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Monday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–138–3]

Imported Fire Ant Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by adding Laurens County, SC, as a quarantined area. We are also adding a boundary to the existing quarantined area in York County, SC. This action expands the quarantined areas and imposes certain restrictions on the interstate movement of quarantined articles from those areas, and corrects an editorial error in an interim rule that expanded the quarantined areas in several States, including South Carolina. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

DATES: Interim rule effective May 2, 1994. Consideration will be given only to comments received on or before July 1, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–138–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittingham, Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10, and referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with imported fire ants. The Administrator will designate less than an entire State only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from the infested locality for quarantine purposes.

We are amending § 301.81–3(e) by designating all of Laurens County, SC, as a quarantined area. We are designating all of Laurens County, SC, as a quarantined area because recent surveys conducted by APHIS and State and county agencies reveal that the imported fire ant has spread to that county.

We are also adding a boundary to the existing quarantined area in York County, SC, published in the **Federal Register** and effective on January 21, 1994 (59 FR 3313–3316, Docket No. 93–138–1). In that earlier interim rule, we inadvertently omitted a portion of the quarantined area for York County, SC.

See the rule portion of this document for specific descriptions of the new quarantined areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial spread of imported fire ant to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action affects the interstate movement of regulated articles from specified areas in Laurens and York counties in South Carolina. Based on information compiled by the Department, we have determined that approximately 24 small entities in Laurens and York counties could be affected by this interim rule. Primarily family-owned, these small nurseries produce nursery and greenhouse crops, with average annual sales of about $110,000, for both the local and interstate markets.

Entities that ship containerized nursery stock to nonquarantined areas will be required to mix bifenthrin with potting media to ensure that imported fire ants do not become established in potted nursery stock. Granular bifenthrin currently retails for about $38.00 per 50-pound bag. We have estimated that the 24 affected entities could apply bifenthrin to about 5,000 cubic yards of potting media annually. These potting media treatments could increase costs for each of these nurseries by about $1,600 annually. This annual cost increase could reduce producer income by about 1.5 percent. Further, the overall economic impact from this action is estimated to be approximately $38,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

Two environmental assessments and findings of no significant impact have been prepared for the imported fire ant regulatory program. The assessments provide a basis for the conclusion that the methods employed to regulate the imported fire ant will not significantly affect the quality of the human environment. Based on the findings of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessments and findings of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in §§ 301.81 through 301.81–10 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0102.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended as follows:

a. By adding, in alphabetical order, an entry for Laurens County, SC, to read as set forth below.

b. In the entry for York County, SC, after the second reference to "South Carolina Highway 5", by adding a new boundary to read as set forth below.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

* * * * *

South Carolina

* * * * *

Laurens County. The entire county.

* * * * *

York County. * * * to its intersection with York County Road 1041; then northeast along York County Road 1041 * * *

* * * * *

Done in Washington, DC, this 25th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–10408 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1240

[AMS–FV–93–704C]

RIN: 0581–AB23

Honey Research, Promotion, and Consumer Information Order and Rules and Regulations Issued Thereunder; Termination of Order Provision and Conforming Correction of the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document terminates a provision of the Honey Research, Promotion, and Consumer Information Order (Order) and deletes conflicting and confusing language in the Rules and Regulations issued under the Order. This action is being taken to clarify and correct the Order and rules and regulations which were amended in August 1991.

DATES: This interim final rule is effective May 2, 1994. Comments must be received May 2, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Research and Promotion Branch, F&V, AMS, USDA, Room 2535 South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours. Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–So., Washington, DC 20090–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: These amendments to the Plan are issued pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended on November 28, 1990 [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

This rule is being issued in conformance with Executive Order No. 12866.

This interim rule has been reviewed under Executive Order 12778, Civil Justice reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule in the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant; or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms, which include importers, are defined as those having annual receipts of less than \$3,500,000.

In accordance with the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35), and Office of Management and Budget (OMB) regulations (5 CFR part 1320), the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control numbers 0581–0093 and 0505–0001. Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, attn: Desk Officer for the Agricultural Marketing Service, USDA.

On November 28, 1990, the Act was amended by the Food, Agriculture, Conservation and Trade Act of 1990. One of the amendments to the Act redefined the requirements for honey that is exempted from assessments under the Act.

Prior to the Act's 1990 amendment, a producer or a producer-packer who produced or handled or produced and handled less than 6,000 pounds of honey per year or an importer who imported less than 6,000 pounds of honey per year were exempt from assessment. Such producers, producer-handlers, and importers applied to the Honey Board for a certificate of exemption which would be presented to the handler of the exemptee's honey. Reporting requirements for handlers included listing those producers claiming exemption.

Under the 1990 amendment to the Act, however, producers, producer-packers, and importers who produce or import during any year less than 6.000 pounds of honey are exempt from paying assessments only if that honey is (1) consumed at home, (2) donated by the producer or importer to a nonprofit, government, or other entity that is determined appropriate by the Secretary, or (3) distributed directly through local retail outlets (e.g., farmers markets and roadside stands).

Since exempted honey may no longer be sold through handlers, handlers are no longer required to provide information to the Board on exempted honey. However, in the amendment to the Order and rules and regulations published as a final rule in the August 7, 1991, **Federal Register** (50 FR 37453), conforming changes to sections 1240.50 and 1240.114 which incorporated these changes to the Act were inadvertently not made. As published, these sections may be confusing and are in conflict with the amended Order and rules and regulations.

Section 13 of the Act provides that whenever the Secretary finds that any provision of any order issued under the Act obstructs or does not tend to effectuate the declared purpose of the Act, the Secretary shall terminate such provisions. Therefore, this action deletes obsolete and confusing language from paragraph (a) of section 1240.50 of the Order and from paragraph (b) of section 1240.114 of the regulations issued under the Order.

Based on the above, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented with regard to the termination of provisions in the Order and the rules and regulations as hereinafter set forth, it is found that these provisions no longer tend to effectuate the declared policy of the Act.

All written comments received in response to this publication by the date specified herein will be considered prior to finalizing this action.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action terminates provisions of the Order and the rules and regulations consistent with the 1990 amendments to the Act; (2) a 30-day comment period is provided to allow interested parties to comment prior to finalization; and (3) no useful purpose would be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR Part 1240 is revised to read as follows:

Authority: 7 U.S.C. 4601–4612.

§ 1240.50 [Amended]

2. In § 1240.50, paragraph (a), the words "including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption" are removed.

§ 1240.114 [Amended]

3. In § 1240.114, paragraph (b), the words "Producers who are exempt from assessment must present their certificates of exemption to their first handler in order to not be subject to

assessment on honey. First handlers, except as otherwise authorized by the Honey Board are required to maintain records showing the exemptee's name and address along with their certificate number assigned by the Board," are removed.

Dated: April 20, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–10220 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Parts 1413 and 1427

RIN 0560–AD22

1994 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On October 13, 1993, the Commodity Credit Corporation (CCC) issued a proposed rule (58 FR 52928) with respect to the 1994 Production Adjustment Program for Extra Long Staple (ELS) Cotton, which is conducted by the CCC in accordance with the Agricultural Act of 1949 (1949 Act), as amended. The 1994 ELS Cotton Acreage Reduction Program (ARP) percentage has been determined to be 15 percent. This final rule amends the regulations to set forth the ARP, the established (target) price, and the price support rate. No paid land diversion (PLD) program will be implemented for the 1994 crop of ELS cotton.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or rights and obligations of recipients thereof; and

(5) Would not raise novel, legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 128866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of the selected option is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the 1994 Production Adjustment Program and the PLD Program and 7 CFR part 1427 to set forth the determinations on the 1994 price support level. General descriptions of the statutory basis for the 1994 ELS ARP percentage determination in this final rule were set forth in the proposed rule at 58 FR 52928 (October 13, 1993).

One comment was received during the comment period. The respondent recommended that a 15-percent ARP level would be sufficient to maintain a stable level of supplies. Concerns were expressed that an ARP higher than 15 percent would result in an unnecessary negative impact on many Pima growers and the Pima cotton industry.

In accordance with statutory requirements, the Secretary of Agriculture (Secretary) announced the 1994 price support level and target price, 85.03 and 102.0 cents per pound, respectively, on December 1, 1993. After considering the comment, the Secretary announced a 15-percent ARP level on January 5, 1994. The Secretary determined that a 15-percent ARP would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages. A 15-percent ARP reflects the current supply situation while signaling to domestic and foreign customers that the U.S. will be a reliable supplier.

Acreage Reduction

In accordance with section 103(h)(5) of the 1949 Act, an ARP has been established for the 1994 crop of ELS cotton at 15 percent. Accordingly, producers will be required to reduce their 1994 acreage of ELS cotton for harvest from the crop acreage base established for ELS cotton by at least this established percentage in order to be eligible for price support loans, purchase, and payments.

Paid Land Diversion

In accordance with section 103(h)(5)(B) of the 1949 Act, a PLD Program will not be implemented for the 1994 crop of ELS cotton.

Price Support Rate

In accordance with section 193(h)(2) of the 1949 Act, the price support rate has been established with respect to the 1994 crop of ELS cotton at 85.03 cents per pound.

Established (Target) Price

In accordance with section 103(h)(3)(B) of the 1949 Act, the established (target) price has been established with respect to the 1994 crop of ELS cotton at 102.00 cents per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(5)(ii) and (a)(5)(iii), and

B. Adding paragraphs (a)(5)(iv) and (d)(4) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(5) * * *

(ii) 1992 ELS cotton, 5 percent;

(iii) 1993 ELS cotton, 20 percent; and

(iv) 1994 ELS cotton, 15 percent.

* * * * *

(d) * * *

(4) For the 1994 crop:

(i)–(iii) [Reserved]

(iv) Shall not be made available to producers of ELS cotton.

* * * * *

3. Section 1413.104 is amended by revising paragraphs (a)(8)(ii) and (a)(8)(iii), adding paragraph (a)(8)(iv) and revising paragraph (b) to read as follows:

§ 1413.104 Established (target) prices.

(a) * * *

(8) * * *

(ii) 1992 ELS cotton—$1.058/lb;

(iii) 1993 ELS cotton—$1.057/lb; and

(iv) 1994 ELS cotton—$1.02/lb.

(b) ELS cotton target price for the 1995 crop will be established as 120 percent of the loan rate for ELS cotton.

PART 1427—COTTON

4. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

5. Section 1427.8 is amended by:

A. Revising paragraphs (a)(2)(ii) and (a)(2)(iii), and

B. Adding paragraph (a)(2)(iv) to read as follows:

§ 1427.8 Amount of loan.

(a) * * *

(2) * * *

(ii) 1992 ELS cotton, 88.15 cents per pound;

(iii) 1993 ELS cotton, 88.12 cents per pound; and

(iv) 1994 ELS cotton, 85.03 cents per pound.

* * * * *

Signed at Washington, DC on April 22, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–10216 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–05–P

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7 CFR Parts 1413 and 1427

RIN 0560–AD21

1994 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On October 5, 1993, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1994 Upland Cotton Production Adjustment Program, which is conducted by the CCC in accordance with the Agricultural Act of 1949 (1949 Act), as amended. The 1994 Upland Cotton Acreage Reduction Program (ARP) percentage has been determined to be 11.0 percent. This final rule amends the regulations to set forth the ARP and the price support rate for the 1994 crop of upland cotton. No paid land diversion (PLD) program will be implemented for the 1994 crop of upland cotton. These actions are required by section 103B of the 1949 Act, as amended.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Carol Skelly, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of more than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and,

(5) Would not raise novel, legal, or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Final Regulatory Impact Analysis

The final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of the selected option is available on request from the above-named individual.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by section 105(b) of the 1949 Act to request comments with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the 1994 ARP and PLD programs, and 7 CFR part 1427 to set forth the determination of the 1994 price support level. General descriptions of the statutory basis for the 1994 upland cotton ARP percentage determination in this final rule were set forth at 58 FR 51934 (October 5, 1993).

A total of thirteen comments was received regarding the ARP level. One respondent recommended the lowest possible level. One respondent suggested an ARP of 10 percent. Five respondents favored an ARP of no more than 14 percent and one other respondent recommended a level of 14 percent. One respondent suggested 15 percent, one suggested 22.5 percent, and one recommended a level of no more than 17.5 percent. Two respondents favored setting the ARP at the statutory maximum of 25 percent.

After considering these comments, the Secretary of Agriculture (Secretary) on November 1, 1993, announced a 17.5-percent ARP level and a price support level of 50.00 cents per pound for the 1994 marketing year. On January 4, 1994, a final ARP requirement of 11.0 percent was announced for the 1994 crop of upland cotton. The Secretary determined that, based upon the most recent projections of carryover and total disappearance, a 11.0-percent ARP would result in a ratio of carryover to total disappearance of 30 percent.

Acreage Reduction

In accordance with section 103B(e)(1) of the 1949 Act, an ARP of 11.0 percent has been established for the 1994 crop of upland cotton. Accordingly, producers will be required to reduce their 1994 acreage of upland cotton for harvest from the crop acreage base established for upland cotton by at least this established percentage in order to be eligible for price support loans and payments.

Paid Land Diversion

In accordance with section 103B(e)(5) of the 1949 Act, a PLD program will not be implemented for the 1994 crop of upland cotton.

Price Support Rate

In accordance with section 103B(a)(1)(3) of the 1949 Act, the price support rate has been established with respect to the 1994 crop of upland cotton at 50.00 cents per pound.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraph (a)(3)(ii) and (a)(3)(iii),

B. Adding paragraph (a)(3)(iv),

C. Republishing paragraph (d)(4), introductory text, and

D. Adding paragraph (d)(4)(iii) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(ii) 1992 upland cotton, 10 percent;

(iii) 1993 upland cotton, 7.5 percent; and

(iv) 1994 upland cotton, 11.0 percent.

* * * * *

(d) * * *

(4) For the 1994 crop:

* * * * *

(iii) Shall not be made available to producers of upland cotton.

* * * * *

PART 1427—COTTON

3. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

4. Section 1427.8 is amended by:

A. Revising paragraph (a)(1)(ii) and (a)(1)(iii); and

B. Adding paragraph (a)(1)(iv) to read as follows:

§ 1427.8 Amount of loan.

(a) * * *

(1) * * *

(ii) 1992 upland cotton, 52.35 cents per pound;

(iii) 1993 upland cotton, 52.35 cents per pound; and

(iv) 1994 upland cotton, 50.00 cents per pound.

* * * * *

Signed at Washington, DC, on April 22, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–10217 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–144–2]

Validated Brucellosis-Free States; Kansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Kansas to the list of validated brucellosis-free States. We have determined that Kansas meets the criteria for classification as a validated brucellosis-free State. This interim rule relieved certain restrictions on the interstate movement of breeding swine from Kansas.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, Swine Health Staff, Veterinary Services, APHIS, USDA, suite 204, Presidential

Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on December 28, 1993 (58 FR 68505–68506, Docket No. 93–144–1), we amended the brucellosis regulations in 9 CFR part 78 by adding Kansas to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before February 24, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR part 78.43 that was published at 58 FR 68505–68506 on December 28, 1993.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 25th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–10407 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 94–06]

RIN 1557–AB27

Rules, Policies and Procedures for Corporate Activities: Merger, Consolidation, Purchase and Assumption

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting final procedures for national banks to follow in merging or consolidating with Federal savings associations. This action is necessary because the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which authorized national bank mergers and consolidations with Federal Savings associations, did not establish procedures for such transactions. To the extent appropriate, the procedures imposed here parallel the statutory and regulatory procedures governing mergers and consolidations between national banks and state-chartered financial institutions.

EFFECTIVE DATE: This rule is effective on May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jerome L. Edelstein, Senior Counsel, Corporate Organization and Resolutions Division, (202) 874–5300; Nancy Cody, National Bank Examiner/Senior Analyst, Bank Organization and Structure, (202) 874–5060, 250 E St. SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

Sections 501(a) and 502(b) of title V of the FDICIA, Public Law 102–242, amended the National Bank Act, at 12 U.S.C. 215c, and the Federal Deposit Insurance Corporation Act (FDI Act), at 12 U.S.C. 1815(d)(3), to authorize national banks, subject to certain limitations, to acquire or be acquired by Federal savings associations. Acquisitions, within the meaning of title V, include mergers and consolidations in addition to purchase and assumption transactions. Title V clearly authorizes national banks to merge or consolidate with Federal savings associations if the transaction meets the requirements set forth in title V.

The authority to merge or consolidate with Federal savings associations, granted in Title V of FDICIA, supplements long-standing national bank authority to merge or consolidate with other national banks or with state chartered financial institutions, including savings associations. National banks also have had the authority to engage in purchase and assumption transactions with both Federal and state chartered depository institutions, including savings associations.

The existing statutes permitting national bank consolidations and mergers provide procedures for such activities including, under Federal law at 12 U.S.C. 214(a), 214a, 215, and 215a, specific procedures for shareholder approval and dissenter's rights for mergers and consolidations between national banks and with state chartered banking institutions. The FDICIA did not address such matters for mergers and consolidations between national banks and Federal savings associations. Thus, there is significant uncertainty about procedures for national banks merging or consolidating with Federal savings associations.

Purpose

To address the uncertainty, the OCC, on November 3, 1992, published an interim rule with request for comment. That rule established procedures for national banks to merge or consolidate with Federal savings associations (57 FR 49639). The interim rule, to the extent appropriate, applied the statutory procedures for mergers and consolidations between national banks and with state-chartered banking institutions. The preamble to the interim rule as published at 57 FR 49639–49642 provided a complete explanation. In summary, these procedures addressed:

—Approval by the board of directors of each institution proposing to engage in such a merger or consolidation;

—Notice to and approval by the shareholders of such institutions;

—Rights of shareholders who dissent from the proposed transaction and procedures for valuing their shares; and

—Succession of the resulting institution to all property and rights of the consolidating or merging institutions.

In addition, the interim rule made various technical changes to 12 CFR § 5.33 governing merger, consolidation, and purchase and assumption transactions by national banks. These changes make it clear that the provisions also apply to mergers and consolidations between national banks and Federal savings associations. These provisions include:

—The requirement that all participating depository institutions file relevant proxy material or information with the OCC;

—The application of the OCC's policy on name changes when the resulting bank selects a new title; and

—The OCC's option to examine any institution proposing to merge into or be consolidated with a national bank and to charge the applicants a fee for the examination.

Another change clarifies the authority of national banks to temporarily retain nonconforming assets acquired in a merger or consolidation with another depository institution.

The interim rule also provides that the OCC has no approval authority over a merger or consolidation transaction where the resulting institution is not a national bank. It requires a national bank to notify the OCC when it intends to be merged or consolidated into a depository institution with a different type of charter.

This final rule, adopted by the OCC pursuant to its authority under the National Bank Act, including 12 U.S.C. 93a and 215c, finalizes the interim rule. There is one change between the final rule and the interim rule. The change, which addresses a national bank's retention of nonconforming assets acquired in a merger or consolidation with another banking institution, is discussed below.

Comments on the Interim Rule

The OCC received four comment letters on the interim rule—three filed on behalf of banks and one filed by the Federal Home Loan Bank of Atlanta (FHLB).

The comment filed by the FHLB concerned § 5.33(b)(8) of the interim rule, which states that the OCC may permit a national bank to acquire nonconforming assets through merger (or consolidation) and retain and carry those assets until they can be divested. The FHLB was concerned that FHLB stock would have to be divested although the resulting national bank intended to become an FHLB member. Subject to OCC approval, a national bank may retain FHLB stock while it takes actions necessary to become an FHLB member. The interim rule did not require divestiture of FHLB stock under these circumstances.

Nevertheless, the OCC agrees that there could be confusion regarding this requirement. Therefore, in this final rule, the OCC has revised § 5.33(b)(8) to reflect that the OCC may approve a national bank to hold nonconforming assets for a reasonable time until such assets can be made to conform.

One bank commenter was concerned that the interim rule unintentionally required shareholder approval for branch purchases and sales between national banks and Federal savings associations. The commenter's concern arises because § 5.33(b)(1) of the interim rule indicates the term merger refers to a merger, consolidation, or purchase and assumption, unless the context indicates otherwise. The provision addressing shareholder approval requirements, 12 CFR 5.33(c), however, specifically refers to mergers and consolidations, thus in context, clearly indicating that the general definition of the term "merger" is inapplicable and that the shareholder approval provision does not apply to branch purchases and sales. The OCC believes that § 5.33 (b)(1) and (c) are sufficiently clear and, therefore, is adopting these provisions without change.

The two other bank commenters raised issues beyond the scope of this rulemaking. One bank commenter dealt with the time period for processing applications for mergers, consolidations, and purchase and assumption transactions between national banks and various types of banking institutions in light of certain provisions of the FDICIA. The interim rule specifically did not address the scope or applicability of the statutory timeframes; consequently, the OCC does not believe that it is appropriate to address those issues in this final rule.

The other bank commenter dealt with procedures to affect mergers and consolidations between national banks and mutual savings associations. As stated, the purpose of the interim rule was simply to apply existing statutory and regulatory procedures governing certain national bank mergers and consolidations to mergers and consolidations between national banks and Federal savings associations. The OCC will continue to process applications where mutual savings associations convert to the stock form of organization and subsequently merge or consolidate with, or convert into a national bank.

Reasons for Immediate Effective Date

Because statutory law currently authorizes mergers and consolidations between national banks and Federal savings associations, and because the procedures in this final rule are already in effect, the OCC finds that a delay in implementation is unnecessary. Moreover, the OCC has made only one change from the interim rule. That change, regarding retention of nonconforming assets, relieves a restriction. Thus, this final rule is being adopted effective immediately.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on national banks, regardless of size.

Executive Order 12866

It has been has determined that this document is not a significant regulatory action as defined in Executive Order 12866.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

Accordingly, the interim rule amending 12 CFR part 5, published at 57 FR 49639–49644 on November 3, 1992, is adopted as a final rule with the following change:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

2. In § 5.33, paragraph (b)(8) is revised to read as follows:

§ 5.33 Merger, consolidation, purchase and assumption.

* * * * *

(b) * * *

(8) *Nonconforming assets.* A national bank seeking to acquire and retain nonconforming assets in a merger shall identify those assets as required by the OCC's merger application. OCC, in its discretion, may permit the bank to retain the assets for a reasonable time to allow it to dispose of or conform the assets. Retention may be subject to conditions and an OCC determination of the carrying value of the retained assets.

* * * * *

Dated: April 25, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–10392 Filed 4–29–94; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 93–AWS–1; Special Condition No. 29–ASW–12]

Special Condition: European Helicopter Industries, Ltd., Model EH–101 Helicopter, Electronic Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the European Helicopter Industries, Ltd., Model EH–101 helicopter. This helicopter will have a novel or unusual design feature associated with the Electronic Instrument System. This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111; telephone (817) 222–5120.

SUPPLEMENTARY INFORMATION:

Background

European Helicopter Industries, Ltd., which consists of Westland Helicopters of England and Agusta Helicopters of Italy, submitted applications for type certificates dated September 20, 1988, to the FAA Brussels Certification Office through the Civil Airworthiness Authorities of the United Kingdom for the passenger carrying version of the EH–101 and through the Registro Aeronautico Italiano of Italy for the utility version.

The passenger version is a 30 passenger, long range helicopter powered by three GE CT 7–6A engines with a maximum takeoff weight of 31,000 lbs. The utility version is a cargo or mixed passenger and cargo helicopter that differs principally from the passenger version in that the utility version has a ramp door incorporated in the rear fuselage.

Type Certification Basis

The certification basis established for the Model EH–101 helicopter consists of 14 CFR part 29, including Amendments 29–1 through 29–27, and 14 CFR parts 21 and 36; Amendments 21–61 and 36–14, respectively.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2) for changes to the type certificates. In addition to the applicable airworthiness regulations and special conditions, the Model EH–101 must comply with the noise certification requirements of part 36, Amendments 36–1 through 36–14.

Novel or Unusual Design Feature

The European Helicopter Industries, Ltd., Model EH–101 helicopter, at the time of application, was identified as incorporating one and possibly more electrical or electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. The Electronic Instrument System displays attitude, flight data, navigation data, engine, and transmission information. The display of attitude, altitude, and airspeed to the pilot is critical to the continued safe flight and landing of the helicopter for instrument flight rules (IFR) operations in Instrument Meteorological Conditions.

If it is determined that this helicopter will incorporated other electrical or electronic systems performing critical functions, those systems also will be required to comply with the requirements of this special condition.

Discussion of Comments

Notice of Proposed Special Condition No. SC–93–1–SW was published in the **Federal Register** on January 8, 1993 (58 FR 3239). No comments were received. Therefore, the special condition is adopted as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S. 1857f–10, 4321 *et seq.*; E.O. 11514, 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the European Helicopter, Ltd., Model EH–101 helicopter.

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on April 14, 1994.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–10287 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 29

[Docket No. 94–ASW–1; Special Condition 29–ASW–13]

Special Condition: Sikorsky Model S76C Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Sikorsky Model S76C helicopter modified by Sikorsky Aircraft, a Division of United Technologies Corporation. This helicopter will have a novel or unusual design feature associated with the Electronic Flight Instrument System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

DATES: The effective date of this special condition is May 2, 1994. Comments must be received on or before June 1, 1994.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 94–ASW–1, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 2601 Meacham Blvd., room 663, Fort Worth, Texas 76137.

Comments must be marked Docket No. 94–ASW–1. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Directorate, Policy and Procedures Group, Fort Worth, Texas 76193–0112; telephone (817) 222–5121.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delay delivery of the affected helicopter. These notice and comment procedures are also considered unnecessary since the public has been previously provided with a substantial number of opportunities to comment on substantially identical special conditions and their comments have been fully considered. Therefore, good cause exists for making this special condition effective upon issuance.

Comments Invited

Although this final special condition was not subject to notice and opportunity for prior public comment, comments are invited on this final special condition. Interested persons are invited to comment on this final special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered. This special condition may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–ASW–1." The postcard will be date and time stamped and returned to the commenter.

Background

On October 12, 1993, Sikorsky Aircraft, West Palm Beach, Florida, applied for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System in a Sikorsky Aircraft Model S76C helicopter. This is a 13 passenger, twin engine, 11,400 pound transport category helicopter.

Type Certification Basis

The certification basis established for the Sikorsky Model S76C helicopter includes: 14 CFR part 29 (part 29) effective February 1, 1965, Amendments 29–1 through 29–11; in addition, portions of Amendments 29–12, specifically, §§ 29.67, 29.71, 29.75, 29.141, 29.173, 29.175, 29.931, 29.1189(a)(2), 29.1555(c)(2), 29.1557(c); portions of Amendment 29–13, specifically § 29.965; § 29.1325 of Amendment 29–24; § 29.811 of Amendment 29–30; Amendment 36–14 of part 36, appendix H; instrument flight criteria for S–76 (interim) dated February 10, 1977; Special Conditions 29–82–NE–3 (Docket No. 17721) dated March 27, 1978; Equivalent Safety Finding for § 29.173(b), National Environmental Act of 1969; Noise Control Act of 1972; § 29.865 including § 29.25 of Amendment 29–12, when cargo hook system, P/N 76255–02000, is installed; and for external load operations, part 133, including Amendments 1–4. Compliance with the following optional requirements has been established: Ditching provisions § 29.563 including §§ 29.801 and 29.807(d) and excluding §§ 29.1411, 29.1415, and 29.1561 of Amendment 29–12, when emergency flotation gear, P/N 76076–02002, is installed. For over-water operations, compliance with the operating rules and §§ 29.1411, 29.1415, and 29.1561 must be shown.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 and become part of the type certification basis in accordance with § 21.101(b)(2). Provision is made for the public comment period in § 11.28.

Discussion

The Sikorsky Model S76C helicopter, at the time of the application for modification by Sikorsky Aircraft, was identified as having modifications that incorporate one and possibly more electrical, electronic, or combination of electrical and electronic (electrical/electronic) systems that will perform functions critical to the continued safe flight and landing of the helicopters. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopters for IFR operations in instrument meteorological conditions. After the design is finalized, Sikorsky Aircraft will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems that are critical to the continued safe flight and landing of the helicopters.

Recent advances in technology have prompted the design of aircraft that include advanced electrical and electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopters. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical and electronic systems required for the continued safe flight and landing of the helicopters. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions:

(1) Increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment and in 1986 initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations. While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is that the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional factors must be considered.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KH$_z$ to 18 GH$_z$. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations. Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotorcraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those shown, by past testing, to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general, do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 H$_z$ square wave modulation while the video signals for electronic display systems may be susceptible to 400 H$_z$ sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH$_z$ sine wave with 80 percent depth of modulation in the frequency range from 10 KH$_z$ to 400 MH$_z$ and 1 KH$_z$ square wave with greater than 90 percent depth of modulation from 400 MH$_z$ to 18 GH$_z$. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KH$_z$	50	50
100–500	50	50
500–2000	70	70
2–30 MH$_z$	200	200
30–100	30	30
100–200	150	33

TABLE 1.—FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GH$_z$	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopter.

The substance of this special condition for similar installations in a variety of helicopters has been subjected to the notice and comment procedure and has finalized without substantive change. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impractical, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to prior opportunities for comment.

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citations for this special condition are as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Sikorsky Model S76C helicopter:

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on April 14, 1994.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 94–10288 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–04]

Establishment of Class E Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Ankeny Regional Airport, Ankeny, Iowa. The development of a new standard instrument approach procedure (SIAP) at the Ankeny Regional Airport, Ankeny, Iowa, utilizing a new non-directional beacon (NDB) on the airport as a navigational aid has made this action necessary. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Ankeny Regional Airport, Ankeny, Iowa (59 FR 4609).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This rule is the same as that proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Ankeny, Iowa, extending upward from 700 feet above the surface excluding that portion within the Des Moines, Iowa, Class C and E airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE IA E5 Ankeny, IA [New]

Ankeny Regional Airport, IA
(lat. 41°41′28″ N, long. 93°34′40″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ankeny Regional Airport, Iowa, excluding that portion within the Des Moines, Iowa, Class C and E airspace.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–10377 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–05]

Establishment of Class E Airspace; Harrisonville, MO, Lawrence Smith Memorial Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lawrence Smith Memorial Airport, Harrisonville, Missouri. The development of a standard instrument approach procedure (SIAP) at the Lawrence Smith Memorial Airport, Harrisonville, Missouri, utilizing the Butler, Missouri, Very High Frequency Omnidirectional Radio Range/Tactical Air Navigational Aid (VORTAC) has made this action necessary. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Lawrence Smith Memorial Airport, Missouri (59 FR 4610).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This rule is the same as that proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Lawrence Smith Memorial Airport, Harrisonville, Missouri, extending upward from 700 feet above ground level (AGL) to 1200 AGL. The development of a new SIAP based on the Butler, Missouri, VORTAC made this action necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR SIAP at Lawrence Smith Memorial Airport, Harrisonville, Missouri.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 Harrisonville, MO [New]

Lawrence Smith Memorial Airport, MO
(lat. 38°36′20″ N, long. 94°20′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Lawrence Smith Memorial Airport.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Center Region

[FR Doc. 94–10379 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–22]

Class D Airspace; Mosinee, WI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Class D airspace for Mosinee, Wisconsin, published in a final rule on March 30, 1994 (59 FR 14744), Airspace Docket Number 93–AGL–22.

EFFECTIVE DATE: 0901 U.T.C., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–7452, Airspace Docket 93–AGL–22, published on March 30, 1994 (59 FR 14744), revised the designation of airspace for Mosinee, Wisconsin. An error was discovered in the description of Class D airspace. This action corrects that error by changing the vertical limits set forth in the airspace description.

Correction to Final Rule

This action corrects the error in the vertical limits of Class D airspace for

Mosinee, Wisconsin, by adding the following sentence: "That airspace extending upward from the surface to and including 3,800 feet MSL."

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Mosinee, Wisconsin, Class D airspace, as published in the **Federal Register** on March 30, 1994, (59 FR 14744), (**Federal Register** Document 94–7452; page 14745, column 2), is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

PART 71.1—[CORRECTED]

§ 71.181 Designation [Corrected]

Paragraph 5000 Class D airspace.

AGL WI D Mosinee, WI [Corrected]

Mosinee, Central Wisconsin Airport, WI
(lat. 44°46′42″ N., long. 89°39′59″ W.)

That airspace extending upward from the surface to and including 3800 feet MSL, within a 4.4-mile radius of Central Wisconsin Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport Facility/Directory.

* * * * *

Issued in Des Plaines, Illinois on April 18, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–10375 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 290

[Docket No. 931239–4088]

RIN 0693–AB27

Regional Centers for the Transfer of Manufacturing Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology is today issuing a final rule making revisions to regulations found at part 290 of title 15 of the Code of Federal Regulations, which implement the Regional Centers for the Transfer of Manufacturing Technology. This change revises the matching fund requirements in the fifth and sixth years of operation to reflect program experience during the first five years. With this change, the maximum allowable Federal funding will be one third of total expenses during years five and six. This change also modifies the requirements for cash match. With this change, at least half of the match must be in cash or full-time personnel loaned to the operating organization.

EFFECTIVE DATE: This rule is effective on May 2, 1994.

FOR FURTHER INFORMATION CONTACT: To receive additional program information, contact Philip Nanzetta at (301) 975–3414.

SUPPLEMENTARY INFORMATION: On January 27, 1994, the National Institute of Standards and Technology published a notice of proposed rulemaking in the **Federal Register** (59 FR 3803). No comments were received in response to this notice. Accordingly, the National Institute of Standards and Technology announces changes to the matching funds requirements for the Regional Centers for the Transfer of Manufacturing Technology (Manufacturing Technology Centers, MTC) program found at Part 290 of title 15 of the Code of Federal Regulations. The MTC program provides financial and technical assistance to regional centers (MTCs) which work directly with small and medium sized manufacturing firms to advance their level of manufacturing technology. The MTCs are selected on a competitive basis in accordance with the regulation at 15 CFR part 290.

Part of the funding for each MTC is provided by a Federal cooperative agreement and the balance (the "match") is provided through a variety of means by the operating organization. The match is generally provided as a combination on non-Federal public funds or in-kind match, contributions of cash or in-kind resources from private sources, and earned income of the MTC. The authorizing legislation allows Federal funding of up to half the total budget (cash and in-kind) in the first three years and requires that the Secretary adopt regulations which specify a declining level of Federal support during the next three years. The regulation, prior to the change announced today, specified those maximum funding levels to be 40 percent, 30 percent, and 20 percent in years four through six respectively. The changes made today to Part 290 specify those maximum funding levels to be 40 percent, ⅓, and ⅓ in years four through six respectively.

Also, the regulation had required that 55 percent of the match be in cash or full-time personnel. The changes made today to Part 290 specify that half of the match be in cash or full-time personnel, effective immediately. This immediate effective date is different from what NIST had proposed in the notice of January 27. In the January 27 notice, NIST had proposed that the relaxation of restrictions on the host contribution apply to all awards issued or extended after September 30, 1994. Since no public opposition was expressed about this change, and in order to avoid any possibility of confusion as to effective date of the revisions contained in this notice, NIST has decided to make all changes to part 290 effective immediately.

Classification

This rule was determined to be not significant for purposes of Executive Order 12866. The General Counsel certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act because the proposed rule changes will affect only those governmental units that are selected to receive funding under the Program. The program is entirely voluntary for the participants that seek funding. It is not a major federal action requiring an environmental assessment under the National Environment Policy Act. The Regional Centers for the Transfer of Manufacturing Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. Since the rule relieves funding restrictions that had previously been imposed on funding recipients, under section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) it may and is being made effective without a 30 day delay in effective date.

List of Subjects in 15 CFR Part 290

Science and technology, Business and industry, Small business.

Dated: April 20, 1994.

Samuel Kramer,

Associate Director, National Institute of Standards and Technology.

For reasons set forth in the preamble, title 15, part 290 of the Code of Federal Regulations is amended as follows:

PART 290—REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

1. The authority section for part 290 is revised to read as follows:

Authority: 15 U.S.C. 278k.

2. Section 290.4 is amended by revising Table 1 in paragraph (b) and paragraph (c)(5) to read as follows:

§ 290.4 Terms and Schedule of Financial Assistance.

* * * * *

(b) * * *

TABLE 1.—SCHEDULE OF NIST MATCHING FUNDS

Year of center operation	Maximum NIST share
1–3	½
4	⅖
5–6	⅓

(c) * * *

(5) In-kind contribution of part-time personnel, equipment, software, rental value of centrally located space (office and laboratory) and other related contributions up to a maximum of one-half of the host's annual share. Allowable capital expenditures may be applied in the award year expended or in subsequent award years.

[FR Doc. 94–10391 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order amending part 30 order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending condition (2)(f) of the part 30 Order issued on February 17, 1993 to the Tokyo Grain Exchange (the "Exchange" or "TGE") to provide that TGE member firms granted relief under rule 30.10 may require its customers resident in the United States who, in connection with disputes arising under transactions subject to part 30, elect arbitration at the National Futures Association ("NFA") to exhaust certain mediation procedures made available by the TGE prior to initiating such arbitration proceeding.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Francey L. Youngberg, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On February 17, 1993, the Commission issued an Order under rules 30.3(a) and 30.10:[1]

(1) Authorizing certain option contracts traded on the Exchange to be offered or sold to persons located in the United States; and

(2) Granting an exemption to designated members of the Exchange from the application of certain of the foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority.

Among other conditions, the Order required that members of the TGE seeking rule 30.10 relief consent to the following:

> (f) [the Firm] [c]onsents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under part 30, and consents to notify customers resident in the United States of the availability of such a program; *Provided, however,* that until the Exchange adopts a procedure for an 'on the papers' hearing applicable to all Exchange arbitrations, consents to notify such customers that if they elect Exchange arbitration, they or their agent could be required to appear personally at a hearing, and if the customer elects NFA arbitration, consents to participate in such proceeding even in circumstances where the dispute arises primarily out of delivery, clearing, settlement or floor practices * * *. 58 FR 10956.

By letter dated March 31, 1994, the Exchange through its counsel, requested that the Commission amend the Order to accommodate mediation procedures available at the Exchange.[2] In particular, it has requested that customers resident in the United States who elect to arbitrate a dispute involving transactions subject to part 30 at NFA be required to exhaust certain mediation procedures made available by the Exchange prior to initiating such NFA arbitration proceeding.

Upon consideration of the matter, the CFTC is amending condition 2(f) of the Order issued on February 17, 1993 as follows (new language is underlined) and approving the form of consent set forth below as Exhibit A:[3]

> (f) [the Firm] [c]onsents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under part 30, and consents to notify customers resident in the United States of the availability of such a program; Provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit A concerning the exhaustion of certain mediation procedures made available by the TGE prior to bringing an NFA arbitration proceeding; and provided further that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit A; Provided, however, that until the Exchange adopts a procedure for an 'on the papers' hearing applicable to all Exchange arbitrations, consents to notify such customers that if they elect Exchange arbitration, they or their agent could be required to appear personally at a hearing, and if the customer elects NFA arbitration, consents to participate in such proceeding even in circumstances where the dispute arises primarily out of delivery, clearing, settlement or floor practices * * *."

Exhibit A—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of TGE firm] with respect to transactions subject to part 30 of the Commodity Futures Trading Commission's rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and Japan and arbitration programs made available both in the United States and Japan. In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation in accordance with such procedures as may be made available by the Tokyo Grain Exchange ("TGE"), information on which is provided to you herewith. The outcome of such TGE mediation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the TGE or to binding arbitration in the United States under the rules of NFA. If you accept the mediated resolution or elect to proceed to arbitration, or to any other form of binding resolution under the rules of the Exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

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[1] 58 FR 10953 (February 23, 1993).

[2] See letter dated March 1, 1994 from John V. Rainbolt, counsel for the Exchange to Jean A. Webb, Commission.

[3] The requirement for U.S. customers to first exhaust mediation procedures before proceeding to NFA arbitration is contained in other part 30 orders. For example, a part 30 order issued by the Commission to the Securities and Investments Board ("SIB") on May 15, 1989 allows firms to require U.S. customers to first exhaust certain mediation and conciliation procedures made available by the SIB prior to bringing an NFA arbitration proceeding. 54 FR 21599, 21601 (May 19, 1989). See also part 30 orders issued on the same day to the Association of Futures Brokers and Dealers, 54 FR 21604, The Securities Association, 54 FR 21609 and the Investment Management Regulatory Organization Limited, 54 FR 21614.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the Tokyo Grain Exchange:

(1) Evidencing completion of the mediation process and reminding you of your right of access to NFA's arbitration proceeding; or

(2) Representing that more than nine months have elapsed since you commenced the mediation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent you are not waiving any other right to any other legal remedies available under the law.

Customer

Date

In all other respects, the terms and conditions of the Commission's part 30 Order issued to the TGE on February 17, 1993 remain unchanged.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix C to Part 30 is amended by revising the entry "Firms Designated by the Tokyo Grain Exchange" to read as follows:

Appendix C to Part 30

* * * * *

Firms designated by the Tokyo Grain Exchange.

FR date and citation: Feb. 23, 1993, 58 FR 10957; May 2, 1994.

Issued in Washington, DC, on April 22, 1994.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94-10267 Filed 4-29-94; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 92

[Docket No. R-94-1648; FR-3411-N-03]

RIN 2501-AB50

HOME Investment Partnerships Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development.

ACTION: Notice of waiver.

SUMMARY: This document informs the public that the Department is waiving a provision of the HOME Program rule at 92.2 on the current definition of commitment. The Department on April 19, 1994, published a rule that expanded the definition of commitment. However, that rule will not become effective until May 19, 1994. In the interim, there are participating jurisdictions (PJs) which could benefit by being able to use the newly expanded definition of commitment. This document provides a waiver of the provisions that are being amended, obviating the need for individual waiver requests from the affected PJs.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director of the Program Policy Division, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The HOME program statute and regulations give PJs 24 months to commit their HOME funds. HOME funds not committed by the 24 month deadline must be recaptured by the Department. The Department published a rule on April 19, 1994 (59 FR 18626) which included a revision to the definition of commitment. The Department believes greater flexibility in the definition of commitment is required. In addition to commitments to specific projects, the definition of commitment is expanded to include legally binding agreements with State recipients, subrecipients, contractors to produce affordable housing and reservation of funds to Community Housing Development Organizations (CHDOs).

II. Good Cause

In expanding the definition of commitment in the regulation, the Department believed that additional flexibility was warranted because of the slow start-up of the program and the significant statutory and regulatory changes which have occurred in the program. With these major changes in the program, the ability of the PJs to operate the program effectively has substantially increased. Nonetheless, the Department recognized that to build on the momentum of these changes, an expansion of the definition would provide regulatory relief to allow funds to be committed to state recipients, subrecipients and CHDOs in a more orderly and equitable fashion. States can work with small cities and newly formed CHDOs to build capacity without fear of losing funds. Also, local PJs may tackle more difficult rental projects designed to serve very-low income or special needs populations, which often require longer development periods.

This good cause applies to PJs whose commitment deadline occurs before the effective date of the April 19, 1994 regulation.

III. Waiver

Pursuant to the authority of § 92.3, the Department waives the definition of commitment at § 92.2 for participating jurisdictions whose 24 months commitment deadline will occur before May 19, 1994. These jurisdictions may use the new definition of "Commitment" published in the **Federal Register** of April 19, 1994 (59 FR 18631).

Dated: April 25, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94-10305 Filed 4-29-94; 8:45 am]

BILLING CODE 4210-29-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment..

SUMMARY: OSM is announcing the approval, with exceptions, of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises parts of the Ohio Administrative Code (OAC) pertaining to land use and revegetation success. It establishes revegetation success standards where the postmining land use is undeveloped land and sampling procedures for measuring vegetative ground cover, forage yield and tree and shrub stocking.

The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations, clarify ambiguities, and encourage tree planting.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Discussion of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

The subject of this final rule is a combination and resubmission of two prior Ohio amendments, PA 25R and PA 56R (Administrative Record No. OH–1944). This combined resubmission was submitted to OSM by Ohio on October 21, 1993. OSM announced receipt of the proposed amendment in the November 4, 1993, **Federal Register** (58 FR 58824) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the amendment. The public comment period ended on December 6, 1993. The public hearing scheduled for November 29, 1993, was not held because no one requested an opportunity to testify.

The Ohio legislature through the Joint Committee on Agency Rule Review approved the proposed amendment on November 27, 1993. The Ohio Department of Natural Resources, Division of Reclamation (Ohio), has delayed implementation of the rule until the Director of OSM makes his decision on the proposed amendment. Set forth below is the history of PA 25R and PA 56R.

Revised Program Amendment Number 25 (PA 25R)

On January 14, 1993 (58 FR 4330), the Director of OSM announced his decision on a June 22, 1992, submission of PA 25R (Administrative Record No. OH–1725). In that decision, the Director approved Ohio's proposed revision to OAC 1501:13–9–15 (J)(1) adopting the requirement that success of revegetation shall be measured using a statistically valid sampling technique with a 90-percent statistical confidence interval. However, the Director did not approve Ohio's visual (ocular) method of evaluating ground cover as a statistically valid means of performing that sampling. Therefore, the Director continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid sampling technique for evaluating ground cover in order to be no less effective than the corresponding Federal regulations at 30 CFR 816.116(a).

By letter dated June 11, 1994 (Administrative Record No. OH–1889), Ohio resubmitted PA 25R. In that resubmission, Ohio proposed to delete the recently approved requirements for statistical sampling of revegetation and to substitute a mixed use of ocular evaluation and statistical sampling under new paragraphs (G)(3)(b) (ii) and (iii) and revised paragraph (K)(1) of OAC 1501:13–9–15.

OSM announced receipt of new PA 25R in the July 6, 1994, **Federal Register** (58 FR 36178), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 5, 1993. The public hearing scheduled for August 2, 1993, was not held because no one requested an opportunity to testify.

By letter dated September 13, 1993 (Administrative Record No. OH–1917), OSM provided its questions and comments to Ohio on the June 11, 1993, resubmission of PA 25R. On October 12, 1993, Ohio requested and received a one-week extension to the due date for its response to OSM's September 13, 1993, letter (Administrative Record Nos. OH–1936 and 1937).

Ohio's October 21, 1993, amendment submission, which is the subject of this final rule, was submitted in part to address OSM's September 13, 1993, questions and comments on PA 25R. Also, as part of the October 21, 1993, submission, Ohio formally withdrew its earlier June 22, 1992, submission of PA 25R, which was partially approved by the Director of OSM on January 14, 1993. On January 14, 1994, OSM sent Ohio a final issue letter which the State responded to on February 23, 1994 (Administrative Record Nos. OH–1976 and OH–1989).

Revised Program Amendment Number 56 (PA 56R)

By letter dated May 1, 1992 (Administrative Record No. OH–1690), Ohio submitted proposed PA 56. This amendment proposed changes to two Ohio rules concerning measurement of revegetation success on pasture or grazing land, undeveloped land, recreational areas, and previously disturbed areas.

As part of and in support of PA 56, Ohio also submitted four draft Policy/Procedure Directives entitled "Measurement of productivity on pasture and grazing land," "Identification of areas for which the premining land use is undeveloped land," "Planting plans for areas for which the approved postmining land use is undeveloped land," and "Verification of proper planting of tree seedlings." These proposed policy statements elaborated on and established criteria for the new requirements in the two revised Ohio rules.

OSM announced receipt of PA 56 in the June 2, 1992, **Federal Register** (57 FR 23178) and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 2, 1992. The public hearing scheduled for June 29, 1992, was not held because no one requested an opportunity to testify.

By letter dated January 12, 1993 (Administrative Record No. OH–1803), Ohio resubmitted PA 56R in response to OSM's questions and concerns. This revised amendment proposed additional modifications to the rule at OAC 1501:13–9–15. OSM announced receipt of new PA 56R in the March 22, 1993, **Federal Register** (58 FR 15315) and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 21, 1993. The public hearing scheduled for April 16, 1993, was not held because no one requested an opportunity to testify.

By letter dated October 14, 1993 (Administrative Record No. OH–1939), OSM provided questions and comments to Ohio on the January 12, 1993, resubmission of PA 56R. Ohio's October 21, 1993, amendment submission, which is the subject of this final rule, was submitted in part to address OSM's October 14, 1993, questions and comments. On January 14, 1994, OSM sent Ohio a final issue letter which the State responded to on February 23, 1994 (Administrative Record Nos. OH–1976 and OH–1989).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Only substantive changes will be discussed in detail. Revisions which are not discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations that reflect organizational changes resulting from this amendment.

The proposed amendment governs both surface mining activities and underground mining activities. The Federal counterparts are 30 CFR part 816 for surface mining activities and 30 CFR part 817 for underground mining activities. With a few exceptions, part 816 and part 817 are substantively identical. OSM will discuss the proposed changes to Ohio's rules in relation to the Federal rules governing surface mining activities at 30 CFR part 816 with the understanding that such discussion also applies to the Federal rules governing underground mining activities at 30 CFR part 817. Any exceptions will be discussed separately.

1. OAC 1501:13–4–06(E)(2)(g), Land Use Changes

Ohio is revising OAC 1501:13–4–06(E)(2)(g) to provide that a change in the postmining land use pursuant to Ohio's postmining land rules at OAC 1501:13–9–17 shall be considered a significant alteration of the mining and reclamation plan in the original permit and shall be subject to notice and hearing requirements. The Federal rules at 30 CFR 701.5 define land uses which are to be used by permit applicants to characterize premining and postmining land uses. This Federal rule further specifies that changes of land use from one category to another shall be considered as a change to an alternative land use which is subject to approval by the regulatory authority. 30 CFR 774.13(b)(2) provides for the regulatory authority to establish guidelines concerning the scale or extent of permit revisions for which all the permit application information requirements and procedures including notice, public participation, and notice of decision requirements shall apply. Such requirements and procedures are to apply, at a minimum, to all significant permit revisions. Furthermore, in the October 1, 1980, **Federal Register** (45 FR 64908), OSM published an interpretive rule, 30 CFR 784.200, pertaining to the approval of alternative postmining land uses through the permit revision procedures of 30 CFR 774.13. In this interpretive rule, OSM stated that it considered an application for a permit revision to adopt an alternative postmining land use to constitute a significant alteration from the mining operations contemplated by the original permit, and to be subject to the public notice and hearing requirements, as well as other provisions, of 30 CFR parts 773 and 775. The Director, therefore, finds that the proposed revisions to OAC 1501:13–4–06(E)(2)(g) bring this rule into conformity with the Federal interpretive rule, and are no less effective than 30 CFR 701.5 and 774.13(b)(2).

2. OAC 1501:13–9–15 (F), (G), (H), Removed and Redesignated

Ohio is proposing to remove paragraphs (F), (G), and (H) and redesignate the requirements found therein as proposed paragraphs (K), (L) and (N). The Director finds that the proposed deletions are duplicative of requirements found elsewhere in the Ohio program and do not render the program less effective than the Federal rules.

3. OAC 1501:13–9–15(F)(1), Measurement of Revegetation Success

A. General Revegetation Requirements

Ohio is proposing to require as part of OAC 1501:13–9–15(F)(1) that the general revegetation requirements found in paragraphs (B) and (C) be met in all revegetation efforts. Paragraph (B) of OAC 1501:13–9–15 requires the vegetative cover of the reclaimed area to be diverse, effective, and permanent; comprised of native species to the area; at least equal in extent of cover to the natural vegetation; and capable of stabilizing the soil surface from erosion. Paragraph (C) of OAC 1501:13–9–15 requires the reestablished plant species to be compatible with the approved postmining use; have the same seasonal characteristics of growth as the original vegetation; be capable of self-regeneration and plant succession; be compatible with the plant and animal species of the area; and meet the requirements of applicable State and Federal seed, poisonous noxious plant, and introduced species laws or regulations. The Federal rules at 30 CFR 816.116(a) contain a similar provision which requires the success of revegetation to be judged, in part, upon the satisfaction of the general standards for revegetation at 30 CFR 816.111. Therefore, the Director finds that the revised State rule is no less effective than its Federal counterpart in this respect.

Part A of Ohio's "Guidelines for Evaluating Revegetation Success" which were also submitted as part of this amendment provide that:

> At the time ground cover is evaluated to determine whether plants are established and controlling erosion, the inspector shall also evaluate species composition and diversity. This evaluation is based primarily on visual observation in the field, although receipts or tags from seed packages are also reviewed.

This language indicates that species composition and diversity will be evaluated only at the time of phase II bond release (see OAC 1501:13–9–15 (G)(2) and (M)(2) which contain similar language). However, the preamble to the Federal revegetation rules at 30 CFR 816.116 states that these parameters must be evaluated at the time of final bond release. "The final bond release inspection will evaluate achievement of the general requirements of 30 CFR 816.111 in addition to the success standards of 30 CFR 816.116 (53 FR 34641, September 7, 1988)." Therefore, the Director finds that this provision of the guidelines is less effective than the Federal rules and he is requiring that Ohio amend its program to require evaluation of the applicable parameters set forth in OAC 1501:13–9–15 (B) and (C), the State counterparts to 30 CFR 816.111, at the time of final bond release. The methodology to be used in evaluation must be clearly identified.

B. Evaluating of Specific Revegetation Success Standards

Ohio also proposes to add language to OAC 1501:13–9–15(F)(1) to require that the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) compile guidelines specifying statistically valid sampling techniques for measuring success of ground cover, production, or stocking at the time of final bond release. The statistical sampling techniques shall use a 90 percent confidence interval (i.e., a one-sided test with a 0.10 alpha error).

The Federal rules at 30 CFR 816.116(a)(1) state that standards of success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. In the preamble to this rule, OSM indicated that this could be accomplished through either rules or by guidelines which are incorporated into the State program by reference (48 FR 40150, September 2, 1983). Ohio has submitted to OSM a separate document titled "Guidelines for Evaluating Revegetation Success" which is proposed for incorporation into the State program to satisfy OAC 1501:13–9–15(F)(1). This document, which covers data collection, recording, and analysis, has three parts:

Part A. Ground Cover: This part outlines Ohio's adaptation of the point-intercept "stick" method developed by John C. Rennie and Robert E. Farmer *et al;* which Ohio will use to evaluate herbaceous ground cover and to evaluate tree and shrub survival concurrently with herbaceous ground cover.

Part B. Stocking of Trees and Shrubs: This part outlines Ohio's adaptation of the Rennie-Farmer method to evaluate tree and shrub survival independent of ground cover using circular plots and tree and shrub counts within those plots. It also specifies handling and planting techniques for trees and shrubs.

Part C. Productivity: This part outlines Ohio's methods for measuring hay production on pasture, grazing land, and cropland and for measuring production on cropland planted with corn, oats, and wheat.

In his January 14, 1994, issue letter to Ohio, the Director noted two errors in the proposed formula to determine sample size found on page 13 of the "Guidelines for Evaluating Revegetation Success." These errors involved the appropriate "t" value and the expression of acceptable error which appears in the denominator of the formula (Administrative Record No. OH–1976). Without correction, the formula will result in an inappropriate sample size. Ohio has agreed to make the necessary revisions but has not yet done so. The Director finds that, with this exception, Ohio's proposed procedures to estimate mean ground cover, stocking and yield are based upon and consistent with statistical sampling theory, and that this aspect of the requirements of 30 CFR 816.116(a)(1) have been satisfied. The Director notes that only the sampling techniques set forth in these guidelines may be used to evaluate revegetation success under the Ohio program.

The State has also proposed at OAC 1501:13–9–15 paragraphs (G) through (N) success standards for ground cover, production and stocking, where appropriate, for various postmining land uses and has adopted the requirement in 30 CFR 816.116(a)(2) that a 90 percent statistical confidence interval be used when testing whether the sample mean is equal to or greater than the approved success standard. The Director finds that, with the exceptions noted above, proposed OAC 1501:13–9–15(F)(1) and the document "Guidelines for Evaluating Revegetation Success" satisfy the requirements of and are no less effective than 30 CFR 816.116(a) (1) and (2). Accordingly, he is removing the existing requirement at 30 CFR 935.16(f) to include in the Ohio program statistically valid techniques for evaluating revegetation success and adding a new requirement that the document "Guidelines for Evaluating Revegetation Success" be revised to include the correct formula for determining sample size.

4. OAC 1501:13–9–15(F)(2)(b)(ii), Timing for Row Crops

For areas to be used for agricultural cropland, including prime farmland, Ohio proposes to require the five-year period of extended responsibility to commence on the date on which the initial planting of row crops has been completed. The initial planting will be subject to verification by the Chief. This proposed rule repeats the requirements of existing rules OAC 1501:13–9–15(I) (4)(a) and (5)(e), which were previously approved by the Director. The Director finds that the removal of OAC 1501:13–9–15(I) (4)(a) and (5)(e) and the reinstatement of the requirements therein as proposed OAC 1501:13–9–15(F)(2)(b)(ii) does not render the Ohio program less effective than 30 CFR 816.116(c).

5. OAC 1501:13–9–15(F)(2)(c)(ii), Rill and Gully Repair

Ohio is revising OAC 1501:13–9–15(F)(2)(c)(ii) to clarify that the Chief will classify instances of rill and gully erosion repair as either limited or extensive based on the extent of repairs needed and the cause of the erosion. The Chief will consider extensive repairs to be an augmentative practice that will restart the extended period of responsibility. Limited repair of rills and gullies will not be considered augmentative. The Director finds that this clarification is no less effective than 30 CFR 816.116(c)(4) and is consistent with the preamble which states that the "repair of rills and gullies is not always simply good husbandry" (53 FR 34642, September 7, 1988).

6. OAC 1501:13–9–15(I)(3), Removed and Redesignated

Ohio proposes to remove OAC 1501:13–9–15(I)(3), which is an introductory statement for rules governing pasture or grazing land, and redesignate and reword the contents thereof as proposed OAC 1501:13–9–15(G)—Revegetation Success Standards for Pasture or Grazing Land. The Director finds that this simplification of regulatory language and structure does not change the meaning of the provision in question and that it, therefore, can be approved.

7. OAC 1501:13–9–15(G)(3), Success Standards for Pasture or Grazing Lands

Ohio is revising OAC 1501:13–9–15 (G)(3) (a) and (b) to provide that revegetation shall be determined to be successful for phase III bond release on pasture or grazing land when the following criteria are met: (1) the production of planted and non-noxious volunteer species equal or exceed the county average yield for hay for any two years of the period of extended responsibility, except the first year, (2) the ground cover equals or exceeds 90 percent for the last year of the period of extended responsibility and one additional year, except the first year, and (3) no single area with less than 30 percent cover exceeds the lesser of 3,000 square feet or 0.3 percent of the land affected.

The success standards for areas developed for use as pasture or grazing land at 30 CFR 816.116(b)(1) require the ground cover and production of living plants on the revegetated area to equal or exceed that of a reference area or other success standards approved by the regulatory authority. Ohio has proposed to use the average yield from all hayland in the county where the mine is located as the standard for phase III bond release. Average county yields for hay are published annually by the Ohio Department of Agriculture without classification as to soil type, management intensity, or past mining history. The Federal rules at 30 CFR 816.116(a)(2) require standards for success to include criteria representative of unmined lands in the area being reclaimed. The potential problem of including mined land in the calculation of average county yields has been evaluated by the Ohio Agricultural Statistics Service (Administrative Record No. OH–1195). It was found that there are no statistically significant differences between county means developed with and without reclaimed land. The Director, therefore, finds that the average county yield for hayland in Ohio is representative of yield on unmined land in the State and that in this respect the proposed rule at OAC 1501:13–9–15(G)(3)(a) is no less effective than 30 CFR 816.116(a)(2). Furthermore, the approval of average county yields in Ohio is consistent with the Director's decision to approve average county yield in the Tennessee Federal Program (30 CFR 942.816(f)(1)).

The Federal rules at 30 CFR 816.116(b)(1) require that success for pasture and grazing land be based not only upon production but also ground cover. Ohio has proposed a ground cover standard of 90 percent cover combined with the existing requirement that no single area with less than 30 percent cover exceeds the lesser of 3,000 square feet or 0.3 percent of the land affected. A 90 percent ground cover and the associated sparse area standard are consistent with a postmining land use of pasture or grazing land where the objective is forage production and the decision by the Director to require a similar standard under the Tennessee Federal Program (30 CFR 942.816(f)(1)). The Director, therefore, finds that the ground cover requirements proposed by Ohio for pasture and grazing land at OAC 1501:13–9–15(G)(3)(b) are no less effective than 30 CFR 816.116(b)(1).

Ohio is proposing to require for phase III bond release that the production standard be met for any two years of the period of extended responsibility except the first year and that the ground cover standard be met for the last year of the period of responsibility and one additional year, except the first year. OSM's rules at 30 CFR 816.116(c)(2) require mine operators in areas of more than 26.0 inches of annual average precipitation, who select a postmining land use of pasture or grazing land, to equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. The Ohio rule has an equivalent requirement. For this reason, the Director finds that Ohio's proposed pasture or grazing land standards at OAC 1501:13–9–15(G)(3) are no less effective than 30 CFR 816.116 (b) and (c).

8. OAC 1501:13–9–15(I)(3)(C) (a), (b), (c), Removed

Ohio proposes to remove ground cover requirements in paragraphs (I)(3)(C) (a), (b), and (c) for pasture and grazing land and replace them with the proposed standards at OAC 1501:13–9–15(G)(3). The Director finds that this removal does not render Ohio's rules less effective than the Federal rules because, as discussed in finding 7 above, the standards established in OAC 1501:13–9–15(G)(3) are consistent with Federal requirements.

9. OAC 1501:13–9–15(J)(1)(b) and (J)(2), Success Standards for Industrial, Residential, or Commercial Areas

Ohio proposes to revise OAC 1501:13–9–15(J)(1)(b) to provide that, for areas to be developed within two years after regarding is completed, revegetation success for phase III bond release shall be evaluated in the last year of the period of extended responsibility. The Federal counterpart at 30 CFR 816.116(c)(2) likewise requires that revegetation on such areas equal or exceed the applicable success standard during the growing season of the last year of the responsibility period. Accordingly, the Director finds that OAC 1501:13–9–15(J)(1)(b) is no less effective than 30 CFR 816.116(c)(2).

Ohio proposes to revise its ground cover standards for phase II and phase III bond release for areas for which an approved industrial, residential, or commercial postmining land use will not be achieved until two or more years after regrading is completed. The proposed rule at OAC 1501:13–9–15(J)(2) requires the ground cover success standards at OAC 1501:13–9–15(G)(2) to be met for phase II bond release. Paragraph (G)(2) provides that revegetation shall be determined to be successful when the species planted, in accordance with the approved reclamation plan, are established and the area has sufficient ground cover to control erosion. The Director finds that this requirement is consistent with 30 CFR 800.40(c)(2), which specifies that phase II bond release may occur when, among other things, revegetation is established in accordance with the reclamation plan.

For phase III bond release, the proposed rule provides that ground cover in the last year of the period of extended responsibility must equal or exceed 90 percent. In addition, no single area with less than 30 percent cover may exceed the lesser of 3,000 square feet or 0.3 percent of the land affected. The Federal rules do not contain specific revegetation success standards for areas to be developed for industrial, commercial, or residential use two or more years after regrading is completed. Although OSM proposed standards on March 23, 1982 (47 FR 12596), they were never adopted. The preamble to the final rule promulgated on September 2, 1983 (48 FR 40154) provides no guidance as to what standards apply to such lands. In the absence of specific Federal standards or guidance, the only applicable portion of 30 CFR 816.116(b) is the requirement that standards for success "be applied in accordance with the approved postmining land use." For areas to be developed for industrial, commercial, or residential use, ground cover is the most appropriate parameter since erosion control and stability are an integral part of the postmining land use, while woody plants (stocking) and vegetative productivity are not. Because the ground cover standard proposed by Ohio is equal to that required for pasture land, it should be sufficient to control erosion. Under OAC 1501:13–9–15(F), such areas would also have to comply with OAC 1501:13–9–15 (B) and (C), the State counterparts to the general revegetation requirements of 30 CFR 816.111, as required by 30 CFR 816.116(a). Therefore, the Director finds that Ohio's proposed phase III bond release standards for areas to be developed for industrial, commercial, or residential use two or more years after regrading is completed are consistent with the applicable provisions of 30 CFR 816.116 an no less stringent than sections 515(b) (19) and (20) of SMCRA.

10. OAC 1501:13–9–15(K)(3), General Requirements for Woody Vegetation

Where the approved postmining land use is commercial forest, noncommercial forest, or shelterbelts, Ohio proposes that the Chief shall determine the appropriate species, stocking and planting arrangements for both woody and herbaceous plants after consultation with and approval by the Ohio Division of Forestry. These same revegetation considerations will also be determined by the Chief after consultation with the approval by the Ohio Division of Wildlife (DOW) for areas where the approved postmining land use is fish and wildlife habitat or undeveloped land. The State's proposed rule includes provisions formerly found at OAC 1501:13–9–15 (F), (G), and (H), which were previously approved as no less effective than 30 CFR 816.116(b)(3)(i), which requires that minimum stocking and planting arrangements for woody plants be specified by the regulatory authority after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. The Director, therefore, finds that proposed OAC 1501:13–9–15(K)(3) remains no less effective than 30 CFR 816.116(b)(3)(i).

11. OAC 1501:13–9–15(I)(8) (b), (c), (d), Removal in Part

Ohio proposes to remove paragraphs (I)(8) (b) and (c), which require tree and shrub species to be compatible with the postmining land use and herbaceous cover species to be compatible with the growth of acceptable trees and shrubs. Since the requirement for tree and shrub species to be compatible with the postmining land use duplicates OAC 1501:13–9–15(C)(1)(a), its removal will not render the Ohio program less effective than the Federal rules at 30 CFR 816.111(b)(1), which contain a similar requirement. Likewise, because there is no Federal rule which specifically requires that herbaceous species be compatible with trees and shrubs, the removal of this State rule will not render the Ohio program less effective than the Federal rules. Ohio has retained this requirement in proposed OAC 1501:13–9–15(M)(1), which applies to areas with a postmining land use of undeveloped land. In addition, both of the deleted provisions are implied requirements of OAC 1501:13–9–15(K)(3), which addresses appropriate species of trees and shrubs and appropriate mixtures of herbaceous species.

Also proposed for removal is paragraph (I)(8)(d), which provides that the five-year period of extended responsibility will begin on the date of the planting of the approved woody plant species or the last augmented seeding of the herbaceous species, whichever occurs later. This requirement is duplicative of the general requirements for measuring revegetation success at OAC 1501:13–9–15(F)(2)(b)(i), which states that the five-year period of extended responsibility shall begin on the date of the last augmented seeding, fertilizing, planting, or other work necessary to ensure successful revegetation. The Director, therefore, finds that the removal of OAC 1501:13–9–15(I)(8) (b), (c), and (d) will not render the Ohio program less effective than the Federal rules at 30 CFR 816.111 and 816.116.

12. OAC 1501:13–9–15(L)(2), Ground Cover Success Standards for Postmining Land Uses Involving Woody Vegetation

Ohio is proposing to revise OAC 1501:13–9–15(L)(2) to provide that, with respect to ground cover, revegetation shall be determined to be successful for a phase III bond release if the five-year period of extended responsibility has expired and the herbaceous ground cover in the last year is at least 70 percent. This provision applies to areas where the approved postmining land use is commercial forest, noncommercial forest, shelterbelts, or fish and wildlife habitat. The Federal rules at 30 CFR 816.116(c)(2) require areas with these approved postmining land uses to meet the applicable success standard during the growing season of the last year of the responsibility period. 30 CFR 816.116(b)(3)(iii) requires the vegetative ground cover at the time of phase III bond release to be not less than that required to achieve the approved postmining land use. In recognition of the difficulty of establishing trees and shrubs in dense herbaceous cover, OSM has previously accepted a minimum vegetative ground cover of 70 percent for postmining land uses involving woody plants in States with more than 26.0 inches of annual average precipitation (44 FR 15237, 15239–40, March 13, 1979). The Director, therefore, finds that OAC 1501:13–9–15(L)(2) is no less effective than 30 CFR 816.116(b)(3) and (c)(2).

13. OAC 1501:13–9–15(L)(2)(a), Commercial Forest

Ohio is proposing to revise OAC 1501:13–9–15(L)(2)(a) by adding the requirement that a minimum of 75 percent of the required trees per acre needed for phase III bond release where the postmining land use is commercial forest land shall be commercial tree species. OSM removed an identical provision from the Federal rules on September 2, 1983 (48 FR 40153), in order to provide States the flexibility to establish standards based on local and regional conditions. Under 30 CFR 816.116(b)(3)(i), such standards must be developed in consultation with and have the approval of the Ohio Division of Forestry. The Director finds that OAC 1501:13–9–15(L)(2)(a) is no less effective than 30 CFR 816.116(b)(3)(i), provided Ohio submits documentation to OSM indicating that approval from the Division of Forestry has been obtained. Until such time, Division of Forestry approval must be obtained on a permit-specific basis in accordance with OAC 1501:13–9–15(K)(3).

14. OAC 1501:13–9–15(L)(2)(c), Noncommercial Forest or Shelterbelts

The phrase "on each acre on which trees and shrubs are to be planted" has been added to paragraphs (L)(1)(a), (L)(2)(a), (L)(2)(b), and (L)(2)(c) to clarify that stocking rates for trees and shrubs only apply to those areas where trees and shrubs are to be planted as indicated in the approved reclamation plan. The Director finds that this clarification does not render the State's rules less effective than their Federal counterparts which also apply only to areas upon which woody plants are to be planted.

Ohio is proposing to add paragraph (L)(2)(c), which requires for phase III bond release, where the postmining land use is noncommercial forest or shelterbelts, a minimum of 450 countable trees per acre, of which 80 percent must have been in place for at least three years. The Federal rules at 30 CFR 816.116(b)(3)(i) provide that minimum stocking and planting arrangement shall be determined by the regulatory authority and that at the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility. In Ohio's case, 60 percent of the five-year responsibility period is three years. The Director, therefore, finds that OAC 1501:13–9–15 paragraph (L)(2)(c) is no less effective than 30 CFR 816.116(b)(3).

15. OAC 1501:13–9–15(I)(8)(f)(ii), Removed

Ohio is proposing to remove paragraph (I)(8)(f)(ii), which requires for phase III bond release where the postmining land use is commercial forest, noncommercial forest, shelterbelts, or fish and wildlife habitat that the herbaceous ground cover be the greater of 30 percent or sufficient to control erosion. This provision has been replaced by proposed OAC 1501:13–9–15(L)(2) which sets a new minimum ground cover standard of 70 percent for phase III bond release. Because the new standard is potentially more protective of the environment, the Director finds that the removal of OAC 1501:13–9–15(I)(8)(f)(ii) can be approved. However, the Director notes that this standard cannot supersede the general requirement of OAC 1501:13–9–15(B)(4), which provides that revegetation must be capable of stabilizing the soil surface from erosion. Therefore, if 70 percent cover is inadequate to control erosion, a greater degree of cover must be established before final bond release can be approved.

16. OAC 1501:13–9–15(M), Success Standards for Undeveloped Land

A. Background and Description of Proposed Amendment

Undeveloped land is defined by Ohio at OAC 1501:13–9–17(C)(10) as "land that is not currently being used or managed or, if previously used or managed, is land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession." This is identical to the Federal definition of "undeveloped land or land with no current use or management" at 30 CFR 701.5.

Under OAC 1501:13–9–17, undeveloped land can be approved as a postmining land use; however, the proposed success standards for undeveloped land will apply only in those situations where the premining land use is undeveloped land. Where both the premining and postmining land use is undeveloped land, the permittee will be required to reclaim the disturbed area to the undeveloped land use success standards in OAC 1501:13–9–15(M). Where the postmining land use is undeveloped land, but the premining land use is not, the permittee is required to obtain approval for a land use change and to reclaim the disturbed area to the forestland/fish and wildlife habitat revegetation standards found at OAC 1501:13–9–15(L).

Ohio's proposed success standards for undeveloped land at OAC 1501:13–9–15(M) will require the success of revegetation to be determined on the basis of ground cover and the proper planting of appropriate tree and shrub species specified in the permittee's approved planting plan. To be acceptable, a planting plan must include tree or shrub planting on 10 to 50 percent of the revegetated area. Planting locations must include slopes steeper than 20 degrees and the area along drainways and permanent sources of water.

The requirements of OAC 1501:13–9–15(M) are supplemented by Policy/Procedure Directive, Regulatory 94–2, "Planting plans for areas for which the approved postmining land use is undeveloped land" which became effective on March 15, 1994. The purpose of this Policy/Procedure Directive is to provide standard criteria for use by the Division of Reclamation's (DOR) Permitting Section to review the planting plans for areas where the approved postmining land use is undeveloped land. Under the directive, permittees will be required to plant a minimum of 600 seedlings per acre on the portion of the permit area where planting of trees or shrubs is to be required. Ten to 30 percent of the permit area must be planted to trees and shrubs where herbaceous cover has been planted and the permittee has obtained an approved postmining land use change from pastureland to undeveloped land. Thirty to 50 percent of the permit area must be planted to trees and shrubs where a permittee has obtained a postmining land use change to undeveloped land prior to the planting of herbaceous cover or where undeveloped land is the approved postmining land use at the time of permit application approval. An acceptable planting plan must include at least four hardwood tree species or shrub species selected from the State's approved list and at least one coniferous tree species selected from the State's approved list. The approved species list to part of the directive.

The Directive also specifies acceptable seed mixes of herbaceous species. These seed mixes are designed to enhance wildlife habitat and to be compatible with tree planting efforts as required under OAC 1501:13–9–15(M)(1). Kentucky 31 Fescue (*Festuca arundinacea*) and Sericea Lespedeza (*Lespedeza cunerta*) are prohibited from all plantings on undeveloped land because neither species benefits wildlife and neither is compatible with tree planting efforts. This language in the Directive supplements the requirement of proposed OAC 1501:13–9–15(M)(1) that selected tree and shrub species and herbaceous ground cover species have value as wildlife habitat and that the herbaceous ground cover species be compatible with the growth of trees and shrubs.

Under OAC 1501:13–9–15(K)(2), which is incorporated by reference in OAC 1501:13–9–15(M)(1), quality planting stock and proven field techniques in the science of woody revegetation must be employed on all areas where the postmining land use is undeveloped land. This requirement is reinforced and elaborated upon in the document "Guidelines for Evaluating Revegetation Success," which has been incorporated into the State's regulatory program. Section B.2 of the document describes in detail the handling and planting practices for seedlings that permittees are expected to follow. Each permittee must submit to DOR, within one week of the completion of planting, a form on which to verify the planting of tree and shrub seedlings. Upon receipt of the planting verification form, the DOR shall, within one week, inspect the area that has been planted to determine whether sufficient numbers of the appropriate species have been planted in the configuration shown in the approved planting plan. If the planting is approved, the verification form is signed by the inspector and returned to the permittee for submittal with the permittee's request for phase III bond release.

In OAC 1501:13–9–15(M)(2), revegetation on undeveloped land will be found successful for phase II bond release when the herbaceous ground cover species are established and provide sufficient ground cover to control erosion. The adequacy of ground cover to control erosion will be determined by DOR's reclamation inspectors based on an ocular inspection of the disturbed area

Under OAC 1501:13–9–15(M)(3), revegetation on undeveloped land will be found successful for a phase III bond release when the five-year period of extended responsibility has expired and acceptable species of trees and shrubs have been properly planted in accordance with the approved planting plan at a rate of 600 trees or shrubs per acre on each acre on which trees or shrubs are to be planted. In addition, the herbaceous ground cover must at least equal 70 percent on areas where trees and shrubs have been planted and at least equal 90 percent or more on areas where no trees and shrubs have been planted. Ground cover will be measured using a point-intercept, systematic sampling procedure. These standards are to be applied to the last year of the period of extended responsibility for revegetation success. Survival of tree or shrub plantings is not a requirement for phase III bond release. The permittee must show by submitting a planting verification form signed by a DOR reclamation inspector that proper planting techniques have bean used and that the trees and shrubs have been planted in approved numbers and locations.

In acting on Ohio's proposed amendment at OAC 1501:13–9–15(M), OSM is proposing to clarify agency policy concerning the appropriateness of undeveloped land as a postmining land use and the applicable revegetation performance standards.

B. Undeveloped Land as a Postmining Land Use

In the past, OSM policy concerning undeveloped land as a postmining land use has not been clearly defined. The Federal definition of "land use" at 30 CFR 701.5 has always recognized "undeveloped land or no current use or land management" as a distinct land use category. However, the Federal regulations at 30 CFR 816.116(b) do not establish specific revegetation success standards for undeveloped land whereas such standards exist for other defined land use categories. OSM has sometimes interpreted this omission to mean that undeveloped land is not an acceptable postmining land use. At other times, OSM has treated this omission as a regulatory void that States are permitted to fill, in keeping with the concept of State primacy for the regulation of surface coal mining and reclamation operations, as established in section 101(f) of SMCRA.

On May 8, 1991 (56 FR 21270), OSM declined to approve a proposed State program amendment submitted by Louisiana that would have established undeveloped land as a separate and distinct postmining land use category. In explaining this decision, OSM stated that the agency "does not recognize undeveloped land as a postmining land use because the intention of the reclamation is to return mined land to a managed land use. Undeveloped land is not managed." Finding 10(h), 56 FR 21276. However, in finding 1(g) (57 FR 48726, 48728, October 28, 1992) of a final rule document announcing a decision on a subsequent Louisiana program amendment, OSM modified this position to recognize undeveloped land as a legitimate postmining land use under certain circumstances:

> "[U]ndeveloped land" can only be designated as a postmining land use where it was the premining land use and under no circumstances could undeveloped land be proposed as an alternative postmining land use because it does not represent a higher or better use as required at 30 CFR 816.133(a).

During the same timeframe, OSM also took several actions that did not adhere to the principles enunciated in the Louisiana program amendment decisions. On February 5, 1991 (finding 66, 56 FR 4542, 4554), OSM unconditionally approved without explanation or discussion an Alabama program amendment that contained separate and distinct revegetation success standards for lands with a postmining land use of undeveloped land. This approved of Alabama's amendment was followed by a February 28, 1992, letter from the Deputy Director of OSM, to the Director of the Surface Mining and Reclamation Division of the Texas Railroad Commission. In this letter, OSM found that the Texas regulatory authority had not abused its discretion by approving undeveloped land as a higher and better alternative postmining land use for a site with a premining land use of pastureland.

Upon careful review of the Act, its implementing regulations and their preambles, OSM has determined that the policy established in the Alabama and Texas decisions is more appropriate and better supported then the principles advanced in the Louisiana decisions. There is no language in the revegetation regulations at 30 CFR 816.116, the land use regulations at 30 CFR 816.133, the definitions of "land use" and "higher or better uses" in 30 CFR 701.5, or their preambles that would either prohibit undeveloped land as a postmining land use or restrict such designations to situations in which the premining use was undeveloped land. Consistency with SMCRA is not an issue since the Act does not identify acceptable postmining land use categories or define higher or better uses.

Furthermore, the Louisiana program amendment findings seem to be inconsistent with the preamble to the definition of "land use" in 30 CFR 701.5, as revised on September 1, 1983 (48 FR 39892, 39893), which affirms the statement in the preamble to the corresponding proposed rule that the definition's land use categories are not hierarchical for purposes of determining higher or better postmining land uses. Specifically, the preamble to the proposed rule provides that:

> [T]he ten categories of land use in the existing definition of land use are not hierarchical. That is, one land use category is not automatically a higher or better use than another. In each situation, the regulatory authority has to compare the values and benefits of the postmining alternative land use to the values and benefits of the premining land uses.

47 FR 16152, 16155, April 14, 1982.

Including undeveloped land, the definition contains only ten land use categories, none of which have undergone material change since 1979. Therefore, it appears that the Secretary did not intend to exclude undeveloped land from consideration as either a postmining land use or a higher or better use.

In addition, on September 1, 1983, OSM defined "higher or better uses" as land uses that have a higher economic value or nonmonetary benefit to either the landowner or the community than the premining land uses (48 FR 39892, 39903). Since undeveloped land can provide higher ecological benefits than such premining uses as cropland and pastureland, the exclusion of undeveloped land as an acceptable alternative postmining land use category would be inconsistent with the definition.

The Director is interpreting the land use and revegetation provisions of SMCRA and the Federal regulations in a manner that will reverse the positions taken in the Louisiana program amendment decisions and will support the approval of the proposed Ohio program amendment. The Director finds that proposed OAC 1501:13–9–15(M), which establishes undeveloped land as a postmining land use, is consistent with SMCRA and does not render Ohio's rules less effective than 30 CFR 701.5, 816.116 and 816.133.

C. Revegetation Success Standards for Undeveloped Land

As noted above, the Federal regulations at 30 CFR 816.116(b) do not establish specific revegetation success standards for undeveloped land whereas such standards exist for other defined land use categories. In the case of the Louisiana program amendments discussed above, OSM interpreted this omission to mean that all mined lands, including areas with either a premining or designated postmining land use of undeveloped land, must be reclaimed to one of the land uses specifically addressed by the Federal regulations at 30 CFR 816.116(b). However, OSM did not apply this interpretation in the Alabama and Texas cases discussed above.

The Louisiana decisions suggest that revegetation success standards for undeveloped land must be equivalent to those for one or more of the managed land uses that the site was capable of supporting prior to mining. The Federal rules do not compel such a conclusion. Although the preamble to 30 CFR 816.133(b) (44 FR 14902, 15243, March 13, 1979) indicates that Congress did not intend to allow mismanagement prior to mining to reduce the standards for reclamation success, a lack of management, which would likely characterize undeveloped land, does not equate to mismanagement.

Section 515(b)(2) of SMCRA requires that land affected by surface coal mining operations be restored to a condition capable of supporting the uses which it was capable of supporting prior to any mining or to higher or better uses of which there is a reasonable likelihood. However, this capability demonstration is independent of the revegetation requirements of paragraphs (b)(19) and (b)(20) of section 515 of SMCRA. There is no language that would compel the adoption of revegetation success standards based on the land's potential uses prior to mining rather than the approved postmining land use. Indeed, in the preamble to 30 CFR 816.133(a) as revised on September 1, 1983 (48 FR 39892, 39897), the Secretary states that:

> [T]he final rule emphasizes the land's capability, both with regard to premining uses and higher or better uses, in this implementation of Section 515(b)(2) of the Act. This requirement is distinct from the revegetation or prime farmland rules, which under some circumstances may require actual production on the reclaimed land as a measure of successful reclamation.

It is also impractical to interpret section 515(b)(2) of SMCRA and 30 CFR 816.133 as requiring that revegetation success standards be adequate to demonstrate that the land has been restored to conditions that are capable of supporting the variety of uses that the land was capable of supporting prior to mining. Revegetation requirements for the various land uses that any individual site may be capable of supporting, such as forestry, pastureland and cropland, are frequently in conflict.

Furthermore, section 508(a) of SMCRA and its legislative history (S. Rep. No. 128, 95th Cong., 1st Sess. 77 (1977)), provide that the demonstration that premining capability can and will be restored must be made as part of the reclamation plan submitted with the permit application. Thus, the land use restoration requirements of section 515(b)(2) are addressed primarily through the permit application review process, and compliance is achieved by adherence to the reclamation plan and other performance standards such as those pertaining to toxic materials, topsoil, and backfilling and grading. No separate capability demonstration is necessary upon the completion of mining and reclamation.

The Director will interpret the land use and revegetation provisions of SMCRA and the Federal regulations in a manner that will reverse the positions taken in the Louisiana program amendment decisions and will support approval of Ohio's proposed program amendment. The establishment by States of separate and distinct revegetation success standards for undeveloped land is consistent with the Federal regulations which do not contain specific success standards for undeveloped land, and is in keeping with section 101(f) of SMCRA, which vests the States with the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface coal mining and reclamation operations.

To be approvable, all such standards must comply with 30 CFR 816.116(a), i.e., they must be consistent with the requirements of 30 CFR 816.111 and they must include a statistically valid evaluation of appropriate vegetation parameters, including ground cover, production or stocking. In addition, they must satisfy the permittee's obligation to enhance fish, wildlife, and related environmental values when practicable as required by section 515(b)(24) of SMCRA. Such enhancement will always be practicable on undeveloped land since there will be no conflict with the approved postmining land use. However, undeveloped land use standards need not meet any of the requirements of 30 CFR 816.116(b) since this paragraph applies only to the postmining land uses identified therein, none of which is undeveloped land.

In his review of proposed OAC 1501:13–9–15(M), the Director has applied the tests described above. Under the Ohio proposal, land reclaimed to an undeveloped postmining land use will be required to satisfy the general revegetation requirements found at OAC 1501:13–9–15 (B) and (C). OAC 1501:13–9–15(B) requires the permittee to establish a vegetative cover that is: (1) Diverse, effective, and permanent; (2) comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use; (3) at least equal in extent of cover to the natural vegetation of the area; (4) capable of stabilizing the soil surface from erosion. These general revegetation requirements correspond to the general revegetation requirements at 30 CFR 816.111. The Director finds that in this respect OAC 1501:13–9–15(M) is no less effective than the Federal rules at 30 CFR 816.116(a).

Ohio's proposal meets the second criterion for approval by establishing standards for ground cover and by requiring that success in achieving these standards be accomplished using statistically valid sampling procedures. The State has proposed in OAC 1501:13–9–15(M) to require a ground cover at least equal to 70 percent where trees and shrubs have been planted and at least equal to 90 percent where no trees and shrubs have been planted. The evaluation of ground cover will be accomplished using an approved statistical sampling procedure in accordance with the "Guidelines for Evaluating Revegetation Success." The Director finds that in this respect, OAC 1501:13–9–15(M) is no less effective than 30 CFR 816.116(a) (1) and (2).

Furthermore, the Ohio program already includes rules which require the enhancement of fish, wildlife and related environmental values on undeveloped land as well as lands reclaimed to other postmining land uses. OAC 1501:13–4–05(P)(2) requires that each permit application include enhancement measures that will be used during reclamation and the postmining phase of operations to develop aquatic and terrestrial habitat. Permittees are required under OAC 1501:13–9–11(C)(5) to select plant species to be used on reclaimed areas based on their nutritional value for fish and wildlife, their use as cover for fish and wildlife and their ability to support and enhance fish and wildlife habitat after release of bonds. The distribution of plant groupings must maximize benefit to fish and wildlife. As required by proposed OAC 1501:13–9–15(K)(3), DOR has consulted with and obtained approval from the DOW for Policy/Procedure Directive, Regulatory 94–2, Planting Plans for Undeveloped Land (Administrative Record Nos. OH–1989 and OH–2011). This further assures that wildlife enhancement will be accomplished where the postmining land use is undeveloped land. The Director finds that the wildlife enhancement requirements embodied in proposed OAC 1501:13–9–15(M) and Policy/Procedure Directive 94–2 are consistent with section 515(b)(24) of SMCRA and no less effective than the Federal rules at 30 CFR 780.16 and 816.97.

Under proposed OAC 1501:13–9–15(M), permittees need only show that they have planted the approved number and species of trees and shrubs using proper planting techniques in order to obtain release of performance bond. Survival of planted trees and shrubs is not required. This differs from other postmining land uses such as fish and wildlife habitat, commercial and noncommercial forest, and shelterbelts where survival of woody plants is a requirement in both State and Federal rules. There are no specific Federal revegetation standards under 30 CFR 816.116 for land reclaimed to an undeveloped land use. Since, by definition, undeveloped land is "land that has been allowed to return *naturally* to an undeveloped state or has been allowed to return to forest through *natural* succession," and the early stages of natural succession are dominated by herbaceous and semi-woody plants, survival of woody stock planted to artificially speed the successional process is not integral to a determination of whether the land is capable of achieving a normal vegetative climax through natural succession within a reasonable period of time. Therefore, even though Ohio is proposing to require planting of trees and shrubs on undeveloped land, OSM has determined that it is not necessary for Ohio to establish woody plant survival standards for undeveloped land. Rather, it is sufficient if the revegetation success standards meet the requirements of 30 CFR 816.111 and 816.116(a) and if the species selected for revegetation will not impede the establishment of woody plants native to the area and characteristic of natural succession in that locality. As discussed in Finding 3.A., the Director is approving Ohio's proposal that the general revegetation requirements found in paragraphs (B) and (C) of OAC 1501:13–9–15, which correspond to the requirements found in 30 CFR 816.111, be met in all revegetation efforts. Accordingly, the Director finds that the requirement found in OAC 1501:13–9–15(M) that the success of revegetation for phase III bond release be based, in part, on the proper planting of trees and shrubs, does not render the Ohio program to be less effective than 30 CFR 816.111 and 816.116(a). The Director notes that the absence of a specific survival standard for trees and shrubs does not relieve the State's responsibility to require the presence of trees where necessary to determine that a diverse vegetative cover be established on regraded areas and all other lands affected, as required in 30 CFR 816.111 and section 515(b)(19). The evaluation of diversity should consider species diversity or richness (number of species and their relative importance) and structural diversity (patchiness and vertical distribution of plants). Representation of the major life forms, e.g. trees, shrubs, grasses and forbs is an integral part of the evaluation of structural diversity (Administrative Record No. OH–2009). The Director has determined that where a major life form was present before mining, it must be represented in the postmining vegetation in order to satisfy the diversity requirement in SMCRA and the Federal rules. Specific survival standards for trees and shrubs need not be included in the Ohio rules; however, representative numbers of trees and shrubs must be present at the time of final bond release. This this end, the Director is requiring Ohio to submit documentation that it has consulted with and obtained the approval of the DOW or other responsible agency for methods to be used to evaluate diversity at the time of final bond release and that such methods be included in the document "Guidelines for Evaluating Revegetation Success."

17. OAC 1501:13–9–15(N), Success Standards for Recreation Areas

Proposed OAC 1501:13–9–15(N) establishes separate revegetation success standards for areas with a postmining land use involving developed recreation facilities, such as portions of parks, camps and amusement areas where woody vegetation would be incompatible with the postmining land use, as opposed to areas with a postmining land use involving less intensive recreational activities, such as hiking or canoeing. Revegetation success standards for developed recreational facilities would be limited to ground cover, while standards for less intensive recreational uses would include both ground cover and woody plant stocking.

The corresponding Federal regulations at 30 CFR 816.116(b)(3), which provide that revegetation success on lands with a recreational postmining land use shall be evaluated in terms of ground cover and woody plant stocking, do not distinguish between types of recreational uses. However, OSM does not believe that the Federal regulations require that trees and shrubs be planted on all portions of lands with recreational postmining land uses. Interpreting the rule in that fashion would be unduly restrictive and would conflict with achievement of the postmining land use to the extent that the approved land use involves athletic fields, golf courses, or other facilities incompatible with woody plants. For functional, aesthetic, and ecological reasons, it may also be desirable to exclude trees and shrubs from other portions of recreational areas. Therefore, the Director finds that the distinctions and separate revegetation success standards proposed by Ohio for recreational lands are not inconsistent with the Federal regulations at 30 CFR 816.116(b)(3), provided Ohio does not implement its rules in a manner that would subvert the intent of the Federal rules to require that recreational lands be planted with trees and shrubs wherever such plantings are not incompatible with the postmining land use.

For areas where the approved postmining land use is developed recreation facilities, OAC 1501:13–9–15(N)(1) requires compliance with the ground cover standards specified in OAC 1501:13–9–15 (G)(2) and (G)(3)(b) for phase II and III bond release, respectfully, except that only one ground cover evaluation in the last year of the responsibility period is necessary for phase III bond release. For phase II bond release, paragraph (G)(2) requires that revegetation be established in accordance with the approved reclamation plan with sufficient ground cover to control erosion. The Director finds that this requirement is consistent with 30 CFR 800.40(c)(2), which authorizes phase II bond release when, among other things, revegetation has been established in accordance with the approved reclamation plan. For phase III bond release, paragraph (G)(3)(b) requires that ground cover equal or exceed 90 percent. In addition, no single area with less than 30 percent cover may exceed the lesser of 3,000 square feet or 0.3 percent of the land affected. The Director finds that these standards are consistent with the Federal requirements for revegetation success standards at 30 CFR 816.116(b)(3), which provide that ground cover on recreational areas may not be less than that required to control erosion and achieve the postmining land use.

For those areas with less intensive recreational postmining land uses, OAC 1501:13–9–15(N)(2) requires compliance with the general requirements for woody vegetation in paragraph (K). In addition, for phase II bond release, the site must meet the revegetation success standards of paragraph (L)(1), which requires the planting of 600 trees or shrubs per acre on each acre on which trees and shrubs are to be planted and a herbaceous ground cover of at least 30 percent or such greater cover as is needed to control erosion. The Director finds that this requirement is consistent with 30 CFR 800.40(c)(2), which authorizes phase II bond release when, among other things, revegetation has been established in accordance with the approved reclamation plan. For phase III bond release, the site must meet the revegatation success standards of paragraph (L)(2) in the last year of the revegetation responsibility period. Under paragraph (L)(2), the herbaceous ground cover must equal at least 70 percent and there must be at least 250–450 countable trees per acre which have met time-in-place requirements.

The Federal rules at 30 CFR 816.116(b)(3) requires the success of vegetation for areas developed for recreation to be based on tree and shrub stocking and vegetative ground cover. The vegetative ground cover shall not be less than that required to achieve the postmining land use. The Director finds that the standards proposed by Ohio in paragraph (N)(2) meet these requirements. In the event 70 percent ground cover is inadequate to control erosion, OAC 1501:13–9–15(F)(1), by reference to OAC 1501:13–9–15 (B) and (C), requires a greater degree of cover (whatever is needed to control erosion). The Federal rule also requires that minimum stocking and planting arrangements for woody plants be specified by the regulatory authority after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. OAC 1501:13–9–15(K)(3), which is incorporated by reference into proposed paragraph (N)(2), contains an identical requirement, but the State did not submit proof of concurrence with the specific stocking standards in this rule. Therefore, the Director finds that, while proposed OAC 1501:13–9–15(N)(2) can be approved, Ohio will need to obtain permit-specific approval of stocking standards for recreational land uses from the pertinent State agencies until such time as the State submits documentation that the appropriate State agencies have concurred with the programmatic standards in this rule.

Finally, the Federal rules at 30 CFR 816.116(c)(2) provide for phase III bond release on areas with a recreational postmining land use if the applicable success standards are met or exceeded during the growing season of the last year of the revegetation responsibility period. As noted above, paragraphs (N) (1) and (2) of the State rules both contain this requirement. Therefore, the Director finds that they are no less effective than 30 CFR 816.116(c)(2).

18. OAC 1501:13–9–17(B)(2), Removed

Ohio proposes to remove OAC 1501:13–9–17(B)(2), which provides that the postmining use for land that has not been previously mined and that had not been properly managed prior to mining shall be judged on the basis of surrounding lands which have received proper management. The State indicated in its May 1, 1992, letter to OSM that the provision has been interpreted as prohibiting the approval of undeveloped land as a designated postmining land use (Administrative Record No. OH–1690). Therefore, the State is proposing to remove the rule.

Because an identically worded Federal counterpart to this rule (former 30 CFR 816.133(b)(2)) was removed without explanation on September 1, 1983 (48 FR 39904), the Director finds that the removal of OAC 1501:13–9–18(B)(2) does not render the Ohio program less effective than 30 CFR 816.133. However, the Director notes that, even with the removal of OAC 1501:13–9–17(B)(2), the remainder of paragraph (B) still requires consideration of whether the land has been properly managed, as does its Federal counterpart at 30 CFR 816.133(b). Therefore, the Director's approval of the proposed deletion shall not be construed as an endorsement of the establishment of artificially low restoration standards resulting from improper management during the period immediately preceding mining.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment on several occasions. The National Coal Association (NCA), the Citizens Coal Council (CCC), and the Division of Wildlife, Ohio Department of Natural Resources (DOW) submitted substantive comments which are summarized and discussed below.

The NCA supported Ohio's proposal to provide for undeveloped land as a postmining land use because it would promote the reclamation of mined lands to a mix of trees and herbaceous species with increased ecological diversity and accelerate natural succession (Administrative Record No. OH–1969). NCA further explained that undeveloped land as a postmining land use falls within the directive of section 515(b)(2) of SMCRA, which requires surface coal mine operators to "* * * restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining * * *," and that the Federal definition of "land use" at 30 CFR 701.5 recognizes "undeveloped land or no current use or land management" as a legitimate land use category for land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state. NCA concluded that the undeveloped postmining land use category in the amendment is consistent with and no less effective than SMCRA and the Federal rules. As discussed in Finding 16, the Director agrees with NCA's conclusion and is approving Ohio's proposed rule.

NCA also commented that, in developing the proposed success standards for undeveloped land, Ohio recognizes that existing tree and shrub survival requirements, which require restarting the extended responsibility period if the survival standards are not met, have discouraged operators from planting trees or incorporating forestry as a postmining land use. In NCA's opinion, the Ohio amendment properly balances the need to address existing regulatory disincentives to tree planting with the most critical factor to assuring success of tree plantings—the selection and planting operation. In support of these comments, NCA submitted literature citing a decline in tree planting due to SMCRA's grading, compaction and ground cover requirements and emphasizing species selection, handling, and planting techniques as the most critical factors in tree survival. The Director acknowledges that the issues raised by the NCA may be relevant to the NCA's support of Ohio's proposed undeveloped land use revegetation requirements, but notes that the basis for approval of the amendment, as more fully discussed in Finding 16, is that it is no less effective than the Federal regulations at 30 CFR 816.111, 816.116 and 816.133.

NCA specifically supported Ohio's lower standard for ground cover for those areas planted with trees and shrubs by noting that competing vegetation inhibits tree seedling survival, fosters an environment for rodent damage, and discourage the invasion of native plant species. The Director notes that Ohio has proposed a ground cover standard of 70 percent where trees and shrubs are to be planted and a ground cover standard of 90 percent where no tree and shrub planting is planned. He agrees with the NCA that these standards should be adequate to stabilize the mined area and control erosion; however, as noted in finding 15, if 70 percent cover is insufficient to stabilize the mined area, a greater degree of cover must be established before bond can be fully released.

The CCC commented that tree planting was a good idea and supported the concept of returning land to a state that closely resembles its premining use (Administrative Record No. OH–1895). The CCC also stated that past practices by State regulatory authorities and OSM in applying SMCRA have caused too many acres of forestland to be replaced with pastureland monocultures populated by introduced rather than native grass species. The CCC further expressed the belief that the current provisions of the Ohio program (OAC 1501:13–9–15(L), Success Standards for Wood Vegetation) allow the regulatory authority to require the planting of trees, shrubs and other desired species for any postmining land use and that the proposed rules on undeveloped land, without any productivity standards, are unnecessary. The CCC also stated that the real problem in Ohio was a "culture" of enforcement that fosters improper reclamation, not the regulations. The CCC argued that the approval of the proposed undeveloped land success standards in Ohio would further erode the enforcement provisions of SMCRA.

The Director agrees that, in general, slowing the conversion of forestland to pastureland is a desirable goal. He believes that the approval of undeveloped land revegetation success standards will further attainment of this goal. The Director finds no evidence to support the CCC's charges that inadequate enforcement has fostered improper reclamation or that approval of the amendment will erode the enforcement provisions of SMCRA. The Director further finds that the question of whether the undeveloped land use category and success standards are necessary is irrelevant. Under 30 CFR 732.15 and 732.17(h)(10), the standard for review and approval of State program amendments is consistency with SMCRA and the Federal rules, not whether the amendment is necessary.

The DOW supported the proposed amendment because it will help solve a longstanding problem of lack of diversity on reclaimed lands (Administrative Record No. OH–1896). The DOW explained that vegetative diversity is a requirement for high quality wildlife habitat and that the availability of a postmining undeveloped land use category will significantly increase wildlife habitat development in an area of the State existing rich in such habitat. The DOW did not view the traditional practice in Ohio of establishing large tracts of grassland monocultures as a "higher or better" use of mined land. The Director agrees with the DOW that vegetative diversity is needed to achieve high quality wildlife habitat and that approval of the undeveloped postmining land use category and revegetation success standards should further this goal. Furthermore, he is requiring the DOR to consult with and obtain DOW's approval of the methods to be used to evaluate species and structural diversity at the time of final bond release (see findings 3A and 16).

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from the Regional Administrator of the U.S. Environmental Protection Agency (EPA); the U.S. Department of Agriculture, Soil Conservation Service (SCS); and the heads of other Federal agencies with an actual or potential interest in the Ohio program. Only the EPA and the SCS provided substantive comments.

The EPA recommended that a surface soil and water survey be performed to ensure that the revegetation for the postmining land uses is successful. In response, the Director notes that OAC 1501:13–2–10(K)(2) requires the operator to monitor flow and quality of surface runoff from the permit area prior to treatment. This data is used by the operator to demonstrate that the quality and quantity of runoff without treatment will minimize disturbance to the prevailing hydrologic balance, meet effluent standards, and attain the prevailing postmining land use. SMCRA and its implementing regulations do not require a surface soil survey as suggested by the EPA, and the Director does not have independent authority to require one.

The EPA also commented that Ohio's proposed guidelines for the evaluation of revegetation success do not provide for adequate assessment of plant species diversity, plant community composition and stability, or percent survival of critical species required to establish desired plant communities (Administrative Record No. OH–1973). The agency stated that this assessment should be required for undeveloped lands, especially in situations where the land use goal is to provide wildlife habitat. The EPA believed the Rennie-Farmer method, which Ohio proposes to use for assessing revegetation, is adequate for percent cover only. It suggests that the Rennie-Farmer method be modified to provide quantitative data on species diversity and plant community composition by incorporating assessment of plant species (number of plants per species and total species present) at each sample point along the transect. The EPA provided an example of how it believed the restored revegetation should be evaluated and monitored. In the example, monitoring reports would be required according to a schedule in the permit. These reports would identify the criteria for evaluation and the performance standards to be met. For each habitat type, they would include the success achieved for critical evaluation parameters, and plans for remedial measures if the standard is not being met. The EPA recommended that the reports, at a minimum, address critical species, undesirable species, percent cover, species richness, species quality, and planting success. The EPA described each of these parameters and suggested that evaluations be done at the end of three and five years after initial planting.

The Director agrees that many of EPA's suggestions have technical merit. However, nothing in SMCRA or the Federal rules requires quantitative evaluation of species diversity. Therefore, the Director does not believe it would be appropriate to require Ohio to adopt a numerical standard for diversity. As previously stated in finding 16, he is requiring the DOR, in consultation with the DOW, to submit methods for evaluating diversity, which may or not include quantitative measures. Such an evaluation or diversity is expected to take into account species richness (number of species and their relative importance) and structural diversity (patchiness and vertical distribution of plants).

The SCS suggested that traditional land use designations such as wildlife habitat or woodland are better than the proposed "undeveloped land" postmining land use (Administrative Record No. OH–1701). Upon further inquiry by OSM, it expressed the belief that it was advisable to assign a "beneficial" use to reclaimed areas rather than to establish idle land as a reclamation goal. In response, the Director notes that as indicated in finding 16, undeveloped land has ecological benefits. Nothing in SMCRA or the State or Federal regulations authorizes substandard reclamation of these sites. To the contrary, they must be reclaimed to conditions that are capable of supporting all the uses that they are capable of supporting prior to mining.

SCS also commented on Policy/Procedure Directive, Regulatory 94–2 (page 3). It believed that the recommended four to six pounds per acre seeding rate for Ladino Clover was extremely high and may result in too much competition with other species (Administrative Record No. OH–1835). A rate of one-half to one pound per acre of Ladino Clover was suggested as more appropriate. OSM has reviewed the technical literature on this topic and found that most sources recommend a seeding rate of three pounds per acre when Ladino Clover is used for mined land reclamation. The four to six pounds proposed by Ohio has been approved by DOW and is within reasonable limits.

The State Historic Preservation Officer (SHPO) commented that information obtained during archaeological/architectural/historical surveys of proposed permit areas may be useful in determining premining land use for undeveloped land (OAC 1501:13–9–17(B)) (Administrative Record No. OH–1713). The Director has forwarded this comment to the State for consideration, but he finds that it has no bearing on whether the amendment can or cannot be approved under 30 CFR 732.17.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on May 1, 1992, and June 11, 1993, and revised on January 12, 1993, and

October 21, 1993. As noted in findings 3A, 13, 16, and 17, Ohio is required to revise its program to require the evaluation of diversity and other revegetation success standards during final bond release inspection and to provide documentation that it has obtained concurrence from the appropriate State agencies for the revegetation success standards which apply to areas with commercial forest and recreation as the proposed postmining land use. As noted in finding 3B, Ohio is required to revise its proposed formula for determining the size of sample needed to evaluate the revegetation success of trees and shrubs. The existing requirement to include in the Ohio program statistically valid sampling techniques for evaluating revegetation success is being removed because Ohio has fulfilled this requirement by including the document "Guidelines for Evaluating Revegetation Success" in the State program.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 1994.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding new paragraph (qqq) to read as follows:

Section 935.15 Approval of Regulatory Program Amendments

* * * * *

(qqq) The following amendment (program amendment 25R and 56R) pertaining to the Ohio regulatory program, as submitted to OSM on May 1, 1992, and June 11, 1993, and revised on January 12, 1993, and October 21, 1993, is approved, effective May 2, 1994.

(1) Revisions to OAC 1501:13–4–06(E)(2)(g), Land Use Change; OAC 1501:13–9–15, Revegetation; and OAC 1501:13–9–17(B), Postmining Use of Land;

(2) Ohio Department of Natural Resources Guidelines for Evaluating Revegetation Success; and

(3) Division of Reclamation Policy/Procedure Directive, Regulatory 94–2, Planting Plans for Undeveloped Land.

3. Section 935.16 is revised to read as follows:

Section 935.16 Required Regulatory Program Amendments

(a) By July 1, 1994, Ohio shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the document "Guidelines for Evaluating Revegetation Success" to require that diversity, erosion control, and other applicable requirements of OAC 1501:13–9–15 (B) and (C) be evaluated based on identified methodologies at the time of final bond release and that the formula used to determine the size of sample needed to evaluate the success of tree and shrub plantings be revised in accordance with the Director's January 14, 1994, letter to Ohio. Consistent with OAC 1501:13–9–15(K)(3), Ohio also needs to submit documentation that it has consulted with and obtained the approval of the Ohio Division of Wildlife or other responsible agency for the methods to be used to evaluate diversity at the time of final bond release.

(b) [Reserved]

[FR Doc. 94–10237 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPPTS–82041B; FRL–4779–7]

Preliminary Assessment Information and Health and Safety Data Reporting; Removal of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule removes two chemicals from a final rule published in the **Federal Register** of February 9, 1994. Diethyl phthalate and methyl methacrylate were included in the category "OSHA Chemicals in Need of Dermal Absorption Testing" in two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. Since that time, however, the Interagency Testing Committee (ITC) has received dermal absorption data which meets their needs. This rule removes diethyl phthalate (CAS No. 84–66–2) and methyl methacrylate (CAS No. 80–62–6) from the TSCA section 8(a) information gathering rule and diethyl phthalate from the section 8(d) health and safety data reporting rule.

DATES: This rule will become effective on May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 9, 1994 (59 FR 5956), EPA issued a final rule which added chemicals designated by the ITC to two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) (40 CFR part 712) and the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716). This rule designated a group of chemicals of regulatory interest to the Occupational Safety and Health Administration (OSHA) for dermal absorption testing. Diethyl phthalate and methyl methacrylate were included in this group of chemicals. Since the publication of that final rule, the ITC received dermal absorption rate data for these two chemicals which was reviewed by OSHA and found adequate to meet their dermal absorption rate data needs. Because the ITC no longer believes that dermal absorption data is necessary for these two chemicals, these chemicals are being removed from the sections 8(a) and 8(d) reporting requirements that were imposed via the rule published in the **Federal Register** of February 9, 1994. Because substances are added to the rules based solely on the ITC's designation and without any public participation, where ITC believes a substance should be removed from the rule, EPA finds that public participation in the removal of such substance is unnecessary. EPA is making this rule which reduces a regulatory burden immediately effective in order to relieve the regulated community of the obligation to report on these substances on May 10, 1994.

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: April 22, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

b. In § 712.30(x), by removing under the category "OSHA Chemicals in Need of Dermal Absorption Testing" the entire entries for CAS Numbers "80–62–6" and "84–66–2".

PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.120 [Amended]

b. In § 716.120(d), by removing under the category "OSHA Chemicals in Need of Dermal Absorption Testing" the entire entry for "Diethyl phthalate".

[FR Doc. 94–10316 Filed 4–29–94; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 35]

RIN 3090–AE98

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables; Correction

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in a document amending the Federal Travel Regulation which was published March 9, 1994 (59 FR 10997). This correction modifies the relocation income tax (RIT) allowance tax tables to reflect retroactive changes to Federal income tax rates made by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993).

DATES: This final rule is effective January 1, 1994, and applies to RIT allowance payments made on or after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

Accordingly, the following correction is made to FR Doc. 94–5448 in the issue of March 9, 1994, on page 10997, under Appendix A to Part 302–11—Federal Tax Tables for RIT Allowance, in the table entitled "Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1993".

1. The table is correctly added to read as follows:

APPENDIX A TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1993

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1993.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$ 6,253	$29,075	$11,181	$41,832	$15,153	$53,837	$ 7,677	$27,035
28	29,075	65,032	41,832	96,209	53,837	112,456	27,035	55,674
31	65,032	135,204	96,209	151,017	112,456	167,399	55,674	87,153
36	135,204	275,043	151,017	270,700	167,399	276,908	87,153	146,600
39.6	275,043	....	270,700	....	276,908	....	146,600	....

Dated: April 21, 1994.

Larry A. Tucker,

Chief, Regulatory Policy Branch.

[FR Doc. 94–10234 Filed 4–29–94; 8:45 am]

BILLING CODE 6820–24–F

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48 CFR Part 533

[APD 2800.12A, CHGE 53]

General Services Administration Acquisition Regulation; Implement Revision to General Services Administration Board of Contract Appeals Rules of Procedure

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to implement changes to the GSA Board of Contract Appeals Rules. The changes took effect on January 3, 1994. Accordingly, to preclude any potential delays, the GSAR is being modified to be consistent with the new requirements in the GSBCA Rules of Procedure.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Public comments are not being sought because the rule implements the GSBCA Rules of Procedure which were subject to the public comment process.

B. Executive Order 12866

This rule was not submitted to or approved by the Office of Management and Budget because it is not considered to be a significant rule as defined in Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this rule was not required to be published for public comment in the **Federal Register**.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Part 533

Government procurement.

Accordingly, 48 CFR part 533 is amended to read as follows:

PART 533—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR Part 533 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 533.105 is amended by republishing paragraphs (a) and (a)(1), introductory text, and by revising paragraphs (a)(1)(iii), (a)(2) and (a)(4) to read as follows:

533.105 Protest to GSBCA.

* * * * *

(a) *Notification procedure.* After receiving a protest, the contracting officer shall notify the following:

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegating official in the Information Resources Management Service. When giving such notification, the contracting officer should follow these procedures:

* * * * *

(iii) Use the following format:

Name (Officer, Managing Agent, or person who signed offer)

Address

A protest concerning Solicitation No. __________ has been filed with the General Services Administration Board of Contract Appeals (GSBCA). The protest was filed by (*Insert the name and address of the protester and the name of the person signing the protest.*) on (*Date*). The protest has been purportedly filed pursuant to Section 2713 of the Competition in Contracting Act, Pub. L. 98–369. Copies of the protest may be obtained from the Office of the Clerk of the GSBCA, 18th and F Streets NW, Washington, DC 20405, or from the contracting officer.

Contracting Officer's signature

(2) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, must be forwarded to the agency by appropriate means to ensure next day delivery to both the requiring office and the agency's legal office.

* * * * *

(4) The Board, through assigned counsel, within 3 workdays after the date of filing with the GSBCA, that the notices described in paragraphs (a)(1) and (2) has been given. Written confirmation of notice and a listing of all persons and agencies receiving notice must be provided.

* * * * *

3. Section 553.7103–1 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

533.7103–1 Preparation of appeals file.

* * * * *

(b) *Content of appeal file.*

(1) Each appeal file must be assembled in a looseleaf binder. A gummed label (NSN 7510–00–264–5460) must be used on top of the looseleaf binder to identify the case by contractor, contract number and docket number.

* * * * *

(4) Each appeal file must contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets must be tabbed and numbered consecutively commencing with number one, in whole Arabic numbers (no letters, decimals, or fractions), and continuously from each file to the next so that the complete appeal file will consist of one set of

consecutively numbered appeal file exhibits. In addition, the pages within the exhibit shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required.

* * * * *

Dated: April 11, 1994.

Arthur E. Ronkovich,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 94-10259 Filed 4-29-94; 8:45 am]

BILLING CODE 6820-61-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816, 1831, and 1852

Deviation From FAR 31.205-18

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This rule provides a class deviation from the cost principle on independent research and development (IR&D). This class deviation will permit the costs of IR&D effort incurred under a cooperative arrangement with NASA, that otherwise would have been allowed as IR&D had there been no cooperative arrangement, to be used as the contractor's contribution under the arrangement and to be recoverable as indirect costs. The intended effect of this deviation will be to allow NASA to increase its technology transfer efforts and eliminate barriers to technology development as recommended by the President's National Performance Review.

DATES: *Effective Date:* This regulation is effective May 2, 1994.

Comments: Comments must be received on or before July 1, 1994.

ADDRESSEES: Submit comments to Mr. Joseph Le Cren, Procurement Analyst, Contract Pricing and Finance Division (Code HC), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358-0444.

SUPPLEMENTARY INFORMATION:

Background

FAR 31.205-18 precludes the allowability of costs incurred for independent research and development (IR&D) by contractions in the performance of cooperative arrangements entered into with NASA on a cost-sharing basis. This prohibition reflects a policy decision which NASA wishes to change. NASA proposes a class deviation which would permit costs contributed by a contractor under a cost-sharing cooperative arrangement with NASA to be recoverable as indirect costs, as long as these costs would otherwise have been allowed as IR&D had there been no cooperative arrangement. The deviation is needed in order for NASA to increase its technology transfer efforts and to eliminate barriers to technology development as recommended by the National Performance Review (NPR). The NPR has recommended that NASA devote 10 to 20 percent of its budget to partnerships with industry. This target cannot be successfully achieved only through contracts, grants and cooperative agreements with nonprofit institutions. Cooperative arrangements with industrial firms or consortia are viewed as the most streamlined and efficient way to accomplish technology transfer on the scale envisioned by the NPR. However, this is hindered because private financing may not be adequate to support the contractor contributions to cooperative arrangements. A barrier whose elimination could significantly aid in achieving NASA's technology transfer and development efforts is the current prohibition at FAR 31.205-18. In addition to increasing the transfer of technology by NASA, the deviation will also achieve uniformity and consistency with other federal agencies in the treatment of similar costs. An example of this is the Advanced Research Projects Agency which, under the Technology Reinvestment Projects, has entered into cooperative arrangements which permit contractors to classify their contribution as IR&D and to recover those same costs as allowable indirect costs; the same result NASA wishes to achieve.

This rule is to be effective on an interim basis due to there being multiple cooperative agreements which would be detrimentally impacted if the rule were delayed.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1816, 1831, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1816, 1831, and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1816, 1831 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1816—TYPES OF CONTRACTS

2. Section 1816.307-70 is amended by adding paragraph (h) to read as follows:

1816.307-70 NASA contract clauses.

* * * * *

(h) The contracting officer shall insert the clause at 1852.216-89 in solicitations and contracts in which the clause at (FAR) 48 CFR 52.216-7 is included and to which (FAR) 48 CFR part 31, subpart 31.2 is applicable.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 1831.205-18 is added to read as follows:

1831.205-18 Independent research and development and bid and proposal costs.

A class deviation from (FAR) 48 CFR 31.205-18(e) exists to permit costs contributed by a contractor under a cooperative arrangement with NASA to be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

This deviation does not apply to costs contributed by the contractor under cost-sharing contracts described in (FAR) 48 CFR 16.303 and 1816.303.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.216-89 is added to read as follows:

1852.216-89 Allowable Cost and Payment.

As prescribed at 1816.307-70(d), insert the following clause:

Allowable Cost and Payment (April 1994)

Allowable costs shall be determined by the contracting officer in accordance with 1831.205-18 in addition to the provisions of (FAR) 48 CFR subpart 31.2.

(End of clause)

[FR Doc. 94-10422 Filed 4-29-94; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 120993A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and approval of catch sharing plan.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, (AA) on behalf of the International Pacific Halibut Commission (IPHC), publishes regulations promulgated by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The IPHC regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

The AA also announces the approval of the 1994 Catch Sharing Plan (Plan) to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fishermen off the coasts of Washington, Oregon, and California (IPHC statistical Area 2A). Regulations necessary to achieve the sport fisheries allocations in the Plan are also published. These regulations specify the seasons, quotas, and bag limits in each of the sport fishery areas.

EFFECTIVE DATE: May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, telephone 907–586–7221; J. Gary Smith, Acting Regional Director, NMFS, Northwest Region, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115, telephone 206–526–6140; or Donald McCaughran, Executive Director, IPHC, P.O. Box 5009, University Station, Seattle, WA 98105, telephone 206–624–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery in 1994. The regulations have been approved by the Secretary of State of the United States with the exception of IPHC regulations that pertain to domestic allocation in Area 4B. Regulations allocating catch in Area 4B have been developed by the North Pacific Fishery Management Council (NPFMC) and, if approved by the AA, will take effect for the 1994 fishery. Area 4B allocative regulations were inappropriately included in the 1994 IPHC regulations and therefore were not approved. On behalf of the IPHC, the approved IPHC regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements appearing therein.

The IPHC held its annual meeting on January 24–27, 1994, in Bellevue, WA, and adopted regulations for 1994. The substantive changes from the previous IPHC regulations (58 FR 17791, April 6, 1993) include: (1) New commercial catch limits and fishing seasons; (2) new treaty Indian halibut catch limits; (3) new sport fishing limits in Area 2A; and (4) new regulations that require fishermen and processors to unload all fish when fishing period limits are in effect and to record these landings on state fish tickets. The 1994 regulations also continue the Area 4D–N experimental fishery.

Because the non-Indian commercial fishery in Area 2A is likely to exceed the sub-quota for this fishery during the first 10-hour opening, the IPHC will need to impose vessel trip limits. However, because it is unknown at this time how many vessels might participate in the Area 2A fishery, the IPHC staff will determine and announce the vessel trip limits necessary to avoid exceeding the sub-quota prior to the July 6 opening when better information is available on the number of vessels that may participate in the fishery.

Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce shall have general responsibility to carry out the Halibut Convention (Convention) between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocation be necessary.

At its January 1994 meeting, the NPFMC recommended regulations that would enhance fishing opportunities for vessels that land their total annual catch of Pacific halibut within Regulatory Area 4B. These regulations would reserve 15 percent of the Area 4B catch limit for Pacific halibut fishing periods scheduled prior to August 15. Vessels participating in these Area 4B fishing periods would be limited to a maximum catch of 10,000 pounds (4.5 mt) during each fishing period. The intended effect of these measures is to provide summer fishing opportunities for smaller vessels that land their total annual Pacific halibut catch in Area 4B. These measures would not apply to fishing periods in Area 4B after August 15.

These Area 4B regulations will be the subject of a separate notice of proposed rulemaking. The AA will decide whether to approve the proposed allocation after consideration of public comment on the proposed rule. If approved by the AA, final regulations implementing the 15-percent catch limit reservation and the fishing period limits will be published at § 301.7(f) and § 301.11(g), respectively. Therefore, these paragraphs are reserved.

The NPFMC's previous allocation recommendations were implemented in regulations published at 53 FR 20327 (June 3, 1988) and 55 FR 23085 (June 6, 1990), have been adopted by the IPHC, and are consolidated and renumbered at § 301.11(h) and (i); § 301.14(a), (b), (e), (f), (g), (h), (i) and (j); and § 301.17(i). An additional regulation pertaining to NPFMC allocation recommendations was originally published at 56 FR 19617 (April 29, 1991) and is republished at § 301.10(g) for the convenience and information of the public.

The Pacific Fishery Management Council (PFMC) has prepared catch sharing plans since 1988 to allocate the TAC of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California. For 1994, the PFMC recommended a two-pronged, contingent recommendation which: (1) Requests that the IPHC calculate 50 percent of the harvestable surplus in subarea 2A–1 and manipulate the non-Indian commercial fishery so that the non-Indian share does not exceed 50 percent in subarea 2A–1, and that the non-Indian allocation should be divided among sport and commercial fisheries in the same proportion as the 1993 catch shares; or (2) if IPHC is unable to determine the harvestable surplus in subarea 2A–1, then the non-Indian commercial fishery be moved south of subarea 2A–1 and the allocations among treaty Indian and non-Indian sport and commercial fisheries would be the same as in 1993 (i.e., Treaty Indian (25 percent), non-Indian commercial (37.5 percent), Washington sport (22.9 percent), and Oregon/California sport (14.6 percent).

The PFMC's recommended Plan was disapproved by the AA because it maintained a *status quo* treaty Indian allocation, or set a treaty Indian allocation based on the IPHC's calculation of half of the harvestable surplus in subarea 2A–1 that would either keep the tribal share at its present 25 percent of the Area 2A TAC, or reduce it to 20 percent if the IPHC used its past report (IPHC Scientific Report Number 74) to estimate the distribution of halibut biomass to derive "harvestable surplus" in subarea 2A–1. The AA disapproved only that portion of the PFMC's recommended allocation that affected Indian fishing rights and harvest in area 2A–1. That portion was disapproved because the information in the record did not establish that the recommendation provided the tribes with a 50-percent allocation of the harvestable surplus of halibut that passes through their usual and accustomed fishing area. The PFMC recommendations pertaining to allocations within the non-Indian fisheries were included in the proposed 1994 Plan. A complete discussion of the partial disapproval of the PFMC's recommendation and background on the development of the 1994 Plan and the proposed sport fishing regulations was published in the **Federal Register** on December 22, 1993, (58 FR 67762) with a request for public comments.

The 1994 Plan as proposed in the December 22, 1993, **Federal Register** notice, was approved because it provides the treaty Indian tribes with an allocation that is consistent with December 29, 1993, order issued by the U.S. District Court for the Western District of Washington, *Makah Indian Tribe v. Brown et al.* No. C85–1605 (W.D. Wash.); *United States of America et al. v. State of Washington, et al.*, Civil No. 9213–Phase I, subproceeding No. 92–1 (W.D. Wash.) and implements the remainder of the PFMC's recommendations on allocations between and within non-Indian fisheries reduced proportionately to accommodate the 35-percent allocation to the tribes. This action responds to public comments on the proposed Plan and proposed sport regulations and announces approval of the Plan and final sport fishing regulations.

Comments and Responses on the Proposed Rule and the Catch Sharing Plan

Three letters of comment on the proposed rule and six letters of comment on the proposed 1994 Plan were received from the Oregon State Department of Fish and Wildlife, Washington State Department of Fish and Wildlife, representatives of the treaty Indian tribes, and non-Indian sport and commercial users. Three letters expressed support for the Plan and three were opposed. The comments are summarized below with responses.

Comment 1: Treaty Indian representatives agreed with the 35-percent allocation to the tribes for 1994 and advised that the tribal estimate for the 1993 ceremonial and subsistence (C&S) fishery for all 12 tribes was 15,798 pounds. For 1994, the tribes requested that 16,000 pounds be used in the Plan as the C&S fishery estimate.

Response: The 1994 Plan and the IPHC implementing regulations were revised to use 16,000 pounds (7.3 mt) as the tribal estimate for 1994.

Comment 2: Oregon representatives and users recommended adoption of the PFMC's recommendation because the proposed Plan would establish a disproportionate harvest in the northern area of Area 2A, which is not consistent with scientific information on biomass distribution and could be detrimental to the halibut stock.

Response: The Secretary disapproved only that portion of the PFMC's recommended allocation scheme that affected treaty Indian fishing rights, because it did not provide the tribes with a 50-percent allocation of the harvestable surplus of halibut that passes through subarea 2A–1 (the treaty Indian tribes usual and accustomed fishing area). In *Makah* v. *Brown*, the U.S. Government argued that harvests should be proportionate to biomass based on the IPHC management philosophy and on IPHC Report No. 74. However, this argument was rejected. The tribes presented statistics showing that 70 percent of the Area 2A harvest has come from subarea 2A–1 for 20 years, without apparent detriment to the stock. Although the IPHC recently stated that overfishing may be occurring in Area 2A, the IPHC statement applies to the entire area, not to just subarea 2A–1, and past IPHC scientific reports have not concluded that the higher removals in subarea 2A–1 are a conservation issue. Given that there is not a clearly demonstrated conservation basis in the record for reducing the removals (70 percent of TAC) in the tribe's usual and accustomed fishing area (subarea 2A–1) at this time, and given their treaty right to 50 percent, the AA determined that 35 percent of the Area 2A TAC should be allocated to the treaty Indian tribes in 1994.

Comment 3: One commenter felt that the PFMC's recommendation should not be overturned because it was based on an established open public process based on well-debated decisions and scientific input.

Response: Only that portion of the PFMC recommendation pertaining to the allocation to treaty Indian tribes was overturned, because it was not consistent with the U.S. District Court order. When the PFMC was considering the allocation to the tribes during its public meeting, the PFMC was advised by U.S. government representatives at the PFMC's public meeting (prior to its vote) that a recommendation to reduce the harvests in subarea 2A–1 in order to reduce the tribal share was likely to be disapproved by the AA.

Comment 4: Oregon representatives and users commented that the proposed Plan establishes an inequitable opportunity to harvest halibut by all users in Area 2A and discriminates between residents of different states by setting a disproportionate allocation in subarea 2A–1 (the treaty Indian tribes' usual and accustomed fishing grounds), thereby preventing equitable use of available biomass in Oregon.

Response: This allocation provides recognition of treaty Indian fishing rights and does not restrict the location of the non-Indian commercial fishery, and therefore does not discriminate between residents of different states.

Comment 5: Oregon raised concerns about institutionalizing the halibut harvest disproportionately in a small area.

Response: The Plan is for 1994 only; allocations for 1995 and beyond could be different than the 1994 Plan. Any proposal to reduce the tribal allocation below 35 percent of the Area 2A TAC must be supported by credible information that there is a conservation necessity to reduce the amount of harvest coming out of subarea 2A–1; a proposal to shift the non-Indian harvest would not have to meet the conservation necessity test.

Comment 6: Representatives of the inside tribes commented that the proposed Plan is inconsistent in its allocation of treaty Indian and non-Indian harvests in Puget Sound in that the sport fisheries have separate sub-quotas for inside waters (Puget Sound), while no equal sub-quota is established for the Puget Sound tribes.

Response: Consistent with the U.S. District Court order, the Plan only addresses the allocation to treaty Indian tribes in subarea 2A–1 and does not consider intertribal allocation issues.

Comment 7: Tribal representatives commented that the 72-hour restriction on the use of setline gear prior to a halibut fishing period should not apply to treaty Indian fishing as it is not necessary for regulating the treaty Indian fisheries.

Response: This comment pertains to IPHC regulations, rather than the Plan. U.S. Government representatives did raise this issue with the IPHC and the application of the 72-hour restriction on treaty Indian fishing was removed by IPHC.

Comment 8: The Washington State Department of Fish and Wildlife (WDFW), in consultation with Washington anglers and IPHC staff, had two recommendations on the sport fishing regulations to account for the decrease in TAC from 1993. WDFW recommends that the Puget Sound sport fishery season be open May 2 to July 5; and that the area between Queets River and Cape Falcon have a 2-day season on June 2 and June 9.

Response: The WDFW recommendations are within the PFMC's allocation objectives for Washington sport fisheries in 1994 as described in the Plan, and are necessary because of the revised sub-quotas in these areas (due to lowered TAC). Therefore, the proposed regulations at § 301.21(d)(2) (i) and (iii) were revised to reflect these revised seasons that are intended to achieve the allocations in these sport fishery areas. The IPHC has concurred that projected catch for these seasons is within the sub-quotas for these areas.

Comment 9: A Washington sport user stated that the one-fish bag limit in the Washington north coastal area sport fishery is not adequate, given the expense to travel to the north coast area.

Response: The one-fish bag limit was recommended by the PFMC to extend the fishing season in this area to maximize angler participation.

Comment 10: A Washington sport user commented that the Washington north coastal area sport fishery opening date should be delayed by 1 month to make the fishery more safely accessible by small boats.

Response: This area has traditionally opened in early May, as there is little other angler opportunity at this time of year. In prior years, when the sub-quota in this area was higher, a second season was set in July when more small vessels participate in the fishery. However, because quotas are no longer sufficient to have two seasons, the PFMC recommended a single opening that would extend as long as quota was available. NMFS agrees with the PFMC recommendation to maximize angler access and therefore the proposed May 3 opening was retained in the final rule.

Comment 11: A Washington sport user was opposed to the proposed closure south of Cape Flattery in the Washington north coast sport fishery, because it prevented user access to productive grounds.

Response: The closed area was recommended by the PFMC, based on input from WDFW, because the halibut caught in this area in 1993 were much larger than the average fish in the north coast area and caused the sub-quota in this area to be achieved much sooner than anticipated. NMFS concurs with the PFMC's objective in recommending closing this area to extend fishing opportunity as long as possible, and since other areas that are close to port are still available for fishing, NMFS has approved the closed area in the final sport regulations.

Accordingly, the proposed 1994 Plan and proposed regulations at § 301.21(d)(2) have been modified as described in the responses to comments. Specific regulations implementing portions of the 1994 Plan were adopted by the IPHC and are published herein. NMFS has implemented the sport fishery portion of the Plan, as applied to the Area 2A TAC, in § 301.21(d) of these regulations. A regulation published at 58 FR 17791 (April 6, 1993) that describes the fishing area of the treaty Indian tribes at § 301.20(j) is renumbered and republished at § 301.20(l). Additional regulations originally published at 58 FR 17791 (April 6, 1993) pertaining to flexible inseason management provisions for Area 2A sport fisheries are republished at § 301.21(d)(3) and (d)(5) for the convenience and information of the public. The final approved 1994 Plan for Pacific halibut in Area 2A is as follows.

1994 Catch Sharing Plan

The 1994 Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided 50 percent to commercial users and 50 percent to sport users. The sport allocation is further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California. The sport fisheries are divided into geographic areas, each having separate seasons, quotas, bag limits, and other restrictions. The Washington sport allocation applies to the coastal and inland waters off Washington, as well as waters off the coast of Oregon north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. The allocations are distributed as sub-quotas to ensure that any overage or underage by any one user group will not affect achievement of the allocation of TAC for other user groups. The Area 2A TAC of 550,000 pounds (249.5 mt) is distributed as sub-quotas between users as follows:

Treaty Indian sub-quota.	192,500 pounds (87.3 mt)
Non-Indian Commercial sub-quota.	178,750 pounds (81.1 mt)
Washington Sport sub-quota.	109,037 pounds (49.5 mt)
Oregon Sport sub-quota.	69,713 pounds (31.6 mt)
Total	550,000 pounds (249.5 mt)

The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described below.

Treaty Indian Fisheries

Thirty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in subarea 2A–1, which includes that portion of Area 2A north of Point Chehalis, WA (46°53′18″ N. latitude) and east of 125°44′00″ W. longitude (defined in 50 CFR 301.20(c)). The treaty Indian allocation is to provide for a tribal commercial fishery and a C&S fishery. These two fisheries are to be managed separately; any overages in the commercial fishery will not affect the C&S fishery. The commercial fishery will be managed to achieve an established sub-quota, while the C&S fishery will be managed for a year-round season. The tribal C&S fishery commenced on January 1 and continues year-round through December 31. No size or bag limits apply to the C&S fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per person per day. The tribal estimate of C&S catch for the year-round fishery in 1993 was about 16,000 pounds (7.3 mt), and it is expected that 1994 will be the same. Based on this expectation, the tribal commercial fishery will have a sub-quota of 176,500 pounds (80.1 mt), which is equal to the tribal allocation of 192,500 pounds (87.3 mt) less the tribal estimate of 16,000 pounds (7.3 mt) for a year-round C&S season. The tribal commercial fishery commenced on March 1 and continues through October 31 or until the tribal commercial sub-quota is taken, whichever occurs first. Any halibut sold by treaty Indians must comply with the IPHC regulations on size limits for the non-Indian fishery. Halibut taken for C&S purposes may not be offered for sale or sold. Regulations necessary for the treaty Indian allocative measures are implemented in the 1994 IPHC regulations.

Commercial Fisheries (Non-Indian)

The non-Indian commercial fishery is allocated 32.5 percent of the Area 2A TAC. This Plan does not address the structuring of the commercial season(s) The 1994 commercial fishery opening date(s), duration, and vessel trip limits for Area 2A, as necessary to ensure that the sub-quota for this fishery is not exceeded, are determined by the IPHC.

Sport Fisheries (Non-Indian)

The non-Indian sport fishery is allocated 32.5 percent of the Area 2A TAC. The sport fishery allocation is further divided, with 19.8 percent of the Area 2A TAC to areas off Washington/northern Oregon and 12.7 percent to areas off Oregon/California. The sport fisheries are divided into five geographic areas, each having separate seasons, sub-quotas, bag limits, and other restrictions as necessary to achieve allocation objectives. The Washington sport allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast.

The Washington sport fisheries structuring is based on the following allocation objectives adopted by the PFMC:

1. In Puget Sound, provide a stable recreational opportunity for anglers and maximize the season length;
2. On the north coast, maximize the season length; and
3. On the south coast, maximize the season length while providing for a limited halibut fishery.

The Oregon sport fisheries structuring is based on the following allocation objectives adopted by the PFMC:

1. Provide early season fishing opportunity to anglers from Cape Falcon to the California border;
2. Provide sport fishing opportunity for all Oregon ports south of Cape Falcon, especially small boat anglers;
3. Provide a short period of opportunity for all ports south of Cape Falcon that allows both charter boats and larger private boats to fish productive areas in deeper water; and
4. Provide anglers in California the opportunity to fish in a fixed season.

The details of the sport fisheries structuring for the five sport fishery areas are as follows:

1. *Washington Inside Waters (Puget Sound and Straits).*

This area is allocated 32.4 percent of the Washington sport sub-quota, which is 35,328 pounds (16.0 mt). The season will be open 6 days per week (closed Wednesdays) from May 2 until a closing date that will be based (preseason) on when the sub-quota is projected to be achieved. Due to the inability to monitor the catch in this area inseason, a fixed season is established preseason, based on projected catch per day and number of days to achievement of the sub-quota; no inseason adjustments will be made, and estimates of actual catch will be made post-season. For 1994, the sub-quota is projected to be achieved on July 5th. The bag limit will be one halibut per person per day, with no size limit.

The dividing line between this area and the Washington north coast area is the Bonilla-Tatoosh line, defined as follows: From Bonilla Point (48°35′44″ N. latitude, 124°43′00″ W. longitude) to the buoy adjacent to Duntze Rock (48°24′55″ N. latitude, 124°44′50″ W. longitude) to Tatoosh Island lighthouse (48°23′30″ N. latitude, 124°44′00″ W. longitude) to Cape Flattery (48°22′55″ N. latitude, 124°43′42″ W. longitude).

2. *Washington North Coast between the Straits and Queets River.*

This area is allocated 62.4 percent of the Washington sport sub-quota, which is 68,039 pounds (30.9 mt). The fishery will open on May 3 and continue 5 days per week (Tuesday through Saturday) until the sub-quota is taken or until September 30, whichever occurs first. The bag limit is one halibut per person per day, with no size limit.

A closure to sport fishing for halibut will be established in an area that is 19.5 nautical miles (36 km) southwest of Cape Flattery. The closed area is defined as the area within a rectangle defined by these four corners: 48°17′00″ N. latitude and 125°10′00″ W. longitude; 48°17′00″ N. latitude and 125°00′00″ W. longitude; 48°05′00″ N. latitude and 125°10′00″ W. longitude; and, 48°05′00″ N. latitude and 125°00′00″ W. longitude.

3. *Southern Washington/northern Oregon* (between Queets River and Cape Falcon, OR).

This area is allocated 5.2 percent of the Washington sport sub-quota, which is 5,670 pounds (2.6 mt). The season will be open one day per week (Thursday only) from June 2 until when the sub-quota is projected to be harvested. Due to the inability to monitor the catch in this area inseason, a fixed season will be established preseason, based on projected catch per day and number of days to achievement of the sub-quota. For 1994, the sub-quota is projected to be achieved on June 9; however, additional fishing days should be provided if the sub-quota is not taken by June 9 and additional sub-quota for this area remains unharvested that is sufficient for an additional full day of fishing. The bag limit is one halibut per person per day, with no size limit.

4. *South of Cape Falcon to the California Border.*

This area is allocated 97.4 percent of the Oregon sport sub-quota, which is 67,900 pounds (30.8 mt). The bag limit for all seasons in this area is two halibut per person per day, one with a minimum 32-inch (81.3 cm) size limit and the second with a minimum 50-inch (127.0 cm) size limit.

This area will have three seasons: The first season is allocated 79 percent of this area sub-quota; the second season is allocated 4 percent; and the third season is allocated 17 percent. The structuring of the three seasons is as follows:

1. The first season will open on May 4 and continue 5 days per week (Wednesday through Sunday) until 53,641 pounds (24.3 mt) is estimated to have been taken.
2. The second season will open the day following the closure of the first season, but only in waters inside the 30-fathom curve and continue every day until August 5 or until 2,716 pounds (1.2 mt) is estimated to have been taken, whichever occurs first.
3. The third and last season will open on August 6, with no depth restrictions. The fishery will be open 5 days per week (Wednesday through Sunday) until September 30 or until the area sub-quota of 67,900 pounds (30.8 mt) is estimated to have been taken, whichever occurs first.

Any poundage remaining after the earlier seasons will be added to the sub-quotas for the next season. If poundage added to the last season's sub-quota is sufficient to allow for additional fishing opportunity, an inseason action should be taken to add additional open days to each week.

5. *California—South of the California Border.*

This area is allocated 2.6 percent of the Oregon sport sub-quota, which is 1,813 pounds (0.8 mt). The season will commence on May 1 and continue every day until September 30. The bag limit is one halibut per person per day with a minimum 32-inch (81.3 cm) size limit. Due to the inability to monitor the catch in this area inseason, a fixed season will be established preseason based on projected catch per day and number of days to achievement of the sub-quota; no inseason adjustments will be made, and estimates of actual catch will be made post-season.

Classification

International Pacific Halibut Commission Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act (APA) does not apply to this notice of the effectiveness and content of the IPHC regulations. Because notice of proposed rulemaking is not required, the preparation of a regulatory flexibility analysis is not required.

Sport Fishing Regulations and Catch Sharing Plan

The 1994 Plan and sport fishing regulations are consistent with the Catch Sharing Plans that have been in place since 1990. A regulatory impact review prepared by the PFMC for the 1992 Plan indicates that actions taken under the Plan will not have a significant economic impact on a substantial number of small entities. The allocations within this Plan are within the scope of the 1992 Plan and therefore preparation of a new regulatory flexibility analysis is not required under the Regulatory Flexibility Act. The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities.

This final rule has been determined to be not significant for purposes of E.O. 12866.

If this rule is not effective by May 1, 1994, sport fishing for Pacific halibut in Area 2A would open under last years' regulations, which provided more halibut to the sport fishery than is available this year. Therefore, this years' season would open under less restrictive regulations than promulgated by these rules, and too much of the sport allocation would be taken early in the year, defeating the goals of the approved 1994 Plan. This would cause negative economic impacts on the coastal communities and charterboat operations that are dependent on Pacific halibut fishing throughout the year. Pursuant to section 553(d)(3) of the APA, the AA finds good cause to make the final rule effective on May 1, 1994.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: April 22, 1994.

Henry R. Beasley,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.
301.1 Short title.
301.2 Interpretation.
301.3 Licensing vessels.
301.4 Inseason actions.
301.5 Application.
301.6 Regulatory areas.
301.7 Fishing periods.
301.8 Closed periods.
301.9 Closed area.
301.10 Catch limits.
301.11 Fishing period limits.
301.12 Size limits.
301.13 Careful release of halibut.
301.14 Vessel clearance in Area 4.
301.15 Logs.
301.16 Receipt and possession of halibut.
301.17 Fishing gear.
301.18 Retention of tagged halibut.
301.19 Supervision of unloading and weighing.
301.20 Fishing by U.S. treaty Indian tribes.
301.21 Sport fishing for halibut.
301.22 Previous regulations superseded.
Figure 1 to part 301.
Figure 2 to part 301.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part:

Automated hook stripper (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval, which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks.

Charter vessel means a vessel used for hire in sport fishing for halibut, but does not include a vessel without a hired operator.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered.

Commission means the International Pacific Halibut Commission.

Daily bag limit means the maximum number of halibut a person may take in any calendar day from Convention waters.

Fishery officer means any State, Federal, or Provincial officer authorized to enforce this part, including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the U.S. Coast Guard (USCG).

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period.

Land, with respect to halibut, means to bring to shore and to offload.

License means a halibut fishing license issued by the Commission pursuant to § 301.3 of this part.

Maritime area, with respect to the fisheries jurisdiction of a Contracting Party, includes, without distinction, areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel.

Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.6 of this part.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing.

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(c) In this part, all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

§ 301.3 Licensing vessels.

(a) No person shall operate or fish for halibut from a U.S. vessel, nor possess halibut on board a U.S. vessel, used either for commercial fishing or as a charter vessel, unless the Commission has issued a license in respect of that vessel.

(b) No person shall operate or fish for halibut from a Canadian vessel used as a charter vessel, nor possess halibut on board such vessel, unless the Commission has issued a license in respect of that vessel.

(c) A license issued in respect of a vessel referred to in paragraphs (a) and (b) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by fishery officers of the Contracting Parties.

(d) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, WA, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from fishery officers of either Contracting Party, or from the Commission.

(f) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(g) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(h) Licenses issued under this section shall be valid only during the year in which they are issued.

(i) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(j) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(k) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

§ 301.4 Inseason actions.

(a) The Commission is authorized to establish or modify regulations during the season after determining that such action

(1) Will not result in exceeding the catch limit established preseason for each regulatory area;

(2) Is consistent with the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(b) Inseason actions may include, but are not limited to, establishment or modification of the following:

(1) Closed areas;
(2) Fishing periods;
(3) Fishing period limits;
(4) Gear restrictions;
(5) Recreational bag limits;
(6) Size limits; or
(7) Vessel clearances.

(c) Inseason changes will be effective at the time and date specified by the Commission.

(d) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, State, U.S. treaty Indian, and Provincial fishery officials; and the media.

§ 301.5 Application.

(a) This part applies to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern and the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.6 through 301.19 of this part apply to commercial fishing for halibut.

(c) Section 301.20 of this part applies to fishing for halibut by U.S. treaty Indian tribes in the State of Washington.

(d) Section 301.21 of this part applies to sport fishing for halibut.

(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.6 Regulatory areas.

The following areas (see Figure 1) shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the states of California, Oregon, and Washington;

(b) Area 2B includes all waters off British Columbia;.

(c) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (latitude 58°11′57″ N., longitude 136°38′18″ W.), and south and east of a line running 205 true from said light;

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41′15″ N., longitude 155°35′00″ W.) to Cape Ikolik (latitude 57°17′17″ N., longitude 154°47′18″ W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44′50″ N., longitude 154°08′44″ W.), then 140 true;

(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (latitude 54°29′00″ N., longitude 164°20′00″ W.) and south of latitude 54°49′00″ N. in Isanotski Strait;

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.9 of this part that are east of longitude 172°00′00″ W. and south of latitude 56°20′00″ N.;

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20′00″ N.;

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9 of this part that are east of longitude 171°00′00″ W., south of latitude 58°00′00″ N., and west of longitude 168°00′00″ W.;

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00′00″ W.;

(j) Subarea 4D–N includes that portion of Area 4D that is north of latitude 62°30′00″ N.;

(k) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9 of this part, east of longitude 168°00′00″ W., and south of latitude 65°34′00″ N.

§ 301.7 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following tables and apply where the catch limits specified in § 301.10 of this part have not been taken.

COMMERCIAL FISHING PERIODS IN REGULATORY AREAS 2A, 2B, 2C, 3A, 3B

	2A	2B	2C	3A	3B
7/06 7/19 8/03 8/16		3/01–11/15	6/06–6/07 9/12–* 10/10–*	6/06–6/07 9/12–9/13 10/10–*	6/06–6/07 9/12–9/13 10/10–*

COMMERCIAL FISHING PERIODS IN REGULATORY AREAS 4A, 4B, 4C

4A	4B	4C		
6/06–6/07	6/06–6/07	6/03–6/04	8/02–8/03	10/01–10/02
8/15	6/15	6/05–6/06	8/04–8/05	10/03–10/04
8/30–*	6/17	6/07–6/08	8/06–8/07	10/05–10/06
9/12–9/13	6/19	6/09–6/10	8/08–8/09	10/07–10/08
10/10–*	6/21	6/11–6/12	8/10–8/11	10/09–10/10
	6/23	6/13–6/14	8/12–8/13	10/11–10/12
	6/25	6/15–6/16	8/14–8/15	10/13–10/14
	6/27	6/17–6/18	8/16–8/17	10/15–10/16
	6/29	6/19–6/20	8/18–8/19	10/17–10/18
	7/01	6/21–6/22	8/20–8/21	10/19–10/20
	7/03	6/23–6/24	8/22–8/23	10/21–10/22
	7/05	6/25–6/26	8/24–8/25	10/23–10/24
	7/07	6/27–6/28	8/26–8/27	10/25–10/26
	7/09	6/29–6/30	8/28–8/29	10/27–10/28
	7/11	7/01–7/02	8/30–8/31	10/29–10/30
	7/13	7/03–7/04	9/01–9/02	
	7/15	7/05–7/06	9/03–9/04	
	7/17	7/07–7/08	9/05–9/06	
	7/19	7/09–7/10	9/07–9/08	
	7/21	7/11–7/12	9/09–9/10	
	7/23	7/13–7/14	9/11–9/12	
	7/25	7/15–7/16	9/13–9/14	
	7/27	7/17–7/18	9/15–9/16	
	7/29	7/19–7/20	9/17–9/18	
	7/31	7/21–7/22	9/19–9/20	
	8/02	7/23–7/24	9/21–9/22	
	8/04	7/25–7/26	9/23–9/24	
	8/06	7/27–7/28	9/25–9/26	
	8/08	7/29–7/30	9/27–9/28	
	8/10	7/31–8/01	9/29–9/30	
	8/12			
	8/14			
	8/15–*			
	8/30–*			

COMMERCIAL FISHING PERIODS IN REGULATORY AREAS 4D, 4D–N, 4E

4D	4D–N	4E	
8/15–*	7/01–7/02	5/02–5/04	7/16–7/18
8/30–*	7/03–7/04	5/05–5/07	7/19–7/21
	7/05–7/06	5/08–5/10	7/22–7/24
	7/07–7/08	5/11–5/13	7/25–7/27
	7/09–7/10	5/14–5/16	7/28–7/30
	7/11–7/12	5/17–5/19	7/31–8/02
	7/13–7/14	5/20–5/22	8/03–8/05
	7/15–7/16	5/23–5/25	8/06–8/08
	7/17–7/18	5/26–5/28	8/09–8/11
	7/19–7/20	5/29–5/31	8/12–8/14
	7/21–7/22	6/01–6/03	8/15–8/17
	7/23–7/24	6/04–6/06	8/18–8/20
	7/25–7/26	6/07–6/09	8/21–8/23
	7/27–7/28	6/10–6/12	8/24–8/26
	7/29–7/30	6/13–6/15	8/27–8/29
	7/31–8/01	6/16–6/18	8/30–9/01
	8/02–8/03	6/19–6/21	9/02–9/04
	8/04–8/05	6/22–6/24	9/05–9/07
	8/06–8/07	6/25–6/27	9/08–9/10
	8/08–8/09	6/28–6/30	9/11–9/13
	8/10–8/11	7/01–7/03	9/14–9/16
	8/12–8/13	7/04–7/06	9/17–9/19
		7/07–7/09	9/20–9/22
		7/10–7/12	9/23–9/25
		7/13–7/15	9/26–9/28

*Date to be announced by the Commission.

(b) Each fishing period in Area 2A shall begin at 0800 hours and terminate at 1800 hours Pacific Standard or Pacific Daylight Time, as applicable, on the dates set out in the table in paragraph

(a) of this section, unless the Commission specifies otherwise.

(c) The fishing period in Area 2B shall begin and terminate at 1200 hours Pacific Standard Time, on the dates set out in the table in paragraph (a) of this section, unless the Commission specifies otherwise.

(d) Except as provided in paragraph (e) of this section, each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E, and subarea 4D–N shall begin and terminate at 1200 hours Alaska Standard or Alaska Daylight Time, as applicable, on the dates set out in the table in paragraph (a) of this section, unless the Commission specifies otherwise.

(e) The 8/15 fishing period in Area 4A and the 6/15 through 8/14 fishing periods inclusive in Area 4B shall begin at 0800 hours and terminate at 2000 hours Alaska Standard or Alaska Daylight Time, as applicable, unless the Commission specifies otherwise.

(f) [Reserved]

(g) All commercial fishing for halibut in Area 2A shall cease at 1200 hours Pacific Standard Time on October 31.

(h) All commercial fishing for halibut in Area 2B shall cease at 1200 hours Pacific Standard Time on November 15.

(i) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

§ 301.8 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.7 of this part in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.17(g) and (h) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.9 Closed area.

All waters in the Bering Sea that are north of latitude 54°49′00″ N. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (latitude 54°36′00″ N., longitude 164°55′42″ W.) to a point at latitude 56°20′00″ N., longitude 168°30′00″ W.; thence to a point at latitude 58°21′25″ N., longitude 163°00′00″ W.; thence to Strogonof Point (latitude 56°53′18″ N., longitude 158°50′37″ W.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.10 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	178,750	81
2B	10,000,000	4,536
2C	11,000,000	4,990
3A	26,000,000	11,794
3B	4,000,000	1,814
4A	1,800,000	816
4B	2,100,000	953
4C	700,000	318
4D	665,000	302
4D–N	35,000	16
4E	100,000	45

(b) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(c) Notwithstanding paragraphs (a) and (b) of this section, Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(d) If the Commission determines that the catch limit specified in any regulatory area in paragraph (a) of this section would be exceeded in an unrestricted 24-hour, 10-hour, or 12-hour fishing period as specified in § 301.7(b), (c), or (d), the catch limit for that area shall be considered to have been taken, unless fishing period limits are implemented.

(e) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 30,000,000 pounds (13,608 mt) for the combined areas is taken.

(f) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,900,000 pounds (1,769 mt) for the combined areas is taken.

(g) Notwithstanding paragraph (a) of this section, the portion of Area 4E that is south and east of a line from 58°21′25″ N. latitude, 163°00′00″ W. longitude to Cape Newenham (at 58°39′00″ N. latitude, 162°10′25″ W. longitude) shall be closed to fishing for halibut when the Commission determines that 30 percent of the catch limit for Area 4E has been taken from this portion of Area 4E, except that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of this line will be available for harvest in the portion of Area 4E that is south and east of this line, subject to the other provisions of this part.

(h) Notwithstanding paragraph (a) of this section, any catch limit remaining in subarea 4D–N at the close of the August 12–13 fishing period, specified in § 301.07 of this part, will be added to the Area 4D catch limit.

(i) When, under paragraphs (b), (c), (d), (e), (f) or (g) of this section, the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.11 Fishing period limits.

(a) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut are weighed and reported on State fish tickets or Federal catch reports.

(c) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets or Federal catch reports.

(d) The provisions of paragraph (c) of this section are not intended to prevent retail over-the-side sales to individual purchasers, so long as all the halibut on board is ultimately offloaded and reported.

(e) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(f) Length classes are shown in the following table:

Overall length	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56–+	H

(g) [Reserved]

(h) Notwithstanding paragraph (e) of this section, all vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 mt) of halibut per fishing period.

(i) Notwithstanding paragraph (e) of this section, all vessels fishing in subarea 4D–N shall be limited to a maximum catch of 1,000 pounds (0.45 mt) of halibut per fishing period.

(j) Notwithstanding paragraph (e) of this section, all vessels fishing in Area 4E shall be limited to a maximum catch of 6,000 pounds (2.7 mt) of halibut per fishing period.

(k) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.

(l) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.

(m) No vessel that fishes for halibut in a regulatory area for which a fishing period limit is in effect shall fish in any other regulatory area during that fishing period.

§ 301.12 Size limits.

(a) No person shall take or possess any halibut that:

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part; or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

(c) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

§ 301.13 Careful release of halibut.

All halibut in excess of a vessel's fishing period limit, when fishing period limits as determined or specified in § 301.11 of this part are in effect, or halibut below the minimum size limit specified in § 301.12 of this part, shall be immediately released and returned to the sea with a minimum of injury by:

(a) Hook straightening outboard of the roller;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

§ 301.14 Vessel clearance in Area 4.

(a) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, 4D, 4E or subarea 4D–N must obtain a vessel clearance before such fishing in each such area and fishing period that applies, and before the unloading of any halibut caught in said areas and fishing periods, unless specifically exempted in paragraphs (h), (i), (j), or (k) of this section.

(b) The vessel clearances required under paragraph (a) of this section for Areas 4A, 4C, 4D, 4E or subarea 4D–N may be obtained only at Dutch Harbor or Akutan, AK, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(c) The vessel clearances required under paragraph (a) of this section for Area 4B may only be obtained at Nazan Bay on Atka Island, AK, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(d) The vessel operator shall specify the specific fishing period and regulatory area in which fishing will take place.

(e) Vessel clearances required under paragraph (a) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0800 and 1800 hours, local time.

(f) No halibut shall be on board at the time of clearance required by paragraph (e) of this section.

(g) Vessel clearances required under paragraph (a) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the closings in that Area, between 0800 and 1800 hours, local time.

(h) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (a) of this section.

(i) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (a) of this section.

(j) Any vessel that is used to fish for halibut only in Area 4E and lands its total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.9 of this part is exempt from the clearance requirements of paragraph (a) of this section.

(k) Any vessel that is used to fish for halibut only in subarea 4D–N and lands its total annual halibut catch at a port within subarea 4D–N is exempt from the clearance requirements of paragraph (a) of this section.

§ 301.15 Logs.

(a) The operator of any vessel that is 5 net tons (4.5 mt) or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Separate from other records maintained on board the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of 2 years by the owner or operator of the vessel;

(4) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following offloading halibut.

(c) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his crew members, or any other person for personal use, shall be recorded in the vessel's log within 24 hours of offloading.

(d) No person shall make a false entry in a log referred to in this section.

§ 301.16 Receipt and possession of halibut.

(a) No person shall receive halibut from a U.S. vessel that does not have the license required by § 301.3 of this part on board.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State fish tickets or Federal catch reports, showing the date, locality, name of vessel, Commission license number (United States), and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) A commercial fish processor who purchases halibut directly from the owner or operator of a vessel that was engaged in fishing for halibut during a fishing period when fishing periods were in effect must accept and weigh all halibut on board said vessel at the time offloading commences, report on State fish tickets or Federal catch reports the weight of halibut offloaded, and prior to purchasing the halibut, report to NMFS poundage in excess of a fishing period limit.

(d) No person shall make a false entry on a State fish ticket or Federal catch report referred to in paragraphs (b) and (c) of this section.

(e) A copy of the fish tickets or catch reports referred to in paragraphs (b) and (c) of this section shall be:

(1) Retained by the person making them for a period of 2 years from the date the fish tickets or catch reports are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(f) No person shall possess any halibut that he or she knows to have been taken in contravention of this part.

(g) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraphs (b) and (c) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (e) of this section.

(h) It shall be unlawful to enter a Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.17 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(d) All setline or skate marker buoys carried on board or used by any U.S. vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name;

(2) The vessel's state license number; or

(3) The vessel's registration number.

(e) The markings specified in paragraph (d) of this section shall be in characters at least 4 inches (10.2 cm) in height and one-half inch (1.3 cm) in width in a contrasting color visible above the water and shall be maintained in legible condition.

(f) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(1) Floating and visible on the surface of the water; and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(g) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) Notwithstanding paragraphs (g) and (h) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut in Areas 4B, 4C, 4E and subarea 4D–N as described in § 301.6 (g), (h), (j), and (k) when the closed period prior to the scheduled fishing period is less than 72 hours in duration.

(j) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(k) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

§ 301.18 Retention of tagged halibut.

(a) Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by a fishery officer.

(b) After examination and removal of the tag by a representative of the Commission or a fishery officer, the halibut:

(1) May be retained for personal use; or

(2) May be sold if it complies with the provisions of § 301.12.

§ 301.19 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of fishery officers to assure the fulfillment of the provisions of this part.

§ 301.20 Fishing by U.S. treaty Indian tribes.

(a) Except as provided in this section, all regulations of the Commission in this part apply to halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington.

(b) For purposes of this part, U.S. treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all waters off the coast of Washington that are north of latitude 46°53′18″ N. and east of longitude 125°44′00″ W., and all inland marine waters of Washington.

(d) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 1 through October 31, or until 176,500 pounds (80.1 mt) is taken, whichever occurs first.

(e) Fishing periods established under this section shall begin and terminate at such times as may be set by treaty Indian tribal regulations.

(f) Ceremonial and subsistence fishing for halibut in subarea 2A–1 is permitted with hook and line gear from January 1 to December 31, and is estimated to take 16,000 pounds (7.3 mt).

(g) The 72-hour fishing restriction preceding the opening of a halibut fishing period specified in § 301.17(h) and (i) of this part shall not apply to U.S. treaty Indian tribes specified in this section while fishing in subarea 2A–1.

(h) No size or bag limits shall apply to the ceremonial and subsistence fishery except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(i) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale, or sold.

(j) All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the provisions of § 301.12.

(k) Any member of a U.S. treaty Indian tribe as defined in paragraph (b) of this section, who is engaged in commercial, or ceremonial and subsistence fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

(l) The following table sets forth the fishing areas of each of the 12 U.S. treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TRIBE and Boundaries

HOH—Between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River), and east of 125°44′00″ W. long.

Jamestown Klallam—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Klallam Tribe may fish under rights secured by treaties with the United States.

Lower Elwha Klallam—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Klallam Tribe may fish under rights secured by treaties with the United States.

Lummi—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.

Makah—North of 48°02′15″ N. lat. (Norwegian Memorial), west of 123°42′30″ W. long., and east of 125°44′00″ W. long.

Port Gamble Klallam—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Klallam Tribe may fish under rights secured by treaties with the United States.

Quileute—Between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River), and east of 125°44′00″ W. long.

Quinault—Between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis), and east of 125°44′00″ W. long.

Skokomish—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

Suquamish—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.

Swinomish—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.

Tulalip—Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

§ 301.21 Sport fishing for halibut.

(a) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(b) In all waters off Alaska:

(1) The sport fishing season is from February 1 to December 31;

(2) The daily bag limit is two halibut of any size per person per day.

(c) In all waters off British Columbia:

(1) The sport fishing season is from February 1 to December 31;

(2) The daily bag limit is two halibut of any size per day per person.

(d) In all waters off California, Oregon, and Washington:

(1) The total allowable catch of halibut shall be limited to:

(i) 109,037 pounds (49.5 mt) north of Cape Falcon (45°46′00″ N. latitude), and

(ii) 69,713 pounds (31.6 mt) south of Cape Falcon.

(2) The sport fishing areas, area sub-quotas, fishing dates, and daily bag limits implemented by NMFS are as follows except as modified under the inseason actions in paragraph (d)(3) of this section.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35′44″ N. latitude, 124°43′00″ W. longitude) to the buoy adjacent to Duntze Rock (48°24′55″ N. latitude, 124°44′50″ W. longitude) to Tatoosh Island lighthouse (48°23′30″ N. latitude, 124°44′00″ W. longitude) to Cape Flattery (48°22′55″ N. latitude, 124°43′42″ W. longitude), there is no sub-quota. This area is managed based on a season that is projected to take 35,328 pounds (16.0 mt).

(A) The fishing season is May 2 through July 5, 6 days a week (closed Wednesdays).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31'42" N. latitude), the sub-quota is 68,039 pounds (30.9 mt).

(A) The fishing season commences on May 3 and continues 5 days a week (Tuesday through Saturday) through September 30 or until the 68,039 pounds (30.9 mt) sub-quota is estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A closure to sport fishing for halibut is established in a portion of this area about 19.5 nautical miles (36 km) southwest of Cape Flattery. The closed area is defined as the area within a rectangle defined by these four corners: 48°17'00" N. latitude and 125°10'00" W. longitude; 48°17'00" N. latitude and 125°00'00" W. longitude; 48°05'00" N. latitude and 125°10'00" W. longitude; and, 48°05'00" N. latitude and 125°00'00" W. longitude.

(iii) In the area between the Queets River, WA, and Cape Falcon, OR (45°46'00" N. latitude), there is no sub-quota. This area is managed based on a season that is projected to take 5,670 pounds (2.6 mt).

(A) The fishing season is open 1 day per week, on Thursday, on June 2 and June 9.

(B) The daily bag limit is one halibut of any size per day per person.

(iv) In the area off Oregon between Cape Falcon and the California border (42°00'00" N. latitude), the sub-quota is 67,900 pounds (30.8 mt).

(A) The fishing seasons are:

(*1*) Commencing May 4 and continuing 5 days a week (Wednesday through Sunday) until 53,641 pounds (24.3 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(iv)(A)(*1*) of this section, and continuing 7 days a week through August 5, in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the California border, or until 2,716 pounds (1.2 mt) are estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) August 6 through September 30, 5 days a week (Wednesday through Sunday), or until a total of 67,900 pounds (30.8 mt) for this area are estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(v) In the area off the California coast, there is no sub-quota. This area is managed based on a season that is projected to take 1,813 pounds (0.8 mt).

(A) The fishing season in this area is May 1 through September 30, 7 days a week.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(3) *Flexible inseason management provisions in Area 2A.* (i) The Regional Director, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after determining that such action:

(A) Is necessary to allow allocation objectives to be met; and

(B) Will not result in exceeding the catch limit established preseason for each area.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(iii) *Notice procedures.* (A) Actions taken under paragraph (d)(3) of this section will be published in the **Federal Register**.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishermen should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(iv) *Effective dates.* (A) Any action issued under paragraph (d)(3)(iii) of this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Director determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after the filing of the action with the **Federal Register**.

(C) Any inseason action issued under paragraph (d)(3) of this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(v) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Fisheries Management Division, 7600 Sand Point Way NE., Seattle, WA.

(4) The Commission shall determine and announce closing dates to the public for any area in which the sub-quotas under paragraph (d)(2) of this section are estimated to have been taken.

(5) When the Commission has determined that a sub-quota under paragraph (d)(2) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled under paragraph (d)(2) or (d)(3) of this section, or announced by the Commission.

(e) Any minimum overall size limit in this section shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(f) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(g) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(h) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(i) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(j) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(k) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

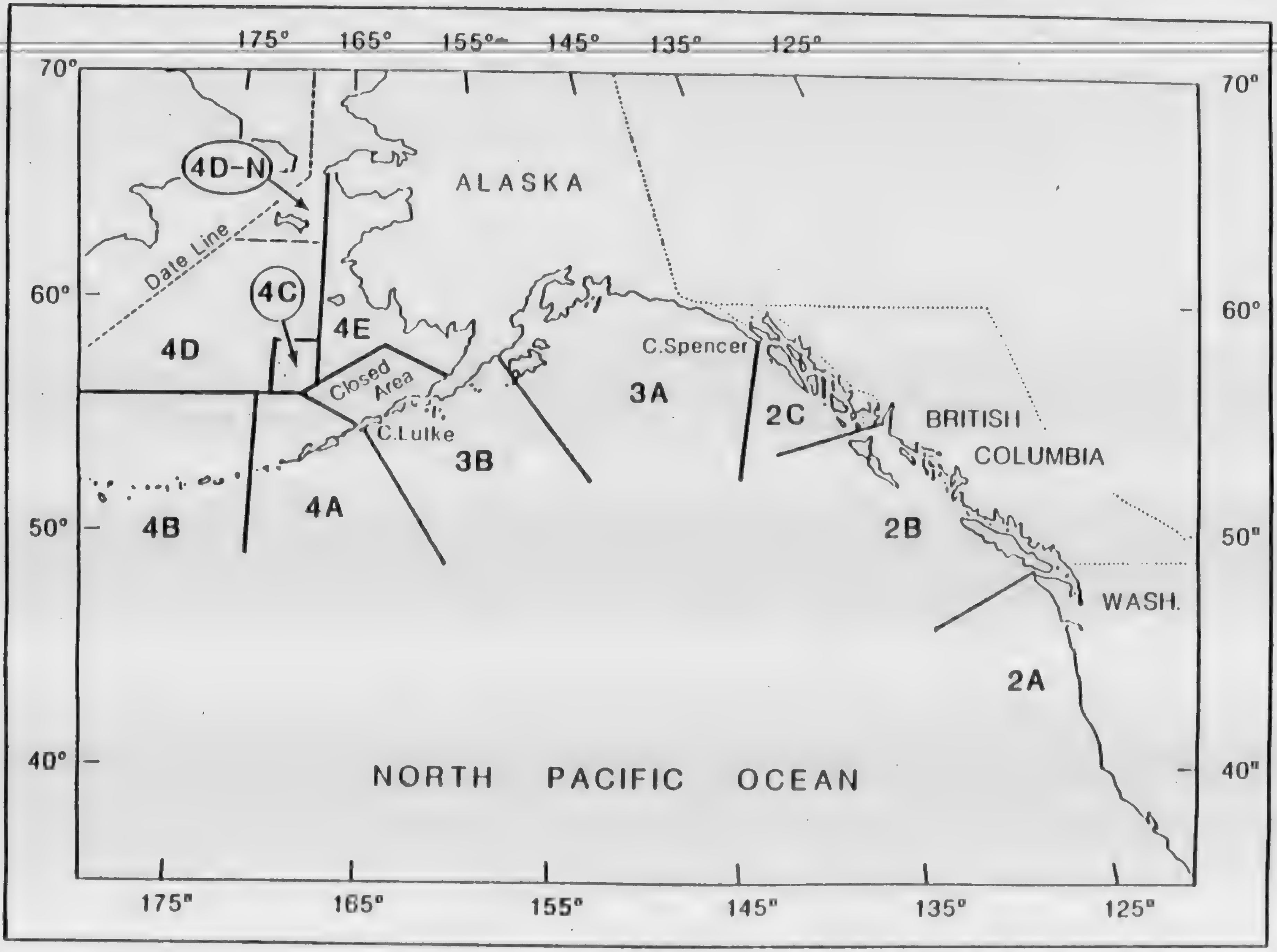
(l) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(m) The operator of a charter vessel shall be liable for any violations of this part committed by a passenger aboard said vessel.

§ 301.22 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

BILLING CODE 3510-22-P


175°
165°
155°
145°
135°
125°
70°
60°
50°
40°
ALASKA
4D-N
Date Line
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4D
4E
Closed Area
C.Lutke
C.Spencer
4B
4A
3B
3A
2C
BRITISH
COLUMBIA
2B
WASH.
2A
NORTH PACIFIC OCEAN

Figure 1 to Part 301

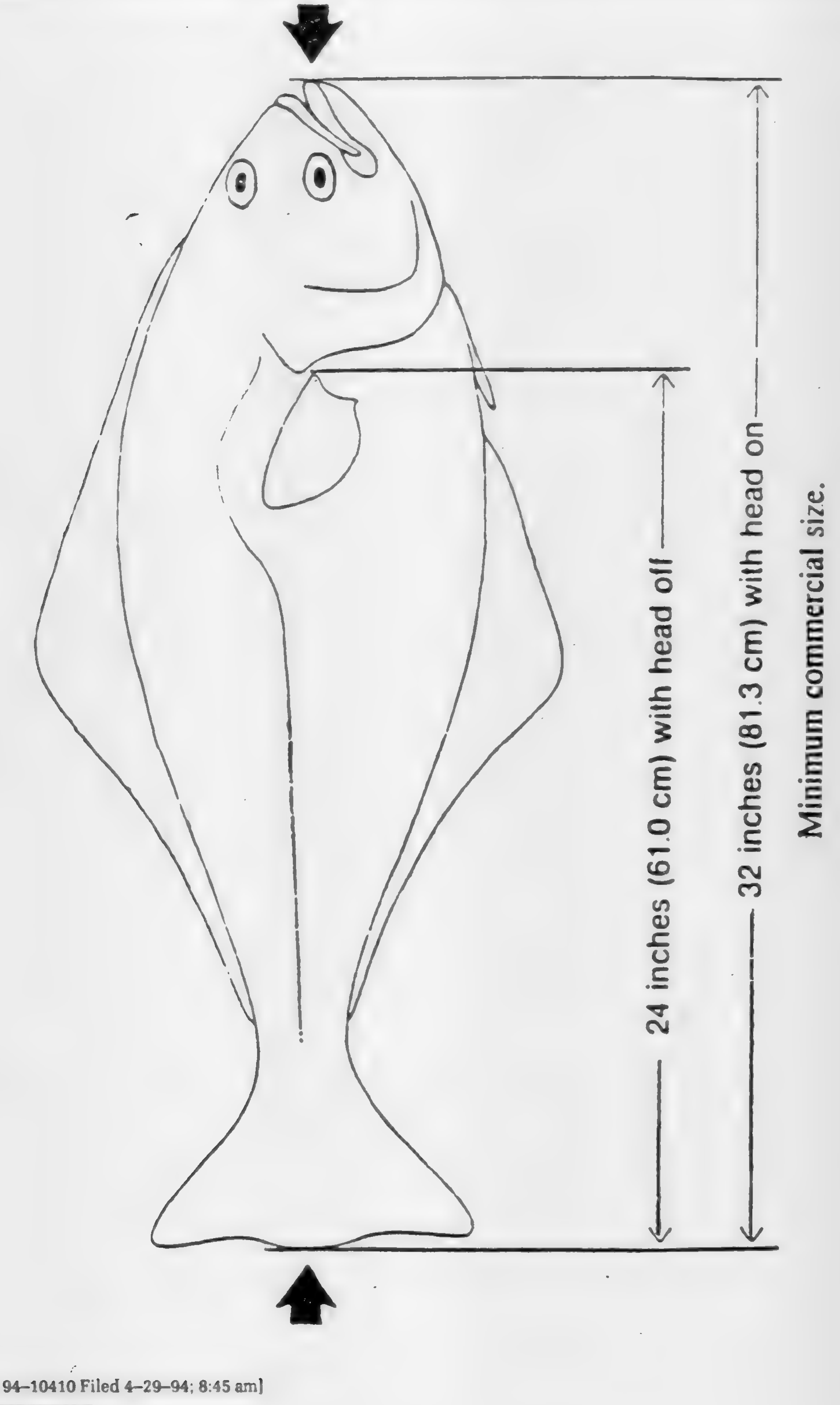
24 inches (61.0 cm) with head off
32 inches (81.3 cm) with head on
Minimum commercial size.

Figure 2 to Part 301

[FR Doc. 94–10410 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 59, No. 83
Monday, May 2, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV

Regional Offices; Jurisdictional Changes

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Notice of proposed amendments to rules and regulations.

SUMMARY: This document proposes to amend the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority to provide for changes in the geographical jurisdictions of the seven Regional Directors concerning unfair labor practice charges and representation petitions.

DATES: Comments should be received on or before June 1, 1994.

ADDRESSES: Comments should be addressed to David L. Feder, Acting Deputy General Counsel, Office of the General Counsel, Federal Labor Relations Authority, 607 14th St. NW, suite 210, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Acting Deputy General Counsel, (202) 482–6680 extension 203.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 et seq. (1993).

Appendix A, paragraph (f) of the rules and regulations sets forth the geographic jurisdictions of the Regional Directors of the Authority. In the best interest of maximizing the resources within the Office of the General Counsel and efficient and effective case processing, the General Counsel of the Authority proposes to realign the geographical jurisdictions of the Regional Directors to distribute the caseload, based on historic perspective, among the seven Regional Directors so that the seven regional offices have a substantially similar size caseload. This proposed change in geographic jurisdiction is in conjunction with the General Counsel review of regional office staffing patterns with the goal of achieving parity in the number of employees per region.

The proposed change will result in equalizing the work per regional office employee. The Office of the General Counsel will transfer cases between regions on a recurring basis, as necessary, based on caseload and staffing so that Office of the General Counsel resources will be utilized to the fullest extent.

Executive Order 12291

This proposed regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established by the Order.

Regulatory Flexibility Act Certification

The General Counsel has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The proposed regulation contains no information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.)

For the reasons set out in the preamble and under the authority of 5 U.S.C. 7134, Appendix A to 5 CFR Chapter XIV is proposed to be amended by revising paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
Alabama	Atlanta.
Alaska	Denver.
Arizona	Denver.
Arkansas	Dallas.
California	San Francisco.
Colorado	Denver.
Connecticut	Boston.
Delaware	Boston.
District of Columbia	Washington, DC.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90 degrees East.	San Francisco.
Idaho	Denver.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Chicago.
Kansas	Denver.
Kentucky	Chicago.
Louisiana	Dallas.
Maine	Boston.
Maryland	Washington, DC.
Massachusetts	Boston.
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri, Eastern (Scotland, Knox, Monroe, Audrain, Shelby, Callaway, Maries, Osage, Pulaski, Texas and Howell counties and all counties east thereof).	Chicago.
Missouri, Western (all counties west of Scotland, Knox, Monroe, Audrain, Shelby, Callaway, Maries, Osage, Pulaski, Texas and Howell counties).	Denver.
Montana	Denver.
Nebraska	Denver.
Nevada	Denver.
New Hampshire	Boston.
New Jersey	Boston.
New Mexico	Denver.
New York	Boston.
North Carolina	Atlanta
North Dakota	Denver.
Ohio	Chicago.
Oklahoma	Dallas.
Oregon	San Francisco.
Pennsylvania, Eastern (all counties except Erie, Crawford, Mercer, Lawrence, Beaver, Allegheny, Washington, Greene, Fayette, Somerset, Westmoreland, Warren, Indiana, Butler, Armstrong, Clarion, Venango, Forest, Cambia, Elk and McKean).	Boston.

State or other locality	Regional office
Pennsylvania, Western (Erie, Crawford, Mercer, Lawrence, Beaver, Allegheny, Washington, Greene, Fayette, Somerset, Westmoreland, Warren, Indiana, Butler, Armstrong, Clarion, Venango, Forest, Cambia, Elk and McKean counties).	Chicago.
Puerto Rico	Atlanta.
Rhode Island	Boston.
South Carolina	Atlanta.
South Dakota	Denver.
Tennessee	Atlanta.
Texas	Dallas.
Utah	Denver.
Vermont	Boston.
Virginia	Washington, DC.
Washington	San Francisco.
West Virginia	Chicago.
Wisconsin	Chicago.
Wyoming	Denver.
Virgin Islands	Atlanta.
Panama/limited FLRA jurisdiction.	Dallas.
All land and water areas east of the continents of North and South America to long 90 degrees E., except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Chicago.

(5 U.S.C. 7134)

For the Authority:

Jean McKee,
Chairman.

Pamela Talkin,
Member.

Tony Armendariz,
Member.

For the General Counsel:

Joe Swerdzewski,
General Counsel.

[FR Doc. 94–10369 Filed 4–29–94; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93–101–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

We are also proposing to make several minor changes to the regulations for the sake of clarity.

DATES: Consideration will be given only to comments received on or before June 1, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–101–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter Grosser, Senior Operations Officers, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses[1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to undergo prescribed treatments for fruit flies or other insect pests as a condition of entry, or to meet other special conditions.

The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of injurious plant pests by the importation of fruits and vegetables from certain foreign countries and localities into the United States.

Subject to Inspection and Treatment Upon Arrival

We are proposing to allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

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[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Artichoke, globe	*Cynara scolymus*	Immature flower head.
Belize	Mint	*Mentha spp*	Above ground parts.
Indonesia	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Tuber.
Jamaica	Ivy gourd	*Coccinia grandis*	Fruit.
	Pointed gourd	*Trichosanthes dioica*	Fruit.
Mexico	Tepeguaje	*Leucaena* spp.	Fruit.
Peru	Arugula	*Eruca sativa*	Leaf and stem.
	Chervil	*Anthriscus* spp.	Leaf and stem.
	Lemongrass	*Cymbopogon* spp.	Leaf and stem.
	Mustard greens	*Brassica juncea*	Leaf.
South Africa	Artichoke, globe	*Cynara scolymus*	Immature flower head.
Spain	Tomato	*Lycopersicon esculentum*	Green fruit.

We also propose to prohibit the entry of dasheen from Indonesia into Guam, to prevent the introduction of dasheen mosaic virus. Cartons in which dasheen from Indonesia are packed must be stamped "Not for distribution in Guam."

Except for dasheen from Indonesia, pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruits and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country or locality of origin. In addition, we have determined that any other injurious plant pests that might be carried by the listed fruits or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, at the port of first arrival, appear adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival; Additional Conditions

In addition to the fruits and vegetables listed above, we are proposing to allow the following fruits and vegetables to be imported into the United States. These commodities, like the fruits and vegetables mentioned above, would be imported into the United States in accordance with § 319.56–6 and all other applicable requirements of the regulations. However, in order to prevent the spread of certain injurious plant pests, we are attaching additional conditions to their proposed importation. These additional conditions, which are explained below, appear to be adequate to prevent the introduction into the United States of injurious plant pests by the importation of these fruits and vegetables.

Tomatoes from Spain. We are proposing to allow pink or red tomatoes (fruit) (*Lycopersicon esculentum*) from the Almeria province of Spain to be imported into the United States under certain conditions. Though pink and red tomatoes are a recorded host of the Mediterranean fruit fly (Medfly), which is known to occur in Spain, we have determined that tomatoes grown under certain conditions in the Almeria Province of Spain can be imported into the United States without presenting a significant risk of introducing Medfly. We believe the multiple safeguards discussed below would be adequate to guard against the introduction of Medfly with the pink or red tomatoes. (As shown in the list above, we are proposing to allow green tomatoes to be imported into the United States from all of Spain, subject only to requirements under § 319.56–6 of the regulations and all other applicable requirements of the regulations.)

We are proposing to allow pink or red tomatoes grown in the Almeria Province to be imported into the United States because Almeria is the only province the Spanish Government has agreed to regulate as follows. Pink or red tomatoes from Almeria could be shipped from Spain only from December 1 though April 30, and only if they were grown in greenhouses registered with and inspected by the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF). Beginning 2 months prior to shipping and continuing through April 30, MAFF would be required to set and maintain Medfly traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF would be required to place Medfly traps at a rate of four traps per square kilometer. All traps would have to be checked every 7 days.

Capture of a single Medfly in a registered greenhouse would immediately cancel exports from that greenhouse until the source of infestation is determined, all flies are eradicated, and measures are taken to preclude any future infestation. Capture of a single fly within 2 kilometers of a registered greenhouse would necessitate increasing trap density in order to determine whether there is a reproducing population in the area or if the single fly had been introduced accidentally. Capture of two flies within 2 kilometers of a registered greenhouse and within a 1-month time period would cancel exports from all registered greenhouses within 2 kilometers of the find, until the source of infestation is determined and all flies are eradicated.

We would require pink or red tomatoes to be packed within 24 hours of harvest, to be safeguarded by a flyproof mesh screen or plastic tarpaulin in transit to the packing house and while awaiting packing, and to be packed in flyproof containers for transit to the airport and subsequent shipping to the United States.

MAFF would be responsible for export certification inspection and issuance of phytosanitary certificates. The phytosanitary certificates would be required to bear the following declaration: "These tomatoes were grown in registered greenhouses in Almeria Province in Spain." These phytosanitary certificates would be required to accompany any shipment of such tomatoes.

Treatment Required

The fruits and vegetables listed below are attacked by the Medfly or other injurious insects, as specified below, in their country or locality of origin. Visual inspection cannot be relied upon to detect the insects, but the fruits and vegetables can be treated to destroy the insects. Therefore, we propose to allow these fruits and vegetables to be imported into the United States, or specified parts of the United States, only if they have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1.

In addition to requiring the treatment listed below for litchi imported from Taiwan, we also propose to prohibit its entry into Florida, to prevent introduction of the pest *Eriophyes lichtii*. Cartons in which litchi from Taiwan are packed must be stamped "Not for distribution in FL."

We would revise the PPQ Treatment Manual to show that treatments are required as follows for the fruits and vegetables listed below:

Country	Common name, Botanical name, and plant part(s)
Ecuador	Blueberry, *Vaccinium* spp., Fruit. Fumigation as follows for Medfly: With methyl bromide at NAP—chamber or tarpaulin: *32 g/m^3 (2 lb/1000 ft^3) for 3½ hours at 21 °C (70 °F) or above, with minimum gas concentrations of:* 26g (26 oz) at ½ hour after fumigation begins. 22g (22 oz) at 2 hours after fumigation begins. 21g (21 oz) at 3½ hours after fumigation begins. *32 g/m^3 (2 lb/1000 ft^3) for 3½ hours at 18–20.5°C (6569 °F), with minimum gas concentrations of:* 26g (26 oz) at ½ hour after fumigation begins. 22g (22 oz) at 2 hours after fumigation begins. 19g (19 oz) at 3½ hours after fumigation begins. (Fruit must be at the indicated temperature at start of fumigation.)
Israel	Cactus, *Opuntia* spp., Fruit. Fumigation as follows for Medfly: With methyl bromide at NAP—chamber or tarpaulin: *32 g/m^3 (2 lb/1000 ft^3) for 3½ hours at 21 °C (70 °F) or above, with minimum gas concentrations of:* 26g (26 oz) at ½ hour after fumigation begins. 21g (21 oz) at 2 hours after fumigation begins. 21g (21 oz) at 3½ hours after fumigation begins. (Fruit must be at the indicated temperature at start of fumigation.)
Mexico	Cherry, *Prunus avium*, Fruit. Cold treatment as follows for fruit flies of the genus *Anastrepha:* 18 days at 0.55 °C (33 °F) or below. 20 days at 1.11 °C (34 °F) or below. 22 days at 1.66 °C (35 °F) or below. (Pulp of the fruit must be at or below the indicated temperature at time of beginning treatment.)
Peru	Blueberry, *Vaccinium* spp., Fruit. Fumigation for Medfly as set forth above for blueberries from Ecuador.
Taiwan	Litchi, *Litchi chinensis*, Fruit. Cold treatment as follows for fruit flies of the genus *Bactrocera* and for *Conopomorpha sinensis:* 15 days at 1 °C (33.8 °F) or below. 18 days at 1.39 °C (34.5 °F) or below (Pulp of the fruit must be at or below the indicated temperature at time of beginning treatment.)
Thailand	Asparagus, *Asparagus officinalis*, Shoot. Fumigation as follows for *Scirtothrips dorsalis:* With methyl bromide at NAP—chamber or tarpaulin: *40 g/m^3 (2.5 lb/1000 ft^3) for 2 hours at 26.5 °C (80 °F) or above, with minimum gas concentrations of:* 32g (oz) at ½ hour after fumigation begins 24g (oz) at 2 hours after fumigation begins *48 g/m^3 (3 lb/1000 ft^3) for 2 hours at 21–26 °C (70–79 °F), with minimum gas concentrations of:* 38g (oz) at ½ hour after fumigation begins. 29g (oz) at 2 or hours after fumigation begins. *64 g/m^3 (4 lb/1000 ft^3) for 2 hours at 15.5–20.5 °C (60–69 °F), with minimum gas concentrations of:* 48g (oz) at ½ hour after fumigation begins. 38g (oz) at 2 or hours after fumigation begins. (Fruit must be at the indicated temperature at start of fumigation.)
Uruguay	Plum, *Prunus domestica*, Fruit. Cold treatment as follows for Medfly and fruit flies of the genus *Anastrepha*. 11 days at 0 °C (32 °F) or below. 13 days at 0.55 °C (33 °F) or below. 15 days at 1.11 °C (34 °F) or below. 17 days at 1.66 °C (35 °F) or below. (Pulp of the fruit must be at or below. the indicated temperature at time of beginning treatment.)

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from the Hoboken Methods Development Center, PPQ, APHIS, USDA, 209 River Street, Hoboken, NJ, 07030.

Fruits and vegetables required to be treated for fruit flies would be restricted to North Atlantic ports of arrival if treatment has not been completed before the fruits and vegetables arrive in the United States. Climatic conditions at North Atlantic ports are unsuitable for the fruit flies listed above. Therefore, in the unlikely event that any fruit flies escape before treatment, they will not become established pests in the United States. North Atlantic ports are: Atlantic Ocean ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is prescribed as a treatment for three of the commodities included in this proposal (blueberries from Ecuador and Peru, cactus from Israel, and asparagus from Thailand). The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of final rulemaking in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). This rulemaking freezes methyl bromide production at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

Miscellaneous

We are also proposing to make several minor changes to the fruit and vegetable regulations for the sake of clarity. In § 319.56–2t, we are proposing to clarify prohibitions on imports into the United States of ginger from the Cook Islands and dasheen from South Korea. For both commodities, we propose to specify that their packing containers be stamped with notices stating that the commodities are not to be distributed in certain areas of the United States. These areas are already listed in the regulations.

Also in § 319.56–2t, under the entries for Israel and Mexico, we are proposing to change the listed common name for *Eruca sativa* from "Garden rocket" to "Arugula."

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This proposed rule would revise the status of certain commodities from certain countries and localities, allowing their importation into the United States for the first time.

Our proposed changes are based on biological risk analyses that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The risk analyses indicate that the fruits or vegetables listed in this proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables in this proposal would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Thus, our proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Of the fruits and vegetables proposed for importation into the United States, domestic production and related import information is available only for artichokes, asparagus, blueberries, sweet cherries, dasheens, plums, and pink and red tomatoes.

We have used both published elasticities and price flexibilities to estimate the potential economic effects of allowing artichokes, asparagus, blueberries, sweet cherries, dasheens, plums, and pink and red tomatoes to be imported into the United States; both examine the relationship between changes in supply and subsequent changes in price.

Domestic production and import information was not available for the other commodities that could be imported into the United States under this proposal, because these other commodities are not produced on a large scale domestically. We anticipate, therefore, that allowing these other commodities to be imported into the United States would not have a significant economic impact on domestic producers.

Artichokes

In 1987, 67 domestic producers harvested artichokes; all but one were in California. It is likely that most of these producers would be classified as small entities using Small Business Administration (SBA) criteria (annual gross receipts of $0.5 million or less). In 1992, domestic producers harvested 118 million pounds of artichokes for the fresh market, with an estimated value of $39.2 million.

This proposed rule would allow artichokes to be imported into the United States from Argentina and South Africa under certain conditions. Argentina produces approximately 165 million pounds of artichokes annually. We estimate that Argentina could export to the United States about 44,000 pounds of artichokes per year over the next three years. This volume of artichoke imports would constitute about 2.0 percent of current total imports to the United States, less than 0.10 percent of current domestic production, and less than 0.10 percent of the current total artichoke supply in the United States (domestic and imports).

Assuming that a less than 0.10 percent increase in the supply of artichokes would lead to an approximately 0.12 percent decrease in the domestic price of artichokes (using the price elasticity for fresh vegetables, −0.320), we estimate that this increase in supply would result in a price decrease of about $0.038 per hundredweight (cwt), or $0.00038 per pound, from an original price of $33.40 per cwt. As a result of the price decrease, there could be a decrease in the total revenue of domestic artichoke producers of about $45,000, roughly 0.12 percent of their total revenue of $39.2 million. We anticipate, therefore, that allowing artichokes to be imported into the United States from Argentina would not have a significant economic impact on domestic producers.

Allowing artichokes to be imported from South Africa would have an even smaller impact on domestic producers. Production data for South Africa is not available. South Africa's total exports of artichokes were less than 2,000 pounds in 1991 and less than 700 pounds in 1992. Even if South Africa exported 2,000 pounds annually to the United States, which is unlikely, the price decrease would be negligible, as would be the decrease in total revenue.

Therefore, allowing artichokes to be imported from South Africa also would not have a significant economic impact on domestic artichoke producers.

Asparagus

In 1987, 3,033 domestic producers harvested asparagus. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 135 million pounds of asparagus for the fresh market, with an estimated value of $116 million.

This proposed rule would allow asparagus to be imported into the United States from Thailand under certain conditions. In 1992, Thailand produced approximately 26.5 million pounds of asparagus and exported 5.5 million pounds. Japan imported 80 percent of Thailand's asparagus exports (4.4 million pounds), with the remaining 20 percent imported by five other countries. Currently, there is no reported excess supply of asparagus in Thailand.

We expect annual asparagus imports into the United States from Thailand would be minimal, possibly 220,000 pounds, as a result of this rule. This volume of asparagus would constitute about 0.38 percent of current total imports to the United States, about 0.16 percent of current domestic production, and about 0.11 percent of the current total asparagus supply in the United States.

Assuming that an 0.11 percent increase in the supply of asparagus would lead to a decrease of about 0.36 percent in the domestic price of asparagus (using the price elasticity for fresh vegetables, −0.320), we estimate that this increase in supply would result in a price decrease of about $0.31 per cwt, or $0.0031 per pound, from an original price of $86.00 per cwt. As a result of the price decrease, there could be a decrease in total revenue of domestic asparagus producers of about $415,000, roughly 0.36 percent of the original total revenue of $116 million. We anticipate, therefore, that allowing asparagus to be imported from Thailand would not have a significant economic impact on domestic asparagus producers.

Blueberries

In 1987, 3,911 farms in 36 states harvested 109.4 million pounds of cultivated blueberries. Additionally, 501 farms in six of the same states harvested 32.6 million pounds of wild blueberries. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 44.7 million pounds of blueberries for the fresh market, with an estimated value of $48.0 million.

This proposed rule would allow blueberries to be imported into the United States from Ecuador and Peru under certain conditions. Blueberry production and export data are not available for either Ecuador or Peru. Blueberries are not a formal crop in either country; they only grow wild. There is limited local consumption near the production areas. We anticipate that an insignificant amount of blueberries, if any, would be exported to the United States from either country as a result of this proposal. We anticipate, therefore, that allowing blueberries to be imported from Ecuador and Peru would not have a significant economic impact on domestic blueberry producers.

Sweet Cherries

In 1987, 7,171 domestic producers harvested sweet cherries. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 191 million pounds of sweet cherries produced for the fresh market, with an estimated value of $115 million.

This proposed rule would allow sweet cherries to be imported into the United States from Mexico. In 1992, Mexico produced approximately 225,000 pounds of cherries, both sweet and sour. We anticipate that any cherry imports from Mexico as a result of this proposal would be minimal, since presently, most of Mexico's cherry production is consumed locally. However, in the unlikely event that Mexico exported into the United States 225,000 pounds of sweet cherries, it would constitute only about 4.9 percent of current total imports, about 0.12 percent of current U.S. production and about 0.12 percent of the current total sweet cherry supply in the United States (domestic and imports).

Assuming that an 0.12 percent increase in the supply of sweet cherries would lead to a decrease of about 0.054 percent in the domestic price (using the price flexibility for sweet cherries, −0.470), we estimate that this increase in supply would result in a price decrease of about $0.65 per ton, or $0.00032 per pound, from an original price of $1,200 per ton. As a result of the price decrease, there could be a decrease in total revenue of sweet cherry producers of about $62,000, which is roughly 0.054 percent of the original total revenue of $115 million. Therefore, we anticipate that allowing sweet cherries to be imported from Mexico would not have a significant economic impact on domestic sweet cherry producers.

Dasheen (Taro)

In 1987, 191 domestic producers harvested taro, 187 in Hawaii. It is likely that most of these producers would be classified as small entities by SBA standards. In 1991, domestic producers harvested 7.0 million pounds of taro for the fresh market, with an estimated value of $3.0 million.

This proposed rule would allow taro to be imported into the United States from Indonesia. Production and export data for taro are not available for Indonesia. Taro consumption is limited mostly to the local areas, although Indonesia exports small quantities to Japan, Hong Kong, Korea, Malaysia, Singapore and Taiwan. We anticipate that very little, if any, taro would be exported to the United States as a result of this rule. We anticipate, therefore, that allowing taro to be imported from Indonesia would not have a significant economic impact on domestic taro producers.

Plums

In 1987, 8,789 domestic producers harvested plums and prunes. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 537 million pounds of plums and prunes for the fresh market, with an estimated value of $67.7 million.

This proposed rule would allow plums to be imported into the United States from Uruguay. Plum production and export data is not available for Uruguay, and we anticipate that an insignificant amount of plums would be exported to the United States as a result of this rule. Consequently, we anticipate that allowing plums to be imported from Uruguay would not have a significant economic impact on domestic plum producers.

Tomatoes

In 1987, 14,542 domestic producers harvested tomatoes. It is likely that most of these producers would be classified as small entities by SBA standards. In 1992, domestic producers harvested 3.6 billion pounds of tomatoes for the fresh market, with an estimated value of $1.3 billion.

This proposed rule would allow pink and red tomatoes to be imported into the United States from the Almeria Province of Spain if they meet with the stringent growing and shipping requirements outlined above. Annual production in the Almeria Province of Spain averages between 4.4 million and 6.6 million pounds. Spanish officials anticipate that annual tomato exports to the United States will range from 440,000 to 660,000 pounds and will occur from December to April.

If the volume of tomatoes to be imported from the Almeria Province were to reach 660,000 pounds, it would constitute about 0.15 percent of current total imports to the United States, about 0.018 percent of current domestic production and about 0.016 percent of the current total tomato supply in the United States (domestic and imports).

Assuming that an 0.016 percent increase in the supply of tomatoes would lead to a decrease of about 0.046 percent in the domestic price (using the price flexibility for tomatoes, −0.355), we estimate that this increase in supply would result in a price decrease of about $0.017 per cwt, or $0.00017 per pound, from an original price of $36.30 per cwt. As a result of the price decrease, there could be a decrease in total revenue of tomato producers of about $600,000, which is roughly 0.046 percent of the original total revenue of $1.3 billion. Therefore, we anticipate that allowing pink or red tomatoes to be imported from Almeria, Spain would not have a significant economic impact on domestic tomato producers.

The aggregate economic impact of this proposed rule is expected to be positive. U.S. consumers would benefit from a greater availability of fruits and vegetables. U.S. importers would also benefit from a greater availability of fruits and vegetables to import. It is not likely that any U.S. producers, large or small, of fruits and vegetables would be affected in a significant economic way by the easing of importation restrictions on these particular commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this proposed rule would not present a significant risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through ______, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 319.56–2t, the table would be amended by adding, in alphabetical order, the following:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Artichoke, globe	*Cynara scolymus*	Immature flower head.
*	*	*	*
Belize:			

Country/locality	Common name	Botanical name	Plant part(s)
* *	*	*	* *
	Mint	*Mentha* spp.	Above ground parts.
* *	*	*	* *
Indonesia and	Dasheen	*Colocasia* spp., *Xanthosoma* spp.	*Alocasia* spp., and Tuber (Prohibited entry into Guam due to dasheen mosaic virus. Cartons in which dasheen is packed must be stamped "Not for distribution in Guam.") .
* *	*	*	* *
Jamaica:			
* *	*	*	* *
	Ivy gourd	*Coccinia grandis*	Fruit.
* *	*	*	* *
	Pointed gourd	*Trichosanthes dioica*	Fruit.
* *	*	*	* *
Mexico:			
* *	*	*	* *
	Tepeguaje	*Leucaena* spp.	Fruit.
* *	*	*	* *
Peru:	Arugula	*Eruca sativa*	Leaf and stem
* *	*	*	* *
	Chervil	*Anthriscus* spp.	Leaf and stem.
* *	*	*	* *
	Lemongrass	*Cymbopogon* spp.	Leaf and stem
	Mustard greens	*Brassica juncea*	Leaf.
* *	*	*	* *
South Africa	Artichoke, globe	*Cynara scolymus*	Immature flower head.
* *	*	*	* *
Spain	Tomato	*Lycopersicon esculentum*	Green fruit (pink or red fruit from Almeria Province may be imported only in accordance with § 319.56–2cc).

* * * * *

5. In § 319.56–2t, the table would be amended for the Cook Islands and South Korea entries, under the heading *Plant Part(s)*, by adding a sentence to each as follows:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
* *	*	*	* *
Cook Islands:			
* *	*	*	* *
	Ginger	* * *	* * * Cartons in which ginger is packed must be stamped "Not for distribution in PR, VI, or Guam.")
* *	*	*	* *
South Korea:			

Country/locality	Common name	Botanical name	Plant part(s)
* *	*	* *	* *
Dasheen	* * *	* * * Cartons in which dasheen is packed must be stamped "Not for distribution in Guam.".	

* * * * *

6. In § 319.56–2t, the table would be amended for the Israel and Mexico entries, under the heading *Common name,* by removing the word "Garden Rocket" from both entries and adding "Arugula" in its place in both entries.

7. In § 319.56–2x, paragraph (a), the table would be amended by adding, in alphabetical order, the following:

§ 319.56–2x Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
* *	*	* *	* *
Ecuador	Blueberry	*Vaccinium* spp.	Fruit.
* *	*	* *	* *
Israel	Cactus	*Opuntia* spp.	Fruit.
* *	*	* *	* *
Mexico	Cherry	*Prunus avium*	Fruit.
* *	*	* *	* *
Peru	Blueberry	*Vaccinium* spp.	Fruit.
Taiwan	Litchi	*Litchi chinensis*	Fruit.(Prohibited entry into Florida due to *Eriophyes litchii.* Cartons in which litchi are packed must be stamped "Not for distribution in FL").
* *	*	* *	* *
Thailand	Asparagus	*Asparagus officinalis*	Shoot.
Uruguay	Plum	*Prunus domestica*	Fruit.

* * * * *

8. A new § 319.56–2cc, would be added to read as follows:

§ 319.56–2cc Administrative instructions: conditions governing the entry of pink or red tomatoes from Spain.

(a) Pink or red tomatoes (fruit) *(Lycopersicon esculentum)* from Spain may be imported into the United States only under the following conditions:

(1) The tomatoes must be grown in the Almeria Province of Spain in greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(2) The tomatoes may be shipped only from December 1 through April 30, inclusive;

(3) Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Medfly traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(4) Capture of a single medfly in a registered greenhouse shall immediately cancel exports from that greenhouse until the source of infestation is determined, all flies are eradicated, and measures are taken to preclude any future infestation. Capture of a single fly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area or if the single fly has been introduced accidentally. Capture of two flies within 2 kilometers of a registered greenhouse and within a 1 month time period shall cancel exports from all registered greenhouses within 2 kilometers of the find, until the source of infestation is determined and all flies are eradicated;

(5) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a flyproof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in flyproof containers for transit to the airport and subsequent shipping to the United States.

(6) MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. A phytosanitary certificate issued by MAFF and bearing the following declaration, "These tomatoes were grown in registered greenhouses in Almeria Province in Spain," must accompany the shipment.

(b) *[Reserved]*

Done in Washington, DC, this 25 day of April 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–10409 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Part 1468

RIN 0560–AD19

Support Prices for Shorn Wool, Wool on Unshorn Lambs, and Mohair for the 1994 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The National Wool Act of 1954, as amended (Wool Act), requires the Secretary of Agriculture (Secretary), through the Commodity Credit Corporation (CCC), to make loans and payments available to producers of wool and mohair through December 31, 1995. The Wool Act further provides that, in the case of the 1994 and 1995 marketing years, the payments shall be 75 percent and 50 percent, respectively, of the amount otherwise determined in accordance with section 704(a) of the Wool Act. This proposed rule would amend the regulations to set forth the support levels for shorn wool, wool on unshorn lambs, and mohair for the 1994 marketing year.

DATES: Comments must be received on or before June 1, 1994, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3760–S, PO Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, FRAD, ASCS, USDA, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this proposed rule:

(1) Would have an annual effect on the economy of more than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: National Wool Act Payments—10.059.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1468 set forth in this proposed rule will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

Section 703(a) of the Wool Act provides that the Secretary shall, through the CCC, make loans and payments available to producers of wool and mohair through December 31, 1995. Proposed regulations concerning a recourse loan program will be issued in the near future.

Section 703(b) of the Wool Act provides that the support price for shorn wool for each of the marketing years 1991 through 1995 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (i) The average of the parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Based on current reported parity indices, the calculation for the 1994 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1990–1992: 1990–1267 1991–1298 1992–1317	
–3882 divided by 3	1294.0
(2) Average parity index, 1958–1960	297.3
(3) Ratio of 1294.0 to 297.3	4.3525
(4) 4.3525×62 cents/lb. (1965 support price)	$2.6986
(5) 77.5%×$2.6986	$2.0914
(6) $2.0914 rounded to nearest cent	$2.09

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, which is determined to maintain normal marketing practices for pulled wool, and which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

Section 704(a) provides that payments shall be such as the Secretary determines to be sufficient, when added to the national average price received by producers, to give producers a national average return for the commodity equal to the support price level, and that, in the case of the 1994 and 1995 marketing years, the payments shall be 75 and 50 percent, respectively, of the amount otherwise determined in accordance with such section.

Section 703(e) of the Wool Act provides that, to the extent practicable, support price levels for wool and mohair shall be established and announced sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following methods for calculating the support prices for wool on unshorn lambs and for mohair for the 1994 marketing year are being proposed.

A. *Support Price—Wool on Unshorn Lambs.* The support price for wool on unshorn lambs for the 1994 marketing year cannot be determined until the 1994 national average market price for shorn wool is calculated. This will occur by April 1995. It is proposed that the method for calculating the support price for wool on unshorn lambs shall be as follows: Once the 1994 national average market price for shorn wool is determined, the support price for wool on unshorn lambs will be determined by taking 80 percent of the difference between the 1994 support price for shorn wool and the 1994 national average market price for shorn wool, multiplied by 5 pounds (the average grease wool yield per hundredweight of live, unshorn lambs marketed). Historically, this formula has provided equitable support for wool on unshorn lambs relative to shorn wool and has helped to maintain normal marketing practices for pulled wool. In accordance with section 704(a) of the Wool Act, the 1994 marketing year payment for wool on unshorn lambs shall be 75 percent of the amount otherwise determined in accordance with such formula.

B. *Support Price—Mohair.* It is proposed that the support price for mohair for the 1994 marketing year shall be determined based on the October 1993 parity prices for mohair and shorn wool. The following percentages of parity at which shorn wool is supported are being considered in the final computation of the mohair support price: 85, 100, and 115 percent.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the proposed program support levels announced in this rule may be recalculated to comply with this Act.

Accordingly, comments are requested with respect to the support price calculation methods for wool on unshorn lambs and mohair. The final determination will be set forth at 7 CFR part 1468.

List of Subjects in 7 CFR Part 1468

Assistance grant programs—agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool

Accordingly, it is proposed that 7 CFR part 1468 be amended as follows:

PART 1468—WOOL AND MOHAIR

1. The authority citation for 7 CFR part 1468 continues to read as follows:

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

2. Section 1468.4 is amended by revising paragraph (b) to read as follows:

§ 1468.4 Eligibility for payments.

* * * * *

(b)(1) The shorn wool support price for the 1991 through 1995 marketing years shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of:

(i) The average of the parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to

(ii) The average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent. The shorn wool support price wool shall be as follows:

(A) 1991—$1.88 per pound.

(B) 1992—$1.97 per pound.

(C) 1993—$2.04 per pound.

(D) 1994—$2.09 per pound.

(2) The payment rate for wool on unshorn lambs for the 1991 through 1995 marketing years shall be 80 percent of the difference between the national average price received by producers for shorn wool during a specified marketing year and the shorn wool support price multiplied by 5 (the average grease wool yield per hundredweight of live, unshorn lambs marketed). The payment rate for wool on unshorn lambs shall be as follows:

(i) 1991—$5.32 per hundredweight.

(ii) 1992—$4.92 per hundredweight.

(iii) 1993—an amount equal to 80 percent of the difference between the national average price received by producers for shorn wool for the 1993 marketing year and the 1993 shorn wool support price, multiplied by 5.

(vi) 1994—an amount equal to 80 percent of the difference between the national average price received by producers for shorn wool for the 1994 marketing year and the 1994 shorn wool support price, multiplied by 5.

(3) The mohair support price for the 1991 through 1995 marketing years shall be established at such level, in relationship to the support price for shorn wool, which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. The mohair support price shall be set within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported, as determined and announced by CCC. The support price for mohair shall be as follows:

(i) 1991—$4.448 per pound.

(ii) 1992—$4.613 per pound.

(iii) 1993—$4.738 per pound.

(iv) 1994—an amount within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported, as determined and announced by CCC.

* * * * *

3. Section 1468.8 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1468.8 Computation of payment.

(a)(1) The amount of the shorn wool or shorn mohair support payment shall be computed by applying the rate of payment to the net sales proceeds for the wool or mohair marketed during the specified marketing year, less the assessment due as specified in § 1468.15. In the case of the 1994 and 1995 marketing years, the payments shall be 75 percent and 50 percent, respectively, of the amount otherwise determined in accordance with this part. For shorn wool payments, if there is a purchase by the producer of unshorn lambs, the resultant amount shall be reduced by an amount resulting from multiplying the liveweight of such lambs reported in the application for payment by the calculated wool on shorn lambs support for such marketing year. If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

* * * * *

(b) The amount of the wool support payment due to a producer for wool on unshorn lambs shall be computed by applying the rate of payment to the liveweight of the lambs sold or moved to slaughter during the specified marketing year, reduced, on account of the purchase or importation by the producer of unshorn lambs, by the liveweight of such lambs reported in the application for payments, less the assessment due as specified in § 1468.15. In the case of the 1994 and 1995 marketing years, the payments shall be 75 percent and 50 percent, respectively, of the amount otherwise determined in accordance with this part. If the amount of the reduction exceeds the liveweight of the unshorn lambs sold or moved to slaughter during said marketing year, such excess liveweight shall be carried forward and used to reduce payments on the wool on unshorn lambs marketed or slaughtered or shorn wool marketed in the current or subsequent years.

* * * * *

Signed at Washington, DC, on April 22, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–10218 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–05–P

Farmers Home Administration

7 CFR Part 1951

RIN 0575–AB55

Offsets of Federal Payments to FmHA Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations on offsets of Federal payments to FmHA borrowers by removing repetitious directions and ambiguous guidance used by FmHA field offices to determine salary offset feasibility. The intended effect of this action is to add further guidance on salary offset eligibility criteria and to clarify the language of the regulation.

DATES: Comments must be submitted on or before July 1, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, FmHA, USDA, South Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanne Hudec, Financial Analyst, FmHA, USDA, Ag Box 0724, Washington, DC 20250–0724, telephone (202) 720–4356.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0119 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag Box 0743, Washington, DC 20250.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

The programs to which this regulation may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans

(Section 502—Rural Housing Loans)

10.411 Rural Housing Site Loans

(Section 523 and 524 Site Loans)

10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans (SW Loans)
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance

(Section 523—Technical Assistance)

10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit Corporations Loan and Grant Program
10.435 Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983.)

Programs listed under numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to the provisions of Executive Order 12372 (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Regulatory Flexibility Act

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Background Information

FmHA has an obligation to protect the Government's interest by collecting the maximum amount possible within a reasonable period of time. Therefore, FmHA proposes to weigh the long-term collectibility of the debt through offset against whether to accept a settlement offer and release of an existing debt.

The current procedures to establish salary offset in FmHA Instruction 1951–C, § 1951.111 contain repetitious directions and ambiguous guidance for FmHA field offices to determine salary offset feasibility. Therefore, FmHA proposes to amend these instructions by retaining the Authorities and Definitions paragraphs in § 1951.111 and moving the remainder of this section to §§ 1951.112 through 1951.117.

The same basic information that was in § 1951.111, paragraphs (c) through (s) will remain in the new sections. However, some information will be deleted or reorganized. For example, the current introduction includes a reference that if a Federal salary was listed on the Farm and Home Plan for a farmer programs borrower and this income used for purposes other than payment on the FmHA loan, salary offset would not be considered. This reference is being deleted because obtaining a salary offset would protect the Government's interest and might eventually bring the loan current, thus helping the borrower retain the farming operation.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—agriculture, Accounting, Credit, Low and moderate income housing loans—servicing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

2. Section 1951.101 is amended by adding a new fourth sentence to read as follows:

§ 1951.101 General.

* * * However, offsets may not be sought against full-time active duty members of the Armed Forces whose FmHA loans are covered by the Soldiers' and Sailors' Civil Relief Act. * * *

3. Section 1951.103 is amended by revising paragraphs (b) and (d), by adding new sixth and seventh sentences preceding the last sentence of paragraph (e), and adding paragraph (i) to read as follows:

§ 1951.103 Procedures for FmHA-initiated administrative offset.

(a) * * *

(b) Before requesting offset from another Federal agency, the debtor must have been given at least 30-days notice using FmHA Form Letter 1951–C–1 and given the rights set out in this section. Also, to be eligible for administrative offset, an FmHA borrower of a Farmer Programs loan (as defined in 7 CFR 1951.906) must have completed all primary servicing options available at the time of offset processing, any appeals concerning that servicing have been concluded, and the borrower's account has been accelerated. For borrowers other than Farmer Programs borrowers, the debtor's account must have been accelerated and all appeals concluded. A delinquent amount does not have to be reduced to judgment or be undisputed before offset can be used, and the payment does not have to be covered by an FmHA instrument.

* * * * *

(d) Administrative offset will be used only where it is feasible. Administrative offset can be determined feasible even though collections by offset are less than the annual interest accrual. Administrative offset is not feasible where, for example, the cost to process the offset exceeds the amount collectible. Administrative offset will not be requested for delinquent amounts of less than $100.

(e) * * * Federal Crop Insurance Corporation and its associated insurance companies cannot honor administrative offset requests to garnish crop insurance claims. Do not initiate administrative offset on accounts that have been referred to the Department of Justice for litigation. * * *

* * * * *

(i) The recovery potential from administrative offsets should be considered when evaluating debt settlement options.

4. Section 1951.104 is amended by revising the reference "FmHA Instruction 2018–E" to "FmHA Instruction 2018–F" in paragraph (a)(1), revising the word "ask" to "request" and adding the words "in writing" after the word "request" in the introductory text of paragraph (b), removing the word "Request" and inserting the phrase "Make a request for" in its place in paragraph (b)(2), adding the words "in writing" after the word "responds" in the first sentence of paragraph (e), revising the first sentence in the introductory text of paragraph (a), and adding new sentences before and after the fourth sentence of paragraph (g), and revising the word "regulation" to "subpart" in the first sentence and revising the second sentence of paragraph (j) to read as follows:

§ 1951.104 Procedures for FmHA-initiated offset.

(a) The use of administrative offset will be initiated by sending FmHA Form Letter 1951–C–1 to the debtor. * * *

* * * * *

(g) * * * The farm operating expenses listed in § 1962.17(b)(2)(ii) of subpart A of part 1962 of this chapter are not included in this determination of essential family living expenses for administrative offset purposes. * * * Where available, the County Supervisor should get documentary evidence such as bills or receipts from the borrower that support the hardship claim. * * *

* * * * *

(j) * * * The borrower may request a hearing if the borrower believes the previous offset actions by FmHA are contrary to the administrative offset procedures found in §§ 1951.103 through 1951.104 of subpart C of part 1951 of this chapter.

5. Section 1951.105(b)(3) is amended by adding the words "or Exhibit L" after the word "Exhibit B" in the second sentence and adding a sentence at the end of the paragraph to read as follows:

§ 1951.105 Procedures for taking funds by administrative offset.

* * * * *

(b) * * *

(3) * * * Prepare FmHA Form Letter 1951–5 to request offset refunds.

* * * * *

6. Section 1951.111 is amended by revising the introductory text, paragraph (b)(1), introductory text of paragraph (b)(2)(ii), and (b)(3), and removing paragraphs (c) through (s) to read as follows:

§ 1951.111 Salary offset.

Salary offset may be used by FmHA to collect delinquent debts from borrowers or debtors who are Federal employees. It may also be used by other Federal agencies to collect delinquencies or other debts owed to them by FmHA employees, excluding County Committee members. Administrative offset rather than salary offset, will be used to collect money from Federal and military retirement benefits. Decisions made under the following sections are not appealable under subpart B of part 1900 of this chapter. This section establishes policies and procedures to implement salary offset.

* * * * *

(b) *Definitions*—(1) *Certifying Officials*—State Directors; the Assistant Administrator, Finance Office; and the Assistant Administrator for Budget, Finance and Management, National Office.

(2) * * *

(ii) *Other debts*—An amount owed to the United States by an employee for salary overpayments, underwithholding of amounts payable for life and health insurance, etc. Also included are monetary losses where the employee has been determined to be liable due to the employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

* * * * *

(3) *Defalcation account*—An account established in the Finance Office for other debts (see paragraph (b)(2)(ii) of this section) owed the Federal government by an employee or former employee.

* * * * *

7. Sections 1951.112 through 1951.117 are added to read as follows:

§ 1951.112 Standards for initiating salary offset.

Salary offset will not be initiated until after all servicing options available have been utilized. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security agreement.

(a) *Feasibility of salary offset.* Certifying Officials must determine on a case-by-case basis if salary offset is feasible. If an offset is feasible, review paragraph (b) of this section to determine if a borrower is ineligible, and follow § 1951.113 of this subpart to establish the offset. If the Certifying Official determines that salary offset is not feasible, the reasons supporting this decision will be documented in the debtor's running case record in the case of delinquent debt, or in the "For Official Use Only" file in cases of other debt. An offset is feasible when the following situations apply:

(1) The cost to process the offset should not exceed the amount the Certifying Official believes would be collectible by the use of salary offset. Salary offset can be determined feasible even though collections by offset are less than the annual interest accrual. County Committee members are exempt from salary offset because the amount collected by offset would be so small as to be impractical.

(2) The debt should be collected by lump-sum when possible.

(3) Payments may be made in installments not to exceed 15 percent of the debtor's disposable pay, unless the debtor agrees to a larger amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. The offset should bear a reasonable relation to the size of the debt and the debtor's ability to pay.

(4) Installment payments of less than $25 per pay period or $50 per month will be accepted only in the most unusual of circumstances.

(b) *Borrowers ineligible for salary offset.* All Federal employee debtors are eligible for salary offset unless they meet one or more of the following criteria:

(1) Account has been discharged in bankruptcy or is under the jurisdiction of a bankruptcy court and the debt has not been reaffirmed. Existence of a bankruptcy action pending flag is not a determining factor.

(2) Account has been referred to OGC for foreclosure and, based on the legal opinion required by § 1951.103(c) of this subpart, a collection by offset would jeopardize the litigation under State law. Existence of a foreclosure action pending flag is not a determining factor.

(3) Account has a delinquency workout agreement in effect and payments under the agreement are current.

(4) The debtor is a Farmer Programs borrower and has not completed all primary servicing options available at the time offset is considered and/or any appeals concerning this servicing have not been concluded.

(5) Account is under a moratorium.

(6) Account has been paid current, paid in full, or otherwise satisfied.

(7) Rescheduling is in process.

(8) Borrower is an active duty member of the armed forces whose FmHA loan is covered by the Soldiers' and Sailors' Civil Relief Act.

(9) Account is past due by less than $100, or if the debtor has multiple loans, the net amount past due is less than $100.

(10) Account has a suspend code.

(11) Account is current under an SAA.

(12) Account has been referred to the Department of Justice for litigation.

§ 1951.113 Procedures for initiating offset.

(a) *Notice to debtor.* After the Certifying Official determines that salary offset is feasible, FmHA Form Letter 1951–C–4 will be sent within 15 calendar days after that determination. This form letter will notify the debtor of intended salary offset at least 30 days before the salary offset begins. Personally deliver FmHA Form Letter 1951–C–4 to the debtor or send by certified mail, return receipt requested. Also send a copy by regular mail on the same day. If the certified mail receipt is returned as being refused, the date the debtor received the letter will be established and the time limits set out in FmHA Form Letter 1951–C–4 will run from that date. If delivery by certified mail is not accomplished, FmHA will assume that the debtor received the letter by regular mail on the day the certified mail was refused or was unable to be delivered. If both the certified and regular mail letters are returned as undeliverable, contact the Financial and Management Analysis Division (FMAD) at the National Office for guidance.

(b) *Debtor's response to the notice.*

(1) *Review records.* If a debtor responds to FmHA Form Letter 1951–C–4 by asking to review and copy FmHA's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's FmHA files and that the files may be reviewed and copied within the next 30 days. Copying costs (see FmHA Instruction 2018–F available in any FmHA office) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have FmHA copy the records, a copy will be made within 30 days of the request.

(2) *Repay debt.* If a debtor responds to FmHA Form Letter 1951–C–4 by offering to repay the debt, the offer may be accepted by the Certifying Official, if it would be in the best interest of the Government. FmHA Form Letter 1951–C–8 will be used if a repayment offer for an FmHA loan or grant is accepted. Upon receipt of an offer to repay, the Certifying Official will delay instituting salary offset until a decision is made on the repayment offer. Within 60 days after the initial offer to repay was made, the Certifying Official must decide

whether to accept or reject the offer. This decision will be documented in the running case record or the "For Official Use Only" file, as appropriate, and the debtor will be sent a letter which sets out the decision to accept or reject the offer to repay. If the offer is rejected, it should be based upon a realistic budget or Farm and Home Plan and according to the servicing regulations for the type of loan(s) involved.

(3) *Request hearing.* If a debtor responds within 15 days from receipt of FmHA Form Letter 1951–C–4 by asking for a hearing on FmHA's determination that a debt exists and/or is due, or on the percentage of net pay to be deducted each pay period, the Certifying Official will notify the debtor in accordance with this subpart and request the debtor's case file or the "For Official Use Only" file.

(4) *Change offset payment amount.* If a debtor wants to have more or less than 15 percent of the disposable pay sent to FmHA, FmHA Form Letter 1951–C–8 must be prepared and signed by the debtor, approved by the Certifying Official, and a copy placed in the debtor's case file or the "For Official Use Only" file. The original form letter will be forwarded with FmHA Form Letter 1951–C–10 when requesting the salary offset. (See § 1951.115 (a) of this subpart.)

(5) *Request debt settlement.* A debtor who is an FmHA borrower may request debt settlement at any time (the account does not have to be in collection-only status or be an inactive account for which there is no security). The Certifying Official must inform the borrower of how to apply for debt settlement. Any application will be considered independently of the salary offset. A salary offset should not be delayed because the borrower applied for debt settlement.

(6) *Time limits.* The time limits set in FmHA Form Letter 1951–C–4 and in paragraphs (b)(1), (2), and (3) of this section run concurrently. For example, if a debtor asks to review the FmHA file and offers to repay the debt, the debtor cannot take 30 days to ask to review the file and then take another 30 days to offer to repay. The request to review the file and the offer to repay must both be made within 30 days of the date the debtor receives the notification letter.

(7) *Negotiated grievance procedure.* If an employee is included in a bargaining unit which has a negotiated grievance procedure that does not specifically exclude salary offset proceedings, the employee must grieve the matter in accordance with the negotiated procedure in lieu of a hearing as set forth in § 1951.114 of this subpart. Employees who are not covered by a negotiated procedure must use the salary offset proceedings as outlined in FmHA Form Letter 1951–C–4. The employee must be informed, in writing, which procedure to follow and, as appropriate, reference should be made to the appropriate sections of the negotiated agreement.

§ 1951.114 Salary offset hearings.

(a) *Debtor's request for a hearing.* The debtor must file a written petition requesting a hearing. This petition must have the original signature of the debtor, be sent to the Certifying Official who issued FmHA Form Letter 1951–C–4, and be received and date stamped at the Certifying Official's office no later than 15 days after the debtor received the form letter. Petitions received from debtors after the 15-day time limitation expires will be accepted only if the debtor can show the delay was caused by circumstances beyond his/her control.

(1) *Valid reasons for a hearing.* The debtor's petition must fully identify and explain all the information and evidence that supports his/her position. If the request is not valid, a hearing should not occur. The debtor's request for a hearing must be based on the following reasons only:

(i) The debtor challenges the existence of the debt;

(ii) The debtor challenges the amount of the debt; and/or

(iii) The debtor challenges the percentage of his/her disposable pay to be deducted each pay period.

(2) *Debtor notification.* Certifying Officials are responsible for determining if the debtor's petition for a hearing has been submitted in a timely fashion and lists valid reasons for a hearing. Certifying Officials are required to provide written notification to the debtor of the acceptance or non-acceptance of the debtor's petition for a hearing. An acceptance notice will state that the debtor's case file has been forwarded to the National Office to be given to the hearing officer and that acceptance of the petition for hearing will put a hold on any offset collections until the results of the hearing are known. Any payments collected in error due to untimely or delayed filing beyond the debtor's control will be refunded unless there are applicable contractual or statutory provisions to the contrary.

(3) *Send hearing request to the National Office.* If the Certifying Official has accepted the debtor's petition for a hearing and has notified the debtor of this acceptance, send a copy of the debtor's case file, including the acceptance letter and the original letter requesting the hearing to the National Office, FMAD:

(b) *Hearing officers.* The hearing must be conducted by a hearing officer who is either an ALJ or someone who is not an employee of the USDA. An ALJ is normally unavailable to handle salary offset hearings in a timely manner. Therefore, FMAD will arrange for a hearing officer when the debtor's case file is received. The hearing officer will contact the debtor as to when and where the hearing will take place and whether or not the hearing will be a documentary review of the case file or in person.

(c) *Hearings.* (1) The hearing will be based on written submissions and documentation provided by the debtor and FmHA unless:

(i) The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence: for example, when the validity of the debt turns on an issue of credibility or truth.

(ii) The hearing officer determines that an oral hearing is appropriate.

(2) Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer. The hearing officer's determination that the offset hearing is on the written record is final and is not subject to review.

(3) The hearing officer will issue a written decision not later than 60 days after the filing of the petition requesting the hearing, unless the debtor requests and the Certifying Official grants a delay in the proceedings. The written decision will state the facts supporting the nature and origin of the debt, the hearing officer's analysis, findings and conclusions as to the amount and validity of the debt, and repayment schedule. Both the debtor and FmHA will be provided with a copy of the hearing officer's written decision on the debt.

§ 1951.115 Procedures for requesting offset from an employing agency.

(a) *Offset request letter.* FmHA Form Letter 1951–C–10 will be prepared, signed and submitted by the Certifying Official to the National Office, FMAD, for coordination and forwarding to the debtor's employing agency if:

(1) The borrower does not respond to FmHA Form Letter 1951–C–4 within 30 days.

(2) The borrower responds to FmHA Form Letter 1951–C–4 and:

(i) Has had an opportunity to review the file, if requested within 30 days of receipt;,

(ii) Has received a hearing, if requested within 15 days of receipt; and

(iii) A decision has been made by the hearing officer to uphold the offset.

(b) *Finance Office copy.* A copy of FmHA Form Letter 1951–C–10 will be sent to the Finance Office, St. Louis, MO 63103, Attn: Accounts Settlement Unit.

(c) *Monthly report.* State Offices shall prepare a monthly report showing salary offset activity. The report should list State, month, debtor name, case number, date FmHA Form Letter 1951–C–4 was sent, date a hearing was requested (if any), date FmHA Form Letter 1951–C–10 was sent, date the offset started, and the average amount collected through salary offset per month. The latter two items can be found on the on-line history screen. After requesting an offset, periodically check to see if the offset has started. Send the report by the 10th of the month for the preceding month to the National Office, FMAD.

(d) *Offset percentage.* If the debtor and FmHA have agreed to have more or less than 15 percent of the disposable pay sent to FmHA, a copy of the debtor's letter (FmHA Form Letter 1951–C–8) authorizing this must be attached to FmHA Form Letter 1951–C–10.

(e) *Offset deductions.* Deductions will be made only from basic pay, incentive pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount.

(f) *Payment notification.* Field offices will be notified of payments received from salary offset by referring to the on-line history screen for that debtor.

(g) *Application of payments, refunds and overpayments.*

(1) If a debtor is delinquent or indebted on more than one FmHA loan or debt, amounts collected by offset will be applied as determined by FmHA. The check date will be used as the date of credit in applying payments to the borrower's accounts.

(2) If a court or agency orders FmHA to refund the amount obtained by salary offset, a refund will be requested promptly by the Certifying Official in accordance with the order by sending FmHA Form Letter 1951–5 to the Finance Office. Processing FmHA Form Letter 1951–5 in the Finance Office will cause a refund to be sent to the debtor through the County Office or other appropriate FmHA office. Unless required by law, refunds shall not bear any interest.

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying Official in accordance with paragraph (g)(2) of this section.

(4) If FmHA receives money through an offset but the debtor is not delinquent or indebted at the time or the amount received is in excess of the delinquency or indebtedness, the entire amount or the amount in excess of the delinquency or indebtedness will be refunded promptly to the debtor by the Certifying Official in accordance with paragraphs (g) (1) and (2) of this section.

(h) *Adjustment in rate of repayment.* (1) When an employee who is indebted receives a reduction in basic pay that would cause the current deductions to exceed 15 percent of disposable pay, and the employee has not consented in writing to a greater amount, the offset will be reduced to 15 percent of the new amount of disposable pay. Upon an increase in basic pay which results in the current deductions to be less than the specified percentage, the offset will be increased accordingly. In either case, when a change is made the employee should be notified in writing by the employing agency.

(2) When an employee is being offset and has an existing reduced repayment schedule because of financial hardship, the creditor agency may arrange for a new repayment schedule, taking into account the offset amount.

(i) *Interest, penalties and administrative costs.* Additional interest, penalties, and administrative costs will be assessed on delinquent loans only in accordance with FmHA regulations permitting such charges.

(j) *Cancellation of offset.* If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will notify the National Office, FMAD, that the offset is being canceled. The Certifying Official will write a letter to the employer, at the address confirmed by FMAD, identifying the debtor by name and social security number and state that salary offset should be canceled. A copy of the cancellation document will be sent to the debtor, the Finance Office, Attn: Account Settlement Unit, and to FMAD.

(k) *Liquidation from final checks.* Upon the determination that an employee owing a debt to FmHA is to retire, resign, or employment otherwise ends, the Certifying Official should immediately telephone FMAD with the appropriate employee identification and amount of the debt. FMAD will request the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. Collection from retirement funds will be in accordance with the Administrative Offset procedures in §§ 1951.103 through 1951.105 of subpart C of part 1951 of this chapter.

(l) *Non-waiver of rights.* An employee's involuntary payment of all or any portion of the debt collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 1951.116 Establishing offsets for other debts of FmHA employees/former employees.

(a) *Agency/National Finance Center (NFC) responsibility for other debts.* (1) FmHA will inform NFC about other indebtedness by transmitting to NFC FmHA Form Letter 1951–C–10. The NFC will process the documents through the Payroll/Personnel System, calculate the net amount of the adjustment and generate a salary offset notice. This notice will be sent to the employee's employing office along with a duplicate copy for the FmHA's records. The FmHA is responsible for completing the necessary information and forwarding the employee's notice to the employee.

(2) Other indebtedness falls into two categories:

(i) An agency-initiated indebtedness (i.e. improper personal telephone calls, property damages, etc.).

(ii) An NFC-initiated indebtedness (i.e. duplicate salary payments, etc.). The NFC will send the salary offset notice to the employing office.

(b) *Establishing employee or former employee defalcation accounts and non-cash credits to borrower accounts.* In cases where a borrower made a payment on an FmHA account(s) and, due to theft, embezzlement, fraud, negligence, or some other action on the part of an FmHA employee or employees, the payment is not transmitted to the Finance Office for application to the borrower's account(s), certain accounting actions must be taken by the Finance Office to establish non-cash credits to the borrower's account and an employee defalcation account.

(1) The Certifying Official will advise the Assistant Administrator, Finance Office by memorandum to establish a defalcation account. The memorandum must state the following information:

(i) Employee's name (or former),

(ii) Social Security Number (SSN),

(iii) Present or last known address,

(iv) Date of payment, and

(v) Amount of the defalcation account.

(2) If a non-cash credit to a borrower's account(s) is required, the letter to the Finance Office will include:

(i) Borrower's name and case number,

(ii) Fund code and loan code,

(iii) Date and amount of missing payment,

(iv) Copy of receipt issued for the missing payment, and

(v) Name of employee who last had custody of the missing funds.

(3) To assist and assure proper accounting for defalcation accounts and non-cash credits, the request should be made at the same time. Should requests be made separately, be sure to identify appropriately.

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (b)(1) and (2) of this section to the Deputy Administrator for Management for distribution to the FMAD and Employee Relations Branch, Personnel Division.

§ 1951.117 Procedures for salary offset against FmHA employees who owe other Federal agencies.

(a) *Coordination with other agencies.* When an employee of FmHA owes a debt to another Federal agency, salary offset may be used only when the Federal agency certifies that the person owes the debt and that the Federal agency has complied with its regulations. The request must include the creditor agency's certification as to the indebtedness, including the amount, and that the agency has satisfied the requirements of 5 U.S.C. 5514 with regard to the employee. When a request for offset is received, FmHA will notify the employee and NFC and arrange for offset.

(b) *Deductions by the NFC.* The NFC will automatically deduct the full amount of the delinquency or indebtedness if less than 15 percent of disposable pay or 15 percent of disposable pay if the delinquency or indebtedness exceeds 15 percent, unless the creditor agency advises otherwise. Deductions will begin the second pay period after the 30-day notification period has expired unless FmHA issues the notice. If FmHA issues the notice, the NFC will begin deductions on the first pay period after receipt of the Form AD–343, "Payroll Action Request."

8. Section 1951.121 is amended by revising the heading from "Internal Revenue Service (IRS) offset" to "IRS offset."

9. Section 1951.122 is amended by revising the reference "FmHA Instruction 1950–C" to "subpart C of part 1950 of this chapter" in paragraph (a)(7), adding a new second sentence in the introductory text, removing paragraph (d), adding paragraphs (a)(9), (a)(10), (c)(3), (c)(4), and revising paragraph (a)(8), introductory text of paragraph (b), paragraph (b)(4), introductory text of paragraph (c), and paragraph (c)(2) to read as follows:

§ 1951.122 Finance Office screening.

* * * Individuals owing other debts as described in § 1951.111 (b)(2)(ii) of this subpart will be included. * * *

(a) * * *

* * * * *

(8) Account is current under an SAA.

(9) Account is current, paid in full, or otherwise satisfied.

(10) Account has been referred to the Department of Justice for litigation.

(b) *Single Family Housing borrowers.* In addition to the criteria set forth in § 1951.122 (a), accounts of delinquent SFH borrowers which meet the following criteria are not eligible for IRS offset:

* * * * *

(4) Account has a delinquency workout agreement in effect and the borrower is current under the agreement.

(c) *Farmer Programs borrowers.* In addition to the criteria set forth in § 1951.122(a) of this subpart, accounts of delinquent FP borrowers which meet the following criteria are not eligible for IRS offset:

* * * * *

(2) Account is less than 180 days past due.

(3) Borrower has not completed all servicing options available (including appeals) at the time of final offset screening by the field and the borrower's account has not been accelerated.

(4) If the account was accelerated prior to instituting servicing in 1987 in accordance with subpart S of part 1951 of this chapter, the borrower's loans are being serviced under subpart S of part 1951, the borrower requested an appeal under subpart S of part 1951 and the appeal has not been concluded.

§ 1951.124 [Amended]

10. Section 1951.124 is amended in the first sentence by revising the words "FmHA Form Letter 1951–C–6" to "a due process notice."

11. Section 1951.125 is amended in the first sentence by revising the words "FmHA Form Letter 1951–C–6" to "the due process notice," and adding a sentence at the end of the paragraph to read as follows:

§ 1951.125 Processing borrower's requests not to exercise IRS offset.

* * * The County Supervisor's review decision is not appealable under FmHA Instruction 1900–B.

§ 1951.134 [Amended]

12. Section 1951.134 is amended in the first sentence by revising the words "refund was" to "refunds were."

13. Sections 1951.136 is added to read as follows:

§ 1951.136 Protection of IRS tax information.

This section explains the policies and procedures for the protection of IRS tax information received from the IRS offset program. The procedures contained in this section are in accordance with and mandated by the Internal Revenue Code (IRC) and IRS Publication 1075, Tax Information Security Guidelines. The FmHA will establish the appropriate safeguards for the protection of IRS tax information received under the IRS offset program. The FmHA must protect this information from unauthorized disclosure and unauthorized use. The procedures outlined in this section apply to all Federal tax information regardless of the media on which it is recorded.

(a) *Employee awareness.* (1) All FmHA employees who have access to IRS tax information must be briefed annually on the security procedures outlined in this section.

(2) Each employee must be advised of the provisions of IRC, section 7213(a), which makes unauthorized disclosure of Federal returns or return information a crime that may be punishable by a $5,000 fine, 5 years imprisonment, or both. The awareness program requires that copies of the law must be provided to each employee.

(3) All FmHA employees who have access to Federal tax information must also be advised annually of the provisions of the IRC, section 7431, which permits a taxpayer to bring suit for civil damages in the U.S. District Court for unauthorized disclosure of returns and return information. This section allows for punitive damages in case of willful disclosure or gross negligence, as well as the cost of the action. A copy of this law must also be given to each employee.

(4) The immediate supervisor is responsible for ensuring that all FmHA employees who have access to Federal tax information receive annual training. A certification of training must be maintained in the office. Training materials and lesson plans can be obtained from the Operational Security Staff, mail code FC–35B, in the Finance Office.

(b) *Recordkeeping requirements.* The FmHA is authorized under the IRC, section 6103, to receive Federal tax information. This section requires FmHA to establish a permanent system of standardized records of requests made by or to FmHA for disclosure of Federal tax returns or return information. These records must be maintained for 5 years. Each FmHA office which receives Federal tax information will establish a record that includes the following:

(1) The date the request was made.

(2) Who made the request.

(3) The reason for the request.

(4) What tax information was requested.

(5) Was a disclosure made.

(c) *Minimizing access to Federal tax information.* (1) To avoid inadvertent disclosures to unauthorized persons, Federal tax information must be kept separate from other information.

(2) Each FmHA office will maintain a separate file(s) for Federal tax information. The file(s) will be clearly labeled to indicate that the file(s) contains Federal tax information. All files containing Federal tax information must be stored in a locked cabinet or safe.

(d) *Magnetic media.* After it has served its purpose, magnetic media containing Federal tax data must not be made available for reuse by other offices or released for destruction without first being subjected to electromagnetic erasing. The FmHA will completely overwrite all data tracks. If reuse is not intended, the tape should be destroyed by cutting into lengths of 18 inches or less, or by burning to effect complete incineration. The FmHA will ensure that all magnetic media used for storage of Federal tax information will comply with the above requirements when the information is no longer needed.

(e) *Use of contractors.* Disclosure of tax returns or return information to contractors is prohibited by tax laws. Federal tax information in identifiable form will not be released to contractors by FmHA. All FmHA offices which use contractors will ensure that contract employees do not have access to files containing Federal tax information or the area/cabinet in which the files are stored.

(f) [Reserved]

(g) *Physical protection of field offices.* All field office locations which receive Federal tax information must be structured so public and non-public areas of the office are well defined as follows:

(1) Signs must be posted which state "FmHA Authorized Personnel Only."

(2) Visitors to the office must be escorted while in the non-public areas.

(3) All new leasing agreements must incorporate and implement the following excerpts from the Finance Office, Solicitation for Offers for Small Lease Packages. These should also be implemented under the present leasing agreements, to the extent practical.

(i) All exterior walls and walls which border public access or other agency space must be slab-to-slab construction.

(ii) All doors which border public access or exterior of the building or other agency space shall, at a minimum, be constructed of solid core wood. They shall have the hinges installed or modified so that the pins of the hinges cannot be removed when the door is in the closed position.

(iii) All locking devices on doors shall, at a minimum, be a five-pin tumbler lockset with a deadlatch or deadbolt feature. Doors must have an auxiliary deadbolt locking device which is capable of a 1-inch throw of the bolt into a fully encased strike box. All wood doors must be reinforced around the locking device.

(h) *Need and use.* The FmHA receives Federal tax information for use in the IRS offset program as stated in § 1951.121 of this subpart. The FmHA will not use the information received for any purposes outside of the offset program.

(i) *Disposal of tax information upon completion of use.* Federal tax information must never be released to private contractors for unsupervised destruction. Destruction of the information must be witnessed by an FmHA employee in a manner to safeguard the information from unauthorized disclosure. All FmHA offices will mail Federal tax information which is no longer needed to the Operational Security Staff, Finance Office, mail code FC–35B, for destruction. Label the package "Open By Addressee Only," but do not label that it contains IRS information.

(j) *Identification of Federal tax information.* The following reports contain Federal tax information and must be afforded the protections outlined in this section.

(1) Form FmHA 389–764, "Weekly Offset Report (Cash Collections) IRS Offset," Report Code: 222–C.

(2) Form FmHA 389–763, "Weekly Claims Report IRS Offset," Report Code: 222–D.

Dated: November 20 1993

Bob J. Nash.

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–10219 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–07–U

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 93–008E]

RIN 0583–AB68

Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Products Are Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On March 3, 1994, the Food Safety and Inspection Service (FSIS) published an advance notice of proposed rulemaking (ANPR) announcing its intent to pursue the development of amendments to the Federal poultry products inspection regulations to define and standardize, or establish other requirements for poultry products produced by mechanical deboning, including possible provisions for the composition, characteristics, and use of such products, and requirements for manufacturing and labeling such products. FSIS has received requests to extend the comment period so that additional data and information can be provided. FSIS has determined that the requests should be granted and, therefore, is extending the comment period for 30 days.

DATES: Comments must be received on or before June 1, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. John W. McCutcheon, (202) 720–2709.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720–2709.

SUPPLEMENTARY INFORMATION: On June 15, 1993, FSIS published in the **Federal**

Register an advance notice of proposed rulemaking (ANPR) (58 FR 33040) soliciting comments, information, scientific data, and recommendations regarding its consideration of the need for labeling of poultry product produced by mechanical deboning and products in which such poultry product is used. FSIS received 2,744 comments in response to the ANPR, most of which were general reactions to the labeling issues. The Agency also issued on March 3, 1994, an ANPR (59 FR 10230) announcing its intent to pursue the development of amendments to the Federal poultry products inspection regulations to define and standardize, or establish other requirements for poultry products produced by mechanical deboning, including possible provisions for the composition, characteristics, and use, and requirements for manufacturing and labeling such products.

The ANPR provided an in-depth discussion on the labeling of mechanically deboned poultry, as well as other issues related to boneless poultry product produced by mechanical deboning and expressed the Agency's tentative positions regarding these issues. The ANPR stated that FSIS was considering, among other things, that certain poultry products produced by mechanical deboning, i.e., those with greater than 0.6 percent bone solids content, but no more than 1 percent bone solids content, be separately identified on the labels of products in which they are used as ingredients by a distinct name. Also, the ANPR stated that FSIS was considering, among other things, that some boneless poultry products derived from mechanical deboning machinery, i.e., those with 0.6 percent or less bone solids, be identified on the label of products in which they are used as poultry or poultry meat, e.g., "chicken" and "turkey meat." FSIS's intent in issuing the March 1994 ANPR was to ascertain the information and data necessary to solidify its position on the labeling, use, and production of poultry products produced by mechanical deboning in order to help the regulation development process.

Interested persons were given until May 2, 1994, in which to comment on the ANPR. FSIS has received requests from several meat and poultry manufacturers and trade associations to extend the comment period to allow additional time for data to be gathered and submitted. FSIS recognizes that the ANPR solicited information on a number of new concepts; e.g., labeling of products with greater than 0.6 percent bone solids content. It is important to the Agency to get substantive data on these concepts as the Agency further develops its policy position. FSIS is interested in receiving this data and is, therefore, extending the comment period for 30 days.

Done at Washington, DC, on April 26, 1994.

William J. Hudnall,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 94–10497 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–DM–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064–AB32

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed Rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing amendments to its securities disclosure regulations. The proposed regulations relate to registration and reporting requirements for non-member insured banks with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act or Act).

Section 12(i) of the Exchange Act requires that the FDIC issue regulations substantially similar to those of the Securities and Exchange Commission (SEC) or publish its reasons for not doing so. The proposed amendments are intended to comply with section 12(i) and to update the regulations. The SEC has amended its Exchange Act regulations, relating to Small Business Initiatives, Executive Compensation Disclosure, and Regulation of Communications Among Shareholders. The FDIC is proposing to amend its Exchange Act regulations to incorporate, in substance, the SEC changes noted above.

In conjunction with this proposed rule, the FDIC also seeks written comments from interested persons relative to the following: Should the FDIC consider proposing a revision to its securities disclosure regulation, to incorporate by cross-reference the comparable rules of the SEC, rather than continue to maintain the separate but substantially similar body of rules as is done presently?

DATES: Written comments must be received by the FDIC on or before July 1, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to Room F–400, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: M. Eric Dohm, Staff Accountant, Division of Supervision (202–898–8921) or Gerald J. Gervino, Senior Attorney, Legal Division (202–898–3723), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act grants authority to the FDIC to promulgate regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (Nonmember Banks). These regulations must be substantially similar to the SEC's regulations under sections 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act. Section 12(i) does not require the FDIC to promulgate substantially similar regulations in the event that the FDIC finds that implementation of such regulation is not necessary or appropriate in the public interest or for protection of investors and the FDIC publishes such findings with detailed reasons therefor in the **Federal Register**. This proposed amendment is intended to satisfy that requirement.

Amendments to Part 335

A. Small Business Initiatives

Recognizing that smaller banks are disproportionately affected by complexities in the disclosure requirements of banks registered under section 12 of the Exchange Act, the FDIC is proposing to amend its regulations by permitting "small business issuers" (as defined under the SEC's Exchange Act rules) to provide financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR part 228) in lieu of certain disclosure requirements in FDIC Forms

F–1, F–2, F–4, F–5, F–5A and the annual report to security holders. The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

For additional information and discussion, reference is made to the preamble contained in "Small Business Initiatives", SEC Release No. 34–30968, 57 FR 36442 (August 13, 1992); and in "Additional Small Business Initiatives", SEC Release No. 34–32231, 58 FR 26509 (May 4, 1993).

B. Executive Compensation Disclosure

The SEC's regulations, as would be referenced by the FDIC's Exchange Act rules, require disclosure of the compensation of the chief executive officer (CEO) regardless of the amount of compensation, and the four most highly compensated senior executive officers, excluding the CEO, who earn more than $100,000 per year in salary and bonus. Additionally, the regulations require a comprehensive three year compensation table, a table which discloses awards granted pursuant to long term incentive plans, and two disclosure tables relative to options and stock appreciation rights. The SEC's regulations also require:

(a) Disclosure of all forms of director compensation, employment contracts and termination agreements which require payments in excess of $100,000;

(b) A compensation committee report to shareholders which details compensation policies and the basis for the CEO's compensation for the last fiscal year;

(c) Proxy statement disclosure of the existence of certain relationships between directors and the bank if specific circumstances exist; and

(d) A graphical chart, which illustrates for the previous five years, the cumulative total return to shareholders, of stock appreciation and dividends.

For additional information and discussion, reference is made to the preamble contained in "Executive Compensation Disclosure", SEC Release No. 34–31327, 57 FR 48125 (October 21, 1992); in "Executive Compensation Disclosure", SEC Release No. 34–32723, 58 FR 42882 (August 12, 1993); and in "Executive Compensation Disclosure", SEC Release No. 34–33229, 58 FR 63010 (November 29, 1993).

C. Regulation of Communications Among Shareholders

The proposed amendments to the proxy rules and other related provisions would generally improve the effectiveness of the proxy-voting process and its effect on corporate governance of nonmember insured banks subject to part 335. These proposed amendments are the result of an effort to eliminate from the FDIC proxy rules, any unnecessary regulatory impediments to communication among shareholders and others and to the effective use of shareholder voting rights. Accordingly, the FDIC proposes to revise its rules relative to the solicitation of proxy authority to allow management and other persons seeking proxy authority to get their case to the shareholders in a more efficient and effective manner. The FDIC has determined that modifications in the current rules are desirable to achieve the purposes set forth in the Exchange Act.

The FDIC proposes to eliminate Form F–6—Form for Statement in Election Contests (§ 335.221) and also proposes to adopt new Form F–6A—Notice of Exempt Solicitation (§ 335.222). Disclosures relative to each participant in an election contest, which were previously provided on Forms F–6, are now required to be included on Form F–5—Form for Proxy Statement (§ 335.212). Form F–6A requirements would apply to large shareholders who are disinterested in the subject matter of a shareholder vote and who are engaging in certain solicitations which are exempt from the regulatory requirements of the proxy rules.

It should also be noted that the FDIC retains its existing rules which generally require the filing of preliminary proxy material and preliminary information statements with the FDIC for staff review and comment, prior to distribution of the definitive materials. The FDIC proposes to amend its rules however, to require that preliminary materials be deemed immediately available for public inspection upon filing, unless confidential treatment is obtained pursuant to § 335.204(f)(2).

The proposed amendments, if adopted, will make the FDIC's proxy and related disclosure rules substantially similar to the SEC's recently amended comparable rules. Prior to amendment of its rules, the SEC conducted an extensive three-year examination focused on the role of its former proxy and disclosure rules in impeding shareholder communication and participation. As a result of its examination, the SEC concluded that the demonstrated effect of its rules as previously written was contrary to Congress's intent that the rules assure fair, and effective shareholder suffrage. For additional information and discussion, reference is made to the preamble contained in "Regulation of Communications Among Shareholders", SEC Rel. No. 34–31326, 57 FR 48276 (October 22, 1992).

D. Other

As described previously, the FDIC proposes to eliminate Form F–6—Form For Statement In Election Contests (§ 335.221) and also proposes to adopt new Form F–6A—Notice Of Exempt Solicitation (§ 335.222). In addition, several technical amendments are proposed to correct various errors which appear in the Code of Federal Regulations.

Request for Public Comment

The Board hereby requests comment on all aspects of the proposed rule, particularly those specifically mentioned above. In conjunction with this proposed rule, the FDIC also seeks written comments relative to the following: Should the FDIC consider proposing a revision to Part 335, to incorporate by cross-reference the comparable rules of the SEC, rather than continue to maintain the separate but substantially similar body of rules contained in Part 335 as is done presently? Interested persons are asked to address: (1) the benefits and disadvantages of cross-referencing as a method for assuring substantial similarity between the FDIC's and the SEC's regulations; (2) the potential cost savings or cost burden of cross-referencing; (3) whether the FDIC should continue to review preliminary proxy materials and information statements; and (4) any other issues regarding a cross-referencing proposal which commenters believe pertinent. Written comments are invited to be submitted during a 60-day comment period.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, the provisions of that Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) do not apply. This proposed rule would not impose significant burdens on depository institutions of any size and would not have the type of impact addressed by the Act.

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0030), Washington, DC 20503, with copies of such comments to Steven F. Hanft, Office of the Executive Secretary, room F–400, 550 17th Street, NW., Washington, DC 20429.

The revisions to the collection of information in this proposed rule are found in § 335.102, § 335.201, § 335.202, § 335.203, § 335.204, § 335.205, § 335.207, § 335.210, § 335.212, § 335.213, § 335.214, § 335.220, § 335.221, § 335.222, § 335.301, § 335.309a, § 335.310, § 335.312, § 335.321, § 335.330, § 335.331, and § 335.622. The most significant of these revisions relate to executive compensation disclosure, small business initiatives, and communications among shareholders. The proposed rules remove § 335.221, eliminating Form F–6—Form For Statement In Election Contests. The previous disclosure requirements of the Form F–6 are now included in Form F–5 (§ 335.212). The requirement to file Form F–6A—Notice Of Exempt Solicitation (§ 335.222), is also added. It is estimated that, relative to the proposed rule, the aggregate effect of all changes in burden is *de minimus* and that the changes counterbalance each other.

The total estimated reporting burden for all collections of information in this proposed regulation is summarized as follows:

Number of Respondents: 4,368.
Number of Responses Per Respondent: 1.42.
Total Annual Responses: 6,214.
Hours Per Response: 8.89.
Total Annual Burden Hours: 55,276.

Cost Benefit Analysis

These proposed amendments will significantly reduce the costs and burdens that have been imposed on "small business issuers", those who wish to communicate with shareholders, and others regarding management performance and matters submitted to a shareholder vote. Costs will also be reduced by the changes to the proxy statement delivery requirements. The proposed amendments should result in cash and manpower savings for "small business issuers" and all those who would no longer be required to prepare and file proxy materials with the FDIC pursuant to the proposed exemptions for solicitations not seeking proxy authority. Even those who would be required to submit a Notice of Exempt Solicitation (new Form F–6A) would have a significantly reduced compliance burden. The proposed amendments to the shareholder list provisions should not change substantially the costs or burdens to either the bank registrant or the requesting party. While some additional disclosure will be required relative to executive compensation, stock performance, and tabulation procedures and voting results, the overall cost resulting from these changes to banks should be minimal and is outweighed in any event by the benefits to shareholders and investors at large resulting from the enhanced information.

Statutory Basis

The proposed amendments to the FDIC's rules under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, are being adopted by the FDIC pursuant to Exchange Act section 12(i).

List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

In accordance with the foregoing, part 335 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for part 335 continues to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78*l*(i)).

2. Section 335.102 is amended by revising the first sentence of paragraph (y); by redesignating paragraphs (oo), (pp), (qq), (rr) and (ss) as paragraphs (pp), (qq), (rr), (ss) and (tt); by adding a new paragraph (oo); and by republishing newly designated paragraph (pp) introductory text and revising newly designated paragraph (pp)(3) to read as follows:

§ 335.102 Definitions.

* * * * *

(y) The term *officer* or *principal officer* or *executive officer* means Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policymaking functions of the bank. * * *

* * * * *

(oo) The term *Small Business Issuer* shall be defined in the same manner as currently defined in 17 CFR 240.12b–2.

(pp) The terms *solicit* and *solicitation* mean:

* * * * *

(3) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the bank of acts required by § 335.210;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 335.202) stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis;

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a bank held by the security holder; or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (pp)(3)(iv).

* * * * *

3. Section 335.201 is amended by revising the reference "(See 12 CFR 335.102(gg) and (oo))" in paragraph (a) to read "(See § 335.102(gg) and (pp))"; and adding paragraph (d) to read as follows:

§ 335.201 Requirement of statement.

* * * * *

(d) The provisions of paragraph (a) of this section shall not apply to a communication made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, newspaper, magazine or other bona fide publication disseminated on a regular basis, provided that:

(1) No form of proxy, consent or authorization or means to execute the

same is provided to a security holder in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the FDIC pursuant to § 335.204(c).

4. Section 335.202 is amended by revising the introductory text; adding new paragraph (f); and removing the Note at the end of the section to read as follows:

§ 335.202 Exceptions.

The requirements of this subpart (except §§ 335.204(l), 335.206, and 335.210) shall not apply to the following:

* * * * *

(f) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. *Provided, however,* that the exemption set forth in this paragraph shall not apply to:

(1) The bank or an affiliate or associate of the bank (other than an officer or director or any person serving in a similar capacity);

(2) An officer or director of the bank or any person serving in a similar capacity engaging in a solicitation financed directly or indirectly by the bank;

(3) An officer, director, affiliate or associate of a person that is ineligible to rely on the exemption set forth in this paragraph (other than persons specified in paragraph (b)(1)(i) of this section), or any person serving in a similar capacity;

(4) Any nominee for whose election as a director proxies are solicited;

(5) Any person soliciting in opposition to a merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the bank who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(6) Any person who is required to report beneficial ownership of the bank's equity securities on a Form F–11 (§ 335.407), unless such person has filed a Form F–11 and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right, to engage in a control transaction, or any contested solicitation for the election of directors;

(7) Any person who receives compensation from an ineligible person directly related to the solicitation of proxies, other than pursuant to § 335.203(c);

(8) Any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities, other than a benefit arising from the person's employment with the bank: and

(9) Any person acting on behalf of any of the foregoing in paragraphs (f)(1) through (8) of this section.

5. Section 335.203 is amended by adding a "Note to Small Business Issuers" following the introductory text of paragraph (a); and removing paragraph (c) and Instructions 1, 2 and 3 following paragraph (c) to read as follows:

§ 335.203 Annual report to security holders to accompany statements.

(a) * * *

Note to Small Business Issuers: A "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S–B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the disclosure requirements set forth by paragraphs (a)(1) and (a)(3) through (a)(8) of this section. If there is no comparable disclosure requirement in Regulation S–B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

* * * * *

6. Section 335.204 is amended by revising paragraph (f); revising the reference "§ 335.220(e)" to read "§ 335.220(c)" in each place it appears in paragraph (h); and adding new paragraph (l), to read as follows:

§ 335.204 Material required to be filed.

* * * * *

(f)(1) All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies", and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (f)(2) of this section.

(2) If action is to be taken with respect to any matter specified in Item 12 of Form F–5, all copies of the preliminary proxy statement and form of proxy filed pursuant to paragraph (a) of this section shall be for the information of the FDIC only and shall not be deemed available for public inspection until filed with the FDIC in definitive form, provided that:

(i) The proxy statement does not relate to a matter or proposal subject to § 335.409; and

(ii) The filed material is marked "Confidential, For Use of the FDIC Only". In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the FDIC may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the FDIC.

* * * * *

(l) Solicitations subject to § 335.202(f). (1) Any person who:

(i) Engages in a solicitation pursuant to § 335.202(f); and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over $5 million, shall furnish or mail to the FDIC, not later than three days after the date the written solicitation is first sent or given to any security holder, three copies of a statement containing the information specified in the Notice of Exempt Solicitation (Form F–6A, § 335.222) which statement shall attach as an exhibit all written soliciting materials. Three copies of an amendment to such statement shall be furnished or mailed to the FDIC, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Proxy Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the FDIC, be furnished or mailed to each national securities exchange upon which any class of securities of the bank is listed and registered.

(2) Notwithstanding paragraph (l)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

7. Section 335.205 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 335.205 Solicitation prior to furnishing required proxy statement.

(a) * * *

(3) The identity of the participants in the solicitation (as defined in

Instruction 3 to Item 3 of Form F–5 (§ 335.212)) and a description of their interests direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation; and

(4) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

* * * * *

8. Section 335.207 is amended by revising paragraph (a); revising the first sentence of paragraph (b)(1); redesignating paragraph (d) introductory text and paragraphs (d)(1) through (d)(4) as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iv); republishing newly designated paragraph (d)(1) introductory text; designating paragraph (d) concluding text as paragraph (d)(2) and revising it; and adding a new paragraph (f), to read as follows:

§ 335.207 Requirements as to proxy.

(a) The form of proxy:

(1) Shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold face type the identity of the persons on whose behalf the solicitation is made;

(2) Shall provide a specifically designated blank space for dating the proxy; and

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (c) of this section.

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office. * * *

* * * * *

(d)(1) No proxy shall confer authority:

* * * * *

(2) A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected. *Provided, however,* That nothing in this section shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the bank's proxy statement, so long as the soliciting party:

(i) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(ii) Represents that it will vote for all the bank nominees, other than those bank nominees specified by the soliciting party;

(iii) Provides the security holder an opportunity to withhold authority with respect to any other bank nominee by writing the name of that nominee on the form of proxy; and

(iv) States on the form of proxy and in the proxy statement that there is no assurance that the bank's nominees will serve if elected with any of the soliciting party's nominees.

* * * * *

(f) No person conducting a solicitation subject to this subpart B shall deliver a form of proxy, consent or authorization to any security holder unless the security holder concurrently receives, or has previously received, a definitive proxy statement that has been filed with, or mailed for filing to, the FDIC pursuant to § 335.204(c).

9. Section 335.210 is revised to read as follows:

§ 335.210 Obligations of banks to provide a list of, or mail soliciting material to, security holders.

(a) If the bank has made or intends to make a proxy solicitation in connection with a security holder meeting, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting to provide a list of security holders or to mail the requesting security holder's materials, regardless of whether the request references this section, the bank shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:

(i) Notification as to whether the bank has elected to mail the security holder's soliciting materials or provide a security holder list if the election under paragraph (b) of this section is to be made by the bank;

(ii) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the bank's or its transfer agent's security holder data systems; and

(iii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the bank has solicited or intends to solicit beneficial owners in connection with the security holder meeting or action;

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the bank's or requesting security holder's option, as specified in paragraph (b) of this section:

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers and similar entities for distribution to all beneficial owners designated by the security holder. The bank shall mail the security holder material with reasonable promptness after tender of the material to be mailed, envelopes or other containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing. The bank shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the bank's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in § 335.214(b), in the possession, or which subsequently comes into the possession, of the bank. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the bank without undue burden or expense. The bank shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, *provided, however,* the bank need not provide beneficial or record holder information more current than the record date for the meeting or action.

(b) If the bank is soliciting or intends to solicit with respect to a proposal that is subject to § 335.409, the requesting security holder shall have the option set forth in paragraph (a)(2) of this section. With respect to all other requests pursuant to this section, the bank shall have the option to either mail the security holder's material or furnish the security holder list as set forth in paragraph (a)(2) of this section.

(c) At the time of a list request, the security holder making the request shall:

(1) If holding the bank's securities through a nominee, provide the bank with a statement by the nominee or other independent third party, or a copy of a current filing made with the FDIC and furnished to the bank, confirming such holder's beneficial ownership; and

(2) Provide the bank with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal or other corporate action that will be the subject of the security holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the bank is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the bank; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the bank pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting for which the bank is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the bank; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the bank in performing the acts requested pursuant to paragraph (a) of this section.

10. Section 335.212 is amended by adding in Form F–5 Proxy Statement "Note to Small Business Issuers" after "General Instructions"; revising paragraph (a)(2) in Item 3, and adding Instruction 3 to Item 3; revising paragraphs (a)(2) and (b) in Item 4, and adding an instruction to Item 4; revising the text preceding the table in paragraph (d)(2) in Item 5; revising paragraph (a) in Item 7; removing paragraphs (b), (c), (d), (e), and (h), and all instructions and general instructions to paragraphs (a), (b), (c), (d), (e), and (h) in Item 7, and redesignating paragraphs (f), (g), and (i) of Item 7 as paragraphs (b), (c), and (d), respectively; revising Item 9, the instructions to Item 9, and Item 18; and removing the "Option Disclosure Instruction" and the following option disclosure table along with notes thereto, which follow Item 21, to read as follows:

§ 335.212 Form for proxy statement (Form F–5).

Form F–5—Proxy Statement

General Instructions

* * * * *

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b–2 has the option of providing financial and other item disclosure in conformance with Regulation S–B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the disclosure requirements set forth in this section by Item 4, paragraph (b)(1)(xi); Item 5, paragraph (d); Item 6, paragraphs (a) through (d): Item 7, paragraphs (a) and (c); Item 8, paragraph (c); Item 10, paragraph (b); Item 12, paragraphs (a)(3)(vi), (a)(5), (a)(6), (a)(7), (b)(1) through (b)(8), (c)(1) through (c)(4), and (e); and Item 13. If there is no comparable disclosure requirement in Regulation S–B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

Information Required in Statement

* * * * *

Item 3—Persons Making the Solicitation.

(a) * * *

(1) * * *

(2) If the solicitation is made otherwise than by the bank, so state and give the names of the participants in the solicitation, as defined in paragraphs (a)(iii), (iv), (v) and (vi) of Instruction 3 to this item.

* * * * *

Instructions. * * *

3. For purposes of this Item 3 and Item 4 of this Form F–5:

(a) The terms "participant" and "participant in a solicitation" include the following:

(i) The bank;

(ii) Any director of the bank, and any nominee for whose election as a director proxies are solicited;

(iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;

(iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than $500 and who are not otherwise participants;

(v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the bank by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) Any person who solicits proxies.

(b) The terms "participant" and "participant in a solicitation" do not include:

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;

(ii) Any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the duties required to be performed in the course of such employment;

(iv) Any person regularly employed as an officer or employee of the bank or any of its subsidiaries who is not otherwise a participant; or

(v) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

Item 4—Interest of Certain Persons in Matters To Be Acted Upon.

(a) Solicitations not subject to § 335.220.

* * *

(1) * * *

(2) If the solicitation is made otherwise than on behalf of the bank, each participant in the solicitation, as defined in paragraphs (a)(iii), (iv), (v), and (vi) of Instruction 3 to Item 3 of this Form F–5.

* * * * *

(b) Solicitations subject to § 335.220.

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in

paragraphs (a)(ii), (iii), (iv), (v) and (vi) of Instruction 3 to Item 3 of this Form F–5, in any matter to be acted upon at the meeting, and include with respect to each participant the following information, or a fair and accurate summary thereof:

(i) Name and business address of the participant.

(ii) The participant's present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.

(iii) State whether or not, during the past ten years, the participant has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer need not be included in the proxy statement or other soliciting material.

(iv) State the amount of each class of securities of the bank which the participant owns beneficially, directly or indirectly.

(v) State the amount of each class of securities of the bank which the participant owns of record but not beneficially.

(vi) State with respect to all securities of the bank purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each such date.

(vii) If any part of the purchase price or market value of any of the shares specified in paragraph (b)(1)(vi) of this item is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

(viii) State whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the bank, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.

(ix) State the amount of securities of the bank owned beneficially, directly or indirectly, by each of the participant's associates and the name and address of each such associate.

(x) State the amount of each class of securities of any parent or subsidiary of the bank which the participant owns beneficially, directly or indirectly.

(xi) Furnish for the participant and associates of the participant the information required by § 335.212, Item 7(c).

(xii) State whether or not the participant or any associates of the participant have any arrangement or understanding with any person—

(A) With respect to any future employment by the bank or its affiliates; or

(B) With respect to any future transactions to which the bank or any of its affiliates will or may be a party. If so, describe such arrangement or understanding and state the names of the parties thereto.

(2) With respect to any person, other than a director or executive officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by paragraphs (b)(1)(xi) and (xii) of this item.

Instruction: For purposes of this Item 4, beneficial ownership shall be determined in accordance with § 335.403.

Item 5—Voting Securities and Principal Holders Thereof.

* * * * *

(d)(1) * * *

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in 17 CFR 229.402(a)(3), and directors and executive officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have a right to acquire beneficial ownership as specified in § 335.403(d)(1).

* * * * *

Item 7—Compensation and Other Transactions With Management and Others.

* * * * *

(a) *Compensation of directors and executive officers.* Furnish the information required by the applicable and currently effective SEC regulations contained in Item 8 of SEC Schedule 14A (17 CFR 240.14a–101, Item 8).

* * * * *

Item 9—Compensation Plans.

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans subject to security holder action.*

(1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

Plan name	Dollar value ($)	No. of units
CEO		
A		
B		
C		
D		
Executive Group		
Non-Executive Director Group.		
Non-Executive Officer Employee Group.		

Instruction to New Plan Benefits Table: Additional columns should be added for each plan with respect to which security holder action is to be taken.

(ii) The table required by paragraph (a)(2)(i) of this item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last completed fiscal year if the plan had been in effect, if such benefits or amounts may be determined, in the table specified in paragraph (a)(2)(i) of this item:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the persons and groups specified in paragraph (a)(2) of this item, state the nature of the amendments which can be so made.

(b) *Additional information regarding specified plans subject to security holder action.* (1) With respect to any pension or retirement plan submitted for security holder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this item may be furnished in the format specified by 17 CFR 229.402(f)(1).

(2)(i) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants, or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in 17 CFR 229.402(a)(3);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officers or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

Instructions to Item 9

1. The term "plan" as used in this item means any plan as defined in 17 CFR 229.402(a)(7)(ii).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time copies of the proxy statement and form of proxy are first filed pursuant to § 335.204(a).

4. Paragraph (b)(2)(ii) of this item does not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

* * * * *

Item 18. Voting Procedures.

As to each matter which is to be submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval or election, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as bank charter and by-law provisions.

* * * * *

11. Section 335.213 is amended by adding 2 paragraphs of text to follow the existing text in the Note preceding Item 1 to read as follows:

§ 335.213 Form for information statement (Form F–5A).

Form F–5A—Information Statement

Note: * * *

Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Small Business Issuers: A "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing financial and other item disclosure in conformance with Regulation S-B of the Securities and Exchange Commission (17 CFR Part 228) in lieu of the following referenced disclosure requirements set forth in § 335.212 Item 4(b)(1)(xi); Item 5, paragraph (d); Item 6, paragraphs (a) through (d); Item 7, paragraphs (a) and (c); Item 8, paragraph (c); Item 10, paragraph (b); Item 12, paragraphs (a)(3)(vi), (a)(5), (a)(6), (a)(7), (b)(1) through (b)(8), (c)(1) through (c)(4), and (e); and Item 13. If there is no comparable disclosure requirement in Regulation S-B, a small business issuer need not provide the information requested. The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

* * * * *

12. Section 335.214 is amended by revising the introductory text in paragraph (a); by revising paragraphs (a)(1)(i)(A), (a)(3), (a)(4), (a)(5), Note 2 and Note 3 to paragraph (a), paragraph (d), and adding a new Note 4 to paragraph (a); by revising the reference "17 CFR 240.14b-1(c) or 17 CFR 240.14b-2 (e)(2) and (3)" in paragraph (a)(1)(i)(C) to read "17 CFR 240.14b-1(b)(3) or 17 CFR 240.14b-2(b)(4)(ii) and (iii)"; by revising the reference "17 CFR 240.14b-1(c) and 17 CFR 240.14b-2 (e)(2) and (3)" in paragraph (a)(1)(ii)(A), the introductory text to paragraph (b), and paragraph (c) to read "17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4)(ii) and (iii)"; by revising the reference "17 CFR 240.14b-2(a)(1)" to read "17 CFR 240.14b-2(b)(1)(i)" in paragraph (a)(2); and by revising the reference "17 CFR 240.14b-2(e)(1)" to read "17 CFR 240.14b-2(b)(4)(i)" in paragraph (b)(1) to read as follows:

§ 335.214 Obligation of banks in communicating with beneficial owners.

(a) If the bank knows that securities of any class entitled to vote at a meeting are held of record by a broker, dealer, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the bank shall:

(1) * * *

(i) * * *

(A) Whether other persons are the beneficial owners of such securities, and if so, the number of copies of the proxy and other soliciting material (or if applicable, the number of copies of the information statement) necessary to supply such material to such beneficial owners.

* * * * *

(3)(i) Make the inquiry required by paragraph (a)(1) of this section:

(A) If the bank intends to solicit proxies, consents or authorizations:

(*1*) At least 20 business days prior to the record date of the meeting of security holders; or

(*2*) If such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date as practicable; or

(*3*) If consents or authorizations are solicited, and such inquiry is impracticable 20 days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable; or

(*4*) At such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown); or

(B) If the bank does not intend to solicit proxies, consents or authorizations, the earlier of:

(*1*) At least 20 business days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; or

(*2*) At least 20 business days prior to the date the information statement is required to be sent or given pursuant to § 335.201(b);

(ii) *Provided however,* That if a record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s);

(4) Supply in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material (or if applicable, copies of the information statement), and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material, information statements, and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

* * * * *

Note 2: The attention of banks is called to the fact that each broker, dealer, bank, association or other entity that exercises fiduciary powers has an obligation under 17 CFR 240.14b-1 and 17 CFR 240.14b-2 (except as provided therein with respect to employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory requirements to obtain and forward, within the time periods prescribed therein: Proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials (or if applicable, copies of the information statement) to beneficial owners on whose behalf it holds securities; and annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the bank has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b-1(b)(3) and 17 CFR 240.14b-2(b)(4)(ii) and (iii).

Note 3: The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material (or if applicable, copies of the information statement) and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

Note 4: The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom the report is not sent agree thereto in writing. This procedure is not available, however, where banks, associations, other entities that exercise fiduciary powers, brokers, dealers and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

* * * * *

(d) If a bank furnishes information statements to, or solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the bank shall cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material (or if applicable, copies of the information statement) and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

13. Section 335.220 is amended by removing paragraphs (b) and (c) and redesignating paragraphs (d) through (h) as paragraphs (b) through (f), respectively; and revising newly redesignated paragraphs (b) and (e), to read as follows:

§ 335.220 Special provisions applicable to election contests.

* * * * *

(b) *Solicitations prior to furnishing required statement.* Notwithstanding the provisions of § 335.201 a solicitation subject to § 335.220 may be made prior to furnishing security holders a written statement containing the information specified in Form F–5 with respect to such solicitation: *Provided,* That—

(1) No form of proxy is furnished to security holders prior to the time the written proxy statement required by § 335.201 is furnished to security holders: *Provided, however,* That this paragraph (b)(1) shall not apply where a proxy statement then meeting the requirements of Form F–5 has been furnished to security holders by or on behalf of the person making the solicitation;

(2) The identity of the participants in the solicitation (as defined in Instruction 3 of Item 3 of Form F–5 (§ 335.212)) and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation;

(3) A written proxy statement meeting the requirements of this subpart B is sent or given to security holders solicited pursuant to this paragraph (b) at the earliest practicable date.

* * * * *

(e) *Application of § 335.204.* The provisions of § 335.204(c) through (f) shall apply, to the extent pertinent, to soliciting material subject to paragraphs (c) and (d) of this section.

* * * * *

§ 335.221 [Removed and Reserved]

14. Section 335.221 (Form F–6) is removed and reserved.

15. Section 335.222 (Form F–6A) is added to subpart B to read as follows:

§ 335.222 Notice of Exempt Solicitation to be included in statements submitted by or on behalf of a person pursuant to § 335.204(l) (Form F–6A).

Form F–6A—Notice of Exempt Solicitation

1. Name and address of the Bank: __________

2. Name of person relying on exemption: __________

3. Address of person relying on exemption: __________

4. *Written materials.* Attach written material required to be submitted pursuant to § 335.204(l).

16. Section 335.301 is amended by revising the reference "(27 CFR 249.220f)" to read "(17 CFR 249.220f)"; and adding a "Note to Small Business Issuers" immediately following the existing text to read as follows:

§ 335.301 Requirement of registration statement.

* * * * *

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b–2 has the option of providing the disclosure required by SEC Form 10–SB, optional form for the registration of securities of a small business issuer (17 CFR 249.210b), in lieu of the disclosure requirements set forth in Form F–1 (§ 335.309a). The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

17. Section 335.309a (Form F–1) is amended by adding a new paragraph immediately preceding the "General Instructions" portion of Form F–1; revising Item 7 and Item 8; and revising paragraphs 7(b)(1), 7(b)(2) and 7(c) under the heading "Instructions as to Exhibits" at the end of the section, to read as follows:

§ 335.309a Form for registration of securities of a bank under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F–1).

Form F–1

* * * * *

Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b–2, is providing alternative disclosures as permitted for small business issuers in this Form F–1. [ ]

* * * * *

Item 7—Compensation of Directors and Executive Officers

Set forth the same information as is required to be furnished by item 7(a) of Form F–5 (§ 335.212).

Item 8—Interest of Management and Others in Certain Transactions

Set forth the same information for the past three years, as is required to be furnished by items 7 (b), (c) and (d) of Form F–5 (§ 335.212).

Note: The information required by items 7 (b), (c) and (d) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Instructions as to Exhibits

* * * * *

7. (a) * * *

(b) * * *

(1) Directors, officers, promoters, voting trustees, or security holders named in answer to item 5 are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It calls for the acquisition or sale of fixed assets for a consideration exceeding 15 percent of the value of all fixed assets of the bank and its subsidiaries.

* * * * *

(c) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the bank, as defined by 17 CFR 229.402(a)(3), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the bank participates shall be filed unless immaterial in amount or significance except as follows: Notwithstanding the above, any compensatory plan, contract, or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

* * * * *

18. Section 335.310 is amended by adding a "Note to Small Business Issuers" immediately following paragraph (c) to read as follows:

§ 335.310 Requirement of annual reports and annual reports of predecessors.

* * * * *

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b–2 has the option of providing the disclosure required by SEC Form 10–KSB, optional form for annual and transitional reports of small business issuers (17 CFR 249.310b), in lieu of the disclosure requirements set forth in Form F–2 (§ 335.312). The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

19. Section 335.312 (Form F–2) is amended by adding a new paragraph immediately following the second line entitled "(Title of class)" in the introductory portion of Form F–2; adding to Item 11, new paragraph (a)(3) to immediately precede the instruction to paragraph (a); and revising paragraph (c)(3)(ii) of Item 11, to read as follows:

§ 335.312 Form for annual report of bank (Form F–2).

Form F–2—Annual Report Under Section 13 of the Securities Exchange Act of 1934

* * * * *

Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b-2, is providing alternative disclosures as permitted for small business issuers in this Form F–2. [ ]

* * * * *

Item 11—Exhibits, Financial Statement Schedules, and Reports on Form F–3.

(a) * * *

(3) Those exhibits required by paragraph (c) of this Item 11. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to paragraph (c)(3)(ii) of this Item 11.

* * * * *

(c) * * *

(3) * * *

(ii) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the "named executive officers" of the bank, as defined by 17 CFR 229.402(a)(3), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the bank participates shall be filed unless immaterial in amount or significance except as follows: notwithstanding the above, any compensatory plan, contract, or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

* * * * *

20. Section 335.321 (Form F–3) is amended by revising paragraph (c) and Instructions 3 and 4 of Item 9 to read as follows:

§ 335.321 Form for current report of a bank (Form F–3).

Form F–3.—Current Report

* * * * *

Item 9—Submission of Matters to a Vote of Security Holders.

* * * * *

(c) A brief description of each matter voted upon at the meeting and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter, including a separate tabulation with respect to each nominee for office.

* * * * *

Instructions

* * * * *

3. Paragraph (b) need not be answered if: Proxies for the meeting were solicited pursuant to subpart B of this part; there was no solicitation in opposition to the management's nominees as listed in the proxy statement; and all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the FDIC was reelected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) must be answered for all matters voted upon at the meeting, including both contested and uncontested elections of directors.

* * * * *

21. Section 335.330 is amended by adding a "Note to Small Business Issuers" at the end of the section to read as follows:

§ 335.330 Quarterly reports.

* * * * *

Note to Small Business Issuers: a "small business issuer", as defined under 17 CFR 240.12b-2 has the option of providing the disclosure required by SEC Form 10–QSB, optional form for quarterly and transitional reports of small business issuers (17 CFR 249.308b), in lieu of the disclosure requirements set forth in Form F–4 (§ 335.330). The definition of "small business issuer", generally includes banks with annual revenues of less than $25 million, whose voting stock does not have a public float of $25 million or more.

22. Section 335.331 is amended by adding a new paragraph immediately following the line entitled "(Former name, former address and former fiscal year, if changed since last report)" in the introductory portion of Form F–4 to read as follows:

§ 335.331 Form for quarterly report of a bank (Form F–4).

Form F–4

* * * * *

Indicate by check mark if the bank, as a "small business issuer" as defined under 17 CFR 240.12b-2, is providing alternative disclosures as permitted for small business issuers in this Form F–4. [ ]

* * * * *

23. Section 335.622 is amended by revising paragraph (g)(1) to read as follows:

§ 335.622 General notes to statement of income.

* * * * *

(g) Disclosure of selected quarterly financial data in notes to financial statements—(1) *Exemption.* This paragraph (g) shall not apply unless the bank meets the tests prescribed by 17 CFR 229.302(a)(5).

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC this 12th day of April, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–9731 Filed 4–29–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–10]

Petition for Rulemaking, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received July 1, 1994.

ADDRESSES: Send comments on any petition in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No., 800 Independence Avenue SW., Washington, DC 20592.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A),800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on April 18, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27549.

Petitioner: Mr. James H. Owens.

Regulations Affected: 14 CFR 91.417(a)(2)(i).

Description of Rulechange Sought: To allow owners and operators of airplanes with reciprocating engines of 750 horsepower or less to be excepted from the time in service maintenance record keeping requirement for each engine and each propellor.

Petitioner's Reason for the Request: The petitioner feels that the current regulation places an unrealistic burden on the owner/operator, in that it is impractical for most part 91 operators and those air carriers operating under part 135.411(a)(i) to maintain a records keeping system that will allow record tracking of the complete engine, propeller or parts thereof.

[FR Doc. 94–10295 Filed 4–25–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Chapter I

[Summary Notice No. PR–94–9]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to the summary described for Docket No. 26995 in a notice of petitions for rulemaking published on March 30, 1994, (59 FR 14795). This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3939.

SUPPLEMENTARY INFORMATION: In the original publication of the petition summary on March 30, 1994, the petitioner was stated to be Mr. John A. Cohen. This error should be corrected to properly show the petitioner as the Benedict Canyon Protection League.

Issued in Washington, DC on April 18, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 94–10291 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–ANE–02]

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This proposal would require a repetitive oil quantity check after engine start-up and prior to taxi, and installation of a flame arrestor plug support (FAPS) in the aft end of the center vent tube as a terminating action to the repetitive oil quantity checks. This proposal is prompted by three reports of uncontained engine failure due to separation of the fan mid shaft. The actions specified by the proposed AD are intended to prevent an uncontained engine failure and inflight engine shutdown due to fuel contamination of the oil system.

DATES: Comments must be received by June 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7132, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–02." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received three reports of uncontained engine failures due to separation of the fan mid shafts on General Electric Company (GE) CF6–80C2 series turbofan engines. Separation of the fan mid shaft results from sustained fires in the forward fan shaft cavity, due to fuel contamination of the oil system. The GE CF6–80C2 series engine has a lube system center vent design which releases air and oil vapor axially through the engine and into the centerbody cavity. The vapor then goes overboard through a hole in the aft centerbody exhaust plug. If fuel enters the engine oil system, fuel vapor passes through this center vent system. In the centerbody cavity, the center vent air is allowed to circulate and contact hot surfaces. These surfaces are hot enough to ignite heavily fuel-laden air. The pressure rise in the centerbody cavity from such an ignition results in backflow of the sump vent system, which can cause a flame to travel forward up the center vent tube (CVT). This may result in a sustained fire in the forward fan shaft cavity which can cause separation of the fan mid shaft. Installation of a flame arrestor plug support (FAPS) prevents the movement of a flame up the CVT, sustained burning in the forward fan shaft cavity, and subsequent fan mid shaft separations. Until such time as the FAPS is installed, operators must perform a repetitive oil quantity check for fuel contamination after engine start-up but prior to taxi. If the oil quantity indicates 5 gallons (20 quarts) or more, operators must troubleshoot and flush the oil system prior to further flight in accordance with the applicable maintenance manual. This condition, if not corrected, could result in an uncontained engine failure and inflight engine shutdown due to fuel contamination of the oil system.

The FAA has reviewed and approved the technical contents of GE CF6–80C2 Service Bulletin (SB) No. 72–648, Revision 1, dated January 11, 1993, and GE CF6–80C2 SB No. 72–095, Revision 2, dated January 11, 1993. These SB's describe procedures for installation of the CVT FAPS.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed airworthiness directive (AD) would require a repetitive oil quantity check after engine start-up and prior to taxi, and installation of a FAPS in the aft end of the CVT as a terminating action to the repetitive oil quantity checks. The manufacturer has advised the FAA that they will have manufactured all the parts needed for the entire fleet by the compliance end-date of August 1, 1994. The FAA has determined that the problem of fuel contamination of the oil system is not dependent upon cyclic or hourly usage and therefore proposes a compliance end-date of August 1, 1994. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 1,570 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,316. Out of the 1,570 engines, the manufacturer has advised the FAA that 96 percent of the fleet have accomplished the requirements of this AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $173,077.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 94–ANE–02.

Applicability: General Electric Company (GE) CF6–80C2 series turbofan engines installed on, but not limited to, Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure and inflight engine shutdown due to fuel contamination of the oil system, accomplish the following:

(a) Before each flight, perform an oil quantity inspection for fuel contamination at least 30 seconds after the engine reaches stabilized idle but prior to taxi. If the oil quantity indicates 5 gallons (20 quarts) or more, maintenance investigation is required prior to takeoff.

(b) If the oil quantity indicates 5 gallons (20 quarts) or more, flush and troubleshoot the oil system for fuel contamination prior to further flight.

(c) For engines with No. 6 bearing plug, Part Number (P/N) 1375M78G01, replace the No. 6 bearing plug with center vent tube (CVT) flame arrestor plug support (FAPS) in accordance with GE CF6–80C2 Service Bulletin (SB) No. 72–648, Revision 1, dated January 11, 1993, prior to August 1, 1994.

(d) For engines with No. 6 bearing plug, P/N 9362M36G01, replace the fan mid shaft assembly, the mid fan duct assembly, and the retaining ring, in accordance with GE CF6–80C2 SB No. 72–095, Revision 2, dated January 11, 1993, and replace the No. 6 bearing plug with CVT FAPS in accordance with GE CF6–80C2 SB No. 72–648, Revision 1, dated January 11, 1993, prior to August 1, 1994.

(e) Installation of the CVT FAPS in accordance with paragraphs (c) or (d) of this AD, constitutes terminating action for paragraphs (a) and (b) of this AD.

(f) The oil quantity inspection required by paragraph (a) of this AD may be performed by the pilot. The checks must be recorded in accordance with Federal Aviation Regulation (FAR) section 43.9, and records maintained by the owner/operator as required by FAR section 121.380(a)(2)(v), or 91.417(a)(2)(v), as applicable.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 13, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10393 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–ASO–4]

Proposed Establishment of Class D Airspace; Class E2 Airspace and Proposed Amendment of Class E Airspace; Athens, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at the Athens/Ben Epps Airport, Athens, GA and to establish Class E4 airspace due to commissioning of a Non-Federal Air Traffic Control Tower, March 14, 1994, at the Athens/Ben Epps Airport. This Action also would amend the Class E2 surface airspace at Athens/Ben Epps Airport to indicate part-time when the control tower is not in operation. The intended effect of this proposal is to require pilots to establish two-way radio communications prior to entering the airspace during the hours the control tower is in operation.

DATES: Comments must be received on or before June 3, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94–ASO–4, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5585.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class D airspace area and Class E4 airspace at the Athens/Ben Epps Airport, Athens, Georgia. This action also would amend the Class E2 surface airspace at Athens/Ben Epps Airport to indicate part time. The establishment of this Class D airspace area will require pilots, prior to entering the airspace, to establish two-way radio communications with the newly commissioned air traffic control tower providing air traffic services. The coordinates for this airspace docket are based on North American Datum 83. Class D, Class E2 and Class E4 airspace areas, are respectively published in Para 5000, Para 6002 and Para 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Class D, E2 and E4 airspace areas listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 25 FR 9565, 3CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para 5000 Class D Airspace

* * * * *

ASO GA D Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(lat. 35°56′54″N, long. 83°19′37″W)

That airspace extending upward from the surface to and including 3300 feet MSL within a 4-mile radius of the Athens/Ben Epps Airport. This Class D airspace area is effective during the specified dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Para 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ASO GA E4 Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(lat. 35°56′54″N, long. 83°19′36″W)

That airspace within 3 miles each side of the Athens VORTAC 195° radial, extending from the 4-mile radius to 7 miles south of the VORTAC and within 3 miles each side of the Athens VORTAC 076° radial, extending from the 4-mile radius to 7 miles east of the VORTAC.

* * * * *

Para 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO GA E2 Athens, Georgia [Amend]

Athens/Ben Epps Airport, Athens, Georgia
(lat. 35°56′54″N, long. 83°19′36″W)

Within a 4-mile radius of the Athens/Ben Epps Airport and within 3 miles each side of the Athens VORTAC 195° radial, extending from the 4-mile radius to 7 miles south of the VORTAC and within 3 miles each side of the Athens VORTAC 076° radial, extending from the 4-mile radius to 7 miles east of the VORTAC.

This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effected date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on April 12, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 94–10382 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–13]

Proposed Removal of Class E Airspace; Higginsville, MO, Higginsville Industrial Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove Class E airspace at Higginsville, Missouri. The only standard instrument approach procedure (SIAP) for the Higginsville Industrial Municipal Airport was cancelled on September 19, 1991. The reason for this cancellation was the Higginsville Very High Frequency Omnidirectional Range (VOR) was permanently out of service, and this was the navigation aid upon which the SIAP was based.

DATES: Comments must be received on or before June 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 94–ACE–13, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption ADDRESSES. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ACE–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 601 East 12th Street, Kansas City, Missouri, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri 64106. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove Class E airspace at Higginsville, Missouri. The only SIAP for the airport was cancelled on September 19, 1991. The approach was based on the Higginsville VOR which has been out of service for several years. A previous proposal to remove the airspace was published in the **Federal Register** on May 24, 1991, as Airspace Docket 91–ACE–21 (56 FR 23820). The proposal was cancelled because of a plan to restore the VOR to normal operation. This plan never materialized. Therefore, the FAA is proposing to remove the Class E airspace at Higginsville, Missouri. Class E airspace areas extending from 700 feet AGL for airports are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation for Higginsville, Missouri, listed in this document would be removed from this order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E2 Higginsville, MO [Removed]

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–10384 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–13]

Modification of Class E Airspace; Newark, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify existing Class E airspace, specifically Class E5 Airspace near Newark, Ohio, to accommodate a new Simplified Directional Facility (SDF) Runway 9 Standard Instrument Approach Procedure (SIAP) to Newark-Heath Airport. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before June 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 204–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects to the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date of comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Newark, Ohio, to provide controlled airspace from 700 feet to 1200 feet AGL for aircraft executing the SDF Runway 9 SIAP into Newark-Heath Airport. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area, which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Newark, OH [Revised]

Newark-Heath Airport, OH
(lat. 40°01′29″N., long. 82°27′43″W.)
Hebron, Buckeye Executive Airport, OH
(lat. 39°57′42″N, long 82°32′27″W.)

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Newark-Heath Airport, and within 1.3 miles either side of the 324° bearing from Newark-Heath Airport, within 5.5 miles north and 4 miles south of the 273° bearing from Newark-Heath Airport, extending to 15 miles west of the Airport, excluding that portion within the Port Columbus, Ohio Class E airspace area; within a 6 mile radius of Buckeye Executive Airport, and within 6 miles either side of the 351° bearing from the Airport, extending to 12.5 miles north of the Airport.

* * * * *

Issued in Des Plaines, Illinois on April 18, 1994

Roger Wall,
Manager, Air Traffic Division.

[FR Doc. 94–10385 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–14]

Establishment of Class E Airspace; Griffith, Indiana

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 Standard Instrument Approach Procedure (SIAP) to Griffith-Merrillville Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedure in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before June 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–14." The postcard will be date/

time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Griffith, Indiana, to provide controlled airspace from 700 feet to 1200 feet AGL for aircraft executing the new VOR/DME Runway 26 SIAP into Griffith-Merrillville Airport. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area, which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A date June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues as read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 99565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Griffith, IN [New]

Griffith-Merrillville Airport
(Lat. 41°31′11″ N., long. 87°24′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Griffith-Merrillville Airport, excluding that area within the Chicago, IL Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 18, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–10383 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed statutory changes to the Wyoming Environmental Quality Act (EQA) pertaining to recovery of costs and expenses (including attorney's fees) incurred in connection with administrative and judicial proceedings.

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. June 1, 1994. If requested, a public hearing on the proposed amendment will be held on May 27, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on May 17, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, Room 2128; Casper, WY: 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer, Director; Wyoming Department of Environmental Quality; Herschler Building, Fourth Floor West; 122 West 25th Street; Cheyenne, Wyoming; 82002. Telephone: (307) 777–7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15, and 950.16.

On January 24, 1994 (59 FR 3513), the Secretary of the Interior approved with certain exceptions, Wyoming's program amendments regarding the recovery of costs and expenses, including attorney fees, incurred in connection with administrative review proceedings under the Wyoming program. As a result of this decision 30 CFR 950.11(c) was modified to require Wyoming to revise section 35–11–437 of the Wyoming Statutes (W.S.) to be consistent with the Federal requirements at section 525(e) of SMCRA (30 U.S.C. 1275(e)) and 43 CFR 4.1290 through 4.1295 concerning the award of costs and expenses incurred in connection with administrative and judicial proceedings.

II. Discussion of Proposed Amendment

By letter dated April 13, 1994, (Administrative Record No. WY–27–01) Wyoming submitted a proposed amendment to its permanent program pursuant to SMCRA. The Wyoming proposed amendment consists of statutory changes to the Wyoming Environmental Quality Act (EQA) through Enrolled Act 4, Original House Bill No. 98 (1994 Budget Session), which was signed into law on March 16, 1994. Enrolled Act 4 revises 1) W.S. 35–11–437(f) by amending the introductory language, changing the word "director" to "council," and adding the language "or subsequent judicial review proceedings;" 2) W.S. 35–11–437(f)(i) and (iii) by repealing them in their entirety; and 3) W.S. 35–11–437(g) by repealing it in its entirety.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. May 17, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance with Executive Order 12866

This proposed rule is exempted from review by the office of Management and Budget under Executive Order 12866 (Reduction of Regulatory Burden).

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 19, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–10236 Filed 4–29–94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD02–94–019]

RIN 2115–AE46

Memphis in May Sunset Symphony, Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes adopting a regulation for the Memphis in May Sunset Symphony which will be held on the Lower Mississippi River near Memphis, Tennessee on May 28, 1994. This regulation is needed to control vessel traffic in the immediate vicinity of the event. The regulation will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

DATES: Comments must be received on or before May 23, 1994.

ADDRESSES: Comments may be mailed to Commander (bb), Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, Attention: Docket CGD2–94–019. Comments may also be delivered to room 2.202C at the above address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comment the telephone number is (314) 539–3971.

The Boating Safety Division, Second Coast Guard District, maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying in room 2.202C at the above address.

FOR FURTHER INFORMATION CONTACT: LCDR J. O. Jaczinski, Boating Safety Division, Second Coast Guard District, (314) 539–3971.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD2–94–019], identify the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person who wants an acknowledgment of the receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard may change the proposal in view of the comments.

The Coast Guard does not plan to hold a public hearing. Persons may request a public hearing by writing to the Docket Clerk at the address under ADDRESSES. If the Coast Guard determines that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The comment period for this regulation has been shortened to 20 days because the application was not received in time to allow for the normal 60 day comment period. The Coast Guard has determined that because of the local nature of this event and the limited duration of the required closure of the river, 30 days will be a sufficient period of time to receive and review any comments.

Drafting Information

The principal persons involved in drafting this document are LCDR J. O. Jaczinski, Project Officer, Second Coast Guard District, Boating Safety Division and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Background and Purpose

The Memphis in May Sunset Symphony begins at 12 noon and will end at approximately 10 p.m. The event consists of an orchestra performance by the Memphis Symphony, followed by 10 to 12 minutes of fireworks over the river at the conclusion of the evening. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regatta area, immediately before and during the fireworks display. The river will be closed from 8 p.m. to 10 p.m., local time, to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to its short duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small business that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see ADDRESSES) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant instruction M16475.1B, this regulation is categorically excluded from further environmental documentation because promulgation of changes to the regulations have been found to not have a significant effect on human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (Water), Records and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35 T02–019 is added, to read as follows:

§ 100.35 T02–019 Lower Mississippi River, Memphis, Tennessee.

(a) *Regulated area.* Lower Mississippi River from mile 736.0 to 736.5.

(b) *Special local regulations.* (1) Except for participants in the Memphis in May Sunset Symphony, no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office Memphis, Tennessee and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area;

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics;

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property; and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed before another event begins.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of this section at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective date.* This section becomes effective from 8 p.m. to 10 p.m. local time on May 28, 1994.

Dated: April 15, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 94–10443 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–190001A; FRL–4777–8]

Standards for Pesticide Containers and Containment; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: Pursuant to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA proposed container design requirements for refillable and nonrefillable pesticide containers, and procedures, standards and label language to facilitate removal of pesticides from containers prior to disposal and standards for pesticide containment structures (59 FR 6712, February 11, 1994). EPA is extending the public comment period for that proposed rule for 60 days, from May 12, 1994 to July 11, 1994.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Submit written comments on the proposed rule, bearing the document identification number OPP–190001, by mail to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Deliver comments in person to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

In addition, EPA requests that a disk copy in Wordperfect or ASCII be submitted, if possible. Comments may be submitted electronically to e-mail address: pestrule.pmds@epamail.epa.gov.

Information submitted in any comment concerning the proposal may be claimed as confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Comments will be available for public inspection in Room 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail for the proposed Standards for Pesticide Containers and Containment: Janice Jensen, Pesticide Management and Disposal Staff, Office of Pesticide Programs (7507C), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (703) 305–5288.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA proposed container design requirements for refillable and nonrefillable pesticide containers, and procedures, standards and label language to facilitate removal of pesticides from containers prior to disposal and standards for pesticide containment structures (59 FR 6712, February 11, 1994). EPA is extending the public comment period for that proposed rule for 60 days, from May 12, 1994 to July 11, 1994. The proposed rule was corrected at 59 FR 10228, March 3, 1994 and at 59 FR 15966, April 5, 1994. EPA has been requested to extend the comment period to give persons interested in commenting on the numerous issues in the proposed rule more time to draft thorough comments. Therefore, the comment period is being extended for an additional 60 days.

Dated: April 20, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–10439 Filed 4–29–94; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 59, No. 83
Monday, May 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intent To Prepare an Environmental Statement, Eldorado National Forest et al; CA

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: On May 13, 1992, the Forest Service filed a notice of intent in the **Federal Register** to prepare an environmental impact statement (EIS) to analyze revision of management guidelines for the Desolation Wilderness on the Pacific and Placerville Ranger Districts of the Eldorado National Forest and the Lake Tahoe Basin Management Unit, El Dorado County, California. This notice is being filed because the draft EIS has been delayed more than 6 months.

ADDRESSES: Craig Harasek, District Ranger, Pacific Ranger District, Eldorado National Forest, ATTN: Desolation Wilderness EIS, Pacific Ranger District, Pollack Pines, CA. 95726, phone 916–644–2349.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Karen Leyse, Interdisciplinary Team Leader, Pacific Ranger District, Pollock Pines, CA. 95726, phone 916–644–2349.

SUPPLEMENTARY INFORMATION: The *Eldorado National Forest Land and Resource Management Plan* (1989), the *Lake Tahoe Basin Management Unit Land and Resource Management Plan* (1988), and the 1964 Wilderness Act have provided general management direction for Desolation Wilderness. The current Desolation Wilderness Management plan was completed in 1978; both Forest Plans indicate the need to review the existing Desolation Wilderness Plan and to revise it as needed. The decision may result in amendment to the Forest Plans.

A great deal of scoping has been completed since the original notice of intent was filed. Through scoping, the following issues have been identified:

1. Fire. Fire suppression has affected the development and maintenance of natural plant communities and the resulting ecosystems. Current fire management policy and suppression techniques are not consistent with maintaining natural processes and wilderness characteristics.
2. Fisheries. Stocking of fish in wilderness lakes provides recreational opportunities for the public, but this practice affects naturally occurring biodiversity and ecosystems, which are protected by wilderness designation.
3. Range. Current grazing practices may impact water quality, vegetation, meadow and riparian areas, wildlife, and archaeological sites. Grazing is a historical use; however, the presence of cattle disturbs some visitors.
4. Water quality. Current use and management practices may be creating unacceptable water quality conditions in the wilderness.
5. Wood fires. Many wilderness users value campfires as part of the wilderness experience; however, collection of firewood and presence of firerings, ashes, and other campfire debris degrades campsites and eliminates down, woody debris, an important part of the ecosystem.
6. Visitor impacts. Some areas of the wilderness, especially lakeshores and easily accessed sites, are being damaged by visitor use. Users, including recreational stock users, may impact the vegetation, soils, wildlife, and cultural sites.
7. Quotas and group size. The number and distribution of users and the size of groups (including stock) affect the values and character of the wilderness and the quality of the wilderness experience.
8. Aircraft Overflights. Overflights are common and intrude on the wilderness experience.
9. Dogs. The presence of dogs disturbs some visitors, adds to sanitation problems, and may harass wildlife.
10. Recreational shooting. Some visitors feel that the responsible use of guns should be allowed. Others are disturbed by the noise and the harassment of wildlife and have expressed concern for their own safety.
11. Trails. Management and development of trailheads and trails may affect the amounts and patterns of use and the quality of the wilderness experience.

In preparing the EIS, the Forest Service will be considering a range of alternatives for future management of the wilderness. The Forest Service is in the process of developing these alternatives, which range from maximum recreational use of the wilderness to maximum wilderness protection. These preliminary alternatives may be revised before the draft EIS is issued as new information is developed or new comments are received:

Maximum Opportunity. This alternative would increase the use of the wilderness by expanding the trail system and signing, maintaining all trails, and upgrading unimproved trails. Camping would be allowed in all zones. Fisheries opportunities would be increases. Campfires would be permitted in designated firerings, back country toilets would be installed, group sizes of 25 would be permitted, and quotas for overnight camping would be raised. There would be no limits for recreational stock. No fees would be charged.

No Action. The current situation would continue unchanged. There would continue to be unlimited day use with quotas on overnight use in the 3-month summer period. Camping would be permitted in all zones. Maintenance and reconstruction of existing trails would continue. Fish stocking of lakes and operation of stream flow management dams would continue. Wood fires would continue to be prohibited. All fires, including lightening caused fires, would be suppressed. Sanitation recommendations would continue to include a 100-foot setback from water. There would be no limits on recreational shooting or recreational stock. The forests would continue to pursue charging a permit reservation fee.

Enhanced Wilderness Experience. The quality of the wilderness experience would be improved by restricting the number of day users in heavily used areas and by slightly reducing the number of overnight users permitted over a 5-month summer period. Group sizes would be reduced in remote areas.

The number of stock permitted per group would be limited, and recreational shooting would be limited during the heavy use season. There would be a leash requirement for dogs. Fish stocking would continue at reduced levels, and catch-and-release regulations would be encouraged. Overnight wilderness permits would be issued by zone or by destination, with no camping in heaviest use areas. "No trace" wood fires would be allowed in designated areas. The use of loop trails in heaviest use areas would be considered; other trails would be made more primitive. Directional signing would be found only in the heaviest use areas. Prescribed natural fire would be allowed in areas of the wilderness where fire hazard is low.

Physical Restoration. The number of day and overnight users would be further reduced from the Enhanced Wilderness Experience alternative during a 6-month summer quota period. Group sizes for users and stock would be reduced. Grazing would be permitted only where appropriate based on wilderness resource conditions. Recreational shooting would be limited to the less pristine areas. Camping and outfitter/guide use would be regulated by zone. Dogs would be required to be on a leash in popular areas and would be prohibited in pristine areas. Fish stocking would be reduced, and riparian areas would be revegetated. Some trails could be removed and others would be re-routed in sensitive areas. Planned and natural prescribed fire would be used to return interior areas of the wilderness to pre-historial conditions. Reservation and permit fees (if legal) would be collected.

Enhanced Ecosystem. Group sizes for users and stock would be further reduced from the other alternatives, and the numbers of overall visitors would be reduced. Cattle would be excluded from riparian areas within the wilderness. Stocking of non-native fish species would be precluded in more pristine areas. Dogs, recreational shooting, and campfires would be prohibited. The number of signs, stream maintenance dams, and trails would be reduced. Trails would be re-routed away from sensitive areas; stream crossings would be repaired; riparian areas would be revegetated. Planned and natural prescribed fire would be used throughout the wilderness. Reservation and permit fees (if legal) would be collected.

Maximum Wilderness Preservation. The wilderness would be managed for very primitive to pristine conditions. Stock and human use levels would be reduced. Dogs, shooting, and campfires would be prohibited. Signing, streamflow maintenance dams, some campsites, and many trails would be removed. Fish stocking would cease. Reservation and permit fees (if legal) would be collected.

Ronald E. Stewart, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1994. At that time the EPA will publish a notice of availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date EPA's notice of availability appears in the Federal Register. It is very important that reviewers participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by January 1995. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 215.

Dated: April 20, 1994.

Susan R. Swinson,

Acting Forest Supervisor, Lake Tahoe Basin Management Unit.

Dated: April 14, 1994.

Robert E. Harris,

Acting Forest Supervisor, Eldorado National Forest.

[FR Doc. 94–10397 Filed 4–29–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Wahoo Creek Watershed, Saunders County, NE

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Wahoo Creek Watershed, Saunders County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Ronald E. Moreland, State Conservationist, Soil Conservation Service, Federal Building, room 152, 100 Centennial Mall North; Lincoln, NE 68508–3866; telephone: (402) 437–5300.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Ronald E. Moreland, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for flood prevention, water quality and recreation improvement. Alternatives under consideration to reach these objectives include systems for conservation land treatment, structural measures, and non-structural measures.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have a special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held at various locations within the watershed and announced thirty days prior to date to be held to determine the scope of the evaluation of the proposed action. Further information on the proposed action or the scoping meetings may be obtained from Ronald E. Moreland, State Conservationist, at the above address or telephone (402) 437–5300.

Dated: April 20, 1994.

Ronald E. Moreland,

State Conservationist.

[FR Doc. 94–10398 Filed 4–29–94; 8:45 am]

BILLING CODE 3210–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene from 6 p.m. and adjourn at 9 p.m. on Friday, May 20, 1994, and reconvene at 9:00 a.m. and adjourn at 12 p.m. on Saturday, May 21, 1994, at the Courtyard by Marriott, 2101 River Plaza Drive, Sacramento, California 95833. The purpose of the meeting is to first have all subcommittees (education, administration of justice, government operations, and employment) discuss projects to be presented to the full Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–10399 Filed 4–29–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Wednesday, May 18, 1994, at the Doubletree Hotel, 475 Parkcenter Blvd., Boise, Idaho 83705. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gladys Esquibel or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–10400 Filed 4–29–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 03/16/94–04/15/94

Firm name	Address	Date petition accepted	Product
Pennsylvania Woven Carpet Mills, Inc.	401 E. Allegheny Avenue, Philadelphia, PA 19134.	03/17/94	Wool is woven on Wilton Looms to produce Wilton and Axminster Carpeting.
Woodies Cajun Lures	P.O. Box 850, 44 Z Beavers Road, Pineville, LA 71360.	03/17/94	Artificial baits and flies.
Diamon Images Incorporated.	120 C Albright Way, Los Gatos, CA 95030.	03/25/94	Photo Masks for use in the manufacture of integrated circuit products.
Hytek Finishes Co., Inc	8127 South 216th Street, Kent, WA 98032.	03/25/94	Aerospace parts.
Precision Gear, Inc	48–09 108th Street, Corona, NY 11368.	03/28/94	Aircraft gear assemblies.
Welsh Company	1535 S. Eighth Street, St. Louis, MO 63104.	03/31/94	Baby carriages and Jenny Lind cribs.
Jacqueline Manufacturing Corporation.	Box 579, Richlands, VA 24641.	03/31/94	Ladies' nightwear of cotton and cotton polyester.
U.S. Metal Forming, Inc	592 New Britain Ave., Farmington, CT 06034–0886.	04/04/94	Metal stamped and welded subassemblies for circuit breakers and misc. metal stampings.
Snow River Wood Products, Inc.	RR 6 Vernon Road, Brattleboro, VT 05301.	04/05/94	Utility boards: Various styles of cutting boards and counter boards.
Martin & Richardson Seafood Co., Inc.	801 Jefferson Avenue, Newport News, VA 23607.	04/06/94	Food & Bevg.—Fresh crabmeat.
Sperry Marine, Inc	1070 Seminole Trail, Charlottesville, VA 22901.	04/07/94	Gyropilots and Gyro Compasses, Radar and Radar Displays.
Diamond Research & Development Company, Inc.	2735 Cheshire Lane, Plymouth, MN 55447.	04/07/94	Portable Quartz Halogen Floodlights and replacement bulbs.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 03/16/94–04/15/94—Continued

Firm name	Address	Date petition accepted	Product
ALTEC International Limited Partnership.	2191 Ward Avenue, La Crosse, WI 54601.	04/07/94	Brazed Aluminum Plate-Fin Heat Exchangers and Steel Composit Pipe Joints.
Champion Fasteners, Inc	500 Campus Drive, Mt. Holly, NJ 08060.	04/07/94	Metal products—Steel and Aluminum Welding Studs.
Celebration Fun Flowers	9402 Fruitland Avenue, East, Puyallup, WA 98371.	04/07/94	Flowers—Artificial
Tidland Corporation	2305 SE 8th Avenue, Camas, WA 98607–0008.	04/07/94	Metal Products—Shafts and Chucks and Slitting Frams and Accessories.
Precision Metal Works	145 Union Street, Holbrook, MA 02343.	04/08/94	Precision Metal Stamped Components.
American Grape Harvesters, Inc.	1600 ½ Ross Street, Selma, CA 93662–3600.	04/08/94	Mach. & Equip.—Grape harvesters.
Inter-State Dyeing & Finishing Co. Inc.	35 8th Street, Passaic, NJ 07055.	04/08/94	Dyed and finished woven fabric made of synthetic fiber.
Quiet Sport, Inc	60 Southeast Kennedy Drive, Duvall, WA 98109.	04/08/94	Footwear—Neoprene waders and hip boots, dog vests, water ski bindings and fisherman float tubes.
Library Bureau, Inc	801 Park Avenue, Herkimer, NY 13350.	04/08/94	Furniture—wood and steel shelving for library furniture market.
Liberty Tool Corporation	350 Buell Road, Rochester, NY 14692.	04/08/94	Mach. & Equip.—milling machines.
Innotec Group, Inc	61 W. Moreland Road, Simi Valley, CA 93065.	04/12/94	Thin film deposition systems for use in the manufacture of semiconductors.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 21, 1994.

Pedro R. Garza,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 94–10450 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–301–602]

Initiation of Administrative Review and Request for Revocation in Part of the Antidumping Duty Order on Certain Fresh Cut Flowers From Colombia

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of administrative review and request for revocation in part of the antidumping duty order on certain fresh cut flowers from Colombia.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. Requests for revocation from the antidumping order were also received from specific exporters/growers. In accordance with the Department's regulations, we are initiating this administrative review for the period March 1, 1993 through February 28, 1994. We are initiating this review for those named exporters/growers for whom a request for review was received. The Department is also noting those exporters/growers who have requested revocation from the antidumping duty order.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Daniel Manzoni, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests in accordance with 19 CFR 353.22 (a)(1), (a)(2), and (a)(3) of the Department's regulations for an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The Department has also received requests for revocation from the exporters/growers noted.

Initiation of Review

In accordance with 19 CFR 353.22(c) of the Department's regulations, we are initiating an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. 19 CFR 353.22(c). The Department is not initiating an administrative review of any Colombian exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under 19 CFR 353.22(a). We intend to issue the final results of this review no later than March 31, 1995.

We received requests for review of the following specifically-named exporters/growers:

Abaco Tulipanes de Colombia
Achalay
Aga
Agrex de Oriente
Agricola Acevedo Ltda.

- Agricola Altiplano
- Agricola Arenales Ltda
- Agricola Benilda Ltda.
- Agricola Bojaca Ltda.
- Agricola Bonanza Ltda
- Agricola Circasia Ltda.
- Agricola de la Fontana Ltda
- Agricola de Los Alisos Ltda
- Agricola de Occidente
- Agricola del Monte
- Agricola el Cactus S.A
- Agricola el Jardin
- Agricola el Redil Ltda
- Agricola Guali S.A.
- Agricola Jicabal
- Agricola La Celestina
- Agricola La Corsaria Ltda
- Agricola La Maria
- Agricola La Siberia
- Agricola Las Cuadras
- Agricola Los Arboles S.A
- Agricola Malqui
- Agricola Megaflor Ltda.
- Agricola Monteflor Ltda
- Agricola Sagasuca Ltda
- Agricola Usatama
- Agricola Yuldama
- Agriflora
- Agrobloom Ltda
- Agrocaribu Ltda.
- Agro de Narino
- Agrodex/Ukrania
- Agrodex Group
  - Agricola el Retiro Ltda
  - Agricola los Gaques Ltda
  - Agrodex Ltda.-Adelaida
  - Degaflores Ltda.
  - Flores Camino Real Ltda
  - Flores de la Comuna Ltda.
  - Flores de La Mercedes Ltda
  - Flores de Los Amigos Ltda.
  - Flores de Los Arrayanes Ltda
  - Flores De Mayo Ltda.
  - Flores de Pueblo Viejo Ltda
  - Flores del Gallinero Ltda
  - Flores del Potrero Ltda.
  - Flores el Trentino Ltda
  - Flores la Conejera Ltda
  - Flores Manare Ltda
  - Florlinda Ltda.
  - Horticola Montecarlo Ltda
  - Horticola El Triunfo Ltda
  - Inversiones Santa Rosa Arw Ltda
- Agroindustria del Rio Frio Ltda.
- Agroindustrial Don Eusebio Ltda. Group
  - Agroindustrial Don Eusebio Ltda.
  - Celia Flowers
  - Passion Flowers
  - Primo Flowers
  - Temptation Flowers
- Agroindustrial Madonna S.A
- Agroindustrias De Narino Ltda
- Agrokoralia
- Agromonte Ltda.
- Agropecuria Cuernavaca Ltda
- Agropecuaria la Marcela
- Agropecuaria Mauricio
- Agrocosas
- Agrotabio Kent
- Aguacarga
- Alcala
- Alstroflores Ltda.
- Amoret
- Ancas Ltda.
- Andes Group
  - Cultivos Buenavista Ltda
  - Flores de los Andes Ltda.
  - Flores Horizonte Ltda.
  - Inversiones Penas Blancas Ltda.
- A.Q.
- Arboles Azules Ltda.
- Aspen Gardens
- Astro Ltda.
- Bali Flowers
- Becerra Castellanos y Cia.
- Bellavista
- Bloomshare Ltda.
- Bogota Flowers
- Caico
- Caicedo Group
  - Exportaciones Bochica S.A.
  - Floral Ltda
  - Flores del Cauca S.A.
  - Aranjuez S.A.
  - Productos El Zorro
  - Andalucia
- Cantarrana Group
  - Cantarrana Ltda.
  - Deer Field Flowers/Agricola los Venados Ltda.
- Carcol Ltda
- Catu S.A.
- Ciba Geigy
- Cienfuegos Groups
  - Cienfuegos Ltda.
  - Flores la Conchita De German
  - Flores la Conchita German Ribon y Cia S. en C.
- Cigarral Group
  - Flores Cigarral
  - Flores Tayrona
- Classic
- Claveles Colombianos Group
  - Claveles Colombianos Ltda.
  - Fantasia Flowers Ltda.
  - Splendid Flowers Ltda.
  - Sun Flowers Ltda.
- Claveles de los Alpes Ltda.
- Claveles Tropicales de Colombia Ltda.
- Clavelez
- Coexflor
- Colflores
- Colibri Flowers Ltda.
- Colony International Farm
- Color Explosion
- Combiflor
- Comercializadora Caribbean
- Conflores Ltda.
- Consorcio Agroindustrial Columbiano S.A.
- Cota
- Crest D'or
- Crop S.A.
- Clutivos Guameru
- Cultiflores Ltda.
- Cultivos el Lago Ltda.
- Cultivos Medillin Ltda.
- Cultivos Miramonte
- Cultivos Tahami Ltda.
- Cypress Valley
- Daflor Ltda.
- Degaflor
- De La Pava Guevara E Hijos Ltda.
- Del Monte
- Del Tropico Ltda.
- Dianticola Colombiana Ltda.
- Disagro Ltda.
- Diveragricola
- Dynasty Roses Ltda.
- El Antelio S.A.
- El Dorado
- Elite Farms
- Elite Flowers
- El Milagro
- El Timbul Ltda.
- Emeral Farms
- Envy Farms Ltda.
- Euroflora
- Exoticas
- Exotic Flowers
- Exotico
- Expoflora Ltda.
- Exporosas
- Exportadors
- F. Salazar
- Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
- Fernando de Mier
- Ferson Trading
- Flamingo Flowers
- Flor Colombia S.A.
- Flor y Color
- Flora Bellisima Ltda.
- Flora Intercontinental Ltda.
- Floralex Ltda.
- Florandia Herrera Camacho & Cia.
- Floreales Group
  - Floreales Ltda.
  - Kim Baya
- Florenal Ltda.
- Flores Abaco S.A.
- Flores Acuarela S.A.
- Flores Agromonte
- Flores Aguila Ltda.
- Flores Ainsuca Ltda.
- Flores Alborado
- Flores Alcala Ltda.
- Flores Alfaya Ltda.
- Flores Andinas Ltda.
- Flores Ainsus
- Flores Arco Iris
- Flores Aurora
- Flores Bachue Ltda.
- Flores Balu
- Flores Calichana
- Flores Canelon
- Flores Carmel S.A.
- Flores Catalina
- Flores Casablanca S.A.
- Flores Colon Ltda.
- Flores Comercial
- Flores Cerezangos
- Flores Corola
- Flores de Aposentos Ltda.
- Flores de Colombia (FLORCOL) Ltda.
- Flores de Fragua
- Flores de Guasca
- Flores de Hacaritama
- Flores de Hunza Ltda.
- Flores de Iztari
- Flores de Memecon/Corinto
- Flores de Oriente
- Flores de Serrenzuela S.A.
- Flores de Suba Ltda.
- Flores de Suesca S.A.
- Flores de Tenjo Ltda.
- Flores de la Cuesta
- Flores de la Hacienda
- Flores de la Maria
- Flores de la Montana
- Flores de la Parcelita
- Flores de la Pradera Ltda.
- Flores de la Sabana S.A.
- Flores de la Vega
- Flores de la Vereda S.A.
- Flores del Campo Ltda.
- Flores del Cielo Ltda.
- Flores del Cortijo
- Flores del Hato

- Flores del Lago Ltda.
- Flores del Rio Group
  - Agricola Cardenal
  - Flores de Rio S.A.
  - Indigo S.A.
- Flores del Molino
- Flores del Prado
- Flores del Salitre Ltda.
- Flores del Tambo
- Flores Depina S.A.
- Flores el Lobo Ltda.
- Flores el Majui
- Flores el Molino S.A.
- Flores el Rosal Ltda.
- Flores el Talle Ltda.
- Flores el Tandil Ltda.
- Flores el Zorro
- Flores Flamingo Ltda.
- Flores Fusu
- Flores Galia Ltda.
- Flores Generales Ltda.
- Flores Gicro Ltda.
- Flores Gloria
- Flores Guaicata Ltda.
- Flores Hacienda Bejucol
- Flores Intercontinentales
- Flores Juanambu
- Flores Juncalito Ltda.
- Flores la Cabanuela
- Flores la Fragrancia
- Flores la Gioconda
- Flores la Lucerna
- Flores la Macarena
- Flores la Pampa
- Flores la Union
- Flores la Union-Gomez Arango & Cia. S. en C.
- Flores la Union/Santana
- Flores la Valvanera Ltda.
- Flores las Caicas
- Flores Marandua Ltda.
- Flores Las Mesitas
- Flores Los Sauces Ltda.
- Flores Mapara
- Flores Mocari S.A.
- Flores Monserrate Ltda.
- Flores Montecarlo
- Flores Naturales
- Flores Palimana
- Flores Petaluma Ltda.
- Flores Ramo Ltda.
- Flores Rio Grande
- Flores S.A.
- Flores Sagaro
- Flores Saint Valentine
- Flores Sairam Ltda.
- Flores San Andres
- Flores San Carlos
- Flores San Juan S.A.
- Flores San Mateo Ltda.
- Flores Santa Fe Ltda.
- Flores Santa Lucia
- Flores Sausalito
- Flores Selectas
- Flores Silvestres
- Flores Sindamanoi
- Flores Suasuque
- Flores Tejas Verdes Ltda.
- Flores Tenerife Ltda.
- Flores Tiba S.A.
- Flores Tibati Ltda.
- Flores Tocarinda
- Flores Tomine Ltda.
- Flores Urimaco
- Flores Violette
- Florex Group
  - Agricola Guacari S.A.
  - Flores Altamira S.A.
  - Flores de Exportacion S.A.
  - Four Farmers
- Florex S.A.
- Florexpo
- Floricola
- Floricola la Gaitana S.A.
- Florimex Colombia Ltda.
- Florisol
- Florpacifico
- Floval
- Flower Factory
- Flowers of the World/Rosa
- Four Seasons
- Fracolsa
- Fresh Flowers
- Fribir Ltda.
- Funza Group
  - Flores Alborada
  - Flores de Funza
  - Flores del Bosque
- Garden and Flowers Ltda.
- German Ocampo
- Granja
- Green Flowers
- Groex S.A.
- Grupo Andes
  - Cultivos Buenavista Ltda.
  - Flores de los Andes
  - Flores Horizonte Ltda.
  - Inversiones Penas Blancas
- Grupo Florex
  - Agricola Gucari S.A.
  - Flores Altamira S.A.
  - Flores de Exportacion S.A.
- Guacatay Group
  - Agricola Guacatay S.A.
  - Jardines Bacata Ltda.
- Gypso Flowers
- Hacienda La Embarrada
- Hacienda Matute
- Hacienda Susata
- Hana/Hisa Group
  - Flores Hana Ichi de Colombia Ltda.
  - Flores Tokai Hisa
- Herando Monroy
- Hill Crest Gardens
- Horticultura de la Sasan
- Horticultura Montecarlo
- Horticultura el Molino
- Illusion Flowers
- Happy Candy Group
  - Flores Tropicales Ltda.
  - Happy Candy Ltda.
  - Mercedes Ltda.
  - Rosas Colombianas Ltda.
- Hosa Group
  - Horticultura de la Sabana S.A.
  - Innovacion Andina S.A.
  - Minispray S.A.
- Industria Santa Clara
- Industrial Agricola
- Industrial Terwengel Ltda.
- Ingro Ltda.
- Innovacion Andina S.A.
- Inpar
- Interflora Ltda.
- Inter Flores Ltda.
- Internacional Flowers
- Inverfloral Ltda.
- Invernavas
- Inverpalmas
- Inversiones Almer Ltda.
- Inversiones Bucarelia
- Inversiones Cota
- Inversiones del Alto
- Inversiones Cubivan
- Inversiones el Bambu Ltda.
- Inversiones el Eden
- Inversiones Kluar
- Inversiones Maya Ltda.
- Inversiones Morcote
- Inversiones Nativa Ltda.
- Inversiones & Producciones Tecnicas
- Inversiones Playa
- Inversiones Santa Rita Ltda.
- Inversiones Silma
- Inversiones Sima
- Inversiones Supala S.A.
- Inversiones Valley Flowers
- Iturrama S.A.
- Jardin
- Jardin de Carolina
- Jardines Choconta
- Jardines Darpu
- Jardines de America
- Jardines de Chia Ltda.
- Jardines de Los Andes
- Jardines de Timana
- Jardines del Muna
- Jardines Fredonia
- Jardines Natalia Ltda.
- Jardines Tocarema
- J.M. Torres
- Karla Flowers
- Kimbaya
- Kingdom S.A.
- La Colina
- La Embairada
- La Flores Ltda.
- La Floresta
- La Florida
- La Marotte S.A.
- La Plazoleta Ltda.
- Las Amalias S.A./Pompones Ltda.
- Las Flores Ltda.
- Laura Flowers
- L.H.
- Linda Colombiana
- Loma Linda
- Loreana Flowers
- Los Geranios Ltda.
- Luisa Flowers
- M. Alejandra
- Manjui Ltda.
- Merastec
- M.G. Consultores Ltda.
- Miraflores Group
  - Inversiones Miraflores S.A.
  - Inversiones Oro Verde S.A.
- Mauricio Uribe
- Maxima Group
  - Agricola Los Arboles
  - Rainbow Flowers
  - Polo Flowers
  - Maxima Farms
- Monteverde Ltda.
- Morcoto
- Morrosquillo
- My Flowers Ltda.
- Naranjo
- Nasino
- Natuflora
- Olga Rincon
- Orquideas Acatayama
- Otono
- Papagayo Group
  - Agricola Papagayo Ltda.
  - Inversiones Calypso S.A.
- Petalos Colombia Ltda.
- Pinar Guameru

- Piracania
- Pisochago Ltda.
- Plantaciones Delta Ltda.
- Plantas Ornamentales de Colombia Ltda.
- Planata S.A.
- Prismaflor
- Proflores Ltda.
- Propagar Plantas S.A.
- Queens Flowers de Colombia Ltda.
- Reme Salamanca
- Rosa Bella
- Rosaflor Ltda.
- Rosales de Colombia Ltda.
- Rosales de Suba Ltda.
- Rosalina Ltda.
- Rosas de Colmbia Ltda.
- Rosas Sabanilla Group
  - Flores la Colmena Ltda.
  - Rosas Sabanilla Ltda.
  - Inversiones la Serena Ltda.
  - Agricola la Capilla Ltda.
- Rosas Tesalia Ltda.
- Rosas y Flores Ltda.
- Rosas y Jardines
- Rose
- Roselandia S.A.
- Rosex Ltda.
- Rosicler Ltda.
- Sabana Flowers
- San Ernesto
- San Martin Bloque B Ltda.
- San Valentine
- Sansa Flowers Ltda.
- Santa Helena S.A.
- Santa Rose Group
  - Flores Santa Rosa Ltda.
  - Floricola la Ramada Ltda.
- Santana Flowers group
  - Santana Flowers Ltda.
  - Hacienda Curubital Ltda
  - Inversiones Istra Ltda.
- Sarena
- S.B. Talle
- Select Pro
- Senda Brava Ltda.
- Shasta Flowers Compania Ltda.
- Shila
- Siempreviva
- Siete Flores S.A.
- Soagro Group
  - Agricola el Mortino Ltda.
  - Flores Aguaclara Ltda.
  - Flores del Monte Ltda.
  - Flores la Estancia
  - Jaramillo y Daza
- Solor Flores Ltda.
- Starlight
- Sunbelt Florals
- Sunset Farms
- Superflora Ltda.
- Susca
- Sweet Farms Ltda.
- Tag Ltda. Siata
- Tecnica Agricola Ganadera
- Tempest Flowers
- The Beall Company
- The Rose
- Tinzuque Ltda.
- Tomino
- Toto Flowers
- Tropical Garden
- Tropiflor
- Tuchany Group
  - Tuchany S.A.
  - Flores Sibate
  - Flores Tikiya
  - Flores Munya
- Uniflor Ltda.
- Universal Flowers
- Vegaflor Ltda.
- Velez De Monchaux e Hijos y Cia. S. en C.
- Victoria Flowers
- Villa Cultivos Ltda.
- Villa Diana Ltda.
- Vuelven Ltda.
- Zipa Flowers

In addition to the names listed above, we received requests for other firms for which we are not initiating an administrative review. These include Flores Timana Ltda., which was specifically excluded on March 18, 1987, from the antidumping order covering this merchandise (see Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Fresh Cut Flowers from Colombia (52 FR 4893)), and Flores Condor, which was revoked from the order on March 31, 1994 (see flower case Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (In Part) (59 FR 15159)).

Also, an administrative review was requested for a number of firms based on incorrect names. However, the Department is already initiating reviews for the firms based on the correct name. Listed below are the names of all firms for which administrative review was requested under a variant name and, in parenthesis, the correct name of the firm under which we are initiating a review for the firm in question:

- Abaco (Abaco Tulipanes de Colombia)
- Agri-fontana (Agricola de la Fontana Ltda.)
- Agricola Fontana Ltda. (Agricola de la Fontana Ltda.)
- Agricola Jicaral (Agricola Jicabal)
- Agrodex el Retiro (Agricola el Retiro Ltda.)
- Agrodex Ltda. (Agrodex Group)
- Almer (Inversionses Almer Ltda.)
- Astroflores Ltda. (Alstroflores Ltda.)
- Aurora (Flores Aurora)
- Austroflor (Alstroflores Ltda.)
- Bochica Group (Caicedo Group)
- Cabanuela (Flores la Cabanuela)
- Canelon (Flores Canelon)
- Cantana Rana Group (Cantarrana Group)
- Cantaranna Ltda. (Cantarrana Ltda.)
- Canta Rana Ltda. (Cantarrana Ltda.)
- D' La Pava (De La Pava Guevara E Hijos Ltda.)
- El Rosal (Flores el Rosal Ltda.)
- Florcol (Flores de Colombia (FLORCOL) Ltda.)
- Flores Alisos (Agricola de los Alisos Ltda.)
- Flores Chia (Jardines de Chia Ltda.)
- Flores de la Conjera (Flores la Conejera Ltda.)
- Flores de Montana (Flores de la Montana)
- Flores de Pueblo Viejo (Flores de Pueblo Viejo Ltda.)
- Flores de Santa Fe (Flores Santa Fe Ltda.)
- Flores de Santa Rosa (Flores Santa Rosa Ltda.)
- Flores de Savanilla (Rosas Sabanilla Group)
- Flores del Tropico Ltda. (Del Tropico Ltda.)
- Flores el Lobo (Flores el Lobo Ltda.)
- Flores Envy Farms Ltda. (Envy Farms Ltda.)
- Flores F. Cortijo (Flores del Cortijo)
- Flores Intercontinental (Flora Intercontinental Ltda.)
- Flores la Union/Esmeralda (Flores la Union)
- Flores Monserate/Rosas (Flores Monserrate Ltda.)
- Flores Monteverde (Monteverde Ltda.)
- Flores Morcari (Flores Mocari S.A.)
- Flores Santana (Santana Flowers Ltda.)
- Flores Tenerife/Statice (Flores Tenerife Ltda.)
- Floresa (Flores S.A.)
- Jardines Natalia/Maria Alejandra (Jardines Natalia Ltda.)
- La Comuna (Flores de la Comuna Ltda.)
- La Macarena (Flores la Macarena)
- La Maria (Flores de la Maria)
- La Plazuleta (La Plazoleta Ltda.)
- Los Gaques (Agricola los Gaques Ltda.)
- Mansui Ltda. (Manjui Ltda.)
- Meraste (Merastec)
- Miraflores (Miraflores Group)
- Monserrate (Flores Monserrate Ltda.)
- Morandua (Flores Marandua Ltda.)
- Natalia (Jardines Natalia Ltda.)
- Oroverde (Inversiones Oro Verde S.A.)
- Papagayo (Papagayo Group)
- Plazoleta (La Plazoleta Ltda.)
- San Carlos (Flores San Carlos)
- Santa Fe (Flores Santa Fe Ltda.)
- Santa Rosa (Santa Rosa Group)
- Tambo (Flores del Tambo)
- Tenjo (Flores de Tenjo Ltda.)
- Tocarinda (Flores Tocarinda)

We have received requests for revocation from the antidumping duty order for the following exporters/growers:

- Agricola Circasia
- Catu S.A.
- Cultivos Miramonte
- Flores Aurora
- Flores de la Vereda S.A.
- Flores Del Rio Group
  - Flores Del Rio
  - Agricola Cardenal
  - Indigo
- Flores el Molino
- Flores La Valvanera
- Flores Santa Fe
- Floricola la Gaitana
- Florex Group
  - Flores de Exportacion
  - Flores Altamira
  - Agricola Guacari
  - Four Farmers
- Cuacatay Group
  - Jardines Bacata
  - Agricola Guacatay
- Inverpalmas
- Jardines de Chia
- M.G. Consultores
- Senda Brava Ltda.
- Tinzuque Ltda.

Interested parties must submit applications for administrative protective orders in accordance with 19 CFR 353.34(b) of the Department's regulations.

This initiation and notice are in accordance with Section 751(a) of the

Tariff Act of 1930, as amended. 19 U.S.C. 1675(a) and 19 CFR 353.22(c).

Dated: April 25, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–10454 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–818]

Personal Word Processors From Japan; Final Results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order; Termination of Anticircumvention Inquiry

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order; Termination of Anticircumvention Inquiry.

SUMMARY: On March 24, 1994, the Department of Commerce published the Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation of Order, Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order on personal word processors from Japan (59 FR 13930). We have completed this review and are revoking the antidumping duty order on PWPs from Japan. We are also terminating the ongoing anticircumvention inquiry of this order.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow or Wendy J. Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5256 and 482–0367, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 42593) an antidumping duty order on personal word processors (PWPs) from Japan (the order). On August 20, 1992, (57 FR 37770), the Department published an amended order. On February 15, 1994, Smith Corona Corporation (Smith Corona), the petitioner in the underlying less-than-fair-value (LTFV) investigation, submitted a request for a changed circumstances administrative review and revocation of the order based on the represented fact that the order no longer is of interest to the domestic interested parties. For the same reasons, in its February 15, 1994, request, Smith Corona withdrew its petition requesting an investigation to determine whether the order was being circumvented pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act). Smith Corona made the withdrawal of that petition and the revocation contingent upon termination of the suspended antidumping investigation on portable electric typewriters from Singapore (A–559–806). Smith Corona also made representations that other U.S. producers of this merchandise (Canon Business Machines and Brother Industries (USA), Inc.) consented to revocation of the order.

On March 24, 1994, the Department published the Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation of Order, Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order on PWPs from Japan (59 FR 13930). In that notice the Department preliminarily determined that the order no longer is of interest to domestic interested parties and notified the public of its intent to revoke the order. The Department gave interested parties an opportunity to comment on the preliminary results and none of the interested parties commented. On April 8, 1994, Brother Industries (USA), Inc., the petitioner in the investigation of portable electric typewriters from Singapore (A–559–806), submitted its request, pursuant to 19 CFR 353.17(a), to terminate the suspended investigation in that case. A notice of such termination will be published simultaneously with this notice.

Scope of Review

The scope of the order covers personal word processors from Japan as defined in the Department's antidumping duty order on PWPs from Japan (56 FR 42593, August 28, 1991), as amended (57 FR 37770, August 20, 1992). PWPs are currently classifiable under item number 8469.10.00 of the Harmonized Tariff Schedule (HTS) of the United States. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Final Results of Changed Circumstances Antidumping Duty Administrative Review, Revocation of Order

Pursuant to section 751(c) of the Act, the Department may revoke an antidumping duty order if the Department determines, based on a review under section 751(b)(1) of the Act, that changed circumstances exist sufficient to warrant revocation. Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

Section 353.25(d)(2) of the Department's regulations permits the Department to conduct an administrative review under § 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding. Section 353.25(d)(1)(i) further provides that if the Department determines that the order under review is no longer of interest to domestic interested parties, the Department may revoke the antidumping duty order.

In accordance with sections 751(b)(1) and (c) of the Act and 19 CFR 353.25(d) and 353.22(f), based upon the facts of this case and the fact that none of the interested parties objected to or otherwise commented on our preliminary results, we have determined that the order no longer is of interest to domestic interested parties. The Department determines that the requirement for revocation based on the changed circumstance that the order no longer is of interest to domestic interested parties has been met. Therefore, we are hereby revoking the antidumping duty order on PWPs from Japan. We are also terminating the ongoing anticircumvention inquiry of the order on PWPs from Japan.

These final results will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1993 (the day after the last administrative review period for which automatic liquidation instructions were sent to the U.S. Customs Service). We intend to instruct the U.S. Customs Service to liquidate all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1993, without regard to antidumping duties.

We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries.

This administrative review, revocation, and notice are in accordance with sections 751(b)(1) and (c) of the

Act and §§ 353.22(f) and 353.25(d) of the Department's regulations.

Dated: April 22, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10451 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–DS–P

A–588–087

Portable Electric Typewriters From Japan; Final Results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of Changed Circumstances Antidumping Duty Administrative Review; Revocation of Order.

SUMMARY: On March 24, 1994, the Department of Commerce published the Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation of Order, Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order on portable electric typewriters from Japan (59 FR 13932). We have completed this review and are revoking the antidumping duty order on PETs from Japan.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas Prosser or Wendy J. Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1130 and 482–0367, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On May 9, 1980, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 40926) an antidumping duty order on Portable Electric Typewriters (PETs) from Japan (the order). On February 15, 1994, Smith Corona Corporation (Smith Corona), the petitioner in the underlying less-than-fair-value (LTFV) investigation, submitted a request for a changed circumstances administrative review and revocation of the order based on the represented fact that the order no longer is of interest to the domestic interested parties. Smith Corona submitted this request contingent upon termination of the suspended antidumping investigation on portable electric typewriters from Singapore (A–559–806). Smith Corona also made representations that other U.S. producers and potential U.S. producers of this merchandise (Nakajima All Manufacturing Limited, Canon Business Machines, and Brother Industries (USA), Inc.) consented to revocation of the order.

On March 24, 1994, the Department published the Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation of Order, Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order on PETs from Japan (59 FR 13932). In that notice the Department preliminarily determined that the order no longer is of interest to domestic interested parties and notified the public of its intent to revoke the order. The Department gave interested parties an opportunity to comment on the preliminary results and none of the interested parties commented. On April 8, 1994, Brother Industries (USA) Inc., the petitioner in the investigation of portable electric typewriters from Singapore (A–559–806), submitted its request, pursuant to 19 CFR 353.17(a), to terminate the suspended investigation in that case. A notice of such termination will be published simultaneously with this notice.

Scope of Review

The scope of the order covers PETs, automatic PETs (PATs), PETs incorporating a calculating mechanism, and certain personal word processors (PWPs). On August 7, 1990, in Preliminary Scope Ruling; Portable Electric Typewriters from Japan (55 FR 32107), the Department clarified the scope of the order, ruling that "* * * certain later-developed PETS, including so-called 'personal word processors' are presumptively of the same class or kind as PETs within the scope of the order * * *." The Department determined that to be of the same class or kind as a PET, a typewriter must meet the following seven physical criteria:

(1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate portability;

(2) Be electric, regardless of source of power;

(3) Be comprised of a single, integrated unit;

(4) Have a keyboard embedded in the chassis or frame of the machine;

(5) Have a built-in printer;

(6) have a platen (roller) to accommodate paper; and

(7) Only accommodate its own dedicated or captive software. The final scope ruling was published on November 13, 1990 (55 FR 47358).

PETs, PATs, and certain PWPs are currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8469.10.00, 8469.21.00, and 8469.29.00. The HTS subheadings are provided for convenience and Customs purposes. Our written description of the scope of this order is dispositive.

This changed circumstance administrative review covers all manufacturers/exporters of PETs and PATs, and PETs incorporating a calculating mechanism manufactured in Japan, and all manufacturers/exporters of those PWPs falling within the scope of the PETs order that are manufactured in Japan.

Final Results of Changed Circumstances Antidumping Duty Administrative Review, Revocation of Order

Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping duty order if the Department determines, based on a review under section 751(b)(1) of the Act, that changed circumstances exist sufficient to warrant revocation. Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

Section 353.25(d)(2) of the Department's regulations permits the Department to conduct an administrative review under § 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding. § 353.25(d)(1)(i) further provides that if the Department determines that the order under review is no longer of interest to domestic interested parties, the Department may revoke the antidumping duty order.

In accordance with sections 751(b)(1) and (c) of the Act and 19 CFR 353.25(d) and 353.22(f), based upon the facts of this case and the fact that none of the interested parties objected to or otherwise commented on our preliminary results, we have determined that the order no longer is of interest to domestic interested parties. The Department determines that the requirement for revocation based on the changed circumstance that the order no longer is of interest to domestic interested parties has been met. Therefore, we are hereby revoking the antidumping duty order on PETs from Japan.

The Department is terminating the administrative reviews covering the following periods: May 1, 1990, through April 30, 1991 (initiated on June 18, 1991 (56 FR 27943)); May 1, 1991, through April 30, 1992 (initiated on June 18, 1992 (57 FR 27212)); and May 1, 1992, through April 30, 1993 (initiated on June 25, 1993 (58 FR 34414)).

For all companies for which an administrative review has been requested but not completed, the effective date of revocation will be May 1, 1990. May 1, 1990, is the first day after the most recent period for which an administrative review has been completed for all of these companies. For all other companies subject to this antidumping duty order, the effective date of revocation will be May 1, 1993. May 1, 1993, is the first day for which automatic liquidation instructions have not been issued for these other companies. We will instruct the U.S. Customs Service to liquidate all entries of subject merchandise in accordance with the above effective dates of revocation. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to entries made on or after May 1, 1990, for which a review has been requested but not completed, and we will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected on or after May 1, 1993, with respect to all other entries made.

This administrative review, revocation, and notice are in accordance with sections 751(b)(1) and (c) of the Act and §§ 353.22(f) and 353.25(d) of the Department's regulations.

Dated: April 22, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10452 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–824]

Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Alley or Andrew McGilvray, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5288 or (202) 482–0108, respectively.

FINAL DETERMINATION: We determine that silicon carbide from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on November 29, 1993, (58 FR 64549, December 8, 1993), the following events have occurred:

On December 1, 1993, the Department of Commerce (the Department) received a letter from Hainan Feitian Electrontech Company, Limited (Hainan), Shaanxi Minmetals (Shaanxi) and Xiamen Abrasive Company (Xiamen), three of the six respondents in this investigation, requesting that the Department postpone the final determination to not later than April 22, 1994, or 135 days after the date of the publication of the preliminary determination. The letter from these three respondents also requested the Department to (1) collect information on third-country sales to use as foreign market value (FMV); (2) find that Treibacher and Saint-Gobain do not qualify as "interested parties" in this proceeding, bar them from further participation in this case, and re-examine the Department's decision that petitioner has standing to file the petition; and (3) verify fully respondents' answers to the Department's questionnaire. On the same day, the other three respondents in this investigation—Inner Mongolia Import and Export Corporation (IMI/E), Qinghai Metals Import and Export Corporation (QI/E), and Seventh Grinding Wheel Factory Import and Export Corporation (SGW—also requested a disclosure conference and a postponement of the final determination.

On December 7, 1993, Hainan, Shaanxi and Xiamen submitted letters alleging ministerial errors in the Department's calculations for the preliminary determination. (For specific details of these allegations and our analysis of them, see Memorandum from Richard W. Moreland to Barbara R. Stafford of December 20, 1993.) One of these exporters, Hainan, alleged that the Department made certain errors with respect to the valuation of freight rates and packing materials. The Department agreed with this one allegation, and in accordance with procedures set forth in the proposed regulations, published an amended preliminary dumping margin for Hainan (59 FR 570, January 5, 1994).

On December 29, 1993, petitioner submitted comments on issues relating to verification. On December 30, 1993, petitioner submitted publicly available information on electricity rates in India and Pakistan as well as information on electricity capacity in the PRC. Hainan, Shaanxi, and Xiamen submitted additional information on December 30 regarding the price and quantity of their U.S. sales and the mode of transportation used to transport coal. The Department sent verification agendas to all six respondents in this investigation on December 30, 1993.

On January 3, 1994, IMI/E, QI/E, and SGW submitted publicly available information about Indian electricity rates and additional information regarding freight distances. IMI/E supplemented its freight information on January 7, 1994.

On January 4, 1994, the Department wrote to SGW regarding the Department's intention to visit two other exporters during verification to confirm that U.S. sales of silicon carbide had been reported for all entities related to SGW. We also wrote to Xiamen regarding out intention to visit China Abrasives Export Corporation (CAEC), the parent corporation of Xiamen, to confirm that all U.S. sales during the period of investigation (POI) had been reported. On January 5, 1994, we requested the assistance of the Ministry of Foreign Trade and Economic Cooperation of the PRC (MOFTEC) in arranging these meetings as well as interviews with appropriate MOFTEC officials. WE wrote to MOFTEC again on January 13, 1994, to request assistance in arranging additional meetings for the verification teams with Quinghai and Inner Mongolia provincial government officials and CAEC representatives. The Department verified responses in the PRC from January 10 to February 5, 1994 and its verification reports between February 15 and March 14, 1994.

Requests for a public hearing were received by the Department on January 5, 1994, from IMI/E, QI/E, and SGW, and on January 10, 1994, from Hainan, Shaanxi, and Xiamen.

On March 1, 1994, petitioner alleged that critical circumstances exist with regard to imports of silicon carbide from the PRC. We requested shipment data from the six respondents in this investigation on March 4, 1994, and received respondents' data on March 17, 18, 21 and 22. (Because Hainan, Shaanxi, and Xiamen failed to file public versions of their original March 11, 1994 submissions of shipment data, we rejected these submissions. Hainan, Shaanxi, and Xiamen refiled these submissions in proper form on March 17.) On March 31, 1994, we issued our preliminary affirmative determination of critical circumstances for two respondents in this investigation—Shaanxi and Xiamen. The other four respondents were found not to have massive increases in imports. In addition, the Department found that critical circumstances exist for all exporters who did not participate in this investigation (59 FR 16795, April 8, 1994). On April 6, 1994, Shaanxi and Xiamen requested that we base our calculations for critical circumstances on the date of shipment rather than the date of importation into the United States (the date used in the preliminary determination of critical circumstances). Petitioner also submitted comments on our preliminary affirmative determination of critical circumstances on April 6, 1994.

On March 11, 1994, petitioner filed information concerning the Department's surrogate value for electricity. Because this submission contained untimely filed new information, we rejected this submission. Petitioner filed new submissions regarding electricity valuation on March 23, 1994. Certain of these submissions also contained untimely filed new information and, therefore, were rejected. Petitioner and respondents submitted case briefs on March 30 and rebuttal briefs on April 4, 1994. A public hearing was held on April 6, 1994.

Scope of Investigation

The product covered by this investigation is silicon carbide, regardless of grade or form, containing by weight from 20 to 98 percent, inclusive, silicon carbide and with a grain size coarser than size 325F (as set by the American National Standards Institute), and inclusive of split sizes. Silicon carbide covered by this investigation typically contains additional impurities: iron, aluminum, silica, silicon, and carbon as well as calcium and magnesium. Silicon carbide is currently classifiable under subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and customs purposes. The written description is dispositive.

Period of Investigation

The POI is January 1, 1993, through June 30, 1993.

Best Information Available (BIA)

As stated in the preliminary determination, the Department must receive an adequate questionnaire response from each entity requesting a separate dumping margin rate before a separate rate can be applied. Consequently, all non-respondent entities, as well as respondents that fail to demonstrate eligibility for a separate rate, must receive a single "All Other" rate. We have based our "All Other" rate on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation or who failed to qualify for a separate rate. According to the Department's two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the *higher* of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

In this case, where some PRC exporters failed to respond to our questionnaire and, thus, are uncooperative, we are assigning an "All Other" rate of 406.00 percent (the highest margin calculated in the amendment petition) as BIA to the uncooperative exporters. The 406.00 percent rate also applies to all other exporters that are ineligible for separate rates.

Separate Rates

Respondents Xiamen, Hainan, and Shaanxi have requested that they be assigned separate rates. For Xiamen, we cannot consider eligibility for a separate rate because it failed to submit consolidated responses, including information on separate rates, for affiliated companies which it has stated are related to it within the meaning of section 771(13) of the Act. (See Memorandum dated April 22, 1994, from Richard W. Moreland to Barbara R. Stafford.)

For Hainan and Shaanxi, we were unable to verify certain information in their separate rates responses. Specifically, these respondents did not make available to us the bank records necessary to verify that they retain the proceeds from their export sales. Given our inability to verify Hainan's and Shaanxi's separate rate submissions, we cannot consider applying separate rates to them. (See *Ibid.*)

In addition to Xiamen, Hainan, and Shaanxi, respondents IMI/E, QI/E, and SGW have also requested that the Department issue to each of them a separate rate. These respondents have submitted completed and verified responses regarding their eligibility for separate rates.

We have analyzed the record in this investigation and agree that it is appropriate to assign separate rates to IMI/E, QI/E, and SGW. In making this determination, we have modified our separate rates policy, previously set forth in Final Determination of Sales at Less Than Fair Value; Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China ("*CDIW*") (58 FR 37908, July 14, 1993) and Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China ("*Lock Washers*") (58 FR 48833, September 20, 1993). In *CDIW*, we took the position that state-ownership (*i.e.* "ownership by all the people") "provides the central government the opportunity to manipulate the [exporter's] prices whether or not it has taken advantage of that opportunity during the period of investigation." Thus, we concluded in *CDIW* that state-owned enterprises would not be eligible for separate rates.

However, based upon further analysis and information developed in the course of this investigation, we find that the ownership of IMI/E, QI/E, and SGW "by all the people," in and of itself, cannot be considered as dispositive in determining whether those companies can receive separate rates. At verification, Mr. Zhang Yuqing, the Division Chief of the Department of Treaty and Law of MOFTEC (the Ministry of Foreign Trade and Economic Cooperation), explained that the designation on these respondents' business licenses that they are "owned by all the people" does not mean that the central, provincial, or local governments control these companies. Instead, "ownership by the people" signifies that "no individual can take the company; it cannot become a private company." The company "belongs to the community" and the company's employees are entrusted with the management of the company. (See Memorandum from Andrew McGilvray, to Gary Taverman, dated February 15, 1994.)

A recent analysis by the Central Intelligence Agency supports MOFTEC's statement that ownership "by all the people" is not synonymous with central government control. (See 1992 report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2 (102 Cong., 2d Sess), 143, 196 (hereinafter, "CIA report"). The report states that a state-owned enterprise was subject to central government control prior to 1980, but that "[t]he reform decade of the 1980s brought significant changes to this scheme" and that the central government devolved control of enterprises owned "by all the people". We have, therefore, come to the conclusion that ownership "by all the people" does not require the application of a single rate. Thus, we believe a PRC respondent may receive a separate rate if it establishes on a *de jure* and *de facto* basis that there is an absence of governmental control. We have, therefore, adapted and amplified the test set out in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China* (56 FR 20588, May 6, 1991) to determine whether the respondents in this case are entitled to separate rates.

1. Absence of De Jure Control

Three enactments that have been placed on the record in this case indicate that the responsibility for managing state-owned enterprises has been shifted from the government to the enterprise itself. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("*1988 Law*"); "Regulations for Transformation of Operational Mechanism of State-owned Industrial Enterprises," approved on August 23, 1992 ("*1992 Regulations*"; and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("*Export Provisions*". The *1988 Law* states that enterprises have the right to set their own prices (see Article 26). This principle is restated in the *1992 Regulations* (see Article IX). The *Export Provisions* list those products subject to direct government control. Silicon carbide does not appear on this list and is not, therefore, subject to the constraints of these provisions.

The existence of these laws indicate that respondents IMI/E, QI/E, and SGW are not subject to *de jure* control. However, there is publicly available information indicating that the PRC central government has acknowledged that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See* "[PRC] Government Findings on Enterprise Autonomy" in Foreign Broadcast Information Service-China-93-133 (July 14, 1993).

Given this report of uneven implementation of the PRC government's laws on devolution of government control, it is critical that we conduct a *de facto* analysis to determine whether these respondents were, in fact, not subject to governmental control.

2. Absence of De Facto Control

For the reasons stated below, we have determined that these respondents are not *de facto* controlled by the central, provincial or municipal governments. In conducting this analysis, we are aware that the CIA report stated that the central government has "decentralized the supervision and planning control over most state enterprises to provincial or municipal authorities." As elaborated below and in the responses to Comments 1 and 2, we have verified that these respondents are not, in fact, subject to provincial control. Municipal control is not an issue in this case as there is no tie between these companies and any municipality.

We have taken the following factors into account in our determination of absence of *de facto* control: First, the respondents' export prices are not set by, nor subject to approval by, a governmental authority. Second, the respondents also have authority to negotiate and sign contracts and other agreements. These points were confirmed by examination of correspondence files and other documentation relating to sales negotiations, as noted in the verification reports.

Third, we have determined, based on our investigation, that the respondents have autonomy from the central government in making decisions regarding selection of management, based on our examination of management election/evaluation forms completed by employees. Lastly, we have determined that the respondents retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. This last point was confirmed through examination of bank records, and company accounting records relating to investment and other activities. (*See also* Concurrence Memorandum and various verification reports.)

3. Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of IMI/E, QI/E, and SGW, we determine that IMI/E, QI/E, and SGW are eligible for separate rates.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product ("GNP"), the national distribution of labor, and growth rate in per capita GNP. (*See* memorandum from the Office of Policy to Gary Taverman, dated August 17, 1993, on file in room B-099 of the Main Commerce Department Building.) Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. Accordingly, for this final determination, we have used the values for the factors of production, as appropriate, from Indian sources. As in our preliminary determination, we have used a world market price in one instance where no appropriate surrogate value was available. We have obtained and relied upon published, publicly available information, wherever possible.

Fair Value Comparisons

To determine whether sales of silicon carbide from the PRC to the United States were made at less than fair value for those exporters deemed eligible to receive a separate rate, we compared the United States price (USP) to FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

United States price was calculated on the same basis as in the preliminary determination. Minor adjustments were made to the reported U.S. prices of IMI/E and SGW, pursuant to finding at verification. We also adjusted foreign inland freight based on verification findings. (*See* Calculation Memorandum, attached to the Department's Concurrence Memorandum of April 22, 1994, on file in room B–099 of the Main Commerce Department Building.)

Foreign Market Value

We calculated FMV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings (*see* Calculation Memorandum). To calculate FMV, the verified amounts for factors of production were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate values as in the preliminary determination with the exception of the value for electricity.

In our November 29, 1993, preliminary determination, we had used publicly available information for Pakistan regarding electricity rates for industrial use during the POI. We did so because the publicly available information at the time for India either was out of date or was not necessarily specific to industrial use. After the preliminary determination, petitioner's December 30, 1993, submission provided new publicly available information from the Asian Development Bank (ADB) showing Indian electricity prices for industrial use in FY1990. Since this new ADB data shows recent electricity rates specific to industrial use for India (our first-choice surrogate), we have used the ADB data for the final determination in preference to data for Pakistan (our second-choice surrogate). (For a complete analysis of surrogate values, see Calculation Memorandum.)

Verification

As provided in section 776(b) of the Act, we verified all the information relied upon for this final determination.

Critical Circumstances

In our preliminary affirmative determination of critical circumstances of March 31, 1994, we found that critical circumstances exist for two respondents in this investigation—Shaanxi and Xiamen. We also preliminary determined that critical circumstances exist for all exporters who did not participate in this investigation.

Pursuant to section 733(e)(1) of the Act, we based that preliminary determination on a finding of 1) a history of dumping of silicon carbide in the European Community (EC), and 2) massive imports of silicon carbide over a relatively short period by examining respondents' shipment data. Because the timing of petitioner's allegation (after the completion of verification) precluded on-site verification of this information, the Department also referred to U.S. Customs IM–115 entry data to corroborate respondents' reported shipment information, pursuant to section 771(18)(E) of the Act. (See 59FR 16795, April 8, 1994).

For the final determination, we have continued to use BIA as the basis for our determination of critical circumstances for non-respondent exporters. The BIA margin (406.00 percent) for those exporters exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. In addition, we have adversely assumed, as BIA, a massive increase in imports from these non-respondent exporters. We, therefore, determine that critical circumstances exist for all non-respondent exporters in this investigation.

Since the preliminary determination of critical circumstances, we have determined that Hainan, Shaanxi and Xiamen are ineligible for rates separate from non-respondent PRC exporters. Because Hainan, Shaanxi and Xiamen are ineligible for rates separate from non-respondent exporters, we must extend to them the same BIA-based determination of critical circumstances applied to the non-respondent exporters.

For respondents IMI/E, QI/E, and SGW, we determine that critical circumstances do not exist. The shipment data for these respondents, which we have corroborated using U.S. Customs IM–115 entry data, shows that there has been no massive increase in shipments from these respondents in the period following the filing of the petition (*See* Preliminary Affirmative Determination of Critical Circumstances).

Interested Party Comments

Because respondents Hainan, Shaanxi, and Xiamen, are not eligible for calculated separate rates, we have not addressed comments made by these parties regarding calculations for this determination.

Comment 1: Petitoner maintains that the Department cannot assign separate rates to respondents because not all relevant entities in the PRC have participated in the investigation. Petitioner states that: (1) The silicon carbide industry in the PRC is characterized by significant provincial and/or local government ownership; (2) information on the record demonstrates a number of non-responding producers of silicon carbide in each province in which respondents and/or their suppliers are located; (3) respondents and the non-responding producers are owned by the governments of the provinces in which they are located; and (4) respondents have offered no reason why cooperation is not required of the non-responding producers. Petitioner further states that, while PRC law prohibits the central government from controlling prices for silicon carbide, there is no evidence that provincial governments cannot regulate prices between silicon carbide producers and exporters. Petitioner concludes that the respondents are thus ineligible for separate rates.

IMI/E, QI/E, and SGW maintain that petitioner has confused the Department's market-oriented industry (MOI) policy with its separate rates policy. They state that PRC export companies do not need to prove that the product under investigation was produced in a market environment to be eligible for separate dumping margins. These respondents conclude that every PRC exporter and producer of silicon carbide does not need to participate in the case for participating exporters to qualify for separate rates.

DOC Position

We disagree with petitioner. Pursuant to the discussion in the "Separate Rates" section above, we have found that the three responding exporters "owned by all the people" are not controlled by the central, provincial, or municipal governments. (*See* discussion under "Separate Rates" section.) Further, the information on the record relating to provincial and local governments shows that their activities with regard to IMI/E, QI/E, and SGW are limited to such functions as taxation, business licensing, and the collection of export statistics. There is no evidence that these governments (1) can manipulate export prices or (2) interfere with other aspects of conducting business with the United States. Therefore, we determine that IMI/E, QI/E, and SGW are not subject to government control of their silicon carbide exports.

Finally, petitioner's concerns regarding the ability of provincial governments to regulate prices between domestic producers and exporters are not relevant to those respondents' eligibility for separate rates. The Department's separate rates analysis focuses on governmental control over the respondents' export activities, not the regulation of prices charged by the respondents' suppliers.

Comment 2: Petitioner maintains that the respondents in this case do not meet the Department's criteria for separate rates because they have not demonstrated that they are independent of government ownership or control and, therefore, that the Department must presume central-government control. Petitioner also maintains that evidence on the record demonstrates that the respondents are subject to certain types of control by the central and provincial governments. Further, petitioner states that various provisions of PRC law demonstrate that respondents, whose business licenses state that they are owned by "the whole people," are subject to state control. In conclusion, petitioner states that, based on the record for this investigation, respondents are ineligible for separate rates.

IMI/E, QI/E, and SGW state that the Department should apply the Sparklers criteria and find them eligible for separate dumping margins. These respondents state that they have cooperated completely in this investigation and have provided information indicating a lack of ownership or control by the PRC central government. Moreover, these respondents emphasize that the appropriate test of ownership is control of property rather than simple legal title. IMI/E, QI/E, and SGW state that the record also provides evidence of a *de facto* absence of central control with respect to exporters.

Hainan, Shaanix, and Xiamen state that they are not subject to *de jure* or *de facto* control by the central government. As evidence of *de jure* absence of control, Hainan, Shaanix and Xiamen cite the specific law and regulations provided in the MOFTEC verification report which indicate that: (1) the PRC central government cannot dictate the decision-making of enterprises; (2) enterprises have the right to enjoy the benefits from their business activities; and (3) enterprises are free to select their own management independently from the PRC central government. These respondents also maintain that evidence on the record demonstrates a *de facto* absence of control.

DOC Position: The Department disagrees with petitioner regarding respondents IMI/E, QI/E, and SGW. As discussed at length in the "Separate Rates" section above, IMI/E, QI/E, and SGW are eligible for separate rates.

Respondents Hainan and Shaanxi have failed to establish their eligibility for separate rates because, at verification, these companies failed to produce bank records necessary to prove their retention of proceeds from export sales. Therefore, these respondents did not meet an important criterion for separate rates (*see* "Separate Rates" section above).

Respondent Xiamen has also failed to establish its eligibility for a separate rate. As noted in the "Separate Rates" section above, Xiamen has stated that certain other PRC exporters of silicon carbide (*i.e.*, CAEC and its other affiliates) are related parties within the meaning of section 771(13) of the Act. However, Xiamen has failed to provide information regarding the eligibility for separate rates of CAEC, *et al.* Without such information, the Department cannot consider assigning a separate rate to Xiamen/CAEC. (*See also* the Concurrence Memorandum of April 22, 1994.)

Comment 3: Hainan, Shaanxi, and Xiamen argue that two of the members of the petitioning coalition, Treibacher and Saint-Gobin, should be excluded as interested parties in this investigation because these companies do not sell U.S.-manufactured silicon carbide. These respondents assert that Treibacher and Saint-Gobain sell silicon carbide produced in Canadian furnaces that is merely ground and screened in the United States. Respondents ask the Department to notify the U.S. International Trade Commission (ITC) that these two companies should not be considered as part of the domestic silicon carbide industry because of (1) their insignificant U.S. capital investment regarding silicon carbide, (2) their negligible U.S. employment, and (3) their negligible real value-added to the product in the United States.

Hainan, Shaanxi, and Xiamen assert that, once the Department has excluded Treibacher and Saint-Gobain from participating as interested parties in this proceeding, the Department must scrutinize Exolon-ESK, the sole remaining petitioner with standing as a U.S. producer of silicon carbide. These respondents point out that Exolon was indicted in February 1994 for alleged improper commercial activities. These charges, Hainan, Shaanxi, and Xiamen argue, are "directly relevant to the credibility of the certifications on which the Department based the initiation of this investigation and to the legitimacy of Exolon's request for import relief." These respondents conclude that since (1) the Department must reject Exolon's submissions as an unreliable basis for the initiation of this investigation, and (2) Treibacher and Saint-Gobain are not interested parties and are thus barred from status as petitioners, there are no remaining petitioners with standing to continue this investigation. Therefore, these respondents maintain that the Department should rescind its investigation of silicon carbide from the PRC.

Petitioner argues that based on long-standing practices, the Department analyzes petitioner's standing only in the event of a challenge from other U.S. producers. Petitioner rebuts respondents' argument by maintaining that the indictment of the petitioner is not relevant to this investigation, that Exolon, the indicted party, is innocent of the charges, and that Treibacher and Saint-Gobain are interested parties to this investigation.

DOC Position: We agree, in part, with petitioner. Exolon's indictment is irrelevant to our analysis and its status as a U.S. producer of subject merchandise is unchallenged. Further, the ITC preliminarily determined that Treibacher and Saint-Gobain are engaged in U.S. "production" of subject merchandise and thus qualify as members of the domestic industry (*see Silicon Carbide From the People's Republic of China,* Inv. No. 731–TA–651 (Preliminary) (Pub. 2668, August 1993), at 12–13). We have reviewed the ITC's analysis, which addresses the same arguments raised by respondents in this proceeding, and we concur with the ITC. Therefore, we determine that Treibacher and Saint-Gobain are engaged in "production" of silicon carbide in the United States. Thus, these companies qualify as interested parties to this proceeding. Given these facts, there is no basis for rescinding the initiation of this investigation.

Comment 4: Hainan, Shaanxi, and Xiamen argue that, if the Department decides not to rescind the initiation of this investigation, the Department should consider crude silicon carbide and refined silicon carbide to be separate classes or kinds of merchandise.

Petitioner asserts that these respondents have offered no evidence on the record to support an alternative class or kind analysis.

DOC Position: We agree with petitioner. Hainan, Shaanxi, and Xiamen have provided no substantial analytical or factual basis for their claim that crude silocon carbide and refined silicon carbide should be considered as separate classes or kinds of merchandise.

Comment 5: IMI/E, QI/E, and SGW argue that the Department should continue to use the Pakistani rates for electricity because the Indian rates for industrial use from the petitioner's December 30, 1993, submission were artificially high.

Petitioner asserts that the Department should follow its preference for using surrogate values from one country when possible. In this case, the Department has surrogate values from India for all factors of production, including electricity. Petitioner further asserts that the Pakistani rate used as the surrogate value for electricity in the preliminary determination was flawed because it did not completely capture electricity costs for industrial users.

DOC Position: We agree with petitioner. In its preliminary determination, the Department relied upon published, publicly-available information (PPI) regarding Pakistani electricity rates for industrial use during the POI. We did so because the PPI available at that time for India either was out of date or was not necessarily specific to industrial use. Since that time, publicly available electricity rates for India have become available and these rates more accurately capture total costs for Indian industrial users.

With regard to the concern raised by IMI/E, QI/E, and SGW regarding artificially high electricity rates in India, the document which these respondents cites as evidence of their contention simply fails to support their position; *viz.*, that document states that "[t]o encourage industrial development, many states also offer low rates to large industries." Therefore, the Department has selected the publicly-available industrial rates for India to value electricity consumption for the calculations for this determination (*see* Calculation Memorandum).

Comment 6: Petitioner states that there is a history of dumping in the United States and Europe of silicon carbide from the PRC. Moreover, petitioner states that the import data show there have been massive imports of silicon carbide from PRC over a relatively short period of time. Since preliminarily estimated dumping margins in this case exceed 25 percent, petitioner maintains that the importers knew or should have known that the product was being sold at less than fair value. Petitioner maintains that the Department should find critical circumstances in this case.

QI/E, IMI/E, and SGW state that since their exports were not massive after the petition was filed, the Department should not find critical circumstances.

Hainan, Shaanxi, and Xiamen state that the EC findings which petitioner cites as evidence of a history of dumping do not, in fact, demonstrate such a history. These respondents maintain that, because the PRC exporters offered the EC "satisfactory undertakings" (*i.e.*, agreed to eliminate injurious dumping), there is no "history of dumping" in the EC.

DOC Position: As described in the "Critical Circumstances" section above, we have analyzed the information on the record regarding critical circumstances and have found that critical circumstances do not exist for the three respondents (IMI/E, QI/E, and SGW) that are eligible for separate rates. For non-respondent exporters during the POI, we have used BIA to determine the existence of critical circumstances. Since Hainan, Shaanxi, and Xiamen are ineligible for rates separate from those non-respondent exporters, we must extend to them the same BIA-based determination of critical circumstances.

Comment 7: Petitioner maintains that the silicon carbide industry is not a market-oriented industry due to: (1) State ownership of some producers; (2) government control of production levels and prices for a significant portion of the industry; and (3) government control of prices and production of significant inputs.

IMI/E, QI/E, and SGW contend that, since prices for energy inputs in the United States are also set by governments, the PRC respondents' market rates submission should not have been rejected on the basis that coal rates are set by the Government of the PRC. IMI/E, QI/E, and SGW further contend that no U.S. industry could ever be considered an MOI under these criteria. The Department's criteria according to IMI/E, QI/E, and SGW, are therefore, inherently unreasonable.

According to Hainan, Shaanxi, and Xiamen, the Department's MOI analysis is inaccurate. They maintain that the Department's MOI test is a charade since, once the Department determines that a country is a non-market economy, it is a foregone conclusion that respondents will be unable to prove that an MOI exists.

DOC Position: We agree with petitioner. And MOI does not exist because coal, a significant material input used to produce silicon carbide, is not purchased at market-determined prices. On November 16, 1993, petitioner submitted for the record of this investigation a World Bank Discussion Paper entitled "The Sectoral Foundations of China's Development." This paper demonstrates that much of the coal supply of the PRC is subject to central regulation of both price and allocation. Coal not subject to central regulation is often subject to regulation by provincial price boards. The PRC's coal market is also distorted by substantial "in plan" production. Given the many distortions of the coal market evident from information on the record, we cannot consider the price of coal in the PRC to be market-determined. (For further discussion, see the preliminary determination in this investigation (58 FR 64549, December 8, 1993).

Comment 8: Petitioner maintains that IMI/E has not demonstrated its independence from other entities listed on its organizational chart or that these other entities did not export silicon carbide to the United States during the POI. Further, petitioner maintains that the Department's failure to find evidence of investments between IMI/E and these other entities does not indicate a lack of business relationships. Petitioner concludes that IMI/E's potential relationship with these other entities renders it ineligible for a separate rate.

IMI/E states that its maintenance of business relationships with other companies should not disqualify it from receiving a separate rate.

DOC Position: The Department disagrees with petitioner. first, at verification the Department examined the completeness of IMI/E's sales reporting. That examination encompassed IMI/E's records and substantial other documentation. There was no indication at verification that any part of IMI/E had failed to report POI sales to the United States.

IMI/E for its part has stated that other entities shown on its organizational chart are "not related to IMI/E". Rather, they contend that those "independent and unrelated organizations appear on IMI/E's organization chart to give the impression that IMI/E is a large company that is prepared to do business with huge customers requiring enormous volumes of products." IMI/E's explanation is consistent with the Department's examinations at verification.

Finally, although petitioner concedes that IMI/E's investment accounts demonstrated no investments between IMI/E and the entities in question, petitioner maintains that IMI/E is ineligible for a separate rate because of potential business relationships with these entities. However, petitioner has not indicated any reasonable basis upon which the Department can determine that such potential relationships offer entities an opportunity to manipulate IMI/E's export pricing.

Comment 9: Petitioner states that SGW is ineligible for a separate rate because other silicon carbide exporters in the same province have failed to respond to the Department's questionnaire. Further, petitioner maintains that information on the record links SGW to other exporters. Petitioner concludes that since exporters of silicon carbide related to SGW are not cooperating in this investigation, the Department cannot issue a separate rate for SGW.

SGW states that it is unrelated to any other exporters of silicon carbide. In particular, SGW maintains that it demonstrated during verification its independence from its provincial government and, thus, from other exporters in the same province.

DOC Position: We agree with SGW that it has established its eligibility for a separate rate. As noted in our "Separate Rates" section above, our analysis shows that SGW is not subject to central-government control of its silicon carbide exports. Further, other than the now disproven contention of relationships based on the common "provincial ownership" of exporters, the only other basis for petitioner's assertion of a relationship among exporters is the use by SGW of ledger paper bearing the name of another exporter. SGW has satisfactorily explained this situation at verification (*see* Concurrence Memorandum and Verification Report). There is no other indication of a relationship between SGW and other exporters of silicon carbide and, therefore, SGW's eligibility for a separate rate is unaffected.

Comment 10: Petitioner states that the Department was unable to verify the factors of production reported by IMI/E, QI/E, and SGW and, therefore, must base FMV on BIA for the final determination.

IMI/E, QI/E, and SGW request that the Department accept the correct and verified consumption factors and use these inputs in the final determination.

DOC Position: The Department agrees with respondents. While the Department's verification uncovered several inaccuracies in these respondents' reported data, the inaccuracies do not undermine the fundamental soundness of their questionnaire responses because the inaccuracies were not significant and there was no pattern of under-reporting of the factors of production. Given these findings, the Department has used the verified factors of production in its calculations for the final determination.

Comment 11: Petitioner states that, should the Department use the factors of production for IME/E, QI/E, and SGW, it must adjust these factors for findings at verification. Specifically, petitioner maintains that the Department should do the following: (1) For IMI/E, adjust sand consumption and electricity consumption, account for previously unreported input materials, reallocate labor hours, and correct transportation distances for certain raw materials; (2) QI/E, adjust QI/E's rail freight distance from factory to port, coal transportation distance and use BIA for sand transportation distance, electricity consumption, and labor; and (3) for SGW adjust distances for shipping sand and coal, reverse the number of skilled and unskilled workers used in the calculations for the preliminary determination ignore unverified information regarding labor rates, and use BIA for rail freight distance from factory to port as well as SGW's reported truck freight distances.

These respondents assert that the Department should use these respondents' verified factors of production, taking clerical errors at verification into account, where appropriate.

DOC Position: As stated in the Department's position to the previous comment, we have used the verified amounts for each of these respondents' factors of production. Any inaccuracies found at verification do not undermine the fundamental soundness of the respondent's questionnaire responses. The inaccuracies were not significant and there was no pattern of under-reporting of the factors of production. Given these findings, the Department has used the verified factors of production in its calculations for the final determination because the verified factors of production yield the most accurate measure of the respondents' margins of dumping. (For an in-depth discussion of verification findings, *see* our Concurrence Memorandum).

Comment 12: Petitioner states that, should the Department consider a separate rate for IMI/E, the Department should adjust IMI/E's U.S. price to eliminate a claimed bonus payment for product purity in excess of requirements.

IMI/E requests that the Department use its verified sales prices in the final determination.

DOC Position: The Department agrees with respondent. The Department verified the proof of payment for the sales in question. That proof of payment demonstrated that actual final sales price for the reported sales, including bonus payments. We have used the verified final sales prices in the calculations for this determination.

Comment 13: Petitioner states that, should the Department consider a separate rate for QI/E, the Department must adjust QI/E's U.S. price based on documentation reviewed at verification. Specifically, petitioner maintains that the Department must exclude a certain price adjustment because the Department was unable to verify the silicon carbide content of one sale.

DOC Position: We disagree with petitioner. The Department verified the proof of payment for the sale in question. That proof of payment demonstrated the actual final sales price for the reported sale. Since the Department's calculations are based on actual sales prices, proof of the silicon carbide content of the merchandise sold is unnecessary. We have used the verified final sales price in the calculations for this determination.

Comment 14: Petitioner states that the Department discovered at verification that QI/E had failed to report certain U.S. sales. In addition, petitioner maintains that changes in the terms of the sales, which Qinghai claims place the dates of sale after the POI, were immaterial. Petitioner concludes that the sales in question are POI sales, and that QI/E's failure to report those sales requires that the Department base its final determination for QI/E on BIA.

QI/E maintains that the changes in question were material changes in quantity. QI/E states that the date of sale for these sales was after the POI. QI/E concludes that these sales were properly excluded from QI/E's questionnaire responses.

DOC Position: We agree with QI/E. The change in question was a change in the quantity sold under the contract. Petitioner maintains that the implementation of the change through a quantity variation is an "immaterial" change. However, verification exhibits indicate that the customer's intent (and the final result) was a change in the quantity term of the shipment. That change went beyond the allowable quantity variation of the original contract. Thus, the quantity of the contract, a material term, was not established until after the POI. Therefore, the date of sale was after the POI.

Comment 15: Petitioner states that SGW understated its U.S. sales during the POI, and that the Department must use BIA for SGW's unreported sale.

SGW requests that the Department include the verified, but unreported sale, in its final determination because SGW did not benefit from this oversight.

DOC Position: The Department agrees with SGW. The omission in question appeared to be inadvertent and had the effect of raising, rather than lowering, SGW's calculated margin. In addition, we have no reason to believe that this omission is indicative of a larger pattern of inaccurate reporting by SGW. Further, this omission does not approach the magnitude of the omissions, errors, and inadequacies which we discovered during the verifications of Hainan, Shaanxi, and Xiamen, requiring us to use BIA for those respondents. Therefore, we have used the actual, verified information for SGW's unreported sale in our calculations for this determination because its inclusion yields the most accurate estimate of SGW's margin of dumping. (See also the Concurrence Memorandum.)

Comment 16: IMI/E, QI/E, and SGW state that the Department should not include coal and water in overhead, in order to avoid double-counting these items.

DOC Position: We agree with respondents that we should not double count these costs. Therefore, we have not included water as a separate factor of production because we believe that water costs are captured in the "other manufacturing expenses" category of the Department's surrogate overhead expense (*see* the Calculation Memorandum attached to the Concurrence Memorandum). However, we have continued to account for coal as a separate factor of production because we have excluded "power and fuel" from the surrogate overhead expense.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) and 735(c)(4) (A) and (B) of the Act, we are directing the Customs Service to continue to suspend liquidation of entries of silicon carbide from the PRC from three of the respondents in this investigation—IMI/E, QI/E, and SGW—that are entered, or withdrawn from warehouse, for consumption on or after December 8, 1993, which is the date of publication of the preliminary determination in the **Federal Register**. For imports of silicon carbide from all other exporters from the PRC, we are directing the Customs Service to suspend liquidation on or after September 9 1993, which is 90 days prior to the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspensions of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter	Weighted-average margin percentage
7th Grinding Wheel Factory Import and Export Corporation .	99.52
The Import and Export Trading Corporation of Inner Mongolia Autonomous Region	27.41
The Qinghai Metals and Minerals Import and Export Corporation	7.50
All Others*	406.00

*Including respondents Hainan, Shaanxi, and Xiamen.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: April 22, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10455 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–559–806]

Portable Electric Typewriters From Singapore; Termination of Suspended Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On July 26, 1993, the Department of Commerce published a notice of the "Suspension of Investigation; Certain Portable Electric Typewriters from Singapore". On February 9, 1994, the Department received from Brother Industries (USA) Inc. ("BIUSA") notice of its intention to withdraw the petition and to request termination of the suspended investigation pursuant to section 734(a) of the Tariff Act of 1930, as amended ("the Act") based upon withdrawal of the petition. BIUSA expressly conditioned the petition withdrawal upon the contemporaneous revocation of the antidumping duty orders on Portable Electric Typewriters from Japan (A–588–087) and Personal Word Processors from Japan (A–588–818). The Department is now terminating this suspended investigation in accordance with these conditions.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Linda Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1991, the Department of Commerce ("the Department") initiated an antidumping duty investigation under section 732(a) of the Act, to determine whether certain portable electric typewriters ("PETs") from Singapore are being, or are likely to be sold, in the United States at less than fair value within the meaning of section 731 of the Act. (56 FR 22150).

On February 8, 1993, after extensive litigation concerning BIUSA's legal authority to file a petition against imports of PETs from Singapore, the Department issued its preliminary determination that PETs from Singapore were being sold at less than fair value in the United States (58 FR 7534). On July 26, 1993, the Department published a notice of suspension of investigation (58 FR 39786). The basis for the suspension was an agreement by the Singapore producer/exporter, which accounts for substantially all of the known exports of these products from Singapore, to revise its prices so as to eliminate sales of this merchandise to the United States at less than fair value.

As a result of receiving a timely request to continue the investigation, the Department, pursuant to section 734(g) of the Act, issued its affirmative final determination (58 FR 43334, August 16, 1993).

On February 9, 1994, the Department received notice from BIUSA of its intention to withdraw the petition and to request termination of the suspended investigation pursuant to section 734(a) based upon withdrawal of the petition. BIUSA expressly conditioned the petition's withdrawal upon the contemporaneous revocation of the antidumping duty orders on Portable Electric Typewriters from Japan (A–588–087) and Personal Word Processors from Japan (A–588–818).

By letter of April 8, 1994, the Department notified parties to the proceeding of its intent to terminate the suspended investigation pursuant to section 353.17(a)(1) of the Department's regulations. The Department received no comments as a result of this notification. In addition, simultaneously with the publication of this notice, the Department is publishing revocations of the antidumping duty orders on Portable Electric Typewriters from Japan (A–588–087) and Personal Word Processors from Japan (A–588–818).

Scope of Investigation

The merchandise covered by this investigation consists of certain (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria:

(1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;

(2) Electric, regardless of source of power;

(3) Comprised of a single, integrated unit;

(4) Having a keyboard embedded in the chassis or frame of the machine;

(5) Having a built-in printer;

(6) Having a platen to accommodate paper; and

(7) Only accommodating its own dedicated or captive software, if any.

PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move;" and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Termination of Investigation

Based on the information contained in the record, the Department has decided to terminate the antidumping duty investigation of PETs from Singapore. The record contains statements supporting the proposed termination from all known domestic producers, BIUSA and Smith Corona Corporation ("Smith Corona"), supporting the proposed termination.

Under § 353.17(a) of the Department's regulations, the Department may terminate an investigation based on the withdrawal of the petition by the petitioner, after notifying all parties to the proceeding and after consultation with the International Trade Commission ("ITC"). Section 353.17 further provides that the Department may not terminate an investigation unless it concludes that the termination is in the public interest. We have notified all parties to the proceeding and have consulted with the ITC. We conclude that termination of the investigation is in the public interest (See April 20, 1994, memorandum from David P. Mueller to Susan Esserman). Accordingly, we are terminating the suspended antidumping duty investigation of PETs from Singapore.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Failure to comply is a violation of the APO.

This notice is published pursuant to § 734(a)(1) of the Act and § 353.17(a)(2) of the Department's regulations.

Dated: April 22, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10453 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 041294B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of Applications to Modify Permits (P501 and P420C).

SUMMARY: Notice is hereby given that Raymond J. Tarpley, D.V.M., Ph.D., Department of Veterinary Anatomy, Texas A&M University, College Station, TX 77843, and Michael A. Castellini, Ph.D., have requested a modification to Permits No. 780 and 801, respectively.

ADDRESSES: The modification requests and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

[P501] - Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–9141);

[P501 and P420C] - Alaska Region, NMFS, Federal Annex, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular modification requests would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of these modification requests to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: Dr. Raymond Tarpley's request to modify Permit No. 780, issued on June 26, 1992 (57 FR 29711) is requested under the authority of the Marine Mammal Protection Act (MMPA) of 1972, as amended 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 780 authorizes the Permit Holder to, among other things, collect specimen samples from 30 bowhead whales and 40 beluga whales taken during the Alaska Native subsistence harvest and import samples from 10 belugas taken in the Inuit subsistence harvest.

The Permit Holder requests a modification to the take authority to collect an unlimited number of samples: from all bowhead whales authorized by NOAA and the Alaska Eskimo Whaling Commission (AEWC) to be landed each year until 1996; from the authorized number of beluga whales taken each year by Alaska Natives; and import from Canada samples collected from all beluga whales authorized to be taken in the Inuit subsistence harvest.

Dr. Michael Castellini's modification to Permit No. 801 (58 FR 48507) is requested under the authority of the MMPA of 1972, as amended 16 U.S.C. 1361 *et seq.*) and the Regulations

Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 801 authorizes the Holder to, among other things, capture, tag, and handle up to 1200 and incidentally harass up to 2100 Weddell seals (*Leptonychotes weddelli*) during research activities.

The Holder requests authority to insert catheters in six (6) pups in order to collect up to 500 ml of blood.

Dated: April 22, 1994

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 94-10359 Filed 4-29-94; 8:45a.m.]

BILLING CODE 3510–22–F

[I.D.041894C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research permit (P79I).

SUMMARY: Notice is hereby given that the Institute of Marine Science, University of California, Santa Cruz, CA 95064, (Principal Investigators: Michael E. Goebel and Daniel P. Costa, Ph.D.), has applied in due form for a permit to take Northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

DATES: Written comments must be received on or before June 1, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4016).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

The Applicants request authority to take up to 220 Northern fur seals annually for three years. Of these, 60 females and their pups will be captured, tagged, instrumented and released and 100 (50/50) additional pups will be captured, tagged and released.

The overall objective of the proposed study is to examine the costs and benefits of the variable foraging patterns observed in Pribilof populations of Northern fur seals and how they relate to offspring growth and condition

Dated: April 22, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 94-10358 Filed 4-29-94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 31, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 17, 27, 1993, January 14, March 4 and 11, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 65971, 68398, 59 FR 2360, 10378 and 11580) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodities and services.
3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodities and services are hereby added to the Procurement List:

Commodities

Tool Box, Portable
  5140–00–388–3416
Cover, Water Canteen
  8465–00–860–0256
  (50% of the Government's requirement)

Military Resale Commodities

Broom, Whisk
  M.R. 910
Broom, Upright
  M.R. 951
  M.R. 953
Broom, Fiber
  M.R. 952
Broom, Patio
  M.R. 954
Brush, Bowl
  M.R. 917
Brush, Duster

M.R. 913
Brush, Scrub
M.R. 958
M.R. 932

Services

Food Service Attendant,
Marine Corps Air Station (MCAS),
New River,
Jacksonville, North Carolina
Grounds Maintenance,
U.S. Army Reserve Center,
2000 North New Road,
Waco, Texas
Janitorial/Custodial,
Veterans Outreach Center,
Vista, California
Janitorial/Custodial,
Social Security Administration Building,
525 18th Street,
Rock Island, Illinois
Laundry Service,
Naval Hospital,
Oak Harbor, Washington
Laundry Service,
Naval Air Station,
Whidbey Island,
Oak Harbor, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 94-10432 Filed 4-29-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List shipping boxes to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 31, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On February 4, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 5396) of proposed additions to the Procurement List.

Comments were received during the development phase of this addition to the Procurement List from one of the current contractors. The contractor claimed that the addition would be devastating as it would remove a sizeable part of its sales and would undermine the company's ability to supply other boxes—for which it is not the current contractor—to the Government. The contractor also indicated, without details, that the Committee's action would "alter the delicate balance" of its sales base.

The percentage of its sales which the contractor claimed it would lose if the boxes were added to the Procurement List does not reach the level which the Committee normally considers severe adverse impact. Also, the percentage of sales the contractor claimed is almost double the percentage of sales the Committee calculated based on the contractor's statement of its total sales and the value of the contractor's current contracts for the boxes as provided by the Government purchasing agency. Consequently, the Committee has concluded that loss of these sales will not constitute a severe adverse impact on the contractor.

The contractor did not provide information to explain its claim that the Committee's action would undermine the company's ability to supply other boxes to the Government and would alter the balance of its sales base. Consequently, the Committee has concluded that these claims represent factors which would not add significantly, if at all, to the impact of the Committee's action on the company.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the boxes, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the boxes listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Box, Shipping
8115-00-117-9524
8115-00-165-6599
8115-00-176-8062
8115-00-176-8064
8115-00-183-9484
8115-00-183-9487
8115-00-183-9488
8115-00-183-9489
8115-00-183-9490
8115-00-183-9491
8115-00-183-9493
8115-00-183-9494
8115-00-183-9496
8115-00-183-9497
8115-00-183-9498
8115-00-183-9499
8115-00-183-9500
8115-00-183-9501
8115-00-183-9503
8115-00-183-9504
8115-00-183-9505
8115-00-190-4863
8115-00-190-4888
8115-00-190-4921
8115-00-190-4936
8115-00-190-4950
8115-00-190-4959
8115-00-190-4968
8115-00-190-5002
8115-00-190-5007
8115-00-200-6954
8115-00-200-6961
8115-00-229-9340
8115-00-255-1346
8115-00-281-3877
8115-00-281-3882
8115-00-281-3886
8115-00-281-3889
8115-00-285-1116
8115-00-292-0724
8115-00-417-9318
8115-00-417-9320
8115-00-417-9378
8115-00-418-4653
8115-00-418-4656
8115-00-418-4660
8115-00-451-7853
8115-00-514-2404
8115-00-526-1617
8115-00-579-9153
8115-00-174-2354
8115-00-183-9481
8115-00-183-9482
8115-00-190-4864
8115-00-190-4865
8115-00-190-5012
8115-00-190-5017
8115-00-190-5053
8115-00-201-1123
8115-00-275-5777
8115-00-417-9236
8115-00-417-9292

8115–00–418–4657
8115–00–428–4183
8115–00–428–4185
8115–00–514–2409
8115–00–190–5011
8115–00–190–5018
8115–00–190–5020
8115–00–418–4654
8115–00–428–4158
8115–00–579–9155
8115–00–579–9156
8115–00–985–7312
8115–00–656–0912
8115–00–190–5015
8115–00–292–0120
8115–00–292–0123
8115–00–428–4145
8115–00–417–9416
8115–00–190–4969

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–10431 Filed 4–29–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 31, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Container, Wood, Rocket Motor, 8140–01–004–9410, (Requirements for the Naval Air Warfare Center, Lakehurst, NJ).

NPA: Helena Industries, Inc., Helena, Montana.

Services

Grounds Maintenance, Naval Postgraduate School Annex, Monterey, California.

NPA: North Bay Rehabilitation Services, Inc., San Rafael, California.

Janitorial/Custodial, Frank T. Bow Federal Building, 201 Cleveland Avenue, SE., Canton, Ohio.

NPA: Sheltered Workshop Foundation of Stark County, Canton, Ohio.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–10430 Filed 4–29–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List combat caps to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 31, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 23, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (58 FR 39527) of proposed additions to the Procurement List.

Comments were received from one of the two current contractors for the cap. The commenter indicated that the cap constituted a sizeable part of its total sales and that without the opportunity to produce the cap it would have to lay off about half its largely minority female work force. The commenter also indicated that loss of the cap would imperil its shared production arrangement with another company.

In order to avoid the possibility of having a severe adverse impact on this commenter, the Committee has reduced the number of caps being added to the Procurement List from 450,000 annually to 375,000 annually. This reduction should lessen the level of impact on the commenting contractor to a degree that will not constitute severe adverse impact, and should minimize employment losses. Additionally, the Committee believes that these losses are outweighed by the creation of employment for people with severe disabilities, whose unemployment rates are higher that those of other workers.

Comments were also received from two companies which are not current contractors for the cap. Both alleged that addition of the cap to the Procurement List would constitute severe adverse impact on them, particularly in light of the impact of other additions to the Procurement List.

One of these commenters noted that the market for the cap and similar items is shrinking significantly because of declining Government procurement of the items. The other commenter noted that the Government is the only potential market for these items. Consequently, both commenters believe the impact of this addition to the Procurement List on them is increased by these conditions.

As one of the commenters noted, however, the Committee assesses impact on "the current or most recent contractor." 41 CFR 51–2.4(e). Neither commenter falls within this category. Consequently, the impact which they will experience is merely the loss of subsequent opportunities to bid on contracts for the caps. The Committee does not normally consider this loss to constitute severe adverse impact because the competitive bidding system does not guarantee that anyone will get or keep a contract for a specific item the Government buys. In this case, because the Committee never proposed to add the total Government requirement for the cap to the Procurement List and has substantially reduced the part of the Government requirement to be added from what was proposed, competing contractors will have more of an opportunity to win awards of the part of the Government requirement for the cap not added to the Procurement List than they normally would, as the Committee's usual practice is to add the total Government requirement for a commodity to the Procurement List.

One of the commenters noted that it had previously produced the cap for several years and had become substantially dependent on income from those sales. However, it lost the contract in the last competitive bidding. While it retained the affected employees in hopes of acquiring another contract for the cap, it has no guarantee of doing so and has lost any advantage that an incumbent contractor may enjoy. Accordingly, the eventual termination of the affected employees will be due to these circumstances rather than the Committee's action.

The same commenter also questioned whether it received adequate notice and whether the statements in the notice of proposed rulemaking concerning significant impact on a substantial number of small entities and a lack of regulatory alternatives were correct. The Committee is required by law, 41 U.S.C. 47(a)(2), to add items to the Procurement List in accordance with the rulemaking provisions of 5 U.S.C. 553, which requires notice in the *Federal Register*. The notice contained all the elements required by 5 U.S.C. 553(b). The statements the commenter questioned are also required by law, 5 U.S.C. 605(b). Consequently, the Committee believes that it has acted properly in these matters.

This commenter also questioned whether the Committee had explored the possibility of having its nonprofit agencies produce the caps under a small business set-aside. The legal authority for nonprofit agencies to bid on these set-asides which the commenter noted has expired.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Cap, Combat Camouflage

8415–01–084–1683
8415–01–084–1684
8415–01–084–1685
8415–01–084–1686
8415–01–084–1687
8415–01–084–1688
8415–01–134–3175
8415–01–134–3176
8415–01–134–3177
8415–01–134–3178
8415–01–134–3179
8415–01–134–3180
(375,000 annually)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–10429 Filed 4–29–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental Scholarships/Fellowships and Grants Program

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)).

ACTION: Notice of funding availability for the Department of Defense Environmental Scholarships/Fellowships, and Grants Program to institutions of higher education heading a consortium.

SUMMARY: The Department of Defense announces the competition for the Defense Environmental Scholarships/Fellowships and Grants Program, authorized by Section 4451 of The National Defense Authorization Act for Fiscal Year 1993 and section 1333 of The National Defense Authorization Act for Fiscal Year 1994. The program has two purposes: (1) For Section 4451 to provide scholarships and fellowships to enable individuals to qualify for employment in the field of environmental restoration or in other environmental programs in the Department of Defense; and (2) for Section 1333 to provide demonstration grants to assist institutions of higher education in providing expertise, training and education in environmental restoration, hazardous materials and waste management, and other environmental fields applicable to Department of Defense and Department of Energy defense facilities. The program will be executed by an institution of higher education heading a consortium. A consortium must consist of the institution of higher education and *one or more of each* of the following:

1. Appropriate State and local agencies.
2. Private industry councils (as described in Section 102 of the Job Training Partnership Act (29 U.S.C. 1512)).
3. Community-based organizations (as defined in Section 4(5) of such Act (29 U.S.C. 1503 (5)).
4. Businesses.
5. Organized labor.
6. Other appropriate educational institutions.

At least five percent of each award will be available to Historically Black Colleges and Universities/Minority Institutions.

Each award will be composed of two agreements, each with its own budget and funds:

1. An agreement to nominate scholarship and fellowship recipients, forward nominations to the Department of Defense for approval, then provide selectees with education leading to degrees relevant for subsequent DoD employment, subject to the needs of the Department of Defense (Section 4451),

2. An agreement to provide expertise, training, and education in hazardous materials and waste management and other environmental fields applicable to defense manufacturing sites and Department of Defense and Department of Energy defense facilities (Section 1333).

A total of $20.382 million will be available initially for this program to be distributed as follows:

(a) $7 million for Section 4451 purposes, and

(b) An initial $13.382 million for Section 1333 purposes.

The $20.382 million will be divided into sixteen awards of $1,273,875 each, made to applicants from the four Census Regions—four per region—based on a merit selection process.

Each award will provide $437,500 for scholarships/fellowships (Section 4451 purposes) and $836,375 for the demonstration grant (Section 1333 purposes). An award made to a consortium under Section 4451 may be used for a period of from one to five years. Demonstration grant monies awarded under Section 1333 must be expended within one year. Funds for Section 1333 purposes may later be made available for a second and a third year, subject to the approval of the Secretary of Defense and to the availability of appropriations for each year.

The DoD Environmental Security Program

The DoD multi-disciplinary approach to environmental security is embodied in a five-pronged strategy:

Cleanup; Compliance; Conservation; Pollution Prevention; and Technology represented by:

C cubed, P squared, plus T.

The DoD program is creating environmental partnerships, matching environmental and economic opportunities, expediting cleanup at DoD sites, improving compliance with environmental laws and regulations, preventing pollution, and targeting technology to meet environmental needs. To develop and exploit technology and innovative ideas which lead to rapid, economical, safe solutions to environmental problems, the Department of Defense requires education and training programs which will produce qualified individuals in career fields which relate to the five programs of environmental security. These five areas will be given priority in the evaluation of applications and are defined as follows:

Cleanup—Restoring DoD Facilities

The Department of Defense is dealing with a legacy of environmental contamination resulting from decades of military operations. Environmental problems continue to grow as the United States and Russia denuclearize and demilitarize their chemical weapons.

Currently, the Department of Defense is engaged in cleanup at 1,800 military locations in the United States and at 1,700 locations overseas. Ninety-three of the stateside locations are listed on the Environmental Protection Agency's Superfund National Priorities List.

Compliance—Complying With Environmental Laws in Day-to-Day Operations

The Department of Defense, like private industry, is concerned with a myriad of environmental laws and regulations. Common compliance issues include:

- Obtaining thousands of air emission permits and hundreds of permits for water discharges such as sewage, industrial, and water treatment plants;
- Managing 300 to 400 permits to treat, store, or dispose of hazardous waste under the Resource Conservation and Recovery Act (RCRA);
- Managing 30,000 regulated underground fuel storage tanks;
- Preparing spill prevention and response plans at every base; and
- Obtaining storm water permits at every base.

Conservation—Conserving Natural Resources

The Department of Defense consumes approximately two percent of the Nation's total energy supply, uses over 200 billion gallons of fresh water each year, and is the steward for 25 million acres of public lands containing valuable ecosystems, natural, cultural, and historic resources.

The Energy Policy Act of 1992 requires that the Department of Defense identify and implement all energy and water conservation measures that pay back in ten years or less, and establish the goal to reduce consumption by 20 percent by the year 2000. Funding for energy conservation is expected to be over $300 million in fiscal year 1996.

Good stewardship requires that the Department of Defense conserve and protect valuable resources, such as the 300 threatened and endangered species that reside on DoD lands, and the numerous DoD facilities on the National Historic Register.

Pollution Prevention—Preventing Pollution

The newest strategy in environmental protection, pollution prevention, reduces the amount of pollution at the source. The Department of Defense's new pollution prevention goals reflect the Pollution Prevention Act of 1990. The program is build on minimizing pollution and emphasizes reduction, recycling, treatment, and disposal. Pollution prevention will ease skyrocketing disposal costs and reduce dependence on disappearing municipal solid waste landfills.

On August 3, 1993, President Clinton signed Executive Order 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements." This executive order was designed to bring federal facilities in line with requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA) by requiring federal authorities to notify local emergency planning committees of all toxic chemicals stored or used at federal facilities. Federal agencies will be required to develop a written strategy to eliminate or minimize acquisition of hazardous or toxic chemicals and to develop a strategy to meet a voluntary goal of 50 percent reduction by December 1999.

The Clean Air Act, Energy Policy Act Executive Order 12579 ("Federal Energ Management"), and Executive Order 12844 ("Federal Use of Alternative Fueled Vehicles") require that DoD facilities use equipment that substantially reduces pollutants at the source.

Technology—Environmental Security Technology Certification Program (ESTCP)

Technology contributes to advancing the objectives of each of the C^3P^2 thrust areas within the Environmental Security Program. The objective of ESTCP is to executive the most promising environmental technology demonstration projects that target the Department of Defense's most urgent environmental needs and have a paycheck in the short term with regard to cost savings and improved efficiencies.

Environmental Concerns

Expansion and further development of the existing core of DoD professionals whose collective disciplines are applicable across the spectrum of issues embraced by the five programs are crucial to ensure restoration, protection, and conservation of the Nation's natural and cultural resources under the stewardship of the Department of Defense. The Defense Environmental Scholarships/Fellowships and Grants Program will serve the upcoming generation of environmental professionals and the emerging technologies they will apply to solve the challenges facing the environment.

The Department of Defense has numerous environmental program areas, each defined by a major topic of environmental regulation, a particular environment-related task or mission. These include, but are not limited to: environmental restoration, compliance, program planning and management, air pollution abatement, hazardous waste management, spill planning and response, solid waste management/recycling, natural resource management, pollution prevention, asbestos management, radon reduction, environmental analysis and documentation, hazardous materials, underground storage tank management, research and development, technology, historic preservation, archaeological resource protection, noise abatement, water resources, and pesticides and integrated pest management.

Section 4451 mandates that scholarship or fellowship recipients pursue and academic program leading to a degree in "engineering, biology, chemistry, or another qualifying field." Other degree areas related to DoD environmental positions include, but are not limited to:

Chemical Engineering
Civil Engineering
Environmental Program Management
Environmental Technology
Natural Resource Management
Earth Sciences
Environmental Engineering
Environmental Sciences
Geotechnology
Geology
Cultural Resource Management
Hydrology
Oceanography
Industrial Engineering
Mechanical Engineering
Forestry
Toxicology
Entomology

Eligibility

Award applicants mut be institutions of higher education as defined by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)) that have or will create a consortium headed by that institution of higher education. They must develop proposals that address the requirements of both Section 4451 of The National Defense Authorization Act for Fiscal Year 1993 and Section 1333 of The National Defense Authorization Act of Fiscal Year 1994.

At least five percent of each award must be made available to Historically Black Colleges and Universities/Minority Institutions.

Section 4451 requires scholarship/fellowships students nominated for selection to meet the following criteria:

(1) Be accepted for enrollment or currently enrolled as a full-time student at a selected institution of higher education.

(2) Be pursuing a degree in an environmental career field.

(3) Agree to serve as a full-time civilian employee in an environmental position with the Department of Defense upon graduation, if such employment is available and offered. (Period of employment will be 12 months for each school year students are provided a scholarship in an undergraduate program, or 24 months for each school year students are provided a fellowship in a graduate program.)

(4) Be a citizen or national of the United States, or an alien lawfully admitted to the U.S. for permanent residence.

Section 1333 requires that an institution receiving a grant under this section must use the grant to establish a consortium for the purpose of establishing and conducting a program to provide training and education in environmental restoration, hazardous materials and waste management and other environmental fields applicable to Department of Defense and Department of Energy defense facilities to:

(1) Individuals who have been terminated or laid off from employment (or have been notified of impending termination or lay off) as a result of reductions in defense spending, the cancellation, termination, or completion of a defense contract, or a base closure or realignment; or

(2) Individuals who are at least 16 but not yet 25.

Selection Criteria

The intent of this section is to help applicants understand how the selection criteria are applied to training and education proposals during the review process. The review process, to identify the best proposals and to provide the best wide-range support of the program, will compare each application to all others in each region.

Proposals for the Defense Environmental Scholarships/Fellowships and Grants Program will be evaluated and rank-ordered by a peer review panel selected by the National Research Council from among recognized experts in various environment-related fields. Rank-ordered proposals for each region will be presented to the Deputy Under Secretary of Defense for Environmental Security for final selection.

At least five percent of each award will be available to Historically Black Colleges and Universities/Minority Institutions.

The final judgment of an application will be based on an overall assessment of the extent to which the application satisfactorily addresses the following selection criteria:

(1) The proposal is submitted by an institution of higher education. An application will be submitted by an institution of higher education that will agree to form and head a consortium, as mandated by section 1333, that will consist of at least one of each of the following:

(i) Appropriate state and local agencies.
(ii) Private industry councils as described in 29 U.S.C. 1512.
(iii) Community-based organizations as defined in 29 U.S.C. 1503(5).
(iv) Businesses.
(v) Organized labor.
(vi) Other appropriate educational institutions.

(2) The proposal addresses education and training in an area of the Department of Defense's Environmental Security Program. Describe the area addressed and its applicational setting—from installation level to Command Headquarters. The Department of Defense's Environmental Security Program identifies specific areas (i.e., cleanup, compliance, conservation, pollution prevention, and technology), but an applicant may choose to focus and provide specific applications on an environmental subject not specifically mentioned in these areas or to address more than one topic in a single project.

(3) The proposal represents an improvement upon existing practice. Since improvements over existing practice are important, reviewers will appreciate any evidence included to illustrate how this project differs from and improves upon previous efforts.

(4) The proposal achieves a far-reaching impact that will be useful in a variety of ways and in a variety of settings. The Department of Defense seeks to make the most of its limited funds by supporting projects which have broad, multiple application and that can become models for the nation's environment program.

(5) The proposal represents an appropriate response to an

environmental area. Not only should a proposal demonstrate understanding of an environmental area, but strategies should be carefully designed to address those areas and reach specific endpoints.

(6) The applicant is capable of carrying out the proposal as evidenced by, for example:

(i) The applicant's understanding of the environmental area or need. The applicant should demonstrate understanding of the area through analysis of it and through the thoughtfulness and specificity of the proposed response.

(ii) The quality of the proposed design, including objectives, approaches, and planning. The proposal should reflect careful attention to the question of who will do what, when, where, why and how.

(iii) The adequacy of resources including money, personnel, facilities, equipment, and supplies. It should be clear that the applicant has carefully allocated appropriate resources and personnel for the tasks and activities proposed in the proposal. The detailed budget justification attached to the proposal should itemize the support requested from the Department of Defense.

(iv) The qualifications of key personnel who would execute the proposal. The qualifications of key personnel should be briefly outlined and attached to the proposal. Please note that a standard curriculum vitae is usually not appropriate for this purpose. Be sure to indicate in the biographical sketch how each individual's background and experience relate to the specific project described in the proposal.

(v) The applicant's relevant experience. It is helpful for the readers to know what other projects of a similar nature the applicant has conducted. With regard to the specific proposal, it is equally helpful to know what steps have already been initiated.

(vi) The applicant's prior work in the area. It is helpful to know the extent to which the applicant has successfully completed prior work on similar or related projects.

(7) The proposal includes an assurance that demonstration grant funds awarded under Section 1333 will supplement and not supplant non-Federal funds that would otherwise be available for education and training activities funded by the grant.

(8) The proposal demonstrates that an education and training program to be established under Section 1333:

(i) Provides a work-based learning system in environmental restoration. Such a system may include basic educational courses, on-site basic skills training, and mentor assistance to participants and may lead to award of a certificate or degree at the institution of higher education.

(ii) Includes out-reach and recruitment efforts to encourage participation by eligible individuals. To the extent practicable in the selection of young adults, priority must be given to those who have not attended and are otherwise unlikely to attend an institution of higher education or have a total family income that does not exceed the higher of the official poverty line or 70% of the lower living standard income level.

(iii) Utilizes, to the extent practicable, instructors selected from institutions of higher education, appropriate community programs, industry and labor.

(iv) Includes provisions for consultation, to the extent practicable, with appropriate Federal, state, and local agencies carrying out environmental restoration programs. The purpose of such consultation is to ensure the Section 1333 program is fully coordinated with similar government programs.

(9) For Section 4451 requirements the proposal demonstrates ability to recruit students, provide education leading to degrees qualifying students for DoD environmental positions, and manage a scholarship and fellowship program. Applicants must make potential scholarship/fellowship recipients aware that acceptance of financial assistance under this program requires a commitment to employment at any DoD facility or site where an environmental position may be offered.

(10) Scholarship and fellowship nomination preference under Section 4451 is given to current and former members of the US Armed Forces and to individuals who are or have been employed by the Department of Defense, or its contractors and sub-contractors. The Department of Defense will retain final approval authority for all individual scholarship and fellowship awards.

Application Procedures

Applications for participation in the Department of Defense Environmental Scholarships/Fellowships and Grants Program will follow the format prescribed in parts of the U.S. Public Health Service (USPHS) Application Form PHS 398.

Applications must include two implementation plans, one for scholarships/fellowships (Public Law 102–484 Section 4451) and one for demonstration grants (Public Law 103–160 Section 1333), each with its own budget proposal. At least five percent of each award must be made available to Historically Black Colleges and Universities/Minority Institutions.

- Plans for scholarships and fellowships programs (not to exceed five years) meeting Section 4451 requirements will include detailed descriptions of the education program, program facility, scholarship and fellowship candidate populations, methods of recruiting individuals, tuition costs and administration procedures. Stipends for fellowship recipients will not exceed $16,000 per year. Tuition, fees and stipends will not be included in calculations of indirect costs. Scholarship/fellowship plans will not exceed 10 pages.
- Plans for demonstration grants (not to exceed three years) meeting the provisions of Section 1333 will include, in 10 pages or less, a detailed description of the specific aims of the education and training program to be supported, background and significance of the proposed program, and its application to the DoD Environmental Program.

A complete Defense Environmental Scholarships/Fellowships and Grants Program application must be submitted to qualify for consideration. A complete application will consist of three sections:

1. General Information—PHS 398 Form AA (Face Page).
2. Scholarships and Fellowships Section—PHS 398 Forms BB, NN, OO, FF, HH, II, and JJ and Implementation Plan.
3. Environmental Grants Section—PHS 398 Forms BB, DD, EE, FF, HH, II, and JJ and Implementation Plan.

It is essential that applications be complete and accurate at the time of submission. Incomplete applications will not be considered. One copy of an incomplete or incorrect application will be returned by mail.

Additional PHS 398 forms and application instructions are available by writing the Defense Environmental Scholarships/Fellowships and Grants Program, P.O. Box R, Woodbridge, VA 22194 (telephone 703–643–2952; FAX 703–497–2095).

Grant recipients will also be required to comply with provisions of Office of Management and Budget Circulars A–21, "Cost Principles for Educational Institutions," A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and A–133, "Audits of Institutions of Higher

Education and Other Nonprofit Institutions."

Proposal must be submitted in 6 copies (original + 5).

DEADLINE: Deadline for complete proposals to be received at the Defense Environmental Scholarships/ Fellowships and Grants Program, P.O. Box R, Woodbridge, VA 22194, is 4:00 p.m. (EDT), June 21, 1994. Proposals received after that time and date will not be considered.

LATE APPLICATIONS: Applications which do not meet the criteria under "Deadline," above, are considered late applications. Late applications will not be considered.

Mailing Address for Application Package. Department of Defense, Environmental Scholarships/ Fellowships and Grants Program, P.O. Box R, Woodbridge, Virginia 22194.

Shipping (FedEx, UPT, etc.) Address for Application Package. Department of Defense, Environmental Scholarships/ Fellowships and Grants Program, 1635–2 Woodside Drive, Woodbridge, Virginia 22191, Phone: 703–643–2952.

DATES: Application packages and detailed instructions will be available April 30, 1994. Deadline for completed applications to be received by the Department of Defense will be 4:00 p.m. (EDT), June 21, 1994. Grants will be issued by September 30, 1994.

ADDRESSES: For additional information or to receive application packages and detailed instructions, contact Dave Fletcher, Department of Defense Environmental Grants Program, P.O. Box R, Woodbridge, VA 22194, phone 703–643–2952 or FAX 703–497–2905.

Dated: April 26, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10419 Filed 4–26–94; 3:00 pm]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and Applicable Form: Continued Health Care Benefit Program (CHCBP)—Enrollment Application.

Type of Request: New collection.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 25,000.

Needs and Uses: The information collected hereby will serve to enroll beneficiaries in the Continued Health Care Benefit Program (CHCBP). It will also be used by a private Third Party Administrator (TPA) firm, providing administrative support services, to determine beneficiary eligibility, other health insurance liability, and amount of premium payment.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ms. Shannah Koss.

Written comments and recommendations on the proposed information collection should be sent to Ms. Koss at the Office of Management and Budget, Desk Officer for DoD, room 3001, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: April 25, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10356 Filed 4–29–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting:

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 17 May 1994.

Time of meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S. C., specifically subparagraph (1) thereof, and Title 5, U.S. C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10253 Filed 4–29–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Statement of Findings for Bridge Restoration and Preservation at Savannah River Site (603–03G)

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Statement of Findings prepared pursuant to Executive Order 11988 and title 10, Code of Federal Regulations, part 1022 (10 CFR part 1022), "Compliance with Floodplain/Wetlands Environmental Review Requirements." DOE has determined that activities (as specified in this Notice) associated with the restoration and preservation of Bridge 603–03G will be conducted within floodplains of Upper Three Runs Creek on Road F at the Savannah River Site (SRS). DOE proposes to repair all deteriorated, decayed, or rotten timber piles associated with Bridge 603–03G having a section loss greater than 55 percent and to increase the load capacity to support truck and emergency vehicle traffic. Road F is one of the primary traffic routes to the Z-, F-, S-, and H-Areas of the site and supports 35 percent of the daily automobile traffic at SRS.

DOE prepared a Floodplain/Wetlands Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. On the basis of this assessment, DOE has determined that there is no practicable alternative to the proposed action and that the proposed action has been designed to avoid or minimize impacts on floodplains/wetlands. The Notice of Floodplain and Wetland Involvement was published in the **Federal Register** (59 FR 47 (March 10, 1994)). No comments were received. The action is categorically excluded under DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

FOR FURTHER INFORMATION CONTACT: Information and maps are available from Stephen R. Wright, Savannah River

NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, Phone Number (803) 725–3957, Fax Number (803) 725–7688.

For further information on general DOE Floodplain/Wetlands Environmental Review Requirements, contact Ms. Carol M. Borgstrom, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone Number (202) 586–4600, or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Bridge 603–03G supports to be repaired are in a floodplain of Upper Three Runs Creek. This floodplain is, at present, and should remain a relatively unimpacted floodplain. Repairs to approximately six deteriorating pile sections will be performed using a pile jacking system constructed of fiberglass, concrete, or steel set in place around the timber piles with reinforcing steel if necessary. Cofferdams (watertight temporary structures for keeping water from an enclosed area) will be required for each pile identified for restoration and may consist of sandbags, precast concrete sections, or steel. In the case of precast concrete or steel, the sections may be driven or jacked into the streambed to a depth below the mudline sufficient to perform the restoration process. The cofferdams will act as a primary barrier for the restoration activity by preventing sediment, grout, concrete, and debris from discharging to the stream. Water infiltrating into the cofferdams will be pumped to a sediment basin tank or approved discharge point. A small amount of sediment can be expected to go into the stream where work is performed close to the adjoining channel. This should have no significant impact on the floodplain. There may be riprap placed on each abutment below the roadway to prevent scouring of the abutment and soil erosion. The lower part of the slopes of these abutments is in the floodplain.

Most of the work will be accomplished from the present roadbed using cranes to repair or replace the bridge supports. Platforms will be lowered from the bridge structure to support equipment and to serve as a work base. These will be removed when the project is completed. There would be no impacts to wetlands or floodplains as a result of this work.

DOE will endeavor to allow 15 days of public review after publication of this Statement of Findings prior to implementing the action.

William L. Barker,

Associate Deputy Assistant Secretary for Facility Transition and Technical Support, Defense Programs.

[FR Doc. 94–10320 Filed 4–29–94; 8:45 am]

BILLING CODE 6450-01-P

Financial Assistance Award: Industrial Foam Products, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-94CE15597 to Industrial Foam Products, Inc. The proposed grant will provide funding in the estimated amount of $99,950 by the Department of Energy for the purpose of saving energy through completion of engineering design for a patented invention, "The GibBAR-WALL™ System (GWS)," a method for constructing insulated concrete walls.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Mr. James H. Gibbar, Industrial Foam Products, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Mr. James H. Gibbar has received three patents and is currently working on a fourth for wall systems. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, DC on April 22, 1994.

Scott Sheffield,

Director Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–10321 Filed 4–29–94; 8:45 am]

BILLING CODE 6450-01-P

Financial Assistance Award: University of Arkansas

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award under Grant number DE–FG01–94FE63182 to the University of Arkansas. The proposed grant will provide funding in the estimated amount of $1,300,000 by the Department of Energy for the utilization of the University of Arkansas's Modeling Support Center in support of the Department of Energy's Liquified Gaseous Fuels Spill Test Facility Program, using a wind tunnel and mathematical modeling support to design field tests.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: James F. Thompson, HR–531.21, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy shall make an award of non-competitive financial assistance in accordance with 10 CFR 600.7(b)(2) to the University of Arkansas. The application submitted by the University of Arkansas is meritorious based on the general evaluation required by 10 CFR 600.7(b)(2)(i)(D), in that the proposed project requires unique equipment, whereas no other sources are known. The Modeling Support Center at the University of Arkansas is the only known facility in possession of the type of wind tunnel necessary for the performance of the work. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 5 months from the effective date of award.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement, and Administration.

[FR Doc. 94–10420 Filed 4–29–94; 8:45 am]

BILLING CODE 6450-01-M

Inertial Confinement Fusion Advisory Committee/Defense Programs; Partially Closed Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs.

Date and Time: Agenda is Subject to Revision

Wednesday, May 18, 1994, 7 p.m.–9 p.m.–Open
Thursday, May 19, 1994, 8:30 a.m.–3:30 p.m.–Closed
Thursday, May 19, 1994, 3:30 p.m.–6:00 p.m.–Open
Friday, May 20, 1994, 7:30 a.m.–2:30 p.m.–Open

Place: University of Rochester, Rochester, NY, Laboratory for Laser Energetics, COI Seminar Room.

Contact: Marshall M. Sluyter, Designated Federal Officer, Office of Research and Inertial Fusion (DP–11), Office of Defense Programs, Washington, DC 20585, Telephone: (301) 903–3345.

Persons wishing to attend the meeting should submit their names to Ms. Jean Steve at the University of Rochester Laboratory for Laser Energetics, (716) 275–5286, on or before May 17, 1994, to obtain visitor passes to the meeting room.

Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion program.

Purpose of the Meeting: To assess the technical readiness of the Inertial Confinement Fusion program to receive approval for the New Start of the National Ignition Facility project; to review the University of Rochester's inertial confinement fusion program and identify its significance to the overall Inertial Confinement Fusion program and the National Security Strategic Plan; and to identify and evaluate the relative importance of other inertial confinement fusion program elements to the overall program mission and the National Security Strategic Plan.

Tentative Agenda: Subject to Revision

May 18, 1994

7 p.m. National Ignition Facility Laser Subcommittee Report
8 p.m. Committee Discussion

May 19, 1994

8:30 a.m. Closed Meeting
3:45 p.m. National Cryogenic Target R&D Program
4:15 p.m. Advanced Target Materials for NIF
4:35 p.m. Cryogenic Target Handling for NIF
4:45 p.m. Opportunity for Public Comment
5:15 p.m. Committee Discussion

May 20, 1994

7:30 a.m. University of Rochester Inertial Confinement Fusion Program—Introduction
8 a.m. National Ignition Facility/Omega Upgrade Capsule Physics
8:45 a.m. Introduction to Omega Upgrade
9:15 a.m. Tours of Facility
10 a.m. Experimental Plan and Details
10:50 a.m. Uniformity Theory
11:10 a.m. New Distributed Phase Plate Technology
11:30 a.m. Laboratories' Comments
1:30 p.m. Committee Discussion
2.10 p.m. Summary
2:30 p.m. Adjournment

Open to the Public: On May 18, 1994, from 7 p.m. to 9 p.m., on May 19, 1994, from 3:30 p.m. to 6 p.m., and on May 20, 1994, from 7:30 a.m. until adjournment, the meeting is open to the public. The Chairman of the Committee is empowered to guide the meeting in a manner that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number shown above. Requests must be received before 3 p.m. (eastern standard time) Friday, May 13, 1994. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3 p.m. (eastern standard time) Friday, May 13, 1994, to assure they are considered by the committee during the meeting.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, App. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portion of the meeting from 8:30 a.m. until 3:30 p.m. on May 19, 1994, will be closed to the public in the interest of national security.

Minutes: Minutes of the open portions of the meeting will be available for public view and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C., 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 26, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–10421 Filed 4–29–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER92–850–005, et al.]

Louis Dreyfus Electric Power, et al.; Electric Rate and Corporate Regulation Filings

April 21, 1994.

Take notice that the following filings have been made with the Commission:

1. Louis Dreyfus Electric Power

[Docket No. ER92–850–005]

Take notice that on April 11, 1994, Louis Dreyfus Electric Power Inc. (Dreyfus) filed certain information as required by the Commission's December 2, 1992, letter order in this proceeding 61 FERC ¶ 61,303 (1992). Copies of Dreyfus' informational filing are on file with the Commission and are available for public inspection, with the exception of certain data which Dreyfus claims is privileged pursuant to 388.112 of the Commission's regulations.

2. Western Resources, Inc.

[Docket Nos. ER93–523–000 and ER93–533–000]

Take notice that on March 31, 1994, Western Resources, Inc. tendered for filing a letter and its enclosures on its case in chief on test year ending December 31, 1994.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Montana Power Co.

[Docket No. ER94–579–000]

Take notice that on April 15, 1994, Montana Power Company tendered for filing an amendment to its December 29, 1993, filing in the above-referenced docket.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Co.

[Docket No. ER94–941–000]

Take notice that on March 30, 1994, Pacific Gas and Electric Company (PG&E) tendered a revision to its filing in Docket No. ER94–941–000, regarding Agreement No. 93–SAO–0018 (Agreement) among PG&E, the federal Western Area Power Administration (Western) and the U.S. Department of Energy, San Francisco Operations Office (DOE/SF). The revised filing is being made to implement FERC Staff's requested changes to Section 7.5 and Exhibit C of the Agreement, affecting service charges under the Agreement.

Copies of this filing have been served upon Western, DOE/SF, the Northern

California Power Agency and the California Public Utilities Commission.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Baltimore Gas and Electric Co.

[Docket No. ER94–997–000]

Take notice that on April 15, 1994, Baltimore Gas and Electric Company tendered for filing an amendment to its February 28, 1994, filing in the above-referenced docket.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Power Systems Inc.

[Docket No. ER94–1124–000]

Take notice that on April 1, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing a Firm Transmission Service, Exhibit A with Western Area Power Agency (Western) and Iowa Public Service Company n/k/a MPSI. This Exhibit A allows Western to increase its schedule power over the MPSI system for delivery to the OPPD system in accordance with Section 6 of Contract No. 89–BAO–337, dated January 18, 1989.

MPSI respectfully requests that the change in schedule of firm transmission service be approved effective December 1, 1992. MPSI states that copies of this filing were served on Western, OPPD and the Iowa Utilities Board.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Co.

[Docket No. ER94–1143–000]

Take notice that on April 4, 1994, Interstate Power Company tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 0116.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Electric Co.

[Docket No. ER94–1144–000]

Take notice that on April 8, 1994, Commonwealth Electric Company (Commonwealth) tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, System Power Sale agreements governing the sale by Commonwealth of System Power (as defined therein) to Green Mountain Power Corporation (GMP), Fitchburg Gas and Electric Light Company (FG&E), and Montaup Electric Company (Montaup). GMP, FG&E and Montaup are collectively referred to herein as the "Buyers".

By the provisions of this agreement, Commonwealth proposes to sell to the Buyers electric power upon terms and conditions and in amounts mutually acceptable to each respective party.

A copy of this filing has been served upon the Buyers and upon the Massachusetts Department of Public Utilities.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER94–1148–000]

Take notice that on April 11, 1994, Entergy Services, Inc. (Entergy Services) filed a letter notifying the Commission of its resignation and withdrawal from membership in the Interregional Transmission Coordination Forum (ITCF) on April 7, 1994. Entergy Services requests that the Commission make this resignation and withdrawal from membership effective on April 7, 1994. Entergy Services states that it has served a copy of this filing on the Administrator of the ITCF.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Co.

[Docket No. ER94–1155–000]

Take notice that New England Power Company (NEP), on April 14, 1994, tendered for filing a preliminary agreement and certificate of concurrence with Nantucket Electric Company and seeks an effective date of sixty days from this filing.

Comment date: May 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10344 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–25–000, et al.]

TIFD VIII-B Inc., et al. Electric Rate and Corporate Regulation Filings

April 20, 1994.

Take notice that the following filings have been made with the Commission:

1. TIFD VIII-B Inc.

[Docket No. EG94–25–000]

Take notice that on April 13, 1994, pursuant to § 365.7 of the Commission's regulations, 18 CFR 365.7, TIFD VIII-B Inc. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. CMS Generation S.A.

[Docket No. EG94–51–000]

On April 15, 1994, CMS Generation S.A., Av. Roque Saenz Peña 1116, piso 9 (1035), Buenos Aires, Argentina, c/o Los Nihuiles S.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CMS Generation S.A. is a subsidiary of CMS Enterprises Company, which is a wholly-owned subsidiary of CMS Energy Corporation. Through affiliates, CMS Generation S.A. will participate in a bid to hold and operate three hydroelectric generating facilities with a combined capacity of 265.2 MW on the Atuel River, 350 kilometers south of the City of Mendoza in Argentina.

Comment date: May 9, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

3. Consolidated Edison Company

[Docket No. ER93–349–000]

Take notice that on April 14, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing revised proposed supplements to its Rate Schedules FERC No. 96 and FERC No. 92.

The revised proposed Supplement No. 2 to Supplement No. 6 to Rate

Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $1,952,000 annually based on the 12-month period ending March 31, 1995.

The revised proposed Supplement No. 2 to Supplement No. 5 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the revised proposed Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Service Agency (COWPUSA) and the New York City Public Utility Service (NYCPUS), decrease the rates and charges for the service by $668,000 annually based on the 12-month period ending March 31, 1995.

These supplements would supersede proposed Supplements No. 2 to Supplement No. 5 and Supplement No. 2 to Supplement No. 6 to Rate Schedule FERC No. 96 and proposed Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 92 which Con Edison tendered to the Commission on January 31, 1994. These supplements have never been made effective and should be deemed superseded upon grant of the relief requested in the present filing.

Con Edison seeks permission to make the rate increases to NYPA, COWPUSA and NYCPUS effective as of April 1, 1994.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Enron Power Marketing, Inc.

[Docket No. ER94–24–003]

Take notice that on March 31, 1994, Enron Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Kentucky Power Co.

[Docket No. ER94–61–000]

Take notice that on April 15, 1994, Kentucky Power Company (Kentucky Power) filed, as an amendment to the filing made in this Docket on October 28, 1993, a proposed amendment to proposed tariff MRS–D. The amendment was submitted in compliance with a Staff request for additional information. Kentucky Power requests an effective date of January 1, 1994.

Kentucky Power states that a copy of its filing was served upon the City of Olive Hill, Kentucky and the Kentucky Public Service Commission.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Power Co.

[Docket No. ER94–121–000]

Take notice that on April 15, 1994, Kentucky Power Company (Kentucky Power) filed, an amendment to the filing made in this Docket on October 28, 1993, a proposed amendment to proposed tariff MRS-T. The amendment was submitted in compliance with a Staff request for additional information. Kentucky Power requests an effective date of January 1, 1994.

Kentucky Power states that a copy of its filing was served upon the City of Vanceburg, Kentucky and the Kentucky Public Service Commission.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Power Systems Inc.

[Docket No. ER94–289–000]

Take notice that on April 11, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 2 to the filing of a Peaking Capacity Sales Agreement (Agreement) dated June 6, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Public Service Company, n/k/a MPSI. This Agreement's principle purpose is to establish terms for MPSI to purchase capacity and energy from Corn Belt from June 1, 1994, through September 30, 2000. Paragraph 12 of the Agreement allows for MPSI to sell capacity and energy to Corn Belt, at Corn Belt's sole option, in the months of October and November of each respective year.

Amendment No. 2 contains additional support data and information.

MPSI requests a waiver of the Commission's regulations so that the Peaking Capacity Sales Agreement be approved effective June 1, 1994.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. The Montana Power Co.

[Docket No. ER94–579–000]

Take notice that on April 15, 1994, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission a second amendment to its original filing in this Docket.

A copy of the filing was served upon Bonneville Power Administration and Western Area Power Administration.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric

[Docket No. ER94–980–000]

Take notice that on March 21, 1994, Portland General Electric Company tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Co.

[Docket No. ER94–989–000]

Take notice that on April 14, 1994, New England Power Company (NEP) tendered for filing an amendment to its filing in the captioned docket. NEP states that this amendment (i) provides reduced cost-of-service numbers applicable to certain of the contracts in the instant filing, and (ii) clarifies certain matters contained in the filing.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Electric Power Co.

[Docket No. ER94–1100–000]

Take notice that on March 29, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing a letter stating the estimated return on common equity used to calculate formula rates for the 1994 contract year to Northeast Texas Electric Cooperative.

12. PacifiCorp

[Docket No. ER94–1134–000]

Take notice that on April 5, 1994, PacifiCorp tendered for filing a Letter Agreement dated February 16, 1994 between PacifiCorp and Idaho Power Company.

The Letter Agreement provides for the installation and cost sharing of a new 230/34.5 Kv transformer at the Jim Bridger Project Substation.

PacifiCorp requests, that a waiver of prior notice be granted and that an effective date of February 16, 1994 be assigned to the Agreement.

Copies of this filing were supplied to Idaho Power Company, the Idaho Public Utilities Commission and the Public Utility Commission of Oregon.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Co.

[Docket No. ER94–1137–000]

Take notice that on April 5, 1994, Arizona Public Service Company (APS) tendered for filing the proposed Capacity Sale Agreement between Citizens Utilities Company (Citizens) and APS.

The agreement proposes that APS will make available to Citizens, when prescheduled by Citizens, up to 45 MW of firm power and energy commencing on June 1, 1994 and ending May 31 1996. The rate for sales under the agreement contains a Demand Charge component and an Energy Charge component.

A copy of this filing has been served on Citizens and the Arizona Commission.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Co.

[Docket No. ER94–1151–000]

Take notice that Florida Power & Light Company (FPL) on April 12, 1994, tendered for filing amendments to five Exhibits A to the Aggregate Billing Partial Requirements Service Agreement Between Florida Power & Light Company and Seminole Electric Cooperative, Inc. FPL requests that they be made effective as of June 13, 1994.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Southwestern Electric Power Co.

[Docket No. ER94–1152–000]

Take notice that on April 13, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing a letter agreement between SWPECO and Arkansas Electric Cooperative Corporation (AECC) which extends for an additional three years, through June 30, 1996, the rates in effect from July 1, 1990 through June 30, 1993, for SWEPCO transmission service to AECC.

SWEPCO seeks an effective date of July 1, 1993 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on AECC and the Arkansas Public Service Commission. Copies of the filing are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Maine Power Co.

[Docket No. ER94–1153–000]

Take notice that on April 14, 1994, Central Maine Power Company (CMP), tendered for filing a Transmission Service Agreement between CMP and Maine Public Service Company, Inc., dated as of April 18, 1994 (Agreement), and Addendum to Transmission Service Agreement dated the same date. CMP will provide MPS with non-firm transmission service over the CMP transmission system for the purpose of transmitting Maine Yankee non-firm energy in accordance with the terms of the Agreement and Addendum.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. West Texas Utilities Co.

[Docket No. ER94–1154–000]

Take notice that on April 14, 1994, West Texas Utilities Company (WTU) tendered for filing an Off-Peak Rider to Rate Schedule TR–1 and a form of Supplement to Exhibit A for the TR–1 Service Specification Sheet. WTU states that a copy of the filing has been served on each of WTU's TR–1 customers and the Public Utility Commission of Texas.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Co.

[Docket No. ER94–1157–000]

Take notice that New England Power Company (NEP) on April 15, 1994, tendered for filing an Executed Service Agreement and Certificate of Concurrence for the Vermont Public Power Supply Authority customers under NEP's Electric Service Tariff, Original Volume No. 5.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Alabama Power Co.

[Docket No. ER94–1158–000]

Take notice that on April 15, 1994, Alabama Power Company filed a letter agreement dated April 6, 1994, revising the Contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Alabama Power Company. The letter agreement extends the term of the existing Contract for six months to allow the parties to continue negotiations of a new arrangement.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. The Washington Water Power Co.

[Docket No. ER94–1159–000]

Take notice that on April 15, 1994, The Washington Water Power Company (WWP), tendered for filing with the Federal Regulatory Commission pursuant to 18 CFR Part 35 an Agreement for Purchase and Sale of Summer Capacity and Energy and the Seasonal Exchange of Capacity and Energy (Agreement) between the Washington Water Power Company and PacifiCorp.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service

[Docket No. ER94–1160–000]

Take notice that on April 15, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company, a Bulk Power Supply Service Agreement (Agreement) to provide requirements service to Town of Madison Department of Electric Works (Madison) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Long-Term Firm Transmission Service No. 1.

NUSCO requests that the rate schedule become effective on September 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreement and the affected state utility commissions.

Comment date: May 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. LG&E-Westmoreland Southampton

[Docket Nos. QF88–84–005 and EL94–45–000]

On April 15, 1994, LG&E-Westmoreland Southampton (Applicant) tendered for filing the second supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides further additional information pertaining to the technical data and the operating procedure of the facility.

Comment date: May 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. Old Dominion Electric Cooperative

[Docket No. TX94–5–000]

On April 15, 1995, Old Dominion Electric Cooperative, Inc. (Old Dominion) filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Delmarva Power & Light Company to provide transmission services pursuant to Section 211 of the Federal Power Act.

Old Dominion seeks a Commission order directing Delmarva to provide transmission service for 150 megawatts of power purchased by Old Dominion from Public Service Electric & Gas Company starting on January 1, 1995 and extending at least ten years through December 31, 2004. The service that Old Dominion requests the Commission to order is that of firm, network transmission service, equivalent to the transmission service provided by Delmarva Power & Light Company to its other native load customers. The service so requested would require Delmarva to transmit the power delivered to it by Public Service Gas & Electric Company to Old Dominion without assessing multiple charges for each receipt/billing point combination.

Comment date: May 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10345 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2347–001 Wisconsin]

Wisconsin Power & Light Co.; Availability of Draft Environmental Assessment

April 25, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Janesville Central Hydroelectric Project, located on the Rock River, in the city of Janesville, in Rock County, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective and enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Michael Strzelecki, Environmental Coordinator, at (202) 219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10346 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2496–006, et al.]

Hydroelectric Applications (Eugene Water and Electric Board, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* 2496–006.

c. *Date filed:* December 26, 1991.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Leaburg-Walterville Hydroelectric Project.

f. *Location:* On the McKenzie River in Lane County, near Eugene, Oregon.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Randy L. Berggren, General Manager, Eugene Water & Electric Board, 500 East 4th Avenue, P. O. Box 10148, Eugene, Oregon 97440, (503) 484–2411.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E. (202) 219–2847.

j. *Deadline Date:* Sixty days from the issuance date of this notice.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The project as proposed for licensing combines two separately licensed developments into one licensed facility.

(A) Leaburg Development

This development as proposed for licensing consists of: (1) The 22-foot-high, 400-foot-long concrete diversion dam impounding the 68-acre reservoir at elevation 743.5 msl; (2) the fishways; (3) the 15-foot-deep, 5-mile-long canal; (4) the forebay with two 260-foot-long, 12-foot-diameter concrete penstocks; (5) the concrete powerhouse containing two 7.5–MW turbine-generator units; (6) the 1,100 foot-long tailrace; and (7) other appurtenant structures. The average annual generation is 97.3 Gwh.

(B) Walterville Development

This development as proposed for licensing consists of: (1) The 15-foot-deep, 4-mile-long canal; (2) the pumped storage pond; (3) the forebay with a 100-foot-long, 16.5-foot-square concrete penstock; (4) the structural steel powerhouse containing a 8–MW turbine-generator unit; (5) the 2-mile-long tailrace; and (6) other appurtenant structures. The average annual generation is 66.6 Gwh.

The Leaburg-Walterville project also includes the two 14.2-mile-long, 69–Kv transmission lines.

m. *This notice also consists of the following standard paragraph:* D9.

n. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

2a. *Type of Application:* Transfer of License.

b. *Project No.:* 9401–028.

c. *Date filed:* April 4, 1994.

d. *Applicant:* Halecrest Company and Mt. Hope Waterpower Project L.P.

e. *Name of Project:* Mount Hope Pumped Storage.

f. *Location:* On Mount Hope Lake, Morris County, New Jersey.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Frank Fisher, Project Manager, Mt. Hope Hydro, Inc., 627 Mt. Hope Road, Wharton, NJ 07885, (201) 361–1072; Amy S. Koch, LeBoeuf, Lamb, Greene & MacRae, 1875 Connecticut Avenue, N.W., Suite 1200, Washington, DC 20009, (202) 986–8031.

i. *FERC contact:* Etta Foster (202) 219–2679.

j. *Comment Date:* June 6, 1994.

k. Description of Proposed Action: Halecrest Company seeks Commission approval to transfer its license for the Mt. Hope Pump Storage Project to the Mt. Hope Waterpower Project L.P., in order to obtain outside financing for project construction.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3a. Type of Application: Surrender of Exemption (5MW or Less).

b. Project No.: 10014–003.

c. Date filed: April 6, 1994.

d. Applicant: Fredrick F. Burnell and William A. Worf.

e. Name of Project: Sharrott Creek Hydroelectric.

f. Location: On Sharrott Creek within the Bitterroot National Forest, Ravalli County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r)

h. Applicant contact: Fredrick F. Burnell, 641 Timber Trail, Stevensville, MT 59870, (406) 777–3670.

i. FERC contact: Etta Foster, (202) 219–2679.

j. Comment Date: June 3, 1994.

k. Description of Proposed Action: The exemptee is requesting surrender of its exemption because the project is not economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1 and D2.

4a. Type of Application: Minor License.

b. Project No.: 11120–000.

c. Date filed: March 4, 1994.

d. Applicant: Cameron Gas & Electric Company.

e. Name of Project: Middleville Hydroelectric Dam Project.

f. Location: On the Thornapple River, Thornapple Township, Barry County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Jan Marie Evans, Cameron Gas & Electric Company, 4572 Sequoia, Okemos, MI 48864, (517) 351–5400.

i. FERC Contact: Mary C. Golato (202) 219–2804.

j. Comment Date: 60 days from the date of issuance of notice.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing concrete, gravity dam 12 feet high and 80 feet long; (2) an existing reservoir with a storage capacity of approximately 30 acres and a normal maximum surface elevation of 708.5 feet mean sea level; (3) an existing penstock approximately 25 feet by 25 feet; (4) an existing powerhouse with one generating unit having a capacity of 350 kilowatts; (5) an existing transmission line approximately 100 feet long; and (6) appurtenant facilities. The owner of the dam is Middleville Power Company. The applicant estimates that the average annual generation would be 1,400,000 kilowatthours, and the estimated cost of the project is $88,000.

l. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

5a. Type of Application: Minor License.

b. Project No.: 11402–000.

c. Date Filed: April 2, 1993.

d. Applicant: City of Crystal Falls.

e. Name of Project: Crystal Falls.

f. Location: On the Paint River, in the City of Crystal Falls, Iron County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: W.E. Hagglund, 401 Superior Ave., Crystal Falls, MI 49920, (906) 875–3212.

i. FERC Contact: Charles T. Raabe (tag) (202) 218–2811.

j. Deadline Date: See paragraph D10.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The existing operating project would consist of: (1) A 270-foot-long, 16-foot-high concrete gravity dam having a spillway section topped with four radial steel gates; (2) a reservoir having a surface area of 100 acres and a storage capacity of 590 acre-feet at surface elevation 1333.69 feet NGVD; (3) a 77-foot-long integral powerhouse having three turbine/generator units with a total installed capacity of 1,000-kW; (4) a 75-foot-long, 77-foot-wide tailrace; and (5) appurtenant facilities. The project is owned by the Applicant. Project power would be used by the Applicant within its municipal facilities.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the City of Crystal Falls, 401 Superior Ave., Crystal Falls, Michigan 49920, (906) 875–3212.

o. Scoping Process: In gathering background information for preparation of the environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the constructing and operation or the continued operation of hydropower projects. The staff will review all issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reason for not providing a more detailed analysis will be given.

p. Request for Scoping Comments: Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and

socioeconomic environments. For example, fish stocking/management histories in the subject river historic water quality the quality, and wetland habitat loss or proposals to develop land and water resources within the basin.

- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that a project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not be limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental document should be filed by the deadline date.

6a. *Type of Application:* Minor License.

b. *Project No.:* 11466–000.

c. *Date filed:* March 29, 1994.

d. *Applicant:* Mansfield Hydro Corporation.

e. *Name of Project:* Mansfield Hollow Water Power Project.

f. *Location:* On the Natchaug River, in the Town of Williamatic, Tolland and Windham Counties, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Richard D. Ely, President, Mansfield Hollow Corporation, P.O. Box 672, Mansfield Center, CT 06250, (203) 487–1395.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* 60 days from the date of issuance of notice.

k. *Description of Project:* The proposed project would utilize an existing dam owned by the Department of the Army, Corps of Engineers, and would consist of: (1) A new powerhouse containing four turbine-generator units at a total installed generating capacity of 1.15 megawatts; (2) a proposed 23-kilovolt transmission line; and (3) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,600 megawatthours.

l. With this notice, we are initiating consultation with the Connecticut State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

7a. *Type of Application:* Amendment of License.

b. *Project No.:* 3074–005.

c. *Date Filed:* September 30, 1993.

d. *Applicant:* City of Spokane, Washington.

e. *Name of Project:* Upriver Project.

f. *Location:* On the Spokane River in Spokane County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Irving B. Reed, Manager, Engineering Services, City of Spokane, Washington, Skywalk Level-Municipal Building, Spokane, WA 99201–3334, (509) 456–4370.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* June 13, 1994.

k. *Description of Amendment:* The City of Spokane requests authorization to increase the normal water surface elevation of the Upriver Project's upstream reservoir by 1.5 feet, from the present elevation of 1927 feet to 1928.5 feet (City Datum). The city would accomplish this by extending the project's tainter gates by 1.5 feet. The change in reservoir elevation will increase the project's annual generation by 4.23 million kWh. The licensee states that the additional generation is necessary due to increased power consumption for water pumpage and other municipal uses.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

8a. *Type of Application:* Surrender of License.

b. *Project No.:* 5906–005.

c. *Date Filed:* April 1, 1994.

d. *Applicant:* North Canal Waterworks.

e. *Name of Project:* North Canal Waterworks.

f. *Location:* North Canal, downstream of Essex Dam, on the Merrimack River, in Essex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825 (r).

h. *Applicant Contracts:* Mr. Melvin G. Lezberg, 6 Broadway, Lawrence, MA 01840, (508) 687–2312.; Stephen E. Champagne, Esquire, Curtis Thaxter Stevens Broder & Micoleau, Box 7320, One Canal Plaza, Portland, ME 04112, (207) 775–2361.

i. *FERC Contact:* Mr. Mark R. Hooper, (202) 219–2680.

j. *Comment Date:* June 6, 1994.

k. *Description of Project:* The licensee states that the project is no longer economically viable to operate.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

9a. *Type of Application:* Minor License.

b. *Project No.:* P–11472–000.

c. *Date Filed:* April 8, 1994.

d. *Applicant:* Consolidated Hydro Maine, Inc.

e. *Name of Project:* Burnham Hydro Project.

f. *Location:* On the Sebasticook River in Somerset and Waldo Counties, near Burnham, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r)

h. *Applicant Contact:* Mr. Wayne E. Nelson, Consolidated Hydro Maine, Inc., c/o Consolidated Hydro, Inc., RR #2, Box 690H, Industrial Avenue, Sanford, MA 04073, (207) 490–1980.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* 60 days from the filing date in paragraph C. (June 7, 1994).

k. *Description of Project:* The proposed project would consist of: (1) An existing dam and intake structure; (2) an existing 304-acre reservoir; (3) a powerhouse containing four generating units for a total installed capacity of 1,430 Kw; (4) a substation and 34.5–Kv transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 6,650 Mwh for the proposed project.

l. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (June 13, 1994 for Project No. 2496–006). All reply comments must be filed with the Commission within 105 days from the date of this notice. (July 26, 1994 for Project No. 2496–006).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "Comments", "Reply Comments", "Recommendations," "Terms and Conditions," or "Prescriptions;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (June 14, 1994 for Project No. 11402–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (July 29, 1994 for Project No. 11402–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "Comments", "Reply Comments", "Recommendations," "Terms and Conditions," or "Prescriptions;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: April 25, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10347 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–351–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

April 21, 1994.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company; Columbia Gulf Transmission Company

[Docket No. CP94–351–000]

Take notice that on April 13, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O Box 2511, Houston, Texas 77252–2511, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001–0683 (jointly referred to as Applicants), filed in Docket No. CP94–351–000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and § 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission and approval to abandon a natural gas transportation service for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they propose to abandon transportation service for Amoco initiated pursuant to an agreement dated August 3, 1977. Applicants indicate that Tennessee provides its service under its Rate Schedule T–62, and Columbia Gulf provides its service under its Rate Schedule X–49. Applicants further state that the service was authorized in Docket No. CP78–44. It is indicated that the transportation is provided by Applicants from Offshore Louisiana to a point in Vermilion Parish, Louisiana, and/or a point in St. Landry Parish, Louisiana, where Amoco would make the subject volumes available to Florida Gas Transmission Company (FGT). It is also indicated that no facilities are proposed to be abandoned. Applicants state that they and Amoco have agreed to the termination by letters dated May 27, 1993 and July 28, 1993.

Comment date: May 12, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP94–363–000]

Take notice that on April 18, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP94–363–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install one delivery tap under Equitrans' blanket certificate issued in Docket No. CP83–508–000 (and transferred to Equitrans in Docket No. CP86–676–000), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install one delivery tap in the City of Waynesburg, Morgan Township, Pennsylvania to provide gas transportation service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans projects the quantity of gas to be delivered through the delivery tap will be approximately 1 Mcf on a peak day. Equitrans will charge Equitable the applicable rate contained in Equitrans' tariff on file with and approved by the Commission.

Comment date: June 6, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10348 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–53–000]

Cardinal Power of Canada, L.P.; Application for Determination of Exempt Wholesale Generator Status

April 25, 1994.

On April 21, 1994, Cardinal Power of Canada, L.P. ("Cardinal"), 242 Henry Street, P.O. Box 70, Cardinal, Ontario, Canada KOE–1EO, filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Cardinal is a limited partnership formed under the laws of the State of Delaware and registered to do business in Ontario Canada. Cardinal will own, operate and maintain a 150 MW natural gas-fired cogeneration facility located in Cardinal, Ontario, Canada ("Facility"). Cardinal will be engaged directly and exclusively in the business of owning and operating the Facility and selling electric energy at wholesale. The Facility is expected to begin commercial operation in May, 1994.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 16, 1994, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10349 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–157–000]

Columbia Gas Transmission Corp.; Technical Conference

April 25, 1994.

Pursuant to the Commission's notice, issued on April 18, 1994, a technical conference was scheduled for Wednesday, April 27, 1994. Because the Commission's offices will be closed on that date, the conference has been rescheduled for Thursday, April 28, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10350 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA93–1–21–003 and TM93–9–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 25, 1994.

Take notice that on April 20, 1994, Columbia Gas Transmission Corporation (Columbia) tendered a compliance filing in accordance with the Federal Energy Regulatory Commission's order issued on April 6, 1994, in Docket Nos. TA93–1–21–000, TA93–1–21–001 and TM93–9–21–000.

Columbia states that copies of the filing were served upon Columbia's firm customers, interested state commissions, and to each of the parties set forth on the Official Service List in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10351 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–211–000]

Pacific Gas Transmission Co.; Change in Rates

April 25, 1994.

Take notice that on April 21, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain revised tariff sheets to add language to the Transportation General Terms and Conditions of PGT's FERC Gas Tariff, First Revised Volume No. 1–A to govern the determination of credit-worthiness for firm transportation service for Shippers bidding on a parcel for one year or less of service through PGT's Capacity Release Program contained in Paragraph 28. PGT requests these tariff sheets become effective on May 21, 1994.

PGT states that a copy of this filing has been served on PGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10352 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–118–001]

Questar Pipeline Co.; Tariff Filing

April 25, 1994.

Take notice that on April 20, 1994, Questar Pipeline Company (Questar) tendered for filing and acceptance, to be effective as shown, the following tariff sheets:

Original Volume No. 1

Substitute Original Sheet No. 7
Effective Date: September 1, 1993

Original Volume No. 3

Substitute Eleventh Revised Sheet No. 8
Effective Date: September 1, 1993
Substitute Twelfth Revised Sheet No. 8
Effective Date: October 1, 1993
Substitute Thirteenth Revised Sheet No. 8
Effective Date: January 1, 1994

Questar states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with the Commission's April 13, 1994, letter order in Docket No. RP94–118–000.

Questar states further that it has provided a copy of this filing to the Utah Division of Public Utilities, the Wyoming and Utah Public Service Commissions and each person designated in the official service list compiled by the secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before May 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10353 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–210–000]

Questar Pipeline Co.; Tariff Filing

April 25, 1994.

Take notice that on April 21, 1994, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet Nos. 44 through 46, 71 and 75 and Original Sheet No. 46A, to be effective May 21, 1994.

Questar states that this filing implements a new receipt-point group (RPG) concept that Questar believes responds positively to customer requests for increased flexibility when nominating firm capacity at alternate receipt points on Questar's system.

Questar states further that it has provided a copy of this filing to the

Wyoming and Utah Public Service Commissions and all shippers on Questar's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10354 Filed 4–29–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following retransfer: RTD/JA(EU)–74, for the transfer of 0.0021 grams of plutonium from Belgium to Japan for use as reference material for determination of plutonium mass by mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, is has been determined that this subsequent arrangement will not be inimical to the common defense and security.

Issued in Washington, DC on April 25, 1994.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–10319 Filed 4–29–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. FE C&E 94–5—Certification Notice—132]

LG&E-Westmoreland Rensselaer; Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy Department of Energy.

ACTION: Notice of filing

SUMMARY: On April 14, 1994, LG&E-Westmoreland Rensselaer submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of April 14, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: LG&E-Westermoreland Rensselaer.

Operator: LG&E-Westermoreland Rensselaer.

Location: Rensselaer, New York.

Plant Configuration: Topping Cycle Cogeneration.

Capacity: 79 megawatts.

Fuel: Natural gas.

Purchasing Utilities: Niagara Mohawk Power Corporation.

In-Service Date: Middle of 1994.

Issued in Washington, DC, April 21, 1994

Anthony J. Como

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–10322 Filed 4–29–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–4710–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed April 18, 1994 Through April 22, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940147, DRAFT EIS, COE, MA, Boston Harbor Navigation Improvements and Berth Dredging Project, Implementation, Reserved Channel, Mystic River and Chelsea Creek, MA, Due: June 13, 1994, Contact: Peter Jackson (617) 647–8861.

EIS No. 940148, FINAL EIS, FHW, NY, I–90/Interchange 8 Connector to Route 4 at Washington Avenue Transportation Improvements, Funding and COE Permits, Town of North Greenbush, Rensselaer County, NY, Due: May 31, 1994, Contact: Harold J. Brown (518) 472–3616.

EIS No. 940149, DRAFT EIS, NPS, AK, Brooks River Area Development, Use and Management Plan, Implementation, Katmai National Park, AK, Due: June 30, 1994, Contact: Bill Pierce (907) 246–3305.

EIS No. 940150, DRAFT EIS, BOP, MN, Waseca Federal Correctional Institution Establishment and Operation, Waseca County, MN, Due: June 13, 1994, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 940151, DRAFT EIS, BLM, NV, Robinson Mining Project, Construction, Operation and Expansion, Plan of Operation Approval, White Pine, Elko and Eureka Counties, NV, Due: June 17, 1994, Contact: Dan Netcher (702) 289–4865.

EIS No. 940152, DRAFT EIS, BLM, CA, Ore Cruz Operation of the American

Girl Canyon Project, Surface and Underground Mining, Plan of Operations Approval, Imperial County, CA, Due: June 28, 1994, Contact: Thomas Zale (619) 353–1060.

EIS No. 940153, FINAL EIS, SFW, SD, Conata Basin/Badlands Area Black-Footed Ferret Reintroduction, Implementation, Badlands National Park and Buffalo Gap National Grassland, Conata Basin, several counties, SD, Due: May 31, 1994, Contact: Douglas A. Searls (605) 224–8693. The US Department of the Interior's Fish and Wildlife Service and National Park Service and the US Department of Agriculture's Forest Service are Joint Lead Agencies on this Project.

EIS No. 940154, FINAL SUPPLEMENT, AFS, NC, Nantahala and Pisgah National Forests Land and Resource Management Plan, Updated Information, Amendment 5, Implementation, several counties, NC, Due: May 31, 1994, Contact: Randle G. Phillips (704) 257–4860.

EIS No. 940155, FINAL EIS, BOP, OH, Elkton Federal Correction Complex, Construction and Operation, Site Selection, Columbiana, Carroll or Portage County, OH, Due: May 31, 1994, Contact: Patricia Sledge (202) 514–6470.

EIS No. 940156, FINAL EIS, FTA, PA, Phase I Airport Busway/Wabash Hovway Corridor Construction, Downtown Pittsburg to the Borough of Carnegie, Allegheny County, PA, Due: May 31, 1994, Contact: Herman Shipman (215) 656–6900.

EIS No. 940157, DRAFT EIS, USN, CA, Miramar Landfill General Development Plan/Fiesta Island Replacement Project/Northern Sludge Processing Facility/West Miramar Landfill Phase II/ Overburden Disposal, Implementation, Funding, COE Section 404 Permit and NPDES Permit, Naval Air Station Miramar, San Diego County, CA, Due: June 13, 1994, Contact: Roger Hillhouse (619) 537–1102.

EIS No. 940158, DRAFT EIS, USN, FL, Pensacola Naval Air Station Realignment, Relocation of Memphis Naval Air Station, Closure of San Diego Naval Training Center, Implementation, Pensacola Bay, FL, Due: June 13, 1994, Contact: Ronnie Lottimore (803) 743–0888.

Dated: April 26, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–10428 Filed 4–29–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4710–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 11, 1994 Through April 15, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–K65159–NV Rating LO1, East Shore Land and Resource Management Plan, Implementation, Lake Tahoe Basin Management Unit (LTBMU), Washoe and Douglas Counties, NV.

Summary: EPA had no objections to the proposed action if the water and air mitigation measures are fully implemented.

ERP No. D–AFS–L65223–ID Rating EC2, Lower Elkhorn Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns based on the BMPs effectiveness and potential impacts on wetlands and air quality. Additional information was requested to: clarify monitoring commitments, document wetland impacts and discuss impacts to downwind sensitive areas, particularly the Class I Selway-Bitterroot Wilderness Area.

ERP No. D–COE–E36173–FL Rating EC1, Central and Southern Florida (Canal 111 (C–111) Project, for Flood Control and other Purposes, Implementation, South Dade County, FL.

Summary: EPA expressed environmental concerns about the function of the project elements and the number of refinements needed to accomplish the project goals.

ERP No. D–IBR–K39048–AZ Rating EC2, Glen Canyon Dam Operation, Implementation, Colorado River Storage Project, Funding and COE section 10 and 404 Permits, Coconino County, AZ.

Summary: EPA expressed environmental concerns regarding the proposal to raise the dam spillway gates by 4.5 feet. EPA requested additional information in the FEIS, including an evaluation of the flood frequency reduction options, further discussion of the adaptive management program, and beach habitat-building flows.

Final EISs

ERP No. F–AFS–L67031–ID Black Pine Gold Mine Expansion Project, Implementation, Plan of Operation Approval and Right-of-Way Permits, Sawtooth National Forest, Burley Ranger District, Cassia County, ID.

Summary: EPA expressed environmental concerns about the EIS since it did not contain detailed information about a surface water management plan and final design for the leach pads.

ERP No. FS–USA–K10009–TT Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, Test Range Facility Construction and Support Services, Republic of the Marshall Islands, TT.

Summary: EPA had concerns with the mechanism for adopting standards and the unavailability of standards to accompany the SEIS. Concerns also included the lack of effluent guidelines; the incompletion of studies to back recommendations; and insufficient descriptions of mitigation activities.

Dated: April 26, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–10427 Filed 4–29–94; 8:45am]

BILLING CODE 6560–50–U

[FRL–4879–9]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption–Class I Hazardous Waste Injection; Hoechst Celanese Engineering Resins, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Hoechst Celanese Engineering Resins, Inc., for the Class I injection wells located at Bishop, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a

reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Hoechst Celanese Engineering Resins, Inc., of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Bishop, Texas facility specifically identified in the reissued petition, for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 25, 1994. The public comment period ended on April 13, 1994. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of April 22, 1994.

ADDRESSES: Copies of the reissued petition and allpertinent information relating thereto are on file at the following location:

Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mac Weaver, Chief UIC Programs Section, EPA-Region 6, telephone (214) 655-7160.

Richard D. Smith,

Acting Director, Water Management Division (6W).

[FR Doc. 94-10436 Filed 4-29-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4879-8]

Underground Injection Control Program, Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; ARCO Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to ARCO Chemicals, for the Class I injection wells located at Channelview, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by ARCO Chemicals, of the specific restricted hazardous waste identified in the exemption reissuance, into the Class I hazardous waste injection wells at the Channelview, Texas facility specifically identified in the reissued exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued November 24, 1993. The public comment period ended on January 10, 1994, was reopened January 26, 1994 and closed on March 18, 1994. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of April 22, 1994.

ADDRESSES: Copies of the reissued petition and allpertinent information relating thereto are on file at the following location:

Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU),1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mac A. Weaver, P.E., Chief UIC State Programs, EPA-Region 6, telephone (214) 655-7160.

Richard D. Smith,

Acting Director, Water Management Division (6W).

[FR Doc. 94-10437 Filed 4-29-94; 8:45 am]

BILLING CODE 6560-50-F

[CFR 1-4880-6]

National Advisory Council for Environmental Policy and Technology, Policy Integration Project, Lead Subcommittee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), the U.S. Environmental Protection Agency (EPA) gives notice of the next meeting of the Lead Subcommittee of the Policy Integration Project of the National Advisory Council for Environmental Policy and Technology (NACEPT). During the meeting, to be held on Wednesday May 11, the Lead Subcommittee will discuss final draft working papers and recommendations and review the draft executive summary of the Subcommittee's report to NACEPT.

DATE: The Subcommittee will meet on May 11, 1993. The meeting will start at 9:30 a.m. and end at 5 p.m.

ADDRESS: Lake Huron Room, Environmental Protection Agency Regional Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION: Contact Mr. Robert L. Hardaker, Designated Federal Official, U.S. EPA, Office of Cooperative Environmental Management, telephone 202-260-9741.

Dated: April 27, 1994.

Robert L. Hardaker,

Designated Federal Official Lead Subcommittee.

[FR Doc. 94-10541 Filed 4-29-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4880-8]

Risk Assessment and Management Commission; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Risk Assessment and Management Commission, established as a Presidential Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will meet on May 16, 1994 in the Board Room of the National Academy of Sciences at 2101 Constitution Avenue NW., Washington, DC. The meeting is open to the public, and will begin at 9 a.m. and end no later than 5:30 p.m. Seating at the meeting will be on a first come basis.

Background

The Risk Assessment and Management Commission was established by Congress to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

This is the first meeting of the Commission and as such it is expected to focus on a range of organizational and administrative issues including the selection of a Chairperson, staff requirements, physical location of the Commission, budget, procurement and contractual issues. The Commission will also begin an initial discussion of its mandate and the approach to be taken in conducting its investigations.

Availability of Documents and Information

Single copies of background documents to this meeting are available from Jeannette M. Price, U.S. EPA, M–6101, 401 M St. SW., Washington, DC, 20460 or telephone (202) 260–7403. Documents include the Charter, list of Commission members, and a reprint of section 303 of the CAAA of 1990. For additional information please contact Dr. Carl Mazza, M–6101, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 94–10542 Filed 4–29–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Cable Forms; Information Collection Under OMB Review

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document summarizes revisions made to FCC Forms which were developed in order for the Commission and/or local franchising authorities to assess whether rates for regulated basic cable services and/or regulated cable programming services are reasonable. Due to the nature of the comments received to date, the Commission has decided to incorporate immediately suggested changes to certain forms as indicated below. The Commission is requesting that the expiration date of these forms be extended to April 1997. These revised forms are being submitted to OMB for expedited review and approval by May 4, 1994.

EFFECTIVE DATE: April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty at 202–416–0856. For copies of the forms, call 202–416–0919.

SUPPLEMENTARY INFORMATION: This is a synopsis of the revisions made to FCC Forms based on comments received by the Commission. To implement rules adopted in MM Docket No. 92–266, MM Docket No. 92–262 and MM Docket No. 93–215, the Commission developed the following forms, and received initial OMB approval on an emergency basis for 90 days, expiring June 29, 1994, 59 FR 15910, April 5, 1994. On April 21, 1994, the Commission held a Cable Operator's Seminar before and during which comments about these forms were received from parties including CATA, NCTA, SCBA, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. and Wiley, Rein & Fielding, as well as others. In addition, the Commission's staff has identified certain corrections which would be beneficial to users of the forms. Due to the range of commenting parties, and the nature and substance of the comments received, the Commission has chosen, upon approval from OMB, to immediately implement these changes in an effort to improve upon the current forms.

1. FCC Form 1200, Setting Maximum Initial Permitted Rates for Regulated Cable Services and Equipment Pursuant to Rules Adopted February 22, 1994 (the "First Time Filers Form"). **Note:** FCC Form 1200 was inadvertently assigned the same OMB Control Number as the FCC Form 393, based on an incorrect assumption that Form 1200 replaces FCC Form 393. FCC Form 393 will continue to be required to be filed by operators to justify pre-May 15, 1994, rates for which there may be refund liability. A correction is being requested, in conjunction with the request for approval of the revised form, which will assign a new OMB Control Number to the Form 1200. FCC Form 393 will retain the OMB Control Number of 3060–0571. In addition to the specific changes listed below, we are editing some of the instructions to clarify them. Changes being made include:

(1) A box is being added for small operators to place an "x" on the paper version of the form, on page 15.

(2) Module B is being modified to permit adjustments for eligible external costs if such costs are not already reflected in rates.

(3) Module C, line C4, instructions, are being changed to read "Enter the monthly average number of customer changes in service tiers charged to subscribers in your fiscal year 1993."

(4) Module E, caption on form, p. 5, and on instructions, is being changed to read "To Be Completed if B19>C10" rather than C9.

(5) Module H, title, is being changed to read "earlier of the date of initial regulation or February 28, 1994" rather than "and."

(6) Module I, line I1—form and instructions are being changed to indicate that gross full reduction rate is line H9, not H8.

OMB Control Number: A new OMB control number has been requested; estimated annual burden: 11,200 responses; 20 hours per response; 224,000 hours total annual burden.

2. FCC Form 1201, Facsimile Request. This form is not being revised and is being submitted to OMB for expedited review and approval to extend the current expiration date.

OMB Control Number: 3060–0597, estimated annual burden: 14,000 responses; 1 hour per response; 14,000 hours total annual burden.

3. FCC Form 1205, Determining Costs of Regulated Cable Equipment and Installation. Edits to instructions are being made to clarify them and to correct grammatical errors. In addition, the gross-up calculation is being revised to ensure that negative values are not inappropriately entered in accounting for interest deductibility and in making adjustments for Non–C corporations when calculating the gross-up rate of return.

OMB Control Number: 3060–0592, estimated annual burden: 16,600 responses; 20 hours per response; 332,000 hours total annual burden.

4. FCC Form 1210, Updating Maximum Permitted Rates for Regulated Services and Equipment. Edits to instructions are being made to clarify them and to correct grammatical errors. The following specific changes are being made to the form:

(1) Instructions, page 2, last bullet, 1st sentence is being changed to read: "If the Commission found your cable programming service rates to be unreasonable less than one year ago and you now wish to increase your rates, you must submit FCC Form 1210 to the Commission for its approval before raising your rates. In addition, if a compliant is pending before the Commission, and you raise your cable programming service rates while a complaint about those rates is pending, you must submit FCC form 1210, for notice purposes only."

(2) module A, line A2 on instructions is being changed to read "enter the full reduction rates from line J6 of your Form 1200" rather than line J7.

(3) Module B is being changed to properly adjust for the 7.5% margin in programming costs and retransmission consent fees. A programming cost adjustment will be added as a one-time-only adjustment in calculating the 7.5% margin on new programming costs. This adjustment is made the first time a Form 1210 is filed. The retransmission consent adjustment will also be made as a one-time-only adjustment in calculating the 7.5% gross-up adjustment. This adjustment is made the first time a Form 1210 is filed after retransmission consent fees are allowed as an external cost (they can be claimed as an external cost after October 6, 1994).

(4) Line E5—where there is no inflation, the filer should enter "1" rather than "0". In addition, the instructions will clarify the calculation for inflation adjustments.

OMB Control Number: 3060–0595, estimated annual burden: 33,600 responses; 10 hours per response; 336,000 hours total annual burden.

5. FCC Form 1215, A La Carte Channel Offerings. Edits to instructions are being made to clarify that Form 1215 is a set of instructions for collective information. There is no "form" for the operator to fill out. The operator should follow the instructions on Form 1215, and provide the requested information on an attached sheet or sheets with each Form 1200 and each Form 1210 which is filed. No other changes are being made.

Control Number: 3060–0593, estimated annual burden: 44,800 responses; 1 hour per response; 44,800 hours total annual burden.

6. FCC Form 1220, Cost of Service Schedule. The following changes are being made upon staff recommendation:

(1) Clarifying language is being added to the instructions for part I (Revenue Requirement Computation), Line 3.h to indicate that if a negative result in the tax gross-up is calculated, the value should be set to zero. The interest expense should not result in a negative tax liability and cause the return on investment to be reduced.

(2) In Worksheet A, the titles for columns (c) and (d) were inadvertently reversed. The title for column (c) should be "Uncategorized Allocations from Higher Organizational Levels (Uncat. Allo.) and the title for column (d) should be "Adjusted Balance" (Adj. Bal.).

OMB Control Number: 3060–0594, estimated annual burden: 2,100 responses; 80 hours per response; 168,000 hours total annual burden.

7. FCC Form 1225, Cost of Service Schedule For Small Systems. This form is not being revised and is being sent to OMB for expedited review and approval to extend the current expiration date.

OMB Control Number: 3060–0596, estimated annual burden: 700 responses; 60 hours per response; 42,000 hours total annual burden.

8. Note: The Commission is seeking expedited review and approval by the Office of Management and Budget of the information collections associated with this notice by May 4, 1994. A copy of this Notice will be available for public inspection and copying at the Office of the Federal Register. Copies of these OMB submissions may be purchased from International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037 (202) 857–3800. Comments on these information collections are encouraged and will be accepted until May 4, 1994. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503 or by calling (202) 395–7231. Printed copies of these forms may be obtained by calling (202) 416–0919, or by writing to Federal Communication Commission, Cable request Form (Specify form number), P.O. Box 18238, Washington, DC 20036. They will also be available in room 207, 2033 M Street NW, Washington, DC.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–10461 Filed 4–29–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1016–DR]

Maryland; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1016–DR), dated March 16, 1994, and related determinations.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3006.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maryland dated March 16, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 16, 1994:

Anne Arundel, Frederick and Prince Georges Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–10412 Filed 4–29–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1015–DR]

Pennsylvania; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1015–DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania dated March 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 10, 1994:

Beaver, Cambria, Centre, Clinton and Wyoming Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–10413 Filed 4–29–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1022–DR]

Tennessee; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1022–DR), dated April 14, 1994, and related determination.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee dated April 14, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 14, 1994:

Bradley, Hamblin, Jefferson and Monroe Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94-10414 Filed 4-29-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1023-DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-1023-DR), dated April 21, 1994, and related determinations.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms, tornadoes, and flooding on April 9, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr., of the Federal Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Franklin, Jefferson, Lincoln, St. Charles, and St. Louis Counties, and the City of St. Louis for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94-10415 Filed 4-29-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1024-DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA-1024-DR), dated April 21, 1994, and related determinations.

DATES: April 21, 1994.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and flooding on April 11, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oklahoma.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint R. Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Oklahoma to have been affected adversely by this declared major disaster:

Ottawa County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James Lee Witt,

Director.

[FR Doc. 94-10416 Filed 4-29-94; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93554.942]

Availability of FY 1994 Funds and Request for Applications; Emergency Child Abuse and Neglect Prevention Services Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of fiscal year (FY) 1994 financial assistance and request for applications for service demonstration projects under Section 107A of the Child Abuse Prevention and Treatment Act.

SUMMARY: The National Center on Child Abuse and Neglect (NCCAN) in the Administration on Children, Youth and Families announces the availability of funds to conduct service demonstration projects to prevent the abuse or neglect of children whose parents or caretakers are substance abusers by providng family support and preservation services, and for interdisciplinary training programs for professionals who serve that population.

In 1991, 94 projects were funded to provide comprehensive, interdisciplinary, coordinated services, training and public education to address the needs of these children and their families, under Sec. 107A. [42 U.S.C. 5106a–1] of the Child Abuse Prevention and Treatment Act. Fiscal year 1994 funds are available to further develop program efforts in comprehensive, interdisciplinary, coordinated services and/or training. These projects will serve as pilot service demonstrations for such children and their families, as States develop family preservation and support services under the recently enacted Family Preservation and Support Program. Applications must be developed collaboratively with the state agency responsible for the state planning and implementation of Family Preservation and Support Services (Title IV–B of the Social Security Act, Subpart 2), in order to assure linkages now and in the future to family support and family preservation State planning and service development.

Programs will be funded in two priority areas: 1. Community-based service demonstration projects which provide family preservation and support services to families in which children are at risk of child abuse and neglect due to parental or caretaker substance abuse.

2. State, multi-state or regional interdisciplinary training programs which address the coexisting problems of substance abuse and child abuse and neglect for current practitioners and administrators from disciplines or agencies serving abused and neglected children and their families, or those at risk of abuse and neglect.

DATES: The closing date for submission of applications is July 18, 1994.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor OFM/DDG, Washington, DC, 20447, Attention: Maiso Bryant.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street SW., Washington DC 20447, Attention: Maiso Bryant.

FOR FURTHER INFORMATION CONTACT: Janice P. Shafer (202) 205–8306.

ELIGIBILITY: Eligible entities that may apply are:

(a) State and local agencies that are responsible for administering child abuse or related intervention services; and

(b) Community and mental health agencies and nonprofit youth-serving organizations with experience in providing child abuse prevention services.

In cases where applications have been reviewed and evaluated and are determined to be qualitatively of equal strength, priority consideration will be given to those entities funded in 1991 under Program Announcement No. 93554.911, published in the **Federal Register**, July 11, 1991, (56 FR 31782), entitled Emergency Child Abuse and Neglect Prevention Services Program: Availability of Funds and Request for Applications; Notice.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. Part I provides background information on the National Center on Child Abuse and Neglect (NCCAN) and the statutory authority for this program. Part II states the problem and describes the priorities under which NCCAN is soliciting applications for fiscal year (FY) 1994 funding of Emergency Child Abuse Prevention Services projects. Part III provides general information and requirements for preparing and submitting applications along with the criteria for the review and evaluation of applications.

All forms and instructions necessary to submit an application are published as part of this announcement following Part III.

I. Agency and Statutory Background

In 1974, the Child Abuse Prevention and Treatment Act (the Act) established the National Center on Child Abuse and Neglect (NCCAN) in the Department of Health and Human Services (DHHS). NCCAN is located organizationally within the Administration on Children, Youth and Families, Administration for Children and Families.

NCCAN conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to eligible States for strengthening and improving child protective services programs; and coordinating Federal activities related to child abuse and neglect through an Inter-Agency Task Force on Child Abuse and Neglect composed of Federal agencies.

In 1989, the Act was amended by the addition of Section 107A as part of the Drug-Free Schools and Communities Act amendments (Pub. L. 101–226), 42 U.S.C. 5106a–1. Congress authorized funding for the Emergency Services Program under these amendments, and in FY 1991, ninety-four projects were funded to provide and improve the delivery of services to children who are victims of or at risk of child abuse and whose parents or caretakers are substance abusers. Projects funded under this program were required to be comprehensive, coordinated with other public and/or private community service providers, and multi-disciplinary in nature. They were funded in four priority areas: (1) Development of emergency service delivery models to provide crisis intervention for children and adolescents in substance abusing families who have been reported to protective service agencies; (2) Development of public education and information models to address the issue of substance abuse and its correlation with the maltreatment of children and youth; (3) Improvement of services and removal of barriers to treatment for substance abusing parents, families and adolescents; and (4) Development or expansion of short-term interdisciplinary training models on the inter-relationships of substance abuse and child abuse, for current child protection/child welfare and substance abuse prevention and treatment practitioners. These projects provided a broad range of creative, coordinated services including, but not limited to, respite care, reunification or permanency planning for children removed by protective services, prevention services to children at risk of removal to foster care, home visitation services, parent support groups, activities to strengthen the parent-child relationship, information and referral to related community support services, parenting education, and case management. In many cases, structural and policy changes were made within and among agencies to improve the delivery of services to families. The array of services developed by these programs are consistent with those defined as family support and family preservation services. A list and description of projects funded under the original Emergency Services Program solicitation is available from the Clearinghouse on Child Abuse and Neglect Information ((800) FYI–3366) by requesting the document Emergency Child Abuse and Neglect Prevention Services Program (Revised April 1993).

In FY 1993, ACYF was given the responsibility for implementation of a new child welfare program. A new Subpart 2 was added to title IV–B of the

Social Security Act by the Omnibus Budget Reconciliation Act of 1993 (August 1993). Entitled "Family Preservation and Family Support Services", this initiative provides capped entitlement funding to State child welfare agencies "for the purpose of encouraging and enabling each State to develop and establish, or expand, and to operate a program of family preservation services and community-based family support services." "Family support services" are described as community-based preventive activities designed to alleviate stress and promote parental competencies and behaviors that will increase the ability of families to successfully nurture their children; enable families to use other resources and opportunities available in the community; and create supportive networks to enhance child-rearing abilities of parents and help compensate for the increased social isolation and vulnerability of families. Examples of such services include respite care; early developmental screening of children; mentoring, tutoring, and health education for youth; and a range of center-based and home visiting activities. "Family preservation services" typically are services designed to help families alleviate crises that might lead to out of home placement of children; maintain the safety of children in their own homes; support families preparing to reunify or adopt; and assist families in obtaining services and other supports necessary to address their multiple needs in a culturally sensitive manner. Examples of such activities are intensive pre-placement preventive services to assist biological, foster, adoptive or extended families; respite care for parents and other caregivers (including foster parents); services to improve parenting skills and support child development; follow-up services to support adopting and reunifying families; services for youth and families at risk or in crisis; and intervention and advocacy services for victims of domestic violence. Both family support and family preservation services are further described in the Program Instruction for Implementation of New Legislation: Family Preservation and Support Services, Title IV–B, Subpart 2, (Appendix 1), and Section 431 of the statute.

This new program offers States an extraordinary opportunity to assess and make changes in State and local service delivery in child welfare for the purpose of improving the well-being of vulnerable children and their families, especially those experiencing or at risk of abuse and neglect. States are encouraged to use the family support and family preservation initiative as a catalyst to assess and redesign categorical, fragmented service delivery systems toward establishing a continuum of coordinated and integrated, culturally relevant, family-focused services for children and families. The new program will afford States the opportunity to offer a continuum of services, depending on a family's needs, and also will provide linkages to necessary ancillary services such as transportation, housing, employment, and health. It is strongly expected that States will take advantage of this opportunity to move the child welfare service system toward a more coordinated, flexible structure built on and linked to existing community services and supports. Funds are also available for a small number of Indian Tribes which qualify for funding under this legislation and submit similar plans.

One critical requirement of the legislation is a strategic planning process that includes a wide array of State, local, and community agencies and institutions, parents, consumers, and other interested individuals whose collective work feeds into joint State-Federal planning activities. Ideally, the planning process will offer an opportunity for multiple State, local and community agencies and organizations and Federal agencies, as well as individuals, including parents, to become partners on behalf of children.

Consultation and outreach are recommended to include the active involvement of major actors across the entire spectrum of the service delivery system for children and their families. The purposes of this coordination and consultation include the development of new and more effective service approaches for children and families, the assessment of family and community needs, the identification of service overlaps and gaps, the identification of available resources (expertise, money, facilities, staff) that might help to meet needs, and the simplification of administrative and case management procedures across programs.

ACYF is actively collaborating with other Federal programs both within and outside the Department to obtain current information on new programs and explore ways to consolidate and maximize resources to promote the development of comprehensive, coordinated State child welfare systems. As part of this effort, the FY 1994 Emergency Child Abuse Prevention Services Program is designed to accomplish two goals:

(1) To build upon the knowledge and experience gained from the initial round of funding under the Emergency Services Program, and

(2) To integrate this foundation of knowledge and experience into the broader service delivery effort being undertaken by the States and Tribes as they plan for and implement the new Family Preservation and Family Support Services Program.

Such integration is appropriate for several reasons. When substance abuse exists in a family, it has such a significant effect on all other aspects of family functioning that it must be addressed in the child welfare service plan in order for the plan to succeed. The projects funded initially by the Emergency Services Program were designed with a multi-disciplinary, coordinated, comprehensive focus, using a family centered approach. The clients served by these projects are frequently on caseloads for child welfare and related services, and offer profound challenges to those service systems. These projects have identified and are developing strategies to deal with the policy, practice, and funding barriers to delivering effective services to children and families affected by substance abuse. The service models that have emerged from these projects embrace family support and family preservation principles, and the strategies developed through these models have broader implications for State service efforts.

II. Fiscal Year 1994 Priorities for Emergency Child Abuse Prevention Service Projects

This part describes the two priority areas for funding under the Emergency Child Abuse and Neglect Prevention Services Program. It contains all the information needed in order to successfully apply for funding. Failure to comply with the eligibility criteria and the deadline for submittal of applications will result in an application being screened out and not considered for funding. Experience has shown that an application which is directly responsive to the requirements and evaluation criteria of a specific priority area is likely to score higher than one which is broad and general in concept.

A. Available Funds

Approximately $15,000,000 is available for grants in FY 1994.

B. Administrative Regulations

For State and local governments, including Federally recognized Indian tribes, 45 CFR part 92 and selected parts of 45 CFR part 74 are applicable. For all other applicants, 45 CFR part 74 is applicable.

C. *Statement of Problem*

According to the 1992 National Child Abuse and Neglect Data System (NCANDS) report, nearly one million children reported to child protective services systems were substantiated/indicated as abused or neglected in one year. This represents two children every minute nationally. In these troubled families, substance abuse is increasingly recognized as a contributing factor among a complex constellation of family problems.

Recent studies indicate a very strong association between substance abuse and child maltreatment. Richard Famularo, *et al.*, reviewed 190 randomly selected records from the caseload of a large juvenile court, cases in which the State took legal custody of the children following a finding of significant child maltreatment, based on a clear and convincing standard of evidence. Sixty-seven percent of these cases involved parents who would be classified, based on the study definition, as substance abusers. The study revealed specific associations between alcohol and cocaine abuse and physical and sexual maltreatment. In another study (Famularo, Kinsherff, and Fenton, 1992), an association was found between the type of substance abused and the type of child maltreatment. Overall, alcohol abuse was found to be associated with physical abuse and cocaine with sexual abuse. Although the sample size for this study was small and involved only cases in which children had been removed from the home, it suggests the need for service providers to be aware of the type of substances being abused, the effects of those substances, and the importance of developing collaborative efforts to meet varying needs. Flanzer and Sturkie (1987) conducted a study with similar implications. In examining the correlation between alcohol abuse by parents and maltreatment of teenagers, they found alcohol abuse by the fathers to be correlated with physical abuse and neglect of the children. In contrast, alcohol abuse by the mothers was found to be correlated with emotional abuse and neglect. Other studies and surveys throughout the nation have produced similar links between substance abuse and widespread neglect as well as physical and sexual abuse of children. The House Appropriations Committee indicated that it is especially interested in children/youth who are the subjects of serious neglect by crack cocaine-abusing parents and who are not ordinarily the immediate concern of overburdened service agencies. The fact that the legislation recognizes the emergency implications inherent in drug/substance abuse situations provides States the opportunity to improve service programs.

The profound effects of substance abuse on the child welfare system are also documented. Not only are the effects significant, but they have compounded existing systemic problems, such as personnel shortages and limited availability of foster homes, contributing to a child welfare system which has become burdened beyond its capacity. These effects have intensified existing difficulties in the broader community service system, which create barriers to meeting the needs of families effectively. Our increased awareness and knowledge of the serious effects of parental and caretaker substance abuse on children and youth exists in an environment frequently characterized by a lack of appropriate services, service options and isolation of child welfare from other community services.

In 1993, the Child Welfare League of America (CWLA) published the results of a ten state survey of child protection agencies. In over half of these states, more than 50% of the children served were affected by problems associated with substance abuse in the home. Percentages were even higher in voluntary child welfare agencies, probably because of greater efforts to routinely screen for substance abuse problems. Staff within the child welfare system have indicated that problems directly attributable to substance abuse by the adult parent and caretaker population have increased over the last five years.

The public child welfare system frequently fails to identify the problem of substance abuse, let alone incorporate substance abuse treatment into a larger service plan or coordinate ancillary services that might mitigate the effects of parental substance abuse on the children. Only 41.7% of those surveyed by the CWLA reported that they routinely screen for alcohol and other drug problems. There are not enough trained personnel in the child welfare system to deal with the problem, nor are there sufficient resources to address the situation effectively on a local level. Less than half of all full-time direct service practitioners surveyed by CWLA received formal training in substance abuse.

Practitioners in all fields who provide services to abused and neglected children and their families can become isolated from the work of professionals in other disciplines, perpetuating the fragmentation of service delivery. In a 1990 study, Thompson concluded that individual child welfare workers tended to focus interventions on what they know best and ignore broader family considerations. Another example of professional isolation is offered by a 1992 study (Pelham and DeJong) which surveyed directors of graduate medical education programs in Obstetrics/Gynecology and Pediatrics. A key finding was that one-third of the respondents were unaware of their State's child abuse laws with respect to requirements for reporting the effects of prenatal cocaine abuse. Further, of those that indicated awareness of their State's requirements, over 50% had incorrect information about these requirements. These studies support the need for education and training programs for professionals which address the relationship between substance abuse and child maltreatment. They also suggest the need for greater collaboration among service professionals in order to improve services to shared clients.

Problems related to substance abuse both lengthen and complicate the investigative process of child protective services agencies. The CWLA study reported that problems related to substance abuse are increasingly a factor in the initial investigative process, in reports of physical abuse and neglect, in reports of child sexual abuse, in the filing of dependency petitions, and in reports of abandoned infants.

The problems experienced by the child welfare system become powerfully magnified when viewed from the vantage point of the individuals and families the system was designed to serve. For example, younger children are more at risk of death or severe injury from child abuse and neglect, and they, therefore, have more often been the focus of child protective services. Because of this, older children and adolescents often fail to receive services. Left with no protection and few options, many adolescents see running away as their only choice. In a compilation of interviews with 31,000 runaway and homeless youth who received services in youth crisis shelters across the country in 1990, it was learned that alcohol or other substance abuse by parents or caretakers was a precipitating or contributing factor in about 40% of the cases (Annual Report to Congress on the Runaway and Homeless Youth Program, Fiscal Year 1990).

Families facing problems with substance abuse often find it difficult to pursue assistance and treatment before some precipitating crisis causes them to become a statistic of the child welfare system. Many drug and alcohol treatment programs are designed to address the problems of adult male substance abusers, and lack either the capacity or an appropriate family orientation to serve a population of parents, children, and adolescents. The illegal nature of many substances, causing fear of apprehension by law enforcement agencies, and the potential loss of children and other consequences, frequently prevent affected families from seeking services.

Over the past several years, State and local governments, foundations, national organizations, and non-profit agencies have begun to develop and implement family support and family preservation programs and experiment with changing the way child welfare services are organized and delivered in coordination with other agencies and resources. While many of the efforts underway have begun to address much needed systems change, the special needs of children from substance abusing families require very close attention. Hence there is a need and opportunity to build on existing efforts to serve this population as Family Support and Family Preservation Services are developed.

The implementation of the new Family Preservation and Support Services initiative represents a significant commitment on the part of the Federal Government to a family centered services approach in funding, philosophy, and policy. It is strongly expected to serve as a catalyst for States to create a child welfare system that is more flexible, coordinated, linked with existing community supports and services, and able to serve children and families in a more holistic and effective way. The Emergency Services Program provides the opportunity to collaborate in this effort by reaching out to a population that is critically challenging the child welfare system: unserved children and adolescents who are at risk of or suffering abuse and neglect as a result of living with substance abusing parents or other care providers, and children and families known to the child protective services system. It also offers the opportunity to influence State, Tribal and national policy as strategies and models are developed which effectively meet the complex needs of this population. Therefore, it is a priority of the FY 1994 Emergency Services Program to form partnerships with the agencies implementing Family Preservation and Support Services at the State and local levels.

D. Related Efforts

Because of the necessity to avoid duplicating services and costs, the importance of coordination, and the interest of ACYF in actively collaborating on FY 1994 discretionary grant announcements, all applicants are required to demonstrate their awareness of other related projects at the State and local level by discussing how they will establish joint planning processes and provide direct collaboration for service delivery. The Department is currently sponsoring a large number of research and demonstration projects on the effects of substance abuse on parents and children, and on family centered service models, including family preservation and support programs. The following are examples of such programs:

1. The Public Health Service's Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS):
   - The CMHS Child and Adolescent Service System Program (CASSP)
   - Center for Substance Abuse Prevention (CSAP) Demonstration Grants for High-Risk Populations:
   - Model Projects for Pregnant and Postpartum Women and Their Infants
   - Demonstration Grants for Youth in High-Risk Environments
   - Center for Substance Abuse Treatment (CSAT):
   - Residential Treatment Centers for Women with Dependent Children
   - Community Partnership Demonstration Grants
2. Other PHS Programs:
   - Perinatal prevention of substance abuse through the Maternal and Child Health Block Grants
3. Department of Housing and Urban Development:
   - Family Unification Demonstration Program;
4. Departments of Housing and Urban Development, Agriculture, and Health and Human Services:
   - Empowerment Zones and Enterprise Communities (Target Cities) Grant Program
5. Administration on Children, Youth and Families (ACYF):
   - Family and Youth Services Bureau (FYSB):
   - Family Resource Programs
   - Drug Abuse Prevention Programs for Runaway and Homeless Youth
   - Youth Gang Drug Prevention Programs
   - Children's Bureau (CB):
   - Respite Care and Crisis Nurseries
   - Abandoned Infants
   - Head Start Bureau (HS):
   - Family Service Centers

Further information on these programs and listings of grants awarded are available from the clearinghouses listed in Appendix 2 of this announcement. This appendix provides information on The Clearinghouse Consortium on Child Abuse and Neglect, which is comprised of seventeen Federal information clearinghouses and resource centers that address child maltreatment issues from differing disciplines and perspectives. The Consortium was established by the U.S. Interagency Task Force on Child Abuse and Neglect to encourage cooperation and information sharing among Consortium members and to support professionals and private citizens seeking information on all aspects of child maltreatment.

E. Priority Areas

1. Community-Based Service Demonstration Projects Which Provide Family Preservation and Support Services to Families in Which Children and Youth Are At Risk of Child Abuse and Neglect Due to Parental or Caretaker Substance Abuse

Purpose: The purpose of this priority area is to provide family preservation and support services to a specific target population: abused or neglected children and youth or those at risk of abuse or neglect due to parental or caretaker substance abuse. Further, these service demonstrations will be developed in collaboration with the State or Tribal agency responsible for the State or Tribal planning and implementation of Family Preservation and Support Services so that they may serve as pilot demonstrations that may be incorporated into the broader service delivery system.

Such service demonstrations should build upon those innovative, comprehensive, interdisciplinary service models developed under the original Emergency Services Program solicitation in 1991. Those programs emphasized two service priorities: Innovative, crisis intervention and treatment services, and coordinated ancillary services. Both of these strategies should be incorporated into the FY 94 applications. The original programs provided or coordinated an array of services targeted to children, youth, and families, which alleviated crisis situations created by parental substance abuse and child abuse, and provided outreach to those at risk. These service programs also sought to improve and expand the delivery of services to prevent maltreatment and diminish the effects of abuse and neglect of children by substance abusing caretakers. Emphasis was placed on outreach and coordination of ancillary service strategies to facilitate the treatment of substance abusers in households with children and youth. Ancillary services, such as respite care, transportation, child care, parenting education, and job counseling, frequently make the difference in whether or not a substance abusing caregiver is able to take advantage of available treatment.

Emphasis was also placed on meeting the unique needs of adolescents who are frequently not a priority for child protective services. These young people nonetheless suffer the effects of living in an environment with a substance abusing parent or caretaker. They may have experienced violence and disruption themselves or may have had to assume a parental role in the family. A recent report from the National Governors Association entitled Kids and Violence indicates that child abuse and out of home placement are risk factors for violent behavior in children and adolescents, and that comprehensive interventions must begin early.

The programs were designed to provide ongoing neighborhood-based, barrier-free and "user-friendly" services, to support positive family functioning, and recovery from substance abuse when necessary. They were intended to connect families with a supportive service network instead of engaging them in the usual child protective service and court action process.

Since the epidemic of substance abuse in families has presented the child welfare system with extraordinarily intense and complex challenges, it is imperative that planning for this priority area include State, Tribal, and local child welfare and social services agencies who all have a role to play in meeting the multiple needs of children and their families. It is important that entities applying for funds under this announcement realize the importance of coordination with youth service organizations, mental health agencies, family services agencies, public health agencies, public educational institutions, maternal and child health providers, and community-based organizations that serve substance abusing parents (including pregnant and post-partum females and their infants.)

The range of services provided under this priority area should include a continuum of innovative, coordinated, interdisciplinary services which respond to substance abuse-related child abuse and neglect. The scope of services should include prevention, intervention, and treatment, tailored to family needs. The services should promote the development of a comprehensive, coordinated continuum of family support and family preservation services which meet the needs of children whose parents or caretakers are experiencing substance abuse problems. The services may include coordination with the agency providing permanency planning and the provision of ancillary services to enhance permanency planning in cases in which one or more children are already in foster care and other children may be at risk of placement. Emphasis should be placed on building on the strengths of existing systems to deliver an array of services which are more responsive to the needs of the target population. Mechanisms to directly serve the affected child/youth population on an emergency basis must be developed. Applications must emphasize programs that are structured to provide or be linked with other agencies to provide the full range of coordinated, comprehensive, multi-disciplinary services required. Such services might include assessment; direct and ancillary services such as child care, transportation, and respite care; and plans for the provision of effective follow-up services. Applicants must also indicate how they plan to overcome current obstacles such as waiting lists and multiple referrals for services. Children who are identified as in need of emergency services should be able to receive necessary care/treatment immediately. Also see the section of this announcement entitled Agency and Statutory Background for a further description of family support and family preservation services.

Minimum Requirements for Program Design: In order to successfully compete under this priority area, the application should be responsive to the requirements of this part and Section 107A(c) of the Act. (See section III C. 1 of this announcement):

- Provide for coordination with and involvement of the State agency (or Tribal agency) responsible for the State planning and implementation of the Family Preservation and Support Program (Title IV–B of the Social Security Act, Subpart 2) with a description of how this demonstration relates to the planning process and/or the development of a statewide continuum of coordinated services. It is the intent of these demonstrations to pilot innovative service models which will inform State and/or Tribal policy in the provision of services to families in which substance abuse places children at risk. Documentation of this agency's participation must be provided in the form of an interagency agreement or letter of commitment documenting the joint effort to be undertaken, and how the Emergency Services project will be incorporated into the state's broader service delivery strategy. The addresses and telephone numbers of the State contacts for the Family Support and Family Preservation Services Program may be obtained from the Federal Regional Offices listed in Appendix 3.
- Describe the services that are currently available in the community to serve children, adolescents and their substance abusing families; explain how those services are currently coordinated; and demonstrate how the proposed project would augment and enhance current services in creating a continuum of family support and family preservation services and activities. If the application builds on a program currently funded under the Emergency Services program, describe the impact of the current project on the service delivery system and how the proposed project will serve as a catalyst in further improving the child welfare system in its family support and family preservation programs. Projects funded under the FY 1991 announcement should demonstrate how their third party evaluation was used to devise the service delivery model proposed. Overall, the emphasis should be on the comprehensive, coordinated and multi-disciplinary nature of the services to be provided. That is, describe primary services now available, such as intervention, outreach, drug counseling, housing assistance, job counseling, legal assistance, medical care, and follow-up, as well as ancillary services, such as child care and transportation, and how they would be coordinated with other expanded or new services.
- Indicate how client outreach would be provided, the range of prevention, intervention, and treatment that would be available for various situations, and how the particular approach advocated by this proposal is innovative relative to other approaches.
- Provide for an active advisory committee which includes, at a minimum, a child protective services agency, a mental health services agency or an agency with a focus on alcohol and drug treatment, a youth serving agency, a public health services agency, a child advocacy group, public education, and parental or client representation. Documentation of interagency participation must be provided in the form of letters of commitment from represented agencies or constituencies. An existing group may serve as the advisory committee provided that it meets the purpose and requirements for representation.
- Clear statements of the project goals, the anticipated end results, and how outcomes would be measured are

required of all applications. Applicants who are currently conducting service programs under the Emergency Services Program and already collecting this data are required to submit a plan for collecting and analyzing follow-up data on their current participants during the 17 month period. These costs are to be included in the project budget. It is suggested that 10% of the grant award be designated for evaluation and data collection purposes. Any proposal with less than 10% budgeted for evaluation must provide a special justification. Additionally, applicants should assure participation in any national evaluation that ACYF may conduct.

- Provide for an evaluation of the implementation, effectiveness, and impact of the project, or individual service components on the children and families served. Each applicant is required to obtain an independent third party evaluation of the project, and to submit with the application an evaluation plan that clearly addresses the following areas and questions:

1. The project's successes and problems in implementing the service delivery effort.

—Was the service program successfully implemented?
—Was the project, or components of the project, successful in recruiting and maintaining targeted participants?
—What were the problems/obstacles in implementing program services?

This should include a discussion of start-up activities, staff recruitment and qualifications, service design and approach, service implementation, criteria for success and methods to measure each, participant recruitment and characteristics, and feedback sources and revisions. A description of problems encountered and procedures for resolving problems relevant to each aspect of the project effort should be included.

2. The effectiveness of the service effort.

—Did the service program bring about documented changes in the knowledge, attitudes, and/or behavior of the participants with respect to the service objectives?

3. The impact of the service effort.

—Did the service program result in a change in the policies or service delivery systems of the agencies involved?
—Did the service demonstration have an impact on the agency, organization, State, or Tribal planning and/or implementation of family support and family preservation services in the community?
—Did the service demonstration integrate service delivery in the community?

- Document and describe how the project anticipates becoming an ongoing part of the agency, organization, Tribe, or State's program of family support and family preservation following the termination of Federal funding and the steps the applicant would take to accomplish this. Among these steps should be the program's representation and expected impact on the planning process for family support and family preservation services. Describe how this expected impact will promote the development of a continuum of family support and family preservation services which address substance abuse and child abuse and neglect service needs, improve services to children and families, and reduce duplication of effort.
- Provide assurances that at least one key person from the project would attend an annual three day grantees' meeting in Washington, DC.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is $500,000 for a 17 month budget period.

Matching Requirements: The minimum non-Federal matching requirement is 20 percent of the total cost of the project. The total approved cost of the project is the sum of the Federal share and non-Federal share. Therefore, a project requesting $500,000 in Federal funds, must include a match of at least $125,000 for a total project cost of $625,000 per 17 month budget period. This match constitutes 20 percent of the total project cost (Federal + non-Federal share). The non-Federal matching requirement may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Successful applicants who exceed the minimum non-Federal match in their proposed budget will be required to provide the match amount proposed.

Anticipated Number of Projects to be Funded: It is anticipated that 26 projects will be funded.

2. Coordinated Interdisciplinary Training Models on the Coexisting Problems of Substance Abuse and Child Abuse and Their Impacts on and Relationships to Family Support and Family Preservation Efforts

Purpose: The purpose of this priority area is to provide for the development or expansion of interdisciplinary training models specific to the co-existing problems of substance abuse and child abuse and neglect, and to collaborate on the implementation of this training with the State or Tribal child welfare agency which is responsible for Family Preservation and Support Services. The training should target current professionals and practitioners in disciplines serving abused or neglected children. This priority area is intended to build upon the knowledge and experience of those innovative, comprehensive, interdisciplinary training models developed under the 1991 solicitation, by implementing training strategies that are statewide, multi-state, or regional in nature and address the impact and relationship of these problems to family support and family preservation services.

At the time of the FY 91 announcement, it was recognized that when children who have been severely neglected or abused as a result of parental substance abuse come to the attention of child welfare agencies, a number of pivotal decisions must be made. These decisions range from delivery of specific services to out-of-home placement. From the point of the initial report, the process entails assorted disciplines (legal, social, health, mental health) and multiple service providers. Effective communication among them is essential to provide comprehensive care and to avoid fragmented or duplicate services. It was also recognized that because of the urgency of the need for personnel, many child welfare agencies and mental health/substance abuse treatment facilities may hire staff with little or no training specific to either child abuse and neglect and/or the relationship between parental substance abuse and child abuse and neglect. In addition, there is a need for qualified professionals from other fields, such as law and psychology, who serve children and families to become knowledgeable about issues related to substance abuse and child abuse and neglect.

These conditions create two distinct but complementary training needs: (a) Interdisciplinary, specialized training on substance abuse and child abuse available to persons from a variety of fields working with children; and (b) interdisciplinary in-service training which provides specialized, immediately available information to child welfare practitioners, particularly those providing services to children of substance abusers or substance abusing parents who have or who are at risk of abusing their children.

The training programs funded under the 1991 announcement have had a far-reaching effect upon the professionals they trained. Among the effects emerging is the development of interdisciplinary understanding among professionals who previously did not understand one another's roles or terminology. Other gains were increased knowledge of the recovery process and the specific effects of certain drugs which can affect a family child welfare treatment plan.

Many interdisciplinary training and education models already exist, including the ones utilized by the FY 1991 grantees, that can be adapted to provide the desired information about substance abuse as it relates to child abuse and neglect, and about family support and family preservation service models and concepts. It is suggested that applicants, to the extent possible, incorporate currently available resources to minimize the time and resources expended on curriculum development and to maximize the number of professionals and paraprofessionals who will benefit from the training effort during the project period. Information regarding existing interdisciplinary training programs can be obtained from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, (800) 394–3366; the National Resource Center for Family Support Programs, 200 Michigan Avenue, suite 1520, Chicago, Illinois 60604, (800) 341–9361; and the National Resource Center on Family Based Services, room 112, North Hall, University of Iowa, Iowa City, Iowa 52242, (319) 335–2200.

Existing curricula specific to child abuse and neglect could be adapted to include: (a) Community responses for providing services for substance abusing care providers; (b) community overviews of public health problems as they relate to substance abusing parents, including pregnant women; (c) physiological aspects of substances as they relate to child abuse and neglect; (d) effects of prenatal substance use on newborns; (e) strategies for working with drug exposed and drug affected infants, older children, and adolescents; (f) risk assessment training for identifying and intervening with substance abusing parents and other family members; (g) strategies for working with substance abusing adults/parents; (h) impacts of substance abuse and child abuse on family support and family preservation programs; (i) strategies for addressing substance abuse issues in families and the related supports for children when developing family support and family preservation case plans. Training may be developed by contract, or may be jointly developed by individual agencies.

Minimum Requirements for Program Design: In order to successfully compete under this priority area, the application should be responsive to the requirements of this part and Section 107A(c) of the Act. (See section III C. 1 of this announcement):

- Indicate the type of training that would be targeted by the project (i.e., statewide, multi-state, or regional) and the network through which the training would be offered.
- Identify the lead agency or educational entity and other responsible entities that would be involved in the proposed project. Training development should involve, at a minimum, input from the medical, legal, social work, and mental health disciplines in coordination with local drug and alcohol counseling, youth shelter and public health service providers. If the application builds on a program currently funded under the Emergency Services program, describe how the evaluation of the current project will be utilized to improve training strategies and how the target population will be expanded under the new program. Documentation of interdisciplinary participation must be provided: e.g., copies of existing agreements or letters of commitment indicating the level, duration, and type of participation that would be provided.
- Provide for coordination with and involvement of the State or Tribal agency responsible for the State' planning and implementation of Family Preservation and Support Services (Title IV-B of the Social Security Act, Subpart 2) with a description of how this demonstration relates to the planning process and/or the development of a statewide continuum of coordinated services. It is the intent of these demonstrations to pilot innovative training models which will inform State and/or Tribal policy in the training of professionals who provide family preservation and support services to families in which substance abuse places children at risk. Documentation of the State agency's participation must be provided in the form of an interagency agreement or letter of commitment documenting the joint effort to be undertaken.
- Describe how the proposed project would enhance or expand training that is already available for professionals on the problems of substance abuse and child abuse and neglect, and how they interrelate with the provision of comprehensive family preservation and support services. Describe the population to which the training would be directed. Describe the plan for targeting and recruiting training participants. Describe the criteria for selecting the targeted population.
- Describe the type of training that would be provided, type of staff or trainers to be used, the curriculum that would be used, the length of training, and the number of persons expected to benefit from the training during the life of the project. If the proposal builds upon a currently funded Emergency Services project, discuss the impact of the project, how the proposed effort expands upon it, and how it relates to the implementation of family support and family preservation services.
- Clear statements of the project goals, the anticipated end results, and how outcomes would be measured are required of all applications. The costs of this evaluation are to be included in the project budget. It is suggested that 10% of the grant award be designated for evaluation purposes. Additionally, applicants should assure participation in any national evaluation that ACYF may conduct.
- Provide for an evaluation of the implementation, effectiveness, and impact of the project. Each applicant is required to obtain an independent third party evaluation of the project, and to submit with the application, an evaluation plan that clearly addresses the following areas and questions:

1. The project's success in implementing the training effort.

—Was the training successfully implemented?
—Was the project successful in recruiting and maintaining targeted participants?
—What were the obstacles/problems in implementing the training?

This should include a discussion of start-up activities, staff recruitment and qualifications, training design and approach, training implementation, criteria for success and methods to measure each, participant recruitment and characteristics, and feedback sources and revisions. A description of problems encountered and procedures for resolving problems relevant to each aspect of the training effort should be included.

2. The effectiveness of the training effort.

—Did the training effort bring about a change in the knowledge, attitudes, and/or behavior of the participants with respect to the training objectives?

3. The impact of the training effort.

—Did the training result in a change in the on-the-job activities of participants?

—Did the training change the way participants view their agency's role in the community?

- Document and describe how the project would become an ongoing part of the agency, organization, tribe, or State's program of family support and family preservation following the termination of Federal funding and the steps the applicant would take to accomplish this. Among these steps should be the project's representation and expected impact on the planning process for family support and family preservation services.
- Provide assurances that at least one key person from the project would attend an annual three day grantees' meeting in Washington, D.C.

Project Duration: The length of the projects must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is $200,000 for a 17 month budget period.

Matching Requirements: None

Anticipated Number of Projects To Be Funded: It is anticipated that 10 projects will be funded.

III. General Information and Requirements for the Application Process and Review

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided at the end of this section, along with a checklist for assembling the application package.

A. General Information

1. Review Process and Funding Decisions

Applications will be reviewed and scored competitively against the published evaluation criteria (see III D of this section) by experts in the field, generally persons from outside of the Federal government. The results of this review are a primary factor in making funding decisions. The Administration on Children, Youth, and Families (ACYF) reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. ACYF may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by the Commissioner, Administration on Children, Youth and Families in making funding decisions.

2. Required Notification of the State Single Point of Contact

All applications for research or demonstration projects submitted to NCCAN are covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and title 45 Code of Federal Regulations (CFR) part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Therefore, the applicant should contact his or her State Single Point of Contact (SPOC) directly to determine what materials, if any, the SPOC requires. Contact information for each State's SPOC is found at the end of this Part.

All States and territories, except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Pennsylvania, Oregon, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these 17 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

It is imperative that the applicant submit all required materials to the SPOC as soon as possible and indicate the date of this submittal (or the date of contact, if no submittal is required) on the Standard Form (SF) 424, item 16a. Under 45 CFR 100.8(a)(2), SPOCs have 60 days from the grant application deadline to comment on applications for financial assistance under this program. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to ACF, they should be addressed to the application mailing address located in the front section of this announcement. A list of Single Points of Contact for each State and territory is included in Appendix 5 of this announcement.

3. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget for review and approval any information collection involving 10 or more respondents.

B. Application Screening Criteria

Applications must meet the following screening requirements or they will not be considered in the current competition; these requirements will be rigorously enforced:

1. Eligible Applicants

(a) Any State or local agencies that are responsible for administering child abuse or related child abuse intervention services; and (b) community and mental health agencies and nonprofit youth-serving organizations with experience in providing child abuse prevention services.

In cases where applications have been reviewed and evaluated and are determined to be qualitatively of equal strength, priority consideration will be given to those entities funded in 1991 under Program Announcement No. 93554.911, published in the **Federal Register** on July 11, 1991, (56 FR 31782), entitled Emergency Child Abuse and Neglect Prevention Services Program: Availability of Funds and Request for Applications; Notice.

Applications may be submitted under more than one priority area; however, a separate application must be submitted for each priority area.

2. Deadline for Submittal of Applications

The closing date for submittal of applications is on July 18, 1994.

(a) *Deadlines.* Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date at the address specified above; or (2) postmarked on or before the deadline date and received by ACF in time to be considered during the competitive review and evaluation process under chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

(b) *Late applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

(c) *Extension of deadlines.* The Administration for Children and Families (ACF) may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

C. Application Requirements

1. Responsiveness to Funding Priorities

The application must be responsive to the priority area under which it is being submitted. The applicant must identify the priority area at the top of page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description and must contain the following information as specified in section 107A of the Child Abuse Prevention and Treatment Act:

(a) an assurance that the applicant operates in a geographic area where child abuse and neglect related to parental substance abuse has placed substantial strains on State and local agencies and has resulted in substantial increases in the need for services and/or training that cannot be met without funds available under this announcement (citing existing sources of data to the extent possible);

(b) identify the responsible agency or agencies that will be involved in the use of funds provided under this announcement;

(c) a description of emergency situations with regard to children of substance abusers who need services of the type described in this announcement;

(d) a plan for improving the delivery of such services to children; and

(e) assurances that such services or training will be provided in a comprehensive, multidisciplinary and coordinated manner.

2. Application Form

The applicant must reproduce single-sided copies of the SF 424 (revised 1988).

3. Copies Required

Applicants must submit an original and two copies of the complete application prepared in accordance with the instructions provided. A complete application includes: the completed SF 424, a summary description of the proposed project, required certifications/assurances, and the program narrative. The full application package is described in III H below.

4. Signature

The signature of the Certifying Representative must be handwritten (preferably in black ink) and the signer's name and title must be typed in Item 18a on the original SF 424.

5. Length

All narrative sections of the application must meet the format specifications. Although no page limit has been established, applicants should seriously consider the information provided in the introduction to Part II, and provide narratives that are succinct, responsive to the priority area requirements, and are within the general recommended length requirements as specified in the instructions later in this part.

D. Evaluation Criteria

The Program Narrative Statement of the application should correspond to the evaluation criteria. The description of the four criteria below should be used as headings in developing the program narrative.

Applications will be reviewed by a panel of at least three individuals. These reviewers will comment on and score the applications, basing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance (25 Points)

The extent to which the applicant clearly states principal objectives and expected outcomes of the project which reflect an understanding of the priority area issues; and indicates an awareness of related services available in the community and how those services will be used in relation to the proposed project. Describe the specific need for the project in terms of its significance for the incorporation of substance abuse and child abuse and neglect services into the State or Tribal implementation of family preservation and support services. Describe the problem within the context of the services now available and services unavailable in the community. State the services objective of the project and, where applicable, give a precise location of the projects or area(s) to be served by the project. Discuss the state-of-the-art relative to the problem of substance abuse as it relates to child abuse and neglect, and their impact on family support and family preservation services, including a list of any relevant published work by the author(s) of the proposal.

2. Results or Benefits Expected (15 Points)

The extent to which the applicant identifies and describes realistic and measurable service delivery components, results and benefits, consistent with the specific goals and objectives of the proposal; the manner in which actual results and benefits to be derived by the project would be objectively measured and substantiated to determine if objectives are met; and there are clearly stated, and significant anticipated contributions to services and practice in the implementation of Family Support and Family Preservation Services in the community, Tribe, or State.

Describe the population or populations to be targeted and the number of persons in that population expected to benefit. Indicate the reason for targeting that particular population, e.g., previous regional assessments, surveys, or other existing data. Describe the specific benefits to the targeted population. Describe the anticipated impact on the State planning process for Family Support and Family Preservation Services.

3. Approach (40 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; presents a clear conceptual understanding of prevention, intervention, and treatment approaches as they relate to the coexisting problems of substance abuse and child abuse and neglect; relates the specific service needs of the target population (children who have been or are at risk of child abuse and neglect due to parental or caretaker substance abuse and their families) to family support and family preservation efforts; cites factors which might accelerate or delay the work and gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, use of automated management and information systems, reductions in cost or time, or extraordinary social and community involvements; provides projections of the accomplishments to be achieved; and presents an evaluation plan which clearly addresses the evaluation questions contained in the priority area description, including proposed measures to be used. The application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. It relates each aspect of the workplan to the specific evaluation objectives; i.e., identifies the kind of data to be collected and maintained relevant to goals and objectives to be evaluated; discusses the criteria to be used to evaluate the results and impact of the project, both at the program level and at the individual child and family levels. The application explains the methodology that will be used to determine if the needs that have been identified and discussed are met, and the expected results and benefits are achieved. The application also lists each organization, agency, consultant, or other key individuals or groups with whom work on the project will be coordinated, and describes the nature of the interaction and the benefits expected to be derived from the proposed coordination of programs and activities.

4. Staff Background and Organization's Experience (20 Points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrate the ability to administer effectively and efficiently a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services. The extent to which the agency is in the position to inform policy related to the implementation of Family Preservation and Support Services, and the involvement of the agency or agency representatives in the Family Support and Family Preservation planning process. The application describes the relationship between this project and other work planned, anticipated or underway under Federal assistance

Describe the background experience, training and qualifications of the key staff and consultants, including any experiences working on child abuse and neglect, programs or services related to substance abuse, and/or family support and family preservation programs (curriculum vitae or resumes must be included with the application.) Describe the adequacy of available resources and organizational experience related to the tasks of the proposed project. An organizational capability statement must be included with the application. Describe any collaborative efforts with other organizations including the nature of their contribution to the project. Interagency agreements or letters indicating the type, extent and duration of commitment must be included with the application.

Describe the staffing pattern for the proposed project. listing key staff and consultants, their responsibilities in conjunction with this project and the time they will be committing to the project.

Identify the authors of the application, by section, and their role in the proposed project.

E. The Components of the Application

A complete application consists of the following in this order:

1. Application Face Sheet, SF 424, page 1.
2. Budget Non-Construction, SF 424A, Budget Information: Section A (Budget Summary), Section B (Budget Categories), and Section E (Budget Estimates of Federal Funds Needed for Balance of the Project);
3. Budget justification (approximately three pages);
4. Project summary description with listing of key words (approximately 1 page);
5. Program Narrative (approximately 40 double-spaced pages is suggested as a reasonable length), organized with sections addressing the following four areas: (1) Objectives and Need for Assistance; (2) Results or Benefits Expected; (3) Approach; and (4) Staff Background and Experience;
6. Organizational capability statement;
7. Letters of commitment;
8. SF 424B Assurances-Non Construction, Debarment, and Drug Free Workplace; Certification Regarding Lobbying; and
9. Appendices/attachments, may include a bibliography (approximately two pages single-spaced); resumes or curriculum vitae (approximately two pages each); and evaluation instruments/measures.

F. Preparing the Application

1. Availability of Forms

Agencies and organizations interested in applying for grant funds should submit an application(s) on the Standard Form 424 (revised April 1988) which is included in this announcement.

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

2. Application Submission and Notification

Applications may be mailed to theDepartment of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants. 370 L'Enfant Promenade SW., 6th Floor OFM/DDG, Washington, DC 20447, Attention: Maiso Bryant.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street SW., Washington DC 20447, Attention: Maiso Bryant.

The program announcement number, 93554.942, must be clearly identified on the application.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

3. Program Narrative

The Program Narrative is a very important part of the application. It should be clear, concise and specific to the priority area being addressed as described in Part II. The narrative should provide information on how the application meets the evaluation criteria. This narrative should be no less than 6 double-spaced pages and up to approximately 40 double-spaced pages. It should be typed on a single-side of 8½" by 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. Applicants should not submit reproductions of larger size paper reduced to meet the size requirement.

Applicants are required to follow the format described below in preparing their applications, using the four headings for the sections of the narrative. However, the number of specific pages for each section is given as a suggestion only. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The four sections are:

(1) Objectives and Need for Assistance (nine pages double-spaced);

(2) Results or Benefits Expected (three pages double-spaced);

(3) Approach (twenty pages double-spaced);

(4) Staff Background and Experience (eight pages double-spaced).

4. Organizational Capability Statement

Applicants should provide a brief (approximately two pages double-spaced) background description of how the applicant is organized and the types and quantities of services it provides or the research capabilities it possesses. This statement may also include descriptions of current work, descriptions of relevant past experience as well as the competence of the project team and its demonstrated ability to produce a final product that is comprehensive and usable.

5. Assurances and Certifications

Applicants must file a standard form 424B, Assurances-Non-Construction Programs, and Certifications Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certification regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory.

Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements and the Debarment and Other Responsibilities certifications.

G. The Application Package

To expedite the processing of applications, each applicant is requested to adhere to the following instructions. Each application package must include:

1. A copy of the Checklist for a Complete Application with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance as page one. To facilitate handling, please do not use covers, binders, tabs or include extraneous materials such as agency promotion brochures, slide, tapes, film clips, minutes of meetings or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of the receipt of, and the four digit identification number assigned to, their application. This number and priority area must be referred to in all subsequent communication with ACF concerning the application. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for ACF staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given. Applicants should be advised that ACF staff cannot release information about the status of any application prior to the time funding decisions are made. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

H. Checklist for a Complete Application

The Checklist below should be typed on 8½" by 11" plain white paper, completed and included in the application package.

Checklist

I have checked my application package to ensure that it includes the following:

__________Checklist for a Complete Application;

__________One original application signed in black ink and dated plus two copies;

__________A complete SPOC certification with the date of SPOC contact entered in item 16 page 1 on the SF 424;

__________Each package contains the application (original and two copies) for one priority area.

The original and both copies of the application include the following:

__________SF 424, page 1, Application Face Sheet;

__________SF 424A;

__________Budget justification;

__________Summary description and key words;

__________Program narrative;

__________Organizational Capability Statement;

__________Interagency agreements; Letters of commitment;

__________Certification Regarding Lobbying;

__________SF 424B Assurances

__________Appendices/attachments.

(Federal Catalog of Domestic Assistance Program Number 93.554 Child Abuse and Neglect Prevention and Treatment).

Dated: April 13, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184-01-P

APPENDIX 1

PROGRAM INSTRUCTION

Implementation of New Legislation: Family Preservation and Support Services Program

OMB No. 0980-0258

Expires: 4-18-94

ACF	**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES** **Administration on Children, Youth and Families**	
	1. Log No. ACYF-PI-94-01	**2. Issuance Date: 1-18-94**
Administration for Children and Families	**3. Originating Office: Children's Bureau**	
	4. Key Word: Family Preservation and Support Services	

PROGRAM INSTRUCTION

TO: State Agencies Administering the Title IV-B Child and Family Services Program.

BILLING CODE 4184-01-C

Subject: Implementation of New Legislation: Family Preservation and Support Services, Title IV–B, Subpart 2.

Purpose: The purpose of this Program Instruction is to provide information on the Fiscal Year (FY) 1994 application requirements and guidance for developing the FY 1995 five-year State Plan for Family Preservation and Support Services. A separate Program Instruction will be issued for grants to Indian Tribes.

Legal and Related References: Title IV–B of the Social Security Act, Subpart 2, Family Preservation and Support Services; Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66); 45 CFR Part 92.

Public reporting burden for this collection of information is estimated to average 144 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Reports Clearance Officer, Administration for Children and families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447; and to: Office of Management and Budget, Paperwork Reduction Project, OMB control number 0980–0258 (new request), Washington, D.C. 20503.

Overview

This new legislation aims to promote family strength and stability, enhance parental functioning, and protect children through funding a capped entitlement to States to provide family support and family preservation services, which the law defines broadly.

There is widespread consensus in the child and family policy community that these new dollars, although relatively small, can best be used strategically and creatively to stimulate and encourage broader system reform which is already under way in many States and communities.

The FY 1994 appropriation for this program is $60 million. Of this amount, $2 million is reserved for Federal evaluation, research, and training and technical assistance; $600,000 is reserved for grants to Indian Tribes. The balance is available for grants to States to fund planning and services for family support and family preservation.

For FY 1995, the authorization increases to $150 million. Of this amount, $6 million is reserved for Federal evaluation, research, and training and technical assistance; $1.5 million is reserved for grants to Indian Tribes. A new program of grants to State courts will be initiated at a funding level of $5 million. (Information on this program will be forthcoming.) The balance is available for grants to States for services.

Attachment A lists FY 1994 State allotments and *estimated* allotments for FYs 1995–98 based on the statutory formula. Attachment B contains a copy of the statute and an excerpt from the Conference Report regarding the definition of family support services.

This Program Instruction is divided into five parts.

- Part I is an introductory section which contains our vision for this new legislation and background information on family support and family preservation services.
- Part II is a discussion of family support and family preservation services and guiding principles for these services.
- Part III is a discussion of planning activities essential to the development of a five-year State Plan for services beginning in FY 1995, including consultation, coordination, data collection, and joint planning.
- Part IV contains a brief outline of major provisions of the statute and additional fiscal and administrative information.
- Part V contains instructions for preparing the FY 1994 application for planning funds and for services funds.

Submittals

The FY 1994 Application

We encourage States to submit the FY 1994 application to the appropriate Regional Office as soon as possible and no later than June 30, 1994.

The FY 1995 State Plan

We encourage States to submit the five-year FY 1995–99 State Plan as soon as possible after completing the planning process and no later than June 30, 1995.

Part I: Introduction

A. Background

Enactment of a new Subpart 2 to title IV-B of the Social Security Act is the first major change in this title since the amendments made by Public Law 96–272, the Adoption Assistance and Child Welfare Act of 1980.

The goals of that legislation were to:

- Prevent the unnecessary separation of children from their families;
- Improve the quality of care and services to children and their families; and
- Ensure permanency for children through reunification with parents, through adoption, or through another permanent living arrangement.

These goals have not been fully realized. A wide variety of reasons have been suggested by researchers and practitioners, including:

- Social, cultural, and economic changes (increases in substance abuse, community violence, poverty, and homelessness, for example), which have affected the number of families coming to the attention of child welfare agencies and the severity of their problems;
- Rising rates of child abuse and neglect reports, particularly for child sexual abuse;
- A child welfare system unable to keep up with these increased demands, given constrained resources, high caseloads, and overburdened workers;
- Services planning that focuses most resources on crisis intervention and too few on prevention;
- Lack of services that fit the real needs of families; and
- The isolation of the child welfare services system from other services needed by vulnerable families, such as housing, employment, and substance abuse services.

In response, Congress has passed, and the President has signed, legislation that will provide States with new Federal dollars for preventive services (family support services) and services to families at risk or in crisis (family preservation services).

In addition to providing funds for expanding services, the new program offers States an extraordinary opportunity to assess and make changes in State and local service delivery in child welfare, broadly defined. The purpose of these changes is to achieve improved well-being for vulnerable children and their families, particularly those experiencing or at risk for abuse and neglect. Because the multiple needs of these vulnerable children and families cannot be addressed adequately through categorical programs and fragmented service delivery systems, we encourage States to use the new program as a catalyst for establishing a continuum of coordinated and integrated, culturally relevant, family-focused services for children and families.

Among the elements that would ideally be part of the continuum, depending on family needs, are family support and family preservation services; child welfare services, including child abuse and neglect preventive and treatment services and foster care; services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements; and linkages to services that meet other needs, such as housing, employment, and health.

In passing this legislation, Congress recognized that new funding alone would not be sufficient to meet the goals of the legislation and Public Law 96–272. Because new or expanded services are just one element needed to improve the child welfare system, many States and communities may choose to carry out major changes in the ways services are delivered and in the systems that deliver them, in order to ensure that services are part of a comprehensive, coordinated service delivery system that draws heavily on community-based programs in its design and implementation.

Therefore, we expect that a major goal of the planning process will be to examine the changes that are needed in each State to make delivery of services more responsive to the needs of individuals and communities and more sensitive to the context in which they are to be delivered.

It is our strong expectation that States will take advantage of this opportunity to move the child welfare service system in these directions, leading to a more coordinated, flexible system, built on and linked to existing community services and supports, and able to serve children and their families in a more effective way.

B. Development of Family Preservation and Support Services

Family support and family preservation services are not new. They date back to the turn of the century, e.g., Hull House and the settlement house movement. Recently, however, there has been increased interest in such programs.

Over the last several years, State and local governments, foundations, national organizations, and non-profit agencies have begun to develop and implement family support and family preservation programs; push for change in child welfare programs, including reform of State laws and policies to support family-centered practice; and experiment with changing the way child welfare services are organized and delivered, including strengthening linkages with other agencies and resources and moving toward greater community direction and control of services.

A few examples of such efforts include the American Public Welfare Association's policy on Commitment to Change, the decategorization of funding and collaborative planning efforts in a number of States, the Children's Trust Funds and Children's Cabinets, the Pew Foundation's Children's Initiative and support for demonstrations of improved planning and child welfare service delivery from the Edna McConnell Clark Foundation and the Annie E. Casey Foundation. Specific program models include the Homebuilders and the Families First programs, the Healthy Families America initiative, and hundreds of community-based family support programs nationwide including both family resource centers and home-based models, such as Parents as Teachers, and the Home Instruction Program for Preschool Youngsters (HIPPY).

Several Federal programs or initiatives also have focused on prevention, family-centered practice, and a community-based approach. Some examples include the Head Start Bureau's Family Service and Family Support Projects, and Parent and Child Centers; the national Comprehensive Child Development Program demonstration; the National Center on Child Abuse and Neglect's State community-based prevention grants associated with Children's Trust Funds; the Family Support Resource Center and the Family Based Services Resource Center funded by the Children's Bureau; the Family and Youth Services Bureau's Family Resource and Support program; the Public Health Services' (PHS) Healthy Start program; the Office of Community Services' Family Support Centers (homeless families demonstration); the Department of Housing and Urban Development's (HUD) Family Self-Sufficiency demonstration program; and the PHS Child and Adolescent Services System Program (CASSP), a planning model for coordinated mental health services now implemented in all States.

We have compiled in Attachment C reference information on family support and family preservation resources, programs and options; information on collaborative planning and needs assessment; and a summary of two recent Federal programs that States and communities should consider as they develop the family support and family preservation five-year plan: the community empowerment funds under the social services block grant and the HUD Family Unification Program.

As one part of our implementation of this new legislation, we have convened a series of focus groups in both the Central and Regional Offices with family support and family preservation program directors, practitioners, and experts; State, county, and city child welfare administrators; State and local agencies with experience in providing such programs; representatives of Indian Tribes and regional and national Tribal organizations; national advocacy, interest group, and professional organizations; representatives of national organizations representing Governors, State legislators, and counties; and parents, foster parents, and consumers of child welfare services. In addition, we have met with or received written materials and recommendations from a number of other experts and practitioners in the field. The suggestions, guidance, and information we have received through this process have been invaluable to us in the development of this Program Instruction.

Further, in an effort to improve Federal collaboration and coordination, we have met with staff of other Federal programs (both within and outside the Department) to obtain current information on new programs and explore ways to consolidate and maximize resources.

We are actively collaborating on FY 1994 discretionary grant announcements with the Health Resources and Services Administration (HRSA) and the Substance Abuse and Mental Health Administration (SAMHSA) in the Public Health Service. For example, in an effort to strengthen coordination at the State and local level, HRSA's discretionary grant announcement for a new program, "Home Visiting for At-Risk Families," will require that the application must be developed collaboratively by representatives of the State agency administering title IV–B (Child and Family Services) and title V (Maternal and Child Health). Information on the Home Visiting Announcement may be obtained by calling Geraldine J. Norris at 301–443–6600.

Also, in the interest of coordinating service efforts at the State and local level, we have been working with SAMHSA which will be publishing a discretionary grant announcement early in FY 1994. The announcement will be for the development of community-based systems of care for children and adolescents who are experiencing a serious emotional disturbance and their families.

In reviewing applications for these discretionary grants, one of the criteria that the Center for Mental Health Services, SAMHSA, will take into account is the degree to which the applicant has included children's mental health services in its comprehensive planning for coordinated services under the Family Preservation and Support Services program.

Part II: Family Preservation and Family Support Services and Principles

The literature on professional practice and the discussion at the focus groups reflected general agreement on the goals for family support and family preservation services. These services should be directed towards:

- Enhancing parents' ability to create stable and nurturing home environments that promote healthy child development;
- Assisting children and families to resolve crises, connect with necessary and appropriate services, and remain safely together in their homes; and
- Avoiding unnecessary out-of-home placement of children, and helping children already in out-of-home care to be returned to and be maintained with their families or in another planned, permanent living arrangement.

Family support services are primarily community-based preventive activities designed to alleviate stress and promote parental competencies and behaviors that will increase the ability of families to successfully nurture their children; enable families to use other resources and opportunities available in the community; and create supportive networks to enhance child-rearing abilities of parents and help compensate for the increased social isolation and vulnerability of families.

Examples of community-based services and activities include respite care for parents and other caregivers; early developmental screening of children to assess the needs of these children and assistance in obtaining specific services to meet their needs; mentoring, tutoring, and health education for youth; and a range of center-based activities (informal interactions in drop-in centers, parent support groups) and home visiting activities. (See Section 431 of the statute and the Conference Report language in Attachment B.)

Family preservation services typically are services designed to help families alleviate crises that might lead to out of home placement of children; maintain the safety of children in their own homes; support families preparing to reunify or adopt; and assist families in obtaining services and other supports necessary to address their multiple needs in a culturally sensitive manner. (If a child cannot be protected from harm without placement or the family does not have adequate strengths on which to build, family preservation services are not appropriate).

Examples of family preservation activities and services, include intensive preplacement preventive services; respite care for parents and other caregivers (including foster parents); services to improve parenting skills and support child development; follow-up services to support adopting and reunifying families; services for youth and families at risk or in crisis; and intervention and advocacy services for victims of domestic violence. (Section 431 of the statute.)

Currently, a number of program models, approaches, and levels of family preservation services are in operation. In this Program Instruction the term "family preservation" is used to include all such service options. ACF does not plan to require and does not endorse any specific program model for implementation. However, in joint planning activities with Federal staff, States will have an opportunity to discuss the basis for their selection of program models, the operation of specific service designs and options, and sources for additional information on high quality program approaches and models. Some activities such as respite care, home visiting, and assistance in obtaining services may be considered either a family support or a family preservation service.

Families and Children

The statute clarifies that, in providing services, "families" may include biological, adoptive, foster, and extended families. The term "children" includes youth and adolescents.

Statewideness

We recommend that States consider: (1) targeting services in areas of greatest need; and (2) targeting services to support cross-cutting community-based strategies. Such strategies have the potential to draw on multiple funding streams to bring a critical mass of resources to bear in high-need communities.

There is no requirement that services must be statewide by a specific date, although States are encouraged to move in that direction as they set goals in their State Plans.

Guiding Principles

Both family support and family preservation services are based on a common set of principles or characteristics which help assure their responsiveness and effectiveness for children and their families. Focus group participants frequently pointed out that, while various models of services or programs are available for communities and States to consider, it is an *approach* based on these principles that should provide an organizing framework for State planning.

Among the shared principles most often identified by practitioners are:

- The welfare and safety of children and of all family members must be maintained while strengthening and preserving the family whenever possible. Supporting families is seen as the best way of promoting children's healthy development.
- Services are focused on the family as a whole; family strengths are identified, enhanced, and respected, as opposed to a focus on family deficits or dysfunctions; and service providers work with families as partners in identifying and meeting individual and family needs.
- Services are easily accessible (often delivered in the home or in community-based settings, convenient to parents' schedules), and are delivered in a manner that respects cultural and community differences.
- Services are flexible and responsive to real family needs. Linkage to a wide variety of supports and services outside the child welfare system (e.g., housing, substance abuse treatment, mental health, health, job training, child care) are generally crucial to meeting families' and children's needs.
- Services are community-based and involve community organizations and residents (including parents) in their design and delivery.
- Services are intensive enough to meet family needs and keep children safe. The level of intensity needed to achieve these goals may vary greatly between preventive (family support) and crisis services.

For additional information on service programs and options, see Attachment C.

Part III: Planning Activities

This new legislation provides an unusual opportunity for States to strengthen and refocus their child and family services. The legislation:

- Provides additional and flexible funds for innovative services;
- Directs the focus of these services in new ways; and
- Provides the resources for a planning effort to ensure maximum results.

Because the new focus on family-based services and community linkages requires changes in vision, in philosophy, and in the design and delivery of child welfare services, the planning period is especially critical. By making funds available for planning and by requiring the development of a long-range, five-year plan, the legislation recognizes this critical first step and offers each State an opportunity to strengthen, reform, and better coordinate and integrate its service delivery system.

We strongly urge States to take advantage of this extraordinary opportunity. To seize that opportunity, we believe that a thoughtful, strategic planning process that includes a wide array of State, local, and community agencies and institutions, parents, consumers, and other interested individuals whose collective work feeds into joint State-Federal planning activities, is necessary.

The five-year State Plan will be the vehicle to articulate a State's vision and strategy for achieving that vision, set goals and measure progress towards those goals, and identify practical next steps toward a more comprehensive and integrated continuum of services that responds to the needs of vulnerable families within the State. To provide the maximum opportunity for States to strategize broadly about the service continuum and family needs, State Plans need to include the major programs serving children and their families, including child welfare services broadly defined, and need to consider family support and family preservation services not as isolated categorical programs but as a part of the overall continuum. Ideally, the planning process will offer an opportunity for multiple State, local and community agencies and organizations (as well as Federal agencies) to become partners on behalf of children.

State planning and service development activities should be characterized by broad consultation and involvement, the identification and gathering of data needed for planning (needs assessment), and joint planning between Federal and State agency staff leading to the development of the State Plan.

A. Consultation and Coordination

We recognize that many States have successful, cross-cutting planning processes underway for child and family services. We believe that these new title IV-B funds can be used to build on and strengthen current planning efforts and act as a catalyst for States at the beginning of this planning process.

In isolation, family support and family preservation services cannot effectively address the needs of children and families. Therefore, consultation and coordination should include the active involvement of major actors across the entire spectrum of the service delivery system for children and their families including:

- State and local public agencies, non-profit private agencies, and community-based organizations with experience in administering programs of services for children and families (including family support and family preservation);
- Representatives of communities, Indian Tribes, and other areas where needs for family support and family preservation are high.
- Parents (especially parents who are participating in or who have participated in family support and/or family preservation programs) and other consumers, foster parents, adoptive parents, and families with a member with a disability.
- Representatives of professional and advocacy organizations (including foundations and national resource centers with the expertise to assist States and communities with regard to family support and family preservation), individual practitioners working with children and families, and the courts; and
- State and local agencies administering Federal and federally assisted programs, such as maternal and child health; the Early and Periodic, Screening, Diagnosis, and Treatment program; mental health; child abuse and neglect (e.g., the NCCAN emergency child abuse prevention services grants); transitional and independent living; substance abuse; education; developmental disabilities; juvenile justice; early childhood education (child care and Head Start); domestic violence; youth gangs; housing; income security (AFDC, JOBS, Child Support); nutrition (Food Stamps, WIC); the social services and the community services block grant; and the title IV-A Emergency Assistance program.

There are many purposes of outreach and consultation, including the development of new and more effective service approaches for children and families, the assessment of family and community needs, the identification of service overlaps and gaps, the identification of available resources (expertise, money, facilities, staff) that might help to meet needs, and the development of strategies for blended financing, common application forms, or simplified case management procedures across programs. All of these outcomes help to improve service delivery to children and families.

B. Collection of Data

An essential component of the planning process is the collection of information on which to base service decisions and determine future goals. We strongly recommend that States conduct a thorough needs assessment using available data whenever possible.

The needs assessment should identify the existing array of family support, family preservation, and other related services currently being provided; resources and sources of funding; and gaps and deficiencies in services. It should also identify data on which to base target population decisions, e.g., demographic characteristics of children and families from census data; State legislative and city planning data; child abuse and neglect and infant mortality data; data on communities that experience high rates of foster care placements; and data about communities experiencing disproportionately high levels of poverty, homelessness, substance abuse, or teen pregnancy. A State might also project what the future circumstances of families and children in the State would be if nothing were done.

C. Joint Planning

Joint planning is an ongoing process of discussion, consultation, and negotiation which takes place between the State child welfare agency and the Federal Regional Office representative for the purpose of developing a State Plan. It includes Federal technical assistance to the State as well.

Through joint planning, State and Federal staff, with appropriate consultation and participation of other State, local and community-based stakeholders, discuss the key strategic decisions facing the State (as identified from needs assessments, consultation, and data available to the State):

- Priorities for services and for target populations;
- Proposed goals and objectives;
- Unmet needs, services gaps, and overlaps in funding;
- Other funding resources available to provide the services needed;
- The State and local organizations, foundations, and agencies with which the child welfare agency can coordinate;
- Ongoing plans to move toward the State's goals by improving the service delivery system and ensuring a more efficient comprehensive system of care for children and families; and
- Methods for reviewing progress toward those goals.

Finally, joint planning also includes Federal guidance and technical assistance after the State Plan has been developed and approved. This is provided through follow-up review and discussion of progress in accomplishing the goals identified in the plan and updating the plan as appropriate.

Part IV: Statutory and Fiscal Requirements

A. Brief Outline of Major Provisions of the Statute

1. Purpose

Family Preservation and Support Services is a capped entitlement program. Its purpose is to encourage and enable each State "to develop and establish, or expand, and to operate a program of family preservation services and community-based family support services." One hundred percent Federal funding is available in FY 1994 to develop and submit a five-year State Plan for such services in FY 1995. (Section 430) A copy of the statute is found in Attachment B.

2. Five-Year State Plan

In order to receive funds in FY 1995, each State must submit a five-year State Plan for FYs 1995–99. The plan must at minimum:

- Set forth the goals to be accomplished by the end of the fifth year;
- Be updated periodically to set forth the goals to be accomplished by the end of each fifth fiscal year thereafter;
- Describe the methods to be used to measure progress toward the goals; and
- Provide for coordination of services under the plan with other Federal or federally assisted programs serving the same populations.

As part of an ongoing planning process, the State must:

- Annually review progress toward accomplishing the goals;
- Based on the annual review, revise the goals if necessary; and
- At the end of the fifth year, conduct a final review and provide a report to the Secretary and to the public on progress toward accomplishing the goals; and
- Also at the end of the fifth year, amend the plan to set forth the goals for the next five years as developed in consultation with public and non-profit agencies. (Section 432 (a))

3. Joint Planning and Consultation Requirements

The Secretary will approve a plan that meets the requirements only if the plan was developed:

- Jointly by the staff of the Department and the State (Section 432(b)(1)); and
- After consultation by the State agency with appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families, including family support and family preservation services. (Section 432(b))

4. Public Information and Reporting Activities

Annually, the State must furnish to the Secretary, and make available to the public, a report which contains a description of:

- The family preservation services and the community-based family support services to be made available under the plan in the upcoming fiscal year;
- The populations each program will serve; and
- The geographic areas in the State where each service will be available.

This first descriptive services report for FY 1995 and FY 1996 is due at the time the State submits its FY 1995 plan, and subsequent reports will be due by June 30 of each succeeding fiscal year for the upcoming fiscal year. (Section 432(a)(5))

As noted above, at the end of each five-year plan period, the State must report to the Secretary and to the public on its progress in meeting its five-year goals and on its goals for the next five-year period.

5. FY 1994 Application and Special Rule Requirements

- The State must submit an application for funds for FY 1994.
- Up to $1 million of a State's allotment may be used for planning purposes to develop and submit the FY 1995–99 plan.
- Funds used for planning purposes in FY 1994 are 100 percent Federal funds, i.e., no State match is required.
- Funds not needed to develop the FY 1995–99 plan may be used to provide family support and family preservation services; funds over $1 million in a State's allotment may only be used for such services.

6. Fiscal and Administrative Requirements

- Funds used to provide services in FY 1994 and subsequent years are federally reimbursed at 75 percent. Federal funding for planning and services will not exceed the amount of the State's allotment.
- States using funds for services in FY 1994 and subsequent years may not use more than 10 percent of total Federal and State service expenditures under this program for administrative costs.
- The ten percent limitation on administrative costs does not apply to funds used for planning purposes in FY 1994.
- States must spend a significant portion of service dollars for family support and for family preservation services, respectively. (Section 432 (a)(4))
- The use of other Federal funds as the State's share of expenditures is prohibited. (Section 434)

7. Other Requirements

The statute requires that the State will:

- Provide for the proper and efficient operation of the State Plan (Section 432(a)(6));
- Assure, and provide fiscal reports to the Secretary to demonstrate compliance with the requirement, that Federal funds under this program will not be used to supplant Federal or non-Federal funds for existing family support and family preservation services and activities (Section 432 (a)(7));
- Furnish other reports as required (Section 432(a)(8));
- Participate in evaluations as required (Section 432(a)(8)); and
- Expend funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded, i.e., the State must liquidate all obligations of FY 1994 funds by September 30, 1995. (Section 434(b)(2))

8. Definitions

Definitions, including definitions of services, are found in Section 431 of the Social Security Act. The Conference Report language provides additional examples of family support services (see Attachment B).

B. Additional Fiscal and Administrative Information

1. Rate of Federal Match

This FFP rate is the same as the rate under Subpart 1 of title IV-B. The State's contribution may be in cash or donated funds.

For example, a State with an allotment of $600,000 must spend at least $800,000 (at least $200,000 of which is non-Federal) in order to receive the full amount of the allotment. If the State spends less than $800,000 (e.g., $700,000), it will receive 75 percent of the amount it spends (e.g., for $700,000 in expenditures, the State will receive $525,000).

2. Submittals

- *The FY 1994 Application.* The application for FY 1994 funds may be submitted as a preprint or in the format of the State's choice. A recommended preprint is found at Attachment D. If a State uses its own format, the application must include all the information specified in the preprint.

We encourage States to submit the FY 1994 application to the appropriate Regional Office as soon as possible after completing the application requirements and no later than June 30, 1994. Grant awards will be made after the application has been approved. (See Attachment F for a list of Regional Offices.)

- *The FY 1995 State Plan*. FY 1995 funds are available only after the State has submitted, and ACF has approved, a five-year State Plan for services that meets all requirements.

ACF is considering consolidating the five-year State Plan for Family Preservation and Support Services with the State's title IV–B (Subpart 1, Child Welfare Services) State Plan, and the title IV–E Independent Living Program plan. Instructions for submittal of this proposed consolidated FY 1995 five-year State Plan will be issued in the future to coincide with regulations ACF expects to propose for family support and family preservation services.

States are encouraged to submit the FY 1995 State Plan as soon as possible after completing the planning process and no later than June 30, 1995. Grant awards will be made after the plan has been approved.

3. Other Information

- FY 1994 funds are available for expenditures from the beginning of the fiscal year, i.e., October 1, 1993.
- There is no reallotment provision in this new legislation.
- The SF–269 report must be submitted annually to the Regional Office.
- Title IV–B, subpart 2, is covered by Executive Order 12372 for the purpose of consolidation and simplification of the State Plan only. Like title IV–B, subpart 1, it is excluded from the intergovernmental review process under the Executive Order.

Part V.—Application Instructions

A. Planning

We expect and encourage States to take full advantage of the opportunity to use the 100 percent FY 1994 Federal funds, up to $1 million, for comprehensive planning and other planning related activities, such as training, technical assistance, assessment, public information and education, and commissioning further analyses. We believe that such planning is critical to the development of a five-year State Plan for services and to the effective establishment of a continuum of services for children and families that includes family support and family preservation services.

To qualify for Federal funding for FY 1994 under title IV–B, Subpart 2, Family Preservation and Support Services, a State must submit an application to the ACF Regional Office. (See optional application preprint at Attachment D.)

All applications must: 1. Provide the name of the State agency that will administer the program. It must be the same agency that administers title IV–B, part 1.

2. Specify the estimated amount of the State's FY 1994 allotment that will be used for planning for family preservation and family support services, including development of a five-year State Plan for services in the context of a comprehensive child welfare services plan.

3. Describe the proposed use of FY 1994 funds for planning activities, including:

- A description of the process the State will follow or the existing State/local planning processes it will use to ensure that parents, consumers, Indian Tribes, representatives of communities, and a variety of State, local, and non-profit agencies, community-based organizations and individuals having experience with services to vulnerable children and families, including family preservation and family support services, will be actively involved in the planning process;
- A description of how the State will coordinate the provision of services with representatives of other Federal and federally assisted programs to develop a more comprehensive and integrated service delivery system;
- A list of planned contacts and a description of the outreach activities, such as hearings or focus group meetings, that the State will use to ensure that interested parties in the State have an opportunity for active involvement in this planning process; and
- A description of how the State will inform all appropriate parties about this new legislation and the planning, consultation, and coordination provisions.

4. Describe how the State will assess State and local needs (or describe a recently conducted prior planning process which assessed community needs and meets the requirements of this paragraph). The proposed approach to needs assessment should contain enough local detail to support State targeting decisions and include specific data collection strategies on service populations, service needs, available programs, and available resources. Examples of information that may be useful are local area data (including census tract data) on the number and types of child abuse and neglect reports and foster care placements, and data by community on child and family poverty, homelessness, substance abuse, teen pregnancy. (See Attachment C for reference materials on needs assessments.)

5. Describe how the State will collect information on the nature and scope of existing public and privately funded family preservation and family support programs in the State.

Information about these programs should be used to make informed decisions on investing or expanding existing services or moving in new directions.

6. Describe other activities the State will carry out to develop the five-year State Plan and implement service system reform, including activities such as:

- Training and technical assistance; and
- The approach the State will take to assess the implementation and effectiveness of the family support and family preservation services within the State and their effect on the broader child welfare and family services system.

7. Supply State FY 1992 summary fiscal data, as shown on the attached application preprint, on federally- or State-funded family support and family preservation programs to enable monitoring of the prohibition against supplantation of funds for these programs.

8. Provide the following general assurances:

- The State will perform administrative procedures determined necessary by the Secretary of HHS, for the proper and efficient operation of the State's program.
- The State will not use Federal funds provided to the State under this program to supplant Federal or non-Federal funds, including those provided to community-based programs, for existing family preservation or family support services. The State will furnish requested reports to the Secretary of HHS, that demonstrate the State's compliance with the prohibition against supplantation.
- The State will furnish reports requested by the Secretary of HHS, including the SF–269.
- The State will participate in any national or local (including local third party) evaluations of the program that may be required by the Secretary of HHS. (A State may be asked to provide information about the number of children served by the new program, State goals on foster care caseloads, and on reports of child abuse and neglect.)

- The State will not expend (obligate and liquidate) any amount paid under this program for any fiscal year after the end of the immediately succeeding fiscal year.

9. Certify that the State will meet the following certifications contained in the application preprint by signing the first and submitting the two remaining certifications. (The signature of the authorized State official on the application constitutes compliance with the drug-free workplace and the debarment certifications.)

- Anti-Lobbying and Disclosure Form;
- Drug-Free Workplace Requirements; and
- Debarment Certification.

10. Provide the name, signature and title of the State agency official certifying compliance with all assurances and certifications associated with the receipt of funds for family preservation and family support services. Also, provide the name, title and telephone number of a State contact person responsible for the planning effort.

B. Services

A State may apply to use FY 1994 funds for services in the following circumstances:

a. Any funds over $1 million used by the State must be used for services.

b. If, after reviewing the FY 1994 application requirements for planning and the preliminary issues for possible regulatory action for the FY 1995 State Plan (see Attachment E), the State believes it can demonstrate that it has met or is in the process of meeting most of these requirements and will have funds from its allotment not needed for planning or developing the FY 1995 State Plan, it may apply to use these funds for services.

Before authorizing the expenditure of FY 1994 funds for services, we will want to be satisfied, for example, that the State expects to meet the requirements for consultation with community-based organizations, parents, and others in its design and funding of family support programs; that it has completed or expects to complete a needs assessment and obtain both State and local data necessary for services planning and/or expansion; and that it has coordinated with other State agencies and Federal and federally assisted programs in order to develop collaborative arrangements to improve service delivery to vulnerable families. The State also must be able to show how the family preservation and support services to be provided in FY 1994 are related to the State's current title IV–B Services Plan.

We urge States to consult with Regional Office staff as they prepare their FY 1994 application for planning/services. Regional Office staff will clarify requirements, review materials submitted as part of the application, and provide further guidance.

In order to receive funding for services in FY 1994, a State's application must include the following information:

1. Specify the estimated amount of the State's allotment that will be used for services, and the amount the State will contribute (at least 25 percent of the total, i.e., 33 percent of the Federal contribution). Include total estimates of the amounts to be used for training, technical assistance, and administrative costs.

2. Include the findings of a needs assessment or prior planning processes that led to the decision to spend FY 1994 funds for services and to the selection of the type of services, the populations to be served, and the geographic areas for each type of service. Include a description of the needs assessment/planning process and a list of the organizations and individuals that participated.

3. Describe how representatives from Indian Tribes, cities and communities, groups identified as having expertise in the field of family preservation and family support, parents, consumers, and others participated in the development of the application for FY 1994 services funds.

4. Identify the State's goals for services to vulnerable children and families in FY 1994 and indicate how the funds obtained under this program will assist in meeting these goals. Specifically, describe how these funds will be used to develop or expand family support and family preservation services and strengthen service delivery in the existing child welfare system.

Describe how these funds will link to other services (such as social, educational, juvenile justice, substance abuse, and health and mental health services) to improve the likelihood that children and families will receive care appropriate to meet their multiple needs.

5. Describe separately the family support services and the family preservation services that will be provided using FY 1994 funds. Include a description of the populations to which each type of service will be directed and the geographic areas where each type of service will be provided.

Describe the nature and scope of existing public and privately funded family preservation and family support services in the State.

6. Indicate the specific percentage of FY 1994 funds that the State will expend for community-based family support and for family preservation services, respectively, and the rationale for that choice. Include an explanation of how this distribution was reached and why it meets the requirement that a "significant portion" of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services. While there is no minimum percentage that defines significant, States should be aware that the rationale will need to be especially strong if the request for either allocation is below 25 percent.

7. Estimate the amount of family support funds which the State will provide to community-based organizations and how organizations will be selected to receive these funds.

8. Specify the following information:

- Describe the types of activities that will be claimed as administrative costs. These typically are the overhead costs associated with personnel, such as State agency rent, utilities, supplies, and so on.
- Describe the types of training and technical assistance activities that will be carried out. (Costs directly associated with the provision of services are not considered administrative costs, e.g., training for individuals to administer or deliver family support or family preservation services.)

9. Provide the following assurances:

- The State will not spend more than ten percent of family support and family preservation service funds on administrative costs.
- The State will spend a significant portion of funds for family preservation and for family support services, respectively.
- The State will not use Federal funds to meet the State's share of costs of services not covered by the amount received under this law.

Note: The State will meet the general assurances in the law (see p. 23) by submitting the signed planning section of this application.

10. Provide the name, signature and title of the State agency official certifying compliance with all assurances and certifications associated with the receipt of funds for family preservation and family support. Also, provide the name, title and telephone number of a State contact person for

family support and family preservation services.

Inquiries to: ACF Regional Administrators—Olivia A. Golden, Commissioner, Administration on Children, Youth and Families.

For the purpose of this Federal Register Announcement, only the body of the Program Instruction has been included as the most pertinent information for prospective applicants. Attachments A through F have not been included because they repeat information, or have been determined to be less relevant to this announcement.

However, the Program Instruction, complete with all attachments may be obtained from the Clearinghouse on Child Abuse and Neglect Information, (800) 394–3366 or (703) 385–7565.

Appendix 2—Clearinghouses and Resource Centers

Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, (703) 385–7565, (800) FYI–3366, (703) 385–3206 FAX

National Adoption Information Clearinghouse (NAIC), 11426 Rockville Pike, Suite 410, Rockville, MD 20852–3007, (301) 231–6512, (301) 984–8527 FAX

Center for Substance Abuse Prevention (CSAP), National Clearinghouse for Alcohol and Drug Information (NACADI), P.O. Box 2345, Rockville, MD 20847–2345, (800) 729–6686, (301) 468–2600, (301) 468–6433 FAX, (301) 230–2687 TDD

National Information Clearinghouse (NIC) for Infants with Disabilities and Life-Threatening Conditions, Center for Developmental Disabilities/USC, Benson Building, 1st Floor, Columbia, SC 29208, (800) 922–9234 ext. 201, (800) 922–1107 (in SC), (803) 777–4435, (803) 777–6058 FAX

Juvenile Justice Clearinghouse, Box 6000, Rockville, MD 20850, (800) 638–8736, (310) 251–5212 FAX

National Center for Education in Maternal and Child Health (NCEMCH), 2000 15th Street, North, Suite 701, Arlington, VA 22201–2617, (703) 524–7802, (703) 524–9335 FAX

National Center for Missing and Exploited Children (NCMEC), 2101 Wilson Boulevard, Suite 550, Arlington, VA 22201–3052, (703) 235–3900, (800) 843–5678 Hotline, (800) 826–7653 TDD Hotline, (703) 235–4067 FAX

Center for Substance Abuse Prevention, National Resource Center for the Prevention of Perinatal Abuse of Alcohol and Other Drugs, 9300 Lee Highway, Fairfax, VA 22031, (703) 218–5600, (800) 354–8824, (703) 218–5701 FAX

National Clearinghouse on Runaway and Homeless Youth (NCRHY), P.O. Box 13505, Silver Spring, MD 20911–3505, (301) 608–8098, (301) 587–4352 FAX

National Victims Resource Center (NVRC), P.O. Box 6000, Rockville, MD 20850–6000, (800) 627–6872, (301) 251–5121

Work and Family Clearinghouse, Women's Bureau, U.S. Department of Labor, 200 Constitution Avenue, Washington, DC 20201–0002, (800) 827–5335, (202) 523–4486, (202) 523–1529

Appendix 3—Administration for Children and Families—Regional Offices

Program Managers, Child Care, Child Welfare and Developmental Disabilities, OFSS

Region I

Tina Janey-Burrell, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, JFK Federal Building, Room 600, 6th Floor (Temp), Boston, MA 02203, Phone: 617–565–3296, Fax: 617–565–2493

Region II

Salvatore Milano, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, Federal Building, Room 4048, 26 Federal Plaza, New York, NY 10278, Phone: 212–264–2975, Fax: 212–264–4881

Region III

Richard Gilbert, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, 3535 Market Street, Room 5450, Philadelphia, PA 19101, Phone: 215–596–0293, Fax: 215–596–5028

Region IV

William Behm, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, 101 Marietta Tower, Suite 821, Atlanta, GA 30323, Phone: 404–331–2398, Fax: 404–331–1776

Region V

Kathleen Penak, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, 105 West Adams Street, 20th Floor, Chicago, IL 60603, Phone: 312–353–6503, Fax: 312–353–2204

Region VI

Manuel Soto, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, 1200 Main Tower Building, Suite 1700, Dallas, TX 75202, Phone: 214–767–6596, Fax: 214–767–3743

Region VII

Robert Reed, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, 601 E. 12th Street, Room 384, Kansas City, MO 64106, Phone: 816–426–5211, Fax: 816–426–2888

Region VIII

Charles Graham, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, Federal Office Building, 1961 Stout Street, Room 1185, Denver, CO 80294–3538, Phone: 303–844–4890, Fax: 303–844–3642

Region IX

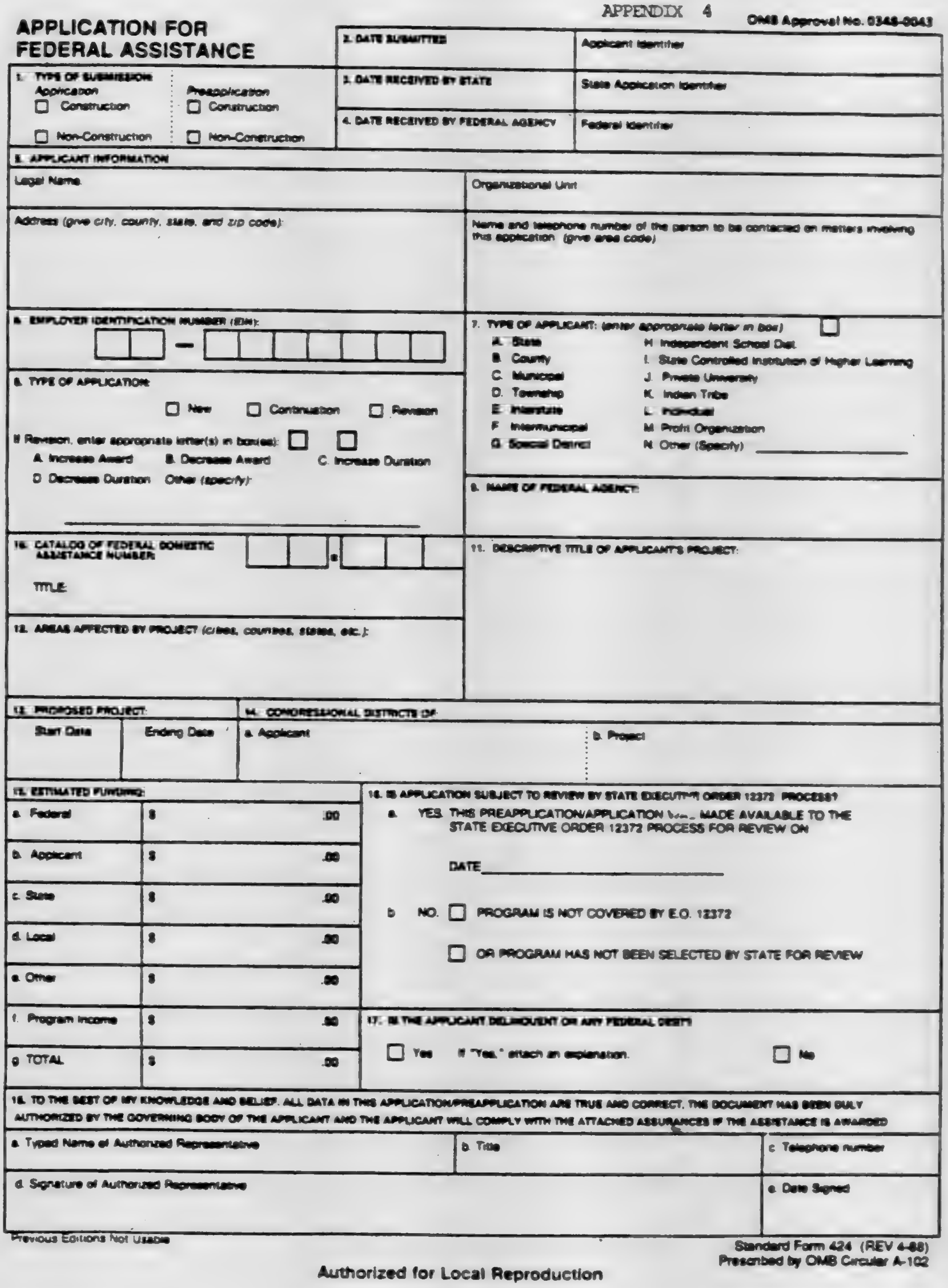
John McGee, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, 50 United Nations Plaza, Room 450, San Francisco, CA 94102, Phone: 415–556–6153, Fax: 415–556–3046

Region X

Richard McConnell, Program Manager, OFSS/OSP, Administration for Children and Families, Department of Health and Human Services, Blanchard Plaza, 2201 Sixth Avenue, Room 610–M/S RX–70, Seattle, WA 98121, Phone: 206–615–2558 ext. 3102, Fax: 206–615–2575

BILLING CODE 4184–01–P

APPENDIX 4



OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

Start Date

Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE____________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative

b. Title

c. Telephone number

d. Signature of Authorized Representative

e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by the Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-Explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contract on matter related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service

7. Enter the appropriate letter in the space provided.

8. Checks appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation of contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append and explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. list the applicant's Congressional District and any district(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contract the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A.—Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5

Show the totals for all columns used.

Section B.—Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i

Show the totals of Lines 6a to 6h in each column.

Line 6j

Show the amount of indirect cost.

Line 6k

Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Instructions for the SF-424A *(continued)*

Line 7

Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C.—Non-Federal-Resources

Line 8–11

Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12

Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5. Column (f), Section A.

Section D.—Forecasted Cash Needs

Line 13

Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14

Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Enter the totals of amounts on Lines 13 and 14.

Section E.—Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19

Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20

Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F.—Other Budget Information

Line 21

Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22

Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23

Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin;

(b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;

(d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse;

(f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing,

(i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and

(j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation or residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official:

Applicant Organization:

Title:

Date Submitted:

Appendix 5—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, D.C. 20005, Telephone (202) 727–6551

Florida

Flordia State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Geroge Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point or Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street Address, City, County, State, ZIP Code):

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Appendix 7—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding, Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix B—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–lLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

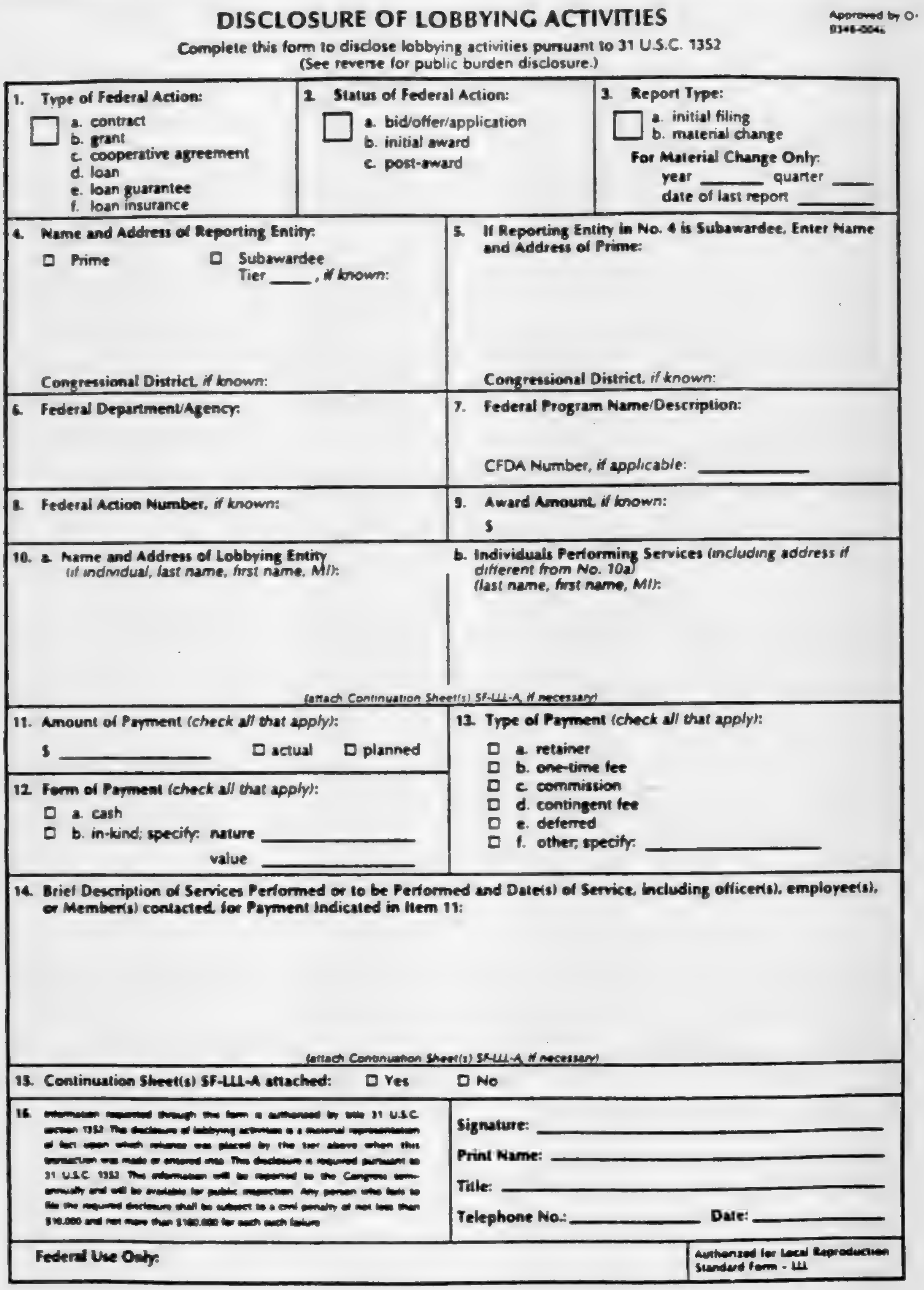
Signature

Title

Organization

Date

BILLING CODE 4184-01-P



DISCLOSURE OF LOBBYING ACTIVITIES

Approved by O·
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year _______ quarter _____
date of last report _________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____________

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _______________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _______________
value _______________

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _______________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _______________________
Print Name: _______________________
Title: _______________________
Telephone No.: _______________ **Date:** ___________

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Standard Form - LLL

[FR Doc. 94–9930 Filed 4–29–94; 8:45 am]

BILLING CODE 4184–01–C

Availability of Financial Assistance for Projects Funded Under the Adoption, Opportunities Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of the Availability of Financial Assistance and Request for Applications to Carry Out Demonstration Projects Funded Under the Adoption Opportunities Branch in the Children's Bureau, Administration on Children, Youth and Families.

SUMMARY: The Children's Bureau of the Administration on Children, Youth and Families announces the availability of fiscal year 1994 funds for grants to public or private nonprofit child welfare and adoption agencies, organizations and adoptive parent groups to assist in supporting programs directed to: (A) Increasing the placements in adoptive families of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families; (B) providing post-legal adoption services for families who have adopted special needs children; and, (C) increasing the rate of placement of children in foster care who are legally free for adoption.

Funding for these grants is authorized under Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Pub. L. 95–266, as amended).

This announcement contains all necessary application materials.

DATES: The deadline for submission of applications is July 1, 1994.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Program, Telephone: 1 (800) 351–2293.

SUPPLEMENTARY INFORMATION: The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence, with particular emphasis on children who have special needs. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children, including children with disabilities; abused and neglected children; runaway and homeless youth; and children from Native American families.

The priority areas identified in this announcement are derived from legislative mandates as well as Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to ACYF's attention by several means including consultation with advocates, policymakers, and practitioners in the field.

The priorities seek to focus attention on and to encourage demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

This program announcement consists of three parts. Part I provides information on the goals of the Children's Bureau (CB), the ACYF office which is requesting applications, and the statutory authorities for awarding grants.

Part II describes the review process and the programmatic priorities under which applications are being solicited.

Part III provides information and instructions for the development and submission of applications.

Part I—Introduction

A. Goals of the Children's Bureau

Within ACYF, Children's Bureau's Division of Child Welfare plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services Program, the Child Welfare Research, Demonstration and Training Program, the Adoption Opportunities Program, the Temporary Child Care and Crisis Nurseries Program, Independent Living Program and the Abandoned Infants Assistance Program.

The Bureau's programs are designed to promote the welfare of all children, including disabled, homeless, dependent or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children and the unnecessary separation of children from families.

B. The Statutory Authority Covering this Announcement

The Adoption Opportunities Program provides financial support for demonstration projects to: Improve adoption practices; eliminate barriers to adoption; and find permanent homes for children, particularly children with special needs. Authorization: Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Title II, Section 203, as amended, Public Law 95–266; Public Law 98–457, the Child Abuse Prevention, Adoption and Family Services Act of 1988, as amended, Title II, Section 201, Public Law 100–294; Public Law 102–295; 42 U.S.C. 5111 *et seq.*

Part II—Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the "Eligible Applicants" section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applications from ineligible organizations will not be considered or reviewed in the competition, and the applicant will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS under IRS Code Section 501(c)(3). The ACYF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Timely applications postmarked by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations that administer or deliver human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

The reviewers will determine the strengths and weaknesses of each proposal using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

All applications will be evaluated against the following criteria.

A. Objective and Need for Assistance (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

B. Approach (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when appropriate, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

C. Results or Benefits Expected (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

D. Staff Background and Organization's Experience (25 points). The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

E. Structure of Priority Area Descriptions. Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State models are noted, where applicable.

Minimum Requirements for Project Design: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project.

Matching Requirement: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project.

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

CFDA: This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the (SF 424) grant application form.

Please note that applications that do not comply with the specific priority area requirements in the section on Eligible Applicants will not be reviewed. Applicants should also note that non-responsiveness to the section Minimum Requirements for Project Design will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

E. Available Funds

The ACYF intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1994, subject to the availability of funds. The size of the actual awards will vary.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term budget period refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term project period refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, applicants should propose only that non-Federal share they can realistically provide since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $100,000 per budget period), must include a match of at least $33,333 (25% total project cost).

G. Index of Priority Areas

To assist potential applicants in using this announcement, a priority area index in numerical order, is presented below.

1.01 Adoptive Parent Groups as Partners in the Adoption of Children with Special Needs
1.02 Increase Adoptive Placements of Minority Children
1.03 Adoptive Placement of Foster Care Children
1.04 Post-Legal Adoption Services
1.05 Respite Care as a Service for Families who Adopt Children with Special Needs
1.06 Synthesis of Results of Post-Legal Adoption Projects
1.07 Regional Conferences on the Adoption of Minority Children
1.08 Developing Collaborative Efforts between Foster Care and Adoption Staff to Improve Child Welfare Services From Intake to Permanency
1.09 Field Initiated Projects

H. Priority Areas

1.01 Adoptive Parent Groups as Partners in the Adoption of Special Needs Children

Eligible Applicants: Voluntary or public social service agencies, adoption exchanges or other national, regional or statewide adoption-related organizations.

Purpose: To develop new adoptive parent groups or expand or strengthen existing adoptive parent groups to assist and support families adopting children, especially minority parent groups.

Background: Through the years adoptive parents have aggressively promoted the adoption of children with special needs. As consumers of adoption services, these parents bring to the adoption field a special perspective both on the children to be served and the agencies that serve them. They have advocated effectively for children and challenged the term “unadoptable” by demonstrating that children with special needs can be placed with families of their own. Often the members of parent groups have come together out of a common need to help each other to more effectively access the child welfare system for the purpose of adoption. Having experienced common problems, the members of parent groups may share information and insights and provide empathy and support for one another through regularly scheduled social and educational activities.

In past years, parent groups have used Federal funds to: Establish warm-lines as resources for adoptive parents; sponsor adoption fairs with the participation and cooperation of adoption agencies and other groups involved in adoption; establish resource libraries; form new support groups; conduct support group conferences; publish and distribute newsletters; and provide adoptive parents stipends to attend conferences.

Currently, there are more than 452,000 children in foster care in the United States and the numbers are growing. Fifty thousand of these children have special needs and are waiting to be adopted. Over half of these waiting children are of minority heritage. Strong parent groups can play an important role in promoting the adoption of these children by sponsoring such activities as information and referral services; recruitment and orientation for prospective adoptive parents; and respite care and work with social service agencies to support families following placement and legalization. The ACYF recognizes the need to support the development of strong, effective parent groups working in partnership with child welfare/adoption agencies to advocate for needed services and support; to promote the adoption of children with special needs; and to support the establishment of new adoptive parent groups and strengthen existing groups.

Minimum Requirements: In order to compete successfully under this priority area, the applicant should:

- Document its capability to assist local or State adoptive parent groups to work with child welfare agencies.
- Describe the process to be used in developing new adoptive parent groups, especially minority groups, and specify the number of new groups to be developed.
- Describe a plan for awarding sub-grants, not to exceed $5,000, to incorporated non-profit local or State adoptive parent groups to work with child welfare agencies and adoptive families, including pre- and post-adoption services.
- Describe the methods to be used to request proposals from parent groups which focus on special needs adoption problems or issues.
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, D.C. (The Conference provides the opportunity for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)
- Provide assurances that the project will be fully staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $85,000 for the 17-month project period.

Matching Requirements: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be Funded: It is anticipated that a minimum of three projects will be funded.

1.02 Increase Adoptive Placements of Minority Children

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies, and adoption exchanges and community-based organizations with experience in working with minority populations. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving grants.

Purpose: To implement programs designed to increase the adoptive placement of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment, retention and utilization of minority families; adoptive placements for minority children over the age of ten; and adoptive placement of sibling groups.

Background Information: The Adoption Opportunities legislation, emphasizes the recruitment of minority families and authorizes funds for demonstration projects for the recruitment of families to adopt waiting minority children. It is estimated that approximately half of the 50,000 children currently free for adoption and awaiting placement are minority children. Many of them are older, some are in siblings groups, some have disabilities and they may wait long periods of time before they are placed with adoptive families.

The Packard Foundation reports that the current situation for children of color is alarming. The proportion of these children in foster care is three times greater than their proportion in the population of the United States. The ACYF is aware that there must be a continuous focus on the adoption of minority children and has funded a number of programs designed specifically to recruit minority families and to place minority children.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and describe existing barriers to minority adoption in the locale where the project would be implemented; the number of families that would be recruited; and the number of children that would be placed.
- Describe the innovative methods that would be employed to recruit and prepare minority families (including single applicants) in a timely manner in order to retain recruited families.
- Provide assurances that the program would not require payment of fees by adoptive families.
- Describe how training in cultural competence would be provided to all relevant staff to increase their effectiveness in serving minority children and families.
- Provide for an assessment of the project's effectiveness in achieving the desired objectives and its ability to provide services to prospective adoptive families through the completion of the adoption.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Private adoption agencies must provide evidence of licensure (a copy of the license must be included with the application).
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, DC (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)
- Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be Funded: It is anticipated that 15 projects will be funded.

1.03 Adoptive Placement of Foster Care Children

Eligible Applicants: Eligibility is limited to State social service agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from the receiving grants.

Purpose: To develop programs which will assist States in their efforts to increase the placement of foster care children legally free for adoption according to a pre-established plan and goals for improvement.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 100–294, authorizes the funding of grants to States to improve adoption services for the placement of special needs children who are legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family. States have received Federal grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Exchange's Network; and to develop a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs; and to form a national post-legal adoption consortium of seven States to focus on models of post legal adoption services. More than half of the States have received grants to improve adoption services.

Increasingly, children entering foster care have more complex problems which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into adoptive placements in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are achieved when permanent plans are made and carried out very early in the placement; when there are sufficient numbers of trained and experienced staff; and when there are available resources and administrative commitments to adoption and to coordinated community-based efforts.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placements.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application. (The rate of placement is the number of children placed divided by the number of children waiting for adoption.)
- Describe the methods to be employed to increase the rate of placement of foster care children into adoption and the goals for improvement to be achieved during the period of the grant.
- Propose and describe an evaluation component which would focus on the innovations used to improve the placement of children who are legally free for adoption and which would address the successes and failures of the initiative.

The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Data should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures used in implementing the project. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.

- Document how the program would be continued beyond Federal funding or part of the agency's ongoing program, if successful, and describe the specific steps which would be taken to accomplish this.
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, DC (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.).
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.04 Post-Legal Adoption Services

Eligible Applicants: States, local government entities, and public or private nonprofit licensed child welfare or adoption agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, applicants previously funded under this priority area will not be precluded from receiving grants.

Purpose: To develop or replicate post-legal adoption projects which will provide services to strengthen and preserve families who have adopted children with special needs. The services provided shall supplement, not supplant, services supported by any other funds available to the applicant for the same general services.

Background Information: The Adoption Opportunities legislation authorizes funds for increased post-legal adoption services. Recognition of special issues in adoption in the past decade has led adoption professionals to reconsider the concept that agency services to adoptive families end with the legal consummation of the adoption. Historically, once the adoption was legally consummated, the newly-formed family was to be considered the same as any other family. However, adoption is a life-long process, and service providers need to understand the unique interpersonal dynamics of adoption in order to provide effective post-legal adoption services (those provided after the legalization of the adoption) to families who seek assistance.

Over the years, ACYF has funded more than 70 programs across the country to provide post-legal adoption services for families who have adopted children with special needs. Information on these projects can be obtained from the National Adoption Information Clearinghouse, 11426 Rockville Pike, suite 410, Rockville, Maryland 20852; telephone: (301) 231–6512.

Funds awarded under this priority area in FY 1994 will support both the institutionalization of post-legal adoption services in communities where such services already exist and the development of such services in communities where they do not yet exist. Support will also be provided for the development of additional models of service delivery. Services funded under this priority area shall be provided to families who have adopted children with special needs.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Propose to provide services such as individual, group and/or family counseling; case management; training of mental health professionals and staff of public agencies and of private, nonprofit child welfare and adoption agencies licensed by the State to provide adoption services; and provide assistance to adoptive parents, adopted children and siblings of adopted children.

- Describe the models that would be developed or replicated and the services that would be provided.
- Describe the existing post-legal adoption services, if any; the need for new services; and plans for the development, implementation, and institutionalization of such services.
- Describe how the proposed project would build upon the existing literature and knowledge base related to post-legal adoption services.
- Provide specific written commitments from collaborating or cooperating agencies, if any.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, DC. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects To Be Funded: It is anticipated that 15 projects will be funded.

1.05 Respite Care as a Service for Families Who Adopt Children With Special Needs

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, University Affiliated Programs, licensed child care or respite care providers, and incorporated adoptive parent groups with experience in working with adoptive populations.

Purpose: To develop or replicate a variety of affordable respite care models for the adoptive parents of children with special needs, especially for the adoptive parents of medically fragile or severely physically or emotionally handicapped children.

Background Information: The ACYF recognizes the need for respite services for adoptive families in order to maintain and support the family unit. Respite may be needed early in the adoptive placement or later in the child's development. Research indicates that the majority of care is requested to relieve the primary caregiver for vacations, emergencies or planned circumstances.

There are few specialized respite care programs for adoptive families that provide temporary relief or rest from parental responsibilities, despite the increasing availability of post-legal adoption services. Such programs can be especially helpful to families who adopt children with special needs by providing support during emergencies or respite from the daily demands of a special needs child. Generally, such respite care is provided by skilled caregivers or companions; however, with proper preparation, it can also be provided by friends and relatives.

In some respite care programs, training and reimbursement are offered to whomever the family designates as provider, a mutually satisfying arrangement that allows the family to control the quality of care. Also, this approach may offer families living in rural areas the flexibility of locating their own providers since distance frequently limits respite resources.

Since 1990, ACYF has awarded grants to expand and develop respite care services for adoptive parents of children with special needs. These projects have developed services such as: payment to families to obtain their own respite services to be provided in their own homes for short periods of time and on weekends; recruitment and training of individuals to provide short breaks for adoptive parents as well as supportive services to parents such as tutorial and recreational activities outside the home; sponsorship of camp programs and other specialized events for the children and their families. Programs funded in 1990 which will end in 1994 include the University of Kansas, Bureau of Child Research; La Hacienda Foster Care, Tucson, Arizona; the University of Alabama at Birmingham; the Mercy Respite Care Corporation, Grand Rapids, Michigan; and the Northwest Adoption Exchange, Seattle, Washington. Information about these programs can be secured from the National Adoption Information Clearinghouse, 11426 Rockville Pike, suite 410, Rockville, Maryland 20852; telephone: (301) 231-6512.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Describe plans to develop or replicate respite care models for the adoptive parents of special needs children that include, but are not limited to:

—Facility-based models such as those located in churches, day care centers, community-based group homes, rehabilitation centers, as well as mother's day out programs, weekend respite, evening respite, and overnight respite programs;
—In-home respite care services offered in the family's home and,
—Respite-host family services offered in the provider's home.

- Describe the respite care services that would be provided for the parents of children who are medically fragile or who have severe physical or emotional problems.
- Describe the preparation, referral, follow-up, and counseling services that would be provided to respite service users.
- Describe the collaboration that would be established with groups such as community recreational services, churches, day care centers, group homes, residential treatment centers, adoptive parent groups, and University Affiliated Programs in providing respite services.
- Describe the training that would be provided to service providers.
- Estimate the number of special needs children and families that would be served and document that a sufficient volume of special needs adoptive families exists to support a program of the size proposed.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, DC. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

Federal Share of Project Cost: The maximum Federal share will not exceed $150,000 per 12-month budget period.

Project Duration: The length of the project must not exceed 36 months.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects: It is anticipated that a minimum of five projects will be funded.

1.06 Synthesis of Results of Post Legal-Adoption Projects

Eligible Applicants: State or local, public or nonprofit agencies, organizations, or universities.

Purpose: To collect, analyze, and synthesize current knowledge and results of projects funded by the Adoption Opportunities Program focused on post-legal adoption services since 1989.

Background Information: In 1989, the Adoption Opportunities statute authorized funds for increased post-legal adoption services for families who adopted special needs children. Approximately 70 grants have been awarded to public and private agencies and adoptive parent groups to provide post-legal adoption services. These efforts resulted in some exemplary products that should be replicated. These include the provision of post-legal adoption services, respite care, and the training of mental health professionals; individual group and/or family counseling; curriculum for adoptive families; resource guides and directories; parent surveys of post-legal adoption services; adoption and the sexually abused child; practice manuals for workers and therapists; handbooks on the adoption of HIV positive children; and diagnostic and evaluation services for adopted children. In addition, a post-legal adoption consortium consisting of seven States funded initially in 1991 is addressing post-legal adoption practices and laws and is reviewing successful models in an effort to include post-legal services in the category of services to be provided by child welfare/adoption agencies. The consortium final report will be available in late 1994.

The ACYF is interested in supporting efforts to review the body of work in the field of post-legal adoption services; determining the number of projects which have continued beyond Federal funding and which are now an ongoing part of the agencies' programs; and determine the impact of these programs on preserving and maintaining the adoptive family unit.

Information on funded projects can be obtained from the National Adoption Information Clearinghouse, 11426 Rockville Pike, suite 410, Rockville, Maryland 20852; telephone (301) 231–6512.

Minimum Requirements for Project Design. In order to successfully compete under this priority area, the applicant should:

- Demonstrate an understanding of the literature and of the issues in post-legal adoption services.
- Describe how the findings from these projects would be analyzed and synthesized into reports which would be useful to the field.
- Describe how this report would be developed and would be useful to practitioners, policy makers and other related disciplines.
- Provide a plan for disseminating the report nationally.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, DC. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of the project is $85,000.

Matching or Cost Sharing Requirement: Grantee must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

1.07 Regional Conference on the Adoption of Minority Children

Eligible Applicants: State or local, public or nonprofit agencies, or organizations with experience in organizing a coordinated effort for sponsoring and conducting a Conference on the Adoption of Minority Children in one of the HHS Regions.

Purpose: To support the planning for, and conduct of, a Regional Conference on the Adoption of Minority Children.

Background Information: For the past two years, the ACYF has provided funds to its Regional Offices to conduct conferences in each Region which address issues in the adoption of minority children. Approximately 3,000 persons participated in the 2-day conferences. Because of the benefits and effectiveness of these conferences, participants requested that this effort be continued to build on established linkages and address issues across the regions. Successful applicants will work with the Regional Office to jointly plan the conference, arrange travel for participants and select a site. These conferences provide opportunities for agency directors, social workers, adoptive parents, volunteers and a broad range of other professionals to interact with adoption experts. Past conferences consisted of plenary and workshop sessions. These sessions focused on a variety of issues in agency practice and policies which create barriers to the adoption of minority children.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Describe organization and management plans for planning the conference. Identify agencies, individuals, and organizations that would sponsor the conference and participate in its planning and implementation. Identify contributions expected from organizations in regard to personnel time and other costs.
- Discuss plans for identifying the conference site, including the availability of hotels, and conference space.
- Describe plans for developing the conference theme, proposed agenda topics and the forums to address critical issues in the field.
- Discuss the materials that would be included in a program packet/kit for the conference.
- Describe the steps to be taken to involve participants from various disciplines in the conference and the efforts that would be made to address racial, ethnic and cultural diversity.
- Describe plans for exhibits, resource tables, films and video tape forums.
- Propose a plan for evaluating the conference and describe how it would be conducted.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $40,000.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be Funded: It is anticipated that ten projects will be funded, one in each HHS region. (These grants will be managed by the appropriate Regional Offices.)

1.08 Developing Collaborative Efforts between Foster Care and Adoption Staff to Improve Child Welfare Services From Intake to Permanency

Eligible Applicants: Public State Child Welfare agencies in the Department of Health and Human Services Regions II (NY, PR, NJ, VI), III (DE, MD, VA, WV, PA, DC), IV (AL, FL, GA, KY, MS, NC, SC, TN), VII (MO, IA, NE, KS) and IX (HI, CA, NV and AZ) (Agencies in regions I, V, VI, VIII, and X were funded in FY 1993.) Only one agency per Federal Region will be awarded a grant.

Purpose: To establish and improve collaboration and develop linkages between public child welfare agency foster care and adoption staff in order to improve practices related to one or more of the issues addressed in the Background section. The State that receives funding within its Region will be designated as the lead State. That State will assume responsibility for bringing together foster care and adoption staff in participating States within its Region to address effective intervention approaches to deal with placement issues.

Background: It is the policy of all States to encourage adoption opportunities for children with special needs who lack permanent families and who could benefit from adoption. In most agencies, children enter the child welfare system through protective services units which determine whether the child is dependent, neglected or abandoned. Generally, children are placed temporarily in substitute care pending an assessment of the child's needs and the family's situation. When children are in substitute care, agencies must develop a case plan for each child and conduct periodic case reviews and dispositional hearings to monitor progress under the plan and to evaluate its appropriateness for attaining a permanent home.

One of the three major issues to be addressed by projects funded under this priority area is the problem of many initially-temporary foster care and/or adoptive placements which ultimately become permanent. Over 60 percent of adopted special needs children have been adopted by their foster parents. Therefore, workers must consider this when selecting initial foster care placements. Consideration must be given to whether the best interests of the child would be served if the temporary placement becomes a permanent home. Attention must be given particularly to matters of race, ethnicity and culture. This is especially true for special needs children who may be older and aware of their cultural or ethnic histories, their siblings and their extended families.

Recently, foster parents have resorted to the courts when children are removed from foster homes to be placed in adoptive homes that are determined by the social services agency to be more in the child's best interest. These cases generate a great deal of publicity and are very damaging to the children, who may be moved to yet another temporary placement until the court determines where the child is to permanently reside. The child welfare system must take responsibility for all placement decisions; therefore, better planning must be conducted to ensure that both the initial and the permanent placements for these children are timely and appropriate.

A second issue to be addressed involves adopted children who require residential placements. These should be considered as interim placements in the hopes that the child will eventually return to the adoptive family. However, staff in residential facilities do not have access to training on adoption issues related to the child and the adoptive family. Consequently, staff may fail to work with families toward the reunification of the child with the family. Coordination needs to be effected among child welfare agencies and residential facilities to achieve comprehensive services for these children.

A third issue which must be addressed is the organizational separation of foster care and adoption staff. This practice hinders communication, case planning and case management for children who move from foster care status to adoption status. Thus, barriers to permanency planning are created. The ACYF seeks proposals from States for projects which address the separation of foster care and adoption services within State agencies. States in each Federal Region will work together on issues and strategies to improve coordination of services to help resolve these issues through meetings, and the exchange of information and materials. The meetings should include appropriate agency staff who can plan and implement the necessary changes. The State agency in each Region which is awarded a grant will assume the leadership role of locating meeting sites, convening meetings, developing agendas and reporting on grant requirements. These three-year grants will result in the development of a model of coordinated services designed and tested in each Region.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Focus on addressing one or more of the issues addressed in the background section.
- Provide letters of support for the project from a minimum of three States in the Region (which includes the State submitting the application) that would participate in the project.
- Describe the existing organization of foster care/adoption services in States within the Region and the need to develop and implement a new approach for these two functions to work together more effectively.
- Identify and describe existing barriers to coordination in practice and policy in the States that would participate in the project.
- Describe how the agencies would incorporate the results of the project into their ongoing programs and how these efforts would be continued beyond the period of Federal support.
- Provide assurances that at least one key person from the project would attend the annual Child Welfare Conference in Washington, DC. (The Conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and address current child welfare trends and issues.)
- Provide assurance that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design. The evaluation should focus on child and family outcome measures (e.g., number of families recruited, number of children placed, disruption rates, etc.).

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 per 12-month project period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be funded: It is anticipated that five projects will be funded, one in each Region of the Department of Health and Human Services that did not receive funding in FY 1993.

1.09 Field Initiated Proposals to Improve Adoption Services to Children with Special Needs

Eligible Applicants: State, Regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations.

Purpose: To improve adoption services for children with special needs through activities which are not addressed elsewhere in this announcement. This priority area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems.

Background Information: Public child welfare workers who provide adoption services are overburdened because of the shortage of staff and the increasing child welfare caseload. In many public agencies, adoption staff are expected to provide services not only to children with special needs and their potential adoptive families, but also to families requesting independent, inter-country and other types of adoption. There is also a growing need to provide post-legal adoption services to preserve adoptive families as well as an increasing responsibility for search and reunion services. This places substantial burdens on limited adoption agency resources which are needed to serve the special needs population.

At any given time, approximately 50,000 children are legally free for adoption. Minority children continue to be over-represented among this group. Older children and sibling groups also continue to present unique challenges. Other sub-populations, such as drug-exposed infants and medically-fragile infants, will be or are currently testing the capacity of adoption programs. Innovative efforts, embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes to all waiting children.

Because there are so many different issues that face the public and voluntary sectors, ACYF is requesting field-initiated proposals that address the most problematic areas in serving children with special needs for whom adoption is the plan. These proposals must be innovative; they cannot be a replication of a previous project or be responsive to other priority areas identified in this announcement.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Describe the agency's current adoption program and the specific problem(s) that would be addressed.
- Describe the approach that would be used to alleviate the problem(s).
- Document that this is a new approach that has not been used before, based on a review of the literature and any other relevant sources.
- Provide specific written commitments from cooperating or collaborating agencies, if appropriate.
- Provide for an evaluation of the project and include a discussion of the proposed evaluation design. The evaluation should focus on child and family outcome measures (e.g., number of families recruited, number of children placed, disruption rates, etc.).
- Describe how the agency would incorporate successful results of the project into its ongoing program.
- Provide assurances that at least one key person from the project would attend the Child Welfare Conference in Washington, DC (The conference is held for Adoption Opportunities and other Children's Bureau grantees to exchange information and to address current child welfare trends and issues.).
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project.

Anticipated Number of Projects to be Funded: It is anticipated that seven projects will be funded.

Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Required Notification of the State Single Point of Contact

The Adoption Opportunities Program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established State Single Point of Contact (SPOCs). Applicants from these seventeen (17) jurisdictions need take no action regarding E. O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to:

ADDRESSES: Applications may be mailed to the Department of Health and Human Services Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of

Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

B. Deadline for Submission of Applications

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at:

ADDRESSES: Applications may be mailed to the Department of Health and Human Services Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

2. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc, or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the Federal Register announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. Type of Submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information

Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. Box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Items 15. Estimated Funding Levels

In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part II, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a-15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes.—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 1993.

Item 16b. Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period if the proposed project period is 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment is defined as non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including: (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, Other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b) from (a). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR part 74, as property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. Columns (d) and (e) would be used in the case of a 60 month project.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria (see Section C, Part II), using the following headings:

(a) *Objectives and Need for Assistance;*
(b) *Approach;* and
(c) *Results and Benefits Expected;*
(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part II, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½″ x 11″ sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);
—Budget Information—Non-Construction Programs (SF 424A, Rev 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part II, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying; and
—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACYF by telephone at (202) 690–8243 or 690–6297.

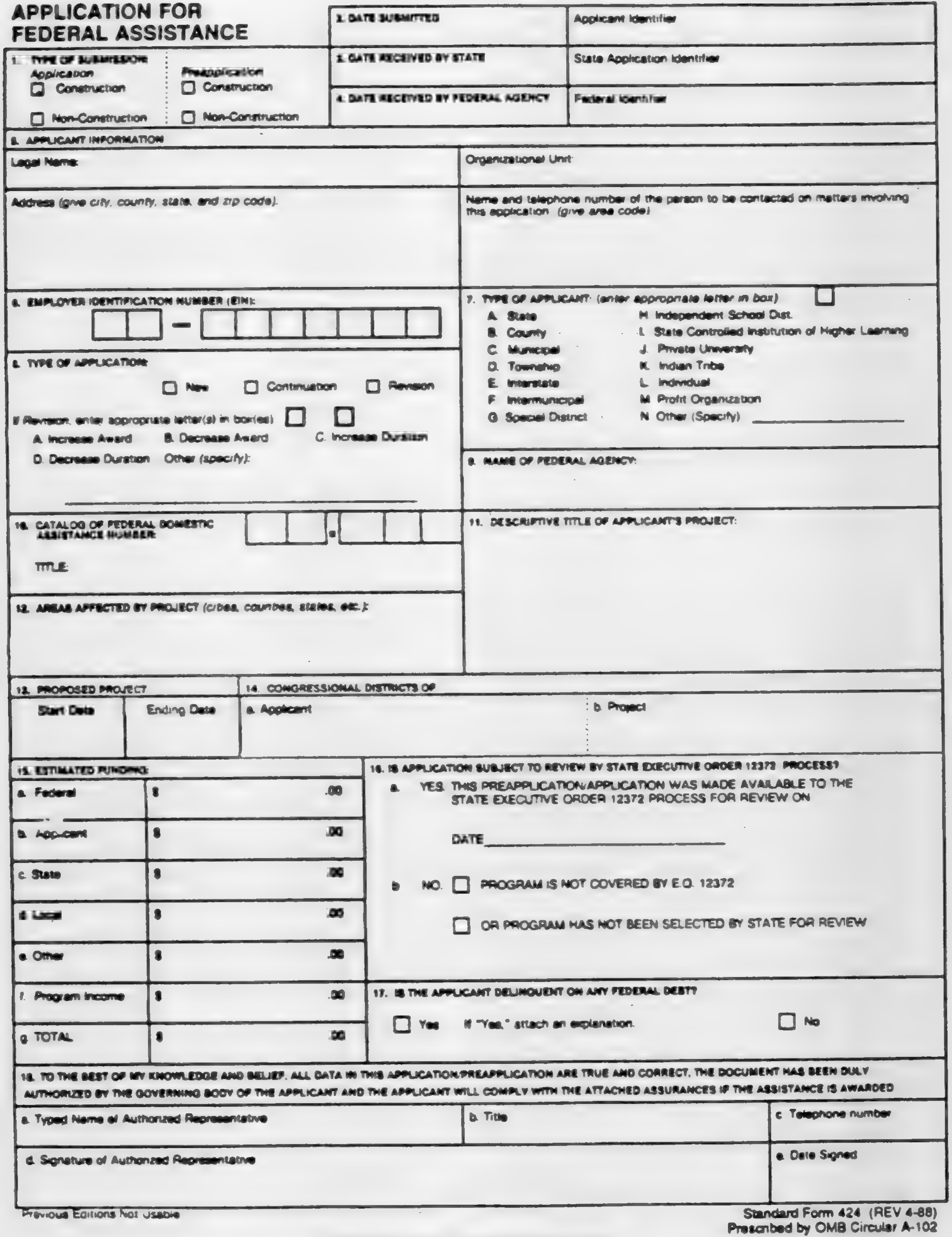
Dated: April 18, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

APPENDIX A



OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for your to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (4-88)

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**

22. **Indirect Charges:**

23. **Remarks**

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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form doe not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Columb (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and inkind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project conspiracy with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Appendix B

Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, D.C. 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emanicipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

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APPENDIX C

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

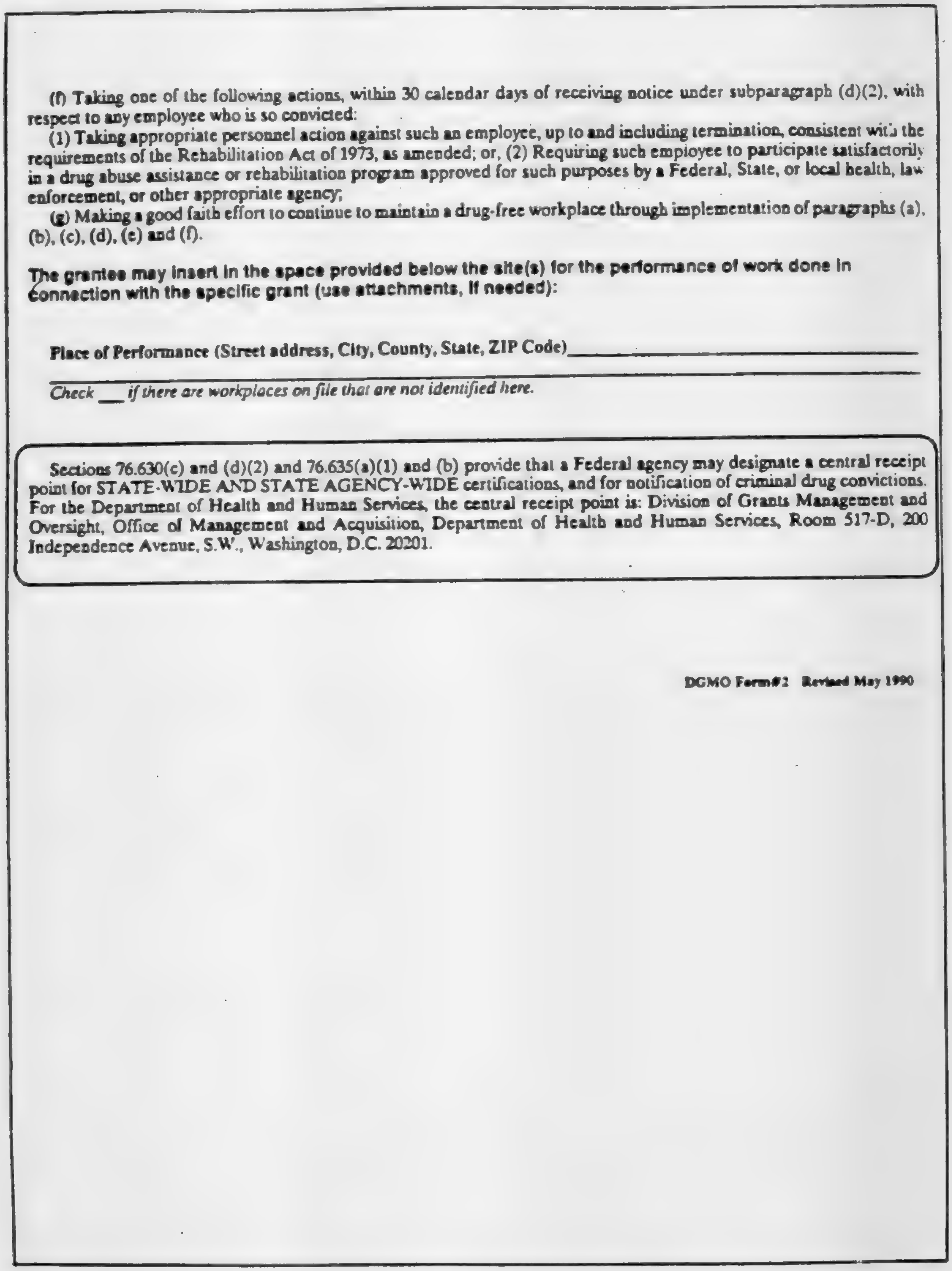
(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;



(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)________________________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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Appendix D

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "Without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix E—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____
Signature

____
Title

____
Organization

____
Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:

☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:

☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:

☐
a. initial filing
b. material change

For Material Change Only:
year ________ quarter _____
date of last report ________

4. Name and Address of Reporting Entity:

☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: ____________

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:

$ ________________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:

☐ a. cash
☐ b. in-kind; specify: nature ________________
value ________________

13. Type of Payment *(check all that apply)*:

☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ________________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ________________________
Print Name: ________________________
Title: ________________________
Telephone No.: ______________ **Date:** ______________

Federal Use Only:

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Standard Form - LLL

[FR Doc. 94-10209 Filed 4-29-94; 8:45 am]
BILLING CODE 4184-01-C

Food and Drug Administration

[Docket No. 83C–0408]

Indian Earth Cosmetics; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 2C0157) proposing that the color additive regulations be amended to provide for the safe use of hematite as a color additive in cosmetics generally, including those for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 26, 1984 (49 FR 3272), FDA announced that a color additive petition (CAP 2C0157) had been filed by R.F.A. Corp., c/o 1120 G St. NW., Washington, DC 20005. The petition proposed that part 73 *Listing of Color Additives Exempt From Certification* (21 CFR part 73) be amended to provide for the safe use of hematite as a color additive in cosmetics generally, including those for use in the area of the eye. FDA has been notified that R.F.A. Corp. has gone out of business and that Indian Earth Cosmetics, 2967 Randolph Ave., Costa Mesa, CA 92626, owns the petition. Indian Earth Cosmetics has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6).

Dated: April 19, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–10325 Filed 4–29–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0151]

Drug Export; Antibody to Hepatitis B Surface Antigen HBsAg EIA-2.0 and HBsAg Confirmatory Assay-2.0

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genetic Systems Corp., a Subsidiary of Sanofi Diagnostics Pasteur, Inc., has filed an application requesting approval for the export of the human biological product Antibody to Hepatitis B Surface Antigen HBsAg EIA-2.0 and HBsAg Confirmatory Assay-2.0 to Australia.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genetic Systems Corp., a Subsidiary of Sanofi Diagnostics Pasteur, Inc., 6565 185th Ave. NE., Redmond, WA 98052–5039, has filed an application requesting approval for the export of the human biological product Antibody to Hepatitis B Surface Antigen HBsAg EIA-2.0 and HBsAg Confirmatory Assay-2.0 to Australia. The Genetic Systems Corp.'s Enzyme Immunoassay for the detection of Hepatitis B Surface Antigen (HBsAg) in human serum and plasma. The Genetic Systems HBsAg Confirmatory Assay-2.0 is Genetic Systems Corp.'s assay for the confirmation of HBsAg reactive specimens detected in the Genetic Systems HBsAg EIA-2.0. The application was received and filed in the Center for Biologics Evaluation and Research on February 23, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 12, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: April 3, 1994.

P. Michael Dubinsky,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research

[FR Doc. 94–10459 Filed 4–29–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0125]

Foodco Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Foodco Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of high intensity pulsed light to control microorganisms on the surface of food.

DATES: Written comments on the petitioner's environmental assessment by June 1, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4M4417) has been filed by Foodco Corp., 8888 Balboa Ave., San Diego, CA 92123. The petition proposes that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of a source of high intensity pulsed light to control microorganisms on the surface of food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 1, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 19, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–10326 Filed 4–29–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–088–N]

RIN: 0938–AG

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal fiscal year (FFY) 1994 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act (the Act) and implementing regulations at 42 CFR 447.297 through 447.299.

EFFECTIVE DATE: The final DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1994.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 966–2019

SUPPLEMENTARY INFORMATION:

I. Background

Section 1923(f) of the Social Security Act and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the **Federal Register** the national target and each State's allotment for disproportionate hospital share (DSH) payments for each Federal fiscal year (FFY). DSH payments are payment adjustments made to Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs. Our regulations provide for publication of preliminary amounts by October 1 of each FFY and final amounts by April 1 of each FFY.

The implementing regulations provide that the national aggregate DSH limit for a FFY specified in the Act is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY.

(**Note:** Whenever the phrases "total medical assistance expenditures" or "total administrative costs" are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which Federal financial participation will not be available. This is called the "State DSH allotment".

Each State's DSH allotment for FFY 1994 is calculated by first determining whether the State is a "high-DSH State," or a "low-DSH State." This is determined by using the State's "base allotment." A State's base allotment is the greater of: (1) the total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1994 is referred to as a "high-DSH State." The FFY 1994 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1994 is referred to as a "low-DSH State." The FFY 1994 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1993 increased by growth amounts and supplemental amounts, if any. However, the FFY 1994 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1994 (excluding administrative costs).

The growth amount for FFY 1994 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1993 and FFY 1994 multiplied by the State's final DSH allotment for 1993. Because the national DSH limit is considered a target, low-DSH States whose programs grow from one year to the next can receive growth that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between fiscal years FFY 1993 and FFY 1994. This is the case for Oklahoma, Rhode Island, and West Virginia. Furthermore, because a low-DSH State's FFY 1994 DSH allotment cannot exceed

12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1994 DSH allotment to be lower than its FFY 1993 DSH allotment. This situation occurs when the State experiences a decrease in its program expenditures between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current FFY. This is the case for Rhode Island. The DSH allotments for Oklahoma and West Virginia remained unchanged from FFY 1993 since each State's prior year DSH allotment is less than 12 percent of its projected FFY 1994 medical assistance expenditures.

There is no supplemental amount available for redistribution for FFY 1994. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12-percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1994 national 12 percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1994.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1 million. As an exception to the above requirements, section 1923(f)(1)(A)(i)(II) of the Act and regulations at 42 CFR 447.296(b)(5), allow a State to increase its aggregate DSH payments for a FFY to meet the minimum payment adjustments required by Medicare methodology described in section 1923(c)(1) of the Act. Nebraska meets this exception criteria. We are, therefore, revising Nebraska's final FFY 1993 and 1994 State DSH allotments.

We are publishing in this notice the final FFY 1994 national DSH target and State DSH allotments based on the best available data we have received, as of March 18, 1994, from the States as adjusted by HCFA. These data are taken from each State's actual Medicaid expenditures reported on the quarterly Form HCFA-64 submissions for FFY 1993 and the projected Medicaid expenditures reported on the February 1994 Form HCFA-37 for FFY 1994 and are adjusted as necessary. The final FFY 1994 State DSH allotments published in this notice supersede the preliminary FFY 1994 DSH allotments that were published in the **Federal Register** on February 1, 1994 (59 FR 4717).

II. Calculations of the Final FFY 1994 DSH Limits

The total of the final State DSH allotments for FFY 1994 is equal to the sum of the base allotments for all high-DSH States, the FFY 1993 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States. A State-by-State breakdown is presented in section III of this notice.

There are 34 low-DSH States and 16 high-DSH States for FFY 1994. This change from the preliminary notice which listed 35 low-DSH States and 15 high-DSH States for FFY 1994 is due to the reclassification of Tennessee as a high-DSH State.

Using the most recent data from the February 1994 budget projections (Form HCFA-37), we estimate the FFY 1994 national total medical assistance expenditures for the States to be $144,326,703,000. Thus, the overall final national FFY 1994 DSH expenditure target is approximately $17.3 billion (12 percent of $144.3 billion). This is a decrease of approximately $0.2 billion from the $17.5 billion preliminary target (12 percent of $145.8 billion) in the preliminary notice.

The high-DSH States' base allotments and the final low-DSH States' DSH allotments for 1993 total approximately $18.0 billion. This amount, which does not include growth or any State supplemental amounts for FFY 1994, is approximately $0.7 billion over the final FFY 1994 national DSH target amount.

In addition, in the final FFY 1994 State DSH allotments we provide a total of $511,372,000 ($287,455,000 Federal share) in growth amounts for the 34 low-DSH States. To compute the growth factor percentage, we first ascertained each low-DSH State's total FFY 1993 medical assistance and administrative expenditures as reported on the State's quarterly expenditure reports (Form HCFA-64) for FFY 1993. Next, we compared the FFY 1993 reported expenditures to each low-DSH State's total estimated unadjusted FFY 1994 medical assistance and administrative expenditures as reported to HCFA on the State's February 1994 Form HCFA-37 submission.

The growth factor percentage was multiplied by the low-DSH State's final FFY 1993 DSH allotment amount to establish the State's final growth amount for FFY 1994.

Since the sum of the total of the base allotments for high-DSH States and the total of the State DSH allotments for FFY 1993 for low-DSH States ($17,981,455,000) is greater than the final FFY 1994 national target ($17,319,204,000), there is no final FFY 1994 redistribution pool.

The low-DSH State's growth amount was then added to the low-DSH State's final FFY 1993 DSH allotment amount to establish the final total low-DSH State DSH allotment for FFY 1994. Six States received partial growth amounts because each State's growth amount, when added to its final FFY 1993 DSH allotment amount, exceeded 12 percent of its FFY 1994 estimated medical assistance expenditures.

As explained above, Rhode Island's final 1994 DSH allotment is lower than its final FFY 1993 DSH allotment.

As explained above, we revised Nebraska's final FFY 1993 State DSH allotment to $8,000,000 and its final FFY 1994 State DSH allotment to $11,000,000.

In summary, the total of all final State DSH allotments for FFY 1994 is $18,490,099,000 ($10,614,651,000 Federal share). This total is composed of the prior FFY's DSH allotments ($17,981,455,000) plus the growth amounts for all low-DSH States ($511,372,000) minus the reduction in Rhode Island's FFY 1993 DSH allotment ($2,728,000 decrease). The total of all final FFY 1994 State DSH allotments is 12.81 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1994. The $18,490,099,000 total of all final DSH allotments for FFY 1994 is $1,170,895,000 over the FFY 1994 final national target amount of $17,319,204,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1994 to ensure that its actual FFY 1994 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1994 published in this notice. As the ongoing reconciliation between actual FFY 1994 DSH payment adjustment expenditures and the final FFY 1994 DSH allotments takes place, each State should amend its plans as may be necessary to make any adjustments to its FFY 1994 DSH payment adjustment expenditure patterns so that the State will not exceed its final FFY 1994 DSH allotment.

The FFY 1994 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1994. Additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1994 will continue to be reconciled back to each State's final FFY 1994 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1994 DSH allotment is not exceeded. Any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed.

Any DSH expenditures that are disallowed will be subject to the normal Medicaid disallowance procedures.

III. Final FFY 1994 DSH Allotments Under Public Law 102–234

Key to Chart:

Column		Description
Column A	=	Name of State.
Column B	=	Final FFY 1993 DSH Allotments For All States. For a high-DSH State, this is the State's base allotment which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1993 which was published in the **Federal Register** on August 13, 1993.
Column C	=	Growth Amounts For Low-DSH States. This is an increase in a low-DSH State's final FFY 1993 DSH allotment to the extent that the State's Medicaid program grew between FFY 1993 and FFY 1994.
Column D	=	Final FFY 1994 State DSH Allotments. For high DSH States this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1993 from column B plus the growth amounts from column C and the supplemental amounts, if any.
Column E	=	High or Low DSH State Designation. "High" indicates the State is a high-DSH State and a "Low" indicates the State is a low-DSH State.

FINAL FEDERAL FISCAL YEAR 1994 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234

[Amounts Are State and Federal Shares—Dollars Are in Thousands (000)]

State	Final FFY 93 DSH allotments for all states	Growth amounts for low DSH states [1]	Final FFY 94 state DSH allotments	High or low DSH state designation
A	B	C	D	E
AL	$417,458	Not applicable	$417,458	High
AK	17,830	$1,759	19,589	Low
AR	2,806	232	3,039	Low
CA	2,191,451	Not applicable	2,191,451	High
CO	302,014	Not applicable	302,014	High
CT	408,933	Not applicable	408,933	High
DE	5,194	730	5,924	Low
DC	38,000	3,039	41,039	Low
FL	239,693	46,785	286,478	Low
GA	343,078	39,266	382,344	Low
HI	45,844	18,233	64,078	Low
ID	1,659	327	1,985	Low
IL	381,534	13,459	394,993	Low
IN	320,475	16,324	336,799	Low
IA	5,027	470	5,497	Low
KS	188,935	Not applicable	188,935	High
KY	264,289	Not applicable	264,289	High
LA	1,217,636	Not applicable	1,217,636	High
ME	165,317	Not applicable	165,317	High
MD	119,381	10,162	129,543	Low
MA	489,547	77,580	567,128	Low
MI	559,732	57,968	817,700	Low
MN	48,579	6,815	55,394	Low
MS	152,342	6,122	158,464	Low
MO	731,894	Not applicable	731,894	High
MT	1,154	145	1,300	Low
NE [2]	8,000	3,000	11,000	Low
NV	73,560	Not applicable	73,560	High
NH	392,006	Not applicable	392,006	High
NJ	1,094,113	Not applicable	1,094,113	High
NM	13,512	2,245	15,757	Low
NY	2,784,477	47,387	2,831,864	Low
NC	345,545	43,721	389,266	Low
ND	1,086	69	1,155	Low
OH	509,924	57,001	566,925	Low
OK	23,568	Not applicable	23,568	Low
OR	20,279	4,778	25,058	Low

FINAL FEDERAL FISCAL YEAR 1994 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102-234—Continued

[Amounts Are State and Federal Shares—Dollars Are in Thousands (000)]

State	Final FFY 93 DSH allotments for all states	Growth amounts for low DSH states [1]	Final FFY 94 state DSH allotments	High or low DSH state designation
A	B	C	D	E
PA	967,407	Not applicable	967,407	High
RI [3]	97,160	Not applicable	94,432	Low
SC	439,759	Not applicable	439,759	High
SD	1,163	140	1,302	Low
TN	430,611	Not applicable	430,611	High
TX	1,513,029	Not applicable	1,513,029	High
UT	5,003	511	5,514	Low
VT	24,403	2,259	26,662	Low
VA	174,251	11,496	185,746	Low
WA	270,374	37,618	307,993	Low
WV	121,883	Not applicable	121,883	Low
WI	9,325	1,556	10,881	Low
WY	1,216	173	1,389	Low
Total	17,981,455	511,372	18,490,099	

Notes:

[1] There were 3 low DSH states which had negative growth and 6 low DSH states which got partial growth up to 12% of FFY 94 map.

[2] Allotment based upon minimum payment adjustment amount.

[3] Prior year's allotment exceeded 12 percent of FFY 94 map so allotment was reduced to 12 percent of FFY 94 map.

IV. Impact Statement

We generally prepare a flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare an impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice does not contain rules; rather, it reflects the DSH allotments for each State as determined in accordance with §§ 447.297 through 447.299.

We have discussed the method of calculating the final FFY 1994 national aggregate DSH target and the final FFY 1994 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for high-DSH States since we are now interpreting the 12-percent limit as a target. Low-DSH States will get their base allotments plus their growth amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 30, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: April 12, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-10417 Filed 4-26-94; 1:21 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-015-94-4210-04; G4-152]

Emergency Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior, Lakeview District.

ACTION: Notice is hereby given that effective immediately all public lands as legally described below are closed to all vehicle access and travel.

In Lake County, Oregon

T. 40 S., R. 18 E., W.M., Oregon
Section 24: W½SW¼.

The purpose of this closure is to protect the area's cultural resource values. The only exception would be for special authorized administrative use and emergency needs. The authority for this closure is 43 CFR 8341.2.

This closure will remain in effect until an ORV designation plan is completed for this area.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 94-10401 Filed 4-29-94; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-4320-01]

Notice of Availability of Environmental Assessment, Decision Record, and Finding of No Significant Impact for Predator Management in the Butte District; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An Environmental Assessment (EA), Decision Record (DR), and Finding of No Significant Impact (FONSI) have been reissued for predator management in the Butte District. The analysis and decisions were vacated from IBLA for further clarification and revision. An EA, DR, and FONSI have been reissued (April 1994).

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2929.

SUPPLEMENTARY INFORMATION: The EA for Predator Management in Montana addresses four alternatives which affect predator management to varying degrees:

Alternative I—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action): This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. The IPM approach incorporates a variety of practical, lethal, and nonlethal methods for prevention and control to minimize animal damage to livestock or human health. The use of M–44s would be permitted after authorization is obtained for specific areas. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative II—No M–44s: This alternative would be similar to Alternative I, except the use of M–44s would not be authorized. All other approved methods for control would be permitted. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative III—No Action (Emergency Control Only): Preventive control measures would not be authorized, and corrective control would be applied only where APHIS–ADC have confirmed recent loss of livestock to predation. Emergency predator management would be requested by a producer when losses are occurring. The BLM would review and approve or disapprove these requests on a case-by-case basis. The requests would be handled using the emergency control procedures.

Alternative IV—No APHIS–ADC or DOL Predator Management on BLM Lands: Under this alternative, APHIS–ADC or DOL predator management activities would not be authorized on BLM land in Montana. However, private landowners could continue to conduct predator management on BLM lands and could continue to enter into agreements with APHIS–ADC to carry out predator management on private, state, and other non-BLM lands.

The Predator Management EA for Montana was available for public review from September 15 to October 15, 1993. An EA, DR, and FONSI were issued in November 1993. Since that time, the BLM decided to vacate the EA and decisions from IBLA to clarify and revise the analysis. The revised EA, DR, and FONSI (April 1994) have been reissued and are available upon request.

Based upon careful consideration of the analysis of alternatives within the Predator Management EA, including consideration of applicable laws, regulations, public and agency comments, I have decided to implement Alternative I—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action). Management actions will be directed towards localized populations and/or individual offending predators. Requests for control will come directly to APHIS–ADC from permittees. In response to public concern regarding the use of lethal methods, the following mitigating measure has been adopted as part of my decision: Livestock producers will be provided information on nonlethal methods. When services are requested by permittees, APHIS–ADC will provide a factsheet to the livestock producer on nonlethal methods. In addition, information on nonlethal methods will also be mailed out in the annual grazing applications by BLM. This will ensure that permittees who request control are aware of the variety of nonlethal methods available to them; such as livestock producer practices, guard dogs, scare devices, etc.

Implementation of Alternative I will require strict adherence to the reasonable and prudent measures provided by the U.S. Fish and Wildlife Service (USFWS) and the mitigation and stipulations provided in the EA for the protection of threatened and endangered and candidate species. The USFWS has concurred with the BLM finding that the proposed predator management strategy is not likely to adversely affect threatened and endangered species. Predator management will be prohibited in the Bear Trap Wilderness Area to reduce conflicts with recreation. Selective aerial predator control will be the only means that predatory animals, other than wolves, be removed from the BLM land between the town of Lima and Bloody Dick Creek due to possible wolf sightings in that area. The National Guard Training Area, located west of Townsend, will also be closed to predator management activities. However, APHIS–ADC will be allowed to conduct predator management after permission is granted from the National Guard and the BLM is notified when control work will be conducted. All areas where human health or safety are a particular concern, as identified on Map No. 1 in the EA, will be closed to predator management. These areas also include appropriate buffer zones. Designated bird-hunting areas will have timing restrictions placed on predator management activities.

It is my conclusion that the proposed action will not result in significant environmental impacts, and that no species will be substantially or permanently reduced in numbers as a result of my decision. In addition, the predator population is not substantially impacted. Statewide, 7,847 coyotes were taken by APHIS–ADC and DOL on lands of all ownership, or 1.5 to 13.7 percent of the population statewide (based on the scientific model) or 2.6 percent (based on the coyote density indices sampling). In the Butte District, approximately 31 coyotes were taken on BLM lands, and no red fox were taken on BLM lands in the district by APHIS–ADC. Based on the analysis in the EA, implementation of Alternative I will result in the smallest amount of livestock loss and provides for the most flexibility in correcting or preventing damage based on the circumstances and surrounding environment. This decision ensures that predator management will be carried out in a systematic manner which responds to resource protection, human health, and livestock protection needs while protecting public safety, domestic animals, and nontarget wildlife. This decision is compatible with resource objectives identified in the land use plans for the Butte District. The Secretary of Interior will put the decision in full force and effect for the 30-day appeal period. To appeal this decision, please follow the appeal procedures. To obtain a copy of the appeal procedures, contact Sandy Brooks, Project Lead, Montana State Office, 406–255–2929.

Dated: April 25, 1994.

Wayne Zinne,

Acting State Director.

[FR Doc. 94–10362 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–DN–P

[MT–930–4320–01]

Notice of Availability of Environmental Assessment, Decision Record, and Finding of No Significant Impact for Predator Management in the Lewistown District Office; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An Environmental Assessment (EA), Decision Record (DR), and Finding of No Significant Impact (FONSI) have been reissued for predator management in the Lewistown District. The EA, DR, and FONSIs were vacated from IBLA. The analysis was clarified and revised, and the analysis and decision have been reissued (April 1994).

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2929.

SUPPLEMENTARY INFORMATION: The EA for Predator Management in Montana addresses four alternatives which affect predator management to varying degrees:

Alternative I—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action): This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. The IPM approach incorporates a variety of practical, lethal, and nonlethal methods for prevention and control to minimize animal damage to livestock or human health. The use of M–44s would be permitted after authorization is obtained for specific areas. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative II—No M–44s: This alternative would be similar to Alternative I, except the use of M–44s would not be authorized. All other approved methods for control would be permitted. Preventive control would be allowed in areas where historical livestock losses had been documented.

Alternative III—No Action (Emergency Control Only): Preventive control measures would not be authorized, and corrective control would be applied only where APHIS–ADC have confirmed recent loss of livestock to predation. Emergency predator management would be requested by a livestock producer when losses are occurring. The BLM would review and approve or disapprove these requests on a case-by-case basis. The requests would be handled using the emergency control procedures.

Alternative IV—No APHIS–ADC or DOL Predator Management on BLM Lands: Under this alternative, APHIS–ADC predator management activities would not be authorized on BLM land in Montana. However, private landowners could continue to conduct predator management on BLM lands and could continue to enter into agreements with APHIS–ADC to carry out predator management on private, state, and other non-BLM lands.

The Predator Management EA for Montana was available for public review from September 15 to October 15, 1993. An EA, DR, and FONSI were issued in November 1993. Since that time, the BLM decided to vacate the EA and decisions from IBLA to clarify and revise the analysis. The revised EA, DR, and FONSI have been reissued (April 1994) and are available upon request.

Based upon careful consideration of the analysis of alternatives within the Predator Management EA, including consideration of applicable laws, regulations, public and agency comments, I have decided to implement Alternative I—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action). Management actions will be directed towards localized populations and/or individual offending predators. Requests for control will come directly from the permittees to APHIS–ADC. In response to public concern regarding the use of lethal methods, the following mitigating measure has been adopted as part of my decision: Livestock producers will be provided information on nonlethal methods. When services are requested by permittees, APHIS–ADC will provide a factsheet to the producer on nonlethal methods. In addition, information on nonlethal methods will also be mailed out in the annual grazing applications by BLM. This will ensure that permittees are aware of the variety of nonlethal methods available to them; such as animal husbandry practices, guard dogs, scare devices, etc.

Implementation of Alternative I will require strict adherence to reasonable and prudent measures, provided by the U.S. Fish and Wildlife Service (USFWS), and the mitigation and stipulations incorporated in the EA, and my decision for the protection of threatened and endangered species. The USFWS has concurred with the BLM finding that the proposed predator management strategy is not likely to adversely affect threatened and endangered species. Restrictions will be placed on predator management activities within four outstanding natural areas located west of Choteau because of the presence of threatened and endangered species. The other special areas in the Lewistown District closed to predator management are Azure Cave and Square Butte Outstanding Natural Area. These areas are closed to predator management because of the high recreational values. The human safety zones identified on Map No. 1 in the EA will be closed to predator management. These areas also include appropriate buffer zones. Bird-hunting areas, as identified on Map No. 2 in the EA, will have timing restrictions placed on some predator management activities.

It is my conclusion that the proposed action will not result in significant environmental impacts, and that no species will be substantially or permanently reduced in numbers as a result of my decision. In addition, the predator population is not substantially impacted. Statewide, 7,847 coyotes were taken by APHIS–ADC and DOL on lands of all ownership, or 1.5 to 13.7 percent of the population statewide (based on the scientific model) or 2.6 percent of the population statewide (based on the coyote density indices sampling). In the Lewistown District, approximately 171 coyotes and 10 red foxes were taken on BLM lands by APHIS–ADC. Based on the analysis in the EA, the implementation of Alternative I will result in the smallest amount of livestock lost, and provides the most flexibility in correcting or preventing damaged based on the circumstances and the surrounding environment. My decision ensures that predator management will be carried out in a systematic manner which responds to resource protection, human health, and livestock protection needs while protecting public safety, domestic animals, and nontarget wildlife. This decision is compatible with resource objectives identified in the Lewistown District land use plans. The Secretary of Interior will put the decision in full force and effect for the 30-day appeal period. To appeal this decision, please follow the appeal procedures. To obtain a copy of the appeal procedures, contact Sandy Brooks, Project Lead, Montana State Office, 406–255–2929.

Dated: April 25, 1994.

Wayne Zinne,

Acting State Director.

[FR Doc. 94–10361 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–DN–P

[MT–930–4320–01]

Notice of Availability of Environmental Assessment, Decision Record, and Finding of No Significant Impact for Predator Management in the Miles City District Office; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An Environmental Assessment (EA), Decision Record (DR), and Finding of No Significant Impact (FONSI) have been reissued for predator management in the Miles City District. The EA and DRs were vacated from IBLA. The analysis was revised and clarified and reissued (April 1994).

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2929.

SUPPLEMENTARY INFORMATION: The EA for Predator Management in Montana addresses four alternatives which affect predator management to varying degrees:

Alternative I—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action): This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. The IPM approach incorporates a variety of practical, lethal, and nonlethal methods for prevention and control to minimize animal damage to livestock or human health. The use of M–44s would be permitted after authorization is obtained for specific areas. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative II—No M–44s: This alternative would be similar to Alternative I, except the use of M–44s would not be authorized. All other approved methods for control would be permitted. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative III—No Action (Emergency Control Only): Preventive control measures would not be authorized, and corrective control would be applied only where APHIS–ADC or DOL have confirmed recent loss of livestock to predation. Emergency predator management would be requested by a livestock producer when losses are occurring. The BLM would review and approve or disapprove these requests on a case-by-case basis. The requests would be handled using the emergency control procedures.

Alternative IV—No APHIS–ADC or DOL Predator Management on BLM Lands: Under this alternative, APHIS–ADC or DOL predator management activities would not be authorized on BLM land in Montana. However, private landowners could continue to conduct predator management on BLM lands and could continue to enter into agreements with APHIS–ADC and DOL to carry out predator management on private, state, and other non-BLM lands.

The Predator Management EA for Montana was available for public comment from September 15 to October 15, 1993. An EA, DR, and FONSI were issued in November 1993. Since that time, the BLM decided to vacate the EA and decisions to clarify and revise the analysis. The revised EA, DR, and FONSI (April 1994) have been reissued and are available upon request.

Based upon careful consideration of the analysis of alternatives within the Predator Management EA, including consideration of applicable laws, regulations, public and agency comments, I have decided to implement Alternative I—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action). Management actions will be directed towards localized populations and/or individual offending predators. Requests for control will come directly to APHIS–ADC from permittees or to the DOL in those counties with a DOL-approved Memorandum of Understanding (MOU). Those counties with an approved MOU with the DOL are: Carter, Powder River, McCone, Dawson, and Richland Counties. In response to public concern regarding the use of lethal methods, the following mitigating measure has been adopted as part of my decision: Livestock producers will be provided information on nonlethal methods. When services are requested by permittees, either APHIS–ADC or DOL will provide a factsheet to the livestock producer on nonlethal methods. In addition, information on nonlethal methods will also be mailed out in the annual grazing applications by BLM. This will ensure that permittees who request control are aware of the variety of nonlethal methods available to them; such as animal husbandry practices, guard dogs, scare devices, etc.

Implementation of Alternative I will require strict adherence to reasonable and prudent measures provided by the U.S. Fish and Wildlife Service (USFWS), mitigation and stipulations incorporated in the EA, and my decision for the protection of threatened and endangered and candidate species. The USFWS has concurred with the BLM finding that the proposed predator management strategy is not likely to adversely affect threatened and endangered species. Predator management will be prohibited in the Powder River Special Recreation Management Area (SRMA), located within the Powder River Depot, because of the high recreational values in the area. All areas, as identified on the maps provided in the EA, where human health or safety are a particular concern will be closed to predator management. These areas also have appropriate buffer zones. Designated bird-hunting areas will have timing restrictions placed on some predator management activities.

It is my conclusion that the proposed action will not result in significant environmental impacts, and that no species will be substantially or permanently reduced in numbers as a result of my decision. The predator population will not be substantially impacted. Statewide, 7,847 coyotes were taken by APHIS–ADC and DOL on lands of all ownership, or 1.5 to 13.7 percent of the population statewide (based on the scientific model) or 2.6 percent of the population (based on the coyote density indices sampling). In the Miles City District, approximately 405 coyotes and 247 red foxes were taken on BLM lands by APHIS–ADC and DOL. Based on the analysis, implementation of Alternative I will result in the least amount of livestock loss and provides the most flexibility in correcting or preventing damage based on the circumstances and the surrounding environment. This decision ensures that predator management will be carried out in a systematic manner which responds to resource protection, human health, and livestock protection needs while protecting public safety, domestic animals, and nontarget wildlife. This decision is compatible with resource objectives identified in the land use plans for the district. The Secretary of Interior will put the decision in full force and effect for the 30-day appeal period. To appeal this decision, the appeal procedures need to be followed. To obtain a copy of the appeal procedures, contact Sandy Brooks, Project Lead, Montana State Office, 406–255–2929.

Dated: April 25, 1994.

Wayne Zinne,

Acting State Director.

[FR Doc. 94–10363 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–DN–P

[NM–070–04–4333–02]

Closure of Lands to Discharge of Firearms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of use restrictions.

SUMMARY: In order to decrease conflict between recreationists and better provide for the safety of the public, use restrictions are announced by the Farmington District.

Effective immediately, the discharge of any type of firearm for any purpose is prohibited in the Dunes Vehicle Recreation Area and Head Canyon ORV Competition Area.

SUPPLEMENTARY INFORMATION: Since the discharge of firearms presents both a safety hazard to and recreational conflict with other users of these Special Management Areas, the following areas are hereby closed to the discharge of firearms any time for any purpose:

Dunes Vehicle Recreation Area

T. 29 N., R. 13 W., NMPM,
  Sec. 19, Lots 19–23;
  Sec. 20, SW¼ west of New Mexico State Highway 371;
  Sec. 29, All below elevation of 5800′;
  Sec. 30, All;
  Sec. 31, All below elevation of 5800′.

Head Canyon ORV Competition Area

T. 29 N., R. 13 W., NMPM,
  Sec. 33, NW¼NW¼, S½NW¼, SW1

Total area affected by these closures is approximately 1,150 acres. Authority for these closures is found in 43 CFR Part 8364. Any person who fails to comply with a closure issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.0–7: violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Christopher Barns, BLM, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401; 505–599–6300.

Dated: April 19, 1994.

[FR Doc. 94–10341 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–4210–06; GP4–041; OR–48432 (WASH)]

Proposed Withdrawal and Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 9,730.82 acres of public lands in aid of legislation for the Department of the Army, Corps of Engineers to expand the Yakima Firing Center. This notice closes the lands for up to two years from surface entry and mining. The lands have been and remain open to mineral leasing.

DATE: Comments must be received by August 1, 1994.

ADDRESS: Comments should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On February 28, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Surface and Mineral Estates

T. 17 N., R. 20 E.,
  Sec. 22, S¼;
  Sec. 24, S½SW¼ and that portion of the E½ lying south of the Interstate Highway 90 right-of-way;
  Sec. 26.
T. 16 N., R. 21 E.,
  Sec. 4, SW¼SW¼;
  Sec. 12, SE¼;
  Sec. 18, lots 1, 2, 3, and 4, E½, and E½W½.
T. 17 N., R. 21 E.,
  Sec. 30, lots 3 and 4;
  Sec. 32, NE¼SE¼.
T. 16 N., R. 22 E.,
  Sec. 2, lots 1, 2, 3, and 4, S½N½, and S½;
  Sec. 4, lots 1, 2, 3, and 4, S½N½, and S½;
  Secs. 10 and 14;
  Sec. 20, SE¼SW¼;
  Sec. 22;
  Sec. 26, N½;
  Sec. 28, N½.
T. 16 N., R. 23 E.,
  Sec. 18, lots 3 and 4, E½SW¼, W½SE¼, and that portion of the E½SE¼ lying westerly of the westerly right-of-way line of Huntzinger Road;
  Sec. 20, that portion of the SW¼ lying westerly of the easterly right-of-way line of the railroad;
  Sec. 30, lots 1 and 2, NE¼, and E½NW¼.

Mineral Estate

T. 16 N., R. 20 E.,
  Sec. 12;
  Sec. 18, lot 4 and SE¼;
  Sec. 20, S½.
T. 16 N., R. 21 E.,
  Sec. 4, lots 1, 2, 3, and 4, and S½NE¼;
  Sec. 8.
T. 17 N., R. 21 E.,
  Sec. 32, S½SE¼;
  Sec. 34, W½.
T. 16 N., R. 22 E.,
  Sec. 12.

The areas described aggregate 9,730.82 acres in Kittitas County.

The purpose of the proposed withdrawal is to protect the expansion of the Yakima Firing Center pending Congressional action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Subject to concurrence by the Department of the Army, Corps of Engineers, the temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: April 13, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–10402 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–33–P

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Information Collection Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503, telephone 202–395–7340.

Title: Amendment to the Federal Fish and Wildlife License/Permit Application, Eagle Permits for Religious Purposes.

OMB Approval Number: 1018–0022.

Abstract: The Service has completed a review of the eagle permit process, and has concluded that the length and complexity of the Service standard wildlife permit application form could discourage Native Americans from applying for eagles and their parts for religious purposes. The new permit application form consists of one page of instruction, a half page application form with a "feather guide" which identifies eagle parts and a "certification of enrollment" and "certification of participation" stating that the applicant has a religious need for the material. The information will be used to determine if the applicant meets the eligibility requirements, and to ship the requested material upon approval of the application. In addition, a new re-order form has been created which can be sent directly to the National Eagle Repository eliminating the need for additional paperwork because the initial application and certifications will be on file.

Frequency: On occasion.

Description of Respondents: Individuals or households.

Estimated Completion Time: 1.5 hours average.

Annual Responses: +365.

Annual Burden Hours: +730.

Service Clearance Officer: Phyllis H. Cook, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: April 22, 1994.

David L. Olsen,

Assistant Director—Refuges and Wildlife.

[FR Doc. 94–10448 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent To Prepare an Environmental Impact Statement To Allow Incidental Take of the Threatened Northern Spotted Owl (Strix occidentalis caurina) and the Threatened Marbled Murrelet (Brachyramphus marmoratus marmoratus) on Lands Administered by the Washington State Department of Natural Resources

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) and Washington State Department of Natural Resources (WDNR) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS). The EIS will consider a permit application by the WDNR to take federally listed species, under the provisions of section 10(a)(1)(B) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act). This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing The Procedural Provisions of the National Environmental Policy Act (NEPA) Regulations (40 CFR 1508.22).

To satisfy both Federal and State Environmental Policy Act requirements, the Service and WDNR are conducting a joint scoping process for the preparation of an EIS. Interested agencies, organizations, and individuals are encouraged to provide written comments on the issues which should be addressed in the EIS to the Service or WDNR.

DATES: Written comments regarding the scope of the EIS should be received on or before May 31, 1994.

ADDRESSES: Comments regarding the scope of the EIS should be addressed to Mr. Curt Smitch, U.S. Fish and Wildlife Service, 3773 Martin Way East, Building C, suite 101, Olympia, WA 98501.

FOR FURTHER INFORMATION CONTACT: Comments received will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday) at the Washington Department of Natural Resources, 1111 Washington St. SE., Olympia, WA; for appointment call Nonie Hall at (206) 902–1405.

As a further opportunity for interested persons to comment on this scope of the EIS, scoping workshops are scheduled as follows:

- May 5, 1994. Thurston County Courthouse, Bldg. 1, Room 152, Olympia, WA.
- May 10, 1994. Skagit Valley College, Ford Hall, Room F–101, Mt. Vernon, WA.
- May 11, 1994. Port Townsend High School, 1500 Van Ness Street, Port Townsend, WA.
- May 17, 1994. Ellensberg High School, Ellensberg, VA.
- May 18, 1994. City Library, 621 K Street, Hoquiam, WA.
- May 19, 1994. Sunrise Elementary School, Enumclaw, WA.

May 24, 1994. Vancouver Public Utility District, Meeting Room, 8600 NE 117th Ave., Vancouver, WA.

All scoping workshops will be held from 5:30 p.m. to 8:30 p.m. Interested persons may contact John Engbring at (206) 53–9330 or Nonie Hall at (206) 902–1405 to receive additional information, including maps for the workshop locations.

SUPPLEMENTARY INFORMATION: WDNR manages approximately 2.1 million acres of state forest land, 2 million acres of aquatic land (primarily tidelands and bedlands), and 1 million acres of range, agricultural and urban land.

WDNR has launched an effort to address species conservation and ecosystem health issues on the lands it manages statewide. The effort will include the development of a habitat conservation plan, as allowed under section 10 of the Act, for forested lands to preserve and protect wildlife and fish while continuing commodity production.

WDNR's goal is to develop a comprehensive species conservation and habitat management plan for forested state trust lands. It is WDNR's intent for the plan to achieve the following objectives.

1. Meet the legal requirements for section 10 incidental take permits for selected threatened or endangered species;
2. Obtain agreements for selected species that are candidates for listing;
3. Make an appropriate contribution to the conservation of other forest associated species (with the intent of reducing the likelihood of future listings);
4. Develop conservation strategies for salmon habitat;
5. Integrate long-term forest health strategies with conservation strategies for northern spotted owl on WDNR managed forests in Eastern Washington; and
6. Meet all the common law duties of a trustee.

The proposed plan will consider the specific needs of those species for which an incidental take permit will be requested (the northern spotted owl and the marbled murrelet). In addition, the needs of native salmon and other forest associated species that may be listed within ten years will be addressed. Once completed, WDNR will submit the plan as part of the permit application process required under the provisions of section 10(a)(2)(A) of the Act. The Service will evaluate the incidental take permit application and plan in accordance with section 10(a)(2)(B) of the Act, and its implementing regulations.

The environmental review of this project will be conducted in accordance with the requirements of NEPA and its implementing regulations.

Dated: April 25, 1994.

Don Weathers,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–10360 Filed 4–29–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Mississippi River Corridor Study Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: June 14, 1994; 8 a.m. until 5 p.m. June 15, 1994; 8 a.m. until noon.

Address: Blackhawk Hotel, 200 East Third Street, Davenport, Iowa 52801.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 28, 1990.

Dated: April 22, 1994.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 94-10440 Filed 4-29-94; 8:45 am]

BILLING CODE 4310-70-P

INTERSTATE COMMERCE COMMISSION

[Sec. 5a Application No. 34 (Amendment No. 8)]

Middlewest Motor Freight Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of opportunity to comment.

SUMMARY: Middlewest Motor Freight Bureau, Inc. (MWB) has filed an application for approval of Amendment No. 8 to its ratemaking agreement, under which MWB's ratemaking territory would be expanded to include all points in the United States. The Commission invites public comment on the application.

DATES: Comments from interested persons must be filed at the Commission and served on MWB's representative by June 2, 1994. MWB's replies are due by June 17, 1994.

ADDRESSES: An original and 15 copies of comments should be sent to: Section 5a Application No. 34 (Amendment No. 8), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660. TDD for the hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: MWB operates under a rate bureau agreement last amended to facilitate MWB's merger with Central States Motor Freight Bureau, Inc., which the Commission approved under 49 U.S.C. 10706(b)(2) in *Middlewest Motor Freight Bureau, Inc. and Central States Motor Freight Bureau, Inc.—Merger Agreement,* Section 5a Application No. 34 (ICC served July 9, 1993). Proposed Amendment No. 8 would permit MWB's General Ratemaking Committee to engage in ratemaking in interstate and foreign commerce from, to, and between all points in the United States. No changes are contemplated in the ratemaking procedures of the agreement approved by the Commission. MWB states that many of its member carriers have nationwide authority from the Commission and operate throughout the United States. Copies of the application and the amendment are available for inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW, Washington, DC, and from MWB's representative Bryce Rea, Jr., Rea, Cross & Auchincloss, 1920 N Street, NW, suite 420, Washington, DC 20036.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: April 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-10404 Filed 4-29-94; 8:45 am]

BILLING CODE 7035-01-P

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: April 26, 1994.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP-102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Harvest States Cooperatives.

(2) P.O. Box 64594, St. Paul, MN 55164.

(3) 1667 N. Snelling Ave., St. Paul, MN 55108.

(4) Allen J. Anderson, Senior Vice-president, Administration and Public Affairs, P.O. Box 64594, St. Paul, MN 55164.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-10405 Filed 4-29-94; 8:45 am]

BILLING CODE 7035-01-M

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: American Tranding and Production Corporation, P.O. Box 238, The Blaustein Building, Baltimore, MD 21203, A Maryland corporation.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation: Northern Computers, Inc., a Wisconsin corporation.

B. 1. Parent corporation and address of principal office: Scrivner, Inc., an Oklahoma Corporation, Corporate Office, 5701 North Shartel, Oklahoma City, Oklahoma 73118.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

Scrivner of Alabama, Inc., Incorporated in Alabama
Scrivner of Kansas, Inc., Incorporated in Kansas
Scrivner, Columbus Division, Incorporated in New York
Scrivner of Illinois, Inc., Incorporated in Illinois
Scirvner, Buffalo Division, Incorporated in New York
Scrivner of Iowa, Inc., Incorporated in Iowa
Scrivner of North Carolina, Inc., Incorporated in North Carolina
Scrivner, Oklahoma Division, Incorporated in Delaware
Scrivner, Syracuse Division, Incorporated in New York
Scrivner of Tennessee, Inc., Incorporated in Tennessee
Scrivner of Texas, Inc., Incorporated in Texas

Gateway Foods Distributors, Inc., Incorporated in Minnesota
Gateway Foods of Pennsylvania, Inc., Incorporated in Wisconsin
Gateway Foods Service Corp., Incorporated in Wisconsin
Scrivner of Pennsylvania, Inc., Incorporated in Pennsylvania
Scrivner Transportation, Inc., Incorporated in Oklahoma
Gateway Foods, Inc., Incorporated in Wisconsin
Gateway Foods of Altoona, Inc.,Incorporated in Pennsylvania
Gateway Foods of Twin Ports, Inc., Incorporated in Wisconsin

C. 1. Parent corporation and address of the principal office: Southline Metal Products Company, 3777 West 12th, P.O. Box 19526, Houston, Texas 77224.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation: Southline Transportation Company, Inc., a Texas corporation, 3777 West 12th, P.O. Box 19526, Houston, Texas 77224.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 94–10406 Filed 4–29–94; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 85–94]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act, 5 U.S.C. 552a, the Department of Justice, United States Marshals Service, proposes to establish a new system of records entitled "Employee Assistance Program (EAP) Records, JUSTICE/USM–015."

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on any new routine uses of a system of records; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to review the new system.

Therefore, please submit any comments by June 1, 1994. The public, OMB, and the Congress are invited to submit written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system of records to OMB and the Congress.

The system description is printed below.

Dated: April 13, 1994.

Stephen R. Colgate,
Assistant Attorney General for Administration.

JUSTICE/USM–015

SYSTEM NAME:

U.S. Marshals Service (USMS) Employee Assistance Program (EAP) Records.

SYSTEM LOCATION:

Records of the Employee Assistance Office, Employee Relations Division, USMS, are located at 600 Army Navy Drive, Arlington, Virginia 22202–4210. Records of independent health service organizations (IHSOs) with whom the USMS has contracted for health services, are located at the respective offices of these services providers.[1] Addresses of these service providers may be obtained by contacting the USMS Employee Assistance Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS (and, in limited cases, immediate family members) who have sought counseling or have been referred for counseling or treatment through the USMS EAP.

CATEGORIES OF RECORDS COVERED IN THE SYSTEM:

Records of the USMS Employee Assistance Office and the IHSOs include written consent forms used to manage referrals and the exchange or flow of personal information, and account information such as billings and payments. (Where relevant, necessary, and proper certain records may be duplicated in these offices.) Other records generally maintained by the USMS Employee Assistance Office and the IHSOs are described as follows:

A. Records located in the USMS Employee Assistance Office include only records which may assist in managing and monitoring employee referrals and participation in the EAP Program. Examples of such records are: The name, location and telephone number(s) of the employee, family member or supervisor or manager who makes the initial contact with EAP personnel; the date and manner of initial contact, i.e., by telephone or in person; notes of problem(s) presented upon initial contact with EAP personnel; documents received from supervisors or personnel on work place problems or performance; insurance data; name and address of treatment facilities; number of sessions attended by the participating employee or family member; leave records; written consent forms and abeyance/back-to-work agreements (made to mitigate adverse action based upon treatment); information on confirmed, unjustified positive drug tests provided by the Drug Free Workplace Program and the Medical Review Officer under E.O. 12564; and "sanitized" audit records of the EAP/IHSO Program.

B. Records of the IHSOs may include any records which may assist in (1) assessing and counseling the individual on a short-term basis, and (2) identifying those individuals who may need long-term professional counseling, treatment and/or rehabilitation services (beyond those provided for by the USMS contract with the IHSOs). Records of the local IHSO may also include any records which may assist in monitoring and evaluating the performance of the various IHSOs outside the Washington, DC metropolitan area. Examples of IHSO records are: Personal identifying data on the employee and/or family member such as name, social security number, gender; home address and telephone number(s); notes and documentation of problem(s) presented upon initial contact with the IHSO; date of intake at the IHSOs; pertinent psychological, medical, employment and/or financial histories; address(es) of IHSOs providing short-term services; clinical notes and documentation on short-term counseling; attendance at short-term counseling sessions; prognosis information; information on problem resolution through short-term counseling, if applicable; date closed at the IHSO; information on confirmed, unjustified positive drug tests; and client employee/family member evaluations of services provided by the IHSOs. Records may also include recommendations and referrals to community resources for long-term counseling, treatment and/or rehabilitation programs beyond the services provided by the USMS EAP/IHSOs, including referrals for other assistance not related to financial concerns, or psychological or medical health.

C. Other records included in the system (and which may be duplicated in the USMS EAP and IHSO offices, where relevant, necessary, and proper) are those obtained from specialized service providers (SSPs) with the written consent of the subject individual.[2] Generally, such records are limited to those which relate to attendance at sessions, prognosis for recovery, motivation, and progress toward recovery. However, where the record subject deems it necessary or desirable to furnish additional records, such records could include: Medical tests and screenings; treatment and rehabilitation plans as well as behavioral improvement plans; notes and documentation on counseling; and relevant information pertaining to assistance provided on matters other than financial concerns, or psychological or medical health.

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[1] On behalf of the USMS, the local IHSO subcontracts with similar throughout independent health service organizations in areas outside of the Washington, DC metropolitan area to provide similar services to USMS employees located in those areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, et seq. and 290ee, et seq.; 42 CFR 2.1, et seq.; Executive Order 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100–71, Sec. 503 (July 11, 1987).

PURPOSE:

The EAP is a voluntary program designed to assist the employee in obtaining necessary help in handling personal problem(s) affecting job performance, and to provide emotional support and assistance during periods of crises, including those arising from traumatic work-related incidents. Records are maintained to document participation in the EAP program, the nature and effects of the employee's personal problem(s); and efforts to counsel the employee. Records may be used also to monitor compliance with abeyance and back-to-work agreements made to mitigate adverse actions based upon treatment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself, 5 U.S.C. 552a(b),[3] permissive disclosures, without individual consent, are as follows:

1. To the extent that it is appropriate, relevant, and necessary to enable the IHSOs to perform counseling, referral and program performance evaluation responsibilities, the USMS will provide those records—identified in paragraph A. of the "Category of Records in the System" (which are primarily administrative in nature) to the IHSOs who, on behalf of the USMS, maintain and operate a portion of this system of records—identified in paragraph B. of the same caption.

2. On behalf of the USMS, the IHSOs may disclose as follows: (a) To the appropriate State or local agency or authority to the extent necessary to comply with laws governing reporting incidents of suspected child abuse or neglect, and (b) to Federal, State and/or local authorities or to any other entity or person to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in locked metal safes.

RETRIEVABILITY:

Records are retrieved by name of employee and, in limited cases, immediate family members.

SAFEGUARDS:

In accordance with the requirements of 42 CFR 2.16, USMS EAP and IHSO records are stored in a secure enivronment. Access to USMS EAP records is restricted to designated USMS EAP personnel, except as otherwise permitted by law or with the written consent of the individual. Vouchers prepared to effect payment for services rendered by the IHSOs in performance of the contract do not contain individual identifiers. Invoices prepared by IHSOs located outside the Washington, DC metropolitan area are sent by first-class mail to the designated member(s) of the local IHSO contracted by the USMS. In turn, invoices or other records prepared in support of payment vouchers which contain individual identifiers are hand-carried by the local IHSO to the EAP Administrator who retains the supporting documentation. Records are maintained in locked metal safes. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

Access to IHSO records is restricted to a designated member(s) of the IHSO, except as otherwise provided by law or with the written consent of the individual. IHSO records are stored in locked files also.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the USMS EAP and/or the IHSO unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. At that time the records are destroyed by shredding (General Records Schedules 26 and 36).

SYSTEM MANAGER AND ADDRESS:

Employee Assistance Program Administrator, Employee Assistance Office, Employee Relations Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia, 22202–4210.

NOTIFICATION PROCEDURES:

Same as "Record Access Procedures."

RECORD ACCESS PROCEDURES:

Address all requests for access to USMS EAP records (identified in paragraphs A. and C. of the "Category of Records in the System,") in writing to the system manager identified above. Address all requests for records maintained by the IHSOs (identified in paragraph B. of the same caption) to these service providers. Addresses of these service providers may be obtained by contacting the USMS Employee Assistance Office. Clearly mark the envelope and letter "Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, and approximate date of the record. In addition, provide the required verification of identity (28 CFR 16.41(d)) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in accordance with the procedures outlined under "Record Access Procedures." State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Privacy Act Amendment Request."

RECORD SOURCE CATEGORIES:

Records are generated by the employee who is the subject of the record; USMS EAP personnel; the IHSO and SSP; the USMS personnel office; and the employee's supervisor. In the case of a confirmed, unjustified positive drug test, records may also be generated by the staff of the Drug-free Workplace Program and the Medical Review Officer.

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[2] SSPs are health service, community-based organizations, which offer long-term treatment and rehabilitation services. The USMS EAP and/or the IHSOs may recommend that the individual seek professional assistance beyond that provided by the USMS EAP program contracted out with the IHSOs. Where the individual chooses to pursue further treatment, he may elect to provide the USMS EAP and/or the IHSOs with such information as may be relevant to the back-to-work agreement.

[3] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, the USMS will follow such restrictions. See 42 U.S.C. 290dd and 290ee (and implementing regulations at 42 CFR part 2), and Public Law 100–71, section 503.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–10403 Filed 4–29–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Numbers D–9395, D–9396]

Amendment to Prohibited Transaction Exemption 93–33 (PTE 93–33) for the Receipt of Certain Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 93–33.

SUMMARY: This document amends PTE 93–33, a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank, provided the conditions of the exemption are met. The amendment affects individuals with a beneficial interest in the IRAs and Keogh Plans who receive such services as well as the banks that provide such services.

EFFECTIVE DATE: The amendment is effective May 11, 1993.

FOR FURTHER INFORMATION CONTACT: Allison K. Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor (202) 219–8971. (This is not a toll-free number); or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 219–9141. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 19, 1993, notice was published in the **Federal Register** (58 FR 61103) of the pendency before the Department of a proposed amendment to PTE 93–33 (58 FR 31053, May 28, 1993). PTE 93–33 provides an exemption from the restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the sanctions resulting from the application of sections 4975 (a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (D), (E) and (F) of the Code.[1]

The amendment to PTE 93–33 adopted by this notice was requested in an exemption application filed on behalf of Citibank, N.A. and the Chase Manhattan Bank, N.A. (the Applicants). The exemption application was submitted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

The notice of pendency gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B.

For the sake of convenience, the entire text of PTE 93–33, as amended, has been reprinted with this notice.

1. Description of the Exemption

PTE 93–33 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the deposit balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemptions are met. The term deposit balance was defined in section III(d) of PTE 93–33 to mean deposits as that term is defined under 29 CFR 2550.408(b)–4(c)(3).[2] The amendment granted by the notice modifies section III(d) of PTE 93–33 to include IRA and Keogh Plan investments in securities for which market quotations are readily available.[3] However, the amendment specifically excludes investments in securities offered by the bank exclusively to IRAs and Keogh Plans.

The Department notes that all the conditions contained in PTE 93–33 still must be met under the amended class exemption. These conditions include a requirement that for purposes of determining eligibility to receive services at reduced or no cost, the account balance required by the bank for the IRA or Keogh Plan is equal to the lowest balance required for any other type of account which the bank includes to determine eligibility to receive reduced or no cost services. Additionally, the rate of return on the IRA or Keogh Plan is no less favorable than the rate of return on an identical investment that could have been made at the same time at the same branch of the bank by a customer of the bank who is not eligible for (or who does not receive) reduced or not cost services. Moreover, the services must be of the type that the bank itself could offer consistent with applicable federal and state banking law.

2. Discussion of the Comments Received

The Department received three letters commenting on the proposed amendment, including one from the Applicants. Two commenters support the proposed amendment. The Applicants requested that we note the following: (1) The notice of proposed amendment incorrectly referred to one of the Applicants, Chase Manhattan Bank, N.A., as Chase National Bank, N.A.; and (2) the Applicants, as of January 1993, served as trustees for 650,000 IRAs and Keogh Plans having approximately $6.5 billion in assets, not $65 billion as previously noted.

The third commenter requested that the Department either expand PTE 93–33 to provide relief for the receipt of services by individuals for whose benefit an IRA or Keogh Plan is established or maintained from a broker-dealer (or other non-bank custodian), or delay the effective date of the amendment until parallel relief has been provided for non-bank custodians. The Department notes that the proposed amendment is limited to the modification of the term deposit balance (which has been redesignated as "account balance" under the amendment) to permit IRA and Keogh Plan investments in securities for which market quotations are readily available to be taken into account in determining eligibility to receive reduced or no cost services. Accordingly, the Department believes that consideration of the issues involved in amending PTE 93–33 to include broker-dealers is beyond the scope of these proceedings. In addition, the Department does not believe that a sufficient showing has been made that the relief and conditions currently contained in PTE 93–33 are relevant in the context of broker-dealer programs for the provision of services at reduced or no cost to IRA and Keogh Plan accounts. Consequently, the final amendment has not been so revised. Furthermore, in the absence of detailed information regarding the operation of such broker-dealer programs, the Department has determined not to delay the effective date of the amendment.

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[1] Section 102 of Reorganization Plan No. 4 of 1978 (42 FR 47712, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] 29 CFR 2550.408b–4(c)(3) provides that deposits are any account upon which a reasonable rate of interest is paid, including a certificate of deposit issued by a bank or similar financial institution.

[3] For purposes of this exemption, the term "securities for which market quotations are readily available" is derived from Federal securities law, in particular, the Investment Company Act of 1940 and regulations issued thereunder. See, *e.g.*, 17 CFR §§ 270.2a–4, 270.17a–7 (1992).

Finally, the Department wishes to take the opportunity to state that the commenter may wish to consider filing an exemption application for comparable relief under section 408(a) of ERISA.

General Information

The attention of interested persons is directed to the following:

(1) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code and based upon the entire record, the Department finds that the amendment is administratively feasible, in the interests of the IRAs and Keogh Plans, their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(2) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The amendment is applicable to a transaction only if the conditions specified in the class exemption are met.

Exemption

Accordingly, PTE 93-33 is amended under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B.

Section I: Covered Transaction

Effective May 11, 1993, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an individual retirement account (IRA) pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank pursuant to an arrangement in which the account balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA or Keogh Plan, the account balance of which is taken into account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services must be of the type that the bank itself could offer consistent with applicable federal and state banking law.

(c) The services are provided by the bank (or an affiliate of the bank) in the ordinary course of the bank's business to customers who qualify for reduced or no cost banking services but do not maintain IRAs or Keogh Plans with the bank.

(d) For the purpose of determining eligibility to receive services at reduced or no cost, the account balance required by the bank for the IRA or Keogh Plan is equal to the lowest balance required for any other type of account which the bank includes to determine eligibility to receive reduced or no cost services.

(e) The rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time at the same branch of the bank by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term bank means a bank described in section 408(n) of the Code.

(b) The term IRA means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code which provides participates with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions.

(c) The term Keogh Plan means a pension, profit sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by title I of ERISA.

(d) The term account balance means deposits as that term is defined under 29 CFR 2550.408b-4(c)(3), or investments in securities for which market quotations are readily available. For purposes of this exemption, the term account balance shall not include investments in securities offered by the bank (or its affiliate) exclusively to IRAs and Keogh Plans.

(e) An affiliate of a bank includes any person directly or indirectly controlling, controlled by, or under common control with the bank. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term members of his or her family refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or a sister.

(g) The term service includes incidental products of a *de minimis* value provided by third persons, pursuant to an arrangement with the bank, which are directly related to the provision of banking services covered by the exemption.

Signed at Washington, DC, this 21st day of April 1994.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration; U.S. Department of Labor.

[FR Doc. 94-10426 Filed 4-29-94; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities Under OMB Review

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a one-year extension of approval of its appeal form, Optional Form 282 (Rev. 12-89) from the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980, and soliciting comments on the public reporting burden. The reporting

burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DATES: Comments must be received on or before June 1, 1994.

ADDRESSES: Copies of the appeal form may be obtained from Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419. Comments concerning the paperwork burden should be addressed to Paul D. Mahoney, Director, Office of Management Analysis, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419; and the Office of Management and Budget, Paperwork Reduction Project (Optional Form 283) Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: C.P. Kramarsky, Office of Management Analysis; (202) 653–8892.

Dated: April 22, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–10324 Filed 4–29–94, 8:45 am]

BILLING CODE 7400–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences.

Date and time: May 17 & 18, 1994.

Place: National Science Foundation, 4201 Wilson Boulevard, room 330, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. James T. Callahan, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1483.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Long Term Ecological Research (renewal) proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 94–10329 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering

Date and time: May 19, 1994; 8:30 a.m. to 5 p.m. May 20, 1994; 8:30 a.m. to 2:30 p.m.

Place: 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of meeting: Open.

Contact person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda:

(1) Strategic Planning.

(2) CISE High Performance Computing and Communications Planning.

(3) Networking Issues.

(4) Advisory Committee Activities.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10330 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities.

Date and time: May 17, 1994; 8:30 a.m. to 5 p.m.

Place: Room 1105.17 and 1150.

Type of meeting: Closed.

Contact persons(s): Forbes Lewis, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1980.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Academic Research Infrastructure proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10331 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), as amended), the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: May 14, 1994 from 12 noon to 7 p.m.

Place: Westin Hotel—O'Hare, Suite 1225, 6100 River Road, Rosemont, IL 60018.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1890.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Presentation of NSAC Subcommittee Report on Assessment and Planning for the DOE Nuclear Physics Program (W. Henning) (*) Discussion and recommendations regarding the Charge to NSAC (*) Public Comments (*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: April 26, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10456 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communication Systems.

Dates & time: May 18, 1994 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 326, Arlington, Virginia 22230.

Contact person: Dr. Linton G. Salmon, Program Director, Solid State and Microstructures (MEMS), Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: 703/306–1339.

Type of meeting: Closed.

Purpose of: To review proposals submitted to the NSF in response to the

Meeting: Solid State and Microstructures Program (MEMS).

Agenda: To review and evaluate proposals submitted under a IITA–94 National Challenge Group for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10333 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (#1196).

Date & Time: May 18, 1994, 8 am–5 pm.

Place: NSF, 4201 Wilson Boulevard, room 320, Arlington, Virginia.

Contact Person: Dr. Linton G. Salmon, Program Director, ECS, room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 TELEPHONE: 703/306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10332 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date & Time: May 24, 1994—8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, room 530, Arlington, Virginia 22230.

Contact Person: Dr. Linton G. Salmon, Program Director, Solid State and Microstructures (MEMS), Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: 703/306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To review proposals submitted to the NSF in response to the Solid State and Microstructures Program (MEMS).

Agenda: To review and evaluate proposals submitted under a IITA–94 National Challenge Group for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10334 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences #1756.

Date: May 19 & 20, 1994.

Time: 8 a.m. to 6 p.m. each day.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James H. Whitcomb, Program Director, Geophysics Program, Division of Earth Sciences, room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1556; or Dr. William A. Anderson, Program Director, Earthquake Hazard Mitigation Program, room 545, National Science Foundation, Arlington, VA 22230, (703) 306–1362.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences and engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10336 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates, and Times: May 15, 1994, 7 pm–9 pm; May 16 and 17, 1994, 8 am–8 pm; May 18, 1994, 8 am–1 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Rooms 330 (May 15 only), 310, and 365.

Type of Meetings: Closed.

Contact Person: Dr. W. Lance Haworth, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, room 1065, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230. Telephone (703) 306–1815.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support by the Materials Research Science and Engineering Centers Program.

Agenda: Review and evaluate proposals as part of the selection process for subsequent awards. Includes presentation by, and discussion with, key participants in proposals previously selected as finalists.

Reason for Closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10337 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical & Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical & Structural Systems.

Date & Time: May 20, 1994—8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 365, Arlington, Virginia 22230.

Contact Person: Dr. John B. Scalzi, Program Director, 703/306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial research.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10338 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: May 16th–18th, 1994; 9 a.m.–5 p.m.

Place: National Science Foundation, room 380, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Dr. Laurence Stanford, Program Director, Developmental Neuroscience, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session May 16 & 18th, 1994; 9 a.m.–5 p.m. and May 17th, 1994 except where noted below. To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Open Session: May 17th, 1994 10 a.m.–12 noon; To discuss goals and assessment procedures.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10339 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Science Foundation.

ACTION: Notice of amendment to the NSF Statement of Organization, Functions, and Delegations of Authority.

SUMMARY: The Directorate for Engineering has been reorganized to better align and integrate the Directorate's programs. This reorganization reflects the:

- Renaming of the Division of Chemical and Thermal Systems as the Division of Chemical and Transport Systems;
- Restructuring and renaming of the Division of Biological and Critical Systems as the Division of Bioengineering and Environmental Systems and the Division of Mechanical and Structural Systems as the Division of Civil and Mechanical Systems; and
- Merging of the Division of Design and Manufacturing Systems and the Division of Industrial Innovation Interface to form the Division of Design, Manufacture and Industrial Innovation.

EFFECTIVE DATE: January 9, 1994.

FOR FURTHER INFORMATION CONTACT: Modestine Rogers, National Science Foundation, Division of Human Resource Management, 4201 Wilson Boulevard, room 315, Arlington, Virginia 22230, telephone 703–306–1181.

SUPPLEMENTARY INFORMATION: The Division of Chemical and Transport Systems (CTS) funds research that strengthens the engineering base for technologies involving chemical, thermal and flow processes. These processes are important in a variety of areas such as microelectronics, specialty chemicals, pharmaceuticals, energy production and transfer, molecular engineering of advanced materials, and chemical processing of hazardous waste.

The Division of Bioengineering and Environmental Systems (BES) is responsible for supporting research that expands the knowledge base of bioengineering; improves our ability to apply engineering methods to correct problems that impair the usefulness of land, air, or water; and explores basic engineering problems in the development, conservation, and use of ocean resources and systems.

The Division of Civil and Mechanical Systems (CMS) is responsible for supporting research that will advance the engineering base necessary for developing new or improved mechanical and civil engineering technologies. In addition, CMS is responsible for supporting research that strengthens the engineering knowledge base of potentially destructive phenomena such as earthquakes, floods, sea level rise, greenhouse effects, expanding and collapsing soils, destructive winds, landslides, tsunamis, and storm surges.

The Division of Design, Manufacture and Industrial Innovation (DMII) is responsible for supporting research that seeks to serve a broad spectrum of American industry through developing and expanding the scientific and engineering foundations of design, manufacturing, production, and integration engineering. It focuses on the relationships between industrial development, technological innovation, and scientific research. Additionally, DMII concentrates on long-term efforts needed to deepen our understanding of the processes, operations, and systems which comprise modern manufacturing, and to make our manufacturing base more competitive by increasing its innovation and responsiveness to changing needs. The Division also provides a focus for the small business activities of NSF and administers the Small Business Innovation Research program through its Office of Industrial Innovation and Partnerships. [58 FR 7587–7595, February 8, 1993]

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10340 Filed 4–29–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Nominations of New Members of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is inviting nominations of individuals for its Advisory Committee on the Medical Uses of Isotopes (ACMUI) who are qualified in radiation therapy technology and/or medical dosimetry.

DATES: Nominations are due July 1, 1994.

ADDRESSES: Submit nominations to: Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-504-3417.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee members posses the medical and technical skills needed to address evolving issues. The ACUMI currently consists of three physician specialists in therapeutic radiology, with experience in teletherapy and brachytherapy; three physician specialists in nuclear medicine, with backgrounds in radiology, internal medicine, and cardiology; a nuclear medicine technologists; a radiopharmacist; a specialist in medical physics; a patient's rights and care advocate; an individual with experience in State regulation of radioisotopes; and a representative from the Food and Drug Administration.

NRC is soliciting nominations of persons who are qualified in radiation therapy technology and/or medical dosimetry. Persons having the aforementioned qualifications are encouraged to apply.

Nominees must include resumes describing their educational and professional qualifications, and provide their current addresses and telephone numbers.

All new committee members will serve a 2 year term, with possible reappointment to two additional 2—year terms.

Nominees must be United States citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses. Nominees will undergo a security background check and will be required to complete financial disclosure statements in order to avoid conflict of interest issues.

Dated at Washington, DC, this 25th day of April, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. 94-10370 Filed 4-29-94; 8:45 am]

BILLING CODE 7590-01-M

[IA 94-008]

Sean G. Miller, Coal City, IL; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Sean G. Miller was formerly employed by the Commonwealth Edison Company (CECo) from June 18, 1990, until he resigned his employment on December 2, 1992. He most recently held the position of Qualified Nuclear Engineer (QNE) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. CECo holds Facility Licenses DPR-19 and DPR-25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. The licenses authorize CECo to operate the Dresden Nuclear Station Units 2 and 3 located near Morris, Illinois. The licenses were issued by the NRC on December 22, 1969, and March 2, 1971, respectively.

II

On November 24, 1992, CECo notified the NRC that CECo senior managers had just become aware of an incident that had occurred on September 18, 1992, when Unit 2 was operating at 75% power. A Nuclear Station Operator (NSO), a licensed reactor operator, had incorrectly moved control rod H-1 while repositioning control rods to change localized power levels within the reactor core, and the event was concealed from CECo management. Both CECo and NRC initiated an investigation of the incident.

On September 18, 1992, the NSO, a licensed operator, erroneously moved control rod H-1 from Position 48 (fully withdrawn) to Position 36. The NSO and two individuals in training to become nuclear engineers were in the control room when Mr. Miller, the QNE on duty and an unlicensed individual, recognized the NSO's error. Mr. Miller informed the NSO of the error, the NSO continued to move control rods at Mr. Miller's direction, without the knowledge or approval of the Station Control Room Engineer (SCRE), and then Mr. Miller informed the SCRE of the event. Later the SCRE spoke with Mr. Miller, the NSO and the two nuclear engineers in training and they all agreed that they would not discussed the incident with anyone else. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, Mr. Miller falsified a Form 14-14C plant record, and CECO management was not informed of the incident.

Dresden Technical Specification 6.2.A.1 stated that applicable procedures recommended in Appendix A of Regulatory Guide 1.33, Revision 2 dated February 1978, shall be established, implemented, and maintained. Regulatory Guide 1.33, Appendix A.1.c, included administrative procedures general plant operating procedures, and procedures for startup, operation, and shutdown of safety related systems.

Dresden Operating Abnormal Procedure (DOA) 300-12, "Mispositioned Control Rod", Revision 2, November 1991, Section C.2, required, in part, that if a control rod is moved more than one even notch from its in-sequence position, then all control rod movement must be discontinued. Section D.2.a.(1) required, in part, that if a single control rod is inserted more than one even notch from its in-sequence position and reactor power is greater than 20%, and if the mispositioning occurred within the last 10 minutes, then the mispositioned control rod must be continuously inserted to Position 00. Section D.6 required that an upper management representative will conduct an evaluation into the cause of the mispositioning and implement immediate corrective actions prior to the resumption of routine control rod movements.

These procedures were not followed. Specifically, the NSO failed to insert the mispositioned control rod to Position

00, and continued to move control rods solely at the direction of Mr. Miller and without the performance of an evaluation and corrective actions by an upper management representative.

Dresdent Administrative Procedure (DAP) 14–14, "Control Rod Sequences," Revision 0, dated November 1991, section F.1.e, required that Form 14–14C, "Special Instructions", must provide instructions which should be clearly stated and strictly adhered to and required that the instructions be approved by the ONE (in this case, Mr. Miller) and an operations shift supervisor. Hoover, on September 18, 1992, following the mispositioning of control rod H–1, control rod arrays 8D2 and 5 were moved at Mr. Miller's direction and without the completion of a Special Instruction Form 14–14C clearly stating the sequence, and without prior approval of Mr. Miller's instructions by an operations shift supervisor. By directing the continued movement of control rods without the approval of a licensed operator, Mr. Miller, who is not a licensed operator, violated 10 CAR 55.3. Furthermore, after these rods had been moved, Mr. Miller knowingly completed a Form 14–14C to indicate a different sequence of control rod movements than that which actually occurred. The effect of this inaccurate Form 14–14C was to conceal the mispositioning of control rod H–1 and the subsequent movement of control rods in violation of plant procedures.

Based on the NRC Office of Investigations (OI) investigation of this matter (OI Report No. 3–92–055R), I conclude that Mr. Miller, along with certain other CECo employees, deliberately attempted to conceal with the mispositioned control rod event by failing to document the incident as required by plant procedures. By falsifying the Form 14–14C, Mr. Miller deliberately put CEOo in violation of Dresden Technical Specification 6.2.A.1, DAP 14–14, Section F.1.e., and 10 CFR 50.9, "Completeness and Accuracy of Information".

III

Based on the above, Mr. Miller, an employee of CECo at the time of the event, engaged in deliberate misconduct which caused CECo to be in violation of its license conditions and 10 CFR 50.9 and which constitutes a violation of 10 CFR 50.5 and 10 CFR 55.3.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to maintain records that are complete and accurate in all material respects. Mr. Miller's action in causing CECo to violate its license conditions and 10 CFR 50.9 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements, including the requirements to maintain complete and accurate records. Mr. Miller's deliberate misconduct that caused CECo to violate Commission requirements cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Miller were permitted at this time to be engaged in the performance of NRC-licensed and regulated activities. Therefore, the public health, safety and interest require that Mr. Miller be prohibited from being involved in any NRC-licensed activities for three years from the date of this Order. In addition, for the same period, Mr. Miller is required to give notice of this Order to any prospective employer engaged in NRC-licensed activities as described in Section IV, Paragraph B, below, from whom he seeks employment in non-licensed activities to ensure that such employer is aware of Mr. Miller's previous history. For five years from the date of this Order, Mr. Miller is also required to notify the NRC of his employment by any person engaged in NRC-licensed activities, as described in Section IV, Paragraph B, below, so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, it is hereby ordered, effective immediately, that:

A. Mr. Miller is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.

B. Should Mr. Miller seek employment in non-licensed activities with any persons engaged in NRC-licensed activities for three years from the date of this Order, Mr. Miller shall provide a copy of this Order to such person at the time Mr. Miller is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, licensed activities include the activities of: (1) An NRC licensee; (2) an Agreement State licensee conducting NRC-licensed activities pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.

C. For three years from the date of this Order, Mr. Miller shall provide notice to the Director, Office of Enforcement, U.S Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities for an employer engaged in NRC-licensed activities described in Paragraph IV.B, above.

D. After the three year prohibition has expired as described in Paragraphs IV.A and B above, Mr. Miller shall provide notice to the Director, Office of Enforcement, for acceptance of any employment in NRC-licensed activity for an additional two year period.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Miller of good cause.

V

In accordance with 10 CFR 2.202, Mr. Miller must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Miller or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532–4351; and to Mr. Miller, if the answer or hearing request is by a person other than Mr. Miller. If a person other than Mr. Miller requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this

Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Miller or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Miller, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate affectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 21 day of April 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94–10371 Filed 4–29–94; 8:45 am]

BILLING CODE 759–01–M

[Docket No. 50–388]

Pennsylvania Power and Light Company; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Pennsylvania Power and Light Company (the licensee) to withdraw its September 14, 1993, application for proposed amendment to Facility Operating License No. NPF–22 for the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The proposed amendment would have revised the requirements in sections 3.6.1.8 and 4.6.1.8 of the Technical Specifications to allow continued operation with an inoperable suppression chamber purge valve.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 10, 1993 (58 FR 59754). However, by letter dated December 22, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 14, 1993, and the licensee's letter dated December 22, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Osterhout Free Library, Reference Department, 71 Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland this 20th day of April 1994.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Acting Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10372 Filed 4–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 55–30662; License No. OP–30277–02; IA 94–007]

Kenneth G. Pierce, Shorewood, IL; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Kenneth G. Pierce (Licensee) held Reactor Operator's License No. OP–30277–02 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on July 25, 1984. Mr. Pierce was employed by the Commonwealth Edison Company (CECo) from April 30, 1979 until CECo terminated his employment on December 2, 1992, which terminated his license. He most recently held the position of Nuclear Station Operator (NSO) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. CECo holds Facility Licenses DPR–19 and DPR–25 issued by the NRC pursuant to 10 CFR part 50. The licenses authorize CECo to operate the Dresden Nuclear Station Units 2 and 3 located near Morris, Illinois. The licenses were issued by the NRC on December 22, 1969, and March 2, 1971, respectively.

II

On November 24, 1992, CECo notified the NRC that CECo senior managers had just become aware of an incident that had occurred on September 18, 1992, when Unit 2 was operating at 75% power. Mr. Pierce, who was the NSO on duty, incorrectly positioned control rod H–1 while repositioning control rods to change localized power levels within the reactor core, and the event was concealed from CECo management. Both CECo and NRC initiated an investigation of the incident.

On September 18, 1992, Mr. Pierce erroneously moved the rod H–1 from Position 48 (the fully withdrawn position) to Position 36. A Qualified Nuclear Engineer (QNE) and two individuals in training to become "qualified" nuclear engineers were in the control room when the QNE recognized the NSO's error. Mr. Pierce failed to insert the mispositioned rod to Position 00 and continued to move other control rods at the direction of the QNE. The QNE then informed the Station Control Room Engineer (SCRE) of the mispositioned rod. Later the SCRE spoke with Mr. Pierce and the three nuclear engineers and they all agreed that they would not discuss the incident with anyone else. As a result, neither the mispositioned rod nor the subsequent deviations from the planned control rod pattern were documented in the control room log, a Form 14–14C plant record was falsified, and CECo management was not informed of the incident.

The NRC licenses individuals pursuant to 10 CFR part 55, "Operators' Licenses," to manipulate the controls of a utilization facility. The operator license requires the individual to observe all applicable rules, regulations and orders of the Commission, including the operating procedures and other conditions specified in the facility license.

Dresden Technical Specification 6.2.A.1. stated that applicable procedures recommended in appendix A of Regulatory Guide 1.33, Revision 2 dated February 1978, shall be established, implemented, and maintained. Regulatory Guide 1.33 Appendix A.1.C. included administrative procedures, general plant operating procedures, and procedures for startup, operation, and shutdown of safety related systems.

Dresden Operating Abnormal Procedure (DOA) 300–12, "Mispositioned Control Rod," Revision 2, dated November 1991, section C, "Immediate Operator Actions," step 2, required, in part, that if a control rod is found or moved more than one even notch from its in-sequence position, then all control rod movement must be discontinued. Section D, "Subsequent Operator Actions," step 2.a.(1), required in part that if a single control rod is inserted more than one even notch from its in-sequence position and reactor power was greater than 20%, and if the mispositioning was within the last 10 minutes, then the mispositioned control rod must be continuously inserted to Position 00. Step 5 required the NSO to compare the current off gas radiation level to the off gas radiation level prior to the suspected time of the mispositioning, and to record data in the Unit log book including the location of the mispositioned rod(s), time of discovery of the mispositioning, actions taken, and any other observation determined to be relevant. Step 6 required that an upper management representative will conduct an evaluation into the cause of the mispositioning and implement immediate corrective actions prior to the resumption of routine control rod movements.

These procedures were not followed. Specifically, Mr. Pierce failed to insert the mispositioned control rod H–1 to Position 00, failed to compare the off gas radiation level at the time of the event to the level prior to the time of the mispositioning, and continued to move control rods without the performance of an evaluation and corrective actions by an upper management representative. Mr. Pierce's failure to record any information concerning the rod mispositioning event in the Unit log book put CECo in violation of its procedures and 10 CFR 50.9(a).

Based on the NRC Office of Investigations (OI) investigation of this matter (OI Report No. 3–92–055R), I conclude that Mr. Pierce, along with certain other CECo employees, attempted to conceal the mispositioned control rod event by deliberately failing to document the event in the Unit log book as required by plant procedures.

Further, in a transcribed sworn statement on December 30, 1992, Mr. Pierce stated that he did not remember the SCRE making a statement to the effect that information about the mispositioned control rod should not leave the control room. Based on the transcribed testimony of three individuals who were present during the incident that the SCRE had made a statement to them to the effect that information about the mispositioned control rod should not leave the control room, that Mr. Pierce was present when the SCRE made that statement, and that all five individuals had agreed not to discuss the event with anyone else, I conclude that Mr. Pierce's testimony to the contrary constituted the deliberate provision of inaccurate information which he knew to be material to the NRC, in violation of 10 CFR 55.9, "Completeness and Accuracy of Information."

III

Based on the above, Mr. Pierce, an employee of CECo at the time of the event, engaged in deliberate misconduct which caused CECo to be in violation of its license conditions and 10 CFR 50.9(a), and which constitutes a violation of 10 CFR 50.5. Further, Mr. Pierce, a licensed reactor operator at the time of the event, provided to NRC investigators information which he knew to be inaccurate in some respect material to the NRC, in violation of 10 CFR 55.9.

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to maintain records and provide information to the NRC that is complete and accurate in all material respects. Mr. Pierce's action in causing CECo to violate its license conditions and 10 CFR 50.9, and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed facilities and licensed individuals and to provide complete and accurate information to the NRC. Mr. Pierce's deliberate misconduct that caused CECo to violate Commission requirements, and his false statements to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Pierce were permitted at this time to be engaged in the performance of NRC-licensed and regulated activities. Therefore, the public health, safety and interest require that Mr. Pierce be prohibited from being involved in any NRC-licensed activities for three years from the date of this Order. In addition, for the same period, Mr. Pierce is required to give notice of this Order to any prospective employer engaged in NRC-licensed activities, as described in Section IV, Paragraph C, below, from whom he seeks employment in non-licensed activities to ensure that such employer is aware of Mr. Pierce's previous history. For five years from the date of Order, Mr. Pierce is also required to notify the NRC of his employment by any person engaged in NRC-licensed activities, as described in Section IV, Paragraph B, below, so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 55.61, *it is hereby ordered, effective immediately, that:*

A. Mr. Pierce is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.

B. Should Mr. Pierce seek employment in non-licensed activities with any person engaged in NRC-licensed activities for three years from the date of this Order, Mr. Pierce shall provide a copy of this Order to such person at the time Mr. Pierce is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, NRC-licensed activities include the activities of: (1) An NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.

C. For three years from the date of this Order, Mr. Pierce shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities, for any employer engaged in NRC-licensed activities described in Paragraph IV.B, above.

D. After the three year prohibition has expired as described in Paragraphs IV. A and B, above, Mr. Pierce shall provide notice to the Director, Office of Enforcement, for acceptance of any employment in an NRC-licensed activity for an additional two year period.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Pierce of good cause.

V

In accordance with 10 CFR 2.202, Mr. Pierce must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Pierce or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532–4351; and to Mr. Pierce, if the answer or hearing is by a person other than Mr. Pierce. If a person other than Mr. Pierce requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Pierce or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Pierce, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An Answer or a REQUEST for a Hearing Shall Not Stay the Immediate Effectiveness of This Order.

Dated at Rockville, Maryland this 21 day of April 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94–10373 Filed 4–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 55–30849; License No. SOP–30516–01; IA 94–006]

David Tang Wee, Tinley Park, IL; Order Prohibiting Involvement in NRC–Licensed Activities (Effective Immediately)

I

Mr. David Tang Wee (Licensee) held Senior Reactor Operator's License No. SOP–30516–01 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on August 14, 1985. Mr. Tang Wee was employed by Commonwealth Edison Company (CECo) between June 22, 1981 until his employment was terminated by CECO on December 2, 1992, an action which terminated license SOP–30516–01. The Licensee most recently held the position of Station Control Room Engineer (SCRE) with responsibilities involving compliance with NRC requirements for the operation of a nuclear power plant. CECo holds Facility Licenses DPR–19 and DPR–25 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize CECo to operate the Dresden Nuclear Station Units 2 and 3 located near Morris, Illinois.

II

On November 24, 1992, CECo notified the NRC that CECo senior managers had just become aware of an incident that had occurred on September 18, 1992 when Unit 2 was operating at 75% power. A Nuclear Station Operator (NSO), who was a licensed reactor operator, incorrectly positioned control rod H–1 while repositioning control rods to change localized power levels within the reactor core, and the event was concealed from CECo management. Both CECo and the NRC initiated investigations of the incident.

On September 18, 1992, the NSO erroneously moved control rod H–1 from Position 48 (fully withdrawn) to Position 36. A Qualified Nuclear Engineer (QNE) and two individuals in training to become "qualified" nuclear engineers were in the control room when the QNE recognized the NSO's error. The QNE informed the NSO of the error. The NSO failed to insert the mispositioned rod to Position 00 and continued to move other control rods at the direction of the QNE. The QNE then informed Mr. Tang Wee, the Station Control Room Engineer on duty, of the mispositioned rod. Later, Mr. Tang Wee spoke with the NSO and the three nuclear engineers and they all agreed that they would not discuss the incident with anyone else. As a result, neither the mispositioned rod nor the subsequent deviation from the planned control rod pattern were documented in the control room log, a Dresden Form 14–14C was falsified, and CECo management was not informed of the incident.

The NRC licenses individuals pursuant to 10 CFR Part 55, "Operators' Licenses," to manipulate the controls of an utilization facility. The operator license requires the individual to observe all applicable rules, regulations and orders of the Commission, including the operating procedures and other conditions specified in the facility license.

Dresden Technical Specification 6.2.A.1 stated that applicable procedures recommended in appendix A of Regulatory Guide 1.33, Revision 2 dated February 1978, shall be established, implemented, and maintained. Regulatory Guide 1.33 Appendix A.1.c included administrative procedures, general plant operating procedures, and procedures for startup, operation, and shutdown of safety related systems.

Dresden Operating Abnormal Procedure (DOA) 300–12, "Mispositioned Control Rod," Revision 2, dated November 1991, section D "Subsequent Operator Actions," step 2, required, in part, that if a single control rod was inserted greater than one even notch from its in-sequence position and reactor power was greater than 20%, then the mispositioned rod must be continuously inserted to position 00. Section D.5 required, in part, that the NSO record any mispositioned control rod in the Unit log book.

Dresden Administrative Procedure, (DAP) 07–29, "Reactivity Management Controls," Revision 0, section F.1.g required, in part, that the station control room engineer (SCRE) communicate to the NSO the requirements for procedural adherence.

Dresden Administrative Procedure, (DAP) 07–01, "Operations Department Organization", Section B.5.e., requires in part that the SCRE report any abnormal operating conditions to the Shift Engineer.

These procedures were not followed. Specifically, Mr. Tang Wee did not communicate to the NSO requirements for procedural adherence concerning the NSO's duty to record the mispositioning incident in the unit control room log, and did not report the mispositioning incident to the Shift Engineer. Instead, Mr. Tang Wee agreed with the NSO, the QNE and two nuclear engineers in training that they would not discuss the incident with anyone else.

Based on the NRC Office of Investigations (OI) investigation of this matter (OI Report No. 3–92–055R), I conclude that Mr. Tang Wee, along with the NSO, the QNE and two nuclear engineers in training, deliberately attempted to conceal the mispositioned control rod event by failing to document and report the incident as required by plant procedures. In furtherance of this agreement, Mr. Tang Wee deliberately caused CECo to be in violation of Dresden Technical Specification 6.2.A.1; DAP 07–29, Revision 0, section F.1.g; and DAP 07–01, Section B.5.e, by failing to communicate to the NSO the requirement to record the mispositioned rod event in the control room log and by failing to report the event to the Shift Engineer.

Further, in a transcribed sworn statement on December 1, 1992, Mr. Tang Wee stated that he did not have a reason to make, and did not believe he made, a statement to the effect that information about the mispositioned control rod should not leave the control room. Based on the transcribed testimony of three individuals who were present during the incident that Mr. Tang Wee had made a statement to them to the effect that information about the mispositioned control rod should not leave the control room, and that all five individuals had agreed not to discuss the event with anyone else, I conclude that Mr. Tang Wee's testimony to the contrary constituted the deliberate provision of inaccurate information material to the NRC in violation of 10 CFR 55.9, "Completeness and Accuracy of Information."

III

Based on the above, Mr. Tang Wee, an employee of CECo at the time of the event, engaged in deliberate misconduct which caused CECo to be in violation of its license conditions and which constitutes a violation of 10 CFR 50.5. Further, Mr. Tang Wee, a licensed senior reactor operator at the time of the event, deliberately provided to NRC investigators information which he knew to be inaccurate in some respect material to the NRC, in violation of 10 CFR 55.9.

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Tang Wee's action in causing CECo to violate its license conditions and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed facilities and licensed individuals and to provide complete and accurate information to the NRC. Mr. Tang Wee's deliberate misconduct that caused CECo to violate Commission requirements, and his false statements to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Tang Wee were permitted at this time to be engaged in the performance of NRC-licensed and regulated activities. Therefore, the public health, safety and interest require that Mr. Tang Wee be prohibited from being involved in any NRC-licensed activities for three years from the date of this Order. In addition, for the same period, Mr. Tang Wee is required to give notice of this Order to any prospective employer engaged in NRC-licensed activities as described in Section IV, Paragraph B, below, from whom he seeks employment in non-licensed activities in order to ensure that such employer is aware of Mr. Tang Wee's previous history. For five years from the date of the Order, Mr. Tang Wee is also required to notify the NRC of his employment by any person engaged in licensed activities, as described in Section IV, Paragraph B, below, so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 55.61, *it is hereby ordered, effective immediately, that:*

A. Mr. Tang Wee is prohibited for three years from the date of this Order from engaging in activities licensed by the NRC.

B. Should Mr. Tang Wee seek employment in non-licensed activities with any person engaged in NRC-licensed activities in the three years from the date of this Order, Mr. Tang Wee shall provide a copy of this Order to such person at the time Mr. Tang Wee is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the purposes of this Order, licensed activities include the activities of: (1) An NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction.

C. For three years from the date of this Order, Mr. Tang Wee shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer involving non-licensed activities from an employer engaged in NRC-licensed activities, as described in Paragraph IV.B, above.

D. After the three year prohibition has expired as described in Paragraphs IV.A and B, above, Mr. Tang Wee shall provide notice to the Director, Office of Enforcement, of acceptance of any employment in NRC-licensed activity for an additional two year period.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Tang Wee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Tang Wee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Tang Wee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532–4351; and to Mr. Tang Wee, if the answer or hearing request is by a person other than Mr. Tang Wee. If a person other than Mr. Tang Wee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Tang Wee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Tang Wee, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 21 day of April 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94-10374 Filed 4-29-94; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A94-9; Order No. 1011]

Green Mountain, IA 50637 (Tim Odle and Others, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued April 22, 1994.

Docket Number: A94-9.

Name of Affected Post Office: Green Mountain, Iowa 50637.

Name(s) of Petitioner(s): Tim Odle and others.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: April 18, 1994.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by May 3, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Docket No. A94-9, Green Mountain, Iowa 50637

April 18, 1994 Filing of Appeal letter.

April 22, 1994 Commission Notice and Order of Filing of Appeal.

May 13, 1994 Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).

May 23, 1994 Petitioners' Participant Statements or Initial Briefs (see 39 CFR 3001.115(a) and (b)).

June 13, 1994 Postal Service's Answering Brief (see 39 CFR 3001.115(c)).

June 28, 1994 Petitioners' Reply Briefs should Petitioners choose to file them (see 39 CFR 3001.115(d)).

July 5, 1994 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).

August 16, 1994 Expiration of the Commission's 120-day decision schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 94-10343 Filed 4-29-94; 8:45 am]

BILLING CODE 7710-FW-P

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of a New Collection of Information Under the Paperwork Reduction Act; Survey of Firms With Significant Pension Plan Underfunding

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested that the Office of Management and Budget approve, under the Paperwork Reduction Act, a survey of companies maintaining single-employer pension plans with significant underfunding (in the aggregate) that requests verification (or correction) and supplementation of information otherwise available to the PBGC. The purpose of this voluntary collection of information is to improve the accuracy and completeness of information obtained from other sources and used in various agency efforts (*e.g.*, estimating potential liability for future benefits, selecting plans for monitoring, responding to congressional inquiries, and identifying for the public the companies with the largest levels of pension underfunding). The effect of this notice is to advise the public of the PBGC's request and solicit public comment on this collection of information.

ADDRESSES: All written comments (at least three copies) should be addressed to Office of Management and Budget, Paperwork Reduction Project (1212-0040), Washington, DC 20503. The PBGC's request for approval will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005-4026, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. 1001 *et seq.*). Since the early 1980's, the PBGC has undertaken a number of steps to address concerns about the potential vulnerability of the single-employer insurance program to large claims. In particular, the agency has sought to increase the availability and quality of the information on pension plan underfunding that it uses in estimating the potential exposure of the single-employer termination insurance program, developing legislative and other policy initiatives, selecting plans for monitoring and other regulatory purposes, responding to congressional inquiries, and educating the public.

PBGC experience revealed problems with using information otherwise available to the agency unless it is reviewed by the companies responsible for funding single-employer plans. In 1990, when the PBGC decided to publish a Top 50 List of firms with the largest pension underfunding (and, hence, in the aggregate, the largest potential claims against the single-employer plan insurance program), it selected the companies to be listed by adjusting otherwise available data (to make the figures as consistent as possible across plans and reflect Title IV liabilities). After receiving company complaints about inaccuracies, the PBGC adopted their suggestion that, in the future, the PBGC contact companies for needed information.

The primary reason that information available from other sources is not adequate is that assumptions differ across plans and from those of the PBGC and includes insufficient detail to enable the PBGC to make appropriate adjustment (*e.g.*, adjustments to common interest rate and mortality assumptions). In addition, much of the information otherwise available is over one and one-half years old by the time it is required to be reported.

The survey conducted in compiling the Top 50 List has demonstrated the usefulness of this technique in fulfilling various agency responsibilities. The collection of information for which the PBGC now is seeking OMB approval would replace it and solicit essentially the same information.

If approved, this voluntary collection of information will request responses to several items of plan funding information from companies that, based on corporate annual reports, pension plan annual reports (Form 5500 filings), and premium declarations (PBGC Form 1 filings), appear to have significant pension plan underfunding. The PBGC anticipates that its significant pension underfunding criterion of $25 million or more (in the aggregate) will result in a survey population of about 300 to 350 companies. Specifically, the PBGC will send each company a letter informing it of data that the PBGC has on benefits and assets of single-employer plans covered by Title IV of ERISA and asking the company to verify (or correct) these data and to provide information on the interest and mortality assumptions used to value plan benefits. At their option, respondents may choose also to provide information on guaranteed benefits and actions taken to improve pension funding. (In particular, companies will be given the option of providing documentation of pension contributions made by September 15 of each year so that the PBGC may include such contributions in the final value of pension plan assets.) Two simple forms will be included for the company's response.

If approved, the PBGC will use responses to the survey to improve the accuracy and completeness of information obtained from other sources and used in various agency efforts, including estimating the potential exposure of the single-employer termination insurance program, legislative and other policy analyses, selecting plan for monitoring, responding to congressional requests for information on companies whose plans are significantly underfunded, and identifying for the public the companies with the largest levels of underfunding under covered plans (including the amount of underfunding by company).

The PBGC expects to survey 300 to 350 companies, for an average of 325 annually. Assuming that 90% of those surveyed will choose to respond (even though this collection of information is voluntary) and 15% of those surveyed will elect to calculate guaranteed benefits, the PBGC estimates the time needed to respond to the survey at 5 hours for those that locate and assemble existing information (including, at their option, documentation of additional pension contributions or information on other actions to improve future funding) and review the PBGC's adjustments and at 15 hours (*i.e.*, an additional 10 hours) for those that also calculate guaranteed benefits, for an average response time of 6.67 hours per respondent and a total annual burden of 1,950 hours.

Issued in Washington, DC this 25th day of April, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–10411 Filed 4–29–94; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33959; International Series Release No. 660; File No. SR–Phlx–94–11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Adoption of a Customized Strike Facility for Foreign Currency Options

April 25, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 4, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.[1] The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt new Rule 1069 to provide for the listing and trading of currency options with customized strike prices. Rules 1002 and 1047, which address exercise limits and trading rotations, respectively, are also being amended accordingly. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] On March 22, 1994, the Exchange filed Amendment No. 1 to the proposed rule change to specify that requests for quotes and responsive quotes for customized strike options will be promptly reported to the Options Price Reporting Authority and disseminated as administrative text messages. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), Commission, dated March 22, 1994 ("Amendment No. 1"). On April 9, 1994, the Exchange filed Amendment No. 2 to the proposed rule change to: (1) revise the procedure in proposed Rule 1069(b) for executing a trade using customized strike prices; and (2) provide that the quote spread parameters for customized strike options will be twice those provided in Phlx Rule 1014(c). See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, ODEO, Division, Commission, dated April 8, 1994 ("Amendment No. 2").

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Phlx states that the purpose of the filing is to adopt a procedure whereby foreign currency option traders and their customers will have the ability, within specified limits, to designate their own option exercise price parameters on a trade. The Exchange now lists specific series of options on foreign currencies that have exercises or strike prices in set intervals at or near the spot price of the underlying currency on which the options are traded. Users of the Phlx foreign currency option market will now have the ability to trade foreign currency options having a chosen exercise price, regardless of whether it is a listed exercise price at the time. These options will be called "customized strike options."

In the over-the-counter market, foreign currency options users currently have the ability to designate the terms of such options with respect to expiration date, exercise style, exercise price, and size. The participants in that customized market are typically institutional investors and banks, investors that often buy and sell options in large size transactions. Users of the Phlx market, because of the selection of expiration dates, strike prices, and exercise styles currently listed on the Exchange, already have a significant ability to dictate the terms of a foreign currency option contract. Once this new rule is adopted, Phlx market participants will also be able to trade foreign currency options with any chosen exercise price, regardless of whether it is not one that has already been listed within the given parameters set by the Phlx.

Customized strike options will be available for all currently listed foreign currency options, including cross-rate options but excluding cash-spot options. The customized strike option contracts may also be either American or European-style and may have any expiration date currently available for non-custom options, including long-term options with terms up to three years out.[2]

By giving these institutional customers and banks the ability to further customize options they wish to trade on an exchange, the Phlx believes they will be able to better manage their risks and hedge their portfolios, while receiving all of the protections and benefits an organized exchange can provide. Also, by having the Options Clearing Corporation ("OCC") as the issuer and guarantor of the customized strike options, the Phlx believes that concerns regarding contra-party creditworthiness and option exercise performance are greatly reduced. Finally, the Phlx believes that the real time dissemination of requests for quotes, responsive quotes, and last sale information through the Options Price Reporting Authority ("OPRA") will help promote and achieve market transparency in these options.

Customized strike options will be subject to all Exchange rules and regulations regarding surveillance and sales practices. Unless specifically exempted, all floor trading procedures will also be adhered to. Examples of different procedures for customized strike options include no continuous quoting, no opening or closing rotations, and restrictions as to exercise.[3] Examples of similar trading practices include position limits and maximum quote spread parameters. Position and exercise limits for customized strike options will be the same as those provided for existing options on the same underlying currency and positions in these options will be aggregated with existing options in calculating position and exercise limits.

The Exchange believes that these options are better suited to large institutional and bank traders rather than individuals and will therefore tailor the product to such traders by requiring a minimum size for any trade that may occur. Quotes may not be requested and trades may not be executed in a series with no open interest for less than 300 contracts. Responsive quotes to series with no open interest must be at least 300 contracts for assigned ROTs and 100 contracts for non-assigned ROTs. Responsive quotes and transactions in currently opened series may be the lesser of 100 contracts or the remaining number of contracts. Current methods of quoting will be used for these options.

A 300 contract trade could have an underlying equivalent value of approximately $12 million, depending on the specified currency. Because of the relatively large size of the potential trades, the Exchange will impose higher net capital requirements for ROTs trading in customized strike options. Assigned ROTs will be subject to a $1 million minimum net liquid assets requirement and all other ROTs will be subject to a $250,000 minimum net liquid assets requirement. In accordance with Exchange Rule 722, these options will be margined the same as regular foreign currency options since the underlying currency and settlements will be identical.

The proposed trade execution procedure is as follows.[4] A participant will come into the trading crowd and request a quote in a customized strike option. The crowd will now have a standard time (as described below) in which to submit responsive quotes. No trade may occur until the expiration of the response period unless at least two assigned ROTs have quoted a market. During the response time, existing time priority and parity rules will apply in order to determine who will participate on the contra-side of the order except that if an assigned ROT has made a market and another participant betters the market, the assigned ROT will have an opportunity to match that better market if he voices that market prior to the execution of the trade.[5]

The Foreign Currency Options Committee ("Committee") has determined that the response period should be a standard predefined interval that may only change at the direction of the Committee and with adequate notice to the membership and the Commission. Acceptable time periods may be within the range of one to ten minutes and will be set by the Committee prior to the start-up of trading in the customized strike options. For example, the Committee may set the time period to two minutes for all trades.

When a request for a quote is voiced in the trading crowd, it and all responsive quotes will be displayed and reported to OPRA and disseminated as an administrative text message over the

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[2] The Phlx has received approval to trade long-term foreign currency options with dates up to three years out. See Securities Exchange Act Release No. 30672 (May 6, 1992), 57 FR 20546 (May 13, 1992). However, the Exchange is presently only listing options with expirations as long as two years out and currently expects to only trade customized strike options with expirations up to two years out.

[3] As proposed, the lesser of 100 contracts or the remaining number of contracts may be exercised. See Amendment No. 2, *supra* note 1.

[4] *Id.*

[5] Because, under the proposal, assigned ROTs would be required to maintain higher net capital and make larger markets in unopened series than unassigned ROTs, the Exchange believes that giving the assigned ROTs this benefit will encourage ROTs to register for assignments in the customized strike options and thereby provide liquidity.

OPRA System.[6] Additionally, once a trade is consummated, it will also be reported to OPRA and disseminated as an administrative text message over the OPRA System. The specialist will not be obligated to make continuous markets in customized options where open interest has been created. OCC will clear and settle the options. Because quotes in these options will not be continuously updated or otherwise priced by the Exchange, OCC will generate a theoretical price based on the prices of currently listed series and the closing value of the underlying foreign currency. OCC will use this price to mark the options daily and calculate margin requirements.

Acknowledging the consistent volatility of the foreign currency market, the Phlx believes that customized strike options should bode well for the investors speculating and hedging on the relative performance of the various economies, as reflected by their currencies.

Finally, the quote spread parameters applicable to customized strike options will be double the existing parameters for listed series provided in Rule 1014.[7] The Exchange believes the existing quote spread parameters are too narrow for use with options such as these which have customized features.[8]

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by providing foreign currency option market participants with strike prices more closely suited to their trading strategies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are inviting to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–11 and should be submitted by May 23, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10395 Filed 4–29–94; 8:45 am]

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[6] See Amendment No. 1, *supra* note 1.

[7] See Amendment No. 2, *supra* note 1.

[8] Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, ODEO, Division, Commission, on April 14, 1994.

[9] 17 CFR 200.30(a)(12) (1993).

[Release No. 34–33956; File No. SR–PSE–93–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to Its Minor Rule Plan

April 22, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal Rule Change

The Exchange is proposing to amend its Minor Rule Plan ("MRP") by adding certain violations to the list of those subject to the expedited disciplinary procedures set forth in PSE Rule 10.13. The Exchange also is proposing to amend its recommended fine schedule for MRP violations. The text of the proposed rule change is available at the Office of the Secretary, the PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] On March 30, 1994, the Exchange filed Amendment No. 1 to the proposal, which: (1) Eliminated from inclusion in the Exchange's Minor Rule Plan and the Recommended Fine Schedule violations of certain rules which are pending before the Commission and have not yet been approved (See File Nos. SR–PSE–93–10 and SR–PSE–93–26); and (2) deleted a cross-reference to another rule which also is pending before the Commission and has not yet been approved (See File No. SR–PSE–93–19). See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Thomas N. McManus, Esq., Division of Market Regulation, SEC, dated March 28, 1994.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

PSE Rule 10.13(a) provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization for any violation of an Exchange rule that has been determined to be minor in nature.[2] The purpose of Rule 10.13 is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under PSE Rule 10.3 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 10.13 provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules that are eligible for Rule 10.13 procedures specifies those rule violations that may be the subject of fines under the rule and also includes a schedule of fines.

The Exchange is proposing to amend its MRP by adding the following violations of Exchange rules and policies to the MRP: (1) Members who act as Floor Brokers and Market Makers trading in excess of 100 contracts per month as a Market Maker without a Primary Appointment (PSE Rule 6.38(c)); (2) Failure to request a market to be removed from the screen when leaving the trading crowd (PSE Rule 6.37, Com. .03; PSE Rule 6.46, Com. .04); (3) Failure to meet 75% Primary Appointment requirement (PSE Rule 6.35, Com. .03); (4) Failure to meet 60% in-person trading requirement (PSE Rule 6.37, Com. .07); (5) Unauthorized use of telephones located in the options trading post areas; (6) Short Sale Rules (PSE Rule 5.18(a)–(f)); [3] (7) Inadequate staffing at specialist post (prior to the opening) (PSE Rule 5.28(c)–(d)); (8) Failure to furnish in a timely manner books, records, or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions (PSE Rule 2.12(c)); and (9) Failure to notify the Exchange of a change of address where notices may be served (PSE Rule 1.13).

The Exchange also is proposing to amend its Recommended Fine Schedule for MRP violations. The proposed amendments include recommended fines for first-, second-, and third-time violations for each of the rule violations proposed to be added to the MRP. The Exchange also is proposing that certain Options and Equity Floor Decorum and Minor Trading Rule Violations[4] be calculated on a running two-year basis, so that a second violation of the same provision within two years will be subject to the next highest fine (*e.g.*, the second violation that occurs within a two-year period will be treated as a second occurrence). However, the Exchange is specifying that violations of certain Equity Floor Decorum and Minor Trading Rules be considered on a running one-year basis consistent with existing provisions to the effect in the Equity Floor Procedure Advices.

The Exchange believes that violations of the rules contained in this proposal are either objective or technical in nature, and easily verifiable, and therefore lend themselves to the use of streamlined disciplinary procedures and the use of a fine schedule. The Exchange further believes that the proposal will enhance the Exchange's enforcement capabilities, will provide effective deterrence, and will allow for just sanctions for minor violations of the specified rules. The Exchange notes that, pursuant to Rule 10.13(f), nothing in the MRP requires the Exchange to impose a fine for a violation of a rule under the MRP, and if the Exchange determines that any violation is not minor in nature, the Exchange at its discretion may proceed under Rule 10.3 rather than under the MRP.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade. The Exchange also believes that the proposed rule change will advance the objectives of section 6(b)(6) of the Act in that it will provide a procedure whereby members can be disciplined appropriately in those instances when a violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–31 and should be submitted by May 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

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[2] The Exchange's MRP initially was approved by the Commission in 1985. See Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985). On June 24, 1993, the Commission approved a number of amendments to the MRP, including the addition of certain rules to the list of MRP violations and revisions to the Exchange's Recommended Fine Schedule. See Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993).

[3] See, *e.g.*, NYSE Rule 476A (¶ 2476A); Amex Rule 590(g)(1).

[4] PSE Rule 10.13(h) and (i), respectively.

[5] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94–10355 Filed 4–29–94; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35–26034]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 22, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 16, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Metropolitan Edison Company (70–8401)

Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19640, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 50(a)(5) and 54 thereunder.

Met-Ed proposes to organize a special purpose subsidiary ("Med-Ed Capital") as either a limited liability company under the Delaware Limited Liability Company Act ("LLC Act") or a limited partnership under the Pennsylvania or Delaware Revised Uniform Limited Partnership Act. Met-Ed may also organize a second special purpose wholly-owned subsidiary under the Delaware General Corporation Law ("Investment Sub") for the sole purpose of either (i) acquiring and holding a second class of Met-Ed Capital common interests so as to comply with the requirement under the LLC Act that a limited liability company have at least two members or (ii) acting as the general partner of Met-Ed Capital, assuming a limited partnership structure. Met-Ed Capital will then issue and sell from time to time in one or more series through June 30, 1996 up to $125 million aggregate stated value of preferred limited liability company interests or limited partnership interests, in the form of Monthly Income Preferred Stock, $25 per share stated value ("MIPS").

Met-Ed and Investment Sub will acquire all of the common interests or, alternatively, Met-Ed or Investment Sub will acquire all of the general partnership interests, as the case may be, of Met-Ed Capital for up to $35 million ("Equity Contribution"). Met-Ed will enter into a loan agreement with Met-Ed Capital under which Met-Ed Capital will loan to Met-Ed both the Equity Contribution and proceeds from the sale of the MIPS from time to time, and Met-Ed will issue to Met-Ed Capital its unsecured promissory notes ("Notes") or subordinated debentures ("Subordinated Debentures") evidencing such borrowing.

Met-Ed will also unconditionally guarantee ("Guaranty") (i) payment of dividends or distributions on the MIPS, if and to the extent Met-Ed Capital has declared dividends or distributions out of funds legally available therefor, (ii) payments to the MIPS holders of amounts due upon liquidation of Met-Ed Capital or redemption of the MIPS, and (iii) certain additional amounts that may be payable in respect of the MIPS.

Each Note or Subordinated Debenture will have an initial term of up to 30 years, and may be extended by Met-Ed for up to an additional 20 years, and may be extended by Met-Ed for up to an additional 20 years, subject to certain specified conditions. Prior to maturity, Met-Ed will pay only interest on the Notes or Subordinated Debentures at a rate equal to the dividend rate on the related series of MIPS. Such interest payments will constitute Met-Ed Capital's only income and will be used by it to pay monthly dividends or distributions on the MIPS and dividends or distributions on the common interests or the general partnership interests of Met-Ed Capital. The dividend or distribution rates, payment dates, redemption and other similar provisions of each MIPS series will be identical to the interest rates, payment dates, redemption and other similar provisions of the Note or Subordinated Debenture issued by Met-Ed with respect thereto.

Each Note or Subordinated Debenture and related Guaranty will be subordinate to all other existing and future indebtedness for borrowed money of Met-Ed and will have no cross-default provisions with respect to other Met-Ed indebtedness. However, Met-Ed may not declare and pay dividends on its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due (whether or not previously deferred) under the Notes or Subordinated Debentures and the Guaranties have been made.

It is expected that Met-Ed's interest payments on the Notes or Subordinated Debentures will be deductible for income tax purposes and that Met-Ed Capital will be treated as a partnership for federal income tax purposes. Consequently, it is represented that MIPS holders and Met-Ed (and Investment Sub) will be deemed to have received partnership distributions in respect of their dividends or distributions from Met-Ed Capital and will not be entitled to any "dividend received distribution" under the Internal Revenue Code.

The MIPS may be redeemable at the option of Met-Ed Capital (with the consent of Met-Ed) at a price equal to their stated value plus any accrued and unpaid dividends, (i) at any time after five years from their date of issuance, or (ii) in the event that (w) Met-Ed Capital is required by applicable tax laws to withhold or deduct certain amounts in connection with dividends, distributions or other payments, or (x) Met-Ed Capital is subject to federal income tax with respect to interest received on the Notes or Subordinated Debentures or is otherwise not treated as a partnership for federal income tax purposes, or (y) it is determined that the interest payments by Met-Ed on the Notes or Subordinated Debentures are not deductible for federal income tax purposes, or (z) Met-Ed Capital becomes subject to regulation as an "investment company" under the Investment Company Act of 1940. Upon the occurrence of any of the events in clause (ii) above, Met-Ed may also have the right to dissolve Met-Ed Capital and exchange the MIPS for Subordinated Debentures or, if Met-Ed's borrowings are evidenced by Subordinated Debentures, to distribute the Subordinated Debentures to the MIPS holders.

In the event that Met-Ed Capital is required by applicable tax laws to withhold or deduct certain amounts in connection with dividends, distributions or other payments, Met-Ed Capital may also have the obligation, if the MIPS are not redeemed or exchanged, to "gross up" such payments so that the MIPS holders will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. In such latter event, the Guaranties would also cover any such "gross up" obligations.

Met-Ed represents that it will not use any of the net proceeds of the borrowings to acquire, either directly or indirectly, any interest in any EWG or FUCO.

Finally, Met-Ed seeks an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereof in order to begin negotiations with prospective underwriters and/or selling agents with respect to the sale of the MIPS. It may do so.

Pennsylvania Electric Company (70-8403)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding Company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 50(a)(5) and 54 thereunder.

Penelec proposes to organize a special purpose subsidiary ("Penelec Capital") as either a limited liability company under the Delaware Limited Liability Company Act ("LLC Act") or a limited partnership under the Pennsylvania or Delaware Revised Uniform Limited Partnership Act. Penelec may also organize a second special purpose wholly-owned subsidiary under the Delaware General Corporation Law ("Investment Sub") for the sole purpose of either (i) acquiring and holding a second class of Penelec Capital common interests so as to comply with the requirement under the LLC Act that a limited liability company have at least two members or (ii) acting as the general partner of Penelec Capital, assuming a limited partnership structure. Penelec Capital will then issue and sell from time to time in one or more series through June 30, 1996 up to $125 million aggregate stated value of preferred limited liability company interests or limited partnership interests, in the form of Monthly Income Preferred Stock, $25 per share stated value ("MIPS").

Penelec and Investment sub will acquire all of the common interests or, alternatively, Penelec or Investment Sub will acquire all of the general partnership interests, as the case may be, of Penelec Capital for up to $35 million ("Equity Contribution"). Penelec will enter into a loan agreement with Penelec Capital under which Penelec Capital will loan to Penelec both the Equity Contribution and the proceeds from the sale of the MIPS from time to time, and Penelec will issue to Penelec Capital its unsecured promissory notes ("Notes") or subordinated debentures ("Subordinated Debentures") evidencing such borrowings.

Penelec will also unconditionally guarantee ("Guaranty") (i) payment of dividends or distributions on the MIPS, if and to the extent Penelec Capital has declared dividends or distributions out of funds legally available therefor, (ii) payments to the MIPS holders of amounts due upon liquidation of Penelec Capital or redemption of the MIPS, and (iii) certain additional amounts that may be payable in respect of the MIPS.

Each Note or Subordinated Debenture will have an initial term of up to 30 years, and may be extended by Penelec for up to an additional 20 years, subject to certain specified conditions. Prior to maturity, Penelec will pay only interest on the Notes or Subordinated Debentures at a rate equal to the dividend rate on the related series of MIPS. Such interest payments will constitute Penelec Capital's only income and will be used by it to pay monthly dividends or distributions on the MIPS and dividends or distributions on the common interests or the general partnership interests of Penelec Capital. The dividend or distribution rates, payment dates, redemption and other similar provisions of each MIPS series will be identical to the interest rates, payment dates, redemption and other similar provisions of the Note or Subordinated Debenture issued by Penelec with respect thereto.

Each Note or Subordinated Debenture and related Guaranty will be subordinate to all other existing and future indebtedness for borrowed money of Penelec and will have no cross-default provisions with respect to other Penelec indebtedness. However, Penelec may not declare any pay dividends on its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due (whether or not previously deferred) under the Notes or Subordinated Debentures and the Guaranties have been made.

It is expected that Penelec's interest payments on the Notes or Subordinated Debentures will be deductible for income tax purposes and that Penelec Capital will be treated as a partnership for federal income tax purposes. Consequently, it is represented that MIPS holders and Penelec (and Investment Sub) will be deemed to have received partnership distributions in respect of their dividends or distributions from Penelec Capital and will not be entitled to any "dividend received distribution" under the Internal Revenue Code.

The MIPS may be redeemable at the option of Penelec Capital (with the consent of Penelec) at a price equal to their stated value plus any accrued and unpaid dividends, (i) at any time after five years from their date of issuance, or (ii) in the event that (w) Penelec Capital is required by applicable tax laws to withhold or deduct certain amounts in connection with dividends, distributions or other payments, or (x) Penelec Capital is subject to federal income tax with respect to interest received on the Notes or Subordinated Debentures or is otherwise not treated as a partnership for federal income tax purposes, or (y) it is determined that the interest payments by Penelec on the Notes or Subordinated Debentures are not deductible for federal income tax purposes, or (z) Penelec Capital become subject to regulation as an "investment company" under the Investment Company Act of 1940. Upon the occurrence of any of the events in clause (ii) above, Penelec may also have the right to dissolve Penelec Capital and exchange the MIPS for Subordinated Debentures or, if Penelec's borrowings are evidenced by Subordinated Debentures, to distribute the Subordinated Debentures to the MIPS holders.

In the event that Penelec Capital is required by applicable tax laws to withhold or deduct certain amounts in connection with dividends, distributions or other payments, Penelec Capital may also have the obligation, if the MIPS are not redeemed or exchanged, to "gross up" such payments so that the MIPS holders will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. In such latter event, the Guaranties would also cover any such "gross up" obligations.

Penelec represents that it will not use any of the net proceeds of the borrowings to acquire, either directly or indirectly, any interest if any EWG or FUCO.

Finally, Penelec seeks an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereof in order to begin negotiations with prospective underwriters and/or selling agents with respect to the sale of the MIPS. It may do so.

Arkansas Power & Light Company (70–8405)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

AP&L proposes to enter into arrangements for the issuance and sale, by one or more governmental authorities (each an "Issuer"), of one or more series of tax-exempt bonds ("Tax-Exempt Bonds") in an aggregate principal amount not to exceed $200 million at one time or from time to time through December 31, 1996.

The AP&L would enter into one or more installment sale agreements or loan agreements and/or one or more supplements or amendments thereto ("Agreement") contemplating the issuance and sale by the Issuer(s) of one or more series of Tax-Exempt Bonds pursuant to one or more trust indentures and/or one or more supplements thereto ("Indenture") between the Issuer and one or more trustees ("Trustee"). The proceeds of the sale of Tax-Exempt Bonds, net of any underwriters' discounts or other expenses payable from proceeds, will be applied to acquire and construct certain pollution control or sewage and solid waste disposal facilities ("Facilities") at the AP&L's generating plants or to refinance outstanding tax-exempt bonds issued for that purpose.

If the Agreement is an installment sale agreement, AP&L would sell Facilities to the Issuer for cash and simultaneously repurchase such Facilities from the Issuer for a purchase price payable on an installment basis over a period of years. If the Agreement is a loan agreement, the Issuer will loan the proceeds of the sale of Tax-Exempt Bonds to AP&L, and AP&L will agree to repay the loan on an installment payment basis over a period of years. Such installment payments or loan repayments will be in amounts sufficient (together with any other moneys held by the Trustee under the Indenture and available for the purpose) to pay the principal or purchase price of, the premium, if any, and the interest on the related series of Tax-Exempt Bonds as the same become due and payable, and will be made directly to the Trustee pursuant to an assignment and pledge thereof by the Issuer to the Trustee as set forth in the Indenture. Under the Agreement, AP&L will also be obligated to pay (i) the fees and charges of the Trustee and any registrar or paying agent under the Indenture and, if any, the remarketing agent ("Remarketing Agent") and the tender agent ("Tender Agent"), (ii) all expenses incurred by the Issuer in connection with its rights and obligations under the Agreement, (iii) all expenses necessarily incurred by the Issuer or the Trustee under the Indenture in connection with the transfer or exchange of Tax-Exempt Bonds, and (iv) all other payments which AP&L agrees to pay under the Agreement.

The Indenture may provide that, upon the occurrence of certain events relating to the operation of the Facilities financed, the Tax-Exempt Bonds will be redeemable by the Issuer, at the direction of AP&L. Any series of Tax-Exempt Bonds may be made subject to a mandatory cash sinking fund under which stated portions of Tax-Exempt Bonds of such series are to be retired at stated times. Tax-Exempt Bonds may be subject to mandatory redemption in certain other cases. The payments by the AP&L under the Agreement in such circumstances shall be sufficient (together with any other moneys held by the Trustee under the Indenture and available therefor) to pay the principal of all Tax-Exempt Bonds to be redeemed or retired, and the premium, if any, thereon together with interest accrued or to accrue to the redemption date of such bonds.

It is proposed that the Tax-Exempt Bonds mature not less than five years from the first day of the month of issuance nor later than 40 years from the date of issuance. Tax-Exempt Bonds will be subject to optional redemption, at the direction of AP&L, in whole or in part at the redemption prices (expressed as percentages of principal amount) plus accrued interest to the redemption date, and at the times, set forth in the Indenture.

The Agreement and the Indenture may provide for a fixed interest rate or for an adjustable interest rate for each series of the Tax-Exempt Bonds as hereinafter described. If the series of Tax-Exempt Bonds has an adjustable interest rate, the interest rate during the first rate period ("Rate Period") would be determined in discussions between AP&L and the purchasers thereof from the Issuer and be based on the current tax-exempt market rate for comparable bonds having a maturity comparable to the length of the initial Rate Period. Thereafter, for each Rate Period, the interest rate on such Tax-Exempt Bonds would be that rate which will be sufficient to remarket such Tax-Exempt Bonds at their principal amount. No series of Tax-Exempt Bonds will be issued at rates in excess of those generally obtained at the time of pricing for sales of substantially similar tax-exempt bonds (having the same maturity, issued for the benefit of companies of comparable credit quality and having similar terms, conditions and features). It is stated that, at April 18, 1994, such rate is estimated to be approximately 7% per annum for tax-exempt bonds having a maturity of 30 years, no optional redemption for the first ten years after initial issuance, and issuance and pledge of collateral first mortgage bonds as security.

Rate Period means a period during which the interest rate on such Tax-Exempt bonds of a particular series bearing an adjustable rate (or method of determination of such interest rate) is fixed. The initial Rate Period would commence on the date as of which interest begins to accrue on such Tax-Exempt Bonds. The length of each Rate Period would be not less than one day nor more than five years.

The Agreement and the Indenture would provide that holders of Tax-Exempt Bonds would have the right to tender or be required to tender their Tax-Exempt Bonds and have them purchased at a price equal to the principal amount thereof, plus any accrued and unpaid interest thereon, on dates specified in, or established in accordance with, the Indenture. A Tender Agent may be appointed to facilitate the tender of any Tax-Exempt Bonds by holders. Any holders of Tax-Exempt Bonds wishing to have such Tax-Exempt Bonds purchased may be required to deliver such Tax-Exempt Bonds during a specified period of time preceding such purchase date to the Tender Agent, if one shall be appointed, or to the Remarketing Agent appointed to offer such tendered Tax-Exempt Bonds for sale.

Under the Agreement AP&L would be obligated to pay amounts equal to the amounts to be paid by the Remarketing Agent or the Tender Agent pursuant to the Indenture for the purchase of Tax-Exempt Bonds so tendered, such amounts to be paid by AP&L on the dates such payments by the Remarketing Agent or the Tender Agent are to be made; provided, however, that the obligation of AP&L to make any such payment under the Agreement would be reduced by the amount of any other moneys available therefor, including the proceeds of the sale of such tendered Tax-Exempt Bonds by the Remarketing Agent.

Upon the delivery of such Tax-Exempt Bonds by holders to the Remarketing Agent or the Tender Agent for purchase, the Remarketing Agent would use its best efforts to sell such Tax-Exempt Bonds at a price equal to the stated principal amount of such Tax-Exempt Bonds.

In order to obtain a more favorable rating on one or more series of the Tax-Exempt Bonds and, thereby, improve the marketability thereof, AP&L may arrange for one of more irrevocable letter(s) of credit for an aggregate amount up to $226 million from a bank ("Bank") in favor of the Trustee. In such event, payments with respect to principal, premium, if any, interest and purchase obligations in connection with such Tax-Exempt Bonds coming due during the term of such letter of credit would be secured by, and payable from funds drawn under, the letter of credit. In order to induce the Bank to issue such letter of credit, the AP&L would enter into a Letter of Credit and Reimbursement Agreement ("Reimbursement Agreement") with the Bank pursuant to which AP&L would agree to reimburse the Bank for all amounts drawn under such letter of credit within a specified period (not to exceed 84 months) after the date of the draw and with interest thereon at a rate that would not exceed rates generally obtained at the time of entering into the Reimbursement Agreement companies of comparable credit quality on letters of credit having comparable terms, and, in any event, not in excess of the Bank's prime commercial loan rate plus 2%. The terms of the Reimbursement Agreements would correspond to the terms of the letter of credit.

It is anticipated that the Reimbursement Agreement would require the payment by AP&L to the Bank of annual letter of credit fees not to exceed 1.25% of the face amount of the letter of credit per annum and perhaps an up-front fee not to exceed 0.25% of the face amount of the letter of credit. Any such letter of credit may expire or be terminated prior to the maturity date of related Tax-Exempt Bonds and, in connection with such expiration or termination, such Tax-Exempt Bonds may be made subject to mandatory redemption or purchase on or prior to the date of expiration or termination of such letter of credit, possibly subject to the right of owners of Tax-Exempt Bonds not to have their Tax-Exempt Bonds redeemed or purchased. Provision may be made for extension of the term of any such letter of credit for the replacement thereof, upon its expiration or termination, by another letter of credit from the Bank or a different bank.

In addition or as an alternative to the security provided by a letter of credit, in order to obtain a more favorable rating on Tax-Exempt Bonds and consequently improve the marketability thereof, AP&L may (a) determine to provide an insurance policy for the payment of the principle of and/or interest and/or premium on the Tax-Exempt Bonds, and/or (b) provide security for holders of Tax-Exempt Bonds, and/or the Bank equivalent to the security afforded to holders of first mortgage bonds outstanding under AP&L's mortgage by obtaining the authentication of and pledging one or more new series of first mortgage bonds ("Collateral Bonds") under the mortgage as it may be supplemented. Collateral Bonds would be issued on the basis of unfunded net property additions and/or previously-retired first mortgage bonds and delivered to the Trustee under the Indenture and/or the Bank to evidence and secure AP&L's obligation to pay the purchase price of the related Facilities or repay the loan made by the Issuer under the Agreement and AP&L's obligation to reimburse the Bank under the Reimbursement Agreement.

These Collateral Bonds could be issued in several ways. First, if the Tax-Exempt Bonds bear a fixed interest rate, Collateral Bonds could be issued in a principal amount equal to the principal amount of such Tax-Exempt Bonds and bear interest at a rate equal to the rate of interest on such Tax-Exempt Bonds. Secondly, they could be issued in a principal amount equivalent to the principal amount of such Tax-Exempt Bonds plus an amount equal to interest on those bonds for a specified period. In such a case, Collateral Bonds would bear no interest. Thirdly, Collateral Bonds could be issued in a principal amount equivalent to the principal amount of such Tax-Exempt Bonds or in such amount plus an amount equal to interest on those bonds for a specified period, but carry a fixed interest rate that would be lower than the fixed interest rate of the Tax-Exempt Bonds. Fourthly, they could be issued in a principal amount equivalent to the principal amount of Tax-Exempt Bonds at an adjustable rate of interest, varying with such Tax-Exempt Bonds.

No series of Collateral Bonds will be issued at interest rates in excess of those of the related series of Tax-Exempt Bonds (the rate of which is described above). The maximum aggregate principal amount of the Collateral Bonds would be $226 million. The terms of the Collateral Bonds relating to maturity, interest payment dates, if any, redemption provisions and acceleration will correspond to the terms of the related Tax-Exempt Bonds. Upon issuance, the terms of the Collateral Bonds will not vary during the life of such series except for the interest rate in the event the Collateral Bonds bear interest at an adjustable rate.

It is contemplated that the Tax-Exempt Bonds may be sold by the Issuer pursuant to arrangements with an underwriter or a group of underwriters or by private placement in a negotiated sale or sales. The AP&L will not be party to the underwriting or placement arrangements; however, the Agreement will provide that the terms of the Tax-Exempt Bonds, and their sale by the Issuer, shall be satisfactory to AP&L.

The AP&L has been advised that the interest rates on tax-exempt bonds have been and are expected at the time(s) of issuance of Tax-Exempt Bonds to be lower than the interest rates on bonds of similar tenor and maturities and comparable quality, interest on which is fully subject to Federal income tax.

The AP&L shall not use the proceeds from the Agreement to enter into refinancing transactions unless: (1) The estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after tax basis, greater than the present value of all repurchasing, redemption, tendering an issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Energy Corporation and its subsidiaries, consolidated; or (2) AP&L shall have notified the Commission of the proposed refinancing transaction (including the terms thereof) by post-effective amendment hereto and obtained appropriate supplemental authorization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–10396 Filed 4–29–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License #06/06-0298]

Southern Ventures, Inc.; Notice of License Surrender

Notice is hereby given that Southern Ventures, Inc., ("SVI"), 605 Main Street, Suite 202, Arkadelphia, Arkansas 71923, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). SVI was licensed by the Small Business Administration on November 30, 1988.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 28, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Company)

Dated: April 21, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-10367 Filed 4-29-94; 8:45 am]

BILLING CODE 8025-01-M

[License #02/02-0334]

Venture SBIC, Inc.; Notice of License Surrender

Notice is hereby given that Venture SBIC, Inc., ("Venture"), 249-12 Jericho Turnpike, Floral Park, New York 11001, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Venture was licensed by the Small Business Administration on November 23, 1977.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 13, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 21, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-10368 Filed 4-29-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94-033]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking additional applicants for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). The Committee is a nineteen member federal advisory committee that advises the Coast Guard on matters related to the training, qualification, licensing, certification and fitness of seamen serving in the U.S. merchant marine.

DATES: Membership applications must be received by July 1, 1994.

ADDRESSES: Persons interested in applying should write to Commandant (G-MVP-3), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Miller, Assistant to the Executive Director, MERPAC, room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0224.

SUPPLEMENTARY INFORMATION: On September 21, 1993, the Coast Guard published a notice in the **Federal Register** (58 FR 49080) requesting applications for six openings for the Committee. This notice announces that the number of openings has increased from six to seven. The Coast Guard seeks applications for an additional member in the category of shipping company manager. The Committee consists of 19 members as follows: Ten active U.S. merchant mariners (three deck officers; three engineering officers; two unlicensed seamen; one staff officer; and one pilot); five marine educators (three from maritime academies, two of whom should be associated with State maritime academies; and two from other maritime training institutions); two shipping company managers; and two persons from the general public. Terms are expiring in the following categories: (a) Active Merchant Mariner (two positions—one deck officer and one engineering officer); (b) Certified Staff Officer (one position); (c) Marine Educator (two positions—one Maritime Academy and one Maritime Training); (d) Shipping Company Manager (one position); (e) General Public (one position). The membership term is three years. No member may hold more than two consecutive three-year terms. Those persons that submitted applications in reply to the September 21, 1993 notice, need not reapply.

The Coast Guard received a number of letters expressing concern that the inland, river and near coastal industries are not adequately represented on the committee. In the October notice members of these industries were encouraged to apply. Interested members of these industries are again encouraged to apply.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided. The Committee normally meets in Washington, DC, with working group meetings for specific problems on an as-required basis.

Dated: April 14, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-10446 Filed 4-29-94; 8:45 am]

BILLING CODE 4910-14-M

[CGD 94-039]

Chemical Transportation Advisory Committee (CTAC)

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee will hold its annual meeting to review and discuss issues relating to the marine transport of hazardous materials in bulk.

DATES: The meeting will be held on Thursday, June 16, 1994, from 9:30 a.m. to 3 p.m. Written material should be submitted no later than June 9, 1994.

ADDRESSES: The meeting will be held in room 2415, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20953-0001. Written material should be submitted to Commandant (G-MTH-1), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593-0001, Attn: Commander K.J. Eldridge.

FOR FURTHER INFORMATION CONTACT: Commander K. J. Eldridge or Mr. F. K. Thompson, U.S. Coast Guard Headquarters (G-MTH-1), 2100 2nd street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App 2 § 1 *et seq.*

The agenda of the Committee meeting will be as follows:

1. Opening remarks—RADM Henn.
2. Chairman's remarks and general interest topics.
3. Introduction and swearing-in of new members.
4. Presentation of awards.
5. Issue briefs:
   Applicability of OPA-90 to chemical tank ships.
   Human factors and the Coast Guard.
   Tankerman regulations.
   Maritime regulatory reform.
   Tank Level or Pressure Monitoring Devices.
6. Subcommittee reports:
   46 CFR Part 151 revision.
   Tank filling limits.
   Benezene and other chemicals.
   Marine vapor control systems.
7. New tasks and initiatives:
   Fire fighting capabilities of marine facilities.
   Chemical compatibility table—industry questionnaire.
8. International activities update.
9. Other business:
   The Marine Safety Network.
   Status of the coast Guard's Inert Gas Systems field survey.
   Overview of the National Oil Pollution Fund Center; liability under OPA.
10. Closing.

Attendance at the above meeting is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Dated: April 19, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-10444 Filed 4-29-94; 8:45 am]

BILLING CODE 4910-14-M

[CGD 94-037]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee will meet to provide recommendations and guidance to the Commander, Eighth Coast Guard District, on navigation safety matters affecting the Houston/Galveston area. The meeting is open to the public.

DATES: The meeting will be held on Thursday, May 19, 1994, and will begin at approximately 9 a.m. and end at approximately 1 p.m.

ADDRESSES: The meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: J.P. Novotny, LT, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-2389.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda for the meeting consists of the following items:

(1) Call to Order.

(2) Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.

(3) Discussion of previous recommendations made by the Committee.

(4) Presentation of any additional new items for consideration of the Committee.

(5) Adjournment.

Members of the public may present written or oral statements at the meeting.

Dated: April 14, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94-10445 Filed 4-29-94; 8:45 am]

BILLING CODE 4910-14-M

[CGD 94-036]

Merchant Marine Personnel Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and working groups will meet to discuss various issues. Agenda items include discussions of physical standards and licensing requirements. All meetings will be open to the public.

DATES: The working groups will meet on June 14, 1994, from 8:30 a.m. to 4 p.m. The full committee will meet on June 15, 1994, from 9 a.m. to p.m. Written material should be submitted not later than June 1, 1994.

ADDRESSES: The meetings will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. Written material should be submitted to CDE Scott J. Glover, MERPAC Executive Director, Commandant (G-MVP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Commander Scott J. Glover, Commandant (G-MVP), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267-0213.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The agenda will include discussion of the following topics:

(1) Review of the recommendations from the Focus Group report, "Licensing 2000 and Beyond", including discussion on the use of simulator based training and testing, and the Coast Guard examination process.

(2) Review of the recommendations from the Coast Guard report, "Review of Marine Safety Issues Related to Uninspected Towing Vessels."

(3) Physical standards for merchant mariners.

(4) Revision of the MERPAC's charter to allow representation of the river, inland, and near coastal mariners on the committee.

Attendance is open to the public. With advance notice, and the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to maker oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 20 copies to the Executive Director no later than June 1, 1994.

Dated: April 25, 1994.

J. F. McGowan,

Captain, US Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-10447 Filed 4-29-94; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Availability of Final Environmental Assessment (Final EA) and Draft Mitigated Finding of No Significant Impact (FONSI)/Record of Decision (ROD); Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of documents and soliciting comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the availability of a Final EA and a Draft of a Mitigated FONSI/ROD. Interested parties are invited to submit comments on the proposed Mitigated FONSI/ROD. Based on the information received, the FAA will make a determination whether to approve the proposed Mitigated FONSI/ROD or prepare an EIS on the proposed development at Greater Rockford Airport, Rockford, Illinois. Major development items, proposed to be completed over the next 5 to 10 years, are depicted on the Airport Layout Plan (ALP). Comments are solicited before the FAA makes its final determination whether to prepare an Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois, 60018 (708) 294–7524.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Illinois Department of Transportation, Division of Aeronautics, and the Greater Rockford Airport Authority have agreed to prepare a Final Environmental Assessment (Final EA) for proposed development at Greater Rockford Airport. Below is a listing of major, associated and indirect development projects. This listing includes United Parcel Service's (UPS) recent announcement to initiate a cargo hub facility at the airport.

1. Develop the midfield area for aviation-related industrial users.

2. Expand the existing cargo apron and buildings west of the existing terminal building to accommodate a minimum of 26 cargo aircraft.

3. Extend Runway 7/25 to a length of 10,000 feet by constructing a 3,500-foot southwesterly extension with parallel and connecting taxiways and associated lighting and navigation aids. This would include the installation of a CAT II Instrument Landing System (ILS) for Runway 7.

4. Relocate approximately 12,000 feet of Belt Line Road and 9,300 feet of Kishwaukee Road.

5. Expand the existing terminal building and auto parking lot and upgrade the existing airport entrance roadway.

6. Construct a general aviation apron and T-hangars.

7. Close Runway 13/31.

8. Remove miscellaneous support buildings.

9. Construct a new 4,000-foot general aviation visual approach runway, parallel to and 5,100 feet southeast of existing Runway 7/25, with associated taxiways and instrumentation.

10. Construct and realign various taxiways parallel to Runway 1/19. The majority of the realignment work proposed is adjacent to and west of the approach end of Runway 19.

11. Implement actions recommended in the 1993 Master Drainage/Stormwater Management Plan.

12. Implement actions recommended in the updated Noise Compatibility Plan.

13. Acquire approximately 1,100 acres of land for airfield development. In addition to this acquisition, is the relocation of up to 28 residential dwellings (for noise and floodway mitigation), of which only eleven are considered to be noise impacted and must be acquired and residents relocated prior to the start of any operation resulting from the Proposed Action Alternative. The remaining residential dwellings would be acquired for purposes of airfield development and floodway mitigation. Those dwellings identified as floodway mitigation can be acquired either in fee-simple or through restrictive covenant. (Updated)

14. Compensate for wetland impacts caused by the development of the Proposed Action Alternative through the creation of approximately 25 acres of new wetlands.

15. An additional 1,500 flights annually beyond those originally forecasted but with a greater number of stage three aircraft. This is based on UPS's proposal to initiate an air cargo operation at Greater Rockford Airport.

The FAA issued a **Federal Register** Notice on April 22, 1993 announcing its intent to prepare an Environmental Document (possible Environmental Impact Statement) and to hold a May 26, 1993 scoping meeting. At the scoping meeting no significant impacts were identified. Some concerns were expressed over possible noise, floodplain and wetland impacts. The airport sponsor indicated that any impacts would be mitigated below the level of significance as an integral part of the development.

The FAA issued a subsequent **Federal Register** Notice on February 17, 1994 announcing the availability of the Draft Environmental Document and provided additional opportunity for scoping comments for the refined listing of the major, associated and indirect development projects, incorporating items scoped originally and those newly identified as part of the UPS proposed development. Notice was also given for a March 22, 1994 public hearing with written comments being received until April 6, 1994.

Public involvement and the Final Environmental Assessment indicates that this development would not result in any potentially significant impacts on the human environment and that a Mitigation FONSI/ROD is appropriate. Additionally, this information indicates that an EIS is not warranted based on the findings made under each specific impact category. The Mitigated FONSI/ROD will incorporate specific mitigation measures as an integral part of the project. The purpose of this notice is to provide the public an opportunity to submit information to the FAA prior to its reaching a decision on this matter.

In accordance with 40 CFR 1501.4(e) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before the FAA makes its final determination on the Mitigated FONSI. Interested individuals, Government agencies, and private organizations are invited to send comments on the proposed Mitigated FONSI/ROD to the address set forth above. Absent receipt of information showing that an EIS is needed, the FAA anticipates that it will sign the Mitigated FONSI/ROD thirty days after this notice appears in the **Federal Register**. The Final EA and its supporting documentation may be viewed during normal business hours at the following locations:

Airport Manager's Office, Greater Rockford Airport Authority, 3600 Airport Drive, Rockford, Illinois 61125–0063

Rockford City Clerk's Office, Rockford City Hall, 1201 Broadway, Rockford, Illinois

Winnebago County Courthouse, County Clerk's Office, 400 West State, Rockford, Illinois

Rockford Public Library, 215 North Wyman, Rockford, Illinois

Illinois Department of Transportation, Division of Aeronautics, One Langhorne Drive, Capitol Airport, Springfield, Illinois

Federal Aviation Administration, Chicago Airports District Office, 2300

East Devon Avenue, Des Plaines, Illinois 60018.

A copy of the Draft Mitigated FONSI/ROD is available for review at the FAA—Chicago Airports District Office (address identified above).

Issued in Des Plaines, Illinois on April 21, 1994.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 94–10386 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

Availability of Solicitation for Center of Excellence (COE) in Airport Pavement Research

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of an open solicitation of aviation research grant proposals to establish an FAA Center of Excellence in Airport Pavement Research. The FAA is responsible for developing standards for airport pavement design, evaluation, and maintenance. Together with the airport operators and industry, the FAA spends nearly $2 billion annually for airport construction and maintenance. Plans for the introduction of new, larger, and heavier aircraft weighing more than a million pounds have necessitated a re-examination of the current pavement design methodologies. The COE for pavement research will assist the FAA to develop advanced design methodologies which are validated through full-scale testing. The FAA grant award will provide long-term funding to establish and operate the COE in support of pavement research.

The grant recipient is required to match FAA funds with non-Federal funding over the term of the grant.

DATES: Solicitation packages may be obtained by contacting the COE Program Manager. The closing date for submitting final proposals is June 8, 1994.

ADDRESSES: Contact Ms. Patricia Watts, The Office of Research and Technology Applications, ACL, Building 270, Atlantic City International Airport, New Jersey, 08405, telephone (609) 485–5043 or (609) 485–5901, Fax number (609) 485–6509 or (609) 485–4020.

SUPPLEMENTARY INFORMATION: The FAA intends to award a grant to establish a Center of Excellence in Airport Pavement Research at a qualified college or university. The Center will conduct basic research in four major areas: modeling of airport pavement structures, constitutive behavior of payment materials, material characterization and new technologies in pavement evaluation.

Eligibility

Colleges and universities are eligible for grants to establish a Center of Excellent in Airport Pavement Research. The FAA is seeking to ensure an equitable geographical distribution of funds and to encourage the inclusion of minority institutions.

Matching Funds Requirement

A Center of Excellence receives funding annually in the form of single or multiple continuing research grants over a three year period. The Federal Government provides 50 percent of the cost to establish and operate a Center of Excellence. The institution must show a continuing source of non-Federal matching funds available for the remaining research and operational expenses at the Center. Once the COE is established, a fiscal year declaring the source and amount of funding and expenditures must be submitted for review every 6 months to The Office of Research and Technology Applications at the FAA Technical Center. A full review and grant close-out takes place at the conclusion of each three-year phase.

The Center of Excellence and the agency shall agree upon the maximum expected costs in each fiscal year. Any cost incurred in excess of the maximum costs agreed upon with the agency shall be the sole obligation of the Center of Excellence.

The Center of Excellence is expected to account for all funds granted and matched, utilized to establish, operate, and conduct the specified research activities of the Center of Excellence.

Maintenance of Effort and Center Operations

A Center of Excellence is required to maintain its aggregate expenditures from all other sources for establishing and operating a Center of Excellence and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding November 5, 1990. The establishment of a Center of Excellence is intended to augment the level of aviation research activities at the institution.

The Center of Excellence must maintain a close working relationship with the corresponding agency research program office. This relationship extends to participation in conferences, meetings, joint research efforts, and submission of significant activity reports to the FAA on a routine basis. The COE prepares quarterly and semi-annual reports, and a fully inclusive annual report on research projects and fiscal expenditures, and hosts an on-site review of all research activities.

The FAA may require the COE to hold an annual joint symposium with the agency on topics relating to the status and results of the designated technology area. Researchers at the COE may serve as consultants by providing technical advice to the sponsoring agency program office. They may also be asked to participate on major planning and investigative committees related to airport pavement technology.

The COE will be selected on the basis of the following criteria:

—The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

—The demonstrated research and extension resources available to the applicant for carrying out the intent of the legislation.

—The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

—The extent to which the applicant has an established air transportation program.

—The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

—The research projects that the applicant proposes to carry out under the grant.

Research Area

Aircraft technology has made giant strides in the past thirty years by successfully incorporating advances made in a host of other technologies. These advanced technologies include composite materials, high temperature alloys, inertial navigation, fly-by-wire controls, and other areas where the performance and economics could be improved in even the smallest increments.

In comparison, airport pavement technologies have advanced little during this time. Current design methods for asphalt and concrete pavements for airports use unrelated theories that cannot be applied when combinations of these materials are used. This is a commonly encountered problem that can only be resolved by using equivalency factors, which are judgmentally chosen. This approach to the design of airport pavements must be replaced with a common methodology based on sound theoretical principles and test validated models. We must take advantage of enhanced computational abilities to provide the flexibility of dealing with the various permutations of complex landing gear configurations that must be analyzed with each new proposed aircraft design. The aircraft will have different types of landing gear layouts that are quite different from current ones, with more wheels on each landing gear strut, and the struts closely spaced around the center of the aircraft.

The current FAA pavement design and evaluation methodologies need to be improved for analyzing and airport pavement response and requirements of new aircraft, such as the triple tandem Boeing B–777 and much heavier models reaching 1.3 million pounds. As a result of this new methodology, the FAA will be able to deal more efficiently with aircraft manufactures, the airlines, and airport owners. These key players of the aerospace industry all require an FAA and International Civil Aviation Organization sanctioned procedure for estimating pavement response because it is critical in selling aircraft, in planning new airline route and services, and in protecting the billions of dollars already invested in airport pavements. Delays in resolving these problems will jeopardize the smooth introduction of new large aircraft. Pavement structure is basically a composite system consisting of asphalt, concrete, and soils of various types. This system exhibits viscoelastic, inelastic, brittle, and plastic behavior when subjected to moving wheel loads. Mechanics of pavement failure and methodology to predict pavement life, particularly when the new generations of aircraft are introduced, are not known. Development of new methodology requires fundamental analyses and pavement evaluation.

Who May Apply

1. Colleges and universities may submit proposals for grant awards to establish and operate the COE in Airport Pavement Research.

2. Individuals are not eligible for a DOE designation and do not qualify for grants under this program.

3. Before final proposal submission, the proposal may be discussed with the Center of Excellence Program Manager, Ms. Patricia Watts, in the Office of Research and Technology Applications, ACL–1, at (609) 485–5043/(609) 485–5901 or FAX (609) 485–6509/(609) 485–4020.

Award Date

The final selection of the Center of Excellence in Airport Pavement Research Technology will be announced by the Administrator by September 30.

Issued in Atlantic County, New Jersey on April 15, 1994.

Lonni Czekalski,

Deputy Director, FAA Technical Center.

[FR Doc. 94–10387 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Duluth International Airport, Duluth, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Duluth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 1, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Grinden, Executive Director, Duluth Airport Authority, at the following address: Duluth Airport Authority, Duluth International Airport, Duluth, Minnesota 55811.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Duluth Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Duluth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 8, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Duluth Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 19, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1994.

Proposed charge expiration date: March 31, 1996.

Total estimated PFC revenue: $562,248.

Brief description of proposed project(s):

1. PAPI's to Serve Runways 09 & 27
2. Runway 03/21 Distance Remaining Signs
3. Rehabilitation of the Terminal and G.A. Ramps
4. Install Jet Bridge
5. Runway Visibility Zone Grading
6. Design Taxiway "K" (Phase I), Relocate Utility Ducts
7. Installation of Airport Signs and Land Acquisition
8. Conduct FAR Part 150 Noise Compatibility Study
9. Study for a SRE Maintenance and ARFF Facility
10. Prepare and Coordinate PFC Application Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators, including those who filed FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Duluth Airport Authority.

Issued in Des Plaines, Illinois, on April 21, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–10388 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Quincy Municipal Airport-Baldwin Field, Quincy, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Quincy Municipal Airport-Baldwin Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 1, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, room 260, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Leon Kowalski, City Engineer, City of Quincy at the following address: City Hall, 507 Vermont Street, Quincy, Illinois 62301.

Air carriers and foreign air carriers may submit copies of written comments previously provided to City of Quincy under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites comment on the application to impose and use the revenue from a PFC at Quincy Municipal Airport-Baldwin Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 4, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Quincy was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 22, 1994.

The following is a brief overview of the application:

Level of proposed PFC: $3.00.

Proposed charge effective date: September 1, 1994.

Proposed charge expiration date: June 30, 1997.

Total estimated PFC revenue: $122,217.00.

Brief description of proposed projects:

1. Overlay Taxiways and Main Entrance Road
2. Install Perimeter Fencing
3. Acquire SRE
4. Grading and Drainage for East Quadrant
5. Install Taxiway Guidance Signs
6. Replace HIRL's R/W 4/22 and MIRL's R/W 13/31
7. Improvements to Terminal Building to Comply with ADA
8. Replace Taxiway Lights
9. Acquisition of a Hydraulic Lift
10. Construct New Electrical Vault and Upgrade Equipment
11. Update Airport Layout Plan Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Charters

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application at the City Hall in Quincy.

Issued in Des Plaines, Illinois, on April 21, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division; Great Lakes Region.

[FR Doc. 94–10389 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

Transfer of Federally Assisted Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Act, as amended (FT Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Suburban Bus Division of the RTA (PACE) intends to transfer its Wilmette Bus Facility at 711 Laramie Avenue, on the western border of Wilmette, Illinois, west of the Edens Expressway.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA, Region 5 Office, of its interest, by June 1, 1994.

ADDRESSES: Interested parties should notify the Regional Office by writing to FTA Region 5, 55 East Monroe Street, Room 1415, Chicago, Illinois 60603).

FOR FURTHER INFORMATION CONTACT: Louise Carter, Director of the Office of Program Oversight, (312)353–2883 or Ann Catlin, Office of Grants Management at (202) 366–1647.

SUPPLEMENTARY INFORMATION:

Background

Section 12(k) of the FT Act, as amended, provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Administrator may authorize the transfer of such assets to any public body to be used for any public purpose with no further obligation to the Federal Government.

Section 12(k)(2) Determinations

The provision also provides that before the FTA may authorize such a transfer for a non-transit use, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the FT Act for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of section 12(k)(2)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in section 12(k)(2) (A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The Wilmette Bus Facility located at 511 Laramie Avenue, on the Western border of the Village of Wilmette, Illinois, a 15,959 square foot, one story on slab, brick and metal panel constructed addition to an existing public works maintenance facility on a six-acre parcel owned by the Village of Wilmette, Illinois. The facility was constructed in 1985 by PACE.

Issued on: April 26, 1994.

Joel P. Ettinger,

Regional Administrator.

[FR Doc. 94–10433 Filed 4–29–94; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 22, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Examination Quality Measurement System (EQMS) Satisfaction Survey
Description: The data collected will be used to get an indication of whether the IRS is providing satisfactory service to its customers the taxpayers. This information will be used by IRS managers to determine if current programs and service are meeting program needs. The need for further evaluation of our service and programs will be indicated by this effort.
Respondents: Individuals or households
Estimated Number of Respondents: 32,000
Estimated Burden Hours Per Respondent: 14 minutes
Frequency of Response: Monthly
Estimated Total Reporting Burden: 7,467 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–10424 Filed 4–29–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review.

April 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0238
Form Number: W–2G
Type of Review: Extension
Title: Certain Gambling Winnings
Description: Internal Revenue Code (IRC) section 6041 requires payers of certain gambling winnings to report them to IRS. If applicable, section 3402(q) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.
Respondents: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations
Estimated Number of Respondents: 6,400
Estimated Burden Hours Per Respondent: 19 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 564,200 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–10425 Filed 4–29–94; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Information Reporting Program Advisory Committee; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Information Reporting Program Advisory Committee

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC). The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program.

There will be a meeting of IRPAC on Tuesday and Wednesday, May 17 & 18, 1994. The meeting will be held in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 9:30 a.m., on both days, concluding about mid-day on the 20th. Topics to be discussed are listed below in a draft version of the agenda.

Draft Agenda for Meeting on May 17 & 18, 1994

Tuesday, May 17, 1994

9:30—Public Meeting Opens.
11:30—Break for Lunch.
1:00—IRPAC Presentations Continue.
4:30—Adjourn for the Day.

Wednesday, May 18, 1994

9:30—Public Meeting Reconvenes.
12:00—Adjourn.

The topics that will be covered are as follows: Revision of the EIN System, Wage Reporting Simplification Project, W–2 Demonstration Project, Reporting of U.S. Source Income to Foreign Persons, Tax Systems Modernization, Civil Penalty Administration, Electronic Filing of Form W–4, On-line TIN Matching Prototype, Form 1099 Standardization, Internal/External Communication, Form 1099R Revisions, Form 1099 Electronic Filing Results, Credit Cards and 1099 Filings, Acceleration of W–2 Reporting Due Dates, Third-Party Payer Situations, and Cancellation of Indebtedness Reporting.

Note: Last minute changes to the topics under discussion are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC reports to the Executive Director, Information Reporting Program (IRP), who is the executive responsible for information reporting and is charged with its systemwide planning and improvement. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance and reduction of burden. IRPAC is currently comprised of 18 representatives from various segments of the private sector payer community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two meetings each year.

DATES: The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of IRPAC and IRS officials. Twenty-five seats will be reserved for the public and press and are available on a first-come, first-served basis. Due to the limited conference space, notification of intent to attend this meeting should be made with John Guthrie no later than May 13, 1994. Mr. Guthrie can be reached at 202–622–3583 (not a toll-free number). Notification of intent to attend should include your name, organization and phone number.

ADDRESSES: If you would like to have IRPAC consider a written statement, please write to Kate LaBuda at IRS, IRP Planning and Management Staff, EX:I:P, room 2011, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: To give notification of intent to attend this meeting, call John Guthrie at 202–622–3583 (not a toll-free number). For information about IRPAC, in general, or about the agenda for this meeting, call Kate LaBuda at 202–622–3404 (not a toll-free number).

Dated: April 21, 1994.

Approved:

Diane Brown,

Acting Staff Chief Planning and Management Staff Information Reporting Program.

[FR Doc. 94–10328 Filed 4–29–94; 8:45 am]

BILLING CODE 4830–01–U

Customs Service

[T.D. 94–43]

Recordation of Trade Name: "PresenTense"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On February 03, 1994, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "PresenTense," was published in the **Federal Register** (59 FR 5221). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than April 04, 1994. No responses were received in opposition to the notice. Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "PresenTense," is recorded as the trade name used by MGP Corporation, a corporation organized under the laws of the State of Virginia, located at 21440 Pacific Boulevard, Sterling, Virginia 20167.

The trade name is used in connection with household ceramic articles, including tableware and dinnerware.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue NW., (Franklin Court), Washington, DC 20229 (202 482–6960).

Dated: April 22, 1994.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 94–10327 Filed 4–29–94; 8:45 am]

BILLING CODE 4820–02–P

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Region 6 Advisory Board

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Change of meeting date and location.

SUMMARY: This is to announce a change in the date and location for the Region 6 Advisory Board meeting scheduled for April 27 as published in the **Federal Register**, April 13, 1994, page 17635. The meeting is rescheduled for April 29 at the U.S. Grant Hotel, 326 Broadway, San Diego, California. The meeting was changed in acknowledgement of the President's Executive Order for the closing of government agencies in a mark of respect for Richard M. Nixon.

DATE: Friday, April 29, 9 a.m to 12:30 p.m.

ADDRESS: U.S. Grant Hotel, 326 Broadway, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232 202/416–2626.

Dated: April 26, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–10364 Filed 4–26–94; 11:14 am]

BILLING CODE 2222–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in exhibit, "Odilon Redon: Prince of Dreams" (see list)[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at The Art Institute of Chicago from on or about June 25, 1994, to on or about September 18, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 26, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–10418 Filed 4–28–94; 8:45 am]

BILLING CODE 5–2–94

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[1] A copy of this list may be obtained by contacting Ms. Neila Sheehan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

UNITED STATES TRADE REPRESENTATIVE

Trade Policy on Tobacco Exports

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice and request for public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice of the Task Force on Tobacco Exports under the TPSC and requests public comment on the development of U.S. health and trade policies related to the export of U.S. tobacco products.

DATES: Comments are due May 27, 1994.

SUBMIT COMMENTS TO: Greg Schneider, Director, Consumer Goods, Office of the U.S. Trade Representative, 600 17th Street, room 422A, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Director, Consumer Goods, Office of the U.S. Trade Representative, 600 17th Street, Room 422A, Washington, DC 20506, Telephone 202–395–6160, Facsimile 202–395–3911; and Michael Eriksen, Sc.D., Director, Office of Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, Department of Health and Human Services (HHS), Mail Stop K–50, 4770 Buford Highway NE, Atlanta, GA 30341, Telephone 404–488–5701, Facsimile 404–488–5976.

SUPPLEMENTARY INFORMATION:

I. Background

The TPSC established the Task Force on Tobacco Exports in December 1993 to conduct a comprehensive review of the U.S. Government's trade and health policies considerations as they relate to U.S. tobacco product exports. The Task Force is cochaired by Chris Marcich, the Assistant USTR for Environment and Natural Resources, Office of the U.S. Trade Representative and Phil Lee, the Assistant Secretary for Health, Department of Health and Human Services.

The mission of the Task Force is to review U.S. policy with respect to tobacco products in light of trade policy considerations, economic and health concerns, U.S. laws and regulations, and international agreements, and to make appropriate recommendations for consideration by the Administration.

II. Request for Comments:

The Task Force is seeking public comment to assist its mission. The Task Force is interested in reviewing published or unpublished materials on the following subjects and issues, as well as other relevant information and data:

- U.S. trade, health, or product specific laws, regulations, guidelines, and other written policies that may relate to the export of U.S. tobacco products;
- International (bilateral or multilateral) rules, agreements, and understandings that may relate to the export of tobacco products;
- Any relevant information on U.S. Government involvement in marketing, advertising, distribution, and promotion of tobacco products;
- Policies of the World Health Organization, the United Nations Children's Fund, the World Bank, and similar international organizations that may relate to international commerce in tobacco products (including smoking/health policies and lending policies);
- Information on the relationship between market opening or trade liberalization measures and international consumption of tobacco products (as measured by rates of sales, prevalence, or other indices), including the effect of price, income, or demographics data;
- Any information comparing U.S. tobacco products or marketing practices (including advertising, promotion, distribution, and product physical characteristics) with foreign tobacco products and marketing practices;
- Relevant information relating to the impact of tobacco exports on the U.S. labor force, U.S. balance of trade, or similar economic and social national interests.
- The public is invited to provide comments on any of these specific areas or on other aspects of the Task Force's work. Comments must be filed in English and provided in twenty copies to the address specified above. Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential information must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket that is open to public inspection.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–10423 Filed 4–29–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register,
Vol. 59, No. 83
Monday, May 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 3, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

1. *Pride in Public Service*

The Commission will present the Pride in Public Service Award to April's recipient.

2. *Mouthwash Containing Ethanol*

The Commission will consider a Federal Register notice that proposes a child-resistant packaging requirement under the Poison Prevention Packaging Act for mouthwash containing ethanol.

3. *Upholstered Furniture Petition FP 93-1*

The staff will brief the Commission on options for Commission action on petition FP 93-1 from the National Association of State Fire Marshals requesting development of a flammability standard for upholstered furniture.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: April 26, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94-10580 Filed 4-28-94; 3:28 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 5, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance and litigation matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: April 26, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94-10581 Filed 4-28-94; 3:28 pm]

BILLING CODE 6355-01-M

U.S. COMMISSION ON CIVIL RIGHTS

DATES AND TIME: Friday, May 6, 1994, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of April Meeting
III. Announcements
IV. Executive Session to Discuss Personnel Rules and Practices of the Commission
V. Staff Report
VI. State Advisory Committee Reports
- Hate Crimes in Indiana: A Monitoring of the Level, Victims, Locations, and Motivations
- White Supremacist Activity in Montana
- The Use and Abuse of Police Powers: Law Enforcement Practices and the Minority Community in New Jersey

VII. Rescheduling of New York Hearing and Scheduling of Future Hearings
VIII. Future Agenda Items
1:00 p.m. Briefing on Americans with Disabilities Act

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105 (TDD 202-376-8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Dated: April 26, 1994.

Emma Monroig,

Solicitor.

[FR Doc. 94-10514 Filed 4-28-94; 11:04 am]

BILLING CODE 6335-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: April 25, 1994, 59 FR 19750.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 27, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The date of the Commission meeting originally scheduled for April 27, 1994, has been changed to April 26, 1994, at 2:00 p.m. The change in the date of the meeting is necessary because Federal Government offices will be closed on April 27, which has been declared a national day of mourning for former President Richard M. Nixon.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10520 Filed 4-28-94; 11:04 am]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:11 a.m. on Tuesday, April 26, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) an application for Federal deposit insurance for Leeds Federal Savings Bank, a proposed new federally chartered stock savings bank, to be located at 1101 Maiden Choice Lane, Baltimore, Maryland, and (2) matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Johnathan L. Feichter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington DC.

Dated: April 26, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–10513 Filed 4–28–94; 11:04 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, May 3, 1994, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the Corporation's corporate, supervisory, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Patti C. Fox, Acting Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 26, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–10481 Filed 4–26–94; 4:50 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, May 3, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Request for authority to purchase laptop computers.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 323 of the Corporation's rules and regulations, entitled "Appraisals," which, among other things, increase to $250,000 the threshold at or below which appraisals are not required.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Patti C. Fox, Acting Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 26, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–10480 Filed 4–26–94; 4:50 pm]

BILLING CODE 6714–01–M

federal register

Monday
May 2, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Allowable Carbon Dioxide Concentration in Transport Category Airplane Cabins; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 27704; Notice No. 94–14]

RIN 2120–AD47

Allowable Carbon Dioxide Concentration in Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the standards for maximum allowable carbon dioxide (CO_2) concentration by reducing the allowable maximum concentration from 3 percent to 0.5 percent in occupied areas of transport category airplanes. This action is in response to a recommendation from the National Academy of Sciences to review the CO_2 limit in airplane cabins, and would provide a cabin CO_2 concentration equivalent to that recommended for buildings.

DATES: Comments must be received on or before August 30, 1994.

ADDRESSES: Send comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 27704, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments in triplicate to: Federal Aviation Administration, room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked Docket No. 27704. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM–7), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments in the information docket may be examined in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bob McCracken, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2118.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, federalism, or economic impacts that might result from adoption of the proposal contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27704." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In October 1984, the Department of Transportation was directed by Congress (Pub. L. 98–466) to commission the National Academy of Sciences (NAS) to conduct an independent study on the cabin air quality in transport category airplanes. The NAS formed the Committee on Airliner Cabin Air Quality to study all safety aspects of airliner cabin air quality, and submitted its report, "The Airliner Cabin Environment—Air Quality And Safety," to the FAA on August 12, 1986. The report includes 19 recommendations for legislative, regulatory, and air transport industry changes in relation to airliner cabin air quality. One of the recommendations relates to the allowable carbon dioxide (CO_2) concentration in the airplane cabin. This action is a result of that recommendation. For the purposes of this notice, the term, "cabin" is meant to include the passenger cabin, the flight deck, lower lobe galleys, crew rest areas, and any other occupied areas in a transport category airplane.

Discussion

Carbon dioxide is the product of normal human metabolism, which is the predominant source in aircraft cabins. The CO_2 concentration in the cabin depends on the ventilation rate, the number of people present, and their individual rates of CO_2 production, which varies with activity and (to a smaller degree) with diet and health. The carbon dioxide concentration level is frequently used as an indication of general air quality. At concentrations above a given level, complaints of poor air quality or "stuffiness" begin to appear.

The current maximum CO_2 limit of § 25.831(b)(2) of the Federal Aviation Regulations (FAR) is 3 percent by volume, sea level equivalent. This 3 percent limit was incorporated into § 4b.371 of the Civil Air Regulations (CAR) by Amendment 4b–6 on March 5, 1952. This limit was carried over into 14 CFR part 25 of the FAR when this part was codified in 1965. This high limit was established to allow for increases in the carbon dioxide levels in the crew compartment to ensure that, in aircraft with built-in carbon dioxide fire extinguishing systems, safe carbon dioxide concentrations would not be exceeded in the crew compartment when combating fires in cargo compartments.

The American Conference of Governmental Industrial Hygienists (ACGIH) has adopted a short-term exposure limit (STEL) for CO_2 of 30,000 parts per million (3 percent). The 3 percent limit specified in part 25 may therefore be satisfactory as a short-term limit, but is inappropriate for a steady-state condition. However, the NAS Committee notes in their report that this 3 percent limit is much higher than the limits adopted by the air conditioning industry for buildings and other types of interior environments, and recommends that the limit specified in part 25 be revised to more closely match the currently acceptable limits. The FAA concurs.

In contrast to the 3 percent limit specified in part 25, Standard 62–1989, prepared by the American Society of

Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), recommends a CO_2 limit of 1,000 parts per million (PPM), or 0.1 percent. As CO_2 concentration in the air increases, there is an increase in both the rate and the depth of breathing, reaching twice the normal rate at 3 percent concentration. At 3 percent concentration, there is some discomfort; at higher concentrations, headache, malaise, and fatigue occur, and the air is reported by those affected as being stale. People can function for long periods of time at levels of CO_2 as high as 1 percent (as in nuclear submarines), but it is generally felt by ASHRAE that 0.1 percent is a better limit. This value, however, is based on the dissipation of smoke and odors and not on health considerations. According to the ASHRAE Standard 62–1989, a steady-state CO_2 concentration of 0.1 percent would require a fresh-air ventilation rate of 15 cubic feet per minute (cfm) per person. In the old standard (62–1981), ASHRAE recommended a limit of 0.5 percent for office buildings and other occupied spaces, but suggested that 0.25 percent would provide an additional safety factor.

The Occupational Safety and Health Administration (OSHA), in 29 CFR 1910.1000, sets an interim (transitional) limit for CO_2 at 5,000 ppm or 0.5 percent, with a final rule limit of 10,000 ppm or 1 percent, which becomes effective December 31, 1993. The increase to 1 percent is apparently in deference to operators of commercial bakeries and breweries, both of which generate a significant amount of CO_2 in their processes. The FAA does not believe it is appropriate to base the allowable CO_2 concentration in transport category airplanes on the needs of specific manufacturing processes. Other commercial enterprises have no difficulty in meeting the existing OSHA limit of 0.5 percent.

The American Conference of Governmental Industrial Hygienists, in its "Documentation of the Threshold Limit Values and Biological Exposure Indices—Sixth Edition," also recommends 0.5 percent as the time weighted average limit for repeated daily exposure by workers. The FAA proposes adopting this value as a limit. A concentration limit of 0.5 percent is considered to be appropriate because there are no documented safety or health benefits associated with a lower value. Parties reviewing this document are encouraged to comment on values between 0.1 percent and the existing 3 percent limit, and to provide justification for any recommendations. The FAA may determine, based on the comments, that a limit different from 0.5 percent is appropriate and change the final rule accordingly.

Copies of the pertinent documents from ASHRAE, OSHA, and ACGIH have been placed in the public docket for this proposed rulemaking.

Cabin ventilation provides air for dilution of airborne contaminants, and supplies oxygen for passengers and crew. Oxygen requirements for sedentary adults can be met with a fresh-air ventilation rate of only 0.24 cubic feet per minute (CFM) per person. This low ventilation rate is also sufficient to dissipate the water vapor produced by cabin occupants. Ventilation rates for current transport category airplanes vary from a low of approximately 7 cfm per person (with one or more air conditioning packs turned off for economy), to over 20 cfm per person (which includes up to 50 percent filtered, recirculated air). Thus, even at the lowest ventilation rates available on current aircraft, there is no significant reduction in the percentage of oxygen, or increase in the amount of water vapor in the cabin due to respiration. Ventilation for the control of CO_2 buildup due to respiration is therefore the factor that dictates design parameters for ventilation systems, although many airplane systems are sized much larger than the minimum required for passenger comfort. Contamination of air with CO_2 varies inversely with the ventilation rate, because CO_2 production by sedentary people is nearly constant.

In order to bring the maximum allowable carbon dioxide concentration into concert with accepted modern limits, this NPRM proposes to reduce the maximum allowable carbon dioxide concentration from the current value of 3 percent to 0.5 percent. According to ASHRAE, for sedentary people, this concentration can be maintained by a fresh air flow rate of 2.25 cfm, which is lower than that currently measured in transport category aircraft.

Section 25.831(b)(2) currently states that "Carbon dioxide in excess of three percent * * * is considered hazardous in the case of crewmembers." The health and comfort considerations discussed earlier are equally valid for passengers. Therefore, the FAA proposes to remove the reference to crewmembers. In addition, § 25.831(b)(2) currently contains the following sentence: "Higher concentrations of carbon dioxide may be allowed in crew compartments if appropriate protective breathing equipment is available." This sentence was incorporated when the 3 percent limit was established in CAR 4b.371 in 1952. As noted above, the origins of the 3 percent limit are unclear, but it is likely that the limit was set at this high level to account for the discharge of CO_2 fire extinguishers in the flight deck or cabin. This thesis is supported by the mention of protective breathing in the existing rule. However, most CO_2 extinguishers have been replaced by Halon or other types of fire extinguishers. Further, the rule is not intended to cover the short-duration rise in CO_2 concentration that would accompany discharge of a fire extinguisher. Removal of the sentence from § 25.831(b)(2) is proposed because it is no longer considered necessary or appropriate.

Section 25.831 also specifies a limit for carbon monoxide (CO) concentration of 1 part in 20,000 parts air (0.005 percent). This limit is the same as currently recommended by ASHRAE and the Occupational Safety and Health Administration (OSHA), and therefore this notice does not propose to change this limit.

Regulatory Evaluation

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, State and local governments.

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that would justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not have a negative impact on international trade. These analyses, available in the docket, are summarized below.

Costs

Carbon dioxide (CO_2) is a byproduct of human metabolism and is expelled through respiration. The proposed rule would reduce the maximum allowable CO_2 concentration, as specified in § 25.831(b)(2), from 3 percent to 0.5 percent in occupied areas of transport category airplanes.

In a confined space, the production of CO_2 is a function of the number of people present, their activity levels, and, to a lesser extent, their diet and health. The concentration of CO_2 in an aircraft is controlled by ventilation of the cabin through the introduction of outside air through the aircraft's environmental control system. For a given set of production and ventilation conditions, the resulting CO_2 concentration can be calculated reliably. In addition, engineering analyses have been conducted to determine the fuel that is consumed in providing a unit rate of ventilation.

Taken together, these functional relationships make it possible to calculate the costs necessary to maintain CO_2 concentrations at a given level under established conditions. It is estimated that the current 3 percent CO_2 concentration limit can be maintained at a cost of .3 cents per passenger-hour. The lower proposed 0.5 percent limit would cost approximately 2.1 cents per passenger-hour, and would constitute an increase of 1.8 cents per passenger-hour. It should be noted that these are "zero baseline" estimates, and do not take into account the cost associated with the fresh air already introduced into the airplane for pressurization and other purposes. In actuality, existing and probable new airplanes currently have and will in the future be designed to have fresh air inflow rates that provide air with a CO_2 concentration well below the proposed 0.5 percent. For this reason, there are no actual costs associated with this proposal.

Benefits

CO_2 is naturally present at low concentration (.03 percent) in outdoor air. When CO_2 is inhaled in progressively elevated concentrations, it may act to produce stimulation of the respiratory center, mild narcotic effects, and asphyxiation, depending on the concentration and the duration of exposure. Numerous studies have been conducted to determine the effects of exposure to elevated CO_2 concentrations. At concentrations of 2 to 3 percent, CO_2 produces effects such as headaches, breathing difficulty, and increases in blood pressure and pulse. By comparison, no symptoms are induced at the proposed 0.5 percent level.

Cost-Benefit Comparison

A strict cost-benefit evaluation of the proposed rule change itself, without consideration of the fact that operators currently comply with the proposed standard, concludes that the cost of the increased ventilation necessary to reduce CO_2 concentration from 3 percent to 0.5 percent would be 1.8 cents per passenger-hour. The proposed reduction would prohibit CO_2 concentration levels known to produce effects such as headaches, breathing difficulty, and increases in blood pressure and pulse. While no precise economic value has been assigned to this benefit, the FAA believes that it would be worth more than 1.8 cents per hour per passenger to avoid such ill effects.

The evaluation described above looks solely at the proposed change in the rule. In fact, the minimum ventilation in current transport category aircraft maintains CO_2 concentrations below the proposed 0.5 percent concentration. Accordingly, it is estimated that no direct incremental costs or benefits would result from this proposed rule. The rule would, however, preclude future certificated airplane models from being designed to operate at CO_2 concentrations above the 0.5 percent level. Because this dictates a minimum design requirement for CO_2 concentration in new airplane types, and any airplane must be operated in accordance with its type design, this minimum concentration would be maintained in actual operation unless a system failure occurs. In addition, an intangible benefit would accrue from the fact that the proposal would make the CO_2 concentration limit for aircraft consistent with the standards of other agencies and advisory authorities.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the proposed amendment to part 25 contained in the notice would not have a significant economic effect on a substantial number of small entities. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for determining whether a proposed or existing rule has a significant economic effect on a substantial number of small entities. Since no actual incremental costs are expected to be incurred to comply with the requirements of the proposal, it would not have a significant economic impact.

Trade Impact Statement

Since the certification rules apply to both foreign and domestic manufacturers that sell aircraft in the United States, there would be no competitive advantage to either. Since no actual costs are expected to be imposed by this rule, it would not result in a competitive trade disadvantage for U.S. manufacturers in foreign markets or for foreign manufacturers in the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Because the proposed revised standards for maximum allowable carbon dioxide concentration are not expected to result in a substantial economic cost or have a significant adverse effect on competition, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA has determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since no actual incremental costs are expected to be incurred to comply with the requirements of this proposal, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this proposed regulation, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the initial regulatory evaluation prepared for this proposal may be examined in the public docket or obtained from the person identified under the caption, **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

2. Section 25.831(b)(2) is revised to read as follows:

§ 25.831 Ventilation.

* * * * *

(b) * * *

(2) Carbon dioxide in excess of 0.5 percent by volume (sea level equivalent) is considered hazardous.

* * * * *

Issued in Washington, DC, on April 11, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 94-9759 Filed 4-29-94; 8:45 am]

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S. 2004/P.L. 103–235

To extend until July 1, 1998, the exemption from ineligibility based on a high default rate for certain institutions of higher education. (Apr. 28, 1994; 108 Stat. 381; 1 page)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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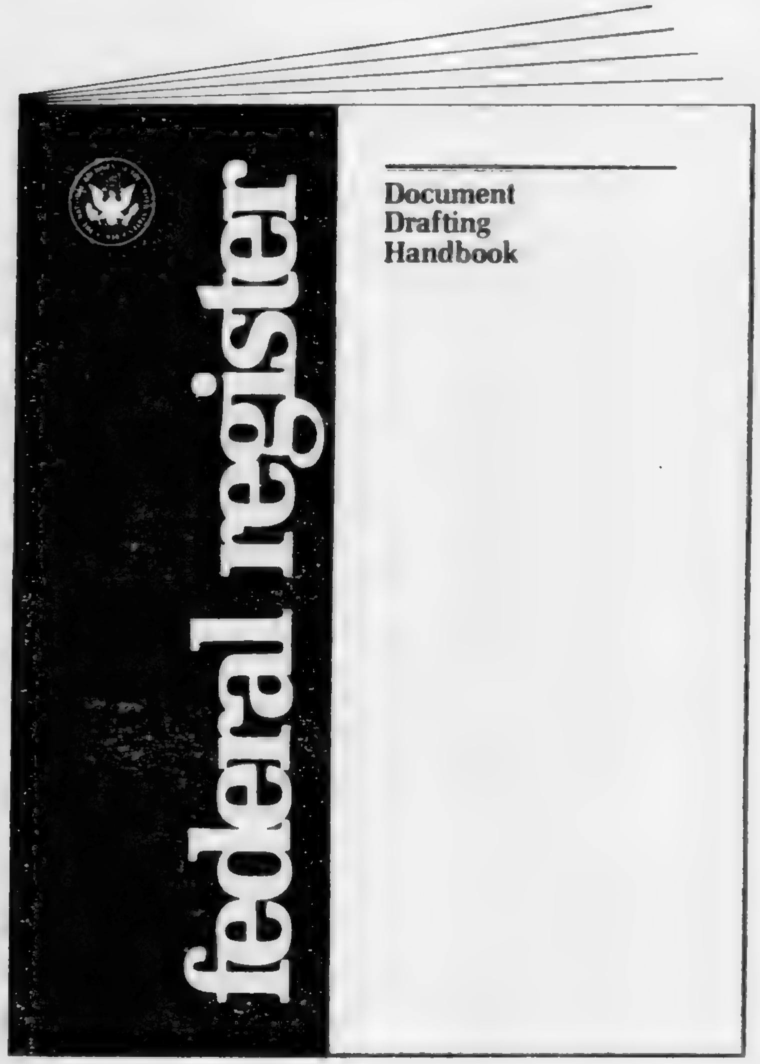

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Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Federal Register
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Tuesday, May 3, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

Food Stamp Program: Technical Amendments Concerning Disabled in Group Homes and Income Exclusion for Plans for Achieving Self-Support

AGENCY: Food and Nutrition Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final regulation (59 FR 5697) published on February 8, 1994. The regulations concerned certain provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 that dealt with disabled persons in group homes and income exclusions for Plans for Achieving Self-Support.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Background

As published, this final rule expands the food stamp eligibility of certain blind and disabled individuals residing in group homes and excludes income of an SSI recipient necessary for the fulfillment of a Plan for Achieving Self-Support (PASS). The provisions concerning the eligibility of certain blind and disabled individuals residing in group homes was effective and had to be implemented no later than February 1, 1992.

Need for Correction

The final rule as published contains an error that needs to be corrected.

Correction of Publication

Accordingly, the publication on February 8, 1994 is corrected as follows:

On page 5697, in the first column, in the paragraph entitled DATES the date "February 2, 1992" is corrected to read "February 1, 1992".

Dated: April 22, 1994.

William Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–10547 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD25

1994 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1994 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938 (1938 Act), as amended, the Secretary determined the 1994 marketing quota for burley tobacco to be 542.7 million pounds. In accordance with the Agricultural Act of 1949 (1949 Act), as amended, the Secretary determined the 1994 price support level to be 171.4 cents per pound.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3736, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–8839.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Final Regulatory Impact Analysis

A final regulatory impact analysis describing the impact of the established quota and support level is available on request from Robert L. Tarczy.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither ASCS nor the Commodity Credit Corporation is required by 5 U.S.C 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Statutory Background

This rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act. Section 1108(c) of Public Law. 99–272 provides that the determinations made in this rule are not subject to the provisions for public participation in rulemaking contained in 5 U.S.C. 553 or in any directive of the Secretary.

On February 1, 1994, the Secretary announced the national marketing quota and price support level for the 1994 crop of burley tobacco.

Marketing Quota

Section 319(c)(3)(A)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, that the Secretary, in the Secretary's discretion, determines necessary to adjust loan stocks to the reserve stock level. However, any downward adjustment in such loan inventories may not exceed the greater of 35 million pounds or 50 percent of the amount which the loan inventories exceed the reserve stock level.

Section 319(c)(3)(C) further provides that, with respect to the 1990 through 1994 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The reserve stock level is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1994 crop of burley tobacco by January 15, 1994. Six such manufacturers were required to submit such a statement for the 1994 crop and the total of their intended purchases for the 1994 crop is 324.0 million pounds. The three-year average of exports is 183.8 million pounds.

The national marketing quota for the 1993 crop year was 603.0 million pounds (58 FR 36857). Thus, in accordance with section 301(b)(14)(D), the reserve stock level for use in determining the 1994 marketing quota for burley tobacco is 90.5 million pounds.

On January 21, 1994, USDA projected that the loan coops would have in their inventories 420.5 million pounds of burley tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 165.0 million pounds.

The total of the three marketing quota components for the 1994–95 marketing year is 342.8 million pounds. However, the 1994 national marketing quota cannot be less than 90 percent of 1993's quota. Accordingly, the national marketing quota for the marketing year beginning October 1, 1994, for burley tobacco is 542.7 million pounds.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national poundage quota for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1994 crop of burley tobacco of 1,862,367 pounds is adequate for these purposes. In setting farm quotas for the 1994 burley crop, it was also determined based on past practice that a factor of 0.90 would be used to adjust preliminary farm quotas to reach the national poundage quota.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1994 crop of burley tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1994 crop of burley tobacco shall be:

(1) The level, in cents per pound, at which the 1993 crop of burley tobacco was supported, plus or minus, respectively,

(2) An adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than:

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by the tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

The difference between the two 5-year averages (i.e., the difference between (A)(I) and (II)) is 4.7 cents per pound. The difference in the cost index from January 1 to December 31, 1993, is also 4.7 cents per pound. Applying these components to the price support formula (4.7 cents per pound, two-thirds weight; 4.7 cents per pound, one-third weight) results in a weighted total of 4.7 cents per pound. As indicated, section 106 provides that the Secretary may, on the basis of supply and demand conditions, limit the change in the price support level to no less than 65 percent of that amount. In order to remain competitive in foreign and domestic markets, the Secretary used his discretion to limit the increase to 65 percent of the maximum allowable increase. Accordingly, the 1994 crop of burley tobacco will be supported at 171.4 cents per pound, 3.1 cents higher than in 1993.

List of Subjects

7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1464

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco, Warehouses.

Accordingly, 7 CFR parts 723 and 1464 are amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314c, 1314d, 1314f, 1314h, 1315, 1316, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.112 is amended by:

A. Redesignating existing text as paragraph (a), and

B. Adding paragraph (b) to read as follows:

§ 723.112 Burley (type 31) tobacco.

* * * * *

(b) The 1994-crop national marketing quota is 542.7 million pounds.

PART 1464—TOBACCO

3. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b and 714c.

4. Section 1464.19 is amended by:

A. Redesignating existing text as paragraph (a), and

B. Adding paragraph (b) to read as follows:

§ 1464.19 Burley (type 31) tobacco.

* * * * *

(b) The 1994-crop national price support level is 171.4 cents per pound.

Signed at Washington, DC, on April 22, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–10482 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94–48]

RIN 1550–AA73

Conversions From Mutual to Stock Form

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations governing mutual-to-stock conversions of insured savings associations. The purpose of these amendments is to revise, clarify and update the current regulations to strengthen the conversion standards and ensure the integrity of the conversion process.

The amendments revise and clarify the appraisal standards; prohibit the use of "running" proxies by management of converting associations; place the current tax-qualified Employee Stock Ownership Plan (ESOP) stock purchase priority after those of eligible depositors; provide stock purchase priority to long-term depositors; require that a stock purchase preference be given to eligible depositors residing in the association's local community; prohibit management stock benefit plans in a conversion; prohibit merger conversions except in supervisory situations; lengthen the conversion public comment period; require associations to submit business plans for all conversions; prohibit the repurchase of a converted association's stock within one year of conversion; and make publicly available preliminary conversion proxy materials.

Interested parties are invited to submit written comments on the conversion regulations, both as to the amendments adopted here and the issues on which comment is specifically solicited and as to any other current provisions of the conversion regulations as they relate to this interim rule.

DATES: The interim final rule is effective May 3, 1994. Written comments must be received on or before June 17, 1994. These amendments will apply to all conversion applications pending or filed on or after May 3, 1994.

ADDRESSES: Comments should be directed to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 94–48. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), James H. Underwood, Special Counsel (202/906–7354), Leon R. Pleasants, Chief Financial Analyst (202/906–6414), J. Larry Fleck, Assistant Chief Counsel (202/906–6413), V. Gerard Comizio, Deputy Chief Counsel (202/906–6411), Corporate and Securities Division, Chief Counsel's Office; Scott Ciardi, Financial Analyst (202/906–6960); David A. Sjogren, Program Manager (202/906–6739), Diana L. Garmus, Deputy Assistant Director (202/906–5683), Corporate Activities Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS has broad authority to authorize and regulate mutual to stock conversions of savings associations under sections 5(i) and (p) of the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1464(i) and (p).[1] For the past 20 years—since the OTS's predecessor, the Federal Home Loan Bank Board (FHLBB) instituted mutual to stock conversion regulations in 1974[2]—mutual to stock conversions have been a successful vehicle for bringing new capital into the thrift industry. Since 1974, over 1,000 mutual savings associations have converted to the stock form of ownership, in the process raising approximately $16 billion in new capital.

While mutual to stock conversions provide an opportunity for thrifts to raise capital, they may also provide an opportunity for an association's insiders to engage in transactions that transfer to the insiders an inappropriate amount of a converting association's value. Thus, the OTS mutual to stock conversion regulations reflect standards and safeguards developed over the years to maintain the integrity of the conversion process, to ensure safety and soundness by responding to the potential for abuses in thrift conversions and to allow the conversion process to function effectively as a capital raising tool.

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[1] The OTS also has broad authority to approve and regulate mutual savings and loan holding companies under section 10(o) of HOLA, 12 U.S.C. 1467a(o).

[2] 39 FR 9142 (March 7, 1974).

The OTS mutual to stock conversion regulations seek to balance concerns such as a fair opportunity for participation by account holders and the desire to infuse significant amounts of new capital into converting savings associations. In addition, the regulations are structured to assure that a savings association receives fair value for its conversion stock and to prevent insider abuse by governing the manner and extent to which a savings association's insiders and their associates, individually and in the aggregate, may acquire stock and other benefits in a conversion.

In recent months, mutual to stock conversions have become the subject of controversy and negative media attention. In particular, there has been controversy over the fact that some states offer insiders of state savings banks the opportunity to gain potentially greater benefits and more generous compensation packages than are currently permitted under OTS rules. Congress also has expressed serious concerns in this area. Legislation has been introduced in both the House and Senate to address the issue of minimum standards for conversions by state savings banks and limitations on management benefits in conversions. In addition, both the Financial Institutions Subcommittee of the House Banking Committee and the Senate Banking Committee recently have held hearings on perceived abuses in mutual to stock conversions.

Although the OTS believes that its current regulations have generally provided sound safeguards for mutual to stock conversions, the OTS and the FHLBB, in administering the conversion program, have refined the conversion regulations periodically in light of experience with the conversion process and in response to developments in the market place. As a result of the recent events concerning mutual to stock conversions, the OTS has again reviewed its conversion regulations to assess whether additional revisions to its rules are necessary.

As part of its review, the OTS has analyzed the changing financial condition of converting mutual associations. During the 1980s, most mutual savings associations were marginally capitalized and many were insolvent. As a result, the FHLBB undertook a number of regulatory initiatives designed to encourage associations to convert to stock form. Many associations took advantage of these changes to recapitalize. Now, however, most mutual institutions in the industry are healthy. Generally, these healthy institutions are not converting to meet regulatory capital requirements. Instead, they seek to raise capital to expand their current operations through branching or acquiring other institutions, to engage in new activities, through both the formation of a holding company and establishment or acquisition of operating subsidiaries, and to establish stock benefit plans for management and employees. This change in the reasons for conversions has caused the OTS to rethink the need for the regulatory inducements for conversion contained in the current regulations.

Based upon the foregoing, the OTS has identified several areas of the regulations, discussed below, that it has determined to revise, update and clarify to further strengthen the standards governing the conversion process. The OTS has consulted with the Federal Deposit Insurance Corporation ("FDIC") in developing these changes to ensure consistent policy in this area. The OTS also has determined to adopt the amendments immediately as an interim final rule to protect the integrity of the conversion process. As such, the final rule is designed to assure the public that the conversion program will continue to be fair and equitable. Also, Congress has made it clear that it expects both the OTS and the FDIC to act promptly to assure that any abuses or potential abuses in the mutual to stock conversion area are addressed.

II. Description of Revisions to Conversion Regulations

A. Revision to the Appraisal Standards

Pursuant to 12 CFR 563b.3(c)(1), a converting savings association is required to sell its capital stock at a total price equal to its estimated *pro forma* market value, based on an independent valuation. When the FHLBB adopted the initial conversion regulations, it found that underpricing conversion stock would result in "windfall" distributions of the value of a converting association and that no method of conversion could be considered equitable unless the conversion stock was accurately appraised and sold at its *pro forma* market value. This was necessary to assure that the association received full value for the conversion stock it distributed.

The current regulations contain safeguards designed to enhance the accuracy of conversion appraisals. Under 12 CFR 563b.7(f), the OTS requires that the appraisal be prepared by an appraiser who is independent of the converting association and who has expertise in the area of corporate appraisals. Although the conversion regulations have been amended numerous times since 1974, the requirement that the conversion stock be sold at its *pro forma* market value has remained constant.

The integrity of the conversion process rests, in large part, on the accuracy of the appraised value of the converting association. It is for this reason that the OTS is concerned about recent conversions that have exhibited significant increases in the immediate post-conversion trading market for the stock. Although some of these increases can be explained by the high levels of speculation that have existed generally in the market for financial institution stocks, the OTS is concerned that many of these appraisal reports may have set *pro forma* market values that were significantly below the true value of the converting associations. In such cases, the converting association is harmed because the net proceeds from the conversion, and the association's capital levels, are lower as a result of its stock being undervalued upon issuance. Conversely, insiders and other sophisticated investors are able to accrue undeserved financial benefits. When this occurs, the independence and competence of the appraiser are called into question.

The OTS relies on the independent appraiser to submit an appraisal report that is impartial, objective and arrived at independently, without undue influence from the converting association or any of its other agents, including its attorneys, accountants, underwriters or selling agents. The OTS is taking this opportunity to remind those persons serving as conversion appraisers that the current regulations require that the conversion applicant submit information demonstrating, to the satisfaction of the OTS, the independence and expertise of the appraiser.[3] In those cases where there appears to be a consistent pattern of undervaluation on the part of an appraiser, it may be difficult for the applicant or the appraiser to establish that the appraiser has acted independently and in a competent manner. In more egregious cases, the OTS also may determine to censure, suspend or bar an appraiser from practicing before the OTS under the OTS rules of practice, 12 CFR part 513.

Under the current rules, § 563b.7(f)(1)(ii) permits the appraisal report to contain a "brief summary" of data that is sufficient to support the appraiser's conclusions as to the *pro forma* market value of the converting association. Section 563b.7(f)(3), however, permits the OTS to request additional information with respect to the pricing of the converting association's capital stock. In practice, the OTS, relying on § 563b.7(f)(3), has required that a full appraisal report be submitted as part of the conversion application. In that regard, the OTS and its predecessor, the FHLBB, have provided detailed policy guidance to the industry regarding appropriate appraisal standards to be used in valuing conversion stock.[4]

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[3] 12 CFR 563b.7(f)(2).

In order to eliminate any potential confusion in this area, the OTS is amending § 563b.7(f)(1)(ii) by deleting suggestions that the appraisal report need only be a "brief summary" and specifying that a full appraisal report is required. The revised language codifies the current practice of OTS staff requiring a more complete and detailed description of the elements that make up an appraisal report and justification for the methodology employed. Because a full appraisal will now be required under paragraph (f)(1)(ii), the reference to "full appraisal" in § 563b.7(f)(3) is unnecessary and is deleted. The OTS expects that appraisals will continue to contain sufficient detail to support the conclusions contained therein and that appraisers will deliberate carefully in the formation of an opinion to arrive at a *pro forma* market value that is consistent with post-conversion market values.

Section 563.7(f) also has been revised to provide that in those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and in accordance with the OTS applications processing rules, 12 CFR part 516, decline to further process the application. In such cases, the applicant will be required to refile the conversion application, including a revised appraisal, as a new application and pay any applicable filing fees.

Under current § 563b.7(f)(2), the fact that a person is participating in effecting a sale of the conversion stock, either as an underwriter or as a selling agent, does not preclude such person or an affiliate of such person from being considered independent for purposes of preparing the appraisal for the conversion. Although the staff has not experienced any problems to date where a conversion appraisal firm or its affiliate have participated in effecting the sale of the conversion stock, the OTS believes that it is essential that conversion appraisals not be tainted in any manner by a real or potential conflict in such an affiliate relationship that would cause the appraiser to not be independent in his or her judgments. Thus, while no changes are being adopted at this time, the OTS is requesting public comment as to whether it should amend § 563b.7(f)(2) to prohibit an appraiser or its affiliates from also serving as an underwriter or selling agent.

Finally, in order to further enhance regulatory oversight in this area, the OTS intends to issue updated guidance for conversion appraisers that will provide specific details on appraisal methodology and report content.

B. Prohibition on Use of "Running" Proxies

Section 563b.5(d)(4), adopted in 1985, provides for management of a converting association to use previously obtained proxies, *i.e.*, "running" proxies, from a voting member. Previously, the conversion rules prohibited the use of "running" proxies. The requirement was changed in 1985 to reduce conversion costs for marginally capitalized savings associations.[5]

Section 563b.5(d)(4), however, requires that each voting member be furnished a proxy statement on the special plan of conversion meeting, and only allows for use of the "running" proxy in the event the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

Currently, as discussed in section I. above, most mutual associations in the thrift industry seeking to convert are well-capitalized. Thus, the regulatory rationale for truncating the proxy solicitation and voting requirements generally no longer exists. In addition, depositors in greater numbers recently have expressed increased interest in the conversion plans of their associations. The OTS believes, based on its experiences in this area, that the current ability to use "running" proxies has lessened the incentive of converting associations to actively solicit depositors to consider and vote on conversions.

Thus, the OTS has decided to revise § 563b.5(d)(4) to prohibit the use of "running" proxies. The OTS believes the prohibition is the most effective manner in which to assure full participation of the association's membership in the conversion process. The requirement to use a proxy specifically designed for the conversion will require thrift management to more actively solicit its depositors to obtain their votes for conversion.

In addition, the last two paragraphs of Item 1 and Item 4(d) of the Form PS have been revised to conform with the revisions discussed above. Finally, a sentence has been added to § 575.13(a)(4) of the mutual holding company regulations to conform with this revision.

C. Re-Prioritize Stock Purchase by Tax-Qualified Employee Stock Ownership Plans.

Under OTS rules, a conversion offering may involve as many as three phases: A subscription offering, a direct community offering and an underwritten public offering. Only the subscription offering phase, which affords account holders the opportunity to subscribe for stock on a priority basis, is required; if all of the stock is purchased in the subscription phase, any other offering is unnecessary.

The conversion regulations protect the status of mutual account holders by establishing a detailed series of subscription priorities for purchases of conversion stock. Currently, § 563b.3(c)(2) requires that first priority to purchase the stock issued in the conversion, after certain tax-qualified ESOP purchases, discussed below, belongs to eligible account holders, *i.e.*, depositors holding qualifying deposits at the savings association as of a date (eligibility record date) at least ninety days prior to the date of adoption of the plan of conversion by the association's board of directors.[6] The regulations also provide that each eligible account holder must receive, without payment, nontransferable subscription rights in an amount equal to the greater of the maximum purchase limitation established under the converting association's plan of conversion, or certain formulas prescribed under the regulations.[7]

In 1986, amendments to the conversion regulations were adopted to eliminate uncertainty on a variety of issues presented by employee stock benefit plans and to enhance the ability of officers, directors and employees of a savings association to acquire stock when the association converted, through various types of employee stock benefit vehicles.[8] Prior to the 1986 amendments, the first priority to purchase conversion stock had always been with eligible account holders. The 1986 amendments, which granted a first priority purchase right to tax-qualified employee benefit plans, were based on the FHLBB's belief that acquisition of an association's stock by such plans provided a means for officers and employees of converting associations to acquire larger ownership stakes in their associations upon conversion without undermining the basic equities of the conversion process.[9] In addition, and perhaps more significantly, the FHLBB sought to afford undercapitalized mutual savings associations, that feared hostile takeovers as a public company, a measure of anti-takeover protection through the opportunity to place a significant block of conversion stock in friendly hands, and thus, encourage capital raising through conversion.

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[4] FHLBB, Guidelines for Appraisal Reports for the Valuation of Savings and Loan Associations and Savings Banks Converting From Mutual to Stock Form of Organization (October 1983); FHLBB, Guidelines for the Valuation of Savings and Loans Converting from Mutual to Stock Form (June 15, 1981).

[5] 50 FR 20555 (May 17, 1985).

[6] 12 CFR 563b.2(a)(16).

[7] 12 CFR 563b.3(c)(2).

Section 563b.3(c)(23) currently provides an explicit top priority for tax-qualified employee stock benefit plans that permits plans to purchase up to 10% of the total conversion stock offering ahead of eligible depositors. This priority also is on a preferred basis; thus, in the event an offering is over-subscribed, the plans' stock purchases will not be affected.

Although the OTS believes that it is still appropriate to provide management incentives and to encourage employee stock ownership in the converted association, these interests have been overshadowed by other factors. Because most mutual associations are now healthy, there is a need to balance the interests of management and employees against those of account holders by providing long-term depositors at mutual savings associations the first opportunity to buy conversion stock. The OTS is therefore amending § 563b.3(c)(23) to revise the stock purchase priorities so as to place eligible account holders before the tax-qualified employee stock benefit plans and to place tax-qualified employee stock benefit plans before supplemental eligible account holders[10] and all other voting members who have subscription rights. Finally, the OTS is amending § 563b.3 (c)(6)(i), (c)(7), and (d)(4) to conform to these changes.

D. Revision to Eligibility Record Date

As discussed above, the intent of the eligibility record date is to give long-term depositors a priority in purchasing stock. It has been the OTS's experience, however, that converting associations have opted for the minimum 90-day period for determining who is a long-term depositor. Upon review of this area, the OTS does not believe that use of the minimum 90-day period is a meaningful indicator of long-term depositor status and should be substantially lengthened. Thus, the OTS is amending the existing rule to require that the eligibility record date be set at a date no less than a year prior to board of director approval of the plan of conversion. In so doing, the OTS stresses that the one year period is a minimum time period; converting associations are encouraged to establish longer time periods to maximize the stock purchase priority for long-term depositors. The OTS also is requesting public comment as to whether a longer minimum time period would be appropriate.

E. Priority to Account Holders and Voting Members Residing in the Association's Local Community

The current conversion regulations require that, following the subscription offering of conversion stock to account holders, all nonsubscribed shares be sold either in a public offering or a direct community offering giving "a preference to natural persons residing in the counties in which the association has an office."[11] Thus, the regulations currently permit a converting association to conduct a community offering of conversion stock in the local community, prior to a general public offering. The current regulations, however, do not permit converting associations to give account holders and voting members in those local communities a priority to purchase stock in the initial subscription offering. The OTS, has, however, on a case by case basis, recently permitted thrift subsidiaries of mutual holding companies to prioritize stock purchases in this manner.

Upon consideration of its favorable experiences with local community stock priorities in stock offerings of thrift subsidiaries of mutual holding companies, the OTS now believes it is appropriate to require converting associations to give the local community a more meaningful opportunity to participate in all conversions on a priority basis at the subscription offering stage. Accordingly, new § 563b.3 (c)(2)(i), (4)(i), and (5)(i) have been added to extend this preference to the eligible account holder, supplemental eligible account holder and other voting member priorities in the subscription stock offering. The preference in each priority group will be to those persons who reside in the association's "local community" or within 100 miles of a home or branch office of the converting association. The term "local community" is defined in new § 563b.2(a)(19) to include all counties in which the converting association has a home or branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other similar local area(s) as provided for in the converting association's plan of conversion, as approved by the OTS. Current § 563b.3(c)(2)(i)–(ii), 4(i)–(iv) and (5)(i)–(ii) will be redesignated as § 563b.3(c)(2)(ii)–(iii), (4)(ii)–(v) and (5)(ii)–(iii). For purposes of consistency, section 563b.3(c)(6)(iv) is revised to conform with new section 563b.3(c)(2)(i).

Additionally, 12 U.S.C. 1464(b) and 12 CFR 545.11(b) establish that a federally chartered savings association may accept and maintain deposit accounts within its discretion and subject to criteria established by the association. The OTS solicits public comment on whether a converting association should have the ability to prevent depositors who do not reside in the local community from participating in a conversion. In addition, the OTS specifically solicits comments as to whether an association, in anticipation of conversion, should be permitted to: (1) refuse to open accounts for potential depositors residing outside the local community, and (2) close accounts of depositors residing outside the local community.

F. Revision of Policy Regarding Management Stock Benefit Plans

Under § 563b.3(c)(8), the amount of stock that officers, directors and their associates can purchase, in the aggregate, is limited to between 25% to 35% of the conversion stock, based upon the total asset size of the converting association. In addition, existing § 563b.3(c)(6)(i) allows any one or more tax-qualified employee stock benefit plans to purchase in the aggregate not more than 10% of the total offering of shares and allows such purchase regardless of the number of shares to be purchased by other parties.

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[8] 51 FR 40127 (November 5, 1986).

[9] *Id.*

[10] The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors and their associates, as of the last day of the calendar quarter preceding the OTS's approval of the application for conversion. See current 12 CFR 563b.2 (a)(37) and (a)(38).

[11] 12 CFR 563b.3(c)(6).

Current OTS policy also permits management stock benefit and recognition plans (collectively "MRPs") to purchase up to 3% or 4% of the conversion stock, depending upon the association's capital position.[12] Current OTS policy limits the combined ESOP and MRP purchases to 10% to 12% of the conversion stock, depending upon the association's capital position. OTS policy also permits management to be granted stock options in an amount up to 10% of the shares issued in the conversion.[13] Finally, the OTS recently, on a case by case basis, has imposed specific percentage limitations on the amount of stock that may vest with individual officers and directors.

Given that mutual savings associations currently seeking to convert generally are well-capitalized, the OTS has become increasingly concerned that the association's management may be undertaking conversions for reasons other than the need for capital. Some thrift insiders may be sacrificing the interests of their associations and mutual account holders to acquire significant amounts of conversion stock and other benefits as cheaply as possible in the conversion process. In addition, in some cases the issuance of conversion stock to a MRP lessens the opportunity for depositors to obtain conversion stock. Finally, the issuance of stock options at the conversion price, rather than at aftermarket trading prices, which in recent years has been substantially higher than the conversion price, creates the impression that management is structuring an excessive compensation package. While the OTS believes there are valid business reasons for thrifts to adopt MRPs and stock option plans in order to attract and retain qualified management, these plans are now more appropriately implemented subsequent to the conversion and with shareholder approval.

The OTS is therefore substantially revising and codifying its policies regarding the establishment of MRPs and stock option plans during the conversion process in new § 563b.3(g)(4). The new provisions require that any decision to implement MRPs or stock option plans after conversion be voted on and approved by a majority of the shareholders no earlier than the first annual meeting following the conversion. The rule further requires that thrift subsidiaries of mutual holding companies obtain a vote of a majority of stockholders, other than the parent mutual holding company, to approve such plans.[14] The provisions also prohibit the use of conversion stock to fund MRPs, require that MRPs be awarded and stock options be granted only after shareholder approval is received and require that stock options be granted at the market price at which the stock is trading at the time of grant. In addition, any intention by management to implement MRPs or stock option plans within one year of conversion would be (1) required to be fully disclosed in the proxy soliciting and conversion stock offering materials, and (2) subject to the prior approval of the appropriate OTS Regional Director. Finally, the regulation codifies the OTS's current policies regarding permissible amounts that may be included in stock option and MRP plans formed within one year of conversion. Codification of these policies is designed to provide clear guidance in this area.

G. Prohibition on Merger Conversions

Under § 563b.10, a mutual savings association may convert to stock form by merging with an existing stock association or by becoming a subsidiary of an existing holding company. In this type of conversion, the account holders of the mutual savings association, instead of being offered the opportunity to purchase stock of the converting mutual association, are instead offered the opportunity to purchase shares of the acquiring stock association or holding company. The structure of these transactions raises unique issues not involved in other types of conversions. These include the adequacy of the consideration paid by an acquiror, whether a "control premium" should or can be incorporated into the valuation of the mutual savings association; the treatment of the mutual account holders in connection with the distribution of the acquiror's stock; whether mutual account holders should be able to purchase the acquiror's stock at a discount and the amount of such discount; and the appropriateness of management compensation and stock incentive packages offered by an acquiror to coax the mutual association's management into the merger conversion.

When merger conversions were first allowed by the FHLBB in the 1980s, they were perceived to be a useful supervisory tool by which significantly undercapitalized or marginally capitalized savings associations could improve their capital positions. In recent years, however, the OTS began to have increasing concern about merger conversions involving healthy associations. In Thrift Bulletin 58 (April 19, 1993), the OTS established increased disclosure requirements for merger conversion proxy statements to ensure that account holders received adequate and accurate disclosure about proposed merger conversion transactions. In so doing, the OTS asserted its view that merger conversions provide more opportunity than standard conversions for insider abuse.[15] In addition, the OTS voiced concerns that institutions participating in merger conversions were not providing sufficient disclosure to account holders regarding this more complex form of conversion transaction.[16]

In addition, there have been numerous complaints recently by account holders and others that permitting healthy mutual savings associations to be acquired by means of a merger conversion has resulted in some thrift insiders putting their self interest ahead of the interests of the converting association and its account holders.

As a result of these concerns, the OTS recently imposed a moratorium on healthy savings associations entering into these transactions. In its announcement, the OTS stated that the moratorium would not prohibit the acquisition of an undercapitalized thrift by a healthy acquiror.

In undertaking the moratorium, the OTS noted that in many cases, management of the converting mutual savings associations engaging in merger conversions were receiving extremely generous compensation and benefit packages. While OTS rules limit many forms of excessive compensation in merger conversions,[17] there is still an

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[12] See FHLBB Office of General Counsel Questions and Answers on Part 563b: Conversion and Employee Stock Benefits Plans at 4, 6 (May 1987).

[13] Id.

[14] In this regard, § 10(o)(8)(B) of the HOLA requires that a mutual holding company, which is generally controlled by the management of its thrift subsidiary, must own more than 50% of its thrift subsidiary. Thus, absent a disinterested stockholder vote requirement, management will be able to ensure approval of its compensation plans.

[15] OTS Thrift Bulletin 58, at 1 (April 19, 1993).

[16] *Id.*

[17] For example, the OTS policy statement on mergers, 12 CFR 571.5, in pertinent part, specifically provides that compensation, including deferred compensation to officers, directors and controlling persons of a merging association may not be in excess of that which is reasonable and commensurate with their duties and responsibilities. The rule provides that mergers will be particularly scrutinized where any such persons will receive a material increase in compensation above that paid by the merging association prior to the commencement of merger negotiations. In this regard, an increase in compensation in excess of the greater of 15% or $10,000 gives rise to

Continued

issue as to whether management is opting for a merger conversion instead of a standard conversion based on the best interests of the association and its depositors or in response to the level of benefits offered to management by the acquiring entity.

In addition, merger conversions are perceived as being overly generous to the acquiring entities since they are essentially able to acquire the mutual association at no cost. Unlike other corporate acquisitions, the acquiror pays nothing for the converting association's stock. Rather, simultaneous with the acquisition, the acquiror's primary obligation is to make an equity offering of its own stock to depositors of the converting association, retaining all proceeds of the offering.

The OTS conversion regulations are based upon the principle that a conversion cannot be equitable unless the potential for "windfall" gains is virtually eliminated. In a standard conversion, the *pro forma* market value of the converting savings association is an appropriate means for determining the price of the stock to be sold. In a merger conversion, however, the acquiring entity is obtaining control and should pay a premium for the *pro forma* value of the stock. In essence, the acquiring entity is obtaining control and receiving a "windfall" gain. As a result, there is tremendous incentive for an acquirer to offer excessive benefits to the management of a mutual savings association to participate in a merger conversion. Upon further review of this issue, the OTS has been unable to resolve the valuation and "windfall" gains problem that the OTS currently believes is inherent in merger conversion transactions.

The OTS therefore has concluded that in nonsupervisory cases, there should be a two step process. The account holders at the mutual association should be given the opportunity to purchase stock in a mutual to stock conversion. This assures the account holders that they will have the opportunity to more directly participate in any appreciation of the converting association's stock price following the conversion. After the conversion to stock form, stockholders can vote on whether to merge with another institution, subject to the rules governing post-conversion transactions.

Based on the reasons described above, the OTS has determined to amend its conversion regulations to limit merger conversions to supervisory cases. As noted earlier, merger conversions may serve a useful purpose in those cases where a savings association is unable to convert on a stand alone basis because of its weak financial condition.

While eliminating the authority for nonsupervisory merger conversions in the interim final rule, the OTS is soliciting comment as to whether merger conversions involving healthy savings associations should be permitted in the future, and if so, under what circumstances. In particular, the OTS is interested in receiving comments on how merger conversions could be structured to avoid the problems discussed above, including the problems associated with valuation issues.

H. Extension of the Conversion Public Comment Period

Section 563b.4(b)(1) requires a conversion applicant to publish, in writing, a notice of the filing of an application. Pursuant to the rule, written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the OTS if filed within ten business days after the date of this notice. Failure to provide the written comments within the ten day period may preclude the pursuit of any administrative or judicial remedies.

Depositors of converting associations and community groups have become increasingly interested in expressing their views on proposed conversions, usually through the public comment process. In this regard, the current ten day comment period may not be sufficient time for interested parties to review and comment on a detailed conversion application. Thus, the OTS is revising § 563b.4(b)(1) to conform the public comment period in the conversion regulations with the longer twenty calendar day public comment period provided under the acquisition of control regulations.[18] The revision also would permit the OTS, in its discretion and upon written request, to extend the twenty day comment period for an additional twenty days. The OTS believes that this revision will give interested parties a more meaningful opportunity to express their views on a proposed conversion transaction. In so doing, the OTS does not believe this requirement will impose an undue burden, since most converting associations undertake holding company conversions, *i.e.*, where a holding company is being formed in the transaction, and are subject to the time periods under the acquisition of control regulations.

I. Submission of Business Plans for All Conversion Transactions

The OTS conversion regulations do not require business plans in standard mutual to stock conversion transactions. The OTS acquisition of control regulations, however, do require a consolidated business plan conforming to the requirements set by the Regional Director to be included in holding company conversions.[19] Because most converting associations also form a holding company at the time of the conversion, most converting associations currently file a business plan.

The OTS believes that all converting associations should be required to demonstrate how they will prudently deploy and utilize the conversion proceeds. Therefore, the exhibits portion of the conversion application form, Form AC, is being amended to require a new Exhibit 8, a consolidated business plan subject to approval by the Regional Director. Also, in response to the OTS's experience that a number of associations have recently submitted business plans that do not adequately address the deployment of conversion proceeds, the new Exhibit 8 includes a requirement that each converting association provide, as part of the business plan submitted with the application for conversion, a detailed discussion of how the capital acquired in the conversion will be utilized. If the plan is to be treated confidentially, the applicant should follow the procedures set forth at § 563b.4(c).

J. Revision to Post-Conversion Stock Repurchase Rules

The capital distributions regulation[20] and § 563b.3(g)(3) of the conversion regulations provide that a well capitalized converted association can repurchase its capital stock, within certain limits and restrictions, by filing with the Regional Director an open-market stock repurchase program for no more than 5% of the association's outstanding capital stock during a six month period. This provision is in essence a safe harbor, provided an institution is well capitalized.[21] Section 563b.3(g)(3) also provides that OTS may object to proposed repurchases fitting within the safe harbor if the repurchases would adversely affect the financial condition of the thrift.[22] Provided the

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presumptions of unreasonableness and sale of control. See 12 CFR 571.5(d)(3).

[18] 12 CFR part 574.

[19] 12 CFR 574.6(a)(1)(ix).

[20] 12 CFR 563.134.

[21] 12 CFR 563.134(b).

[22] 12 CFR 563b.3(g)(3)(iii)(A).

safe harbor is met, a converted association can, under current rules, buy back up to 30% of the stock sold in the conversion within three years of conversion.

The agency's experience has been that many associations begin substantial buyback programs immediately following their conversions. While OTS believes that stock repurchase programs may serve valid business purposes, *e.g.*, maintaining the value of a converting institution's stock in an active trading market, the OTS has concerns that substantial buyback programs begun immediately after conversion may not have a valid business purpose. In addition, repurchases begun immediately after conversion raise substantial issues regarding whether conversion stock has been appropriately valued.

To address these concerns, Form AC has been revised to now require that each converting association provide, as part of the business plan submitted with the application for conversion, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

Also, the OTS is revising § 563b.3(g)(3) to prohibit stock repurchases for one year following conversion. After one year, a recently converted association may file with the appropriate Regional Director an open-market repurchase program in which it can request stock repurchases of no more than 5% of the outstanding capital stock during any twelve month period within the following two years. In addition to the current standards governing permissible repurchases, the Regional Director can now disapprove repurchases if the association does not demonstrate a valid business purpose for the stock repurchase. The regulation, however, will permit the Regional Director to approve amounts greater than 5% in the second and third years if there are circumstances that would justify such repurchases. Section 563b.3(g)(1)(iii) has been deleted to conform with this revision.

The OTS also is soliciting comments as to whether the current requirements of the capital distributions regulations governing the "upstreaming" of conversion proceeds to holding companies formed by converting institutions should be revised to further restrict the upstreaming of substantial amounts of the conversion proceeds soon after the conversion.

K. Other Issues

1. Subscription Rights

The conversion regulations require that prior to the completion of a conversion, no person may transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.[23]

The OTS notes that the FDIC and others have recently suggested that it may be appropriate for depositors to be able to transfer and sell their subscription rights so that any "windfall" value can be distributed directly to the depositors.

In this regard, the OTS believes that this type of change to the current conversion regulations would raise a number of novel and complex legal and policy issues, many of which were taken into account previously by the FHLBB in determining to prohibit transferability. These issues include the possibility of adverse federal tax consequences to depositors receiving such rights, undue pressure on mutual associations to convert that may evolve from significant shifts of savings funds by depositors into such associations, difficulties in equitably allocating such subscription rights among depositors, potential manipulation of the process by sophisticated third parties to the detriment of the depositors, incentives for manipulation by insiders, the continued need for establishment and maintenance of a liquidation account,[24] and significantly increased conversion costs due to compliance with securities laws requirements for registering subscription rights for public distribution.

The OTS believes these issues must be carefully analyzed before considering regulatory changes in this area. Therefore, the OTS is not proposing any change at this time that would allow for the transfer or sale of subscription rights, but is requesting comment on whether subscription rights should continue to be nontransferable, or if transferability is recommended, the reasons for, and the manner in which to allow for, such transfer.

2. Availability of Conversion Documents

The conversion regulations, since adoption in 1974, have prohibited the placing of copies of preliminary conversion stock offering and proxy soliciting materials in the OTS public files. The OTS has noted, over the past few years, an increasing interest shown by account holders, the public and the media in the information contained in those portions of an application for conversion.

The OTS believes that even though this information is preliminary in nature, it may be useful for account holders and the public to access it earlier in the conversion process. The OTS, therefore, is revising § 563b.4(c) to eliminate the automatic confidential treatment that has been afforded this information in the past. The revision will permit the public to have ready access to all relevant materials regarding proposed conversion transactions.[25] Applicants will have the ability to request confidential treatment of any portion of these materials by following the confidential treatment procedures contained in section 563b.4(c).

3. Conforming Changes to Mutual Holding Company Regulations and Other Technical Changes

The mutual holding company regulations, 12 CFR part 575, generally incorporate the substantive and procedural standards for conversion contained in the conversion regulations. To the extent the interim final rule addresses conversion standards, those same standards apply to mutual holding company transactions. Thus, the OTS is also revising 12 CFR part 575 to make clarifying and conforming changes to those regulations to reflect the changes being made to 12 CFR part 563b.

Also, the interim final rule makes certain other technical and conforming changes to the conversion regulations.

4. Proposal to Impose Convenience and Needs Test in Conversion Transactions

Elsewhere in this issue of the **Federal Register**, the OTS is soliciting public comment on an amendment to its conversion regulations that would impose an additional standard requiring that the OTS, in considering whether to approve a mutual to stock conversion transaction, consider the needs and convenience of the community served by the converting association. To date, a convenience and needs test generally has not been applied to these transactions.

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[23] 12 CFR 563b.3(i)(1).

[24] The regulations require that a converting association establish and maintain a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in an amount equal to the association's net worth at the date of conversion. Each eligible account holder is deemed to have a pro rata inchoate interest in the liquidation account. In the event of a complete liquidation of the association, an account holder's interest may not be increased after conversion, but may be reduced by any subsequent decrease in the account holder's savings account balance. See 12 CFR 563b.3(c)(13).

[25] This revision augments the amount of information regarding conversions currently required to be made public by converting associations. Section 563b.4(a)(3)(i) requires that, promptly after adoption of a plan of conversion by its board of directors, a converting association must notify its members, and make copies of the adopted plan of conversion available for inspection by its members at each office of the savings association. Section 563b.4(a)(3)(ii) also allows a converting association to issue a press release announcing the conversion.

III. Paperwork Reduction Act

The reporting requirements contained in this interim final rule have been submitted to and approved by the Office of Management and Budget under OMB Control No. 1550–0014 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting requirements in this interim final rule are found in 12 CFR 563b.100. The information is needed by the OTS to further strengthen the standards governing the conversion process. The likely recordkeepers are savings associations.

Estimated number of respondents: 70.

Estimated average annual burden per respondent: 500.

Estimated annual frequency of responses: 1.

Estimated total annual reporting burden: 35,000.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

V. Executive Order 12866

The OTS has determined that the interim final regulation does not constitute a "significant regulatory action" for purposes of E.O. 12866.

VI. Administrative Procedure Act

Pursuant to 5 U.S.C. 553, OTS has found good cause to dispense with both prior notice and comment on this interim final rule and with a 30-day delay of its effective date in light of the critical need to ensure an equitable conversion process while still providing converting associations access to the capital markets. The OTS has a number of conversion applications pending and it expects that it will receive significantly more in the next few weeks. Unless these revisions are implemented immediately, associations will be able to avoid compliance with the new rules by filing and attempting to obtain approval of their conversion applications before the new rules become effective. If the OTS were to proceed with a notice of proposed rulemaking, the only practical solution to this problem would be to impose an administrative moratorium on all conversions until the rulemaking process is complete. That type of rulemaking process would take a minimum of several months. The result would thus be to preclude converting savings associations from raising additional capital at a time when the capital markets are receptive to capital stock offerings by financial institutions. Should the capital markets become less favorable, such a delay could prevent savings associations from raising sufficient new capital through a mutual to stock conversion. The public interest is served by encouraging savings associations to raise additional capital because an association's capital is the financial cushion that protects the association's depositors and the federal fund that insures the depositors' accounts. In view of the need both to ensure an equitable conversion process and to provide converting associations with access to the capital markets without delay, the OTS finds that good cause exists for dispensing with the notice and comment procedures of the Administrative Procedure Act. Similarly, the OTS finds that good cause exists for eliminating the 30-day delay of the effective date.

The revised rules will become effective upon publication in the **Federal Register** and will be applicable to all applications pending or newly filed as of that date. The OTS generally expects converting associations with pending applications to comply with the revised rules. The OTS may grant, on a case by case basis, a waiver in writing from any provision in the interim final rule for good cause shown. The request for a waiver must contain sufficient information to substantiate the justification for the waiver.

The OTS, however, seeks public comment on the conversion regulations, both as to the amendments adopted here and the issues on which comment is specifically solicited and as to any other current provisions of the conversion regulations as they relate to this interim final rule. The OTS may modify the rule in response to those comments if appropriate.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set out in the preamble, parts 563b and 575 of subchapter D, chapter V, title 12 of the Code of Federal Regulations are amended as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. The authority citation for 12 CFR part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

2. Section 563b.2 is amended by removing paragraph (a)(14); by redesignating paragraphs (a)(15) through (a)(19) and (a)(29) through (a)(40) as paragraphs (a)(14) through (a)(18) and paragraphs (a)(30) through (a)(41), respectively; by revising paragraph (a)(16); and by adding paragraphs (a)(19) and (a)(29) to read as follows:

§ 563b.2 Definitions.

(a) * * *

(16) *Eligible account holder.* The term *eligible account holder* means any person holding a qualifying deposit as determined in accordance with § 563b.3(e) of this part, but shall include only those account holders with savings accounts in place for a minimum of one year prior to board of director adoption of the plan of conversion.

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(19) *Local community.* The term *local community* includes all counties in which the converting association has its home office or a branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other similar local area(s) as provided for in the plan of conversion, as approved by the OTS.

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(29) *Regional Director.* The term *regional director* means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with examination and supervision of savings associations in the region in which the converting savings association has its principal office.

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3. Section 563b.3 is amended by:

a. Revising paragraphs (c)(6)(i), (c)(6)(iv), (c)(7), (c)(14), (c)(23), (d)(4), (g) heading, (g)(1)(i) and (g)(1)(ii) and (g)(3);

b. Redesignating paragraphs (c)(2)(i), (c)(2)(ii), (c)(4)(i) through (c)(4)(iv), (c)(5)(i) and (c)(5)(ii) as paragraphs (c)(2)(ii), (c)(2)(iii), (c)(4)(ii) through (c)(4)(v), (c)(5)(ii) and (c)(5)(iii), respectively;

c. Removing paragraph (g)(1)(iii); and

d. Adding new paragraphs (c)(2)(i), (c)(4)(i), (c)(5)(i), and (g)(4).

The additions and revisions read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(c) * * *

(2) * * *

(i) The stock to be offered and sold in the subscription offering shall give a preference to eligible account holders residing in the association's local community or within 100 miles of the association's home or branch office(s).

* * * * *

(4) * * *

(i) The stock to be offered and sold in the subscription offering shall give a preference to supplemental eligible account holders residing in the association's local community or within 100 miles of the association's home or branch office(s).

* * * * *

(5) * * *

(i) The stock to be offered and sold in the subscription offering shall give a preference to voting members residing in the association's local community or within 100 miles of the association's home or branch office(s).

* * * * *

(6) * * *

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

* * * * *

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the association's local community or within 100 miles of the association's home or branch office(s).

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, provide that the total shares that any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

* * * * *

(14) Provide for an eligibility record date, which shall be not less than one year prior to the date of adoption of the plan of conversion by the converting savings association's board of directors.

* * * * *

(23) Provide that eligible account holders with subscription rights have priority to purchase conversion stock prior to tax-qualified employee stock benefit plans and tax-qualified employee stock benefit plans have priority to purchase conversion stock prior to supplemental eligible account holders and other voting members who have subscription rights. If shares are sold in the conversion stock offering in excess of the maximum proposed offering, shares may be sold to the tax-qualified employee stock benefit plans in accordance with the purchase limitations provided in paragraph (c)(7) of this section.

* * * * *

(d) * * *

(4) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares. The percentage amount by which any order for conversion stock exceeds 5% of the total offering of shares shall be aggregated with the percentage amounts by which all other orders for conversion stock exceed 5% of the total offering of shares. The aggregate amount shall not exceed 10% of the total offering of shares, except that this limitation shall not apply to the purchases of the tax-qualified employee stock benefit plans.

* * * * *

(g) *Restrictions on repurchase of stock; payment of dividends; and use of stock option and management or employee stock benefit plans.* * * *

(1) * * *

(i) A repurchase, on a *pro rata* basis pursuant to an offer approved by the Office and made to all shareholders of such association; or

(ii) The repurchase of qualifying shares of a director.

* * * * *

(3)(i) A converted savings association subject to paragraph (g)(1) of this section may repurchase its capital stock provided:

(A) No repurchases occur within one year following conversion;

(B) Repurchases within two years after the conversion are part of an open-market stock repurchase program that does not allow for a repurchase of more than 5% of the association's outstanding capital stock during a twelve month period;

(C) The repurchases do not cause the association to become undercapitalized (as defined in 12 CFR 565.4); and

(D) The association provides to the Regional Director, with a copy to the Chief Counsel's Office, Corporate and Securities Division, no later than ten days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken, the effect of such repurchases on its regulatory capital position, and a valid business purpose for the repurchase; and the Regional Director does not disapprove the repurchase program based upon a determination that:

(*1*) The repurchase program would materially adversely affect the financial condition of the savings association;

(*2*) The information submitted by the savings association is insufficient upon which to base a conclusion as to whether the association's financial condition would be materially adversely affected; or

(*3*) The association did not demonstrate a valid business purpose for the stock repurchase.

(ii) Notwithstanding paragraph (g)(3)(i) of this section, during the second and third year following conversion, the Regional Director, in accordance with the standards contained in this paragraph, may permit stock repurchases in amounts greater than 5% of the association's outstanding capital stock during a twelve month period.

(4) Use of Stock Option and Management or Employee Stock Benefit Plans. No converted savings association shall, for a one year period from the date

of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified plan complying with (c)(6) of this section, unless each of the following requirements are met:

(i) Each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;

(ii) For stock option plans, the total number of shares of common stock for which options may be granted does not exceed ten percent of the amount of shares issued in the conversion;

(iii) For management or employee stock benefit plans, the aggregate amount of such plans shall not exceed three percent of the amount of shares issued in the conversion;

(iv) The aggregate amount of all shares obtained by a tax-qualified employee stock benefit plan(s) in the conversion, pursuant to (c)(6) of this section, or within one year following the conversion, and all the shares in a management or employee stock benefit plan, pursuant to paragraph (g)(4)(iii) of this section, shall not exceed ten percent of the total amount of shares issued in the conversion;

(v) Associations that have in excess of ten percent tangible capital following the conversion, may be granted, on a case by case basis, approval to establish a management or employee stock benefit plan pursuant to paragraph (g)(4)(iii) of this section in an amount up to four percent of the amount of the shares issued in the conversion, and an aggregate total of up to twelve percent for all plans established pursuant to paragraph (g)(4)(iv) of this section;

(vi) No individual shall receive more than twenty-five percent of the shares of any plan and directors who are not employees of the association shall not receive more than five percent of the stock individually, or thirty percent in the aggregate, of any plan;

(vii) All such plans are approved by a majority of the association's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no earlier than the first annual meeting following the conversion;

(viii) In the case of a savings association subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no earlier than the first annual meeting following the stock issuance;

(ix) For stock option plans, stock options are granted at the market price at which the stock is trading at the time of grant;

(x) For management or employee stock benefit plans, no conversion stock is used to fund the plans; and

(xi) Prior to implementation, all such plans are submitted to the appropriate Regional Director for review and approval in accordance with the foregoing standards. In connection with such review, the Regional Director shall consider all relevant supervisory information, including, among other things, the association's capital level, operating history and size of the association. The Regional Director may permit amounts greater than those specified in paragraph (g)(4)(vi) of this section, provided that the aggregate limitations of paragraphs (g)(4)(ii)–(v) of this section are not exceeded.

* * * * *

4. Section 563b.4 is amended by removing the phrases "District Director" and "District Director's" where they appear in paragraph (b)(1) and adding in lieu thereof the phrases "Regional Director" and "Regional Director's", respectively; and by revising the concluding text of paragraph (b)(1) following the notice of filing and paragraph (c) to read as follows:

§ 563b.4 Notice of filing; public statements; confidentiality.

* * * * *

(b) * * *

(1) * * *

Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Office if filed within twenty calendar days after the date of this notice. The OTS may, in its discretion, and upon written request, extend the twenty day comment period for an additional twenty calendar days. Failure to provide the written comments in twenty calendar days may preclude the pursuit of any administrative or judicial remedies. Two copies of the comments should be sent to the Chief Counsel, Corporate and Securities Division, one copy to the Corporate Activities Division and one copy to the Regional Director. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Chief Counsel's Office and at the Regional Director's Office. A copy of the plan of conversion may also be inspected at the home office and each branch office of the applicant.

* * * * *

(c) Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or any part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential," and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Office determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. Preliminary soliciting materials will be made available upon filing, unless such materials are not otherwise available to the public and are bound and labeled "confidential." The applicant will be advised of any decision by the Office to make public information designated "confidential" by the applicant. Even though sections of the application are considered "confidential," as far as public inspection thereof is concerned, to the extent it deems necessary, the Office may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

5. Section 563b.5 is amended by revising paragraphs (d)(4) and (e)(5) to read as follows:

§ 563b.5 Solicitation of proxies; proxy statement.

* * * * *

(d) * * *

(4) Each voting member must be furnished a form of proxy conforming with paragraph (d) of this section. No applicant shall use previously-executed proxies.

(e) * * *

(5) All preliminary copies of material filed pursuant to paragraphs (e)(1), (e)(2) and (e)(4) of this section shall be clearly marked on the cover page "Preliminary Copy". Such preliminary copies shall be public unless otherwise deemed confidential pursuant to § 563b.4(c) of this part.

* * * * *

6. Section 563b.7 is amended by revising paragraphs (f)(1)(ii) and (f)(3), by removing the period at the end of paragraph (f)(1)(iii) and adding a semicolon in its place, and by adding paragraph (f)(1)(iv) to read as follows:

§ 563b.7 Pricing and sale of securities.

(f) * * *

(1) * * *

(ii) The materials shall contain a full appraisal, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein;

* * * * *

(iv) In those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and in accordance with the OTS applications processing rules, 12 CFR part 516, decline to further process the application.

* * * * *

(3) In addition to the information required in paragraphs (f)(1) and (f)(2) of this section, the applicant shall file with the Office such additional information with respect to the pricing of the capital stock of the association as the Office may request.

* * * * *

§ 563b.8 [Amended]

7. Section 563b.8 is amended by removing the phrase "District Director" where it appears in paragraphs (e)(1) and (f)(1), and by adding in lieu thereof the phrase "Regional Director".

8. Section 563b.10 is revised to read as follows:

§ 563b.10 Conversion of a savings association through merger with an existing holding company or stock savings association.

A savings association that qualifies for a voluntary supervisory conversion under subpart C of this part may convert to stock form by merging with an existing holding company or interim Federal or state chartered stock association in a transaction in which stock of the existing holding company or resulting association is issued.

9. Section 563b.100 is amended by removing the phrase "90 days" in Form AC, the first paragraph of Item 6 and by adding in lieu thereof the phrase "one year"; and by adding Exhibit 8 to Form AC to read as follows:

§ 563b.100 Form AC—Application for Conversion.

Form AC

* * * * *

Exhibit 8. Business Plans

(a) Furnish a consolidated business plan The converting association shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

(b) Applicant should follow § 563b.4(c) if the business plan is to be deemed confidential.

10. Section 563b.101 is amended by revising Items 1 and 4(d) of Form PS to read as follows:

§ 563b.101 Form PS—Proxy Statements.

Form PS

* * * * *

Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement and the full address, ZIP code and telephone number of the applicant.

In accordance with § 563b.5(d)(4) of this part, the applicant shall not use previously executed proxies to vote on the plan of conversion.

* * * * *

Item 4. Voting Rights and Vote Required for Approval

* * * * *

(d) The applicant shall not use previously executed proxies to vote on the plan of conversion.

* * * * *

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

11. The authority citation for 12 CFR part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828.

12. Section 575.7 is amended by adding paragraph (e) to read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

* * * * *

(e) *Procedural and substantive requirements.* The procedural and substantive requirements of §§ 563b.3 through 563b.8 of this subchapter shall apply to all mutual holding company stock issuances under this section, unless clearly inapplicable.

13. Section 575.13 is amended by adding a new sentence at the end of paragraph (a)(4) to read as follows:

§ 575.13 Procedural requirements.

(a) * * *

(4) * * * Notwithstanding the provisions in this paragraph (a)(4), "running" proxies or similar proxies may not be used to vote for a mutual to stock conversion undertaken either by a mutual savings association or a mutual holding company.

* * * * *

Dated: April 7, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–9981 Filed 5–2–94; 8:45 am]

BILLING CODE 6720–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments, Liquidity, Interest Rate Risk, and Eligible Investments; Correction

AGENCY: Farm Credit Administration.

ACTION: Correcting amendments.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (58 FR 63034, November 30, 1993) that amended the regulations which govern the investment activities of Farm Credit System banks. This document corrects two typographical errors in the final rule.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register**, a typographical error was inadvertently made in the § 615.5140(a)(8)(i)(B) and (a)(11)(ii).

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

Accordingly, 12 CFR part 615 is corrected by making the following correcting amendments:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS; AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020 2073, 2074, 2075, 2076, 2093, 2122, 2128.

2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

§ 615.5140 [Corrected]

Section 615.5140(a)(8)(i)(B) and (a)(11)(ii) is corrected by removing the reference "§ 615.5131(i)" and adding in its place, the reference "§ 615.5131(j)".

Dated: April 26, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–10490 Filed 5–2–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ACE–01]

Establishment of Class E Airspace; Belle Plaine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Belle Plaine, Iowa. The development of a new standard instrument approach procedure (SIAP) at the Belle Plaine Municipal Airport, Belle Plaine, Iowa, utilizing the Cedar Rapids, Iowa, Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and the Belle Plaine non-directional beacon (NDB) on the airport as a navigational aid has made this action necessary. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 21, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Belle Plaine Municipal Airport, Belle Plaine, Iowa (59 FR 8566).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. We discovered there was a minor error in the geographic coordinates of the Belle Plaine Municipal Airport. In addition, there was a reference to the Belle Plaine, Iowa, NDB and Cedar Rapids, Iowa, VORTAC in the official description, which is not required. They were corrected in this document. Other than these changes, this amendment is the same as that proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Belle Plaine, Iowa, extending upward from 700 feet above the surface excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace. The development of new SIAPs at Belle Plaine Municipal Airport has made this rule necessary. The intended effect of this rule is to provide adequate Class E airspace for aircraft executing the NDB or VOR/DME–A SIAPs at Belle Plaine Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 CFR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Belle Plaine, IA [New]

Belle Plaine Municipal Airport, IA
(lat. 41°52′39″ N, long. 92°17′08″ W)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of the Belle Plaine Municipal Airport, Iowa, excluding that portion which overlies the Cedar Rapids, Iowa, Class E airspace.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region

[FR Doc. 94–10378 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–03]

Revision of Class D Airspace; Kansas City, MO, Richard-Gebaur Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace at the Kansas City Richards-Gebaur Airport, Missouri. This change is necessary to exclude the Hillside Airport at Stilwell, Kansas, from this Class D airspace.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace at the Kansas City Richards-Gebaur Airport, Missouri (59 FR 4608).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace at the Kansas City Richards-Gebaur Airport. On September 16, 1993, Airspace Reclassification discontinued the use of the term "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. During the Airspace Reclassification project, the Hillside Airport at Stilwell, Kansas, was to be excluded from the Richards-Gebaur Class D airspace. However, it was inadvertently not addressed in the official description. Hillside is a public use airport which was established in 1956 and serves numerous non-radio aircraft, as well as ultralight vehicles. Under the rules prior to September 16, 1993, an aircraft could land and take off at this airport without contacting the Richards-Gebaur Tower. Under the present rules, an aircraft operating to/from the Hillside Airport must contact this Tower. The intended effect of this rule is to provide access for aircraft utilizing the Hillside Airport without the requirement to establish radio contact with the Richards-Gebaur Tower. The coordinates for this airspace docket are based on North American Datum 83.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ACE MO D Kansas City, MO [Revised]

Richard-Gebaur Airport, MO
(lat. 38°50′38″ N, long. 94°33′37″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Richards-Gebaur Airport; excluding that airspace from the surface to 1,700 feet MSL bounded on the north by lat. 38°50′00″ N and on the east by long. 94°36′00″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–10376 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ACE–06]

Establishment of Class E Airspace; Sullivan, MO, Sullivan Regional Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Sullivan Regional Airport, Sullivan, Missouri. The development of a standard instrument approach procedure (SIAP) at the Sullivan Regional Airport, Sullivan, Missouri, utilizing a new nondirectional beacon (NDB) has made this action necessary. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed. For aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at the Sullivan Regional Airport, Sullivan, Missouri (59 FR 4611).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as the proposed in the notice. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Sullivan, Missouri, extending from 700 feet AGL to 1200 feet AGL. The development of a SIAP based on a new NDB located on the Sullivan Regional Airport, Sullivan, Missouri, made this proposal necessary. The intended effect of this rule is to provide adequate Class E airspace for aircraft executing the NDB SIAP at Sullivan Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant rule" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulation Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 Sullivan, MO [New]

Sullivan Regional Airport, MO
(lat. 38°14′01″ N, long. 91°09′53″ W)

That airsapce extending upward from 700 feet above the surface within a 6.4-mile radius of Sullivan Regional Airport and within 2.5 miles each side of the 068-degree bearing from the Sullivan Regional Airport extending from the 6.4-mile radius to 6.7 miles northeast of the airport.

* * * * *

Issued in Kansas City, Missouri, on April 13, 1994.

Clarence E. Newbern,
Manager, Air Traffic Division, Central Region.

[FR Doc. 94–10380 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27715; Amdt. No. 1599]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with

Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on April 22, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective June 23, 1994

Gambell, AK, Gambell, NDB or GPS RWY 16, Orig.
Gambell, AK, Gambell, NDB/DME or GPS RWY 34, Amdt. 1
Gulkana, AK, Gulkana, VOR or GPS RWY 32, Amdt. 6
Gulkana, AK, Gulkana, VOR or GPS RWY 14, Amdt. 6
Homer, AK, Homer, NDB or GPS RWY 3, Amdt. 2B
Northway, AK, Northway, NDB or GPS RWY 4, Orig.
Northway, AK, Northway, NDB or GPS RWY 22, Orig.
Northway, AK, Northway, VOR/DME or GPS–A, Orig.
Northway, AK, Northway, VOR or GPS–B, Amdt. 3
Hamilton, AL, Marion County, VOR or GPS RWY 18, Amdt. 4A
Muscle Shoals, AL, Muscle Shoals Regional, VOR/DME or GPS RWY 11, Amdt. 5A
Muscle Shoals, AL, Muscle Shoals Regional, VOR or GPS RWY 29, Amdt. 26A
Tuscaloosa, AL, Tuscaloosa Muni, NDB or GPS RWY 4, Amdt. 10
Tuscaloosa, AL, Tuscaloosa Muni, VOR or TACAN or GPS RWY 22, Amdt. 13
Fort Smith, AR, Fort Smith Regional, VOR or TACAN or GPS RWY 25, Amdt. 20A
Fort Smith, AR, Fort Smith Regional, VOR/DME or TACAN or GPS RWY 7, Amdt. 10
Jonesboro, AR, Jonesboro Muni, VOR or GPS RWY 23, Amdt. 9
Magnolia, AR, Magnolia Muni, NDB or GPS RWY 35, Orig.
Mountain Home, AR, Baxter County Regional, VOR or GPS–A, Amdt. 9
Mountain Home, AR, Baxter County Regional, VOR/DME RNAV or GPS RWY 5, Amdt. 1
Douglas Bisbee, AZ, Bisbee Douglas Intl, VOR/DME or GPS RWY 17, Amdt. 5
Phoenix, AZ, Phoenix-Deer Valley Muni, NDB or GPS RWY 25L, Amdt. 3
Daggett, CA Barstow-Daggett, VOR or TACAN or GPS RWY 21, Amdt. 8
Firebaugh, CA, Firebaugh, VOR/DME or GPS–A, Amdt. 2
Fortuna, CA, Rohnerville, VOR or GPS RWY 11, Amdt. 2
Modesto, CA, Modesto City-County Airport-Harry Sham Field, VOR or GPS RWY 28R, Amdt. 10A
Napa, CA, Napa County, VOR or GPS RWY 6, Amdt. 11
Oakland, CA Metropolitan Oakland Intl, VOR or GPS RWY 9R, Amdt. 7
Oakland, CA Metropolitan Oakland Intl, VOR/DME or GPS RWY 27L, Amdt. 10
Palmdale, CA, Palmdale Production Flt/Test Instln AF Plant 42, VOR/DME or TACAN or GPS RWY 25, Amdt. 6
Sacramento, CA, Mather Field, VOR or GPS RWY 4R, Orig.
Sacramento, CA, Mather Field, VOR/DME or GPS RWY 22L, Orig.
Willows, CA, Willows-Glenn County, VOR/DME or GPS RWY 34, Amdt. 4
Grand Junction, CO, Walker Field, VOR or GPS RWY 11, Amdt. 1
Montrose, CO, Montrose Regional VOR/DME or GPS RWY 13, Amdt. 8A
Rifle, CO, Garfield County Regional, VOR/DME or GPS–C, Orig.
New Haven, CT, Tweed-New Haven, VOR or GPS RWY 2, Amdt. 22
New Haven, CT, Tweed-Now Haven, VOR or GPS–A, Amdt. 2
Washington, DC, Washington National, VOR/DME or GPS RWY 15, Orig.
Wilmington, DE, New Castle County, VOR or GPS RWY 19, Amdt. 4
Wilmington, DE, New Castle County, VOR or GPS RWY 1, Amdt. 3
Immokalee, FL, Immokalee, VOR or GPS RWY 18, Amdt. 4
Marathon, FL, Marathon, NDB or GPS RWY 7, Amdt. 2A
Miami, FL, Miami Intl, VOR or GPS RWY 12, Amdt. 29
Miami, FL, Miami Intl, RNAV or GPS RWY 9L, Amdt. 9
Miami, FL, Miami Intl, NDB or GPS RWY 27L, Amdt. 18
Miami, FL, Miami Intl, VOR or GPS RWY 30, Amdt. 8
Miami, FL, Miami Intl, RNAV or GPS RWY 27R, Amdt. 5A
Titusville, FL, Space Center Executive, NDB or GPS RWY 18, Amdt. 11
Dalton, GA, Dalton Muni, NDB or GPS RWY 14, Orig.
Hazlehurst, GA, Hazlehurst, NDB or GPS RWY 14, Amdt. 3
Milledgeville, GA, Baldwin County, NDB or GPS RWY 28, Orig.
Moultrie, GA, Moultrie Muni, VOR or GPS RWY 22, Amdt. 11A
Statesboro, GA, Statesboro Muni, NDB or GPS RWY 32, Amdt. 4
Sylvania, GA, Plantation Airpark, NDB or GPS RWY 23, Amdt. 1A
Valdosta, GA, Valdosta Regional, VOR or GPS RWY 35, Orig.
Valdosta, GA, Valdosta Regional, VOR or GPS RWY 17, Orig.
Kailua-Kona, HI, Keahole-Kona International, VOR or TACAN or GPS RWY 35, Amdt. 6
Kailua-Kona, HI, Keahole-Kona International, VOR/DME or TACAN or GPS RWY 17, Amdt. 3
Charles City, IA, Charles City Muni, NDB or GPS RWY 30, Amdt. 2C
Charles City, IA, Charles City Muni, NDB or GPS RWY 12, Orig. B
Cherokee, IA, Cherokee Muni, NDB or GPS RWY 36, Amdt. 4
Creston, IA, Creston Muni, NDB or GPS RWY 34, Orig. A
Independence, IA, Independence Muni, NDB or GPS RWY 17, Amdt. 2
Mason City, IA, Mason City Muni, VOR or GPS RWY 35, Amdt. 5A
Mason City, IA, Mason City Muni, VOR/DME or GPS RWY 17, Amdt. 3A
Mason City, IA, Mason City Muni, RNAV or GPS RWY 30, Amdt. 5
Orange City, IA, Orange City Muni, NDB or GPS RWY 34, Amdt. 3
Sheldon, IA, Sheldon Muni, VOR or GPS RWY 33, Amdt. 1
Boise, ID. Boise Air Terminal (Gowen Field), VOR/DME or GPS RWY 10R, Orig.
Twin Falls, ID, Twin Falls-Sun Valley Regional-Joslin Field, NDB or GPS RWY 25, Amdt. 5
Twin Falls, ID, Twin Falls-Sun Valley Regional-Joslin Field, VOR or GPS RWY 7, Amdt. 3

Kankakee, IL, Greater Kankakee, VOR or GPS RWY 4, Amdt. 5

Kankakee, IL, Greater Kankakee, VOR or GPS RWY 22, Amdt. 6

Morris, IL, Morris Municipal-James R. Washburn Field, VOR or GPS–A, Amdt. 9

Mount Carmel, IL, Mount Carmel Muni, VOR or GPS RWY 22, Amdt. 7

Mount Carmel, IL, Mount Carmel Muni, NDB or GPS RWY 4, Amdt. 3

Mount Sterling, IL, Mount Sterling Muni, VOR/DME or GPS–A, Orig.

Salem, IL, Salem-Leckrone, NDB or GPS RWY 18, Amdt. 8

Angola, IN, Tri-State Steuben County, NDB or GPS RWY 5, Amdt. 6

Elkhart, IN, Elkhart Muni, RNAV or GPS RWY 17, Amdt. 3

Elkhart, IN, Elkhart Muni, VOR or GPS RWY 27, Amdt. 13A

Elkhart, IN, Elkhart Muni, VOR or GPS RWY 9, Amdt. 5

Elkhart, IN, Elkhart Muni, VOR/DME or GPS RWY 35, Amdt. 2

Jeffersonville, IN, Clark County, VOR or GPS RWY 18, Amdt. 2

Richmond, IN, Richmond Muni, VOR or GPS RWY 24, Amdt. 11

Richmond, IN, Richmond Muni, VOR or GPS RWY 6, Amdt. 10

Richmond, IN, Richmond Muni, VOR or GPS RWY 33, Orig.

Washington, IN, Daviess County, NDB or GPS RWY 18, Amdt. 5

Anthony, KS, Anthony Muni, VOR or GPS–A, Orig.

Atwood, KS, Atwood-Rawlins County City-County, NDB or GPS RWY 16, Amdt. 1

Colby, KS, Shaltz Field, NDB or GPS RWY 17, Orig.

Concordia, KS, Blosser Muni, NDB or GPS RWY 17, Amdt. 1A

Dodge City, KS, Dodge City Regional, VOR/DME or GPS RWY 32, Amdt. 3A

El Dorado, KS, Captain Jack Thomas/El Dorado, NDB or GPS RWY 4, Amdt. 2

Elkhart, KS, Elkhart-Morton County, NDB or GPS RWY 35, Orig.

McPherson, KS, McPherson, NDB or GPS RWY 18, Orig.

Ulysses, KS, Ulysses, NDB or GPS RWY 12, Amdt. 2

Louisville, KY, Bowman Field, NDB or GPS RWY 32, Amdt. 14

Louisville, KY, Bowman Field, VOR or GPS RWY 14, Amdt. 90

Louisville, KY, Bowman Field, VOR or GPS RWY 24, Amdt. 6A

Shreveport, LA, Shreveport Downtown, VOR or GPS RWY 14, Amdt. 14

Marksville, LA, Marksville Muni, VOR/DME or GPS–A, Amdt. 3

Marksville, LA, Marksville Muni, NDB or GPS RWY 4, Amdt. 1A

Boston, MA, General Edward Lawrence Logan Intl, VOR/DME or GPS–A, Orig.

Boston, MA, General Edward Lawrence Logan Intl, NDB or GPS RWY 4R, Amdt. 22

Boston, MA, General Edward Lawrence Logan Intl, VOR/DME or GPS RWY 15R, Orig.

Boston, MA, General Edward Lawrence Logan Intl, NDB or GPS RWY 22L, Amdt. 9

Salisbury, MD, Salisbury-Wicomico County Regional, VOR or GPS RWY 5, Amdt. 8A

Salisbury, MD, Salisbury-Wicomico County Regional, VOR or GPS RWY 23, Amdt. 8A

Salisbury, MD, Salisbury-Wicomico County Regional, VOR or GPS RWY 32, Amdt. 8A

Houlton, ME, Houlton Intl, VOR or GPS RWY 5, Amdt. 9

Millinocket, ME, Millinocket Muni, NDB or GPS RWY 29, Amdt. 3

Millinocket, ME, Millinocket Muni, VOR or GPS–A, Amdt. 10

Alma, MI, Gratiot Community, NDB or GPS RWY 9, Amdt. 5

Alma, MI, Gratiot Community, VOR/DME RNAV or GPS RWY 27, Amdt. 6

Gladwin, MI, Charles C. Zettel Memorial, NDB or GPS RWY 27, Amdt. 3A

Greenville, MI, Greenville Muni, VOR/DME or GPS–A, Orig.

Ironwood, MI, Gogebic County, VOR/DME or GPS RWY 27, Amdt. 8

Ironwood, MI, Gogebic County, VOR or GPS RWY 9, Amdt. 12

Marquette, MI, Marquette County, VOR or GPS RWY 8, Amdt. 2A

Marquette, MI, Marquette County, VOR or GPS RWY 26, Amdt. 2A

Marshall, MI, Brooks Field, VOR or GPS RWY 28, Amdt. 13

Saginaw, MI, Tri-City Intl, VOR or GPS RWY 5, Amdt. 14

Saginaw, MI, Tri-City Intl, VOR or GPS RWY 14, Amdt. 13

Saginaw, MI, Tri-City Intl, VOR or GPS RWY 23, Amdt. 14

Saginaw, MI, Tri-City Intl, VOR or GPS RWY 32, Amdt. 9

Bemidji, MN, Bemidji-Beltrami County, VOR or GPS RWY 13, Amdt. 16A

Bemidji, MN, Bemidji-Beltrami County, VOR/DME or TACAN or GPS RWY 31, Amdt. 12A

Benson, MN, Benson Muni, NDB or GPS RWY 14, Amdt. 5

Grand Rapids, MN, Grand Rapids/Itasca County-Gordon Newstrom Field, VOR/DME or GPS RWY 16, Orig.

Grand Rapids, MN, Grand Rapids/Itasca County-Gordon Newstrom Field, VOR or GPS RWY 34, Amdt. 9

Pipestone, MN, Pipestone Muni, NDB or GPS RWY 36, Amdt. 5A

Willmar, MN, Willmar Muni-John L. Rice Field, VOR or GPS RWY 10, Amdt. 1A

Willmar, MN, Willmar Muni-John L. Rice Field, VOR or GPS RWY 28, Amdt. 1A

Grain Valley, MO, East Kansas City, VOR/DME RNAV or GPS RWY 27, Amdt. 1

Grain Valley, MO, East Kansas City, VOR or GPS RWY 23, Amdt. 2

Lebanon, MO, Floyd W. Jones Lebanon, NDB or GPS RWY 36, Amdt. 5

Malden, MO, Malden Muni, VOR or GPS RWY 31, Amdt. 7A

Malden, MO, Malden Muni, RNAV or GPS RWY 13, Orig.

Mountain View, MO, Mountain View, NDB or GPS RWY 28, Amdt. 3

Poplar Bluff, MO, Poplar Bluff Muni, NDB or GPS RWY 36, Amdt. 1A

Clarksdale, MS, Fletcher Field, NDB or GPS–A, Orig.

Clarksdale, MS, Fletcher Field, NDB or GPS RWY 36, Amdt. 7

Greenwood, MS, Greenwood-Leflore, RNAV or GPS RWY 36, Amdt. 3

Greenwood, MS, Greenwood-Leflore, VOR or GPS RWY 5, Amdt. 9

Greenwood, MS, Greenwood-Leflore, NDB or GPS RWY 18, Amdt. 1

Miles City, MT, Frank Wiley Field, VOR or GPS RWY 4, Amdt. 11

Miles City, MT, Frank Wiley Field, VOR/DME or GPS RWY 22, Amdt. 8

Shelby, MT, Shelby, NDB or GPS RWY 23, Amdt. 6

Elkin, NC, Elkin Muni, NDB or GPS RWY 25, Amdt. 1

Kenansville, NC, Duplin County, NDB or GPS RWY 22, Amdt. 5

Morganton, NC, Morganton-Lenoir, NDB or GPS RWY 3, Amdt. 4

New Bern, NC, Craven County Regional, VOR or GPS RWY 4, Amdt. 3A

New Bern, NC, Craven County Regional, VOR or GPS RWY 22, Amdt. 1B

Oxford, NC, Henderson-Oxford, NDB or GPS RWY 6, Amdt. 1B

Salisbury, NC, Rowan County, VOR or GPS–A, Amdt. 7

Salisbury, NC, Rowan County, VOR or GPS RWY 2, Amdt. 5

Salisbury, NC, Rowan County, VOR or GPS RWY 20, Amdt. 1

Salisbury, NC, Rowan County, NDB or GPS–B, Amdt. 10

Jamestown, ND, Jamestown Muni, VOR or GPS RWY 13, Amdt. 7

Jamestown, ND, Jamestown Muni, VOR or GPS RWY 31, Amdt. 8

Alliance, NE, Alliance Muni, VOR or GPS RWY 12, Amdt. 2

O'Neill, NE, The O'Neill Muni-John L. Baker Field, VOR or GPS RWY 13, Amdt. 5

O'Neill, NE, The O'Neill Muni-John L. Baker Field, VOR or GPS RWY 31, Amdt. 1

Scottsbluff, NE, William B. Heilig Field, NDB or GPS RWY 12, Amdt. 7

Scottsbluff, NE, William B. Heilig Field, VOR or TACAN or GPS RWY 23, Amdt. 10

Scottsbluff, NE, William B. Heilig Field, VOR/DME or GPS RWY 5, Amdt. 3

York, NE, York Muni, NDB or GPS RWY 35, Amdt. 2

Claremont, NH, Claremont Muni, NDB or GPS–A, Orig.

Lebanon, NH, Lebanon Muni, NDB or GPS–B, Amdt. 3

Teterboro, NJ, Teterboro, VOR/DME RNAV or GPS RWY 24, Orig. A

Teterboro, NJ, Teterboro, VOR/DME or GPS–B, Amdt. 2

Teterboro, NJ, Teterboro, VOR/DME or GPS–A, Amdt. 2

Teterboro, NJ, Teterboro, NDB or GPS RWY 6, Amdt. 17A

Vineland, NJ, Kroelinger, VOR or GPS–B, Orig.

Artesia, NM, Artesia Muni, NDB or GPS RWY 12, Amdt. 2

Artesia, NM, Artesia Muni, NDB or GPS RWY 30, Amdt. 2

Zuni Pueblo, NM, Black Rock, VOR/DME or GPS RWY 7, Orig.

Reno, NV, Reno Cannon Intl, VOR or GPS–D, Amdt. 6

Reno, NV, Reno Cannon Intl, NDB or GPS RWY 16R, Amdt. 5

Newburgh, NY, Stewart Intl, RNAV or GPS RWY 16, Amdt. 2A

Newburgh, NY, Stewart Intl, NDB or GPS RWY 9, Amdt. 7

Newburgh, NY, Stewart Intl, RNAV or GPS RWY 27, Amdt. 1A

Poughkeepsie, NY, Dutchess County, VOR or GPS–A, Amdt. 10
Poughkeepsie, NY, Dutchess County, VOR/DME or TACAN or GPS RWY 24, Amdt. 3
Poughkeepsie, NY, Dutchess County, RNAV or GPS RWY 6, Amdt. 5
Schenectady, NY, Schenectady County, NDB or GPS RWY 22, Amdt. 14
Schenectady, NY, Schenectady County, NDB or GPS RWY 28, Amdt. 9
Ashland, OH, Ashland County, NDB or GPS RWY 18, Amdt. 8
Ashland, OH, Ashland County, VOR or GPS–A, Amdt. 6
Cleveland, OH, Burke Lakefront, NDB or GPS RWY 24R, Orig. B
Ottawa, OH, Putman County, VOR or GPS RWY 27, Amdt. 1
Toledo, OH, Toledo Express, VOR/DME RNAV or GPS RWY 16, Amdt. 5
Toledo, OH, Toledo Express, VOR/DME or GPS RWY 34, Amdt. 5
Toledo, OH, Toledo Express, NDB or GPS RWY 7, Amdt. 23
Van Wert. OH, Van Wert County, NDB or GPS RWY 9, Amdt. 1
Versailles, OH, Darke County, NDB or GPS RWY 9, Amdt. 7
Wilmington, OH, Airborne Airpark, VOR or GPS RWY 4, Amdt. 4
Wilmington, OH, Airborne Airpark, VOR/DME or GPS RWY 22, Amdt. 3
Blackwell, OK, Blackwell-Tonkawa Muni, VOR/DME RNAV or GPS RWY 17, Amdt. 2
Blackwell, OK, Blackwell-Tonkawa Muni, VOR or GPS–A, Amdt. 3
Cushing, OK, Cushing Muni, NDB or GPS RWY 35, Amdt. 3B
Durant, OK, Eaker Field, NDB or GPS RWY 35, Amdt. 5
Guthrie, OK, Guthrie Muni, NDB or GPS RWY 16, Amdt. 3
Guymon, OK, Guymon Muni, NDB or GPS RWY 18, Amdt. 5
Tulsa, OK, Tulsa Intl, VOR or TACAN or GPS RWY 26, Amdt. 22
Tulsa, OK, Tulsa Intl, NDB or GPS RWY 36R, Amdt. 19
Tulsa, OK, Tulsa Intl, VOR/DME or TACAN or GPS RWY 8, Amdt. 3A
Tulsa, OK, Tulsa Intl, NDB or GPS RWY 18L, Amdt. 10
Klamath Falls, OR, Klamath Falls Intl, VOR/DME or TACAN or GPS RWY 14, Amdt. 3
Klamath Falls, OR, Klamath Falls Intl, VOR or GPS–B, Amdt. 3
Klamath Falls, OR, Klamath Falls Intl, NDB or GPS RWY 32, Amdt. 1
Pendleton, OR, Eastern Oregon Regional At Pendleton, NDB or GPS–A, Amdt. 7
Pendleton, OR, Eastern Oregon Regional At Pendleton, VOR or GPS RWY 7, Amdt. 14
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 17, Amdt. 4
Philadelphia, PA, Philadelphia Intl, VOR/DME or GPS–A, Amdt. 1
Philadelphia, PA, Philadelphia Intl, NDB or GPS RWY 27L, Amdt. 5
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 35, Amdt. 3A
Pittsburgh, PA, Allegheny County, VOR/DME RNAV or GPS RWY 10, Amdt. 6
Pittsburgh, PA, Allegheny County, VOR or GPS RWY 5, Amdt. 9A
Pittsburgh, PA, Allegheny County, NDB or GPS RWY 28, Amdt. 22A
Washington, PA, Washington County, NDB or GPS RWY 27, Orig. A
Washington, PA, Washington County, VOR or GPS–B, Amdt. 6A
Aguadilla, PR, Rafael Hernandez, VOR/DME or TACAN or GPS RWY 8, Amdt. 1
Providence, RI, Theodore Francis Green State, VOR or GPS RWY 34, Amdt. 4
Aiken, SC, Aiken Muni, NDB or GPS RWY 24, Amdt. 9
Aiken, SC, Aiken Muni, VOR/DME or GPS–A, Orig.
Greenville, SC, Donaldson Center, NDB or GPS RWY 4, Amdt. 4
Kingstree, SC, Williamsburg County, NDB or GPS RWY 14, Amdt. 3
North Myrtle Beach, SC, Grand Strand, VOR or GPS RWY 5, Amdt. 19
North Myrtle Beach, SC, Grand Strand, VOR or GPS RWY 23, Amdt. 18
Brookings, SD, Brookings Muni, VOR or GPS RWY 12, Amdt. 10
Brookings, SD, Brookings Muni, VOR or GPS RWY 30, Amdt. 9
Centerville, TN, Centerville Muni, VOR/DME or GPS RWY 2, Amdt. 2
Greeneville, TN, Greeneville Muni, NDB or GPS RWY 5, Amdt. 4
Lexington, TN, Franklin Wilkins, VOR or GPS RWY 33, Amdt. 9
Morristown, TN, Moore-Murrell, NDB or GPS RWY 5, Amdt. 4
Pulaski, TN, Abernathy Field, VOR/DME or GPS RWY 33, Orig. A
Pulaski, TN, Abernathy Field, NDB or GPS RWY 15, Amdt. 4
Savannah, TN, Savannah-Hardin County, NDB or GPS RWY 18, Amdt. 3A
Brady, TX, Curtis Field, NDB or GPS RWY 17, Amdt. 2
Carrizo Springs, TX, Dimmit County, NDB or GPS RWY 31, Amdt. 2
Carthage, TX, Panola County-Sharpe Field, NDB or GPS RWY 35, Orig.
Houston, TX, Andrau Airpark, NDB or GPS RWY 16, Amdt. 16
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 35L, Amdt. 3
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 17R, Amdt. 3
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 35, Amdt. 2
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 30L, Amdt. 16
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 4, Amdt. 17
Houston, TX, William P. Hobby, VOR or GPS RWY 12R, Amdt. 18
Houston, TX, William P. Hobby, VOR/DME or GPS RWY 22, Amdt. 23A
Jacksonville, TX, Cherokee County, VOR/DME or GPS RWY 13, Amdt. 2
McKinney, TX, McKinney Muni, VOR/DME or GPS–A, Amdt. 3
Mineral Wells, TX, Mineral Wells, VOR or GPS RWY 31, Amdt. 9A
Olney, TX, Olney Muni, NDB or GPS RWY 17, Amdt. 3
Paris, TX, Cox Field, VOR/DME or GPS RWY 35, Amdt. 10
Plainview, TX, Hale County, VOR or GPS RWY 4, Amdt. 8
Snyder, TX, Winston Field, NDB or GPS RWY 35, Amdt. 1
Sonora, TX, Sonora Muni, NDB or GPS RWY 18, Amdt. 3
Van Horn, TX, Culberson County, NDB or GPS RWY 21, Amdt. 1
Waco, TX, Waco Regional VOR/DME or GPS RWY 32, Amdt. 13
Waco, TX, Waco Regional VOR or GPS RWY 14, Amdt. 20
Waco, TX, Waco Regional NDB or GPS RWY 19, Amdt. 17
Salt Lake City UT, Salt Lake City Intl, VOR/DME or TACAN or GPS RWY 34, Amdt. 6
Salt Lake City UT, Salt Lake City Intl, VOR or TACAN or GPS RWY 16, Amdt. 22
Salt Lake City UT, Salt Lake City Intl, VOR or TACAN or GPS RWY 17, Amdt. 10
Culpeper, VA, Culpeper County, NDB or GPS–B, Orig.
Culpeper, VA, Culpeper County, VOR or GPS–A, Amdt. 4
Culpeper, VA, Culpeper County, VOR/DME RNAV or GPS RWY 22, Amdt. 1
South Boston, VA, William M. Tuck, VOR or GPS–A, Amdt. 6
Wakefield, VA, Wakefield Muni, NDB or GPS RWY 20, Amdt. 4
Wise, VA, Lonesome Pine, RNAV or GPS RWY 24, Amdt. 2
Burlington/Mount Vernon, WA, Skagit Regional/Bay View, NDB or GPS RWY 10, Amdt. 2
Renton, VA, Renton Muni, NDB or GPS RWY 15, Amdt. 2
Seattle, WA, Seattle-Tacoma Intl, VOR or GPS RWY 34L/R, Amdt. 8
Seattle, WA, Seattle-Tacoma Intl, VOR or GPS RWY 16L/R, Amdt. 12
Clintonville, WI, Clintonville Muni, NDB or GPS RWY 32, Amdt. 6
Fort Atkinson, WI, Fort Atkinson Muni, VOR or GPS–A, Orig.
Manitowish Waters, WI, Manitowish Waters, NDB or GPS RWY 32, Orig.
Manitowoc, WI, Manitowoc County, VOR or GPS RWY 35, Amdt. 12
Manitowoc, WI, Manitowoc County, VOR or GPS RWY 17, Amdt. 13
Platteville, WI, Grant County, VOR/DME RNAV or GPS RWY 25, Amdt. 6
Sturgeon Bay, WI, Door County Cherryland, NDB or GPS RWY 1, Amdt. 9
West Bend, WI, West Bend Muni, VOR or GPS RWY 24, Amdt. 2
West Bend, WI, West Bend Muni, RNAV or GPS RWY 13, Amdt. 5
West Bend, WI, West Bend Muni, NDB or GPS RWY 31, Amdt. 10
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, VOR or GPS–A, Amdt. 11
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, NDB or GPS–18, Amdt. 15
Parkersburg, WV, Wood County Airport Gill Robb Wilson Field, VOR or GPS RWY 21, Amdt. 14
Big Piney, WV, Big Piney-Marbleton, VOR or GPS RWY 31, Amdt. 3
Riverton, WY, Riverton Regional, VOR or GPS RWY 28, Amdt. 8
Riverton, WY, Riverton Regional, VOR or GPS RWY 10, Amdt. 8

The following are corrected procedure titles adding "or GPS" published in Transmittal Letter 94–09.

Hot Springs, AR, Memorial Field, VOR or GPS–2 RWY 5, Amdt. 3

Bedford, IN, Virgil I. Grissom Muni, VOR/DME or GPS RWY 13, Amdt. 9
Manistee, MI, Manistee County-Blacker, VOR or GPS RWY 9, Amdt. 11
Manistee, MI, Manistee County-Blacker, VOR or GPS RWY 27, Amdt. 11
Alexandria, MN, Chandler Field, VOR or GPS RWY 22, Amdt. 14
Laconia, NH, Laconia Muni, NDB or GPS RWY 6, Amdt. 8
Las Vegas, NV, McCarran Intl, VOR/DME or GPS RWY 1R, Orig.
Aberdeen, SD, Aberdeen Regional, VOR/DME or GPS RWY 13, Amdt. 11

[FR Doc. 94–10534 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 7

National Institute of Standards and Technology

15 CFR Part 285

[Docket No. 930103–4017]

RIN 0693–AB15

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology, United States Department of Commerce, is today issuing a final rule making changes to regulations previously found at 15 CFR part 7 pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). The NVLAP procedures are redesignated as part 285 of title 15 of the Code of Federal Regulations, and are revised to expand the procedures to include accreditation of calibration laboratories; update the procedures for compatibility with conformity assurance and assessment concepts; assure consistency with relevant International Organization for Standardization (ISO) documents (e.g., ISO Guides 25, 38, 43, 58, and 9000); and facilitate and promote acceptance of calibration and test results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies to assist in the exchange of information and experience, harmonize standards and procedures, and establish the basis for bi-lateral and multi-lateral agreements.

EFFECTIVE DATE: This rule is effective June 2, 1994.

ADDRESSES: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899, telephone number (301) 975–4016.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, (301) 975–4016.

SUPPLEMENTARY INFORMATION: The Director of the National Institute of Standards and Technology, (NIST) is today issuing a final rule making changes to regulations previously found at 15 CFR Part 7 pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). NVLAP provides an unbiased third party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance, by accrediting calibration laboratories and testing laboratories found competent to perform specific tests or calibrations.

Competence is defined as the ability of a laboratory to meet the NVLAP conditions set out in the NVLAP regulations and to conform to the criteria in NVLAP publications for particular calibration and test methods. Specifically, NVLAP accreditation indicates that a laboratory's quality system, staff, facilities and equipment, calibration protocols, methods and procedures, records and reports have been evaluated and found to meet NVLAP criteria.

Accreditation is granted following successful completion of a process which includes submission of an application and payment of fees by the laboratory, an on-site assessment, resolution of any deficiencies identified during the on-site assessment, participation in proficiency testing, technical evaluation, and administrative review. The accreditation is formalized through issuance of a Certificate of Accreditation and Scope of Accreditation and is publicized by announcement in various government and private media. NVLAP accreditation does not imply any guarantee or certification of laboratory performance or test/calibration data; it is solely a finding of laboratory competence.

NVLAP accreditation is available to commercial laboratories, manufacturers' in-house laboratories, university laboratories, and federal, state and local government laboratories. Foreign-based laboratories may also be accredited if they meet the same requirements as domestic laboratories and pay any additional fees required for travel expenses.

NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. Each LAP includes specific calibration and/or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in a field of testing, field of calibration, product or service.

Description of the Changes

The NVLAP procedures are redesignated as part 285 of title 15 of the Code of Federal Regulations; expanded to include accreditation of calibration laboratories; updated for compatibility with conformity assurance and assessment concepts; made consistent with relevant International Organization for Standardization (ISO) documents (e.g., ISO Guides 25, 38, 43, 58, and 9000); revised to facilitate and promote acceptance of calibration and test results between countries to avoid barriers to trade; and to eliminate references to the NVLAP advisory committee. Section D has been replaced with language essentially identical to ISO Guide 25. Provisions in this regard will facilitate cooperation between laboratories and other bodies to assist in the exchange of information and experience, harmonize standards and procedures, and establish the basis for bi-lateral and multi-lateral agreements.

Summary of Comments

On July 27, 1993, the National Institute of Standards and Technology published a notice of proposed rulemaking in the **Federal Register** (58 FR 40087). A total of 11 letters were received: Four trade associations, three manufacturers, one government agency, one laboratory accrediting organization, one testing laboratory, and one consultant commented. All eleven supported the proposal, especially the changes in procedures that will result in achieving compatibility with international standards and guides and broadening the scope of NVLAP to include accreditation of calibration laboratories.

Other than recommendations to strengthen the national and international recognition of NVLAP accredited laboratory data, the comments covered a wide range of suggestions made by only one or two of the respondents. Recommendations are addressed below with a summary "Recommendation" and a "Response" for each.

Comment. One accreditation organization and one consultant suggested that NVLAP clarify § 285.24 Denying, Suspending, and revoking accreditation, to specify the conditions for making a suspension decision vis-a-vis a revocation decision.

Response. Section 285.24 (e) clearly states that invoking suspension or revocation "will depend on the nature of the violation(s)". It is very difficult to be prescriptive because of the vast possible combinations of laboratory operations and deficiencies. Selecting suspension action implies the expectation that deficiencies can be resolved before actual suspension is invoked; additionally, if suspension is invoked, the expectation is that it will be rather short lived. Revocation, in contrast, is clearly used in cases of more serious deficiencies that are not likely to be resolved. The return of the Certificate and Scope of Accreditation are required under revocation; it is expected that suspension will be short lived, therefore return of the Certificate and Scope are not required.

Comment. One manufacturer and one laboratory suggested that NVLAP procedures should provide for an "office of government liaison" to work toward reduction of redundant accreditation programs in the United States to save laboratories the expense of paying for multiple programs.

Response. Although redundant programs and multiple audits cause confusion and added expense to accredited laboratories, NVLAP has no authority to add a provision regarding redundant programs and/or multiple audits. The NVLAP process is designed so that NVLAP itself does not offer a LAP that duplicates one that exists or could be offered by a public sector accreditor.

Comment. One consultant suggested that although a definition is provided for the term "Certificate of Accreditation", a definition is needed for the term "Certificate" as used in the definition of "Reference material".

Response. See NIST Special Publication 260, "Standard Reference Materials Catalog", for definition and discussion of the term "certificate" as it applies to Standard Reference Materials. Defining the term in the NVLAP procedures would be confusing and out of context with its use.

Comment. One manufacturer suggested that part 285 should be referenced in § 285.6 NVLAP documentation.

Response. Section 285.6 (a) will be changed to include such a reference.

Comment. One trade association suggested that NVLAP modify the definition for Authorized Representative in § 285.5 Definitions to provide an organization with more flexibility in naming an Authorized Representative.

Response. This section will be reworded to provide additional flexibility by stating that the Authorized Representative of an accredited laboratory may be an individual who is authorized by the laboratory or the parent organization.

Comment. One manufacturer suggested adding a definition for Competent to § 285.5 Definitions.

Response. The definition of Competence will be added as "the ability of a laboratory to meet the NVLAP conditions and to conform to the criteria in NVLAP publications for specific calibration and test methods".

Comment. One manufacturer suggested modifying the definition of NVLAP in § 285.5 Definitions to include its relationship to NIST.

Response. Agree. The definition for NVLAP will be changed to state that NVLAP "is an Office within the National Institute of Standards and Technology".

Comment. One trade association suggested changing the definition of Traceability of the accuracy—in § 285.5 Definitions by changing "primary" standard to "reference" standard.

Response. The definition is correct as written. Traceability follows a path which may include the "reference standard" in the laboratory but, as the definition states, must be traceable "ultimately to a primary standard".

Comment. One trade association suggested that § 285.33 (k) Certificates and reports identify the type of laboratory issuing the certificate and report (e.g., independent, manufacturer's, etc.). It is the belief of the writer of this comment that "in-house" laboratories can not necessary produce "unbiased" results.

Response. No change is needed. Information describing the type of laboratory accredited is provided by the laboratory in its application and included in the NVLAP data base. However, the type of laboratory has no bearing on the accreditation decision; rather, the accreditation decision is based on the judgment (using results from on-site assessments, proficiency testing, and monitoring visits) that the laboratory meets all of the criteria established for a particular Laboratory Accreditation Program (LAP), independent of the "organizational" association of the laboratory.

Comment: One consultant suggested revision of § 285.23(a) Granting and renewing accreditation to remove decisions based on variations of compliance.

Response: Full compliance results in accreditation action. Less than full compliance can result in accreditation or other actions depending on variation from full compliance in terms of deficiencies and the expectations of corrective action.

Comment: One consultant suggested that § 285.23(b)(3) Granting and renewing accreditation should contain a stronger statement than "reminding" laboratories of their legal obligations.

Response: NVLAP has no responsibility or authority to do more than remind laboratories of this fact.

Comment: One trade association and one laboratory suggested that §§ 285.32(a)(10) and 285.33(b)(2)(ii) and (iii) be either deleted or limited to ensure that the requirement for laboratories to avoid undue or coercive commercial or financial pressures on staff are not applied to the normal course of employer-employee and independent contractor relationships of a manufacturer's in-house laboratory.

Response: These Sections clearly avoid undue interference by limiting the requirement to "pressures which might adversely affect the quality of the work." Accreditation of a laboratory depends on NVLAP's confidence that the laboratory will provide accurate test and calibration services. These services must no be degraded by pressures of any kind. NVLAP cannot deal with degrees or types of pressure, only with the accuracy of data provided to customers.

Comment: One trade association suggested that NVLAP needs to clarify its policy for addressing the recognition of foreign-based laboratories based on accreditation by a foreign government or accrediting organization.

Response: The policy will be clarified by adding to § 285.11 Requesting a LAP a new paragraph (f) which states that "consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries for NVLAP recognition of foreign laboratories. At a minimum, any agreement must provide that accredited foreign laboratories meet conditions for accreditation comparable to and consistent with those set out in these requirements".

Comment: One manufacturer suggested deleting the requirement in § 285.26 Change in status of laboratory for laboratories to advise NVLAP of any change in location and/or configuration of its facilities.

Response: NVLAP must get this information prior to the laboratory making any changes. The fact of moving or reconfiguration of a laboratory could significantly affect the quality of its testing or calibration activities.

Comment: One trade association suggested revising § 285.32(a)(6) Conditions for accreditation, to limit the services that a laboratory offers to customers to NVLAP accredited areas.

Response: NVLAP accreditation does not limit the freedom of laboratories to offer services outside the scope of accreditation. NVLAP only limits laboratories from claiming accreditation for services not included on their Scopes of Accreditation issued to the laboratories.

Comment: One trade association asked that the regulation be made more specific in defining the meaning of "staffing" in § 285.26., stating that it is too broad.

Response: NVLAP believes that there are so many possibilities regarding staffing changes that the reference needs to be general so that an objective opinion can be made on the specific change proposed or made. NVLAP focuses on staffing changes that could affect the quality of the testing or calibration work.

Comment: One trade association suggested changing § 285.33 (1) Subcontracting of calibration or testing to limit subcontracting to accredited laboratories only.

Response: This section is in full conformity with international requirements which do not impose such a restriction. This is partly based on the fact that no other accredited laboratory may be geographically available or willing to provide the services needed. NVLAP believes that its procedures for subcontracting will ensure that the data provided by the subcontractor will meet the established quality standards.

Comment. Two trade associations and one Government agency stated that NVLAP procedures need to be more explicit regarding coordination with the private and public sectors in defining the contents of a LAP, especially when the LAP will be addressing regulatory responsibilities of other agencies.

Response. NVLAP invites the participation of all interested parties in the determination of need and in the design of a new accreditation program (§§ 285.15 and 285.16). The **Federal Register**, public workshops, news releases, direct mailings to organizations and associations, and participation in industry and professional meetings are all mechanisms used in order to encourage such participation.

Comment. A trade association, a Government agency and an accreditation organization commented that § 285.12(b)(3) LAP development decision does not adequately prevent a conflict of interest for NIST in making LAP development decisions that could be in competition with private sector accreditation programs.

Response. The conditions under which NVLAP establishes and operates accreditation programs is explicit and addresses the conflict of interest question. NVLAP believes that the requirements followed in making a development decision are adequate and that NVLAP has guarded against establishment of programs already existing or that could be offered by private sector accreditors.

Comment. A trade association, a Government agency and an accreditation organization commented that § 285.18 Adding to or modifying an established LAP should be strengthened to require NVLAP to follow the same requirements for modifying a LAP as for establishing a new LAP. NVLAP should not add test methods without going through a full "need" analysis.

Response. Every LAP is established after an exhaustive process that includes the determination of need. Changes needed by a LAP sponsor, caused by standards updated by standards bodies, or due to revisions in regulatory requirements, must be made expeditiously so that the accreditation program continues to meet the needs of its sponsor.

Comment. One manufacturer and one government agency suggested that § 285.13 Request from a government agency be revised to contain all of the information required from a private sector organization requesting a LAP (§ 285.14).

Response. The procedures to be followed by private sector organizations and government agencies are, of necessity, different. Regulatory and public service program authorities are specified in laws and administrative procedures. Accreditation requirements established by government agencies may contain the conditions noted in § 285.14 and are automatically referenced in the specific authority establishing a laboratory accreditation program.

NVLAP, however, agrees that the procedures do need to explicitly address establishing or modifying NVLAP LAPs to meet the requirements mandated by the Federal Government including legislative action and/or intergovernmental understandings or agreements. Accordingly, section 285.1 is revised to state that NVLAP will operate to accredit both calibration laboratories and testing laboratories "in response to (a) Mandates by the Federal government through legislative or administrative action; (b) Requests from a government agency (§ 285.13); and (c) Requests from a private section organization (§ 285.14)".

In addition, § 285.11, Requesting a LAP, is revised to provide that following receipt of the identification of a mandate for a LAP based on legislative or administrative action, the Director must publish a Federal Register notice (1) stating the purpose of the LAP including the national or international need; (2) describing the general scope of the LAP; (3) identifying government agencies having oversight; and (4) providing information to any interested party wishing to be on the NVLAP mailing list to receive routine information on the development of the LAP. In addition, § 285.12 is revised to provide that the Director of NIST shall establish all LAPs on the basis of need; and that a mandate to develop a LAP by NVLAP will be interpreted as a defacto decision to develop the specified LAP, and a LAP will be developed (or existing LAPs modified, if practical) following these procedures.

Comment. In the context of the establishment of LAPs at the request of Government agencies, one manufacturer stated that the proposed change to the NVLAP procedures does not cover: (1) Requirements for factory inspections as a part of certification; (2) certification organizations; and (3) the need for a public review of the findings. Further, the changes would allow the use of subcontractors who are not independent of manufacturers, employers, and distributors.

Response. No changes are made. The comments reflect some of the conditions of accreditation required by a government agency. These kinds of conditions are normally addressed in gathering information leading to a decision whether or not to develop a new LAP. The NVLAP procedures can not be complete in anticipation of any and all possible conditions required by a sponsor.

Comment. Three trade associations, two manufacturers, a Government agency, an accreditation organization and a consultant each commented on the need for more specifics regarding international trade, international recognition of testing and calibration data, and memoranda of understanding (MOUs) and mutual recognition agreements. Most letters contained some reference to these issues, either pointing out the need for explicit language recognizing international trade interests such as "reduction of non-tariff barriers"; working to "make the program more acceptable nationally and internationally"; stating that "it is of great interest to U.S. manufacturers to have U.S./EC recognized accreditation for testing to European specifications"; and identifying the need to "promote the acceptance of calibration and testing results between countries to encourage international trade".

The comment was also made that the NVLAP revision should state that inquiries from other countries regarding memoranda of understandings (MOUs) and mutual recognition agreements (MRAs) will be referred to the appropriate U.S. agency to participate in any detailed negotiations.

Response. Other than a general statement, the proposed regulation did not specifically deal with these concerns.

Comment. One consultant suggested changing § 285.22 Assessing and evaluating a laboratory to eliminate the suggestion that NVLAP provides consulting or legal services.

Response. Regarding consulting services, communications with laboratories are in the context of these procedures, none of which provide for consulting services. NVLAP identifies the deficiencies noted; it is the responsibility of the laboratory, not NVLAP, to determine how deficiencies will be rectified. Regarding legal services, NVLAP provides guidance to the accredited laboratories on the conditions for referencing accredited status; this is procedural, not legal advice.

Comment. One consultant suggested that NVLAP expand and elaborate § 285.3 Description and goal of NVLAP to include additional information explaining methods for achieving the various objectives and goals in the section.

Response. The language in this section clearly defines the goals and objectives of NVLAP. Methods for achieving these goals and objectives are already contained in many other publications, including NIST administrative procedures and various NVLAP programmatic documents.

Comments. One trade association and one consultant suggested that NVLAP reword § 285.8 Referencing NVLAP accreditation, to remove the implication that laboratories must advertise accredited status, etc.

Response. Section 285.8(a) has been revised to make clear that advertising is voluntary.

Comment. One accreditation organization suggested that NVLAP should not make any changes to § 285.33 Criteria for accreditation in response to comments received as a result of the **Federal Register** notice because it is important that the NVLAP regulation remain compatible with the ISO Guide 25. It was recommended that such changes should be compiled for use in discussions at upcoming ISO meetings related to changing ISO Guide 25.

Response. NVLAP agrees, and is doing this.

Comment. One accreditation organization suggested that ASTM Standard E 1301 should be referenced instead of ISO Guide 38, which is "no longer a viable standard"; ISO Guide 43 should not be referenced because it is very general and being revised.

Response. Guides 38 and 43 served as reference to ensure that the NVLAP procedures meet all current international requirements. In fact, the NVLAP procedures are more robust than the procedures contained in either Guide 38 or Guide 43. NVLAP is committed to meeting international requirements for laboratory accreditation, therefore we reference the ISO guides and standards. We also know that ISO "equivalents" are published by other standards bodies. However, we do not plan to invest time in evaluating the equivalence of these standards in order to reference them in our procedures.

Comment. One accreditation organization suggested that the reference to ISO Series 9000 documents in § 285.4 References might imply that NVLAP accreditation also conveys ISO 9000 registration.

Response. Reference to the ISO Series 9000 does not imply that NVLAP is an ISO 9000 registrar. However, NVLAP accepts the statement in ISO Guide 25 that "laboratories meeting the requirements of the Guide comply with the relevant requirements of the ISO 9000 series of standards including those of the model described in ISO 9002".

Comment. One consultant suggested deleting reference to ISO 9004 because it is intended only as a guideline document for use by operators of quality management systems and not for regulatory adoption or referencing as being compatible.

Response. The entire ISO Series is referenced because of the strong relationship of this series with the quality systems criteria of ISO Guide 25.

Additional Information

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because (1) participation in NVLAP is entirely voluntary, and (2) the changes are primarily administrative, affecting the management of the program rather than laboratories seeking or holding accreditation. Further, the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not changed in any significant way by this proposal.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0693–0003.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environment Policy Act of 1969.

List of Subjects in 15 CFR Part 285

Business and industry, Commerce, Laboratories, Measurement standards.

Dated: April 25, 1994.

Mary Good,

Under Secretary for Technology, Department of Commerce.

Dated: April 19, 1994.

Samuel Kramer,

Associate Director, NIST.

For reasons set forth in the preamble, Title 15 of the Code of Federal Regulations is amended as follows:

PART 7—[REDESIGNATED AS PART 285]

1. Part 7 is redesignated as part 285.

1a. The authority citation for part 285 is revised to read as follows:

Authority: 15 U.S.C. 272 *et seq.*

PART 285—[AMENDED]

2. The Table of Contents for Part 285 is revised to read as follows:

Subpart A—General Information

Sec.

285.1 Purpose.
285.2 Organization of procedures.

285.3 Description and goal of NVLAP.
285.4 References.
285.5 Definitions.
285.6 NVLAP Documentation.
285.7 Confidentiality.
285.8 Referencing NVLAP Accreditation.

Subpart B—Establishing a LAP

285.11 Requesting a LAP.
285.12 LAP development decision.
285.13 Request from a government agency.
285.14 Request from a private sector organization.
285.15 Development of technical requirements.
285.16 Coordination with federal agencies.
285.17 Announcing the establishment of a LAP.
285.18 Adding to or modifying an established LAP.
285.19 Termination of a LAP.

Subpart C—Accrediting a Laboratory

285.21 Applying for accreditation.
285.22 Assessing and evaluating a laboratory.
285.23 Granting and renewing accreditation.
285.24 Denying, suspending, and revoking accreditation.
285.25 Voluntary termination of accreditation.
285.26 Change in Status of Laboratory.

Subpart D—Conditions and Criteria For Accreditation

285.31 Application of accreditation conditions and criteria.
285.32 Conditions for accreditation.
285.33 Criteria for accreditation.

3. Section 285.1 is revised to read as follows:

§ 285.1 Purpose.

The purpose of part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates to accredit both calibration laboratories and testing laboratories in response to:

(a) Mandates by the Federal government through legislative or administrative action;

(b) Requests from a government agency (§ 285.13); and

(c) Requests from a private sector organization (§ 285.14).

Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

4. Section 285.2 is revised to read as follows:

§ 285.2 Organization of procedures.

Subpart A describes considerations which relate in general to all aspects of NVLAP. Subpart B describes how new LAPs are requested, developed, and announced, and how LAPs are terminated. Subpart C describes procedures for accrediting laboratories. Subpart D sets out the conditions and criteria for NVLAP accreditation.

5. Section 285.3 is revised to read as follows:

§ 285.3 Description and goal of NVLAP.

(a) NVLAP is a system for accrediting calibration laboratories and testing laboratories found competent to perform specific tests or calibrations. Competence is defined as the ability of a laboratory to meet the NVLAP conditions (§ 285.32) and to conform to the criteria (§ 285.33) in NVLAP publications for specific calibration and test methods.

(b) NVLAP is a process which:

(1) Provides the technical and administrative mechanisms for national and international recognition for competent laboratories based on a comprehensive procedure for promoting confidence in calibration and testing laboratories that show that they operate in accordance with NVLAPs requirements;

(2) Provides laboratory management with documentation for use in the development and implementation of their quality systems;

(3) Identifies competent laboratories for use by regulatory agencies, purchasing authorities, and product certification systems;

(4) Provides laboratories with guidance from technical experts to aid them in reaching a higher level of performance resulting in the generation of improved engineering and product information; and

(5) Promotes the acceptance of calibration and test results between countries, and facilitates cooperation between laboratories and other bodies to assist in the exchange of information and experience, facilitating removal of non-tariff barriers to trade and promoting the harmonization of standards and procedures.

(c) NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. The specific calibration and test methods, types of calibration and test methods, products, services, or standards to be included in a LAP are determined by an open process during the establishment of the LAP (see § 285.11). The Director of the National Institute of Standards and Technology (NIST) does not unilaterally propose or decide the scope of a LAP. Communication with other laboratory accreditation systems is fostered to encourage development of common criteria and approaches to accreditation and to promote the domestic, foreign, and international acceptance of test data produced by the accredited laboratories.

6. Section 285.4 is revised to read as follows:

§ 285.4 References.

NVLAP is designed to be compatible with domestic and foreign laboratory accreditation programs to ensure the universal acceptance of test data produced by NVLAP-accredited laboratories. In this regard, these Procedures are compatible with:

(a) The most recent official publications of ISO Guides 2, 25, 30, 38, 43, 45, 49, 58, and Standards 8402, 9001, 9002, 9003, and 9004.

(b) International vocabulary of basic and general terms in metrology (VIM) and Guide to the expression of uncertainty in measurement, issued by International Bureau of Weights and Measures (BIPM), International Electrotechnical Commission (IEC), International Federation of Clinical Chemistry (IFCC), International Organization for Standardization (ISO), International Union of Pure and Applied Chemistry (IUPAC), International Union of Pure and Applied Physics (IUPAP), and International Organization of Legal Metrology (OIML).

7. Section 285.5 is revised to read as follows:

§ 285.5 Definitions.

Accreditation (of a laboratory): A formal recognition that a laboratory is competent to carry out specific tests or calibrations or types of test or calibrations.

Accreditation criteria: A set of requirements used by an accrediting body which a laboratory must meet in order to be accredited.

Approved Signatory (of an accredited laboratory): An individual who is recognized by NVLAP as competent to sign accredited laboratory calibration or test reports.

Assessment (of a laboratory): The on-site examination of a testing or calibration laboratory to evaluate its compliance with the conditions and criteria for accreditation.

Authorized Representative (of an accredited laboratory): An individual who is authorized by the laboratory or the parent organization to sign the NVLAP application form and commit the laboratory to fulfill the NVLAP requirements (The Authorized Representative may also be recommended by the laboratory as an Approved Signatory).

Calibration: A set of operations which establish, under specified conditions, the relationship between values indicated by a measuring instrument or system, or values represented by a material measure, and the corresponding known values of a measurand.

Calibration method: A defined technical procedure for performing a calibration.

Certificate of Accreditation: A document issued by NVLAP to a laboratory that has met the criteria and conditions for accreditation. The Certificate of Accreditation may be used as proof of accredited status. A Certificate of Accreditation is always accompanied with a Scope of Accreditation.

Competence: The ability of a laboratory to meet the NVLAP conditions and to conform to the criteria in NVLAP publications for specific calibration and test methods.

Deficiency: The non-fulfillment of NVLAP conditions and/or criteria for accreditation.

Director of NIST: The Director of the National Institute of Standards and Technology or designate.

Laboratory: An organization that performs calibrations and/or tests. When a laboratory is part of an organization that carries out activities additional to calibration and testing, the term "laboratory" refers only to those parts of that organization that are involved in the calibration and testing process. The laboratory activities may be carried out at or from a permanent location, at or from a temporary facility, or in or from a mobile facility.

LAP: A laboratory accreditation program established and administered under NVLAP, consisting of test methods or calibrations relating to specific products or fields of testing or calibration.

NIST: The National Institute of Standards and Technology.

NVLAP: The National Voluntary Laboratory Accreditation Program. NVLAP is an Office within the National Institute of Standards and Technology.

Person: Associations, companies, corporations, educational institutions, firms, government agencies at the federal, state and local level, partnerships, and societies—as well as divisions thereof—and individuals.

Product: A type or a category of manufactured goods, constructions, installations, and natural and processed materials, or those associated services whose characterization, classification, or functional performance is specified by standards or test methods.

Proficiency testing: The determination of laboratory performance by means of comparing and evaluating calibrations or tests on the same or similar items or materials by two or more laboratories in accordance with predetermined conditions.

Quality manual: A document stating the quality policy, quality system, and quality practices of an organization. The quality manual may reference other laboratory documentation.

Quality system: The organizational structure, responsibilities, procedures, processes, and resources for implementing quality management.

Reference material: A material or substance one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement method, or for assigning values to materials. A "certified reference material" means that one or more of the property values of the reference material are certified by a technically valid procedure, accompanied by or traceable to a certificate or other documentation which is issued by a certifying body.

Reference standard: A standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived.

Scope of accreditation: A document issued by NVLAP which lists the test methods or services, or calibration services for which the laboratory is accredited.

Sub-facility: A laboratory operating under the technical direction and quality system of a main facility that is accredited.

Test: A technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

Test method: A defined technical procedure for performing a test.

Testing laboratory: A laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products or materials.

Traceability of the accuracy of measuring instruments: A documented chain of comparison connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and ultimately to a primary standard.

8. Section 285.6 is revised to read as follows:

§ 285.6 NVLAP documentation.

NVLAP publications are available for information and use by staff of accredited laboratories, those seeking accreditation, other laboratory accreditation systems, and others needing information on the requirements for accreditation under the NVLAP program. Accredited laboratories will be sent revised publications routinely. Publications include:

(a) The Procedures and General Requirements, (15 CFR part 285);

(b) Handbooks containing the administrative and operational procedures and technical requirements of specific LAPs;

(c) A directory of accredited laboratories published annually and updated periodically; and

(d) Policy Guides that provide changes to the Procedures and General Requirements and Handbooks between formal revisions of those publications.

9. Section 285.7 is revised to read as follows:

§ 285.7 Confidentiality.

To the extent permitted by applicable laws, NVLAP will seek to ensure confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

10. Section 285.8 is added to read as follows:

§ 285.8 Referencing NVLAP accreditation.

To become accredited and maintain accreditation, a laboratory shall agree in writing to:

(a) Follow NVLAP guidance when advertising its accredited status (including the use of the NVLAP logo) on letterheads, brochures, test reports, and professional, technical, trade, or other laboratory services publications.

(b) Inform its clients that the laboratory's accreditation or any of its calibration or test reports in no way constitutes or implies product certification, approval, or endorsement by NIST.

11. Section 285.11 is amended by revising paragraphs (a), (b)(1), (b)(3)(ii) and (c) and adding paragraphs (e) and (f) to read as follows:

§ 285.11 Requesting a LAP.

(a) A request to establish a LAP must be made to the Director of NIST.

(b) * * *

(1) The scope of the LAP in terms of products, calibration services, or testing services proposed for inclusion;

* * * * *

(3) * * *

(ii) Evidence of a national need to accredit calibration or testing laboratories for the specific scope beyond that served by an existing laboratory accreditation program in the public or private sector;

* * * * *

(c) NVLAP may request clarification of the information submitted according to paragraph (b) of this section.

* * * * *

(e) Following receipt of the identification of a mandate for a LAP based on legislative or administrative action, the Director shall publish a **Federal Register** notice:

(1) Stating the purpose of the LAP including the national or international need;

(2) Describing the general scope of the LAP;

(3) Identifying government agencies having oversight; and

(4) Providing information to any interested party wishing to be on the NVLAP mailing list to receive routine information on the development of the LAP.

(f) Consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries for NVLAP recognition of foreign laboratories. At a minimum, any agreement must provide that accredited foreign laboratories meet conditions for accreditation comparable to and consistent with those set out in these requirements.

12. Section 285.12 is amended by revising paragraphs (a) and (b)(6) to read as follows:

§ 285.12 LAP development decision.

(a) The Director of NIST shall establish all LAPs on the basis of need.

(1) A mandate to develop a LAP by NVLAP will be interpreted as a de facto decision to develop the specified LAP, and a LAP will be developed (or existing LAPs modified, if practical) following these procedures.

(2) Government agencies may document the need by using § 285.13, and private sector organizations by using § 285.14.

(b) * * *

(6) The economic and technical feasibility of accrediting laboratories for the calibration or test methods, types of calibration or test methods, products, services, or standards requested; and

* * * * *

13. Section 285.13 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.13 Request from a government agency.

(a) Any Federal, state or local agency responsible for regulatory or public service programs established under statute or code, which has determined a need to accredit laboratories within the context of its programs, may request the Director of NIST to establish a LAP.

* * * * *

(c) NVLAP may request clarification of the information required by § 285.11(b).

* * * * *

14. Section 285.14 is amended by revising paragraphs (a) introductory text and (c) to read as follows:

§ 285.14 Request from a private sector organization.

(a) Any private sector organization which has determined a need to accredit laboratories for specific products, calibrations, or testing services, may request the Director of NIST to establish a LAP if it uses procedures meeting the following conditions:

* * * * *

(c) NVLAP may request clarification of the information required by § 285.11(b).

* * * * *

15. Section 285.15 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.15 Development of technical requirements.

(a) Technical requirements for accreditation are specific for each LAP. The requirements tailor the criteria referenced in § 285.33 to the calibration or test methods, types of calibration or test methods, products, services, or standards covered by the LAP.

* * * * *

(c) NVLAP shall make every reasonable effort to ensure that the affected calibration or testing community within the scope of the LAP is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NIST Records Inspection Facility.

16. Section 285.17(c) is revised to read as follows:

§ 285.17 Announcing the establishment of a LAP.

* * * * *

(c) NVLAP shall establish fees in amounts that will enable it to recover its full costs, and shall, from time to time as necessary, revise the fees for this purpose.

17. Section 285.18 is revised to read as follows:

§ 285.18 Adding to or modifying an established LAP.

(a) Established or developing LAPs may be added to, modified, or realigned based on either a written request from any person wishing to add or delete specific standards, calibration or test methods, or types of calibration or test methods or a need identified by NIST.

(b) NVLAP may choose to make the additions or modifications available for accreditation under a LAP when:

(1) The additional standards, calibration or test methods, or types of calibration or test methods requested are directly relevant to the LAP;

(2) It is feasible and practical to accredit calibration or testing laboratories for the additional standards, calibration or test methods, or types of calibration or test methods; and

(3) It is likely that laboratories will seek accreditation for the additional standards, calibration or test methods, or types of calibration or test methods.

18. Section 285.19(a) is revised to read as follows:

§ 285.19 Termination of a LAP.

(a) The Director of NIST may terminate a LAP when the Director of NIST determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Director of NIST proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

* * * * *

19. Section 285.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 285.21 Applying for accreditation.

(a) A laboratory may complete and remit an application for accreditation in any of the established LAPs.

* * * * *

(c) Accreditation of laboratories outside of the United States may require:

(1) Translation of laboratory documentation into English; and

(2) Payment of additional traveling expenses for on-site assessments and proficiency testing.

20. Section 285.22 is revised to read as follows:

§ 285.22 Assessing and evaluating a laboratory.

(a) Information use to evaluate a laboratory's compliance with the conditions for accreditation set out in § 285.32, the criteria for accreditation set out in § 285.33, and the technical requirements established for each LAP will include (not necessarily in this order):

(1) Application and other material submitted by the laboratory (§ 285.32(b));

(2) On-site assessment reports;

(3) Laboratory performance on proficiency tests;

(4) Laboratory responses to identified deficiencies; and

(5) Technical evaluation.

(b) NVLAP shall arrange the assessment and evaluation of applicant laboratories in such a way as to minimize potential conflicts of interest.

(c) NVLAP shall inform each applicant laboratory of any additional action(s) that the laboratory must take to qualify for accreditation.

21. Section 285.23 is amended by removing paragraph (d), and by revising paragraphs (a) and (b) to read as follows:

§ 285.23 Granting and renewing accreditation.

(a) NVLAP will take action to: (1) Grant initial accreditation, or (2) renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, based on the degree to which the laboratory complies with the specific NVLAP requirements.

(b) If accreditation is granted or renewed, NVLAP shall:

(1) Provide a Certificate of Accreditation and a Scope of Accreditation to the laboratory;

(2) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and

(3) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

* * * * *

22. Section 285.24 is revised to read as follows:

§ 285.24 Denying, suspending, and revoking accreditation.

(a) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within that 30-day period.

(c) If NVLAP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, NVLAP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation. If accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated.

(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the conditions and criteria for accreditation that are set out in §§ 285.32 and 285.33.

(e) Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports during the suspension period. The determination of NVLAP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

23. Section 285.26 is added to read as follows:

§ 285.26 Change in status of laboratory.

Accreditation of a laboratory is based on specific conditions and criteria including the laboratory ownership, location, staffing, facilities, and configuration. Changes in any of these conditions or criteria could result in loss of accreditation. NVLAP must be informed if any of the conditions or criteria for accreditation are changed so that a determination can be made concerning the status of the accreditation.

24. Section 285.31 is revised to read as follows:

§ 285.32 Application of accreditation conditions and criteria.

To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 285.32, the criteria set out in § 285.33, and the guidance provided in the Handbooks for specific LAPs.

25. Section 285.32 is revised to read as follows:

§ 285.32 Conditions for accreditation

(a) To become accredited and maintain accreditation, a laboratory shall agree in writing to:

(1) Be assessed and evaluated initially and on a periodic basis;

(2) Demonstrate, on request, that it is able to perform the calibrations or tests representative of those for which it is seeking accreditation;

(3) Pay all fees;

(4) Participate in proficiency testing as required;

(5) Be capable of performing the calibrations or tests for which it is accredited according to the latest version of the calibration or test method within one year after its publication or within another time limit specified by NVLAP;

(6) Limit the representation of the scope of its accreditation to only those calibrations, tests or services for which accreditation is granted;

(7) Resolve all deficiencies;

(8) Limit all its work or services of clients to those areas where competence and capacity are available;

(9) Maintain records of all actions taken in response to complaints for a minimum of one year;

(10) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render calibration or test reports objectively and without bias is not adversely affected;

(11) Report to NVLAP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and

(12) Return to NVLAP the Certificate of Accreditation and the Scope of Accreditation for revision or other action should it:

(i) Be requested to do so by NVLAP;

(ii) Voluntarily terminate its accredited status; or

(iii) Become unable to conform to any of these conditions, the applicable criteria of § 285.33, and related technical requirements.

(b) To become accredited and maintain accreditation, a laboratory shall supply, upon request, the following information:

(1) Legal name and full address;

(2) Ownership of the laboratory;

(3) Organization chart defining relationships that are relevant to performing testing and calibrations covered in the accreditation request;

(4) General description of the laboratory, including its facilities and scope of operation;

(5) Name, address, and telephone and FAX number of the authorized representative of the laboratory;

(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of calibration or test reports that reference NVLAP accreditation;

(7) The laboratory Quality Manual; and

(8) Other information as may be needed for the specific LAP(s) in which accreditation is sought.

26. Section 285.33 is revised to read as follows:

§ 285.33 Criteria for accreditation.

(a) *Scope.* (1) This section sets out the general requirements in accordance with which a laboratory has to demonstrate that it operates, if it is to be recognized as competent to carry out specific calibrations or tests.

(2) Additional requirements and information which have to be disclosed for assessing competence or for determining compliance with other criteria may be specified by NVLAP, depending upon the specific character of the task of the laboratory.

(3) This section is for use by calibration and testing laboratories in the development and implementation of their quality systems. It may also be used by accreditation bodies, certification bodies and others concerned with the competence of laboratories.

(b) *Organization and management.* (1) The laboratory shall be legally identifiable. It shall be organized and shall operate in such a way that its permanent, temporary and mobile facilities meet these requirements.

(2) The laboratory shall:

(i) Have managerial staff with the authority and resources needed to discharge their duties;

(ii) Have policies to ensure that its personnel are free from any commercial, financial and other pressures which might adversely affect the quality of their work;

(iii) Be organized in such a way that confidence in its independence of judgement and integrity is maintained at all times;

(iv) Specify and document the responsibility, authority and interrelation of all personnel who manage, perform or verify work affecting the quality of calibrations and tests;

(v) Provide supervision by persons familiar with the calibration or test methods and procedures, the objective of the calibration or test and the assessment of the results. The ratio of supervisory to non-supervisory personnel shall be such as to ensure adequate supervision;

(vi) Have a technical manager (however named) who has overall responsibility for the technical operations;

(vii) Have a quality manager (however named) who has responsibility for the quality system and its implementation. The quality manager shall have direct access to the highest level of management at which decisions are taken on laboratory policy or resources, and to the technical manager. In some laboratories, the quality manager may also be the technical manager or deputy technical manager;

(viii) Nominate deputies in case of absence of the technical or quality manager;

(ix) Have documented policy and procedures to ensure the protection of clients' confidential information and proprietary rights;

(x) Where appropriate, participate in interlaboratory comparisons and proficiency testing programs.

(c) *Quality system, audit and review.* (1) The laboratory shall establish and maintain a quality system appropriate to the type, range and volume of calibration and testing activities it undertakes. The elements of this system shall be documented. The quality documentation shall be available for use by the laboratory personnel. The laboratory shall define and document its policies and objectives for, and its commitment to, good laboratory practice and quality of calibration or testing services. The laboratory management shall ensure that these policies and objectives are documented in a quality manual and communicated to, understood, and implemented by all laboratory personnel concerned. The quality manual shall be maintained current under the responsibility of the quality manager.

(2) The quality manual, and related quality documentation, shall state the laboratory's policies and operational procedures established in order to meet the requirements of procedures. The quality manual and related quality documentation shall also contain:

(i) A quality policy statement, including objectives and commitments, by top management;

(ii) The organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;

(iii) The relations between management, technical operations, support services and the quality system;

(iv) Procedures for control and maintenance of documentation;

(v) Job descriptions of key staff and reference to the job descriptions of other staff;

(vi) Identification of the laboratory's approved signatories;

(vii) The laboratory's procedures for achieving traceability of measurements;

(viii) The laboratory's scope of calibrations and/or tests;

(ix) Arrangements for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work;

(x) Reference to the calibration, verification and/or test procedures used;

(xi) Procedures for handling calibration and test items;

(xii) Reference to the major equipment and reference measurement standards used;

(xiii) Reference to procedures for calibration, verification and maintenance of equipment;

(xiv) Reference to verification practices including interlaboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes;

(xv) Procedures to be followed for feedback and corrective action whenever discrepancies are detected, or departures from documented policies and procedures occur;

(xvi) The laboratory management policies for departures from documented policies and procedures or from standard specifications;

(xvii) Procedures for dealing with complaints;

(xviii) Procedures for protecting confidentiality and proprietary rights;

(xix) Procedures for audit and review.

(3) The laboratory shall arrange for audits of its activities at appropriate intervals to verify that its operations continue to comply with the requirements of the quality system. Such audits shall be carried out by trained and qualified staff who are, wherever possible, independent of the activity to be audited. Where the audit findings cast doubt on the correctness or validity of the laboratory's calibration or test results, the laboratory shall take immediate corrective action and shall immediately notify, in writing, any client whose work may have been affected.

(4) The quality system adopted to satisfy the requirements of this section shall be reviewed at least once each year by the management to ensure its continuing suitability and effectiveness and to introduce any necessary changes or improvements.

(5) All audit and review findings and any corrective actions that arise from them shall be documented. The person responsible for quality shall ensure that these actions are discharged within the agreed timescale.

(6) In addition to periodic audits the laboratory shall ensure the quality of results provided to clients by implementing checks. These checks shall be reviewed and shall include, as appropriate but not be limited to:

(i) Internal quality control schemes using whenever possible statistical techniques;

(ii) Participation in proficiency testing or other interlaboratory comparisons;

(iii) Regular use of certified reference materials and/or in—house quality control using secondary reference materials;

(iv) Replicate testings using the same or different methods;

(v) Re-testing of retained items;

(vi) Correlation of results for different characteristics of an item.

(d) *Personnel.* (1) The testing laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions.

(2) The testing laboratory shall ensure that the training of its personnel is kept up-to-date.

(3) Records on the relevant qualifications, training, skills and experience of the technical personnel shall be maintained by the laboratory.

(e) *Accommodation and environment.* (1) Laboratory accommodation, calibration and test areas, energy sources, lighting, heating and ventilation shall be such as to facilitate proper performance of calibrations or tests.

(2) The environment in which these activities are undertaken shall not invalidate the results or adversely affect the required accuracy of measurement. Particular care shall be taken when such activities are undertaken at sites other than the permanent laboratory premises.

(3) The laboratory shall provide facilities for the effective monitoring, control and recording of environmental conditions as appropriate. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic interference, humidity, voltage, temperature, and sound and vibration levels, as appropriate to the calibrations or tests concerned.

(4) There shall be effective separation between neighboring areas when the activities therein are incompatible.

(5) Access to and use of all areas affecting the quality of these activities shall be defined and controlled.

(6) Adequate measures shall be taken to ensure good housekeeping in the laboratory.

(f) *Equipment and reference materials.* (1) The laboratory shall be furnished with all items of equipment (including reference materials) required for the correct performance of calibrations and tests. In those cases where the laboratory needs to use equipment outside its permanent control it shall ensure that the relevant requirements of this section are met.

(2) All equipment shall be properly maintained. Maintenance procedures shall be documented. Any item of equipment which has been subjected to overloading or mishandling, or which gives suspect results, or has been shown by verification or otherwise to be defective, shall be taken out of service, clearly identified and wherever possible stored at a specified place until it has been repaired and shown by calibration, verification or test to perform satisfactorily. The laboratory shall examine the effect of this defect on previous calibrations or tests.

(3) Each item of equipment including reference materials shall, when appropriate, be labelled, marked or otherwise identified to indicate its calibration status.

(4) Records shall be maintained of each item of equipment and all reference materials significant to the calibrations or tests performed. The records shall include:

(i) The name of the item of equipment;

(ii) The manufacturer's name, type identification, and serial number or other unique identification;

(iii) Date received and date placed in service;

(iv) Current location, where appropriate;

(v) Condition when received (e.g. new, used, reconditioned);

(vi) Copy of the manufacturer's instructions, where available;

(vii) Dates and results of calibrations and/or verifications and date of next calibration and/or verification;

(viii) Details of maintenance carried out to date and planned for the future;

(ix) History of any damage, malfunction, modification or repair.

(g) *Measurement traceability and calibration.* (1) All measuring and testing equipment having an effect on the accuracy or validity of calibrations or tests shall be calibrated and/or verified before being put into service. The laboratory shall have an established program for the calibration and verification of its measuring and test equipment.

(2) The overall program of calibration and/or verification and validation of equipment shall be designed and operated so as to ensure that, wherever applicable, measurements made by the laboratory are traceable to national standards of measurement where available. Calibration certificates shall wherever applicable indicate the traceability to national standards of measurement and shall provide the measurement results and associated uncertainty of measurement and/or a statement of compliance with an identified metrological specification.

(3) Where traceability to national standards of measurement is not applicable, the laboratory shall provide satisfactory evidence of correlation of results, for example by participation in a suitable program of interlaboratory comparisons or proficiency testing.

(4) Reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be demonstrated that their performance as reference standards has not been invalidated.

(5) Reference standards of measurement shall be calibrated by a body that can provide traceability to a national standard of measurement. There shall be a program of calibration and verification for reference standards.

(6) Where relevant, reference standards and measuring and testing equipment shall be subjected to in-service checks between calibrations and verifications.

(7) Reference materials shall, where possible, be traceable to national or international standards of measurement, or to national or international standard reference materials.

(h) *Calibration and test methods.* (1) The laboratory shall have documented instructions on the use and operation of all relevant equipment, on the handling and preparation of items and for calibration and/or testing, where the absence of such instructions could jeopardize the calibrations or tests. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be maintained up-to-date and be readily available to the staff.

(2) The laboratory shall use appropriate methods and procedures for all calibrations and tests and related activities within its responsibility (including sampling, handling, transport and storage, preparation of items, estimation of uncertainty of measurement and analysis of calibration and/or test data). They shall be consistent with the accuracy required, and with any standard specifications relevant to the calibrations or tests concerned.

(3) Where methods are not specified, the laboratory shall, wherever possible, select methods that have been published in international or national standards, those published by reputable technical organizations or in relevant scientific texts or journals.

(4) Where it is necessary to employ methods that have not been established as standard, these shall be subject to

agreement with the client, be fully documented and validated, and be available to the client and other recipients of the relevant reports.

(5) Where sampling is carried out as part of the test method, the laboratory shall used documented procedures and appropriate statistical techniques to select samples.

(6) Calculations and data transfers shall be subject to appropriate checks.

(7) Where computers or automated equipment are used for the capture, processing, manipulation, recording, reporting, storage or retrieval of calibration or test data, the laboratory shall ensure that:

(i) The requirements of these procedures are complied with;

(ii) Computer software is documented and adequate for use;

(iii) Procedures are established and implemented for protecting the integrity of data; such procedures shall include, but not be limited to, integrity of data entry or capture, data storage, data transmission and data processing;

(iv) Computer and automated equipment is maintained to ensure proper functioning and provided with the environmental and operating conditions necessary to maintain the integrity of calibration and test data;

(v) It establishes and implements appropriate procedures for the maintenance of security of data including the prevention of unauthorized access to, and the unauthorized amendment of, computer records.

(8) Documented procedure shall exist for the purchase, reception and storage of consumable materials used for the technical operations of the laboratory.

(i) *Handling of calibration and test items.* (1) The laboratory shall have a documented system for uniquely identifying the items to be calibrated or tested, to ensure that there can be no confusion regarding the identity of such items at any time.

(2) Upon receipt, the condition of the calibration or test item, including any abnormalities or departures from standard condition as prescribed in the relevant calibration or test method, shall be recorded. Were there is any doubt as to the item's suitability for calibration or test, where the item does not conform to the description provided, or where the calibration or test required is not fully specified, the laboratory shall consult the client for further instruction before proceeding. The laboratory shall establish whether the item has received all necessary preparation, or whether the client requires preparation to be undertaken or arranged by the laboratory.

(3) The laboratory shall have documented procedures and appropriate facilities to avoid deterioration or damage to the calibration or test item, during storage, handling, preparation, and calibration or test; any relevant instructions provided with the item shall be followed. Where items have to be stored or conditioned under specific environmental conditions, these conditions shall be maintained, monitored and recorded where necessary. Where a calibration or test item or portion of an item is to be held secure (for example, for reasons of record, safety or value, or to enable check calibrations or tests to be performed later), the laboratory shall have storage and security arrangements that protect the condition and integrity of the secured items or portions concerned.

(4) The laboratory shall have documented procedures for the receipt, retention or safe disposal of calibration or test items, including all provisions necessary to protect the integrity of the laboratory.

(j) *Records.* (1) The laboratory shall maintain a record system to suit its particular circumstances and comply with any applicable regulations. It shall retain on record all original observations, calculations and derived data, calibration records and a copy of the calibration certificate, test certificate or test report for an appropriate period. The records for each calibration and test shall contain sufficient information to permit their repetition. The records shall include the identity of personnel involved in sampling, preparation, calibration or testing.

(2) All records (including those listed in § 285.33(f)(4) pertaining to calibration and test equipment), certificates and reports shall be safely stored, held secure and in confidence to the client.

(k) *Certificates and reports.* (1) The results of each calibration, test, or series of calibrations or tests carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, in accordance with any instructions in the calibration or test methods. The results should normally be reported in a calibration certificate, test report or test certificate and should include all the information necessary for the interpretation of the calibration or test results and all information required by the method used.

(2) Each certificate or report shall include at least the following information:

(i) A title, e.g., "Calibration Certificate", "Test Report" or "Test Certificate";

(ii) Name and address of laboratory, and location where the calibration or test was carried out if different from the address of the laboratory;

(iii) Unique identification of the certificate or report (such as serial number) and of each page, and the total number of pages;

(iv) Name and address of client, where appropriate;

(v) Description and unambiguous identification of the item calibrated or tested;

(vi) Characterization and condition of the calibration or test item;

(vii) Date of receipt of calibration or test item and date(s) of performance of calibration or test, where appropriate;

(viii) Identification of the calibration or test method used, or unambiguous description of any non-standard method used;

(ix) Reference to sampling procedure, where relevant;

(x) Any deviations from, additions to or exclusions from the calibration or test method, and any other information relevant to a specific calibration or test, such as environmental conditions;

(xi) Measurements, examinations and derived results, supported by tables, graphs, sketches and photographs as appropriate, and any failures identified;

(xii) A statement of the estimated uncertainty of the calibration or test result (where relevant);

(xiii) A signature and title, or an equivalent identification of the person(s) accepting responsibility for the content of the certificate or report (however produced), and date of issue;

(xiv) Where relevant, a statement to the effect that the results relate only to the items calibrated or tested;

(xv) A statement that the certificate or report shall not be reproduced except in full, without the written approval of the laboratory.

(3) Where the certificate or report contains results of calibrations or tests performed by sub-contractors, these results shall be clearly identified.

(4) Particular care and attention shall be paid to the arrangement of the certificate or report, especially with regard to presentation of the calibration or test data and ease of assimilation by the reader. The format shall be carefully and specifically designed for each type of calibration or test carried out, but the headings shall be standardized as far as possible.

(5) Material amendments to a calibration certificate, test report or test certificate after issue shall be made only in the form of a further document, or data transfer including the statement "Supplement to Calibration Certificate for Test Report or Test Certificate), serial

number * * * for as otherwise identified]", or equivalent form of wording. Such amendments shall meet all the relevant requirements of § 285.33(j).

(6) The laboratory shall notify clients promptly, in writing, of any event such as the identification of defective measuring or test equipment that casts doubt on the validity of results given in any calibration certificate, test report or test certificate of amendment to a report or certificate.

(7) The laboratory shall ensure that, where clients require transmission of calibration or test results by telephone, telex, facsimile or other electronic or electromagnetic means, staff will follow documented procedures that ensure that the requirements of these procedures are met and that confidentiality is preserved.

(l) *Subcontracting of calibration or testing.* (1) Where a laboratory subcontracts any part of the calibration or testing, this work shall be placed with a laboratory complying with these requirements. The laboratory shall ensure and be able to demonstrate that its subcontractor is competent to perform the activities in question and complies with the same criteria of competence as the laboratory in respect of the work being subcontracted. The laboratory shall advise the client in writing of its intention to subcontract any portion of the calibration or testing to another party.

(2) The laboratory shall record and retain details of its investigation of the competence and compliance of its subcontractors and maintain a register of all subcontracting.

(m) *Outside support services and supplies.* (1) Where the laboratory procures outside services and supplies, other than those referred to in these procedures, in support of calibrations or tests, the laboratory shall use only those outside support services and supplies that are of adequate quality to sustain confidence in the laboratory's calibrations or tests.

(2) Where no independent assurance of the quality of outside support services or supplies is available, the laboratory shall have procedures to ensure that purchased equipment, materials and services comply with specified requirements. The laboratory should, wherever possible, ensure that purchased equipment and consumable materials are not used until they have been inspected, calibrated or otherwise verified as complying with any standard specifications relevant to the calibrations or tests concerned.

(3) The laboratory shall maintain records of all suppliers from whom it obtains support services or supplies required for calibrations or tests.

(n) *Complaints.* (1) The laboratory shall have documented policy and procedures for the resolution of complaints received from clients or other parties about the laboratory's activities. A record shall be maintained of all complaints and of the actions taken by the laboratory.

(2) Where a complaint, or any other circumstances, raises doubt concerning the laboratory's compliance with the laboratory's policies or procedures, or with the requirements of this section or otherwise concerning the quality of the laboratory's calibrations or tests, the laboratory shall ensure that those areas of activity and responsibility involved are promptly audited in accordance with this section.

[FR Doc. 94–10449 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

April 26, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Correction to notice of consolidation of electronic bulletin board working groups.

SUMMARY: The Federal Energy Regulatory Commission is correcting its notice issued on April 19, 1994 (59 FR 19637, April 25, 1994) regarding the consolidation of the Electronic Bulletin Board Working Groups. The correction is to the name of the person representing the producer sector on the interim steering committee.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

On April 19, 1994, the Commission issued a Notice of Consolidation of Electronic Bulletin Board Working Groups. The member of the interim steering committee from the producer sector was incorrectly identified. The correct name and address is:

Randy D. Mills, Chevron USA Production, 1301 McKinney, Houston, TX 77252, Phone 713–754–2563, FAX 713–754–3840.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10531 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) from SmithKline Beecham Animal Health to Solvay Animal Health, Inc.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA's 49–892, 126–232, and 140–909 to Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120. Accordingly, FDA is amending the regulations in 21 CFR 520.2260a, 520.2260b, and 520.2260c to reflect the change of sponsor.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2260a [Amended]

2. Section 520.2260a *Sulfamethazine oblets and boluses* is amended in paragraph (b)(1) by removing "053571" and adding in its place "053501".

§ 520.2260b [Amended]

3. Section 520.2260b *Sulfamethazine sustained-release boluses* is amended in paragraph (b)(1) by removing "053571" and adding in its place "053501".

§ 520.2260c [Amended]

4. Section 520.2260c *Sulfamethazine sustained-release tablets* is amended in paragraph (a) by removing "053571" and adding in its place "053501".

Dated: April 22, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–10458 Filed 5–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880, 881, and 883

[Docket No. R–94–1714; FR–3683–F–01]

Special Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule is a technical amendment to HUD's regulations for certain Section 8 programs governed by 24 CFR parts 880 (New Construction), 881 (Substantial Rehabilitation), and 883 (State Housing Agencies) to conform the language to that used in section 8(c)(2)(B) of the U.S. Housing Act of 1937. The amendment will authorize rent adjustments for privately owned Section 8 projects to cover expenses that are not presently compensated for by annual rental adjustments.

EFFECTIVE DATE: June 2, 1994.

FOR FURTHER INFORMATION CONTACT: James Tahash, Director, Planning and Procedures Division, room 6280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500; telephone: (voice) (202) 708–3944 and (TDD) (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This rule is a technical amendment to the Section 8 Housing Assistance Payments programs governed by 24 CFR parts 880 (New Construction), 881 (Substantial Rehabilitation), and 883 (State Housing Agencies). The amendment will conform the special rent adjustment regulations for those programs (§§ 880.609(b), 881.609(b) and 883.710(b)) to the language used in section 8(c)(2)(B), by adding the phrase "or similar costs" to the list of substantial increases in expenses, such as real property taxes and utility rates, that may result in the need for special rent adjustments. The "similar costs" language appears in other section 8 program regulations (parts 882, 884 and 886), but was never included in the regulations for those programs covered by parts 880, 881, and 883. This final rule will treat all section 8 programs comparably.

In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect, unless to do so would be impracticable, unnecessary, or contrary to the public interest. This rule is being published as a final rule for effect because the Department believes that public comment is unnecessary. The amendments made by this rule are technical in nature, and conform the regulations to the statutory language.

Other Matters

An environmental assessment is unnecessary, since fair market rent schedules is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*), and rent adjustments are directly related to such rent schedules.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Any economic impact, whether on small entities or large, would be beneficial, in that it would seek to compensate property owners for extraordinary expenses incurred that are not compensated by the annual rent adjustments.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to private owners of Section 8 projects and do not impinge upon the relationship between the Federal government and State and local governments.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Nothing in this rule changes the amount of rent paid by tenant families, which is based on the income of the family.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

2. Section 880.609 is amended by revising paragraph (b) to read as follows:

§ 880.609 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or similar costs, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

4. Section 881.609 is amended by revising paragraph (b) to read as follows:

§ 881.609 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates or similar costs, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

6. Section 883.710 is amended by revising paragraph (b) to read as follows:

§ 883.710 Adjustment of contract rents.

* * * * *

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or similar costs, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

* * * * *

Dated: April 25, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–10518 Filed 5–2–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS SIROCCO (PC 6) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval patrol craft. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 1 April 1994.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SIROCCO (PC 6) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 23(a)(ii), pertaining to display of a masthead light and a second (after) masthead light on vessels exceeding 50 meters in length; Annex I, paragraph 2(k), pertaining to the vertical distance between the forward and after anchor lights and the height of the forward anchor light above the hull; Rule 21(c), pertaining to location of the sternlight, without interfering with its special functions as a naval patrol craft. The Judge Advocate General of the Navy has also certified that the number of masthead lights displayed and the location of the other mentioned lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and

701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the number and placement of lights on USS SIROCCO (PC 6) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Three of 706.2 is amended by revising the column headings and adding the following ship:

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
USS SIROCCO	PC 6	....	....	....	....	25.5[1]	3.0	1.1 below.

[1] Only when towing.

Dated: April 1994.

R. B. Schiff,

Capt., JAGC, U.S. Navy, Acting.

[FR Doc. 94–10499 Filed 5–2–94; 8:45 am]

BILLING CODE 3810–AE–P

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Postal Service regulation which prohibits the disclosure to the public of information contained in Postal Service Form 1583, "Application for Delivery of Mail Through Agent." The amendment will authorize the disclosure of information from Form 1583 for the purpose of identifying addresses as Commercial Mail Receiving Agencies. The intended affect of this amendment is to provide an effective tool in combating credit card fraud and other types of consumer fraud.

DATES: This interim rule will become effective June 2, 1994. Comments are invited and must be received on or before June 17, 1994.

ADDRESSES: Comments may be mailed to Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., room 8831, Washington, DC 20260–5240, or delivered to the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received may be inspected during the above hours in room 8831.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–2924.

SUPPLEMENTARY INFORMATION: Commercial Mail Receiving Agencies (CMRAs) are private entities which receive mail on behalf of other persons. Both CMRAs and their customers are required to sign Postal Service Form 1583, "Application for Delivery of Mail Through Agent," a copy of which is filed with the postmaster responsible for the delivery address. Under 39 CFR 265.6(d)(10), the disclosure to the public of any information contained in Form 1583 has been prohibited.

The Postal Service, primarily through its law enforcement branch, the Postal Inspection Service, has been working with the credit card industry to prevent credit card fraud. One form of credit card fraud consists of submitting an application for a credit card under a fictitious name. Perpetrators of this type of fraud may use an address provided by a CMRA, which often appears to be a typical residential or business address, as a means of avoiding detection. Credit card companies have asked the Postal Service to help them detect such fraud by identifying CMRA addresses, and the Postal Service has concluded that the identification of CMRA addresses would be an effective tool in combating credit card fraud and other types of consumer fraud.

As amended by the interim rule, 39 CFR 265.6(d)(8) will authorize disclosure of information only for the purpose of identifying an address as belonging to a CMRA, and no other information concerning CMRAs or their customers will be disclosed pursuant to the regulation. Because the regulation will not authorize the disclosure of the identities of CMRA customers, disclosures under the regulation will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means of annotations to the Postal Service's Delivery Sequence File (DSF). DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals.

Copies of Form 1583 on file with the Postal Service are records protected by the Privacy Act of 1974, 5 U.S.C. 552a, and they are maintained in the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. In a separate notice published elsewhere in this issue of the **Federal Register**, the Postal Service is adding a routine use to system of records USPS 010.050 which will authorize the disclosure of the information that may be released pursuant to the interim rule.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments concerning the interim rule. These comments will be considered before a final rule is adopted.

List of Subjects in 39 CFR Part 265

Disclosure of information, Postal Service.

For the reasons set forth in this document, the Postal Service is amending 39 CFR Part 265 as follows:

PART 265—DISCLOSURE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. Paragraph (d)(8) of § 265.6 is revised to read as follows:

§ 265.6 Availability of Records.

* * * * *

(d) * * *

(8) *Form 1583, Application for Delivery of Mail Through Agent.* Except as provided by this paragraph, information contained in Form 1583 may not be disclosed to the public. Information contained in Form 1583 may be disclosed to the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. The identities of persons on whose behalf agents receive mail may not be disclosed.

* * * * *

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 94–10543 Filed 5–2–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA17–1–6339 and VA16–1–6340; FRL–4879–4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Disapproval of the Request to Redesignate the Richmond Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the request to redesignate the Richmond ozone nonattainment area from moderate nonattainment to attainment and is also disapproving the associated maintenance plan as a State Implementation Plan (SIP) revision. The intended effect of this action is to retain the current designation for ozone nonattainment in the Richmond area. This action is being taken under sections 107 and 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule will become effective on June 2, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 597–1325.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1992, the Commonwealth of Virginia's Department of Environmental Quality (VDEQ) submitted a request to EPA to redesignate the Richmond moderate ozone nonattainment area from nonattainment to attainment, and to approve a maintenance plan for the Richmond area as a State Implementation Plan (SIP) revision.

On August 17, 1993, (59 FR 43609), EPA published a notice of proposed rulemaking (NPR) proposing approval of the Commonwealth's request to redesignate the Richmond moderate ozone nonattainment area to attainment and its associated maintenance plan SIP revision. EPA's rationale for its proposed approval was stated in that NPR and will not be restated here. However, on January 31, 1994, (59 FR 4263) EPA published a NPR withdrawing its August 17, 1993 proposed approval and proposing to disapprove the request to redesignate the Richmond ozone nonattainment area from moderate nonattainment to attainment and proposed to disapprove the maintenance plan as a SIP revision. EPA converted its proposed approval action to a proposed disapproval because review of the 1993 ambient air quality data monitored during the 1993 ozone season indicated that the Charles City County monitor, located in the Richmond nonattainment area, had registered a violation of the ozone national ambient air quality standards (NAAQS). The ambient data was quality assured in accordance with established procedures for validating such monitoring data. The VDEQ did not contest the registered data. Therefore, the Richmond area does not meet the statutory criteria for redesignation to attainment found in section 107(d)(3)(E) of the CAA. The maintenance plan SIP revision is not approvable because its demonstration of attainment and maintenance of the ozone NAAQS is based on a level of ambient ozone precursor emissions which was thought to represent an inventory of emissions that would provide for attainment and maintenance of the NAAQS, but which does not as evidenced by the ozone violations recorded during the 1993 ozone season.

II. Comments Received on EPA's January 31, 1994 Proposal

Letters of Public Comment: EPA received four comment letters concerning the January 31, 1994 action proposing to disapprove the request to redesignate the Richmond ozone nonattainment area from moderate nonattainment to attainment and proposing to disapprove the maintenance plan as a revision to the SIP. One comment letter supported EPA's proposal to disapprove both the request to redesignate the Richmond ozone nonattainment area and to disapprove the maintenance plan SIP revision. Three comment letters opposed EPA's proposed disapproval of the request to redesignate the Richmond area. The commenters opposing EPA's proposed disapproval stated that that even though exceedances of the ozone standard had been registered at the Charles City County monitor, the monitor is located in a rural location downwind of a more populated urban area. The commenters stated that, based on meteorological data, the recorded violations were caused by a small portion of the urban portion of the Richmond nonattainment area and are localized. The commenters stated that the rest of the Richmond ozone nonattainment area should not be economically penalized by the disapproval of the Richmond redesignation request.

EPA's Response: EPA's response to the latter comments is that EPA has determined that ozone is a regional pollutant driven by several factors including, but not restricted to, weather and climate changes and ozone precursors so that the effect of ozone emissions are not localized. In light of this, and the lack of evidence that the violations in the Richmond area are due only to localized emissions, EPA does not believe that it would be appropriate to redesignate as attainment portions of the Richmond ozone nonattainment area. Such an action would not be appropriate unless it were firmly established that, contrary to the bases underlying the establishment of the boundaries of the Richmond ozone nonattainment area following the 1990 Clean Air Act Amendments, certain portions of the Richmond ozone nonattainment area do not contribute to nonattainment of other portions of the Richmond ozone nonattainment area.

Final Action

EPA is disapproving both the request to redesignate the Richmond ozone nonattainment area to attainment and the associated maintenance SIP revision, both submitted on November 12, 1992 by VDEQ. This disapproval will have the effect of retaining the designations of Virginia for ozone found in 40 CFR part 81 (56 FR 56843) dated November 6, 1991.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action disapproving the request for redesignation of the Richmond moderate ozone nonattainment area and the associated maintenance plan SIP revision has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action disapproving the request to redesignate the Richmond moderate ozone nonattainment area to attainment and the associated maintenance plan SIP revision may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental cooperation, Ozone.

Dated: March 30, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2423 is amended by adding paragraph (k) to read as follows:

§ 52.2423 Approval status.

* * * * *

(k) The maintenance plan SIP revision, and request to redesignate the Richmond moderate ozone nonattainment area to attainment were submitted on November 12, 1992, by the Department of Environmental Quality. These requests are disapproved because review of the 1993 ambient air quality data monitored during the 1993 ozone season indicated that a violation of the ozone NAAQS occurred at the Charles City monitor in the Richmond nonattainment area . Because of the registered violation during the 1993 ozone season, the underlying basis of the Commonwealth's November 12, 1992 maintenance plan's demonstration is no longer valid.

[FR Doc. 94–10522 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 60

[FRL–4880–3]

New Source Performance Standards Supplemental Delegation of Authority to the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On December 8, 1993, the State of South Carolina, through the South Carolina Department of Health and Environmental Control, requested delegation of authority for the implementation and enforcement of additional categories of the New Source Performance Standards (NSPS). EPA's review of South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, and EPA made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is February 2, 1994.

ADDRESSES: Copies of the request for the delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly designated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Bill Denman of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards established in 40 CFR part 60, New Source Performance Standards (NSPS). After a thorough review of the categories requested for delegation, the Regional Administrator determined that such delegation was appropriate for these source categories with conditions set forth in the original delegation letter of October 19, 1976, and subsequent delegation letters of January 22, 1981, February 1, 1984, June 29, 1987, February 9, 1988, January 5, 1989, December 10, 1990, March 3, 1992, and March 8, 1993. EPA thereby delegated its authority for 40 CFR part 60, NSPS in a letter to the State of South Carolina on February 2, 1994, as follows.

40 CFR Part 60

Subpart RRR—Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, except § 60.703(e).

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements. The EPA hereby notifies the public that it has delegated the authority over certain NSPS subparts to the State of South Carolina.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This action is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: April 18, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–10549 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 60

[FRL–4880–4]

New Source Performance Standards Supplemental Delegation of Authority to the State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On March 3, 1993, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, requested delegation of authority for the implementation and enforcement of additional categories of the New Source Performance Standards (NSPS). EPA's review of North Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is May 21, 1993.

ADDRESSES: Copies of the request for the delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Health, Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly designated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: North Carolina Department of Health, Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Carol Kemker of the EPA Region IV Air Programs Branch at (404) 347–2864 and Region IV address above.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards established in 40 CFR part 60, New Source Performance Standards (NSPS). After a thorough review of the categories requested for delegation, the Regional Administrator determined that such delegation was appropriate for these source categories with conditions set forth in the original delegation letter of November 24, 1976, and subsequent delegation letters of October 22, 1980, December 04, 1981, October 19, 1982, May 02, 1984, April 02, 1985, June 16, 1986, August 07, 1986, June 8, 1987, August 20, 1987, June 22, 1988, January 27, 1988, and August 29, 1989. EPA thereby delegated its authority for 40 CFR part 60, NSPS in a letter to the State of North Carolina on May 21, 1993, as follows.

40 CFR Part 60

Subpart Dc—Small Industrial-Commercial-Institutional Steam Generating Units (except §60.48c(a)(4))
Subpart Ea—Municipal Waste Combustors
Subpart DDD—Volatile Organic Emissions from the Polymer Manufacturing Industry (except §60.562–2(c))

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements. The EPA hereby notifies the public that it has delegated the authority over certain NSPS subparts to the State of North Carolina.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This action is issued under the authority of sections 101, 110, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: April 18, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–10548 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Part 217

Defense Federal Acquisition Regulation Supplement; Economy Act

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to define the role of the contracting officer in the approval process for intragency orders under the Economy Act.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The Director of Defense Procurement issued a final rule on April 25, 1994, by Departmental Letter 94–007, which establishes an advisory role for the contracting officer in the approval of intragency orders under the Economy Act (31 U.S.C. 1535).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because the rule is not a significant revision within the meaning of Public Law 98–577. However, comments from small entities will be considered in accordance with Section 610 of the Act. Please cite DFARS Case 94–D303 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 217 is amended as follows:

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.500 is added to read as follows:

217.500 Scope of subpart.

Acquisitions from required sources, as described in FAR Part 8, are not orders under the Economy Act.

3. Section 217.502 is revised to read as follows:

217.502 General.

If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

217.503 [Removed]

4. Section 217.503 is removed.

[FR Doc. 94–10582 Filed 5–2–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 909268–9277; I.D. 042694B]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has projected that the annual commercial quota for red snapper will be reached on April 27, 1994. This closure is necessary to protect the red snapper resource.

EFFECTIVE DATES: Closure is effective 12:01 a.m., local time, April 28, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 3.06 million lbs (1.39 million kg) for the current fishing year, January 1 through December 31, 1994 (50 CFR 641.25(a)).

Under 50 CFR 641.26, NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing a document in the **Federal Register**. Based on current statistics, NMFS has projected that the commercial quota of 3.06 million lbs (1.39 million kg) for red snapper will be reached on April 27, 1994. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, April 28, 1994, through December 31, 1994, the end of the fishing year. A vessel with a valid reef fish permit having red snapper aboard must land and barter, trade, or sell such red snapper prior to 12:01 a.m., local time, April 28, 1994.

During the closure, the bag limit applies to all harvests of red snapper from the EEZ in the Gulf of Mexico. The daily bag limit for red snapper is seven per person. From 12:01 a.m., local time, April 28, 1994, through December 31, 1994, the purchase, barter, trade, or sale of red snapper taken from the EEZ is prohibited. This prohibition does not apply to trade in red snapper that were harvested, landed, and bartered, traded, or sold prior to 12:01 a.m., local time, April 28, 1994, and were held in cold storage by a dealer or processor.

Classification

This action is required by 50 CFR 641.26 and has been determined to be "not significant" for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10462 Filed 4–26–94; 4:46 pm]

BILLING CODE 3510–22–P

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50 CFR Part 651

[Docket No. 940421–4121; I.D. 042594B]

RIN 0648–AG64

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 1 to the Northeast Multispecies Fishery Management Plan (FMP). NMFS implemented parts of Amendment 5 to the FMP on March 1, 1994, but delayed implementation of some provisions, including the effort-reduction program, until May 1, to provide the industry and NMFS sufficient time to prepare for this unprecedented and far-reaching change to the regulations. The effect of this delay is that the first-year's effort reduction requirements are compressed into eight months with different impacts on different segments of the fleet. The adjustment in the fishing year implemented by this rule will establish May 1 through April 30 as the annual fishing year for the effort reduction program contained in Amendment 5.

EFFECTIVE DATE: May 1, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment #1 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) submitted Amendment 5 to the NMFS on September 27, 1993, after spending more than 2 years on its development. The primary purpose of Amendment 5 is to eliminate the overfished condition of the primary stocks of the multispecies complex through an effort-reduction program. The effort-reduction program consists of annual reductions in the numbers of days that vessels are allowed to spend at sea as a method to limit fishing effort for groundfish. Vessels have a choice whether to fish under an individual allocation of days-at-sea (DAS), based on each vessel's history of fishing for groundfish, or to fish under the fleet DAS option, wherein vessels must declare blocks of time out of the fishery and lay over in port for a period proportional to the time fishing for groundfish.

NMFS published the proposed rule for Amendment 5 on October 27, 1993 (58 FR 57774), and informed the Council on January 3, 1994, that Amendment 5 had been approved. At that time, the Director, Northeast Region, NMFS (Regional Director) indicated that the expected implementation date for the amendment was to be March 1, 1994. The Council immediately realized that the implementation of this comprehensive amendment would require NMFS' starting a number of new administrative programs. The Council acknowledged the procedural and administrative difficulties and stated that it wanted NMFS to implement the effort-reduction program only when the agency was ready. The Council also communicated its intent that Amendment 5's effort-reduction program be implemented on a full-year basis, rather than on a part-year basis for the first year, and initiated Framework Adjustment #1 on February 16 to adjust the final rule for Amendment 5.

The Council is making this adjustment to the final rule for Amendment 5 (59 FR 9872, March 1, 1994) under the framework abbreviated rulemaking procedure established by Amendment 5 and contained in 50 CFR part 651, subpart C. This procedure requires the Council, when making certain adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council provides the public with advance notice of both the proposals and the analysis and an opportunity to comment on them prior to and at the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Director that the measures of a given framework adjustment be published as a final rule, if certain conditions are met. The Regional Director may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

When the Council began developing Amendment 5, groundfish stocks were overfished and the prospects were dim for improvement without the effort-reduction program. Since then, the condition of the stocks has deteriorated to the point where NMFS, with Council support, implemented emergency regulations to protect haddock. Each new assessment of groundfish stocks underlines the urgency of implementing rigorous and effective management measures.

The Council designed the management program using annual incremental reductions in fishing effort. The result of implementing the effort-reduction program for less than 12 months in the first year is that vessels fishing under the individual allocation option would have their annual allocation compressed into eight months, while vessels under the fleet DAS would be required to meet the annual time-out requirement over eight months, instead of the full year. Since the vessels in the individual DAS category generally choose to be in that group because of their higher allocation of opportunity than under the fleet group, the conservation benefits of the first year's reductions in allocation would be negated if the same allocation were distributed over only 8 months, instead of 12.

On the other hand, vessels in the fleet DAS category would be disproportionately burdened if they were required to declare the same amount of time out of groundfishing over 8 months, that they would have to take over 12 months had Amendment 5 been implemented beginning on January 1. Many of the vessels in this category ordinarily would meet their time-out requirement during the first few months of the year when the weather limits fishing opportunity, or when they are in other winter fisheries such as northern shrimp.

A further need for Framework Adjustment #1 arises from the Amendment 5 requirement that all vessels declare one 20-day block out of groundfishing during the spawning months of March, April, and May. Since NMFS decided to implement the effort-reduction program on May 1, that requirement would be compressed into the month of May for the first year. As a result, at least two-thirds of the fleet would be required to be out of groundfishing at the same time, unless Framework Adjustment #1 were implemented. Many fishermen are unable to plan how to best use their time and resources during the required period out of groundfishing given the relatively short notice, and the substantial impact that the sudden loss of two-thirds of the domestic supply of groundfish might have on the processing sector and the market.

This final rule will adjust the rule implementing the effort-reduction program so that each allocation of DAS (fleet or individual) is done on a 365-day program year beginning with the first full year of implementation of Amendment 5.

Comments and Responses

During the period following the approval of Amendment 5 and preceding the Council's formal initiation of the framework adjustment, a number of individual fishermen, interested members of the public, and industry association representatives commented on the problems with the current effort-reduction program implementation schedule. Since the comment period had not begun, these comments were not tabulated; however, all comments were in support of the Council's expeditiously making the adjustment that is contained in this rule.

During the comment period spanning the two required Council meetings, the Council received written comments from one individual and two associations—the Provincetown Draggermen's Association and the Seafood Harvester's Association of New York. Oral comments were submitted by three individuals. All of the public comments supported the Council's action and urged expeditious implementation. No negative comments were received on the proposed action during or outside the comment period.

The Council requested publication of the management measures as a final rule after considering the required factors stipulated under the Framework Measures in Amendment 5 and providing supporting analysis for each factor considered. The Assistant Administrator for Fisheries, NOAA (AA) determined that the framework adjustments to the FMP that this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The AA, in making that determination, has taken into account the information, views, and comments received during the two public hearings and comment period under the FMP's framework adjustment mechanism as specified in 50 CFR 651.40. Considering the opportunity for public comment at Council meetings on January 12 through 13, February 16 through 17, March 17, and April 6 through 7, and Groundfish Committee meetings on February 2 through 3 and February 24, and considering the need for immediate resource protection for the groundfish stocks, the provisions for continuing evaluation of the adjusted measures, and the timing of the rule relative to the requirement that all vessels take twenty days out of the fishery during May, 1994, the AA has waived for good cause the proposed rules and additional comment period.

Classification

This final rule has been determined to be "not significant" for purposes of E.O. 12866.

The AA finds there is good cause to waive prior notice under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA). Prior notice is impracticable and contrary to the public interest because it would cause undue burdens on some members of the groundfish fishing industry and would further delay full implementation of conservation measures intended to replenish groundfish stocks. Further, the AA finds that the public meetings held by the

Council to discuss designation of beginning and ending dates for the fishing year for this fishery provided opportunity for public comment to be considered. The AA finds that under section 553(d) of the APA the need to have this regulation in place by May 1, 1994, is good cause to waive the 30-day delay in effectiveness of this regulation.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 27, 1994.

Rolland A. Schmitten,

Assistant Administrator National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is revised as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Section 651.2 is amended by adding the definition of "fishing year", in alphabetical order, to read as follows:

§ 651.2 Definitions.

* * * * *

Fishing year means the 12-month period beginning May 1 and extending through April 30 of the following year.

* * * * *

3. Section 651.22 is amended by revising paragraphs (b)(1)(i), the first sentence of (b)(3)(i), paragraphs (b)(3)(ii), (b)(3)(iv), (b)(7), (c)(1)(i) heading, (c)(1)(i)(A), (c)(1)(i)(E) and (c)(1)(i)(F) to read as follows:

§ 651.22 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) Beginning on May 1, 1994, any vessel that is greater than 45 ft (13.7 m) in length and eligible for a limited access permit, except a combination vessel, may elect to fish under the Individual DAS program by making such election at the time of application for or renewal of a limited access permit. For fishing year 1996 and thereafter, the vessel must remain in the DAS program assigned to it in fishing year 1995.

* * * * *

(3) * * *

(i) Each vessel participating in the Individual DAS program shall be allocated, for each fishing year, the maximum number of days at sea it may fish in the multispecies finfish fishery according to the criteria and table specified in paragraph (b)(3)(ii) of this section. * * *

(ii) *Annual DAS allocations.* Vessels fishing under the Individual DAS program will receive and be subject to annual allocations of DAS based on a fishing year as specified in the following table. These allocations are determined by reducing the vessel's Individual DAS as calculated under paragraph (b)(2) of this section by 10 percent each fishing year, including the first year, for the first 5 fishing years of the effort reduction program. Each fishing year shall begin on May 1 and extend 12 months through April 30 of the following year.

INDIVIDUAL-DAS ALLOCATION=X DAYS

Fishing year	Annual allocation
1994	x − 10% days.
1995	x − 20% days.
1996	x − 30% days.
1997	x − 40% days.
1998	x − 50% days.

* * * * *

(iv) All vessels fishing under the Individual DAS program must declare out of the multispecies finfish fishery for at least one 20-day period between May 1 and May 31, or between March 1 and April 30, of each fishing year using the notification requirements specified under § 651.29(a). If a vessel owner has not declared, or taken, the period of time required between May 1 and May 31 or between March 1 and April 10, of each fishing year on or before April 11 of each such year, the vessel is subject to the possession limit specified under § 651.27(a) during the period April 11 through April 30, inclusive.

* * * * *

(7) *Status of vessels pending appeal of DAS allocations.* All vessels, while appealing their Individual-DAS allocation, may fish under the Fleet-DAS program and are subject to all requirements applicable to the Fleet-DAS program unless otherwise exempted, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for multispecies finfish shall be counted against the Individual-DAS allocation that the vessel may ultimately receive. If before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal, the excess days will be subtracted from the vessel's allocation of days in fishing year 1995.

* * * * *

(c) * * *

(1) * * *

(i) *Days in which a vessel may not possess more than 500 lbs (226.8 kg) of regulated species.*

(A) During each fishing year, beginning with 1994, vessel owners of all such vessels must declare periods of time out of the multispecies fishery totaling at least the minimum number of days listed for each such fishing year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20-consecutive-day period must be declared or taken between May 1 and May 31, or between March 1 and April 10, of each fishing year. Each fishing year shall begin on May 1 and extend 12 months through April 30 of the following year.

Fishing year	Days out of multispecies fishing
1994	20
1995	80
1996	128
1997	165
1998	200
1999	233

* * * * *

(E) If a vessel owner has not declared, or taken, the period of time required between May 1 and May 31, or between March 1 and April 10, of each fishing year on or before April 11 of each such year, the vessel is subject to the possession limit specified under § 651.27(a) during the period April 11 through April 30, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the fishing year.

[FR Doc. 94–10521 Filed 4–28–94; 4:06 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 042294A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Greenland turbot in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands

management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the AI was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and subsequent apportionment of reserve (59 FR 21673, April 26, 1994) as 2,333 metric tons (mt).

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS (Regional Director), has established a directed fishing allowance of 1,400 mt, with consideration that 933 mt will be taken as incidental catch in directed fishing for other species in the AI. In accordance with § 675.23(f), this fishery begins at 12 noon, A.l.t., May 1, 1994. Because of the low directed fishing allowance and high interest in the fishery, there will be insufficient time to collect and analyze catch data and take appropriate action to ensure the directed fishing allowance is not exceeded. Therefore, based on the best available data, the Regional Director has determined that the Greenland turbot directed fishing allowance in the AI will be reached by 12 noon, A.l.t., May 4, 1994. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the AI, effective from 12 noon, A.l.t., May 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10492 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94–49]

RIN 1550–AA74

Conversions From Mutual to Stock Form; Mutual Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations governing mutual to stock conversions and stock issuances by savings association subsidiaries of mutual holding companies (MHC stock offerings). The proposed amendment requires the OTS, in connection with its review of conversion applications and MHC stock offering applications, to consider the extent to which the transaction will affect the convenience and needs of the communities to be served by the applicant. Under the proposal, in determining whether to approve these types of applications, the OTS will consider the applicant's record of compliance with the Community Reinvestment Act (CRA) and other factors relating to the convenience and needs of the communities served by the applicant.

DATES: Comments must be received on or before July 17, 1994.

ADDRESSES: Interested parties are invited to submit written comments on this proposal to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 94–49. These submissions may be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days, or may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney (202) 906–6241, Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962, Corporate and Securities Division, Chief Counsel's Office; Diana L. Garmus, Deputy Assistant Director, (202) 906–5683, Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OTS recently has undertaken a comprehensive review of its conversion regulations. By Order No. 94–48, dated April 7, 1994, the OTS adopted significant amendments to its mutual to stock conversion regulations, 12 CFR part 563b, and mutual holding company regulations, 12 CFR part 575, to revise, update and clarify the regulations in a number of areas. In connection with its review of the conversion regulations, one of the issues the OTS considered was whether the convenience and needs of the local communities should be a factor in determining whether to approve these conversions.

The reasons for mutual associations' conversion to stock form have changed over the years. During the 1980s, most mutual savings associations were marginally capitalized and many were insolvent. During this period, conversion transactions were a primary method for undercapitalized savings associations to raise capital and avoid being closed by the regulators. The conversion enabled an association to stay in business and continue to serve the community's credit needs.

Now, however, most mutual associations are healthy. While a relatively small number of capital deficient mutual associations undertake conversions primarily to recapitalize, most healthy mutual thrifts now convert for other reasons. These reasons include financing the expansion of their operations and taking advantage of the benefits available to a public company, such as the ability to establish stock benefit plans for management and employees.

The OTS is aware that account holders and consumer groups recently have voiced significant concerns regarding the conversion of well-capitalized associations, particularly in light of the compensation and stock benefits that management typically receives in such transactions. Such groups also have expressed concerns regarding the proper deployment of conversion proceeds, *i.e.*, the extent to which the capital raised in such transactions should be used to support credit and loan programs and related services tailored to the community's credit needs. In addition, management of many well-capitalized converting associations recently have expressed concern to the OTS that their institutions do not need—or are unable efficiently to deploy—substantial amounts of the capital required to be raised under current regulations.[1] Managers of such associations also have voiced concern about the negative impact of what they view as "excess capital" on the price/earnings ratio of the converted association's stock.

The OTS is responding to these concerns by issuing an interim final regulation that, among other things, restricts management benefit plans and requires converting institutions to file with the OTS a business plan that adequately addresses the deployment of conversion proceeds.[2] The interim rule, which appears elsewhere in this issue of the **Federal Register**, solicits public comment on the conversion regulations, both as to the amendments adopted there and the issues on which comment is specifically sought, and as to any other current provisions of the conversion regulations as they relate to the interim rule.

As noted in the interim final rule, a convenience and needs standard has not, to date, been applied to mutual stock conversions of savings associations. Similarly, a convenience and needs standard generally has not been applied to MHC stock offerings.[3]

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[1] The conversion regulations require that stock be sold in the amount of the converting association's *pro forma* market value. *See* 12 CFR 563b.7(f).

[2] See OTS Order No. 94–48.

[3] A convenience and needs standard is already being applied to mutual holding company reorganizations because these transactions require the OTS's approval under the Bank Merger Act (BMA). See 58 FR 44105 (August 19, 1993) (adopting part 575 governing mutual holding company reorganizations and related stock issuances). The BMA requires that the responsible agency consider the convenience and needs of the community to be served in acting on any BMA application. See 12 U.S.C. 1828(c)(5). Because mutual holding company reorganizations and stock

Upon review of this area, however, the OTS is proposing to apply a convenience and needs standard to these transactions for the reasons discussed below.

First, the OTS has broad authority under sections 5(i)(1) and 5(i)(2) of the Home Owners' Loan Act (HOLA) to regulate mutual to stock conversions by savings associations, and under section 10(o)(7) of the HOLA to regulate mutual holding companies.[4] These authorities give the agency considerable discretion in reviewing a conversion application or MHC stock offering application. For example, the OTS has exercised this authority to determine whether a transaction is in the best interests of depositors, the association and the Savings Association Insurance Fund.[5] The OTS believes that inherent in this broad grant of authority is the ability to assess the impact of a proposed transaction on the convenience and needs of the communities to be served by a savings association.

Second, section 4(a)(3) of the HOLA supports the adoption of the proposed regulations addressing housing credit needs.[6] Section 4(a)(3) of the HOLA provides that the Director "shall exercise all powers granted to the Director under this chapter so as to encourage savings associations to provide credit for housing safely and soundly." The powers granted to the Director include the general regulatory authority under sections 5(i)(1), 5(i)(2), and 10(o)(7) of the HOLA mentioned above. Because savings associations are predominantly housing lenders, the admonition in section 4(a)(3) of the HOLA that the Director use his or her statutory powers to encourage savings associations to provide credit for housing provides a substantial additional basis for the Director to assess community needs when reviewing applications.

Third, the OTS believes it is appropriate to apply a convenience and needs standard to conversion transactions and MHC stock offerings as a part of the OTS's responsibility to consider the ongoing CRA performance of savings associations. The CRA expresses Congress's judgment that regulated financial institutions must demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business and that regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of those local communities.[7]

In this regard, the federal banking agencies recently conducted a comprehensive review of their CRA regulations in order to provide clearer guidance to financial institutions on the nature and extent of their CRA obligations, the methods by which their performance will be assessed, and the manner in which the CRA will be enforced. This review was undertaken in response to the President's July 1993 request that the federal financial institution supervisory agencies reform the CRA examination and enforcement system. The President asked, among other things, that in undertaking this effort, the regulators seek to promote consistency and even-handedness, to improve CRA performance evaluations and to institute more effective sanctions against institutions with consistently poor CRA performance.[8] The addition of a convenience and needs factor to the mutual to stock conversion standards and the standards for MHC stock offerings is wholly consistent with the larger Presidential and regulatory initiatives on the CRA.[9] The OTS's assessment of the CRA performance record of each association that is subject to the regulations promulgated under sections 5(i) and 10(o) of the HOLA furthers its responsibility under section 4(a)(3) of the HOLA to encourage thrifts to provide housing credit safely and soundly.[10]

The proposed convenience and needs standard, like the convenience and needs standards governing transactions subject to the Bank Merger Act,[11] certain holding company applications,[12] and certain non-routine corporate transactions under current OTS regulations,[13] is intended to encourage savings associations to devote their resources to lending programs and related customer services that are designed to address the credit needs of their local communities, including low- and moderate-income communities, consistent with safety and soundness. Such programs and services are an integral part of a mutual association's traditional role of providing "credit for housing," as envisioned by section 4(a)(3) of the HOLA. Thus, the OTS believes the proposed regulations will enhance the OTS's ability to ensure that savings associations undertaking these transactions recognize their responsibility to consider their community's credit needs.

Proposed Amendments

The proposal would add a new § 563b.11 to the OTS conversion regulations that would require the OTS, in reviewing a conversion application, to examine the extent to which the proposed conversion will affect the convenience and needs of the communities to be served by the converted savings association.

As part of this examination, the OTS will review the applicant's record under the CRA regulations at 12 CFR part 563e and related CRA policies. Under the proposal, the OTS would give substantial weight to an applicant's previous CRA record, consistent with the long-standing policy of the OTS.[14] For example, if an applicant in its most recent CRA examination received a rating of "substantial noncompliance," [15] the OTS likely would not approve the application.

Under the proposal, the OTS also would scrutinize the business plans of the applicant. Applicants must demonstrate that their plans for deployment of proceeds will help meet the credit and lending needs of the communities served by the applicant. Under the proposed convenience and needs standard, where an applicant's business plan does not adequately address this issue, the OTS may deny the application or impose additional conditions of approval. While commitments in an applicant's business plan to allocate resources to community

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issuances to date generally have been effected simultaneously as a two part transaction, the OTS has, as a practical matter, reviewed the entire transaction under a convenience and needs standard.

[4] See 12 U.S.C. 1464(i)(1), 1464(i)(2) and 1467a(o)(7). See also *Charter Federal S. & L. Ass'n. v. Office of Thrift Supervision*, 912 F.2d 1569 (11th Cir. 1990).

[5] See *Charter Federal; York v. Fed. Home Loan Bank Bd.*, 624 F.2d 495 (4th Cir. 1980), *cert. denied*, 449 U.S. 1043 (1980).

[6] 12 U.S.C. 1463(a)(3).

[7] 12 U.S.C. 2901.

[8] To implement the President's initiative, the four agencies held a series of seven public hearings across the country, and amendments to the agencies' CRA regulations were proposed on December 21, 1993. See 58 FR 67466 (December 21, 1993).

[9] In connection with its review of the CRA and its implementing regulations, the OTS also concluded that the CRA, by its terms, requires the OTS to consider the CRA record of an association proposing to convert from mutual to *federal* stock form because the association must receive a new federal stock charter to replace its previous mutual charter. See 12 U.S.C. 2902(3)(A) and 2903 and 12 CFR 563e.8(a) (1993).

[10] See also section 5(a) of the HOLA, 12 U.S.C. 1464(a). Section 5(a) of the HOLA provides that the lending and other powers conferred on federal savings associations under section 5 are intended to encourage provision of credit for housing safely and soundly.

[11] See 12 U.S.C. 1828(c).

[12] See 12 U.S.C. 1467a(e)(2).

[13] See 12 CFR 563.22(c) and 571.5(b)(4) (1993).

[14] See 54 FR 13742 (April 5, 1989) (joint CRA policy statement of the federal financial supervisory agencies).

[15] See 55 FR 18163 (May 1, 1990) (adopting revised CRA guidelines and assessment rating system).

development projects or credit-related programs generally indicate responsiveness to the convenience and needs of the community, the OTS will not necessarily view such commitments as remedying CRA-related deficiencies. Performance under those commitments, however, would be considered in evaluating the association's CRA record. The OTS also will consider other relevant factors relating to the association's performance in meeting the convenience and needs of the community.

The proposal also would add a new § 575.7(a)(7) to the OTS's mutual holding company regulations, and renumber current § 575.7(a)(7) as 575.7(a)(8). The proposed new section would set forth an additional approval requirement for stock issuances by a savings association subsidiary of a mutual holding company, requiring that the transaction meet the convenience and needs standard of proposed § 563b.11.

Solicitation of Comments

The OTS solicits comment on all aspects of the proposed regulations. The OTS particularly invites comments on whether the proceeds from conversions or MHC stock offerings should be directed to specific types of activities and, if so, what portion should be used for what types of activities.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12866

The OTS has determined that this rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Director of the OTS hereby proposes to amend parts 563b and 575, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. The authority citation for part 563b is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

2. Section 563b.11 is added to subpart A to read as follows:

§ 563b.11 Convenience and needs considerations.

In reviewing an application under this subpart, the Office will examine the extent to which the conversion will affect the convenience and needs of the communities to be served by the converted savings association. The Office will review the applicant's record under part 563e of this subchapter. In addition, the Office will scrutinize the business plan of the applicant. Each applicant must demonstrate that the proposed deployment of proceeds contained in its business plan will help meet the credit and lending needs of the communities served by the applicant. Also, the Office will consider other relevant factors relating to the association's performance in meeting the convenience and needs of the community. Based on an assessment of the applicant's record under part 563e of this subchapter, the applicant's business plan and other relevant factors, the Office may approve the application, deny the application, or approve the application on the condition that the applicant improve certain aspects of its CRA performance record or address particular credit or lending needs of the communities that it serves.

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

3. The authority citation for part 575 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

4. Section 575.7 is amended by redesignating paragraph (a)(7) as paragraph (a)(8), and by adding a new paragraph (a)(7) to read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) *Approval requirements.* * * *

* * * * *

(7) The proposed stock issuance would fail to meet the convenience and needs standard of § 563b.11 of this subchapter.

* * * * *

Dated: April 8, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94-9980 Filed 5-2-94; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-95; Notice No. SC-94-2-NM]

Special Conditions: Learjet Inc., Model 45 Airplane, Lightning and High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the Learjet Inc. (Lear) Model 45 airplane. This new airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 17, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-95, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-95. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, or telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–95." The postcard will be date stamped and returned to the commenter.

Background

On January 27, 1992, Learjet Inc. (Lear), 8220 West Harry Street, Wichita, KS 67209–2942, P.O. Box 7707, Wichita, KS 67277–7707, applied for a new type certificate in the transport airplane category for the Model 45 airplane. The Learjet Model 45 is a T-tail, low wing, medium sized business jet powered by two Garrett TFE 731–20 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 3,500 lbs. thrust (3,650 lbs. thrust with auto performance reserve). The airplane will be capable of operating with two flight crewmembers and a maximum of ten passengers (standard is eight passengers).

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Learjet must show, except as provided in § 25.2, that the Model 45 meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–75. In addition, the proposed certification basis for the Model 45 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 45 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 45 incorporates new avionic/electronic installations, including primary flight displays, an electronically controlled braking system, digital electronic engine controls, an engine indication and crew alerting system (EICAS), multifunction display, and a digital autopilot/flight director system. These systems may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic and electronic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Lear Model 45, which would require that new technology electrical and electronic systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these proposed special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronics Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment, which has been changed to agree with the latest recommendation from the Society of Automotive Engineers (SAE) AE4L lightning committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. The effect of these threats on the airplane and its systems depends upon several factors, including installation configuration, materials, shielding, airplane geometry, etc. Therefore, test (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses that represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds, the maximum is 1,000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between bursts is 30ms, and (2) the maximum period between bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o(e^{-at}-e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak} and,	=	200 KA	100 KA	50 KA	10 KA
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2.0×10^{11}
	=	@t=0+sec	@t=0+sec	@t=0+sec	@t=0+sec
(di/dt), (amp/sec)	=	1.0×10^{11}	1.0×10^{11}	0.5×10^{11}	
	=	@t=.5µs	@t=.25µs	@t=.25µs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	0.0625×10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30

Frequency	Peak (V/M)	Average (V/M)
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

As discussed above, the proposed special conditions would be applicable initially to the Learjet Model 45. Should Learjet apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Learject Model 45 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq., E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Learjet Model 45 series airplanes.

1. *Lightning Protection:* (a) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from unwanted effects of high-intensity radiated fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

3. For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on April 12, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 94–10381 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–ANE–11]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45/–50/–80A series turbofan engines, that currently requires a one-time ultrasonic and eddy current inspection of the high pressure compressor rotor (HPCR) stage 3–9 spool for cracks. This action would retain the inspection requirements of the current AD, but would accelerate the inspection schedule, and introduce a repetitive inspection requirement. This proposal is prompted by a review of the inspection results to date, which indicate that the crack occurrence rate is higher than initially projected. The actions specified by the proposed AD are intended to prevent an uncontained HPCR stage 3–9 spool failure, which could result in damage to the aircraft.

DATES: Comments must be received by June 2, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–11." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 25, 1991, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 91–20–01, Amendment 39–8035 (56 FR 55230), to require a one-time ultrasonic and eddy current inspection of the high pressure compressor rotor (HPCR) stage 3–9 spool for cracks. That action was prompted by two reports of spools found cracked in service. That condition, if not corrected, could result in an uncontained HPCR stage 3–9 spool failure, which could result in damage to the aircraft.

Since the issuance of that AD, the FAA has received reports of five additional spools found cracked in service. Investigation indicates that the cracks initiated in sub-surface origins in the stage 9 bore region of the spool. These cracks form from metallurgical anomalies that result from reduced forging work associated with the sixteen inch billet material used in the manufacture of certain HPCR stage 3–9 spools.

Based on the investigation findings, and the higher than projected crack occurrence rates, the FAA has determined that the inspection schedule in the current AD should be accelerated, and a repetitive inspection requirement be implemented.

The FAA has reviewed and approved the technical contents of GE CF6–50 Service Bulletin (SB) No. 72–1000, Revision 2, dated September 9, 1993, and GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, which describe procedures for the ultrasonic and eddy current inspection of the HPCR stage 3–9 spool.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–20–01, would retain the one-time ultrasonic and eddy current inspection of the HPCR stage 3–9 spool for cracks as required in the current AD, but would accelerate the inspection schedule, and introduce a repetitive ultrasonic and eddy current inspection requirement.

There are approximately 462 GE CF6–45/–50/–80A series engines of the affected design in the worldwide fleet. The FAA estimates that 67 engines installed in aircraft of U.S. registry would be affected by the proposed AD, that it would take approximately 584 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $127,412 per engine. Based on these figures, and assuming that 3 of the inspected spools will require replacement, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,534,276.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8035 (56 FR 55230; October 25, 1991) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. 94–ANE–11. Supersedes AD 91–20–01, Amendment 39–8035.

Applicability: General Electric Company (GE) CF6–45/–50/–80A series turbofan engines installed on, but not limited to, Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained high pressure compressor rotor (HPCR) stage 3–9 spool failure, which could result in damage to the aircraft, accomplish the following:

(a) Eddy current and ultrasonic inspect GE CF6–45/–50 HPCR stage 3–9 spools, Part Number (P/N) 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G08, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, with serial numbers (S/N) listed in Table 2 of GE CF6–50 Service Bulletin (SB) No. 72–1000, Revision 2, dated September 9, 1993, as follows:

(1) For spools that have not been previously inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, Revision 2, Revision 3, or Revision 4, or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.C of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(2) For spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next engine shop visit, or by December 31, 1994, whichever occurs earlier.

(3) For spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Original, Revision 1, or Revision 2, and GE CF6–50 SB No. 72–1008, Original, inspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next piece-part exposure, or within 3,500 cycles in service (CIS) since inspected in accordance with GE CF6–50 SB No. 72–1008, Original, whichever occurs earlier.

(4) For spools that have been inspected in accordance with GE CF6–50 SB No. 72–888, Revision 3, or Revision 4, or GE CF6–50 SB No. 72–1000, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at the next piece-part exposure, or within 3,500 CIS since inspected in accordance with, GE CF6–50 SB No. 72–888, Revision 3, or Revision 4, or GE CF6–50 SB No. 72–1000, Original,

Revision 1, or Revision 2, whichever occurs earlier.

(b) Thereafter, for spools that have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with paragraph 2.D of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, at intervals not to exceed 3,500 CIS since the last inspection.

(c) Eddy current and ultrasonic inspect GE CF6–80A HPCR 3–9 spool, P/N 9136M89G10, with S/N's listed in Table 2 of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, as follows:

(1) For spools that have not been previously inspected in accordance with GE CF6–80A SB No. 72–500, Original, Revision 1, Revision 2, Revision 3, or Revision 4, or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, inspect in accordance with paragraph 2.C of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(2) For spools that have been previously inspected in accordance with GE CF6–80A SB No. 72–500, Revision 3, or Revision 4, or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, inspect in accordance with paragraph 2.D of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, at the next piece-part exposure, or within 3,500 CIS since inspected in accordance with GE CF6–80A SB No. 72–500, Revision 3, or Revision 4, or GE CF6–80A SB No. 72–583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, whichever occurs earlier.

(d) Thereafter, for spools that have been inspected in accordance with paragraph (c) of this AD, reinspect in accordance with paragraph 2.D of GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, at intervals not to exceed 3,500 CIS since the last inspection.

(e) Remove from service prior to further flight HPCR stage 3–9 spools that meet or exceed the reject criteria established in Section 2.C and 2.D, as applicable, of GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993, and GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993, as appropriate.

(f) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major flange.

(g) For the purpose of this AD, piece-part exposure is defined as disassembly and removal of the stage 3–9 spool from the HPCR rotor.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternate methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued, in accordance with 14 CFR 21.197 and 21.199, to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 26, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10503 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–23–AD]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Airplanes, Equipped With Flight Equipment and Engineering Limited Model 121 Series Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B airplanes. This proposal would require repetitive inspections to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard sections of certain seats; and replacement of the inboard sections, if necessary. This proposal would also require repair and identification of the modification plate, which would terminate the requirement to inspect repetitively. This proposal is prompted by reports of fatigue cracking in the vicinity of the tray stop spindle and backrest spindle bosses, which could lead to excessive movement and eventual failure of the backrest on these seats during aft loading. The actions specified by the proposed AD are intended to prevent failure of the backrest on these seats, which could inhibit emergency egress.

DATES: Comments must be received by June 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–23–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Flight Equipment and Engineering Limited, Technical Manager, Nissen House, Grovebury Road, Leighton Buzzard, Bedfordshire, LU7 8TB, United Kingdom. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–23–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Flight Equipment and Engineering Limited (FEEL) Model 121 series seats that are installed on Saab

Model SAAB SF340A and SAAB 340B airplanes. The CAA advises that several operators of Saab Model SAAB SF340A and SAAB SF340B airplanes found fatigue cracking in the vicinity of the tray stop spindle and backrest spindle bosses. Cracking in this area may weaken the machined component that attaches the backrest of the seats to the main spars of the airplane and may lead to excessive movement and eventual failure of the backrest on these seats during aft loading. This condition, if not corrected, could result in failure of the backrest of these seats, which could inhibit emergency egress.

FEEL has issued Service Bulletin 25–20–1287, Revision 3, dated March 1993, that describes procedures for a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard section of certain Model 121 series seats; replacement of the inboard section with a section having the same part number, if necessary, and repetitively inspecting; and identification of the newly installed section.

FEEL has also issued Service Bulletin 25–20–1294, Revision 1, dated May 1993, that describes procedures for repair by replacing the inboard section of certain Model 121 series seats with a newly designed, stronger inboard section, and replacing the front beam with a serviceable beam, if necessary; and identification of the newly installed section. This repair and identification procedure would eliminate the need to inspect the inboard sections repetitively.

The CAA classified these service bulletins as mandatory and issued CAA Airworthiness Directives 006–03–93 and 017–03–93 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses on the inboard section of certain Model 121 series seats; replacement of the inboard sections with sections having the same part number and repetitively inspecting, if necessary; and identification of the newly installed section. This proposal would require repair (including the installation of stronger inboard sections) and identification of the stronger inboard sections (accomplishment of the actions specified in FEEL Service Bulletin 25–20–1294), which would terminate the requirement to inspect repetitively. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours (1 work hour per seat to inspect and 1 work hour per seat to replace, with 34 seats per airplane) to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $273,020, or $3,740 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 94–NM–23–AD.

Applicability: Model SAAB SF340A airplanes having serial numbers 004 through 159 inclusive, and Model SAAB 340B airplanes having serial numbers 160 through 330 inclusive; equipped with Flight Equipment and Engineering Limited (FEEL) Model 121 series seats listed in FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993, or FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the backrest on these seats, which could inhibit emergency egress, accomplish the following:

(a) Within 28 days after the effective date of this AD, perform a detailed visual inspection to detect cracking of the tray stop spindle and backrest spindle bosses of the inboard section of the seat, in accordance with FEEL Service Bulletin 25–20–1287, Revision 3, dated March 1993.

(1) If no cracking is found, or if cracking is found that does not penetrate the shear web, repeat the inspection of that seat thereafter at intervals not to exceed 150 hours time-in-service until the requirements or paragraph (b) of this AD are accomplished.

(2) If any cracking is found that penetrates the shear web, prior to further flight, replace the inboard section (up to issue 12), and identify the modification plate with "25–20–1287A," in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 150 hours time-in-service until the requirements of paragraph (b) of the AD are accomplished.

(b) Within 6 months after the effective date of this AD, repair and identify the modification plate with "25–20–1294," in accordance with FEEL Service Bulletin 25–20–1294, Revision 1, dated May 1993. Accomplishment of the actions required by this paragraph constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-10508 Filed 5-2-94; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-33965; File No. S7-3-94]

RIN 3235-AG03

Recordkeeping and Reporting Requirements for Trading Systems Operated by Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the date by which comments must be received on proposed rule 17a-23 under the Securities Exchange Act of 1934 ("Act") from April 19, 1994 to May 19, 1994. The proposed rule would establish recordkeeping and reporting requirements for broker-dealer sponsors of certain automated securities trading systems ("broker-dealer trading systems" or "BDTSs").

DATES: Comments should be received on or before May 19, 1994.

ADDRESSES: Comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6-9, Washington D.C. 20549. Comment letters should refer to File No. S7-3-94. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, Sheila C. Slevin, Branch Chief, or Kristen N. Geyer, Attorney Advisor, 202/942-0794 or 202/942-0792.

SUPPLEMENTARY INFORMATION: On February 9, 1994, the Commission published proposed rule 17a-23 under the Act.[1] The proposal would establish a uniform recordkeeping and reporting structure for broker-dealer sponsors of broker-dealer trading systems, requiring those broker-dealer sponsors to make available to the Commission and the appropriate self-regulatory organization ("SRO"), system-specific information about activity occurring in those systems. The Commission is extending the comment period on the proposal from April 19, 1994 to May 19, 1994 in order to receive the benefit of comments from the greatest possible number of interested persons.

The proposal raises a number of complex issues with respect to the regulation of broker-dealer trading systems, including the consistency of the proposal with the policies underlying the Act and the appropriate scope of the requirements imposed under the proposal. The Commission has received only two comments on the proposal to date. Accordingly, the Commission is concerned that the current comment period may not permit interested persons sufficient time to address these issues in a thorough manner.[2] Moreover, the lack of a sufficient volume of comments to comprise an adequate record potentially undermines the quality of any determination the Commission ultimately may make with respect to the proposal.[3] Accordingly, in order to receive the benefit of comments from the greatest possible number of interested persons, the Commission is extending the comment period on the proposal from April 19, 1994 to May 19, 1994.

Dated: April 26, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-10540 Filed 5-2-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-34-93]

RIN 1545-AR64

Definition of Sewage Facilities for Tax-exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of sewage facilities. The proposed regulations reflect changes to the law made by the Tax Reform Act of 1986 and affect taxpayers who seek tax-exempt bond financing for sewage facilities. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for 10 a.m. on July 26, 1994, must be received by July 5, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS-34-93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS-34-93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

The public hearing will be held in the Commissioner's Conference Room, Internal Revenue Building, room 3313, 1111 Constitution Avenue NW, Washington, DC.

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[1] Securities Exchange Act Release No. 33605 (February 9, 1994), 59 FR 8368 (February 18, 1994).

[2] A number of potential commenters have called the staff to inquire whether the Commission will extend the comment period.

[3] The Commission's experience with proposed rule 15c2-10 under the Act, which the Commission recently withdrew (Securities Exchange Act Release No. 33621 [February 14, 1994], 59 FR 8379), indicates that an extension of time may assist interested persons in formulating their views and help ensure that the Commission is provided with an adequate record. Proposed rule 15c2-10 would have established a comprehensive regulatory framework for certain automated securities trading systems that are not operated as facilities of national securities exchanges or associations. The Commission twice extended the comment period on proposed rule 15c2-10, for a total of 45 days (from June 19 to August 2, 1989). The Commission received 17 comments on its proposal. However, only five of those 17 comments were received during the initial comment period; the remaining 12 comments were submitted during the subsequent 45-day extended period. If the same pattern holds with respect to the current proposal, extension of the comment period could provide the Commission with a substantial number of additional comments upon which to base its determination.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Joanne E. Johnson at (202) 622–3110; concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 103(a) generally provides that the interest on obligations of a State or political subdivision thereof is excluded from gross income. Section 103(b)(1) provides, however, that section 103(a) does not apply to any private activity bond unless the bond is a qualified bond. Section 141(e) defines a qualified bond to include an exempt facility bond which, under section 142(a)(5), includes an issue at least 95 percent of the net proceeds of which are used to provide sewage facilities.

Until the Tax Reform Act of 1986 (1986 Act), both sewage disposal facilities and water pollution control facilities constituted exempt facilities under former sections 103(b)(4)(E) and 103(b)(4)(F), respectively, the predecessors to existing section 142. Section 1.103–8(f)(2)(i) defines sewage disposal facilities to mean any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage.

The 1986 Act eliminated the exempt facility exemptions for air and water pollution control facilities, while retaining the exemption for sewage disposal facilities (renamed sewage facilities by the 1986 Act) under section 142(a)(5). Neither section 142 nor the regulations issued under section 103(b)(4) define sewage. As a result, it has become important to define the facilities eligible for private activity bond financing as sewage facilities under section 142(a)(5).

Explanation of Provisions

Definition of Sewage Facility

The proposed regulations define a sewage facility for purposes of section 142(a)(5). A facility may satisfy the definition of a sewage facility regardless whether wastewater originates from a domestic, a commercial, or an industrial source. The proposed regulations, in effect, generally distinguish between sewage treatment facilities and water pollution control facilities. The proposed regulations define sewage facilities by reference to the operations historically performed at most publicly-owned treatment works (POTW). On the other hand, because toxic, priority, and nonconventional pollutants are more in the nature of water pollutants, the regulations consider treatment of these pollutants as ordinarily not performed in sewage facilities.

The proposed regulations provide that sewage facilities include property used for the secondary treatment of wastewater but only to the extent the treatment is for wastewater having an average daily raw wasteload concentration of biochemical oxygen demand (BOD) that does not exceed 350 milligrams per liter as oxygen. Thus, to the extent the wastewater treated by the property has an average daily raw wasteload concentration of BOD exceeding 350 milligrams per liter as oxygen, then the property used for the secondary treatment of the excess is not a sewage facility. The limitation is intended to reasonably approximate the upper limit of the average daily raw wasteload concentration for most POTWs.

The proposed regulations further provide that any property used for the preliminary and/or primary treatment of wastewater used in connection with secondary treatment qualifies as a sewage facility. Sewage facilities also include related property used for the collection, storage, use, processing, or final disposal of wastewater or sewage sludge and property functionally related and subordinate to a sewage facility.

Generally, other treatment of wastewater is not sewage treatment. Thus, for example, sewage facilities, including functionally related and subordinate property, do not include property used for the pretreatment, advanced treatment, or tertiary treatment of wastewater, whether or not the treatment is necessary for preliminary, primary, or secondary treatment.

For property that has both a sewage treatment function and another function, such as pretreatment or, in certain cases, secondary treatment of wastewater having an average daily raw wasteload concentration of BOD in excess of 350 milligrams per liter as oxygen, the proposed regulations provide an allocation rule to permit the portion of the property allocable to sewage treatment to be financed as part of an exempt facility issue.

The IRS solicits comments on how best to address technological advances to wastewater treatment processes within the definition of sewage facilities.

Proposed Effective Dates

The regulations are proposed to apply to issues of bonds issued 60 days after publication of the final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 26, 1994, at 10 a.m., in the Commissioner's Conference Room, Internal Revenue Building, room 3313, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 5, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Joanne E. Johnson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.142(a)(5)–1 is added to read as follows:

§ 1.142(a)(5)–1 Exempt facility bonds: Sewage facilities.

(a) *In general.* Under section 103(a), a private activity bond is a tax-exempt bond only if it is a qualified bond. Qualified bonds include exempt facility bonds, defined as any bond issued as part of an issue 95 percent or more of the net proceeds of which are used to provide a facility specified in section 142. One type of facility specified in section 142(a) is a sewage facility. This section defines the term *sewage facility* for purposes of section 142(a).

(b) *Definitions*—(1) *Sewage facility defined.* A sewage facility is property—

(i) Used for the secondary treatment of wastewater but, for property treating wastewater reasonably expected to have an average daily raw wasteload concentration of biochemical oxygen demand (BOD) that exceeds 350 milligrams per liter as oxygen, only to the extent the treatment is for wastewater having an average daily raw wasteload concentration of BOD that does not exceed 350 milligrams per liter as oxygen (see paragraph (d) of this section regarding permissible allocations of costs);

(ii) Used for the preliminary and/or primary treatment of wastewater but only to the extent used in connection with secondary treatment (without regard to the BOD limitation described in paragraph (b)(1)(i) of this section);

(iii) Used for the collection, storage, use, processing, or final disposal of—

(A) Wastewater, which property is necessary for such preliminary, primary, or secondary treatment; or

(B) Sewage sludge removed during such preliminary, primary, or secondary treatment; and

(iv) Functionally related and subordinate to property described in this paragraph (b)(1).

(2) *Other applicable definitions*—(i) *Advanced or tertiary treatment* generally means the treatment of wastewater after secondary treatment. Advanced or tertiary treatment ranges from biological treatment extensions to physical-chemical separation techniques such as denitrification, ammonia stripping, carbon adsorption, and chemical precipitation.

(ii) *Nonconventional pollutants* are any pollutants that are not listed in 40 CFR 401.15, 401.16, part 423, app. A.

(iii) *Preliminary treatment* generally means treatment that removes large extraneous matter from incoming wastewater and renders the incoming wastewater more amenable to subsequent treatment and handling.

(iv) *Pretreatment* means processes that equalize flow and loadings, or that precondition wastewater to neutralize or remove toxic, priority, nonconventional pollutants, and other wastes that could adversely affect sewers or inhibit preliminary, primary, or secondary treatment operations.

(v) *Primary treatment* means treatment that removes material that floats or will settle, usually by screens or settling tanks.

(vi) *Priority pollutants* are those pollutants listed in 40 CFR part 423, app. A.

(vii) *Secondary treatment* means the stage in sewage treatment in which a bacterial process (or an equivalent process) consumes the organic parts of wastes, usually by trickling filters or an activated sludge process.

(viii) *Sewage sludge* means sludge as defined in 40 CFR 122.2.

(ix) *Toxic pollutants* are those pollutants listed in 40 CFR 401.15.

(c) *Other property not included in the definition of a sewage facility.* Property other than property described in paragraph (b)(1) of this section is not a sewage facility. Thus, for example, property is not a sewage facility, or functionally related and subordinate property, if the property is used for pretreatment, advanced treatment, or tertiary treatment of wastewater (whether or not this treatment is necessary to perform preliminary, primary, or secondary treatment), or the related collection, storage, use, processing, or final disposal of the wastewater. In addition, property used to treat, process, or use wastewater subsequent to the time the wastewater can be discharged into navigable waters is not a sewage facility.

(d) *Allocation of costs.* In the case of property that has both a use described in paragraph (b)(1) of this section (a sewage treatment function) and a use other than sewage treatment, only the portion of the cost of the property allocable to the sewage treatment function is taken into account as an expenditure to provide sewage facilities. The portion of the cost of property allocable to the sewage treatment function is determined by allocating the cost of that property between the property's sewage treatment function and any other uses by any method which, based on all the facts and circumstances, reasonably reflects a separation of costs for each use of the property.

(e) *Effective date.* This section applies to issues of bonds issued 60 days after publication of the final regulations in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–10584 Filed 5–2–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 16–18, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Barcelo Washington Hotel, 2121 P Street NW., Washington, DC, (202) 293–3100.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4082, ROB–3), Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended: 5 U.S.C. 561). The Advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following items:

- —School participation requirements
- —Selection criteria
- —Application process
- —Loan origination requirements

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: April 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–10498 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–M

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34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 19–20, 1994 from 9:00 am to 5:00 pm.

ADDRESSES: The Barcelo Washington Hotel, 2121 P Street NW., Washington, DC (202) 293–3100.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education U.S. Department of Education, 400 Maryland Avenue SW (room 4082, ROB–3), Washington, DC 20202–5100 Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 USC 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 USC 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement Section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include the following items:

- —Complete definition of reserve funds and assets
- —Negotiate standard for unnecessary reserves
- —Negotiate definition of improper expenditures

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9:00 am and 5:00 pm weekdays, except Federal holidays.

Dated: April 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–10516 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH31–1–6092; FRL–4880–5]

Approval and Promulgation of Implementation Plans; Ohio; Reopening of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: USEPA is reopening the comment period for a proposed rule published on March 4, 1994 (59 FR 10349). On this date, USEPA proposed to disapprove Ohio's submittal for the review of new sources and modifications of existing sources in nonattainment areas in the State. Pursuant to a request from the Ohio Environmental Protection Agency, USEPA is extending the comment period for an additional sixty days.

DATES: Comments regarding the proposed disapproval of the Ohio new source review program must be received by June 3, 1994.

ADDRESSES: Written comments should be sent to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6798.

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–6067.

Dated: April 18, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–10550 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 59

[FRL–4877–6]

Field Citation Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Clean Air Act, as amended (the Act), authorizes EPA to

implement a field citation program, as part of the Agency's recently-granted authority for the administrative assessment of civil penalties.

The Act authorizes EPA to issue field citations for appropriate minor violations, defined in todays proposal as those violations determined to be minor in nature after consideration of various specified factors. EPA also proposes a maximum penalty of $5,000 per day for each violation cited, and a maximum cumulative penalty in the range of $15,000 to $25,000 per citation.

Upon receipt of a field citation, a respondent must either pay the proposed penalty or submit a request for a hearing. Hearing procedures are also proposed in this document.

EPA expects to implement this program such that in the great majority of cases the issuance of a field citation will lead to a quick correction of a clear violation and a payment of the assessed penalty.

DATES: *Comments:* Comments must be received on or before July 5, 1994. A public hearing will be held on June 8, 1994 from 1 p.m. to 4 p.m.

If a written request for a public hearing is received by the Agency before June 2, 1994, the Agency will hold a hearing on June 8, 1994 from 1 p.m. until 4 p.m.

ADDRESSES: Written comments should be submitted in duplicate (if possible) to: U.S. Environmental Protection Agency (6102), Attention: Air Docket Number A–91–63, 401 M Street, SW., Washington, DC 20460.

Comments received on this proposed rule will be available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Room M–1500, First Floor Waterside Mall, at 401 M Street, SW., Washington, D.C. A reasonable fee may be charged by the Agency for copying docket materials, pursuant to 40 CFR part 2. The docket control number for the field citation rulemaking is A–91–63. All written comments on this rule must be identified with this number

Public Hearing Information. If requested, a public hearing will be held at the EPA Education Center Auditorium, which is located on the northwest corner of the First Floor of Waterside Mall at 401 M Street, SW., Washington, DC. Oral and written statements will be accepted during the hearing. However, a person who wishes to make an oral presentation must:

(i) Notify the Agency in writing, and

(ii) Bring a written copy of the complete comments for inclusion in the official record.

Written requests to schedule or speak at a public hearing shall be addressed to: Jane Engert, Field Citation Public Participation Officer, Stationary Source Compliance Division (6306W), Office of Air and Radiation, US EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jane Engert, Stationary Source Compliance Division (6306W), Office of Air and Radiation, US EPA, 401 M Street, SW., Washington, DC 20460, (703) 308–8677.

SUPPLEMENTARY INFORMATION:

I. Introduction

This preamble discusses the major issues raised by today's proposed action, and EPA's justification for each proposed provision. Sections II and III, which follow this introduction, contain a brief outline of the proposals statutory authority and background. Section IV outlines the major program considerations and the rationale for EPA's proposal on each, while Section V presents a section-by-section analysis of the proposed rule. The final section in this preamble, Section VI, outlines specific regulatory impact analyses.

II. Statutory Authority

Today's rule is proposed under authority of sections 113(d) and 301(a) of the Act (42 U.S.C. 7413(d) and 7601(a)).

III. Background of Proposed Rule

Prior to the passage of the Clean Air Act Amendments of 1990,[1] EPA enforced Clean Air Act provisions through civil or criminal judicial enforcement actions and the issuance of administrative orders for compliance.[2] The 1990 Amendments expanded EPA's range of enforcement tools by authorizing EPA to issue administrative penalty orders (section 113(d)(1) of the Act) and to administratively assess civil penalties through field citations issued for minor violations (section 113(d)(3) of the Act). EPA expects that these new enforcement options will enhance the Agency's ability to enforce the Act. Where appropriate, EPA will be able to respond quickly to a violation by issuing an administrative penalty order or a field citation, rather than commencing a civil judicial enforcement action for penalties. While civil and criminal judicial enforcement actions will remain an important component of EPA's enforcement program, EPA's new administrative authorities will enable it to effectively pursue a broad range of violations without the expenditure of resources associated with judicial action.

Section 113(d)(3) of the Act authorizes EPA to implement a field citation program to enforce the Act through regulations which establish appropriate minor violations for which field citations may be issued. The Act requires that the Agency consult with the Attorney General and the States, that the maximum civil penalty for a minor violation not exceed $5,000 per day of violation, and that field citations be issued only by EPA officers or employees designated by the Administrator.

Section 113(d)(3) of the Act also provides that any person to whom a field citation is issued may elect either to pay the proposed penalty or to request a hearing in accordance with procedures specified in the regulations. It further provides that the penalty assessed in the field citation becomes final if a request for a hearing is not made within the time specified in the implementing regulations. The Act specifies that hearings shall not be subject to the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 554 or 556, but shall provide a reasonable opportunity to be heard and to present evidence.

The Act also specifies that payment of a field citation penalty shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the Act, if the violation continues.

IV. Program Considerations

A. Appropriate Minor Violations for Issuance of Field Citations

EPA expects the field citation program to exhibit several important characteristics. First, field citations should be issued for violations that are clear cut and truly minor in nature. Second, field citations should, in general, be issued shortly after a violation is discovered, if not upon discovery. Third, the amount of the penalty assessed and other aspects of the program should induce quick correction of the violation and payment of the penalty. As required by section 113(d)(3), EPA is proposing a definition of minor violation for which field citations may be issued. This definition is designed to help implement these goals.

EPA considered several regulatory options for establishing appropriate minor violations as directed in the statute. One option was inclusion in the rule of a comprehensive list of all possible violations suitable for field citations. This approach would appear to have several advantages. Explicitly listing each minor violation in the rule would provide clear, objective criteria for the issuance of field citations, thereby limiting inspector discretion. An inspector would need only check the list of appropriate minor violations to determine whether a field citation could be issued. This approach would appear to both streamline the program and help to achieve national consistency in its application.

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[1] Pub. L. No. 101–549, 104 Stat. 2399 (1990)

[2] See CAA sections 113 (c)(1), (c)(2), and (b), prior to their amendment in 1990.

A major problem with this option became clear, however, when attempts were made to develop such a list of "minor violations." Almost any violation might be considered significant or minor depending on the circumstances. A regulatory list of all or nearly all possible minor violations would therefore be too long to be of any real use, or in the alternative, would exclude violations which, given the right circumstances, would properly be considered minor.

In addition, it became clear that an exercise of discretion was almost unavoidable in determining whether a violation was minor. This was inherent in the view that the specific circumstances, along with the kind of violation, were critical in determining whether or not it was minor.

Thus, the option of listing all or nearly all minor violations in the regulations would result in a list that was either too long or too short to be of significant value. It would also not provide a mechanism for channeling the exercise of discretion that appears inherent in the decision on whether a violation is minor, and consequently would not appear to foster national consistency.

A second option considered by EPA would define as minor those violations limited to particular categories of regulatory requirements (e.g., recordkeeping, reporting, labeling, monitoring, workpractice standards, etc.). This option, however, exhibits the same basic problems as the first option. Here again, violations within these broad categories could be considered significant or minor depending on the circumstances. This second approach still did not provide a method for determining when a violation in one of the broad categories would be considered minor.

Given the importance of the specific circumstances of a violation in categorizing it as significant or minor, EPA considered and is today proposing a third option. In todays proposal a minor violation would be defined as one that is minor in nature, in light of a list of factors that must be considered as a whole. This list contains such factors as whether the violation is readily recognizable by an officer or employee of EPA; the risk and degree of environmental harm resulting from the violation; the time, effort, or expense required to correct the violation; the frequency and duration of the violation; and the importance of the violated requirement to the regulatory program. For example, determinations that the violation is manifest; that it poses little risk of environmental harm; that it has not been identified in a previous enforcement action against the respondent; that it occurred once or only for a short period of time; or that correcting it should require little time, effort, or expense would be indicators of the minor nature of a violation.

EPA recognizes that this list is not exhaustive of all factors that may be relevant to whether a violation is minor in nature. Therefore, the definition includes a provision for consideration of other appropriate factors. However, the list is indicative of the types of factors that EPA will consider in determining whether a violation is minor.

While EPA considers these factors as relevant to determining whether or not a violation is minor in nature, information may not be available on all of these factors when decisions are made regarding the propriety of issuing a field citation. If information is not available for any of the factors noted in the proposed list of factors, then that factor would be treated as neutral on the issue of whether a violation is minor in nature. In addition, EPAs proposal calls for evaluating the factors as a whole. Specific requirements are not proposed for each of the factors individually, i.e., EPA has not proposed a specific time requirement for "duration of violation" or a dollar amount for "expense required to correct a violation." The specific circumstances of the violation would be considered in light of all of these factors taken as a whole.

A final factor has been added to the definition of minor violation to make clear that EPA reserves all rights to determine the appropriate enforcement response to a violation. A violation is not a minor violation under the definition proposed today unless it is minor in nature as described above, and unless the Agency, in its descretion, decides to address it as a minor violation. This is to make it clear that the field citation regulations proposed today do not provide a basis for respondents to claim that an alleged violation is minor in nature and therefore EPA's only available enforcement mechanism is issuance of a field citation. Today's proposed regulations are not intended to limit in any way EPA's ability to fully exercise its enforcement discretion. The Agency reserves the right to determine what, if any, enforcement approach is appropriate in a specific case. EPA believes this is consistent with Congressional intent for the field citation program, as section 113(d)(3) provides that "[t]he Administrator may implement * * * a field citation program through regulations establishing appropriate minor violations for which field citations * * * *may* be issued by officers or employees designated by the Administrator." (emphasis supplied)

It is important to note that there are circumstances under which EPA might conclude that a field citation is not the most appropriate enforcement response. For example, if a person or source is the subject of an ongoing EPA investigation or if a person or source has an aggregation of many minor violations, each of which, if considered individually, would be suitable for a field citation, EPA may appropriately decide to address those violations through its section 113(d) administrative penalty authority or through its section 113(b) civil judicial authority. A more detailed description of the process for determining whether a violation is minor will be presented in the guidance document to be developed for implementing this rule.

B. Maximum Penalty

Under section 113(d)(3), civil penalties assessed in a field citation may not exceed "$5,000 per day of violation." EPA proposes to interpret this provision such that the maximum $5,000 penalty applies for each day, for each separate violation cited in the field citation. This interpretation is consistent with the statutory text and structure of section 113, and is supported by its legislative history.

EPA's proposed interpretation of the phrase "per day of violation" as used in section 113(d)(3) is quite reasonable, given EPA's long history of interpreting an identical penalty provision in this manner, the civil penalty provision of section 113(b) as it stood prior to enactment of the 1990 amendments.[3] That prior interpretation has found support in several judicial decisions.[4] By using the same language as previously found in section 113(b), Congress clearly authorized EPA to continue this interpretation for purposes of the new field citation program.

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[3] Prior to revision in 1990, section 113(b) stated that "[t]he Administrator shall [for owners or operators of major stationary sources], and may, in the case of any other person, commence a civil action * * * to assess and recover a civil penalty of not more than $25,000 per day of violation * * *."

This interpretation is also consistent with Congress' apparent objectives for the field citation program as indicated by various provisions in section 113 relating to field citations. Congress limited the field citation program to "appropriate minor violations," established a maximum penalty amount of "$5,000 per day of violation," provided a right to a non-APA hearing, and required that penalties in this program be assessed after consideration of the penalty assessment criteria of section 113(e). These provisions indicate that Congress wanted to provide EPA with a flexible enforcement tool that would focus on the less significant, presumably simpler and less complex violations, with assessment of significantly lower penalties than expected through two other civil penalty provisions of section 113, administrative penalty orders (section 113(d)(1)) and judicial civil penalty actions (section 113(b)).

EPA's proposed interpretation of the maximum penalty amount for the field citation program, $5,000 per day for each violation, will lead to significantly lower penalty assessments in comparison to these other two programs, primarily because of the large reduction in the maximum penalty from $25,000 to $5,000, the minor nature of the violations, and the penalty assessment criteria in section 113(e). Interpreting "per day of violation" to mean per day for each violation allows EPA to fairly and flexibly implement a field citation program in a manner consistent with Congress' apparent objectives for this program. While a more restrictive interpretation, such as $5,000 per day of violation no matter how many different violations on a specific day, might lead to even lower penalty assessments in certain cases, Congress' apparent objectives for the field citation program can be met without adopting this approach. In fact, a more restrictive interpretation might hinder implementation of these goals.

First, an interpretation that "per day of violation" in section 113(d)(3) imposes a maximum penalty of $5,000 notwithstanding the number of violations in a day would in certain cases minimize if not remove the Agency's ability to fully account for important differences between violators when assessing penalties under this program. Two violators with different numbers of minor violations on the same day would both face the same maximum penalty, possibly removing EPA's ability to reflect this difference in the amount of penalty imposed. This would appear to run counter to the requirement in section 113(e) that EPA consider such differences when assessing penalties under section 113(d)(3). Second, in that situation there would be an incentive for EPA to issue an administrative penalty order in lieu of a field citation, to avoid the apparent unfairness resulting from the limitation in discretion embodied in the more restrictive interpretation.

It is unlikely that Congress intended either of these results, and EPA's proposed interpretation avoids them without in any way sacrificing full implementation of Congress' goals for this program. The Agency will be able to fully consider all the factors required under section 113(e), including the number of violations, and the field citation program will still involve significantly lower penalty amounts than the other civil penalty programs in section 113.

EPA's interpretation is supported by the legislative history in section 113(d)(3). The field citation provisions finally adopted by Congress originated in the House of Representatives. While an early version of the provision called for a maximum penalty of "$5,000 per day for each violation," this was changed without explanation to a maximum penalty of "5,000 per day of violation."[5] While the House Committee Report fails to explain this change in language, it is important to note that the phrase "per day of violation" had long been interpreted by the Agency as establishing a maximum civil penalty for each day, for each separate violation. Various judicial decisions were consistent with this interpretation.[6] Congress' adoption of language with a long-standing Agency interpretation is strong evidence that despite the difference in language between section 113(a) and section 113(d)(3), Congress did not preclude EPA's proposed interpretation but instead authorized the Agency to adopt the same interpretation for the field citation program that EPA had long employed for the maximum penalty provision found in the pre-1990 version of section 113(a).

The legislative history in the Senate also makes it clear that Congress intended to authorize EPA's proposed interpretation. In the Senate, the bill reported out by the Senate Committee on Environment and Public Works authorized a field citation program with a maximum civil penalty of "$5,000 per day for each violation."[7] The bill passed by the Senate contained a very different provision, establishing a $5,000 maximum "per inspection."[8] In conference, the Senate's clear mandate for a maximum dollar amount, no matter the number of violations, was rejected in favor of the version passed by the House. This indicates that Congress did not intend to mandate a similar interpretation for the field citation program.

Finally, EPA's interpretation is supported by the legislative history of title II's enforcement provisions. As reported out of the Senate Committee on Environment and Public Works, sections 211(d)(1) and 205(c) of the Act authorized administrative assessment of civil penalties of no more than "$25,000 per day of violation."[9] In describing this authority, the Committee Report states that "[t]his section of the bill changes the section 211(d) penalty amount * * * to a maximum penalty of $25,000 per day of violation. This penalty amount applies to *each day for each violation*." (emphasis supplied)[10] This shows that when Congress used the term "per day of violation" in amending section 113 it had no intention of barring an EPA interpretation that such term meant "per day for each violation."

On a separate issue, EPA considered several different ways to structure the field citation program so that as clear a line as possible would be drawn indicating when it was appropriate to issue a field citation, and when one of the other civil penalty authorities would be more appropriate. This is important, among other things, given the decentralized nature of this program and the authority to issue citations in the field. One option considered was issuance of internal Agency guidance on this point. As discussed in section D of this notice, EPA does intend to issue guidance on a wide variety of matters related to this program, and an important component of this will include guidance on when to issue a citation and when to employ other enforcement tools open to the Agency.

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[4] *U.S. v. SCM Corp.*, 667 F. Supp. 110 (D. Md. 1987); *United States v. Chevron U.S.A., Inc.*, 639 F. Supp. 770 (W.D. Tex. 1985).

[5] As originally introduced, the field citation program contained a limit of $5,000 "per day for each violation." H.R. 3030, 101st Cong., 1st Sess 283 (1989). A similar provision was employed for civil judicial penalties under § 113(b) and the new authority for administrative penalty orders under § 113(d)(1). The Subcommittee on Health and the Environment of the Committee on Energy and Commerce retained this provision for judicially imposed civil penalties, but for the field citations program limited field citations to $5,000 "per day of violation," adopting language from the judicial civil penalty provision in the then current Clean Air Act. House Subcommittee on Health and the Environment, 101st Cong., 1st Sess. Amendment in the Nature of a Substitute of H.R. 3030 at 309 (Comm. Print, November 9, 1989). This version of the field citation penalty provision was later reported out by the Committee, adopted by the House and finally included in the Clean Air Act Amendments of 1990. Pub. L. No. 101-549, 104 Stat. 2399 (1990).

[6] Supra n. 2.

[7] S. Rep. No. 101-228, 101st Cong., 1st Sess. 550 (1989).

[8] S. 1630, 101st Cong., 2d Sess. (1990).

[9] S. Rep. No. 101-228, 101st Cong., 1st Sess. 636 (1989).

[10] S. Rep. No. 101-228, 101st Cong., 1st Sess. 126 (1989).

EPA also considered and is proposing establishing a maximum cumulative dollar amount that may be assessed in an individual citation. This would have the advantage of providing an objective indication in the regulations themselves that a more serious compliance problem exists and other, more stringent enforcement mechanisms would generally be more appropriate. This maximum penalty amount could be reached by, for example, a combination of many violations (whether occurring on the same or separate days), with low amounts per violation, or a smaller number of violations combined with larger penalty amounts per violation. Either of these circumstances would serve to indicate that a stronger enforcement approach may well be appropriate. While such a cap could be included in internal Agency guidance, a regulatory cap will provide greater structure for this program, at least initially.

As a variation on the above, EPA considered establishing a maximum number of violations that could be included in an individual citation. This option, however, might preclude issuance of a field citation where the number of violations exceeded the maximum, even if the violations were all very minor and would receive a low penalty assessment. For this reason EPA is not currently proposing this form of a cap.

EPA is proposing that the maximum cumulative penalty in an individual citation not exceed a dollar amount in the range of $15,000 to $25,000. EPA invites comment on this range, and whether such a dollar cap should be in the regulations or in Agency guidance. EPA is also considering and invites comment on whether the penalty cap should "sunset" after a pre-set time period, ranging from one or two years to a longer period. Before the cap expired of its own terms, EPA would reevaluate whether it should continue, and if appropriate, would revise the regulations to extend the cap or some more useful version thereof.

C. Penalty Assessment Policy

The regulations proposed today define minor violation, establish the maximum penalty amount per violation, and address matters concerning hearings to contest assessment of a civil penalty through a field citation. EPA plans to develop detailed guidance that will address many of the other issues concerning implementation of the field citation program. The following section discusses important aspects of EPA's planned guidance on the penalty amounts to be assessed by field citations.

Penalty assessment under the field citation program will be designed to achieve expeditious compliance with the applicable Clean Air Act requirements. Although only minor violations of the Act will be subject to the program, the penalties must be significant enough to deter violations and to ensure a high rate of compliance. On the other hand, penalties will generally be significantly lower than amounts that could be assessed through other enforcement means. EPA plans to incorporate these objectives into a field citation penalty assessment policy, which will become a component of the Agency's Clean Air Act civil penalty assessment policy.

The penalty assessment guidance will explain how the Agency intends to evaluate the penalty assessment criteria in section 113(e) of the Act when determining penalty amounts. The Agency is considering assigning standardized penalty amounts to specific categories of violations. These standard amounts might then be modified by means of a penalty matrix, which would take into account such factors as the seriousness of the violation; the degree of environmental harm; or other appropriate criteria.

EPA expects that its penalty assessment guidance will limit the discretion of inspectors and others in setting penalty amounts. For example, any matrix approach as described above would constrain the person issuing the field citation to operate within the limits of the matrix. In addition, EPA expects the guidance will establish that where the amount of a penalty would be based on specific characteristics of the violation and the person issuing the citation has not obtained evidence relating to one of the characteristics, then that characteristic would be treated as neutral for purposes of penalty assessment.

D. Program Implementation

In addition to guidance on the penalty amounts assessed through the field citation program, EPA plans to issue guidance addressing a wide variety of other implementation issues. This guidance would be carefully designed to spell out and restrict the day-to-day practice under this program. EPA believes this approach will facilitate achievement of the goals for this program, and still provide the flexibility necessary for an enforcement program designed to address a wide variety of factual circumstances. This section describes EPA's current ideas on certain elements of this program guidance.

Field citations may be issued either in the field or from an EPA office. Violations of reporting requirements, for example, will typically involve desk issuance since discovery of these violations normally occurs not in the field, but in an office designated to receive such reports. Even where a violation is discovered in the field, an inspector may elect to return to the office for further review or discussion with management prior to issuing a field citation. In order to promote consistency, inspectors will be encouraged to return to the office for clarification whenever there is any doubt regarding the nature of a violation or the appropriate penalty amount. During the initial phase of program implementation, the Agency anticipates that most field citations will be issued from an EPA office, based on field inspections. After a suitable period of experience with the program, it is expected that the majority of inspection-based citations will be issued on-site. The Agency will then establish guidelines for particular situations in which office-only issuance would still be recommended, e.g., based on penalties exceeding a specified dollar amount, or for other relevant considerations. Although State and local employees may not issue federal field citations pursuant to this regulation, EPA employees may rely on information gathered during State and local inspections as a basis for issuing field citations.

Following discovery of a minor violation and issuance of a field citation, the respondent will have thirty days in which to either pay the assessed penalty or to request a hearing. EPA reserves the right to revoke a field citation, in whole or in part, at any time prior to payment of the assessed penalty.

EPA believes this authority is a necessary safeguard in this program. It will allow a reevaluation, before the process has gone very far, of whether a citation should have been issued. For example, this could involve a reevaluation of whether a filed citation is the most appropriate enforcement tool, or could involve the early resolution of a citation issued in error.

As noted above, EPA will prepare detailed guidance for the implementation of the field citation program. The guidance will cover such broad areas as coordination of inspections with State and local agencies, desk issuance as opposed to field issuance, determination of whether a violation is minor, and calculation of penalty amounts. The guidance will also cover such issues as how to revoke a field citation, and how field citations will be recorded and tracked. Finally, the guidance will include procedures for determining appropriate penalty amounts, and an actual sample of the design and format of the field citation.

E. Field Citations as Distinguished From Other Enforcement Authorities

Under section 113(b) of the Act, the Agency is authorized to commence civil judicial enforcement actions against certain violators to assess and recover civil penalties of up to $25,000 per day for each violation, and/or to seek temporary or permanent injunctions. Civil actions under section 113(b) are most advantageous when:

(1) A compliance schedule or other injunctive relief is necessary and an administrative compliance order under section 113(a) is either unavailable or inappropriate;

(2) The violator's compliance history indicates that the compliance schedule should be subject to court supervision and contempt remedies; or

(3) Substantial civil penalties are appropriate.

In 1990, Congress amended section 113 of the Act, providing new authority for the Administrator to issue administrative penalty orders under section 113(d)(1). These administrative penalty orders, which may assess civil penalties of up to $25,000 per day of violation, may be issued where:

(1) The total penalty sought does not exceed $200,000; and

(2) The first alleged date of violation occurred no more than twelve months prior to initiation of the administrative action. The Administrator and the Attorney General may, however, jointly determine that an administrative penalty action is appropriate for either a larger penalty or a longer period of violation.

Administrative penalties under section 113(d)(1) are most advantageous where:

(1) The violator does not have a compliance history of multiple or repeat violations; and

(2) Court-supervised injunctive relief is not appropriate. Additionally, civil judicial action is preferred over administrative action where extensive post-filing discovery will be necessary to fully develop the circumstances associated with one or more violations, and where new legal issues are presented by a case.

The field citation program under section 113(d)(3) is another new enforcement authority provided by the November 15, 1990 Amendments. As indicated elsewhere in this preamble, the field citation program involves the issuance of citations that assess civil penalties, not exceeding $5,000 per day of violation, for minor violations of the Act.

The focus of the field citation program will be to ensure compliance with regulatory requirements that often remain unaddressed due to limited Agency resources. The opportunity for streamlined, expedited enforcement to address minor violations should save Agency resources, reduce court backlogs, and send a clear enforcement message to violators that minor violations will not be overlooked.

F. Role of Inspectors

1. Issuance by Officers/Employees

Under the Act, field citations "may be issued by officers or employees designated by the Administrator." It is the Agency's position that section 113(d)(3) does not authorize delegation of section 113 field citation authority to State and local officials. The legislative history supports this interpretation.[11] Comments on the Agency's position, including any alternative legal analyses or interpretations of the statute, are invited.

2. Training and Guidance for Inspectors and Enforcement Officers

The success of the field citation program will depend on well-trained inspectors and enforcement officers, skilled at both recognizing minor violations and determining appropriate penalty amounts. Before implementing this program, EPA will offer a number of Regional inspector training sessions to ensure that inspectors and enforcement personnel are completely familiar with the program and understand the limits of its applicability. In particular, employees will be trained to identify minor violations based on the criteria set forth in this regulation. They will also be trained to identify circumstances in which particular violations might indicate a more serious compliance problem that should be handled through a more stringent enforcement action.

In addition to training, inspectors and enforcement officers will be given a detailed guidance document containing recommended penalty ranges associated with specific categories of violations. In this way, inspectors will have a ready reference if they are unsure about a particular violation. Moreover, the establishment of appropriate penalty amounts in guidance will help to ensure national consistency. Whenever there are doubts regarding how to characterize a suspected violation, inspectors will be directed to return to the office for further evaluation and consultation.

G. Rules Governing Hearings on Field Citations

In addition to authorizing EPA to implement a field citation program, section 113(d)(3) of the Act addresses certain basic procedural issues involving hearings on field citations. First, it provides that any person to whom a civil penalty is assessed through a field citation may elect either to pay the civil penalty or to request a hearing on the field citation. Any request for a hearing must be within the time period prescribed by the Administrator through regulation, and if a hearing is not requested within such time then the penalty assessment in the field citation becomes final. Second, this section explicitly provides that the hearing on a field citation shall not be subject to the Administrative Procedure Act (APA) provisions on formal adjudications (5 U.S.C. 554 or 556), but shall provide a reasonable opportunity to be heard and to present evidence.

EPA is proposing three distinct alternatives to implement these statutory provisions and establish fair and reasonable procedures to govern hearings on field citations. These alternatives are: (1) EPA's consolidated, APA penalty assessment procedures under 40 CFR part 22, with appropriate revisions; (2) EPA's proposed consolidated, non-APA penalty assessment procedures under 40 CFR part 28, with appropriate revisions; and (3) new streamlined administrative procedures contained in today's proposal. The following section discusses and evaluates each of these alternatives. The Agency requests comment on the propriety of each of these penalty assessment procedures.

Procedures for the assessment of field citation penalties must reasonably implement the requirements of section 113(d)(3), including providing a reasonable opportunity to be heard and to present evidence, and must also satisfy procedural due process considerations under the Constitution. Determining compliance with both of these requirements requires a close comparison between the proposed procedures, the factual and legal situations that are expected to arise under this program, and the interests at issue, both private and governmental.

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[11] "The citations are to be issued by Federal officers or employees designated by EPA." H.R. Rep. No. 101–490, 101st Cong., 2d Sess. 393 (1990).

Congress specifically limited field citations to minor violations, as defined by the Agency. While EPA's proposed definition of minor violation does not specify each and every violation that might be considered minor, it does set clear limits on the kinds of violations that will be considered minor violations. The many different kinds of violations that may meet the definition of minor violation will exhibit common features. For example, the typical minor violation will involve a clear and straightforward violation, both factually and legally, of limited frequency or duration and limited environmental impact. The factual and legal issues that EPA expects to arise in field citation assessments are, overall, expected to be simple and uncomplicated.

The basic private interest at stake is the assessment of civil penalties of up to a maximum of $5,000 per day for each violation, as well as the resources needed to contest such assessments where considered appropriate. The maximum penalty is significantly lower than the maximum administrative or judicial civil penalties authorized under sections 113, 205 and 211 of the Act. The primary governmental interest is implementation of a program that fairly fills a gap in EPA's enforcement programs, without undue drain on EPA's limited enforcement resources. EPA believes this interest is best served by addressing minor violations in a straightforward and direct manner, somewhat akin to a traffic enforcement program. The deterrence effect from this program will come in large part from the issuance of a citation immediately upon or shortly after detection of a violation, with final assessment of the penalty occurring shortly after issuance of the citation.

EPA has considered these and other factors in evaluating the three options proposed today for hearing procedures, and believes all three fully implement Congressional intent and satisfy due process requirements. The three options draw different balances between complexity and simplicity, formality and informality, but are all designed to implement a program aimed at simple and uncomplicated violations, involving penalties significantly lower than others authorized in the Act, and requiring straightforward, quick and fair adjudication to obtain the desired deterrent effect without undue drain on limited Agency resources.

1. Modified 40 CFR Part 22—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits

Under the first Agency proposal, administrative hearings on field citations would be conducted pursuant to the procedures established by EPAs consolidated APA rules of practice for the administrative assessment of civil penalties, 40 CFR part 22. In a separate rulemaking, the Agency would propose to amend part 22, where appropriate, to make that regulation applicable to field citations.

Basis for Hearing Procedures

Although the Act explicitly indicates that hearings in field citation cases are not subject to the provisions for formal APA adjudication, it does not prohibit the Agency from exercising its discretion and providing such procedural rights. There are two primary benefits in using part 22 to govern hearings on field citations: (1) It would consolidate Clean Air Act administrative penalty hearings under one set of procedural rules, minimizing the need for the Agency and the regulated community to learn and become proficient in more than one set of procedures; and (2) it would use a penalty assessment procedure with which both the Agency and the regulated community have a great deal of experience.

The Act as amended in 1990 authorizes the Administrator to issue administrative penalty orders under section 113(d)(1). These administrative penalty orders, which may assess civil penalties of up to $25,000 per day of violation, are generally limited to situations where the total penalty sought does not exceed $200,000 and where the first alleged date of violation occurred no more than twelve months prior to initiation of the administrative action. Similar authority was provided under sections 205(c) and 211(d)(1) of the Act.

The penalties contained in administrative penalty orders issued under section 113(d)(1) are assessed pursuant to the part 22 procedures, as are administrative penalties assessed under sections 205(c) and 211(d)(1). Part 22 was amended to incorporate these provisions on February 4, 1992 (57 FR 4318). Thus, using part 22 to govern hearings on field citations issued under section 113(d)(3) would consolidate all of the Clean Air Act administrative penalty hearings under one set of procedures.

Additionally, the Agency has used part 22 for assessing administrative penalties under other environmental statutes since 1980. Consequently, both the regulated community and the Agency have considerable experience with these procedures, thereby simplifying the implementation of the field citation program. As discussed later, minor revisions to part 22 procedures would be adopted to account for certain statutory provisions in section 113(d)(3) and to account for the types of violations and penalties associated with field citations.

Proposed Hearing Procedures

Under part 22, the field citation would be issued by an EPA officer or employee as an administrative complaint. Within twenty days after service of the citation, the Respondent must file an answer. In the answer, the Respondent may contest the facts in the complaint, the size of the penalty, or claim that the Respondent is entitled to judgment as a matter of law. If requested by the Respondent, a hearing will be held on the issues raised in the citation and answer. The Presiding Officer has the discretion to allow the Respondent to amend his answer. A default order, which allows the full proposed penalty to be collected, may be issued upon motion if the Respondent fails to file an answer.

The Respondent may simultaneously pursue informal settlement and a hearing. During settlement negotiations, the parties may informally exchange information, if appropriate. For example, the Agency may supply copies of the documentation used to support its case and the Respondent might provide any evidence that would tend to disprove the allegations or to mitigate the penalty. A written Consent Agreement and a proposed Consent Order are submitted for approval by the Regional Administrator, if the parties reach a settlement of the claim.

Either party may file a preliminary motion for an accelerated decision if no genuine issues of material fact exist. The Respondent may file a motion for dismissal of the citation.

A mandatory prehearing conference is held to simplify issues; to limit the number of potential witnesses; and to address other matters that may expedite the hearing. An exchange of witness lists and documents occurs at the prehearing conference.

The hearing is held for the presentation of evidence and testimony concerning the facts relating to the violation and to the size of the penalty. Except as otherwise provided by the Presiding Officer, witnesses are to be examined orally, under oath or affirmation, at the hearing. The parties have the right to cross-examine witnesses who testify at the hearing. The Presiding Officer may take notice of any matter judicially noticed in the Federal courts and of any facts falling within the specialized knowledge and expertise of the Agency.

At the hearing, the Agency has the burden of going forward and proving that the violation occurred and that the proposed penalty is appropriate. After a prima facie case is established, the Respondent has the burden of presenting and going forward with any defense to the allegations in the citation. The matters in controversy are determined by the Presiding Officer upon a preponderance of evidence.

The hearing must be transcribed. Within twenty days after the transcript is available, the parties may submit proposed findings of fact and conclusions of law with supporting briefs. Reply briefs are also authorized.

The Presiding Officer issues the initial decision, which consists of findings of fact, conclusions of law, and recommended civil penalty. In reaching an initial decision, the Presiding Officer is required to consider the statutory penalty assessment criteria listed in section 113(e), section 205(c) or section 211(d) of the Act, as appropriate. For section 113(e), these criteria include: The size of the business; the economic impact of the penalty on the business; the Respondent's full compliance history; the Respondent's good faith efforts to comply; the duration of the violation as established by any credible evidence; payment by the Respondent of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and such other factors as justice may require.

If the Presiding Officer recommends a penalty different from the one proposed by the citation, the initial decision must set forth the specific reasons for the increase or decrease. Either party may file a motion to reopen the hearing within twenty (20) days of service of the initial decision.

Unless a party appeals to the Environmental Appeals Board (the Board) within twenty (20) days of service, or unless the Board elects to review it *sua sponte*, the Presiding Officer's initial decision becomes a final order of the Board within forty-five (45) days after service. A final order of the Board shall adopt, modify or set aside the findings and conclusions of the initial decision. The Board is authorized to increase or decrease the assessed penalty, except in the case of a default order. A motion for reconsideration of the final order may be filed with the Board within ten (10) days after service of the final order.

Procedural Due Process

EPA analyzed the issue of procedural due process with its consolidated APA rules of practice when they were promulgated. See 52 FR 2922 (August 6, 1987) (NPRM) and 57 FR 4316 (February 4, 1992) (FRM). In that analysis EPA evaluated and balanced the three factors specified by the Supreme Court in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976) for determining whether the administrative procedure provided to an individual prior to the deprivation of a property interest meets the due process requirements of the Fifth Amendment: the magnitude and nature of the individual interest at stake, the risk of an erroneous deprivation of that interest and the benefit of additional procedures in reducing that risk, and the governmental interest in not providing such additional procedures.

EPA's APA style hearing procedures would certainly satisfy procedural due process considerations as well as statutory requirements if employed for hearings on field citations. By statute APA adjudication procedures are not required. The violations are by definition minor in nature and should involve simple and straightforward factual and legal situations. In fact, EPA believes these procedures provide significantly more process than required by the Fifth Amendment for hearings on field citations, and are proposed as an option not because of due process considerations but because of the expected benefits of having a single set of procedures governing all administrative penalty proceedings under the Clean Air Act.

EPA is also considering certain revisions to the Part 22 procedures to account for the minor nature of the violations at issue under the field citation program. First, EPA is considering using presiding officers that are not administrative law judges. As with other non-APA situations, the agency's presiding officers would conduct the hearings and take other actions. This would help to conserve the agency's administrative law judge resources for APA hearings, with no expected reduction in the accuracy of the hearing process. The Agency is also considering such revisions as making the prehearing conference optional and changing the deadline for default from twenty to thirty days following service.

In addition, EPA is considering limiting appeals from the presiding officer to the EAB. Appeals from the initial decision on a field citation would not be of right, but would be at the discretion of the EAB. For example, a party seeking an appeal from the initial decision would file a motion with the EAB seeking leave to appeal. There would only be an appeal to the EAB if they granted such motion, or reviewed the initial decision *sua sponte*. Absent such review by the EAB, the initial decision of the presiding officer would become the final order of the Agency. EPA expects that in the typical situation the EAB would not hear an appeal from either party given the expected nature of the minor violations. Appeals typically would be limited to cases with unique factual or legal circumstances. This would conserve the Agency's resources for hearing and deciding administrative appeals, and allow their use for APA cases and more complex cases. At the same time, where appropriate the EAB could hear an appeal. This would minimize the chance of an erroneous deprivation of an individual interest, and at the same time maximize the efficient use of scarce Agency resources.

2. Modified 40 CFR Part 28—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties Under Various Statutes

Under the second option considered and proposed by the Agency, the hearings on field citations would be conducted pursuant to the procedures in EPAs proposed non-APA, consolidated rules of practice for the administrative assessment of penalties, with appropriate revisions to conform with the Clean Air Act. (See proposed 40 CFR part 28, 56 FR 29996 (July 1, 1991)). In a separate rulemaking, the Agency would propose to amend Part 28, where appropriate, to make that regulation applicable to field citations.

Basis for Hearing Procedures

The rules of procedure proposed as 40 CFR Part 28 are intended to consolidate under uniform rules of practice the following non-APA administrative penalty programs that are currently administered by the Agency: Class I administrative penalties under sections 309(g) and 311(b)(6) of the Clean Water Act, section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and section 325(b) of the Emergency Planning and Community Right-toKnow Act (EPCRA); and administrative penalties under section 1423(c) of the Safe Drinking

Water Act and sections 325 (c) and (d) of EPCRA.

Part 28 was proposed to consolidate and harmonize certain EPA procedural rules and guidance for the administrative assessment of civil penalties under various statutes, where Congress gave EPA authority to conduct non-APA hearings. In line with this Congressional intent, proposed part 28 is designed to provide streamlined administrative penalty procedures that are designed to assure the protection of basic constitutional rights. Section 113(d)(3) of the Act explicitly states that hearings on field citations are not subject to the APA provisions for hearings (5 U.S.C. 554), and that recipients of a field citation must be provided a reasonable opportunity to be heard and to present evidence.

The basic hearing requirements of the field citation program are therefore similar in structure to those programs proposed for inclusion under 40 CFR part 28.

Inclusion of hearings on CAA field citations in part 28 would be consistent with the goals stated by EPA when it proposed these consolidated rules for non-APA hearing procedures under various statutes—reduction of confusion by Agency decision makers and enforcement staffs, provision for the regulated community of an essentially uniform set of procedural rules, and conformity with Congress' and EPA's desire to employ expedited penalty assessment procedures. At the same time, the proposed part 28 procedures are designed to provide non-APA hearing procedures under a wide range of statutory provisions, involving civil penalties ranging from $5,000 for each day of violation to $25,000 per violation. This contrasts with the field citation program, involving no more than $5,000 per day of violation for minor violations of the Act or its implementing regulations. In addition, adoption of part 28 procedures for the field citation program would also involve two separate procedures for administrative assessment of civil penalties under the CAA, parts 28 and 22. Adding the field citation program to part 28, however, would promote a greater potential for non-APA multimedia enforcement actions by providing a common administrative forum. As with the part 22 option, the currently proposed part 28 procedures would be modified in certain ways to account for certain aspects of the field citation program. These are discussed later.

Proposed Hearing Procedures

Under the modified part 28, the field citation would be issued as an administrative complaint. Unlike proposed part 28, however, the field citation complaints would not require certification by an Agency attorney. Within thirty days after service of the citation, the Respondent must file a response requesting a hearing. A 90-day extension of time to respond may be granted by the complainant.

As in part 22 practice, the Respondent may simultaneously pursue informal settlement and a hearing. During settlement negotiations, the parties may informally exchange information, if appropriate. For example, the Agency may supply copies of the documentation used to support its case and the Respondent might provide any evidence that would tend to disprove the allegations or to mitigate the requested penalty.

EPA's experience has been that the great majority of its administrative penalty actions conclude by a settlement. Part 28 explicitly provides settlement procedures and, unlike part 22, would allow field citation cases to settle by the simple agreement of the parties in a consent order or, if the Respondent chooses, by the Respondent's payment of the amount requested by the Agency in the field citation itself (or in any superseding pleading). Under part 28, a settlement may be reached at any time, even before the deadline for a response has passed. In cases of settlement, there is no further administrative review, and the Respondent waives its rights to appeal the administrative penalty to the appropriate federal court. Pursuant to the language of the CAA, consent orders under the Part 28 field citation program would allow for the compromise, modification, or remission by the Agency, with or without conditions, of any penalty requested in the administrative complaint.

Part 28 would be revised such that failure of the Respondent to affirmatively request a hearing in the response would lead to assessment of the penalty proposed in the field citation. Under section 113(d)(3) of the Act, the penalty assessed by the field citation becomes final if the Respondent fails to request a hearing within the time required by the implementing regulation. Part 28 would also be revised to require Agency counsel to file a written explanation for the penalty imposed by the field citation no later than five days following a Respondent's default by failure to request a hearing. This would ensure an adequate administrative record for the penalty imposed.

Upon the request of a party, or on his own initiative, the Presiding Officer may make a summary adjudication of the allegations, without further proceedings, whenever he finds that there are no material facts in dispute and that a party is entitled to judgment as a matter of law. In the same manner, the Presiding Officer may accelerate the transmittal of his recommended decision to the Regional Administrator if there is no compelling need for additional fact-finding on remedy issues.

Either party may request a summary determination or an accelerated recommended decision at any time after service of the response, up until thirty days before the time set for a hearing. Alternatively, the Presiding Officer may summarily determine any of the allegations after the time for the exchange of information has run, and after he has examined the entire administrative record. The Presiding Officer may accelerate the transmittal of the recommended decision, upon finding liability in a summary determination or upon stipulation as to liability by the parties, if there is no need for further fact-finding as to remedy.

In reaching a recommended decision, the Presiding Officer is required to consider the statutory penalty assessment criteria listed in section 113(e) of the Act. These criteria include the size of the business; the economic impact of the penalty on the business; the Respondent's full compliance history; the Respondent's good faith efforts to comply; the duration of the violation as established by any credible evidence; payment by the Respondent of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and such other factors as justice may require. The Respondent is afforded the opportunity to provide evidence of the relevant statutory criteria, including evidence concerning the duration of the violation. Part 28 would be revised to incorporate these statutory penalty assessment criteria.

Other than by a motion for summary determination or by a motion for an accelerated recommended decision, a field citation may be settled preliminarily by a consent order. The consent order includes a penalty settlement which has the force and effect of a final order issued by the Regional Administrator, except that the consent order is not appealable. Part 28 would be revised to provide that, consistent with the authority under section 113(d)(2)(B), the consent order may be issued with or without conditions.

Part 28 establishes deadlines to ensure that administrative cases do not languish.

Not later than thirty days following the Respondent's response, the Presiding Officer is required to hold a prehearing conference at which the parties meet to consider matters which may expedite the disposition of the proceedings. The Presiding Officer also sets the time and place for further proceedings and schedules an information exchange during the prehearing conference, if one is requested.

The authority to require discovery is limited to exchange of certain information. The required information that may be exchanged is limited to: (1) Documents intended to be introduced at the proceedings under Part 28 that have not already been filed with the Hearing Clerk; (2) witness lists, qualifications of expert witnesses and the subject matter of intended witness testimony; and (3) information known to the Respondent relating to the Respondent's inability to pay a civil penalty or relating to any economic advantage accruing to the Respondent as a result of his alleged violations of law. Part 28 would be revised to expand this last category, by allowing the Agency to include the Respondent's good faith efforts to comply with the applicable Clean Air Act requirements. Other forms of discovery, including interrogatories and the taking of depositions, are not permitted unless stipulated to by the parties.

Except for supplemental materials, the information exchange must conclude no later than sixty days following the prehearing conference. Since new information concerning witnesses or documents may develop after an information response deadline passes, the parties may supplement the original information, but not later than seven days prior to the hearing.

In order to provide the parties with incentives to cooperate during the discovery phase, there are both mandatory and discretionary sanctions for failure to comply with the information exchange requirements. For example, if a party fails to timely provide the name and all supporting information regarding any witness it intends to present at a hearing, such witness may not be presented. Similarly, if a party fails to timely produce a document it intends to introduce at such a hearing, that document may not be introduced to prove the truth of what it asserts. Part 28 would be revised to provide that if the Respondent fails to timely provide information regarding its good faith efforts to comply with the Act, then that information may not be used by the Respondent at the hearing. The Presiding Officer may also impose additional appropriate sanctions on a party that fails to fully comply with these requirements.

In conducting the hearing, the Presiding Officer may limit the number of witnesses and the scope and extent of both the direct examination and cross-examination. Cross-examination is limited to the scope of the direct examination. The Presiding Officer may take testimony in the form that is the most efficient under the circumstances. No matter what form of testimony is permitted, however, the Presiding Officer will make adequate provision to ensure that each party retains its right of cross-examination if the witness is available to testify or is subject to a subpoena.

The hearing is generally limited to resolving disputed allegations as to liability. Remedy issues are generally addressed in the parties' closing arguments, unless there is a compelling need for remedy testimony. Such need could arise where the underlying facts which are material to the statutory penalty assessment factors are disputed.

As is typical in administrative proceedings, strict adherence to the Federal Rules of Evidence is not required under part 28. Testimony or documentation that is "relevant, material or of significant probative value", including hearsay, is admissible, as long as the witness presenting the information is subject to cross-examination by any opposing party. The Presiding Officer has the discretion to take official notice of certain facts, exclusive either of facts relating to settlement or relating to a person's challenge to a final State or Agency action.

The proposed part 28 rules contemplate that each party will have an opportunity to make an opening statement (with the Agency making its opening statement first); that the Agency will put on its prima facie case; and that the Respondent thereafter will have an opportunity to present its defense.

Participants may present oral closing arguments at the discretion of the Presiding Officer, and such arguments may address both liability and remedy issues. The participants may submit supporting documentation regarding remedy. If the Presiding Officer does not allow oral closing arguments, the Agency anticipates that he would solicit the submission of written proposed recommended findings of fact and conclusions of law as to liability and remedy.

Under part 28, the Presiding Officer would be required to: (1) Certify the administrative record as complete and as being in compliance with the requirements of part 28; (2) make the administrative record available to the Regional Administrator; and (3) prepare and transmit a recommended decision to the Regional Administrator. The Presiding Officer's authority to prescribe a remedy would be limited to recommending the withdrawal of the field citation or recommending the issuance of an order.

The decision of the Regional Administrator must be based on applicable law and on the administrative record, which includes the recommended decision of the Presiding Officer. Upon receipt of the Presiding Officer's recommended decision, the Regional Administrator may either withdraw the field citation, if he concludes that the Agency has not sustained its burden of proof, or issue an order granting the requested relief, in whole or in part. Any decision by the Regional Administrator must be in writing, supported by clear reasons based on the administrative record and applicable law, and include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. If the Regional Administrator rejects the recommendation of the Presiding Officer, the explanation for that rejection must be in writing and made part of the administrative record.

The Regional Administrator's order must include a discussion of the applicable penalty factors which were considered in the assessment of a penalty under the Act, and set forth the penalty assessed. Part 28 would be revised to limit the Regional Administrator's authority to issue a default order by excluding those based on a default for failure to respond or to request a hearing (which would become final, pursuant to section 113(d)(3) of the CAA, by operation of law).

Any order issued by the Regional Administrator becomes effective thirty days after issuance, unless either the Environmental Appeals Board (the Board) suspends the implementation of the order pursuant to its *sua sponte* review authority, or a judicial appeal is taken pursuant to section 113(d)(4) of the Act. No person may stay the effective date of an administrative order by attempting to appeal it administratively.

The decision of the Regional Administrator to issue a final decision constitutes final Agency action (subject to *sua sponte* review by the Board) on its effective date, for purposes of any judicial appeal. Withdrawal of the field citation, however, would not constitute final Agency action, unless it occurs without prejudice.

The Board, on behalf of the Administrator, is authorized to review part 28 rulings by Regional Administrators, *sua sponte*, on issues of law. The Board may not become involved in factfinding; second guess the penalty amount issued by the Regional Administrator; or review orders issued on consent. The Agency anticipates that this review authority will be exercised infrequently, but believes that the authority is necessary to ensure consistent Agency positions on the applicable law.

The Board may withdraw a Regional Administrator's order if it determines that the Agency lacks jurisdiction to assess a penalty, or if it determines that the Respondent is not liable under applicable law. The Board shall remand an administrative order if it determines that elements of the Respondent's liability are different from those found by the Regional Administrator. Under such a remand, the remedy should be conformed to the amended conclusions of law. The order shall also be remanded if the Board finds that the order fails to provide clear reasons for the decision. The Board shall allow the Regional Administrator's order to issue unchanged if it finds that the order is legally sufficient and it agrees with all material conclusions of law.

Parties are not permitted under part 28 to administratively appeal adverse rulings, either to the Regional Administrator or to the Environmental Appeals Board.

Procedural Due Process

EPA recognizes that the administrative imposition of penalties for minor violations of the Act may affect constitutionally protected interests of those against whom actions have been taken. Part 28 includes precautions to ensure that individuals subject to a finding of liability for a civil penalty will have all of the protections that due process of law requires. These precautions include an impartial Presiding Officer; the right to a hearing on liability, with a right of cross-examination; and a final Agency action based solely on the administrative record and applicable law. For a detailed due process discussion concerning part 28, see the July 1, 1991 proposal at 56 FR 29997 *et seq.*

The part 28 procedures provide all of the procedure necessary to meet constitutional due process requirements under the leading Supreme Court case, *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). In that case, the Supreme Court set out a three-part test for determining whether the administrative procedure provided to an individual prior to the deprivation of a property interest by the government meets the due process requirements of the Fifth Amendment. The *Mathews* test involves balancing the magnitude and nature of the individual interest at stake; the benefit of additional procedures in reducing the risk of erroneous deprivation of that interest; and the governmental interest in not providing such additional procedures. Although the part 28 procedures streamline the adjudicatory process provided for analogous administrative hearings under the APA, those procedures do not eliminate any of the constitutional elements of such hearings. The part 28 procedures grant the person receiving the field citation a full opportunity to review the evidence of minor violations, as well as address the propriety of the assessed penalty. Since these procedures allow for complete adjudication of liability issues, there would be little benefit to the Respondent in more extensive or attenuated procedures, and disproportionate cost to the Agency and to the public.

The field citation program will typically address violation and penalty issues that are simple and straightforward matters. Since these cases should not be complex, their resolution is well-suited to the expedited administrative penalty proceedings mandated by Congress and included in part 28. For these reasons as well as those noted in the July 1, 1991 proposal, EPA believes the proposed part 28 procedures would adequately provide for due process in the assessment of penalties under the field citation authority.

3. 40 CFR Part 59—Rules Governing Administrative Hearings on Field Citations

The third Agency proposal involves using new procedures for conducting administrative hearings requested by persons to whom field citations have been issued under section 113(d) of the Act.

Background

Section 113(d) of the Act provides that any person to whom a field citation is issued may either elect to pay the penalty assessment or to request a hearing, in accordance with procedures specified in the regulation which implements the field citation program. Section 113(d) further provides that the penalty assessed in the field citation becomes final unless the person to whom it is issued requests a hearing within the time specified in the implementing regulation. Section 113(d)(3) explicitly provides that the hearing is not subject to the requirements of a formal adjudicatory hearing under the Administrative Procedure Act (APA), 5 U.S.C. 554 or 556. Instead, the hearing must provide a reasonable opportunity to be heard and to present evidence.

Basis for Hearing Procedures

The Congressional intent to afford the Respondent a less formal, non-APA hearing is explicit in the legislation. Although such hearing must provide the Respondent with a reasonable opportunity to be heard and to present evidence, such hearing shall not be subject to the procedures under sections 554 or 556 of the APA.

On July 1, 1991, the Agency proposed non-APA consolidated rules of practice for the administrative assessment of civil penalties at 40 CFR part 28 (56 FR 29,996). Although the part 28 rules are intended to consolidate all other non-APA administrative penalty programs currently administered by the Agency under uniform rules of practice, the field citation program was excluded from those proposed rules. Programs covered by part 28 include Class I administrative penalties under section 309(g) of the Clean Water Act, section 109(a) of CERCLA, and section 325(b) of EPCRA; and administrative penalties under section 1423(c) of the Safe Drinking Water Act and sections 325(c) and (d) of EPCRA.

There are several compelling reasons for developing hearing procedures that are better suited to the field citation program than those provided either by proposed part 28 or the consolidated APA rules of practice promulgated at 40 CFR part 22, 45 FR 24363 (April 9, 1980). The part 28 rules provide many of the same procedural rights in part 22 that are designed to comport with APA requirements. These rights include prehearing conferences; subpoena authority; discovery rights; and cross-examination. The major differences between the two rules are that part 28 provides for a Presiding Officer instead of an Administrative Law Judge; imposes page limits on written submissions; and eliminates the right to appeal the decision of the Presiding Officer or Regional Administrator to the Administrator.

Under the part 28 procedures, resolution of an administrative penalty proceeding could take seven or eight months. This lengthy time period would diminish the utility of the field citation program in addressing minor violations quickly and efficiently.

Most of the penalty programs covered by the part 28 procedures provide for maximum per day per violation penalties well in excess of the $5,000 limit authorized for field citations. Using the part 28 hearing procedures could result in spending more money to adjudicate field citation appeals than would be justified by the expected monetary recovery.

Based on the foregoing reasons, the Agency is considering using a more streamlined set of hearing procedures drafted specifically to apply to the field citation program.

Today's proposal relies on some of the part 28 provisions which ensure expedited proceedings. This proposed option also relies on the rules at 33 CFR subpart 1.07, 43 FR 54186 (November 20, 1978), which govern hearings on statutory penalties imposed by the Coast Guard.

Under section 311(b)(6) of the Clean Water Act, the Coast Guard is authorized to assess a civil penalty of up to $5,000 against any owner, operator or person in charge of a facility or vessel that discharges either oil or a hazardous substance. The violator may challenge the penalty assessment at a hearing governed by the subpart 1.07 procedures. The similarities between this program and the field citation program make the subpart 1.07 regulations an appropriate model for hearing procedures. These Coast Guard procedures were found to satisfy due process under the Constitution in *U.S.* v. *Independent Bulk Transport*, 480 F. Supp. 474 (1979).

The part 28 regulations were used as a model for the following major provisions of the proposed part 59 hearing procedures: the Presiding Officer's duties and responsibilities; consent orders; prehearing conference; information exchange; post-hearing submissions; and review of the Regional Administrator's decision by the Environmental Appeals Board.

The subpart 1.07 regulations were used as a model for the following provisions: certain preliminary matters; confidential business information; hearing procedures; and the scope of the Regional Administrator's authority for issuing a decision.

The relevant part 28 provisions were selected to ensure fundamental fairness while streamlining the procedures available to Respondents. The Presiding Officer under part 28 is authorized to exercise a great deal of discretion to expedite the presentation of evidence in administrative cases. In that regard, the most pertinent authority adopted from the part 28 regulations allows the Presiding Officer to limit the number of witnesses and the extent of direct examination and cross-examination.

The provisions adopted from subpart 1.07 further streamline the administrative process for penalty assessment, while guaranteeing fundamental rights. The Respondent is allowed under subpart 1.07 to submit written arguments and evidence in lieu of requesting a hearing. Such response allows the Presiding Officer to make a determination on the administrative record without the delays inherent in conducting the prehearing conference, information exchange, and hearing.

Additionally, the subpart 1.07 provisions allow the Presiding Officer to determine the appropriate form of testimony: oral; written; or recorded. Subpart 1.07 also simplifies the hearing process by allowing the Respondent to present facts, statements, documents and other relevant evidence. The relatively informal nature of the proceeding provides the opportunity for expedited penalty assessment.

Proposed Hearing Procedures

Under proposed part 59, the field citation would be issued during or shortly after an inspection by an EPA officer or employee. The citation is subsequently served upon the Respondent by first class mail or equivalent. Within thirty days after service of the citation, the Respondent must either request a hearing; provide written evidence and arguments in lieu of a hearing; or pay the penalty.

If the Respondent fails either to request a hearing or to submit evidence in lieu of a hearing, he would be in default under section 113(d)(3) of the Act. That section states that the penalty assessed by the field citation becomes final where the Respondent fails to request a hearing within the time required by the implementing regulation. In the case of a Respondent's default by failure to request a hearing, Agency counsel is required under this proposal to file, within ten days, a written justification for the penalty imposed by the field citation.

At any time prior to final Agency action, a disputed field citation may be settled by a consent order. The consent order may conclude the citation in whole or in part, and may contain conditions. Upon service, the consent order constitutes a final order that is not appealable. Additionally, the field citation may be revoked by the Agency, in whole or in part and without prejudice, prior to payment of the penalty.

Under the proposed part 59 procedures, the prehearing conference is optional. The purposes of the conference, which must be held no later than thirty days after the Respondent's response, are to simplify issues and to attempt to reach stipulations of fact. The Presiding Officer may also set the time and place for the hearing and schedule an information exchange during the prehearing conference. Within twenty days following the prehearing conference, the Presiding Officer may issue a written prehearing order to memorialize the rulings made at the conference.

Each party has the authority to require that the other provide it with certain information. The information that may be exchanged is limited to: (1) Documents intended to be introduced at the hearing that have not already been filed with the Hearing Clerk; (2) witness lists, qualifications of expert witnesses and the subject matter of intended witness testimony; and (3) information known to the Respondent relating to the Respondent's inability to pay a civil penalty, economic benefit of noncompliance; and good faith efforts to comply with the applicable Clean Air Act requirements.

The hearings on field citations will be conducted by an impartial Presiding Officer who, in most cases, will be the Judicial Officer or the Regional Judicial Officer. Such Judicial Officer will be an Agency employee who may perform other functions within the Agency, but who has no prior connection with the case being presided over.

The Presiding Officer and other officials involved in deciding the case are prohibited under today's rule from engaging in ex parte contacts with interested parties both inside and outside of the Agency. The prohibition applies to the Regional Administrator as well as to his advisors.

The Presiding Officer is required to schedule a hearing expeditiously. An extension of time for scheduling the hearing is only authorized for good cause and if no prejudice results.

The hearing procedures provide that the Respondent may be represented by counsel. The Agency representative initiates the hearing by introducing into evidence the field citation and the relevant material supporting its issuance. The Respondent or his counsel may then provide facts, statements, arguments, documents, testimony and other exculpatory evidence responding to the evidence presented. Although the Presiding Officer may limit the number of witnesses and determine the appropriate form of testimony, either party has the right to cross-examine a witness who has provided direct testimony. The opportunity for rebuttal, and response to rebuttal, falls within the Presiding Officer's discretion.

Consistent with the informal nature of the proceedings, the Presiding Officer is not bound by the Federal Rules of Evidence. The Presiding Officer is, however, authorized to take administrative notice of pertinent matters.

Section 113(e) of the Act contains criteria that must be used in assessing whether the field citation penalty is appropriate. Under today's proposal, the Presiding Officer is required to consider these criteria when reviewing the assessed penalty. Those criteria include: The size of the business; the economic impact of the penalty on the business; the Respondent's full compliance history; the Respondent's good faith efforts to comply; the duration of the violation as established by any credible evidence; payment by the Respondent of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and such other factors as justice may require. Some or all of these criteria may be relevant to the issues presented in the case before the Presiding Officer. The burden of proof with respect to these criteria is assigned to the party with access to information concerning the particular factor. Consequently, the Agency must provide evidence regarding the duration and seriousness of the violation, and the Respondent must provide evidence regarding the other criteria.

EPA is considering adopting a similar approach where the penalty assessment becomes final under section 113(d)(3) of the Act because a respondent fails either to request a hearing or submit evidence in lieu of a hearing within the time required by the regulations. When such a default occurs, the penalty assessed by the field citation becomes final by operation of section 113(d)(3). As previously discussed, under the proposed procedures, Agency counsel would then submit a written justification for the record concerning the amount of the assessed penalty. EPA is considering adopting a regulatory presumption that in cases of such default the penalty assessed in the field citation would be presumed to be appropriate with respect to those penalty assessment criteria where the regulations would place the burden of going forward on the respondent if a hearing had been requested. The purpose of this presumption would be to clarify the requirements of section 113(e) in such a default situation, and at the same time, reflect the authority of the agency to establish reasonable presumptions based on the circumstances of a case.

The hearing will normally be tape recorded, unless the parties decide otherwise in the interests of preventing a serious delay in the proceedings. Tape recording the proceedings is desirable to develop a clear administrative record for later review. Transcription of the proceedings is not required, but may be made by a party, at its own expense, or may be ordered by the Presiding Officer. Any party causing a transcript to be made must provide copies to the other party and to the Presiding Officer. The transcript then becomes a part of the administrative record.

The parties are permitted to submit a written statement for the Presiding Officer's consideration within a reasonable time after the hearing. The written statements, which may only address matters raised at the hearing, may be in the form of proposed findings of fact and conclusions of law.

As soon as practicable after the hearing, the Presiding Officer is required to prepare a recommended decision in the case based on substantial evidence in the administrative record as a whole. The recommended decision will recommend either that the field citation be affirmed, modified or withdrawn. The recommended decision must be filed with the Regional Administrator. Within a reasonable time after receipt of the recommended decision, the Regional Administrator may either affirm, reverse, modify or remand the case to the Presiding Officer for further proceedings. The Regional Administrator may compromise, modify, or remit the penalty assessed by the field citation, with or without conditions.

The Regional Administrator must provide the legal and factual basis for any modification of the recommended decision. Withdrawal of the penalty assessment, which does not constitute final Agency action, occurs without prejudice to the Agency.

Any order issued by the Regional Administrator becomes effective thirty days after issuance, unless either the Environmental Appeals Board (the Board) suspends the implementation of the order pursuant to its *sua sponte* review authority, or a judicial appeal is taken pursuant to section 113(d)(4) of the Act.

The Board, on behalf of the Administrator, is authorized to review the decisions of Regional Administrators, *sua sponte*, on issues of law. The Board may not review fact-finding; second guess the penalty amount issued by the Regional Administrator; or overturn orders issued on consent.

The Board may withdraw a Regional Administrator's order if it determines that the Agency lacks jurisdiction to assess a penalty, or if it determines that the Respondent is not liable under applicable law. The Board shall remand an administrative order if it determines that elements of the Respondent's liability are different from those found by the Regional Administrator. Under such a remand, the remedy should be conformed to the amended conclusions of law. The order shall also be remanded if the Board finds that the order fails to provide clear reasons for the decision. The Board shall allow the Regional Administrator's order to issue unchanged if it finds that the order is legally sufficient and it agrees with all material conclusions of law.

Within thirty days after the penalty assessment becomes final, the Respondent may appeal to the appropriate United States District Court.

Procedural Due Process

As noted previously, *Mathews* v. *Eldridge* requires consideration of three factors in evaluating whether the proposed administrative procedures satisfy the Fifth Amendment's due process requirements. The relevant factors are: (1) The private interest that will be affected; (2) the risk of an erroneous deprivation of this interest and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest including the function involved and the fiscal or administrative burdens that the additional procedural requirements would entail.

The private interest at stake is payment of a civil penalty. The maximum amount that may be assessed, $5,000 per day of violation, is significantly less than the penalty that may be assessed under the other civil penalty authorities in the Act. In addition, EPA's proposed rules would establish a maximum amount that might be assessed in any one citation. It is also expected that the actual penalties assessed per violation will generally be less than the statutory maximum. The circumstances expected in the great majority of cases is a proper focus for assessing due process concerns. *Chemical Waste Management, Inc.* v. *U.S.E.P.A.*, 873 F.2d 1477, 1484 (D.C. Cir. 1989). In addition, the straightforward and simple hearing procedures proposed would minimize the cost for private parties to contest assessment of a field citation.

The procedures proposed in this third option should minimize the risk of an erroneous deprivation of property. Under the proposed rules, a respondent would be served with a citation that clearly identified the alleged violation and provided a reasonable opportunity to request a hearing. If a hearing was requested, it would be presided over by a neutral agency official that had no prior connection with the action, including investigative or prosecutorial functions. The Presiding Officer also would have no interest in the outcome of the action. This offers the respondent a hearing before a neutral and unbiased tribunal, and clearly minimizes any risk of error from institutional or other bias.

The parties have the right to discover, before the hearing, all the information necessary to provide for a fair and adequate hearing. Parties may obtain the names of all witnesses that will be presented, along with a brief description of the witnesses qualifications and the subject matter of the testimony, and they may obtain each document that will be introduced by the other party. Since the violations involved will be minor in nature and are expected to typically involve simple and straightforward factual and legal circumstances, this should provide a respondent with all the information needed to adequately contest a citation. In addition, the citation would typically have been issued immediately upon or shortly after the violation is detected, providing respondents with ample opportunity to investigate the circumstances of an alleged violation. In these circumstances, additional discovery would not be expected to significantly advance the accuracy of the final decision.

The hearing allowed under the proposed rules would provide respondents with several options in presenting relevant evidence, limited by the authority of the Presiding Officer to determine the manner of testimony that is most efficient in resolving an issue. Written and oral testimony are both acceptable, as well as testimony provided by other means. Respondents may offer any facts, statements, explanations, documents, testimony or other exculpatory evidence that is relevant to issues at the hearing. A right of cross-examination is provided, although EPA is considering limiting cross-examination to situations determined appropriate by the Presiding Officer. This form of hearing clearly meets the requirements of section 113(d)(3), and provides respondents with a fair opportunity to present evidence and argument on relevant issues. Given the simple and straightforward nature of the minor violations expected in the program, additional procedures would not significantly reduce the risk of an erroneous imposition of a civil penalty. A right to cross-examine witnesses, as compared to limiting cross examination to situations where deemed appropriate by the Presiding Officer, would allow for additional cross-examination only where the Presiding Officer, a neutral official, had already determined it was inappropriate. A right to cross-examination would increase the accuracy of the hearing only in those limited cases where a Presiding Officer had mistakenly denied crossexamination. EPA expects this kind of mistake would occur infrequently, and a right to cross-examine, therefore, would not significantly increase the accuracy of the proceedings in the great bulk of cases.

The Presiding Officer is afforded substantial discretion to tailor the hearing procedures to the individual facts and circumstances of each case. The Presiding Officer, may, for example, hold prehearing conferences, regulate the course of the hearing, including the form and extent of testimony and crossexamination, take official notice of matters, and request a written statement from the parties post-hearing. This flexibility should increase the accuracy of the proceedings, and reduce the value of mandating additional procedures. See Chemical Waste Management, 873 F.2d at 1483.

After the hearing, parties may submit written statements to the Presiding Officer, such as recommended findings of fact and conclusions of law, at the discretion of the Presiding Officer. The Presiding Officer then prepares and transmits a recommended decision that is forwarded to the Regional Administrator for issuance of a final decision. There is no administrative appeal to the Administrator, except the Board may review a decision sua sponte. This provides for at least one level of review above the Presiding Officer, and in some cases a second level of review by the Board, establishing a clear mechanism to correct potential errors in the recommended decision. It should also promote consistency within a region, as well as national consistency if and when issues of national importance arise.[12]

Additional procedures, such as a right to comment on the recommended decision, would not significantly add to the accuracy of these procedures. Respondents would already have had a full opportunity to present their position on the issues at the hearing, and could submit proposed findings and conclusions at the request of the Presiding Officer. All of this would be in the administrative record, and available to the Regional Administrator. Additional right to comment would not be expected to be of significant benefit, given the minor nature of the factual and legal issues involved.

The government's primary interest, as previously described, is to implement an effective citation program without an unnecessary drain on limited enforcement resources. An effective program calls for issuance of a citation immediately or shortly after detection of a violation, with a final resolution accomplished shortly after issuance of the citation. This will maximize the deterrent effect of the field citation program, and minimize the amount of resources necessary to achieve this goal. The proposed hearing procedures meet these objectives by using simplified and streamlined procedures, with a relatively limited time needed to complete all procedures necessary to a final decision on assessment of a penalty.

Since the field citation program fills a gap in EPA's enforcement program, it is reasonable to expect that a large number of citations will be issued in each region, addressing simple, easy to prove violations and assessing small monetary penalties. While the nature of the violations and the penalty should act to limit the number of hearings requested by respondents, it is reasonable to expect that a significant number of hearings may be requested if EPA issues a large number of citations. In that context, any additional procedures run the risk of significantly increasing the administrative burden and length of field citation proceedings. This could quickly make the program inefficient and a drain on government resources, given the small potential penalties and the limited environmental concerns involved for most minor violations.

EPA believes the proposed part 59 procedures faithfully implement Congressional intent for the field citation program, and satisfy procedural due process concerns. This belief is bolstered by judicial acceptance of similar procedures in a variety of related situations. See Chemical Waste Management, Inc. (court upheld EPA's non-APA hearing procedures for issuance of administrative orders concerning corrective action orders under section 3008(h) of RCRA); *United States* v. *Independent Bulk Transport, Inc.*, 480 F.Supp. 474 (S.D. NY 1979) (court upheld non-APA hearing held by Coast Guard in assessing less than the maximum $5,000 civil penalty per unlawful discharge under the Federal Water Pollution Control Act).

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[12] Given the minor nature of the violations at issue, EPA rarely expects review by the Board.

H. Design of Field Citations

Field citations will be of a standardized format nationwide, and will be issued in triplicate. The following information shall be included on the field citation:

(1) Date and time of violation(s);
(2) Inspector's name, title, and office;
(3) Name and address of source;
(4) Name and telephone number of owner/operator or his/her representative;
(5) Specific violation(s);
(6) Location/source/description of violation(s);
(7) Proposed penalty;
(8) Notification of the 30-day deadline to either pay the penalty or request a hearing;
(9) Address to which payment must be sent;
(10) Address to which a request for a hearing must be sent;
(11) Inspector's signature;
(12) Space for signature indicating receipt; and
(13) Citation number.

The actual format of the citation will be published in the Agency's guidance document.

V. Section-by-Section Analysis

A. Section 59.1 Purpose and Scope

This section of the proposed rule states EPA's authority to develop a field citation program and explains that procedures developed in this part will be used in administering the field citation program. The section acknowledges the twin goals of the field citation program: ensuring compliance with the Act and providing for expedited enforcement.

B. Section 59.2 Use of Number and Gender

This section clarifies that words in the singular also include the plural, and those in the masculine gender also include the feminine, and vice versa.

C. Section 59.3 Computation of Time

This section provides that any time period specified in these rules shall begin the day following the event from which the period begins, and shall include Saturdays, Sundays, and Federal legal holidays.

D. Section 59.4 Definitions

This section provides definitions of terms used in part 59.

E. Section 59.5 Determination of Minor Violation and Maximum Proposed Penalty

This section describes the process that will be used to determine whether a violation is minor. Each violation will be evaluated according to the proposed list of factors provided. A violation will be determined as minor through evaluation of the factors, considered as a whole.

Criminal violations will not be addressed under the field citations program. Criminal enforcement action may be pursued for the violations described in section 113(c). These violations include "knowing" violations such as knowing endangerment, in which a person knowingly releases a hazardous air pollutant, with the knowledge that the release is placing another person in imminent danger of death or serious bodily injury.

This section also provides the proposed maximum civil penalty for a minor violation as $5,000 per day of violation, and defines a field citation's total proposed penalty as the sum of each individual minor violation's proposed penalty.

Subpart B—Rules Governing Hearings on Field Citations

F. Section 59.6 Scope of These Rules

This section outlines the purpose of Subpart B, which is to establish streamlined administrative procedures for conducting hearings under section § 113(d)(3) of the Act.

G. Section 59.7 Issuance and Service of Field Citations

This section describes who may issue field citations and what should be contained therein. The section also details requirements for service of a field citation. The statute limits the authority to issue field citations to EPA officers or employees.

H. Section 59.8 Presiding Officer

This section describes the role and responsibilities of the Presiding Officer. There are no specific qualification requirements except that the Presiding Officer be neutral to the controversy. In most cases the Presiding Officer will be the Regional Judicial Officer. The Presiding Officer is authorized to take certain actions, but also must abide by the limitations imposed under subsection (c).

I. Section 59.9 Hearing Clerk

This section describes the role and responsibilities of the Hearing Clerk, who shall be designated by the Regional Administrator.

J. Section 59.10 Representation by Counsel

This section outlines a respondent's right to be represented by counsel. Following notification of such representation, all further notification shall be directed to that counsel.

K. Section 59.11 Preliminary Matters

This section describes the process by which a hearing is requested and scheduled. It also details the Presiding Officer's discretion in granting delays, continuances, and permission to amend a response or raise new issues prior to a scheduled hearing.

L. Section 59.12 Revocation of Field Citation

This section sets forth the Agency's authority to revoke a field citation, in whole or in part, at any time before the penalty amount becomes final.

M. Section 59.13 Request for Confidential Treatment

This section describes the basis for, and procedure by which a respondent may request confidential treatment of a document or portion thereof.

N. Section 59.14 Consent Agreements and Consent Orders

This section outlines the basis for a consent agreement, through which the Agency and the respondent formally agree to a civil penalty, with or without conditions. Thereafter, the Presiding Officer shall enter a consent order in accordance with the terms of the consent agreement. The consent order may be filed at any time prior to final Agency action, and constitutes a final order that may not be appealed.

O. Section 59.15 Prehearing Conference

This section provides the Presiding Officer with the discretion to conduct a prehearing conference, and sets forth matters appropriate for discussion during such conference.

P. Section 59.16 Information Exchange

This section outlines the responsibilities of each party, both in serving information requests and in providing information requested by the other party. The exchange of information shall proceed according to the schedule established by the Presiding Officer.

Q. Section 59.17 Subpoenas

This section establishes the Presiding Officer's right to subpoena the testimony of witnesses or the production of documents, or both, and establishes the manner by which subpoenas shall be served.

R. Section 59.18 Hearing Procedures

This section outlines the basic requirements for the conduct of the proceeding. It also establishes the rights and responsibilities of the Presiding Officer and of each party in presenting or receiving evidence, testimony, responses and rebuttals. Either party has the right to cross-examine any witness who has provided direct testimony, however, such crossexamination is limited to the issues presented in direct testimony. The overall format for the proceeding is informal, and the Presiding Officer has the discretion to offer opportunities for rebuttal and response to rebuttal.

S. Section 59.19 Penalty Assessment Criteria

This section establishes the criteria which shall be considered by the Presiding Officer in reviewing the penalty amount requested by the field citation, and assigns the burden of proof for each criterion either to the Respondent or to the Agency.

T. Section 59.20 Transcript or Recording of Hearing

This section provides that all hearings will be tape recorded unless both parties agree and the Presiding Officer directs otherwise. A verbatim transcript will not normally be prepared, however, this section outlines the requirements and procedure to be followed if either party or the Presiding Officer should specially request that such a transcript be prepared.

U. Section 59.21 Post-Hearing Submissions

The Presiding Officer may request a written statement from each party following the conclusion of the hearing. Such statements are limited to those matters raised at the hearing.

V. Section 59.22 Recommended Decision

This section describes the procedural requirements for preparing, transmitting, and filing a recommended decision.

W. Section 59.23 Decision of the Regional Administrator

The Regional Administrator must issue a final decision that either affirms, reverses, or modifies the recommended decision, or remands the case to the Presiding Officer for further proceedings. This section describes the procedures the Regional Administrator shall follow in concluding actions taken under this part. The Regional Administrator's decision must be based on applicable law and the administrative record, which includes the recommended decision of the Presiding Officer. The final decision becomes effective thirty days following the date of issuance.

X. Section 59.24 Sua Sponte Review

This section describes the role of the Environmental Appeals Board in reviewing the Regional Administrator's decision. The thirty-day period for this review coincides with the thirty-day period before a final decision becomes effective.

Y. Section 59.25 Payment of Assessed Penalty

This section outlines the deadline and method of payment for civil penalties assessed pursuant to this part.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required. The expected impact of this proposed rule is negligible. The rule creates no new requirements, small or large, and is procedural in nature. Accordingly, I hereby certify that these proposed regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

These proposed rules do not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Labeling, Penalties, Reporting and recordkeeping requirements.

Dated: April 15, 1994.

Carol M. Browner,

Administrator.

Part 59 is proposed to be added to 40 CFR chapter I to read as follows:

PART 59—FIELD CITATION PROGRAM

Subpart A—Scope of Program

Sec.

59.1 Purpose and scope.
59.2 Use of number and gender.
59.3 Computation of time.
59.4 Definitions.
59.5 Determination of minor violation and maximum proposed penalty.

Subpart B—Rules Governing Hearings on Field Citations

59.6 Scope of these rules.
59.7 Issuance and service of field citations.
59.8 Presiding officer.
59.9 Hearing clerk.
59.10 Representation by counsel.
59.11 Preliminary matters.
59.12 Revocation of field citation.
59.13 Request for confidential treatment.
59.14 Consent agreements and consent orders.

59.15 Prehearing conference.
59.16 Information exchange.
59.17 Subpoenas.
59.18 Hearing procedures.
59.19 Penalty assessment criteria.
59.20 Transcript or recording of hearing.
59.21 Post-hearing submissions.
59.22 Recommended decision.
59.23 Decision of the regional administrator.
59.24 *Sua Sponte* review.
59.25 Payment of assessed penalty.

Authority: 42 U.S.C. 7413(d).

Subpart A—Scope of Program

§ 59.1 Purpose and scope.

Section 113(d)(3) of the Clean Air Act (42 U.S.C. 7413(d)) authorizes EPA to implement a field citation program. The regulations in this part establish the standards and procedures which will apply to all field citations issued by EPA under this authority. The field citation program is designed both to deter minor violations of the Act and to expedite enforcement against such violations.

§ 59.2 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 59.3 Computation of time.

In computing any period of time prescribed or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

§ 59.4 Definitions.

In this part:

(a) *Act* means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(b) *Agency* or "EPA" means the United States Environmental Protection Agency.

(c) *Administrator* means the Administrator of the United States Environmental Protection Agency, or the Administrator's delegate.

(d) *Complainant* means the Agency, acting through any Agency employee authorized by the Administrator to initiate an action under this Part, or authorized to conclude such an action, in whole or in part, upon consent.

(e) *Consent agreement* means a written agreement executed by Complainant and Respondent, consisting of:

(1) Stipulations by the parties establishing subject matter jurisdiction;

(2) An admission by Respondent that it had violated the Act as alleged in the field citation or a statement by Respondent that it neither admits nor denies such violation; and

(3) Agreement as to the assessment of a stated civil penalty, with or without conditions.

(f) *Consent order* means an order entered by the Presiding Officer in accordance with the consent agreement of the parties.

(g) *Field citation* means an administrative complaint which is issued by the complainant as a document that:

(1) Names one or more respondents;

(2) Alleges one or more minor violations of applicable law, stating with reasonable specificity the nature of the alleged violations; and

(3) Proposes that a penalty be assessed upon the respondent as authorized by applicable law.

(h) *Hearing clerk* means the person authorized by the Administrator or Regional Administrator to serve as hearing clerk.

(i) *Minor violation* means a violation which is:

(1) Minor in nature as determined by one or more relevant factors listed in § 59.5(a) and

(2) Addressed by the Agency as a minor violation.

(j) *Penalty* means the civil penalty assessed against a respondent under this part for one or more minor violations of the Act.

(k) *Presiding officer* means the person designated by the Administrator or Regional Administrator to preside at hearings conducted under this part.

(l) *Regional Administrator* means the Administrator of the Regional Office of the EPA Region in which the alleged violation occurred, or any officer or employee thereof to whom his authority has been duly delegated.

(m) *Respondent* means any person named in the field citation.

§ 59.5 Determination of minor violation and maximum proposed penalty.

(a) The following factors shall be considered in determining whether a violation is minor under the Act:

(1) Whether the violation is readily recognizable;

(2) Risk of environmental harm;

(3) Time required to correct the violation;

(4) Effort required to correct the violation;

(5) Expense required to correct the violation;

(6) Frequency of the violation;

(7) Duration of the violation;

(8) Importance of the violated requirement to the specific program; and

(9) Other factors as appropriate.

Criminal violations shall not be addressed through issuance of field citations.

(b) The maximum civil penalty which may be proposed for each minor violation shall not exceed $5,000 per day for each violation. The total cumulative penalty proposed in a field citation is the sum of the proposed penalties corresponding to each minor violation alleged in the field citation. The maximum cumulative penalty which may be proposed in any single field citation is (insert dollar amount from $15,000 to $25,000).

Subpart B—Rules Governing Hearings on Field Citations

§ 59.6 Scope of these rules.

This subpart sets forth procedures for the issuance of field citations and for the administration of administrative hearings on field citations under section 113(d)(3) of the Act.

§ 59.7 Issuance and service of field citations.

(a) A field citation may be issued by the complainant to any person for any minor violation of the Act or for any minor violation of any regulations promulgated under the Act.

(b) A field citation shall list:

(1) Each alleged minor violation;

(2) The penalty amount proposed for each violation;

(3) The total proposed penalty amount; and

(4) The address of the Regional office issuing the field citation; the address of the Federal repository to which payment of the proposed penalty may be sent; and the address of the Hearing Clerk to whom a request for a hearing shall be submitted.

(c) A field citation shall be served on the respondent personally or by certified mail, return receipt requested (or any other manner of service that is no less speedy and reliable), with an attached certificate of service. Service upon a corporation, partnership or other unincorporated association shall be made personally, or by certified mail, return receipt requested (or by any other manner of service that is no less speedy and reliable), directed to an officer, partner, managing or general agent, or to any person authorized by appointment or by federal or State law to receive service of process. Service upon a federal agency, State or municipal government, State or municipal agency or other instrumentality thereof shall be made in the manner prescribed by the applicable law for service of process.

(d) Proof of service of the field citation shall be made by affidavit of the person making personal service, or by properly executed return receipt, and shall be filed with the Hearing Clerk.

§ 59.8 Presiding officer.

(a) The Presiding Officer shall have the authority to:

(1) Issue subpoenas pursuant to § 59.17 for the attendance and testimony of witnesses and for the production of relevant information and documents.

(2) Issue or modify a prehearing order pursuant to § 59.15(c);

(3) Schedule and further limit the information exchange pursuant to § 59.16;

(4) Impose sanctions pursuant to § 59.16 or to aid in the maintenance of order and the efficient and impartial administration of justice; and

(5) Certify the administrative record and set forth and transmit a recommended decision pursuant to § 59.22.

(b) The Presiding Officer shall, in a timely fashion:

(1) Carry out his duties as required by this part;

(2) Oversee and direct the activities of the Hearing Clerk in an action under this part;

(3) Schedule activities of the parties pursuant to the requirements of this part; and

(4) Take any other action necessary for the maintenance of order and for the efficient and impartial adjudication of allegations arising in an action under this part.

(c) The Presiding Officer shall not:

(1) Have any prior connection with the action before him, including the performance or supervision of investigative or prosecutorial functions;

(2) Have any interest in the outcome of the action;

(3) Grant an extension, delay or continuance to a party based on a party's request for information pursuant to law outside the scope of this part;

(4) Allow the introduction of any document or testimony into the administrative record relating to settlement of the instant action; or

(5) Dismiss the field citation.

§ 59.9 Hearing clerk.

The Regional Administrator shall designate a Hearing Clerk. After the filing of a field citation by the Complainant with the Regional Hearing Clerk, the Hearing Clerk shall:

(a) Timely notify each party in writing of the name of the Presiding Officer designated to preside over the case;

(b) Record the date of receipt of each document received regarding the action;

(c) Timely notify the Presiding Officer of the receipt of any document filed with the Clerk by either party;

(d) Perform such other functions as required by the Presiding Officer to assist him in carrying out his responsibilities under this part; and

(e) Perform such ministerial and clerical functions as required by the Regional Administrator or by the Environmental Appeals Board to assist each in carrying out its responsibilities under this part.

§ 59.10 Representation by counsel.

The respondent has the right to be represented at all stages of the proceedings by counsel. Following notification that a respondent is represented by counsel, all further communications regarding the proceedings shall be directed to that counsel.

§ 59.11 Preliminary matters.

(a) Within 30 days after receipt of the field citation, the respondent, or counsel for the respondent, may:

(1) Request a hearing;

(2) Provide any written evidence and arguments in lieu of a hearing; or

(3) Pay the penalty proposed in the citation. A hearing must be requested in writing and must specify the issues which are in dispute. Any request for hearing shall be filed with the Hearing Clerk.

(b) The right to a hearing is waived if the respondent fails to submit the request to the Hearing Clerk within thirty (30) days after service of the field citation.

(c) If the respondent fails to respond to the field citation in accordance with the provisions of this section, the penalty proposed in the field citation shall be final and immediately payable. The Agency shall file with the Hearing Clerk, no later than ten (10) days following the respondent's failure to respond, a written explanation supporting the penalty amount requested by the field citation.

(d) The Presiding Officer shall promptly schedule all hearings. The Presiding Officer shall grant such delays or continuances as may be necessary or desirable in the interest of fairly resolving the case.

(e) The respondent may amend the response no later than ten (10) days prior to the scheduled hearing date. Issues raised later than ten (10) days before the scheduled hearing may be presented only at the discretion of the Presiding Officer.

§ 59.12 Revocation of field citation.

At any time before the penalty proposed by the field citation becomes final, the Complainant may revoke the field citation, in whole or in part, without prejudice.

§ 59.13 Request for confidential treatment.

(a) A request for confidential treatment of a document or portion thereof may be made by the respondent on the basis that the information is:

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The respondent must submit the request for confidential treatment to the Presiding Officer in writing and must state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

§ 59.14 Consent agreements and consent orders.

(a) At any time before final Agency action, the complainant and the respondent may settle an action, in whole or in part, by agreeing upon a civil penalty, with or without conditions. The parties shall memorialize such an agreement in the form of a consent agreement. The Presiding Officer shall thereafter enter a consent order in accordance with the terms of the consent agreement. Such consent order may not be appealed to federal court by either party.

(b) If the filing of the consent order with the Hearing Clerk pursuant to paragraph (a) of this section does not wholly conclude the action, the Presiding Officer shall promptly inform the parties of the schedule of the remaining proceedings.

§ 59.15 Prehearing conference.

(a) Within thirty (30) days following receipt of the respondent's response to the field citation, the Presiding Officer may, in his discretion, hold a prehearing conference. The Presiding Officer may conduct the conference in person or by telephone.

(b) At the prehearing conference, the Presiding Officer:

(1) May attempt to simplify issues and assist the parties in reaching a stipulation as to facts that are not in dispute;

(2) May, upon request of either party, schedule an exchange of information in accordance with § 59.16;

(3) Shall establish a time and place for the hearing; and

(4) May discuss other appropriate matters.

(c) The Presiding Officer may issue a prehearing order to the parties, no later than twenty (20) days following the conference, which memorializes the rulings of the Presiding Officer made at the prehearing conference.

§ 59.16 Information exchange.

(a) Subject to any limitation imposed by the Presiding Officer in a prehearing order issued pursuant to § 59.15(c) each party shall provide, in writing, the following information:

(1) The name of each witness it intends to present at the hearing and the subject matter of the intended testimony; and

(2) Each document it intends to introduce at the hearing.

(b) The respondent shall provide the following information in writing, to the Agency:

(1) If the respondent contends that it is unable to pay the proposed penalty, the respondent shall submit financial information in support of such claim, including, but not limited to, complete copies of its federal income tax returns for the previous three years;

(2) The respondent's net profits, delayed or avoided costs, or any other form of economic benefit resulting from any activity or failure to act by the respondent which is alleged in the field citation; and

(3) The respondent's good faith efforts to comply with the applicable Clean Air Act requirements.

(c) The parties shall conduct the exchange of information according to the schedule established by the Presiding Officer pursuant to § 59.15(c).

(d) Each party shall file its information exchange with the Hearing Clerk and shall simultaneously serve copies thereof personally or by certified mail (or any other manner of service that is no less speedy and reliable), with an attached certificate of service, upon the other party and the Presiding Officer.

(e) The Presiding Officer has the discretion to impose on any party that fails to comply with the requirements of this section any sanction that is just and proper.

§ 59.17 Subpoenas.

(a) The Presiding Officer may, on his own initiative or at the request of either party, subpoena the testimony of witnesses or the production of documents, or both, for a hearing conducted pursuant to § 59.16.

(b) The Presiding Officer shall serve the subpoena upon its recipient in the manner prescribed for the service of a field citation pursuant to § 59.7(d).

(c) The Presiding Officer shall file a copy of the subpoena with the Hearing Clerk.

§ 59.18 Hearing procedures.

(a) The Presiding Officer shall conduct a fair and impartial proceeding in which each party has a reasonable opportunity to be heard and to present evidence. Each witness shall testify in the form determined by the Presiding Officer to be most efficient in resolving an issue. Forms of testimony include oral testimony provided in person or by other means, and written or otherwise recorded testimony. The Presiding Officer may limit the number of witnesses and the scope and extent of any direct examination or cross-examination as necessary to protect the interests of justice and conduct a reasonably expeditious hearing.

(b) The Agency representative shall present the field citation and the evidence supporting its issuance, and any other material that is pertinent to the issues to be determined by the Presiding Officer. The respondent has the right to examine, and to respond to or rebut, the field citation and any proffered evidence and material. The respondent may offer any facts, documents, testimony or other exculpatory evidence which bears on appropriate issues, or which may be relevant to the size of an appropriate penalty. Any opposing party has a right of crossexamination after the introduction of a witness' direct testimony. A party shall not cross-examine regarding a matter that is outside of the scope of the direct examination. The Presiding Officer may require the authentication of any written exhibit or statement.

(c) At the close of the respondent's presentation of evidence, the Presiding Officer may allow the introduction of rebuttal evidence by the Agency representative. The Presiding Officer may allow the respondent to respond to any such evidence submitted by the Agency.

(d) In receiving evidence, the Presiding Officer is not bound by the Federal Rules of Evidence. In evaluating the evidence presented, the Presiding Officer shall give due consideration to the reliability and relevance of each item of evidence.

(e) The Presiding Officer may take notice of matters which are not subject to reasonable dispute and are commonly known in the community, or are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Prior to taking notice of a matter, the Presiding Officer shall give each party an opportunity to show why notice should not be taken. In any case in which notice is taken, the Presiding Officer shall place in the record a written statement of the matter as to which notice was taken with the basis for such notice, including either a statement that the parties consented to notice being taken or a summary of any party's objections.

§ 59.19 Penalty assessment criteria.

(a) The Presiding Officer shall consider the following criteria in reviewing the penalty proposed in the field citation:

(1) The size of the business;

(2) The economic impact of the penalty on the business;

(3) The respondent's full compliance history, and good faith efforts by the respondent to comply;

(4) The duration of the violation as established by any credible evidence (including evidence other than the applicable test method);

(5) Payment by the respondent of penalties previously assessed for the same violation;

(6) The economic benefit of noncompliance;

(7) The seriousness of the violation; and

(8) Such other factors as justice may require.

(b) The burden of going forward with respect to criteria in paragraphs (a)(1), (2), (3), (5), and (6) of this section, is on the respondent. The burden of going forward with respect to criteria in paragraphs (a)(4) and (7) of this section is on the Agency. The burden of going forward with respect to criterion in paragraph (a)(8) of this section is on the party proffering such factors. Failure of the respondent to meet its burden with respect to any applicable criterion shall mean that a penalty amount that is appropriate in light of other criteria shall also be appropriate in light of such criterion for which the respondent failed to meet its burden.

§ 59.20 Transcript or recording of hearing.

(a) The hearing shall be tape recorded unless the parties agree and the Presiding Officer directs otherwise. A verbatim transcript will not normally be prepared, but may be ordered by the Presiding Officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the Presiding Officer, a party may, at its own expense, cause a verbatim transcript to be made. The party causing the verbatim transcript to be made shall submit one (1) copy to the Presiding

Officer and one (1) copy to the other party.

(b) The transcript or recording of the hearing, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

§ 59.21 Post-hearing submissions.

The Presiding Officer may request, within a reasonable time following the conclusion of the hearing, that the parties submit a written statement for his consideration including, but not limited to, proposed recommended findings of fact and conclusions of law. Such written statement shall be limited to the matters raised at the hearing.

§ 59.22 Recommended decision.

(a) Within a reasonable time after the conclusion of the hearing, the Presiding Officer shall:

(1) Certify the administrative record as complete;

(2) Make the administrative record available to the Regional Administrator; and

(3) Prepare and transmit a recommended decision to the Regional Administrator. The recommended decision shall address all material issues of fact or law properly raised by the respondent, and shall recommend that the field citation be affirmed, modified or withdrawn. The recommended decision shall be based on substantial evidence in the administrative record, taken as a whole, and shall provide citations to relevant material contained in that record.

(b) The Presiding Officer shall file a copy of the recommended decision with the Hearing Clerk at the time of its transmittal to the Regional Administrator. The Hearing Clerk shall immediately serve each party with a copy of the recommended decision.

§ 59.23 Decision of the regional administrator.

(a) Following receipt of the recommended decision, the Regional Administrator shall issue a final decision that either affirms, reverses, or modifies the recommended decision or remands the case to the Presiding Officer for further proceedings. The Regional Administrator's decision may compromise, modify, or remit the penalty requested by the recommended decision, with or without conditions.

(b) If the Regional Administrator rejects the recommendation of the Presiding Officer, in whole or in part, the decision shall include a written explanation for that rejection that states each point of disagreement with the recommendation of the Presiding Officer. If the Regional Administrator determines that the proposed penalty assessment must be withdrawn, such action may be done without prejudice.

(c) The Regional Administrator's decision shall be supported by clear reasons and by the administrative record and shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. The decision shall be comprised of the Regional Administrator's findings of fact, conclusions of law, and assessment of an appropriate penalty after taking into account all applicable statutory and penalty factors.

(d) For purposes of appeal, the final decision of the Regional Administrator pursuant to this part shall be deemed issued five (5) days following the date of mailing of the decision to the respondent. The final decision becomes effective thirty (30) days following its date of issuance unless an appeal is taken pursuant to section 113(d)(4) of the Clean Air Act, 42 U.S.C. 7413(d)(4) before that date. The issuance of the final decision by the Regional Administrator pursuant to this section constitutes final Agency action on its effective date.

§ 59.24 Sua Sponte review.

The Environmental Appeals Board may, on its own initiative, within thirty (30) days of the date of issuance by the Regional Administrator of a final decision pursuant to § 59.23, suspend implementation of such decision for the purpose of reviewing its conclusions of law or its sufficiency under § 59.23(c). The Environmental Appeals Board, after such review, may amend its conclusions of law, withdraw the field citation, remand the case for appropriate action to the Regional Administrator, or may allow the decision to issue unchanged. In any action in which the Environmental Appeals Board acts pursuant to this section, the provisions of § 59.23 shall apply, except that:

(a) The Regional Administrator who issued the final decision shall be deemed the recommending Presiding Officer for purposes of § 59.22;

(b) Upon suspension of the final decision, the Environmental Appeals Board shall be deemed the Regional Administrator for purposes of § 59.23;

(c) The Regional Administrator's decision, except for its findings of fact, shall be deemed a recommended decision; the Regional Administrator's findings of fact are findings for purposes of this part and are not subject to review by the Environmental Appeals Board;

(d) If the Environmental Appeals Board does not amend the Regional Administrator's conclusions of law nor determine that the order is insufficient under § 59.23(c), the Regional Administrator's penalty determination is not subject to review. If the Environmental Appeals Board amends the Regional Administrator's conclusions of law or determines insufficiency, the Regional Administrator's penalty determination shall be remanded by the Environmental Appeals Board to the Regional Administrator for appropriate action, except that if the Environmental Appeals Board determines that the respondent is not liable for the violations alleged under applicable law, then the Environmental Appeals Board shall withdraw the field citation and the final decision of the Regional Administrator without remand;

(e) If the Environmental Appeals Board allows the final decision to issue unchanged, the requirements of § 59.23(c) shall not apply;

(f) If the Environmental Appeals Board amends or remands the decision, the requirements of § 59.23(c) to make findings of fact and to assess the appropriate penalty shall not apply; and

(g) The Environmental Appeals Board's decision to suspend implementation of a final decision shall not be deemed final Agency action for the purposes of § 59.23(d).

§ 59.25 Payment of assessed penalty.

Except as may otherwise be provided by applicable law and the provisions of any applicable consent order, the respondent shall pay, within thirty (30) days of the effective date of the final decision, any civil penalty assessed pursuant to this part by forwarding to the address provided by the field citation a cashier's or certified check, payable to "Treasurer, The United States of America."

[FR Doc. 94–10197 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 65

[FRL–4877–5]

RIN 2060–AD81

Regulations Governing Awards Under Section 113(f) of the Clean Air Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule sets forth criteria and procedures for the granting of awards as authorized by an amendment to the Clean Air Act (the Act). The amendments added section

113(f) to the Act, which authorizes the Administrator of the Environmental Protection Agency discretion to pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty enforced under section 113 of the Act for a violation of titles I, III, IV, V, or VI of the Act, as amended. Section 113(f) also authorizes the Administrator to prescribe, by regulation, additional criteria for eligibility for such an award. This proposed rule sets forth such additional criteria for eligibility. In addition, this proposal establishes procedures to petition the Agency for consideration for an award, including what information must be submitted in such petitions, and describes award criteria. This proposed rule also provides an assurance of confidentiality as to the identity of persons who provide information or services on a confidential basis. Furthermore, to implement the goal of the program, this rule provides direction for providing information or services regarding potential violations.

DATES: *Comments.* Written comments on the proposed rule must be received on or before July 5, 1994.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule. If anyone contacts EPA requesting to speak at a public hearing by June 6, 1994, a public hearing will be held June 8, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention: Docket Number A–94–05, U.S. Environmental Protection Agency, room M–1511, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. The public hearing will be held at the EPA Auditorium, 401 M Street, SW., Washington, DC.

Docket. Materials relevant to this rulemaking are contained in Docket Number A–94–05. The docket is available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M–1500, 1st floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Clara Poffenberger, Office of Air and Radiation, Stationary Source Compliance Division (EN–341W), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (703) 308–8709.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

Section 113(f) of the Clean Air Act, as amended, (the Act), 42 U.S.C. 7413(f), authorizes the Administrator discretion to pay awards to persons who provide information or services regarding potential violations of the Act. Pursuant to section 113(f), the information or services must result in a criminal conviction or a judicial or administrative civil penalty for a violation of titles I, III, IV, V, or VI of the Act, enforced under section 113 of the Act, before an award may be issued.

The statute specifically authorizes awards only for enforcement actions brought under section 113 of the Act. Thus, information or services which assist actions brought under State law (e.g. enforcement of SIPs under State law or citizen suits brought under State law), under other sections of the Act (i.e., citizen suits under section 304), or under other statutes, do not qualify for an award under this provision. However, in cases where the Agency intervenes, overfiles, or otherwise takes over the enforcement action under the authority of section 113, the awards authority may become applicable.

Under section 113(f) of the Act, any officer or employee of the United States or any State or local government who furnishes information or renders services to the Agency in the performance of an official duty is ineligible for an award. Also, section 113(f) authorizes the Administrator to prescribe, by regulation, additional criteria for eligibility for an award. In response, the regulation proposed today prescribes additional criteria for eligibility. The regulation proposed today also prescribes general criteria for the Agency to consider in determining whether and how much of an award is appropriate and procedures to be followed by persons who want to be considered for an award. Additional authority for these provisions is provided by section 301(a) of the Act.

II. The Proposal

Today's proposed rule prescribes regulations for EPA's awards authority under section 113(f) of the Clean Air Act, as amended, 42 U.S.C. 7413(f). The proposed rule sets forth general eligibility criteria, criteria to be used in considering petitions for awards, the procedures for petitioning consideration for an award, and other matters designed to assist the Administrator in exercising her discretion in this area. The goal of this proposal is to assist in the implementation of an awards program that would encourage citizens to cooperate with and voluntarily assist the EPA's Clean Air Act enforcement efforts and thereby deter violations. Inherent in a program for awards are concerns regarding the confidentiality of the identity of those who provide information or services and the need to evaluate the quality of such information or services. This proposal is intended to address those concerns.

A. Application of Proposal

The EPA intends that this proposed regulation will apply only after promulgation. Petitions for an award based on information or services provided to the EPA after the passage of the Clean Air Act Amendments of 1990 (the Amendments) but before the regulation is promulgated may be processed using the proposed criteria as nonbinding guidance. The EPA will not consider a petition for an award based on information or services provided entirely prior to enactment of the Amendments.

B. Eligibility Criteria

As discussed above, section 113(f) renders certain persons ineligible for an award, and also authorizes the Administrator to prescribe additional eligibility criteria. In response, this proposed rule categorically excludes EPA employees from eligibility to receive an award. The proposed regulation further delineates eligibility limits for employees of, and others who have a contractual relationship with, federal, State, or local governments. Thus under the proposal, officers, employees, contractors, and grantees will be ineligible to receive an award if at the time they come into possession of the information or render services which constitute, in whole or in part, the basis of the award, they were performing an official duty. Furthermore, any members of the immediate family of those "performing their official duty" are likewise ineligible.

The EPA believes these provisions will help ensure that employees and others contractually obligated to the EPA or other governmental entities will fulfill their obligation and will not withhold information that they would otherwise provide to the government. The proposed provisions also address the concern that such persons could indirectly benefit by passing information obtained while performing their official duty to family members, who could then use that information to petition for an award. The concern addressed here is protection of the integrity of compliance and enforcement activities. By declaring such persons ineligible for an award, the proposed regulation seeks to ensure that the awards program will not create an incentive for employees to abuse access to information and authority otherwise unavailable to the public. The term "immediate family member" is purposely not defined in the proposed regulation, as the EPA prefers to maintain its discretion in referencing other sources of law and otherwise evaluating the circumstances of the particular case in making its award determination.

So that persons who may receive awards are aware that certain persons are ineligible to be paid an award, the proposal requires that a certificate of eligibility be signed by the person before the Administrator may pay the award. This requirement assists the EPA in assuring that an award is not paid to ineligible persons.

C. Addresses for Tips

Tips from citizens to the US EPA and State and local air pollution control agencies provide useful information on the possible existence or extent of a violation. Since the goal of the awards program is to encourage citizens to cooperate with and voluntarily assist EPA enforcement efforts, the proposal provides the addresses to which information may be sent. The information or services provided may or may not lead to eligibility for an award. Providing such information does not create an obligation on the Agency to issue an award, or vest in any person a right to such award. Nevertheless, the Administrator encourages all persons to provide any information they have regarding violations of the Act to the appropriate persons listed in Appendix A. Such information improves the Agency's ability to enforce the Act. The EPA encourages persons to provide the information or services to State and local agencies as well. Although completion of an enforcement action by a State or local agency under authority other than section 113 of the Clean Air Act cannot lead to an award paid by the U.S. EPA under section 113(f), it is important that information be provided to State and local agencies. In most situations, the U.S. EPA will defer to State enforcement authorities to address violations in a timely and appropriate manner. However, persons who provide information or services to a State or local agency may become eligible for an award if the EPA overfiles or otherwise takes over the enforcement action.

D. Confidentiality

Because today's proposal contemplates the EPA receiving and using information and services from private sources for enforcement activities, the EPA is also proposing to maintain as confidential, upon request, the identity of persons providing information or services. The EPA believes this assurance of confidentiality will encourage persons to assist the EPA in its efforts to enforce compliance with the Act. In this regard, the proposed rule provides, upon request, confidential treatment by the EPA consistent with this proposal, existing law and other EPA regulations. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552 (b)(6) & (7), the confidentiality of the identity of those providing information and services will be protected from FOIA requests consistent with existing law. The assurance of confidentiality extends to petitions for awards submitted to the EPA. To ensure confidential treatment of such petitions, it is important that persons submitting petitions to the EPA specifically request confidentiality at or prior to the time of providing information or services, and to renew such request at the time of submitting a petition.

E. Petitions for Awards

Because the information or services provided would be instrumental to the successful prosecution of the EPA's enforcement action, in many cases EPA personnel will be aware of persons potentially eligible for an award, even without a petition being submitted. The EPA expects that in many such situations, award determinations may be made without submission of a petition.

Today's proposal recognizes, however, that a person may wish to petition the Agency for consideration for an award and authorizes such petitions. To ensure that such petitions contain sufficient information for the purpose of evaluation, and to ensure that petitions are directed to the appropriate EPA office, the proposal sets forth award petition procedures and requirements.

Timing of Petitions

The proposed rule requires petitions for consideration to be submitted in writing no later than one year after the judgment of conviction or assessment of a civil penalty. Petitions may be submitted at any time prior to the judgment or assessment, but no award determination will be made before the judgment of conviction is entered or a judicial or administrative civil penalty is finally assessed, agreed, or ordered. Again, payment and the amount of any award granted is within the Administrator's unfettered discretion. The granting of an award is a gratuity, and not an entitlement.

Certification of Eligibility

The proposed regulation also requires that the petition contain a certification of compliance with the eligibility criteria set forth in the regulation. A statement signed by the person to be considered for an award attesting to having read the eligibility requirements and attesting that the person to be considered for an award is not ineligible to receive an award would meet this requirement. This certification is important to the award determination process because the EPA recognizes that it may be difficult for the Administrator to determine with certainty whether a person meets all eligibility criteria. However, the Act prohibits payment of an award to certain persons. Therefore, the proposal requires a certification of eligibility be signed before the Administrator may pay an award.

F. Criteria for Awards

Under the Act, the Administrator has discretionary authority whether to pay an award and to determine the amount of an award. The proposed regulation does not constrain this discretion. Although the proposed rule permits petitions for consideration for an award, whether an award is ultimately granted will turn on the exercise of the Administrators unfettered discretion, including the application of factors described in this proposed regulation. These factors include whether the information or services constituted the initial, unsolicited notice of the violation to the government, whether the government would have obtained knowledge of the violation in a timely manner absent the information or services, the importance of the case, the severity of the violation, the potential for or existence of actual or threatened harm to persons or the environment, the willingness to assist in the governments enforcement action(s) regarding the violation(s), the value of the assistance in comparison to that given by any other persons or sources of information or services and, in part, the amount of money available to the EPA through appropriations.

Furthermore, the rule is not intended to discourage self-auditing within facilities nor is it intended to encourage concealment of information about violations or problems within a facility by an employee from an employer. Thus, the regulation sets forth the additional criterion of whether payment of the award would improperly create incentives against the timely and appropriate identification of such a violation to either the employer or the government.

G. Timing of Award Consideration

As mandated by section 113(f), persons may not be considered for an award unless and until such time as the information or services provided leads to a judicial or administrative civil penalty or a criminal conviction under section 113 of the Act.

H. Prepayment Offers

The proposed regulation makes clear the distinction between the Awards program and paid informant programs or contractual relationships that may be created by the Agency. The EPA's employees do not have the authority under this proposal or this statutory provision to promise that an award will be paid nor to promise consideration or recommendation for an award.

I. Request for Public Comment

The EPA is interested in public comment on all aspects of this proposed rule. The EPA is particularly interested in comments on: (1) The provision for confidentiality of identity for persons who provide information or services; (2) the eligibility exclusions and eligibility criteria for an award; (3) petitions for consideration; and (4) the criteria for awards determinations.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in public record.

B. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

C. Paperwork Reduction Act

Since this proposed rule does not create any new information requirements or contain any new information collection activities, no clearance is necessary from OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 65

Environmental protection, Air pollution control, Awards, Confidentiality, Enforcement, Natural resources.

Dated: April 15, 1994.

Carol M. Browner,

Administrator.

40 CFR part 65 is proposed to be amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 is revised to read as follows:

Authority: 42 U.S.C. 7413, 7601(a).

2. Part 65 is proposed to be amended by adding subpart BBB to read as follows:

Subpart BBB—Awards

Sec.
65.571 Purpose and scope.
65.572 Definitions.
65.573 Eligibility.
65.574 Information or tips regarding possible violations.
65.575 Confidentiality.
65.576 Petitions for consideration.
65.577 Criteria for awards.
65.578 Prepayment offers.

Appendix A to Subpart BBB—Addresses for Petitions for Consideration and for Tips or Information

Subpart BBB—Awards

§ 65.571 Purpose and scope.

(a) This regulation implements section 113(f), 42 U.S.C. 7413(f), the "citizen award" provision of the Clean Air Act, as amended (the Act). As authorized in section 113(f), of the Act the Administrator of the U.S. Environmental Protection Agency (the Agency) is authorized to pay up to $10,000, as may be available from appropriations, to any person who provides information or services leading to a criminal conviction or a judicial or administrative civil penalty, enforced under section 113, for any violation of Titles I, III, IV, V, or VI of the Act. The goal of the program is to encourage citizens to cooperate with and voluntarily assist the Agency's enforcement efforts and thereby deter noncompliance.

(b) Providing information or services to the Agency by any person does not create any obligation on the Administrator to issue an award or to pay compensation for such assistance. Neither the Act nor these regulations create an entitlement to the payment of an award. The determinations whether to pay an award, and in what amount, are matters which remain by statute in the exclusive and unfettered discretion of the Administrator.

§ 65.572 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

(a) *Administrative penalty.* Any amount finally assessed, agreed or ordered to be paid into the U.S. Treasury pursuant to an administrative enforcement action under section 113 of the Act.

(b) *Certification of Eligibility.* A statement signed by the person to be considered for an award attesting to having read the eligibility requirements and attesting that the person is not ineligible to receive an award.

(c) *Criminal conviction.* A judgment of conviction entered in U.S. District Court on a verdict or finding of guilty, or by a plea of guilty, including a plea of nolo contendere, in an action brought under section 113 of the Act (as defined at 28 U.S.C. 2901(f)).

(d) *Judicial penalty.* Any amount finally assessed, agreed or ordered to be paid into the U.S. Treasury by a court of the United States pursuant to a judicial enforcement action under section 113 of the Act.

§ 65.573 Eligibility.

(a) Any person who provides information or services which leads to a criminal conviction or a judicial or administrative civil penalty, enforced under section 113, for any violation of titles I, III, IV, V, or VI of the Act, except those persons identified in paragraph (b) of this section, shall be eligible to receive an award under this part.

(b) The following persons are not eligible to receive an award:

(1) Persons convicted of or found liable for the violation(s) that are the subject of the award,

(2) Officers or employees of the United States Environmental Protection Agency,

(3) Any of the following persons who, at the time he or she came into possession of the information or rendered the service which constitutes in whole or in part the basis for an award, was performing his or her official duty:

(i) Officers or employees of the United States Government;

(ii) Contractors or grantees of the United States Government;

(iii) Officers or employees of a State or local government;

(iv) Contractors or grantees of a State or local government;

(4) Any members of the immediate family of persons who would be ineligible under paragraph (b)(3) of this section; and

(5) Such other persons as the Administrator may determine to be ineligible who are not otherwise ineligible under the law.

(c) Before the Administrator may pay an award, a certification of eligibility must be signed by the person receiving the award.

§ 65.574 Information or tips regarding possible violations.

(a) Persons having knowledge of violations of the Act may provide such information to the Regional Administrators listed in appendix A of this subpart.

(b) Information regarding violations of the Act should also be provided to State and local agencies, although not required by this regulation. The USEPA, in many cases, defers to State enforcement authorities to address violations in a timely and appropriate manner.

§ 65.575 Confidentiality.

(a) Any person providing information or services under this subpart may request confidentiality as to his or her identity.

(b) To the extent permitted by law, the EPA will not disclose the identity of, or information which could reasonably be expected to disclose the identity of, a person who has requested confidentiality prior to or at the time of providing information or services under this 66 subpart, except in exceptional circumstances under appropriate restrictions with the approval of the Office of General Counsel or a Regional Counsel.

§ 65.576 Petitions for consideration.

(a) Any person may petition the Agency to consider paying an award.

(b) *Addresses.* (1) Petitions for consideration must be submitted in writing to the Regional Administrator in the Region(s) bearing a substantial relationship to the violation(s) that are the subject of the petition.

(2) The appropriate addresses for the Regional Administrators are provided in appendix A of this subpart.

(c) *Timing.* (1) Petitions may be submitted at any time prior to the judgment of conviction or assessment of a civil penalty but must be submitted no later than one year after the judgment of conviction or assessment of a civil penalty.

(2) No award determination will be made before a judgment of conviction is entered or judicial or administrative civil penalty is assessed, agreed, or ordered to be paid.

(d) *Content.* A petition for consideration shall contain the following information:

(1) Whether a request for confidentiality was made prior to or at the time of providing the information or services, and whether such request is still in effect; the petition envelope should also specify whether the information or services were provided under a request for confidentiality;

(2) Name, address, and telephone number of the petitioner;

(3) A brief description of the federal enforcement action (whether the action was a criminal conviction or judicial or administrative civil penalty) which resulted (if known) from the information or services;

(4) Name, title, agency and office affiliation, city, and telephone number of person(s) to whom the information and services was provided (to the extent known);

(5) Name(s) and address(es) of the violator(s) and (to the extent relevant) the names and/or locations of any sites or facilities involved;

(6) Description of the information or services that led to the federal enforcement action;

(7) Date(s) the information or services were provided;

(8) Description of any other involvement by the petitioner in the enforcement action;

(9) Certification of eligibility stating that the petitioner meets the requirements for eligibility for an award set forth in § 65.575 (if the petitioner is the person who provided the information or services); and

(10) Any other relevant information in support of the petition.

§ 65.577 Criteria for awards.

In deciding whether to make an award, and in what amount, the Administrator shall consider relevant criteria, giving such weight and importance to each separate criterion as appears warranted in his or her judgment alone. Relevant criteria shall include, but not be limited to, one or more of the following:

(a) Whether the information or services constituted the initial, unsolicited and full disclosure to a governmental entity with jurisdiction over the violation;

(b) Whether the governmental entity would readily have obtained knowledge of the violation in a timely manner absent the information or services;

(c) The importance of the case, severity of the violation, and potential for or existence of actual or threatened harm to persons or the environment;

(d) The willingness to assist as necessary in the Government's resulting or related enforcement action(s) regarding the violation(s), including providing further information or services, participating in hearing or trial preparation and appearing as a witness at or in connection with any hearings or trial(s) of the matter, to the extent consistent with a reasonable claim of need for confidentiality, if any;

(e) Value of the assistance in comparison to that given to the government in the resulting enforcement action by any other persons or sources of information or services;

(f) Value of the assistance in comparison to that given by other petitioners or others in similar circumstances in other enforcement actions brought by the government; and

(g) Whether such payment would result in a conflict of interest, present an appearance of impropriety, or improperly create incentives against the timely and appropriate identification of such a violation to either the employer or the government.

§ 65.578 Prepayment offers.

Prior to the actual payment of an award under section 113(f) of the Act, no employee of the United States Government, including any person purporting to act on behalf of the United States Government, is authorized by these regulation to make any promise, offer, or representation with respect to the Agency's grant of such an award.

Appendix A to Subpart BBB—Addresses for Petitions for Consideration and for Tips or Information

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Regional Administrator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Building, Room 2203, Boston, MA 02203.

For New Jersey, New York, Puerto Rico, and Virgin Islands: Regional Administrator, Region II, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278.

For Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia: Regional Administrator, Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Regional Administrator, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365.

For Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Regional Administrator, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604.

For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Regional Administrator, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733.

For Iowa, Kansas, Missouri, and Nebraska: Regional Administrator, Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101.

For Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming: Regional Administrator, Region VIII, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2405.

For Arizona, California, Hawaii, Nevada, American Samoa, and Guam: Regional Administrator, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

For Alaska, Idaho, Oregon, and Washington: Regional Administrator, Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

[FR Doc. 94–10435 Filed 5–2–94; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 80

[AMS–FRL–4879–7]

RIN 2060–AF13

Regulation of Fuels and Fuel Additives: Individual Foreign Refinery Baseline Requirements for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to amend the reformulated gasoline regulations to define criteria and procedures by which foreign refiners establish individual refinery baselines that reflect the properties and volume of the gasoline that was produced at a foreign refinery in 1990 and imported for use within the United States. EPA is seeking comments on a wide range of matters in this proposal, including the air quality effects of the proposed approach. Where the requisite showing is made through a petition process, importers of reformulated gasoline produced at the foreign refinery would be allowed to use the individual foreign refinery baseline values to demonstrate compliance with the reformulated gasoline standards with regard to gasoline produced at that foreign refinery and imported into the United States only during the period 1995 through 1997 and only up to a volume of gasoline each year that equals the foreign refinery's 1990 import volume, and subject to certain limitations and conditions that are proposed as well. This amendment would allow imported reformulated gasoline to be evaluated relative to individual refinery baselines in a manner that is similar to that applicable to reformulated gasoline produced at domestic refineries. Individual foreign refinery baselines could be used only with reformulated gasoline under this proposal, and such baselines could not be used with conventional gasoline.

EPA specifically states that it seeks comments on the proposed approach for foreign refinery baselines and on any underlying assumptions, as well as any other options for regulating imported reformulated gasoline that would be fair to all regulated parties and would achieve the environmental benefits intended for reformulated gasoline by the Clean Air Act.

DATES: The comment period will close on June 23, 1994. EPA will hold a public hearing on this proposal on May 23, 1994, beginning at 10 a.m.

ADDRESSES: Send comments to Public Docket A–94–25 at the address below. It is also requested that a duplicate copy of comments be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Materials relevant to this NPRM are contained in Public Dockets A–91–02 and A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

The meeting will be held at the Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: George Lawrence, Field Operations and Support Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9307.

SUPPLEMENTARY INFORMATION: To Request Copies of This Document Contact: Helen Sablack, Field Operations and Support Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9402.

Copies of this proposed rule are available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(T) GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. The individual foreign refinery baseline proposed rule is identified by the title: "FORBASE.ZIP." To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp
Selection or <CR> to exit: D FORBASE.ZIP

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. Then go into your own software and tell it to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

Background

On December 15, 1993 the EPA Administrator issued the final regulations implementing the reformulated gasoline and anti-dumping programs (the Final Rule), as prescribed by section 211(k) of the Clean Air Act (the Act). See 59 FR 7716 (February 16, 1994).

Under the final rule, compliance by refiners and importers with certain reformulated gasoline and anti-dumping standards is measured against baselines that are intended to reflect 1990 gasoline quality. Domestic refiners are required to establish individual refinery baselines of the quality and quantity of the gasoline that was produced by the refiner in 1990. Domestic refinery baselines must be calculated using, in hierarchical order based on the availability of data, 1990 gasoline test data (Method 1), 1990 blendstock test data (Method 2), or post-1990 blendstock and/or gasoline test data (Method 3).

Under the rule, domestic importers of foreign-refined gasoline are treated differently. They are required to establish baselines of the quality and quantity of 1990 gasoline that they import using 1990 gasoline test data (Method 1) if available. If Method 1 data are not available, importers are assigned a baseline approximating average gasoline quality in the United States in 1990—the statutory baseline.[1] EPA anticipates that most importers, like most domestic refiners, lack the actual 1990 testing data necessary to establish a baseline using Method 1. As a result, EPA expects most importers will be assigned the statutory baseline, with the consequence that most gasoline produced at foreign refineries will be evaluated using the statutory baseline. The baseline-setting scheme is specified in 40 CFR 80.91 through 80.93 and is discussed in the Preamble to the final rule at 59 FR 7791 (February 16, 1994).

Before January 1, 1998, refiners and importers have the option of certifying reformulated gasoline using either the "simple" model or "early use of the complex model." Under either of these reformulated gasoline certification approaches, compliance with certain standards is determined in relation to the baseline established for each refinery or importer. Under the simple model, the annual average levels for sulfur, T–90, and olefins are limited to each refinery's or importer's baseline levels for these parameters.[2] Under early use of the complex model (in contrast to mandatory use of the complex model beginning in 1998) refinery- or importer-specific standards for VOC, toxics, and NO_X emissions performance are set in part using refiner or importer baseline levels for sulfur, T–90, and olefins.[3]

Beginning on January 1, 1998, only the complex model may be used to certify reformulated gasoline, and the basis for all compliance with the reformulated gasoline complex model standards is determined in relation to 1990 statutory baseline gasoline. See §§ 80.41(i)(2)–(i)(3). As a result, beginning in 1998 refiner or importer baselines are no longer relevant to determining compliance with reformulated gasoline standards.

Compliance with the standards for conventional gasoline (the "anti-dumping" standards) is measured against refinery or importer baselines beginning in January 1995 and thereafter. See § 80.101. As a result of the baseline-setting requirements of the final rule discussed above, domestic refiners would determine compliance with the anti-dumping standards in relation to refinery-specific baselines, while most or all importers of gasoline produced at foreign refineries would determine compliance in relation to the statutory baseline.

In developing the final rule, EPA evaluated comments regarding the proposed approach for establishing baselines for imported gasoline, including comments submitted on behalf of Petroleos de Venezuela, S.A. (PDVSA), the Venezuelan national oil company, in response to the April 16, 1992 reformulated gasoline proposal, at 57 FR 13416. In their comments, PDVSA said that the proposal for imported gasoline baselines is unfair in that it treats domestic and foreign refiners differently. PDVSA also stated in its comments that this difference in treatment of domestic and foreign refiners conflicted with the requirements of the General Agreement on Tariffs and Trade (GATT). EPA officials held a series of meetings on the foreign refiner baseline issue during the Fall of 1992 and during 1993. These included meetings with PDVSA officials, regarding whether PDVSA has the data necessary to establish a baseline of the quality of its gasoline that was used in the United States in 1990, and whether EPA could formulate an adequate enforcement scheme for a program that included individual foreign refinery baselines. EPA also met with domestic refiners on this issue, to hear their concerns, and with representatives of other agencies, primarily officials from the Office of the U.S. Trade Representative and the State Department, to better understand the GATT requirements. EPA's February 26, 1993 reformulated gasoline proposal also invited comment on these issues. See 58 FR 11758.

As a result of these comments and meetings, EPA considered provisions allowing foreign refiners to establish individual refinery baselines in a manner similar to that required for domestic refiners. See discussion in the Preamble to the final rule at 59 FR 7785–7788 (February 16, 1994). EPA was not prepared to adopt such provisions by the court ordered deadline for the final rule of December 15, 1993, but it stated at that time that it would continue to consider this issue and continue discussions with PDVSA. Since issuance of the final rule, EPA has continued to consider this question, including the relationship of the GATT and the reformulated gasoline rule, and is seeking comments on its proposal in this notice to allow foreign refiners to establish individual refinery baselines under limited circumstances. While EPA does not necessarily agree with PDVSA position on GATT requirements, EPA desires to remove the uncertainty in this regard and we believe the proposal does that in a manner fully protective of human health and the environment.

II. The Proposed Limited Use of Individual Foreign Refinery Baselines

Under today's proposal, importers would be allowed limited use of a baseline established for an individual foreign refinery to demonstrate compliance with the reformulated gasoline standards for gasoline produced at that foreign refinery and imported for use in the United States. The use of individual foreign refinery baselines would be conditioned and limited in the following ways:

- EPA would have to specifically approve the baseline for the foreign refinery. In order to obtain a baseline, the foreign refiner would have to submit a petition to EPA, which would include the same types of gasoline and blendstock testing data and refinery modelling analyses that domestic refiners must submit. In addition, a foreign refiner would have to support its baseline petition with a report prepared by an independent baseline auditor, and like for domestic refiners EPA would have to approve the auditor. One key aspect of a foreign refiner's baseline petition is that it would have to conclusively establish the quality and volume of gasoline that was used in the United States in 1990, and not just the refinery's overall gasoline quality in 1990.

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[1] The "statutory" baseline is calculated pursuant to section 211(k)(10)(B) of the Act which defines the statutory baseline for summertime gasoline and instructs the Administrator to establish the properties of the statutory baseline for wintertime gasoline based on average 1990 qualities of wintertime gasoline. EPA's Final Rule specifies the properties of the statutory baseline for wintertime gasoline in § 80.45(b)(2), and annual statutory baseline gasoline properties in § 80.91(c)(5).

[2] The reformulated gasoline "simple" model requirements include standards for oxygen, benzene, RVP, and toxics emissions which are unrelated to refinery or importer baselines, in addition to standards for sulfur, T–90, and olefins which are in relation to refinery or importer baselines. See §§ 80.41 (a) and (b).

[3] Under early use of the "complex" model, a refiner or importer calculates refinery- or importer-specific standards for VOC, toxics, and NO_x emissions performance by using the complex model to evaluate a gasoline with "simple" model values for benzene, RVP, oxygen, and aromatics, and the refiner's or importer's individual baseline values for sulfur, T–90, and olefins. See § 80.41(j).

- Individual foreign refinery baselines could be used by importers only to demonstrate compliance with reformulated gasoline standards and only prior to January 1, 1998. They could not be used to demonstrate compliance with anti-dumping standards.
- The total volume of imported reformulated gasoline that could be subject to the individual baseline for any foreign refinery would be limited each year to the volume of that refinery's gasoline used in the United States in 1990.
- The importer would be required to establish that any imported gasoline that would be subject to an individual foreign refinery baseline actually came from that refinery, through gasoline inspections and attest engagements conducted by independent inspectors and auditors at the foreign refinery.
- EPA inspectors would have to receive full access to the foreign refinery to conduct announced and unannounced inspections and audits related to the individual foreign refinery's baseline or any gasoline produced at the foreign refinery.

These conditions and limits are discussed more fully below.

Under the final rule, individual baselines are used to certify reformulated gasoline and demonstrate compliance with the reformulated gasoline standards only during 1995 through 1997. Beginning January 1, 1998 all reformulated gasoline compliance must be certified using the statutory baseline. See §§ 80.41(h)–(j). This constraint also would apply to importers of reformulated gasoline who under today's proposal had previously used individual foreign refinery baselines.

Importers would be able to use an individual foreign refinery baseline for reformulated gasoline for 1995 through 1997 only if all of these conditions and limits are fully met. If any condition is not met with regard to a specific foreign refinery, then importers would not be allowed to use the foreign refinery's individual baseline. If any such conditions are not met subsequent to the time the importer uses the individual foreign refinery baseline, then the importer would be required to recalculate its compliance using the statutory baseline, even if the failure to meet the conditions occurs during a subsequent averaging period. This potentially could expose the importer to substantial penalties if subsequent use of the statutory baseline causes the importer to be in non-compliance with the reformulated gasoline requirements.[4]

EPA is proposing that importers who use a foreign refinery's individual baseline would use that baseline, and the volume of the foreign refinery's reformulated gasoline involved, to calculate a new importer baseline for use during that year. The total of the reformulated gasoline imported by the importer during the relevant averaging period would then be evaluated against this new importer baseline to determine compliance by the importer with the reformulated gasoline standards. This proposed method for using foreign refinery baselines is illustrated by the following example.

A hypothetical importer has been assigned the statutory baseline. During 1996 he imports reformulated gasoline totalling 900,000 barrels of gasoline produced at hypothetical foreign refinery A, and 800,000 barrels of gasoline produced at hypothetical foreign refinery B. Foreign refiner A has an individual refinery baseline, and the sulfur baseline level is 400 ppm, and a baseline volume of 1,000,000 barrels.[5] Foreign refiner B does not have an individual refinery baseline, and the importer would use the statutory baseline, which for sulfur is 338 ppm, for the refinery B volume. The average sulfur content of the imported gasoline that was produced at foreign refinery A was 375 ppm, and the average sulfur content of the imported gasoline that was produced at foreign refinery B was 360 ppm.

The hypothetical importer would calculate a new sulfur baseline of 370.80 ppm as follows:

$$\frac{(900{,}000 \times 400) + (800{,}000 \times 338)}{1{,}700{,}000} = 370.80$$

The hypothetical importer then would compute the average sulfur content of all gasoline imported during the year, of 365.00 ppm, as follows:

$$\frac{(900{,}000 \times 375) + (800{,}000 \times 360)}{1{,}700{,}000} = 365.00$$

Because the 365.00 ppm overall average sulfur content of the gasoline imported is less than the 370.80 ppm calculated baseline for the importer, the importer meets the sulfur standard applicable to the importer. Note that the imported gasoline produced at foreign refinery A would not be required to separately meet the 400 ppm sulfur baseline applicable to refinery A, and the imported gasoline produced at foreign refinery B would not be required to separately meet the 338 ppm sulfur baseline applicable to refinery B.

A. Establishing Individual Foreign Refinery Baselines

In order to establish an individual baseline for a foreign refinery under this proposal, a petition would have to be submitted to EPA in a manner analogous to the baseline submissions required for domestic refiners. The petition would have to contain the Method 1, Method 2, and/or Method 3 data, collected and evaluated in the same manner as is required of domestic refiners under § 80.91. The baseline data would have to be submitted in the same manner as is required of domestic refiners under § 80.93, except that EPA is proposing to modify the requirements in § 80.93 related to the dates by which baseline submissions are due.

Under § 80.93 domestic refiners are required to submit data collected before December 15, 1993 by June 1, 1994, or by September 1, 1994 if data is collected subsequent to December 15, 1993. As a result of the timing of this proposal, these dates are not reasonable for baseline petitions for foreign refiners. EPA is therefore proposing that any petition for an individual foreign refinery baseline would be required to be submitted to the Administrator within six months following the date the individual foreign refinery baseline final regulation is signed. This approach is analogous to the lead time afforded domestic refiners in the final rule for baseline submissions.

Another departure from the baseline submission requirements of § 80.93 is that baseline data for foreign refineries would have to be submitted in such a manner that EPA could determine the quality and quantity of the gasoline produced at the foreign refinery during 1990 that was used in the United States. Baseline submissions by domestic refiners are not required to focus on the 1990 U.S. market share of refinery production, because it is assumed that all gasoline produced at a domestic refinery is used in the United States, unless the refiner shows certain gasoline was exported. This proposal that foreign refinery baseline petitions would be required to establish U.S. market gasoline quality and quantity is critical, because the quality of a foreign refinery's U.S. market gasoline in many cases would be different from the quality of the refinery's overall gasoline quality. Under the proposal, if EPA is unable to determine both the quality and quantity of the gasoline that was produced by any foreign refinery in 1990 and used in the United States, the individual foreign refinery baseline petition would be denied.

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[4] Under section 211(d) of the Clean Air Act, violators of the reformulated gasoline requirements and standards are subject to a maximum penalty of $25,000 per violation per day, plus economic benefit. Violations of multi-day (averaging) standards constitute a separate day of violation for each day in the averaging period.

[5] Because the 1990 baseline volume assigned to Refinery A is greater than 900,000 barrels, the importer may use Refinery A's individual baseline for all 900,000 barrels imported from that refinery.

The accuracy and completeness of the data and conclusions contained in the individual foreign refinery baseline petition would have to be verified by an independent EPA-approved auditor, in the same manner as is required of domestic refiners under § 80.92. Thus, the auditor would have to be approved by EPA according to the criteria, specified in § 80.92, which include approval of the auditor's independence and technical ability.

EPA is proposing that a petition for an individual foreign refinery baseline must be submitted by the foreign refiner. EPA believes the foreign refiner is the most appropriate person to submit such a petition, because it is the foreign refiner who will possess most or all of the information that would support such a petition.

EPA also is proposing that the petition must contain a declaration by the owner or president of the foreign refiner business that the information submitted in the petition is accurate and complete. EPA is further proposing that the foreign refiner owner or president would be required to affirmatively declare that EPA auditors and inspectors will be given full and immediate access to all refinery premises, for purposes of compliance with the EPA inspection requirements EPA has proposed in § 80.84(f). The declarations by the foreign refiner owner or president would be mandatory conditions for EPA approval of any foreign refinery baseline petition. EPA is proposing this declaration requirement in order to ensure that in each case of a foreign refiner seeking an individual baseline, refiner officials at the highest levels of the business are aware of the refiner commitments that are necessary for use of a foreign refinery's baseline.

B. Establishing the Refinery-of-Origin

EPA is proposing regulatory requirements that would, for any batch of imported gasoline claimed to be subject to an individual foreign refinery baseline, establish the identity of the foreign refinery at which the gasoline was produced. The proposed requirements would include the testing of samples of the gasoline in question collected subsequent to loading into the ship at the port serving the foreign refinery, but before the ship leaves that port. These test results from the foreign refinery loading point would then be compared with test results of samples of the gasoline in question collected when the ship arrives at the United States port of entry. Sampling and testing of gasoline at the U.S. port of entry is required by the final rule, at §§ 80.65(e)–(f).

The proposed regulations include criteria for evaluating whether the test results of the gasoline samples from the foreign refinery loading port match the test results of the gasoline samples from the U.S. port of entry. The test results would have to agree, for each parameter included in the evaluation of reformulated gasoline, within the limits used for comparing domestic refiner and independent laboratory test results, which are specified in § 80.65(f).

The volume of gasoline contained in each shipment of imported gasoline claimed to be subject to an individual foreign refinery baseline also would have to be confirmed. The inspection at the foreign refinery loading port would have to establish the volume loaded onto the ship, which would be compared to the volume determination at the U.S. port of entry. EPA is proposing that these two volume determinations, corrected for temperature and density, would have to agree within one percent. EPA believes this level of correlation is appropriate, because it is well within the level of correlation normally expected in commercial transactions. EPA understands that protests normally are initiated if ship volume determinations in commercial dealings differ by 0.5%. Nevertheless, EPA requests comment as to the appropriate level of correlation which should be required, and as to any other approach to confirming volumes that would be preferable to that proposed.

In the event any single parameter, or the volumes involved, would not agree in the manner proposed, the individual foreign refinery baseline could not be used by the importer for the specific batch of imported gasoline for which there is parameter value or volume disagreement.

EPA believes that in most cases the gasoline contained in each compartment of a ship would constitute a separate batch, because the gasoline would not be homogeneous across more than one compartment, and would therefore not meet the batch definition of § 80.2(gg). In consequence, EPA believes that in most cases the sampling, testing, and volume determinations would have to be performed separately for each of a ship's compartments. In addition, it is EPA's understanding that the current practice for inspecting the gasoline transported by ship is to separately sample each compartment, even when the same grade of gasoline is being transported in more than one compartment of a ship.

EPA also is proposing that the independent laboratory would be required to determine the refinery of origin, and thereby establish whether the gasoline loaded onto the ship was in fact produced at that refinery. The laboratory also would determine whether the foreign refinery's gasoline has been combined with gasoline produced at any other refinery. Only gasoline that is produced at the foreign refinery or origin would be eligible for use with the foreign refinery's baseline, yet it is possible that gasoline loaded onto a ship at a port serving a foreign refinery could have been produced at a different refinery. For example, two refineries could be linked to a port by a common pipeline, or gasoline could be produced at a foreign refinery and then transferred by ship to storage tanks located at a second foreign refinery.

The proposed requirements related to determining the refinery of origin would confirm that gasoline loaded into a ship at the port serving a foreign refinery was in fact produced at the foreign refinery and therefore that the foreign refinery's individual baseline would be applicable. This confirmation of the source refinery by the independent inspector normally would require the review of documents that reflect all transfers and storage of the gasoline in question from the point of production at the source refinery to the point of ship loading. The inspector thus would be required to establish the refinery of origin and that there was no fungible mixing of the gasoline in question with any gasoline produced at any other refinery prior to loading onto the ship.

An additional proposed requirement that relates to establishing the refinery-of-origin for imported gasoline is the proposal for attest engagements at the foreign refinery. This attest requirement would supplement the requirements regarding an independent laboratory determination of the source refinery of gasoline. The focus of the attest engagement, however, would be on the refinery operations while the independent laboratory's primary focus would be on the transportation and storage of gasoline from the refinery to the point of ship loading.

Under the proposed procedures, the attester would be required to confirm the overall production for the refinery in question, and to confirm that the portion claimed to have been transferred to ships for shipment to the United States was a part of that overall production. The attester also would be required to confirm the transfer of gasoline from the refinery to the ships, and to identify the ships into which the gasoline was transferred. EPA requests comment on whether these proposed attest procedures are appropriate and adequate.

EPA is proposing that the sampling, testing, and volume determinations at the foreign refinery loading port would have to be performed by an independent laboratory that is U.S.-based. The proposed criteria for independence are the same criteria that apply for the independent sampling and testing requirement for domestic refiners and importers, and that are specified at § 80.65(f)(2)(ii). Similarly, EPA is proposing that the attest requirements would have to be fulfilled by certified public accountants (CPA's) that are United States citizens, or members of a firm that is a U.S. corporation.

The proposed requirements that the independent laboratories and CPA's be U.S.-based is intended to result in laboratories and CPA's over which EPA may easily exercise jurisdiction. EPA's ability to inspect, obtain judicial enforcement, or submit information requests under section 114 of the Clean Air Act is significantly more effective in the case of a person that is a United States citizen or a United States corporation. These enforcement approaches may not be easily available against non-U.S. corporations or citizens. EPA seeks comment on the proposed requirement that independent laboratories and CPA's be U.S. corporations or citizens.

C. The Volume Limitation on Use of Individual Foreign Refinery Baselines

EPA is proposing that the total volume of imported reformulated gasoline that could be subject to the individual baseline for any foreign refinery would be limited each year to the volume of that refinery's gasoline that was used in the United States in 1990. It has been argued that this proposed volume constraint would limit any potential adverse environmental effects of gasoline imported under individual foreign refinery baselines in comparison to the final rule, as is discussed more fully below.

The proposed volume constraint would apply separately to each foreign refinery having an individual baseline, and would apply across all of the importers who import gasoline produced at each foreign refinery. Thus, for example, if the gasoline produced at a particular foreign refinery having an individual baseline is imported by ten importers during a specific year, the volume constraint applicable to that foreign refinery would apply to the ten importers collectively. Any of the hypothetical refinery's gasoline that is imported that year beyond the proposed volume constraint would be subject to the baseline otherwise applicable to the importer (normally the statutory baseline), and the individual foreign refinery's baseline would not apply to this excess volume.

EPA is proposing that the date gasoline is imported would be the criterion for determining which gasoline would qualify for use of an individual foreign refinery baseline. In the event importers claim use of an individual foreign refinery's baseline for a volume in excess of the proposed volume constraint, the gasoline that is first imported that equals the volume constraint would receive use of the individual baseline. Thus, the proposed volume constraint would apply based on the date the gasoline is imported into the United States, and not based on the date the gasoline is produced. Beginning on January 1 of each year the volume constraint accounting would begin anew.

EPA is not proposing any regulatory mechanisms that would provide importers a running accounting of the volume of a particular foreign refinery's gasoline that has been imported subject to an individual refinery baseline. Moreover, EPA would not know the total volume of imported gasoline claimed to be subject to any particular foreign refinery's baseline until quarterly or annual reports are submitted to EPA. EPA expects that importers would make private arrangements with their foreign refiner business partners to track the volume of each foreign refinery's gasoline that is imported under each individual foreign refinery's baseline. In this way EPA believes that importers would be able to know whether any particular batch of imported gasoline would be within the volume constraint that would apply to the foreign refinery that produced the gasoline.

The proposed consequences for the importer that would result from claiming use of an individual foreign refinery's baseline beyond the proposed volume constraint are discussed below.

EPA is proposing that any reformulated gasoline that is imported during 1994 and for which an individual foreign refinery baseline is used would be combined with such gasoline imported during 1995 for purposes of the proposed volume constraint. This proposal for combining compliance calculations for gasoline imported during 1994 and 1995 is analogous to the requirement in the final rule that reformulated gasoline produced or imported in 1994 must be combined with reformulated gasoline produced or imported in 1995 for determining compliance with average standards. See § 80.67(i).

EPA is further proposing to expand the 1990 baseline volume to allow for imports during 1994, but this expanded baseline volume would apply only for gasoline imported during 1994–1995. The mechanism proposed for this volume expansion is to multiply the foreign refinery's 1990 baseline volume times 1.17, which would result in an additional volume equal to two months of the 1990 baseline volume. EPA believes this approach for expanding the 1990 baseline volume to cover imports during 1994 is appropriate, because it would allow imports subject to an individual baseline to begin in November 1994 and to continue at the same rate as would be allowed for 1995.

EPA requests comment on this proposal for combining gasoline imports in 1994 and 1995 for purposes of applying the proposed volume constraint on use of an individual foreign refinery's baseline, and on the proposed mechanism for calculating an expanded 1990 individual foreign refinery baseline volume for use during 1994 and 1995.

D. The Requirement To Allow EPA Inspections and Audits

EPA is proposing that, as a condition of use by an importer of an individual foreign refinery's baseline, EPA inspectors and auditors would have to be given full access to conduct inspections and audits related to the foreign refinery's baseline and to the gasoline produced at the foreign refinery. The proposed access for inspections and audits would be at the foreign refinery, at any place gasoline produced at the foreign refinery for the U.S. market is located, and at any location where documents are kept that relate to the foreign refinery's baseline or to gasoline produced at the foreign refinery for the U.S. market. EPA is proposing that the access would have to be granted in response to inspections or audits that either are announced or unannounced.

EPA is proposing the inspection and audit access requirement in order to allow EPA inspectors and auditors to confirm the baseline submissions that would relate to any foreign refinery. In addition, EPA inspections and audits would confirm the information related to refinery-of-origin that is reported to EPA. The proposed access requirements related to foreign refineries would provide EPA with access analogous to that exercised over domestic refiners to conduct inspections and audits. EPA historically has conducted inspections and audits of domestic refineries in order to ensure compliance with gasoline quality rules, including the lead phasedown requirements at § 80.20, and the gasoline volatility requirements at §§ 80.27–28. EPA intends to follow this enforcement approach with the reformulated gasoline program. EPA believes it is important that it have comparable access to foreign refinery operations under the proposed approach for foreign refinery baseline in order to meet its enforcement responsibilities.

The scope of the proposed access requirement is intended to allow EPA to inspect or audit wherever documents are located that would relate to an individual foreign refinery's baseline, or to the production or shipping of gasoline that would be subject to such a baseline. In addition, the access proposal would ensure EPA access to collect samples of any gasoline that would be subject to an individual foreign refinery baseline.

EPA is proposing that the access requirement would terminate on January 1, 2003. This proposed termination date is five years following January 1, 1998, the last date individual foreign refinery baselines could be used. Five years is the statutory limitation that applies to potential liability for violations of the reformulated gasoline requirements. EPA also is proposing that its inspection and audit access would be limited to gasoline produced before 1998 and to documents that relate to such gasoline. This proposed limitation on the access requirement also corresponds to the January 1, 1998 date individual foreign refinery baselines would become unavailable.

EPA would conduct these inspections or audits at facilities controlled by the foreign refiner. As a result, EPA inspectors and auditors would have to be given access to conduct inspections or audits by the foreign refiner and by the country in which the foreign refiner's facilities are located. Any failure to grant access, therefore, would be the result of an action or decision by the foreign refiner or the foreign country. Nevertheless, the consequences of any failure to give EPA full and immediate access would fall on the U.S. importers of that foreign refiner's gasoline. In consequence, EPA believes any importer who would claim use of an individual foreign refinery's baseline would be expected to protect itself against this possibility through whatever means it would feel prudent, such as assurances from the foreign refiner that the access requirement would be met, or contractual indemnification provisions that would apply in the event the access requirement is not met.

The proposed consequences for the importer that would result from any failure to meet the access requirements are discussed below.

E. Failure To Meet Requirements

EPA is proposing that a foreign refinery's individual baseline could not be used by any importer if EPA were to determine that information submitted to EPA to establish the foreign refinery's individual baseline is inaccurate, or if EPA were denied access to the foreign refinery to conduct an inspection or audit. EPA also is proposing that a foreign refinery's individual baseline could not be used by the importer of a specific batch of gasoline in the event any of the foreign refinery baseline requirements would not be met with respect to that batch of gasoline.

Thus, for example, if EPA would determine that a foreign refinery's individual baseline submittal is in error, an individual baseline for that refinery could not be used by any importer during any year, unless the Administrator determines a shorter period is appropriate. Similarly, if EPA were to attempt to conduct an inspection or audit of a foreign refinery and were to be denied full and immediate access, the individual baseline for that refinery could not be used by any importer during any year, unless the Administrator determines a shorter period is appropriate. In this situation, any importer who had previously submitted reports to EPA for any averaging period that included use of the foreign refinery's individual baseline would be required to recompute its compliance calculations, *ab initio*, using the baseline that would apply to the importer in the absence of the foreign refinery's individual baseline—normally the statutory baseline. This recalculation by the importer would be required even if the recalculation would result in violations by the importer of the reformulated gasoline standards. It would be no defense for the importer to argue it used the foreign refinery's individual baseline in a good faith belief the baseline information was accurate, or that the foreign refiner would allow EPA to conduct inspections and audits.

A similar result would occur if EPA were to discover that a particular batch of imported gasoline, claimed by the importer to be subject to a foreign refinery's individual baseline, in fact is not entitled to use of that baseline. This could occur, for example, if through the CPA attest engagement or through an EPA audit it were discovered that the gasoline comprising the batch was not produced at the foreign refinery claimed by the importer. Another example of gasoline that would not be entitled to use of a foreign refinery's baseline would be a batch of gasoline that is imported subsequent to the date when the total volume of imported gasoline for which use of the foreign refinery's baseline is claimed equals the baseline volume for that foreign refinery. In these cases the importer who improperly claimed use of the foreign refinery's individual baseline, but not other importers of gasoline produced by that foreign refinery, would be required to recompute its compliance calculations, *ab initio*, as described above.

EPA is proposing that these consequences would be imposed on the importers, because there are clear barriers to effective enforcement directly against foreign refiners. This would occur even in a case where EPA could prove that gasoline was improperly imported using a foreign refinery's individual baseline, and where the improper use was the fault of the foreign refiner, for example by submitting false baseline information or by refusing to allow EPA inspections or audits. In such a case EPA could not bring effective enforcement against the foreign refiner. As a result, in order to preserve the integrity of the reformulated gasoline program, EPA proposes that importers would be ultimately responsible for the proper establishment and use of individual foreign refinery baselines.

EPA believes that importers would be able to decide whether and when to claim use of a foreign refinery's individual baseline. This approach is predicated on the assumption that importers would be expected to use great care in making this decision, and would do so only if the importer has complete confidence the foreign refinery baseline information was properly submitted to EPA and the foreign refiner intends to fully and properly comply with all requirements related to use of individual foreign refinery baselines, including requirements that apply years into the future. EPA also would expect importers to require the foreign refiner to carry out a gasoline volume tracking scheme that would enable importers to know with certainty that any batch of imported gasoline for which use of the foreign refinery's individual baseline would be claimed is within the foreign refinery's baseline volume.

III. Justification for Proposed Amendment to Final Rule

When EPA issued the final rule on December 15, 1993 the Agency was not fully satisfied that the baseline-setting scheme applicable to importers, and thereby applicable to foreign refiners, was the optimum solution. In preparing the final rule, EPA focused on three major issues regarding the use of individual baselines for foreign refiners in the reformulated and conventional gasoline programs. EPA's overriding consideration, and the basis for EPA's focus on these issues, was the ultimate environmental consequences of the baseline-setting scheme. The three issues are: (1) The technical problems with using baseline-setting Methods 2 and 3 to accurately predict the qualities of gasoline imported in 1990 from a foreign refiner; (2) the ability of the agency to adequately verify and enforce the use of foreign refiner individual baselines, including problems identifying the refinery of origin of imported gasoline and enforcing performance standards against a foreign refiner; and (3) any risk that would result from providing refiners or importers with options in establishing baselines.

The final regulations for reformulated and conventional gasoline, promulgated on December 15, 1993 pursuant to a court ordered deadline, attempt to resolve these issues. These issues, however, are complex and have potentially broad consequences. EPA therefore announced that it would continue to consider individual baselines for foreign refiners after promulgation of the Final Rules in mid-December 1993. This consideration has resulted in today's proposal, with EPA inviting comments on the proposed resolution described above.

The first issue involved whether and when it would be appropriate to allow refiners or importers an option in establishing individual baselines. In general, EPA's Final Rule takes the approach that options should not be allowed. Given a choice, a refiner or importer would tend to choose the option requiring the least expense overall, which would also presumably be the least protective of the environment. Avoiding options should therefore tend to avoid skewing the program in a way that would reduce air quality benefits. EPA described this gaming concern in the preamble to the Final Rule, at 59 FR 7785 (February 16, 1994).

Under EPA's Final Rule, domestic refiners are basically provided no choice regarding individual baselines—they must develop an individual baseline, using one or more of three different methods or modelling approaches. Since gasoline produced by domestic refiners made up an overwhelming majority of the gasoline sold in the U.S. in 1990, the average of all domestic refiner baselines should closely approximate the average 1990 quality of gasoline sold in 1990. Importers are treated like domestic refiners in that they are not provided an option on how to develop an individual baseline. A major difference, however, is that importers may use only the first of the three modeling methods. If the data are not available for this method, the importer defaults to the statutory baseline. In general, EPA expects all or almost all importers to default to the statutory baseline.

For foreign refiners, EPA considered whether it should also require that all foreign refiners establish individual baselines before they could import either conventional or simple model reformulated gasoline into the U.S. However, as discussed later, EPA had considerable doubt about the ability of baseline-setting Methods 2 and 3 to accurately predict the quality of that portion of a foreign refiner's production sent to the U.S. in 1990. EPA believed many foreign refiners would therefore not be able to use these models, and mandating use of an individual baseline might therefore lead to a ban on importation of gasoline from those foreign refiners not able to develop such baselines.[6] In addition, EPA had serious questions whether it could adequately verify the accuracy of individual baselines for foreign refiners under such a scenario. The current Final Rule resolves these concerns by not allowing foreign refiners to establish individual baselines, and regulating the introduction of gasoline into the U.S. through the importer. Importers must establish an individual baseline in the manner described above.

The air quality impact of allowing foreign refiners a choice in what baseline to use, such as would result from the petition process proposed today, depends in large part on which foreign refiners ultimately would have the ability, and would choose, to produce reformulated gasoline for importation into the U.S., and on the individual baselines of those foreign refiners who would make this choice. If a significant number of foreign refiners sent gasoline to the U.S. in 1990 that was cleaner than the statutory baseline, those refiners would not be expected to choose to establish an individual baseline but would instead default to the statutory baseline. Refiners who sent gasoline to the U.S. in 1990 that was dirtier than the statutory baseline might well decide to petition for an individual baseline, assuming they could satisfy all of the conditions for establishing an individual baseline. In such a case, this might result in certain foreign refiners being allowed to degrade the emissions performance of their gasoline down from its actual 1990 quality to the statutory baseline. Under this approach other foreign refiners might be allowed to establish accurate and verifiable individual baselines that are dirtier than the statutory baseline, and thereby continue to produce at this quality.

In comparison, the current regulatory provisions provide foreign refiners with no choice. As described above, foreign refiners whose 1990 gasoline was cleaner than the statutory baseline may degrade the quality of their gasoline down to the statutory baseline, while foreign refiners whose 1990 gasoline was dirtier than the statutory baseline are required to reformulate to meet the stricter statutory baseline.

It is important to note that EPA does not have any clear evidence as to the actual average quality of gasoline imported into the U.S. in 1990. EPA does not know, for example, whether a significant amount of such gasoline was cleaner than the statutory baseline. While it would be reasonable to assume that at least some imported gasoline was cleaner and some was dirtier than the statutory baseline, EPA is not in a position to quantify this in any reliable manner. As such, it is not clear whether or how much providing foreign refiners with an option in establishing an individual baseline would actually skew the air quality impacts of these programs in a negative direction. As mentioned above, a second major issue EPA has considered involves the technical limits of Methods 1, 2 or 3 in predicting the qualities of that portion of a foreign refiner's 1990 gasoline production that was sent to the U.S.[7]

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[6] EPA considered the option of banning foreign supplies of gasoline that were not produced under a verifiably accurate individual baseline. This option appeared to redress the issue of the loss of a "netting out" effect due to the presumed loss of "cleaner" than statutory baseline foreign gasoline. However, EPA believes that many foreign refiners do not possess adequate data to establish an individual baseline. It has been agreed that the consequence of banning foreign supplies of gasoline, both to the nation's energy security and to competitive pricing, would be unfair.

[7] These technical limits have important implications for the first issue discussed above. For example, if EPA required that foreign refiners

Foreign refiners likely did not send the majority of their gasoline to the United States in 1990. Foreign refiners may not have exported the majority of their gasoline to the United States in 1990. Domestic refiners, on the other hand, are assumed to have distributed (and to continue to distribute) the majority of their gasoline within the U.S. In the absence of actual 1990 data, domestic refiners may calculate individual baselines using models developed by EPA that depend, in part, on the fact that the majority of the modelled gasoline is distributed in the U.S. However, foreign refiners typically did not distribute the majority of their 1990 gasoline within the U.S., rendering the models inappropriate for those refiners.[8]

The third major issue of concern involves whether EPA can accurately verify individual baselines of foreign refiners and effectively enforce standards for foreign produced gasoline based on such individual baselines. EPA was concerned that it would not be able to effectively exercise authority to inspect foreign facilities and require the production of records or samples, or to require accurate auditing of the compliance of foreign operations. This includes, for example, EPA's ability to ensure the accuracy of an individual foreign refiner baseline, EPA's ability to clearly identify the refinery of origin for gasoline imported into the U.S. (the "tracking" issue), and EPA's ability to easily access foreign records, samples, and facilities for inspections and other compliance measures.

With respect to tracking refinery of origin, EPA believes it must be able to establish with certainty which baseline attaches to each specific batch of gasoline imported into the U.S. The distribution of foreign produced gasoline is significantly distinct from domestic distribution patterns. As described in the preamble to the final rule, see 59 FR 7785 (February 16, 1994), the association of a refinery-specific baseline with the gasoline produced at a domestic refinery is relatively uncomplicated, because compliance is determined at the refinery level before fungible mixing in the gasoline distribution system. The source refinery for gasoline is clear before the gasoline leaves the refinery. In the case of all imported gasoline, on the other hand, the gasoline will be transported from the refinery to the U.S. port of entry prior to the point at which the imported gasoline would have to be associated with a foreign refinery-specific baseline. This stage of transportation from the foreign refinery to the U.S. port of entry could be by fungible means for any imported gasoline, with the consequence that fungible mixing could obscure the identity of the source refinery for any batch of imported gasoline. For a discussion of these and other enforcement and compliance related issues, see the preamble to the final rule at 59 FR 7787 (February 16, 1994).

Finally, it is important to place the role of individual baselines in their proper context for the reformulated and conventional gasoline programs. For conventional gasoline, the individual baseline of a refiner or importer establishes the applicable emissions standard for the conventional gasoline they produce or import. On average, a refiner's or importer's conventional gasoline has to meet an emissions performance standard measured by the performance of their individual baseline. If the refiner or importer is assigned the statutory baseline instead of an individual baseline, then performance is measured against the statutory baseline. This performance standard applies on an annual basis starting with 1995. The statutory basis for these requirements are found in section 211(k)(8) of the Act.

The individual baseline plays a much more limited rule in the reformulated gasoline program. For the first three years of that program, three specific fuel qualities are capped at the level of a refiner's or importer's individual baseline.[9] Starting January 1, 1998, a refiner or importer's individual baseline has no relevance in the reformulated gasoline program. This short term requirement is part of the standards adopted by EPA and commonly called the simple model. The refiner and importer specific caps on the three parameters were based on EPA's understanding of the directional impacts of these parameters on emissions, the lack of adequate data to fully model the emissions impacts of these three gasoline parameters when EPA proposed the simple model, and the lead time needed before requiring use of a subsequent, more complex emissions performance model adopted by EPA in the final rule. Further discussion of this may be found in the preamble to the final rule at 59 FR 7720 (February 16, 1994).

The final rule's requirements for individual baselines resolves these various concerns in a straightforward manner. EPA is seeking comment on whether this proposal addresses all of the above concern, in a manner that achieves the environmental goals intended for reformulated gasoline while at the same time addressing the equity concerns that previously have been raised, by placing clear limits and conditions on the use of individual baselines for foreign refiners. These limits and conditions would be designed to address the issues described above—concerns about skewing of air quality benefits in a negative direction by providing options in establishing individual baselines, concerns about the technical limits of the refinery modeling used to establish baselines, and finally concerns over the Agency's ability to adequately verify individual baselines for foreign refiners and adequately ensure compliance by imported gasoline with standards based on individual baselines.

A. Accuracy of Individual Foreign Refiner Baselines

As described in detail above, this proposed amendment provides that parties that desire to establish an individual baseline for a foreign refinery would submit a petition to EPA's Assistant Administrator for Air and Radiation to establish a reliable and verifiable individual baseline. The petitioner would also submit data adequate to establish the volume of gasoline exported to the United States during 1990.

The Assistant Administrator would only approve petitions when the individual baseline had been established with sufficient certainty, to the satisfaction of the Assistant Administrator. The Assistant Administrator's decision whether to approve a petition would depend, in part, on the certainty with which the foreign refiner's 1990 fuel properties and volume data could be verified by a U.S.-based independent baseline auditor and by EPA, as discussed above. In requiring that a petitioner bear the burden of demonstrating to the Assistant Administrator that the

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establish individual baselines, without providing any choice on defaulting to the statutory baseline, then many foreign refiners might not be able to develop such baselines and EPA would confront a situation involving whether or not it should ban the importation of gasoline from such foreign refiners.

[8] EPA believes it is possible that in certain limited situations a foreign refiner may be able to establish a baseline of U.S.-market gasoline quality and quantity. For example, a foreign refiner potentially could establish that in 1990 its refinery produced only a limited number of gasoline blending components, and therefore could be capable of producing only a predictable and limited number of gasoline types from these blending components. In such a case, it is possible that a baseline could be established based on the "cleanest" of the gasoline types, without actually showing that this was the gasoline supplied to the U.S. market. Under this approach, the foreign refiner's baseline would be the most rigorous baseline possible given the refinery configuration.

[9] The three parameters are sulfur, olefins, and T-90 or E300. See § 80.41(h)(2).

individual baseline and the data submitted in support of an individual baseline is accurate and verifiable, and in requiring that a U.S.-based attestor corroborate that demonstration, the amendment provides for appropriate certainty in establishing accurate individual baselines.

EPA requests comment as to whether the proposal would result in appropriate certainty as to any foreign refinery baseline that would be established.

B. Certainty as to Refinery-of-Origin

In the preamble to the final rule, EPA expressed concern about effectively determining the refinery-of-origin for specific batches of imported gasoline so as to determine the appropriate baseline to be applied to the product. However, EPA is proposing and seeking comment on procedures that are designed to ensure that importers effectively track gasoline from the point of gasoline production to the port-of-entry into the U.S.

Strict tracking and segregation of reformulated gasoline that is produced by foreign refiners and that would be subject to an individual baseline is necessary to assure compliance with this program. Only by matching a discrete volume of gasoline with an individual baseline would an importer be able to accurately calculate its compliance with this proposed amendment to the reformulated gasoline program. Further, such tracking and segregation is necessary for EPA to ensure that use of an individual baseline remains within the foreign refiner's volume cap.

Today's proposed amendment of the final rule seeks to provide for certainty with respect to establishing the refinery-of-origin of imported gasoline through the use of independent sampling and testing that would be required upon loading on-board ship at the refinery-of-origin and upon receipt by an importer at a U.S. port-of-entry. The sampling and testing at both ends of the shipment would help to assure that the volume and parameters of the product subject to the individual baseline are identical. Additionally, the independent laboratory would verify the foreign refinery-of-origin before the shipment leaves the foreign port.

The amendment proposes that batch specific information pertaining to the parameters and volume of the batch would be collected by an independent laboratory upon loading of the product and a report filed with EPA. This information would be available for comparison with batch specific information required to be collected by importers upon receipt of product.

Further, the tracking system would help to ensure that EPA could determine that the imported reformulated gasoline produced subject to an individual baseline was not commingled with gasoline produced under another baseline en route from its source to the U.S. port-of-entry.

Today's proposal also would require that an importer exercising the option to use a foreign refinery's individual baseline must demonstrate that an annual attestation engagement is conducted of the foreign refinery for each year of individual baseline use. The engagement would be undertaken by a U.S.-based CPA or firm. This requirement would be equivalent with attest engagement requirements applicable to domestic refiners and importers under the Final Rule. The engagement would verify that the gasoline loaded on-board ship was produced by the refinery for which individual baseline use is claimed.

The practical effect of today's proposal would be to condition the use of individual foreign refinery baselines upon strict tracking of reformulated gasoline. An importer's use of a foreign refinery's individual baseline would depend upon the importer's ability to establish with certainty that the reformulated gasoline for which the individual baseline is claimed was, in fact, produced at the foreign refinery for which the individual baseline is applicable.

EPA requests comment regarding whether there would be appropriate certainty as to the refinery of origin of any imported gasoline that would use an individual foreign refinery's baseline under this proposal.

C. The Limited Potential for Adverse Air Quality Effects From Gaming

It has been argued that the proposed constraints on the use of individual baselines by importers would limit the potential for gaming associated with establishing baselines for imported gasoline, and in consequence the potential for adverse air quality effects from such gaming.

If all foreign refiners sending gasoline to the U.S. established accurate and verifiable baselines, and concerns about tracking refinery of origin and other compliance concerns were resolved, then it has been agreed, those baselines and the gasoline produced under them clearly and easily would lead to the air quality benefits expected from conventional and reformulated gasoline. This might be considered the "ideal", or best possible result. As described earlier, however, there is considerable doubt about whether accurate, verifiable, and enforceable baselines can be expected for *all* foreign refiners.

The Final Rule addresses these problems in effect by requiring all foreign refiners to produce gasoline using the statutory baseline—those cleaner than the statutory baseline are allowed to degrade down to that baseline, while those dirtier than the statutory baselines are required to clean up to that baseline. While the Final Rule would not allow the average quality of foreign produced gasoline to degrade below the statutory baseline, it might in fact require that foreign gasoline be cleaner on average than would be required if all refiners did establish individual baselines.[10]

One concern regarding the approach used in the Final Rule is that it treats all foreign refiners as a class (by assigning the statutory baseline to all imported gasoline), yet the factors that led to grouping foreign refiners as a class may not apply equally to all foreign refiners. The result of the class approach to resolving the foreign refiner baseline issue could be considered unfair to any particular foreign refiner who would be able to accurately establish refinery baselines, and who would be able to establish with certainty the refinery of origin for gasoline imported into the United States. On the other hand, and as has been discussed above, allowing each foreign refiner to choose whether to establish individual refinery baselines creates the potential for gaming with consequent adverse environmental effects. The challenge for EPA, then, is to create a regulatory mechanism for imported gasoline baselines that is as fair as possible to each foreign refiner, but that also achieves the environmental goals intended for reformulated gasoline.

The proposed revisions would allow certain foreign refiners the option to petition for the right to establish individual baselines under carefully controlled circumstances. As discussed above, this proposed scheme has a potential for adverse air quality effects, in comparison to the current Final Rule, because some importers would have an option as to which baseline would apply to imported reformulated gasoline. Presumably, foreign refiners and their U.S. importer business partners would elect to seek to establish individual foreign refinery baselines only if the foreign refinery produced gasoline in 1990 that was "dirtier" than the statutory baseline alternative to an individual foreign refinery baseline. In the case of foreign refineries that produced gasoline in 1990 that was "cleaner" than the statutory baseline, on the other hand, the foreign refiners and their U.S. importer business partners presumably would use the less stringent and less costly statutory baseline option. EPA's "gaming" concern would result from these likely decisions by "dirtier" and "cleaner" foreign refiners. The potential adverse air quality consequence would result from the volume of imported gasoline during 1995 through 1997 that would use a "dirtier"-than-statutory baseline, and the loss to the U.S. gasoline pool during 1995 through 1997 of gasoline produced to meet a "cleaner"-than-statutory baselines. There may or may not be an adverse air quality impact in relation to the "ideal" scenario described above, depending on whether the average quality of gasoline imported from foreign refiners in 1990 was different from the statutory baseline and how much reformulated gasoline is imported in 1995 through 1997.

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[10] This would occur if the average quality of all gasoline imports in 1990 was dirtier than the statutory baseline.

EPA has been unable to identify any foreign refiners other than PDVSA who intend to produce any reformulated gasoline,[11] though there nevertheless could be some because there is no requirement that refiners must announce their intentions at this time. The absence of identified foreign reformulated gasoline refiners (other than PDVSA) does present the possibility that there will be few, if any, foreign reformulated gasoline refiners who would have a "cleaner"-than statutory baseline (but who would opt for the statutory baseline). If true, this would resolve EPA's gaming concern.

Moreover, even to the extent there are foreign refiners who would qualify for "cleaner"-than-statutory baselines EPA believes there is a possibility that their gasoline would nevertheless be cleaner than the statutory baseline, which would limit the likelihood for adverse air quality effects. This possibility was presented to EPA by a foreign refiner who argued that such "clean" refiners may in fact be technologically incapable of relaxing production parameters so as to realize a benefit from the statutory baseline. To the extent this may be true, such "clean" refiners might reduce any adverse air quality impact associated with providing an option to establish individual baselines.

The principal reason limiting the potential for adverse air quality effects from gaming under today's proposal is, however, that use of "dirtier"-than-statutory individual baselines would be restricted. It has been argued that this would in turn limit any adverse air quality effects, in relation to the current final rule.[12] At the same time, any reformulated gasoline imported under an individual baseline would be required to meet the same standards that apply to any other refiner, foreign or domestic, with the same baseline. For the three parameters of interest under the simple model for reformulated gasoline, sulfur, olefins, and T–90, reformulated gasoline produced by a foreign or domestic refiner with an individual baseline would have to meet an annual average limit set at 100% of the individual baseline level for those parameters. This effectively requires that the gasoline stay as clean as it was in 1990, for those three specific parameters.

EPA has considered the level of emissions that would result from gasoline imported under the approach contained in the final rule, versus gasoline imported under the approach described in today's proposal. While no baselines have been established yet for any refiner or importer, PDVSA has submitted to the reformulated gasoline docket a record that describes the baseline it would be able to establish if given the opportunity. The baseline it describes is dirtier than the statutory baseline for some parameters, and cleaner for other parameters. In the case of sulfur and olefins, PDVSA's stated baseline levels would be significantly higher than the statutory baseline: PDVSA's claimed sulfur level is 644 parts per million (ppm), and the statutory baseline level is 339 ppm; PDVSA's claimed olefin level is 22 vol% and the statutory baseline level is 9.2 vol%. The environmental implication is that NO_X emissions are higher with larger sulfur and olefin levels.

Taking into account the volume of PDVSA's gasoline that is used in the Northeast U.S.—its primary market, EPA's preliminary analysis shows that PDVSA's 1995 gasoline would increase overall NO_X emissions there by only 0.08% during the high ozone season,[13] in comparison to the case where PDVSA would produce gasoline to meet the statutory baseline for sulfur and olefins.

Also, PDVSA's 1995 gasoline quality will be approximately equal to the quality of statutory gasoline in terms of VOC emissions, and will be much cleaner in terms of toxics emissions.[14]

The proposed program elements that would help to limit the impact of "dirtier"-than-statutory baselines are the limited volume of a foreign refinery's reformulated gasoline that could use the individual baseline, the limited time period during which the individual baseline could be used, the fact that the individual baseline could be used only for reformulated gasoline, and EPA's belief that the individual baseline option would not be attractive to most foreign refiners.

1. The Volume Limitation on Use of Individual Refinery Baselines

An importer's use of a foreign refinery's individual baseline is proposed to be limited to volumes of reformulated gasoline equivalent to the foreign refinery's 1990 volume of gasoline imports to the U.S. This volume constraint is described above.

The volume cap limiting use of an individual baseline for reformulated gasoline production (until January 1, 1998) to a foreign refiner's 1990 import volumes ensures that the use of an individual baseline is constrained by historical import volumes. Volumes imported above the 1990 constraint would be subject to the importer's statutory baseline. Foreign-produced reformulated gasoline subject to an individual baseline, within the 1990 volume cap limitation, would be measured for compliance against gasoline produced in 1990, and therefore would be at least as clean as the foreign refiner's 1990 gasoline. However, any reformulated gasoline produced by a foreign refiner above the 1990 volume would be evaluated relative to the statutory baseline and therefore would be at least as clean as reformulated gasoline produced using the statutory baseline.

2. The Time Limitation on the Use of Individual Foreign Refinery Baselines

A further constraint on potential adverse air quality effects is the time limit on an importer's use of a foreign refiner's individual baseline. It would be limited to the period commencing when reformulated gasoline is first imported into the U.S. and continues through December 31, 1997. After 1997, individual baselines have no further relevance to the requirements for reformulated gasoline, and all importers and domestic refiners are required by the Final Rule to measure compliance with the reformulated gasoline standards against the statutory baseline. Therefore, the effect of this regulation would be limited to this three year period only.

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[11] EPA does expect some imports of reformulated gasoline under the Final Rule's provision that applies to a foreign refinery that is owned by the U.S. importer and where at least 75% of the refinery's 1990 production was imported into the U.S. These refineries are relevant to this discussion.

[12] It is important to note that the potential for adverse air quality effects discussed in this preamble is in relation to gasoline that would be imported under the approach contained in the Final Rule, i.e., to imported gasoline that meets the statutory baseline. That comparison may not be fair. Another comparison that may be more appropriate would be with imported gasoline that is produced to each foreign refinery's individual baseline, like is done for domestic refiners. When imported gasoline is compared based on individual foreign refinery baselines, there may be no potential for adverse air quality effects from today's proposal.

[13] The high ozone season is the appropriate period for evaluating NO_X emissions, because NO_X is of primary concern as an ozone precursor.

[14] EPA has placed in the docket an analysis of the environmental impacts of the use of gasoline having properties equal to those described by PDVSA.

3. The Number of Foreign Refiners Who Would Seek to Use Individual Foreign Refinery Baselines Would be Limited

This proposal is predicated on the assumption that the costs inherent in producing reformulated gasoline and meeting the requirements of the reformulated gasoline program, including those costs necessary to establish an individual baseline, will deter most foreign refiners from selecting the individual baseline option, thereby further limiting any potential adverse air quality impact. These costs include extensive refinery modifications; costs associated with petitioning EPA for an individual baseline and providing adequate information to establish with certainty that the baseline determination is accurate; a baseline audit; and the record keeping and product tracking associated with complying with the proposed annual compliance audits.

EPA believes that few refiners have made the requisite capital investments necessary to produce reformulated gasoline. Therefore, it currently appears that the number of foreign refiners who would take advantage of this proposed amendment would be limited.

In addition, the limited time period during which individual foreign refinery baselines could be used may limit the number of foreign refiners that would take advantage of this option, because the costs associated with exercising this option described above, could only be recouped within the 1995 through 1997 time frame.

4. Conventional Gasoline Not Affected by This Proposed Amendment

EPA's concern for gaming in the case of conventional gasoline is substantially greater than its concern with respect to reformulated gasoline. First, there is likely to be significantly more conventional gasoline imported into the U.S. than reformulated gasoline. Second, the Final Rule provides that individual baseline will be the basis for conventional gasoline compliance into the foreseeable future while an individual baseline for reformulated gasoline is applicable only until December 31, 1997. Accordingly, due to these volumetric and long term distinctions between reformulated gasolines and conventional gasolines, the potential for adverse air quality impact is significantly larger if individual foreign refinery baselines could be used with conventional gasoline, as compared with the potential if individual foreign refinery baselines could be used with reformulated gasoline.

The Final Rule requires that domestic refiners apply their individual baselines to conventional gasoline production. EPA anticipates that nationwide use of individual baselines will result in gasoline quality that approximately equals the statutory baseline. However, EPA believes that an option to use individual baselines by foreign refiners in the production of conventional gasoline would result in significant skewing, in a negative direction, of the average quality of imported gasoline based on the gaming scenario described above.

A skewing in a negative direction of the average of baselines with respect to foreign conventional gasoline, is of significant concern because EPA anticipates that most foreign sources of gasoline will provide conventional gasoline to the U.S. This assumption is based on EPA's belief that few foreign producers of gasoline have invested in the capital equipment necessary for complying with the reformulated gasoline program. Further, the increased costs of capitalization realized by a refiner entering the reformulated gasoline market would be exacerbated by the continuing costs of overseas shipping under the segregated fuels requirement proposed in this amendment. Accordingly, there appears to be few economic incentives for foreign refiners to reallocate production from conventional to reformulated gasolines.

Thus, EPA is not proposing to change the approach contained in the Final Rule pertaining to baselines for imported conventional gasoline, and EPA expects all or almost all importers to default to the statutory baseline.

EPA requests comment as to the magnitude of any potential adverse air quality consequences that would result from gaming under today's proposal.

D. EPA's Compliance Oversight Authority

The preamble to the Final Rule expresses EPA's concern that it would lack adequate compliance monitoring and enforcement techniques to ensure that foreign refineries comply fully with the reformulated gasoline program. This concern arose out of the perceived need to bring any enforcement actions against importers that would rely on baseline audits and inspections of foreign refiners, and that these foreign refiners may not be subject to the full panoply of enforcement mechanisms available with domestic corporations.

Today's proposed amendment, however, provides for compliance monitoring and enforcement pertaining to foreign-produced reformulated gasoline to focus on domestic importers. Such foreign-produced reformulated gasoline would be subject to the full array of monitoring and enforcement devices available to EPA. It has been argued that importers' potential liability, including but not limited to exposure to potential relegation to compliance with the statutory baseline, will be adequate to ensure that importers would import gasoline using an individual foreign refinery's baseline only where the importer has sufficient confidence the requirements of this program would be met, including the compliance monitoring provisions that require the cooperation of the foreign refiner and the government of the country in which the foreign refiner is located. These compliance monitoring and enforcement provisions appears to be equivalent to EPA's compliance monitoring and enforcement authority over domestic refiners.

The proposal provides that, as a condition for the use of a foreign refinery's individual baseline, EPA would be guaranteed full and immediate access to conduct compliance oversight inspections, collect gasoline samples and perform compliance audits at the foreign refinery. EPA's compliance audits supplement the baseline certification and annual audits specified elsewhere in this proposal. EPA's compliance oversight authority is proposed to last until January 1, 2003, consistent with the statute of limitations governing violations of the reformulated gasoline program and associated statutes governing the submission of information to the U.S. government.

In addition, foreign refiners electing to petition to use an individual baseline would be required to engage a domestic CPA to conduct a baseline certification audit and annual attest engagements. EPA anticipates that and is seeking comment on whether the professional standards governing the conduct of such audits, as well as the amenability of a U.S. CPA to EPA compliance monitoring and enforcement, is adequate assurance that EPA can effectively monitor foreign refiners for program compliance.

E. EPA Seeks Comment on Today's Proposal, or Any Alternative Approaches

Today's proposal is an attempt to resolve the issue of baselines for foreign refiners in a more appropriate manner, with the intent of achieving several important, but different, goals. One goal is that the environmental benefits intended for reformulated gasoline by the Clean Air Act be realized. The other goal is that all regulated parties who are similarly situated be treated alike, with the differences in treatment between domestic and foreign refiners limited to those measures necessary to appropriately accommodate differences in their situations and protect human health and environmental values. EPA recognizes that there may be other methods for regulating imported reformulated gasoline that resolve these two goals in ways that are preferable to the approaches contained both in the Final Rule and in today's proposal. EPA requests comment as to any alternative approaches to regulating imported reformulated gasoline that achieves the environmental benefits required by the Clean Air Act for reformulated gasoline, and that treats domestic and foreign refiners in a manner consistent with the provisions of the GATT.

IV. Public Participation

EPA invites comment on all aspects of today's notice. EPA has specifically requested comments on a number of areas throughout the previous discussion. A list of these and other areas for comment are the following:

- Any alternative approaches to regulating imported reformulated gasoline that achieve the environmental benefits required by the Clean Air Act for reformulated gasoline, and that treat domestic and foreign refiners in a manner consistent with the provisions of the GATT.
- The accuracy of any foreign refinery baseline that would be established under the proposal.
- The identification of the refinery of origin of any imported gasoline that would use an individual foreign refinery's baseline under today's proposal.
- Whether today's proposal would result in the environmental benefits that are intended by the reformulated gasoline provisions of the Clean Air Act.
- The issue of when foreign refinery baseline petitions would be due.
- The appropriate approach for correlating the volume determination at the foreign refinery and at the U.S. port of entry.
- The adequacy of the proposed attest procedures.
- The proposed requirement that independent laboratories and CPA's be U.S. corporations or citizens.
- The proposal for combining gasoline imports in 1994 and 1995 for purposes of applying the proposed volume constraint on use of an individual foreign refinery's baseline.
- The proposed mechanism for calculating an expanded 1990 individual foreign refinery baseline volume for use during 1994 and 1995.

V. Administrative Designation and Regulatory Analysis

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of the potential impacts on portions of the domestic refining and gasoline importing industry. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The issue of baselines for imported reformulated gasoline is discussed generally in section VII-C of the Regulatory Impact Analysis that was prepared to support the Final Rule for reformulated gasoline. A copy of this document may be found in the reformulated gasoline docket, number A-92-12, at the location identified in the **ADDRESSES** section of this document.

The RFA of 1980 requires federal agencies to examine the effects of proposed regulations and to identify significant adverse impacts on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[15] For purposes of the proposed individual foreign refinery requirements for reformulated gasoline, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

The Agency believes that the individual foreign refinery baseline requirements being proposed today are unlikely to have a significant economic impact on a substantial number of small entities. The businesses affected will be either a relatively small number of major domestic oil companies who would compete with imported gasoline that is produced at foreign refineries for which individual baselines are established, or importers who would import gasoline that is produced by foreign refineries for which individual baselines are established. EPA expects the number of foreign refineries for which individual baselines will be established will be small, with the result that the number of affected domestic refiners and importers also will be small.

However, EPA invites comment on the question of significant impacts on small entities. EPA also requests all relevant data which justify any conclusions submitted.

C. The Paperwork Reduction Act

The information collection requirements in this proposal have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C.

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[15] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1591.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St., SW. (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated recordkeeping and reporting burden averaging 4.1 hours per respondent. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M St., SW. (Mail Code 2136), Washington, DC 20460, and to the Office of Information Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VI. Statutory Authority

The statutory authority for the rules proposed today is granted to EPA by sections 114, 211 (c) and (k), and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 21, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.84 is proposed to be added to subpart D to read as follows:

§ 80.84 Individual baselines for foreign refineries.

(a) *Definitions.* For purposes of this section, "foreign refinery" shall mean a specific refinery located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) *Conditions for use of individual foreign refinery baselines.* For purposes of compliance with the reformulated gasoline standards of § 80.41, any importer may use a baseline established for a foreign refinery as the importer's individual baseline, but only for gasoline produced at that foreign refinery and provided that:

(1) The Administrator has approved separate 1990 baseline properties and volume for the foreign refinery, as specified under paragraph (c) of this section;

(2) The importer is able to establish that the imported gasoline was produced at the foreign refinery, as specified under paragraph (d) of this section;

(3) An attest engagement is conducted of the foreign refinery operation for the calendar year during which the separate foreign refinery baseline is claimed by the importer, as specified under paragraph (e) of this section; and

(4) Authorized representatives of the Administrator are given full and immediate access and are allowed to conduct inspections, review records and other documents, collect gasoline samples, and perform audits relating to the foreign refinery, as specified under paragraph (f) of this section.

(c) *Establishing individual foreign refinery baselines.* (1) Any foreign refiner may seek a separate baseline for a foreign refinery by submitting a petition to the Assistant Administrator of EPA's Office of Air and Radiation, such petition to include the Method 1-, 2-, and/or 3-type data as specified in § 80.91 for the foreign refinery, submitted as specified in § 80.93, and verified as specified in § 80.92 except that the baseline auditor shall be an individual who is a United States citizen.

(2) The Assistant Administrator of EPA's Office of Air and Radiation may grant such petition if the properties and volume of the gasoline produced at the foreign refinery and imported for use in the United States in 1990 are established to the satisfaction of the Assistant Administrator.

(3) Any petition under this paragraph (c) of this section shall:

(i) Contain a declaration, signed by the owner or president of the foreign refiner business, that contains the following language:

> The information contained in this individual baseline petition is complete and accurate.
>
> I agree that any EPA inspector or auditor will be given immediate and complete access to the premises of [the name of foreign refinery for which an individual baseline is requested], to any other location where gasoline produced at [the name of the foreign refinery] for use in the United States during the period December 1994 through December 1997 is stored or transported, and to any other location where documents are kept which relate to this baseline petition or to the quality and/or quantity of the gasoline produced at the foreign refinery for use in the United States during the period December 1, 1994 through December 31, 1997, regardless of whether these inspections are announced in advance or are unannounced;

and

(ii) Be submitted by [insert date 6 months after publication of the Final Rule].

(d) *Establishing refinery-of-origin.* In order to establish the refinery-of-origin with regard to any batch of imported gasoline:

(1) The gasoline to which the individual foreign refinery baseline would apply may not be combined with gasoline produced at any other refinery prior to arrival at the United States port-of-entry;

(2)(i) A United States-based independent laboratory shall:

(A) Collect a representative sample of the batch subsequent to loading on the ship that will transport the gasoline to the United States, and prior to departure of that ship from the port serving the refinery-of-origin;

(B) Analyze such sample for each property specified in § 80.65(e)(1) using the methodologies specified in § 80.46;

(C) Independently determine the volume of the batch;

(D) Independently determine the refinery at which the subject gasoline was produced, and that the subject gasoline was not combined with gasoline produced at any other refinery before loading on the ship.

(E) Obtain the EPA-assigned registration number of the refinery at which the batch was produced;

(F) Determine the name and country of registration of the ship used to transport the batch to the United States port-of-entry; and

(G) Determine the date the ship departs from the port serving the refinery-of-origin.

(ii) A laboratory shall be considered independent only if it meets the criteria specified in § 80.65(f)(2)(iii).

(iii) In order to be considered United States-based, the laboratory must be a United States corporation engaged in the business of gasoline sampling and testing, or an individual who is a United States citizen who is engaged in the business of gasoline sampling and testing in the United States.

(iv) The independent laboratory shall submit to the Administrator a report containing the information required under paragraph (d)(2)(i) of this section, within thirty days following the date of the independent laboratory's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the subject gasoline was produced, that the subject gasoline was not mixed with gasoline produced at any other refinery, and a description of the gasoline's movement and storage between production at the source refinery and ship loading.

(v) The refinery-of-origin sampling and testing required under paragraph (d)(2) of this section is in addition to the sampling and testing required at the port-of-entry under §§ 80.65 (e) and (f).

(3) The importer shall meet the sampling and testing requirement, under § 80.65(f)(1)(i), whereby an independent laboratory samples and tests each batch of imported gasoline.

(4)(i) The results of testing of the batch sample collected at the refinery-of-origin under paragraph (d)(2) of this section, when compared to the results of testing of the batch sample collected at the United States port-of-entry under § 80.65(f)(1)(i), must for each parameter be within the range specified for the parameter under § 80.65(e)(2)(i);

(ii) The volume determination for the batch at the refinery-of-origin under paragraph (d)(2) of this section, when compared to the volume determination for the batch at the United States port-of-entry under § 80.65(f), must be within ± 1% where such volume determinations are corrected for temperature and density;

(iii) The ship identified under paragraph (d)(2) of this section must be the same ship that is used to transport the gasoline on arrival at the United States port-of-entry; and

(iv) The refinery-of-origin, volume, shipment date, and ship name under paragraph (d)(2) of this section must be confirmed by the attest engagement under paragraph (f) of this section.

(e) *Attest requirements.* (1) The attest engagement required under paragraph (b)(3) of this section shall be conducted by a United States-based CPA in accordance with the procedures specified in §§ 80.126 and 80.127.

(2) The CPA shall: (i) Obtain a gasoline inventory reconciliation analysis for the current year from the refinery which includes reformulated gasoline, RBOB, conventional gasoline, and other non-finished gasoline petroleum products, whether imported into the United States or not;

(ii) Test the mathematical accuracy of the calculations contained in the analysis; and

(iii) Agree the beginning and ending inventories to the refinery's perpetual inventory records.

(3) The CPA shall: (i) Obtain a separate listing of all tenders during the current year of reformulated gasoline produced at the refinery for use in the United States, such listing to include the date the tender was transported from the refinery, the method of transportation of the tender from the refinery to the point of ship loading, the identification of any storage of the gasoline prior to the point of ship loading, and the name and country of registration of the ship used for transporting the gasoline from the refinery to the United States;

(ii) Test the mathematical accuracy of the calculations contained in the listings;

(iii) Agree the listing's tender volumes to the gasoline inventory reconciliation in paragraph (e)(2) of this section; and

(iv) Confirm that the gasoline comprising the tender was not mixed with gasoline produced at any other refinery between its production and ship loading.

(4)(i) The CPA shall prepare a report on the attest engagement summarizing the procedures performed and the findings in accordance with the § 80.125(b), and shall include in the report, for each tender of reformulated gasoline, the volume, date shipped, and ship name and country of registration.

(ii) The CPA report for each calendar year shall be submitted to EPA not later than May 31 of the following year.

(5) In order to be considered a United States-based CPA, a CPA firm must be a United States corporation, or an individual CPA must be a United States citizen who is a licensed CPA in the United States.

(f) *EPA inspections.* The inspections, reviews, collections, and audits under paragraph (b)(4) of this section may be conducted:

(1)(i) At the foreign refinery;

(ii) At any other location where gasoline produced at the foreign refinery for use in the United States is stored or transported; and

(iii) At any other location where documents are kept which relate to the quality and/or quantity of the gasoline produced at the foreign refinery for use in the United States;

(2) Either announced in advance, or unannounced;

(3) At any time prior to January 1, 2003; and

(4) With relation to any gasoline produced:

(i) During 1990 and any other year for which data are submitted to EPA in support of an individual baseline; and

(ii) For use in the United States during the period December 1994 through December 1997.

(g) *Failure to meet requirements.* If any requirement specified in paragraphs (b) through (f) of this section is not fully met for any calendar year, or if the Administrator determines that the information submitted to EPA under paragraphs (b) through (f) of this section is inaccurate in whole or in part, then compliance with the requirements of §§ 80.41 (h) and (i) by an importer shall be measured, *ab initio* and for each and every calendar year or for such other period of time as the Administrator may determine, from the baseline that otherwise would apply to the importer in the absence of the operation of this section.

(h) *Volume constraints.* (1) During any calendar year the total volume of gasoline imported by one or more importers to which a foreign refinery's baseline applies shall not be greater than the refinery's 1990 baseline volume.

(2) Where the volume of gasoline for which the foreign refinery's baseline is claimed by one or more importers during any calendar year exceeds the refinery's 1990 baseline volume, the refinery's baseline applies only to the first volume of that refinery's gasoline that is imported into the United States that equals the 1990 baseline volume.

(3) In the event any importer uses a foreign refinery baseline in violation of the volume constraint specified in paragraphs (h) (1) through (2) of this section the importer shall, *ab initio*, calculate compliance using the baseline values that properly apply under paragraphs (h) (1) through (2) of this section.

(4) In the event any gasoline is imported before January 1, 1995 for which a separate foreign refinery baseline is claimed:

(i) Such gasoline shall be combined with gasoline imported during 1995 for which the separate foreign refinery baseline is claimed for purposes of the volume constraint specified in paragraphs (h) (1) through (2) of this section; and

(ii) An adjusted 1990 baseline volume for the foreign refinery shall be calculated, for use during the combined 1994 and 1995 period only, by multiplying the 1990 baseline volume for the foreign refinery times 1.17.

[FR Doc. 94–10434 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Children's Television

AGENCY: Federal Communications Commission.

ACTION: Policy Statement; notice of hearing and extension of comment period.

SUMMARY: The Commission will hold a public hearing on the issues raised concerning the implementation of the Children's Television Act of 1990. The Commission will also accept additional comments and reply comments. It has been nearly one year since the last comments were filed in this proceeding. Submission of this more current information will facilitate the Commission's ability to make an informed policy decision.

DATES: Requests to appear at the hearing must be submitted by May 11, 1994; written comments must be submitted by June 8, 1994; and reply comments must be submitted by July 15, 1994.

ADDRESSES: Request to appear at the hearing should be sent to: Larry A. Miller, Video Services Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, NW.—room 702, Washington, DC 20554.

Comments and reply comments should be sent to: Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554 with copies to the Video Services Division.

The hearing will be held at: Federal Communications Commission, Room 856, 1919 M Street, NW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry A. Miller at (202) 632–6993.

SUPPLEMENTARY INFORMATION:

April 20, 1994.

Commission To Hold En Banc Hearing on Children's Television (MM Docket No. 93–48)

The Federal Communications Commission will hold an *en banc* hearing on children's television on Tuesday, June 28, 1994. The hearing will convene at 9 a.m. in Room 856, at 1919 M Street, NW., Washington, DC, and will be open to the public. The Commission has determined that it would be useful to hear oral presentations and a direct exchange of viewpoints on the issues raised in the pending children's television proceeding. The issues in this proceeding focus on the Commission's current definition of informational and educational programming and the amount of informational and educational programming a broadcaster must air to meet its obligation to children under the Children's Television Act. The Commission had earlier issued a Notice of Inquiry, 8 FCC Rcd 1841 (1993) (58 FR 14367, March 17, 1993), in this proceeding, comments were filed on May 7, 1993, and reply comment were filed on June 7, 1993.

Parties wishing to make oral presentations and appear on panels to debate issues at this hearing should submit written requests by close-of-business, Wednesday, May 11, 1994, to: Larry A. Miller, Video Services Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, NW.—room 702, Washington, DC 20554.

Such requests should clearly identify the speaker, the organization represented (if any), relevant experience and training, and the specific topic(s) to be discussed. Appropriate topics include any issues related to the *NOI*, and specifically comments on changes in the availability, quantity, quality and effectiveness of programming directed to the educational and informational needs of children, including standard-length programming, that have occurred between the enactment of the Children's Television Act of 1990 and the present. The Commission is also interested in comments on the economics of providing educational and informational programming for children either to the home or to the classroom.

Depending on the number of requests, it may be necessary to limit the number of presenters. If so, we will select speakers for the hearing in order to achieve broad representation of different viewpoints. With this in mind, interested parties wishing to present similar material are encouraged to propose a single representative or consolidated presentation. The precise format and schedule for the *en banc* hearing, as well as a list of the selected presenters, will be specified in a future public notice; however, we anticipate that presentations will be limited to no more than five minutes.

Persons selected to appear will be required to submit to the Secretary by close-of-business, Wednesday, June 8, 1994, an original and 9 copies of the proposed remarks, a summary of those remarks of no more than two pages, a brief speaker biography, and a description of the organization represented. In addition, 21 copies of the material submitted to the Secretary must be submitted to the Video Services Division by close-of-business on June 8, 1994. Interested persons not desiring to participate or not selected to participate in the *en banc* hearing may file written comments on June 8, 1994. Persons filing written comments only should comply with Sections 1.415 and 1.419 of the Commission's Rules. Persons wishing to respond to testimony presented at the hearing are invited to do so by July 15, 1994.

For more information contact Larry Miller, Video Services Division, (202) 632–6993. Members of the media should contact Maureen Peratino, Office of Public Affairs, (202) 632–5050.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–10119 Filed 5–2–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–038–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
994–054–01, renewal of permit 93–165–01, issued on 07–12–93.	Upjohn Company.	03–25–94	Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2.	Maryland.
94–069–01, renewal of permit 93–105–04, issued on 06–17–93.	Michigan State University.	03–29–94	Cantaloupe plants genetically engineered to express resistance to zucchini yellow mosaic virus.	Michigan.
93–342–01	U.S. Department of Agriculture, Agricultural Research Service.	03–31–94	Tomato plants genetically engineered to express a satellite of cucumber mosaic virus (CMV) for resistance to CMV.	Alabama, Florida, Maryland.
93–364–01	Washington University.	03–31–94	*Arabidopsis thaliana* plants genetically engineered to express tolerance to the herbicide chlorsulfuron.	Missouri.
94–039–04, renewal of permit 90–088–01, issued on 07–11–90.	Upjohn Company.	04–05–94	Cantaloupe and squash plants genetically engineered to express resistance to cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Michigan.
94–038–01	Calgene, Incorporated.	04–06–94	Canola plants genetically engineered to express oil modification genes.	North Dakota.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 26th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–10546 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Grain Inspection Service

Opportunity for Designation in the Little Rock (AR), Los Angeles (CA), and Ohio Valley (IN) areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Little Rock Grain Exchange Trust (Little Rock), Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Ohio Valley Grain Inspection, Inc. (Ohio Valley), will end October 31, 1994, according to the Act, and FGIS is asking persons interested in these designations to submit an application.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before May 31, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Little Rock, main office located in North Little Rock, Arkansas, Los Angeles, main office located in Montebello, California, and Ohio Valley, main office located in Newburgh, Indiana, to provide grain inspection services under the Act on November 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Little Rock, Los Angeles, and Ohio Valley end on October 31, 1994.

The geographic area presently assigned to Little Rock, in the States of Arkansas and Texas, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Arkansas State line from the western Benton County line east to the eastern Clay County line;

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Arkansas State line from the southern Miller County line north to the northern Benton County line.

Bowie and Cass Counties, Texas.

An exception to Little Rock's assigned geographic area is the following location inside Little Rock's area which has been and will continue to be serviced by Memphis Grain Inspection Service: Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas.

The geographic area presently assigned to Los Angeles, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In California: Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Ohio Valley, in the States of Indiana, Kentucky, and Tennessee, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is as follows:

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana.

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky.

Cheatham, Davidson, and Robertson Counties, Tennessee.

Interested persons, including Little Rock, Los Angeles, and Ohio Valley are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning November 1, 1994, and ending October 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 22, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–10476 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity To Comment on the Applicants for the Denver (CO), East Indiana (IN), and Kansas Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by May 31, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 1994, **Federal Register** (59 FR 10108), FGIS asked persons interested in providing official services in the geographic areas assigned to Denver, East Indiana, and Kansas to submit an application for designation. Applications were due by March 31, 1994. There were three applicants. Denver, East Indiana, and Kansas, the only applicants, each applied for the areas currently assigned to them. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 22, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–10477 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Memphis (TN) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Memphis Grain Inspection Service (Memphis) to provide official inspection services under the United States Grain Standards Act, as amended (Act). FGIS also announces that there were no applicants for the Alaska area, and that there will be no designated agency to serve Alaska.

EFFECTIVE DATE: June 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1993, **Federal Register** (58 FR 63332), FGIS announced that the designations of Memphis and Alaska end on May 31, 1994, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by December 31, 1993. Memphis applied for designation in the entire area currently assigned to it. There were no applicants for the Alaska geographic area. FGIS requested comments on the applicant for the Memphis area, and comments on the need for official services in Alaska in the February 1, 1994, **Federal Register** (59 FR 4679). Comments were due by March 2, 1994. FGIS received no comments. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Memphis was able to provide official services in the geographic area for which they applied.

Effective June 1, 1994, and ending May 31, 1997, Memphis is designated to provide official inspection services in the geographic area specified in the December **Federal Register**.

FGIS also determined that, pursuant to the provisions of the Act, there is insufficient need for official services in Alaska to designate an agency. Alaska's designation ends May 31, 1994. Any person desiring official services in Alaska after this date should contact the FGIS office in Olympia, Washington at 206–753–9072 (Fax: 206–586–5257).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 22, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–10478 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity To Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR part 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin January 3, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5148.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Granby Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published week in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yamp and Hans Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

North Park District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below)

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: April 25, 1994.

Elizabeth Estill,

Regional Forester.

[FR Doc. 94–10505 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–11–M

Management Plan Being Developed for Allegheny National Wild and Scenic River; Warren, Forest, and Venango Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement for a Management Plan and Final Corridor Boundaries for the Allegheny National Wild and Scenic River located in northwestern Pennsylvania.

The agency invites written comments and suggestions on the issues to be addressed and management recommendations needed to protect the outstandingly remarkable values of the Allegheny National Wild and Scenic River. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the decision. This EIS will result in an amendment to the Allegheny National Forest Land and Resource Management Plan.

DATES: Comments should be received in writing by May 18, 1994, to ensure timely consideration.

ADDRESSES: Send written comments to Allegheny River Management Plan, Allegheny National Forest, P.O. Box 847, Warren, PA 16365.

FOR FURTHER INFORMATION CONTACT: Susan K. Wingate, Allegheny National Forest, P.O. Box 847, Warren, PA 16365 (814/723–5150).

SUPPLEMENTARY INFORMATION: On April 20, 1992, legislation was signed (Pub. L. 102–271) amending the Wild and Scenic Rivers Act of 1968 to include 85 miles of the Allegheny River as a component of the National Wild and Scenic River System. This act gave a "recreational" classification to all three designated sections of the Allegheny River between Kinzua Dam and Emlenton, PA. The Act directed the Secretary of Agriculture to establish two advisory councils to advise him on the final corridor boundaries and the management of the designated river segments. Approximately 20 percent of the designated river segments are bordered by public lands and 80 percent by private lands.

The decision to be made, based on this environmental impact statement is: What management guidelines and final corridor boundaries will best preserve and protect for present and future generations the outstanding scenic, natural recreational, scientific, historic and ecological values of the Allegheny River while adequately recognizing private land rights?

The following preliminary issues derived from public involvement during the initial river study and the more recent advisory council process, as well as significant issues identified during additional scoping, will be considered in the environmental analysis: (1) Public vs. Private Interests: There is a concern that with the increasing use of the river by the public, the possibility of conflicts between private landowners and river users will increase. Landowners are also concerned about the loss of property rights and increased regulation to protect identified river values. There is also concern that private land use could change the character of the river corridor. (2) River Development: There is concern about what will be proposed, how proposed river development will be managed and how river development will affect municipalities and landowners. There is also concern about how to maintain the river's character and minimize impacts on riparian landowners while developing the economic potential of the river. (3) Land Acquisition: There is a concern that acquisition of land by the Forest Service within the river corridor will result in a loss of tax base for local municipalities.

A range of alternatives will be considered. They will include, as a minimum, the no action alternative that does not recommend any action to implement the Wild and Scenic River designation beyond that which is needed to meet minimum requirements and existing laws; and an alternative that recommends maximum protection of designated sections, including public land purchase and the inforporation of advisory council recommendations. Additional alternatives may be developed from public comments received during the scoping process. The environmental impact statement will disclose the direct, indirect and cumulative effects of implementing each alternative.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. Comments previously submitted during the river study and relevant to the management of the corridor as well as new information submitted will be utilized in the preparation of the draft environmental impact statement. During April 1994, news releases will be mailed to local and regional newspapers, radio stations, etc., and letters will be sent to key contacts and interested and affected publics. Advisory Council meetings will continue to be used as a means to inform the public of the analysis process and to provide for public participation and involvement. Additional meetings may be held in other locations.

The responsible official is Floyd J. Marita, Regional Forester.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1994. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of available in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft environmental impact statement, projected for September 1994, reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by December 1994. This decision will be subject to appeal under 36 CFR 217.3.

Dated: April 7, 1994.

Lionel A. Lemery,

Wild and Scenic Rivers Coordinator.

[FR Doc. 94–10472 Filed 5–2–94; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Recreation Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the times and location of the next meeting of the Recreation Access Advisory Committee.

DATES: The next meeting of the Recreation Access Advisory Committee is scheduled for Friday, May 20, 1994 (8:30 a.m.–5:00 p.m.), Saturday, May 21, 1994 (8:30 a.m.–5:30 p.m.), and Sunday, May 22, 1994 (9:00 a.m.–12:30 p.m.). The schedule of events is as follows:

Friday, May 20, 1994

8:30 a.m.–9 a.m. Convene in Full Committee
9:00 a.m.–12:30 p.m. Discussion of Program and Operational Issues
1:15 p.m.–2 p.m. Review of Rulemaking Process and Federal Advisory Committee Act Requirements
2 p.m.–4 p.m. Sports Facilities Subcommittee Report
4 p.m.–5 p.m. Public Comment Period

Saturday, May 21, 1994

8:30 a.m.–10:45 a.m. Golf Subcommittee Report
10:45 a.m.–12:30 a.m. Developed Outdoor Recreation Facilities and Areas Subcommittee Report
2 p.m.–3:30 p.m. Recreational Boating and Fishing Subcommittee Report
3:30 p.m.–5 p.m. Play Area Settings Subcommittee Report
5 p.m.–5:30 p.m. Public Comment Period

Sunday, May 22, 1994

9 a.m.–11:30 a.m. Places of Amusement Subcommittee Report
11:30 a.m.–12 noon Public Comment Period
12 noon–12:30 p.m. Full Committee Discussion

ADDRESSES: The meeting will be held at the offices of the Disabled American Veterans, 807 Main Avenue, SW., Washington, DC in the auditorium on the lobby level of the building.

FOR FURTHER INFORMATION CONTACT: Peggy H. Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 34. (Voice); (202) 272–5449 (TTY). These are not toll free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Access Board established a Recreation Access Advisory Committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. This advice will be used by the Access Board to develop accessibility guidelines under the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 for newly constructed and altered recreational facilities and outdoor developed areas. The Advisory Committee is composed of owners and operators of various recreational facilities; persons who design recreational facilities or manufacture related equipment; Federal, State and local government officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing the interests of such persons.

The Recreation Access Advisory Committee has formed subcommittees to assist in its work. The subcommittees include: Places of Amusement; Golf; Play Area Settings; Recreational Boating and Fishing; Developed Outdoor Recreation Facilities and Areas; and Sports Facilities. The subcommittees will be presenting their recommendations to the full Committee during the May meeting.

This meeting is open to the public and the meeting site will be accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by May 16, 1994 at (202) 272–5434 ext. 34. (Voice) or (202) 272–5449 (TTY). These are not toll free numbers.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 94–10471 Filed 5–2–94; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will hold a consultation and planning meeting from 9 a.m. until 5 p.m., on Wednesday, May 25, 1994 and Thursday, May 26, 1994, from 9 a.m. to 5 p.m., at the Westin Hotel, 909 North Michigan Avenue, Chicago, Illinois 60611. The purpose of the meeting is to gather information regarding civil rights issues facing Asian Americans in Metropolitan Chicago and to discuss other current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Faye M. Lyon or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 25, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–10559 Filed 5–2–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, May 25, 1994, at the Holiday Inn-Downtown, 120 W. Broadway in Louisville, Kentucky. The meeting will include: (1) A discussion of the status of the Commission and the State Advisory Committees; (2) a discussion of civil rights issues and progress in the State; and (3) review of a draft report on "Bigotry-Related Violence in Kentucky."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Thelma Clemons, 502–893–1055 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 26, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–10560 Filed 5–2–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than May 31, 1994.

EFFECTIVE DATE: May 3, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty order or findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping duty proceeding	*Date of finding/order*
Japan: Impression Fabric (A–588–066). Contact: Joseph Fargo/Richard Rimlinger (202) 482–4733	43 FR 12344, 05/25/78
Dominican Republic: Portland Cement (A–247–003). Contact: Joseph Fargo/Richard Rimlinger (202) 482–4733	28 FR 4507, 05/04/63
Argentina: Rect. Carbon Steel Tubing (A–357–802). Contact: Sally Hastings/John Kugelman (202) 482–5253	54 FR 22794, 05/26/89
Taiwan: Pipe and Tube (A–583–008). Contact: Barbara Victor/John Kugelman (202) 482–5253	49 FR 19369, 05/07/84
Brazil: Pipe Fittings (A–351–505). Contact: Michael Diminich/Richard Rimlinger (202) 482–4733	51 FR 18640, 05/21/86
South Korea: Pipe Fittings (A–580–507). Contact: Michael Diminich/Richard Rimlinger (202) 482–4733	51 FR 18917, 05/23/86
Taiwan: Pipe Fittings (A–583–507). Contact: Dennis Askey/Wendy Frankel (202) 482–5253	51 FR 18918, 05/23/86
Turkey: Steel Pipe and Tube (A–498–510). Contact: Gayle Longest/Kelly Parkhill (202) 482–2786	51 FR 17784, 05/15/86
Brazil: Iron Construction Castings (A–351–503). Contact: Brian Albright/Maria Mackay (202) 482–2786	51 FR 17220, 05/09/86

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings by May 31, 1994.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 28, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–10712 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Wednesday, June 8, 1994, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on the Institute's laboratory plans, a progress report and program definition of the Advanced Technology Program, Institute budget update; and tours to the Optical Fiber Geometry Standards Laboratory and to the Pulsed Tube Refrigeration Laboratory.

DATES: The meeting will convene June 8, 1994, at 8:30 a.m. and will adjourn at 5 p.m. on June 8, 1994.

The discussion on NIST Budget, scheduled to begin at 3:50 p.m. and end at 5 p.m. on June 8, 1994, will be closed.

ADDRESSES: The meeting will be held in Conference Room 1103, Radio Building, National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 14, 1994, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: April 12, 1994.

Samuel Kramer,

Assocaite Director.

[FR Doc. 94–10585 Filed 5–2–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D.042894B]

Marine Mammals

AGENCIES: The Advanced Research Projects Agency (ARPA), Department of Defense in cooperation with National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement and request for comment.

SUMMARY: The ARPA, in cooperation with the NMFS, intends to prepare an environmental impact statement (EIS), according to the National Environmental Policy Act (NEPA), on an application for a scientific research permit to allow harassment of marine mammals and sea turtles by a low frequency sound source, and to monitor the effects thereof.

DATES: Comments are requested by June 15, 1994. The public hearing and scoping meeting will be held on May 16, 1994.

ADDRESSES: Comments and requests for additional information should be addressed to: Ralph W. Alewine, III, Ph.D., Director, Advanced Research Projects Agency, NMRO, 3701 North Fairfax Drive, Arlington, VA 22203–1714, (703) 696–2246. The public hearing and scoping meeting will held at the Santa Cruz Civic Auditorium, 307 Church Street, Santa Cruz, CA.

SUPPLEMENTARY INFORMATION: An application for a scientific research permit has been submitted by Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate (ATOC) Program, 9500 Gilman Drive, La Jolla, CA 92093–0225. The applicant is requesting authorization to take (by harassment) several species of cetaceans, pinnipeds, and sea turtles in California coastal waters, during a study designed to assess the effects of low frequency sound associated with the ATOC program on marine mammals and sea turtles. The proposed research is a pilot project which is intended to provide information which can be used in assessing the potential environmental effects of continuing the ATOC program in a broader context. If a decision is made to continue funding for the broader ATOC program, any potential environmental effects will be assessed in a separate environmental analysis.

The subject research was proposed to be conducted in California waters from April 1994 through March 1996. As currently proposed, the sound source will be located due west of Pt. Sur, California at 850–950 m depth. The maximum duty cycle will be 8%, with a transmission bandwidth of 20 Hz at a level of 195 dB (re 1 μPa at 1m), and with a spectrum level for the center frequency (70 Hz) at 182 dB. The effects of these transmissions on marine mammals and sea turtles will be monitored through the authority of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (EIS) of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215. ARPA and NMFS invite interested parties to participate in determining the scope of significant issues to be addressed in the EIS. Significant issues currently under consideration by ARPA and NMFS are: the potential effects of the proposed low frequency sound source on marine mammals, sea turtles, and other marine resources, including fish; alternatives with respect to site selection; and, as a related issue, the purpose of the ATOC program, and an evaluation thereof as compared to other possible alternatives for assessing global warming. ARPA and NMFS will also consider as part of the scoping process, comments received at a public hearing to be held in California on May 16, 1994, from 5 p.m. to 10 p.m. at the Santa Cruz Civic Auditorium, 307 Church Street, Santa Cruz, California co-sponsored with the Monterey Bay National Marine Sanctuary. The period from 5 p.m. to 6 p.m. will be allotted for the applicant to provide a brief description of an udpated research program. Upon completion of a draft EIS on the proposed application, ARPA and NMFS will solicit public comments on it, as well.

Dated: April 28, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service, Department of Commmerce.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10667 Filed 4–29–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 042294E]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public meeting on May 100912, 1994, at the Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX; telephone: (512) 887091600. Related committee meetings will be held on May 9 and 10, 1994.

The Council will meet on May 10, from 3 p.m. until 5 p.m. p.m. The Council will receive public testimony on Amendment 5 to the Stone Crab Fishery Management Plan, on Amendment 7 to the Shrimp Fishery Management Plan, on Amendment 10 to the Reef Fish Fishery Management Plan, and on Mackerel Total Allowable Catch and Bag Limits and the South Atlantic amendment to the Coral and Coral Reefs Fishery Management Plan in the area of jurisdiction from 3:15 until 5:45 p.m. (NOTE: Testimony cards must be turned in to staff before the start of public testimony). From 5:45 p.m. until 6 p.m., the Council will take action on Shrimp Amendment 7.

The Council will reconvene on May 11 at 8:30 a.m. to receive the Panel report on the NMFS Shrimp Effort Data System, previous Council Actions/Information, Background and Overview of Shrimp Trawl Bycatch Research Plan, Bycatch Characterization, Finfish Mortality Estimates, Bycatch Reduction by Turtle Excluder Devices, Bycatch Reduction Devices, Social and Economic Research, and Predator/Prey Bycatch Reduction Model. The meeting will adjourn at 5 p.m. and reconvene on May 12 at 8:30 a.m. to receive a presentation of Fishery Provisions of Draft Environmental Impact Statement for the Florida Keys National Marine Sanctuary until 10 a.m. From 10 a.m. until 11:30 a.m. the Council will receive reports of the Mackerel Management Committee, from 11:30 a.m. until 11:45 a.m. from the Stone Crab Management Committee, from 11:45 a.m. until 12 noon from the Scientific and Statistical Selection Committee, from 1:30 p.m. until 2:30 p.m. from the Reef Fish Management Committee, from 2:30 p.m. until 2:45 p.m. from the Habitat Protection Committee, from 2:45 p.m until 3 p.m. from the Migratory Species Management Committee. The reports will be followed by Clarification of Council Intent (Reef Fish Amendment 7), Enforcement Reports, the Director's Reports, and other business. This meeting will adjourn at 4:15 p.m.

Committees will convene at 11 a.m. on May 9, beginning with meetings of the Migratory Species Management Committee, the Shrimp Management Committee and the Stone Crab Management Committee and will recess at 5:30 p.m. The meetings will reconvene at 8 a.m. on May 10, with the Mackerel Management Committee, and the Habitat Protection Committee. The meetings will adjourn at 2 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228092815.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by May 2, 1994.

Dated: April 25, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-10467 Filed 5-2-94; 8:45am]

BILLING CODE 3510-22-F

[I.D. 042294F]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee and Surf Clam and Ocean Quahog Industry Advisory Subcommittee will hold a meeting on May 17, 1994, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meetings will begin at 10 a.m.

The following topics will be discussed:

(1) Amendment 9 to the Surf Clam and Ocean Quahog Fishery Management Plan;

(2) The vessel call-in requirement, and

(3) Transfers of individual transferable quotas.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least 5 days prior to the meeting date.

Dated: April 25, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-10468 Filed 5-2-94; 8:45am]

BILLING CODE 3510-22-F

[I.D. 042594D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a scientific research permit (P567).

Notice is hereby given that Dr. Peter Lutz of Florida Atlantic University has applied in due form to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

The applicant requests authorization to conduct a detailed study on the daily movements and habitat usage of green sea turtles (*Chelonia mydas*) and to relate these activities to local topography and flow patterns. The purpose of the comparisons is to provide an understanding of the spatial distribution of the sea turtles and to allow researchers to forecast the impact of oil spills on the turtles, in order to take timely remedial action. The applicant requests this authorization for a duration of two years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–2322); and

National Marine Fisheries Service, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813-893-3141).

Dated: April 26, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-10501 Filed 5-2-94; 8:45a.m.]

BILLING CODE 3510-22-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Establishing a Report-Based Contract Month Cycle for the Live Hog and Frozen Pork Bellies Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Change.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to its live hogs and frozen pork bellies futures option contracts. The proposed amendments will establish a "report-based" contract month trading cycle. Trading in each contract month of the cycle will occur only during a two-week period immediately preceding the release of the United States Department of Agriculture's (USDA's) quarterly "Hogs and Pigs" report.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that publication of the proposed amendments is in the public interest. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before June 2, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the report-based contract month cycle for the live hog and frozen pork bellies futures option contracts.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: Under the existing terms of the live hogs and pork bellies futures option contracts, the CME lists "regular cycle" option contract months which are exercisable into each of the contract months listed by the CME for the underlying live hogs and pork bellies futures contracts.[1] Currently, all live hogs option contract months expire on the first Friday of the underlying futures contract month. All but one of the contract months listed for the pork bellies option contract expire on the last Friday that precedes by at least three days the first business day of the underlying futures contract month.[2]

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[1] For the live hogs futures contract, the CME currently lists the following annual cycle of contract months: February, April, June, July, August, October and December. For the pork bellies futures contract, the CME currently lists contracts months in the following annual cycle: February, March, May, July and August.

[2] In the case of pork bellies, there currently are two option contract months based on the underlying February futures contract month: one contract month that expires on the last Friday that

The CME presently lists for trading at all times the nearest five live hogs option contract months and the nearest four pork bellies option contract months.[3]

The pork bellies option contract's existing terms provide for the listing of 11 strike prices in intervals of two cents per pound at the commencement of trading in a contract month, including the strike price nearest to the previous day's settlement price and the next five strike prices above and the next five strike prices below that strike price. The pork bellies option contract currently provides for the listing of additional strike prices as necessary to maintain the listing of at least the next five strike prices above and the next five strike prices below the prevailing prices for the underlying futures contract month.

The live hogs option contract currently provides for the listing at the commencement of trading in a contract month of all strike prices in intervals of two cents per pound that fall within the range of ten cents above and ten cents below the previous day's settlement price for the underlying futures contract month. In addition, the live hogs option contract currently provides that, when a contract month becomes the next-to-expire contract month, all strike prices that fall within a range of six cents per pound above or six cents per pound below the previous day's settlement price will be listed in intervals of one cent per pound. The live hogs option contract's existing terms also provide for the listing of additional strike prices as necessary to ensure that all strike prices at the specified price intervals are listed within the above-noted ranges of ten and, as appropriate, six cents above and below the prevailing prices for the underlying futures contract month.

The proposed amendments would provide for the listing of a "report-based" cycle of contract months for the live hog and frozen pork bellies option contracts, in addition to the listing of the "regular cycle" of option contract months currently provided for in the contracts' rules.[4] Each report-based option will have a trading life of two weeks. Specifically, a report-based option contract month will be listed on the first business day of the calendar week preceding the week in which the USDA releases the quarterly "Hogs and Pigs" report[5] and will expire on the last business day of the week in which the report is released.[6]

For report-based options in live hogs, the underlying futures contract will be the second-nearest futures contract to delivery. For example, the underlying futures contract for a report-based option that is listed in March in connection with the release of the March Hogs and Pigs report would be the June futures contract month. Similarly, the underlying futures contracts for the other report-based options to be listed during the calendar year are: the August futures contract month for the option listed during June; the December futures contract month for the option listed in September; and the April futures contract month for the option listed in December. The CME shall list initially, and thereafter maintain, put and call live hogs report-based options with strike prices at one-cent intervals in a range of six-cents above and below the previous day's settlement price of the underlying futures contract, and at two-cent intervals in a range 10 cents above and below the previous day's settlement price of the underlying futures contract.

The underlying futures contract months for pork bellies report-based options are: the May futures contract month for the option listed in March; the August futures contract month for the option listed in June; the February futures contract month for the option listed in September; and the March futures contract month for the option listed in December. The CME shall list initially and maintain pork bellies report-based put and call options at eleven strike prices listed in two-cent intervals, including the strike price that is nearest the previous day's settlement price of the underlying futures contract, and the next five higher, and the next five lower strike prices.

The proposed amendments will continue to specify the listing of the "regular cycle" of option contract months and the listing of strike prices for such months in the same manner as provided for in the contracts' existing terms.

In support of the proposed amendments, the CME states the following:

> Options on futures allow hedgers to shield themselves from the adverse impact of a ["Hogs and Pigs"] report while retaining much of the ability to benefit from a favorable market response. However, for hedgers using options on the more distant contract months, the high cost of buying an option—due to the large time value component of the option premium—can outweigh the benefits of protection from an unfavorable market reaction. As a result, many potential hedgers are effectively priced out of the option market.
>
> Short-dated options would address this problem. Since these options would be traded for such a short time, the time value component of the option premium would be negligible, and therefore the total premium would be substantially less than for a traditional long-dated option, all other things being the same. This would make short-dated options an attractive risk-management tool for hedgers who require protection around the release of these critical reports, and particularly those whose usage of options is currently limited due to the cost of the premium.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at

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is more than three business days prior to the first business day of February and a contract month which expires on the third Friday of the November which immediately precedes the underlying February futures contract month.

[3] For the pork bellies option contract, the CME lists the nearest five option contract months when one of the nearest five contract months is the existing option month that is based on the February futures contract month but expires during the preceding November.

[4] Under the proposals, the regular cycle option contract months for pork bellies will include both of the above-noted existing option contract months that are based on the February futures contract month.

[5] These quarterly reports are released late in the months of March, June, September and December. The exact dates on which the reports will be released during a given year are published by the USDA during the last calendar quarter of the preceding year.

[6] In some cases, the USDA Hogs and Pigs report will be released after trading ceases on the last trading day for the proposed report-based options. For example, the most recent Hogs and Pigs report was released at 2 p.m., Central Time, on Friday, March 25, 1994 (the USDA releases all Hogs and Pigs reports at 2 p.m., Central Time, on the scheduled release day, which typically is either a Thursday or Friday). The release time for this report would have followed the 1 p.m., Central Time, close of trading for live hogs and pork bellies on the last trading day of the report-based options for that month if such options had been available for listing during March 1994. In such cases, persons who hold report-based option positions after trading ends on the last trading day would have the right to choose whether to exercise such options into the underlying futures contract after the USDA report is released. In this respect, the option contracts' current terms permit persons holding option positions after trading ceases on the last trading day to submit to the CME a notice that they wish to exercise their report-based option positions until 7 p.m., Central Time, on the last trading day. For persons holding in-the-money report-based options, the option contracts' existing rules provide that such options will be automatically exercised by the CME unless instructions to the contrary are submitted to the CME by the option holder by 7 p.m. on the last trading day.

the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC on April 26, 1994.

Blake Imel,

Acting Director, Division of Economic Analysis.

[FR Doc. 94–10464 Filed 5–2–94; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service, gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The Board advises the Director of the CCC concerning the administration of the program and assists in the development and administration of the Corps. This meeting of the Board will discuss the purpose and general status of the program. The meeting will be open to the public up to the seating capacity of the room.

DATES: May 20, 1994, 8:30am–4 pm.

ADDRESSES: Washington VISTA Hotel, 1400 M Street, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: To assure adequate accommodation contact Dr. Alice McGill, Special Assistant to the Director, CCC at 1100 Vermont Ave., NW., Washington, DC 20525; (202) 606–5000 ext. 179 or (202) 606–5256 (TDD) prior to May 16, 1994.

Dated: April 25, 1994.

Donald L. Scott,

Director.

[FR Doc. 94–10465 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0105]

Clearance Request for Certification of Commercial Pricing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0105).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Certification of Commercial Pricing.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This clearance covers the extension of reporting requirements as required by 41 U.S.C. 253e on Certification of Commercial Pricing. The clauses at FAR 52.215–32 and 52.215–35 require that offerors/contractors certify to the best of their knowledge and belief that prices offered for certain spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial sales price at which such parts were sold during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, provided that in no event shall this period be less than 30 days in duration. All items for which prices offered are higher than the lowest commercial sales price discussed above must be identified and a written justification for the differences supplied.

The commercial pricing information is used by contracting officers to ensure that the Government does not pay prices for commercial spare and repair parts that exceed the lowest commercial sales prices at which such items are sold by the contractor to the general public unless the price differences are justified. Without the information, the Government may pay prices for such supplies that are higher than prices paid by other customers.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *120* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *303*; responses per respondent, *1*, total annual responses, *303*; preparation hours per response, *120*; and total response burden hours, *36,360*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *303*; hours per recordkeeper, *160*; and total recordkeeping burden hours, *48,480*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0105, Certification of Commercial Pricing, in all correspondence.

Dated: April 18, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–10562 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0096]

Clearance Request for Patents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0096).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has

submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Patents.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of $25,000 (sections 27.202–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.204–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *30*; responses per respondent, *1*; total annual responses, *30*; preparation hours per response, *.5*; and total response burden hours, *15*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: April 18, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–10563 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–34–M

Office of the Secretary

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, May 18, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II Section 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10539 Filed 5–2–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, May 17, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of election devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10538 Filed 5–2–94; 8:45 am]

BILLING CODE 5000–04–M

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1800, Thursday, 12 May 1994.

ADDRESSES: The meeting will be held at Hyatt Regency Monterey, Spyglass II, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10537 Filed 5–2–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 18 May 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994. Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10254 Filed 5–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24 May 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, maybe contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10255 Filed 5–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 May 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10256 Filed 5–2–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 2, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Wallace McPherson, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Wallace McPherson (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or

Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Wallace McPherson at the address specified above.

Dated: April 28, 1994.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Final Performance Report for the Library Services for Indian Tribes and Hawaiian Natives Program.

Frequency: Annually.

Affected Burden: State or local governments.

Reporting Burden: Responses: 250. *Burden Hours:* 625.

Recordkeeping Burden: Recordkeepers: 250. *Burden Hours:* 300.

Abstract: This report form is used to determine the use of grant funds awarded by the Library Services for Indian Tribes Program. The Department will use the information to evaluate project performance.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for the Fulbright-Hays Seminars Abroad Program.

Frequency: One time per application.

Affected Public: Individuals or households.

Reporting Burden: Responses: 600. *Burden Hours:* 600.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: The Fulbright-Hays Seminars Abroad Program provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject area of the social sciences, social studies, and the humanities. Applicants will use these forms to apply to this program. Collected data will be used to evaluate the applications.

[FR Doc. 94–10553 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.246C]

Braille Training Program; Notice Inviting Applications For New Awards for Fiscal Year (FY) 1994

Purpose of Program: To pay all or part of the cost of training in the use of braille for personnel providing vocational rehabilitation services or educational services to youth and adults who are blind. This program will provide support to establish or to continue projects that develop braille training materials and provide in-service or pre-service training in the use of braille and methods of teaching braille.

Eligible Applicants: State agencies and public or nonprofit agencies and organizations, including institutions of higher education.

SUPPLEMENTARY INFORMATION: The Braille Training Program is authorized under Title VIII of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 760–762).

Deadline for Transmittal of Applications: June 29, 1994.

Deadline for Intergovernmental Review: August 29, 1994.

Applications Available: May 11, 1994.

Available Funds: $400,000.

Estimated Range of Awards: $180,000–$210,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Statutory Requirements

The statutory requirements in section 21(b)(6), section 302(a), with the exception of the first sentence, sections 302(b) and (c), paragraphs (1) and (2) of section 302(g), section 306, and section 803(b) apply to this program.

Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priorities

(1) Training approaches that will recruit and train minority and underrepresented groups, including individuals for whom English is a second language.

(2) Training in the braille codes used for mathematics (Nemeth code) and music.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications: Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

FOR FURTHER INFORMATION: Bob Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322 Switzer Building, Washington, DC. 20202–2649. Telephone (202) 205–8291.

Program Authority: 29 U.S.C. 774.

Dated: April 28, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–10554 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Finding of No Significant Impact for the Urgent-Relief Acceptance of Foreign Research Reactor Spent Nuclear Fuel

AGENCY: United States Department of Energy (DOE).

ACTION: Finding of no significant impact.

SUMMARY: In compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq., the Council on Environmental Quality's implementing regulations, 40 CFR parts 1500–1508, DOE's implementing procedures, 10 CFR part 1021, and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, the DOE has prepared an Environmental Assessment (DOE/EA–0912, April 1994) to evaluate the potential environmental impacts of the proposed urgent-relief acceptance of foreign research reactor spent nuclear fuel.

The Environmental Assessment analyzed the potential environmental impacts under the proposed action of accepting up to 409 spent nuclear fuel elements from eight reactors in Europe for storage in an existing DOE wet storage facility to meet the urgent needs of certain foreign research reactor operators and to avoid failure of a key United States nuclear weapons nonproliferation objective of minimizing and eventually eliminating the use of highly enriched uranium in civil programs worldwide. Specifically, the Environmental Assessment analyzed the potential impacts of transporting the spent nuclear fuel elements by commercial or chartered vessel from eight reactors in Europe to any one of five ports of entry in the United States (Wilmington, North Carolina; the Army Military Ocean Terminal at Sunny Point, North Carolina; Charleston, South Carolina; Savannah, Georgia; and Jacksonville, Florida), off-loading the spent fuel at the port of entry and transporting it by truck or rail to the Savannah River Site, near Aiken, South Carolina; and storing the spent fuel there until decisions are made regarding interim storage and ultimate disposition. The Nuclear Waste Policy Act authorizes ultimate disposal of the spent fuel in a geologic repository.

In October 1993, DOE provided a draft Environmental Assessment for comment to the States of Georgia and South Carolina, and the Commonwealth of Virginia, and interested individuals and organizations. In February 1994, DOE provided a revised draft Environmental Assessment to the States of Florida, Georgia, North Carolina, and South Carolina, the Commonwealth of Virginia, and to individuals and groups known to have an interest in the proposed action, and requested that comments on the draft Environmental Assessment be submitted by March 7, 1994. On February 10, 1994, Federal, State and local government representatives, citizen groups, individuals and members of the international community attended a meeting in Washington, DC, to present their views concerning the proposed action. DOE also held public meetings in communities potentially affected by the proposed acceptance of foreign research reactor spent fuel. On March 18, 1994, the comment period on the draft Environmental Assessment was extended until April 8, 1994, to provide an additional opportunity for stakeholders to provide comments. The Environmental Assessment has been revised, where appropriate, to reflect comments received during the comment period.

Based on an evaluation of the use of either commercial or chartered vessels, the proposed ports of entry and alternative modes of transporting the spent nuclear fuel (truck or train) from the port of entry to the Savannah River Site, DOE has concluded that no significant impact would result from receipt of the spent fuel at any of the five proposed ports and overland transport by rail or truck from the port of entry to the Savannah River Site. Therefore, based on the analysis in the Environmental Assessment and after careful consideration of all comments from Federal, State and local officials, members of the public and from the international community, DOE has determined that the acceptance of up to 409 spent nuclear fuel elements from eight foreign research reactors in Europe for storage at the Savannah River Site does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act. Accordingly, an Environmental Impact Statement is not required and the DOE is issuing this Finding of No Significant Impact.

However, upon further consideration, and in an effort to balance the domestic and international interests at stake, DOE has decided to implement the proposed action as follows. The spent fuel will be shipped either by commercial or chartered vessel from Europe to the Army's Military Ocean Terminal at Sunny Point, North Carolina to the maximum extent practicable (rather than allowing the shipper to select from among any one of the five proposed ports as described in the Environmental Assessment), and transported overland by rail (rather than truck). Should DOE determine that another port or mode of transport (from among those considered as the proposed action) is necessary, DOE will provide direct notice of the change to State and local government officials of the affected States and will notify the public through local media and other means, as appropriate.

ADDRESSES AND FURTHER INFORMATION: Persons requesting additional information regarding this action or desiring a copy of the Environmental Assessment should contact: Mr. David Huizenga, Office of Environmental Management, U.S. Department of Energy (Mail Stop EM–30), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9441. Copies of the Environmental Assessment are available for public review at the following DOE reading rooms and public libraries:

Aiken, South Carolina
  DOE Public Reading Room, Gregg-Graniteville Library, 171 University Parkway, Aiken, SC 29801, (803) 641–3465
Charleston, South Carolina
  Charleston County Public Library, 404 King Street, Charleston, SC 29403, (803) 723–1645
Savannah, Georgia
  Chatham County Public Library, 2002 Bull Street, Savannah, GA 31499–4301, (912) 234–5127
Jacksonville, Florida
  Haydon Burns Public Library, Attn: Technical Services Dept., 122 N. Ocean Street, Jacksonville, FL 32202, (904) 630–2665
Wilmington, North Carolina
  New Hanover County Public Library, Attn: Daniel Horn, 201 Chestnut Street, Wilmington, NC 28401, (910) 341–4390
Brunswick County, North Carolina
  Brunswick County Manager's Office, Attn: Joyce Johnson, P.O. Box 249, 45 Courthouse Drive, Bolivia, NC 28422 (910) 253–4331
Washington, DC
  DOE Freedom of Information, Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020

For general information regarding DOE's National Environmental Policy Act process, please contact: Ms. Carol M. Borgstrom, Office of National Environmental Policy Act Oversight, U.S. Department of Energy (Mail Stop EH–25), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In the 1950's, as part of the "Atoms for Peace" program, the United States began providing assistance in the peaceful application of nuclear technologies to countries that agreed to forego the development of nuclear weapons. This assistance included the provision of highly enriched uranium for use in research reactors around the world. After irradiation in the reactor, the used (spent) fuel was transported to the

United States, where it was reprocessed to extract the uranium still remaining in the spent fuel. In this way, the United States maintained control of the highly enriched uranium, which otherwise could be used to make nuclear weapons.

To reduce the danger of nuclear weapons proliferation, the United States began a program in 1978 aimed at minimizing and eventually eliminating the use of highly enriched uranium in civilian reactor programs worldwide. This effort (the Reduced Enrichment for Research and Test Reactors Program) was directed at replacing the highly enriched uranium used in research reactors with low enriched uranium, a material that is not directly usable in nuclear weapons. Research reactors are of particular interest because the major civilian use of highly enriched uranium is as fuel in research reactors. If research reactors worldwide were to convert to low enriched uranium fuels, highly enriched uranium essentially would be eliminated from use in civil commerce.

For research reactors converting to low enriched uranium fuel, acceptance of spent fuel by the United States was viewed as essential to offset the substantial expenses and reduction in reactor efficiency and capability resulting from conversion. The United States accepted highly enriched uranium spent fuel for several decades, until the program was allowed to expire in 1988.

DOE decided in mid-1993 to prepare an Environmental Impact Statement on a new proposed policy to accept, over a 10–15 year period, up to 15,000 spent fuel elements containing uranium enriched in the United States. The goal of the proposed long-term policy would be to recover highly enriched uranium exported from the United States, while giving foreign research reactor operators sufficient time to develop their own long-term solutions for storage and disposal of spent fuel. Although the Environmental Impact Statement is under preparation, DOE does not expect to complete the analysis and make a decision on whether to implement the policy until mid to late 1995.

Because DOE has not accepted any spent fuel containing uranium enriched in the United States for more than five years, several foreign research reactor operators are running out of storage capacity and facing safety and regulatory issues associated with the presence of spent fuel at their sites. If the United States is unable to commit now to the near-term acceptance of a small amount of foreign research reactor spent fuel, several reactor operators soon will either shut down their reactors or ship their spent fuel offsite for reprocessing. Neither option would serve the nonproliferation interests of the United States. Thus, at the urging of the Department of State, DOE is proposing to accept a small number of highly enriched uranium spent fuel elements in the near term for storage in an existing federal facility in South Carolina.

DOE believes that preparation of the Environmental Assessment, which analyzes the potential environmental impacts of the proposed urgent-relief acceptance of a small number of spent fuel elements before the Environmental Impact Statement is completed, fully complies with the National Environmental Policy Act and its implementing regulations. The proposed near-term acceptance is justified independently of the decision on whether to establish a new policy on the proposed long-term acceptance of foreign research reactor spent fuel. Until the Environmental Impact Statement is completed and a decision made whether to implement the proposed long-term acceptance policy, the proposed acceptance of a small number of spent fuel elements is necessary to maintain the United States program of encouraging the conversion by research reactors to low enriched uranium fuel. Further, while there is an obvious relationship between the two proposals, a decision to accept such a small number of fuel elements does not foreclose or prejudice future decisions regarding establishment of a new spent fuel acceptance policy, or the decisions regarding interim storage or ultimate disposition of spent nuclear fuel. (In the Programmatic Spent Nuclear Fuel Management Environmental Impact Statement, due to be completed by June 1995, DOE is considering where to manage all spent fuel within the DOE complex nationwide for the interim period prior to ultimate disposition.)

In October 1993, to ensure that countries currently possessing spent fuel continue to support the nonproliferation initiatives of the United States embodied in the Reduced Enrichment for Research and Test Reactor Program until the ongoing Environmental Impact Statement can be completed, DOE issued for comment a draft Environmental Assessment which evaluated the proposed urgent-relief acceptance of up to 700 elements of foreign research reactor spent nuclear fuel containing uranium enriched in the United States. It was apparent from the comments that DOE received in response to the October 1993 draft that many people did not agree that there is a need for the United States to accept this spent fuel. Others expressed concerns regarding DOE's plans for implementing the proposed action. Subsequent to the release of the October 1993 draft Environmental Assessment and after consideration of comments received, teams of experts from the United States visited foreign research reactors in Europe and Australia to assess the near-term need for acceptance of foreign research reactor spent fuel elements before the Environmental Impact Statement on the proposed long-term acceptance policy is completed.

In February 1994, a revised draft Environmental Assessment, which included revisions made in response to comments received on the October 1993 draft Environmental Assessment, was prepared and issued for public review and comment. The proposed action evaluated in the February draft Environmental Assessment was to accept 448 highly enriched uranium spent fuel elements shipped by sea to any one of seven ports (Newport News, Norfolk, or Portsmouth, Virginia; Charleston, South Carolina; Wilmington, North Carolina; Savannah, Georgia; and Jacksonville, Florida) and then by truck to DOE's Savannah River Site near Aiken, South Carolina, for storage. The comment period on the revised draft Environmental Assessment was scheduled to close on March 7, 1994. On February 10, 1994, DOE and the Department of State co-hosted a meeting of stakeholders from State and local governments, Congress, environmental and non-proliferation public interest groups, other private sector interest groups, foreign research reactor operators and key affected communities. The purpose of that meeting was to involve stakeholders in a meaningful and constructive dialogue on the proposed urgent-relief acceptance of a small number of spent fuel elements from foreign research reactors. Subsequent to that meeting and based on concerns raised by local communities potentially affected by the proposed action, DOE extended the comment period on the February draft Environmental Assessment until April 8, 1994.

Proposed Action

The DOE proposes to accept up to 409 spent nuclear fuel elements containing highly enriched uranium of United States origin from eight research reactors in seven European countries (Austria, Denmark, Germany, Greece, Netherlands, Sweden and Switzerland). The spent fuel would be shipped across the ocean in up to 15 spent fuel transportation casks from the country of origin to one or more United States eastern seaboard ports. The casks are expected to be transported in the next several months either by commercial container ships or chartered ships. Several casks could be transported together on a single ship to any one of the five proposed ports of entry: Wilmington and the United States Army's Military Ocean Terminal at Sunny Point, North Carolina; Charleston, South Carolina; Savannah, Georgia; and Jacksonville, Florida.

After arriving in the United States, the casks would be transported to DOE's Savannah River Site near Aiken, South Carolina, where the fuel elements would be stored underwater in an existing storage facility (the Receiving Basin for Offsite Fuels).

Environmental Impacts of the Proposed Action

Routine Operation: During routine (non-accident condition) ocean transport, there would be no impact to the marine environment. Radiation exposure from the very small radiation fields being emitted from the casks—about 1 millirem per hour at 1 meter from the cask surface—would be limited primarily to crew members who inspect the cargo on a daily basis to ensure secure stowage and structural safety of the vessel. Incident-free dose estimates to these crew members would be essentially the same regardless of the port of entry, largely because the exposure is proportional to the numbers of inspections over time. Distances and time of transit are similar from the European ports to the proposed United States ports of entry. Assuming that the ship makes three intermediate port stops and then unloads at the fourth stop, the incident-free dose to a ship cargo inspector is estimated to be 4.3 millirem for shipments into Sunny Point and Wilmington, North Carolina; 4.5 millirem for shipments into Charleston, South Carolina; and 4.6 millirem for shipments into Jacksonville, Florida and Savannah, Georgia. The likelihood of a single fatal cancer among the entire crew of all the ships used in the proposed action is approximately one in 450,000. If no intermediate port stops are assumed, the collective dose would be reduced by approximately 30 percent.

Because container cargo handling is relatively uniform throughout the world, exposure to port workers (handlers/inspectors) also would be essentially the same regardless of the port of entry. Using a conservative assumption, i.e., the same handler/inspector inspects all shipments, the maximally exposed port worker would receive a dose of approximately 5.2 millirem. The collective exposure (assuming the same crew of handlers/inspectors for all shipments) to the handlers/inspectors is estimated as 0.078 person-rem (0.0052 rem × 15 workers). The likelihood of a single individual port worker dying from cancer as a result of the proposed action is about 1 in 380,000. Dose to members of the general public during port operations would be extremely low because residences are separated from dock facilities by buffer spaces such as parking lots, warehouses and other port facilities.

During truck transport of the spent fuel from the port of entry to the Savannah River Site, the maximally exposed individual truck crew member (assuming the same person is involved in all truck shipments) would receive 2.4 millirem for shipments from Charleston, South Carolina; 2.7 millirem for shipments from Savannah, Georgia; 4.1 millirem for shipments from Wilmington, North Carolina; 4.5 millirem for shipments from Sunny Point, North Carolina; and 3.9 millirem for shipments from Jacksonville, Florida. The likelihood of a single crew member dying from cancer as a result of transporting spent fuel from Sunny Point to the Savannah River Site is about 1 in 440,000.

The maximum exposure to an individual not actively involved in shipping the spent fuel during routine transport was estimated for two cases: (1) a member of the public who lives beside the highway route (this individual was assumed to be exposed to each of the 15 truck shipments at a distance of 30 meters); and (2) an individual located near a stopped truck, e.g., in a traffic jam. The maximum in-transit dose under the first instance was calculated to be 0.002 millirem for routine operations. A dose of 0.002 millirem would increase the risk of a latent cancer fatality by 1 in one billion. For the second case, an individual could receive doses higher than 0.002 millirem depending on the duration of the stop and the distance of the individual from the truck. For example, in the unlikely event that a person was standing outside a stopped truck for a period of 1/2 hour at a distance of two meters, the person could receive a dose of one millirem.

Since port workers, inspectors, and truck drivers are not considered radiation workers, as defined by the Nuclear Regulatory Commission (NRC), the maximum annual allowable exposure for these personnel would be 100 millirem, the same radiation dose limit established by the NRC to protect the individual members of the general public. As discussed above, during normal transport of the spent nuclear fuel, the maximum annual exposure to the public, port workers, inspectors, and truck drivers would be well below the 100 millirem dose limit, and no doses large enough to result in acute health effects are predicted among either the workers or general public for the proposed action. The cumulative annual incident-free dose from the proposed activity to all persons potentially exposed would range between 0.12 person-rem (Charleston and Savannah) and 0.16 person-rem (Sunny Point).

Currently, the average annual individual worker dose at the Receiving Basin for Off-Site Fuels (RBOF) for all operations (unloading, handling and storage of the spent nuclear fuel elements) is approximately 150 millirem. Based on very conservative assumptions, i.e., all 409 spent fuel elements are received in a one-year period and the same individuals unload all 15 casks, the maximum annual increase in the average individual dose to a worker at RBOF is estimated to be 60 millirem. This dose would be well below both the DOE limit of 5,000 millirem per year for radiation workers and the DOE Administrative control level of 2,000 millirem per year per person, for all DOE activities. Once the spent fuel elements were stored under water in the RBOF, the increase in radiation exposure to facility personnel from the storage of the foreign spent fuel elements would not be detectable.

Only minor environmental impacts would be expected from the proposed action because the receipt and storage of up to 409 spent fuel elements represents only a small increase to existing site activity and involves no new construction. Approximately 15 cubic feet of laundry type waste and 5.5 cubic feet of solid waste would be generated per cask. The proposed action would add less than 4 percent to the average annual solid waste normally generated at RBOF. Receipt and storage of foreign research reactor spent nuclear fuel would have no effect on the types, quantities or utilization of hazardous compounds stored at RBOF, and no incremental risk to workers would be expected.

Accident Conditions: The Environmental Assessment evaluates the potential for accidents during ocean transport (port departure, ocean crossing, and port arrival), overland transport, and storage at RBOF.

In the extremely unlikely event of an accidental fire at sea in which a cask was sufficiently damaged by the fire to release its contents, members of the ship crew near the fire would be exposed to the released radioactive material.

However, any crew member close enough to the fire to suffer a significant radiation dose likely would be more severely injured from the fire than the radiation dose. If crew members were to survive the fire, radiological impacts would be similar to those resulting from a severe accident in port, which would result in a maximum exposure to workers and the public of approximately 0.21 person-rem. This exposure would result in an approximately one in 9,500 chance of one additional cancer in the entire exposed population. If such an accident were to occur at sea, however, there would be essentially no exposure to members of the public, and all released activity would be deposited in the ocean. Assuming that the spent fuel cask lay on the ocean floor where it slowly released its radioactive inventory, the peak doses to biota residing on the ocean floor in or near the uppermost sediment layer are estimated to be 0.11 rad (radiation adsorbed dose) per year for fish, 0.17 rad per year for crustaceans and 7.3 rad per year for mollusks. The radioactive material would be expected to disperse and to be diluted due to the influence of ocean currents. Since deleterious effects of chronic irradiation have not been observed in natural populations at dose rates of less than 365 rad, no significant impacts would be expected. Further, uranium, the major constituent of the spent fuel, has not been found to bioaccumulate in fish and bioaccumulates only slightly in crustaceans and mollusks. No significant chemical hazard would be expected from the release of the contents of the spent fuel elements into the open ocean.

Spent fuel casks are designed to withstand at least a 15-meter immersion, and it has been demonstrated that the cask seals will remain intact at much greater depths. Further, damaged and undamaged casks can be recovered readily from water up to 200 meters deep. Recovery from depths of up to 2,000 meters may be possible, but would be costly.

In an extreme situation, where the accident occurs in coastal wasters, the spent fuel is not recovered, and both the spent fuel and cask are damaged, the peak dose to an individual is estimated to be 11 millirem per year. This individual is assumed to reside near the shore and to eat seafood (fish, mollusk, seaweed) harvested from the area in the immediate vicinity of the spent fuel cask.

In the event of the most severe port accident (major mechanical damage, fire, oxidation of 100 percent of the fuel, and release of radioactive material from a cask containing 33 spent fuel elements), the dose to a maximally exposed individual, i.e., an individual assumed to be standing outside approximately 100 feet away from the event and remaining there for 24 hours, would be 25 rem. At such close distance, it is highly probable that the individuals, if not evacuated, would be harmed more by the explosion and fire engulfing the cask than by the radiation dose. If the individual were inside a building approximately 100 feet away and remained there for 24 hours after the accident, the dose would be reduced to 0.22 rem. At a more likely distance, where an individual may be located outside for a period of 24 hours after the accident, the dose at 0.6 miles would be 0.21 rem. If the person were inside at the same distance, the dose would be 0.002 rem. When considered in conjunction with the unlikely probability of occurrence (approximately 1 chance in 7.7 million), the accident has an extremely small risk. For example, the risk of developing a single fatal cancer for the most severe case, i.e., individual outside, 100 feet away for 24 hours receiving 25 rem, is about 1 chance in 600 million.

In the event of an overland accident, assuming the surrounding population remains there for a 24-hour period, the estimated population dose risk is 0.0000015 person-rem for transport from Savannah, 0.0000018 person-rem from Charleston, 0.0000028 person-rem from Wilmington, 0.0000024 person-rem from Jacksonville, and 0.0000035 person-rem from Sunny Point. While there would be slightly different risks among the different ports, no significant impacts would result.

Four hypothetical accidents at RBOF were evaluated that could potentially release radionuclides to the atmosphere. These accidents include: (1) A nuclear criticality incident; (2) a fire and explosion at RBOF; (3) accidental cutting of fuel element cores; and (4) rupture or failure of fuel elements during underwater storage. The maximum dose was attributed to the unlikely accident of 1000 foreign fuel elements rupturing during storage at RBOF. This event would result in an 8.3 millirem maximum dose to the individual at the site boundary and a 70 person-rem dose for the offsite population. The probability of such an accident occurring, however, would be less than one in 2000 years. When the probability is taken into account, there would be an additional 1 in 500 million chance that the individual at the site boundary would develop a fatal cancer, and a 1 in 55,000 chance that a single fatal cancer would occur in the exposed populations.

Environmental Impacts of Alternatives

Alternatives considered in the Environmental Assessment include no action, receipt of a greater or lesser number of spent fuel elements, alternate ports of entry, alternative modes of transport from the receiving port to the Savannah River Site, and reprocessing abroad and transport of low or highly enriched uranium to the United States.

No Action: Under the No Action Alternative, there would be no environmental impact in the United States. However, United States nonproliferation policy would be adversely affected. Foreign reactor operators will try to avoid shutting down their reactors. The operators of two reactors can elect to reprocess their spent fuel at an existing facility in Scotland, although one of the two would need United States authorization to do so. Reprocessing would allow the uranium to be extracted for reuse, and thus would increase the threat of nuclear proliferation. Reactor operators in Belgium and Germany resorted to reprocessing on four occasions in 1993 and 1994.

Six of the eight research reactors from which DOE proposes to accept spent fuel either do not have the option to reprocess their spent fuel or could not obtain regulatory authority to reprocess in time to avoid shutdown. Shutdown of these reactors would severely undermine the United States' credibility as a reliable partner in matters of nuclear cooperation. This, in turn, could influence other reactor operators to cease their conversion to low enriched fuel or to revert to the use of highly enriched fuel if they have already converted. In fact, several reactor operators have stated that, if the United States is unable to accept spent fuel, they will cancel or delay their reactor conversions to low enriched uranium fuel. Such actions would encourage development of a world market for highly enriched uranium, thereby undermining a key aspect of the United States nonproliferation program.

Selection of the No Action Alternative would also adversely affect the upcoming 1995 international conference on the Treaty on the Non-Proliferation of Nuclear Weapons. The conference will consider the indefinite extension of the Treaty, which the United States strongly supports. Other Treaty parties will want assurance that the United States has fulfilled its obligations under the Treaty to share the benefits of peaceful nuclear cooperation. If several countries that are parties to the Treaty are compelled to shut down their research reactors, thereby foregoing the benefits from these reactors, the United States may be accused, fairly or unfairly, of not sharing the benefits of peaceful nuclear cooperation. Such an accusation, however ill-founded, could create or increase opposition to the indefinite extension of the Treaty, which is the foundation for the international nuclear weapons nonproliferation regime.

Greater or Lesser Number of Spent Fuel Elements Accepted: In addition to the proposed action (shipment of up to 409 spent nuclear fuel elements), the environmental impacts of shipping alternative numbers of spent fuel elements (i.e., 953, 359, 291, and 248 spent fuel elements) were also considered in the Environmental Assessment. The risks for the 953-element alternative are slightly more than double the risks for shipping 409 elements through the proposed ports. Conversely, the risks of shipping 359, 291 and 248 elements are less than the risks for shipping 409 elements. While there are differences in the risks depending upon the number of elements shipped, the impacts associated with the shipment of any alternative number of elements are extremely small.

Acceptance of up to 409 spent fuel elements would allow the foreign research reactors to ship full casks, and would not force the two reactors that can ship spent fuel to Scotland for reprocessing to do so. (Acceptance of 359 spent fuel elements, i.e., shipment in partially full casks, also would not force these two reactors to reprocess.) In proposing to accept full casks, DOE took note of the fact that there is no significant difference in the environmental impacts between shipping full and partially full casks. Further, shipping full casks is the customary shipping procedure, and more cost-effective. Accordingly, proposing to accept full casks appeared to be a prudent course to encourage the continued participation of foreign research reactors in the Reduced Enrichment for Research and Test Reactors Program.

Other Ports of Entry: The Environmental Assessment also evaluated the impacts of shipping 409 spent fuel elements through alternate commercial and military ports using two assumptions: (1) No intermediate port stops and eight casks per vessel; and (2) three intermediate port stops and one cask per vessel. Dose to handlers and port workers would be essentially the same from port to port. During ocean transport, dose to the ship's crew would be generally the same regardless of the port of entry. However, dose to the truck's crew showed some slight variation consistent with the distance of travel, i.e., slightly higher doses are associated with greater distances traveled. The dose to the ship's crew and the dose to the truck crew would be well below the 100 millirem limit for nonradiation workers.

None of the alternate ports appeared as advantageous for the proposed receipt of spent fuel as the five proposed ports based on the application of screening criteria drawn from the National Defense Authorization Act for Fiscal Year 1994, and additional criteria recommended by a panel of maritime experts at a DOE-sponsored workshop on port selection criteria for shipments of spent fuel. While there are comparative advantages and disadvantages among the five proposed ports, all five of the proposed ports appear comparatively more advantageous than other United States seaports for the proposed action.

Other Modes of Overland Transport: The spent nuclear fuel could be transported by rail from the port of entry to the Savannah River Site. The incident-free dose to spent fuel cask handlers would depend on how the casks were handled in port. If two casks are shipped per rail car, the handler would continue to receive a small dose from the first loaded cask as the second cask is loaded. Dose would also be influenced by the number of cargo transfers required. For example, if the spent fuel cask cannot be off-loaded directly from the ship to a rail car, spent fuel cask handlers would receive an additional small dose during the transport by truck to the rail car and from the transfer of the cask from the truck to the rail car. In addition, rail cargo is inspected after loading and prior to off-loading. As a result, transport by rail would result in a slightly higher dose to port handlers/inspectors and rail crew than transport by truck. Dose to the public, however, would be generally lower, partly because rail stops would normally occur in rail yards (removed from the general population). For example, rail transport from Sunny Point to the Savannah River Site would result in an annual dose of 0.16 person-rem total to port handlers/inspectors, other port workers and rail crew, and in a dose of 0.0017 person-rem to members of the public. Truck transport of the spent fuel from Sunny Point to the Savannah River Site would result in an annual dose of 0.08 person-rem to port handlers/inspectors, other port workers and truck crew and a dose of 0.067 person-rem to members of the public. Neither mode of transport would result in a significant health effect.

Reprocessing Abroad and Transport of Low or Highly Enriched Uranium to the United States: The potential environmental impact of transporting low enriched uranium by ship to the United States after reprocessing the spent fuel abroad was analyzed in detail in two recently issued Environmental Assessments prepared by the United States Enrichment Corporation. Low enriched uranium was found to be a common commercial product that has been shipped safely around the world in large quantities by air, water, and land transport modes for over 30 years without significant impact. Consequently, if the spent nuclear fuel elements were reprocessed in Europe (i.e., at Dounreay, Scotland), blended down to low enriched uranium, and the low enriched uranium was returned to the United States, no significant impacts would be expected.

If the spent fuel were reprocessed in Scotland, but not blended down, then highly enriched uranium could be transported from Scotland to the United States for blending. The shipment of highly enriched uranium would require extensive security activities and would involve the use of military assets for protection and safety. The military has had considerable experience in shipment of highly enriched uranium and has safely transported such materials throughout the world without significant impact.

These options, however, would not serve the nonproliferation interests of the United States. As discussed above and in greater detail in the Environmental Assessment, reprocessing would likely result in reactor operators postponing conversion from highly enriched uranium fuel, or reverting back to its use if conversion has already been completed. This is because the only current reprocessor of highly enriched uranium does not reprocess low enriched uranium fuel, and reactor operators have only limited capacity to store spent fuel generated as a result of operating. Thus, to continue operating, research reactors would have to continue to use highly enriched uranium fuels. In addition, for those reactors for which United States consent is not required for reprocessing to occur, there is no mechanism to implement or to enforce a blending requirement by the reactor operators or reprocessors. Consequently, reactor operators could elect to have their fuel reprocessed, but not blended. This would result in the continued use of highly enriched uranium fuel by research reactors, contrary to United States nonproliferation policy.

Enhanced Storage in Europe: DOE considered but rejected as unreasonable the alternative of assisting foreign research reactors to expand spent fuel storage capacity at the reactor sites or at other sites in Europe. By the time new facilities could be constructed and licensed, or existing facilities modified, the reactors from which DOE proposes to accept spent fuel would have been forced to send their spent fuel to Scotland for reprocessing, where that is an option, or to shut down. For the reasons discussed above and in greater detail in the Environmental Assessment, forcing research reactors to shut down or reprocess would undermine the gains already realized in converting to low enriched uranium fuels under the Reduced Enrichment for Research and Test Reactors Program. The governments in the countries where these reactors are located have stated that acceptance of spent fuel has become a measure of the United States' reliability in worldwide nuclear cooperation. A perceived lack of reliability could complicate upcoming negotiations for renewal of important nonproliferation agreements.

Cumulative Impact

In addition to the environmental impacts from the proposed action, the Environmental Assessment also considered the cumulative dose of transporting other shipments of spent fuel to the Savannah River Site and shipments of low-level radioactive materials to the Barnwell facility, east of the Savannah River Site. No significant cumulative effects were identified.

Determination

Based on the analyses in the Environmental Assessment, and after careful consideration of comments received, DOE has determined that the acceptance of up to 409 spent nuclear fuel elements from eight foreign research reactors in Europe for storage at the Savannah River Site does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act. Therefore, an Environmental Impact Statement is not required and DOE issues this Finding of No Significant Impact.

Based on an evaluation of the five proposed ports of entry (Jacksonville, Florida; Savannah, Georgia; the Army Military Ocean Terminal at Sunny Point, and Wilmington, North Carolina; and Charleston, South Carolina) and alternative modes of transporting the spent nuclear fuel from the port of entry to the Savannah River Site (truck or train), DOE has concluded that no significant impact would result from any combination of proposed port and mode of transport from the port of entry to the Savannah River Site.

However, upon further consideration, and in an effort to balance the domestic and international interests at stake, DOE has decided to implement the proposed action as follows. The spent nuclear fuel will be shipped by commercial or chartered vessel from Europe to the Army's Military Ocean Terminal at Sunny Point, North Carolina to the maximum extent practicable (rather than allowing the shipper to select from among any one of the five proposed ports as described in the Environmental Assessment) and transported overland by rail (rather than truck). Should DOE determine that another port or mode of transport (from among those considered as the proposed action) is necessary, DOE will provide direct notice of the change to State and local government officials of the affected states and will notify the public through local media and other means, as appropriate.

Issued at Washington, DC, this 22nd day of April, 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–10569 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Award of a Grant, Noncompetitive Financial Assistance

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Richland Operations Office (RL) announces that pursuant to Public Law 95–224, The Federal Grant and Cooperative Agreement Act of 1977, it intends to make a discretionary financial assistant award based on the criterion set forth in 10 CFR 600.7(b)(2)(i)(B) to the Institute for Science and Society, Inc., (ISS), Ellensburg, Washington, under Grant Number DE–FG06–94RL12929. The primary purpose of the grant is to help "K through 12" teachers improve math and science education classes for their students and to assist in strengthening math and science education in the public sector. This two year effort will have an estimated cost of $300,000 for the first budget year.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be addressed to the U.S. Department of Energy, Richland Operations Office, Procurement Division, Mail Stop A7–80, P.O. Box 550, 825 Jadwin Avenue, Richland, Washington 99352, Attn: Jo Laughlin, Contract Specialist.

SUPPLEMENTARY INFORMATION: In support of DOE's Math/Science Education Action Conference Report of May 1990 which emphasized the critical need for a technologically informed citizenry and the need for American elementary and secondary students to receive increased preparation in math and science in every grade and that teachers must become empowered to prepare this generation of children for lives in the 21st Century, various methods are being explored and pursued to accomplish these aims. Surveys have found that many K–12 teachers have little or no background in science or need to enhance and update their skills in this field. A science literacy course covering such fields as astronomy, geology, chemistry, math, physics, origins of life, evolution, global warming, electromagnetic fields, population explosion, ionizing radiation and the health effects of radiation, has been developed to increase and stimulate a teacher's interest and understanding of the sciences and the concept of the scientific approach to societal issues involving science and/or technology. Some simple, inexpensive experiments are offered which can be used by the teachers in the classroom to demonstrate scientific principles. Experts in various science fields are utilized as lecturers to provide quality instruction. Teachers who complete the course generally overcome their fears of science and transfer a sense of excitement in science to their students.

Dated: April 22, 1994.

P.E. Rasmussen,

Acting Director Procurement Division, Richland Operations Office.

[FR Doc. 94–10571 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: County of Lake, CA

Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office,

announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a renewal for Grant Number DE–FG07–93ID13257 to the County of Lake, Lakeport, California. The objective of the work to be performed under this grant is to provide funds to hire a project management firm and a final design engineer on a plan to use treated wastewater effluent for injection as a means of increasing the recovery of energy from The Geysers geothermal field. The Federal Domestic Catalog Number is 81.087.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Stallman, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563, (208) 526–7038.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Geothermal Energy Research, Development and Demonstration Act (Pub. L. 93–410); the Department of Energy Organization Act (Pub. L. 95–91); and the Energy and Water Development Appropriation Bill of 1993 (Pub. L. 102–377). The proposal meets the criteria for "non-competitive" financial assistance set forth in 10 CFR part 600.7(b)(2)(i)(C). The applicant represents a unit of government and the activity to be supported is related to the performance of a government function within the subject jurisdiction. The County of Lake is the leader of this project and is the appropriate agency to prepare the environmental impact statement and do the design work since they will be the owner and operator of the pipeline carrying the effluent from the county wastewater treatment plant to The Geysers. The anticipated total project period to be awarded is twelve (12) months. The Office of Utility Technologies has provided $1,450,000 to the DOE, Idaho Operations Office for support of this project. Lake County will provide $20,000. The total estimated cost of this project is $1,470,000.

Issued: April 22, 1994.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–10570 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

Kansas City Support Office; Noncompetitive Financial Assistance Award to the Wisconsin Center for Demand-Side Research

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to the Wisconsin Center for Demand-Side Research, to continue activities initiated through a cooperative agreement between the Center and the DOE that seek to develop market information electric motor systems and facilitate collaboration between DOE, state governments, industries, utilities, electric motor equipment manufacturers, and other stakeholders on technical and market related issues of electric motor systems.

SUPPLEMENTARY INFORMATION: The Wisconsin Center for Demand-Side Research is a non-profit organization which sponsors and conducts cooperative research and technology transfer efforts aimed at cost effective and customer sensitive energy efficiency initiatives. The Center has worked in partnership with Wisconsin utilities, DOE, national and state based energy research organizations, and Canadian utilities on a wide range of energy efficient technology and market issues. Through the existing cooperative agreement the Center and the DOE are working together to develop a Midwest Electric Motor Systems Collaborative Project which encourages implementation of energy efficient motor-driven systems in a ten state region. This award will further that effort and the objectives of the DOE, Industrial Electric Motor Systems Program in promoting the use of efficient electric motor systems. Therefore, the application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

The project period for this award is 12 months and is expected to begin in May 1994. DOE plans to provide funding in the amount of $99,000 for continuing this effort.

FOR FURTHER INFORMATION CONTACT: Chris Cockrill, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Kansas City, MO 64106–2024. (816) 426–4772.

Issued in Golden, Colorado on April 15, 1994.

Christine A. Phoebe,

Director, Administrative Division, Golden Field Office.

[FR Doc. 94–10572 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Proposed Rate Adjustment for Eklutna Project

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of proposed rate adjustment for Eklutna Project, notice of public forum and opportunity for review and comment.

SUMMARY: Alaska Power Administration (APA) is proposing to adjust the rates for the Eklutna Project. Rates of 17 mills per kilowatthour for firm energy, 10 mills per kilowatthour for non-firm energy and .3 mills per kilowatthour for wheeling expire September 30, 1994. APA proposes to raise the rate for firm energy to 18.9 mills per kilowatthour beginning October 1, 1994 for a period of up to five years. Rates for non-firm energy and wheeling would remain the same. APA will finalize the proposal giving full consideration to comments received. The final proposal may differ from the present. The proposed rates will be submitted to the Deputy Secretary of Energy for interim approval and to the Federal Energy Regulatory Commission for review and final approval.

DATES: Written comments will be considered for 90 days from the date of this publication.

ADDRESSES: Written comments should be submitted to Mr. Lloyd A. Linke, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd A. Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, AK 99802, (907) 586–7405.

SUPPLEMENTARY INFORMATION: The proposed rates apply for power sold from the Eklutna Hydroelectric Project to three electric utilities serving the Anchorage and Matanuska Valley areas of Alaska.

Details of the proposed rates, including supporting studies, are available for inspection at Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska; and the Eklutna Project Office, Mile 4.0, Old Glenn Highway, Palmer, Alaska.

A public information and comment forum is scheduled to be held June 14, 1994, at 7 p.m., in the public conference room of the Loussac Library, 3600 Denali, Anchorage, Alaska. APA is requesting that the parties interested in attending the public information and comment forum notify APA of this intent in writing by June 7, 1994. If APA has not received any written notices of intent to attend the forum the APA Administrator will cancel the forum, as allowed in 10 CFR 903.15(c) and 10 CFR 903.16(c).

Authorities for the proposed rate action are the Eklutna Project Act of July 31, 1950 (64 Stat. 382, as amended) and the Department of Energy Organization Act (Pub. L. 95–91). Alaska Power Administration is developing these rates in accordance with DOE financial reporting policies, procedures and methodology (DOE Policy RA 6120.2 [September 20, 1979]), and the procedures for public participation in rate adjustments found in 10 CFR Part 903 (1987) as amended.

The present rates went into effect in October 1990. APA has repaid over 75% of the project investment. Since the last rate action Operation and Maintenance (O&M) costs have increased. The major contributors to this increase are the addition of the Government's unfunded liability for the Civil Service Retirement System in the repayment studies, and an increase in the number of staff dealing with environmental compliance issues. The proposed rate results in an 11% rate increase. This is below the rate of inflation from 1990 to 1994. APA has notified its customers that a rate was being developed. One of the customers has asked that APA look at the increased O&M costs and to verify the need for the increases. APA is in the process of doing this and will include the results of this evaluation in the final rate proposal.

Given the age of the Eklutna Project, APA expects sizeable replacement costs over the next several years. These costs have been included in the repayment study supporting the proposed rates.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture is under Congressional consideration. This proposed rate action continues present rate policies under existing law.

Environmental Impact

The proposed rate action will have no significant environmental impact within the meaning of the National Environmental Policy Act of 1969. The proposed action meets the requirements of a categorical exclusion as defined in 40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CFR 1021, Appendix B4.3. An Environmental Assessment and an Environmental Impact Statement is not required.

Issued at Juneau, Alaska, April 21, 1994.

Michael A. Deihl,

Administrator.

[FR Doc. 94–10576 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG94–22–000, et al.]

Inversores De Electricidad S.A., et al.; Electric Rate and Corporate Regulation Filings

April 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Inversores de Electricidad S.A.

[Docket No. EG94–22–000]

Take notice that on April 6, 1994, pursuant to section 365.7 of the Commission's regulations, 18 CFR 365.7, Inversores de Electricidad S.A. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. Hermiston Generating Company, L.P.

[Docket No. EG94–48–000]

On April 11, 1994, Hermiston Generating Company, L.P. ("Hermiston"), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Hermiston intends to own and operate a multi-unit, natural gas-fired combined cycle generating plant with automatic generation control and related transmission and interconnection equipment with a bus bar rating of approximately 474 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by PacifiCorp, an electric utility.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments must be served on the applicant.

3. TIFD VIII–L Inc.

[Docket No. EG94–49–000]

April 13, 1994, TIFD VIII–L Inc. ("Applicant"), with its principal place of business at 1600 Summer Street, Stamford, Connecticut 06927, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant has represented that it will be engaged indirectly, through an affiliate that is a Philippine company, and exclusively in the business of owning and operating electricity generating facilities to be located near Iligan City in Mindanao, Philippines and selling electric energy at wholesale. The electric energy generated by those facilities will be delivered at wholesale to the National Power Corporation, a Philippine electric utility wholly-owned by the Philippine government. Retail sales to Philippine industrial customers may occur in the future, although no such arrangements currently exist.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

4. SEI Inversora S.A.

[Docket No. EG94–52–000]

On April 20, 1994, SEI Inversora S.A. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Bahamas Argentina I, Inc. ("SEI Bahamas Argentina"), which owns 65% of the voting securities of the Applicant, and by COE Argentina I Corp., a Connecticut corporation, which owns 35% of the voting securities of the Applicant. The Applicant is participating in several bids for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The currently identified facilities consist of several hydroelectric generating stations with a total combined installed capacity of approximately 650 MW produced by several generating units and associated interconnection facilities. The facilities are located on the Atuel and Diamante River Systems in the Province of Mendoza and other provinces in the Republic of Argentina.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or EWGs. These development activities will be limited to activities associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in section 32 of the Public Utility Holding Act of 1935.

Comment date: May 13, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

5. Florida Power & Light Company

[Docket No. ER93–939–000]

Take notice that Florida Fower & Light Company (FPL), on March 31, 1994, tendered for filing the Amendment Number One the AES Cedar Bay Parallel Operations Agreement Between Florida Power & Light Company and Jacksonville Electric Authority.

FPL states that copies of the filing were served upon the Jacksonville Electric Authority and the Florida Public Service Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER94–963–000]

Take notice that on April 19, 1994, Portland General Electric Company (PGE) tendered for filing a request for deferral of Commission action for thirty (30) days in the above Docket, to allow PGE to respond to Commission staff questions concerning the filed Round Butte/Cove Interconnection and Operation Agreement.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Equitable Resources Marketing

[Docket No. ER94–1029–000]

Take notice that on April 12, 1994, Equitable Resources Marketing Company (Equitable) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a revised petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Rate Schedule No. to be effective May 9, 1994.

The revised reflects filing makes two minor changes to the filing made March 10, 1994 in Docket No. ER94–1029–000. First, Equitable clarifies that a small, affiliated owned cogeneration unit sells its output to another affiliate under a long-term contract committing the full output of the plant. Second, the proposed Rate Schedule is modified to explicitly exclude sales to affiliates.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER94–1135–000]

Take notice that on April 4, 1994, Boston Edison Company (Edison) tendered for filing a letter agreement dated March 29, 1994, with New England Power Company (NEP) extending the term of the Transmission Facilities Support Agreement between Edison and NEP, dated May 25, 1988 and accepted by the Commission in Docket No. ER89–658–000. Boston requests that this letter agreement be allowed to become effective as of June 1, 1994.

Edison states that it has served the filing on NEP and the Massachusetts Department of Public Utilities.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Delmarva Power & Light Company

[Docket No. ER94–1136–000]

Take notice that on April 5, 1995, Delmarva Power & Light Company (DPL) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Pennsylvania Power & Light Company (PP&L) and DPL dated March 16, 1994. This contract sets forth the terms under which DPL will sell PJM installed capacity credits to PP&L. DPL requests that the Commission permit this Agreement to become effective on May 30, 1994.

DPL states that a copy of this filing has been served by mail up PP&L, the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER94–1149–000]

Take notice that on April 12, 1994, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), filed a Service Schedule EP (Economic Energy Participation) to the Interchange Contract between those companies and the Tennessee Valley Authority (TVA). Under that Service Schedule, Southern Companies will provide transmission service for economic energy to TVA from certain third-party utilities. Southern Companies request an effective date of April 13, 1994.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Rainbow Energy Marketing Corporation

[Docket No. ER94–1061–000]

Take notice that on April 19, 1994, Rainbow Energy Marketing Corporation tendered for filing revised FERC Electric Rate Schedule No. 1.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER94–1162–000]

Take notice that on April 15, 1994, Duke Power Company (Duke) tendered for filing copies of the true-up filing for calendar year 1993 under Article II.3 of the Settlement Agreement in Docket No. ER90–315–000.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power Corporation

[Docket No. ER94–1163–000]

Take notice that on April 18, 1994, Florida Power Corporation (Florida Power) filed a contract for the provision of interchange service between itself and Alabama Electric Cooperative, Inc. Florida Power requests that the contract become effective on June 17, 1994, which is 60 days after the contract was tendered for filing.

Florida Power states that a copy of the filing has been posted as required by the Commission's Regulations, and a copy has been mailed to the customer affected by the filing, to the Florida Public Service Commission and to the Alabama Public Service Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. WestPlains Energy, a division of UtiliCorp United, Inc.

[Docket No. ER94–1164–0000]

Take notice that on April 18, 1994, WestPlains Energy, a division of UtiliCorp United, Inc. (WestPlains) tendered for filing an "Interconnection and Interchange Agreement between WestPlains Energy and Colorado Springs Utilities" ("the Agreement"). Under the Agreement, WestPlains and

Colorado Springs Utilities ("CSU") agree to install facilities to interconnect their systems in order to provide service between the parties under the rates, terms and conditions of the Revised Inland Power Pool Agreement. An effective date of June 1, 1994, was requested.

WestPlains states that a copy of the filing was served on CSU, the Public Utilities Commission of the State of Colorado and the Chairman of the Inland Power Pool Executive Committee.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER94–1165–000]

Take notice that on Apil 19, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing a rate schedule change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

The rate schedule change establishes recorded-cost based rates for true-up for Western's withdrawals of energy from the Energy Account No. 2 (EA2), an energy account established by Western's Contract No. 14–06–200–2948A with PG&E, and maintained by PG&E, for return of previously banked energy to Western. PG&E has previously billed Western for withdrwals for the years 1985 through 1992 at rates based on estimated costs, and is now filing revised rates. This true-up process is part of a rate methodology specified in a PG&E-Western Letter Agreement dated February 7, 1992, and previously accepted by the Commission in FERC Docket No. ER92–457–000.

Copies of this filing have been served upon Western and the CPUC.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Mississippi Power Company

[Docket No. ER94–1166–000]

Take notice that on April 18, 1994, Mississippi Power Company filed a letter agreement dated April 6, 1994, revising the Contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Mississippi Power Company. The letter agreement extends the term of the existing Contract for six (6) months to allow the parties to continue negotiations of a new arrangement.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Metropolitan Edison Company

[Docket No. ER94–1167–000]

Take notice that on April 19, 1994, Metropolitan Edison Company (Met-Ed) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) amendments to its existing rate schedule, for borderline service to Pike County Light & Power Company (Pike). Under such existing rate schedule, Met-Ed has been providing borderline service to Pike.

By an Order issued July 30, 1993 in Commission Docket No. PL93–2–002, the Commission held that, in recognition of the character of the borderline service provided, the Commission had adopted as the wholesale rate the neighboring utility's retail rate, provided that the utility documents the state commission's approval of the retail rate.

Under the tendered amendments, Met-Ed would (1) terminate its Borderline Service Agreement, dated July 22, 1980, with Pike, and (2) file as its Borderline Rate Schedule for borderline service to Pike the Met-Ed retail Rate Schedule that is currently on file with the Pennsylvania Public Utility Commission (PaPUC) which was approved by the PaPUC.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Pike.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Vesta Energy Alternatives Company

[Docket No. ER94–1168–000]

Take notice that on April 19, 1994, Vesta Energy Alternatives Company (VEA) submitted for filing pursuant to Rule 205, 18 CFR 385.205, an application for waivers and blanket approvals under various Commission regulations and authorizations enabling VEA to engage in electric power and energy transactions as a marketer and broker. VEA also requests an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than June 18, 1994.

VEA states that it will act as both a broker (introducing buyers and sellers without taking title to electric power) and a marketer (buying and selling electric power). VEA states that it will develop market-based transactions that meet its customers' needs. Prices for capacity and energy would be competitively set, based on market conditions. These transactions may vary in terms of duration (possibly ranging from hourly to long-term sales), in terms of a firm or interruptible nature, and in terms of energy and capacity or energy-only services.

VEA states that it neither owns, operates, nor controls any electric power transmission or distribution facilities. It is not affiliated with any entity that owns, operates, or controls any electric power transmission or distribution facilities. Neither VEA nor any of its affiliates holds a franchise or service territory for transmission, sales or distribution of electric power.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER94–1169–000]

Take notice that on April 19, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement (Agreement) between APS and Citizens Utilities Company (Citizens) (APS–FERC Rate Schedule No. 49).

Current rate levels are unchanged from those currently on file with the Commission, and no other significant change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Citizens and the Arizona Public Corporation Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER94–1170–000]

Take notice that on April 20, 1994, Central Maine Power Company (CMP) tendered for filing executed Service Agreements entered with the following: Bangor Hydro-Electric Company, Boston Edison Company, Central Vermont Public Service Corporation, Connecticut Municipal Electric Energy Cooperative, Green Mountain Power Corporation, Massachusetts Municipal Wholesale Electric Company, Unitil Power Corp., Fitchburg Gas and Electric Light Company, Montaup Electric Company and North American Energy Conservation, Inc. Service will be provided pursuant to CMP's previously accepted Power Sales Tariff, designated rate schedule CMP–FERC Electric Tariff, Original Volume No. 2. An effective date for commencement of service of April 1, 1994, is requested for each of the Service Agreements.

CMP has served a copy of the filing on the affected customers and on the Maine Public Utilities Commission.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Arizona Public Service Company

[Docket No. ER94–1171–000]

Take notice that on April 20, 1994, Arizona Public Service Company (APS) tendered for filing the Reciprocal Transmission Service Agreement (Agreement) between APS and PacifiCorp.

The enclosed Agreement essentially proposed two transmission service arrangements: (1) APS will provide 30 MW of interim firm transmission service for PacifiCorp over the Cholla/Four Corners System until PacifiCorp's Four Corners/Borah-Brady System is able to accommodate additional transmission for APS; and (2) at such time as PacifiCorp's Four Corners/Borah-Brady System has sufficient capacity to accommodate additional transmission for APS, the Agreement then converts to a classical "reciprocal" type arrangement whereby APS and PacifiCorp will each provide 30 MW of firm unidirectional reciprocal transmission to the other.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Company

[Docket No. ER94–1173–000]

Take notice that on April 20, 1994, Boston Edison Company (Edison) tendered for filing for informational purposes a letter agreement dated April 12, 1994, with Wellesley Municipal Light Plant (WMLP) implementing the terms and conditions of Exhibit C, Section V, of the October 26, 1992, Agreement between Boston Edison and WMLP, which was approved by the Commission in Docket Nos. ER86–562–000, ER87–122–000 and ER91–149–000.

Edison states that it has served the filing on WMLP and the Massachusetts Department of Public Utilities.

Comment date: May 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10532 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF92–54–006]

Polk Power Partners, L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

April 26, 1994.

On April 14, 1994, Polk Power Partners, L.P. (Polk) of 1027 South Rainbow Boulevard, Las Vegas, Nevada 89128, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County, Florida. On December 23, 1991, in Docket No. QF92–54–000, Mulberry Energy Company, Inc. filed a notice of self-certification for a natural gas-fueled 123 MW combined-cycle cogeneration facility. In Docket No. QF92–54–001, Polk was granted certification with a power production capacity of 118.7 MW. Thermal energy from the facility was to be used by an affiliated host for the production of liquified carbon dioxide [61 FERC ¶61,030 (1992), *order denying rehearing,* 61 FERC ¶61,300 (1992), *appeal pending sub nom. Liquid Carbonic Corp.* v. *FERC* (D.C. Cir. Nos. 93–1095 *et al*)]. In Docket No. QF92–54–003, Commission granted certification to reflect change in ownership and use of thermal output for the product of fuel grade ethanol [65 FERC ¶62,136 (1993)]. On September 3, 1993, in Docket No. QF92–54–004, Polk filed a notice of self-certification. In Docket No. QF92–54–005, the Commission granted a limited waiver of Commission's operating and efficiency standards [66 FERC ¶61,116 (1994)]. Instant recertification is submitted to reflect change in the maximum net electric power production capacity to 134 MW, change in facility's ownership and possible operational changes in the facility's thermal host.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10485 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–715–000, CP92–715–001, CP92–719–000, CP92–719–001, CP92–720–000, CP92–720–001, CP93–108–000, CP93–108–001, CP92–721–000, CP92–721–001, CP92–730–000, CP92–730–001, CP92–734–000, and CP92–734–001]

Liberty Pipeline Company; et al. Liberty Pipeline Project: Second Notice of Postponement of Draft Environmental Impact Statement

April 26, 1994.

The Federal Energy Regulatory Commission (Commission) staff notifies all parties that Liberty Pipeline Company (LPC) filed a request on April 5, 1994, to suspend work on the Draft Environmental Impact Statement (DEIS) of the Liberty Pipeline Project (Liberty Project). LPC states that the postponement for at least 90 days is necessary to change the upstream Liberty Project facilities in response to changing market requirements.

We regret any difficulties to the public and all parties and agencies that might result from this second revision by the Liberty Project applicants to the proposed project.

After the Commission's staff receives and analyzes the information in the forthcoming amended applications, it will announce an EIS schedule as soon as it is practicable.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10486 Filed 5–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94-352-000]

Columbia Gulf Transmission Co.; Application

April 26, 1994.

Take notice that on April 12, 1994, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP94-352-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Tennessee Gas Pipeline Company, a Division of Tenneco Inc., which was authorized in Docket No. CP83-197-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia Gulf proposes to abandon transportation service performed under a gas transportation agreement dated January 10, 1983, as amended, and pursuant to Columbia Gulf's Rate Schedule X-86. Columbia Gulf states that it has been transporting up to 12,000 Dekatherms of natural gas per day from South Marsh Island Block 99, Offshore Louisiana, to the interconnection of its line and the Blue Water System in South Marsh Island Block 74. It is stated that the transportation is subject to a monthly demand charge.

Columbia Gulf explains that by letter dated December 8, 1993, Tennessee requested conversion of the transportation service to Part 284 service, and the parties executed an Order No. 636, FTS-2 Transportation Service Agreement effective February 1, 1994, providing for the conversion of Part 157 service to service provided under part 284. Columbia Gulf requests an effective date for the abandonment of January 31, 1994, in order that service under part 284 may commence on February 1, 1994.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 17, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10487 Filed 5-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-367-000]

Texas Eastern Transmission Corporation; Request Under Blanket Authorization

April 26, 1994.

Take notice that on April 20, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-367-000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to construct a new delivery point to enable Texas Eastern to deliver natural gas to Middle Tennessee Natural Gas Utility District (Middle Tennessee) under the certificate issued in Docket No. CP82-535-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that Middle Tennessee has requested that Texas Eastern install two 2-inch diameter hot taps and appurtenant facilities on Texas Eastern's 30-inch diameter Line Nos. 25 and 15 in Wilson County, Tennessee. Texas Eastern indicates that the cost of the proposed hot taps will be approximately $53,195 and that Middle Tennessee will pay all of such costs. Texas Eastern further states that after receipt of the authorization requested in the instant application, it will render interruptible transportation service for Middle Tennessee under Texas Eastern's Rate Schedule IT-1. Texas Eastern states that peak and average day deliveries at the proposed delivery point will be 10,000 dekatherms per day. It is indicated by Texas Eastern that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10488 Filed 5-2-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Armstrong Air Conditioning Inc. (Case No. F-070)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Armstrong Air Conditioning Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Armstrong. Armstrong's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification.

Armstrong seeks to test using a blower delay time of 30 seconds for its GUK and GCK condensing gas furnaces and GUJ, GCJ, and GHJ non-condensing gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 2, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–070, Mail Stop EE–43, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 11, 1994, and the addendum of April 6, 1994, Armstrong filed an Application for Interim Waiver regarding blower time delay. Armstrong's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Armstrong requests the allowance to test using a 30-second blower time delay when testing its GUK and GCK condensing gas furnaces and GUJ, GCJ, and GHJ non-condensing gas furnaces. Armstrong states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an increase in AFUE of 1.2 percentage points for GUK and GCK condensing gas furnaces, and 0.8 percentage point for GUJ, GCJ, and GHJ non-condensing gas furnaces. Since current DOE test procedures do not address this variable blower time delay, Armstrong asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Armstrong an Interim Waiver for its GUK and GCK condensing gas furnaces and GUJ, GCJ, and GHJ non-condensing gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Armstrong was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, April 20, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

Mr. Bruce R. Maike,
Vice President, Product Engineering, Armstrong Air Conditioning Inc., 421 Monroe Street, Bellevue, OH 44811.

Dear Mr. Maike: This is in response to your March 11, 1994, and the addendum of April 6, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Armstrong Air Conditioning Inc. (Armstrong) GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Armstrong's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Armstrong will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Armstrong's Application for an Interim Waiver from the DOE test procedure for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces regarding blower time delay is granted.

Armstrong shall be permitted to test its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t−) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

March 11, 1994.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Subject: Petition for Wavier and Application of Interim Waiver.

Gentlemen: This is a Petition for Waiver and application of Interim Waiver submitted pursuant to Title 10 CFR 430.28. Waiver is requested from the test procedure for measuring Furnace Energy Consumption as found in appendix H to subpart B of part 430

The current test requires a 1.5 minute delay between burner ignition and the start of the circulating air blower. Armstrong Air Conditioning Inc. is requesting waiver and authorization to use a timed on delay instead of the specified 1.5 minutes for blower start-up after main burner ignition. Armstrong intends to use a fixed timing control on our GUK and GCK condensing gas furnaces and on our GUJ, GCJ, and GHJ non-condensing gas furnaces to gain additional energy savings that are achieved with the use of shorter blower on times.

Test data for these furnaces with a timed on delay indicates an increase in AFUE. The use of a timed on delay reduces flue losses thus increasing furnace efficiency. Copies of confidential test data confirming these energy savings will be forwarded to you upon request.

The current test procedure does not give Armstrong credit for the energy savings that can be obtained using fixed timing. ASHRAE 103–1993 test procedure that is under consideration by D.O.E. addresses the use of timed blower operation. Section 9.6.1 of ASHRAE 103–1993 requires testing of a furnace with this type of control to be set to its maximum setting. Armstrong's intent would be to request testing at this maximum setting. Granting of this Waiver permits testing of similar competitive products to be rated on a comparable basis to that of Armstrong.

Armstrong is confident that this Waiver will be granted, and therefore requests an Interim Waiver be granted until a final ruling is made. Armstrong, as well as other manufacturers of domestic furnaces, have been granted similar waivers.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Armstrong Air Conditioning Inc.

Bruce R. Maike,

Vice President Product Engineering.

April 6, 1994.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Attention: Mr. Cyrus Nasseri.

Subject: March 11, 1994 Petition for Waiver Addendum.

Sir: Inadvertently in our Petition for Waiver and application for Interim Waiver, the delay on timing and the additional increase in AFUE was left out. Our intent is to use a 30 second delay between burner ignition and the start of the circulating air blower. An increase of 1.2 percentage points in AFUE can be achieved on the GUK and GCK condensing furnaces and an increase of .8 percentage points on the GUJ, GCJ, and GHJ furnaces.

Please consider this information upon reviewing the Petition for Waiver and application for Interim Waiver. Should you require any additional information, please feel free to contact me.

Sincerely,

Armstrong Air Conditioning Inc.

Bruce R. Maike,

Vice President Product Engineering

[FR Doc. 94–10577 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–M

(Case No. F–069)

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From DMO Industries

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to DMO Industries (DMO) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's HDS series gas furnaces.

Today's notice also publishes a "Petition for Waiver" from DMO. DMO's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. DMO seeks to test using a blower delay time of 30 seconds for its HDS series gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 2, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–069, Mail Stop EE–43, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 4, 1994, DMO filed an Application for Interim Waiver regarding blower time delay. DMO's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, DMO requests the allowance to test using a 30-second blower time delay when testing its HDS series gas furnaces. DMO states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an increase in AFUE of 2.0 percentage points. Since current DOE test procedures do not address this variable blower time delay, DMO asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR

19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting DMO an Interim Waiver for its HDS series gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to DMO was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC April 19, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

April 19, 1994.

Mr. Kyu S. Hwang, P.E.,
Manager of Engineering, Research, and Development, DMO Industries, P.O. Box 900, Wallaceburg, Ontario N8A 5E5.

Dear Mr. Hwang: This is in response to your March 4, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for DMO Industries (DMO) HDS series gas furnaces. Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

DMO's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage DMO will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, DMO's Application for an Interim Waiver from the DOE test procedure for its HDS series gas furnaces regarding blower time delay is granted.

DMO shall be permitted to test its HDS series gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless:

(1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or

(2) The furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or

(3) The delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

March 4, 1994.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Subject: Petitions for Waiver and Interim Waiver.

Dear Secretary: Please consider this letter as a Petition for Waiver and Application for Interim Waiver, submitted pursuant to Title 10 CFR 430.27. DMO Industries is requesting a waiver from the furnace test procedure which requires a 90 second delay between burner ignition and blower start-up.

DMO requests authorization to reduce the 90 second delay to 30 seconds when testing our HDS series, high efficiency, residential gas furnaces. The HDS series includes the following models as listed in the GAMA (Gas Appliance Manufacturers Association) certification program:

HDS 40MS
HDS 50MS (60/50MS)
HDS 60MS
HDS 60M (70/60M)
HDS 70M
HDS 80M (90/80M)
HDS 90M
HDS 90MF (100/90M)
HDS 100M
HDS 110M (120/110M)
HDS 120M

DMO is currently switching all controls on this series to a 30 second blower-on delay by a timed controller, which cannot be adjusted by the installer, or service person.

Our tests indicate that by using the 30 second delay, AFUE values increase by up to 2.0 points, depending on the model. We feel that this is a substantial benefit to our customers and would like to reflect this through the higher AFUE values. Confidential Test data is available upon request which confirms the above claim.

We are confident that both an Interim Waiver and final Waiver will be granted us on the basis that many similar petitions have already been granted on our competitors.

A copy of this petition for Waiver and Application for Interim Waiver is being sent to manufacturers who market similar equipment.

Sincerely,

Kyu S. Hwang, P. Eng.,

Manager of Engineering, Research and Development.

[FR Doc. 94–10578 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–071]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Rheem. Rheem's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Rheem seeks to test using a blower delay time of 20 seconds for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than June 2, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–071, Mail Stop EE–43, room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

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The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 23, 1994, Rheem filed an Application for Interim Waiver regarding blower time delay. Rheem's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 20-second blower time delay when testing its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Rheem states that the 20-second delay is indicative of how these furnaces actually operate. Such a delay results in an average increase in AFUE of 2.0 percentage points. Since current DOE test procedures do not address this variable blower time delay, Rheem asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Rheem an Interim Waiver for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Rheem was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, April 19, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

April 19, 1994.

Mr. Daniel J. Canclini,
Vice-President,
Product Development and,
Research Engineering,
Rheem Manufacturing Company,
P.O. Box 17010,
Fort Smith, AR 72917–7010.

Dear Mr. Canclini: This is in response to your March 23, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Rheem Manufacturing Company (Rheem) GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Rheem's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Rheem will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Rheem's Application for an Interim Waiver from the DOE test procedure for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces regarding blower time delay is granted.

Rheem shall be permitted to test its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless:

(1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or

(2) The furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or

(3) The delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

March 23, 1994.

Mr. Cyrus Nasseri,
Assistant Secretary, Conservation, and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Mr. Nasseri: This is a petition for waiver and application for interim waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the furnace test procedure as prescribed in appendix N to Subpart B of Part 430. The test procedure requires a 1.5 minute delay between burner and blower start-up. Rheem is requesting authorization to use a 20 second delay instead of 1.5 minutes for our series (−)GDG upflow, (−)GLH downflow, (−)GVH horizontal, and (−)GPH upflow/horizontal residential gas-fired furnaces.

Rheem will be manufacturing these appliances with an electronic device that controls the blower operation on a timing sequence as opposed to temperature.

Improved energy efficiency is achieved by reducing on cycle losses. Under the Appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 20 second blower on time, allowing energy to be lost out of the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations.

The current test procedures do not give Rheem credit for the energy savings which averages approximately 2%. This improvement is an average reduction of 20% of the normal on cycle energy losses. Rheem is of the opinion that a 20% reduction is a worthwhile energy savings.

Rheem has been granted previous waivers regarding blower on time to be used in the efficiency calculations for our (−)GEB and (−)GKA series condensing furnaces and/or (−)GDE, (−)GLE, (−)GDG, (−)GLG and (−)GVG series furnaces. Several other manufacturers of gas furnaces have also been granted a waiver to permit calculations based on timed blower operation. Also, ASHRAE Standard 103–1993, paragraph 9.5.1.2.2 specifically addresses the use of timed blower operation.

Confidential and comparative test data is available to you upon your request, confirming the above energy savings.

Manufacturers that domestically market similar products are being sent a copy of this petition for waiver and petition for interim waiver.

Sincerely,

Daniel J. Canclini,

Vice-President, Product Development and Research Engineering.

[FR Doc. 94–10579 Filed 5–2–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140220; FRL–4772–5]

Access to Confidential Business Information by Information Dynamics, Inc. and General Sciences Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Information Dynamics Inc. (IDI) of Washington, DC and subcontractor General Sciences Corp. (GSC) access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 260–1024, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D3–0145, contractor Information Dynamics, Inc. (IDI) of 600 Maryland Avenue, SW., Suite 308E, Washington, DC and subcontractor General Sciences Corp. (GSC) of 6100 Chevy Chase Drive, Laurel, MD will assist the Office of Pollution Prevention and Toxics (OPPT) in developing computer-based models to support performance of chemical exposure assessments. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D3–0145, IDI and GSC will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. IDI and GSC personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section 4, 5, 6, and 8 of TSCA that EPA may provide IDI and GSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

IDI and GSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

In another, unrelated matter, the Consumer Product Safety Commission (CPSC) has moved its TSCA CBI storage facility from 5401 Westbard Avenue, Bethesda, MD to 4330 East West Highway, Bethesda, MD. The EPA TSCA Security Staff will perform the required inspection of CPCS's facility, and ensure that the facility is in compliance with the *TSCA Confidential Business Information Security Manual*

List of Subjects

Environmental protection, Access to confidential business information.

Dated: April 25, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10552 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4880–2]

Clean Water Act (CWA) 304(l): Availability of List Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice correction.

SUMMARY: This notice announces corrections to the availability of lists submitted to USEPA pursuant to section 304(l)(1)(C) of the Clean Water Act ("CWA") as well as USEPA's proposed approval decisions, and requests for public comment.

DATES: Comments must be submitted to USEPA on or before June 2, 1994.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, USEPA-Region 5, 304(l) Coordinator U.S. Environmental Protection Agency-Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, Telephone: (312) 353–2310.

Comments on these items should be sent to Howard Pham, USEPA—Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: The March 16, 1994, notice document, 59 FR 12322, page 12325, 12326 and 12327 contained a number of errors that occurred during the typesetting process. The following tables correct those errors found in the March 16th notice regarding the availability of the State lists pursuant to section 304(l)(1)(C) of the CWA:

Corrections to USEPA Region 5, Section 304(l) Additional Listing/Revisions

Page 12325 as published: Wisconsin; Lower Fox River; W10001848; Fort Howard Paper Company; PCBs.

Correction: deleted

U.S. EPA REGION 5, SECTION 304(L) ADDITIONAL LISTINGS/REVISIONS—CONTINUED

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
OH	Cuyahoga River (Big Cr. to Lake Erie).	OH0000957	LTV Steel Cleveland East Side	Pb, Zn, CN, Phenolics, Naphthalene.
OH	(Same as above)	OH0000850	LTV Steel Cleveland West Side	CN, Zn, Pb, Phenolics.
OH	(Same as above)	OH0000990	DuPont/Cleveland	Cd, Cr, Pb, Zn.
OH	Cuyahoga River (Tinkers Cr. to Big Cr.).	OH0000655	Harshaw Chemical	Ni, Cu.
OH	(Same as above)	OH0024651	NEORSD Southerly WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg, Phenolics.
OH	Tinkers Cr. (Pond Brook to Cuyahoga River).	OH0024058	Bedford Heights WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	(Same as above)	OH0027863	Twinsburg WWTP	Cu, Pb, Ni, Zn, Hg.
OH	Beaver Meadow Cr.	OH0027430	Solon Central WWTP	CN, Cd, Cr, Cu, Pb, Ni, Zn, Hg.
OH	Euclid Cr.	OH0000281	Argo-Tech (TRW)	CN, Cd, Cr, Cu, Pb, Ni, Zn.
OH	Grand River (Paine Cr. to Lake Erie)	OH0026948	Painesville WWTP	Cd, Cr, Cu, Pb, Ni, Zn, Hg Phenolics.
OH	Fields Brook	OH0000442	RMI Extrusion Plant	Cd, Cr, Cu, Pb, Ni, Zn.
OH	(Same as above)	OH0003205	RMI Titanium Metals Plant	Cr, Cu, Pb, Mo, Zn.
OH	(Same as above)	OH0029149	Occidental Electrochemical	Organics, CN, Cr.
OH	(Same as above)	OH0001872	Detrex Chemical	Cd, Cu, Zn.

Corrections U.S. EPA Region 5, section 304(l) Revisions to original listings Page 12325, 12326 and 12327 as published: Ohio; Lytle Cr.; OH0028134; Wilmington WWTP; Cd, Cr, Cu, Pb, Ni, Zn, Hg; through Ohio; Second OH0021733; Blanchester WWTP; Cu, Pb, Ni, Zn.

Correction: Deleted

U.S. EPA REGION 5, SECTION 304(l) REVISIONS TO ORIGINAL LISTINGS

State	Waterbody name	NPDES,	Discharger name	Pollutants of concern
MI	Saginaw River	MI0000868	Dow Chemical U.S.A.-Midland[1]	2,3,7,8—TCDD.
MN	Mississippi River	MN0000418	Koch Refinery[2]	Hg.
MN	Mississippi River	MN0029815	MWCC/MC Metro[2]	PCB, Hg.
MN	St. Louis Bay	MN0049786	Western Lake Superior SD[2]	PCB, Hg, Pb.
OH	Mahoning River (Meander Cr. to Duck Cr.).	OH0011363	Thomas Steel Strip[2]	Cr, Cu, Pb, Ni, Zn, CN, Tetrachloroethylene.
OH	Red Run	OH0083852	Sharon Steel[2]	CN, Cr, Zn, Cd, Cu, Pb, Ni.
OH	Big Darby Cr. (Buck Run to Sugar Run).	OH0004502	Ranco/Plain City[2]	CN, Cd, Cr, Cu, Ni, Zn.
OH	Cuyahoga River (Little Cuyahoga Rv. to Yellow Cr.).	OH0023833	Akron WWTP[2]	Cd, Cu, Pb, Ni, Hg, Phenolics, Zn.

[1] Facility listed in the original list and with revision to waterbody's name.

[2] Facility listed in the original list with revision of pollutants of concern.

Dated: April 21, 1994.

Howard Pham,

Region 5, 304(l) Coordinator.

[FR Doc. 94–10438 Filed 5–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for each of the financial institutions specified in **SUPPLEMENTARY INFORMATION**. The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estates are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT:

Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims:

Guaranty Bank, #2825, Dallas, Texas

Sabinal Bank, #4335, Sabinal, Texas

First Comanche Bank, #4278, Comanche, Texas

Northshore Bank, #2513, Houston, Texas

Dated: April 26, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–10515 Filed 5–2–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Crowley American Transport, Inc. Et Al; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006190–073.

Title: Venezuelan American Maritime Association.

Parties:

Crowley American Transport, Inc.
A/S Ivarans Rederi
Consoricio Naviero de Occidente, C.A.
A.P. Moller-Maersk Line

Synopsis: The proposed amendment adds a new article 14(c) pertaining to service contracts that are for the account of an individual ocean common carrier that becomes a party to the Agreement.

Agreement No.: 232–011321–002.

Title: Maersk/Sea-Land Pacific Agreement.

Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment adds a new article 5.11 which would allow the parties to discuss and agree upon, on a voluntary basis, rate and service items, terms and conditions of service contracts and tariffs. It also revises article 9.3 to provide that a party's withdrawal from the Agreement may not be effective prior to December 31, 1995.

Agreement No.: 203–011449.

Title: Agreement for Settlement and Release of Bottacchi Claims Relating to the Argentina/U.S. Atlantic & Gulf Pool Agreements 1987–1991.

Parties:

American Transport Lines, Inc.
A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed Agreement would settle disputes between the parties over revenue pool accounting payments for the years 1987–1991 under pooling Agreements No. 212–010386, 212–010388, 212–010389, and 212–010382.

Agreement No.: 217–011450.

Title: Space Charter Agreement Between Kyowa Shipping Co., Ltd./Nippon Yusen Kaisha.

Parties:

Kyowa Shipping Co., Ltd. ("Kyowa")
Nippon Yusen Kaisha ("NYK")

Synopsis: The proposed Agreement permits NYK to charter space on vessels owned, operated or chartered by Kyowa in the trade between ports in the Far East and South East Asia, on the one hand, and ports of Guam and Saipan, on the other hand. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: April 26, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–10491 Filed 5–2–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank South Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Citizens Express Company, Gainesville, Georgia, and thereby indirectly acquire The Citizens Bank, Gainesville, Georgia.

B.Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mountain West Financial Corp.*, Helena, Montana; to become a bank holding company by acquiring in excess of 80 percent of the voting shares of Mountain West Bank of Helena, N.A., Helena, Montana.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10523 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

CBA Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CBA Bankshares, Inc.*, Americus, Georgia; to engage *de novo* through its subsidiary Community Bank Data Systems, Inc., Americus, Georgia in providing to others data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10524 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

Compass Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be, received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Compass Bancshares, Inc.*, Birmingham, Alabama; to engage *de novo* in making, acquiring and servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas; to engage *de novo* in the making, acquiring or servicing of loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10493 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

Consolidated Equity Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1994.

A. Federal Reserve Bank of Kansas City (Stephen McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Consolidated Equity Corporation*, Purcell, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of American Interstate Bancshares, Inc., Woodward, Oklahoma, and thereby indirectly acquire 85.89 percent of the voting shares of American National Bank, Woodward, Oklahoma, and 98.27 percent of the voting shares of First American Bank and Trust Company, Purcell, Oklahoma. Applicant also proposes to retain mortgage and other notes receivable pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of Continental Bank Corporation, Chicago, Illinois, and thereby indirectly acquire Continental Bank, N.A., Chicago, Illinois.

In connection with this application, Applicant has also applied to acquire Continental Illinois Energy Devlopment Corporation, and thereby engage in commercial lending pursuant to § 225.25(b)(1) of the Board's Regulation Y; Continental Illinois Trust Company of Florida, N.A., Sarasota, Florida, and thereby engage in limited purpose national bank performing trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y; Continental Equity Capital Corporation, Chicago, Illinois, and thereby engage in commercial financing pursuant to § 225.25(b)(1) of the Board's Regulation Y; Repechage Partners Ltd., Chicago, Illinois, and thereby engage in asset management, servicing and collection for third parties pursuant to Board Order effective July 26, 1993 (79 Federal Reserve Bulletin 888 (September 1993); and acquire Continental Illinois Commercial Corporation, Chicago, Illinois, and thereby engage in making, acquiring and servicing for its own account or for the account of others secured and unsecured loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10494 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

F&M National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *F&M National Corporation*, Winchester, Virginia; to merge with PNB Financial Corporation, Warrenton, Virginia, and thereby indirectly acquire The Peoples National Bank of Warrenton, Warrenton, Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Hibernia Corporation*, New Orleans, Louisiana; to merge with First Bancorp of Louisiana, Inc., West Monroe, Louisiana, and thereby indirectly acquire First National Bank, West Monroe, Louisiana, and Southern National Bank at Tallulah, Tallulah, Louisiana.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Madison Bancorp, Inc.*, Madison Heights, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Madison National Bank, Madison Heights, Michigan.

2. *NorthWest Indiana Bancorp*, Munster, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank SB, Munster, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas; to acquire at least 80 percent of the voting shares of United American Bancshares, Inc., Palestine, Texas, and thereby indirectly acquire The First National Bank of Palestine, Palestine, Texas.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10495 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

Thomas F. Farrell, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §

225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Thomas F. Farrell*, Prairie du Chien, Wisconsin; to acquire 45.20 percent of the voting shares of Peoples Bancorp, Inc., Prairie du Chien, Wisconsin, and thereby indirectly acquire Peoples State Bank, Prairie du Chien, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Eddie A. Sturzl and Peggy J. Sturzl, Trustee, for the Sturzl Revocable Trust*, Laona, Wisconsin; to retain 26.8 percent of the voting shares of Northern Wisconsin Bank Holding Company, Laona, Wisconsin, and thereby indirectly acquire Laona State Bank, Laona, Wisconsin.

Board of Governors of the Federal Reserve System, April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10496 Filed 5-3-94; 8:45 am]

BILLING CODE 6210-01-F

Hudson City Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hudson City Bancorp, Inc.*, Paramus, New Jersey; to become a bank holding company by acquiring up to 100 percent of the voting shares of Hudson City Savings Bank, Paramus, New Jersey.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *F&M National Corporation*, Winchester, Virginia; to acquire 100 percent of the voting shares of Hallmark Bank and Trust Company, Springfield, Virginia.

2. *FNB Corp.*, Asheboro, North Carolina; to acquire 100 percent of the voting shares of Randleman Savings Bank, SSB, Randleman, North Carolina.

3. *First Citizens BancShares, Inc.*, Raleigh, North Carolina; to acquire 100 percent of the voting shares of Bank of Marlinton, Marlinton, West Virginia.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Hibernia Corporation*, New Orleans, Louisiana; to merge with First Continental Bancshares, Inc., Gretna, Louisiana, and thereby indirectly acquire First National Bank of Jefferson Parish, Gretna, Louisiana.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to merge with First State Bancorp of Princeton, Princeton, Illinois, and thereby indirectly acquire First State Bank of Princeton, Princeton, Illinois; First Bank of Ashton-Rochelle, Ashton, Illinois; and First Bank of Gridley, Gridley, Illinois.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Charter Bancorporation, Inc.*, Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Buffalo Holding Company, Scottsdale, Arizona, and thereby indirectly acquire The Bank of Arizona, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10525 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Incorporated, et al.; Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 27, 1994.

A. Federal Reserve Bank of New York, (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. J.P. Morgan & Co. Incorporated, New York, New York; to retain a partnership investment of 39.6 percent of equity and to increase its interest to 59.4 percent, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citco Community Bancshares, Inc., Elizabethton, Tennessee; to acquire Small Business Resources, Inc., Panama City, Florida, pursuant to section § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to merge its current subsidiaries Citizens Federal Savings Bank, Rockwood, Tennessee, into Trans Financial Bank of Tennessee, F.S.B., Tullahoma, Tennessee, pursuant to section 225.25(b)(9) of the Board's Regulation Y. Citizens and Trans Financial are subsidiaries of Applicant.

Board of Governors of the Federal Reserve System, April 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10526 Filed 5-2-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Stocking Change of SF 529, Medical Record—Muscle Function By Nerve Distribution: Trunk and Lower Extremities

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 529, Medical Record—Muscle Function By Nerve Distribution: Trunk and Lower Extremities. This form is now authorized for local reproduction. You can request a camera copy of SF 529 from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, GSA Forms Management Branch, (202) 501–0581.

DATES: Effective May 3, 1994.

Dated: April 22, 1994.

Theodore D. Freed,

Chief, Forms Management Branch.

[FR Doc. 94–10561 Filed 5–2–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Disability Process Reengineering Proposal: Notice of Public Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Disability Process Reengineering Team of the Social Security Administration (SSA) will hold a public meeting to discuss the proposal to redesign the disability claims process that was issued on March 31, 1994 and published as a notice in the **Federal Register** on April 15, 1994. This proposal was developed by the Disability Process Reengineering Team—comprised of SSA and State Disability Determination Services (DDS) employees—and is intended to achieve dramatic improvements in customer service to the public. This public meeting is being held in conjunction with a national dialogue period to obtain the views, concerns, and ideas of all interested parties before the Team makes a final recommendation to the Commissioner of Social Security on what changes should be made to the disability claims process. The national dialogue period will end on May 27, 1994.

DATES: May 16, 1994, 1:00 p.m. to 4:00 p.m.

ADDRESSES: VOA Auditorium, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Disability Process Reengineering Team, Room 4–N–3, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410)966–8255.

SUPPLEMENTARY INFORMATION: The aim of the proposal to redesign the disability claims process is to achieve dramatically improved levels of service to the public. For purposes of this initiative, the process considered begins with the initial contact of the claimant when an intent to file an application for disability benefits is expressed, and continues through the payment of benefits or the final administrative appeal.

The proposed redesigned process is characterized by opportunities for claimants to participate fully throughout the process, enabled by information about the process and personal contact with a single employee during the initial claims process. The appeals process is streamlined, with more efficient management of pre-hearing development and an opportunity for claimants to receive favorable decisions without a hearing if the evidence so warrants, or faster decisions if a hearing is held. The decision methodology used at all levels would be simplified and streamlined to be more understandable by lay persons and medical persons alike, and there is an emphasis on individualized functional assessment. Employees work in an atmosphere characterized by teamwork, contributions by claimants and interested third parties, adequate training and quality feedback, and technological supports.

The Team's proposal intends to make the process more efficient and customer friendly for all claimants for Social Security or Supplemental Security Income disability benefits; to give claimants the right decision at the earliest point possible in the process. It is the Team's intention that claims for benefits which are correctly paid today will continue to be paid, but in a more expedited manner. The Team's proposal is not intended to affect the benefits of current disability beneficiaries, to reduce the percentage of cases that are allowed under the current process, or to make it more difficult for an individual to be found disabled.

The Disability Process Reengineering Team is interested in receiving public comments on the concepts in the proposal, particularly the public's response to the following questions about the proposal's goals:

- Does the proposal have the potential to provide a process that is easy for claimants and those who assist claimants to access and understand?
- Will it enable SSA and the State DDS to make the right decision the first time a case is adjudicated?
- Will it result in dramatically improved processing times?
- Will it result in a more efficient use of SSA and State DDS personnel?
- Will it create jobs for employees in the process that are satisfying?

In considering these questions, interested parties are encouraged to identify factors that would assure that the proposed concepts will achieve these goals. To the extent that the proposal is not seen as achieving these goals, alternative suggestions about how to do so are of particular interest to the Team.

The Commissioner of Social Security or her designee will preside over the public meeting and chair a panel including members of the Disability Process Reengineering Team. The meeting will be open to the public to the extent that space is available. Individuals who would like to present comments to the panel should contact the Project Team at 410–966–8255 by COB May 11, 1994 to sign up for a specific time for their presentations. Times for presentations will be scheduled on a first-come, first-served basis. Time allowing, each presenter will be given 5 minutes to make a presentation to the panel. Participants in this meeting are asked to submit 1 written copy of their full presentation on the day of the public meeting and be prepared to give an abbreviated statement at the public meeting.

While we will try to provide all interested parties with an opportunity to present comments to the panel, individuals who do not pre-register to make a presentation may not be able to be accommodated within the three hours reserved for the meeting. In such cases, written statements may be submitted on the day of the public meeting. A sign language interpreter will be available; the room is accessible for wheelchairs.

Written comments on the proposed disability claims process published in the April 15, 1994 **Federal Register** should be directed to: SSA—Disability Process Reengineering Project, P.O. Box 17052, Baltimore, MD 21235. Written comments can also be telefaxed to 410–966–9884. Comments should be sent by May 27, 1994 to ensure that they will be considered.

The transcript of the meeting will be available at cost. Transcripts may be ordered from the Project Team. The transcript will become part of the record of this meeting.

Dated: April 25, 1994.

Rhoda M. G. Davis,

Director, Process Reengineering Program.

[FR Doc. 94–10466 Filed 5–2–94; 8:45 am]

BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913, (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609, (moved 6/16/93)

EXPRESSLAB, INC., 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories),

HealthCare/MetPath 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 NE. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211

Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986

Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940

Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)

UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory is voluntarily withdrawing from the Program on May 1, 1994:

SmithKline Beecham Clinical Laboratories 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–10597 Filed 5–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–41–5700; WYW106365]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW106365 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW106365 effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Superivsory, Land Law Examiner.

[FR Doc. 94–10470 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–22–M

[ID–010–04–332A–02; IDI–29516]

Realty Action; Ada and Owyhee, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—IDI–29516; Exchange of public and private lands in Ada and Owyhee Counties, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 1 N., R. 2 E.
  Sec. 5: SE¼NW¼
T. 2 N., R. 2 E.
  Sec. 7: Lot 4, SE¼SW¼
  Sec. 8: SE¼SW¼
  Sec. 14: NW¼NW¼
  Sec. 17: SW¼NW¼, NE¼SW¼
  Sec. 18: S½NE¼, SE¼NW¼.

Aggregating 403.40 acres, more or less, in Ada County.

In exchange for the above described public lands, BLM will acquire the following described private lands from Thomas Nicholson and Ronald Yanke:

Boise Meridian, Idaho

T. 4 N., R. 2 E.
  Portions of Sections 34 and 35.

Containing 13.02 acres, more or less, in Ada County.

T. 8 S., R. 6 E.
  Sec. 36: All.

Containing 640 acres, more or less, in Owyhee County.

The purpose of this exchange is to dispose of public lands that have no legal access, limited resource values, are difficult and uneconomic to manage, and would better be managed in private ownership, in exchange for private lands that contain important wildlife, riparian, and recreation values in Hulls Gulch and along the Bruneau River Canyon. The public interest will be well served by the completion of this exchange, as the consummation thereof will fulfill the Secretary's Fish and Wildlife 2000, Recreation 2000, and riparian management initiatives.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be accomplished prior to closing through either acreage adjustment or cash payment in an amount not to exceed 25 percent of the value of the lands to be transferred out of Federal ownership.

DATES: On or before June 17, 1994, interested parties may submit comments to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Resource Management Specialist, at (208) 384–3338.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

Lands to be transferred from the United States will be subject to valid existing rights and the following reservations, terms, and conditions:

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Subject To:

2. Those rights for power transmission purposes granted to Idaho Power Company, its successors or assigns, by Rights-of-Way No. IDI–017143 and IDI–9195, pursuant to the Act of March 4, 1911 (43 U.S.C. 961).
3. Those rights for buried telephone line purposes granted to AT&T, its successors or assigns, by Right-of-Way No. IDI–26291, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).
4. Those rights for railroad purposes granted to Union Pacific Railroad, its successors or assigns, by Right-of-Way No. IDB–026801, pursuant to the Act of March 3, 1875 (43 U.S.C. 934–939).

Dated: April 19, 1994.

Barry C. Cushing,

Acting District Manager.

[FR Doc. 94–10564 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–04–406A–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 22, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 23, Township 14 North, Range 1 East, Boise Meridian, Idaho, Group No. 864, was accepted April 20, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 22, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94-10565 Filed 5-2-94; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-04-321A-02]

Idaho: Correction to the Filing of Plats of Survey; Idaho

The original plat of T. 20 N., R. 22 E., Boise Meridian, Idaho Was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 1, 1994.

This notice is necessary to correct Township 20 South, Range 22 East, as indicated on the notice of April 1, 1994, to Township 20 North, Range 22 East, Boise Meridian, Idaho, Group No. 811, accepted July 23, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 22, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94-10566 Filed 5-2-94: 8:45 am]

BILLING CODE 4310-GG-M

Geological Survey

Technology Transfer Act of 1986; Proposed Cooperative Research and Development Agreement Negotiations

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter a cooperative research and development agreement with several major oil companies. The purpose of the CRADA is to conduct geological field studies on Devonian and Carboniferous carbonate reefs and carbonate platforms in Kazakhstan that will lead to the development of predictive petroleum-focused models that can serve as useful analogs for interpreting the subsurface nature of facies belts, stratigraphic cyclicity, and distribution of potential reservoir, seal, and source-rock facies in the North Caspian basin and in other carbonate basins of the former Soviet Union.

Any other oil companies or organizations interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Branch of Sedimentary Processes, U.S. Geological Survey, Box 25046, MS 939, Denver Federal Center, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Dr. Harry E. Cook, Branch of Sedimentary Processes, U.S. Geological Survey, MS 999, 345 Middlefield Road, Menlo Park, CA 94025; Telephone (415) 354-3007, FAX (415) 354-3224, E-Mail hcook@octopus.wr.usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 18, 1994.

Benjamin A. Morgan,

Chief, Geologic Division.

[FR Doc. 94-10573 Filed 5-2-94; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Washington, DC 20503, telephone (202) 395-7340, with copies to Angela Cummings, Office of Policy and Management Improvement, Mail Stop 4013, Minerals Management Service, 1849 C Street, NW., Washington, DC 20240.

Title: MMS Customer Satisfaction Survey

Abstract: Annually, approximately 1,200 individuals have contact with the Minerals Management Service Gulf of Mexico Public Information Office by mail, telephone or in person. The Public Information Office provides its customers with information regarding the gas, oil, and sulphur leasing, exploration and production activities regulated by MMS in federally owned areas in the Gulf. The collection will obtain information for determining the level of satisfaction with the service provided by the Public Information Office to these individuals and to identify any areas where improvements in providing service could be made

Bureau form number: None

Frequency: On occasion, annually

Description of respondents: Individuals State and local governments, businesses and other for profit, Federal Agencies or employees, non profit institutions, small businesses and organizations

Estimated completion time: .25 hour

Annual responses: 1,200

Annual burden hours: 300

Bureau Clearance Officer: Arthur Quintana, (703) 787-1239.

Dated: April 20, 1994.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.

[FR Doc. 94-10567 Filed 5-2-94, 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Central and Western Gulf of Mexico; Natural Gas and Oil Lease Sales 157 and 161

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations, and notice of intent (Call/NOI) to prepare an environmental impact statement (EIS)

1. *Authority.* This Call is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331-1356, (1988))(OCSLA), and the regulations issued thereunder (30 CFR part 256).

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969as amended (42 U.S.C. 4321 *et seq.* (1988))(NEPA).

2. *Purpose of Call.* The purpose of the Call is to gather information for OCS Lease Sale 157 in the Central Gulf of Mexico Planning Area, tentatively scheduled for March 1995, and OCS Lease Sale 161 in the Western Gulf of

Mexico Planning Area, tentatively scheduled for August 1995.

Information and nominations on gas and oil leasing, exploration, and development and production within the Central and Western Gulf of Mexico Planning Areas are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCSLA, and regulations at 30 CFR part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA, and the OCSLA. Established departmental procedures will be employed.

3. *Description of Area.* The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88 degrees W. longitude on the east and approximately 97 degrees W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama. This area is divided into two planning areas.

The Central Gulf Planning Area is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments consists of about 47.8 million acres.

The Western Gulf Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf Planning Area. It extends south to the provisional maritime boundary with Mexico. It is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments consists of about 35.9 million acres.

A standard Call for Information Map depicting each planning area on a block-by-block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: (504) 736–2519.

4. *Areas Deferred from this Call (Western Gulf).* High Island Area, East Addition, South Extension, (Flower Gardens), Block A–375 and Block A–398.

5. *Area Under Ongoing Discussions with the Navy (Western Gulf).* The Navy has requested that two, three block groups in the Mustang Island Area be deferred from leasing in the Western Gulf so that they can conduct mine warfare operations in those areas. These six blocks are not being deferred from this Call. The MMS will continue its review to take into account possible changes in nearby oil and gas discovery and development patterns and will continue discussions with the Navy and industry representatives regarding future activities.

6. *Instructions on Call.* Indications of interest and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed 1996 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1996 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of gas and oil. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have considered for inclusion in proposed Sale 157 in the Central Gulf and proposed Sale 161 in the Western Gulf.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are requested to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)).

Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736–2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS gas and oil activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

7. *Use of Information from Call.* Information submitted in response to this Call will be used for several purposes. First, responses will be used to help identify the areas of potential for gas and oil development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of gas and oil exploration and development to the region and the Nation. A third purpose of this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and to develop a proposed action and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to assess potential conflicts

between offshore gas and oil activities and a State CMP.

8. *Existing Information.* Preceding this Call in the sale planning process was an Information Base Review (IBR). The purpose of an IBR is to evaluate the status of pertinent information and the information acquisition efforts. This IBR constituted an assessment of the quality and adequacy of the information available which has been found sufficient for the decision to proceed with the Call.

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of gas and oil activities. A complete listing of available study reports, and information for ordering copies, can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487–4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area"), or telephone (504) 736–2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, at 381 Elden Street, Herndon, Virginia 22070.

9. *Tentative Schedule.* The following is a list of tentative milestone dates preceding Sale 157 and Sale 161:

	Sale 157	Sale 161
Comments due on call and notice of intent (scoping).	June 1994	June 1994.
Area Identification.	July 1994	July 1994.
Draft EIS published.	March 1995	March 1995.
Proposed Notice Issued.	March 1995	March 1995.
Public Hearings.	May 1995	May 1995.
Governors' Comment due on proposed notice.	June 1995	June 1995.
Final EIS published.	November 1995.	November 1995.
Consistency Determination.	November 1995.	April 1995.
Final Notice of Sale.	February 1996.	July 1996.
Sale Date	March 1996	August 1996.

10. *Purpose of Notice of Intent (NOI).* Pursuant to the regulations implementing the provisions of the NEPA, the MMS is announcing its intent to prepare an EIS on the gas and oil leasing proposals known as Sale 157 in the Central Gulf, and Sale 161 in the Western Gulf, off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal Agencies and State and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

11. *Instructions on NOI to Prepare an EIS.* Federal Agencies and State and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the NOI to Prepare an EIS on the proposed 1995 Lease Sales in the Gulf of Mexico." Comments on the NOI should be submitted no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Tom Fry,

Director, Minerals Management Service.

Dated: April 25, 1994.

Nancy Hayes,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–10489 Filed 5–2–94; 8:45 am]

BILLING CODE 4310-MR-P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 16, 1994. Pursuant to § 60 13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 18, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Pickens County

Pickens County Courthouse, Jct. of AL 17. Phoenix St. (Co. Rd. 35) and Tuscaloosa St. (AL 86), Carrollton, 94000441

ARIZONA

Maricopa County

Encanto—Palmcroft Historic District (Boundary Increase), Roughly bounded by Encanto Blvd., Coronado Rd., 7th Ave. and 15th Ave., Phoenix, 94000461

Kitchell, Denison, House, 2912 E. Sherran Ln., Phoenix, 94000448

ARKANSAS

Boone County

Hotel Seville, NW corner of Vine and Ridge Sts., Harrison, 94000443

Chicot County

Dermott Bank & Trust Company Building, NW corner of N. Arkansas and E. Iowa Sts., Dermott, 94000466

Garland County

Beauchamp, Walter, House, 492 Prospect Ave., Hot Springs, 94000470

Hempstead County

Clinton, Bill, Birthplace, 117 S. Hervey St., Hope, 94000472

Hempstead County Courthouse, NW corner of 5th and Washington Sts., Hope, 94000442

Johnson County

Tankersley—Stewart House, E of County Rd 27, N of AR 352, Hunt vicinity, 94000464

Marion County

Marion County Courthouse, Courthouse Square, Yellville, 94000471

St. Francis County

First United Methodist Church, 101 S. Izard St., Forrest City, 94000467

Sebastian County

Birney Safety Streetcar No. 224, 100 S. Fourth St., Fort Smith, 94000465

Sevier County

First United Methodist Church, E of Jct. of 2nd St. and 5th Ave., Lockesburg, 94000468

Washington County

Old Springdale High School, Johnson St., Springdale, 94000469

CALIFORNIA

Los Angeles County

Pasadena Playhouse Historic District, 464—611 E. Colorado Blvd., 550—655 E. Green St., 21—127 S. El Molino Ave., and 150 N.—101 S. Madison Ave., Pasadena, 94000462

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Hecht Company Warehouse, 1401 New York Ave., NE., Washington, 94000446

IOWA

Dubuque County

Bishop's Block, 90 W. Main St., Dubuque, 94000477

LOUISIANA

East Baton Rouge Parish

Yazoo and Mississippi Valley Railroad Company Depot, 100 S. River Rd., Baton Rouge, 94000463

Union Parish

Moore, R.T. House, LA Alt. 2. N side, about 2 mi. W of US 167, Bernice vicinity, 94000478

MINNESOTA

Itasca County

Marcel Ranger Station, Chippewa NM, Marcell Township, Bigfork vicinity, 94000473

PENNSYLVANIA

Bucks County

Brownsburg Village Historic District, Jct. of River and Brownsburg Rds., Upper Wakefield Township, Brownsburg, 94000445

Dolington Village Historic District, Jct. of Rt. 532 and Mt. Eyre Rd. (Washington Crossing Rd.), Upper and Lower Wakefield Townships, Dolington, 94000444

SOUTH CAROLINA

Pickens County

Central High School, 304 Church St., Central, 94000475

Williamsburg County

Heller, M.F., House, 405 Academy St., Kingstree, 94000452

TEXAS

Bexar County

San Antonio Drug Company, 432 W. Market St., San Antonio, 94000453

Denton County

Johnson Farm, Johnson Branch Park, Lake Ray Roberts, 94000449

VERMONT

Franklin County

Rockledge, St. Alban's—Highgate Rd., VT 207, Swanton, 94000474

VIRGINIA

Campbell County

Blenheim Amendment (Boundary Increase), E of VA 648, 3500 ft. S of jct. with VA 604, Spring Mills vicinity, 94000457

Hanover County

Oakley Hill, VA 156 S side, 2500 ft. W of jct. with VA 643, Mechanicsville, 94000459

St. Paul's Episcopal Church, Jct. of US 301 and VA 54, SW corner, Hanover, 94000460

Rockbridge County

Kennedy—Wade's Mill Historic District, VA 606 (Raphine Rd.), 2000 ft. NE of jct. with VA 721, Raphine, 94000458

Smyth County

Scott—Walker House, VA 635 E side, 2 mi. SE of Saltville, Saltville vicinity, 94000450

Chesapeake Independent City

Wallaceton, 3509 George Washington Hwy., S. Chesapeake, 94000455

Hampton Independent City

Aberdeen Gardens, Roughly bounded by Langston and Mary Peake Blvds., and Russell, Davis, Lewis, Weaver and Walker Rds., Hampton, 94000456

Richmond Independent City

Weisiger—Carroll House, 2408 Bainbridge St., Richmond, 94000454

WASHINGTON

Adams County

Ritzville High School, 7th Ave., between Columbia and Division Sts., Ritzville, 94000476

WISCONSIN

Dane County

Larson, August Cornelius, House, 1006 Grant St., Madison, 94000451

Iowa County

Jones, David J. and Maggie, House, 201 E. Swayne St., Dodgeville, 94000447

[FR Doc. 94–10342 Filed 5–2–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 23, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 18, 1994.

Carol D. Shull,

Chief of Registration, National Register

ALABAMA

Madison County

Lanford, William, House, 7400 Old Madison Pike, Huntsville, 94000499

ARIZONA

Pima County

Bates Well Ranch, Bates Well Rd. E side, Ajo vicinity, 94000493

ARKANSAS

Faulkner County

Robins, Frank E., House, 567 Locust St., Conway, 94000497

Lawrence County

Walnut Ridge Post Office, Old, 225 W. Main St., Walnut Ridge, 94000496

Perry County

Houston Methodist Episcopal Church, South, AR 60 SW side, near jct. with AR 216, Houston, 94000494

Pulaski County

Johnswood, 10314 Cantrell Rd., Little Rock, 94000495

LOUISIANA

East Baton Rouge Parish

Prince Hall Masonic Temple, 1335 North Blvd., Baton Rouge, 94000498

MISSISSIPPI

Clarke County

Akin, C. V., House (Clarke County MPS), Clarion St. S side, approximately ¼ mi. E of US 45, DeSoto, 94000512

Buckley, Judge John L., House (Clarke County MPS), Bridge St. N side at jct. with Hand Ave., Enterprise, 94000513

Carter, Benjamin H., House (Clarke County MPS), 210 Ferrill St., Quitman, 94000514

Clarke County Courthouse and Confederate Monument (Clarke County MPS), Archusa St. at head of Main St., Quitman, 94000511

East Enterprise Historic District (Clarke County MPS), Roughly bounded by S. Stonewall St., Church St., MS 513 and Tuscahoma Rd., Enterprise, 94000510

Ferrill, Capt. C. C., House (Clarke County MPS), 118 E. Franklin St., Quitman, 94000509

House on Old Mill Creek Road (Clarke County MPS), Old Mill Creek Rd. W side, between Old Mill Creek Rd. and US 11, Enterprise, 94000508

Kirkland, J.K., General Merchandise Store (Clarke County MPS), 124 Main St., Quitman, 94000507

Moore, Noah, House (Clarke County MPS), 111 Main St., Enterprise, 94000506

Quitman Depot (Clarke County MPS), Illinois Central Gulf RR tracks E side, near jct. of Main St. and Railroad Ave., Quitman, 94000505

Shubuta Methodist Episcopal Church, South (Clarke County MPS), High St. (US 45), E side, Shubuta, 94000504

Stonewall Mill Village Historic District (Clarke County MPS), Roughly, area surrounding Erwin Rd. between Alice and Allen Aves., Stonewall, 94000503

Williams, Jim, House (Clarke County MPS), N. River Rd. W side, near jct. with MS 513, Enterprise, 94000502

Wyatt, W.W., House (Clarke County MPS), 107 N. River Rd., Enterprise, 94000501

OKLAHOMA

Blaine County

Watonga Armory, 301 W. Main, Watonga, 94000491

Caddo County

Anadarko Armory, 700 W. Oklahoma St., Anadarko, 94000479

Cherokee County

Tahlequah Armory, 100 Water Ave., Tahlequah, 94000488

Custer County

Weatherford Armory, 123 W. Rainey St., Weatherford, 94000492

Grady County

Minco Armory, 407 W. Pontotoc St., Minco, 94000484

Johnston County

Tishomingo Armory, 500 E. 24th St., Tishomingo, 94000489

McIntosh County

Eufaula Armory, 48 Memorial Dr., Eufaula, 94000481

Murray County

Sulphur Armory, 500 W Wynnewood Ave., Sulphur, 94000487

Oklahoma County

Wagoner Armory, 509 E. Cherokee St., Wagoner, 94000490

Osage County

Hominy Armory, 201 N. Regan St., Hominy, 94000482

Pawhuska Armory, 823 E. 8th St., Pawhuska, 94000485

Pawnee County

Pawnee Armory, Jct. of First and Cleveland Sts., Pawnee, 94000486

Payne County

Cushing Armory, 218 S. Little Ave., Cushing, 94000480

Seminole County

Konawa Armory, 625 N. State St., Konawa, 94000483

[FR Doc. 94-10533 Filed 5-2-94; 8:45 am]

BILLING CODE 4310-70-F-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Chile, acting through its Ministry of Housing and Urban Development ("Borrower") as part of USAID's development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Chile. At this time, the Ministry of Finance of the Republic of Chile has authorized USAID to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (US$10,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Republic of Chile

Project No: 513-HG-010-$10,000,000

Housing Guaranty Loan No: 513-HG-010 A01

Attention: Mr. Jose Pablo Arellano Marin, Director de Presupuestos, Ministry of Finance, Teatinos 120, piso 12, Santiago, Chile, Telefax No.: (562) 671-3814 (preferred communication), Telephone No.: (562) 696-1368 or (562) 671-0672.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by Tuesday, May 17, 1994, at 12:00 Noon Eastern Daylight Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Thomas Nicastro, USAID Representative/Chile, USAID/Chile, American Embassy Codina Bldg., 1343 Agostinas, Santiago, Chile, Telefax No: (562) 638-0931 (preferred communication), Telephone No: (562) 671-0133 or 638-1014

and

Mr. William Yaeger, Director, RHUDO, South America, USAID/Quito, Ecuador, c/o American Embassy, Unit 5330, APO AA 34039-3420, Telefax No.: (593) 2-561-228 (preferred communication), Telephone No.: (593) 2-544-365

Mr. David Grossman/Mr. Peter Pirnie, U.S. Agency for International Development, Office of Housing and Urban Programs, G/DG/H, Room 401, SA-2, Washington, D.C. 20523-0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663-2552 (preferred communication), Telephone No.: 202/663-2548/2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* US$10 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years on the repayment of principal (during grace period, semi-annual payments of interest only). If *variable interest* rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed interest* rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of *fixed rate,* and *variable rate* are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6¼% U.S. Treasury Bond due August 15, 2023. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:* Offers should include options for prepayment and mention prepayment premiums, if any.

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, the Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* As early as practicable, but not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by USAID. The Republic of Chile reserves the right to not accept any bid which, in its estimation, is non-competitive. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Peter Kimm, Director, Office of Housing and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: April 28, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau of Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 94–10598 Filed 5–2–94; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–651 (Final)]

Silicon Carbide from the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On December 8, 1993, the Commission instituted the subject investigation and established a schedule for its conduct (59 FR 3735, January 26, 1994). Subsequently, the President declared April 27, 1994, a day of national mourning and ordered all Federal agencies closed for business. The Commission, therefore, is revising its schedule in the investigation to adjust for the President's order.

The Commission's new schedule for the investigation is as follows: the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 2, 1994; the deadline for filing posthearing briefs is May 9, 1994.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: April 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–10675 Filed 4–29–94; 2:29 pm]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 163X)]

Southern Pacific Transportation Company; Abandonment Exemption; in Bexar, Karnes, and Wilson Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Southern Pacific Transportation Company of a 46.7-mile line of railroad in Bexar, Karnes, and Wilson Counties, TX, subject to standard labor protective conditions, environmental conditions, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 2, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by May 13, 1994. Petitions to stay must be filed by May 18, 1994. Petitions to reopen must be filed by May 30, 1994. Requests for a public use condition conforming to 49 CFR 1152.28(A)(2) must be filed by May 23, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–12 (Sub-No. 163X), to : (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission; Washington, DC 20423; and (2) Petitioner's representatives: Karl Morell, Taylor, Morell & Gitomer, 919 18th Street, NW. suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: April 20, 1994.

By the Commission, Chairman McDonald, Vice Chairmen Phillips, Commissioners Simmons and Philbin. Commissioner Philbin did not participate in the dispostion of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10557 Filed 5–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 133X)]

Virginia & Southwestern Railway Company; Abandonment Exemption; in Bristol, VA and Bristol, TN

Virginia & Southwestern Railway Company (V&S) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon 0.18 mile of track between milepost 68.24–T and milepost 68.42–T at Bristol, VA, and 0.8 mile of track between milepost 70.6–T and milepost 71.4–T at Bristol, TN, a total distance of 0.98 mile.

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

V&S has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 2, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 13, 1994.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 23, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

V&S has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 6, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10558 Filed 5–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Spring meeting of the Committee on Occupational Safety and Health Statistics of the Labor Research Advisory Council will be held on May 24, 1994. The meeting will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meeting is as follows:

Tuesday, May 24, 1994

1 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Rooms 7 and 8

1. Survey of Occupational Injuries and Illnesses: Case and Demographic data.
2. Department of Labor report on the availability and use of data on occupational injuries and illnesses to the Senate and House Appropriations Committees.
3. Occupational motor vehicle fatalities: Census of Fatal Occupational Injuries—Fatal Accident Reporting System (CFOI–FARS) linkage.
4. Survey of Employer-Provided Training—status report.
5. Other business.

The meeting is open to the public. Persons planning to attend the meeting as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Signed at Washington, DC this 21st day of April 1994.

Katharine G. Abraham,

Commissioner.

[FR Doc. 94–10594 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–24–M

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on May 10, 11, and 12. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, May 10, 1994

9:30 a.m.—Committee on Prices and Living Conditions Meeting Room 3, PSB

1. Discussion of articles on measurement issues in the CPI published in the December 1993 issue of the Monthly Labor Review
2. Other business

1:30 p.m.—Committee on Wages and Industrial Relations Meeting Room 3, PSB

1. Current Activities in Progress
2. Discussion of the 1995 budget for Compensation and Working Conditions
3. Report of the Business and Labor Advisory Subcommittee on Employer Provided Training
4. Results from the Health Expenditures Survey
5. Other business

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C 2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of the exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Wednesday, May 11, 1994

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9, PSB

1. Discussion of BLS Fiscal Year 1995 budget
2. Summary of recommendations of the Labor Market Information Review
3. BLS response to the American Statistical Association report
4. Issues regarding contingent workers
5. Lessons learned in the Current Population Survey Redesign
6. Plans for design of wage record database

Thursday, May 12, 1994

1 p.m.—Committee on Productivity, Technology and Growth—Meeting Rooms 9 and 10

1. Review of recent program developments in the Office of Productivity and Technology (OPT)
2. Planned adoption of alternative index numbers in productivity measurement
3. Publication of alternative projections on infrastructure, health expenditures, and foreign trade.

Committee on Foreign Labor Statistics

1. Update on international price statistics program (report by staff of the Office of Prices and Living Conditions)
2. Report on BLS international cooperation activities.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Due to various scheduling difficulties, we are unable to provide the full fifteen (15) days of advance notice of this meeting.

Signed at Washington, DC this 26th day of April 1994.

Katharine G. Abraham,

Commissioner.

[FR Doc. 94–10595 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–29,715]

B and B Garment Works, Inc., Parsons, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 4, 1994 in response to a worker petition which was filed on behalf of workers at B and B Garment Works, Incorporated, Parsons, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 20th day of April 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–10588 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,567 and TA–W–29,567A]

Bravo Fashions, Mineral Wells, TX; and Employee Services, Mineral Wells, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 24, 1994, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on December 28, 1993 (58 FR 68669).

At the request of the State Agency, the Department is amending the certification to include leased employees at Bravo Fashions who were separated as a result of the adverse impact of imported ladies' jackets.

The intent of the Department's certification is to include all workers at Bravo Fashions, Mineral Wells, Texas who were affected by increased imports of ladies' jackets.

Further, as a result of the plant shutdown in November, 1993, the Department is including a termination date of April 23, 1994.

The amended notice applicable to TA–W–29,567 is hereby issued as follows:

> All workers of Bravo Fashions, Inc., Mineral Wells, Texas who became totally or partially separated from employment on or after February 23, 1993 and before April 23, 1994, including leased employees of Employee Services who were employed exclusively at Bravo Fashions, Mineral Wells, Texas who were separated as a result of the impact of imported ladies' jackets on or after February 23, 1993 and before April 23, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of April 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–10589 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles producted
Fisher-Price, Inc (Co)	Murray, KY	04/18/94	04/05/94	29,748	Toys.
Fisher-Price, Inc (Co)	Medina, NY	04/18/94	04/05/94	29,749	Toys.
Fisher-Price, Inc (Co)	East Aurora, NY	04/18/94	04/05/94	29,750	Toys.
Lady Lynne Lingerie (ILGWU)	New York, NY	04/18/94	04/06/94	29,751	Ladies' underwear.
IBM, East Fishkill Facility (Wkrs)	Hopewell Jct, NY	04/18/94	04/08/94	29,752	Ceramic semiconductors.
C & R Cedar (Co)	Forks, WA	04/18/94	04/05/94	29,753	Cedar shakes and shingles.
Any Wash (Wkrs)	Hialeah, Fl	04/18/94	03/27/94	29,754	Ladies' pants, dresses, skirts and shorts.
Unifirst Corp (Co)	Haverhill, MA	04/18/94	04/04/94	29,755	Uniform rentals.
UCAR Carbon Co, Inc (Co)	Robinson, IL	04/18/94	04/08/94	29,756	Calcined petroleum coke.
The Greif Companies (Co)	Lehigh Valley, PA	04/18/94	04/05/94	29,757	Men's suits, sportcoats and pants.
The Greif Companies (Wkrs)	Shippensburg, PA	04/18/94	04/05/94	29,758	Men's suits, sportcoats and pants.
The Greif Companies (Wkrs)	Verona, VA	04/18/94	04/05/94	29,759	Men's suits, sportcoats and pants.
The Greif Companies (Wkrs)	New York, NY	04/18/94	04/05/94	29,760	Men's suits, sportcoats and pants.
Monroeville Dodge, dba Dodgeland (Wkrs).	Monroeville, PA	04/18/94	03/27/94	29,761	Autmobile dealership.
Kirschner Medical Corp (Wkrs)	Marlow, OK	04/18/94	04/04/94	29,762	Orthopedic appliances.
General Electric Co. (IUE)	Lynn, MA	04/18/94	04/04/94	29,763	Jet aircraft engines.
Koch Industries (Wkrs)	Trenton, ND	04/18/94	04/01/94	29,764	Gas and gas liquid products.
KDEX, Inc (Wkrs)	Russell, KS	04/18/94	04/01/94	29,765	Oil drilling.
USA Interprises of GA (Wkrs)	Conyers, GA	04/18/94	03/24/94	29,766	Men's pants.
Richard Warren (Wkrs)	New York, NY	04/18/94	03/30/94	29.767	Ladies' Dresses and suits.
Normandy Manufacturing Co (ILGWU)	Paducah, KY	04/18/94	04/04/94	29,768	Ladies' outer apparel.
Charles Bluestone Co (USWA)	Elizabeth, PA	04/18/94	04/08/94	29,769	Metal recycling.
Sante Fe Minerals, Inc (Co)	Dallas, TX	04/18/94	04/05/94	29,770	Oil and gas.
Milco Industries, Inc (Wkrs)	Bloomsburg, PA	04/18/94	04/08/94	29,771	Ladies' intimate apparel.
Wilmington Steel and Construction (Wkrs).	New Castle, PA	04/18/94	04/08/94	29,772	Fabricated structrual steel.
James River Corp (Co)	Old Town, ME	04/18/94	04/05/94	29,773	Hardwood and softwood pulp.
Airfoil forging Textron (UAW)	Euclid, OH	04/18/94	03/30/94	29,774	Forged Bladess for jet engines.
Airfoil Textron (UAW)	Fostoria, OH	04/18/94	03/28/94	29,775	Jet engine blades and vanes.
Harbor Casuals, Inc (ILGWU)	Plains, PA	04/18/94	04/11/94	29,776	Bathing suits and sportswear.
Sandvik Special Metals Corp (OCAW)	Kennewick, WA	04/18/94	03/28/94	29,777	Specialty tubing.
R&A, Inc (Co)	Aransas Pass, TX	04/18/94	03/29/94	29,778	Shrimp.
R. Shrimp, Inc (Co)	Aransas Pass, TX	04/18/94	03/29/94	29,779	Shrimp.
Vikki, Inc (Co)	Aransas Pass TX	04/18/94	03/29/94	29,780	Shrimp.
Murfin Drilling Co (Wkrs)	Wichita, KS	04/18/94	04/01/94	29,781	Oil and Gas Exploration and production.
Amoco Production CO., Gen Office (Co)	Chicago, IL	04/18/94	04/05/94	29,782	Oil, gas exploration and production.
Amoco Production Co., Tulsa Research (Co).	Tulsa, OK	04/18/94	04/05/94	29,783	Oil, gas exploration and production.
Amoco Production Co., Tulsa Data (Co)	Tulsa, OK	04/18/94	04/05/94	29,784	Oil, gas exploration and production.
Amoco Production Co, Offshore Unit (Co).	New Orleans, LA	04/18/94	04/05/94	29,785	Oil, gas exploration and production.
Amoco Production Co, Denver Reg Off (Co).	Denver, CO	04/18/94	04/05/94	29,786	Oil, Gas exploration and production.
Amoco Production Co, Houston Reg Of (Co).	Houston, TX	04/18/94	04/05/94	29,787	Oil, gas exploration and production.
Gerber Products Co., Inc (Wkrs)	Reesburg, WI	04/18/94	2/28/94	29,788	Infant feeding and care products.

[FR Doc. 94–10591 Filed 5–2–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,403]

Johnson Controls, Inc., Bennington, VT; Affirmative Determination Regarding Application for Reconsideration

On April 5, 1994, the workers with the support of their Congressman, requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The notice was issued on March 15, 1994 and was published in the **Federal Register** on March 30, 1994 (59 FR 14876).

It's claimed that an appropriate subdivision at Johnson Controls in Bennington, Vermont was adversely affected by increased imports because Johnson Controls moved a part of the production process (the filling, charging, decorating and installing) at Bennington to a plant in Mexico. The charged batteries will then reenter the U.S. as imports.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of

Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of April 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94-10592 Filed 5-2-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than May 13, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than May 13, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received at Governor's office	Petition No.	Articles produced
Dataproducts (Wkrs)	Norcross, GA	04/11/94	NAFTA-00077	Typewriter ribbons.
Radform Tool Company (Wkrs)	East Mckeesport, PA	04/12/94	NAFTA-00078	Machined items: nuclear replacement parts and tooling, steam generator components, power systems.
Swiss Precision Products, Inc. (Co.)	Lake Havasu City, AZ	04/13/94	NAFTA-00079	Screw machine parts.
Sushine Rope Manufacturing, Inc. (Co.)	Miami, FL	04/11/94	NAFTA-00080	Synthetic twine and rope.
Allied Signal Safety Restraints; El Paso Automotive Sector (Wkrs).	El Paso, TX	04/18/94	NAFTA-00081	Automobile seat belts/safety restraints, child seat safety restraints.

[FR Doc. 94-10590 Filed 5-2-94; 8:45 am]

BILLING CODE 4510-30-M

Wagner-Peyser Act Final Planning Allotments for Program Year (PY) 1994

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning allotments for Program Year (PY) 1994 (July 1, 1994, through June 30, 1995) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, 200 Constitution Avenue NW., room N-4470, Washington, DC 20210. Telephone: (202) 219-5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with Section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final planning allotments for each State for Program Year (PY) 1994 (July 1, 1994, through June 30, 1995). Preliminary planning estimates were provided to each State on February 25, 1994. Funds are distributed in accordance with formula criteria established in Section 6 (a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1993 are used in making the formula calculations.

The total amount of funds currently available for distribution is $832,656,000. The Secretary of Labor set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required by Section 6(b)(4) of the Act. In accordance with this provision, $24,396,018 is set aside for administrative formula allocation. These funds are included in the total planning allotment. The funds that are set aside are distributed in two steps to States which have lost in relative share of resources from the prior year. In Step 1, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. The remainder is distributed in Step 2 to all other States losing in relative share from the prior year but which do not meet the size and density criteria for Step 1.

Postage costs incurred by States during the conduct of employment service (ES) activities are billed directly to the Department of Labor by the U.S. Postal Service. The total final planning allotment reflects $19,655,400, or 2.36 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of ES business.

The Department had planned to require State Employment Security Agencies (SESAs) to convert from penalty mail systems to commercial mail systems effective October 1, 1994, at which time the Employment and Training Administration (ETA) had planned to allocate national postage reserves to the SESAs. Based on a legal opinion, the Department cannot require this conversion. SESAs are entitled to the penalty mail privilege pursuant to 39 U.S.C. 3202(a)(1)(E). This does not impact on the change to direct accountability that SESAs implemented on October 1, 1993. States will continue to use penalty mail systems (penalty meters, penalty stamps and envelopes, permit G–12, and Business Reply Mail permit 12634) and ETA will continue to pay the SESA penalty mail costs to the U.S. Postal Service. ETA will explore with the U.S. Postal Service the possibility of having individual State penalty mail agreements with the U.S. Postal Service. This would permit ETA to allocate postage resources to the States who could then have the option of using commercial or penalty mail systems. It continues to the Departmental policy that States utilize commercial mail methods for mail which pertains to both employment security and non-employment security business. In such instances, ETA will reimburse the SESA for the employment security share of the cost.

Differences between preliminary planning estimates and final planning allotments are caused by the use of a Calendar Year data base as opposed to the earlier data used for preliminary planning estimates. Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Signed at Washington, DC, this 8th day of April, 1994.

Robert A. Schaerfl,

Director, U.S. Employment Service.

Appendix

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
FINAL PY 1994 WAGNER–PEYSER ALLOTMENTS TO STATES
(WITHOUT POSTAGE)

State	Basic Formula	3% Distribution			Total Allotment
		Step 1*	Step 2**	Total	
Alabama	11,770,628	0	0	0	11,770,628
Alaska	7,716,630	1,123,248	0	1,123,248	8,839,878
Arizona	10,216,111	0	0	0	10,216,111
Arkansas	6,463,018	0	345,263	345,263	6,808,281
California	97,552,102	0	0	0	97,552,102
Colorado	10,060,190	0	0	0	10,060,190
Connecticut	9,944,734	0	388,328	388,328	10,333,062
Delaware	2,203,102	0	68,309	68,309	2,271,411
District of Columbia	4,206,119	0	388,993	388,993	4,595,112
Florida	38,258,513	0	718,354	718,354	38,976,867
Georgia	18,862,962	0	0	0	18,862,962
Hawaii	2,933,814	0	0	0	2,933,814
Idaho	6,429,327	935,865	0	935,865	7,365,192
Illinois	35,279,161	0	715,650	715,650	35,994,811
Indiana	15,636,573	0	322,313	322,313	15,958,886
Iowa	7,676,798	0	452,443	452,443	8,129,241
Kansas	6,894,124	0	0	0	6,894,124
Kentucky	9,940,241	0	382,017	382,017	10,322,258
Louisiana	11,067,481	0	907,827	907,827	11,975,308
Maine	3,823,461	556,550	0	556,550	4,380,011
Maryland	14,837,226	0	0	0	14,837,226
Massachusetts	18,188,732	0	1,129,895	1,129,895	19,318,627
Michigan	27,148,057	0	1,599,310	1,599,310	28,747,367
Minnesota	12,940,759	0	155,783	155,783	13,096,542
Mississippi	6,789,572	0	540,674	540,674	7,330,246
Missouri	14,862,895	0	287,810	287,810	15,150,705
Montana	5,254,079	764,794	0	764,794	6,018,873
Nebraska	6,314,370	919,132	0	919,132	7,233,502
Nevada	5,107,518	743,460	0	743,460	5,850,978
New Hampshire	3,517,645	0	167,434	167,434	3,685,079
New Jersey	23,539,327	0	450,917	450,917	23,990,244
New Mexico	5,896,001	858,233	0	858,233	6,754,234
New York	51,610,634	0	836,654	836,654	52,447,288
North Carolina	18,456,819	0	465,243	465,243	18,922,062
North Dakota	5,350,224	778,789	0	778,789	6,129,013
Ohio	30,973,622	0	618,573	618,573	31,592,195
Oklahoma	9,909,261	0	916,435	916,435	10,825,696
Oregon	9,253,799	0	0	0	9,253,799
Pennsylvania	34,105,087	0	665,192	665,192	34,770,279
Puerto Rico	10,340,732	0	0	0	10,340,732
Rhode Island	3,074,338	0	134,008	134,008	3,208,346
South Carolina	10,824,335	0	0	0	10,824,335
South Dakota	4,944,837	719,780	0	719,780	5,664,617
Tennessee	13,540,630	0	256,789	256,789	13,797,419
Texas	52,928,323	0	0	0	52,928,323
Utah	10,814,959	1,574,246	0	1,574,246	12,389,205
Vermont	2,316,445	337,186	0	337,186	2,653,631
Virginia	17,629,863	0	622,024	622,024	18,251,887
Washington	15,966,406	0	0	0	15,966,406
West Virginia	5,659,854	823,860	0	823,860	6,483,714
Wisconsin	13,954,398	0	166,197	166,197	14,120,595
Wyoming	3,836,445	558,440	0	558,440	4,394,885
FORMULA TOTAL	786,822,281	10,693,583	13,702,435	24,396,018	811,218,299
Guam	380,515	0	0	0	380,515
Virgin Islands	1,601,786	0	0	0	1,601,786
Indicia Postage	19,655,400	0	0	0	19,655,400
NATIONAL TOTAL	808,459,982	10,693,583	13,702,435	24,396,018	832,856,000

* Funds are allocated to the 13 States whose relative share decreased from PY 1993 to the PY 1994 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1993 relative share.

** The balance of the 3% funds are distributed to the remaining 28 States losing in relative share from PY 1993 to their PY 1994 total allotment amount.

[FR Doc. 94-10593 Filed 5-2-94; 8:45 am]

BILLING CODE 4510-30-C

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by May 27, 1994. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Requests for Proposals.

Affected Public: Individuals, State or local governments, Business or other for-profit, Non-profit institutions, and Small businesses or organizations.

Respondents/Reporting Burden: 260 respondents annually: 120 hours per response.

Abstract: Requests for Proposals used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Dated: April 27, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–10510 Filed 5–2–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Engineering Education and Centers.

Date & Time: May 16–18, 1994, 8:30 a.m.–5 p.m.

Place: Arlington Renaissance Hotel, 950 North Stafford Street, room 585, Arlington, Virginia 22203.

Contact person: Ms. Lynn Preston, Deputy Division Director, Engineering Education and Center Division, National Science Foundation.

Telephone: 703/306–1379.

Type of meeting: Closed.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Engineering Research Centers program.

Reasons for closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10335 Filed 5–2–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316]

Indiana Michigan Power Co., D.C. Cook, Unit No. 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, appendix J, III.D.2.(a) and III.D.3., related to Type B and C local leak rate testing of containment isolation valves, to the Indiana Michigan Power Company (the licensee), for operation of the D.C. Cook Nuclear Plant, Unit 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time schedular exemption from the requirements of Appendix J, paragraphs III.D.2.(a) and III.D.3 of 10 CFR part 50 and approve an extension of the 2-year period between the performance of Type B and C leak rate test by 150 days. Appendix J to 10 CFR part 50, paragraph III.D.2.(a), states, in part, "Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years." Paragraph III.D.3., states, "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years." Taken together, these sections require Type B and C containment leakage tests to be performed at an interval not to exceed 2 years.

In a letter dated March 9, 1994, as supplemental April 13, 1994, the licensee requested an exemption to 10 CFR part 50, Appendix J, to allow the time between the performance of the required Type B and C tests to exceed the 2-year maximum by up to 150 days.

The Need for the Proposed Action

The proposed exemption is needed because compliance with paragraphs III.D.2(a) and III.D.3 of 10 CFR part 50, appendix J, would result in a unit shutdown and additional personnel radiation exposure in order to comply with the required Type B and C test frequency. The licensee last conducted the required Type B and C leak rate tests during a refueling outage in the spring of 1992. These previous leak rate tests will reach the 2-year maximum test interval imposed by Appendix J starting on May 29, 1994. The licensee's next refueling outage is scheduled to begin in August 1994. The extended interval between refueling outages is a result of an equipment problem and scheduling to avoid coincident refueling outages on both units. The exemption is requested to support the current outage schedule and to avoid the potential for an earlier reactor shutdown. If a forced outage is imposed to perform testing it would present undue hardship and cost in the form of increased radiological exposure. Furthermore, if a forced outage is imposed to perform the required testing, an additional plant shutdown and startup will be required. This action is similar to that approved for several other facilities.

Environmental Impact of the Proposed Action

The proposed action includes exemptions from performing Type B and C tests for a maximum period of 150 days beyond the required Appendix J test intervals. As stated in 10 CFR part 50, appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR 50.12(a), in that it represents a one-time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to asure that any required maintenance or repair is performed. As noted in paragraphs III.D.2.(a) and III.D.3 of Appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the Appendix J intervals by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and, therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurance during the 150-day extended period.

Past Unit 2 local leak rate test data have demonstrated improving leak rate test results. Although the As Found results for the 1989 and 1990 outages were 3.0 L_a and 0.74 L_a, respectively, which exceeded the maximum limit of 0.6 L_a, the 1992 As Found was 0.18 L_a. The improved 1992 As Found result, which was a minor increase from the 1990 As Left of 0.17 L_a, followed several corrective actions by the licensee. The improving trend for the Type B and C testing, well below the allowable limit, provides reasonable assurance that the probability of exceeding the offsite dose rates established in 10 part 100 will not be increased by extending the current Type B and C testing for a maximum of 150 days.

Thus, radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. The proposed exemption will not increase the probability or consequences of any reactor accidents. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption and amendment and to require rigid compliance with the requirements of paragraphs III.D.2.(a) and III.D.3 of appendix J to 10 CFR part 50. Such action would not enhance the protection of the environment and would result in unjustified burdens and costs for the licensee and greater occupational exposure to plant personnel.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action. The State had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's application and request for exemption dated March 9 and April 13, 1994. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 22nd day of April 1994.

For the Nuclear Regulatory Commission.

John B. Hickman,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-10527 Filed 5-2-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Co.; Issuance of Environmental Assessment Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. DPR-70 and DPR-75, issued to Public Service Electric and Gas Company (the licensee), for the operation of Salem Nuclear Generating Station, Units 1 and 2.

Identification of Proposed Action

The amendments would consist of changes to the Technical Specifications (TS) that would authorize an increase to the storage capacity of the spent fuel pools (SFP) from 1170 fuel assemblies to 1632 fuel assemblies at each Salem unit.

The amendments to the TS are responsive to the licensee's application dated April 28, 1993, as supplemented by letters of August 12, 1993, November 7, 1993, February 2, 1994, and April 7, 1994. The NRC staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pools, Public Service Electric and Gas Company, Facility Operating License No. DPR-70 and DPR-75, Salem Nuclear Generating Station, Units 1 and 2, Docket Nos. 50-272 and 50-311," dated April 25, 1994.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended licensing SFP expansion on a case-by-case basis.

For Salem Units 1 and 2, the SFP modification will not create any significant additional radiological effects or measurable nonradiological environmental impacts.

In the event of a fuel handling accident, the whole body dose and thyroid dose that might be received by an individual at the site boundary is well within regulatory requirements. It is not expected that an increase in the occupational radiation dose will result from the operation of the expanded spent fuel pools. For the modification of the pools, the occupational exposure is estimated to be less than 4% of the total annual occupational exposure at the facility. To assure as low as reasonably achievable (ALARA) goals are met, during the SFP expansion activities, work, personnel traffic and movement of equipment will be monitored and controlled. Therefore, the staff concludes that the exposure to workers is ALARA and is acceptable.

The only nonradiological impact affected by the expansion of the spent fuel pools is the waste heat rejected. The increase in total plant waste heat is insignificant (less than 0.05% of the total plant heat loss to the environment). There is no significant environmental impact attributed to the waste heat from the plant because of the expansion of the spent fuel pools.

Finding of No Significant Impact

The staff has reviewed this proposed facility modification relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendments to the licenses will have no significant impact on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments to the Technical Specifications dated April 28, 1993, as supplemented by letters of August 12, 1993, November 17, 1993, February 2, 1994, and April 7, 1994, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Salem Nuclear Generating Station, Units 1 and 2, issued April 1973, and (4) the Environmental Assessment dated April 25, 1994. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located in the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 25th day of April 1994.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10528 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 140.11(a)(4) to Facility Operating License No. DPR–13, a possession-only license held by the Southern California Edison Company (SCE or the licensee). The exemption would apply to the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1), a permanently shutdown plant located at the SCE site in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 140.11(a)(4) to the extent that SONGS 1 would be exempted from participation in the industry retrospective rating plan (secondary level financial protection). The licensee requested the elimination of its required participation in a letter dated February 2, 1993.

The Need for the Proposed Action

SONGS 1 was permanently shut down in November 1992, and defueling of the reactor completed in March 1993. Upon licensee certification of the defueling on March 9, 1993, Amendment No. 150 to Facility Operating License No. DPR–13 became effective, changing the license to a possession-only license. The exemption addresses withdrawal from participation in the industry retrospective rating plan.

Since SONGS 1 no longer contributes as great a risk to the retrospective rating plan participants as does an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The proposed action does not involve any environmental impacts. The proposed exemption is in a subject area, changes in surety, insurance and/or indemnity requirements, for which the Commission in 10 CFR 51.22(c)(10) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Since the proposed action does not involve a change in plant operation or configuration, there is reasonable assurance that the proposed action would not increase the probability or the consequences of an accident or reduce the margin of safety, no changes would be made in the types or quantities of effluents that may be released offsite, and there would be no significant increase in the allowable individual or cumulative radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Environmental Assessment related to the conversion of the Provisional Operating License to a Full Term Operating License issued to Southern California Edison Company for the San Onofre Nuclear Generating Station, Unit 1, on September 16, 1991.

Agencies and Persons Consulted

The NRC staff consulted with a representative of the State of California regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application to amend Indemnity Agreement No. B–31, dated February 2, 1993, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room at the Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 22nd day of April 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10529 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co. (Fermi 2); Exemption

I

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43 which authorizes operation of the Fermi 2 Nuclear Plant at steady-state reactor power levels not in excess of 3430 megawatts thermal. The Fermi 2 facility is a boiling water reactor located at the licensee's site in Monroe County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.C of appendix J to 10 CFR part 50 requires, in part, that valves, unless pressurized with fluid (e.g., water, nitrogen) from a seal system, shall be tested by pressurizing with air or nitrogen at a test pressure of Pa (56.5 psig), the calculated peak containment internal pressure as a result of the design basis accident. Further, the combined leakage rate of all penetrations and valves subject to Type B and C testing shall be less than 0.60 La (La is the maximum allowable leakage rate at Pa). Leakage from containment isolation valves that are sealed with fluid from a seal system may be excluded, provided the leakage rates for these valves do not exceed the Technical Specification leakage requirements and the seal system fluid inventory is sufficient to ensure the sealing function for 30 days following an accident at a pressure of 1.10 Pa.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated May 24, 1993, the licensee requested an exemption from the requirements of 10 CFR part 50, appendix J, III.C for performing Type C integrated leak rate tests of the containment isolation valves in the Low pressure coolant injection (LPCI) lines of the residual heat removal (RHR) system. The valves in question are the loop A and B LPCI isolation valves, which are motor-operated gate valves, outboard of containment and which are operable from the control room and are designated as E11–F015 A and B. The licensee proposed, as alternative testing, an external leakage test, with water as the test medium, at a pressure of 1045 psig with an allowable leakage value of 5 milliliters per minute (ml/min). The license also provided justification in its May 24, 1993, letter to reclassify the inboard containment LPCI valve configuration (which consists of a reverse flow swing check valve with a 1-inch, locked closed, solenoid-operated bypass valve) as other than containment isolation valves and thus no longer subject to Type C testing.

The staff evaluated the licensee's proposal for reclassification of the inboard containment valves and concluded that the licensee's proposal met the guidance in the Standard Review Plan (SRP), NUREG–0800, Section 6.2.4 for differing from the explicit requirements of General Design Criterion 55 in 10 CFR part 50, appendix A for containment isolation valves (CIVs). Subsection II.6.e allows only a single CIV outside containment, if the system is closed outside containment and certain other criteria are met. Details concerning the staff's review are contained in the staff's safety evaluation dated April 22, 1994.

Two aspects of the RHR system form the basis for the proposed exemption. It is a closed system outside of containment, and the containment penetrations will be water sealed during a loss of coolant accident (LOCA). The licensee's analyses showed that a water seal. pressurized to greater than 1.1 Pa (62.15 psig), would exist outboard of the LPCI CIV for at least 30 days following the design basis LOCA despite the most limiting single active failure. However, if one or both of the LPCI CIVs is shut, that water seal might not prevent external valve leakage (valve stem or bonnet leakage). The licensee also showed that a water seal, would exist inboard of the LPCI CIVs following a design basis LOCA. The licensee's analyses demonstrated that the volume of the water seal is sufficient to last for greater than 30 days assuming the leakage limit proposed in their alternative testing acceptance criteria. The licensee's analyses also showed that through seat leakage of the LPCI CIVs would be in toward containment and would not deplete the water seal.

Although the external leakage water seal would prevent atmosphere from leading out of containment, it does not satisfy the requirements for a water seal contained in Appendix J. Appendix J allows water sealed valves to be excepted from the normal Type C testing with air, but it requires that the water seal be pressurized to at least 1.1 Pa during an accident. The water leg inboard of the LPCI CIVs does not meet this requirement. Nevertheless, the staff has determined that the licensee's analyses of the water seals provide sufficient assurance that containment atmosphere leakage out of containment will be prevented during an accident to justify granting the requested exemption from Type C testing of the LPCI CIVs with air as the test medium. The licensee's alternative test will measure external valve leakage with a limit of 5 ml/min using water as the test medium at a pressure of 1045 psig.

IV

Accordingly, the Commission concluded that the licensee's proposed alternative testing plan and analyses provide sufficient assurance that the containment atmosphere would not leak out of containment through the LPCI CIVs during a design basis accident and that containment integrity will be maintained by granting the proposed exemption.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. As stated in part in 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of Section III.C of Appendix J is to measure containment isolation valve leakage rates. This leakage, when summed with the allowable Type A and Type B leakage is limited to a value which ensures overall containment integrity in preventing the uncontrolled release of radioactivity to the environment. The licensee has demonstrated through analyses and by proposing alternative testing criteria, that containment integrity will be maintained. Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12 (a)(2)(ii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

V

Accordingly, the Commission has determined that, pursuant to CFR 50.12 this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants an exemption as described in Section III above the requirements in 10 CFR 50.12, Appendix J, III.C. for performing Type C containment integrated leak rate tests of the CIVs in the LPCI lines of the RHR system and approves the licensee's alternative testing plan.

Pursuant to CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 19028).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of April 1994.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director; Division of Reactor Projects—III/IV; Office of Nuclear Reactor Regulation.

[FR Doc. 94–10530 Filed 5–2–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new routine use applicable to a system of records.

SUMMARY: The purpose of this document is to publish notice of a new routine use applicable to the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. The new routine use will authorize the disclosure of information for the purpose of identifying addresses as Commercial Mail Receiving Agencies.

DATES: This proposal will become effective without further notice 30 days from the date of this publication, unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to Records Office, United States Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260–5240, or delivered to the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received may be inspected during the above hours in room 8831.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–2924.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (e)(11) of the Privacy Act of 1974, 5 U.S.C. 552a, the Postal Service is publishing a notice of a new routine use applicable to its system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. The new routine use will authorize disclosure of information for the purpose of identifying addresses as belonging to Commercial Mail Receiving Agencies (CMRAs). CMRAs are private entities which receive mail on behalf of other persons. Often, the address provided for a person by a CMRA appears to be a typical residential or business address.

The Postal Service, primarily through its law enforcement branch, the Postal Inspection Service, has been working with the credit card industry to prevent credit card fraud. One form of credit card fraud consists of submitting an application for a credit card under a fictitious name. Perpetrators of this type of fraud may use an address provided by a CMRA as a means of avoiding detection. Credit card companies have asked the Postal Service to help them detect such fraud by identifying CMRA addresses, and the Postal Service has concluded that the identification of CMRA addresses would be an effective tool in combatting credit card fraud and other types of consumer fraud.

The routine use will authorize disclosure of information only for the purpose of identifying an address as belonging to a CMRA, and no other information concerning CMRAs or their customers will be disclosed pursuant to the routine use. Because the routine use will not authorize the disclosure of the identities of CMRA customers, disclosures under the routine use will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means of annotations to the Postal Service's Delivery Sequence File (DSF). DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals.

New Routine Use

This notice adds routine use No. 1 to Postal Service system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents, as follows:

"1. Information may be disclosed for the purpose of identifying an address as an address of an agent to whom mail is delivered on behalf of other persons. This routine use does not authorize the disclosure of the identities of persons on behalf of whom agents receive mail."

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–10544 Filed 5–2–94; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33962; File No. SR–CBOE–93–57]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Global Telecommunications Index and Long-Term Options on a Reduced-Value Global Telecommunications Index

April 25, 1994.

I. Introduction

On December 14, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Global Telecommunications Index ("Global Telecommunications Index" or "Index"). Notice of the proposal appeared in the **Federal Register** on December 30, 1993.[3] No comment letters were received on the proposed rule change. On March 16, 1994, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the Exchange's proposal.

II. Description of Proposal

A. General

The CBOE proposes to list and trade options on the CBOE Global Telecommunications Index, a new securities index developed by the CBOE and based on stocks and ADRs[5] of international telecommunications companies that are traded on the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), or are national market securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Global Telecommunications Index ("Global Telecommunications LEAPS" or "Index LEAPS").[6] Global Telecommunications LEAPS will trade independent of and in addition to regular Global Telecommunications Index options traded on the Exchange,[7] however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33370 (December 22, 1993), 58 FR 69417 (December 30, 1993).

[4] Amendment No. 1 provides that the CBOE will maintain the Index such that at least 90% of the Index, by weight, will be composed of securities that are eligible for equity options trading under CBOE Rule 5.3. See Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, SEC, dated March 16, 1994 ("Amendment No. 1").

B. Composition of the Index

The Index is based on securities representing twenty U.S. and foreign companies that the Exchange believes are representative of the global telecommunications industry, all of which trade domestically as either stocks or ADRs. Fourteen of these securities currently trade on the NYSE, one trades on the Amex, and five trade through NASDQ. The Index is price-weighted and will be calculated on a real-time basis using last sale prices.

As of the close of trading on February 11, 1994, the Index was valued at 149.63.[8] As of November 30, 1993, the market capitalizations of the individual securities in the Index ranged from a high of $73.61 billion (AT&T) to a low of $144.21 million (Atlantic Tele-Network, Inc.), with the mean and median being $14.79 billion and $8.14 billion, respectively. The market capitalization of all the securities in the Index was $295.74 billion. The total number of shares outstanding for the stocks and ADRs in the Index ranged from a high of 1.35 billion shares (AT&T) to a low of 12.27 million shares (Atlantic Tele-Network, Inc.). The average price per share of the securities in the Index, for the six-month period between June 1 and November 30, 1993, ranged from a high of $78.19 (Compania De Telefonos De Chile) to a low of $12.79 (Atlantic Tele-Network, Inc.). In addition, the average daily trading volume of the stocks and ADRs in the Index, for the same six-month period, ranged from a high of 1.89 million shares per day (AT&T) to a low of 51,675 shares per day (Atlantic Tele-Network, Inc.), with the mean and median being 425,652 and 252,187 shares, respectively. Lastly, no one stock or ADR accounted for more than 9.08% of the Index's total value (Compania De Telefonos De Chile) and the percentage weighting of the five largest issues in the Index accounted for 37.07% of the Index's value. The percentage weighting of the lowest weighted component was 1.27% of the Index (Atlantic Tele-Network, Inc.) and the percentage weighting of the five smallest issues in the Index accounted for 11.66% of the Index's value.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed herein, to reflect the conditions in the global telecommunications industry. If it becomes necessary to replace a security in the Index, the Exchange represents that it will make every effort to add new stocks and/or ADRs that are representative of the global telecommunications industry and will take into account a security's capitalization, liquidity, volatility, and name recognition of the proposed replacement. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than twenty-six or reduce the number of Index component securities to fewer than fourteen, the proposal provides that the CBOE will submit a rule filing with the Commission pursuant to Section 19(b) of the Act. In addition, in choosing replacement securities for the Index, the CBOE will be required to ensure that at least 90% of the weight of the Index continues to be made up of stocks and ADRs that are eligible for standardized options trading.[9] Finally, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S.[10]

D. Applicability of CBOE Rules Regarding Index Options

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Global Telecommunications Index options and full-value and reduced-value Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The CBOE Global Telecommunications Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 2, 1992. Specifically, the Index value is calculated by adding the prices of the component stocks and ADRs and then dividing this summation by a divisor that is equal to the number of the components of the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

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[5] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. The securities underlying the ADRs included in the Index are securities issued by corporations formed under the laws of Chile, France, Hong Kong, Mexico, the Netherlands, New Zealand, Sweden, Spain, and the United Kingdom. See discussion of standards for ADR components, *infra* notes 9 and 29.

[6] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from twelve to thirty-six months from their date of issuance. See CBOE Rule 24.9(b)(1).

[7] According to the CBOE, the Global Telecommunications Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from the global telecommunications industry. The CBOE believes the Index will provide retail and institutional investors with a means of benefitting from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed global telecommunications industry funds, as well as a means of hedging the risks of investing in the global telecommunications industry.

[8] See Letter from Eileen Smith, Director, Product Development, Research Department, CBO, to Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, SEC, dated February 14, 1994 ("February 14 Letter").

[9] See Amendment No. 1, *supra* note 4. The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See CBOE Rule 5.3. With respect to ADRs' in addition to the above standards: (1) the Exchange must have in place a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded; or (2) the trading volume in the U.S. markets where the ADR is traded represents (on a share-equivalent basis) at least 50% of the worldwide trading volume in the security underlying the ADR over the three month period preceding the date of selection of the ADR for options trading; or (3) the SEC must otherwise authorize the listing. See Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[10] See February 14 Letter, *supra* note 8.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority ("OPRA") every fifteen seconds by the CBOE, based on the last-sale prices of the component stocks and ADRs.[11] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration. In the case of securities traded on and through NASDAQ, the first reported sale price will be used. Once all of the component stocks and ADRs have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks or ADRs do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on expiration Friday.

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[12] Standard options trading hours (8:30 a.m. to 3:10 p.m. Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[13] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to there expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from twelve to thirty-six months from the date of issuance.

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component securities on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Global Telecommunications Index

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 36 months from listing based on the full-value Global Telecommunications Index or a reduced value Global Telecommunications Index that will be computed at one-tenth the value of the full-value Index. Existing Exchange requirements applicable to full-value and reduced-value LEAPS will apply to full-value and reduced-value Index LEAPS.[14] The current and closing Index value for reduced-value Global Telecommunications LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 149.76 would be 14.98 for the Index LEAPS and 149.73 would become 14.97. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an "industry index" under CBOE rules,[15] Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Global Telecommunications Index options and Global Telecommunications Index LEAPS. Specifically, Exchange rules governing margin requirements,[16] position and exercise limits,[17] and trading halt procedures[18] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options. For these purposes, ten reduced-value contract will equal one full-value contract.

I. Surveillance

Surveillence procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surviellance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19]

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[11] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[12] A European-style option can be exercised only during a specified period before the option expires.

[13] For a description of the strike price intervals for reduced-value Index options and long-term Index options, See *infra*, Section II.G.

[14] See CBOE Rule 24.9(b).

[15] See CBOE Rule 24.1(i).

[16] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus-10% of the underlying Index value; and (2) for long term options positions, 100% of the options premium paid.

[17] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 10.500 contracts, unless the Exchange determines, pursuant to Rules 24.4A and 24.5 that a lower limit is warranted. See February 14 Letter, *supra* note 8.

[18] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[19] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Gro

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[20] Specifically, the Commission finds that the trading of Global telecommunications Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with securities in the global telecommunications industry.[21]

The trading of options on the Global Telecommunications Index, including full-value and reduced-value LEAPS on the Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Global Telecommunications Index is a narrow-based index. The Global Telecommunications Index is composed of only twenty securities, all of which are within one industry—the global telecommunications industry.[22] Accordingly, the Commission believes it is appropriate for the CBOE to apply its rules governing narrow-based index options to trading in the Index options.[23]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the components that compose the Index are actively traded, with a mean and median average daily trading volume of 425,652 and 252,187 shares, respectively.[24] Second, the market capitalizations of the securities in the Index are very large, ranging from a high of $73.61 billion to a low of $144.21 million as of November 30, 1993, with the mean and median being $14.79 billion and $8.14 billion, respectively. Third, although the Index is only comprised of twenty component securities, no one particular security or group of securities dominates the Index. Specifically, no one stock or ADR comprises more than 9.08% of the Index's total value and the percentage weighting of the five largest issues in the Index account for 37.07% of the Index's value.[25] Fourth, at least 90% of the twenty securities in the Index by weight must be eligible for standardized options trading.[26] The proposed CBOE maintenance requirement that 90% of the weighting of the Index be comprised of securities that are eligible for options trading will ensure that the Index is almost completely comprised of options eligible securities. Fifth, if the CBOE increases the number of component securities to more than twenty-six or decreases that number to less than fourteen, the CBOE will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Global Telecommunications Index options and Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the CBOE's obligations to protect investors and to maintain fair and orderly markets in Global Telecommunications Index options and Index LEAPS. Sixth, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S.[27] This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Global Telecommunications Index in any significant way through trading in component stocks, ADRs, or securities underlying ADRs (or options on those securities) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Global Telecommunications Index Options (including full-value and reduced-value Global Telecommunications (LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Global Telecommunications Index options and full-value and reduced-value Global Telecommunications Index LEAPS.

Agreement, January 29, 1990. The members of the ISG are: the Amex: the Boston Stock Exchange, Inc.: the CBOE; the Chicago Stock Exchange, Inc.: the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliated members in 1990.

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed index options and full-value index LEAPS on the Global Telecommunications Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks and ADRs comprising the global telecommunications industry in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the global telecommunications industry sector of the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, which will be traded on an index computed at one-tenth the value of the Global Telecommunications Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[22] The reduced-value Global Telecommunications Index, which is composed of the same component securities as the Index and calculated by dividing the Index value by ten, is identical to the Global Telecommunications Index.

[23] See *supra* notes 15 through 18, and accompanying text.

[24] In addition, for the six-month period between June 1 and November 30, 1993, no component of the Index had an average daily trading volume of less than 51,000 shares per day.

[25] For an index with a significantly greater number of securities than twenty issues, the Commission might come to a different conclusion if only a few securities accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[26] See *supra* note 9.

[27] See February 14 Letter, *supra* note 8

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[28] In this regard, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.[29] Further, as to the foreign components of the Index, either the Exchange has comprehensive surveillance sharing agreements with the primary foreign markets for the securities underlying the ADRs or the U.S. is the relevant market for surveillance purposes.[30]

D. Market Impact

The Commission believes that the listing and trading of Global Telecommunications Index options, including full-value and reduced-value Index LEAPS, on the CBOE will not adversely impact the underlying securities markets.[31] First, as described above, for the most part, no one security or group of securities dominates the Index. Second, because, at least 90% of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards,[32] and because each of the component securities must be subject to last sale reporting requirements,[33] the component securities generally will be actively-traded, highly-capitalized securities. Third, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns. Forth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Global Telecommunications Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[34]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 raises the maintenance standards originally proposed by the Exchange by requiring the CBOE to ensure that at least 90% of the Index, by weight, is composed of securities that are eligible for equity options trading pursuant to CBOE Rule 5.3. As stated above, the Commission believes that this requirement has the effect of ensuring that the Index is composed of highly-capitalized, actively-traded securities which serve to minimize the possibility that the Index can be easily manipulated. Additionally, the Commission notes that this is the same standard that the Commission recently approved for the listing and trading of index options and index LEAPS on the CBOE Telecommunications Index.[35] As a result, the Commission believes that good cause exists for approving Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–93–97 and should be submitted by May 24, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–CBOE–93–57), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10473 Filed 5–2–94; 8:45 am]

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[28] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[29] See note 19, *supra*. If the prices of the ADR components, or the composition of the Index, should change so that greater than 20% of the weight of the Index would be represented by ADRs whose underlying securities were not the subject of a comprehensive surveillance sharing agreement with the CBOE, then it would be different for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable for the Exchange to continue to trade options on this Index. The CBOE should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the current relative weights of the Index or in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement see, *e.g.*, Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1994); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[30] See Securities Exchange Act release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[31] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. See Memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated February 14, 1994.

[32] See Amendment No. 1, *supra* note 4.

[33] See February 14 Letter, *supra* note 8.

[34] See Securities Exchange Act Release No. 30944 (July 21, 1994), 57 FR 33376 (July 28, 1992).

[35] See Securities Exchange Act Release No. 33473 (January 13, 1994), 59 FR 3383 (January 21, 1994).

[36] 15 U.S.C. 73s(b)(2) (1988).

[37] CFR 200.30–3(a)(12) (1993).

[Release No. 34–33958; File No. SR–DTC–93–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Temporarily Approving a Proposed Rule Change Expanding the Money Market Instrument Settlement Program on a Pilot Basis

April 22, 1994.

On October 19, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change

(File No. SR–DTC–93–12) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to implement a pilot program to include additional types of money market instruments ("MMIs") in its MMI settlement program. Notice of the proposal was published in the **Federal Register** on November 8, 1993.[2] The Commission did not receive any comment letters on the proposed rule change.[3] For the reasons discussed below, the Commission is granting temporary approval of the pilot program until April 30, 1995.

I. Description

A. Generally

The proposed rule change makes DTC's existing MMI settlement services available for transactions in additional types of MMIs. New MMI programs include those for institutional certificates of deposit ("CD"), municipal commercial paper, and bankers' acceptances. The existing DTC MMI programs to be expanded or enhanced include those for corporate commercial paper, medium-term notes, preferred stock in a CP-like mode, short-term bank notes, and discount notes.

The new MMI programs, along with the existing MMI programs, are an extension of DTC's Same-Day Funds Settlement ("SDFS") system.[4] The automated operating procedures for MMIs are virtually the same as those followed by SDFS participants and by Institutional Delivery ("ID") system users for basic depository services in other eligible SDFS securities. The MMI issues being made SDFS-eligible will be distributed in book-entry-only form by the issuer's issuing agent that, as in the commercial paper ("CP") and medium-term note MMI programs, will send MMI issuance instructions to DTC electronically. Settlement of an issue will be on the same day as the issuance or on a specified future day. The issuer's paying agent, that will also serve as DTC's custodian, will hold a master or balance MMI certificate for DTC unless the issuer and its issuing and paying agent bank choose to distribute uncertificated MMIs through DTC.[5] Because SDFS-eligible MMIs will be book-entry-only, participant operating procedures for deposits and withdrawals will not apply to MMIs.

B. New MMI Programs

The fundamental risk in the SDFS system is that a participant will default in its payment obligation. The new MMI programs are offered as an extension of DTC's current SDFS system; therefore, DTC will employ the same risk management controls (*e.g.*, net debit collateralization, net debit caps, and receiver-authorized deliveries) to transactions in these new programs as are employed in the current SDFS system.[6]

Net debit collateralization requires each participant to maintain in its account throughout the processing day collateral at least equal in value to the participant's net settlement debit. If during the processing day a transaction will cause a net debit greater than the amount of collateral in the participant's account at the time the transaction is being processed, DTC will recycle the transaction until there is sufficient collateral in the participant's account. Transactions in the new MMI programs also will be subject to the participant's net debit cap.[7] The net debit cap helps to protect against abnormal intraday debit peaks that are out of line with a participant's prior month's average daily activity level. The net debit cap also reduces the possibility that the failure to settle by more than one participant will not cause DTC to exceed its liquidity resources. The new MMI programs also will utilize the receiver-authorized delivery control which allows a participant to monitor deliveries and payment orders directed to its account before the orders are posted to the account.

In addition, DTC's three failure to settle procedures applicable to the CP program will be applicable to the new MMI programs. First, DTC will employ the same procedures with regard to the sequence in which DTC will use MMI collateral and eliminate payment order debits in a failing participant's account. Second, if DTC is notified before 3 p.m. eastern standard time ("E.S.T.") that a paying agent will not pay on an MMI issuer's maturity presentments, reorganization presentments, periodic principal presentments, or periodic income presentments or if DTC is informed of an MMI issuer's bankruptcy and a participant fails to settle with DTC on that day, DTC has the authority to reduce the settlement credits of participants who had transactions on the day of default with the defaulting issuer or the defaulting participant on the day of the default. Third, if the paying agent has not settled with DTC by noon E.S.T. on the DTC business day following the settlement day or if a paying agent is determined to be insolvent according to DTC's rules, DTC will notify the issuers utilizing that paying agent and provide those issuers with information on any presentments related to their MMIs on which the PA failed to pay DTC.

C. Expanded or Improved Existing MMI Programs

DTC will be expanding its CP program to include "uncommon CP." Uncommon CP is CP paying income periodically, a variable amount of income, or a variable amount of principal. It also includes CP denominated in a foreign currency, CP with a maturity of 271 days to a year, or corporate variable-rate demand obligations in CP mode. These instruments were not included in the original CP program.

DTC also will be enhancing their MMI programs for medium-term notes, short-term notes, discount notes, and preferred stock in CP-like mode. The medium-term note program will be enhanced by DTC's collection and allocation of income, principal, reorganization, and maturity payments within the SDFS system. Paying agents will no longer have to separately wire such payments to DTC. Instead, as with maturity payments in the CP program, these payments will be included in each paying agent's net settlement figure due to or from DTC at the end of each day. Similarly, the short-term note program will be enhanced with the inclusion in the SDFS system maturity payments and periodic income payments in the SDFS system and in the paying agents' net SDFS amounts due to or from DTC. The restriction that short-term notes must have a minimum maturity period of thirty days to be included in this program will be removed. The short-term notes program, the discount notes program, and the preferred stock in CP-like mode program will all provide for uncertificated issuer programs. However, one master note or certificate may be held for DTC by the paying agent.

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 33126 (November 1, 1993), 58 FR 59283.

[3] At the request of the Commission, the Federal Reserve Bank of New York ("FRBNY"), and the Board of Governors of the Federal Reserve System ("Fed") DTC issued a notice to participants requesting comment on issues raised by the regulators. DTC received ten comment letters. The issues and the comment letters will be discussed in detail later in this approval order.

[4] DTC's SDFS system currently includes the following issue types: Corporate commercial paper, municipal notes and bonds, municipal variable-rate demand obligations, zero coupon bonds backed by U.S. Government securities, continuously offered medium-term corporate notes, short-term bank notes, auction-rate and tender-rate preferred stocks and notes, collateralized mortgage obligations and other asset-backed securities, Government trust certificates and Government agency securities not eligible for the Fed's book-entry system, retail certificates of deposit, corporate and municipal variable mode obligations, corporate bonds, discount notes, and unit trusts. For a detailed description and discussion of DTC's SDFS system, including the implementation of the commercial paper program, refer to Securities Exchange Act Release Nos. 26051 (August 31, 1988), 53 FR 34853 [File No. SR–DTC–88–06] (order permanently approving DTC's SDFS system) and 30986 (July 31, 1992), 57 FR 35856 [File No. SR–DTC–92–01] (order approving implementation of commercial paper program).

[5] Uncertificated MMIs are not evidenced by any certificate whatsoever. Bills, notes, bonds, and other securities have been issued in uncertificated form by U.S. government and federal agencies for many years.

[6] *supra* note 4.

[7] Each participant's net debit is limited throughout the processing day to a net debit cap that is the least of the following four amounts: (1) an amount forty times the participant's required and voluntary deposits to the SDFS fund, (2) an amount that is equal to seventy-five percent of DTC's liquidity resources, including cash deposits to the SDFS fund and lines of credit for loans to facilitate SDFS settlement, (3) an amount, if any, determined by the participant's settling bank, and (4) an amount, if any, determined by DTC. *Supra* note 4.

II. Discussion

Section 17A(b)(3)(F)[8] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As discussed below, the Commission believes the DTC's proposed rule change is consistent with DTC's obligations under the Act.

As previously described, the new MMI programs and the expanded and enhanced programs are an extension of DTC's current SDFS system and include many of the same risk management features that are employed in the SDFS system. The Commission previously examined these features when DTC first proposed the SDFS system and again when the CP program was added.[9] At those times, the Commission found, and continues to believe, that these risk management measures are consistent with Section 17A of the Act and should minimize the impact of a default by a participant in the SDFS system.

The use of provisional credits and unwind procedures if an MMI issuer were to default, however, could increase the risk of settlement gridlock in certain circumstances. For example, if DTC were to confirm the insolvency of an MMI issuer before 3:00 p.m.,[10] DTC would reverse all participants' credits attributable to the insolvent issuer without regard to any of the risk management controls. Such reversals of credits could result in a participant having a net debit that exceeds the participant's net debit cap and DTC's liquidity resources. If such a participant then failed to settle its net debit with DTC, DTC would possibly have difficulty completing other settlements thus creating systemic risk.

As an interim solution, DTC proposed for comment the implementation of an additional $500 million line of credit dedicated to the completion of settlement in the SDFS system in the event a participant fails to settle after application of the unwind procedures. The additional line of credit would be supported by securities pledged to the SDFS fund and would not be included as a part of DTC's liquidity resources when determining a participant's net debit cap. DTC also proposed as a long term solution, a SDFS system enhancement that would conduct default scenarios to assure that unwind procedures would not cause a liquidity problem.[11]

DTC solicited comment from its participants regarding (1) the necessity of unwind procedures in the SDFS service that override risk management controls and (2) if unwind procedures are necessary, whether participants would be prepared to absorb the additional costs of mechanisms to assure that use of the unwind procedures on the same day that any DTC participant failed to settle would not deplete DTC's liquidity resources. DTC received ten comment letters from participants and two from industry organizations.[12] Generally, the comments supported the use of unwind procedures as a way to replicate the risks taken by parties to transactions in the physical MMI market (*i.e.*, to place the risk and burden of default on the appropriate party, which is on the issuer or the purchaser instead of on the issuing and paying agent). The comments also generally supported the interim solution of obtaining an additional, dedicated line of credit and allocating its cost to SDFS system participants.

Two of DTC's bank participants did not support DTC's proposals and offered alternative solutions. One of these two commentators argued that issuing and paying agents should fund presentments earlier or that unwind procedures should be employed earlier in the day.[13] The other commentator suggested that DTC should create a system similar to the procedures employed by the Clearing House Interbank Payment System.[14]

DTC has agreed to implement the dedicated line of credit as an interim solution and proceed with the necessary modifications to implement the system enhancements. DTC also has agreed to continue to employ its liquidity monitoring system which simulates double default scenarios every fifteen minutes beginning at 2 p.m. E.S.T.[15]

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[8] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[9] *Supra* note 4.

[10] If DTC cannot confirm that an MMI issuer is insolvent before 3 p.m. EST., DTC will not reverse credits attributable to that issuer because after 3 p.m. E.S.T. credits are no longer provisional in DTC's SDFS system.

[11] DTC has proposed two SDFS system enhancements that will eventually replace the additional line of credit dedicated to settlement in the SDFS system. The future system enhancements will retain unwind procedures but will allow DTC to run intraday computerized double default scenarios (*i.e.*, an MMI issuer default and an SDFS participant default due to debits created by the unwind procedures) to help assure that each participant's net debit is within DTC's liquidity resources.

Under the first system enhancement, DTC will subtract from a participant's actual overall SDFS net debit or credit amount the amount of the participant's largest provisional net credit due to transactions in any single issuer's MMIs. DTC then will limit the resulting net debit from all other SDFS transactions ("liquidity net debit") to the amount of DTC's liquidity resources ("liquidity net debit cap"), which as of April 18, 1994, was approximately $760 million. If a transaction will cause a participant's liquidity net debit to exceed DTC's liquidity net debit cap, DTC will block and recycle the transaction until credits are received from transactions in MMIs of MMI issues other than those of the issuer of the largest provisional net credit.

Under the second system enhancement, DTC will subtract the amount of a participant's largest provisional net credit due to transactions in any single issuer's MMIs from the participant's collateral monitor ("simulated collateral monitor"). If a transaction will cause the simulated collateral monitor to turn negative (*i.e.*, the participant's collateral would be insufficient to cover its simulated net debit after the transaction), the transaction will be blocked. Blocked transactions will be recycled until credits from other transactions in MMIs of issuers other than those of the largest provisional net credit cause the simulated collateral monitor to be positive.

DTC expects to implement the two system enhancements subsequent to the industry conversion to same-day funds settlement that is scheduled for implementation in 1996. Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Peter R. Geraghty, [Staff Attorney], Division of Market Regulation, Commission (April 18, 1994).

[12] Letters from Albert Howell, Vice President, Money Market Operations, Merrill Lynch, to James Reilly, Vice President, DTC (March 7, 1994); Christopher T. Amico, Assistant Vice President, Chemical Bank, to James Reilly, Vice President, DTC (February 1, 1994); Gary S. Schayne, Vice President, Citibank, to James Reilly, Vice President, DTC (January 31, 1994); Ronald M. Thalheimer, Vice President, The First National Bank of Chicago, to James Reilly, Vice President, DTC (February 3, 1994); Michael J. Stein, Vice President, State Street Bank and Trust Company, to James Reilly, Vice President, DTC (February 7, 1994); Stephen J. Melanaski, Vice President, United States Trust Company of New York, to James Reilly, Vice President, DTC (January 21, 1994); Mark Handsman, Vice President-Assistant Treasurer, Goldman Sachs, to James Reilly, Vice President, DTC (February 23, 1994); Michael J. Gardiner, Vice President, The Chase Manhattan Bank, N.A., to James Reilly, Vice President, DTC (February 28, 1994); S. Michael Barnes, Vice President, and Lloyd A. Baggs, Trust Officer, Morgan Guaranty Trust Company of New York, to James Reilly, Vice President, DTC (February 24, 1994); R. May Lee, Assistant General Counsel, Public Securities Association, to James Reilly, Vice President, DTC (March 2, 1994); Jill M. Considine, President, New York Clearing House to James Reilly, Vice President, DTC (March 23, 1994).

[13] Letter from State Street Bank and Trust Co., *supra* note 12.

[14] Letter from Bankers Trust Co., *supra* note 12.

DTC will begin the expansion of its MMI programs with the institutional CDs programs. DTC will begin the pilot program with four bank issuers and will expand the pilot program over the net two months. Until DTC secures the additional $500 million line of credit, the pilot program will be limited to: (1) 120 CD programs, (2) A value not to exceed $20 billion on deposit with DTC, (3) A percentage of the total CD market on deposit at DTC not to exceed 5.7%, and (4) A daily average face amount of CD issuances not to exceed $1 billion.[16] DTC has agreed that if prior to securing the $500 million line of credit the addition of CDs according to the schedule increases simulated breaches of its liquidity resources (currently $760 million), DTC will slow down or stop the addition of CD programs after consultation with the regulators. DTC also has agreed that if subsequent to attaining the additional line of credit, simulations show breaches of DTC's new overall liquidity resources, due to the expansion of the MMI program to include different types of MMI instruments, DTC again will slow down or stop expansion of the program after consultation with the regulators.[17]

The Commission believes that the additional risk management controls to be implemented with the new and enhanced MMI programs in conjunction with the current SDFS system risk management controls should help further reduce the possibility that a double default scenario will exceed DTC's liquidity resources. In addition, the Commission believes the controlled expansion of the SDFS program to include additional types of MMIs will reduce the costs, inefficiencies, and risks associated with the clearance and settlement of physically transferred securities by providing the benefits of centralized, automated, book-entry clearance and settlement.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–DTC–93–12) be, and hereby is, approved on a temporary basis until April 30, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10474 Filed 5–2–94; 8:45 am]

BILLING CODE 8010–01–M

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[15] Letter from Richard B. Nesson, DTC to Christine M. Cumming, Vice President, Domestic Banking Department, FRBNY (March 8, 1994).

[16] *Supra* note 11.

[17] *Supra* note 15.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–20247; File No. 812–8872]

IDS Life Insurance Company of New York, et al.

April 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: IDS Life Insurance Company of New York ("IDS Life of New York"), IDS Life of New York Accounts 4, 5, 6, 9, 10, and 11 ("Variable Accounts"), and IDS Financial Services Inc.

RELVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act granting exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Variable Accounts under a group, fixed/variable annuity contract and related certificates to be issued in connection with retirement plans.

FILING DATE: The application was filed on March 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on May 20, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants: Mary Ellyn Minenko, Counsel, IDS Life Insurance Company, IDS Tower 10, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: W. Thomas Conner, Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. IDS Life of New York is a stock life insurance company organized under the laws of New York and is a wholly owned subsidiary of IDS Life Insurance Company ("IDS Life") of Minneapolis, Minnesota. IDS Life is a wholly owned subsidiary of IDS Financial Corporation, which, in turn, is a wholly owned subsidiary of the American Express Company. IDS Financial Services Inc. is the principal underwriter of the Variable Accounts and also is a subsidiary of IDS Financial Corporation.

2. Variable Accounts 4, 5, and 6 were established on November 12, 1981. Variable Account 9 was established on February 12, 1986. Variable Accounts 10 and 11 were established on October 8, 1991. All Variable Accounts were established as separate accounts under New York law to fund variable annuity contracts issued by IDS Life of New York. The Variable Accounts are registered together as a single unit investment trust under the 1940 Act.

3. IDS Life of New York proposes to issue and distribute a group deferred annuity contract ("Contract") that is designed primarily to fund retirement plans. The owners of the group Contracts are the employers or other organizations that sponsor the plans. Participation in the Contract will be accounted for separately by the issuance of certificates showing the participants' interests under the Contract. Purchase payments may be accumulated before retirement on a variable and/or fixed basis, and annuity payments will be received after retirement on a variable and/or fixed basis. A registration statement on Form N–4 has been filed with the Commission in connection with the Contracts.

4. The Contracts provide for allocation of purchase payments to the Variable Accounts or to a fixed account of IDS Life of New York. The Variable Accounts, in turn, will invest solely in

the shares of the IDS Life Retirement Annuity Mutual Funds ("Funds"). The Funds are registered with the Commission as diversified open-end management investment companies.

5. The Contracts and related certificates provide for certain charges. IDS Life of New York will make a charge against the certificate value for any premium taxes to the extent the taxes are payable.

6. IDS Life of New York will deduct an annual administrative charge of $30 from the value of each certificate. This annual administrative charge can not be increased and does not apply after retirement payments begin. The administrative charge represents reimbursement for only the actual administrative costs expected to be incurred over the life of the certificates.

7. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts and related certificates. A contingent deferred sales charge ("surrender charge") will be assessed on certain full or partial surrenders. A surrender charge applies if all or part of the certificate value is withdrawn within the first eleven certificate years. The surrender charge is 8 percent of the amount surrendered in the first through fourth certificate years, and then declines by 1 percent from 7 percent in the fifth certificate year to 1 percent in the eleventh certificate year. In no event will the aggregate surrender charges exceed 8.5 percent of purchase payments made to a certificate. The surrender charge can not be increased during the life of the Contracts and related certificates.

8. There is no surrender charge on amounts surrendered: After the eleventh certificate year, due to a participant's retirement under the plan on or after age 55; due to the death of the participant; or upon settlement of the certificate under an annuity payment plan.

9. IDS Life of New York will assess the Variable Accounts of a daily mortality and expense risk charge equal to 1 percent of the average daily net assets of the Variable Accounts on an annual basis. IDS Life of New York estimates that two-thirds of this charge is for assumption of the mortality risk and one-third is for the assumption of the expense risk. This charge cannot be increased during the life of the Contracts and does not apply after retirement payments begin.

10. IDS Life of New York will assume certain mortality and expense risks under the contracts. IDS Life of New York assumes certain mortality risks by its contractual obligation to continue to make retirement payments for the entire life of the annuitant under annuity obligations involving life contingencies. This obligation assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the retirement payments received under the Contracts and related certificates. This assurance relieves the annuitant from the risk of outliving the amounts accumulated for retirement. The payment option tables contained in the Contracts are based on the 1983 Individual Annuity Mortality Table. The use of these tables is guaranteed for the life of the Contracts and related certificates.

11. IDS Life of New York assumes additional mortality and certain expense risks under the Contracts and certificates by its contractual obligation to pay a death benefit in a lump sum (or in the form of an annuity payment plan) upon the death of a participant prior to the retirement date.

12. IDS Life of New York assumes an expense risk because the administrative charge may be insufficient to cover administrative expenses. These include the costs and expenses of processing purchase payments, retirement payments, surrenders, and transfers; furnishing confirmation notices and periodic reports; calculating mortality and expense risk charges; preparing voting materials and tax reports; updating registration statements; and actuarial and other expenses.

13. If the administrative charge and the mortality and expense risk charge are insufficient to cover the costs and expenses assumed, the loss will be borne by IDS Life of New York. Conversely, if the amount deducted proves more than sufficient, the excess will represent a profit to IDS Life of New York. As noted above, IDS Life of New York does not expect to profit from the administrative charge. However, IDS Life of New York does expect to profit from the mortality and expense risk charge. Any profit realized from this charge would be available to IDS Life of New York for, among other things, payment of distribution expenses.

Applicants' Legal Analysis and Conditions

1. Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales loads) are deposited with a trustee or custodian having the qualifications prescribed by section 26(a)(1) of the 1940 Act and held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

2. Applicants request an exemption from sections 26(a)(2)(c) and 27(c)(2) to the extent necessary to permit the issuance and sale of the Contracts and related certificates providing for the 1 percent mortality and expense risk charge. Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the 1940 Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that, for the following reasons, their exemptive requests meet the standards set out in section 6(c) and, therefore, an order should be granted.

3. Applicants represent that the level of the mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. IDS Life of New York has reviewed publicly available information about other annuity products, taking into consideration such factors as current charge levels, charge guarantees, sales loads, surrender charges, availability of funds, investment options avaiable under annuity contracts, market sector and the availability of retirement plans. IDS Life of New York represents that it will maintain at its principal office, and make available upon request of the Commission or its staff, a memorandum setting forth its analysis, including its methodology and results.

4. Applicants acknowledge that the surrender charge described above may be insufficient to cover all costs relating to the distribution of the Contracts and certificates and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the distribution costs of the Contracts and related certificates.

5. Notwithstanding the foregoing, IDS Life of New York has concluded that there is a reasonable likelihood that the

proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Accounts and investors in the Contracts and related certificates. The basis for such conclusion is set forth in a memorandum that will be maintained by IDS Life of New York at its principal office and will be available to the Commission or its staff on request.

6. IDS Life of New York represents that the Variable Accounts will invest only in an underlying mutual fund that, in the event the fund should adopt any plan under Rule 12b–1 to finance distribution expenses, would have such a plan formulated and approved by a board of directors, a majority of the members of which are not interested persons of such fund within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10475 Filed 5–2–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 22, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49514.

Date Filed: April 19, 1994.

Parties: Members of the International Air Transport Association.

Subject: CAC/RESO/177 dated April 13, 1994; Expedited Reso 801r.

Proposed Effective Date: July 1, 1994.

Docket Number: 49515.

Date Filed: April 19, 1994.

Parties: Members of the International Air Transport Association.

Subject: TC1 Telex Mail Vote 683; Excursion fares within South America.

Proposed Effective Date: May 1, 1994.

Docket Number: 49520.

Date Filed: April 21, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 681; Iran fare increase; Reso 003m—r-1; COMP Telex Mail Vote 682; Iranian rounding units; Reso 024d—r-2; Reso 033d—r-3.

Proposed Effective Date: June 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–10512 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 22, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49517.

Date filed: April 19, 1994.

Due Date for Answers, Conforming Applications, to Motion to Modify Scope: May 17, 1994.

Description: Application of United Parcel Service Co., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests amendment to its certificate of public convenience and necessity for Route 569 so as to add a segment between San Antonio, Texas and Monterrey, Mexico. UPS further requests route integration authority so as to be able to include stops at Guadalajara (a point UPS currently has authority to serve from San Antonio) on flights serving Monterrey.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–10511 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of FAR/JAR Harmonization Working Group for Helicopters.

SUMMARY: Notice is given of the establishment of a FAR/JAR Harmonization Working Group for Helicopters for the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on noise certification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202)267–3577; FAX: (202)267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) establishment an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Helicopters will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the FAR/JAR Harmonization Working Group for Helicopters is charged with reviewing the applicable provisions of subparts A and H, and appendices H and J of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of JAR 36.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated into JAR and FAR 36.

If the ARAC determines that a Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriated, those documents are to be submitted, in the format prescribed, to the FAA. The Working Group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Giver a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analysis, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The FAR/JAR Harmonization Working Group for Helicopters will be comprised of experts from those organizations having an interest in the tasks assigned. A working Group member need not necessarily be a respective of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the Working Group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT**, expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. The request will be reviewed by the ARAC Assistant Chair for Noise Certification and the Chair of the Working Group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Helicopters will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on April 25, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-10533 Filed 5-2-94; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes.

SUMMARY: Notice is given of the establishment of a FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes for the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on noise certification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE-2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3577; FAX: (202) 267-5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes is charged with reviewing the applicable provisions of subparts A, B, C, and D, and appendices A, B, and C of the 14 CFR part 36 and harmonizing them with the corresponding applicable provision of JAR 36.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated in JAR and FAR 36.

If the ARAC determines that a Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriate, those documents are to be submitted, in the format prescribed, to the FAA. The Working Group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the Working Group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT**, expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. The request will be reviewed by the ARAC Assistant Chair for Noise Certification and the Chair of the Working Group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on April 25, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10575 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes.

SUMMARY: Notice is given of the establishment of a FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes for the FAA Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on noise certification issues.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Dykeman, Assistant Executive Director for Noise Certification, Deputy Director, Office of Environment and Energy (AEE–2), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3577; FAX: (202) 267–5594.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with noise certification issues. These issues involve the harmonization of part 36 of the Federal Aviation Regulations (14 CFR part 36) with Joint Aviation Requirements (JAR) part 36, their associated guidance material including equivalent procedures, and the interpretation of the regulations. The FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes is charged with reviewing the applicable provisions of subparts A and F, and appendices F and G of the 14 CFR part 36 and harmonizing them with the corresponding applicable provisions of JAR 36.

ARAC should consider the current international standards and recommended practices, as issued under the International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. ARAC should also consider recommending a process whereby subsequent ICAO Annex 16 changes are properly incorporated into JAR and FAR 36.

If the ARAC determines that Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriate, those documents are to be submitted, in the format prescribed, to the FAA. The Working Group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task and subtasks, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider noise certification issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for aircraft noise certification, a supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider noise certification issues.

The FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the Working Group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT**, expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. The request will be reviewed by the ARAC Assistant Chair for Noise Certification and the Chair of the Working Group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider noise certification issues will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on April 25, 1994.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10574 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on May 16, 1994, at 1 p.m.

ADDRESSES: The meeting will be held at 500 E Street, SW., suite 920, International Trade Commission Building, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Assistant Executive Director for General Aviation Operations, Flight Standards Service

(AFS–850), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8150; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on May 16, 1994, at 1 p.m., at the AOPA offices on 500 E Street, SW., suite 920, International Trade Commission Building, Washington, DC 20591. The agenda for this meeting will include a vote to recommend the publication of the committee's advisory circular concerning operations over the high seas and a progress report from the part 103 (Ultralight Vehicles) Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Ron Myres,

Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–10536 Filed 5–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974, as Amended; System of Record

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of alteration of Privacy Act System of Records.

SUMMARY: The Treasury Department gives notice of proposed alteration to the system of records entitled Public Transportation Incentive Program Records—Treasury/DO .203, which is subject to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988. The system notice was last published in its entirety on September 21, 1992, at 57 FR 43485.

DATES: Comments must be received no later than June 2, 1994. The alteration to the system of records will be effective June 13, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to Office of Inspector General, Office of Policy, Planning and Programs, Room 7210, 1201 Constitution Avenue, NW., Washington, DC 20220. Comments will be made available for inspection and copying upon request at the Department of the Treasury library, Room 5010, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Ann Marie Gould, Management Analyst, Office of Inspector General, Office of Policy, Planning and Programs, (202) 927–5210.

SUPPLEMENTARY INFORMATION: The purpose of the alteration is to bring the existing Privacy Act notice into compliance with the requirements of the Privacy Act, as amended. The alteration increases the number of locations at which records of the public transportation incentive program are kept, identifies the system manager responsible for the records of the Office of Inspector General, and discloses the address for notification and access to the records. The Office of Inspector General will be maintaining records pertaining to its employees who have applied for, and those who have been accepted as participants in, the Public Transportation Incentive Program (PTI Program). The records ensure that only one fare incentive per month is available to eligible employees. The records are also used to generate reports on changes in the participants' commuting methods.

The specific changes to the record system being altered are set forth below:

Treasury/DO .203

SYSTEM NAME:

Public Transportation Incentive Program Records—Treasury/DO.

SYSTEM LOCATION:

* * * * *

(5) Office of Inspector General, Office of Assistant Inspector General for Policy, Planning and Resources, Office of Management Resources, Room 7137, 1201 Constitution Avenue, NW., Washington, DC 20220; Office of Inspector General, Regional Inspector General for Investigations, Northeastern Regional Office, 1255 22nd Street, NW., Washington, DC 20037; Office of Inspector General, Field Office Manager (Audit), Northeastern Region, #6 World Trade Center, room 745, New York, NY 10048; Office of Inspector General, Regional Inspector General for Investigations, Central Region, Suite 520, 55 West Monroe Street, Chicago, IL 60603; Office of Inspector General, Regional Inspector General for Audit, Northeastern Regional Office, Room 330, 408 Atlantic Avenue, Boston, MA 02110; Office of Inspector General, Regional Inspector General for Audit, Central Region, Suite 510, 55 West Monroe Street, Chicago, IL 60603; Office of Inspector General, Regional Inspector General for Audit, Capital Region Office, Suite 100, 1255 22nd Street, NW., Washington, DC 20037; Office of Inspector General, Regional Inspector General for Audit, Western Region, Room 220, 211 Main Street, San Francisco, CA 94105.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

(5) Office of Inspector General: Assistant Inspector General for Policy, Planning and Resources, Room 7119, 1201 Constitution Avenue, NW., Washington, DC 20220.

* * * * *

NOTIFICATION PROCEDURE:

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(5) Office of Inspector General: Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, Room 1054 MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

* * * * *

Dated: April 26, 1994.

G. Dale Seward,

Acting Deputy Assistant Secretary (Administration).

[FR Doc. 94–10545 Filed 5–2–94; 8:45 am]

BILLING CODE 4810–31–M

Internal Revenue Service

[Delegation Order No. 228 (Rev. 2)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order authorizes the redelegation of authority to abate interest in amounts under $2,500 to first line managers.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Bob Curran, EX:E:D, room 2010, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone (202) 622–4373 (not a toll-free number).

Order No. 228 (Rev. 2)

Effective date: May 3, 1994.

Authority to Abate Interest Due to IRS Error or Delay

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order No. 150–10, the following officials are authorized to abate assessed and unassessed interest due to IRS error or delay under section 6404(e)(1) of the Internal Revenue Code (Code): chiefs of appeals, division chiefs for Examination, Collection, Employee Plans and Exempt Organizations, Compliance, and Tax Accounts.

This authority may be redelegated to associate chiefs of appeals, district and service center branch chiefs (and equivalent positions) in the above divisions, and division chiefs in the Austin Compliance Center and may be redelegated to first line managers for abatements under $2,500.

In any instance in which a Code section 6404(e)(1) claim for interest abatement is immediately disallowable by statute, the assigned interest abatement coordinator is delegated authority to deny the claim. This authority may not be redelegated.

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

This order supersedes Delegation Order No. 228 (Rev. 1) effective October 4, 1990.

Dated: April 19, 1994.

Approved:

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–10469 Filed 5–2–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

American Studies Fellowships for Scholars From Eastern Europe and the Newly Independent States

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: Prospective grantee will provide approximately twelve research fellowships for scholars from Eastern Europe and the Newly Independent States (NIS) to pursue research in American studies in U.S. universities and research institutions in the academic year 1995–1996. Participants should be teaching at the university level in humanities and social science fields of American studies, broadly defined, such as American history, law, demography, literature, sociology, or political science. Grantee is responsible for publicizing the program abroad, selecting the participants, and placing them in appropriate U.S. institutions. Grantee is also responsible for all administrative arrangements, for program evaluation, and for establishing procedures for follow-up after participants return to their home institutions.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time, on Friday, June 10, 1994. Faxed documents will not be accepted, nor will documents postmarked on June 10, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that the proposals are received by the above deadline. Grants should begin on or about August 15, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: E/AA–94–3, Grants Management Staff, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Gretchen Christison at U.S. Information Agency, 301 4th St. SW., Study of the U.S. Branch, E/AAS room 256, (202) 619–4557 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, and should be balanced and representative of the diversity of American political, social, and cultural life.

Overview

The program seeks to increase the quality and amount of teaching in Eastern European and NIS countries about the United States through guided curricular research. The program will provide fellowships for approximately twelve qualified Eastern European and NIS scholars to update and enhance their knowledge of their American studies fields.

Guidelines

The program is designed for Eastern European and NIS scholars who are teaching at the university level in humanities and social science fields of American studies, broadly defined, such as American history, law, demography, literature, sociology, or political science. Participants should be chosen through a public, open competition which includes U.S. professional peer review for the final selection of participants. Selections should be made and announced in reasonable time for applicants to make plans for absence from their countries and to undertake departure formalities. USIA (E/AAS) and all posts in countries from which scholars are selected should be informed of the final selection. Proposals should demonstrate extensive contacts with and knowledge of Eastern European and NIS universities to ensure that the best possible candidates are recruited and selected.

Fellowships should be six to twelve months in duration. Family members may accompany recipients for part of the grant period, but not for a period exceeding six months. The fellowships provide for all costs of the recipients and accompanying dependents, with due account being taken of any continuing university salary transferable into U.S. dollars that recipients might be receiving.

Grantee will arrange appropriate placement in U.S. universities and research institutions for participants. To the extent possible, waivers of tuition fees should be procured.

Grantee will make all administrative arrangements, including travel, visa, disbursement of grant funds, insurance and related matters. The grantee should maintain contact with the participants and liaison with university hosts during the course of the grant to offer assistance with participant administrative concerns such as housing, travel within the U.S., or emergency matters. Grantee will develop evaluation instruments and procedures to determine the participants' scholarly activity during the course of the grant, the adequacy of the stipend, and the adequacy of grantee and university administrative arrangements. Participants should also report on their general impressions of the U.S. and how they intend to apply the materials or new information gained during the fellowship in their professional work in their own countries. The grantee will establish procedures for follow-up communication with grantees to ascertain the application of their fellowship activity to their professional responsibilities, such as new publications, workshop leadership, new positions, or new course offerings stemming from their fellowship experience.

Proposed Budget

Applicants must submit a comprehensive line item budget for which specific details are available in the application packet. A USIA-funded budget will not exceed $150,000. Grantee organization is expected to provide significant cost sharing.

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission and program goals.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate appropriate content and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
6. *Institution's track record/ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's office of Contracts (M/KG). The Agency will consider past performance grantees and the demonstrated potential of new applicants.
7. *Follow-on activities:* Proposals should provide a plan for continued cost-effective follow-on activity which insures that USIA supported programs are not isolated venues.
8. *Evaluation plan:* Proposals should provide a plan for evaluation by the grantee institution.
9. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.
10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: April 27, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–10586 Filed 5–2–94; 8:45 am]

BILLING CODE 8320–01–M

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities: Exchange Programs To Promote the Strengthening of the Rule of Law in Africa Through Judicial and Public Defender Training

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchange (E/P) of the Bureau of Educational and Cultural Affairs announces a competitive grants program for nonprofit organizations to develop initiative grant projects on the theme of rule of law for audiences in selected African countries. Two separate projects are detailed below for judicial training and public defender training. USIA is particularly seeking projects linking American legal institutions and specialists with partners in Africa. Interested organizations are welcome to submit proposals for one or both projects; if submitting for both, each project should have a separate proposal.

BACKGROUND: Many African countries are striving to create and institutionalize more democratic polities by establishing multi-party systems, writing new constitutions, holding free elections, creating new legal systems and making a variety of political and economic reforms. The highest priority of U.S. Missions in Africa is supporting democratization, of which one crucial aspect is the growth of strong legal systems and legal institutions firmly committed to the rule of law.

The two projects described in this announcement are intended to engage American legal professionals, particularly judges, public defenders and training institutions, in working with African counterparts to enhance the professionalism and efficiency of the judiciary and to create or greatly expand public defender and legal aid services in the target countries. The projects should also promote long-term linkages between American and African institutions.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–24–29. Please refer to the title given above and this number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC, time on June 24, 1994. Faxed documents will not be accepted, nor will documents postmarked June 24, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after October 1.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–29, Office of Grants Management (E/XE), 301 Fourth

Street, SW.—room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchange (E/P), room 224, USIA, 301 Fourth Street, SW., Washington, DC 20547, tel. (202) 619–5319, fax (202) 619–4350, to request detailed application packages which include all necessary forms and guidelines for preparing proposals, including specific budget preparation.

SUPPLEMENTARY INFORMATION:

African Judicial Training Exchange

USIA will accept proposals designed to develop a two-way exchange program to support independent judiciaries and enhance the performance of judges and the administrative capacity of court systems in Malawi, Zambia, Tanzania, and Uganda. The project should encourage long-term relationships between African judicial systems and U.S. counterparts. USIA will consider providing funding up to approximately $250,000 of which at least $30,000 must be devoted to developing or purchasing specialized support materials for participating African institutions. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Themes and Objectives

1. Introduce African judges to the American legal system and the principles upon which it is based, particularly the rule of law and the independence of the judiciary;
2. Provide a formal training component for the dual purpose of benefiting the individual visiting judges and enabling them to develop improved in-service training programs for colleagues in their home countries;
3. Discuss constitutional issues including due process, rules of evidence, equal protection and criminal procedure;
4. Demonstrate various U.S. models for enhancing judicial efficiency, including caseload management and trial conduct techniques and alternative dispute resolution;
5. Promote long-term linkages between African and U.S. court systems to foster dialogue on issues of common concern and to enhance the institutional capabilities of the African judiciaries;
6. Develop and/or purchase specialized support materials for participating institutions in each of the target countries. Such materials might include but are not limited to legal reference and research books, training videos, textbooks or other instructional materials. Grant monies of $30,000 must be used for this purpose.

Participants

The African participants will be judges selected through coordination among U.S. Information Service personnel in the target countries, USIA, and the African partner institutions. All participants must have strong English-language skills.

The U.S. consultants who will travel to Africa will be selected by the grantee institution in consultation with USIA. The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Experience in communicating to foreign audiences and general knowledge of Africa and of the countries involved in the project are highly desirable.

Recommended Program Structure

The following suggestions should not serve as a blueprint, but as a stimulus for the development of an original program design.

Phase One: The program could begin with a 3–4 week U.S. study tour for a group of approximately 10–12 judges representing the target countries. The study tour should allow the African jurists to visit several locations in the U.S. and should include cultural activities as well as the following professional components:

—A series of field visits to familiarize the visiting jurists with the operations of courts and other legal institutions such as bar associations, law schools, and legal training organizations;

—An intensive visit of several days duration to a state court system which is of a scale similar to the national courts of the target countries;

—Formal judicial training to address the program themes in both the constitutional and court administration areas;

—A concluding session to evaluate the study tour, make plans for the follow-up visit of American specialists to Africa, and discuss needs for the specialized support materials to be provided with grant funds.

Phase Two: One or more American judges, judicial training specialists and/or experienced court administrators would visit each of the target countries for consultations, workshops or other activities with local counterparts. Ideally, the Americans would work closely with Africans who participated in Phase One to build on that earlier phase. For example, they might collaborate to train and to plan professional development programs for many others. One approach might be for the Americans and their Phase One African partners to conduct week-long workshops for 10–20 African judges on selected constitutional or court management issues; another approach might be to convene 10–20 African judges to begin designing a country-specific professional development program of coursework and practical experience and technical progress. In planning these follow-up activities, the grantee should work closely with the African participants in the U.S. study tour and with U.S. Information Service personnel in Africa to ensure that the activities are tailored to meet the needs of the African countries.

Phase Three: With careful planning and cost sharing, there may be enough money to conduct a third phase, in either the U.S. or Africa, which would extend the work of the first two phases.

African Public Defender and Legal Aid Training Exchange

USIA will accept proposals for a two-way exchange project to foster the development of public defender and legal aid services in Ethiopia, Tanzania, Uganda and Zambia, and to promote linkages between legal professionals in the U.S. and these countries for this purpose. USIA will consider providing funding up to approximately $200,000, of which $10,000 must be devoted to developing or purchasing specialized support materials for participating African institutions. For technical information, interested organizations may contact E/P Program Specialist Charlotte Peterson at (202) 619–5319.

Project Objectives

1. Introduce African participants to the U.S. legal system and the principles on which it is founded, particularly the rule of law and the power of courts to overrule actions of the Executive and Legislative branches, and compare the U.S. legal system with those of the target countries;
2. Examine the organizational structure and administrative operation of public defender and legal aid organizations in the U.S., and explore how U.S. models might be adapted for use in the target countries;
3. Explore techniques of alternative dispute resolution and sentencing alternatives such as probation and community service;
4. Provide a formal training component for the dual purpose of benefiting the individual visiting public defenders and legal aid attorneys, and of

enabling them to develop or enhance training programs for colleagues in their home countries;

5. Discuss the primary constitutional issues affecting criminal cases, including due process, equal protection, rules of evidence, and criminal procedure;

6. Explore strategies and modalities for challenging governmental actions, including test cases and class action lawsuits;

7. Promote long-term linkages between African public defenders and legal aid organizations and their counterparts in the U.S. in order to foster dialogue on issues of common concern and to enhance the institutional capabilities of the African organizations;

8. Develop and/or purchase specialized support materials for participating institutions in each of the target countries. Such materials might include but are not limited to legal reference and research books, training videos, textbooks or other instructional materials. Grant monies of $10,000 must be used for this purpose.

Participants

The African participants will be attorneys active in public defense work and/or legal aid in their countries, or seeking to establish such services. Participants will be nominated through coordination among U.S. Information Service personnel in the target countries, USIA, and the African partner institutions. All participants must have strong English-language skills.

The U.S. consultants who will travel to Africa will be selected by the grantee institution in consultation with USIA. The grantee should provide the names of American participants and brief, relevant biographical data. American participants should be selected on the basis of their experience and expertise in the thematic field. Experience in communicating to foreign audiences and general knowledge of Africa and of the countries involved in the project are highly desirable.

Program Structure

The following suggestions should not serve as a blueprint, but as a stimulus for the development of an original program design

Phase One: The program could begin with a 3–4 week U.S. study tour for approximately 12 attorneys representing public defense and legal aid services in the target countries. The study tour should allow the African lawyers to visit several regions of the U.S. and should include cultural activities as well as the following professional components:

—An initial orientation to the U.S. legal system and the constitution on which it is founded;

—A series of field visits to familiarize the visiting lawyers with the operations of courts and other legal institutions such as bar associations, law schools, and legal training facilities;

—Field visits and consultations with NGOs wholly or partly dedicated to legal aid, including organizations focused on civil rights, consumer protection and public interest issues such as the environment;

—Intensive visits of several days duration to public defender or legal aid organizations representing at least two different organizational approaches to provision of legal services. Participants might be divided into two or more small groups for this portion of the program. For example, those focused on criminal defense might spend a few days with a large-city public defender's office and then travel to a smaller community which provides public defenders through a system of appointing private-practice attorneys. Those participants interested primarily in legal aid in civil cases might visit a single city to observe the various organizations providing legal aid such as legal aid societies, NGOs devoted to civil rights or public interest practice, and law school clinical programs;

—Formal training in such areas as trial advocacy skills, for the benefit of the visiting attorneys and to demonstrate training techniques they might establish for colleagues in their home countries;

—A concluding session to evaluate the study tour, make plans for the follow-up visit of American specialists to Africa, develop a framework for institutional linkages between African public defender/legal aid organizations and American counterpart institutions, and discuss needs for the specialized support materials to be provided with grant funds.

Phase Two: One or more American attorneys specializing in criminal defense or legal aid services would visit each of the target countries for consultations, workshops or other activities with local counterparts. In planning these follow-up activities, the grantee should work closely with the African participants in the U.S. study tour and with U.S. Information Service personnel in Africa to ensure that the activities are tailored to meet the needs of the African countries. Ideally, the Americans and their African partners would use this phase to involve many more African lawyers and to design or launch projects which continue after this phase.

Additional Guidelines and Restrictions

USIA is interested in supporting programs which will lay the groundwork for new and continuing relationships between American and African legal institutions. Proposals which are overly ambitious and those which are very general will not be competitive. Therefore, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Bureau grants are not given to support projects whose focus is limited to technical issues, or for research projects, developing publications for dissemination in the United States, individual student exchanges, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register** and may have different application requirements as well as different objectives.

Programmatic Considerations

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

USIA will give priority to proposals from U.S. organizations with relevant institutional contacts in the countries involved in the projects described above. Partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing and transportation, interpreting, translating and other local currency costs. These institutions are also encouraged to assist with the organization of various program activities.

The grantee will be responsible for most arrangements associated with this program. These include selecting speakers, themes, and topics for discussion; organizing a coherent progression of activities; making all arrangements associated with the African follow-up portion of the program; providing international and domestic travel arrangements for all participants; making lodging and local transportation arrangements for visitors; orienting and debriefing participants; preparing any necessary support materials; and working with host institutions and individuals to achieve maximum program effectiveness.

At the start of the U.S. portion of a program, the grantee should conduct an orientation session for the visiting delegation which addresses substantive details of the program as well as geographic, historical, and cross-cultural factors which they should consider to enhance program success.

At the conclusion of each phase, the grantee institution will conduct participant evaluations and submit to E/P a progress report. Upon conclusion of the program the grantee will be required to submit a report to E/P summarizing results of the entire program including project outcomes, anticipated follow-on activities, and any resulting institutional linkages.

Program monitoring and oversight will be provided by appropriate USIA elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other cosponsors should then use those monies to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or be hired by the sponsoring institution. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support.

USIS officers in participating countries will facilitate the issuance of visas and other program-related materials.

Funding

Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Competition for USIA funding support is keen. The final selection of a grantee institution will depend on assessment of proposals according to the review criteria delineated below.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92-9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A-133, AICPA SOP 92-9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. *Per diem:* For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities. NOTE: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities overseas, the Standard Government Travel Regulations per diem rates must be used.

3. *Book and cultural allowance:* Participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Escorts are reimbursed for actual cultural expenses up to $150. U.S. staff do not get these benefits.

4. *Consultants:* May be used to provide specialized expertise or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. *Room rental:* generally should not exceed $250 per day.

6. *Materials development:* Proposals may contain costs to purchase, develop and translate materials for participants, in addition to the specialized support materials to be provided to African institutions. USIA reserves the rights to these materials for future use.

7. *One working meal per project:* Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

8. *Return travel allowance:* $70 for each participant which is to be used for incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, Attachment E., "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the appropriate geographic area offices and the budget and contract offices. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate

Director for Educational and Cultural Affairs.

Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of program idea:* Proposals should exhibit originality, substance, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institutional reputation and ability:* Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG) will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

3. *Project personnel:* The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be relevant to the specific proposal and no longer than two pages each.

4. *Program planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic expertise:* Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

6. *Cross-cultural sensitivity and area expertise:* Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. *Ability to achieve program objectives:* Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier effect:* Proposed programs should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-effectiveness:* Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. *Follow-on activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. *Project evaluation:* Proposals should include a plan to evaluate the activity's success. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 5, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: April 22, 1994

Barry Fulton,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–10587 Filed 5–2–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:30 a.m., Monday, May 9, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10703 Filed 4–49–94; 2:54 pm]

ILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, May 10, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open

MATTERS TO BE CONSIDERED:

6182A Aviation Accident Report: Uncontrolled Collision with Terrain, American International Airways Flight 808, Douglas DC–8–61, U.S. Naval Air Station, Guantanamo Bay, Cuba, August 18, 1993

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: April 29, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–10641 Filed 4–29–94; 10:54 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 2, 9, 16, and 23, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 2

Thursday, May 5

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 9—Tentative

Tuesday, May 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 16—Tentative

Wednesday, May 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, May 20

1:00 p.m.
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–492–3904)

Week of May 23—Tentative

Wednesday, May 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, May 26

3:00 p.m.
Briefing on Status of Thermo-Lag (Public Meeting) (Contact: Ashok Thadani, 301–504–1274)

ADDITIONAL INFORMATION: By a 4–0 vote on April 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Proposed Changes to NRC's Program for Protecting Allegers Against Retaliation" (Public Meeting) be held on April 26, and on less than one week's notice to the public.

By a 4–0 vote on April 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107 of the Commission's rules that "Report on International Nuclear Safety Meeting" (Closed—Ex. 1) be held on April 26, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: April 29, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–10723 Filed 4–29–94; 2:56 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
May 3, 1994

Part II

Department of Education

Direct Grant Programs and Fellowship Programs; Notice

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice of direct grant programs and fellowship programs under which the Secretary is making new awards for fiscal year 1994.

SUMMARY: The Secretary updates the list of the Department's direct grant programs and fellowship programs under which the Secretary is making new awards for fiscal year (FY) 1994 and estimates the deadline dates for the transmittal of applications for those programs for which application notices have not yet been published. The Secretary also revises the list of State Single Points of Contact (SPOCs) for programs subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs). The notice is intended to help potential applicants in planning for the remainder of this fiscal year.

DATES: The actual or estimated deadline dates for transmitting applications under these programs are listed in column four of the chart contained in this notice. If a program has yet to publish an application notice, an estimated date is listed in this notice, and the actual deadline date will appear in the application notice to be published in the **Federal Register**.

For previously announced programs that are subject to Executive Order 12372, the deadline dates for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties are listed in the application notices for those programs (see column three of the chart for the respective publication dates of—and **Federal Register** volume and page references to—those notices). The deadline date will also appear in the respective application notices for those programs yet to be announced (see column three).

The date on which applications will be available for any given program is in the application notice for that program.

ADDRESSES: The address and telephone number for obtaining applications for, or further information about, an individual program are in the application notice for that program.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

SUPPLEMENTARY INFORMATION: On September 24, 1993, the Secretary published in the **Federal Register** (58 FR 50138) the Department's annual combined application notice (CAN). That notice listed almost all of the direct grant and fellowship programs under which the Secretary planned to make new awards in FY 1994 and included the application notices for many of those programs. The list included some programs for which application notices had not yet been published.

Since publication of the CAN, additional application notices have been published. In addition, on February 11, 1994, the Secretary published in the **Federal Register** (59 FR 6826) a notice extending application deadline dates for certain programs. The Secretary took this action to assist potential applicants who may have been adversely affected by severe weather conditions in various parts of the Nation or by the earthquake in California. Also, since publication of the CAN, some new programs have been added, and some other programs have been withdrawn or replaced. The Secretary therefore determined that publication of an update would be useful to the educational community.

This notice, therefore, lists all FY 1994 programs previously announced in the **Federal Register**, including those for which the deadline dates have already passed, as well as FY 1994 programs to be announced at a later date. As is the case with the CAN, this notice is designed to assist potential applicants in planning projects and activities. However, to expedite publication of this update, the Secretary has decided not to include any individual application notices. Application notices are published separately in the **Federal Register**. If additional competitions are carried out in FY 1994 because of events not known at this time, the Secretary will announce those competitions in future issues of the **Federal Register**.

As an appendix to the CAN of September 24, 1993, the Secretary published a list of State Single Points of Contact (SPOCs) for programs subject to Executive Order 12372 and the regulations in 34 CFR part 79. Since publication of that list, the names or addresses of SPOCs in a few States have changed. Therefore, as an appendix to this update, the Secretary is publishing a revised listing of SPOCs.

Organization of Notice

The chart lists all direct grant programs and certain fellowship programs under which the Secretary is making new awards in FY 1994. The listings are organized under the following principal program offices of the Department:

Office of Bilingual Education and Minority Languages Affairs.

Office of Educational Research and Improvement.

Office of Elementary and Secondary Education.

Office of Postsecondary Education.

Office of Special Education and Rehabilitative Services.

Office of Vocational and Adult Education.

The listing for each principal office includes application notices already published and those to be published at a later date. The latter are referenced with estimated dates (est.) in columns three and four of the chart. The programs are listed in order of their Catalog of Federal Domestic Assistance (CFDA) number irrespective of category. An asterisk (*) preceding a CFDA number indicates a program announced or listed since publication of the CAN and not included or referenced in that earlier combined notice.

The listing for each office contains the following information:

The CFDA number of each program.

The name of that program.

A reference to the application notice; that is, either (1) the publication date of the application notice, with a reference to the volume and page number of the **Federal Register** in which the announcement appeared, or (2) an estimated date for publication of the application notice.

The deadline date or estimated deadline date for the transmission of applications.

Programs To Be Announced at a Future Date

For FY 1994 a number of programs will be governed by new regulations or funding priorities. This notice references these types of programs with an asterisk following the respective estimated date (est.*) in column three of the chart. For further information regarding six of these programs, readers are referred to the following notices of proposed rulemaking and notices of proposed priority that have been published in the **Federal Register**:

Strengthening Institutions Program—
  Notice of Proposed Rulemaking—58 FR 48478 (9/16/93)

Dwight D. Eisenhower National Program for Mathematics and Science Education—(1) Model Professional Development in Use of Technology for Mathematics and Science Instruction; (2) Model Projects in Encouraging Female and Minority Students in Mathematics and Science; and Model Science-Based Professional Development Projects in Environmental Education—Notices of Proposed Priorities—58 FR 60007 (11/12/93); 59 FR 9610 (2/28/94)

Training in Early Childhood Education and Violence Counseling—Notice of Proposed Priorities for Fiscal Year 1994—59 FR 6249 (2/10/94)

Fund for Innovation in Education (FIE): Innovation in Education Program—Partnerships for Standard-Based Professional Development of K–12 Educators—Notice of Proposed Priority for Fiscal Years 1994 and 1995—59 FR 10258 (3/3/94)

National Early Intervention Scholarship and Partnership Program—Notice of Proposed Rulemaking—59 FR 10926 (3/8/94)

National Institute on Disability and Rehabilitation Research—Knowledge Dissemination and Utilization Program—Notice of Proposed Funding Priorities for Fiscal Years 1994–1995—59 FR 16486 (4/6/94)

Institute for International Public Policy—Notice of Proposed Definitions and Proposed Priority for Fiscal Year 1994—59 FR 16799 (4/8/94)

National Education Goals

On March 31, 1994, the President signed into law the Goals 2000: Educate America Act (Pub. L. 103–227). The Act enunciates eight National Education Goals for the year 2000:

Goal 1: All children in America will start school ready to learn.

Goal 2: The high school graduation rate will increase to at least 90 percent.

Goal 3: All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.

Goal 4: The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

Goal 5: United States students will be first in the world in mathematics and science achievement.

Goal 6: Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Goal 7: Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.

Goal 8: Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

For competitions that are still open for FY 1994, the Secretary encourages applicants under these programs to consider the eight National Education Goals in developing their applications.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

A number of programs listed in the chart provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction. This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs listed in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

PART I—CHART 1—LIST OF APPLICATION NOTICES

CFDA No.	Name of program	Application notice	Application deadline date
	Office of Bilingual Education and Minority Languages Affairs		
84.003A	Transitional Bilingual Education Program	7/28/93 (58 FR 40559)	11/19/93
84.003C	Developmental Bilingual Education Program	7/28/93 (58 FR 40554)	11/19/93
84.003E	Special Alternative Instructional Program	7/28/93 (58 FR 40557)	11/19/93
84.003G	Academic Excellence Program	7/28/93 (58 FR 40554); 2/11/94 (59 FR 6826)	2/25/94
84.003J	Family English Literacy Program.	7/28/93 (58 FR 40556)	11/12/93
84.003L	Special Populations Program	7/28/93 (58 FR 40559)	10/20/93
84.162	Emergency Immigrant Education Program	9/24/93 (58 FR 50138)	5/13/94
84.195R	Educational Personnel Training Program	7/28/93 (58 FR 40555); 2/11/94 (59 FR 6826)	2/25/94
84.195T	Fellowship Program	7/28/93 (58 FR 40556)	1/12/94
84.195V	Short-Term Training Program.	7/28/93 (58 FR 40557)	11/5/93

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
Office of Educational Research and Improvement			
Library Programs			
84.036A	Library Education and Human Resource Development—Institutes.	9/10/93 (58 FR 47800)	11/30/93
84.036B	Library Education and Human Resource Development—Fellowships.	9/10/93 (58 FR 47800)	11/30/93
*84.039	Library Research and Demonstration: Online and Dial-in Access to a Statewide Multitype Library Data-base Demonstration Project.	2/18/94 (59 FR 8360)	4/28/94
84.091A	Improving Access to Research Library Resources Program.	7/30/93 (58 FR 40992)	10/12/93 (1) 12/9/93 (2)
84.163A	Library Services to Indian Tribes and Hawaiian Natives—Basic Grants.	7/30/93 (58 FR 40992)	10/15/93
84.163B	Library Services to Indian Tribes and Hawaiian Natives—Special Projects.	7/30/93 (58 FR 40992)	4/4/94
84.167A	Library Literacy Program.	7/30/93 (58 FR 40992)	11/19/93
84.197AD	College Library Technology and Cooperation Grants Program.	7/30/93 (58 FR 40992)	12/13/93
84.239A	Foreign Language Materials Acquisition Program	7/30/93 (58 FR 40992); 12/16/93 (58 FR 65703)	Cancelled
Fund for the Improvement and Reform of Schools and Teaching			
(First)			
84.211B	FIRST—Schools and Teachers Program—School-Level Projects.	11/1/93 (58 FR 58478)	1/7/94
84.215	Secretary's Fund for Innovation in Education (FIE).		
84.215A	FIE—Innovation in Education Program (General Competition).	Withdrawn.	
84.215B	FIE—Comprehensive School Health Education Program.	9/24/93 (58 FR 50138); 12/10/93 (58 FR 64933)	1/21/94
84.215C	FIE—Technology Education Program	2/11/94 (59 FR 6860); 3/2/94 (59 FR 9975)	4/29/94
*84.215E	FIE—Innovation in Education Program—State Content Standards for English, History, Geography, Civics, Foreign Languages, and the Arts Competition.	4/11/94 (59 FR 17184)	6/10/94
84.215	HFIE—Innovation in Education Program—Field Testing and Demonstrations of New or Improved Assessments of K–12 Student Performance.	Withdrawn.	
84.215J	FIE—Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators.	5/3/94	7/1/94 (est.).
Office of Research			
84.117D	National Center for the Study of Children and Youth Placed At-Risk of Educational Failure.	3/8/94 (59 FR 10924)	5/8/94
84.117E	Educational Research Grant Program—Field-Initiated Studies.	8/31/93 (58 FR 45883)	12/10/93
84.117J	Office of Educational Research and Improvement Fellows Program.	9/24/93 (58 FR 50138)	12/10/93
Programs for the Improvement of Practice			
84.073A	National Diffusion Network Program—New Developer Demonstrator Projects.	9/24/93 (58 FR 50138)	4/8/94
84.073C	National Diffusion Network Program—New State Facilitator Project (for Palau Only).	9/24/93 (FR 50138)	3/8/94
*84.168T	Dwight D. Eisenhower National Program for Mathematics and Science Education—(1) Model Professional Development in Use of Technology for Mathematics and Science Instruction; (2) Model Projects in Encouraging Female and Minority Students in Mathematics and Science; and Model Science-Based Professional Development Projects in Environmental Education.	5/3/94	7/1/94 (est.)
84.203A	Star Schools Program—Distance Education Projects.	2/23/94 (59 FR 8766); 3/11/94 (59 FR 11659)	4/18/94
*84.203B	Star Schools Program—Special Statewide Project	2/23/94 (59 FR 8766); 3/11/94 (59 FR 11659)	4/18/94

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CFDA No	Name of program	Application notice	Application deadline date
84.203C	Star Schools Program—Dissemination Grants	2/23/94 (59 FR 8766)	4/18/94
National Center for Education Statistics			
84.999A	Independent Evaluation of the National Assessment of Educational Progress (NAEP) Trial State Assessment.	11/9/93 (58 FR 59610)	12/27/93
84.999B	National Assessment of Educational Progress (NAEP) Data Reporting Program.	9/24/93 (58 FR 50135)	12/13/93
*84.999J	National Assessment of Educational Progress (NAEP) (Test Development, Field Testing, and Planning for the 1996 NAEP).	11/29/93 (58 FR 63008)	1/13/94
Office of Elementary and Secondary Education			
84.061A	Educational Services for Indian Children	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.061B	Indian Education Resource Centers	Withdrawn	
84.061F	Indian Education—Educational Personnel Development.	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.062A	Educational Services for Indian Adults	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.072A	Indian-Controlled Schools—Enrichment Projects	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.083A	Women's Educational Equity Act Program—General Significance Grants.	9/24/93 (58 FR 50138)	3/11/94
84.083B	Women's Educational Equity Act Program—Challenge Grants.	9/24/93 (58 FR 50138)	3/11/94
84.123A	Law-Related Education Program	9/24/93 (58 FR 50138), 1/31/94 (59 FR 4271)	2/11/94
84.144A	Chapter 1 Migrant Education Coordination Program	Withdrawn	
84.214A	Migrant Education Even Start Program	9/24/93 (58 FR 50138); 2/10/94 (59 FR 6252)	Cancelled
84.233A	Drug-Free Schools and Communities Emergency Grants Program.	9/24/93 (58 FR 50138); 1/31/94 (59 FR 4271)	2/11/94
84.241A	Drug-Free Schools and Communities Counselor Training Grants Program.	9/24/93 (58 FR 50138), 1/31/94 (59 FR 4271)	2/11/94
84.258A	Even Start Program—Indian Tribes and Tribal Organizations.	9/24/93 (58 FR 50138); 12/28/93 (58 FR 68638)	Cancelled
84.266A	Training in Early Childhood Education and Violence Counseling.	5/6/94 (est.*)	7/8/94 (est.)
Office of Postsecondary Education			
84.015A	National Resource Centers and Fellowships	9/3/93 (58 FR 46948)	11/3/93
84.016A	Undergraduate International Studies and Foreign Language.	7/28/93 (58 FR 40413)	11/5/93
84.017A	International Research and Studies	7/28/93 (58 FR 40413)	11/5/93
84.019A	Fulbright-Hays Faculty Research Abroad	8/10/93 (58 FR 42530)	11/1/93
84.021A	Fulbright-Hays Group Projects Abroad	7/28/93 (58 FR 40412)	10/22/93
84.022A	Fulbright-Hays Doctoral Dissertation Research Abroad.	8/10/93 (58 FR 42530)	11/1/93
84.031A	Strengthening Institutions Program	3/28/94 (59 FR 14504)	5/16/94
84.031G	Endowment Challenge Grant Program	9/24/93 (58 FR 50138)	6/14/94
84.031H	Strengthening Institutions Program and Endowment Challenge Grant Program—Designation as an Eligible Institution.	9/24/93 (58 FR 50220)	12/3/93
84.044A	Talent Search	11/5/93 (58 FR 59153)	12/22/93
84.055A	Cooperative Education Program—Administration, Part A Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.055B	Cooperative Education Program—Demonstration Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.055C	Cooperative Education Program—Research Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.055D	Cooperative Education Program—Training and Resource Center Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.055E	Cooperative Education Programs—Administration, Part B Projects.	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404); 3/29/94 (59 FR 14614).	2/14/94; 3/14/94 (areas of Calif.); 3/31/94 (areas of Miss.)
84.066A	Educational Opportunity Centers	1/18/94 (59 FR 2664)	3/14/94
84.094B	Patricia Roberts Harris Fellowship Program	Withdrawn.	
84.097A	Law School Clinical Experience Program	9/24/93 (58 FR 50138); 2/4/94 (59 FR 5404)	1/28/94; 2/23/94 (areas of Calif.)
84.103	Training Program for Federal TRIO Programs	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68881)	3/31/94
84.120	Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects.	9/24/93 (58 FR 50138)	12/17/93
84.153A	Business and International Education	7/28/93 (58 FR 40413)	11/8/93
84.170	Jacob K. Javits Fellowship Program	10/28/93 (58 FR 58090); 1/19/94 (59 FR 2835)	2/25/94
84.200A	Graduate Assistance in Areas of National Need Program.	12/16/93 (58 FR 65836); 2/4/94 (59 FR 5404)	2/14/94; 2/28/94 (areas of Calif.)
84.202A	Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education Program.	9/24/93 (58 FR 50138)	12/6/93
84.204	School, College, and University Partnerships	9/24/93 (58 FR 50138)	4/1/94
*84.252A	Urban Community Service Program	4/4/94 (59 FR 15810)	6/3/94
*84.261A	Dwight D. Eisenhower Leadership Program	5/9/94 (est.)	6/23/94 (est.)
*84.262A	Programs to Encourage Minority Students to Become Teachers.	3/1/94 (59 FR 9735)	4/15/94
*84.269A	Institute for International Public Policy	6/1/94 (est.*)	7/15/94 (est.)
*84.270A	Teacher Corps Program	5/16/94 (est.)	6/30/94 (est.)
*84.271A	Faculty Development Fellowship Program	7/5/94 (est.*)	8/12/94 (est.)
*84.272A	National Early Intervention Scholarship and Partnership Program.	5/2/94 (est.*)	6/27/94 (est.)
*84.273A	Demonstration Grants for Critical Language and Area Studies.	6/10/94 (est.)	8/1/94 (est.)
*84.274A	American Overseas Research Centers	6/10/94 (est.)	8/1/94 (est.)
	Office of SpecialEducation Programs		
	Fund for the Improvement of Postsecondary Education (FIPSE)		
84.116A	Comprehensive Program (Preapplications). (3)	11/19/93 (58 FR 61080)	1/10/94
84.116B	Comprehensive Program (Applications)	11/19/93 (58 FR 61080)	4/19/94
84.116F	Fund for the Improvement of Postsecondary Education—Innovative Projects for Community Service.	9/24/93 (58 FR 50138)	12/21/93
84.183A	Drug Prevention Programs in Higher Education—Institution-Wide Program.	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	2/25/94
84.183B	Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program.	9/24/93 (58 FR 50138)	4/4/94
84.183D	Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention).	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	3/11/94
84.183E	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Projects.	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	2/14/94; 3/7/94 (Calif. only)
84.183F	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects.	9/24/93 (58 FR 50138); 12/29/93 (58 FR 68880)	2/16/94; 3/9/94 (Calif. only)

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
Office of Special Education and Rehabilitative Services			
Office of Special Education Programs			
84.023A	Advancing and Improving the Research Knowledge Base.	7/29/93 (58 FR 40702)	10/22/93
84.023B	Student-Initiated Research Projects	7/29/93 (58 FR 40702)	10/22/93
84.023C	Field-Initiated Research Projects	7/29/93 (58 FR 40702)	1/14/94
84.023D	School-Linked Services to Support Better Outcomes for Children with Disabilities and Their Families.	11/18/93 (58 FR 60934)	2/11/94
84.023E	Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice.	11/18/93 (58 FR 60934)	3/25/94
84.023F	State and Local Education Efforts to Implement the Transition Requirements in the Individuals with Disabilities Education Act.	Withdrawn	
84.023H	Center for Policy Research	11/18/93 (58 FR 60934)	4/8/94
84.023N	Initial Career Awards	11/18/93 (58 FR 60934)	2/18/94
84.024B	Model Demonstration Projects for Young Children with Disabilities.	9/16/93 (58 FR 48554)	1/10/94
84.024D	Outreach Projects for Young Children with Disabilities.	9/16/93 (58 FR 48554)	1/5/94
84.024K	Early Childhood Research Institute on Integration	9/16/93 (58 FR 48554)	1/10/94
84.024P	Early Childhood Model Inservice Training Projects	9/16/93 (58 FR 48554)	12/29/93
84.025S	Research Validation and Implementation Projects for Children who Are Deaf-Blind.	9/21/93 (58 FR 48039)	12/17/93
84.026A	Closed-Captioned Sports Programs	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.026C	Broadcast and Cable Television Description	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/3/94; 2/24/94 (Calif. only)
84.026D	Educational Video Selection and Captioning	10/21/93 (58 FR 54440)	1/3/94
84.026G	Research on Video Description	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.026H	Described Home Video	10/21/93 (58 FR 54440)	3/3/94
84.026M	Symposium on Exploring New Strategies for Providing Captioned Media Services.	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.026R	Research on Captioning as a Language Development Tool.	10/21/93 (58 FR 54440); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.029A–Q	Training Personnel for the Education of Individuals with Disabilities:		
84.029A	Training Personnel to Serve Low-Incidence Disabilities.	6/3/93 (58 FR 31512)	10/1/93
84.029B	Preparation of Personnel for Careers in Special Education.	6/3/93 (58 FR 31512)	9/17/93
84.029C	Technical Assistance to Professional Development Partnerships.	8/31/93 (58 FR 45884)	10/29/93
84.029D	Preparation of Leadership Personnel	6/3/93 (58 FR 31512)	9/17/93
84.029E	Minority Institutions	6/3/93 (58 FR 31512)	1/14/94
84.029F	Preparation of Related Services Personnel	6/3/93 (58 FR 31512)	9/17/93
84.029H	Grants to State Educational Agencies and Institutions of Higher Education.	5/28/93 (58 FR 31102)	12/17/93
84.029K	Special Projects	6/3/93 (58 FR 31512)	11/19/93
84.029L	Training Educational Interpreters	6/3/93 (58 FR 31512)	1/14/94
84.029M	Parent Training and Information Centers	6/3/93 (58 FR 31512)	8/27/93
84.029Q	Training Early Intervention and Preschool Personnel.	6/3/93 (58 FR 31512)	10/1/93
84.078C	Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities.	9/14/93 (58 FR 48042); 2/11/94 (59 FR 6826)	2/4/94; 2/25/94 (Calif. only)
84.086D	Research Projects for Educating Children with Severe Disabilities in Inclusive Settings.	9/22/93 (58 FR 49398)	12/15/93
84.086J	Statewide Systems Change: Children with Severe Disabilities.	9/22/93 (58 FR 49398)	1/14/94
84.086R	Model Inservice Training Projects to Prepare Personnel to Educate Students with Severe Disabilities in General Education Classrooms and Community Settings.	9/22/93 (58 FR 49398); 2/11/94 (59 FR 6826)	2/3/94; 2/24/94 (Calif. only)
84.086V	Institute on Implementing Inclusive Education for Children with Severe Disabilities.	9/22/93 (58 FR 49398)	12/30/93

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.158D	Model Demonstration Projects to Identify and Develop Alternatives for Youth with Disabilities Who Have Dropped Out of School or Are at Risk of Dropping Out of School.	9/21/93 (58 FR 49154)	12/17/93
84.158Q	Outreach Projects for Services for Youth with Disabilities.	9/21/93 (58 FR 49154)	3/28/94
84.158U	Research Projects on Student Involvement in Transition Planning.	9/21/93 (58 FR 49154)	4/8/94
84.159A	State Agency-Federal Evaluation Studies Projects	10/14/93 (58 FR 53366)	3/25/94
84.159D	Technical Assistance for State Agencies Participating in the State Agency-Federal Evaluation Studies Program.	Withdrawn.	
84.159F	State Agency-Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness.	10/14/93 (58 FR 53366)	3/25/94
84.180A	Organizational Support and Professional Development in the Use of Technology, Media, and Materials with Children and Youth with Disabilities.	9/14/93 (58 FR 48041)	1/7/94
84.180G	Technology, Educational Media, and Materials Research Projects that Promote Literacy.	8/13/93 (58 FR 43190)	11/19/93
*84.180T1	Technology, Educational Media and Materials for Individuals with Disabilities Program.	2/15/94 (59 FR 7248)	5/18/94
84.237F	Preventing the Development of Serious Emotional Disturbance Among Children and Youth with Emotional and Behavioral Programs.	10/14/93 (58 FR 53372)	1/7/94
	National Institute on Disability and Rehabilitation Research		
84.133A–1	Research and Demonstration Projects	7/7/93 (58 FR 36554)	11/4/93
84.133A–4	Research and Demonstration Projects	12/8/93 (58 FR 64644)	3/8/94
84.133B–2	Rehabilitation Research and Training Centers	10/19/93 (58 FR 54006); 3/16/94 (59 FR 12268)	5/18/94
84.133B–5	Rehabilitation Research and Training Centers	12/17/93 (58 FR 66228); 1/27/94 (59 FR 3850)	3/4/94
84.133B–9	Rehabilitation Research and Training Centers	6/30/93 (58 FR 34994)	9/1/93
84.133D–1	Knowledge Dissemination and Utilization Program	12/6/93 (58 FR 64298)	3/11/94
*84.133D–2	Knowledge Dissemination and Utilization Program—Training Projects.	5/27/94 (est.*)	6/27/94 (est.)
84.133E–5	Rehabilitation Engineering Research Centers	11/12/93 (58 FR 60099)	3/4/94
84.133F	Rehabilitation Research Fellowships Program	7/7/93 (58 FR 36554)	10/15/93
84.133G–2	Field-Initiated Research	7/7/93 (58 FR 36554)	10/5/93
84.133P–1	Research Training and Career Development Program.	7/7/93 (58 FR 36554)	8/27/93
84.224A–6	State Grants for Technology-Related Assistance for Individuals with Disabilities.	5/9/94 (est.)	6/10/94 (est.)
	Rehabilitation Services Administration		
84.128A	Special Projects and Demonstrations for Providing Supported Employment—Community-Based Projects.	9/24/93 (58 FR 50138)	3/24/94
84.128B	Special Projects and Demonstrations for Providing Supported Employment—Statewide Demonstration Projects.	9/24/93 (58 FR 50138); 11/9/93 (58 FR 59453)	12/22/93
84.128G	Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.	9/24/93 (58 FR 50138)	1/14/94
84.128J	Projects for Initiating Recreational Programs for Individuals with Disabilities.	9/24/93 (58 FR 50138); 2/11/94 (59 FR 6826)	2/25/94
84.128N	Special Projects and Demonstrations for Providing Supported Employment to Individuals with the Most Severe Disabilities—Community-Based Projects for Serving Individuals Who Are Low-Functioning and Deaf or Low-Functioning and Hard-of-Hearing.	9/24/93 (58 FR 50138)	12/1/93
84.129A–1	Rehabilitation Long-Term Training—Rehabilitation Medicine.	9/24/93 (58 FR 50138)	11/30/93
84.129A–3	Rehabilitation Long-Term Training—Rehabilitation Nursing.	9/24/93 (58 FR 50138)	11/30/93
84.129A–5	Rehabilitation Long-Term Training—Prosthetics and Orthotics.	9/24/93 (58 FR 50138)	11/30/93
84.129B	Rehabilitation Long-Term Training—Rehabilitation Counseling.	9/24/93 (58 FR 50138)	2/18/94

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.129C–1	Rehabilitation Long-Term Training—Community Rehabilitation Program Administration.	9/24/93 (58 FR 50138)	11/30/93
84.129C–3	Rehabilitation Long-Term Training—Rehabilitation Administration.	9/24/93 (58 FR 50138)	11/30/93
84.129D–1	Rehabilitation Long-Term Training—Physical Therapy.	9/24/93 (58 FR 50138)	11/30/93
84.129D–3	Rehabilitation Long-Term Training—Occupational Therapy.	9/24/93 (58 FR 50138)	11/30/93
84.129E	Rehabilitation Long-Term Training—Rehabilitation Technology.	9/24/93 (58 FR 50138)	11/30/93
84.129F	Rehabilitation Long-Term Training—Vocational Evaluation and Work Adjustment.	9/24/93 (58 FR 50138)	11/30/93
84.129G	Rehabilitation Long-Term Training—Community Rehabilitation Program Personnel.	9/24/93 (58 FR 50138)	11/30/93
84.129H	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Mentally Ill.	9/24/93 (58 FR 50138)	11/30/93
84.129J	Rehabilitation Long-Term Training—Rehabilitation Psychology.	9/24/93 (58 FR 50138)	11/30/93
84.129K	Rehabilitation Long-Term Training—Specialized Personnel for Supported Employment.	9/24/93 (58 FR 50138)	11/30/93
84.129L	Rehabilitation Long-Term Training—Undergraduate Education in Rehabilitation Services.	9/24/93 (58 FR 50138)	11/30/93
84.129M	Rehabilitation Long-Term Training—Independent Living.	9/24/93 (58 FR 50138)	11/30/93
84.129N	Rehabilitation Long-Term Training—Speech Pathology and Audiology.	9/24/93 (58 FR 50138)	11/30/93
84.129P	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Blind.	9/24/93 (58 FR 50138)	11/30/93
84.129Q	Rehabilitation Long-Term Training—Rehabilitation of Individuals Who Are Deaf.	9/24/93 (58 FR 50138)	11/30/93
84.129R	Rehabilitation Long-Term Training—Rehabilitation Job Development and Placement.	9/24/93 (58 FR 50138)	11/30/93
*84.129U	Parent Information and Training Programs—Technical Assistance.	3/29/94 (59 FR 14614)	5/13/94
84.129V	Rehabilitation Long-Term Training—Technician Training.	9/24/93 (58 FR 50138)	1/14/94
84.132A	Centers for Independent Living	5/16/94 (est.*)	6/30/94 (est.)
84.177A	Independent Living Services for Older Individuals Who Are Blind.	5/16/94 (est.*)	6/30/94 (est.)
84.240A	Protection and Advocacy of Individual Rights	Became a formula grant competition as a result of 1994 appropriation.	
*84.246C	Rehabilitation Short-Term Training—Braille Training Program.	4/29/94	6/15/94 (est.)
84.246	Rehabilitation Short-Term Training—Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act.	11/9/93 (58 FR 59608); 2/11/94 (59 FR 6826)	2/25/94
84.246B	Rehabilitation Short-Term Training—Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals with Disabilities in Postsecondary Education Settings.	11/9/93 (58 FR 59608); 2/11/94 (59 FR 6826)	2/25/94
84.250D	Vocational Rehabilitation Service Projects for American Indians with Disabilities.	9/24/93 (58 FR 50138)	4/7/94
84.263	Rehabilitation Training—Experimental and Innovative Training.	9/24/93 (58 FR 50138)	11/23/93
84.264	Rehabilitation Training—Rehabilitation Continuing Education Programs.	7/28/93 (58 FR 40414)	9/30/93
84.265A	State Vocational Rehabilitation Unit In-Service Training.	6/15/94 (est.*)	7/15/94 (est.)
	Office of Vocational and Adult Education		
84.099	Bilingual Vocational Instructor Training Program	8/5/93 (58 FR 41918)	9/20/93
84.101A	Indian Vocational Education Program	3/18/93 (58 FR 15052)	7/15/93
84.198	National Workplace Literacy Program	1/10/94 (59 FR 1418); 2/3/94 (59 FR 5223)	3/11/94
84.199G	Cooperative Demonstration Program—Community Education Employment Centers.	12/14/93 (58 FR 65434); 2/11/94 (59 FR 6826)	2/11/94; 3/4/94 (Calif. only)
84.199H	Cooperative Demonstration School-to-Work Opportunities State Implementation Grants Program.	2/3/94 (59 FR 5290)	4/1/94

PART I—CHART 1—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
(SGA/DAA 94-007).	School-to-Work Opportunities: Local Partnership Implementation Grants. (4).	3/9/94 (59 FR 11154)	5/9/94
*84.199J	Cooperative Education Program—Manufacturing Technology.	5/13/94 (est.)	6/30/94 (est.)
84.248	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	6/11/93 (58 FR 32808)	7/30/93
84.255A	Life Skills for State and Local Prisoners Program	3/16/93 (58 FR 14278); 4/9/93 (58 FR 18381)	5/17/93
84.259A	Native Hawaiian Vocational Education Program	9/24/93 (58 FR 50138)	3/25/94

(1) For institutions needing to establish eligibility (Part I only).

(2) For all project descriptions (Part II).

(3) Applicants for 84.116B were required to submit preapplications under 84.116A by 1/10/94.

(4) This competition announced jointly by the Departments of Education and Labor is being funded by the Department of Labor. In accordance with the notice, applications are available from the Department of Labor.

Invitation To Comment

The Secretary welcomes comments on the usefulness of this update of the annual combined application notice and suggestions for improving this update or the combined application notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of Education, 400 Maryland Avenue, SW. (room 5131, FOB-6), Washington, DC 20202-2241.

Dated: April 22, 1994.

Richard W. Riley,

Secretary of Education.

Appendix

Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

State Single Points of Contact

Note: In accordance with Executive Order #12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary some States no longer participate in the process. These include: Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, and Washington.

Arizona

Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315, FAX (602) 280-1305.

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone (501) 682-1074, FAX (501) 682-5206.

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323-7480, FAX (916) 323-3018.

Colorado

Margaret Dubas, State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 521, Denver, Colorado 80203, Telephone (303) 866-2156, FAX (303) 866-2251.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 739-3326, FAX (302) 739-5661.

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., suite 500, Washington, D.C. 20005, Telephone (202) 727-6551, FAX (202) 727-1617.

Florida

Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol (room 1603), Tallahassee, Florida 32399-001, Telephone (904) 488-8114, FAX (904) 488-9005.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, room 401J, Atlanta, Georgia 30334, Telephone (404) 656-3855 or 656-3829, FAX (404) 656-7938.

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782-1671, FAX (217) 782-6620.

Indiana

Francis E. Williams, Intergovernmental Grant Coordinator, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–2972, FAX (317) 233–3323.

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 242–4729, FAX (515) 242–4859.

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone (502) 573–2382, FAX (502) 573–2512.

Maine

Joyce Benson, State Planning Office, State House Station #38, 184 State Street, Augusta, Maine 04333, Telephone (207) 287–3261, FAX (207) 287–6489.

Maryland

Mr. Roland E. English III, Chief, State Clearinghouse, for Intergovernmental Assistance, Maryland Office of Planning, 301 West Preston Street, room 1104, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490, FAX (410) 225–4480.

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001, ext. 443, FAX (617) 727–4259.

Michigan

Richard S. Pastula, Director, Office of Federal Grants, Michigan Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–7356, FAX (517) 373–6683.

Mississippi

Cathy Malette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, Department of Finance and Administration, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 949–2174, FAX (601) 949–2125.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 760, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834, FAX (314) 751–4819.

Nevada

Maud Naroll, Department of Administration, State Clearinghouse, Capitol Complex, room 200, Carson City, Nevada 89710, Telephone (702) 687–4065, FAX (720) 687–3983.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155, FAX (603) 271–1728.

New Jersey

Gregory D. Adkins, Director, Division of Community Resources, New Jersey Department of Community Affairs.

Please direct all correspondence and questions about intergovernmental review to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0814, Telephone (609) 292–9025, FAX (609) 984–0386.

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, suite 5106, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232, FAX (919) 733–9571.

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094, FAX (701) 224–2308.

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411.

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone (614) 466–0698, FAX (614) 466–5400.

Rhode Island

Kevin Nelson, Senior Planner, Statewide Planning Program, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone (401) 277–2656, FAX (401) 277–2083.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494, FAX (803) 734–0385.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, John Sevier Building, suite 309, Nashville, Tennessee 37243–0001, Telephone (615) 741–1676

Texas

Tom Adams, Director, Intergovernmental Coordination, P.O. Box 13005, Austin, Texas 78711, Telephone (512) 463–1771, FAX (512) 463–1984.

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535, FAX (801) 538–1547.

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone (802) 828–3326, FAX (802) 828–3339.

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 558–4010, FAX (304) 558–3248.

Wisconsin

William Carey, Bureau Director, Intergovernmental Relations, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone (608) 266–2125, FAX (608) 267–6931.

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574, FAX (307) 638–8967.

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone 011–671–472–2285, FAX 011–671–472–2825.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Norma Burgos/Jose B. Caro, Chairman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119985, Telephone (809) 727–4444 or 723–6190, FAX (809) 724–3270 or 724–3103

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone (809) 774–0750, FAX (809) 776–0069.

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone (202) 395–5090) at the Office of Management and Budget and to the State in question.

[FR Doc. 94–10310 Filed 5–2–94; 8:45 am]

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federal register

Tuesday
May 3, 1994

Part III

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Three Final Priorities for Fiscal Year 1994; Notice

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development in the Use of Technology for Mathematics and Science Instruction; Model Projects in Encouraging Female and Minority Students in Mathematics and Science; and Model Science-Based Professional Development Projects in Environmental Education

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1994.

SUMMARY: The Secretary announces three priorities for fiscal year 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education: model professional development projects in the use of technology for mathematics and science education, model projects in encouraging female and minority students in mathematics and science, and model science-based professional development projects in environmental education.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. For information about the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Liz Barnes or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5673. Telephone: (202) 219–2210. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The goal of the Eisenhower National Program is to support projects of national significance in elementary and secondary schools in mathematics and science education designed to improve the skills of teachers and the quality of instruction in these areas and to increase the access of all students to that instruction. The program is authorized under Title II, Part A, Subpart 1, section 2012 of the Elementary and Secondary Education Act of 1965, as amended.

The Secretary may subsequently conduct an external study or studies of the effectiveness and lessons learned from projects funded under this program. If he does so, projects will be required to cooperate with the conduct of the study, by sharing their experiences, project evaluations, and data.

Regarding priority 1, the Secretary believes that technology can be used to improve instruction and assessment in mathematics and science and provide all students with greater opportunity to learn in accordance with state content and student performance standards. The Secretary believes that developments in technology have great promise for helping to attain National Education Goal Five, that by the Year 2000, United States students will be first in the world in mathematics and science achievement; however, he sees ample evidence that many teachers are not confident about using these resources in the classroom. The scope of these projects may include professional development in the use of technology for assessment of student learning. For purposes of substantiating that two or more schools assisted under this priority serve underachieving students, the applicant may cite test scores, drop-out rates, Chapter I eligibility, or similar indices.

Regarding priority 2, the Secretary is concerned that the Nation's schools encourage too few minority and female students to study and pursue careers in the fields of mathematics and science. The Secretary believes that the well-documented underrepresentation of minorities and women in these disciplines represents a waste of human talent that the Nation can ill afford. This priority will therefore support, and learn from, projects that seek to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Regarding priority 3, the Secretary believes that environmental education can stimulate students' interest in scientific fields and enhance their understanding of these disciplines. The Secretary also believes that environmental issues are important in their own right and are, therefore, eminently worthy of study. The Secretary finds, however, that environmental education programs of high quality are available in too few of the Nation's schools, in part because American teachers have very limited opportunities to increase their knowledge of environmental issues and to learn the most successful means of providing environmental education. The Secretary proposes, therefore, to support and learn from projects in professional development for teachers in environmental education.

The Secretary draws to the attention of potential applicants responding to priority 3 the National Consortium for Environmental Education and Training (NCEET) at the University of Michigan, an undertaking funded by the Environmental Protection Agency under Section 5 of the National Environmental Education Act of 1990. NCEET's primary emphasis is professional development for teachers in environmental education. Potential applicants should consult with NCEET to ensure that their projects are not duplicative of the National Consortium's efforts.

On November 12, 1993, the Secretary announced in the **Federal Register** (58 FR 60007) a proposed priority for the Eisenhower National Program in model professional development in the use of technology for mathematics and science instruction. After considering the intent of the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriations Act, the Secretary proposed two additional priorities. These proposed priorities were announced on February 28, 1994 in the **Federal Register** (59 FR 9610).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of the Comments and Changes

In response to the Secretary's invitation in the notices of proposed priorities several parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notices of proposed priorities follows.

Notice of Proposed Priority Published on November 12, 1993

Comment: One commenter pointed out that technology projects are hardware intensive. The commenter therefore suggested that the portion of grant funding available for purchase or lease of appropriate hardware, software, and communications services or tariffs for use in these projects be greater than is traditionally available in many grants. Another commenter urged that the Department allow up to 50% of the total Federal portion of the project budget, rather than the 20% stipulated in the priority, to be used for purchase of items such as hardware. This commenter believed that this change would result in greater numbers of applications from districts that have relatively few resources for the purchase of technology.

Discussion: In this priority the Secretary wishes to emphasize professional development, rather than equipment purchase, and thus does not wish to reduce the proportion of Federal funds available for inservice education. The Secretary notes that, in their efforts to obtain additional funds to be used for purchase of hardware, software, and other such items, applicants should have available the joint resources of the partnerships that are to be formed under this priority. The Secretary acknowledges, however, that the type of projects to be supported under this priority may require a significant initial investment in technology-related resources.

Changes: The priority has been revised to state that up to one-third of the total Federal funds approved for year one and up to 15 percent of the Federal funds approved in years two and three may be expended to purchase or lease hardware, software, and communications services or tariffs.

Comment: One commenter urged that a portion of funds made available through this priority be used for preservice programs, such as those that would help faculty in schools of education to provide exemplary models of the use of technology in teaching.

Discussion: The Secretary agrees that preservice programs can play a critical role in preparing teachers to use technology effectively in the classroom. The current priority, however, was designed for inservice professional development, where ample need for improvement exists. Given the relatively limited amount of funding available for these priorities, the Secretary does not wish to dilute the purpose or effectiveness of the priority by broadening it to encompass preservice programs. The Secretary will, however, examine possible opportunities to support preservice programs in future technology-related grant priorities.

Changes: None.

Comment: One commenter suggested that partnerships formed to develop and implement project activities include representatives of the Statewide Systemic Initiative (SSI) program funded by the National Science Foundation.

Discussion: The Secretary believes that, insofar as the SSI program involves professional development, this comment is already addressed in the priority's requirement that projects coordinate their work with other professional development efforts in mathematics and science education.

Changes: None.

Comment: One commenter urged that principals be allowed to designate persons knowledgeable in technology to serve in the principal's stead on the advisory committees that will guide the projects.

Discussion: The Secretary points out that the priority does not preclude participation on the advisory committees by persons who have been chosen by principals and who are particularly knowledgeable in technology. The Secretary believes that the presence of a principal himself or herself on an advisory committee represents a personal commitment that could be vital to the undertaking's success. In addition, in light of the many-faceted professional development activities envisioned in the priority, the Secretary believes that the advisory committee needs the breadth of knowledge and management perspectives that principals can bring.

Changes: None.

Comment: One commenter suggested that the priority require the participation of teachers of English as a second language (ESL) to enhance the effectiveness of the program in schools serving underachieving students whose native language is not English.

Discussion: The Secretary notes that the priority allows for inclusion of ESL teachers in project activities. The priority requires the involvement of two or more schools serving underachieving students and the inclusion of the majority of, if not all, the mathematics and science teachers in participating schools. ESL teachers who provide instruction in mathematics and science at project site schools are thus likely to participate in the professional development activities that are part of the project. In the interest of allowing the greatest amount of flexibility and variety in the projects that are funded, the Secretary does not wish to add further requirements concerning inclusion of teachers.

Changes: None.

Comment: One commenter suggested that, in addition to requiring integration of academic content and pedagogical components, the priority should provide a focus on the interdisciplinary nature of mathematics and science education.

Discussion: The Secretary observes that the priority would not preclude such a focus. The Secretary wishes to allow potential applicants flexibility to design projects that respond to local and State needs, and thus does not desire to restrict applicants' choice of emphases.

Changes: None.

Comment: One commenter pointed out that technology provides the teacher with an opportunity to assess each student's learning on a near-continuous basis, thus enabling the teacher to adjust instruction to fit the needs of both individual learners and groups of students throughout the course of a learning sequence. Technology can thus maximize the usefulness of assessment by making it an integral part of learning, the commenter argued. The commenter urged that the priority be expanded to include attention to the use of technology for student assessment aimed at continuous monitoring and improvement of learning.

Discussion: The Secretary recognizes that technology can provide improved methods of assessing student progress and thus can contribute to student learning. The Secretary does not exclude teacher professional development in the use of technology for student assessment.

Changes: None.

Notice of Proposed Priorities Published on February 28, 1994

Comment: One commenter strongly supported the emphasis on women and minorities, as well as the emphasis on environmental education. The commenter also suggested adding a priority, or mentioning the possibility of, the development and incorporation of service learning in projects.

Discussion: The Secretary observes that the priorities would not necessarily preclude such a focus. The Secretary wishes to allow potential applicants flexibility to design projects that respond to local and State needs, and thus does not desire to restrict applicants' choice of emphases.

Changes: None.

Comment: Two commenters strongly argued against limiting one priority to environmental education. They felt that it is unnecessary and unwise to focus limited funding for professional development on a particular field of science. One commenter stated that most teachers teach more than one science and therefore need reinforcement in more than one field.

Discussion: The Secretary believes that environmental education is one way to stimulate students' interest in scientific fields. The Secretary also believes that environmental education involves several different scientific fields and will therefore enhance teachers' ability to teach science generally.

Changes: None.

Comment: One commenter supported the encouragement of women and minorities in mathematics and science. However, the commenter urged that the priority provide opportunities and funds for selected projects to do controlled studies, with longer term follow up of their impact.

Discussion: The Secretary requires these projects to evaluate lessons learned about promoting the interest and attainment of women and minorities in mathematics and science and expects the findings to be widely disseminated. This requirement does not preclude the use of controlled evaluation studies for these purposes. However, projects funded under this priority must be "model" projects designed themselves to stimulate and sustain the interest and attainments of females and minority children in mathematics and science. The Secretary will not support projects under this priority which are solely for the purpose of conducting research and evaluation in this area.

Changes: None.

Comment: One commenter strongly supported programs attracting females and minorities to careers in mathematics and science. However, referencing the Senate report language cited in the February 28, 1994, Notice of Proposed Priority issued by the Eisenhower National Program, the commenter questioned the Secretary's intent to fund the priority on environmental education because it would dilute Congressional intent to respond to the needs of women and minorities in mathematics and science, and in any event mathematics and science high schools would be teaching environmental education.

Discussion: The Secretary believes the commenter overlooked a provision of the Senate report directing the Department of Education to support work in environmental education.

Changes: None.

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. Each application shall respond to *only one* of the three priorities, although an applicant could submit more than one application to respond to more than one priority. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Absolute Priority 1—Teacher Professional Development in the Use of Technology for Mathematics and Science Education

The Secretary will support model projects that demonstrate effective ways of strengthening teachers' abilities to use technology in the classroom for the improvement of teaching and learning in mathematics and science at the elementary or secondary school levels, or both.

Required Activities: Each project must:

(a) Form a partnership to develop and implement project activities. Partnerships must include one or more of each of the following parties: local educational agency or private school(s), State educational agency, institution of higher education, and private sector party with expertise in technology. Partners must contribute resources to the operation of the project. Programming must be designed in consultation with professionals who are experts in the applicable subject matter, educational levels, and technologies to be used in the project. Projects must be coordinated with other professional development efforts in mathematics and science education, particularly with the Eisenhower State Grant Program.

(b) Establish an advisory committee to guide the project. The advisory committee must include representation from each of the partners to the application, plus principals of project site schools and classroom teachers participating in the project.

(c) Involve two or more schools serving underachieving students in the project.

(d) Involve the majority of, if not all, teachers of mathematics and science in the participating schools in project activities. Participating teachers must implement the use of technology in their teaching of mathematics and science.

(e) Provide participating teachers with sustained, intensive, high-quality professional development activities that focus on the use of technology to improve classroom instruction in mathematics and science. Project activities must reflect relevant research on teaching and learning, as well as the experiences of the partners and participating teachers. Activities must integrate academic content and pedagogical components, and be delivered largely on-site (i.e., in schools or districts) for groups of teachers working cooperatively.

(f) Provide participating teachers with forums for interaction and with access to sources of technical assistance outside their schools. Projects must require that participating teachers collaborate with each other and that they participate in electronic networking with other teachers, including teachers participating in other projects funded under this program, to share experiences and knowledge about how to improve student learning through the use of technology in instruction.

Projects may use up to one-third of the total Federal portion of the project budget for year one and no more than 15 percent in years two and three to purchase or lease appropriate hardware, software, and communications services or tariffs for use in these projects. In addition, projects must provide, using non-Federal funds, some of the hardware, software, and other requirements of the technology to be used in these projects.

(g) Evaluate lessons learned about effective teacher professional development in the use of technology to improve mathematics and science teaching and learning, and use the information to improve the project on a continuing basis. Evaluations must address the characteristics of participating teachers and students, the technologies used and their relative effectiveness, and the effects on teaching and learning of the use of technology in instruction in mathematics and science. Evaluations must include a mid-course, on-site review by an outside panel, including experts in the use of technology in instruction and classroom teachers with successful experience in using technology to improve instruction.

(h) Disseminate lessons learned to other schools participating in the program, and to others such as schools with similar needs in the project site State, institutions and organizations providing pre-service and in-service teacher development programs in the project site State, and other interested parties that could benefit from this information. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication. Applicants may request Federal funding to support dissemination activities, including travel for dissemination, in amounts not to exceed 20% of the total Federal portion of the project budget. Projects must participate in meetings of the Eisenhower Program held annually in Washington, DC.

Absolute Priority 2—Encouraging Female and Minority Students in Mathematics and Science

The Secretary will support model projects designed to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Each project must: (a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with the State science teachers' association and/or the State mathematics teachers' association and with at least one other party such as a school, another educational institution, a local or state educational agency, a national education organization, a science-technology center, or private sector parties; and with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(d) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

(e) In the case of projects serving elementary and middle schools, increase teachers' own mastery of mathematics and science in order to increase their confidence and skill in teaching these subjects (including skills in providing hands-on learning).

(f) Involve parents and community members as role models and/or mentors for female and minority children.

Absolute Priority 3—Science-Based Teacher Professional Development in Environmental Education

The Secretary will support model science-based professional development projects designed to improve student achievement in environmental education.

Each project must: (a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with at least two other parties such as schools, other educational institutions, local or state educational agencies, national education organizations, science-technology centers, or private sector parties; with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Use environmental education as a means to enhance students' interest, literacy, and achievement in science.

(d) Increase teachers' own mastery of environmental issues, including related scientific issues.

(e) Train teachers to develop varied learning experiences for students in environmental education that include field components and the study of individual themes, such as ecosystems (e.g., wetlands), the water cycle, and global climate change; and enable teachers to pilot-test these varied learning experiences with students.

(f) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(g) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide final notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 755.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: April 26, 1994.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 94-10483 Filed 5-2-94; 8:45 am]

BILLING CODE 4000-01-P

federal register

Tuesday
May 3, 1994

Part IV

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No. 84.168T]

Dwight D. Eisenhower National Program for Mathematics and Science Education: Model Professional Development in the Use of Technology for Mathematics and Science Instruction, Model Projects in Encouraging Female and Minority Students in Mathematics and Science, and Model Science-Based Professional Development Projects in Environmental Education; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of Program: To award grants to support projects of national significance designed to improve instruction in mathematics and science in the nation's elementary and secondary schools, and increase the access of all students to such instruction.

Eligible Applicants: The Secretary may award grants to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations, including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations.

Deadline For Transmittal of Applications: July 5, 1994.

Deadline For Intergovernmental Review: September 5, 1994.

Applications Available: May 20, 1994.

Available Funds: $3,000,000.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 12

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 85 and 86; and (b) The regulations for this program in 34 CFR part 755.

Priority

The priorities in the notice of final priorities for this competition as published elsewhere in this issue of the **Federal Register** apply to this competition. Only applications under these priorities will be considered. This program and priorities support Goals 2000, the President's strategy for moving the Nation toward achievement of the National Education Goals.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 755.32.

The program regulations in 34 CFR 755.30(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition, the Secretary distributes the 10 points as follows:

Quality of Key Personnel (34 CFR 755.32(b)). Five points are added to this criterion for a possible total of 10 points.

Evaluation Plan (34 CFR 755.32(d)). Five points are added to this criterion for a possible total of 15 points.

FOR APPLICATIONS OR INFORMATION CONTACT: Liz Barnes or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5543. Telephone (202) 219–2164. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 2992

Dated: April 26, 1994.

Sharon Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–10484 Filed 5–2–94; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 880, et al.

Preferences for Elderly Families in Certain Section 8 Housing; and Reservation of Units for Disabled Families; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884, and 886

[Docket No. R-94-1719; FR-3465-I-01]

RIN 2502-AG05

Preference for Elderly Families in Certain Section 8 Housing; and Reservation of Units for Disabled Families

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's section 8 regulations for newly constructed and substantially rehabilitated housing projects to provide for the system of occupancy preferences in certain section 8 assisted housing authorized by subtitle D of title VI of the Housing and Community Development Act of 1992. Subtitle D allow owners of section 8 projects originally designed primarily for occupancy by elderly families to provide preferences to elderly families in selecting tenants for available units in those projects. Owners that elect to provide preferences to elderly families as authorized by subtitle D also must reserve no less than a statutorily determined number of units for disabled families who are not elderly or near-elderly families.

The Supplementary Information section of this document provides further information on the specific amendments to be made to the section 8 regulations in parts 880, 881, 883, 884 and 886, and explains the Department's reasons for issuing this rule as an interim rule.

DATES: Effective date: June 2, 1994 through May 3, 1995.

Comments due date: July 5, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director of the Office of Elderly and Assisted Housing, Office of Housing, Department of Housing and Urban Development, room 6130, or Albert Sullivan, Director of the Office of Multifamily Management, room 6160, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708-4542 (voice) for Ms. Milner; (202) 708-3730 for Mr. Sullivan; or (202) 708-4594 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle D (sections 651-661; codified at 42 U.S.C. 13611-13620) of title VI of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (hereafter, "1992 HCD Act") is entitled "Authority to Provide Preferences for Elderly Residents and Units for Disabled Residents[1] in Certain Section 8 Assisted Housing," and allows an owner of a covered section 8 housing project to elect to provide preferences to elderly families in selecting tenants for available units in the project, subject to certain statutory requirements. An owner who elects to provide preferences to elderly families must also reserve a percentage of units, not to be less than the percentage determined according to a formula set out in the statute, for disabled families who are not elderly or near-elderly.[2]

This interim rule adopts in regulation the system of preferences for occupancy provided by subtitle D, and sets forth the standards for determining whether a project is eligible to elect the preferences for occupancy provided by subtitle D, and explains the effect of such preferences on administration of project waiting lists.

II. Eligibility To Provide Preferences for Elderly Residents

Section 651 of the 1992 HCD Act provides in relevant part, "[n]otwithstanding any other provision of law, an owner of a *covered section 8 housing project designed primarily for occupancy by elderly families*, may in selecting tenants for units in the project that become available for occupancy, give preference to elderly families who have applied for occupancy in the housing * * *." (Emphasis added.)

With regard to the phrase "designed primarily for occupancy by elderly families," the Department believes that in using the term "primarily," the Congress intended to limit the applicability of subtitle D to either the section 8 units in those covered projects in which a majority of the section 8 units were designed for elderly families (i.e., seniors[3]), or to the section 8 units in covered projects where a distinct portion of the project (e.g., a tower or a wing of a project, but not just a floor) exists in which the majority of section 8 units were restricted to seniors only. Thus, section 651 may apply to the section 8 units in an entire project originally designed primarily for occupancy by elderly families ("covered section 8 housing project"), or section 651 may apply to the section 8 units in a portion of such project, but only where the section 8 units in this project or portion of the project were designed primarily for seniors. The preamble frequently uses the term "covered section 8 units" to recognize that there are partially assisted projects whose section 8 units will be covered by this interim rule.

It is important to note that the statutory system of preferences provided by subtitle D is only available to projects which qualify as "covered section 8 housing projects designed primarily for occupancy by elderly families." The Department points out that many projects which have section 8 assistance are not "covered section 8 housing projects designed primarily for occupancy by elderly families" (as defined in Section I.A. of the preamble, which follows), and may not elect the subtitle D statutory system of preferences.

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[1] Definitions for "elderly families" and "disabled families" are codified in section 3(b) of the U.S. Housing Act of 1937 (1937 Act). Section 3(b) was amended by section 621 of the 1992 HCD Act. Where the definition for "elderly families" has, since 1974, encompassed disabled families, the amended section 3(b) now defines "elderly families" as families whose heads (or their spouses) or sole members are persons at least 62 years old Thus, under the revised definition, a disabled person does not qualify as an elderly family solely because of the person's disability.

Section 3(b) defines "disabled families" to mean families whose heads (or their spouses) or sole members are persons with disabilities. "Person with disabilities" is defined to mean a person who: (1) has a disability as defined in section 223 of the Social Security Act; (2) is determined pursuant to regulations issued by the Secretary of HUD, to have a physical, mental or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions; or (3) has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

The Department's regulations for the terms defined in section 3(b) of the 1937 Act for the assisted housing programs are published at 24 CFR part 812. While the 1992 HCD Act amendments to section 3(b) of the 1937 Act require changes to 24 CFR part 812, this rule does not amend 24 CFR part 812. The Department will modify 24 CFR part 812 by separate rulemaking. Also, unless the context indicates otherwise, reference to the terms elderly families, disabled families, and near-elderly families in this preamble is reference to these terms as defined in section 3(b) of the 1937 Act, as amended by section 621 of the 1992 HCD Act

[2] Under section 3(b) of the 1937 Act, as revised by section 621 of the 1992 HCD Act, the term "near-elderly families" is defined as families whose heads (or their spouses) or sole members are persons who are 50-61 years old.

[3] As used in this preamble, the term "seniors" refers to families whose heads of household, their spouses or sole members are 62 years or older

A. Covered Section 8 Housing Project: Section 659

Subtitle D and these regulations define "covered section 8 housing" to mean housing that:

(1) was constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 (1937 Act), as in effect before October 1, 1983;

(2) is assisted under a contract for assistance under such section; and

(3) was originally designed primarily for occupancy by elderly families.

1. Projects That are Newly Constructed or Substantially Rehabilitated Pursuant to Assistance Provided Under Section 8(b)(2) of the 1937 Act, as in Effect Before October 1, 1983.

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing. However, the system of preferences under subtitle D does not apply to all these programs.

The programs to which subtitle D applies are:

(1) The section 8 New Construction Program, 24 CFR part 880;

(2) The Section 8 Substantial Rehabilitation Program, 24 CFR part 881;

(3) The State Housing Agencies program (insofar as it involves new construction and substantial rehabilitation), 24 CFR part 883;

(4) The New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; and

(5) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as it involves substantial rehabilitation), 24 CFR part 886.[4]

Other programs which may involve section 8 new construction or substantial rehabilitation assistance, but which are not covered by the preferences in subtitle D are identified in section 658 of the 1992 HCD Act. Under section 658 of the 1992 HCD Act, an owner of a project (or portion of a project) that was originally designed for occupancy by elderly families, and assisted under the Section 221(d)(3) Below Market Interest Rate (BMIR) program, the Section 236 Mortgage Insurance and Interest Reduction Payment for Rental Projects program, or Section 202 Loans for Housing for the Elderly or Handicapped Program, may continue to restrict occupancy in such projects (or portion of such projects) to elderly families in accordance with the rules, standards and agreements in effect when the housing project was developed. Accordingly, under this interim rule, the subtitle D statutory system of preferences does not apply to newly constructed or substantially rehabilitated section 8 projects with HUD insurance or assistance under any of these three programs.[5] The Department emphasizes that it is critical that a project owner understand the type of assistance a project receives to determine eligibility under subtitle D and these regulations.

Project owners should note that the following types of projects or assistance would *NOT* be covered by this interim rule:

- —Section 202 housing projects,
- —Section 221(d)(3) BMIR housing projects,
- —Section 221(d)(4) retirement service centers (because such projects have FHA mortgage insurance but no section 8 assistance),
- —Section 236 housing projects,
- —Housing projects with contracts for section 8 loan management set aside (unless the projects also have contracts for section 8 assistance involving new construction or substantial rehabilitation, in which case the units could be covered),
- —Housing projects with project-based section 8 rental certificates, and
- —Section 8 tenant-based assistance programs (rental vouchers and certificates).

2. Assisted Under a Contract for Assistance Under Section 8(b)(2)

Some newly constructed or substantially rehabilitated projects have unassisted units and assisted units. These projects are often referred to as "partially assisted projects." Because the statutory definition of "covered section 8 housing" only applies to housing that is under a contract for assistance, the subtitle D system of preferences would not apply to unassisted units in a partially assisted project. Additionally, nothing in this regulation establishes a cap on the number of unassisted units for disabled families in a partially assisted project.

While this regulation does not apply to the unassisted units in a partially assisted project, this regulation also does not relieve any owner of any project, including the owner of a partially assisted project from complying with the Fair Housing Amendments Act of 1988, section 504 of the Rehabilitation Act of 1973, the implementing regulations for these statutes, or any other applicable statutory or regulatory requirement, including the requirements of the National Housing Act, with respect to the assisted or unassisted units. However, notwithstanding the foregoing, owners may provide the preferences in accordance with this interim rule, with respect to the assisted units.

3. Originally Designed Primarily for Occupancy by Elderly Families

The final statutory requirement for qualification as a "covered section 8 housing project" is that the project must have been originally designed for occupancy by elderly families. The statute does not define the term "originally" or define the phrase "originally designed for occupancy by elderly families." However, the House Report offers some insight on this subject. The House Report suggests that to qualify as housing originally designed for occupancy by elderly families, the owner of the project must have expressed an intent to create housing for elderly tenants when the developer negotiated with the Department for Federal financial assistance. (H.R. Rept. No. 760, 102d Cong. 2d Sess. at 141 (1992).)

Because the various types of housing projects covered by this interim rule were developed under several different programs, and over a period of time which spans almost two decades, there is no uniform documentation at the Department which evidences the population group to be served by a project. In many instances, the application in response to a notice of funding availability (NOFA) shows that a project was designed as an elderly housing project. However, an indication of the population group to be served by the housing project does not always appear in any one document.

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[4] The "Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages" (see 24 CFR part 886, subpart A) involves only existing housing. However, the "Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects" (see 24 CFR part 886, subpart C) involves substantially rehabilitated housing, in addition to existing housing. Accordingly, this rule would amend subpart C of 24 CFR part 886, but only for projects involving substantially rehabilitated housing.

[5] Although in this regard, the Department is aware of no Section 221(d)(3) BMIR projects or Section 236 projects with Section 8 new construction or substantial rehabilitation assistance. As such, by its terms, "covered section 8 housing" does not seem to encompass the Section 236 Mortgage Insurance and Interest Reduction Payment for Rental Projects program or the Section 221(d)(3) BMIR program.

In addition, because one of the previous definitions of "elderly families" in section 3(b) of the 1937 Act included disabled families, it is not always clear from documents that indicate a project was developed for "elderly families" whether the project for elderly families was intended to mean housing for the broeder eligible category of families (i.e., elderly families and disabled families) or for families who qualified by virtue of age alone. Further confusion may be added by the fact that for most of the period when this housing was being developed, the Department policy required all housing for the elderly (defined by age) to incorporate certain accessible features and to design a certain percentage of the units to be accessible for persons with physical disabilities. Typically, these units were made available to eligible families with physical disabilities, regardless of age.

Thus, in establishing whether a project was originally designed primarily for occupancy by elderly families within the meaning of subtitle D, two distinctions must be drawn: (1) The project was designed primarily for elderly families (as opposed to non-elderly families); and (2) the project was designed for elderly families (i.e., seniors), and not designed for elderly families under the broader meaning of this term, which formerly included elderly families and disabled families.

Recognizing all these factors, the interim rule provides for supporting documentation to be drawn from a variety of sources. These sources are identified as being either "primary" sources, or "secondary" sources. The interim rule provides that if at least one of the primary sources clearly establishes that a project was originally designed for elderly families (seniors), the owner of this project may elect the system of preferences provided by subtitle D. However, if another primary source establishes a design contrary to the primary source upon which the owner would base support that the project is a covered section 8 housing project, the owner cannot make the election of preferences provided by subtitle D without finding support in secondary sources. Secondary sources may then, as discussed in this interim rule, be used to establish the use for which the project was originally designed.

If there are no primary sources clearly establishing the original design of the project, then original design may still be established through secondary sources. At least two secondary sources must support that the project was designed as elderly (seniors) housing in the absence of primary documentation in order to establish such intention for elderly housing. Additionally, in the case of conflict between primary sources, and the owner chooses to rely on secondary sources, then at least two secondary sources must support that the project was designed as elderly (seniors) housing.

Primary sources. Primary sources that would evidence that a project was originally designed for occupancy by elderly families (seniors) include any of the following: the application in response to the notice of funding availability (NOFA); the terms of the NOFA under which the application was solicited; the regulatory agreement, the loan commitment, the bid invitation, the owner's management plan, or any other underwriting or financial document collected at or before loan closing. If any one of these project documents clearly evidence that the project was originally designed primarily for elderly families (seniors), the owner would be eligible to elect to apply the system of preferences provided under these regulations so long as the primary documents do not conflict.

Secondary sources. As discussed above, if primary sources do not evidence that the population intended to be served by the project were elderly families (seniors), an owner may elect the system of preferences provided by subtitle D if the owner is able to produce evidence from two secondary sources that clearly evidence that the project was originally designed primarily for elderly families (seniors). Secondary sources include: (1) Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older; (2) evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; (3) project unit mix with a higher percentage of efficiency and one-bedroom units (a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or (4) any other relevant type of historical data unless clearly contradicted by other comparable evidence.

As discussed above, the lack of uniform documentation, and the possible lack of distinction between: (1) Elderly projects which are seniors housing, and (2) elderly projects which planned to serve disabled families equally with seniors, make the determination of whether a project is a "covered section 8 housing project" a difficult one.

The Department is specifically interested in public comment on this issue, particularly with respect to the existence (or lack thereof) of documentation that would show the original population group intended to be served by the project, other types of evidence that might be considered, and how to distinguish between: (1) Projects for elderly families, which included, and intended to include, disabled families, from (2) projects for elderly families which served disabled families only incidentally.

B. Projects That Do Not Elect Subtitle D System of Preferences: Section 657

The Department emphasizes that the system of preferences provided by subtitle D and these regulations is not mandatory, and is available at the election of the multifamily housing owner. In accordance with section 657 of the 1992 HCD Act, an owner of a covered section 8 housing project that does not elect to implement the system of preferences provided by subtitle D would continue to provide housing for elderly families without incurring any obligation (beyond that mandated by the specific authorizing statutes and any other applicable statutory requirements) to provide housing for elderly families and/or non-elderly and disabled families.

For covered section 8 projects for which the owner does not elect the subtitle D system of preferences, the new definition of "elderly families" established by section 621 of the 1992 HCD Act would *not* apply. Rather the former definition in section 3(b) of the 1937 Act, which includes the non-elderly disabled families in the meaning of "elderly families," would be applicable, and elderly families under this broader definition (i.e., elderly families *and* disabled families) would be eligible for units in these projects for which the election of preferences was not taken to the same extent that such families were eligible before enactment of the 1992 HCD Act.

The non-election of the subtitle D system of preferences does not override any occupancy requirements affecting covered section 8 housing designed primarily for occupancy by elderly families based on the authority of regulatory agreements or statutory provisions governing the FHA mortgage insurance programs. By way of example, the enabling statute for the Section 231 Program ("Housing Mortgage Insurance for the Elderly") mandates that not less than 50 percent of the units in a Section 231 project must be designed for the use of elderly persons, meaning any person, married or single, who is 62 years of age or over. Accordingly, not all members of the entire population group encompassed by the pre-1992 HCD Act definition of "elderly families" (*i.e.*, elderly families and non-elderly disabled families), are eligible for elderly units in Section 231 projects.

Application of the pre-1992 HCD Act definition could make it impossible to meet the statutory percentage requirement of the Section 231 Program or a higher percentage that may have been specified in the regulatory agreement or in other authority. Therefore, owners of Section 231 projects (where the projects are also covered section 8 housing designed primarily for occupancy by elderly families) who do not make an election to be covered by the subtitle D system of preferences will continue to follow the standards of Section 231 of the National Housing Act and the terms of their regulatory agreement or other controlling documentation in determining the eligibility of elderly families for occupancy in their projects. This position is consistent with section 657 of subtitle D which provides that where the owner does not elect the preference scheme, "elderly families" as defined by the pre-1992 HCD Act definition, shall be eligible for occupancy "*to the same extent* that such families were eligible before the date of enactment [of the 1992 HCD Act.] (emphasis added.)"

III. Implementation of Preferences for Elderly Families

An owner who elects to provide preferences for elderly families in accordance with section 651, and who can compile and, on request, produce the required documentation to support a determination that the project was designed primarily for occupancy by elderly families (seniors), may, in selecting tenants for units in the project that become available for occupancy after the effective date of this regulation, give preference to elderly families who have applied for occupancy in the housing.

An owner of a covered section 8 project is not required to solicit or obtain the approval of HUD before exercising the election of preference for elderly families provided by subtitle D. The owner, if challenged on the issue of the "coverage" of the project, must be able to support the project's coverage, and the owner's eligibility to make the election of preference through the production of the supporting evidence discussed earlier in this preamble. (The owner may be challenged by, among others, existing tenants, applicants for tenancy or HUD on this issue.) Additionally, the Department reserves the right at any time to review and make determinations regarding the accuracy of the determination of the project as an eligible project. The Department can make such determinations as a result of its ongoing monitoring of activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

When establishing the preference for elderly families, an owner also must reserve units for occupancy by disabled families who are not elderly or near-elderly, as explained below. In no case, may an owner evict, without good cause, a family that is lawfully residing in a unit in a covered section 8 housing project to achieve the occupancy level that has been determined under the system of preferences or the reservation of units set forth in this interim rule. (Good cause would not exist where the eviction stemmed from the system of preferences or the reservation of units, or because of any action taken by the Secretary or owner pursuant to subtitle D.)

A. Reservation of Units for Disabled Families Who Are Neither Elderly Nor Near-Elderly: Section 652

If an owner elects to provide preferences for elderly families for admission to a project or a portion of a project that is determined to be "covered section 8 housing project" in accordance with section 651, then section 652 requires the owner also to reserve covered section 8 units in the project for occupancy by disabled families who are not elderly or near-elderly. The number of units to be reserved for disabled families who are not elderly or near-elderly is based on a calculation prescribed in section 652(b).

Under section 652(b), an owner who elects to provide preferences for elderly families must determine the percentage of covered section 8 units occupied by disabled families who are not elderly or near-elderly on October 28, 1992, which is the date of enactment of the 1992 HCD Act (the October 28, 1992 percentage). The next step is for the owner to compare the October 28, 1992 percentage to the percentage of covered section 8 units occupied by disabled families who are not elderly or near-elderly on January 1, 1992 (the January 1, 1992 percentage), in order to determine the highest occupancy percentage of disabled families who are not elderly or near-elderly in 1992. The owner must reserve the highest occupancy percentage (either the October 28, 1992 percentage or the January 1, 1992 percentage), up to a maximum of 10 percent of the covered section 8 units, for disabled families who are not elderly or near-elderly.

Under the statute and these regulations, an owner may, but is never obligated to, admit disabled families who are not elderly or near-elderly to more than 10 percent of the covered section 8 units. The actual percentage required is the highest percentage in occupancy on the two "snapshot" dates in 1992 (again October 28, 1992 or January 1, 1992), unless that number exceeds 10 percent, in which case the requirement is set at 10 percent. Thus, under the statutory formula and this interim rule, if a project did not have any disabled families who are not elderly or near-elderly residing in the covered section 8 units on both January 1, 1992 and October 28, 1992, the owner would not be required to reserve any covered section 8 units for such families. The Department believes that few, if any, projects will fall into this category.

While the percentage of covered section 8 units required to be reserved may vary between 10 percent and zero, the Department reiterates that the required percentage is not a ceiling, and owners are encouraged to reserve (or permit admission to) a higher percentage of covered section 8 units for disabled families who are not elderly or near-elderly where the need exists. Owners who choose to reserve (or permit admission to) a greater percentage of covered section 8 units than the percentage which is statutorily required for disabled families who are not elderly or near-elderly would not incur any obligation to continue maintaining the higher percentage (than statutorily required by subtitle D) as vacancies arise.

In calculating actual utilization of units reserved for disabled families who are not elderly or near-elderly, units occupied by elderly families where a member of the family is disabled do not count as part of the required percentage. Another factor to be considered is that the percentage of units which are reserved under subtitle D for disabled families who are not elderly or near-elderly is not linked to specific units.

Since most elderly projects, even when designed for occupancy by seniors, have a portion of the units designed to be accessible and usable by persons with physical disabilities, there may be a tendency to assume that these "accessible" units will be designated to fulfill the required percentage of units reserved for disabled families who are not elderly or near-elderly. This is not the case. Disabled families who are not elderly or near-elderly and therefore qualify for the units reserved under subtitle D may have any one of a variety of disabilities, many of which will not require an accessible unit. Thus, in determining whether a project has met its obligation under subtitle D, the relevant factor is the number of disabled families who are not elderly or near-elderly in occupancy, not the units in which they reside. The accessible units may be occupied by elderly families, or by a mixture of elderly families and disabled families who are not elderly or near-elderly. Similarly, a project may have reached its required percentage of occupancy by disabled families who are not elderly or near-elderly, and have vacant accessible units. In such case, an owner is under no obligation to offer these units to disabled families before offering such units to elderly families. However, the owner must offer such vacant accessible units to current tenants who need any of the accessible features of the unit before offering it to the first elderly or non-elderly family on the waiting list. In selecting from the waiting list, the owner can give elderly disabled families who need the accessible unit a preference over elderly non-disabled families.

The Department emphasizes that when a vacancy occurs and it is a disabled family's turn to be placed in a project pursuant to the preference system, the fact that the vacant unit may not be accessible, does not entitle the housing provider to skip over the disabled family. Where the available unit is not accessible and the disabled family needs an accessible unit, the housing provider is to accommodate the family, either by (1) making that unit accessible, or (2) by transferring a tenant who is living in an accessible unit but does not need an accessible unit to the inaccessible unit and offering the disabled family an accessible unit.

B. Secondary System of Preferences: Section 653.

Under the statutory system of preferences, if there are an insufficient number of elderly families to fill vacant covered section 8 units, an owner may give a secondary preference to disabled families who are near-elderly. Similarly, if there are an insufficient number of disabled families who are not elderly or near-elderly to fill vacant covered section 8 units reserved for such disabled families, an owner may give a secondary preference to disabled families who are near-elderly to fill those units. However, in the event that there are an insufficient number of elderly families, disabled families who are not elderly or near-elderly, or near-elderly disabled families to fill vacancies that occur, the owner must make vacant covered section 8 units generally available to eligible families who apply for housing, without regard to the statutory system of preferences or reservation of units.

The statute looks to the Department to establish a standard for determining whether there are an insufficient number of families to fill vacant units subject to the preferences or reservations established in this interim rule. These standards are already in place in the existing section 8 regulations. The interim rule provides that before an owner can determine that there are an insufficient number of families to fill vacant covered section 8 units, an owner must conduct marketing to attract applicants qualifying for the preferences (including outreach to such applicants) in accordance with §§ 880.601(a), 881.601(a), 883.702(a), 884.226, or 886.321(a), as applicable. Additionally, the owner must make a good faith effort to lease to applicants qualifying for the preferences (which must include taking all feasible actions to fill vacancies by renting to such families), and not reject any such applicant family except for reasons acceptable to the Department or the contract administrator (in accordance with HUD guidelines).

C. Waiting Lists

Owners of covered section 8 housing projects designed primarily for occupancy by elderly families, which are required to have a percentage of covered section 8 units reserved for disabled families who are not elderly or near-elderly pursuant to section 652, or which have other units available to disabled families pursuant to statutory and regulatory requirements (e.g., near-elderly disabled families admitted under the secondary preferences of section 653) would not be able to use this interim rule to remove applicants from a waiting list. Moreover, an owner would have to continue to select applicants for covered section 8 vacant units in accordance with current HUD procedures with the exception noted below.

Procedures presently in effect provide that the applicant's place on the waiting list and the application of preferences determine the order of selection for admission. Section 655 provides that the existing Federal preferences apply within each group (i.e. elderly families, disabled families who are not elderly or near-elderly, and disabled families who are near-elderly) to the extent that they currently apply under each applicable multifamily housing program.[6] Local preferences also are permitted under existing rules.

However, under this interim rule, if the applicants at the top of the waiting list are disabled families who are not elderly or near-elderly, and such disabled families currently occupy the full percentage of covered section 8 units required to be reserved for them under subtitle D, the owner may, but is not required to, skip over the disabled applicants on the waiting list, and select elderly families for vacant covered section 8 units. The owner would only be required to select disabled families who are not elderly or near-elderly, and who are at the top of the waiting list for vacant covered section 8 units when: (1) The number of disabled families who are not elderly or near-elderly in covered section 8 units drops below the minimum required percentage, (2) the owner has adopted a secondary preference under section 653(a) of the 1992 HCD Act, and there are not sufficient numbers of elderly families or near-elderly disabled families to fill the elderly units (in accordance with section 654 of the 1992 HCD Act), or (3) the owner has not adopted a secondary preference under section 653(a), and there are not sufficient numbers of elderly families to fill the elderly units.

It is important to note that some projects which do not have to reserve any units for non-elderly disabled families under subtitle D may have disabled families who are not elderly or near-elderly on their waiting lists. If a project originally designed primarily for occupancy by elderly families would not have to reserve any units for disabled families who are not elderly or near-elderly under subtitle D, the owner would not have to admit such disabled families on the waiting list to covered section 8 units, nor would any additional non-elderly families have to be added to the waiting list for covered section 8 units. The owner would, of course, have to admit disabled families who are also elderly, and provide such families with the same preference for admission as non-disabled elderly families.

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[6] For example, an elderly family with a Federal preference would be selected for a vacant unit before an elderly family without a Federal preference.

Also, an owner who has adopted a secondary preference under section 653(a) would admit, and give a preference to, near-elderly disabled families, if there are insufficient numbers of elderly families to fill the elderly units. An owner who has adopted a secondary preference under section 653(a) would also admit families without regard to age (including disabled families that are not elderly or near-elderly) if there are not sufficient numbers of elderly families or near-elderly disabled families to fill the elderly units (pursuant to section 654). An owner who has not adopted a secondary preference under section 653(a) would admit applicants without regard to age (including disabled families that are not elderly or near-elderly) if there are not sufficient numbers of elderly families to fill the elderly units.

Even where there are sufficient numbers of elderly families to fill the elderly units, an owner may elect to admit disabled families who are not elderly or near-elderly to covered section 8 units, and the Department encourages this voluntary policy, particularly where the need exists and the units are available. Owners who choose to admit such disabled families in excess of the statutorily-mandated minimum may do so without incurring any continuing obligation as such disabled families voluntarily move out, and without losing their project's identification as a project designed primarily for occupancy by elderly families.

In any case, when an owner's decision to provide preferences to elderly families under subtitle D would have an adverse effect on non-elderly families on the waiting list, the owner would be required to notify those families of the new policy and how this policy may affect them. The notification requirement would be triggered if the current percentage of disabled families who are neither elderly nor near-elderly exceeds the minimum required percentage, and non-elderly families on the waiting list (including those with disabilities) may be passed over for covered section 8 units for the elderly, or if the project is one of the few which will have no units set aside for such disabled families under subtitle D.

Justification for Interim Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect in accordance with the Department's own rule on rulemaking, codified at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without notice and prior public comment because the Department has determined that, with the exception of possible clarifying changes at the final rule stage, public comment will not alter the standards set forth in this interim rule for making the election of preferences provided by subtitle D, and is therefore unnecessary. The interim rule adopts the standards for the election of preferences for elderly families and reservation of units for disabled families as set forth in the statute.

Subtitle D establishes which section 8 housing projects are eligible for the election of preferences provided by subtitle D. Subtitle D establishes that the "elderly families" eligible to reside in covered section 8 housing projects for which the owner has made the election of preferences provided by subtitle D are those families who meet the definition of "elderly families" as set forth in section 3(b) of the 1937 Act, as amended by section 621 of the 1992 HCD Act. Subtitle D establishes the formula by which an owner will determine the number of units in the covered section 8 housing project that must be reserved for occupancy by disabled families who are not elderly or near-elderly. Subtitle D establishes the secondary system of preferences available to owners if there are insufficient numbers of elderly families to occupy all the units reserved for elderly families. Subtitle D also establishes the procedures to be followed if units remain vacant after the owner has elected to provide the secondary system of preferences, and the procedures to be followed concerning the order of selection within groups to whom a preference has been given. The interim rule adopts all these statutory provisions without substantive change.

The interim rule departs from the statute in providing the types of documents that an owner must be able to produce in the event the owner is challenged on the issue of whether the owner's project is eligible for the election of preferences provided by subtitle D. The statute does not provide how the owner may support that the owner's section 8 housing project was originally designed primarily for occupancy by elderly families (i.e., seniors). The interim rule provides a list of documents which the owner may rely upon as support for determining project eligibility to make the election of preferences provided by subtitle D.

The Department carefully considered which documents may evidence project eligibility for the subtitle D system of preferences. As discussed earlier in the preamble, because of the various types of housing projects covered by subtitle D and this interim rule, and because these housing projects were developed under several different programs and over a period of time which spans almost two decades, there is no uniform documentation at the Department which identifies the population group to be served by the project. Additionally, and again as discussed earlier in the preamble, the difficulty in identifying the population group to be served is added by the fact that the previous definition of "elderly families" in the 1937 Act included disabled families, and the Department's policy required all housing for the elderly (defined by age) to incorporate certain accessible features and to design a certain percentage of units to be accessible for persons with physical disabilities. The Department specifically requests comments from the public on the list of supporting documents provided in the interim rule, and this provision may change following public comment.

The Department recognizes that there may be questions concerning the Department's use of interim rulemaking for subtitle D of title VI, but not for subtitle B of the title VI. Subtitle B provides public housing agencies (PHAs) with the option, subject to certain requirements, to designate public housing projects, or portions of these projects, for occupancy by elderly families, by disabled families, or elderly families and disabled families. Under subtitle B, to elect this option, a PHA must submit an allocation plan to the Department for review and approval before designating a project for occupancy by one of the three categories of families listed in the statute. Additionally, for projects to be designated for occupancy by disabled families, the statute requires the PHA also must submit, and receive approval of, a supportive service plan. The Department added requirements, by regulation, to the allocation plan and supportive service plan to supplement those set forth in the statute. For this reason, it was necessary to provide the public with advance notice and public comment before making those regulatory requirements effective.

Additionally, to the extent that this subtitle D rule, which concerns section 8 housing, and the subtitle B rule, which concerns public housing, address similar issues, the public comments on the subtitle B rule are applicable to this interim rule. Both statutes (subtitle D and subtitle B), which permit housing to be reserved for occupancy by elderly families, may have the affect of reducing housing assistance for non-elderly disabled persons. Subtitle D attempts to minimize the reduction of housing assistance for non-elderly disabled families by limiting the preference for elderly families to covered section 8 housing that was originally designed primarily for occupancy by elderly families. Subtitle D also requires owners of these covered projects to reserve units in the covered project for disabled families who are neither elderly nor near-elderly, and the number of units to be reserved is determined in accordance with the formula established by the statute.

Subtitle B attempts to minimize the reduction of housing assistance for non-elderly disabled families by requiring housing authorities that designate projects for elderly families to submit a plan for securing sufficient additional resources that the agency owns, controls, or has received preliminary notification that it will obtain, or for which the agency plans to apply that will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed but for the designation of the project for elderly families. Further, both statutes prohibit the eviction of any tenant lawfully residing in a section 8 covered project or a public housing project because the project is to be reserved for elderly families or to be designated for elderly families.

Persons with disabilities commenting on the subtitle B rule were concerned about the possible reduction of public housing assistance for non-elderly disabled families as a result of projects designated for elderly families, and several requested that the Department not permit designated housing. The Department anticipates that persons with disabilities will have the same concerns about the subtitle D rule, and perhaps make similar comments. However, in both cases, the statute permits the reservation or designation for projects for occupancy by elderly families, and the Department cannot preclude this an as option for project owners or housing authorities.

Persons with disabilities commenting on the subtitle B rule requested that the Department carefully monitor the statutory protections provided for non-elderly disabled families. The Department anticipates that persons with disabilities commenting on the subtitle D rule will make similar comments. The Department will monitor both the subtitle D reservation, and the subtitle B designation, to ensure, to the extent possible, that there is minimum adverse impact on non-elderly disabled families.

Persons with disabilities commenting on the subtitle B rule stated that their concern about loss of access to projects designated for elderly families should be construed to mean a concern about reduction of housing assistance generally, and not concern about loss of access to "elderly" projects. These commenters stated that an integrated housing setting is not a project that houses only elderly families and disabled families. The commenters asked the Department to make available section 8 assistance to non-elderly disabled families so that they could live in housing with "mainstream" populations. The Department anticipates that similar comments will be made by persons with disabilities on the subtitle D rule. The Department will make every effort to increase section 8 housing assistance for non-elderly disabled persons.

Given the statutory framework of the system of preferences for elderly families authorized by the subtitle D rule, the Department reiterates that, except for the types of documentation a project owner should be able to produce to support a determination of eligibility to make the election of preferences, there is very little that will change at the final rule stage as a result of public comments. Given the similarity of certain issues addressed by subtitle D and subtitle B, the Department also reiterates that those comments received on the subtitle B rule and that are applicable to this rule were taken into consideration in developing this interim rule.

Although this interim rule is being published for effect within 30 days from the date of publication, the Department requests comments from the public on this interim rule, and the public comments will be considered by the Department in development of the final rule.

Additionally, in accordance with the Department's policy on interim rules, the amendments made by this interim rule to parts 880, 881, 883, 884, and 886 will expire on the twelve-month anniversary date of publication of this interim rule unless extended by notice published in the **Federal Register** or adopted by a final rule published on or before the twelve-month anniversary date of publication of this interim rule

Other Matters

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review. Any changes made in this interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rule's Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk room 10276, 451 Seventh Street, SW., Washington, DC 20410

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the interim rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the interim rule is not subject to review under the order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the order. This interim rule implements the system of preferences authorized by subtitle D of title VI of the 1992 HCD Act, which provides that owners of certain section 8 covered projects that were originally designed primarily for occupancy by elderly families (i.e., families whose heads, spouses or sole members are 62 years or older) may elect to give preference in occupancy to vacant units in the project to elderly families. Although subtitle D provides for preferences for elderly families in projects meeting the conditions established by subtitle D, subtitle D also requires that owners of such projects must reserve no less than a minimum number of units in these projects for disabled families who are not elderly or near-elderly. The minimum number is determined in accordance with the formula established by statute.

Since the subtitle D preference system provides a primary preference for elderly families, and a secondary preference for disabled families who are near-elderly, there is the possibility that this statutory system of preferences would limit the availability of certain section 8 housing for: (1) Disabled families who are not elderly or near-elderly (if an owner gives preference to elderly families for units), and (2) such families with children, and thus adversely impact the maintenance and well-being of these families. (Although owners can apply the same preferences and reservation of units to families with children as to families without children, owners cannot restrict admission to any units solely because of familial status as long as the family qualifies for the unit on the basis of the relevant age or disability criterion for admission.) The Department believes that the number of projects that would be eligible for the preferences provided by subtitle D is limited, and thus, the impact on family maintenance and well being would not be significant within the meaning of the order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule would not have a significant economic impact on a substantial number of small entities. This interim rule reflects a system of occupancy preferences authorized by statute which applies to section 8 newly constructed or substantially rehabilitated housing without regard to the size of entities involved.

Regulatory Agenda

This interim rule was listed as sequence no. 1580 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20446) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance Programs. The Catalog of Federal Domestic Assistance program number is 14.156.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 880, 881, 883, 884, and 886 are amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for 24 CFR part 880 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

2. A new § 880.612a is added to read as follows:

§ 880.612a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units (a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families); or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; or

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 880.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 880.613.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for 24 CFR part 881 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

4. A new § 881.612a is added to read as follows:

§ 881.612a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1)

Election by owners of eligible projects. (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units

to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 881.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 881.613.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for 24 CFR part 883 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619

6. A new § 883.704a is added to read as follows:

§ 883.704a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; or

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 883.702(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 883.714.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. The authority citation for 24 CFR part 884 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

8. A new § 884.223a is added to read as follows:

§ 884.223a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: Lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 884.214(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 884.226.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

11. The authority citation for 24 CFR part 886 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

12. A new § 886.329a is added to read as follows:

§ 886.329a Preferences for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project involving substantial rehabilitation and assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of supporting evidence as provided in paragraph (b) of this section.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations and compliance reviews required under the Fair Housing Act (42 U.S.C. 3601 through 19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any other underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with a higher percentage of efficiency and one-bedroom units (a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families); or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where the primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by disabled families who are not elderly or near-elderly families (hereafter, collectively referred to "non-elderly disabled families").

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of;

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in

accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* If the owner of an elderly project who has elected to adopt the secondary preferences in paragraph (d) of this section determines, in accordance with paragraph (f) of this section, that there are an insufficient number of families for whom preference, including secondary preference, in occupancy has been given, to fill all the vacant units in the elderly project, the owner shall make the vacant units generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 886.321(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in § 886.337.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

(i) *Expiration date of section.* This section will expire on May 3, 1995.

Dated: April 26, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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federal register

Tuesday
May 3, 1994

Part VI

Department of Education

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators; Notice of Final Priority for Fiscal Years 1994 and 1995

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces an absolute priority for fiscal years 1994 and 1995 under the Fund for Innovation in Education (FIE): Innovation in Education Program to support innovative projects that provide K–12 teachers and other educators with sustained, high quality professional development opportunities that are aligned with challenging content and professional standards developed at the national, State or local levels. The intent of this priority is to enable school educators, working with appropriate university, community, and business partners, to create and maintain model learning environments that will help all students in elementary and secondary schools achieve challenging academic standards in subjects such as English, mathematics, science, history, geography, civics, foreign languages, economics, and the arts.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION: Jaymie Lewis or Bryan Gray, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: An essential step in achieving our National Education Goals is ensuring that we have high academic expectations for *all* students and that each student has the opportunity to fulfill those expectations. Current national, State, and local efforts to define high standards for what students should know and be able to do in the various subject areas provide a starting point for creating the type of learning opportunities that an education system of excellence must provide for all members of an increasingly diverse student population.

In order to provide learning opportunities where more rigorous and complex learning is expected of *all* students, teachers will need high-quality, career-long professional development programs. Other educators who help to create teaching and learning environments that better serve the academic and other needs of students will need similar high-quality professional development opportunities. Such educators might include school and district administrators, school and university-based teacher educators, curriculum and supervisory personnel, paraprofessionals/instructional aides, and members of school boards. To provide effective professional development programs for teachers and other educators, applicants must ensure that their proposed projects are aligned with high standards for student learning. Applicants should also consider related standards for teacher effectiveness and for the preparation, credentialling and continuing development of educators. More specifically, in designing policies and practices for professional development, applicants are urged to draw on relevant work, as appropriate, from groups such as the National Board for Professional Teaching Standards, the Interstate New Teacher Assessment and Support Consortium, the National Council for the Accreditation of Teacher Education, and the National Staff Development Council.

The Secretary recognizes that successful well-articulated programs that provide for continuous improvement of professional educators from recruitment to retirement will require educators to work together across traditionally separated roles and organizations. Therefore, projects must be carried out by partnerships. Finally, the design of professional development efforts must incorporate what is known about developing and managing high-performance school systems that support educational excellence and equity.

The Secretary proposes to direct financial assistance to projects that develop new or further develop existing innovative partnerships of school, university, community, and other entities to establish and maintain high-quality, standards-based professional development programs for teachers and other educators. The purpose of these partnerships may be to improve the entire continuum of professional development or to focus on one or more points along that continuum (e.g., preservice, induction, inservice).

In accordance with recommendations in the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriation Act, the Secretary supports development of programs based on existing strategies, such as creating model professional development schools, or applicants' newly designed strategies. The Secretary also recognizes the need for professional development efforts, as identified in the Senate Report, that prepare educators for working with other human service professionals to address non-academic student/family problems (e.g., drugs, violence, nutrition, unemployment) as well as other conditions that place students at-risk for failure in school. The Secretary is particularly interested in projects that provide relevant professional development opportunities for educators who work in urban school communities.

The Secretary strongly encourages the development of challenging and feasible school-based collaborations that are based upon appropriate research results and exemplary teaching and professional development practices, as well as the contributions of expert school, higher education, and community practitioners. Emphases might include collegial strategies such as in-school mentoring for teachers; school-university teams integrating teacher preparation and school curriculum to effectively educate at-risk students; teacher sabbaticals to work in model schools; and practitioner-led inquiry and reform activities.

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Analysis of the Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, eight of the eleven parties submitting comments made recommendations. Three commenters expressed support for the priority without any recommendations for change. An analysis of the recommendations submitted by eight commenters follows.

Comments: One commenter recommends that the priority require projects to include representatives from State Boards of Education on the advisory committee since States set the standards and policies that serve as frameworks for professional development.

Discussion: The priority requires that the advisory committee include State education officials. This requirement ensures representation of the State and is broad enough to include State board members.

Changes: None.

Comments: Three commenters recommend that the priority use more explicit language to identify the "other" potential project partners. One commenter believes the priority should explicitly identify national organizations or associations as potential partners or applicants. Another commenter requests the inclusion of non-profit organizations.

Discussion: The Secretary supports extensive collaboration. The priority states that partnerships must be formed that involve LEAs, IHEs, and others. The examples of other potential partners does not preclude national organizations, associations, or non-profit entities.

Changes: None.

Comments: One commenter requests that the National Staff Development Council (NSDC) be cited as a resource to applicants on staff development standards in the Supplementary Information section of the priority. This same commenter encouraged inclusion of the NSDC's Standards for Staff Development under the Required Activities Section of the priority.

Discussion: The Secretary recognizes that many organizations have already developed and recommended, or are in the process of developing and recommending guidelines and standards for professional development. The NSDC is a national organization representing a key professional development audience and can appropriately be included as an example in the Supplementary Information section of the priority. The priority requires that projects consider the applicability of several types of standards, including those for teacher preparation and continuing development. The Secretary does not wish to specify particular documents or sources in the text of the priority.

Changes: The National Staff Development Council has been added under the Supplementary Information section of the priority.

Comments: Two commenters find the examples of possible ways to build upon existing strategies listed in the Supplementary Information section of the priority either too limiting or not specific enough, e.g., model professional development school, model school, and teacher sabbaticals.

Discussion: The Secretary used these terms in the Supplementary Information section to give examples of possible strategies for an applicant. The examples are illustrative only.

Changes: None.

Comments: One commenter recommends that districts and States be allowed to align professional development with performance outcomes in order to allow districts to continue to upgrade teacher skills to improve student performance in locally developed performance outcomes.

Discussion: As stated, the priority allows a project to propose this type of activity.

Changes: None.

Comments: One commenter recommends that grants up to $1 million be awarded for up to three years.

Discussion: The Secretary expects that a project could receive up to $1 million over a three-year period.

Changes: None.

Comments: One commenter recommends that methodology for teaching and understanding the dynamics of at-risk youth be emphasized more.

Discussion: The priority permits projects to address the needs of at-risk youth through this sort of focus.

Changes: None.

Comments: One commenter recommends that the Secretary support model schools located in the inner city to demonstrate existing or newly designed strategies.

Discussion: The priority does not preclude such projects provided they have a professional development focus and other requirements of the priority are met.

Changes: None.

Comments: One commenter recommends changing the language of the required activity to allow an LEA to form a partnership with either one or more institutions of higher education or with other qualified educational institutions.

Discussion: The Secretary intends that projects funded under this program form cross-institutional partnerships that will enable sites to address the career-long development of teachers and other educators in an integrated fashion. Therefore, collaboration among those entities which influence educator development from recruitment through retirement is essential.

Changes: None.

Comments: One commenter recommends that training objectives highlight the need for teachers to become more effective in motivating students to set and achieve their goals, and to help students understand the direct relationship of their success in school (i.e., traditional academic subjects) and future success in the world of work.

Discussion: The priority does not preclude projects that help teachers motivate students and help students understand the relationship between their success in school and future success in the world of work.

Changes: None.

Comments: Two commenters recommend networking and collaboration to promote the interchange of ideas among teachers, community members, parents and others involved in education.

Discussion: The priority as written requires partnerships that encourage collaboration and networking.

Changes: None.

Comments: One commenter recommends adding language under *Required Activities* that would provide for those with disabilities.

Discussion: The Secretary intended to emphasize the provision of professional development opportunities that are aligned with challenging academic content standards for *all* students.

Changes: "All" has been added to part "a" of *Required Activities*.

Comments: One commenter recommends adding language to part "c" of *Required Activities* to include those with expertise in the education of children with disabilities.

Discussion: The Secretary intended that projects funded under this program help *all* students achieve challenging academic standards. The Secretary intended that groups such as experts in the field of educating children with disabilities be involved.

Changes: The phrase "experts in the education of children with disabilities" has been added to part "c" of *Required Activities*.

Comments: One commenter recommends adding arts and cultural organizations as potential partners in these projects.

Discussion: The priority permits arts and cultural organizations to participate as partners in these projects. However, the Secretary intended to encourage broad participation.

Changes: The Absolute Priority section of the notice has been revised by adding arts and cultural organizations as potential partners in the professional development of teachers.

Priorities:

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that design and implement innovative, high quality, standards-based preservice, induction and/or inservice professional development programs for K–12 teachers and other educators. Each project must involve one or more local education agencies (LEAs) working in partnership with one or more institutions of higher education (IHEs) and others such as State education officials and representatives from professional organizations, private schools, arts and cultural organizations, business, and the community, as appropriate. Programs and activities must be built upon relevant and current research including a demonstrated relationship between the professional development approach and lessons learned from relevant research and exemplary practice. A grounding in research findings must also be evident in the content of the professional development activities

Required Activities

Each project must: a. Provide professional development opportunities that are aligned with challenging academic content standards for *all* students as developed through voluntary national, State, and/or local efforts in one or more subjects such as English, mathematics, science history, geography, civics, foreign languages, economics, and the arts.

b. Consider the implications of available professional standards such as those for beginning and expert teachers and other educators, as well as for teacher preparation, credentialling, and ongoing staff development as appropriate to the particular focus of the project.

c. Establish an advisory committee composed of school and university practitioners; state education officials; experts in the education of children with disabilities; parents; professional organization, community and business representatives; and others as appropriate. The advisory committee must guide the project activities to ensure a systemic approach including cross-institutional planning, coordination, and resource allocation.

d. Evaluate the following aspects of the project:

1. The degree to which the professional development content and strategies reflect relevant research and exemplary practice;
2. The degree to which the project activities were actually implemented as compared to the original design; and
3. The nature and impact of project outcomes related to improved teaching and increased student learning and development.

The evaluation must use state-of-the-art documentation and assessment approaches.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number: 84.215) Secretary's Fund for Innovation in Education: Innovation in Education Program)

Dated: April 28, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–10555 Filed 5–2–94; 8:45 am]

BILLING CODE 4000-01-P

federal register

Tuesday
May 3, 1994

Part VII

Department of Education

Fund for Innovation in Education; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No. 84.215J]

Fund for Innovation in Education: Innovation in Education Program—Partnerships for Standards-Based Professional Development of K–12 Educators; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of program: To award grants to support projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary and secondary levels.

Eligible applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), private schools, and other public and private agencies, organizations and institutions.

Deadline for transmittal of applications: July 1, 1994.

Deadline for intergovernmental review: September 1, 1994.

Applications available: May 13, 1994.

Estimated available funds: $6,000,000.

Estimated range of awards: $250,000–$450,000.

Estimated average size of awards: $300,000.

Estimated number of awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition. In addition, in accordance with EDGAR 34 CFR 75.591, a grantee must cooperate in any evaluation of the program by the Secretary. This program and the priority support the National Education Goals.

Selection criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation plan (34 CFR 75.210(b)(6)). Ten additional points are added to this criterion for a possible total of 15 points.

For applications or information contact: Bryan Gray or Jaymie Lewis, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 3151.

Dated: April 28, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–10556 Filed 5–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
May 3, 1994

Part VIII

Department of Agriculture

Office of the Secretary

7 CFR Ch. VII

Semiannual Regulatory Agenda; April 1994 Correction; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Ch. VII

Semiannual Regulatory Agenda, April 1994; Correction

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda; correction.

SUMMARY: This document corrects the Proposed Rule Stage section of the Agricultural Stabilization and Conservation Service's agenda, which was published in the **Federal Register** on Monday, April 25, 1994. The entries listed in the table of contents under Sequence Numbers 54-74 were inadvertently omitted from the text starting on page 20035.

The three indexes appearing at the end of the Unified Agenda do include the appropriate references to the omitted entries.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, (202) 720-7563.

DATED: April 26, 1994.

Jacquelyn C. Patterson,

Acting Chief, Legislative, Regulatory, and Automated Systems Division.

In proposed rule document 94-6355, beginning on page 20008 in the issue of Monday, April 25, 1994, make the following correction:

On page 20035, Sequence Number 54 was only partially printed and Sequence Numbers 55-74 were omitted. The table of contents of the Proposed Rule Stage section for the Agricultural Stabilization and Conservation Service and the text of all the entries in that section (Sequence Numbers 50-75) are printed below in their entirety.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE—PROPOSED RULE STAGE

Sequence Number	Title	Regulation Identifier Number
50	Amendments to the Production Adjustment Regulations—Reconstitution of Bases, Allotments and Quotas	0560-AC99
51	Pilot Voluntary Production Limitation Program	0560-AD00
52	Amendments to CCC Debt Settlement Regulations Regarding Waiver of Restriction on Program Eligibility and Collection of Judgments by Administrative Offset	0560-AD09
53	Amendment to the U.S. Warehouse Act Regulations—License and Inspection Fees	0560-AD13
54	1994 Wool and Mohair Program	0560-AD19
55	1995 Feed Grain Program	0560-AD37
56	1995 Rice Program	0560-AD38
57	1995 Upland Cotton Program	0560-AD39
58	1995 Wool and Mohair Program	0560-AD40
59	1995 Extra Long Staple Cotton Program	0560-AD42
60	90-Day Rule	0560-AD43
61	Colorado River Basin Salinity Control Program Amendments	0560-AD45
62	Amendments to Regulations Regarding Payments to Persons Convicted of Controlled Substance Violations	0560-AD47
63	1994 Options Pilot Program	0560-AD48
64	Nonemergency Haying and Grazing on Conservation Reserve Program Grasslands	0560-AD54
65	Program Ineligibility for Noncompliance With Boll Weevil Eradication Program	0560-AD57
66	1995-Crop Marketing Quota and Price Support Level For Flue-Cured Tobacco	0560-AD62
67	1995-Crop Marketing Quota and Price Support Level For Burley Tobacco	0560-AD63
68	1995-Crop Market Quota and Price Support Levels For Six Kinds of Tobacco	0560-AD64
69	1995-Crop Marketing Quotas For Three Kinds of Tobacco	0560-AD65
70	1995-Crop Peanuts National Poundage Quota and Minimum Commodity Credit Corporation (CCC) Export-Edible Sales Price for Additional Peanuts	0560-AD66
71	Amendment to the Price Support Regulations Regarding Losses to Farm-Stored Loan Collateral Due to Flood	0560-AD69
72	Cooperative Marketing Association Eligibility Requirements for Price Support	0560-AD70
73	Technical Corrections to the Wheat, Feed Grain, Cotton and Rice Program Regulations	0560-AD72
74	Wool and Mohair Recourse Loan Program	0560-AD75
75	1995 Wheat Loan Rate and Acreage Reduction Program	0560-AD76

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Stabilization and Conservation Service (ASCS)

Proposed Rule Stage

50. AMENDMENTS TO THE PRODUCTION ADJUSTMENT REGULATIONS—RECONSTITUTION OF BASES, ALLOTMENTS AND QUOTAS

Legal Authority: 7 USC 1379; The Agricultural Adjustment Act of 1938, sec 379, as amended

CFR Citation: 7 CFR 719

Legal Deadline: None

Abstract: This action is needed to amend the regulations regarding reconstitution of bases, allotments, and quotas in order to 1) clarify them, 2) make them more consistent with the payment limitation regulations, and 3) determine whether a spouse should be considered the "same owner" when determining whether land is under the same ownership. No Federal outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AC99

51. PILOT VOLUNTARY PRODUCTION LIMITATION PROGRAM

Legal Authority: 7 USC 1444f; 7 USC 1445b-3a; The Agricultural Act of 1949, sec 105B(g), as amended

CFR Citation: 7 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement the Pilot Voluntary Production Limitation Program (PVPLP) for wheat and feed grains, as required by P.L. 101-624. This action will implement regulations to provide for 1) Implementation of the PVPLP in at least 15 states, 2) Limiting the amount of wheat or feed grains that can be disposed of in excess of the production limitation quantity for the marketing year, 3) A production limitation quantity calculation, 4) Terms and conditions for producers who elect to participate, 5) Provisions for excess production, 6) Subsequent year marketing of excess production, and 7) Measures to prevent circumvention of the program, including refunds or forfeitures of commodities. Only minor administrative and program costs are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD00

52. AMENDMENTS TO CCC DEBT SETTLEMENT REGULATIONS REGARDING WAIVER OF RESTRICTION ON PROGRAM ELIGIBILITY AND COLLECTION OF JUDGMENTS BY ADMINISTRATIVE OFFSET

Significance:
Subject to OMB review: Yes

Legal Authority: 28 USC 3201; 15 USC 714b; 15 USC 714c

CFR Citation: None

Legal Deadline: None

Abstract: This action is needed to allow for the waiver of restrictions on program eligibility, as authorized by the Federal Debt Collection Procedures Act of 1990 (the Act), and to facilitate the collection of judgements by administrative offset. The Act provides that debtors who have judgement liens against their property for a debt owed to the United States are not eligible to receive grants or loans made by the United States until the debt is paid in full or otherwise satisfied. However, the Act also permits agencies to waive this restriction. In addition, the Commodity Credit Corporation is authorized to collect debts for other Federal agencies by administrative offset upon receipt of (1) a qualified offset request, (2) a Notice of Levy, or (3) a request or approval by the Department of Justice. This action would authorize ASCS to collect judgements in favor of the United States by administrative offset. This action will result in increased collection of debts owed to the Government.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD09

53. AMENDMENT TO THE U.S. WAREHOUSE ACT REGULATIONS—LICENSE AND INSPECTION FEES

Legal Authority: 7 USC 268

CFR Citation: 07 CFR 736

Legal Deadline: None

Abstract: The Omnibus Budget Reconciliation Act of 1981 required that U.S. Warehouse Act licensing and examination programs be operated on a fee basis. New regulations are required when an increase and/or decrease is warranted. Fixed fees were implemented in 1981 and were last increased in 1985. The interest accumulating in the Warehouse User Fee Account has been the major reason for not having to adjust the fee schedule before now. In more recent years, low interest rates and increased expenses (primarily salaries, travel, and administrative costs), coupled with collections which have not changed significantly over the past 10 years, will result in a deficit in the "fee collection account" by FY 1994 if the fee schedule is not revised, and would thus require a reduction in service. The cost of Government of this action has not yet been determined.

Timetable:

Action	Date	FR Cite
Notice Requesting Comments	08/20/93	58 FR 44320
NPRM	04/00/94	
Final Action	06/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD13

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54. 1994 WOOL AND MOHAIR PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1781 et seq

CFR Citation: 07 CFR 1468

Legal Deadline: None

Abstract: This action is needed to implement the 1994 Wool and Mohair Program, as required by legislation. The purpose of the Program is to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner that will assure a viable domestic wool industry in the future, by supporting the prices of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. Payments are to be 75 percent of the amount otherwise determined. The other determinations are to: (1) support mohair at a level not more than 15 percent above or below the comparable percentage of parity at which shorn wool is supported, and (2) support pulled wool through payments based on the liveweight of unshorn lambs marketed for slaughter. The expected cost is $130–150 million.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD19

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55. 1995 FEED GRAIN PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1444 et seq

CFR Citation: 07 CFR 1413

Legal Deadline:
Final, Statutory, September 30, 1994, ARP.
Final, Statutory, November 15, 1994, Adjustments.

Abstract: This action is needed to provide an adequate supply of feed grains for domestic and foreign utilization, support farm income, hold down Federal costs, conserve natural resources, and comply with statutory requirements. The primary determinations are: 1) Loan and purchase rates and 2) the acreage reduction program. Cost to the Government will be $3.0 to $4.5 billion.

Timetable:

Action	Date	FR Cite
NPRM	07/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD37

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56. 1995 RICE PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1441-2

CFR Citation: 07 CFR 1413; 07 CFR 1421

Legal Deadline:
NPRM, Statutory, December 1, 1994, Preliminary ARP announcement.
Final, Statutory, January 1, 1995, Final ARP announcement.

Abstract: This action is needed to implement the Rice Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of rice for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) Loan and purchase rate and 2) The acreage reduction program. Cost to the Government will be $0.7 to $1.0 billion.

Timetable:

Action	Date	FR Cite
NPRM	09/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD38

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57. 1995 UPLAND COTTON PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes

Legal Authority: 7 USC 1444-2

CFR Citation: 07 CFR 1413; 07 CFR 1427

Legal Deadline:
NPRM, Statutory, November 1, 1994, Preliminary ARP level.
Final, Statutory, November 1, 1994, Loan rate.
Final, Statutory, January 1, 1995, Final ARP level.

Abstract: This action is needed to implement the Upland Cotton Program as as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of cotton for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) Loan rate 2) Acreage reduction program 3) Marketing loan and 4) Base quality. Cost to the Government will be $1 to $2 billion.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service,

Room 3741-S, P.O. Box 2415,
Washington, DC 20013, **202 720-7583**

RIN: 0560–AD39

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58. 1995 WOOL AND MOHAIR PROGRAM

Significance:
Economically significant: Yes

Legal Authority: 7 USC 1781 et seq

CFR Citation: 07 CFR 1468

Legal Deadline: None

Abstract: This action is needed to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner that will assure a viable domestic wool industry in the future, by supporting the prices of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. Payments will be 50 percent of the amount otherwise determined. The cost to the Government will be $75 to 125 million.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD40

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59. 1995 EXTRA LONG STAPLE COTTON PROGRAM

Significance:
Subject to OMB review: Yes

Legal Authority: 7 USC 1444(h)

CFR Citation: 07 CFR 1413; 07 CFR 1427

Legal Deadline: Final, Statutory, December 1, 1994.
For announcement of the loan rate.

Abstract: This action is needed to implement the ELS Cotton Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of ELS cotton for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) loan rate, and 2) the acreage reduction program. The cost to the Government will be $0 - $5 million.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD42

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60. 90-DAY RULE

Significance:
Subject to OMB review: Yes

Legal Authority: 7 USC 1433e

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This action is needed to implement the 90-day rule as provided by the Food, Agriculture, Conservation, and Trade Act of 1990. The 90-day rule provides that decisions of State and county offices shall be final after 90 days and that no action shall be taken to recover payments made in error unless the producer had reason to believe that the decision was erroneous. The cost of this action has not yet been determined.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD43

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61. COLORADO RIVER BASIN SALINITY CONTROL PROGRAM AMENDMENTS

Legal Authority: 43 USC 1592(c)

CFR Citation: 07 CFR 702

Legal Deadline: None

Abstract: This action is needed to amend the Colorado River Basin Salinity Control Program regulations to: (1) provide on-farm/off-farm definitions, and (2) clarify SCS technical assistance in planning and completing the Salinity Control Plan. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD45

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62. AMENDMENTS TO REGULATIONS REGARDING PAYMENTS TO PERSONS CONVICTED OF CONTROLLED SUBSTANCE VIOLATIONS

Legal Authority: 21 USC 881a

CFR Citation: 07 CFR 796

Legal Deadline: None

Abstract: This action is necessary to amend the regulations regarding payments to persons convicted of controlled substance violations to reflect recent legislation. Current regulations implement the Food Security Act of 1985 provisions but not the FY 1993 Appropriations Act provisions. This action will thus amend the regulations to implement the statutory provisions regarding controlled substance violations. The primary effect of this action will be to make most conservation programs subject to the controlled substance violation provisions and result in some people being declared ineligible for benefits. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD47

63. 1994 OPTIONS PILOT PROGRAM

Legal Authority: 7 USC 1421 Note

CFR Citation: 07 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement the Options Pilot Program for wheat, corn, and soybeans and possibly other program crops, for the 1994 crop year, as required by legislation. The program: (1) May be expanded to include additional States, counties and crops, in addition to the ones already administering the program. (2) Will provide means for farmers to buy put options that would provide price assurance equivalent to deficiency payments and price support benefits. (3) Provide terms and conditions for producers who elect to participate; (4) Provide provisions for administering the program, and (5) Provide measures to prevent circumvention of the program, including refunds and penalties. Only minor administrative and program costs are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD48

64. • NONEMERGENCY HAYING AND GRAZING ON CONSERVATION RESERVE PROGRAM GRASSLANDS

Significance:
Subject to OMB review: Yes

Legal Authority: 16 USC 3801 et seq

CFR Citation: 07 CFR 1410

Legal Deadline: None

Abstract: This action is needed to revise the regulations governing the Conservation Reserve Program (CRP) to allow the non-emergency haying and grazing of CRP grasslands, under specified conditions. Such haying and grazing can have beneficial impacts on wildlife habitat and cover quality while still achieving the goals of the CRP. Issues to be considered include conditions for allowing haying and grazing, acreage to be allowed, monitoring and enforcement, compensation offset, effects on wildlife habitat and ground cover, and impacts on local markets. A savings to Government would likely result from the compensation offset, while monitoring and enforcement costs would likely increase slightly.

Timetable:

Action	Date	FR Cite
ANPRM	12/20/93	58 FR 66308
ANPRM Comment Period End	01/19/94	58 FR 66308
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD54

65. • PROGRAM INELIGIBILITY FOR NONCOMPLIANCE WITH BOLL WEEVIL ERADICATION PROGRAM

Legal Authority: 7 USC 1444a

CFR Citation: None

Legal Deadline: None

Abstract: This action is necessary to make producers and landowners ineligible for USDA program benefits when they are not in compliance with the Boll Weevil Eradication Program (BWEP). This will ensure better compliance with the BWEP and contribute to the elimination of boll weevils. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	08/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD57

66. • 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Legal Authority: 7 USC 1314; 7 USC 1445

CFR Citation: 07 CFR 723; 07 CFR 1464

Legal Deadline: Final, Statutory, December 15, 1994.
Marketing Quotas

Abstract: The flue-cured tobacco marketing quota and price support are required by statute. The purpose of quotas and price support is to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The national quota is based on cigarette manufacturers' intentions, 3-year average exports, a loan stocks adjustment, and discretionary adjustment of plus or minus 3 percent. The quota may not be less than 90 percent of the previous year's quota except this limit may be waived if producer association inventories likely will exceed 150 percent of the reserve stock level. The price support level is based on a formula that averages market prices (2/3 weight) and a cost index (1/3 weight), with discretion to limit any increase to 65 percent of the formula increase. Marketing quotas are implemented if approved by producer in a referendum scheduled for January 1995. Gross loan outlays of $30 million are expected in FY's 1995 and 1996. They will be offset by redemptions and no-net-cost assessments in FY 1996 and later years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD62

67. • 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Legal Authority: 7 USC 1314

CFR Citation: 07 CFR 723; 07 CFR 1464

Legal Deadline: Final, Statutory, February 1, 1995.
Marketing Quota.

Abstract: The burley tobacco marketing quota and price support are required by statute. The purpose of the quota and price support is to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The national quota is based on cigarette manufacturers' intentions, 3-year average exports, a loan stocks adjustment, and a discretionary adjustment of plus or minus 3 percent. The quota may not be less than 90 percent of the previous year's quota except this limit may be waived if producer association inventories likely will exceed 150 percent of reserve stock level. The price support level is based on a formula that averages market prices (2/3 weight) and a cost index (1/3 weight), plus discretion to limit any increase to 65 percent of the formula increase. Marketing quotas are implemented if approved by producers in a referendum scheduled for February 1995. Gross loan outlays of $30 million are expected in FY 1996. They will be offset by loan redemptions and no-net-cost assessments in FY 1996 and subsequent years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD63

68. • 1995-CROP MARKET QUOTA AND PRICE SUPPORT LEVELS FOR SIX KINDS OF TOBACCO

Legal Authority: 7 USC 1312; 7 USC 1445

CFR Citation: 07 CFR 723; 07 CFR 1464

Legal Deadline: Final, Statutory, March 1, 1995.
Marketing Quotas.

Abstract: Marketing quotas and acreage allotments are required by statute for these kinds of tobacco: Fire-cured (type 21), Fire-cured (types 22-23), Dark Air-cured (types 35-36), Virginia sun-cured (type 37), Cigar Filler (type 46) and Cigar Filler and Binder (types 42-44 and 53-55). Quotas and allotments are determined by statutory formula to balance supply with demand to assure stable supplies for domestic and export use. Marketing quotas are implemented if approved by producers in referenda. Producers approved quotas for the 1995 crops of cigar filler (type 46) and cigar filler and binder (types 42-44 and 53-55) in March, 1993. Referenda for the other kinds are scheduled for March, 1994 and 1995. Producers of these types have historically voted in favor of quotas. Price support levels are set by statutory formula. The Secretary may reduce the level at the request of producer associations, and may limit increases to 65 percent of the formula increase. Gross loan outlays of $2 million are expected in FY 1996. They will be offset by loan redemptions and no-net-cost assessments in FY 1996 and subsequent years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD64

69. • 1995-CROP MARKETING QUOTAS FOR THREE KINDS OF TOBACCO

Legal Authority: 7 USC 1312; 7 USC 1445

CFR Citation: 07 CFR 723

Legal Deadline: Final, Statutory, March 1, 1995.

Abstract: Marketing quotas and acreage allotments are required by statute to be announced for these three kinds of tobacco: Maryland (type 32), cigar filler (type 41) and cigar binder (type 51-52). Marketing quotas are implemented, if approved by producers in referenda, to achieve a supply equal to the "reserve supply level" as defined by legislation. No quotas are in effect because producers disapproved quotas for 1992-94 crops, and that status will continue if producers again disapprove quotas for the 1995-97 crops in referenda scheduled for March 1995. Negligible cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig,** Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD65

70. • 1995-CROP PEANUTS NATIONAL POUNDAGE QUOTA AND MINIMUM COMMODITY CREDIT CORPORATION (CCC) EXPORT-EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

Legal Authority: 7 USC 1358-1

CFR Citation: 07 CFR 729

Legal Deadline: Final, Statutory, December 15, 1994.

Abstract: This action is needed to implement the national peanut poundage quota, as required by statute. The purpose of the quota is to balance supply with demand at a level that will assure stable supplies for domestic use and assure producers a stable income. The export-edible sales price for additional peanuts provides price stability for additional peanuts sold under contract and assures handlers that CCC will not undercut export efforts. The primary determinations are 1) National Poundage Quota–set by statutory formula, based on the Secretary's estimate of the amount of peanuts required for domestic food, seed, and related uses for the 1995 marketing year. The 1995 marketing year is from August 1, 1995, through July 31, 1996. 2) Minimum CCC export-edible sales price for additional peanuts–established at the Secretary's discretion (the level has been set at $400 per ton each of the last 7 years). The peanut program as a whole will result in a net realized loss of about $46.5 million, which will be attributable to loan forfeitures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD66

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71. • AMENDMENT TO THE PRICE SUPPORT REGULATIONS REGARDING LOSSES TO FARM-STORED LOAN COLLATERAL DUE TO FLOOD

Legal Authority: 7 USC 1444f; 7 USC 1445b-3a

CFR Citation: 07 CFR 1421

Legal Deadline: None

Abstract: This action is needed to amend the price support regulations at 7 CFR 1421.15 to provide relief to producers because of loss of outstanding farm-stored CCC loan collateral during the 1993 floods. Outlays of about $300,000 are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD69

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72. • COOPERATIVE MARKETING ASSOCIATION ELIGIBILITY REQUIREMENTS FOR PRICE SUPPORT

Legal Authority: 7 USC 1441 et seq; 15 USC 714b; 15 USC 714c; 15 USC 714j

CFR Citation: 07 CFR 1425

Legal Deadline: None

Abstract: This action will amend the regulations for cooperatives approved to participate in the price support programs on behalf of their members to: 1) Support 23 handbook requirements that are currently in effect, 2) Allow voting by proxy and under power of attorney in membership meetings, and 3) Require cooperatives to withhold pool distributions from members when notified by CCC that the members have failed to fully comply with regulations, an outstanding claim exists, or an IRS levy has been received. No costs are expected as a result of this action.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	05/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD70

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73. • TECHNICAL CORRECTIONS TO THE WHEAT, FEED GRAIN, COTTON AND RICE PROGRAM REGULATIONS

Legal Authority: 7 USC 1421 et seq

CFR Citation: 07 CFR 718; 07 CFR 719; 07 CFR 1413; 07 CFR 1414

Legal Deadline: None

Abstract: This action is needed to revise the regulations governing the Wheat, Feed Grain, Cotton, and Rice Programs, as follows: 1) Implement the 0,50/85 and 0,50/92 provisions of the updates Budget Reconciliation Act of 1993; 2) Amend the ARP participation contracts to provide for declarations of intention to participate; 3) Amend the Integrated Farm Management provisions for 1994; 4) Clarify the compliance regulations; and 5) Incorporate existing handbook provisions. Implementation of the 0,50/85 and 0,50/92 provisions is expected to save about $95-$100 million annually. The other provisions will have insignificant costs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	05/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, **202 720-7583**

RIN: 0560–AD72

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74. • WOOL AND MOHAIR RECOURSE LOAN PROGRAM

Legal Authority: 7 USC 1782

CFR Citation: 7 CFR 1428

Legal Deadline: None

Abstract: This action is needed to implement a recourse loan program for wool and mohair through December 31, 1995, as required by statute. Determinations are to be made regarding applicability, administration, disbursement of loans, eligibility, loss or damage, liens, fees, charges and interest, loan rates, approved storage, settlement, foreclosure, loan maturity, and producer liability. The program is to be administered at no net cost to the Federal Government. Loan outlays are estimated at $1 to $20 million from inception to the end of the program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	06/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD75

75. • 1995 WHEAT LOAN RATE AND ACREAGE REDUCTION PROGRAM

Significance:
Subject to OMB review: Yes
Economically significant: Yes
Regulatory Plan entry: Yes

Legal Authority: 7 USC 1445b-3a

CFR Citation: 7 CFR 1413; 7 CFR 1421

Legal Deadline: NPRM, Statutory, April 1, 1994. Final, Statutory, June 1, 1994. Other, Statutory, March 31, 1994. Other deadline is for adjustments.

Abstract: This action is needed to implement the Wheat Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of wheat for domestic and export use, maintain adequate carryover stocks, and support farm income. The expected cost is about $1 to $3 billion.

Timetable:

Action	Date	FR Cite
NPRM	04/00/94	
Final Action	08/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Tom Witzig**, Regulatory Analyst, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD76

[FR Doc. 94-10583 Filed 5-2-94; 8:45 am]

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federal register

Tuesday
May 3, 1994

Part IX

The President

Executive Order 12912—Amendment to Executive Order No. 12878

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Federal Register
Vol. 59, No. 84
Tuesday, May 3, 1994

Presidential Documents

Title 3—

The President

Executive Order 12912 of April 29, 1994

Amendment to Executive Order No. 12878

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to extend the reporting period of the Bipartisan Commission on Entitlement Reform from May 1, 1994, to December 15, 1994, it is hereby ordered that section 2(a) of Executive Order No. 12878 is amended by deleting the date "May 1, 1994" and inserting the date "December 15, 1994" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
April 29, 1994.

[FR Doc. 94–10794
Filed 5–2–94; 11:27 am]
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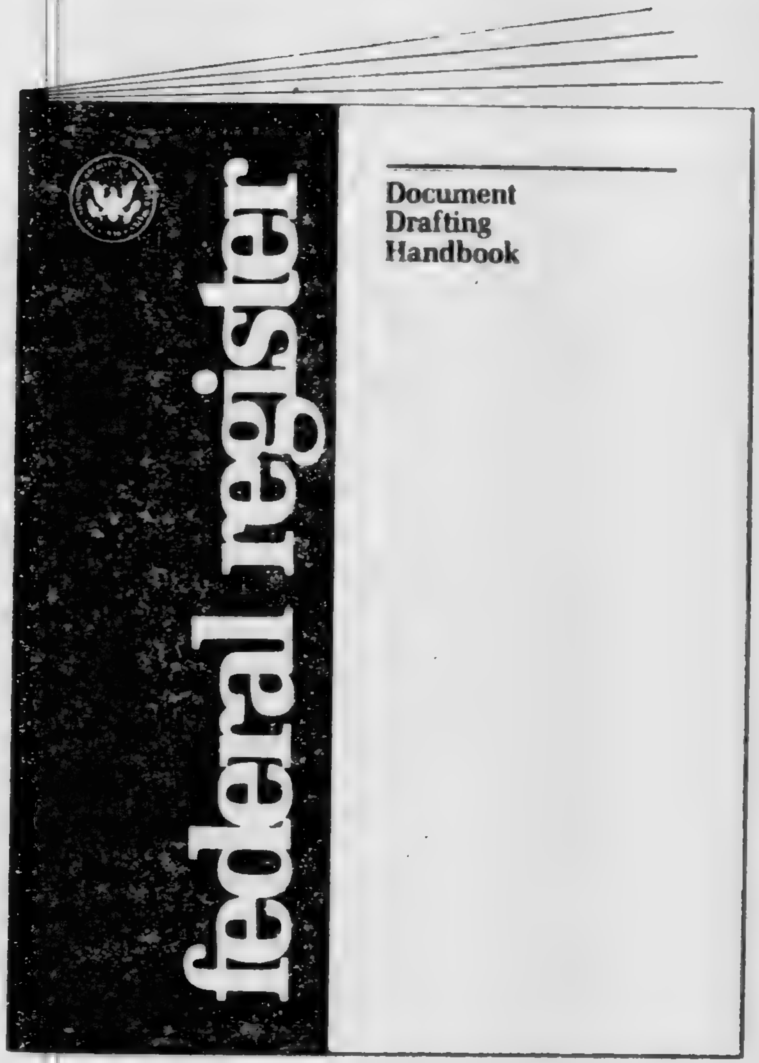

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103d Congress, 2d Session, 1994

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federal register

Wednesday
May 4, 1994

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Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Memorandum of April 29, 1994

Government-to-Government Relations With Native American Tribal Governments

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the **Federal Register**.

William J Clinton

THE WHITE HOUSE,
Washington, April 29, 1994.

[FR Doc. 94-10877
Filed 5-2-94; 3:49 pm]
Billing code 3110-01-M

Editorial note: For the President's remarks to American Indian and Native Alaska tribal leaders, see the *Weekly Compilation of Presidential Documents* (vol. 30, issue 18)

Presidential Documents

Memorandum of April 29, 1994

Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes

Memorandum for the Heads of Executive Departments and Agencies

Eagle feathers hold a sacred place in Native American culture and religious practices. Because of the feathers' significance to Native American heritage and consistent with due respect for the government-to-government relationship between the Federal and Native American tribal governments, this Administration has undertaken policy and procedural changes to facilitate the collection and distribution of scarce eagle bodies and parts for this purpose. This memorandum affirms and formalizes executive branch policy to ensure that progress begun on this important matter continues across the executive branch.

Today, as part of an historic meeting with all federally recognized tribal governments, I am directing executive departments and agencies (hereafter collectively "agency" or "agencies") to work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law.

As part of these efforts, agencies shall take steps to improve their collection and transfer of eagle carcasses and eagle body parts ("eagles") for Native American religious purposes. The success of this initiative requires the participation, and is therefore the responsibility, of all Federal land managing agencies, not just those within the Department of the Interior. I therefore direct each agency responsible for managing Federal lands to diligently and expeditiously recover salvageable eagles found on lands under their jurisdiction and ensure that the eagles are promptly shipped to the National Eagle Repository ("Repository"). To assist agencies in this expanded effort, the Secretary of the Interior shall issue guidelines to all relevant agencies for the proper shipment of eagles to the Repository. After receiving these guidelines, agencies shall immediately adopt policies, practices, and procedures necessary in accordance with these guidelines to recover and transfer eagles to the Repository promptly.

I support and encourage the initial steps taken by the Department of the Interior to improve the distribution of eagles for Native American religious purposes. In particular, the Department of the Interior shall continue to adopt policies and procedures and take those actions necessary to:

(a) ensure the priority of distribution of eagles, upon permit application, first for traditional Native American religious purposes, to the extent permitted by law, and then to other uses;

(b) simplify the eagle permit application process quickly and to the greatest extent possible to help achieve the objectives of this memorandum;

(c) minimize the delay and ensure respect and dignity in the process of distributing eagles for Native American religious purposes to the greatest extent possible;

(d) expand efforts to involve Native American tribes, organizations, and individuals in the distribution process, both at the Repository and on tribal lands, consistent with applicable laws;

(e) review means to ensure that adequate refrigerated storage space is available to process the eagles; and

(f) continue efforts to improve the Repository's ability to facilitate the objectives of this memorandum.

The Department of the Interior shall be responsible for coordinating any interagency efforts to address continuing executive branch actions necessary to achieve the objectives of this memorandum.

We must continue to be committed to greater intergovernmental communication and cooperation. In addition to working more closely with tribal governments, we must enlist the assistance of, and cooperate with, State and local governments to achieve the objectives of this memorandum. I therefore request that the Department of the Interior work with State fish and game agencies and other relevant State and local authorities to facilitate the objectives of this memorandum.

With commitment and cooperation by all of the agencies in the executive branch and with tribal governments, I am confident that we will be able to accomplish meaningful progress in the distribution of eagles for Native American religious purposes.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 29, 1994.

[FR Doc. 94–10885
Filed 5–2–94; 4:17 pm]
Billing code 3110–01–M

Editorial note: For the President's remarks to American Indian and Native Alaska tribal leaders, see the *Weekly Compilation of Presidential Documents*

Presidential Documents

Proclamation 6679 of April 30, 1994

Law Day, U.S.A., 1994

By the President of the United States of America

A Proclamation

In 1961, when President John F. Kennedy first proclaimed Law Day, U.S.A., he urged "Americans to rededicate themselves to the ideals of equality and justice under law in their relations with each other and with other nations. . . ."

President Kennedy's challenge is no less urgent today. We live in a time when nations around the globe are struggling to break free from the darkness of oppression into the light of law and justice. To many of the people of these countries, the American rule of law stands as a bright beacon guiding the way to a hopeful future. Law Day, U.S.A., offers every American the opportunity to reflect upon our Nation's proud example of respect for the rights of individuals. More than that, this day demands that we reaffirm our commitment to maintaining a just and civil society in a rapidly changing world.

With the triumph of democratic governments and judiciaries around the world, it seems particularly disturbing that our own legal system is tested daily by the epidemic of crime and violence here at home. In America today, too many children must pass through metal detectors to go to school. Too many are approached by drug dealers in public parks, or worry that they will be victims of drive-by shootings. The primary responsibility of government is to protect the freedom of its citizens and to keep them safe from harm. Our tradition of jurisprudence is the powerful embodiment of this ideal. But it is up to each of us to help ensure that this system remains true to its essential mission—freeing our people from fear while protecting the liberties and rights of all.

On this day, I urge every American to support those who fight to promote respect for the law, from police officers, judges, and other members of the legal system to parents, teachers, and clergy. Let us find the strength to insist that law prevails over disorder, equality over discrimination, and justice over crime and prejudice. Let reverence for the laws, in the words of President Abraham Lincoln, "be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in the courts of justice. . . ."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim May 1, 1994, as "Law Day, U.S.A." I request the people of the United States to observe this day with such ceremonies and observances as will suitably signal our heritage of freedom, our rights under law, and our abiding commitment to assist others in vindicating their rights. I urge members of the legal profession, civic associations, and the media, as well as educators, librarians, and public officials, to promote this observance through appropriate programs and activities. I further call upon all public officials to display the flag of the United States on all government buildings on Law Day, U.S.A., as a symbol of our dedication to the rule of government under law

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–10894
Filed 5–2–94; 4:37 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6680 of April 30, 1994

Loyalty Day, 1994

By the President of the United States of America

A Proclamation

Each year, at the height of spring's renewal, Americans take the time to reaffirm our allegiance to our country and to the ideals upon which it was founded. On this "Loyalty Day," we pledge to defend the blessings of American democracy.

Ours is still a relatively young Nation, but even in our brief history, we have seen many other forms of government come and go. We have witnessed the collapse of dictatorial regimes, while our brand of democracy has continued to evolve and flourish. Rather than establishing government control through the deprivation of basic human rights, our founders realized that individual freedom and the right to self-determination are the most powerful sources of national strength. This philosophy forms the bedrock upon which our Nation is built, and we continue to expand and enforce its wise mandate to this very day.

Generations of Americans have demonstrated their loyalty and devotion to this country, many risking their lives for the sake of defending the common good. To ensure that this loyalty and love of country remain a vibrant part of each new generation, the Congress, by a joint resolution approved July 18, 1958 (72 Stat. 369; 36 U.S.C. 162), has designated May 1 of each year as "Loyalty Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1994, as Loyalty Day. I call upon all Americans to observe this day with appropriate ceremonies and activities, including public recitation of the Pledge of Allegiance to the Flag of the United States. I also call upon government officials to display the flag on all government buildings and grounds on this day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-10895
Filed 5-2-94; 4:37 pm]
Billing code 3195-01-P

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Presidential Documents

Proclamation 6681 of April 30, 1994

Small Business Week, 1994

By the President of the United States of America

A Proclamation

Small businesses create many new jobs in the United States and are an important part of our Nation's international competitiveness. Today, America's 20 million small businesses remain at the heart of our economy. These companies are the engines of growth, and it is in small business that people continue to find opportunity, pride, and dignity.

Indeed, small business is the lifeblood of America's free enterprise system. This is the sector that creates two of every three new jobs in our country, putting the American Dream within reach of hundreds of thousands of men and women who provide the variety and ingenuity that are our greatest natural resources. Small businesses employ more than 57 percent of the private U.S. work force, account for 54 percent of all sales, and generate half of the domestic private sector output.

As we move forward in a spirit of renewal and change, there is one constant that must prevail in the economy of the United States. Small business must continue to provide the solid foundation upon which this Nation builds its economic strength and maintains its character. Government, working hand in hand with entrepreneurs, must recognize these contributions and help small business create jobs and increase incomes.

We must support and honor small business for the contributions this sector makes to the economy. And just as important, we should remember that it is in small business that the United States finds energy, faith, and confidence in our system of democracy and free enterprise. Only by fully developing our technological and human resources can we expect to be leaders in the global marketplace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 1 through May 7, 1994, as the 31st "Small Business Week," and I call on every American to join me in this tribute.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J Clinton

[FR Doc. 94–10896
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Rules and Regulations

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1941, 1943, and 1945

RIN 0575–AB30

Final Implementation of Appraisal of Farms and Leasehold Interests

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its farm tract appraisal regulations in order to implement and conform to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989. The intended effect of this rule is to meet the provisions of title XI of FIRREA and the Uniform Standards of Professional Appraisal Practice (USPAP) as directed from the Office of Management and Budget (OMB Bulletin A–129).

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald T. Thelen, Senior Loan Officer, Program Development Staff, USDA, FmHA, room 4918–S, South Building, Washington, DC 20250, telephone: (202) 720–0830.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this final rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program/activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

This program/activity affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans,
10.407—Farm Ownership Loans, and
10.416—Soil and Water Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On August 25, 1993, FmHA published an interim rule which removed 7 CFR part 1809, subpart A, "Appraisal of Farms and Leasehold Interests," from the **Federal Register**. It also did the following: (1) Revised and renumbered part 1809 to FmHA Instruction 1922, subpart E—"Appraisal of Farms and Leasehold Interests."; (2) Issued revised § 1922.201 "General" (old § 1809.1 "General") and (3) Issued new § 1922.209 "Easements and appraising property subject to easements."

Other §§ 1809.2 through 1809.8 of subpart A were amended to meet USPAP and placed in §§ 1922.202 through 1922.208 of FmHA Instruction 1922–E. Sections 1922.202 through 1922.208 were not published in the **Federal Register** because they involve internal Agency management.

These changes were implemented upon publication in the **Federal Register** in order to provide immediate guidance to FmHA designated farm real estate appraisers and FmHA contract farm real estate appraisers concerning the use of the uniform standards as set out in Sections I, II and III of USPAP. This action was necessary because most States enacted legislation and implemented FIRREA on January 1, 1993, and required farm real estate appraisers to follow uniform appraisal standards or Sections I, II and III of USPAP. Further delays by FmHA would have had an adverse impact on FmHA borrowers and loan applicants due to delays which may have resulted from the continued use of outdated farm appraisal techniques and methods.

The comment period ended September 24, 1993. No comments were received. Accordingly, no substantive change is made from the interim rule. Minor editorial changes of an administrative nature have been made. Inadvertently, a few FmHA Instructions were overlooked when revising references from FmHA Instruction 422.1 to FmHA Instruction 1922–E.

List of Subjects in 7 CFR Parts 1941, 1943, and 1945

Agriculture, Credit, Crops, Disaster assistance, Livestock, Loan programs—agriculture, Recreation, Real property—appraisals, Rural areas, Water resources, Youth.

Therefore, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PARTS 1941, 1943, 1945—[AMENDED]

1. The authority citations for parts 1941, 1943, 1945 continue to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

CHAPTER XVIII—[AMENDED]

2. 7 CFR Chapter XVIII is amended by revising the reference "FmHA Instruction 422.1" to read "FmHA Instruction 1922–E" in the following places:

a. § 1941.19 (b)(2).
b. § 1943.19 (b)(1).
c. § 1943.69 (b)(1).
d. § 1945.169 (b)(1).

Dated: February 1, 1994.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94-10619 Filed 5-3-94; 8:45 am]

BILLING CODE 3410-07-U

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R-0821]

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to subpart A of its Regulation J, governing collection of checks and other items by Federal Reserve Banks. The amendments, in general, conform the warranties and various other provisions of Regulation J to recent amendments to Regulation CC or to the Uniform Commercial Code.

EFFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Subpart A of the Board's Regulation J (12 CFR part 210) governs the collection of checks and other items by Federal Reserve Banks. Regulation J sets out the warranties made by institutions that send items for collection through the Federal Reserve System as well as warranties made by Reserve Banks.[1] Regulation J also covers liability for breach of warranty, presentment of and settlement for cash items and returned checks, and other related issues.

In October 1992, the Board published amendments to its Regulation CC (12 CFR part 229) that require paying banks to make same-day settlement for certain checks presented by private-sector banks, effective January 3, 1994 (57 FR 46956, October 14, 1992). As part of these amendments, the Board revised the Regulation CC warranties to require private-sector collecting, returning, and presenting banks to warrant the accuracy of cash letter totals and check encoding. In December 1993, the Board published proposed amendments to Regulation J to clarify that the Reserve Banks and institutions that send items to Reserve Banks also make the Regulation CC warranties, to conform certain Regulation J provisions to the 1990 version of the Uniform Commercial Code (U.C.C.), and to make other minor changes (58 FR 68566, December 28, 1993). The Board received 10 comments on the proposed amendments, which are discussed in the section-by-section analysis below.

The Board has established procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.[2] Under these procedures, the Board assesses whether the proposed regulatory changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve Banks in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. The Regulation J amendments are largely technical, clarifying, or conform Regulation J to the rules applicable to private-sector banks under Regulation CC and the U.C.C. The Board believes that the amendments would not have a direct and material adverse effect on the ability of others to compete effectively with the Federal Reserve Banks.

Section-by-Section Analysis

Section 210.1

This section sets forth the authority, purpose, and scope of subpart A of Regulation J. At the suggestion of one commenter, the Board is updating the authority citations in this section to conform with the authority citations in the CFR. Specifically, the Board has added a citation to section 11(j) of the Federal Reserve Act, which authorizes the Board to exercise general supervision over the Reserve Banks.

Section 210.2(g)

The Board proposed to amend the definition of "item" in keeping with the definition of "item" in U.C.C. § 4-104(a)(9). Under the amended language, "item" would expressly include promises or orders, such as certain bonds or other investment securities, that are handled through the bank collection system. The Board received no comments on this section and has adopted the amendment as proposed.

Section 210.2(p)

The Board proposed to add a definition of "Uniform Commercial Code" that conforms to the definition in Regulation CC (12 CFR 229.2(ii)). The Board received no comments on this section and has adopted the amendment as proposed.

Section 210.3(a)

The Board proposed to amend this section to set forth more accurately the scope of the Federal Reserve Banks' operating circulars, which include provisions for service terms and adjustments. The amendment specifies that the operating circulars may include provisions for adjustments of amounts, waiver of expenses, and payment of interest by as-of adjustment.

One commenter believed that the proposed change, at least as it relates to Reserve Bank adjustment practices, impedes the ability of correspondent banks to compete with the Reserve Banks. This commenter stated that the adjustment accounting practices of its local Reserve Bank require intercept processors and depository institutions to engage in a burdensome reconcilement process. The commenter stated that the Board should not incorporate the operating circulars into Regulation J.

The proposed amendments, however, would not incorporate the operating circulars into Regulation J, but rather would provide greater detail as to the scope of the operating circulars. Issues related to adjustment posting alternatives generally can be settled between the Reserve Bank and the parties involved and would not be affected by the proposed amendment to Regulation J. Thus, the Board has adopted the amendment as proposed.

Section 210.3(f)

The Board proposed to add a new paragraph to § 210.3 to clarify that Regulation J supersedes the U.C.C., other state laws, and Regulation CC to the extent of any inconsistency. This provision parallels § 229.41 of Regulation CC, which provides that Regulation CC supersedes the U.C.C. and other state law to the extent of the inconsistency. The Board received no comments on this section and has adopted the amendment as proposed.

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[1] As used in this docket, sender means any institution that sends a check to a Reserve Bank for collection, and bank includes all depository institutions, such as commercial banks, savings institutions, and credit unions.

[2] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System" (55 FR 11648, March 29, 1990).

Section 210.5(a)

The Board proposed to amend § 210.5(a) to conform the warranties made by banks that send items to Reserve Banks to the transfer and presentment warranties in U.C.C. 4–207 and 4–208. A sender would warrant that it was (or acted on behalf of a person who was) entitled to enforce the item. The U.C.C. substituted the concept of "person entitled to enforce" for "person with good title" in recognition that the right to enforce an instrument is not limited to holders. In addition, the proposed amendment would require the sender to warrant that the item was not altered, dropping the adverb "materially." The U.C.C. formerly incorporated the concept of a "material" alteration as one that changed the contract of the parties in any respect. The revised U.C.C. refers to such a change simply as an alteration. Finally, the proposed amendment would clarify that the sender also makes the warranties set forth in Regulation CC and that the Regulation J warranties may not be disclaimed and are made regardless of whether the sender's indorsement appears on the item.

One commenter was concerned that dropping the word "materially" would mean that repair of MICR encoding on a check that rejects from automated processing would constitute an alteration. Section 3–407 of the U.C.C. defines "alteration" as an unauthorized change that purports to modify the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. The 1990 version of the U.C.C. appears to use the terms "alteration" synonymously with the former term "material alteration" (see Official Comment (1) to U.C.C. 3–407). MICR repair, which is intended to facilitate check collection and not to affect the obligations of the parties to a check, is unlikely to be considered an alteration.

Sections 210.5(d) and 210.12(i)

The Board proposed to add new paragraph (d) to § 210.5 and new paragraph (i) to § 210.12 to give a Reserve Bank a security interest in a sender's or prior collecting or returning bank's assets held by the Reserve Bank. The security interest would attach when a warranty is breached or other obligation is incurred. The proposed provisions were based on similar provisions in subpart B of Regulation J, which gives a Reserve Bank a security interest in the assets of a sender of a payment order to secure overdrafts and other obligations (§ 210.28(b) (3) and (4)).

Two commenters were concerned that the proposal would give Reserve Banks greater rights than private-sector banks to resolve warranty breach issues. One of the commenters stated that the proposal appeared to give Reserve Banks a complete self-remedy for breaches absent a court order or agreement of the parties. The commenter noted that security interests under § 210.28 are designed to secure overdrafts, which are easily determinable, as opposed to warranty breaches, which are often a matter of dispute. The commenter requested that the proposal be clarified to provide that security interests do not attach and a Reserve Bank may not set off or realize upon collateral without a judicial determination or agreement of the parties.

Section 9–501(5) of the U.C.C. provides that when a claim of a secured party is reduced to judgment, the secured party's lien on collateral relates back to the date the security interest was perfected. Accordingly, the Board believes that a Reserve Bank's security interest in the assets of a warranting bank should attach on the date the warranty is breached (generally the date the Reserve Bank handles the check in question) so that the Reserve Bank may take actions to protect its collateral, if necessary, as discussed below.

The Monetary Control Act of 1980 (12 U.S.C. 248a) directed the Board and the Reserve Banks to establish and set prices for services with due consideration to ensuring an adequate level of services nationwide. In keeping with this directive, the Board expects that Reserve Banks will provide check collection services to financially troubled banks that cannot obtain services elsewhere. If a troubled bank fails, the Reserve Bank may be liable on warranty claims that it cannot pass back to the failed bank. Accordingly, the Board believes that it is appropriate to provide some protection to the Reserve Banks from pending insolvencies. Thus, the Board has adopted the proposed security interest provisions, with modifications.

The modifications to §§ 229.5(d) and 229.12(i) clarify when a default occurs. Specifically, a Reserve Bank's rights to take any action under those sections will apply only: (1) If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or (2) at the time the sender suspends payments and is closed. The Board believes that requiring the Reserve Bank to advise a bank of its concerns about the bank's solvency will prevent the routine use of set-off or other actions on collateral by Reserve Banks. The Board believes that private-sector banks often reserve the right under security agreements to take steps, such as placing a hold on collateral, to protect themselves in cases where the banks consider themselves insecure.

Under the final rule, when a Reserve Bank receives notice of a warranty claim based on alleged forged indorsement or alteration, it would pass the notice back to the bank from which it received the check. The Reserve Bank would not, however, unilaterally pass judgment on such a claim. Rather, the Reserve Banks' uniform operating circulars provide that they will process adjustments for these types of warranty claims only with the agreement of the prior collecting bank. If such agreement is not forthcoming, the Reserve Bank would wait to be sued on the warranty claim and would tender defense of the suit to the prior collecting bank under §§ 210.5 (b) and (c) and 210.12 (e) and (f) of Regulation J. Entries would be made or collateral disposed of only after judgment as provided in those sections. The amendments to §§ 229.5(d) and 229.12(i), however, would not require a sender bank to fail or a Reserve Bank to deem itself insecure before the Reserve Bank could make credit or debit adjustments to reserve or clearing accounts in accordance with adjustment procedures established in Reserve Bank operating circulars.

Section 210.6(b)

The Board proposed to amend § 210.6(b) to conform the Reserve Bank warranties to the transfer and presentment warranties in U.C.C. 4–207 and 4–208. (See discussion of § 210.5(a).) The amendment clarifies that the Reserve Banks make the warranties set out in § 229.34 of Regulation CC. The Board received no comments on this section and has adopted the amendment as proposed.

Section 210.6(c)

Section 210.6(c) provides a 2-year statute of limitations for claims against Reserve Banks for lack of good faith or failure to exercise ordinary care under Regulation J. The Board proposed to amend this section to clarify that the Regulation CC limitation period of one year would apply to any claims against a Reserve Bank under Regulation CC, such as breach of a warranty under § 229.34 or lack of good faith or failure to exercise ordinary care under § 229.38. This amendment clarifies that claims against Reserve Banks for Regulation CC violations are subject to the same time limitations as those against private-sector banks.

The Board received three comments on this section. Two commenters believed that limitation period for breach of Regulation CC warranties should be two years rather than one year. One of these commenters often receives adjustment requests from the IRS one to two years after the fact and does not wish to be precluded from pursuing such adjustments with a Reserve Bank. This commenter suggested that the Regulation CC limitation period be extended to 2 years. Another commenter noted that, if the one year limitation period is adopted, it should run from the date of the last entry for the check in question rather than from the date the check first cleared.

The Board believes that the same limitation period should apply to Reserve Banks and private-sector banks for Regulation CC violations. As Regulation CC provides a one-year statute of limitations, the Board does not believe Regulation J should lengthen this period for Reserve Banks and has adopted the proposed amendment. The one-year period was established in subpart C of Regulation CC to match the one-year limitation period for subpart B (funds availability) violations, which was set by statute. As provided in Regulation CC § 229.38(g), an action must be brought within one year after the date of the occurrence of the violation involved.

Section 210.9(a)(5)

Section 210.9(a)(5) provides that paying banks must settle for checks presented by Reserve Banks by "autocharge" (i.e. a debit to an account at a Reserve Bank), cash, or other means agreed to by the Reserve Bank. The Board proposed to amend this section to clarify that a Reserve Bank may, in its discretion, elect to obtain settlement by autocharging the account of the paying bank for the amount of a cash letter. Virtually all Reserve Bank presentments are settled via autocharge. This amendment would restate the autocharge provisions that currently are set out in the Reserve Banks' uniform cash item operating circular.

The Board also proposed to amend this section to provide that paying banks that receive presentment from Reserve Banks may not set off other claims against the amount of settlement owed to the Reserve Bank. Paying banks may set off against private-sector presenting banks under § 229.34(c)(4) of Regulation CC. The Regulation CC set-off provision was designed to protect paying banks under the same-day settlement rule, which requires paying banks to accept presentment from and settle with all presenting banks, some of which may be in poor financial condition. If a paying bank overpays a cash letter in reliance on a cash letter total or check encoding warranted by the presenting bank, it could face the risk that the presenting bank would be unable to settle for adjustments. Protection against insolvency risk would not be necessary against a Reserve Bank. In addition, as banks generally settle with Reserve Banks via autocharge, set-off against a Reserve Bank would be impractical. Therefore, the Board does not believe this amendment would have a direct and material adverse effect on the ability of private-sector banks to compete effectively with Reserve Banks.

The Board received no comments on this section and has adopted the amendments as proposed.

Section 210.12(a)

Section 210.12(a) provides that a paying bank that has settled for a check presented by a Reserve Bank may return the check in accordance with Regulation CC, the U.C.C., and the Reserve Bank's operating circular. The Board proposed to amend this section to clarify that the paying bank may also return a check prior to settlement in accordance with § 210.9(a) of Regulation J and the Reserve Bank's operating circular. This amendment would clarify that a paying bank would have the same return rights under Regulation J as under Regulation CC and the U.C.C. The Board received no comments on this section and has adopted the amendment as proposed.

Section 210.12(c)

Section 210.12(c) sets out the warranties and agreements made by a bank that sends a returned check to a Reserve Bank. The Board proposed to amend this section to clarify that, in addition to the warranties set forth in § 229.34 of Regulation CC, the sender also makes any applicable warranty under state law. For example, the amendment would clarify that a depositary bank that settled for a returned check could recover the amount paid plus expenses and lost interest from a prior bank that breached a transfer warranty, in accordance with U.C.C. 4–208(d). In addition, similar to the amendments to § 210.5(a), the proposed revisions to this paragraph would clarify that the Regulation J warranties may not be disclaimed and are made regardless of whether the sender's indorsement appears on the item. These amendments restate provisions that are already applicable to private-sector banks under Regulation CC and the U.C.C. The Board received no comments on this section and has adopted the amendments as proposed.

Section 210.12(d)

The Board proposed to add a new paragraph (d) to § 210.12 to clarify that when a Reserve Bank transfers and receives settlement for a returned check, it makes the warranties set out in § 229.34 of Regulation CC. In addition, the new paragraph would parallel revised § 210.6(b) (governing Reserve Bank warranties for cash items) by providing a limitation of the Reserve Bank's liabilities, other than those allowed for in Regulation J, to the Reserve Bank's own lack of good faith or failure to exercise ordinary care. (The amendments redesignate current §§ 210.12(d) through (g) as §§ 210.12(e) through (h).) The Board received no comments on this section and has adopted the amendments as proposed.

Section 210.12(e) (Formerly 210.12(d)) and Section 210.5(b)

The U.C.C. (3–119) and Regulation CC (§ 229.34(e)) provide that a bank that receives a tender of defense may in turn tender defense to a prior bank in the collection or return chain. Unless the prior bank comes in and defends, it is bound by the determination of fact common to the current litigation and any subsequent litigation.

Section 210.5(b) of Regulation J provides that, when a Reserve Bank tenders defense to a sender as a result of a tender to it, the Reserve Bank need not be a defendant in the suit in order to recover from the sender any losses that it incurs because of the judgment, so long as the judgment addresses the fact issue of breach of warranty. The Board adopted this provision in 1986 in order to reduce litigation and provide a more efficient way of handling forged indorsement cases (51 FR 21740, June 16, 1986). Due to an oversight, when the Board amended § 210.12 to provide a similar rule for returned checks, the language did not match that of § 210.5(b) and could have been interpreted to apply only when a Reserve Bank is a defendant (53 FR 21983, June 13, 1988). The Board proposed to amend § 210.12(e) to conform it to § 210.5(b). (The amendments redesignate current § 210.12(d) as § 210.12(e) and add a new paragraph (d) as discussed above.) The Board also proposed to correct a typographical error in § 210.5(b). The Board received no comments on this section and has adopted the amendments as proposed.

Section 210.12(h) (Formerly 210.12(g))

This section provides that a depositary bank must settle for returned checks received from a Reserve Bank in the same manner as it settles for cash items presented by the Reserve Bank. The Board proposed to amend this section to clarify that settlement for returned checks also must be made by the same time as settlement for cash items, as provided in § 210.9(a). The Board received no comments on this section and has adopted the amendment as proposed.

Section 210.13(a)

Section 210.13(a) authorizes a Reserve Bank that does not receive payment for an item to charge back the account of the sender, paying bank, or returning bank from which the item was received. The Board proposed to amend this section to clarify that a Reserve Bank also may charge the account of a prior collecting bank through which the item was received. This amendment is consistent with § 229.35(b) of Regulation CC, which allows a bank that handles a check or returned check to recover from any prior indorser in the event that the bank does not receive payment for the check from a subsequent bank in the collection or return chain. In the event of such a recovery by a Reserve Bank, § 229.13(a) provides that no bank or person in the forward collection or return chain would have an interest in any funds in the Reserve Bank's possession of the bank that failed to pay. The amendment would clarify that, when a Reserve Bank charges back an item, this limitation of interest applies only when a bank or person seeks payment of the amount of the item out of funds or property held by the Reserve Bank. The Board received no comments on this section and has adopted the amendment as proposed.

Section 210.13(b)

Section 210.13(b) provides that a Reserve Bank will not debit an institution's reserve account for drafts or other orders on the account after receiving notice that the institution has been closed. The Board proposed to amend this section to clarify that Reserve Banks will not charge an account as authorized by § 210.9(a)(5) after receiving notice the institution is closed. The amendment also would clarify that this section applies only to charges to reserve accounts to settle for items (including returned checks) and does not affect the Reserve Bank's security interest under proposed §§ 210.5(d) and 210.12(i). The Board received no comments on this section and has adopted the amendments as proposed.

Section 210.14

Section 210.14 describes those circumstances under which the time limits for acting on an item may be extended, such as interruption of communication facilities, suspension of payments by a bank, and other emergency conditions. The Board proposed to amend this section to clarify that computer and equipment failure would constitute emergency conditions. This amendment is consistent with the emergency provisions in § 229.38(e) of Regulation CC and U.C.C. 4–109(b). The Board received no comments on this section and has adopted the amendment as proposed.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The amendments apply to all depository institutions that receive items from or send items to Federal Reserve Banks, regardless of size. The amendments generally clarify rights and duties of banks and do not impose any substantial economic burden on small entities.

List of Subjects in 12 CFR Part 210

Banks, Banking, Check collection.

For the reasons set out in the preamble, 12 CFR part 210 is amended as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)

1. The authority citation for part 210 is revised to read as follows:

Authority: 12 U.S.C. 248 (i), (j), and (o), 342, 360, 464, and 4001–4010.

2. The first sentence of § 210.1 is revised to read as follows:

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System (Board) has issued this subpart pursuant to the Federal Reserve Act, sections 11 (i) and (j) (12 U.S.C. 248 (i) and (j)), section 13 (12 U.S.C. 342), section 16 (12 U.S.C. 248(o) and 360), and section 19(f) (12 U.S.C. 464); the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*); and other laws. * * *

3. In § 210.2, paragraph (g) introductory text is revised and a new paragraph (p) is added immediately before the concluding text to read as follows:

§ 210.2 Definitions.

* * * * *

(g) *Item* means an instrument or a promise or order to pay money, whether negotiable or not, that is:

* * * * *

(p) *Uniform Commercial Code* means the Uniform Commercial Code as adopted in a state.

* * * * *

4. In § 210.3, the last sentence of paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 210.3 General provisions.

(a) * * * The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, provide different closing times for the receipt of different classes or types of items, set forth terms of services, and establish procedures for adjustments on a Reserve Bank's books, including amounts, waiver of expenses, and payment of interest by as-of adjustment.

* * * * *

(f) *Relation to other law.* The provisions of this subpart supersede any inconsistent provisions of the Uniform Commercial Code, of any other state law, or of part 229 of this title, but only to the extent of the inconsistency.

5. In § 210.5, paragraph (a) introductory text and paragraph (a)(2) are revised, in paragraph (b)(3) the phrase "judgment or decree of the tender of defense" is revised to read "judgment or decree or the tender of defense", and a new paragraph (d) is added to read as follows:

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender:

* * * * *

(2) Warrants to each Reserve Bank handling the item that:

(i) The sender is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item; and

(ii) The item has not been altered; but this paragraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law or under subpart C of part 229 of this title; and

* * * * *

(d) *Security interest.* To secure any obligation due or to become due to a Reserve Bank by a sender or prior collecting bank under this subpart or subpart C of part 229 of this title, the sender and prior collecting bank, by sending an item directly or indirectly to the Reserve Bank, grant to the Reserve Bank a security interest in all of the sender's or prior collecting bank's assets in the possession of, or held for the account of, the Reserve Bank. The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or prior collecting bank, or if the sender or prior collecting bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

6. In § 210.6, paragraphs (b)(1) and (b)(2) are revised, a new first sentence is added to paragraph (b) concluding text, and a new last sentence is added to paragraph (c) to read as follows:

§ 210.6 Status, warranties, and liability of Reserve Bank.

* * * * *

(b) * * *

(1) That the Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person who is either:

(i) Entitled to enforce the item; or

(ii) Authorized to obtain payment on behalf of a person entitled to enforce the item); and

(2) That the item has not been altered.

The Reserve Bank also makes the warranties set forth in § 229.34(c) of this title, subject to the terms of part 229 of this title. * * *

(c) * * * This paragraph does not lengthen the time limit for claims under § 229.38(g) of this title (which include claims for breach of warranty under § 229.34 of this title).

7. In § 210.9, paragraph (a)(5) is revised to read as follows:

§ 210.9 Settlement and payment.

(a) * * *

(5) Settlement with a Reserve Bank under paragraphs (a)(1) through (4) of this section shall be made by debit to an account on the Reserve Bank's books, cash, or other form of settlement to which the Reserve Bank agrees, except that the Reserve Bank may, in its discretion, obtain settlement by charging the paying bank's reserve or clearing account. A paying bank may not set off against the amount of a settlement under this section the amount of a claim with respect to another cash item, cash letter, or other claim under § 229.34(c) of this title or other law.

* * * * *

8. In § 210.12, a new sentence is added after the first sentence of paragraph (a), paragraph (c) introductory text and paragraph (c)(2) are revised, paragraphs (d) through (g) are redesignated as paragraphs (e) through (h), respectively, new paragraphs (d) and (i) are added, and newly-designated paragraph (e) concluding text and newly-designated paragraph (h) are revised to read as follows:

§ 210.12 Return of cash items and handling of returned checks.

(a) * * * A paying bank that receives a cash item directly or indirectly from a Reserve Bank also may return the item prior to settlement, in accordance with § 210.9(a) and its Reserve Bank's operating circular. * * *

* * * * *

(c) *Paying bank's and returning bank's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank—

* * * * *

(2) Makes the warranties set forth in § 229.34 of this title (but this paragraph does not limit any warranty by a paying or returning bank arising under state law); and

* * * * *

(d) *Warranties by Reserve Bank.* By sending a returned check and receiving settlement or other consideration for it, a Reserve Bank makes the returning bank warranties as set forth in § 229.34 of this title, subject to the terms of part 229 of this title. The Reserve Bank shall not have or assume any other liability to the transferee returning bank, to any subsequent returning bank, to the depository bank, to the owner of the check, or to any other person, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care as provided in subpart C of part 229 of this title.

(e) * * *

The Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

* * * * *

(h) *Settlement.* A subsequent returning bank or depositary bank shall settle for returned checks in the same manner and by the same time as for cash items presented for payment under this subpart.

(i) *Security interest.* To secure any obligation due or to become due to a Reserve Bank by a paying bank, returning bank, or prior returning bank under this subpart or subpart C of part 229 of this title, the paying bank, returning bank, and prior returning bank, by sending a returned check directly or indirectly to the Reserve Bank, grant to the Reserve Bank a security interest in all of the paying bank's, returning bank's, and prior returning bank's assets in the possession of, or held for the account of, the Reserve Bank. The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the paying bank, returning bank, or prior returning bank, or if the paying bank, returning bank, or prior returning bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

9. Section 210.13 is revised to read as follows:

§ 210.13 Unpaid items.

(a) *Right of recovery.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, prior collecting bank, paying bank, or returning bank from or through which it was received, whether or not the item itself can be sent back. In the event of recovery from such a party, no party, including the owner or holder of the item, shall, for the purpose of obtaining payment of the amount of the item, have any interest in any reserve balance or other funds or property in the Reserve Bank's possession of the bank that failed to make payment in actually and finally collected funds.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge (including a charge authorized by § 210.9(a)(5)), or other order on a reserve balance or other funds in its possession for the purpose of settling for items under § 210.9 or § 210.12 after it receives notice of suspension or closing of the bank making the settlement for that bank's own or another's account.

10. Section 210.14 is revised to read as follows:

§ 210.14 Extension of time limits.

If a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time limits because of interruption of communication or computer facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

By order of the Board of Governors of the Federal Reserve System, April 28, 1994.

William W. Wiles,

Secretary of the Board

[FR Doc. 94–10645 Filed 5–3–94; 8:45 am]

BILLING CODE 6210–01–P

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12 CFR Parts 225 and 265

[Regulation Y; Docket No. R–0773]

Bank Holding Companies and Change in Bank Control; Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On August 12, 1992, the Board approved several proposals to change certain procedures for obtaining Board approval of various applications and notices filed under the Federal Reserve Act, the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act and various other statutes. All but one of these changes to the Board's application and notice review procedures were implemented by the Board at that time. Most of these changes involved revising certain internal procedures of the Federal Reserve System (System), to improve the efficiency of processing applications that are reviewed by the Board in conjunction with the Reserve Banks and to reduce the regulatory burden associated with these application and notice procedures. Two of the changes—eliminating the stock redemption notice requirement for "well-capitalized" bank holding companies, and modifying the Board's delegation rules pertaining to competition and market concentration—necessitate amendments to certain provisions of, respectively, the Board's Regulation Y and Rules Regarding Delegation of Authority.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Terence F. Browne, Senior Attorney (202/452–3707), Legal Division; or Sidney M. Sussan, Assistant Director (202/452–2638), John S. Russell, Manager—Applications Processing (202/452–2466), or Beverly Evans, Supervisory Financial Analyst (202/452–2573), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

As part of the Board's ongoing efforts to reduce the regulatory burden associated with its application and notice procedures, in 1992 the Board approved a number of steps to reduce the burden associated with these procedures.[1] Although all but one of these streamlining initiatives became effective upon publication in the **Federal Register**,[2] two of the initiatives require that the Board's Regulations be amended to reflect the changes.

Currently, § 225.4(b)(1) of Regulation Y (12 CFR 225.4(b)(1)) requires a bank holding company to give the Board prior notice of certain purchases or redemptions of its equity securities:

> (b) *Purchase or redemption by a bank holding company of its own securities*—(1) *Filing notice.* A bank holding company shall give the Board prior notice before purchasing or redeeming its equity securities, if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

The Board determined to eliminate this notice requirement for bank holding companies that are and, following the redemption or purchase, would remain "well-capitalized" on a consolidated basis and in generally satisfactory condition. The Board believes that a bank holding company would qualify for this exception to the notice requirement if:

- The total and tier 1 risk-based capital ratios and the leverage capital ratio for the bank holding company, both before and following the redemption, exceed the thresholds established for "well-capitalized" state-member banks under 12 CFR 208.33(b)(1) as if the bank holding company (on a consolidated basis) were deemed to be a state-member bank;
- The bank holding company received a composite "1" or "2" rating at its most recent BOPEC inspection, and
- The bank holding company is not the subject of any unresolved supervisory issues.

The Board also determined to revise its delegation rules pertaining to competition and market concentration. If a party submits an application or notice to the System pursuant to the Bank Holding Company Act, Change in Bank Control Act, Bank Merger Act, or the Bank Service Corporation Act, the Board's Rules Regarding Delegation of Authority (12 CFR 265.1–265.11), permit the appropriate Reserve Bank to act on such application or notice unless certain circumstances are present. Specifically, § 265.11(c)(11)(v) of the Board's Rules provide that a Reserve Bank is not authorized to approve the following transactions:

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[1] See 57 FR 39641 (September 1, 1992). These changes included establishing certain procedures to limit extension of the pre-acceptance period for applications; offering prospective applicants the opportunity to submit a pre-filing notice of intent to file an application; eliminating the stock redemption notice requirement for bank holding companies that are and, following the redemption would remain, "well-capitalized" on a consolidated basis and in generally satisfactory condition; expanding the authority of Reserve Banks to process all delegable applications without Board staff review; modifying the Board's delegation rules pertaining to competition and market concentration; reducing redundant post-acceptance processing of Board action cases; increasing the monitoring of cases requiring extended processing; and establishing a general consent procedure under section 24A of the Federal Reserve Act for investments by state member banks in bank premises.

In publishing notice of these changes, the Board also invited comment on any additional measures to eliminate or reduce burden associated with the Board's notice and application procedures. The comments received will be considered by the Board in its ongoing efforts to streamline and reduce the regulatory burden associated with the Board's notice and application procedures.

[2] The Board is currently finalizing a separate regulation implementing a general consent procedure for investments in bank premises pursuant to section 24A of the Federal Reserve Act.

(v) With respect to BHC formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(B) Where divestitures designed to address any substantive anticompetitive effects are not effected on or before consummation of the proposed transaction[.]

The Board determined to revise its Rules Regarding Delegation of Authority to increase the resulting market share criterion that would require Board consideration of a bank merger or acquisition from 30 percent to 35 percent. In particular, the Reserve Banks may now act on applications involving two or more banking organizations that, upon consummation of the proposed transaction, would control 35 percent or less of total deposits in banking offices in the relevant geographic market. This change would also reflect the Board's practice, in computing market share, of weighing deposits of thrifts in the subject market at 50 percent.

As part of this change to the Board's Rules Regarding Delegation of Authority, the Board also determined to eliminate the need for Board approval of applications involving divestitures designed to address anticompetitive effects, which divestitures are not completed on or before consummation of the proposed transaction.[3] As a result, the Federal Reserve Banks may now act on applications involving proposed divestitures to address competitive concerns, provided the divestitures are undertaken in accordance with the Board's position on the timing of divestitures.[4]

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. The amendments would reduce regulatory burdens imposed by Regulation Y and the Board's Rules Regarding Delegation of Authority and have no particular adverse effect on other entities.

Effective Date

The provisions of the Administrative Procedures Act (APA)(5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of these amendments because the changes to be effected are either procedural in nature and do not constitute a substantive rule subject to the requirements of that section, or grant an exemption and reduce regulatory burden. The APA grants specific exemptions from its requirements relating to notice, public participation and the deferred effective date requirements in these instances (12 U.S.C. 553 (b)(3)(A) and (d)(1)).

Final Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding Companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 265

Authority delegation (Government agencies), Banks, banking.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, parts 225 and 265, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. Section 225.4 is amended by revising paragraph (b)(1), and adding a new paragraph (b)(6) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(b) * * *—(1) *Filing notice.* Except as provided in paragraph (b)(6) of this section, a bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

* * * * *

(6) *Exception for well-capitalized bank holding companies.* A bank holding company seeking to redeem or purchase its equity securities is not required to obtain prior Board approval for the redemption or purchase under this section provided:

(i) The total and tier 1 risk-based capital ratios and the leverage capital ratio for the bank holding company, both before and following the redemption, exceed the thresholds established for "well-capitalized" state-member banks under 12 CFR 208.33(b)(1) as if the bank holding company (on a consolidated basis) were deemed to be a state member bank;

(ii) The bank holding company received a composite "1" or "2" rating at its most recent BOPEC inspection; and

(iii) The bank holding company is not the subject of any unresolved supervisory issues.

* * * * *

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.11 is amended by revising paragraph (c)(11)(v) to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(c) * * *

(11) * * *

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[3] See 57 FR 39641 (September 1, 1992).

[4] See *id.*; see also BankAmerica Corporation, 78 Federal Reserve Bulletin 338, 340 n.15 (1992).

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations that, upon consummation of the proposal, would control over 35 percent of total deposits (including 50 percent of thrift deposits) in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 28, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–10689 Filed 5–3–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWP–1]

Establishment of Class D Airspace; El Toro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at El Toro, CA, designated as an extension to a Class C surface area. The floor was inadvertently lowered from a base of 2,500 feet mean sea level (MSL) down to the surface. This modification raises the floor between the 10 and 15 mile radius of the Class ' D airspace from the surface to 2,500 feet MSL. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at El Toro, CA (59 FR 8565). The Class D airspace was inadvertenly changed during Airspace Reclassification. This change restricted aircraft transiting along the shoreline. This action will raise the floor of a portion of the Class D airspace from the surface to 2,500 feet MSL to allow aircraft to transit along the shoreline.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA and there were no objections to the proposal.

Class D airspace designations for airspace designated as extensions to class C airspace are published in Paragraph 5000b of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulation modifies Class D airspace at El Toro, CA, to establish Class D airspace from 2,500 fee MSL to 4,400 feet MSL for aircraft transiting between the 10 and 15 mile radius of MCAS El Toro, CA. The FAA has determined that this regulation only involves an established body by technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regularly Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 general.

* * * * *

AWP CA D EL Toro MCAS, CA [Removed]

* * * * *

Paragraph 5000b Class D Airspace areas designated as an extension to a Class C surface area.

* * * * *

AWP CA D2 EL Toro MCAS, CA [New]

EL Toro MCAS, CA

(lat. 33°40'34" N., long. 119°43'52" W.)

That airspace extending upward from the surface to but not including 2,500 feet MSL from the 5-mile radius of EL Toro MCAS to a 10-mile radius of the EL Toro MCAS between the 164 °(T) and the 189 °(T) bearings of the El Toro MCAS and that airspace extending upward from 2,500 feet MSL to and including 4,400 feet MSL from the 10-mile radius to 15-mile radius of the airport between the 164 °(T) and the 189 °(T) bearings of the El Toro MCAS. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on April 15, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–10704 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–47]

Amendment to Class D Airspace; Moses Lake, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace at the Grant County Airport, Moses Lake, WA, by excluding the airspace overlying the Moses Lake Municipal Airport, WA. It will permit air traffic operations to and from Moses Lake Municipal Airport without the requirement for radio communications with the Grant County Airport Traffic Control Tower.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT:

Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–47, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 23, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace for the Grant County Airport, Moses Lake, Washington (59 FR 8567). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "control zone," and airspace extending upward from the surface with an operating airport traffic control tower is now designated Class D airspace. Class D airspace designations for airspace extending upward from the surface with an operating airport traffic control tower are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North America Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class D airspace at Moses Lake, Washington. It will permit air traffic operations at the Moses Lake Municipal Airport without the requirement for direct radio communications with the airport traffic control tower at the Grant County Airport by excluding the Moses Lake Municipal Airport from the Grant County Airport Class D airspace. It improves the efficiency at Moses Lake Municipal Airport without significantly impacting on the operation at the Grant County Airport operation, and simplifies air traffic control activities within the Class D airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM WA D Moses Lake, WA [Revised]

Moses Lake, Grant County Airport, WA

(lat. 47°12′28″ N, long. 119°19′13″ W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 5.7-mile radius of the Grant County Airport, excluding that airspace within an area bounded by a line beginning at lat. 47°11′31″ N, long. 119°10′59″ W., to lat. 47°09′59″ N., long. 119°14′55″ W., to lat. 47°07′34″ N., long. 119°14′55″ W., thence counterclockwise via a 5.7 mile radius of the Grant County Airport to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Seattle, Washington, on April 18, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 94–10705 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–25]

Amendment to Class E Airspace; Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Rifle, CO. Establishment of a new instrument approach procedure requires additional controlled airspace for the procedure. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," replacing it with the designation "Class E airspace" The Class E airspace will be depicted on aeronautical charts for pilot reference when the new approach procedures become effective.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1994, the FAA proposed to amended part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace for the Rifle Garfield County Airport, Rifle, CO (59 FR 8147). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," and airspace extending upward from 700 feet above ground level is now designated as Class E airspace. Class E airspace designations for airspace extending upward from 700 fect or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North American Datum 83.

The Rule

This amendment of part 71 of the Federal Aviation Regulations amends

Class E airspace to Rifle, Colorado. It will provide controlled airspace for a new instrument approach procedure at the airport. Amendment of the Class E airspace will result in greater safety and efficiency at, and in the vicinity of, the airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Rifle, CO [Revised]
Rifle Garfield County Airport, CO
(lat. 39°31′35″ N, long. 107°43′37″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Garfield County Airport, and within 4.3 miles each side of the 090° bearing from the Garfield County Airport, extending from the 7-mile radius to 18.3 miles east of the airport, and within 4.5 miles each side of the 321° bearing from the Garfield County Airport, extending from the 7-mile radius to 14.5 miles northwest of the airport.

* * * * *

Issued in Seattle, Washington, on April 18, 1994.

Temple H. Johnson,

Manager, Air Traffic Division.

[FR Doc. 94-10706 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is issuing this Order pursuant to which option contracts on a spot foreign exchange operation between the United States Dollar and the Deutsche Mark (USD/DM) and United States Dollar and the French Franc (USD/FRF) traded on the Marche a Terme International de France (MATIF) may be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the procedures established in the Commission's Order (Mutual Recognition Memorandum of Understanding (MRMOU) with the French Commission des Operations de Bourse).

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Pursuant to the Mutual Recognition Memorandum of Understanding With the French Commission des Operations de Bourse and Rule 30.3(a) Permitting Option Contracts on the USD/DM and USD/FRF Traded on the Marche a Terme International de France To Be Offered or Sold in the United States Thirty Days After Publication of This Notice in the Federal Register

By Order issued on December 17, 1991 (Initial Order),[1] the Commission authorized, pursuant to the Mutual Recognition Memorandum of Understanding (MRMOU)[2] and Commission rule 30.3(a),[3] certain option products traded on the MATIF to be offered or sold in the United States.

By letter dated April 8, 1994, MATIF notified the Commission that on May 20, 1994 it would be introducing option contracts based on the USD/DM and USD/FRF. By letter dated April 19, 1994, the Commission des Operations de Bourse requested that the Commission supplement its Initial Order and subsequent Order[4] authorizing Options on the Notional Bond, the 3-month PIBOR, the 3-month EURODEM and the Long-Term ECU Bond Futures Contracts by also authorizing the MATIF's Option Contracts on the USD/DM and USD/FRF to be offered or sold in the United States. Based upon the foregoing, and pursuant to the terms of the MRMOU, the Commission hereby publishes this Order in the **Federal Register** pursuant to which the particular option contract specified herein may be offered or sold thirty days after the publication of this Order.

Accordingly, pursuant to Commission rule 30.3(a), 17 CFR 30.3(a), and Article II, paragraph 6(b) and Article V, paragraph 6 of the MRMOU signed by the Commission on June 6, 1990 (55 FR 23902 (June 13, 1990)), and subject to the terms and conditions specified in the MRMOU, the Commission hereby issues this Order pursuant to which option contracts based on the USD/DM and USD/FRF traded on the MATIF may be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**.

USD/DM Option Specifications

Exercise Style—European option
Underlying Inst—USD/DM spot transaction
Contract Size—USD 100 000
Strike Prices—In DM, with two decimals.
  Exercise price intervals: 2 pfennigs. (1.60—1.62 . . .) At least eleven closest-to-the-money (5 on each side).
Premium Quotation—Premium in % of the USD nominal, with two decimals (Ex:

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[1] See 56 FR 66345 (December 23, 1991).

[2] See 55 FR 23902 (June 13, 1990). Among other things, this arrangement provides a mechanism pursuant to which certain option products traded on the Marche a Terme International de France (MATIF) may be offered or sold to customers resident in the United States thirty days after publication in the **Federal Register** of a notice specifying the particular option contracts to be offered or sold.

[3] Commission rule 30.3(a), 17 CFR 30.3(a), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold.

[4] See 57 FR 10987 (April 1, 1992).

2.61% stands for 100 000×2.61/100=USD 2 610). In specific cases, premium with 3 decimals
Tick Size—0.01% i.e. USD 10
Expiration Months—Three monthly + three quarterly maturities from March, June, September, December
Expiration Date—Thursday following third Wednesday of expiration month at 9:00 am New York time.
First Trading Day—First business day following an expiration date
Exercise—After settlement of a spot-fixing on the expiration date, automatic exercise of in-the-money options. Exercise: exchange of underlying currencies.
Trading Hours—Open outcry: 9:15 am—5 pm Paris time. THS (after hours trading): 5 pm—9:15 am

USD/FRF Options Specifications

Exercise Style—European option
Underlying Inst—USD/FRF spot transaction
Contract Size—USD 100 000
Strike Prices—In FRF, with two decimals. Exercise price intervals: 5 centimes. (5.60—5.65 . . .) At least eleven closest-to-the-money (5 on each side)
Premium Quotation—Premium % of the USD nominal, with two decimals. (Ex: 0.45% stands for 100 000×0.45/100=USD 450) In specific cases, premium with 3 decimals
Tick Size—0.01% i.e. USD 10
Expiration Months—Three monthly + three quarterly maturities from March, June, September, December
Expiration Date—Thursday following third Wednesday of expiration month at 9 am New York time.
First Trading Day—First business day following an expiration date
Exercise—After settlement of a spot-fixing on the expiration date, automatic exercise of in-the-money options. Exercise: exchange of underlying currencies
Trading Hours—Open outcry: 9:15 am—5 pm Paris time. THS (after hours trading): 5 pm—9:15 am

Lists of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for "Marche a Terme International de France" to read as follows:

APPENDIX B TO PART 30.—OPTION CONTRACTS PERMITTED TO BE OFFERED OR SOLD IN THE U.S. PURSUANT TO §30.3(a)

Exchange	Type of contract	FR date and citation
• •	• • •	• •
Marche a Terme International de France.	Option Contracts on United States Dollar/Deutsche Mark and United States Dollar/French Franc.	May 5, 1994; ____ FR __
• •	• • •	• •

Issued in Washington, DC on April 26, 1994

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 94–10612 Filed 5–3–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

31 CFR Part 601

[T.D. BEP–2]

Distinctive Paper for United States Currency and Other Securities

AGENCY: Bureau of Engraving and Printing (BEP), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Engraving and Printing is amending the provisions of Distinctive Paper for United States Currency and Other Securities regulations, to reflect the adoption of a new distinctive paper adopted for use by the Secretary of the Treasury to deter counterfeiting.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Rodolfo Roberts, Office of Management Services, Bureau of Engraving and Printing, room 321–9A, 14th and C Streets, SW., Washington, DC 20228, (202) 874–3551.

SUPPLEMENTARY INFORMATION: 80 Stat. 379, 39 Stat. 277, as amended; and 5 U.S.C. 301, U.S.C. 5114 give the Secretary of the Treasury the authority of law to adopt a new distinctive paper for use in printing United States currency and other interest-bearing securities of the United States.

The changes:

(1) Amend section 601.1 to reflect the existence of two kinds (threaded and non-threaded) of distinctive papers for printing United States currency and the use of the non-threaded one for printing interest-bearing securities of the United States.

(2) Amend section 601.2 to reflect a description of the new threaded distinctive paper.

(3) Amend section 601.3 to indicate that the distinctive paper currently in use will continue to be used.

(4) Amend section 601.4 to provide that the existing distinctive paper will continue to be used for printing interest-bearing securities of the United States.

(5) Section 601.5 remains the same.

(6) Delete section 601.6 in its entirety.

Notice of Proposed Rulemaking

On November 12, 1993, BEP published Notice No. 1 (58 FR 59973), proposing to amend the provisions of Distinctive Paper for United States Currency and Other Securities regulations to reflect the adoption of a new distinctive paper adopted for use by the Secretary of the Treasury to deter counterfeiting. No comments were received on or before the closing date of December 13, 1993. Therefore, BEP is adopting the language in the proposed rule, with no modification.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected:

(1) To have secondary, or incidental effects on a substantial number of small entities; or

(2) To impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens of a substantial number of small entities.

Executive Order 12866

It has been determined that this document is not a major regulation as defined in Executive Order 12866 and a regulatory impact analysis is not required because it will not have any annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because no requirement to collect information is contemplated.

Drafting Information

The principal author of this document is Rodolfo Roberts, Office of Management Services, Bureau of Engraving and Printing.

List of Subjects in 31 CFR Part 601

Currency, Securities, Printing

Authority and Issuance

31 CFR part 601 is revised to read as follows:

PART 601—DISTINCTIVE PAPER FOR UNITED STATES CURRENCY AND OTHER SECURITIES

Sec.
601.1 Notice to the public.
601.2 Description of paper.
601.3 Use of paper.
601.4 Use of paper; interest-bearing securities of the United States.
601.5 Penalty for unauthorized control or possession.

Authority: 5 U.S.C. 301; 18 U.S.C. 474; 31 U.S.C. 321.

§ 601.1 Notice to the public.

The Secretary of the Treasury, by authority of law, has adopted a new distinctive paper for use in printing United States currency in addition to the existing distinctive paper for use in printing United States currency and other securities.

§ 601.2 Description of paper.

The paper utilized in the printing of United States currency and public debt issues is cream-white bank note paper which must contain security features prescribed by the Secretary of the Treasury. All currency paper shall contain distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout. In addition to distinctive red and blue fibers, currency paper shall contain, for denominations prescribed by the Secretary of the Treasury, security threads embedded beneath the surface of the paper during the manufacturing process. Security threads shall contain graphics consisting of the designation "USA" and the denomination of the currency, expressed in alphabetic or numeric characters.

§ 601.3 Use of paper.

The new distinctive paper shall be used for printing Federal Reserve Notes of the denominations prescribed by the Secretary of the Treasury. The use of the existing distinctive paper, the distinctive feature of which consists of distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout, will be continued for printing of any currency denomination prescribed by the Secretary of the Treasury.

§ 601.4 Use of paper; interest-bearing securities of the United States.

The existing distinctive paper shall be used for the printing of interest-bearing securities of the United States, and for any other printing where the use of distinctive paper is indicated.

§ 601.5 Penalty for unauthorized control or possession.

The Secretary of the Treasury hereby gives notice that the new distinctive paper, together with any other distinctive paper heretofore adopted for the printing of paper currency or other obligations or securities of the United States, is and will be subject to the provisions of 18 U.S.C. 474 which provides, in part, that it is against the law to possess any paper, or facsimile thereof, designated by the Secretary of the Treasury for the printing of U.S. currency or any other security of the United States, except with the permission of the Secretary or other authorized official. This crime is punishable by a fine not to exceed five thousand dollars or imprisonment for not more than fifteen years, or both.

Peter H. Daly,

Director.

George Muñoz,

Assistance Secretary Management.

Lawrence F. Zenker,

Certifying Officer, Bureau of Engraving and Printing.

[FR Doc. 94–10711 Filed 5–3–94; 8:45 am]

BILLING CODE 4840–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH–10–1–5677; FRL–48764]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving and disapproving specific portions of a revision to the Ohio State Implementation Plan (SIP) for ozone On April 9, 1986, the State of Ohio Environmental Protection Agency (OEPA), submitted amendments to the Ohio Administrative Code (OAC) Chapter 3745–21 to USEPA as proposed revisions to the SIP for Ozone. OAC Chapter 3745–21 consists of emission limitations and control requirements for sources of volatile organic compounds (VOC). The amendments to OAC Chapter 3745–21 involve certain compliance deadlines and source specific exemptions from otherwise applicable emission limitations.

EFFECTIVE DATE: This final rule becomes effective on June 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for inspection at (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Air Docket, 6102, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On April 9, 1986, the OEPA submitted amendments to OAC Chapter 3745–21 and supporting data to USEPA as a proposed revision to the ozone portion of its SIP. OEPA adopted these rules in final form on March 21, 1986. OAC Chapter 3745–21, entitled, "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards," includes Ohio's VOC Reasonably Available Control Technology (RACT I and II) regulations.

Ohio's submittal included new VOC regulations for additional source categories not specifically covered by Ohio's existing rules and a site-specific revision for the Huffy Corporation. These other elements of the April 9, 1986, submittal are not covered in this document. Today's **Federal Register** document also does not address those amendments to the ozone SIP that were previously submitted on March 28, 1983, to USEPA, and were addressed in a March 6, 1985 **Federal Register** notice of proposed rulemaking (50 FR 9052) and in a January 18, 1989, **Federal Register** final rulemaking (54 FR 1934).

The regulations subject to this rulemaking are embodied in OAC Chapter 3745–21–01, Definitions; OAC Chapter 3745–21–04, Attainment dates and compliance time schedules; OAC Chapter 3745–21–09, Control of emissions of volatile organic compounds from stationary sources; and OAC Chapter 3745–21–10, Compliance test methods and procedures.

USEPA is taking final action to approve these revisions, with the following exceptions:

1. USEPA is disapproving the proposed relaxation for food can end sealing compounds in 3745–21–09 (D)(1)(e) and (D)(2)(e) from 3.7 to 4.4 lbs VOC/gal.

2. USEPA is disapproving the proposed revision to the exemption, as well as the entire exemption in 3745–21–09(N)(3)(e) for the application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing.

Ohio's high ratio of emulsified to cutback asphalt used in 1987 is not a valid basis for exempting the hand application of cutback asphalt. This exemption is inconsistent with USEPA guidance, and Ohio has provided no data on the amount of additional cutback asphalt that would be used in the ozone season as a result of the exemption.

In addition, USEPA is disapproving the recordkeeping requirements in 3745–21–09 (N)(4) because they are inadequate with respect to the time period during which records are required because paragraph 3745–21–09 (N)(4) only deals with recordkeeping requirements and not when cutback asphalt is allowed to be used. Ohio's SIP does not allow cutback asphalt to be used from April 15 through October 15. Unless and until the exemption period is changed (in 3745–21–09 (N)(3)), the recordkeeping requirements must reflect the SIP requirements.

3. USEPA is disapproving the relaxation from 3.5 to 6.2 lbs. VOC/gal for high performance architectural aluminum coatings in 3745–21–09 (U)(1)(a)(viii) because Ohio did not document the infeasibility of add-on controls and powder coatings in support of its proposed relaxation. USEPA will evaluate the merits of a compliance date extension if submitted and supported by OEPA.

In addition, USEPA will repropose rulemaking on the relaxation for miscellaneous metal parts, in 3745–21–09 (U)(1)(vii), and USEPA will propose rulemaking on the exemption for new sources, in 3745–21–09 (U)(2)(f), in separate **Federal Register** documents

Comments on the proposed SIP revisions contained in the May 30, 1989, rulemaking notice (54 FR 22915) are discussed below:

1. Can Regulations-Rules 3745–21–09(D)(1)(c) and (D)(2)(e)

A. Proposed Action

OEPA proposed a relaxation from 3.7 pounds of VOC per gallon of coating (lbs VOC/gallon of coating, excluding water) to 4.4 lbs/gal for food can end sealing compounds. OEPA's basis includes a September 13, 1985, letter and testimony to OEPA from Heekin Can; an April 13, 1984, submittal from the Can Manufacturers Institute (CMI) to USEPA; and testimony presented by Campbell Soup Company before the OEPA on September 12, 1985. The basis of the can industry's requests for a relaxation is the purported unavailability of complying end sealing compounds for food can ends, as well as the infeasibility of add-on control.

USEPA proposed disapproval of this relaxation because data from a San Diego source (Van Camp) indicates the possible feasibility of both add-on control equipment and low solvent coatings, and Ohio had not considered this information.

B. Comments on Proposed Disapproval

Heekin Can, Campbell Soup, Central States Company, OEPA, and the Can Manufacturers Institute commented on the proposed disapproval. Their comments, and USEPA's response to these comments are enumerated below.

1. Campbell Soup Company Submitted the Following Comments on July 27, 1989

Comment 1: The Amendment should now be approved by USEPA in total: The data cited by USEPA in the notice of proposed rulemaking is, on its face, not an appropriate basis for rejection.

USEPA Response: The data cited by USEPA in its notice of proposed rulemaking (NPR) provided a strong indication that use of add-on control equipment may be feasible for controlling end seal compound VOC emissions. However, after reviewing the comments, USEPA agrees that use of add-on control equipment doesn't appear feasible. In addition, Van Camp has switched over to a solventless, waterborne end sealing compound for its pet food cans. However, USEPA has considered other relevant information, as discussed in this notice, including comments received, in conjunction with the data cited in the NPR, in its final evaluation of the proposed relaxation. Therefore, any shortcomings, or limitations, in the data cited in the NPR, have been taken into consideration.

Comment 2: If the Amendment cannot now be approved in total, it should at least be approved in part, by allowing relaxation of VOC standards for the period when compliance would otherwise have been technically and commercially impracticable, i.e., at least until May 1989.

"Only with Campbell's May 1989 conversion to a compliant end-sealing compound, following extensive research and development efforts funded by Campbell to develop and apply such a compound, is there evidence that a 3.7 pound standard became technically and commercially feasible for Campbell's Ohio facility."

USEPA Response: USEPA can only act on a proposed revision that has been submitted to it. Therefore, USEPA's only option is to approve or disapprove a permanent relaxation of the food can end sealing compound limit. It should be emphasized that as of May 1989 Campbell came into compliance with the 3.7 pounds VOC per gallon food can end seal compound limit. Therefore, USEPA does not believe approval of the permanent relaxation is appropriate.

Comment 3: If relaxation of the VOC standard to 4.4 pounds for the period ending May 1989, cannot now be approved for the entire food can end sealing compound category, it should at least be allowed for such period for the human food can end sealing compound category.

USEPA Response: As stated in the response to comment 2, USEPA can only act on a proposed revision that has been submitted to it. The submitted rule provides for a relaxation for the entire category and cannot be approved.

Comment 4: In any case, if the Amendment cannot now be approved in whole or in part, it should not now be rejected with prejudice. Rather, OEPA should be given a chance to modify or supplement the Amendment.

"USEPA's proposed rulemaking notes that OEPA did not consider certain Van Camp data, i.e., the Lake paper which, in fact, was only publicly presented after the date the Amendment was submitted to USEPA. Accordingly, if the Amendment cannot now be approved in whole or part, and if such data is still deemed relevant by USEPA, these proceedings should be remanded without prejudice to OEPA so that the data can be considered, findings made, and, if deemed appropriate by OEPA, the Amendment resubmitted to USEPA in the same or modified form after the new data has been fully considered."

USEPA Response: USEPA has an obligation to act on any pending SIP revision request and does not have the authority to "remand" such a submittal to the State. However, the State has the ability to withdraw or amend a pending SIP revision request at any time prior to final USEPA action. After USEPA takes final action on a SIP submittal, the State still may submit revisions to the existing SIP. USEPA will act on any proposed SIP revision submitted by Ohio in the future including additional relaxation requests for end sealing compounds. Any relaxation would need to be consistent with section 193 of the amended CAA. Moreover, it should be noted that USEPA has considered comments from OEPA on the Van Camp data in its final evaluation.

2. Heekin Can Submitted Comments on July 27, 1989

These comments include background information, comments on the infeasibility of add-on controls, and comments on the unavailability of low solvent compounds.

Comment 1: Before reviewing the infeasibility and unavailability issues it should be recognized that the level of VOCs that was emitted at the Heekin facility in 1987 as a result of following the food can end seal regulation (4.4 pounds of VOC per gallon) instead of the general VOC content end seal limitation (3.7 pounds of VOC per gallon) amounted to only 27.89 tons of VOC. Total VOC emissions from the entire end seal operation at the facility were 219.27 tons for 1987, while plant-wide emissions (base coaters, litho presses, side seam strippers, and end seal liner machines) were 652 tons per year after controls. Thus, the level of emissions sought to be restricted by disapproving the food can end seal VOC limit is only 4.2 percent of the emissions from the facility.

USEPA Response: The level of control technology that constitutes RACT is a function of technical and economical feasibility, and not emission impacts. Furthermore, excess emissions of 27.89 tons of VOC per year is not a negligible quantity.

Comment 2—Infeasibility of Add-on Controls: As a result of USEPA's reliance on the Lake article and the Van Camp study, Heekin commissioned a RACT study by Camp, Dresser, and McKee (CDM). CDM focused on collecting VOCs from the application, conveying, and bagging stages of the end seal lining process. Warehousing areas were disregarded by Lake and CDM as being infeasible to control.

CDM performed a complete RACT analysis tailored specifically for Heekin's Hamilton County, Ohio can manufacturing facility. A total of five end seal lining processes (10 applicators) were considered for control. Before discussing the results of CDM's RACT study, it should be noted that CDM disregarded the carbon adsorption control option because of the difficulties encountered with regeneration. Steam regeneration of spent carbon creates a hazardous waste requiring costly disposal. Hot air regeneration requires an incinerator which duplicates the incinerator control technology option. Also, it is believed that hexane, the major solvent in the end seal lining compounds, has a poor adsorption efficiency. Thus, Lake's reporting of a cost effectiveness figure for a carbon adsorption collection system is not supported by CDM.

CDM focused on thermal and catalytic incineration as preferable control options and determined that the capital cost for a catalytic incinerator system was $1,854,600, approximately $320,000 higher than the capital cost of a thermal incineration system. The annual operating expense for the catalytic incineration system was estimated to be $1,608,719 per year, $2,008,719 per year for thermal incineration.

Dividing the annual cost to operate the control system by the quantity of VOC reduced yields the "cost effectiveness" of the control system. CDM's analysis utilized three figures for the quantity of VOC removed per year: (1) The quantity of VOC removed to reach equivalence with the general end seal compound limit of 3.7 pounds of VOC per gallon (i.e., 27.89 tons per year); (2) the quantity of VOC removed assuming a 40 percent capture efficiency (i.e., 87.70 tons per year); and (3) the quantity of VOC removed assuming that Perlis' 80 percent capture efficiency is correct (i.e., 175.4 tons per year). Heekin does not believe that an 80 percent collection efficiency on the system is possible but has calculated the "cost effectiveness" for comparison purposes.

CDM determined the following "cost effectiveness" figures. For scenario one, removal of sufficient VOCs to reach equivalence with the 3.7 pounds per gallon emission rate limitation, the "cost effectiveness" is $71,597 per ton of VOC removed for thermal incineration and $57,681 per ton of VOC removed for catalytic incineration. For scenario two, removal of VOCs with a 40 percent capture efficiency, the "cost effectiveness" is $23,235 per ton of VOC removed for thermal incineration and $19,310 per ton of VOC removed for catalytic incineration. For scenario three, removal of VOCs with an 80 percent capture efficiency, the "cost effectiveness" is $10,853 per ton of VOC removed for thermal incineration and $9,020 per ton of VOC removed for catalytic incineration.

It should be noted that the above detailed "cost effectiveness" figures were calculated based on can end residence times through the collection system reported by Lake. However, Heekin's actual residence times are much shorter. Lake reported a total residence time for Van Camp of 1.5 minutes. During the Perlis test, a residence time of 3.0 minutes was contrived to gain an 87 percent capture efficiency. Heekin's process lines have a total residence time from lining to stacking/bagging of only 20 to 65 seconds. The discrepancy between Heekin's residence time and the Van Camp/Perlis residence times means that the collection efficiencies for the capture system if it were to be installed at Heekin would be much lower than the collection efficiencies reported by Lake. Thus, the cost effectiveness figures estimated by CDM are on the low side compared to what Heekin could actually attain because the amount of VOCs removed would be much lower.

USEPA Response: Add-on control is not used on any end seal compound coating lines. USEPA agrees that add-on control is not feasible for this application.

Comment 3—Unavailability of Low Solvent Compounds: USEPA stated in its proposed disapproval of Ohio's Food Can End Regulation that the Lake article and the Van Camp data indicated "possible feasibility" of low solvent coatings. According to the article, Van Camp was successful at replacing "9101" compound with a water-based end sealing compound, "480T". The replacement compound was used by Van Camp to manufacture ends to be used for pet food cans. Van Camp continued to use the "9101" compound for its human consumption product line, tuna fish cans. Thus, Van Camp came into compliance with the 3.7 pounds of VOC per gallon limitation by averaging noncompliant VOC emissions from "9101" usage with water-based emissions from "480T" usage. The Van Camp facility continues to operate in this fashion.

Before addressing the viability of the low solvent coating option, one must understand the distinction between a "captive" and a "merchant" can manufacturer. A "captive" can manufacturer supplies cans only for one customer, itself. Conversely, a "merchant" can manufacturer supplies cans for several customers according to the customer's varied requirements and individualized specifications. Thus, a "merchant" manufacturer has little control over the coatings it must use to fabricate the cans.

Heekin is a "merchant" manufacturer. Van Camp was a "captive" manufacturer at the time of the Lake article. Thus, the feasibility of a lower solvent coating for Heekin is complicated by additional determining factors that Van Camp does not have (i.e., Heekin must satisfy the customer's manufacturing requirements and Heekin has no leverage or internal pressure by which to force a customer to make a change).

Since the first promulgation of the RACT regulations, Heekin has made a concerted effort at advising and steering its customers to specifying coatings and compounds with low solvent formulations. With regard to end seal liner compounds, however, Heekin is serving several customers that have refused to accept a low solvent formulation as a replacement to the end seal liner compound with VOC contents exceeding 3.7 pounds per gallon. The major customer in this category is Ross Laboratories in Columbus, Ohio. Ross Laboratories is the nation's largest producer of milk and soy protein infant formulas. They also manufacture medical nutritional products for hospital and home use. Ross has made the determination that "1105" compound is the only suitable compound for fabricating cans for these highly sensitive products. Other national food processing customers specifying "1105" and "9101" end seal compounds include: Quaker Oats Company, American Home Foods, and Beatrice/Hunt-Wesson.

Disallowing the food can end seal regulation will put Heekin at a disadvantage in the "merchant" can manufacturer's market. When approached by Heekin representatives regarding the possibility that Heekin may no longer be able to use "1105", the manager of the purchasing department stated that an option for Ross Laboratories, if the regulation is disapproved and Heekin no longer can supply "1105" ends, is to move its business to another "merchant" can manufacturer that is not restricted by the end seal liner RACT regulation. Thus, since low solvent end seal compounds are not an option for Heekin's customers, Heekin must have the ability to continue to use the "9101" and "1105" compounds for food can ends.

USEPA Response: Heekin has not adequately demonstrated that 4.4 lbs VOC per gallon is RACT for food can end sealing compounds for the following reasons.

1. Other State regulations have a 3.7 lbs/gallon limit for end sealing compounds.

2. The South Coast Air Quality Management District (SCAQMD) amended its can coating rules (in early 1990). These regulations specify 3.7 lbs/gallon for end sealing compounds for food cans.

3. Campbell Soup stated, in its comments, that in May 1989, Campbell converted to a compliant end sealing compound, following extensive research and development efforts funded by Campbell to develop and apply such a compound. This is "evidence that a 3.7 pound standard became technically and commercially feasible for Campbell's Ohio facility."

4. There is no indication that 3.7 lbs/gallon end sealing compounds are unavailable for certain type food cans, e.g., pet food cans and fruit and vegetable cans.

5. Heekin has not demonstrated that it made a substantial effort to develop and/or locate complying end seal compounds.

6. In its June 27, 1989, letter, Ross Laboratories states that there are no qualified replacements, to Dewey and Almy's "1105" end seal compound, available. The letter falls short of saying that they would refuse to use any other suitable product, if it exists.

7. The fact that Heekin is a "merchant" manufacturer is not a sufficient reason for it to have a less stringent limit. Job shops are common in the coating industry and have not in the past been given special consideration because they have to deal with a number of customers. The feasibility of compliant end seal compounds for Heekin's customers' cans is more relevant than its status as a "merchant" manufacturer.

However, USEPA does agree that 3.7 lbs/gallon end seal compounds for certain applications may not be available. A July 12, 1989, letter from Neil Moyer, (then) Director of Rule Development for the SCAQMD, states that compliant end seal compounds are a problem for cans used for tuna and other oily products.

Heekin may, in fact, have a problem with end seal compounds for certain products. However, USEPA does not have the ability to create exemptions for Heekin. The State has not submitted such a rule. The State submitted relaxation (to 4.4 lbs/gallon) for all end seal compounds is overly broad and cannot be approved. Furthermore, Heekin has not adequately demonstrated the lowest VOC content feasible for its end seal compounds for specified applications.

3. Central States Can Company Submitted Comments on July 26, 1989

Comment 1: We would be interested to know if there are any end lines running with off-line controls that can maintain a reduction efficiency of 76 percent (80% capture, 95% control) over a long period of time. The type of control systems that could be used on end lining systems would require a residence time of several hours and seem to be totally impractical considering the size required and the operational cost.

USEPA Response: USEPA is not aware of add-on control being used on any end seal compound coating lines. USEPA agrees that add-on control is not feasible for this application.

Comment 2: We note that the "480T" compound has been used on pet food. OEPA (presumably commenter means USEPA) seems to be proposing its use on all foods on the basis of tests with pet food. It should be pointed out that many other products besides pet food (including infant formula) are packed and should be considered before such a change is made. The USEPA cannot ignore food safety in its proposed action.

USEPA Response: USEPA agrees that there appear to be some products which cannot use 3.7 lbs/gallon end seal compounds. However, there appear to be some food cans (e.g., pet food cans) which can use compliant end seal compounds. It is the State's responsibility to demonstrate that the requirements it submits are RACT. The burden is on the State to show for which cans another limit (above 3.7) is RACT and what is that appropriate limit. For example, an adequate demonstration has not been made of the lowest VOC content feasible for end seal compounds used for products such as infant formula. Because the State has submitted a general relaxation of the end seal limit and has not demonstrated that the relaxed limit is RACT for all end seal compounds, USEPA cannot approve the relaxation.

Comment 3: While we are confident that other foods can successfully use an alternate compound, it is important that these products be tested prior to making such a change. It is not unreasonable that this testing for all products may require as much as 5 years. It is, therefore, requested that the Ohio proposed relaxation be approved.

USEPA Response: The need for testing does not, in itself, justify a permanent relaxation. Central States Can has provided no specifics about food safety testing, and it is therefore not possible to evaluate the effects it would have. The nature and length of the testing is also not specified. Furthermore, there are no details or support for the Central States comment that "It is not unreasonable that this testing for all products may require as much as 5 years."

4. The Can Manufacturers Institute (CMI) Submitted Comments on July 28, 1989

The CMI supports OEPA's action to raise the VOC end seal compound limits. CMI's specific comments are as follows:

CMI's Position

CMI opposes the basis of USEPA's proposed denial of Ohio's revision of end seal compound VOC limits. We believe USEPA's reliance on the study of Van Camp's efforts in San Diego is misguided.

Additionally, CMI is concerned that the Agency is willing to risk endangering the food supply or forcing Ohio-based can makers to surrender business to obtain minuscule gains in the National Ambient Air Quality Standards (NAAQS).

The Van Camp Study by Michael Lake

In 1986, Michael Lake of the San Diego County Air Pollution Control District, San Diego, California, presented a paper entitled "VOC Emission Control for Can End Sealing Compounds: A Case History." This study outlines the Van Camp Company's experience in testing, qualifying and running water-based end seal compound. It also broached the possibility of using add-on equipment around end seal application operations. USEPA cites Van Camp's narrow experience with add-on control equipment and water-based end seal compound as the rationale for denying Ohio's proposed rules 3745–21–09 (D)(1)(e) and (D)(2)(e).

Add-On Controls

The add-on control equipment referred to in the Lake study was not installed on a permanent basis. The Van Camp plant managers in 1987 told CMI that initial tests of mock-up add-on equipment showed the system was impractical from an engineering and production standpoint. The Lake study cites three very serious concerns of Van Camp concerning add-on control equipment:

1. The prototype VOC containment/capture system had not been tested under rigorous, extended-production conditions;
2. The system might not allow sufficient visual and physical access by line operators; and
3. Carbon adsorption was and still is an unproven technology for control of VOC emissions from can end sealing lines.

CMI asserts that a theoretical system which did not prove practical, safe or efficacious should not be used as a basis for USEPA to deny a reasonable regulatory action by Ohio's environmental authority.

Water-Based End Seal Compound

The use of the Van Camp Study on water-based end seal compound to deny relaxation of the Ohio VOC limits wrongly assumes these test conditions are acceptable to qualify end seal compound for other types of packs and containers. The process required to safely qualify a new end seal compound is linked to different packing and food conditions. As a general rule, more testing is required for materials which are used on a broad basis.

The successful use of a water-based end seal compound by Van Camp, a division of the Ralston Purina Company, is limited to a very specific, narrow category of food products—tuna and pet food. The Ohio can manufacturers who would be subject to this rule produce containers for a wide variety of products, including baby food, soups and vegetables.

For USEPA to assume that uniformity exists between the processes which Van Camp and Ohio can makers use to qualify end seal compounds is to short change the factors which are necessary to ensure food safety and shows a considerable lack of understanding of the delicate nature under which food is processed and packaged. CMI is concerned that USEPA is willing to risk the safety of the American food supply in order to obtain minimal gains toward attainment of the NAAQS in Ohio.

Conclusion

In 1984 and 1985, CMI and its Ohio-based members asked OEPA to relax the VOC end seal limits because they could not use lower solvent end seal compound with the complete certainty that food safety would be assured. If a catastrophic failure were to occur in a single canned product which resulted in the illness or death of a consumer, the integrity of all canned foods would be suspect.

USEPA Response: USEPA's position on these issues has been previously stated in the response to Heekin's and Central States Can's comments. In summary, it is agreed that add-on control has not been demonstrated to be feasible for end seal compound application operations. However, it has not been documented that 4.4 lbs/gallon is the most stringent limit that is feasible for food can end seal compounds in general. Furthermore, the CMI has not documented the effect that food safety concerns have on using 3.7 lbs/gallon end seal compounds. For example, if CMI's position is that 3.7 lbs/gallon end seal compound cannot be used with canned vegetables (for example) due to safety reasons, it has not supported its position.

5. OEPA Submitted Comments on July 31, 1989

Comment: The Michael Lake report (paper) was not provided to OEPA during OEPA's public hearing on the eventual 1986 rulemaking. Therefore, OEPA could not consider such information. Since USEPA has added that report to the docket, USEPA must show that the report, which pertains to a specific plant in a specific food industry, is applicable to all food industries or at least the food industries in Ohio.

If complying end sealing compounds (at the "3.7" level) are or will be available, OEPA asks that USEPA provide some guidance on the proper date for compliance. The original RACT regulations, as envisioned by USEPA, were to require compliance by the end of 1982 with a time extension up through the end of 1985 for some can plants where adequately justified. The Michael Lake paper shows that "it may be feasible and cost effective to control VOC emissions at the line with carbon adsorption or incineration" according to

USEPA. At what level of cost-effectiveness? Does that transfer to plants in Ohio?

USEPA Response: It is OEPA's responsibility to demonstrate that 4.4 lbs/gallon is the most stringent limit that is feasible for food can end seal compounds. OEPA provides no basis for its statement that "U.S. EPA must show that the report, which pertains to a specific plant in a specific food industry, is applicable to all food industries or at least the food industries in Ohio." It would be appropriate for Ohio to provide adequate support for a relaxation that would make its limit the least stringent in the country. Similarly, additional time to achieve compliance with Ohio's end seal limit will only be considered by USEPA if it is proposed and submitted by OEPA. As stated previously, USEPA agrees that add-on control is not feasible for this operation. Therefore, the cost-effectiveness issue is moot.

2. Cutback and Emulsified Asphalt-Rule 3745-21-09(N)(4)

A. Proposed Action

Ohio added paragraph 3745-21-09(N)(4) to establish recordkeeping requirements for those persons using or applying cutback asphalt or emulsified asphalt during the period from May 15 through September 15.

USEPA proposed disapproval because these recordkeeping requirements are inadequate in that they do not apply to the appropriate SIP period of April 15 through October 15. Although in its State regulations, Ohio currently has an exemption period of September 15 through May 15, USEPA disapproved that extended exemption period when it was submitted as a SIP revision. 54 FR 1934. The applicable SIP exemption period is October 15 through April 15.

Under the current USEPA approved regulations, the use or application of cutback asphalt or emulsified asphalt during October 15 through April 15 is exempt from limitations. Thus, the recordkeeping requirements are necessary for the remaining period: April 15 through October 15.

B. Comments

OEPA's July 31, 1989 Comment: The recordkeeping requirements and the September 15 through May 15 exemption period are considered adequate in light of the USEPA Region VI's proposed approval of the Texas regulation which had a September 15 through April 15 exemption period in a much warmer spring-fall period.

USEPA Response: Paragraph 3745-21-09(N)(4) only deals with recordkeeping requirements and not when cutback asphalt is allowed to be used. Ohio's Federally approved SIP does not allow cutback asphalt to be used from April 15 through October 15. Unless and until the exemption period is changed (in 3745-21-09(N)(3)), the recording requirements must reflect the SIP requirements. Therefore, Paragraph 3745-21-09(N)(4) should be finally disapproved.

3. Cutback and Emulsified Asphalt-Rule 3745-21-09(N)(3)(e)

A. Proposed Action

This paragraph states that the control requirements of (N)(1) and (N)(2) shall not apply:

To the use or application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing, provided the maximum daily usage is less than one thousand gallons *for any work crew.*

USEPA proposed to disapprove this exemption (without the underlined words) on March 6, 1985 (and finally disapproved this exemption on January 18, 1989 (54 FR 1934)), and proposed to disapprove the rule as revised in the May 30, 1989 **Federal Register**. This exemption is supported by a November 3, 1982, letter from the Ohio Department of Transportation which states that "Our attempts at using emulsified asphalt as crack sealers have not generally been satisfactory." The County Engineers Association of Ohio, in a June 22, 1982, letter, requested OEPA to "Permit use of cutback asphalt for patching up to a usage not to exceed 2,000 gallons per day at any time of the year". The County Engineers stated that this requested change "would improve the efficiency and economy of road paving and maintenance work."

The language added to the end of (N)(3)(e) clarifies the exemption. However, this clarifying language could result in substantially increased VOC emissions because it clarifies that the one thousand gallons per day refers to each work crew. Therefore, this clarifying language, and the supporting documentation, does not change USEPA's position on this exemption, for which an adequate basis has not been provided. USEPA informed OEPA of this in its September 17, 1985, comment letter.

B. Comments

OEPA's July 31, 1989 Comment: The hand application exemption for crack sealers and road patching conforms to the best judgement of the engineering staff at the Ohio Department of Transportation and the County Engineers Association of Ohio. Ohio's record in the conversion to acceptable emulsified asphalts is above the median level of the 35 regulated States. This exemption is certainly minor when considering this fact.

USEPA Response: Ohio's ratio of emulsified to cutback asphalt used in 1987 is not a valid basis for exempting the hand application of cutback asphalt. This exemption is inconsistent with USEPA guidance and its previous determination of RACT. Ohio has not adequately demonstrated that this revised language causes this exemption to constitute RACT and it has provided no data on the amount of additional cutback asphalt that is used in the ozone season as a result of the exemption.

4. Miscellaneous Metals-Rule 3745-21-09(U)(1)(a)(vii)

A. Proposed Action

This paragraph establishes a limitation of 4.8 lbs VOC/gallon of coating, excluding water, for a heat resistant, anti-corrosion coating applied to the interior of a motor vehicle directly above the catalytic converter. This revision was proposed for disapproval because it is a relaxation of approved VOC emission limits in Ohio's ozone SIP and Ohio has not made a demonstration that this relaxation will not interfere with attainment and/or maintenance of the ozone NAAQS. Furthermore, the July 29, 1983, memorandum titled "Source Specific SIP Revisions" by Sheldon Meyers, former Director of Air Quality Planning and Standards, addresses the issue of VOC SIP relaxations. This memorandum states that approval of such a relaxation would require a data base and modeling demonstration consistent with that applied in extension areas. The sources subject to this relaxation are located in Lordstown and Dayton, Ohio. There have not been any revised attainment demonstrations, consistent with those done for extension areas, submitted for these areas.

B. Comments

OEPA's July 31, 1989 Comment: The required demonstration will be made as part of the upcoming post-1987 ozone SIP submissions. USEPA is asked to accept such commitment on the part of OEPA. Region VI has accepted such commitment for a future SIP impact assessment at 54 FR 23672 on June 2, 1989 (regarding Vulcan Materials Company, Geismar Chemicals Plant).

USEPA Response: This requested rule relaxation is being reproposed in a separate **Federal Register** notice which deals with corrections to Ohio's VOC rules (as required by the Clean Air Act, as amended in 1990). The reason for this reproposal is that the revelant policy has changed with the Amended Act.

5. Architectural Aluminum Coating-Rule 3745-21-09 (U)(1)(a)(viii)

A. Proposed Action

The VOC requirement in this paragraph establishes a limitation of 6.2 lbs VOC/gallon of coating excluding water for high performance architectural aluminum coatings. OEPA considers this limitation to constitute RACT. This relaxation is supported by a September 6, 1985, letter from Reynolds Aluminum, to OEPA. This letter states that "We have been unable to convert our High Performance Architectural Aluminum Coatings to a low solvent formulation." Reynolds attached a December 6, 1984, letter from PPG which states that its efforts to develop compliant coatings for the architectural and recreational vehicle markets have been unsuccessful. USEPA proposed to disapprove this relaxation because OEPA has neither documented the infeasibility of add-on control nor the potential use of powder coatings. Three of these suppliers, Armstrong Products, Fuller O'Brien, and Polymer Corporation, expect their coatings to pass the 5 year exposure test. Some of these are currently in the third or fourth year of their 5-year testing period. Therefore, a permanent relaxation for high performance architectural aluminum coatings is not approvable.

B. Comments

OEPA's July 31, 1989 Comment: The USEPA purported availability of compliant coatings for high performance architectural aluminum coatings at 3.5 lbs VOC per gallon from Armstrong Products, Fuller O'Brien, and Polymer Corporation should be documented in the docket. If a permanent relaxation is not appropriate, does USEPA recommend a relaxation for a specific year (e.g., up to 1989 or 1990)?

USEPA Response: Documentation of USEPA's conversations with powder coating suppliers is in the Docket. The CTGs and Ohio SIP establish the presumptive RACT for this source category. Ohio's comments provide no support for its proposed relaxation. USEPA is only able to take actions on proposed SIP revisions that are submitted to it. USEPA will evaluate the merits of a compliance date extension if submitted and supported by OEPA. Therefore, USEPA is disapproving this relaxation.

Final Action

OEPA had proposed a number of revisions to its RACT I, RACT II, and general VOC rules. These are contained in OAC Chapter 3745-21-01, Definitions; OAC Chapter 3745-21-04, Compliance and Schedules; OAC Chapter 3745-21-09, Emission Limits; and OAC Chapter 3745-21-10, Test Methods. A listing and short description of all of these revisions are in USEPA's technical support documents, dated July 14, 1986, September 23, 1986, and July 27, 1988. Many of these revisions are minor.

Ohio submitted these regulations in 1986 in order to meet the RACT requirement of the pre-amended Act and USEPA reviewed this submittal against the general RACT requirement of the preamended Act, 1977 Act § 172.54 FR 22915 (May 30, 1989). Since USEPA did not issue a SIP call with respect to the elements of this submittal, these revisions are not required under the section 182(a)(2)(A) RACT fix-up requirement of the Act. However, amended section 172 retains a general requirement that States must adopt RACT for nonattainment areas. Therefore, USEPA is taking final partial approval action as proposed under Section 110 and Part D of the Amended Act, with the exception of the following:

1. USEPA is disapproving the proposed relaxation for food can end sealing compounds in 3745-21-09(D)(1)(e) (from 3.7 to 4.4 lbs VOC/gal).
2. USEPA is disapproving the proposed revision to the exemption, as well as the entire exemption in 3745-21-09(N)(3)(e) for the application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing. In addition, USEPA is disapproving the recordkeeping requirements in 3745-21-09(N)(4) because they are inadequate with respect to the time period during which records are required.
3. USEPA is disapproving the relaxation (from 3.5 to 6.2 lbs VOC/gal) for high performance architectural aluminum coatings in 3745-21-09 (U)(1)(a)(viii).
4. In the proposed rulemaking for this revision published at 54 FR 22915 (May 30, 1989), USEPA proposed to take no action on the exemption for new sources in 3745-21-09(U)(2)(f). USEPA believes that the Amended Clean Air Act affects this element and will repropose action on it consistent with the amended Act in a separate **Federal Register** document.
5. In the May 30, 1989, proposed rulemaking for this revision, USEPA proposed to disapprove the relaxation for miscellaneous metals in 3745-21-09 (U)(1)(a)(vii). This requested rule relaxation will be reproposed in a separate **Federal Register** notice because the relevant policy has changed with the Amended Act.

As stated earlier, Ohio's April 9, 1986, State submittal included new VOC regulations for additional RACT III source categories not specifically covered by Ohio's existing rules and a site-specific revision for the Huffy Corporation. This **Federal Register** document does not address these other elements of the April 9, 1986, submittal. This notice also does not address those amendments to the ozone SIP that were previously submitted on March 28, 1983, to USEPA and for which final rulemaking was taken on January 18, 1989 (54 FR 1934).

Under Executive Order 12866, this action is not significant. It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 13, 1994.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(90) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(90) On April 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted amendments to the Ohio Administrative Code (OAC) Chapter 3745–21. The amendments are embodied in the following OAC regulations: Definitions, Rule 3745–21–01; Attainment dates and compliance time schedules, Rule 3745–21–04; Control of emissions of volatile organic compounds from stationary sources, Rule 3745–21–09; and Compliance test methods and procedures, Rule 3745–21–10. USEPA is approving these amendments with the following exceptions: The proposed relaxation for food can end sealing compounds in 3745–21–09(D)(1)(e) and (D)(2)(e) (from 3.7 to 4.4 lbs VOC/gallon); the proposed revision to the exemption in 3745–21–09(N)(3)(e) for the application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing; the recordkeeping requirements in 3745–21–09(N)(4); the relaxation from 3.5 to 6.2 lbs VOC/gallon for high performance architectural aluminum coatings in 3745–21–09(U)(1)(a)(viii); the exemption for new sources in 3745–21–09(U)(2)(f); and the relaxation for miscellaneous metals coatings in 3745–21–09(U)(1)(a)(vii).

(i) Incorporation by reference.

(A) Amendments to Ohio Administrative Code Rule 3745–21–01, effective on May 9, 1986.

(B) Amendments to Ohio Administrative Code Rule 3745–21–04, effective on May 9, 1986.

(C) Amendments to Ohio Administrative Code Rule 3745–21–09, effective on May 9, 1986, except for:

(1) 3745–21–09(D)(1)(e) and (D)(2)(e) (proposed relaxation for food can end sealing);

(2) 3745–21–09(N)(3)(e) (proposed revision to the exemption for the application by hand of any cutback or emulsified asphalt for patching crack sealing);

(3) 3745–21–09(N)(4) (recordkeeping requirements);

(4) 3745–21–09(U)(1)(a)(viii) (relaxation from 3.5 to 6.2 lbs VOC gal for high performance architectural aluminum coatings);

(5) 3745–21–09(U)(2)(f) (the exemption for new sources); and

(6) 3745–21–09(U)(1)(a)(vii) (relaxation for miscellaneous metal coatings).

(D) Amendments to Ohio Administrative Code Rule 3745–21–10, effective May 9, 1996.

[FR Doc. 94–10652 Filed 5–3–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PP Docket No. 93–253, FCC 94–61]

Implementation of Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules establishing general procedures that will apply whenever it employs a system of competitive bidding ("auctions") to choose from among mutually exclusive applications for certain initial licenses. This action is taken to implement section 309(j) of the Communications Act of 1934, as amended. Procedures applicable to specific services will be determined in future Reports and Orders. The new rules will promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. These rules also will promote economic opportunity and competition, and disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. This action will provide recovery for the public of a portion of the value of the public spectrum made available for commercial use.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Office of Plans and Policy, (202) 418–2030.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, PP Docket No. 93–253, adopted March 8, 1994, and released April 20, 1994. The full text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, telephone (202) 857–3800.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Please note: The Commission has requested emergency review of this collection by May 6, 1994, under the provisions of 5 CFR 1320.18.

Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, PP Docket No. 93–253.

Action: New collections.

Respondents: Individuals, state or local governments, non-profit organizations, business or other for-profit entities, including small business.

Frequency of response: On occasion.

Estimated Annual Burden:

Section/forms	Number of respondents	Estimated average hours per response	Estimated annual responses
FCC Form 175	6,400	.50	3,200
Section 1.2105(a)(2)(i)–(ix)	6,400	.50	3,200
Section 1.2107	4,700	1.00	4,700
Section 1.2108	2,350	20.00	47,000
Section 1.2111	100	.50	50
FCC Form 175–S	2,700	.25	675
Microfiche Req	6,400	2.00	12,800
Total Annual Burden: 71,625.			

Needs and Uses: In the Second Report and Order in PP Docket No. 93–253, the Commission has amended 47 CFR part 1 to add a new Subpart Q which contains the general rules and requirements governing the competitive bidding process for certain initial licenses. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically, and financially qualified to be licensed. Affected public are any member of the public who wants to become a licensee. The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission Records Management Division, Paperwork Reduction project, Washington, DC 20554 and to the Office of the Management and Budget Paperwork reduction project, Washington, DC 20503.

Summary of Second Report and Order

Introduction

1. In this Second Report and Order, we prescribe general rules and procedures to implement the Commission's new authority under Section 309(j) of the Communications Act of 1934, as amended, to use competitive bidding to award licenses for use of the radio spectrum. In the future, in subsequent Reports and Orders, specific rules within the scope of these general rules will be adopted for each service subject to competitive bidding.

2. A voluminous number of comments and reply comments were filed by interested parties in response to the Notice of Proposed Rule Making (58 FR 53489 (October 15, 1993)) in this docket. These comments address the many proposals made in the Notice.

Eligibility of License Applications for Competitive Bidding

3. The Commission will use competitive bidding to award licenses only when the statutory criteria for auctionability set forth in Section 309(j) of the Communications Act are met. First, there must be mutually exclusive applications for an initial license or construction permit. Second, the service applied for must principally involve the transmission or reception of communications services to subscribers for compensation. Applying these criteria, the Commission determined that mutually exclusive licenses in the Interactive Video Data Service (IVDS), the Personal Communications Services, most of the Public Mobile Services, the Multipoint Distribution Service, the Multichannel Multipoint Distribution Service, the Specialized Mobile Radio Service, Marine Public Coast Stations and for exclusive frequencies above 900 MHz in the Private Carrier Paging Service should be awarded through competitive bidding.

4. Because licensees in the Broadcast Radio and Broadcast Television Services, Maritime Operational Fixed Stations, Personal Radio Services (except IVDS), certain Private Land Mobile Radio Services and certain other services do not receive compensation from subscribers, these services are excluded from the competitive bidding process. The following kinds of applications are not subject to competitive bidding: Applications for renewal of licenses, most applications for modification, applications for subsidiary communications services, and applications for frequencies used as intermediate links in the provision of service.

Competitive Bidding Design Options

5. We adopt simultaneous multiple round auctions as our primary auction methodology. However, as the record convinces us that there is no single competitive bidding design that is optimal for all auctionable services and because Congress directed us to design and test multiple alternative methodologies, we have provided alternative methods from which to choose under appropriate circumstances. The alternative design options are single round sealed bid auctions (either sequential or simultaneous) and sequential oral auctions.

6. The two primary characteristics that will determine the choice of auction design are: (1) The degree to which licenses are interdependent, and (2) whether the expected license values are high or low. Because we expect most licenses to be of high value and interdependent, the simultaneous multiple round auction is our preferred auction design. The Commission will select the competitive bidding design to be used in auctioning particular licenses on a service-specific basis. Combinatorial bidding, which may be used with any type of auction, is also authorized for use as a competitive bidding mechanism.

Procedures to Implement the Competitive Bidding Designs

7. To efficiently implement the competitive bidding designs, we must specify certain auction procedures. We will choose from these procedures and incorporate them into the service-specific rules that we will adopt in the future.

8. *Sequencing.* We will choose the sequence of what is auctioned. The importance of the choice of sequence increases with the degree of interdependence among the items auctioned in sequence. We intend to minimize the importance of the choice of sequence by auctioning licenses sequentially only when there is not a high degree of value interdependence across the licenses or groups that are offered in sequence.

9. *Duration of bidding rounds.* In simultaneous multiple round auctions, bids can be submitted continuously with the high bids announced at the end of each round. With discrete rounds, the Commission can more readily control the pace at which the auction proceeds. The duration of bidding rounds and the interval between rounds in simultaneous multiple round auctions may be varied by announcement during the course of an auction. We generally intend to give bidders a single business day to submit bids and intend to conduct a new bidding round each business day, but we may choose other round lengths and intervals between rounds.

10. *Minimum bid increments.* In multiple round auctions, whether they be sequential or simultaneous, the Commission will generally specify minimum bid increments. The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current round. Imposing a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. We reserve the right to specify minimum bid increments in dollar terms as well as in percentage terms. We also may vary the minimum bid increments with respect to different licenses being awarded in one auction.

11. *Stopping rules for multiple round auctions.* Prior to each multiple round auction, the Commission will announce by Public Notice a stopping rule for determining when the auction is over. We seek a stopping rule that will (1) terminate the auction in a reasonable period of time, (2) be simple and clearly understood by participating bidders and observers of the auction process, and (3) in the case of simultaneous auctions, close all markets at approximately the same time. In simultaneous auctions, the stopping rules must also specify whether to close markets individually or simultaneously. Hybrid stopping rules are also possible.

12. The following stopping rules are preferred: (1) When auctioning licenses one at a time, or simultaneously and closing markets one at a time bidding on a market will close if a single round passes in which no new acceptable bids (*i.e.*, no bids that meet any applicable bid increment rule) are submitted for that license; (2) when auctioning licenses simultaneously and closing markets simultaneously—bidding on all markets will close if a single round

passes in which no new acceptable bids are submitted for any license.

13. *Activity rules.* To ensure that simultaneous auctions with our preferred simultaneous stopping rule close within a reasonable period of time, an activity rule is likely to be necessary to prevent bidders from waiting until the end of the auction before participating. Where we decide to employ an activity rule, we will seek one that (1) moves auctions along at an appropriate speed, (2) provides bidders with sufficient flexibility to pursue a wide range of alternative bidding strategies, and (3) is simple and clearly understood by participating bidders.

14. When the Commission employs a simultaneous stopping rule, our preferred activity rule will be the three stage rule proposed by Professors Paul Milgrom and Robert Wilson. Under this rule, the minimum activity level, measured as a fraction of the self declared maximum eligibility, would increase during the course of the auction. The auction would be divided into three stages. During the first stage of the auction, bidders would be required to be active on licenses encompassing at least one-third of the MHz-pops for which they are eligible. In the second stage, bidders would be required to be active on licenses encompassing at least two-thirds of the MHz-pops for which they are eligible. In the third stage, bidders would be required to be active on licenses encompassing 100 percent of the MHz-pops for which they are eligible. Bidders under this rule would be required to meet these activity levels to retain their desired eligibility. A shortfall in activity would reduce eligibility levels accordingly.

15. The Commission retains the flexibility to choose among activity rules, other than the three stage Milgrom-Wilson rule, on a case-by-case basis. These include: (1) A Milgrom-Wilson rule with one or two stages, (2) a rule that requires bidders to be active on a single license, (3) a rule that requires that a bidder's activity level remain within a single range throughout the action, (4) a rule that replaces the maximum allowed bidding levels in the Milgrom-Wilson rule with a bidding premium for exceeding those maximums, or (5) a combination of the foregoing rules. We conclude that a waiver procedure is necessary in conjunction with a Milgrom-Wilson activity rule. Under our preferred option, bidders will be permitted five automatic waivers of the minimum activity requirement during the course of an auction.

16. *Bid withdrawal and default penalties.* If a high bid is withdrawn prior to the close of a simultaneous round auction, the Commission will impose a penalty equal to the difference between the withdrawn bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty will be assessed if the subsequent winning bid exceeds the withdrawn bid. If a winning bidder defaults after the close of such an auction, the defaulting bidder will be required to pay the foregoing penalty plus an additional penalty equal to three percent of the amount of the winning bid the next time the license is offered by the Commission or three percent of the amount of the defaulting bidder's bid, whichever is less.

17. In the case of open outcry auctions, the Commission may choose not to impose any penalty for bid withdrawal during the course of an auction and instead rely only on the default penalty to discourage insincere bidding. The default penalty will be assessed if a bidder fails to make the down payment on a license, fails to pay for a license or is disqualified after the close of an auction. In connection with single round bidding, only the basic penalty (and not the additional three percent penalty) would generally apply

18. *Release of Bid Information.* We will announce bidder identification numbers and bid amounts during the course of an auction, but not the identities of bidders, to avoid potential manipulation and collusion among bidders.

19. *Delay, Suspension or Cancellation of Auction.* By Public Notice or by announcement during an auction, the Commission may delay, suspend or cancel an auction in the event of a natural disaster, technical obstacle, evidence of auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of the competitive bidding. In such cases, the Commission may, at its sole discretion, resume the auction starting from the beginning of the current or some previous round or may cancel the auction in its entirety.

Pre-Auction Procedures and Bidder and License Qualification

20. To streamline the processing of auction applications and ensure that bidders and licensees are qualified, we are adopting the following procedures. Usually, no less than 75 days before each scheduled auction, the Commission will release a Public Notice announcing the auction. The initial Public Notice will normally contain information such as the licenses to be auctioned and the time, place and method of competitive bidding to be used, including applicable bid withdrawal procedures and penalties, stopping rules and activity rules.

21. The initial Public Notice will also specify filing windows for short-form applications (no long form applications are to be filed at this stage of the competitive bidding application procedure) and bidder certifications, filing fees, upfront and down payments Applications filed before or after the dates specified in the Public Notice will not be accepted by the Commission. Applications submitted after the deadline specified will be dismissed with prejudice. An auction information package will be made available to prospective bidders after the release of the initial Public Notice. Slightly different procedures will apply when the rules permit applicants to submit long form applications after the occurrence or nonoccurrence of certain events (e.g., passage of time and failure to serve a particular area).

22. The short-form applications and bidder certifications will normally require applicants to provide the following information: (1) The license(s) for which the applicant wishes to bid, (2) the applicant's name, (3) the identity of the person(s) authorized to bid, (4) certifications that the applicant is legally, technically, financially, and otherwise qualified, and (5) certification that the applicant satisfies any financial qualification requirements for the service in question. Applicants seeking to file as designated entities eligible for bidding preferences must indicate their status in the short-form application and must certify that they are qualified to file as designated entities. Bidders will also be required to identify all parties with whom they have entered into partnerships, joint ventures, consortium, or other arrangements or agreements. Bidders will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements with any parties other than those identified regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

23. After reviewing the short-form applications, the Commission will issue a Public Notice listing all defective applications and notify applicants of the specific defect. If the Commission receives only one application that is acceptable for filing for a particular license, the Commission will issue a Public Notice cancelling the auction for

this license and establishing a date for the filing of a long-form application, the acceptance of which would trigger the relevant procedures permitting petitions to deny. Applicants whose short-form applications are substantially complete but have minor errors or defects will be provided an opportunity to correct their applications prior to the auction. However, applicants will not be permitted to make any major modifications to their applications, including ownership changes or changes in the identification of parties to bidding consortia. Also, applications that are not signed or that fail to make the requisite certifications will be dismissed as unacceptable.

24. After reviewing the corrected applications, the Commission will release another Public Notice announcing the names of all applicants whose applications have been accepted for filing. Applicants identified in the Public Notice will then be required to submit the full amount of their upfront payment to the Commission's lock-box bank by a date to be specified in that Public Notice which generally will be no later than 14 days before the scheduled auction.

25. Once the Commission has received from the lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a fourth Public Notice announcing the names of all applicants that have been determined to be qualified to bid. Each of these applicants will be provided a bidder identification number and further information and instructions regarding the auction procedures.

Competitive Bidding Payments

26. *Upfront Payments.* In most cases, some form of upfront payment is necessary to deter frivolous or insincere bidding. We have determined that the best approach is to retain flexibility to determine the amount of upfront payment on an auction-by-auction basis. Generally, a bidder must submit an upfront payment equal to $0.02 per pop per MHz for the largest combination of MHz-pops the bidder anticipates bidding on in any single round of bidding. A bidder may file applications for every license being auctioned, but its actual bidding in any round of an auction will be limited by the amount of its upfront payment.

27. Upfront payments will provide the Commission with a source of available funds in the event a penalty must be assessed for bid withdrawal prior to further payments. In future Reports and Orders establishing service-specific auction rules, we may determine that the $0.02 per pop per MHz formula is inappropriate because of product market or license characteristics or auction design choice. In some circumstances, we may decide that it is more appropriate instead to set a fixed upfront payment or eliminate the upfront payment. We therefore reserve the option of revising or waiving the upfront payment. In such cases, we will adopt an alternative upfront payment in service-specific auction rules or in the Public Notice announcing the auction.

28. As a general rule, we will not cap upfront payments because we need to ensure that those bidding on large numbers of licenses have the financial capability to build out those licenses and are bidding in good faith. However, we reserve the right to institute caps in specific services if we are satisfied that an absolute dollar amount will provide sufficient deterrence against frivolous bidding and pernicious strategic bidding. Setting a minimum upfront payment may be appropriate when use of our preferred formula would result in a payment that would be too small. Although a general minimum upfront payment of $2,500 is reasonable, we retain the flexibility to modify this amount.

29. As a general matter, to protect the integrity of the auction process, all applicants should be required to tender their upfront payments to the Commission prior to bidding. However, given the likely magnitude of some upfront payments and the fact that there will be a significant interval between the date that short-form applications are filed and the auction date, we will not require the filing of upfront payments with short-form applications. Upfront payments will be required to be made to the Commission on a date to be announced by Public Notice, generally no later than 14 days before the scheduled auction.

30. *Down Payment.* A 20 percent down payment is appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system and protect against possible default, while at the same time not being so onerous as to hinder growth and diminish access. We therefore will require that winning bidders supplement their upfront payments with a down payment sufficient to being their total deposits up to 20 percent of their winning bid(s). The down payment by cashier's check or wire transfer to our lock-box will generally be required within five business days after the auction is over.

31. *Remainder of License Payment.* The Commission will not permit licensees to satisfy their payment obligations to the Commission through the payment of royalties. With the exception of certain designated entities, we are requiring full payment of the remainder of the winning bid in a lump sum. This will leave financing to the private sector and eliminate the need for the Commission to conduct detailed credit checks.

32. *Default and Disqualification.* It is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses, or default on a balance due. We will require any auction winner who defaults by failing to remit the required down payment within the prescribed time to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission.

33. A defaulting auction winner will also be assessed a penalty of three percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the three percent penalty will be calculated based on the defaulting bid's amount. This additional penalty will also apply if an auction winner is disqualified or fails to remit the balance of its winning bid after having made the required down payment. We will hold deposits made by defaulting or disqualified auction winners to help ensure that the penalty is paid.

34. If a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission also may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it may deem necessary. Where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation.

35. If the high bidder makes the down payment in a timely manner, a long-form application will be required to be filed by a specified date, generally within ten business days after the close of the auction. The Commission will then review the long-form application to determine if it is acceptable for filing. Upon acceptance for filing, the Commission will release a Pubic Notice announcing acceptance for filing of the long-form application thus triggering the filing window for petitions to deny.

36. The long-form application must include as an exhibit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement they have entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of the short-form application. If all petitions to deny are dismissed or denied, the Commission is satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

37. The Commission need not conduct a hearing before denial if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination. In the event that the Commission identifies substantial and material issues of fact in need of resolution, Sections 309 (j)(5) and (i)(2) of the Communications Act permit in any hearing the submission of all or part of evidence in written form and allows employees other than administrative law judges to preside at the taking of written evidence.

38. As a general rule, when an auction winner defaults on its final payment or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the license. Nevertheless, if a default occurs within five business days after the end of bidding, the Commission retains the right to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders at their final bid levels. If a new auction becomes necessary because of a disqualification or default more than five business days after the end of bidding, we will afford new parties an opportunity to file applications to assure that serious interested bidders are in the pool of qualified bidders at any re-auction.

39. *Reservation Prices.* We will retain the flexibility to utilize a reservation price below which a license would not be awarded if we decide that it is appropriate in a particular auction. The reservation price could be disclosed, in which case it would effectively constitute a minimum bid, or it could be undisclosed.

Regulatory Safeguards

40. We will impose a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not. We will give particular scrutiny to action winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, in order to determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. The applicant will be required to file, together with its application, the associated contracts for sale, option agreements and all other documents disclosing the total consideration received in return for the transfer of its license

41. We believe that it is unnecessary and undesirable to impose performance requirements on all auctionable services in excess of those set forth in service rules for most existing services. We do not believe that additional, general requirements are needed to address concerns over "warehousing" of spectrum. With respect to those services where no performance requirements currently exist, however, we will prescribe such performance rules as are necessary at the same time we promulgate competitive bidding rules for each of those services.

Designated Entities

42. *Definitions.* We are adopting a menu of preferences from which we will choose in service-specific auction rules. These preferences are designed to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively "designated entities") are given the opportunity to participate in both the competitive bidding process and in the provision of spectrum-based services. To qualify as a "small business" for the purposes of competitive bidding, an entity must be an independently-owned business with a net worth not exceeding $6 million dollars and an average net income after Federal income taxes for two preceding years not in excess of $2 million. In order to be eligible for preferences, businesses owned by women or minorities will be required to have at least 50.1 percent equity ownership and a 50.1 percent controlling interest owned by women or minorities. Rural telephone companies will be eligible for preferences if they are independently owned, have 50,000 access lines or fewer and serve communities with no more than 10,000 inhabitants.

43. *Installment payments.* We may allow small businesses (including rural telephone companies and businesses owned by women and minorities and rural telephone companies) that are winning bidders for certain blocks of spectrum to pay in installments over the term of their licenses. As a general matter, we will only allow installment payments for licenses in those smaller spectrum blocks that are most likely to match the business objectives of *bona fide* small businesses. The down payment for such designated entities will be 10 percent of the winning bid instead of 20 percent. Once the license is granted we will require that the remaining 10 percent of the down payment be made within five business days of grant, thereby commencing the eligible entity's installment payment plan, which will extend over the period of the license.

44. We will impose interest of installment payments equal to the rate for U.S. Treasury obligations of maturity equal to the license term. The schedule of installment payments will begin with interest-only payments for the first two years. After that, principal and interest will be amortized over the remaining term of the license. An eligible designated entity that elects installment payments will have its license conditioned upon the full and timely performance of its payment obligations under the installment plan. However, we will consider (on a case-by-case basis) a grace period before a delinquent payor's license cancels.

45. *Bidding credits.* Bidding credits (payment discounts) may be available to designated entities on certain frequency blocks. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures. We reserve the option to determine, on a service-specific basis, whether certain auctionable services should allow other bidding credits to a consortium of companies organized to bid for auctionable services.

46. To further promote the investment and rapid deployment of new technologies and services in rural areas, we will also institute a system of bidding credits for rural telephone companies for licenses in their rural service areas. The amount of the bidding credit for rural telephone companies will be tied to their commitments to achieve certain telecommunications infrastructure build-out milestones in their rural service areas. The amount of the bidding credit will be proportionately linked to the amount by which the rural telephone company agrees to expand its built-out commitment. Failure to meet a build-out commitment will result in liability for a penalty in the amount of the bidding credit, plus interest. Grant of licenses to rural telephone companies utilizing bidding credits will be conditioned upon payment of this penalty, if and when it becomes applicable.

47. *Set-aside spectrum.* We may establish set-aside spectrum in certain services in which eligibility to bid may be limited to some or all designated entities. For any auctions of set-aside spectrum, we anticipate that we will establish lower upfront payments. This lower payment would serve to encourage participation by all eligible designated entities in the auction.

48. *Tax certificates, distress sales and royalties.* We will not at this time adopt a general tax certificate program for services subject to competitive bidding because other available measures will generally provide sufficient incentive to attract investors in designated entity enterprises. We will examine the feasibility of utilizing tax certificates in subsequent competitive bidding rules for particular services, especially where the record demonstrates a need to further stimulate designated entity participation in spectrum auctions and in the after-market for auctioned services. Before we determine whether distress sales to designated entities should be authorized, we will evaluate the success of our other measures. We do not adopt royalties as an alternative payment method for designated entities. Such a procedure would prove extremely intrusive and difficult to implement.

49. *Preventing unjust enrichment.* If we employ set-asides to benefit some or all of the designated entities, we will impose a recapture provision, applicable in the event of a sale to a non-designated entity, that would be designed to recoup for the government a portion of the value of the benefit received by the designated entity in the bidding. Such a recapture provision would require that licensees seeking to transfer their licenses for profit must within a specified time remit to the government a penalty equal to a portion of the total value of the benefit conferred by the government. We will generally reduce the penalty as time passes or construction benchmarks are met.

50. Any specific recapture provisions will be set forth in competitive bidding rules applicable to any services in which we decide to set aside licenses. In no event will recapture provisions apply to the transfer or assignment of a license that has been held for more than five years. If the transfer is made to another eligible designated entity, there would be no penalty.

51. If a small business making installment payments sells its license to an entity that does not qualify under the standards we have set for small businesses, we will require payment of the full amount of the remaining principal balance as a condition of the license transfer. Also, where bidding credits are used, transfer of a license to a non-designated entity or any action relating to ownership or control that will result in loss of status as an eligible designated entity, will require the designated entity to reimburse the government for the amount of the bidding credit, plus interest.

Final Regulatory Flexibility Analysis

Need for and purpose of this action:

52. This rulemaking proceeding was initiated to implement Section 309(j) of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a system of competitive bidding for choosing from among mutually exclusive applications for initial licenses to use the electromagnetic spectrum principally for the transmission or reception of communications signals to or from subscribers for compensation. The rules adopted herein also will carry out Congress's intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

Issues raised in response to the Initial Regulatory Flexibility Analysis:

53. The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised to the IFRA. We have made some modifications to the proposed requirements as appropriate.

Significant alternatives considered and rejected:

54. All significant alternatives have been addressed in the Second Report and Order.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements, Telecommunications.

Amendatory Text

47 CFR part 1 is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. A new subpart (Q), consisting of §§ 1.2101–1.2111, is added to read as follows:

Subpart Q—Competitive Bidding Proceedings

General Procedures

Sec.

1.2101 Purpose.
1.2102 Eligibility of applications for competitive bidding.
1.2103 Competitive bidding design options.
1.2104 Competitive bidding mechanisms.
1.2105 Bidding application and certification procedures; prohibition of collusion.
1.2106 Submission of upfront payments.
1.2107 Submission of down payment and filing of long-form applications.
1.2108 Procedures for filing petitions to deny against long-form applications.
1.2109 License grant, denial, default, and disqualification.
1.2110 Designated entities
1.2111 Assignment or transfer of control: Unjust enrichment.

Subpart Q—Competitive Bidding Proceedings

General Procedures

§ 1.2101 Purpose.

The provisions of this subpart implement section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

§ 1.2102 Eligibility of applications for competitive bidding.

(a) Mutually exclusive initial applications in the following services or classes of services are subject to competitive bidding:

(1) Interactive Video Data Service (see 47 CFR part 95, subpart F);

(2) Marine Public Coast Stations (see 47 CFR part 80, subpart J);

(3) Multipoint Distribution Service and Multichannel Multipoint Distribution Service (see 47 CFR part 21, subpart K). This subsection does not apply to applications in these services that were filed prior to July 26, 1993;

(4) Exclusive Private Carrier Paging above 900 MHz (see 47 CFR part 90, subpart P and the Private Carrier Paging Exclusivity Report and Order, 8 FCC Rcd 8318 (1993));

(5) Public Mobile Services (see 47 CFR part 22), except in the 800 MHz Air-Ground Radiotelephone Service, and in the Rural Radio Service. Paragraph (a)(g) of this section does not apply to certain applications in the cellular radio service that were filed prior to July 26, 1993;

(6) Specialized Mobile Radio Service (SMR) (see 47 CFR part 90, subpart S)

including finder's preference requests for frequencies allocated to the SMR service (see 47 CFR 90.173); and

(7) Personal Communications Services (PCS) (see 47 CFR part 24).

Note: To determine the rules that apply to competitive bidding in the foregoing services, specific service rules should also be consulted.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Applications for renewal of licenses;

(2) Applications for modification of license; provided, however, that the Commission may determine in particular instances that applications for modification that are mutually exclusive with other applications should be subject to competitive bidding;

(3) Applications for subsidiary communications services. A "subsidiary communications service" is a class of service where the signal for that service is indivisible from that of the main channel signal and that main channel signal is exempt from competitive bidding under other provisions of these rules. See, *e.g.*, § 1.2102(c) (exempting broadcast services). Examples of such subsidiary communications services are those transmitted on subcarriers within the FM baseband signal (see 47 CFR 73.295), and signals transmitted within the Vertical Blanking Interval of a broadcast television signal; and

(4) Applications for frequencies used as an intermediate link or links in the provision of a continuous, end-to-end service were no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are

(i) Point-to-point microwave facilities used to connect a cellular radio telephone base station with a cellular radio telephone mobile telephone switching office; and

(ii) Point-to-point microwave facilities used as part of the service offering in the provision of telephone exchange or interexchange service.

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (see 47 CFR part 80, subpart O);

(2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 CFR part 73;

(3) Broadcast Auxiliary and Cable Television Relay Services (see 47 CFR part 74, subparts D, E, F, G, H and L and part 78, subpart B);

(4) Instructional Television Fixed Service (see 47 CFR part 74, subpart I);

(5) Maritime Support Stations (see 47 CFR part 80, subpart N);

(6) Marine Operational Fixed Stations (see 47 CFR part 80, subpart L);

(7) Marine Radiodetermination Stations (see 47 CFR part 80, Subpart M);

(8) Personal Radio Services (see 47 CFR part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (see 47 CFR part 95, subpart F);

(9) Public Safety, Industrial/Land Transportation, General and Business Radio categories above 800 MHz, including finder's preference requests for frequencies not allocated to the SMR service (see 47 CFR 90.173), and including, until further notice of the Commission, the Automated Vehicle Monitoring Service (see 47 CFR 90.239);

(10) Private Land Mobile Radio Services between 470–512 MHz (see 47 CFR part 90, subparts B through F) including finder's preference requests, see 47 CFR 90.173;

(11) Private Land Mobile Radio Services below 470 MHz (see 47 CFR part 90, subparts B through F) except in the 220 MHz band (see 47 CFR part 90, subpart T), including finder's preference requests (see 47 CFR 90.173); and

(12) Private Operational Fixed Services (see 47 CFR part 94).

§ 1.2103 Competitive bidding design options.

(a) The Commission will select the competitive bidding design(s) to be used in auctioning particular licenses or classes of licenses on a service-specific basis. The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Single round sealed bid auctions (either sequential or simultaneous);

(2) Sequential oral auctions; or

(3) Simultaneous multiple round auctions.

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 1.2104 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum bid increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(e) *Stopping rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.

(f) *Activities rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, default and disqualification penalties.* As specified below, when the Commission conducts a simultaneous multiple round auction pursuant to § 1.2103, the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in. paragraph (g)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or

disqualified bidder has deposited with the Commission.

When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal; default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(h) *Bidder identification during auctions.* During any auction, the Commission may identify bidders and the bids only by bid numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) *Submission of Short Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate filing fee set forth in public notice. Unless otherwise provided by Public Notice, the Form 175 need not be accompanied by an upfront payment (see § 1.2106).

(1) All Form 175s will be due:

(i) On the date(s) specified by public notice; or

(ii) In the case of application filing dates which occur automatically by operation of law (see *e.g.*, 47 CFR 22.902), on a date specified by public notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principles or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to § 1.2110, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 1.2110;

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934; as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure. All such arrangements must have been entered into prior to the filing of Form 175 and no such arrangements may be entered into after the filing of Form 175 until after the winning bidder has made the required down payment;

(ix) Certification under penalty of perjury that is has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid;

Note: The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Form 175.* (1) Any Form 175 that is not signed or otherwise does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. Form 175 may be amended or modified to make minor changes or correct minor errors in the application (such as typographical errors). The Commission will classify all amendments as major or minor, pursuant to rules applicable to specific services. An application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicant who fail to correct defects in their applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(c) *Prohibition of Collusion.* After the filing of short-form applications, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

§ 1.2106 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. No interest will be paid on upfront payments. In auctions for licenses set aside pursuant to § 1.2110(c), the Commission may establish lower upfront payments for eligible designated entities.

(b) Upfront payments must be made either by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder.

(e) Notwithstanding the provisions of paragraph (d) of this section, in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional payment obligations that the high bidder may have.

§ 1.2107 Submission of Down Payment and Filing of Long-Form Applications

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within five (5) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy penalties) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payments with their bids.) This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Winning bidders who are qualified designated entities eligible for installment payments under § 1.2110(d) are only required to bring their total deposits up to ten (10) percent of their winning bid(s). Such designated entities must pay the remainder of the twenty (20) percent down payment within five (5) business days of grant of their application. See § 1.2110(e) (1) and (2). Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by § 1.2105(a)(1)(b). For example, if the applicant is a high bidder for a license in the Interactive Video Data Service (see 47 CFR part 95, subpart F), the long form application will be submitted on FCC Form 574 in accordance with Section 95.815 of the Rules. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

An applicant that fails to submit the required long-form application as required under this subsection, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the penalties set forth in § 1.2104.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 1.2105.

§ 1.2108 Procedures for filing petitions to deny against long-form applications.

(a) Where petitions to deny are otherwise provided for under the Act or the Commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within thirty (30) days after the Commission gives public notice that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such opposition and replies will be those provided in § 1.45.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

§ 1.2109 License grant, denial, default, and disqualification.

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within five (5) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 1.2104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 1.2107(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in § 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 1.2110 Designated entities.

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Definitions.

(1) Small businesses. Unless otherwise provided in rules governing specific services, a small business is an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.

(2) Businesses owned by members of minority groups and/or women. A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens have at least 50.1 percent equity ownership and 50.1 percent controlling interest in the applicant. For applicants that are limited partnerships, the general partner either must be a minority and/or woman (or minorities and/or women) who is a U.S. citizen and owns at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(3) Rural telephone companies. A rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit small businesses, including small businesses owned by women and minorities and rural telephone companies that qualify as small businesses, that are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(2) Within five (5) business days of the grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan. Such plans will:

(i) Impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) Allow installment payments for the full license term;

(iii) Begin with interest-only payments for the first two years; and

(iv) Amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a licensee may request that the Commission permit a three to six month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to subpart O of this part.

(e) The Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities.

(1) Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(2) Any bidding credit for rural telephone companies will be available only for licenses in rural telephone company service areas and only if eligible rural telephone companies make an infrastructure build-out commitment beyond any standard performance requirement. The amount of the bidding credit for rural telephone companies will be based on the amount by which eligible applicants agree to expand or accelerate the build-out commitment. If a rural telephone company fails to meet an accelerated or expanded build-out

commitment, it must make payment to the Commission within ninety (90) days of a penalty equal to the amount of the bidding credit. Grant of the license will be conditioned upon payment of this penalty if and when it becomes applicable.

(f) The Commission may offer designated entities a combination of the available preferences or additional preferences.

§ 1.2111 Assignment or transfer of control: Unjust enrichment.

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-asides.* As specified in this paragraph (b), an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor pursuant to a set-aside for eligible designated entities under § 1.2110(c), or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of a comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

(1) The license is transferred or assigned more than five years after its initial issuance; or

(2) The proposed transferee or assignee is an eligible designated entity under § 1.2110(c), and so certifies.

(c) *Unjust enrichment payment: installment financing.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing installment financing available to designated entities under § 1.2110(d) will be required to pay the full amount of the remaining principal balance as a condition of the license transfer. No payment will be required if the proposed transferee or assignee assumes the installment payment obligations of the transferor or assignor, and if the proposed transferee or assignee is itself qualified to obtain installment financing under § 1.2110(d), and so certifies.

(d) *Unjust enrichment payment: bidding credits.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing bidding credits available to eligible designated entities under § 1.2110(e), or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and will be required to make an unjust enrichment payment (Payment) to the Government by wire transfer or cashier's check before consent will be granted. The Payment will be the sum of the amount of the bidding credit plus interest at the rate applicable for installment financing in effect at the time the license was awarded. See § 1.2110(e). No payment will be required if:

(1) The proposed transferee or assignee is an eligible designated entity under § 1.2110(e), and so certifies; or

(2) The proposed transferor or assignor is a rural telephone company as defined in § 1.2110(b)(3), and the proposed transferee or assignee is also a rural telephone company and agrees to meet the same construction requirements as the transferor or assignor.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Editorial Note: This appendix will not appear in the Code of Federal Regulations

BILLING CODE 6712-01-M

Appendix—FCC Form 175

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

APPROVED BY OMB
3060-XXXX
EXPIRES XX/XX/XX
Est. Avg. Burden Hrs.
Per Response: 30 minutes

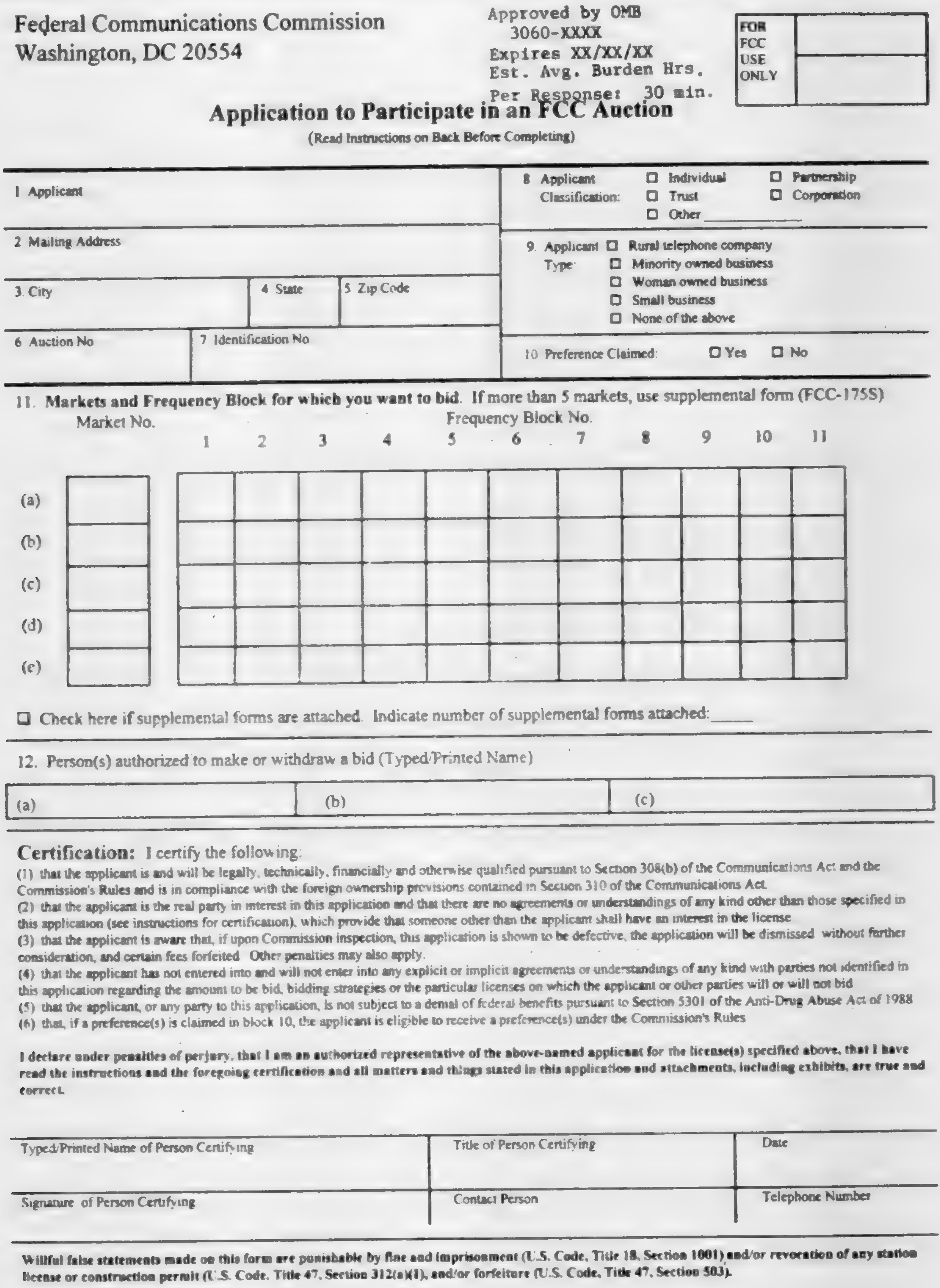
APPLICATION TO ENTER AN FCC AUCTION

Notice: The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In researching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes per response including the time for reviewing instruction, searching existing data needed, and completing and reviewing the collection. Send comments regarding this burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20554.

The Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980.

FCC 175



Federal Communications Commission
Washington, DC 20554

Approved by OMB
3060-XXXX
Expires XX/XX/XX
Est. Avg. Burden Hrs.
Per Response: 30 min.

FOR FCC USE ONLY	

Application to Participate in an FCC Auction

(Read Instructions on Back Before Completing)

1 Applicant

2 Mailing Address

3 City

4 State

5 Zip Code

6 Auction No

7 Identification No

8 Applicant Classification: ☐ Individual ☐ Partnership ☐ Trust ☐ Corporation ☐ Other ____________

9. Applicant Type: ☐ Rural telephone company ☐ Minority owned business ☐ Woman owned business ☐ Small business ☐ None of the above

10 Preference Claimed: ☐ Yes ☐ No

11. **Markets and Frequency Block for which you want to bid.** If more than 5 markets, use supplemental form (FCC-175S)

	Market No.	Frequency Block No. 1	2	3	4	5	6	7	8	9	10	11
(a)												
(b)												
(c)												
(d)												
(e)												

☐ Check here if supplemental forms are attached. Indicate number of supplemental forms attached:_____

12. Person(s) authorized to make or withdraw a bid (Typed/Printed Name)

(a)	(b)	(c)

Certification: I certify the following:

(1) that the applicant is and will be legally, technically, financially and otherwise qualified pursuant to Section 308(b) of the Communications Act and the Commission's Rules and is in compliance with the foreign ownership provisions contained in Section 310 of the Communications Act.
(2) that the applicant is the real party in interest in this application and that there are no agreements or understandings of any kind other than those specified in this application (see instructions for certification), which provide that someone other than the applicant shall have an interest in the license
(3) that the applicant is aware that, if upon Commission inspection, this application is shown to be defective, the application will be dismissed without further consideration, and certain fees forfeited Other penalties may also apply.
(4) that the applicant has not entered into and will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in this application regarding the amount to be bid, bidding strategies or the particular licenses on which the applicant or other parties will or will not bid
(5) that the applicant, or any party to this application, is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988
(6) that, if a preference(s) is claimed in block 10, the applicant is eligible to receive a preference(s) under the Commission's Rules

I declare under penalties of perjury, that I am an authorized representative of the above-named applicant for the license(s) specified above, that I have read the instructions and the foregoing certification and all matters and things stated in this application and attachments, including exhibits, are true and correct.

Typed/Printed Name of Person Certifying	Title of Person Certifying	Date
Signature of Person Certifying	Contact Person	Telephone Number

Willful false statements made on this form are punishable by fine and imprisonment (U.S. Code, Title 18, Section 1001) and/or revocation of any station license or construction permit (U.S. Code, Title 47, Section 312(a)(1), and/or forfeiture (U.S. Code, Title 47, Section 503).

INSTRUCTIONS

Item 1 Applicant Name   Enter the legal name of the person or entity applying to participate in an auction. If other than an individual, insert the exact name of the entity as it appears on the legal document(s) establishing the entity such as the Articles of Incorporation.

[Note: Applicants who have entered into an arrangement(s) of any kind relating to the license(s) specified in this application must provide additional information. See certification instructions.]

Item 2 Applicant Mailing Address   Enter the street address to which the entity wants future correspondence relating to this application to be mailed. Indicate street numbers or rural route numbers whenever appropriate.

Item 3 City   Enter the city name for the applicant mailing address.

Item 4 State   Enter the two-letter state abbreviation for the applicant mailing address

Item 5 ZIP Code   Enter the Zip Code for the applicant mailing address.

Item 6 Auction Number   Enter the appropriate auction number. This number will have been supplied by the Commission in the Public Notice announcing the auction

Item 7 Identification No.   Enter your personal identification number. This number must consist of ten digits. You have two options to create this Identification Number. Option 1 - you may use your taxpayer identification number (TIN) with a prefix of "0" i.e., 0123456789. Option 2 - You may use your ten-digit telephone number (i.e., 5551234567). You should use this same number when submitting additional information/material regarding this application, including fees (i.e., FCC Account No.), to the Commission

Item 8 Applicant Classification   Place an [X] in the appropriate box following the type of entity to indicate the type of legal entity applying. If an [X] is placed in the "Other" box indicate the type of entity applying in the space provided (e.g., governmental entity, association, etc.). Limited liability companies should check the "Partnership" box.

Item 9 Applicant Type   Place an [X] in the appropriate box or boxes following the appropriate applicant type. This information will be used for purposes of determining the applicant's eligibility for any preferences available for designated entities. See Part 1 of the Commission's Rules for definitions of the different types of designated entities.

Item 10 Preference Claimed   Place an [X] in the "Yes" box if you are claiming a preference(s) available to designated entities. If you are not claiming a preference(s) available to eligible designated entities, place an [X] in the "No" box. In order to claim a preference(s) you must have checked one or more of the boxes in item 9 other than the "None of the above" box, be eligible to receive a preference(s), and a preference(s) must be available for the license(s) for which you are applying

Item 11 Markets/Frequency Blocks   Enter the code for the market(s) which you want to bid on in the column under Market No. The codes will be provided by the Commission in a Public Notice. Use a separate line (a-e) for each different market. If you plan to bid on more than five markets place an [X] in the box below the table to indicate there are supplementary forms attached and list the number of supplementary forms attached in the space provided. You must use Supplementary Form 175-S. After each market list the code for the frequency block(s) or channel(s) for which you want to bid. These codes will be provided by the Commission in a Public Notice. For example, if you only wanted to bid on two frequency blocks in market (a) and one block in market (b) you would enter the codes for those two blocks in columns 1 and 2 on line (a) and leave the remaining columns on that line blank. On line (b) you would enter the code for the block you wanted in market (b) and leave the remaining columns on the line blank

Item 12 Authorized Representatives   Type or print the name(s) of the person(s) you which to designate as an authorized representative(s). Only authorized representatives will be allowed to make or withdraw bids at an auction You may list a maximum of 3 authorized representatives

Certification   Read the certification. Enter the typed/printed name of the individual authorized to sign the application, his/her title, date signed, authorized individual's signature, the name of a person familiar with the application (contact person) and the phone number (including area code) of the contact person. See Part 1, Subpart Q of the Commission's Rules. All applications must bear an original signature of a person authorized to sign on behalf of the applicant

List in the space provided below or in an exhibit the name, citizenship and address of all partners, if the applicant is a partnership; of a responsible officer or director, if the applicant is a corporation; of the trustee, if the applicant is a trust or, if the applicant is none of the foregoing, list the name and address of a principal or other responsible person. See Part 1, Subpart Q of the Commission's Rules

Also list in the space provided below or in an exhibit all parties with whom the applicant has entered into an agreement(s), of any kind, relating to the licenses being auctioned including such agreement(s) relating to the post auction market structure. See Part 1, Subpart Q of the Commission's Rules.

NOTE: The Commission's Public Notice announcing the auction for the licenses for which you are interested in bidding on has information essential to completing this form correctly. Forms which are completed incorrectly may be dismissed without opportunity for resubmission

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Use this space for listing additional information required by the Certification   [If additional space is needed attach a separate sheet(s) as an exhibit.]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Approved by OMB
3060-XXXX
Expires XX/XX/XX
Est. Avg. Burden Hrs.
Per Response: 15 minutes

APPLICATION TO PARTICIPATE IN AN FCC AUCTION
SUPPLEMENTAL FORM

(This form is to be used in conjunction with FCC Form 175)

APPLICANT	Payor's ID No.	AUCTION NO.	PAGE ___ OF ___
STREET ADDRESS/CITY		STATE	ZIP CODE

		Frequency Block										
	Market No.	1	2	3	4	5	6	7	8	9	10	11
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FCC 175-S

BILLING CODE 6712-01-C

Notice: The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In researching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 15 minutes per response including the time for reviewing instruction, searching existing data needed, and completing and reviewing the collection. Send comments regarding this burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20554.

The Notice is required by the Privacy Act of 1974, Public Law 93–579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, Public Law 96–511, December 11, 1980.

[FR Doc. 94–10638 Filed 4–29–94; 4:43 pm]

BILLING CODE 6712–01–M

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47 CFR Part 73

[ET Docket No. 92–298, FCC 94–88]

Broadcast Services; AM Radio Stereophonic Transmitting Equipment Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule; supplemental order.

SUMMARY: By this Supplemental Order, the Commission affirms its decision to adopt the Motorola C-Quam system as the standard for the stereophonic AM broadcast radio service. On November 23, 1993, the Commission released a Report and Order implementing the C-Quam AM stereo standard. Subsequent to the release on the Report and Order, it has come to the attention of the Commission that a number of comments had been inadvertently overlooked. After review of these additional comments, the Commission finds no new evidence or information that warrants a change in its decision in this matter.

EFFECTIVE DATE: March 20, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Means, Office of Engineering and Technology, Authorization and Evaluation Division, (301) 725–1585, extension 206.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 94–88, adopted April 12, 1994, and released April 28, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. Copies may also be purchased from the Commission's duplicating contractor, International Transcription Services, at (202) 857–3800 or 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of the Order

1. In response to the Telecommunications Authorization Act of 1992 (Authorization Act), the Commission adopted a Report and Order in this proceeding, 58 FR 66300, December 20, 1993, selecting the C-Quam system as the single AM stereo transmission standard.[1] Subsequent to the release of the Report and Order, it was found that twenty comments had inadvertently not been considered. Most of these comments were improperly or untimely filed. Nevertheless, because other late and improperly filed comments were considered in the Report and Order, we have elected to consider all of these comments at this time.

2. All of the previously unconsidered comments oppose the Commission's proposed selection of C-Quam as the AM stereo standard. Most parties generally allege some form of technical superiority of the Kahn system, or conversely, some technical inferiority of the C-Quam system. Specifically, these parties claim the C-Quam system exhibits technical flaws, including "platform motion," loss of coverage, and increased adjacent channel interference.[2] In addition, some commenting parties recommend that additional testing or evaluation be undertaken. Other parties question the compatibility of C-Quan with future AM band digital audio transmission systems, argue that adopting a system other than Kahn's as the standard will force them to re-engineer antenna array, or contend that Motorola unfairly manipulated the marketplace to create its competitive lead.

Discussion

3. The relative technical performance of the Kahn and C-Quam systems was addressed in the Report and Order, including specifically the issues of platform motion, coverage area and adjacent channel performance. With regard to platform motion, we concluded that recent improvements in receiver design mitigate such effects. Modern C-Quam receivers compensate for platform motion by gradually reducing stereo channel separation as signal-to-noise ratios deteriorate, creating a smooth transition to monaural operation when signals are weak. Further, as previously noted, such weak signal effects as platform motion generally occur beyond a station's protected coverage area. Claims of loss of coverage area and increased adjacent channel interference with C-Quam appear to be based on allegations that the C-Quam signal must be modulated at lower levels to avoid excessive bandwidth. As stated in the Report and Order, we find no evidence that currently authorized C-Quam equipment violates the Commission's bandwidth requirements when operated properly. The additional commenting parties present no new analysis or measurements to support their claims. We further note that the record contains no complaints of lost coverage from the hundreds of broadcasters currently using the C-Quam system.

4. With regard to suggestions that further testing and evaluation should be performed, in the Report and Order we noted that the Motorola and Kahn systems have been tested and comparatively evaluated over the years, and both systems were found to have technical advantages. As stated, we have no reason to expect that further testing would reveal any new information. Moreover, any further testing would lead to additional delays and would be inconsistent with the statutory time restrictions on this proceeding.

5. The issue of compatibility with future AM band digital audio broadcast systems was also discussed in the Report and Order. We noted that there is no reason to believe that either the C-Quam system or the Kahn system would have any advantage in compatibility with future digital systems. We further

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[1] See Telecommunications Act of 1992, Public Law No. 102–538. See also Report and Order, FCC 93–485 (released November 23, 1993).

[2] See, for example, comments of Hughes H. Brewer, Broadcast Devices, Inc. (BDI), E. P. De La Hunt, Joseph A. Dentici, David Smith Forsman, Interstate Broadcasting Company (Interstate), Richard W. Jolls, Robert M. Kanner, Patrick M. O'Gara, and Ridgefield Broadcasting Corporation (Ridgefield).

observed that, as we have no specific information on the likely design of such systems, we would not presuppose to consider fairly issues relating to their compatibility with AM stereo technologies.

6. With regard to comments that protest the potential costs associated with re-engineering the antenna arrays to accommodate C-Quam transmission, we observe that conversion of any station to any AM stereo system, either initially or from one system to another, will certainly involve re-engineering costs. Commenting parties have not provided any evidence from which to conclude that the conversion cost to the relatively few stations using the Kahn system outweigh the benefits to the public of requiring use of the C-Quam system.

7. We stated in the Report and Order that we were not persuaded that Motorola unfairly manipulated the market to deny any segment of the industry or the public a free choice. No new information in the additional comments convinces us otherwise. While vehicular receivers for any system other than C-Quam may indeed be generally unavailable, this is a result of market choices by vehicle and receiver manufacturers in anticipating the preference of their customers. We disagree that existing market penetration is inadequate to determine whether a de facto standard exists. As stated in the Report and Order, we find that there was indeed sufficient convergence in the market place toward C-Quam during the past twelve years of unrestricted competition between the systems to conclude that the public interest would be best served by adopting C-Quam as the standard.

8. With regard to the comments that the Commission should mandate multiple system receivers, allow systems other than the standard to be operated on a non-interference basis, or not adopt a standard, we find these positions to be inconsistent with the Congressional mandate in this matter. Specifically, the Authorization Act requires that we select a single standard for AM stereo.

9. In the Report and Order, we determined that stations employing power-side operation are not subject to the provisions of the stereophonic transmission standard and use of the Kahn system for such operation could continue. Thus, we believe that the decision made in the Report and Order is responsive to those parties wishing to use the Kahn system for power-side operation.

10. We remain convinced that the Motorola C-Quam system is the appropriate choice for the AM stereo standard. We find no arguments in any of the previously unconsidered comments that persuade us to modify any of the decisions previously adopted in the Report and Order.

Ordering Clause

11. Accordingly, it is ordered that this Supplemental Order is adopted.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–10610 Filed 5–3–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–521; RM–6963 and RM–7254]

Radio Broadcasting Services; Lancaster, WI, Clinton and Manchester, IA and Morrison, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission grants the request of K to Z, Ltd., licensee of Station WGLR-FM, Channel 249A, Lancaster, Wisconsin, to substitute Channel 249C3 in lieu of Channel 249A at Lancaster, rather than Channel 234C3 allotted to Manchester, Iowa in the Report and Order, 56 FR 56,472, published November 5, 1991, and to modify the license of Station WGLR-FM accordingly. The Commission substitutes Channel 234A in lieu of Channel 249A at Clinton, Iowa for Station KCLN (FM), and modifies Station KCLN (FM)'s license accordingly. The Commission also substitutes Channel 274A in lieu of Channel 236A at Morrison, Illinois for Station WZZT (FM), and modifies Station WZZT (FM)'s license accordingly. The Commission also rescinds both the substitution of Channel 234C3 at Manchester, Iowa and the modification of Station KMCH's license to reflect that substitution. With this action, the proceeding is terminated. See Supplemental Information, *supra.*

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89–521, adopted April 19, 1994 and released April 29, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Channel 249C3 can be allotted to Lancaster in compliance with the Commission's minimum distance separation requirements at coordinates North Latitude 42–50–18 and West Longitude 90–40–14. Channel 234A can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements at coordinates North Latitude 41–54–32 and West Longitude 90–13–20. Channel 274A can be allotted to Morrison in compliance with the Commission's minimum distance separation requirements at coordinates North Latitude 41–50–16 and West Longitude 89–55–29.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 249A and adding Channel 249C3 at Lancaster; under Iowa, is amended by removing Channel 249A and adding Channel 234A at Clinton; and under Illinois, is amended by removing Channel 236A and adding Channel 274A at Morrison.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 94–10653 Filed 5–3–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-21, Notice No. 8]

RIN 2127-AC88

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This final rule delays until September 1, 1994, the effective date of the requirements in one section of a final rule issued November 2, 1992, which amended Federal Motor Vehicle Safety Standard No. 217, Bus Emergency Exits and Window Retention and Release, to revise the minimum requirements for school bus emergency exits and improve access to school bus emergency doors. On March 24, 1994, NHTSA issued an interpretation of the term "daylight opening" used in the final rule. Subsequently, NHTSA has learned that several school bus manufacturers had misunderstood this term and as a result, will not have designed many of their buses with sufficient exits to comply with the new requirement by the May 2, 1994 effective date. Because NHTSA agrees that this term could have been misunderstood, NHTSA is allowing manufacturers to continue certifying their buses as having the exits required prior to the November 2, 1992 final rule until September 1, 1994. All other requirements of the November 2, 1992 final rule will continue to be effective on May 2, 1994.

DATES: *Effective Date:* The amendments made in this rule are effective May 2, 1994.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than June 3, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Leon DeLarm, NRM-15, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4920.

SUPPLEMENTARY INFORMATION: On March 15, 1991, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 217 to require that the minimum number of emergency exits on school buses be based upon the seating capacity of the school bus (56 FR 11153). Under the proposal, all school buses would have been required to have either a rear emergency exit door or a side emergency exit door and a rear push-out window. Depending on capacity, some school buses would have been required to have additional exits. The NPRM proposed two options regarding the means for providing the additional emergency exits. Option A would have required the use of emergency exit doors. Option B would have required a combination of emergency exit doors and emergency roof exits. The NPRM included a table indicating the additional exits required under each option for any bus with a designated seating capacity between 24 and 90. The determination of the number and type of exits used in the tables was based on crediting an emergency exit door with its minimum area (24 inches × 45 inches, or 1,080 inches^2) and crediting two emergency roof exits as a single emergency exit door.

On November 2, 1992, NHTSA published a final rule increasing the amount of emergency exit area required on school buses (57 FR 49413). As in the proposal, the final rule required that the minimum emergency exit area on school buses be based upon the seating capacity of the school bus. However, the final rule differed from the NPRM concerning the calculation by which the need for additional emergency exits was to be determined. (On December 2, 1992 NHTSA published a technical amendment to the November 2, 1992 final rule. Both of these notices will be referred to collectively as the November 2, 1992 final rule.)

The November 2, 1992 final rule specified that after calculating the total amount of additional emergency exit area [AEEA] needed for a school bus, using the formula proposed in the NPRM, each exit was to be credited with its "daylight opening." "Daylight opening" was defined as "the maximum unobstructed opening of an emergency exit when viewed from a direction perpendicular to the plane of the opening." The preamble to the final rule did not include a further discussion of what might constitute an obstruction.

On January 6, 1994, Mr. Bob Carver of Wayne Wheeled Vehicles (Wayne) wrote to the agency requesting clarification of the terms "daylight opening" and "unobstructed opening." The Wayne letter included Figure 5C from the November 2, 1992 final rule. This figure illustrates the permitted placement of a seat adjacent to a side emergency exit door. Wayne stated that agency personnel had indicated that only the area visually obstructed by the seat could not be credited, and requested confirmation of this interpretation.

The agency's response, dated March 24, 1994, did not agree with this interpretation. The March 24 letter states,

> The term "daylight opening" is defined in the Final Rule as "the maximum unobstructed opening of an emergency exit when viewed from a direction perpendicular to the plane of the opening." An obstruction in this context would include any obstacle or object that would block, obscure, or interfere with, in any way, access to that exit when opened. In determining the "maximum unobstructed opening of an emergency exit," we would subtract, from the total area of the opening, the area of any portions of the opening that cannot be used for exit purposes as a result of the obstruction. The area measurements would be taken when viewed from a direction perpendicular to the plane of the opening.

With regard to the particular illustration included with the Wayne letter, the March 24 letter states that the area forward of the seat back and leg would be considered obstructed.

On April 20, 1994, Mr. Thomas D. Turner of Blue Bird Body Company (Blue Bird) wrote to the agency regarding the March 24 letter. The Blue Bird letter states, "(w)e believed and were told (by agency personnel) that the definition of 'daylight opening' applied to the exit opening itself and did not involve access to the exit opening." The Blue Bird letter also notes that additional interpretations will be needed to address obstructions at rear emergency exit doors, emergency exit windows, and the front service door. Blue Bird requested that the agency suspend enforcement until either (1) a final rule is issued in connection with a December 1, 1993 NPRM which proposed two alternative means of determining the maximum credit of emergency exits or (2) September 1, 1994. Blue Bird stated that this would allow sufficient time to resolve these issues and make any necessary changes.

On April 26, 1994, Mr. Turner met with agency to further explain the scope of the problem for Blue Bird. In this meeting, Mr. Turner explained that the confusion resulted in part because the term "daylight opening" is used differently from the November 2 final rule definition in other contexts. The alternate definition is consistent with Blue Bird's understanding of the term prior to the March 24, 1994 letter.

On April 27, 1994, Ms. Jane L. Dawson of Thomas Built Buses (Thomas Built) wrote to the agency to request a delay of the effective date of the November 2, 1992 final rule. Thomas Built stated that the March 24, 1994 letter "differs drastically from the general interpretation of the school bus industry." Thomas Built also stated that one effect of the March 24 letter was the need for additional interpretations regarding other emergency exits.

Interpreting the term "daylight opening" either as any area not visually obstructed or as the entire area of the exit opening, results in crediting some exits with more exit area than the agency intended. On some buses, this would result in an incorrect determination that either no additional exits or fewer additional exits are required. For example, if a rear emergency exit door is credited with greater area than allowed, a manufacturer may have determined that no additional exits were required. On other buses, the manufacturer may have determined that only an additional side emergency exit door was required. However, if the required exits and the additional side emergency exit door are credited with greater area than allowed, this determination would be incorrect and an additional emergency roof exit may also be required.

The agency has determined that the term "daylight opening," without clarifying explanation, is arguably ambiguous, in that it leaves open the question of whether an "obstruction" is a visual obstruction or a physical obstruction. This is the issue resolved by the agency's March 24, 1994 letter to Wayne.

Rather than penalize manufacturers that utilized the alternative interpretation, at significant cost to them, NHTSA has decided to allow manufacturers the option of complying with the previous requirements regarding the number and type of exits required for a school bus until September 1, 1994. That is, until September 1, 1994, manufacturers can install either a rear emergency exit door or a side emergency exit door and a rear push-out window.

In response to Blue Bird's request to suspend enforcement until a final rule is issued for the December 1, 1993, NPRM, NHTSA has determined that such a delay is not warranted. Each of the options proposed in the December 1, 1993 NPRM would further limit the amount of area that can be credited for an emergency exit. Because any final rule consistent with the proposals in the December 1, 1993 NPRM would require vehicle redesign, additional leadtime would be necessary after publication of such a final rule. Therefore, NHTSA has determined that suspension of the November 2, 1992 final rule until the rulemaking proceeding for the December 1, 1993 NPRM is final would unnecessarily delay the safety benefits of the November 2, 1992 final rule.

NHTSA believes that the safety effects of an extension to September 1, 1994 will be minimal. The November 2, 1992 final rule required additional exits on some school buses. The confusion about the amount of area credited for each exit has resulted in some school buses having fewer exits than the agency expected under the November 2, 1992 final rule. However, many of these school buses have been redesigned to have more exits than required prior to the November 2, 1992 final rule. The agency expects that manufacturers will not revert to prior designs during the extension period. Therefore, much of the anticipated benefits of the final rule will be retained during this time period. In addition, the length of the extension period is short. Therefore, NHTSA anticipates minimal loss of safety benefits as a result of this extension.

By contrast, the economic effects of denying manufacturers' requests to delay the effective date would be significant. Most of the school buses which are currently being manufactured or which will be manufactured during the extension period have already been ordered. Because it is common practice to order school buses by competitive bidding, manufacturers will have to sell these school buses at the price quoted when ordered. If a manufacturer based the price on installing fewer exits than required to comply with Standard No. 217, the manufacturer would have to absorb the cost. In addition, if an extension were not granted, manufacturers would have to stop production until changes could be made to designs, which could take several months.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. As explained above, this notice merely extends the effective date of the final rule of November 2, 1992, which amended Standard 217. There will be no additional costs associated with this final rule. Rather, this final rule extends the date of compliance with the amendments of Standard 217 to September 1, 1994.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Since this notice merely extends the effective date of a previously-issued notice, no costs are associated with it. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.217 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.217 [Amended]

2. Section 571.217 is amended by revising § 5.2.3 and adding a new § 5.2.3.4, to read as follows:

§ 5.2.3 *School buses.* Except as provided in § 5.2.3.4, each school bus shall comply with § 5.2.3.1 through § 5.2.3.3.

* * * * *

§ 5.2.3.4 Each school bus manufactured before September 1, 1994 may, at the manufacturer's option, comply with either § 5.2.3.4(a) or § 5.2.3.4(b) instead of § 5.2.3.1 through § 5.2.3.3.

(a) Each bus shall be equipped with one rear emergency door that opens outward and is hinged on the right side (either side in the case of a bus with a GVWR of 4,536 kilograms or less); or

(b) Each bus shall be equipped with one emergency door on the vehicle's left side that is hinged on its forward side and meets the requirements of § 5.2.3.2(a), and a push-out rear window that provides a minimum opening clearance 41 centimeters high and 122 centimeters wide and meets the requirements of § 5.2.3.2(c).

Howard M. Smolkin,
Executive Director.

[FR Doc. 94-10758 Filed 4-29-94; 4:55 pm]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 940422-4122; I.D. 042294B]

RIN 0648-AF61

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual management measures for the Ocean Salmon Fishery and Technical Amendment.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1994. Specific fishery management measures vary by fishery and area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for spawning escapement and inside fisheries. This action also announces a technical amendment codifying the spawning escapement goal for Klamath Fall chinook. NMFS also announces 1995 recreational salmon seasons opening earlier than May 1, 1995.

DATES: Effective from 0001 hours Pacific daylight time (P.d.t.), May 1, 1994, until modified, superseded, or rescinded. Comments must be received by May 16, 1994.

ADDRESSES: Comments on the management measures may be sent to J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or Gary C. Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 310-980-4030.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" fishery management plan (FMP). The framework FMP was approved in 1984 and has been amended five times since then (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989; 56 FR 26774, June 11, 1991; [Amendment 11 approved 4/6/94 final rule is being published within days of these annual management measures]). Regulations at 50 CFR part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**.

These management measures for the 1994 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 5–8, 1994, meeting.

Schedule Used To Establish 1994 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1993 Ocean Salmon Fisheries," summarizes the 1993 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1993. The second report, "Preseason Report I Stock Abundance Analysis for 1994 Ocean Salmon Fisheries," provides the 1994 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1993 regulations or regulatory procedures were applied to the 1994 stock abundance.

The Council met on March 8–11, 1994, in Portland, OR, to develop proposed management options for 1994. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options presented various combinations of management measures designed to protect numerous weak stocks of coho and chinook salmon and provide for ocean harvests of more abundant stocks of chinook salmon (primarily Sacramento Fall chinook). All options provided for no directed harvest of coho salmon coastwide and no non-treaty commercial or recreational fishing north of Cape Falcon, OR. After the March Council meeting, the STT and staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 1994 Ocean Salmon Fisheries," which analyzes the effects of the proposed 1994 management options. This report also was distributed to the Council, its advisors, and the public.

Public hearings on the proposed options were held March 28–30, 1994, in Westport, WA; Warrenton and Coos Bay, OR; and Arcata, CA.

The Council met on April 5–8, 1994, in Burlingame, California, to adopt its final 1994 recommendations. Following the April Council meeting, the STT and staff economist prepared a fourth report, "Preseason Report III Analysis of

Council-Adopted Management Measures for 1994 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was distributed to the Council, its advisors, and the public.

Resource Status

Many salmon runs returning to Washington, Oregon, and California streams in 1994 are expected to be at record low levels.

Primary resource concerns are for Klamath River fall chinook; Columbia River hatchery chinook; Oregon Production Index area coho stocks destined for the Columbia River and the California and Oregon coasts, particularly Oregon coastal natural coho; and Washington coastal and Puget Sound natural coho. Management of all of these stocks is affected by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

California Central Valley stocks are relatively abundant compared to the other chinook stocks of the Pacific coast. The Central Valley Index of abundance of combined Central Valley chinook stocks is estimated to be 503,000 fish for 1994, slightly above the post-season estimate of the index for 1993 and 18 percent below the average of the index from 1970–1993. The escapement goal range of 122,000 to 180,000 Sacramento River adult fall chinook was not met in 1990, 1991, or 1992, and was near the low end of the goal range in 1993. Preseason modeling predicted that regulations comparable to those of 1993 would result in an escapement of Sacramento River fall chinook within the escapement goal range in 1994.

Winter-run chinook from the Sacramento River are listed under the Endangered Species Act (ESA) as an endangered species (59 FR 440, January 4, 1994) and are a consideration in establishing ocean fishing regulations. The 1993 spawning run size estimate totaled 341 adults, a substantial decline from the 1992 run-size estimate of 1,180 adults. The abundance of the winter run in the ocean at the beginning of the fishing season is not forecast.

Klamath River fall chinook ocean abundance is expected to be 137,600 age-3 and age-4 fish at the beginning of the fishing season. This forecast is 16 percent below last year's actual abundance, and 58 percent below the average of estimates for 1985–1993. The spawning escapement goal for Klamath River fall chinook is 33–34 percent of the potential adults with a minimum of 35,000 natural spawners (wild run salmon or fish that spawn independent of hatcheries). Although ocean escapement to the Klamath River (in-river run size) in 1993 was the largest recorded since 1989, the natural spawning escapement of 20,900 adults fell short of the goal of 38,000, set in 1993 by emergency action by the Secretary of Commerce (Secretary), and was below the FMP's minimum natural spawner requirement of 35,000 for a fourth consecutive year. Preseason modeling predicted that harvest regulations similar to those adopted in 1993 would result in an ocean escapement that would not be sufficient to achieve the minimum spawning escapement floor and to provide for in-river sport and Indian tribal fisheries in 1994.

In recent years of low abundance, the procedures used to model the Klamath fall chinook population have consistently overestimated stock abundance and underestimated the hatchery component of the spawning run. In 1994, the Council implemented changes in the predictor used to forecast age-3 ocean abundance and developed a new predictor of the relative sizes of the natural and hatchery spawning escapements. As a result, the 1994 forecast of the adult ocean population is 11 percent smaller, and the spawning escapement (hatchery and natural) required to achieve the natural spawner floor is 36 percent greater than would have been predicted using the previous methodology. The new predictor is considered to reflect more accurately the actual ocean abundance and proportion of natural and hatchery stocks.

In 1989, as authorized at 50 CFR part 661, Appendix IV.B., the Council recommended, and the Secretary approved, a change in the Klamath River fall chinook spawning escapement rate goal from 35 percent to between 33 and 34 percent (54 FR 19800, May 8, 1989). That change was not codified at the time. The change in the spawning escapement rate goal is herein codified in 50 CFR part 661 Appendix IV.A as a technical amendment.

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks that generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be low, similar to the levels observed in 1993. These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for a continuation of average to above-average abundance as observed in recent years. These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will be met in 1994.

Estimates of Columbia River chinook abundance vary by stock as follows:

1. *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river (49,000) in 1994 are 56 percent below the 1993 run size of 111,500 fish, and 13 percent below the 1979–1984 average of 56,600 fish. The 1994 depressed stock status reflects a substantial decline from recent improvements (1985–1990 and 1992–1993) in the status of this stock. The 1985–1990 and 1992–1993 increases from the poor returns in the early 1980s are primarily the result of increases of hatchery stocks. The natural stock component remains depressed. Ocean escapement is expected to be significantly below the goal of 115,000 adults counted at Bonneville Dam. Upriver spring chinook are affected only slightly by ocean harvests in Council area fisheries, with the contribution of these stocks being generally 1 percent or less of the total chinook catch north of Cape Falcon, OR. Expected ocean escapement of adult upriver summer chinook is 15,700 fish. The 1994 stock status remains extremely depressed, with ocean escapement being about 20 percent of the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon.

2. *Willamette River Spring Chinook.* Willamette River spring chinook returns are projected to be 72,000 fish, 15 percent above the 1993 run of 62,600 fish, and 11 percent greater than the 1980–1984 average return of 65,000 fish. Willamette River spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon.

3. *Columbia River Fall Chinook.* Four distinct fall chinook stock units initially were identified, and recently a fifth stock unit has been added, as follows:

(a) Upriver bright fall chinook ocean escapement is expected to be 85,400 adults, 17 percent below the 1993 return of 102,900 adults, and 7 percent above the 1981–1985 period of poor returns that averaged 79,500 adults. The escapement goal for upriver bright fall chinook is 40,000 adults above McNary Dam. This stock has a northern ocean migratory pattern and constitutes less than 10 percent of Council-area fisheries north of Cape Falcon.

(b) Lower river natural fall chinook ocean escapement is forecast at about 14,700 adults, 10 percent above the 1993 run size of 13,400.

(c) Lower river hatchery fall chinook ocean escapement is forecast at 36,100 adults, a 31 percent reduction from the record low return observed in 1993 of 52,200 adults. This stock has been declining sharply since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council-area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock.

(d) Spring Creek hatchery fall chinook ocean escapement is projected to be about 20,200 adults, 20 percent above the 1993 return of 16,800 adults; the 1986–1990 average ocean escapement was 16,700 adults. The Spring Creek hatchery fall chinook stock has been rebuilding slowly since the record low return in 1987, with a downturn in 1992 and 1993.

(e) Mid-Columbia bright fall chinook ocean escapement is projected to be about 23,900 adults, 13 percent below the 1993 return of 27,400 adults. These fall chinook are returns primarily from hatchery releases of bright fall chinook stock in the area below McNary Dam, although some natural spawning in tributaries between Bonneville and McNary dams is also occurring.

4. *Snake River Wild Fall Chinook.* Also of concern are Snake River wild fall chinook, listed as a threatened species under the ESA. Information on the stock's ocean distribution and fishery impacts are not available. Attempts to evaluate fishery impacts on Snake River wild fall chinook have used the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska.

5. *Washington Coastal and Puget Sound Chinook.* Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter Point, WA, south through California. It is the primary index of coho abundance for the Pacific ocean fishery. Oregon coastal and Columbia River coho stocks are the primary components of the OPI. Beginning in 1988, the Council adopted revised estimation procedures that were expected more accurately to predict abundance of the following individual OPI area stock components: public hatchery, private hatchery, Oregon coastal natural (OCN) for rivers and lakes, and the Salmon Trout Enhancement Program. Prediction methodologies are described in the Council's "Preseason Report I Stock Abundance Analysis for 1988 Ocean Salmon Fisheries." In response to the extremely low abundances expected in 1994, some changes to the abundance predictors were implemented as described in the Council's "Preseason Report I Stock Abundance Analysis for 1994 Ocean Salmon Fisheries." In particular, the current predictor for the OCN river component does not adequately incorporate environmental variability, so an environment-based model is being used to predict abundance in 1994. This model incorporates annual measurements of upwelling and sea surface temperatures and contains no provision for the influence of spawner escapement. Further analysis of this model will occur before the 1995 season. The 1994 OPI is forecast to be a record low 239,700 coho, 69 percent below the 1993 preseason forecast of 767,000 coho, and 49 percent below the 1993 observed level of 470,900 fish. The 1994 estimate includes a record low of 140,900 OCN coho, 44 percent below the 1993 observed level of 250,800 fish and 27 percent below the previous record low of 192,500 fish observed in 1987. The 1993 spawning escapement of the OCN stock was 170,200 fish.

All Washington coastal and Puget Sound natural coho stocks are expected to be less abundant than forecast in 1993. Abundances for Washington coastal stocks of Hoh, Queets, and Grays Harbor natural coho are projected to be 40 percent, 47 percent, and about 60 percent below the 1993 preseason predictions, respectively. Abundances for Puget Sound stocks of Skagit, Stillaguamish, and Hood Canal natural coho are projected to be 45 percent, 65 percent, and 72 percent below the 1993 preseason predictions, respectively. Even in the absence of ocean and inside (Strait of Juan de Fuca and Puget Sound) fisheries, natural coho run sizes are forecast to be well below spawning escapement goals. These low expected abundances are thought to be the result of low freshwater flows in 1992, poor marine survival associated with anomalous ocean conditions, and long-term habitat degradation. Abundance forecasts for Washington coastal and Puget Sound hatchery production are also well below 1993 expectations.

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. Consequently, pink salmon runs are not of management concern in 1994.

Management Measures for 1994

The Council adopted allowable ocean harvest levels and management measures for 1994 that are consistent with the FMP and are designed to apportion the burden of protecting the weak stocks discussed above equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. The management measures below reflect the Council's recommendations.

South of Cape Falcon

In the area south of Cape Falcon, the management measures in this rule are based primarily on concerns for Klamath River fall chinook, Sacramento River winter chinook, and OCN coho. The greatest constraint on the ocean management measures was the record low abundance of OCN coho as described above.

The Council recommended measures that result in the harvest of Klamath River fall chinook being shifted predominantly southward off California, to maximize access to abundant Central Valley chinook stocks. Management constraints on Klamath River fall chinook resulted in restrictive fishing seasons in the area between Humbug Mountain, OR, and Horse Mountain, CA, termed the Klamath Management Zone (KMZ), as well as in the areas both north and south of the KMZ.

The Secretary issued a final rule (58 FR 68063, December 23, 1993) recognizing the Federally-reserved fishing rights of the Yurok and Hoopa Valley Tribes, as acknowledged and quantified in an opinion issued by the Solicitor, Department of the Interior, as other applicable law for the purposes of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The 1994 management measures provide for an ocean exploitation rate on age-4 Klamath fall chinook of 9 percent. This restriction of ocean harvest is required to provide equal sharing of the harvest of Klamath River fall chinook between the Tribes and non-Indian fishermen, as set out in the Solicitor's opinion, as well as to meet the spawning escapement goal floor of 35,000 natural adult spawners.

Winter-run chinook from the Sacramento River are listed under the ESA as an endangered species. In 1991, NMFS concluded a formal consultation with the Council regarding the impacts of the ocean salmon fishing regulations on the winter run. The biological opinion issued from that consultation determined that the 1990 level of impacts from the ocean fisheries would not jeopardize the continued existence of the winter run. NMFS also recommended shortening the recreational fishing season off central California and closure of an area at the mouth of San Francisco Bay during the time when the winter run fish are entering the Bay. These recommended conservation measures were implemented in 1991 and remain a part of the salmon management measures for 1994. The overall impact of the 1994 salmon management program on the winter run is expected to be significantly less than in 1990, the base year for the biological opinion. This expectation is based on the harvest rate model for the Central Valley Index stocks of fall chinook, which predicts a harvest rate of 53 percent in 1994, as compared to 79 percent in 1990. These rates are only indicators of the relative impact on the winter run, because these fish are less vulnerable to the ocean fisheries than fall-run chinook, due to the timing of the seasons, as well as growth and migration patterns.

Under recently approved Amendment 11 to the FMP, the spawning escapement goal for OCN coho is 42 spawners per mile in the Oregon Department of Fish and Wildlife's "standard" coastal index survey areas. This translates to a maximum sustainable yield (MSY) goal of 200,000 spawners. At lower abundance levels, only incidental impacts, rather than directed OCN coho fisheries, are allowed. When the predicted spawner escapement is less than or equal to 28 spawners per mile (which translates to 135,000 spawners), the FMP allows an incidental exploitation rate of up to 20 percent, but only if it is the minimum incidental harvest necessary to prosecute other fisheries, and will not cause irreparable harm to the OCN stock (135,000 spawners was the spawning escapement floor under the FMP prior to approval of Amendment 11; 200,000 spawners is the spawning escapement floor established by Amendment 11).

The 1994 abundance estimate for OCN coho is for a record low of 140,900 fish. At this abundance level, the FMP only allows a minimum incidental harvest that will not cause irreparable harm to the stock. The 1994 management measures result in a total OCN coho exploitation rate of only 11 percent, of which about 6.4 percent are impacts associated with prosecution of Council area fisheries and about 4.6 percent are impacts associated with non-Council-managed directed fisheries (Canadian, Alaskan, and inside fisheries). Based on these measures, OCN coho spawning escapement is estimated to be 125,500 adults.

The Director, Northwest Region, NMFS, has determined that the recommended harvest rate will not cause irreparable harm to the OCN coho salmon stock for several reasons. First, the 1993 spawning escapement goal was achieved, although the geographic distribution of spawners was not optimal. As a result of achieving the spawning escapement goal in 1993, the resulting production of many individual stocks in 1996 should return to normal levels, if ocean survival conditions also return to normal. Second, under the 1994 fishing regime (no coho retention), spawning escapement is projected to be 125,500 fish. This level of escapement, although not optimal because it is less than the 200,000 MSY escapement goal, is not at such a low level that OCN coho stocks cannot recover when ocean survival conditions improve. Of greatest concern are specific individual stocks within the OCN complex, such as Tillamook Bay stocks, that have exhibited extremely poor spawning escapements in recent years. However, the predominantly southern distribution of the chinook harvest, the prohibition of coho retention in all chinook-only fisheries, and the extreme measures being imposed by the states in internal waters to protect coho salmon that return to individual watersheds, makes it unlikely that the ocean salmon fishing regime in 1994 will cause irreparable harm to any OCN coho salmon stock.

NMFS has also considered whether the 11 percent incidental harvest rate is the minimum necessary to prosecute other fisheries. Because the bycatch in non-salmon fisheries, such as the Pacific Coast groundfish fishery, is almost exclusively chinook salmon, the bycatch of coho salmon in non-salmon fisheries is not a large concern. The Council determined that harvestable numbers of Central Valley and Klamath River fall chinook stocks warranted a chinook fishery on these stocks. In order to minimize the impacts on OCN coho salmon during these chinook fisheries, the Council recommended, and NMFS provides in this action that no coho retention be allowed. Thus the only mortality to coho salmon will be the result of hooking mortality from chinook fishing. In addition, the Council adjusted the geographic distribution of the fisheries so that the majority of chinook fishing occurs to the south, primarily off California, where the catch of OCN coho is the lowest. The Council recommended this geographic shift to the South to protect coho. However, this shift occurs at the expense of Oregon fishermen, who now will not have the opportunity to harvest as large a proportion of Klamath River fall chinook stocks as they might have absent coho conservation concerns. Finally, the States of Oregon and Washington have closed the Columbia River Buoy 10 fishery for coho salmon, and Oregon has taken additional restrictive actions in estuarine and freshwater fisheries to minimize the impacts of fishing on OCN coho. Based on these actions, NMFS believes that the 11 percent ocean and freshwater harvest rate is the minimum harvest rate necessary to prosecute other fisheries.

Commercial Troll Fisheries

Retention of coho salmon is prohibited in all areas due to the projected record low coho abundance. All seasons listed below apply only to salmon species other than coho. Chinook quotas are being implemented in the area between Florence South Jetty and House Rock, OR, to ensure that the ocean impacts on Klamath River fall chinook do not exceed those that have been modeled. Specifically, commercial troll fisheries will be limited to quotas of 12,000 chinook during May and June in the area between Florence South Jetty and Humbug Mountain, 1,500 chinook during May in the area between Sisters Rocks and House Rock, 800 chinook during August in the area between Sisters Rocks and Mack Arch, and 10,000 chinook during September and October in the area between Cape Arago and Humbug Mountain. Troll fisheries in other areas south of Cape Falcon are not limited by any chinook quotas, because of the minor contribution of Klamath stocks to the fisheries.

From Point San Pedro, CA, to the U.S.-Mexico border, the commercial fishery for all salmon except coho will be open May 1 through June 11, then reopen July 1 through September 30.

From Point Reyes to Point San Pedro, CA, the commercial fishery for all salmon except coho will be open June 15 through September 30.

From Point Arena to Point Reyes, CA, the commercial fishery for all salmon except coho will be open August 1 through September 30.

From Horse Mountain to Point Arena, CA, the commercial fishery for all salmon except coho will be open September 1 through September 30.

From Sisters Rocks to House Rock, OR, the commercial fishery for all salmon except coho will open the following days, until May 31 or attainment of the chinook quota, whichever occurs first: May 1–2, 5–6, 10–11, 14–15, 18–19, 22–23, 26–27, and 31. The days open may be adjusted inseason, if necessary, to manage the fishery. Gear is restricted to no more than four spreads per line, with the open area restricted to 0–6 nm from shore.

From Sisters Rocks to Mack Arch, OR, the commercial fishery for all salmon except coho will open August 8 and continue through August 31 or attainment of the chinook quota, whichever occurs first. This is a experimental fishery designed to determine the stock composition in the area in August, with particular concern for southern Oregon and Klamath chinook. It will be open to a limited number of fishers who must first preregister by July 1 with the ODFW office in Newport for selection by a random process.

From Florence South Jetty to Humbug Mountain, OR, the commercial fishery for all salmon except coho will open May 1 and continue through June 30 or attainment of the chinook quota, whichever occurs first. Gear is restricted to no more than four spreads per line.

From Cape Falcon to Florence South Jetty, OR, the commercial fishery for all salmon except coho will open May 1 through June 30, with gear restricted to no more than four spreads per line.

Later in the season, the area from Cape Arago to Humbug Mountain, OR, will open for all salmon except coho on September 1 and continue through October 31 or attainment of the chinook quota, whichever occurs first. Gear is restricted to no more than four spreads per line.

From Cascade Head to Cape Arago, OR, the commercial fishery for all salmon except coho will open September 1 through October 31, with gear restricted to no more than four spreads per line.

From Cape Falcon to Cascade Head, OR, the commercial fishery for all salmon except coho will open October 1 through October 31, with gear restricted to no more than four spreads per line. A subarea in state waters at the mouth of Tillamook Bay will be closed to commercial troll fishing.

Recreational Fisheries

Retention of coho salmon is prohibited from May 1, 1994, in all areas, due to the projected record low coho abundance. From Point Arena to the U.S.-Mexico border, the recreational fishery, which opened on the nearest Saturday to March 1 for all salmon, continues for all salmon except coho from May 1 through the nearest Sunday to November 1 with a two-fish daily bag limit.

From Horse Mountain to Point Arena, the recreational fishery, which opened on the nearest Saturday to February 15 for all salmon, continues for all salmon except coho from May 1 through June 30 with a two-fish daily bag limit. This area will reopen on August 1 for all salmon except coho and continue through the nearest Sunday to November 15 with a two-fish daily bag limit.

From Humbug Mountain to Horse Mountain, the recreational fishery will open May 1 for all salmon except coho and continue through June 30 or attainment of the 10,300 chinook quota, whichever occurs first, with a two-fish daily bag limit. This area will reopen on August 27 for all salmon except coho and continue through August 31 or attainment of the 500 chinook quota, whichever occurs first, with a two-fish daily bag limit; the mouth of the Klamath River is closed. This area will reopen September 1 through September 5, with no chinook quota and a two-fish daily bag limit.

From Cape Falcon to Humbug Mountain, the recreational fishery will open May 1 through June 5 for all salmon except coho, with a daily bag limit of two fish, no more than two fish in 7 consecutive days, no more than 10 fish per year, and the open area restricted to within the 27-fathom curve (49.4 m). This fishery will reopen only between Twin Rocks and Pyramid Rock, OR, on June 6 through June 19; this fishery is entirely in State waters so regulations to manage the fishery will be implemented by the State of Oregon.

North of Cape Falcon

Due to the projected record low returns for Washington coastal coho, Puget Sound natural and hatchery coho stocks, and Oregon coastal and Columbia River coho, unprecedented action is being taken to close the non-treaty commercial troll and recreational ocean fisheries north of Cape Falcon in 1994.

All Washington coastal and Puget Sound natural coho stocks are expected to be less abundant than forecast in 1993. Numbers of coho entering freshwater are either below spawner escapement goals (Queets, Grays Harbor, Skagit, Stillaguamish, and Hood Canal natural coho) or at the lower end of the spawner escapement goal range (Quillayute Falls and Hoh natural coho). These low expected abundances are the result of low flows in 1992, poor marine survival associated with anomalous ocean conditions, and long-term habitat degradation. Abundance forecasts for Washington coastal and Puget Sound hatchery production are also well below 1993 expectations.

Even in the absence of ocean salmon fisheries north of Cape Falcon, the Council wanted to ensure that the impacts on Snake River spring/summer and fall chinook stocks, which are listed as threatened species under the ESA, did not exceed recent years' levels of impacts. For Snake River wild spring chinook, the available information indicates that it is highly unlikely these fish are impacted in Council-area fisheries. For Snake River wild summer chinook, these fish comprise only a very small proportion of total chinook abundance in the Council management area, and it is unlikely these fish are significantly impacted in Council-area fisheries. For Snake River wild fall chinook that are caught in Council-area fisheries, the STT estimated significant reductions in the ocean exploitation rate under the Council's recommended 1994 ocean measures compared to the 1986–1990 average by using the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. These reductions in the ocean exploitation rate total over 90 percent for north of Cape Falcon and 80 percent for combined north and south of Cape Falcon.

Treaty Indian Fisheries

Ocean salmon management measures proposed by the treaty Indian Tribes are part of a comprehensive package of Indian and non-Indian salmon fisheries in the ocean and inside waters agreed to by the various parties. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the Tribes and agreed to by the Council. The treaty Indian Tribes of the Washington coast agreed to a minimal chinook quota, with no directed coho fisheries. Recognition was made of the special right of the treaty Indian Tribes to fish in their usual and accustomed areas and the limitation of their location-dependent fisheries.

In 1994, treaty Indian troll fisheries north of Cape Falcon are governed by a quota of 16,400 chinook, with no retention of coho. The all-except-coho seasons will open May 1 and extend through June 30, if the chinook quota is not reached. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 in. (61 cm) for chinook.

1995 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons to the Secretary that begin before May 1 of the same year. Therefore, openings earlier than May 1 for 1995 fishing seasons are being provided for at this time. The Council recommended, and the Secretary concurs, that the following recreational seasons will open in 1995: (1) The area from Point Arena to the U.S.-Mexico border will open on the nearest Saturday to March 1 for all salmon with a two-fish daily bag limit, except for closure of the control zone near the mouth of San Francisco Bay from the opening of the season through March 31; and (2) the area from Horse Mountain to Point Arena will open on the nearest Saturday to February 15 for all salmon with a two-fish daily bag limit.

The following tables and text are the management measures recommended by the Council for 1994 and, as specified, for 1995. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The management measures are consistent with requirements of the Magnuson Act and other applicable law, including U.S. obligations to Indian Tribes with treaty-secured fishing rights.

The following management measures are adopted for 1994 and, as specified, for 1995 under 50 CFR part 661.

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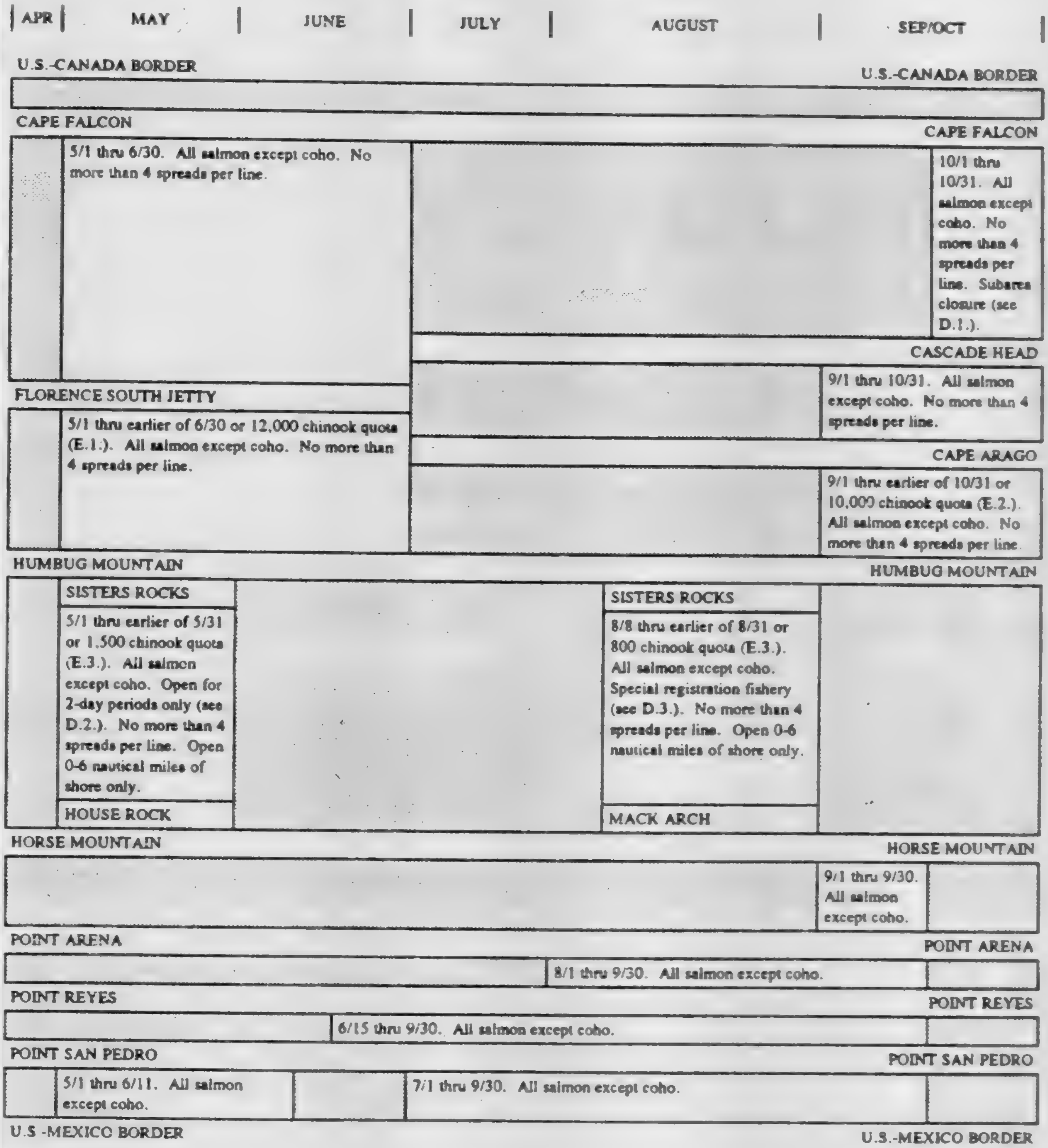
Table 1. Commercial management measures for 1994 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, D, and E which must be followed for lawful participation in the fishery. Areas on the map are not proportional to actual geographic areas.)

A. SEASONS, SUBAREA QUOTAS, AND SPECIES

(Shaded areas represent closures.)


APR
MAY
JUNE
JULY
AUGUST
SEP/OCT
U.S.-CANADA BORDER
U.S.-CANADA BORDER
CAPE FALCON
CAPE FALCON
CASCADE HEAD
FLORENCE SOUTH JETTY
CAPE ARAGO
HUMBUG MOUNTAIN
HUMBUG MOUNTAIN
SISTERS ROCKS
SISTERS ROCKS
HOUSE ROCK
MACK ARCH
HORSE MOUNTAIN
HORSE MOUNTAIN
POINT ARENA
POINT ARENA
POINT REYES
POINT REYES
POINT SAN PEDRO
POINT SAN PEDRO
U.S.-MEXICO BORDER
U.S.-MEXICO BORDER

5/1 thru 6/30. All salmon except coho. No more than 4 spreads per line.

10/1 thru 10/31. All salmon except coho. No more than 4 spreads per line. Subarea closure (see D.1.).

9/1 thru 10/31. All salmon except coho. No more than 4 spreads per line.

5/1 thru earlier of 6/30 or 12,000 chinook quota (E.1.). All salmon except coho. No more than 4 spreads per line.

9/1 thru earlier of 10/31 or 10,000 chinook quota (E.2.). All salmon except coho. No more than 4 spreads per line.

5/1 thru earlier of 5/31 or 1,500 chinook quota (E.3.). All salmon except coho. Open for 2-day periods only (see D.2.). No more than 4 spreads per line. Open 0-6 nautical miles of shore only.

8/8 thru earlier of 8/31 or 800 chinook quota (E.3.). All salmon except coho. Special registration fishery (see D.3.). No more than 4 spreads per line. Open 0-6 nautical miles of shore only.

9/1 thru 9/30. All salmon except coho.

8/1 thru 9/30. All salmon except coho.

6/15 thru 9/30. All salmon except coho.

5/1 thru 6/11. All salmon except coho.

7/1 thru 9/30. All salmon except coho.

Table 1. Commercial management measures for 1994 ocean salmon fisheries (continued).

B. MINIMUM SIZE LIMITS (Inches)

	Chinook		Coho		
	Total Length	Head-off	Total Length	Head-off	Pink
North of Cape Falcon	—	—	—	—	—
Cape Falcon to Humbug Mountain	26.0	19.5	—	—	None
South of Humbug Mountain	26.0	19.5	—	—	None

C. GENERAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

C.1. Hooks – Single point, single shank barbless hooks are required.

C.2. Line Restriction – Off California, no more than 6 lines per boat are allowed.

C.3. Transit Through Closed Areas with Salmon on Board – It is unlawful for a vessel, which has been issued an ocean salmon permit by any state, to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.4. Landing Salmon in Closed Areas – Legally caught salmon may be landed in closed areas unless otherwise prohibited by these regulations.

C.5. Consistent with Council management objectives, the State of Oregon may establish some additional late-season, all-salmon-except-coho fisheries in state waters.

C.6. For the purposes of California Fish and Game Code Section 8232.5, the definition of the Klamath management zone for the ocean salmon season shall be that area from Humbug Mountain, Oregon, to Horse Mountain, California.

D. POSSESSION, LANDING, AND SPECIAL RESTRICTIONS BY MANAGEMENT AREA

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area where landing is required. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, and the estimated time of arrival.

D.1. Cape Falcon to Cascade Head in October – The following subarea at the mouth of Tillamook Bay is closed to commercial fishing for the month of October: Inside the 10 fathom curve between the latitude of Twin Rocks (45°35'48" N. latitude) and 45°33'00" N. latitude; or as otherwise established by Oregon Department of Fish and Wildlife in State regulations. The 10 fathom curve passes just west of the green bell buoy #1 at the Tillamook Bay entrance (approximately 1 nautical mile offshore) at the Tillamook Bay entrance.

D.2. Sisters Rocks to House Rock in May – The fishery will be open only on the following days until the earlier of May 31 or attainment of the chinook quota (see E.3.): May 1-2, 5-6, 10-11, 14-15, 18-19, 22-23, 26-27 and 31. The Oregon Department of Fish and Wildlife and the National Marine Fisheries Service may adjust the open/closure cycle through the inseason management process as necessary to manage the fishery. All salmon caught in the area must be landed in the immediate area ports only (Gold Beach, Brookings, or Port Orford) within 24 hours of each closure. Landing limits may be imposed inseason as required to maintain an orderly fishery.

Table 1. Commercial management measures for 1994 ocean salmon fisheries (continued).

D.3. Sisters Rocks to Mack Arch in August - This is an experimental fishery to collect stock composition information that will be opened to a limited number of fishers determined in a random process by the Oregon Department of Fish and Wildlife (ODFW). The days of fishing will be determined prior to August by ODFW. All salmon caught in the area must be landed in the immediate area ports only (Gold Beach, Brookings, or Port Orford) within 24 hours of each weekly closure. Landing limits may be imposed inseason as required to maintain an orderly fishery. State regulations will require that fishers preregister with the ODFW by July 1 and may impose special reporting requirements. All participating fishers must have in their possession, prior to fishing, a National Marine Fisheries Service (NMFS) experimental fishing permit and a fishing permit from ODFW. Both permits will be issued through the ODFW Marine Region Office in Newport.

E. QUOTAS

E.1. May/June Chinook Quota Between Florence South Jetty and Humbug Mountain - The May/June troll fishery will be limited to a catch quota of 12,000 chinook.

E.2. September/October Chinook Quota Between Cape Arago and Humbug Mountain - The September/October troll fishery will be limited by a catch quota of 10,000 chinook.

E.3. Chinook Quotas Between Sisters Rocks and House Rock - The troll fishery will be limited by catch quotas of 1,500 chinook for the May fishery between Sisters Rocks and House Rock, and 800 chinook for the August fishery between Sisters Rocks and Mack Arch.

Table 2. Recreational management measures for 1994 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery. Areas on the map are not proportional to actual geographic areas.)

A. SEASONS, SUBAREA QUOTAS, SPECIES AND BAG LIMITS

(Shaded areas represent closures.)

	FEB/MAR/APR	MAY	JUNE	JULY	AUGUST	SEP/OCT/NOV
U.S.-CANADA BORDER						
CAPE FALCON						
		5/1 thru 6/5. All salmon except coho. 2 fish per day. No more than 2 fish in 7 consecutive days and no more than 10 fish per year (C.6.). Open only within the 27 fathom curve (C.4.).	TWIN ROCKS 6/6 thru 6/19. Season in State waters (see C.7.). PYRAMID ROCK			
HUMBUG MOUNTAIN						
		5/1 thru earlier of 6/30 or 10,300 chinook quota (D.1.). All salmon except coho. 2 fish per day.			8/27 thru earlier of 8/31 or 500 chinook quota (D.1.). All salmon except coho. 2 fish per day. Control Zone 2 (C.2.), Klamath River mouth, closed. Fishery reopens 9/1 thru 9/5 with no chinook quota. All salmon except coho. 2 fish per day.	
HORSE MOUNTAIN						
	Nearest Sat. to 2/15 thru 6/30. All salmon thru 4/30, then all salmon except coho. 2 fish per day				8/1 thru nearest Sun. to 11/15. All salmon except coho. 2 fish per day.	
POINT ARENA						
	Nearest Sat. to 3/1 thru nearest Sun. to 11/1. All salmon thru 4/30, then all salmon except coho. 2 fish per day. In 1995, Control Zone 3 (C.3.), near mouth of San Francisco Bay, will be closed from the opening of the season thru 3/31.					
U.S.-MEXICO BORDER						

B. MINIMUM SIZE LIMITS (Total length in inches)

	Chinook	Coho	Pink
North of Cape Falcon	—	—	—
Cape Falcon to Humbug Mountain	20.0	—	None
South of Humbug Mountain	20.0	—	None, except 20.0 off California

Table 2. Recreational management measures for 1994 ocean salmon fisheries (continued).

C. SPECIAL REQUIREMENTS, RESTRICTIONS AND EXCEPTIONS

C.1. Hooks - Single point, single shank barbless hooks are required north of Point Conception, California

C.2. Control Zone 2 - The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles off shore), and on the south by 41°26'48" N latitude (approximately 6 nautical miles south of the Klamath River mouth), is closed August 27-31.

C.3. Control Zone 3 (Sacramento River Winter-Run Chinook Conservation Closure) - The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54'17" N. latitude, 122°43'35" W. longitude) southerly to Duxbury Buoy to Channel Buoy 1 to Channel Buoy 2 to Point San Pedro (San Mateo County, 37°35'40" N. latitude, 122°31'10" W. longitude) is closed from the opening of the season in 1995 through March 31.

C.4. Area Within the 27 Fathom Curve Between Cape Falcon and Humbug Mountain - The ocean area that is bounded by a line from Cape Falcon to 45°46'00" N., 124°01'20" W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04'15" N., 124°04'00" W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40'40" N., 124°09'15" W. (approximately 3 nautical miles west of Yaquina Head) to 44°08'30" N., 124°12'00" W. (approximately 3 nautical miles west of Heceta Head) to 43°40'15" N., 124°14'30" W. (approximately 0.5 nautical mile west of the Umpqua Whistle Buoy) to 43°31'30" N., 124°17'00" W. (approximately 1.7 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°01'30" N., 124°29'05" W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56'00" N., 124°33'10" W. (approximately 2.4 nautical miles west of the mouth of Floras Creek) to 42°50'20" N., 124°38'30" W. (approximately 3.4 nautical miles west of Cape Blanco) to 42°40'30" N., 124°28'45" W. (approximately 1.1 nautical mile west of Humbug Mountain) to Humbug Mountain.

C.5. Inseason Management - To meet preseason management objectives, certain regulatory modifications may be necessary inseason. Such actions could include modifications to bag limits or days open to fishing and extensions or reductions in areas open to fishing.

C.6. Annual Possession Restriction Between Cape Falcon and Humbug Mountain - No more than 10 salmon of any species may be retained per year from the ocean area between Cape Falcon and Humbug Mountain, Oregon.

C.7. Restrictions Between Twin Rocks and Pyramid Rock - The fishery is entirely in State waters. Regulations to manage the fishery will be implemented by the State of Oregon. Contact the Oregon Department of Fish and Wildlife for current regulations.

C.8. Consistent with Council management objectives, the State of Oregon may establish limited, all-salmon-except-coho fisheries in state waters.

C.9. Consistent with Council management objectives, the State of Washington may establish limited fisheries in state waters.

D. QUOTAS

D.1. Chinook Quotas Between Humbug Mountain and Horse Mountain - The recreational fishery will be limited by harvest quotas of 10,300 chinook in May and June, and 500 chinook in August.

Table 3. Treaty Indian management measures for 1994 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, and C which must be followed for lawful participation in the fishery.)

A. SEASONS, SPECIES, MINIMUM SIZE LIMITS, AND GEAR RESTRICTIONS

Tribe and Area Boundaries	Open Seasons	Salmon Species	Minimum Size Limit (inches) Chinook	Minimum Size Limit (inches) Coho	Special Restrictions by Area
Makah – That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	—	Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person.
Quileute – That portion of the FMA between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	—	Barbless hooks. No more than 8 fixed lines per boat.
Hoh – That portion of the FMA between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	—	Barbless hooks. No more than 8 fixed lines per boat.
Quinault – That portion of the FMA between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	—	Barbless hooks. No more than 8 fixed lines per boat.

B. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a federal court for that tribe's treaty fishery.

B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches for chinook. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:
Makah Tribe – None.
Quileute, Hoh, and Quinault tribes – Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.

B.3. The areas within a 6-mile radius of the mouths of the Queets River (47°31'42" N. latitude) and the Hoh River (47°45'12" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. QUOTAS

C.1. The overall treaty troll ocean quotas are 16,400 chinook and no coho salmon. These quotas include troll catches by the Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through June 30.

BILLING CODE 3510-22-C

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3 of this preamble, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds (1.8 kg). There is no limit to the number of lines that a person may use while recreational fishing for salmon off California.

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographic Landmarks

Wherever the words "nautical miles from shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this notice are at the following locations:

Cape Falcon	45°46′00″ N. lat.
Twin Rocks	45°35′48″ N. lat.
Pyramid Rock	45°29′46″ N. lat.
Cascade Head	45°03′50″ N. lat.
Florence South Jetty	44°01′00″ N. lat.
Cape Arago	43°18′20″ N. lat.
Humbug Mountain	42°40′30″ N. lat.
Sisters Rocks	42°35′45″ N. lat.
Mack Arch	42°13′40″ N. lat.
House Rock	42°06′32″ N. lat.
Horse Mountain	40°05′00″ N. lat.
Point Arena	38°57′30″ N. lat.
Point Reyes	37°59′44″ N. lat.
Point San Pedro	37°35′40″ N. lat.
Point Conception	34°27′00″ N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 Khz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the Office of the Federal Register as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures and technical amendment are exempt from review under E.O. 12866.

Section 661.23 of title 50, Code of Federal Regulations states that the Secretary will publish a notice establishing management measures for ocean salmon each year and will invite public comments prior to their effective date. If the Secretary determines, for good cause, that a notice must be issued without affording prior opportunity for public comment, the measures will become effective, however, comments on the notice will be received by the Secretary for a period of 15 days after the filing of the notice with the **Federal Register**.

Because many ocean salmon seasons are scheduled to start May 1, the management measures must be in effect by this date. Each year the schedule for establishing the annual management measures begins in February with the compilation and analysis of biological and socioeconomic data for the previous year's fishery and salmon stock abundance estimates for the current year. Two meetings of the Council follow in March and April which incorporate a public review period. In 1994, the Council recommended management measures at the conclusion of its meeting on April 8, resulting in a short time frame for implementation.

In addition, delay in the start of the fishing season would deny ocean fishermen access to harvestable salmon stocks which, if taken later in the year, would produce unacceptable impacts on other salmon stocks, such as those listed under the ESA. Due to the migratory patterns of the various salmon stocks, harvest regimes account for the timing and location of harvestable stocks in concert with the stocks of concern. Therefore, in light of the limited available time and the adverse effect of delay, the Secretary has determined that good cause exists to waive prior notice and comment on the management measures.

Although this document will be effective without prior opportunity for comment, the public had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, STT, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in late March that generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

The technical amendment provisions of this regulatory action make only minor, non-substantive changes and do not change operating practices in the fishery. Accordingly, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment, and there is good cause under 5 U.S.C. 553(d) not to delay the effective date of the technical amendment for 30 days. Comments will be accepted for 15 days after the effective date of this notice.

On March 31, 1991, NMFS issued a biological opinion that considered the effects of the FMP on Sacramento River winter-run chinook salmon. The opinion concluded that implementation of the plan is not likely to jeopardize the continued existence of the species. The 1994 season falls within the scope of the 1991 opinion, and the seasons and management measures comply with the recommendations and incidental take conditions contained in the biological opinion. Therefore, it was not necessary to reinitiate consultation on Sacramento River winter-run chinook salmon.

NMFS has issued a biological opinion that considered the effects of the 1994 salmon management measures on wild sockeye salmon, wild spring/summer chinook salmon, and wild fall chinook salmon from the Snake River, which concluded the fishery in 1994 under the FMP is not likely to jeopardize the continued existence of the listed stocks.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Rolland A. Schmitten,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Appendix to part 661 [Amended]

2. The appendix to part 661, section IV.A., in the table "Summary of Specific Management Goals for Stocks in the Salmon Management Unit", is amended by revising the entry for the Klamath Fall Chinook to read as follows:

IV. Escapement Goals

A. * * *

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning[1] escapement goal
•	• • • •
Klamath Fall Chinook.	Between 33 and 34 percent of the potential adults from each brood of natural spawners, but no fewer than 35,000 naturally spawning adults in any one year.[3]
•	• • • •

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

* * * * *

[3] The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP.

* * * * *

[FR Doc. 94–10722 Filed 4–29–94; 3:43 pm]

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50 CFR Part 661

[Docket No. 940120–4123, I.D. 011094A]

RIN 0648–AE05

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce issues this final rule to implement Amendment 11 (Amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California (FMP). The Amendment modifies the spawning escapement goal for Oregon coastal natural (OCN) coho salmon and the criteria for establishing and managing subarea allocations for recreational coho salmon harvest south of Cape Falcon, OR. The Amendment is intended to: (1) Address persistent low OCN coho stock abundance and annual escapement goals below maximum sustainable yield (MSY), (2) prevent imbalances in recreational coho harvest allocation at low allowable harvest levels, and (3) prevent the frequent use of emergency rulemaking to implement annual management measures.

EFFECTIVE DATE: April 29, 1994.

ADDRESSES: Copies of the Amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council (PFMC), Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) at 206–526–6140, Rodney R. McInnis (Southwest Region, NMFS) at 310–980–4040, or Lawrence D. Six (PFMC) at 503–326–6352.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries in the exclusive economic zone of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of Washington, Oregon, and California are managed under the FMP. The FMP was developed by the Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), and approved by the Secretary of Commerce (Secretary) in 1978. Since then, the FMP has been amended 10 times, with implementing regulations codified at 50 CFR part 661. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments. Amendments to the framework FMP were implemented in 1987, 1988, 1989, and 1991.

The Council prepared the Amendment to the FMP and submitted it to the Secretary for approval under the provisions of the Magnuson Act. On January 10, 1994, the Secretary began formal review of the Amendment. A notice of availability and a proposed rule were published in the **Federal Register** on January 21, 1994 (59 FR 3327), and February 2, 1994 (59 FR 4895), respectively. The preamble for the proposed rule discussed the rationale for the proposed amendment. The comment period on the Amendment ended March 10, and on the proposed rule March 21, 1994; two written comments were received. The Amendment was approved on April 6, 1994.

As implemented by this final rule, the Amendment modifies the spawning escapement goal for OCN coho salmon. The OCN coho stock is composed of naturally produced coho salmon from Oregon coastal streams. OCN coho are important contributors to the ocean harvest, as the stock aggregate constitutes the largest component of naturally produced coho caught in ocean salmon fisheries off Oregon and California.

The modified escapement goal is intended to achieve an aggregate OCN adult spawning density of 42 naturally spawning adults per mile in standard index survey areas each year. The standard index survey areas are 48 different stream sections that have been surveyed by the Oregon Department of Fish and Wildlife (ODFW) each year since 1950. Under the current methods used by ODFW, the spawners in the standard index area are extrapolated for 4,764 miles of coastal spawning habitat. This translates to a numerical spawning escapement goal of 200,000. The original FMP spawning escapement goal of 200,000 was based on this extrapolation. This number of adult spawners per mile was documented as the estimated MSY spawning escapement level in an ODFW study of coastal stream spawning escapements and subsequent production from 1950 to 1980.

The Amendment also provides that when OCN coho abundance is forecast to be less than 125 percent of the annual numerical escapement goal, or below 250,000 fish at the present spawner escapement goal of 200,000 adults, an incidental exploitation rate of up to 20 percent will be allowed for ocean and freshwater fisheries targeting on non-OCN coho salmon stocks.

When the predicted OCN coho spawning escapement is 28 or less adults per mile in standard index areas, the Council may allow only an incidental exploitation rate of up to 20 percent. The Council will evaluate the actual level of incidental harvest of OCN coho that might be expected to occur in fisheries for chinook salmon and non-OCN coho salmon and will recommend only the minimum incidental harvest rate necessary to prosecute other fisheries, provided that that rate will cause no irreparable harm to the OCN coho stock.

The Amendment also modifies the criteria for establishing and managing subarea allocations for recreational coho salmon harvest south of Cape Falcon, OR, when the allowable recreational coho allocation for the entire area is equal to or less than 167,000 fish. The Amendment establishes two subareas with independent impact quotas to ensure that a large southward shift in the recreational harvest does not occur. Of the total recreational allocation, the subarea from Cape Falcon to Humbug Mountain, Oregon, receives 70 percent and the subarea south of Humbug Mountain receives 30 percent, the purpose being to avoid large deviations from historical harvest shares. The two subareas will be managed for their respective impact quotas; the recreational fisheries for coho salmon in each area may be closed upon attainment of the quota except for the area south of Point Arena, California (38°57′30″ N. lat.). South of Humbug Mountain, there are two additional conditions: (1) An impact guideline of 3 percent of the overall recreational allocation south of Cape Falcon will be applied from Horse Mountain to Point Arena, California; and (2) the recreational fishery for coho salmon will not be closed south of Point Arena, even if the fishery between Humbug Mountain and Point Arena is closed, upon projected attainment of the south of Humbug Mountain impact quota; but the projected harvest through the end of the year will be included in the south of Humbug Mountain impact quota. Quota transfers between subareas are allowed on a one-for-one basis, but only if chinook constraints preclude access to coho.

At its March 8–11, 1994, meeting the Council considered and adopted management options for annual ocean salmon fisheries under the assumption that the Amendment and its implementing regulations would be in place when coastwide ocean salmon fishing seasons open on May 1, 1994, as regularly scheduled. During this meeting, the Council clarified its intent regarding the fishing allowed when the spawner escapement is less than or equal to 28 coho per mile in the standard index areas. Under the existing plan, no fishing would have been allowed at that level of spawner escapement. This is a standard that is more restrictive than under the Endangered Species Act (ESA), which allows some incidental take of listed stocks. Therefore, the Amendment will allow an incidental exploitation rate of up to 20 percent that will provide only the minimum incidental harvest necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the OCN coho stock. This standard of the minimum incidental harvest and no irreparable harm replaces other allocative measures in the plan regarding OCN coho at spawner escapement levels at or below 28 spawners per mile.

Implementation of the Amendment requires changes to the regulatory language in the Appendix to 50 CFR part 661. The only change to the proposed regulations published on February 2, 1994, clarifies this issue of allocation at low spawner levels by adding language in paragraph 2(b)(i) of Appendix section II.B.

Comments and Responses

Two written comments on the Amendment were submitted representing three individuals and two organizations, the Environmental Defense Fund and the Northwest Forest Resource Council.

Comment: The spawning escapement goal proposed in the Amendment and the proposed rule does not adequately reflect documented declines in fish size, fecundity, survival rates, ocean production, and rainfall since 1979. The spawning escapement goal of 200,000 adults is most likely inadequate.

Response: The OCN coho stock has been the subject of ongoing review under the Council management process, which requires using the best scientific information and methodology available. There are several reasons for the consistent and significant depression in the OCN coho stock, but determination of a primary cause is not currently possible given the inadequacies in the information available on the stock and its habitat. Additional studies may provide a better definition of the total OCN coho spawning population. The ODFW is currently in the fourth year of a 5-year study of the methodology used in estimating OCN coho escapements. The results of that study, coupled with any additional biological data, will be used to develop a biologically sounder OCN coho escapement goal. Implementation of the Amendment does not hinder further investigations on the appropriateness of the numerical goal of 200,000 adults. The proposed rule anticipated revision to the spawning escapement goal, including the 200,000 number, by describing the processes by which the goal would be revised. If the estimated total number of spawners at the MSY level that is calculated by extrapolating from the 42 adults per mile in the standard index survey areas is revised, further changes to the FMP or its implementing regulations would not be necessary. If the number (42) of adult spawners per mile in the standard index survey areas is revised, the FMP would need to be amended. The framework in 50 CFR part 661, Appendix IV.B. provides for the modification of escapement goals based on technical evidence.

Comment: Individual escapement goals should be set for the northern, central, and southern regional aggregates of OCN coho stocks.

Response: The Salmon Technical Team has expressed its concern that the unequal distribution of spawners along the Oregon coast may be an important factor in recent OCN stock status declines. The Council recognizes the problem, but there are insufficient data at this time to implement separate escapement goals by subdividing the OCN stock aggregate. This matter will be subject to further analysis.

Comment: The escapement goal should be increased by 10 percent to hedge against impacts of harvest on genetic diversity and ecosystem integrity.

Response: The 200,000-fish MSY escapement goal has not been met for a number of years, and does not appear to be attainable in 1994. Because the goal represents an optimal production level and not a conservation threshold, it provides for substantial genetic diversity. Although there does not appear to be a statistical basis for any particular level of additional conservatism, NMFS agrees that, when stock sizes are such that the number of spawners is forecast to be below 28 per mile when directed fisheries are not allowed, substantial conservatism should be used when allowing incidental impacts for other fisheries.

Comment: Allowable incidental take should be reduced to a maximum of 10 percent to prosecute other fisheries, and should only be allowed when abundance is between 225,000 and 150,000 fish. No incidental take should be allowed that would result in escapement below the escapement floor (28 spawners per mile) until scientific information establishes that incidental take that violates the floor would not result in irreparable harm.

Response: The maximum incidental exploitation rate of 20 percent provides flexibility during the annual preseason management process for structuring fishing seasons to access salmon stocks with allowable harvest levels. Flexibility is also needed to account for harvest impacts by fisheries outside the Council's purview (e.g., freshwater fisheries and Canadian fisheries). NMFS will rely on the annual management process to determine the appropriate level of allowable incidental take. As with any management measure recommended by the Council, NMFS will consider comments by the Council, its advisers, and the public before implementing an incidental harvest rate. The Regional Director will provide guidance to the Council on an appropriate rate after consideration of the available information as supported by the administrative record. The Council demonstrated its ability to exercise harvest restraint on OCN coho, as in 1991, 1992, and 1993, when it recommended emergency regulations to reduce the ocean harvest rate on OCN coho from the levels set in Amendment 7 to the FMP. For the 1994 season, the Council recommended management measures with an incidental harvest rate of 11 percent. The standard of the minimum incidental harvest and no irreparable harm replaces other allocative measures in the plan regarding OCN coho at spawner escapement levels at or below 28 spawners per mile.

Comment: A reduction in the body size of salmon could cause a significant reduction in fish productivity and subsequent declines in stock abundance. The direct relationship between fecundity and fish size has been established in prior research. Yet the proposed spawning escapement goal has not taken this relationship into account.

Response: The OCN spawning escapement goal is based on data from many series of years. Body size and fecundity undoubtedly varied depending on ocean feeding conditions, with returning spawners being both above and below the average body size and fecundity for the time series. The spawning escapement goal is based on average conditions, which take into account this variability. Since fishery managers cannot predict whether body size will be larger or smaller than normal prior to the fish appearing in the catch and on the spawning grounds, it is not practical to adjust either the fishing seasons or the annual spawning escapement goals to account for body size. The spawning escapement goal implemented by the Amendment assumes average conditions and is set at a level to accommodate annual variations.

Comment: The Amendment fails to require measures or research for reducing the incidental take of OCN coho.

Response: Measures for reducing the incidental take of OCN coho are addressed during the annual process for setting management measures. The Council is currently reviewing its list of research and data needs, which includes improving estimates of commercial troll shaker mortality. These estimates will be determined by contact rates in various fisheries. The Council will continue to consider new information as it becomes available, in developing ways to reduce this mortality through gear selectivity or modification. The Council determined that the Amendment provides the best approach at the present time, given the currently available information.

Comment: The Amendment establishes OCN coho numerical annual spawning escapement goals at the expense of remaining wild stocks of coho salmon.

Response: The OCN spawning escapement goal implemented by this amendment is based solely on wild fish. Current hatchery practices are designed to discourage the intermixing of wild and hatchery stocks. Although some intermixing probably occurs, it is thought to be a small enough proportion of the total spawning population that it does not adversely affect the production of wild coho salmon.

Comment: A supplemental environmental impact statement (SEIS) on the FMP should be prepared incorporating new scientific information concerning coho and other salmon since the last SEIS was prepared in 1984.

Response: The environmental assessment (EA) for the Amendment was prepared in accordance with NOAA Administrative Order 216–6 on Environmental Review Procedures. The Assistant Administrator for Fisheries, NOAA (AA), reviewed the EA and concluded that this action will not significantly affect the human environment. Therefore, preparation of an SEIS is not required. While new information on salmon stocks has been developed since the last SEIS, prepared for the framework amendment to the FMP in 1984, there is not sufficient new information specific to the OCN coho stock to warrant preparation of an SEIS for this action. Under the ESA process, a thorough evaluation of salmon stocks in Washington, Oregon, and California is being conducted that may result in preparation of at least one SEIS for the FMP.

Classification

This rule has been determined to be "not significant" for purposes of E.O. 12866.

The Assistant Administrator determined that this rule will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The Council prepared a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) that are incorporated in the Amendment document and may be obtained from the Council (see **ADDRESSES**). A summary of the RIR/IRFA was published on February 2, 1994 (59 FR 4897). No public comments were received relating to small entities and no changes were made in the initial document. Therefore, the document will now serve as a final regulatory flexibility analysis (FRFA).

The AA determined that this rule must be effective no later than May 1, 1994, when coastwide ocean salmon fishing seasons are scheduled to open. Therefore, it is impracticable and contrary to the public interest to delay for 30 days the effective date of this final rule, and the agency finds good cause to waive the delayed effectiveness provision (5 U.S.C. 553(d)(3)) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: April 29, 1994

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In the appendix to part 661, in section II.B., three new sentences are added to the end of paragraph 2(b)(i), and a new paragraph 2(b)(v) is added to read as follows:

Appendix

* * * * *

II. Annual Changes to Management Specifications

* * * * *

B. Procedures for Establishing and Adjusting Annual Management Measures.

* * * * *

2. Allocation of ocean harvest levels

* * * * *

(b) *Coho south of Cape Falcon.* (i) * * * The recreational allowable ocean harvest will be distributed between the two major recreational subareas when the recreational allocation is equal to or less than 167,000 fish, in accordance with paragraph 2(b)(v) of this appendix. At OCN spawning escapements of 28 or fewer adults per mile, the allocation provisions of paragraph 2(b) of this appendix do not apply. Fisheries will be established that will provide only the minimum incidental harvest of OCN coho necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the OCN stock.

* * * * *

(v) When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

* * * * *

3. In the appendix to part 661, in section IV.A., the table "Summary of Specific Management Goals for Stocks in the Salmon Management Unit" is amended by revising the entry for Columbia River and Oregon Coastal Coho and its footnote 4 to read as follows:

IV. Escapement Goals

A. * * *

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning escapement goal[1]
* * * * *	
Columbia River and Oregon Coastal Coho.	Oregon coastal natural (OCN) coho spawning escapement is based on an aggregate density of 42 naturally spawning adults per mile in standard index survey areas[4]
* * * * *	

---

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

* * * * *

[4] At OCN stock sizes below 125 percent of the annual numerical escapement goal, an exploitation rate of up to 20 percent will be allowed for incidental impacts of the combined ocean troll, sport, and freshwater fisheries. At OCN spawning escapements of 28 or fewer adults per mile, an exploitation rate of up to 20 percent may be allowed to provide only minimum incidental harvest to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.

* * * * *

[FR Doc. 94-10721 Filed 4-29-94; 3:43 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1530

Sugar Import Licensing

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Foreign Agricultural Service (FAS) is requesting suggestions for revising the regulations and other program provisions for the sugar import licensing programs in order to improve program efficiency and compliance as well as to carry out relevant provisions of the North American Free Trade Agreement (NAFTA).

DATES: Interested persons are invited to submit written comments concerning the rules or administration of these programs. All written comments must be received on or before June 3, 1994, in order to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to the Team Leader, Import Quota Programs, Foreign Agriculture Service, room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Fred R. Kessel, (202) 720–5676.

SUPPLEMENTARY INFORMATION: Paragraphs 21 and 22 of Annex 703.2 of Chapter 7 of the NAFTA relate to the trade of sugar and sugar containing products which receive benefits under re-export programs. Paragraph 21 requires that the United States notify Mexico, in writing, of any export to Mexico is not obligated to grant NAFTA duty preferences for such products. However, paragraph 22(b) provides that Mexico shall accord duty-free treatment to imports of (i) U.S. raw sugar that will be refined in Mexico and re-exported to the United States, and (ii) refined sugar that has been refined in the United States from Mexican raw sugar. Moreover, imports qualifying for duty-free treatment pursuant to paragraph 22(b) will not be subject to, or counted under, any tariff rate quota. Comments with respect to implementation of these provisions will be considered in drafting proposed regulations.

Interested persons are encouraged to consider the rules relating to the maximum license sizes (7 CFR 1530.102(c) and 1530.202(c)) and provide comments supporting any change. FAS is considering having all programs conform to the metric system. This change would revise the maximum license sizes from short tons to metric tons.

Another rule change being considered relates to changes in the notice of transfer submission to the Licensing Authority. The provisions at 7 CFR 1530.106(c) and 1530.204(c) relating to the original notice of transfer being submitted to the Licensing Authority within 10 days of the transfer date will be reviewed for possible changes. The agency is considering having the refiner licensee transmit to FAS the original notice of transfer within X days of the shipment date and then simply receive and store confirmations from the manufacturer licensees. Information concerning numerous transfers within an X-day period could be submitted to the Licensing Authority, either by mail or by electronic means.

FAS is also considering modifying the rule concerning licensee certifications in 7 CFR 1530.105(b). The additional requirement the agency is considering is having the licensee provide certification to the Licensing Authority within 95 days of the date of export or last certification which ever comes first. An alternative could be to have periodic reports (e.g., weekly, monthly, or quarterly depending on the volume of license activity). This change would allow the Licensing Authority to establish greater compliance safeguards.

Licensees in the Refined Sugar Re-export program have been informed by FAS that during the time domestic marketing allotments are in effect, licensees' sugar export shipments could not be certified to the Licensing Authority as being eligible for license credit except when any domestic sugar can be verified as being counted against marketing allotment allocations. FAS is interested in developing appropriate rules that would incorporate this limitation.

FAS also is interested in comments addressing the creation of a program to provide for imports of raw cane sugar exempt from the tariff-rate quota on condition that an equivalent quantity of raw sugar is exported. Currently, subheading 1701.11.02 and additional U.S. note 3(c) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) authorizes the sugar licensing programs but provides only for imports of raw sugar "to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products." This provision would need to be amended to permit a raw sugar swap program.

FAS is interested in comments relating to the implementation of an automated data system linking licensees with the Licensing Authority. Automated data processing procedures relating to the use of standardized forms for notices of transfer and certifications for export credit are of particular interest. Rule change suggestions for providing a structured data reporting format to enhance program administration and assist in verifying program compliance are also requested.

FAS will give major consideration to the suggestions of manufacturer licensees in the sugar to be re-exported in sugar containing products program with respect to contractual manufacturing arrangements with co-packers. Comments should center on the control of quota-exempt sugar to prevent diversion onto the domestic market and the means by which manufacturer licensees would establish eligibility to receive credit for sugar containing product exports for products manufactured and exported by a co-packer.

FAS is also considering changing the licenses used under the Sugar for the Production of Polyhydric Alcohol program from a license to import raw sugar to a license to receive transfers of refined sugar.

Since this will be the best opportunity to modify program regulations, program participants should address any other issues that they deem appropriate.

Signed at Washington, DC on March 31 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–10621 Filed 5–3–94; 8:45 am]

BILLING CODE 3410–10–M

Farmers Home Administration

7 CFR Parts 1823, 1910, 1941, 1942, 1943, 1944, 1945, 1948, 1951, and 1980

RIN: 0575–AA66

Denying Credit to Applicants Delinquent on Federal Debt

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations concerning program eligibility requirements. These revisions will direct field offices to suspend processing of an application if an applicant is found to be delinquent on a Federal debt until the delinquency is resolved, and to deny credit if a Federal judgment is found against an applicant. This action is necessary to implement requirements of OMB Circular A–129, "Policies for Federal Credit Programs and Non-Tax Receivables." Denying credit to applicants against whom there is a Federal judgment is mandated by provisions of the Federal Debt Collections Procedures Act of 1990. The intended effect of this action is to instruct field offices on how to obtain more information to be used in determining loan, grant and loan servicing eligibility.

DATES: Comments must be submitted on or before July 5, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, South Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Wanamaker, Senior Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, room 6446, South Agriculture Building, Washington, DC 20250, Telephone (202) 690–0501.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575–0134, 0575–0141, 0575–0132, 0575–0097, 0575–0123, 0575–0074, 0575–0085, 0575–0083, 0575–0059, 0575–0045, 0575–0047, 0575–0062, 0575–0090, 0575–0130, 0575–0066, 0575–0079, 0575–0029, and 0575–0137 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Intergovernmental Review

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404	Emergency Loans
10.405	Farm Labor Housing Loans and Grants
10.406	Farm Operating Loans
10.407	Farm Ownership Loans
10.410	Low Income Housing Loans (Section 502 Rural Housing Loans)
10.411	Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans (SW Loans)
10.417	Very Low Income Housing Repair Loans and Grants
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.420	Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.421	Indian Tribes and Tribal Corporation Loans
10.422	Business and Industrial Loans
10.423	Community Facility Loans
10.434	Nonprofit Corporations Loan and Grant Program
10.436	Technical Assistance and Training Grants

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983).

Programs listed under numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to the provisions of Executive Order 12372 (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Regulatory Flexibility Act

The Administrator of the Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Background Information

The current loan application procedures require that an applicant provide certification that it is not delinquent on a Federal debt. For the purpose of verifying an applicant's certification, FmHA proposes to amend its instructions by revising each eligibility section to instruct the field offices to access the Department of Housing and Urban Development's Credit Alert Interactive Voice System (CAIVRS) to verify that the applicant is not delinquent on a Federal debt. If a delinquency is found, processing of the application will be suspended. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. If the applicant is unable to resolve the delinquency, or if an outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, is found, assistance may be denied.

List of Subjects

7 CFR Part 1823

Credit, Indians.

7 CFR Part 1910

Applications, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Industrial park, Loan programs—housing and community development, Loan programs—natural resources, Loan security, Rural areas, Soil conservation, Waste treatment and disposal—domestic, Water supply—domestic.

7 CFR Part 1943

Credit, Loan programs—agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—housing and community development, Handicapped, Home improvement, Loan programs—housing and community development, Low and moderate income housing—rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—agriculture.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—housing and community development, Housing, Nuclear energy, Planning, Rural areas, Transportation, Economic development.

7 CFR Part 1951

Accounting servicing, Grant programs—housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1980

Agriculture, Grant programs—Nonprofit corporations, Loan programs—agriculture, Loan programs—business and industry—Rural development assistance, Loan programs—nonprofit corporations, Rural areas, Loan programs—community programs, Rural development assistance.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

1. The authority citation for part 1823 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart N—Loans to Indian Tribes and Tribal Corporations

2. Section 1823.403 is amended by adding paragraph (d) to read as follows:

§ 1823.403 Eligibility.

* * * * *

(d) Not be delinquent on any Federal debt or have a Federal judgment lien against its property.

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

PART 1910—GENERAL

3. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

4. Section 1910.4 is amended by adding paragraph (g)(3) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(g) * * *

(3) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. FmHA loan or grant funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so. A decision to deny a loan for this reason is not appealable.

* * * * *

5. Section 1910.5 is amended by adding paragraph (e) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(e) *Delinquency on a Federal debt.* Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," will be used to help determine if an applicant is delinquent on any Federal debt.

PART 1941—OPERATING LOANS

6. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

7. Section 1941.12 is amended in paragraphs (a)(1) and (b)(5)(i) in the fourth sentence by changing the reference from "INS Form G–641, 'Application for Verification of Information from Immigration and Naturalization Records,' " to "INS Form G–639, 'Verification Request Form,' " and in the last sentence by changing the reference from "INS Form G–641" to "INS Form G–639," by revising the introductory text and paragraphs (a)(4)

and (b)(5)(iii), and by adding paragraph (d) to read as follows:

§ 1941.12 Eligibility requirements.

Subject to the restrictions listed in paragraph (d) of this section, an applicant is eligible for loan assistance if the following requirements are met:

(a) * * *

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s). However, delinquency on a Federal debt shall cause the applicant to be ineligible for loan assistance (other than for certain Farmer Program loans as provided in § 1941.14 of this subpart).

(i) The County Office will use Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) If the applicant is delinquent on a Federal debt, and is unable to resolve the delinquency, the application will be rejected (unless applying for certain Farmer Program loans as providied in § 1914.14 of this subpart) and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(b) * * *

(5) * * *

(iii) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to meet the payment(s). Delinquency on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of this subpart), by the entity or any of its members shall cause the entity to be ineligible.

(A) The County Office will use Form FmHA 1910–3 to check the Department of Housing and Urban Development's CAIVRS to determine if the entity or any of its members is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(B) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt) and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(d) *Restrictions.* An applicant will be considered ineligible for loan assistance under any of the following circumstances. A decision to deny a loan for any of these reasons is not appealable.

(1) In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of this subpart (available in any FmHA office) for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crimes after December 23, 1985.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any Farmer Program loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

PART 1942—ASSOCIATIONS

8. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

9. Section 1942.2 is amended by redesignating paragraphs (a)(2) through (a)(4) as (a)(3) through (a)(5), by adding a new paragraph (a)(2), and by revising newly redesignated paragraph (a)(3)(ii) to read as follows:

§ 1942.2 Processing applications.

(a) * * *

(2) Delinquency on a Federal Debt

(i) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

(3) * * *

(ii) The State Office shall maintain a working relationship with the State agency or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed.

* * * * *

Subpart C—Fire and Rescue Loans

10. Section 1942.111 is amended by adding paragraph (d) to read as follows:

1942.111 Applicant eligibility.

* * * * *

(d) Delinquency on a Federal Debt

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter.

The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

11. Section 1942.305 is amended by adding paragraph (a)(4) to read as follows:

§ 1942.305 Eligibility and priority.

(a) * * *

(4) Delinquency on a Federal Debt

(i) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

12. Section 1942.356 is amended by adding paragraph (a)(4) to read as follows:

§ 1942.356 Applicant eligibility and priority.

(a) * * *

(4) Applicant is not delinquent on a Federal debt.

(i) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

* * * * *

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

13. Section 1942.405 is amended by adding paragraph (f) to read as follows:

§ 1942.405 Eligibility.

* * * * *

(f) Applicant must not be delinquent on a Federal debt.

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

Subpart J—Technical Assistance and Training Grants

14. Section 1942.457 is amended by adding paragraph (d) to read as follows:

§ 1942.457 Eligibility.

* * * * *

(d) The applicant must not be delinquent on a Federal debt.

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

Subpart K—Emergency Community Water Assistance Grants

15. Section 1942.506 is amended by adding paragraph (c) to read as follows:

§ 1942.506 Eligibility.

* * * * *

(c) The applicant must not be delinquent on a Federal debt.

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

16. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

17. Section 1943.12 is amended in paragraphs (a)(1) and (b)(4)(i) in the fourth sentence by changing the reference from "INS Form G–641,

'Application for Verification of Information from Immigration and Naturalization Records,'" to "INS Form G–639, 'Verification Request Form,'" and in the last sentence by changing the reference from "INS Form G–641" to "INS Form G–639," by revising the introductory text and paragraphs (a)(4) and (b)(4)(iii), and by adding paragraph (d) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

Subject to the restrictions listed in paragraph (d) of this section, an applicant is eligible for loan assistance if the following requirements are met:

(a) * * *

(4) Have the character (emphasizing credit history, past record of debt repayment, and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s). If an applicant is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(i) The County Office will use Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt), and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(b) * * *

(4) * * *

(iii) Have the character (emphasizing credit history, past record of debt repayment, and reliability) and industry to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners, or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s). If the entity or any of its members is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), the entity is automatically ineligible for loan assistance.

(A) The County Office will use Form FmHA 1910–3 to check the Department of Housing and Urban Development's CAIVRS to determine if the entity or any of its members is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(B) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt) and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(d) *Restrictions.* An Applicant will be considered ineligible for loan assistance under any of the following circumstances. A decision to deny a loan for any of these reasons is not appealable.

(1) In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office) for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crimes after December 23, 1985.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any Farmer Program loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

18. Section 1943.62 is amended in paragraphs (a)(1) and (b)(3) in the fourth sentence by changing the reference from "INS Form G–641, 'Application for Verification of Information from Immigration and Naturalization Records,'" to "INS Form G–639, 'Verification Request Form,'" and in the seventh sentence by changing the reference from "INS Form G–641" to "INS Form G–639," by revising the introductory text and paragraphs (a)(4) and (b)(1), and by adding paragraph (c) to read as follows:

§ 1943.62 Soil and water loan eligibility requirements.

Subject to the restrictions listed in paragraph (d) of this section, an applicant is eligible for loan assistance if the following requirements are met:

(a) * * *

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s). If an applicant is delinquent on a Federal debt (other than a Farmer Program debt,

in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(i) The County Office will use Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt), and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(b) * * *

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners, or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s). If the applicant (the entity or any of its members) is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A or part 1941 of this chapter), the entity is automatically ineligible for loan assistance.

(i) The County Office will use Form FmHA 1910–3 to check the Department of Housing and Urban Development's CAIVRS to determine if the entity or any of its members is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt) and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(d) *Restrictions.* An applicant will be considered ineligible for loan assistance under any of the following circumstances. A decision to deny a loan for any of these reasons is not appealable.

(1) In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office) for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Service," that as individuals or that its members, if an entity, have not been convicted of such crimes after December 23, 1985.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any Farmer Program loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

PART 1944—HOUSING

19. The authority citation for Part 1944 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

20. Section 1944.9 is amended by adding paragraph (f)(5) to read as follows:

§ 1944.9 Other eligibility requirements.

* * * * *

(f) * * *

(5) The loan approval official will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the loan approval official will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection

upon specific determination that it is in the best interest of the Government to do so.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

21. Section 1944.157 is amended by adding paragraph (a)(10) to read as follows:

§ 1944.157 Eligibility requirements.

(a) * * *

(10) Not be delinquent on a Federal debt or have a judgment lien against its property for a debt owed the United States.

(i) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

(iii) For the purposes of this paragraph, applicant is defined as the applicant entity. In the case of a limited partnership, the applicant entity and each general partner will be considered.

* * * * *

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

22. Section 1944.211 is amended by adding paragraph (a)(15) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(15) Not be delinquent on a Federal debt or have a judgment lien against its property for a debt owed the United States.

(i) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

(iii) For the purposes of this paragraph, applicant is defined as the applicant entity. In the case of a limited partnership, the applicant entity and each general partner will be considered.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

23. Section 1944.467 is amended by revising paragraph (c) to read as follows:

§ 1944.467 Processing applications.

* * * * *

(c) *Credit investigation.* Credit reports will be used for all loans of more than $7,500, and will be ordered at no cost to the applicant in accordance with subpart B of part 1910 (available in any FmHA office). Credit reports will not be used for grant assistance or loans of $7,500 or less. In all cases, before making a loan, the County Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

* * * * *

PART 1945—EMERGENCY

24. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

25. Section 1945.162 is amended in paragraph (b)(1) in the fourth sentence by changing the reference from "INS Form G–641, 'Application for Verification of Information from Immigration and Naturalization Records,' " to "INS Form G–639, 'Verification Request Form,' " and in the last sentence by changing the reference from "INS Form G–641" to "INS Form G–639," by revising the introductory text and paragraph (g), and by adding paragraph (n) to read as follows:

§ 1945.162 Eligibility requirements.

Subject to the restrictions listed in paragraph (n) of this section, an applicant is eligible for loan assistance if the following requirements are met:

* * * * *

(g) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years immediately preceding the application) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. If an applicant is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(1) The County Office will use Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) If the individual applicant (or entity, or any member of the entity) is delinquent on a Federal debt (other than a Farmer Program debt), and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

(n) *Restrictions.* An applicant will be considered ineligible for loan assistance under any of the following circumstances. A decision to deny a loan for any of these reasons is not appealable.

(1) In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office) for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FMHA Services," that as individuals or that its members, if an entity, have not been convicted of such crimes after December 23, 1985.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any Farmer Program loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

PART 1948—RURAL DEVELOPMENT

26. The authority citation for Part 1948 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

27. Section 1948.54 is amended by designating the text as paragraph (a), and adding paragraph (b) to read as follows:

§ 1948.54 Eligible applicants.

* * * * *

(b) The applicant must not be delinquent on a Federal debt.

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing fo the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900

of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

Subpart C—Intermediary Relending Program (IRP)

28. Section 1948.117 is amended by adding paragraph (d) to read as follows:

§ 1948.117 Other regulatory requirements.

* * * * *

(d) *The applicant must not be delinquent on a Federal debt.*

(1) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter.

The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

29. Section 1948.128 is amended by redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 1948.128 Requests to make loans to ultimate recipients.

* * * * *

(d) If the ultimate recipient is a partnership or for-profit corporation, the intermediary will provide certifications from each general partner or stockholder owning a 10 percent or more interest as to whether it is delinquent on any Federal debt or has a judgment lien against its property for a debt owed the United States.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

30. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

31. Section 1951.230 is amended by adding paragraph (a)(13) to read as follows:

§ 1951.230 Transfer of security and assumption of loans.

(a) * * *

(13) The transferee must not be delinquent on a Federal debt or have a Federal judgment lien against its property.

(i) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the transferee is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The transferee will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the transferee provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the transferee to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the transferee is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the transferee will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

* * * * *

PART 1980—GENERAL

32. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmer Program Loans

33. Section 1980.175 is amended in paragraphs (b)(1)(i) and (b)(2)(iv)(A) in the fourth sentence by changing the reference from "INS Form G–641, 'Application for Verification of Information from Immigration and Naturalization Records,' " to "INS Form G–639, 'Verification Request Form,' " and in the last sentence by changing the reference from "INS Form G–641" to "INS Form G–639," by revising the introductory text of paragraph (b), by revising paragraphs (b)(1)(iv), (b)(1)(v), (b)(2)(iv)(C) and (b)(2)(iv)(D), and by adding paragraph (b)(3) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) *Loan eligibility requirements.* Subject to the restrictions listed in paragraph (b)(3) of this section, an applicant is eligible for loan assistance if the following requirements are met:

(1) * * *

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation. If an applicant is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(A) The County Office will use Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to check the

Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(B) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt), and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

(v) Honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete, and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(2) * * *

(iv) * * *

(C) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation. If the applicant (the entity or any of its members) is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(*1*) The County Office will use Form FmHA 1910–3 to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(*2*) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt) and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

(D) They and the entity itself will honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete, and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(3) *Restrictions.* An applicant will be considered ineligible for loan assistance under any of the following circumstances. A decision to deny a loan for any of these reasons is not appealable.

(i) In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office) for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crimes after December 23, 1985.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any Farmer Program loan or loan guarantee until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

34. Section 1980.185 is amended in paragraphs (b)(1)(i) and (b)(2)(iii) in the fourth sentence by changing the reference from "INS Form G–641, 'Application for Verification of Information from Immigration and Naturalization Records,'" to "INS Form G–639, 'Verification Request Form,'" and in the last sentence by changing the reference from "INS Form G–641" to "INS Form G–639," by revising the introductory text of paragraph (b), by revising paragraphs (b)(1)(iv), (b)(1)(v), (b)(2)(i) and (b)(2)(ii), and by adding paragraph (b)(3) to read as follows:

§ 1980.185 Soil and Water loans.

* * * * *

(b) *Soil and Water loan eligibility requirements.* Subject to the restrictions listed in paragraph (b)(3) of this section, an applicant is eligible for loan assistance if the following requirements are met:

(1) * * *

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation. If an applicant (the entity or any of its members) is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(A) The County Office will use Form FmHA 1910–3 to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate

Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(B) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt), and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

(v) Honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete, and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(2) * * *

(i) Along with all of its members, stockholders, partners, or joint operators have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation. If the applicant (the entity or any of its members) is delinquent on a Federal debt (other than a Farmer Program debt, in accordance with § 1941.14 of subpart A of part 1941 of this chapter), it is automatically ineligible for loan assistance.

(A) The County Office will use Form FmHA 1910–3 to check the Department of Housing and Urban Development's CAIVRS to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the County Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(B) If the applicant is delinquent on a Federal debt (other than a Farmer Program debt) and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

(ii) Along with all of its members, stockholders, partners or joint operators, honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete, and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

* * * * *

(3) *Restrictions.* An applicant will be considered ineligible for loan assistance under any of the following circumstances. A decision to deny a loan for any of these reasons is not appealable.

(i) In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office) for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crimes after December 23, 1985.

(ii) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any Farmer Program loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. The Administrator may waive this restriction upon specific determination that it is in the best interest of the Government to do so.

* * * * *

Subpart E—Business and Industrial Loan Program

35. Section 1980.406 is added to read as follows:

§ 1980.406 Delinquency on a Federal debt.

(a) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(b) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant, loan or loan guarantee until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

Subpart G—Nonprofit National Corporations Loan and Grant Program

36. Section 1980.606 is amended by adding paragraph (f) to read as follows:

§ 1980.606 NNC eligibility.

* * * * *

(f) Not be delinquent on a Federal Debt. This applies to both the applicant and the ultimate recipients that are to be funded from Federal funds.

(1) The National Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny assistance can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the National Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant, loan or loan guarantee until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

Subpart I—Community Programs Guaranteed Loans

37. Section 1980.851 is amended by adding paragraph (a)(1)(vii) to read as follows:

§ 1980.851 Processing applications.

(a) * * *

(1) * * *

(vii) Determination of delinquency on a Federal debt.

(A) The District Office will check the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS), following the Forms Manual Insert for Form FmHA 1910–3, "Record of Credit Alert Interactive Voice Response System (CAIVRS) Inquiry," to determine if the applicant is delinquent on a Federal debt. No decision to deny credit can be based solely on the results of the CAIVRS inquiry. If CAIVRS identifies a delinquent Federal debt, the District Office will immediately suspend processing of the application. The applicant will be notified that processing has been suspended and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides FmHA with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued.

(B) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. FmHA loan funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel. If the judgment remains unsatisfied, or if the applicant is delinquent on a Federal debt and is unable to resolve the delinquency, the application will be rejected and the applicant will be notified of its right for an appeal in accordance with subpart B of part 1900 of this chapter. The Administrator may waive the rejection upon specific determination that it is in the best interest of the Government to do so.

* * * * *

Dated: April 7, 1994.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–10618 Filed 5–3–94; 8:45 am]

BILLING CODE 3410–07–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Environmental Review for Renewal of Operating Licenses: Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff will meet with the Nuclear Energy Institute (NEI) and Yankee Atomic Electric Company (YAEC) to discuss their written comments that are responsive to the States' concerns regarding NRC's proposed rule on the environmental review required for renewal of nuclear power plant operating licenses. These concerns focus on provisions of the proposed rule that the States see as being in conflict with the traditional authority of the States to regulate electric utilities with respect to non-safety aspects of nuclear power generation. The purpose of the meeting is to assure that the NRC staff and the public understands the approaches proposed by NEI and YAEC.

DATES: The date of the meeting is May 16, 1994. The meeting will begin at 1 p.m. and will finish by 4:30 p.m.

ADDRESSES: The meeting will be held at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, room 1–S 7&9.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 492–3936.

SUPPLEMENTARY INFORMATION: The NRC published proposed amendments to its environmental protection regulations, 10 CFR part 51, which would establish new requirements for the environmental review of applications to renew operating licenses for nuclear power plants (September 17, 1991; 56 FR 47016). Concurrently, the NRC published NUREG–1437, a draft Generic Environmental Impact Statement (GEIS) that contained the analyses which the NRC proposed to codify in Part 51. In commenting on the proposed rule and the draft GEIS, a number of States expressed dissatisfaction with the treatment of need for generating capacity, and alternative energy sources. The States' concerns involve provisions of the proposed rule that the States see as being in conflict with the traditional authority of the States to regulate electric utilities with respect to non-safety aspects of nuclear power generation. The Commission instructed the NRC staff to develop options for responding to these States' concerns and in doing so to solicit the views of the States.

The NRC staff solicited the views of the States and others through three regional meetings and a request for written comments (January 18, 1994; 59 FR 2542). To facilitate discussions with the States the NRC staff prepared a paper, "Addressing the Concerns of States and Others Regarding the Role of Need for Generating Capacity, Alternative Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental Reviews for Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper." The regional meetings were held in Rockville, MD, February 9, 1994; Rosemont, IL, February 15, 1994; and Chicopee, MA, February 17, 1994. A number of parties, including NEI and YAEC, filed written comments subsequent to the meetings. The discussion paper, meeting transcripts, and written comments, including NEI's proposal dated March 23, 1994, and YAEC's proposal dated March 18, 1994, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037.

The NEI and the YAEC proposals were not adequately developed for discussion at the time of the regional meetings, and now the NRC staff needs to be assured that it understands the two proposals before reporting to the Commission on the options considered. All interested persons are invited to attend as observers. After the NRC staff's questions have been answered, time will be allowed to take questions and comments from the floor on the NEI and YAEC proposals. The meeting minutes will be transcribed by a court reporter.

Dated at Rockville, Maryland, this 22th day of April, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–10663 Filed 5–3–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0830 and Docket No. R–0831]

Electronic Fund Transfers; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and official staff interpretation; Extension of comment period.

SUMMARY: On March 7, 1994, the Board requested comment on a proposal to revise Regulation E (Electronic Fund Transfers and the Official Staff Interpretation (59 FR 10684 and 59 FR 10698). The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period for 60 days to give the public additional time to provide comments.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Comments, which should refer to Docket No. R–0830 and Docket No. R–0831, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Obrea Poindexter, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202)452–3667 or 452–2412. For the hearing impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202)452–3544.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on the proposed amendments to Regulation E (Electronic Fund Transfers) and the Official Staff Interpretation, to give the public additional time to comment on the proposal.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, April 28, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–10646 Filed 5–3–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–25–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires inspections to detect damage of the ball bearings in the aileron quadrants, replacement of damaged ball bearings with new ball bearings, and adjustment to the secondary stops. This action would require installation of new swivel bearings in the aileron quadrants, which would terminate the inspection requirement. This proposal is prompted by the development of a modification that eliminates the need to inspect repetitively. The actions specified by the proposed AD are intended to prevent failure of the bearings in the aileron quadrants, which could result in reduced controllability of the airplane.

DATES: Comments must be received by June 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–25–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–25–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On March 3, 1994, the FAA issued AD 93–25–10, Amendment 39–8849 (59 FR 11531, March 11, 1994), applicable to certain Jetstream Model 4101 airplanes, to require inspections to detect damage of the ball bearings in the aileron quadrants, replacement of damaged ball bearings with new ball bearings, and adjustment to the secondary stops. That action was prompted by a report that an in-flight failure of a ball bearing in a quadrant in the pilot's aileron control system caused abnormal backlash of the pilot's aileron control. The requirements of that AD are intended to prevent reduced controllability of the airplane.

Since the issuance of that AD, Jetstream has developed new swivel bearings that allow greater swivel action, which would significantly decrease the likelihood of abnormal backlash of the aileron control due to bearing failure. Bearing failure in the aileron quadrants, if not corrected, could result in reduced controllability of the airplane.

Jetstream has issued Service Bulletin J41–27–027, dated January 17, 1994, that describes procedures for installation of swivel bearings in the left and right aileron quadrants (Modification JM41307A).

Jetstream has also issued Revision 2 of Service Bulletin J41–A–27–026, dated January 17, 1994. The inspection procedures described in this revision are identical to those described in Revision 1 of the service bulletin (which was referenced in AD 93–25–10). The only change effected by Revision 2 is to reference the modification described in Service Bulletin J41–27–027 as terminating action for the inspections of the bearings in the aileron quadrants and adjustment to the secondary stops described in Service Bulletin J41–A–27–026. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–25–10 to require installation of new swivel bearings in the left and right aileron quadrants (Modification JM41307A) as terminating action for the currently required inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Paragraphs (a) and (b) of this proposal have been revised to reference Revision 2 of Service Bulletin J41–A–27–026, dated January 17, 1994, as an additional source of service information for accomplishing the inspections of the bearings in the aileron quadrants and adjustment to the secondary stops.

The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 93–25–10, and retained in this proposal, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these inspection requirements on U.S. operators is estimated to be $440, or $55 per airplane, per inspection cycle.

The adjustment to the secondary stops that were previously required by AD 93–25–10, and retained in this proposal, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this adjustment requirement on U.S. operators is estimated to be $440, or $55 per airplane. The FAA estimates that all affected U.S. operators have already accomplished this action; therefore, the future cost impact of this requirement is minimal.

The installation of new swivel bearings (Modification JM41307A) that would be required by this proposal would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the modification requirement of this proposal on U.S. operators is estimated to be $4,400, or $550 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8849 (59 FR 11631, March 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft Limited: Docket 94–NM–25–AD. Supersedes AD 93–25–10, Amendment 39–8849.

Applicability: Model 4101 airplanes having constructors numbers 41004 and subsequent on which Modification JM41307A or JM41307B has not been installed previously; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bearings in the aileron quadrants, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after March 28, 1994 (the effective date of AD 93–25–10, Amendment 39–8849), perform a detailed visual inspection to detect damage of the bearings in the aileron quadrant in the pilot's and co-pilot's aileron control, in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993; or Revision 2, dated January 17, 1994.

(1) If no damaged bearing is found, repeat the inspection, thereafter, at intervals not to exceed 7 days.

(2) If any damaged bearing is found, prior to further flight, replace the damaged bearing with a new bearing in accordance with the service bulletin, and repeat the inspection, thereafter, at intervals not to exceed 7 days.

Note 1: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph (a) of AD 93–25–10. Therefore, for operators that have previously accomplished at least the initial inspection in accordance with AD 93–25–10, paragraph (a) of this AD requires that the next scheduled inspection be performed within 7 days after the last inspection performed in accordance with paragraph (a) of AD 93–25–10.

(b) Within 7 days after March 28, 1994 (the effective date of AD 93–25–10, Amendment 39–8849), adjust the aileron secondary stop in the pilot's and co-pilot's aileron control system in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993; or Revision 2, dated January 17, 1994.

Note 2: Paragraph (b) of this AD restates the requirement to adjust the aileron secondary stop contained in paragraph (b) of AD 93–25–10. As allowed by the phrase "unless accomplished previously," if that requirement of AD 93–25–10 has been accomplished previously, this AD does not require that it be repeated.

(c) Within 7 days after March 28, 1994 (the effective date of AD 93–25–10, Amendment 39–8849), revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Where abnormal aileron control backlash is experienced by one pilot, the other pilot should assume control of the aircraft without using the disconnect facility. The disconnect facility should only be used in accordance with published procedures in cases of control restrictions or jamming."

Note 3: Paragraph (c) of this AD restates the requirement for an AFM revision contained in paragraph (c) of AD 93–25–10. As allowed by the phrase "unless accomplished previously," if that requirement of AD 93–25–10 has been accomplished previously, this AD does not require that it be repeated.

(d) Within 180 hours time-in-service after the effective date of this AD, install new swivel bearings in the left and right aileron quadrants (Modification JM41307A) in accordance with Jetstream Service Bulletin J41–27–027, dated January 17, 1994. Accomplishment of this modification constitutes terminating action for the requirements of this AD. The AFM revision required by paragraph (c) of this AD may be removed following accomplishment of this modification.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 28, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10643 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWP–6]

Proposed Establishment of Class E Airspace; Arcata, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Arcata, CA. An Instrument Landing System/Distance Measuring Equipment (ILS/DME) standard instrument approach procedure (SIAP) has been developed for the Arcata Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Arcata Municipal Airport.

DATES: Comments must be received on or before June 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manger, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 94–AWP–6, 15000 Aviation Boulevard, Lawndale, California 90261. The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. AN informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialists, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Arcata, CA. This proposal would provide adequate Class E airspace for IFR operators executing the ILS/DME approach at Arcata, CA. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as transition areas for airports are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Arcata, CA [Revised]

Arcata Municipal Airport, CA
(lat. 40°58′41″ N, long. 124°06′31″ W)

That airspace extending upward from 700 feet above the surface within a 4 mile radius of the Arcata Municipal Airport and that airspace beginning at lat. 40°29′00″ N., long. 124°07′00″ W.; to lat. 40°45′00″ N., long. 123°50′00″ W.; to lat. 41°05′00″ N., long. 124°05′00″ W.; to lat. 41°03′00″ N., long. 124°19′00″ W.; to lat. 40°36′00″ N., long. 124°19′00″ W.; thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on April 15, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94-10707 Filed 5-3-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-AWP-7]

Proposed Establishment and Modification of Class E Airspace; Lompoc, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish and modify Class E airspace at Lompoc Municipal Airport, Lompoc, CA. Controlled airspace to the surface, a surface area, and a 700 foot transition area are needed for instrument flight rules operations at the airport.

DATES: Comments must be received on or before June 17, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 94-AWP-7, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297-0697.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AWP-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport and to modify the 700 foot transition area. An Automated Weather Observing System has been installed at Lompoc Municipal Airport meeting the criterion for a Class E surface area. The coordinates for this airspace are based on North American Datum 83. Class E airspace designated as a surface area for an airport is published in Paragraph 6002 and Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport

* * * * *

AWP CA E2 Lompoc, CA [NEW]

Lompoc Airport, CA
(lat. 34°39′58″N, long. 120°28′00″W)
Gaviota VORTAC
(lat. 34°31′53″N, long. 120°05′28″W)

That airspace extending upward from the surface within a 4.3-mile radius of Lompoc Airport, excluding that airspace within Restricted Areas R–2516 and R–2517.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Lompoc, CA [Revised]

Lompoc Airport, CA
(lat. 34°39′58″N, long. 120°28′00″W)
Gaviota VORTAC
(lat. 34°31′53″N, long. 120°05′28″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Lompoc Airport and within 4.3 miles each side of the Gaviota VORTAC 293° radial extending from the 4.3-mile radius to 10.9 miles west of the Gaviota VORTAC and within 4 miles each side of the 083° bearing from the Lompoc NDB to 8 miles east of the NDB, excluding that airspace within Restricted Areas R–2516 and R–2517.

* * * * *

Issued in Los Angeles, CA, on April 19, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–10708 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73, 74, 168, 172, 173, 182, and 184

[Docket No. 93N–0348]

Lead in Food and Color Additives and GRAS Ingredients; Request for Data; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 3, 1994, the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of February 4, 1994, (59 FR 5363). The document announced the agency's intent to take several related actions to reduce the amount of lead in food from the use of food and color additives and ingredients whose uses are generally recognized as safe (GRAS). FDA is taking this action in response to a request to allow additional time for public comment.

DATES: Written comments and information by August 3, 1994.

ADDRESSES: Submit written comments and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 4, 1994 (59 FR 5363), FDA published an ANPRM announcing the agency's intent to take several related actions to reduce the amount of lead in food from the use of food and color additives and GRAS ingredients. The ANPRM requested information on whether the specifications it is considering are feasible, and if they are not, why higher levels will not endanger the public health, and what levels are feasible. Interested persons were given until May 5, 1994, to provide comments and information in response to the ANPRM.

FDA has received a request to extend the comment period to permit at least an additional 90 days for public comment. The request stated that additional time is needed to undertake testing, analysis, and data collection relating to the ANPRM. The request also asked that the extension be granted as quickly as possible, so that the requester can determine whether there will be adequate time to perform testing.

After careful consideration, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments and information relating to the ANPRM. Accordingly, FDA is extending the comment period to August 3, 1994.

Interested persons may, on or before August 3, 1994, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 1994
Michael R. Taylor,
Deputy Commissioner for Policy
[FR Doc. 94-10605 Filed 5-3-94; 8:45 am]
BILLING CODE 4160-01-F

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21 CFR Part 878

[Docket No. 91N-0281]

General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of Silicone Inflatable (Saline-Filled) Breast Prosthesis; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on a proposed rule to amend its regulations to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the silicone inflatable (saline-filled) breast prosthesis, a medical device. The purpose of the public hearing is to assist the agency in determining when to issue a final rule to require the filing of a PMA for the silicone inflatable breast prosthesis.

DATES: The public hearing will be held on Thursday, June 2, 1994, from 9 a.m. to 6 p.m. Submit written notices of participation and comments by May 16, 1994. Written comments will be accepted until July 5, 1994.

ADDRESSES: The public hearing will be held at the Sheraton Washington Hotel, 2660 Woodley Rd. NW., Washington, DC 20008. Submit written notices of participation and comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Written notices of participation can also be faxed to 301-594-0113. A limited number of hotel rooms have been reserved at the Sheraton Washington Hotel for June 1, 1994. Attendees are responsible for making their own reservations. In order to receive the established rate, attendees should refer to the FDA hearing. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Arrowsmith-Lowe, Office of Health Affairs (HFY-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1472.

SUPPLEMENTARY INFORMATION:

I. Background

Section 515(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking in the **Federal Register**.

If the proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act (21 U.S.C. 360c), whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the investigational device exemption (IDE) regulations. The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed.

II. Summary of Risks and Benefits

In the **Federal Register** of January 8, 1993 (58 FR 3436), FDA published a proposed rule to require the filing, under section 515(b) of the act (21 U.S.C. 360e(b)), of PMA's for the classified silicone inflatable (saline-filled) breast prosthesis and all substantially equivalent devices. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirement of the act, and (2) the benefits to the public from use of the device (58 FR 3436 at 3438). The following is a summary of those findings.

The envelope or shell of the silicone inflatable breast prosthesis is made of silicone rubber. Accordingly, prolonged contact with the prosthesis raises the same questions about the potential risks for adverse immunological effects and/or connective tissue disorders that have been asked with regard to the use of silicone gel-filled breast prostheses and silicone injections. In addition, no satisfactory, independent data base has been compiled to serve as a basis for the thorough evaluation of the chronic toxic effects and the possible teratogenic effects of silicone. Lastly, neither particles which may shed from the silicone shell, nor the chemical forms of silicone monomers or other additives which may leach from the shell, have yet been adequately characterized with regard to metabolism, distribution, and excretion.

The most common risk associated with breast augmentation and reconstruction is fibrous capsular contracture, the formation of a constricting fibrous layer around the prosthesis. Capsular contracture may result in excessive breast firmness, discomfort, pain, disfigurement, and/or displacement of the implant. Deflation of the implant is another risk associated with use of the device. Deflation, which results from partial or total loss of the contents due to puncture, rupture, or other failure of the shell, or a faulty valve, results in the loss of shape of the prosthesis, and often requires surgical intervention to correct. Lastly, the presence of any breast prosthesis may interfere with standard mammography procedures used to screen patients for breast cancer. By compressing overlying breast tissue, the presence of the implant makes it more difficult to detect small tumors. In addition, the presence of the implant can produce a shadow on the radiograph that may reduce visual clarity of a significant portion of the breast.

Whether performed for reconstruction or augmentation purposes, breast prosthesis implantation is a discretionary, elective surgical procedure performed for its psychological benefits. Several studies have been published that show psychological improvement in both reconstruction and augmentation patients; however, these studies did not use objective, standardized methodologies that have been validated for measuring the psychological benefit of the device.

The silicone inflatable (saline-filled) breast prosthesis is currently the only device legally available for breast augmentation. For breast reconstruction, the current legal restrictions on the use of silicone gel-filled implants limit their use to those cases where the silicone inflatable (saline-filled) breast prosthesis is considered medically unsatisfactory.

III. Public Hearing

Based on the available scientific evidence and comments received on the proposed rule, FDA has concluded that PMA's will need to be submitted and evaluated for the silicone inflatable (saline-filled) breast prosthesis. However, the agency has also determined that a public hearing is warranted to assist the agency in determining when to issue a final rule to require the filing of PMA's for the silicone inflatable breast prosthesis.

The agenda for the hearing will include: (1) An overview by FDA of the statutory procedure for requesting the submission of PMA's for preamendment class III devices; (2) a presentation by FDA on the preclinical and clinical studies that are required to be completed to support a PMA for the silicone inflatable breast prosthesis; (3) oral testimony by the manufacturers on the status of their scientific studies, including their prospective clinical studies, and the scheduled timeframe for completion of those studies; and (4) oral testimony by consumers and/or representatives of consumer and health professional organizations to assist the agency in determining when to require the filing of PMA's for the silicone inflatable breast prosthesis. To the extent possible, oral testimony should address the following issues:

Manufacturers

1. To what extent do protocols for your pre-clinical testing and ongoing clinical prospective studies reflect the elements identified in the guidance for submission of PMA's for the silicone inflatable breast prosthesis? For major items that do not comply with the FDA guidance document, what is the basis for the scientific validity of the involved tests and/or studies?

2. When were such studies commenced, and when do you expect to have completed all the studies that are necessary for submission of a PMA?

3. How many patients are being implanted with silicone inflatable (saline-filled) breast prostheses at the current time (e.g., 1993 through the present)?

Consumers and Representatives of Consumer and Health Professional Organizations

1. Based on the risks to health as you understand them today, what degree of priority do you recommend that FDA give to calling for safety and effectiveness data for the silicone inflatable breast prosthesis?

2. Based on the benefits of the device as you understand them today, to what extent do you believe that continued availability of the silicone inflatable breast prosthesis fulfills an important patient need that would otherwise be unmet if the device was no longer commercially available or restricted in its availability?

3. Do you believe that FDA should distinguish between use of the device for breast reconstruction versus use for augmentation purposes in its regulation of the silicone inflatable breast prosthesis?

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The presiding officer will be Carol Scheman, Deputy Commissioner for External Affairs, Food and Drug Administration. Ms. Scheman will be joined by other FDA officals.

Persons who wish to participate must file a written notice of participation with the Dockets Management Branch (address above) on or before May 16, 1994. All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the person's name, address, telephone number, FAX number, business affiliation, if any, a brief summary of the presentation, and the approximate time requested for the presentation.

The agency requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. FDA will allocate the time available for the hearing among the persons who properly file a notice of participation

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail, telephone, or FAX, of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The schedule of the public hearing will be available at the hearing. After the hearing, it will be placed on file in the Dockets Management Branch (address above) under docket number 91N–0281.

Under § 15.30 the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guideline (21 CFR part 10, Subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any handicapped persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

The administrative record of the proposed rule will remain open until July 5, 1994, to allow comments on matters raised at the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Dockets

Management Branch (address above) by July 5, 1994.

Dated: April 29, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–10785 Filed 5–2–94; 10:14 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Annual Fees and Use of Permit Imprints

AGENCY: Postal Service

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes changes in several Domestic Mail Manual (DMM) standards concerning bulk and presort mailing fees and the methods of paying postage.

E110.6.1, E312.2.6, and E411.4.0 are amended to standardize the terms of application of bulk and presort mailing fees on First-, third-, and fourth-class mail, by requiring payment of the fee only by the party entering the mail, regardless of whose permit imprint, precanceled stamp permit, or meter was used as the device for postage payment on the mailing. A single fee payment would allow mailing at all bulk or presort rate categories of the corresponding class of mail.

E213.4.3 is amended to change the publishing requirements for Form 3526, Statement of Ownership, Management, and Circulation, generally to allow publication anytime during October of the filing year rather than in a specific issue.

P040 is amended both to relax the conditions under which a company permit imprint may be used and to strengthen concurrently the Postal Service's ability both to identify the place of mailing of company permit imprint mail and to obtain information about such mailings. Generally, mailers will be allowed to use a company style imprint without having to obtain permits at two or more post offices, but mailers will be required to show a return address at which records of the mailing will be made available upon request.

P040 is also amended to relax the design restrictions of permit imprint indicia. Generally, the new standards allow for more creativity while retaining restrictions that ensure that the indicia content is readable and clearly identifiable as postage payment.

P200 is amended to set a sunset date for the use of key rates.

Miscellaneous other changes are made for consistency.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5610 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: This notice presents revisions to Domestic Mail Manual (DMM) standards suggested during the DMM revision project begun in 1992. DMM Issue 46 (July 1993) was the first result of that project, but was not intended to make changes simultaneously in substantive mailing requirements; such amendments were deferred for subsequent action such as this rulemaking. This notice focuses on several matters related to the use of permit imprints (for First-, third-, and fourth-class mail) and to the method of paying postage for second-class mail.

1. E110.6.1, E312.2.6, and E411.4.0 are amended to standardize the assessment of bulk or presort mailing fees on First-, third-, and fourth-class mail. Existing standards brought forward from DMM Issue 45 and earlier are inconsistent with one another. A single standard applies to all First-Class (and Priority) Mail—that a fee must be paid once each 12-month period by any person or organization entering mail at other than the single-piece rates. Payment of that fee allows use of any presort or bulk First-Class rate and the mailing of both the payer's mail and that of its clients. By contrast, third-class standards distinguish between postage-affixed (precanceled and meter stamp) and permit imprint mailers. Fourth-class presents its standards yet another way. Understandably this variation confuses both customers and postal employees and may cause fees to be assessed incorrectly.

The revision below amends the standards cited earlier to state them uniformly for all three classes: The mailing fee applicable to the particular class of mail must be paid once each 12-month period at each office of mailing (except as provided otherwise for plant-verified drop shipments) by any person or organization entering mailings of that class at other than a single-piece or nonpresorted rate, regardless of whose permit imprint, precanceled stamp permit, or meter was used to pay postage on the mail; payment of the one fee allows that person or organization to enter its own mail (and that of its clients) at all the bulk or presort rates available in the corresponding class of mail. By this revision, the Postal Service believes that confusion over this type of fee payment should be effectively eliminated.

2. E213.4.3 is amended to change the publishing requirements for Form 3526, Statement of Ownership, Management, and Circulation. The current standard requires each publisher of a second-class publication to file Form 3526 by October 1 of each year for each authorized publication. The information on that form (or a facsimile of the form) must be published in the first issue after October 1 of the corresponding general or requester second-class publication. Publishers have asked that this specification be relaxed to offer more latitude on the issue in which the information may appear. Because 39 U.S.C. 3685 allows the Postal Service the authority to administer such details as when the form is filed or published, the Postal Service believes it can change those criteria without adversely affecting the informational value of what is published. The Postal Service sees no benefit from retaining a stringent requirement when a reasonable relaxation is sought and supported by the industry. Therefore, the cited standard is amended as shown below to clarify its applicability and require publication of Form 3526 in any issue published during October.

3. P040 is amended to relax the conditions under which a company permit imprint may be used and to strengthen concurrently the Postal Service's ability both to identify the place of mailing of company permit imprint mail and to obtain information about such mailings. Current standards require a permit imprint indicium to contain the mailer's permit number and the name of the post office where the permit is held unless, for a mailer having permit imprint authorizations at two or more post offices, a "company" style indicium is used. In a company style indicium, the name of the permit holder is substituted for the permit number and post office name. This style is preferred and used extensively by customers who produce large mailings for entry at multiple sites, who may change printers or mailers regularly, who purchase large quantities of envelope stock, or who simply prefer the appearance of the company style over the basic format. Customers who have no need for multiple permit imprint authorizations have noted that

it is a pointless burden on the Postal Service and its customers to generate and maintain a second permit imprint account simply to gain access to the company style indicium. These customers have requested relaxation of the applicable standards to let any permit holder use the company style format.

Current standards also require that company permit imprint mailpieces bear a complete domestic return address, but do not specify what that address is to represent. Consequently, the Postal Service has found it difficult to trace such mailpieces back to the point of mailing in situations where classification or postage matters have been questioned. Moreover, no remedies exist for instances in which the permit holder deliberately frustrates the Postal Service's efforts to identify the point of mailing, what was mailed, and whether the correct postage was paid.

Therefore, P040 is amended as shown below to allow use of a company style permit imprint indicium by any permit mailer regardless of the number of permits held. The Postal Service is also requiring more information to document company permit imprint mailings (and mailings including company permit imprint pieces), is specifying the required return address, and is enhancing its administrative remedies when the permit holder fails to supply mailing or permit use information on the request of the Postal Service. No additional record-keeping responsibilities are being added for either the mailer or the local post office. Rather, it is proposed that mailers use the location (the permit holder's or its agent's) at which records for the mailing will be available to the Postal Service on request as the required return address. The revised standards allow suspension or revocation of permits if such records are not provided in a timely manner. The Postal Service believes the higher standards are a prudent administrative control and do not represent an unreasonable condition: each permit holder should be able to detail what was mailed, where, and how much postage was paid, and should have no legitimate reason to withhold such details from the Postal Service. Postal Service actions against fraudulent uses of permits should be enhanced by these proposed measures.

4. P040 is also amended to relax the design restrictions of permit imprint indicia. Current standards allow use of only the formats illustrated in the DMM—basically a plain box with plain lettering. While this format was adequate for years, contemporary marketing techniques and competitive pressures among mail users have made the attractiveness of the mailpiece a cornerstone of efforts to interest the addressee in what is inside the mailpiece. As a result, mailers have become more interested in using artistic latitude in designing the permit imprint indicium that appears on the mailpiece.

The Postal Service understands the mailer interest in this matter and accepts the validity of proposals for greater design flexibility. However, those must be balanced against the needs of the Postal Service to maintain the clear recognition of the indicium both as evidence of postage payment and as an indicator of the mailer's identity. Therefore, P040 is amended as shown below to allow some greater flexibility in the preparation of permit imprint indicia. Generally, the proposed standard reinforces the distinctiveness of an indicium but allows its incorporation into a design of the mailer's choice. The combined design must be in a prescribed area of the upper right corner of the address side, area, or label on the mailpiece, must not imitate a stamp or meter impression, and must keep the indicia free of words and other printing not specified by the format standards. While some mailers may prefer more latitude, the Postal Service believes the proposed standards grant significant new flexibility to mailpiece designers in a reasonable balance between such flexibility and the Postal Service's legitimate interest in maintaining recognizable permit indicia.

5. P200 is amended to set a sunset date for the use of key rates. Key rates basically represent a simplified method of computing zone-rate postage on issues of second-class publications having a stable distribution pattern. Publishers and others who provided the Postal Service with suggestions for simplifying these regulations noted the diminishing use of key rates in an era of centralized postage, electronic funds transfer, multiple editions, and other industry changes. At the same time, postal personnel, noting how seldom key rates are used and the resulting lessening of understanding and experience in their administration, agreed that their continued availability should be questioned.

Therefore, by the revision shown below, the Postal Service proposes to end the use of key rates. No new users would be added after September 30, 1994, or on adoption of a final rule, whichever is later, and, to allow for an orderly transition for remaining key rate users, termination of key rates would be deferred until March 31, 1995, or 6 months after adoption of a final rule, whichever is later. The Postal Service recognizes that there are some publishers that may still use key rates and does not wish to impact them more than necessary. However, the Postal Service, which also recognizes the need to eliminate nonessential regulations if the mailing community is to be better served, feels that key rates exemplify a potential for such action.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the following units of the Domestic Mail Manual as noted below:

E110 Basic Standards

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6.0 Fees.

6.1 Presort Mailing Fee.

A First-Class presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at other than the single-piece First-Class or Priority Mail or Nonpresorted First-Class rates, regardless of whose permit imprint, precanceled stamp permit, or meter was used to pay postage on the mail. Payment of one fee allows that person or organization to enter its own mail (and that of its clients) at all the First-Class and Priority Mail presort rates.

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E213 Publisher Records

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4.0 Statement of Ownership, Management, and Circulation.

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4.3 Publication.

During October every year, the publisher of each publication authorized second-class mail privileges as a general or requester publication must publish a complete statement of ownership, containing all information required by Form 3526, in the issue of the publication to which data reported on that statement relate. A reproduction of the Form 3526 submitted to the USPS may be used for this purpose. Other publications are not required to publish this statement.

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E312 Additional Standards Applicable to Bulk Third-Class Mail

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2.0 Standards for Rates, Fees, and Postage.

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2.6 Bulk Mailing Fee.

A third-class bulk mailing fee must be paid once each 12-month period at each office of mailing (except as provided otherwise for plant-verified drop shipments) by any person or organization entering mailings at any regular or special bulk third-class rate, regardless of whose permit imprint, precanceled stamp permit, or meter was used to pay postage on the mail. Payment of one fee allows that person or organization to enter its own mail (and that of its clients) at all the third-class bulk rates. [Delete 2.7; renumber 2.8 through 2.10 as 2.7 through 2.9, respectively.]

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E411 Standards Applicable to All Fourth-Class Mail

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4.0 Fees.

4.1 Special Presort and DBMC Rates.

[Combine existing 4.1 and 4.3; renumber existing 4.4 as 4.3; revise 4.1 as follows:] A mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at the special fourth-class presort rate or (except as provided otherwise for plant-verified drop shipments) at the destination BMC (DBMC) parcel post rates, regardless of whose permit imprint, precanceled stamp permit, or meter was used to pay postage on the mail. A separate fee is required for each rate; payment of the applicable fee allows that person or organization to enter its own mail (and that of its clients) at the corresponding rate.

4.2 Pickup Service.

The parcel post pickup fee must be paid every time pickup service is provided, subject to the corresponding standards in D010.

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P040 Permit Imprints

1.0 Basic Information

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[Renumber existing 1.6 and 1.7 as 1.8 and 1.9; add new 1.6 and 1.7 and revise 1.8 as follows:]

1.6 Information

Upon request by the USPS, a permit holder or its agent must provide in a timely manner complete information (as specified in 3.5) about mailings, or including pieces, paid by company permit imprint.

1.7 Suspension.

The USPS may immediately suspend the permit holder's use of a permit imprint if the permit holder or its agent fails to provide information as specified in 1.6.

1.8 Revocation.

A permit is revoked for use in operating any unlawful scheme or enterprise, for nonuse during any 12-month period, for refusal to provide information about permit imprint use or mailings, or for any noncompliance with the standards applicable to using permit imprints. If revocation is for nonuse but the permit holder plans to resume mailings within a 90-day period, the permit may be continued for 90 days. The permit holder may appeal the revocation in writing to the postmaster within 10 days of receipt of the notice. Further appeal may be made through the postmaster to the district manager of customer service and sales or to the RCSC if the initial decision was made at the district level.

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2.0 Preparing Permit Imprints.

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2.4 Placement.

The entire permit imprint indicium must be aligned parallel with the address of the mailpiece and placed in the upper right corner of the address side, of the address area, or of the address label, subject to these conditions:

a. The indicium must not encroach on reserved space on the mailpiece (e.g., the OCR read area) if such a standard applies to the rate claimed.

b. The position (but not the format) of the indicium may be varied so that data processing equipment can simultaneously print the address, imprint, and other postal information.

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3.0 Permit Imprint Content.

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3.5 Company Permit Imprint.

A company permit imprint is one in which the exact name of the company or individual holding the permit is shown in the permit imprint indicium in place of the city, state, and permit number. A customer may use a company permit imprint indicium if:

a. For 2 years after the last date of mailing, the permit holder keeps records for each mailing paid by company permit imprint for USPS review on request. These records include (for each version of what was mailed, if applicable) a complete sample mailpiece; the weight of a single piece; the total number of pieces mailed; the total postage; the date(s) and post office(s) of mailing, and other records required by the rate of postage claimed or the method of payment used.

b. Each mailpiece bears the complete domestic return address of the mailer or the mailer's agent, that address being the physical location at which the records listed in 3.5a are available for USPS review. On unendorsed bulk third-class mail, the return address may be below the permit imprint.

4.0 Formats.

[Renumber existing 4.0 as 4.1, and Exhibits 4.0a-c as 4.1a-c; amend and add new 4.2 as follows:]

4.1 Basic Standard.

Unless prepared under the option in 4.2, permit imprint indicia for ordinary mail, official mail, and Mailgrams must be prepared in one of the formats shown in Exhibit 4.1a, Exhibit 4.1b, and Exhibit 4.1c, as applicable to the rate claimed or type of mail.

4.2 Optional Format.

Permit imprint indicia may be prepared in a format other than the basic format described in 4.1 subject to these conditions:

a. The rule that forms a box around the content of the indicium may be omitted if the content remains as specified in 3.0 and Exhibits 4.1a-c.

b. The indicium content specified in 3.0 is placed within a clear area no smaller than ½ inch high and ½ inch wide, no more than 1-½ inches below or left from the upper right corner of the mailpiece, of the address label, or of the address area, regardless of the processing category or the postage rate claimed.

c. No printing appears in the indicium area other than the information required or allowed under 3.0.

d. No printing appears above or to the right of the permit information.

e. The permit information is printed in no smaller than 4-point type.

f. Any decorative designs intended to be part of the permit imprint indicium design appear below or to the left of the permit information in an area extending no farther than 4-½ inches to the left of the right edge, and 1-½ inches below the top edge, of the mailpiece, address area, or address label, as applicable. Such designs must not resemble or imitate a postage meter imprint, postage stamp, postcard postage, or other method of postage payment. No words or symbols are included in a decorative design used by the USPS to identify a class of mail, rate of postage, or level of service, unless such words or symbols are correctly used under the applicable standards for the mailpiece on which they appear and the corresponding postage and fees have been paid.

g. All other applicable standards in 1.0 through 5.0 are met.

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5.0 Mailings.

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5.3 Preparation of Mailing.

All pieces in a permit imprint mailing must be faced (i.e., have the address facing in the same direction) and meet the preparation standards applicable to the rate claimed. Mail claimed at a rate where postage varies by zone must be separated by zone when mailed unless authorized by the USPS.

5.4 Place of Mailing.

Mail must be deposited and accepted at the post office that issued the permit, at a time and place designated by the postmaster, except as provided for plant-verified drop shipments.

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5.6 Prepayment.

Payment must be made for each mailing, either in cash or through an advance deposit account, before the mailing can be released for processing. Funds to pay postage must be deposited as prescribed by the USPS. If the funds paid or on deposit are less than that necessary to pay for a mailing, the difference must be paid or deposited before it or other permit imprint mailings can be accepted. Credit for postage is not allowed. Postage may not be paid partly in money and partly by postage stamps unless permitted by standard.

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P200 Second-Class Mail

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3.0 Key Rate.

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3.5 Termination of Key Rate Option.

New authorizations to use key rates may not be granted after September 30, 1994. Publications already authorized key rates may continue to use them until March 31, 1995. Effective April 1, 1995, use of key rates is eliminated and 3.0 is deleted.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–10644 Filed 5–3–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50604A; FRL–4779–1]

RIN 2070–AC37

Refractory Ceramic Fiber; Proposed Significant New Use of a Chemical Substance; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for a proposed significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act to require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of refractory ceramic fiber (RCF) in any new product for or any new application of an existing product form. The proposed rule was published in the **Federal Register** on March 21, 1994.

DATES: Written comments must be received by EPA by June 3, 1994.Q02

ADDRESSES: All comments should be sent in triplicate to: U.S. Environmental Protection Agency, OPPT Document Receipt (7407), 401 M St., SW., Washington, DC 20460, Attention Docket No. 50604. Comments that contain information claimed as confidential must be clearly marked "Confidential Business Information" (CBI). If CBI is claimed, three sanitized copies of any comments containing information claimed as CBI must also be submitted. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file. Any comments marked as CBI will be treated in accordance with the procedures in 40 CFR part 2. Nonconfidential versions of comments on the proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments not claimed as confidential at the time of submission will be placed in the public file.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1994 (59 FR 13294), EPA proposed a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act to require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of refractory ceramic fiber (RCF) in any new product form not listed, or any new application of an existing product form not listed in the proposed rule. Written comments on the proposed rule were to be received on or before April 20, 1994. EPA received a request from a trade association seeking a 30–day extension of the public comment period because of additional time needed to provide EPA with information on uses not listed in the proposal. EPA believes that providing an additional 30–day period to prepare written comments is reasonable. EPA is therefore reopening the comment period 30 days in order to give all interested persons the opportunity to comment fully. Written comments must be received on or before June 3, 1994.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 26, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10699 Filed 5–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 745

[OPPTS–62134A; FRL–4778–3]

RIN 2070–AC21

Lead Fishing Sinkers; Response to Citizens' Petition and Proposed Ban; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed rule to prohibit the manufacture, processing, and distribution in commerce of certain lead- and zinc-containing fishing sinkers which was published in the **Federal Register** of March 9, 1994.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: All comments should be submitted in triplicate to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket No. 62134A.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: 202–554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 9, 1994 (59 FR 11122), EPA issued a proposed rule under section 6(a) of the Toxic Substances Control Act to prohibit the manufacture, processing, and distribution in commerce of certain lead- and zinc-containing fishing sinkers. Written comments on the proposed rule were to be received on or before May 9, 1994. EPA received requests seeking a 60–day extension of the public comment period because of additional time needed to provide EPA with information it requested in the proposed rule. EPA believes that providing an additional 60–day comment period to prepare written comments is reasonable. EPA is therefore extending the comment period 60 days in order to give all interested persons the opportunity to comment fully. Written comments must be received by EPA on or before July 8, 1994.

A person may assert a claim of business confidentiality for any comments submitted to EPA in connection with the proposed rule. Any person who submits a comment that contains information claimed as confidential, must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of business confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in comments at the time it is submitted to EPA, the Agency will put the comments in the public docket without further notice to that person.

List of Subjects in 40 CFR Part 745

Environmental protection, Lead, Recordkeeping and reporting requirements.

Dated: April 26, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10696 Filed 5–3–94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 94–1; DA 94–314]

Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission adopted a Notice of Proposed Rulemaking initiating a comprehensive review of the performance of local exchange carriers under price cap regulation. The Commission pledged to undertake this fourth-year review when it adopted price cap regulation for the Regional Bell Operating Companies, GTE, and electing local exchange carriers. A motion for extension of time was filed on March 30, 1994, by the United States Telephone Association and granted by the Commission on April 7, 1994. This notice serves to grant all local exchange carriers additional time in which to file comments and replies on the issues set forth in the above-cited NPRM.

DATES: Comments must be filed on or before May 9, 1994, and reply comments on or before June 8, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joanne Wall, Tel. (202) 632–6917.

SUPPLEMENTARY INFORMATION:

Order

Adopted: April 6, 1994;
Released: April 7, 1994.

In the Matter of: Price Cap Performance Review for Local Exchange Carriers; Motion for Extension of Time.

By the Acting Chief, Common Carrier Bureau:

1. On March 30, 1994, the United States Telephone Association (USTA) filed a motion for extension of time to file comments in response to the Notice of Proposed Rulemaking[1] in the above-captioned proceeding. Comments are scheduled to be filed by April 18, 1994 and replies by May 17, 1994. USTA seeks an extension until May 9, 1994 for comments and until June 8, 1994 for replies.

2. USTA states that the Commission has requested that interested parties submit detailed information and quantitative data on a wide variety of issues, ranging from the broad policy goals underlying the price cap plan, to specific details of the plan, to transition issues related to increasing competition in access markets. USTA indicates that it is the principal trade association representing the entire local exchange carrier industry and views this proceeding as critically important to determining the future of the telecommunications industry. USTA asserts that the quantification and other analyses that it will be submitting cannot be completed in time for inclusion in comments to be filed on April 18. Therefore, it argues, an extension of time is necessary for USTA to gather and analyze relevant data and to allow its consultants to prepare their reports and obtain the approval of USTA's membership before those reports can be incorporated in its comments.

3. The Common Carrier Bureau has reviewed USTA's request for extension of time and has determined that good cause has been shown to grant all interested parties additional time, until May 9, 1994, to file comments and until June 8, 1994 to file reply comments.

4. Therefore, it is ordered that the United States Telephone Association's motion for extension of time is granted to the extent specified herein.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Acting Chief, Common Carrier Bureau.

[FR Doc. 94–10611 Filed 5–3–94; 8:45 am]

BILLING CODE 6712-01-M

[1] Price Cap Performance Review for Local Exchange Carriers, Notice of Proposed Rulemaking, CC Docket No. 94-1, FCC No. 94-10, rel. Feb. 16, 1994.

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47 CFR Part 73

[MM Docket No. 93–282, RM–8371]

Radio Broadcasting Services; Eureka, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel 233A to Eureka, Nevada, as the community's first local aural transmission service. See 58 FR 62319, November 26, 1993. Neither the petitioner nor any other party filed comments reiterating an intention to apply for the channel, if allotted.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–282, adopted April 14, 1994, and released April 29, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–10654 Filed 5–3–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–30; RM–8457]

Television Broadcasting Services; Kaneohe, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Collins/West Broadcasting, proposing the allotment of Television Channel 66 to Kaneohe, Hawaii, as that community's first local television service. The allotment can be made consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules. The coordinates for the proposed allotment of Channel 66 to Kaneohe are North Latitude 21–25–18 and West Longitude 157–48–06. This proposal is not affected by the freeze on television allotments or applications.

DATES: Comments must be filed on or before June 20, 1994, and reply comments on or before July 5, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey C. Hill, President, Collins/West Broadcasting, 45–934 Kamehameha Highway, #C–127, Kaneohe, Hawaii 96744 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 94–30, adopted April 14, 1994, and released April 29, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–10655 Filed 5–3–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Regulations for the Administration of Special Use Permits on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice to the public that it will be developing regulations that will clarify, update, and add to existing regulations for the administration of special use permits (permits) on national wildlife refuges (refuges) in Alaska. These changes will include but not be limited to: Permit application, denial, and appeal procedures; permit fees; and the process for issuing permits where a competitive selection process is used to select the permit holder (e.g., big game guide-outfitters).

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should be addressed to: U.S. Fish and Wildlife Service, Regional Director, Attention: Daryle R. Lons, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons at the above address; telephone 907–786–3361.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (43 U.S.C. 1602–1784), the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) authorize the Secretary of the Interior to prescribe regulations as necessary to administer permits for compatible activities on refuges in Alaska.

The current regulations governing issuance of permits on refuge units in Alaska, codified at 50 CFR 36.41, were originally published in the **Federal Register** at 46 FR 40192 on August 7, 1981, and later amended at 51 FR 44794 on December 12, 1986. Since that time, the permit administration program on refuges in Alaska has continued to evolve. The purpose of the proposed regulations is to provide up-to-date guidance to both commercial users and Service employees for the administration of permits in Alaska. Prior to promulgating these revised regulations, the Service will be reviewing its existing permit administration program and will be proposing revisions based on over 12 years of experience with the program and the implementation of ANILCA.

The evolution of the program for administering permits has been influenced by a number of factors since the original regulations were promulgated. One factor has been the increased public awareness and understanding of the need for securing permits prior to engaging in many activities on refuges in Alaska.

Another factor is the November 1984 Inspector General's Audit Report that found that the Service was not collecting fees which were commensurate with the value of the commercial activities authorized. This audit resulted in the Service developing a fee schedule based on client use days instead of charging a fixed $100 administrative fee for all permits regardless of the scope of income generated by the commercial permittee.

Another event causing a significant impact on refuge permit administration in Alaska was the decision of the Alaska Supreme Court in *Owsichek* v. *State Guide Licensing and Control Board,* 763 P.2d 488 (Alaska, 1988). That ruling found the State's system of assigning exclusive guide areas unconstitutional. Prior to this ruling, the Service had depended upon the State's system for selecting and assigning guides to areas which were located within refuge lands. In an attempt to allow the State an opportunity to develop a constitutionally acceptable system, and one which would satisfy Service needs, the Service imposed a moratorium on the issuance of permits to new guide applicants. This effectively limited the availability of permits to those who were guiding at the time of the 1988 court ruling.

After some time, the Service decided to develop its own interim program in order to provide an equal opportunity for all registered big game guide-outfitters to compete for permits. During late 1991 and early 1992, the Service proposed an interim system to select big game guide-outfitters. After soliciting public comment on the system, and making revisions based on substantive comments, an interim program was implemented in June 1992. Requests for proposals were then solicited and applicants were notified of selections in January 1993. Successful applicants were awarded 5-year permits effective July 1, 1993.

It now appears that the State may not be able to implement a satisfactory system for the selection of guide-outfitters prior to the expiration of the 5-year permits the Service issued in 1993. Accordingly, the Service proposes to initiate development of regulations related to the big game guide-outfitter program and include them in the revised regulations pertaining to the general administration of permits in Alaska (50 CFR 36.41).

The Service has identified several issues at this preliminary stage for which it invites public comment:

(1) Is the existing 180 day period allowed for filing appeals of adverse decisions on permits appropriate in this instance? Should a separate appeal system be developed which speaks directly to big game guide-outfitters?

(2) To what extent should the existing interim system for selecting big game guide-outfitters be made part of the regulations?

(3) If the State develops a selection system that meets Service requirements, should provision be made for the suspension of the Service permit selection system?

Comments on the foregoing issues, as well as other related aspects of this process, are encouraged. The Service will follow this comment period with the publication of a proposed rule which will allow, also, for additional comments prior to publication of a final rule.

Dated: April 1, 1994.

Mollie H. Beattie,

Director.

[FR Doc. 94–10517 Filed 5–3–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 940413–4113; I.D. 032394C]

RIN 0648–AG59

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; proposed 1994 specification of Pacific halibut bycatch allowances; request for comments.

SUMMARY: NMFS proposes regulations to implement several management measures designed to prevent some Gulf of Alaska (GOA) trawl fisheries from taking an unnecessarily large share of the GOA halibut bycatch limit; amend the directed fishing standards to prohibit using retained amounts of arrowtooth flounder, or groundfish species that are closed to directed fishing, as a basis for calculating retainable amounts of other, more valuable groundfish species that are closed to directed fishing; change the opening date of the yellowfin sole and "other flatfish" fisheries in the Bering Sea and Aleutian Islands management area (BSAI) from May 1 to January 1; and implement changes pertaining to the annual specification and management of GOA halibut prohibited species catch (PSC) limits. This action is necessary to reduce the likelihood that one sector of the Alaska trawl fleet will preempt others for a share of the Pacific halibut bycatch limit established for vessels using trawl gear in the GOA, and provide greater opportunity to harvest available groundfish under halibut bycatch restrictions in both the GOA and BSAI fisheries. This action is intended to further the objectives of the fishery management plans for the groundfish fisheries off Alaska.

DATES: Comments must be received by May 31, 1994

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Individual copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Fisheries Management Division, Alaska Region, NMFS, at 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary of Commerce in accordance with the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations authorized under the FMP that pertain to the U.S. groundfish fisheries appear at 50 CFR parts 672 and 675.

At its September 1993 meeting, the Council requested NMFS to prepare a rulemaking that would implement several management measures that are intended to prevent some GOA trawl fisheries from taking an unnecessarily large share of the halibut bycatch limit relative to other groundfish trawl fisheries. This results in the attainment of the halibut bycatch cap before some groundfish total allowable catches (TACs) have been taken, causing a closure of trawling operations in the GOA even though the full groundfish harvest amount has not been taken in some fisheries. These measures were presented to the Council in September 1993 by GOA and BSAI trawl industry representatives as an alternative to FMP amendments under consideration by the Council that would establish a super-exclusive registration program for vessels participating in the GOA and BSAI groundfish fisheries.

Three measures were proposed to address the preemption of one trawl fishery sector by another:

1. Establish two GOA trawl fishery categories for the purpose of apportioning the GOA halibut bycatch limit already established for the trawl gear fisheries (§ 672.20(f)). These two categories are the following: (1) The shallow-water fishery complex (pollock, Pacific cod, Atka mackerel, shallow-water flatfish, flathead sole, and "other species"); and (2) the deep-water fishery complex (the deep water flatfish, rex sole, arrowtooth flounder, sablefish, and rockfish);

2. Revise the method for calculating retainable amounts of groundfish

species under directed fishing standards (§ 672.20(h) and § 675.20(i)). Revised methods prohibit using retained amounts of arrowtooth flounder, or groundfish species that are closed to directed fishing, as a basis for calculating retainable amounts of other, more valuable groundfish species that are closed to directed fishing; and

3. Adjust the opening date for the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 1. As a result of this season adjustment, directed fishing standards governing retainable amounts of flatfish species at § 675.20(h)(2) are also revised.

At its December 1993 meeting, the Council requested that NMFS implement these measures early in the 1994 fishing year by emergency interim rulemaking. An emergency rule was issued on February 10, 1994 (59 FR 6222) under section 305(c) of the Magnuson Act.

A detailed description of, and justification for, each of the proposed management measures, including editorial changes to regulations addressing GOA halibut bycatch limits, follow.

Establishment of Two GOA Trawl Categories for Purposes of Apportioning the Halibut Bycatch Mortality Limit

Existing regulations at § 672.20(f) establish a framework process for the annual specification of separate Pacific halibut PSC limits for "trawl" and "fixed gear" fisheries, and for apportioning those limits by season. Although these regulations limit the bycatch of Pacific halibut in the GOA groundfish trawl fisheries, they have resulted in conflict among, and preemption of, groundfish trawling operations in the GOA as various trawl fishery components compete for shares of the available halibut PSC limit. This conflict occurs due to seasonal variations in halibut bycatch rates and amounts of halibut caught in the various trawl fisheries; NMFS lacks regulatory authority to apportion the halibut PSC limit among separate trawl fishery categories.

Under existing regulations, the possibility exists for the activities of one group of trawl vessels fishing for a particular groundfish species or species complex to take a disproportionate amount of the halibut PSC limit relative to other groundfish fisheries. The halibut PSC limit may be reached before the attainment of the fisheries' TAC amount and cause closure of all trawling operations in the GOA, except for trawling for pollock with pelagic trawl gear. Such closures may cause: significant amounts of economically important TAC to remain unharvested; idling of vessels and crew; and, a disruption of processing, fishing support sectors, fishery-dependent communities, and intermediate and final markets. Even if the total trawl PSC limit is not reached prematurely, the threat that it may be reached at any point in the fishing year can force other user groups to incur unnecessary costs, alter fishing plans, or operate in a manner that causes conflict among user groups.

Many of the potentially adverse impacts of the present process used to manage halibut bycatch in the GOA trawl fisheries could be avoided or reduced if the GOA trawl PSC limit were apportioned between competing fishery categories. Fishery data from the GOA trawl fisheries indicate that the variation in halibut bycatch rates and associated bycatch mortality in these fisheries appears to be relatively well demarcated by the following operational categories: (1) Those vessels fishing for species in the "shallow-water species complex" (pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, or "other species"); and (2) those vessels fishing for species in the "deep-water species complex" (sablefish, rockfish, deep water flatfish, and arrowtooth flounder). The Council's recommended management measure included flathead sole in the deep-water complex; however, 1993 fishery data show that more than 65 percent of the total GOA flathead sole harvest was associated with fisheries in the shallow-water complex. Therefore, NMFS proposes to include flathead sole in the shallow-water complex. In general, the shallow-water and deep-water complexes are associated with inshore and offshore trawl operations, respectively.

Based on Council recommendations at its September and December 1993 meetings, NMFS proposes to apportion the 1994 GOA halibut trawl PSC limit among fisheries and seasons as set out below:

Apportionment of the 2,000 metric ton (mt) halibut bycatch mortality limit established for the 1994 GOA trawl fisheries among the shallow and deep-water trawl fishery complexes and seasons. Seasons open and close at 12 noon, Alaska local time (A.l.t.), except that the first season opens at 0001 hours, A.l.t., January 20, and the last season ends at 12 midnight, A.l.t., December 31.

Season	Shallow complex	Deep complex	Total
Jan. 20–Mar. 31.	500 mt ..	100 mt ..	600 mt.
Mar. 31–Jun. 30.	100 mt ..	300 mt ..	400 mt.
Jun. 30–Sep. 30.	200 mt ..	400 mt ..	600 mt.
Sep. 30–Dec. 31.	(1)	(1)	400 mt.

[1] No apportionment.

Attainment of a seasonal (quarterly) bycatch allowance by a fishery complex would result in directed fishing closures for each species within that fishery complex for the remainder of the quarter, except that when the halibut bycatch allowance, or seasonal apportionment thereof, specified for the shallow-water complex is reached, directed fishing for pollock with pelagic trawl gear may continue subject to other regulatory provisions under § 672.20(f). Any overages or shortfalls of a quarterly bycatch allowance would be accounted for in the subsequent quarterly allowance.

A detailed justification for the fishery and seasonal apportionments of the 1994 halibut PSC limit is described in the EA prepared for this management measure (see **ADDRESSES**). These apportionments are intended to accommodate seasonal bycatch requirements in a manner that optimizes the 1994 halibut PSC limit established for trawl gear relative to anticipated trawl fishing patterns and 1994 groundfish TACs.

Revision of the Methodology Used To Calculate Retainable Amounts of Groundfish Under Directed Fishing Standards

The proposed rule amends § 672.20(h) and § 675.20(i) to address problems with the current regulatory provisions for calculation of "retainable" bycatch amounts of groundfish species for which directed fishing is closed. Current regulations provide for an overly liberal computation of retainable amounts of groundfish bycatch species, because the basis for bycatch retention inappropriately includes species not open for directed fishing. This compromises the purpose of using directed fishing standards to restrict bycatch of species after directed fishery closures. This also creates a circular process, effectively allowing excessive bycatch retention.

An associated concern exists that operators of some vessels deliberately target on arrowtooth flounder merely to provide a basis for retaining allowable amounts of highly valued groundfish species for which directed fishing is closed. In this case, arrowtooth flounder is harvested solely for the purpose of providing "directed catch" against which "retainable bycatch" quantities may be calculated and accumulated. The arrowtooth flounder directed catch is discarded and only the economically valuable bycatch, authorized on the basis of the quantity of the arrowtooth harvest, is actually retained for processing. This practice effectively subverts the "bycatch only" intent of fishery closures and associated directed fishing standards at § 672.20(g) and § 675.20(h). Furthermore, trawl operations for arrowtooth flounder experience relatively high bycatch rates of halibut and, thus, contribute to premature attainment of the halibut PSC limit, further aggravating the competition for the halibut PSC limit in the GOA trawl fisheries and increasing the potential for costly trawl fishery closures.

Adjustment of Season Opening Dates for the BSAI Flatfish Fisheries

The proposed rule would adjust the opening date for the yellowfin sole and "other flatfish" fisheries from May 1 to January 1. The purpose of this season adjustment is to provide the BSAI trawl industry with viable fishing alternatives; reduce the need for, and likelihood of, significant movement of fishing capacity from the BSAI to the GOA; reduce competition for the halibut PSC limit established for the GOA trawl fisheries; and reduce the likelihood that displacement of Bering Sea trawl effort into the GOA may preempt fishing opportunities for GOA operations later in the fishing year by exhausting the GOA trawl halibut PSC limit, thus necessitating GOA-wide trawl closures.

The original purpose for delaying directed fishing for yellowfin sole and "other flatfish" species until May 1 was to prevent the joint venture processing (JVP) and domestic annual processing (DAP) fisheries from taking a disproportionate share of their respective red king crab or halibut bycatch allowances established for Bycatch Limitation Zones 1 or 2H (defined at § 675.2), before available amounts of yellowfin sole and other groundfish species were harvested. Early attainment of red king crab or halibut bycatch allowances due to of high bycatch rates experienced in the early spring flatfish fisheries resulted in premature fishery closures that prevented available amounts of flatfish and other groundfish species from being harvested. Delaying the opening of the yellowfin sole and "other flatfish" fisheries until May 1 allowed the DAP fisheries to utilize the bulk of the available Zone 1 PSC limits in the rock sole and Pacific cod fisheries from January through April, optimizing their catch of allocated groundfish species.

The flatfish fisheries have changed substantially since the May 1 starting date was implemented. JVP fisheries no longer operate in the EEZ off Alaska. The domestic industry has developed profitable new markets for products from the "other flatfish" complex. In addition, the yellowfin sole and rock sole/"other flatfish" fisheries are allocated separate bycatch allowances that may be seasonally apportioned to optimize the groundfish harvest within the established prohibited species bycatch restrictions.

The May 1 opening date of the yellowfin sole and "other flatfish" fisheries now has the effect of preventing domestic fishermen from harvesting these resources at the beginning of the fishing year, when few other fishing opportunities exist. This season has contributed, for example, to a situation in which the available TAC for the "other flatfish" complex has been underutilized in recent years. In 1991, only about 47 percent of the TAC for this species group was harvested. In 1992 and 1993, that figure was 38 percent and 45 percent, respectively. Nonetheless, while these resources have been underutilized, despite an expressed interest in accessing them at the beginning of the fishing year, retention of the May 1 opening has forced BSAI trawl fishermen either to move into the GOA deep-water flatfish fishery, which opens in January, or cease fishing until May 1.

The rock sole fishery in the Bering Sea currently opens at the beginning of the fishing year to allow fishing in the lucrative "roe" fishery. This fishery typically closes in late February or early March when the rock sole have finished spawning. Seasonal halibut bycatch restrictions can close other fisheries (e.g., Pacific cod during 1991 and 1992), leaving, as noted above, few alternative fishing opportunities for the BSAI groundfish fleet. Flathead sole, one of the species in the Bering Sea "other flatfish" category, produce roe that matures just after rock sole roe matures. Markets for roe-bearing flathead sole have emerged, making this fishery a natural extension of that for roe-bearing rock sole in the Bering Sea. Other markets for these flatfish species, including a domestic fillets market, are under development.

Opening the BSAI yellowfin sole fishery and the "other flatfish" fishery at the beginning of the fishing year (January 1) would provide vessels operating in the Bering Sea with the opportunity to participate in a potentially profitable, developing fishery. This opportunity is expected to reduce the need for vessels to move into the GOA trawl fisheries early in the fishing year, and thus would decrease pressure on the GOA halibut PSC limit and diminish the probability of preemption of existing GOA groundfish fisheries through early closure.

The proposed rule would amend the directed fishing standard for flatfish species (§ 675.20(h)(2)) to accommodate this season change and allow sufficient bycatch amounts of rock sole, yellowfin sole, arrowtooth flounder, or "other flatfish" in the flatfish fisheries, while allowing for fishing operations to minimize the discard waste of these species. The proposed rule would also establish species-specific standards, rather than aggregate standards, for all flatfish species closed to directed fishing. The intent of this action is to simplify directed fishing standards, and to reduce discard waste by increasing the retainable amounts of flatfish species closed to directed fishing relative to other flatfish species that are open to directed fishing.

Editorial and Technical Changes to § 672.20(f)

NMFS proposes to reorganize § 672.20(f) to clarify the presentation and interpretation of regulations pertaining to halibut PSC limits. Existing regulations at § 672.20(f)(1)(i) and (2)(i) would be amended and redesignated as (f)(3)(i) and (f)(1), respectively, to implement management measures set out in this proposed rule. To eliminate redundant regulatory language, paragraph § 672.20(f)(2)(ii) would be amended and included as part of paragraph (f)(1) to cross reference the publication of proposed and final specifications required under § 672.20(c). These documents also include proposed and final halibut PSC limits and satisfy separate publication requirements currently set out in § 672.20(f)(2)(ii).

The following paragraphs would be redesignated as indicated; no changes would be made to the regulatory text:

Existing regulation	Redesignation
(f)(1)(ii)	(f)(3)(ii)
(f)(1)(iii)	(f)(3)(iii)
(f)(1)(iv)	(f)(1)(iii)(B)
(f)(1)(v)	(f)(1)(iii)(C)
(f)(2)(iii)	(f)(1)(iii)(A)
(f)(2)(iv)	(f)(2)
(f)(2)(v)	(f)(4)

The redesignated regulatory text is republished as part of the proposed rule. However, NMFS is not requesting public comment on the redesignated paragraphs.

Classification

NMFS prepared an analysis of the economic impact on small entities as part of the EA/RIR. All vessels using trawl gear to harvest BSAI or GOA groundfish and processors receiving trawl-caught groundfish could be affected by the management measures proposed under this action. Most catcher vessels harvesting groundfish off Alaska meet the definition of a small entity under the Regulatory Flexibility Act. In 1993, 265 catcher vessels were issued permits to harvest groundfish with trawl gear in Federal waters. All these vessels could be affected due to adjustments in fishing patterns resulting from (1) changing the season of the BSAI flatfish fisheries, and (2) revising the management of the GOA halibut PSC limit established for trawl fisheries. These effects are not expected to result in a reduction in annual gross revenues by more than 5 percent, annual compliance costs that would increase total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. Therefore, the proposed action would not result in a "significant economic impact" on small entities under the RFA. A copy of the EA/RIR is available (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Recordkeeping and reporting requirements.

Dated: April 28, 1994.

John T. Everett,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH FISHERY OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In section 672.20, paragraphs (f) and (h)(1) are revised to read as follows:

§ 672.20 General limitations.

* * * * *

(f) *Halibut PSC limits*—(1) *Notification of proposed halibut PSC limits.* NMFS will publish annually in the **Federal Register**, proposed and final halibut PSC limits and apportionments thereof authorized under this paragraph (f), in the notification required under paragraph (c) of this section. Public comment will be accepted by NMFS on the proposed halibut PSC limits and apportionments thereof for a period of 30 days after publication in the **Federal Register**. NMFS will consider comments received on proposed halibut limits and, after consultation with the Council, will publish notification in the **Federal Register** specifying the final halibut PSC limits and apportionments thereof.

(i) *Trawl gear fisheries.* (A) After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed halibut PSC limit for vessels using trawl gear. The halibut PSC limit specified for vessels using trawl gear may be further apportioned as bycatch allowances to the fishery categories listed in paragraph (f)(1)(i)(B) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (f)(1)(i).

(B) For purposes of apportioning the trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species for which a TAC has been specified under paragraphs (a) and (c) of this section:

(*1*) *Shallow-water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate catch of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" that is greater than the retained aggregate amount of other groundfish species or species group.

(*2*) *Deep-water species fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained catch of groundfish and is not a shallow-water species fishery as defined under paragraph (f)(1)(i)(B)(*1*) of this section.

(ii) *Hook-and-line and pot gear fisheries.* After consultation with the Council, NMFS will publish notification in the **Federal Register** specifying the proposed halibut PSC limits for the hook-and-line gear fisheries. The notification may also specify a halibut PSC limit for the pot gear fisheries. The proposed halibut PSC limit for hook-and-line gear fisheries may be further apportioned as bycatch allowances to the directed fishery for demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area and to all other hook-and-line gear fisheries.

(iii) *Seasonal apportionments.* (A) NMFS, after consultation with the Council, may apportion each halibut PSC limit or bycatch allowance specified under this paragraph on a seasonal basis. NMFS will base any seasonal apportionment of a halibut PSC limit or bycatch allowance on the following types of information:

(*1*) Seasonal distribution of halibut;

(*2*) Seasonal distribution of target groundfish species relative to halibut distribution;

(*3*) Expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species;

(*4*) Expected variations in bycatch rates throughout the fishing year;

(*5*) Expected changes in directed groundfish fishing seasons;

(*6*) Expected start of fishing effort; and

(*7*) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

(B) Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year.

(C) If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

(iv) *Apportionment among regulatory areas and districts.* Each halibut PSC limit specified under this paragraph (f) may also be apportioned among the regulatory areas and districts of the Gulf of Alaska.

(2) NMFS may, by notification in the **Federal Register**, change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (f)(1) of this section.

(3) *Attainment of a halibut PSC limit or bycatch allowance*—

(i) *Trawl gear fisheries.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in either of the trawl fishery categories listed in paragraph (f)(1)(i)(B) of this section will catch the Pacific halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire Gulf of Alaska to directed fishing with trawl gear for each species and/or species group that comprises that fishing category; provided, however, that when the halibut bycatch allowance, or seasonal apportionment thereof, specified for the shallow-water species fishery is reached, fishing for pollock by vessels using pelagic trawl gear may continue, consistent with other provisions of this part.

(ii) *Hook-and-line fisheries*—(A) *Groundfish other than demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear in groundfish fisheries other than the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach the halibut bycatch allowance, or seasonal apportionment thereof, specified for hook-and-line gear under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** prohibiting directed fishing for groundfish, other than demersal shelf rockfish in the Southeast Outside District, by vessels using hook-and-line gear for the remainder of the season to which the halibut bycatch allowance or seasonal apportionment thereof applies.

(B) *Demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear in the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach the halibut bycatch allowance, or seasonal apportionment thereof, specified for this fishery under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** prohibiting directed fishing for demersal shelf rockfish in the Southeast Outside District by vessels using hook-and-line gear for the remainder of the season to which the halibut bycatch allowance or seasonal apportionment thereof applies.

(iii) *Pot gear fisheries.* If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, provided for under paragraph (f)(1) of this section, NMFS will publish notification in the **Federal Register** prohibiting directed fishing for groundfish by vessels using pot gear for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

(4) When the vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notification in the **Federal Register**, allow some or all of those vessels to continue to fish for groundfish using nonpelagic trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(i) The risk of biological harm to halibut stocks and of socio-economic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(ii) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(iii) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year;

(iv) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches; and

(v) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

* * * * *

(h) * * *

(1) *Calculations.* (i) In making any determination concerning directed fishing under paragraph (g) of this section, the amount or percentage of any species, species group, or any fish or fish products will be calculated in round-weight equivalents.

(ii) Arrowtooth flounder or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species under paragraph (g) of this section.

* * * * *

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In section 675.20, paragraphs (h)(2) and (i)(1) are revised to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(2) *Yellowfin sole, rock sole, arrowtooth flounder, or "other flatfish".* The operator of a vessel is engaged in directed fishing for yellowfin sole, rock sole, arrowtooth flounder, or "other flatfish" if he or she retains at any time during a trip an amount of one of these species equal to or greater than 35 percent of the amount of the other respective species retained at the same time on the vessel during the same trip, plus 20 percent of any groundfish species other than yellowfin sole, rock sole, or "other flatfish" retained at the same time on the vessel during the same trip.

* * * * *

(i) * * *

(1) *Calculations.* (i) In making any determination concerning directed fishing under paragraph (h) of this section, the amount or percentage of any species, species group, or any fish or fish products will be calculated in round-weight equivalents.

(ii) Arrowtooth flounder or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species under paragraph (h) of this section.

* * * * *

5. In § 675.23, paragraph (c) is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(c) Directed fishing for arrowtooth flounder and Greenland turbot is authorized from 12 noon Alaska local time, May 1 through 12 midnight, Alaska local time, December 31, subject to the other provisions of this part.

* * * * *

[FR Doc. 94–10640 Filed 4–29–94; 11:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Authority To Act as Administrator

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: This notice provides for the executive direction of the Farmers Home Administration (FmHA).

1. When the Administrator, FmHA, is absent or unable to perform the duties of the position, by reason of enemy attack or other natural security emergency, the Associate Administrator, FmHA, is designated to serve as Acting Administrator, FmHA.

2. When both the Administrator and the Associate Administrator are absent or unable to perform their duties, the Deputy Administrators, FmHA, are designated to perform all functions assigned by law or delegated to the Administrator, FmHA, as described in 7 CFR 2.70, and to serve as Acting Administrator in the following order:

A. Deputy Administrator, Program Operators
B. Deputy Administrator, Management

3. When the Administrator, the Associate Administrator, the Deputy Administrators, and the Assistant Deputy Administrators, are absent or unable to preform their duties, the Director, Planning and Analysis Staff, FmHA, and the Assistant Administrators are designated to perform all the functions assigned by law or delegated to the Administrator, FmHA, as described in 7 CFR 2.70, and to serve as Acting Administrator, FmHA, in the following order:

A. Director, Planning and Analysis Staff
B. Assistant Administrator, Housing
C. Assistant Administrator, Farmer Programs
D. Assistant Administrator, Budget, Finance and Management

This document supersedes any previous document designating an official of the FmHA to serve as Acting Administrator, FmHA.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Assistant Administrator for Human Resources, Farmers Home Administration, USDA, Office of Human Resources, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 245-5561.

Dated: April 18, 1994.

Michael V. Dunn,
Administrator, Farmers Home Administration.

[FR Doc. 94-10620 Filed 5-3-94; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF AGRICULTURE

Forest Service

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interim Strategies for Managing Anadromous Fish-Producing Watersheds on Federal Lands in Eastern Oregon, et al.

AGENCY: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Notice; extension of public comment period.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) announce the extension of public comment on an environmental assessment and proposed finding of no significant impact on a proposal to establish interim management direction for anadromous fish habitat protection and restoration on all or part of 15 National Forests and seven BLM Districts. The affected areas are in the states of Oregon, Washington, Idaho, and California. The notice of availability, published March 25, 1994, established May 9, 1994, as the end of the public comment period. This notice extends that published date for two additional weeks.

DATES: Comments must be received in writing, postmarked by May 23, 1994.

ADDRESSES: Send written comments to "PACFISH EA," Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090.

Dated: April 28, 1994.

For the Forest Service

Gray F. Reynolds,
Deputy Chief.

Dated: April 29, 1994

For the Bureau of Land Management.

Laurence E. Benna,
Acting Deputy Director.

[FR Doc. 94-10702 Filed 5-3-94; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Panel Content Tests for the Survey of Income and Program Participation (SIPP) Redesign

Form Number(s): Control, Core, and Topical Modules in an automated instrument, Reminder Card.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 840 hours.

Number of Respondents: 840

Avg Hours Per Response: 30 minutes.

Needs and Uses: The 1996 Content Tests for the SIPP are part of a program of evaluation and development emerging from a comprehensive reassessment of SIPP. The SIPP redesign is an evolving process that has multiple developmental and testing stages. This stage involves proposed small-scale content tests to evaluate changes made to the new instrument in earlier pretests. The content tests will involve two waves of interviews to be conducted at an estimated 400 households. The objectives of these content tests are: to evaluate the improved wording and ordering of the instrument over what was implemented during the pretests; and to further test the total integration of the instrument; observe field interviewing techniques through laptop management application; assess the case management system's ability to assign, accept, and transfer cases; and test closeout activities and post–closeout data preparations.

Affected Public: Individuals or households.

Frequency: Twice in 1994.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–10714 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—October 1994 School Enrollment Supplement.

Form Number(s):

Agency Approval Number: 0607–0464.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 7,598 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 8 minutes.

Needs and Uses: The October Current Population Survey (CPS) supplement is the only source of data on enrollment in all schools by demographic, social, and economic characteristics. This annual supplement provides school enrollment data for persons 3 years old or older who are enrolled in elementary school, high school, college, and vocational/technical schools, as well as for children enrolled in nursery schools and kindergarten. It also provides higher education data for adults and computer usage data for adults and children. These data are collected from each household from both the full regular CPS sample and the CATI/CAPI Overlap sample. The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 28, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–10715 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 16–94]

Foreign-Trade Zone 146; Lawrenceville, IL; Proposed Reorganization and Expansion of Foreign-Trade Subzones 146A & 146B North American Lighting, Inc. (Motor Vehicle Lighting Products) Flora, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, grantee of FTZ 146, Lawrenceville, Illinois, requesting authority for reorganization of and the expansion of zone activity at Subzone 146A and Subzone 146B at the North American Lighting, Inc. (NAL), facilities in Flora, Illinois, and the inclusion of a new facility in Salem, Illinois, as part of the reorganized subzone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 14, 1994.

Subzones 146A and 146B were approved by the Board in 1988 for two adjacent manufacturing plant sites of NAL, both of which are located within the Flora Industrial Park, Flora, Illinois (Board Order 371, 53 FR 5436, 2–24–88). The two facilities (222,000 sq.ft./14 acres) were granted subzone authority to manufacture motor vehicle lighting components and other related auto parts. Subzone 146B was formerly operated by Hella Electronics, Inc., a NAL affiliate. Both plants are now operated as an integrated manufacturing unit by NAL.

NAL has added a third manufacturing site (380,000 sq. ft. on 22 acres), located in the Salem Industrial Park, 1075 West Main Street, Salem (Marion County), Illinois (30 miles west of Flora), which would become part of the reorganized zone. Construction is underway at the Flora facilities which will increase manufacturing space to 355,000 square feet. The completed expansion will yield a combined production capacity of some 28 million units annually. Based on the restructured management of the operations, the applicant requests that all three manufacturing facilities be consolidated under one subzone designation—146A.

The production activity that would occur within the consolidated subzone would be essentially the same as that currently occurring at the Flora facilities. The finished products would involve motor vehicle lighting components. Materials purchased from abroad include: various polymers and resins in primary form (HTSUS Ch. 39), articles of rubber and plastic, fasteners, optical elements of glass, certain electrical apparatus, lamps and lenses, insulated wire, optical fiber and cable/bundles (duty rates: free-16%, 3.1c/kg+9%).

Zone procedures exempt NAL from Customs duty payments on the foreign materials used in export production. On domestic sales, the company is able to choose the duty rates that apply to finished automotive lighting equipment and parts (free-10%) for the foreign components noted above. The auto duty rate (2.5%) applies if the finished products are shipped via zone-to-zone transfer to U.S. motor vehicle assembly plants with subzone status.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 5, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 18, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 8182 Maryland Avenue, Suite 303, St. Louis, MO 63105.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: April 26, 1994.

John J. Da Ponte,

Executive Secretary.

[FR Doc. 94–10716 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Two Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and two findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and two findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than 30 days from May 4, 1994.

EFFECTIVE DATE: May 4, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping duty proceeding	Date of finding/order
Japan: Ferrite Cores (A–588–016) Contact: Lisa Raisner/ Tom Futtner, (202) 482–5253.	36 FR 4877, 03/13/71
Italy: Spun Acrylic Yarn (A–475–084) Contact: Kim Moore/Tom Futtner, (202) 482–5253.	55 FR 18925, 04/08/80
Japan: Spun Acrylic Yarn (A–588–086) Contact: Kim Moore/Tom Futtner, (202) 482–5253.	55 FR 37015, 04/08/80
Canada: Sugar and Syrups (A–122–085) Contact: David Dirstine/ Richard Rimlinger (202) 482–4733.	50 FR 24126, 04/09/80
France: Sorbitol (A–427–001) Contact: Sally Hastings/ John Kugelman, (202) 482–5253.	47 FR 15391, 04/09/82
Kenya: Standard Carnations (A–779–602) Contact: Michael Panfeld/ Richard Rimlinger, (202) 482–4733.	52 FR 9518, 04/23/87
Greece: Electrolytic Manganese Dioxide (A–484–801) Contact: Thomas Barlow/Wendy Frankel, (202) 482–5253.	54 FR 15243, 04/17/89

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation.

Opportunity to Object

No later than 30 days from the publication date of this notice, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: April 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–10719 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–DS–M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than May 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

Antidumping duty proceedings	Period
Argentina: Light-Wall Welded Rectangular Carbon Steel Tubing (A–357–802)	05/01/93–04/30/94
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A–351–602)	05/01/93–04/30/94
Brazil: Certain Iron Construction Castings (A–351–503)	05/01/93–04/30/94
Brazil: Frozen Concentrated Orange Juice (A–351–605)	05/01/93–04/30/94
Dominican Republic: Portland Cement, Other Than White Nonstaining Portland Cement (A–247–003)	05/01/93–04/30/94
France: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–427–801)	05/01/93–04/30/94
Germany: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–428–801)	05/01/93–04/30/94
India: Certain Welded Carbon Steel Standard Pipes and Tubes (A–533–502)	05/01/93–04/30/94

Antidumping duty proceedings	Period
Italy: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–475–801)	05/01/93–04/30/94
Japan: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–588–804)	05/01/93–04/30/94
Japan: Impression Fabric (A–588–066)	05/01/93–04/30/94
Japan: Gray Portland Cement and Clinker (A–588–815)	05/01/93–04/30/94
Romania: Ball Bearings and Parts Thereof (A–485–801)	05/01/93–04/30/94
Singapore: Ball Bearings and Parts Thereof (A–559–801)	05/01/93–04/30/94
Sweden: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–401–801)	05/01/93–04/30/94
Taiwan: Certain Circular Welded Carbon Steel Pipes and Tubes (A–583–008)	05/01/93–04/30/94
Taiwan: Malleable Cast-Iron Pipe Fittings, Other Than Grooved (A–583–507)	05/01/93–04/30/94
Thailand: Ball Bearings and Parts Thereof (A–549–801)	05/01/93–04/30/94
The People's Republic of China: Certain Iron Construction Castings (A–570–502)	05/01/93–04/30/94
The Republic of Korea: DRAMs of One Megabit and Above (A–580–812)	10/29/92–04/30/94
The Republic of Korea: Malleable Cast Iron Pipe Fittings, Other Than Grooved (A–580–507)	05/01/93–04/30/94
United Kingdom: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–412–801)	05/01/93–04/30/94
Turkey: Welded Carbon Steel Standard Pipe and Tube Products (A–489–501)	05/01/93–04/30/94
Countervailing Duty Proceedings	
Brazil: Certain Heavy Iron Construction Castings (C–351–504)	01/01/93–12/31/93
Mexico: Ceramic Tile (C–201–003)	01/01/93–12/31/93
Singapore: Ball Bearings (C–559–802)	01/01/93–12/31/93
Singapore: Cylindrical Roller Bearings (C–559–802)	01/01/93–12/31/93
Singapore: Needle Roller Bearings (C–559–802)	01/01/93–12/31/93
Singapore: Spherical Plane Bearings (C–559–802)	01/01/93–12/31/93
Singapore: Spherical Roller Bearings (C–559–802)	01/01/93–12/31/93
Sweden: Viscose Rayon Staple Fiber (C–401–056)	01/01/93–12/31/93
Thailand: Ball Bearings and Parts Thereof (C–549–802)	01/01/93–12/31/93
Venezuela: Ferrosilicon (C–307–808)	08/25/92–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with §§ 353.31(g) or 355.31(g) of the Commerce regulations, a copy of each request must be served on every party on the Department's service list.

The Department will published in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by May 31, 1994.

If the Department does not receive, by May 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: April 25, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–10720 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–834]

Initiation of Antidumping Duty Investigation: Stainless Steel Angle From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1756, or (202) 482–4929.

INITIATION OF INVESTIGATION:

The Petition

On April 8, 1994, we received a petition filed in proper form by Slater Steels Corporation, Specialty Alloys Division (petitioner), a U.S. producer of stainless steel angle. In accordance with 19 CFR 353.12, the petitioner alleges that imports of stainless steel angle from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigation

For purposes of this investigation, the term "stainless steel angle" includes hot-rolled, whether or not annealed or descaled, stainless steel products angled at 90 degrees, that are not otherwise advanced. The stainless steel angle subject to this investigation is currently classifiable under subheadings 7222.40.30.20, and 7222.40.30.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioner based U.S. price (USP) on prices contained in a November 1993 price list for subject merchandise sold by an unrelated U.S. importer and reseller of Japanese stainless steel angle to its U.S. customer. Since these prices were quoted ex-dock, duty paid, petitioner deducted from USP amounts for U.S. duty, ocean freight, marine insurance, harbor maintenance and U.S. merchandise processing fees.

Petitioner used tax-exclusive, delivered prices of subject merchandise sold in Japan by three Japanese producers during the month of September 1993, as the basis for foreign market value (FMV). These prices were obtained from a market research report and pertained to the following three Japanese producers: Aichi Steel Works, Daido Steel and Sumitomo Metal Industries. To calculate an ex-factory price, petitioner used expense information from the market research report. Petitioner converted the home market prices to U.S. dollars based on the monthly average yen/dollar exchange rate effective during the month of the U.S. sale, as reported by the Federal Reserve Bank of New York. Petitioner deducted from FMV an amount for inland freight. Petitioner made circumstance-of-sale adjustments for differences in imputed credit costs between Japanese and U.S. sales based on the average payment period identified in the foreign market research report.

Based on a comparison of USP to FMV, the dumping margins alleged by petitioner for stainless steel angle from Japan range from 40.82 percent to 58.81 percent.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by May 23, 1994, whether there is a reasonable indication that imports of stainless steel angle from Japan are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: April 20, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-10718 Filed 5-3-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-122-824]

Termination of Antidumping Duty Investigation: Certain Carbon and Alloy Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-4136 or 482-1769, respectively.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorous plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-matching steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Termination of Investigation

On April 20, 1994, the Department of Commerce (the Department) published its Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada in the **Federal Register** (59 FR 18791). In a letter dated April 18, 1994, petitioner notified the Department of the withdrawal of its April 23, 1993, petition and requested termination of the antidumping investigation.

In accordance with 19 CFR 353.17(a), upon the petitioner's withdrawal of the petition, the Department may terminate an investigation after notice to all parties to the proceeding and after consultation with the International Trade Commission (ITC). Furthermore, the Department may not terminate an investigation unless it concludes that termination is in the public interest. All parties to the proceeding have been notified of the petitioner's withdrawal and we have consulted with the ITC. No objections were received regarding termination of the investigation. In addition, we have concluded that termination of the investigation is in the public interest. Accordingly, we are terminating the antidumping investigation of certain alloy and carbon steel wire rod from Canada. This action is taken pursuant to section 734(a)(1) of the Tariff Act of 1930, as amended.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-10717 Filed 5-3-94; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[I.D. 042094B]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for experimental fishing permits.

SUMMARY: NMFS announces receipt of experimental fishing permit (EFP) applications from Terra Marine Research and Education (TMRE), and Coastal Villages Fishing Cooperative (CVFC) and Golden Age Fisheries (GAF). TMRE requests approval of an EFP to retain salmon caught incidentally in the Bering Sea and Aleutian Islands (BSAI) during the 1994 pollock "B" and the 1995 pollock "A" season fisheries and the 1995 BSAI directed Pacific cod trawl fishery. The purpose is to assess whether the quantities of salmon donated to a foodbank program are sufficient to justify the costs associated with the processing and shipping of the product. CVFC and GAF request approval of an EFP to assess the feasibility of the establishment of an inshore fishery in the Kuskokwim Bay in the BSAI by the residents of this area.

ADDRESSES: Comments should be addressed to and copies of the EFP applications are available from Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, NMFS (907–586–7230).

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) and its implementing regulations specify that EFPs may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing permits are contained in the regulations at § 675.6.

The EFP applications submitted by TMRE, CVFC, AND GAF have been accepted for review and copies were forwarded to the North Pacific Fishery Management Council (Council). The Council reviewed these applications at its April 18–22, 1994, meeting, which was held in Anchorage, AK.

TMRE proposes to assess the feasibility of a voluntary donation of salmon caught incidentally in the directed 1994 pollock "B" and the 1995 pollock "A" season fisheries and the 1995 BSAI directed Pacific cod trawl fishery for the purpose of distribution to foodbanks. CVFC and GAF propose to assess the commercial feasibility of fishing for groundfish in the Kuskokwim Bay by the residents of this area by establishing a 500 metric ton allocation of groundfish in this area during the period May 1 through September 30, 1994. Vessels participating in these EFPs will accommodate a NMFS-certified observer at all times with costs paid for by operators of vessels fishing for the applicants. Information regarding project design, disposition of fish harvested, and other matters is contained in the applications.

Copies of the applications may be obtained from and comments should be addressed to the NMFS Regional Director (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10639 Filed 4–29–94; 11:45 am]

BILLING CODE 3510–22–P

[I.D. 040794D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P281C)

SUMMARY: Notice is hereby given that S. Jonathan Stern, Marine Mammal Research Program, Texas A&M University, 4700 Avenue U, Building 303, Galveston, Texas, has applied in due form for a permit to take minke whales (*Balaenoptera acutorostrata*), blue whales (*B. musculus*), fin whales (*B. physalus*), sei whales (*B. borealis*), humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrictius robustus*), and killer whales (*Orcinus orca*) for purposes of scientific research.

DATES: Written comments must be received on or before June 3, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, (310/980–4001);

Director, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070, (206/526–6150); and

Director, Alaska Region, P.O. Box 21688, Juneau, AK 99802–1668, (907/586–7221).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant proposes to take by inadvertent harassment, up to several times daily, a maximum of 1,000 minke whales, 400 blue whales, 100 fin whales, 50 sei whales, 600 humpback whales, 500 gray whales, and 300 killer whales per year for 5 years for photo-identification purposes. A minimum population size estimate for the minke whale stocks under investigation will be generated from the total of individually identified whales. Of the number requested above, 150 minke whales, and 30 individuals of each of the remaining baleen whale species are requested for biopsy darting to collect blubber and skin samples to examine trophic level relationships with prey and among whale species, and to conduct genetic analysis. Individually identified whales are intended to be sampled once every 30 days, but not more than 12 times. A maximum of five individuals from each pod of killer whales encountered in the Gulf of the Farallones will be biopsied only once. The research will be centered in and around the Gulf of the Farallones National Marine Sanctuary from Bodega Bay to Point Sur, California, but will range opportunistically from the Gulf of

Alaska to the California/ Mexican border.

Dated: April 26, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 94-10637 Filed 5-3-94; 8:45a.m.]

BILLING CODE 3510-22-F

COMMISSION ON IMMIGRATION REFORM

Chicago Hearing

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of hearing.

This notice announces a public hearing of the Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The mandate of the Commission is to review and evaluate the impact of U.S. immigration policy and transmit to the Congress a report of its findings and recommendations. The Commission's first report to Congress is due on September 30, 1994.

The Commission will hear from federal, state and local officials, representatives of community-based organizations, researchers and other experts. The hearing will focus on naturalization, civic participation, ethnic community roles and relations, and education for children and adults.

DATES: May 24, 1994, 9 a.m. to 1 p.m.

ADDRESSES: Chicago Cultural Center, GAR Hall, 78 East Washington St. Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: David Howell or Beth Malks, Telephone: (202) 673–5348.

Dated: April 28, 1994.

Susan Martin,

Executive Director.

[FR Doc. 94-10651 Filed 5-3-94; 8:45 am]

BILLING CODE 6820-87-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in The People's Republic of China

April 26, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Group IV is being increased for swing and carryforward. The limit for Category 607 is being reduced to account for the swing applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 26, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in The People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on April 26, 1994, you are directed to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and The People's Republic of China:

Category	Adjusted twelve-month limit[1]
Group IV	11,450,428 square meters.
Sub-levels in Group I	
607	2,752,516 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–10599 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

April 26, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 347/348, 351/651 and 448 are being increased for carryover. The limit for Categories 340/640 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 26, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on May 4, 1994, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Guatemala:

Category	Adjusted twelve-month limit[1]
340/640	953,325 dozen.
347/348	1,247,175 dozen.
351/651	213,924 dozen.
448	45,714 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–10600 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–DR–F

Exemption of Certain Textile and Apparel Products From Visa and Quota Requirements

April 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting textile and apparel products imported in connection with certain international athletic events from visa and quota requirements.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Nat Cohen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on May 2, 1994, textile and apparel products imported as personal effects of participants in certain world athletic events, such as The 1994 FIFA World Cup Games, properly classified under Harmonized Tariff Schedule number 9902.98.04 which are produced or manufactured in various countries and entered into the United States for consumption and withdrawal from warehouse for consumption shall be exempt from visa and quota requirements.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 28, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on May 2, 1994, textile and apparel products properly classified under Harmonized Tariff Schedule number 9902.98.04 which are produced or manufactured in various countries and entered into the United States for consumption and withdrawal from warehouse for consumption are exempt from visa and quota requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–10609 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: DoD FAR Supplement (DFARS), Part 225, International Acquisition; and Subpart 252.2, Texts of Provisions and Clauses.

Type of Request: Extension.

Number of Respondents: 3,465.

Responses Per Respondent: 4.7.

Annual Responses: 16,333.

Average Burden Per Response: .25 hours.

Annual Burden Hours: 4,083.

Needs and Uses: The provisions at DFARS 252.225–7006, Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate, and 252.227–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, require offerors to identify end products that are not domestic. This information is necessary to evaluate offerors under policy providing a preference for certain products. Under trade agreements, including the North American Free Trade Agreement Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers (over certain dollar limitations), without regard to restrictions of the Buy American Act or the balance of payments program. Offerors identify excluded end products in these two provisions.

Affected Public: Businesses or other for-profit; non-profit institutions; and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: April 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10657 Filed 5–3–94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Comparative Study of Waste Isolation Pilot Plant Transportation Alternatives; Availability

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy has issued a study comparing the transportation alternatives for the Waste Isolation Pilot Plant (WIPP) transuranic waste shipping campaign in support of the disposal phase at the WIPP facility. The study compares truck and train transport, including the use of dedicated trains. The study includes a consideration of the following elements in association with each transportation mode: occupational and public risks and exposures, other environmental impacts, emergency response capabilities, and an estimation of comparative costs. The report is available upon request.

ADDRESSES: The report is available at the Public Reading Room (Room 1E190), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Monday-Friday, excluding Federal holidays. Copies of the report have also been placed in the following WIPP reading rooms: WIPP Public Reading Room, National Atomic Museum, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115; Thomas Brannigan Memorial Library, 200 E. Picacho, Las Cruces, New Mexico 88005; New Mexico State Library, 325 Don Caspar, Santa Fe, New Mexico 87503; Pannell Library, New Mexico Junior College, 5317 Lovington Highway, Hobbs, New Mexico 88240; Carlsbad Public Library, 101 S. Halagueno, Carlsbad, New Mexico 88220; Zimmerman Library, Government Publications Department, University of New Mexico, Albuquerque, New Mexico 87138; and Martin Speare Memorial Library, New Mexico Tech, Campus Station, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Sellani, Carlsbad Area Office, U.S. Department of Energy, Post Office Box 3090, Carlsbad, New Mexico 88220–3090, at (505) 234–7313.

SUPPLEMENTARY INFORMATION: WIPP is a research and development facility located in Southeastern New Mexico with the mission to demonstrate the safe disposal of transuranic radioactive wastes resulting from defense activities and programs of the United States. The study describes relevant transportation requirements and responsibilities of the U.S. Department of Energy, the U.S. Nuclear Regulatory Commission, and the U.S. Department of Transportation. Responsibilities of States, local governments, and Indian tribes are also included. The proposed transportation system is discussed which includes: The shipping containers to be used, the transportation fleet, shipment options, waste volumes, training, and the transportation tracking system. Risk analysis data is represented in the study in terms of occupational health and public exposure risks, as well as environmental impacts associated with the proposed WIPP shipping campaign. Emergency response capabilities for accidents involving radioactive materials for the states through which transuranic waste will be transported during the disposal phase are outlined. Finally, cost comparative data is presented for transportation by truck, regular train, and dedicated train.

Thomas P. Grumbly,

Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 94–10649 Filed 5–3–94; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER94–1174–000]

Florida Power Corp.; Filing

April 28, 1994.

Take notice that on April 20, 1994, Florida Power Corporation (FPC) tendered for filing an agreement between itself and Oglethorpe Power Corporation pursuant to which FPC will sell to Oglethorpe 50 MW of peaking capacity and energy in the months of June through September 1997 and 275 MW of peaking capacity and energy in the months of June through September 1998.

FPC proposes to make the Agreement effective 60 days after filing. FPC states that copies of its filing have been served upon Oglethorpe and the Public Service Commissions of Georgia and Florida.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10625 Filed 5–3–94; 8:45 am]

BILLING CODE 6717-01-M

L'Energia, Limited Partnership; Notice of Filing

[Docket No. EL94–58–000 and QF87–249–004]

April 28, 1994.

Take notice that on April 15, 1994, L'Energia, Limited Partnership, a Delaware limited partnership (Applicant), filed a petition with the Federal Energy Regulatory Commission (the Commission) requesting a temporary waiver of the operating standard set forth in 18 CFR 292.205(a)(1) for calendar year 1992 and 1993 and the efficiency standard set forth in 18 CFR 292.205(a)(s)(i)(B) for calendar year 1992, as those standards apply to Applicant's cogeneration facility located in Lowell, Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 16, 1994. Protests will considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10624 Filed 5–3–94; 8:45 am]

BILLING CODE 6717-01-M

Interstate Natural Gas Pipeline Gas Supply Realignment Costs; Supplemental Notice

Docket No. PL94–1–000 (previously docketed as Docket No. RM94–12–000)

April 26, 1994.

On March 30, 1994, the Commission issued a notice (59 FR 16198, April 6, 1994) scheduling a public conference on May 26, 1994 in RM94–12–000 to examine the use of pricing differential mechanisms by interstate natural gas pipelines to recover gas supply realignment costs. The Commission is redocketing this proceeding as Docket No. PL94–1–000.

At the conference, the Commission would be interested in hearing commenters' views on the following issues:

1. The pricing differential mechanisms were designed to lessen the pipelines' costs of renegotiating gas supply contracts. The theory was that providing pipelines a means to honor existing contracts while they were being renegotiated would be less expensive for consumers than requiring contracts to be bought out immediately. Has this theory been validated?

2. How are the pricing differential cost (PDC) mechanisms functioning?

a. What impact, if any, do the PDC mechanisms have on pipelines' renegotiations with producers?

b. While the pipelines have been recovering PDCs, what percentage of their overall contract volumes and costs have been finally resolved?

3. What impact, if any, does the two-year authorization have on the use of the PDC mechanisms? What type of review should the Commission undertake to evaluate specific PDC mechanisms if a pipeline seeks to extend the authorization? If the Commission were to extend a pipeline's 2-year authorization period, what effect would that have on your response to question 1?

4. Are there alternatives to the PDC mechanisms?

a. If so what are they?

b. What impact would these alternatives have on the timing of cost recovery?

5. There are various procedural ways the Commission can deal with subsequent quarterly PDC filings where the first filing has been set for hearing. Possible alternative approaches include: establishing new hearings; consolidating new filings with the existing hearing; or, making subsequent filings subject to the first proceeding. Are there other approaches that should also be considered?

The Commission will provide for remote viewing of the conference in Hearing Room 1, 810 First Street, NE., Washington, DC. In addition, if there is sufficient interest, the Capitol Connection may broadcast the conference in the Washington, DC metropolitan area or nationally. Those interested in the local or national television broadcast should call The Capitol Connection at (703) 993–3100 no later than May 4, 1994. Requests from viewers outside of Washington, DC should be directed to Julia Morelli or Shirley Al-Jarani.

Any person who wishes to make a formal presentation to the Commission should submit a written request to the Secretary of the Commission no later than May 2, 1994. Written statements to accompany oral presentations are welcomed, but not required. Persons providing written statements should file 15 copies of the statement with the Office of the Secretary by May 16, 1994, and 100 copies at least one hour prior to their oral presentation.

All questions concerning the format of the technical conference should be directed to: Mary Hain, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4010J, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2143.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10623 Filed 5–3–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–72–002]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

April 28, 1994.

Take notice that on April 22, 1994, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets, with a proposed effective date of June 1, 1994:

Substitute First Revised Sheet No. 15
Original Sheet No. 15A
Substitute First Revised Sheet No. 16

Iroquois states that it is filing the above tariff sheet in compliance with the Commission's order issued in the referenced proceeding on March 23, 1994. Specifically, Iroquois states that the tariff sheets reflect a new § 4.3(*f*) of Rate Schedule RTS in compliance with the Commission's directive in the March 23, 1994 Order that Iroquois refile tariff sheets to restore its interruptible transportation service revenue sharing mechanism. Iroquois further states that it is filing these tariff sheets under protest and subject to any subsequent order issued by the Commission on Iroquois' pending request for rehearing in this proceeding.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before may 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10626 Filed 5–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–235–000]

Northeast Utilities Service Co.; Notice of Filing

April 28, 1994.

Take notice that on April 21, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company and Holyoke Water Power Company, an amendment to a filing for sales of system power to Chicopee Municipal Lighting Plant. NUSCO renews its requests that the change in rate schedule become effective on December 1, 1993 and that such rate schedule change supersede FERC Rate Schedule Nos. CL&P 504 and HWP 49 at that time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10627 Filed 5-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT94-4-000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1994.

Take notice that on April 25, 1994, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective May 25, 1994:

First Revised Sheet No. 219
First Revised Sheet No. 220

Northern states that such tariff sheets are being submitted to revise and update its tariff to reflect the current organizational structure of its merchant function to coincide with its revised Standards of Conduct.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protest must be filed on or before May 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10628 Filed 5-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-4-28-001]

Panhandle Eastern Pipe Line Co.; Notice of Compliance Filing

April 28, 1994.

Take notice that on March 31, 1994, the Commission issued a letter order requesting Panhandle Eastern Pipe Line Company (Panhandle) to file workpapers and an explanation of how the lost and unaccounted for percentages were determined. On April 15, 1994, Panhandle filed with the Commission its workpapers and explanation of how the lost and unaccounted for percentages were determined.

Panhandle states that the lost and unaccounted for percentage is based on Panhandle's system actual unaccounted for gas lost for the years 1987 through 1991. Panhandle notes that the data and the calculation of the lost and unaccounted for percentage for the Panhandle system is reflected in appendix A to the filing.

Panhandle states that copies of the filing are being served on the parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10629 Filed 5-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-931-000]

PowerNet G.P.; Issuance of Order

April 29, 1994.

On January 24, 1994 and March 16, 1994, PowerNet G.P. (PowerNet) submitted for filing a rate schedule under which PowerNet will engage in wholesale electric power and energy transactions as a marketer. PowerNet also requested waiver of various Commission regulations. In particular, PowerNet requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PowerNet.

On April 22, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PowerNet should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PowerNet is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PowerNet's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 23, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10694 Filed 5-3-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-361-000]

Tennessee Gas Pipeline Co.; Notice of Application

April 28, 1994.

Take notice that on April 15, 1994, Tennessee Gas Pipeline Company ("Tennessee") filed an application pursuant to section 7(b) of the Natural Gas Act and §§ 157.7(a) and 157.18 of the Federal Energy Regulatory Commission's ("Commission") Regulations for authorization to abandon Tennessee's Rate Schedule X-67, a transportation and exchange service with Arkla Energy Resources Company (formerly Arkansas Louisiana Gas Company).

This transportation and exchange service was previously certificated on November 15, 1994, under Docket No. CP84-248-000 (29 FERC ¶ 61,184) and, according to Tennessee and Arkla, has been inactive and is no longer necessary. No facilities will be abandoned as a result of the abandonment of this service.

Any person desiring to be heard or to make protest with reference to said application should, on or before May 12, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirement of the Commission's Rules or Practices and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file in motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10630 Filed 5-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-372-000]

Transcontinental Gas Pipe Line Corp.; Notice of Request Under Blanket Authorization

April 28, 1994.

Take notice that on April 22, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94-372-000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point under TGPL's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL proposes to construct a new delivery point to Piedmont Natural Gas Company, Inc. (Piedmont) in Mecklenburg County, North Carolina. TGPL states that the new delivery point, referred to as the "Hicks Crossroads Meter Station", will consist of a sixteen-inch tap on TGPL's Main Line "C", a sixteen-inch tap on Main Line "D" and a new metering and regulating station, all located approximately at milepost 5.0 on TGPL's Cowan Ford Loop.

TGPL states that the Hicks Crossroads Meter Station will be used by Piedmont to receive into its distribution system up to 204,000 Mcf of gas per day on a firm and/or interruptible basis TGPL states that it has sufficient system delivery flexibility to accomplish these deliveries without detriment or disadvantage to TGPL's other customers.

TGPL further states that it is not proposing to alter the total volumes authorized for delivery to Piedmont. TGPL also states that the addition of such delivery point will have no impact on TGPL's peak day deliveries and little or no impact on TGPL's annual deliveries, and is not prohibited by TGPL's FERC Gas Tariff.

TGPL states that the construction and operation of its facilities will comply with the environmental requirements set forth in § 157.206(d) of the Commission's regulations, and that TGPL will obtain all required clearances prior to the commencement of any construction work in the vicinity of the delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-10631 Filed 5-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-42-008]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 28, 1994.

Take notice that on April 25, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of April 25, 1994:

3rd Revised Sheet No. 5M

On August 6, 1994, the Commission issued its Order on Rehearing and Terminating Technical Conference, in the above-referenced proceedings, directing Transwestern within thirty days to file revised tariff sheets to reflect the removal of:

(1) $4,200,000 of producer pricing settlement amounts,

(2) $2,219,314 of prior period adjustments, and

(3) $510,146 from Transwestern's direct bill to its former sales customers, and to refund with interest all the costs excluded from its Account No. 191 direct bill filings (August 6 order). In the August 6 order, the Commission specifically provided that Transwestern would be permitted to propose "a prospective charge to recover these costs from its current open access transportation customers."

Transwestern requested rehearing of the August 6 order and, in addition, filed motions requesting additional time with which to comply with the requirements of the August 6 order, which extensions were granted by the Commission. On March 25, 1994, the Commission issued its "Order Denying Rehearing," directing Transwestern to comply with the requirements of the August 6 order and reiterated that Transwestern could file to recover the disallowed costs through a mechanism that does not constitute a surcharge to its "former sales customers based upon their past sales contract demand" ("March 25 order"). Accordingly and without waiving its rights to file an alternate rate mechanism to recover the disallowed costs, Transwestern is filing a revised tariff sheet in compliance with the August 6 and March 25 orders. The only changes Transwestern is proposing in Sheet No. 5M are to adjust the direct bill amounts in accordance with such orders and to explain in footnote one that section 24, "Gas Supply Inventory Charge", has been canceled.

Transwestern requested any waiver of any Commission Regulation and its tariff provisions as may be required to allow the tariff sheet referenced above to become effective on April 25, 1994.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10632 Filed 5–3–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4881–1]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a conference call meeting of the Technology Innovation and Economics (TIE) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the TIE Committee examines issues associated with the development, commercialization and use of environmentally beneficial technologies.

At this meeting the TIE Committee will discuss the report it plans to submit to EPA containing its comments on the Agency's draft Innovative Technology Strategy.

Scheduling constrains preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to TIE Committee members for their consideration.

DATES: The public conference call meeting of the TIE Committee will be held on Wednesday, May 11, 1994, from 2 to 4 p.m. Please call the contact listed below for the call-in number.

ADDRESSES: Written comments should be sent to: Mark Joyce, 1601F, Office of Cooperative Environmental Management, USEPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct Line (202) 260–6889, Secretary's Line (202) 260–6892.

Dated: April 25, 1994.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–10838 Filed 5–3–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44608; FRL–4779–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methylethylketoxime (MEKO) (CAS No. 96–29–7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for MEKO were submitted by the Industrial Health Foundation, Inc., on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2700. They were received by EPA on March 24, 1994. The submission describes "an Inhalation Oncogenicity Study of MEKO in Rats and Mice; Part II - Rats." This chemical is sold primarily as a nonreactive antiskinning agent in alkyd surface coating and paints. It is also used as a blocking agent for isocyanates and siloxanes.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44608). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607, Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 21, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10695 Filed 5–3–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59978; FRL–4770–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 16 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–50, March 1, 1994.

Y 94–51, 94–52, March 7, 1994.

Y 94–53, March 8, 1994.

Y 94–54, 94–55, March 14, 1994.

Y 94–56, 94–57, 94–58, 94–59, 94–60, 94–61, 94–62, March 15, 1994.

Y 94–63, 94–64, 94–65, March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 260–1024, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm B–607, Northeast Mall, at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–50

Manufacturer. Confidential.

Chemical. (G) Unsaturated urethane acrylate.

Use/Production. (G) Resin or resin additives. Prod. range: Confidential.

Y 94–51

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and bake coatings for metal substrates. Prod. range: Confidential.

Y 94–52

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and bake coatings for metal substrates. Prod. range: Confidential.

Y 94–53

Manufacturer. Caschem, Inc.

Chemical. (G) Urethane acrylate.

Use/Production. (G) UV Curable coating for electronic components open, non-dispersive use. Prod. range: Confidential.

Y 94–54

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Mixed resin.

Use/Production. (S) Industrial air-dry and force-dry coatings for metal substrates. Prod. range: Confidential.

Y 94–55

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and force-dry coatings for metal substrates. Prod. range: Confidential.

Y 94–56

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and force-dry coatings for metal substrates. Prod. range: Confidential.

Y 94–57

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and force-dry coatings for metal substrates. Prod. range: Confidential.

Y 94–58

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and force-dry coatings for metal substrates. Prod. range: Confidential.

Y 94–59

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry and force-dry coatings for metal substrates. Prod. range: Confidential.

Y 94–60

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry primers for metal substrates. Prod. range: Confidential.

Y 94–61

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air-dry primers for metal substrates. Prod. range: Confidential.

Y 94–62

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Binder for xerographic toners. Prod. range: Confidential.

Y 94–63

Importer. Confidential.

Chemical. (G) Aliphatic amine derivative and aliphatic amide derivative copolymer.

Use/Import. (S) Additive for ink jet paper, retention aid for paper, dry strength agent for paper making. Import range: Confidential.

Y 94–64

Importer. Unitika America Corporation.

Chemical. (G) Co-polyester.

Use/Import. (G) Resin for powder coating. Import range: 40,000–50,000 kg/yr.

Y 94–65

Importer. Unitika America Corporation.

Chemical. (G) Co-polyester.

Use/Import. (G) Resin for powder coating. Import range: 10,000–20,000 kg/yr.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: April 26, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10698 Filed 5–3–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59979; FRL–4770–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION. Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 9 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–66, 94–67, 94–68, 94–69, 94–70, March 27, 1994.

Y 94–71, 94–72, 94–73, March 28, 1994.

Y 94–74, March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 260–1024, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm B–607, Northeast Mall, at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–66

Importer. Hanse Chemical USA, Inc.

Chemical. (G) Biphenol A epoxy resin-silicone copolyester.

Use/Import. (G) Function: elastification additive application in epoxy resin additives, potting, and casting. Import range: 2,000–40,000 kg/yr.

Y 94–67

Manufacturer. Confidential.

Chemical. (G) An isophthallic acid, phthallic anhydride, neopentyl glycol, trimethyl propane, ethylene glycol, 2-butyl-2-ethyl-1,3 propanediol polyester.

Use/Import. (G) Polyester resin used for industrial coating. Prod. range: Confidential.

Y 94–68

Manufacturer. Confidential.

Chemical. (G) Acrylic acid/vinyl ester copolymer.

Use/Import. (S) Thickening agent mainly for the cosmetic industry. Prod. range: Confidential.

Y 94–69

Importer. Unitika America Corporation.

Chemical. (G) Co-polyester.

Use/Import. (G) Resin for powder coating. Import range: 3,000–6,000 kg/yr.

Y 94–70

Importer. Unitika American Corporation.

Chemical. (G) Co-polyester.

Use/Import. (G) Resin for powder coating. Import range: 3,000–6,000 kg/yr.

Y 94–71

Manufacturer. Confidential.

Chemical. (G) Epoxy ester resin.

Use/Production. (G) Thermoset epoxy-ester for metal coatings. Prod. range: Confidential.

Y 94–72

Manufacturer. Henkel Corporation.

Chemical. (G) Polyester.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 75,000–150,000 kg/yr.

Y 94–73

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Acrylic ester copolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 94–74

Manufacturer. Confidential.

Chemical. (S) Neopentyl glycol; trimethylolpropane; isophthalic acid; $C_{16'-18}$ and $C_{18'}$ fatty acids; phenyl, propyl silicone resin; and trimellitic anhydride.

Use/Production. (S) Resin for water based paint. Prod. range: 2,700,000 kg/yr.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: April 26, 1994.

Frank V. Ceasar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–10697 Filed 5–3–94; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4880–7]

Molokai Aquifer, Maui County, HI: Sole Source Aquifer Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the U.S. Environmental Protection Agency has determined that the aquifer underlying Molokai, Hawaii is the sole or principal source of drinking water for the island. The Regional Administrator has determined that contamination of this aquifer would create a significant hazard to public health. As a result of this determination, Federally financially assisted projects constructed anywhere in the designated area will be subject to EPA review to ensure that they do not contaminate the aquifer through a recharge zone so as to create a significant hazard to public health.

ADDRESSES: The data upon which this determination has been made are available to the public and may be inspected during normal business hours at the EPA, Region 9, Water Management Division, 75 Hawthorne Street, San Francisco, CA, 94105.

FOR FURTHER INFORMATION CONTACT: Sunny Kuegle, Groundwater Pollution Control Section, (W–6–2), (415) 744–1830.

SUPPLEMENTARY INFORMATION:

1. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In 1987, EPA delegated authority to designate Sole Source Aquifers to EPA Regional Administrators.

On April 23, 1993, Sarah Sykes submitted a petition for Sole Source Aquifer Designation to EPA Region 9. After Sarah Sykes submitted additional information pursuant to EPA's request, EPA determined the petition to be complete on September 29, 1993. EPA conducted a public hearing on Molokai, Hawaii on January 6, 1994. The public comment period on the petition closed on January 21, 1994.

II. Basis for Determination

The factors to be considered by the Regional Administrator in the designation of an area under section 1424(e) of the Safe Drinking Water Act are: (1) Whether the aquifer is the area's sole or principal source of drinking water and; (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of the information available to EPA, the Regional Administrator has made the following findings which are the basis for the determination:

1. The aquifer underlying Molokai currently serves as the sole or principal source of drinking water for the residents of the island.
2. Contamination of the aquifer would create a significant hazard to public health. There is no economically feasible alternative drinking water source or combination of sources near the designated area. Potential sources of contamination include: cesspools, landfills, and highway accidents.
3. The determination of the boundary of the Sole Source Aquifer is consistent with EPA's Sole Source Aquifer designation Decision Process: Petition Review Guidance (Office of Groundwater Protection, 1987).

III. Description of the Molokai Sole Source Aquifer

The Molokai Sole Source Aquifer underlies the entire island of Molokai, Maui County, Hawaii. The aquifer is largely constituted by igneous rocks formed by numerous lava flows. Fresh to brackish groundwater flows within the igneous rocks in a lens-shaped configuration under Molokai. Lateral groundwater flow is locally impounded by near vertical dikes. These dikes form relatively impermeable compartments of groundwater at elevations above the island-wide lens. Yields from wells on Molokai range from 0.5 to 1.8 million gallons per day.

IV. Information Used in the Determination

The information used in the determination includes the petition and the amended petition as submitted by Sarah Sykes. In addition, the determination is based on EPA's "Technical Support Document." The Technical Support Document is based on reviews of hydrogeologic studies conducted on Molokai. These documents are available to the public and may be inspected during business hours at the EPA, Water Management Division, 75 Hawthorne Street, San Francisco, California.

V. Project Review

EPA region 9 will seek to work with the Federal agencies that may in the future provide financial assistance to projects within the boundaries of the Molokai Sole Source Aquifer. EPA will seek to develop agreements with other Federal agencies whereby EPA will be notified of proposed commitments of Federal financial assistance for projects which could contaminate the aquifer. In the event that a Federal financially assisted project could contaminate the Molokai Sole Source Aquifer through its recharge zone so as to create a hazard to public health, no commitment of Federal financial assistance will be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to insure it will not contaminate the aquifer.

Although the project review process cannot be delegated, EPA will consider, to the maximum extent possible, any existing or future state, tribal, and local control mechanisms in protecting the groundwater quality of the aquifer.

VI. Summary of Public Comments

EPA received six letters during the comment period. Sixteen people spoke at the public hearing at Kaunakakai, Molokai, Hawaii on January 6, 1994. Of those who expressed an opinion, six supported the designation of a Sole Source Aquifer for Molokai, whereas one opposed a designation. The public's written and oral comments are fully addressed in EPA's Responsiveness Summary which is available to the public during normal business hours at EPA, Water Management Division, 75 Hawthorne Street, San Francisco, California.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this certification, the term "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the area within the boundaries of the Molokai Sole Source Aquifer. The only affected entities will be those businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small, isolated commitments of financial assistance on an individual basis; accordingly, the number of affected small entities will be minimal.

For those small entities which may be subject to review, the impact of this action will not be significant. For most projects subject to this review, a ground water impact assessment will be required pursuant to other federal laws, such as the National Environmental Policy Act, as amended (NEPA), 42 U.S.C. 4321, *et seq.* Integration of those related reviews with Sole Source Aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is "significant" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not significant because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. This action only affects the area within the boundaries of the Molokai Sole Source Aquifer. As a result of this action, no commitment of Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Dated: April 14, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–10551 Filed 5–3–94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 94–420]

Meeting Held To Discuss Role of Cable in Proposed Changes to the Emergency Broadcast System

April 28, 1994.

The Federal Communications Commission is nearing completion of a rulemaking proceeding to modernize the present Emergency Broadcast System (EBS), Docket FO 91–171 and FO 91–301. One of the areas under consideration is the inclusion of cable television systems as an equal partner with broadcast stations in a new emergency alerting system. On Wednesday, April 27, 1994, members of the Commission staff met in Washington, DC with some of the cable television equipment manufacturers and cable operators that had filed comments in the docket on the integration of cable systems into an alerting system.

The purpose of the meeting was to attempt to clarify and further document the estimated costs of emergency alerting equipment in cable systems. Such costs include the purchase of equipment, and the operation of such an alerting system over the multi-channel cable systems. While the discussions centered upon comments already filed with the Commission, it was hoped that this further discussion would enhance the Commission's understanding of the nuances and details for cable implementation of an alerting system.

An audio recording of the meeting was made and has been placed in the record as a part of the official proceeding in the docket. The public and all interested parties are invited to review this recording which consists of approximately six hours of discussion by the approximately 25 participants.

For further information contact the EBS staff at (202) 632–3906.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–10656 Filed 5–3–94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1005–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1005–DR), dated October 28, 1993, and related determinations.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 22, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–10671 Filed 5–3–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1020–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1020–DR), dated March 31, 1994, and related determinations.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 10, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–10672 Filed 5–3–94; 8:45 am]

BILLING CODE 6718–02–P

[Docket No. FEMA–REP–10–OR–3]

Oregon WNP–2 Emergency Response Plan and Guidelines

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Region X Office of the Federal Emergency Management Agency gives notice that it has received a radiological emergency response Manual from the State of Oregon. The Manual contains plans which support the State of Oregon and plans of local governments near the WNP–2 Nuclear Power Plant located in Benton County, Washington.

DATE PLANS RECEIVED: March 24, 1994.

ADDRESSES: We invite comments on the State and Local plans portion of the Manual within 30 days of the date of this notice. Comments should be submitted in writing to Lloyd F. Hara, Regional Director, FEMA Region X, 130–228th Street SW., Bothell, Washington 98021–9796, (fax) (206) 487–4707, and to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry E. Moore, TE Team Leader, FEMA Region X, 130 228th Street SW., Bothell, Washington 98021–9796.

SUPPLEMENTARY INFORMATION: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. In support of the Federal requirement for emergency response plans, 44 CFR 350, Review and Approval of State and Local Radiological Emergency Plans and Preparedness, describes its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to 44 CFR 350.7, Application by State for Review and Approval, the State of Oregon submitted its Radiological Emergency Plan for the State of Oregon and Affected Counties to the Federal Emergency Management Agency, Region X Office, for review and approval under 44 CFR part 350.

Included are radiological emergency response plans for local governments that are wholly or partially within the plume exposure pathway emergency planning zones of the WNP–2 Nuclear Power Plant. The Manual covers:

(1) Oregon's WNP–2 Emergency Response Plan, dated December 1993,

(2) Oregon's Hanford Emergency Response Plan, and

(3) Guidelines the State of Oregon, Morrow County, and Umatilla County will use to implement the plans in a WNP–2 and Hanford emergency. Oregon is not requesting FEMA review of the Oregon Hanford Plan section.

Copies of the Manual are available for review and copying at the FEMA Region X Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR part 5. There are 510 pages in this document; reproduction fees are $0.10 per page, payable with the request for a copy.

44 CFR 350.10 also calls for a public meeting prior to approval of the plans. This meeting will be held in accordance with 44 CFR 350.10 in Hermiston, Oregon, in advance of FEMA approval.

Dated: April 14, 1994.

Lloyd F. Hara,

Regional Director.

[FR Doc. 94–10670 Filed 5–3–94; 8:45 am]

BILLING CODE 6718–20–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Dolphin Cruise Line, Inc., Ulysses Cruises, Inc. and Compania de Vapores Seabreeze S.A., 901 South America Way, Miami, Florida 33132

Vessel: SEABREEZE I

Dolphin Cruise Line, Inc., Ulysses Cruises, Inc. and Masefield Company Limited, 901 South America Way, Miami, Florida 33132

Vessel: DOLPHIN IV

Dated: April 28, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–10616 Filed 5–3–94; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Dolphin Cruise Line, Inc., Ulysses Cruises, Inc. and Compania de Vapores Seabreeze S.A., 901 South America Way, Miami, Florida 33132

Vessel: SEABREEZE I

Dolphin Cruise Line, Inc., Ulysses Cruises, Inc. and Masefield Company Limited, 901 South America Way, Miami, Florida 33132

Vessel: DOLPHIN IV

Dated: April 28, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–10617 Filed 5–3–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Mellon Bank Corp.; Acquisition of Companies Engaged in Nonbanking Activities

Mellon Bank Corporation, Pittsburgh, Pennsylvania (applicant), has applied pursuant to Section 4(c)(8) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1843(c)(8)) and § 225.23 of the Board's Regulation Y (12 CFR 225.23) to acquire, directly or indirectly, all of the voting securities of the following directly or indirectly held subsidiaries of the Dreyfus Corporation, New York, New York (Dreyfus):

(1) The Dreyfus Security Savings Bank, F.S.B., Paramus, New Jersey (DSSB), a federal savings bank (insured by the FDIC, Bank Insurance Fund), and thereby engage in operating a savings association pursuant to 12 CFR 225.25(b)(9);

(2) The Dreyfus Trust Company, Uniondale, New York (DTC), a trust company holding a limited purpose charter from the New York Department of Banking, and thereby engage in operating a trust company pursuant to 12 CFR 225.25(b)(3);

(3) Dreyfus Realty Advisors, Inc., New York, New York and Atlanta, Georgia (DRA), and thereby engage in certain investment advisory activities related to the acquisition, management, and disposition of real estate and real estate-related investments (DRA also has 21 wholly-owned corporate subsidiaries, each of which acts as a managing general partner in certain real estate limited or general partnerships); and

(4) The Truepenny Corporation, New York, New York (Truepenny), a holding company for the Trotwood Corporation (Trotwood), New York, New York, and thereby engage in certain community development initiatives and, with two of their subsidiaries and through several partnerships, in a real estate development project in New York City, known as the Queens West Redevelopment Project.

(5) Dreyfus Partnership Management, Inc., New York, New York (DPM), and thereby serve as a non-managing general partner of two mutual funds organized as limited partnerships which are sponsored, advised and managed by Dreyfus;

(6) Major Trading Corporation, New York, New York (MTC), and thereby engage primarily in investing in securities, including shares of certain mutual funds advised by Dreyfus-affiliates; and

(7) Dreyfus Acquisition Corporation, New York, New York (DAC), and thereby engage in making equity and debt investments, including investments in certain mutual funds advised by Dreyfus-affiliates and in certain limited partnerships.

Applicant proposes to acquire the above companies simultaneously with the proposed acquisition of Dreyfus by its subsidiary, Mellon Bank, N.A., which has filed a notice with the Office of the Comptroller of the Currency regarding such proposed acquisition of Dreyfus. Applicant proposes to acquire DSSB, DTC, DRA, DPM, MTC, and DAC through a wholly owned subsidiary, MBC Investments Corporation (MBC), and to acquire Truepenny directly.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the closely related to banking test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National courier Assn* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y (49 FR 806, January 6, (1984).

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities of the subsidiaries that Applicant proposes to acquire can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by enabling Applicant to provide a broader range of services to its customers and thereby enhance Applicant's ability to compete and expand its participation in the investment advisory business. Applicant also believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

The Board has previously determined in §§ 225.25(b)(9) and 225.25(b)(3) of Regulation Y that the operation of a savings association and a trust company, respectively, are activities closely related to banking and permissible for bank holding companies. Applicant states that DSSB and DTC will be operated in accordance with these sections. DSSB operates out of a principal office in Paramus, New Jersey, has a branch office in San Francisco, California, and has received approval from the Office of Thrift Supervision to open 13 additional interstate offices.

Applicant asserts that DRA's real estate-related investment activities are permissible under § 225.25(b)(4) of Regulation Y. Applicant has committed that DRA will cease to engage in any activities that are impermissible for bank holding companies or their nonbank subsidiaries and that all subsidiaries of DRA will cease to engage in impermissible activities or be divested within 2 years after consummation of the proposed transaction.

According to Applicant, the direct and indirect investments of Truepenny and Trotwood are authorized under § 225.25(b)(6) of Regulation Y as equity and debt investments in corporations or projects designed primarily to promote community welfare. Applicant asserts that the Queens West Redevelopment Project is designed to make affordable housing available to persons of lower middle income and will create significant employment opportunities for low- and moderate-income communities.

Applicant contends that its proposed investments in DPM, MTC and DAC are authorized under section 4(c)(7) of the BHC Act, which permits bank holding companies to acquire shares of investment companies that engage solely in acquiring 5 percent or less of the securities of other companies. With respect to the role of DPM as non-managing general partner to 2 mutual funds, Applicant claims that DPM engages only in investment activity permitted by section 4(c)(7) of the BHC Act and that the managing general partners have complete and exclusive control over the management, conduct and operation of the funds' business. Applicant commits to reduce any investment of DPM, MTC and DAC to below the 5% threshold in section 4(c)(7) of the BHC Act, including limited partnership interests that qualify as voting securities under § 225.2(p) of Regulation Y.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 30, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, April 28, 1994.

William W. Wiles,

Secreary of the Board.

[FR Doc. 94-10690 Filed 5-3-94; 8:45 am]

BILLING CODE 6210-01-P-M

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement for the Construction of the Montgomery County, Maryland, Campus for the Headquarters of the Food and Drug Administration

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the General Services Administration (GSA) guidelines PBS P 1095.4B, GSA and the Food and Drug Administration (FDA) announce their intent to prepare an Environmental Impact Statement (EIS) for the acquisition of 350 to 400 acres in Montgomery County, Maryland for the construction of 2.1 million occupiable square feet (osf) of office and laboratory space for use by the FDA to house approximately 5,645 employees with 5,415 parking spaces. Acquisition of this site and construction of this facility will provide one of three campuses planned to allow FDA to consolidate its facilities. FDA is located in three buildings within the District of Columbia and 35 buildings in Maryland.

In March 1994, GSA advertised for expressions of interest from potential offerors to provide the required site. The site is to accommodate the construction of a campus for the Headquarters of the Food and Drug Administration. The list of sites that will be considered as alternatives in the EIS are as follows (not listed in order of preference):

- **The Clarksburg Triangle Site**

Approximately 535 acres in Clarksburg, Maryland, (bounded by Interstate 270, Route 121/Clarksburg Road, and Old Baltimore Road).

- **The King Farm Site**

Approximately 355 acres in the vicinity of Gaithersburg and Rockville, Maryland, (bounded by Route 355/Frederick Road, Shady Grove Road, Gude Drive and Interstate 270 at Piccard Drive).

- **The Marriott/Milestone Site**

Approximately 443 acres in Germantown, Maryland, (bounded by Interstate 270, Route 118/Germantown Road, and Route 355/Frederick Road).

- **The National Geographic Site**

Approximately 380 acres in Gaithersburg, Maryland, (bounded by Route 28/Darnestown Road, Great Seneca Highway, Route 124/Quince Orchard Road, and Muddy Branch Road).

The EIS will focus on the Government's programmatic needs and potential short and long-term impacts that may result from new construction. The consulting firms of Leo A. Daly and Greenhorne & O'Mara have been retained to prepare the draft and final EIS.

GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on May 16, 1994, at 7 p.m. at Rockville High School, 2100 Baltimore Road, Rockville Maryland.

A short, formal presentation will precede the request for public comments. GSA and FDA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, State, and County Agencies, interested individuals, and groups take this opportunity to identify environmental concerns and significant issues that should be addressed by the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentator believes the EIS should address. Written statements concerning the alternatives should be postmarked no later than June 6, 1994, to Mr. Andrew Dempster, Planning Staff (WPL) room 7618, National Capital Region, General Services Administration, Room 7618, 7th and D Streets, SW, Washington, DC, 20407, Telephone (202)–708–5530.

Dated: April 29, 1994.

Mr. Jack Finberg,

Acting Director, NCR Planning Staff (WPL).

[FR Doc. 94–10673 Filed 5–3–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: To be determined.

ADDRESSES: Tentative, The White House Conference Center, Truman Room, 3rd Floor, 726 Jackson Place NW., Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Sandra Perlmutter, Executive Director, President's Council on Physical Fitness and Sports, 701 Pennsylvania Ave., NW., Suite 250, Washington, DC 20004 202/272–3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, as amended, and subsequent orders. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the President and the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; (3) advise the President and Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program on physical fitness and sports, to report on ongoing Council initiatives, and to plan for future directions.

Dated: April 29, 1994.

Sandra Perlmutter,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 94–10674 Filed 5–3–94; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following special emphasis panel scheduled to meet during the month of May 1994:

Name: Health Care Policy and Research Special Emphasis Panel.

Dates and Times: May 3–4, 1994, 9:00 A.M.

Place: Ramada Inn, 8400 Wisconsin Avenue, Ambassador 1 Room, Bethesda, Maryland 20814.

This meeting will be closed to the public.

Purpose: The Panel's charge is to provide advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals (PHS 94–2). The purpose of this contract, entitled Consumer Choices and Health Care Reform, is to develop a prototype decision support system, workbook, interactive video, or other tools for consumers to use in selecting health care plans, providers, and practitioners. The prototype should focus on one area of. decision-making, e.g., evaluation of preventative health services. The final product should have the capacity to be adapted for new categories of choices related to a reformed system of health care.

Agenda: The session of this Panel will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Panel and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Anne R. Bavier, Center for General Health Services Extramural Research, Division of Primary Care, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Suite 502, Rockville, Maryland 20852, (301) 594–1357 extension 129.

Dated: April 26, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–10604 Filed 5–3–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Poverty-Associated Mental Retardation (PAMR) Prevention Technical Assistance Workshop for Planning Grant Recipients.

Time and Date: 8:30 a.m.–4:30 p.m., May 10, 1994.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public; limited only by the space available.

Purpose: The primary purpose of this workshop is to provide technical assistance to recipients of CDC grants as they plan programs to prevent PAMR. The workshop is not designed to provide general information on mental retardation or on prevention of PAMR.

SUPPLEMENTARY INFORMATION: The workshop will convent a group of recipients of CDC PAMR Planning Grants.

Seven of every 1,000 ten-year old children suffer from mild mental retardation, and three of every 1,000 suffer from more serious mental retardation. Poor children, especially those whose mothers have less than a high school education, are at risk of cognitive delay of as much as one standard deviation of IQ (15 points) at age three. Studies such as the Infant Health and Development Program and the Carolina Abecedarian Project have proven that an intensive early health and development intervention can prevent or reduce as much as two-thirds of PAMR. CDC is actively involved in research and planning to help States develop a community-based program to prevent PAMR.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Edward A. Brann, M.D., Chief, Mental Retardation Prevention Section, Developmental Disabilities Branch, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, Mailstop F–15, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone 404/488–7360.

Dated: April 28, 1994.

Robert L. Foster,

Assistant Director for Special Programs, Office of Program Support, Centers for Disease Control and Prevention.

[FR Doc. 94–10642 Filed 5–3–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 93N–0490]

Public Workshop on Improvements in the Drug Master File System; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 3, 1994 the comment period for a notice that appeared in the **Federal Register** of January 14, 1994 (59 FR 2413). The document announced a public workshop on possible improvements in the drug master file (DMF) system. This action is based on a request for an extension of the comment period.

DATES: Written comments by June 3, 1994.

ADDRESSES: Submit written comments regarding the workshop to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Transcripts and summaries of the workshop are available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eric P. Duffy, Center for Drug Evaluation and Research (HFD–635), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0360.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1994 (59 FR 2413), FDA announced that on January 31, 1994, the agency would be holding a public workshop on possible improvements in the DMF system, especially Type II DMF's, which concern drug substances, drug substance intermediates, and materials used in their preparation, or drug products. The workshop focused on alternative ways for the Center for Drug Evaluation and Research (CDER) to review Type II DMF's for drug substances and intermediates. The agency announced that it would accept data, information, or views on this subject until March 14, 1994.

The International Pharmaceutical Excipients Council (IPEC) requested that FDA extend the comment period for an additional 60 days. IPEC explained that several of its members could not attend the public workshop because of a scheduling conflict with the U.S. Pharmacopeia's Second Open Conference on Excipient Harmonization and that the members are reviewing the transcript and summary of the workshop.

The purpose of reopening the comment period is to provide an opportunity for interested persons to submit comments for review by CDER in considering possible improvements in the DMF system. FDA believes that reopening the comment period until June 3, 1994, provides sufficient opportunity to comment on the workshop transcript and summary.

Interested persons may, on or before June 3, 1994, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–10606 Filed 5–3–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA), Flexible Survey Protocol Form; *Form No.:* HCFA–667; *Use:* This form will be used for laboratories that are nonwaived, nonaccredited, and considered low risk by HCFA, in lieu of onsite inspection for the first survey cycle. This checklist is designed to screen laboratories and alert HCFA to any facility where an onsite inspection is vital; *Frequency:* Biennially; *Respondents:* State or local governments, Federal agencies or employees, small businesses or organizations, and nonprofit institutions; *Estimated Number of Responses:* 1,000; *Average Hours Per Response:* 1.5; *Total Estimated Burden Hours:* 1,500.

2. *Type of Request:* Extension; *Title of Information Collection:* Application for Health Insurance Benefits Under Medicare for Individual With Chronic Renal Disease; *Form No.:* HCFA–43; *Use:* The law requires the filing of an application to establish Medicare entitlement based on end stage renal disease. This form is the application form used to obtain information needed to determine Medicare eligibility. It guides district office personnel in securing the required development and becomes a permanent part of the claims file; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated Number of Responses:* 21,000; *Average Hours Per Response:* .43; *Total Estimated Burden Hours:* 9,030.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Qualification Statement for Federal Employees; *Form No.:* HCFA–565; *Use:* Information is required on individuals filing for hospital insurance benefits (Part A) based on their Federal employment. This information is required in order to determine if they can get "deemed" quarters for work prior to 1983 to qualify for free Part A; *Frequency:* One time only; *Respondents:* Individuals or households; *Estimated Number of Responses:* 4,300; *Average Hours Per Response:* .17; *Total Estimated Burden Hours:* 731.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Attending Physician's Statement and Documentation of Medicare Emergency; *Form No.:* HCFA–1771; *Use:* This form is used to document the attending physician's statement that the hospitalization was required due to an emergency and give clinical support for the claim; *Frequency:* On occasion; *Respondents:* Businesses or other for profit; Estimated Number of Responses: 1,700; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 425.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Part B Medicare Hearing by an Administrative Law Judge; *Form No.:* HCFA–5011B; *Use:* This form is used by the beneficiary or other qualified appellant to request a hearing by an Administrative Law Judge if the carrier hearing decision fails to satisfy the claimant; *Frequency:* On occasion; *Respondents:* Businesses or other for

profit, individuals or households; *Estimated Number of Responses:* 10,000; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 2,500.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Part A Medicare Hearing by an Administrative Law Judge; *Form No.:* HCFA–5011A; *Use:* This form is used by the beneficiary or other qualified appellant to request a hearing by an Administrative Law Judge if the carrier hearing decision fails to satisfy the claimant; Frequency: On occasion; *Respondents:* Businesses or other for profit, individuals or households; *Estimated Number of Responses:* 10,000; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 2,500.

7. *Type of Request:* New; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Adverse Action Extract; *Form No.:* HCFA–462; *Use:* The CLIA Adverse Action Extract will be used by HCFA surveyors (State health department surveyors and other HCFA agents) to record the adverse actions imposed against a laboratory. The form will also serve to track dates of the imposition of adverse actions, dates on which a laboratory corrects deficiencies, and all appeals activity; *Frequency:* Biennially or when adverse actions are imposed against a laboratory; *Respondents:* State or local governments, Federal agencies or employees, nonprofit institutions, small businesses or organizations; *Estimated Number of Responses:* 2,500 (reporting) 52 States (recordkeeping); *Average Hours Per Response:* 2.25 (reporting), 1.90 (recordkeeping); *Total Estimated Burden Hours:* 5,724.

8. *Type of Request:* New; *Title of Information Collection:* Medicare and Medicaid Coverage Data Bank Reports; *Form No.:* HCFA–163; *Use:* Employers are required to report information on individuals covered by the employer's group health plans to a data bank established by HHS. Information will be used to further purposes of Medicare Secondary Payer and Medicaid Third Party Liability provisions of the Social Security Act; *Frequency:* Annually; *Respondents:* State or local governments, Federal agencies or employees, nonprofit institutions, small businesses or organizations, individuals or households; *Estimated Number of Responses:* 120,000,000 (reporting), 10,000 (recordkeeping); *Average Hours Per Response:* 3.89 seconds (reporting), 100 hours (recordkeeping); *Total Estimated Burden Hours:* 2,300,000.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503

Dated: April 25, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–10635 Filed 5–3–94; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Division of Research Grants; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division, of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Joseph Kimm (301) 594–7257.

Date of Meeting: May 4, 1994.

Place of Meeting: Westwood Bldg, Rm 309A, NIH, Bethesda, MD. (Telephone Conference)

Time of Meeting: 10 am.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–10725 Filed 5–3–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NHLBI SEP on Mammalian Genotyping Service Contract, May 10, 1994, Holiday Inn, Bethesda, Maryland which was published in the **Federal Register** on April 22, (59 FR 19194).

This SEP was to have convened at 8 a.m. on May 10, but has been changed to 8:00 p.m. on May 9, Holiday Inn, Bethesda, Maryland.

The meeting will be closed from 8:00 p.m. on May 9, to adjournment on May 10, for the review and evaluation of contract proposals.

Dated: April 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–10724 Filed 5–3–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Services

[0905–ZA53]

Announcement of Availability of Funds for Family Planning Service Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs announces the availability of funds for FY 1995 family planning services grant projects under the authority of Title X of the Public Health Service Act (42 U.S.C. 300, *et seq.*) and solicits applications for competing grant awards to serve the areas and/or populations set out below.

OMB Catalog of Federal Domestic Assistance. 13.217

DATES: Application due dates vary. See **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Additional information may be obtained from and completed applications should be sent to the appropriate Regional Health Administrator at the address below:

Region I

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, John F. Kennedy Federal Building, Government Center, room 1400, Boston, MA 02203

Region II

(New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, room 3337, New York, NY 10278.

Region III

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 3535 Market Street, Philadelphia, PA 19101.

Region IV

(Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina, Tennessee): DHHS/PHS Region IV, 101 Marietta Tower, suite 1106, Atlanta, GA 30323.

Region V

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 105 West Adams Street, 17th floor, Chicago, IL 60603.

Region VI

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1200 Main Tower Building, room 1800, Dallas, TX 75202.

Region VII

(Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, 5th Fl. W., Kansas City, MO 64106.

Region VIII

(Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming): DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294.

Region IX

(Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, room 327, San Francisco, CA 94102.

Region X

(Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–20, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: Regional Grants Management Officers: Region I, Mary O'Brien—617/565–1482; Region II, Steven Wong—212/264–4496; Region III, Marty Bree—215/596–6653; Region IV, Wayne Cutchins—404/331–2597; Region V, Lawrence Poole—312/353–8700; Region VI, Joyce Bailey—214/767–3879; Region VII, Michael Rowland—816/426–2924; Region VIII, Susan A. Jaworowski—303/844–4461; Region IX, Howard F. (Al) Tevis—415/556–8233; Region X, Jim Tipton—206/615–2473.

Regional Program Consultants for Family Planning: Region I, James Sliker—617/565–1452; Region II, Eileen Connolly—212/264–2571; Region III, Elizabeth Reed—215/596–6686; Region IV, Christino Rodringuez—404/331–5254; Region V, George Hockenberry—312/353–1700; Region VI, Paul Smith—214/767–3072; Region VII, Susan Moskosky—816/426–2924; Region VIII, John J. McCarthy, Jr.—303/844–5955; Region IX, James Hauser—415/556–7117; Region X, Vivian Lee—206/615–2501.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations appear at 42 CFR part 59 subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules (popularly known as the "Gag Rule"), pending the promulgation of new regulations. The principle effect of this action was to suspend the definitions of "family planning," "grantees," "prenatal care," "Title X," "Title X Program," and "Title X Project" presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the compliance standards that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, will be used to administer the program. Copies of the pre-1988 compliance standards are available from the Regional Program Consultants listed above.

The Title X program has established these five priorities:

(1) Expansion of current clinic sites and development of new clinics in high-need areas;

(2) Outreach to low-income women, adolescents and persons at high risk of unintended pregnancy or infection with STD (including HIV) not now receiving family planning services;

(3) Increased emphasis on services to adolescents, including enhanced counseling as well as new service arrangements for providing services to teens;

(4) Increased focus on quality and comprehensiveness of services, including treatment of STDs, screening for cervical and breast cancer, substance abuse counseling, and counseling on avoidance of high risk behavior which may place clients at risk for STD and HIV; and

(5) Increased emphasis on training and retention of family planning nurse practitioners, particularly minority nurse practitioners and those working in clincis serving high-need populations.

These program priorities represent overriding goals which are being pursued to the extent that funding increases or increases in program efficiency allow. Some funding may be available to Title X grantees to improve and expand services.

The Administration's FY 1995 budget request for this program is $199 million. This amount represents a 10 percent increase over the appropriation for FY 1994 of $181 million, of which $168 million will be made available to Title X service grantees. Approximately 16 percent of the funds appropriated for FY 1995 and made available to Title X service grantees will be used for competing grants. The remaining funds will be used for non-competing continuation grants. This program announcement is subject to the appropriation of funds and is a contingency action being taken to ensure that, should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for the distribution of funds throughout the fiscal year. Since the precise funding levels for FY 1995 are uncertain at this point, the funding levels set out below are based on the FY 1993 appropriation level. However, it is expected that funding levels will be increased if the appropriation for FY 1995 increases.

Approximately $168 million will be awarded nationwide during FY 1994 for Title X services. The entire $168 million will be allocated among the 10 DHHS regions, and will be in turn awarded to public and private non-profit agencies located within the regions. Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the availability of funds to provide family planning services in 11 States, Washington, DC and Guam. Competing grant applications are invited for the following areas:

Populations or areas to be served	Number of grants to be awarded	FY 1993 funding level	Application due date	Grant funding date
Region II:				
New York, excluding New York City	1	$6,429,872	3/1/95	7/1/95
Region III:				
Washington, DC	1	635,080	9/1/94	1/1/95
Region V:				
Indiana	1	3,616,959	10/1/94	2/1/95
Michigan	1	4,341,358	12/1/94	4/1/95
Minnesota	1	1,723,066	9/1/94	1/1/95
Wisconsin	1	2,533,949	11/1/94	3/1/95
Region VI:				
Arkansas	1	2,561,144	11/1/94	3/1/95
New Mexico	1	1,727,124	9/1/94	1/1/95
Region VII:				
Kansas, excluding Wyandotte County	1	1,439,100	3/1/95	7/1/95
Wyandotte County, KS	1	167,900	8/1/94	12/1/94
Region VIII:				
Larimer County, CO	1	128,122	9/1/94	1/1/95
Region IX:				
Guam	1	143,633	3/1/95	7/1/95
Region X:				
Idaho	1	921,574	4/1/95	7/1/95
Alaska Natives residing in the Yukon and Kuskokwim River area	1	80,000	4/1/95	7/1/95
Total	14	26,448,881		

Applications must be postmarked or, if not mailed, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified,and the applications will be returned.

Applications will be evaluated on the following criteria:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority areas of Family Planning. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Application Requirements

Applications kits (including the application form, PHS 5161) and technical assistance for preparing proposals are available from the regional offices. An application must contain:

(1) A narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations;

(2) A budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested;

(3) A description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and

(4) Such other pertinent information as may be required by the Secretary as specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

Application Review and Evaluation

Each regional office is responsible for establishing its own review process. Applications must be submitted to the appropriate regional office at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally approved for 3 to 5 years with an annual non-competitive review of a continuation application to obtain continued support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office of the appropriate region. State Single Point of Contact comments must be received by the regional office 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, and terms and conditions of the grant award.

Gerald J. Bennett,

Acting Deputy Assistance Secretary for Population Affairs.

[FR Doc. 94–10658 Filed 5–3–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Minority Fellowship Program

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of intent to award a competing renewal clinical training grant for the Minority Fellowship Program (MFP) to the American Psychological Association.

SUMMARY: The Center for Mental Health Services (CMHS) is publishing this notice to provide information to the public of its intent to award a competing renewal MFP grant award to the American Psychological Association for the clinical training of psychology students who are ethnic minorities for entry into service careers in mental and addictive health areas. The project period for the competing renewal grant is anticipated to be three years. The first year's award will be approximately $266,000. This is not a general request for applications. The competitive renewal clinical training grant will only be made to the American Psychological Association.

AUTHORITY: The award will be made under the authority of section 303 of the Public Health Service (PHS) Act. The authority to administer this program has been delegated to the Director, CMHS. The Catalog of Federal Domestic Assistance number for this program is 93.244.

BACKGROUND: CMHS has the responsibility for mental health workforce development, including the clinical training of mental health professionals concerned with the treatment of underserved priority populations: Seriously mentally ill adults; seriously emotionally disturbed children; and elderly, ethnic minorities and rural populations with mental disorders; and individuals with co-occurring mental and addictive disorders. CMHS also has responsibility for training ethnic minorities to become mental health professionals, which is a very significant task in light of the gap between the growing ethnic minority populations requiring mental health services (approaching 25% of the total population) and the much smaller number of ethnic minority mental health professionals (less than 10% of the total).

Over the past several decades, the Federal mental health clinical training program at NIMH (and currently at CMHS) has addressed this gap primarily by attempting to increase the numbers of ethnic minority professionals. Ethnic minority professionals understand the customs and language of their own particular ethnic group and, therefore, are more likely to render high-quality mental health services to mentally ill minorities.

The CMHS MFP is designed to facilitate the entry of minority students into mental health careers. The long-term goal is to increase the number of professionals trained at the doctoral level to teach and provide mental health services, especially to ethnic minority groups.

The MFP was started at NIMH in the 1970s. This program for clinical training provides grants to each of the four core mental health professional organizations: The American Nurses Association, the American Psychological Association, the American Psychiatric Association, and the Council on Social Work Education. These 4 MFP grantees, in turn, conduct national competitions to make individual graduate fellowship awards to minority students throughout the country. Each of the four professional organizations has unique access to those students entering its profession. Each of the four has recruited the best students, assured that all program requirements were satisfied, and monitored the progress of fellows during and after the fellowship period. In short, there has been no reason to change the program structure or the grantees administering the four-discipline program; thus, the mechanism of peer-reviewed competing renewal clinical training grant has been appropriate.

Therefore, because the American Psychological Association's MFP grant support will end in FY 1994, the CMHS is providing additional support for up to three years via a competing renewal grant award. The American Nurses Association, the American Psychiatric Association and the Council on Social Work Education have ongoing CMHS MFP grant support.

FOR FURTHER INFORMATION: Questions concerning the CMHS MFP may be directed to Dr. Lemuel Clark, Chief, Human Resources Planning and Development Branch, CMHS, room 15C–18, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–5850.

Dated: April 28, 1994.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 94–10607 Filed 5–3–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–020–5101–10–B039; CACA–31406, NVN–57250]

Environmental Statements; Availability, etc; 345 Kilovolt Electric Power Transmission; Susanville District Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: This Notice Amends a Notice of Intent to Prepare an Environmental Impact Statement which was published in the **Federal Register** on March 24, 1994 (59 FR 13995–6). The original Notice of Intent requested scoping comments on the preparation of a joint Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for the proposed construction of a 345 kilovolt electric power transmission line by the Sierra Pacific Power Company. The Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) are preparing the combined EIS/EIR through a third party contractor. This Amendment to the Notice is published to announce the dates and locations of the public scoping sessions for the preparation of the EIR/EIS. Members of the public, affected Federal, State, and local agencies, any affected Indian tribes, the proponent of the action, and other interested persons are invited to participate in the scoping process for this project by attending the scoping sessions and providing written and verbal comments or recommendations concerning the issues to be analyzed in the EIS/EIR.

DATES: Public and governmental agency scoping sessions will be held as follows: (1) May 17, 1994 (Tuesday) in Susanville, CA, beginning at 6 p.m., at the Monticola Club, 140 S. Lassen St., Susanville. (2) May 18, 1994 (Wednesday) in Alturas, CA, beginning at 6 p.m., at the Modoc Middle School multi-purpose room 906 W. 4th St., Alturas. (3) May 19, 1994 (Thursday), in Sparks, NV at the Best Western McCarran Inn, 55 E. Nugget, in Sparks. A scoping session for agency concerns of Federal and State agencies will be held from 3 p.m. to 5 p.m., and the scoping session for the public will start at 6 p.m.

ADDRESSES: Written comments on the combined Federal EIS and State EIR must be sent to the California Public Utilities Commission (Attn: Julie Halligan, Project Manager); Commission Advisory and Compliance Division, Environmental and Energy Advisory Branch; 505 Van Ness Ave., room 3207; San Francisco, CA 94102. Written comments should reference BLM case number CACA–31406, and the "Alturas Intertie Project". Written and verbal comments will also be accepted at the scoping meetings.

FOR FURTHER INFORMATION CONTACT: This Amendment to the Notice of Intent to prepare an EIS is issued by the Associate District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. For further information on the Federal action, call Peter Humm, BLM Project Manager, at (916) 257–0456.

Dated: April 25, 1994.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 94–10603 Filed 5–3–94; 8:45 am]

BILLING CODE 4310–40–M

[NV–056–94–4333–01 4–00154]

Management Framework Plans, etc.; Nevada

April 20, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Release of the Proposed General Management Plan, Red Rock Canyon National Conservation Area, for public review and comment.

SUMMARY: The Proposed General Management Plan has been developed in conformance with Public Law 101–621–November 16, 1990, which designated Red Rock Canyon as a National Conservation Area. A 60 day comment period will be held from May 1, 1994 through June 30, 1994 to receive public comment on the Proposed Plan. During this period, the Bureau of Land Management will hold two "open houses," which will be informal sessions allowing the public to discuss the Proposed Plan with NCA specialists and gain clarification on issues of concern. In addition, a public hearing is scheduled. The hearing will be a formal process by which individuals will be allowed 3 minutes to testify with testimony being recorded by a court stenographer. The schedule will be as follows:

Open Houses—
  May 11, 1994, 4 pm to 9 pm.
  May 14, 1994, 4 pm to 9 pm.
Public Hearing—
  May 25, 1994, 7 pm to 9 pm.

All of the above sessions will be held at the BLM District Office located at 4765 Vegas Drive, Las Vegas, Nevada. Written comments may be sent to the BLM office throughout the 60 day comment period at P.O. Box 26569, Las Vegas, Nevada 89126.

Individuals wishing to testify at the hearing are requested to notify Gene Arnesen (702 647–5000) prior to May 24, 1994.

For additional information or clarification of items in the Proposed Plan, please contact Dave Wolf or Gene Arnesen at (702) 647–5000.

Colin P. Christensen,

Acting District Manager.

[FR Doc. 94–10614 Filed 5–3–94; 8:45 am]

BILLING CODE 4310–HC–M

Public Land and Resources; Planning, Programming, and Budgeting

AGENCY: Bureau of Land Management Interior.

ACTION: Notification of resource management planning schedule.

SUMMARY: Resource management planning for the Bureau of Land Management (BLM) administered lands is governed by regulations in 43 CFR 1610.2(b). These regulations require that the BLM publish a planning schedule advising the public of the status of resource management plans (RMP's) in preparation. Projected new RMP starts for the three succeeding fiscal years are also identified to provide the public an opportunity to comment on the projected planning schedule and aid in the coordination of the schedule with other agencies.

SUPPLEMENTARY INFORMATION: A limited number of new starts for RMP's are projected. There are currently 34 RMP efforts underway (not including amendments and revisions). It is forecasted that 11 of the RMP's will be completed in fiscal year 1994 and an additional 11 will be completed in fiscal year 1995. These efforts are having a significant effect on BLM capability to initiate new RMP's and complete maintenance/monitoring and implementation of the existing RMP's.

Upon completion of a major portion of the current ongoing RMP's, the BLM will start a limited number of new RMP's or RMP revisions within its current capability. A priority ranking system will be utilized to allocate the limited new planning efforts. New RMP starts for fiscal year 1994 include Snake River/Deep Creek RMP (Idaho). New starts for 1995 include Malheur/Jordan RMP (Oregon) and Price RMP (Utah). New starts for 1996 include Andrews RMP (Oregon) and Winnemuca/Surprise (Nevada).

The planning process begins with the publication of a Notice of Intent to initiate an RMP. A public notice and and an opportunity for participation in each RMP are provided as required by the regulations (43 CFR 1610.2(f)). Publication of the draft RMP and associated draft environmental impact statement as indicated on the schedule is a key opportunity for public comment.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule will be accepted until June 3, 1994.

ADDRESSES: Comments should be sent to Director (760), Bureau of Land Management, Rm. 406 LS, 1849 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jordon Pope or Colin Voigt (202) 452-5045.

Dated: April 20, 1994.

Mike Dombeck,

Acting Director.

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

State, district and resource area	Plan name and type (major resource/issue)	Fiscal year 1994	Fiscal year 1995	Fiscal year 1996	Fiscal year 1997
Alaska: Glennallen	Southcentral RMP (recreation, wildlife).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Arizona:					
Phoenix, Kingman	Kingman RMP (realty, ACEC, grazing, wildlife).	PRMP/FEIS ARMP/ROD			
Lower Gila	Lower Gila RMP (realty, recreation, wildlife).				
Safford	Safford RMP (recreation, off-road, vehicles, ACEC).	ARMP/ROD			
California:					
Bakersfield, Caliente	Caliente RMP O&G, realty	PRMP/DEIS	ARMP/ROD		
Desert, Palm Springs	South Coast RMP (O&G, realty, recreation, T&E).	PRMP/FEIS			
Colorado:					
Canon City, Royal Gorge.	Royal Gorge RMP (wild and scenic river, grazing, realty, O&G, recreation).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Craig, White River	White River RMP (O&G, riparian, T&E, grazing, oil shale).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Eastern States:					
Jackson	Florida RMP (lands, minerals, wildlife, recreation).	PRMP/FEIS	ARMP/ROD		
Milwaukee	Michigan RMP (oil and gas)		NOI	DRMP/DEIS	PRMP/FEIS ARMP/ROD
Idaho:					
Boise, Owyhee	Owyhee RMP (grazing, wildlife)	PRMP/FEIS	ARMP/ROD		
Burley					
Salmon, Challis	Snake River/Deep Creek RMP	NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Shoshone Bennett Hills	Challis RMP (realty, grazing, T&E, wild & scenic rivers).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
	Bennett Hills RMP (grazing, recreation).	PRMP/FEIS ARMP/ROD			
Montana:					
Lewistown, Judith, Valley, Phillips.	Judith/Valley/Phillips RMP (O&G, realty, off-road vehicle).	ARMP/ROD			
Mile City, Big Dry	Big Dry RMP (realty, off-road vehicles).	ARMP/ROD			
Nevada:					
Battle Mountain, tonopah.	Tonopah RMP (O&G, realty)	PRMP/FEIS ARMP/ROD			
Las Vegas, Stateline	Stateline RMP (realty, T&E species)	SUPPLEMENTAL DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Winnemucca, Sonoma,Gerlach, Paradise-Denio.	Winnemucca-Surprise RMP[1] (Minerals, Lands, Recreation).	NOI DRMP/DEIS	PRMP/FEIS		
New Mexico:					
Roswell, Roswell	Rowell RMP (O&G, mining, off-road vehicles).	DRMP/DEIS PRMP/EIS	ARMP/ROD		
Tulsa, Oklahoma	Oklahoma RMP (O&G, leasing & development, coal Leasing).	PRMP/FEIS ARMP/ROD			
	Texas RMP (O&G, leasing and development).		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Oregon:					
Coos Bay	Coos Bay RMP (forestry, watershed, wildlife, realty, ACEC).	PRMP/FEIS ARMP/ROD			
Eugene	Eugene RMP (forestry, watershed, ACED, realty).	PRMP/FEIS ARMP/ROD			
Lakeview, Klamath Falls.	Klamath Falls RMP (forestry, watershed, wildlife, range, ACEC).	PRMP/FEIS ARMP/ROD			

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, district and resource area	Plan name and type (major resource/issue)	Fiscal year 1994	Fiscal year 1995	Fiscal year 1996	Fiscal year 1997
Medford	Medford RMP (forestry, wildlife, watershed, realty, ACEC).	PRMP/FEIS ARMP/ROD			
Roseburg	Roseburg RMP (forestry, wildlife, watershed, realty, ACEC).	PRMP/FEIS ARMP/ROD			
Salem	Salem RMP (forestry, wildlife, watershed, realty).	PRMP/FEIS ARMP/ROD			
Vale	Malheur/Jordan RMP (wildlife, watershed, minerals, range).		NOI	DRMP/DEIS	PRMP/FEIS ARMP/ROD
Burns	Andrews RMP (wildlife, watershed, recreation, range, who horses, ACEC).				
Utah:					
Cedar City, Kanab-Escalante.	Kanab-Escalante RMP (recreation, wildlife).	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Dixie	Dixie RMP (recreation, range, wildlife).	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Richfield, Henry Mountain.	Henry Mountain RMP (ACEC, wildlife).	DRMP/FEIS	PRMP/FEIS	ARMP/ROD	
Vernal, Diamond Mountain.	Diamond Mountain RMP (wildlife, O&G).	ARMP/ROD			
MOAB, Price Grand	Eastern Utah RMP (O&G, Wildlife, Recreation).		NOI	DRMP/DEIS	PRMP/DEIS
Wyoming:					
Casper, Newcastle	Newcastle RMP (O&G)	PRMP/EIS	ARMP/ROD		
Buffalo	Buffalo RMP revision (O&G, wildlife, range).	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Rock Springs, Green River.	Green River RMP (O&G, grazing)	PRMP/FEIS	ARMP/ROD		
Worland, Grass Creek	Grass Creek RMP (wildlife, watershed).	DRAMP/FEIS	PRMP/FEIS ARMP/ROD		

Key to planning schedule abbreviations:
ACEC—Area of Critical Environmental Concern.
ARMP/ROD—Approved Resource Management Plan and Record of Decision.
DRMP/DEIS—Draft Resource Management Plan and Draft Environmental Impact Statement.
PRMP/FEIS—Proposed Resource Management Plan and Final Environmental Impact Statement.
NOI—Notice of Intent.
O&G—Oil and Gas.

[1] This RMP will include the entire Winnemucca District as well as the Surprise Resource Area of the California Susanville District.

[FR Doc. 94–10608 Filed 5–3–94; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Ellen T. Bauder, San Diego, CA, PRT–788074.

The applicant requests a permit to remove and reduce to possession no more than 2 percent of seeds, plant parts or whole plants of the following endangered plants: San Diego button celery (*Eryngium aristulatum* ssp. *parishii*), San Diego mesa mint (*Pogogyne abramsii*), Otay mesa mint (*P. nudiuscula*) and California Orcutt grass (*Orcuttia californica*) from vernal pools in and around Naval Air Station, Miramar, California, for scientific research on systematics, population dynamics, seed germination, and restoration of vernal pools. Soil samples will be taken from each collection site in Riverside, San Diego, and Orange Counties, California, and may contain Riverside fairy shrimp (*Streptocephalus woottoni*).

Applicant: Zool. Society of San Diego, Escondido, CA, PRT–788682.

The applicant requests a permit to import one captive-bred female kiang (*Equus hemionus holdereri*) from Tierpark Berlin, Berlin, Germany, to enhance the propagation of the species through captive breeding.

Applicant: Brian Bock, Athens, OH, PRT–788597.

The applicant requests a permit to collect blood and tissue samples from tartaruga (*Podocnemis expansa*) and tracaja (*Podocnemis unifilis*) from Colombia, Brazil, Peru and Venezuela for the purpose of enhancement of the survival of the species through genetic analysis. Sampling will result in sacrificing the specimens.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 28, 1994.

Margaret Tieger,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 94–10602 Filed 5–3–94; 8:45 am]

BILLING CODE 4310–55–P

Development of Permit Policy for Import of Giant Pandas; Suspension of Consideration of Giant Panda Import Permit Applications, and a Review of Existing Policy on Giant Panda Import Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that it is suspending the review and processing of all future import permit applications of giant pandas for temporary exhibition and/or captive-breeding loans until it has completed an evaluation of available information and existing policies and guidelines relating to the import of giant pandas and has published a new panda policy. This will allow the agency to examine the potential impact of future imports on the survival of the giant panda. The Service will consider whether, and if so, how such imports into the United States might contribute to giant panda conservation. Any draft policy or guidelines developed as a result of this review will be published in the **Federal Register** for public review and comment. A public working meeting or meetings will be used to assist the Service in formulating the draft policy.

DATES: Public comments on this notice will be accepted until June 30, 1994. A public working meeting will be held on May 26, 1994, at 2:00 p.m., at 4401 Fairfax Drive, Room 200, Arlington, Virginia, 22203.

ADDRESSES: Comments may be submitted to the Chief of the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, at the above address, or call (703) 358–2093.

SUPPLEMENTARY INFORMATION: The giant panda (*Ailuropoda melanoleuca*) is subject to U.S. and international protection as a result of its listing as an endangered species under the U.S. Endangered Species Act and its inclusion in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Section 2(b) of the Endangered Species Act (Act) states that the purposes of the Act "...are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section." CITES is one of the Conventions cited in subsection (a) of this statement.

The Service is responsible for deciding whether to issue import and export permits required by the Act and CITES for giant panda loans. Therefore, the Service must determine whether the purposes for such imports influence the continued existence of giant pandas in the wild. The Service believes that existing regulations and policy, including its March 14, 1991 "Policy on Giant Panda Import Permits" (56 FR 10809) have been sufficient for individual panda import permit decisions made to date. However, there is the possibility that an increasing number of import permits for numerous pandas will be sought for captive breeding purposes in the United States in the near future.

Before any import permit will be granted, it must be reviewed in terms of the application requirements of CITES and the Act by the Service's Offices of Management and Scientific Authorities. Issuance of an import permit under CITES requires prior findings that: (1) the proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant is suitably equipped to house and care for the animal(s). Issuance of a permit under the Act requires prior determinations that, among other things: (1) the import would be for scientific purposes or to enhance the propagation or survival of the species in a manner consistent with the purposes and policies of the Act; and (2) issuance of the import permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15. With regard to making the first finding listed above under both CITES and the Endangered Species Act, the issue is whether the detrimental effects that might result from a loan would be sufficiently offset by specific enhancement features to allow a determination that the import would be for purposes that are not detrimental and that would, in fact, enhance the survival of the species.

While the Service was processing a previous application to import a pair of giant pandas for a temporary exhibition loan, the CITES Secretariat requested that the Service reevaluate its "Policy on Giant Panda Import Permits" for temporary exhibition loans. Therefore, the Service published a notice in the **Federal Register** on June 29, 1992 (57 FR 28825), requesting public comments on this policy. Before this evaluation was completed, the Service received additional applications for the import of giant pandas for purposes other than for temporary exhibition loans, and determined the need for additional review and comment, resulting in this notice. To date, comments received have not been incorporated into any revision of its existing policy, since such comments only were solicited on temporary exhibition loans.

On February 19, 1993, the Service received an application from the Zoological Society of San Diego to import a pair of giant pandas for a captive-breeding loan. Shortly afterwards, on April 20, 1993, the American Zoo and Aquarium Association (AZA) announced the development of a Giant Panda Conservation Action Plan, which currently includes approximately 29 zoological institutions that have agreed to participate in a giant panda captive-breeding program in North America.

It is estimated that there are fewer than 1000 giant pandas remaining in the wild in scattered and isolated populations, and that approximately 100 are held in captivity. Conservation of the giant panda appears to involve two broad areas of activities: habitat protection, management and expansion; and the captive breeding of animals with the ultimate goal of reintroductions into available habitat. The primary concerns associated with individual giant panda import permit applications are: (1) the potential for stimulating the unwarranted removal of additional pandas from the wild; (2) the need for a clear connection between imports and conservation activities for giant pandas; (3) the need to ensure that imports will not disrupt or defer existing captive-breeding efforts; and (4) the potential for planned captive-breeding efforts in the U.S. to maximize the probability of enhancing international captive-breeding efforts. With the possibility of receiving an increased number of import permit applications for giant pandas for public exhibition and/or captive breeding purposes, the Service feels that a re-examination of the long-range implications of panda imports is necessary to further ensure that such imports best serve the conservation needs of the species.

In response to these rapidly developing events and the increased interest in a coordinated captive-breeding program for the giant panda, the Service has decided to suspend the review and processing of future permit applications for the import of giant pandas until it has had an opportunity to evaluate additional and pertinent information on the subject, and has developed, if necessary, new policy or guidelines for the issuance of import permits for giant pandas. During this moratorium the Service will evaluate the potential effects of further loans on the survival of the giant panda, including the cumulative impacts of an anticipated increase in the number of import permit applications from U.S. institutions.

As part of the review process, the Service will convene a public working meeting on May 26, 1994, (see **DATES** section of this notice), and perhaps additional meetings, to provide active participation in the process of developing a proposed policy. The meeting will provide an opportunity for discussion of specific topics presented below. Interested organizations and individuals that cannot participate in the meeting may submit comments on these issues to the address given above (see **ADDRESSES** section) by June 30, 1994.

In addition, at appropriate times during the review the Service will engage in direct discussions with representatives of the government of the People's Republic of China, and with the Secretariat of CITES in Geneva, Switzerland. Such discussions will be designed to ensure full understanding of the respective policies and goals of each country for implementation of CITES in general and for panda conservation in particular.

PUBLIC COMMENTS SOLICITED: The Service intends to complete the review and development of any necessary new policy or guidelines as quickly as possible. Interested organizations and the public are invited to comment on the existing need for new policy or guidance for the evaluation of giant panda import permit applications in the future, to suggest criteria that should be included or considered when developing new policy or guidance, and to suggest any other issues relative to giant panda conservation that the Service should consider during this review. Suggested criteria should take into account the necessary applicability of the requirements of the Endangered Species Act and CITES regarding permit issuance. Any draft policy or guidelines developed as a result of this review will be published in the **Federal Register** for review and comment.

Authority: The authority for this action is the Convention on International Trade in Endangered Species (TIAS 8249), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Federal Advisory Committee Act.

Dated: April 21, 1994.

George T. Frampton, Jr.,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 94–10601 Filed 5–3–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–360]

Decision Not To Review Initial Determinations Granting Joint Motions To Terminate the Investigation With Respect to Respondents ABL Electronics Corporation and Enhance Cable Technology, Inc. on the Basis of Settlement Agreements

In the Matter of certain devices for connecting computers via telephone lines.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations (IDs) (Order Nos. 11 and 12) issued on March 31, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Farallon Computing, Inc. ("Farallon") and respondent ABL Electronics Corporation ("ABL") to terminate the investigation as to ABL on the basis of a licensing agreement, a settlement agreement, and a "U.S. Distributor Agreement," and the joint motion of Farallon and respondent Enhance Cable Technology, Inc. ("Enhance") to terminate the investigation as to Enhance on the basis of a licensing agreement and a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On March 7, 1994, Farallon and ABL filed a joint motion to terminate the investigation with respect to ABL on the basis of a licensing agreement, a settlement agreement, and a U.S. Distributor Agreement. On March 10, 1994, Farallon and Enhance filed a joint motion to terminate the investigation with respect to Enhance on the basis of a licensing agreement and a settlement agreement. The Commission investigative attorney supported the motions. The ALJ issued IDs granting the joint motions and terminating the investigation as to ABL and Enhance. No petitions for review of the IDs were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: April 28, 1994.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 94–10700 Filed 5–3–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–351]

Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Respondent Srinivisan v. Chari Pursuant to 19 CFR 210.51(a) and as to Remaining Respondents on the Basis of a Settlement Agreement

In the Matter of certain removable hard disk cartridges and products containing same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") terminating the above-captioned investigation as to one respondent pursuant to 19 CFR 210.51(a) and as to remaining four respondents on the basis of a Settlement Agreement and Memorandum of Understanding.

FOR FURTHER INFORMATION CONTACT: Rachele R. Valente, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3089.

SUPPLEMENTARY INFORMATION: On May 20, 1993, the Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930, as amended, in the misappropriation of trade secrets and trade dress, infringement of federally-registered trademarks, false designation of origin and passing off in the importation, the sale for importation, and the sale within the United States after importation, of certain removable hard disk cartridges.

On March 16, 1994, complainant Syquest Technology, Inc. filed a motion to terminate the investigation as to respondent Srinivisan V. Chari pursuant to 19 CFR 210.51(a). (Motion 351 24). On March 17, 1994, Syquest and respondents Nomai, S.A., Iomega Corporation, Marc Frouin, and Herve Frouin filed a joint motion to terminate the investigation on the basis of a Memorandum of Understanding and a Settlement Agreement (Motion 351–26).

On March 23, 1994, the Commission investigative attorney ("IA") filed a response in support of the Motion 351–24, and a response in support of Motion 351–26, contingent upon the parties' filing a more complete public version of their MOU. The IA concluded that Motion 351–26 met the requirements for termination based upon a settlement agreement, and that the settlement agreement does not appear contrary to the public interest. On April 5, 1994, the ALJ issued an ID granting both motions.

No petitions for review, or agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–2648.

Issued: April 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–10701 Filed 5–3–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32482]

Genesee and Wyoming Industries, Inc.; Continuance in Control Exemption; GWI Switching Services, L.P.

Genesee and Wyoming Industries, Inc. (GWI), has filed a notice of exemption to continue in control of GWI Switching Services, L.P. (GWISS),[1] upon GWISS becoming a class III rail carrier.

GWISS, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32481, GWI Switching Services, L.P.—Operation Exemption—Southern Pacific Transportation Company, to operate a rail car storage yard owned by CMC Railroad I Ltd., and to operate under trackage rights over a railroad line owned by Southern Pacific Transportation Company (SP) between SP's rail yard and CMC's yard in the vicinity of Dayton, TX.[2] That transaction was expected to be consummated on or after April 5, 1994.

GWI also directly controls eight existing class III common carriers by rail: the Allegheny & Eastern Railroad, Inc., the Bradford Industrial Rail, Inc., Buffalo & Pittsburgh Railroad, Inc., the Dansville and Mount Morris Railroad, the Louisiana & Delta Railroad, Inc., the Rochester & Southern Railroad, Inc., and the Willamette & Pacific Railroad, Inc.

GWI indicates that: (1) The rail lines to be acquired and operated will not connect with any of GWI's rail subsidiaries; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: James B. Gray, Jr., 700 Midtown Tower, Rochester, NY 14604.

Decided: April 28, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10691 Filed 5–3–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] GWI Dayton, Inc., a wholly owned subsidiary of GWI, is the sole general partner of GWISS and has exclusive management control.

[2] Brotherhood of Locomotive Engineers (BLE) has filed a petition to reject the notices of exemption and the United Transportation Union (UTU) has filed a petition to revoke the notices of exemption and a motion to stay the transaction. BLE argues that the notices should be rejected because the Commission does not have jurisdiction over the transaction in Finance Docket No. 32481, as it involves yard operations which are exempt under 49 U.S.C. 10907 and not operations over a line of railroad under 49 U.S.C. 10901 and 49 CFR 1150.1. UTU argues that the exemption in Finance Docket No. 32481 should be revoked, alleging that this is a sham transaction to avoid Commission regulation and labor protective conditions under 49 U.S.C. 11343. These issues will be addressed in a separate decision.

[Finance Docket No. 32481]

GWI Switching Services, L.P. Operation Exemption; Rail Lines of Southern Pacific Transportation Company

GWI Switching Services, L.P. (GWISS), whose general partner is noncarrier GWI Dayton, Inc., has filed a notice of exemption to operate a rail car storage yard owned by CMC Railroad I Ltd. (CMC), and to operate under incidental trackage rights over a rail owned by Southern Pacific Transportation Company (SP) between CMC's yard and SP's rail yard in the vicinity of Dayton, TX. SP's rail car storage yard is located at Lafayette Main Line SP milepost 328.0; CMC's rail car storage has entrance connections at Baytown Branch SP mileposts 2.0 and 3.3. The incidental trackage rights cover the rail line between the two rail yards from the Baytown Branch SP milepost 5.0 to Baytown Branch SP milepost 0.0, which is also Lafayette Main Line SP milepost 327.8, and then from that point to the entrance to the SP yard at

Lafayette Main Line SP milepost 328.0. The proposed transaction was expected to be consummated on or after April 5, 1994.[1]

This proceeding is related to Finance Docket No. 32482, Genesee and Wyoming Industries, Inc.—Continuance in Control Exemption—GWI Switching Services, L.P., wherein Genesee and Wyoming Industries, Inc., has concurrently filed a notice of exemption under 1180.2(d)(2) to continue in control of GWISS and eight other class III rail carriers[2] when GWISS becomes a class III rail carrier upon consummation of the transaction described in this notice.[3]

Any comments must be filed with the Commission and served on: James B. Gray, Jr., 700 Midtown Tower, Rochester, New York, NY 14604.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 28, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10692 Filed 5–3–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] Under 49 CFR 1150.32(b), a notice of exemption does not become effective until 7 days after filling. Here, because the notice was not filed until March 29, 1994, consummation should not have taken place until on or after April 5, 1994. Applicant's verified notice of exemption states that consummation is scheduled for on or about April 4, 1994, or immediate following the effective date of the notice, whichever is later.

[2] Allegheny & Eastern Railroad, Inc., Bradford Industrial Rail, Inc., Buffalo & Pittsburgh Railroad, Inc., Dansville and Mount Morris Railroad Company, Genesee and Wyoming Railroad Company, Louisiana & Delta Railroad, Inc., Rochester & Southern Railroad, Inc., and Willamette & Pacific Railroad, Inc.

[3] Brotherhood of Locomotive Engineers (BLE) has filed a petition to reject the notices of exemption and the United Transportation Union (UTU) has filed a petition to revoke the notices of exemption and a motion to stay the transaction. BLE argues that the notices should be rejected because the Commission does not have jurisdiction over the transaction in Finance Docket No. 32481, as it involves yard operations which are exempt under 49 U.S.C. 10907 and not operations over a line of railroad under 49 U.S.C. 10901 and 49 CFR 1150.1. UTU argues that the exemption in Finance Docket No. 32481 should be revoked, alleging that this is a sham transaction to avoid Commission regulation and labor protective conditions under 49 U.S.C. 11343. These issues will be addressed in a separate decision.

[Finance Docket No. 32489]

Kiamichi Railroad Company, Inc.; Trackage Rights Exemption; The Kansas City Southern Railway Company

The Kansas City Southern Railway Company (KCS) has agreed to grant trackage rights to Kiamichi Railroad Company, Inc. (Kiamichi), to operate over a portion of KCS's line between milepost 0.0 at Hope, AR, to milepost 4.0 on the KCS Hope Subdivision near Anthony, AR. The trackage rights were to become effective on or after April 28, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: W. James Wochner, The Kansas City Southern Railway Company, 114 West Eleventh Street, Kansas City, MO 64105.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: April 28, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10693 Filed 5–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32036 (Sub-No. 1)]

Wisconsin Central Transportation Corporation, et al.—Continuance in Control—Fox Valley and Western Ltd.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: Applicants, shippers, and other interested parties may file written comments with the Commission regarding the competitive impacts of WCTC's continuance in control of FV&W. Participants are asked to address themselves in particular to: (1) Whether substantial competitive harm has resulted from the transaction, and (2) if so, whether appropriate and workable conditions can be formulated.

DATES: Comments will be accepted no later than July 5, 1994.

ADDRESSES: An original and 10 copies of the comments, referencing Finance Docket No. 32036 (Sub-No. 1), must be mailed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. Comments need not be served on other persons.

FOR FURTHER INFORMATION CONTACT: Kay Anderson (202) 927–6203. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: By a decision served February 11, 1993, the Commission instituted an oversight plan that allows us to monitor effectively the competitive results of Wisconsin Central Transportation Corporation's (WCTC) continuance in control of Fox Valley and Western Ltd. (FV&W).[1] As detailed in the decision, the oversight covers 5 years and contains five elements: Notification of shippers, reporting by applicants, discussion with selected parties, proceeding, and staff report. Commission staff has been actively monitoring the transaction since its consummation on August 28, 1993.

This notice announces the decision to initiate the fourth element of this year's oversight function—the proceeding. In the February 11 decision, the Commission stated that a proceeding would be conducted annually during which applicants, shippers, and other interested parties may express their views on the competitive impacts of the transaction and on appropriate conditions to remedy any substantial anticompetitive effects. This proceeding is a fact-finding mechanism and will not necessarily result in a formal ruling.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

The decision is being served on all persons appearing on the service list in Finance Docket No. 32036.

Decided: April 28, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Commissioner Philbin was absent and did not participate in the disposition of this proceeding.

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[1] This transaction was approved by decision served December 10, 1992, which was corrected by a decision served December 22, 1992. See Wisc. Central Transportation Corporation, et al., 9 I.C.C.2d 233 (1992). On December 30, 1992, Chicago and North Western Transportation Company (CNW) petitioned the Commission to reopen the proceeding. CNW argued that the Commission materially erred in its competitive impact analysis and in its failure to impose any of CNW's proposed remedial conditions. By decision served July 23, 1993, the petition to reopen was denied. See Wisc. Central Transportation Corporation, et al., 9 I.C.C.2d 730 (1993).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10795 Filed 5–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) The National Corrections Reporting Program:

Prison Admissions Report
Prison Releases Report
Parole Discharges Report

(2) NCRP–1A, NCRP–1B, NCRP–1C. Bureau of Justice Statistics.

(3) Annually.

(4) State and local governments, Federal agencies or employees. The NCRP is the only national data collection program furnishing information on sentencing, time served for prisoners and parolees under State and Federal jurisdiction. Bureau of Justice Statistics, the Congress, researchers, practitioners, and others in the criminal justice community use these data to profile offenders and to monitor trends.

(5) 625,000 annual respondents at 0.24 hours per response.

(6) 1,447 annual burden hours.

(7) Not applicable under Section 3504(h) Public comment on this item is encouraged.

Dated: April 28, 1994.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 94–10622 Filed 5–3–94; 8:45 am]

BILLING CODE 1121–18–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 18, 1994, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to import small quantities of these controlled substances for research purposes.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 3, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noticed in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 25, 1994.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–10676 Filed 5–3–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated October 28, 1993, and published in the **Federal Register** on November 4, 1993, (58 FR 58878), Hoffman-LaRoche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer Levorphanol (9220), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–10681 Filed 5–3–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated March 3, 1994, and published in the **Federal Register** on March 11, 1994, (59 FR 11625), Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application on the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: April 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–10684 Filed 5–3–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 15, 1994, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 3, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 25, 1994.

Gene R. Haislip,

Director, Office of Diversion Control.

[FR Doc. 94–10677 Filed 5–3–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 15, 1994, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Merperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 3, 1994.

Dated: April 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-10680 Filed 5-3-94; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 15, 1994, The PF Laboratories, Inc., 700 Union Blvd., Totowa, New Jersey 07512, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9060)	II
Oxycodone	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of the above controlled substances for use as laboratory standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 31 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 3, 1994.

Dated: April 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-10678 Filed 5-3-94; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 11, 1994, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63178, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316:47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 3, 1994.

Dated: April 25, 1994.

Gene Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-10679 Filed 5-3-94; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 3, 1994, and published in the **Federal Register** on March 11, 1994 (59 FR 11625), Sanofi Winthrop LP, DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Meperidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-10682 Filed 5-3-94; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated March 3, 1994, and published in the **Federal Register** on March 11, 1994, (59 FR 11625), Sanofi Winthrop LP, DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: April 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-10683 Filed 5-3-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on May 17, 1994 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-4437B-D, Washington, DC. The meeting is open to the public and will begin at 9 a.m.

At this meeting, OSHA will consult with the Advisory Committee regarding any construction-specific considerations raised by the proposed rule for Indoor Air Quality. In addition, the Advisory Committee will receive the report of the

Permit-required Confined Space Work Group and will make recommendations to the Agency regarding a draft proposed rule for permit spaces encountered in construction employment.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202-219-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 28th day of April, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94-10668 Filed 5-3-94; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Working Group Meeting on the NRC Staff Capabilities in Performance Assessment and Computer Modeling of High-Level Waste Disposal Facilities; Meeting

The ACNW Working Group on the NRC staff capabilities in performance assessment and computer modeling of high-level waste disposal facilities will hold a meeting on May 16, 1994, room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, May 16, 1994—8:30 a.m. until the conclusion of business.

The ACNW will revisit this subject, which was originally addressed in an October 17, 1991 Working Group Meeting. Progress in the NRC's Iterative Performance Assessment (PA) Program, the NRC staff's total system performance assessment (TPA), the evolution of the reliance on expert elicitation, and progress made in the execution of the NRC's modular computer model will be subjects of interest to the Committee. This review will be performed periodically to determine the degree of in-house and contractor-supported PA capability, the coordination and integration between data analyst and computer modelers, revisions to the High-Level Radioactive Waste Management PA Strategy Plan, and future direction of Phase 3 for PA development.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will then hear presentations by and hold discussions with representatives of the NRC staff and their consultants, national laboratories, state officials, and other interested parties, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492-9851) between 8:15 a.m. and 6 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 25, 1994.

R. K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 94-10664 Filed 5-3-94; 8:45 am]

BILLING CODE 7590-01-M

Cleveland Electric Illuminating Co., et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Facility Operating License No. NPF-58, issued to the Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to delete the reactor core isolation cooling (RCIC) system isolation on high RCIC room differential temperature to improve the reliability of the RCIC system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 28, 1990 (55 FR 7073). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 65737).

For further details with respect to the action see (1) the application for amendment dated January 19, 1990, (2) Amendment No. 59 to License No. NPF-58, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment dated December 16, 1993. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry Ohio 44081.

Dated at Rockville, Maryland, this 28th day of April 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III—IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10665 Filed 5–3–94; 8:45 am]

BILLING CODE 7590–01–M

Northeast Nuclear Energy Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications (TS) to change the laboratory testing protocol for the charcoal absorbers for the Control Room Emergency Ventilation System (TS 3.7.6.1) and the Enclosure Building Filtration System (TS 3.6.5.1).

Because the present TS requires a test on carbon samples of charcoal absorbers that the licensee's vendor had not and could not perform, the TS must be changed to allow testing of carbon samples to a standard that is more accurate and capable of performance. The plant is presently operating and during a review of the recent ventilation system testing, the licensee's Quality Services Department discovered a discrepancy in the references identified in the vendor test procedure as compared to the Millstone Unit 2 TS requirements. Further, on April 12, 1994, the licensee discovered that the vendor's test equipment could not support the laboratory test required by the testing standard currently referenced in the Millstone Unit No. 2 TS. The inplace charcoal for the "B" facilities of the Control Room Emergency Ventilation System and the Enclosure Building Ventilation System were conservatively determined to be inoperable because the surveillance performed on these units had been satisfied utilizing a standard (ASTM Standard D3803–79/86) not specified in the Millstone Unit 2 TS. Thus the licensee immediately declared the affected facilities inoperable and entered the 7 day action statement. The action statements require the affected systems to be restored to an operable status within 7 days or the plant be placed in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours. Due to the fact that the time necessary to process the application for amendment would be longer than the remaining time of the 7 day action statement, exigent action is justified in order to reduce the time of enforcement discretion which was granted until the license amendment is issued.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards (SHC) consideration, which is presented below:

The proposed changes do not involve a SHC because the changes would not:

> 1. Involve a significant increase in the probability or consequences of an accident previously analyzed.
>
> NNECO's proposal to revise Millstone Unit No. 2 Technical Specifications 4.6.5.1.b.2., 4.6.5.1.c, 4.7.6.1.c.2, 4.7.6.1.d, 4.9.15.b.2, and 4.9.15.c will permit carbon samples to be tested in accordance with ASTM D3803–89 versus ANSI N509–1976. ASTM Standard D3803–89 is used industry wide, and is acknowledged by the NRC as an acceptable method for the testing of activated charcoal bed filters. In addition, testing in accordance with ASTM Standard D3803–89 yields more accurate results than testing in accordance with ANSI N509–1976. The removal efficiency requirement is not affected by the proposed changes.
>
> NNECO's proposal to correct the reference to Regulatory position C.6.a in Technical Specification 4.9.15.b.2 is an editorial correction.
>
> Based on the above, the proposed changes do not involve an increase in the probability or consequences of an accident previously analyzed.
>
> 2. Create the possibility of a new or different kind of accident from any previously analyzed.
>
> The proposed changes to Millstone Unit No. 2 Technical Specifications 4.6.5.1.b.2, 4.6.5.1.c, 4.7.6.1.c.2, 4.7.6.1.d, 4.9.15.b.2, and 4.9.15.c do not involve any physical modifications to any equipment, structures, or components, nor do they involve any changes to any plant operating procedures. The only change would be to use a more reliable method to determine filter efficiency at the laboratory.
>
> NNECO's proposal to correct the reference to Regulatory Position C.6.a in Technical Specification 4.9.15.b.2 is an editorial correction.
>
> Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.
>
> 3. Involve a significant reduction in the margin of safety.
>
> The proposed changes to Millstone Unit No. 2 Technical Specifications 4.6.5.1.b.2, 4.6.5.1.c, 4.6.5.1.c.2, 4.7.6.1.d, 4.9.15.b.2, and 4.9.15.c do not modify the requirement for carbon sample removal efficiency, do not involve a change in any safety limits, setpoints, or design margins, and do not affect any protective boundaries. Additionally, the proposed methodology has been determined to be more accurate.
>
> NNECO's proposal to correct the reference to Regulatory Position C.6.a in Technical Specification 4.9.15.b.2 is an editorial correction.
>
> Therefore, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 3, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–4: petitioners' name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 14, 1994, as supplemented April 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 26th day of April 1994.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-10666 Filed 5-3-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 25-47

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25-47, Survey of Continuing Full-Time School Attendance, is used to verify that students who certified they would be enrolled full time are still so enrolled.

Approximately 11,000 RI 25-47 forms are completed annually. It takes approximately 5 minutes to complete. The total annual burden is 917 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by June 3, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, Chief Forms Analysis & Design Section (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94-10660 Filed 5-3-94; 8:45 am]

BILLING CODE 6325-01-M

Notice of Request for Reclearance of Revised Form RI 10-72

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of a revised information collection. Form RI 10-72, Client Satisfaction Survey, is used to determine how well the Office of Personnel Management has served federal civil service annuitants and survivor annuitants.

The questionnaire will be sent to approximately 1500 annuitants and will require approximately 25 minutes to complete, for a total public burden of approximately 625 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by June 3, 1994.

ADDRESSES: Send or deliver comments to—

Kenneth H. Glass, Chief, Quality Assurance Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 4316, Washington, DC 20415 and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief Forms Analysis & Design Section, (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director,

[FR Doc. 94-10661 Filed 5-3-94; 8:45 am]

BILLING CODE 6325-01-M

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provision of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the thirty-fourth and thirty-fifth meetings of the Federal Salary Council will be held at the times and places shown below. At the meetings the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: May 18, 1994, at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 5A06A, Washington, DC.

DATES: June 21, 1994, at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415-0001. Telephone number: (202) 606-2838.

FOR THE PRESIDENT'S PAY AGENT:

James B. King,

Director.

[FR Doc. 94-10662 Filed 5-3-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Meridan National Corporation, Common Stock, $0.01 Par Value) File No. 1-10286

April 28, 1994.

Meridan National Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on October 25, 1993, to withdraw the Company's Common Stock from listing on the BSE. The Company's Common Stock will continue to be traded in the over-the-counter market. The decision of the Board was based upon belief that listing of the Company on the BSE was not beneficial to its stockholders in that there was little or no activity in the Company's Common Stock.

Any interested person may, on or before May 19, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10613 Filed 5–3–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–94–17]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 24, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ________, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 25, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 23455.

Petitioner: Reeve Aleutian Airways, Inc.

Sections of the FAR Affected: 14 CFR 121.574.

Description of Relief Sought/ Disposition: To permit Reeve Aleutian Airways, Inc. to continue to carry and operate, for emergency medical use by patients aboard its aircraft, certain oxygen storage, generating, and dispensing equipment. This equipment is furnished and maintained by hospitals, clinics or city/village emergency medical services within the state of Alaska. *Grant, Date, Exemption No. 4692.*

Docket No.: 26615.

Petitioner: State of Idaho Transportation Department.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To permit approximately trained and certificated pilots employed by part 135 operators, who operate only within the State of Idaho, to continue to remove and reinstall aircraft cabin seats while operating in remote areas when certificated mechanics are not available. *Grant, Date, Exemption No. 5464A*

Docket No.: 27406.

Petitioner: Diamond Flight Center.

Sections of the FAR Affected: 14 CFR 141.5(b).

Description of Relief Sought: To allow DFC to be issued a pilot school certificate with associated ratings for that certificate without meeting the requisite number of applicants for flight certificates required during the 24 months preceding the application. *Denial. 04/2/94, Exemption No. 5875*

Docket No.: 27487.

Petitioner: Rebecca Cohen-Pardo.

Sections of the FAR Affected: 14 CFR 61.39.

Description of Relief Sought: To allow Ms. Cohen-Pardo to be eligible for a flight test even though more examination was passed. *Denial, 04/20/94, Exemption No. 5876*

Docket No.: 27490.

Petitioner: Sections of the FAR Affected: 14 CFR 121.411(a)(2), (3), and (b)(2), 121.413(b), (c), and (d) and Part 121, Appendix H.

Description of Relief Sought/ Disposition: To permit CAE without holding an air carrier operating certificate, to train the certificate holder's pilots and flight engineers in initial, transition, upgrade, differences, and recurrent training in approved simulators and in airplanes without CAE's instructor pilots meeting all the applicable training requirements of subpart N and the employment requirements of appendix H of part 121. *Grant, 04/14/94, Exemption No. 5870*

Docket No.: 27698.

Petitioner: Carnival Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought: To allow Carnival to operate one Airbus A300 B4 aircraft through September 1, 1994, without an airborne windshear warning system. *Denial, 04/14/94, Exemption No. 5859.*

[FR Doc. 94–10709 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–13–M

Proposed Establishment of the Longview, TX, Class C Airspace Area; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting; correction.

SUMMARY: This correction clarifies that comments concerning the informal airspace meeting for the Longview, TX, Class C airspace area, published in the **Federal Register** on April 4, 1994, will be received until July 25, 1994.

FOR FURTHER INFORMATION CONTACT: Greg Juro, Federal Aviation Administration, Southwest Regional Office, ASW–530, 2601 Meacham Blvd, Fort Worth, TX 76137–4298, telephone: (817) 222–5591.

SUPPLEMENTARY INFORMATION:

In **Federal Register** Document 94–7919 published on April 4, 1994, (59 FR 15803), under Time and Date "Comments must be received on or before May 17, 1994," should be changed to "Comments must be received on or before July 25, 1994."

Issued in Washington, DC, on April 20, 1994.

Fred L. Gibbs,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-10710 Filed 5-3-94, 8:45 am]

BILLING CODE 4910-13-P

Federal Highway Administration

Environmental Impact Statement: Alameda and Contra Costa Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation project in Alameda and Contra Costa Counties, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, Chief, District Operations–A, Federal Highway Administration, 980 9th Street, suite 400, Sacramento, California, 95814–2724, 916/551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) and the California Toll Road Company (CTRC) will prepare an Environmental Impact Statement (EIS) on a proposal to construct a toll-operated highway facility in a corridor between Route 4 and Route 84 in Alameda and Contra Costa Counties, a distance of approximately 48-kilometers (30 miles). The proposed facility would consist generally of a divided limited access roadway. It is anticipated that majority of the roadway will be located on new alignment. Major roadways in the area are presently operating at peak hour levels of service (LOS) D to F, and are expected to decline to LOS F before the year 2010. There are also problems with the regional movement of freight on local roads because of the lack of regional transportation facilities.

Alternatives under consideration are:

(1) The "No-Build" Alternative;

(2) A Transportation Systems Management/Transportation Demand Management Alternative providing incremental improvements;

(3) A Mass Transit Alternative providing transit improvements, including buses and rail modes;

(4) A divided limited access toll road in a 48-kilometer (30 miles) corridor from the I–680/Route 84 Interchange southwest of the City of Livermore to Route 4 near Antioch; and

(5) A freeway in the same 48-kilometer (30-mile) corridor. In addition to the alternatives noted above, any other alternatives identified in the scoping process meetings will be studied and considered during the project development stage.

Letters describing the proposed action and soliciting comments were sent to the appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this proposal. Public scoping and community participation meetings will be held on May 10, 1994 at 6 p.m. at the Tracy Community Center, 300 East 10th Street, Tracy; on May 11, 1994 at 5 p.m. at the Brentwood Lions Club, 3700 Walnut Boulevard, Brentwood and; at the Triad Corporation Cafeteria at 3055 Triad Drive, Livermore, on May 12, 1994 at 5 p.m. An agency scoping meeting is scheduled at the Contra Costa Transportation Authority, Pacific Plaza Bldg., 1340 Treat Blvd., Suite 150, Walnut Creek at 10 a.m. May 12, 1994. The Public Participation Program for this study includes additional community information meetings and a Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the Environmental Impact Statement (EIS) should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on April 26, 1994.

John R. Schultz,

Chief, District Operations—A, Sacramento

[FR Doc. 94–10615 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Research and Development Programs; Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects and requests suggestions for agenda topics.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on June 14, 1994, beginning at 1:30 p.m. and ending at approximately 5 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on May 18, 1994. Questions may be submitted in advance regarding the Agency's research and development projects. They must be submitted in writing by June 7, 1994, to the address given below. If sufficient time is available, questions received after the June 7 date will be answered at the meeting in the discussion period. The individual, group or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by June 7 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the June 14, 1994, meeting relating to the Agency's research and development programs should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, SW., Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. This sixth meeting will be held on June 14, 1994.

NHTSA requests suggestions from interested parties on the specific agenda topics. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on May 18, 1994. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. NHTSA asks that the suggestions be taken from the list below and that they be limited to five, in priority order, so that the presentations at the June 14 R&D meeting can be most useful to the audience. Please note that almost all of these topics have been discussed at the previous five meetings to some extent and that presentations at the sixth meeting will be reports on current status, results, and plans.

Specific Crashworthiness R&D topics are:

Improved frontal crash protection,
Highway traffic injury studies,
Head and neck injury research,
Lower extremity injury research,
Thorax injury research,
Human injury simulation and analysis,
Crash test dummy component development,
Vehicle aggressivity and fleet compatibility,
Upgrade side crash protection,
Upgrade seat and occupant restraint systems,
Child safety research, and
Electric and alternate fuel vehicle safety.

Specific Crash Avoidance R&D topics are:

Truck crashworthiness/occupant protection
Truck tire traction
Portable data acquisition system for crash avoidance research
Systems to enhance EMS response (automatic collision notification)
Vehicle motion environment,
Crash causal analysis,
Guidelines for crash avoidance warning devices,
Longer combination vehicle safety,
Drowsy driver monitoring,
Driver workload assessment, and
Performance guidelines for IVHS systems (approach).

Specific topics from the National Center for Statistics and Analysis are:

National safety belt use survey,
New data elements for FARS and NASS,
Special crash investigations program regarding air bag performance,
Pedestrian special NASS data collection project, and
Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

Questions regarding research projects that have been submitted in writing not later than close of business on June 7, 1994, will be answered as time permits. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participant as necessary, during the NHTSA Industry Research and Development Meeting. Thus any person desiring assistance of "auxiliary aids" (e.g., sign language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Barbara Coleman on 202/366–1537 by COB June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: April 26, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94–10633 Filed 5–3–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 26, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0018.
Form Number: ATF F 6 Part II (5330.3B).
Type of Review: Extension.
Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.
Description: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. Forms are used by persons who are members of the United States Armed Forces.
Respondents: Individuals or households.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,500 hours.
OMB Number: 1512–0352.
Regulation ID Number: ATF REC 5170/1.
Type of Review: Extension.
Title: Importers Records and Reports (Alcoholic Beverages).
Description: Importers are required to maintain usual and customary business records and file letter applications or notices related to specific regulated activities.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 251 hours.
OMB Number: 1512–0367.
Regulation ID Number: ATF REC 5220/1.
Type of Review: Extension.
Title: Tobacco Export Warehouse—Record of Operations.
Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. Record is used to maintain accountability over these products. Allows ATF to verify that all products have been exported or tax liabilities satisfied. Protects tax revenues.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 213.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 1 hour.
Clearance Officer: Robert N. Hogarth (202) 927–8930 Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue N.W., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–10687 Filed 5–3–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

April 29, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0274.

Form Number: IRS Form 2163(c).

Type of Review: Extension.

Title: Employment—Reference Inquiry.

Description: Form 2163(c) is used by IRS to verify past employment history and to question listed and developed references as to the character and integrity of current and potential IRS employees. The Information received is incorporated into a report on which a security determination is based.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 20,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–10686 Filed 5–3–94; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

North-South Center External Research Grant Program

ACTION: Notice-request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from eligible institutions under the auspices of the North-South Center's 1994 Research Grant Programs. The North-South Center is located at the University of Miami and is funded through a Congressional appropriation managed through the Bureau of Educational and Cultural Affairs of the United States Information Agency. The Center's External Research Grant Program and Short-Term Field Research Program support selected research activities which are of importance to the people and governments of the Western Hemisphere. Through grant awards, the Center brings together human and technical resources to address major themes relevant to policy making in North, South, and Central America and the Caribbean. The Grant Programs provide funding for research projects with innovative approaches to contemporary concerns throughout the region. There are currently two grant competitions for which solicitation of research proposals is being sought:

External Research Grant Program: The Program supports research, analysis, and the exchange of information important to the economic, social, political, and cultural development of the countries of the Western Hemisphere. The general aim of the grant program is to promote scholarly research of contemporary regional issues including: Democratization, social change and equity, trade, debt, investment, environment, and drug policy. Since 1991, approximately 100 External Research Grants have been awarded involving over 250 institutions throughout the hemisphere.

Short-term Field Research Grant Program on Poverty and Urban Violence: Designed to coincide with the upcoming United Nations World Summit for Social Development (March 1995) these awards are to be specifically focused around the theme of poverty. Research proposals will be accepted from various disciplines for research projects or field research to investigate issues of poverty and its relationship to migration pressures and illegal immigration, youth and violence, distributional equity, and the impact of stabilization and adjustment measures on the overall well-being of the population. The one-time competition for the Short-Term Field Research Grants on Poverty and Urban Violence will be held in Spring of 1994.

Dates/Deadlines: It is the responsibility of each grant applicant to ensure that proposals are received by the stated deadlines for selected program.

External Research Grant Program: For information purposes the External Research Grant Program requires one original and nineteen (19) copies of the final proposal, written in English, and have been received at the Office of Grant Programs, North-South Center by 5 p.m. Miami time on Monday, May 2, 1994. Please conserve paper by making copies double-sided. Faxed documents will not be accepted, nor will documents postmarked on May 2, 1994 but received at a later date. Project activities should begin no earlier than July 1, 1994 and should run no longer than September 30, 1995. An additional External Research Grant Program will be announced in July of 1994, with projects to begin no earlier than September 1994.

Short-term Field Research Grant Program on Poverty and Urban Violence: The deadline for submission of the original and nineteen (19) copies of the final proposal and required attachments, written in English, must be received at the Office of Grant Programs, North-South Center by 5 p.m. Miami time on Wednesday, May 25, 1994. Please conserve paper by making copies double-sided. Faxed documents will not be accepted, nor will documents postmarked on May 25, 1994 but received at a later date. Project activities should begin no earlier than July 1, 1994 and should run no longer than October 31, 1994.

ADDRESSES: Twenty complete proposals should be submitted by their respective deadlines to: Mary Uebersax, Director of Grant Programs, North-South Center, 1500 Monza Avenue, Coral Gables, FL 33146–3027, Fax (305) 284–6370.

FOR FURTHER INFORMATION: Interested organizations/institutions should contact the Office of Grant Programs at the address listed above or by telephone at (305) 284–8951, facsimile (305) 284–6370. The Director of Grant Programs can also be reached by electronic mail at: macondo2@umiami.ir.miami.edu to request detailed application packets, which include award criteria not mentioned in this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Proposals from all parts of the world, except where prohibited by U.S. law that are consistent with the mission of the North-South Center and are of sound intellectual justification will be considered. Funding will not be authorized for any private for-profit institutions, profit-oriented individuals' initiatives, projects of a proprietary nature, or for projects of a partisan political nature. Principal investigators should have completed advanced degrees and must demonstrate an institutional affiliation. Pre and post doctoral scholars are eligible to complete for the Short-term Field Research Grants on Poverty and Urban Violence, however the investigators must demonstrate an institutional affiliation. The Center and its Grant Review Panel will not use political tests or political qualifications and will not discriminate in any manner whatsoever in selecting grantees.

Funding Limitations: The grant awards should not be used in lieu of salary or to support projects which could be funded by private foundations or government. In addition, applicants are encouraged to seek supplemental funding for projects.

Successful projects will be funded by means of a cost reimbursement subcontract agreement between the North-South Center, the University of Miami, and the applicant's institution. All current policies and requirements that govern federal research grants will be applied to the grant award.

Pursuant to the USIA's Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

External Research Grant Program: North-South Center External Research Grant Awards will be capped at $50,000. Multi-year proposals will be funded on a yearly basis upon recommendation of the Grant Review Panel, contingent upon Congressional funding of the North-South Center.

Short-term Field Research Grant Program on Poverty and Urban Violence: The maximum award for this program will be $20,000. Support will include international travel expenses, domestic transportation, limited living expenses, and research and pre-publication expenses.

Overview—The general aim of the North-South Center's grant programs is to promote scholarly research that will increase knowledge and broaden understanding of contemporary regional issues. The long-term aims of the programs are to support scholarship in inter-American affairs, encourage collaboration in various fields of research among institutions throughout the hemisphere, stimulate discussion of policy-relevant issues, and promote scholarship from which policy solutions may derive.

Guidelines—The Center gives priority to projects involving the collaboration of institutions in more than one country and to projects addressing issues encompassing several countries. The Programs provide funding for projects that demonstrate a clear analytical focus, a solid method to achieve research goals in a timely manner, and relevance to contemporary policy. Research activities should generate a product of enduring value such as a publication or a series of publications.

Proposed Budget—Applicants must submit a comprehensive line item budget for which specific details are available in the application packet. The Center does not pay for costs that are not directly related to the specific project being funded (e.g., indirect costs). No support will be given for the purchase or lease of capital equipment (e.g., fax machines, computers), or other related infrastructural costs. Some degree of institutional support should be reflected in the proposed project budget. Salary support must be fully justified by the specific requirements of the projects and should not represent a major portion of total project expense. Salary support should be calculated as a percentage of time spent on research for the duration of the project. It is not permissible to request support in lieu of responsibilities for university course instruction.

Review Process: Grants made through the North-South Center External Research Grant Program are awarded through a competitive review process. The Grant Programs Office will acknowledge receipt of all proposals, and the Center's Executive Staff will review every proposal for eligibility, completeness, and competitiveness. Outside reviewers with expertise in a particular subject area may be called upon to provide critique on proposals. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. All eligible and complete proposals will be submitted to the Center's Grant Review Panel, comprised of a multidisciplinary group of distinguished experts from major university centers for Latin American and Caribbean Studies throughout the United States and two international business members.

Review Criteria: Applications which meet the aforementioned technical requirements will be competitively reviewed according to the following criteria:

1. *Contribution to the field of study:* Proposals should demonstrate a distinct theoretical, political, or applied academic significance to the stated subject area. The outcome of the research endeavor should be useful and applicable to the academic, government, and/or the policy-making community.

2. *Research cohesiveness and quality:* Clearly defined research hypotheses, including the specific questions which will be asked through this investigation, and an explanation of the means of testing and evaluating the research objectives should be provided. A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

3. *Clarity and focus:* Proposals should illustrate that the research has been sufficiently developed prior to the request for funding, to ensure that its aims are clear and specific. Proposals should clearly demonstrate how the applicant will meet the program's objectives and research plan.

4. *Concrete and lasting impact of the investigations:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should provide a plan for continued follow-up activity which insures that the Center's supported programs are not isolated events. Effective dissemination of the project's results should be planned to reach the widest possible and most relevant audience.

5. *Potential:* Proposals should demonstrate the potential for fostering cooperation and understanding among peoples of the region.

6. *Applicant's "track record"/ evaluation plans:* Applicants should demonstrate a history of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past research grants, where applicable. The Center will consider the past performance of prior grantees and the demonstrated potential of new applicants. Grantees must be willing to comply with evaluation requirements of the granting institution.

7. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other research costs should be necessary, appropriate, and justified in the budget narrative

8. *Cost-sharing:* Proposals should maximize cost-sharing through other private support as well as direct funding contributions (such as full-time salaries) from their institution.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any North-South Center or USIA representative. Explanatory information provided by the North-South Center that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Center. Final awards cannot be made until funds have been fully appropriated by the U.S. Congress; allocated and committed through internal North-South Center and University of Miami procedures.

Notification

All applicants will be notified in writing of the results of the review process. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: April 28, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94-10634 Filed 5-3-94; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 26, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 94–10871 Filed 5–2–94; 2:55 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 19, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSONS FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 94–10872 Filed 5–2–94; 2:55 p.m.]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 59, No. 79, page 19750, April 25, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., April 27, 1994.

CHANGES IN MEETING: Meeting scheduled for April 27, 1994 has been postponed until May 3, 1994.

CONTACT PERSON FOR MORE INFORMATION: Sheldon D. Butts, Deputy Secretary, (301) 504–0800.

Dated: April 28, 1994.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 94–10859 Filed 5–2–94; 2:34 p.m.]

BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 22216, April 26, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, May 10, 1994.

CHANGE IN THE MEETING:

Open Session

The item listed below has been added to the agenda:

4. Extension of Comment Period on the Proposed Consolidated Guildelines on Harassment.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: April 29, 1994.

Frances M. Hart,
Executive Officer, Executive Secretariat.

[FR Doc. 94–10789 Filed 5–2–94; 11:04 am]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 5, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. Chief Examiner's Quarterly Report

C. New Business

1. Regulations

a. Standards of Conduct, Personnel Administration [12 CFR Part 612] (Final).

b. Collateral Evaluation Requirements, Loan Policies and Operations [12 CFR Part 614] (Policy Discussion).

Closed Session*

A. Reports

1. Office of Secondary Market Oversight Quarterly Report

B. New Business

1. Enforcement Actions

Dated: May 2, 1994.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.

[FR Doc. 94–10878 Filed 5–2–94; 3:57 pm]

BILLING CODE 6705–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sixteenth Annual Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m., Friday, May 13, 1994.

PLACE: Federal Reserve System, 20th & C Streets, NW., Eccles Building, room 4001, Washington, DC 20552.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 376–2441.

Agenda

I. Call to Order
II. Approval of Minutes:
  March 11, 1994, Regular Mtg.
III. Committee Appointments:
  a. Audit Committee
  b. Budget Committee
  c. Personnel Committee
IV. Election of Officers
V. Board Appointments:
  a. Internal Audit Director
  b. Asst. Secretary/Paralegal
VI. Resolutions of Appreciation
VII. Treasurer's Report
VIII. Executive Director's Quarterly Management Report
IX. Adjourn

Jeffrey T. Bryson,
General Counsel/Secretary.

[FR Doc. 94–10786 Filed 5–2–94; 8:45 am]

BILLING CODE 7570–01–M

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* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8), (9) and (10)

Corrections

Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 261, 262, 263 and 267

[Docket No. 940387–4087; ID 120293B]
RIN 0648–AD53

U.S. General Standards for Grades of Finfish Products

Correction

In proposed rule document 94–9060 beginning on page 18091 in the issue of Friday, April 15, 1994, make the following correction:

On page 18092, in the first column, under **DATES**, in the second line, "May 2, 1994" should read "August 15, 1994".

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC08

Student Assistance General Provisions

Correction

In rule document 94–9747 beginning on page 22066 in the issue of Thursday, April 28, 1994, make the following correction:

§ 668.61 [Corrected]

On page 22068, in the third column, in § 668.61, insert the following below the five stars: "(Approved by the Office of Management and Budget under Control Number 1840–0570)".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 150

[CGD 93–080]

RIN 2115–AE69

Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries

Correction

In rule document 94–8837 beginning on page 17480, in the issue of Wednesday, April 13, 1994, make the following correction:

On page 17480, in the third column, under **SUMMARY**, in the sixth line, "of" should read "or".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 115CE, Special Condition 23–ACE–74]

Special Conditions; Cessna Model 526 Airplane

Correction

In rule document 94–3620 beginning on page 8119 in the issue of Friday, February 18, 1994, make the following corrections.

1. On page 8124, in the second column, in SC23.157 (a), in the sixth line, "W+500+1300 " should read:

$$\frac{W+500}{1300}$$

and in SC23.157 (c), in the sixth line, "W+2800+2200" should read:

$$\frac{W+2800}{2200}$$

BILLING CODE 1505–01–D

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federal register

Wednesday
May 4, 1994

Part II

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resources Damage Assessments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN: 1090–AA43

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comment on proposed revisions of the regulations for assessing natural resource damages resulting from a discharge of oil into navigable waters under the Clean Water Act or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (the type A rule); and site-specific procedures for detailed assessments in individual cases (the type B rule).

The Department is proposing, as part of its compliance with a court remand, to revise the type B rule to address the use of the economic methodology known as contingent valuation to assess lost values of injured natural resources. In general, the Department is considering and soliciting comment on a proposed natural resource damage assessment rule regarding contingent valuation recently published by the National Oceanic and Atmospheric Administration pursuant to the Oil Pollution Act of 1990. This notice constitutes the Department's proposed rulemaking document and solicits comment on rule language under consideration for a final rule. Upon consideration of the comments received in response to this notice, the Department intends to issue a final rule. The Department recently published a final rule to revise the type B rule to comply with all other aspects of the court order.

DATES: Comments must be received by July 7, 1994.

ADDRESSES: Comments should be sent in triplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule, Mail Stop 2340, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary C. Morton or David Rosenberger at (202) 208–3301.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

I. Background
  A. Statutory Provisions
  B. Regulatory History
  C. Judicial Review
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I. Background

A. Statutory Provisions

The Clean Water Act, as amended (33 U.S.C. 1251 et seq.) (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA) authorize natural resource trustees to recover compensatory damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil into navigable waters or a release of a hazardous substance. CWA sec. 311(f); CERCLA sec. 107. Federal and State officials may be designated to serve as natural resource trustees under CERCLA and CWA. CERCLA also recognizes the authority of Indian tribes to commence actions as natural resource trustees.

Damages may be recovered for those natural resource injuries and losses that are not fully remedied by response actions. All sums recovered in compensation for natural resource injuries must be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. Trustee officials may also recover the reasonable costs of assessing natural resource damages and any prejudgment interest.

CERCLA requires the promulgation of two types of regulations for the assessment of natural resource damages resulting either from a discharge of oil under CWA or from a release of a hazardous substance under CERCLA. CERCLA sec. 301(c). The type A regulations constitute standard procedures for simplified assessments requiring minimal field observation. The type B regulations constitute site-specific procedures for detailed assessments. Both regulations identify the best available procedures for determining natural resource damages. Assessments performed by Federal and State natural resource trustee officials in accordance with these regulations receive a rebuttable presumption in court. CERCLA sec. 107(f)(2)(C). The promulgation of these regulations was delegated to the Department of the Interior (the Department). E.O. 12316, as amended by E.O. 12580.

The Oil Pollution Act (33 U.S.C. 2701 et seq.) (OPA) was signed into law on August 18, 1990. Among other things, OPA amended the natural resource damage provisions of CWA. OPA authorized the National Oceanic and Atmospheric Administration (NOAA) to develop new natural resource damage assessment regulations for discharges of oil into navigable waters. The Department is coordinating its rulemakings with NOAA to ensure, to the maximum extent appropriate, that consistent processes are established for assessing natural resource damages under CERCLA and OPA. OPA provides that until NOAA develops final regulations, the Department's regulations may be used to assess natural resource damages under OPA. OPA sec. 6001(b).

B. Regulatory History

The Department has issued various final rules for the assessment of natural resource damages: 51 FR 27674 (Aug. 1, 1986); 52 FR 9042 (March 20, 1987); 53 FR 5166 (Feb. 22, 1988); and 53 FR 9769 (March 25, 1988). These rulemakings are all codified at 43 CFR part 11. The Department also recently published a final rule that has not yet been codified in the Code of Federal Regulations. 59 FR 14261 (March 25, 1994).

The natural resource damage assessment regulations provide an administrative process for conducting assessments as well as technical methods for the actual identification of injuries and calculation of damages. Under the regulations, both type A and type B, assessments consist of four major phases.

The first phase of an assessment conducted under the regulations involves the activities that precede the actual assessment. For example, upon detecting or receiving notification of a discharge or release, trustee officials perform a preassessment screen to ascertain whether further assessment actions are warranted.

The second phase involves the preparation of an Assessment Plan. The Assessment Plan, which is subject to public review and comment, assists the involvement of other interested trustee officials, potentially responsible parties (PRPs), and the general public. The Assessment Plan also ensures that assessments are performed at a reasonable cost.

In the third phase, trustee officials conduct the work described in the Assessment Plan. The work involves three steps: Injury Determination; Quantification; and Damage Determination. In Injury Determination, trustee officials determine whether any natural resources have been injured. If trustee officials determine that resources have been injured, they proceed to Quantification, in which they quantify the resulting reduction in services provided by the resources. Finally, in Damage Determination, trustee officials calculate the monetary compensation to be sought as damages for the natural resource injuries.

In a type A assessment, trustee officials perform Injury Determination, Quantification, and Damage Determination through the use of standardized procedures involving minimal field work. The Department has adopted a phased approach to developing type A procedures for different environments. Only one type A procedure has been developed to date. The existing type A procedure provides for the use of a computer model to assess damages from small releases or discharges in coastal or marine environments. For other releases or discharges, trustee officials conduct a type B assessment, in which Injury Determination, Quantification, and Damage Determination are performed through the use of a range of alternative scientific and economic valuation methodologies. This notice addresses the use of a particular valuation methodology during the Assessment Phase.

The fourth phase of every natural resource damage assessment, whether the type A or type B rule is followed, consists of post-assessment activities such as: Preparation of a Report of Assessment; establishment of an account for damage assessment awards; and development of a Restoration Plan for use of the awards.

C. Judicial Review

A party may petition the Court of Appeals for the District of Columbia Circuit to review any regulation issued under CERCLA. CERCLA sec. 113(a). A number of parties filed such petitions for review of the natural resource damage assessment regulations.

The type B rule was challenged in *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (DC Cir. 1989) (*Ohio* v. *Interior*). The court in *Ohio* v. *Interior* upheld various challenged aspects of the type B rule but did remand three issues. The court ordered the Department to revise the rule to reflect the statutory preference for using restoration costs as the measure of natural resource damages. The court used the term "restoration costs" to encompass the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. 880 F.2d at 441.

The court also ordered the Department to allow for the assessment of all reliably calculated lost values of injured natural resources, including both lost use values and lost nonuse values. Use values are derived through activities such as hiking or fishing. Nonuse values are not dependent on use of the resource. Nonuse values include existence value, which is the value of knowing that a resource exists, and bequest value, which is the value of knowing that a resource will be available for future generations. Finally, the court asked the Department to clarify whether the natural resource damage assessment regulations apply to natural resources that are not actually owned by the government.

The type A rule was challenged in State of *Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (DC Cir. 1989) (*Colorado* v. *Interior*). *The court held that, based on the reasoning in the Ohio* v. *Interior* decision, the type A procedure for coastal and marine environments should be revised to allow for the calculation of restoration costs.

D. Implementation of the Court Order

The Department published an advance notice of proposed rulemaking on September 22, 1989, to announce its intent to revise the type B rule to comply with *Ohio* v. *Interior*. 54 FR 39016. The Department issued a proposed rule on April 29, 1991, with comments requested by June 28, 1991. 56 FR 19752. On July 2, 1991, the Department extended the comment period to July 16, 1991. 56 FR 30367. On July 22, 1993, the Department reopened the comment period to allow consideration of additional comments, including newly developed information on the contingent valuation methodology (CV), the only method currently available for the express purpose of estimating nonuse values. 58 FR 39328. The comment period was originally reopened until September 7, 1993, and then extended until September 22, 1993. 58 FR 45877 (Aug. 31, 1993).

After reviewing the comments received in response to the July 22, 1993, **Federal Register** notice, the Department proposes to revise the type B rule to include appropriate standards to improve the reliability of CV when used to estimate lost nonuse values. The Department is issuing this notice to ensure that interested parties have an adequate opportunity for review and comment.

On March 25, 1994, the Department published a final rule to revise the type B rule to comply with all aspects of the *Ohio* v. *Interior* remand other than the assessment of lost nonuse values. 59 FR 14281. Pending completion of this rulemaking, the Department is temporarily leaving unchanged the language of the original type B rule concerning the assessment of lost nonuse values.

E. Other Rulemakings

CERCLA mandates biennial review and revision, as appropriate, of the natural resource damage assessment regulations. The Department plans to begin the biennial update of the type B rule in July 1994. All aspects of the administrative process and the type B rule will be subject to review during that update. During the biennial review, the Department will consider ways of ensuring the greatest consistency appropriate between its damage assessment regulations and the damage assessment regulations being developed by NOAA.

Further, later this year the Department plans to issue a proposed rule to revise the type A rule for coastal and marine environments in compliance with *Colorado* v. *Interior*. The Department is also developing an additional type A rule for assessing damages in the Great Lakes. Like the type A rule for coastal and marine environments, the type A rule for the Great Lakes will incorporate a computer model.

II. Calculation of Damages Under the Type B Rule

A. Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

The type B rule as originally published on August 1, 1986, provided that damages consisted of the lesser of the cost of restoring the injured resources (plus the lost interim use value) or the diminution in the value of the injured resources without restoration. In *Ohio* v. *Interior*, the court ordered the Department to revise the rule to reflect the statutory preference for using restoration costs as the measure of natural resource damages.

CERCLA provides that sums recovered in natural resource damage actions may be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. The court used the simple term "restoration" costs as shorthand for the cost of performing any of these actions. 880 F.2d at 441. On March 25, 1994, the Department published a final rule that revised the type B rule to allow trustee officials to recover the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in all cases. 59 FR 14281.

The March 25, 1994, final rule provides guidance on projecting the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources. Under that final rule, trustee officials first identify and consider a reasonable number of possible alternatives for restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources. Trustee officials also estimate those services that are likely to be lost to the public pending completion of each alternative under consideration. Trustee officials then select one of the possible alternatives based on several factors. The trustee officials document their decisions in a Restoration and Compensation Determination Plan, which is subject to public review and comment.

Once the trustee officials select a restoration, rehabilitation, replacement, and/or acquisition alternative, they choose the methods they intend to use to estimate the costs of implementing that alternative. To do this, trustee officials select among specified cost estimating methodologies. Trustee officials include the rationale for their selection in the Restoration and Compensation Determination Plan.

B. Compensable Value

Under the March 25, 1994, final rule, the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources are the basic measure of damages; however, these costs are only one component of the damages that trustee officials may assess. Trustee officials also have the discretion to assess the value of the resource services that the public lost from the date of the release or discharge until completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. 59 FR 14283. The term "compensable value" is used to encompass all of the lost public economic values, including both lost use values and lost nonuse values. The Restoration and Compensation Determination Plan includes a description of the methodologies trustee officials intend to use when estimating compensable value during Damage Determination.

The original type B rule provided a ranked list of methodologies that could be used to calculate lost use values. If the market for the injured resource was "reasonably competitive," then the diminution of the market price attributable to the discharge or release was used to estimate damages. If a market price methodology was not applicable, then the trustee officials were required to use appraisal methodologies. Only when neither market-price nor appraisal methodologies were appropriate for the resources being assessed did the original version of the rule allow trustee officials to use non-market-based methodologies.

Further, §§ 11.83(b)(2) and 11.83(d)(5)(ii) of the original version of the type B rule provided that lost nonuse values could only be assessed if trustee officials could not determine any lost use values. In the August 1, 1986, preamble to the original type B rule, the Department provided the following explanation for this restriction:

> Ordinarily, option and existence values would be added to use values. However, section 301(c) of CERCLA mentions only use values. Therefore, the primary emphasis in this section is on the estimation of use values * * * Another related reason for this limitation is that more is known about the determination of use values than option and existence values. Option and existence values are less well-defined and more uncertainty surrounds their measurement. 51 FR 27719.

Ohio v. *Interior* held that the type B rule incorrectly established a strong presumption in favor of the use of market price and appraisal methodologies to estimate lost use values. The court also held that the Department had "erroneously construed the statute" with regard to the assessment of lost nonuse values. The court stated:

> (S)ection 301(c)(2) requires Interior to "take into consideration factors including, *but not limited to* * * * use value." 42 U.S.C. 9651(c)(2) (emphasis added). The statute's command is expressly not limited to use value; if anything, the language implies that DOI is to include in its regulations other factors in addition to use value. 880 F.2d at 464.

The court went on to say that the Department

> is entitled to rank methodologies according to its view of their reliability, but it cannot base its complete exclusion of option and existence values on an incorrect reading of the statute. Id.

The court instructed the Department to consider a rule that would permit trustee officials to include all reliably calculated lost values in their damage assessments. Id.

CV is currently the only method available for the express purpose of estimating nonuse values. Under the original type B rule, CV was listed as a non-market-based methodology for calculating either lost use or lost nonuse values. *Ohio* v. *Interior* upheld the Department's inclusion of CV as a "best available procedure." Id. at 478. However, the court did not require the Department to allow unlimited use of CV. Moreover, the court did not address the difference between use of CV to calculate lost use values and use of CV to calculate lost nonuse values.

The March 25, 1994, final rule leaves trustee officials free to choose among the listed valuation methodologies, including CV, when estimating lost use values. 59 FR 14285–86. The final rule provides a number of criteria to guide the selection of valuation methodologies, including a requirement that the chosen methodologies are reliable for the particular incident and type of damage being measured. The final rule renumbers §§ 11.83(b)(2) and 11.83(d)(5)(ii) of the original rule, which restrict the assessment of lost nonuse values to cases where lost use values cannot be determined, as new §§ 11.83(c)(1)(iii) and 11.83(c)(2)(vii)(B), respectively. Pending completion of this rulemaking to address the final issue affected by the *Ohio* v. *Interior* remand, the Department is temporarily leaving unchanged the language of these renumbered sections.

III. Contingent Valuation: Discussion and Rule Language Under Consideration

CV is a survey-based approach to the valuation of nonmarket goods and services that relies on a questionnaire for the direct elicitation of information about the value of the good or service in question. The value obtained for the good or service is said to be contingent upon the nature of the constructed (hypothetical or simulated) market and the good or service described in the survey scenario. In the natural resource damage assessment context, CV studies generally derive values through elicitation of respondents' willingness to pay (WTP) to prevent injuries to natural resources or to restore injured natural resources.

The first published CV study, valuing outdoor recreation, appeared in 1963. There are now over 1,400 documented papers, reports, and books on CV. In recent years, CV has become one of the most widely used methods of nonmarket valuation.

Four basic elements common to CV questionnaires are: (1) An explanation of the structure and rules of the market in which the good or service being valued is either bought or sold; (2) a description of the good or service and how it is to be provided; (3) the value elicitation question; and (4) validation questions to verify comprehension and acceptance of the scenario and to elicit socioeconomic and attitudinal characteristics to interpret the variation in responses to the valuation question across respondents. There are no universal rules on how each of these elements of a CV questionnaire should be designed, since the appropriate formulation of each depends on the good or service being valued and its context and, consequently, will vary across applications.

CV surveys generally measure total value of a good or service, which includes both use values and nonuse values. However, nonuse values, unlike use values, are not linked to observable behavior and, thus, are more difficult to validate externally than use values. Therefore, criticisms of CV pertain primarily to its use in valuing the nonuse component of total value and the difficulty of external validation of that component of total value. Among the most commonly cited criticisms of CV studies of nonuse values are: The stated intentions of WTP in CV surveys may exceed "true" WTP; CV may produce results that appear inconsistent with the tenets of rational choice; respondents to CV surveys on nonuse may be unfamiliar with the good or service being valued and therefore may not have an adequate basis for articulating their true value; CV respondents may be expressing a value for the satisfaction (warm glow) of giving rather than the value of the good or service in question; and respondents may fail to take CV questions seriously because the financial implications of their responses are not binding. Most proponents of CV acknowledge that poorly designed and administered CV studies can produce results that reflect the potential problems identified above. However, proponents also assert that these problems are not inherent to the method and that well-designed and well-executed CV studies can eliminate them or render them inconsequential. Proponents further assert that survey design, development, and administration standards will improve quality control for CV surveys.

The Department received many, often conflicting, comments on the use of CV to calculate nonuse values. As the Department noted in the July 22, 1993, **Federal Register** notice, NOAA convened a panel of economic and survey experts (the NOAA panel), pursuant to its rulemaking authority under OPA, to evaluate the reliability of CV to measure nonuse values. The NOAA panel issued a report in January, 1993. 58 FR 4601 (Jan. 15, 1993).

Based upon consideration of all comments received and the NOAA panel report, the Department is proposing to revise the type B rule to include standards for the use of CV to estimate lost nonuse values. The Department believes that standards to improve the reliability of CV surveys of lost nonuse values are needed in the Department's type B rule, because assessments performed in accordance with the rule will be given a rebuttable presumption in litigation over the specific amount of money a particular party must pay as compensation for liability. However, this same level of precision for CV surveys may not necessarily be required for other applications of CV, such as use of CV in regulatory cost-benefit analyses.

On January 7, 1994, NOAA published a proposed natural resource damage assessment rule under OPA. 59 FR 1062. Section 990.78(b)(5) of NOAA's proposed rule includes standards for the use of CV. 59 FR 1182–83; see also 59 FR 1142–48. In the interest of consistency and after consultation with other Federal agencies, the Department is soliciting comment on whether the Department's type B rule should be revised to include standards for the use of CV substantially similar to those proposed by NOAA. Upon consideration of the comments received in response to this notice, the Department intends to issue a final rule.

NOAA's proposed standards for use of CV cover five areas: (1) Survey instrument design and development; (2) survey administration; (3) the nature of the results; (4) calibration; and (5) reporting. NOAA's proposed standards are intended to provide flexibility to trustee officials so that they can take advantage of new developments that may occur in CV methodology. Further, any standards included in the Department's type B rule may be subject to amendment during the statutorily required biennial review of the regulations to reflect the results of new research.

A. Survey Instrument Design and Development

The reliability of a CV study begins with the design and development of the survey instrument. NOAA has proposed several survey instrument design and development standards. The Department solicits comment on whether the same standards should be included in the Department's type B rule. NOAA's proposed rule language, which the Department is considering for its type B rule, is as follows:

> Survey instrument design and development—(A) Willingness to pay for Prevention or Restoration. (1) The survey instrument shall elicit from respondents their willingness-to-pay (WTP) either to prevent described injuries to natural resources or to restore injured resources as described to their baseline or comparable condition.
>
> (2) The trustee(s) shall document the rationale for selecting a prevention program or restoration program as the commodity to be valued.
>
> (B) Commodity definition. (1) During development of the survey, the trustee(s) shall determine whether respondents understood and found credible the description of the injuries (including whether they are permanent or interim losses) and the program (including the timing of the process) for preventing injuries or restoring the natural resources.
>
> (2) Prior to the value elicitation, the trustee(s) shall identify the natural resource context of the injured resources, if related resources exist, including commodities that might serve as substitutes.
>
> (C) Budget constraints. Prior to the value elicitation, respondents shall be reminded of their budget constraints and their alternative expenditures. Respondents shall be reminded that their WTP for the environmental program in question would reduce their expenditures on other goods. This reminder should be more than perfunctory, but less than overwhelming. The goal is to induce respondents to keep in mind other likely expenditures, including those on other environmental goods, when evaluating the main scenario. After the value elicitation, respondents shall be reminded again of their alternative expenditure possibilities. Respondents shall be given an opportunity to reconsider and change their votes (bid) after this second reminder of alternative expenditure possibilities.
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> (D) Comparability with real transactions. (1) The survey instrument shall use a credible choice mechanism and payment vehicle.
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> (2) The trustee(s) shall select a choice mechanism that is incentive compatible and shall document the rationale for the selected choice mechanism.
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> (3) The trustee(s) shall ask follow-up questions to determine whether the respondents accepted the choice mechanism and payment vehicle as credible.
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> (4) (Note: Calibration requirement discussed in Section III.D of this notice)* * *
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> (E) Pretesting. (1) Survey development shall include adequate field testing to ensure that the above design criteria are met. 59 FR 1182–83.

One important aspect of survey instrument design and development is the selection of a choice mechanism.

Past CV studies have used different methods to elicit values, including open-ended WTP questions; bidding cards; and voting formats typically termed "referenda." The Department believes that selection of a choice mechanism should be left to the discretion of trustee officials, as provided in NOAA's proposed rule. Nonetheless, the Department believes that the current state of the art shows many advantages for using a voting format as the choice mechanism for CV surveys in natural resource damage assessments. Therefore, if trustee officials select a choice mechanism other than a voting format, they should document the factors that led them to reject a voting format. Nevertheless, the Department solicits comments regarding the incentive compatibility of alternative choice mechanisms and whether the final regulation or its preamble should state a preference for the voting format. The Department also solicits comments regarding the administrative and analytical costs associated with alternative choice mechanisms.

The Department believes that the method of elicitation should be one with which people are familiar and one which provides a realistic context in which respondents can choose to increase levels of public goods. Local jurisdictions and State governments often ask voters to increase taxes on themselves so that public goods may be increased (e.g., school bond issues; special assessments for public infrastructure). Second, in our society, most goods are offered using posted prices. Asking an individual to reveal his or her maximum WTP for a good is both unfamiliar and unrealistic. Third, it is important that respondents believe that they will receive the program offered in the CV survey. To CV respondents, the cost of the program naturally determines the price they must pay. If no set price is offered, the respondents may perceive uncertainty regarding the program's costs and, therefore, uncertainty regarding the provision of the program. Finally, the voting format is incentive compatible. Respondents must reveal their preference and vote for the program if they desire the program at the stated price. Voting against or refusing to vote will only lower the probability of obtaining the program.

B. Survey Administration

The most carefully designed CV survey can produce unreliable results if the survey administration is faulty. NOAA has proposed several standards for survey administration. The Department solicits comment on whether the same standards should be included in the Department's type B rule. NOAA's proposed rule language, which the Department is considering for its type B rule, is as follows:

> Survey administration—(A) Sampling procedures. (1) The trustee(s) shall determine the relevant population(s) to be sampled and document the rationale for that determination.
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> (2) The trustee(s) shall draw a probability sample(s) from the target population for the administration of the final survey. Less rigorous sampling is suitable for pretesting and pilot surveys so long as the heterogeneity of the target population is considered.
>
> (3) The sample size(s) shall be sufficient to draw statistically significant population inferences and to estimate WTP valuation functions or to test relevant statistical hypotheses.
>
> (4) The trustee(s) shall minimize nonresponse bias to the extent practicable by striving for as high a response rate in the final survey as possible, consistent with the requirements of reasonable cost. In no case shall the response rate be less than seventy percent.
>
> (5) The trustee(s) shall document the rationale for the selected response rate.
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> (B) Mode of administration. (1) The trustee(s) shall document the rationale for the selected mode of survey administration.
>
> (2) If interviewers are used, the survey administration shall be conducted by trained interviewers who are supervised by experienced interviewer field managers.
>
> (3) Regardless of the mode of administration, the trustee(s) shall use an experienced survey research organization to administer the survey.
>
> (C) Confidentiality. The trustee(s) should ensure respondent confidentiality. 59 FR 1183.

One important aspect of survey administration is the determination of an appropriate response rate. The Department believes that trustee officials should obtain as high a response rate as possible, consistent with the requirements of reasonable cost, in order to ensure reliable inferences to the general population. Low response rates pose a risk of compromising the statistical validity of the survey when nonrespondents have systematically different values than respondents. Another risk associated with low response rates is that estimates of response variance may be significantly affected such that the indicated confidence of survey results is questioned. Since the likelihood of these risks cannot be determined unless nonrespondents have been surveyed, trustee officials should minimize nonresponse in the final survey to the extent practicable. For example, trustee officials could design the survey instrument so that individuals must decide whether to respond before the exact nature of the environmental insult is revealed.

NOAA has proposed that response rates shall not fall below 70 percent. The Department solicits comments on whether there should be a specified minimum response rate and, if so, whether 70 percent is a reasonable floor. Further, the Department solicits comments regarding the administrative costs associated with alternative response rates.

Another important aspect of survey administration is selection of the mode of administration. The three generally used CV survey administration modes are in-person, mail, and telephone. There are advantages and disadvantages of each method, and often the selection of the appropriate method is dependent on a number of factors such as cost, turn-around time, desired response rate, type of information to be conveyed, use of visual aids, required population coverage, and the ultimate use of the survey results. For example, telephone surveys can approximate simple random sampling of households through random digit dialing; can produce fast results; are relatively easy to administer; and are less expensive than in-person interviews. On the other hand, visual aids cannot be used; interviews need to be relatively short; interviewer bias may be involved; and individuals without telephones are necessarily omitted from the sample. Self-administered mail surveys are the least costly of the three methods. However, probability sampling is difficult; respondents can review the survey before deciding to participate (imparting self-selection bias); there can be no random selection within the household and no control of question sequencing; and a higher number of incomplete responses are likely to result because there is no interviewer to motivate the respondent. Finally, in-person interviews permit random selection of the respondent within the household; maintain control of question ordering; allow the use of visual materials; and generate high response rates. In-person interviews, though, are the most costly method to administer; require complex field operations; involve the use of many documents and forms (e.g., calling cards, interviewer evaluation forms, verification forms); and may involve interviewer bias. For a more in-depth discussion of each method, see EPA, "Survey Management Handbook," vol. II, pp. 24–35, 230/12–84–002, December, 1984.

The Department believes that selection of a mode of administration should be left to the discretion of trustee officials, as provided in NOAA's proposed rule. Nonetheless, the Department believes that in-person interviews provide certain advantages in the natural resource damage assessment context. Therefore, if trustee officials select a mode of administration other than in-person interviews, they should document the factors that led them to reject in-person interviews. The Department solicits comments on whether the final regulation or its preamble should state a preference for in-person interviews.

While recognizing that mail surveys can provide invaluable information for many academic studies and regulatory purposes (e.g., the U.S. decennial census), the Department believes that mail surveys at this time lack certain features that are desirable for use in the natural resource damage assessment context. Telephone surveys also have limitations. A CV survey designed for natural resource damage assessment purposes is likely to impart a large amount of information to respondents causing interviews to be lengthy and often complex. In-person interviews offer the opportunity to motivate the respondents and to hold their interest by providing important information in a graphic and pictorial format and asking interactive questions regarding the respondents' understanding and acceptance of key features of the survey instrument. In-person interviews also permit interviewers to record verbatim responses to important open-ended questions. Such information may be critical in demonstrating that a trustee official has adhered to regulatory standards for the design and administration of the CV study.

The Department also believes that trustee officials should consider the use of modes of administration other than in-person interviews during the survey instrument development stage. For example, a telephone survey may be an appropriate and cost-effective method to test a design feature such as question ordering or the understanding of technical terms. Further, the Department is interested in comparative empirical testing of other administration modes, such as random digit dialing for initial contacts, followed by mailed descriptive information and visual materials, culminating with a telephone survey. If such testing demonstrates that other modes can produce the type of information and results comparable to in-person interviews, the Department would consider encouraging trustee officials to use those methods for the final survey.

Regardless of the mode of administration, the Department believes that all surveys should be administered by a survey research organization, as provided in NOAA's proposed rule. The Department believes that use of a survey research organization is necessary because the preparation and administration of a general population survey require practical survey expertise and substantial logistical support. The Department also believes that trustee officials should select a survey research organization that has implemented procedures to meet the standards outlined in either the Council of American Survey Research Organizations' Code of Standards for Survey Research or the American Association for Public Opinion Research's Code of Professional Ethics and Practices. Use of such an organization would help to maintain reliability and confidentiality. Further, such organizations are likely to have proven track records and the staff necessary to conduct a survey in accordance with any regulatory standards. Nevertheless, the Department solicits comments regarding the requirement that surveys be administered by an experienced survey research organization. Further, comments regarding alternative codes of standards for survey administration are solicited.

C. Nature of Results

A commonly expressed concern about CV is that it can produce results that are not sensitive to all relevant characteristics of the described natural resource injuries and methods of preventing or restoring the injured resources. NOAA has proposed a test to address this concern. The Department solicits comment on whether the same test should be included in the Department's type B rule. NOAA's proposed rule language, which the Department is considering for its type B rule, is as follows:

> Nature of results. (A) Scope test. Controlling for attitudinal, demographic, perceptual, and other differences across respondents, the trustee(s) shall demonstrate statistically that the aggregate WTP across all respondents for the prevention or restoration program increases (decreases) as the scope of the environmental insult is expanded (contracted). The scope of the environmental insult is characterized by the severity of the natural resource injuries and the level of effectiveness and timing of the restoration or prevention program. The demonstration shall be conducted through the use of split samples.
>
> (B) Number of scenarios. The trustee(s) shall administer to split samples different survey instruments containing three variations of the scope of the environmental insult that respondents perceive as different unless the trustee(s) can provide a reasonable showing that the three-scenario test is infeasible due to considerations of cost or lack of plausibility of scenarios. Where three scenarios are feasible, the statistical test shall involve pairwise comparisons. In either case, the scenarios may vary along any of the margins of intensity, geography, and duration of damage and, for prevention scenarios, the probability of an event occurring. The trustee(s) shall document the rationale for the selected variations of the scope of the environmental insult. In determining the descriptions to be used with the split samples, the trustee(s) shall use realistic injury scenarios and prevention or restoration programs that the respondents accept as credible.
>
> (C) Maximum amount of difference between scenarios. The trustee(s) shall develop scenarios for the total value test. Prior to the performance of the test, the trustee(s) shall demonstrate that not more than ninety-five percent of respondents in a pre-test or in focus groups indicate that there are meaningful value differences between the scenarios to be tested in any pairwise comparison. The demonstration shall be based on a minimum of sixty valid responses. The trustee(s) shall exclude from this demonstration any individuals who indicate in screening questions that they are not willing to pay anything for any size environmental cleanup or who would be willing to pay unrealistically large and invariant amounts for any size environmental cleanup. 59 FR 1183.

If this test were included in the Department's type B rule, one important aspect would be the determination of the relevant dimensions of the scope of the environmental insult. The scope of an environmental insult such as a discharge of oil or release of a hazardous substance is multi-dimensional, where the dimensions are influenced by biological and social attributes. A discharge or release can affect all or part of an ecosystem. Its effects can be short- or long-lived, lethal or sublethal, geographically contained or widely dispersed. From the human perspective, the effects of a discharge or release may be directly visible and disturbing, or out of sight and perceived only indirectly once there is knowledge about the loss of natural resources.

In the first phase of NOAA's proposed test, the relevant dimensions of the scope of the discharge or release under investigation would need to be identified. Once the trustee official had defined the relevant dimensions of scope, the trustee official would employ a split sampling technique where some respondents were provided with an alternative survey instrument. The trustee official would begin the analysis with the primary survey instrument that would be used to estimate the values lost due to the discharge or release in question. This instrument would be designated the base instrument. Trustee officials would pre-test and perform pilot tests on the instrument to ensure that the instrument met any design and development standards. Analyses performed using incompletely developed or tested preliminary instruments would not be considered evaluations of scope sensitivity because in these situations it would not be possible to distinguish the effects of variations in survey instrument design from the effects of changes in the scope of the injury or proposed prevention or restoration program.

In designing a CV survey instrument, trustee officials would determine the dimensions of scope that were relevant to the discharge or release under investigation and decide whether there existed a subset of dimensions that were important to the values being measured or whether all of the dimensions were linked and therefore equally important. In cases where a subset were deemed important, trustee officials would choose whether to scale these dimensions up or down in relation to the levels described in the base instrument and by how much to scale the dimensions. If all relevant dimensions were to be scaled, trustee officials would still decide in which direction and magnitude to scale each dimension.

After the trustee officials had decided on the dimensions to be scaled, in what direction and by how much, they would produce second and third instruments that differed from the base instrument only with respect to the scope dimensions. Trustee officials could choose to scale dimensions regarding the injury description, dimensions concerning the prevention or restoration programs offered to respondents, or both. Regardless, trustee officials must take care to ensure that the expected ordinal change in WTP remains unambiguous when simultaneously scaling different dimensions.

The scope test would be designed to determine ordinal changes in the aggregate WTP estimates. The Department is considering a hierarchy of preferred scope tests. The first priority in this hierarchy would be to demonstrate the transitivity of aggregate WTP estimates with respect to the scope of the environmental insult. The second priority would be to demonstrate the sensitivity of aggregate WTP estimates to both an expansion and a contraction of the environmental insult.

The most preferred test would involve two alternative instruments: One reflecting an expansion of the environmental insult from that described by the base instrument and the other reflecting a contraction of the environmental insult from that described by the base instrument. Joint pairwise comparisons would determine whether the three aggregate WTP estimates were transitive (i.e., A<B and B<C, where B is the aggregate WTP estimate of the base instrument).

The Department recognizes that such a test may not be feasible all cases. It may not be feasible in some cases to design credible alternative instruments reflecting either an expansion or a contraction of the environmental insult. For those cases, the second most preferred test would involve two alternative instruments: Both reflecting either an expansion or a contraction of the environmental insult from that described by the base instrument. Regardless, joint pairwise comparisons would determine whether the three aggregate WTP estimates were transitive (e.g., A<C and C<B, where B is the aggregate WTP estimate of the base instrument).

Alternatively, it may not be feasible in some cases to determine whether the three aggregate WTP estimates were transitive if different dimensions were scaled in the two alternative instruments. For those cases, the third most preferred test would involve separate pairwise comparisons to determine ordinal changes in the aggregate WTP estimates (e.g., A<B and C<B, where B is the aggregate WTP estimate of the base instrument).

Finally, it may not be feasible in some cases to design two credible alternative instruments. For those cases, the test would involve one alternative instrument reflecting either an expansion or a contraction of the environmental insult from that described by the base instrument. This would be the least preferred test. In all cases, trustee officials would be required to document the rationale for the selected scope test. The Department solicits comments on the need for and desirability of such a hierarchy of preferred scope tests.

After the scaled instruments were pretested, all three instruments would be employed in a split sample design. Since inferences to the relevant population would not be part of a scope analysis, true probability sampling would not be required and convenience samples could be employed so long as random assignment of the different treatments were maintained. Trustee officials would endeavor to employ large samples in these analyses since changes in scope could be small and large samples may be needed to attain significant differences in WTP. Trustee officials would be free to demonstrate sensitivity to scope using statistical techniques of their choosing.

The validity of the scope test could depend on the respondents' perception of differences in the scope dimensions across the three treatments. Trustee officials would include questions that could be used to determine whether respondents understood and found credible the description of the injuries.

The three-scenario approach would not be required when trustee officials provided a reasonable showing that it was infeasible due to considerations of cost or lack of plausibility of the scenarios. In such circumstances, trustee officials could perform the analysis using only the original scenario and one alternative scenario. However, as CV surveys are routinized and their costs fall, trustee officials may find that the three-scenario analysis is feasible in most cases.

Concern has been expressed that differences between the scenarios not be so large that passing the scope test would be a foregone conclusion, nor so small that it would be very difficult to demonstrate statistical differences without extremely large (and costly) split samples. The issue is complicated by the possibility, based on the State of Alaska-sponsored study of the Exxon Valdez spill, that a significant minority of the population may be insensitive to any reasonable differences in scenarios: Some individuals may not be willing to pay anything for any environmental cleanup, others may be willing to pay unrealistically high (and invariant) amounts for any size environmental cleanup. In response to this concern, NOAA has proposed that trustee officials should develop procedures for identifying and eliminating these responses, so that the demonstration that the scenarios are meaningfully different would rest on the remaining participants. To accept the scenarios for the scope test, no more than 95 percent of the remaining participants could indicate that the differences between the scenarios were real and meaningful, i.e. that the values of the respective commodities differed. The Department is seeking comment on ways to design such a procedure to demonstrate differences in scenarios, and on alternative schemes to achieve a comparable goal. For example, should "insensitive" individuals be excluded from the survey and, if so, how should such individuals be identified? How should the threshold defining "meaningful differences" be characterized? Should the threshold criterion for determining "meaningful difference" be adjusted, since individuals impose internal consistency on their answers in the face of direct comparisons (recognizing much finer differences than in split samples)? Once a procedure has been developed to determine if individuals are sensitive to the scope of the environmental insult, should this information be incorporated into the selection of the sample for the scope test?

While NOAA's proposed rule would require a split sample with multiple scenarios for demonstrating the scope test, the Department seeks comment on the option of alternatively using an indirect test to explain variation in WTP as a function of a set of explanatory variables, including belief in the size of the damage scenario, and/or effectiveness of the prevention or restoration program. Commenters should consider under what circumstances such an indirect test should be allowed for performing the scope test. An indirect approach examines the sensitivity to scope indirectly through the use of a WTP valuation function, relying entirely on the base instrument. In the context of a single dichotomous choice referendum (or a double-bounded formulation), a WTP valuation function may relate the probability of a yes vote to a list of variables assumed to underlie the voting decision (e.g., the amount the household is asked to pay, household demographics, etc.). The indirect approach may expand this list to include variables based on information collected from respondents that are related to the scope dimensions of the discharge or release. These measures must be meaningful to the respondent given the information provided in the survey. For example, a useful question following the WTP elicitation question is one that asks whether the respondent believed the injuries caused by the discharge or release to be more or less severe than described. All other things being equal (i.e. similar preferences, budget constraints, etc.), respondents believing the injuries to be worse than described, and having equal confidence in the prospects for restoring the injured resources through the offered plan, might be willing to pay more. Such a finding would be an indirect verification of scope sensitivity.

D. Calibration

NOAA has proposed a requirement that trustee officials calibrate WTP values derived from CV studies to "actual" WTP. The Department is aware of a number of studies examining the relationship between "hypothetical" WTP and "actual" WTP. In this work, an effort is made to calibrate hypothetical WTP values derived from CV studies to actual WTP. The results of this work are not definitive and are based on CV studies of a lower quality survey design than would be required under NOAA's proposed rule. However, because of uncertainty associated with CV estimates, the Department is soliciting comment on whether the calibration requirement in NOAA's proposed rule should be included in the Department's type B rule. NOAA's proposed rule language requiring calibration is as follows:

> The survey instrument or analysis method shall provide a factor for calibrating hypothetical WTP to actual WTP. The trustee(s) shall document the rationale for the selected calibration factor. If the survey instrument or analysis method fails to provide such a factor or the trustee(s) fails to document the rationale for the selected factor, actual WTP shall be presumed to be one-half of stated WTP. 59 FR 1183.

As NOAA's preamble recognizes, the proposed default factor was included for the purpose of soliciting comment. 59 FR 1146.

The Department seeks comment on a number of questions regarding the calibration of CV results. Is a calibration requirement necessary in light of the other proposed standards for survey instrument design and development, survey administration, and nature of results? Is a calibration requirement warranted given that, but for the difficulties in elicitation, willingness to accept (WTA) would be a more appropriate measure of damages than WTP? The economics literature concludes that, for changes in the provision of a public good, the difference between WTA and WTP depends on the availability of substitute goods. The fewer substitutes available, the greater the difference between WTA and WTP. See W.M. Hanemann, "Willingness to Pay and Willingness to Accept: How Much Can They Differ?" American Economic Review, vol. 81, pp. 635–647 (1991). This result suggests that WTP may significantly understate WTA, the more appropriate measure of damages for natural resource injuries. The Department also seeks comment on: The rationale for calibration or the justification for assuming that hypothetical WTP equals actual WTP; the appropriate default, if any, for a calibration factor; whether a calibration requirement should be included in a technical information document rather than in the rule; and whether inclusion of a calibration requirement is consistent with the *Ohio* v. *Interior* decision upholding the inclusion of all reliably calculated values in a damage assessment.

Finally, the Department solicits comments regarding whether marketing research which attempts to establish relationships between stated intentions to purchase and actual purchase behavior for private goods is relevant to the calibration of CV results for natural resource damage assessments. If commenters believe that research to be relevant, additional comments are solicited regarding the appropriate actual behavior with which similar relationships could be established the hypothetical behavior elicited by CV studies. Commenters should explicitly state the behavioral links between the suggested actual behavior and the hypothetical behavior elicited by CV studies.

The Department wishes to emphasize to those who support the use of a default calibration factor that they should supply specific information to support whatever factor they believe the Department should adopt. The adoption of a definite calibration factor would have to be supported by information in the administrative record.

E. Reporting

NOAA has proposed a standard for reporting the results of CV surveys. The Department solicits comment on whether the same standard should be included in the Department's type B rule. NOAA's proposed rule language, which the Department is considering for its type B rule, is as follows:

> Reporting. The trustee(s) shall ensure that reports of contingent valuation studies discuss the relevant factors identified in the standards pertaining to survey instrument design and development, survey administration, and nature of results in this section. A copy of the survey instrument shall be included. 59 FR 1183.

F. Additional Requests for Comment

1. Prior Knowledge

The objective of conducting a CV study in a natural resource damage assessment is to determine the damages suffered by the public as a result of a discharge of oil or a release of a hazardous substance into the environment. For consideration of lost nonuse values, the relevant public may include the entire U.S. population, or may include a regional subset of the population. Damages may be sustained by each individual in the relevant public, but only a small fraction of the public will actually participate in the survey. The damages an individual suffers from a discharge or release depend on many factors. These include the effects of the discharge or release on natural resources, how much the individual uses the services provided by the injured resources, individual preferences, and the individual's information about the release or discharge and the world in general.

In conducting the survey, it is necessary to educate the respondent about the natural resource itself, the facts surrounding a discharge or release, and the impacts of the discharge or release on the resource. This education process greatly changes the respondent's information set. Upon gaining this new information, respondents are then asked to place a value on the losses suffered. There is general agreement that the losses an individual experiences from a discharge or release after learning the new information are likely to be systematically different than the losses they would experience prior to learning the new information.

Some commenters have argued that the fact that the CV method itself actively changes the information set of an individual prior to valuing the good or service makes it fundamentally different from other economic valuation methodologies. These commenters have questioned whether it is appropriate to extrapolate value estimates based on post-survey information to the general population. Given the assessment's objective of estimating damages owed to the public at large, and the small fraction of the public that actually participates in the survey, some have argued that the relevant information set for the purposes of extrapolating to the general population is the pre-survey information set. One way to move towards value estimates that reflect the information set of the general public is to obtain information in the survey itself regarding the respondents' pre-existing knowledge about the resource and injury to it. Regardless of the value a respondent states after learning information from the survey, those respondents who were not aware of the resource or an injury to it or both would be assigned a value of zero. The rationale for assigning a zero value is that if X percent of the survey respondents did not know about the resource or injury, then X percent of the relevant public is likely to be similarly uninformed. (Implicit is the assumption that individuals who are unaware of the injury at the time of the survey would continue unaware, but for the survey, for the foreseeable future.)

Other commenters have articulated the point of view that the level of respondents' prior information about the injury is irrelevant to the determination of natural resource damages. According to these commenters, an education process increases the reliability of CV by exposing respondents to a uniform set of information regarding the characteristics of the commodity, availability of substitutes, and prices. Consumers undertake a similar education process in private markets to form their demands for other commodities. In this sense, the education process is necessary so that CV is not fundamentally different from other valuation methodologies. Further, these commenters have stated that the fact that an individual is not informed of a specific injury does not mean that he or she suffers no loss as a result of the injury. Natural resources are held in trust for the public. Therefore, WTA rather than WTP would be the most appropriate measure of lost values of injured resources, were it not for the technical difficulties involved in eliciting WTA. Each member of the public has an interest in the injured natural resources being valued regardless of whether he or she is aware of the particular resources and injuries. Therefore, these commenters believe it would be inappropriate to require that CV respondents' values only be counted if they were aware of the injured resources before the survey.

The Department seeks comments on whether it is appropriate to use information regarding pre-existing knowledge of respondents to reassign to zero any positive values expressed by individuals who were unaware of the injuries prior to the survey in the calculation of damages. Commenters who believe it is appropriate to assign zero damages to individuals with limited prior knowledge should articulate the rationale for doing so. Commenters who believe that it is inappropriate to assign zero damages to individuals with limited prior knowledge should articulate their rationale for using the post-survey information set to extrapolate damages to a public that only has pre-survey information.

2. Screening or Threshold Factor

Because of concern by many commenters that CV surveys may be undertaken in damage cases where expected damages may be too small to justify the costs of the CV survey, the Department is seeking comment on the concept of a screening factor that trustee officials should apply in deciding whether to conduct a CV survey of nonuse values in a particular case. Factors currently limiting the use of CV include the high costs of surveys to meet NOAA's proposed standards, trustee budget and staff limitations, and trustee desire for speedy judgment to enable expeditious restoration activities. To employ an additional screening factor, expected damages might be estimated using a small sample with protocols designed to minimize survey costs and, therefore, not necessarily subject to the standards contained in NOAA's proposed rule. Alternatively, expected damages might be estimated by scaling damages estimated in other CV studies. Other methods may be possible. Several possible thresholds have been suggested. These possibilities include setting the threshold for a particular case at the greater of twice the expected cost of a full CV survey or the product of multiplying $5 per household by the number of households expected to hold nonuse values for the resource of concern. The Department is specifically seeking comment on: Whether such a screening factor would be appropriate; what form a factor might take; whether the factor should apply to total damages or only to lost nonuse values; and whether inclusion of a screening factor is consistent with the *Ohio* v. *Interior* decision upholding the inclusion of all reliably calculated values in a damage assessment.

IV. Technical Information Document

The Department intends to work with NOAA and other interested agencies to develop a guidance document on use of CV. This document will provide additional technical information on possible means of satisfying any standards contained in the damage assessment regulations as well as other issues involved in conducting CV studies. Once a draft of the document has been prepared, the Department will publish a notice in the **Federal Register** announcing its availability and soliciting comment.

The Department requests comments on additional tests for determining the reliability of CV estimates for possible inclusion in the technical information document. In order to evaluate any additional tests, the Department requests that commenters provide a complete list of the behavioral assumptions underlying their theoretical framework of rational choice. The Department assumes that commenters will begin with what economists consider to be the generally accepted axioms of neoclassical consumer choice theory or revealed preference theory. The Department requests that commenters clearly state all further assumptions underlying the test and describe the sensitivity of the test's results to the assumptions presented. Second, if commenters are proposing tests that rely on marginal or infra-marginal changes in the scope of the injuries, the commenters should describe how the variation of scope dimensions involved in the test would be quantified. Third, and perhaps most important, the Department asks that commenters explain how any proposed test can be accomplished feasibly within the survey instrument design and development and survey administration standards specified in NOAA's proposed rule. Tests causing CV surveys to violate these standards are themselves unreliable tests. Fourth, the commenter should give examples of how these tests would be structured in the context of a hazardous substance release.

Finally, commenters have expressed concern about the valuation of past nonuse losses. The Department believes that when little time has elapsed since the occurrence of a nonuse loss, trustee officials might conclude that CV respondents' WTP is not likely to have changed significantly. On the other hand, in cases where a great deal of time has elapsed since the occurrence of the nonuse loss, determination of WTP becomes more problematic. Therefore, the Department is soliciting comment on methods for estimating nonuse values lost over a significant amount of time for possible inclusion in the technical information document.

V. Response to Comments

The Department received numerous comments on the July 22, 1993, **Federal Register** notice. The Department appreciates the time and effort expended by the commenters. This notice discusses only those comments concerning the assessment of lost nonuse values or the use of CV. All other comments submitted on the July 22, 1993, **Federal Register** notice are addressed in the notice of final rulemaking to revise the Department's type B rule, which was published on March 25, 1994. 59 FR 14261.

Comment: The comments on the assessment of lost nonuse values were widely divergent but generally fell into two primary schools of thought. One set of commenters thought that trustee officials should have the discretion to decide on a case-by-case basis when lost nonuse values should be included in a damage assessment. These commenters stated that assessment of lost nonuse values is necessary to ensure that the public is made whole for natural resource injuries. One commenter noted that inclusion of lost nonuse values in damage assessments is particularly crucial in the case of injuries to tribal resources because of the special spiritual and cultural significance that natural resources hold for Indian tribes. Some commenters stated that if the Department does not include provisions for assessing lost nonuse values in the regulations, then the Department would send inappropriate economic signals to PRPs and could cause risky activities to be directed toward pristine environments where use values are very low.

Further, this set of commenters thought that CV is a reliable methodology for calculating lost nonuse values. Some of these commenters stated that studies purporting to demonstrate that CV produces unreliable results have failed to distinguish between well and poorly designed CV surveys. A few of these commenters took issue with the Department's discussion in the July 22, 1993, **Federal Register** notice of the potential for bias in CV studies. Some commenters stated that the Department had failed to recognize that the real bias lies in using methodologies that consistently undervalue public losses by computing compensable value based solely on lost use values. Other commenters questioned the Department's statement in the July 22, 1993, **Federal Register** notice that although all valuation methodologies have potential reliability problems, CV, when used to estimate lost nonuse values, poses more significant problems because the per-person bias is multiplied by a larger population. These commenters thought that the Department's line of reasoning, if taken to its logical extreme, would dictate the nonsensical result that only small values should be measured. A number of commenters made reference to the report issued by the NOAA panel. According to these commenters, the NOAA panel report concluded that CV can produce reliable estimates of lost nonuse values.

The other set of commenters thought that the rule should not include any provisions for the assessment of lost nonuse values. These commenters stated that assessment of lost nonuse values is not necessary to compensate the public because trustee officials already have the discretion to assess lost use values in addition to the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources. These commenters stated that assessment of lost nonuse values was inconsistent with general legal principles designed to prevent speculative damages. For example, the commenters noted that courts only allow certain categories of individuals to recover damages for pain and suffering in tort cases. Other commenters stated that allowing assessment of lost nonuse values would be punitive because it amounts to charging PRPs for hurting the public's feelings. Some commenters expressed concern that allowing assessment of nonuse values could drive companies out of business and cause an increase in consumer prices. A few commenters expressed skepticism that nonuse values were actually economic values.

This set of commenters also thought that CV cannot reliably calculate nonuse values. These commenters stated that the results of CV studies are inconsistent with rational decisionmaking. For example, a number of commenters cited CV surveys in which stated WTP did not respond to increases in the commodity being valued. Some commenters stated that the results of CV surveys are overly sensitive to the wording and administration of the survey instrument. Several commenters thought that CV results seem unrealistically high compared to actual contributions to environmental causes. Some commenters stated that such disparities result because CV respondents do not adequately consider their budget constraints when determining their WTP. A number of commenters thought that responses to CV surveys were likely to reflect feelings of vengeance toward PRPs or the warm glow of supporting a worthy cause rather than the respondents' actual WTP to prevent injury to the specific resources in question. Other commenters noted that CV studies require respondents to perform difficult valuation tasks with which they have little prior experience. A few commenters expressed particular concern about the public's ability to provide accurate values for injuries in industrial areas where contamination may exist that is unrelated to the release in question.

Some commenters provided citations to studies purporting to demonstrate the unreliability of CV. A number of commenters stated that even some CV practitioners have called CV experimental. Other commenters noted that the NOAA panel did not conclude that CV could produce estimates of lost nonuse values that were reliable enough to be granted a rebuttable presumption. Rather, according to these commenters, the NOAA panel stated that even if a CV study met a number of strict standards, it would only be reliable enough to serve as a starting point in litigation. Therefore, these commenters thought that even if the Department allowed CV to be used to estimate lost nonuse values, it should not grant the results of CV studies of lost nonuse values a rebuttable presumption. Finally, most of the commenters who thought that CV was unreliable when used to estimate lost nonuse values also thought that this unreliability was the result of fundamental flaws that economists do not know how to correct at this time.

Response: Section 11.80(b) of the March 25, 1994, final rule provides that trustee officials have the discretion to include all or a portion of compensable value in their natural resource damage assessments. 59 FR 14283. *Ohio* v. *Interior* held that the Department's type B rule should allow for the recovery of all reliably calculated lost values of injured resources, including lost nonuse values. 880 F.2d at 464. Therefore, the focus of this notice is not whether lost nonuse values per se are an appropriate component of a natural resource damage assessment. This notice addresses whether lost nonuse values can be reliably calculated and, if so, under what conditions.

The Department acknowledges that a poorly designed or administered CV study, like any poorly designed or administered valuation study, can produce unreliable results. However, based on the evidence received to date, the Department does not believe that CV is a fundamentally flawed methodology. The Department believes that a properly designed and administered CV study can produce reliable estimates of lost nonuse values.

The Department also believes that the results of a CV study of lost nonuse values performed in accordance with whatever standards are ultimately included in the type B rule should receive a rebuttable presumption. CERCLA provides that the natural resource damage assessment regulations are to identify the best available procedures and that assessments performed in accordance with the regulations receive a rebuttable presumption. *Ohio* v. *Interior* further instructed the Department to consider a rule that would permit trustee officials to include all reliably calculated lost values in their damage assessments. The Department believes that a properly designed and administered CV study is a best available procedure and can produce reliable estimates of lost nonuse values.

Comment: There were numerous comments on possible guidance for the conduct of CV studies. A few commenters thought that guidance was unnecessary. Most commenters, though, thought that some guidance was advisable. A number of commenters, noting that NOAA is developing standards based on the NOAA panel report, suggested that the Department postpone development of guidance until NOAA evaluates the report and issues a proposed rule. Some commenters thought that the Department should incorporate NOAA's rulemaking record before deciding on guidance. Other commenters urged the Department to make any proposed guidance available for public review and comment before issuing a final rule.

Response: The Department believes that standards for the use of CV should be included in the type B rule to improve reliability. The Department does not think it is advisable to incorporate NOAA's rulemaking record because that record covers a wide range of issues beyond CV. However, the Department did consider the NOAA panel report. Also, numerous commenters on the Department's July 22, 1993, **Federal Register** notice submitted copies of comments they had provided to NOAA on its rulemaking. The Department agrees that commenters should have an adequate opportunity to review and comment on the standards being considered for the use of CV; therefore, the Department has issued this notice. The Department invites commenters on NOAA's proposed rule to submit comments to the Department on this proposed rule as well.

Comment: A number of commenters responded to the Department's request for suggestions on the content of possible guidance on the use of CV to estimate lost nonuse values. Several commenters suggested that the Department adopt some or all of the standards contained in the NOAA panel report. Some commenters thought that the Department should include both the standards in the NOAA panel report and additional standards. Other commenters offered their own standards. The suggested standards covered six major areas: restrictions on the type of resource for which lost nonuse values could be assessed; restrictions on the relevant population; protection against the influence of improper motives; standards for ensuring that respondents consider all relevant factors when estimating their WTP; standards for determining whether CV results are consistent with basic tenets of rationality; and methods of calibrating CV results.

Some commenters thought that assessment of lost nonuse values should be limited to cases where there have been long-lasting injuries to resources with few substitutes. These commenters stated that such a limitation was necessary to prevent speculative claims. These commenters also agreed with the Department's statement in the July 22, 1993, **Federal Register** notice that in cases where injuries are of short duration and where the injured resources have many substitutes, nonuse losses are likely to be minimal. Other commenters objected to such a limitation noting that there is no empirical evidence that there cannot be a loss of nonuse values in cases where injuries are of short duration or where there are many substitutes for the injured resources. These commenters also noted that such a restriction is unrelated to reliability. Some commenters stated that such a limitation might prevent assessment of lost nonuse values where individual animals had been killed but overall population levels were unaffected. These commenters stated that the public may well experience nonuse losses for the death of the individual animals since each individual animal is, in some sense, irreplaceable.

A number of commenters suggested that trustee officials be required to limit the relevant population to those persons with prior knowledge of the release or discharge and the affected resources. These commenters thought that if individuals did not have prior knowledge of the injury, then they could not have experienced a loss.

Several commenters suggested that the Department develop standards to protect against the influence of improper motives. These commenters expressed concern that respondents might provide answers based on the warm glow of supporting a worthy cause rather than their WTP for injury prevention or resource restoration. These commenters also thought that the Department should ensure that respondents are not motivated by vengeance against PRPs. In particular, some commenters suggested that trustee officials be required to demonstrate that the results of a CV study do not change if respondents are asked their WTP to prevent a naturally occurring injury rather than an injury resulting from human activity.

Other commenters thought that, given the novelty of the task they are asked to perform, CV respondents are unlikely to consider all relevant factors on their own. Therefore, these commenters suggested that respondents be reminded of their budget constraints and the availability of substitutes for the resources being valued.

Numerous commenters thought there should be standards for determining whether CV studies produce results consistent with the basic tenets of rationality. For example, several commenters thought that WTP should increase as the amount of the commodity being valued increases.

Several commenters thought that the Department should develop guidance on how to calibrate hypothetical WTP with actual WTP. Some commenters suggested that trustee officials attempt to collect actual funds from CV respondents and use the results to calibrate stated WTP. Other commenters thought that the Department should develop a formula for calibrating WTP based on a ratio between lost use values and lost nonuse values.

Response: The Department has carefully reviewed the standards offered by the commenters and the standards included in the NOAA panel report. The Department does not believe that assessment of lost nonuse values should be restricted only to cases involving long-lasting injuries to resources with few substitutes. The Department believes that such a restriction would not address the reliability of CV and, therefore, would be inconsistent with *Ohio* versus *Interior.*

With regard to restricting the relevant population to persons with prior knowledge of the discharge or release and the affected resources, the Department has decided to solicit additional comment, as discussed above.

With respect to improper motive, the Department finds no evidence to suggest that warm glow and vengeance are necessarily prevalent in CV studies. The Department believes that when CV respondents are asked their WTP in a credible context they are adequately focused on the commodity of injury prevention or resource restoration rather than some other commodity such as the warm glow of giving or vengeance toward PRPs. NOAA's proposed rule includes a requirement that trustee officials use a choice mechanism that is credible and incentive compatible. Further, the Department believes that vengeance is not a prevalent motivation in a CV study in which respondents are asked how much they would be willing to pay rather than how much a PRP should be required to pay.

The Department agrees that CV respondents may not always consider every relevant factor on their own. NOAA's proposed rule would require that the survey instrument place the commodity to be valued in the context of related natural resources. NOAA's proposed rule would also require respondents to be reminded of their budget constraints prior to being asked their WTP.

The Department also agrees that questions of unreliability arise when studies produce results that are inconsistent with basic tenets of rationality. NOAA's proposed rule includes a standard to ensure that CV survey responses satisfy one important tenet of rationality, namely that WTP increases as the severity of the injuries or the level of effectiveness and timing of the restoration or prevention program increase.

With regard to calibrating hypothetical WTP to actual WTP, NOAA's proposed rule includes a calibration requirement.

Comment: Several commenters responded to the Department's request for comment on the proper placement of any guidance developed for the use of CV. Some commenters thought that any guidance developed by the Department should be placed in the preamble or in a guidance document. These commenters noted that CV is an evolving methodology and expressed concern that placing guidance in the rule could lock in standards that might soon be found to be ill-advised. Other commenters thought that detailed standards should be placed in the rule itself to minimize the risk of unreliable studies being given a rebuttable presumption. Some commenters thought that the establishment of clear standards in the rule was particularly important since there are no generally accepted standards among CV practitioners. These commenters noted that any standards placed in the rule could be updated during biennial reviews.

Response: The Department believes that poorly designed and administered CV studies can pose reliability problems. Therefore, the Department believes that standards for the use of CV should be included in the rule itself to improve the reliability of CV studies that receive a rebuttable presumption. However, the Department recognizes that CV is an evolving methodology. Therefore, the Department believes that only those standards that are unlikely to change over time should be included in the rule and that trustee officials should be given some flexibility in determining how to meet these standards.

Further, as discussed above, the Department intends to work with NOAA and other interested agencies to develop a technical information document on the use of CV. This document will provide additional technical information on possible means of satisfying any standards contained in the rule as well as other issues involved in conducting CV studies.

Comment: A few commenters responded to the Department's request for comments on how to ensure that CV studies are cost-effective and can be performed at a reasonable cost. Some commenters thought that the real issue was how to reduce the cost of performing a CV study, rather than how to ensure cost-effectiveness and reasonable cost. These commenters suggested that the Department fund reference CV studies.

Response: As discussed above, the Department intends to work with NOAA and other interested agencies to develop a technical information document on use of CV. This document should assist trustee officials in conducting reliable studies at a reasonable cost. The Department may consider the feasibility and utility of funding reference CV studies in the future. However, consideration of such studies is beyond the scope of this rulemaking, which is designed solely to comply with *Ohio* versus *Interior.*

Comment: Some commenters stated that trustee officials should provide PRPs with the opportunity to conduct an independent review of all data collected in a CV survey.

Response: The Department agrees that PRPs should have access to all assessment data collected by trustee officials, including any data collected in a CV study. Section 11.90 of the Department's existing type B rule provides that at the conclusion of an assessment, trustee officials must prepare a Report of Assessment that is presented to the PRP. The Report of Assessment includes all test results. NOAA's proposed rule provides that the report of a CV study must include a discussion of the relevant factors identified in the standards pertaining to survey instrument design and development, survey administration, and nature of results, as well as a copy of the survey instrument. If the same standards were added to the Department's type B rule, the report of the CV study would be included in the Report of Assessment. Also, under § 11.91(c) of the Department's existing type B rule, everything in the administrative record of the assessment, including all data collected in a CV survey, would be available for review during the judicial discovery process.

Comment: A few commenters noted that WTA, not WTP, is the correct theoretical measure of lost resource values. These commenters acknowledged that there are practical problems with using CV studies to calculate WTA. However, the commenters stated that the Department should allow trustee officials to use methods that translate WTP into WTA and provided copies of articles describing such methods.

Response: As was stated in the August 1, 1986, preamble to the original rule:

> The Department maintains that willingness to pay and willingness to accept are both theoretically valid criteria for estimating damages to nonmarketed natural resources.

> In addition, the Department continues to maintain that willingness to accept may be the criterion most germane to natural resource damages, since the public has the property right to the injured natural resource. However, the Department also agrees with many of the comments that recognize that the application of the willingness-to-accept criterion can lead to more technical difficulties and uncertainties than the willingness-to-pay criterion. 51 FR 27721.

The Department believes it is inadvisable at this time to revise the rule to allow for use of methods to translate WTP into WTA.

Comment: A few commenters thought that if the Department allows assessment of lost nonuse values, it should not allow assessment of so-called intrinsic values that purport to represent the value of the resource in and of itself rather than the value of the resource to humans.

Response: Compensable value includes only those values lost by the public. Therefore, only human values should be considered in a CV study of lost nonuse values.

Comment: Some commenters stated that if the Department allows assessment of lost nonuse values, it should also require trustee officials to assess the benefits to society of the activity giving rise to the release or discharge and claim only the net loss.

Response: When Congress passed CERCLA and CWA it decided that parties responsible for hazardous substance releases or oil discharges should compensate the public for the resulting natural resource damages, notwithstanding the possible societal benefits of the activities giving rise to the release. CERCLA and CWA were designed to ensure full compensation for natural resource damages resulting from hazardous substance releases or oil discharges. Nothing in the statutes suggests that trustee officials are required to assess the benefits to society of the activity giving rise to the release or discharge and claim only the net loss. Further, many of these benefits are already accounted for in current market activity whereas the costs of the associated release or discharge are not.

Comment: A few commenters disagreed with the Department's statement that CV is the only method available for estimating lost nonuse values. These commenters thought that trustee officials should be allowed to estimate lost nonuse values through analysis of charitable donations, insurance premiums, and conservation expenditures.

Response: Section 11.83(c)(3) of the March 25, 1994, final rule allows trustee officials to use any valuation methodology, regardless of whether it is explicitly listed, provided it measures the public's WTP and satisfies the criteria set forth in § 11.83(a)(2). 59 FR 14286. The Department is currently unaware of any methodology available for the express purpose of estimating economically valued nonuse losses of specific injured resources, other than CV, that meets these specifications.

Comment: Some commenters thought that if assessment of lost nonuse values is allowed, the Department should restrict such assessment to present and future values.

Response: Where little time has elapsed since the occurrence of a nonuse loss, trustee officials might conclude that CV respondents' WTP is not likely to have changed significantly. On the other hand, in cases where a great deal of time has elapsed since the occurrence of the nonuse loss, determination of WTP becomes more problematic. Therefore, as discussed above, the Department is soliciting comment on methods for estimating nonuse values lost over a significant amount of time for possible inclusion in a technical information document.

Comment: A few commenters requested that the Department clarify that even if a CV study of lost nonuse values met any conditions set forth in the natural resource damage assessment regulations, it would still have to meet judicial standards for admissibility of evidence. Some commenters cited case law for the proposition that CV studies of lost nonuse values do not meet judicial standards for admissibility of evidence. *State of Idaho* v. *Southern Refrigerated Transport Inc.*, No. 88–1279, slip op. (D. Idaho Jan. 24, 1991) (*Idaho* v. *Southern Refrigerated Transport*).

Response: CERCLA and *Ohio* v. *Interior* mandate that the natural resource damage assessment regulations include the best available procedures for reliably calculating lost values of injured resources. Therefore, the Department believes that any CV study of lost nonuse values performed in accordance with these regulations should satisfy judicial standards for admissibility of evidence.

The Department is unaware of any case that has held CV studies per se to be inadmissible in court. *Idaho* v. *Southern Refrigerated Transport* addressed the use of a particular CV study in a case where the natural resource damage assessment regulations were not followed. The study had been conducted not for the purposes of the specific case but rather to guide a utility council in making operational changes in a hydropower system. Slip op. at 20. The court did not rule that the study was inadmissible. However, the court did find that the study was not sufficiently persuasive to sustain the claim for lost nonuse values, noting that the survey questions were aimed at doubling fish runs from 2.5 million to 5 million whereas only 1,688 fish had actually been lost due to the specific release in question. Id.

National Environmental Policy Act, Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Orders 12866, 12630, 12778, and 12612

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act (43 U.S.C. 4332(2)(C)) has been prepared.

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. As the rule applies to natural resource trustees, it is not expected to have an effect on a substantial number of small entities.

It has been determined that this rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

This final rule has been reviewed under Executive Order 12866 and has been determined to constitute a significant regulatory action. However, because of the difficulty of evaluating the effects of alternatives to this rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget has waived preparation of the assessments described in sections 6(a)(3)(B) and 6(a)(3)(C) of Executive Order 12866 for the final rule.

It has been determined that this rule does not have takings implications under Executive Order 12630. The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. It has been determined that this rule does not have federalism implications under Executive Order 12612.

Dated: April 28, 1994.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 94-10636 Filed 5-3-94; 8:45 am]

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federal register

Wednesday
May 4, 1994

Part III

The President

Executive Order 12913—Revocation of Executive Order No. 12582

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Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

Presidential Documents

Title 3—
The President

Executive Order 12913 of May 2, 1994

Revocation of Executive Order No. 12582

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 1440 of title 8, United States Code, and in consideration of *Matter of Reyes*, 910 F.2d 611 (9th Cir. 1990), I hereby order as follows:

Section 1. Executive Order No. 12582 is revoked and shall be treated as void, effective February 2, 1987.

Sec. 2. Revocation of Executive Order No. 12582 is not intended to affect the status of anyone who was naturalized pursuant to the terms of that order prior to the date of publication of this order in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
May 2, 1994.

[FR Doc. 94–10932
Filed 5–3–94; 11:40 am]
Billing code 3195–01–P

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federal register

Wednesday
May 4, 1994

Part IV

Advisory Committee on Human Radiation Experiments

Open Meeting; Notice

ADVISORY COMMITTEE ON HUMAN RADIATION EXPERIMENTS

Open Meeting

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATES: May 18, 1994, 9 a.m.–5 p.m., May 19, 1994, 9 a.m.–3 p.m.

PLACE: The Ramada Plaza Hotel, 10 Washington Circle, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Anna Mastroianni, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., suite 600, Washington, DC 20036. Telephone: (202) 254–9795.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Wednesday, May 18, 1994

9:00 a.m. Call to Order and Opening Remarks
9:15 a.m. Briefing on Background Issues, Advisory Committee Members
10:45 a.m. Break
11 a.m. Briefing on Background Issues, Advisory Committee Members (continued)
12:15 p.m. Lunch
1:30 p.m. Discussion, Status and Strategies of Document Collection and Review
3 p.m. Break
3:15 p.m. Public Comment
5 p.m. Meeting Adjourned Thursday, May 19, 1994
9 a.m. Opening Remarks
9:15 a.m. Discussion, Status and Strategies of Document Collection and Review (continued)
10:45 a.m. Break
11:00 a.m. Discussion, Status and Strategies of Document Collection and Review (continued)
12:15 p.m. Lunch
1:30 p.m. Discussion, Status and Strategies of Document Collection and Review (continued)
2:45 p.m. Future Meeting(s)
3 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement within the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Dated: May 3, 1994.

Stephen R. Neuwirth,
Associate Counsel to the President.

[FR Doc. 94–10972 Filed 5–3–94; 1:31 pm]

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Federal Register
Vol. 59, No. 85
Wednesday, May 4, 1994

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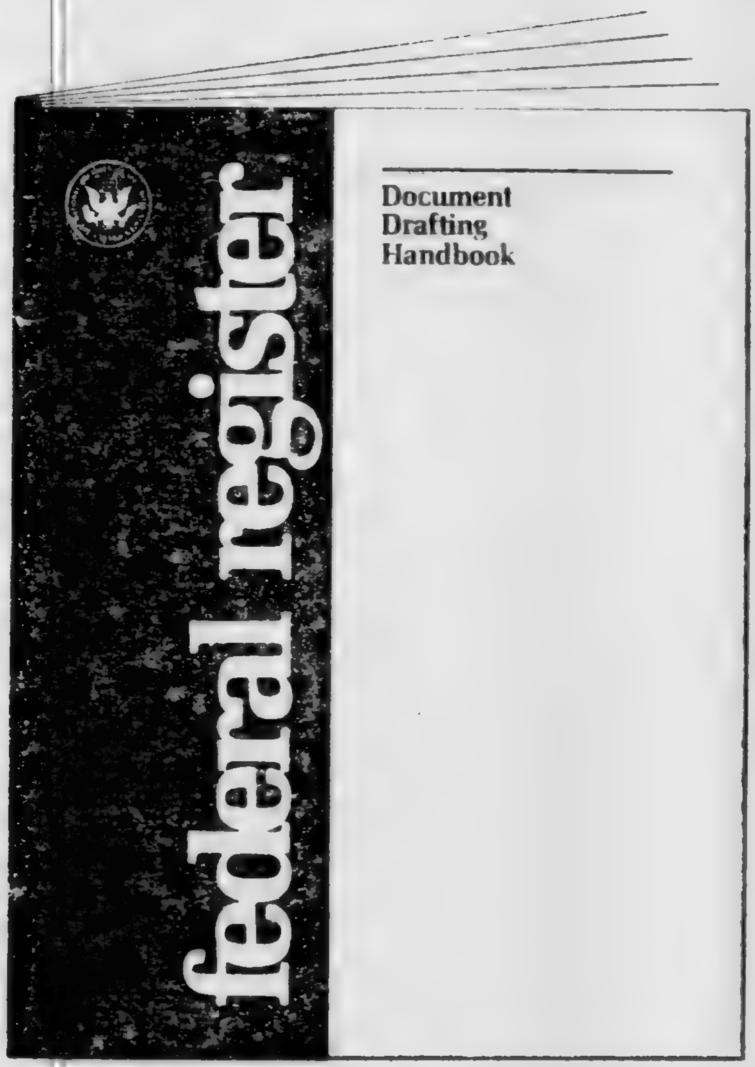

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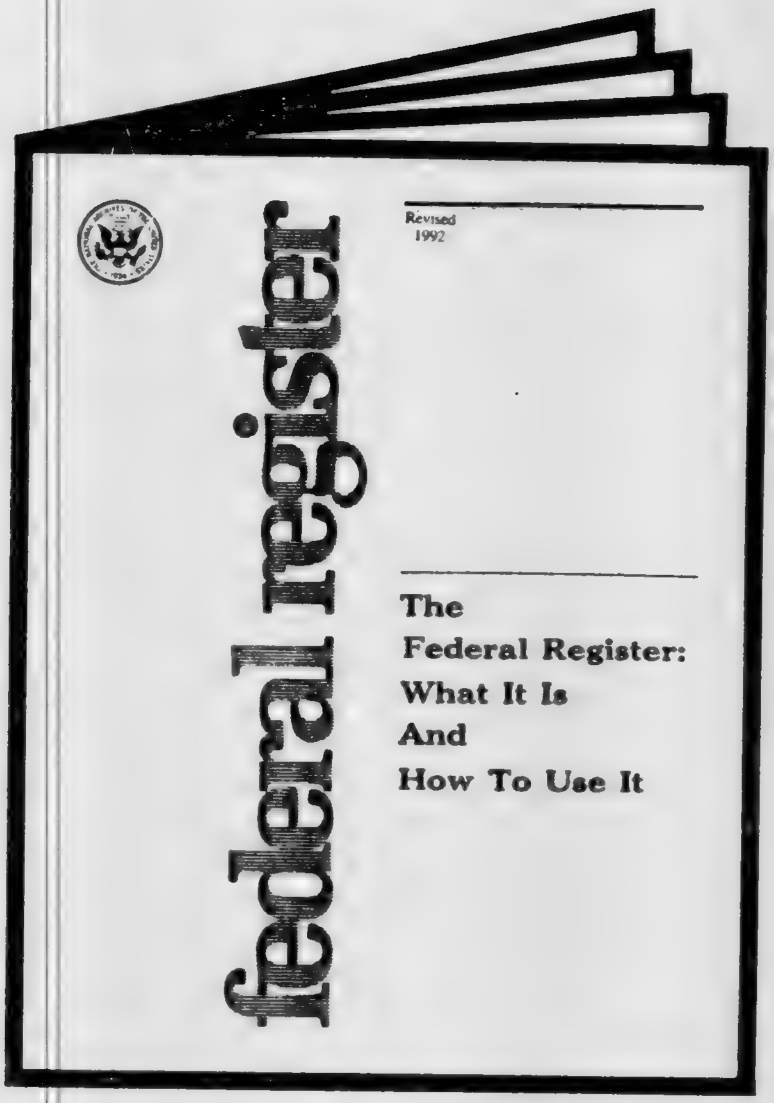

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 12

RIN 3150 AE61

Equal Access to Justice Act: Implementation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by adding new provisions designed to implement the Equal Access to Justice Act (EAJA). The EAJA provides for the award of fees and expenses to certain individuals and businesses that prevail in agency formal adjudicatory proceedings in which the agency's position is determined not to have been substantially justified.

EFFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1634.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments Received.
III. Administrative Statements.

I. Background

The Equal Access to Justice Act (EAJA) became law on October 21, 1981 (5 U.S.C. 504). The EAJA authorizes agencies to award attorney fees and other expenses to parties that prevail over an agency in certain agency proceedings under specified circumstances. Generally, for an award to be made, the proceeding must be one that is "required by statute to be determined on the record." *See, Ardestani* v. *U.S. Department of Justice,* ——— U.S. ———, 112 S.Ct. 515 (1991).

On October 28, 1981 (46 FR 53189), the NRC published a proposed rule designed to implement the EAJA in the **Federal Register**. However, serious doubt developed as to the need for the regulations. A significant consideration in this regard was the impact of a statutory bar against the use of funds appropriated to the NRC "to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings." This provision first appeared in the Energy and Water Development Appropriations Act of 1981 (Pub. L. No. 966–367, Sec. 502, 94 Stat. 1344, 1345 (1980)), and has continued to appear each year in subsequent NRC appropriation acts. In addition, case law developed in the 1980's indicating that the Commission would receive judicial support if it determined that no NRC license proceeding of any kind is covered by the EAJA.

With the enactment of the Inspector General Act Amendments of 1988 (Pub. L. 100–504, 1102 Stat. 2515), which established an Office of the Inspector General in the NRC, the NRC became subject to the Program Fraud Civil Remedies Act (PFCRA), 31 U.S.C. ch. 38. Hearings under the Program Fraud Civil Remedies Act are expressly covered by the EAJA, necessitating the issuance of EAJA regulations by the NRC. However, because of the length of time that had gone by since the NRC issued the 1981 proposed EAJA rule, the Commission replaced it with a new proposed rule, published on August 2, 1993 (58 FR 41061). The new proposed rule was essentially similar to a model rule suggested by the Administrative Conference of the United States (ACUS) for agency adoption. (May 6, 1988, 51 FR 16665.)

II. Responses to Comments Received

In response to the August 2, 1993 proposed rule, the NRC received one set of comments from ACUS and one set from the Nuclear Management and Resources Council (NUMARC). The NRC's consideration of the comments follows.

A. Time Deadlines

1. Decision on the Petition for Increase of Maximum Rate for Attorney Fees

Comment. ACUS recommended that the rule provide a specific time frame for agency action on a petition for rulemaking to increase the maximum rate for attorney fees.

Response. The EAJA provides a $75 hourly ceiling on attorney fees, but allows agencies to raise the statutory ceiling by regulation. The proposed rule provides that any person may file with the Commission a petition for rulemaking to increase the $75 maximum hourly rate for attorney fees, and refers to 10 CFR 2.802 and 2.803 for the procedures to be followed with respect to such petitions. Neither the proposed rule nor 10 CFR 2.802 nor 10 CFR 2.803 provides a specific time frame for agency action on the petition for rulemaking. A sentence has been added to 10 CFR 12.107 requiring the Commission to determine what action it will take on the petition within 90 days after the petition is filed.

2. Decision on the Application for Award of Attorney Fees

Comment. ACUS recommended that the rule provide a specific time frame for the adjudicative officer to issue an initial decision on the application for award of attorney fees.

Response. 10 CFR 12.307 of the proposed rule states requirements for the adjudicative officer's initial decision on the application for award of attorney fees, but does not prescribe a time limit for the adjudicative officer to issue the decision. A sentence has been added to 10 CFR 12.307 requiring the initial decision to be issued within 90 days after completion of proceedings on the application, but permitting the adjudicative officer to extend the time limit after notice to the parties of the reason for the delay. Authority is provided for the adjudicative officer to extend the time period in order to prevent the interruption of cases presenting pressing health and safety concerns. The NRC expects that extensions will be issued sparingly.

B. Exhaustion of Administrative Remedies

Comment. ACUS stated that if the NRC believes that a request for administrative review should be a prerequisite to judicial review, it should recast 10 CFR 12.308 (Agency review) in light of the Supreme Court's decision in *Darby* v. *Cisneros,* ______ U.S. ______, 113 S.Ct. 2539 (June 21, 1993).

Response. Within the last year, the Supreme Court cast new light on the requirements for exhaustion of administrative remedies before appealing an agency decision to the courts. In *Darby* v. *Cisneros*, the Court held that an agency cannot insist on exhaustion of intra-agency appeals prior to judicial review unless the agency promulgates rules that require intra-agency appeals and stay the effect of agency decisions during such appeals. The Commission believes that for purposes of judicial and administrative economy a request for administrative review should be a prerequisite to judicial review, particularly because the NRC frequently entertains proceedings that encompass highly technical matters.

The cross-reference in 10 CFR 12.308 to the review procedures set out in 10 CFR 2.786 should be sufficient to satisfy the commenter that the NRC has addressed the *Darby* case ruling in these regulations, because 10 CFR 2.786(b)(1) expressly provides that the filing of a petition for review is mandatory for a party to exhaust its administrative remedies. Nevertheless, it may be considered fairer notice to state the requirement in 10 CFR 12.308 itself. Therefore, the NRC has amended 10 CFR 12.308 to state unambiguously that an aggrieved party is required to seek Commission review of the adjudicative officer's initial decision.

The application of the part of the Court's opinion on staying the effect of the initial decision seems inapposite in the context of an EAJA administrative proceeding, because it makes little sense to speak of a stay of an initial decision denying the application for award of attorney fees, which is the type of decision most likely to be appealed. A successful applicant for an award is not likely to appeal unless he or she is dissatisfied with the amount of the award. This poses a very different type of situation from that in the *Darby* case, where the Court had before it an agency decision debarring petitioners from participating in Federal programs. Nevertheless, in what is perhaps an excess of caution, we have included in NRC's EAJA rule a statement on staying the effect of the initial decision during an appeal to the Commission.

C. Proceedings Subject to the EAJA

Comment. NUMARC commented that the rule should be revised to make clear that the only proceedings subject to NRC's EAJA rule are those conducted pursuant to the Program Fraud Civil Remedies Act.

Response. The EAJA applies only to an agency adversary adjudication. 50 U.S.C. 504(a). The term "adversary adjudication" is defined by 5 U.S.C. 504(b)(1)(C) to mean an appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals, a hearing conducted under 31 U.S.C. ch. 38 (PFCRA), and an adjudication under 5 U.S.C. 554 (the Administrative Procedure Act). Section 554 of the Administrative Procedure Act expressly states that (with certain exceptions) it applies "in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing."

A proceeding for the purpose of granting or renewing a license is expressly excluded from EAJA coverage by 5 U.S.C. 504(b)(1)(C). However, there is no express exclusion of proceedings suspending, revoking, or amending a license, including that for a nuclear reactor. As indicated in the Supplementary Information for NRC's proposed EAJA rule, the question of such proceedings was at least addressed partially in 1983, when a materials license amendment proceeding was judicially held as not being required by statute to be conducted "on the record." In that case, the court declined to read section 189(a) of the Atomic Energy Act of 1954 (AEA) as requiring an on-the-record hearing, in the absence of clear Congressional intent to trigger the formal on-the-record hearing provisions of the Administrative Procedure Act. *West Chicago, Ill.* v. *U.S. Nuclear Regulatory Commission*, 701 F.2d 632 (1983). Since that time, the Commission has gone on record that it interprets section 189a of the AEA as not requiring formal hearings in reactor licensing proceedings. *En Banc* Brief for Respondents dated August 30, 1991 (filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 89–1381, *Nuclear Information and Resource Service* v. *NRC*, at pp 32–38).

In light of the above, it is not unreasonable to conclude that no NRC proceeding other than an appeal to a board of contract appeals under the Contract Disputes Act or a Program Fraud Civil Remedies Act hearing is covered by the EAJA. Nevertheless, the Commission does not wish to frame its EAJA regulations in such a way as to preclude potential applicants for attorney fee awards from raising the issue of EAJA coverage, if they can make a good faith argument that the proceeding in which they have been involved falls under the EAJA. In addition, there is always the possibility of new enactments that could make the EAJA applicable to proceedings not previously entertained by the agency. Therefore, the Commission has decided not to state that the NRC's EAJA rule applies only to a proceeding under the Program Fraud Civil Remedies Act.

Nevertheless, the Commission has decided to amend 10 CFR 12.101, 12.102, and 12.103 to clarify its intent regarding the scope of coverage of the regulations. The amendment does not make express reference to any type of proceedings other than appeals under the Contract Disputes Act and adjudications conducted pursuant to the Program Fraud Civil Remedies Act, but it contains a general provision that will encompass other types of proceedings that may fall within the parameters of the EAJA. This leaves room for case-by-case determinations on applicants' claims of coverage in areas that have not been addressed previously by statute, case law, or express Commission interpretation.

III. Administrative Statements

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule are exempt from the Paperwork Reduction Act of 1980 (44 U.S.C. 3518(c)(1)).

Regulatory Analysis

The EAJA provides that individuals and businesses that meet certain net worth and other requirements and prevail over the NRC in an adversary adjudication in which the NRC's position is not substantially justified may be awarded fees and expenses incurred in connection with the proceeding. Recent events, most notably the NRC's publication of a final rule implementing the Program Fraud Civil Remedies Act and actions thereunder, suggest that it is necessary for the NRC to adopt procedures to govern the receipt and determination of applications for EAJA fees. The procedures adopted mirror in important respects the model rule promulgated by the ACUS. The NRC has fulfilled the statutorily mandated process of consultation between the Chairman of the ACUS and the agency with respect to EAJA implementing procedures. See 5 U.S.C. 504(c)(1). The Commission believes that the procedures adopted are preferable to other procedural requirements that might be imposed.

The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The rule merely will establish a procedural framework for the submission and determination of applications for fees and expenses incurred in participating in NRC adjudications and will not itself impose significant economic benefits or burdens.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 12

Adversary adjudications, Award, Equal Access to Justice Act, Final disposition, Net worth, Party.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting a new 10 CFR part 12.

1. A new part 12 is added to 10 CFR chapter I to read as follows:

PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart A—General Provisions

Sec.

12.101 Purpose.
12.102 When the EAJA applies.
12.103 Proceedings covered.
12.104 Eligibility of applicants.
12.105 Standards for awards.
12.106 Allowable fees and expenses.
12.107 Rulemaking on maximum rates for attorney fees.
12.108 Awards against other agencies.
12.109 Decisionmaking authority.

Subpart B—Information Required From Applicants

12.201 Contents of application.
12.202 Net worth exhibit.
12.203 Documentation of fees and expenses.
12.204 When an application may be filed.

Subpart C—Procedures for Considering Applications

12.301 Filing and service of documents.
12.302 Answer to application.
12.303 Reply.
12.304 Comments by other parties.
12.305 Settlement.
12.306 Further proceedings.
12.307 Decision.
12.308 Agency review.
12.309 Judicial review.
12.310 Payment of award.

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

Subpart A—General Provisions

§ 12.101 Purpose.

The purpose of this Part is to state the regulatory requirements for award of attorney fees to eligible individuals and entities in certain administrative proceedings before the Nuclear Regulatory Commission, in implementation of the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA), which provides for the award of attorney fees and other expenses to parties to "adversary adjudications", as defined in 5 U.S.C. 504(b)(1)(C). In general, an "adversary adjudication" is an adjudication that is required by statute to be determined on the record after opportunity for hearing before an agency of the United States and in which the position of the agency, or any component of the agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. However, some agency adjudications are expressly excluded from coverage by 5 U.S.C. 504 (e.g., an adjudication for the purpose of granting or renewing a license) even though they fall within this general definition, and certain appeals before an agency board of contract appeals and Program Fraud Civil Remedies Act hearings conducted under 31 U.S.C. ch. 38 are expressly covered.

An eligible party may receive an award in an adversary adjudication when the party prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The regulations in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 12.102 When the EAJA applies.

The EAJA applies to any covered adversary adjudication pending or commenced before the Commission on or after August 5, 1985.

§ 12.103 Proceedings covered.

(a) The EAJA applies to the following proceedings:

(1) Hearings under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–12);

(2) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607); and

(3) Adversary adjudications conducted by the Commission pursuant to any other statutory provision that requires a proceeding before the Nuclear Regulatory Commission to be so conducted as to fall within the meaning of "adversary adjudication" under 5 U.S.C. 504(b)(1)(C).

(b) The Commission's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA. Whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 12.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 12.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or a significant and discrete substantive portion of the proceeding, unless the position of the Commission over which the applicant has prevailed was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the Commission upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Commission's position was substantially justified is on the Commission counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 12.106 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under this part may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for these expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Other factors that bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 12.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some, or all of the types of proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with the requirements of 10 CFR 2.802. The petition should identify the rate the petitioner believes the Commission should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. Within 90 days after the petition is filed, the Commission will determine whether it will initiate a rulemaking proceeding, deny the petition, or take other appropriate action on the petition. The Commission will act on the petition in accordance with 10 CFR 2.803.

§ 12.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 12.109 Decisionmaking authority.

Unless otherwise ordered by the Commission in a particular proceeding, each application under this part shall be assigned for decision to the official or decisionmaking body that entered the decision in the adversary adjudication. That official or decisionmaking body is referred to in this part as the "adjudicative officer."

Subpart B—Information Required From Applicants

§ 12.201 Contents of application.

(a) An application for an award of fees and expenses under the EAJA shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) The applicant attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization

described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under this section; or

(2) The applicant states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 12.202 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 12.104(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, 10 CFR part 9, subpart A.

§ 12.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed, pursuant to § 12.306 of this part.

§ 12.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the NRC and to the courts.

(b) If after the filing of an application for an award, review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Subpart C—Procedures for Considering Applications

§ 12.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 12.202(b) for confidential financial information.

§ 12.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the NRC against which an award is sought may file an answer to the application. Unless the NRC counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the NRC counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by the NRC counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the NRC counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, the NRC counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 12.306.

§ 12.303 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 12.306.

§ 12.304 Comments by other parties.

Any party to a proceeding other than the applicant and the NRC counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires participation in order to permit full exploration of matters raised in the comments.

§ 12.305 Settlement.

The applicant and the NRC counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the NRC's standard settlement procedure. If a prevailing party and the NRC's counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 12.306 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the NRC counsel, or on the adjudicative officer's own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 12.307 Decision.

(a) The adjudicative officer shall issue an initial decision on the application within 90 days after completion of proceedings on the application. If the adjudicative officer fails to issue an initial decision within 90 days, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(b) The initial decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the NRC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 12.308 Agency review.

(a) Either the applicant or the NRC counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with the Commission's review procedures set out in 10 CFR 2.786. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review. If neither the applicant nor NRC counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the NRC forty (40) days after it is issued.

(b) Notwithstanding anything to the contrary in any other part of the Commission's regulations, the initial decision shall be inoperative (i.e., the decision shall not be final and any award made shall not be paid) until the later of—

(1) The expiration of the forty-day period provided in paragraph (a) of this section; or

(2) If within the forty-day period provided in paragraph (a) of this section the Commission elects to review the decision, the Commission's issuance of a final decision on review of the initial decision.

(c) Whether to review a decision on its own motion is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 12.309 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 12.310 Payment of award.

An applicant seeking payment of an award shall submit to the appropriate official of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Where the award is granted against the Commission, the applicant shall make the submission to the Director, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The NRC will pay the amount awarded to the applicant within 60 days.

Dated at Rockville, Maryland, this 29th day of April 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–10729 Filed 5–4–94; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U, and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and additions to the Foreign List.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to and deletions from the OTC List. This supersedes the last OTC List which was effective February 14, 1994. Additions and deletions to the OTC List were last published on February 1, 1994 (59 FR 4549). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under a Securities and Exchange Commission (SEC) rule. Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the additions to the Board's Foreign List, which was last published on February 1, 1994 (59 FR 4549), and became effective February 14, 1994. There are no deletions from the Foreign List. The Foreign List includes those foreign securities that meet the criteria in section 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c), and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and additions to the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

- ADVACARE, INC.
  - $.01 par common
- AMERICAN DENTAL TECHNOLOGIES, INC.
  - $.01 par common
- AMERICAN FILM TECHNOLOGIES, INC.
  - $.002 par common
- AMERICAN INTERNATIONAL PETROLEUM CORPORATION
  - Rights (expire 02–11–94)
- AMERICAN NUCLEAR CORPORATION
  - $.04 par common
- BANK OF SAN PEDRO
  - No par common
- BIRD CORPORATION
  - $1.85 par cumulative convertible preferred
- BOONTON ELECTRONICS CORPORATION
  - $.10 par common
- CARETENDERS HEALTH CORPORATION
  - $.02 par common
- CENTOCOR, INC.
  - 7.25% convertible subordinated debentures
- CHEMFIX TECHNOLOGIES, INC.
  - $.01 par common
- COMMERCEBANCORP (California)
  - No par common
- CRAFTMATIC INDUSTRIES, INC.
  - $.01 par common
- DOVER REGIONAL FINANCIAL SHARES
  - No par shares of beneficial interest
- EMBRACE SYSTEMS CORPORATION
  - $.001 par common
- ENZYMATICS, INC.
  - $.01 par common
- FIRST FAMILY BANK, FSB (Florida)
  - $1.00 par common
- FONIC, INC.
  - $.01 par common
- IKOS SYSTEMS, INC.
  - $.01 par common
- INDEPENDENCE BANCORP, INC. (New Jersey)
  - $1.00 par common
- INNOVATIVE GAMING CORPORATION OF AMERICA
  - Warrants (expire 05–28–96)
- INSTRUMENTARIUM CORPORATION
  - American Depositary Receipts for non-restricted B shares
- NATIONAL LOAN BANK (Texas)
  - $.01 par common
- PACIFIC INTERNATIONAL SERVICES CORPORATION
  - No par common
- PETTIBONE CORPORATION
  - $.01 par common
- PUBLISHERS EQUIPMENT CORPORATION
  - No par common
- QUME CORPORATION
  - $.001 par common
- ROCKY MOUNTAIN HELICOPTERS, INC.
  - $.02 par common
- SANBORN, INC.
  - Class A, warrants (expire 07–02–97)
- SEVEN OAKS INTERNATIONAL, INC.
  - $.10 par common
- SPROUSE-REITZ STORES, INC.
  - Non-voting, $10.00 par common
- STAFF BUILDERS, INC.
  - Warrants (expire 01–31–95)
- SUNLITE, INC.
  - $.20 par common
- URANIUM RESOURCES, INC.
  - Warrants (expire 02–26–94)
- VACU-DRY COMPANY
  - No par common
- VIDECART, INC.
  - $.01 par common
- WAREHOUSE CLUB, INC.
  - $.10 par common
- WASHINGTON SCIENTIFIC INDUSTRIES, INC.
  - $.10 par common
- WESTWOOD ONE, INC.
  - 6.75% convertible subordinated debentures
- WOLF FINANCIAL GROUP, INC.
  - $.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

- AGCO CORPORATION
  - $.01 par common Depositary Shares
- BOULEVARD BANCORP, INC.
  - $.04 par common
- CALIFORNIA WATER SERVICE COMPANY
  - No par common
- CARE ENTERPRISES, INC.
  - $.01 par common
- CENTRAL HOLDING COMPANY

No par common

- CHATTAHOOCHEE BANCORP, INC.
  - $1.00 par common
- CITIZENS NATIONAL CORPORATION (Florida)
  - $.01 par common
- COMMERCIAL BANCORPORATION OF COLORADO
  - Class A, $1.00 par common
- CONSTELLATION BANCORP (New Jersey)
  - $5.00 par common
- CORPORATE SOFTWARE INCORPORATED
  - $.01 par common
- ELDEC CORPORATION
  - $.05 par common
- ESB BANCORP, INC. (Pennsylvania)
  - $.01 par common
- FIRST FIDELITY BANCORP, INC. (West Virginia)
  - $1.25 par common
- FIRST SAVINGS BANK FSB, THE (South Carolina)
  - $1.00 par common
- FIRST UNITED BANK GROUP, INC.
  - $5.00 par common, Series A, $1.00 par convertible preferred
- FLORIDABANK, A FEDERAL SAVINGS BANK
  - $1.00 par common
- FRONTIER ADJUSTERS OF AMERICA, INC.
  - $.01 par common
- GREENWICH FINANCIAL CORPORATION
  - $.01 par common
- HAMPTONS BANCSHARES INC. (New York)
  - $4.00 par common
- HUMPHREY, INC.
  - No par common
- INTERNATIONAL HOLDING CAPITAL CORP.
  - $1.00 par common
- JACKSON COUNTY FEDERAL BANK, A FEDERAL SAVINGS BANK (Oregon)
  - $1.00 par common
- McGAW, INC.
  - $1.00 par common
- MEDCO CONTAINMENT SERVICES, INC.
  - 6% convertible subordinated debentures
- MEDICAL MARKETING GROUP INC.
  - $.01 par common, 7.5% convertible subordinated debentures
- MOUNTAINEER BANKSHARES OF WEST VIRGINIA
  - $2.50 par common
- NORTH AMERICAN NATIONAL CORPORATION
  - $.01 par common
- PENN CENTRAL BANCORP, INC.
  - $1.25 par common
- QUALITY PRODUCTS, INC.
  - $.00001 par common
- QUANTUM RESTAURANT GROUP, INC.
  - $.01 par common
- RED EAGLE RESOURCES CORPORATION
  - $.10 par common
- REFAC TECHNOLOGY DEVELOPMENT CORPORATION
  - $.10 par common
- RHODES, INC.
  - No par common
- TERMINAL DATA CORPORATION
  - $1.00 par common
- THOUSAND TRAILS, INC.
  - No par common
- TITAN HOLDINGS, INC.
  - $.01 par common
- TITAN WHEEL INTERNATIONAL, INC.
  - No par common
- TOCOR II INC.
  - Units (expire 12–31–95)
- UNITED FEDERAL BANCORP, INC.
  - $.01 par common
- UNITED POSTAL BANCORP, INC.
  - $.01 par common
- VMX INC.
  - $.01 par common

Additions to the List of Marginable OTC Stocks

- 1ST UNITED BANCORP (Florida)
  - $.01 par common
- ADVANCED NMR SYSTEMS, INC.
  - $.01 par common
- AES CHINA GENERATING CO., LTD.
  - Class A, $.01 par common
- AIR EXPRESS INTERNATIONAL CORPORATION
  - $.01 par common
- AK STEEL HOLDING CORPORATION
  - $.01 par common
- ALANTEC CORPORATION
  - $.001 par common
- AMBANC CORPORATION
  - $10.00 par common
- AMERICAN INTERNATIONAL PETROLEUM CORPORATION
  - Class A, warrants (expire 03–01–95)
- AMERICAN UNITED GLOBAL, INC.
  - Warrants (expire 02–17–96)
- ANCHOR GAMING
  - $.01 par common
- ANESTA CORPORATION
  - $.001 par common
- APPLIED BIOMETRICS, INC.
  - $.01 par common
- APPLIED DIGITAL ACCESS, INC.
  - No par common
- ARDEN INDUSTRIAL PRODUCTS, INC.
  - $.01 par common
- ARYT INDUSTRIES LTD.
  - Ordinary Shares (NIS $1.00)
- BATTERY TECHNOLOGIES, INC.
  - No par common
- BAY RIDGE BANCORP, INC. (New York)
  - $.10 par common
- BERKLEY, W. R. CORPORATION
  - Depositary Shares
- BIOCRYST PHARMACEUTICALS, INC.
  - $.01 par common
- BIOSEPRA INC.
  - $.01 par common
- BLIMPIE INTERNATIONAL, INC.
  - $.01 par common
- BORROR CORPORATION
  - No par common
- BROAD NATIONAL BANCORPORATION (New Jersey)
  - 8–1/2% cumulative convertible preferred
- BUGABOO CREEK STEAK HOUSE, INC.
  - $.01 par common
- CAI WIRELESS SYSTEMS, INC.
  - No par common
- CAMERON ASHLEY INC.
  - No par common
- CANTEL INDUSTRIES, INC.
  - $.10 par common
- CAREER HORIZONS, INC.
  - $.01 par common
- CELADON GROUP, INC.
  - $.033 par common
- CERPLEX GROUP INC., THE
  - $.001 par common
- CHAMPPS ENTERTAINMENT, INC.
  - $.01 par common
- CHARTER BANK, S.B. (Illinois)
  - $1.00 par common
- CHARTER FEDERAL SAVINGS BANK (Virginia)
  - $.01 par common
- CIBER, INC.
  - $.01 par common
- CIDCO INCORPORATED
  - $.01 par common
- CITI-BANCSHARES, INC. (Florida)
  - $.01 par common
- CMG INFORMATION SERVICES, INC.
  - $.01 par common
- CNS, INC.
  - $.01 par common
- COMMONWEALTH FEDERAL SAVINGS BANK (Pennsylvania)
  - $.10 par common
- CONCORD HOLDING CORPORATION
  - $.01 par common
- CONESTOGA BANCORP, INC. (New York)
  - $.01 par common
- CONSEP, INC.
  - $.01 par common
- CONWEST EXPLORATION COMPANY LTD.
  - No par common
- COPART, INC.
  - No par common
- DAKOTAH, INCORPORATED
  - $.01 par common
- DAKTRONICS, INC.
  - No par common
- DEFLECTA-SHIELD CORPORATION
  - $.01 par common
- DELRINA CORPORATION
  - No par common
- DIALOGIC CORPORATION
  - No par common
- DIGITAL LINK CORPORATION
  - No par common
- DOLCO PACKAGING CORPORATION
  - $.01 par common
- DRYPERS CORPORATION
  - $.001 par common
- DSP GROUP INC.
  - $.001 par common
- ECOGEN INC.
  - Warrants (expire 01–31–98)
- EFFECTIVE MANAGEMENT SYSTEMS, INC.
  - $.01 par common
- ELECTRIC FUEL CORPORATION
  - $.01 par common
- ELECTRONIC FAB TECHNOLOGY CORPORATION
  - $.01 par common
- ELTRON INTERNATIONAL, INC.
  - No par common
- EMMIS BROADCASTING CORPORATION
  - Class A, $.01 par common
- EMPLOYEE SOLUTIONS, INC.
  - No par common
- ENCORE COMPUTER CORPORATION
  - $.01 par common
- EQUITY INNS, INC.
  - $.01 par common
- EQUITY MARKETING, INC.
  - $.001 par common
- ESMOR CORRECTIONAL SERVICES, INC.
  - $.01 par common
- FEDERAL INDUSTRIES LTD.
  - Class A convertible common
- FINANCIAL BENEFIT GROUP INC.
  - Class A, $.01 par common
- FINISHMASTER, INC.
  - $1.00 par common
- FIRST ALERT, INC.

$.01 par common
FIRST COMMERCE BANCSHARES, INC. (Nebraska)
Class B, $.20 par common
FIRST FINANCIAL BANCORP, INC. (Illinois)
$.10 par common
FIRST INDEPENDENCE CORPORATION
$.01 par common
FIRST PATRIOT BANKSHARES CORPORATION (Virginia)
$2.50 par common
FIRST-KNOX BANC CORP. (Ohio)
$3.125 par common
FLEXTRONICS INTERNATIONAL LTD.
$.01 par common
FUEL-TECH, N.V.
$.01 par common
GAMETEK, INC.
$.01 par common
GASONICS INTERNATIONAL CORPORATION
$.001 par common
GLOBAL VILLAGE COMMUNICATION, INC.
$.001 par common
GP FINANCIAL CORPORATION
$.01 par common
GRAFF PAY-PER-VIEW INC.
$.01 par common
GREAT FINANCIAL CORPORATION
$.01 par common
GREAT LAKES AVIATION, LTD.
$.01 par common
GTS DURATEK INC.
$.01 par common
GULF SOUTH MEDICAL SUPPLY INC.
$.01 par common
HARRIS SAVINGS BANK (Pennsylvania)
$.01 par common
HARVEY UNIVERSAL, INC.
$.01 par common
HEALTH POWER, INC.
$.01 par common
HEALTHCARE IMAGING SERVICES, INC.
Class B, redeemable warrants (expire 11–12–96)
HEALTHY PLANET PRODUCTS, INC.
$.01 par common
HEMASURE INC.
$.01 par common
HILITE INDUSTRIES, INC.
$.01 par common
HIRSCH INTERNATIONAL CORPORATION
Class A, $.01 par common
HOME THEATER PRODUCTS INTERNATIONAL INC.
No par common Warrants (expire 08–14–94)
HUGOTON ENERGY CORPORATION
No par common
HUNGARIAN TELEPHONE & CABLE CORP.
$.001 par common
ID BIOMEDICAL CORPORATION
No par common
IGEN, INC.
$.001 par common
INFOSOFT INTERNATIONAL, INC.
$.01 par common
INTEGRATED MICRO PRODUCTS PLC
American Depositary Shares
INTEGRATED SILICON SYSTEMS, INC.
$.01 par common
INTERCEL, INC.
$.01 par common
INTERIM SERVICES INC.
$.01 par common
INTERNATIONAL GAMING MANAGEMENT, INC.
$.001 par common
INTERNATIONAL NESMONT INDUSTRIAL CORPORATION
No par common
INTERNATIONAL POST LIMITED
$.01 par common
JACKSON HEWITT INC.
$.02 par common
JAMESON INNS INC.
$.10 par common
JEFFERSON SAVINGS AND LOAN ASSOCIATION, F.A. (Virginia)
$3.00 par common
JUST FOR FEET, INC.
$.0001 par common
KIDDIE PRODUCTS, INC.
$.10 par common
KINROSS GOLD CORPORATION
No par common
L.A. T SPORTSWEAR INC.
No par common
LACROSSE FOOTWEAR INC.
$.01 par common
LANCIT MEDIA PRODUCTIONS LTD.
$.001 par common
LANDMARK BANCSHARES, INC. (Kansas)
$.10 par common
LASER VIDEO NETWORK, INC.
$.001 par common
LEASEWAY TRANSPORTATION CORPORATION
$.01 par common
LFS BANCORP, INC. (Kentucky)
$.01 par common
MAPINFO CORPORATION
$.002 par common
MARSHALLTOWN FINANCIAL CORPORATION
$.01 par common
MEDIA VISION TECHNOLOGY, INC.
Convertible subordinated debentures due 2003
MEGO FINANCIAL CORPORATION
No par common
MERITRUST FEDERAL SAVINGS BANK (Louisiana)
$1.00 par common
MEYERSON, M. H., & CO., INC.
$.01 par common
MFB CORPORATION
No par common
MICROFLUIDICS INTERNATIONAL CORPORATION
$.01 par common
MINNESOTA BREWING COMPANY
$.01 par common
MINNESOTA EDUCATIONAL COMPUTING CORPORATION
$.01 par common
MOTORCAR PARTS & ACCESSORIES, INC.
$.01 par common
MPTV, INC.
$.005 par common
MRV COMMUNICATIONS, INC.
$.01 par common
Warrants (expire 12–07–97)
MTI TECHNOLOGY CORPORATION
$.001 par common
NATIONAL TECHTEAM INC.
$.01 par common
NATURAL MICROSYSTEMS CORPORATION
$.01 par common
NEUROBIOLOGICAL TECHNOLOGIES, INC.
$.001 par common
NEW WORLD COMMUNICATIONS GROUP INC.
Class A, $.01 par common
NEXAGEN INC.
$.01 par common
NN BALL & ROLLER, INC.
$.01 par common
NORTHWEST AIRLINES CORPORATION
Class A, $.01 par common
NORTON McNAUGHTON, INC.
$.01 par common
OLYMPIC STEEL, INC.
No par common
OPTIMA PETROLEUM CORPORATION
No par common
ORTHOPEDIC TECHNOLOGY, INC.
$.01 par common
PARCPLACE SYSTEMS, INC.
$.001 par common
PAUL-SON GAMING CORPORATION
$.01 par common
PC SERVICE SOURCE, INC.
$.01 par common
PEOPLES BANK CORPORATION OF INDIANAPOLIS
Non-voting, no par common
PERMANENT BANCORP, INC. (Indiana)
$.01 par common
PERPETUAL MIDWEST FINANCIAL, INC.
$.01 par common
PERSONNEL MANAGEMENT INC.
No par common
PET FOOD WAREHOUSE, INC.
$.01 par common
PETCO ANIMAL SUPPLIES, INC.
$.0001 par common
PETERBOROUGH SAVINGS BANK (New Hampshire)
$.01 par common
PETROLANE INCORPORATED
Class B, $.01 par common
PRIME RETAIL, INC.
$.01 par common
Series B, cumulative convertible preferred
PROCEPT, INC.
$.01 par common
PROPHET 21, INC.
$.01 par common
QLOGIC CORPORATION
$.10 par common
QUALITY DINING, INC.
No par common
QUALITY SYSTEMS, INC.
$.01 par common
RAMTRON INTERNATIONAL CORPORATION
$.01 par common
REDFED BANCORP INC. (California)
$.01 par common
RELIANCE BANCORP, INC. (New York)
$.01 par common
RENASSANCE COMMUNICATIONS CORP.
$.01 par common
REPTRON ELECTRONICS, INC.
$.01 par common
RETIREMENT CARE ASSOCIATES, INC.
$.0001 par common
RIVERVIEW SAVINGS BANK, F.S.B. (Washington)
$1.00 par common
ROANOKE GAS COMPANY
$5.00 par common
ROCK-TENN COMPANY
Class A, $.01 par common
SA HOLDINGS, INC.
$.0001 par common
SANCTUARY WOODS MULTIMEDIA CORPORATION

No par common
SECURITY ENVIRONMENTAL SYSTEMS INC.
$.03 par common
SERVING SOFTWARE INC.
$.01 par common
SHUFFLE MASTER, INC.
Warrants (expire 01–20–98)
SHURGARD STORAGE CENTERS, INC.
Class A, $.01 par common
SIGMATRON INTERNATIONAL, INC.
$.01 par common
SOFTDESK INC.
$.01 par common
SOFTKEY INTERNATIONAL INC.
$.01 par common
Warrants (expire 03–26–96)
SONIC SOLUTIONS
No par common
SOUTHERN MISSOURI BANCORP INC.
$.01 par common
SOUTHERN STARR BROADCASTING GROUP, INC.
$.10 par common
STANDISH CARE COMPANY, THE
$.01 par common
Series A, $.01 par cumulative convertible preferred
SUNSHINE MINING COMPANY
Warrants (expire 03–09–99)
TATHAM OFFSHORE, INC.
$.01 par common
TELULAR CORPORATION
$.01 par common
TEXAS REGIONAL BANCSHARES, INC.
Class A voting, $1.00 par common
TJ SYSTEMS CORPORATION
Series A, $.01 par convertible preferred
TOTAL CONTAINMENT, INC.
$.01 par common
TRACTOR SUPPLY COMPANY
$.008 par common
TRANSTEXAS GAS CORPORATION
$.01 par common
TRIANGLE BANCORP, INC. (North Carolina)
No par common
TRIPLE S PLASTICS, INC.
No par common
TRISM, INC.
$.01 par common
TUFCO TECHNOLOGIES, INC.
$.01 par common
ULTRAK, INC.
No par common
UNIROYAL TECHNOLOGY CORPORATION
Warrants (expire 06–01–2003)
UNITED STATES EXPLORATION, INC.
$.0001 par common
UROMED CORPORATION
No par common
USA MOBILE COMMUNICATIONS HOLDINGS INC.
$.01 par common
VAUGHN COMMUNICATIONS, INC.
$.10 par common
VECTRA BANKING CORPORATION
$.01 par common
VENEZUELAN GOLDFIELDS LTD.
No par common
VIVUS INC.
No par common
WANDEL & GOLTERMANN TECHNOLOGIES INC.
$.01 par common
WAYNE SAVINGS AND LOAN COMPANY, INC. (Ohio)
$1.00 par common
WEBCO INDUSTRIES, INC.
$.01 par common
WHOLESALE CELLULAR USA INC.
$.01 par common
WILLARD PEASE OIL AND GAS COMPANY
Series A, $.01 par cumulative convertible preferred
WIRELESS CABLE OF ATLANTA, INC.
$1.00 par common
WTD INDUSTRIES, INC.
No par common
XCELLENET INC.
$.01 par common
XPEDITE SYSTEMS, INC.
$.01 par common

Additions to the List of Foreign Margin Stocks

AISIN SEIKO CO., LTD.
¥50 par common
AIWA CO., LTD.
¥50 par common
AKITA BANK, LTD.
¥50 par common
ALPS ELECTRIC CO., LTD.
¥50 par common
AMADA CO., LTD.
¥50 par common
AMADA METRECS CO., LTD.
¥50 par common
AMANO CORP.
¥50 par common
ANRITSU CORP.
¥50 par common
AOKI CORP.
¥50 par common
AOKI INTERNATIONAL CO., LTD.
¥50 par common
AOMORI BANK, LTD.
¥50 par common
ASAHI BANK, LTD.
¥50 par common
ASAHI DIAMOND INDUSTRIAL CO., LTD.
¥50 par common
ASATSU INC.
¥50 par common
ASHIKAGA BANK LTD.
¥50 par common
ATSUGI NYLON INDUSTRIAL CO., LTD.
¥50 par common
AUTOBACS SEVEN CO., LTD.
¥50 par common
BANK OF FUKUOKA, LTD.
¥50 par common
BANK OF HIROSHIMA
¥50 par common
BANK OF KINKI LTD.
¥50 par common
BANK OF KYOTO, LTD.
¥50 par common
BANK OF NAGOYA, LTD.
¥50 par common
BANK OF YOKOHAMA, LTD.
¥50 par common
BANYU PHARMACEUTICAL CO., LTD.
¥50 par common
BEST DENKI CO., LTD.
¥50 par common
BROTHER INDUSTRIES, LTD.
¥50 par common
CASIO COMPUTER CO., LTD.
¥50 par common
CHIBA BANK, LTD.
¥50 par common
CHIYODA CORP.
¥50 par common
CHIYODA FIRE & MARINE INSURANCE CO., LTD.
¥50 par common
CHUDENKO CORP.
¥50 par common
CHUGAI PHARMACEUTICAL CO., LTD.
¥50 par common
CHUGOKU BANK LTD.
¥50 par common
CHUGOKU ELECTRIC POWER CO. INC.
¥50 par common
CHUO TRUST & BANKING CO., LTD.
¥50 par common
CITIZEN WATCH CO., LTD.
¥50 par common
COSMO OIL CO. LTD.
¥50 par common
COSMO SECURITIES CO. LTD.
¥50 par common
CREDIT SAISON CO. LTD.
¥50 par common
CSK CORP.
¥50 par common
DAI-SHOWA PAPER MFG. CO. LTD.
¥50 par common
DAI-TOKYO FIRE & MARINE INSURANCE CO. LTD.
¥50 par common
DAICEL CHEMICAL INDUSTRIES LTD.
¥50 par common
DAIDO STEEL CO. LTD.
¥50 par common
DAIHATSU MOTOR CO. LTD.
¥50 par common
DAIICHI CORP.
¥50 par common
DAIICHI PHARMACEUTICAL CO. LTD.
¥50 par common
DAIKEN CORP.
¥50 par common
DAIKIN INDUSTRIES LTD.
¥50 par common
DAIKYO INC.
¥50 par common
DAIMARU INC.
¥50 par common
DAINIPPON INK & CHEMICALS INC.
¥50 par common
DAINIPPON PHARMACEUTICAL CO. LTD.
¥50 par common
DAINIPPON SCREEN MFG. CO. LTD.
¥50 par common
DAITO TRUST CONSTRUCTION CO. LTD.
¥50 par common
DAIWA BANK LTD.
¥50 par common
DAIWA SECURITIES CO. LTD.
¥50 par common
DENNY'S JAPAN CO. LTD.
¥50 par common
DOWA FIRE & MARINE INSURANCE CO. LTD.
¥50 par common
EAST JAPAN RAILWAY CO.
¥50 par common
EIGHTEENTH BANK LTD.
¥50 par common
EISAI CO. LTD.
¥50 par common
EZAKI GILCO CO. LTD.
¥50 par common
FAMILYMART CO. LTD.
¥50 par common
FANUC CO. LTD.
¥50 par common
FUJI HEAVY INDUSTRIES LTD.

¥50 par common
FUJIKURA LTD.
¥50 par common
FUJISAWA PHARMACEUTICAL CO. LTD
¥50 par common
FUJITA KANKO INC.
¥50 par common
FUKUYAMA TRANSPORTING CO., LTD.
¥50 par common
FUTABA CORP.
¥50 par common
FUTABA INDUSTRIAL CO. LTD.
¥50 par common
GENERAL SEKIYU K.K.
¥50 par common
GODO STEEL LTD.
¥50 par common
GREEN CROSS CORP
¥50 par common
GUNMA BANK LTD.
¥50 par common
GUNZE LTD.
¥50 par common
HACHIJUNI BANK LTD.
¥50 par common
HANKYU CORP.
¥50 par common
HANKYU DEPARTMENT STORES INC.
¥50 par common
HANSHIN ELECTRIC RAILWAY CO. LTD.
¥50 par common
HANWA CO. LTD.
¥50 par common
HASEKO CORP.
¥50 par common
HAZAMA CORP.
¥50 par common
HEIWADO CO. LTD.
¥50 par common
HIGASHI-NIPPON BANK LTD.
¥50 par common
HIGO BANK LTD.
¥50 par common
HIROSE ELECTRIC CO. LTD
¥50 par common
HITACHI CABLE LTD.
¥50 par common
HITACHI CHEMICAL CO. LTD.
¥50 par common
HITACHI CONSTRUCTION MACHINERY CO. LTD.
¥50 par common
HITACHI CREDIT CORP.
¥50 par common
HITACHI KOKI CO. LTD.
¥50 par common
HITACHI MAXELL LTD.
¥50 par common
HITACHI METALS LTD.
¥50 par common
HITACHI SALES CORP.
¥50 par common
HITACHI SOFTWARE ENGNEERING CO. LTD.
¥50 par common
HITACHI TRANSPORT SYSTEM LTD.
¥50 par common
HITACHI ZOSEN CORP.
¥50 par common
HOKKAIDO BANK LTD.
¥50 par common
HOKKAIDO ELECTRIC POWER CO. INC.
¥500 par common
HOKKAIDO TAKUSHOKU BANK LTD.
¥50 par common
HOKKOKU BANK LTD.
¥50 par common
HOKUETSU BANK LTD.
¥50 par common
HOKUETSU PAPER MILLS LTD.
¥50 par common
HOKURIKU BANK LTD.
¥50 par common
HOKURIKU ELECTRIC POWER CO. INC.
¥50 par common
HOUSE FOOD CORP.
¥50 par common
HOYA CORP.
¥50 par common
HYOGO BANK LTD.
¥50 par common
INAX CORP.
¥50 par common
ISHIHARA SANGYO KAISHA LTD.
¥50 par common
ITOCHU CORP.
¥50 par common
ITOHAM FOODS INC.
¥50 par common
IYO BANK LTD.
¥50 par common
IZUMI CO. LTD.
¥50 par common
JACCS CO. LTD.
¥50 par common
JAPAN AIRPORT TERMINAL CO. LTD.
¥50 par common
JAPAN DIGITAL LABORATORY CO. LTD.
¥50 par common
JAPAN SECURITIES FINANCE CO. LTD.
¥50 par common
JAPAN SYNTHETIC RUBBER CO LTD.
¥50 par common
JGC CORP.
¥50 par common
JOYO BANK LTD.
¥50 par common
JUROKU BANK LTD.
¥50 par common
JUSCO CO. LTD.
¥50 par common
KAGOSHIMA BANK LTD.
¥50 par common
KAKEN PHARMACEUTICAL CO. LTD.
¥50 par common
KAMIGUMI CO. LTD.
¥50 par common
KANDENKO CO. LTD.
¥50 par common
KANEKA CORP.
¥50 par common
KANEMATSU CORP.
¥50 par common
KANKAKU SECURITIES CO. LTD.
¥50 par common
KANSAI PAINT CO. LTD.
¥50 par common
KAO CORP.
¥50 par common
KATOKICHI CO. LTD.
¥50 par common
KAYABA INDUSTRY CO. LTD.
¥50 par common
KEIYO BANK LTD.
¥50 par common
KEIYO CO. LTD.
¥50 par common
KENWOOD CORP.
¥50 par common
KEYENCE CORP.
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KINDEN CORP.
¥50 par common
KINKI NIPPON RAILWAY CO. LTD.
¥50 par common
KISSEI PHARMACEUTICAL CO. LTD.
¥50 par common
KIYO BANK LTD.
¥50 par common
KOA FIRE & MARINE INSURANCE CO. LTD
¥50 par common
KOA OIL CO. LTD.
¥50 par common
KOKUSAI DENSHIN DENWA CO. LTD (KDD)
¥500 par common
KOKUSAI ELECTRIC CO. LTD.
¥50 par common
KOKUSAI SECURITIES CO. LTD.
¥50 par common
KONAMI CO. LTD.
¥50 par common
KUMAGAI GUMI CO. LTD.
¥50 par common
KURABO INDUSTRIES LTD.
¥50 par common
KURIMOTO LTD.
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KURITA WATER INDUSTRIES LTD.
¥50 par common
KYOCERA CORP.
¥50 par common
KYODO PRINTING CO. LTD.
¥50 par common
KYOWA EXEO CORP.
¥50 par common
KYUDENKO CORP.
¥50 par common
KYUSHU ELECTRIC POWER CO. INC.
¥500 par common
KYUSHU MATSUSHITA ELECTRIC CO LTD.
¥50 par common
MABUCHI MOTOR CO. LTD.
¥50 par common
MAEDA CORP.
¥50 par common
MAEDA ROAD CONSTRUCTION CO. LTD.
¥50 par common
MAKITA CORP.
¥50 par common
MARUDAI FOOD CO. LTD.
¥50 par common
MARUETSU INC.
¥50 par common
MARUHA CORP.
¥50 par common
MATSUSHITA COMMUNICATION INDUSTRIAL CO. LTD.
¥50 par common
MATSUSHITA REFRIGERATION CO.
¥50 par common
MATSUSHITA SEIKO CO. LTD.
¥50 par common
MATSUSHITA-KOTOBUKI ELECTRONICS INDUSTRIES LTD.
¥50 par common
MAX CO. LTD.
¥50 par common
MICHINOKU BANK LTD.
¥50 par common
MIKUNI COCA-COLA BOTTLING CO. LTD.
¥50 par common
MINEBEA CO. LTD.
¥50 par common
MINOLTA CAMERA CO. LTD.
¥50 par common
MISAWA HOMES CO. LTD.

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MITSUBISHI CABLE INDUSTRIES LTD.
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MITSUBISHI GAS CHEMICAL CO. INC.
¥50 par common
MITSUBISHI MOTORS CORP.
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MITSUBISHI PETROCHEMICAL CO. LTD.
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MITSUI CONSTRUCTION CO. LTD.
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MITSUI ENGINEERING & SHIPBUILDING CO. LTD.
¥50 par common
MITSUI PETROCHEMICAL INDUSTRIES LTD.
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MITSUI REAL ESTATE SALES CO. LTD.
¥50 par common
MITSUI-SOKO CO. LTD.
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MITSUMI ELECTRIC CO. LTD.
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MIZUNO CORP.
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MOCHIDA PHARMACEUTICAL CO. LTD.
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MORINAGA MILK INDUSTRY CO. LTD.
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MURATA MFG. CO. LTD.
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MUSASHINO BANK LTD.
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NAGASAKIYA CO. LTD.
¥50 par common
NAGASE & CO. LTD.
¥50 par common
NAGOYA RAILROAD CO. LTD.
¥50 par common
NAMCO LTD.
¥50 par common
NATIONAL HOUSE INDUSTRIAL CO. LTD.
¥50 par common
NCR JAPAN LTD.
¥50 par common
NEW JAPAN SECURITIES CO. LTD.
¥50 par common
NEW OJI PAPER CO. LTD.
¥50 par common
NGK SPARK PLUG CO. LTD.
¥50 par common
NHK SPRING CO. LTD.
¥50 par common
NICHICON CORP.
¥50 par common
NICHIEI CONSTRUCTION CO. LTD.
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NICHII CO. LTD.
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NICHIMEN CORP.
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NIPPON COMSYS CORP.
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NIPPON CREDIT BANK LTD.
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NIPPON DENSETSU KOGYO CO. LTD.
¥50 par common
NIPPON ELECTRIC GLASS CO. LTD.
¥50 par common
NIPPON FIRE & MARINE INSURANCE CO. LTD.
¥50 par common
NIPPON HODO CO. LTD.
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NIPPON MEAT PACKERS INC.
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NIPPON PAINT CO. LTD.
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NIPPON ROAD CO. LTD.
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NIPPON SANSO CORP.
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NIPPON TELEVISION NETWORK CORP.
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NIPPON TRUST BANK LTD.
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NIPPON ZEON CO. LTD.
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NISHI-NIPPON BANK LTD.
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NISHI-NIPPON RAILROAD CO. LTD.
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NISHIMATSU CONSTRUCTION CO. LTD.
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NISSAN CHEMICAL INDUSTRIES LTD.
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NISSAN FIRE & MARINE INSURANCE CO. LTD.
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NISSEI SANGYO CO. LTD.
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NISSHA PRINTING CO. LTD.
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NISSHIN FIRE & MARINE INSURANCE CO. LTD.
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NISSHIN STEEL CO. LTD.
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NISSHINBO INDUSTRIES INC.
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NISSHO IWAI CORP.
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NISSIN FOOD PRODUCTS CO. LTD.
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NITSUKO CORP.
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NITTO DENKO CORP.
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NOK CORP.
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NORITZ CORP.
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OGAKI KYORITSU BANK LTD.
¥50 par common
OKASAN SECURITIES CO. LTD.
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OKUMURA CORP.
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OLYMPUS OPTICAL CO. LTD.
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OMRON CORP.
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ONO PHARMACEUTICAL CO. LTD.
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ONWARD KASHIYAMA CO. LTD.
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ORIENT CORP.
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ORIX CORP.
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PENTA-OCEAN CONSTRUCTION CO. LTD.
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PIONEER ELECTRONIC CORP.
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Q.P. CORP.
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RAITO KOGYO CO. LTD.
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RENGO CO. LTD.
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RENOWN INC.
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RINNAI CORP.
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ROHM CO. LTD.
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RYOSAN CO. LTD.
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SAGAMI RAILWAY CO. LTD.
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SAIBU GAS CO. LTD.
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SAKATA SEED CORP.
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SANKI ENGINEERING CO. LTD.
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SANKYO ALUMINIUM INDUSTRY CO. LTD.
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SANKYU INC.
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SANTEN PHARMACEUTICAL CO. LTD
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SANWA SHUTTER CORP.
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SANYO CHEMICAL INDUSTRIES LTD.
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SANYO SECURITIES CO. LTD.
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SECOM CO. LTD.
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SEIBU RAILWAY CO. LTD.
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SEIKO CORP.
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SEINO TRANSPORTATION CO. LTD.
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SEIYU LTD.
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SEKISUI HOUSE LTD.
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SENSHUKAI CO. LTD.
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SEVEN-ELEVEN JAPAN CO. LTD.
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SEVENTY-SEVEN (77) BANK LTD.
¥50 par common
SHIKOKU ELECTRIC POWER CO. INC
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SHIMADZU CORP.
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SHIMAMURA CO. LTD.
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SHIMANO INC.
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SHINMAYWA INDUSTRIES LTD.
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SHIONOGI & CO. LTD.
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SHISEIDO CO. LTD.
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SHIZUOKA BANK LTD.
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SHOWA SANGYO CO. LTD.
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SIEBE PLC
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SKYLARK CO. LTD.
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SMC CORP.
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SNOW BRAND MILK PRODUCTS CO. LTD.
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SS PHARMACEUTICAL CO. LTD.
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STANLEY ELECTRIC CO. LTD.
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SUMITOMO BAKELITE CO. LTD.

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SUMITOMO CONSTRUCTION CO. LTD
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SUMITOMO FORESTRY CO. LTD.
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SUMITOMO HEAVY INDUSTRIES LTD.
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SUMITOMO MARINE & FIRE INSURANCE CO. LTD.
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SUMITOMO RUBBER INDUSTRIES LTD.
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SUMITOMO TRUST & BANKING CO. LTD.
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SUMITOMO WAREHOUSE CO. LTD
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SURUGA BANK LTD.
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SXL CORP.
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TADANO LTD.
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TAIHEI DENGYO KAISHA LTD.
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TAISEI PREFAB CONSTRUCTION CO. LTD
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TAIYO YUDEN CO. LTD.
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TAKARA STANDARD CO. LTD.
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TAKUMA CO. LTD.
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TANABE SEIYAKU CO. LTD.
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TERUMO CORP.
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TOA CORP.
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TOA STEEL CO. LTD.
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TOAGOSEI CHEMICAL INDUSTRY CO. LTD.
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TODA CONSTRUCTION CO. LTD
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TOENEC CORP.
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TOHO BANK LTD.
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TOHO CO. LTD.
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TOHO GAS CO. LTD.
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TOKAI BANK LTD.
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TOKUYAMA SODA CO. LTD.
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TOKYO BROADCASTING SYSTEM INC.
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TOKYO DOME CORP.
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TOKYO ELECTRON LTD.
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TOKYO OHKA KOGYO CO. LTD
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TOKYO ROPE MFG. CO. LTD.
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TOKYO SOWA BANK LTD.
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TOKYO STEEL MFG. CO. LTD
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TOKYO STYLE CO. LTD.
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TOKYO TATEMONO CO. LTD
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TOKYO TOMIN BANK LTD.
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TOKYOTOKEIBA CO. LTD.
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TOKYU CONSTRUCTION CO. LTD.
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TOKYU CORP.
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TOKYU LAND CORP.
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TOMEN CORP.
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TOSHIBA CERAMICS CO. LTD
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TOSHOKU LTD.
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TOSTEM CORP.
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TOYO COMMUNICATION EQUIPMENT CO LTD.
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TOYO ENGINEERING CORP.
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TOYO EXTERIOR CO. LTD.
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TOYO INK MFG. CO. LTD.
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TOYO SUISAN KAISHA LTD.
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TOYO TRUST & BANKING CO. LTD.
¥ 50 par common
TOYOTA AUTO BODY CO. LTD.
¥ 50 par common
TOYOTA TSUSHO CORP.
¥ 50 par common
TSUMURA & CO.
¥ 50 par common
UNI-CHARM CORP.
¥ 50 par common
UNIDEN CORP.
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UNY CO. LTD.
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USHIO INC.
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WACOAL CORP.
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WAKO SECURITIES CO. LTD.
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WHEELOCK & CO. LTD.
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YAKULT HONSHA CO. LTD.
¥ 50 par common
YAMAGUCHI BANK LTD.
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YAMAHA MOTOR CO. LTD.
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YAMAICHI SECURITIES CO. LTD
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YAMANASHI CHUO BANK LTD
¥ 50 par common
YAMATAKE-HONEYWELL CO. LTD
¥ 50 par common
YAMATO TRANSPORT CO. LTD
¥ 50 par common
YAMAZAKI BANKING CO. LTD
¥ 50 par common
YAOHAN JAPAN CORP.
¥ 50 par common
YASUDA TRUST & BANKING CO. LTD
¥ 50 par common
YODOGAWA STEEL WORKS LTD.
¥ 50 par common
YORK-BENIMARU CO. LTD.
¥ 50 par common
YOSHITOMI PHARMACEUTICAL INDUSTRIES LTD.
¥ 50 par common
YUASA CORP.
¥ 50 par common
ZEXEL CORP.
¥ 50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), April 19, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–10688 Filed 5–4–94; 8:45 am]

BILLING CODE 6210–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Inflation Adjusted Size Standards

AGENCY: Small Business Administration.

ACTION: Final rule, correction regarding effective date.

SUMMARY: SBA is amending information concerning the effective date of its final rule published in the **Federal Register** on April 7, 1994 (59 FR 16513), applying an inflation adjustment percentage of 48.2% to certain receipts-based industry size standards. The amendment clarifies application of the effective date for various SBA programs.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff (202) 205–6618.

SUPPLEMENTARY INFORMATION: On April 7, 1994, SBA published a final rule increasing the receipts-based size standards for certain industries by a factor of 48.2% (59 FR 16513) and identified the effective date as April 22, 1994. In response to inquiries, SBA is issuing this notice to clarify application of the effective date for various SBA programs. SBA calls to the attention of the public its regulation at 13 CFR 121.205 concerning the effective date of changes to SBA's size regulations, including changes in size standards. Except for noncompetitive Section 8(a) contracts, the new size standards are applicable to all solicitations issued on or after April 22, 1994. As for noncompetitive Section 8(a) contracting actions, the new size standards are applicable to offers of requirements that are accepted by SBA subsequent to April 22, 1994. The new size standards are effective as to applications for financial assistance received by SBA on or after April 22, 1994.

Dated: April 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–10843 Filed 5–4–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–184–AD; Amendment 39–8884; AD 94–08–12]

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes, Equipped With Dunlop Main Landing Gear Wheels, Part Number AHA1752 Pre Mod 6

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires inspections to detect cracking in the brake side half hub in the bearing housing area of certain main landing gear (MLG) wheels, and replacement of the MLG wheel, if necessary. This amendment also requires the eventual replacement of certain MLG wheels with other wheels, as terminating action for the repetitive inspections. This amendment is prompted by in-service experience that indicates the possibility of fatigue cracking occurring in the subject area. The actions specified by this AD are intended to prevent failure of the brake side half hub due to fatigue cracking, which could lead to separation of the MLG wheel and tire from the axle.

DATES: Effective June 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Dunlop Limited, Aviation Division, Silverton House, Vincent Square, London SW1P 2PL, United Kingdom. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published in the **Federal Register** on November 19, 1993 (58 FR 61038). That action proposed to require repetitive eddy current inspections to detect cracking in the bearing housing of the brake side half hub of Dunlop MLG wheels, part number AHA1752 Pre Mod 6. Additionally, that action proposed to require that, if any cracked half hub assemblies are detected, the complete wheel must be replaced. If certain improved replacement wheels are installed, the repetitive eddy current inspections may be discontinued. That action also proposed to require the eventual replacement of all MLG wheels having part number AHA1752 Pre Mod 6 with other (improved) wheels, as terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the inspection actions on U.S. operators is estimated to be $1,760, or $110 per airplane, per inspection. Should a cracked half hub assembly be found, replacement wheel assemblies will be provided by Dunlop at no charge to the operator.

The required wheel replacement action will require approximately 2 work hours to accomplish, at an average labor charge of $55 per work hour. Replacement parts will be provided by Dunlop at no charge to the operators, as part of Dunlop's repair/replacement program. Based on these figures, the total cost impact of the replacement actions on U.S. operators is estimated to be $1,760, or $110 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–12 Aerospatiale: Amendment 39–8884. Docket 93–NM–184–AD.

Applicability: Model ATR72 airplanes; equipped with Dunlop main landing gear (MLG) wheels, part number AHA1752 Pre Mod 6; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brake side half hub due to fatigue cracking, which could lead to separation of the MLG wheel and tire from the axle, accomplish the following:

(a) At the next tire change after the effective date of this AD, or within 60 days after the effective date of this AD, whichever occurs later, conduct an eddy current inspection to detect cracking in the bearing housing of the brake side half hub of Dunlop MLG wheels, part number AHA1752 Pre Mod 6, in accordance with the Accomplishment Instructions of Dunlop Limited, Aviation Division, Service Bulletin AHA1752–32–1069, dated June 28, 1993.

(b) If no cracking is detected, repeat the inspection specified in paragraph (a) of this AD thereafter at every tire change until the requirements of paragraph (d) of this AD are accomplished.

(c) If any cracking is detected, prior to further flight, accomplish one of the following:

(1) Replace the complete MLG wheel with a serviceable MLG wheel having part number AHA1752 Pre Mod 6. Thereafter, repeat the inspections specified in paragraph (a) of this AD at every tire change. Or

(2) Replace the complete MLG wheel with a MLG wheel having part number AHA1752 Post Mod 6. Such replacement constitutes terminating action for the inspection requirements of this AD. Or

(3) Replace the complete MLG wheel with a MLG wheel having part number AHA1890. Such replacement constitutes terminating action for the inspection requirements of this AD.

(d) Within 6 months after the effective date of this AD, replace all Dunlop MLG wheels having part number AHA1752 Pre Mod 6, with MLG wheels having either part number AHA1752 Post Mod 6 or part number AHA1890. Such replacement constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Dunlop Limited, Aviation Division, Service Bulletin AHA1752–32–1069, dated June 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dunlop Limited, Aviation Division, Silverton House, Vincent Square, London SW1P 2PL, United Kingdom. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 6, 1994.

Issued in Renton, Washington, on April 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9001 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–54–AD; Amendment 39–8905; AD 94–09–16]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Model A300–600 series airplanes. This action requires replacement of certain Feel and Limitation Computers (FLC) with modified FLC's. This amendment is prompted by reports that the elevator control on several in-service airplanes operated with stiffness. The actions specified in this AD are intended to prevent stiff operation of the elevator control and undetected loss of the rudder travel limitation function, which may adversely affect controllability of the airplane.

EFFECTIVE DATES: May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–54–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Général de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that operators of Model A300–600 series airplanes reported that the elevator control on several in-service airplanes operated with stiffness. Investigation into the cause of this stiffness revealed that the Feel and Limitation Computer (FLC) may be detecting spurious low voltage. This condition, if not corrected, could result in stiff operation of the elevator control and undetected loss of the rudder travel limitation function, which may adversely affect controllability of the airplane.

Airbus has issued Service Bulletin A300–27–6025, dated September 15, 1993, that describes procedures for replacement of certain FLC's with modified FLC's. These replacement FLC's have been modified in accordance with Aerospatiale Service Bulletin 35–900–27–013, dated September 29, 1993 (for FLC's having part number 35–900–2000–200), or Aerospatiale Service Bulletin 35–900–27–012, dated September 29, 1993 (for FLC's having part number 35–900–2000–201). The Aerospatiale service bulletins describe procedures for adjustment of the "UNDERVOLTAGE DETECTION" signal with new values to preclude stiff operation of the elevator control. The DGAC classified the Airbus service bulletin as mandatory and issued French Airworthiness Directive 94–046–156(B), dated February 16, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane. This AD requires replacement of certain FLC's with modified FLC's. The actions are required to be accomplished in accordance with the Airbus service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–54–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–09–16 Airbus Industrie: Amendment 39–8905. Docket 94–NM–54–AD.

Applicability: Model A300–600 series airplanes, as listed in Airbus Industrie Service Bulletin A300–27–6025, dated September 15, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent stiff operation of the elevator control and undetected loss of the rudder travel limitation function, which may adversely affect controllability of the airplane, accomplish the following:

(a) Within 45 days after the effective date of this AD, replace Feel and Limitation Computers (FLC), having part number (P/N) 35–900–2000–200 or 35–900–2000–201, serial numbers 755 and subsequent, with an FLC that has been previously modified, in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993.

(b) As of the effective date of this AD, no person shall install, on any airplane, an FLC, P/N 35–900–2000–200 or 35–900–2000–201, that has not been previously modified in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Airbus Service Bulletin A300–27–6025, dated September 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10509 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–80; Amendment 39–8897; AD 94–09–08]

Airworthiness Directives; Allied-Signal Inc., Garrett Engine Division, TPE331 Series Turboprop and Model TSE331–3U Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Allied-Signal Inc., Garrett Engine Division, TPE331 series turboprop and Model TSE331–3U turboshaft engines. This action requires inspection of certain third stage turbine stator assemblies, and replacement, if necessary, with serviceable assemblies. This amendment is prompted by reports of six third stage turbine stator assemblies assembled with inner seal supports made of incorrect material that results in a significantly reduced cyclic life. The actions specified by this AD are intended to prevent an uncontained failure of the third stage turbine wheel.

DATES: May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–80, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal, Inc., Aviation Services Division, Data Distribution Dept. 64–3/2102–IM, P.O. Box 29003, Phoenix, AZ 85038–9003. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of six third stage turbine stator assemblies assembled with inner seal supports made of incorrect material that significantly reduces the cyclic life of the assembly. The manufacturer has identified part serial numbers of 150 third stage turbine stator assemblies that may contain the inner seal supports made of Hastelloy S material. These assemblies were repaired at the Garrett General Aviation Service Division (GGASD) facility in Phoenix, Arizona between November 1988 and May 1991. Fatigue failure of the inner seal support has resulted in the seal support moving aft and contacting the third stage turbine wheel. This condition, if not corrected, can result in an uncontained failure of the third stage turbine wheel.

The FAA has reviewed and approved the technical contents of AlliedSignal Aerospace Alert Service Bulletin (ASB) No. TPE331–A72–0906, dated October 15, 1993, that describes procedures for inspecting the third stage turbine stator assemblies, and replacing, if necessary, with serviceable assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD is being issued to prevent an uncontained failure of the third stage turbine wheel. This AD requires inspection of third stage turbine stator assemblies to determine the acceptability of the inner seal supports, and replacement, if necessary, with serviceable assemblies. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–80." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-09-08 Allied-Signal Inc., Garrett Engine Division: Amendment 39-8897. Docket 93-ANE-80.

Applicability: Allied-Signal Inc., Garrett Engine Division, Model TPE331-1, -2, -2UA, -3U, -3UW, -5, -5A, -6, and -6A turboprop and Model TSE331-3U turboshaft engines incorporating third stage stator turbine assemblies, Part Number (P/N) 868379-3, repaired at the Garrett General Aviation Service Division (GGASD) facility in Phoenix, Arizona, between November 1988 and May 1991, and identified by serial numbers listed in AlliedSignal Aerospace Alert Service Bulletin (ASB) No. TPE331-A72-0906, dated October 15, 1993. These engines are installed on but not limited to Mitsubishi MU-2B series (MU-2 series); Construcciones Aeronauticas, S.A. (CASA) C-212 series; Fairchild SA226 series (Swearingen Merlin and Metro series); Prop-Jets, Inc. Model 400; Twin Commander 680 and 690 (Jetprop Commander), Rockwell Commander S-2R, Shorts Brothers and Harland, Ltd. SC7 (Skyvan), Dornier 228 series, Beech 18 and 45 series and Models JRB-6, 3N, 3NM, 3TM, and B100, Pilatus PC-6 series (Fairchild Porter, Peacemaker), De Havilland Model DH 104 series 7AXC (Dove), and Ayres S-2R series airplanes; and Sikorsky S-55 series helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the third stage turbine wheel, accomplish the following:

(a) Inspect suspect third stage turbine stator assemblies, P/N 868379-3, and replace, if necessary, with serviceable assemblies, in accordance with the Accomplishment Instructions of AlliedSignal Aerospace ASB No. TPE331-A72-0906, dated October 15, 1993, and the following schedule:

Third stage turbine stator cycles in service since repair by GGASD	Inspection schedule
900 or more cycles.	Within 50 cycles in service after the effective date of this AD
450 to 899 cycles.	Within 150 cycles in service after the effective date of this AD, but not to exceed 950 cycles in service since repair by GGASD.
Less than 450 cycles.	Prior to accumulating 600 cycles in service since repair by GGASD.

Note: The FAA has determined that cracking of third stage turbine stator assemblies is related to operating cycles, rather than operating hours.

(b) If cycles cannot be determined, calculate cycles by multiplying third stage turbine stator assembly hours time in service by 1.5.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The inspection, and replacement, if necessary, of the third stage turbine stator assembly, shall be accomplished in accordance with the following ASB, which also identifies third stage turbine stator assemblies, P/N 868379-3, repaired at GGASD between November 1988 and May 1991, by serial number:

Document No.	Pages	Date
AlliedSignal Aerospace ASB No. TPE331-A72-0906.	1-10	Oct. 15, 1993.
Total pages: 10.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal, Inc., Aviation Services Division, Data Distribution Dept. 64-3/2102-IM, P.O. Box 29003, Phoenix, AZ 85038-9003. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 20, 1994.

Issued in Burlington, Massachusetts, on April 19, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-10365 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-157-AD; Amendment 39-8893; AD 94-09-05]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, that requires a one-time inspection to assess the adequacy of the clearance between various adapter plates and seal retaining angles on the fuselage side access panel, and modification of both the forward and rear seal retention angles. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Effective June 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, New York

Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on January 4, 1994 (59 FR 266). That action proposed to require a one-time inspection to assess the adequacy of the clearance between various adapter plates and seal retaining angles on the fuselage side access panel, and modification of both the forward and rear seal retention angles.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the modifications and inspections, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,360, or $440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–09–05 De Havilland, Inc.: Amendment 39–8893. Docket 92–NM–157–AD.

Applicability: Model DHC–7 series airplanes having serial numbers 1 through 99 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) For airplanes having serial numbers 1 through 77 inclusive, 79 through 83 inclusive, 85, and 86: Within 12 months after the effective date of this AD, inspect the clearance between the wing forward pick-up adapter plates and the seal retaining angle on the fuselage side access panel in accordance with de Havilland Service Bulletin 7–57–11, dated December 17, 1982.

(1) If the adapter plates are undamaged or if scoring on the adapter plates does not exceed 0.050 inch in depth, prior to further flight, accomplish Modification 7/2319 in accordance with the service bulletin.

(2) If scoring on the adapter plates is equal to or exceeds 0.050 inch in depth, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate.

(b) For airplanes having serial numbers 1 through 99 inclusive: Within 12 months after the effective date of this AD, inspect the clearance between the rear mounting adapter plates and the seal retaining angle on the fuselage side access panel in accordance with de Havilland Service Bulletin 7–57–19, dated February 24, 1984.

(1) If the adapter plates are undamaged or if scoring on the adapter plates does not exceed 0.050 inch in depth, prior to further flight, accomplish Modification 7/2355 in accordance with the service bulletin.

(2) If scoring on the adapter plates is equal to or exceeds 0.050 inch in depth, prior to further flight, repair in accordance with a method approved by the Manager, New York ACO, ANE–170, FAA, Engine and Propeller Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO, ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with de Haviliand Service Bulletin 7–57–11, dated December 17, 1982, and de Havilland Service Bulletin 7–57–19, dated February 24, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 6, 1994.

Issued in Renton, Washington, on April 18, 1994.

Darrell M. Pederson, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9730 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–04; Amendment 39–8877; AD 94–08–05]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines, that requires installation of a fan stator case stiffening ring assembly, and a new stage one fan shroud. This amendment is prompted by a report of an uncontained stage one fan blade failure, which resulted in an inflight engine shutdown, and damage to the aircraft. The actions specified by this AD are intended to prevent an uncontained stage one fan blade failure, which can result in an inflight engine shutdown, and damage to the aircraft.

DATES: Effective July 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines was published in the **Federal Register** on January 11, 1994 (59 FR 1503). That action proposed to require installation of a fan stator case stiffening ring assembly and a new stage one fan shroud, which will result in reduced running clearances, and lower fan blade stresses. The compliance end date of December 31, 1996, ensures timely compliance without forced engine removals based on hardware availability. The actions would be required to be accomplished in accordance with GE CF6–50 Service Bulletin (SB) No. 72–573, Revision 5, dated September 15, 1981.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule as proposed.

One commenter states that the compliance end-date of August 31, 1995, in compliance paragraph (a) of the proposed rule should be extended to December 31, 1996, in order to avoid forced engine removals. The Federal Aviation Administration (FAA) concurs. The FAA has determined that flight safety will not be compromised by extending the compliance end-date to December 31, 1996. The final rule has been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 67 GE CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA has been advised by the manufacturer that there are no engines on U.S. registered aircraft that would be affected by this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, it would take approximately 48 work hours to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $9,360 per engine. Based on these figures, the total cost impact of the AD is estimated to be $12,000 per engine.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–05 General Electric Company: Amendment 39–8877. Docket 93–ANE–04.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on, but not limited to, Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained stage one fan blade failure, which can result in inflight engine shutdown, and damage to the aircraft, accomplish the following:

(a) For engines that have not been modified in accordance with any revision level of GE CF6–50 Service Bulletin (SB) No. 72–573, prior to the effective date of this AD, install a fan stator case stiffening ring assembly and stage one fan shroud, in accordance with GE CF6–50 SB No. 72–573, Revision 5, dated September 15, 1981, by December 31, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
GE CF6–50 SB No. 72–573 .... Total Pages: 17.	1–17	5	Sept. 15, 1981.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 5, 1994.

Issued in Burlington, Massachusetts, on April 5, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–9002 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–41; Amendment 39–8907; AD 94–09–18]

Airworthiness Directives; General Electric Company; CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–6/–45/–50 series turbofan engines, that requires an inspection for cracks in the stage 1 high pressure turbine (HPT) disk rim bolt holes, and stage 2 HPT disk rim and inner bolt holes; and replacement, if necessary, with serviceable parts. This amendment is prompted by a report of an uncontained stage 1 HPT disk failure which resulted in an aborted takeoff. The actions specified by this AD are intended to prevent an uncontained stage 1 or stage 2 HPT disk failure, which could result in an inflight engine shutdown, rejected takeoff, or damage to the aircraft.

DATES: Effective June 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–6/–45/–50 series turbofan engines was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 19, 1993 (58 FR 53893). That action proposed to require an eddy current inspection for cracks in the stage 1 high pressure turbine (HPT) disk rim bolt holes, and stage 2 HPT disk rim and inner bolt holes; and replacement, if necessary, with serviceable parts. The inspection, and replacement, if necessary, would be performed in accordance with GE CF6–6 Service Bulletin (SB) No. 72–1002, dated February 12, 1993; CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993; CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993; and CF6–50 SB No. 72–1059, dated February 12, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter states that the compliance end-date of February 28, 1994, in compliance paragraph (b)(6) of the proposed rule should be replaced by 1,000 cycles in service (CIS) after the effective date of this AD, in order to avoid forced engine removals. The FAA concurs. This change is consistent with the results of the failure analysis performed by the manufacturer, and is supported by the positive inspection results to date. This final rule has been revised accordingly.

One commenter states that the compliance end-date of February 28, 1994, in compliance paragraph (b)(6) of the proposed rule should be extended to one year after the effective date of this AD, in order to avoid forced engine removals. The FAA concurs in part. The FAA agrees that the current compliance end-date may cause forced engine removals; however, an extension of this date alone may still cause an undue burden on low cycle/low time operators. A cyclic definition in lieu of a compliance end-date will help alleviate this potential problem. The manufacturer has informed the FAA that a typical operator accumulates approximately 1,000 CIS in one year. This change is consistent with the results of the failure analysis performed by the manufacturer, and is supported by the positive inspection results to date. Therefore, the compliance end-date of February 28, 1994, in paragraph (b)(6) in the proposed rule has been replaced in this final rule by 1,000 CIS after the effective date of this AD.

Two commenters state that the compliance end-date of May 31, 1994, in compliance paragraph (a)(1) and (a)(2) should be removed, and 4,500 cycles since new (CSN) should be replaced by 5,400 CSN to avoid forced engine removals. The FAA concurs. This change is consistent with the results of the failure analysis performed by the manufacturer, and is supported by the positive inspection results to date. This final rule has been revised accordingly.

Two commenters state that the compliance end-date of May 31, 1994, in compliance paragraph (a)(3) should be replaced by 1,400 CIS after the effective date of this AD to avoid forced engine removals. The FAA concurs. This change is consistent with the results of the failure analysis performed by the manufacturer, and is supported by the positive inspection results to date. This final rule has been revised accordingly.

Two commenters state that the compliance end-date of February 28, 1994, in compliance paragraphs (a)(4)(i) and (a)(4)(ii) should be removed, 3,500 CSN should be replaced by 4,500 CSN, and 3,000 CSN should be replaced by 3,500 CSN to avoid forced engine removals. The FAA concurs in part. The FAA agrees that the current compliance end-date may cause forced engine removals, but the proposed CSN changes are not consistent with the results of the failure analysis performed by the manufacturer. The results of this analysis suggest that 3,500 CSN can be changed to 4,000 CSN; however, 3,000 CSN can not be changed. This final rule has been revised accordingly.

Two commenters state that the compliance end-date of February 28, 1994, in compliance paragraph (a)(4)(iii) should be replaced by 1,000 CIS after the effective date of this AD, and 3,000 CSN should be replaced by 3,500 CSN to avoid forced engine removals. The FAA concurs in part. The FAA agrees that the current compliance end-date may cause forced engine removals, but the proposed CSN change is not consistent with the results of the failure analysis performed by the manufacturer. The results of this analysis suggest that 3,000 CSN can not be changed. This final rule has been revised accordingly.

One commenter states that the compliance end-date of May 31, 1994, in compliance paragraphs (a)(5)(i) and (a)(5)(ii) should be removed, and 4,500 CSN should be replaced by 6,000 CSN to avoid forced engine removals. The FAA concurs in part. The FAA agrees that the current compliance end-date may cause forced engine removals, but the proposed CSN change is not consistent with the results of the failure analysis performed by the manufacturer. The results of this analysis suggest that 4,500 CSN can be changed to 5,400 CSN. The final rule has been revised accordingly.

One commenter states that the compliance end-date of May 31, 1994, in compliance paragraph (a)(5)(iii) should be replaced by 2,000 CIS after the effective date of this AD to avoid forced engine removals. The FAA concurs in part. The FAA agrees that the current compliance end-date may cause forced engine removals, but the proposed CIS is not consistent with the results of this failure analysis performed by the manufacturer. The results of this analysis suggest that 1,400 CIS is appropriate. This final rule has been revised accordingly.

Although no comments were received regarding compliance paragraphs (b)(1) to (b)(5), the FAA has changed these paragraphs to be consistent with the corresponding paragraphs in paragraph (a) of this final rule.

The economic analysis section of the proposed rule assumed that all inspected disks would require replacement. The manufacturer has informed the FAA that this assumption is overly conservative based on analysis and inspection results to date, and that only approximately 2% of the inspected disks will require replacement. The 2% figure translates to approximately 10 disks installed on aircraft of U.S. registry. The economic analysis section of this final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 650 GE CF6–6/–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 108 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $77,314 per engine. Based on these figures, and assuming that 10 of the inspected disks will require replacement, the total cost impact of the AD on U.S. operators is estimated to be $3,743,140.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–09–18 General Electric Company: Amendment 39–8907. Docket 93–ANE–41

Applicability: General Electric Company (GE) CF6–6/ –45/–50 series turbofan engines installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained stage 1 or stage 2 high pressure turbine (HPT) disk failure, which could result in an inflight engine shutdown, rejected takeoff, or damage to the aircraft, accomplish the following:

(a) Eddy current inspect (ECI) stage 1 and stage 2 HPT disks for cracks in accordance with the Accomplishment Instructions of GE CF6–6 Service Bulletin (SB) No. 72–1002, dated February 12, 1993, and CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993, as follows:

(1) For GE CF6–6 series stage 1 HPT disks, Part Numbers (P/N) 9137M40P01 and 9687M39P07, with serial numbers (S/N) listed in Appendix I or II of GE CF6–6 SB No. 72–1002, dated February 12, 1993, which have accumulated less than 2,500 cycles since new (CSN) on the effective date of this airworthiness directive (AD), ECI the rim bolt holes at the next engine shop visit after accumulating 2,500 CSN, but not to exceed 5,400 CSN.

(2) For GE CF6–6 series stage 1 HPT disks, P/N 9137M40P01 and 9687M39P07, with S/N listed in Appendix I or II or GE CF6–6 SB No. 72–1002, dated February 12, 1993, which have accumulated 2,500 CSN or more, but less than 4,000 CSN on the effective date of this AD, ECI the rim bolt holes at the next

engine shop visit, but not to exceed 5.400 CSN.

(3) For GE CF6–6 series stage 1 HPT disks, P/N 9137M40P01 and 9687M39P07, with S/N listed in Appendix I or II of GE CF6–6 SB No. 72–1002, dated February 12, 1993, which have accumulated 4.000 CSN or more on the effective date of this AD. ECI the rim bolt holes at the next engine shop visit, or prior to accumulating 1.400 cycles in service (CIS) after the effective date of this AD, whichever occurs earlier.

(4) For GE CF6–6 series stage 2 HPT disks, P/N 9084M52P02 and 9084M52P05, with S/N listed in Appendix I or II of GE CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993, which have not accomplished the inner bolt hole ECI prior to the effective date of this AD in accordance with GE CF6–6 Shop Manual, GEK 9266, Chapter 72–53–04, accomplish the following:

(i) For disks which have accumulated less than 2.000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit after accumulating 2.000 CSN, but not to exceed 4.000 CSN.

(ii) For disks which have accumulated 2.000 CSN or more, but less than 3.000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, but not to exceed 4.000 CSN.

(iii) For disks which have accumulated 3.000 CSN or more on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, or prior to accumulating 1.000 CIS after the effective date of this AD, whichever occurs earlier.

(5) For GE CF6–6 series stage 2 HPT disks, P/N 9084M52P02 and 9084M52P05, with S/N listed in Appendix I or II of GE CF6–6 SB No. 72–1003, Revision 1, dated June 17, 1993, which have accomplished the inner bolt hole ECI prior to the effective date of this AD in accordance with GE CF6–6 Shop Manual, GEK 9266, Chapter 72–53–04, and not found cracked, accomplish the following

(i) For disks which have accumulated less than 2.000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit after accumulating 2,000 CSN, but not to exceed 5,400 CSN.

(ii) For disks which have accumulated 2,000 CSN or more, but less than 4.000 CSN on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, prior to accumulating 4,500 CSN, but not to exceed 5.400 CSN.

(iii) For disks which have accumulated 4,000 CSN or more on the effective date of this AD, ECI the rim and inner bolt holes at the next engine shop visit, or prior to accumulating 1,400 CIS after the effective date of this AD, whichever occurs earlier.

(6) GE CF6–6 series stage 1 HPT disks referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–6 All Operators Wire (AOW) 92–6–09, dated September 24, 1992, or GE CF6–6 Engine Shop Manual, GEK 9266, Chapter 72–53–03, prior to the effective date of this AD, and whose CSN at the time of inspection was 2,500 or more, already meet the inspection requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(7) GE CF6–6 series stage 2 HPT disks referenced in paragraphs (a)(4) and (a)(5) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–6 AOW 92–6–09, dated September 24, 1992; GE CF6–6 SB No. 72–1003, dated February 12, 1993; or GE CF6–6 Engine Shop Manual, GEK 9266, Chapter 72–53–04, prior to the effective date of this AD, and whose CSN at the time of inspection was 2,000 or more, already meet the inspection requirements of paragraphs (a)(4) and (a)(5) of this AD.

(b) ECI stage 1 and stage 2 HPT disks for cracks in accordance with the Accomplishment Instructions of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, and CF6–50 SB No. 72–1059, dated February 12, 1993, as follows:

(1) For GE CF6–45/–50 series stage 1 HPT disks, P/N 9283M31P02, 9283M55P04, and 9283M55P05, with S/N listed in Appendix I, II, or III of GE CF6–50 SB No. 72–1059, dated February 12, 1993, which have accumulated less than 2.500 CSN on the effective date of this AD. ECI the rim bolt holes at the next engine shop visit after accumulating 2.500 CSN, but not to exceed 5,400 CSN.

(2) For GE CF6–45/–50 series stage 1 HPT disks, P/N 9283M31P02, 9283M55P04, and 9283M55P05, with S/N listed in Appendix I, II, or III of GE CF6–50 SB No. 72–1059, dated February 12, 1993, which have accumulated 2.500 CSN or more, but less than 4.000 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, but not to exceed 5.400 CSN.

(3) For GE CF6–45/–50 series stage 1 HPT disks P/N 9283M31P02, 9283M55P04, and 9283M55P05, with S/N listed in Appendix I, II, or III of GE CF6–50 SB No. 72–1059, dated February 12, 1993, which have accumulated 4.000 CSN or more on the effective date of this AD. ECI the rim bolt holes at the next engine shop visit, or prior to accumulating 1,400 CIS after the effective date of this AD, whichever occurs earlier.

(4) For GE CF6–45/–50 series stage 2 HPT disks, P/N 9045M35P18 and 1474M49P06, with S/N listed in the Appendix of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, which have accumulated less than 2,000 CSN on the effective date of this AD. ECI the rim and inner bolt holes at the next engine shop visit after accumulating 2,000 CSN, but not to exceed 4.000 CSN.

(5) For GE CF6–45/–50 series stage 2 HPT disks, P/N 9045M35P18 and 1474M49P06, with S/N listed in the Appendix of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, which have accumulated 2.000 CSN or more, but less than 3,000 CSN on the effective date of this AD, ECI the rim bolt holes at the next engine shop visit, but not to exceed 4.000 CSN.

(6) For GE CF6–45/–50 series stage 2 HPT disks, P/N 9045M35P18 and 1474M49P06, with S/N listed in the Appendix of GE CF6–50 SB No. 72–1057, Revision 1, dated June 17, 1993, which have accumulated 3,000 CSN or more on the effective date of this AD. ECI the rim and inner bolt holes at the next engine shop visit, or prior to accumulating 1,000 CIS after the effective date of this AD, whichever occurs earlier.

(7) GE CF6–45/–50 series stage 1 HPT disks referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–50 AOW 92–50–15, dated September 24, 1992, or GE CF6–50 Engine Task Numbered Shop Manual, GEK 50481, Chapter 72–53–03, prior to the effective date of this AD, and whose CSN at the time of inspection was 2.500 or more, already meet the inspection requirements of paragraphs (b)(1), (b)(2), and (b)(3) of this AD

(8) GE CF6–45/–50 series stage 2 HPT disks referenced in paragraphs (b)(4), (b)(5), and (b)(6) of this AD, that have been inspected by ECI in accordance with the procedures outlined in GE CF6–50 AOW 92–50–15, dated September 24, 1992; GE CF6–50 SB No 72–1057, dated February 12, 1993, or GE CF6–50 Engine Task Numbered Shop Manual, GEK 50481, Chapter 72–53–04, prior to the effective date of this AD, and whose CSN at the time of inspection was 2.000 or more, already meet the inspection requirements of paragraphs (b)(4), (b)(5), and (b)(6) of this AD.

(c) Remove from service disks found cracked, and replace with serviceable parts. Inspect replacement disks in accordance with paragraphs (a) or (b) of this AD, if applicable

(d) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major flange.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
GE CF6–6 SB No. 72–1002	1–12	Original	February 12, 1993.
Total Pages: 12.			
GE CF6–6 SB No. 72–1003	1–3	1	June 17, 1993.
	4–21	Original	February 12, 1993.
Total Pages: 21.			
GE CF6–50 SB No. 72–1057	1–2	1	June 17, 1993.
	3–14	Original	February 12, 1993.
Total Pages: 14.			
GE CF6–50 SB No. 72–1059	1–17	Original	February 12, 1993
Total Pages: 17.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 6, 1994.

Issued in Burlington, Massachusetts, on April 26, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10502 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–186–AD; Amendment 39–8881; AD 94–08–09]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Jetstream Model ATP airplanes, that requires a one-time inspection and appropriate torque loading check of certain wing top surface stringer joint fasteners, and correction of discrepancies. This amendment is prompted by a report of loose fasteners on the wing top surface stringer joint bolts at Rib 0. The actions specified by this AD are intended to prevent reduced structural integrity of the wing top surface stringer joints at Rib 0, which subsequently could lead to reduced structural integrity of the wing.

DATES: Effective June 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., Librarian for Service Bulletins, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Jetstream Model ATP airplanes was published in the **Federal Register** on December 15, 1993 (58 FR 65569). That action proposed to require a one-time inspection and appropriate torque loading check of certain wing top surface stringer joint fasteners, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

Since issuance of the notice, Jetstream Aircraft Limited has issued Revision 3 of BAe ATP Service Bulletin ATP–57–14, dated December 15, 1993. This revision of the service bulletin is essentially identical to Revision 1, which was referenced in the notice, but contains certain editorial changes. The FAA has revised the final rule to include a reference to Revision 3 of the service bulletin as an additional source of appropriate service information.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,500, or $2,750 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–09 Jetstream Aircraft Limited (formerly British Aerospace): Amendment 39–8881. Docket 93–NM–186–AD.

Applicability: Model ATP airplanes; serial numbers 2001 through 2053 inclusive, and 2055; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing top surface stringer joints at Rib 0, which subsequently could lead to reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 10,000 total hours time-in-service, or within the next 600 hours time-in-service after the effective date of this AD, whichever occurs later, perform a detailed visual inspection and appropriate torque loading check of the fasteners in the stringer joint brackets (part number JD534J0015) at the wing top surface stringer joints for stringers 1 through 19 at Rib 0, in accordance with paragraph 2.A. of British Aerospace BAe ATP Service Bulletin ATP–57–14, Revision 1, dated September 27, 1993; or Revision 3, dated December 15, 1993. If any discrepancy, as specified in the service bulletin, is detected, prior to further flight, correct it in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, torque loading check, and correction of discrepancies shall be done in accordance with the following British Aerospace BAe ATP Service Bulletins, which contain the specified list of effective pages:

Service bulletin number and date	Page No.	Revision level shown on page	Date shown on page
ATP–57–14, Revision 1, Sept. 27, 1993	1–3	1	Sept. 27, 1993.
	4–5, 7, 9, 11, 13, 15	0	Aug. 14, 1993.
	6, 8, 10, 12, 14	(1)	(1)
ATP–57–14, Revision 3, Dec. 15, 1993	1–2	3	Dec. 15, 1993.
	3–5	2	Nov. 24, 1993.
	7, 9, 11, 13, 15	0	Aug. 14, 1993.
	6, 8, 10, 12, 14	(1)	(1)

(1) These papers are not used.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., Librarian for Service Bulletins, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 6, 1994.

Issued in Renton, Washington, on April 6, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8685 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–166–AD; Amendment 39–8883; AD 94–08–11]

Airworthiness Directives; Jetstream Aircraft Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that requires replacement of certain circuit breakers on the left- and right-hand AC generator panel assemblies with new circuit breakers. This amendment is prompted by reports of failures due to localized overheating of the electric power circuit for the air conditioning recirculation fan in the environmental control system (ECS). The actions specified by this AD are intended to prevent the recirculation fan circuit from overheating, which could lead to smoke and/or flame in the fuselage.

DATES: Effective on June 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes was published in the **Federal Register** on November 22, 1993 (58 FR 61635). That action proposed to require replacement of certain Texas Instrument circuit breakers on the left- and right-hand AC generator panel assemblies with certain Genelco circuit breakers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $225 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,350, or $335 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–11 Jetstream Aircraft Limited (Formerly British Aerospace): Amendment 39–8883. Docket 93–NM–166–AD.

Applicability: Model ATP airplanes, serial numbers 2002 through 2065 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the recirculation fan circuit from overheating, which could lead to smoke and/or flame in the fuselage, accomplish the following:

(a) Within 600 hours time-in-service after the effective date of this AD, replace Texas Instrument circuit breakers 1HG3 and 2HG3 having part number (P/N) 6TC4–10, on the left- and right-hand AC generator panel assemblies at zones 131–05–00 and 132–05–00, respectively, with Genelco circuit breakers having P/N 4330–014–10, in accordance with Jetstream Service Bulletin ATP–21–24–10306A, dated July 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Jetstream Service Bulletin ATP–21–24–10306A, dated July 30, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 6, 1994.

Issued in Renton, Washington, on April 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9004 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–53–AD; Amendment 39–8906; AD 94–09–17]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This action requires inspections to determine the serial numbers and to detect defects in the upper and lower lock links on the nose landing gear (NLG), and rework or replacement of any defective link found. This amendment is prompted by reports of cracking and subsequent failure of certain lock links on these airplanes, which have been attributed to forging defects in the lock links. The actions specified in this AD are intended to prevent collapse of the NLG.

DATES: Effective May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA has received a report of cracking and subsequent failure of an upper lock link on the center landing gear (CLG) of a McDonnell Douglas Model MD–11 series airplane. Results of a subsequent analysis attributed the failure to forging defects in the lock link. An investigation conducted by the manufacturer revealed two additional upper links on the CLG with similar forging defects. The lower lock link on the CLG and the upper and lower lock links on the nose landing gear (NLG) are similar in design and are manufactured by the same supplier as the upper lock link on the CLG; therefore, defective lock links could be installed at any of these locations. Failure of the lock links on the CLG would result in collapse of the CLG; collapse of the CLG would not present an unsafe condition. However, cracking and subsequent failure of the lock links on the NLG, if not corrected, could result in collapse of the NLG. This situation could result in reduced controllability of the airplane during takeoff or landing.

The FAA has issued a separate AD to address this unsafe condition on Model MD–11 series airplanes [reference AD 94–09–01, amendment 39–8889 (59 FR 18722, April 20, 1994)]. However, since the NLG lock links used on Model MD–11 series airplanes can also be used on Model DC–10 series airplanes and KC–10A (military) airplanes, the FAA finds that the latter airplane models also are subject to the identified unsafe condition.

The FAA has reviewed and approved McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994, that describes procedures for a visual inspection to determine the serial numbers of the upper and lower NLG lock links; an eddy current inspection to detect defects in suspect lock links; and rework of any defective lock link found, or replacement of any defective lock link with a servicable link. Reworking or replacing the lock links will minimize the possibility of failure of the lock links on NLG and subsequent collapse of a landing gear.

Since an unsafe condition has been identified that is likely to exist or develop on other Model DC–10 series airplanes and KC–10A (military) airplanes of the same type design, this AD is being issued to prevent collapse of the NLG. This AD requires inspections to determine the serial numbers and to detect defects in the upper and lower lock links on the NLG, and rework or replacement of any defective link found. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD also requires that operators submit a report of inspection findings to the FAA.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The required compliance time of 120 days is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, that compliance time was selected because of a short-term problem with availability of sufficient replacement parts if defects are found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of replacement parts. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required inspections as soon as possible.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–53–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–09–17 McDonnell Douglas: Amendment 39–8906. Docket 94–NM–53–AD.

Applicability: All Model DC–10 series airplanes and KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the nose landing gear (NLG), accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a visual inspection to determine the serial number of the upper lock links, part number ACG7396–1, and lower lock links, part number ACG7237–1, on the NLG; in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994.

(b) If the serial number of the lock link coincides with any of the suspect serial numbers listed in McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994, perform an eddy current inspection to detect defects in the suspect lock link, in accordance with the alert service bulletin.

(c) If any defect is found, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994.

(1) Rework the lock link. Or

(2) Replace the defective lock link with a serviceable lock link that has been inspected in accordance with paragraphs (a) and (b) of this AD, or that has been reworked in accordance with paragraph (c)(1) of this AD.

(d) Within 10 days after accomplishing the inspection required by paragraph (b) of this AD, submit a report of inspection findings to the Manager, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. The report must include the inspection results, a description of any discrepancy found, the part numbers of all links inspected, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) As of the effective date of this AD, no person shall install an upper lock link, part number ACG7396–1, or a lower lock link, part number ACG7237–1, on the NLG of any airplane unless that lock link has been inspected in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A32–237, dated April 11, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10506 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–ANE–47; Amendment 39–8878; AD 94–08–06]

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT9D–7R4 series turbofan engines, that requires initial and repetitive fan blade leading edge inspections, and either installation of fan blade sets with modified fan blade shrouds or rework of the fan blade shrouds as a terminating action to the inspections. This amendment is prompted by reports of flutter-induced fan blade fractures. The actions specified by this AD are intended to prevent fan blade fracture and uncontained engine failure, resulting in possible damage to the aircraft.

DATES: Effective July 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines was published in the **Federal Register** on June 2, 1993 (58 FR 31356). That action proposed to require initial and repetitive on-wing or shop fan blade leading edge inspections to check for leading edge damage in accordance with PW Service Bulletin (SB) No. 72–255, Revision 5, dated January 8, 1990; and to require fan blade set replacement or optional rework of the fan blade shrouds in accordance with PW SB No. 72–309, Revision 9, dated June 12, 1991. Though the NPRM referenced PW SB No. 72–309, Revision 9, dated June 12, 1991, this final rule incorporates the later Revision 10, dated September 2, 1993, which is substantially unchanged from Revision 9. Rework of the fan blade shrouds in accordance with PW SB No. 72–309, Revision 9, dated June 12, 1991, is an acceptable alternate means of compliance for paragraphs (c) and (d) of this AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One comment states that the proposed 90-day requirement for initializing the inspection program poses a significant hardship and economic impact due to difficulty in scheduling engine maintenance. This comment requests extending the initializing period to 180 days. The Federal Aviation Administration (FAA) agrees that the proposed initial 90-day eddy current inspection requirement may be burdensome to some operators. The FAA has therefore added a visual inspection as an option to the eddy current inspection in this final rule. This visual inspection offers greater flexibility in scheduling as it can easily be performed in the field. The FAA does not concur, however, in extending the initializing period to 180 days, as this time period does not offer an adequate level of safety based on risk analysis results. This final rule establishes an interval of 200 cycles in service (CIS) before visual or eddy current inspection that should enable operators to initialize the inspection program with minimum disruption to scheduling without reducing flight safety. Also, the FAA has added guidance emphasizing the manner in which the visual inspection should be performed.

One comment requests eliminating the reference in paragraphs (a) and (b) of the proposed rule to the leading edge refurbishment described in PW Service Bulletin (SB) No. 72–117, as the determining factor for beginning the inspection program. The comment further states that a previous AD, 90–14–08, already requires the leading edge refurbishment described in PW SB No. 72–117, and therefore meets the intent of paragraphs (a) and (b) of the proposed rule. The FAA concurs. Repetitive leading edge refurbishment as described in PW SB No. 72–117 is already required by AD 90–14–08. The compliance section of this AD has been changed from the wording in the NPRM to eliminate reference to leading edge refurbishment, and combines paragraphs (a) and (b) of the proposed rule into a new paragraph (a) which has the same inspection requirements and interval of 200 CIS as the repetitive inspections of paragraph (c) of the proposed rule.

One comment states that the mandatory incorporation of the fan blade shroud angle rework to 52 degrees as described in PW SB No. 72–309 should be relaxed from within two years after the effective date of this AD to the next engine shop visit, thereby reducing the potential for on-wing maintenance induced error. The FAA does not concur. The FAA has determined that it is necessary to expeditiously remove fan blades with the 62 degree shroud configuration, thereby reducing the potential for operating the fan blade in flutter. The FAA has reviewed a risk analysis study that indicates that a two-year time period for incorporating this modification is required to lower the risk sufficiently to avert future potential uncontained fan blade failures.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 730 PW JT9D–7R4 series engines of the affected design in the worldwide fleet. The FAA estimates that 220 engines installed on aircraft of U.S. registry would be affected by this AD, and that the average labor rate is $55 per work hour. The inspections required by this AD will take approximately 1.6 work hours per engine. The blade rework will cost approximately $15,600 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,451,360.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–06 Pratt & Whitney: Amendment 39–8878. Docket 91–ANE–47.

Applicability: Pratt & Whitney (PW) JT9D–7R4 series turbofan engines installed on but not limited to Boeing Models 747 and 767 aircraft, and Airbus Models A300 and A310 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan blade fracture and uncontained engine failure, resulting in possible damage to the aircraft, accomplish the following:

(a) Perform an initial visual or eddy current inspection of the fan blade set leading edges for leading edge damage within 200 cycles in service (CIS) after the effective date of this AD, and rework or replace fan blades as necessary, in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) No. 72–255, Revision 5, dated January 8, 1990. Perform the fan blade leading edge visual inspections using a strong white light, as well as fingernails and fingertips when inspecting for nicked, eroded, or blunt leading edges.

(b) Thereafter, perform repetitive visual or eddy current fan blade leading edge inspections, at intervals not to exceed 200 CIS, and rework or replace fan blades as necessary, in accordance with the Accomplishment Instructions of PW SB No. 72–255, Revision 5, dated January 8, 1990. Perform the fan blade leading edge visual inspections using a strong white light, as well as fingernails and fingertips when inspecting for nicked, eroded, or blunt leading edges.

(c) For PW Model JT9D–7R4H1 engines, install a new or reworked fan blade set with a 52 degree shroud angle, in accordance with PW SB No. 72–309, Revision 10, dated September 2, 1993, within 1 year after the effective date of this AD.

(d) For PW Models JT9D–7R4D, D1, E, E1, G2, and E4 engines, install a new or reworked fan blade set with a 52 degree shroud angle, in accordance with PW SB No. 72–309, Revision 10, dated September 2, 1993, within 2 years after the effective date of this AD.

(e) Installation of a new or reworked fan blade set with a 52 degree fan blade shroud angle, in accordance with paragraphs (c) or (d) of this AD, constitutes a terminating action to the inspection requirements of paragraphs (a) and (b) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Certification Office.

(g) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The modification and inspections shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
PW SB No. 72–255	1–2	5	Jan. 8, 1990.
	3–4	4	Aug. 25, 1988.
	5	5	Jan. 8, 1990.
	6–8	3	Aug. 17, 1987.
Total Pages: 8.			
PW SB No. 72–309	1	10	Sept. 2, 1993.
	2	8	Apr. 5, 1989.
	3–4	9	Jun. 12, 1991.
	5	(1)	Oct. 2, 1986.
	6	1	Nov. 7, 1986.
	7	5	Jul. 22, 1987.
	8–10	8	Apr. 5, 1989.
	11	10	Sept. 2, 1993
	12–18	8	Apr. 5, 1989
	19–20	10	Sept. 2, 1993
	21	8	Apr. 5, 1989
Total Pages: 21.			

(1) Original.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 5, 1994.

Issued in Burlington, Massachusetts, on April 5, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10394 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–ANE–04; Amendment 39–8808; AD 94–03–02]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines; C

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 94–03–02 applicable to Pratt & Whitney Canada PW100 series turboprop engines that was published in the **Federal Register** on February 1, 1994 (59 FR 4565). The AD number and date for the Canadian AD referenced in the SUPPLEMENTARY INFORMATION is incorrect. This document corrects that number and date. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 16, 1994.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney Canada (PWC) Model PW118, PW118A, PW120, PW120A, PW121, PW123, PW124B, and PW125B turboprop engines, was published in the **Federal Register** on Tuesday, February 1, 1994 (59 FR 4565). The following correction is needed:

On page 4566, in the first column, in the SUPPLEMENTARY INFORMATION, in the second paragraph, in the second line, "XX, dated January XX" should read "01, dated January 5."

Issued in Burlington, MA, on April 20, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10504 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ANE–50; Amendment 39–8896; AD 94–09–07]

Airworthiness Directives; Teledyne Continental Motors IO–346, IO–520, and IO–550 Series Piston Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) IO–346, IO–520, and IO–550 series piston engines, that requires initial and repetitive inspections of the engine mount brackets for cracks, and if found cracked, replacement with improved design engine mount brackets. All engine mount brackets require replacement with improved design

engine mount brackets at the next engine removal after the effective date of this AD. This amendment is prompted by reports of cracks in engine mount brackets on engines that have completed at least one overhaul cycle. The actions specified by this AD are intended to prevent engine separation from the aircraft due to cracks in the engine mount brackets.

DATES: Effective July 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) IO–346, IO–520, and IO–550 series piston engines was published in the **Federal Register** on October 20, 1993 (58 FR 54072). That action proposed to require initial and repetitive dye penetrant inspections for cracks in certain lower left engine mount brackets, Part Number (P/N) 630695. If the lower left engine mount bracket is found cracked, that proposed rule would require replacing both the lower left and lower right engine mount brackets with improved design engine mount brackets, P/N 653306 and 653305, respectively. If a crack is not detected, the lower left engine mount bracket would require repetitive inspections at intervals not to exceed 500 hours time in service (TIS) until the next engine removal, at which time engine mount brackets, P/N 630694 and 630695, would be replaced with improved design engine mount brackets, P/N 653306 and 653305. Installation of these improved design engine mount brackets would constitute terminating action to the inspection requirements of that AD. The actions would be required to be accomplished in accordance with TCM Service Bulletin (SB) No. M92–13, dated September 4, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter supports the proposed rule but states that the interval for the repetitive inspections should be reduced from 500 hours TIS to 100 hours TIS. The commenter states that if the bracket is found broken, the airframe engine mount and surrounding areas should be inspected for damage and the upper brackets and all bolts and nuts should be replaced as they may be overstressed. The commenter further states that the pilot should visually inspect the brackets on each preflight.

The FAA does not concur with the recommendation to reduce the repetitive inspection interval to 100 hours TIS. Data provided from the manufacturer indicates that the repetitive inspection interval of 500 hours TIS is sufficient once the initial inspection is satisfactorily completed.

The FAA does not concur with the commenter's recommendation to inspect the airframe engine mount and surrounding areas for damage and to replace all bolts and nuts if the bottom brackets are found broken. Once the bottom brackets are broken, there is essentially no load being transmitted to the lower airframe structure. In addition, a structural analysis of the bolt strength indicates that with only the two upper mounts securing the engine, safety factors exceed required values for normal category "g" loading. Therefore, none of the bolts and nuts should be overstressed.

The FAA does not concur with the commenter's recommendation to require the pilot to visually inspect the brackets on each preflight. Based on the data presented above, the FAA has determined that it is not necessary to inspect the brackets on each preflight.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 9,750 TCM IO–346, IO–520, and IO–550 series piston engines of the affected design in the worldwide fleet. The FAA estimates that 8,300 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per inspection, and if the engine mount brackets must be replaced, an additional 4 work hours will be required. The average labor rate is $55 per work hour. Required parts will cost approximately $320 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,395,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–09–07 Teledyne Continental Motors: Amendment 39–8896. Docket 92–ANE–50.

Applicability: Teledyne Continental Motors (TCM) engine models IO–346A, IO–346B, IO–520C, IO–520CB, and IO–550C; rebuilt engine model IO–520C with serial numbers (S/N) 287051–R and lower; rebuilt engine model IO–520CB with S/N 282226–R and lower; rebuilt engine model IO–550C with S/N 271742–R and lower; and all factory overhauled IO–520C, IO–520CB, and IO–550C engines with a build date prior to August 6, 1992. These engines are installed on but not limited to Beech model A23, A23A, 95–C55, 95–C55A, D55, D55A, E55, E55A, 58, and 58A airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine separation from the aircraft due to cracks in the engine mount brackets, accomplish the following:

(a) For engines with engine mount brackets that have completed at least one engine overhaul cycle, or have accumulated 2,500 or more hours time in service (TIS) on the effective date of this AD, inspect the lower left engine mount bracket, Part Number (P/N) 630695, for cracks using the dye penetrant techniques specified in this paragraph and in accordance with TCM Service Bulletin (SB) No. M92–13, dated September 4, 1992, within the next 50 hours TIS after the effective date of this AD.

(1) Perform the dye penetrant inspection as follows:

Note: Military Specification MIL-I–6866 and American Society of Testing Materials specifications ASTM E1417–93 and E165–9 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalies, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* after preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75°C (165°F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50°C (120°F) before proceeding to the developing procedure.

(v) *Developing:* apply the developer to the dry parts as lightly and as evenly as possible, using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* Because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* All penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* Most penetrants, cleaning agents, and developer suspensions are low flash point material; use caution to prevent fires.

(2) If no crack is detected, inspect in accordance with paragraph (a) of this AD at intervals not to exceed 500 hours TIS since the last inspection.

(3) If a crack is detected, prior to further flight replace both the lower left engine mount bracket, P/N 630695, and lower right engine mount bracket, P/N 630694, with improved design engine mount brackets, P/N 653306 and 653305, respectively.

(b) For all engines, replace both the lower left engine mount bracket, P/N 630695, and lower right engine mount bracket, P/N 630694, with improved design engine mount brackets, P/N 653306 and 653305, respectively, at the next engine removal after the effective date of this AD.

(c) Installation of the improved design engine mount brackets, P/N 653306 and 653305, constitutes terminating action to the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM SB M92–13 .... Total Pages: 2.	1–2	Original	Sept. 4, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 5, 1994.

Issued in Burlington, Massachusetts, on April 19, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10500 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–ANE–12; Amendment 39–8895; AD 94–06–09]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 94–06–09 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) (formerly Bendix) SC–20, SC–200, and S–1200 series magnetos by individual letters. This AD requires inspection to determine if capacitors that may have an intermittent open circuit condition are installed in magnetos, and replacement, if necessary, with serviceable capacitors. This amendment is prompted by reports that TCM produced and delivered magneto capacitors that have the potential for an intermittent open circuit condition that may exist between the internal through-lead and the p-lead stud terminal. The actions specified by this AD are intended to prevent possible injury or death to ground personnel due to a non-grounded magneto.

DATES: Effective May 20, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–06–09, issued on

March 9, 1994, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–12, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On March 9, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94–06–09, applicable to Teledyne Continental Motors (TCM) (formerly Bendix) SC–20, SC–200, and S–1200 series magnetos, which requires inspection to determine if capacitors that may have an intermittent open circuit condition are installed in magnetos, and replacement, if necessary, with serviceable capacitors. That action was prompted by reports that TCM produced and delivered magneto capacitors, Part Number (P/N) 10–349276, which have the potential for an intermittent open circuit condition that may exist between the internal through-lead and the p-lead stud terminal. The potential open circuit condition was initially discovered during a production engine test run at TCM. Further investigation revealed this problem to be limited to two lot numbers, 93–40 and 93–42, approximately 500 capacitors total. To date 241 of the capacitors have been found and taken out of service. These parts were used in magnetos produced at TCM for company use, Textron Lycoming use, after market sales, and for individual capacitors sold as spares to the field after October 27, 1993. These individual replacement parts can be fitted into TCM or Bendix magnetos.

A capacitor with the intermittent open circuit condition described can result in a "hot mag" (i.e. the magneto is not grounded when the ignition/magneto switch is placed in the off position). The magneto is therefore capable of producing ignition, and if the propeller is moved with some residual fuel left in the cylinders, the engine could start momentarily. This momentary engine start could turn the propeller with enough force to cause injury or death to ground personnel struck by the turning propeller. Capacitors with an intermittent open circuit condition may show no revolutions per minute (RPM) drop-off during the magneto check prior to flight. This condition, if not corrected, could result in possible injury or death to ground personnel due to a non-grounded magneto.

The FAA has reviewed and approved the technical contents of TCM Critical Service Bulletin (CSB) 641, dated February 1, 1994, that describes procedures for determining if magnetos contain capacitors, P/N 10–349276, that may have an intermittent open circuit condition.

Since the unsafe condition described is likely to exist or develop on other products of the same type design, the FAA issued priority letter AD 94–06–09 to prevent possible injury or death to ground personnel due to a non-grounded magneto. The AD requires inspection within 10 hours time in service after the effective date of this AD to determine if affected capacitors are installed in magnetos, and replacement, if necessary, with serviceable capacitors. All affected magnetos must be metal stamped with the letter "E" to show compliance. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 9, 1994, to all known U.S. owners and operators of TCM (formerly Bendix) SC–20, SC–200, and S–1200 series magnetos installed on but not limited to reciprocating engine powered Beech, Cessna, Maule, Mooney, Piper, and Robinson aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–12." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–06–09 Teledyne Continental Motors: Amendment 39–8895. Docket 94–ANE–12.

Applicability: Teledyne Continental Motors (TCM) (formerly Bendix) magnetos new and rebuilt TCM Model SC–20, Part Number (P/N) 10–500XXX–X series; Model SC–200, P/N 10–600XXX–X series; and Model S–1200, P/N 10–349XXX–X series, magnetos with Serial Numbers (S/N) J2793XXX(R) through J3193XXX(R), K0193XXX(R) through K3093XXX(R) and L0193XXX(R) through L2293XXX(R) inclusive, with capacitor, P/N 10–349276, with date code 93–40 or 93–42. In addition, all TCM Model SC–20, P/N 10–500XXX–X series; SC–200, P/N 10–600XXX–X series; and S–1200, P/N 10–349XXX–X series, magnetos that have capacitor, P/N 10–349276, identified with date code 93–40 or 93–42, installed after October 27, 1993. Also, any TCM or Bendix magneto regardless of serial number that was fitted after October 27, 1993, with capacitors P/N 10–349276, sold as individual replacement parts with date code 93–40 or 93–42. These magnetos are installed on but not limited to reciprocating engine powered Beech, Cessna, Maule, Mooney, Piper, and Robinson aircraft.

Note: The "X" represents numbers in the P/N and S/N that have no significance in determining applicability: Only the first five digits are needed. The "(R)" at the end of the S/N indicates a rebuilt magneto. The absence of an "(R)" indicates a new magneto.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible injury or death to ground personnel due to a non-grounded magneto, accomplish the following:

Note: Warning: Do not move propellers by hand on engines that may contain affected capacitors until the inspection procedures required by this airworthiness directive (AD) are completed. Ground personnel should avoid the propeller arc.

(a) Within the next 10 hours time in service after the effective date of this AD, inspect affected magnetos for the presence of capacitor P/N 10–349276, in accordance with the Detailed Instructions, paragraphs 1, 1.1, and 1.2 of TCM Critical Service Bulletin (CSB) 641, dated February 1, 1994, and, if necessary, replace with a serviceable part as follows:

(1) If the capacitor is marked with a date code other than 93–40 or 93–42, reinstall the capacitor in the magneto and metal stamp the letter "E" in accordance with the Identification paragraph of TCM CSB641, dated February 1, 1994, to show compliance with this AD. No further action is required.

(2) If the capacitor is marked with either date code 93–40 or 93–42, replace with a serviceable capacitor of the same P/N but with a date code other than 93–40 or 93–42, and metal stamp the letter "E" in accordance with the Identification paragraph of TCM CSB641, dated February 1, 1994, to show compliance with this AD.

(b) Prior to installation, inspect uninstalled capacitor, P/N 10–349276, and replace, if necessary, with a serviceable part, in accordance with the Detailed Instruction, paragraph 2.1 of TCM CSB641, dated February 1, 1994.

Note: TCM Critical Service Bulletin CSB94–1 dated February 1, 1994, and Lycoming Service Bulletin 517 dated February 25, 1994, refers to this subject.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM CSB641	1–2	Original	Feb. 1, 1994.
Total pages: 2.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective May 20, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–06–09, issued March 9, 1994, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on April 19, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10366 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 25 and 602

[TD 8536]

RIN 1545–AM86

Adjustments Under Special Valuation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing for an adjustment in computing the Federal estate or gift

tax imposed on the transfer of interests to which the special valuation rules of section 2701 of the Internal Revenue Code previously applied. This document also contains a technical amendment to the final regulations under section 2702 pertaining to short taxable years of trusts. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990 (the 1990 Act). The final regulations provide needed guidance for taxpayers to comply with the 1990 Act.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman, (202) 622–3090 (not a toll-free telephone number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection-of-information requirements contained in the final regulations under sections 2701(e)(6) and 2702 have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1273. The estimated average annual burden per recordkeeper attributable to these final regulations is two minutes. The estimated average annual burden per respondent attributable to these final regulations is ten minutes.

These estimates approximate the average time expected to be necessary for the collection of information. They are based upon the information available to the IRS and do not include an estimate of annual burden per recordkeeper applicable to Forms 706 and 709. Individual respondents and recordkeepers may require more or less time depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Proposed Regulations

Proposed § 25.2701–5 (relating to adjustments to mitigate double taxation) was published in the **Federal Register** on February 4, 1992. This document adopts final regulations under § 25.2701–5.

Mitigation of Effects of Double Taxation

Section 2701 of the Internal Revenue Code (Code) provides special valuation rules to determine the amount of the gift when an individual transfers an equity interest in a corporation or partnership to a member of the individual's family. For section 2701 to apply, the transferor or an applicable family member must, immediately after the transfer, hold an equity interest having liquidation rights or distribution rights that are preferential to the rights of the transferred interest (an applicable retained interest).

If section 2701 applies to a transfer, the amount of the transferor's gift is determined using a subtraction method of valuation. Generally, in determining the value of any applicable retained interest held by the transferor or an applicable family member, liquidation rights and certain distribution rights in a controlled entity are valued at zero.

Section 2701(e)(6) provides that if there is a subsequent transfer or inclusion in the gross estate of any applicable retained interest that was valued under the rules of section 2701, appropriate adjustments are to be made, pursuant to regulations, to reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation.

The proposed regulations mitigate the effect of double taxation through a reduction to a decedent's adjusted taxable gifts. In general, the amount of the reduction is the lesser of: (1) The amount by which the transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer, or (2) the amount by which the individual's taxable transfers were increased as a result of not applying the valuation rules of section 2701 upon the subsequent transfer of the applicable retained interest.

Under certain circumstances, the proposed regulations provide that the transferor's spouse is treated as the transferor for purposes of making the adjustment. However, because a transferor will often acquire (by gift, inheritance, or purchase) an applicable retained interest initially held by an applicable family member and because of the administrative complexity inherent in allowing assignability of the adjustment between the transferor and any other applicable family member, the proposed regulations do not provide for an adjustment by any individual other than the transferor or the transferor's spouse.

Potential for Loss of Benefit

One commentator argued that some taxpayers will be deprived of the benefit of the adjustment if it is not: (1) Available for lifetime transfers, and (2) freely assignable to all applicable family members. In response to this comment, the final regulations adopt a rule generally allowing the adjustment in the computation of the transferor's gift tax if either the transferor or an applicable family member transfers an applicable retained interest to or for the benefit of an individual other than the transferor or an applicable family member.

In addition, if the applicable retained interest has not been so transferred prior to the death of the transferor, the executor of the transferor's estate is entitled to make the adjustment in computing the transferor's estate tax provided that the executor can demonstrate the fair market value of the applicable retained interest as of the date of death of the transferor.

However, after carefully considering the merits of a freely assignable adjustment, the IRS and the Treasury have determined that in light of the relief otherwise provided, the administrative complexity involved in tracking the adjustment would far outweigh the additional benefit that would be gained therefrom.

"Purge" Method

One commentator argued that double taxation is avoided only if the adjustment produces no greater tax than would be produced if the initial transfer had not been made (and the value of the entity did not change prior to the transferor's death). In the view of this commentator, section 2701 requires prepayment of transfer tax as the "cost" of a corporate or partnership freeze. Under this view, the section 2701(e)(6) adjustment would be accomplished through a mechanism whereby the transferor's transfer tax base is "purged" of the effect of section 2701.

The final regulations continue the approach of the proposed regulations in that they provide the same relief as that advocated above except in those cases where the retained interest declines in value between the date of the initial transfer and the date of the subsequent transfer. Because a reduction in the value of the entity may occur as the result of indirect (hard to detect) transfers to younger generations, the IRS and the Treasury believe that adoption of the purge method is inconsistent with the purpose of section 2701 and would perpetuate the abuses Congress sought to eliminate.

Split Gifts

The proposed regulations provide that the effects of section 2513 (pertaining to gift splitting between spouses) are to be ignored in making the adjustment under section 2701(e)(6). One commentator argued that part of the adjustment could be lost depending upon which spouse died first. In response to this comment, the final regulations provide adjustments for split gifts that are generally consistent with the principles of section 2001(d) and (e) (pertaining to the treatment of split gifts in the computation of the estate tax).

Transfers to Spouse

Under the proposed regulations, the transfer of an applicable retained interest to the transferor's spouse results in the automatic assignment of the adjustment to the spouse. One commentator argued that this automatic assignment will result in loss of the adjustment if the spouse has not made sufficient prior gifts. Under the final regulations, the adjustment is not assigned to the spouse but, instead, is generally available to the transferor or the executor of the transferor's estate.

Effect on Prior Section 2701 Transfers

The final regulations are effective with respect to section 2701 interests transferred after May 4, 1994. For section 2701 transfers occurring on or before May 4, 1994, taxpayers may rely on the final regulations, the previously proposed regulations or any other reasonable interpretation of the statute.

Final Regulations Under Section 2702

The final regulations contain a technical amendment to the regulations under section 2702 pertaining to the governing instrument requirements for qualified interests under section 2702. The amendment, pertaining to the treatment of short taxable years, simplifies the valuation of an annuity or unitrust interest by eliminating the need to pro-rate the first year's payment in the case of a short taxable year.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Fred E. Grundeman, Office of Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 25 and 602 are amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *. Section 25.2701–5 also issued under 26 U.S.C. 2701(e)(6).* * *

Par. 2. In § 25.2701–0, table of contents entries are added under § 25.2701–5 to read as follows:

§ 25.2701–0 Table of contents.

* * * * *

§ 25.2701–5 Adjustments to mitigate double taxation.

(a) Reduction of transfer tax base.
(1) In general.
(2) Federal gift tax modification.
(3) Federal estate tax modification.
(4) Section 2701 interest.
(b) Amount of reduction.
(c) Duplicated amount.
(1) In general.
(2) Transfer tax value—in general.
(3) Special transfer tax value rules.
(d) Examples.
(e) Computation of reduction if initial transfer is split under section 2513.
(1) In general.
(2) Transfers during joint lives.
(3) Transfers at or after death of either spouse.
(f) Examples.
(g) Double taxation otherwise avoided.
(h) Effective date.

* * * * *

Par. 3. In § 25.2701–1, paragraph (a)(1) is amended by adding a sentence at the end to read as follows:

§ 25.2701–1 Special valuation rules in the case of transfers of certain interests in corporations and partnerships.

(a) * * *

(1) * * * Section 25.2701–5 provides an adjustment to mitigate the effects of double taxation when an applicable retained interest is subsequently transferred.

* * * * *

Par. 4. Text is added to § 25.2701–5 to read as follows:

§ 25.2701–5 Adjustments to mitigate double taxation.

(a) *Reduction of transfer tax base*—(1) *In general.* This section provides rules under which an individual (the initial transferor) making a transfer subject to section 2701 (the initial transfer) is entitled to reduce his or her taxable gifts or adjusted taxable gifts (the reduction). The amount of the reduction is determined under paragraph (b) of this section. See paragraph (e) of this section if section 2513 (split gifts) applied to the initial transfer.

(2) *Federal gift tax modification.* If, during the lifetime of the initial transferor, the holder of a section 2701 interest (as defined in paragraph (a)(4) of this section) transfers the interest to or for the benefit of an individual other than the initial transferor or an applicable family member of the initial transferor in a transfer subject to Federal estate or gift tax, the initial transferor may reduce the amount on which the initial transferor's tentative tax is computed under section 2502(a). The reduction is first applied on any gift tax return required to be filed for the calendar year in which the section 2701 interest is transferred; any excess reduction is carried forward and applied in each succeeding calendar year until the reduction is exhausted. The amount of the reduction that is used in a calendar year is the amount of the initial transferor's taxable gifts for that year. Any excess reduction remaining at the death of the initial transferor may be applied by the executor of the initial transferor's estate as provided under paragraph (a)(3) of this section. See paragraph (a)(4) of this section for the definition of a section 2701 interest. See § 25.2701–6 for rules relating to indirect ownership of equity interests transferred to trusts and other entities.

(3) *Federal estate tax modification.* Except as otherwise provided in this paragraph (a)(3), in determining the Federal estate tax with respect to an initial transferor, the executor of the initial transferor's estate may reduce the amount on which the decedent's tentative tax is computed under section 2001(b) (or section 2101(b)) by the amount of the reduction (including any excess reduction carried forward under paragraph (a)(2) of this section). The amount of the reduction under this paragraph (a)(3) is limited to the amount that results in zero Federal estate tax

with respect to the estate of the initial transferor.

(4) *Section 2701 interest.* A section 2701 interest is an applicable retained interest that was valued using the special valuation rules of section 2701 at the time of the initial transfer. However, an interest is a section 2701 interest only to the extent the transfer of that interest effectively reduces the aggregate ownership of such class of interest by the initial transferor and applicable family members of the initial transferor below that held by such persons at the time of the initial transfer (or the remaining portion thereof).

(b) *Amount of reduction.* Except as otherwise provided in paragraphs (c)(3)(iv) (pertaining to transfers of partial interests) and (e) (pertaining to initial split gifts) of this section, the amount of the reduction is the lesser of—

(1) The amount by which the initial transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer; or

(2) The amount (determined under paragraph (c) of this section) duplicated in the transfer tax base at the time of the transfer of the section 2701 interest (the duplicated amount).

(c) *Duplicated amount*—(1) *In general.* The duplicated amount is the amount by which the transfer tax value of the section 2701 interest at the time of the subsequent transfer exceeds the value of that interest determined under section 2701 at the time of the initial transfer. If, at the time of the initial transfer, the amount allocated to the transferred interest under § 25.2701–3(b)(3) (*Step 3* of the valuation methodology) is less than the entire amount available for allocation at that time, the duplicated amount is a fraction of the amount described in the preceding sentence. The numerator of the fraction is the amount allocated to the transferred interest at the time of the initial transfer (pursuant to § 25.2701–3(b)(3)) and the denominator of the fraction is the amount available for allocation at the time of the initial transfer (determined after application of § 25.2701–3(b)(2)).

(2) *Transfer tax value—in general.* Except as provided in paragraph (c)(3) of this section, for purposes of paragraph (c)(1) of this section the transfer tax value of a section 2701 interest is the value of that interest as finally determined for Federal transfer tax purposes under chapter 11 or chapter 12, as the case may be (including the right to receive any distributions thereon (other than qualified payments)), reduced by the amount of any deduction allowed with respect to the section 2701 interest to the extent that the deduction would not have been allowed if the section 2701 interest were not included in the transferor's total amount of gifts for the calendar year or the transferor's gross estate, as the case may be. Rules similar to the rules of section 691(c)(2)(C) are applicable to determine the extent that a deduction would not be allowed if the section 2701 interest were not so included.

(3) *Special transfer tax value rules*—(i) *Transfers for consideration.* Except as provided in paragraph (c)(3)(iii) of this section, if, during the life of the initial transferor, a section 2701 interest is transferred to or for the benefit of an individual other than the initial transferor or an applicable family member of the initial transferor for consideration in money or money's worth, or in a transfer that is treated as a transfer for consideration in money or money's worth, the transfer of the section 2701 interest is deemed to occur at the death of the initial transferor. In this case, the estate of the initial transferor is entitled to a reduction in the same manner as if the initial transferor's gross estate included a section 2701 interest having a chapter 11 value equal to the amount of consideration in money or money's worth received in the exchange (determined as of the time of the exchange).

(ii) *Interests held by applicable family members at date of initial transferor's death.* If a section 2701 interest in existence on the date of the initial transferor's death is held by an applicable family member and, therefore, is not included in the gross estate of the initial transferor, the section 2701 interest is deemed to be transferred at the death of the initial transferor to or for the benefit of an individual other than the initial transferor or an applicable family member of the initial transferor. In this case, the transfer tax value of that interest is the value that the executor of the initial transferor's estate can demonstrate would be determined under chapter 12 if the interest were transferred immediately prior to the death of the initial transferor.

(iii) *Nonrecognition transactions.* If an individual exchanges a section 2701 interest in a nonrecognition transaction (within the meaning of section 7701(a)(45)), the exchange is not treated as a transfer of a section 2701 interest and the transfer tax value of that interest is determined as if the interest received in exchange is the section 2701 interest.

(iv) *Transfer of less than the entire section 2701 interest.* If a transfer is a transfer of less than the entire section 2701 interest, the amount of the reduction under paragraph (a)(2) or (a)(3) of this section is reduced proportionately.

(v) *Multiple classes of section 2701 interest.* For purposes of paragraph (b) of this section, if more than one class of section 2701 interest exists, the amount of the reduction is determined separately with respect to each such class.

(vi) *Multiple initial transfers.* If an initial transferor has made more than one initial transfer, the amount of the reduction with respect to any section 2701 interest is the sum of the reductions computed under paragraph (b) of this section with respect to each such initial transfer.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (a) through (c) of this section.

Facts. (1) *In general.* (i) P, an individual, holds 1,500 shares of $1,000 par value preferred stock of X corporation (bearing an annual noncumulative dividend of $100 per share that may be put to X at any time for par value) and 1,000 shares of voting common stock of X. There is no other outstanding common stock of X.

(ii) On January 15, 1991, when the aggregate fair market value of the preferred stock is $1,500,000 and the aggregate fair market value of the common stock is $500,000, P transfers common stock to P's child. The fair market value of P's interest in X (common and preferred) immediately prior to the transfer is $2,000,000, and the section 2701 value of the preferred stock (the section 2701 interest) is zero. Neither P nor P's spouse, S, made gifts prior to 1991.

(2) *Additional facts applicable to Examples 1 through 3.* P's transfer consists of all 1,000 shares of P's common stock. With respect to the initial transfer, the amount remaining after Step 2 of the subtraction method of § 25.2701–3 is $2,000,000 ($2,000,000 minus zero), all of which is allocated to the transferred stock. P's aggregate taxable gifts for 1991 (including the section 2701 transfer) equal $2,500,000.

(3) *Additional facts applicable to Examples 4 and 5.* P's initial transfer consists of one-half of P's common stock. With respect to the initial transfer in this case, only $1,000,000 (one-half of the amount remaining after Step 2 of the subtraction method of § 25.2701–3) is allocated to the transferred stock. P's aggregate taxable gifts for 1991 (the section 2701 transfer and P's other transfers) equal $2,500,000.

Example 1. Inter vivos transfer of entire section 2701 interest. (i) On October 1, 1994, at a time when the value of P's preferred stock is $1,400,000, P transfers all of the preferred stock to P's child. In computing P's 1994 gift tax, P, as the initial transferor, is entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) by $1,400,000.

(ii) The amount of the reduction computed under paragraph (b) of this section is the lesser of $1,500,000 (the amount by which the initial transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer) or $1,400,000 (the duplicated amount). The duplicated amount is 100 percent (the portion of the section 2701 interest subsequently transferred) times $1,400,000 (the amount by which the gift tax value of the preferred stock ($1,400,000 at the time of the subsequent transfer) exceeds zero (the section 2701 value of the preferred stock at the time of the initial transfer)).

(iii) The result would be the same if the preferred stock had been held by P's parent, GM, and GM had, on October 1, 1994, transferred the preferred stock to or for the benefit of an individual other than P or an applicable family member of P. In that case, in computing the tax on P's 1994 and subsequent transfers, P would be entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) by $1,400,000. If the value of P's 1994 gifts is less than $1,400,000, P is entitled to claim the excess adjustment in computing the tax with respect to P's subsequent transfers.

Example 2. Transfer of section 2701 interest at death of initial transferor. (i) P continues to hold the preferred stock until P's death. The chapter 11 value of the preferred stock at the date of P's death is the same as the fair market value of the preferred stock at the time of the initial transfer. In computing the Federal estate tax with respect to P's estate, P's executor is entitled to a reduction of $1,500,000 under paragraph (a)(3) of this section.

(ii) The result would be the same if P had sold the preferred stock to any individual other than an applicable family member at a time when the value of the preferred stock was $1,500,000. In that case, the amount of the reduction is computed as if the preferred stock were included in P's gross estate at a fair market value equal to the sales price. If the value of P's taxable estate is less than $1,500,000, the amount of the adjustment available to P's executor is limited to the actual value of P's taxable estate.

(iii) The result would also be the same if the preferred stock had been held by P's parent, GM, and at the time of P's death, GM had not transferred the preferred stock.

Example 3. Transfer of after-acquired preferred stock. On September 1, 1992, P purchases 100 shares of X preferred stock from an unrelated party. On October 1, 1994, P transfers 100 shares of X preferred stock to P's child. In computing P's 1994 gift tax, P is not entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) because the 1994 transfer does not reduce P's preferred stock holding below that held at the time of the initial transfer. See paragraph (a)(4) of this section.

Example 4. Inter vivos transfer of entire section 2701 interest. (i) On October 1, 1994, at a time when the value of P's preferred stock is $1,400,000, P transfers all of the preferred stock to P's child. In computing P's 1994 gift tax, P, as the initial transferor, is entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) by $700,000.

(ii) The amount of the reduction computed under paragraph (b) of this section is the lesser of $750,000 (($1,500,000 × .5 ($1,000,000 over $2,000,000)) the amount by which the initial transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer) or $700,000 (($1,400,000 × .5) the duplicated amount). The duplicated amount is 100 percent (the portion of the section 2701 interest subsequently transferred) times $700,000; e.g., one-half (the fraction representing the portion of the common stock transferred in the initial transfer ($1,000,000/$2,000,000)) of the amount by which the gift tax value of the preferred stock at the time of the subsequent transfer ($1,400,000) exceeds zero (the section 2701 value of the preferred stock at the time of the initial transfer).

Example 5. Subsequent transfer of less than the entire section 2701 interest. On October 1, 1994, at a time when the value of P's preferred stock is $1,400,000, P transfers only 250 of P's 1,000 shares of preferred stock to P's child. In this case, the amount of the reduction computed under paragraph (b) is $175,000 (one fourth (250/1,000) of the amount of the reduction available if P had transferred all 1,000 shares of preferred stock).

(e) *Computation of reduction if initial transfer is split under section 2513*—(1) *In general.* If section 2513 applies to the initial transfer (a split initial transfer), the special rules of this paragraph (e) apply.

(2) *Transfers during joint lives.* If there is a split initial transfer and the corresponding section 2701 interest is transferred during the joint lives of the donor and the consenting spouse, for purposes of determining the reduction under paragraph (a)(2) of this section each spouse is treated as if the spouse was the initial transferor of one-half of the split initial transfer.

(3) *Transfers at or after death of either spouse*—(i) *In general.* If there is a split initial transfer and the corresponding section 2701 interest is transferred at or after the death of the first spouse to die, the reduction under paragraph (a)(2) or (a)(3) of this section is determined as if the donor spouse was the initial transferor of the entire initial transfer.

(ii) *Death of donor spouse.* Except as provided in paragraph (e)(3)(iv) of this section, the executor of the estate of the donor spouse in a split initial transfer is entitled to compute the reduction as if the donor spouse was the initial transferor of the section 2701 interest otherwise attributable to the consenting spouse. In this case, if the consenting spouse survives the donor spouse—

(A) The consenting spouse's aggregate sum of taxable gifts used in computing each tentative tax under section 2502(a) (and, therefore, adjusted taxable gifts under section 2001(b)(1)(B) (or section 2101(b)(1)(B)) and the tax payable on the consenting spouse's prior taxable gifts under section 2001(b)(2) (or section 2101(b)(2))) is reduced to eliminate the remaining effect of the section 2701 interest; and

(B) Except with respect to any excess reduction carried forward under paragraph (a)(2) of this section, the consenting spouse ceases to be treated as the initial transferor of the section 2701 interest.

(iii) *Death of consenting spouse.* If the consenting spouse predeceases the donor spouse, except for any excess reduction carried forward under paragraph (a)(2) of this section, the reduction with respect to any section 2701 interest in the split initial transfer is not available to the estate of the consenting spouse (regardless of whether the interest is included in the consenting spouse's gross estate). Similarly, if the consenting spouse predeceases the donor spouse, no reduction is available to the consenting spouse's adjusted taxable gifts under section 2001(b)(1)(B) (or section 2101(b)(1)(B)) or to the consenting spouse's gift tax payable under section 2001(b)(2) (or section 2101(b)(2)). See paragraph (a)(2) of this section for rules involving transfers by an applicable family member during the life of the initial transferor.

(iv) *Additional limitation on reduction.* If the donor spouse (or the estate of the donor spouse) is treated under this paragraph (e) as the initial transferor of the section 2701 interest otherwise attributable to the consenting spouse, the amount of additional reduction determined under paragraph (b) of this section is the amount determined under that paragraph with respect to the consenting spouse. If a reduction was previously available to the consenting spouse under this paragraph (e), the amount determined under this paragraph (e)(3)(iv) with respect to the consenting spouse is determined as if the consenting spouse's taxable gifts in the split initial transfer had been increased only by that portion of the increase that corresponds to the remaining portion of the section 2701 interest. The amount of the additional reduction (i.e., the amount determined with respect to the consenting spouse) is limited to the amount that results in a reduction in the donor spouse's Federal transfer tax no greater than the amount of the increase in the consenting spouse's gift tax incurred by reason of the section 2701 interest (or the remaining portion thereof).

(f) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section. The examples assume the facts set out in this paragraph (f).

Facts. (1) In each example assume that P, an individual, holds 1,500 shares of $1,000 par value preferred stock of X corporation (bearing an annual noncumulative dividend of $100 per share that may be put to X at any time for par value) and 1,000 shares of voting common stock of X. There is no other outstanding stock of X. The annual exclusion under section 2503 is not allowable with respect to any gift.

(2) On January 15, 1991, when the aggregate fair market value of the preferred stock is $1,500,000 and the aggregate fair market value of the common stock is $500,000, P transfers all 1,000 shares of the common stock to P's child. Section 2701 applies to the initial transfer because P transferred an equity interest (the common stock) to a member of P's family and immediately thereafter held an applicable retained interest (the preferred stock). The fair market value of P's interest in X immediately prior to the transfer is $2,000,000 and the section 2701 value of the preferred stock (the section 2701 interest) is zero. With respect to the initial transfer, the amount remaining after Step 2 of the subtraction method of § 25.2701–3 was $2,000,000 ($2,000,000 minus zero), all of which is allocated to the transferred stock. P had made no gifts prior to 1991. The sum of P's aggregate taxable gifts for the calendar year 1991 (including the section 2701 transfer) is $2,500,000. P's spouse, S, made no gifts prior to 1991.

(3) P and S elected pursuant to section 2513 to treat one- half of their 1991 gifts as having been made by each spouse. Without the application of section 2701, P and S's aggregate gifts would have been $500,000 and each spouse would have paid no gift tax because of the application of the unified credit under section 2505. However, because of the application of section 2701, both P and S are each treated as the initial transferor of aggregate taxable gifts in the amount of $1,250,000 and, after the application of the unified credit under section 2505, each paid $255,500 in gift tax with respect to their 1991 transfers. On October 1, 1994, at a time when the value of the preferred stock is the same as at the time of the initial transfer, P transfers the preferred stock (the section 2701 interest) to P's child.

Example 1. Inter vivos transfer of entire section 2701 interest. P transfers all of the preferred stock to P's child. P and S are each entitled to a reduction of $750,000 in computing their 1994 gift tax. P is entitled to the reduction because P subsequently transferred the one-half share of the section 2701 interest as to which P was the initial transferor to an individual who was not an applicable family member of P. S is entitled to the reduction because P, an applicable family member with respect to S, transferred the one-half share of the section 2701 interest as to which S was the initial transferor to an individual other than S or an applicable family member of S. S may claim the reduction against S's 1994 gifts. If S's 1994 taxable gifts are less than $750,000, S may claim the remaining amount of the reduction against S's next succeeding lifetime transfers.

Example 2. Inter vivos transfer of portion of section 2701 interest. P transfers one-fourth of the preferred stock to P's child. In this case, P and S are each entitled to a reduction of $187,500, the corresponding portion of the reduction otherwise available to each spouse (one-fourth of $750,000).

Example 3. Transfer at death of donor spouse. P, the donor spouse in the section 2513 election, dies on October 1, 1994, while holding all of the preferred stock. The executor of P's estate is entitled to a reduction in the computation of the tentative tax under section 2001(b). Since no reduction had been previously available with respect to the section 2701 interest, P's estate is entitled to a full reduction of $750,000 with respect to the one-half share of the preferred stock as to which P was the initial transferor. In addition, P's estate is entitled to an additional reduction of up to $750,000 for the remaining section 2701 interest as to which S was the initial transferor. The reduction for the consenting spouse's remaining section 2701 interest is limited to that amount that will produce a tax saving in P's Federal estate tax of $255,500, the amount of gift tax incurred by S by reason of the application of section 2701 to the split initial transfer.

Example 4. Transfer after death of donor spouse. The facts are the same as in *Example 3*, except that S acquires the preferred stock from P's estate and subsequently transfers the preferred stock to S's child. S is not entitled to a reduction because S ceased to be an initial transferor upon P's death (and S's prior taxable gifts were automatically adjusted at that time to the level that would have existed had the split initial transfer not been subject to section 2701).

Example 5. Death of donor spouse after inter vivos transfer. (i) P transfers one-fourth of the preferred stock to P's child. In this case, P and S are each entitled to a reduction of $187,500, the corresponding portion of the reduction otherwise available to each spouse (one-fourth of $750,000). S may claim the reduction against S's 1994 or subsequent transfers. P dies on November 1, 1994.

(ii) P's executor is entitled to include, in computing the reduction available to P's estate, the remaining reduction to which P is entitled and an additional amount of up to $562,500 ($750,000 minus $187,500, the amount of the remaining reduction attributable to the consenting spouse determined immediately prior to P's death). The amount of additional reduction available to P's estate cannot exceed the amount that will reduce P's estate tax by $178,625, the amount that S's 1991 gift tax would have been increased if the application of section 2701 had increased S's taxable gifts by only $562,500 ($750,000 – $187,500).

(g) *Double taxation otherwise avoided.* No reduction is available under this section if—

(1) Double taxation is otherwise avoided in the computation of the estate tax under section 2001 (or section 2101); or

(2) A reduction was previously taken under the provisions of section 2701(e)(6) with respect to the same section 2701 interest and the same initial transfer.

(h) *Effective date.* This section is effective for transfers of section 2701 interests after May 4, 1994. If the transfer of a section 2701 interest occurred on or before May 4, 1994, the initial transferor may rely on either this section, project PS–30–91 (1991–2 C.B. 1118, and 1992–1 C.B. 1239 (see § 601.601(d)(2)(ii)(*b*) of this chapter)) or any other reasonable interpretation of the statute.

Par. 5. Section 25.2702–3 is amended as follows:

1. A sentence is added to the end of paragraph (b)(3).
2. A sentence is added to the end of paragraph (c)(3).
3. The additions read as follows:

§ 25.2702–3 Qualified interests.

* * * * *

(b) * * *

(3) * * * Solely for purposes of this paragraph (b), the governing instrument meets the requirements of this section with respect to short taxable years, if any, and the last taxable year of the term if the governing instrument provides that the fixed amount or a pro-rata portion thereof must be payable for the final short period of the annuity interest.

* * * * *

(c) * * *

(3) * * * Solely for purposes of this paragraph (c), the governing instrument meets the requirements of this section with respect to short taxable years, if any, and the last taxable year of the term if the governing instrument provides that the fixed amount or a pro-rata portion thereof must be payable for the final short period of the unitrust interest.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. The table in § 602.101(c) is amended by adding the following citation in numerical order to read as follows:

25.2701–5 1545–1273

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: April 18, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–10727 Filed 5–4–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-93-023]

RIN 2115-AE47

Drawbridge Operation Regulations; Pass Manchac, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This notice corrects technical errors in the regulatory language of a final rule published in the **Federal Register** on March 30, 1994 (59 FR 14755). The final rule changed the regulation governing the operation of the bascule span bridge across Pass Manchac, mile 6.7 at Manchac, Louisiana, by permitting automated operation of the draw.

EFFECTIVE DATE: This regulation becomes effective on April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

Corrections

§ 117.489 [Corrected]

1. On Page 14755, second column, § 117.484, correct paragraph (b) by removing the last sentence and adding two sentences in its place to read "Navigation channel warning lights will be lit, and photoelectric (infrared) boat detectors will monitor the waterway beneath the bridge for the presence of vessels. The waterway approaches to the bridge will be monitored by closed circuit TV (CCTV) cameras.".

2. On Page 14755, second column, § 117.484, correct paragraph (c) by revising the second sentence to read "The yardmaster will continuously monitor marine radio broadcasts on the normal and emergency marine radio channels throughout the warning period and at all times the bridge is closed.".

Dated: April 20, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94-10855 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Baltimore 94-007]

Regulated Navigation Area Regulation: Ice Operations in Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: The Ice Navigation Season Regulated Navigation Area on the northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal, is terminated April 20, 1994.

The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, state that they shall be placed in effect and terminated at the direction of the Captain of the Port Baltimore by notice in the **Federal Register**. This notice terminates the regulation placed into effect by a **Federal Register** Notice published on February 9, 1994 (59 FR 5954).

The purpose of the Regulated Navigation Area was to enhance the safety of navigation in the affected waters. It required operators of certain vessels, during their vessel's transit of the Regulated Navigation Area, to be aware of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port, Baltimore.

EFFECTIVE DATE: This notice is effective 12 a.m., April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy P. Ryan, Chief Warrant Officer, U.S. Coast Guard Marine Safety Office, Baltimore Customs House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-2651.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Timothy P. Ryan, Chief Warrant Officer, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Dated: April 22, 1994.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 94-10856 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On October 28, 1993, the President signed into law Public Law 103-123, the Treasury, Postal Service, and General Appropriations Act for 1994. Title VII of the Act, the Revenue Forgone Reform Act, amends 39 U.S.C. 3626 by adding provisions to subsection (j) and new subsection (m). These sections concern the administration of special bulk third-class postage rates for certain qualified organizations. The provisions, which were not to take effect until after December 31, 1993, make certain types of advertisements, promotions, and offers, as well as some products, ineligible to be mailed at the special bulk third-class rates. This document contains regulations implementing the legislative changes.

EFFECTIVE DATE: September 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268-5316.

SUPPLEMENTARY INFORMATION: The Postal Service published in the **Federal Register** (58 FR 64918-64919) on December 10, 1993, a proposal to amend the Domestic Mail Manual to implement certain provisions of Public Law 103-123, the Treasury, Postal Service, and General Appropriations Act for 1994. These provisions made certain types of matter ineligible to be mailed at the special bulk third-class postage rates, which are available for use by certain qualified nonprofit organizations and political committees. The Postal Service requested comments by January 10, 1994. Subsequently, the comment period was extended to February 9, 1994, by notice in the **Federal Register** (58 FR 65959) on December 17, 1993. At the request of postal customers, the Postal Service held a public meeting on January 28, 1994, as announced in the **Federal Register** (59 FR 1512) on January 11, 1994, to facilitate the receipt of comments regarding the proposal to implement new statutory restrictions on the use of special bulk third-class mail.

The new legislation establishes additional content-based restrictions on matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or for a fee or consideration, recommends, describes, or announces the availability of any product or service to qualify for mailing at these rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The determination whether a product or service is substantially related to an organization's purpose is to be made in accordance with standards established under the Internal Revenue Code.

The legislation also establishes restrictions for mailing products at the special rates. The only products mailable at the special bulk third-class rates are low-cost products as defined under the Internal Revenue Code, items donated or contributed to the qualified organization, and periodical publications of qualified organizations. The Postal Service views the new provisions as supplementary to, rather than a change to or replacement for, existing restrictions on special rate mailings. That is, mailings ineligible for the special rates under existing rules remain ineligible for these rates, regardless of whether they violate the new restrictions. Further, mailings that violate the new restrictions would not be eligible for the special rates, regardless of whether they would be eligible under existing rules.

As a general matter, it should be recognized that the Postal Service has limited discretion on what may be mailed at the special rates. These historically subsidized rates are based on statutes that prescribe standards for who may mail at the special rates and what may be sent at those rates. The Postal Service views its role as the administrator of these laws. Accordingly, its goal in this rulemaking is to promulgate rules implementing Public Law 103–123.

As explained below, the new rules deny the use of special bulk third-class rates for mailpieces that contain advertisements for products or services of the qualified organization that are not "substantially related" to a purpose on which the organization's authorization to mail at the special bulk third-class rates is based. This prohibition applies to catalogs and publications containing such advertisements, regardless of the inclusion of other advertisements that do qualify for mailing at those rates. Paid advertisements that do not violate any of the current restrictions will continue to be allowed in publications sent at the special bulk third-class rates, as long as they pass the "substantially related" test. These new rules are in addition to, and are designed to be compatible with, existing prohibitions on the use of special bulk third-class rates for improper cooperative mailings, and certain advertising for credit cards, insurance policies, and travel arrangements. As a separate matter, the Postal Service will revise mailing statements for special bulk third-class mailings by citing the appropriate Domestic Mail Manual section to call mailers' attention to provisions with which they need to be familiar.

Evaluation of Comments Received

Written comments from almost 600 religious, educational, fraternal, charitable, labor, and agricultural organizations and individuals were received by the Postal Service. In addition, 14 commenters offered oral comments at the public meeting.

Four hundred seventeen comments oppose enforcement of the "substantially related" test to determine whether an advertisement, promotion, or offer is mailable at the special bulk third-class rates. They state that the test would be detrimental to fundraising activities needed to sustain operating budgets, harm religious publications of all faiths, and impair organizations' abilities to carry on their religious, educational, or charitable functions.

As explained above, the Postal Service's responsibility is to implement and administer a new statutory provision restricting the use of special bulk third-class rates. This law specifically requires that the sale of a product or the providing of a service must be "substantially related (aside from the need, on the part of the organization promoting such product or service, for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates" (i.e., special bulk third-class rates). Consequently, the Postal Service and qualified organizations are required to use the "substantially related" test to determine whether an advertisement, promotion, or offer is mailable at the special bulk third-class rates.

The statute further states that the "substantially related" test for products and services must be consistent with the standards established by the Internal Revenue Service (IRS) and courts reviewing IRS decisions. Accordingly, the rules adopted by the Postal Service follow these standards.

To be "substantially related" in accordance with IRS standards, an advertised product or service must contribute importantly to the accomplishment of one or more of the purposes of the qualified organization. This means that the sale of the product or service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the special bulk third-class rates is based. The sale of the product or offering of the service must have a causal relationship to the achievement of the exempt purposes (other than through the production of income) of the qualified organization. (Whether an activity generates income that will be used to accomplish one or more of the purposes of the qualified organization is not to be used as a factor in determining whether an advertisement passes the "substantially related" test.) A synopsis of IRS rulings regarding the definition of "substantially related" is in Internal Revenue Manual, sec. 7751, part (36) 40 (Exempt Organizations Handbook). Additionally, the Postal Service expects to publish a handbook that will provide further guidance to mailers.

One of the major points of contention throughout this rulemaking has been the classification of third-class newsletters, bulletins, and other publications containing paid advertising from parties other than the publisher. The proposed rule published on December 10, 1993, sets forth the Postal Service's view that these publications are subject to the new statutory restrictions, and would be excluded from mailing at the special bulk third-class rates if they contained paid advertising that did not comply with the "substantially related" test. Numerous commenters have opposed this interpretation, arguing that the statute contains a general exception for these publications, or that it reflects the intent of Congress to permit paid advertising, as distinguished from an organization's own advertising, to be sent at the special rates. The Postal Service believes that these objections are not well taken, and that the terms of the statute contain no special exception from the "substantially related" test for the advertising content of third-class publications.

The "substantially related" test is contained in new subparagraph (D) of 39 U.S.C. 3626(j)(1), which forbids the application of special bulk third-class rates to "mail which advertises, promotes, offers, or, for a fee or consideration recommends, describes, or announces the availability of" certain categories of products and services. The types of advertising already restricted under paragraph (j)(1) include advertisements for credit cards by subparagraph (A), for insurance policies by subparagraph (B), and for travel arrangements by subparagraph (C). Subparagraphs (A), (B), and (C) contain no exception for paid advertising in third-class publications, and the Postal Service has not applied any such exception in its enforcement of these provisions.

Unlike the earlier provisions, however, new subparagraph (D) does contain a specific exception related to publications. Subclause (D)(ii)(II) provides that "clause (i) [containing the substantially related test] shall not apply if the product involved is a periodical publication described in subsection (m)(2) [a periodical publication of a qualified nonprofit organization] (including a subscription to receive any such publication)." By its terms, this provision recognizes that a periodical publication may also be a product that a nonprofit organization wishes to advertise, and it exempts the advertising for the publication (or for subscriptions to the publication) from the "substantially related" test. It in no way prevents the application of the test to third-party paid advertising for other products or services that may be contained in an issue of the publication itself.

A second specific exception concerning publications is contained in new 39 U.S.C. 3626 (m), which restricts what "mail consisting of products" may be sent at the special bulk third-class rates. Under paragraph (m)(1), such products must either have been received by the mailing organization as gifts or contributions, or be "low-cost articles" as defined in the Internal Revenue Code. Paragraph (m)(2) makes an exception from these requirements for a "periodical publication of a qualified nonprofit organization." Thus, the statute recognizes that a periodical publication may also be a product that a nonprofit organization wishes to mail, whether as a benefit to members or a premium for potential donors in the course of a fundraising appeal, and allows such mailings to go at the special rates. By its terms, however, the "product rule" of subsection (m) does not override the separate and distinct "advertising rules" of subsection (j), and the Postal Service believes that it would be erroneous to construe subsection (m) as a blanket exception to those rules. Such interpretation would rob the new "substantially related" test of subparagraph (j)(1)(D) of much of its effectiveness, by allowing mailers to convert ineligible third-class catalogs into eligible third-class "publications," and overturn the Postal Service's established enforcement policies regarding the credit card, insurance, and travel advertising restrictions in subparagraphs (j)(1)(A), (B), and (C).

The new restrictions do not apply to publications mailed at the special nonprofit second-class rates. However, if a publisher wishes to mail copies of a special second-class rate publication at the special bulk third-class rates as provided for in DMM E215.2.6, those copies are subject to these new rules. Accordingly, those copies may not be mailed at the special bulk third-class rates if they contain any material ineligible for the special rates.

It should be emphasized that the application of the "substantially related" test to third-party paid advertising in publications does not preclude all paid advertising in publications mailed at the special bulk third-class rates. If the product or service advertised is substantially related to one or more of the nonprofit's qualifying purposes, the publication may still be mailed at the special rates. Each situation must be considered on a case-by-case basis, including consideration of the product or service advertised and the nature of the nonprofit organization. Examples of acceptable types of advertisements include an advertisement for a blood glucose tester in a nonprofit diabetes association's publication and an advertisement for courses at one college in another college's publication.

It should also be noted that the "substantially related" test and other advertising restrictions do not apply if the material in question is not considered an advertisement under postal rules. The Postal Service received numerous comments concerning the listing of contributors in publications, such as the lists of individuals and firms that appear on the back page of many church bulletins. For purposes of these rules, acknowledgments of organizations or individuals who have contributed to the nonprofit mailer are not generally treated as advertising. 39 U.S.C. 3626(j)(2)(A). To prevent technical disputes in individual cases concerning the distinction between an advertisement and an acknowledgment, the rule will consider material to be acknowledgments, rather than advertising, if they appear on a page headed "Sponsors," "Contributors," "Donors" or a similar term, and each acknowledgment does not exceed the size of a business card (approximately 7 square inches). The listings should not be labeled as advertising in other portions of the publication or elsewhere (such as rate cards).

Similarly, organizations may still include information and response cards concerning membership benefits in publications sent at the special third-class rates. Such matter will still be required to comply with the restrictions in 39 U.S.C. 3626(j)(2)(B).

Consistent with Postal Service practice and policy, public service announcements for which no consideration has been paid will not be considered advertising, and may be included in publications sent at the special bulk third-class rates.

Finally, announcements of activities substantially all the work of which is contributed by the members or supporters of a qualified organization without compensation and advertisements for products and services, including products and services offered as prizes or premiums, substantially all of which have been received by a qualified organization as gifts or contributions, are considered to be "substantially related" to the organization's purposes.

One hundred twenty-seven comments asserted that the Postal Service's proposed rule did not follow the intent of Congress to base mailing restrictions on whether the qualified organization pays unrelated business income tax on the particular activity advertised. The law, however, does not adopt the test urged by the comments. Instead it clearly states that the products or services advertised must be "substantially related" to the purpose(s) on which the qualified organization's authorization to mail at special bulk third-class rates is based. This "relatedness" test is only one of the factors considered by the IRS in determining whether unrelated business income tax must be paid, but this part of the test is singled out by the statute as the standard that the Postal Service must follow. Accordingly, the Postal Service is directed to rely on the "substantially related" portion of the unrelated business income tax analysis but not the other parts.

Twenty-five comments oppose or protest increases in rates for nonprofit mailers over the next 6 years, the end of subsidized funding for nonprofit postage rates, and other aspects of the Revenue Forgone Reform Act that will have an adverse effect on the mailing activities of churches and church organizations. In general, these types of comments are beyond the scope of this rulemaking. These comments also questioned whether including new member information, financial information, attendance information, and announcements of upcoming church events would disqualify church bulletins from being sent at the special bulk third-class rates. This kind of information concerning the qualified organization's activities would generally be considered to be substantially related to the nonprofit religious purposes of a church.

Three comments requested that scholarly journals be allowed to continue to accept exchange advertisements and paid advertisements to attract new subscriptions and promote books and journals. The final rule allows paid advertisements to be in materials that are mailed at the special bulk third-class rates as long as the advertisements are for products or services related to the purposes on which the qualified organization's authorization to mail at special bulk third-class rates is based. Although each advertisement must be considered on a case-by-case basis, the inclusion of exchange advertisements and third-party paid advertisements under the circumstances described would not appear to violate the "substantially related" test.

Ten comments stated that the proposed definition of "low-cost items" was inconsistent with the Internal Revenue Service definition. These comments are correct.

Accordingly, the definition for "low-cost items" in the final rule is the same definition that the Internal Revenue Service uses and includes a provision for annually increasing the cost of such items based on the cost of living.

Ten comments stated that requiring a separate certification at the time of mailing would be an administrative and logistical burden for mailers and the Postal Service, urged that mailers needed more information about the process and the consequences of improper certification, and questioned why such a statement could not be included on the mailing statement for each mailing. It was also suggested that the application for special bulk third-class mailing privileges be modified to state that the organization will submit only mailings it thinks qualify for the special bulk third-class rates. In response to these comments, it should be noted that the intended purpose of the certification statement was more instructive than regulatory. That is, the Postal Service was concerned that nonprofits should be aware of the restrictions on nonprofit rates. Because mailing statements are often signed by agents, there was concern that the nonprofits themselves may not be aware of the new rules. Further, although the publication of these rules and a one-time notice to the nonprofit organization would provide sufficient legal notice, the Postal Service took notice that the officers of nonprofit organizations, particularly smaller ones, regularly change, and was concerned that new officers might not be aware of the rules. Nevertheless, in view of the hardships noted by comments, a separate certification will not be required. Instead, the mailing statement that must be completed for each mailing will be modified to refer to the DMM section in which the standards for advertisements are located, as a reminder and a reference. The Postal Service will also explore other ideas to promote awareness of the rules, such as providing information pertaining to this final rule to qualified organizations before the effective date of the rule change.

Four comments expressed confusion between advertising, public "thank yous," and free advertisements, and asked for clarification. The definition for advertising that will be used to administer the new eligibility requirements for special bulk third-class matter is in DMM E211.11.1. As discussed above, public service announcements for which no consideration is paid are not considered advertising as stated in DMM E211.11.2. Two examples of a public service announcements are "Support the Red Cross Blood Drive" and "Buy U.S. Savings Bonds."

Eighty-one comments raised a variety of conflicting views from the perspective of commercial mailers and small or local religious and charitable organizations. The commercial mailers stated that it is unfair to business owners who are not members of a qualified organization to allow qualified organizations to include advertisements of their members in the materials they mail at the special bulk third-class rates, and higher postage should be paid when third-party advertisements are mailed with materials of a qualified organization. The small nonprofit organizations argued against imposing additional restrictions on the advertising in their publications and other materials they mail at the special bulk third-class rates. In general, those comments concern suggestions that the Postal Service has no authority to implement. The Postal Service is required to administer the statutory provisions that prohibit only certain types of advertising in nonprofit mail matter.

Three comments (two colleges and a religious organization) stated that advertisements for similar types of organizations and affiliated organizations should be permitted in materials mailed at the special bulk third-class rates. The statutes and implementing rules look to the nature of the product or service promoted, rather than to the identity of the advertiser. As noted above, paid advertisements for "substantially related" products or services may be mailed at the special bulk third-class rates, regardless of the identity of the advertiser.

One comment stated that the proposed regulations do not include provisions for informing mailers of enforcement decisions or of measures that may serve to assist mailers plan future mailings. Notice of changes in these standards will be published by the Postal Service in accordance with its usual procedures for rulemaking.

Two comments suggested that the proposed definition of "periodical publication" goes beyond the requirements of the new statute. Nothing in the new statute suggests an intent to modify the established postal definition of periodical publication derived from statutory standards, which the Postal Service believes to be consistent with the common usage and understanding of that term among mailers. The use of the existing definition for a periodical publication would seem consistent with the statute and would in addition help avoid ambiguity and confusion.

Seventy-six comments stated that the proposed rule change is vague and complex, does not clearly define "substantially related" and "contribute importantly," and does not indicate whether "front-end" and "back-end" premiums as well as emblematic products will qualify for mailing at the reduced rates. The Postal Service does not believe the rule is unclear. Moreover, the final rule clearly states that the phrases "substantially related" and "contribute importantly" will be administered in accordance with Internal Revenue Service rulings and precedents. In addition, as discussed, the Postal Service will produce a publication to provide further guidance and examples concerning the rules. The question whether front-end and back-end premium products, as well as emblematic products, are eligible for the special rates will be determined on a case-by-case basis by the statutory restrictions concerning the mailing of "products." That is, these products must meet the definition for low-cost items, be donated or contributed to the mailing organization, or be periodical publications.

Thirty-seven comments stated that they oppose retroactive applicability of eligibility restrictions if the qualified organization made an innocent mistake or lacked knowledge of the restriction at the time of mailing, and requested that the Postal Service excuse "minor infractions" regarding advertisements that do not meet the "substantially related" test. The statute does not provide any such exceptions, and the Postal Service is required to "maintain procedures for the prompt collection of postage deficiencies arising from" these rules. 39 U.S.C. 3626(k)(3). See also 39 U.S.C. 2601(a)(1), which requires the Postal Service to "collect debts due to the Postal Service." Indeed, the granting of an exception to some noncomplying mailers would appear to discriminate against mailers who pay postage at the appropriate rate. 39 U.S.C. 403(c). Here, the final rule is being published in advance of its effective date to give mailers time to adjust their methods of operation, and the regulations contain sufficient detailed information to help mailers ensure that they comply with the new eligibility restrictions. In addition, mailers may obtain private legal or financial advice and counsel to assist in making their decisions. Nevertheless, the Postal Service will continue to consider requests for compromise or settlement of revenue deficiencies on a case-by-case basis, consistent with existing postal policies.

Five comments stated that the Postal Service needs to establish a procedure for mailers to obtain advance binding rulings regarding whether materials and products will be mailable at the special bulk third-class rates. In general, as discussed above, the Postal Service does not believe such a procedure is necessary because mailers have access to the many IRS determinations and precedents that govern how the eligibility restrictions are administered. The Postal Service also believes that nonprofit mailers that engage in any considerable amount of commercial advertising or business activity may have already obtained private legal or financial counsel to help them deal with such matters. The Postal Service further notes that it does not have the staffing to provide a large volume of such rulings in a timely and consistent fashion, has not had a formal procedure for providing such opinions in mail classification matters, and does not believe that it is feasible to provide such a procedure.

One comment was concerned that the Postal Service may disqualify a mailing announcing a meeting, seminar, or conference sponsored by the qualified organization if it contains a brochure for the hotel where the meeting will be held. This decision must necessarily be determined upon the specific circumstances of the mailing. Nevertheless, the Postal Service does not believe that the inclusion of such a brochure would necessarily prevent the mailpiece from being mailed at the special rates. For instance, it would be significant whether the brochure is donated to the qualified organization as information for individuals that will or may attend a meeting, seminar, or conference sponsored by the qualified organization at that hotel, as opposed to being provided by the hotel to the nonprofit with payment for inclusion in the mailpiece.

Seven comments stated that a "grace period" should be authorized to allow qualified organizations to mail materials that are in the process of being prepared for mailing to avoid having to discard them or pay a higher postage rate than was planned for the mailing. One comment suggested that the grace period be allowed and that the Postal Service publish a graduated phase-in schedule, beginning January 1, 1996, to allow for the acceptance of materials in the process of being prepared for mailing. One comment suggested a 90-day grace period consistent with this comment. The final rule will be effective September 4, 1994, more than 4 months after it is published. Although the Postal Service is sympathetic with the concerns expressed by comments seeking a more extended period, these interests must be balanced against the additional revenue loss caused by any delay in the effective date of the rules. This loss will ultimately be borne by postal customers. Additionally, it is noted that the rules will not become effective until a full 8 months after the January 1, 1994, date authorized in the legislation.

One comment from a nonprofit society stated that the regulations should provide specific "procedural rules" for reliance on Internal Revenue Service regulations and court decisions regarding the "substantially related" test. It is not clear what type of "procedural rules" the comment envisions. Nevertheless, the final rule makes it clear, as specified by Public Law 103–123, that the Postal Service will use standards established by the Internal Revenue Service and the courts with respect to determining whether a product or service is substantially related to the purpose(s) on which the qualified organization's authorization to mail at special bulk third-class rates is based.

Three comments stated that the Postal Service should determine that the "substantially related" test does not apply to an offer for a "back-end premium" (a product or service provided to a donor who first contributes a certain sum of money). To be mailable at the special bulk third-class rates, the "back-end premium" itself, if it is a product, must be a "low-cost" item or otherwise comply with 39 U.S.C. 3626(m). The solicitation seeking donations and offering the "back end premium" is, moreover, an advertisement, covered by the new "substantially related " test. Accordingly, the solicitation is mailable at the special rates only if the premium is substantially related to the nonprofit's qualifying purposes.

One comment stated that organizations that market training and education through the mail should not be allowed to mail at the special bulk third-class rates if they are not accredited educational institutions. The statutory provisions do not restrict the use of special rates in this manner, and this suggestion is beyond the authority of the Postal Service to adopt.

One comment stated that the Postal Service should allow third-class periodical publications that contain advertisements, have no subscribers, and meet the definition of a periodical to be mailable at the special bulk third-class rates until the Postal Service obtains approval from the Postal Rate Commission to accept such periodicals as second-class matter. Again, the statutory provisions do not authorize an exception of this type, and it is beyond the authority of the Postal Service to adopt. Organizations that wish to mail publications at the special second-class rates will be required to obtain authorization, under the existing eligibility requirements, to mail at those rates, which would generally require that the publication be primarily circulated to paid subscribers. Subscriptions may be paid for with dues or contributions, if the dues or contributions and the subscription price are separated to show the amount paid for the subscription. A membership organization applying for second-class mailing privileges under the narrowly defined "Publications of Institutions and Societies" category (see DMM E222) may pass a resolution specifying the amount that is to be used for a subscription to receive its periodical publication if each member knows how much is being paid for the subscription. Mailers should contact their postmasters for advice on the exact procedures they must follow to qualify their publications for special second-class mailing privileges.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Domestic Mail Manual section E370 is amended by renumbering old 5.6 and 5.7 as 5.7 and 5.8, respectively; renumbering old 5.9 as 5.10; and adding new 5.4(d), 5.6, 5.7c, and 5.9. The text is as follows:

E-Eligibility

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E370 Special (Nonprofit) Bulk Rates

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5.0 Eligible and Ineligible Matter

* * * * *

5.4 Prohibitions

Except under 5.7, special bulk third-class rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

* * * * *

[Add new 5.4d as follows:]

d. Any product or service (other than those described in 5.4a , 5.4b, or 5.4c), if the sale of the product or the providing of such service is not substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the special bulk third-class rates. The criteria in 5.6 are used as the bases for determining whether an advertisement, promotion, or offer for a product or service is mailable at the special bulk third-class rates.

[Change title of 5.5 as follows:]

5.5 Definitions, Insurance

[Add new 5.6 and renumber existing 5.6 and 5.7 as 5.7 and 5.8, respectively:]

5.6 Definitions, Substantially Related Advertising, Products

For the standards in 5.4d:

a. To be "substantially related," the sale of the product or the providing of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or the providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the special bulk third-class rates is based. The sale of the product or the providing of the service must have a causal relationship to the achievement of the exempt purposes (other than through the production of income) of the qualified organization. (Whether selling the product or providing the service generates income that is used to accomplish the purposes of the qualified organization is not used as a factor in determining whether such activity is substantially related to the qualifying purpose or purposes of the organization.)

b. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513 (a) and (c) of the Internal Revenue Code are used to determine whether an advertised product or service, whether sold or offered by the organization or by another party, is "substantially related" to the qualifying purposes of an organization.

(1) If the advertising material is for a product or service that is not substantially related, the material is not mailable at the special bulk third-class rates.

(2) If an organization pays unrelated business income tax on the sale of a product or the providing of a service, that activity is by IRS definition not substantially related to the organization's qualifying purposes. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related, because other criteria may exempt the organization from payment. Thus, the inclusion of an advertisement for a product or service in a mailpiece may disqualify the piece from using special bulk third-class rates, even if the mailer does not pay unrelated business income tax on its sale.

(3) Advertisements in the qualified organization's newsletter or other publication for one or more products or services that are not substantially related to the qualified organization's purposes, notwithstanding the presence of advertisements that are so related, are not mailable at the special bulk third-class rates. Third-party paid advertisements may be included in a publication mailed at the special bulk third-class rates if the products or services advertised are substantially related to one or more of the purposes for which the qualified organization is authorized to mail at the special bulk third-class rates. If the publication contains one or more advertisements ineligible for the special rates, the publication is not eligible for the special rates.

(4) Advertising for one or more products or services that are not substantially related to the qualified organization's purpose included in a catalog that also offers items that are so related is not mailable at the special bulk third-class rates. If the catalog contains one or more advertisements ineligible for the special rates, the catalog is not eligible for the special rates.

c. Public service announcements, e.g., "Support the Red Cross Blood Drive," for which no consideration has been paid are mailable at the special bulk third-class rates.

d. Announcements of activities, e.g., bake sale, car wash, charity auction, oratorical contest, substantially all the work of which is conducted by the members or supporters of a qualified organization without compensation are mailable at the special bulk third-class rates. Such activities are considered to be "substantially related" to the organization's purposes.

e. Advertisements for products and services, including products and services offered as prizes or premiums, substantially all of which have been received by a qualified organization as gifts or contributions. Such products and services are considered "substantially related" to the organization's purposes.

f. An advertisement, promotion, or offer for a periodical publication, including subscription order forms, meeting the eligibility criteria in E211 and published by one of the types of qualified nonprofit organizations listed in E370.2.0 is mailable at the special bulk third-class rates.

5.7 Other Matter

* * * * *

[Add new 5.7c as follows:]

c. A listing in a qualified organization's newsletter or other publication of the names of individuals or organizations who sponsor the publication or other activities of the qualified organization. The Postal Service presumes that an item is an acknowledgment of a sponsor and not an advertisement ineligible for special rates if it occupies not more than 7 square inches (the approximate size of a business card) and if it appears in a portion of the publication titled "Sponsors," "Contributors," "Donors," or a similar designation.

[Renumber old 5.9 as 5.10 and add new section 5.9 as follows:]

5.9 Products Mailable at Special Bulk Third-Class Rates

The following products are mailable at special bulk third-class rates:

a. Low-cost items within the meaning of 26 U.S.C. 513(h)(2), Internal Revenue Code. Under this standard, low-cost items are currently those having a cost of not more than $6.39 as of January 1, 1994. At the beginning of each calendar year, the value of low-cost items is adjusted for cost of living. The cost is the cost to the qualified nonprofit organization that mails the item or on whose behalf the item is mailed.

b. Items donated or contributed to the qualified organization. Such items need not meet the definition of low cost as described in 5.9a.

c. Periodical publication of a qualified nonprofit organization that does not contain any advertisements or other material ineligible to be mailed at the special bulk third-class rates under 5.4

a, b, c, or d. Periodical publication and qualified nonprofit organization are defined in 5.6f.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–10852 Filed 5–2–94; 2:29 pm]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–4–1–5637; FRL–4878–5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Correction of Volatile Organic Compound Reasonably Available Control Technology Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves revisions to the Louisiana State Implementation Plan (SIP) as submitted by the Governor on the following days: June 13, 1990, October 26, 1990, May 24, 1991, and March 24, 1992. These revisions and this action are necessary for several reasons. First, on May 26, 1988, the EPA notified the State of Louisiana that its SIP for attaining the National ambient air quality standard (NAAQS) for ozone was substantially inadequate as it applied to the seven parishes comprising the Baton Rouge ozone nonattainment area: Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge. This document called for the State to correct deficiencies in its Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) rules as they applied to those parishes. Second, on November 8, 1989, the EPA notified Louisiana that its ozone SIP was substantially inadequate as it applied to Calcasieu Parish, which comprises the Lake Charles ozone nonattainment area, and also called for the State to correct existing deficiencies in its VOC RACT rules as these applied to Calcasieu Parish. Third, the Clean Air Act Amendments (CAAA) of 1990, required the State to revise its SIP to correct VOC RACT deficiencies within six months of enactment. Finally, the VOC RACT rules must be recodified to provide consistency between the State's code and the SIP. The effect of today's action will be to correct existing deficiencies in the VOC RACT rules of the Louisiana SIP as required by the EPA notices of deficiency and the CAAA and to recodify the VOC RACT rules to conform with the State's code. This action is being taken under section 110 and part D of the Clean Air Act (CAA), as amended by the CAAA of 1990.

EFFECTIVE DATE: This final rule will become effective on June 6, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Planning Section (6T-AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Air Docket, 6102, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson, EPA Air Programs Branch at (214) 655–7214.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on November 24, 1987, the EPA's Proposed Post–1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the ozone standard in the Baton Rouge area of Louisiana and that a "SIP call" would be issued (See 52 FR 45044). A SIP call is a finding by the EPA that the SIP does not provide for attainment by the required date.[1] In a letter dated May 26, 1988, to Governor Buddy Roemer, the EPA notified the State of Louisiana that because the Baton Rouge area had failed to attain the NAAQS for ozone by December 31, 1987, as required under section 172 of the CAA, its SIP was substantially inadequate and would need to be revised. Later, on November 8, 1989, the EPA notified the State that its SIP as it applied to Calcasieu Parish was substantially inadequate to achieve the ozone NAAQS in that area (i.e., LakeCharles).[2] The EPA requested that the State respond to the SIP calls in two phases. Pursuant to the first phase, the State was to: (1) Correct identified deficiencies in the existing SIP's VOC regulations; (2) adopt VOC regulations previously required or committed to but never adopted; and (3) update the area's base year emissions inventory. Just as the Post-1987 SIP calls were being anticipated, the Louisiana Department of Environmental Quality recodified its air quality regulations. The bulk of this effort was conditionally approved March 8, 1989, at 54 FR 9783.[3] The VOC RACT rules were not approved as part of the recodification at that time because the majority of the VOC RACT rules as recodified were substantially changed from the rules previously approved as part of the SIP. This is because the State had revised its VOC RACT rules for various reasons, but the revisions had not been incorporated into the federally-approved SIP. Given the discrepancies between the State code and the SIP, the EPA decided not to approve the recodification of the VOC RACT rules to avoid confusing the public about which version was part of the federally-approved SIP. Now that the revised VOC regulations are considered acceptable, the EPA is simultaneously approving the substantive revisions and the recodification and will refer to the VOC RACT rules by the recodified designations.

Since the Post 1987 SIP calls, Congress amended the CAA on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under the CAAA, those areas that were designated nonattainment before enactment of the CAAA, and which retained that designation and were classified as marginal or above as of enactment,[4] were required to meet the section 182(a)(2)(A) RACT fix-up requirement by May 15, 1991. The Baton Rouge and Lake Charles nonattainment areas are classified as serious and marginal, respectively, and therefore, are subject to the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required to correct RACT as it was required under pre-amendment guidance.[5] The Post 1987 SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas.

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[1] Under the pre-amended Act, section 110(a)(2)(H) provided for a finding by the Administrator that a "plan is substantially inadequate to achieve the (NAAQS)." This provision was carried forth under the amended Act. In addition, Section 110(k)(5) of the amended Act reinforces the Agency's authority to make such a finding.

[2] To avoid repetition, hereinafter the Baton Rouge and Lake Charles SIP calls will be referred to as the Post 1987 SIP calls.

[3] The conditional approval of the rules has not been changed to final approval because the State still has not submitted changes to correct certain errors in the recodified rules. Also, since the publication of that conditional approval, the EPA has found that one rule, previously thought to be unchanged, was changed substantially. The Agency issued a correction to the conditional approval (57 FR 8075, March 6, 1992) to note that the language of the recodified rule in question is not being approved.

[4] Air monitoring data since the Post 1987 SIP call indicate that St. James Parish may have attained the NAAQS for ozone. It has retained its nonattainment designation but is classified as incomplete data. Therefore, St. James Parish is not subject to section 182(a)(2)(A) of the CAAA. Louisiana will, however, have to correct any deficiencies regarding enforceability of existing rules applicable to St. James Parish before the parish could be redesignated to attainment. See the General Preamble 57 FR 13498, at 13525 (April 16, 1992).

The Louisiana Department of Environmental Quality (LDEQ) adopted revisions to the VOC RACT rules in a series of actions making revisions to various sections of LAC:33:III: Chapter 1 (pertaining to General Provisions), Chapter 21 (pertaining to Control of Emissions of Organic Compounds), and Chapter 61 (pertaining to Test Methods). The first submittal in response to the Post 1987 SIP calls, sent to the EPA in a letter dated June 13, 1990[6], contained revisions to Chapter 21 as adopted on January 20 and February 20, 1990. The second submittal from the Governor, dated October 26, 1990, contained further corrections to Chapter 21 as adopted July 20, 1990. A third submittal dated May 9, 1991, contained revisions as adopted by emergency rulemaking procedures on May 1, 1991. A fourth submittal, received May 24, 1991, contained revisions to the VOC regulations adopted by the LDEQ on November 20, 1990, and April 20, 1991.

Because the LDEQ could not meet the statutory deadline using its regular rulemaking procedures, it resorted to emergency procedures allowed under the State's Administrative Procedures Act (LSA R.S. 49:953(B), 30:2011, and 30:2054) to make final corrections to the VOC RACT rules. These procedures allow rules to be revised without public hearing but limit their effectiveness to 120 days. By using these procedures, Louisiana was able to make the required submission on May 9, 1991. However, since the rules are only effective for 120 days, the LDEQ also used its regular rulemaking process and adopted these rules again on July 20, 1991. These regulations were submitted to the EPA on March 26, 1992.

The Louisiana emergency measures submitted on May 9, 1991, were not subject to notice and public hearing at the State level. Pursuant to section 110(a)(1) of the CAAA, the EPA requires States to submit SIPs and SIP revisions that the State has adopted "after reasonable notice and public hearing." The State cured this defect through its submittal of March 26, 1992. At that time, the State resubmitted the same rules, after it fulfilled the public notice and hearing requirements. Therefore, the EPA is approving these submittals in this action.

At the same time that Louisiana submitted the rules that went through the public participation process, Louisiana resubmitted the recodification of the VOC RACT rules and submitted rules adopting capture efficiency test methods. Due to deficiencies in the recodified rules, they could not be approved when they were originally submitted. Because the deficiencies have now been corrected, the EPA can now approve the rules, and the State was asked to resubmit the recodified VOC RACT rules. The recodified VOC RACT rules, first submitted in 1988, serve as the baseline superseding all previous revisions concerning VOC RACT rules.

On September 30, 1992 (57 FR 45012), the EPA published a notice of proposed rulemaking in the **Federal Register** to approve the above rules into the Louisiana SIP because they correct the specified deficiencies identified under the SIP call and satisfied the requirements of section 182(a)(2)(A) of the CAAA. For a complete discussion of the EPA's evaluation of the submitted rules, the reader is directed to the **Federal Register** document referenced above. The EPA provided a 30 day comment period on the notice of proposed rulemaking. No adverse public comments were received.

Action

The EPA approves revisions to the Louisiana SIP as submitted on June 13, 1990, October 26, 1990, May 24, 1991, and March 26, 1992. These revisions to the VOC RACT rules satisfy the requirements of the May 26, 1988, SIP call for the Baton Rouge nonattainment area, the November 8, 1989, SIP call for the Lake Charles nonattainment area and the RACT fix-up requirements of section 182(a)(2)(A) of the CAAA. The recodification meets the requirements of section 110 and part D of the CAAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C.603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Nothing in this action should be construed as allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed on September 30, 1992, at 57 FR 45012. As noted elsewhere in this document, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table One to Table Two under the processing procedures established at 54 FR 2214, January 19, 1989.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1994. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. Under the revised tables, this action remains classified as a Table Two. On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table Two and Table Three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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[5] Among other things, the pre-amendment guidance consists of those portions of the Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (for which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[6] EPA has already taken action on a portion of Louisiana's June 13, 1990, submittal. Those portions, Subchapter B, Organic Solvents, Section 2123, paragraphs C.6 and D.3, were approved on September 7, 1990 (55 FR 36811). Louisiana revised these sections pursuant to an Order of the United States District Court for the Western District of Louisiana in the case of United States v. General Motors Corporation. Civil Action No. CV87–1890S.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmentalregulations, Reporting and recordkeeping, Ozone,Volatile organic compounds.

Dated: Februrary 7, 1994.

Joe D. Winkle,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(60) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(60) A revision to the Louisiana State Implementation plan (SIP) to include revisions to Louisiana Administrative Code (LAC), Title 33, Environmental Quality, Part III. Air, Chapter 1, Chapter 21, and Chapter 61 as submitted by the Governor on June 13, 1990, October 26, 1990, May 24, 1991, and March 24, 1992.

(i) Incorporation by reference.

(A) LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21 (December 1987). Control of Emission of Organic Compounds, except section 2105. Storage of Volatile Organic Components (Small Tanks).

(B) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 1. General Provisions, section 111. Definitions–Administrator, Administrative Authority*, Attainment Areas, Nonattainment Areas, SIP, Volatile Organic Compound, and Chapter 21. Control of Emission of Organic Compounds, Subchapter A. General, section 2103. Storage of Volatile Organic Compounds paragraphs A., C., D.1., D.1.a. through D.1.d., D.2., D.2.a., D.2.b., D.3., E., F., H.1., H.2., I. effective January 20, 1990.

(C) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21. Control of Emission of Organic Compounds Subchapter A. General, section 2107. Volatile Organic Compounds–Loading, section 2109. Oil/Water–Separation, paragraphs A.1. through A.4., B. through D., section 2113. Housekeeping, paragraphs A.1 through A.3., A.5., section 2117. Exemptions, section 2119. Variances B., and Subchapter D. Cutback Paving Asphalt section 2127. Cutback Paving Asphalt, paragraphs A., B., C.1., C.2., C.3., D., D.1., D.1.b., D.1.c., D.1.d., and D.2., effective February 20, 1990.

(D) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21. Control of Emission of Organic Compounds, Subchapter B. Organic Solvents, section 2123. Organic Solvents, paragraphs C., C.1. through C.5., C.7. through C.9., effective February 20, 1990.

(E) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21. Control of Emission of Organic Compounds, Subchapter F. Gasoline Handling, section 2131. Filling of Gasoline Storage Vessels, paragraphs A., B., B.1., B.3., D., D.1., D.4., D.5., E., F., and G., section 2133. Gasoline Bulk Plants paragraphs A., A.1., A.3. through A.6., B., B.3., B.4., C. and D., section 2135. Bulk Gasoline Terminals paragraphs A., B., B.1.a., B.1.a.i., B.1.a.iii., B.1.d., B.2. through B.5., and C. through E., E.1. through E.4., and section 2137. Gasoline Terminal Vapor-Tight Control Procedure. effective July 20, 1990.

(F) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21. Control of Emission of Organic Compounds Subchapter A. General, section 2101. Compliance Schedules, section 2115. Waste Gas Disposal paragraphs A., B., C., D., F., G., H., I.1. through I.5., J. through K., section 2121. Fugitive Emission Control paragraphs B., B.1, B.2., C., C.1.b., C.1.b.i., C.1.b.ii., C.1.b.iii., C.1.c, C.2., C.2.b., C.2.b.i., C.4., C.4.c., C.4.d., C.5. and G., Subchapter C. Vapor Degreasers, section 2125. Vapor Degreasers paragraphs A., A.1., A.2., A.2.i. through A.2.m., A.3., A.3.a. through A.3.d., B., B.1., B.7., B.8., C., C.1., C.1.a. through C.1.c., C.1.i., C.1.j., and D. through G., Subchapter E. Perchloroethylene Dry Cleaning Systems, section 2129. Perchloroethylene Dry Cleaning Systems paragraphs A., A.1., A.2., A.2.a. through A.2.c., C., and D., Subchapter H. Graphic Arts, section 2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes paragraphs A., A.1., A.3., A.5., B., C. and D., Subchapter I. Pharmaceutical Manufacturing Facilities, section 2145. Pharmaceutical Manufacturing Facilities, paragraphs A., A.1., A.1.c., and E. through G. effective November 20, 1990.

(G) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21. Control of Emissions of Organic Compounds Subchapter A. General, section 2103. Storage of Volatile Organic Compounds paragraphs B.,D., D.2.c. through D.2.e., G., H.3., I.2.c., I.4. and I.5., section 2107. Volatile Organic Compounds–Loading paragraphs D.3. and D.4., section 2109. Oil/Water Separation paragraphs A., B.4., and B.5., section 2111. Pumps and Compressors, section 2113. Housekeeping paragraph A.4., section 2119. Variances paragraph A.; Subchapter D. Cutback Paving Asphalt, section 2127. Cutback Paving Asphalt paragraphs C. and D.1.a. effective April 20, 1991.

(H) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 21. Control of Emission of Organic Compounds, section 2115. Waste Gas Disposal paragraphs I., K., and K.4., section 2121. Fugitive Emission Control paragraphs A., C.1., C.1.b.iv. through C.1.b.vi., C.4.a., C.4.b., C.4.h., D., D.1., D.1.b. through D.1.f., and D.2., seciton 2123. Organic Solvents paragraphs A., A.1. through A.3., B., B.1., B.1.a. through B.1.c., C.11., D., D.1. through D.9., E., E.1. through E.7., F., and F.1. through F.4., Subchapter F. Gasoline Handling, section 2131. Filling of Gasoline Storage Vessels paragraphs D.2. and D.3., section 2135. Bulk Gasoline Terminals paragraph E.5., Subchapter G–Petroleum Refinery Operations, section 2139. Refinery Vacuum Producing Systems paragraphs A. and B. and section 2141. Refinery Process Unit Turnarounds effective July 20, 1991.

(I) Revisions to LAC, Title 33, Environmental Quality, Part III. Air, Chapter 61. Division's Sources Test Manual, Subchapter A. Method 43–Capture Efficiency Test Procedures section 6121 through section 6131 effective July 20, 1991.

(J) Revisions to LAC, Title 33, Environmental Quality, Part III. Air Chapter 1. General Provisions, section 111. Definitions–Coating, Department, Distance from Source to Property Line, Exceedance, Hydrocarbon, Leak, Miscellaneous Metal Parts and Products

Coating, Nonattainment Area, Ozone Exceedance, SIP effective August 20, 1991.

[FR Doc. 94–10773 Filed 5–4–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[NM–20–1–6216; FRL–4879–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Carbon Monoxide Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) addressing carbon monoxide (CO) contingency measures and a proposed clean fuel vehicle fleet demonstration project for Albuquerque/Bernalillo County, outside the boundaries of Indian lands. The CO contingency measures constitute one of the required elements of the complete Albuquerque/Bernalillo County CO SIP.

DATES: This final rule will become effective on July 5, 1994 unless notice is received by June 6, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

Background

Albuquerque/Bernalillo County, New Mexico, was designated nonattainment for CO and classified as moderate with a design value below 12.7 parts per million (ppm.) (specifically 11.1 ppm.), under sections 107(d)(4)(A) and 186(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please reference 56 FR 56694 (November 6, 1991) and 57 FR 13498 and 13529 (April 16, 1992). The air quality planning requirements for moderate CO nonattainment areas with a design value less than or equal to 12.7 ppm. are set out in subparts one and three of part D, title I of the CAA. Subpart one contains provisions generally applicable to all nonattainment areas, and subpart three contains provisions specifically applicable to CO nonattainment areas.

On November 5, 1992, the Governor of New Mexico submitted to the EPA a SIP revision for CO concerning Albuquerque/Bernalillo County that was intended to satisfy CAA requirements due on November 15, 1992. This submittal included the 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program. On November 29, 1993, the EPA published the final approval of the emissions inventory, oxygenated fuels program, and the winter woodburning program (58 FR 62535).

This action approves CO contingency measures for Albuquerque/Bernalillo County, submitted to the EPA by the Governor of New Mexico by cover letter dated November 12, 1993. This submittal satisfies the requirement, as per section 172(c)(9) of the CAA, that all nonattainment area SIPs must contain contingency measures (due November 15, 1993) that are to be implemented if the area fails to make reasonable further progress (RFP) or to attain the applicable National Ambient Air Quality Standards (NAAQS) by the applicable date. The contingency measures are to be implemented immediately after the EPA determines failure of RFP or attainment of the applicable NAAQS, without further action by the State or the EPA.

Analysis of City/County Submission

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing (see also section 110(l) of the CAA). Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the City of Albuquerque held a public hearing on October 13, 1993, to entertain public comment on proposed revisions to the CO SIP narrative, and on proposed revisions to Regulation 35 addressing CO contingency measures, entitled Alternative Fuels. Public comments were received and adequately addressed by the City/County. Following the public hearings, the revisions to the CO SIP narrative and to Regulation 35 were adopted by the Albuquerque/Bernalillo County Air Quality Control Board, and submitted as a SIP revision to the EPA by cover letter from the Governor dated November 12, 1993.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter datedDecember 27, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

B. Review of CO Contingency Measures

Albuquerque/Bernalillo County filed revisions to Regulation 35 with the State of New Mexico Records and Archives Center on November 10, 1993. Regulation 35 contains the oxygenated fuel provisions for Albuquerque/Bernalillo County. The revisions being approved in this action consist of the implementation of a more stringent oxygenated fuels program in Bernalillo County beginning November 1, 1996, if the County does not achieve attainment of the CO NAAQS by December 31, 1995 (i.e., one or more quality assured violations of the CO NAAQS are recorded in calendar years 1994 and/or 1995). Specifically, the revisions would require gasoline sold in Bernalillo County during the winter control period (November 1 to the end of February) to contain not less than 3.0% oxygen by weight for ethanol blends. The current program requires not less than 2.7% oxygen by weight for all blends. In addition, the revisions mandate that as a contingency measure, all oxygenated fuel would be blended prior to removal by tank truck from primary supply points (such as refineries and terminals).

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[1] The CAAA of 1990 made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the CO National Ambient Air Quality Standards (NAAQS) (see Public Law No. 101–549, 104 Stat. 2399). References herein are to the CAA as amended in 1990, 42 U.S.C. 7401 *et seq.*

C. Review of Proposed Clean Fuel Vehicle Fleet Demonstration Project

The City/County also included in the November 12, 1993, submittal, a proposed demonstration project to convert certain fleet vehicles (select medium and heavy duty passenger vans) to alternative fuel use (e.g., compressed natural gas, electricity). The City/County included a description of this proposed demonstration project in the revisions to the CO SIP narrative. The proposed project is expected to show air quality benefits (e.g., CO tailpipe emission reductions) and fuel cost savings for natural gas conversions. The EPA in this action is approving the revisions to the Albuquerque/Bernalillo County CO SIP narrative to include the proposed clean fuel vehicle fleet demonstration project discussed above. It is important to note that the proposed clean fuel vehicle fleet demonstration project is not required by the EPA, and is not being approved as a contingency measure in the Albuquerque/Bernalillo County, New Mexico, SIP. The approval of the revised CO SIP narrative acknowledges that the City/County is taking its own initiative in exploring means of obtaining additional, but undefined, CO emission reductions.

Final Action

This action approves a revision to the New Mexico SIP to include for Albuquerque/Bernalillo County, outside the boundaries of Indian lands: (1) CO contingency measures; and (2) a proposed clean fuel vehicle fleet demonstration project. The CO contingency measures constitute one of the required elements of the complete Albuquerque/Bernalillo County CO SIP.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 5, 1994 unless, by June 6, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 5, 1994.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order

This action has been classified as a table two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these revised tables. On January 6, 1989, the Office of Management and Budget (OMB) waived table two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 20, 1994.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(57) A revision to the New Mexico SIP addressing CO contingency measures and a proposed clean fuel vehicle fleet demonstration project for Albuquerque/Bernalillo County, outside the boundaries of Indian lands, was submitted by the Governor of New Mexico by cover letter dated November 12, 1993.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Regulation Number 35–*Alternative Fuels*, Section 35.02, "Oxygenated Fuels," Subsection 35.02(A)(1); Section 35.03, "Oxygenated Fuels Procedures Manual;" and Section 35.06.

"Contingency Measures," as filed with the State Records and Archives Center on November 10, 1993.

(ii) Additional material.

(A) November 12, 1993, narrative plan addressing the Albuquerque/Bernalillo County CO nonattainment area, including the proposed clean fuel vehicle fleet demonstration project.

[FR Doc. 94-10757 Filed 5-4-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Petroleum Products

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to require that qualified offers of petroleum products from eligible countries under the Caribbean Basin Economic Recovery Act be treated as if they were offers from designated countries under the Trade Agreements Act.

EFFECTIVE DATE: April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8094 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) requires that in connection with procurements of petroleum products made by the Department of Defense with appropriated funds, the Secretary shall consider all qualified bids from any eligible country under the Caribbean Basin Economic Recovery Act which is deemed a designated country pursuant to 19 U.S.C. 2511(b).

The Director, Defense Procurement, issued Departmental Letter 94-08, April 26, 1994, to implement section 8094 (DFARS Case 93-D312).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision within the meaning of Public Law 98-577. However, comments from small entities will be considered in accordance with section 810 of the Act. Such comments shall cite DFARS Case 94-610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 225—FOREIGN ACQUISITION

2. A new definition is added to section 225.401 to read as follows:

225.401 Definitions.

"Caribbean Basin country end product" includes petroleum or any product derived from petroleum.

* * * * *

3. Section 225.403 is amended by adding paragraph (m)(4) to read as follows:

225.403 Exceptions.

* * * * *

(m)(4) In accordance with Section 8094 of the Fiscal Year 1994 Defense Appropriations Act, (Pub. L. 103-139), for contracts awarded during fiscal year 1994, the exception for petroleum and any product derived from petroleum does not apply.

4. Section 225.403-70 is amended by revising the entry FSG # 91 to read as follows:

225.403-70 Products subject to Trade Agreements Act.

* * * * *

FSG	Category/Description
* * *	* *
91	Fuels, oils and waxes
* * *	* *

[FR Doc. 94-10790 Filed 5-4-94; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 940418-4118; I.D. 031894B]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS establishes all inshore and offshore waters from Cape Canaveral, Florida (28°24.6′ N latitude), to the North Carolina-Virginia border (36°30.5′ N latitude) as the leatherback conservation zone and notifies owners and operators of shrimp trawlers operating in that zone that short-term area closures may be required if high abundance levels of leatherback turtles are documented. NMFS will close those areas to any shrimp trawler required to have a turtle excluder device (TED) installed in each net that is rigged for fishing unless the TED installed is a NMFS-approved Taylor TED or a Morrison TED with either of the two NMFS-approved modifications made in May 1993. This temporary rule is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp fishermen may also call (813) 893-3163 for updated closure information.

Owners and operators of shrimp trawlers operating in closed areas with modified TEDs must register with the Director, Southeast Region, NMFS, and may be required to carry an observer and provide information on trawling hours, gear modifications and turtle captures if requested by the Regional Director.

DATES: This rule is effective from April 29, 1994 through May 31, 1994. Comments on this rule and consideration of any extension of this rule must be submitted by May 31, 1994.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. William W.

Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Acting Chief, Endangered Species Division (301) 713–2322, or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA) of 1973. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species, as a result of fishing activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles during fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition if specified sea turtle conservation measures are used.

Existing sea turtle conservation regulations (50 CFR part 227) require most shrimp trawlers to have a NMFS-approved TED installed in each net rigged for fishing throughout the year. The use of TEDs significantly reduces mortalities of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

The existing sea turtle conservation regulations allow the Assistant Administrator for Fisheries (AA), NOAA, to restrict fishing activities in order to conserve a species listed under the ESA (50 CFR 227.72(e)(6)(ii)). This action may be taken if the AA determines that restrictions are necessary to avoid unauthorized takings that may likely jeopardize the continued existence of a listed species. The provision is particularly applicable to leatherback turtles, where despite the use of TEDs, taking by shrimp trawlers can occur. In accordance with the endangered status of leatherback turtles, NMFS considers preventable take of leatherbacks to be inappropriate. If the leatherbacks are relatively abundant in areas where shrimp trawlers are fishing, restrictions to minimize the take of leatherbacks must be imposed.

Because of their primarily pelagic existence, leatherbacks normally occur outside of areas where they would be subject to take by shrimp trawlers. During most months of the year, leatherbacks are not considered abundant in shrimping areas, and only isolated incidents of take by trawlers are expected. However, the coastal waters of northern Florida, Georgia, South Carolina and North Carolina experience relatively high abundance levels of leatherbacks as a periodic spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. A NMFS Biological Opinion prepared for a revision to the sea turtle conservation regulations made on December 4, 1992, (52 FR 24244) episodic stranding events from Florida through North Carolina and required NMFS to develop and implement a contingency plan to solve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented, if necessary, was prepared in cooperation with State officials from Florida, Georgia, and North Carolina. The necessity for implementation of protective measures for leatherback turtles is expected to be short-term and apply to specific areas. The plan considers several options to provide protection, and any or all of them may be implemented, if necessary, pursuant to 50 CFR 227.72(e)(6). These options include, closure of areas to all fishing, use of restricted tow-times in lieu of TEDs, mandatory observers, and use of modified TEDs designed to exclude leatherback turtles.

Presence of Leatherback Turtles

During December of 1993 and January and February 1994, NMFS received regular reports of leatherback sightings in northern Florida. These sightings occurred during aerial surveys for right whales, conducted by the state of Florida from St. Marys, Georgia, to Sebastian Inlet, Florida. During December, sighting rates ranged from 12 to 49 leatherbacks per survey. During the first week of January, 15 sightings were reported. The level of leatherback turtle sightings at this time of the year is consistent with data from previous years. The turtles normally migrate northward during the months of March through June from Florida waters to those off North Carolina.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that shrimp trawlers may incidentally take endangered leatherback sea turtles, the AA has determined that immediate action may be necessary to conserve sea turtles. The AA has determined that incidental takings of leatherback sea turtles during shrimp trawl fishing in the leatherback conservation zone are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements.

A biological opinion addressing the potential adverse effects of shrimp trawling to endangered and threatened species was conducted in 1992 for final sea turtle conservation regulations. The opinion concluded that, "episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated." A biological opinion on this action analyzed the impact of shrimp trawl fishing in the leatherback conservation zone on endangered leatherback turtles. The opinion emphasizes the need for additional protective measures such as requiring the use of TEDs with escape openings large enough for leatherback sea turtles to escape in areas where high abundance levels of leatherbacks are observed. The incidental take statement issued with this opinion allows for the documented take of 20 leatherback turtles and mortality of four leatherback turtles. If observer reports or other information indicate that this incidental take is met or exceeded, consultation must be reinitiated, and the AA may require additional or more stringent conservation measures.

Requirements

The definitions in 50 CFR 217.12 are applicable to this action, as are all relevant provisions in 50 CFR parts 217, 222 and 227.

The term "leatherback conservation zone" means all inshore and offshore waters of the Atlantic area from Cape Canaveral, Florida (28° 24.6′ N latitude), to the North Carolina-Virginia border (36° 30.5′ N latitude).

NMFS hereby notifies owners and operators of shrimp trawlers in the leatherback conservation zone that short-term closures in specific areas may be required to protect endangered leatherback turtles. Weekly aerial surveys will be conducted from northern Florida through the North Carolina-Virginia border. If sightings of leatherback turtles during such surveys exceed 10 animals per 50 nautical miles (nm) of trackline, the survey will be replicated within 12 hours, or as soon as practicable, to ensure that leatherback turtle presence is persistent in the area. If surveys demonstrate the continued presence of large concentrations of leatherbacks NMFS will temporarily close these specific areas to any shrimp trawler required to have a NMFS-approved TED installed in each net rigged for fishing, unless the TED installed is one of the NMFS-approved TEDs as described below. In addition, owners and operators of vessels operating in closed areas with an allowed TED, described below, must register with the Director, Southeast Region, NMFS, in accordance with 50 CFR 227.72(e)(6)(v) (A) through (F). If requested, they must carry a NMFS-approved observer on board such vessel(s). A shrimp trawler in the leatherback conservation zone must comply with the terms and conditions accompanied by any such request as well as provide information on trawling hours, gear modifications and turtle captures.

Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel, and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 893–3163 for updated area closure information. Closure will take effect upon public filing with the **Federal Register**.

NMFS-Approved TEDs With Escape Openings Large Enough for Leatherback Sea Turtles

NMFS previously approved the Taylor TED and two modifications to the Morrison TED that will allow leatherback turtles to escape the trawl. Descriptions of the Taylor TED and the Morrison modifications were published on May 17, 1993 (58 FR 28795).

Additional Sea Turtle Conservation Measures

NMFS anticipates that shrimp trawlers may continue to interact with leatherback turtles throughout the summer. As necessary, the AA may extend, for additional 30-day periods, the restrictions described in this temporary rule through notification in the **Federal Register**.

In addition, the AA may modify, at any time, the requirements of this action through notification in the **Federal Register**, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA will impose any necessary additional or more stringent measures if NMFS determines that shrimp trawlers are having a significant adverse effect on sea turtles. For example, if monitoring to assess turtle mortality indicates that the incidental take level is approaching the level established by the biological opinion for this action issued under section 7 of the ESA, the AA may modify or add conservation measures to protect leatherback sea turtles. That level is 20 documented takes, including four by mortality of leatherback turtles. If the incidental take level is met or exceeded, if significant or unanticipated levels of lethal or nonlethal takings or strandings occur that are associated with fishing activities in the leatherback conservation zone, or if there is significant non-compliance with this action, additional measures may be imposed. Additional restrictions may include closing the entire leatherback conservation zone to all shrimping.

Classification

The AA has determined that this action is necessary to respond to an emergency situation to conserve and provide adequate protection for leatherback turtles. This action is consistent with the ESA and other applicable law.

Because neither section 553 of the Administrative Procedures Act (APA) or any other law requires that a general notice of proposed rulemaking be published for this action, under section 503(b) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis is not required.

It has been determined that this rule is not significant for purposes of E.O. 12866.

This action allows the AA to establish a registration program as authorized by the final rule (57 FR 57348, December 4, 1992), codified at 50 CFR 227.72(e)(6)(iv). Such a program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, registration by vessels fishing in the leatherback conservation zone from Cape Canaveral, FL, to the Virginia-North Carolina border. This collection has been approved by OMB under control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to NMFS and OMB (see **ADDRESSES**).

Pursuant to section 553(b)(B) of the APA, the AA finds that there is good cause to take this action without notice and opportunity for comment. It is impracticable and contrary to the public interest because relatively high levels of leatherback turtle abundance have been reported recently in Florida, and closures and/or restrictions may need to be imposed quickly. The action announced by this notice is needed at this time so that shrimp trawlers will monitor NOAA weather radio and prepare for closures and/or restrictions in specific areas where relatively high leatherback sea turtle concentrations are identified. Furthermore, comments were solicited on the temporary rule establishing a leatherback conservation zone last year (58 FR 28790, May 17, 1993). In addition, comments were solicited on potential leatherback conservation measures (57 FR 57348, December 4, 1992), and a summary of the comments received and a response was published (57 FR 40859, September 8, 1992). NMFS also solicited comments in meetings with fishing groups and state officials concerning this problem.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the required 30-day delay in effective date for this action. Advance preparation is not necessary to monitor the NOAA weather radio. While time may be needed to procure a Taylor TED or make the appropriate modifications to the Morrison TED, restricted areas will be relatively small in size and shrimp trawlers should be able to operate in other areas with existing gear.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: April 29, 1994.

John T. Everett,

Acting Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 94–10754 Filed 4–29–94; 4:35 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 042594A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Greenland turbot in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in that subarea.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the BS was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and subsequent apportionment of reserve (59 FR 21673, April 26, 1994) as 4,667 metric tons (mt).

In accordance with § 675.20(a)(8), the Director of the Alaska Region, NMFS, has established a directed fishing allowance of 3,967 mt, with consideration that 700 mt will be taken as incidental catch in directed fishing for other species in the BS. This fishery begins at 12 noon, A.l.t., May 1, 1994. Because of the low directed fishing allowance and high interest in the fishery, there will be insufficient time to collect and analyze catch data and take appropriate action to ensure the directed fishing allowance is not exceeded. Therefore, based on the best available data, the Director of the Alaska Region, NMFS, has determined that the Greenland turbot directed fishing allowance in the BS will be reached by 12 noon A.l.t., May 8, 1994. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the BS, effective from 12 noon, A.l.t., May 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq*

Dated: May 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10826 Filed 5–2–94; 12:32 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 86
Thursday, May 5, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB29

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: Farmers Home Administration (FmHA) proposes to amend its regulations on the monitoring of lender's collection activity after a final loss is paid, when a guaranteed borrower's account remains unsatisfied. This action is taken to further define criteria, by which FmHA will monitor the lender's future recovery from unsatisfied guaranteed borrower accounts. There is no formal procedure at present for monitoring these accounts. The intended effect is to maximize collections from unsatisfied guaranteed borrower accounts and to minimize the financial loss to the Government.

DATES: Written comments must be submitted by July 5, 1994.

ADDRESSES: Submit written comments in duplicate, to the Office of the Chief, Regulations, Analysis and Control Branch (RACB), Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: James C. Root, Senior Loan Officer, Guaranteed Servicing Branch, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5444, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, at (202) 720–4572.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for review under Section 504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 28 hours per response, with an average of 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

This Action affects the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404	Guaranteed Emergency Loans
10.406	Guaranteed Farm Operating Loans
10.407	Guaranteed Farm Ownership Loans
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans
10.768	Business and Industrial Loans
10.766	Community Facilities Loans
10.428	Economic Emergency Loans
10.434	Non-Profit National Corporations Loan and Grant Program

Intergovernmental Consultation

For the reasons set forth in the final rule related Notice(s) to 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983; and 48 FR 54317, December 1, 1983), numbers 10.415, 10.416, 10.766, and 10.768 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The remaining numbered programs are excluded from the scope of Executive Order 12372.

Discussion of Proposed Rule

The FmHA, in a response to an audit conducted by the Office of Inspector General, agreed to strengthen FmHA Instructions regarding the monitoring of loan accounts for 3 years following the year in which final losses were paid in order to maximize potential future recoveries.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Loan programs—Business and Industry—Rural development assistance, Loan programs—Housing and community development, Loan programs—Community programs—Rural development assistance.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

2. Section 1980.69 is added to read as follows:

§ 1980.69 Future collections.

After a loan or an account has been liquidated, and the final loss claim has been paid, FmHA will continue to maintain the borrower account in an active status for 3 fiscal years, following the fiscal year in which liquidation was completed or until the account is paid in full, the borrower and all guarantors have been released from liability, and/or the account is otherwise satisfied. A lender may, with FmHA's concurrence, release a borrower and/or cosigner from liability only when adequate compensation/consideration is received. The servicing official will continue to monitor the collection efforts of the lender during the 3 fiscal years following the fiscal year in which the final loss claim was paid. The servicing official will send FmHA Form Letter 1980–A–1 along with Form FmHA 1980–26, "Report on Collection Activities on Liquidated Accounts," by October 31st of each year, to each lender that has an FmHA guaranteed loan account which remains unsatisfied after the payment of the final loss claim. The loan servicing official will establish a follow-up system to assure each lender returns the appropriately completed Form FmHA 1980–26, by November 30th. Appropriate follow-up will be initiated for those lenders not providing adequate information as a result of the servicing official's request. The servicing official will forward these reports by program to the State Director by December 15th. The State Director will consolidate the reports by program and report the results to the Administrator by December 31st of each year. The FmHA servicing official will ensure that any funds received by the lender after the payment of the final loss claim will be prorated between FmHA and the lender in accordance with the Lender's Agreement. The lender will promptly transmit to FmHA such amounts recovered in proportion to the percentage of the guaranteed portion of the loan by using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA," and the lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

Subpart B—Farmer Programs Loans

3. Section 1980.146, paragraph (e)(3) is revised to read as follows:

§ 1980.146 Liquidation.

* * * * *

(e) * * *

(3) *Future Recovery.* The County Supervisor will monitor collection activities of lenders on unsatisfied liquidated accounts, which have had final loss claims paid, for 3 fiscal years following the fiscal year in which the loss claims were paid, beginning with loans which had final loss claims paid during fiscal year 1990. On October 31st of each year, the County Supervisor will provide FmHA Form Letter 1980–A–1 and Form FmHA 1980–26, "Report on Collection Activities on Liquidated Accounts," to each guaranteed lender for each guaranteed loan on which a final loss has been paid, but the account remains unsatisfied (the account is not paid in full, the borrower or any guarantors have not been released of liability, or the account has not been otherwise satisfied). A lender may, with FmHA's concurrence, release a borrower and/or cosigner from liability only when adequate compensation/consideration is received. The County Supervisor will establish a follow-up on each respective borrower management system card to send FmHA Form Letter 1980–A–1 and Form FmHA 1980–26 on October 31st and follow-up on November 30th for lenders who have not completed and returned to FmHA, Form FmHA 1980–26. The County Supervisor will forward these reports to the State Director by December 15th in accordance with § 1980.69 of subpart A of this part.

* * * * *

Dated: February 23, 1994.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–10756 Filed 5–4–94; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–39–AD]

Airworthiness Directives; Israel Aircraft Industries (IAI) Model 1125 Westwind Astra Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain IAI Model 1125 Westwind Astra airplanes. This proposal would require relocation of the ground cable in the slat power drive unit. This proposal is prompted by a report that the drive system for the leading edge slat stopped in transit during flight on a Model 1125 Westwind Astra airplane. This incident was caused by an improper ground connection for the electric motor of the slat drive system, which resulted in arcing and an open electrical circuit. The actions specified by the proposed AD are intended to prevent possible fuel vapor fire due to electrical arcing in an area where fuel vapors might be present and the inability to move the slats during flight due to an open electrical circuit.

DATES: Comments must be received by June 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720–9813. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–39–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries (IAI) Model 1125 Westwind Astra airplanes. The CAAI advises that it has received a report that the drive system for the leading edge slat stopped in transit during flight on a Model 1125 Westwind Astra airplane. The cause of this incident has been attributed to an improper ground connection for the electric motor of the leading edge slat drive system, which resulted in arcing and an open electrical circuit. The ground connection for the electric motor is located in the area just forward of the wing spar. Since the fuel system is integrated into the structure of the wing, the area is subject to fuel leakage. An improper ground connection for the subject motor, if not corrected, could result in possible fuel vapor fire due to electrical arcing in an area where fuel vapors might be present, and the inability to move the slats during flight due to an open electrical circuit.

Astra Jet Corporation has issued Service Bulletin SB 1125–27–110, Revision 1, dated February 16, 1994, that describes procedures for relocation of the ground cable in the slat power drive unit (Modification 6350). Accomplishment of this modification involves routing the ground cable for the slat power drive located in the aircraft secondary structure to the aircraft primary structure. Relocating the ground cable will improve electrical grounding for the slat power drive unit. The CAAI classified this service bulletin as mandatory and issued Airworthiness Directive No. 93–02, dated December 2, 1993, in order to assure the continued airworthiness of these airplanes in Israel.

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require relocation of the ground cable in the slat power drive unit. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 52 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $53 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,336, or $218 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries Limited: Docket 94–NM–39–AD.

Applicability: Model 1125 Westwind Astra airplanes; serial numbers 004 through 066 inclusive, and 068; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fuel vapor fire due to electrical arcing in an area where fuel vapors might be present and the inability to move the slats during flight due to an open electrical circuit, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, relocate the ground cable in the slat power drive unit in accordance with Astra Jet Service Bulletin SB 1125–27–110, Revision 1, dated February 16, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 29, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10777 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Indiana statutes as made by the Indiana General Assembly and contained in Senate Enrolled Act (SEA) 179. The amendment is intended to revise the Indiana program concerning disturbances in a floodway on a mine site.

DATES: Written comments must be received by 4 p.m., e.s.t. June 6, 1994. If requested, a public hearing on the proposed amendment will be held on May 31, 1994. Requests to speak at the hearing must be received by 4 p.m., e.s.t. on May 20, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the first address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16

II. Discussion of the Proposed Amendment

By letter dated October 1, 1993, (Administrative Record No. IND–1325) Indiana submitted a proposed amendment to its program pursuant to SMCRA. The amendment consists of statute changes made by the Indiana General Assembly and contained in the 1993 SEA 179. SEA 179 contains numerous amendments to Indiana statutes, but only those which pertain to the Indiana program are discussed below.

IC 13–4.1–4 Permit Approval or Denial

Indiana has amended subsection IC 13–4.1–4–3(a) concerning the findings required to be made by the director of the Indiana Department of Natural Resources (IDNR) prior to issuing a permit. New subdivision 3(a)(10) is added to provide as follows:

> (10) if any part of the operation would take place in a floodway (as defined in IC 13–2–22–3), the operation will not:
>
> (A) result in unreasonably detrimental effects upon the fish, wildlife, or botanical resources;
>
> (B) adversely affect the efficiency; or
>
> (C) unduly restrict the capacity of the floodway.

In its submittal of this amendment, Indiana explained that the proposed language quoted above is being added to the Indiana program as a consequence of an amendment to IC 13–2–22–13. New subdivision 13(c)(3) is added to IC 13–2–22–13 to provide that operations conducted under IC 13–4.1 (Indiana SMCRA) are exempted from the need for a "construction in a floodway" permit issued by the IDNR, Division of Water. Instead, any activity in a floodway which is to be conducted as part of an operation regulated under IC 13–4.1 must be identified in the permit application to the Division of Reclamation. A determination must then be made by the Division of Reclamation that the environmental standards identified in the proposed language are met. This determination will then become part of the "Findings Document" which accompanies each of the Division's final permit recommendation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4 p.m., e.s.t. on May 20, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–10783 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 915

Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Iowa permanent regulatory program (hereinafter, the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Iowa regulations pertaining to rulemaking petitions, definitions, permit processing, revisions, bonding, backfilling and grading, civil penalties, and individual civil penalties. The amendment is intended to revise the Iowa program to be consistent with the corresponding Federal standards, to clarify ambiguities, to and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., c.d.t. June 6, 1994. If requested, a public hearing on the proposed amendment will be held on May 31, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on May 20, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom at the address listed below.

Copies of the Iowa program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Michael C. Wolfrom, Acting Director, Kansas City Field Office; Office of Surface Mining Reclamation and Enforcement; 934 Wyandotte, room 500; Kansas City, MO 64105, Telephone: (816) 374–6405.

Department of Agriculture and Land Stewardship, Division of Soil Conservation; Wallace State Office Building; East 9th and Grand Streets; Des Moines, Iowa 50319, Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

II. Proposed Amendment

By letter dated April 13, 1994, (Administrative Record No. IA–397) Iowa submitted a proposed amendment to its program pursuant to SMCRA. Iowa submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 915.16 (a) and (b) and at the State's own initiative to improve its program.

The substantive changes proposed by Iowa are discussed briefly below:

(1) IAC 27–40.3(207), General

Iowa proposes to add a statement that in lieu of the regulations previously deleted at 30 CFR 700.12 concerning "Petitions to initiate rulemaking," rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, "Petitions for Rulemaking" shall serve as the basis for submitting petitions to initiate rulemaking.

(2) IAC 27–40.4(9), Definitions

Iowa proposes to delete its definition of "previously mined area" as incorporated by reference and replace it such that "[p]reviously mined area" means the land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

(3) IAC 27–40.31(14), Requirements for Permits and Permit Processing

Iowa proposes to remove and reserve this subrule concerning willful suppressing or falsifying of facts or data that OSM previously reviewed but did not approve.

(4) IAC 27–40.32(207), Revision or Amendment, Renewal, Transfer, Assignment, or Sale of Permit Rights

Iowa proposes to replace its regulations concerning requirements for defining and processing significant permit revisions and nonsignificant permit revisions. Iowa uses the term "permit revision" to mean significant permit revision and the term "amendment" to mean nonsignificant permit revision.

(5) IAC 27–40.51(7), Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

Iowa proposes to delete its existing subrule and replace it with the requirement that an application for bond release shall not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by the division.

(6) IAC 27–40.63(2), Backfilling and Grading: Time and Distance Requirements

Iowa proposes to delete its incorporation by reference of 30 CFR 816.101 [Backfilling and grading: Time and distance requirements] and replace it with the requirement that (a) except as provided in paragraph "b" of the subrule, rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge; (b) the division may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with 27 IAC 40.36/30 CFR 780.18(b)"3" of these rules that additional time is necessary.

(7) IAC 27–40.74(3), Civil Penalties

Iowa proposes to adopt specific State counterpart rule cites for those Federal rule cites at 30 CFR 845.15(b)(2) that were previously incorporated by reference by the State.

(8) IAC 27–40.75(2), Individual Civil Penalties

Iowa proposes to adopt a specific State Code reference (Iowa Code 207.15(3)) counterpart to section 518(b) of the Surface Coal Mining and Reclamation Act in its definition of "Violation, failure, or refusal."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Iowa program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. May 20, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Reduction of Regulatory Burden).

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–10784 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville Regulation 94–027]

RIN 2115–AA97

Safety Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone in the St. Johns River around barges launching fireworks located between the Hart and Acosta Bridges. The permanent safety zone will relieve the need to establish temporary safety zones for the purpose of regularly scheduled fireworks displays. The zone will be placed into effect during fireworks displays to protect vessels in the vicinity from safety hazards associated with the storage, preparation and launching of fireworks. It will automatically terminate at the conclusion of the fireworks display unless terminated earlier by the Captain of the Port of District Commander.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, FL 32206–3497. The comments will be available for inspection and copying at MSO Jacksonville, Room 222. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Varamo, Tel: (904) 232–2648.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (94–027) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant A. Varamo, project officer for the Captain of the Port Jacksonville, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office

Discussion of Proposed Regulations

The events requiring this regulation are fireworks displays which necessitates that an area within 500 yards of fireworks barges remain clear of all vessels. The safety zone will be in effect around the barges when fireworks are prepared and launched. Vessels are prohibited from anchoring, mooring, or transiting the St. Johns River within the prescribed area while the safety zone is in effect to avoid potential hazards associated with the fireworks display. The need to establish this permanent safety zone is based on the number of safety zones issued for fireworks displays in this area over the last year. Between April 1993 and April 1994, 15 safety zones were established in this area of the St. Johns River. The creation, review, and submission of the large number of individual field regulations for these safety zones presents a significant administrative burden. The permanent safety zone would alleviate this burden.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.C of Commandant Instruction M16475.1B and the establishment of safety zones has been determined to be categorically excluded from further environmental documentation.

Economic Assessment and Certification

This proposal is not a significant regulatory action under Executive Order 12866 on Federal Regulation and is nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The safety zone will only be in effect during the preparation and launching of fireworks. The Coast Guard will notify the public of the activation of the safety zone by transmitting a Broadcast Notice to Mariners on appropriate VHF–FM radio frequencies in advance of each fireworks display. The exact time of each safety zone will be included in the Broadcast Notice to Mariners. Each safety zone is expected to last for approximately one hour, which includes the time immediately prior to, during, and after the fireworks display.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant impact on a substantial number of small entities.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Proposed Regulations

In consideration of the foregoing, subpart C of title 33, Code of Federal Regulations, is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.721 is added to read as follows:

§ 165.721 Safety Zone: St. Johns River, Jacksonville, Florida.

(a) *Location.* The following area is established as a safety zone during the specified conditions: The waters within a 500 yard radius of the fireworks barge or barges during the storage, preparation, and launching of fireworks in the St. Johns River between the Hart and Acosta Bridges.

(b) *Effective dates.* This section becomes effective upon activation by the Captain of the Port by the broadcasting of a local Notice to Mariners on appropriate VHF–FM radio frequencies. It terminates at the conclusion of the fireworks display unless terminated earlier by the Captain of the Port.

(c) *Regulations*—(1) In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the District Commander or Captain of the Port.

(2) This section does not apply to authorized law enforcement agencies operating within the Safety Zone.

Dated: April 12, 1994.

A. Regalbuto,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 94–10857 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–14–M

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls: Proposed Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. To improve the competitiveness of the Seaway, the Corporation and the Authority are proposing that the Tariff be amended to provide that the charges for the 1994 season under the Tariff Schedule be the same as for the 1993 season, except the toll for steel slab. In an effort to increase steel slab shipments, the Corporation and the Authority are proposing a separate, lower toll for this commodity, which is now included under the general cargo rate. In addition, the Corporation and the Authority are proposing for competitive purposes that the Incentive Tolls Program be continued and be revised by increasing the amounts of the discounts and rebates and their applicability.

DATES: Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before June 6, 1994.

ADDRESSES: Send comments to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: In and effort to improve the Seaway's competitiveness, it is proposed to amend § 402.8, the Schedule of Tolls, to provide the charges for the 1994 season under the Tariff Schedule be the same as for the 1993 season, except the toll for steel slab. In an effort to increase steel slab shipments, the Corporation and the Authority are proposing a separate, lower toll for this commodity, which is now included under the general cargo rate. This separate toll would be a 25 cents per metric ton reduction for each of the two Seaway segments, a net reduction of 50 cents per metric ton for vessels transiting both segments. As a conforming amendment, paragraph (i) of § 402.3, the definition of "general cargo" would be amended to reflect that steel slab is no longer included in this category. The Corporation and the Authority also are proposing, for competitive purposes, that the Incentive Tolls Program be continued and be revised. Section 402.9 would be amended to provide that a new business incentive of a 50% discount would be granted to a carrier immediately upon application before transit or upon arrival at its destination. In addition, North American origins and destinations will be grouped into five geographic regions to discourage cargo diversions. It is additionally proposed to amend § 402.11 to provide that volume rebates of 50% would be available to both shippers and receivers of cargoes with a satisfactory three year traffic history for the commodity involved. When a particular shipper's or receiver's shipments of a specific commodity exceed their highest single season tonnage amount of that commodity of the previous three seasons by at least 25,000 metric tons, the rebate would be applied to all tons exceeding that previous high. This change will target to rebates more directly to shippers and receivers. The alternate use of bulkers program (section 402.13) would be continued, but amended to include steel slab as a separate commodity. That section would also be amended to make clarifying, editorial changes that have proved necessary from experience, but the manner in which the provisions is interpreted and administered would not change. Finally, a new section 402.15 would be added to clarify that carriers, shippers, or receivers would be eligible to receive only one of the incentives, *i.e.*, new business, discount, bulk trade discount, or volume rebate, for any one shipment.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this proposal under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR Part 402 as follows:

PART 402—TARIFF OF TOLLS

1. The authority citation for 33 CFR part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

2. Section 402.3 would be amended by revising paragraph (i) to read as follows:

§ 402.3 Interpretation.

* * * * *

(i) *General cargo* means all goods not included in the definitions under paragraphs (b), (g), (h), and (j) of this section, but excluding steel slab;

* * * * *

3. Section 402.8 would be revised to read as follows:

§ 402.8 Schedule of Tolls.

	Tolls (Effective 1994)	
	Montreal to or from Lake Ontario (MLO)	Lake Ontario to or from Lake Erie (Welland Canal)
(a) For transit of the Seaway, a composite toll, comprising:		
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States.)	0.11	0.13
(2) A charge in dollars per metric tons of cargo as certified on ship's manifest or other document, as follows:.		
Bulk Cargo	1.10	0.55
Food Grains	0.68	0.55
Feed Grains	0.68	0.55
Coal	0.65	0.55
General Cargo	2.66	[illegible]
Steel Slab	2.41	0.63
Containerized Cargo	1.10	0.55
Government Aid	0.00	0.00
(3) a charge in dollars per passenger per lock	1.18	1.18
(4) a charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo vessels, which may be shared by cargo vessels in tandem:.		
(i) loaded per: lock	N/A	440.00
(ii) in ballast: per lock	N/A	325.00
(b) For partial transit of the Seaway:		
(1) between Montreal and Lake Ontario, in either direction, 15 percent per lock, of the applicable toll..		
(2) between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll..		
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:		
Pleasure craft[1]	10.00	10.00
Other vessels	15.00	15.00

[1] Includes Federal Taxes where applicable.

4. Section 402.9 would be revised to read as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new business shall be reduced by fifty percent for a Seaway transit beginning and ending during the 1994 navigation year.

(b) The discount mentioned in paragraph (a) of this section shall be granted for the remainder of the navigation season if:

(1) A vessel carries, for each transit, 1,000 metric tons or more of new business or a minimum of 1.000 cubic meters of new business project cargo; and

(2) A complete and accurate application for a new business discount is submitted to the Authority or the Corporation, on the form provided by the Authority or the Corporation, for evaluation and audit by the Authority or the Corporation prior to the beginning of a Seaway transit.

(c) For the purposes of this section, "new business" means cargo that has not moved through a Seaway lock between an origin and a destination as defined in this paragraph (c) during the navigation seasons of 1991, 1992, and 1993 or cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic between an origin and a destination during the navigation seasons of 1991, 1992, and 1993. For the purposes of this paragraph (c), "origin" and "destination" mean the country in which the cargo is loaded or unloaded, but if the cargo is unloaded in North America, "origin" and "destination" mean the geographic region in which the cargo is unloaded, those geographic regions being as follows:

(1) The Gulf of St. Lawrence and St. Lambert Lock;

(2) St. Lambert Lock to Cape Vincent on the St. Lawrence River, Lake Ontario and the Welland Canal;

(3) Lake Erie, Lake Huron, and connecting waters;

(4) Lake Michigan;

(5) Lake Superior and St. Mary's River; and

(6) Ports elsewhere in North America in regions not specifically described in paragraphs (c) (1) through (5) of this section.

5. Section 402.11 would be revised to read as follows:

§ 402.11 Volume discount.

(a) A volume rebate shall be granted to a shipper of downbound cargo or to a receiver of upbound cargo at the end of the 1994 navigation season after payment of the full toll specified in the schedule under the tariff in section 402.8 if shipments of a particular commodity during 1994 exceed by a minimum of 25,000 tons the shipper's or receiver's highest tonnage for that particular commodity during 1991, 1992, or 1993 in the Seaway. Shippers will be qualified based upon the particular commodity loaded at their port of origin and receivers will be qualified based on the particular commodity unloaded at their port of destination. Shippers and receivers located within the Seaway will be qualified based on the total of their upbound and downbound shipments or receipts of the particular commodity. Should a shipper or receiver of the same commodity qualify for a volume rebate, the rebate will be divided equally between the shipper and receiver.

(b) Volume rebates shall be granted only with respect to commodities whose shipper and receiver have shipped or received the subject commodity in the years 1991, 1992, and 1993 and have not been subject of a merger or take-over during 1991, 1992, 1993, or 1994.

(c) The volume rebate shall be equal to a 50 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the shippers or receiver's highest tonnage for that commodity during 1991, 1992, or 1993. Payment of rebates will be made directly to the qualified shipper or receiver.

(d) The Seaway traffic history describing the shipper's or receiver's tonnage shall be submitted by the shipper or receiver prior to the end of 1994 and shall be subject to audit by the Authority.

(e) Cargoes having been the subject of a new business discount or an alternate use of bulker discount described in section 402.13 of this Part shall be excluded from the statistics used for calculation of volume rebates.

6. Section 402.13 would be revised to read as follows:

§ 402.13 Vessels engaged primarily in the bulk trade.

Notwithstanding anything contained in this Tariff, the toll for steel slab, general, or containerized cargo for any vessel documented under the laws of the United States or registered in Canada in accordance with the laws of Canada that has been engaged primarily in the bulk trade within the St. Lawrence Seaway/Great Lakes system during the three navigation seasons immediately preceding the applicable season shall, upon written application to the Authority or the Corporation prior to the beginning of a Seaway transit, be the toll charged for food grains specified in the schedule under the Tariff in § 402.8 of this part.

7. A new § 402.15 would be added to read as follows:

§ 402.15 Single season discounts or rebate for same shipment.

Notwithstanding anything in the Tariff, a carrier, shipper, or receiver shall obtain during a single navigation season, with respect to the same shipment, only one of the following three: A new business discount, as described in § 402.9; a bulk trade discount, as described in § 402.13; or a volume rebate, as described in § 402.11.

Issued at Washington, DC on April 25, 1994.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 94-10568 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-61-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94-06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: By Notice of Proposed Rulemaking published March 31, 1994 (59 FR 15149), as corrected by a document published April 18, 1994 (59 FR 18443), the Federal Maritime Commission proposed to remove the $15 million unearned passenger revenue ("UPR") ceiling now applicable to passenger vessel financial responsibility requirements for nonperformance of transportation, because some vessel operators now have UPRs significantly exceeding $15 million. The Commission also proposed to revise the current UPR sliding scale accordingly—and to require coverage of 110 percent of UPR up to $25 million per operator, with coverage of 90 percent of UPR for amounts exceeding $25 million. Comment was also sought on an alternative proposal to require coverage of 110 percent of UPR up to $25 million per operator; 75 percent of UPR between $25 million and $50 million per operator; and 50 percent coverage for UPR over $50 million per operator. Additionally, the Commission proposed to remove self-insurance as an option for section 3 coverage (except for state or federal entities). Existing self-insured commercial operations would be provided one year following the effective date of any final rule in this matter to obtain other evidence of financial responsibility. These changes are deemed necessary to ensure that cruise passengers are adequately protected in the event of nonperformance of transportation. The Delta Queen Steamboat Co. now has requested a ninety day extension of the comment period and the International Council of Cruise Lines has requested that the comment period be extended to June. 15, 1994. The Commission has

determined to extend the comment period to June 10, 1994.

DATES: Comments due on or before June 10, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5796.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–10742 Filed 5–4–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 76

[MM Docket No. 94–34, FCC 94–103]

Notice of Inquiry Regarding Broadcast and Cable Television EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: This Notice of Inquiry in MM Docket No. 94–34 seeks comment on the Commission's current equal employment opportunity (EEO) rules and policies, and proposals for changes in promoting equality of employment opportunity and promotion opportunity in the cable, broadcast, and other telecommunications industries. This proceeding is initiated in order to assist the Commission in complying with section 22(g) of the Cable Television Consumer Protection and Competition Act of 1992, which requires the Commission to file a report to Congress on the effectiveness of its EEO policies.

DATES: Initial comments due May 23, 1994; reply comments due June 7, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 632–7069.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Notice of Inquiry in MM Docket No. 94–34, FCC 94–103, adopted April 20, 1994, and released April 21, 1994. The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Notice of Inquiry

1. To assist the Commission in implementing section 22(g) of the Cable Television Consumer Protection and Competition Act of 1992, which requires the Commission to file a report to Congress on the effectiveness of its EEO policies, the Commission adopted a notice of inquiry. This notice of inquiry outlines the Commission's broadcast and cable EEO rules, policies and procedures; suggests proposals for changes to these rules; and invites comments on ways that the Commission can more efficiently enforce these rules. To focus the comments the Commission has set forth a number of areas where changes might be considered.

2. The Commission asks how its EEO policies can reflect the concerns of broadcasters who indicate difficulties in meeting EEO requirements due to their location in small markets. The Commission seeks information concerning how "small market broadcasters" should be defined and what process should be implemented to identify such broadcasters.

3. The Commission asks if there is a way to decrease any administrative burdens placed on broadcasters by the Commission without decreasing the effectiveness of the Commission's broadcast EEO enforcement. The Commission's primary focus is on full-time hires and employment. The Commission seeks comment as to whether the requirement for efforts documentation of part-time hires should be eliminated for all broadcasters. The Commission seeks comment as to whether its inquiry letters should be revised to request information for the entire license term or for some other period to time instead of the three years of information that is presently asked for. It also seeks comment as to whether to supplement its renewal inquiry procedures by conducting on-site audits. The Commission seeks comment on possible revisions to the Broadcast Renewal Application which presently asks for examples of recruitment sources contacted, the number of female and minority referrals received from recruitment sources and the number of overall as well as upper-level hires occurring during the 12-month period prior to filing the application. These revisions include requesting information for only full-time hires, requesting that the information required by the form be divided by full and part-time hires and requesting more detailed recruitment and hiring information. The Commission also requests comment on revising the Broadcast Station Annual Employment Report to request information be collected for the same 15 job categories as is now required for cable operators and multichannel video programming distributors (MVPDs).

4. The Commission requests comment as to whether broadcasters should be required to encourage minority and female entrepreneurs to conduct business with all parts of their operation given that the Commission already requires cable operators and MVPDs to do so. Given that the Commission now gives credit to broadcasters and cable operators for using minority/female sources and/or obtaining minority/female referrals with other licensees and cable operators, respectively, the Commission seeks comment as to what it can do to encourage joint recruitment efforts by licensees and joint recruitment efforts by licensees and joint recruitment efforts by cable operators.

5. The Commission asks if its broadcast and cable EEO enforcement is adequate regarding the promotion and retention of minority and female employees and, if not, to what extent should changes be made.

6. The Commission asks if there is a way to decrease any administrative burdens placed on a cable operators by the Commission without decreasing the effectiveness of the Commission's cable EEO enforcement. It asks for comment on the job title information and information regarding 15 job categories required in the Cable Television Annual Employment Reports. It also seeks comment on whether it should require cable operators to maintain certain types of records about their recruitment efforts for a specified period of time. It seeks comment on its present method for selection cable audit locations. This method is to select a region of the country based on such factors as the concentration of minorities in the available labor force and the number of employment units in the area and then review Cable Television Annual Employment Reports of units in that area that fall below the processing guidelines and/or have employment discrepancies. The Commission also seeks comment on whether the remedies and sanctions available to redress violations of the cable EEO rules, which include admonishment, reporting conditions, forfeitures and suspension of the cable antenna real service license, are adequate. If not, the Commission

asks what other remedies and sanctions Congress might provide in order to enforce the cable EEO rules, particularly with respect to furthering the congressional goal of increased opportunities for minorities and women in managerial positions.

7. The Commission seeks comment as to how it can better enable cable operators and MVPDs to meet their EEO goals and as to how it can better inform cable operators, MVPDs and the public about their EEO obligations.

8. The Commission seeks comment on all of the foregoing as well as the appropriate application and enforcement of its EEO policies in connection with new and Emerging communication technologies.

Administrative Matters

Ex Parte: This is a non-restricted proceeding subject to 47 CFR § 1.1206(b)(2).

Comments. Interested parties may file comments on or before May 23, 1994, and reply comments on or before June 7, 1994.

List of Subjects

47 CFR Part 1

Non-restricted proceedings, Radio.

47 CFR Part 73

Television and radio broadcasting, Equal employment opportunity, Reporting and recordkeeping requirements.

47 CFR Part 76

Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–10792 Filed 5–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–214, RM–8287, RM–8350]

Radio Broadcasting Services; Ocracoke, Edenton, Columbia, Pine Knoll Shores, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal of.

SUMMARY: The Commission denies the petition for rulemaking filed by Ocracoke Broadcasters requesting the substitution of Channel 224C1 for Channel 225A at Ocracoke, NC, and the modification of its construction permit for a new Class A station to specify operation on the higher class channel. See 59 FR 40401, July 28, 1993. The Commission found that the proposed site would not permit compliance with Section 73.315 of the Commission's Rules regarding 70 dBu city-grade coverage. The Commission also denies the counterproposal filed by Lawrence F. and Margaret A. Loesch to substitute Channel 273C1 for Channel 273C2 at Edenton, NC, reallot Channel 273C1 to Columbia, NC, substitute Channel 224A for unoccupied but applied-for Channel 272A at Pine Knoll Shores, NC, and modify Station WERX–FM's license to specify Columbia as its community of license. The Commission found that the proposed transmitter site is located in a swamp and no showing that a suitable transmitter site exists was provided. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–214, adopted April 14, 1994, and released May 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–10791 Filed 5–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking Federal Motor Vehicle Safety Standard No. 105

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking by Volkswagen of America, Inc. (VW) to amend Standard No. 105 by reducing the required height for lettering on antilock brake failure indicator lights. VW wants the reduction to facilitate its efforts to develop a single indicator light design that complies with both U.S. and Canadian requirements. Standard 105 provides that if a separate indicator light is provided for antilock brake failure, the indicator must bear one of the following: "Antilock," "Anti-lock" or "ABS." Canada requires use of the ISO brake failure symbol. VW's single design would consist of the letters "ABS" placed inside the ISO symbol. A letter size reduction would enable VW to avoid having to use what it regards as an overly large ISO symbol.

NHTSA is denying this petition for two reasons. First, NHTSA believes that reducing the minimum letter height would make it impossible for many drivers, particularly elderly ones, to read the words and thus discern when there is a brake system failure. Second, the agency is not convinced that the international symbol, by itself, is sufficiently recognizable to be understood as an indication of brake failure by persons unfamiliar with that symbol.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4803.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standards (FMVSS) 101 and 105, promulgated in 1978 and 1976, respectively, establish requirements for vehicle panel displays, including indicators warning of brake failure. The two FMVSS's prescribe the wording of the failure warning displays, as well as their dimensions and colors.

S5.3.5(a) of FMVSS 105 (Hydraulic Brake Systems) requires that each indicator lamp shall have letters which are not less than ⅛-inch high, and which must be visible and legible to a vehicle's driver in daylight. In the case of brake warning displays, FMVSS 105 prescribes that the word "Brake" be used. (S5.3.5(c)(1)). If a separate indicator lamp is provided for an anti-lock brake system (ABS), the word "Antilock," "Anti-lock" or the abbreviation "ABS" must be used (S5.3.5(c)(1)(C)). Table 2 of FMVSS 101 (Controls and Displays), echoes FMVSS 105, permitting use of the words "antilock," "anti-lock" or "ABS."

On July 6, 1993, Volkswagen of America, Inc. (VW) petitioned the agency to modify FMVSS 105 to require the letters in the word or acronym on the ABS warning indicator to have a minimum height of 2.4 mm (3/32-inch) instead of the current 1/8 inch (3.2 mm). VW apparently desires the reduction to facilitate its efforts to develop a single dashboard indicator light design that complies with both U.S. and Canadian requirements. VW stated that Transport Canada had amended Canadian Motor Vehicle Safety Standard (CMVSS) 101 to require use of the ISO symbol for brake failure. CMVSS 101 requires the ISO symbol to be at least 1/8-inch high. The amendment to CMVSS 101 becomes effective on September 1, 1994.

VW's single design would consist of the letters "ABS" placed inside the ISO symbol. VW wants the letter size reduction in order to avoid having to use what it regards as an overly large ISO symbol. It states that in order to put the currently required 1/8-inch high letters inside the ISO symbol, the latter would have to be 10.18 mm (2/5 inch). VW states that such a size would be three times larger than required for all other warning indicators. In the alternative, a manufacturer would need two different designs: One for installation in vehicles sold in Canada, and one for installation in vehicles sold in the United States.

VW requested the agency to reduce the required minimum dimensions for "ABS," when used inside the ISO brake failure symbol, from 3.2 mm (1/8-inch) high to 2.4 mm (3/32-inch) high. It admitted that letters inside the symbol would be "extremely small." VW suggested that an ISO symbol 7 mm (1/4-inch) high could accommodate letters 2.2 mm (0.0866 inches) high. VW did not state how much larger the ISO symbol would have to be to include letters 2.4 mm high, as requested in its petition.

The agency has addressed the issue of the ISO symbol previously. For instance, in a supplemental notice of proposed rulemaking (SNPRM) for proposed Standard No. 135; which provides for harmonization of international standards for passenger-car hydraulic brake systems (see 56 FR 30528, July 3, 1991), the agency stated that it had denied several petitions for inconsequential noncompliance based on the use of ISO symbols in place of words or symbols required by Standard No. 101. In those cases, the agency stated in the SNPRM, it had believed the meaning of the ISO symbols would be unclear or ambiguous to drivers.

Additionally, the agency conducted a rulemaking proceeding between 1982 and 1987 in which the agency amended Standard No. 101 by permitting various words and symbols to be used, while rejecting others. In a NPRM (47 FR 49994, November 4, 1982), the agency discussed allowing the ISO symbol for brake failure, and sought comment. It noted that the symbol for brakes was of "particular safety importance" to drivers, and stated the agency's concern that "the symbol may not be immediately recognizable." Two years later, in a final rule (49 FR 30191, July 27, 1984), the agency expressed its concern that "too many symbols, or symbols that are not easily recognizable, are not in the public's or industry's interest." The agency delayed a decision on brake failure warning indicators in that final rule, addressing them instead in another final rule issued a year later (50 FR 23426, June 4, 1985). The agency rejected use of the ISO symbol in the 1985 rule based on a study published by the Society of Automotive Engineers (SAE). That study found the percentage recognition or understanding of the ISO brake symbol among a survey sample of people unfamiliar with that symbol to be very low (i.e., about one-quarter of the survey sample). By comparison, 87 percent of the survey sample recognized the meaning of the word "brake" when it was illuminated. In addition, a comment from General Motors stated that the ISO was adopting new symbols by consensus and without resort to its prior practice of extensive international testing as to the symbol's recognizability and suitability. In a final rule published on May 28, 1987 (52 FR 19872), the agency declined to adopt the ISO symbol as an alternative to the words "Antilock" or "ABS", once again citing the SAE study discussed above. In all of the above final rules, the agency discussed the desirability of increased harmonization of symbols and words as a way to eliminate language barriers and decrease manufacturer costs. However, notwithstanding its general wish to increase harmonization, NHTSA has consistently deemed it prudent to reject symbols and words that could have a negative safety impact, whether in the short run during a transitional period of familiarization or in the long run.

In its petition, VW stated it was not aware of any definitive studies showing the need for a 1/8-inch minimum height requirement for lettering on indicator lamps. VW maintained that the slightly smaller letters it requested in its petition, combined with the slightly larger ISO symbol, would be sufficient to convey the intended meaning (i.e., brake failure) to the driver of a vehicle.

VW points to FMVSS 208 (Occupant Crash Protection), S4.5.1, which requires occupant crash protection maintenance schedules to be permanently affixed on a label inside the vehicle, as permitting letters of 3/32-inch high. 3/32-inch (or 2.4 mm) is insignificantly larger than the 2.2 mm letter height that VW says would fit inside the 7 mm ISO symbol.

NHTSA disagrees with VW's statement that decreasing the minimum letter height would have no effect on a driver's ability to understand the warning indicator. Contrary to VW's assertion that there is no definitive study showing the need for a 1/8-inch minimum height requirement, NHTSA research report, "Specification of Control Illumination Limits" (DOT–HS–4–00864, 1974) found that instrument-panel labels consisting of .09 inch letters (2.3 mm, or 0.1 mm smaller than that requested by VW) could not be read by older drivers, regardless of letter brightness or background contrast. VW has provided no data supporting its contention that a letter height of 2.4 mm would be readable by all drivers, including older drivers.

The agency also takes issue with the comparison of the letter height requirements of FMVSS 105 and those of FMVSS 208. The words required under FMVSS 105 warn of an impending or actual failure in the brake system of the vehicle. The indicator light in this situation must be seen and understood by all drivers in all lighting conditions as quickly as possible. In an emergency situation involving brake failure, the agency believes that it would be the word, "antilock" or the letters "ABS" that would convey the desired message. If the minimum height of the letters were reduced to the point of illegibility, the successful communication of the message would rest solely on the accompanying ISO symbol. NHTSA believes that the symbol would not be adequate by itself to alert many drivers to the occurrence of brake failure.

The wording required by FMVSS 208 is a standard and permanent notice of maintenance. It is a reminder to the vehicle owner when to have the occupant crash protection system serviced. It need not be seen and immediately understood, as with a warning indicator. The two requirements are obviously for different purposes and to be read at different times. Therefore, they need not have identical letter height requirements.

NHTSA has no objection to use of the ISO symbol, *per se*. However, the ISO symbol may only be used as an addition to the words or acronym required by FMVSS's 101 and 105 and not as a substitute. VW may, if it so chooses, meet the requirements of FMVSS 105 by including "ABS" inside the ISO symbol for brake failure, provided that the letters "ABS" are 1/8-inch in height. Alternatively, it may place the word "antilock" or letters "ABS", in compliance with the requirements of FMVSS's 101 and 105, next to a ¼-inch ISO symbol brake failure indicator. Both options would meet the requirements of CMVSS 101 and the FMVSS's 101 and 105, obviating the need for VW to install different components in vehicles sold in the U.S. or Canada.

Based on the foregoing, NHTSA concludes that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding and therefore denies VW's petition.

Authority: 15 U.S.C. 1410a, delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: May 2, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–10862 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 580

[Docket No. 92–20; Notice 3]

Petition for Rulemaking; American Car Rental Association

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition filed by the American Car Rental Association, requesting that the National Highway Traffic Safety Administration amend its regulation concerning odometer disclosure requirements to accommodate the needs of car rental companies purchasing fleets of new vehicles. The petition is denied, because the agency concludes that its authority to grant relief extends only to vehicles for which the odometer reading is not relied upon as an indicator of mileage or condition.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Attorney Adviser, Office of the Chief Counsel, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590; (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

Title IV of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1981–1991) ("the Act") sets forth certain requirements concerning odometers in motor vehicles. Among other things, the Act prohibits disconnecting, resetting, or altering motor vehicle odometers and requires the execution of an odometer disclosure statement incident to the transfer of ownership of a motor vehicle. The Act also subjects violators to civil and criminal penalties, and provides for Federal injunction, State enforcement, and a private right of civil action. The provisions requiring odometer disclosure statements on titles were added by the Truth in Mileage Act of 1986 (Pub. L. 99–579), and reflect Congress' intent to address the growing national problem of odometer tampering in motor vehicles.

Section 408 of the Act (15 U.S.C. 1988) directs the Secretary of Transportation to promulgate rules governing the making of odometer disclosure statements. In accordance with that mandate, NHTSA published a regulation (49 CFR part 580) which requires, in connection with the transfer of ownership of a motor vehicle, that each transferor must disclose the mileage to the transferee in writing on the title (or in some cases on the document being used to reassign the title). The regulation details the minimum contents of the disclosure, requires the disclosure to be signed by both the transferor and the transferee, and provides that no person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, except in limited situations (described below).

The regulation allows a number of exemptions of relevance to the instant petition. Section 580.6(b) provides that "[a] transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage." In practice, this provision exempts a motor vehicle manufacturer from the odometer disclosure requirement with respect to a vehicle transferred to a dealer for purposes of resale as a new vehicle. Section 580.5(h), which prohibits a person from signing an odometer disclosure statement as both transferor and transferee, allows an exemption in situations where the exercise of a power of attorney is authorized under §§ 580.13 or 580.14. The power of attorney allows a transferee to make an odometer disclosure on behalf of his transferor only in cases where the transferor's title is held by a lienholder or where the transferor to whom the title was issued by the State has lost his title and the transferee obtains a duplicate title on behalf of the transferor.

The Petition

The American Car Rental Association (ACRA) filed a petition dated November 29, 1993, seeking an amendment to NHTSA's regulation, under which its member car rental companies would be relieved of certain odometer disclosure requirements when purchasing new vehicles. ACRA describes a process, referred to as "drop-shipment," by which many nationwide car rental companies purchase fleets. According to ACRA, the companies receive vehicle deliveries directly from the manufacturers but, due to franchising agreements between manufacturers and dealers, the purchase must be handled through a dealer. In some cases, the manufacturer ships both the vehicles and the title documents directly to the car rental company, while in other cases, it ships the vehicles to the car rental company and the ownership documents to the dealer. In either of these cases, ACRA asserts, car rental companies experience significant logistical problems in complying with the odometer disclosure regulations, because they must secure odometer disclosure statements from dealers that never take possession of the vehicles or, in some cases, the title documents.

ACRA explains that the required odometer disclosure is currently accomplished through the grant of a power-of-attorney from the dealer to a third party (not related to the limited power of attorney between transferor and transferee authorized under §§ 580.13 and 580.14). The third party certifies the vehicle's odometer reading on behalf of the dealer, conveys the manufacturer's certificate of origin (MCO), and performs other services incidental to titling and registering the vehicle. ACRA acknowledges that this system works, but claims that it imposes a significant cost on the car rental industry, because the dealers pass on the costs associated with third party services to the car rental companies. ACRA estimates the cost to the average nationwide car rental company to be in the tens of thousands of dollars per year, and asserts that the process delays the introduction of vehicles into a car rental fleet without a legitimate law enforcement purpose, given the extremely low mileage on these new vehicles.

In early 1993, following informal discussions with NHTSA, ACRA submitted a written request for a legal interpretation of a proposal to list both the dealer and the car rental company as joint transferees on a vehicle's MCO. ACRA sought assurances that, under this arrangement, it would be permissible for only one of these entities to sign the odometer disclosure statement as transferee in the initial transfer and as transferor in a subsequent transaction. It was ACRA's hope that this procedure would alleviate the burdens associated with the use of third party agents. NHTSA confirmed that only one of several listed transferors or transferees need execute an odometer disclosure statement in the course of a vehicle transfer. However, NHTSA also noted that, in this case, the listing of joint transferees on the MCO would defeat the vehicle manufacturer's exemption from the odometer disclosure requirements (under Section 580.6(b)), as one of the listed transferees would be using the vehicle for purposes other than resale. It is ACRA's position that vehicle manufacturers would be unwilling to undertake the burden of executing odometer disclosure statements, and it now seeks other avenues of relief.

ACRA proposes three alternative regulatory approaches to alleviate the burden imposed on the car rental industry. First, it proposes to exempt the transferor of a new vehicle that is dropped-shipped to a car rental company from the requirement to make an odometer disclosure. It would accomplish this by adding a definition of "new vehicle" to § 580.3 ("any vehicle driven no more than the limited use necessary in moving or road testing a vehicle prior to delivery by a manufacturer and/or a dealer") and a new exemption to § 580.6 ("a transferor of new vehicle to a business engaged in the leasing of automobiles for a period of thirty (30) days or less need not disclose the vehicle's odometer mileage"). Under this approach, with the dealer and the car rental firm listed as joint transferees on the MCO, the car rental firm would make any required odometer disclosure without involving the dealer.

Alternatively, ACRA proposes to extend the circumstances under which a transferor could give its transferee power of attorney to make the odometer disclosure ordinarily required of the transferor. ACRA would also extend the power of attorney from the transferee to the transferor. To accomplish this objective, ACRA proposes to amend § 580.13 as follows:

> (a) If the transferor's title is physically held by a lienholder, or if the transferor transfers the title of a new vehicle to a transferee engaged in the business of leasing new vehicles for a period of thirty (30) days or less, or if the transferor to whom the title was issued by the State has lost his title and the transferee obtains a duplicate title on behalf of the transferor, and if otherwise permitted by State law, the transferor may give a power of attorney to his transferee, or the transferee may give a power of attorney to his transferor, for the purpose of mileage disclosure only. The power * * *.

As a final option, ACRA proposes to exempt the initial transfer on all fleet purchases of new vehicles from the odometer disclosure requirements. To implement this approach, ACRA suggests including the definition of "new vehicle" set forth in the first suggested approach, and adding a definition of "fleet purchases" ("the annual aggregate transfer of new vehicles in quantities over 500 vehicles from a manufacturer to a transferee for use in the transferee's rental, lease, or corporate fleet.") Section 580.6 would then be amended to read as follows:

> "Notwithstanding the requirements of §§ 580.5 and 580.7:
>
> (a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:
>
> * * * * *
>
> *(5) A new vehicle transferred by a manufacturer as part of a fleet purchase.*

This approach would exempt the manufacturer from the odometer disclosure requirements, even though the car rental company and the dealer are listed on the MCO as joint transferees.

ACRA asserts that under any of the three approaches, the opportunity for odometer fraud is minimal. It notes that, under the first two approaches, the universe of vehicles potentially qualifying for exemption is carefully limited to new vehicles (registering very low mileage), and only those new vehicles transferred to a business engaged in "short-term leasing." Under the third approach, ACRA views the combination of factors (i.e., new vehicle, fleet purchase) to pose a similarly low risk of fraud, while eliminating the need for manufacturer disclosures in cases involving joint dealer and car rental company transferees.

Discussion

The central purpose of the Truth in Mileage Act was to make the title document the sole vehicle for odometer disclosure. Congress sought to institute a uniform system of disclosure that would be readily available to assist the consumer in making motor vehicle purchasing decisions. Prior to that time, the use of separate documents for odometer disclosure was not uncommon, and was found to be vulnerable to abuse.

Subsequent statutory amendments in 1988 and 1990 have deviated from the absolute requirement to use the title document, by authorizing the use of powers of attorney in strictly limited circumstances when titles are physically held by lienholders. Additionally, Congress has authorized the approval of alternate odometer disclosure procedures, provided they are determined to be consistent with the Act, but only when these procedures are submitted by a State. However, there is no indication that Congress intended to extend the opportunity to seek alternate procedures to any other entities. Indeed, such a course of action would seem anomalous, considering that it is the States that are charged with institutionalizing the odometer disclosure procedures. The limited circumstances articulated for deviation from the primary intent of the Act reflect Congress' reluctance to stray from the overriding goal of achieving comprehensive odometer disclosure procedures to protect the public.

It is significant that several States have voiced concern regarding the granting of additional exemptions to the disclosure requirements, arguing that new exemptions would introduce serious burdens to an already complex titling review process. Even under the current procedures, NHTSA is aware that some States have administratively rejected certain exemptions provided for in NHTSA's regulation. The differing practices among States with respect to the existing exemptions have resulted in a disruption of interstate vehicle transfers, as title transfer documents from some States have been rejected by other States. Favorable action on this petition would likely compound the problem, in apparent contradiction to the intent of Congress that the interests of the States be accommodated, where consistent with the Act.

Apart from issues of Congressional intent evident in the legislation, the agency's authority to deviate from the Act has, over the years, been thrown into question by court decisions rejecting one of NHTSA's regulatory exemptions under Section 580.6. Several courts have ruled that NHTSA does not have the authority to exempt vehicles with a Gross Vehicle Weight Rating in excess of 16,000 pounds from the odometer disclosure requirement. See *W. W. Wallwork, Inc.* v. *Duchscherer*, 501 N.W.2d 751 (N.D. 1993); *Davis* v. *Dils Motor Co.*, 566 F. Supp. 1360 (S.D.W.Va. 1983); *Lair* v. *Lewis Service Center*, 428 F. Supp. 778 (D. Neb. 1977). It is significant that these courts reached such a conclusion despite NHTSA's administrative determination that, in transfers of the subject vehicles (heavy trucks), maintenance records are of key importance but the odometer reading is not generally relied upon in determining value or condition. NHTSA continues to believe that it has the requisite authority to consider exemptions in cases where odometer readings are not relied upon in the course of vehicle transfers. However, the vehicles that are the subject of this petition do not enjoy such a distinction, and so it is especially doubtful that the courts would support the requested broadening of exemptions.

In view of these limitations, the agency's discretion to allow exemptions to the odometer disclosure requirements is highly circumscribed. This is especially true in the instant case, where the proposed changes have been requested by an entity other than a State (whose right to seek approval of alternate requirements is the only one specifically recognized by the Act) and, moreover, would target a large vehicle population (the top ten companies had over one million vehicles in their fleets in 1992, according to ACRA's figures). Each of the proposed solutions advanced by ACRA raises serious problems. The first and third proposed solutions would introduce a new exemption, in the face of court decisions increasingly rejecting NHTSA's authority to grant such exemptions. Moreover, they would do so for vehicles with respect to which mileage is relied upon as an indicator of value or condition. The second proposed solution would expand the use of the power of attorney, in the face of Congressional intent that it be strictly limited. All of the proposed solutions would compromise the States' implementation procedures. Under the circumstances, and mindful of the fact that the petitioner is not a State, NHTSA concludes that it does not possess the authority to implement any of the proposed amendments.

NHTSA is aware of ACRA's assertions that the current procedures are causing hardship to the car rental industry, and that its proposed solutions would not compromise the integrity of the system. Although the denial of this petition rests on the agency's lack of authority, the agency offers the following comments on ACRA's assertions.

ACRA acknowledges that its existing procedures achieve compliance with odometer disclosure requirements, but cites costs to the average nationwide car rental company of tens of thousands of dollars per year and the time-consuming nature of the process. Given the large number of vehicles at issue, this compliance cost does not appear unreasonable, and certainly does not compel a conclusion of hardship. Nor is such a conclusion compelled by concerns about the time expended in achieving compliance.

In the world of motor vehicle transfers, NHTSA is aware of other situations in which companies incur similar costs and time burdens associated with the employment of personnel that provide titling and registration services and act as agents for the purpose of odometer disclosure. For example, companies that lease vehicles for long terms also rely on "drop shipments" or "courtesy deliveries" when obtaining new vehicles. In these situations, the leasing companies typically pay set fees to dealers to prepare the new vehicles for operation and process the paperwork associated with the transfer of both the new and the old vehicles. In many instances, the services performed include executing mileage disclosures. These firms also experience similar, normal delays incident to obtaining the proper disclosures. NHTSA cannot conclude that the costs or burdens to the car rental industry are excessive or beyond those reasonably contemplated by the Congress in enacting the disclosure requirements.

It is impossible to downplay the large number of vehicles proposed for exemption or alternate treatment under this petition. The total rental fleet put into service in 1992 numbered 1,532,000 passenger cars and light trucks,[1] or almost 13 percent of the 12 million new passenger cars and light trucks sold in the country during that year.[2] Moreover, NHTSA cannot distinguish the merits of ACRA's arguments from those that might be advanced by the leasing industry, as discussed above. If a similar exemption were granted to the leasing industry, which placed a total of 1,543,000 passenger cars and light trucks into service in 1992,[3] it would encompass an additional 13 percent of the new vehicles sold that year. While the risk to the integrity of the system may not appear great in the rental industry situation, the same cannot be said with respect to the leasing industry. Prior to the passage of the Act, odometer tampering in leased vehicles was rampant, and served as a major impetus for Congressional action.

In conclusion, NHTSA does not believe that it possesses the authority to grant the relief requested by the petitioner, based on the intent of Congress and recent court decisions. Moreover, granting the relief requested would be against the expressed interest of the States, the very entities charged with enforcing the odometer disclosure procedures.

For the foregoing reasons, the petition is denied.

Issued on April 29, 1994.

John Womack,

Acting Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 94–10759 Filed 5–4–94; 8:45 am]

BILLING CODE 4910-59-P

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[1] Automotive Fleet, 1993 Fact Book, Vol. 32 Supp. 1993, p. 20.

[2] American Automobile Manufacturers Association, Motor Vehicle Facts and Figures '93, pp. 18, 20.

[3] Automotive Fleet, p. 20.

Notices

Federal Register
Vol. 59, No. 86
Thursday, May 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 29, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service.

7 CFR Part 51—Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products FV–202, FV–237, FV 292.
On occasion.
State or local governments; Businesses or other for-profit; 212,256 responses; 6,366 hours.
Shane Brown (202) 690–0604.

- Agricultural Marketing Service.

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR part 110).
SD–8.
Recordkeeping; On occasion.
State or local governments; Farms; Federal agencies or employees; 184,802,265 responses; 1,623,625 hours.
Bonnie Poli (703) 330–7826.

Extension

- Soil Conservation Service.

Agricultural and Urban Damage Surveys and Public Law 83–566, Project Application.
SCS ECN 1 through 6.
On occasion.
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 1,750 responses; 2,850 hours.
Doug Lawrence (202) 720–1510.

New Collection

- Food Safety and Inspection Service.

Official Marketing Device, Labeling and Packaging Material—Addendum 1.
FSIS Form 7234–1.
On occasion.
Businesses or other for-profit; 5,979 responses; 1,495 hours.
Lee Puricelli (202) 720–7163.

Larry K. Roberson,
Deputy Department Clearance Officer

[FR Doc. 94–10755 Filed 5–4–94; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[Docket No. TB–94–28]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Dates: May 19, 1994

Time: 1:30 p.m.

Place: Agricultural Marketing Service, U.S. Department of Agriculture, Conference Room, room 3501 South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Purpose: To elect officers, review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 et seq.) and to discuss the level of tobacco inspection and related services. In particular, the Committee will analyze the financial status of the inspection program and recommend the rate of the user fee for the 1994–95 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 2, 1994.

Lon Hatamiya,
Administrator.

[FR Doc. 94–10825 Filed 5–4–94; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Crane Mountain Salvage, Flathead National Forest, Swan Lake Ranger District, Lake County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environment impacts of a proposal to harvest timber, use prescribed fire, and implement travel management changes on Crane Mountain, on the Swan Lake Ranger District. This EIS will tier to the Flathead National Forest Land and Resource Management Plan (LRMP) and EIS of January 1986, which provides overall guidance in achieving the desired future condition for the area.

The Proposed Action is designed to implement the Flathead Forest Plan within the context of Ecosystem Management principles. The primary purpose for development of the Proposed Action is to address an ongoing Mountain Pine Beetle epidemic which is causing extensive mortality in lodgepole pine on Crane Mountain. The Proposed Action is designed to address the short- and long-term consequences of the epidemic. The Proposed Action will reduce the likelihood of a large intense fire by reducing the accumulation of dry fuels through salvage of dead lodgepole pine and treatment of residual slash, accelerate re-establishment of a variety of tree species in area of high mortality, contribute to the current demands for timber and provide for long-term

sustainability of wood products and other resource elements.

A portion of the Proposed Action is designed to address the effects of past fire suppression in fire-dependent forest communities where ponderosa pine was once a major tree species. Use of prescribed fire is proposed to begin to reverse the destabilizing effect of post-settlement fire suppression on dry sites, moving towards the relatively open stands dominated by ponderosa pine and western larch which historically existed in these areas.

A third aspect of the Proposed Action is designed to improve on existing levels of grizzly bear habitat security. Changes in Travel Management would bring the area into compliance with LRMP standards for open road density in grizzly bear habitat, and take further steps to provide more effective road closures and increase, over time, the proportion of unroaded secure habitat on Crane Mountain.

Preliminary scoping for this project began in the fall of 1992. At this time the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may now be interested in or affected by the Proposed Action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and proposed management activities in the area being analyzed. More detailed information on the Proposed Action, public comments to date, and preliminary issues and alternatives is available upon request.

DATES: Comments should be received by May 31, 1994, to receive timely consideration in the preparation of the Draft EIS.

ADDRESSES: Send written comments or requests to be placed on the project mailing list to Charles E. Harris, District Ranger, Swan Lake Ranger District, P.O. Box 370, Bigfork, MT 59911.

FOR FURTHER INFORMATION CONTACT: Cathy Calloway, Planning Team Leader, or Chuck Harris, District Ranger. Phone (406) 837–5081.

SUPPLEMENTARY INFORMATION: The Proposed Action has been developed to respond to existing conditions in the Crane Mountain area, ecosystem management principles, and Forest Plan direction for the area. For the past several years, Crane Mountain has been experiencing a Mountain Pine Beetle (MPB) epidemic. The Mountain Pine Beetle is a wood boring insect which affects primarily mature lodgepole pine trees. When beetle populations are high, as is the case on Crane Mountain, they can cause widespread mortality. Approximately 3500 acres (20%) of the Crane Mountain landscape is occupied by trees which are susceptible to MPB mortality. At present, extensive mortality has occurred on approximately 2000 acres where lodgepole pine is the primary tree species. An additional 1000 acres of mixed species stands have also been impacted by more scattered lodgepole pine mortality. Additional mortality is predicted.

Without management action, MPB activity will result in considerable change on the landscape over time. During the next decade or two, most dead trees will blow over. Areas which used to have dense lodgepole pine forests will become open, dominated by grasses, herbs, and shrubs. Dead trees will result in an increased fuel loading and increased possibility of stand replacement wildfire. Extensive mortality will change the habitat conditions for many wildlife species over time. Areas of hiding cover and thermal cover for large mammals will be lost in the short-term. The changes in vegetation will also affect water yield and water quality, and the visual quality of the area. With or without fire, trees will gradually become re-established, but without management action it may take an additional 10 to 20 years for openings to become fully re-stocked with trees.

Proposed management activities have been designed to address both long- and short-term consequences of the current Mountain Pine Beetle epidemic on Crane Mountain. Specifically, the proposal includes the following components:

1. Reduce the likelihood of a large intense fire, by reducing the accumulation of dry fuels through salvage of dead lodgepole pine and treatment of residual slash.

2. Accelerate re-establishment of a variety of tree species in areas with high levels of MPB mortality. Timely reforestation of harvested areas will help ameliorate the affects of wide-spread mortality more rapidly than if nature is allowed to take its course in the area. Proposed actions will provide for more rapid stabilization of exposed soils in riparian areas, more rapid return to wildlife cover conditions, and provide for more insect and disease resistant conditions across the landscape.

3. Contribute to the short-term demands for timber and provide for utilization of a variety of wood products.

4. Accomplish other resource objectives in conjunction with proposed harvest activities, including:

—Planting of shrubs in riparian areas
—Improve moist site habitat for a variety of wildlife species via impoundment of surface water in several sites

A portion of the Proposed Action is designed to reverse the destabilizing effect of post-settlement fire suppression on dry sites, historically dominated by open grown stands of ponderosa pine and western larch. The objective is to create stand conditions more characteristic of those found on these sites under the pre-settlement fire regime. This stand type and structure provides an important, and quickly disappearing, niche for a variety of plant and animal species, including flammulated owl and old growth management indicator species. Treatment would be accomplished through a combination of slashing and prescribed fire. This would reduce the stocking in understory Douglas-fir, moving towards the relatively open stands dominated by ponderosa pine and western larch which historically existed in these areas.

The Proposed Action is designed to incorporate a variety of Travel Management changes to reduce open road densities to within current LRMP standards and to balance public access with measure to provide improved grizzly bear habitat security in areas of high quality spring and summer habitats.

Management activities under consideration would occur in an area encompassing approximately 40,000 acres of National Forest lands in the East Shore and Lower Swan Geographic Units, on the Swan Lake Ranger District, as delineated in the LRMP. Proposed harvest or burning activities would occur in portions of the following: Sections 21, 22, and 26–35, T26N, R19W, and Sections 2–4, 9–11, 13–16, and 21–36, T25N, R19W, Principal Montana Meridian. Proposed changes in

Travel Management would be distributed across a larger area, including portions of T26N, R19W; T25N, R19W; T26N, R18W; T25N, R18W; and T24N, R18W.

The Proposed Action includes harvest treatment on approximately 960 acres and use of prescribed fire in three areas, totalling 400 acres. Harvested areas would be treated to reduce fuels accumulations and to prepare sites for reforestation. Tree planting is proposed on approximately 800 acres to ensure rapid reforestation. No new road construction is proposed, but approximately 3 miles of temporary road would be required to access harvested areas. A portion of the proposed treatments would require helicopter logging. A variety of changes to travel management are also proposed, including road closures via rocks or berms and reclamation measures designed to remove some roads from the long-term transportation system. The Proposed Action would close approximately 51 miles or road which are currently open to motorized use.

The Proposed Action would require a site-specific amendment to the LRMP to vary from the grizzly bear distance to cover guideline and the duration of activity/re-entry period criteria for grizzly bear habitat. These deviations are proposed in order to address the ongoing MPB epidemic and meet the Purpose and Need for Action on a timely basis.

The Land and Resource Management Plan for the Flathead National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Most of the proposed activities would occur in Management Areas 15 and 7. Forest plan direction states that Management Area 15 consists of lands where timber management with roads is economical and feasible. The management goal is to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products, as well as provide for soil and water protection, wildlife habitat, and roaded recreation opportunities. Management Area 7 is identified as roaded timberlands in visually sensitive areas. The goal in these areas is to manage timber resources in a manner that complements and protects high scenic values, maintaining a pleasing, natural-appearing landscape.

In addition, prescribed burning, road re-construction, and some timber harvest and reforestation may occur within Management Area 12 (riparian areas along perennial streams), Management Area 17 (riparian areas with typically intermittent streams), Management Area 3 (amenity resource values), or Management Area 1 (nonforested lands).

Proposed Actions would occur in Management Situation 2 grizzly bear habitat. Management Situation 2 includes areas which do not have distinct bear populations or do not contain year-round high quality bear habitats. The area is a part of the Northern Continental Divide Recovery Area, but categorized as unnecessary for the survival and recovery of the bear. Management considerations include minimizing potential bear mortality and human-grizzly conflicts, and maintaining habitat components. The grizzly bear is an important, but not the primary use in this area.

Public involvement conducted during 1993 has resulted in identification of numerous important issues to be addressed in the Draft EIS. Five alternatives to the Proposed Action have been developed to address the following issues: Water quality, fisheries and riparian values, visuals, forest health, grizzly bear, elk, gray wolf, fire risk, and road and travel management. Many other issues will be addressed as features common to all alternatives, or through effects analysis included in the Draft EIS.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which none of the Proposed Actions would be implemented. Other alternatives will examine various levels and locations of proposed activities to achieve the proposal's purpose, as well as respond to the issues and resource values important to Crane Mountain.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The EIS will disclose the analysis of the direct, indirect, and cumulative environmental effects of the alternatives. Effects analysis will address past, present, and projected activities. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now through May 31, 1994) and in the review of the Draft EIS (anticipated between June and September 1994). The Forest Service has not yet determined whether any public meetings will be held.

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the U.S. Fish and Wildlife Service will review the EIS and biological evaluation and, if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species including grizzly bear, gray wolf, and bald eagle.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June or July 1994. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The public comment period on the Draft EIS will be 45 days from the date when the EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Following this comment period, the comments received will be analyzed, considered and responded to by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by October 1994. The Forest Supervisor for the Flathead National Forest is the responsible official for the preparation of this EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: April 25, 1994.

Joel D. Holtrop,

Forest Supervisor, Flathead National Forest.

[FR Doc. 94-10798 Filed 5-4-94; 8:45 am]

BILLING CODE 3410-11-M

Newberry National Volcanic Monument Advisory Council Meeting; Notice

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council Meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on May 26, 1994 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meeting will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: reviewing the Draft Environmental Impact Statement for the Monument, staff reports on recreation and other issues, preview of the summer season, and confirmation of direction for vegetation management in the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383-4702 or 383-4704.

Dated: April 19, 1994.

Ranotta McNair,

Acting Deputy Supervisor, Deschutes National Forest.

[FR Doc. 94-10799 Filed 5-4-94; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will convene on June 7, 1994 at the Bureau of the Census, Conference Center, Federal Building 3, Suitland, Maryland.

The Committee advises the Director, Bureau of the Census, on the conduct of the periodic censuses and surveys of agriculture and related surveys and the kind of information that should be obtained from respondents associated with agriculture production, prepares recommendations regarding the contents of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Committee is composed of 21 members. Twenty members are appointed by the presidents of the nonprofit organizations having representatives on the Committee, and one member is a representative from the Department of Agriculture.

The agenda for the June 7 meeting that will begin at 9 a.m. and adjourn at 5 p.m. is: (1) Call to order and introduction; (2) introductory remarks by the Acting Director, Bureau of the Census; (3) update on 1992 Agriculture and Economic Censuses; (4) review of recommendations from previous advisory committee meeting; (5) options for 1997 Census of Agriculture; (6) marketing strategies for the Bureau of the Census; (7) public questions and comments; (8) Committee recommendations; and (9) election of chairperson for 1996.

This meeting should be of significant interest to those organizations that use data from the census of agriculture. Significant redesign of the census of both scope and methodology will be discussed and recommendations made during this meeting. Those with specific needs should contact their representatives or may wish to attend.

This meeting is open to the public and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Mr. George Pierce, Agriculture Division, Bureau of the Census, room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone (301) 763-8556-TDD (301) 763-4056.

Dated: April 28, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94-10793 Filed 5-4-94; 8:45 am]

BILLING CODE 3510-07-P

International Trade Administration

Environmental Technologies Trade Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA and the Office of Management and Budget, the Secretary of Commerce has determined that the establishment of the Environmental Technologies Trade Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Federal Government in all aspects of the development and conduct of programs, activities, and strategies to expand U.S. exports of environmental products and services. The Committee will advise on promotional activities and communications and on building business-government partnerships. The Committee shall provide advice on such specific issues as: Determining how both U.S. and foreign Government policies, regulations and programs affect the export of U.S. environmental products and services; assessing the competitiveness of the U.S. industry and its ability to respond to international opportunities; identifying priority export markets and technologies; and evaluating the progress of the U.S. Government in implementing the National Environmental Technologies Export Strategy.

The Committee will consist of approximately 35 members to be appointed by the Secretary of Commerce. In appointing members to the Committee, the Secretary will seek a balanced representation among industry and service sectors, company size, geographic location and demographics.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act fifteen (15) days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this Committee to Tiffany Smith, International Trade Administration, room 2015B, U.S. Department of Commerce, 14th & Constitution, NW., 20230. Telephone: (202) 482–1369.

Dated: April 28, 1994.

Raymond Vickery, Jr.,

Assistant Secretary for Trade Development.

[FR Doc. 94–10788 Filed 5–4–94; 8:45 am]

BILLING CODE 3510–DR–F

National Oceanic and Atmospheric Administration

[I.D. 042994E]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a two-day public meeting on May 11–12, 1994, at the Seacrest Oceanfront Resort and Conference Center, 350 Quaker Road, North Falmouth, MA; telephone: (508) 540–9400.

The meeting will begin at 10 a.m. on May 11 with a report from the Interspecies Committee. This will be followed by an update from the Marine Mammal Committee on the status of the framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) to reduce takes of harbor porpoise in the Gulf of Maine. There also will be review on the status of Amendment #5 to the Lobster FMP. The meeting will adjourn at approximately 5:30 p.m.

During the afternoon session, the Scallop Committee will give a report. This will be followed by reports from the Council Chairman, the Executive Director, the NMFS Regional Director, the Northeast Fisheries Science Center liaison, the Mid-Atlantic Council liaison, the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission.

On May 12 the meeting will open at 8:30 a.m. with the Groundfish Committee report. The report will cover the following issues:

(1) A joint meeting with the Enforcement Committee;

(2) A review of a silver hake (whiting) public hearing document; and

(3) The fishing industry's proposed measures for the Cultivator Shoal whiting fishery. Other groundfish issues may be discussed. This meeting will adjourn at approximately 5:00 p.m.

Abbreviated Rulemaking Actions—Northeast Multispecies FMP

The Council will consider two framework adjustments:

(1) To allow groundfish vessel transits to and from home ports without using up days at sea; and

(2) to modify the square mesh specifications according to vessel size in the Stellwagen Bank/Jeffreys Ledge juvenile protection area. The Council will determine whether the requested adjustments to the regulations for groundfish are necessary and will initiate a public comment period.

The Council staff will evaluate the proposals and announce the availability of these analyses prior to the next Council meeting (June 29–30, 1994). The public will have the opportunity to comment on the proposals prior to and at the June Council meeting. After developing management actions and receiving public testimony, the Council will make a recommendation to the Regional Director. The Regional Director may publish the action as a final rule or as a proposed rule, as described in § 651.40.

There will be a report on the federal financial assistance program for industry and ports during the afternoon session. The meeting will conclude with a continuation of the Groundfish Committee Report.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at (617) 231–0422 at least 5 days prior to the meeting date.

Dated: May 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10861 Filed 5–4–94; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0010]

Victor Reichenbach d/b/a Reichenbach Fireworks; Provisional Acceptance of a Consent Order Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a consent order agreement under the Federal Hazardous Substances Act (FHSA).

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts in the **Federal Register** in accordance with the terms of 16 CFR 1605.13. Published below is a provisionally accepted Consent Order Agreement with Victor Reichenbach d/b/a Reichenbach Fireworks.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 20, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0010, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (Attached)

Dated: April 28, 1994.

Sheldon D. Butts,

Deputy Secretary.

Victor Reichenbach, d/b/a Reichenbach Fireworks; Settlement Agreement and Order

1. Victor Reichenbach, owner of Reichenbach Fireworks (hereinafter, "Reichenbach"), a sole proprietorship, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Reichenbach knowingly caused delivery for introduction into, and/or the receipt in interstate commerce of, certain banned hazardous substances and/or misbranded hazardous substances, to wit, fireworks, in violation of sections 4 (a) and (c) of the Federal Hazardous

Substances Act, 15 U.S.C. 1263 (a) and (c).

I. Jurisdiction

2. The Commission has jurisdiction over Reichenbach and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1) (A) and (B), 4 (a) and (c), and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1) (A) and (B), 1263 (a) and (c), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA 15 U.S.C. 2053.

4. Victor Reichenbach is the sole proprietor of Reichenbach Fireworks, located in the state of Montana, with its principal corporate offices located at 815 High Ridge Drive, Billings, Montana 59105. Reichenbach fireworks is engaged in the business of importing and selling fireworks in the United States.

III. Allegations of the Staff

5. Between April 2, 1991, and June 18, 1991, Reichenbach Fireworks caused the delivery for introduction into interstate commerce, and/or received in interstate commerce, banned hazardous substances and misbranded hazardous substances, to wit, fireworks, which are identified and described below:

CPSC collection date location	CPSC sample No./fireworks device	Violation(s)
April 16, 1991, Billings, MN	M–870–6319/Color Pearl flowers (mines/shells).	Excessive pyrotechnic leakage, 16 CFR 1507.5. Side ignition occurred, 16 CFR 1507.3(a)(1). Misbranded, 16 CFR 1500.14(b)(7).
April 16, 1991, Billings MN	M–870–6320/Kaleidoscope (flaming balls/report).	Excessive pyrotechnic leakage, 16 CFR 1507.5. Fuse burn time too short, 16 CFR 1507.3(a)(2). Failed blowout requirement, 16 CFR 1507.6.
	M–870–6713/Small festival balls (100 foot shells).	Excess pyrotechnic leakage, 16 CFR 1507.5. Fuse burn time too short, 16 CFR 1507.3(a)(2). Failed fuse weight support test, 16 CFR 1507.3(b).
	M–870–6316/White Orchid (flaming balls, 50 feet).	Fuse burn time too short, 16 CFR 1507.3(a)(2). Misbranded, 16 CFR 1500.14(b)(7).
	M–870–6315/Celebrating Fireworks w/Firecracker.	Excess pyrotechnic leakage, 16 CFR 1507.5. Fuse burn time too long, 16 CFR 1507.3(a)(2). Exceeded grain (2) grains=130 mg) report weight, 16 CFR 1500.17(a)(3). Misbranded, 16 CFR 1500.14(b)(7).
April 16, 1991, Billings, MN	M–870–6314/Blossom After Thunder (flaming balls, 30–70 feet).	Fuse burn time too short, 16 CFR 1507.3(b). Failed fuse weight support test, 16 CFR 1507.3(b). Excess report weight, 16 CFR 1500.17(a)(3). Misbranded, 16 CFR 1500.14(b)(7).
	M–870–6310/Flashing Thunder (Flaming balls, 25 feet with report).	Fuse burn time too long, 16 CFR 1507.3(a)(2). Excess report weight, 16 CFR 1500.17(a)(3).
	M–870–1281/96 Shot Color Peak Flames.	Fuse burn time too short, 16 CFR 1507.3(a)(2). Excess pyrotechnic leakage, 16 CFR 1507.5.
	M–870–1282/News Transmitter (flaming balls 5–50 Feet).	Exhibited blowout, 16 CFR 1507.6. Excess pyrotechnic leakage, 16 CFR 1507.5. Fuse burn time too short, 16 CFR 1507.3(a)(2).
April 30, 1991, Port of Portland, OR.	M–870–2722(A)/Sky Boom Rockets	Fuse burn time too short, 16 CFR 1507.3(a)(2). Failed stick rigidity test, 16 CFR 1507.10.
April 30, 1991, Port of Portland, OR.	M–870–2722(B)/Color Silk Rocket	Fuse burn time too short, 16 CFR 1507.3(a)(2). Failed stick rigidity test, 16 CFR 1507.10.
	M–870–2772(c)/Aerial Flash Rocket	Fuse burn time too short, 16 CFR 1507.3(a)(2). Failed stick rigidity test, 16 CFR 1501.10.
	M–870–2722(D)/Willow Rocket	Fuse burn time too short, 16 CFR 1507.3(a)(2). Failed stick rigidity test, 16 CFR 1507.10.
	M–870–2723/B–3 Bomber.	Exhibited blowout, 16 CFR 1507.6.
May 22, 1991, Port of Seattle, WA.	M–872–2809/Twitter Glitter.	Fuse burn time too long, 16 CFR 1507.3(a)(2). Excess pyrotechnic leakage, 16 CFR 1507.5. Failed blowout requirement, 16 CFR 1507.6. Excess report weight, 16 CFR 1500.17(a)(3). Failed fuse weight support test, 16 CFR 1507.3(b).
	M–872–2810/Lawman-Lawman-25 Shots (flaming balls with whistles and reports).	Fuse burn time too long, 16 CFR 1507.3(a)(2). Fuse missing.
June 9, 1992, Port of Denver, CO.	P–863–8074/Color Pearl Flowers (flaming balls 10–40 feet high with report).	Excessive pyrotechnic leakage, 16 CFR 1507.5.

CPSC collection date location	CPSC sample No./fireworks device	Violation(s)
June 10, 1991, Port of Portland, OR.	P–863–8075/Saturn Missile Battery	Burning debris fell to ground in 8 of 8 tested. Report discharged on ground. Exhibited side ignition in less than 5 seconds,16 CFR 1507.3(a)(1).
	P–863–8080/Artillery Shell.	Excess pyrotechnic leakage, 16 CFR 1507.5.
	M–870–2731/Fireworks for Celebration	Fuse burn time too short, 16 CFR 1507.3(a)(2).
	M–870–2733/Spring Prevails over Garden (shoots flaming balls 40–50 feet into air).	Excess pyrotechnic composition for report weight, 16 CFR 1500.17(a)(3). Misbranded, 16 CFR 1500.121. Fuse burn time too short, 16 CFR 1507.3(a)(2).
	M–870–2735/Celebration Crackers (Three different sizes of fire cracker sets):	Misbranded, 16 CFR 1500.121. Burning debris fell to earth on test analyst and ignited grass fires. All three sets exhibited excess report weight, 16 CFR 1500.17(a)(3).

With regard to samples M–870–6315 (Celebrating Fireworks with Firecrackers), M–870–6314 (Blossom after Thunder), and M–870–6310 (Flashing Thunder) noted above, these are "Class B" fireworks. Reichenbach Fireworks imported them in consumer packaging and sold them to retailers licensed to sell only "Class C" fireworks to consumers. "Class B" devices are defined by the U.S. Department of Transportation, 44 CFR 173.88(a) and (d) and 173.100 (a) and (r) and have significantly greater pyrotechnic composition than "Class C" fireworks. For this reason, they pose a greater risk of injury to consumers.

6. For the specific reasons set out in paragraph 5 above, the fireworks described therein failed to comply with the Commission's fireworks regulations.

7. Each of the fireworks devices named in paragraph 5 above, therefore, is a banned hazardous substance. 15 U.S.C. 1261(q)(1)(B), 16 CFR 1500.17(a)(3) and 16 CFR part 1507.

8. Certain fireworks identified in paragraph 5 above also fail to comply with the Commission's labeling requirements for fireworks and, therefore, are misbranded hazardous substances. 15 USC 1261(p) (1) and (2), 15 U.S.C. 1262(b); 16 CFR 1500.14(b)(7) and 16 CFR 1500.121.

9. Reichenback Fireworks knowingly received and caused the introduction into interstate commerce of the aforesaid banned and misbranded hazardous substances, in violation of section 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c). The Commission may impose a civil penalty for these violations pursuant to section 5 (c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Reichenbach Fireworks

10. Reichenbach Fireworks denies the allegations of the staff that it knowingly received or caused the introduction into commerce of the aforesaid banned or misbranded hazardous substances, or that it violated the FHSA as alleged by the staff.

V. Agreement of the Parties

11. The Consumer Product Safety Commission has jurisdiction over Reichenbach and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*.

12. Reichenbach agrees to pay to the Commission a civil penalty in the amount of Fifteen Thousand and 00/100 Dollars ($15,000.00) within ten (10) days after service of the Final Order of the Commission accepting this Settlement Agreement.

13. The Commission does not make any determination that Reichenbach knowingly violated the FHSA. The Commission and Reichenbach agree that this Agreement is entered into for the purposes of settlement only.

14. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)-(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

15. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Reichenbach knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Reichenbach failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

16. For purposes of section 6(b)(5) of the CPSA, 15 U.S.C. 2055(b)(5), this matter shall be treated as if a complaint had been issued.

17. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Reichenbach to appropriate legal action.

18. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

19. The provisions of the Settlement Agreement and Order shall apply to Reichenbach and each of his successors and assigns.

Dated: January 26, 1994.

Reichenbach Fireworks

Victor Reichenbach,

Owner, Reichenbach Fireworks, 815 High Ridge Drive, Billings, Montana 59105.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: February 2, 1994.

By: William J. Moore,
Trial Attorney, division of Administrative Litigation, Office of Compliance and Enforcement.

Victor Reichenbach, d/b/a Reichenbach Fireworks; Order

Upon consideration of the Settlement Agreement entered into between respondent Victor Reichenbach, d/b/a Reichenbach Fireworks, a sole proprietorship, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Reichenbach Fireworks; and it appearing that the Settlement Agreement is in the public interest, it is, hereby

Ordered, That Victor Reichenbach shall pay, within 10 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the amount of $15,000.00 to the U.S. Consumer Product Safety Commission.

Provisionally accepted on the 28th day of April, 1994.

By Order of the Commission.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 94-10858 Filed 5-4-94; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Scoping Meeting, Griffiss AFB, NY

The United States Air Force (AF) will conduct a public scoping meeting to provide a forum for public officials and the community to provide information and comments concerning the disposal and reuse of portions of Griffiss AFB, NY. The meeting will be held May 19, 1994 beginning at 7 p.m. at the Common Council Chambers, Rome City Hall, 200 Liberty Plaza, Rome, New York.

The purpose of this meeting is to: (1) Identify the environmental issues and concerns that should be analyzed to support base disposal and reuse; (2) solicit comments on the proposed action; and (3) solicit potential disposal and reuse alternatives for consideration in developing the EIS. In soliciting disposal and reuse alternatives, the AF will consider all reasonable alternatives offered by any federal, state or local government agency, and any federally-sponsored or private entity or individual. The resulting EIS will be considered in making disposal decisions that will be documented in the Air Force's Final Disposal Plan and Record of Decision for Griffiss AFB.

To ensure sufficient time to adequately consider public comments concerning environmental issues and disposal alternatives to be included in the EIS, the AF recommends that comments and reuse proposals be presented at the upcoming meeting or forwarded to the address below by August 1, 1994. The AF will, however, accept additional comments at any time during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the base disposal and reuse EIS to: Lt Col Gary P. Baumgartel, HQ AFCEE/EC, 8106 Chennault Road, Brooks AFB TX 78235-5318, (210) 536-3869.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 94-10730 Filed 5-4-94; 8:45 am]

BILLING CODE 3910-01-P

Public Scoping Meeting, K. I. Sawyer AFB, MI

The United States Air Force (AF) will conduct a public scoping meeting to provide a forum for public officials and the community to provide information and comments concerning the disposal and reuse of portions of K. I. Sawyer AFB, MI. The meeting will be held May 17, 1994 beginning at 7 p.m. at the Gwinn High School, 50 W M-35, Gwinn, Michigan.

The purpose of this meeting is to: (1) Identify the environmental issues and concerns that should be analyzed to support base disposal and reuse; (2) solicit comments on the proposed action; and (3) solicit potential disposal and reuse alternatives for consideration in developing the EIS. In soliciting disposal and reuse alternatives, the AF will consider all reasonable alternatives offered by any federal, state or local government agency, and any federally-sponsored or private entity or individual. The resulting EIS will be considered in making disposal decisions that will be documented in the Air Force's Final Disposal Plan and Record of Decision for K. I. Sawyer AFB.

To ensure sufficient time to adequately consider public comments concerning environmental issues and disposal alternatives to be included in the EIS, the AF recommends that comments and reuse proposals be presented at the upcoming meeting or forwarded to the address below by August 1, 1994. The AF will, however, accept additional comments at any time during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the base disposal and reuse EIS to: Lt Col Gary P. Baumgartel, HQ AFCEE/EC, 8106 Chennault Road, Brooks AFB TX 78235-5318, (210) 536-3869.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 94-10732 Filed 5-4-94; 8:45 am]

BILLING CODE 3910-01-P

Public Scoping Meeting, Newark AFB, OH

The United States Air Force (AF) will conduct a public scoping meeting to provide a forum for public officials and the community to provide information and comments concerning the disposal and reuse of portions of Newark AFB, OH. The meeting will be held May 10, 1994 beginning at 7 p.m. at the Heath City Hall, 1287 Hebron Road, Heath, Ohio.

The purpose of this meeting is to: (1) Identify the environmental issues and concerns that should be analyzed to support base disposal and reuse; (2) solicit comments on the proposed action; and (3) solicit potential disposal and reuse alternatives for consideration in developing the EIS. In soliciting disposal and reuse alternatives, the AF will consider all reasonable alternatives offered by any federal, state or local government agency, and any federally-sponsored or private entity or individual. The resulting EIS will be considered in making disposal decisions that will be documented in the Air Force's Final Disposal Plan and Record of Decision for Newark AFB.

To ensure sufficient time to adequately consider public comments concerning environmental issues and disposal alternatives to be included in the EIS, the AF recommends that comments and reuse proposals be presented at the upcoming meeting or forwarded to the address below by August 1, 1994. The AF will, however, accept additional comments at any time during the environmental impact analysis process.

Please direct written comments or requests for further information concerning the base disposal and reuse EIS to: Lt Col Gary P. Baumgartel, HQ AFCEE/EC, 8106 Chennault Road, Brooks AFB TX 78235-5318, (210) 536-3869.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 94-10731 Filed 5-4-94; 8:45 am]

BILLING CODE 3910-01-P

Department of the Army

International Personal Property Rate Program; Proposed Changes

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: MTMC is proposing use of Electronic Data Interchange (EDI) as the method for carriers to submit international personal property shipment rates. This system is the method by which international personal property shipment rates will be submitted for Department of Defense (DOD)-sponsored international household goods (HHG) and unaccompanied baggage (UB) shipments.

DATES: Comments must be received before July 5, 1994.

ADDRESSES: Comments should be mailed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T–NI, room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Moreno, (703) 756–2383.

SUPPLEMENTARY INFORMATION: MTMC's intention to institute an EDI program for acquisition of carrier rates is in furtherance of the following policy and directives:

a. Office of the Secretary of Defense Policy Memorandum directing use of American National Standards Institute EDI standards, dated May 1988.

b. 41 Code of Federal Regulations, § 101–41.007, permitting use of EDI to document and pay transportation bills, April 1989.

c. Defense Management Review Decision 941 directing use of EDI standards, dated November 1993.

MTMC proposes the use of EDI to receive, return, file, and use rates submitted by HHG and UB carriers.

The meetings listed below were held to discuss use of EDI for billing and rate filing purposes. The carrier industry was invited to attend these meetings and was briefed on MTMC's desire to convert from a magnetic tape media for rate submissions to an EDI process.

a. DOD/Industry EDI Personal Property Working Group meetings on June 14, 1991, and January 29–31, 1992, at Bethesda, Maryland.

b. DOD/Industry EDI Personal Property Working Group meeting on March 23–25, 1992, at Indianapolis, Indiana.

Under this proposed change, carriers will be able to electronically file their rates on a daily basis during filing windows, and will be electronically notified by the next business day of the results, i.e., total rates received and rates rejected with a rejection error code. For the initial filing (I/F) window, carriers will have a 3-week period, prior to the I/F deadline, in which they can add, delete, or change rates on a daily basis. Upon completion of the I/F window, MTMC will notify all interested parties via an electronic bulletin board of all rate levels filed by traffic channel, including which carrier established the rate. If two or more carriers establish this rate level, each carrier will be shown. MTMC will continue to verify all carriers filing rates in the I/F window have a letter of intent on file at each applicable installation. There will be approximately a 3-week period after notification of established low rates and the me-too (M/T) window to allow carriers an opportunity to determine their M/T rates. Carriers will have a 2-week period, prior to the M/T filing deadline, in which they can either add or change M/T rates on a daily basis. However, once both I/F and M/T filing deadlines have passed, no further modifications to those rates or other rates will be allowed. The mistake-in-rate filing (MMIRF) process will be included in the window period. The input rates will be edited for suspect rates and returned to the carriers so they may make "MIRF-like" changes. There will be two cancellation periods during each 6-month cycle in which carriers will be allowed to cancel rates.

The purpose of this proposed change is to convert the rate filing process from a magnetic tape media to electronic submission. Initially, MTMC will accept electronic mail capabilities or in the public standard format of ANSI X.12 Transportation Services Tender Transaction Set 602 using EDI technology. However, MTMC plans to transition over the next 18 months to ANSI X.12 602 public standard format as the sole method for submission of international personal property rates.

It is anticipated that many automated data processing (ADP) firms currently filing magnetic tape on behalf of carriers will continue to provide rate filing services under the electronic submission requirement. Carriers that elect to use the services of these ADP firms will only have to notify MTMC, in writing, of the firm representing them.

For interested parties who wish to file rates using EDI procedures, the first step will be to obtain the services of a Value Added Network (VAN) for either X.25 protocol for the EDI 602 format or X.400 protocol for the electronic mail proprietary format. The VAN will be the conduit for exchanging rate submissions with MTMC. The next step will be to complete a Trading Partner Agreement and submit to MTMC. A Trading Partner Agreement provides the terms and conditions governing the exchange of administrative information between carriers and MTMC, and legally binds both parties to those terms. The final step will be to complete three successful transmissions of rates without a communications or technical error.

All international personal property rates will be filed via electronic submission for the International Winter 1995 (IS95) cycle, rates effective October 1, 1995. It is anticipated that the I/F window will be in May 1995 for a 3-week period. Magnetic tapes will no longer be accepted.

DOD-approved international personal property carriers and current ADP rate tape filers will be provided instructions on filing electronic rate submissions after comments received as a result of this **Federal Register** notice have been reviewed. Instructions for filing rates electronically will also be provided on the AT&T Bulletin Board. The instructions for filing electronic international personal property rates will include procedures for filing a Trading Partner Agreement, and procedures for testing transmission of rates, along with MTMC points of contact for these procedures.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–10800 Filed 5–4–94; 8:45 am]

BILLING CODE 3710–08–M

Patents Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Issue patent	Title	Issue date
4,472,504	Hyperproducing Cellulase Microorganism.	09/18/84

ADDRESSES: Commander, U.S. Army Aviation and Troop Command, 4300 Goodfellow Boulevard, St. Louis, MO 63120–1798.

FOR FURTHER INFORMATION CONTACT:

John T. Stone or Ms. Jessica M. Niro, (508) 651–4510 or DSN 256–4510.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–10801 Filed 5–4–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE DOCKET NO. 94–32–NG]

Riata Resources Ltd.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Riata Resources Ltd. blanket authorization to import and export up to a combined maximum of 100 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 18, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–10851 Filed 5–4–94; 8:45 am]

BILLING CODE 6450–01–P

[FE DOCKET NO. 94–22–NG]

Stampgas (U.S.) Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting StampGas (U.S.) Inc. authorization to import up to a 100 Bcf and to export up to 100 Bcf of natural gas from and to Canada and Mexico, and to import up to 10 Bcf of liquefied natural gas over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 20, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–10850 Filed 5–4–94; 8:45 am]

BILLING CODE 6450–01–P

[FE DOCKET NO 94–17–NG]

Westcoast Gas Services (U.S.A.) Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services (U.S.A.) Inc. blanket authorization to import up to 1,000 billion cubic feet (Bcf) of natural gas, including liquefied natural gas (LNG), from Canada, and to export up to 1,000 Bcf of natural gas to Canada, over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 21, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–10849 Filed 5–4–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2489–001 Vermont]

Central Vermont Public Service Corporation; Availability of Draft Environmental Assessment

April 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent, minor license for the Cavendish Hydroelectric Project, located on the Black River, in the Town of Cavendish, Windsor County, Vermont and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2489 to all comments. For further information, please contact Jim Haimes, Environmental Coordinator, at (202) 219–2489.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10766 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–161–000]

Avoca Natural Gas Storage; Site Visit

April 29, 1994.

On May 4 and 5, 1994, the Office of Pipeline Regulation staff will conduct a site visit with representatives of Avoca Natural Gas Storage for the facilities proposed in the Avoca Gas Storage Field Project. The proposed facilities are near the towns of Avoca and Wallace in Steuben County, New York.

Parties to the proceeding may attend. Those planning to attend must provide their own transportation. For further information, call Steven G. Grape, (202) 208–0812.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10771 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1070–000]

Boston Edison Company; Filing

April 29, 1994.

Take notice that on April 15, 1994, Boston Edison Company, Blackstone Valley Electric Company and

Commonwealth Electric Company filed a Supplement in this docket agreeing to make a filing with the Commission before collecting any charges in the event that use rights under the Card Street line agreement filed in this docket are exceeded.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10768 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL94–48–000]

Delmarva Power & Light Company; Filing

April 29, 1994.

Take notice that on April 26, 1994, Delmarva Power & Light Company (Delmarva) amended its original filing in this docket of a petition for waiver pursuant to section 207 of the Commission's Rules and the policy established by the Commission in an order issued November 29, 1993 in Western Resources, Inc., 65 FERC ¶61,271 (1993). The filing was made in order for the company to lock in the period over which "time value" refunds with respect to coal mine closing costs which the company collected through its wholesale fuel adjustment clause in 1989 to 1992 and which are the subject of a pending audit. The amendment was filed as an "Answer of Delmarva Power & Light Company to Motions to Intervene" previously filed in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10767 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–974–000]

Indianapolis Power & Light Company; Filing

April 29, 1994.

Take notice that on April 5, 1994, Indianapolis Power & Light Company tendered for filing an amendment to its February 15, 1994 filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10769 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–385–000]

Koch Gateway Pipeline Company, et al.; Request Under Blanket Authorization

April 29, 1994.

Take notice that on April 28, 1994, Koch Gateway Pipeline Company (Koch), P.o. Box 1478, Houston, Texas 77251–1478, and Florida Gas Transmission Company (Florida), P.O. Box 1188, Houston, Texas 77251–1188, filing in Docket No. CP94–385–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to reassign volumes of gas to be delivered pursuant to an exchange agreement between the two pipelines under the blanket certificates issued to Koch in Docket No. CP82–430–000 and issued to Florida in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and are available for public inspection.

Koch and Florida state that one of the three exchange points specified in the original exchange transaction is inactive and is no longer needed. Koch and Florida propose to reassign the gas volumes to the remaining two exchange points. They further state that the total volumes to be delivered after the requested reassignment will not exceed the total volumes authorized prior to the request; that they have adequate capacity to accomplish the reassigned deliveries without detriment or disadvantage to other customers; and the proposed change will not impact either of the pipelines' peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10772 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–000]

Williams Natural Gas Co.; Informal Settlement Conference

April 29, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on May 5, 1994, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact James A. Pederson at (202) 208–5705 or Sandra Delude at (202) 208–0583.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10770 Filed 5–4–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $21,764.57, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to Aptos Shell, *et al.* (Aptos) Case Nos. LEF–0092, *et al.* The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, subpart V and 15 U.S.C. 4501, the Petroleum Overcharge distribution and Restitution Act (PODRA).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to Case Number LEF–0092, *et al.*

FOR FURTHER INFORMATION CONTACT: Kim L. Hargrove, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $21,764.57, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to Aptos Shell, *et al.* (Aptos) on December 14, 1981. Under the Remedial Order, Aptos was found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products during the relevant audit periods.

The OHA has proposed to distribute the Remedial Order funds in a two stage refund proceeding. Purchasers of motor gasoline from any one of the gasoline retailers considered in the Aptos proceeding will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the gasoline retailers during the relevant audit periods. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submissions, within 30 days of publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: April 28, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Date: April 28, 1994.

Names of Firms: Aptos Shell, *et al.*
Date of Filing: July 20, 1993.
Case Numbers: LEF–0092, *et al.*

On July 20, 1993, the Economic Regulatory Administration of the Department of Energy (ERA) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR 205.280. We have considered the ERA's request to formulate refund procedures for the disbursement of monies remitted by Aptos Shell and 4 other firms pursuant to a Remedial Order (hereafter, the Order) issued by OHA on December 14, 1981, and have determined that such procedures are appropriate. Each firm's name, case number and amount of money it remitted under the Order has been set out in the appendix immediately following this Decision.

The firms remitted a total of $21,764.57 to the DOE to remedy pricing violations which occurred during the period covered by the ERA's audit. These funds are being held in an escrow account established with the Treasury pending a determination of their proper distribution. See Memorandum from George B. Breznay, Director OHA, to James T. Campbell, Comptroller, "Transferring Funds to Escrow Account," August 30, 1993. OHA's tentative plan to distribute those funds is set forth in this Decision. Specific application requirements appear in Section III. Because these procedures are set forth in proposed form, refund applications should not be filed at this time. Comments are solicited.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the refund amount each person should receive. For a more detailed discussion of subpart V and OHA's authority to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981) and Office of Enforcement, 8 DOE ¶ 82,597 (1981).

II. Background

The facts alleged in the Order were undisputed. Aptos and each of the 4 firms identified in the Appendix to this Decision were "retailers" of motor gasoline as that term has been defined at 10 CFR 212.31 and were therefore subject to the provisions of 10 CFR part 210 and 10 CFR part 212, subpart F. The Order states that, during the period covered by the ERA's audit, each retailer charged prices higher than those permitted by 10 CFR 212.93(a)(2); levied a cents-per-gallon fee for services associated with the sale of motor gasoline in violation of 10 CFR 210.62(d)(1) and refused to make its records available for inspection in violation of 10 CFR 210.92(b).

The retailers were ordered to reduce their prices for motor gasoline by specified amounts until sufficient volumes of gasoline could be sold at the reduced prices to remedy the violations.[1] After decontrol, the Order was modified to require direct monetary restitution to the Treasury instead. See Sunset Boulevard Car Wash, 20 FERC ¶ 62,319 at 63,537 (1982). The retailers objected. The Order has since been affirmed by the Federal Energy Regulatory Commission (FERC) in a Proposed Order issued on August 13, 1982. *Id.* FERC issued a final Order adopting its Proposed Order on September 29, 1982.

III. The Proposed Refined Product Refund Procedures

This section sets forth the considerations that will be used to evaluate refund applications payable from the monies remitted by the retailers. We propose implementing a two stage refund proceeding. Purchasers of motor gasoline from any one of the gasoline retailers considered in this proceeding will have an opportunity to submit refund applications in the first stage. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. 4501) (PODRA).

Refund applications submitted in this special refund proceeding will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of motor gasoline they purchased from one or more of the retailers during the relevant audit period. In order to permit applicants to participate in the refund proceeding without incurring inordinate expense and to facilitate OHA's consideration of refund applications, we plan to adopt certain presumptions regarding the nature and extent of the pricing violations and the requirement that applicants demonstrate injury. Our authority to adopt presumptions in refund cases is set forth at 10 CFR 205.282(e).

With regard to the pricing violations, we propose adopting a rebuttable presumption that such violations were dispersed equally throughout each retailer's sales of motor gasoline during the appropriate audit period and that refunds should therefore be made on a pro rata or volumetric basis. Under this volumetric refund approach, applicants will be eligible to receive refunds that are equal to the gallons of gasoline they purchased multiplied by the per gallon refund amount (volumetric), plus accrued interest.

We propose that a separate volumetric be set for each retailer. The volumetrics for each retailer appear in the Appendix. Each was obtained by dividing the funds the retailer remitted to the DOE by the total gallons of motor gasoline we believe that retailer sold during the period covered by the ERA's audit.[2] A higher volumetric may be used to calculate an applicant's refund provided he satisfactorily demonstrates that he was disproportionately overcharged by one or more of the retailers, during a relevant audit period.

The potential applicants in this proceeding are likely to fall into just two categories since each of the Remedial Order firms was a retailer of motor gasoline. We will provide a presumption of injury for both categories of applicants; that is, end-users of petroleum products whose businesses were unrelated to the petroleum industry and were therefore not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h, and retailers or resellers.

End-user applicants whose businesses were unrelated to the petroleum industry were presumed injured by the motor gasoline overcharges covered by the Remedial Order. These applicants need only document the volume of motor gasoline they purchased from one of the gasoline retailers in this proceeding in order to be eligible to receive a refund.

We are proposing to adopt a small claim presumption of injury for reseller and retailer applicants seeking refunds of $5,000 or less, exclusive of interest. These applicants will not be required to prove injury. In order to be eligible to receive a refund in this proceeding, a small claim applicant need only document the volume of motor gasoline he purchased from one of the gasoline retailers listed in the appendix.

Only claims for at least $15 in principal will be processed. We have adopted this minimum in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See Mobil Oil Corp., 13 DOE ¶ 85,339 (1985).

The deadline for filing an Application for Refund is June 1, 1995.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Aptos Shell and the 4 other firms listed in the Appendix, pursuant to the Remedial Order finalized on December 14, 1981, be distributed in accordance with the foregoing Decision.

Dated: April 28, 1994.

APPENDIX

Case No.	Case name	Amount (dollars)	Audit period	Volumetric (dollars)
LEF–0092	Aptos Shell, 18 Rancho Del Mar, Aptos, CA 95003	$4,568.44	8/1/79–11/13/79	$.0267
LEF–0109	C.J. King Chevron, 403 S. Saratoga Ave., San Jose, CA 95129	4,786.36	12/15/79–11/6/80	.0089
LEF–0110	Hughes Burlingame Shell, 1490 Burlingame Ave., Burlingame, CA 94010	7,284.06	8/1/79–11/13/79	.0424
LEF–0111	Sandusky's Service, 1201 Terrence Street, Vallejo, CA 94590	2,855.71	1/79–1/31/80	.0096
LEF–0112	Skycrest Shell, 1600 King Drive, Daly City, CA 94015	2,250.00	8/1/79–11/13/79	.0131
Total		21,764.57		

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[1] The Order imposed no sanctions upon the firms for failing to provide records pursuant to 10 CFR 210.92(b). See Remedial Order.

[2] In the absence of accurate figures indicating the amount of motor gasoline sold by each firm during the audit period, we have estimated the volume of their sales using the best available data. Our estimate is that each gasoline retailer sold 50,000 gallons of motor gasoline per month for each month of its audit period. This figure was used to calculate each retailer's volumetric. Should the claims submitted pursuant to this Order indicate that our sales volume estimate was inaccurate, it may be necessary to reestimate the volumetric.

[FR Doc. 94–10650 Filed 5–4–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4881–7]

Technical Review Workshop on the Reference Dose for Aroclor 1016

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA's) Risk Assessment Forum to study the sceintific analysis underlying the Reference Dose (RfD) for Aroclor 1016, which appears on EPA's Integrated Risk Information System (IRIS). EPA will use recommendations developed at this meeting to re-examine the RfD for Aroclor 1016.

DATES: The workshop will begin on Tuesday, May 24, 1994, at 8:30 a.m. and end on Wednesday, May 25, 1994, at 12 noon. Members of the public may attend as observers.

ADDRESSES: The Meeting will be held at the Barcelo Washington Hotel, 2121 P Street, NW., Washington, DC.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Deborah Kanter, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts, 02173, Tel: 617/674–7320 by Friday, May 13, 1994. Space is limited.

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (8101), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260–6743.

SUPPLEMENTARY INFORMATION: Aroclor 1016 is a commercial mixture of polychorinated biphenyls devoid of dibenzofurans. In January 1993, based in part on a series of published reports on perinatal and long-term neurobehavioral effects in monkeys, EPA entered an Aroclor 1016 reference dose of 0.007 mg/kg-day into the Integrated Risk Information System. The IRIS entry states that, in general, the RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to human populations that is likely to be without appreciable risk of deleterious effects during a lifetime.

The purpose of the May 24–25 workshop is for EPA to collect expert opinions and recommendations from a panel of independent scientists regarding Aroclor 1016 data and the related IRIS entry. Although discussion of the RfD for any substance may present generic issues, this technical review meeting is limited to the science-based information and analyses relevant to Aroclor 1016. Larger issues regarding the generic RfD process are being addressed by the Agency as a separate effort (58 FR 11490; February 25, 1993).

IRIS is an online database created by the Environmental Protection Agency and mounted on the National Library of Medicine's (NLM) Toxicology Data Network (TOXNET). Registered NLM online services users are able to access IRIS and all other TOXNET system files through the COMPUSERVE, TYMNET, TELENENT, or INFONET telecommunication net works or by direct dial.

Dated: April 29, 1994.

Gary J. Foley,

Assistant Administrator for Research and Development.

[FR Doc. 94–10840 Filed 5–4–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4880–9]

Massachusetts: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to fully approve the adequacy of the Commonwealth of Massachusetts's municipal solid waste permitting program, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal land fill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Massachusetts has applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region I has reviewed Massachusetts's MSWLF permit program adequacy application and has made a tentative determination that all portions of Massachusetts's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Massachusetts's application for program adequacy determination is available for public review and comment at the places listed in the "ADDRESSES" section below during regular office hours.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF permit program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express interest in participating in a hearing by writing to the EPA Region I, Solid Waste Section or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing, in Boston, Massachusetts, on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person

listed in the "CONTACTS" section below.

DATES: All comments on Massachusetts's application for a determination of adequacy must be received by the close of business on June 4, 1994. If there is sufficient interest, a public hearing will be held on June 20, 1994, at 1 p.m., at the Offices of the Massachusetts Department of Environmental Protection, 10th Floor, One Winter Street, Boston, Massachusetts. Massachusetts will participate in the public hearing, if held by EPA on this subject.

ADDRESSES: Copies of Massachusetts's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying: Massachusetts Department of Environmental Protection, Division of Solid Waste Management, One Winter Street, 4th Floor, Boston, MA 02108; USEPA Region I, Waste Management Division, Solid Waste Section, 90 Canal Street, Boston, MA 02203, Attn: Fred Friedman, telephone (617) 573–9687. Written comments should be sent to Mr. John F. Hackler, Chief, Solid Waste Section, mail code HER–CAN6, EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Ms. Connie Dewire, mail code HER-CAN6, telephone (617) 573–5719.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C) that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Commonwealth of Massachusetts

On August 13, 1993, EPA Region I received Massachusetts's final MSWLF Permit Program application for adequacy determination. Region I reviewed the final application and submitted comments to Massachusetts. Massachusetts addressed EPA's comments and submitted a revised final application for adequacy determination on August 30, 1993. Region I received additional clarifying information on the Massachusetts MSWLF Permit Program on November 2, 1993 and March 23, 1994. Region I has reviewed Massachusetts's revised application and has tentatively determined that all portions of Massachusetts's MSWLF program meet all the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until June 6, 1994. Copies of Massachusetts's application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this notice.

In the Commonwealth of Massachusetts, the jurisdiction for siting and permitting of solid waste management facilities lies with local boards of health and the Department of Environmental Protection (DEP), an agency falling under the Executive Office of Environmental Affairs (EOEA). The Department of Public Health (DPH) is also given an advisory role in the siting process. Authority for respective roles of the boards of health, DEP and DPH is granted by Chapter 111, section 150A of the Massachusetts General Laws. Region I based its decision of tentative full approval on the current approach for approving the construction and operation of MSWLFs in Massachusetts. This approach includes: (1) A review pursuant to the Massachusetts Environmental Policy Act (MEPA), a public information process that generally involves the submission of an Environmental Impact Report, which must be approved by the Secretary of the Office of Environmental Affairs; (2) a Site Assignment Process, which focuses on determining whether a specific location is suitable for a specific type of solid waste facility (the local board of health is responsible for granting a site assignment in accordance with the procedures and criteria at 310 CMR 16.00); and (3) a Solid Waste Management Facility Permit, a permit that must be obtained from DEP's Division of Solid Waste Management after completing the MEPA process and obtaining a site assignment. The permitting process regulates the design, operation and maintenance, closure, post-closure and financial assurance aspects of a facility.

The Massachusetts regulations require, at 310 CMR 19.021, the repermitting of all landfills existing as of the effective date of July 1, 1990, unless they choose to close prior to July 1, 1992. Furthermore, the regulations at 310 CMR 19.022(1) require the completion of closure of all unlined areas of landfills by July 1, 1995. A recent amendment of MGL c. 111, s. 150A makes the 1995 closure date applicable only to privately owned landfills.

The design standard for new and lateral expansions of landfills currently in effect in Massachusetts includes a composite liner system which features: a subgrade layer which must ensure a minimum of four foot separation between the top of bedrock or the maximum high groundwater table and the bottom of the lowermost low permeability layer; a two foot, low permeability, soil/admixture layer having a maximum in-place saturated hydraulic conductivity of 1x10–7 cm/sec; a minimum 30-mil flexible membrane liner (60-mil minimum for high density polyethylene) in direct contact with the underlying soil/admixture; a drainage/protection layer; and a leachate collection system.

Alternative liner designs must meet the performance standard for ground water protection systems found at 310 CMR 19.110 and do so in a manner which meets or exceeds the design standard of that section.

The current siting criteria carefully restrict new or expanding landfills from being located in settings that may conflict with the Location Criteria specified in 40 CFR 258.10, 258.11, 258.12, 258.13, 258.14 and 258.16. By currently restricting landfills to such settings, Massachusetts has protected all state drinking water resources, whether surface water or groundwater, from the potential impact of leachate -an approach which EPA has determined to be an alternate to the 40 CFR part 258 requirements, but still as protective as the Federal requirements at 40 CFR part 258. In addition, the Commonwealth's requirements are no less stringent than the requirements set forth at 40 CFR part 258.

The Massachusetts MSWLF Permitting Program features an unique approach to landfill assessment which includes four parts. The first part is an Initial Site Assessment (ISA), which examines the general history of the site, the types and amounts of waste landfilled, the size of the site and other historical information concerning the site. The second part is a Comprehensive Site Assessment (CSA) to characterize the nature and extent of any contamination that may exist. The CSA, which is used to develop a suitable closure strategy, involves, in its final step, a two-phased risk assessment approach to determine whether corrective action is warranted. The first phase of the risk assessment is called a qualitative risk assessment. The following three pieces of information are analyzed in this phase: the existence of contamination above standards or approved levels; the existence of potential public health or environmental receptors; and the existence of pathways which would serve to link contamination to receptors. If all three are determined to exist in any media (air, surface water, ground water or soil), the second phase in the risk assessment process, the quantitative risk assessment, is invoked as is a round of sampling for all the 40 CFR part 258, appendix II constituents. The third part of the landfill assessment is a Corrective Actions Alternatives Analysis (CAAA), which is conducted to determine the type of cap and any additional remediation measures which will be needed to properly close the sanitary landfill. The fourth and final part of the landfill assessment process is a Corrective Action Design (CAD), in which the landfill cap and any additional remediation measures are designed.

Massachusetts covers the landfill assessment requirements in more detail in its Guidance on Conducting Qualitative Risk Assessments at Solid Waste Landfills and Guidance for Disposal Site Risk Characterization and Related Phase II Activities. The revised Landfill Assessment and Closure Guidance Manual (LAC Manual) is applicable to all existing MSWLFs and to all MSWLF permit applications effective July 1, 1993. Massachusetts will implement its MSWLF permit program through enforceable permit conditions. To ensure compliance with the Federal criteria, Massachusetts has revised its current permit requirements through the existing Supplement to Landfill Assessment and Closure Manual. These revisions occur in the following areas:

1. The adoption of the EPA approved method 8260 to test ground water.
2. Addition of the provision on minimum distance of ground water monitoring well from landfill boundary.
3. Compliance with the protocols for testing and analyzing ground water for constituents listed in appendix II to part 258.
4. Compliance with the procedures for notifying the DEP about explosive levels of landfill gas.
5. Compliance with the protocols for conducting inspections to detect presence of hazardous waste and procedures for reporting results of such inspections.
6. Compliance with the minimum design standard for alternative landfill cover.

The Massachusetts Department of Environmental Protection will update the permits of existing municipal solid waste landfills scheduled to remain open after the effective date of 40 CFR part 258, to assure compliance with current state requirements. The Commonwealth of Massachusetts is not asserting jurisdiction over Tribal land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Massachusetts's program. EPA will make a final decision on approval of the Commonwealth of Massachusetts's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a) provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972 to enforce the Federal MSWLF criteria set forth in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6945 and 6949a(c-c).

Dated: April 25, 1994.

John P. DeVillars,

Acting Regional Administrator.

[FR Doc. 94-10713 Filed 5-4-94; 8:45 am]

BILLING CODE 6560-60-F

FEDERAL COMMUNICATIONS COMMISSION

[DA 94-371]

Provision of Direct Telex Service Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has authorized IDB WorldCom Services, Inc. to provide direct telex service between the United States and Cuba pursuant to the Executive Branch's general policy guidelines for implementation of the telecommunications provisions of the Cuban Democracy Act, which provides

that "telecommunication services between the United States and Cuba shall be permitted."

EFFECTIVE DATE: April 22, 1994.

FOR FURTHER INFORMATION CONTACT: John M. Coles, Attorney, Common Carrier Bureau, (202) 632–7265.

SUPPLEMENTARY INFORMATION:

In the Matter of: IDB WorldCom Services, Inc. Application for authority to lease and operate facilities for the provision of direct telex service between the United States and Cuba.

File No. I–T–C–94–211

Order and Authorization

Adopted: April 14, 1994

Released: April 22, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned application filed by the IDB WorldCom Services, Inc. (IDB) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the United States and Cuba for the provision of direct telex service. The application was placed on the Commission's public notice and no comments were received.

2. IDB proposes to provide international telex service between the U.S. and Cuba via the INTELSAT satellite located at 325.5° E.L. using appropriately licensed existing earth station facilities owned or leased by it or its affiliates. Specifically, IDB requests authority to lease from Comsat and operate one 9.6 kbps analog SCPC circuit to be used together with matching facilities provided by INTERTEL S.A. (INTERTEL) of Cuba to derive up to 46 telex circuits with the use of TDM equipment. IDB states that it has already entered into an operating agreement with INTERTEL for the establishment of direct telex service between the U.S. and Cuba. Under the terms of its agreement with INTERTEL, there will be a 50/50 split of the prevailing $3.00 per minute accounting rate for telex services.[1] IDB states that it will initiate service within one year.

3. IDB states that the public interest would be served by a grant of its application since it will result in the rapid introduction of new lines of telecommunications between the United States and Cuba. IDB notes that it is virtually impossible to make a telephone call from the U.S. to Cuba. Because of the continuing dispute over the appropriate switched voice accounting rate and the disposition of blocked funds, U.S. carriers have been unable to expand direct telephone service between the U.S. and Cuba. IDB proposes to offer direct telex service as a means to satisfy a small portion of the enormous demand for telecommunications between the U.S. and Cuba.

4. In a letter dated July 22, 1993, the U.S. Department of State informed the Commission of the Executive Branch's general policy guidelines for implementation of the telecommunications provisions of the Cuban Democracy Act, which provides that "telecommunication services between the United States and Cuba shall be permitted."[2] Among the policy guidelines are the following requirements: (1) The proposals must have the potential to be operational within a year; (2) settlements must not be more favorable to Cuba than the current 50/50 split of the $1.20 per minute accounting rate; (3) proposals must be limited to equipment and services necessary to deliver a signal to Cuba; (4) proposals must utilize modes of communications already in place between the U.S. and Cuba; and (5) carriers shall report the number of circuits activated by facility on June 30 and December 31 of each year and on the one-year anniversary of the notification by the FCC in the Federal Register.

5. Upon consideration of IDB's application, we find that a grant of its application will serve the public interest subject to the conditions set forth below. IDB's application is consistent with the Executive Branch's general guidelines set forth in the Department of State's letter. IDB states that it will initiate service within one year, and expects to initiate service shortly after all requisite regulatory approvals have been obtained. IDB's proposed use of INTELSAT facilities and appropriately licensed existing earth station facilities satisfies the requirements that facilities already be in existence and be limited to equipment and services necessary to deliver a signal to Cuba. With respect to IDB's proposed 50/50 split of a $3.00 per minute accounting rate, the Department of State in a follow-up letter dated March 14, 1994 found a $3.00 per minute accounting rate for telex service to be consistent with the guidelines contained in its July 22, 1993 letter. Furthermore, the Department of State states that it has no objection to our approval of the application.[3]

6. According, it is Ordered That application File No. I–T–C–94–211 is granted and IDB WorldCom Services, Inc. is authorized to:

a. lease from Comsat and operate one 9.6 kbps analog SCPC circuit between an appropriately licensed existing U.S. earth station and the INTELSAT satellite located 325.5° E.L. correspondent in Cuba, INTERTEL;

b. lease and operate necessary connecting facilities in the U.S.; and

c. use the above facilities for the provision of direct telex service (46 circuits) between the U.S. and Cuba subject to the conditions set forth herein.

7. It is further Ordered That the service authorized herein must be implemented within one year from the date of release of this order.

8. It is further Ordered That the applicant shall submit reports on or before June 30, and December 31 of each year, and on the one-year anniversary of the notification of the grant of this application in the **Federal Register** indicating the numbers of circuits activated by facility.

9. It is further Ordered That this authorization is subject to the applicant's obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.

10. It is further Ordered That this order is subject to revocation without a hearing in the event the Department of State or FCC determines that the continuation of communications between the U.S. and Cuba is no longer in the national interest.

11. It is further Ordered That, pursuant to section 203 of the Communications Act, 47 U.S.C. § 203, and part 61 of the Commission's Rules, 47 CFR part 61, IDB shall file and have in effect a tariff for the service authorized in this order before offering services to the public.

12. It is further Ordered That IDB shall file copies of any operating agreements entered into by itself or its parent/affiliates with its correspondents within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51

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[1] IDB notes that the prevailing accounting rate for telex services is $3.00 per minute which is typical for most Caribbean, Central American and Latin American countries. In comparison, the prevailing accounting rate for switched voice services between the U.S. and Cuba is $1.20 per minute. IDB explains that it is common for the telex accounting rate between two countries to be much higher than the switched voice accounting rate.

[2] Letter dated July 22, 1993, from Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman James H. Quello.

[3] Letter dated March 14, 1994, from Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State, to FCC Chairman Reed Hundt.

of the Commission's Rules, 47 CFR 43.51.

13. It is further Ordered That IDB shall file annual reports of overseas telecommunications traffic required by § 43.61 of the Commission's Rules, 47 CFR 43.61.

14. It is further Ordered That IDB shall file a Section 214 application for any additional circuits it proposes to establish between the U.S. and Cuba.

15. Acceptance of this authorization shall be deemed acceptance of the conditions set forth herein.

16. This authorization is issued pursuant to § 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

Federal Communications Commission.

George S. Li,

Chief, International Facilities Division, Common Carrier Bureau.

[FR Doc. 94–10728 Filed 5–4–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

First Fidelity Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 26, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Fidelity Bancorporation*, Lawrenceville, New Jersey; to acquire First Inter-Bancorp Inc., Fishkill, New York, and its subsidiary Mid-Hudson Savings Bank FSB, Fishkill, New York, and thereby engage in savings association activities of deposit taking and lending pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire BancFlorida Financial Corporation, Naples, Florida, and its wholly owned subsidiary, BancFlorida, a Federal Savings Bank, Naples, Florida, and thereby engage in owning and operating a savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Community First Bankshares, Inc.*, Fargo, North Dakota; to acquire indirectly through its subsidiary, Community Insurance, Inc., Fargo, North Dakota, the assets of Key Insurance Agency, Gettysburg, South Dakota, and thereby engage in general insurance agency activities in a place (Gettysburg, South Dakota) with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. **Comments on this application must be received by May 20, 1994.**

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire United Mortgage Holding Corporation; Bloomington, Minnesota, and thereby engage in originating and servicing first mortgages on residential property, and purchasing residential first mortgages originated by others, all pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10744 Filed 5–4–94; 8:45 am]

BILLING CODE 6210–01–F

Hebron Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 31, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hebron Bancorp, Inc.*, Hebron Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Hebron Deposit Bank, Hebron, Kentucky.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank Investors Limited Partnership*, Lafayette, Louisiana; to become a bank holding comany by acquiring 100 percent of the voting shares of Royal Bankgroup of Acadiana, Inc., Lafayette.

Louisiana, and thereby indirectly acquire Bank of Lafayette, Lafayette, Louisiana.

2. *Chance Investments, Inc.*, Lafayette, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Bank Investors Limited Partnership, Lafayette, Louisiana, and Royal Bankgroup of Acadiana, Inc., Lafayette, Louisiana, and thereby indirectly acquire Bank of Lafayette, Lafayette, Louisiana.

3. *Royal Bankgroup of Acadiana, Inc.*, Lafayette, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Lafayette, Lafayette, Louisiana.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Baylake Corp.*, Sturgeon Bay, Wisconsin; to merge with Kewaunee County Banc-Shares, Inc., Kewaunee, Wisconsin, and thereby indirectly acquire State Bank of Kewaunee, Kewaunee, Wisconsin.

2. *Comerica Incorporated*, Detroit, Michigan, and Comerica Texas Incorporated, Dallas, Texas; to merge with Lockwood Banc Group, Inc., Houston, Texas, and thereby indirectly acquire Lockwood National Bank of Texas, Houston, Texas.

3. *Town Financial Corporation*, Hartford City, Indiana; to acquire 100 percent of the voting shares of Pacesetter Bank of Hartford City, Hartford City, Indiana, and Pacesetter Bank of Montpelier, Montpelier, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bank Corp.*, Fort Smith, Arkansas; to acquire 100 percent of the voting shares of Vista Bancorporation, Inc., Van Buren, Arkansas, and thereby indirectly acquire Citizens Bank & Trust Company, Van Buren, Arkansas.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Green Mountain Bancorporation, Inc., Lakewood, Colorado, and thereby indirectly acquire Green Mountain Bank, Lakewood, Colorado.

2. *First Holding Company of Park River, Inc.*, Park River, North Dakota; to merge with Lamb's Bancorporation, Inc., Michigan, North Dakota, and thereby indirectly acquire Lamb's Bank of Michigan City, Michigan, North Dakota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Falcon Bancorp, Inc.*, Anadarko, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Anadarko Bancshares, Inc., Anadarko, Oklahoma, and thereby indirectly acquire Anadarko Bank and Trust Company, Anadarko, Oklahoma.

2. *Pinnacle Bancorp, Inc.*, Central City, Nebraska; to acquire 100 percent of the voting shares of Nebraska Capital Corporation, Lincoln, Nebraska, and thereby indirectly acquire Havelock Bank, Lincoln, Nebraska.

G. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Adam Financial Corporation*, Bryan, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of New Adam Bank Group, Inc., Dover, Delaware, and thereby indirectly acquire First American Bank, Bryan, Texas.

2. *New Adam Bank Group, Inc.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of First American Bank, Bryan, Texas.

Board of Governors of the Federal Reserve System, April 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10745 Filed 5–4–94; 8:45 am]

BILLING CODE 6210–01–F

Louis F. Pignatelli, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 1994.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Louis F. Pignatelli*, Rock Falls, Illinois; to acquire an additional 7.5 percent of the voting shares of Community Illinois Corporation, Rock Falls, Illinois, and thereby indirectly acquire Community State Bank of Rock Falls, Rock Falls, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jack A. Marantz*, Springfield, Illinois, to acquire an additional 7.67 percent, for a total of 27.62 percent, and Tom E. Marantz, Springfield, Illinois, to acquire an additional .72 percent, for a total of 2.57 percent, of the voting shares Staun Bancorp, Inc., Staunton, Illinois, and thereby indirectly acquire First Community State Bank, Staunton, Illinois.

Board of Governors of the Federal Reserve System, April 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10746 Filed 5–4–94; 8:45 am]

BILLING CODE 6210–01–F

South Banking Company; Notice of Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. South Banking Company, Alma, Georgia; to engage *de novo* through its subsidiary Bankers Data Services, Inc., Alma, Georgia, in providing to others data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94–10747 Filed 5–4–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hospital Infection Control Practices Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hospital Infection Control Practices Advisory Committee.

Time and Date: 8:30 a.m.–5 p.m., June 13, 1994. 8:30 a.m.–5 p.m., June 14, 1994.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals and updating of guidelines and other policy statements regarding prevention of nosocomial infections.

Matters to be Discussed: This is the fifth meeting of the Hospital Infection Control Practices Advisory Committee. The agenda will include review of comments on the published draft of the CDC Guideline for Prevention of Nosocomial Pneumonia, review of the final draft of the proposed revision of the CDC Guideline for Isolation Precautions in Hospitals, and review of the second draft of the proposed revision of the CDC Guideline for Prevention of Intravascular Infections; and an update on CDC activities of interest to the committee. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Julia S. Garner, R.N., M.N., Nurse Consultant, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333, telephone 404/639–1552.

Dated: April 29, 1994.

Robert L. Foster,

Assistant Director for Special Programs, Office of Program Support, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–10778 Filed 5–4–94; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Disability and Long-Term Care Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Disability and Long-Term Care Statistics.

Time and Date: 9 a.m.–5 p.m., May 24, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss the Resident Assessment Instrument and the minimum data set for nursing home residents.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: April 29, 1994.

Robert L. Foster,

Assistant Director for Special Programs, Office of Program Support, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–10779 Filed 5–4–94; 8:45 am]

BILLING CODE 4163–18–M

Office of Community Services

[Program Announcement No. OCS 94–10]

Limited Competition; Request for Applications Under the Office of Community Services' FY 1994 Demonstration Partnership Program, Special Set-Aside for Empowerment Zone/Enterprise Community—Technical Assistance/Planning Grants

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Request for applications for technical assistance-planning grants from all eligible entities under the Demonstration Partnership Program (DPP) which also meet the eligibility criteria set forth below.

SUMMARY: The Office of Community Services (OCS) announces that, based on availability of funds, it has set aside up to two million dollars ($2,000,000) for technical assistance/planning grants not to exceed ten thousand dollars ($10,000) each, related to the development of Strategic Plans by communities seeking designation as Empowerment Zones or Enterprise Communities under Title XX of the Social Security Act. Applications will be accepted for grants pursuant to the Secretary's authority under section 408(a) as amended (Pub. L. 99–425), of the Human Services Reauthorization Act of 1986. This Program Announcement contains forms and instructions for submitting an application, and consists of six parts:

Part A sets forth eligibility criteria for funding under this Program Announcement;

Part B describes the purposes of this program, the type of project that will be considered for funding, and the size and duration of grants;

Part C provides details on application requirements such as the amount of matching funds applicants are required to commit, prohibitions on use of funds, partnership agreements, etc.;

Part D describes the application procedures including where and how to submit an application;

Part E describes contents of application and how the project narrative should be ordered and presented;

Part F details post-award information and reporting requirements.

CLOSING DATE: The closing date for submission of applications is May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Division of Community Demonstration Programs, Attn: Richard M. Saul, 370 L'Enfant

Promenade SW., Fifth floor, Washington, DC 20447, telephone (202) 401–9341.

Part A—Eligible Applicants

1. Basic Eligibility Criteria

Grants pursuant to this announcement may be made to any organization which is officially designated as a community action agency or community action program under section 673(1) of the Community Services Block Grant (CSBG) Act, meets all the requirements under section 675(c)(3) of the CSBG Act, and which meets the additional criteria set out in paragraph 2. below. All eligible applicants are current recipients of Community Services Block Grant funds. For purposes of the Demonstration Partnership Program only, the term eligible applicant also includes an organization that serves migrant and seasonal farmworkers and that received Community Services Block Grant funds in fiscal year 1993. OCS/ACF will be the final determiner of an organization's status as an eligible entity under the Community Services Block Grant Act.

2. Additional Eligibility Criteria

Additional Criteria: to be eligible for funding under this Program Announcement an applicant must also:

a. Contain within its service area a community or communities which as of the closing date for application under this Program Announcement has filed with HUD or USDA a Notice of Intent to Participate indicating an intent to apply for designation as an Empowerment Zone or Enterprise Community; and

b. Of the agencies meeting the criteria set out in subparagraph (1), above, have a CSBG funding level in FY 1994 which is one of the 200 smallest among those submitting an otherwise acceptable application in response to this announcement. (OCS estimates that agencies which received FY 1994 CSBG grants of less than approximately $350,000 should be eligible, although the final figure will not be known until all applications are received.)

Part B—Type of Project Eligible for Funding

OCS is interested in providing funds to eligible applicants with limited resources whose service areas have a high incidence of poverty. The purpose of this set-aside is to provide capacity-building grants that will enable eligible applicants to strengthen their staffs or obtain other resources that will enable them to participate, in partnership with others in their communities, in the development of Strategic Plans for their service areas which will be submitted to USDA and HUD seeking designation as Empowerment Zones or Enterprise Communities. OCS looks to the participation in this planning process made possible by these grants as a way of achieving the following goals: (1) That low income people will be involved in the design and implementation of these Strategic Plans and as beneficiaries of the programs they propose, (2) that the Plans will include provision for independent third-party evaluation that will verify such involvement and assess its benefits, and (3) that the Plans will provide a vehicle for replication of past successful Demonstration Partnership Programs.

Funds under this set aside may be used to acquire additional staff and/or to contract for necessary expertise or resources in order to enable the applicant to develop partnership arrangements through which it can contribute effectively to the development of a Strategic Plan that will embody the goals outlined above. Reasonable and necessary travel costs, including those necessary to facilitate low income participation in the strategic planning process, may also be paid for with grant funds. The end result should be a comprehensive, finely-tuned Strategic Plan that will include innovative approaches to provide for greater self-sufficiency of the poor.

A maximum of $10,000 will be granted to eligible applicants which submit acceptable applications as described below. OCS has set aside a total of up to two million dollars ($2,000,000) to fund these grants, which will have project periods of six months. Funds not obligated by grantees at the end of the project period will lapse.

It should be noted that under the terms of the authorizing legislation recipients of these TA/Planning grants will not be eligible to receive any other grants under the Demonstration Partnership Program in FY 1994.

Part C—Application Requirements

1. Limitation on Use of Funds

Grant funds under this Program Announcement may only be used for Salaries, Travel, and Contract/Consultant Services. (Categories a, c, and f on SF 424A)

2. Prohibition on the Use of Funds

The use of funds for the purchase, construction or improvement of real property is prohibited. This prohibition includes expenditures for weatherization and home repairs.

3. Eligibility

Applicant must be an eligible entity as defined in Part A. As part of establishing eligibility, the application must contain a letter signed by the State Director of the Community Services Block Grant program certifying that the applicant meets the Basic Eligibility Criteria set out in Part A, Paragraph 1 of this Announcement, and that it has the capacity to operate the proposed project. The application must also contain, as part of the Project Narrative, a statement certifying that a Notice of Intent to Participate has been submitted from the applicant's service area to either HUD or USDA indicating an intent to apply for designation as an Empowerment Zone or an Enterprise Community. The statement must identify the entity which submitted the Notice and its location, and must indicate that to the best of the applicant's knowledge and belief the submission was based on the existence of eligible census tracts within the applicant's community or service area.

4. Matching Funds

An applicant is required to obtain commitment of at least one private or public sector dollar or equivalent in-kind contribution for each dollar of OCS funds awarded for under this Program Announcement. Public sector resources that can be counted toward the minimum match include funds from State and local governments, and funds from certain block grants allocated to the States by the Federal Government, provided that the authorizing legislation for these grants permits such use. (CDBG legislation permits such use; CSBG legislation does not.) Funds identified by the applicant as those to be counted toward the minimum match requirement may be in the form of grantee-incurred costs, cash or third-party in-kind contributions fairly valued.

5. Partnership Agreement

To be considered for funding applicants must include in the application a signed letter from the EZ/EC Applicant Entity, if already selected, and from the unit or units of local government which will be signing off on the EZ/EC Application for designation, pledging cooperation with the applicant as a member of the group engaged in development of the Strategic Plan in their community. Applicants are encouraged to seek similar letters from other agencies or organizations in their community involved in the Strategic Planning process.

6. Sub-Contracting or Delegating Projects

An applicant will not be funded where the proposal is for a grantee to act as a mere conduit of funds to a third party without performing a substantive role itself. This prohibition does not bar subcontracting or subgranting for specific services or activities needed to conduct the project.

7. Maintenance of Effort

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced in order to provide the required matching contributions. When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project. (See Attachment B)

Part D—Submission of Applications

1. Application Submission

Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor OFM/DDG–EZ/EC, Washington, DC 20447. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447. An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier.

(Applicants are cautioned to request a legibly dated U. S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

3. Extension of Deadline

The ACF Office of Community Services may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a disruption of the mails. However, if the Office of Community Services does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies should be submitted.

Part E—Contents of Application, Appendices, and Intergovernmental Review

1. Contents of Application

Each application submission should include a signed original and two additional copies of the application. Each application should include the following in the order presented:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally; [Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization]

b. Budget Information-Non-Construction Programs (SF–424A) Note that grant funds under this Announcement may only be used for Salaries, Travel, and Contract/Consultant Services (Budget Categories a, c, and f). Attach to the SF 424A a breakout of total project costs reflecting Federal (OCS funds) and matching non-Federal resources (including funds from other Federal programs) along with budget justification. (See Attachment A, SF–424 and SF–424A)

c. Filled out, signed and dated Assurances—Non-Construction Programs (SF–424B);

d. By signing and submitting this application the applicant is certifying that it will comply with the Federal requirements concerning Drug-Free Workplace and debarment regulations;

e. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: Filled out, signed and dated form found at Attachment D;

f. Disclosure of Lobbying Activities, SF–LLL: Filled out, signed and dated form found at Attachment D, if necessary;

g. A project narrative of not more than two pages that will include the following components in the order enumerated:

(1) A statement of the amount of applicant's FY 1994 CSBG grant award.

(2) A statement certifying that a Notice of Intent to Participate has been submitted from the applicant's service area to either HUD or USDA indicating an intent to apply for designation as an Empowerment Zone or an Enterprise Community. The statement must identify the entity which submitted the Notice and its location, and must indicate that to the best of the applicant's knowledge and belief the submission was based on the existence of eligible census tracts within the applicant's community or service area.

(3) A statement indicating the names of the counties and principal towns in the applicant's service area;

(4) A brief Project Design indicating how applicant proposes to achieve the goals set out in Part B, above;

(5) Identification of the program Partners (Selected EZ/EC Applicant, Unit of Local Government, other organizations involved in planning process, etc.)

h. An itemized budget justification detailing proposed costs, explaining budget appropriateness and showing required match.

2. Appendices

Including Maintenance of Effort Certification (See Attachment B); letter from the State CSBG Director certifying eligibility of applicant (as described in Part C, Paragraph 3, Eligibility, above; letter(s) of cooperation (described in Part C, Paragraph 5, Partnership Agreement, above); letters of match commitment or letters of intent; and signed certifications, etc., in attachment A (listed in sub-paragraphs (e) and (f) above).

3. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oregon, Oklahoma, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applications from Federally-recognized Indian Tribes are exempt from the requirements of Executive Order 12372.

Applicants from these seventeen jurisdictions need take no action regarding Executive Order 12372. All other applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. However, for this program announcement, the SPOC comment period has been reduced to seven (7) days in order to ensure timely awards. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the accommodate or explain rule under 45 CFR 100.10. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF–424.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Financial Management, Division of Discretionary Grants, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included at Attachment C of this announcement.

Part F—Post-Award and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total required financial grantee participation.

Grantees are subject to the audit requirements in OMB Circulars A–128 and A–133.

Attachment E indicates the regulations which apply to all applicants/grantees under the Demonstration Partnership Program.

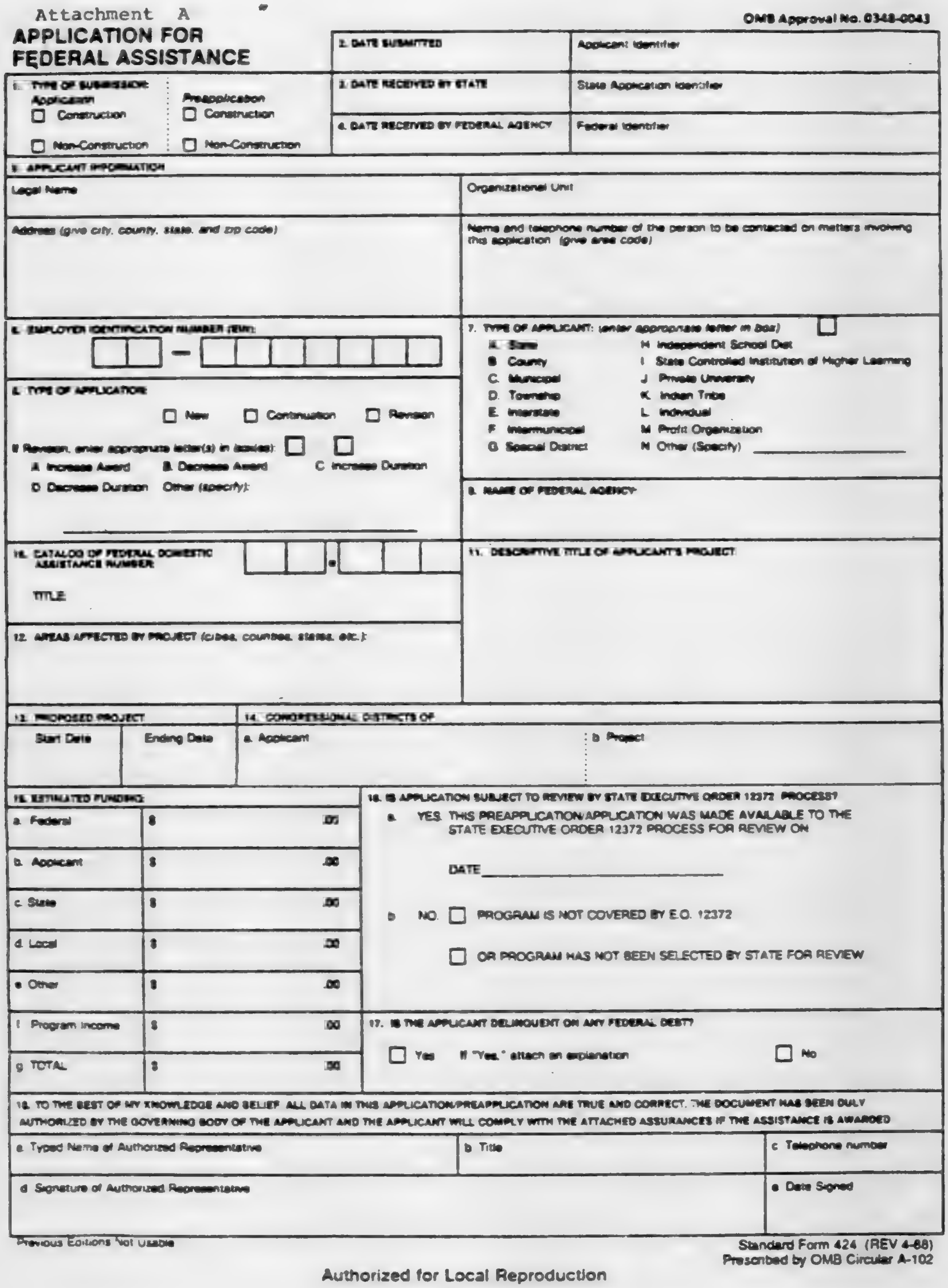
Grantees will be required to submit a final progress and financial report within 90 days of the termination of the project.

Dated: April 22, 1994.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184-01-P



Attachment A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION:
Application
☐ Construction
☐ Non-Construction
Preapplication
☐ Construction
☐ Non-Construction

2. DATE SUBMITTED
Applicant Identifier

3. DATE RECEIVED BY STATE
State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY
Federal Identifier

5. APPLICANT INFORMATION
Legal Name
Organizational Unit
Address (give city, county, state, and zip code)
Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT
Start Date
Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant
b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE ____________________
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.
a. Typed Name of Authorized Representative
b. Title
c. Telephone number
d. Signature of Authorized Representative
e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first fund/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on a an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327—333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 4469a-1 et seq.)

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Attachment B—Certification Regarding Maintenance of Effort

The undersigned certifies that:

(1) activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

Organization

Authorized Signature

Title

Date

Attachment C—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local

Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/ James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey, 08625–0803, Telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 east Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

Attachment D

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)________________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action: ☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type: ☐
a. initial filing
b. material change

For Material Change Only:
year ________ quarter ____
date of last report ________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* ____________

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ ________________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature ________________
value ________________

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ________________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ________________
Print Name: ________________
Title: ________________
Telephone No.: ____________ **Date:** ____________

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184-01-C

Attachment E

The following DHHS regulations apply to all applicants/grantees under the Demonstration Partnership Program, Special Set-Aside for Empowerment Zone/Enterprise Community—Technical Assistance/Planning Grants:

Title 45 of the *Code of Federal Regulations*:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
  Sections 74.62(a) Non-Federal Audits
  74.173 Hospitals
  74.174(b) Other Nonprofit Organizations
  74.304 Final Decisions in Disputes
  74.710 Real Property, Equipment and Supplies
  74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services

Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities

Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (*Federal Register*, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 94-10648 Filed 5-4-94; 8:45 am]

BILLING CODE 4184-01-P

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776] and section 402(b)(6), of the Public Health Service Act, as amended [42 U.S. Code 282(b)(6)], the Director, National Institutes of Health (NIH), announces the establishment of the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

The Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities (Board) shall provide advice to the Director of the National Center for Research Resources (NCRR) and the National Advisory Research Council (NARRC). The Board shall determine the merit of the grant applications requesting funds to construct facilities and additions to or renovations of existing facilities to meet the research needs of applicant institutions, and shall report the results of the determination to the Director, NCRR, and the NARRC.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: April 25, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94-10736 Filed 5-4-94; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on PPG for Respiratory Afferents and the Control of Breathing.

Dates of Meeting: May 16–18, 1994.

Time of Meeting: 7:30 p.m.

Place of Meeting: Congressional Park Ramada Inn, Rockville, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Dr. Jon, Ranhand, 5333 Westbard Avenue, room 554, Bethesda, Maryland 20892, (301) 594–7439.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Hearth and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 21, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-10737 Filed 5-4-94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-94-3729; FR-3623-N-02]

Notice of Funding Availability (NOFA) for Fiscal Year 1994, Section 8 Community Investment Demonstration Program; Notice to Change Date of Presubmission Conference

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice to change date of presubmission conference.

SUMMARY: On April 26, 1994 (59 FR 21826), the Department published in the **Federal Register**, a Notice of Funding Availability (NOFA) for Fiscal Year 1994 for Section 8 Community Investment Demonstration Program. The purpose of this Notice is to change the date of the presubmission conference set forth in that NOFA from May 11, 1994 to May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph E. Malloy, Office of Insured Multifamily Housing Development, Room 6134, telephone (202) 708–3000, or Richard L. Schmitz, Policies and Procedures Division, Room 6138, Telephone (202) 708–1113. Both addresses are at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20401–8000. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The date for the presubmission conference set forth in the April 26 NOFA is changed from May 11, 1994 to May 16, 1994. The time and place for this conference still remains 1 p.m., Departmental Conference Room.

Accordingly, FR Doc. 94–9887, published at 59 FR 21826 (April 26, 1994) is revised as follows:

On page 12826, in the second column, the second paragraph after the heading "**ADDRESSES**" is revised to read as follows:

"A presubmission conference for parties who may be interested in participating in this demonstration program has been scheduled at 1 p.m., May 16, 1994, in Room 10233, Departmental Conference Room, at HUD headquarters. While not a precondition to eligibility for submission of a formal application, representatives of the pension funds or their affiliates are encouraged to attend."

Authority: 42 U.S.C. 3535(d).

Dated: April 28, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–10740 Filed 5–4–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–940–04–4730–02]

Land Resource Management, Meridian, MT

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The amended field notes of the following described land approved April 11, 1994, will be officially filed in the Montana State Office, Billings, Montana, 30 days from the date of this publication.

Principal Meridian, Montana

T. 12 S., R. 4 E.

The amended field notes correcting the corner description of the C–N–NE 1/64 section corner of section 5 as previously described in the field notes approved April 30, 1974, and referring to the plat accepted April 30, 1974, Township 12 South, Range 4 East, Principal Meridian, Montana. The copy of the preceding described field notes will be immediately placed in an open file and will be available to the public as a matter of information. Copies of the field notes may be furnished to the public upon payment of the appropriate fee.

If a protest against these notes is received prior to the date of official distribution, the distribution will be stayed pending consideration of the protest. The protested notes of survey will not be officially distributed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

This survey was executed at the request of the U.S. Forest Service, Region 1.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32d Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 22, 1994.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 94–10808 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–DN–M

Bureau of Land Management

[CA–069–4350–03]

Closure of Public Lands; Bonanza King Mine Canyon, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8364.1 that the following described public lands within the Bonanza King Mine Canyon in San Bernardino County, California, are closed to the collecting, possessing, killing, or transporting of butterflies or any part of their lifecycle or the collecting of plants they need for their survival.

San Bernardino Meridian

T. 11 N., R. 14 E., Sections 31 and 32.

The BLM may approve scientific research by qualified persons, which could include limited collecting, if this research is deemed important and is compatible with the preservation of the species.

EFFECTIVE DATE: May 8, 1994.

ADDRESSES: For further information, Contact Michael McGill, Bureau of Land Management (BLM), Needles Resource Area Office, 101 Spikes Road, Needles, California 92363; (619) 326–3896.

SUPPLEMENTARY INFORMATION: The Martin's swallowtail butterfly, (*Paplio indra martini*), is under threat by poaching on lands managed by the BLM. The estimated number of females in the population is about 20, and no larvae were known to survive to an adult stage in 1993. The butterfly currently is not a listed or a candidate species. The Martin's swallowtail butterfly is known to occur within a very restricted area within the Providence Mountains of the Eastern Mojave Desert of San Bernardino County, California. The entire known range is circumscribed by a three by five mile rectangle. The butterfly is prized by collectors, and its value is enhanced by its rare status. Poaching by collectors is a threat. Poachers will often collect plants, eggs and/or larvae to be raised in captivity. Swallowtails are very susceptible to disease when raised in captivity on harvested plants. If larvae do not survive, poachers must collect again. Since this butterfly is not protected under the Endangered Species Act, this disclosure will help prevent individuals from attempting to collect the Swallowtail butterfly under the pretense of collecting other butterflies that are found in the area.

Penalties

Violations of supplementary rules authorized by 43 CFR title 43, chapter II, part 8360, subpart 8364.1 are punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Dated: April 25, 1994.

Michael Blymyer,

Acting Area Manager.

[FR Doc. 94–10841 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Land Management

[OR–087–04–4333–01: GP4–154]

Closures and Restrictions: Yaquina Head Outstanding Natural Area, OR

SUMMARY: To fulfill the specific administrative mandate set forth in the Act of Congress dated March 5, 1980 (Pub. L. 96–199), and in accordance with CFR 8364.1, notice is hereby given that the closures and restrictions listed below apply to lands within the congressionally established Yaquina Head Outstanding Natural Area. This 100-acre area is located in Lincoln County, Oregon, along the Pacific Coast in Sections 29 and 30, T. 10 S., R 11 W., Willamette Meridian. These regulations are in addition to closures and restrictions affecting Yaquina Head Outstanding Natural Area, Oregon, as published in the **Federal Register**, Vol. 54, No. 114, dated Thursday, June 15, 1989; Page 25502.

Closure #:

13. Access to or through the following construction areas will be restricted to provide for the safety of visitors and the protection of contractors' equipment.

a. Lower quarry tidepool construction area.

1. Closed September 15, 1993, to September 15, 1994.

b. Marine garden stairway construction area.

1. Closed April 18, 1994, to September 18, 1994.

This closure and restriction notice does not apply to:

1. Any Federal, State, or local official or member of an organized rescue, medical, or firefighting unit while in the performance of fire, emergency, law enforcement, or other similar duty;

2. Any Bureau of Land Management, U.S. Coast Guard, or U.S. Fish and Wildlife Service employee, agent, contractor, or cooperator while in the performance of an official duty; and

3. Any person or member of a group or institution expressly authorized by permit, license, agreement, or other similar authorization while in the performance of activities covered by the authorization.

Dated: April 26, 1994.

Mark Lawrence,

Acting District Manager.

[FR Doc. 94–10842 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–33–M

[WY-060-93-4410-02]

Newcastle Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Comment period extension for the *Draft Environmental Impact Statement for the Newcastle Resource Management Plan for the BLM Administered Public Lands in the Wyoming Portion of the Newcastle Resource Area.*

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period for the Draft Environmental Impact Statement (EIS) for the Newcastle Resource Management Plan (RMP). Comments will be accepted until June 10, 1994.

The draft EIS for the Newcastle RMP describes and analysis four alternative RMPs, including the BLM's preferred alternative, for managing the Wyoming portion of the Newcastle Resource Area. The planning area is located in Crook, Weston, and Niobrara Counties, in northeastern Wyoming. When completed, the Newcastle RMP will provide the management direction for future land and resource management actions on approximately 291,000 acres of public land surface and approximately 1,700,000 acres of Federal mineral estate administered by the BLM within this portion of the Newcastle Resource Area.

The draft EIS focuses on resolving three key issues that were identified with public involvement early in the planning process. These issues are: (1) Retention or disposal of public lands; (2) surface disturbance; and (3) special management areas designations.

There is one designated area of environmental concern (ACEC) within the Newcastle RMP planning area, the Whoopup Canyon ACEC. The preferred alternative recommends that the Whoopup Canyon ACEC designation be retained and that the area of the ACEC be expanded in size. The potential for new ACEC designations was also explored. One potential new ACEC was identified and is proposed in the preferred alternative. This involves the BLM administered public land surface in the Lance Creek Fossil Area.

During development of the draft EIS, the BLM conducted a Wild and Scenic Rivers review of BLM administered public lands that lie along waterways within the planning area. There were no BLM administered public lands in the planning areas that were found to meet the Wild and Scenic Rivers eligibility criteria to be given further consideration for inclusion in the Wild and Scenic Rivers System.

The coal screening process (including application of the coal unsuitability criteria under 43 CFR part 3461) was not conducted for the planing effort. Any interest in coal exploration or leasing will be handled on a case by case basis. If an application for a coal lease is received sometime in the future, an appropriation land use environmental analysis will be conducted (which will include conducting the coal screening process), to determine whether or not the coal areas applied for are acceptable for development and leasing consideration. The RMP will be amended by necessary. To date, there has been no interest expressed to the BLM for leasing and development of BLM-administered coal in the planning area.

Wilderness management and wild horse management were not addressed in the planning effort. There are no wilderness areas or wilderness study areas on BLM-administered public lands in the planning area. In addition, there have been no other areas with wilderness characteristics identified on public lands in the planning area. There are no known wild horse or wild horse herd management areas in the planning area.

When approved, the Newcastle RMP will guide BLM's management of the public lands in the Newcastle Resource Area.

DATES: Written comments will be accepted until June 10, 1994.

ADDRESSES: Copies of the Newcastle RMP draft EIS are available from the BLM Newcastle Resource Area Office at 1101 Washington Boulevard, Newcastle, Wyoming 82701, or the BLM Casper District Office at 1701 East "E" Street, Casper Wyoming 82601. Comments should be sent to the Newcastle Area Manager at the Newcastle Resource Area Office.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Newcastle Area Manager, or Gary Lebsack, Newcastle RMP Team Leader, at the above address or telephone 307–746–4453.

SUPPLEMENTARY INFORMATION: The Newcastle Resource Area is responsible for managing the BLM administered public lands in Crook, Niobrara, and Weston countries in Wyoming, and all BLM administered public lands in Nebraska. Management of the BLM administered public lands in Nebraska is covered under the Nebraska Resource Management Plan completed in 1992.

Within the Nescastle RMP planning areas, there are varied and intermingled land surface ownerships and overlapping mineral ownerships. Therefore, the administrative jurisdictions for land use planning and for managing the land surface and minerals are also varied, intermingled, and sometimes overlapping. For this reason, it is important to understand that the Newcastle RMP draft EIS does not address management of lands or minerals within the planning areas that are privately owned or owned by the State of Wyoming of local Governments (about 1,000 acres). If also does not address those Federally owned minerals within the planning area that are under Federal land surface managed by other Federal agencies (about 420,000 acres).

The draft EIS for the Newcastle RMP presents four alternatives, multiple use RMPs for managing the BLM administered public lands in the planning area, Alternative A (continuation of present management) and three other alternatives that suggest different combinations and emphases for managing the various resource and land uses on the BLM administered public lands, on the basis of needs, opportunities, and public demand. The four alternative plans focus on allocating public lands and resources among their valid uses and prescribing general management actions that would be taken. The preferred alternative is a combination of parts of Alternatives A, B, and C and represents what BLM believes is the best balance between the public land and resource uses and environmental protection in the planning area. The various impacts that would be expected from implementing each of the alternative is also presented in the draft EIS.

Dated: April 29, 1994.

David J. Walter,

Acting State Director.

[FR Doc. 94–10774 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–22–M

[CO–920–94–4110–03; COC30463]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC30463, Mesa and Delta County, Colorado, was timely filed and was accompanied by all required rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office at (303) 239–3767.

Dated: April 20, 1994.

Milada Krasilince,

Lease Closure Team.

[FR Doc. 94–10804 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–JB–M

[(WY–920–41–5700; WYW106130)]

Proposed Reinstatement of Terminated Oil and Gas Lease

April 28, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e) and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW106130 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16–2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW106130 effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–10805 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Land Management

[WY–920–41–5700; WYW126770]

Proposed Reinstatement of Terminated Oil and Gas Lease

April 26, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126770 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW126770 effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–10806 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Land Management

[CA–010–04–4210–03; CA–33873]

Realty Action; Land Use Lease of Public Lands, El Dorado County, CA

AGENCY: Department of the Interior, Bureau of Land Management.

REALTY ACTION: Land use lease, El Dorado County, CA–33873.

SUMMARY: The following described public land is being considered for a non-competitive, lifetime, residential, land use lease pursuant to section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

El Dorado County, California

T. 11 N., R. 10 E., M.D.M.
Sec. 12: lot 18.
Comprising 1 acre, more or less

The above parcel of public land would be leased to Doil Fred and Ruth Anna Burkett to resolve a trespass situation. The lease would be issued for the remainder of Mr. and Mrs. Burkett's lives. Upon their death, all improvements would have to be removed from the public land. The land will be leased at fair market value.

The parcel would be subject to any prior existing rights. All necessary clearances including clearances for archeology and for rare plants and animals would be completed prior to any lease being issued. The proposal is consistent with the Bureau's land use plans that support the settlement of trespass by lease when an undue hardship case is present.

ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received within 45 days from date of publication of this notice in the **Federal Register.**

FOR ADDITIONAL INFORMATION: Contact Marianne Wetzel Lopez at (916) 985–4474 or at the address above.

D.K. Swickard,

Area Manager.

[FR Doc. 94–10807 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–40–M

[UT–934–04–4410–03; 4–00152]

Resource Management Plans, etc.; Eastern Utah Resource Area, UT; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This notice is a correction to the notice that appeared in the February 25, 1994, **Federal Register** concerning a Call for Information for the Eastern Utah Resource Management Plan. This planning effort will incorporate the components of ecosystem management. To do this, it is important to increase the level of involvement of those interested in the planning area. In addition to the usual scoping meetings held to identify issues, we will be using representatives from the various interest groups to help collect and analyze the data and develop the alternatives to be analyzed in the National Environmental Policy Act process. In the February 25, 1994, **Federal Register** notice, public workshops were scheduled to be held in April of 1994. In order to make these workshops more responsive to public needs and to help focus the issues discussion, the workshops are being rescheduled. Information on the dates, times, and places of these workshops will appear in local papers and planning updates. In order to help the public better understand ecosystem management and the increased opportunity for the public to participate in this process, the Bureau of Land Management is preparing a series of information bulletins to be mailed to those interested in the process. We are also seeking opportunities to meet with groups and organizations interested in assisting in the preparation of this plan.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Project Manager, Utah State Office, 324 South State Street, suite 301, Salt Lake City, Utah 84111; Michael O'Donnell, Team Leader, Bureau of Land Management, Moab District Office, 82 East Dogwood, Moab, Utah 84532; or Jerry Kenczká, Team Leader, Vernal District, 170 South 500 East, Vernal, Utah 84078. Office hours are: Utah State Office, 7:30 a.m. to 4:3 p.m., telephone (801) 539–4076; Moab District, 7:45 a.m. to 4:30 p.m., telephone (801) 259–6111; Vernal District, 7:45 a.m. to 4:30 p.m., telephone (801) 781–4400 or (801) 789–1362, Monday through Friday, except holidays.

Ted D. Stephenson,

Acting State Director.

[FR Doc. 94–10733 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–DQ–M

[ID–030–94–4210–05; IDI–29265]

Intent To Prepare a Planning Amendment to the Pocatello Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Pocatello Resource Management Plan (RMP).

SUMMARY: The following described public land in Bingham County, Idaho will be examined for possible disposal by exchange under section 206 and section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 AND 1719.

Boise Meridian, Idaho

T. 1 S., R. 38 E.,
  Sec. 17, S½SW¼,
  Sec. 18, SE¼NW¼, E½SW¼, S½SE¼,
  Sec. 19, N½NE¼, NE¼NW¼.

The land described above contains 400 acres, more or less.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for exchange to Bingham County at fair market value. The public is invited to provide scoping comments on the issues that should be addressed in the planning amendment. Planning criteria which will be used to prepare this planning amendment is available for review at the Bureau of Land Management, Idaho Falls District Office, Pocatello Resource Area, 1111 North 8th Avenue, Pocatello, Idaho.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524–7500.

Dated: April 26, 1994.

Sandra Courtney-Berain,

Acting District Manager.

[FR Doc. 94–10809 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–GG–M

[CO–942–94–4730–02]

Colorado: Filing of Plats of Survey

April 18, 1994.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 18, 1994.

The plat representing the dependent resurvey of portions of the Eleventh Auxiliary Guide Meridian West (east boundary), north boundary and subdivisional line, and the subdivision of section 1, T. 9 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 1032, was accepted March 17, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and Mineral Survey No. 11496, Fayette Placer, and the survey of lot 12 in section 33, T. 44 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 1051, was accepted March 18, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat (in 11 sheets), representing the dependent resurvey of certain mineral claims, section 15, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted March 17, 1994.

The plat representing the dependent resurvey of a portion of the line between sections 33 and 34 and a portion of the subdivision lines in section 33, and a survey of a portion of the boundary of the Holy Cross Wilderness and a metes-and-bounds survey of the line between lots 1 and 2 in section 33, T. 5 S., R. 82 W., Sixth Principal Meridian, Colorado, Group No. 1065, was accepted March 18, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Daryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 94–10734 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–JB–M

[ID–942–04–406A–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 25, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 9, Township 18 North, Range 1 East, Boise Meridian, Idaho, Group No. 865, was accepted April 21, 1994.

This survey was executed to meet certain administrative needs of the USDA Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 25, 1994.

Jeff A. Lee,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–10810 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0012) Washington, DC 20503, telephone 202–395–7340.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

OMB Approval Number: 1018–0012.

Abstract: The Service regulates the importation and exportation of fish and wildlife, as a treaty obligation under the Convention on International Trade in Endangered Species, and as required by regulations contained in 50 CFR part 14. The information is used by the Service as an enforcement and management aid and to regulate and enforce the import/export provisions of several laws the Service enforces, such as the Endangered Species Act of 1973, the Lacey Act Amendments of 1981, and the Marine Mammal Protection Act. Form 3–177 must be filed at designated ports with the Service—for imports, when requesting wildlife clearance. For exports, such declaration must be filed in advance of the actual departure of wildlife from the United States to allow reasonable time for inspection. At non-designated ports, such declaration should be filed with the U.S. Customs prior to removal of the wildlife from the United States.

Service Form Number: 3–177.

Frequency: On occasion.

Description of Respondents: Individuals and households, small businesses or organizations, and businesses or other for profit.

Estimated Completion Time: The overall reporting burden is estimated to average 15 minutes per response with a response rate average of 4 entries per respondent.

Annual Burden Hours: 21,250.

Service Clearance Officer: Phyllis H. Cook, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: April 22, 1994.

William F. Hartwig,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 94–10803 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Revised Recovery Plan for the Masked Bobwhite Quail for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the masked bobwhite quail (*Colinus virginianus ridgwayi*) which the Service listed as an endangered species on March 11, 1967 (32 FR 4001). Four populations are known to exist in the wild: Three in Mexico and one on the Buenos Aires National Wildlife Refuge in the United States. The total wild population is believed to be less than 1,500 birds. Historic accounts and collections indicate this subtropical subspecies has always been restricted to level plains and river valleys in Sonora, Mexico and extreme south-central Arizona in the United States. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 5, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, Buenos Aires National Wildlife Refuge P.O. Box 109, Sasabe, Arizona 85633. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. William (Bill) Kuvlesky, Jr., U.S. Fish and Wildlife Service Biologist, telephone (602) 823–4251 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Habitat of the masked bobwhite quail (*Colinus virginianus ridgwayi*) is open savanna grassland within dry-tropic scrub. Occupied habitat is further restricted to elevations ranging between 10 and 1,200 meters where mean rainfall ranges from 250 to over 500 millimeters. The birds are associated with weedy bottomlands, grassy and herb-strewn valleys, and forb-rich plains. This habitat type has declined drastically as a result of overgrazing by livestock and periods of severe drought. The recovery plan addresses populations that remain in Mexico and steps being taken in the United States to reintroduce the species to areas once occupied in the state of Arizona. Although the goal is to recover the species to the level where delisting can occur, the recovery plan emphasizes short term actions deemed necessary to stabilize the species in the wild and prevent the species, extinction.

The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the plan's approval.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 28, 1994.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 94–10781 Filed 5–4–94; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Mexican Long-Nosed Bat for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Mexican long-nosed bat (*Leptonycteris nivalis*) which the Service listed as an endangered species on September 30, 1988 (53 FR 38460). This species is known to occur in central and northern Mexico, the Big Bend area of Texas, and Hildago County in southwestern New Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 5, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482–5436. Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carol J. Beardmore, U.S. Fish and Wildlife Service Biologist, telephone (512) 482–5436 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mexican long-nosed bat (*Leptonycteris nivalis*) is known to occur in central and northern Mexico, the Big Bend area of Texas, and Hildago County, New Mexico. The species roosts in caves, crevices, mines, and occasionally man-made structures. The only known Mexican long-nosed bat roost in the United States is found in the Big Bend National Park, Texas. This roost is used for a relatively short period during the summer. The Mexican long-nosed bat feeds primarily on the nectar produced by night blooming plants (Agave spp.) and is one of only two bat species found in the United States that is nectarivorous. These bats appear to follow the seasonal blooming of agave plants.

The Mexican long-nosed bat is threatened by loss and disruption of roosting and foraging habitat. Preferred (historical) roost sites are a limiting factor for this and other bat species. When occupying a roost, this bat appears to be particularly sensitive to human movement and disruption. Mexican long-nosed bat roosts are threatened by curious individuals, cave vandals, and citizens attempting to eradicate vampire bats.The foraging habitat of the Mexican long-nosed bat is threatened by producers of tequila, mescal, and pulque who harvest heads from flowering agave stalks before they mature and producers flower. Except for protection of plants and roost sites in the Big Bend National Park, food producing plants and roosts are generally unprotected.

The objective of the Draft Recovery Plan for the Mexican long-nosed bat is downlisting. Downlisting is selected because there is insufficient information regarding the bat and its habitat to specify delisting criteria. Downlisting criteria are specified in the plan. Recovery efforts outlined in the plan focus on roosting and foraging habitat identification and protection, public education, and research to determine biological and habitat requirements of the species as they apply to identification and protection efforts.

The Mexican long-nosed bat recovery plan has been reviewed by the appropriate Service staff in Region 2. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan. Because the majority of this bat's range is found in Mexico, the Service is especially interested in soliciting comments from Mexican biologists and others who have studied the bat fauna in Mexico.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 28, 1994.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 94–10780 Filed 5–4–94; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Oryx Energy Company, six exploratory wells, SEA No. S–3047U.	High Island Area, East Addition, South Extension, block A–379, lease OCS–G 13808, 112 miles southeast of the nearest coastline on Galveston Island, Texas.	11/24/93
Texaco Pipeline, Inc., pipeline activity, SEA No OCS–G 13219A.	High Island Area, East Addition, South Extension, blocks A–393, A–390, A–377, A–374, A–373, A–367, A–366, A–365, and A–364; Garden Banks, blocks 189, 188, 187, 186, 142, 141, and 97; lease OCS–G 13219; 130 miles southeast of the nearest coastline in Texas.	12/11/92
ARCO Oil and Gas Company, NORM disposal operations, SEA No. NORM–073.	Eugene Island Area, Block 175, lease OCS 0438, 40 miles southwest of the nearest landfall in Terrebonne Parish, Louisiana.	07/12/93
Sonat Exploration Company, NORM disposal operations, SEA No. NORM–100.	East Cameron Area, block 23, lease OCS–G 2853, three miles south of Cameron Parish, Louisiana.	03/31/94
Samedan Oil Corporation, NORM disposal operations, SEA No. NORM–108.	Main Pass Area, block 305, lease OCS–G 1676, 23 miles east of Plaquemines Parish, Louisiana.	03/11/94
Chevron U.S.A., NORM disposal operations SEA No. NORM–109.	East Cameron Area, block 281, lease OCS–G 2050, 84 miles southwest of Cameron Parish, Louisiana.	02/11/94
Shell Offshore, Inc., NORM disposal operations SEA No. NORM–111.	East Cameron Area, block 40, lease OCS–G 4101, 70 miles southwest of Vermilion Parish, Louisiana.	02/23/94
Unocal Corporation, NORM disposal operations, SEA No. NORM–112.	West Cameron Area, block 292, lease OCS–G 6581, 29 miles south of Cameron Parish, Louisiana.	03/03/94
Mobil Exploration & Producing U.S. Inc., NORM disposal operations, SEA No. NORM–113.	Eugene Island Area, block 116, lease OCS 0478, 37 miles southeast of Lafourche Parish, Louisiana.	04/11/94
EP Operating Company, pipeline activity, pipeline "bottom tow" route SEA.	Offshore Matagorda Peninsula, Texas, to the Mississippi Canyon 441 Field, 55 miles south of Jefferson Parish, Louisiana.	11/12/92
Freeport McMoRan Inc., structure-removal operations, SEA Nos. ES/SR 92–138A and 93–139A.	Vermilion Area, block 161, lease OCS–G 1127, 45 miles south of Vermilion Parish, Louisiana.	09/18/93
Texaco Exploration and Production Inc., structure-removal operations, SEA No. ES/SR 93–122A.	West Cameron Area, South Addition, block 487, lease OCS–G 2847, 80 miles south of Cameron Parish, Louisiana.	03/11/94
Santa Fe Energy resources, structure-removal operations, SEA No. ES/SR 93–141(B).	West Cameron Area, block 472, lease OCS–G 8409, 90 miles south of Cameron Parish, Louisiana.	03/28/94
Pennzoil Petroleum Company, structure-removal operations, SEA Nos. ES/SR 94–07 through 94–09.	Eugene Island Area, block 305; Ship Shoal Area, blocks 176 and 198; leases OCS–G 2108 and OCS 0589; 52 miles south of Terrebonne and Saint Mary Parishes, Louisiana.	01/20/94
Pennzoil Petroleum Company, structure-removal operations, SEA Nos. ES/SR 94–015 through 94–017.	West Cameron Area, block 20, lease OCS 0680, four miles south of Cameron Parish, Louisiana.	02/16/94
Kerr-McGee Corporation, structure-removal operations, SEA Nos. ES/SR 94–018 through 94–021.	Ship Shoal Area, blocks 27 and 28, leases OCS 0347 and 0346, five miles south of Terrebonne Parish, Louisiana.	01/13/94
Walter Oil & Gas Corporation, structure-removal operations, SEA No. ES/SR 94–022.	Galveston Area, block 389, lease OCS–G 4259, 40 miles south of Galveston County, Texas.	02/02/94
Mobil Exploration and Producing U.S. Inc., structure-removal operations, SEA Nos. ES/SR 94–023 through 94–025.	West Cameron Area, blocks 71 and 72, leases OCS 0245 and 0244, 17 miles southeast of Cameron Parish, Louisiana.	03/01/94
Seagull Energy E&P Inc., structure-removal operations, SEA No. ES/SR 94–026.	Galveston Area, block 383, lease OCS–G 8131, 46 miles southwest of Galveston, Texas.	03/17/94
PG&E Resources Company, structure-removal operations, SEA No. ES/SR 94–027.	East Cameron Area, South Addition, block 267, lease OCS–G 6638, 58 miles south of the Rockefeller Wildlife Refuge in Cameron Parish, Louisiana.	04/05/94
Chevron U.S.A. Production Co., structure-removal operations, SEA No. ES/SR 94–028.	West Cameron Area, block 173, lease OCS 0759, 28 miles southwest of Cameron, Louisiana.	03/03/94
Union Pacific Resources Company, structure-removal operations, SEA No. ES/SR 94–029 through 94–031.	High Island Area, block 178, lease OCS–G 8150, 20 miles south of Chambers County, Texas.	03/03/94
Sonat Exploration Company, structure-removal operations, SEA No. ES/SR 94–032.	Ship Shoal Area, block 225, lease OCS–G 1984, 106 miles southeast of Intracoastal City, Louisiana.	03/15/94
Union Pacific Resources Co., structure-removal operations, SEA No. ES/SR 94–039.	High Island Area, block 178, lease OCS–G 8150, 23 miles east of Galveston, Texas.	03/11/94
Murphy Exploration & Production Company, structure-removal operations, SEA No. ES/SR 94–045.	West Cameron Area, block 188, lease OCS–G 6573, 22 miles south of Cameron Parish, Louisiana.	04/07/94

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: April 25, 1994.

Chris C. Oyens,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 94–10811 Filed 5–4–94; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–32 (Sub-No. 67X)]

Boston and Maine Corporation—Discontinuance of Trackage Rights Exemption—Hampden County, MA

Boston and Maine Corporation (B&M), has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights to discontinue trackage rights over approximately 0.52 miles of rail line owned by Consolidated Rail Corporation (Conrail) between milepost 98.02 and milepost 98.54, in Springfield, Hampden County, MA.[1] Conrail will continue to provide rail service on the line.

B&M has certified with respect to the trackage rights involved here that:

(1) No local traffic has moved over the line for at least 2 years;

(2) Any overhead traffic on the line has been rerouted over other lines;

(3) No formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 4, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by May 16, 1994. Petitions to reopen must be filed by May 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[3]

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Decided: April 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10797 Filed 5–4–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 30739 (Sub-No. 1)]

Burlington Northern Railroad Company—Trackage Rights Exemption—Southern Railway Company

Norfolk Southern Railway Company (NS), successor to Southern Railway Company, has agreed to grant additional overhead trackage rights to Burlington Northern Railroad Company, and to modify the terms and conditions of the trackage rights previously acquired from SR pursuant to a 1985 Agreement. The original agreement granted trackage rights from Kimbrough, AL to Saraland, AL, a distance of 102.55 miles. NS and BN's supplemental agreement extends the trackage rights from Saraland, AL to Mobile, AL, a distance of 5.75 miles. The trackage rights were to become effective April 25, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael E. Roper, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main St., Fort Worth, TX 76102–5384.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—*BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: April 28, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10796 Filed 5–4–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that the final proposed Consent Decree in *United States* v. *Hawaiian Western Steel, Inc., et al.*, 92–00587 ACK, was lodged with the United States District Court for the District of Hawaii on April 22, 1994. This action was brought on behalf of the United States Environmental Protection Agency pursuant to section 3008 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. 6928.

Under the proposed Consent Decree, Hawaii Western Steel, Inc., Western Canada Steel, Inc., IPSCO, Inc., and the Estate of James Campbell agree to pay $700,000 to the United States to resolve the penalty claims of the United States against those defendants for violations of RCRA at the steel facility operated by Hawaii Western Steel in the Estate of James Campbell Industrial Park, Ewa Beach, Hawaii (the "Plant" site). These defendants also agree to undertake specified corrective action at the Plant site, at a nearby Landfill, and surrounding Estate owned land.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., Washington, DC

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[1] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. B&M's verified notice indicated a proposed consummation date of June 1, 1994. Because the verified notice was not filed until April 15, 1994, consummation should not have been proposed to take place prior to June 6, 1994. B&M's representative has confirmed that the correct consummation date is on or after June 6, 1994.

[2] Because under 49 CFR 1105.6(b)(3) no environmental assessment will be prepared for discontinuances of trackage rights where the affected line will continue to be operated, environmental or historical documentation is not required here. 49 CFR 1105.6(c)(6) and 49 CFR 1105.8

[3] Because this is only a discontinuance proceeding and Conrail will continue to provide service over the line, the routine provisions for trail use/rail banking or public use conditions provided for in abandonment proceedings are not appropriate here.

20530. All comments should refer to *United States* v. *Hawaii Western Steel, Inc.*, D.J. Ref. 90–7–1–659A.

The proposed Consent Decree may be examined at the office of the United States Attorney, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount or $18.75 for copying costs ($0.25 per page) payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–1081 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice of hereby given that a proposed consent decree in *United States* v. *Olin Corporation*, Civil Action No. 1–91–472, was lodged on April 21, 1994 with the United States District Court for the Eastern District of Tennessee. The United States filed a civil action against Olin Corporation, seeking injunctive relief and civil penalties for violations of section 112(c) of the Clean Air Act, as amended, 42 U.S.C. 7412(c), the National Emission Standard for Hazardous Air Pollutants for mercury promulgated under the Act (the "mercury NESHAP"), 40 CFR part 61, Subparts A and E, and Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. 9603(a), and 40 CFR 302.6 promulgated under CERCLA. The action was originally filed in November 1991.

Defendant Olin Corporation ("Olin") owns and operates a plant in Charleston, Tennessee, where it uses mercury chlor-alkali cells to manufacture chlorine and other products. Olin's mercury chlor-alkali cell process includes over 400 feet of piping referred to as the "dilute caustic header." The dilute caustic header pipe is an "alkali metal hydroxide line" within the meaning of the mercury NESHAP. Mercury, as well as other substances, flow through this piping. The United States alleged that Olin Corporation violated the mercury NESHAP by failing to maintain the header pipe and the cell room basement floor in good condition. The United States also alleged, among other things, that on or about August 22, 1988, Olin violated the mercury NESHAP by allowing the use of torches to cut through the header pipe to remove and replace it, by allowing mercury to spill from the header pipe, by failing to ensure that exposed employees were decontaminated, and by otherwise failing to ensure that the spills were properly contained or cleaned up.

Under the proposed consent decree, Olin Corporation will pay a civil penalty of $1,000,000 to the United States in settlement of these claims as well as other claims relating to the incident on August 22, 1988.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Olin Corporation*, DOJ Ref. # 90–5–2–1–1482.

The proposed consent decree may be examined at the office of the United Sates Attorney, 1110 Market Street, Suite 301 Chattanooga, Tennessee 37402, (615) 752–5140; United States Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 94–10812 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on March 29, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Italtel Societa Italiana Telecomunicazioni S.p.A. ("Italtel") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Italtel, Milan, Italy. Bellcore and Italtel entered into an agreement effective as of March 10, 1994, to engage in cooperative research with respect to understanding ATM and networking protocol issues related to interactive video communications, and to better understand the feasibility and applicability of technologies underlying such issues for exchange and exchange access services.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10814 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for National Research Initiatives—Cross Industry Working Team Project

Notice is hereby given that, on March 30, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for National Research Initiatives ("CNRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership of the Cross Industry Working Team Project ("XIWT"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become Primary Members of XIWT: American Express Company, Phoenix, AZ; Compaq Computer Corporation, Houston, TX; Concentric Research Corporation, Ballwin, MO; Electric Power Research Institute, Palo Alto, CA; Novell, Inc., San Jose, CA; WilTel, Inc., The Woodlands, TX; and Wellfleet Communications, Inc., Billerica, MA. Satellite Broadcasting and Communications Association, Alexandria, VA, has become an Associate Member of XIWT.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CNRI intends to file additional written notifications disclosing all changes in membership. On September 28, 1993, CNRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 17, 1993 (58 FR 66022). The last notification was filed with the Department on December 28, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 23, 1994 (59 FR 13745).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10815 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The Frame Relay Forum

Notice is hereby given that, on March 25, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the additional member of FRF is: LCI International, Dublin, OH.

Teleglobe, a member of FRF, has changed its name to Memotec Communications Inc., and Netlink Ltd., a member of FRF, has changed its name to Netlink Inc.

No other changes have been made in either the membership or planned activities of the FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on January 24, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 23, 1994 (59 FR 13746).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10816 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation

Notice is hereby given that, on March 17, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hart Communication Foundation ("HCF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Delta Controls Limited, West Molcsey, Surrey, ENGLAND; Drexelbrook Engineering Company, Horsham, PA; Endress & Hauser GmbH, Maulburg, GERMANY; Fairchild Industrial Products, Winston-Salem, NC; Fischer & Porter Company, Warminster, PA; Fisher-Rosemount Systems, Inc., Burnsville, MN; Flowdata, Inc., Richardson, TX; Honeywell Loveland Controls Company, Loveland, CO; Kay-Ray/Sensall, Inc., Mt. Prospect, IL; KDG Mobrey Ltd., Slough, Berks, ENGLAND; Leeds & Northrup, North Wales, PA; Measurement Technology Limited, Luton, Bedfordshire, ENGLAND; Micro Motion, Inc., Boulder, CO; Moore Industries-International, Inc., Sepulveda, CA; Moore Products Co., Spring House, PA; Oyster Terminal Ltd., Gwent, Great Britain; Prime Technology, Inc., North Branford, CT; Princo Instruments, Inc., Southhampton, PA; Rosemount Analytical Inc., Eden Prairie, MN; Rosemount Inc., Eden Prairie, MN; Smar International Corporation, Houston, TX; SOR, Inc., Lenexa, KS; UTSI International Corp., Friendswood, TX; Viatran Corporation, Grand Island, NY; Westlock Controls Corporation, Saddle Brook, NJ; Whessoe Varec, Inc., Cypress, CA.

A Minnestoa not-for-profit corporation, HCF has been established through which cooperative research and development work will be conducted. Membership in HCF will be open to any individual or entity that supports the objectives of the organization, subscribes to its bylaws and pays the dues for such membership.

The objective of the HCF is to develop an open and interoperable standard protocol for a digitally enhanced analog communications technology to be used by instruments and control systems for process control and other industrial applications. A successful open and interoperable standard protocol will permit field devices of different manufacturers to be used within a system, thereby reducing both the initial and operating costs and improving performance of such a system. Such a protocol will also increase the range of options for builders of industrial equipment systems. The development and use of this technology will provide compatability with analog instruments currently installed in these systems and will provide new capability for those installations. Use of this technology will allow a transition to the fully digital technology to be implemented when it is available in the future.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 94–10817 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Storage Industry Consortium

Notice is hereby given that, on November 2, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Storage Industry Consortium ("NSIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of NSIC are: Advanced Research Corporation, Minneapolis, MN; Bandgap Technology Corporation,

Broomfield, CO; Bellcore, Red Bank, NJ; Censtor Corporation, San Jose, CA; Convex Computer Corporation, Richardson, TX; Cray Research, Eagan, MN; CREO Products, Burnably, BC, CANADA; DOW Chemical Company, Midland, MI; E-Mass Storage System Solutions, Inc., Dallas, TX; Exabyte, San Jose, CA; Hughes Research Laboratories, Malibu, CA; IBM-Federal Sector Division, Houston, TX; Lots Technology, Incorporated, Santa Clara, CA; Non-Volatile Electronics, Inc., Plymouth, MN; Rockwell Science Center, Thousand Oaks, CA; Seagate Technology, Inc., Bloomington, MN; Southwall Technologies, Palo Alto, CA; and Uniphase Corporation, San Jose, CA. Lawrence Livermore National Laboratory, Livermore, CA; and Rice University, Lincoln, NE, have joined NSIC as university associate members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSIC intends to file additional written notification disclosing all changes in membership.

On June 12, 1991, NSIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 1991 (56 FR 38465).

This last notification was filed with the Department on May 22, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29538).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10818 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Petroleum Environmental Research Forum

Notice is hereby given that, on March 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 93–12, titled "Advanced Vehicle Emissions Sulfur Effects", have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Project No. 93–12, and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project are Amoco Oil Company, Naperville, IL; Chevron Research and Technology Company, Richmond, CA; Exxon Research and Engineering Company, Linden, NJ; Mobil Research and Development Corporation, Paulsboro, NJ; Shell Oil Company, Westhollow Research Center, Houston, TX; Sun Company, Inc., Philadelphia, PA; and Texaco Research and Development, Inc., Glenham NY. The objective of this project is to determine the effects of fuel sulfur on emissions from vehicles that have advanced emission control technology. If there are effects, the goal is to determine their magnitude and whether they are reversible.

Information regarding participation in the project may be obtained from Mark L. Sztenderowicz, Chevron Research and Technology Company, 100 Chevron Way, P.O. Box 1627, Richmond, CA 94802–0627, Telephone: (510) 242–5673, Facsimile: (510) 242–2390.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10819 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PowerOpen Association, Inc.

Notice is hereby given that, on January 7, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: 4Front Technologies, Inglewood, CA; Abacus Computer Applications, Framingham, MA; Adaptec, Inc., Milpitas, CA; Advantest America, Inc., Ft. Lee, NJ; Alsys Group, Reston, VA; Bear, Stearns & Co., Whippany, NJ; Breno De Avellar Gomes, Porto, PORTUGAL; C3, Inc., Herndon, VA; Citibank N.A., New York, NY; Computer Associates International Inc., Islandia, NY; Dassault Systemes of America Corp., North Hollywood, CA; Dun & Bradstreet, Corporation, Framingham, MA; EMASSr, Dallas, TX; Fast, Inc., Bridgeport, CT; Foothills Software, Inc., Littleton, CO; Highland Logic P/L, Moss Vale, AUSTRALIA; Information Presentation Technologies Inc., San Luis Obispo, CA; Interleaf, Inc., Waltham, MA; Ithaca Software, Alameda, CA; J.P. Morgan & Co., Inc., New York, NY; Liant Software Corporation, Austin, TX; MacWeek, San Mateo, CA; Magna Software Corporation, New York, NY; Mercury Computer Systems, Inc., Chelmsford, MA; Metrowerks Inc., St-Laurent, Quebec, CANADA; Mic Associates, Inc., Tokyo, JAPAN; Micro Focus, Palo Alto, CA; Microwave Systems Corporation, Des Moines, IA; Modular Assured Quality Software, Oakland, CA; Motorola, Inc., Computer Group, Austin, TX; NCR Systems Engineering, Copenhagen, DENMARK; Prisma, Inc., Austin, TX; Prograph International, Halifax, CANADA; Quest Engineering Solutions, Billerica, MA; Roemmers S.A.C.I.F., Miami, FL; Seek Systems, Inc., Kirkland, WA; Siren Software Corporation, Menlo Park, CA; Soft Dynamic, Melrose, MA; Sterling Software, Inc., Bellevue, NE; Tecsiel-Finsiel Group, Rome, ITALY; The Mitre Corporation, McLean, VA; U.S. Computer Services U.S., Rancho Cordova, CA; Verdix Corporation, Herndon, VA; Wind River Systems, Alameda, CA; WordPerfect Corporation, Orem, UT; Z-Code Software Corporation, San Raphael, CA; Z.U.K.E.N. Incorporated, Mideriku, JAPAN.

On April 21, 1993, PowerOpen filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 22, 1993 (58 FR 33954).

The last notification was filed with the Department on October 7 1993. A notice ws published in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10820 Filed 5–4–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, on March 15, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Interest Group ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novell Inc., and Synoptics Communications are no longer parties to the Group.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Group intends to file additional written notifications disclosing all changes in membership.

On April 19, 1991, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 23, 1991 (56 FR 23723). The last notification was filed with the Department on September 10, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 28, 1993 (58 FR 58019).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10821 Filed 5–4–94; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Bank IV Kansas, N.A. and Taylor Crane and Rigging, Inc.*, Civil Action No. 93–2315JWL, was lodged on April 21, 1994, with the United States District Court for the District of Kansas.

The United States brought a civil action against Bank IV, Kansas N.A. ("Bank IV") and Taylor Crane and Rigging, Inc. ("Taylor") under Section 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7413, and the National Emissions Standards for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"), 40 CFR part 61, subpart M. The Complaint, filed of record July 22, 1993, alleges that Bank IV, and Taylor committed violations of section 112 of the Act, 42 U.S.C. 7412, and the NESHAP for asbestos, 40 CFR part 61, subpart M, § 61.145, in connection with the demolition of the "Sunrise" apartment building formerly located at 101 North 10th Street, Independence, Kansas. Further, the Complaint requests injunctive relief and a statutory civil penalty of up to $25,000.00 per day of violation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bank IV Kansas, N.A. and Taylor Crane and Rigging, Inc.*, DOJ Ref. #90–5–2–1–1841.

The proposed consent decree may be examined at the office of the United States Attorney, 500 State Avenue, Suite 360, Kansas City, Kansas 66101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–10735 Filed 5–4–94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

FOIA-Requester Community Conference

SUMMARY: On October 4, 1993, President Clinton asked that each Federal department and agency renew its commitment to the Freedom of Information Act (FOIA), its underlying principles of government openness, and its sound administration. Also on October 4, 1993, Attorney General Reno asked the Federal agencies to ensure that the principle of openness in government is applied in every disclosure and nondisclosure decision made under FOIA. Subsequently, in the attached memorandum, all component agencies within the U.S. Department of Labor (DOL) were directed to take the appropriate steps to ensure that they are in compliance with both the letter and the spirit of the Freedom of Information Act. 5 U.S.C. 552.

The Department of Labor is fully committed to these directives, and, in an effort to implement this Administration's policy, is scheduling a conference to discuss the DOL's internal handling and processing of FOIA requests with its FOIA-requester community.

TIME AND PLACE: The meeting will be held on Thursday, May 19, 1994, from 10 a.m. to 12 noon in the Auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

AGENDA: The agenda for the meeting is as follows:

(1) Welcome and introduction of DOL panel and representatives from various components of DOL;

(2) Overview of DOL's process for handling FOIA/PA requests;

(3) Question/Answer Session;

(4) Closing Remarks.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating, however, is limited and will be available on a first-come, first-served basis. Disabled individuals should contact Barbara Walker on (202) 219–8188, no later than Tuesday, May 9, 1994, if special accommodations are needed. Persons wishing to make presentations to the panel should contact Ms. Walker in advance of the meeting; arrangements can be made for distribution of any written materials by those wishing to address the panel.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, U.S. Department of Labor, Office of the Solicitor, room N–2428, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8188.

Signed at Washington, DC, this 2nd day of May, 1994.

Robert B. Reich,

Secretary of Labor.

Memorandum for the Executive Staff

From: Robert B. Reich.

Subject: The Freedom Information Act.

Date: November 17, 1993.

The President has recently declared his strong commitment to the basic purposes of the Freedom of Information Act (FOIA). Like President Clinton, I believe that this Act is a vital part of a participatory system of government. I enthusiastically join the President and pledge to renew this Department's commitment to openness in government and to the sound administration of the FOIA.

Attorney General Reno has issued the attached memorandum implementing the President's mandate. I have asked the Solicitor of Labor to take the necessary steps to ensure that each official and employee of this Department reflects this new spirit of government openness and accountability. Specifically, I have asked Solicitor Williamson to do the following:

(1) Provide guidance to all DOL agencies on the President's and Attorney General's memoranda;

(2) Prepare the report, requested by Attorney General Reno, describing the extent of any present FOIA backlog as well as any FOIA staffing difficulties. The Justice Department has asked that this report be submitted by early November; and

(3) Periodically report to me on the progress made by DOL agencies to examine and improve their procedures with the objective of making our handling of FOIA requests more customer-friendly, including enhanced use of electronic information systems.

I ask that each component of the Department cooperate fully with the Solicitor as the first step to renew our efforts to keep the public informed while at the same time protecting information only when it is legally justified and necessary to protect an important Labor Department interest, or the interests of private entities or individuals.

Please join me in reinventing this Department's enhanced communication with the public. Let us commit this Department to seek more ways to distribute information without being requested to do so, to withhold documents only when it is necessary to protect an important interest, and to handle each request for records in a customer-friendly manner.

Attachments

Note: The memorandum from Attorney General Reno is not included in this document.

[FR Doc. 94–10874 Filed 5–4–94; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by June 3, 1994. Comments may be submitted to:

(A) *Agency Clearance Officer*. Herman G. Fleming, Division of Personnel and Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer*. Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Applicant Survey.

Affected Public: Individuals.

Respondents/Reporting Burden: 11,000 respondents annually: 3 minutes per response.

Abstract: Data are required to ensure compliance with laws cited in 5 USC 7201 and 42 USC 20003–16, 29 CFR 1607 and section 7201 of title 5 of the USC. Data will be used to analyze recruitment and selection practices and/or to defend the Foundation's practices in discrimination cases.

Dated: May 2, 1994.

Herman G. Fleming,

Reports Clearance Office.

[FR Doc. 94–10787 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: May 26, 1994; 8:30am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John Enderle, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10831 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: May 24, 1994; 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John Enderle, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington; VA 22230, Telephone: (703) 306–1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10829 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological and Critical Systems (#1189).

Date and Time: May 25, 1994; 9 am–4 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, room 565, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward H. Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc 94–10830 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (#1193).

Date and Time: May 24, 1994; 8:30 a.m. to 5 p.m.

Place: Rooms 360 and 360.2.

Type of Meeting: Closed.

Contact Person(s): Tse-yun Feng, Program Director, CISE/CDA, room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Educational Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10832 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources; Committee of Visitors.

Date and Time: May 24, 1994, 8:30 a.m.–5:30 p.m.

Place: Room #830, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Duncan McBride, Section Head, ILI, Division of Undergraduate Education, room 835, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Telephone: (703) 306–1667.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposal, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Instrumentation & Laboratory Improvement (ILI) Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10833 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communication Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communication Systems.

Date & Time: May 23, 1994, 8 a.m–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 530, Arlington, Virginia 22230.

Contact Person: Dr. Paul Werbos, Program Director, Neuroengineering, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306–1340.

Type of Meeting: Closed.

Purpose of Meeting: To review and evaluate RIA, REG, and Regular proposals for the Neuroengineering Program.

Agenda: To review and evaluate applicants of Research Initiation and Research Equipment proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10834 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:.

Name: Special Emphasis Panel in Electrical & Communication Systems.

Date & Time: May 24, 1994 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 365, Arlington, Virginia 22230.

Contact Person: Dr. Albert B. Harvey, Program Director, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applicants of regular research proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10835 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences.

Date and Time: May 23, 1994; 8.30 am–5 pm.

Place: Room 370, Stafford Place, 4201 Wilson Blvd., Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: H. Lawrence Clark, Program Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support

Agenda: To review and evaluate proposals submitted to address the mechanics and biogeochemistry of coastal air-sea chemical fluxes as part of the Coastal Ocean Processes (CoOP) initiative.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10836 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting(s)

Name: Special Emphasis Panel in Mechanical and Structural Systems

Date & Time: May 19, 20, and 21, 1994.

Place: NSF, Rms. 310, 310.2, 340, 360, 360.2, and 330, 4201 Wilson Blvd., Arlington, VA 22230.

Contact: Dr. William Anderson, Program Director, 703–306–1361.

Type of Meeting(s): Closed.

Purpose of meetings(s): To provide advice and recommendations concerning the Northridge Earthquake proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Civil and Mechanical Systems as part of the selection process for awards.

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date & Time: May 19 and 20, 1994.

Place: NSF, Rms. 370, 380 and 390, 4201 Wilson Blvd., Arlington, VA 22230.

Contact: Dr. James Whitcomb, Program Director, 703–306–1556.

Type of Meeting(s): Closed.

Purpose of meetings(s): To provide advice and recommendations concerning the Northridge Earthquake proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Civil and Mechanical Systems as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 29, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10726 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral and Economic Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavior and Economic Sciences (#1171).

Date and Time: May 23, 1994; 8:30 a.m.–5 p.m. May 24, 1994; 8:30 a.m.–12 p.m.

Place: Room 375, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: John E. Jankowski, Jr., Division of Sciences, Resources Studies, Suite 965, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1777.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources in the areas of the social, behavioral and economic sciences.

Agenda: Role and direction of the NSF Directorate for Social, Behavioral and Economic (SBE) Sciences in the various government-wide initiatives. Special focus on programs in the SBE Research Division and on social accountability issues.

Dated: May 2, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–10837 Filed 5–4–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–53 and DPR–69 issued to Baltimore Gas and Electric Company (the licensee, BG&E) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

By letter dated November 4, 1993, BG&E requested Technical Specifications (TSs) amendments which would allow the removal of an orifice in the 4-inch containment vent/purge line resulting in greater flow. The Unit 1 containment and the Unit 2 containment each have a separate but identical system. Penetration room exhaust fans in the auxiliary building draw air through an in-containment moisture separator and an in-containment motor-operated value (MOV). The air is passed through the auxiliary building via the vent lines which have an outside containment MOV, flow reducing orifice, a flow monitoring system, a motor-operated butterfly valve, and a set of two high efficiency particular air and two charcoal filters in parallel (the penetration room ventilation system filter bank). The air is then discharged by the fans through the main plant vent. Vented air is replaced through a separate penetration. The use of this system as a containment vent was approved by TS Amendment Nos. 115 and 98 for Unit Nos. 1 and 2, respectively, dated February 20, 1986. The maximum hypothetical accident doses in the Updated Final Safety Analysis Report (UFSAR), Chapter 14.42, were revised to include venting of the containment at the initiation of an accident. The NRC staff's Safety Evaluation (SE) which supported TS Amendment Nos. 115 and 98 also approved the higher calculated offsite dose than was currently described in the USFAR at that time. Subsequently, BG&E identified calculational errors in the offsite dose, which when corrected, indicate an offsite dose higher than that approved in the NRC staff's SE. An orifice plate with a 1-inch opening was installed in each of the vent lines in order to maintain the approved offsite dose levels.

Reanalysis have been performed to support the removal of the orifice plates which indicate that the offsite dose would be increased. Although the consequences of the maximum hypothetical accident would result in an increase in the fission product release, the total dose is well within the limits of 10 CFR part 100, "Factors to be considered when evaluating sites."

Need for the Proposed Action

Restoration of full-flow capability to the 4-inch vent/purge lines by removing the orifice plates will significantly reduce the time required to vent or purge. It now takes 7 times longer to vent a containment than it did with a 4-inch line (28 hours versus 4 hours). In addition, venting now occurs over three operating shifts instead of being completely contained within one shift.

Venting is a manually controlled operation, in that it requires operator attention (the operator opens and closes the valves from the control room). Stretching the venting over three shifts introduces the possibility of additional human error into the venting process. Another consideration is that the probability of an accident occurring during venting decreases with decreased vent time. Reducing the venting time will not increase the number of times BG&E needs to vent, because the starting and ending conditions for venting remain the same. Therefore, the total amount of time the containment vents would be open will be decreased.

Environmental Impacts of the Proposed Action

The environmental impact of allowing increased flow results from consideration of the maximum hypothetical accident (large break loss-of-coolant accident) occurring when a vent is open. Fission products would be released until the in-containment and outside containment isolation valves receive a safety injection actuation signal (SIAS) or a containment radiation signal (CRS) which would close the valves isolating the vent line.

BG&E's reanalysis of the hypothetical loss-of-coolant (LOCA) indicate a dose of 118 rem to the thyroid and 10.6 rem to the whole body at the exclusion area boundary (EAB) and 39.3 rem to the thyroid and 2.7 rem to the whole body at the low-population zone (LPZ) boundary. The previously approved doses in the UFSAR, Chapter 14, are a dose of 124 rem to the thyroid and 3.0 rem to the whole body at the EAB and 33 rem to the thyroid and 0.8 rem to the whole body at the LPZ.

The reanalyses results show a slight dose decrease to the thyroid at the EAB and a slight dose increase to the thyroid at the LPZ. The whole-body doses are increased by approximately 3.5 times at the EAB and LPZ. The 10 CFR part 100 limits are 300 rem to the thyroid and 25 rem to the whole body at both the EAB and LPZ. The increase doses to the whole body are approximately 40% at the EAB and 10% at the LPZ of the 25 rem limit provided in 10 CFR part 100.

The results of the reanalysis are similar to the licensing basis evaluation contained in the Commission's Safety Evaluation Report (SER) dated August 28, 1972. The SER results are 110 rem to the thyroid and 4 rem to the whole body at the EAB and 80 rem to the thyroid and 3.0 rem to the whole body, at the LPZ with no containment venting or purging assumed. It should be noted that the dose estimates in the reanalysis represent an extreme upper bound because the release from the containment was assumed to contain fission products derived from a uniform mixing in the containment atmosphere of the iodines and noble gases specified in TID–14844. Even though the percentage increase in offsite doses is not small, the actual total doses are a fraction of the limits of 10 CFR part 100, as noted above. In evaluating the impact of the increased doses, it is important to view these results in light of the low probability of the accident. This change does not significantly affect the risk of any dominant accident scenario and the effect on overall risk of accident at this facility is insignificant.

With regard to normal environmental releases when venting during power operation with the orifice plates removed, the release limits are controlled by the previously approved TS for each of the Calvert Cliffs units. Therefore, the removal of the orifice plates and reestablishing full flow through the vent lines will result in no additional environmental impact for non-accident releases.

Alternatives to the Proposed Action

The principal alternative to approving the removal of the orifice plates allowing full flow for venting or purging would be to deny the request and retain the limited flow capability. However, this alternative would not significantly enhance the protection of the environment. As noted above, the total doses based on the reanalysis are similar to those in the initial licensing basis SE dated August 28, 1972. The doses represent an extreme upper bound, and the doses are a fraction of the 10 CFR part 100 limits. In addition, the removal of the orifice plates would reduce the required time to vent from 28 hours to 4 hours and the probability of an accident occurring during venting decreases with a decreased vent time.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the April 1973 Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff contacted the State of Maryland, Department of Natural Resources, regarding the environmental impact of this proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment and has determined, therefore, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application dated November 4, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 26th day of April 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10827 Filed 5–4–94; 8:45 am]

BILLING CODE 7590-01-M

Fourth Meeting of the CONTAIN Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The CONTAIN Peer Review Committee will meet to review the technical adequacy of the CONTAIN code.

DATES: May 18–20, 1994.

TIME: 8:30 am each day.

ADDRESSES: Energy Research, Inc. 6290 Montrose Road, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: A. Notafrancesco, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3537.

SUPPLEMENTARY INFORMATION: The objective of this effort is to organize and conduct a peer review of the CONTAIN code, light water reactor version. The peer review is to provide an independent assessment of the modeling capabilities and limitations, and adequacy of the CONTAIN code. The results of the peer review are to be documented in a summary report that describes the results of the independent assessment by the peer review participants and the technical acceptability of the code.

A peer review committee has been organized using recognized experts from the national laboratories, universities, CONTAIN user community and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various CONTAIN phenomenological models. The meeting schedules for May 18–20, 1994, is the fourth meeting of the CONTAIN Peer Review Committee. The Committee will review the draft summary report.

Dated at Rockville, Maryland, this 26th day of April, 1994.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 94–10828 Filed 5–4–94; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer's Deemed Service Month Questionnaire.

(2) *Form(s) submitted:* GL–99.

(3) *OMB Number:* 3220–0156.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* Annually.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 450.

(9) *Total annual responses:* 900.

(10) *Average time per response:* .03333 hours.

(11) *Total annual reporting hours:* 30.

(12) *Collection description:* Under section 3(i) of the Railroad Retirement Act (RRA), the Railroad Retirement Board may deem months of service in cases where an employee does not actually work in every month of the year. The collection obtains needed service and compensation information from railroad employers for determining if an employee may be credited with additional deemed months of railroad service.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–10822 Filed 5–4–94; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33980; File No. SR–Amex–94–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Floor Official Zone System

April 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Amex Rule 22 to delete its references to the Floor Official zone system, and provide that matters which currently require the approval of a majority of the Floor Officials in a zone may be determined by a Floor Official with the concurrence of a Senior Floor Official.[1] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Trading Floor has historically been divided into zones comprised of designated trading posts. Pursuant to Rule 22, the Senior Supervisory Officer assigns Floor Officials to each zone and they are expected to exercise their authority in their assigned zones. In addition, Rule 22(c) provides that a majority of the available Floor Officials in each zone may (i) restrict or ban trading by Registered Traders, (ii) restrict or ban transactions pursuant to off-Floor orders for accounts in which members or member organizations have an interest, (iii) prohibit specialists from accepting stop or stop limit orders, or (iv) restrict or ban the use of hand signals with respect to any or all of the securities in their zone.

Rule 22 was adopted in 1965 at a time when all of the trading posts were located on one main Trading Floor, the Exchange was not trading options, and new types of trading products were not frequently added. Although the zone system was useful when implemented, it is not appropriate in today's environment. As a result of improved technology and the faster pace of trading generally (and particularly in options and other derivatives), members typically require quick resolution of trading questions from Floor Officials. With the expansion of the Trading Floor and changes in its configuration, it is unduly time-consuming and burdensome to attempt to deal only with Floor Officials assigned to a particular zone.

The Exchange is therefore proposing that Rule 22 be amended to (i) delete the references to the zone system and permit Floor Officials to make determinations anywhere on the Floor, and (ii) provide that matters which currently require the approval of a majority of the Floor Officials in a zone may be determined by a Floor Official with the concurrence of one of the Senior Floor Officials.[2]

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[1] The Amex has clarified that the proposed rule change will affect both its equity and options trading floors. Telephone conversation between Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on April 20, 1994.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street. NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–11 and should be submitted by May 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[FR Doc. 94–10748 Filed 5–4–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–33972); File No. SR–CBOE–94–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading Floor Booth Policy and Fee Changes

April 28, 1994.

On February 2, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19B–4 thereunder,[2] a proposed rule change to set forth formally the Exchange's current policy ("Policy") regarding the rental of booths on the CBOE trading floor, and to amend its current Fee Schedule as it pertains to Facility Fees for the rental of Exchange trading floor booths.

The proposed rule change was published for comment in the **Federal Register** on March 16, 1994.[3] No comments were received on the proposed rule change. This order approves the proposal.

The purpose of the proposed rule change is to memorialize for distribution to the CBOE membership the Exchange's policy regarding the rental and use of booth space on the CBOE trading floor by member organizations. The CBOE included with its filing, solely for informational purposes, a sample "Trading Floor Booth Rental Agreement" that would be executed between the Exchange and the member organizations regarding the leasing of trading floor booths. In addition, in connection with the Exchange's elimination of a practice known as "joint leasing," the Exchange has proposed to amend the existing fee structure regarding the rental of trading floor booths.

The CBOE currently has certain space located on its trading floor which it makes available for rental to qualified member organizations. These "booths" are located at various locations on the trading floor adjacent to the trading "pits" or "crowds" where the actual CBOE trading activity takes place. The booths generally are used by member organizations to perform various functions in support of their CBOE trading activities. Over the years, the CBOE has developed certain policies and practices with regard to the rental and use of these trading floor booths by member organizations. The Exchange has determined that it would benefit both the CBOE and the membership to memorialize the Exchange's current policies for distribution to the members.

The Policy addresses several issues pertaining to booth rental, including eligibility requirements, allocation and assignment, and booth usage and rental terms. Specifically, the Policy sets forth the four broad categories of member organizations that, in accordance with current policy, may rent booth space on the floor. These four types of eligible members are: (1) Members of The Options Clearing Corporation ("OCC") that conduct a retail customer business; (2) members of OCC that clear CBOE market-maker and/or floor broker trades; (3) members that operate a public customer and/or broker business in options and meet any financial requirements established at any time by the Exchange; and (4) members that are stock execution service firms approved by the Exchange in accordance with CBOE Rule 6.77.[4] These categories were formulated in order to accommodate member organizations with the greatest need for working space in close proximity to CBOE trading activity, and they encompass almost all major types of CBOE member organizations. Market-maker organizations, the only major category of member organization that cannot obtain a booth under the Policy, customarily obtain booth space through their clearing firms.

To account for the possibility that in the future demand for booth space may exceed availability, the Policy states that the Facilities Committee of the CBOE may establish guidelines with respect to the allocation and assignment of trading floor booths to CBOE member organizations, based upon trading volume, business need, product support, and other reasonable criteria.[5] The CBOE currently has no such guidelines in effect, and does not anticipate the creation of such guidelines in the foreseeable future.

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[2] Pursuant to Exchange Rule 21(a), Senior Floor Officials include the Floor Governors and those Exchange Officials who were previously Floor Governors and continue to be active on the Floor.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] *See* Securities Exchange Act Release No. 33745 (March 9, 1994), 59 FR 12388 (March 16, 1994).

[4] A stock execution service is a regular member organization that is registered with the Exchange for the purpose of providing stock execution services to market-makers on the floor of the Exchange. CBOE Rule 6.77.

The Policy also sets forth the requirement that all member organizations renting booths execute a lease agreement with the Exchange, which agreement sets forth the contractual terms governing the rental and use of booths by member organizations. Although the Exchange in the past has used a standard form agreement regarding booth rental, that agreement is brief and contains little detail regarding the nature of the contractual relationship between the parties. Any lease agreement executed pursuant to the new Policy would set forth specifically the details of the parties' contractual relationship regarding rental and use of the booths as they have been established by custom and usage in the past.

Finally, the Exchange proposes to eliminate the practice of joint leasing, and to amend the fee structure to account for this change. Previously, the Exchange has permitted two different member organizations to occupy jointly a single trading floor booth and to share the costs associated therewith, believing that such joint leasing would provide a less costly method for smaller member organizations to obtain access to multiple locations adjacent to the trading floor. However, the Exchange states that joint leasing has been used by non-transaction-producing members solely to reduce their booth fees and not to facilitate trading activity. Accordingly, the Exchange has determined to eliminate joint leasing and replace it with a variable fee arrangement which the Exchange anticipates will soften the economic impact on smaller member organizations that the elimination of joint leasing might otherwise have caused. Pursuant to the amended fee schedule, variable booth fees have been reduced in two respects: (1) The $1,250 per booth variable monthly fee has been eliminated for the second booth leased by a member organization; and (2) the $1,250 per booth variable month fee for a third booth has been reduced by 50 percent to $625. The initial booth rental, and all additional booths beyond the third booth, continue to be subject to the full variable fee.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[6] Specifically, the purpose of the proposal is to memorialize existing Exchange policies regarding the rental of trading floor booths to member organizations, including the delineation of eligible lessees and the requirement that members enter into a formal lease agreement.[7] The Policy does not represent a change to current Exchange policies, except the elimination of the CBOE's current policy to permit joint leasing. In this regard, the Exchange states that the purpose behind joint leasing was ultimately to provide small member organizations less costly access to multiple locations adjacent to the trading floor. The Exchange proposes to eliminate this practice because it believes that non-transaction producing member organizations have exploited joint leasing solely to reduce their booth fees and not to facilitate trading activity.

The Commission believes that the Exchange's codification of its existing policy, and the elimination of joint leasing in favor of a variable fee arrangement, is a reasonable exercise of the CBOE's right to determine how it wants to administer its floor booth space. In this regard, the Commission notes that existing joint lessees will continue to have access, as individual lessees, to booth space under the revised Policy. Moreover, the variable fee structure should help to eliminate some of the economic impact of the revised Policy on existing joint lessees. Accordingly, the Commission finds the proposal to be consistent with the Act, in that it promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–94–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10749 Filed 5–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33975; File No. SR–CSE–94–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 To Extend the Pilot of The Cincinnati Stock Exchange, Inc., Relating to the Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

April 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1994, the Cincinnati Stock Exchange, Incorporated ("CSE or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") hereby proposes to extend for an additional 90 days, ending August 6, 1994, the CSE's pilot program regarding preferencing. The pilot was initially approved by the Commission on February 7, 1994.[1] The exchange requests, in Amendment No. 1, that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.[2]

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[5] Prior to implementing such guidelines, the Exchange represents that it will consult with Commission staff to determine whether such guidelines would have to be filed with the Commission as a rule change and be approved pursuant to Section 19(b) of the Act. Telephone conversation between Dan Schneider, Schiff Hardin & Waite, Joanne Moffic-Silver, CBOE, and Mary Gilhooly, CBOE, and Thomas N. McManus, Division of Market Regulation, SEC, on April 26, 1994.

[6] 15 U.S.C. § 78f(b)(5) (1982).

[7] Although the Exchange included in its filing a sample lease agreement, the Commission by this order is approving only the general requirement referenced in the Policy that a lease agreement be executed between the Exchange and its member organizations. The Commission is taking no position on, and by this order is not approving, the substance of the aforementioned sample lease agreement.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[1] Securities Exchange Act Release No. 28866 (February 13, 1991), 56 FR 5854.

[2] See letter from Robert Ackermann, Vice President, Regulation, Cincinnati Stock Exchange to Jill Ostergaard, Attorney, Division of Market Regulation, SEC, dated April 26, 1994 ("Amendment No. 1").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule filing is to extend for 90 days the Exchange's pilot program governing preferenced trading. The Commission originally approved the pilot in February 1991, and subsequently extended the pilot several times. The pilot is currently approved through May 7, 1994.[3]

On February 25, 1994, the CSE filed a rule change containing certain proposals to further enhance the quality of its market, including a proposed prohibition against "auto-quoting" and limitations on the maximum spread which exchange specialists could quote in the stocks in which they make markets.[4] Further, on March 31, 1994, the CSE filed a rule change which would make its preferencing pilot permanent.[5] The Commission's staff has requested that the Exchange seek an interim 90 day extension of the preferencing pilot in order to afford the Commission the opportunity to consider the relationship between the quality of markets proposal and the preferencing program.[6]

Accordingly, this rule filing would extend the existing pilot program form its current expiration date of May 7, 1994 until August 6, 1994. During this interim extension, the pilot will continue to operate in accordance with all existing conditions.[7]

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will promote just and equitable principals of trade and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CSE solicited comments on the original filing from other Intermarket Trading System participants.[8]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Room. Copies of the filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to the file number in the caption above and should be submitted by May 26, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

The CSE filed this interim extension at the Commission staff's request to enable the Commission to review the impact of the Exchange's quality of markets filing on the preferencing program. Under the circumstances, the Commission finds that allowing the preferencing pilot to continue for an additional 90 days is necessary.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the CSE and, in particular, the requirements of section 6(b)(5).

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. Accelerated approval will avoid an unnecessary interruption of the preferencing pilot. Accordingly, under these circumstances, the Commission believes the CSE's preferencing pilot should be permitted to continue operating for 90 days, ending August 6, 1994.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an additional period, ending August 6, 1994.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-10750 Filed 5-4-94; 8:45 am]

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[3] See Securities Exchange Act Release Nos. 29524 (August 5, 1991), 56 FR 38160; 30353 (February 7, 1992), 57 FR 5918; 31011 (August 7, 1992), 57 FR 38704; and 32260 (May 7, 1993), 58 FR 28422.

[4] See SR-CSE-94-01; Securities Exchange Act Release No. 33849 (April 1, 1994), 59 FR 16870.

[5] See SR-CSE-94-01. In its filing for permanent approval, the Exchange requests that two restrictions of the pilot be lifted: first, the number of preferred securities be expanded beyond the current 350 limitation; and second; a lifting of the ban on cash payments to preferencing dealers for preferenced orders.

[6] Conversation between David Colker, Executive Vice President and Chief Operating Officer, Cincinnati Stock Exchange, and Jill W. Ostergaard, Attorney, Division of Market Regulation, SEC, on April 25, 1994.

[7] These conditions include the two cited above regarding the number of preferenced securities and cash payment for order flow, as well as the requirement that the Exchange provides certain information to the Commission.

[8] See File No. SR-CSE-90-6.

[9] 17 CFR 200.30-3(a)(12)(1993).

[Release No. 34-33974; File No. SR-NSCC-94-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Clearing Fund Formula

April 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 3, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rules change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC.

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[1] 15 U.S.C. 78s(b)(1) (1988).

The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies that the component of the clearing fund formula applicable to usage of NSCC's mutual fund services applies to all NSCC members that use such services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change consists of a technical amendment to the clearing fund formula to clearly delineate the clearing fund requirements of NSCC's regular clearing members ("clearing members") and NCCC's members that only use the mutual fund services ("mutual fund services members"). All NSCC members that use the mutual fund services are required to make clearing fund deposits relating to their mutual fund services usage. For clearing members, this requirement is in addition to their normal clearing fund requirements. Previously, clearing members' clearing fund requirements for usage of mutual fund services was set forth in NSCC Procedure XV, A. I.(a)(iii). However, in the recently approved File No. SR–NSCC–93–11,[2] NSCC moved this clearing fund requirement to Procedure XV, A.I.(b). Because section A.I.(b) is entitled "Clearing Fund Formula for Mutual Fund Services Members," it is not clear that this requirement applies to both clearing members and members that only use the mutual fund services members even though the mutual fund services clearing formula refers to "Members" (i.e., clearing members) and even though NSCC intended that clearing members remain subject to the mutual fund services clearing fund requirement. Accordingly, the proposed rule change is reinserting into section A.I.(a), "Clearing Fund Formula for Members," the mutual fund services component of the clearing fund formula for the purposes of clarity and is limiting section A.I.(b) to mutual fund services members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[3] and subparagraph (e)(1) of Rule 19b–4 thereunder[4] because it involves an interpretation of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–NSCC–94–02 and should be submitted by May 26, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10751 Filed 5–4–94; 8:45 am]

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[2] Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 04959, [File No. SR–NSCC–93–11] (order approving a proposed rule change relating to capital and clearing fund requirements for users of mutual fund services).

[3] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[4] 17 CFR 240.19b–4(e)(1) (1993).

[5] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33973; File No. SR–Phlx–93–64]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Bid Cap Index

April 28, 1994.

I. Introduction

On January 2, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Phlx Big Cap Index ("Big Cap Index" or "Index"). On January 5, 1994, January 25, 1994, January 28, 1994, and April 7, 1994, the Exchange filed Amendment Nos. 1,[3] 2,[4] 3,[5] and 4,[6] respectively, to this proposal.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

The proposed rule change and Amendment Nos. 1, 2, and 3 thereto were published for comment in the **Federal Register** on February 10, 1994.[7] No comments were received on the proposed rule. This order approves the proposal and its four amendments.

II. Description of Proposal

A. Composition of the Index

The Phlx proposes to list for trading options on the Big Cap Index, a stock index to be calculated and maintained by the Phlx. The Index will be composed of 50 of the largest and most widely-held U.S. common stock issues representing a variety of industries, including, but not limited to, technology, manufacturing, and the service industries, 49 of which are listed on the New York Stock Exchange ("NYSE"), and one of which is listed on the Nasdaq National Market. The Phlx will use a capitalization-weighted methodology to calculate the Index.[8]

As of December 1, 1993, the market capitalizations of the individual stocks in the Index ranged from a high of $81.8 billion to a low of $7.4 billion, with the mean and median being $25.6 billion and $20.2 billion, respectively. The market capitalization of all the stocks in the Index was $1.3 trillion. The total number of shares outstanding for the stocks in the Index ranged from a high of 2.3 billion shares to a low of 1.03 million shares. In addition, the average daily trading volume of the stocks in the Index, for the period between June 1, 1992 and January 31, 1994, ranged from a high of 4,179,900 shares per day to a low of 241,900 shares per day, with a mean of approximately 1,168,000 shares. For the same period, the average monthly trading volume of the stocks in the Index ranged from a high of 87,778,300 shares per month to a low of 5,081,800 shares per month, with a mean of approximately 24,523,000 shares. Finally, no one stock comprised more than 6.38 percent of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 27.62 percent of the Index's value. The percentage weighting of the lowest weighted stock was 0.58 percent of the Index and the percentage weighting of the five smallest issues in the Index accounted for 3.05 percent of the Index's value.

B. Maintenance

The Index will be maintained by the Phlx. The Phlx will make special adjustments to the securities comprising the Index to reflect such events as stock splits or reverse splits, spinoffs, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence. In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index that is caused by delisting, merger, acquisition, or otherwise, occurs which would change the overall market character of the Index, the Exchange will take appropriate steps to delete this Index component stock from the Index. Such Index component stock would be replaced by another Index component stock which the Exchange in its discretion believes would be compatible with the intended market character of the Index.

If at any time less than 90 percent of the component stocks in the Index, by weight, are eligible for exchange options trading, or if the number of stocks in the Index ever increases to more than 60 or decreases to less than 40, the Exchange would submit a filing to the Commission pursuant to Rule 19b–4 under the Act prior to opening any new series of options on the Index for trading.

C. Calculation of the Index

The Index will be calculated using a capitalization-weighting methodology. The representation of each security in the Index will be proportional to the security's last sale price multiplied by the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The value of the Index was set to equal 200 on March 31, 1994. As of April 5, 1994, the Index value was 193.12. The formula for calculating the Index value is as follows:

$$\text{Current Index Value} = \frac{\text{Total Capitalization}}{\text{Divisor}}$$

Where:

Total Capitalization = Sum of Market Values (price × shares outstanding) for all component securities

Divisor = The number which, when divided from the total capitalization when the Index was initially calculated (on March 31, 1994), yielded an Index value of 200

The Index divisor will be adjusted for changes in the capitalization of any of the component securities resulting from mergers, acquisitions, delistings, substitutions, and other like corporate events. The formula for adjusting the divisor is as follows:

$$\text{Divisor} = \frac{\text{Total Capitalization (as result of adjustments)}}{\text{Index Value}}$$

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price × shares outstanding) of the relevant issues.

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[3] The Phlx amended the proposal to change the name of the index from "Nifty Fifty Index" to "The Big Cap Index." See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Office of Derivatives Regulation, Division, SEC, dated January 5, 1994 ("Amendment No. 1").

[4] The Phlx amended the proposal:

(1) To set the exercise prices at five point intervals instead of 2½ point intervals; and

(2) To request accelerated approval of the proposed rule change. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division, SEC, dated January 25, 1994 ("Amendment No.2").

[5] The Phlx amended the proposal:

(1) To reflect the new ticker symbol as a result of Amendment No. 1;

(2) To provide that the index will be updated during the trading day at least once every 15 seconds, rather than once every minute;

(3) To specify that the expiration cycle applicable to options on the Index will be three expiration months from the March, June, September, December cycle plus two additional near-term months; and

(4) To clarify the Exchange's obligations with respect to delisting and replacing components of the Index. See Letter from Micheie R. Weisbaum, Associate General Counsel, Phlx, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division, SEC, dated January 27, 1994 ("Amendement No. 3").

[6] The Phlx amended its proposal:

(1) To clarify that all of the stocks comprising the Index are options eligible and have overlying exchange traded options on them;

(2) To note that, if at any time less than 90 percent of the component stocks in the Index, by weight, are eligible for exchange options trading, or if the number of stocks in the Index ever increases to more than 60 or decreases to less than 40, the Exchange would submit a filing to the Commission pursuant to Rule 19b–4 under the Act prior to opening any new series of options on the Index for trading;

(3) To clarify that surveillance procedures currently used to monitor trading in each of the Exchange's other index options also will be used to monitor trading in options on the Index (which procedures include having complete access to trading activity in the underlying securities);

(4) To clarify that the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index;

(5) To confirm that the Index trading hours will be from 9:30 a.m. to 4:10 p.m.; and

(6) To amend the formula with which the current Index value will be calculated. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Esq., Division of Market Regulation ("Division"), SEC, dated April 7, 1994 ("Amendment No. 4").

[7] Securities Exchange Act Release No. 33579 (February 4, 1994), 59 FR 6320 (February 10, 1994).

[8] See infra Section II.C., entitled "Calculation of the Index," for a description of this calculation method.

The Index value will be updated dynamically and disseminated at least once every fifteen seconds during the trading day.[9] The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

The Index value, for purposes of settling outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.

D. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[10] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The Index multiplier will be 100. Strike prices will be set at 5.0 point intervals in terms of the current value of the Index.[11]

The Exchange will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle, plus two additional near-term months so that the three nearest term months always will be available.

Index options will expire on the Saturday following the third Friday of the expiration month. Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will be the second to last business day before expiration (normally a Thursday).

E. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for the Index options will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month.[12] Exercise limits will be set at the same level as position limits.[13] Exchange rules applicable to options on the Big Cap Index will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,[14] and margin treatment.[15]

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Big Cap Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[16]

III. Commission Findings and Conclusions

The Commission has reviewed the proposal to list and trade options on the Big Cap Index. As discussed below, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Index is broad-based, the proposed options are designed to reduce the potential for manipulation, and the proposal to list and trade options on the Big Cap Index is consistent with the Exchange's obligation to promote investor protection.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 50 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes the Big Cap Index options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of 50 of the largest and most widely-held U.S. common stocks. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[17]

The trading of options on the Big Cap Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Exchange has addressed these concerns adequately.

A. Index Design and Structure

The Commission finds that the Big Cap Index is a broad-based index, and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it contains 50 actively-traded stocks representing 25 industry groups, and thus reflects a substantial segment of the U.S. equities market.

The Commission also finds that the large capitalizations, liquid markets, and relative weighings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the Index represents and consists of the common stock values of 50 actively-traded U.S. companies. Second, as of December 1, 1993, no one stock comprised more than 6.38 percent of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 27.62 percent of the Index's value. Third, the overwhelming majority of the stocks that comprise the Index are actively-traded, with a mean average daily trading volume and average monthly trading volume of approximately 1,168,000 and 24,523,000 shares, respectively. Fourth, as of December 1, 1993, the market capitalizations of the stocks in the Index were substantial, ranging from a high of $81.8 billion to a low of $7.4 billion, with the mean and median at $25.6 billion and $20.2 billion, respectively. Fifth, the Index is comprised of stocks representing a diverse group of industries, the most heavily represented by Index weight including technology, manufacturing, and telecommunications industries. Sixth, all of the component securities currently are eligible for options trading.[18] Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in those securities will help deter as well as detect illegal trading activity involving the index option.

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[9] To the extent that a component stock does not open for trading on a particular trading day, or trading in that component stock is halted during the course of a particular trading day, the last reported sale price of such security will be used for purposes of calculating the current Index value. Telephone conversation between Michele R. Weisbaum, Associate General Counsel, Phlx, and Thomas N. McManus, Division of Market Regulation, SEC, on April 26, 1994.

[10] A European-style option can be exercised only during a specified period before the option expires.

[11] Additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

[12] See Phlx Rule 1001A(a)(i).

[13] See Phlx Rule 1002A.

[14] See Phlx Rule 1047A.

[15] See Phlx Rules 722 and 1000A.

[16] The Exchange is a member of the ISG, which was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The Commission understands that the ISB Agreement, as amended, covers investigations and inquiries regarding trading activity in options on the Big Cap Index and the underlying component securities.

[17] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Big Cap Index will provide investors with a hedging vehicle that should reflect the overall movement of the 50 component stocks.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Big Cap Index, can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that:

(1) The special risks of options are disclosed to public customers;

(2) Only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and

(3) Special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the Phlx, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options in the Big Cap Index.

C. Surveillance

The Commission generally believes that a surveillance-sharing agreement between an exchange proposing to list a stock index derivative and the exchanges trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[19] In this regard, the NYSE and National Association of Securities Dealers, Inc., which together serve as the primary markets for all of the Index component stocks, are members of the ISG, which provides for the exchange of all necessary surveillance information.[20]

D. Market Impact

The Commission believes that the listing and trading on the Phlx of options on the Big Cap Index will not have an adverse impact on the underlying securities markets.[21] First, as described above, the Index is broad-based and comprised of 50 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively-traded. Third, the 25,000 contract position and exercise limits, along with the 15,000 contract telescoping requirement, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party performance will be minimized because the Index options will be issued and guaranteed by The Options Clearing Corporation just like any other standardized option traded in the United States. Fifth, existing Phlx stock index options rules and surveillance procedures will apply to options on the Big Cap Index.

Lastly, the Commission believes that settling expiring Index options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on the opening prices rather than closing prices may help reduce any adverse effects on the securities underlying options on the Index.[22]

E. Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. Amendment No. 4 helps to conform the proposal to the Phlx's existing rules governing index options, clarifies certain characteristics of the proposal that were omitted in prior filings, and amends the formula for calculating the current Index value. All of these changes strengthen the proposal and, accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 4 on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 26, 1994.

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[18] The Exchange's option listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements:

(1) The public float must be at least 7,000,000 shares;

(2) There must be a minimum of 2,000 stockholders;

(c) Trading volume must have been at least 2.4 million shares over the preceding twelve months; and

(4) The market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See Phlx Rule 1009, Commentary .01.

[19] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992)

[20] See n.16, *supra*.

[21] The Commission notes that, prior to listing Big Cap Index options, the Exchange will be required to provide written representations that both the Exchange and the Options Price Reporting Authority have the necessary systems capacity to support those new series of Big Cap options.

[22] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR–Phlx–93–64), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.[24]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10752 Filed 5–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20255; 811–4650]

The Scandinavia Fund, Inc.; Notice of Application

April 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The Scandinavia Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 21, 1990, and amended on March 15, 1994 and April 26, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 23, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o Allan D. Goodridge, Schnader, Harrison, Segal & Lewis, 330 Madison Avenue, suite 1400, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified closed-end management investment company organized as a Maryland corporation. On April 25, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1993. The registration statement became effective, and applicant's initial public offering commenced, on June 17, 1986.

2. On July 29, 1988 and October 1, 1988, applicant's board of directors approved a plan of liquidation and dissolution whereby applicant would be restructured as an operating company by reincorporating it as a Cayman Islands corporation that would engage in the secured lending business. Preliminary proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on August 2, 1988. Amended proxy materials were filed on or about October 11, 1988. A pre-effective amendment was filed on or about November 23, 1988. Proxy materials were mailed to shareholders on or about December 8, 1988. The reorganization was approved by applicant's shareholders at a meeting held on February 3, 1989.

3. On February 21, 1989, applicant transferred all of its assets, which consisted of cash, to a Cayman Islands corporation, The Scandinavia Company, Inc. (the "Company"), in exchange for all of the outstanding shares of the Company's common stock. At the time of the exchange, applicant had outstanding 6,415,810 shares of common stock with a net asset value per share of $8.41. Applicant's shareholders received one share of the Company's common stock for each share of the applicant's common stock.

4. In connection with the liquidation and dissolution of applicant, expenses due and payable before the reorganization were paid by the applicant, and expenses due and payable after the reorganization were paid by the Company. Such expenses were as follows: Legal fees—$447,397; accounting fees—$39,700; printing—$21,084; mailing—$13,633; proxy solicitation fees—$10,500; exchange agency fees—$1,080; and proxy statement filing fee—$8,264; for a total of $541,658.

5. As a result of the liquidation and dissolution, applicant, the Company, the applicant's former director, and applicant's majority shareholder were named as parties to three class action lawsuits filed by applicant's shareholders in the United States District Court for the Southern District of New York. The lawsuits alleged, among other things, that the proxy materials mailed to shareholders in December 1988 were false and misleading, that the conversion of applicant's assets to cash without shareholder approval violated section 13 of the Act, and that the Company violated the Act by adopting a stock option plan and by filing periodic reports with the SEC as an operating company rather than an investment company.

6. On May 20, 1991, the parties signed an agreement settling the suits. The settlement was approved by the court on July 30, 1991, and it became final on August 30, 1991. For purposes of the settlement, all persons who owned shares of common stock of the applicant or the Company (other than the defendants and their affiliates and those persons who submitted valid and timely requests for exclusion) during the period February 1, 1988 through June 30, 1990 were deemed "Settlement Class 1." All persons who owned stock of the Company at the time of the public announcement of the settlement were deemed "Settlement Class 2" (the members of Settlement Class 1 and Settlement Class 2, collectively the "Class Members").

7. Under the terms of the settlement, the Company paid $.085 for each share of applicant's common stock that the members of Settlement Class 1 held as of February 1, 1988 and sold at a loss before December 10, 1988. The Company also paid to Class Members who held shares of applicant's common stock as of February 1, 1988 and sold such shares for less than $6.00 per share during the period from December 10, 1988 to September 26, 1989, an amount equal to $.25 per share. Pursuant to the foregoing, the Company paid claims aggregating approximately $32,500. The Company also agreed to commence an issuer tender offer to purchase 952,500 shares of the Company's common stock at a purchase price equal to the market price increased by a premium of 16% of the market price, but in no event more than $5.25. The offer was commenced on May 24, 1991 at a purchase price of $4.07, and was consummated on July

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] See n.21, *supra*.

[25] 17 CFR 200.30–3(a)(12) (1993).

22, 1991, resulting in the purchase by the Company of 609,613 shares of its common stock at an aggregate purchase price of $2,481,125. The Company also paid the legal fees of counsel to the plaintiffs and certain expenses of settlement in the total amount of approximately $280,000.

8. In consideration of the settlement, the Class Members discharged the defendants of any claims arising from conduct relating to the management or operations of applicant or the Company, the use and investment of their assets, the preparation and dissemination during the settlement class period of false or misleading proxy materials and annual or periodic reports, and the failure of the applicant or the Company to conduct their businesses as investment companies.

9. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

10. As a condition to the application, applicants expressly agree that all books and records required to be kept pursuant to rule 31a-1 under the Act will be preserved for a period of not less than six years after the date of applicant's liquidation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-10753 Filed 5-4-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Requests from Borrower—Reports, Records, and Financial Statements.

Form No.: SBA 770.

Frequency: On Occasion.

Description of Respondents: Recipients of SBA Loans.

Annual Response: 161,000.

Annual Burden: 281,750.

Dated: May 2, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94-10848 Filed 5-4-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2715]

Texas; Declaration of Disaster Loan Area

Harris County and the contiguous counties of Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller constitute a disaster area as a result of damages caused by a tornado which occurred on April 15, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 30, 1994 and for economic injury until the close of business on January 30, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—7.125%
Homeowners Without Credit Available Elsewhere—3.625%
Businesses With Credit Available Elsewhere—7.125%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%

The number assigned to this disaster for physical damage is 271512 and for economic injury the numbers 825300

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-10839 Filed 5-4-94; 8:45 am]

BILLING CODE 8025-01-M

[License #06/06-0190]

San Antonio Venture Group, Inc.; License Surrender

Notice is hereby given that San Antonio Venture Group, Inc., ("SAVG"), 2300 West Commerce, San Antonio, Texas 78207, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). SAVG was licensed by the Small Business Administration on March 23, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 25, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 29, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-10844 Filed 5-4-94; 8:45 am]

BILLING CODE 8025-01-M

Minneapolis/St. Paul District Advisory Council; Public Meeting

The U.S. Small Business Administration Minneapolis/St. Paul District Advisory Council will hold a public meeting at 12 noon on Wednesday, May 25, 1994, at the Jax Cafe, 1928 University Avenue N.E., Minneapolis, Minnesota to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: April 26, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–10847 Filed 5–4–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 08/08–0148]

CI Capital Group, Inc.; Issuance of a Small Business Investment Company License

On November 9, 1993, a notice was published in the Federal Register (58 FR 59509) stating that an application had been filed by CI Capital Group, Inc., Salt Lake City, Utah, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business December 9, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08–0148 on April 15, 1994, CI Capital Group Group, Inc. to operate as a small business investment company.

The Licensee has initial private capital of $4.5 million, and Mr. Timothy Draper will manage the fund. Zions First National Bank owns approximately 89 percent of the stock of the Licensee; the remaining stock is owned by Utah Technology Equity Foundation.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 20, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–10846 Filed 5–4–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03-0195]

CIP Capital, L.P.

Notice is hereby given that CIP Capital, L.P. (CIP), 20 Valley Stream Parkway, suite 265, Malvern, PA 19355, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and § 107.903 Conflicts of interest of the SBA Rules and Regulations (the Regulations) governing Small Business Investment Companies (13 CFR 107.903 (1993)). An exemption may not be granted by SBA until Notices of this transaction have been published. CIP proposes to provide equity financing to Bio-Pharm Clinical Services, Inc. (Bio-Pharm), 512 Township Line Road, Blue Bell, Pennsylvania, 19422. The financing is one of the conditions precedent to the consummation of the planned merger of Bio-Pharm into Affinity Biotech, Inc. (Affinity), 34 Mt. Pleasant Drive, Aston, PA 19041. When the merger becomes effective Affinity's name will be changed to IBAH, Inc.

The financing is brought within the purview of § 107.903(b)(1) of the Regulations because Mr. Winston J. Churchill, a General Partner of CIP, is a director of Affinity and owns more than 10% of the total shares of Affinity. The proposed financing will provide expansion capital for IBAH.

Notice is further given that any person may, not later than 15 days from the date of the publication of the Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with § 107.903(e) of the Regulations, in a newspaper of general circulation in Philadelphia, PA.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 21, 1994.

Robert D. Stillman,

Associate Administrator for Investment

[FR Doc. 94–10845 Filed 5–4–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–038]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for the period from July 1, 1994 through June 30, 1995. The Coast Guard seeks comments on the application from interested groups. The Coast Guard will be publish a later notice in the **Federal Register** to notify the public of its decision regarding the recertification request.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–038), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between the hours of 8 a.m. to 3 p.m., Monday through Friday, except Federal holidays. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelops.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Marine Environmental Protection Division, (202) 267–0500.

SUPPLEMENTARY INFORMATION: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group (advisory group) in lieu of Regional Citizens' Advisory councils for Cook Inlet and Prince William Sound, Alaska. The Coast Guard published guidelines on December 31, 1992, to assist groups seeking recertification under the Act (57 FR 62600). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to certify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of PWSRCAC, the currently certified advisory group for the Prince William

Sound region. In accordance with the review and certification process contained in the policy statement, the Coast Guard now solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at the terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory groups under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: April 29, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–10854 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Allegan and Ottawa Counties, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for alternative alignments for a bypass of US–31 from Holland in Allegan County to Grand Haven in Ottawa County.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, Program Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, room 211, Lansing Michigan 48933, Telephone: (517) 377–1880 or Mr. Michael O'Malley, Environmental Coordinator, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone: (517) 373–2634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for alternative alignments for a bypass of US–31 from I–196 north of Holland in Allegan County to I–96 north of Grand Haven in Ottawa County. The proposed project is approximately 40 kilometers (25 miles) in length and is needed to alleviate the traffic congestion across the Grand River crossing in Grand Haven and to address operational deficiencies on US–31 in Ottawa County as a result of increased population and commercial development. It is also intended to improve service in this developing area in northern Allegan and Southern Ottawa Counties. Alternatives under consideration include: (1) Taking no action to improve this section of US–31 other than routine maintenance; (2) mass transit; (3) reconstruction of existing US–31 within the existing right-of-way; (4) controlled access boulevard on existing US–31. within the existing right-of-way; (4) controlled access boulevard on existing US–31 alignment; (5) construction of a second bridge for local access across the Grand River in Grand Haven; and (6) bypass alternative east of existing US–31. Scoping of this project began in 1990 and included: meetings with local jurisdictions and representatives from the Townships, cities, counties and the US–31 Advisory Committee. Letters and a scoping document describing the proposed action and soliciting comments will be sent to appropriate federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interests in this proposal. Although no agency scoping meeting is planned at this time, a pre-study meeting will be held in the near future to provide the public an opportunity to discuss the proposed action. A public hearing will also be held. Public notice will be given of the time and place of the hearing. The Draft Environmental Impact Statement (EIS) is scheduled for completion in September, 1996, and will be made available for public and agency review and comment prior to the public hearing. The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the Michigan Department of Natural Resources are requested to be cooperating agencies on this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 19, 1994.

A. George Ostensen,

Division Administrator, Lansing, Michigan.

[FR Doc. 94–10823 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Marion and Ralls Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Marion and Ralls Counties in Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, Missouri 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. 270, Jefferson City, Missouri 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to relocate U.S. Route 61 in Marion County. MHTD has determined that the relocation of U.S. Route 61 would accomplish several goals: (1) Provide a dual-lane bypass around the city of Hannibal, (2) improve safety and capacity for through-traffic on U.S. Route 61 and reduce local traffic congestion, and (3) promote economic development and planned growth in Marion and Ralls Counties.

1. The proposed highway project begins in the vicinity of the intersection of U.S. Route 24 and U.S. Route 61 and runs generally southeasterly for about 11 miles where it rejoins existing U.S. Route 61 just south of State Route M. The proposed facility would provide a four-lane, limited-access roadway with interchanges at major arterial crossroads.

2. Alternates under consideration include "build" alternatives and "no build" alternative.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal, State, and local agencies. Public hearings will be held. To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MHTD at the addresses provided above.

Issued on April 22, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94-10824 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-905]

Gulfcoast Transit Company; Notice of Application for Temporary Written Consent Pursuant to Section 506 of the Merchant Marine Act, 1936, as Amended, for the Transfer of the JANIS GUZZLE to the Domestic Coastwise Trade

Notice is hereby given that Gulfcoast Transit Company (Gulfcoast), a U.S. company, by letter of April 15, 1994, requested temporary written consent pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), for transfer of the construction-differential subsidy (CDS) built tug, M/V JANIS GUZZLE, to the domestic coastwise trade for not more than six months in the aggregate during the year 1994.

Gulfcoast is the owner and operator of the ARTUBAR integrated tug/barge combination JANIS GUZZLE/MARIE FLOOD. The M/V JANIS GUZZLE was constructed in 1979 pursuant to a CDS agreement, Contract MA/MSB-373, dated September 23, 1976. The barge MARIE FLOOD (Official Number 545015) was constructed in 1972 in Orange, Texas, as a coastwise qualified vessel. Gulfcoast placed the JANIS GUZZLE/MARIE FLOOD into service in 1990. Both vessels have Certificates of Documentation issued by the Coast Guard with coastwise endorsements.

In support of its request, Gulfcoast advises that it provides coastwise transportation for its affiliate company, Tampa Electric Company, under a long term contract for the movement of coal from the New Orleans, Louisiana area to Tampa, Florida. (The coal is utilized by Tampa Electric Company in its power generation facilities.) In addition, Gulfcoast's transportation service for its affiliate company is provided throughout the year, utilizing several coastwise qualified tugs, barges and tug/barge units owned by Gulfcoast.

Any person, firm, or corporation having any interest in the application for section 506 consent and desiring to submit comments concerning Gulfcoast's request must by 5 p.m. on May 18, 1994, file written comments in triplicate, to the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action as may be deemed appropriate.

Dated: April 29, 1994.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDSS))

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 94-10738 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. NCI 3257]

Motorcycle Helmets Manufactured by Frenchy's Worldwide Helmets; Public Proceeding Scheduled

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting.

SUMMARY: NHTSA will hold a public meeting on June 1, 1994 regarding an initial determination that certain motorcycle helmets manufactured by Frenchy's Worldwide Helmets fail to comply with Federal Motor Vehicle Safety Standard No. 218.

FOR FURTHER INFORMATION CONTACT: John Lee, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; 202-366-5299.

SUPPLEMENTARY INFORMATION: Pursuant to section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1412(a), NHTSA's Associate Administrator for Enforcement has made an initial determination that certain motorcycle helmets manufactured by Frenchy's Worldwide Helmets, (Frenchy's), do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets," 49 CFR 571.218. Compliance tests performed for NHTSA indicate that Frenchy's model "B-13" helmets do not meet the impact attenuation, penetration, and retention system requirements of FMVSS No. 218 and therefore would not provide adequate protection to users in the event of a crash. In addition, the "B-13" helmets fail to comply with the labelling requirements of the Standard.

A public proceeding will be held at 10 a.m., on June 1, 1994 in room 2230, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, at which time the manufacturer will be afforded an opportunity to present data, views, and arguments to establish that the helmets covered by this initial determination comply with FMVSS No. 218.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6111, 400 Seventh Street, SW., Washington, DC 20590, 202-366-2832, before the close of business on May 25, 1994. Written comments must be submitted to the same address on or before May 27, 1994.

The agency's investigative file in this matter is available for public inspection during working hours (9:30 a.m. to 4 p.m.) in its Technical Reference Library, room 5108, 400 Seventh Street SW., Washington, DC 20590.

Authority: 15 U.S.C. § 1412; delegation of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: April 28, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-10760 Filed 5-4-94; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93-79; Notice 2]

Fisher-Price, Inc.; Denial of Petition for Determination of Inconsequential Noncompliance

Fisher-Price, Inc. (Fisher-Price) of East Aurora, New York, determined that some of its child safety seats failed to comply with the flammability requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and filed an appropriate report pursuant to 49 CFR Part 573. Fisher-Price also petitioned to be exempted from the notification and remedy requirements of the National Traffic and

Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance was inconsequential as it related to motor vehicle safety.

Notice of receipt of the petition was published on November 9, 1993, and an opportunity afforded for comment (58 FR 59511). This notice denies the petition.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

During the period of January 1988 through the present, Fisher-Price produced approximately 3.3 million child restraint seats with shoulder belt webbing that might not comply with the flammability requirements of FMVSS No. 213.

The Fisher-Price webbing restraint system is manufactured in three phases. First, raw webbing is manufactured by AlliedSignal in Knoxville, Tennessee. Second, the raw webbing is sent to another AlliedSignal plant located in Mexico, which cuts the webbing to length and attaches the buckles. Finally, the webbing/buckle assemblies are sent to Jones and Vining, Inc., in Lewiston, Maine, which attaches them to the "T-Shield," a soft, molded polyurethane cushion. A foam molding process is used to attach the T-Shield to the webbing.

NHTSA took two samples of the harness webbing from a Fisher-Price child safety seat and had them tested by the Detroit Testing Laboratory. The two samples of webbing burned at rates of 4.4 and 4.7 inches per minute, thus failing the test specified in FMVSS No. 213. (NHTSA notes that there was an additional failure on retest of 4.9 inches. These tests formed the basis of agency investigation NCI 3270). When the agency informed Fisher-Price of the test failures, Fisher-Price conducted further tests on the webbing, both in its raw state and in its molded state. AlliedSignal conducted FMVSS No. 302 compliance tests for Fisher-Price on webbing which had gone through the molding process at Jones and Vining (hereinafter "molded webbing"). On April 12, 1993 and May 10, 1993, eleven samples which were tested either self-extinguished or had burn rates from 1.84 to 2.91 inches per minute, thus complying with the standard. On August 19, 1993, AlliedSignal tested seven raw webbing samples, all of which either did not ignite or self extinguished, resulting in a burn rate of zero, and twelve molded webbing samples, yielding burn rates of 2.0 to 5.8 inches per minute. (NHTSA notes a slight inaccuracy in the petition. Data supplied during the course of the investigation indicate that the lowest burn rate rounded to the nearest tenth was 3.0 inches, rather than 2.0).

Fisher-Price supported its petition for inconsequential noncompliance with the following rationale, as well as webbing test photographs, test data, a videotape of the tests, and the professional resumes of two fire experts which are available for review in the NHTSA docket. In addition, Fisher-Price met with NHTSA officials to reemphasize some of the points that it presented in its petition. A record of this meeting is contained in the NHTSA docket.

Fisher-Price commissioned two fire experts, James H. Shanley, Jr., P.E., a licensed fire protection engineer, and Patrick M. Kennedy, an experienced fire investigator, to conduct a study to assess the impact on motor vehicle safety of the noncompliance. The study consisted of conducting tests to compare the webbing with typical children's clothing, to compare the webbing with other interior elements of a typical motor vehicle, to search available literature and databases for instances where the webbing in a child safety seat contributed to a fire, and to determine whether the noncompliance would have an impact on an individual's ability to evacuate a burning motor vehicle.

Among the tests which compared the burn rates and ignition temperatures of typical children's clothing to that of the noncompliant webbing, the first test, American Society for Testing and Materials (ASTM) D1929, "Standard Test Method for Ignition Properties of Plastics," was to determine ignition temperatures. The ignition temperature of the molded webbing was 796° Fahrenheit (F), ignition temperature of a 100 percent cotton "T" shirt was 571°F, and ignition temperature of 50 percent cotton/50 percent polyester sweatpants was 676°F. The study concluded that the molded webbing is "manifestly more resistant to ignition than typical children's clothing."

The second test, 16 CFR 1610 or ASTM D1230, "Standard Test Method for the Flammability of Apparel Textiles," was to determine the relative flammability of each of the three above-mentioned materials. This test determines the time it takes the sample to burn a distance of five inches while suspended at a 45° angle. In this test, the molded webbing took 13.51 times longer to burn than is allowed by the standard. Further, the "T" shirt and the sweatpants burned at rates that were three and 2.2 times faster, respectively, than the molded webbing.

The third test, ASTM 3659, "Standard Test Method for Flammability of Apparel Fabrics by Semi-Restraint Method," measures the burn rates in a vertical configuration. The average vertical burn rates of the materials were as follows: molded webbing—6.36 inches per minute; sweatpants—19.79 inches per minute; and "T" shirt—30.41 inches per minute. From these results, the study concluded that the molded webbing is significantly less flammable than typical children's clothing.

Finally, a series of tests were conducted to determine the relative ease or difficulty of igniting each of the three materials using ignition sources most typically expected to be found in a motor vehicle: A lit cigarette; a paper match and a butane lighter. None of the materials ignited using a smoldering cigarette placed on top of the horizontally suspended material sample. The "T" shirt ignited in one-fifth the time (3 seconds), and the sweatpants ignited in slightly less than one-fourth the time (4 seconds) it took the molded webbing to ignite (15 seconds) using a paper match flame. The "T" shirt ignited in slightly less than one-sixth the time (2.5 seconds), and the sweatpants ignited in nearly one-fifth the time (3 seconds) it took to ignite the molded webbing (14.4 seconds) using a butane lighter flame.

Messrs. Kennedy and Shanley concluded that, based on these tests and on their expertise in this area, when compared to the relative ease of ignition of typical children's clothing, the molded webbing material presents no risk to the safety of the occupant of the Fisher-Price car seat.

Messrs. Shanley and Kennedy also examined how the webbing would contribute to a vehicle fire in comparison with the other interior elements of a typical motor vehicle. They found that the molded webbing contained in the Fisher-Price child safety seats comprises 0.019 percent of the combustible material in the interior of the average motor vehicle; it weighs approximately 0.06 pound and the total combustible material in the average motor vehicle weighs 337 pounds. From this, they concluded that the molded webbing comprises an inconsequential percentage of material when compared to the total amount of combustible material contained in a typical motor vehicle's interior. Mr. Shanley concluded that "the removal of this material would have no effect on any interior motor vehicle fire and, conversely, that its presence in the vehicle would not, to any degree, increase the risk, of an interior vehicle fire.”

Messrs. Shanley and Kennedy also searched all available databases and source materials for information relating to the involvement of child car seats in interior motor vehicle fires. Their research focused on the possibility of an interior motor vehicle fire originating in a child car seat, especially where it appeared that the shoulder belt webbing may have been the original fuel source. Their search did not reveal any instances where an interior motor vehicle fire originated in a child car seat or where a car seat contributed in any way to an interior motor vehicle fire.

With regard to the occupants of a motor vehicle having sufficient time to evacuate the vehicle in the event it caught fire, Mr. Shanley stated that:

> It is a basic principle of fire protection that the ability of a person to evacuate and survive a fire is strictly dependent upon two conditions:
>
> (1) The severity or magnitude of the fire, and
>
> (2) The time of exposure to the fire. In a motor vehicle fire situation, the threat to life is the inhalation of smoke and hot gases (asphyxiation) and exposure to the heat of the fire (burns). The design of most motor vehicles ensures that unimpaired occupants can evacuate quickly. Therefore, the goal of fire protection efforts must focus on reducing the severity of the fire. The severity of a fire is determined by its physical size, the quantity of available fuel, the total quantity of heat released, and the rate at which that heat is released. A complete assessment of the fire threat must include an assessment of all of these factors.
>
> Limiting the flame spread rate of a motor vehicle's combustible interior materials, as measured and specified by FMVSS 302, does not suffice for a complete fire hazard assessment. The 0.06 lbs (sic) (30.2 grams) of webbing material used in Fisher-Price car seats is an insufficient quantity of material to produce a potentially lethal fire threat to the occupants of a motor vehicle. *Therefore, the time available for an occupant to safely evacuate and survive a motor vehicle fire is not influenced to any degree by a material, such as the molded webbing, which comprises a mere 0.019% of the total combustible material in a motor vehicle's interior* (emphasis original).

Fisher-Price argued that:

> A remedial action campaign would not further the purposes of the Traffic and Vehicle Safety Act (the “Act”), 15 U.S.C. 1391 et seq. (1982), in promoting the marketing of safe motor vehicles and their accessories, such as child car seats. The dominant theme of the regulations propounded in furtherance of the Act is that accessories such as car seats be safe; indeed, the stated basis in the Act for the granting of an exemption from the remedial action requirements of the Act is that the noncompliance would have only an inconsequential impact on the safety of motor vehicles. 15 U.S.C. 1417; 49 CFR 556.1, 556.2.
>
> Child safety advocates, automobile safety advocates and the NHTSA all acknowledge the negative impact of a remedial action campaign based on a technical noncompliance with a particular regulation that does not, as a practical matter, have any effect on the safety of the occupants of a motor vehicle. The NHTSA itself has reported that many child car seat owners ignore car seat recalls that they do not view as posing a serious problem or threat. See Transcript, “The 1993 Child Passenger Safety Symposium Public Comment Session On Child Safety Seat Recalls,” March 14, 1993.

Fisher-Price also argued that a negative consequence of a remedial action campaign resulting from what it feels is a technical noncompliance, would be a general lack of confidence in child car seats. It feels that there is a danger that parents of young children might discontinue the use of child car seats out of concern that child car seats are not safe, in spite of the fact that all states currently have laws on their books mandating the use of such seats for specified child groups.

Fisher-Price concluded that:

> The tests performed by Messrs. Kennedy and Shanley clearly demonstrate that a noncompliance with the requirements of FMVSS 302 as it applies to the molded webbing used in the Fisher-Price car seats is inconsequential as it relates to motor vehicle safety. The empirical data gathered from these tests establish that, to the extent a child occupant of a car seat faces a risk of injury from fire, that risk arises as a result of the clothing the child wears, not from the flammability of the molded webbing material. In addition, the webbing constitutes only an inconsequential percentage (0.019%) of the total combustible material located in the interior of the average motor vehicle and therefore has no impact on the fire safety of a motor vehicle or on the ability of an individual to safely evacuate a burning motor vehicle. Of equal import, research has revealed no reported instance in which the shoulder belt webbing of a child car seat has been the material first ignited in a motor vehicle fire or in which a single child was burned as a result of a fire originating in the shoulder belt webbing of a child car seat.

No comments were received on the petition.

NHTSA has given careful consideration to the petitioner's arguments. There is no disagreement that a noncompliance has occurred. Molded webbing as used in completed child restraint systems has burned at a rate that significantly exceeds the maximum limit imposed by the standard. The average burn rate in the two initial tests and one retest conducted by NHTSA is 4.67 inches. In the twelve tests on molded webbing conducted by AlliedSignal, there were only four tests in which the burn rate was less than 4 inches. The average burn rate for the eight failing tests was 4.71 inches (and for all twelve tests, 4.21 inches).

NHTSA believes that flammability requirements for child restraints should be stringently adhered to for the following reasons. The test requirement of not more than 4 inches a minute is justified by the need “to prevent injury to occupants from rapidly spreading interior fires, to allow sufficient time for the driver to stop the vehicle, and, if necessary, for occupants to leave it before injury occurs” (36 FR 10817). This is even more critical in the case of child restraints as a typical small child is not capable of exiting a vehicle without help. Therefore, some additional time is required for another person to remove the child. Moreover, the child most often is in the rear seat and the adult is in front, adding to the time factor. Finally, because the webbing rests against the child's body, noncompliant webbing has great potential for injuring the child if ignited.

In issuing FMVSS No. 302 in 1971 (36 FR 289), the agency cited matches, cigarettes or short circuits in interior wiring as examples of sources for fires occurring in the interior of vehicles. The agency believes that there are situations where the straps could become ignited. One example is children in the back seat of a car, playing with matches, a cigarette lighter, or other ignition source near a child restrained in a Fisher-Price seat.

In point of fact, had the tests been conducted under real life circumstances, the results could have been worse. Webbing samples are tested horizontally, but webbing is worn vertically. If a fire begins at the bottom of webbing, it will travel upward at a faster rate than it would in a horizontal placement.

The petitioner attaches importance to its arguments that there is a higher risk of injury to a child through ignition of its clothing rather than from the webbing material, that the webbing constitutes only a very small percentage of the total combustible material located in the interior compartment, and that there is no reported instance in which injuries are attributable to ignition of shoulder belt webbing.

NHTSA does not consider these arguments well taken. In any motor vehicle fire, whether or not involving children, there is likely to be higher risk to an occupant from ignition of clothing than from ignition of interior components. That is because Standard No. 302 (and Standard No. 213) does not set fire retardant standards for clothing. The aim of NHTSA's standards is to reduce the likelihood of ignition of interior components, or to limit their burn rate if they ignite, and this is to be accomplished within the parameters of NHTSA's jurisdiction over motor vehicles and motor vehicle equipment. With respect to child restraints, it is important to inhibit or delay combustion so that, as NHTSA has noted above, the driver can pull to the side of the road, stop, exit the vehicle, and remove the child from it. Although the chance of ignition of shoulder webbing may not be as great as other components of child seating systems that present a broader fabric face for flame to travel across, all components must comply with the standard, and it is not impracticable for manufacturers to assure that they do so.

The statement that consumers ignore recalls because of their number and frequency is unsubstantiated. Further, NHTSA views it equally unlikely that, because of campaigns, consumers would conclude that child restraints are unsafe and decline to use them. Indeed, the opposite is more likely the case. Responses to safety notifications depends on factors including the type of noncompliance or defect, the type and extent of the notification campaign, media coverage, and the efforts of manufacturers.

Future campaigns are more likely to be effective than past ones. FMVSS No. 213 has been amended to provide for the registration of child restraints. The purpose of the program is to increase the effectiveness of campaigns to recall child seats. It requires manufacturers to take steps that will increase their ability to inform owners of particular child restrains about problems in these restraints and by encouraging owners to register their child seats.

For the foregoing reasons, the petitioner has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 22, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–10860 Filed 5–2–94; 2:46 pm]

BILLING CODE 4910-59-P

[Docket No. 94–08; Notice 2]

Determination That Nonconforming 1989 Peugeot 405 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1989 Peugeot 405 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1989 Peugeot 405 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into the sale in United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1989 Peugeot 405), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1989 Peugeot 405 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on January 27, 1994 (59 FR 3920) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 65 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Peugeot 405 not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Peugeot 405 originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 29, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–10761 Filed 5–4–94; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 94–32; Notice 1]

Receipt of Petition for Determination That Nonconforming 1992 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1992 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1992 Mercedes-Benz 190E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is June 6, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer No. R–90–006) has petitioned NHTSA to determine whether 1992 Mercedes-Benz 190E (Model ID 201.029) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1992 Mercedes-Benz 190E that Daimler Benz AG manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it has carefully compared the non-U.S.-certified 1992 Mercedes-Benz 190E to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to most applicable Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S.-certified 1992 Mercedes-Benz 190E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S.-certified 1992 Mercedes-Benz 190E is identical to its U.S.-certified counterpart with respect to compliance with Standards Nos. 102 Transmission Shift Level Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displaying: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger side rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 206 Door Locks and Door Retention Components: Replacement of rear door locks and retention components with U.S.-model parts.

Standard No. 208 Occupant Crash Protection: (a) Installation of an ignition switch-actuated seat belt warning buzzer; (b) installation of a factory-supplied knee bolster to augment the vehicle's airbag-based automatic restraint system. The petitioner claims that the airbag supplied on the vehicle is identical to that found on its U.S.-certified counterpart.

Standard No. 214 Side Impact Protection: Installation of reinforcing beams in doors.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1992 Mercedes-Benz 190E must be reinforced to comply with the Bumper Standard found at 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and to submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 29, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–10762 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–33; Notice 1]

Receipt of Petition for Determination That Nonconforming 1988 Volkswagen Golf Rallye Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 Volkswagen Golf Rallye passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1988 Volkswagen Golf Rallye that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is June 6, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1988 Volkswagen Golf Rallye passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1988 Volkswagen Golf GTI. G&K has submitted information indicating that Volkswagenwerke A.G., the company that manufactured the 1988 Volkswagen Golf GTI, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner claims that it carefully compared the 1988 Volkswagen Golf Rallye to the 1988 Volkswagen Golf GTI, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1988 Volkswagen Golf Rallye, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1988 Volkswagen Golf GTI, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1988 Volkswagen Golf Rallye is identical to the certified 1988 Volkswagen Golf GTI with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 111 Rearview Mirror: replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 Theft Protection: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 Occupant Crash Protection: (a) installation of a seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S.-model belts equipped with retractors.

Standard No. 214 Side Door Strength: installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1988 Volkswagen Golf Rallye must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(iii); 49 CFR 593.8: delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 29, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–10763 Filed 5–4–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–34; Notice 1]

Receipt of Petition for Determination That Nonconforming 1971 Rolls Royce Corniche Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1971 Rolls Royce Corniche passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1971 Rolls Royce Corniche that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is June 6, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202)–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under Section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) has petitioned NHTSA to determine whether 1971 Rolls Royce Corniche passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1971 Rolls Royce Corniche that was manufactured for importation into and sale in the United States and certified by its manufacturer, Rolls Royce Motors, Inc., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 1971 Rolls Royce Corniche to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1971 Rolls Royce Corniche, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1971 Rolls Royce Corniche is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 208 Occupant Crash Protection, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Additionally, the petitioner states that the 1971 Rolls Royce Corniche complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the 1971 Rolls Royce Corniche is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-Model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 114 Theft Protection: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: installation of a relay in the power window circuit so that the window transport is inoperative when the ignition is switched off.

Standard No. 301 Fuel System Integrity: installation of a check valve and factory-supplied gas cap to prevent any fuel loss in the event of a 30 mph front or rear impact.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before after that date. To the extent possible, comments filed after the closing date will be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 29, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–10764 Filed 5–4–94; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 60 (Rev. 7)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: Authority to settle cases docketed in the Tax Court.

EFFECTIVE DATE: May 5, 1994.

FOR FURTHER INFORMATION CONTACT: Rebecca Harrigal, CC:DOM:FS:FI&P, room 4043, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–7870 (not a toll-free call).

With respect to cases docketed in the United States Tax Court, the authority vested in the Commissioner of Internal Revenue by 26 CFR 301.6020–1, 26 CFR 301.6201–1, 26 CFR 301.7701–9, and Treasury Department Order No. 150–10 is hereby delegated and pursuant to the authority vested in Chief Counsel for the Internal Revenue Service by General Counsel Legal Division Order No. 4 it is hereby delegated:

1. Chief Counsel's delegate (hereinafter Counsel) will have exclusive jurisdiction over any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials; if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans and Exempt Organizations function; if the notice of deficiency, liability or final adverse determination letter was issued by a district director and is based upon a National Office ruling or National Office Technical Advice in that case involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involved such issue); or, except as provided in paragraph 3, if the case was docketed under Internal Revenue Code sections 6110, 7477, or 7478. Jurisdiction will vest with Counsel at the time such cases are docketed with the Court.

2. Appeals will have exclusive jurisdiction to settle in whole or part, (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases) cases docketed in the Tax Court, except cases described in paragraph 1 of the Delegation Order. If Appeals concludes that the case is not susceptible of settlement, Counsel will have jurisdiction over the case.

3. The Associate Chief Counsel (Domestic) will have settlement jurisdiction over cases in his/her jurisdiction for any case docketed in the Tax Court under Internal Revenue Code section 7478. The Associate Chief Counsel (Domestic) and the Associate Chief Counsel (International) will have settlement jurisdiction over cases in his/her jurisdiction for any case docketed in the Tax Court under Code section 6110.

4. The authority of Chief Counsel's delegate to redelegate is contained in Chief Counsel's Order No. 1030.1B, issued July 2, 1978.

5. To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified.

6. Delegation Order No. 60 (Rev. 6), effective May 12, 1986, is superseded.

Dated: April 11, 1994.

David L. Jordan,

Acting Chief Counsel.

Dated: April 16, 1994.

Michael P. Dolan,

Deputy Commissioner.

[FR Doc. 94–10863 Filed 5–4–94; 8:45 am]

BILLING CODE 4830-01-U

Sunshine Act Meetings

Federal Register

Vol. 59, No. 86

Thursday, May 5, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 22216, April 26, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern time), Tuesday, May 10, 1994.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 3, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–10999 Filed 5–3–94; 3:04 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–10460.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 5, 1994, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Congressman Thomas' Request.

DATE AND TIME: Tuesday, May 10, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, May 11, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Status of Regulations Projects
Future Meetings
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued from meeting of April 18, 1994)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–1099 Filed 5–3–94; 8:45 am]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 22046, April 28, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:30 a.m., Monday, May 2, 1994.

CHANGES IN THE MEETING:

(1) One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Proposals regarding a uniform code of conduct and financial disclosure forms for Federal Reserve Bank personnel. (This item was originally announced for a closed meeting on April 27, 1994.)

(2) Addition of the following closed item to the meeting (that commenced at 11:30 a.m.): Proposed personnel policy.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 2, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10899 Filed 5–2–94; 4:51 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m.—May 16, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping and agency liaison.
2. Benefits administration.
3. Investments.
4. Participant communications.
5. Approval of the minutes of the last meeting.
6. Thrift Savings Plan activities report by the Executive Director.
7. Annual financial audit presentation.
8. Approval of the update of the FY 1994—FY 1995 budgets.
9. Investment policy review.
10. Review of additional Thrift Savings Plan funds.
11. Status of audit recommendations.

CONTACT PERSONS FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 2, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–10967 Filed 5–3–94; 3:01 pm]

BILLING CODE 6760–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 21801 April 26, 1994].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: April 26, 1994.

CHANGE IN THE MEETING: Deletion.

The following item was not considered at a closed meeting scheduled for Tuesday, April 26, 1994, at 3:00 p.m.

Settlement of injunctive action.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane (202) 272–2300.

Dated: April 29, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10964 Filed 5–3–94; 3:00 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 2, 1994.

A closed meeting will be held on Friday, May 6, 1994, at 11:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, May 6, 1994 at 11:00 p.m. will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum (202) 272–2300.

Dated: April 29, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10965 Filed 5–3–94; 3:00 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 9, 1994.

An open meeting will be held on Monday, May 9, 1994, at 10 a.m. A closed meeting will be held following the open meeting on Monday, May 9, 1994.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, May 9, 1994, at 10:00 a.m. will be:

Consideration will be given to whether to propose for public comment rule 17f–6 under the Investment Company Act of 1940. Rule 17f–6 would permit registered management investment companies to use futures commission merchants and commodity clearing organizations as custodians in connection with commodity transactions regulated under the Commodity Exchange Act. For further information please contact Elizabeth Krentzman at (202) 942–0687.

The subject matter of the closed meeting scheduled for Monday, May 9, 1994 following the open meeting will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Formal order of investigation.

At times, changes in Commission priorities require alternation in the scheduling of meeting items for further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: John Walsh (202) 272–2000.

Dated: April 29, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10966 Filed 5–3–94; 3:00 pm]

BILLING CODE 8010–01–M

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 11 a.m. Monday, May 9, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, financial and internal personnel issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: May 2, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 94–10941 Filed 5–3–94; 2:59 pm]

BILLING CODE 8720–01–M

federal register

Thursday
May 5, 1994

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Approval and Promulgation of State and Federal Implementation Plans; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL–4848–4]

Approval and Promulgation of State and Federal Implementation Plans; California—Sacramento and Ventura Ozone; South Coast Ozone and Carbon Monoxide; Sacramento Ozone Area Reclassification

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or "the Act"), EPA today proposes federal implementation plans (FIPs) to attain, by the applicable statutory deadlines, the national ambient air quality standards (NAAQS) for ozone in the Sacramento and Ventura nonattainment areas, and to attain the NAAQS for ozone and carbon monoxide in the South Coast nonattainment area. EPA's final FIPs must be signed by the EPA Administrator no later than February 1995. EPA requests comment on these proposed FIPs.

EPA expects the California Low Emitting Vehicle (LEV) program will substantially reduce emissions from cars and light trucks, compared to the federal standard. In addition, for motor vehicles, EPA requests comment on an enhanced in-use compliance program to provide extra emissions.

The FIP proposes a federal enhanced motor vehicle inspection and maintenance (I/M) program. If California adopts an approvable enhanced I/M program, EPA will either withdraw or refrain from promulgating this federal program.

The FIP proposes stringent emission standards for heavy-duty vehicles and provisions to limit usage of older and dirtier heavy-duty trucks within the State and the FIP areas.

The FIP describes federal rulemakings in progress for both light and heavy-duty categories of nonroad engines, and proposes additional measures in the FIP areas.

The proposed FIP includes innovative control programs to reduce emissions associated with airports and, particularly within the South Coast, emissions from locomotives, ships, and ports.

EPA proposes rules, specific to each area, for industrial and commercial sources, and proposes to implement on a statewide basis federal rules for architectural coatings, consumer products, aerosol spray paints, and pesticides. EPA also proposes an "emissions cap" program, which allows sources the flexibility to develop their own compliance approach in order to achieve the needed annual emissions reductions.

Finally, EPA proposes to approve in part and disapprove in part the proposed South Coast CO State Implementation Plan (SIP) revision designed to address CO requirements of the 1990 Amendments to the Act.

DATES: Written comments on the proposal will be accepted throughout the public comment process. EPA expects to hold public hearings in early July 1994, and expects that the deadline for written comments will be approximately 30 days after the public hearings. EPA will give notice in the **Federal Register** of the public hearings and public comment deadline as soon as possible, but at least 30 days prior to the hearing dates.

ADDRESSES: Written comments on the proposed FIP and SIP promulgations must be received by EPA at the address below on or before the close of the public comment period. Comments should be submitted (in duplicate, if possible) to: EPA Air Docket Section, Attn: Docket No. A–94–09, Environmental Protection Agency (Mail Code—6102), Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (phone 202–260–7549).

Docket No. A–94–09, containing material relevant to this NPRM, is located at the above address. The docket is available for public inspection between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m. EPA may charge a reasonable fee for copying.

A copy of the docket is also available for review at: Regional Administrator, Attention: Office of Federal Planning (A–1–2), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Interested persons may make an appointment with Ms. Virginia Petersen at (415) 744–1265, to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Copies of this NPRM, the technical support document, and the regulatory impact analysis, are also available for review at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California
Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, California
Sacramento Area Council of Governments, 3000 S Street, Suite 300, Sacramento, California
El Dorado County Air Pollution Control District, 2850 Fair Lane Court, Bldg. C, Placerville, California
Feather River Air Quality Management District, 463 Palora Avenue, Yuba City, California
Placer County Air Pollution Control District, 11464 B Avenue, Auburn, California
Yolo-Solano County Air Pollution Control District, 1947 Galileo Court, Suite 103, Davis, California
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California
South Coast Air Quality Management District, Colton Office, 851 S. Mt. Vernon Avenue, Colton, California
Southern California Association of Governments, 818 W. 7th Street, Los Angeles, California
Southern California Association of Governments, Inland Empire Office, 3600 Lime Street, Riverside, California
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, California

Electronic Availability

This document is available May 5, 1994 as an electronic file on EPA's Technology Transfer Network (TTN). For 1200 bps or 2400 bps modems, use 919–541–5742; for 9600 bps use 919–541–1447. The FIP NPRM will be under the Clean Air Act Amendments (CAAA) board, in a section for "Recently Signed Rules." Users should check the initial CAAA announcement screen for updates on file availability. Because of its size, the FIP NPRM will be divided into several pieces, and stored in the compressed "ZIP" archive format. The file names will begin with "FIP." If you need help in accessing the system, call the systems operator by phone at (919) 541–5384 in Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT: For stationary and area source issues and general information on the FIPs, call EPA's FIP Hotline (415) 744–1151 or Julia Barrow (415) 744–2434, at the Office of Federal Planning (A–1–2), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901.

For mobile source issues, call EPA's FIP Hotline (313) 668–4361 or Jane Armstrong (313) 668–4471, at the Office of Mobile Sources, Motor Vehicle and Fuels Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

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Proposed Revisions to CFR

40 CFR 52 Subpart GGG

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40 CFR 52.2970—Civil Aircraft Operations
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Appendix to 40 CFR 52 Subpart GGG

40 CFR 81 Subpart C

40 CFR 81.305—Reclassification of Sacramento Ozone Nonattainment Area

I. Executive Summary

A. Introduction

EPA issues this Notice of Proposed Rulemaking under court orders to propose by February 1994, and promulgate by February 1995, federal implementation plans (FIPs) to attain the ozone National Ambient Air Quality Standard (NAAQS) in the Sacramento and Ventura areas,[1] and to attain both the ozone and carbon monoxide (CO) NAAQS in the South Coast area. These obligations arise from provisions of the Clean Air Act Amendments (CAAA) of 1977 and 1990, from successful citizen suits to compel disapproval of 1982 attainment plans for the three areas, and from district court orders requiring EPA to prepare federal plans demonstrating attainment of the NAAQS.[2]

Specifically, these proposals are the result of the historical inability of each of the three areas to develop adequate state implementation plans (SIPs) under the Clean Air Act of 1977. Because of these failures, EPA was required by law to produce federal plans. The courts have interpreted that this federal responsibility was continued by the U.S. Congress even as it substantially amended the Clean Air Act Amendments of 1990.

Although EPA is issuing this NPRM today because we are legally required to do so, EPA intends to use this opportunity to assist renewed state and local efforts to achieve clean, healthy air for the citizens of California. Therefore, the agency has tried to keep one central principle in mind as we fashioned our approach: EPA wants to do this in conjunction with the ongoing efforts of the local communities, not simply impose federal plans upon them. EPA believes that if these combined efforts are to be successful, the FIP process must both develop appropriate emissions reduction strategies, and support the local-state-federal-public cooperation necessary to attain clean air. These proposals therefore contain not only the specific control strategies necessary to demonstrate attainment in each of the three areas, but also plans to coordinate, to the extent feasible, an expanded public participation process with that of each local air board. This coordination is especially important because each local air board is currently developing its own SIP under the Clean Air Act Amendments of 1990. These SIPs must be adopted and submitted to EPA by November 15, 1994. If they can be approved by EPA, then these local plans can replace proposed federal controls. In light of these ongoing efforts, EPA strongly believes that a coordinated, inclusive process is the best way to address the regulatory, social and economic changes which will be required to achieve clean air.

Looked at collectively, the plans proposed here will directly affect more than 15 million people—almost half of California's population—and virtually all businesses in the South Coast, Sacramento, and Ventura areas. In each FIP area the proposed stationary controls will require emission reductions from small commercial sources such as bakeries and print shops to large industrial sources such as petroleum refineries and large manufacturing operations. Most commercial and industrial activities will be affected. Proposed area source controls may result in cost increases and reformulation of products as diverse as hair spray, deodorant, pesticides and house paint. Mobile source emission reduction requirements for autos, trucks, planes, trains, boats, ships, and off-road equipment may result in higher costs to some and significant changes in the mode of transportation for others.

These reductions are made even more difficult—and costly—because they must come on top of years of significant efforts and reductions. For example, the South Coast area has managed a reduction in peak ozone levels of nearly 75% since its worst days of the mid-1950's. Yet it remains the center of the worst air pollution in the country. Sacramento and Ventura, though not facing the same extreme levels of air pollution as the South Coast, have also made significant strides in reducing ozone levels; but they, too, remain close to the bottom of any urban area ranking of air quality levels.

Taken together, the cost associated with the proposed pollution control strategies necessary to reach attainment in these three areas ranges from $4 billion to $6 billion per year over the next 16 years. While these are not new, additional costs (they were included in the analysis done prior to the passage of the CAAA of 1990), clearly part of developing these plans is coming to terms with the fact—regardless of which governmental body assumes responsibility for the effort—that most of the emission reductions that were easy or inexpensive were achieved in these areas some time ago.

The obvious questions at this point are, "What are the benefits of clean air for these areas? Is it really worth the cost?" Ultimately, the second question will be answered by the citizens, and future citizens, who live in these communities. In order to make this judgement, citizens will need to know the answer to the first question. While we have a firm understanding of the many health, economic, and aesthetic benefits of clean air, quantifying these benefits has proved difficult.

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[1] EPA is not currently under a district court schedule order for the Ventura FIP. EPA and the plaintiffs have, however, recently negotiated an agreement providing for a proposal and promulgation schedule consistent with those for the South Coast and Sacramento. The settlement agreement will be filed shortly with the court.

[2] In the case of Sacramento, the lawsuit was filed by the Environmental Council of Sacramento and the Sierra Club; see *ECOS* v. *EPA*, No. CIVS 87–0420, slip op. (E.D. Cal. Dec. 2, 1991). The plaintiff in Ventura is Citizens to Preserve the Ojai; see *CPO* v. *EPA*, No. CV 88 00982 HLH. For the South Coast, disapproval of the 1982 attainment plan followed litigation by a private citizen, Mark Abramowitz; see *Abramowitz* v. *EPA*, 832 F.2d 1071 (9th Cir. 1987). The South Coast FIP order resulted from a lawsuit brought by the Coalition for Clean Air and the Sierra Club, Inc.; see *Coalition for Clean Air* v. *EPA* (reported as *Coalition for Clean Air* v. *Southern Cal. Edison*), 971 F.2d 219 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 1361 (1993).

What we do know is that the reactivity of ozone causes health problems because it damages lung tissue and sensitizes the lungs to other irritants. Scientific evidence indicates that ambient levels of ozone not only affect people with impaired respiratory systems, such as asthmatics, but healthy adults and children as well. Regular exposure to ozone for 6–7 hours at concentrations *below* the levels in the South Coast, Ventura or Sacramento has been found to significantly reduce lung function in normal, healthy people during periods of moderate exercise. Animal studies have demonstrated that repeated exposure to ozone for months or years can produce permanent structural damage in the lungs and accelerate the rate of lung function loss and aging of the lungs. It is also well accepted that ozone can cause significant crop yield losses, extensive damage to forests, and deterioration of buildings as well.

We also know that exposure to elevated carbon monoxide levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

What we don't know enough about yet is how to assign a direct monetary value to protection from these air pollutants. Benefits such as reduced health care costs, increased employee attendance and productivity, increased crop yields, reduced materials damage, and a healthier ecosystem clearly have value. The quality of life values associated with more than 15 million people finally being able to breathe air free of unhealthful levels of smog and carbon monoxide must be added to the total as well. On balance, these values—when compared against the costs—were strong enough to compel the U. S. Congress to mandate that all Americans be provided with this public health protection. That is what the Clean Air Act is all about. Ultimately, these federal implementation plans, and the state and local efforts which will coincide with them, are about finally bringing that protection to the citizens of California.

B. EPA's Goals

As the above discussion suggests, we seek to meet several goals as we engage in the development and promulgation of FIPs for these California areas. These goals compel EPA to go beyond normal boundaries of rule development and implementation. EPA views both the SIP and FIP processes as an opportunity to make real progress towards clean air on a variety of fronts. To do that, these FIPs must include more than rules which reduce emissions; they must also involve a concerted effort to make the process of bringing clean air to California work better. This effort will require even better cooperation and coordination among local, state and federal air pollution control agencies, better coordination with the other governmental agencies which must contribute to the solutions, and more public involvement and education. Success demands that everyone work together on creative and innovative solutions to the difficult air pollution problems these areas still face.

1. Provide for the Emissions Reductions Needed To Meet EPA's Obligations

First and foremost, EPA's goal is to meet its obligations under the Clean Air Act and under court orders, to promulgate plans in Sacramento, Ventura, and the South Coast which provide for attainment of the health-based ozone and carbon monoxide standards. Due to historical failures of these three nonattainment areas to develop adequate plans themselves, the courts have determined that the Clean Air Act, as amended in 1990, requires EPA to provide plans now. Although EPA disagreed with the retention of the FIP obligations in the wake of the 1990 amendments, EPA takes its obligations, and their ultimate objective of clean air very seriously.[3] In EPA's view, any efforts to fulfill other goals stated below must complement this ultimate objective of clean air.

2. Develop the FIPs in a Manner Which Encourages and Assists the Implementation of Air Quality Measures by State and Local Agencies

It is most appropriate for state and local agencies to play the lead roles in addressing their own air pollution problems. In fact, that is how Congress, through the Clean Air Act, intended it to work. Traditionally, this approach has placed EPA in the roles of technical advisor, grant officer, and, as a last resort when local or state responsibilities are not met, as a backstop. But the air quality problems faced by these California areas are tremendous, and despite their efforts the state and local governments have been as yet unable to provide a plan for attaining the health standards. It has therefore become necessary, both legally and practically, for EPA to play the backstop role at this time.

As EPA pursues this role, we believe that we must do so in a manner which both encourages and supports the efforts of the state and local governments to meet their continuing air quality related responsibilities, especially regarding the development of the November 15 SIP submittal. In short, this means moving beyond the mere fulfillment of our legal responsibilities toward the establishment of a full working partnership among all parties.

Obviously, the first real test of this new partnership begins now. As has been previously discussed, these FIPs are being proposed at the same time as state and local agencies are preparing to meet many of the Act's most important requirements, including their own plans to address the very same obligation as these FIPs: attainment of the ozone NAAQS.[4] EPA is concerned that issuance of comprehensive regulatory FIPs within the FIP time frame has the potential to disrupt the SIP planning process. State and local agencies will be in the process of designing air quality measures for legislative or board consideration at the same time the federal government is proposing to promulgate measures to cover the very same emission sources. At the very least, these parallel planning processes are likely to create confusion for the public and the regulated community. EPA's goal is to develop the FIPs in a manner that supports effective air quality planning by the responsible state and local agencies.

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[3] EPA has previously published advance notices of proposed rulemakings (ANPRs) and/or notices of proposed rulemaking (NPRs) for FIPs in the three areas. For Sacramento, ANPRs were published on April 5, 1990 (55 FR 12669) and May 27, 1992 (57 FR 22194). For the South Coast, EPA published an ANPR on December 7, 1988 (53 FR 49494) and an NPR on September 5, 1990 (55 FR 36458). EPA published an NPR for Ventura on January 17, 1991 (56 FR 1754). While the approach of these FIPs is quite different, the reader should consult these notices for an account of the litigation, settlement agreements, modifications to the agreements, regulatory history, and EPA's then-current interpretations of its obligations. For an account of EPA's views on timing and circumstances of these FIP obligations, see especially the executive summary of the South Coast NPR. See also Coalition for Clean Air, 971 F.2d 219 (9th Cir. 1992).

[4] For carbon monoxide, the South Coast is revising its CO SIP which was submitted to EPA in 1992. The South Coast is currently scheduled to submit this revised SIP to EPA in November 1994

3. Minimize Federal Intrusion Into State and Local Affairs

EPA will meet its obligations to prepare federal plans for clean air in these three areas of California, and EPA must, and will if necessary, implement the measures it promulgates. However, EPA firmly believes that clean air is more likely to be achieved faster, and in greater harmony with local economic and community goals, if its own role is minimized by effective state and local actions.

EPA's current challenge to minimize federal intrusion is through the proposal and promulgation of these federal plans—plans which EPA hopes to see replaced by state and local regulations. Consequently, EPA will withdraw or rescind any federal measure it proposes or promulgates as soon as it can approve acceptable SIP measures submitted by the state which provide for commensurate emissions reductions. In fact, EPA hopes these FIPs will become obsolete as a regulatory matter. The remaining value of these FIPs would then be the partnerships and solutions which both minimize federal intrusion and enable the state and local agencies to achieve the clean air goals as the law envisions.

To put this another way, while EPA's goal is to minimize federal intrusion into state and local decision making and implementation authority, only prompt action by California officials—within the timetables of the CAAA and the court ordered deadlines—can significantly diminish the FIPs' impact on the state. EPA intends to assist the state and local agencies in their efforts to adopt and submit ozone SIPs with the requisite emissions reductions and ozone attainment demonstrations. As pointed out earlier in this discussion, successful state and local action will allow EPA to withdraw the regulatory pieces of the federal plan or reduce the scope and stringency of its imposed or impending measures.

4. Minimize Adverse Socio-Economic Impacts

EPA has attempted to fashion these proposed FIPs to meet the attainment obligations while trying hard to avoid unnecessarily severe social and economic impacts, both through the choice of the particular regulations and by the timing of their implementation. Despite these mitigatory approaches, federal regulation sufficient to achieve the NAAQS in these heavily polluted areas has the potential for significant social and economic disruption. This is the inevitable result of the extraordinary emission reductions required, the advanced level of control that already exists, and the constraints on EPA's authority and practical ability to enact and implement many of the most appropriate control approaches for these areas.[5] Current control strategies in these areas, especially in the South Coast, already employ state of the art technology and regulatory design for many pollution sources. To achieve attainment in these areas, in effect, we must do even better. To mitigate the severe impact of further near-term emission reduction requirements, EPA has attempted to identify control options which provide emission sources with flexibility and incentives for technological development, product reformulation and pollution prevention. We will look to the public comments on the proposals to further identify such strategies.

We want to emphasize here again that state and local agencies are in a far better position to tailor plans for the areas that minimize adverse impacts of the attainment obligations. Through proximity they have a better understanding of their emission sources and their local communities. They can also achieve significant mobile source reductions from transportation and land use measures that are beyond EPA's resources and authority to implement directly.

For example, there is a growing body of evidence supporting the use of market-based programs, sometimes incorporating fees, to encourage emissions reductions and transitions to cleaner technologies and processes. Such policies can be effectively designed and implemented at the local level where a specific understanding of local conditions and economies can be integrated into a flexible program and, regarding fee-based programs, where revenues can be redistributed within the community. A well designed program can effectively minimize the disruptive impacts of major emissions reductions. Conversely, federal measures for local implementation must be general enough to provide for enforcement from a distance, and have severe legal restraints relative to local revenue issues. The federal Miscellaneous Receipts Act, for example, requires revenues from any such federal fee-based programs to be deposited in the U.S. Treasury, thereby preventing their redistribution within the local community. In short then, locally designed and implemented plans become the best means of minimizing socio-economic impacts.

5. Ensure Fairness with Respect to Impacts on the Population as a Whole and on Individual Air Pollution Sources

The extent of the air quality problems in these three areas, as well as principles of equity, demand that emission reductions must come from every source of pollution—from cars to refineries to hand-held spray paint. Fairness is an elusive goal—what seems fair to one may not seem fair to another—but there are a few facts to bear in mind as we formulate a plan for clean air: (1) Some emission sources have been required to reduce more than others in the past; (2) Some emissions can be reduced more cheaply than others; (3) Some individuals and sources of emissions can more easily afford to comply with air pollution regulations than others.

Myriad sources comprise the pieces of the air quality problem, and each of these sources must be part of the solution. What part of the solution each will contribute, and how to fashion those contributions into a plan is where the challenge lies. EPA has and will continue to consider the issue of fairness as it develops these FIP strategies. We encourage the regulated community and the public to make sure that the clean air strategies which ultimately get implemented are fair by: (1) Constructively participating in the FIP public involvement processes; and (2) supporting the development of appropriate SIP measures to displace as much of each of the FIPs as possible.

6. Ensure That the Federal Government Does its Part to Contribute to the Solution

The solution to these air quality problems will require the participation of all sectors that can contribute. There are several ways that these FIP proposals embody the federal government's contribution to the solution. First, EPA is meeting its legal obligations to provide plans for attainment in the FIP areas. EPA has proposed plans which, building upon existing state emission control strategies, will meet the ultimate goal of attainment. EPA hopes that this federal effort will, by actually providing a complete plan, leverage state and local efforts to complete their 1994 ozone attainment SIPs.

Second, some of the federal rules proposed today would achieve reductions from emission sources over which the federal government has sole jurisdiction. Emissions from sources such as new locomotives, ship engines, aircraft engines, and some farm and construction equipment have not been previously included in state and local efforts to develop comprehensive and complete attainment plans. While EPA believes that these sources are appropriate for regulation, there remain unresolved legal and policy issues regarding the extent to which, if at all, EPA can or should continue to regulate them indefinitely. In other words, should SIPs, such as those due in November 1994, be allowed to take credit for federally-mandated reductions from these types of sources? EPA is requesting comment on this issue.

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[5] The proposals in this rulemaking are designed to achieve the substantial emission reductions required in these three areas and are not necessarily appropriate for areas with lesser problems.

Third, the FIPs proposed today include reductions from federal facilities such as military bases. EPA intends to continue working with other federal agencies to reduce emissions from their operations in these FIP areas as well as other nonattainment areas.

Finally, as we have stated earlier, EPA views these FIPs as an opportunity to contribute much more than a comprehensive set of regulations. The ultimate goal of clean air requires public support and education, development of new clean technologies, use of environmentally sound modes of transportation, and a fundamental shift to include pollution prevention into our everyday decision making both at home and at work. Along with these proposed FIP rules, EPA as an agency is pursuing a set of initiatives which will contribute to these pieces of the clean air solution. These efforts include implementation of the President's Climate Change Action Plan; an increasing emphasis by the agency on public awareness of environmental issues and solutions and implementation of the National Environmental Education Act; participation in the development and funding of a government-wide Environmental Technology Initiative; and a direct, agency-wide focus on pollution prevention in every rulemaking we undertake. Over time, these efforts will provide significant emissions reductions not only for California, but across America as well.

C. *Summary of the FIP Contents*

Under the Clean Air Act, nonattainment areas are classified according to the severity of their pollution problem. The attainment deadlines that are then assigned reflect the classification. The current classifications for the three FIP ozone nonattainment areas are set forth below. Also depicted are the attainment deadlines, which are as expeditious as practicable, but not later than the following dates:

Area	Classification	Attainment date
South Coast	Extreme	2010
Ventura	Severe	2005
Sacramento	Serious	1999

For a number of reasons, EPA believes that the control strategies available to the Agency to attain the ozone standard in the Sacramento area by 1999 could result in unacceptable socioeconomic hardship. For example, nitrogen oxides (NO_X) emissions within the Sacramento area are overwhelmingly from mobile sources. And, while significant reductions of mobile source NO_X emissions will result from the scheduled phasing in of cleaner engines and fuels, this changeover to cleaner engines and fuels will take some time (e.g. manufacturing changes, replacement costs, infrastructure changes). This is especially true since owners legitimately want to continue to receive the benefits of a full useful life from their present vehicles and engines. Therefore, in order to get the planned emissions reductions earlier, i.e., before 1999, EPA must either restrict the use of current, dirtier vehicles and engines, or somehow force turnover in the current vehicle and engine fleet. That means considering options like no-drive days, and/or dramatically increasing the costs associated with operating vehicles and engines currently in use.

Moreover, in order to attain by 1999, stationary sources in the Sacramento area would be required to reduce their volatile organic compounds (VOC) emissions by 20% by 1999, which because of the magnitude of reductions could lead to potential production cutbacks or shutdowns. As a result of these negative socioeconomic impacts, EPA is proposing, in addition to the 1999 attainment option, the option of reclassifying the Sacramento area to severe. EPA's reclassification proposal would move the attainment deadline to 2005, and would allow the Sacramento area, for purposes of attainment, to benefit from substantial emissions reductions without the use of more disruptive emissions reduction options. Even with the additional requirements associated with a severe designation (e.g. the Employee Commute Option program, and more stringent New Source Review requirements) the Agency believes that this 2005 deadline can result in attainment without the onerous consequences associated with Sacramento's current classification.

The South Coast is classified as a serious CO nonattainment area and is required to attain the CO NAAQS as expeditiously as practicable, but not later than 2000.

Given these attainment deadlines, the principal technical objectives of the proposed FIPs are to: (1) Determine the pollutant emission reductions needed to attain the NAAQS in each area; (2) select the additional control strategies best suited to achieve these reductions; and (3) develop specific measures for each strategy.

1. Required Emission Reductions

The first task depends on the collection and analysis of critical data relating emissions to ambient concentrations. To the greatest extent possible, EPA's proposed FIPs use data compiled by the California Air Resources Board (CARB) and the responsible local agencies (e.g. the local air pollution control districts and councils of governments) regarding current and future sources and levels of emissions in each area. In order to remain consistent with state and local planning efforts, EPA has made adjustments to these data only where absolutely necessary to correct errors, improve the precision and currency of the data, or analyze more effectively the impact of control measures.

Of necessity, the proposed FIPs rely on air quality measurements and meteorological input from the extensive CARB and district monitoring networks. Finally, in order to relate emissions levels to ambient pollutant concentrations, EPA has chosen to rely on modeling analyses developed cooperatively with the involved state and local agencies and used in their ongoing SIP development activities.

These technical foundations of the FIPs are discussed in section III.H., and further details may be found in the technical support documents accompanying this proposal. The data and analyses will be revised to reflect the final FIP strategies and to conform, to the extent possible, with new information and assumptions used by the state and local agencies in the 1994 ozone SIPs for each area.

The results of these complex technical assessments confirm the need for massive further reductions in emissions of the ozone precursor pollutants in each area.[6] In the most challenging case, current levels of VOC must be reduced by 90 percent and NO_X emissions must be reduced by 70 percent to reach attainment of the ozone NAAQS in the South Coast by the target date of 2010. In Ventura, approximately a 40 percent reduction of both VOC and NO_X appears to be necessary for ozone attainment by 2005. The reduction requirements for the Sacramento area are slightly lower, but still amount to roughly 40 percent for VOC and 30 percent for NO_X by 1999 or 2005. Finally, approximately a 45 percent reduction in CO emissions is needed in order to attain the CO standard in the South Coast Air Basin by 2000.

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[6] Ground-level ozone, more commonly known as smog, is formed when nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react with high temperatures. Strategies for reducing smog generally require reductions in both VOC and NO_X emissions. Ozone causes health problems by damaging lung tissue and sensitizing the lungs to other irritants.

2. Selection of Control Strategies

EPA's selection of control strategies for the FIP areas began with a review of the existing emissions inventories to determine which pollution source categories were present in each area and the extent to which each category contributed ozone precursor (VOC and NO_X) pollutant emissions. All mobile source categories are present in each FIP area with the exception of ocean-going vessels in Sacramento, but the relative importance of individual mobile source categories varies significantly among the three areas. While the South Coast area includes most industrial and commercial source categories, the emissions inventory for the Sacramento area includes very few of these sources. The importance of agriculture in Ventura County is reflected in the unusual proportion of that area's VOC inventory assigned to pesticides use. More details on the inventory profile for each area may be found in sections II.A and III.H.

For stationary sources, EPA next reviewed the extent to which each category was currently controlled under either federal, state, or local regulations. In those few cases where the existing level of control failed to meet existing national requirements for application of reasonably available control technology (RACT), EPA prepared remedial regulations for specific industrial sources identified in section III.C.2., below.

EPA then reviewed the potential for further reductions from each stationary source category in each area, based on upgrading the level of control to match that required by the best existing rules, by further enhancements to existing rules to reflect available technology, or by imposing requirements that could be met through technology transfer from similar sources. From this exercise, EPA selected and prepared most of the industrial and commercial source control measures discussed in section III.C.3.

That brings us to the first decision point where the awkwardness of having the federal government undertaking air quality planning for a particular state or locality becomes obvious. How will the remaining emission reductions be apportioned among mobile sources, factories, and consumer products and services? The choice is best made with both a consideration of the costs and benefits associated with particular control measures and a knowledge of the local impacts that will occur when a specific choice is made. In addition, each locality has a different mix of industries in different states of economic health and with differing capabilities to absorb the costs of emission control.

Lacking detailed, specific information about every emissions source in each FIP area, the choice EPA has made in this proposal is to seek further reductions in all categories of pollution sources generally in the same proportion as their remaining contribution to the problem. Given EPA's distant starting point in this area of regulation (i.e. EPA is not the local air board) this approach is as fair as EPA can be. This means that the FIPs' reductions are generally apportioned in an "equal," across-the-board fashion even though individual pollution sources or source categories may vary substantially in their starting points (the extent to which they have already reduced their emissions) and in their ability to achieve further emission reductions. Local air boards have a greater capacity for developing the kind of detailed, specific information about local emissions sources which can improve and replace these policies. EPA encourages the local boards to do so wherever possible.

As a result, significant further reductions must be achieved by industrial sources, such as petroleum refineries, which may have already invested hundreds of millions of dollars in control equipment. EPA is proposing that these sources reduce their VOC and NO_X emissions still further, not only through conventional, technology-based regulations (for example, the fugitive emissions regulation presented in section III.C.3.j.), but also through market-based "cap" rules, which allow sources the flexibility to select their reduction approach so long as overall emissions are reduced annually (see section III.C.5.).

Area source emissions must also be dramatically reduced through regulations that apply either to individuals or, in some cases, the national manufacturers and distributors of materials whose application, storage, or use contribute evaporative VOC emissions. The category of area sources proposed for new (or further) regulation in the FIPs includes such diverse substances or activities as clean-up solvents, architectural coatings, waste burning, landfills, pesticides, consumer products, livestock waste, and residential water heaters (see sections III.C.3. and III.C.4.).

Certain of the area sources present special challenges both to the regulated community and to the regulator. For example, today's NPRM includes a proposal that manufacturers of pesticides not only continue to comply with existing state and federal rules that address toxics concerns but also reformulate their products sold in California to diminish VOC emissions (section III.C.4.d.). Regulation of other area sources, including most categories of consumer products, involves complex considerations of the extent to which additional reductions can be achieved without negatively affecting the products' quality or its effectiveness.[7]

EPA began its selection process for mobile source control strategies with those measures that were required in all states by the Clean Air Act Amendments of 1990, and those measures being implemented by the State of California and local agencies. EPA considered the impact of these measures as well as the expected benefit of national mobile source rules in process. For example, the California Low Emissions Vehicle program (LEV) relies on advanced emission control technologies, clean gasoline, and an on-board diagnostics system which achieve substantial reductions beyond those which will result from federal cars. As described above, EPA then developed mobile source control strategies such that generally equal, proportional reductions would be achieved in all stationary, area and mobile source categories. EPA developed strategies which, if implemented, would result in cleaner vehicles and engines via further improvements in technology or mobile source users selecting alternatives with lower polluting characteristics. EPA also developed strategies which rely on declining emission limits for other remaining mobile source categories, both to provide sufficient reductions for attainment and to assure that each category of emission source was contributing to the solution.

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[7] In the case of consumer products, CARB has already undertaken these analyses and adopted regulations. These FIPs do not include any new requirements for these consumer product categories, but would make the existing state requirements federally enforceable.

In 1990, passenger cars, other highway vehicles, nonroad engines and equipment, and the transportation facilities used in interstate commerce produced from 53 to 63 percent of the total inventory of volatile organic compounds (VOCs) and from 70 to 94 percent of the total inventory of oxides of nitrogen (NO_X) in the FIP areas covered by this proposal. In order to demonstrate attainment of the ozone standard in these areas, EPA is proposing regulations which assure significant reductions in mobile source emissions—beyond those already expected from the continued turnover to newer, cleaner vehicles and engines. The mobile source category covers a very broad range of sizes of equipment, types of fuels, uses and operating modes, and extent of current pollution control. Therefore, there is no one measure or even one uniform type of measure which is proposed across the category to achieve the reductions needed for the attainment plans (see section III.D.1.).

The ozone attainment responsibility also falls on mobile sources that may operate on a national (or even an international) scale. Many of these mobile sources have not previously been controlled and must now undertake for the first time challenging pollution abatement assignments. For example, EPA is proposing that locomotives and large ships work to reduce NO_X and VOC emissions from their respective activities in the FIP areas (see sections III.D.4.e.(3). and (4).). Airline operators, though to some extent previously regulated for air quality purposes, will also be asked to make further emissions reductions from aircraft and other airport activities (see section III.D.4.e.(2).).

In addition, high quality inspection and maintenance (I/M) programs for vehicles remain the single most cost effective and important measure for achieving mobile source emissions reductions. In the FIPs, EPA is proposing a program which follows closely the model for meeting the performance standards for all I/M programs nationwide, and which EPA could effectively implement. EPA and the State of California are continuing to hold discussions on a different enhanced program design which would meet the national enhanced I/M performance standard if implemented by the state. If an agreement is reached, appropriate legislation and regulations are adopted, and an approvable SIP revision is submitted, EPA will withdraw or rescind the FIP I/M program (section III.D.2.c).

One reason that vehicle emissions continue to be such a large portion of total VOC and NO_X emissions—despite increasingly stringent emission standards for vehicles—is because of high growth in vehicle miles traveled (VMT). This VMT increase reflects the simple facts that more cars are on the road today than ever before, and more people are driving more miles than ever before. In order to encourage a reduction in VMT, and in the number of cars on the road, EPA is proposing two programs designed to decrease growth in VMT by targeting single occupant vehicle use. The proposed measures will require increases in average occupancy in personal vehicles in Sacramento and encourage shifts to carpooling and public modes of transportation in all the FIP areas (sections III.F.2 and III.D.2.g). Various other strategies could be used to achieve decreases in VMT. As discussed below and elsewhere in today's NPRM, EPA resources, and statutory authority have constrained our ability to propose these possibly more effective strategies.

In designing these FIPs, EPA has attempted, wherever possible, to structure the proposed FIP rules so that responsible state and local agencies can adopt the rules as part of their SIPs or accept EPA delegation to implement the federal rules (section III.J.). For example, the proposed New Source Review (NSR) regulations for the Sacramento FIP area tracks the existing rule format and terminology shared by the 5 Sacramento area air pollution control districts, rather than following the design of EPA's existing federal NSR regulations (section III.F.4.).

While the emission reduction targets in Sacramento and Ventura are formidable, the overwhelming reductions needed for ozone attainment in the South Coast appear to require that each individual pollution source within the FIP area eventually abate its emissions almost completely. For practically every controllable source category, this ultimate degree of control is beyond a level now foreseeable with existing technology and control techniques.

Congress recognized that this unique South Coast attainment challenge required sustained commitment to seek and apply new technological solutions. EPA's proposed FIP employs the special provision in the 1990 Clean Air Act Amendments, which allows for commitments (rather than fully adopted regulations) as part of the South Coast ozone attainment demonstration. The South Coast FIP includes these commitments and outlines some of the federal activities currently underway to support the development and commercialization of new control technologies or pollution prevention techniques (see section III.B.5.d.).

The state has already submitted a SIP for the South Coast demonstrating attainment of the CO NAAQS by the year 2000. This demonstration relies primarily on existing state programs for clean fuels and vehicles, supplemented by an enhanced motor vehicle inspection and maintenance (I/M) program. Since the state has not yet developed and submitted legislation and regulations to implement an enhanced I/M program, EPA is proposing to complete the state's attainment demonstration with a single federal measure: the contractor-run I/M program discussed in section III.D.2.c. As discussed above, EPA believes that an I/M program is a necessary part of the ozone FIPs as well.[8]

3. Specific Control Measures

a. *Stationary/area source measures.* With few exceptions, industrial and commercial sources in the FIP areas are already subject to air pollution controls that match or exceed the stringency of rules applied elsewhere in the country. In the Sacramento FIP area, however, EPA was able to identify four major industrial facilities (Michigan-California Lumber Company; Formica Corporation; SierraPine Limited; and Reynold's Metals) for which the applicable local regulations do not reflect the minimum level of control required nationally. The state and local air districts remain under an obligation to adopt and submit "RACT" regulations for these sources. Since these agencies (specifically, Placer County and El Dorado County Air Pollution Control Districts) have not yet acted, EPA is today proposing detailed provisions that will contribute to attainment in the Sacramento area by supplementing the applicable regulations to match available control technology. See section III.C.2, and proposed 40 CFR 52.2961(p)–(s).

EPA selected a second set of proposed FIP controls by comparing existing air pollution regulations in each FIP area with the best existing state or local regulation, on a category-by-category basis. Where a more effective control measure that could provide significant reductions already existed (either as an adopted or draft rule), EPA has adapted and proposed the rule for federal administration in the applicable FIP areas. Since existing South Coast controls are generally the most stringent in the country, many of these proposed rules were based on existing SCAQMD regulations and are proposed for the Sacramento and Ventura areas. In some cases, the proposed FIP rules newly regulate sources in the area (e.g., commercial bakeries and municipal landfills in the Sacramento FIP area). In other cases, the proposed rules significantly strengthen existing regulatory provisions (e.g., tighter coatings and solvents limits in Sacramento and Ventura). The costs, regulatory strategy, and technical basis of these measures are discussed individually in section III.C.3. The regulations themselves appear in proposed 40 CFR 52.2961(a)–(o) and (t)–(v).

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[8] See earlier discussion on I/M.

EPA is proposing to enforce on a statewide basis a group of four area source rules. EPA proposes that they be administered on a statewide basis primarily because ensuring compliance only within the FIP areas would be relatively ineffective. EPA's rationale for statewide control appears in section III.C.4.a.

The first of these controls simply proposes CARB's existing consumer product regulations, which regulate products such as detergents, floor finishes and deodorants, and are enforced against manufacturers, distributors, and retailers. While the CARB regulations have been adopted and enforced by the state for several years, California has not yet submitted them to EPA for inclusion in the SIP. The proposed FIP measure would make the measures federally enforceable, and is discussed in sections II.B.1. and III.C.4.c. The proposed regulation is 40 CFR 52.2957.

The second proposed statewide control is based on a draft CARB consumer product rule for the aerosol spray paint category, as well as rules developed by SCAQMD and the Bay Area Air Quality Management District. Proposed rule 40 CFR 52.2958 would limit the VOC content of spray paints that could be sold or used within the state.

The third proposed statewide control deals with one of the largest nonmobile sources of VOC: architectural and industrial maintenance (AIM) coatings, including most primers, paints, lacquers, stains, and specialty coatings used for residential, commercial, and industrial purposes. The proposed rule progressively tightens restrictions on VOC content in three phases of reduction through the year 2003 in order to allow for development of additional VOC reduction strategies. The FIP rule may be amended if appropriate, in the event that EPA issues a national AIM coatings rule.

The fourth rule proposed for statewide application is designed to reduce VOC emissions from agricultural and structural pesticides use. Many other pesticides are subject to CARB's consumer product rule and EPA's proposed 40 CFR 52.2957. The proposed agricultural and structural pesticides rule, 40 CFR 52.2960, is necessarily complex and is discussed extensively in section III.C.4.d. The rule initially requires producers to submit VOC analyses of their pesticides. Following EPA review of the data, EPA will implement a six-step procedure for setting a VOC limit to achieve target VOC reductions.

In order to achieve further necessary reductions from stationary and area sources, EPA proposes declining emission "cap" rules in each of the FIP areas. The cap rules apply to a large portion of the stationary sources of VOC and NO_X. For these sources, the rules require annual reductions in emissions from 2001 through 2005, but allow each source the flexibility to determine how reductions are to be made. If a 1999 attainment option is selected for Sacramento, the Sacramento VOC cap rule would require that all reductions be achieved in the attainment year (i.e., by January 1, 1999). EPA strongly encourages affected sources to identify pollution prevention approaches as the ideal response to this market-based initiative.

The proposed cap rules require sources to submit compliance plans in the year 2000, showing how the mandated reductions will be achieved, using 1990 actual emissions as the baseline but subtracting emissions required to be reduced through any SIP or FIP rules in the period after 1990. EPA is proposing VOC cap rules in each area, with annual reductions of between 4 and 9 percent, depending upon public comment and EPA's final determination of the appropriate and necessary reduction rate. A NO_X cap rule with annual reductions of between 6 and 9 percent is proposed only in Ventura, since further NO_X reductions are not needed in Sacramento, and the South Coast has recently adopted a cap program (RECLAIM) achieving comparable reductions to the proposed FIP NO_X cap rule.

EPA is inviting comment on a number of important issues associated with these innovative rules. The Agency particularly solicits comment on whether a trading component should be added to increase compliance options, and whether it is preferable to establish a manufacturers' "bubble" rule for industrial and commercial solvents and coatings, rather than regulating users (see III.C.5. and 40 CFR 52.2952–52.2955).

b. *Mobile source measures*—(1) Programs for vehicles. Because the magnitude of needed emissions reductions is so great, the FIPs seek to build on reductions already being achieved by the California Low Emission Vehicle (LEV) program. In order to achieve these reductions, EPA is asking for comment on the need for and benefits of adopting an enhanced in-use compliance program which would provide extra in-use emissions reductions beyond the substantial reductions already provided by the California LEV program.

Specifically, EPA is proposing to strengthen the recall program for cars and light and medium duty trucks. Vehicle manufacturer's recall responsibilities will be determined by testing the emissions performance of typical vehicles instead of only vehicles which have been properly maintained. EPA is also proposing to increase manufacturer's liability for repair of vehicle emissions control equipment. Both of these proposals are intended to provide incentives to manufacturers to increase the durability of the emissions control systems in the vehicles they produce (III.D.2.d., Appendix I.A., and 40 CFR 52.2962).

EPA is also seeking comment on a program which would require that on-board diagnostic systems of new vehicles be capable of communicating, to on-road sensors, the operational status of the emission control system. This approach would be intended to particularly target high emitting vehicles, and would remain in effect for the life of the vehicle (III.D.2.d.).

For the South Coast, EPA is also proposing a requirement that certain commercial vehicle fleets make the majority of their purchases from inherently low emitting vehicles (ILEVs),[9] including, for example, natural gas and electric vehicles, 40 CFR 52.2962.

For light-duty vehicles, EPA proposes to prohibit California residents from importing or registering vehicles purchased outside of California that are not certified to meet California's stringent vehicle standards. This prohibition would begin in 1999, and is described in section III.D.2.h. The proposed regulation is 40 CFR 52.2964.

Given the level of emissions reductions necessary to demonstrate attainment in each of the three FIP areas, EPA believes it is absolutely essential to propose an enhanced inspection and maintenance (I/M) program for vehicles which meets national performance standards. As previously discussed, the structure of the FIP proposal will follow EPA's model program. If the state enacts and submits approvable legislation and regulations for its own enhanced program which meets national performance standards, EPA will withdraw or rescind the FIP I/M program. This issue is described in more detail in sections III.D.1.b.(7).(a). and III.D.2.c. The proposed regulation is 40 CFR 52.2963.

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[9] Beyond very low exhaust emissions, these vehicles must have little or no evaporative emissions even when emissions control systems malfunction. In practice this means using fuel sources which have little or no evaporative emissions.

For heavy duty trucks, the FIP proposals include tighter hydrocarbon (HC) and NO_X exhaust standards for model years 1999 and beyond, strict evaporative HC standards to minimize shifting from diesel to gasoline beginning in 1999 as well, and a declining average NO_X level for fleet operators beginning in 2000. Fees for fleet emission averages above the declining NO_X targets are proposed to help maintain turnover to the newer, cleaner engines.

At the option of the fleet owner, interstate trucks may comply with limitations on the number of stops allowed within FIP areas beginning in 1998 rather then complying with the declining NO_X levels. The heavy duty truck proposals are discussed in section III.D.3. and the proposed regulations are in 40 CFR 52.2966.

Finally, for the 1999 attainment date option in Sacramento, EPA is proposing to include an accelerated retirement strategy for on-highway heavy duty engines. This accelerated retirement strategy is discussed in section III.B.3..

(2) Programs for nonroad vehicles and engines. EPA is proposing to regulate a number of categories of nonroad vehicles and equipment: Nonroad heavy duty engines, small nonroad equipment, motorcycles and recreation vehicles, and marine engines. See discussion in section III.D.4.(a)-(d).

For nonroad heavy duty engines (at or above 50 horsepower, 37 kW), a phased approach would begin with a national program targeted for final rulemaking in May 1994. In the next phase, EPA is proposing additional standards for the FIP areas and increased manufacturers liability for repair of emissions control systems to help ensure continued low emission performance. An emissions-based, fleet-average fee system with a declining emission levels is proposed for the FIP areas to maintain turnover to the cleaner engines. For the 1999 attainment date option in Sacramento, EPA is proposing a growth cap for the nonroad heavy equipment category. This cap is discussed in section III.B.3.

For small nonroad equipment (spark ignited engines at or below 25 horsepower, 19kW), EPA is proposing to employ a two-phased strategy of first setting national standards for implementation by 1995, and then employing negotiated rulemaking to achieve still further reductions after 2000 or 2001. This strategy reflects discussions already underway at the national level. The standards EPA will propose in the first phase will be similar to the State of California's regulation for utility and lawn and garden equipment engines manufactured in 1995 and beyond. In both phases, the effect of this action will be to extend regulations to engines which California is currently pre-empted from regulating (III.D.4.b.2.).

The FIP proposals include more stringent exhaust emissions standards for motorcycles and recreational vehicles such as mopeds, dirt bikes, all terrain vehicles (ATVs), and go-karts sold in California after January 1996. The level of stringency may require substitution of 4-stroke nonroad engines for some current 2-stroke applications (III.D.4.c.(1).).

Finally, EPA is proposing to apply national emission standards, scheduled to be proposed in 1994 and finalized by November 1995, to spark-ignited marine propulsion engines such as outboard engines, personal watercraft ("jet-skis," etc.), and sterndrive and inboard engines. These national rules will apply to new spark ignition marine propulsion engines produced after August 1, 1998 and are proposed to be combined with a registration/permitting and fee system for marine engine use in FIP area waters. Marine engines meeting the new national standards would be exempt from the fees which are proposed to begin in 2004 (III.D.4.b.(3). and III.D.4.c.(2).). For the 1999 attainment option in Sacramento, EPA is proposing a fee system or boating restriction to reduce emissions from recreational boating by one-third.

(3) Program for National Transportation Sources and Federal Activities

The litigation which resulted in today's FIP proposals arose in part from the South Coast's concern that emission regulation of "federal sources" such as those associated with interstate transportation or military bases was not keeping pace with controls in other sectors. In order to achieve appropriate emissions reductions in these areas, the FIP proposals include controls for locomotives, airports and aircraft, large marine vessels, and military installations.

For locomotives, EPA is relying on a national regulation that will apply to NO_X emissions from newly manufactured locomotive engines in two phases, first in 2000, then in 2005. Tighter standards for remanufactured locomotive engines are also being proposed and may be implemented either statewide or nationwide. Because the necessary reductions in NO_X emissions are so significant in the South Coast, EPA is proposing a supplemental program for railroads in the South Coast FIP. This program would require that railroads reduce their average emission rate of their fleet by 2010 to a level consistent with the reductions proposed for stationary sources. See discussion in section III.D.4.e.(3) and proposed regulation 40 CFR 52.2971.

As described in section III.D.4.e.(2), EPA is proposing that commercial aviation operations be subject to an environmental performance target in the FIPs, including mobile emissions sources under the direct control of the airline (aircraft, aircraft auxiliary power units, ground service equipment, captive vehicle fleets, and any other airline-operated mobile source). Declining emissions rate targets for these emissions, consistent with the caps proposed for stationary sources, would be set beginning with the ozone season of 2001. This level of allowable emissions would translate into an industry-wide environmental performance factor expressed as an allowable pounds of pollutant per passenger equivalent unit. Airlines which exceed their allowable performance factor would pay a fee based on the amount of excess emissions. In order to provide additional flexibility in meeting these targets, EPA is also proposing intra-airline averaging for airlines with operations at multiple airports within the same FIP area. The Agency is also seeking comment on the establishment of an inter- airline credit and trading program. The proposed regulation is 40 CFR 52.2970.

For general aviation in the FIP areas, EPA is proposing two fee systems in the alternative. One proposal would simply charge a fee for each takeoff sufficient to discourage use without making general aviation prohibitively expensive. The second approach would incorporate an exemption into the fee program for engines that are certified to "clean" emissions levels. EPA also requests comment on differentiation of fees based on airport proprietor's programs for other emissions reductions such as refueling vapor recovery and other alternative control programs. See discussion in section III.D.4.e.(2).(d). and proposed regulation at 40 CFR 52.2970.

Section III.D.4.e.(2).(c). and (5) describes EPA's proposed military installation bubble for each FIP area encompassing all mobile emission sources under the control of the Department of Defense (DOD), with the exception of military aircraft and vessels. This includes auxiliary power units, ground service equipment, captive vehicle fleets, privately owned vehicles, and any other mobile source operated within the boundaries of the installation. A declining emissions cap would apply similar to the cap imposed on stationary sources within each FIP area. Each installation would be required to determine a baseline inventory from which the reductions will be achieved. The proposed regulation, 40 CFR 52.2972, allows trading among active bases and credit for base closures that generate permanent emission reductions.

Marine vessels are the largest uncontrolled source of emissions of NO_X and sulfur oxides in California. In order to encourage emissions reductions from these vessels in a manner consistent with existing international standards, EPA is proposing a flexible control strategy for the reduction of emissions from ships in port. Specifically, a user fee would be based on the type emission control that a particular ship used. Ship operators would be allowed (and encouraged) to reduce the fees which would be applied by using low emission engines, using electrical onshore power service instead of the ship's engines while in port, and for travelling outside of the Channel Islands. Compliance with all three operational changes would eliminate the fees altogether. Ships that use South Coast ports more frequently would be faced with higher annual fees, and therefore would have a greater incentive to make operational changes and install more efficient emission control devices to reduce or avoid fees.

In Ventura there are no large ports, but marine vessel emissions are still large contributors to the area's NO_X inventory, because of the emissions that are blown onshore from passing ships by the prevailing winds. As mentioned above, the South Coast FIP includes a discount in the proposed fee system to encourage ships to move further out to sea when passing the Ventura coastline. See discussion of marine vessels and ports in section III.D.4.e.(4). and proposed regulation 40 CFR 52.2973.

(4) Programs to Reduce Vehicle Miles Traveled (VMT)

As described earlier, vehicle emissions continue to be a large portion of future total VOC and NO_X emissions inventory, despite increasingly stringent emission standards, because of projections of continued high growth in vehicle miles traveled (VMT). Due to current growth projections, EPA is proposing programs designed to decrease growth in VMT by targeting single occupant vehicle use. The proposed regulations require increases in average occupancy in personal vehicles in Sacramento (for the 1999 attainment option only) and encourage shifts to carpooling and public modes of transportation in all the FIP areas. Various other strategies could be used to achieve decreases in VMT, but most depend on local planning and implementation to be successful. Unfortunately, EPA resources and statutory authority have constrained our ability to propose these possibly more effective strategies. These constraints are discussed generally in section III.A.2.

Finally, for purposes of the 1999 attainment date option for Sacramento, EPA is proposing a restriction on the use of on-road vehicles such that each vehicle in the Sacramento nonattainment area would be prohibited from being driven on one day out of five weekdays. This is, of course, one of the least desirable of mobile source options available to EPA, but, as is described in detail in III.B.3.d.(3), it appears necessary in order to meet the 1999 attainment deadline. It is also one of the main reasons why EPA is recommending the 2005 attainment option.

D. Role of State and Local Agencies

1. SIP Responsibilities

EPA has every intention of using the FIP process to propose and promulgate real solutions to the ozone problems in Sacramento and Ventura, as well as both the ozone and carbon monoxide problems in the South Coast. EPA will implement these solutions as it becomes necessary. However, under the CAAA of 1990, nothing in the FIPs proposed today or to be finalized in February, 1995 releases the state and local governments from their independent legal responsibilities to meet all requirements of the Clean Air Act. Furthermore, failure to meet any of these requirements will subject applicable areas of the state to the mandatory sanctions required by section 179 of the Act.

One of the most important responsibilities that any nonattainment area has under the Clean Air Act is to adopt and submit to EPA in November 1994, comprehensive plans to attain the ozone standard by its applicable attainment date. Regardless of the FIPs, the state must still implement plans sufficient to demonstrate attainment. Nothing in the FIP can relieve them of that responsibility under the law. As discussed earlier, EPA is requesting comment on whether there should be an exception to this requirement. Specifically, comment is requested on whether, as a legal and policy matter, states should be allowed to take credit for emission reductions associated with FIP controls applied to sources over which EPA has sole jurisdiction.

2. State and Local Opportunities

EPA hopes that state and local agencies will take full advantage of the opportunities provided by the FIP development process. EPA believes that the emission reduction strategies proposed today, together with the public involvement process described below, can be used to leverage support for state and local emission reduction strategies. EPA has purposefully chosen to maximize the number of strategies in this proposal that could be adopted wholesale by state and local agencies. In other cases, the necessarily blunt EPA strategies should provide support for better tailored state and local regulation of the same emission sources. Finally, state and local agencies have the ability to adopt innovative emissions growth management, transportation control and land use strategies that EPA cannot propose. These types of strategies adopted at the local level could displace the more onerous strategies in the FIPs.

E. Public Involvement

1. Public Participation in Development of the FIPs

One of the more difficult aspects of developing these FIPs has been to build in meaningful public participation. Sufficient time is at best a luxury in meeting the court-ordered deadlines to promulgate the final FIPs. Conversely, sufficient time is an absolute necessity for full public involvement. An inevitable conflict arises when trying to meet both of these needs.

If community-wide support for the changes necessary to reach attainment were easy to achieve, there would be no need for these FIPs or even the attainment deadlines in the first place. Unfortunately, any level of real public participation in matters this controversial can easily degenerate into parochial disagreements with no real benefit to anyone involved. Any participation process which facilitates consensus solutions must be designed to minimize these disagreements.

Finally, given the limited resources available to EPA for actually developing the strategies in these FIPs, it is a measure of the Agency's commitment to public involvement that we have and will continue to direct them toward increasing public involvement in this effort.

Irrespective of these difficulties, EPA has and will continue to engage in every possible effort to make the final plans a product of local involvement and consensus. We will do so because we believe strongly that we can best fulfill the goal of the Clean Air Act—that is, clean and healthy air for all Americans—and meet our court-ordered obligations by preparing these plans with the state and local communities, not in spite of them. We are highly cognizant of the fact that each area affected by our rules has its own unique qualities and concerns. We also believe that the only way in which EPA can fully understand those concerns—and take them into account—is through direct participation by the affected interests and communities.

Ultimately we believe that the success of *any* air quality plan—federal, state or local—will be dependent upon the level of understanding and support which exists in the community regarding the need for and benefits of the plan. Without that understanding and support, we are unlikely to meet the difficult challenges which lie ahead.

2. Public Meetings Prior to Proposal

As a result of these beliefs, we have initiated an effort to develop these plans in a manner which encourages local input. First, our plans, and their assumptions, were built with significant input from state and local air agencies, other local and state officials, and representatives of various affected interests. EPA has tried to use the best and most current data that these entities could provide within our FIP proposal timeframe.

Second, our FIP development effort has included eight informal, pre-proposal public meetings (two each in Ventura and Sacramento, and four in the South Coast). The purposes of these meetings were to: (1) Begin the process of education and interaction among the various parties—local, state, federal, and the public; (2) solicit initial thoughts and concerns from the affected communities as we developed the proposals; and (3) solicit suggestions about how best to continue the interactive process through the development of the final plans due in February 1995. The results of these meetings are found throughout these FIP proposals, both in the emission reductions strategies and in the post-proposal process.

Finally, our FIP development process has included numerous staff-to-staff discussions among the local and state air boards and EPA. The results of these discussions, as well, are found throughout the proposals.

3. Process for Post-Proposal Public Involvement

In order to organize and facilitate meaningful community involvement during the period between proposal and the final plans, EPA plans to enhance the normal notice and comment period. Our primary effort in this area will consist of working to coordinate the FIP processes with the ongoing local processes so as to minimize public confusion and coordinate planning resources. This approach is based on comments and requests received in pre-proposal meetings, and will rely—to the greatest extent feasible—on the processes already in place at the local level. Following proposal of the FIPs, EPA will continue to meet with responsible state and local air agencies to coordinate the SIP and FIP public processes, as well as with community groups, environmental and business interests.

A set of conflicts exist though, which may make it necessary for the FIP processes to also follow its own separate track. For example, the local air boards are currently developing plans which not only meet the requirements of the Clean Air Act Amendments of 1990, but also must meet the requirements of the California Clean Air Act. No such California specific requirement exists for the FIPs.

Further, EPA believes that it is necessary for the FIPs to apply many of the controls to all three areas or in some cases, state-wide. Reliance on the various local SIP processes to engage the public on these particular FIP measures would make it difficult for interested parties to participate fully in all aspects of the dialogue, and could lead the public to believe that EPA has the ability to tailor these measures to the conditions of the local areas.

Finally, EPA must meet the mandates of the federal courts and the terms of settlement agreements which require it to promulgate final FIPs by February 1995. This deadline cannot be changed by EPA and means that coordination with ongoing local processes must be constrained to fit within EPA's timeframe.

For these reasons, EPA believes that we should take additional steps outside of the local processes in order to provide an opportunity for productive public input on the proposed FIPs in a timeframe which is consistent with the final promulgation deadline of February 1995. These steps will include:

(a) Following proposal of the FIPs, EPA will convene a public workshop in each FIP area in order to describe in some detail our proposals, to help us identify appropriate issues for in-depth examination, and to encourage local participation and support for issue-specific focus meetings.

(b) Depending on the level of support that exists, issue-specific focus meetings may be held in each FIP area, and possibly a central forum for selected statewide issues, to help develop comments on the FIP issues of greatest concern. The goals of each issue-specific group will be to develop a consensus position, if possible, and to submit consensus comments, if possible, on its set of FIP issues. EPA will also encourage each group to direct its comments to the state and local air agencies which will be developing ozone plans due in November 1994.

(c) EPA will not "select" specific attendees or chairpersons for these focus meetings, but will encourage participation that is sufficiently representative and inclusive so as to make any consensus real and meaningful. To the extent possible, EPA will provide contractor and staff support for the meetings. EPA will encourage the local air districts and the Air Resources Board to provide staff support as well.

(d) All group meetings sponsored by EPA will be open to the public. The number of meetings for each issue area will vary by issue.

(e) Following the workshops and group meetings, formal public hearings will be held in each FIP area, probably in early July 1994. Notice will be given of the formal public hearings in the **Federal Register** thirty (30) days prior to such hearings.

(f) The public comment period will be held open from the publication of the FIP proposals until 30 days after the public hearings.

(g) It is EPA's intention to give great weight to any comments on which local consensus has been reached through this public involvement process. EPA, of course, remains ultimately responsible for the content of the final rule which must meet federal legal requirements and address national policy concerns. Although EPA encourages all interested parties to participate in focus meetings and workshops, any member of the public who has chosen not to do so has the right to submit written comments and/or testify at the public hearings. EPA will consider all comments received during the public comment period.

EPA realizes that the time constraints involved pose a very real obstacle to achieving consensus on issues as complex and controversial as those raised in developing clean air strategies. The requirement to finalize these FIPs by February 1995 means that EPA, and the public, will need to make very efficient use of this period until the public comment period closes in mid-summer. EPA is realistic about the level of consensus that can be reached in such a short period of time. We have decided to go forward with an expanded public involvement process because we believe that the potential benefits are great—and at a minimum, all parties will benefit from a greater understanding of the air quality problems, the concerns of affected parties, and the range of solutions.

In summary, we see the development of the final federal implementation plans due in February of 1995 as a *real* opportunity for local communities, in conjunction with federal and state authorities, to build air quality plans that can be successfully implemented. Optimally, this process will also provide state and local authorities with workable ideas and strategies that can be incorporated into the 1994 ozone plans, thus facilitating recision of all or significant parts of the FIPs. Through the enhanced notice and comment process each participant—state, local, federal, and every interested member of the public—will have the opportunity to take responsibility where it should be taken, and to work cooperatively where it can be done.

4. Solicitation of Comment

Written comments on the proposals contained in today's NPRM will be accepted throughout the public process described above. EPA expects to hold public hearings in early July, 1994 and expects that the deadline for written comments will be approximately 30 days after the public hearings. EPA will give notice in the **Federal Register** of the public hearings and public comment deadline as soon as possible, but no later than 30 days prior to the hearing dates.

EPA encourages the public to participate both through formal hearing and written comments as well as in the informal workshop and focus meeting forums described above. Workshops will be held in each FIP area in mid to late March 1994. Throughout today's NPRM, EPA has encouraged the public to comment on specific issues and alternatives. We expect that these issues will be appropriate for further examination in informal workshop and focus meeting forums.

II. Background and Proposed SIP Actions

A. Description of the Affected Areas

1. Sacramento Area

The Sacramento area includes all of Sacramento and Yolo Counties, the northeast portion of Solano County, the southern portion of Sutter County, and all of El Dorado and Placer Counties except for the Lake Tahoe area.[10] The population of this area is approximately 1.6 million, and is projected to increase to 1.9 million by 2000 and 2.2 million by 2005.[11] The annual personal income of the area exceeds $30 billion. The economy is dominated by agricultural, commercial, and service sectors, with almost no heavy industry.

Mobile sources, particularly motor vehicles, are the dominant source of VOC and NO_X in the Sacramento area. By 1999, mobile sources will account for approximately 50 percent of VOC emissions and over 90 percent of NO_X emissions. Industrial, commercial, and residential solvents and coatings are also significant sources of VOC, contributing almost 30 percent of VOC emissions in 1999.

Violations of the ozone NAAQS occur in the Sacramento area from as early as April through mid-November, although most violations in recent years have been confined to the warmer months of June through October. The Sacramento ozone design value at the time of classification was 0.16 ppm (based on 1987–1989 data), substantially above the NAAQS for ozone, which is 0.12 ppm, measured as a one-hour average. Over the period 1990–1992, the design value was still 0.16 ppm. For this 1990–1992 measurement period, only four areas had a higher design value: South Coast (.30 ppm); the Southeast Desert area, immediately to the east of the South Coast (.23 ppm); Houston/Galveston (.21 ppm); and San Diego (.17 ppm).

Based on this design value, the Sacramento area was classified as "Serious" under section 181(a) of the Clean Air Act, with an attainment deadline of no later than November 15, 1999. See 56 FR 56728. However, according to EPA's most recent national air quality and emissions trends data (through calendar year 1992), the area also has the eighth largest number of average expected exceedances of the ozone standard in the country (9.0 days).[12] Outside of southern and central California, only the Houston and Philadelphia areas have a greater number of expected exceedances.

This unusual frequency of exceedances—coupled with the absence of easy-to-control pollution sources, the immense emissions reductions needed, the rapid population growth predicted for this area, and the possibility that some of the ozone violations in Sacramento may be due primarily to transport of pollution from the south and southwest—suggest the appropriateness of a bump-up to a "Severe" classification, in accordance with the provisions of section 181(b)(3). See discussion below.

Urban airshed modeling suggests that a 40 percent reduction in current levels of VOC coupled with a 30 percent reduction in NO_X emissions would be needed for attainment. As displayed in a table included in the Sacramento FIP attainment demonstration (see section III.H.3.a.), other combinations of VOC and NO_X reductions also could yield attainment, but in EPA's judgment the 40:30 option appears to have a greater potential to minimize dislocation and inequities among source categories.

2. Ventura Area

The Ventura area includes all of Ventura County, which lies on the California coast between Santa Barbara and Los Angeles Counties. The 1990 population was 660,000 and is projected to increase to 840,000 by 2005. The County ranks third in California in petroleum production and 17th in the Country in agricultural income. Twenty-five percent of the work force commute to jobs in Los Angeles.

Ventura's emissions inventory is less dominated by the mobile source component than is Sacramento's. For the year 2005, mobile sources account for approximately 40 percent of VOC emissions and 70 percent of NO_X emissions. The ozone season extends from April through November, but very few violations have been recorded before June.

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[10] At the time EPA's FIP obligation arose, the Sacramento nonattainment area did not include any portions of El Dorado and Sutter Counties. These portions were added in revised designations promulgated in conformance with the 1990 Amendments. See 56 FR 58694, 56726 (November 6, 1991).

[11] Population projections for 2000 and 2005 are based on the latest SACOG data and do not yet include estimates from the northeast portion of Solano County.

[12] The average estimated number of exceedances is the number of days the 0.12 ppm standard was exceeded on average at the site recording the highest second maximum 1-hour concentration, after adjustment for incomplete or missing data days.

Ventura is classified as a "Severe" ozone area, with a November 15, 2005 attainment deadline.[13] For the period 1990–1992, the design value was .15 ppm. While this design value is the same as Sacramento's for the 1990–1992 period, Ventura had more than twice the number of expected exceedance days (17.6).

Transport of ozone and ozone precursors from Los Angeles, Santa Barbara, and outer continental shelf activity can be significant. However, emissions from Ventura itself can result in ozone standard exceedances independent of transport from other areas. In addition, mountains bordering the Ventura urban areas contribute to a meteorology that favors high ozone concentrations, particularly within the southern portions of the County.

Based on recent urban airshed modeling analyses, EPA has determined that attainment requires 40 percent reductions from current levels of both NO_x and VOC.

3. South Coast Area

The South Coast area (South Coast Air Basin) includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.[14] Ventura County lies to the northwest, the Southeast Desert "Severe" ozone nonattainment area (portions of San Bernardino, Riverside, Kern, and Los Angeles Counties) is to the north and east, and the San Diego "Severe" ozone area is to the south.

The current population of approximately 13 million is expected to grow to more than 18 million by 2010. The South Coast is the largest industrial area in the United States, with a gross domestic product of $300 billion. Practically every commercial and industrial category is represented in the area's economy.

In the year 2010, mobile sources will account for 46 percent of VOC emissions, 81 percent of NO_x emissions, and 97 percent of CO emissions in the South Coast.

The South Coast area has by far the worst ozone levels in the Country and is the only area classified as "Extreme." For the period 1990–1992, the design value was .30 ppm and the average number of actual exceedance days was 134.3. Ozone levels are particularly high during the months of July through October, but violations also occur under warm and stagnant conditions in April, May, June, and November.

The South Coast is one of only three "Serious" CO areas in the Country. Its design value is 16.4 ppm for the period 1991–1992. The average yearly number of exceedances for those years was 38. In recent years, CO violations have occurred only in the months of November, December, January, and February, and at certain monitoring sites in Los Angeles and Orange Counties. No CO violations have been recorded in the Riverside and San Bernardino portions of the South Coast area since the 1970's.

These uniquely high levels of pollution are the result of the massive emissions generated within the area, combined with especially adverse meteorology and topography. A number of factors—sunshine, high temperatures, ocean breezes carrying pollutants into the inland valleys, mountains to the north and east trapping the pollutants within the basin, and prolonged thermal inversion layers—conspire to create ideal conditions for the generation of high ozone levels. Extreme wintertime inversions retard the dispersion of CO emissions from the 9 million motor vehicles within the area. This leads to a buildup of CO concentrations over time, particularly within west-central Los Angeles County. Attainment requires approximately a 45 percent reduction in CO emissions from the baseyear.

B. SIP Status

1. Introduction; Relationship of the FIP to the SIP

At the same time EPA is proposing federal plans for these areas, the responsible State and local agencies have been developing and adopting their own plans and rules to meet the scheduled Clean Air Act requirements. In relation to the FIPs, the most important of these new SIP requirements and submittal deadlines are:

(1) CO plan for the South Coast demonstrating attainment and addressing the provisions of section 187 of the Act—due November 15, 1992;

(2) Ozone 15 percent rate-of-progress plans for each area meeting the requirements of section 182(b)(1)—due November 15, 1993; and (3) ozone plans for each area demonstrating attainment and satisfaction of the relevant portions of section 182—due November 15, 1994.

EPA has issued preliminary interpretations of the amended Act's provisions applicable to these SIP obligations. See, for example, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)], and "Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans," (EPA–452/R–93–002, March 1993).

Ultimately, EPA expects that SIP measures meeting the requirements of the 1990 amendments and more carefully tailored to the FIP areas will supplant the potentially severe measures EPA is compelled to propose here. EPA understands that this scenario presents facilities with the prospect of changing compliance requirements as the FIP is replaced by SIP measures. In the long term, however, it will better serve the area to have in place measures which are designed by State, regional, and local authorities, who are best situated to minimize any disruption of the local economy and communities.

In the discussion below, the more important completed and pending SIP submittals for the State and each area are briefly described. To the extent that the submittals satisfy, or help to satisfy EPA's obligations under the existing court orders, EPA will approve the SIPs and refrain from promulgating FIP provisions addressing those aspects of the air quality problem.

A submittal from the State and local districts of an approvable[15] SIP demonstrating attainment by the applicable deadline will enable EPA to rescind the FIP in its entirety. EPA believes that this rescission is appropriate even if the SIP for the area has other deficiencies (such as deficient RACT or NSR rules) which trigger separate FIP actions.[16]

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[13] Based on a request and supporting information from the State, EPA's designation under the 1990 CAA Amendments divided the Los Angeles Consolidated Metropolitan Statistical Area into four distinct areas with respect to ozone designations and classifications. This action made the entire Ventura County a separate nonattainment area with a "Severe" classification, although the 1988–1990 design value calculated for the area would have supported a "Serious" classification. See 56 FR 56698, 56700, 56731 (November 6, 1991). Prior to this designation, the Ventura ozone nonattainment area included only that portion of the County south of the southern boundary of the Los Padres National Forest.

[14] For a description of the boundaries of the South Coast Air Basin, see 40 C.F.R. 81.305 and 56 FR 56726–56728 (November 6, 1991).

[15] Under section 110(k)(4) of the Act, EPA can conditionally approve a state plan which lacks adopted enforceable measures as long as the state has been made a commitment to adopt the enforceable measures within one year of the conditional approval.

[16] The Act allows states to replace FIP requirements with SIP measures, subject, of course, to EPA's approval of the SIP measures under sections 110(a), (k), and (l) of the Act. The Act provides that EPA is relieved of having to promulgate a FIP at all if the state submits and EPA approves a replacement SIP before the FIP must be promulgated. Section 110(c)(1) of the Act provides:

Continued

EPA wishes to emphasize that all existing and future SIP obligations remain the responsibility of State and local agencies, despite provisions in the FIP that may fulfill, in whole or in part, these obligations. Thus, the State and the applicable areas of the State are subject to the sanctions provisions of section 179 for any failure to submit a required plan or plan element, or upon EPA disapproval of a required plan or plan element.[17]

While EPA's FIP promulgation process unfolds, the responsible State and local agencies in Sacramento, Ventura, and the South Coast are developing their own plans under the schedule provided by the 1990 Amendments. Depending upon the time EPA is able to approve SIP replacement measures submitted by these agencies, EPA may upon approval of such measures either refrain from promulgating, or withdraw the corresponding portions of the FIP. sections 110(c) and 302(y).

As the relationship between the FIPs and the developing SIPs evolves, EPA will confront a number of issues. One question that has been raised is whether the State may claim credit toward meeting progress or attainment requirements for the emissions reductions from FIP measures that apply to a limited category of sources over which State or local control is legally preempted. The issue is whether the State, in its plan, may seek not to replace these FIP measures, but rather continue to rely upon them, at the same time obtaining EPA's full approval for the state plan.

Although EPA has not previously addressed this specific question, a straightforward reading of the Clean Air Act's text and structure suggests that a state plan to be approvable must demonstrate attainment of the relevant standard, without reliance on measures that EPA has promulgated solely pursuant to its FIP authority. (Under this theory, a state could still rely on any measures that EPA has promulgated under its independent authority, such as Title II, as opposed to its authority under section 110(c) to assume California's waiver role under, for example, section 209. See discussion of EPA's FIP authority, section III.A.2.a. To decide otherwise would require the conclusion that Congress intended FIP measures to remain in place, perhaps permanently, without sanctions being imposed on the state—a view arguably at odds with the Act's historic emphasis on the primacy of state responsibility and the role of FIPs as temporary substitutes for state failures.

On the other hand, it may be argued that, for a limited number of sources over which the federal government, when promulgating a FIP, demonstrably has sole legal authority, and over which the state is barred from exerting control, removing the FIP measures and hence requiring the state to compensate for the lack of control of these sources may force it to impose unreasonably and inequitably harsher controls on other sources. Thus, the argument goes, EPA should consider whether there is any basis in law, and justification in policy, for carving out a limited exception to the traditional view.

EPA does not resolve this complex issue here, but intends to continue to analyze and explore it. In this proposal we solicit comment on the legal and policy implications raised by this aspect of the relationship between the FIP and the SIP.

2. Sacramento

On November 15, 1993, the State submitted Sacramento ozone rate-of-progress plans for the Sacramento Metropolitan Area, addressing the Act's 15 percent rate-of-progress plan requirements. The Sacramento area's 15 percent plans involved a coordinated effort by the Sacramento Area Council of Governments (SACOG) and the five local air pollution control agencies. Each of the air agencies developed a plan for their portion of the area.

The reductions in Sacramento's 15 percent plans rely on an enhanced I/M program, measures that the State and local governments have adopted or have committed to adopt, measures that the Federal government will have to develop and implement for the Sacramento area, and substitution of NO_x for VOC reductions. However, an approvable enhanced I/M program has not been authorized by the State legislature, EPA has decided preliminarily that it will not accept commitments for measures for purposes of the Act's 15 percent rate-of-progress provision, and EPA cannot credit NO_x reductions in place of the necessary VOC reductions. Therefore, EPA cannot take action at this time to approve this submittal with respect to the Clean Air Act progress demonstration.

The Sacramento Metropolitan Air Quality Management District (SMAQMD), the Yolo-Solano Air Pollution Control District (YSAPCD), the Placer County Air Pollution Control District (PCAPCD), the El Dorado County Air Pollution Control District (EDCAPCD), the Feather River Air Quality Management District (FRAQMD), SACOG and CARB plan to submit a comprehensive revised ozone attainment SIP on or before November 15, 1994. The local agencies hope to release a draft of this SIP in the Spring of 1994 and to modify it after EPA finalizes the FIP in February 1995. The air quality modeling in the SIP and FIP are based on similar data and should be consistent. There may, however, be significant differences between the regulations included in the two plans to attain the ozone standard.

3. Ventura

On November 15, 1993, the State submitted a Ventura ozone rate-of-progress plan addressing the Act's requirement that a plan be submitted by that date demonstrating creditable VOC reductions of at least 15 percent from 1990 to 1996. The plan describes how this reduction can be accomplished with an enhanced I/M program plus measures that the State committed to adopt and implement by 1996 in Ventura's 1991 Air Quality Management Plan. Many of the promised local measures have already been adopted, but an approvable enhanced I/M program has not been authorized by the State legislature. As in the case of Sacramento, EPA cannot now approve this Ventura plan submittal with respect to the progress demonstration.

"The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator [makes certain findings or disapproves a SIP] unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan." Section 302(y) of the Act defines a FIP as "a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan. . . ." If a state fills a gap or cures an inadequacy in its SIP subsequent to EPA promulgating a FIP, the FIP may be rescinded or revised. The U.S. Court of Appeals for the Ninth Circuit recognized this principle in *Coalition for Clean Air v. EPA* (reported as *Coalition for Clean Air v. Southern California Edison*), 971 F.2d 219.

[17] Under section 179 of the Act, two principal sanctions are authorized: a highway funding restriction and an increased offset requirement for major new or modified sources. The highway funding sanction is enforced through an EPA prohibition on approval by the U.S. Secretary of Transportation of projects or grants in the area except where the Secretary has determined that the purpose of the project or grant is to improve a demonstrated safety problem. Section 179(b)(1)(B) also allows the Secretary to exempt certain projects and grants that are intended to minimize air pollution problems. The offset sanction requires that major new or modified sources in the area obtain at least 2 to 1 offsets before construction.

Section 179(a) requires EPA to impose one of these sanctions within 18 months and the remaining sanction within 24 months if: (1) The state has failed to submit a required plan or element; (2) the required submission is deemed incomplete; (3) EPA disapproves the required submission; or (4) an approved SIP provision is not being implemented. Section 110(m) allows EPA to impose these sanctions at any time after EPA has made one of these findings.

The Ventura County Air Pollution Control District (VCAPCD), the Southern California Association of Governments (SCAG), and the CARB plan to submit a comprehensive revised ozone attainment SIP on or before November 15, 1994. VCAPCD hopes to release a draft of this SIP by the Spring of 1994 and to modify it after EPA finalizes the FIP in February 1995. The air quality modeling in the SIP and FIP are based on similar data and should be consistent. As in the case of Sacramento, however, the regulations included in the two plans may be different.

4. South Coast

On December 31, 1992, the State submitted the CO plan for the South Coast. This plan includes a demonstration of attainment by the year 2000 relying on emission reductions from previously adopted regulations as well as from an enhanced I/M program meeting the requirements of sections 182(c)(3) and 187(a)(6). Because the State legislature has not yet enacted legislation authorizing such an enhanced I/M program, EPA proposes to disapprove the CO plan with respect to the requirements for an attainment demonstration, reasonable further progress, reasonably available control measures, and enhanced I/M.

On January 15, 1993, the Agency issued a finding of failure to submit two other mandatory elements of the CO plan: (1) Transportation control measures (TCMs) to offset growth, as required by section 182(d)(1)(A); and (2) adopted contingency measures to be implemented if vehicle miles traveled (VMT) forecasts are exceeded, in accordance with section 187(a)(3). In section II.C.1., below, EPA is proposing to disapprove the CO SIP with respect to these six elements: attainment demonstration, reasonable further progress, reasonably available control measures, provision for an enhanced I/M program, TCMs to offset growth, and contingency measures to be implemented if VMT forecasts are exceeded. EPA is also proposing a partial approval of other portions of the plan that represent an improvement over what is currently in the SIP, do not conflict with proposed FIP provisions, and meet some of the applicable requirements of the Act.

On November 15, 1993, the State submitted a 15 percent rate-of-progress plan for the South Coast. The 15 percent plan relies on reductions from currently adopted rules, but also depends upon a relatively small contribution from 10 SCAQMD measures scheduled for full adoption in 1994 or 1995 and an improved I/M program. As in the case of Sacramento and Ventura, EPA cannot at this time propose to approve this South Coast submittal with respect to the 15 percent rate-of-progress demonstration. However, in section II.C.2., below, for entirely different purposes EPA is proposing to conditionally approve the SCAQMD commitments to adopt rules during 1994 and 1995.

On October 15, 1993, the SCAQMD adopted rules implementing the Regional Clean Air Incentives Market (RECLAIM) program for NO_X and sulfur oxides (SO_X). This innovative program establishes a declining cap "bubble" requirement on most facilities with emissions greater than 4 tons per year of NO_X or SO_X. The program includes emissions allocation and emissions trading components. EPA intends to propose to approve (or conditionally approve) the RECLAIM regulations in separate rulemaking, following SIP submittal. For the purposes of the FIP attainment demonstration, EPA proposes to assign credit to the adopted RECLAIM program, which went into effect on January 1, 1994. If EPA does not finally approve the NO_X RECLAIM rules, EPA would not be able to grant credits for associated reductions, and would need to amend the FIP accordingly. For more details on the RECLAIM rules, see section III.C.5.

The SCAQMD, SCAG, and CARB are currently preparing a comprehensive revision to existing air quality plans, addressing all pollutants and the requirements of both the federal and State Clean Air Acts. SIP submittal of this comprehensive plan (or portions of the plan) is scheduled to occur on or before November 15, 1994. The new plan will include revised 1990 baseyear emissions inventories, and projected inventories for interim years through the year 2020. With respect to motor vehicle emissions, these inventories may be significantly different from those used in the proposed ozone and CO FIPs, because the 1994 plan is expected to rely on new trip modeling input data and revised motor vehicle emissions factors. For ozone, the plan may analyze additional episodes, including a weekend episode.

5. State of California

California's motor vehicle control program (CMVCP) predates the first federal statute regulating motor vehicle emissions, the Motor Vehicle Air Pollution Control Act of 1965. In the Air Quality Act of 1967 (Pub. L. 90–148), Congress allowed California a waiver of the Air Quality Act's preemption section on motor vehicle emissions control because of California's pioneering efforts and unique problems. The 1977 amendments to the CAA expanded the flexibility granted to California in order "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare." H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–2 (1977).

So long as California demonstrates that its motor vehicle standards are "in the aggregate" at least as protective of public health and welfare as applicable federal standards, section 209(b) of the Act requires the Administrator to waive the Act's general prohibition on state adoption of standards relating to the control of emissions from new motor vehicles or new motor vehicle engines, unless the Administrator finds that California's determination was arbitrary and capricious, that California does not need the standard to meet "compelling and extraordinary conditions," or that the California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[18] Section 211(c)(4)(B) also provides that a state that has received a section 209 waiver (i.e., California) may prescribe controls or prohibitions respecting fuels or fuel additives.

The 1990 CAAA further expanded the California waiver provisions to cover nonroad vehicles or engines (except for certain preempted engines), and also established a special California clean-fuel vehicle program to be implemented in California (the California Pilot Test Program). See sections 209, 211(c)(4), and 249.

California law reserves to CARB most authorities for adopting and enforcing motor vehicle emission controls (including restrictions on fuels and fuel content) and standards for nonroad engines and consumer products. Under this authority, particularly as strengthened by the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988), CARB has adopted many new provisions with the potential for vast VOC and NO_X emission reductions. CARB regulations adopted through the first half of 1990 are described at length in EPA's 1990 proposed FIP for the South Coast. See 55 FR 36470–36479.

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[18] In section 209 waiver decisions EPA has explained that California standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, the Agency has held that to avoid inconsistency with section 202(a), California's procedures may not impose inconsistent certification requirements such that manufacturers would be unable to meet both the California and Federal requirements with the same test vehicle.

More recently adopted State measures include: Low Emissions Vehicles (LEV) and Clean Fuels Program; Utility and Lawn and Garden Equipment Engine Exhaust Emission Standards and Test Procedures; Standards for Consumer Products (CARB regulations adopted thus far cover approximately 30 consumer product categories); and Emission Standards for Construction and Farm Equipment.

EPA is not generally assigning credit in the attainment demonstration for State (or local) regulations that have not already been approved as part of the SIP or are not now undergoing SIP approval. EPA's policy restricts State credit in either their attainment demonstrations or progress plans for reductions from measures that have not been submitted as approvable elements of the SIP.

The principal reason for this policy has been to comply with section 110(a)(2)(A) of the Act, which requires that each SIP "include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act * * *."

In general, EPA policy has been to require that reductions used in attainment demonstrations be submitted for incorporation in the SIP, to ensure that the reductions are enforceable directly by EPA in the event that the responsible State and local agencies fail to perform their implementation responsibilities. It is for this reason that EPA is proposing in this NPRM to promulgate consumer product regulations comparable to rules which CARB has previously adopted and already enforces, but which the State has not yet submitted as a SIP revision.

C. Proposed Action on the South Coast SIP Revisions

1. CO Plan

a. Statutory provision and general preamble requirements. The air quality planning requirements for CO nonattainment areas are set out in sections 186–187 of the Act, which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIPs for these areas, respectively. EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. The reader should refer to the General Preamble for a more detailed discussion of the EPA's preliminary interpretations of Title I. In this proposed rulemaking action, EPA is applying these policies to the proposed South Coast CO SIP, taking into consideration the specific factual issues presented.

Those states containing CO nonattainment areas classified as "Serious" were required under the Act to submit by November 15, 1992, a plan that provides enforceable measures to achieve annual emissions reductions leading to attainment of the NAAQS by December 31, 2000. The Act mandates other specific plan elements, which are discussed below.

In today's action, EPA is proposing to partially disapprove and partially approve the plan for the South Coast, in accordance with the provisions of section 110(k) of the Act governing EPA's review of SIP submittals (see 57 FR 13565–13566). EPA is proposing to approve the plan with respect to procedural requirements, employee commute options (ECO) program, and forecast of VMT. EPA is proposing to disapprove the plan with respect to the attainment demonstration, reasonable further progress (RFP), reasonably available control measures (RACM), enhanced inspection and maintenance (I/M), VMT contingency measures, and TCMs to offset growth in motor vehicle emissions and meet progress and attainment requirements. The State's submission to address the requirements for the clean-fuel vehicle fleet has been conditionally approved in a separate rulemaking. EPA will also act separately on the State's oxygenated fuel program. EPA is proposing to take no action on the plan's emissions inventory for the reasons discussed below.

b. *Procedural requirements*. Section 110(a)(2) of the Act requires states to provide reasonable notice and public hearing before plan adoption. The SCAQMD satisfied this requirement by furnishing proper notice and adopting the plan at a public hearing held on November 6, 1992. Following adoption by the Governing Board of the SCAQMD, the plan was forwarded to CARB, which submitted the CO plan as a proposed revision to the California SIP on December 31, 1992. On April 29, 1993, CARB submitted a letter correcting certain adoption and implementation dates for measures under CARB's jurisdiction.

c. *Emissions inventory*. Section 172(c)(3) of the Act requires that nonattainment plans include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory included with the South Coast CO plan generally conforms to applicable EPA guidance (see, for example, Emission Inventory Requirements for Carbon Monoxide State Implementation Plans, EPA–450/4–91–011; Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources, EPA–450/4–91–016; Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, EPA 450/4–81–026d Revised). This guidance allows approval of California's motor vehicle emissions factors (in this case, the EMFAC7EP update) in place of the corresponding federal emissions factors. The methodologies used to prepare the base year and projected emissions inventories, as described in Chapter 3 of the plan, are acceptable. EPA is not proposing to approve into the SIP the State's emission inventories, however, because a different inventory is employed in the federal attainment demonstration for CO, and a new CO inventory has been developed for use in a South Coast SIP revision scheduled for adoption later this year. EPA hopes to be able to approve the revised inventory in the final SIP action and use this new inventory in the final CO FIP.

Moreover, State and local agencies are preparing comprehensive revisions to the base year and projected inventories for motor vehicles. EPA may use some or all of this revised and updated motor vehicle data to amend the attainment demonstration in the final FIP. If the State submits an approvable CO SIP along with acceptable updated emissions inventories for the South Coast, EPA will be able to approve the revised State plan and inventories and substitute them for the federal plan and federal emissions inventories.

d. Reasonably available control measures (RACM). Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM (including Reasonably Available Control Technology, or RACT) as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.

The South Coast CO plan's control measures are presented in Chapter 4, Chapter 6, Appendix B, and Appendix

C. The control measures are also discussed below in sections II.C.1.g., h., i., and j. The State and local control measures (with adoption/implementation dates before 2001) are as follows:

M–G–12, Oxygenated Fuels Program (1991/1992);

ARB–4, Improved Certification Requirements for alternative Fuel Retrofit Systems (1992/1992);

M–G–5, Motor Vehicle Buyback Program (1993/1993–1997);

M–G–4, Low-Emission New Fleet Vehicles (1991/1993–2000);

M–G–11, Inspection and Maintenance Program Enhancement (1993/1994);

M–G–1, Zero-Emission Urban Bus Implementation (1992/1994–2000);

ARB–5, Low Emission Vehicles and Clean Fuels Program (1990/1994–2003);

ARB–1, Revised Emission Standards and Test Procedures for Medium-Duty Vehicles and Light Heavy-Duty Engines (1990/1995–1996);

ARB–7, Low Emission Vehicle Standards for Heavy-Duty Engines (1992/1998–2007);

ARB–11, Inspections of Fleet Heavy-Duty Trucks (1992/to be determined);

ARB–12, Control of Off-Cycle Emissions (1993/to be determined);

ARB–16, Retrofit/Operational Requirements for Locomotives (1993/1992–1997);

M–I–7, Eliminate Leaf Blowers (1993/1994);

ARB–13, Emission Standards for Utility Engines (1990/1994–1999);

ARB–15, Emission Standards for Off-Road Motorcycles (1992/1995);

ARB–14, Emission Standards for Construction and Farm Equipment (1992/1995–2000);

ARB–18, Emission Standards for Off-Highway Vehicles (1993/1995–2000);

ARB–17, Emission Standards for Marine Vessels (1993/1997–1999);

P–B–6, Control of Emissions from Petroleum Refinery Flares (1992/1996);

FC–1/2g, Transit Improvements (to be determined/to be determined);

F–2/2f, HOV and Bus Lanes/Roads (to be determined/to be determined);

FC–3/M–H–5(c), Employer-Based Trip Reduction (1993/1994);

FC–4, Additional VMT/VT Reduction Strategies (1989–2000, with SCAQMD backstop 1994/1991–, with SCAQMD backstop 1994);

FC–5/4, Traffic Flow Improvements (1989–2000/1991–);

FC–6/M–G–7, Control Extended Idling (1993/1994);

FC–7/M–G–5, Encourage Removal of Pre-1980 Vehicles (1993/1993);

FC–8, M–G–6, Reduce Cold Start Emissions from Vehicles (1994/1994);

M–H–1, Environmental Review Program (1992/1992);

M–H–2, Trip Reduction for Schools (1993/1993);

M–H–4, Special Activity Centers (1993/1994)

EPA has reviewed the extensive list of scheduled measures and has concluded that the plan would reflect RACM but for the omission of an enhanced I/M program. By this NPRM, EPA is proposing to disapprove the plan with respect to the RACM requirement because of this single deficiency. EPA invites comment on whether other RACM exist for the South Coast CO plan.

e. *Attainment demonstration.* As noted, "Serious" CO nonattainment areas were required to submit a demonstration that the plan will provide for attainment by December 31, 2000. The SCAQMD conducted an attainment demonstration using both areawide (Urban Airshed Model, or UAM) and hotspot (CAL3QHC) modeling analyses. The two modeling analyses and the selection of the design value (23.4 ppm, recorded in 1988 at the Lynwood monitoring station) are discussed in Chapter 4 and Appendix D of the CO plan. The modeling analyses are consistent with EPA's guidance (Guideline for Modeling Carbon Monoxide from Roadway Intersections, User's Guide to CAL3QHC: A Modeling Methodology for Predicting Pollutant Concentrations near Roadway Intersections, and Guideline for Regulatory Application of the Urban Airshed Model for Areawide Carbon Monoxide). The SCAQMD's modeling analyses predict attainment of the 8-hour CO NAAQS by the year 2000, based upon the control strategies included in the plan.

However, since attainment depends upon large CO emissions reductions (587.4 tons per day) assigned to the enhanced I/M program, which has not yet been adopted by the State, EPA proposes to disapprove the attainment demonstration portion of the plan. In the future, the attainment demonstration could be approved if the State submits approvable enhanced I/M legislative authorization and regulations.

f. *Quantitative milestones and reasonable further progress (RFP).* The CO plan must contain measures which demonstrate RFP toward attainment by the applicable attainment date. Reasonable further progress is defined in section 171(1) of the Act as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the NAAQS by the applicable date.

EPA has reviewed the attainment demonstration and control strategy for the area (see Chapter 6 and Appendix C of the CO plan). EPA concludes that the plan would provide for RFP but for the fact that the State legislature has not yet adopted legislation authorizing an enhanced I/M program and California has not submitted implementing regulations for the program. Therefore, EPA proposes to disapprove the RFP provision. Again, however, this defect could be cured by State action to authorize, adopt, and submit an approvable enhanced I/M program.

g. *Adoption of mandatory control measures.* The Act mandates State adoption of four control programs for CO areas such as the South Coast.

(1) Enhanced Inspection and Maintenance (I/M)

Section 187(a)(6) requires implementation of an enhanced I/M program in the nonattainment area's urbanized portions (as defined by the Bureau of Census) with a CO design value greater than 12.7 ppm. EPA's regulations respecting this requirement were issued on November 5, 1992 (57 FR 52950). The reader should refer to section III.D.2.c. for a detailed discussion of the purpose and components of the enhanced I/M program. As noted, the California State Legislature has to date failed to enact legislation that would authorize such a program. While EPA is not now required to propose a FIP enhanced I/M measure (as discussed in section III.A.1.), the Agency has chosen to do so as part of the FIP attainment demonstrations.

(2) Oxygenated Fuels

Sections 211(m) and 187(b)(3) mandate SIP provisions prohibiting the sale of gasoline during winter months containing less than 2.7 percent oxygen by weight. Increasing the oxygen content of gasoline causes motor vehicle engines to run with leaner overall fuel/air mixture, thereby reducing the amount of CO generated during the combustion process.

California's adopted regulations (California Wintertime Oxygenates Program for the years 1992–1995, and Phase 2 Reformulated Gasoline regulation for the years after 1995) provide for the sale of 1.8 to 2.2 percent oxygenated fuels. On October 30, 1992, the CARB applied for a partial waiver from the 2.7 percent level specified in the Act.

EPA intends in a separate NPRM to propose to conditionally approve the waiver under the provisions of section 211(m)(3)(A), which authorizes the Administrator to waive, in whole or in part, this fuel requirement if the State demonstrates that use of oxygenated gasoline would prevent or interfere with the attainment of a NAAQS or a state or local ambient air quality standard.

CARB's waiver petition argues that an oxygen content above an average of 2.0 percent would interfere with attainment of the California standards for ozone, nitrogen dioxide, and particulate matter, because the higher oxygenated fuel levels have the potential to increase emissions of NO_x, which is a precursor to ozone and (in the South Coast) nitrogen dioxide and particulate matter.

(3) Clean-Fuel Vehicle Fleet Program

Section 246 of the Act requires that the CO SIP for the South Coast provide for a Clean-Fuel Vehicle Fleet program by May 15, 1994. Section 182(c)(4) places a similar requirement on the South Coast ozone SIP. The Act mandates SIP provisions requiring the purchase of clean new vehicles, beginning in 1998, for use in centrally fueled fleets of cars and light-duty trucks.

On November 13, 1992, CARB submitted as a SIP revision the State's regulations mandating the availability of clean fuels. At the same time, CARB applied for conditional approval of an opt-out from this requirement based upon a showing that the State's Low-Emission Vehicles (LEV) and Clean Fuels programs (adopted in 1990) qualify as a substitute for the federal clean fleet program. On November 29, 1993 (58 FR 62532), EPA approved the State's clean fuels availability regulations and conditionally approved the opt-out request.[19]

(4) Employee Commute Options Program

Section 187(b)(2) requires SIP submission by November 15, 1992, of an Employee Commute Options (ECO) regulation to reduce commute trips to the worksites of large employers. Section 182(d)(1)(B) mandates that the ECO SIP requirement also applies to "Severe" and "Extreme" ozone nonattainment areas, and this same section establishes minimum program performance levels: the rules must "require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted."

In December 1992, EPA issued Employee Commute Options Guidance to assist states in developing approvable ECO SIP revisions. This guidance, and the ECO requirement in the 1990 Amendments, derive in part from the SCAQMD employee trip reduction program, Regulation XV, which was adopted on December 11, 1987, as the Country's first large-scale ECO program.

Regulation XV has undergone several significant revisions since that date to expand the program and address implementation issues. The SCAQMD rule was initially submitted as a SIP revision on February 7, 1989, and CARB submitted an amended Regulation XV on two occasions: March 31, 1991 and May 31, 1993. EPA has reviewed the amended Regulation XV for consistency with the Act and EPA's guidance. This review is available as a Technical Support Document, "EPA Analysis of the Approvability of South Coast Air Quality Management District Regulation XV." Based on this detailed analysis, EPA proposes in this NPRM to approve Regulation XV as meeting the requirements of sections 187(b)(2) and 182(d)(1)(B) of the Act.

While the current Regulation XV meets federal approval criteria, EPA encourages the SCAQMD to continue to evaluate and adjust the program, if necessary, to ensure that the rule is fully and successfuly implemented. Any adjustments to the rule must not jeopardize timely achievement of average passenger occupancy targets and emissions reductions from the rule.

h. *Vehicle miles traveled (VMT) forecast and contingency measures.* Section 187(a)(2)(A) requires the South Coast CO plan to contain a forecast of VMT for each year until attainment. The plan must also provide for annual updates of the forecasts along with annual reports regarding the extent to which the forecasts proved to be accurate. Finally, section 187(a)(3) requires that the plan contain specific contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. These contingency measures must be adopted and enforceable in the SIP and must take effect without further action by the State or the Administrator.

The required VMT forecasts are included in Table 3–3 and Appendix A of the plan. The forecasts require significant update, and SCAG is now preparing and adopting such an amendment for a new Regional Mobility Plan and an air quality plan revision scheduled for adoption later in 1994. EPA therefore proposes to approve the forecasts, but intends to amend the VMT projections in the FIP when the new VMT numbers are adopted and submitted as a SIP revision. EPA also proposes to approve the responsible agencies' commitments to replace the VMT projections and monitor actual VMT levels in the future.

The State has not yet submitted, however, fully adopted and enforceable contingency measures to meet the requirements of section 187(a)(3). The plan includes three groups of potential controls, identified as contingency measures. The measures, in fact, are surplus rather than contingent. The committal measures achieve reductions beyond those needed for progress and attainment, and they are scheduled for adoption and implementation by fixed dates, which are independent of determinations that VMT levels have been exceeded or that the plan has failed to achieve progress milestones or attainment. Although the measures are not designed to be triggered by excess VMT levels or by a failure to achieve scheduled progress or attainment, the measures could be approved as meeting the contingency requirement if: (1) They are submitted in fully adopted form, and (2) the RFP and attainment deficiencies are resolved by SIP submission of approvable enhanced I/M authorization and regulations.

The first group of "contingency" measures (Table 6–4 of the plan) consists of two stationary source measures: P–B–5, Control of Emissions from OCS Exploration, Development and Production; and P–B–6, Control of Emissions from Petroleum Refinery Flares. Emissions reductions were not estimated for these possible measures. Moreover, neither of the controls have yet been adopted, although the plan scheduled both for adoption in 1992. Thus, the two measures cannot be approved.

The second group (Table 6–5) comprises five measures. One of the measures is assigned to CARB: ARB–8, Fleet Average Standards for Post-2003 Model Years (Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles). The remaining four measures were scheduled for adoption by 1992, but the State has provided no evidence that the measures have in fact been adopted. The four measures are energy conservation programs: E–D–1b, Residential Sector; E–C–1b, Commercial Sector; E–C–2b, Industrial Sector; and E–C–3, Local Government Sector.

Each of the five measures is designed to serve as contingency measures after the year 2000. As such, the measures would be appropriate for SIP submission in the context of a CO maintenance plan. In their present form, they could not serve to meet contingency requirements for the attainment plan, since the measures are not designed to remedy plan shortfalls in achieving reasonable further progress before, and attainment by, the year 2000. Moreover, EPA cannot either approve or conditionally approve the measures since the scheduled full adoption date has elapsed without evidence of such adoption. Nevertheless, the measures are important pollution prevention initiatives with multiple benefits, and EPA strongly encourages further progress at the State, regional, and local level to implement the measures fully.

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[19] In Section III.D 2.d.(6), EPA proposes as part of the South Coast FIP a clean fuel fleet program, consistent with EPA's final fleet program rules [see 58 FR 64679 (December 9, 1993)].

The third group of "contingency" measures (Table 6–6) includes 11 transportation and indirect source measures. The plan requests conditional approval of the measures to allow time to fully develop and adopt the controls, and the resolution of adoption commits the SCAQMD to revise the measures in 1993 to be fully quantifiable as required by the CAA (SCAQMD Board Resolution No. 92–36, Finding 10).

These potentially significant measures are undergoing further revision at the local and regional level, in order to improve the design and quantification of the controls and confirm implementation responsibilities. This is particularly the case with respect to the only two measures to which substantial emissions reductions are assigned: FC–3—Employer-Based Trip Reduction (advances beyond existing Regulation XV), and FC–4—Additional VMT/VT Reduction Strategies. EPA hopes to receive these revised measures as a SIP submittal and will take action to approve or conditionally approve the controls at that time.

The CO plan therefore lacks approvable measures that fulfill the section 187(a)(3) requirements for fully adopted contingency measures to be triggered if estimates of actual VMT exceed the plan's forecasted levels. EPA proposes to disapprove the plan with respect to this requirement. In separate rulemaking, EPA will propose as part of the South Coast ozone and CO FIP/SIP a substitute contingency measure to be implemented automatically in the event actual VMT excesses are monitored.

i. *Transportation control measures (TCMs) to offset growth in emissions from growth in vehicle miles traveled.* Section 187(b)(2) of the Act requires "Serious" CO areas to meet a TCM requirement specified in section 182(d)(1)(A) for "Severe" and "Extreme" ozone areas. The Act provides that all such plans must include specific and enforceable TCMs to offset any growth in emissions from growth in VMT and numbers of vehicle trips, and to achieve reductions in mobile source emissions as necessary in conjunction with other measures to comply with the periodic emissions reduction and attainment requirements of the Act. EPA's preliminary interpretation of this requirement appears in the General Preamble, 57 FR 13521–13523 and 13533–13534 (April 16, 1992).

As mentioned above, Table 6–6 of the South Coast CO plan includes 11 transportation and indirect source "contingency" measures. These measures and the plan's scheduled adoption dates are as follows:

FC–1, Transit Improvements (to be determined by the implementing agency)
FC–2, HOV and Bus Lanes/Roads (to be determined by the implementing agency)
FC–3, Employer-Based Trip Reduction (1993)
FC–4, Additional VMT/VT Reduction Strategies (1989–2000, with an SCAQMD backstop rule adoption in 1994, if necessary)
FC–5, Traffic Flow Improvements (1989–2000)
FC–6, Control Extended Idling (1993)
FC–7, Encourage Removal of Pre-1980 Vehicles (1993)
FC–8, Reduce Cold Start Emissions from Vehicles (1994)
M–H–1, Environmental Review Program (1992)
M–H–2, Trip Reduction for Schools (1993)
M–H–4, Special Activity Centers (1993)

While progress has been made in local and regional adoption and implementation of certain measures (e.g., FC–1, FC–2, FC–4, and FC–5), none of these important measures has been fully adopted and submitted at this time.

Table 3–3 of the CO plan projects VMT and CO emissions for each year through the attainment year. This table shows that CO emissions will decline each year through the year 2000, despite the predicted VMT growth. As a result, the CO plan does not need to include TCMs to offset growth in CO emissions.

As discussed above, the CO plan would meet the attainment demonstration and progress requirements of the Act if the State adopts and submits an approvable enhanced I/M program. Until the attainment and RFP deficiencies are cured, it is not possible for EPA to find that the CO plan includes specific and enforceable TCMs that are sufficient, in conjunction with other measures, to meet the progress and attainment requirements of the Act. EPA therefore proposes to disapprove the plan with respect to the TCM requirement. Approval of an enhanced I/M program in the future would allow EPA to change this section 187(b)(2) disapproval to an approval.

j. *Fully adopted and enforceable control measures.* The attainment demonstration relies upon SCAQMD and CARB stationary, area, and mobile controls adopted before July 1, 1990, and three additional controls: (1) CARB's Low-Emission Vehicles (LEV) and Clean Fuels Program (adopted September 1990); (2) CARB's California Wintertime Oxygenates Program and Phase 2 Gasoline Specifications (adopted November 1991); and (3) an Enhanced I/M Program. Except for the enhanced I/M program, all of the measures included in the attainment modeling analysis are fully adopted and enforceable.

The plan also includes a group of 18 supplemental measures (Tables 4–1 and 4–2). Most of these measures have not yet been adopted in enforceable form, and the attainment demonstration does not claim credit for the potential reductions associated with the controls. If the measures are submitted by the State in approvable form, EPA will propose to approve them and assign them credit in the attainment demonstration.

k. *Implications of EPA's proposed action.* EPA is proposing to disapprove in part the SIP revision submitted by the State of California on December 31, 1992, for the South Coast CO nonattainment area. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566–13567). As provided under section 179(a) of the Act, the State would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has corrected the deficiency.

2. Ozone Rate of Progress Plan

a. *Statutory provisions and General Preamble requirements.* The requirements for the 15 percent rate-of-progress plans appear in section 182(b)(1) of the Act, which describes how ozone nonattainment areas must achieve an actual VOC reduction of at least 15 percent during the first 6 years after enactment of the 1990 CAA Amendments (i.e., up to November 15, 1996). The General Preamble provides an overview of EPA's preliminary policy interpretation of this statutory requirement (see 57 FR 13507–13510, April 16, 1992). EPA has issued detailed guidance documents on the plan requirements, including: Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate-of-Progress Plans (EPA–452/R–92–005), and Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans (EPA–452/R–93–002).

The CAA requires that the 15 percent rate-of-progress plan be submitted by November 15, 1993. The plan must show an actual reduction in typical ozone season weekday VOC emissions of at least 15 percent for the period 1990–1996.[20] The reduction must be calculated from the 1990 baseline of actual emissions, adjusted in accordance with section 182(b)(1)(B), and must account for any net growth in emissions. Section 182(b)(1)(D) provides that reductions from the federal motor vehicle control program (FMVCP) as promulgated by January 1, 1990, or from the federal 9.0 Reid Vapor Pressure (RVP) gasoline regulation may not count toward meeting the 15 percent reduction target. Also excluded from credit are "fix-ups" to VOC RACT rules or I/M programs to comply with prior statutory and regulatory requirements.

b. *Description of plan.* On November 12, 1993, the SCAQMD adopted its Rate-of-Progress Plan, following reasonable notice and public hearing. CARB submitted the Rate-of-Progress plan as a proposed SIP revision on November 15, 1993. The submitted plan shows a 1990 base year emissions inventory of 1683 tons per day of reactive organic compounds (ROC), an adjusted 1990 inventory of 1450 tons per day (after subtracting FMVCP and RVP reductions of 233), resulting in a 1996 target emissions reductions of 217.5 tons per day. After credit for fully adopted State and local measures and taking into account growth in emissions through 1996, the plan achieves almost all of the reductions needed to meet the target. The plan addresses the small remaining shortfall by commitments to adopt 9 SCAQMD measures in 1994, one SCAQMD measure in 1995, and one CARB measure: the enhanced I/M program. Even after applying an 80 percent rule effectiveness discount (in accordance with EPA's policy), the proposed SCAMQD measures alone would eliminate the shortfall, without the need to count credits assigned to the enhanced I/M program.

Under section 110(k)(4) of the Act, EPA has the authority to conditionally approve the South Coast plan based upon the State's commitment to adopt these measures. However, EPA's current policy does not allow approval of rate-of-progress plans if they depend upon commitments to adopt measures in order to meet the 15 percent reduction requirement. See Memorandum from Michael H. Shapiro, EPA Acting Assistant Administrator for Air and Radiation, "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," August 23, 1993. As a result, EPA intends not to take action to approve the South Coast Rate-of-Progress Plan at this time.

c. *Conditional approval of commitments.* As discussed above, EPA policy does not allow approval of 15 Percent Rate-of-Progress Plans based on committal measures. In accordance with this policy, EPA does not propose to assign credit to the SCAQMD committal measures and approve the progress plan until all measures are submitted in fully enforceable form. However, commitments that strengthen the existing SIP can be approved, although without assignment of emission reduction credit.

EPA proposes to conditionally approve the SCAQMD commitments to adopt the measures listed below, as strengthening the SIP. EPA has evaluated the commitments to adopt measures and finds that those commitments to adopt rules before 1996 are eligible for conditional approval under section 110(k)(4). EPA cannot propose to conditionally approve commitments to adopt measures with 1996 or later adoption dates because the SCAQMD's commitment may extend beyond one year from the date of the final conditional approval action (see pages 2–4 and 6–2 of the plan, and the SCAQMD Resolution of Adoption).

(1) Commitments to adopt measures to contribute emission reductions in the period 1990–1996. The SCAQMD has committed to adopt fully enforceably controls in 1994 for the following measures:

P–B–7, Further Control of Emissions from Bulk Terminals:
P–C–1, Further Emission Reductions from Rubber Products Manufacturing;
A–B–2, Control of Emissions from Gasoline Transfer: Phase II Improvements;
A–B–3, Control of Emissions from Pleasure Boat Fueling Operations;
A–B–5, Further Control of Emissions from Gasoline Dispensing Facilities;
A–B–6, Control of Emissions from Utility Engine Refueling Operations;
A–B–9, Control of Emissions from Active Draining of Liquid Products;
A–C–2, Control of Emissions from Commercial Charbroiling;
A–C–4, Control of Emissions from Deep-Fat Frying.

The SCAQMD committal measure scheduled for adoption in 1995 is A–F–1, Installation of Best Available Retrofit Control Technology on Miscellaneous Sources. All of the measures are listed in Table 4–1 of the plan, along with the identification of the date for full implementation, the implementing agency, and the 1996 ROC emissions reductions with and without the 80 percent rule effectiveness discount. Appendix A of the plan provides further details on each of the measures, including descriptions of the regulatory history, the proposed method of control, and the calculation of emissions reductions and cost effectiveness.

(2) Commitments to adopt measures before 1996 to contribute emission reductions in the period 1997–2000. The South Coast Rate-of-Progress Plan also includes SCAQMD and ARB committal measures, with adoption and implement schedules, to reduce VOC and NO_X emissions during 1997–2000. The SCAQMD commitments are to adopt the following VOC and NO_X measures by the years shown:

P–A–2, Further Control of Emissions from Auto Assembly Coatings (1995);
A–B–7, Control of Emissions from Over-Filling of Vehicle Fuel Tanks (1994);
A–D–3, Control of Emissions from Residential and Commercial Water Heating (1994);
A–E–1, Control of Emissions from Pesticide Applications (1994);
A–E–2, Control of Emissions from Livestock Waste (1994);
M–G–1, Zero-Emission Urban Bus (1993);
M–G–8, Aerodynamic Devices for Trucks (1994);
M–I–1, Control of Emissions from Ship Berthing Facilities (1995);
M–I–4, Control on Marine Diesel Operations (1995);

This list does not include SCAQMD committal NO_X measures which have now been subsumed in the NO_X/SO_X RECLAIM program, adopted on October 15, 1993.

For the period 1997–2000, the CARB committal measures and adoption dates are:

ARB–7, Low Emission Vehicle Standards for Heavy-Duty Engines (1995);
ARB–15, Emission Standards for Recreational Vehicles (1994);
ARB–16, Retrofit/Operational Requirements for Locomotives (1994);
ARB–17, Emission Standards for Marine Vessels (1994).

In section III of this NPRM, EPA proposes to promulgate as part of the

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[20] For the initial progress period (1990–1996), the Act specifies that the SIP must "provide for volatile organic compound emission reductions . . . of at least 15 percent. . . ." Section 182(b)(1)(A). NO_x emission reductions may substitute for VOC reductions in subsequent progress demonstrations, in accordance with section 182(c)(2)(C) of the Act.

FIP attainment demonstration federal measures comparable to some of these SCAQMD and CARB committal measures. If any of the State or local committal measures for these categories are adopted and submitted as a SIP revision and achieve emission reductions comparable to the FIP controls, EPA will approve the SIP rules and modify the FIP rules accordingly. d. Implications of EPA's Proposed Actions.

If EPA issues final conditional approval of the SCAQMD commitments, the SCAQMD must fulfill the commitments to adopt the rules by the date specified in the plan and shown above, and the State must submit these rules to EPA. If the SCAQMD fails to adopt or CARB fails to submit any of the rules to EPA within this time frame, this approval will become a disapproval following EPA written notification to the State.

If the rules are submitted to EPA within the applicable time frame, the SCAQMD commitments will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the submittal, the measures on which the conditional approval was based will also be disapproved at that time. If EPA approves the submittal, those newly approved rules will become a part of the SIP and will modify or replace the measures on which the conditional approval is based. As discussed above, EPA's proposed conditional approval of the committal measures does not mean that the State has satisfied the initial 15 Percent Rate-of-Progress plan requirements of section 182(b)(1). EPA's current policy would not allow such approval until all necessary measures are submitted in fully adopted and enforceable form.

EPA's final conditional approval of the SCAQMD commitments to adopt measures to achieve minimum progress requirements for the 1990–2000 period will establish a federally enforceably obligation on the part of the SCAQMD to adopt these measures in fully enforceable form according to the committed schedule. It is essential not only that SCAQMD but also CARB and all other responsible agencies follow through on their commitments to meet the Act's near-term progress requirements through expeditious adoption of enforceable regulations to achieve the necessary creditable reductions.

III. California FIP

A. Basis for the FIP Actions in Applicable Law and EPA Policies

1. FIP Obligation

a. *Introduction.* In 1988, in the wake of lawsuits and ensuing court orders, EPA disapproved the 1982 South Coast ozone and CO plans and the Sacramento and Ventura ozone plans on the ground that, among other things, they failed to demonstrate attainment of the NAAQS by the December 1987 statutory attainment date, as required by Section 172(a) of the Act. See 53 FR 1780 (January 22, 1988). In March 1989, EPA entered into a settlement agreement with the South Coast plaintiffs which obligated EPA to promulgate federal plans for the South Coast in final form by February 1991. EPA issued a proposed FIP in September 1990.

For Sacramento, EPA also negotiated settlement agreements containing schedules by which EPA would propose and promulgate a federal plan. Pursuant to these schedules, EPA published Advance Notices of Proposed Rulemakings (ANPRMs) on April 5, 1990 (55 FR 12669) and May 27, 1992 (57 FR 22194).

For Ventura, EPA similarly entered into settlements setting a schedule, and published an NPRM on January 17, 1991.

But as time progressed, it became increasingly clear that the South Coast, Sacramento, and Ventura—all areas with difficult air pollution problems—could not possibly meet the ambitious requirements of the 1977 CAA Amendments without severe economic dislocation.

(1) Passage of 1990 amendments. On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Pub. L. No. 101–549, 104 Stat. 2422–2423. Among other things, Congress completely revised the Part D nonattainment provisions of the Act. In so doing Congress repealed the provisions of Section 172 that had required SIPs for the South Coast, Ventura, and Sacramento to demonstrate attainment by December 31, 1987. Those provisions had formed the basis for EPA's disapprovals of the California SIP submissions for those areas, and thus the 1990 Amendments removed the statutory justification for those disapprovals. Congress replaced the provisions of section 172 with a detailed scheme of new requirements and extended deadlines specifically applicable to ozone and CO nonattainment SIPs. Sections 171–193, 42 U.S.C. 7501–7515.

In particular, the 1990 Amendments established a graduated series of requirements for different areas, depending on the severity of the air quality problem in each. Congress established five classifications of ozone nonattainment areas based on the level of each area's ozone problem—ranging from "Marginal" to "Extreme"—and two classifications of CO nonattainment areas. The Amendments also set new, extended deadlines for the attainment of the primary NAAQS for each classification. Sections 181(a)(1) and 186(a)(1).

Consistent with the new Amendments, EPA issued a regulation classifying Sacramento as a "Serious" area for ozone nonattainment; under the statute, "Serious" areas must attain the ozone standard as expeditiously as practicable but no later than November 15, 1999. 40 C.F.R. 81.305 (1992); CAA section 181(a). Ventura is classified as a "Severe" area for ozone, and must attain as expeditiously as practicable, but no later than November 15, 2005. The South Coast is classified as the only "Extreme" area for ozone, and must demonstrate attainment as expeditiously as practicable but no later than November 15, 2010. For carbon monoxide, the South Coast is classified as a "Serious" area, and must demonstrate attainment as expeditiously as practicable but no later than December 31, 2000.

In the 1990 Amendments Congress also imposed specific and increasingly rigorous requirements for Part D SIPs, depending on the area's nonattainment classification, with new deadlines, ranging from immediately to six years from enactment, for submitting various components of the plans to EPA. Sections 181, 182, 186, and 187. In addition, the 1990 Amendments amended Section 110(c)(1), the principal provision governing EPA's FIP obligation.

EPA concluded that these revisions, directing States to develop SIPs meeting new requirements and deadlines, and to submit SIPs to EPA on specific schedules, demonstrated that EPA's obligation to promulgate FIPs would arise only upon future disapprovals of those newly submitted SIPs. EPA appealed to the courts to determine whether the Amendments had relieved the Agency of its pre-existing FIP obligations.

In Coalition for Clean Air, 971 F.2d 219 (9th Cir. 1992), a divided panel of the Ninth Circuit held that although Section 110(c)(1) had been revised by the 1990 Amendments, the language of section 110(c)(1)(B), which requires EPA to promulgate a FIP within two years after it "disapproves" a SIP, applies to pre-Amendment disapprovals. Thus, the court ruled that new section 110(c)(1)(B) operates retroactively to retain EPA's preexisting FIP obligation, even though the statutory provisions forming the basis for that obligation have been repealed. In reaching this conclusion, the court declined to indicate whether the requirements of the old law or the 1990 Amendments would govern the contents of this FIP.

The Court acknowledged that "the proper contents of FIPs for the South Coast are not before us," and that "we need not decide whether EPA would be required to meet any additional requirement imposed by the 1990 Amendments in promulgating FIPs for the South Coast." 971 F.2d at 225.

EPA sought, and was denied, a writ of certiorari (113 S.Ct. 1361 (1993)).

(2) Applicable law. Thus, although the Ninth Circuit found that the passage of the Amendments did not release EPA from a FIP obligation arising from a pre-Amendment disapproval, it did not decide whether any requirement of the 1990 Amendments applies to this continuing obligation. In the absence of any guidance from the Court, this task falls to EPA.

The threshold question, then, is what requirements govern the content of a FIP which will take effect after enactment of the Clean Air Act Amendments, but which is based on a plan failure and disapproval arising from pre-Amendment Clean Air Act provisions which have since been repealed. The greatly altered legal regime established by the 1990 Amendments creates a discontinuity between the plan contents required under the new and old acts. Thus, EPA is faced with a choice as to how to design the FIP.

(3) New law applies. It is well settled that "[c]ourts must apply new laws to pending cases, unless such application would result in manifest injustice or be contrary to statutory direction or legislative history." *United States* v. *Ford*, 737 F.2d 1508 (9th Cir. 1984). *See Bradley* v. *School Bd. of Richmond*, 416 U.S. 696, 711 (1974); *DeGurules* v. *INS*, 833 F.2d 861, 863 (9th Cir. 1987); *California Cartage Co.* v. *United States*, 802 F.2d 353, 357 (9th Cir. 1986). In accordance with the principle embodied in these cases, EPA believes that the 1990 Amendments should be applicable to the FIPs arising from EPA's pre-Amendment disapprovals. But an analysis of the new Act's provisions reveals that the new Act does not require this FIP to include each and every pollution control program required of States under the Amendments.

The 1990 Amendments make explicit a principle that was implicit in the preceding Act—that a FIP corrects or fills a void in a deficient state plan. The amended Act defines a FIP as a plan to fill a gap or "correct all or a portion of an *inadequacy* in a State implementation plan." 42 U.S.C. 7602(y) (Supp. II. 1990) (emphasis added). The California SIPs at issue here were rejected by EPA in 1988 because they were "inadequa[te]" to demonstrate attainment under the pre-Amendment deadlines, and thus EPA's obligation under the pre-1990 Act was to promulgate a FIP in order to correct that "inadequacy." Thus EPA's FIP obligation is to fulfill the requirement to demonstrate attainment. Stated differently, what the Ninth Circuit's ruling preserved was EPA's existing FIP obligation to correct the state plan's failure to provide for attainment. That is the inadequacy that EPA must address in this FIP, not any failure that might have arisen under any of the numerous requirements of the new law.

Of course, if the State fails to meet any of the new Act's requirements, that failure would trigger a new FIP obligation in the future, but that would be an entirely different obligation, not the one on which the district court orders under the old Act were premised. And even as to such obligations, the Administrator is not required to promulgate a federal plan until two years after she disapproves a deficient state plan or finds that the state has failed to submit a required plan element. Section 110(c)(1).

With respect to new requirements imposed by the 1990 Amendments, there has either been no state failure, or the 24-month clock for EPA to promulgate a FIP has not yet run. When a state failure giving rise to a new FIP obligation occurs, EPA will address that obligation in a separate FIP NPRM. For example, FIPs addressing state failures to satisfy the VOC RACT catch-up requirement of the new Amendments may become due late in 1994 and in 1995. In the absence of approvable state measures correcting for these deficiencies, EPA will issue separate FIPs to rectify them.

Given EPA's position as to the effect of the new Amendments, one might argue that the logical extension is that since the state has not yet failed to adopt an attainment demonstration under new section 182(c)(2)(A), no attainment demonstration is due. But since the Ninth Circuit conclusively decided that the obligation to promulgate an attainment demonstration survived, EPA must prepare one under the new Act.

For policy as well as legal reasons, this resolution makes sense, and it avoids extreme results. On the one hand, it would be unhelpful for EPA to design the FIP to meet the old law requirements that have since been repealed. And for EPA to impose in 1995 a regulatory regime that became extinct in 1990 would surely not serve Congressional intent or constitute sound regulatory policy. On the other hand, it would equally disserve Congressional intent to compel these FIPs, which are not based on state failures to meet any requirements of the new Act, to meet all those requirements and to cure failures that were not part of the obligation that the Court orders preserved.

In the *Coalition* case, the Ninth Circuit Court itself seemed to imply that EPA's FIP need not address new requirements when it noted that the state could "propose these new measures as revisions to the FIP under the timetables provided in the 1990 Amendments just as the state would be required to do if a FIP had been in effect when those Amendments were adopted". *Coalition for Clean Air*, 971 F.2d at 226.

Indeed, if the FIP were to try to meet all the requirements of the new Act, it would have to anticipate and cure new failures before they had arisen under the new Act, and before the State has had an opportunity to develop and submit plans to comply with the new Act. This would violate the express congressional determination that "air pollution prevention" and "air pollution control at its source is the primary responsibility of States and local governments." Section 101(a)(3).

Thus, EPA has concluded that the FIPs must cure the original failure to demonstrate attainment. But in these FIPs the Agency need not assume additional obligations to meet new requirements as to which no state delinquency has yet been established under the new Act, or as to which EPA's FIP obligation has not yet matured.

b. The FIPs Must Demonstrate Attainment—(1) What Attainment Deadline Governs?

(a) *Background.* The Ninth Circuit last addressed the issue of what attainment deadline applied to a pre-Amendment FIP obligation in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). But at that time the attainment deadline in the then extant Clean Air Act—December 31, 1987—had passed, and Congress had not yet extended it.

In a March 1990 opinion, prior to the passage of the Clean Air Act Amendments, the Ninth Circuit vacated EPA's approval of two Arizona carbon monoxide SIPs, and ordered EPA to promulgate FIPs consistent with that court's opinion. Interpreting EPA's statutory requirement to develop a FIP in light of the elapsed statutory attainment date of December 31, 1987, the Court concluded that "the national ambient air quality standards must be attained as soon as possible with every available control measure * * *." 898 F.2d at 691. The Court relied upon EPA guidance, subsequently revoked, for the part of its formulation requiring "all possible measures" or "every available measure." 55 FR 36505 (September 5, 1990).

The Court, in formulating this attainment test, made plain that, while it understood that a Congressional re-determination of the attainment deadlines was in the works, the Court was constrained until Congress acted. Thus, at the time the *Delaney* Court and EPA last struggled to define an appropriate FIP attainment deadline, they confronted not only a lapsed attainment deadline, but Congressional silence as to an appropriate replacement.

Quoting from its opinion in *Abramowitz v. EPA*, 832 F.2d 1071, 1079 (9th Cir. 1987), the *Delaney* Court stated: "We are informed by counsel for both sides of their expectation that Congress will extend the deadline once again in the near future, but we must apply the law as it now stands, not as it may become. * * * Until the Clean Air Act is further considered * * * the Agency must 'give effect to the unambiguously expressed intent of Congress.' We, and the EPA, are bound by the statutory scheme until Congress alters that scheme." 898 F.2d at 691.

(b) *Current law*. Now, however, Congress has indeed "alter[ed] that scheme", the new law applies, and EPA, in formulating its FIPs, has the benefit of Congressional determination of appropriate attainment dates. With the passage of the Clean Air Act Amendments, Congress has made specific attainment deadline determinations with respect to each type of area. As with other aspects of the new law, EPA believes that the attainment dates of the new law apply. Indeed, even if it were not clear that the new attainment dates apply, it is now impossible to design FIPs to meet the 1987 attainment date that governed the original state plans, and there is a clear expression of Congressional intent as to substitute attainment deadlines.

As noted above, under the new Act, the ozone attainment date must be "as expeditiously as practicable but not later than" November 15, 1999 for Sacramento; November 15, 2005 for Ventura; and November 15, 2010 for the South Coast. Section 181(a). The carbon monoxide attainment date for the South Coast must be "as expeditiously as practicable but not later than" December 31, 2000.

(2) These FIPs need not address new requirements other than the requirement to demonstrate attainment. As shown above, EPA's obligation to design a FIP arose from state failures to demonstrate attainment under the old Clean Air Act. The Amendments imposed for the first time additional, different requirements that were not in effect when EPA disapproved the state plans giving rise to its FIP obligation, and which took effect after EPA's FIP obligation matured. Thus California was given no opportunity to meet these requirements in its previous SIPs, and any failure to meet these requirements would be a new delinquency that was not the subject of EPA's original FIP obligation. EPA therefore has concluded that the FIPs need not address these requirements unless and until California has failed to satisfy them and the time for EPA to promulgate a replacement FIP under the new Act has elapsed.

For example, the Amendments contain new and highly specific targets for Reasonable Further Progress. Section 182(b)(1) in the Amendments requires plans under the Act to provide for VOC emissions reductions of at least 15 percent by 1996, and section 182(c)(2)(B) requires an additional 9 percent emissions reduction every three years after 1996. Each of these sections contains detailed instructions for calculating the creditability of those reductions. Sections 182(b)(1) and 182(c)(2).

While EPA does not believe that these progress requirements are applicable to its FIP obligation, EPA has concluded that it is wise policy to achieve some degree of progress during the time preceding the attainment dates. As a result, the FIPs do establish incremental reduction targets for the purpose of ensuring attainment by the applicable attainment date.

At this time, the State of California has become delinquent in meeting a few requirements in the new Act, thereby giving rise to new EPA FIPs obligations under the new Act's deadlines. FIPs to address these deficiencies, which primarily involve submissions of RACT catch-ups and emission statements, are not yet due. EPA will address these FIPs in separate rulemakings as they become due.

c. FIPs may use new provisions providing additional flexibility. Since EPA has concluded that the new law applies to its FIP obligation, EPA may avail itself of new provisions of the law that furnish additional flexibility in designing implementation plans.

The Ninth Circuit in its opinion recognized that EPA could take advantage of increased flexibility in the new Act. For example, the Court noted that EPA now has authority under new section 182(e)(5) to approve some parts of the South Coast ozone SIP that it had disapproved in 1988. *Coalition for Clean Air*, 971 F. 2d at 226. Similarly, as explained below, EPA believes it may invoke section 182(e)(5) in designing its FIP to obtain greater flexibility to anticipate new control techniques or the improvement of existing techniques. To the extent that EPA invokes such discretionary provisions of the new Act, it will satisfy any new prerequisites prescribed in those sections. For example, as explained below, in order for EPA's FIP to obtain the benefit of the latitude granted by section 182(e)(5) to rely on measures anticipating improvements in technology, the FIP must address progress requirements of that section which otherwise would have been inapplicable.

As described in more detail below, EPA in its FIPs is also applying the new law's classifications for each ozone nonattainment area, and, for Sacramento, the provision for "bumping" up an area to a new classification. As with section 182(e)(5), where EPA relies on a new provision for added flexibility, it intends to fulfill any conditions imposed on the exercise of that authority.

EPA recognizes that its FIPs must weave a complicated path between the old and new laws, and that its FIP obligation is necessarily a hybrid of old and new. This complexity is unavoidable, however, because of the anomalous nature of the task EPA faces: EPA must cure a failure under an old Act, since repealed, but administer the cure under new law.

d. *Maintenance demonstration for the south coast*. EPA's FIP obligations for the South Coast, Sacramento, and Ventura arose from disapprovals of their SIPs solely on the ground of their failure to demonstrate attainment by 1987 or any fixed near-term date. See 53 FR 1280–1281 (January 22, 1988) (South Coast); 53 FR 39087–39088 (October 5, 1988) (Ventura); 53 FR 48535–48536 (Dec. 1, 1988) (Sacramento). The settlement agreements for Ventura and Sacramento describe EPA's FIP obligation solely in terms of promulgating a plan for attainment. The South Coast settlement agreement refers to a plan for attainment and maintenance. Thus, with respect to the South Coast, EPA must determine what requirements apply to maintenance.

As noted above, EPA is applying the new law to its FIP obligation. The 1990 Amendments changed the law with respect to maintenance demonstrations. Under the pre-Amendment Clean Air Act, sections 172(a)(1) and 110(a)(2)(b) required plans to include measures to "insure attainment and *maintenance*". (emphasis added) But the 1990 Amendments revised both the general planning and ozone and CO specific planning provisions to delete the requirement for a maintenance demonstration to be submitted simultaneously with an attainment demonstration.

The Amendments revised section 110(a)(2) to delete any reference to a maintenance demonstration. When we look to Part D for requirements applicable to areas classified "Serious" and above for ozone, and "Moderate" (with a design value greater than 12.7ppm) and above for CO, we find that section 172(c)(1), the closest analog to old section 172(a)(1), also drops any mention of planning for maintenance. Sections 182(c)(2)(A) and 187(a)(7) of the new Amendments, which set forth the specific requirements for ozone and CO nonattainment areas, respectively, to provide for attainment, similarly makes no mention of any maintenance requirement.[21]

Rather, the requirement for nonattainment areas to provide for maintenance in the amended Act is now found in new section 107(d)(3)(E)(iv) and section 175A. These sections provide that maintenance plans must be submitted when an area requests redesignation to attainment. The combination of the amendments to section 172 and the addition of these new maintenance plan provisions indicates that the requirement for a maintenance plan arises only much later, when it must accompany a request for redesignation.

This reflects a Congressional determination to focus on attainment, and to compel maintenance plans only when an area has progressed to the point when it has already attained and is ready to demonstrate attainment. This legal regime and policy has thus superseded any obligation arising out of old section 172(a).

EPA's existing regulation, promulgated under the aforementioned pre-Amendment maintenance provisions, requires SIPs to provide for maintenance for 20 years, or for 10 years upon the making of an appropriate finding. Section 193 of the 1990 Amendments, the "General Savings Clause", provides in pertinent part that each regulation shall remain in effect except to the extent "otherwise provided under this Act, or inconsistent with any provision in effect. * * *"

As demonstrated above, the changes to section 172 and the new requirements of section 175A and related provisions deleted from the Act any requirement to provide for maintenance prior to a request for redesignation. The new Act thus establishes a whole new regime for demonstrating attainment and maintenance, the timing and requirements of which are inconsistent with the old law. Under the Amendments, attainment plans no longer must provide "up front" a plan for maintenance. And when the Act does require submission of maintenance plans (at the time of a redesignation request), such plan need demonstrate maintenance for only ten years instead of twenty.

Although EPA has not yet accomplished the formal rescission of its pre-1990 regulations on maintenance, we consider the rules nullified by operation of Section 193, and therefore no longer applicable. EPA will propose in separate rulemaking to rescind these national regulations, which appear at 40 CFR part 51 subpart D—Maintenance of National Standards. EPA may or may not promulgate a replacement for the regulations.

2. Other Issues Relating to EPA's Authority in Issuing a FIP

a. *Comprehensive FIP authorities under the clean air act.* When forced by a state planning delinquency to promulgate a FIP, EPA has wide-ranging authority under section 110(c) to fill the gaps left by the state failure. EPA's authority to prescribe FIP measures is of three types. First, EPA may promulgate any measure which it is expressly permitted to issue under any circumstances pursuant to pre-existing independent statutory authority—for example, explicit provisions of Title II. That is, EPA may promulgate any measure which it has authority to issue in a non-FIP context, without reliance on section 110(c). Second, EPA may invoke Section 110(c)'s general FIP authority, and act to cure a planning inadequacy in any way not clearly prohibited by statute. Third, under section 110(c), the Courts have held that EPA may exercise all authority that the State may exercise under the Act.

The second type of authority, EPA's general authority under section 110(c), is essentially remedial, and EPA has broad power under that section to cure a defective state plan. Thus, in promulgating a FIP, EPA may exercise its own, independent regulatory authority under the Act in any way not clearly prohibited by an explicit provision of the Act. When EPA promulgates a FIP, courts have not required explicit authority for specific measures: "We are inclined to construe Congress' broad grant of power to the EPA as including all enforcement devices reasonably necessary to the achievement and maintenance of the goals established by the legislation." *South Terminal Corp.* v. *EPA*, 504 F.2d 646, 669. (1st Cir. 1974). See also *City of Santa Rosa* v. *EPA*, 534 F.2d 150, 153–154 (9th Cir. 1976) (upholding the Administrator's authority to promulgate a FIP imposing gas-rationing in Los Angeles on a massive scale). "The authority to regulate pollution carries with it the power to do so in a manner reasonably calculated to reach that end." *Id.* at 155.

In addition, when a State's failure to discharge the primary responsibility to protect its air quality compels EPA to assume this task, the powers of the defaulting State accrue to EPA. As the Ninth Circuit recently held, when EPA acts in place of the State pursuant to a FIP under section 110(c), EPA " 'stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA.' " *Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531, at 1541 9th Cir. 1993). The First Circuit, in an early FIP case, agreed:

> The Administrator must promulgate promptly regulations setting forth 'an implementation plan for a State should the State itself fail to propose a satisfactory one.' The statutory scheme would be unworkable were it read as giving to EPA when promulgating an implementation plan for a State, less than those necessary measures allowed by Congress to a State to accomplish federal clean air goals. We do not adopt any such crippling interpretation.

South Terminal Corp. v. *EPA, supra* at 668.

b. *EPA authority to charge fees.* State Implementation Plans for nonattainment areas are clearly authorized to include emission fees as economic incentives to reduce pollutants. Sections 110(a)(2)(A) (relating to SIPs generally) and 172(c)(6) broadly authorize SIPs to meet the Act's requirements through any "control measures, means, or techniques * * * necessary or appropriate", including "economic incentives such as fees * * *"

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[21] Section 110(a)(1) of both the pre-amended and amended Acts requires areas to provide for maintenance (as well as implementation and enforcement) after EPA issues a new or revised NAAQS. But this is not applicable here, since that obligation is past for ozone and CO, and the failure that gave rise to the FIP obligation here was grounded in maintenance provisions of section 172(a) that were repealed in 1990.

EPA interprets the FIP provisions to authorize fees as well, by virtue of both the case law that grants FIPs much the same scope as SIPs, and by the provisions of section 302(y), which defines a FIP to include—

> Enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances).

EPA interprets this phrase, including the parenthetical reference to economic incentives, as providing authority to impose a broad range of economic incentives, including fees, even if not specifically listed in the provision. Thus, EPA takes the position that a FIP includes authority to impose fees concerning ozone generating emissions or other activities.

c. *Restrictions on EPA's authority regarding fees.* As a legal matter, EPA's authority under section 110(c) and 302(y) to impose fees is limited only to the extent that the fees must be enforceable, and must provide an incentive that may result in a reduction in ozone generating emissions or other activities. As a practical matter, because only quantifiable emissions reductions may be credited in the attainment demonstration, EPA may limit the types or amounts of fees imposed to those that assure quantifiable emissions reductions.

The Clean Air Act includes no provision directing that FIP fees collected by EPA remain at EPA's disposal; as a result, in general, EPA must deposit any FIP fees it collects in the Treasury, under 31 U.S.C. 3302(b) (the Miscellaneous Receipts Act). The prohibition against retaining fees applies as well against directing how those fees are spent. For example, EPA could (by itself or through a contractor, described below) establish an I/M program and charge fees for conducting the inspection, but the Miscellaneous Receipts Act precludes EPA from rebating those fees to car owners who failed the inspection and elected to scrap their vehicles.

Under certain circumstances, fees relating to services or products provided by a contractor may be retained by that contractor to defray its costs. *See* 61 Comp. Gen. 285 (1982) (contractor may charge and retain fees to offset costs of providing public microfilm copies of Federal Election Commission reports).

d. *Land use.* Section 131 of the Act states: "Nothing in this Act constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this Act provides or transfers authority over such land use." This language merely preserves in general terms the existing authority of counties and cities to plan or control land use. However, this language could be interpreted as a constraint on EPA's authority under section 110(c). This could happen if, for example, the FIP proposes to regulate certain air emissions, which indirectly has the effect of narrowing or restricting a district's or locality's zoning or land use planning choices. However, any FIP actions taken by EPA would be for the purpose of regulating air emissions, not local land use or zoning requirements that are unrelated to air quality. As such, they would not infringe on the authority of local governments to control land use; rather they, at best, would restrain the ability of certain entities to engage in activities that cause certain air quality problems. This interpretation is confirmed by the House Conference Committee Report which states:

> Depending on the nature of the air pollution problem in a State and the control options available to the State, the measures required [to attain the NAAQS] may or may not include measures involving land use requirements. New section [131] clarifies that if land use requirements are necessary to meet the requirements of the Clean Air Act, nothing in the Act should be construed to affect State laws regarding the appropriate entities to adopt and implement such land use requirements * * * [nor to authorize] air pollution control agencies to override individual project-specific land use decisions made by a city or county.

See H.R. Re. No. 490, 101st Cong., 2d Sess. 401 (1990) (analyzing section 706 of H.R. 3030, which added section 131 [mistakenly identified as section 130]).

e. *Parking management.* FIP fees imposed with respect to parking management are subject to additional limitations under section 110(c)(2)(B) and (D)—such a fee is not permissible if it constitutes a "parking surcharge". A parking surcharge is defined to include—

> Any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

This provision effectively eliminates a variety of parking management fees, such as surcharges designed to increase parking costs. Several such measures were included in the 1973 FIP setting forth transportation control plans for several areas in California, 38 FR 31232, 31236–31237, 31247–31248 (Nov. 12, 1973), but the parking measures were withdrawn when a provision to preclude them was included in the Energy Emergency Act of 1973, 39 FR 1848 (Jan. 15, 1974). (Although the Energy Emergency Act of 1973 ultimately was not enacted, 110(c)(2) was enacted as part of the Energy Supply and Environmental Coordination Act, June 22, 1974, Pub.L. 93–310, S 4, 88 Stat. 256.)

f. *Authority to order the state to implement specific measures requiring the state to legislate or expend money.* EPA's authority to promulgate measures in a FIP which require the State to enact legislation or expend state funds may be somewhat limited under prior case law. In general, EPA may require the State to implement FIP measures, including requirements for legislation and expenditure of funds, if the measures affect the pollution-creating activities of the State. However, in *Brown* v. *EPA*, 521 F.2d 827 (9th Cir. 1975), *vacated on other grounds*, 431 U.S. 99 (1977) (*Brown I*), the court held that Section 113 of the Clean Air Act did not provide statutory authority for EPA to bring an enforcement action against the state (or other municipal authority) for failing to implement a motor vehicle inspection and maintenance program. The court reasoned that the Act authorized federal enforcement if the State did not implement regulations to control its own pollution creating activities, "but not against a state that chooses not to govern polluters as the Administrator directs." *Id.* at 832. In a subsequent decision, the court rejected EPA's argument that ownership of the roads and highways made the State responsible for the pollution created from their use. *Brown* v. *EPA*, 566 F.2d 665 (9th Cir. 1977), *vacated on other grounds*, 431 U.S. 99 (1977).

The same court, however, held in *City of Santa Rosa* v. *EPA*, 534 F.2d 150 (9th Cir. 1976), that the EPA may require gas rationing under its FIP authority. The court found that the Administrator of EPA has authority to limit gas delivery to retail outlets and may require the citizens of the State to curtail their gas usage. The FIP measure in *City of Santa Rosa* did not require the State to implement the gas rationing scheme, and the court distinguished *Brown* because the petitioners had challenged the effect of gas rationing, not EPA's authority to order rationing. *Id.* at 155.

The *Brown* holding was similarly distinguished and limited by the Sixth Circuit Court of Appeals in *United States* v. *Ohio Department of Highway Safety*, 635 F.2d 1195 (6th Cir. 1980). The court upheld EPA's enforcement against the State under Section 113 of the Act for registering motor vehicles which did not pass an inspection and maintenance program promulgated by EPA. The court held that the State was interfering with EPA's implementation of a measure that had been promulgated under its federal authority. See also *Pennsylvania* v. *EPA*, 500 F.2d 246 (3d Cir. 1974).

The court in *Brown* did not reach constitutional issues raised under the commerce clause. It is unclear, but unlikely, that requiring the State to implement FIP measures which mandate legislation and expenditure of funds would be struck down under the commerce clause. See *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985) (holding that the federal government may require states to pay minimum wages and overtime pursuant to the Fair Labor Standards Act). However, even assuming that the commerce clause poses no such obstacle, nothing in the enactment of the 1990 Amendments casts doubt on the continued vitality of the *Brown* holdings with respect to the statutory limits on EPA's FIP authority. Thus, the constraints discussed above still apply. In short, EPA may require the state to legislate or expend funds that affect the state's own pollution creating activities. Although EPA may not require the state to legislate or spend money to govern the pollution creating activities of others, EPA may promulgate and implement such measures directly in a FIP and the State may not interfere with EPA's enforcement of those measures.

B. Overview of Components of Each FIP

1. FIP Control Strategy

a. *Introduction*. This NPRM addresses EPA's FIP obligations to prepare attainment demonstrations for ozone in Sacramento and Ventura, and for both ozone and carbon monoxide in the South Coast. EPA's task requires the Agency to complete four fundamental air quality planning activities: (1) Preparation of information on current and projected emissions of each precursor pollutant; (2) modeling assessment of the levels of these pollutants that must be reached for each area to attain the relevant NAAQS; (3) identification of control options sufficient to achieve the necessary reductions in emissions; and (4) drafting of federally enforceable regulations adequate to secure the reductions.

In this section of the NPRM, EPA summarizes information used in establishing the technical foundations of the attainment demonstration: the sources of data on existing and future emissions, EPA adjustments to that data, and modeling analyses used to simulate the ambient consequences of emissions changes and to set the overall reduction targets for each precursor pollutant.

The bulk of this section, however, presents the complete set of federal regulations for each area. The regulations themselves appear at the end of the NPRM, and they are further explained, in many cases, by technical support documents which are available as part of the docket for this NPRM.

For each set of regulations, EPA has attempted to: (1) Specify clearly which sources are subject to the rule's requirements, and which are exempt; (2) describe in simple terms the most important source obligations, whether procedural or emissions related; (3) identify possible compliance options and estimated costs per unit of pollution reduced; and (4) characterize the emissions reduction benefits associated with the rule in each applicable FIP area.

Because many of the FIP rules are unprecedented in their regulatory targets or approach, EPA has reserved portions of the rules for later development, and seeks full input from affected sources on the best ways to fill in these implementation details before the compliance deadlines of each rule approach.

In other cases, EPA must complete ongoing technical projects, including further emissions sampling and analysis, to finalize important rule implementation elements, such as protocols for use in the stationary and area source cap rules. Ideally, EPA would undertake these projects in coordination with affected industry and State and local air pollution control agencies in the FIP areas. These additions to the FIP rules may be proposed as actual regulations or they may be issued as supplementary guidance materials that expand on practical compliance issues.

EPA encourages readers to provide information and regulatory suggestions to allow EPA to improve the proposed rules' clarity and compliance certainty, provide for least-cost compliance approaches, and tailor the rules more precisely to fit local circumstances and foster program transfer to the State or local level.

In many cases, affected sources are already subject to existing State and local emission reduction requirements, and the responsible State and local agencies may be developing further regulatory initiatives, as part of their ongoing SIP efforts. EPA has attempted to craft FIP rules which, to the extent possible, match the format of State or local regulations and minimize conflict between the federal regulatory regime and current or proposed State and local requirements. To reduce compliance costs and duplication of effort by sources and the enforcing agencies, EPA will consider future FIP rule amendments for the purpose of harmonizing federal and State controls and eliminating any jeopardy of the regulated community for inadvertent violations of similar but not identical federal and State rules.

b. *Enforcement*. As described in section III.A.2.a of this NPRM, the FIP requirements contained in sections 52.2950–52.3002 are proposed pursuant to section 110(c) and other sections of the Clean Air Act. If finalized, these requirements will be subject to Federal enforcement under section 113(a)(3) of the Act. Pursuant to section 113(a)(3), EPA may pursue the following actions against any person who violates a requirement of the final FIP rules:

(1) Administrative penalty order. EPA may issue an administrative order assessing a civil administrative penalty of up to $25,000 per day per violation.

(2) Compliance order. EPA may issue an order to comply with any requirement of the FIP.

(3) Civil action. EPA may commence a civil action for permanent or temporary injunction and/or assess a civil penalty of up to $25,000 per day per violation.

(4) Criminal action. EPA may request that the Attorney General commence a criminal action against any person who knowingly violates any requirement of the FIP.

Owners and operators of sources subject to the FIP rules should be aware that compliance with the FIP requirements does not generally relieve them of the obligation to comply with other applicable federal requirements or with their obligations under State law and regulations, or local air pollution control rules.

c. *Application of FIP Requirements to OCS Sources*. Section 328 of the 1990 CAA Amendments required EPA to establish requirements to control air pollution from Outer Continental Shelf (OCS) sources to attain and maintain federal and state ambient air quality standards and to comply with part C of title I of the CAA. EPA promulgated the new OCS air regulations at 40 CFR part 55 ("Part 55") on September 4, 1992 (57 FR 40792).

As required by section 328 of the Act, OCS sources located within 25 miles of states' seaward boundaries,[22] must meet requirements that are the same as the requirements that would be applicable if the OCS source were located in the corresponding onshore area ("COA").[23]

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[22] The state seaward boundary of California extends three miles from the coastline.

[23] Part 55 also establishes federal requirements for sources located beyond 25 miles from state seaward boundaries. However, there currently are no OCS

These include, but are not limited to, all applicable federal, state, and local requirements for control technology, permitting, monitoring, reporting, compliance and fees. New OCS sources must comply with the requirements of Part 55 immediately and existing sources must comply by September 4, 1994.

Both VCAPCD and SCAQMD are designated as the COA for several OCS facilities located within 25 miles of the State seaward boundary. These OCS sources will be required to meet all the applicable requirements of the FIP when the FIP requirements are incorporated into part 55. The OCS rule establishes a "consistency update" procedure at 40 CFR 55.12 to amend part 55 to include new federal, state, and local regulations when they are adopted.

The OCS rule also establishes procedures for EPA to delegate implementation and enforcement of the requirements of part 55 to state and local agencies. Thus, any FIP requirements applicable to the affected OCS sources can be implemented by VCAPCD and SCAQMD when they are delegated authority for part 55. The reader is referred to the preamble of the OCS regulation for further background and information on part 55.

d. *Application of FIP Requirements to Sources Located in Indian Country.* As described below, the CAA empowers EPA to apply the FIP requirements to affected air pollution sources in Indian country.[24] Thus, EPA is also proposing to apply the FIP requirements to all affected air pollution sources located on Tribal lands. This means that the proposed FIP rules will apply with equal force to State and Tribal lands.

Congress has authorized EPA to make Indian Tribes partners in Clean Air Act implementation in the same manner as States. See section 301(d)(2) of the Act. As a prerequisite, EPA must identify provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. EPA may provide by regulation other means by which it will directly administer any other provisions of the CAA not identified, to achieve the appropriate purpose. See section 301(d)(4).

The overarching purpose of the Clean Air Act is, among other things, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." See section 101(b)(1) of the CAA (emphasis added). The NAAQS are one of the fundamental CAA benchmarks by which public health and welfare protection is measured.

EPA has not yet issued rules under section 301(d)(2) authorizing Tribes to submit NAAQS-related CAA programs for EPA approval in the same manner as States. Sections 110(c)(1) and 301(d)(4) of the Act nevertheless evince Congressional intent to authorize EPA to directly protect public health and welfare where States or Tribes fail to submit such CAA programs or lack authority to do so. Federal implementation on Indian lands is especially appropriate in these particular exigencies where federal action will prevent voids in public health and welfare protection. See *Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545, 555–56 (10th Cir. 1986) (affirming EPA's authority to directly implement Safe Drinking Water Act Underground Injection Control program on Indian lands in Oklahoma where concluding otherwise would contradict the meaning and purpose of the Act by creating "a vacuum of authority over underground injections on Indian lands, leaving vast areas of the nation devoid of protection from groundwater contamination).

It is not necessary for EPA to determine to what extent at the local level the State or certain Indian Tribes would have authority over specific geographic areas within the scope of the FIPs. The State has failed to make required SIP submittals to protect the NAAQS and any affected Tribes lack authority to make such submittals at this time. In these circumstances the CAA empowers EPA to protect air quality *throughout* the affected areas. *Id.* at 553 ("the underground drinking water provisions of the SDWA apply throughout the country, border to border, ocean to ocean").

2. Common Elements

a. *Mobile source regulations.* The mobile source control measures which are discussed in section III.D. of this NPRM range in scope from national application to restricted application in one or more of the three FIP areas depending on the category. Technology improvements are generally required in phases, with new national emission standards applicable in the early years, and California, or FIP area requirements scheduled for implementation later. In some cases, the mobile source measures are applied only locally because they are adopted to fill a lack in a particular area's plan, such as enhanced I/M or the employee commute options program. Local strategies are also proposed to deal with the emissions from transportation and military facilities that contain more than one type of mobile emission source. Following is a brief classification of the measures according to the breadth of their application:

(1) Nationwide. New emission standards have recently been proposed or are shortly scheduled for proposal for several mobile source emission categories. Both on-highway and off-road heavy duty engines will meet tighter NO_x standards, as will locomotives. Lawn and garden, recreational marine, and other small nonroad equipment are the subject of new exhaust and evaporative hydrocarbon standards.

(2) Statewide. In California, it is also possible to adopt standards more stringent than those applied at the national level, if it is necessary to do so for attainment purposes. The market for vehicles and equipment in California is large enough to encourage manufacturers to supply a full range of product in the state, even though it may be different than similar product in the rest of the country. Today's NPRM proposes special standards for medium duty vehicles, heavy duty highway engines, and onroad and off-road motorcycles sold and used in California and gives notice that such standards may become necessary for lawn and garden equipment and other small engines.

(3) FIP areas. In the nonroad heavy duty engine category, the FIP proposal contains special NO_x and evaporative HC requirements for engines used in the FIP areas. The standards represent a significant challenge for heavy duty engine manufacturers and are not considered to be necessary for attainment in other areas of the United States. Engines used in highway applications are regulated in the FIP at the statewide level, but the approach to the special NO_x and evaporative HC standards for the nonroad engines will involve an engine registration and sticker enforcement system. For that reason, the standards are applied to engines actually used in each individual FIP area, and not to all engines sold in California.

In several categories, the FIP proposes emission bubbles to allow facilities or entities with many mobile sources as

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sources located, or proposed to be, in this outer regime.

[24] Indian country includes: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 18 U.S.C. section 1151.

much flexibility as possible to find reductions across different mobile emission sources. These bubbles are proposed for commercial airlines, marine vessels, railroads (South Coast only), and military installations in the FIP areas. In some cases, fees are proposed to encourage the purchase and use of the cleanest engines, to encourage activity reductions, or to promote the use of lower emitting operational procedures. These fees would apply to heavy-duty nonroad fleets, recreational marine engines, commercial and general aviation, and ships in the FIP areas only.

Finally, the FIP proposes two light duty vehicle measures in only the FIP areas of California, namely motor vehicle inspection and maintenance (I/M), and parking cash out (a transportation control measure).

b. *Stationary and area source regulations.* As discussed in section III.C of this NPRM, the proposed stationary source control package includes five general strategies:

- Regulations for specific sources;
- Regulations for specific source categories in the FIP areas;
- Regulations imposed statewide;
- Cap regulations; and
- New technology measures for the South Coast pursuant to section 182(e)(5) of the Act.

Regulations for specific sources are, by definition, particular to individual sources and thus not common to the three FIP areas. In fact, all the source-specific regulations proposed in this NPRM apply only in the Sacramento area. Similarly, new technology measures proposed for the South Coast apply only in the South Coast as specified in section 182(e)(5) of the Act. Some or all regulations from the other three categories, however, are proposed for implementation in all three FIP areas. These are summarized briefly below.

(1) Regulations for specific source categories. Sections III.C.3.b–p of this NPRM describe eighteen rules proposed for specific source categories in one or more FIP areas. Categories were selected for regulation generally because a State or local agency had already published a regulation that could be adapted for implementation in the FIP, or a previously unregulated category contributed substantial VOC or NO_X emissions. Because the FIP areas have different emission inventories and local rules, the projected impact of new federal rules varies from area to area. Therefore, EPA is proposing to implement these FIP rules only in the areas where they may have a significant impact. As a result, only a few of the rules are common to all three FIP areas.

(2) Regulations imposed statewide. As discussed in section III.C.4, EPA is proposing several stationary source rules for implementation statewide: Architectural coating, pesticides, aerosol paints and other consumer products. EPA believes that statewide implementation of these rules is necessary to assure compliance in the FIP areas.

(3) Cap regulations. As discussed in section III.C.5, EPA is proposing cap regulations for both VOC and NO_X in this NPRM. These rules cap emissions at 1989–1990 levels and require sources to reduce emissions below this level by a fixed annual percent, beginning in the year 2001.[25] The VOC regulations are common to all three areas. The NO_X cap rules apply only to Ventura, since stationary sources contribute only a small part of the NO_X inventory in Sacramento and NO_X sources in the South Coast are now controlled under the recently adopted SCAQMD NO_X RECLAIM rules.

3. Sacramento Ozone

a. *Reduction requirements for 1999 and 2005.* Anthropogenic emissions in the Sacramento area in 1990 totaled approximately 236 tons per day of VOC and 185 tons per day of NO_X. There are many existing State and local regulatory requirements in the Sacramento area. These requirements include numerous State and local stationary source regulations and the existing CARB standards on new engines and equipment which will deliver increasing reductions each year as a result of replacement of old engines and equipment with newer cleaner engines and equipment. Sections II.B.2., II.B.5., and III.H. of today's NPRM discuss the adopted CARB and local districts' rules and EPA's assignment of credit to the rules as part of the FIP/SIP attainment demonstration.

Unfortunately, projected emissions reductions from the State and local requirements must compete with projected growth in the area's population, automobile traffic and industrial activity.

As a result, without further SIP or FIP measures, the total amount of emissions in the Sacramento area is not expected to change significantly by 1999 or 2005.

CARB and EPA have performed extensive meteorologic analysis and urban airshed modeling (UAM) of ozone formation for the Sacramento area. This modeling suggests that several combinations of VOC and NO_X reduction can achieve attainment of the ozone standard. As discussed in Section III.H.3.a., EPA is using reduction targets of 40 percent VOC and 30 percent NO_X from 1990 baseyear emission levels for the Sacramento area FIP attainment demonstration. In order to achieve the 40:30 target, SIP and FIP controls must reduce the future inventories for 1999 and 2005 to approximately 140 tons per day of VOC and 130 tons per day of NO_X. (These targets are often referred to as "carrying capacities.")

b. *SIP rules.* Irrespective of EPA's FIP obligation, California and the Sacramento nonattainment area are required to submit an ozone attainment SIP in November 1994. As part of this and previous SIP efforts, CARB and the local air agencies in the Sacramento area are continually adopting and modifying regulations to reduce NO_X and VOC emissions. EPA is not proposing to act on any SIP improvements as part of this NPRM, but will do so on a case-by-case basis in separate actions.

For purposes of the attainment demonstration in this NPRM, EPA is not generally assigning emission reduction credit for those measures that are not fully adopted in enforceable form. EPA urges the responsible State and local agencies to complete rule development and submit rules for SIP approval as soon as they are fully adopted. This will allow EPA to approve the regulations and substitute the locally developed measures for FIP rules.

c. *FIP rules for 1999 and 2005.* Sacramento is classified as a "Serious" ozone nonattainment area and is, therefore, initially required by the Clean Air Act Amendments of 1990 to demonstrate attainment by 1999. There are several reasons why a 1999 attainment target for a FIP, however, would result in an unreasonable plan with undesirable impacts on the local economy. The following discussion outlines these reasons and explains EPA's proposed solution (i.e., bumping up the classification to "Severe" and extending the attainment deadline). EPA is soliciting comment on whether its solution is appropriate or whether the advantages of attainment by an earlier date justify the imposition of the kinds of measures which would be necessary.

The FIP rules proposed for implementation in the Sacramento area for the 1999 and 2005 attainment options are discussed in sections III.B.2 and III.B.3. Mobile source measures which yield emission reductions for both the 1999 and 2005 options include an enhanced I/M program, credit for national standards for nonroad vehicles and engines, offroad recreational vehicle standards, motorcycle standards, and a parking cash out requirement. Other mobile source measures needed for attainment, discussed above and below, depend on the attainment year, 1999 or 2005. For 1999, the additional measures include accelerating turnover for heavy duty truck engines, capping emissions for nonroad fleets, restricting driving for highway vehicles and a strategy for recreational boats. For 2005, the additional measures includes strategies for motor vehicles, locomotives, recreational boats, airports, military installations, and an employee commute options (ECO) program.

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[25] For Sacramento's alternative 1999 attainment demonstration, the cap program will require full reductions by 1990.

For stationary sources in Sacramento, both the 1999 and 2005 proposals include the source specific reasonably available control technology (RACT) regulations discussed in III.C.2, all of the regulations for specific source categories discussed in III.C.3 and the statewide regulations discussed in III.C.4. Many sources will also be subject to the cap regulations discussed in III.C.5. which will require approximately a 20–45 percent reduction in VOCs by 1999 (for the 1999 attainment option) or a gradual 4–9 percent per year reduction in VOCs from 2001 through 2005 (for the 2005 attainment option).

d. *1999 attainment option.* By 1999, the existing State and proposed FIP measures common to both the 1999 and 2005 proposals for both stationary[26] and mobile sources will have reduced the Sacramento VOC inventory from 236 tons per day in 1990 to 155 tons per day in 1999, and the NO_x inventory from 185 to 153 tons per day. Much of the progress on VOC and NO_x comes from the stationary source measures, continued benefits of the current motor vehicle control programs, and a substantial improvement in in-use emissions of light duty vehicles due to an enhanced I/M program. New initial emissions standards affecting nonroad diesels and locomotives are just barely beginning to be felt in new engine purchases. New standards for medium duty vehicles, heavy duty vehicles, and heavy duty nonroad engines in California are just taking effect in the 1999 model year.

In 1999, the shortfall in emission reductions is about 15 tons per day for VOC and 23 tons per day for NO_x. NO_x is almost entirely contributed by mobile sources in Sacramento. Twenty-three tons per day represent about 16 percent of the remaining mobile source emissions of NO_x in 1999, or 43 percent of the remaining light duty motor vehicle emissions (i.e., passenger cars, light duty trucks and motorcycles). If the FIP must reduce the additional 23 tons of NO_x without the benefit of new standards and normal turnover, then it must contain measures to require accelerated turnover and to reduce the activity of mobile sources. Under the option of retaining Sacramento's "Serious" area classification, EPA's strategy for making up the shortfall focused on mobile sources because of the absence of significant stationary NO_x sources and aimed first at technology measures that are able to yield NO_x reductions by 1999. EPA then considered whether similar opportunities existed for VOC reductions. The remainder of the reductions came necessarily from measures to reduce activity.

(1) *Onroad heavy duty trucks.* On-highway heavy duty trucks are a category for which EPA believes an accelerated retirement/replacement program can be adopted and implemented because the regulatory development for tighter emission standards, certification protocols and product design work was updated in 1993. For the 2005 option, the FIP proposes significant changes to the emission standards and certification protocols which will be applied to on-highway heavy duty trucks beginning with the 1999 model year. However, the NO_x standard for this category was also recently made more stringent. Since the 1991 model year, engine manufacturers have been certifying engines meeting a 5 gram per brake horsepower-hour standard. The federal NO_x standard reduces further to 4 grams per brake horsepower-hour in 1998. Engines currently in use may range in design standard as high as 10.7 grams per brake horsepower-hour. Thus, there is an opportunity to require accelerated turnover in this category to effect reductions from the current fleet in order to contribute to a 1999 attainment strategy.

In order for EPA to implement and enforce an engine replacement requirement, it will be necessary for California fleets to show compliance with a fleet average NO_x standard prior to registration. The details of such a registration system and other requirements are described in section III.D.3., Programs for Onroad Heavy Duty Vehicles and Engines. For the 2005 option, a fleet averaging program begins in 2001. If the 1999 attainment option is ultimately selected, fleets registered in California would be required, after 1997, to have an average gram per brake horsepower-hour level of no more than 5 grams.

Some 1999 truck travel in the Sacramento area would be by fleets not subject to any fleet standard. The emissions reductions available depend on the contribution to vehicle miles traveled made by fleets which are subject to the rule. For the purpose of this proposal, it is assumed that 80 percent of the onroad heavy duty miles come from California fleets, yielding an estimated reduction of approximately 6 tons of NO_x per day.

(2) Nonroad growth cap. The remaining NO_x shortfall is approximately 17 tons per day, 13 percent of total mobile source inventory or 33 percent of the light duty motor vehicle NO_x inventory in 1999. Before turning to activity reductions in the light duty motor vehicle category, it is reasonable to consider whether any reductions are available in this time frame from nonroad heavy-duty equipment. The difficulties of implementing a retrofit rule are discussed in I.D. However, there are emission reduction strategies which could be implemented by equipment fleet operators in the Sacramento area. For example, nonroad engines meeting higher national standards should be available from manufacturers as early as 1996. There are also applications which have on-road configurations as well as nonroad configurations, and fleet operators can purchase replacements meeting the tighter standards.

One of the reasons that the overall nonroad category is estimated to contribute significantly to a 1999 inventory is that it has been unregulated up to this time. The other reason is that substantial growth is projected for the category: 8.8 tons per day NO_x increase from 1990 to 1999. If growth in emissions from the largest NO_x-emitting nonroad sources could be avoided, the task of attaining the standards by 1999 or any later date would be made easier. EPA is proposing as part of the 1999 attainment FIP that growth in the nonroad heavy-duty category be capped such that NO_x emissions not exceed 1995 projected levels. The cap would be implemented via a fleet averaging concept like that described in section III.D.4 which contains the nonroad proposal for the 2005 attainment strategy. Section III.D.4 proposes a declining fleet average emissions level to assure that the historical rate of engine turnover is maintained; the 1999 attainment cap would require that fleet operators acquire and utilize low emission engines as necessary to maintain NO_x emissions at projected

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[26] The stationary measures include all of the measures discussed in III.C that are identified as applying to Sacramento and those that are applied statewide, and the cap regulation which requires a 20–45 percent reduction by 1999.

1995 levels. The estimated benefit of this cap is the reduction of approximately 4 tons per day of NO_X which would have resulted from further growth in the heavy-duty equipment category.

(3) No drive days. The remaining NO_X shortfall is approximately 13 tons per day which amounts to approximately 10 percent of the total mobile source inventory, 16 percent of the on-road mobile source inventory, or 25 percent of the light duty motor vehicle inventory in 1999. This represents a substantial reduction from sources that can not be significantly controlled by further technological solutions or forced turnover to cleaner alternatives. Therefore, the shortfall would have to be achieved with even more difficult measures that focus on reducing the use of mobile sources.

Activity restrictions could be obtained from various mobile source categories using a variety of regulatory approaches. For example, broad-based reductions from essentially all categories could be obtained with such blunt measures as fuel surcharges or gas rationing. More focused reductions could be made by targeting motor vehicle activity through fees on vehicle-miles-traveled (VMT) or no-drive days.

EPA believes such potentially severe measures should only be selected after substantial public participation and debate. However, the Agency is compelled to make a selection for the proposed 1999 attainment date option. When faced with a similar dilemma in the 1990 proposed FIP for the South Coast Basin (55 FR 36458), EPA chose to limit mobile source activity with a no-drive day program for on-road motor vehicles. Today's proposal also contains that control measure in order to achieve the sizeable, remaining NO_X shortfall for the 1999 attainment option. More specifically, in order to achieve the 13 tons of NO_X reductions needed, EPA is proposing that each highway vehicle registered in the Sacramento nonattainment area be prohibited from being driven one day out of five weekdays.

(4) Recreational boat fees or prohibitions. A no-drive day, which is imposed on all highway vehicles one out of five weekdays, would produce approximately a 20 percent decrease in the emissions of the remaining NO_X and VOC from highway vehicles. This would be sufficient to reduce NO_X in the Sacramento area to the area's carrying capacity. However, the VOC reductions from the above no-drive day proposal provides only eleven out of the required fifteen tons per day. The accelerated retirement strategy and growth cap proposed for heavy duty engines do not significantly affect VOC emissions. There is a nonroad mobile source category, recreational boating, which does contribute significantly to the VOC inventory in Sacramento and which will eventually be reduced through the adoption of national standards for new engines and subsequent fleet turnover. It is possible to achieve an accelerated turnover similar to that required for heavy equipment either by restricting the operation of boats which use engines which do not meet new national standards, or by imposing a fee on the excess emissions from such boats. As a final measure in a 1999 attainment option for VOC reductions, EPA is proposing a fee system or boating restriction which will reduce emissions from recreational boating by one-third in 1999. A similar fee system is explained in the 2005 attainment proposal.

As an alternative to the fees or restrictions on recreational boating, EPA requests comment on obtaining the additional VOC reductions from stationary sources. This alternative would consist of either increasing the cap reduction requirement or achieving further VOC reductions from sources which are not covered by the cap regulations (e.g., architectural coatings, consumer products).

e. *EPA's preferred option*—(1) EPA authority to initiate bump-up. Under section 181(b)(3) of the Act, EPA must grant the request of a state to reclassify a nonattainment area to a higher classification. Once the area has been bumped-up pursuant to such a request, it becomes subject to the more stringent control requirements associated with the higher classification. While a state need not make any particular showing for the bump-up request to be granted, legislative history indicates that the voluntary bump-up "is provided for areas that wish to impose the more stringent control measures associated with a higher classification or that, for reasons such as extremely rapid population growth, conclude that they will not be able to attain by their otherwise applicable date [sic]." H.R. Rep. No. 101–490, Part 1, 101st Cong., 2d Sess., 232 (1990).

In the case of the Sacramento nonattainment area, the State could mitigate the difficulties in achieving attainment by 1999 by requesting a voluntary reclassification from "Serious" to "Severe," which would allow up to an additional six years to attain the ozone NAAQS. To date, the State has not opted to do so for the purposes of its attainment SIP, which must be submitted to EPA in November 1994. See section 182(c)(2) and (d). EPA, however, must confront these same difficulties now in designing its FIP proposal and, in the absence of a State request, must determine whether the Agency may avail itself of the voluntary bump-up option.

While the Act specifically provides for an EPA-initiated reclassification only upon failure of an area to attain the ozone NAAQS by the applicable attainment date, the Agency believes that a recent Ninth Circuit Court of Appeals case offers a persuasive basis for interpreting the Act as authority for a unilateral bump-up in the FIP context.

Central Arizona Water Conservation District et al. v. *EPA*, 990 F.2d 1531 (9th Cir. 1993), involved EPA promulgation of a visibility FIP to remedy visibility impairment in the Grand Canyon National Park. In that case, the court upheld EPA's action under regulations that on their face applied only to state action in adopting a SIP. The court stated that when "[a]cting in the place of the state * * * pursuant to a FIP under 42 U.S.C. § 7410(c), EPA 'stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA.' " 990 F.2d at 1541. Based on this decision, EPA has concluded that when the Agency promulgates a FIP, it can stand in the shoes of the state in order to bump up an ozone nonattainment area under section 181(b)(3) on its own initiative.

(2) Rationale for bump-up to "Severe." Although the design value assigned to Sacramento for the period 1988 through 1990 resulted in its classification as "Serious," a review of the most recent design values and yearly exceedances for several ozone areas including Sacramento (summarized in the following table) show that it is comparable to other "Severe" nonattainment areas with the 4th highest design value in the group and the 7th highest number of yearly exceedances.

OZONE CLASSIFICATIONS AND AIR QUALITY DATA

[Design Values and Number of Exceedance Days Based on Most Recent 3 Years of Data]

Area	Classif.	Design value (ppm)	Exceedances (days)
So. Coast	Extreme	.300	106.1
SE Desert	Severe-17	.230	52.9
Houston	Severe-17	.210	13.0
San Diego	Severe-15	.170	7.3
San Joaquin	Serious	.160	22.6
Sacramento	Serious	.160	6.1
New York	Severe-17	.160	3.4
Baltimore	Severe-15	.156	4.9
Philadelphia	Severe-15	.153	8.4
Ventura	Severe-15	.150	17.6
Milwaukee	Severe-17	.148	4.7
Chicago	Severe-17	.143	4.7

Note: Most of the classifications were based on 1987–1989 data. Design values and exceedance numbers are for 1990–1992 and derive from *National Air Quality and Emissions Trends Report, 1992* (November 2, 1993).

The urban airshed modeling which calculates the reductions needed to attain the standards also produces results comparable to the percent reduction needed for attainment in Ventura (an area classified as "Severe" under the Act). The VOC reduction target is identical at 40 percent; the NO_X target is somewhat lower at 30 percent (compared to 40 percent).

However, the main reason EPA believes a bump-up to 2005 for the Sacramento area is appropriate is the difficulty in achieving significant emissions reductions from a mobile source dominated emissions inventory where less than 10 percent of the NO_X emissions are from stationary sources. A 1999 attainment date does not allow sufficient time for the emissions reductions of many of the mobile source strategies discussed in section III.D to occur. This includes strategies which rely on the normal replacement of older, dirtier engines and vehicles with cleaner engines and vehicles. It also would include strategies that rely on longer lead times to develop and implement lower emitting operational improvements or control hardware. Thus, EPA must turn to measures which require retrofits or replacements for in-use engines and vehicles, and restrictions on mobile source activity to achieve the necessary emissions reductions. A bump-up would allow the Sacramento area to take advantage of the new engine standards and other requirements proposed in section III.D, and avoid accelerating turnover for heavy duty truck engines, capping nonroad engine emissions growth and restricting driving—measures EPA is proposing to satisfy the 1999 attainment demonstration.

A bump-up is also important for stationary sources which will be required to meet EPA's Cap Regulations (section III.C.5). Under the 1999 attainment date, these stationary sources would be required to submit compliance plans by 1998 which will demonstrate an additional 20–45 percent reduction in VOC emissions by 1999. With the additional time allowed by a "Severe" area classification, these sources would instead be subject to a declining cap requiring gradual 4–9 percent per year emissions reductions, which will not be required to begin until 2001. The additional years for compliance would allow a company to investigate control options and take greater advantage of technological developments, and thus avoid production cutbacks or shutdowns to meet emissions reductions levels. EPA believes it is reasonable to anticipate that substantially improved emission reduction alternatives and control technologies will develop for stationary and area sources during the additional time that a higher classification for Sacramento would provide.

(3) 2005 attainment option. The FIP measures common to both the 1999 and 2005 proposals for both stationary[27] and mobile sources will have reduced the Sacramento VOC inventory from 236 tons per day in 1990 to 157 tons per day in 1999, and the NO_x inventory from 185 to 149 tons per day. Like the 1999 proposal discussed above, these reductions come from the stationary source measures, continued benefits of the current motor vehicle control programs, and a substantial improvement in in-use emissions of light duty vehicles due to an enhanced I/M program. However, by 2005 additional reductions are realized from the new emissions standards affecting medium duty vehicles, heavy duty vehicles, nonroad diesels and locomotives due to engine turnover, and from the enhanced in-use compliance program.

With the benefits from the recreational boat measure and ECO program discussed above and in section III.D, total emissions reductions by 2005 will be large enough to provide for attainment.

It is important to note that a bump-up of the Sacramento area to "Severe" also leads to the following additional Clean Air Act requirements associated with a "Severe" area classification, which include: (1) A more stringent major source definition (25 tons per year, down from 50 tons per year); (2) a more stringent offset requirement for new major sources (1.3:1 instead of 1.2:1); (3) TCMs to offset VMT growth; (4) and an employer-based trip reduction rule. The responsibility for meeting these requirements is discussed below.

If EPA grants the request of a state to reclassify a nonattainment area to a higher classification under section 181(b)(3), that area must meet all deadline and control requirements applicable to the higher classification, and is not eligible for any adjustment of those deadlines. H.R. Rep. No. 101–490, Part 1, 101st Cong., 2d Sess., 233 (1990). If reclassification is promulgated by EPA unilaterally in the FIP, the area likewise becomes responsible for meeting all such deadlines and requirements for SIP purposes.

The substance of these additional requirements is set forth in section

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[27] The stationary measures include all of the measures discussed in III.C that are identified as applying to Sacramento and those that apply statewide, and the cap regulation which requires a gradual 4 percent per year VOC reduction from 2001 through 2005.

182(d) of the Act.[28] Because the statutory deadlines for compliance with or submission to EPA of these requirements have already passed, if EPA finalizes in February 1995 its bump-up option for the Sacramento area, the State will be responsible for submitting the actual regulations to comply with the "Severe" area requirements at that time. If the State fails to do so, the Sacramento area will be subject to a finding of failure to submit these requirements upon final promulgation of the FIP in 1995.

As discussed previously in this NPRM, EPA's current obligation is to design a FIP for the Sacramento area that attains the ozone NAAQS by 1999 or 2005. EPA is not legally required to meet all SIP submittal requirements that appeared for the first time in the 1990 Amendments and for which there are no state failures which EPA must cure. Nevertheless, as a policy matter, and because it has invoked the provisions of the Amendments in initiating a bump-up, EPA is proposing in today's NPRM the "Severe" area provisions (section III.F.) in regulatory form.

The measures proposed in III.F. were developed to help the State and local agencies meet the additional "Severe" area requirements if the Sacramento area is bumped up. For example, the proposed new source review rule discussed in section III.F.4. is based on the actual language of existing rules in the Sacramento area in order to provide a rule that is easy for the local APCDs to adopt and implement. The employee commute options (ECO) rule discussed in section III.F.2. is also adoptable by the local APCDs; alternatively, it may provide an incentive for the local APCDs to develop, adopt and submit ECO programs that are currently being considered. Thus, if bump-up is promulgated, EPA believes that the measures proposed in III.F. will help the State and local agencies meet their mandate in a timely fashion and avoid sanctions.

If EPA ultimately chooses its preferred option of bumping up Sacramento, EPA plans, if necessary, to implement the "Severe" area measures proposed in section III.F. on their respective effective dates following final promulgation of the FIP in February 1995. Until a submittal of replacement measures is made by the State and approved by EPA, the "Severe" area requirements proposed in section III.F. will remain in effect. If EPA finds that there will be a significant time period before the submittal is made and approved, EPA will try to delegate portions or all of the federal program to the State and local agencies.

f. *Summary of 1999 and 2005 attainment options.* The following table summarizes the FIP measures proposed for the alternative 1999 and 2005 attainment demonstrations:

SUMMARY OF SACRAMENTO FIP MEASURES FOR 1999 AND 2005 ATTAINMENT OPTIONS

	1999	2005
Mobile Measures:		
Enhanced I/M	X	X
Nonroad stds (nat'l)	X	X
Offroad recreational vehicle stds-w/normal turnover	X	X
Motorcycle stds w/normal turnover	X	X
Parking Cash Out	X	X
Airports/Military Installations declining cap reduction	....	X
Accelerated turnover for heavy duty trucks	X	
Nonroad growth cap based on available retrofits	X	
Onroad driving restrictions (no-drive days)	X	
Fees for recreational boats	X	X
Stationary Measures:		
Applicable FIP Rules	X	X
Cap reduction by 1999	X	
Declining Cap reduction by 2005	....	X
2005 Bump-Up Requirements:		
NSR Rule	....	X
ECO Program	....	X

EPA requests comment on whether the bump-up is an appropriate solution or whether the advantages of attainment by an earlier date justify the imposition of the measures necessary for 1999 attainment.

g. *Attainment demonstrations.* As discussed in Section III.H.5.a, EPA believes that the set of measures proposed in this NPRM, in conjunction with adopted State and local measures, will bring the Sacramento area into attainment with the ozone standard by 1999 or 2005. This projection is based on extensive computer simulations of ozone formation performed using the Urban Airshed Model.

4. Ventura Ozone

a. *Reduction requirements.* Anthropogenic emissions in Ventura in 1990 totaled approximately 105 tons per day of VOC and 86 tons per day of NO_X. The existing air pollution regulations controlling these emissions are among the most stringent in the country. In addition, many of the CARB and VCACPD regulations prescribe future compliance requirements that are still more stringent, and the existing CARB standards on new engines and equipment will deliver increasing reductions each year as a result of fleet turnover. Sections II.B and III.H of this NPRM discuss the adopted CARB and VCAPCD rules and EPA's assignment of credit to the rules as part of the FIP/SIP attainment demonstration.

Unfortunately, projected emission reductions from many of these State and local measures are offset by continued growth in the area's population and activity levels. Consequently, in the absence of further SIP or FIP measures, emissions in Ventura are projected to be 98 tons per day VOC and 75 tons per day NO_X by the year 2005.

EPA, CARB, and VCAPCD have performed extensive meteorologic analysis and airshed modeling of ozone formation in the area. This modeling suggests that various combinations of VOC and NO_X reductions can achieve attainment with the ozone standard. As discussed in Section III.H.3, EPA is using reduction targets of 40 percent VOC and 40 percent NO_X from the 1990 base-year emissions levels. Therefore, the SIP and FIP controls must achieve, by 2005, emission levels of 57 tons per day VOC and 46 tons per day NO_X.

b. *SIP rules.* Irrespective of EPA's FIP obligation, California and Ventura County are required to submit an ozone attainment SIP in November 1994. As part of this and previous SIP efforts, CARB and VCAPCD are continually adopting and modifying regulations to reduce NO_X and VOC emissions. EPA is not proposing to act on any SIP improvements as part of this NPRM, but will do so on a case-by-case basis in separate actions.

For purposes of the attainment demonstration in this NPRM, EPA is generally not assigning emission reduction credit to measures until they are fully adopted in enforceable form. EPA urges the responsible State and local agencies to complete rule development and submit rules for SIP approval as soon as they are fully adopted. This will allow EPA to approve the regulations and substitute the locally developed measures for FIP rules.

c. *FIP rules.* The set of FIP measures proposed for implementation in Ventura relies largely on those regulations discussed in Section III.B as elements common to all three FIP areas. For mobile sources, this includes regulations for motor vehicles and I/M, nonroad vehicle and engine controls, forthcoming national regulations for locomotives, and strategies to reduce the ambient impact of ship traffic along the coast. For stationary sources, it includes regulations for solvent cleaning operations, wood products coatings, service stations, waste burning, and fugitive emissions, as well as the statewide measures and the emission cap programs.

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[28] For a more complete description of the requirements and EPA preliminary policies with respect to them, readers should consult the "General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13521).

One FIP measure peculiar to Ventura affects emissions from ocean-going ships transitting up and down the Ventura coastline. In Section III.D.5.e.(4) of this NPRM, EPA discusses rerouting the Santa Barbara shipping channel farther from the coast, and a fee system designed to encourage ships to travel outside of the Channel Islands.

d. *Attainment demonstration.* As discussed in Section III.H., EPA believes that the set of measures proposed in this NPRM, along with adopted State and local measures, will bring Ventura County into attainment with the ozone standard by 2005. This projection is based on extensive computer simulations of ozone formation performed using the Urban Airshed Model.

e. *Alternative attainment date discussion.* Section 181(a)(1) of the Act requires that ozone SIPs demonstrate attainment as expeditiously as practicable but not later than, in the case of Ventura, 2005. As a result, EPA has attempted to identify practicable measures that could achieve attainment by an earlier date. For illustrative purposes, EPA focused this investigation on a target attainment date of 2000. EPA is not, however, proposing this attainment date or the following strategies in this NPRM.

In today's NPRM, EPA is proposing two attainment options for the Sacramento area. 1999 is proposed because Sacramento is currently classified as a "Serious" ozone area, and 2005 is proposed because EPA is recommending reclassifying Sacramento to a "Severe" area. As discussed in paragraph III.B.3.e of this NPRM, EPA believes that attainment in Sacramento by 1999 would require unacceptably harsh control measures, and therefore prefers the 2005 option. Since Ventura's ozone problem is worse than Sacramento's (e.g., EPA is projecting that a 30% reduction of NO_X emissions is needed for attainment in Sacramento while a 40% reduction is needed in Ventura), it is not surprising that attainment in Ventura by 2000 would also prove to be impracticable.

Many of the mobile source FIP controls for the 2005 attainment demonstration are proposed for near-term implementation in Ventura, and will achieve substantial emission reductions by 2000. These include an enhanced inspection and maintenance program, national standards for nonroad vehicles and engines, offroad recreational vehicle standards, motorcycle standards, and a parking cash-out program. The difficulty in achieving full attainment by that date, however, is that many of the proposed mobile source strategies rely on engine and vehicle turn-over to reduce emissions. Tight emission standards for new onroad vehicles, for example, are not effective while people are still driving older cars. By 2000, new emission standards affecting heavy duty onroad and nonroad engines and locomotives will just barely begin to be felt in new engine purchases.

In trying to identify practical measures for attainment in Ventura by 2000, EPA has considered control strategies similar to those proposed to bring Sacramento into attainment by 1999. These include the following:

Onroad heavy duty trucks. EPA could accelerate replacement of old high-emitting onroad heavy duty truck engines by requiring local truck fleet owners to register and sticker their equipment to assure compliance with tight emission standards.

Nonroad growth cap. EPA could propose that growth in the nonroad heavy duty category be capped such that emissions not exceed 1995 projected levels.

Accelerate shipping fee system. EPA could accelerate the fee system designed to encourage shipping companies to reroute their shipping activities beyond the Channel Islands.

Accelerate airport and aircraft programs. EPA could accelerate programs designed to reduce emissions from commercial, general, and military aircraft and associated activity.

Accelerate turnover of recreational boat engines. Emissions from recreational boat engines will eventually be reduced through the adoption of national standards for new engines and subsequent fleet turnover. It is possible to achieve an accelerated turnover similar to that required for heavy equipment either by restricting operation of boats which use engines that do not meet new national standards, or by imposing a fee on the excess emissions from such boats.

Most of the requirements for stationary source categories described in section III.C.3 and the statewide area sources described in section III.C.4 are scheduled for implementation in 1996. EPA expects, in fact, that all stationary source emission reductions projected under the 2005 attainment demonstration will be achieved by 2000 except for those required by the cap rules discussed in section III.C.5.

The proposed cap programs require most stationary sources in Ventura to reduce VOC and NO_X emissions by at least 4% and 6% per year respectively for each year from 2001 through 2005. Theoretically, EPA could require 20% or greater VOC reductions (and 30% or greater NO_X reductions) by 2000. While this might accelerate attainment, EPA cannot conclude that accelerating such reductions would be practicable, and believes it could well be counterproductive in practice. Specifically, such a dramatic near-term reduction requirement might result in massive non-compliance that would overwhelm EPA's enforcement abilities and fail to achieve real air quality improvement.

EPA has estimated the effects of an onroad heavy duty truck measure, nonroad growth cap, accelerated shipping fee system, accelerated airport and aircraft programs, accelerated turnover of recreational boat engines, and accelerated stationary source cap on the overall Ventura emission inventory. After accounting for these controls, EPA projects an emission reduction shortfall of approximately 10 tons/day of VOC and 5 tons/day of NO_X. Note that the NO_X contribution by stationary sources in Ventura is substantially greater than in the Sacramento area. Therefore, the mobile source measures do not produce the same effect as they did in Sacramento.

In order to address the remaining emission reduction shortfall, EPA could impose activity restrictions using a variety of regulatory approaches. For example, broad-based reductions from many stationary and almost all mobile source categories could be obtained with such blunt measures as fuel surcharges or gas rationing. More focused reductions could be made by targeting motor vehicle activity through fees on vehicle-miles-traveled (VMT) or no-drive days.

EPA believes such potentially severe measures should only be selected after substantial public participation and debate. When faced with an attainment shortfall in the 1990 proposed FIP for the South Coast Basin (55 FR 36458), EPA did propose to limit mobile source activity with a no-drive day program for onroad motor vehicles. In the 1990 South Coast case, however, EPA was struggling to find enough reductions to attain by the latest legally acceptable date. In Ventura, the issue is whether there are practical measures to attain prior to the statutory deadline. In order to achieve the remaining emission reductions necessary for Ventura to attain by 2000, EPA estimates that two no-drive days or equivalent alternative activity reductions would be needed. That is, each highway vehicle registered in Ventura would be prohibited from being driven on two of the five workdays in each week.

Obviously, this and other measures needed to accelerate attainment in Ventura would have dramatic negative socioeconomic impacts in the area. EPA does not consider them legally required as practical measures or good policy. For that reason, EPA cannot conclude that such measures would be practicable and EPA is not, therefore, proposing to attain the standard before 2005.

5. South Coast Ozone

a. *Reduction requirements.* Anthropogenic emissions in the South Coast in 1990 totaled approximately 1913 tons per day of VOC and 1273 tons per day of NO_X for an average summer weekday. The air pollution control regulations now in effect in the South Coast are, with few exceptions, the most stringent in the Country. In addition, many of the CARB or SCAQMD adopted regulations prescribe future compliance requirements that are still more stringent, and the existing CARB standards on new engines and equipment will deliver increasing reductions each year as a result of fleet turnover. Sections II.B and III.H. of this NPRM discuss the adopted CARB and SCAQMD rules which are assigned credit as part of the FIP attainment demonstration.

Even after allowing credit for reductions from these State and local measures, continued growth in the area's population and activity levels will erode much of the future benefits of currently adopted controls. Consequently, in the absence of further SIP or FIP measures, emissions in the South Coast will not decline appreciably. The 2010 emissions levels are projected to be 1390 tons/day VOC and 1142 tons/day NO_X for an average summer weekday.

Extensive urban airshed modeling of three episodes in 1985 and 1987 provided the basis for the SCAQMD's 1991 Air Quality Management Plan, which concluded that ozone attainment could be achieved if basin-wide emissions were reduced to approximately 187 tons per day of VOC and 399 tons per day of NO_X (episode-specific emissions). Based on the current baseline emissions inventory, and prior to the completion of extensive new modeling analyses that are underway, EPA is using reduction targets of 90 percent for VOC and 69 percent for NO_X from the 1990 base-year emissions levels.[29] Assuming these reduction targets, the combination of SIP and FIP controls must achieve, by 2010, total reductions of 1726 tons per day of VOC and 874 tons per day of NO_X from 1990 emissions, or 1203 tons per day of VOC and 743 tons per day of NO_X from 2010 baseline emissions.

As with Sacramento and Ventura, EPA's control strategy analysis for the South Coast began with a comparison of the applicable existing South Coast rules to the rules currently in effect in other areas. Although the SCAQMD generally has among the most advanced regulations in the Country, EPA was able to identify stationary and area source categories for which new or enhanced technology-based rules could be promulgated immediately to yield additional emission reductions. Section III.C.3. discusses those new or improved category-specific stationary and area source rules which EPA is able to propose at this time.

After credit for emissions reductions from this initial set of FIP measures, a massive shortfall in necessary emission reductions still remains. The FIP mobile source core measures are identified in section III.B.2. and III.D.1.b. These measures contribute substantial further reductions (approximately 205 tons per day VOC and 181 tons per day NO_X), leaving roughly 1000 tons per day VOC and 562 tons per day NO_X to be achieved by added stationary and area source controls.

EPA proposes to achieve the remaining target reductions through a combination of the emission cap rules set forth in section III.C.5., additional mobile source controls discussed in section III.D, and the "new technology" commitments discussed in section III.B.5.d. below and in section III.G.

b. *SIP rules.* In section II.C.2., EPA proposes to conditionally approve commitments by the SCAQMD and CARB to continue their development of a number of new or strengthened regulations and to adopt them within the next two years to accomplish the first rate-of-progress installments required under the Act. These committal measures have the potential to deliver approximately 83 tons per day of VOC. Scheduled SCAQMD rule development could also contribute substantial additional NO_X reductions.

In preparing the November 1994 ozone attainment plan, CARB, SCAQMD, and SCAG are now reassessing strategies for adopting measures to reduce NO_X and VOC emissions. The SCAQMD is also developing a VOC RECLAIM program for near-term adoption and implementation.

For purposes of this attainment demonstration, however, EPA is not assigning emission reduction credit to measures until they are fully adopted in enforceable form. EPA urges the responsible State and local agencies to complete rule development and submit rules for SIP approval as soon as they are fully adopted. This will allow EPA to approve the regulations and substitute the locally developed measures for FIP rules.

c. *FIP Rules.* The set of FIP measures proposed for implementation in the South Coast relies largely on those regulations discussed in Section III.B as elements common to all three FIP areas. This includes the controls for onroad and nonroad mobile sources, supplemented by such elements as I/M and sticker programs. In addition, the proposed FIP for the South Coast includes the mobile source controls discussed in the Ventura FIP summary, and two measures peculiar to the South Coast FIP: A fee-based program to reduce emissions from ports and a locomotive cap rule. For stationary and area sources, it includes regulations for service stations, livestock waste, fugitive emission controls for petroleum and chemical facilities, and waste burning, as well as the statewide measures and the emission cap program. Finally, the South Coast FIP relies on the new technology commitments discussed immediately below.

d. *Section 182(e)(5) provisions.* (1) Statutory provision and General Preamble requirements Section 182(e)(5) of the Clean Air Act applies exclusively to "Extreme" ozone areas (i.e., only the South Coast area). This provision authorizes the State (or EPA, standing in the shoes of the State[30]) to rely for its ozone attainment demonstration on conceptual, as yet unadopted measures that anticipate new or improved technology. The South Coast's 1991 Air Quality Management Plan employs a similar approach in its "Tier II" and "Tier III" new technology measures, which consist of brief discussions of control targets (percentage and emission reductions) for specific or general source categories, to be achieved in future years through technological advances.

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[29] Other combinations of VOC and NO_X reductions may be evaluated in preparation of the 1994 ozone SIP. To the extent possible, EPA will attempt to conform the final FIP (and any subsequent amendments to the FIP) to the State's chosen mix of VOC and NO_X reductions used in the 1994 ozone SIP.

[30] As discussed above, the Ninth Circuit has held that "Acting in place of the State of Arizona pursuant to a FIP under 42 U.S.C. §7410(c), EPA 'stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA.'" *Central Arizona Water Conservation District et al. v. EPA,* 990 F.2d 1531, 1541 (9th Cir. 1993).

For EPA to credit such measures toward the ozone attainment demonstration (either by SIP approval or FIP promulgation), EPA must find that the measures are not needed to meet the Act's progress requirements for the first 10 years (see section 182(e)(5)(A)), and EPA must approve State commitments or make its own commitments to submit contingency measures no later than three years before proposed implementation of the measures, sufficient to ensure the required rate of progress and attainment (section 182(e)(5)(B)).

EPA's General Preamble for the Implementation of Title I provides the Agency's preliminary articulation of how it will exercise its considerable discretion under section 182(e)(5). At this time, EPA, in approving or promulgating measures under this section, will look to see that the plan shows that the measures cannot be fully developed and adopted by the submittal date for the attainment demonstration; that the plan contains a schedule outlining the steps leading to final development and adoption of the measures; and that the plan contains commitments from those agencies that would be involved in developing and implementing the schedule for each measure (57 FR 13524, April 16, 1992).

With respect to the Act's requirement that the technology advancement measures not be needed to achieve progress required during the first 10 years, EPA believes that the Administrator should satisfy herself with respect to three separate progress requirements applicable during the 10-year period following enactment of the 1990 Amendments to the Act: (1) 15 percent reduction of VOC emissions for the 6-year period from 1990 to 1996, as required by section 182(b)(1); (2) 9 percent reduction of VOC and/or NO_X emissions for the 3-year period from 1997 to 1999, as required by section 182(c)(2)(B); and (3) a further 3 percent reduction of VOC and/or NO_X emissions during the year 2000, as the initial installment of the 9 percent reductions required for the period 2000 to 2002.[31] In section III.B.5.d.(4) of this NPRM, EPA demonstrates that each of these three progress requirements is satisfied (with regard to section 182(e)(5)) by the combination of State and local measures and the FIP regulations proposed in this NPRM.

(2) Need for additional time to develop new technologies in enacting special provisions for ozone attainment in the South Coast, Congress recognized that attainment in this area may require 20 years, even on an expeditious schedule of progress. The difficulty of the ozone attainment project derives primarily from the topography and climate of the South Coast basin, which combine to produce ideal conditions for the formation and persistence of tropospheric ozone. In this setting exists one of the world's largest industrial and commercial centers, with a population projected to approach 18 million by the attainment year.

The technological challenge of attainment is evident in the extraordinary remaining ozone precursor reduction requirements—approximately 90% for VOC and 70% for NO_X—which are superimposed on an already very strict level of existing control. Complete elimination of all emissions from motor vehicles would not accomplish even half of the needed reductions. In fact, the South Coast could not reach attainment even if there were no mobile source and industrial emissions in the basin. The area's unique reduction responsibilities therefore necessitate breakthroughs in air pollution control technologies for practically every pollution source, coupled with the most advanced techniques and initiatives for preventing pollution.

EPA believes that the pace of air pollution control technology development in the past provides a reasonable basis for confidence that the South Coast can meet the Clean Air Act's 2010 ozone attainment goal using section 182(e)(5). Lacking sufficiently detailed data to predict and mandate specific controls for each particular source category, however, EPA proposes to employ section 182(e)(5) commitments to extend the rate of progress beyond the levels now foreseeable and reflected in the declining cap rules discussed above. EPA also proposes to commit to achieving additional reductions from smaller stationary source categories than are covered under the proposed cap rules, as well as from area and mobile sources. The commitments would allow EPA, the State, and the affected sources sufficient time to cooperate in the further development and commercialization of control approaches to deliver the remaining reductions needed for attainment. EPA strongly encourages CARB and SCAQMD to devote their substantial resources to expediting development and adoption of State and local controls in advance of the section 182(e)(5) commitment dates for rule adoption and implementation.

(3) Federal Role in Support of Technological Development Activities

(a) *Scope of EPA's Responsibilities.* From its inception, EPA has been charged with a leadership role in coordinating, assisting, and independently advancing national research efforts to develop methods and technologies for air pollution control. This continuous program has taken many forms:

- EPA laboratories to conduct research, testing, and development;
- EPA surveys, reports, networks, and clearinghouses to disseminate the most current information on technology development and transfer;
- EPA programs and EPA-lead task forces to coordinate technology development and application studies and projects with other Federal departments and agencies; with State, local, and international air pollution control agencies; with private agencies, institutions, and organizations; and with involved industries;
- EPA study and assessment (in accordance with section 405 of the Act and in conjunction with the Council of Economic Advisors) of economic incentive measures and approaches for stimulating additional air pollution control progress, concentrating on air pollution problems for which no existing methods of control exist;
- EPA research contracts with public and private agencies, institutions, and individuals to carry out specific projects relating to new air pollution reduction technologies;
- EPA grants under section 105 of the Act to State and local air pollution control agencies and to other nonprofit organizations to conduct research or demonstration projects; and
- EPA research fellowships both at EPA and at research organizations or universities.

In the 1990 Amendments to the CAA, Congress assigned EPA additional responsibilities for several specific new air pollution control technology projects, ranging from hydrogen fuel cell vehicle test programs to studies of renewable energy and energy conservation incentives. Congress also broadened the scope of EPA's mission: "the [EPA] Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention. Such strategies and technologies shall be developed with priority on those pollutants which pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, and other interested persons in the development of such strategies and technologies." Section 103(g)

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[31] EPA policies on rate-of-progress plan requirements, including substitution of NO_X for VOC emissions reductions for the post-1996 period, appear in two recent guidance documents: *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans* (EPA–452/R–93–002, March 1993); and *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration.*

(b) *Recent National Initiatives.* The Federal commitment to a leadership role in development of clean technologies and control approaches is reflected in several new comprehensive initiatives.

(*1*) Climate Change Action Plan. The Climate Change Action Plan was announced by President Clinton and Vice President Gore on October 19, 1993. The plan consists of 50 new or expanded programs and innovative public-private partnerships. The unifying goal of the plan is reduction in greenhouse gases, which include one of the two principal ozone precursors: oxides of nitrogen. In addition, the majority of the plan's initiatives—whether in the area of energy demand actions, transportation actions, or energy supply actions—will directly advance progress toward ozone attainment in the South Coast, either through projects to reduce energy consumption or programs to spur increased reliance on clean energy sources.

Many provisions of the Action Plan are intended to produce almost immediate progress, and some of these actions, like the parking cash-out program, are already incorporated as core measures in this FIP. Successful implementation of this group of initiatives will reduce the growth in emissions in the South Coast associated with the area's projected population increases, economic development, rising energy use, and expanded transportation requirements.

Other provisions of the Climate Change plan involve a continuing effort to advance long term strategies and stimulate programs and technologies that will yield their greatest reductions in the first decade of the next century. As a means of ensuring overall coordination, the President has instructed the White House National Economic Council, the Office on Environmental Policy, and the Office of Science and Technology Policy to co-chair interagency working groups to examine all budget, technology, research and development, regulatory and economic policies that could impact greenhouse gas emission levels beyond the year 2000. From this effort will come cooperative federal pilot projects and technical assistance programs designed to establish an empirical basis for the technological advances that will provide the foundation for sustainable development in future decades.

An example of this coordinated long-term commitment is the pesticide use reduction project of EPA, the Department of Agriculture, and the Food and Drug Administration. The specific strategies under this initiative include establishing incentives for the development, registration, and use of biological pesticides and the promotion of the high-technology bio-engineering industry; initiation of demonstration projects for reductions in overall pesticide use; and support for integrated pest management programs. The success of this program should eventually, through regulatory and nonregulatory incentives, accomplish further VOC reductions beyond the air pollution achievements of the pesticide control measure proposed in this FIP (see section III.C.4.d.). Besides impressive reductions in greenhouse gas emissions, this program is anticipated to result in energy savings worth $1.9 billion through 2000, and savings of $9 billion of the period of 2001–2010.

(*2*) Technology Innovation Strategy. EPA's newly announced Technology Innovation Strategy was released in draft form on November 23, 1993. This inter-agency initiative is under the direction of the Innovative Technology Council. It has as its goal to foster the development, commercialization, and widespread use of innovative technologies that can efficiently close the gap tween our Nation's ambitious environmental goals and its ability to meet them, and provide the base for sustainable development as economic activity, population, and threats to the environment grow worldwide.

The Strategy includes four focus areas. The first plan area, Environmental and Restoration Technologies, begins with an allocation of $10.8 million for projects in FY–94. The program's goal is to support the development, testing, and commercialization of technological breakthroughs needed for critical environmental progress. Projects currently funded include:

Cleaner Processes in Plating and Metal Finishing—developmental research for cleaner technologies in electroplating and metal finishing operations;

Pollution Prevention-Based Materials Cleaning/Decontamination—development and demonstration of pollution-prevention based surface cleaning technologies for use in advanced manufacturing operations and service industries;

Supercritical CO_2—production of a solvent-free alternative technology for metal degreasing operations;

Enhancing Market Penetration of Water-Borne and Other Low-Solvent Consumer/Commercial Adhesives—identification of the key technical and institutional barriers to the use of new adhesive technologies by EPA's Air and Energy Engineering Research Laboratory, pinpointing research and development needs, directing key product and applications research and development, and demonstrating successfully developed processes and products; and

NO_X Control by Hybrid Technologies—development of cost-effective hybrid NO_X control technologies for combustion sources, including advanced fuel reburning (AFR)/selective non-catalytic reduction (SCNR).

The second plan area, Clean Technology for Small Business, is initially funded at a $12 million level. It includes many projects directed toward development, commercialization, and diffusion of new cleaner technologies. Among the projects is the Merit program in Southern California, facilitating the use of pollution prevention technologies in the South Coast.

Clean Technology Use projects involve cooperative testing and development programs for less polluting technologies applicable to many other types of small businesses:

Dry cleaning—EPA's Office of Pollution Prevention Technology projects to test and develop emerging technologies for cleaner solvents and alternative cleaning methods;

Printing—cooperative projects with industry to reduce emissions from the flexography, lithography, and screen printing sectors of the printing industry;

Printed wiring boards—projects with the Department of Energy (DOE) and industry to develop and disseminate information on environmentally improved manufacturing options;

Metal degreasing—projects with DOE and industry to expand use of cleaner, safer degreasing operations;

Solvents—updates to EPA's Office of Research and Development Solvents Alternative Guide l(SAGE) software system to identifying viable alternative solvent substitution options for industrial users; projects to demonstrate innovative manufacturing projects for reducing VOC emissions; and

Coatings—two projects, in conjunction with Southern California Edison's Customer Technology Application Center, to accelerate development and market penetration of very low or zero VOC wood furniture coatings; project to promote technology transfer of Department of Defense powder coating technology; Applied Innovative Coatings Research Center projects to complete field trials of reformulated low- or zero-VOC coatings.

The third plan element—Gaps, Barriers, and Incentives—will concentrate on identifying gaps in environmental technology development in order to stimulate technology innovation and create a national climate supportive of such innovation. Typical projects will work on institutional, legislative, and tax changes that can stimulate support for development and use of improved environmental technologies. The U.S. Department of Commerce is a key participant in several of these efforts, along with industry and other regulatory agencies.

The fourth plan component—Improving Competitiveness of U.S. Environmental Technologies may also contribute to the development and commercialization of technologies relevant to further progress in the South Coast, but the primary focus of this activity is to promote use of U.S. technologies and expertise to solve international environmental problems. Initial funding for this plan area is $12 million.

(3) Clean Car Initiative. On September 29, 1993, President Clinton and Vice President Gore announced the "Clean Car Initiative," an historic cooperative effort between the U.S. automakers, the Department of Energy, the Department of Defense, and EPA. The primary goal of this initiative is to develop an ultra fuel efficient, safe, and clean vehicle by the year 2000.

To implement this goal, industry and government engineering teams will undertake research projects in three categories:

Technologies that can lead to near-term improvements in automobile efficiency, safety, and emissions—research in this area will include efforts to develop lightweight, recyclable materials and catalysts for reducing exhaust pollution.

Research that could lead to production prototypes of vehicles capable of up to three times greater fuel efficiency—projects will include fuel cells and advanced energy storage systems such as ultracapacitors, to produce more fuel-efficient cars that are affordable, meet or exceed current safety standards, and retain the performance and comfort available today.

Advanced manufacturing techniques to make it easier to get new product ideas into the marketplace quickly—this effort will involve computer-based design and testing systems and automation and control systems.

In support of the Clean Car Initiative, both the U.S. automakers and the major utility companies throughout the country are striving to develop inexpensive high energy battery technology—a technology that will be applicable to virtually all types of mobile sources. Various projects are underway to develop and perfect engines that operate on alternative cleaner burning fuels or utilize fuel cells. The application of regenerative breaking technology to motor vehicles is being studied for light duty vehicles and is even being implemented in a limited number of heavy duty vehicles. Hybrid electric vehicles utilizing both electric and clean burning combustion technology are being developed and tested to demonstrate their potential in-use capabilities.

EPA is also engaged in several other motor vehicle-related technological advancement initiatives. For example, EPA is undertaking a regulatory process to introduce improved vapor recovery technologies to automobiles for use during the refueling process. Finally, expected improvements in remote sensing technology may enable inspection programs to more clearly identify in-use high-emitters.

(c) *SCAQMD Technology Advancement Office.* In addition to these federally managed programs and projects, EPA has provided assistance to the SCAQMD's critically important Technology Advancement Office (TAO). Since its inception in 1987, the TAO has supported research, development, demonstration, and commercialization of advanced emissions control technologies and clean fuels.[32] EPA intends to contribute continued support for the TAO and anticipates that many of the new stationary and mobile source control technologies needed for eventual attainment will derive from the TAO's research efforts. EPA expects to incorporate the results of the SCAQMD's projects in the design of new technology measures issued in the future under the section 182(e)(5) provision.

(4) Demonstration That Progress Requirements for 1990–2000 Are Met Without the Need for Section 182(e)(5) Measure Reductions

As discussed above, section 182(e)(5) provides that an attainment demonstration can rely on new technology commitments if the measures are shown not to be needed to achieve the incremental emission reductions required during the first 10 years after the date of enactment of the Clean Air Act Amendments of 1990. Section 182(e)(5) contains no requirement that this demonstration be based exclusively on adopted and submitted measures. Section 182(e)(5) explicitly states that the showing need be only "to the satisfaction of the Administrator." EPA must be able to conclude, however, that the State has the ability to meet the progress requirements without relying on the new technology measures.

Elsewhere in this NPRM (see section II.C.2.), EPA describes the recently submitted South Coast Rate-of-Progress Plan, which demonstrates achievement of the progress requirements for the first 6 years primarily through fully adopted State and local measures. To the extent that the demonstration rests on measures not yet fully adopted, EPA cannot now propose to accept the plan for purposes of satisfying the 15 percent reduction requirement of section 182(b)(1), in conformance with the referenced EPA policy memorandum, "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans" (August 23, 1993).

In this NPRM, however, EPA proposes to conditionally approve these measures as strengthening the SIP and for the purpose of finding under section 182(e)(5) that later-enacted measures are not needed to meet this progress requirement. Although section 182(e)(5) does not require conditional approval for the purpose of such a finding, EPA has decided to conditionally approve, under the authority of section 110(k)(4) of the Act, the SCAQMD's enforceable commitments to adopt in fully enforceable form by 1996 specific measures to deliver the small, remaining shortfall in necessary reductions. This conditional approval, combined with the South Coast plan, assures to the satisfaction of the Administrator that the State will ultimately be able to meet the 15 percent progress requirements for the period 1990–1996 by means of recently adopted creditable control measures, along with a small number of new measures scheduled for full adoption and implementation in 1994, 1995, and 1996.

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[32] Information on current and planned TAO projects may be obtained from the SCAQMD. Some of the TAO projects are also jointly sponsored by the Clean Fuels Working Group, of which CARB and the California Energy Commission are also members.

As discussed in section III.B.5.d.(1) above, the Act also establishes two other progress requirements applicable within the first 10 years following enactment of the 1990 Amendments. A further 9 percent of creditable reductions must be achieved by 1999, followed by an additional 3 percent for the year 2000, as part of the 9 percent due by 2002.[33]

While the Act specifies that progress for the period 1990–1996 is in terms of VOC reductions, section 182(c)(2)(C) allows the substitution of NO_X reductions for VOC in meeting the post-1996 progress requirements. EPA has recently issued the Agency's policy and procedures for substituting NO_X reductions, NO_X Substitution Guidance (OAQPS, December 1993.) For purposes of the progress plans, this guidance authorizes any combination of VOC and NO_X emission reductions which total 3 percent per year, so long as the proposed level of NO_X substitution is consistent with the emission reductions in the modeled ozone attainment demonstration. In the case of the South Coast, UAM analyses support a one-for-one substitution of NO_X for VOC, inasmuch as peak ozone concentrations in the South Coast Air Basin are sensitive to both VOC and NO_X controls (see discussion below in section III.H.).

EPA has concluded that the Act allows NO_X emissions reductions occurring since 1990 to be applied to the post-1996 emissions reductions requirements.[34] 57 FR 13517, April 16, 1992. SCAQMD's aggressive rule adoption schedule for NO_X has resulted in recent adoption of rules that contribute creditable NO_X reductions during the period 1990–2000. Particularly important new or revised rules include: Rule 1109—Refinery Heaters & Boilers; Rule 1110.2—Internal Combustion Engines; Rule 1134—Gas Turbines; Rule 1135—Electric Power Generators and Boilers; Rule 1146—Crude Oil Pipeline Heaters and Oil Field Steam Generators, and Industrial Boilers, Heaters, & Generators; Rule 1146.1—Small Boilers and Heaters; and the NO_X/SO_X RECLAIM program. Creditable reductions in VOC and NO_X for 1997–2000 also derive from CARB measures, including reductions from the California Low Emission Vehicles/Clean Fuels Program and California's regulation of certain nonroad engine categories. Finally, the FIP contributes significant creditable NO_X and VOC reductions in the period 1997–1999 and in 2000, primarily through the enhanced I/M program and initial benefits from the other mobile source controls.

A technical support document entitled "Calculation of Creditable SIP/FIP Rate-of-Progress Reductions for the Period 1997–1999 and for the Year 2000" identifies individual FIP and SIP measures and associated creditable reductions for both progress periods. EPA's analysis determined that cumulative creditable VOC and NO_X emissions reductions for 1997–1999 exceed the Act's 9 percent rate-of-progress requirement for 1997–1999 and 3 percent requirement for 2000, without the need for any emission reductions from the FIP's new technology measures.

e. Attainment demonstration—As discussed in section III.H., EPA believes that the set of measures proposed in this NPRM will bring the South Coast into attainment with the ozone standard by 2010. This projection is based on photochemical grid modeling performed by the South Coast Air Quality Management District. Six episodes representative of conditions conducive to high concentrations of ozone were selected for the modeling exercise. Four of the episodes chosen were from the period for which an intensive air quality and meteorological data base from the Southern California Air Quality Study was available.

The emissions for the basin were projected for the year 2010, as discussed in section III.H.2.b, and the emission reductions resulting from the implementation of the set of proposed measures were quantified (section III H.4.). The resulting emissions were used as input for each of the six episodes. The projected ozone concentrations for the modeled episodes were below the NAAQS for ozone for all portions of the domain, hence demonstrating attainment of the ozone standard.

f. Alternative attainment date discussion—As in the case of the Sacramento and Ventura attainment analyses, EPA considered for the South Coast ozone FIP a number of mechanisms to achieve attainment before 2010, the Act's deadline for the South Coast. For a discussion of possible controls, the reader should refer to sections III.B.3.d. on the Sacramento 1999 attainment option and section III.B.4.e. on an alternative attainment date in Ventura. Expedited attainment using these approaches is even less practicable in the South Coast than in the other two California FIP areas. The enormous emission reductions required for ozone attainment in the South Coast mean that the restrictions would have to be so severe as to interfere profoundly with the economic and social organization of the area, commerce generally, the provision of public services, and the effective operation of local governments. EPA believes this strategy would not be in the public's interest, despite the benefits of any acceleration in the attainment date.

6. South Coast Carbon Monoxide

a. Reduction Requirements—EPA's attainment analysis uses a 1990 South Coast CO emissions level of 7084 tons per day. Motor vehicles are responsible for 93 percent of these emissions. Without adoption of further controls, CO emissions are expected to decline to 4349 tons per day in the year 2000. This reduction is due primarily to turnover in the motor vehicle fleet (including the benefits of California's LEV program) and to reductions from the California wintertime oxygenated gasoline requirement (see section II.C.1.).

b. Attainment Demonstration—In order to maximize consistency between the FIP and local SIP efforts, EPA has elected to employ the SCAQMD modeling analyses for purposes of the CO attainment demonstration. As discussed above, the SCAQMD's 1992 CO SIP revision based the attainment demonstration on both areawide (Urban Airshed Model, or UAM) and hotspot (CAL3QHC) modeling analyses, and used an appropriate design value of 23.4 ppm, recorded in 1988 at the Lynwood monitoring station.

The modeling analyses predict attainment of the 8-hour CO NAAQS by reductions in areawide emissions of tons per day, based upon the control strategies included in the plan and the transportation modeling assumptions for the year 2000. As noted in section II.C.1, however, the SIP's attainment demonstration relies upon large CO emissions reductions (587.4 tons per day) assigned to an enhanced I/M program, which has not yet been adopted by the State. EPA proposes to disapprove the attainment demonstration portion of the SIP and fill the gap in necessary emissions reductions through the promulgation of the federal enhanced I/M program described in section III.D.2.c.[35] In the future, the SIP attainment demonstration could be approved if the State submits approvable enhanced I/M legislative authorization and regulations.

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[33] For EPA's applicable policy on the post-1996 progress requirements, the reader should consult Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration (OAQPS, December 1993).

[34] Emission reductions from the measures listed in section 182(b)(1)(D) are not creditable toward meeting the progress requirements, whether the emissions are VOC or NO_X.

[35] The FIP contributes additional CO emission reductions from other federal mobile source measures, as shown in sections III.D., III.E., and III.H., below. These reductions are not so great, however, as to advance the attainment date.

c. Alternative Attainment Date Discussion—As in the case of the California ozone FIPs, advancement of the CO attainment date could be achieved through activity restrictions more severe than those proposed in this FIP. For example, EPA could prohibit registration of cars emitting more than 3.4 grams of CO per mile, the national federal motor vehicle standard for 1994 and later model years. Alternatively, the FIP could mandate no-drive days or restrict sale of gasoline during winter months. EPA believes that these approaches are simply not practicable because of their widespread adverse consequences and enforceability issues. Therefore, EPA proposes not to include such additional measures in the CO FIP.

C. *Stationary and Area Source Rules*

1. Introduction

a. Source Category Description and Significance—Stationary sources of air pollution are traditionally divided into "point" and "area" categories. Point sources include refineries, electric utilities, manufacturing plants, and other large industrial facilities, and have received considerable regulatory attention under the Act. Most, for example, are visited annually by District inspectors and are restricted to activities described in District air permits. As a result, belching smokestacks have largely disappeared as industrial facilities have installed scrubbers, incinerators, carbon adsorbers, and other expensive equipment to reduce air pollution. Nevertheless, EPA believes these sources can reduce NO_x and VOC emissions even further.

Area sources consist of widely dispersed commercial and residential equipment and activities. While some are not currently subject to air pollution regulations (e.g., pesticide application and some consumer products), most have been controlled in California for many years (e.g., gasoline pumps, dry cleaners, architectural coatings, degreasers, etc.). Despite regulation, these small sources are so numerous that they now emit more in the FIP areas than do point sources. Among the largest contributors are livestock waste in Sacramento, pesticides in Sacramento and Ventura, and coatings, solvents, consumer products, and petroleum extraction in all three areas. As discussed in sections II.A, III.G.2 and elsewhere in this NPRM, overall stationary source contributions to the total anthropogenic emission inventories range from roughly 5 percent NO_x and 45 percent VOC in Sacramento to 35 percent NO_x and 65 percent VOC in Ventura. Even with the relatively favorable emission reduction targets and stationary source contributions to NO_x in Sacramento, EPA has aggressively sought stationary source emission reductions to help achieve attainment. For VOC in Sacramento and both pollutants in Ventura and South Coast, dramatic emission reductions from stationary sources are essential for attainment.

b. Selection of Control Strategies—EPA faces several large obstacles to obtaining the needed emission reductions from stationary sources. First, primary control of these sources has historically fallen to State and local agencies. Particularly in California, these agencies have developed an excellent understanding of the control technologies available to the specific sources in their jurisdiction, and have cooperated together to determine the best available retrofit control technology (BARCT) standards for major point sources, as required under the California Clean Air Act.

Second, there are literally hundreds of different stationary activities that emit NO_x and VOCs in the FIP areas. Even if EPA had the expertise, it would not have the time nor resources to scrutinize each source and determine the costs and technical details of control strategies to achieve the tremendous emission reductions needed for the South Coast, or even the lesser reductions needed for Sacramento and Ventura.

Within these and other constraints, EPA has attempted to propose a set of stationary source control strategies which best fulfill the goals described in section I.B of this NPRM. A brief summary and explanation of the strategies is presented below.

(1) Source-Specific RACT Rules. As a first step, EPA developed source-specific RACT rules for major point sources in the FIP areas not already subject to a RACT rule. These are described in section III.C.2 of this NPRM. In addition to contributing emission reductions towards the overall attainment targets, these rules are an appropriate first stage of the stationary source rule package because (1) RACT is already required for these sources under sections 181 and 182 of the Act, and (2) promulgation of RACT for these sources establishes greater equity with regard to other major sources.

(2) Traditional Stationary Source Category Rules. As discussed in section III.C.1 of this NPRM, EPA cannot evaluate every source category in the FIP areas for availability and cost of emission reductions needed to meet the tremendous FIP reduction targets. Nevertheless, this type of source-by-source evaluation and rulemaking is exactly how State and local agencies have traditionally regulated VOC and NO_x. Therefore, in order to create a State/federal partnership, minimize federal intrusion into State affairs, and achieve the other goals described in section I, EPA believes it is important to propose traditional stationary source rules by source category wherever possible.

Sections III.C.3 and III.C.4 of this NPRM describe the regulations that EPA is proposing under this effort. Categories were generally selected because: (1) A State or local agency had already published a regulation that could be adapted for implementation in the FIP, or (2) a currently unregulated category contributed substantial emissions. While many of these rules will not achieve all the needed reductions, all provide reductions in the near-term and contribute progress towards attainment. In addition, many of these regulations were recommended by State or local agencies. EPA believes these agencies should and will follow the FIP proposal by promulgating equivalent rules, further supporting the FIP goals.

(3) Cap Regulations. Section III.C.4 of this NPRM describes a set of emission cap regulations designed to achieve additional stationary source reductions. These rules impose substantial requirements on a wide range of sources, but they leave the sources a great deal of flexibility in how the reduction requirements are to be met.

The requirements in the cap rules are designed to achieve the stationary sources' share of the emission reductions needed for attainment in Sacramento and Ventura. While these reductions are substantial and challenging to the regulated community EPA believes that the reductions are achievable on the schedule reflected in the cap rules. EPA believes that this level of reduction is achievable by sources in the South Coast, in the same time frame. EPA does not know, however, whether current technologies and control techniques are adequate to achieve the additional reductions necessary in the South Coast. As a result, EPA is proposing that the South Coast reduction requirements under the cap rules be similar to those proposed for Ventura.

(4) New Technology Measures under section 182(e)(5). The additional stationary source reductions needed for attainment in the South Coast are discussed in Section III.G. Section 182(e)(5) of the Clean Air Act allows States and EPA, acting in place of the State, to postpone promulgation of

regulations in the South Coast (the only "Extreme" ozone nonattainment area) in order to provide for technology advancements. EPA is proposing to include in this category all stationary, area, and mobile source emission reductions needed in the South Coast beyond those proposed for Ventura. As discussed above, EPA lacks evidence at this time that either accelerating the reduction schedule or increasing the reduction requirements of the proposed cap rules would be achievable, in light of feasible existing control options.

EPA solicits information from industry and the public on demonstrated and commercially available technologies that could reliably achieve a greater level of reduction than required in the cap rules. As soon as new or improved technologies and control techniques are foreseeable, EPA will consider amendments to the FIP to mandate further reduction requirements, even in advance of the schedule for rule development set forth in the proposed section 182(e)(5) commitments. EPA also urges the State and SCAQMD to pursue aggressively the development and application of low-emission technologies, clean fuels, and pollution prevention approaches capable of advancing and sustaining the pace of air quality progress in the South Coast.

c. Future Evolution of Rules—EPA intends to reevaluate these stationary source requirements as air pollution control technology continues to improve. All four of the general strategies discussed in paragraph III.C.1.b are subject to ongoing efforts to develop cost-effective emission reductions. This includes industry-sponsored environmental audits, CARB's RACT/BARCT development, EPA's continuing research and development initiatives and CTG and MACT efforts, and SCAQMD's RECLAIM and Tier 1, 2, and 3 programs, including projects of the SCAQMD's Technology Advancement Office.

Where appropriate, the final promulgated FIP rules will reflect modifications to the proposed regulations based on information received from these and other efforts during the public comment period. However, EPA fully intends to continue modifying the FIP rules through subsequent separate actions, even after final promulgation. As discussed elsewhere in this NPRM, EPA hopes that the final modification to most FIP rules will be delegation to a State or local agency or recision of the FIP rules in deference to an approvable State or local program.

2. Regulations for Specific Sources in Sacramento

(a) Introduction and rationale for selection of sources. In developing the attainment demonstration, EPA evaluated the possibility of achieving emissions reductions from stationary point sources in the Sacramento area. EPA has identified several major stationary sources of VOC in the Sacramento area which are not subject to reasonably available control technology (RACT) requirements. Under section 182(a)(2)(A) and 182(b)(2) of the Clean Air Act, local air pollution control agencies are responsible for the submittal of RACT rules for all major sources to EPA. Formica Corporation (Placer County), Sierra Pine Limited (Placer County), Michigan California Lumber Company (El Dorado County), and Reynolds Metal's tab lubricant operation (Placer County) are four major VOC sources which are not currently subject to RACT requirements. In order to achieve VOC emissions reductions for the FIP and to provide rule models that will help the local air agencies meet their Clean Air Act requirements, EPA is proposing the following source specific RACT rules for the Sacramento area.[36]

(b) Formica Corporation (Placer County) Proposed 40 CFR 52.2961(p) sets VOC emission limits for resins used at Formica Corporation's Sierra Plant ("Formica") which manufactures plastic laminate products. Emissions are generated from the lamination process which involves the application of melamine and phenolic resins to several types of paper, followed by oven curing. VOC emissions reductions have been achieved by Formica due to past changes in resin formulations. Proposed 40 CFR 52.2961(p) represents Formica's current resin formulations and EPA's proposal of a RACT rule for Formica.

Formica has made several changes in resin formulation which have reduced their VOC emissions. In 1987, Formica switched from a phenolic resin with a VOC content of 2.88 lb/gal to one at 1.85 lb/gal. In 1991, Formica reduced their phenolic resin VOC content again from 1.85 lb/gal to 1.13 lb/gal. Also in 1991, the melamine resin was switched so that the VOC content was reduced from 0.2 lb/gal to 0.002 lb/gal. EPA is proposing that 1.13 lbs of VOC per gallon of phenolic resin applied and 0.002 lbs of VOC per gallon of melamine resin applied represent RACT for Formica. Proposed RACT rule 52.289(p) will also allow control equipment with an overall efficiency of 85 percent as an alternative to meeting the above VOC limits.

Based on the 1990 CARB point source inventory, Formica emitted 211.8 tons per year (tpy) of reactive organic gases (ROG). However, more recent and accurate emissions data indicate that Formica's emissions in 1990 were actually 601.6 tpy of VOC and that with the change in resin formulations in 1991, Formica's emissions were reduced to 461.3 tpy of VOC. Thus, with the resin changes made by Formica since 1990, approximately 140 tpy or 0.38 tons per day (tpd) of VOC emissions reductions have been achieved by Formica.

Since the resin changes required by the proposed RACT rule have already been implemented, there should be no additional costs for Formica to meet the rule's requirements. However, it appears that the past reformulations were cost effective.

EPA is aware that Formica is currently in the process of obtaining an Authority to Construct permit from Placer County APCD to install a thermal oxidizer in order to bank emissions reductions credits. EPA also understands that Formica has plans to bank the emissions reductions from the second phenolic reformulation discussed above. In order for Formica to bank the emissions from the second phenolic reformulation, EPA would have to propose a rule which set the phenolic limit at 1.85 lbs/gal., rather than 1.13 lb/gal. The emissions reductions achieved by the second reformulation would then have to be achieved elsewhere by the FIP. Given the stringency of some of the other FIP measures, EPA believes that proposed rule 52.2961(p) should represent RACT.

(c) SierraPine Limited (Placer). Proposed 40 CFR 52.2961(q) controls the emissions from SierraPine Limited, a medium density fiberboard plant in Placer County. Estimated uncontrolled emissions at the facility total approximately 306 tons of VOC per year, with the primary emissions points at three fiber dryers (178 tpy), two press vents (117 tpy), and wood-waste fired boiler (11 tpy). The three wood fiber dryers use steam heat to dry the wood fibers but in the process drive off VOCs in the wood. After the fibers are dried and formed into the desired shape, a resin is applied. A steam heated press is then used to form the fiberboard. As the fiberboard is heated, VOCs (mostly formaldehyde) are driven off. Currently all VOCs are emitted directly to the atmosphere.

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[36] These four sources will also be required to achieve additional VOC emissions reductions required by the Cap Rules discussed in section III.C.5. of today's notice, as well as any NO_x requirements that may apply.

Based on a review of currently available controls, emissions from the dryers and vents could be reduced significantly through the addition of a control device (e.g., wet electrostatic precipitator/carbon adsorption system or regenerative thermal oxidation). Emissions at the wood-fired boiler could also be reduced by maintaining optimum combustion practices.

The proposed rule for this facility would require the reduction of dryer and press vent emissions by 90 percent, which would be achievable through currently available technology at an estimated cost of $2,200 to $3,400 per ton of VOC reduced. The cost per ton may be partially offset by the additional PM10 reductions expected as the result of controls.[37] The rule is expected to reduce VOC emissions at the facility by approximately 280 to 290 tpy.

(d) Michigan-California Lumber Company (El Dorado) Proposed 40 CFR 52.2961(r) controls the VOC emissions from Michigan-California Lumber ("Michigan-California") which is a lumber processing and timber manufacturing facility located in El Dorado County. Various coniferous tree species, including Sugar Pine, Douglas Fir, Ponderosa Pine, and White Fir, are harvested, transported to the facility, and processed for commercial sale. The main source of VOC emissions from Michigan-California is a spreader-stoker boiler which uses waste bark and wood as fuel. Due to several operational changes to increase the efficiency of the boiler, VOC emissions reductions have also been realized. Proposed 40 C.F.R. 52.2961(r) represents Michigan-California's current operating conditions and EPA's proposal of a RACT rule for Michigan-California.

EPA's proposed RACT rule will require Michigan-California to meet an emission limit of 150 parts per million by volume (ppmv) of VOCs in the stack exhaust stream from the spreader-stoker furnace. Since 1988, Michigan-California has made improvements in the combustion process and regulated moisture concentration of the wood fuel for the spreader-stoker furnace which resulted in an average VOC emission rate of approximately 218 ppmv during a 1992 source test. Further changes and improvements made since 1992 have resulted in a VOC emission rate of approximately 127 ppmv during a 1993 source test. Therefore, a maximum VOC limit of 150 ppmv is reasonable for Michigan-California's spreader- stoker furnace.

The 1990 CARB point source inventory reports Michigan-California emitting 251.7 tpy of VOC which was based on 1988 emissions test estimates. With the changes since 1988, current VOC emissions should be approximately 48.8 tpy. Thus, Michigan-California has achieved approximately 200 tpy or 0.56 tpd of VOC reductions since 1990.

Since the requirements of the proposed RACT rule are currently being met, there should be no additional costs for Michigan-California to meet the rule's requirements.

(e) Reynolds Metals (Placer). Reynolds manufactures aluminum "Stay On Tab" can ends in Rocklin, California and uses several VOC containing compounds which include end sealing compound, equipment cleaner and tab lubricants. Proposed 40 CFR 52.2961(s) controls the VOC emissions from the tab lubricating process at Reynolds Metals Company ("Reynolds") in Placer County. The end sealing compound is currently regulated by Placer County APCD and the equipment cleaner is covered by the Solvent Cleaning Operations rule discussed below. VOC emissions reductions from the tab lubrication process have been achieved by reducing the VOC content and application rate of the lubricant. Proposed 40 CFR 52.2961(s) requires Reynolds' to meet limits that are based on the lower VOC and application rate of the tab lubricant.

In 1992, Reynolds switched from a tab lubricant with a VOC content of 6.38 lbs of VOC per gallon, which was applied at a rate of 50 milliliters per minute (ml/min) to make 3240 tabs/min (or 2.60×10^{-5} lbs VOC/tab) to a tab lubricant with a VOC content of 5.73 lb/gal which is applied at a rate of 25 ml/min to make 3240 tabs/min (or 1.17×10^{-5} lbs VOC/tab). EPA is proposing a limit of 5.73 lb/gal for the tab lubricant and total tab lubricant VOC emissions of not more than 1.2×10^{-5} lbs of VOC per tab produced in a given press. Proposed RACT rule 52.2961(s) will also allow control equipment with an overall efficiency of 85 percent as an alternative to meeting the above VOC limits.

In 1990, Reynolds emitted a total of 247.5 tons of VOC from which 77.5 tons was generated by the tab lubricant process. The changes made in 1992 achieve an estimated 55 percent reduction in VOC (or 42.3 tpy, 0.12 tpd). Since the tab lubricant changes required by the proposed RACT rule have already been implemented, there should be no additional costs for Reynolds to meet the rule's requirements, and apparently the past reformulations were cost effective.

3. Regulations for Specific Source Categories in the FIP Areas

a. Introduction—(1) Rationale for Selection of Categories and Requirements. As discussed in section III.C.1 of this NPRM, EPA believes the FIP should include traditional category-specific stationary source rules where possible. Such rules improve the State/federal partnership, minimize federal intrusion into State affairs, and contribute to other goals described in section I.B of this NPRM. While EPA is unable to develop rules for all stationary source categories, the proposed FIP includes 15 rules for specific categories as described in sections III.C.3.b-p and 3 statewide area source regulations presented in section III.C.4 below.

Many of these rules have been adapted from regulations already existing or proposed in parts of California. In such cases, EPA has generally selected the most stringent requirements available and relied on the technical work performed by CARB and local Districts to estimate associated costs and emission reductions. While there may be additional rules that EPA could have adapted for the FIP under this effort, EPA used the amount of potential emission reductions as a primary screening device for evaluating which rules were appropriate for the FIP proposal. Thus, rules projected to reduce emissions by more than 0.1 percent of the uncontrolled attainment year inventory were considered good candidates. EPA also considered cost-effectiveness and District recommendations in selecting categories and specific requirements under this effort. Examples of proposed FIP elements adapted from existing District rules are those affecting solvent cleaning operations, wood products coatings, and auto refinishing. Many of these category-specific rules are based on regulations adopted by the SCAQMD or CARB. EPA's application of these rules to Sacramento and Ventura should not discourage the SCAQMD and CARB from pursuing further emission reductions from these source categories in order to meet the progress and attainment requirements of federal and State law.

EPA also developed rules for source categories which have not yet been regulated under the Clean Air Act but which contribute substantial emissions in the FIP areas. For these categories, EPA worked with the State and Districts to evaluate various mechanisms for reducing emissions. Among the FIP rules developed under this effort are those affecting pesticides, aerosol coatings, and livestock waste management.

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[37] SierraPine has applied for permits to construct wet electrostatic precipitators and wet scrubbers to reduce PM10 emissions at the facility. While these controls will have some smalll VOC reduction benefit, EPA has determined that these controls alone will not address the need for RACT level reductions as required under the Clean Air Act.

(2) Relationship to existing and pending SIP provisions Some stationary sources proposed for control through category-specific FIP rules are already regulated by existing State or District SIP rules. Architectural coating, for example, has been regulated in the South Coast by versions of South Coast Rule 1113 since 1977. EPA's proposed FIP rule (section 52.2959), however, would reduce architectural coating emissions even further. Where a State or local rule has been approved by EPA into the SIP (as, for example, Rule 1113 was approved in 57 FR 8104, August 11, 1992), affected sources would have to meet the tighter of each element in the two rules.[38] Sources will, however, need to continue to comply with applicable State and local rules.

As discussed in section III.J. and elsewhere in this NPRM, EPA intends to delegate the FIP rules and/or remove them whenever the State submits an approvable, equivalent SIP provision.[39] If, for example, SCAQMD submits a proposed SIP amendment that makes Rule 1113 an approvable substitute for the FIP rule, upon EPA approval, EPA would amend section 52.2959 to rescind its applicability within the South Coast. In many cases, CARB and affected Districts are already developing rules similar to those proposed in this NPRM. If these are submitted to EPA before February 1995, EPA may, upon SIP approval, simply amend or remove the analogous component from the final promulgated FIP. Alternatively, EPA may remove FIP elements under separate action.

If, however, EPA determines that a new or modified State rule does not achieve emission reductions equivalent to the FIP rule, and no other State rule compensates for the differences, EPA will maintain implementation of the FIP measure.[40] In such cases, sources could again be subject to overlapping State and federal requirements. Therefore, EPA encourages the State to adopt approvable regulations as soon as possible to avoid duplicative effort for both regulators and affected sources.

(3) Relationship to other applicable FIP provisions. Many of the sources subject to the proposed category-specific rules described here will also be affected by the cap regulations described in section III.C.5 of this NPRM. As proposed, the cap regulations require almost all significant stationary sources to reduce emissions by a specified percentage. The reduction rates are currently the same for sources which are affected by category-specific rules and for sources which are not. As discussed in section III.C.5 of this NPRM, EPA specifically requests comments on whether fairness and other concerns justify adjusting the reduction requirements to give sources credit for emission reductions required in the proposed FIP rules described in sections III.C.2–4 of this NPRM.

(4) Rule structure. These proposed rules generally follow the structure of New Source Performance Standards (NSPS) in 40 CFR part 60. They contain sections on applicability, definitions, specific requirements, exemptions, reporting, recordkeeping, test methods, and additional components as necessary. Where immediate or near-term compliance is feasible, the effective dates of the substantive requirements are generally January 1, 1996, roughly one year after final FIP promulgation is due. Issues specific to individual rules are discussed in sections III.C.3.b-p and III.C.4 below.

(b) Solvent Cleaning Operations (Sacramento, Ventura). Proposed 40 CFR 52.2961(a) controls VOC emissions resulting from certain solvent cleaning operations in the Sacramento and Ventura nonattainment areas. Emission reductions are achieved by: (1) Limiting the VOC content and vapor pressure of solvents used in solvent cleaning operations; (2) allowing the use of add-on control equipment in lieu of meeting the VOC content and vapor pressure limits; and (3) prescribing procedures and requirements for solvent cleaning operations.

The proposed rule applies to facilities that use VOC-containing materials in the production, repair, maintenance, or servicing of parts, products, tools, machinery, equipment, or general work areas, or that store and dispose of VOC-containing materials used in solvent cleaning operations. Affected facilities include manufacturing plants, printing presses, shipyards, and repair and refinishing facilities such as auto garages, auto body shops and workshops for buses, aircraft, trains and trucks. This proposed rule also applies to repair, service, and production operations at institutional facilities such as government buildings, schools, hospitals, sanitariums, prisons, restaurants, health clubs, and theaters.

This proposed rule is based largely on SCAQMD Rule 1171 (Solvent Cleaning Operations) as adopted on August 2, 1991. Evaluation of the environmental, economic, socioeconomic, and other impacts of the proposed FIP rule's requirements can be found in SCAQMD's final staff report for Rule 1171, dated July 1991. This proposed FIP rule also incorporates changes from the draft amended Rule 1171 released by SCAQMD on October 6, 1993 and components of the VCAPCD Rule 74.19 (Graphic Arts) as adopted on August 11, 1992.

EPA is in the process of developing an Alternative Control Technology (ACT) Document for solvent cleaning operations. The ACT will primarily address recordkeeping and will not establish national guidelines for solvent content and work practices. The proposed FIP rule requirements on VOC content and work practices do not conflict with the draft ACT.

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 10.44 tpd in Sacramento in 1999, 11.82 tpd in Sacramento in 2005, and 3.55 tpd in Ventura in 2005. Implementation of this proposed rule is projected to reduce those emissions by 6.75, 7.66, and 2.66 tpd respectively at an overall cost savings of $991 per ton VOC removed (1990 dollars). A cost savings is projected because CARB and the Districts have identified compliant solvents which are less expensive than high-VOC solvents currently in use.

(c) Wood Products Coatings (Sacramento, Ventura) Proposed 40 CFR 52.2961(b) controls VOC emissions resulting from commercial and industrial application in the Sacramento and Ventura nonattainment areas of coatings while manufacturing wood products. Emission reductions are achieved by: (1) limiting the VOC content of various wood coating products; (2) allowing the use of add-on control equipment that reduces VOC emissions by 85 percent in lieu of meeting the VOC limits on coatings; and (3) restricting application of wood coatings to application methods and equipment with high transfer efficiencies.

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[38] Section 302(q) of the Act defines the applicable implementation plan as that "portion . . . or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c) . . ." While the regulations discussed in sections III.C.3 and 4 of this notice may effectively supersede less stringent provisions of federally approved SIP rules addressing the same source categories, the State or local rules would remain in the SIP and be enforceable.

[39] Pursuant to § 110(1) of the Act, State rules are not approvable as revisions to an implementation plan if they 'interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this Act."

[40] EPA could also approve a substitute SIP attainment demonstration relying on a different mix of control measures to achieve attainment and interim progress that at least equals the FIP's schedule. In this case, EPA may rescind individual FIP rules that are more stringent than the substitute SIP provisions, if the particular FIP rules are no longer necessary to provide for expeditious attainment because the SIP achieves greater reductions from controls on other source categories.

The proposed rule applies to all persons applying coating, inks, stains, and/or strippers in wood product coating operations for the purpose of manufacturing wood products, including furniture and other coated objects made of solid wood and/or wood composition and/or simulated wood material. The proposed rule does not apply to residential noncommercial operations. The majority of the affected wood products coating operators are expected to comply with the proposed rule through the use of reformulated coatings rather than add-on emission control devices.

The proposed rule is based largely on SCAQMD Rule 1136 entitled "Wood Products Coatings," as amended on August 2, 1991. In addition, EPA has incorporated some of SCAQMD's proposed amendments to Rule 1136, dated July 23, 1993. Evaluation of the environmental, economic, socioeconomic, and other impacts of Rule 1136 can be found in SCAQMD Staff Report "Proposed Amended Rule 1136—Wood Products Coatings," dated April 19, 1988, and SCAQMD Supplemental Staff Report "Proposed Amended Rule 1136—Wood Products Coatings," dated July 5, 1988.

EPA has prepared a draft Control Techniques Guideline (CTG) document on wood products coatings that is entitled "Control of Volatile Organic Compound Emissions from Wood Furniture Coating Operations." Upon publication of the CTG, revisions to this FIP rule may be appropriate for consistency. EPA expects, however, that the proposed FIP rule may be more stringent than the CTG in some regards to reflect the unusually difficult air pollution problems in the FIP areas.

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 0.49 tpd in Sacramento in 1999, 0.53 tpd in Sacramento in 2005, and 0.63 tpd in Ventura in 2005. Implementation of this proposed rule is projected to reduce those emissions by 0.45, 0.51, and 0.61 tpd respectively at a cost of $18 per ton VOC removed (1988 dollars).

(d) Automotive Refinishing Operations (Sacramento). Proposed 40 CFR 52.2961(c) controls VOC emissions from automobile refinishing operations in the Sacramento nonattainment area. Emission reductions are achieved by: (1) limiting the VOC content of various automobile refinishing coatings; (2) allowing the use of add-on control equipment that reduces VOC emissions by 85 percent in lieu of meeting the VOC limits on coatings; and (3) restricting application of automotive refinishing coatings to application methods and equipment with high transfer efficiencies.

The proposed rule applies to facilities that apply coatings to motor vehicles and mobile equipment or their existing parts and components for the purpose of on-site refinishing and modification. The proposed rule does not apply to application of original equipment manufacturing coatings applied at manufacturing plants. Affected facilities include autobody repair/paint shops, production autobody paint shops, new car dealer repair/paint shops, fleet operator repair/paint shops, custom-made car fabrication facilities, and truck body builders.

Proposed 40 CFR 52.2961(c) is based largely on SCAQMD's Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations (September 6, 1991). Portions of the proposed FIP rule are based on CARB's Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology (RACT/BARCT) for Automotive Refinishing Operations (January 8, 1991). An evaluation of the environmental, economic, socioeconomic, and other impacts of Rule 1151 requirements can be found in SCAQMD's staff report for the proposed amended Rule 1151 (August, 1991); this evaluation is also applicable to this proposed FIP rule.

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 4.23 tpd in 1999 and 4.71 tpd in 2005. Implementation of this proposed rule is projected to reduce those emissions by 3.77 tpd and 4.19 tpd respectively at a cost of $7,200 per ton of VOC removed (1990 dollars).

Under section 183(e)(3) of the Act, EPA may in the future issue either national regulations or a CTG for this source category, as well as for other categories discussed in this section. If EPA does so and the FIP rule is less stringent than the national guidance or rule, EPA will amend the FIP rule appropriately.

(e) Adhesives and Sealants (Sacramento) Proposed 40 CFR 52.2961(d) controls VOC emissions resulting from industrial and commercial use of adhesives and sealants in the Sacramento nonattainment area. Emission reductions are achieved by: (1) limiting the VOC content of various adhesives and sealants; and (2) allowing the use of add-on control equipment that reduces VOC emissions by 85 percent in lieu of meeting the VOC limits on coatings.

This proposed rule applies to certain facilities that supply, sell, or use adhesives, sealants, or adhesive primers. Affected facilities include (but are not limited to) manufacturing plants, architectural and construction companies, and welding operations. Various activities are exempt from all or part or the proposed rule, including tire repair, undersea-based weapon systems manufacturing, research and development, and small quantity users.

Proposed 40 CFR 52.2961(d) is based largely on draft guidance and model rules developed by members of the CARB/California Air Pollution Control Officers Association's (CAPCOA) Technical Review Group included in "Reasonably Available Control Technology and Best Available Retrofit Control Technology (RACT/BARCT) for Adhesives and Sealants," as presented in a workshop on September 30, 1993. In addition, portions of the proposed FIP rule are based on Bay Area Air Quality Management District (BAAQMD) Regulation 8, Rule 51, Adhesive and Sealant Products; VCAPCD Rule 74.20, Adhesives and Sealants; and SCAQMD Rule 1168, Control of Volatile Organic Compound Emissions from Adhesive Application. Evaluation of the environmental, economic, socioeconomic, and other impacts of the proposed FIP rule's requirements was partially based on the information provided in the BAAQMD and VCAPCD staff reports for their respective rules.

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 2.64 tpd in 1999 and 2.99 tpd in 2005. Implementation of this proposed rule is projected to reduce those emissions by 1.29 tpd and 1.47 tpd respectively at a cost of $890 per ton of VOC removed (1989 dollars).

(f) Can and Coil Coating (Sacramento). Proposed 40 CFR 52.2961(e) controls VOC emissions from certain metal container, metal closure, and metal coil coating operations in the Sacramento nonattainment area. Emission reductions are achieved by: (1) limiting the VOC content of various can and coil coatings; (2) allowing the use of add-on control equipment that achieves a 90 percent capture efficiency and 95 percent destruction or removal efficiency in lieu of meeting the VOC limits on coatings; and (3) restricting application of can and coil coatings to application methods and equipment with high transfer efficiencies.

The proposed rule applies to facilities that apply coatings to metal containers, metal closures, and/or metal coils. Facilities that apply 1 gallon per day or less of spray coating, however, are exempt from the requirements of the proposed rule. Sacramento and Placer counties have implemented can and coil rules (SMAQMD Rule 452 and PCAPCD Rule 223) similar to this proposed FIP rule, although not as stringent. Currently, no sources exist in El Dorado and Sutter counties. Therefore, while the rule is proposed for implementation in the entire Sacramento ozone nonattainment area (as described in 40 CFR 81.305), most of the near-term emission reductions are projected to occur in Yolo and Solano counties.

Proposed 40 CFR 52.2961(e) is based largely on SCAQMD's Rule 1125, Metal Container, Closure, and Coil Coating Operations. Portions of the proposed FIP rule are based on the following: CARB's "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology (RACT/BARCT) for Metal Container, Closure and Coil Coating Operations" (July 21, 1992); San Diego County Air Pollution Control District (SDAPCD) Rule 67.4, Metal Container, Closure, and Coil Coating Operations (1990); and SMAQMD Rule 452, Can Coating (August 21, 1990).

An evaluation of the environmental, economic, socioeconomic, and other impacts of Rule 1125 requirements can be found in the SCAQMD staff reports for Rule 1125 (February 2, 1979 and October 13, 1989). Evaluations of these impacts are also presented in CARB's RACT/BARCT Determination for Metal Containers, Metal Closures, and/or Metal Coils. Both of these evaluations are applicable to this proposed FIP rule.

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 2.09 tpd in 1999 and 2.34 tpd in 2005. Implementation of this proposed rule is projected to reduce those emissions by 0.26 tpd and 0.30 tpd respectively at a cost savings of $540 per ton of VOC removed (1990 dollars). A cost savings is projected in part because CARB and the Districts have identified compliant coatings which are less expensive than high-VOC coatings currently in use.

(g) Commercial Bakeries (Sacramento). Proposed 40 CFR 52.2961(f) controls VOC emissions from commercial bakery ovens in the Sacramento nonattainment area that emit VOCs while baking yeast-leavened products. The proposed rule requires that certain bakeries install and operate a VOC pollution control system to reduce VOC emissions by at least 95 percent by weight. The following four yeast-leavened dough processes are affected: sponge dough, straight dough, liquid ferments, and no-time dough.

Facilities with a combined rated heat input capacity of all ovens less than 2 million British Thermal Units (Btus) per hour and facilities with ovens used exclusively for baking products leavened chemically (without yeast) are exempt from all of the proposed rule requirements, including recordkeeping and test method provisions. Facilities which emit less than 6.5 tons of VOC per year are exempt from the standards and compliance schedule requirements, but still must observe the recordkeeping and test method requirements.

The proposed rule is based largely on SDCAPCD proposed Rule 67.24 (Bakery Ovens), as presented in Workshop Draft form on September 17, 1992. Portions of the proposed rule are based on SCAQMD Rule 1153 (Commercial Bakery Ovens) as adopted on January 4, 1991 and BAAQMD Regulation 8, Rule 42 (Large Commercial Bread Bakeries) as adopted on September 20, 1989. Evaluations of environmental, economic, socioeconomic, and other impacts of the proposed rule can be found in EPA's ACT Document for Bakery Oven Emissions (EPA–453/R–92–017, December 1992).

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 1.28 tpd in 1999 and 1.40 tpd in 2005. Implementation of this proposed rule is projected to reduce those emissions by 1.22 tpd and 1.33 tpd respectively at a cost of $1,200 per ton VOC removed or 0.2 cents per pound of bread (1990 dollars).

(h) Municipal Waste Landfills (Sacramento). Proposed 40 CFR 52.2961(g) controls emissions of non-methane organic compounds (NMOC) from certain municipal solid waste (MSW) landfills in the Sacramento nonattainment area by collecting and processing the landfill gases evolved from decomposition of organic material in MSW landfills. Emission reductions are achieved by requiring collection of 90 percent of the landfill gases produced, and destruction of 98 percent of the NMOCs collected. By controlling NMOCs, VOCs are also controlled because NMOCs include, but are not limited to, VOCs.

The substantive requirements of the proposed rule apply to MSW landfills that have received more than 500,000 tons of decomposable solid waste during their operational lifetime. The following types of landfills are exempt from some or all requirements of this proposed rule: facilities that have accepted only hazardous waste; facilities issued an Authority to Construct permit from the applicable air quality management district or air pollution control district prior to April 1, 1995 and that have an NMOC control device in place with at least 90 percent efficiency; and facilities that demonstrate a low concentration of landfill gas (i.e., less than 500 ppm by volume total organic compounds measured as methane) at all points near the surface of the landfill.

Proposed 40 CFR 52.2961(g) is based largely on VCAPCD Rule 74.17 (Solid Waste Disposal Sites), as adopted on September 17, 1991. Evaluation of the environmental, economic, socioeconomic, and other impacts of that rule can be found in VCAPCD's "Final Staff Report for Rule 74.17," dated September 17, 1991.

EPA is in the process of developing "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills" ("MSW Guidelines"). This proposed FIP rule is also based on work performed in development of the "MSW Guidelines." Upon publication of the "MSW Guidelines" in the **Federal Register**, it may be appropriate to revise the FIP rule for consistency.

As described in the technical support document, uncontrolled VOC emissions from affected facilities are projected to total 0.94 tpd in 1999 and 1.08 tpd in 2005. Implementation of this proposed rule is projected to reduce those emissions by 0.60 tpd and 0.69 tpd respectively at a cost of $18,000 per ton of VOC removed.

(i) Livestock Waste (Sacramento, South Coast, and Ventura). Proposed 40 CFR 52.2961(h) controls VOC emissions from livestock waste operations. Livestock waste emission sources include cattle, hogs, sheep, and poultry operations. VOC emissions are created during the anaerobic decomposition of livestock wastes. Although methane emissions are estimated to make up 70 to 80 percent of the total organic gases (TOG) created, VOC emissions account for approximately 10 percent of the TOG. Livestock waste operations account for approximately 7.7 tpd of VOC emissions in the Sacramento area, 34.4 tpd in the South Coast,[41] and 3.8 tpd in Ventura. Although livestock waste operations have traditionally not been the subject of VOC regulation, they are now under consideration because of the magnitude of livestock waste emissions and the need to achieve reductions from all FIP area emission VOC sources, most of which have previously reduced or will soon be required to reduce their VOC emissions.

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[41] These estimates do not include methane and ethane emissions. Because limited information was available regarding the fraction of poultry operations within Riverside, San Bernardino, and Los Angeles counties which are located in the South Coast Air Basin, the 34.4 tpd estimate includes the total poultry population found in the three aforementioned counties. As a result, livestock waste emission estimates may be slightly overestimated for the South Coast Air Basin.

As proposed, the rule would only apply to dairy cattle operations of 400 head or greater. These operations are estimated to represent approximately 1.8 tpd of VOC emissions in the Sacramento area and 10.8 tpd in the South Coast. Ventura County currently does not have any dairy operations of greater than 200 head of cattle and, as a result, dairy operations would not be affected in Ventura. Although other livestock waste operations (e.g., chicken, hogs, sheep facilities) are not being proposed for regulation at this time, EPA will continue to investigate potential options for reducing emissions from other livestock waste operations as appropriate.

Emissions from livestock waste are determined by the quantity of manure produced, how it is handled, and the temperature at which it is handled. The manure management system employed is very important. Wet management systems, such as liquid or slurry based systems (e.g., lagoons), convert large portions of the carbon to methane and other gases. Dry management systems, which rely on placing the manure in storage piles, also result in methane and other volatile organic compound emissions created by the anaerobic conditions within the storage piles. The primary emission reduction strategies available to reduce VOC emissions include utilizing methane recovery systems and/or promoting enhanced aerobic conditions in manure storage areas.

Methods recommended for promoting aerobic decomposition of livestock waste include: aerating manure storage piles every three to seven days; scraping feedlots at least three times per year; and spreading oxidizing agents on feedlots. For waste management practices using a dry method, the proposed FIP measure will require the periodic aeration and removal of manure storage piles. This measure is estimated to reduce VOC emissions by 25 percent.

Methane recovery and utilization systems are considered a potential control method for reducing VOC and methane emissions. Methane is considered an important greenhouse gas and also a potential energy source. Depending on the size of the livestock waste operation, methane recovery systems can pay for themselves over time and result in cost savings for large-scale dairy operations. Methane recovery systems are currently operating at 23 sites in the U.S., including at a swine facility near Tulare, CA and a dairy near Modesto, CA. Near Chino, CA, a recovery system is under development which would process an estimated 2,500 tpd of cattle waste and 600 tpd of chicken waste. Technologies for methane recovery include covered lagoons, plug flow digesters, and complete mix digesters. Although these recovery systems represent a viable, demonstrated technology, some systems have not been as successful as expected because of improper design or other factors. For these reasons, EPA requests comment and information on any examples, circumstances, and/or reasons why a previously installed recovery system may not have achieved its full expectations.

The proposed FIP rule will require that at least 55 percent of the manure generated be collected and managed through a methane recovery system. These systems are estimated to reduce emissions by 80 percent.

The technical and economic feasibility of this technology depends on farm size, climate, and energy process. The off-gas (i.e., methane) collected can be utilized in the dairy operation for processes such as: electricity production (e.g., to fuel an engine generator); heating (e.g., to fire boilers and/or space heaters); and cooling (e.g., to fire chillers or other refrigeration equipment). This in turn can create farm profits from avoided energy costs or sales of excess electricity to the local utility. Although methane recovery systems would require a large initial investment, estimated annual costs range from $100 to $1,300 per year (for a 400 head dairy) to a cost savings of $10,000 per year (for a 1,400 head dairy). The initial investment could be recovered within six to fourteen years, depending on dairy size.

The overall emission reductions from livestock waste operations will depend on the percentage of waste which is managed via the dry method (e.g., placed in storage piles) compared to the handled through a wet method (e.g., sent to the covered lagoon or digester) For purposes of the FIP reduction estimates, it is assumed that a minimum of 55 percent of the livestock waste would be sent to a lagoon or digester. Assuming that a hypothetical dairy farm would install a recovery system for liquid management and use the dry method for the remaining fraction of the wastes not sent to the recovery system, overall expected cost per ton of VOC reduced is estimated to range from about $2,100 per ton for a 400 head dairy to a $400 (cost) to $100 (savings) per ton for a 1,450 head dairy.

Preliminary evaluation of the environmental, economic, and other impacts of the proposed rule are discussed in EPA's technical support document. VOC Emission reductions expected from this proposed regulation are estimated at 1.0 tpd in the Sacramento area and 6.0 tpd in the South Coast. No reductions are expected in Ventura County because all livestock waste operations are believed to be less than 200 head. Additional reductions could be achieved if the requirements were extended to smaller livestock waste operations, such as 250 head or greater.

EPA is requesting comments and information on a number of issues related to this proposed measure. Comments are requested on the proposed FIP requirements and/or other potential emission reduction strategies not addressed in the proposal. Because each dairy operation is unique and can vary in its waste management practices, comments are specifically requested on alternative emission reduction methods and/or more cost effective strategies which might achieve equivalent results to those proposed.

EPA also requests comments and information on the number of dairy farms in the FIP areas which contain at least 400 head and the percentage of dairy farms which manage at least 55 percent of the livestock waste through a wet method. Because the emission factors used to estimate VOC emissions from these sources should be updated, EPA intends to explore options for additional testing to verify that VOC emission factors accurately reflect emissions expected from both wet and dry waste management methods.

(j)(1) Fugitive Emissions from Oil and Gas Production Facilities and Conveying Stations (Sacramento, South Coast, Ventura).

Proposed 40 CFR 52.2961(t) controls VOC fugitive leak emissions from valves, flanges, fittings, pumps, compressors, open ended lines and/or other components at oil and gas production facilities and conveying stations.[42] 1990 VOC emissions from these fugitive sources were estimated at approximately 0.9 tons per day (tpd) in the Sacramento area, 4.4 tpd in the South Coast, and 3.8 tpd in Ventura.

The proposed rule builds upon current regulations and strengthens and improves existing rules through retrofits on gas-operated control valves, lower allowable leak thresholds, correction of rule deficiencies, and improved inspection and repair programs. The proposed regulation is based on: CARB RACT guidance for the control of fugitive emissions of VOCs from oil and gas production and processing facilities, refineries, chemical plants, and pipeline transfer stations; Santa Barbara APCD Rule 331; SCAQMD Rule 1173; and new information regarding gas-operated control valves.

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[42] Conveying stations include any compressor station, metering station, or other transfer station located between the extraction well and the refinery or gas processing plant.

Currently, gas-operated control valves are not regulated in the FIP areas. These valves are designed to bleed upon actuation, resulting in the release of uncontrolled VOC emissions. The proposed FIP rule would require that these valves be retrofitted using a control valve which would reduce gas bleed emissions by an estimated 95 percent. EPA has estimated a California population of 10,000 gas-operated control valves and assumed that these valves are evenly distributed throughout the state. EPA has also assumed that the control valves are only used in natural gas conveyance and petroleum production. Comments are specifically requested on the number of gas-operated control valves in the FIP areas and whether these valves are used in other operations besides those described above.

The proposed FIP rule will establish a fugitives regulation for oil and gas production and conveying stations within the Sacramento FIP area. Previously, these fugitive sources were unregulated. The majority of expected reductions will be from the Yolo-Solano portion of the FIP area. In the Ventura FIP area, the rule builds upon requirements in VCAPCD Rule 74.10 and lower the number of allowable leaking components and leak definition to requirements consistent with existing rules and CARB's RACT guidance.

In the South Coast FIP area, the proposed FIP rule will correct the gas leak definition in SCAQMD Rule 1173. The proposed correction defines a gas leak as total gaseous hydrocarbon in excess of the applicable parts per million limit measured as methane.

In the Sacramento FIP area, the proposed FIP rule will establish an inspection and repair program. In the Ventura FIP area, the proposed FIP rule will further strengthen the existing program to make it consistent with those adopted in other districts and CARB's RACT guidance.

Evaluation of the environmental, economic, and other impacts of the proposed rule are discussed in EPA's technical support document. Emission reductions expected from this proposed rule are estimated at 0.8 tpd in the Sacramento area, 2.8 tpd in the South Coast, and 2.1 tpd in Ventura. (j)(2) Fugitive Emissions from Gas Processing Plants, Refineries, Bulk Plants, Bulk Terminals, and Chemical Plants (Sacramento, South Coast, Ventura). Proposed 40 CFR 52.2961(i) controls VOC emissions from fugitive leaks resulting from valves, flanges, fittings, pumps, compressors, open ended lines and/or other components at gas processing plants, refineries, bulk plants, bulk terminals, and chemical plants. 1990 VOC emissions from these fugitive sources were estimated to be less than 0.9 tons per day (tpd) in the Sacramento area, approximately 17.5 tpd in the South Coast, and 0.8 tpd in Ventura.

The proposed rule builds upon current or proposed regulations and strengthens and improves existing rules through: regulation of additional fugitive sources; lower allowable leak thresholds; correction of rule deficiencies; and improved inspection and repair programs. The proposed FIP regulation is based on: CARB RACT guidance for the control of fugitive emissions of VOCs from oil and gas production and processing facilities, refineries, chemical plants, and pipeline transfer stations; Bay Area AQMD (BAAQMD) Regulation 9—Rules 18, 22, and 25; SCAQMD Rule 1173; and EPA's proposed National Emission Standards for Organic Hazardous Air Pollutants (HON) from the synthetic organic chemical manufacturing industry and equipment leaks from seven other processes (FR 52 62685).[43]

The proposed rule will establish and/or lower allowable leak levels for affected components. Allowable leak levels for valves and connectors are proposed at 500 parts per million based on BAAQMD regulations[44] and EPA's proposed HON. Allowable leak levels for other components are proposed at levels based on CARB's RACT guidance and SCAQMD Rule 1173.

In all three FIP areas, the proposed measure will regulate fugitives from bulk plants and bulk terminals. Because only a portion of these sources have traditionally been regulated for their fugitive emissions (i.e., loading and storage of petroleum liquids), fugitive emissions may have been underestimated in previous inventory projections. Because emission factors were not readily available for these sources, emission estimates were made using fugitive emission factors for refineries. Preliminary analyses have determined that bulk plant and bulk terminal emissions may account for as much as an additional 2.9 tpd in the Sacramento area, 9.3 tpd in the South Coast, and 1.7 tpd in Ventura. Potential reductions from these sources alone would be 2.2 tpd in the Sacramento area, 4.1 tpd in the South Coast, and 1.4 tpd in Ventura. EPA requests comments and information regarding appropriate emission factors to use for fugitive emissions from bulk plants and bulk terminals.

The proposed FIP rule will correct the gas leak definition in South Coast AQMD Rule 1173. The proposed correction defines a gas leak as total gaseous hydrocarbon in excess of the applicable parts per million limit measured as methane.

Evaluation of the environmental, economic, and other impacts of the proposed rule are discussed in EPA's technical support document. Emission reductions expected from this proposed rule are estimated to be 0.7 tpd in the Sacramento area, 3.1 tpd in the South Coast, and 0.7 tpd in Ventura. Fugitive emission reductions from bulk plants and bulk terminals are not included in the above estimates.

(k) Service Stations (Sacramento, Ventura, South Coast). Proposed rule 40 CFR 52.2961(j) reduces VOC emissions from gasoline dispensing facilities. Gasoline service stations are a source of VOC emissions created during vehicle refueling and storage tank working/breathing losses. Service station VOC emissions are estimated at approximately 3.2 tpd in the Sacramento area, 25.3 tpd in the South Coast, and 1.2 tpd in Ventura. Although service stations in the FIP areas currently have vapor recovery systems, the proposed FIP rule builds upon current Phase I and Phase II regulations and strengthens and improves existing rules by requiring pressure/vacuum relief valves on open vent pipes and the phasing out of inefficient vapor recovery system components.

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[43] Although EPA's proposed HON is expected to be finalized soon, the proposed HON covers only emissions designated as hazardous air pollutants, which may make up only a fraction of VOC emissions from affected FIP sources. The proposed FIP fugitives rule is intended to reduce VOC emissions. In some instances, the proposed HON is less stringent than adopted SIP regulations in California and the proposed FIP measure. Although the proposed HON was considered, EPA's proposed fugitives rule relies primarily on current California regulations and/or guidance. After the HON is finalized, EPA will clarify the overlap between existing SIP and/or proposed FIP rules and the proposed HON.

[44] On January 1, 1997, BAAQMD Regulation 8, Rules 18 and 25 reduce allowable leak levels to 100 ppm for valves and connectors and 500 ppm for pumps and compressors. Although these lower limits are not being proposed as FIP limits at this time, EPA will continue to investigate the need for and potential reductions from leak thresholds consistent with the BAAQMD regulations.

Pressure-vacuum relief valves are expected to virtually eliminate breathing and working losses from the storage tank vent pipe. Pressure-vacuum relief valves cost less than fifty dollars, are easily installed without underground construction, and improve efficiency of existing vapor recovery systems by one to three percent. The pressure/vacuum relief valves typically pay for themselves within less than one year and result in a cost savings. Additional emission reductions will be achieved through elimination of exemptions and the replacement of remote check valves in Phase II control systems. The Phase I efficiency is expected to be increased through the combined impact of the requirements for poppetted drybreaks in the Phase I vapor control systems, the installation of the pressure-vacuum valve on the vent pipes, and the installation of CARB certified spill boxes. Phase II efficiency is expected to be increased through the combined impact of using proper tubing between the riser and dispenser cabinet, requiring a certified insertion interlock mechanism on all bellows-equipped nozzles, and replacing non- coaxial hose with coaxial hose. Many of the proposed revisions are based on recent amendments to BAAQMD Regulation 8, Rule 7—Gasoline Dispensing Facilities.

Emission reductions expected from this proposed rule are estimated at 1.3 tpd in the Sacramento area, 8.9 tpd in the South Coast, and 0.3 tpd in Ventura. Because fuel savings result from installation of the pressure/vacuum relief valves and because inefficient vapor recovery components wear out and can be replaced by more efficient components during regularly scheduled maintenance, the cost impacts of the proposed measure will be minimized. The overall cost effectiveness is estimated at $1,600 per ton of VOC reduced.

(l) Waste Burning (Sacramento, South Coast, and Ventura). Proposed 40 CFR 52.2961(k) controls VOC emissions from waste burning. Waste burning activities are defined as agricultural burning, range management burning, forest management burning, and open burning. 1990 waste burning emissions[45] were estimated at 3.8 tpd in the Sacramento FIP area, 0.7 tpd in the South Coast FIP area, and less than 0.1 in the Ventura FIP area.

Most waste burning activities are currently restricted by a permissive burn/no-burn day program as specified in the California Health and Safety Code Regulations. This program allows the local air district office to declare a permissive burn day or a no-burn day, requires that subject sources obtain a burn permit from the local designated county or state agency, and limits burning to permissive burn days. Waste burning is restricted to days with acceptable air quality based largely on current and forecasted visibility and particulate levels.

The proposed FIP rule would complement and expand the current permissive burn/no-burn day program to incorporate ambient ozone air quality considerations. The purpose of this proposal is not to ban waste burning but to restrict waste burning to days when ambient ozone concentrations are within acceptable levels. On days predicted to exceed the California ambient air quality standard for ozone (0.09 ppm), all forms of waste burning would be prohibited. EPA is currently investigating the methodologies used to predict ozone exceedances and no-burn days. These methodologies could be used to predict air quality conditions using current and forecasted weather, meteorology, ozone levels, and other relevant criteria. A similar forecasting strategy would be used as part of the proposed FIP waste burning rule. SMAQMD has a voluntary permissive burn/no-burn program which takes into account predicted high ambient ozone levels. VCAPCD restricts burning when the California ozone standard of 0.09 ppm is expected to be exceeded.

Although not contained within the proposed FIP rule, EPA expects to establish a notification system compatible with and similar to those already in place for current permissive burn day/no-burn day programs.

Because poor visibility or high particulate levels can also result during conditions conducive to high ambient ozone levels, there is expected to be some overlap between current no-burn days and any additional no-burn days resulting from the proposed FIP program. During 1990 no-burn days were declared on 16 days in the Sacramento FIP area, 68 days in the South Coast FIP area, and 311 days in the Ventura FIP area. Using 1990 air quality data, the proposed rule is expected to restrict burning on an estimated additional 45 days per year (dpy) in the Sacramento FIP area, 121 dpy in the South Coast FIP area, 3 dpy in the Ventura FIP area. In the Sacramento area, the largest impact would occur on days during July through September when ozone levels typically reach their highest levels. In the South Coast, the largest impact would occur on high ozone days during March through October. Because of Ventura's current policy on waste burning, the proposal would have minimal impact.

Open burning operations at single and two-family dwellings are currently exempt from most permissive burn/no-burn day programs. Although EPA is not proposing that these sources be required to obtain a burn permit, the proposed FIP regulation would also require that this type of burning activity be restricted to permissive burn days. Comments are requested on the impacts and issues resulting from including these sources in the proposed FIP regulation.

The cost resulting from the lost opportunity to burn waste on the additional no-burn days would be minimized by allowing sources to burn on days when exceedances are not predicted. In the case of Sacramento, the proposed rule is expected to allow waste burning during over 80 percent of the calendar days each year. However, in the South Coast, where the state ozone standard is exceeded roughly 50 percent of the calendar days each year, the proposed rule would restrict burning to approximately 50 percent of the calendar days per year. The impact of the proposed FIP measure in Ventura is expected to be minimal since the district has already instituted a policy of restricting burning when the state standard is predicted to be exceeded.

Comments are requested on the feasibility of this strategy for the FIP areas, especially for the South Coast FIP area. EPA also requests information on potential costs resulting from the proposed FIP measure. Comments are also requested on alternative strategies (e.g., soil incorporation, residue removal, after market disposal alternatives) which will reduce waste burning impacts on ambient ozone air quality. EPA seeks comments on ways to avoid any increased costs and increased pesticide use that may be associated with the rule. Comments are requested on potential VOC reductions resulting from implementation of the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991 (California Health & Safety Code, Part 4, Chapter 3, Article 3, Section 41865).

Comments are requested on the necessity of exemptions in the proposed FIP measure. For example, California district offices may exempt a source from no burn day prohibitions during circumstances of imminent and substantial economic loss. However, these terms are undefined. Comments are requested on an appropriate definition for the aforementioned terms.

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[45] These estimates do not include emissions from incineration and unplanned fires (e.g., structural fires and wildfires).

EPA is also requesting comment on an alternative to the aforementioned strategy. As an alternative, a waste burning measure could be designed to only allow waste burning during the period of the year when ozone levels are within the state ozone standard, typically November through February depending on the area. This alternative would supplement the current no-burn day program and prohibit burning during the ozone season. This approach would provide greater certainty to affected parties so they could adequately plan their burn schedules; however, it would also provide less flexibility by prohibiting burning on days expected to be within ozone standard.

While EPA is continuing to evaluate the emissions inventory and potential reductions from the proposed FIP measure, preliminary emission reduction estimates from the 1990 baseline are 1.8 to 3.6 tpd in the Sacramento area, 0.3 to 0.5 tpd in the South Coast FIP area, and less than 0.1 tpd in the Ventura FIP area. Actual reductions will depend on the overall effectiveness of the FIP measure.

(m) Residential Water Heaters (Sacramento). Proposed 40 CFR 52.2961(l) controls NO_X emissions resulting from residential water heaters. Emission reductions are achieved by: (1) replacement of conventional gas-fired water heaters with low-NO_X units; (2) replacement of conventional gas-fired water heaters with electric water heaters; or (3) installation of solar panels to decrease natural gas consumption associated with the use of gas-fired water heaters.

The proposed rule applies to any natural gas-fired water heater installed in the Sacramento FIP area after August 15, 1995, which emits in excess of 40 nanograms of NO_X (calculated as weight equivalent NO_X per joule) and with a heat input rating less than 75,000 British thermal units per hour (Btu/hr). The rule does not apply to water heaters with a rated heat input of 75,000 Btu/hr or greater, used for recreational vehicles, or used exclusively to heat swimming pools and hot tubs.

The proposed rule is based largely on SCAQMD Rule 1121, BAAQMD Regulation 9—Rule 6, and VCAPCD Rule 74.11.

Evaluation of the environmental, economic, and other impacts of the proposed rule are discussed in detail in EPA's technical support document. The proposed rule is expected to result in a cost savings created by the more energy efficient units and lower cost of the low-NO_X units (compared to currently sold units). Considering the long-term fuel costs for residential water heating, solar water heaters can also be a cost-effective option.

As described in the technical support document, uncontrolled 1990 NO_X emissions from residential water heaters were 1.8 tpd in the Sacramento FIP area. Emissions are projected to continue to grow to 2.3 tpd in 1999 and to 2.7 tpd in 2005. Implementation of this proposed rule is projected to reduce those emissions by 0.2 and 0.6 tpd respectively at a retail cost savings of $3.00 to $19.00 per heater (1992 dollars) if replaced with a low-NO_X heater. Additional reductions will continue to occur until approximately 2008 when it is expected that all existing units will have been replaced[46] by the low-NO_X units. Energy savings and costs would also accrue if currently available low-NO_X, higher efficiency units or solar powered water heaters were used. While electric water heaters are also an option, electricity currently costs approximately three times the cost of natural gas in the Sacramento area.

Additional reductions could be achieved in all three FIP areas by requiring that a percentage of new housing starts in the areas install solar water heater systems. While it is not feasible for EPA to require this approach through a FIP regulation, it is very feasible for local communities to adopt ordinances that require a percentage of solar water heaters in new construction. Examples of such communities include the Gold River Area Housing Development in Sacramento, the City of La Verne in Los Angeles County, and the cities of Thousand Oaks and Del Mar.

Comments are requested on additional methods or options, such as market incentives and methods encouraging solar technologies, which might further reduce NO_X emissions from residential water heaters.

(n) Stationary Internal Combustion Engines (Sacramento). Proposed 40 CFR 52.2961(m) controls NO_X emissions resulting from stationary internal combustion (IC) engines. These engines are used for a variety of applications including electric power generation for both base and standby service, oil and gas pipeline pumping/transport, oil and gas exploration and production, irrigation, hoisting, and nuclear power plant emergency cooling water pump operation. Engines are generally classified by fuel type, method of ignition, combustion cycle, and charging method. 1990 NO_X emissions from IC engines in the Sacramento FIP area were estimated at 2.6 tons per day.

Several control techniques are available for controlling NO_X emissions from IC engines. Combustion controls include exhaust gas recirculation, prestratified charge, injection timing retard, pre-ignition chamber combustion, control of the air-to-fuel ratio, and wet injection. Post combustion add-on controls include selective noncatalytic reduction selective catalytic reduction. Other control techniques include conversion of fuel-fired engines to electric motors or the use of alternative fuels such as methanol in place of diesel fuel.

The proposed rule applies to any owner or operator of an IC engine rated at 50 or more brake horsepower in the Sacramento area. After May 15, 1997, all IC engines shall meet a parts per million NO_X standard based on engine and fuel type as follows: rich-burn engines, 25 ppm; lean-burn engines, 45 ppm; diesel 80, ppm; rich-burn (waste gas), 50 ppm; lean-burn (waste gas), 125 ppm. VOC and CO limits are also included within the standards. Engines rated at less than 50 brake horsepower or operated less than 200 hours per calendar year are exempt from the requirements of the proposed rule. Additional exemptions are provided for very low or specialized uses.

The proposed rule limits are based largely on SCAQMD Rule 1110.2, VCAPCD Rule 74.9, and EPA's ACT guidance for IC engines.

Evaluation of the environmental, economic, and other impacts are discussed in detail in EPA's technical support document. The rule is expected to affect approximately 100 IC engines in the Sacramento FIP area. Although there are additional IC engines in the FIP area, these sources are already meeting the proposed FIP limits or would be exempt from the proposed measure. As described in the technical support document, 1990 uncontrolled NO_X emissions from subject sources were estimated at 2.6 tons/day (tpd). Implementation of this rule is expected to reduce those emissions by 2.3 tpd at an average estimated cost of $7,200 per ton of NO_X reduced.

It is important to note that this proposed rule will be amended in the final promulgation to further clarify which engines are subject to the rule's provisions. The effect of such amendment may be to exempt from the requirements of this rule any new IC engines which will be subject to proposed FIP nonroad engine rules or national nonroad engine regulations issued under EPA's authority for regulating mobile sources in accordance with Title II of the Act. These mobile IC engines are proposed to be governed by specific emission standards and other requirements discussed below in section III.D.4.

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[46] Estimated service life of a residential water heater is approximately twelve years.

The emission reduction estimates presented above are associated with reductions only from existing IC engines reflected in the 1990 emissions inventory. In the final FIP, EPA will attempt to adjust this calculation of credit to clarify the relationship between reductions from this proposed rule and reductions from the nonroad engine rule proposed in III.D.5., which applies to newly manufactured nonroad IC engines. The adjustment would amend NO_X reduction credits attributed to proposed rule 40 CFR 52.2961(m), by a factor relating to the expected turnover of existing IC engines through the year of attainment.

(c) Industrial, Commercial, and Institutional Boilers, Steam Generators, and Process Heaters (Sacramento). (1) Biomass Boilers. Proposed 40 CFR 52.2961(n) controls NO_X emissions resulting from biomass boilers. Biomass boilers typically burn wood, wood waste, and/or bark as a fuel source. Almond shells, landfill gas, or natural gas have also been used as a supplemental fuel source. Emission reductions are achieved through application of selective noncatalytic reduction or selective catalytic reduction. Both systems are post-combustion NO_X control techniques in which ammonia (or urea) is injected into the flue gas to reduce NO_X to nitrogen and water.

The proposed rule applies to any owner or operator of a biomass boiler or steam generator with a rated heat input capacity equal to or greater than 5 million British thermal units per hour (mmBtu/hr) and an annual heat input greater than or equal to 9 billion Btu/yr. After May 15, 1997, biomass boilers shall either meet a 70 ppm NO_X standard or reduce uncontrolled NO_X emissions by 50 percent.

The proposed rule limits are based largely on demonstrated controls at approximately 30 different biomass boilers located in the U.S. Although a SIP rule written solely for biomass boilers does not exist in any other California districts, the FIP rule is modeled after currently adopted NO_X boiler rules in California.

Evaluation of the environmental, economic, and other impacts are discussed in detail in EPA's technical support document. The rule is expected to affect biomass boilers at five sources (Michigan California Lumber, SierraPine Limited, Lausmann Lumber and Moulding, Formica Corporation, and Blue Diamond) in the Sacramento FIP area. Three of these sources (Michigan California Lumber, SierraPine Limited, and Formica Corporation) are also subject to RACT rules in this FIP proposal (see section III.C.2). Although additional biomass boilers are located in the FIP area, these boilers are already meeting the proposed FIP limits.

As described in the technical support document, 1990 uncontrolled NO_X emissions from these five sources were 0.8 tpd. Implementation of this proposed rule is projected to reduce those emissions by 0.34 tpd at an average estimated cost of $2,500 per ton of NO_X reduced.

Additional reductions could be achieved by requiring replacement of the biomass boilers with new boilers which burn cleaner fuels (e.g., natural gas), although this may not be a cost effective option for some sources.

(2) Gaseous/Liquid Fuel Fired Boilers with a Rated Heat Input Capacity of Equal to or Greater than 5 mmBtu/hr. Proposed 40 CFR 52.2961(u) controls NO_X emissions resulting from boilers, steam generators, and process heaters which have a rated heat input capacity of greater than 5 mmBtu/hr. A boiler or steam generator is used to produce steam which is then used to produce mechanical power, thermal energy, or electricity. A process heater is combustion equipment used to transfer heat indirectly to water or process streams. These units can be fired with natural gas, propane, distillate or residual oil, or landfill or sewage gas.

Emission reductions are achieved through: (1) Retrofitting units with low-NO_X burners; (2) retrofitting units with flue gas recirculation systems; (3) application of selective noncatalytic reduction (e.g., installing an ammonia injection system); or (4) application of selective catalytic reduction (e.g., installing an ammonia injection system with a catalyst).

The proposed rule applies to any owner or operator of a boiler, steam generator, and process heater which has a rated heat input capacity of equal to or greater than 5 mmBtu/hr. After May 15, 1997, all units with an annual heat input rate greater or equal to 9 billion Btu per year (10^9 Btu/yr) and using gaseous fuels shall meet a 30 ppm NO_X standard; units using liquid fuels shall meet a 40 ppm NO_X standard. Units that operate with an annual heat input rate less than 9×10^9 Btu/yr shall be tuned once every six months or after 750 hours of operation.

The proposed rule limits and requirements are based largely on SCAQMD Rule 1146, VCAPCD Rule 74.15, Yolo-Solano AQMD Rule 2.27, CARB's RACT/BARCT guidance, and EPA's ACT document for process heaters.

Evaluation of the environmental, economic, and other impacts are discussed in detail in EPA's technical support document. The rule is expected to affect approximately 60 units in the Sacramento FIP area. Approximately nine of these units are already scheduled for replacement with cleaner burning cogeneration gas turbines. As described in the technical support document, 1990 uncontrolled NO_X emissions from these sources were 1.2 tpd. Implementation of this proposed rule is projected to reduce those emissions by 0.78 tpd at an average estimated cost of $6,900 per ton of NO_X reduced.

(3) Gaseous/Liquid Fuel-Fired Boilers with a Rated Heat Input Capacity of less than 5 mmBtu/hr but greater than 1 mmBtu/hr. Proposed 40 CFR 52.2961(v) controls NO_X emissions resulting from boilers, steam generators, and process heaters which have a rated heat input capacity of less than 5 mmBtu/hr but greater than 1 mmBtu/hr. A boiler or steam generator is used to produce steam which is then used to produce mechanical power, thermal energy, or electricity. A process heater is combustion equipment used to transfer heat indirectly to water or process streams. These units are typically fired with natural gas or propane. Emission reductions are achieved through retrofitting units with low-NO_X burners.

The proposed rule applies to any owner or operator of a boiler, steam generator, and process heater which has a rated heat input capacity of less than 5 mmBtu/hr but greater than 1 mmBtu/hr. After May 15, 1997, all units with an annual heat input rate greater than or equal to 1.8×10^9 Btu/yr shall meet a 30 ppm NO_X standard. Units that operate with an annual heat input rate less than 1.8×109 Btu/yr but greater than 0.3×10^9 Btu/yr shall be tuned once every six months or after 750 hours of operation.

The proposed rule limits and requirements are based largely on SCAQMD Rule 1146.1 and VCAPCD Rule 74.15.1. Evaluation of the environmental, economic, and other impacts are discussed in detail in EPA's technical support document.

The proposed rule is expected to affect approximately 25 units in the Sacramento FIP area. As described in the technical support document, 1990 uncontrolled NO_X emissions from these sources were 0.05 tpd or 19.2 tpy. Implementation of this proposed rule is projected to reduce those emissions by 9.2 tpy at an average estimated annual savings of $4,600 per ton of NO_X reduced. The savings accrue from an estimated 10 percent reduction in fuel resulting from the installation of low-NO_X burners.

(p) Gas Turbines (Sacramento). Proposed 40 CFR 52.2961(o) controls NO_X emissions resulting from gas turbines. A gas turbine is an internal combustion engine that operates with a rotary rather than a reciprocating motion. Compressed air and fuel are introduced to the combustor section were the fuel is burned. Hot combustion gases then enter the turbine section, where the gases rotate one or more shafts which power the compressor and electric generator. Electric utilities and cogenerators use gas turbines to produce electricity and useful thermal energy. Gas turbines can burn a variety of fuels including natural gas, waste process gases, or liquid fuels such as distillate oils.

There are three generic control techniques available for controlling NO_X emissions from gas turbines: (1) Injection of water or steam into the combustor; (2) add-on post combustion controls (e.g., selective catalytic reduction); and (3) modification to combustor designs.

The proposed rule applies to any owner or operator of a stationary gas turbine with a rated heat output capacity equal to or greater than 0.3 megawatt (MW). After May 15, 1997, all stationary gas turbines rated equal to or greater than 0.3 but less than 2.9 MW shall meet a compliance limit based on 25 ppm NO_X times a demonstrated percent efficiency. Stationary gas turbines rated equal to or greater than 2.9 MW shall meet a compliance limit based on 9 ppm NO_X times a demonstrated percent efficiency. Peaking units and emergency standby units operated less than 200 hours per calendar year are exempt from the reduction requirements but must keep records to verify hour of operation. Additional exemptions are provided for very specialized uses.

The proposed rule limits are based largely on SCAQMD Rule 1134, CARB RACT/BARCT guidance, and EPA's ACT guidelines.

Evaluation of the environmental, economic, and other impacts are discussed in detail in EPA's technical support document. The proposed rule is expected to affect gas turbines at only one source (i.e., Proctor and Gamble) in the Sacramento FIP area. However, the Procter and Gamble unit is currently scheduled for replacement with a newer gas turbine which will operate at 5 ppm NO_X. Although additional gas turbines are located in the FIP area, these units are already meeting the proposed FIP limits or are exempt from the proposed rule.

As described in the technical support document, 1990 uncontrolled NO_X emissions from this source was 0.43 tpd. Implementation of this proposed rule is projected to reduce those emissions by 0.2 tpd at an estimated cost of $6,700 per ton of NO_X reduced.

4. Regulations Imposed Statewide

a. Introduction—Rationale for Statewide Control.—Section 110(a)(2)(A) of the Act directs states to include in a SIP those enforceable control measures necessary to demonstrate attainment. This requirement extends to development of federal plans. Paragraphs III.C.4.b–e of this NPRM describe a set of area source rules that EPA is proposing to implement on a statewide basis in order to assure compliance and emission reductions. In addition, an option for a statewide manufacturers rule is discussed for the solvents and coatings categories regulated under the proposed VOC cap rules (see section III.C.5).

EPA is proposing statewide requirements for area source categories that consist of portable VOC-containing materials including architectural coatings, pesticides, aerosol paints and other consumer products. These categories differ from traditional point source categories for which emissions principally occur at a few stable locations where products are manufactured. In contrast, area sources are distributed widely and emit pollutants where products are used. EPA believes that regulations for these categories will be most effective if applied uniformly throughout the State.

Most notably, EPA cannot assure compliance for these area source categories at the point of emissions as achieved with point sources. This would require routine inspection and enforcement against individual consumers for using, for example, high VOC house paints and bathroom cleansers. EPA has neither the resources for such a program, nor the expectation that individual consumers should be responsible for monitoring the VOC contents of their paints and cleansers. Instead, EPA must rely on compliance at point of sale or manufacture such as, in this example, paint and cleanser distributors.

Unfortunately, because there is little threat of enforcement against actual product users, EPA believes that regulations affecting these categories would be routinely circumvented if standards varied in neighboring areas. If, for example, the architectural coating rule applied only in the narrow FIP areas, house painters in southern Sutter County (part of the nonattainment area) might drive to northern Sutter (outside the nonattainment area) to purchase cheaper paints, or lemon growers in Ventura might cross into Santa Barbara for a pesticide formulation they had used the year before.

While EPA has not attempted to quantify the erosion in projected emission reductions that would occur if these FIP rules were implemented on an area rather than statewide basis, there is much anecdotal evidence to confirm that considerable circumvention of the rules would occur. California air pollution agencies, for example, believe such circumvention routinely erodes the effectiveness of existing architectural coating, automobile refinishing, and other local regulations. Such circumvention is an important force behind the ongoing national regulatory negotiation designed to establish consistent architectural coating standards. It is also a primary rationale for existing California legislation requiring statewide regulation of consumer products.

One could extend this discussion to argue that these area source rules should be implemented on a national basis. Particularly along the northern and eastern State borders, EPA expects some circumvention of rules affective only in California. These borders are relatively scarcely populated, however, and fairly far from the FIP areas. EPA expects, therefore, minimal impact in the FIP areas and believe that the State of California is the most appropriate area in which to implement these rules.

While the need for enforceability is the primary and independently legally sufficient justification for implementing these rules on a statewide basis, several additional benefits to this approach are discussed below:

(i) *Consistency.* With the exception of architectural coatings, all the categories proposed as statewide measures in this NPRM are currently addressed in California on a statewide basis.[47] Statewide FIP measures maintain consistency with these regulations, minimizing unnecessary complexity for all concerned parties.

(ii) *Fairness.* Statewide rules would provide a more level playing field than do area-specific requirements. Area-specific pesticide controls, for example, might place parsley growers in Ventura at a competitive disadvantage compared to parsley growers in San Joaquin. Statewide rules minimize the potential for such inequities, helping fulfill one of the FIP goals discussed in section I.B of this NPRM. In addition, many parts of California besides the FIP areas have significant ambient ozone problems, including San Diego, the San Joaquin Valley, and the Southeast Desert. These areas may also need the statewide controls described in this NPRM in order to attain the health-based ozone standard.

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[47] Pesticides are regulated statewide under the California Food and Agriculture Code, consumer products are regulated statewide under the California Code of Regulations, and aerosol paints are proposed for inclusion in the statewide consumer products regulations.

(iii) *Reduce costs to industry.* From an industry perspective, it is important for certain types of rules to be consistent throughout the state. In this instance, EPA believes that most manufacturers support statewide regulations for the suggested source categories. Coating manufacturers complain, for example, of the current expense and complexity of complying with different standards in California's many districts. These expenses accrue not only from research resources needed to develop multiple coatings, but from subsequent complexities in marketing, distributing, and tracking compliance. All these tasks would be simplified, however, by establishing one standard for the entire State as proposed in this NPRM.

b. Architectural Coatings—Architectural and industrial maintenance (AIM) coatings are coatings or paints generally used by consumers and contractors. These coatings are formulated and recommended for field application to structures (e.g., residences, commercial buildings, and bridges) and their appurtenances (e.g., doors, cabinets, fences, railings, and gutters).

AIM coatings primarily provide a decorative and/or general protective function. Although there are a myriad of types and grades, AIM coatings are generally classified as exterior and interior paints, industrial maintenance coatings, roof coatings, primers, lacquers, stains, traffic paints, and specialty coatings.

These coatings are formulated with a variety of components including pigments, resins, solvents, and additives. Solvents, which are typically VOCs, often contribute to the formation of ozone as they volatilize after application. AIM coatings have been regulated in California since the late 1970s and all major metropolitan areas in the State have an architectural coating rule. AIM coating emissions for California were estimated at 197 tpd (in 1989), with approximately 50 percent of the emissions within the three FIP areas. 1990 FIP area emissions were estimated at 92 tpd in the South Coast, 5 tpd in Ventura, and 12 tpd in the Sacramento area. Because of the magnitude of emissions resulting from this group of coatings, EPA is proposing a FIP measure which will provide reductions to help demonstrate attainment in the FIP areas.

The proposed AIM coatings FIP rule (see 40 CFR 52.2959) builds upon the California Air Resources Board—California Air Pollution Control Officers Association 1989 Suggested Control Measure (SCM) for Architectural Coatings and upon current district rules. In addition, and parallel to the FIP effort, EPA is involved in a Regulatory Negotiation[46] (Reg Neg) for the development of a national AIM coating regulation. The relationship between a potential national rule and the proposed FIP rule is discussed later in this section. Where possible, EPA has attempted to take into account the potential outcome of the Reg Neg and its possible impact on a FIP regulation.

The proposal is modeled after the 1989 SCM and currently adopted California regulations, and it incorporates recent information regarding low VOC AIM coatings. The proposed regulation phases in lower coating limits from 1996 to 2003. In January 1996, initial limits for approximately 40 coating categories will go into effect. This will be followed by a second reduction phase in 2000 with lower limits for select categories such as: all clear wood finishes [350 grams of VOC per liter (g/l)]; concrete curing compounds (250 g/l); and traffic paints (125 g/l). A third reduction phase in 2003 will lower limits for select categories such as: varnishes (250 g/l); flats (50–150 g/l); many industrial maintenance coatings (275 g/l); non-flats (150 g/l); roof coatings (250 g/l); and traffic paints (50 g/l). In addition, the small container (less than one liter) exemption will be phased out as of 2003.

The environmental, economic, and other impacts of the proposed rule are discussed in EPA's technical support document. The rule is expected to affect approximately 150 paint manufacturers who market their AIM coatings in the State. Implementation of this rule is expected to reduce emissions by an estimated 25–30 percent, depending on the stringency of the current SIP regulation for a given district. FIP area reductions are expected to be 2.0 tpd (1999) and 2.3 tpd (2005) for Sacramento, 1.7 tpd (2005) in Ventura, and 21 tpd (2010) in South Coast.

The proposed FIP AIM coating rule establishes future effective limits which allow industry time to transition, where necessary, to lower VOC coatings. For the most part, low VOC coatings are being sold today which can meet the limits proposed for 2000 and 2003. While EPA acknowledges that the proposed limits may in some cases phase out certain high VOC technologies (e.g., nitrocellulose lacquers), the proposal assumes that available alternative resin technologies can adequately replace high VOC coatings. The proposal will also encourage the further development of new and improved low VOC technologies.

As described earlier, AIM coatings are formulated with pigments, resins, solvents, and additives. Changes and improvements in coating technologies begin in the research laboratories of the resin manufacturers/suppliers and paint manufacturers capable of researching new resin technologies. The cost of phasing in lower VOC AIM coatings will depend in part on the ability of resin manufacturers/suppliers and paint manufacturers to develop and market low VOC coatings. For those already manufacturing low VOC products, the proposed regulation would initially impose no additional costs and might, in fact, lead to increased profits. For AIM coating manufacturers who manufacture high VOC coatings affected by the proposed rule, the cost may approach several thousand $/ton for conversion to low VOC product lines. These costs can be partially reduced through the assistance of resin manufacturers/suppliers and/or large paint manufacturers, who are primarily responsible for researching and developing new coating formulations. Upon request, most resin manufacturers/suppliers are willing to share information and sample low VOC coating formulations with interested paint manufacturers, both large and small, to assist in the development of low VOC coatings.

While low VOC coatings are available today which meet the proposed coating limits, there continues to be debate over the performance characteristics and perceived limitations of certain low VOC AIM coatings. EPA requests comment and technical information on: available or soon to be available low VOC coatings which meet the proposed limits; previous or potential reformulation costs; performance or application limitations (if any) of low VOC coatings; and any AIM coatings or promising technologies where low VOC technology is expected to advance beyond the proposed AIM FIP limits.

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[46] The Regulatory Negotiation includes representatives from industry, user groups, regulators, and environmental organizations. The goal of this consensus building process is to assist EPA in the development of a national AIM rule or control technique guideline.

(1) Relationship to National Rule Development. In early 1992, EPA began to explore a Reg Neg (57 FR 1443; January 14, 1992) to assist in fulfilling its obligation for a national AIM regulation or CTG as described under section 183(e) of the Act. Although today's proposed FIP action is independent of the ongoing Reg Neg process and is not an attempt by the Agency to meet the requirements of section 183(e), EPA will fully consider the potential Reg Neg outcome and may modify the proposed FIP rule as appropriate.

Either a FIP AIM coating rule or a national AIM coating rule/CTG will ultimately provide the basis for the regulation which reduces emissions from AIM coatings sold into and used in California. While the Reg Neg process is nearing completion, unresolved issues remain and EPA does not anticipate that the proposed action under section 183(e) will be published prior to the court-ordered FIP proposal deadline. In addition, there is not a statutory deadline for an AIM rule per se under section 183(e),[49] so there is currently no assurance as to when the AIM regulation will be finalized. Because of the need to demonstrate through actual regulations the emission reductions necessary to achieve attainment in the FIP areas, EPA could not rely on the speculative outcome of the Reg Neg for its FIP rule and is therefore proposing a FIP AIM rule. While EPA is hopeful that the Reg Neg will result in a rule/CTG which could benefit the FIP areas, the court ordered deadline for the FIP proposal does not allow EPA the opportunity to wait for the potential national rule/CTG. Upon completion of the Reg Neg process and EPA's proposed national AIM rule/CTG, EPA will reevaluate its FIP strategy for AIM coatings.

(2) Relationship to Local Rules. While all of the major metropolitan areas in California already have an architectural coatings rule, coating limits may vary between districts for certain AIM categories. Because the proposed FIP regulation will be more stringent than all current district regulations, the proposed FIP rule will effectively bring all of the areas under a common standard to provide equity within the industry and greatly enhance the enforceability the rule.[50]

(3) Alternative Reduction Approaches. The following additional approaches for reducing emissions from AIM coatings were also considered.

(a) Fees. Because of large diversity within and among AIM coating categories and because of the multitude of uses for these coatings, it may be preferable to establish a fee-based strategy for providing additional emission reductions rather than to establish limits for specific categories. For example, a fee-based strategy could be established using a combination of gallons sold and VOC in each gallon (e.g., an annual fee equaling total grams or pounds of VOC sold by each manufacturer). Because fees provide uncertainty as to actual emission reductions, the fees would need to be periodically adjusted to achieve their intended reduction and market response. Currently, EPA has limited FIP authority (see III.A.2.b. and c.) to collect and redistribute fees. Because fees have previously not been used as an emission reduction strategy, limited data is available to predict and establish the level of fee necessary to achieve the intended reductions. With these constraints in mind, EPA is asking for comment on the potential use of fee-based approaches for within the FIP. This concept is also discussed in III.C.5.i.(3).

(b) Corporate Average VOC Emission (CAVE) Limit. Within the Reg Neg discussions, the concept of a CAVE limit has been suggested. The CAVE limit would allow each manufacturer to average all coatings sold nationally to meet a single, overall grams of VOC per liter CAVE limit. The CAVE limit would be based on a table of standards (e.g., VOC limits for each category) and the previous sales for each manufacturer. In theory, the CAVE approach could be applied in the FIP on a statewide basis. Because the limit is based on averaging, it could provide uncertainty as to the expected reductions (e.g., increased use of both a high and low VOC coating may not decrease actual emissions to the predicted amount). Therefore, a backstop measure (e.g., a cap on overall emissions per manufacturer) may be needed to guarantee expected reductions. Although the details of this concept have not been worked out, EPA is asking for comment on the potential use of a CAVE approach for AIM coatings regulated within the FIP.

(c) Manufacturers Bubble. In EPA's 1990 FIP proposal, the concept of a manufacturers bubble was proposed as a backstop measure. This approach would establish a single gram or pound of VOC per year limit for each manufacturer selling coatings within California. Each manufacturer's limit could be established using a table of standards and historical annual sales. This approach aggressively encourages the use of low-VOC coatings, provides greater assurance of actual reductions, and could potentially be expanded to incorporate additional flexibility, such as a banking/trading component. Although the details of this concept have not been worked out, EPA is asking for comment on the potential use of a manufacturers bubble for coatings regulated within the FIP. This concept is further discussed in III.C.5.i.

c. Consumer Products.[51] (1) FIP Promulgation of Existing CARB Rules. Proposed 40 CFR 52.2957(a) and (b) control VOC emissions from consumer products and antiperspirants and deodorants. These proposed FIP measures reflect previously adopted CARB limits. Because CARB has not submitted the measures as SIP revisions, EPA is promulgating these measures, which are needed for progress and attainment in the three FIP areas. These measures would also provide the framework for additional future FIP reduction strategies as needed.

(a) Consumer Products. Proposed 40 CFR 52.2957(a) controls VOC emissions from consumer products, with the exception of antiperspirants, deodorants, aerosol paints, and a few other consumer product categories.[52] Consumer products are chemical formulations used in households and institutions and includes products such as detergents, cleaning compounds, polishes, floor finishes, personal care products, disinfectants, and automotive specialty products. The proposed regulation limits the VOC content in products sold, supplied, offered for sale, or manufactured for use within California. The rule establishes VOC limits consistent with limits previously adopted by CARB. 1990 Statewide emissions from consumer products are estimated at 250 tpd, 14 2 tpd in Sacramento, 108 tpd in South Coast, and 7 tpd in Ventura.

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[49] Section 183(e) of the CAA requires that EPA submit a report to Congress by November 15, 1993. Upon submission of the final report, the Administrator will establish categories of consumer and commercial products intended for regulation and divide the categories into four groups to establish regulatory priorities. Every two years after promulgation of the list, EPA shall regulate one group until all four groups are regulated. EPA has yet to submit the report and establish the list of categories to be regulated.

[50] As a matter of law, the local agencies could continue to enforce their local SIP rules, but manufacturers would be expected to formulate their coatings to address the more stringent statewide FIP provisions.

[51] As specified under section 183(e)(3) of the CAAA of 1990, EPA is required to study emissions of VOCs from consumer and commercial products and to investigate the development of a national regulation or CTG for selected consumer products. While in all likelihood EPA will be developing a national regulation or CTG for many of the consumer products covered by the proposed FIP regulations, the proposed FIP regulation is not an attempt on EPA's part to meet its 183(e)(3) responsibilities. When and if EPA promulgates a national regulation or CTG for consumer products, EPA will reevaluate its FIP strategy for consumer products.

[52] While CARB has attempted to regulate most consumer products, some products have not been regulated at this time. These include: lubricants, hand washing detergents, toilet bowl cleaners, disinfectants, paint strippers, laundry detergents and herbicides.

The CARB and proposed FIP regulations for consumer products, including antiperspirants and deodorants, cover just over half of the consumer products in the inventory or approximately 130 tpd statewide. The CARB and proposed FIP consumer product rules are estimated to achieve a VOC emission reduction of over 25 percent. However, these reductions will be partially offset by growth in consumer product sales. The FIP area reductions after growth were estimated at 1.3 tpd (1999) and -1.6 tpd (increase in 2005) in Sacramento, 1.6 tpd in South Coast, 0.2 tpd in Ventura. Because the FIP consumer product requirements are almost identical to the CARB rules, the cost of the consumer products FIP measure is expected to be zero.

Although the proposed FIP measure is very similar to that previously adopted by CARB, minor differences exist between the proposed FIP regulation and CARB's regulation. Differences are intended to simplify or reduce the administrative burden on the affected manufacturers or to correct rule deficiencies. The proposed FIP consumer products rule differs from the CARB rule in that it deletes: requirements for certification of charcoal lighter materials; a variance section; and a federal enforceability section. Otherwise the rules are virtually identical.

(b) Antiperspirants and Deodorants. Proposed 40 CFR 52.2957(b) controls VOC emissions from antiperspirants and deodorants. The regulation limits the VOC content of products sold, supplied, offered for sale, or manufactured for use within California. The rule establishes VOC limits based on those previously adopted by CARB. The rule establishes a percent VOC by weight limit for both aerosol and non-aerosol products (e.g., sticks and roll-ons). Although aerosols make up approximately 25 percent of the market, they account for approximately 90 percent of the emissions from this category. Statewide emissions and expected reductions are incorporated in the consumer product totals described under III.C.4.c.(1).(a).

Although the proposed FIP measure is very similar to that previously adopted by CARB, minor differences exist between the proposed FIP regulation and CARB's regulation. Differences between the proposed FIP antiperspirant and deodorant rule and the CARB rule include: the compliance date[53] for aerosol products has been extended to January 1, 1999; deletion of the administrative requirements that aerosol product manufacturers apply to CARB by January, 1994 for a compliance date extension to 1999; deletion of the section restricting toxic air contaminants; deletion of certain reporting requirements; deletion of the variance section; and deletion of the federal enforceability section. Otherwise the rules are virtually identical.

(2) Aerosol Paints. Proposed 40 CFR 52.2958 reduces VOC emissions from aerosol coatings. Aerosol coatings are self dispensing, pressurized products containing coating solids (i.e., pigments, resins, and binders) and solvent designed to dispense product ingredients by means of a propellant. The solvent and propellant are typically VOCs which make up from 70–95 percent of the product by weight. The VOCs are emitted into the atmosphere during the coating delivery and curing process.

Aerosol spray paints account for approximately 25 tpd of VOC emissions in California. FIP area 1990 emissions were estimated at 1.3 tpd in the Sacramento area, 11.6 tpd in the South Coast, and 0.6 tpd in Ventura. The use of aerosol paints has grown steadily since the 1950s. Growth peaked in 1977, but in 1978, the federal government restricted the use of chlorofluorocarbons as aerosol coating propellants and hydrocarbons were introduced as a replacement for the CFC propellants. Since the mid 1980s, use of aerosol paints has continued to steadily grow, with annual sales reaching historical highs during the early 1990s.

Aerosol coatings have previously been regulated by the BAAQMD (Regulation 8, Rule 49) and the SCAQMD (Rule 1129). CARB recently assumed authority to regulate the VOC content of aerosol paints. The FIP aerosol paint rule is based on a draft regulation workshopped by CARB on November 10, 1993. The draft regulation is not scheduled for adoption until after EPA's court ordered deadline for the FIP proposal. In addition, current State law giving CARB the authority to regulate aerosol coatings also limits CARB's ability to submit some future-effective limits and reductions to EPA as SIP submittals.

Because of the need to demonstrate attainment in each of the FIP areas, EPA is proposing an aerosol coating rule which is generally consistent with the regulation expected to be adopted by CARB in 1994. Minor differences exist between the FIP proposal and the CARB draft, however. The proposed FIP aerosol paint rule does not include sections for a special recognition label, variances, and federal enforceability. Also, the proposed FIP measure does not include a provision for a five year compliance date extension as found in CARB's draft rule. Instead, EPA intends to monitor industries progress and CARB's 1999 determination regarding the coating limits. If necessary, EPA will consider amendments to the FIP aerosol coating rule where appropriate. By adopting the FIP aerosol coating regulation, EPA hopes to avoid having to impose more stringent requirements on other VOC sources which would need to compensate for the reduction shortfall pending SIP submittal of the adopted CARB regulation. While this proposed FIP aerosol coating regulation will be published prior to CARB's adoption of its regulation, EPA expects to modify the FIP regulation, if appropriate, to be consistent with the final CARB regulation.

The proposed FIP regulation will build upon the previous work by the BAAQMD and the SCAQMD and closely parallel CARB's regulation. The proposed FIP regulation would apply to any person who sells, supplies, offers for sale, applies, or manufactures for use in California any aerosol coating products as described in the proposed regulation. Because of the diversity of uses and coating types, the proposed regulation establishes VOC limits for a variety of product coating types. The initial 1996 limits are based on limits in the BAAQMD regulation. A second phase of lower limits goes into effect in 1999.

Aerosol coating manufacturers are expected to develop compliant products through propellant replacement, product reformulation, and improvements in packaging and delivery systems. Two promising propellent alternatives, hydrofluorocarbon (HCFC) 152a and dimethyl ether, are potential replacements for current hydrocarbon propellants. Reformulation to a lower VOC content could be achieved through increased solids, lower VOC solvents and propellants, or a combination of both. A further opportunity to reduce emissions lies in the redesign of the packaging and delivery system such that a nonhydrocarbon gas or mechanical device acts to displace the container's contents. Improvements in the transfer efficiency of the delivery systems would result in reduced overspray, higher surface coating percentage per container, and cost savings to the consumer.

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[53] CARB's regulation allows manufacturers to apply for the January 1, 1999 compliance date if certain requirements are met. Based on conversations with CARB, EPA believes that most if not all aerosol product manufacturers have or will apply for the 1999 compliance date.

The proposed FIP aerosol coating regulation is to reduce VOC emission by approximately 60 percent from 1990 levels. The reductions from 1990 levels equate to approximately 15 tpd in California. FIP area attainment year reductions are estimated at 0.9 tpd in 1999 and 1.1 tpd in 2005 in the Sacramento area, 8.9 tpd in 2010 for the South Coast, and 0.4 tpd in 2005 for Ventura. Only limited data is available to estimate the cost of developing compliant products. The first phase of the regulation is expected to have a minimal cost because compliant products are already available to meet the BAAQMD rule. Costs of meeting the 1999 limits will depend in part on the availability of HCFC 152a. Although a promising propellant substitute, HCFC 152a is estimated to cost five to ten times more than current hydrocarbon propellants. However, with increased demand for HCFC 152a, its cost is expected to decrease.

(3) Alternative Reduction Approaches. CARB is currently developing an alternative compliance plan (ACP) approach which would allow additional flexibility for affected consumer product manufacturers. The ACP would allow manufacturers to average a limited number of products when determining compliance. The ACP concept is under development and EPA is working with CARB to assure its consistency with EPA's Economic Incentive Program guidance. After the ACP program is adopted by CARB, EPA will consider it for adoption as part of the FIP. Additional alternative reduction approaches as described in III.C.4. for architectural coatings could also be applied to consumer products. Comments are requested on the use of these approaches to achieve additional emission reductions from consumer products.

(4) Need for Additional Reductions. Because additional reductions from consumer products will be needed to attain the ozone standard in the South Coast, EPA will continue to investigate strategies such as setting VOC limits, fees, a manufacturers bubble, or a corporate average to further encourage reductions from these products. Because a fraction of the consumer products inventory (e.g., laundry detergents, hand washing detergents, lubricants) are not regulated by current CARB regulations or the FIP proposal, EPA will investigate strategies for reducing emission resulting from these unregulated products. EPA intends to use section 182(e)(5) commitments for these additional reductions and to develop appropriate control strategies based on continuing evaluation of new technologies and compliance options.

d. *Pesticides.* (1) Summary and Applicability. Proposed 40 CFR 52.2960 is designed to reduce VOC emissions from agricultural and structural pesticide application.

Producers of such pesticides must determine the VOC content[54] of their products as defined by an analytical method. All agricultural and structural pesticides registered in California must be tested, regardless of whether the producer is located inside or outside of the State. Distribution, application, and storage of pesticides with high VOC contents will be restricted in California.

9,500 pesticide formulations may be subject to the analysis requirement, and sale and use of several thousand may be subsequently restricted. EPA cannot determine how industry will respond to restrictions on each specific formulation. Generally, however, EPA expects that low-VOC reformulations will provide feasible alternatives for many restricted pesticides.

The proposed rule is not intended to apply to consumer-oriented pesticides that are subject to consumer products regulations in this NPRM (40 CFR 52.2957) or in the California Code of Regulations (Title 17, Division 3, Subchapter 8.5—Consumer Products, §§ 94507–94517). The proposed rule is also not intended to apply to production or distribution of pesticides intended for use outside of California.

(2) Specific provisions. *Required submission of data.* By June 1, 1996 or 120 days after the effective date of the rule, whichever is later, producers must submit analyses identifying the VOC content of all affected pesticides. EPA believes that 120 days is ample time to perform this analysis, and notes that the requirement is being proposed over two years before the analysis will come due. Concern has been raised that independent laboratory capacity may be insufficient to analyze all regulated pesticides within 120 days. EPA believes, however, that most large pesticide manufacturers will perform the required analysis in-house, and that independent laboratory capacity will be sufficient to handle the remaining analytic demand.

Analysis is required of all California-registered pesticides including those not currently in use. This information is needed to determine an accurate base-year VOC emission inventory to compare against future emission reductions. It is also important to identify all available low-VOC pesticides regardless of whether they are currently in use in order to maximize the available pest-control options.

Establish VOC limit. The proposed rule describes a six-step procedure for establishing a VOC limit for pesticides.

(i) EPA will establish a base-year pesticide use inventory for each pesticide registered in California. This inventory may consist simply of the amount of each pesticide applied in the State according to the 1990 pesticide use report (PUR) combined with the inerts data-base, both of which are maintained by the California Department of Pesticide Regulation (DPR). The proposed rule is drafted, however, to provide the Agency discretion to establish the base-year inventory using other information. EPA could, for example, use an average of the 1990 to 1993 PUR data for just the three FIP areas if that was determined to be more appropriate. In any case, EPA intends to discuss the base-year inventory actually used when promulgating the VOC limit pursuant to § 52.288(c)(2)(vi).

(ii) EPA will rank the pesticides according to their VOC content. The pesticide with the largest VOC content (i.e., a gas or highly volatile liquid) will be ranked #1. If EPA determines that adequate data for a particular pesticide is not submitted by the deadline, EPA may assign the pesticide a VOC content equal to the largest VOC content reported for any pesticide (i.e., also ranking it #1). This would effectively prohibit distribution and application of this pesticide in the affected area pursuant to § 52.2960(c)(5). EPA's intention is to provide an incentive for manufacturers to submit the required data while simultaneously enabling the Agency to implement the regulation in the absence of some data. Nevertheless, the regulation is drafted to provide the Agency some discretion in assigning VOC contents for pesticides in the absence of adequate data. EPA might, for example, determine it more appropriate to assign VOC contents for such a pesticide based on the largest VOC content reported for its formulation type (e.g., oil, emulsifiable concentrate, pressurized liquid, etc.) Or, if analysis of a pesticide failed to demonstrate a specific VOC content but did demonstrate that the VOC content fell within a discrete range, EPA might assign the pesticide the largest VOC content within that range. In any case, EPA intends to discuss the VOC contents actually assigned when promulgating the VOC limit pursuant to § 52.288(c)(2)(vi).

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[54] The actual volatility of the organic compounds in a particular pesticide depends on the temperature, moisture, substrate, application technique, and other conditions under which it is applied. Therefore, "VOC emission potential" might more accurately reflect the result of the analytical test methods. EPA, however, is using the term "VOC content" to be consistent with analogous coating regulations.

(iii) EPA will multiply the VOC contents (weight percent basis) by the base-year inventory (kilogram-per-year basis) to establish the individual base-year VOC emissions (kilogram-per-year basis). A pesticide not used in the affected area in the base-year(s) would have a base-year inventory and a VOC emission of zero.

(iv) EPA will add the base-year VOC emissions of all affected pesticides to determine the total base-year VOC emissions in the affected area.

(v) Starting with the highest-ranking pesticides (i.e., those with the largest VOC content and those without adequate data), EPA will add the individual base-year VOC emissions until the sum equals 40 to 65 percent of the total base-year VOC emissions. The VOC content of the last pesticide needed to achieve 40 to 65 percent is the VOC limit. EPA has assumed that restricted pesticides will be replaced on a one to one mass basis with pesticides at the VOC limit.[55] Based on an analysis described in the technical support document (TSD) for the proposed rule, EPA has calculated that a 40 to 65 percent threshold value will achieve emission reductions of 20 to 45 percent off the base-year inventory. The target reduction of 20 to 45 percent was chosen for consistency with the range of target reductions of the stationary source cap rules described in section III.C.5 of this NPRM. Based on planned modeling and inventory analysis and comments received during the comment period, EPA hopes to select a specific reduction target from within this range for use in the final rule promulgation. The relationship between the 20–45 percent reduction target and the 40–65 percent threshold value is discussed further in the TSD.

(vi) EPA will publish the VOC limit. EPA intends to publish this limit in the **Federal Register** with a discussion of the data and assumptions used to generate the limit. If the limit is generated by a straightforward execution of the procedure described in this NPRM, EPA may publish the limit directly in final form. If, however, EPA exercises significant discretion (as provided for in the proposed rule) in generating the limit, EPA intends to take public comment on a proposed limit before publishing the final limit.

Restrictions on pesticides. One year after EPA publishes the VOC limit, all persons are prohibited from distributing in the affected area pesticides with VOC contents greater than the VOC limit. After that time, distributors with remaining inventory of high-VOC pesticides could still sell them to persons outside the affected area.

Two years after EPA publishes the VOC limit, all persons are prohibited from applying or storing in the affected area pesticides with VOC contents greater than the VOC limit. EPA believes this is sufficient time for affected applicators to apply existing inventory of high-VOC pesticides or to sell them to persons outside the affected area.

Revisions to the VOC limit. EPA may require a producer to reanalyze its pesticides at any time. Based on this or other information, EPA may recalculate the VOC limit at any time. EPA does not anticipate recalculating the VOC limit frequently, as recalculation has significant resource implications for both the Agency and the regulated community. Recalculation may be appropriate, however, if EPA determines that the existing VOC limit is not equitably achieving the targeted emission reductions of 20 to 45 percent. Developments that might justify a recalculation include changes in pesticide use patterns and improved understanding of VOC emissions from pesticides.

Alternative ranking scheme. Rather than ranking pesticides simply by VOC content, representatives of DPR and CARB have suggested ranking by VOC emissions. Under the former scheme, as incorporated in this NPRM, application of a high-VOC low-use pesticide (e.g., a pheromone) would be regulated even if it contributed much fewer VOC emissions than unregulated application of a medium-VOC high-use product. Under the latter scheme, pesticides would be ranked and regulated in order of their overall emissions, as determined by VOC content times quantity applied in the base-year(s).

While the two ranking systems could provide equivalent emission reductions, EPA believes the simplicity of the former makes it easier to implement and enforce. Once the VOC limit is established, Agency inspectors can simply determine whether pesticides sold and used in the affected area comply with the limit. Under the latter scheme, however, rather than publishing a single limit, EPA would need to publish and regulate a list of all the specific restricted pesticides, which would need to be revised regularly to account for new and reformulated products and for changing use patterns. If, for example, a high-VOC pesticide had low use and low emissions in the base-year but high use and high emissions thereafter, it would need to be added to the list of restricted pesticides. Conversely, pesticides with unusually high use in the base-year might need to be removed from the list of restricted pesticides, adding to the likelihood of inequities and compliance problems.

Nevertheless, EPA understands that alternatives to the regulatory structure contained in the proposed FIP rule offer different trade-offs between the various FIP goals (described in section I.B of this NPRM) of reducing emissions, encouraging State action, minimizing federal interference, etc. EPA has attempted to address some of these alternatives in paragraph III.C.4.d(4) of this NPRM.

(3) Reporting, recordkeeping and test methods. Proposed § 52.2960(f) describes the test methods required for determining the VOC content of pesticides. Pesticide producers may use one of two test methods:

(i) *Thermogravimetric Analysis (TGA).* This is one of the two test methods described in EPA's alternative control technology document (ACT) for pesticides ("Alternative Control Technology Document; Control of VOC Emissions from the Application of Agricultural Pesticides," EPA–453/R–92–011, March 1993, Appendix C). The method is based on the "American Standard Test Method (ASTM) for Compositional Analysis by Thermogravimetry" (ASTM E–1131–86).

(ii) *Volatile organics in pesticides (VOP) method.* This is the second test method described in EPA's ACT for pesticides. It includes a purge and trap procedure conducted at constant temperature that allows for direct measurement of water content.

DPR has investigated various modifications to ASTM E–1131–86 for analyzing a wide variety of pesticide formulations. Some of DPR's work is reflected in modifications to the method included in the ACT and in § 52.2960(f)(1)(i) by reference. DPR's work is ongoing, however, and EPA expects that additional modifications to the method may be determined appropriate. Depending on the timing and scope of such modifications, EPA may address them through the discretion allowed in the proposed rule, by incorporating them into the final FIP rule, or by formally proposing and promulgating subsequent rule modifications. Modifications may include the following:

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[55] Imbedded in the one-to-one replacement assumption is another assumption that, in the aggregate, pesticide efficacy is not reduced by reformulation to lower VOC products. For some specific pesticides, efficacy may decrease and applicators may respond by using greater quantities of the reformulated product. Emissions associated with this phenomenon will be somewhat offset by replacement of specific restricted products by pesticides with VOC contents below the VOC content limit.

(i) Modifications to the method for estimating water content. DPR is currently investigating several analytical methods for estimating water content including both Karl Fischer titration and spectroscopic analysis of the vapor-phase effluent from the TGA analysis. Until adequate validation of these methods is available, DPR may calculate water content based on the "percentage water added" component of the statement of formulation required pursuant to FIFRA (7 U.S.C. 136a(c)(1)(E)). Because this generally does not account for water present as impurity, water produced in reaction, or water present as a component of other raw materials, it should provide a conservative (i.e., low) estimate of true water content. Reliance on formulation data is consistent with EPA's historic policy regarding analogous coating regulations before reliable test methods (e.g., ASTM D–4017 and D–3792) were available.[56]

(ii) Modifications to the method for estimating exempt compounds. Again, until adequate validation of a specific test method(s) is available, DPR may rely on the statement of formulation for estimating the amount of exempt compounds present in specific pesticides. This is also analogous to coating regulations which generally relied on formulation data until ASTM D–4457 was available.[57]

(iii) Modifications to address solid pesticide formulations.

As described in § 52.2960 (d) and (e), producers of affected pesticides must submit copies of all raw data and a summary of the results of the VOC content analyses. Distributors must submit a distributor notification and an annual report summarizing the pesticides distributed in the affected area during the preceding year. Applicators must submit a copy of the PUR for all pesticide applications within the affected area.

Pesticide producers, distributors, and applicators are required to maintain all information necessary to demonstrate compliance with the regulation for a period of five years. At a minimum, this information must include copies of all reports specifically required in paragraph 52.2960(d), and any technical support to these reports.

(4) Relationship to State rules. As discussed in sections I.D., III.J., and elsewhere in this NPRM, EPA believes that State and local agencies can adopt and implement regulations that are better tailored to the specific characteristics and needs of the affected areas. Therefore, EPA strongly encourages the State to continue ongoing efforts to adopt approvable rules to replace all or part of the FIP.

Pursuant to § 110(l) of the Act, State rules are not approvable if they, "* * * interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement." For purposes of the pesticide rule, EPA intends to determine approvability based largely on emissions. Modifications to the pesticide rule which EPA may consider approvable, if shown to result in no significant emission increases, include the following:

(i) Provisions for exempting de minimis use of high-VOC pesticides.

(ii) Provisions for allowing use of high-VOC pesticides to prevent overwhelming economic dislocation.

(iii) Provisions for allowing use of high VOC pesticides to prevent harm to human health or the environment.

(iv) Provisions for allowing use of high-VOC pesticides during times of the year when low ambient ozone concentrations are projected.

(v) Modifications of the test method discussed in section III.C.3.d(3) of this NPRM.

(vi) Modifications to 40 CFR 52.2960(c)(2) of the proposed rule, such as ranking pesticides based on emissions instead of VOC content as discussed in section III.C.3.d(2) of this NPRM.

(vii) Consideration of the relative reactivity of different VOCs.

Or, of course, the State could adopt rules based on completely different regulatory strategies that still achieve equivalent emission reductions.[58]

The State is likely to propose substitution for the FIP rule's "Required submission of data" provision in 40 CFR 52.2960(c)(1) of the proposed rule. DPR is currently planning to issue a data call-in during early 1994 which would require submittal of much of the same information. If these data are timely and approvable, EPA may remove 40 CFR 52.2960(c)(1) from the final FIP rule.

(5) Relationship to FIFRA. EPA acknowledges the unique situation in which the proposed FIP rule places the pesticide and agriculture industries, which are already subject to considerable regulation under FIFRA.

However, because pesticide use is estimated to represent a significant component of the VOC emissions inventory in the Sacramento, South Coast and Ventura areas, EPA considers emission reductions from pesticides an important part of the overall FIP attainment strategy.[59]

Under the proposed rule, EPA will establish a VOC limit that all pesticides must meet to be distributed or applied in the affected area. Specific pesticides are not regulated, and the proposed rule does not conflict with FIFRA's registration cancellation or suspension procedures (7 U.S.C. 136d). Nonetheless, EPA expects that many pesticides will need to be reformulated in order to meet the VOC limit and be useable in the affected area. EPA has accounted for the costs of reformulation in the technical support to this proposed rule. EPA specifically requests comment on how to minimize the costs of this regulation in light of existing FIFRA regulations while still achieving the necessary emission reductions.

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[56] See, for example, "Procedure for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings, "U.S. EPA, EPA–450/3–84–019, December 1984.

[57] ibid.

[58] EPA, for example, considered several other regulatory strategies for inclusion in the FIP, and analyzed two in detail through a contract to Midwest Research Institute ("Development of Pesticide Rules for the Sacramento, South Coast, and Ventura Nonattainment Area FIPs," prepared by Midwest Research Institute for EPA, April 30, 1993 draft final report).

The no-use day strategy was fashioned after existing no-burn day programs. EPA would establish meteorologic criteria for predicting unfavorable ozone conditions and pesticide use would be restricted on a day-to-day basis. A major drawback to this strategy is that postponing pesticide application for several consecutive days could result in significant crop damage and an increase in overall annual pesticide use.

The users bubble strategy would be somewhat analogous to the stationary source emission cap programs proposed in this notice. Pesticide users (e.g., growers) would calculate a base-year VOC emission rate as: amount of pesticide applied times VOC content of pesticides divided by total acreage. Users would then be required to reduce their VOC emission rate a certain percentage by the attainment year. A major drawback to this strategy is the difficulty in establishing equitable baseline inventories.

EPA selected the VOC content strategy incorporated in this notice for a variety of reasons including better enforceability, consistency with State regulatory plans, and minimization of disruption to the affected industries. EPA invites comment on mechanisms to improve the proposed pesticides rule, as well as on other strategies to reduce VOC emissions from pesticides. EPA is interested, for example, in mechanisms to encourage pesticide application technologies (e.g., electrostatic application) that decrease VOC emissions. In addition, EPA requests comment on how to optimize the interaction between the proposed FIP rule and ongoing pesticide programs and initiatives including those targeting pesticide use reduction, pollution prevention, and integrated pest management.

[59] As with all components of the FIP, § 52.2960 is proposed under authority of the Clean Air Act. Failure to comply with any provision of § 52.2960 will violate the applicable implementation plan for purposes of section 113 of the Clean Air Act, and be subject to all administrative, civil, and criminal penalties described therein.

5. Cap Regulations

a. Introduction—EPA is today proposing to promulgate Federal control measure rules to reduce emissions of VOC from sources located in all three FIP areas, and NO_x from sources in the Ventura FIP area.[60] The proposed measures impose an annual rate of reduction on affected sources for as many controllable VOC and NO_x categories as possible. The purpose of these proposed rules is to ensure that the FIP areas achieve attainment of the ozone NAAQS by the statutory attainment dates for each area. These proposed rules are designed to supplement reductions achieved by other proposed FIP and SIP measures as necessary to make up for any emission reduction shortfalls in the affected FIP areas.

The FIP cap measures proposed today differ in several ways from those proposed in the 1990 South Coast FIP (55 FR 36458). Most importantly, the current FIP proposal adds complete regulations for most categories of industrial sources of NO_x emissions, whereas the 1990 proposal dealt only with VOC sources. The NO_x cap regulations proposed today for Ventura (and discussed as an alternative for the South Coast) contain comprehensive control requirements, including specific detailed provisions for source monitoring.

EPA's cap regulations proposed today also make significant changes from the 1990 rules in terms of the cap compliance period, penalties for noncompliance with emission limits, and establishment of emissions baselines. In addition, this NPRM significantly revises the discussion of two potential amendments to the cap program: the development of an emissions trading element and the replacement of the industrial solvents/coatings rules with a manufacturers bubble.

Many of these changes from the 1990 proposal derive from extensive EPA involvement in the evolution of SCAQMD's RECLAIM program. However, EPA's proposed cap rules deviate from the RECLAIM program in several areas. For example, in RECLAIM, which is currently a NO_x and SO_x market, the term of each emission cap is one year. In the proposed FIP measures, the term of each emission cap is one month. EPA selected the shorter compliance term as providing more certainty that the one-hour ozone NAAQS would not be exceeded. EPA will continue to evaluate the compliance period as more information becomes available. For each FIP area, data may allow EPA to determine that different compliance periods would provide sufficient security against short-term emission increases that jeopardize air quality progress.

The 1990 proposal did not include regulations specifying the noncompliance penalty structure. This NPRM proposes penalty provisions for emissions cap exceedances based on EPA's conclusion (expressed repeatedly in the context of the RECLAIM development process) that exceedance-based systems of establishing penalties are the most appropriate for the use of mass emission caps. Exceedance-based penalty systems establish violations based on the amount of excess emissions above the facility cap. This penalty structure is most protective of the NAAQS and comports best with the Act and with EPA's established enforcement policies.

EPA has included in this FIP a much more detailed method for setting baselines for the facilities subject to the cap program. The method requires sources to examine the following data to calculate their year 2001 cap emissions:

- 1990 annual emissions, and
- Reductions to be made as a result of compliance with SIP and/or FIP control measures between the years 1990 and 2001.

This methodology will inherently rely on emission inventory data and planning projections to set year 2001 emissions caps. However, the methodology has the advantage that it will not unfairly penalize facilities which have made reductions ahead of schedule. This baseline proposal provides flexibility beyond the 1990 proposal for facilities which have made early reductions of NO_x and VOC emissions.

EPA is not now proposing to incorporate a trading system into the program in regulatory form. EPA will observe the functioning of the RECLAIM market system, the Acid Rain (CAA Title IV) market system, and other markets to determine the design which is most successful for reducing emissions in the FIP areas while achieving other program goals, including the avoidance of air toxics hotspots. In the 1990 FIP proposal, EPA indicated that a trading scheme would be proposed in the future; in this round, given that there will be more experience with trading markets by the time this FIP is finalized, EPA chose to observe the developing markets in parallel with its own research effort prior to selecting a market structure.

Finally, the 1990 proposal discussed the use of a manufacturers bubble as an alternative to emissions caps for users of industrial and commercial solvents and coatings. The current FIP proposal describes this concept in greater detail and discusses EPA's various reasons for preferring this approach, if EPA is able to successfully resolve certain issues involved in regulating manufacturers at the national level.

(1) Rationale for Approach. All of the California FIP areas suffer from emission reduction shortfalls when the FIP attainment analysis is performed. The shortfalls, or reductions beyond the other proposed FIP and SIP measures, which must be accounted for in order to bring the FIP areas into attainment, range from at least 20 percent additional reductions for VOC to at least 30 percent additional reductions for NO_x.[61] In consideration of the limitations of available technology-based regulations, and to provide the regulated community with maximum flexibility when trying to achieve the shortfall reductions, EPA is proposing a facility-wide declining emission cap program.

The declining facility-wide emission caps will have a monthly compliance period (i.e., a single monthly emissions limit for the entire facility that declines annually as opposed to emission limits on single emission points), an annual reduction rate (4 to 9 percent for VOC, 6 to 9 percent for NO_x), and initial baseline emission caps (caps for the first 12 months of the program) established using anticipated implementation-year inventories (year 2001 projected inventories) for the universe of facilities included in the FIP cap program. The facilities subject to the FIP cap program will be those facilities that generate emissions of NO_X or VOC greater than or equal to 4 tpy in the FIP areas. The universe of facilities included in the FIP cap program is based on process lists or emission categories that make up a significant portion of the emissions necessary to be reduced to ensure attainment in the FIP areas.

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[60] EPA assumes that the South Coast's NO_x RECLAIM program will be submitted to EPA as a SIP revision and that EPA will take some form of approval action on NO_x RECLAIM so that the South Coast FIP area can be credited with those reductions. In the event that NO_x RECLAIM is not submitted to EPA in an approvable form, then EPA will prepare regulations for NO_x emissions similar to those proposed for the Ventura FIP area.

[61] The rates of reduction shown here represent the results ofEPA's preliminary analysis of the FIP areas' emission inventories. Further analysis of these inventories is currently being performed and may ultimately impact the final rates of reduction for the FIP cap program. The reates of reduction may increase or stay the same as appropriate. The current rates of reduction analysis shows that a 4 percent to 9 percent annual rate of reduction for VOC and 6 percent to 9 percent for NO_x may be necessary to demonstrate attainment in the FIP areas.

In developing its proposal, EPA has drawn on its experience and involvement in other emission cap programs such as the CAA Title IV program (Acid Rain), the South Coast Air Quality Management District's Regional Clean Air Incentives Market (RECLAIM), and the general guidance provided by the proposed Economic Incentive Program (EIP) rules and guidance (58 FR 11110, February 23, 1993).

Discussed below are the source categories for which rules have been developed. These measures would be promulgated as complete regulations in the FIP but would not require emissions reductions until 2001 in order to allow the FIP areas time to develop measures which obtain the necessary reductions and to allow EPA adequate time to implement these measures to ensure attainment and progress towards attainment by the statutory attainment dates. The measures for stationary and areas sources would mandate a linear annual reduction of emissions from individual facilities with emissions greater than or equal to 4 tpy in order to accomplish necessary reductions not achieved through other FIP measures and federally approved SIP rules (facilities with emissions greater than or equal to 2 tons per year will be subject to exemption verification reporting requirements). Because EPA has chosen not to develop conventional control measures at this time for a portion of the VOC and NO_X inventory, the level of control for the FIP cap measures must be sufficient to make up for at least a 20 percent VOC and at least a 30 percent NO_X emission reduction shortfall.

(2) Reduction Rate. Assuming that the creditable State rules and FIP rules will meet minimum progress requirements (particularly in the South Coast FIP area) for the period up to 2000, the proposed FIP cap rules are designed to go into effect beginning in 2001 and to achieve reductions from each category of between 4 and 9 percent per year for VOC and between 6 and 9 percent per year for NO_X until the year 2005.[62] This design, for example, means that in 2001 a VOC-emitting facility would reduce its emissions at least 4 percent from its baseline emissions; in 2002 the same facility would reduce its emissions by at least 8 percent of its baseline emissions. By 2005, the facility's emissions would be reduced by at least 20 percent of its baseline (or year 2000) emissions.

(3) Withdrawal of Rules Based on SIP Progress. These proposed FIP cap measures serve as a strong incentive for State efforts, since they could be rescinded before their scheduled implementation dates if areawide emissions are reduced to the prescribed levels through the adoption and implementation of future SIP rules. In addition, any of these measures could be rescinded upon EPA approval of State or local measures that obtain the necessary reductions and which would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. EPA strongly encourages the State to adopt measures quickly and in a manner that will minimize adverse economic impacts.

(4) Relationship to Other Applicable FIP Provisions. Given the overlap between the source categories in the proposed FIP cap program (see section III.C.5.b.(2)) and those source categories regulated by traditional means, EPA is proposing to include the reductions achieved by the other regulations (i.e., the other FIP and/or SIP measures which are effective at the time of the FIP cap program's implementation) in the FIP cap program baseline setting procedures. This design means that EPA is assuming that all reductions required by other portions of the regulatory framework are achieved by the year 2001. EPA believes this design to be a necessity given the emission reduction shortfalls and attainment dates faced in the FIP areas. However, EPA seeks comment on this design and potential alternatives that will ensure attainment and progress prior to a given FIP area's attainment date. This design also assumes that facilities after 2001 would not be operating under two regulatory frameworks; rather, the traditional regulations are assumed to have achieved their associated reductions and the FIP cap regulations would make up for shortfalls necessary in the FIP areas. This issue will be examined periodically to determine the impacts of the interface and the ultimate reduction rate for the FIP cap program in the FIP areas.

In the proposed FIP cap regulations EPA assumed no participation of new sources in the program. EPA's design assumes that new sources will be subject to federally approved new source review rules and emission limits. However, EPA seeks comment on means for including new sources in the FIP cap program and alternatives to the current design.

(5) Implementation and Enforcement Issues. The emission reduction requirements derive from the areawide emission reduction requirements of the FIP, rather than from the normal Agency assessments of available technologies. As such, they may be costly and disruptive, and the prospect of their federal implementation, in the case of inadequate State progress, should inspire successful adoption of the SIP.

Over time, the State and local agencies can develop carefully tailored economic incentive programs or traditional rules based upon the most recent technologies and regulatory approaches. For example, the SCAQMD has recently adopted the RECLAIM program and also has a multi-million dollar technology development program to assist industry to identify and successfully apply the latest scientific approaches that can be employed to reduce pollutant emissions. With these types of resources and, most importantly, with additional time to develop the most feasible control approaches, the State and local agencies are in a superior position to construct regulations that avoid social and economic dislocation.

(a) Compliance mechanisms. As designed, the FIP cap program requires affected sources to submit facility compliance plans to the Agency for review by 1999. These plans must outline the facility's means to achieve the specific annual reductions from 2001 to 2005. The options for meeting the annual reductions include, but are not limited to, product reformulation, product substitution, control equipment, and, if necessary, production curtailments.[63]

EPA will review and approve or disapprove these plans depending on whether they achieve the required emission reduction requirements. Given that these plans will encompass multiple emission sources with different emission measurement methods, EPA believes that the compliance plan review effort will be resource intensive.

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[62] This design assumes that the Sacramento area's ozone nonattainment classification is changed to allow for a year 2005 attainment date. If a 1999 attainment date for Sacramento is assumed, then the cap program in the Sacramento area would start with compliance plan submittal in 1998 and full reductions required in 1999, in order to achieve the earlier attainment date. The Ventura area's ozone nonattainment classification allows for a year 2005 attainment date.

[63] See section (i) for a discussion of the option of trading credits as a possible means of meeting reduction requirements.

For those sources subject to Title V operating permit regulations, the provisions of the compliance plans would be federally enforceable permit conditions. For such sources, procedures used in reviewing and approving the compliance plans would not supersede public participation and other requirements found in the Part 70 Title V regulations.

Compliance with the monthly caps established in the FIP cap program will be determined by two means. Routine inspections to determine whether or not monthly caps are met will be conducted. In addition, facilities subject to the FIP cap program will be required to certify that they met their monthly caps on an annual basis by submitting annual reports within 60 days of the close of each calendar year. Prior to the implementation of the FIP cap program, EPA will prepare a statistical showing that the aggregate effect of the specified averaging time is consistent with attaining the ozone NAAQS and satisfying applicable progress requirements on a typical summer day basis in accordance with the proposed economic incentive program rules and guidance (see 58 FR 11110, February 23, 1993). EPA seeks comment on the term of the emission caps (i.e., monthly as opposed to a shorter or longer timeframe) and the means by which to determine compliance at facilities subject to the FIP cap program.

(b) EPA Resources. EPA believes that the compliance mechanisms outlined above require a significant resource investment by the Agency. These resources include staff to review the compliance plan submissions and evaluate the subject facilities' compliance status. EPA seeks comment on alternative designs to those outlined in the FIP cap regulations that may reduce this resource burden (including the delegation of these responsibilities to the State or local agencies discussed elsewhere in this NPRM).

(c) Emission Quantification Mechanisms. EPA recognizes that in order to quantify mass emissions, the suggested emissions quantification mechanisms may need further development. EPA will be evaluating the methods outlined and alternatives for adequacy prior to implementation of the FIP cap program.[64] EPA may develop and propose additional methods to obtain the appropriate mass emission results required of the FIP cap program prior to its implementation. EPA seeks comment on the methods outlined in the proposed regulations and any alternative means for determining emissions from the affected source categories.

b. Control Approach— (1) Rule Structure. This overview explains the format used in the proposed FIP cap program rules.

All of the proposed rules contain sections discussing definitions, applicability, specific provisions, reporting, recordkeeping, testing, and monitoring requirements. The definitions section of each rule contains the definitions which apply only to that rule. The applicability section specifies the area to which the rule applies, who is subject to the rule, and references the sections and/or paragraphs of the rule to which subject persons must comply.

The specific provisions section of the rules specifies applicable VOC or NO_X limitations and requires subject persons to submit baseline VOC or NO_X emissions data to the EPA. Once implemented, the rules would require affected facilities to annually reduce VOC emissions by 4 to 9 percent and NO_X emissions by 6 to 9 percent beginning in 2001 and ending in 2005 to achieve at least a 20 percent VOC reduction and at least a 30 percent NO_X reduction overall. It is expected that subject facilities would continue to maintain VOC and NO_X levels at 2005 levels after 2005.[65] EPA may reduce the annual percent reduction requirement during one or more years if rules adopted by the local, State, and EPA (through the promulgation of additional FIP or national measures) achieve the VOC and NO_X reductions necessary to demonstrate progress toward attainment of the ozone standard.

The purpose of the reporting, recordkeeping, testing, and monitoring requirements of the proposed rules is to complement the compliance plan and to ensure their enforceability. The reporting section specifies annual reporting requirements (subject to certification requirements) to demonstrate compliance with the monthly caps and the recordkeeping section requires subject persons to maintain, for at least three years, all information necessary to verify compliance with the VOC and NO_X limitations. The testing and monitoring section of the rules require persons to test and/or install monitoring equipment to demonstrate compliance with the VOC and NO_X limitations as requested by EPA. The VOC and NO_X cap regulations incorporate the specific methods for reporting, recordkeeping, testing, and monitoring. EPA intends that facilities which use the incorporated test methods will have satisfied the requirements discussed in the proposed enhanced monitoring program[66] regarding the source-specific analysis otherwise required by the proposed enhanced monitoring program.

In addition to the proposed source category specific rules, EPA is proposing a general provisions section which will be applicable to all sources covered in each pollutant's cap program (i.e., one section for VOC sources and one for NO_X sources). The general provisions section includes definitions applicable to all of the rules and test methods and procedures referenced in the testing and monitoring sections of most of the rules.

(2) Applicability and Exemptions. The proposed rules are designed to regulate and limit VOC and NO_X emissions at subject facilities (process sources and other sources). Examples of process sources include extraction, manufacturing, fabrication, and combustion operations. Other sources include the use of solvent and paints (not directly used in extraction, manufacturing, and fabrication processes), VOC waste disposal and storage sites, and smaller combustion processes (for example, smaller internal combustion engines). The FIP cap rules are proposed for the following source categories:

For VOC:

(a) facilities which emit greater than or equal to 4 tons per year from any of the following processes or combination of these processes:

- Industrial and commercial solvents and coatings;
- VOC emissions associated with the manufacturing of products;
- Disposal of materials containing VOCs;
- Commercial food preparation and/or baking;
- Petroleum and natural gas extraction, processing, and storage;

For NO_X:

(a) facilities which emit greater than or equal to 4 tons per year of NO_X from any of the following processes or combination of these processes:

- Any boiler, furnace, oven, dryer, heater, incinerator, test cell and any solid, liquid or gaseous fueled equipment with a maximum rated capacity greater than or equal to 2 million Btu per hour;

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[64] This issue may impact the structure of any emission reduction trading market established as a result of subsequent analysis. See discussion later in this section.

[65] Except in the case of the South Coast, where continued reductions may be necessary to achieve attainment. See the discussions elsewhere in this notice of EPA's use of section 182(e)(5) of Act.

[66] The proposed program was published on October 22, 1993—see 58 FR 54648.

- Any internal combustion engine with rated brake horsepower (bhp) greater than or equal to 50 bhp, regardless of operating time;
- Any gas turbine rated greater than or equal to 0.2 megawatts excluding any emergency standby equipment or peaking unit;
- Any petroleum refinery fluid catalytic cracking unit;
- Any petroleum refinery tail gas unit;
- Any kiln or calciner;
- Any equipment burning or incinerating solid fuels or materials;
- Any sulfuric acid production unit,
- Any portable combustion and process equipment;
- Any emergency standby equipment or peaking unit;
- Any NO_x source for which NO_x emissions reported to the State or local agency were equal to or greater than 2 tons per year for the calendar year 1990.

Only those sources which emit greater than 4 tons per year of NO_x or VOC are subject to the emission cap requirements found in the rules. Those sources which emit 2 tons per year but less than 4 tons per year in the above categories are exempt from the cap requirements provided that they maintain emissions below the 4 tons per year inclusion level.[67] However, EPA notes that the South Coast RECLAIM program could subject sources which emit less than 4 tons per year to the cap requirements to get additional necessary reductions. EPA encourages the South Coast to reduce its RECLAIM emissions threshold in order to achieve necessary reductions for attainment.

Rules for most of the source categories contain exemption levels to minimize potential impacts on small businesses. The proposed rules require owners or operators of exempt facilities to certify to the EPA by January 1, 2000, that they are exempt from the VOC and NO_x limitations of the rules and to submit calculations which demonstrate the VOC and NO_x emissions from their facility will not exceed the exemption level. If a facility exceeds the level on and after January 1, 2000, the source must notify EPA within thirty days that the exemption level was exceeded. The source would then comply with the VOC and NO_x limitations of the rule beginning on January of the calendar year following the exemption level exceedance. Once an exempt facility exceeds the exemption level, it would always be subject to the VOC and NO_x limitations of the rule.

(3) Determination of Baseline Emissions. The proposed FIP cap rules require baseline emissions and emission reductions to be calculated on a monthly basis. The rules require baseline emissions to be determined based on emission inventory records, production, throughput, or usage level. If daily emissions records are available for the period 1989–1990 and are consistent with the State or local agency's November 15, 1992 inventory submittal, then this data would be used. If daily emissions records are not available for the 1989–1990 period, then the baseline would be established based on the average daily emissions value calculated by dividing the average emissions over the 1989–1990 period by 730 days. These baseline emissions are annualized and reduced by the projected reductions from 1990 through the year 2000 (using anticipated control factors from control measure implementation). Finally the reduced baseline is prorated to establish monthly emissions caps by dividing annual emissions by twelve. The purpose for using the median or average value for calculating baseline emissions is to determine the representative emissions of the affected facility.

(4) Compliance Plans. This proposed regulatory format requires owners and operators of subject facilities to calculate total VOC and NO_x emissions from all process and area emissions sources at the facility for the base year 1990, adjust these emissions by the projected reductions to be achieved by 2000 and then reduce the year 2000 emissions by 4 to 9 percent for VOC and 6 to 9 percent for NO_x per year from 2001 through 2005. Owners or operators could use a variety of methods to reduce VOC and NO_x emissions by installing new control equipment and/or increasing control efficiency of existing equipment, process modifications or substitutions, or reducing operating schedules.

The specific provisions sections of the rules require each owner or operator of a subject facility to prepare a VOC and/or NO_x emission reduction compliance plan for the years 2001 through 2005 and submit the plan to EPA by January 1, 1999. EPA could comment on any plan and request additional information if needed to adequately evaluate the requirements of the plan. Each owner or operator would submit a revised plan to EPA within 30 calendar days of the receipt of EPA comments. The source would then comply with the provisions of the most recent plan approved by EPA. The owner or operator would include the following information in the plan:

- Name, title, address, and telephone number of the owner or operator of the facility, and the person responsible for preparing the plan;
- An estimate of baseline (year 2000) VOC and/or NO_x emissions from all emissions sources at the facility;
- Methods to be employed to achieve the annual percent emissions reduction;
- Test or demonstration methods used to demonstrate achievement of the VOC and/or NO_x emissions reductions,
- Projections of annual VOC and/or NO_x emissions for each source through the year 2005 after application of the VOC and/or NO_x reduction methods described in the plan; and
- For all sources, all information required as part of the facility's Title V operating permit. If a source is not subject to Title V, then the source would submit information similar to that provided by sources subject to Title V.

EPA is proposing to require submittal of the plans two years prior to the effective date of the limitations of the rules (i.e., January 1, 1999) to obtain a more accurate estimate of baseline VOC and NO_x emissions, to identify subject facilities, and to encourage subject facilities to develop a comprehensive, long-range control strategy for reducing VOC and NO_x emissions.

The submittal of baseline VOC and NO_x emissions data in 1999 will provide the EPA with more accurate, facility-specific data for evaluating progress toward attainment of the ozone NAAQS and will allow EPA to evaluate whether the cap rules should require higher or lower VOC and NO_x reductions than the proposed annual rates. In addition, this information is important to EPA because it will provide a current estimate of emissions for the affected sources. Hundreds of small, uninventoried facilities are located in the FIP control areas account, in the aggregate, for a significant source of the VOC and NO_x emissions. Although the databases contain area source emissions estimates to account for uninventoried sources classified under some source categories, the area source emissions estimates are based on inexact data (i.e., the amount of coating or solvent used in the county, etc.) rather than emissions associated with individual facilities in the control area.

EPA will also use the emission reduction plans submitted to identify the number and location of subject facilities. This determination is needed to estimate resource requirements for conducting facility inspections for enforcement of the rules. Enforcement personnel will also use the plans to prepare for facility inspections.

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[67] It is important to note that while sources which emit less than 4 tons per year of NO_x and VOC are not required to comply with all of the elements in the FIP cap program, if a source which is classified as being in one of the categories listed emits greater than 2 tons per year but less than 4 tons per year, then that source will be subject to annual exemption verification requirements to ensure that it remains exempt from the other requirements of the FIP cap requirements.

(5) Reporting, Recordkeeping, and Compliance Requirements. Owners or operators of facilities which would be subject to the VOC and NO_x limitations of the rules would also be subject to annual reporting requirements.

Owners or operators would certify to the EPA by March 1 of each calendar year, beginning in 2002, that they have complied with all of the requirements of the rule for the previous calendar year on a monthly basis. Owners or operators would also submit documentation of the methods used to achieve the VOC and NO_x reductions.

(6) Penalties. In the FIP cap rules, EPA proposes an exceedance-based approach to establishing statutory maximum penalties for monthly emission cap exceedances. EPA favors the use of an exceedance-based approach to establishing penalties for emissions limit violations in cap programs and as such, is proposing such an approach for the FIP cap program. The FIP cap rules specify that each 50 pound increment or fraction thereof above a monthly emissions cap would be considered a violation for federal enforcement purposes. For example if a facility was subject to a 2000 pound per month emissions cap and in one month exceeded its emissions cap by 500 pounds, then that facility would have been liable for 10 violations when establishing the statutory maximum penalty for federal enforcement purposes. EPA is seeking public comment on the specific increment (50 pounds per violation—also referred to as a violation-increment) found in the proposed regulations. EPA will consider whether values in a range up to 200 pounds per violation are necessary or adequate. However, the ranges discussed in the FIP should not be construed as what would necessarily be required for all types of cap programs or economic incentive programs including those developed at the State or local level either as a supplement to the FIP cap program or as a replacement for the FIP cap program. For example, State/local agencies may design programs which incorporate enforcement authorities that are unavailable to EPA (e.g., mandatory minimum civil penalties for violations) and which may compensate for somewhat higher violation-increments. In addition to the emissions limit violation penalties, all of EPA's enforcement authorities under section 113 of the CAA apply in the FIP cap program.

Following is a detailed description of each source category for which EPA has proposed emission cap rules.

c. Industrial and Commercial Solvents and Coatings— (1) Source category description. The industrial and commercial solvents and coatings source category includes emissions from dry cleaners; degreasing operations; and all types of coating and/or solvent clean-up operations. Examples of coating operations include, but are not limited to: aerospace component coating; automobile and light-duty truck assembly-line coating; can and coil coating; paper, film, and fabric coating; flatwood products coating; large appliance coating; magnet wire coating; marine vessel coating; metal and wood furniture coating; miscellaneous metal parts and products coating; motor vehicle and mobile equipment refinishing; plastic parts coating; and graphic arts (printing) operations.

While EPA has proposed an exemption level similar to that found in the traditional regulations for this source category, EPA seeks public comment on the exemption level found in the rules and will review this exemption level prior to program implementation.

(2) Issues. The major issue on which EPA seeks comment is whether these emissions should be covered by the cap rule as proposed or by a manufacturers bubble approach (see section (i) for discussion). The FIP cap rule approach would provide the owners or operators of facilities using industrial and commercial coatings and solvents the most compliance flexibility. Owners or operators could use a variety of methods to comply with the rule. Such methods include installing new emission control systems or increasing the efficiency of existing control devices, process modifications or substitutions, or limiting the amount of solvent used at the facility. Process modifications including installing new, more efficient processes, increasing the efficiency of existing processes, or limiting process operating time. Substitutions include the replacement of solvent-based coatings with low-VOC coatings.

d. VOC Emissions Associated with the Manufacturing of Products— (1) Source category description. The rule for this source category will regulate VOC emissions from manufacturing and fabrication processes used to produce organic chemicals, gases, rubber and miscellaneous plastic products. Examples of products manufactured or fabricated by processes that would potentially be covered by this rule are:

- Industrial organic chemicals and gases. Industrial organic chemicals include, but are not limited to, gum and wood chemicals, cyclic organic crudes and intermediates, organic dyes and pigments, and 280 organic chemicals (listed in the TSD).
- Drugs which include, but are not limited to, medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products.
- Soaps: detergents; cleaning, polishing, and sanitizing preparations; surface active agents, finishing agents, sulfonated oils, and assistants; and perfumes and cosmetics.
- Food additives and sweeteners.
- Paints, varnishes, lacquers, enamels, inks, primers, paint removers, thinners, stains, shellacs, cleaners, putty, coatings, adhesives, fillers, sealants, explosives, and carbon black.
- Fabricated rubber and miscellaneous plastics products including, but not limited to, tires and inner tubes; rubber and plastic footwear, hose, belting, gasket, packing, and sealing devices; and molded, extruded, and lathe-cut mechanical rubber goods.

The proposed rule for this source category contains an exemption level of 10 pounds per day of VOC emissions. While EPA has proposed an exemption level similar to that found in the traditional regulations for this source category, EPA seeks public comment on the exemption level found in the rules and will review this exemption level prior to program implementation.

e. Disposal of Materials Containing VOCs

(1) Source category description. The proposed rule for this source category would regulate VOC emissions at organic waste disposal facilities. Organic waste disposal facilities include any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of organic wastes that contain VOCs or to reclaim or recycle organic compounds or gases from organic wastes that contain VOCs. Examples of organic waste disposal facility include: landfills; publicly owned treatment works (POTWs); hazardous waste treatment, storage, and disposal facilities; and sewage sludge, solid waste, and hazardous waste incinerators. Waste solvents, coatings, and other products which contain VOCs are the major source of VOC emissions at these facilities. The VOCs contained in consumer products which are flushed to POTWs after use may be a major source of VOCs at POTWs. Given the limited data available on emissions from these facilities, no exemption level is included in the proposed rule. Upon

receipt of baseline data in 1999, EPA will evaluate an exemption level for this source category.

(2) Issues. EPA is requesting any information which can be used to characterize the number, size, and location of, and VOC emissions from organic waste disposal facilities located in the FIP areas. EPA is also requesting public comment on the need for this rule because the reductions associated with the industrial and commercial solvent use and the consumer and pesticide products rules may result in a reduction in VOC emissions at organic waste disposal facilities.

f. Commercial Food Preparation and/or Baking—(1) Source category description. The proposed rule for this source category will regulate VOC emissions from commercial food preparation facilities. Commercial food preparation facilities include commercial bakeries and commercial charbroiling, fruit and vegetable preservation, grain mill production, malt beverage production, vegetable oil production, and wine- or brandy-making facilities, and restaurants involved in any of the aforementioned activities. The rule for this source category includes an exemption level of 10 pounds per day of VOC emissions. While EPA has proposed an exemption level similar to that found in the traditional regulations for this source category, EPA seeks public comment on the exemption level found in the rules and will review this exemption level prior to program implementation.

(2) Issues. EPA is requesting public comment on methods for adjusting requirements for sources which barely exceed the exemption levels. For these small sources, it will become increasingly onerous to reduce emission levels. EPA is considering implementing the initial emission reduction requirements at a later date (though within a timeframe consistent with the attainment of the ozone NAAQS in the FIP areas) for these sources.

g. Petroleum and Natural Gas Extraction, Processing, and Storage—(1) Source category description. The proposed rule for this source category would regulate VOC emissions from all VOC sources at oil and natural gas drilling wells (both on-shore wells and wells located offshore that, by virtue of the rule for onshore wells, would then be regulated by EPA's Outer Continental Shelf regulations in 40 CFR part 55); oil refineries; and petroleum, gasoline, and natural gas storage facilities. Storage facilities include extraction and refinery facilities, bulk gasoline plants and terminals, or any other facility which distributes petroleum, gasoline, or natural gas to retail outlet and wholesale purchaser-consumer facilities.

The intent of this proposed rule is to reduce VOC emissions associated with petroleum and natural gas production, processing, and storage without limiting gasoline supplies. Retail gasoline service stations are exempted from this rule because these facilities already are complying with existing regulations.[68]

(2) Issues. EPA is undecided on whether wholesale purchasers/consumers should be subject to the VOC limitations of this rule. A wholesale purchaser/consumer includes any business which is the ultimate consumer of natural gas, gasoline, or other petroleum-based fuel. Examples of wholesale purchaser/consumers include airports and fleet vehicle operations. Public comment is requested on potential control methods for wholesale purchasers/consumers (other than restricting the amount of petroleum, natural gas, or gasoline purchased) which could be applied under the rule.

h. NO_X emissions sources— (1) Source category description. The proposed rule for this source category will regulate NO_X emissions in Ventura County from the following processes:

- Any boiler, furnace, oven, dryer, heater, incinerator, test cell and any solid, liquid or gaseous fueled equipment with a maximum rated capacity greater than or equal to 2 million Btu per hour;
- Any internal combustion engine with rated brake horsepower (bhp) greater than or equal to 50 bhp, regardless of operating time;
- Any gas turbine rated greater than or equal to 0.2 megawatts excluding any emergency standby equipment or peaking unit;
- Any petroleum refinery fluid catalytic cracking unit;
- Any petroleum refinery tail gas unit;
- Any kiln or calciner;
- Any equipment burning or incinerating solid fuels or materials;
- Any sulfuric acid production unit;
- Any portable combustion and process equipment;
- Any emergency standby equipment or peaking unit;
- Any NO_X source for which NO_X emissions reported to the state or local agency were equal to or greater than 2 tons per year for the calendar year 1990.

The proposed reporting exemption level of 2 tons per year of NO_X emissions is based on work done by the SCAQMD in their development of the RECLAIM program.

(2) Issues. EPA is requesting comment on alternative exemption levels particularly for the FIP areas for these sources. For instance, the participation level could be as low as 2 tons per year, with an exemption level of 1 ton per year in the control areas. With respect to the South Coast FIP area, EPA is intending to use the RECLAIM NO_X program's reductions for use toward attainment in lieu of implementing the FIP cap NO_X program (this strategy may also be used in the case of a VOC RECLAIM program if the South Coast should develop such a program). If EPA is unable to approve the NO_X RECLAIM program, EPA would promulgate the NO_X cap program in the South Coast to achieve comparable reductions.

i. Alternatives to the FIP cap program—At present, EPA has identified several alternatives to the design of EPA's proposed FIP cap program. For example, the FIP cap program does not include a trading component (i.e., the current proposal does not provide for trading of emission credits to achieve reductions). In addition, the industrial and commercial coatings and solvents source category could be regulated at the manufacturer level as opposed to the user level. Finally, the use of other economic instruments such as fees is also an alternative to the cap program proposed today. EPA seeks public comment on any of the following issues as well as any other issues or designs that may be available to achieve equivalent emissions reductions.

(1) Trading of emissions. Although EPA's thinking on how to incorporate trading into a facility-wide emissions cap program has advanced in the last several months, EPA believes that the trading of emissions in the three FIP areas to meet facility emissions caps requires further study prior to implementation. To this end, EPA will be examining many of the issues that arise as a result of the use of emissions trading to meet emissions cap requirements. Some of the issues that will be examined are:

- The impacts of emissions trading on the FIP areas' ability to meet ozone attainment requirements;
- How enforcement of applicable requirements will be carried out with a trading system;
- Whether VOC trading would pose an increased exposure to toxic emissions (or hazardous air pollutants, many of which are also VOCs) and whether toxics trading would be allowed given EPA's work on Title III regulations and EPA's commitment to environmental justice;

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[68] Service stations will be further regulated through category specific regulations proposed elsewhere in this notice.

- Whether differences in accuracy of emissions quantification methods would necessarily limit trading to source emissions that could be quantified within some minimum level of accuracy, or to limit trading to sources which are in the same source category;
- Whether there would be an economic impact on the three FIP areas because of emissions trading;
- The interface between trading and new source review requirements in the FIP areas;
- Market structure issues, such as the length of the compliance period, the type of market established, market administration, implementation of trades, and general data tracking involved with trading; and
- Resource issues involved with the implementation of a trading system (i.e., can EPA provide the additional resources needed to administer a trading program?).

(2) Manufacturers Bubble for Industrial and Commercial Solvents and Coatings. (a) Introduction. All of the California FIP areas suffer from emission reduction shortfalls after application of the proposed conventional FIP stationary, area, and mobile source controls. These shortfalls must be accounted for in order to bring the FIP areas into attainment. In this NPRM, EPA is discussing and taking comment on the use of a statewide manufacturers "bubble" rule as an alternative to the cap program to obtain required reductions in the FIP areas. Given that manufacturers sell products throughout California, EPA believes, based on its experience with other designs,[69] that statewide regulation is the only effective means of controlling these emissions at the manufacturer level. The intent of EPA's extensive discussion is to provide sufficient detailed discussion of the manufacturers bubble concept so that between the proposal of the FIP and its final promulgation, EPA can develop and include in the final FIP promulgation a measure in final regulatory form that will incorporate the concepts discussed (EPA will avoid the task of a supplemental proposal by discussing the manufacturers bubble in detailed form). The purpose of this rule would be to reduce VOC emissions from industrial and commercial solvents and coatings. This reduction would be realized by limiting the VOC content of these products at the point of manufacture. This type of regulation is consistent with EPA's new commitment to preventing pollution at the source, rather than at the end of a process or processes.

This manufacturers bubble rule would serve as a method to regulate the emissions of VOCs from industrial and commercial solvents and coatings. This proposed regulatory program would establish a VOC content limit that companies who manufacture solvents and coatings would have to meet, on average, for all of their products sold in the State of California. EPA is proposing this alternative in preliminary form only at this time and solicits the public's comments on the concept and technical merit of this program. If this approach is ultimately selected, actual rule language will follow, and will incorporate the concepts proposed in this NPRM, as well as ideas and concerns expressed in comments received.

While EPA realizes that the most straightforward means of regulation would be to put a firm limit on the maximum allowable VOC content on every coating and solvent, EPA has determined that this regulatory strategy may become, at some point, excessively onerous on the manufacturers and users of industrial and commercial solvents and coatings, and would limit the availability of commercially useful solvents. Imposing content limits stringent enough to obtain the necessary reductions in VOC emissions needed to bring the FIP areas into attainment may be technology forcing. In addition, EPA does not have the resources to effectively research the solvent and coating industries to determine feasible content limits for every coating and solvent, especially considering the court-ordered deadline for promulgation of this FIP.

EPA intends that the manufacturers bubble rule discussed here would achieve the VOC reductions necessary to bring the FIP areas, along with other control measures discussed elsewhere in this action, into attainment while minimizing any technology-forcing aspects of the rule. EPA believes that, within the FIP context, promulgating a rule that allows manufacturers to comply by averaging VOC content may provide necessary emission reductions with a minimum of adverse regulatory impact. Such a rule would allow manufacturers the flexibility necessary to comply at minimum cost.

(b) Withdrawal of rules based on SIP progress. As noted elsewhere in this NPRM, the manufacturers bubble program rule may be affected (i.e., rescinded or modified) by State or local measures which are adopted and implemented prior to implementation of the manufacturers bubble program and which represent the necessary emission reductions from industrial and commercial solvents and coatings.

(c) Relationship with other FIP provisions. EPA intends that the manufacturers bubble rule discussed in this subsection will work simultaneously with the FIP cap program proposed elsewhere in this NPRM to obtain a significant portion of the reductions needed to reach attainment of the ozone NAAQS in the FIP areas. However, EPA is considering additional options for the interaction of these two programs (the FIP cap program for these emission sources and the manufacturers bubble for these same sources) and requests public comment on the merit of these options. EPA is considering using the manufacturers bubble program to preempt portions of the cap program (particularly the FIP cap program covering industrial and commercial coatings and solvents). The manufacturers bubble program may be used to relieve portions of the cap program requirements either for a particular source category (such as industrial and commercial solvents and coatings), or to reduce the total VOC emission reductions expected from the cap program. The following sections provide a detailed discussion of the proposed manufacturers bubble program.

(d) Implementation date. EPA is proposing that the manufacturers bubble rule would be implemented January 1, 2001 to be consistent with the implementation date of the FIP cap program discussed earlier while achieving the necessary reductions for attainment, unless it is withdrawn prior to that date on the basis of State or federal progress in reducing emissions of VOCs.

(e) Applicability. This proposed rule would affect U.S. manufacturers and importers who offer for sale in the State of California industrial and commercial solvents and coatings. These solvents and coatings include, but are not limited to, the categories listed in section iii.c.5.c.(1) of this NPRM.

EPA requests comment on the inclusion or exclusion of these and other categories from the definition of industrial solvents and coatings.

(f) Exemption limit. EPA proposes and requests comment on two options for determining the minimum size of a manufacturer that would be subject to this rule. It is EPA's intention to include in this rule only those sources whose products have a potential to emit a nontrivial amount of VOC to the atmosphere. Therefore, EPA proposes that only those manufacturers whose products have a potential to emit at least 0.5 ton of VOC in California in a calendar year be subject to this manufacturers bubble rule. This potential would be measured by multiplying the manufacturer's total annual sales in the State of California by the VOC content of those products.

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[69] In particular, EPA is aware of CARB's efforts to design a similar program for consumer products

As an alternative to using potential VOC emissions as a measure of the minimum manufacturer size that would be subject to this rule, EPA requests comment on using a manufacturer's pretax gross revenues to determine their relative potential to emit VOCs. With this method of exemption measurement, manufacturers of industrial and commercial solvents and coatings with annual pretax gross revenue below $500,000 would be exempt from this rule. Another alternative to determining this exemption level is to base it on annual unit sales of VOC-containing compounds. Under this option, a manufacturer who sold less than 100,000 units of VOC-containing materials in the State of California in one calendar year would be exempt from the rule.

(g) Conceptual design. This rule would establish VOC content limits for a variety of solvent and coating categories (see the applicability section of this discussion for details). These content limits would be derived from EPA's published Control Technique Guidelines,[70] as well as the reasonably available control technology/best available retrofit control technology (RACT/BARCT) determinations established by CARB or current District rules, Manufacturers would be in compliance with this rule if the average VOC content of their products was less than the average content limits set for those categories that the manufacturer produced. This average would not be a simple arithmetic average. Instead, it would be a weighed average, where the weights on VOC content would be derived from the demonstrated number of units sold by that manufacturer during the compliance period in the State of California. This averaging is expressed mathematically in the following formulas:

$$\text{Average Content Standard} = \frac{\sum_{i=1}^{n} VOC_i}{\frac{1}{N}\sum_{i=1}^{n} VOC_i}$$

$$\text{Average Emissions} = \sum_{i=1}^{n} VOCC_i SW_i$$

$$SW_i = \frac{S_i}{\sum_{i=1}^{n} S_i}$$

Where:
N=Number of Products;
i=Product Index;
$VOCC_i$=VOC content of product i;
SW_i=sales weight of product i
S_i=sales of product i
VOC_i=Content Standard for the ith product;

A manufacturer will be in compliance if:

Average Emissions ≤ Average Content Standard

That is, if average emissions are less than or equal to the average content standard, the manufacturer is in compliance.

EPA currently is proposing that the compliance period be quarterly. Prior to the implementation of the manufacturers bubble program, EPA will prepare a statistical showing that the aggregate effect of the specified averaging time is consistent with attaining the ozone NAAQS and satisfying applicable progress requirements on a typical summer day basis in accordance with the proposed economic incentive program rules and guidance (see 58 FR 11110, February 23, 1993). However, EPA is also considering annual, monthly, and flexible compliance periods, and is soliciting comment on the appropriateness of the duration of these compliance periods.

EPA is also soliciting comments on establishing a single VOC content limit for all industrial and commercial solvents and coatings, which would be the level that a manufacturer's sales weighted average must be less than or equal to in order to be in compliance. This option differs from the averaging scheme discussed above in that instead of having several VOC content limits for each source subcategory that would be used to determine if a manufacturer was in compliance, a single VOC content limit for all industrial and commercial coatings and solvents would be established. Manufacturers products would have to be less than or equal to this content limit, on average, in order to comply with the rule. This option is exhibited mathematically in following formulas:

$$\text{Single Content Standard} = \frac{\sum_{i=1}^{n} VOC_i}{\frac{1}{N}\sum_{i=1}^{n} VOC_i}$$

$$\text{Average Emissions} = \sum_{i=1}^{n} VOCC_i SW_i$$

$$SW_i = \frac{S_i}{\sum_{i=1}^{n} S_i}$$

Where:
N=Number of Products;
i=Product Index;
$VOCC_i$=VOC content of product i;
SW_i=sales weight of product i
S_i=sales of product i
VOC_i=Content Standard for the ith product;

A manufacturer will be in compliance if:

Average Emissions≤Average Content Standard

That is, if average emissions are less than or equal to the content standard, the manufacturer is in compliance.

While the proposed manufacturers bubble rule provides compliance flexibility for manufacturers with several products, requiring manufactures that produce only one solvent or coating to meet content limits could put them at a disadvantage. Because of this, EPA is soliciting comments on options to ease the regulatory burden on manufacturers with one product. Specifically, EPA is considering the following options:

- Including these manufacturers despite the competitive disadvantage
- Excluding these manufacturers from the rule
- Raising the minimum size manufacturer that would be subject to the rule for these manufacturers

(h) Recordkeeping and reporting. To demonstrate compliance, EPA will require manufacturers subject to this proposed manufacturers bubble rule to submit documentation to EPA. This documentation will be submitted in two parts. The first part will be a plan describing what products the manufacturer intends to market during that compliance period, the VOC content of each product, an estimate of their sales during the compliance period, and how the manufacturer intends to conclusively show what the sales of those products during the compliance period actually were. EPA will review this plan for completeness and the viability of the proposed sales reporting method. EPA will approve or disapprove this submission within the 90 days of the compliance period. In the case of an incomplete submittal or disapproval, EPA will notify the submitting manufacturer of the deficiencies, and will require another submittal before the end of the second quarter of the compliance period.

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[70] These limits could be expressed in pounds per gallon (grams/liter), weight percent, or volume percent of VOC. EPA seeks comment for a preferred means of expressing these limits.

The second part of this compliance demonstration will be submitted to EPA at the end of the compliance period. This document will contain the sales demonstration for each of the manufacturer's products that are subject to this manufacturers bubble and their VOC contents. This demonstration will follow the methodologies approved by EPA in part one of the compliance demonstration. Manufacturers will be required to retain all documents pertaining to this compliance demonstration for a period of five years. EPA solicits comments on these proposed recordkeeping provisions.

(2) Implementation and enforcement issues. Because of EPA's limited resources, the agency intends to require manufacturers subject to this proposed rule to structure their compliance demonstrations in such a way so that the agency can minimize its review and enforcement costs. EPA invites comment on ways to accomplish this goal. The agency invites comments from other entities with experience in designing and implementing these types of manufacturers bubble programs. EPA especially seeks comment on ways to reduce the cost of enforcement against manufacturers with a potential for multiple inspection locations.

(3) The use of other economic instruments to incentivize emission reductions. EPA is also examining the use of other economic instruments to achieve emission reductions equivalent to the proposed FIP cap program. The primary instrument that EPA is considering is the use of emission fees to accomplish the necessary reductions in the FIP areas. The use of fees will involve examining at least the following issues:

- Fee structures: how much should be charged for a given quantity of pollution and how will the fee structure affect the FIP areas' ability to attain the ozone NAAQS? Should fees be constant up to an allowable emissions limit and increase as excess emissions increase?
- Permitting issues: how will NSR and other permitting issues be addressed?
- Enforcement issues: how will EPA or the FIP areas enforce a fee program?
- Economic impacts: how will the use of fees affect the FIP areas' economies?

EPA seeks public comment on the above fee-related issues as well as comment with respect to the use of other economic incentive strategies not discussed in this proposal.

D. Mobile Sources

1. Overview of Mobile Source Issues and Measures—*a. Emissions Credit for the California Motor Vehicle Control Program.* The California LEV program relies on advanced emission control technologies, clean gasoline, and an on-board diagnostic (OBD) system, which together with enhanced I/M, or its equivalent, are designed to assure that in-use vehicles emit at levels close to their respective emission standards. EPA is confident that the LEV program will achieve substantial emission reductions beyond those which will result from federal cars. Emission reductions for the LEV program used in the FIP reflect a substantial reduction in the rate of emission deterioration compared to current vehicles.

EPA believes that the California LEV program has addressed the problem of excessive in-use emission deterioration with its on-board diagnostics program, which requires the identification of individual vehicles whose emissions exceed the certification standards by more than 50 percent. Furthermore, ARB's assessment of the new technology which will be used to comply with LEV standards has identified many new components and control techniques which will improve emission durability. These features of the LEV program will help assure that in-use vehicle emission deterioration will be substantially reduced from current levels and that the low emission attributed to the program by ARB will be realized in-use.

b. Summary of Mobile Source FIP Measures—In 1990, passenger cars, other highway vehicles, nonroad engines and equipment, and the transportation facilities used in interstate commerce produced from 53 to 63 percent of the total inventory of volatile organic compounds (VOCs) and from 70 to 94 percent of the total inventory of oxides of nitrogen (NO_X) in the FIP areas covered by this proposal. In order to demonstrate attainment of the ozone standard in these areas, it will be necessary to propose regulations which assure significant reductions in mobile source emissions—beyond those already expected from the continued turnover to newer, cleaner vehicles and engines. The mobile source category covers a very broad range of sizes of equipment, types of fuels, uses and operating modes, and extent of current pollution control. Therefore, there is no one measure or even one uniform type of measure which is proposed across the category to achieve the reductions needed for the attainment plans.

In addition to those measures that are required in all States by the Clean Air Act Amendments of 1990, and those measures being implemented by the State of California and local agencies, EPA considered measures requiring cleaner vehicles and engines via further improvements in technology or through incentives for users to select alternatives with lower polluting characteristics. EPA also developed measures which will achieve emission reductions from other remaining mobile source categories, both to provide sufficient reductions for attainment and to ensure that each category of emission source was contributing to the solution. The following specific measures were developed.

(1) Programs for Light Duty Vehicles. EPA expects the California Low Emission Vehicle (LEV) program will substantially reduce emissions from cars and light duty trucks, compared to federal standards. However, despite the use of advanced technologies and the OBD requirements, ARB projects LEVs will exceed their certification standards in-use. Emissions above the certification standards will occur because some models may experience more in-use deterioration than expected, or because individual vehicles experience component failure or improper maintenance which is not immediately corrected by the various existing in-use compliance programs, including enhanced I/M.

Because the magnitude of the emission reductions needed for attainment is so great, the adoption of further measures to reduce these in-use emissions will help reach attainment of the ozone standard. EPA is therefore seeking comments on the need for and benefits of adopting an enhanced in-use compliance program which would provide extra emission reductions above and beyond the substantial reduction provided by the California LEV program.

Specifically EPA is considering three approaches. The first would modify the current federal recall program to initiate recalls based on the emission results of vehicles tested in their as-received condition, but from vehicles which are subject to the new enhanced I/M program and thus should be well maintained. Obviously tampered or abused vehicles would also be excluded from that sample. This differs from current practice and would result in a shift in responsibility for ensuring low in-use emissions from the consumer to the manufacturer.

The second approach would make manufacturers responsible for vehicle repairs in those cases where vehicle failure rates for a particular model in an enhanced I/M program exceed a threshold level (e.g., greater than 5 percent within the first 5 years). This approach (i.e., an I/M-based, selective recall program) also provides an incentive for vehicle manufacturers to increase the durability and reliability of their designs.

The third possible program involves adoption of a requirement that the on-board diagnostic system of new vehicles be capable of communicating, to on-road sensors, the operational status of the emission control system (i.e., whether a fault has been detected). This approach would allow for the immediate detection of high emitting vehicles so that they may be submitted for repair.

(2) Programs for Medium Duty Vehicles. California's medium duty standards for 1995 and later model years apply to all vehicles between 6000 and 14,000 pounds Gross Vehicle Weight Rating (GVWR). Manufacturers have previously been able to certify medium duty vehicles over 8500 pounds under the less stringent heavy duty standards and procedures. California rules require further reductions to be phased in between the 1998 and 2003 model years, through a California medium duty LEV program. EPA proposes to accelerate the medium duty LEV program phase in and to require additional emission reductions. EPA is also requesting comment on including all 1999 and later model vehicles certified under California's medium duty LEV program (as modified by the FIP) in an enhanced in-use compliance program similar to that described for light duty vehicles. An option to certify engines used in these vehicles under the stringent heavy duty engine program described below is also available.

(3) Programs for Heavy Duty Vehicles. Currently, heavy duty engines for highway vehicles are certified to national emission standards; no waiver is in place for the State of California to enforce different standards for engines sold in the state. EPA proposes that, beginning with the 1999 model year, more stringent standards would apply for NO_X and HC exhaust from heavy duty engines sold in California, and strict evaporative hydrocarbon requirements would also be applied to prevent a shift from diesel to gasoline fuel which could make reductions in NO_X easier but would result in higher HC emissions. As with light duty vehicles, the FIP proposes additional measures to enhance in-use compliance for the engines' full operational life, including as-received recall requirements. The FIP also proposes to include some pre-1999 model year heavy duty vehicles in the I/M program.

Since the emission reductions from the heavy duty engines are very important to the attainment demonstration, it is also necessary to ensure that the fleet operated in California continues to experience normal turnover. The introduction of tighter standards can work against turnover, however, if heavy duty vehicle owners perceive that costs will rise or that new technology is risky. To ensure a normal turnover in heavy duty engines, the FIP proposes a declining average NO_X level for operating fleets starting in the year 2000. The decline in average NO_X will reflect the historical level of new engine purchases and old engine retirements..

Many trucks operating in California are also engaged in interstate commerce. California Air Resources Board (CARB) data show that about 20 percent of the mileage accumulated for heavy-duty vehicles in California is from trucks registered in other States. If new emission standards are adopted for California trucks, the interstate trucks would likely remain certified only to the less stringent federal standards, and their use in California could increase, preventing the new California standards from achieving their full potential for emission reduction. Tighter emission standards only on California registered trucks could impose a cost burden on California shipping firms that would not exist for shippers based outside of the state. EPA wants to avoid such a competitive disadvantage for trucking firms based in California since it could result in even more operation by out-of-state trucks, and is requesting comment on two options for a policy to deal with federally certified interstate trucks driving in California. These programs could be implemented together or separately.

First, starting in 1999, EPA proposes that any time a federally certified truck (i.e., not meeting the FIP standards and not included in a California fleet averaging program) with multiple-state registrations operates in the state, it could make no more than one stop in either the South Coast, Ventura, or Sacramento FIP areas. Any pickup or delivery would be considered a stop. Also interstate trucks making a stop in one of the FIP areas would not be permitted to make more than two stops statewide.

Second, starting in 2005, EPA is proposing to require all trucks which do not meet FIP standards operating in the state to be certified to the federal emission standards for 1998 and later model engines. Preventing earlier models from operating in California would greatly reduce the emission contribution from the interstate portion of the heavy duty fleet.

(4) Programs for Nonroad Vehicles and Engines. EPA has begun the process of setting national emission standards for a wide variety of nonroad sources including, but not limited to, small spark ignition engines used in lawn and garden and other utility equipment, recreational vehicle and marine engines, and heavy duty farm and construction equipment. In addition to these national standards, special California-only standards are proposed in the FIP for certain subcategories of engines and equipment:

(a) Nonroad Heavy Duty Engines (engines at or above 50 horsepower, 37kW). Phase 1 of the FIP proposal incorporates the national program for control of NO_X from new nonroad heavy-duty engines which will be published in final rulemaking by May 1994. The FIP also proposes standards for HC, CO, particulates, and smoke. These standards are consistent with the nonroad equipment standards which have been adopted in California. The effect of Phase 1 is to extend the application of the California standards to farm and construction equipment which California is currently pre-empted from regulating.

New engine standards would be phased in on a national basis by engine size over four years beginning January 1996. The national standards apply to all compression ignition engines at or above 50 horsepower (37kW) except engines used in underground mining activity, aircraft, marine vessels, or to propel locomotives.

Phase 2 of the FIP proposal for this equipment category contains a program to ensure that nonroad engines over 50 horsepower used in the FIP areas meet stringent NO_X and HC standards over their full useful lives. The program includes a combination of low NO_X and HC standards, very stringent ILEV evaporative requirements, and other elements of an enhanced in-use compliance program. Requirements are also proposed for engine rebuilds.

For Ventura and the South Coast, the FIP proposes the same numerical NO_X standard for nonroad engines as is proposed for on-highway heavy duty engines. It proposes a less stringent standard for nonroad equipment used in the Sacramento area, because less NO_X reduction is needed for attainment.

Nonroad engines and equipment are generally not registered or licensed by a state, with the exception of recreational boats. This fact makes it difficult to administer and enforce a rule for equipment that is different in California (or even in some areas of California) than it is in the rest of the country. But if these subcategories are to contribute their share to the attainment plan (and their share can be quite large as all other types of mobile sources are tightly controlled), then EPA must consider going beyond national standards, fashioning a plan which assures that equipment used in the FIP areas meets tighter standards, and that equipment purchased outside the control area cannot be used to avoid the cost of control. That is what the FIP proposal attempts to do for nonroad heavy duty engines.

A fleet-average standard with a declining emission level which reflects the historical number of new engine purchases and old engine retirements, similar in concept to that for on-highway heavy duty engines, is proposed. Operation of heavy equipment in the FIP areas will be prohibited if the equipment is not part of a registered fleet. Nonroad equipment owners may pool their fleets to facilitate compliance, just as with highway fleets. An equipment labeling system is proposed to allow enforcement by EPA.

(b) Small Nonroad Equipment (spark ignited engines at or below 25 horsepower, 19kW). Since March 1992, EPA has held several public workshops and meetings to solicit information on technical characteristics, emissions, potential regulatory strategies, and other issues related to small spark ignition engines. The Agency believes that the best approach for setting emission standards in this category will be a consultative approach of negotiated rulemaking often called "reg neg." But there is also a sense of urgency about the need for areas to benefit from the reductions in emissions that will result from standards in this category. The result is that EPA will be pursuing a two phased approach to regulation of small spark ignition engines.

In the first phase, EPA will propose regulations through the normal regulatory process. These regulations will be similar to California's regulation for 1995 and later utility and lawn and garden equipment engines. EPA's proposal will extend the regulations in California to engines which California is currently pre-empted from regulating. The second phase of regulation will utilize the reg neg process to develop consensus on important issues, such as useful life, in-use emissions, evaporative emissions, test procedures, and market based incentive programs. EPA believes that Phase 1 standards will result in a 40 percent reduction in the HC inventory from small engines. Phase 2 will achieve a 90 percent reduction in HC inventory from this category. The agency expects that achieving a 90 percent reduction would not depend solely on more stringent exhaust emission standards, but rather on a combination of strategies (e.g., scrappage or other programs to accelerate turnover, fuel requirements , and/or evaporative controls).

EPA's Phase 2 rulemaking is intended to apply nationally in approximately 2000 to 2001. If the Agency's phase 2 program does not come out of the reg neg process providing for a 90 percent reduction in HC, then EPA has committed to propose those more-stringent measures applicable to California, either statewide or in the FIP areas, which are necessary to the overall attainment strategy. The federal rules are expected to explicitly exclude spark ignition marine engines, engines used in underground mining, motorcycle engines, aircraft engines, and those used in recreational vehicles which will be covered elsewhere.

(c) Motorcycles and Recreational Vehicles. EPA believes that by using existing on-highway motorcycle technology, it is possible to reduce the contribution of nonroad motorcycles and recreational vehicles to the HC and NO_X emission levels in the FIP areas. Therefore, it is proposing to treat on-highway and nonroad motorcycles in California equally and to apply a more stringent set of exhaust emission standards to all new on-highway and nonroad motorcycles sold in California after January 1996. This proposal encompasses engines used in such vehicles as mopeds, dirt bikes, all terrain vehicles (ATVs), and go-karts. The standards are being proposed statewide, because EPA believes that that is necessary to assure that the equipment used in the FIP areas meets standards. The level of stringency may require the substitution of 4-stroke nonroad engines for the 2-stroke engines currently used in some nonroad applications, but there is also the prospect that catalyst technology may be viable.

(d) Spark-Ignition Marine Propulsion Engines. Reductions from this subcategory of nonroad equipment will come from a national program of emission standards and from a registering/permitting fee system for operation in FIP-area waters. The national regulation, scheduled to be final by November 1995, will reduce emissions from outboard engines, personal watercraft (jet-skis, etc.), sterndrive engines, and inboard engines through application of new engine emission standards. The standards themselves are not being proposed in the FIP, but will be proposed in September 1994. Reductions in per-engine emissions are expected to be on the order of 70–80 percent from current two-stroke outboard and personal watercraft engines, and up to 30–50 percent from current 4-stroke carbureted sterndrive and inboard engines.

The standards will apply to new spark ignition marine propulsion engines produced after August 1, 1998. Certification procedures will be similar to on-highway procedures, with some modifications appropriate for the ways these engines are used. The program may also include features such as assembly-line testing and recall.

Although these national standards will result in substantial emission reductions per new engine, overall reductions in emissions from this category will depend on how much boating activity uses the newer, cleaner engines, and how much activity uses older engines. EPA expects that approximately one half of the total fleet of marine pleasure craft owned by FIP-area residents will meet the standard by the year 2005. However, equal use of old and new engines, in combination with other available measures to reduce VOCs, does not appear to be enough to meet the goals of the FIP. Therefore, EPA is also proposing a permit based fee system for marine engines produced before the new standards take effect, to strongly discourage use of these very high emitting engines in the FIP areas. The fees for emission permits would be based on the average excess emissions of pre-control engines compared to engines meeting the new emission standards. This fee system would take effect in 2004, and would apply to only operators of marine pleasure craft who wished to operate a boat in the FIP areas. Owners who live in the FIP areas but only use their boats elsewhere would not be affected. Owners of boats meeting the new emission standards would be eligible for emission permits free of charge.

(5) Programs for National Transportation Sources and Federal Activities. The litigation which resulted in today's FIP proposal arose at least in part from a feeling in California that the emission regulation of certain sources was not keeping pace with the attainment needs of California areas or with the stringency of control imposed on other sectors of the California economy. For today's FIP proposal, EPA is proposing controls for these sources which include the following provisions:

(a) Locomotives. Today's proposal has three parts: a program for freshly manufactured locomotives which will be implemented nationwide; a program for remanufactured locomotives which could be implemented nationwide or in California only; and a South Coast program. Reductions from new and remanufactured locomotives should be achievable without causing economic damage to the railroad industry or causing a shift of the freight carrying business to truck-based forms of transportation. At the same time, it will extend the burden of clean air attainment in California to the locomotive sector.

EPA will propose a national regulation that will apply to freshly manufactured locomotive engines beginning in 2000, and may also apply to the remanufacture of engines which were made since approximately 1973. Locomotives may operate for many decades and be remanufactured many times before they are retired. Extending the application of standards to remanufactured engines will accelerate and extend the overall emission reductions in the category.

EPA estimates that a national program for freshly manufactured and remanufactured engines would reduce locomotive emissions in the South Coast by approximately 40 percent from 1990 levels by 2010. As the total NO_X reduction from all sources required in the South Coast is approximately 70 percent, EPA would like to achieve comparable reductions in this category. The FIP proposes that average engine NO_X emissions from locomotives and sources directly associated with locomotives be lowered to the new engine levels through use of clean engines, electric power, and other means. California would retain the right to regulate operational changes in railroads, including time spent idling, rail lubrication, operating times, etc. The overall average would allow companies the maximum flexibility in meeting the additional emission reduction target.

(b) Commercial Aviation. Commercial airports become increasingly important in the attainment effort as time goes by. In the South Coast Air Basin, there are five commercial airports which will contribute nearly 9 percent of a 2010 allowable attainment inventory of NO_X and 6 percent of VOC if left uncontrolled. The emissions contributions in Sacramento and Ventura are smaller than in the South Coast. Airport mobile sources include aircraft; ground service equipment such as baggage carts; and ground access vehicles such as passenger cars, taxis, shuttle buses, etc. Aircraft are the dominant source. The percentage contribution and absolute amount of emissions from ground access vehicles in the future decrease substantially as other FIP measures take effect; ground service equipment emits a smaller fraction of the airport total.

The FIP proposes an airline emissions bubble comprising mobile emission sources under the control of the airlines. These include aircraft, aircraft auxiliary power units, ground service equipment, captive vehicle fleets, and any other airline-operated mobile source. The FIP proposes declining targets for emissions for all commercial airline operations in the Sacramento area, Ventura, and the South Coast Air Basin during the ozone season beginning in 2001. The emission reduction requirements are consistent with those proposed for stationary sources under the emission cap program. This level of allowable emissions would translate into an environmental performance factor, applicable to each airline, expressed as an allowable pounds of pollutant per passenger equivalent unit. Airlines which exceed the limit would pay a fee based on the amount of excess emissions generated.

There are a number of ways that an airline could reduce emissions under its control to avoid compliance fees. Higher plane load factors (fewer empty seats), electrifying ground service equipment, towing airplanes to the runway, increased use of single engine taxiing, and bringing the cleanest planes to the California airports all contribute to emission reductions under the FIP concept. The Agency is proposing that each airline be allowed to average the emissions from its operations at all airports within a FIP area. Such intra-airline averaging could provide airlines with additional flexibility in demonstrating compliance with the emissions target. EPA is also requesting comments on establishing an inter-airline credit and trading program to further enhance compliance opportunities.

(c) General Aviation. General aviation is comprised of a wide variety of aircraft types with significantly different engines: piston, turboprop, and turbine. Much of the general aviation fleet is old, and there appear to be few, if any, significant technological improvements in emission performance which could be obtained without a large investment in research and development. Currently the general aviation manufacturing industry is also in a precarious economic state.

EPA proposes to achieve emission reduction targets for general aviation which are consistent with the emission cap requirements for many stationary sources in the FIP areas. EPA is proposing two fee system options in the alternative for achieving the reductions in general aviation. In the first option, aircraft owners/operators would be charged a fee for each takeoff from an airport in the FIP areas. The fee would be set high enough to discourage use without making general aviation flying prohibitively expensive.

The second option is identical to the first, but incorporates an exemption for engines that are certified to "clean" emission levels. It is possible that an engine manufacturer may find a differential fee system sufficient incentive to begin producing cleaner aircraft for certification and use in California. The proposal also requests comment on differentiating fees for specific airports based on the implementation of other emission reduction measures by the airport proprietors such as refueling vapor recovery where applicable.

(d) Military Installations. Military installations can include a significant amount of mobile source activity. The FIP proposes, with certain exemptions, a military installation bubble in each FIP area encompassing mobile emission sources under the control of the Department of Defense (DOD). This includes auxiliary power units, ground service equipment, captive vehicle fleets, privately owned vehicles, and any other mobile source operated within the boundaries of the installation. A declining cap will be applied which corresponds to the cap imposed on stationary sources within each FIP area.

(e) Ships and Ports. Marine vessels are the largest uncontrolled source of emissions of NO_X and sulfur oxides (SO_X) in California. According to a study prepared for CARB, marine vessels account for approximately 40 percent of all SO_X and 12 percent of all NO_X emissions from both mobile and stationary sources statewide. While most emissions associated with marine vessels occur at sea, a great deal is emitted while the vessel is in port, during maneuvering and hotelling activities. Both are of concern in the South Coast area, since emissions from vessels at sea are transported onshore by the prevailing winds and can affect air quality, and because there are large ports and significant shipping activity in the area.

EPA does not believe that it is practical to pursue a conventional regulatory strategy for marine vessels in the FIP for a number of reasons. Not all ships are equally high emitting, and not all ships spend a lot of time in California ports. An expensive retrofit requirement may serve only to drive shipping traffic to competing port facilities where this special technology would not be required. Also, regulation of ocean-going vessels, especially foreign-registered vessels, is traditionally undertaken by international organizations like the International Maritime Organization (IMO). A unilateral action by EPA to require such technology on all ocean-going ships that enter California's ports may be considered inappropriate by the international organizations that oversee such vessels.

EPA is proposing a flexible control strategy for the reduction of emissions from ships. This strategy would rely on economic incentives to encourage operators of ships that frequently use Southern California ports to take the necessary steps to reduce their emissions. Specifically, an emissions fee would be based on the type of emission control that a particular ship used. Ship operators would be allowed (and encouraged) to reduce the fees which would be applied by using electrical onshore power service instead of the ship's engines while in port. Ships that use South Coast ports more frequently would be faced with higher annual fees, and therefore would have a greater incentive to install more efficient emission control devices to reduce or eliminate those fees.

In Ventura, there are no large ports, but marine vessel emissions are still large contributors to the area's NO_x inventory, because of the emissions that are blown onshore from passing ships by the prevailing winds. The FIP includes in its fee system provisions for encouraging ships to move further out to sea when passing the Ventura coastline.

(6) Programs to Reduce Vehicle Miles Traveled. Passenger cars, light and heavy trucks, buses, and motorcycles have met increasingly stringent new vehicle standards for years, and industrial sources of pollution have installed increasingly sophisticated controls to reduce emissions. But the trends in the total emissions of VOCs and NO_x barely show any reduction over time. One reason for this is the growth in economic activity which causes increases in emissions from stationary and area sources; another reason is the fact that the number of vehicle miles traveled (VMT) has grown, significantly undercutting the impact of improved vehicle emission controls.

VMT is increasing for several reasons: more Americans are working; travel by automobile is cheap and convenient; alternatives to automobile travel are not convenient or do not exist at all in many situations; workers commute suburb to suburb; and workers commute many miles each way in order to be able to afford a single family home. But there are things that local communities can do to change some of the factors that cause the reliance on the automobile. Land use and zoning policies can support mass transportation and car pooling as they now support single occupant vehicle travel. Investments can be made in providing travel alternatives for work and leisure. Communities can begin to make the real cost of driving be reflected in fee systems for parking or use of congested roadways during peak hours. EPA does not have the authority to make the land use planning policies that would be effective in reducing VMT growth in the FIP areas. The Agency could impose fees on passenger vehicles in the FIP, but it could not return the revenue that would be collected to the local area to support transportation alternatives. Therefore, the FIP focuses primarily on additional requirements for improvements in vehicle technology which will contribute to a decrease in per vehicle emissions. But, EPA has also considered whether there are controls which can be imposed via a federal implementation plan which can lead to reductions in vehicle miles traveled. Two measures are proposed in today's NPRM:

(a) Employee Commute Options Program. EPA is proposing two alternative attainment dates for the Sacramento area. The first is the 1999 attainment date which is required by the Clean Air Act Amendments of 1990, for areas classified as serious nonattainment for ozone. EPA is also proposing to bump the Sacramento area up to the severe classification with a 2005 attainment date. Under the Clean Air Act, severe ozone nonattainment areas must implement employee commute options (ECO) programs designed to reduce work-related trips and vehicle miles traveled during peak commuting periods. Specifically, employers with 100 or more employees must develop and implement a plan to encourage employees to use alternatives to the single occupant vehicle commute. Both the South Coast and the Ventura areas have implemented ECO programs, but the Sacramento area has not yet enacted the necessary legal authority, although an ECO program is required under California law. Elsewhere in this NPRM, EPA is proposing to approve the South Coast ECO program. Although EPA is not at this time prepared to approve the Ventura ECO program, EPA need not do so as part of this FIP. Even though EPA is similarly not required to promulgate an ECO program for Sacramento at this time, EPA is proposing to do so because the obligation of Sacramento to do an ECO program under federal law would be a direct result of EPA's proposed bump-up. EPA is therefore proposing an ECO program for the Sacramento area to be implemented if the area's classification is changed to severe. Affected employers must within two years develop programs which are designed to increase the vehicle occupancy of their employees to a target which is 25 percent above the current average vehicle occupancy for all commute trips in the area.

(b) Parking Cash Out. Even in downtown areas, most employees in California receive free or subsidized parking spaces. Current tax codes allow employers to offer this benefit without the employer or the employee having to pay taxes on the value of the space. Since parking costs represent the bulk of the daily cost of driving to work, these "free" spaces are a strong incentive for employees to drive to work alone.

As part of his Climate Change Action Plan, President Bill Clinton has called for transforming much of the existing tax subsidy for employer-paid parking into a powerful reward for commuters to ride transit, carpool, or find other ways to get to work. The Administration will shortly propose changes in the tax law necessary to bring about parking subsidy reform. This same proposal is included in the FIP, in a form which is consistent with EPA's authority. The proposal does not modify the tax code or require payments by an employer. Rather it applies certain restrictions.

Employers of 25 or more employees who lease parking spaces for their employees may not offer free parking unless they offer employees the option of retaining the parking or accepting a cash allowance equal to the market cost of the parking space. The cash allowance will be considered taxable income, but under current law, up to $60 per month of the cash may be taken in the form of a transit pass, which would be tax-exempt. Those who opt for the parking space will be unaffected by the change. Whether the employee decides to take the free parking or the cash allowance, the company can still deduct the cost from corporate income tax. Research indicates that such a program may reduce single occupant commuting by 20 percent in densely developed areas where most employer-provided parking is through leased spaces. The improvement which is achieved will also assist employers in complying with the ECO programs in each of the FIP areas.

(7) Special Issues for Mobile Sources. (a) Inspection and Maintenance.

While stricter standards act to ensure that new vehicles are cleaner than were their predecessors, there has been no guarantee that these vehicles would "stay clean" in actual use. Historically, tampering, lack of proper maintenance, maladjustment, and control equipment failures have meant that cars on the road would emit on average 3 to 4 times more pollutants than the levels for which their control systems were certified. The evolution of vehicles to fuel injection and closed-loop computer control along with the reduction in availability of leaded fuel have significantly reduced the amount that owners tamper with or maladjust their vehicle emission control systems. Simply, the cost advantage of using leaded fuel has disappeared, and vehicle performance has become so closely tied with having all systems operating as designed that it is no longer widely perceived to be beneficial to remove or render inoperative any of the various vehicle systems. Malfunctions of the engine and emission control systems can still occur, however. Periodic vehicle emissions inspection and maintenance (I/M) programs are designed to identify and repair these malfunctions.

For this reason, I/M plays an important role in the FIP proposal. The Clean Air Act Amendments of 1990 require areas such as the FIP areas which are classified as serious or worse ozone nonattainment to implement enhanced I/M programs. Up to this time, the State of California has not enacted an enhanced I/M program which meets the requirements of the national I/M rule which was published in 1992. A recently signed law in California retains the current Smog Check network of licensed inspection garages in slightly altered form. The national enhanced I/M regulations require that inspection and repair functions be conducted separately to avoid conflict of interest and improper testing unless there are other features which provide sufficient reductions to meet the enhanced I/M performance standard. EPA and the State are currently discussing a program design which would meet the enhanced I/M performance standard, but which would also preserve as much business as possible for the currently licensed inspection stations. This program has not yet achieved consensus among all parties and is not represented by specific legislation or as a SIP revision.

The FIP I/M design must also deal with the further constraints that are imposed on EPA, namely that it cannot order the State to implement any of the FIP's required programs, nor can it add to its own appropriation in order to staff the various programs. That means that EPA must design programs which require the minimum level of oversight and administration.

EPA is proposing an enhanced I/M program which follows closely the model program which sets the performance standard for all I/M programs nationwide. EPA would implement the program in the FIP areas through legal agreements between EPA and a private firm or firms which would provide testing services to California motorists. The firm(s) would be authorized to charge a specific fee for the test; EPA's oversight costs would have to be absorbed by the Agency.

EPA believes that an I/M network run by one or a few private firms will, in fact, be the most cost-effective, convenient option for the State in providing I/M testing. It may not, however, meet other economic and social objectives held by State and local authorities, special interest groups, or the public. Some in California have indicated a desire to continue to involve as many individual businesses as possible in the program; some are also interested in exploring alternative test procedures. The fact that these features do not appear in the FIP proposal does not mean that they necessarily could not be pieces of the I/M program which California ultimately adopts in the SIP. However, if a SIP I/M program with a licensed test-and-repair station element is less effective than the I/M program proposed in the FIP, substitution of the former for the latter would require the addition of compensating increases in the stringency of other measures or the addition of measures not proposed for the FIP at all.

Because of the reasons outlined above, EPA is proposing an enhanced I/M program in the FIP. However, EPA and the State are continuing to hold discussions on a program design which would meet the enhanced I/M performance standard. EPA would not finalize the FIP I/M program, should an agreement be reached, if appropriate legislation were adopted and an approvable SIP revision submitted.

(b) Retrofit Programs for Mobile Sources. There has been a considerable amount of interest expressed by California air pollution control officials in retrofit/replacement options for highway diesel vehicles, heavy duty nonroad equipment, and locomotives. These are the categories (in addition to light duty vehicles) which contribute the bulk of the NO_X emissions in the FIP areas. And, a retrofit requirement could accelerate the emission reductions that would normally result from equipment turnover. In order for a retrofit/replacement strategy to work, however, there are a number of tasks which must be completed.

The general knowledge about how and where different types of engines are used must be increased significantly. For each category, there will be different typical lifetimes and rebuild or repower practices as well as differences in current technology and the feasibility of lowering NO_X through in-field engine modifications. To estimate the impact of any measure, it is necessary to know the market share for the engines for which low emission models are available and much more about the usage patterns, for example, how much of the VMT in the inventory is due to local operations versus out-county or even interstate operations. It is also important to consider fleet fueling practices and whether or not there might be difficulties in gaining reasonable access to alternative fuels. Some technological modifications may not be appropriate for engines used on nonroad applications if they accelerate engine wear or reduce reliability in the rugged working conditions which are common to the category. Finally, the economic impact to individual industrial segments as well as on the overall economy in the FIP areas is a critical component in the regulatory decision. Nonroad engines are very specialized to their applications, and the costs of re-engineering engines and fuel systems cannot be spread over large numbers of sales as is the case with on-road vehicles.

If, after consideration of many factors, a decision were made to require retrofit or engine replacement for NO_X, it would be necessary to set emission performance standards for the retrofit/replacement and to promulgate the appropriate test protocols. The fact that there are specialized applications with a very wide range of vehicle duty cycles and engine types and sizes makes it extremely difficult for EPA to develop appropriate test cycles. EPA would also need to devise a process for identifying the individual pieces of equipment to which the requirements would apply, to implement a program in which a fleet operator would certify the efficacy and durability of a retrofit/replacement, and to establish an enforcement system which assured that the emission reductions which were predicted would actually occur.

EPA believes that it has neither the knowledge nor the time which would be necessary to develop an effective retrofit strategy for on-highway or nonroad heavy duty engines in the FIP areas. For the locomotive category, EPA is proposing to develop national or state regulations which will address the rebuilds for locomotive engines. These regulations will contain the test protocols, emission standards and enforcement mechanisms to assure that the reductions occur. Although it is not proposing a retrofit program for existing trucks in any of the FIP areas, EPA is proposing a fleet average standard strategy for on-highway heavy duty engines and a growth cap for the nonroad heavy equipment category as part of a 1999 attainment option for the Sacramento area. The necessary standards, certification protocols, and enforcement mechanism either already exist or are being developed for other FIP areas. The specific details of these requirements are discussed elsewhere in this NPRM.

(c) Adjustments Based on Local Control of VMT Growth. As discussed earlier, the expected growth in vehicle miles of travel (VMT) by on-highway vehicles in the FIP areas contributes to the stringency and wide applicability of the many emission reduction measures in the proposed FIP. For practical reasons, EPA is proposing only a limited set of measures that can be expected to affect VMT growth, specifically the parking cash out requirement and the employee commute options program in Sacramento. Consequently, there remains considerable opportunity for state and local governments to do more to influence VMT growth, and EPA urges them to do so.

EPA invites public comment on what measures in particular could be designed by the state and local agencies which would be less expensive, less dislocating, and more equitable than the FIP's controls. Those measures which make more expansive use of market incentive approaches and those which address land use planning are the most likely candidates.

If the state and local agencies are able to identify and adopt measures which effectively lower the rate of VMT growth from what is currently projected, then EPA could entertain the removal of certain FIP measures which impose the most stringent controls. EPA invites public comment on which of the FIP measures might be a candidate for earlier removal. State and local action now on measures to reduce growth will also make it easier in the long term to replace the bulk of the FIP with a State Implementation Plan, since there will be more flexibility for the state to choose an optimum set of measures.

Although the FIP contains an attainment strategy for the South Coast area, it does not contain the fully adopted regulations that will ultimately be needed. In fact, attainment there will clearly require at least all the elements proposed today or their equivalents. EPA does not envision an adjustment process for that area although the flexibility that lower growth provides would still hold true. Also, because of the limited time before 1999, EPA does not think it would be possible to revisit VMT growth in the Sacramento area soon enough to affect the strategy for the 1999 attainment option.

It is a requirement of the Clean Air Act that every SIP and FIP attain as expeditiously as practicable but no later than the date specified by statute. In any VMT revisitation and strategy adjustment process, EPA could not and would not remove reasonably available measures from the FIPs. EPA believes, however, that some of the measures proposed today and likely to be finalized go beyond the test of reasonable availability. These are candidates for later removal as described here.

2. Programs for Onroad Light Duty Vehicles and Engines. a. Overview—Despite requiring vehicles to meet increasingly rigorous certification standards, California's air quality is among the poorest in the country. High emission levels have persisted even though emission standards for light-duty vehicle (i.e., passenger cars) (LDV) and light duty truck (LDT) exhaust hydrocarbon emissions have dropped more than 90 percent since 1970. The continuing high emissions derive from considerable increases in the number of vehicle miles traveled (VMT), the increased expected life of vehicles in the temperate California climate and the failure of many in-use vehicles to meet the standards to which they are certified when new.

In order to reduce the emissions from onroad light duty mobile sources, EPA has developed two distinct control strategies. The first strategy, described in detail in section III.D.2.c, is the implementation of a centralized test only enhanced I/M program. In the second strategy, described in section III.D.2.d, EPA is proposing to complement the California LEV program with enforceable requirements providing lower in-use emission levels. EPA believes that both of these strategies are necessary in order to bring all of the California FIP areas into compliance.

b. Air Quality Significance—Light duty onroad mobile sources (cars, light duty trucks and motorcycles) are significant contributors to the emissions inventories in all three of the FIP areas The table below ("1990 Base Year Inventory for Light Duty Vehicles") details the level of emissions from onroad light duty mobile sources in each of the FIP inventories for the 1990 base year. The information contained in this table illustrates the large portion of the FIP inventories that is attributable to emissions from onroad light duty mobile sources. No control strategy could achieve attainment in the California FIP areas without affecting these engines which are central to the California economy.

1990 BASE YEAR INVENTORY FOR LIGHT DUTY VEHICLES

	Sacramento		Ventura		South coast	
	VOC	NO_x	VOC	NO_x	VOC	NO_x
Onroad LDVs (tons)	108.5	78.0	38.3	27.0	772.6	421.1
Percent of total inventory	46%	42%	36%	31%	40%	37%

c. Enhanced Inspection and Maintenance—(1) Introduction. In its studies of in-use vehicle emission performance, EPA has found that vehicles typically emit at 2–3 times their certification standards in actual use. Factors such as lack of durability, tampering with emission control equipment, design defects, and poor maintenance all contribute to making cars and other mobile sources much dirtier in use than they should be.

EPA has found that an efficiently designed and managed vehicle inspection and maintenance (I/M) program is one of the most effective and cost effective ways of cleaning the air I/M programs are able to produce significant emission reductions after only a single inspection cycle, and the effort the consumer must expend to comply with I/M can be offset with improved fuel economy and performance.

(2) Enhanced I/M. I/M programs achieve their objectives by identifying vehicles that have high emissions as a result of one or more malfunctions and requiring them to be repaired. An "enhanced" I/M program covers more of the vehicles in operation, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are properly tested and adequately repaired.

Given the severity of the air quality problem in the FIP areas covered by this proposed action, EPA is proposing to implement an enhanced I/M program in all FIP areas as one of the most significant and productive of its FIP measures.

(3) Background. The first mandatory I/M programs were required by the 1977 Amendments to the Clean Air Act, which called for I/M programs in areas with long term air quality problems. The 1990 Amendments to the Act expanded the role of I/M, directing EPA to develop guidelines and performance standards for two levels of I/M program—basic I/M for areas with moderately dirty air, and enhanced I/M for areas (like those addressed by this proposed FIP) with more serious and chronic nonattainment problems. On November 5, 1992, EPA published a final regulation (40 CFR part 51 subpart S) establishing certain minimum requirements and performance standards for both basic and enhanced I/M programs. It is this regulation and its supporting documentation that will form the basis for much of what will be proposed in this action. Readers are encouraged to consult the preamble to the final I/M rule for a more thorough explanation of the costs and benefits of I/M programs and the specific regulations.[71]

A state-administered I/M program known as Smog Check has been in existence in California since March 1984, and is currently operating in all three of the FIP areas. The Smog Check program includes a biennial tailpipe and antitampering inspection of 1966 and newer model passenger cars, as well as light- and heavy-duty trucks. The inspections are conducted in a decentralized network of private garages and service stations which are licensed by the State and which may perform both the emissions inspection and emissions-related repairs. The tailpipe test consists of a simple idle test for VOCs and carbon monoxide (CO) for vehicles up to the 1979 model year and a two-speed idle test for model year 1980 and newer vehicles. The program also includes antitampering inspections for all significant emission control components. Owners of subject vehicles must present proof that the vehicle has either been tested and passed or been waived from the program requirement prior to registering their vehicle(s) in even numbered years for even numbered license plates and odd numbered years for odd numbered license plates.

Since the beginning of the program in California, a review committee of State and local air quality professionals has been conducting a continuing evaluation of the Smog Check network in order to recommend improvements to the Legislature and to address problems in program operation as they are identified. The "California I/M Review Committee's Fourth Report to the Legislature" details the results of comprehensive station audits and vehicle emission tests and concludes that the current program is yielding less than one-half the potential emission reduction benefits of the program if properly implemented due to improper testing and inadequate repair in the garages.

Based upon its own audits, as well as those conducted by California and other states, EPA has concluded that I/M programs throughout the country which combine the functions of testing and repair in a single facility are only roughly half as effective as programs which separate the two functions. The I/M rule which applies to enhanced areas requires the separation of test and repair unless a State can demonstrate that its current test-and- repair program is equal in effectiveness to a test-only network. In making this demonstration states will receive only one half the emission credit for the tailpipe test than that allowed for test-only facilities unless the state can demonstrate higher reductions from its program.

During the 1993 legislative session, the California legislature considered but did not pass legislation which would have authorized the upgrade of the Smog Check network. Citing concerns over jobs and consumer convenience, state legislators advanced a bill designed to improve the State's failing Smog Check system without fundamentally changing its test-and-repair structure. Although the bill contained some important measures, EPA had to inform the legislature that the bill fell short of meeting the Clean Air Act's standards for an enhanced I/M program. EPA officials are continuing to work with the California legislative leadership in the hopes of achieving consensus on a program design which would meet both the Clean Air Act requirements and California's unique needs. EPA is proposing an enhanced I/M program design which incorporates the most sophisticated testing techniques with features to maximize consumer convenience and to mimimize the cost of inspection. If the State should develop and adopt an alternative program design which meets the Act's performance standard for enhanced I/M programs prior to finalization of the FIP, then the alternative program will be proposed for approval as a State plan revision and its reductions will be substituted for those which would be expected from a federally imposed I/M program. EPA would propose additional measures if necessary to provide equivalent emission reductions as part of the FIP attainment demonstration. Once the FIP I/M program is finalized, however, the State will need to meet not only the requirements of the I/M rule, but will have to produce a plan that fills any shortfall between the State I/M program and the FIP I/M program, so as not to jeopardize the FIP's required attainment demonstration. This could be done through the State I/M program or other emission reductions.

(4) Summary of Proposed Federal Enhanced I/M Program. The proposed program would cover all model year 1966 and newer onroad, gasoline-fueled vehicles—including heavy-duty trucks but excluding motorcycles—and would be conducted on a biennial basis to optimize the measure's emission reduction potential and cost effectiveness, as well as to minimize the disruption created by any transition from the current, state-run Smog Check program.

The proposed program would be conducted in a network of test-only stations (i.e., stations in which both owners and operators are legally barred from profiting either directly or indirectly from the sale and servicing of motor vehicles and motor vehicle parts). The tests performed would include a transient, mass-emissions tailpipe test known as the IM240 which would measure hydrocarbons, carbon monoxide, and oxides of nitrogen; purge and pressure tests to assure that the evaporative control system is working properly; and a visual antitampering inspection for the presence and proper connection of the positive crankcase ventilation (PCV) and air systems.

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[71] Although the proposed I/M program will meet the requirements of the Clean Air Act Amendments of 1990, as well as the performance standard for enhanced I/M programs promulgated on November 5, 1992, EPA is not obligated to meet these requirements as part of its California FIP proposal. EPA would only be required to do so within 2 years of a state failure related to such requirements. EPA has chosen the proposed program design because it is one of the most productive and cost effective means by which to meet the requirement that the FIP demonstrate attainment with the ozone NAAQS.

EPA intends to enter into a legal agreement with one or more entities for the performance of all possible program activities, other than enforcement of the motorist registration requirement, and oversight requirements which would constitute a conflict of interest. This entity shall hereafter be referred to as the "test provider."

The biennnial test is estimated to cost between $20 and $25, and the average wait time at the high volume inspection stations should average less than ten minutes.

A more detailed discussion of the FIP's proposed I/M program and its various program elements follows:

(a) Applicability. The enhanced I/M requirement will apply to all vehicles registered, or required to be registered, in the counties listed in Table IM–1 and to vehicles in commercial fleets which are primarily operated within these same counties. Vehicles which are operated on Federal installations located within the I/M program area must also comply with the I/M requirements regardless of their registration status.

TABLE XX–X.—COUNTIES INCLUDED IN THE ENHANCED I/M PROGRAM

Sacramento area	Ventura	South coast
Sacramento	Ventura	Los Angeles.
Yolo		Orange.
Placer (part)		Riverside (part).
Solano		San Bernardino (part).
Sutter.		
El Dorado (part).		

Note: The portions of Riverside, San Bernardino, Placer, and El Dorado counties to be covered by the FIP I/M program would be the same as are currently covered by the State's Smog Check program.

The current Smog Check program covers more than the required areas, and therefore carrying this coverage over into the FIP I/M program is sufficient to satisfy the Act's enhanced I/M requirements. EPA is requesting comment, however, on whether the geographic coverage is sufficient to include all significant contributors to FIP area emissions and whether there is any reason that it should be expanded beyond the scope of the existing I/M areas.

(b) Enforcement. Under this proposal, the Secretary of State of California, the California Department of Motor Vehicles, its employees, any any other persons representing the State of California are prohibited from registering any subject vehicle which does not present a valid certificate of compliance with or a valid waiver from the FIP's I/M program requirements. At Federal installations, where vehicles may not have California registration, the vehicles may not be issued a base sticker or other operating permit without evidence of compliance with enhanced I/M program requirements. EPA or the test provider(s) will issue these certificates.

(c) Network Type. Two basic types of inspection networks have existed since the start of I/M programs—centralized, test-only networks and decentralized, test-and-repair networks. A centralized, test-only network consists of inspection and retest at high-volume, multi-lane, usually highly automated stations, run by either a government agency or a single, state-hired contractor within a defined area. A decentralized, test-and-repair network consists of inspection and retest of vehicles at privately owned, licensed facilities, such as gas stations and other shops which may also do repair work. California's current I/M program is of this latter variety.

While the Clean Air Act Amendments of 1990 called for EPA to develop performance standards for both basic and enhanced I/M programs, they also established minimum requirements for certain program parameters. In the case of enhanced I/M programs, network type was one of these prescribed parameters. Specifically, section 182(c)(3)(C) of the Act states that enhanced programs must include, at a minimum, "operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective." Based upon its evaluation of current decentralized, test-and-repair programs, as well as upon data gathered by individual states on their own I/M programs' effectiveness, EPA provided for the approval of a decentralized test-only network as an equally effective alternative, because the inherent conflict of interest found in test-and-repair programs had been removed. It may be that the State of California will ultimately choose to design a decentralized test-only system in order to guarantee that there are many independent businesses which participate in providing inspection services. But it is not a practical choice for a federally implemented I/M program. Given the significantly lower implementation burden of a centralized system, EPA has determined that it is appropriate to propose a centralized program for the FIP.

Although EPA has the authority to forbid the State of California to register vehicles which do not have a certificate of compliance with the prescribed enhanced I/M program, it does not have the authority to order the State to write the program rules, oversee the construction or licensing of test-only stations or carry out any of the tasks involved in program implementation and oversight. Therefore, it is necessary for EPA to design a program which will divert as few as possible resources from the national environmental effort to the day to day operation of what would ordinarily be a state-run emission control program.

EPA is proposing that the California FIP I/M program would be a centralized, test-only network operated by a private entity or entities (if each FIP area is to be treated separately) that have entered into a legal agreement with the federal government. This entity or entities will be known generically as the test provider(s). Program oversight would be facilitated through the award of a contract to provide for the collection of data in the form of overt and covert auditing of the testing contractor's sites and performance. The test provider(s) would be reimbursed through the collection of a fee paid directly to the test provider(s) by motorists at the time of testing. Once EPA has entered into an agreement with the test provider(s), it will be the State's obligation to enter into its own agreement with the test provider(s) when the State wants to replace the FIP program with its own. EPA does not intend to place itself in the position of assuming any legal penalty through termination of a contract with a test provider as a result of California starting its own program; comments are requested on how this result may be achieved.

The test provider(s) would perform many program activities, with the exception of enforcement of the registration requirement (which shall remain a State responsibility) and any oversight requirements which would constitute a conflict of interest, such as covert and overt auditing of the test sites and testing personnel. In addition to establishing the test sites and conducting the testing, therefore, the testing provider would provide for both mechanic and inspector training, tracking and reporting of effectiveness data, performing other program data collection and reporting requirements, conducting a campaign of public information, establishing and maintaining a repair technician hotline, performing motorist compliance surveys, designing and issuing program documentation such as certificates of compliance and waivers, and designing and managing a program of onroad vehicle testing via remote sensing technology. Separately, EPA would award a contract to a different entity or entities to collect the information needed to oversee the performance of the test provider(s) and to evaluate the effectiveness of the I/M program. Duties under this oversight contract would include purchasing vehicle records or otherwise entering into a cooperative agreement with the California Department of Motor Vehicles to facilitate testing and database comparisons for program effectiveness and enforcement analyses, procuring vehicles for covert testing, conducting covert station audits, and performing periodic overt audits to confirm that the testing equipment is accurate within the quality specifications.

Under the legal agreement EPA envisions entering into with the test provider(s), no funds would accrue to EPA, because that is prohibited by the Miscellaneous Receipts Act, which only allows each Federal agency to retain those funds which have been specifically appropriated for its use by the Congress. Awarding of the oversight contract and program administration duties would, therefore, require EPA to divert funds and human resources from other activities to perform the role currently performed in California by the Bureau of Automotive Repair.

EPA requests comment on its proposal to establish a centralized, test-only network and to enter into a legal agreement with one or more test providers as well as awarding a separate contract for data collection in support of program oversight. EPA also requests comment on whether the Agency should enter into separate agreements and award separate contracts for each FIP area, or if a single agreement and a single oversight contract for all FIP areas are appropriate.

(d) *Test Type and Procedure.* The California Smog Check program currently employs a steady-state, unloaded, tailpipe test, which is conducted with the vehicle parked and idling. The test is called "steady-state" because the vehicle is operated in only one or two operating modes (typically at idle, or at both idle and 2500 rpm, depending upon the model year of the vehicle); it is considered "unloaded" because the vehicle is parked and therefore encounters no additional power demands to overcome road resistance. Emissions are measured by placing a probe in the tailpipe to gather a sample which is analyzed to determine the relative concentrations (i.e., percentage or parts per million) of CO, carbon dioxide, and hydrocarbons in the exhaust (the analyzer-test type combination used in the Smog Check program is currently unable to measure NO_X emissions). Given that the volume of exhaust from any vehicle is unknown, the concentration of pollutants measured during a Smog Check cannot indicate the emission level of the vehicle in terms of grams of pollutant emitted per mile driven—or from the fleet all together in terms of tons of pollutant emitted per day.

Studies conducted by EPA's Office of Mobile Sources, at the National Vehicle and Fuels Emission Laboratory and elsewhere have shown that steady-state, idle, concentration-based tests such as those used in California's Smog Check program are not highly effective at identifying and reducing in-use emissions from the types of vehicles which currently dominate the fleet (and will continue to dominate the fleet in the future). (See the I/M rule's technical support document, entitled "I/M Costs, Benefits, and Impacts," November 1992, for more details on these studies and their results.) Steady-state idle tests were originally designed to detect excess emissions from relatively low-technology, pre-1981, carbureted, non-computerized passenger cars and worked well enough for these vehicles because the typical emission control problems they experienced tended to involve "rich" air/fuel mixtures which are detectable at idle as well as other driving modes. To meet increasingly stringent emission standards, however, current high-technology cars must use an elaborate array of sensors and computer feedback controls to continuously adjust engine operations, optimizing the air/fuel mixture depending upon the current driving mode. Such vehicles are more effectively tested with procedures that address the full range of driving modes, including cruise, idle, acceleration, and deceleration cycles under loaded conditions.

Emission tests which include driving cycles are called "transient tests," and are performed by running a vehicle on a treadmill device known as a dynamometer which allows the vehicle to be driven in place and which can be made to simulate road load conditions by increasing the resistance on the treadmill rollers. Transient tests capture a known volume of exhaust and produce actual grams-per-mile results as opposed to the relative concentration values generated by steady-state, idle tests. Transient, mass emission testing also measures fuel economy, and the results can be provided to the vehicle owner. A transient test known as the Federal Test Procedure (FTP) has been used for certification testing of new vehicles for over twenty years and is considered the yardstick by which other testing strategies are measured.

A full Federal Test Procedure involves special vehicle preparation and takes several hours to conduct, making it impractical as an I/M test type. But EPA has developed a shortened version of the FTP known as the IM240, which more closely reflects how vehicles perform under actual driving conditions than do current idle inspections, while also being short enough to be practical in an I/M setting (the "240" stands for the maximum number of seconds it takes to perform an IM240 test). In its development and evaluation of the IM240, EPA has found the test to be superior to alternative I/M testing strategies for all relevant evaluation criteria, including accuracy and overall cost effectiveness. Using the pass/fail limits proposed in this action, the IM240 has been shown to have a zero percent false fail rate, while also accurately identifying the vast majority of the highest emitting vehicles. The result is that the IM240 is able to get more emission reductions by failing fewer cars than is the case for other I/M tests yielding comparable emission reductions. Furthermore, since the equipment required to perform the IM240 is based upon that used to perform certification testing, IM240 test sites will not become obsolete with future changes in vehicle technology; driving cycles and testing algorithms may require changes in software, but the hardware configuration will remain substantially similar well into the next century. Transient testing is also the only currently known reliable way to test for NO_X emissions—something not possible with an idle-based test, yet nevertheless required in order to achieve the NO_X reductions necessary for ozone attainment, and specifically required by section 182(c)(3) of the Clean Air Act.

The enhanced I/M program being proposed in this action also includes two functional tests to detect excessive evaporative emissions. Over the last several years, EPA has learned that vapors which escape from various points in a vehicle's fuel system represent a huge source of hydrocarbon emissions, generally greater than those present in now highly controlled tailpipe exhaust. In response to this finding, EPA has developed two functional tests which can determine whether vehicle evaporative emission control systems are operating properly. The first test is a simple pressure check to find leaks in the fuel system (e.g., bad gas caps or cracked evaporative system hoses). The test, referred to as the "pressure test," is simple to perform and highly cost effective. The second test—called the "purge test"—is a check of the evaporative system's purge function, which involves removing gasoline vapors stored in the charcoal canister and routing them to the engine where they can be burned as fuel. The purge test is performed in conjunction with the IM240 (i.e., while the vehicle is operating on the dynamometer). Performance of the purge test is not possible using a traditional idle inspection, since most automobiles are not designed to purge extra vapors when they are not needed during the idle mode.

EPA is proposing to use the IM240, and purge and pressure testing, as the main group of high-technology emissions tests around which the FIP's I/M program would be built. The FIP's I/M program would also retain the current Smog Check program's visual antitampering inspections for the air pump and PCV system, but would eliminate the catalyst, inlet, and evaporative canister inspections. The evaporative canister inspection would be eliminated because it would be redundant in the face of the more rigorous purge and pressure tests. The catalyst and inlet checks would be eliminated because the IM240 is sufficiently sensitive to detect the fact that a catalyst has either been removed or poisoned through the use of leaded fuel. The air pump check, on the other hand, would be retained because this emission control device only operates during cold start conditions and its malfunction affects emissions only in this driving mode. Since vehicles will generally be warmed up by the time they arrive for their I/M inspection, this type of malfunction is difficult to detect without a visual inspection. The PCV inspection would be retained because malfunction of this device can produce emission leaks that are not detectable through the tailpipe. Lastly, the FIP's I/M inspection would also include a test portion involving connection to and the interrogation of the onboard diagnostic (OBD) computer on vehicles so equipped beginning with the 1994 model year. Information in the form of trouble codes would be downloaded from the OBD computer and analyzed for the presence of emissions-related system malfunctions.

All of the proposed FIP I/M program's inspections would be conducted in compliance with the test procedure guidance developed and issued by EPA in conjunction with the I/M rule. The IM240 standards will be set at the following gram-per-mile cutpoints for HC, CO, and NO_X, respectively, for Tier 0 vehicles (with somewhat more stringent first and second test cycle standards for Tier 1, TLEV, LEV, and ULEV vehicles in the pre-1999 model year group):

First test cycle: 1.2 / 20 / 3
Second test cycle: 0.8 / 15 / 2
Third test cycle: 0.6 / 10 / 1.5

The third test cycle cutpoints represent the final IM240 cutpoints for 1983–1998 model year vehicles and would be used for all subsequent test cycles. Model year 1999 and newer vehicles are addressed as part of the discussion of the enhanced in-use compliance program in section III.D.2.d of this preamble; I/M cutpoints for these vehicles are contained in Appendix 1, section A(4). EPA is also in the process of developing test procedures for performing the OBD check portion of an I/M inspection and will propose these as amendments to the I/M rule later in 1994.

(e) Vehicle Coverage and Test Frequency. The proposed FIP I/M program would cover all model year 1966 to 1998 gasoline-fueled vehicles, excluding motorcycles but including heavy-duty vehicles to 19,500 pounds Gross Vehicle Weight Rating (GVWR), including vehicles with engine-based certification. The proposed FIP I/M program would also cover all model year 1999 and newer vehicles of all fuel types, excluding motorcycles, but including heavy-duty vehicles to 14,000 pounds GVWR (except for 8,500 to 14,000 pound vehicles with engine-based certification). The IM240 tailpipe emission test would be performed on all vehicles including the heavier trucks for administrative simplicity. Model-year based cutpoints for pre-1983 light-duty vehicles are included in this proposed rule, as are cutpoints for heavy-duty trucks, although these latter cutpoints are subject to possible amendment prior to program implementation, based upon the experience of state-adopted enhanced I/M programs that begin operation prior to the scheduled implementation date for the proposed FIP I/M program. The purge, pressure, and visual inspections would be performed on all model year 1971 and newer vehicles. Older model years were not equipped with the evaporative control systems subject to the purge and pressure tests. EPA will also study the sales and in-use performance of pre-1999 diesel and alternatively fueled vehicles, to determine if significant, additional emission reductions can be achieved by testing such vehicles as part of the FIP I/M program.

EPA proposes to require I/M testing biennially in the California FIP areas, with new vehicles being exempt until the second anniversary of the initial registration date. Notification of scheduled testing times would be through regular mass mailings conducted by the test provider(s), with individual motorists receiving notification no less than 45 days prior to the individual's testing deadline. The test provider(s) would use mailing lists obtained from the Department of Motor Vehicles to conduct the test notification mailing.

EPA has chosen to retain biennial testing for the California FIP's I/M program due partly from an interest to minimize the disruptive impact of the new program, but mainly because biennial testing is simply more cost effective, especially when conducted within the context of a high-technology I/M program such as the one proposed. Simply put, the IM240, purge, and pressure tests are so effective that a biennial test program will yield almost the same emission reduction benefits as an annual program. In its research on the relative benefits of test accuracy versus test frequency, EPA has found that doing the test right is far more important than doing it more often. Furthermore, the types of repairs needed to pass these high-technology tests are substantive and durable—something which is not always the case with repairs aimed at passing an idle-based I/M program.

(f) Waivers and Special Warranty Protection. The FIP I/M program would include the opportunity for owners of failing vehicles to apply for a cost waiver once they have spent at least

$450, adjusted annually for inflation, in relevant emission control repairs. The $450 figure is required by the Clean Air Act Amendments of 1990 for state-adopted, enhanced I/M programs. While EPA is not required to include such a waiver limit in this FIP, EPA is proposing this waiver limit because it is practical, ensures repair of virtually all failures, and will simplify the transition once California adopts its own program. The $450 figure will be adjusted annually, based upon the difference between the Consumer Price Index for the current year and that of a 1990 base year, and would not include costs related to the repair of tampering-related defects or emission control components the servicing of which are covered by an unexpired warranty. The test provider(s) would be responsible for issuing such waivers and for conducting a visual inspection to confirm that all claimed repairs have, in fact, been made. Motorists on public assistance would be able to apply for a one-time, non-renewable time extension on making repairs, not to exceed one full test cycle. Only one such time extension will be granted per the lifetime of a vehicle.

The California Motor Vehicle Control Program provides for warranties similar to those included under Federal law. These warranties would be available to owners of failed vehicles up to the specified age and mileage limitations which vary depending on the model year of the vehicle. Special warranty protection would be available to owners of vehicles certified under the proposed enhanced in-use compliance program for model year 1999 and newer vehicles (see Section III.D.2.d).

(g) Enforcement and Oversight. Under the FIP I/M program, it would be a violation of Federal law for the California Department of Motor Vehicles (DMV), its employees, or any other representative of the State of California to register any vehicle subject to the FIP's I/M requirement for which a valid certificate of compliance or waiver (either paper-based or electronic) has not been presented. DMV employees or other State representatives suspected of violating the FIP I/M requirement would be subject to prosecution under Federal law and, if found guilty, could be subject to civil penalties up to $25,000 per violation. Each instance of unlawful registration would be considered a separate offense.

Motorists who were late for either regularly scheduled tests or who failed to comply with an out-of-cycle test required because the vehicle was identified by a remote sensing unit (see below), would be assessed a late fee at the rate of $10 per week late. EPA requests comments on other means of enforcing program requirements, including the possibility of tying penalty fees to the length of violation multiplied by the level of excess emissions.

(h) Convenience Issues. EPA would make customer convenience an important criteria in entering into any legal agreement with a test provider(s). Minimum convenience requirements would be established and addressed. For example, EPA intends to require in any such agreement that test stations be sited such that 80 percent of all subject motorists are within a 5 mile radius of a test station, with 95 percent of all motorists within a 10 mile radius. Wait times between entering a test station queue and the initiation of actual testing would be tracked and would not be allowed to exceed 15 minutes on average. Scheduling individual vehicles for tests would be required to be done on a weekly basis, as opposed to monthly, to help reduce the impact of the end-of-the-month rush. To avoid being assessed a late penalty, motorists would have to report for testing sometime during the scheduled testing week, with the week beginning on Sunday and ending on Saturday. The test provider(s) would be allowed to use late fees paid by motorists who do not show up during the specified test week to either create an incentive program to stimulate off-peak test lane usage or to expand capacity. The test provider(s) would also be required to offer "valet testing" for a reasonable fee. Such an option would allow motorists to have their vehicles picked up for testing from their homes, work places, etc., and returned.

(i) Onroad Testing. Although not expressly required to do so as part of its FIP effort, EPA proposes to use remote sensing devices (RSD) as a supplement to the proposed FIP I/M program, because EPA believes RSD to be a useful way of identifying gross emitters for possible out-of-cycle repairs. The actual onroad testing would be performed by the test provider and would cover a larger percentage of the fleet than the minimum required of state-adopted enhanced I/M programs under the I/M rule (i.e., approximately 10 percent). Owners of vehicles which fail the RSD check would be notified of the failure by registered mail, and would be required to report for an out-of-cycle confirmatory test at a test-only test site. Should the vehicle fail this confirmatory test, the owner would be responsible for the procurement of necessary repairs and would be required to submit the vehicle for retesting. The owner would have an opportunity to apply for a waiver, but only after meeting all the same criteria that would apply during the regular testing cycle. Vehicle owners who did not respond to the NPRM of RSD failure would be assessed a late penalty at the time of their next scheduled test. The late penalty would be the same as that charged for missing a regularly scheduled test (i.e., $10 per week late).

(j) Program Start Date. The FIP I/M program would initiate testing 100 percent of the subject vehicle population beginning in January 1997.

d. Enhanced In-Use Compliance Program for Light-Duty Vehicles—EPA expects the California Low Emission Vehicle (LEV) program will substantially reduce emissions of cars and light-duty trucks, compared to the federal standards. However, despite the use of advanced technologies and the OBD requirements, CARB projects LEVS will exceed their certification standards in-use, although, for the reasons noted in Section III.D.1.a(2), by a much smaller margin than has occurred in the past. Emissions above the certification standards, referred to as excess emissions, will occur because some models may experience more in-use deterioration than expected, or because individual vehicles experience component failure or improper maintenance which is not immediately corrected by the various existing in-use compliance programs, including enhanced I/M. Because the magnitude of the emission reductions needed for attainment is so great, the adoption of further measures to reduce these remaining excess in-use emissions will help reach attainment of the ozone standard.

EPA is therefore seeking comments on the need for and benefits of adopting an enhanced in-use compliance program which would provide extra emission reductions above and beyond the substantial reduction provided by the California LEV program, and cause in-use emissions to approach the certification standards. Specifically, EPA is considering three approaches. The first would modify the current federal recall program to initiate recalls based on the emission results of vehicles tested in their as received condition. This differs from current practice, and would result in a shift of responsibility for maintaining low emissions from the consumer to the vehicle manufacturers.

The second possible program would make manufacturers responsible for repairs for vehicles whose failure rate for that model in an enhanced I/M program exceeds a threshold level (e.g., greater than 5 percent within the first 5 years). This approach, like the first approach, provides an incentive for vehicle manufacturers to increase the durability of their designs, or implement other programs designed to maintain the emissions of their products in-use. Both of these possible programs would apply throughout a vehicle's statutory useful life.

The third possible program involves adoption of a requirement that the on-board diagnostic system of new vehicles be capable of communicating, to on-road sensors, the operational status of the emission control system (i.e., whether a fault has been detected). This approach allows for the immediate identification of high emitting vehicles, and their timely repair. Unlike the first two approaches, this approach would remain in effect for the vehicles's entire life, a significant point since over 40 percent of cars and light trucks on California's highways have over 100,000 miles on their odometer.

EPA requests comments on these three approaches, and on any other approaches to further reduce in-use emissions. Comments should address the need for and viability of EPA implementing, within the context of the FIP, compliance programs in addition to those already adopted by California. EPA is proposing to adopt the enhanced in-use compliance program described in Appendix I A.

e. On-highway Motorcycles—Provisions for on-highway motorcycles are contained in section III.D.4.c(1). Because engines used in nonroad recreational vehicles such as all terrain vehicles and dirt bikes are similar to those used in on-highway motorcycles, all control strategies for these engines are contained in the section referenced in the preceding sentence.

f. Discussion of Emission Registration and Fee Systems for Light Duty Vehicles—In the light duty vehicle and light duty truck sector, emission reductions can result from direct regulation of the vehicle and fuels or can be brought about by regulations or incentives (either positive or negative) to change vehicle ownership patterns and/or driver behavior. Emission standards for light duty vehicles and their fuel have significantly decreased the amount of pollution emitted by any one vehicle over a given mile. Standards continue to tighten and within the FIP EPA is proposing to reduce tailpipe and evaporative emissions even further.

Additional reductions could come from incentives to increase the number newer vehicles on the road and reduce the number of older vehicles. Accelerating fleet turnover through any means would reduce on road emissions by replacing older vehicles (which have older emissions technology) with newer, cleaner vehicles.

Increasing the number of newer vehicles purchased could be achieved either by offering incentives, such as rebates or reductions in registration fees, and/or with disincentives for owning older vehicles, i.e. higher registration fees based on age or on emissions.

Despite the impressive reductions in tailpipe emissions, on highway motor vehicle emissions remain a source of concern. Increases in the number of vehicles on the road and the number of vehicle miles traveled (VMT), threaten to outpace gains from technology. For the three FIP areas EPA utilizes the VMT growth projections provided by the local MPO or air quality management district. Growth in VMT can have significant impact on a given nonattainment area's ability to show attainment.

In most, if not all, nonattainment areas changing driver behavior has been addressed primarily (if at all) through implementation of transportation control measures (TCMs). The TCMs found in SIPs have generally, in the past, been voluntary in nature and often have consisted of efforts to make transit more available through increased bus routes, light and heavy rail expansions and the building of park and ride lots. While these steps are laudable they do little to change the current equation faced by a user of our transportation system. Because our road and highway system is financed in large part by general revenues (40 percent), and because drivers do not pay for the congestion and pollution they cause, the use of our roadways appears to users to carry a relatively low cost. In addition, single-occupant vehicles have considerable advantage in terms of convenience and privacy. Thus, any attempt to promote the use of alternatives to single-occupancy vehicles faces quite a challenge.

The limited effectiveness of traditional TCMs has led many in Federal, State and local government and in academia to promote instead the use of market-based TCMs. (See Cameron, Shoup for DOT, EPA/DOT Report to Congress, forthcoming NARC report by Apogee). Congestion pricing, parking reform, and VMT and emission fees all show great promise as effective means of changing driver behavior by making travel choices reflect more closely their true social costs.

EPA seriously considered making market-based TCMs an integral part of the FIP, however, within the context of the FIP, neither traditional TCMs nor market-based TCMs lend themselves easily to Federal implementation. The very nature of many traditional TCMs limits their usefulness within the context of the FIP. FIP authority does not allow the Agency to take on fundamentally local roles such as building new transit lines, expanding bus services, or building HOV lanes. If EPA were to impose emission fees or VMT fees or to institute congestion pricing, all revenue generated would have to go to the Federal Treasury (see the above discussion of the Miscellaneous Receipts Act in section III.A.2.b). Such a flow of revenue out of the FIP areas could have numerous adverse impacts.

In addition, the issue of fees, especially VMT fees, raises other inherently local issues such as land use planning. There are many theories and explanations for the rapid and continual growth in VMT over the last few decades—increases in women in the work force, population growth, increases in average income—but suburban sprawl also plays a significant role. For a variety of reasons, crime, housing costs, land costs, etc. the bulk of growth in metropolitan areas has been occurring in the suburbs. The lower housing densities and lack of mixed use zoning in most suburbs have made use of a car a daily necessity. Just as these patterns of land use occurred over a long period of time in response to local demands, so must future changes.

Despite the EPA assessment that control of VMT growth and the use of market-based TCMs are most appropriately considered at the local level, EPA would like to present an outline of a reasonable and, at the state or local level, an arguably workable light duty vehicle fee system, based on both emissions and vehicle miles traveled. EPA invites comment on federal implementation of this approach or any other appropriate market-based measures. If changes in technical estimates or in the stringency of other controls are made following public comment, EPA may have to turn to a fee system as described below despite the reservations voiced above. In such a case, EPA would obtain more public input on program specifics before implementation, including if appropriate, reproposal and public comment.

A fee on the product of emissions level and VMT would provide incentives for individuals to reduce emissions but also would provide them with some flexibility to achieve those reductions. A driver could choose to reduce her fee by buying a cleaner vehicle, or she could reduce her fee burden by driving fewer miles. Most likely, individuals would consider the trade-offs they face and choose a course of action most appropriate for their circumstances. In thinking about this fee system, EPA has attempted to remain sensitive to many issues surrounding fees and the incentives they provide. EPA used as a guide California Senate Bill 1070, and many of the principles it provides. As in Bill 1070, EPA believes a fee collected at biennial inspection and maintenance points which is a function of VMT in excess of an annual per driver allotment of 5,000 miles and of the vehicle's I/M score recorded after any necessary repairs have taken place would be most workable.

EPA recognizes that the automobile represents for many people in the FIP area the only means of getting to work. Therefore, EPA suggests each licensed driver over the age of 18 could be allocated 5,000 "free" miles annually. Drivers in one household could combine their allowances however they choose, and use them to cover some of the VMT from the household's vehicles. EPA suggests this lifeline level based on data in the 1990 National Personal Travel Survey (NPTS) conducted by DOT. According to the 1990 NPTS, on average 32 percent of VMT and 26 percent of trips are directly the result of commuting. The average new car mileage (older model years are driven fewer miles in each successive year) is 15,000 miles. Thus 5,000 represents, on average, the upper end of commuting miles for a given driver. However, EPA invites comment on this issue.

Obviously the emission component of the fee provides an incentive for the vehicle owner to reduce vehicle emissions. How an individual chooses to do so is somewhat dependent on the way in which the fee is set. If the fee is charged based on how much the vehicle's emissions exceed the average emissions from other vehicles from the same model year, then the owner of the vehicle is interested in keeping the vehicle in good working order to ensure average or better emissions for a car of that model year. A fee set in this way does not penalize an owner for having an old car (and therefore old emissions technology) per se, but for having an old car dirtier than other cars of its age. The fee then does little to encourage the owner to replace the vehicle with one offering newer and therefore cleaner technology.

If, on the other hand, the fee is set based on actual emissions, owners still have an incentive to keep each car as clean as possible, but they face an added incentive to invest in cleaner technology. An added bonus for California of this type of emission fee is that it would address the question of vehicles not meeting California emissions standards which are brought into California by new residents ("49 state vehicles"). Any additional emissions resulting from a 49 state vehicle would be appropriately charged a fee, eliminating the need for a separate program to address those emissions.

However, such an incentive structure raises obvious questions regarding equity. Many, although not all, older cars are often perceived to be utilized by citizens with lower incomes. Thus, one could argue straight emission-based fees are regressive. However, on average, older vehicles are driven fewer than 5,000 miles annually for reliability reasons. A fee formula structure which forgives the first 5,000 miles of VMT and emissions, such as the system outlined here, allows low income car owners continued free use of their vehicles for daily necessities.

If EPA or the FIP areas were to adopt a VMT/emission fee system other details would need to be addressed. For example, EPA would suggest using actual VMT for each vehicle as determined by odometer checks at the time of the biennial I/M inspection. To discourage odometer tampering, EPA would propose to include in all registration material home and work addresses for all household members so that the distance from home to work could be estimated EPA would also propose some type of system to "stop the clock" on VMT additions when the vehicle is being used out of state as during a vacation. (Granting fee exemptions for all VMT outside the FIP area appears to be too complex and/or cumbersome). EPA invites comment on this and other odometer tampering issues.

For the emission portion of the fee calculation, EPA would suggest using the actual IM240 scores without regard to model year and with no adjustments for evaporative or cold start emissions. Since all three FIP areas need substantial reductions in both VOC and NO_x emissions, EPA suggests that the emission readings for the two pollutants be given equal weight in calculating the VMT/emissions fee. As with other fee programs described in this document, the fee could be charged at the rate of $10,000/ton of emissions, based on the emissions generated by an individual car.

Again, EPA is not proposing a VMT/emission fee within the FIP. EPA believes such a fee system is most appropriately implemented at the local level and invites comment on the suggested program outlined here.

g. Parking Cash Out—Even in downtown areas, most employees in California receive free or subsidized parking spaces. Current tax codes allow employers to offer this benefit without the employer or the employee having to pay taxes on the value of the space. Since parking costs represent the bulk of the daily cost of driving to work, these "free" spaces are a strong incentive for employees to drive to work alone. For example, in downtown Los Angeles the average employer-paid subsidy for employee parking is 43 percent more than the cost per average commute trip for gasoline.

As part of his Climate Change Action Plan, President Clinton has called for transforming the existing tax subsidy for employer-paid parking into a powerful reward for commuters to ride transit, carpool, or find other ways to get to work. The Administration will shortly propose changes in the tax law necessary to bring about parking subsidy reform. This same proposal is included in the FIP, in a form which is consistent with EPA's authority. The proposal does not modify the tax code or require payments by any employer. Rather, it applies certain restrictions.

Certain employers may not offer free parking unless they offer employees the option of retaining the parking space or accepting a cash allowance equal to the market cost of the parking space. The cash allowance will be considered taxable income, but under current tax law, up to $60 per month of the cash may be taken in the form of a transit pass, which would be tax-exempt. Those who opt for the parking space will be unaffected by the change. Whether the employee decides to take the free parking or the cash allowance, the company can still deduct the cost from corporate income tax.

The cash out provision would be applicable to employer-paid parking provided by firms of 25 or more employees, located in an access-controlled parking lot not owned by the employer. Those spaces or lots leased by employers from a third party before March 14, 1994 are included only if the lease explicitly includes the value of the parking per space and the lease allows the employer to reduce the number of parking spaces leased without monetary penalty. The provisions will apply to all spaces leased on or after March 14, 1994, regardless of the form of the lease. Employers who execute leases on or after this date should make sure the per space value and the right to reduce the number of leased spaces are included in the lease. Absence of either will not be grounds for exemptions. Absence of a per space value will mean that the employer may not offer free parking.

At this time EPA lacks information on the number of employers and employees who would be affected by this program or the average value of leased parking spaces in each of the three nonattainment areas, making it difficult to estimate the exact impact of a cash out program. Analysis by Dr. Donald Shoup of UCLA suggests that if offered in downtown Los Angeles, one form of parking cash out would reduce employee solo driving by 20 percent, and would eliminate 9,000 vehicle trips per day. (See: Cashing Out Employer-Paid Parking, U.S. Department of Transportation, Federal Transit Administration, Final Report FTA–CA–11–0035–92–1, December 1992.) Dr. Shoup's analysis of Los Angeles predicted these impacts in a location where parking costs approximately $5.00 per day. Once EPA has more specific information on the three nonattainment areas, EPA proposes to assume for emission reduction crediting purposes a linear relationship between the value of parking in a given area and the employee response to a cash out program, based on Dr. Shoup's work. EPA invites comment on this assumption. EPA also asks for information on the employer composition and parking lease practices in the three non-attainment areas.

It should be noted that for this proposal EPA has assigned credit to the ECO program in the Sacramento FIP area assuming a 20-percent reduction in affected employers' employees who drive alone to work. The universe of employers who are subject to ECO and to the cash out provisions do overlap and in the final FIP rule EPA will ensure that emission reductions taken for the two programs do not include any double counting.

EPA recognizes that this provision is similar to the cash out legislation recently enacted in California. Since the Administration will soon offer legislative language to enact parking cash out nationally EPA is proposing a cash out program in keeping with the federal proposal. The most obvious difference between the two proposals is in the definition of affected employers. California's legislation applies to employers with 50 or greater employees, while the Climate Change Action Plan calls for parking cash out for employers with 25 or more employees. The EPA proposal simply makes mandatory an option many employers have had as a way of achieving the South Coast and Ventura goals. As with the President's plan, this proposal requires cash out in such a way to ensure that no employer will have a net loss.

h. Importation of Vehicles Into California—Little data are available on the population and characterization of 49-state vehicles in California and nationwide. However, it is estimated that out-of-state passenger vehicles (49-state vehicles) currently make up about 10 percent of the VMT in California. As a result of the California's LEV program and the proposed enhanced in-use compliance program, the difference in the emissions level between California certified vehicles and federally certified 49-state vehicles is expected to increase, and 49-state vehicles will therefore have increasing negative impact on air quality. Moreover, if California and 49-state vehicles further diverge in design there may be an increased incentive for California residents to purchase vehicles designed to meet only 49-state standards. Currently, 49-state vehicles with less than 7500 miles of operation (classified as new) may not be brought into California, but older vehicles can be upon payment of a California DMV fee, which is not prohibitive in comparison to many vehicle's market value.

Today's FIP therefore proposes to impose a restriction, starting in 1999, on California residents importing 49-state vehicles. Specifically, EPA proposes to prohibit (with an exception noted below) the State of California from allowing California residents to register for the first time in California any vehicle that was previously registered in another state, unless that vehicle was originally certified to the vehicle requirements set forth in this proposal for its class. In addition, EPA proposes to prohibit California residents from owning and keeping a car in California that is currently registered in another state.

As an exception to this prohibition, EPA proposes that the State of California may allow recent immigrants to California (defined as residents of California for less than three months) to register a car, over 7500 miles, that they had previously registered for at least three months in another state while a resident of that state. EPA's attainment demonstrations are based on migration patterns for out-of-state vehicles that match the restrictions described above. EPA solicits comments on these rules and restrictions.

EPA is also inclined to provide exemptions for historic and collector vehicles, and requests comment on methods for providing these exemptions.

3. Programs for Onroad Heavy Duty Vehicles and Engines

a. Overview—Heavy-duty mobile sources (trucks and HDVs) are large contributors, especially for NO_X, to the emissions inventories in the three FIP areas. Existing standards for heavy-duty engines in California are, for the most part, the same as the Federal standards. Further control of these engines is necessary to meet the attainment targets. For these reasons, EPA will propose an enhanced in-use compliance program for heavy-duty vehicles, similar to the one proposed for light duty vehicles, which includes not only tighter standards but also selected controls on higher emitting interstate trucks.

Larger heavy-duty engines see substantially heavier use than smaller engines. These engines are built to very high durability standards and are designed to be cost effectively rebuilt one or more times within their total lifetime. To provide assurance of emissions control over this extended actual life, this proposal includes certification and liability requirements for rebuilt engines as well.

b. Air Quality Significance— Heavy-duty highway mobile sources are significant contributors to the emissions inventories in all three of the FIP areas. The table below ("1990 Base Year Inventory of Heavy Duty Vehicles") details the level of emissions from onroad heavy-duty mobile sources in each of the FIP inventories for the 1990 base year. The information contained in this table illustrates the large portion of the FIP inventories that is attributable to emissions from onroad heavy-duty mobile sources.

1990 BASE YEAR INVENTORY OF HEAVY DUTY VEHICLES

	Sacramento		Ventura		South Coast	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Onroad HDVs (tons)	12.7	48.3	5.5	14.8	107.8	246.7
Percent of total inventory	5	26	5	17	6	19

c. Enhanced In-Use Compliance Program for Heavy-duty Vehicles—EPA is proposing an enhanced in-use compliance program for onhighway heavy-duty engines. The heavy-duty vehicle program described in Appendix I Section B is based in large part on the enhanced light-duty vehicle program, described in Appendix I Section A. However, certain changes and additions were made in order to deal with the differences between heavy- and light-duty vehicles. The reader is advised to read the discussion of the enhanced in-use compliance light-duty vehicle program as the information will facilitate understanding the heavy-duty program.

The enhanced program for heavy-duty vehicles consists of several parts: More stringent emission standards, new full useful life requirements, high-emitting interstate truck regulations, expanded recall scope, a fleet averaging program and I/M for certain vehicle classes. Each of these program elements is discussed further in Appendix I Section B; however, a short introduction is provided here.

Heavy-duty on-highway engines contributed 19 percent of South Coast NO_X emissions and 6 percent of South Coast VOC emissions in 1990. These engines are predicted to continue to contribute significantly to the inventory, even though, for NO_X, the applicable standards have decreased in recent years (1989 and 1990) and will continue to do so (1998). These NO_X inventory contributions continue to be significant largely because the heavy-duty engine NO_X standards have been introduced relatively recently and because of a continued increase in heavy duty VMT. In addition, the heavy-duty NO_X standards are significantly less stringent than the light-duty standards due to the historical inability of heavy-duty diesel engines to attain low NO_X levels. The VOC contribution from heavy-duty engines, although smaller than the NO_X contribution, is also a significant part of the inventory. Additional reductions in the contribution of heavy-duty engines to the NO_X and VOC inventory are required in order to meet the objectives of the FIP. Thus, EPA has developed the enhanced heavy-duty vehicle program being proposed today.

California's heavy-duty engine standards are not significantly more stringent than federal standards. A large part of the reason for this relates to interstate commerce. Approximately 22 percent of the VMT traveled by heavy-duty trucks in California are from out-of-state trucks engaged in interstate commerce. California cannot effectively deal with its air quality problems without regulating these engines, but the State has hesitated from regulating interstate commerce because of concerns about the impact on in-state firms and lawsuits. In order to effectively deal with NO_X from heavy-duty engines, controls on interstate trucking must be considered. For these reasons, the program proposed today for heavy-duty vehicles includes not only tighter standards (as described in Appendix I Section B(3)) and a fleet averaging program (as described in Appendix I Section B(9)), but also selected controls on higher emitting interstate trucks (as described in Appendix I Section B(7)).

Larger heavy-duty engines see substantially heavier use than smaller engines. These engines are built to very high durability standards and are designed to be cost effectively rebuilt one or more times within their total lifetime. To provide assurance of emissions control effectiveness over this extended actual life, this proposal includes revised recall provisions (similar to those for light-duty) and certification and liability requirements for rebuilt engines (as described in Appendix I Section B(4)).

EPA is proposing to adopt the enhanced in-use compliance program described in Appendix I Section B. EPA also requests comments on all aspects of its proposal and on any other approaches to further reduce in-use emissions.

4. Nonroad Engines and Vehicles

a. Overview—(1) Statutory Authority. Authority for the actions proposed to regulate nonroad engines is granted to EPA by sections 110, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7410, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

The Clean Air Act Amendments of 1990 extended EPA's authority regarding regulation of nonroad engines and vehicles. Specifically the revised CAA section 213(a) directs EPA to: (1) Conduct a study of emissions from nonroad engines and vehicles; (2) determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from nonroad engines and vehicles are significant contributors to ozone or CO in more than one area that has failed to attain the National Ambient Air Quality Standards (NAAQS) for ozone and CO; and (3) regulate those categories or classes of nonroad engines and vehicles that contribute to such air pollution if nonroad emissions in the aggregate are determined to be significant by November 1992. Under CAA section 213(a)(4), EPA may also regulate emissions other than CO, NO_X, and VOCs from new nonroad engines and vehicles if EPA determines that such other emissions contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Finally, Section 213 directs EPA to regulate emissions from new locomotives.

EPA is already required by statute, and, in some cases, court order, to promulgate national rulemakings for various categories of nonroad engines. In this NPRM, EPA proposes to allow credit for these rules, which will be promulgated either before or within a relatively short time after promulgation of these FIPs. Thus final issuance of these rules is legally compelled well in advance of their scheduled implementation.

Because of the imminence of these rulemakings, and because EPA's commitments to them are legally guaranteed, EPA believes it is appropriate to give credit in the FIP for the emissions reductions they are expected to generate. The emissions reductions involved are relatively small, and are further ensured by EPA's regulatory guarantee to achieve the level of credited emission reductions by other means if necessary.

Canvassing the alternatives to this approach bolsters EPA's conclusion. One option is to accelerate the statutory and court-ordered deadlines so that they precisely fit the FIP promulgation date. But the rulemakings at issue are national in scope, and it would be detrimental to cut short the time Congress and the courts have allocated for their analysis and consideration as a technical accommodation to the localized FIP deadlines. The only remaining alternative would be to promulgate temporary, interim measures that would in all probability never be implemented, and that would evaporate when the national rules were issued. This approach would be wasteful, inefficient, and confusing for regulated sources.

(2) General Nonroad Background. This section provides general background on nonroad sources excluding large ocean-going ships, locomotives, and Federal sources such as aircraft. These sources will be covered starting with Section III D.4.e of this preamble. The Nonroad Engine and Vehicle Emission Study (hereafter, "Nonroad Study") required by section 213(a)(1) was completed in November 1991. The Nonroad Study is available in docket A-91-24. The determination of

the significance of emissions from nonroad engines and vehicles in more than one NAAQS nonattainment area, required by section 213(a)(2), was proposed on May 17, 1993 (58 FR 28809). At the same time, the first set of Federal regulations for a class or category of nonroad engines that contribute to air pollution, required by section 213(a)(3), was also proposed (58 FR 28809) for new nonroad compression-ignition (CI) engines at or above 37 kilowatts (kW) (50 hp). As EPA continues to implement section 213(a)(3) and (4), it will propose Federal emission standards for new nonroad spark-ignition (SI) engines at or below 19 kW (hereafter, "small SI engines"), and spark-ignition (SI) marine engines (hereafter, "SI marine engines") as well as other classes or categories of nonroad engines that contribute to air pollution.

On the basis of the Nonroad Study, EPA has proposed its determination that emissions of CO, NO_X, and VOCs from nonroad engines and vehicles contribute significantly to ozone or CO in more than one NAAQS nonattainment area (see 58 FR 28809, May 17, 1993). According to the Nonroad Study, nonroad engines and vehicles contribute an average of 10 percent of summer VOCs and 17 percent of summer NO_X in the 19 ozone nonattainment areas included in the study. Small SI engines are the source of half of those nonroad summer VOC emissions. CI engines over 50 kW used in farm, construction, and utility applications are a major source of nonroad NO_X emissions. In the 16 CO nonattainment areas included in the study, nonroad engines and vehicles account on average for 9 percent of winter CO emissions. Small SI engines are the source of 56 percent of the nonroad winter CO contribution, according to the study. In the Sacramento, Ventura, and South Coast FIP areas, nonroad sources comprise 10 percent, 5 percent, and 6 percent of the baseline VOC inventory, respectively. Nonroad sources contribute 22 percent of Sacramento's baseline NO_X inventory, 12 percent of Ventura's, and 21 percent of South Coast's.

(3) Sierra Club Suit. The Sierra Club Legal Defense Fund brought suit against EPA in Federal District Court for the District of Columbia for failure to meet certain deadlines required under the Clean Air Act (*Sierra Club* v. *Browner*, Civ. No. 93–0197 NHJ (DDC 1993)). Plaintiffs and EPA have entered into a settlement agreement in that case that, among other things, requires EPA to finalize Federal emission standards for certain categories of nonroad engines on the following schedule:

Heavy Duty CI Ignition Engines.	May 1994.
Small Nonroad SI Engines Phase I.	May 1995.
Small Nonroad SI Engines Phase II.	April 1997.
Marine Pleasure Craft	November 1995.

The Settlement also requires that EPA make a decision regarding whether to regulate SI engines over 19 kW (25 hp) and CI engines under 37 kW (50 hp) by December 1996. Given the reductions available through other measures proposed today, it will not be necessary to develop special control measures for the FIP areas for these two categories of nonroad engines. However, certain SI engines over 37 kW (50 hp) may be affected by the enhanced nonroad program described in the Appendices of today's proposal.

(4) Rationale for Implementing the Federal Programs in the FIP Areas. Nonroad sources are a diverse class of engines used in as many as 80 applications. The structure of the industry that manufactures nonroad engines and vehicles is complicated in that it is not integrated. Some manufacturers manufacture only engines, others manufacture only equipment, few manufacture both engines and equipment. Much of the equipment is portable and is not registered, making enforcement of regulations challenging. Almost without exception, nonroad engines have not been regulated previously by EPA for emissions. Much of the data which existed relating to emissions from nonroad engines prior to 1991, while adequate to estimate emissions inventories for the purpose of the Nonroad Study, needed updating and analysis before comprehensive regulatory programs could be developed. For some categories of engines, little emissions data existed; for other categories of engines, EPA believes that the emission test procedures need to be validated to ensure accurate representation of in-use emissions using advanced control technology.

The Agency is now in the process of gathering more emissions data and validating and developing test procedures for nonroad engines. Because of the need to achieve near-term emissions reductions from nonroad sources in the nonattainment areas and the lack of certain data, the Agency adopted phased Federal regulatory strategies for two nonroad categories: CI engines at or over 37 kW and SI engines at or under 19 kW. In Phase 1 for each of these categories, EPA either has proposed or will soon propose standards that will achieve maximum reductions in the near term using existing test procedures and technology or modifications of existing technology. Phase 2 will deal with those issues for which a longer review time is advisable, such as development of new technologies and test procedures.

For the purposes of the FIP, the Agency proposes to implement certain Federal programs that have not yet been promulgated by EPA. In particular, the Agency proposes to implement the Phase 1 and Phase 2 Federal Standards for nonroad SI engines at or under 19 kW. These Phase 1 and 2 standards are now under development and will be proposed by May of 1994 and May 1996, respectively. EPA also proposes to implement the Federal Standards for CI Nonroad Engines at or over 37 kW which have been proposed (58 FR 28809) and will be made final by May 31, 1994, and National Standards for Spark-ignition Marine Pleasure Craft which are under development and will be proposed by September 1994. These programs are described in the section entitled, "Federal Nonroad Requirements."

(5) California's Nonroad Program/Preemption. Section 209(e)(1) prohibits California, and all other states, from adopting standards for new locomotives and for new engines and vehicles used in farm and construction equipment under 175 hp. CAA section 209(e)(2) authorizes California to adopt and enforce emission standards for all other nonroad engines if it is California's determination that such standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal Standards and if EPA finds that: (1) California's determination is not arbitrary and capricious; (2) California needs such standards to meet compelling or extraordinary conditions; or (3) California's standards and accompanying enforcement procedures are consistent with that section. CAA section 209(e)(2) also authorizes other states to opt into California standards.

The California Air Resources Board (CARB) has chosen to create categories for regulation of nonroad sources based on application or end use of the engines. The Federal program for control of emissions from nonroad sources creates categories for regulation based on engine parameters and characteristics such as size and fuel system, rather than application. The Agency believes that this regulatory scheme provides criteria that make it easier to clearly determine which engines are covered by which set of standards. The Agency does consider application or operating environment in its regulatory scheme for some engines.

In general, the Federal categories are broader than those chosen by California and encompass a wider range of engines and applications. CARB has approved standards for nonroad lawn and garden and utility SI and CI engines from 0–25 horsepower. EPA is currently reviewing CARB's section 209(e) waiver request for its lawn and garden and utility rule. A decision will be issued once EPA's section 209(e) procedural rule is finalized. There is potential for other states to adopt the California standards, which are scheduled to become effective in 1995. CARB also has proposed standards for other classes of nonroad vehicles.

Federal Standards will be more comprehensive than California's proposed standards for lawn and garden equipment or heavy-duty farm and construction equipment because the Federal programs will cover engines used in new farm and construction equipment under 175 hp which California is preempted from regulating. About 1 in 5 engines that would otherwise be covered by California's proposed lawn and garden standards are preempted because they are classified as farm or construction engines. The Federal program for control of SI marine engines, which will be proposed by September 1994, will also be applied in the FIP areas. California has no proposed standards for marine pleasure craft, however, CARB has conducted a public meeting to consider a plan to control emissions from "large" marine vessels.

b. Federal Nonroad Requirements—(1) Federal Requirements for CI Engines at or above 37 kW. This section provides a general overview of the major elements of the Federal program to control emissions from new nonroad CI engines at or greater than 37 kW.

(a) Applicability. The regulations are expected to apply to all new nonroad CI engines at or above 37 kW with certain exemptions and exclusions. Engines included in this rule will be referred to as "large nonroad CI engines."

The vast majority of large nonroad CI engines currently being used and manufactured are diesel-fueled engines. The use of alternative fuels will not be necessary to meet the emission standards. However, these regulations would apply to large nonroad CI engines regardless of the fuel that is used (for example, diesel, compressed natural gas (CNG), rapeseed, methanol, ethanol, and blends). Provisions are expected to be included which will allow manufacturers to apply for Administrator approval of alternative test procedures if fuel other than diesel is to be used.

(b) Standards. EPA expects to adopt NO_X emission and smoke standards for all large nonroad CI engines at or above 37 kW as proposed May 17, 1993 (58 FR 28809). Furthermore, EPA expects to adopt standards for HC, CO, and PM emissions for engines at or above 130 kW, consistent with those standards adopted by California in section 2420–2427, Chapter 11, Title 13 of the California Code of Regulations, "California Regulation for New 1996 and Later Heavy-duty Off-road Diesel Cycle Engines."

Net Power (kW)	HC g/kWh	CO g/kWh	NO_x g/kWh	PM g/kWh	Smoke A/L/P percent[a]
≥130	1.3	11.4	9.2	0.54	20/15/50
≥75 to <130	N/A	N/A	9.2	N/A	20/15/50
≥37 to <75	N/A	N/A	9.2	N/A	20/15/50

[a] Smoke Opacity Standards are reported in terms of percent opacity during an acceleration mode, a lug mode, and the peak opacity on either the acceleration or lug modes.

(c) Compliance Dates. Under the expected regulations, all engines produced by an engine manufacturer on or after January 1 of the implementation year specified below by power category would be required to be certified by the engine manufacturer according to the requirements in effect for that year. EPA expects equipment manufacturers to begin installing certified engines as soon as they become available from engine manufacturers, with some lag time expected for equipment manufacturers to clear out normal inventories. Early certification will be allowed one year prior to the applicable effective date for engines participating in the averaging, banking, and trading (ABT) program.

Engine size (kW)	Implementation date
≥130 to ≤560	January 1, 1996.
≥75 to <130	January 1, 1997.
≥37 to <75	January 1, 1998.
>560	January 1, 2000.

(d) Certification and Test Procedures. The exhaust emission 8–Mode test procedures for NO_X emissions and the smoke test procedures are expected to be adopted as they were proposed with minor revisions. The 8–Mode test procedure would also apply to emissions of HC and CO.

For PM emission measurement, EPA would adopt the California test procedures as finalized in Section 2420–2427, Chapter 11, Title 13 of the California Code of Regulations, "California Regulation for New 1996 and Later Heavy-duty Off-road Diesel Cycle Engines."

Manufacturers of engines that are not able to operate properly over the 8–Mode or smoke test cycles (such as engines with constant speed governors), would be able to petition the Administrator to allow use of an alternative test procedure. Upon adequate demonstration of need, the Administrator may allow use of alternative procedures. If an engine is unable to be operated over the smoke test procedure, the manufacturer would be required to submit an alternative test plan to the Administrator for approval in advance of any testing.

The particulate standard adopted in the rule would be based on the use of the low sulfur fuel. Should a manufacturer or EPA choose to perform certification or in-use compliance testing with commercially available fuel containing higher sulfur, the particulate measurement will be adjusted by using the following equation to reflect the effects of higher sulfur content of the fuel on particulate emissions

$$PM_{adj}=PM-[BSFC\times 0.0917\times(FSF-USLF_{CA})]$$

Where:

PM_{adj}=adjusted measured PM level [g/kWh]

PM=measured weighted PM level [g/kWh]

BSFC=measured brake specific fuel consumption [(G/kW-hr) hr]

FSF=fuel sulfur weight fraction

$USLF_{CA}$=upper sulfur level weight fraction of California test fuel specification

This adjustment only applies to engines with no exhaust gas aftertreatment. No adjustment is provided for engines with exhaust gas aftertreatment.

(2) Federal Requirements for Small Nonroad SI Engines at or Under 19 kW.

(a) Background. Since March 1992, EPA has held several public workshops and meetings to solicit information on technical characteristics, emissions, potential regulatory strategies, and general regulatory issues related to small SI engines. Public notice of such meetings may be found in the docket for this rulemaking.

At the March 1992 public workshop, the Engine Manufacturers Association and the Outdoor Power Equipment Institute encouraged Federal regulation of nonhandheld small SI engines and expressed interest in working in a cooperative program with EPA to develop regulations by November 1993. Likewise, the Portable Power Equipment Manufacturers Association encouraged Federal regulation of portable 2-stroke power equipment and expressed interest in working cooperatively with EPA.

Following the March 1992 workshop, EPA determined that setting emission standards for the small SI engine category might be suitable for a consultative approach to rulemaking, such as negotiated rulemaking. The Negotiated Rulemaking Act (5 U.S.C. 581–590) establishes a framework for conducting negotiated rulemaking. The goal of a regulatory negotiation committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal.

EPA initiated a convening process to determine the best way to work with industry and other interested parties in developing regulations for small SI engines. The conveners interviewed individuals in leadership roles in key organizations identified by EPA to determine what parties were interested in these regulations, what issues were important to interested parties, and whether a consultative rulemaking process would be feasible and appropriate. A copy of the convening report dated August 24, 1992, is available in the docket for this rulemaking.

The convening report recommended an exploratory meeting of interested parties to discuss, but not initiate, a consultative process. Time-forcing factors lending an air of urgency to issuance of the rule include: (1) The need of states to realize emission reductions from nonroad sources that are creditable toward Reasonable Further Progress requirements of the CAA, and (2) the potential threat to industry of patchwork regulation if a number of states opt into California's program in order to attain national air quality goals. The deadlines created by the settlement of the *Sierra Club* suit mentioned earlier led to even further need to issue a rule quickly.

The exploratory meeting recommended in the convening report was held in Ann Arbor, Michigan, on November 16–17, 1992. Participants decided that state and public interest representatives needed more technical information to fully understand some of the regulatory issues participants might face. It was also decided that another meeting was necessary to discuss the potential design of a consultative process for a small SI engine rulemaking. The technical briefing for state and public interest representatives was conducted in Ann Arbor on December 16, 1992. On January 28–29, 1993, a meeting to discuss consultative process design was held in Ann Arbor.

At the January meeting, it was suggested that EPA consider a two-phased approach to regulation of small SI engines. In the first phase, EPA would propose regulations for small SI engines through the normal regulatory process rather than a consultative process. The suggested Phase 1 regulations would be similar to California's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines, modified as necessary to meet CAA requirements. (For example, EPA's proposal would modify CARB's program by including engines preempted from regulation in California.) The Phase 1 proposal would be completed as soon as possible, but no later than the spring of 1994. The final rule would be completed no later than spring of 1995. The second phase of regulation would be developed through the consultative process of regulatory negotiation. It would include issues such as useful life, in-use emission, evaporative emissions, refueling emissions, test procedure, and market-based incentive programs.

Today's action proposes that both phases of regulation for small SI engines be applied to the FIP areas. An overview of what EPA anticipates will be included in a Phase 1 program is outlined below. EPA believes that the Federal Phase 1 Standards will result in a 40 percent reduction in the HC inventory with a slight (less than 1 percent) increase in NO_X. Phase 2 small SI engine regulations are expected to achieve 90 percent reduction in the small SI engine baseline HC emissions inventory. The Agency expects that achieving a 90 percent reduction would not depend solely on more stringent exhaust standards, but rather a combination of strategies (i.e., a scrappage program or other programs to accelerate turnover, spillage control programs, fuels requirements and evaporative emission controls) that added together would result in the anticipated reduction. Negotiations have been underway since Fall 1993 and will continue for approximately 18 months.

The phased approach to regulation of small SI engines is incorporated in the *Sierra Club* v. *Browner* settlement. Phase 2 regulation is expected to apply federally and in California in approximately 2000–2001. Should the Agency's Phase 2 small SI engine program fail to provide for a 90 percent reduction from the current uncontrolled emissions inventory, EPA shall promulgate a more stringent program applicable to California, or the FIP areas, or propose fees for commercial operators of SI engines at or under 19 kW.

(b) Overview of Program to Control Emissions from SI Engines Under 19 kW. The general provisions that EPA expects to propose for the Phase 1 and Phase 2 rules, as well as the rationale for the key parts of the proposal, are briefly described in the following section.

EPA expects to propose to regulate the emissions of hydrocarbons (HC), oxides of nitrogen (NO_X), and carbon monoxide (CO) from certain new nonroad SI engines that have a gross power output at or below 19 kilowatts (kW) (small SI engines). An SI engine is an internal combustion engine in which the air/fuel mixture is ignited in the combustion chamber by an electric spark and are generally fueled by gasoline. The scope of these rules are expected to encompass a broad range of small SI engine applications, including farm and construction equipment, which states are preempted from regulating under section 209(e)(1) of the CAA. Anticipated exclusions from the rules are detailed below.

1. Engines used to propel marine vessels as defined in the General Provisions of the United States Code, 1 U.S.C. 3 (1992). A "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C. 3 (1992).

2. Engines used in underground mining or engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MHSA). See 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75.

3. Engines used in motorcycles and regulated in 40 CFR part 86 subpart E.

4. Engines used in aircraft as that term is defined in 40 CFR 87.1(a).

5. Engines used in recreational vehicles. Recreational engines are those engines which have no installed speed governor and which have a rated speed of greater than or equal to 5000 revolutions per minute (RPM). Recreational engines are not used to

propel marine vessels and do not meet the criteria to be categorized as a Class III, IV, or V engine under this rule.

(c) Standards.

Phase 1

Under the expected Phase 1 proposal, exhaust emissions from small SI engines cannot exceed levels for a given engine class as listed in the table below ("Phase 1 Small SI Exhaust Emission Standards"). Engine classes are specified both by engine displacement, as measured in cubic centimeters (cc), and by the type of equipment the engine will power—either handheld or nonhandheld. The emission standards that EPA expects to propose are considered Phase I small engine standards.

PHASE 1 SMALL SI EXHAUST EMISSION STANDARDS

[In grams per kilowatt hour]

Engine class	Hydrocarbon plus oxides of nitrogen	Hydrocarbon	Carbon monoxide	Oxides of nitrogen
I	16.1	....	402	....
II	13.4	....	402	....
III	....	295	805	5.36
IV	....	241	805	5.36
V	....	161	402	5.36

Class I: engines less than 225 cc in displacement

Class II: engines greater than or equal to 225 cc in displacement

Engines powering equipment defined as handheld must meet Class III, IV, or V emission standards as follows:

Class III: engines less than 20 cc in displacement

Class IV: engines at or above 20 cc to less than 50 displacement

Class V: engines equal to or greater than 50 cc indisplacement

Phase 2

Standards are currently being negotiated for Phase 2 through the regulatory negotiation process and will cover exhaust as well as evaporative emissions.

(d) Regulatory Scheme.

Phase 1

This rule is expected to propose the following regulatory scheme:

- Designation of product lines into groups of engines with similar emissions, and manufacturer emission testing of selected engines with a specified test;
- Labeling of engines, and alternatively, equipment labeling;
- Submission of an application for certification for each engine family;
- Inclusion of various certification requirements such as the prohibition of defeat devices;
- Issuance of an emission certificate of conformity for each engine family;
- Prohibition against sale of engines in the U.S. not certified by EPA;
- Requirement that equipment manufacturers use the appropriate handheld or nonhandheld certified engine in their equipment;
- Recordkeeping and reporting requirements;
- Design warranty provisions and prohibition on tampering;
- Inclusion of all farm and construction engines preempted under the CAA from state regulation;
- Development of an engine manufacturer's program to evaluate in-use emission deterioration;
- Requirement that, if catalysts are used in an engine family, catalyst durability must be confirmed by means of the evaluation procedure that is specified in this NPRM;
- Defect reporting;
- Importation provisions; and
- Production line Selective Enforcement Auditing (SEA).

Phase 2

The regulatory scheme for Phase 2 will be negotiated through the regulatory negotiation process.

3. Federal Requirements for SI Marine Engines

The EPA is currently in the process of developing a Federal rulemaking to control emissions from SI marine engines. The proposed standards will be expected to result in a 70–80 percent reduction in HC emissions from two-stroke outboard engines which comprise over half of the engines in this category. On average there will be a 50–60 percent reduction in emissions from the fleet of SI marine engines. However, as a result of controlling HC emissions, NO_X emissions are expected to increase by a factor of 2–4 (baseline NO_X for these engines, on average, is about 2 g/kWh). This Federal program will apply to FIP areas. EPA is under court ordered deadline for this regulation; the schedule is for the NPRM to be signed by the Administrator by September 30, 1994 and final rule signed by November 24, 1995. The general provisions that the Agency anticipates will be included in the proposal for regulation of SI marine engines are briefly described in the following section. Today, EPA is also proposing a system of emission based fees for use of SI marine pleasure craft in the FIP areas. If the Agency finds that the Federal program for controlling emissions from SI marine engines does not achieve the anticipated reduction, adjustments will be made to the stringency of the fees or the standards to compensate for any loss in benefit from the Federal program.

(a) Overview of Requirements for SI Marine Engines

EPA will propose to regulate the emission of hydrocarbons from SI marine engines. Included under this regulation will be emission standards for SI marine propulsion engines which include the following engine types: outboard, sterndrive (inboard/outboard), inboard, and personal watercraft (e.g., Jet Ski).

A compliance program involving pre-sale certification and in-use enforcement is also expected to be proposed for marine engines. The proposed program will be similar to the current on-highway engine program. EPA expects to include the following provisions:

- Designation of product line into groups of engines with similar emission characteristics (such groups are called engine families);
- Manufacturer emission testing of selected engines with the specified test procedure to demonstrate compliance with emission standards;
- Labeling of engines from each engine family;
- Submission of application for certification for each engine family by model year;
- Issuance of an emission compliance certificate for each engine family;
- Prohibition against sale of engines not certified by EPA;
- Recordkeeping and reporting;
- EPA confirmatory certification testing;
- Production line Selective Enforcement Auditing (SEA);
- In-use testing and enforcement;
- Warranty and prohibition on tampering; and
- Importation provisions.

Certain modifications to the on-highway program are expected to be proposed for this program. These modifications include: (1) only one emission test engine required, and (2) a national averaging, banking, and trading program modified to suit this industry.

For the FIP areas, EPA proposes that phased emission standards and certification of new engines commence with the 1998 model year for outboard, sterndrive and inboard engines, and 1999 model year for personal watercraft.

(b) Definition of SI Marine Engine.

A spark-ignition engine is an internal combustion engine in which the air/fuel mixture is ignited in the combustion chamber by an electric spark. EPA is expecting to propose defining marine engines as any nonroad engine which is used on a "vessel" as defined in 1 U.S.C. Section 3 (1992).[72]

(c) Applicability. Under the expected proposal all SI marine engines must comply with the proposed emission standards, with some exceptions as discussed below.

Exclusions from the Proposal

Certain engines that are included within the proposed definition of marine engine just discussed are expected to be excluded from the Federal marine engine emission standards. SI engines expected to be excluded are the following:

(1) Engines used in marine "vessels" as defined in 1 U.S.C. Sections 3 (1992) which are used exclusively as marine auxiliary power generation units;

(2) Exported engines, either loose marine engines or marine engines in boats or vessels that are to be exported.

Exemptions From the Proposal

Pursuant to section 203(b)(1) of the CAA, the Agency is expecting to propose categories of exemptions from new SI marine engine regulations similar to the existing exemptions for new large nonroad CI engines (see 40 CFR part 89 subpart I). These include exemptions for purposes of research, investigations, studies, demonstrations, training, or for reasons of national security. Exemptions are justified in these cases because the sources are limited in number or scope so no environmental harm results, the particular use of the source is determined to further air quality research, and/or the exemption is vital to the security of the nation. (See 39 FR 10601, March 21, 1974 for history of on-highway exemptions policy.)

(d) Emission Standards. The numerical emission standards are expected to be proposed for the category of SI marine vessels which includes inboard engines, sterndrives, and outboard engines. EPA realizes that these standards will cover engines that use different technology, but EPA believes that creating separate standards based on categories such as 2- and 4-stroke engines sets up artificial barriers to competition in the market and will not achieve as efficiently reductions from this category as a single set of standards. EPA will in its proposal for the Federal program take comment on the scheme of classification and level of standards. Separate standards are expected to be set for HC and NO_x emissions on a brake-specific basis (i.e., grams of pollutant per brake kilowatt-hour). EPA realizes that there is a tradeoff between the level of HC emissions and NO_x emissions and intends to take comment on setting a combined $HC+NO_x$ standard for this category of nonroad engines.

EPA believes that for current outboard engines these standards will be technology forcing. For other types of engines these standards may require better calibration and more advanced fueling systems. The emission standards will be proposed to take effect at the earliest possible date, as required by paragraph 213(b) of the Act.

SI marine engines are very rarely designed to operate on alternative fuels. EPA does not believe that new emission standards for marine engines will require increased use of alternative fuels. EPA therefore does not expect to propose procedures or emission standards for SI alternative-fueled marine engines. EPA does expect to request comment on the need for regulations and the potential for increased market share for SI marine engines that operate on alternative fuels such as natural gas, methanol, or ethanol.

In addition to the numerical emission standards described above, EPA expects to propose to prohibit direct emissions of crankcase vapors into the atmosphere. Motor vehicles have been subject to an analogous requirement since the first stages of emission-control regulation.

(e) General Enforcement Provisions. The Agency is expected to propose regulations that require marine sources to obtain certification and subject them to selective enforcement auditing and in-use enforcement. The Agency is also expected to propose regulations similar to those for on-highway vehicles under sections 203, 204, 205, and 208 of the Act.

(f) Compliance Dates for Certification. The Federal marine program as it applies to the FIP areas will phase standards in over time. EPA proposes that emission standards become effective in the FIP areas beginning in the 1998 model year for outboard, sterndrive, and inboard SI marine engines, and in the 1999 model year for personal watercraft SI engines. Companies considered small marine businesses will be defined in the Federal rule and would first be subject to emission standards no earlier than the 2000 model year.

(g) Averaging, Banking, and Trading. Provisions of the national enforcement program are expected to include an averaging, banking, and trading Program. EPA will not propose an averaging, banking, and trading program for marine engines specifically for the FIP areas. However, EPA does plan on proposing such a program for the Federal regulation.

c. *Special FIP Measures.* The Agency believes that the above Federal programs will have sound technical basis and will achieve projected emissions reductions. The Agency also acknowledges that the marine pleasure craft standards are likely to be technology forcing. However, the Agency also recognizes that many other sources, which have been previously regulated, will be required to meet new and more stringent standards than they are required to meet federally. For the purposes of equity and to achieve added emissions reductions from nonroad sources, the Agency proposes to and will take comment on a fees program for certain classes of these nonroad engines. The Agency is also proposing today a program to control emissions from engines used in recreational vehicles and nonroad and on-highway motorcycles as a special FIP measure.

(1) On-Highway Motorcycles and Nonroad Engines Used in Nonroad Motorcycles. The Agency intends to exclude from its regulation of SI engines at or under 19 kW, engines used in recreational vehicles because they have fundamentally different operating characteristics than other small SI nonroad engines. In general, engines used in recreational equipment are similar to engines used in on-highway motorcycles in that they use a continuously variable throttle (not a governor), have rated engines speeds in excess of 5000 RPM, and wide variations in both engine load and speed. These engines, like motorcycle engines, are primarily used to transport people. CARB has estimated that engines used in nonroad vehicles such as motorcycles, all terrain vehicles, go-carts and other nonroad recreational vehicles, contribute 21 tons of HC and 100 tons of CO per day to the statewide inventory. Further, EPA estimates that on-highway motorcycles and engines used in nonroad motorcycles, including dirt bikes, ATVs, and similar equipment contribute 3, 1, 30.3 tons of HC per day to the emissions inventories in the Sacramento, Ventura, and South Coast, respectively. To achieve reductions from this category of nonroad sources as well as to achieve reductions from on highway motorcycles and mopeds, EPA proposes to promulgate emissions restrictions for motorcycles and nonroad recreational vehicles similar to EPA's

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[72] The word vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

existing on-highway motorcycle program found in 40 CFR part 86 subpart E.

(a) Overview. EPA today proposes to promulgate a definition of on-highway and nonroad motorcycles applicable in the State of California for the purposes of the FIP, as well as standards for those classes of motorcycles and engines used in them. Today's proposal encompasses on-highway motorcycles, and engines used in such vehicles as mopeds, dirt bikes, all terrain vehicles, and go-carts. EPA is also proposing a more stringent set of exhaust emission standards applicable to all new on-highway and nonroad motorcycles sold in the State of California after January 1, 1996. EPA proposes that all other requirements of the current Federal motorcycle regulations contained in 40 CFR part 86 subparts E and F, apply to motorcycles sold in California, including provisions for certification, test procedures, and enforcement.

(b) Definition of On-highway and Nonroad Motorcycles. For the purpose of the FIPs, EPA proposes to use the definition of motorcycle in 40 CFR part 86 to refer to on-highway motorcycles and add the following definition for nonroad motorcycles.

A nonroad motorcycle means any motorized land vehicle designed for transporting persons or property and manufactured for sale, sold, offered for sale, introduced into commerce, or imported into the State of California and which has two wheels, or three or more wheels and a curb mass less than or equal to 680 kilograms; it does not include devices regulated by the State of California as other classes of motor vehicles or devices regulated by EPA as other classes of nonroad engines.

(c) Applicability. The Agency believes that it is necessary to control emissions from all on-highway motorcycles and engines used in nonroad motorcycles, as defined in the previous section, on a statewide basis to achieve needed emission reductions in the FIP areas. It is the Agency's intent that the standards proposed today, as well as the requirements of 40 CFR part 86 subpart E, apply to all on-highway motorcycles, and engines used in nonroad motorcycles regardless of displacement. The following are examples of vehicles covered by the definition of nonroad motorcycles: dirt bikes, all terrain vehicles, go-cart, and mopeds. It is the Agency's intent that engines used in these vehicles and similar nonroad vehicles meet the standards. It is also the Agency's intent that on-highway motorcycles with displacements less than 50 cc (3.1 cu. in.) meet the proposed standards.

(d) Standards. EPA proposes that all motorcycles sold in California meet a 0.8 g/km standards for HC, a 0.8 g/km standard for NO_X, and a 12 g/km standard for carbon monoxide.

Certification data from current technology on highway motorcycles indicates that over 50 percent of these motorcycles are certifying to exhaust HC emission levels at or below 0.8 g/km HC. EPA believes that by using existing on-highway motorcycle technology it is reasonable to expect that motorcycles should be able to achieve comparable emission levels for HC. The Agency understands that an 0.8 g/km standard may require substitution of 4-stroke nonroad engines for 2-stroke nonroad engines currently used in dirt bikes, ATVs, and similar vehicles. However, EPA is also aware that catalyst technology exists and is currently being applied to 2-stroke motorcycles and mopeds sold in other countries to meet stringent legal emissions levels in those countries. EPA believes that this simple oxidation technology is viable for reducing emissions from engines used in both on-highway and nonroad motorcycles to the 0.8 g/km HC and 0.8 g/km NO_X level.

The Agency has considered a 0.5 g/km HC standard for on-highway motorcycles and takes comment on restricting emissions from on-highway motorcycles to this more stringent level and on the applicability of this standard to the smaller displacement on-highway motorcycles under 50 cc (3.1 cu. in.).

Although the test data on NO_X emissions from motorcycles is more limited, experience with light duty cars suggests that with a catalyst, NO_X emission levels are approximately equal to HC emission levels. In addition, legal emission levels for motorcycles in Taiwan, beginning in 1996, will be 0.8 g/km for both HC and NO_X. Testing data submitted by one catalyst manufacturer shows that $HC+NO_X$ levels range between 0.30 g/km and 1.88 g/km. The Agency realizes that there is a trade-off between HC emission and NO_X emission and solicits comment on the benefit of setting a combined standard of 1.6 g/km for $HC + NO_X$.

EPA also realizes that less emission data exists for nonroad engines used in nonroad motorcycles and solicits data from manufacturers as a basis for evaluating the level of the standards proposed today.

(e) Certification and Test Procedure. EPA proposes that the test procedure for on-highway and nonroad motorcycles will be the same as that procedure described in 40 CFR part 86 subpart F. EPA acknowledges that the test procedure described in 40 CFR part 86 subpart F, in general is performed on a dynamometer designed for two-wheeled motorcycles and that many motorcycles as defined above have more than two wheels. The test procedure described in 40 CFR part 86 subpart F, involves testing motorcycles as whole vehicles on chassis dynamometers designed for two-wheeled motorcycles, driving the same driving cycle (vehicle speed versus time) that is used for cars and light trucks.

Current Federal regulations contain a general provision for EPA to authorize special test procedures for vehicles which cannot be properly tested under the standard procedures. EPA believes it is appropriate to test all of the new motorcycles and engines included in today's proposal as whole vehicles under this same procedure used for current motorcycles. The special test procedure provision would be applied as necessary to test any vehicles which cannot be physically tested using current motorcycle dynamometers. For example, vehicles having more than one drive wheel on an axle exceeding the width of current motorcycle dynamometer rolls might be tested using normal passenger car chassis dynamometers, or motorcycle dynamometers with specially widened rolls. Vehicles with multiple drive axles would be handled, as much as possible, like four-wheel drive passenger cars and light trucks are currently tested, with all the power supplied through only one primary drive axle. If the foregoing adaptations of the currently available motorcycle and passenger car chassis dynamometers cannot be applied, EPA would expect to apply special procedures involving directly connecting the drive axle to a dynamometer, driven at an axle speed that corresponds to the required vehicle speed. EPA solicits comments on the test procedures outlined in 40 CFR, Subpart F, and its applicability to four-wheeled nonroad motorcycles. EPA specifically requests comments on J1088 as an alternative test procedure. For J1088 and other alternative procedures suggested, EPA specifically requests data to allow correlation between the stringency of the proposed standards as measured on the test procedure defined in 40 CFR, Subpart F, and any test suggested by commentors.

(f) Authority. As explained above, in promulgating a FIP under section 110 (c) of the Act, EPA may take any actions that the state could take. As section 209 of the CAA provides that California is not preempted from adopting and implementing a motor vehicle emissions control program provided its program satisfies the criteria of section 209(b), EPA believes that it, acting on behalf of California in the context of a FIP, may adopt a motor vehicle program or supplement California's own motor vehicle program provided that EPA's actions would satisfy the criteria of section 209(b) for a waiver of Federal preemption. Moreover, EPA believes that it, acting on behalf of California in the context of a FIP, may adopt a nonroad engine program or supplement California's nonroad engine program provided that EPA's actions satisfy the criteria of section 209(e)(2) for a waiver of Federal preemption and provided that the program does not establish emission standards or accompanying enforcement procedures for any new nonroad engines that California, under section 209(e)(1) is precluded from regulating (i.e., new locomotive and new engines used in locomotives and new engines used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower). Section 209 provides that EPA is to grant California a waiver of preemption if the State determines that its standards "will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."

Section 209 further provides that no waiver or authorization is to be granted if EPA finds that: (A) the determination of the State that the standards are, in the aggregate, at least as protective of public health and welfare as otherwise applicable Federal standards is arbitrary and capricious; (B) State standards are not needed to meet compelling and extraordinary conditions; or (C) the State standards and accompanying enforcement procedures are not consistent with section 202(a) (or are not consistent with section 209, as is the case of nonroad engines under section 209(e)). EPA has interpreted the consistency criterion as meaning that California standards and accompanying enforcement procedures must be technologically feasible within the leadtime provided, taking into account the cost of compliance, and that they not impose inconsistent certification test procedure requirements such that the same vehicle or engine could not be used to comply with both State and Federal certification requirements.

EPA believes that the on-highway and nonroad motorcycle program that would be applicable to vehicles and engines in California under the proposed FIP would satisfy the section 209 waiver criteria. Thus, California could undertake the on-highway and nonroad motorcycle program described above, and, therefore, EPA has authority under section 110(c) to undertake the proposed programs.

With respect to the protectiveness of the standards, all of the proposed standards are at least as protective as the otherwise applicable Federal standards.

With respect to the need to meet compelling and extraordinary conditions, EPA has repeatedly found that California's air quality problems satisfy the need criterion of section 209. Moreover, the magnitude of the reductions in emissions needed to reach attainment in the FIP areas, including mobile source emissions, provides ample evidence of the need for more stringent motor vehicle emission standards in California.

Finally, with respect to the criterion of consistency with section 202(a) or section 209, EPA believes that its proposed enhanced nonroad program is consistent with both the technological feasibility and certification elements of that criterion. EPA believes that the various elements of the program are technologically feasible within the leadtime provided, taking into account the cost of compliance. Moreover, no aspect of the program establishes any new certification test procedures that are inconsistent with either existing Federal or California test procedure requirements. Consequently, EPA believes that its proposed on-highway and nonroad motorcycle program satisfies this prong of section 209 as well.

In addition, as none of the classes of nonroad equipment EPA is regulating under this program are new farm or construction equipment or new locomotives, this program meets the requirements of section 209(e)(1).

(2) Fee on Marine Pleasure Craft. Although the new national emission standards for spark ignition engines in marine pleasure craft described above will result in substantial emissions reductions per engine, overall reductions in emissions from this category will depend primarily on the amount of fleet turnover after the new standards are introduced. Under conditions of normal turnover, EPA expects that approximately one half of the total fleet of marine pleasure craft will meet the new standard by 2005. However, even normal turnover may not result in enough emission reduction to accomplish the goals of this FIP. EPA believes that additional measures are needed to strongly encourage the use of only cleaner engines in the FIP areas. Therefore, EPA proposes to require that all owners of marine pleasure craft with spark ignition engines obtain an emission permit before operating their boats in the FIP areas during each area's ozone season beginning in 2004.

Under this proposed permit system, all operators of marine pleasure craft will be required to carry an emission permit on board their boats while operating in the FIP area. Since boats are often operated in areas other than where the owner resides, permits will be required only for operation of a boat within the FIP area, not for ownership of a boat within the FIP area. Boat-owners who reside in the FIP area but only use their boats outside the FIP area would not be required to purchase permits.

Two types of permits will be sold, annual permits and daily use permits. Owners of boats meeting the new emission standards described above would be eligible for permanent emission permits free of charge. Owners of all other boats could choose to buy either an annual permit which would allow them to operate their boats in the FIP area for the entire year, or a daily use permit which would allow them to operate their boat on a single specified day in the FIP area (owners could also purchase multiple daily use permits if they plan to operate their boats in the FIP area for only a few days per year).

The fees for emission permits will be based on the average excess emissions of pre-standard engines compared to engines meeting the new emissions standards described above. For the purpose of permit fee calculation, the engines of marine pleasure craft will be divided into the following classes: 4-cycle gasoline inboard, 4-cycle gasoline outboard, 2-cycle gasoline outboard, 4-cycle gasoline sterndrive, sailboat auxiliary engines, and personal watercraft (e.g., Jet Ski). EPA invites comment on whether these general categories are appropriate for permit fee calculation, or whether they should be further subdivided to reflect differences in emissions or use within a class (e.g., some of these classes, such as 2-cycle outboards, could be further subdivided based on horsepower to reflect the very wide range of horsepower, usage, and total emissions that might be seen within the class).

Average excess emissions per engine would be calculated separately for each engine class based on the difference between the sum of average HC and NO_X emissions for pre-standard engines and the sum of average HC and NO_X emissions for engines meeting the appropriate new standard. Total average excess emissions would then be calculated as the product of average excess emissions per engine for the engine class and the time of use for the engine class. For an annual permit, time of use would be based on the average annual use for the particular engine class. For a daily permit, eight hours of continuous use would be assumed for all engine classes. EPA requests comment on other options for time of use when assessing fees for daily permits.

EPA currently estimates that a boat with a typical pre-standard 2-cycle gasoline outboard motor would be assessed an annual fee of approximately $400, based on typical emission rates and hours of use and using a rate of $10,000 per ton of excess emissions (this example assumes 35 hours of annual use, with HC emissions reduced from 118 g/hp-hr to 35 g/hp-hr as a result of the new standard while NO_X emissions increase from 2.4 g/hp-hr to 4.7 g/hp-hr; this example is based on EPA's best current estimates which may change as more information is received and as the engine standards are finalized). At this time, EPA believes that this fee level will effectively discourage the operation of pre-standard engines in the FIP areas. However, EPA will monitor the effectiveness of this fee level in discouraging operation of pre-standard engines, and increase the fee per ton if needed to discourage virtually all such operation.

To obtain a permit a boat owner would have to present to the permit office documentation regarding the engine class and whether or not the engine meets the new emissions standard. The boat's state registration documentation may be sufficient to ascertain the engine class. If not, one time physical inspections may be needed, in which case EPA would seek to delegate such inspections to local or state agencies. Engines meeting the new emissions standard will be required to be labeled as such by the manufacturers. Boat owners will be required to show that their boat engines have such a label in order to obtain a free permit. In the absence of such proof, the permit fee will be based on the assumption that the boat engine does not meet the new standard.

Some boat engine manufacturers may already be producing engines that meet the new standards, before the labeling requirements have been finalized. These manufacturers have the option of presenting to EPA evidence (in the form of emissions test data which meets EPA's test requirements for these engines) of which engines met the requirement before it went into effect. If EPA accepts this evidence, owners of such engines could qualify for a free permit if they can prove that their boat engine qualifies based on the serial number of the engine.

Emission permits must be prominently displayed at all times in boats operating in the FIP area under this proposal. EPA will enforce this permit system through the inspection of permits at boat ramps, marinas, and other access points, and through patrols of boating areas. EPA will have the authority to inspect boat engines, permits, and any other required documentation. Failure to display the proper daily or annual permit, falsification of a permit or of any documentation required to get a permit, or failure to surrender documentation or allow inspection of a boat or engine will be strictly prohibited and will be punishable by fines of up to $25,000.

As explained above, in promulgating a FIP under section 110(c) of the Act, EPA may take any actions that the state could take. As Section 209 of the CAA does not preempt states from regulating the use of marine engines, EPA believes that it, acting on California's behalf in the context of the FIP, may adopt this fee program.

(3) Measures for Nonroad SI Engines over 19 kW and CI Engines under 37 kW. The Agency will decide whether to propose and implement national control programs for emissions from heavy-duty SI nonroad engines greater than 19 kW and small CI nonroad engines under 37 kW by November 1996. These small CI engines are used in such types of equipment as generator units, pumps, air compressors, welders, and pressure washers. The heavy-duty SI engines are used in forklifts and a small percentage of farm tractors.

Today's proposal does not contain provisions for controlling emissions from these engines except for certain SI engines over 37 kW. The Agency does not today have information sufficient to determine whether such engines should be regulated in the context of section 213 (a)(3). The Agency solicits comments on the greatest degree of emissions reductions which may be achieved from these engines through the application of various technologies and information on the costs of such technologies; the time period within which manufacturers could implement technologies; and the safety, noise, and energy implications of such technologies.

d. Enhanced In-Use Compliance Program for Nonroad Engines Over 37kw. EPA is proposing an enhanced in-use compliance program for nonroad engines that is intended to apply to most of the larger nonroad engines, both compression ignition (CI) and spark ignition (SI). More specifically, it covers all nonroad engines at or above 37 kilowatt (kw)(50 horsepower (HP)) in size except for engines used in aircraft, locomotives, underground mining equipment, SI engines used in recreational marine engines and low speed CI (diesel) engines used in oceangoing ships. Most of these engine categories are dealt with in other portions of this FIP.

The proposal is very similar to the program for new heavy-duty onhighway engines. The program will contain tighter NO_X standards for the FIP areas. It will also have an HC standard and evaporative free requirements to prevent a shift to engines operating on high volatility fuels, such as gasoline. Finally, a "normal maintenance" recall program and engine rebuild requirements will be applied. Readers should refer to the onhighway descriptions of these programs (contained in Sections A. and B. of Appendix I) as well as Appendix I, Section C., regarding nonroad, for more information.

These nonroad engines are proposed to be regulated because of their significance to the FIP area emissions inventories. In 1990, emissions from nonroad engines constituted 24 to 27 percent of the NO_X emissions, depending on the FIP area concerned. NO_X emissions reductions of 40 to 70 percent are required for attainment of the ozone standard. These reductions are well beyond those expected from the soon to be adopted Federal nonroad standards. EPA's data shows that without control beyond the national standard, the percentage contribution of these engines will increase by almost one-third in each FIP area.

The standards being proposed are the same as those proposed for onhighway heavy-duty engines. Since the engines involved are often derived from onhighway engine designs, the technologies used for compliance in the onhighway sphere can also be applied here. These rules ensure that similar stringency is applied across engine categories in the FIP.

Many of the provisions for nonroad engines that are being proposed are similar to EPA's earlier proposed Federal nonroad program. That program was proposed in May of 1993 (58 FR 28809, May 17, 1993), and when finalized will provide details regarding definitions, test procedures, general certification and enforcement protocols. The reader is referred to that proposal for further information.

EPA is proposing to adopt the enhanced in-use compliance program described in Appendix I, Section C. EPA also requests comments on all aspects of its proposal and on any other approaches to further reduce in-use emissions.

e. Programs for National Transportation Sources and Federal Activities. (1) Introduction. The litigation which resulted in today's FIP proposal arose at least in part from a feeling in California that the emission regulation of certain sources was not keeping pace with the attainment needs of California areas or with the stringency of control imposed on other sectors of the California economy. For today's FIP proposal, EPA is proposing controls for these sources, and this section details the mixture of new engine standards and innovative market- based controls that will be proposed.

The table below ("1990 Base Year Inventory of National Transportation Sources")[73] details the level of emissions from national transportation sources in each of the FIP inventories for the 1990 base year. The information contained in this table illustrates that while these sources are not as large as other mobile sources, their contribution to the emissions inventories warrants control by EPA.

1990 BASE YEAR INVENTORY OF NATIONAL TRANSPORTATION SOURCES

[In tons/day]

	Sacramento		Ventura		South Coast	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Locomotives	0.34	8.70	0.04	1.18	1.5	29.7
Military aircraft	1.0	0.7	0.27	0.24	7.7	3.3
Commercial aircraft	0.1	0.9	0.07	0.18	5.9	14.0
General aviation	0.4	0.1	0.23	0.25	1.1	0.1
Vessels	0.0	0.0	0.35	8.41	1.4	31.9
Percent of Total inventory	0.8	5.6	0.9	11.7	0.9	6.9

(2) Civil and Military Aviation

(a) General Description of Category

(*1*) Aircraft Operational Classes

Aircraft operations can be segregated into four general categories:

Commercial—aircraft operated on a scheduled basis by international, national, regional, and commuter air carriers, and unscheduled charter operators

Military—aircraft operated by the Department of Defense

General Aviation—aircraft privately owned and operated on a nonscheduled basis

Public—aircraft operated by federal, state, or local government agencies other than the Department of Defense

Aircraft in each category are operated in considerably different fashion. For example, commercial aircraft operate on a relatively fixed schedule while military aircraft operate according to specific mission requirements. For that reason, each aircraft category will be controlled separately under this proposed FIP program.

(*2*) Related Mobile Sources. Emissions related to aircraft operations are generated by a variety of mobile sources. Ground support equipment (GSE) includes vehicles such as aircraft tugs, baggage tugs, fuel trucks, maintenance vehicles, and other miscellaneous vehicles. Ground access vehicles include vehicles used by passengers, employees, freight operators, and other persons using an airport. These sources have been considered in developing this program.

(*3*) Need for Control. Aircraft and aircraft-related emissions as a category represent significant sources of air pollution in the FIP areas. In the South Coast air basin, the FIP area where airports represent the greatest portion of the inventory, aircraft operating at the five commercial airports alone contributed 0.3 and 1.1 percent of the total 1990 baseline emissions inventory for VOC and NO_X, respectively. At projected growth rates, aircraft at these five airports—Los Angeles, Ontario, Burbank, John Wayne, and Long Beach—will consume nearly 3.9 and 4.4 percent of the basin's allowable 2010 NO_X and VOC inventory, respectively, if left uncontrolled.

(*4*) Level of Control. EPA intends to reduce emissions resulting from aircraft and aircraft-related activities in the three California FIP areas to a level and at a rate commensurate with that required for stationary emission sources in those areas which are subject to the proposed emission cap rules described in section III.C.5. of this NPRM. This approach was selected by EPA for aviation primarily because of the difficulty in identifying specific control measures given the diverse operational nature of the aviation sector and the leadtime available for FIP development, the difficulty of requiring specific operational or procedural control measures for aircraft due to safety and operational flexibility concerns, and the desirability of achieving emission reductions comparable to those being demanded from other significant source categories.

Currently, the proposed stationary source rules include a range of potential emission reduction requirements. Consequently, the overall reduction targets for aviation reflect the same range of stringency. The proposed control levels for these sources are expressed as the percentage reduction from the respective 1990 baseline emissions inventory that must be achieved by 2005. The range of required reductions for each pollutant by area are shown below.

2005 AVIATION EMISSION REDUCTION REQUIREMENTS: PROPOSED RANGE OF PERCENTAGE REDUCTIONS FROM 1990 BASELINE EMISSIONS

Area	VOC		NO_X	
	Low	High	Low	High
South Coast	20	45	30	45
Ventura	20	45	30	45
Sacramento	20	45	N/A	N/A

The Agency will promulgate a specific percentage reduction target in the final rule based on public comments and any additional technical information.

(b) Commercial Aviation. (*1*) Overview. (*a*) Airline Focus and

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[73] The inventories for locomotives are derived from assuptions made by EPA based on inventories acquired from the Booz-Allen reports entitled: *Locomotive Emissions Study* and *Report on Locomotive Emission Inventory: Locomotive Emissions by County.*

Specific Sources Covered. The FIP strategy for commercial aircraft operations is aimed at reducing total emissions from all emission sources under direct control of commercial airlines operating at all airports in each nonattainment area. The strategy is constructed so that each airline is responsible for its own compliance. "Commercial airlines" are defined as those air carriers operating aircraft with any of the following FAA operational certificates: Parts 121, 125, 127, 129, and 135.

Commercial airline emission sources include aircraft, aircraft auxiliary power units (APUs), GSE, and any other mobile sources under the control of airlines. For the purposes of this regulation, emission sources defined as "under the control" of a commercial airline include all sources owned or leased by the airline, and all sources whose operations are controlled under a contract agreement by the airline (for example, GSE servicing an airline that are owned and operated by a fixed-base operator under contract to the airline).[74]

Some GSE that service aircraft are owned by fixed based operators (FBOs) rather than airlines. Emissions from these vehicles must be included in the airport bubble since they are a direct result of aircraft activity. EPA proposes today to allocate these GSE to specific airlines based on servicing provided under contract agreements, and requests comment on possible alternatives to such an allocation strategy.

EPA proposes a target-based emission reduction program for these commercial aircraft emission sources. Each commercial airline will be required to comply with a declining emission limit, expressed in allowable emissions per passenger and freight handled. The proposed target-based program will include emission fees assessed on any airline that fails to meet this emission rate target. The proposed target has been selected so that, even with expected passenger and freight growth, compliance with the target by all airlines will result in total emissions declining at a rate and to a level equivalent to that required of many stationary sources in the same basin. EPA will through experience raise the level of the emissions fees as needed to achieve such aggregate emission reductions.

As described above, EPA currently intends to establish emission reduction requirements for commercial aircraft that are generally consistent with the emission cap requirements for stationary sources in the FIP areas. Although not firmly decided, the current stationary source control strategy for the South Coast requires that VOC and NO_X emissions be reduced by 20–45 and 30–45 percent, respectively, from the 1990 baseline inventory by 2005, through a series of uniform annual reductions of baseline emissions of each pollutant: 4–9 percent per year for VOC and 6–9 percent per year for NO_X, both starting in 2001. Stationary source requirements for the 2006–2010 period have not been established at this time. The requirements for Ventura from 2001–2005 are identical to that for the South Coast.

For Sacramento, the strategy requires a VOC reduction of 20–45 percent, with a uniform annual reduction of 4–9 percent. The timeframe for achieving this reduction is the same as for the South Coast and Ventura areas (i.e., 2001–2005). The stationary source control strategy for Sacramento does not require a NO_X reduction since other actions will be adequate to achieve the area-wide NO_X emissions level needed for attainment.

For this proposal, the overall reduction targets are expressed as a range of percentages; the final rule will contain a specific percentage reduction target. EPA requests comment on whether the stationary source emission reduction targets are appropriate for use with the commercial aircraft control strategy.

(*b*) Geographic Scope. As already described, today's proposal applies to all three affected California control areas: South Coast, Ventura, and Sacramento air basins. However, EPA requests comment on the desirability of removing the Ventura and Sacramento control areas from this commercial aircraft control strategy.

The Sacramento air basin includes a single commercial airport. Aircraft emissions from this airport contributed significantly less than one percent of the air basins total VOC and NO_X baseline emissions inventory for 1990. Current projections show that if uncontrolled, this airports emissions would consume less than one percent of the basins allowable 2005 inventory for VOC and NO_X. Additionally, the SIP and FIP for Sacramento are expected to achieve VOC and NO_X reductions adequate for attainment, not counting additional reductions from airports. This expectation is based on the best available, but still preliminary, analysis of current and future emissions. Further analysis may change the picture. Similarly, the Ventura control area has only minimal commercial aviation activity; an extensive emissions control program for the limited emissions resulting from such activity may not be desirable given the resource expenditure necessary for implementation. The Agency, therefore, requests comment on whether it is necessary to implement a commercial aviation control program in Sacramento and Ventura.

(*c*) Control Period. EPA proposes to establish a fee-based program focused on controlling commercial aviation emissions only during the ozone season in each FIP area. Further, EPA proposes to assess fees on the basis of the season-long average of emissions per passenger and freight carried. There would be no enforceable expectation for emissions in a single day or month.

This extended averaging period differs from the stationary source cap program in which year-round control and monthly control periods are proposed. Because of the complex nature of operational scheduling, commercial aircraft operations appear to have much less potential to vary significantly over the course of the ozone season in comparison to stationary sources. This reduces the need to be concerned about particular days with significantly more emissions than average that could adversely affect attainment. In addition, if the program is fee-based rather than based on a specific emissions limitation, enforcement does not require a short control period to be practicable as it does for the stationary source cap program. The proposed program for commercial aviation is both novel in concept and stringent, and EPA does not wish to burden the industry with controls outside the ozone season if they are not essential to the air quality goals of the FIP. Furthermore, operational changes outside the ozone season may provide some opportunity to ease the compliance burden during the season.

The annual ozone seasons for each of the three FIP areas are:

South Coast—March through October
Ventura—April through October
Sacramento—May through October

Alternatively, EPA could establish a year-round fee program and apply fees separately in each month in order to even better ensure that emissions are controlled each day. Beyond its contribution to ozone attainment, year-round control of NO_X emissions from commercial aviation may aid efforts to comply with the particulate air quality standard, particularly in the South Coast control area. (Ensuring particulate air quality is not a requirement for this

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[74] General aviation aircraft operated at commercial airports will be included in the general aviation control strategy as described in section III.D.4.e(2)(d). Today's proposal for public aircraft operated at commercial airports is described in section III.D.4.e.(2)(e).

FIP.) Since state and local regulation over commercial aviation emissions is preempted by the federal government, such control would have to come at the federal level. The Agency, therefore, requests comment on potential alternative compliance strategies.

(2) Key Regulatory Elements. (*a*) Summary. A detailed control strategy is described here for the South Coast FIP area, but will apply for all three control areas. Any differences in detail or emission reduction requirements for Ventura and Sacramento will be identified separately.

The control strategy for commercial aircraft proposed today relies on a fee system to achieve a series of annual emissions reductions from a baseline commercial aircraft emissions inventory. Airlines subject to the requirements of this program will report activity and emissions during the ozone season on an annual basis beginning in 1999. An airline's compliance with the program requirements will be determined for a given year by comparing an environmental performance factor, expressed as pounds of pollutant emitted per passenger-equivalent unit (PEU) as calculated in the annual report, against EPA's published pounds-per-PEU target for that year's ozone season. Airlines that exceed a particular year's pounds-per-PEU target will be required to pay a fee in proportion to the excess emissions. EPA is proposing pounds-per-PEU targets that will achieve the requisite annual emission reductions based on projected growth in passenger and freight activity. (A more complete description of the proposed PEU factor and emission targets is presented in section III.D.4.e.(2)(b)(*2*)(*b*).)

In order to obtain airline compliance with these pounds-per-PEU targets, the Agency will observe the airlines' responses to the initial fee level in 2001, and will adjust the fee level to a higher or lower level if needed. The final FIP regulations will contain commitments to this effect, and will specify the specific level to which the fees will be adjusted or a formula for determining such level. Comments on this adjustment process are requested. EPA expects that the final fee program for this source will be consistent with the Agency's Economic Incentive Program rules as discussed in section III.D.5 of this NPRM.

This commercial aircraft emission reduction program will apply to all commercial aircraft operators in the FIP areas, including domestic airlines, foreign airlines, and new entrant airlines. EPA recognizes the economic and social importance of accommodating new entrants and the expansion of existing airlines in any commercial aircraft emission reduction program. This control strategy attempts to accommodate these important concerns by not directly requiring EPA to allocate emissions or operational rights to individual airlines.

The methodology for determining the environmental performance targets reflects projected growth in air travel within the respective FIP control area. As a result, new entrants simply would be required to achieve the appropriate environmental performance targets upon initiation of service. Both new entrants and expanding airlines are automatically accommodated by the control strategy as long as growth beyond predicted levels does not occur. In event that activity grows faster than originally forecast, EPA will revise the performance targets, as discussed in greater detail later in this section.

Therefore, the Agency believes that the proposed program incorporates features which provide flexibility for new entrants or existing airlines to begin and expand environmentally responsible aircraft operations in the basin. Nonetheless, all airlines will face significant economic and technical challenges as a result of this program.

(*b*) Pounds per PEU Scheme. The FIP strategy for commercial aircraft operations will center on a schedule of declining emission performance targets (i.e., pounds per PEU) for the combined emissions from all commercial airports in each control area. Separate targets will be established for HC and NO_X emissions. These emission targets will yield benefits consistent with the percentage reduction from 1990 inventory for stationary sources. Ultimately, the emissions from commercial aviation in the South Coast and Ventura areas will be reduced by 20–45 percent and 30–45 percent from 1990 VOC and NO_X emission levels, respectively, by 2005. The goal for VOC emissions in the Sacramento area is 20–45 percent by 2005. As already discussed, there is currently no stationary source emissions cap for NO_X in Sacramento.

This control strategy fundamentally relies on the calculation of an emissions baseline as a reference point for determining future year emission limits during the control period. The Agency proposes to use currently available emissions inventory data for aircraft and aircraft-related activities to establish the requisite emissions inventory for the baseline year of 1990. Once established, the seasonal emission limits for each year can be calculated from the baseline inventory established according to the annual uniform schedule of percentage reductions described above.

The choice of 1990 as the baseline year is consistent with the Act's requirement for modeling reasonable further progress (RFP) and attainment of the ambient standards. However, aviation activity in 1990 may not be representative of typical operations, because the aviation industry experienced significant change during this period. Several air carriers, notably Eastern Airlines, ceased operations or stopped serving airports in the South Coast and Sacramento areas. Others such as Southwest Airlines had only a minimal presence in these areas during that period, but greatly expanded operations in subsequent years.

In addition, the Desert Shield/Desert Storm military action caused an increase in jet fuel prices and a rapid decline in commercial passenger traffic. For these reasons it may be desirable to use a two-year average, perhaps 1989–1990, for establishing a baseline inventory in preference to using 1990 data alone; this could lessen the effect of unusual circumstances on a single year's inventory. EPA requests comment on the desirability of using a two-year average for establishing a baseline inventory. Any such multi-year average, however, may require an adjustment to the emission performance targets in order to assure consistency with the stationary source cap requirements and EPA's demonstration of attainment.

Alternatively, EPA could utilize baseline reports from commercial airlines to establish this inventory. Given the importance of this baseline inventory in setting realistic emission limits and environmental performance targets, such industry baseline reports could provide information more representative of airline operations in the control area than generic default data currently being used EPA for some portions of the inventory.

For example, EPA currently has only estimated information on GSE and limited primary data concerning commercial aircraft operations in Ventura and Sacramento. These reports could also provide data on certain ground access vehicles that are directly under the control of airlines. These sources are presently unaccounted for in today's proposal due to insufficient information.[75] Therefore, baseline reports could provide additional detail and precision, albeit at the expense of an additional administrative burden for commercial airlines. Information that could be requested for such baseline reports is discussed in "Reporting and Recordkeeping" below. EPA requests comment on the desirability of requiring airlines to submit baseline reports, and on other possible alternative methods for establishing a reasonable baseline emissions inventory.

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[75] See the Technical Support Document, available in the rulemaking docket, for further information.

The Agency further proposes to modify the stationary source-related approach just described in order to "lock in" additional emission reductions that are expected to result from other non-FIP requirements such as the commercial aircraft fleet modernization that will occur in response to FAA noise reduction regulations. According to the Air Transport Association,[76] these requirements could generate a 40 percent reduction in VOC emissions by 2000 from 1990 levels, when the requirements are fully implemented. This represents the maximum period of effect for these requirements, however, since the affected aircraft would be retired eventually even in the absence of specific regulations. EPA estimates that the emissions reduction benefit resulting from noise reduction requirements declines to zero by 2010 because of such expected retirement schedules.

To ensure these potential emission benefits occur, the Agency proposes to modify the stationary source approach for developing the commercial aircraft baseline inventory and seasonal emission limits as follows. The target for basin-wide emissions will be the lower of either the emissions level calculated from the percentage-reduction-from-1990 schedule being proposed for the stationary source cap program, or the emissions level that is expected to result from non-FIP regulatory requirements such as the fleet modernization under the noise reduction requirements (i.e., emission improvements accompanying the retirement of older, dirtier aircraft). The Agency requests comment on this "lock-in" approach and potential alternatives that would ensure progress and attainment under the FIP.

The two tables below present examples of the proposed ozone season emission inventory limits for VOC and NO_X in the South Coast area. The emission limits in these tables are presented for illustrative purposes and for the purpose of facilitating public comment only. They do not represent the final values from which the enforceable emission performance targets will be derived, since EPA will continue to refine the baseline emissions inventory, aviation activity projections, and the effect of noise-driven fleet modernization based on information received during the comment period.[77]

PRELIMINARY VOC EMISSION LIMITS FOR COMMERCIAL AIRLINES IN THE SOUTH COAST AIR BASIN

Control period	Range of VOC limits (tons/day)		Range of cumulative reductions (percent)	
	Low	High	Low	High
1990	7.3	7.3	N/A	N/A
2001	7.1	6.7	4	9
2002	6.8	6.0	8	18
2003	6.5	5.4	12	27
2004	6.2	4.7	16	36
2005	5.9	4.0	20	45

[*Note:* These emission limits reflect currently available data on aircraft, auxiliary power units, and ground service equipment only. They do not include the proposed lock-in VOC reductions from the noise-driven fleet modernization forecast.]

PRELIMINARY NO_X EMISSION LIMITS FOR COMMERCIAL AIRLINES IN THE SOUTH COAST AIR BASIN

Control period	Range of NO_X limits (tons/day)		Range of cumulative reductions (percent)	
	Low	High	Low	High
1990	13.7	13.7	N/A	N/A
2001	12.9	12.5	6	9
2002	12.1	11.3	12	18
2003	11.3	10.0	18	27
2004	10.4	8.8	24	36
2005	9.6	7.6	30	45

EPA proposes to use a constant annual reduction between 2001 and 2005 in determining the seasonal area-wide emissions limits, since this straight-forward and simple approach is being proposed for the stationary source cap program. EPA requests comment on the appropriate schedule of reduction (i.e, faster or slower phase-in) for the seasonal emission limit even though the final (2005) emission limit would not change.

EPA will establish enforceable environmental performance targets that will serve as the primary mechanism to achieve the annual emission limits for commercial aircraft operations in each FIP area. These area-wide performance targets will be calculated for each ozone season from 2001 through 2005 using the following formula:

Performance target (lbs/PEU)=seasonal emission limit (lbs) / seasonal projected activity (PEUs)

Passenger equivalent units (PEUs) will reflect the projected number of passengers and the amount of cargo carried, as described below. The example environmental performance targets presented for illustrative purposes in the tables above use EPA's current PEU activity forecast, which assumes an annual linear growth rate of approximately 1.5 percent per year from 1990 through 2005 based on information from the Southern California Association of Governments (SCAG).

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[76] See letter from R. Kettler, ATA to R. Wilson, EPA, dated December 27, 1993, available in the rulemaking docket.

[77] A detailed derivation of the emission limits for all areas is contained in the Technical Support Document, which is available in the public docket.

Individual airlines will determine their compliance with these basin-wide performance targets by calculating their annual pounds-per-PEU performance using the following formula:

Performance result (lbs/PEU)=actual seasonal emissions (lbs) / actual seasonal activity (PEUs)

This performance will be compared against the basin-wide targets to determine compliance; non-compliant airlines will pay an emissions fee proportional to their excess emissions, as discussed in greater detail below

PEUs will reflect both the actual number of passengers carried and the actual tonnage of cargo transported on commercial airlines. EPA will establish in the final FIP a conversion factor for combining passenger and freight movement into a single PEU total. The airlines have reported using as a "rule of thumb" 200 pounds of payload for each passenger, which includes the weight of the passenger and his or her luggage. EPA proposes to use this conversion factor of 200 lbs/passenger to convert cargo weight into PEUs. EPA requests comment on whether this is an appropriate and equitable value.

EPA will develop a forecast of control area airline PEU activity for the control period (2001–2005) to develop each year's environmental performance targets. EPA proposes today to use currently available activity projections for the South Coast from the South Coast Air Quality Management District for this purpose. Similar existing projections will be used for Ventura and Sacramento, as discussed in the Technical Support Document.

Certain discrepancies may arise, however, between current forecasts and actual activity some years in the future. If actual PEU activity is higher than EPA forecast, compliance with the annual pounds-per-PEU level could result in total emissions higher than the basin-wide targets. If actual activity is lower than EPA forecast, the promulgated pounds-per-PEU limit will be more restrictive than actually needed. For that reason EPA will periodically review the PEU forecast, given its importance in establishing the environmental performance targets.

This review will occur approximately every three to five years at a minimum. EPA will revise the area-wide PEU forecast in a subsequent rulemaking action if the periodic review indicates that the forecast is significantly inaccurate. EPA also will revise the seasonal environmental performance pounds-per-PEU targets in the same rulemaking action in the event that the PEU forecast is revised. EPA also requests comment on alternative methods for establishing activity factors (and the resulting environmental performance targets) that may be automatically updated based on prior-year operational data.

The two tables below present examples of the proposed seasonal environmental performance targets for VOC and NO_x in the South Coast area. As with the emission limits presented earlier in this section, these example targets are provided for illustrative purposes only and do not represent the final enforceable emission performance targets.

PRELIMINARY VOC EMISSION PERFORMANCE TARGETS FOR COMMERCIAL AIRLINES IN THE SOUTH COAST AIR BASIN

Control period	Range of VOC performance targets (lbs/PEU)	
	Low	High
1990	0.087	0.087
2001	0.072	0.068
2002	0.068	0.061
2003	0.064	0.053
2004	0.060	0.046
2005	0.057	0.039
2005+	0.057	0.039

[See note on previous tables.]

PRELIMINARY NO_X EMISSION PERFORMANCE TARGETS FOR COMMERCIAL AIRLINES IN THE SOUTH COAST AIR BASIN

Control period	Range of NO_x performance targets (lbs/PEU)	
	Low	High
1990	0.162	0.162
2001	0.132	0.128
2002	0.122	0.113
2003	0.112	0.100
2004	0.102	0.086
2005	0.093	0.073
2005+	0.093	0.073

For 2006 and beyond, EPA proposes to retain for now the same pounds-per-PEU limit used for 2005 in all three areas, pending promulgation of the additional rules envisioned under today's proposed strategy for 2010 attainment in the South Coast and the preparation of maintenance SIPs for the Ventura and Sacramento areas. Comment is invited on this aspect of the proposal.

(c) Fee System. EPA will establish, and as necessary adjust, the level of a fee-based compliance system in consultation with the FAA to achieve the seasonal commercial aircraft emissions targets for each pollutant. Each commercial airline will be expected to meet the seasonal pounds-per-PEU environmental performance target as described above. Any airline that exceeds the target in any ozone season will pay an emissions fee proportional to the excess emissions. Expressed differently, the fee will be applied only to the incremental emissions which are in excess of the performance target, not to the airline operator's total seasonal emissions. Through an iterative process, EPA will set the emissions fee at a level designed to discourage such noncompliance.

EPA requests comment on a triggering mechanism that would prevent implementation of the fee system as long as the area-wide commercial aircraft emission allowance target is achieved. Beginning with the 2001 annual report, EPA could use airline annual emissions/activity reports to determine total actual area-wide commercial aircraft emissions. If this total emissions quantity did not exceed the allowance for that year, airlines could operate undisturbed by the FIP. If the total actual emissions quantity did exceed a given year's allowance, however, the emissions fee system would be implemented for that year and would remain in effect for all subsequent years.

It is important that the fee paid by the airlines for excess emissions be high enough to encourage adherence to the pounds-per-PEU limit but not so high as to needlessly reduce industry profits or to drain away funds that should be spent for mitigating emissions. For the other fee systems discussed in this FIP, EPA proposes a base fee of $10,000/ton of pollutant. The following example describes the impact of a $10,000/ton fee on a commercial airline under the proposed control strategy. The 1990 emissions per PEU are 0.087 pounds of VOC per PEU and 0.162 pounds of NO_x per PEU using current EPA data (see discussion above). The 2005 example environmental performance targets as presented in Tables D and E are 0.039 pounds of VOC per PEU and 0.073 pounds of NO_X per PEU . Assuming that there is no improvement in environmental performance from the current uncontrolled rate, a maximum fee for 2005 can be calculated as follows:

VOC Fee: (0.087 lbs/PEU–0.039 lbs/PEU) X $10,000/ton divided by 2000 lbs/ton = $0.24/PEU for VOC

NO_x Fee: (0.162 lbs/PEU–0.073 lbs/PEU) X $10,000/ton divided by 2000 lbs/ton = $0.45/PEU for NO_x

On this basis the maximum fee would be $0.69 per PEU. This is equivalent to approximately $120 per landing plus takeoff, for an average airplane. To put this excess emissions fee in the context of other fees, collected from commercial aircraft operators for other purposes, current landing fees at LAX are $1.56/1,000 pounds of gross landing weight; for a typical Boeing 737 this is about $178 and for a Boeing 747 about $913. From another perspective, the FAA allows airports to apply passenger facility charges of $3 per passenger to pay for qualified airport improvements.

The $10,000/ton emission fee, therefore, may be an inappropriate starting point for commercial aircraft, since the likely impact is so small, that between 2000 and 2005 upwards adjustment is very likely to be needed. EPA believes that a substantially higher fee may be necessary for commercial aircraft in order to ensure compliance with the seasonal environmental performance targets. On the other hand, the expectation of larger fees after 2001 may have an effect on its own. Also, there are enough fee cycles between 2001 and 2005 that a fee level which will produce the desired reductions by 2005 should be reachable by 2005 even if the fees initially are based on $10,000 per ton. EPA requests comment on what fee levels will achieve the objective of discouraging noncompliance without being excessive, and on what the starting level of the fees should be.

EPA believes that fee collected under this program must be submitted to the United States treasury and can not be redirected for air pollution mitigation projects or other purposes. The Agency requests comment, however, whether this is true for fees collected from foreign flag air carriers under international aviation agreements. For a general discussion on the disposition of collected fees see section III.A.2.b.

(*d*) Averaging and Trading. The Agency proposes to allow an airline to calculate its average seasonal environmental performance across the entire area in order to determine compliance with the emission rate target. This approach will provide airlines with the flexibility to shift operations within the basin to meet demand in an environmentally beneficial manner; an airline could move some of its operations to a less-congested airport to take advantage of reduced taxi times and resultant emissions reductions, for example. It also allows an airline to operate at some airports in excess of the pounds-per-PEU level and offset the excess at other airports where emission control may be more economical. EPA requests comment on the feasibility and desirability of determining compliance in such a manner.

EPA also requests comment on including an emissions credit program as part of the control strategy proposed today. Any commercial airline that achieves emission reductions greater than those required could sell or otherwise transfer credits thus generated to other commercial airlines, which in turn could use the credits to comply with the pounds per PEU target and minimize or avoid paying emissions fees. Such a credit program would provide commercial aircraft operators with an incentive to reduce emissions to a level below that required, thus rewarding those airlines with the ability to operate in an efficient and environmentally beneficial manner. A credit program also would accommodate those airlines that cannot achieve their individual emission rate targets because of certain operating circumstances.

Simple, direct airline-to-airline credit trades could be incorporated into EPA's annual reporting and fee calculation program fairly easily with little extra resources on EPA's part. An expanded credit system in which credits become a commodity that can be purchased and re-sold would require more monitoring and enforcement to prevent error and fraud. EPA would be likely to allow such a system only if a state or local agency took responsibility for the work of keeping it honest and accurate, given the expected limits on EPA resources to implement all aspects of the FIP.

EPA notes that the RECLAIM credit trading program for NO_x emissions was recently adopted in the South Coast, and is an example of cross-source trading of excess emission reductions relative to well quantified baselines and requirements for further emission reduction. The RECLAIM program covers certain NO_x source types that were most amenable to emissions quantification and verification. Such a cross-source trading system has obvious attractions in terms of achieving a given environmental goal, while allowing the most economically efficient business choices consistent with that goal.

EPA anticipates that commercial airlines may be interested in a program that provides the option of purchasing emission credits to allow more operational flexibility. Since the RECLAIM program operates off a declining schedule of allowable emissions from the subject sources, rather than from the declining emissions caps established by the FIP, RECLAIM NO_x credits are not necessarily surplus to the FIP and cannot be used by sources, including commercial airlines, to meet their FIP emission limits or to reduce their fee liability. Given EPA's concern about the adequacy of its implementation resources, EPA is not proposing to establish a cross-source trading program of its own. However, EPA welcomes comments on whether and how state or local agencies could help operate a credit trading system which would be in keeping with the FIPs control levels and which would be available to the airline industry.

(*e*) Reporting and Recordkeeping. (i) Compliance plans. The stationary source cap program includes a requirement for affected sources to submit compliance plans that describe planned emission reduction measures. EPA could establish a similar requirement for commercial airlines as part of today's proposed control strategy. Such compliance plans would be submitted by airlines in advance of the control period and would describe in some detail the various emission reduction measures planned for the 2001–2005 control period. Compliance plans also could include information on expected activity during the control period, which would provide EPA with an opportunity to review the PEU forecast and update the environmental performance targets if necessary. Most importantly, compliance plans could provide an opportunity for the FAA to review airline emission reduction plans for safety considerations.

Compliance plans would impose significant administrative burdens on commercial airlines, EPA, and the FAA, however. The Agency therefore requests comment on the desirability of requiring airlines to submit compliance plans, and on the information that should be provided in such plans should they be required. EPA does not contemplate that compliance plans if required would become legally binding on the airlines that submit them since that would impede business flexibility and is not essential to the effectiveness of the program. However, if EPA does require compliance plans, deliberate misrepresentation of an airlines plans may be made a violation of the FIP.

(ii) Baseline reports. As described above, EPA requests comment on requiring airlines to submit baseline reports that provide emissions data for the baseline year of 1990, or some alternative baseline reporting period as discussed in section III.D.4.e.(2)(b) above. Baseline reports would provide EPA with additional detail and precision for the purpose of establishing the baseline emissions inventory, the seasonal emission limits, and, ultimately, the seasonal environmental performance targets. Any revisions to the emission limits and environmental performance targets would be made after notice and opportunity for public comment.

One alternative for implementing a baseline reporting requirement, is to require commercial airline operators to report data concerning aircraft operations into or out of the basin for their particular airline in the baseline year of 1990 (or for 1989 and 1990 for the purpose of calculating a two-year average). Airlines would submit this data to EPA no later than 180 days following finalization of this rule. These reports could also provide information on ground access vehicles under the direct control of airlines for incorporation into the control strategy. More specifically, the baseline reports could include the following information to be provided by airlines:

- Aircraft type and model, engine type and model, and number of landing/take-off operations (LTOs).
- Taxi/idle time by engine for each flight.
- Auxiliary Power Unit (APU) operating time.
- Ground Support Equipment (GSE) population by type.
- GSE activity by fuel type, engine size, and annual use hours.

EPA recognizes that detailed information may not be available in each of these categories for 1990. In these instances affected airlines could report estimated data; such estimates would be accompanied by a description of the estimation methodology used, including any supporting data. Alternatively, EPA could establish a set of default values for use in the absence of detailed data, as described above. The Agency requests comment on these and other baseline report alternatives.

(iii) Annual compliance determination reports. Beginning with a report describing activity during the 1999 ozone season, the FIP will require commercial airlines to submit annual reports within 60 days of the close of each calendar year. These reports will include information on aircraft-related emissions and airline activity for the previous year's ozone season.

Commercial airline operators will be required to submit annual reports describing regulated aircraft-related activities and emissions in each control area for their airline during the preceeding year's ozone season beginning in 1999. These annual emissions/activity reports will be submitted to EPA within 60 days of the close of each calendar year; the first report thus would be due by March 1, 2000. Initiating these annual reports in 1999 will provide airlines and EPA with an opportunity to assess data-gathering and -analysis requirements well in advance of the first emission targets in 2001, as well as providing airlines with important information on their performance needs prior to the first round of required reductions. Subsequent annual reports will be used to determine compliance with the seasonal emission targets.

Failure to submit an annual emissions/activity report will subject an airline to EPA enforcement. Affected airlines will be required to maintain appropriate data collection equipment and procedures necessary to complete the annual report in a satisfactory manner. Failure to maintain such equipment and procedures also will subject an airline to EPA enforcement.

Annual emissions/activity reports will include the following information for aircraft and aircraft-related operations during the seasonal control period:

- Flight number for each flight.
- Aircraft type and model for each flight.
- Engine type and model for each flight.
- Taxi/idle time by engine for each flight.
- Auxiliary Power Unit (APU) operating time.
- Number of passengers carried for each flight.
- Weight of non-passenger cargo for each flight.
- Ground Support Equipment (GSE) population by type.
- GSE activity by fuel type, engine size, emission control level, and number of hours used.

Airlines will be required to track and report actual data for the above information categories. Default values will not be accepted for the purposes of determining compliance with the environmental performance target.

Reporting airlines will be required to calculate their VOC and NO_x emissions for the ozone season using the above data and enter these emissions on the report form. The Agency anticipates using existing EPA documents for the emission calculation methodology. Comments are requested on the desirability of issuing additional specific technical guidance concerning emissions calculations for aircraft and aircraft-related operations. Reporting airlines also will be required to calculate their total PEUs using passenger and cargo data, as well as their pounds/PEU emission rate for VOC and NO_x, and enter these results on the report form.

An airline's compliance with a seasonal environmental performance target will be determined by comparing actual pounds-per-PEU performance against the target. An airline whose actual performance exceeds the target will be required to submit a fee proportional to the resultant excess emissions, as described in "Fee System" above. This fee will be remitted along with the annual compliance determination report.

An airline's annual emissions/activity report will include a statement signed by a corporate officer affirming the report's accuracy. Failure to provide accurate information in the annual emissions/activity report will be considered a FIP violation subject to EPA enforcement. Reporting airlines will be required to maintain copies of their annual reports for three years, including all relevant calculation worksheets and supporting data.

(*f*) Exemptions. EPA requests comment on the desirability of providing exemptions from the requirements of this control program for certain types of commercial aircraft operations or unusual situations. Atypical aircraft operations beyond the control of an airline and not anticipated in the design of the operations data collection system, such as in-flight emergency situations requiring emergency landings, could be exempted from reporting requirements and would not count toward an airline's environmental performance. Also, certain small commercial aircraft operators might be unnecessarily burdened under this program relative to the emissions reductions that might be obtained. EPA requests comment on the desirability and feasibility of establishing a de minimis exemption for this control program. Additionally, the Agency requests comment on the desirability of waiving part or all of any fee incurred by individual airlines that can demonstrate unreasonable economic hardship or burden on interstate commerce. Finally, comments are solicited on appropriate procedures and criteria for granting exemptions to foreign flag air carriers to ensure compliance with international treaties, bilateral agreements, or when the Secretary or Deputy Secretary of the Department of State find that granting such an exemption is in the national interest of the United States.

(*3*) Legal Authority and Regulatory Interactions. As noted in this preamble, EPA has broad authority under section 110(c) to promulgate regulations in a FIP when states have failed to submit a state plan or have submitted defective state plans. *See Southland Terminal Corp.* v. *EPA*, 504 F.2d 646, 669 (1st Cir. 1979). The courts have not required EPA to demonstrate explicit authority for promulgating specific control measures in FIPs. Instead, EPA may exercise its broad authority under section 110(c) unless such authority is expressly prohibited under the Act, other statutes, or the United States Constitution. EPA's general regulatory authority and its authority under section 110(c) include the ability to impose and enforce pollution fees. *See* 42 U.S.C. Sections 110(a)(2)(A); 172(c)(6).

Congress has also granted express authority to EPA to set emissions standards for certain sources of pollution, such as aircraft and new locomotive engines. *See* 42 U.S.C. Sections 7547, 7571 (a)(2). In vesting EPA with authority to promulgate aircraft emissions standards, Congress recognized the authority of the Federal Aviation Administration (FAA) to regulate aircraft design and manage the navigable airspace to assure safety and efficiency. Sections 231 and 232 of the Act establish a cooperative scheme in which EPA is required to consult with FAA in setting emissions standards, and FAA is charged with enforcing those standards. 42 U.S.C. Sections 7571–7472. The president may disapprove any standard after notice and an opportunity for a hearing, based upon a finding by the FAA that the standard would create a hazard to safety. Additionally, in section 233, Congress preempted the states from enacting or enforcing any emission standards for aircraft that did not conform to the federal standards. *Id.* Section 7573.

EPA's broad powers under section 110(c) provide the legal authority for promulgating the control strategy proposed in the FIP—an emissions fee system based on a declining performance target expressed in per passenger emissions that can be achieved through either operational or technological means. EPA is not exercising its authority under section 231 to promulgate technology forcing emission standards for aircraft engines as the control strategy in this FIP. Nevertheless, the proposed control strategy maintains cooperative interaction between EPA and FAA and recognizes FAA's expertise in aircraft safety and navigation. EPA has consulted with FAA in drafting the proposed control strategy and will continue to consult and cooperate with FAA in finalizing and implementing the control strategy.

EPA has determined that the proposed control strategy is well within the broad scope of powers under section 110(c) and that the strategy is not prohibited under any provisions in the Act. As explained elsewhere in this preamble, EPA has solid legal authority for fee systems to encourage emission reductions. Further, EPA believes that the proposed control strategy is not prohibited by or in direct conflict with other federal regulations and statutes, such as the Airline Deregulation Act of 1978 ("ADA"), the Airport Noise and Capacity Act of 1990 ("ANCA"), or the Federal Aviation Act, which establishes FAA for overseeing aircraft safety, the efficient use of the navigable airspace, and the national air transportation system.

The proposed program is designed to ensure that substantial emission reductions are achieved by the aviation industry. However, the strategy neither establishes a hard and fast emissions budget or cap for individual commercial airline operators, nor specifies compliance measures. Instead, the program relies on environmental performance targets or emissions rate goals with fees for excess emissions. The approach leaves each operator with the discretion to choose the best compliance strategy for achieving environmental goals and satisfying market demands.

A commercial airline may choose to satisfy the emission reduction requirements with compliance measures ranging from relatively straightforward options to very challenging, more difficult approaches. EPA's preliminary analysis suggests that the lower end of this range includes such measures as converting ground service equipment to cleaner power sources; increased use of single engine taxiing; implementing procedural improvements to reduce congestion and taxi/idle times; purchasing cleaner, current production aircraft; or possibly purchasing emissions credits.

At the upper end of this range, airlines may choose to tow aircraft rather than taxi with onboard power; substantially improve load factors; pursue the production of new engine designs with low-NO_X staged-combustion systems which are presently nearing production for certain applications; or develop additional clean engine technology. An airline which continues to have excess emissions after choosing from among these possible measures will pay emission fees on its activities. It might then choose to limit activity to reduce its total fee liability.

Concerns have been raised that this strategy may require airlines to choose operational measures that, for safety reasons, should be left to the discretion of the pilot in command. For example, the FAA has advised that the decisions to reduce use of reverse thrust and increase use of single-engine taxiing should ultimately be those of the pilot.

Beyond these choices, concerns have been raised that compliance with the no-fee emission reduction targets may depend on technology-forcing aircraft engine development, and that the liability for noncompliance fees may directly or indirectly result in a limitation on activity. EPA requests comments on the likelihood that, and the point within the range of proposed emission reductions (e.g., 30–45 percent for NO_X) at which, such measures as advanced engine development may be required. The Agency also seeks comment on the legal and policy implications of a strategy that has the potential to create an economic incentive for airlines to limit operations at airports in the FIP areas. EPA also requests comments on the legal and policy implications of the proposed strategy if, after public comment and further study the Agency determines that at the upper end of the emissions reduction range under consideration, the requirement may have the potential to induce airlines to choose between such options as encouraging implemention of aircraft operational measures that currently are left to pilot discretion for safety reasons on the one hand, and limiting the number of operations at the airport on the other. Finally, comment is requested on the relationship between EPA's legal authority under section 110(c) and section 231, should the strategy result in the regulated industry having as its only options, outside of activity limits, reliance on either technology-forcing aircraft engine advances to meet the emission reduction targets, or paying the proposed fees.

Regardless of the means by which compliance is achieved, the proposed control strategy does not appear to mandate or indirectly require an accelerated fleet turnover that would potentially conflict with the schedule established under ANCA for reducing noise by the end of 1999 (See 49 U.S.C. App. Section 2157 (a)), because the first FIP controls would not apply until 2001 and the most stringent controls would not be required until 2005. The proposed control strategy also appears consistent with the statutory requirements and mandate for the FAA under the Federal Aviation Act, 49 U.S.C. App. 1348.

During the drafting of the proposed control strategy, EPA considered but rejected requiring the airport proprietor to implement and enforce regulation of the commercial airlines. EPA rejected this concept and chose for EPA and FAA to implement and enforce the proposed strategy because the proprietor has more limited authority over the commercial airlines and because the courts have held that there are limits on EPA's ability to mandate municipal entities to control the behavior of others by requiring specific measures. *See Brown v. EPA*, 521 F.2d 827 (9th Cir. 1975), *vacated on other grounds*, 431 U.S. 99 (1977).

The proposed control strategy treats all commercial airlines identically, and the proposed strategy envisions compliance by international air carriers as well as domestic airlines. EPA believes that international air carriers are required to comply with all applicable rules and regulations, including air quality laws. Therefore, EPA is not proposing to treat foreign air carriers any differently than the domestic commercial airlines, subject to any supervening requirements in treaty obligations. During the comment period on the proposed control strategy, EPA will be contacting the Department of Transportation, the Department of State, and other federal agencies to ensure consistencies with relevant rules, regulations, and agreements. EPA will also explore any additional requirements or flexibility for the handling of fees collected from foreign carriers.

(*4*) Ground Access Vehicles Controlled by Other FIP Elements. The proposed control strategy only applies to aircraft and related emission sources that are under the direct control of commercial air carriers. This is because the other major sources of emissions operating at airports, such as GAV and stationary sources, are being substantially controlled under other regulations. Emissions from significant stationary sources are controlled under stationary source rules implemented by the state and local agencies or the FIP. Emissions from GAV are comprehensively regulated under state rules and other FIP measures. Also, in conjunction with promulgating the proposed strategy, EPA is recommending amending provisions in the Airports and Airways Improvement Act ("AAIA"), 49 U.S.C. Section 2210, that limit the airport proprietor's ability to spend landing fee revenues on projects that reduce GAV emissions through promoting mass transit or eliminating congestion.

(*5*) Issues for Specific Comment. EPA requests comment on the desirability of removing the Ventura and Sacramento control areas from this commercial aircraft control strategy.

EPA requests comment on whether stationary source emission reduction targets are appropriate for use with the commercial aircraft control strategy.

EPA requests comment on the desirability of using a two-year average for establishing a baseline inventory, although EPA notes that any multi-year average must represent 1990 emissions in some manner consistent with Clean Air Act requirements.

EPA requests comment on the desirability and feasibility of modifying the basin-wide emissions target to lock in emissions reductions that will result from non-FIP requirements such as the Airport Noise and Capacity Act.

EPA proposes today to allocate GSE operated by fixed-base operators to specific airlines based on servicing provided under contract agreements, and requests comment on possible alternatives to such an allocation strategy.

EPA requests comment on potential alternatives to the ozone-season control period proposed today.

EPA requests comment on the appropriate schedule of reduction for the seasonal emission cap even though the final (2005) emission cap would not change.

EPA requests comment on a triggering mechanism that would prevent implementation of the fee system as long as the area-wide commercial aircraft emission allowance target is achieved.

EPA requests comment on what fee levels will achieve the objective of discouraging noncompliance without being excessive.

EPA requests comment on alternative methods for establishing activity factors that may be automatically updated based on prior-year operational data.

The airlines have reported using as a "rule of thumb" 200 pounds of payload for each passenger, which includes the weight of the passenger and his or her luggage. EPA requests comment on whether this is an appropriate and equitable value.

EPA requests comment on the possible incorporation of an emissions credit program as part of the control strategy proposed today, and on ways to involve state and local agencies in order to make more trading opportunities available to the airlines.

EPA requests comment on the desirability of issuing additional specific technical guidance concerning emissions calculations for aircraft operations.

EPA requests comment on the desirability of requiring airlines to submit baseline reports, and on possible alternative methods for establishing a reasonable baseline emissions inventory.

EPA requests comment on the current emissions inventory methodology that uses airport-specific average summer day, mid-morning mixing heights for July and August 1990 as the basis for calculating aircraft climbout and approach emissions. (The amount of time spent in each of these operational modes depends on the height of the inversion layer.) Alternatively, a single default mixing height (e.g., 3000 feet above ground level) could be used for all aircraft operations. This could simplify the calculation procedure, but may not be as representative.

EPA requests comment on the desirability of requiring airlines to submit compliance plans, and on the information that should be provided in such plans should they be required.

EPA requests comment on the desirability of providing exemptions from the requirements of this control program for certain types of emergency or atypical commercial aircraft operations beyond the control of aircraft operators.

EPA requests comment on the desirability and feasibility of establishing a de minimus exemption for this control program.

The Agency requests comment on the legal and policy implications of a strategy that has the potential to create incentives to limit operations at airports in the FIP areas.

EPA requests comment on the relationship between EPA's legal authority under sections 110(c) and 231 if the strategy results in the regulated industry having as a principal option, reliance on technology-forcing aircraft engine advances to meet the emission reduction targets.

Persons submitting comments on these issues or other specific aspects of today's proposal should consider and discuss the possible impact of their comments on other elements of the control program, particularly when such comments propose alternative strategies that would achieve smaller or larger emission reductions from commercial aviation.

(*6*) Aviation Working Group Issues/Concerns To gather information used in preparing today's action, the Agency formed a working group composed principally of representatives from EPA, FAA, various State and local regulatory authorities, airport operators, and airlines. The mission of the working group was to acquire emission inventory data, assess inventory methodologies, and identify operational and technological issues regarding potential control strategies.

The proposed environmental performance target/fee control program represents a new and innovative strategy for aviation. EPA has attempted to address many of the issues and concerns raised by the working group members, but recognizes that significant issues and differences of opinion remain. In order to facilitate public comment on these issues, EPA has requested comment on specific topics throughout the description of the proposal. Nonetheless, EPA is taking an additional step to ensure that concerns raised by the airline industry are fully aired as part of this rulemaking. The industry's concerns, as submitted by the Airline Transport Association,[78] are summarized as follows:

- Further regulation of aircraft emissions under the FIP is unnecessary because VOC emissions from aircraft have already been reduced and will continue to decrease substantially through the next decade. Fleet modernization due to market forces and phase out of Stage II aircraft will substantially decrease VOC emissions.
- Any FIP requirements for aircraft emission reductions would be illegal per section 110(a)(5)(C) of the Clean Air Act. It would also run counter to the jurisdiction of DOT to ensure a safe and efficient air transportation system.
- Emission reductions required by the FIP would ultimately require limiting the number of flights, which would have a devastating effect on the region's economy.
- Airlines will be subject to NO_x reductions under a regulatory scheme being developed by the International Civil Aviation Organization (ICAO). This international approach is necessary to keep from placing U.S. airlines at a competitive disadvantage in the global marketplace.
- Any FIP proposal that directly or indirectly affects aircraft operations would unwisely and unlawfully impinge on the control of the Federal Aviation Administration (FAA) over the safety and efficiency of airport operations. The pilot in command is the final authority as to the operation of the aircraft. Measures such as single engine taxiing, derated takeoffs, and limiting use of reverse thrust on landing may pose safety hazards.
- EPA has no authority to prescribe a bubble to control airport or airline emissions. Proposal of an airline or airport-wide emissions cap would require either operational changes that raise serious safety and efficiency concerns or a reduction in the number of flights. These would violate either the Federal Aviation Act, FAA regulations or the Airline Deregulation Act of 1978.
- Airport proprietors are preempted from exerting operational controls with regard to aircraft and airlines.
- Use of a bubble would be unworkable, since neither EPA nor airport proprietors have the expertise or the resources to supervise and enforce restrictions on the hundreds of businesses and operations that are potential emission sources at an airport.
- Control of domestic aircraft emissions under the FIP would discriminate unfairly against U.S. air carriers. Foreign carriers, military and general aviation must be subject to the same controls as commercial domestic carriers.
- Any emissions decreases from the closure or realignment of military airfields must be credited to the aviation sector as a whole.
- Although the Clean Air Act requires EPA to use a 1990 baseline for determining overall emission reduction goals for the FIP, EPA should allow the use of other years for particular sources. A 1987 baseline year for aircraft would be more equitable, because individual airlines have been voluntarily reducing their VOC emissions since that date by phasing in quieter and cleaner engines.
- As an alternative to allowing an earlier baseline year, the rule might provide that the benefit of percentage reductions by those industries that have made the least pre-1990 emission reductions be shared with industries that made the most pre-1990 progress.
- ATA questions the authority of EPA to regulate airline ground service equipment (GSE) emissions.
- The airline industry maintains that EPA has unfairly focused on airline GSE regulation, while ignoring similar off-road vehicles used by other industries.
- The airline industry has provided evidence that GSE emissions amount to nearly 40 percent of airline-controlled emissions, in contrast to the substantially lower percentage estimated by EPA. Thus, there may be much greater opportunity for emission reductions from GSE than EPA has previously contemplated.
- To the extent that GSE emission regulation is permissible, EPA should develop a reasonable phase-in schedule for such regulations to allow for the development of appropriate controls and to work through the associated technical problems.

The Agency requests comments on the concerns and issues raised by the airline industry.

(c) Military Aviation. (1) Overview. (*a*) Military Air Base Operations. Military air bases are defined for the purpose of this proposal as facilities owned and operated by the Department of Defense with the primary mission of aircraft operation. Aircraft operation emissions, defined here as emissions from aircraft themselves, dominate total emissions at a military air base. Like commercial airports, ground support equipment and ground access vehicles also contribute to a military air base's total emissions. Mobile source-related emissions from these "other base operations" sources have never been fully inventoried. EPA has established a working group in conjunction with the Department of Defense (DOD) to compile and assess complete emission profiles for all air bases. The information that is currently available is contained in the Technical Support Document, which is available in the rulemaking docket for today's proposal.

Table F lists the military installations in the control areas where aircraft activity has been identified, ranging from active air bases with intensive activity, to bases with only minimal transient operations. The South Coast Air Basin contains most of the installations. As an example of their significance in FIP areas, emissions from military aircraft operations in the South Coast air basin currently are about 20 percent of those generated by commercial aircraft operations, or about 0.3 percent of the total South Coast Air basin's 1990 baseline emissions inventory based on current inventory data.

A military air base usually has specific aircraft based on-site; the operational characteristics for these aircraft can vary widely depending on the specific mission requirements for the based unit or units. Transient operations resulting from military aircraft based elsewhere can comprise a significant portion of a military air base's total aircraft operations, depending on specific military requirements, but most of these transient operations are unscheduled and difficult to characterize. The military aircraft fleet experiences relatively slow turnover; aircraft remain in service for many years, and new airframe designs enter the fleet at a relatively slow pace.

The ongoing base closure and realignment process introduces an important element into the process of developing a control strategy for military aircraft operations. The Secretary of Defense and the Defense Base Closure and Realignment Commission have recommended a series of defense base closures across the nation, including the FIP areas, as well as a concurrent sequence of "realignment" actions with shifts in the location and intensity of military activity. The closure of several air bases within the control areas represents the more significant impact on the control strategies described here. Of the seven military air installations located in the South Coast area, three are scheduled for closure and one will be realigned. Aircraft operations at the realigned installation are expected to decrease. (See the table below for the air bases recommended for closure.) As a result of the Base Realignment and Closure (BRAC) process, emissions from military aircraft will be significantly reduced by the year 2000. For example, emissions of VOC and NO_X will decline by at least 50 percent in the South Coast control area as a result of air base closures, according to current information. (See the Technical Support Document for further discussion.)

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[78] For more detail see the letter from R. Kettler, ATA to R. Wilson, EPA, dated December 27, 1993, available in the rulemaking docket.

Certain bases are slated for re-use by civilian entities following closure; this re-use may include aircraft activity. Some of any such activity may represent relocation of current or future growth in civilian aviation from other airports in the respective air basins; some may be activity which would not have occurred in that basin but for the availability of the closed base.

Military Air Bases in California FIP Areas

Military Agency

South Coast Air Basin

Production Flight Test-Air Force Plant 42—Air Force
El Toro MCAS [closing]—Marine Corps
Los Alamitos AAF—Army National Guard
March AFB—Air Force
Norton AFB [closing]—Air Force
San Clemente Island—Navy
Tustin MCAS [closing]—Marine Corps

Sacramento Air Basin

Mather AFB [closing]—Air Force
McClellan AFB—Air Force

Ventura County

Channel Islands—Air National Guard
Point Mugu NAWS—Navy

Abbreviations

AAF—Army Air Field
AFB—Air Force Base
MCAS—Marine Corps Air Station
NAWS—Naval Air Weapons Station

(*b*) Control Strategy. As with commercial operations, the EPA examined various options for reducing total emissions from military aircraft operations and other base operations. These options included: (1) exempting military aircraft operations from FIP requirements while maintaining a cap on all other mobile source emissions from other base operations at military air stations; (2) an absolute cap on total emissions (including aircraft) under the direct control of the Department of Defense; and (3) a target based program using an allowable emission rate and a fee for excess emissions above this rate, like that proposed for commercial airports.

EPA proposes the first of these three options. EPA is proposing to exclude military aircraft operations from FIP requirements for national security reasons, as explained in more detail below. Applying restrictions on military aircraft operations will inevitably degrade training and combat readiness. Restrictions would impair the ability of the Department of Defense to perform assigned missions (including humanitarian and natural disaster relief, surveillance, and logistic support).

The options available for reducing emissions from military aircraft without requiring a significant decrease in the number of aircraft operations are minimal. Military aircraft are designed to specific mission requirements including power, maneuver, lift, and load. Application of control technologies to existing aircraft would degrade characteristics inherent in military aircraft design. Arbitrary reductions in aircraft operations that may be required to meet the second or third alternative control strategies listed above may be inconsistent with training and operational requirements necessary for national security. In selecting this proposal to exempt military aircraft operations from the FIP requirements, EPA has considered the approved base closings within California which will provide significant reductions in current emissions from stationary, aircraft and other mobile sources under the direct control of the Department of Defense. One consequence of these closures is that the reductions in operations least harmful to military readiness have already been made. The incremental risk to readiness of further reductions in operations is therefore that much more.

The DOD established an internal FIP working group in December 1992 to examine the problems associated with potential FIP strategies, identify impacts to military operations and readiness, and collect data from military installations in the FIP areas. Several concerns have been identified. The principal concern is that although military aircraft operations contribute a very small portion of the total area-wide emissions, they would be severely restricted within an emissions cap. On military air installations, the predominant source of mobile emissions is aircraft and aircraft support operations. Severe restrictions will inevitably degrade training and combat readiness necessary to minimize the risks associated with military aviation. An emission cap or reduction in training operations may impair the ability to perform assigned national missions (including humanitarian relief, surveillance and logistics support). The options available for reducing mobile source emissions from military air stations without requiring a decrease in aircraft operations are minimal.

Another issue is the limited ability for DOD to transfer aircraft to military air stations outside the FIP areas. To move a specific aircraft type requires that the receiving installation have the necessary infrastructure to accommodate that particular aircraft type. Additionally, permanent moves of military assets and personnel are also not fully at the discretion of the military. Any significant base closure action or realignment that meets certain thresholds requires that the action be presented to the BRAC Commission and subsequently be presented to Congress.

Based on the impact the second and third possible FIP control strategies (listed above) would have on military readiness, and the already scheduled decrease in military aircraft operations, EPA proposes that military aircraft be exempt from the FIP. EPA requests comments on excluding military aircraft from the FIP control strategy.

The proposed FIP program will control mobile source emissions from other base operations under the control of DOD. These sources include APUs, GSE, captive vehicle fleets, privately-owned vehicles, and any other mobile sources operated within an air base's boundaries. The military bubble also will include DOD-controlled non-aircraft emissions sources that operate at locations other than military bases, such as ground equipment based at civilian airports. The bubble will be basin-wide rather than air base-specific, given the variability introduced by base closure and realignment activities, as well as the need for operational flexibility.

EPA proposes to impose a declining cap on total emissions for controlling these other base operations emissions from all air bases within each FIP area.

This avoids the difficulty of having to allocate baseline emissions among multiple entities (e. g., perhaps down to individual air bases). This approach also takes advantage of the military's centralized command structure; DOD (or each branch of the armed forces) can mandate air base performance at a certain emissions level (excluding aircraft emissions) commensurate with environmental objectives while maintaining the flexibility to stage specific missions and other functions among various bases inside or outside of the basin. This control strategy provides individual base commanders with the flexibility to implement specific operational and procedural measures necessary to achieve the specified emissions goal, and avoids having EPA attempt to implement specific control measures for military operations. The centralized command structure means that a single entity is the focus of the control strategy.

An absolute emissions cap approach does not require a projection of activity in future years, one of the required assumptions for a program based on allowable emissions per activity unit. Finally, a control strategy that fundamentally relies upon the environmental efficiency of operations, such as the emission rate-based program proposed for commercial aircraft, appears less desirable for military air bases given the inherent unpredictability of military operations.

EPA also seeks comments on the second alternative approach, to establish a declining cap for an emissions bubble which includes military aircraft emissions and therefore requires reductions in aircraft emissions also. Further, comments are requested on the desirability of the third possible control approach, an approach that includes aircraft emissions but is based on a target average emission rate per aircraft operation with a fee for emissions above the target. This third approach would be similar to that being proposed today for commercial aviation.

With respect to the second and third possible control approaches, several additional issues have been identified if military aircraft operations are included within the scope of a bubble program. EPA requests comment on the following issues.

If emissions from aircraft are included, a fee system based on an emission rate target (i.e., the third approach), consistent with the proposed strategy for commercial airlines, or a variation of the second approach but with a fee for emissions in excess of the cap, may be more equitable and desirable than an absolute emissions cap that applies uniquely to military aviation. Emissions that exceed the emissions target would be subject to emission fees instead of an enforcement-related fine or penalty. The emission target would apply to air emissions only during the ozone season in each FIP area. The method of determining the excess emissions and the resulting fee would be addressed in subsequent rulemaking.

Another issue identified involves the method of allotting the emission caps or emission rate targets by the EPA. To be most effective, the DOD Working Group recommends that any caps on total emissions, targets for total emissions, or emission rate targets which include aircraft emissions be allocated to the individual Military Departments. Each Military Department will be responsible for attaining the target for installations under its control. This system is consistent with existing DOD command structure and can be readily implemented. Trading between Military Departments and between installations is proposed. Trading is applicable only to installations within the same FIP area.

To reduce the potential impact on aircraft operations of an emissions cap or emission rate target which includes aircraft emissions, the DOD working group identified as essential the ability to trade excess emission reductions between stationary and mobile sources. Maximum flexibility and minimal operational impacts can be achieved by allowing trading between stationary and mobile sources, in addition to trading between all types of military installations within the same FIP area. In other words, major reductions or elimination of a stationary source may allow continued essential flight operations. EPA acknowledges this concern and supports such trading programs as created by State and local governments as discussed elsewhere in today's proposal.

Of particular concern to the Navy with respect to the second and third options identified above is the inclusion of Naval Auxiliary Landing Field San Clemente Island (SCI) in the list of military air installations regulated by the FIP. SCI is an isolated and remote area, with few emissions sources, either mobile or stationary, other than aircraft. The impact on aircraft operations will be substantial, as almost the entire amount of required reductions will have to be a result of decreased aircraft operations. SCI is the primary training location for Navy pilots prior to carrier deployment. This training is vital and represents a significant military readiness issue. SCI is located 55 miles southwest of Long Beach. Meteorological data indicates that SCI emissions do not impact the South Coast Air Basin, and at best the contribution of air emissions from SCI to the South Coast air quality is not well defined. Consistent with EPA's request for comment on exempting Sacramento and Ventura areas from the FIP commercial airport requirements, EPA also requests comments on exempting emissions from on or near San Clemente Island from the FIP control strategy, if aircraft are ultimately included in the final rule.

The proposed emission reduction requirements under a bubble concept for military air bases—regardless of whether it includes aircraft emissions—would be generally consistent with the emission cap requirements for stationary sources in the FIP areas. Although not firmly decided, the current stationary source control strategy for the South Coast requires that VOC and NO_X emissions be reduced by 20–45 and 30–45 percent, respectively, from the 1990 baseline inventory by 2005, through a series of uniform annual reductions of baseline emissions of each pollutant: 4–9 percent per year for VOC and 6–9 percent per year for NO_X, both starting in 2001. Stationary source requirements for the 2006–2010 period have not been established at this time. Until modified in a future rulemaking, the 2005 cap will apply through 2010.

The requirements for Ventura from 2001–2005 are identical to that for the South Coast. For Sacramento, the strategy requires a VOC reduction of 20–45 percent, with uniform annual reduction of 4–9 percent. The timeframe for achieving this reduction is the same as for the South Coast and Ventura areas.

For this proposal the overall reduction targets are expressed as a range of percentages; EPA anticipates establishing a specific percentage reduction target in the final rule. EPA requests comment on whether these stationary source emission reduction targets are appropriate for use with the military air base control strategy.

A military air base can utilize any of a variety of emission reduction options, at the discretion of the Department of Defense and the base commander, to meet the annual emissions target. For example, reductions in ground equipment could be obtained through GSE electrification and restrictions on ground traffic within base boundaries. If the final rule does include emissions from military aircraft, a base commander may choose to restrict aircraft taxi procedures, perhaps by mandating specific direct routes to and from runways, or by towing aircraft into takeoff position; certain training procedures could be altered to minimize the frequency of high-emission operating modes within the basin mixing zone.

(c) Geographic Scope. The control program for military air bases will cover the three FIP areas: South Coast, Ventura, and Sacramento Air Basins. The Agency requests comments on the need to control air base emissions in each area based on air quality effects or equity considerations. In particular, EPA requests comments on exempting emissions from on or near San Clemente Island from the FIP control strategy, if aircraft are ultimately included in the final rule.

(d) Control Period. EPA proposes to control military air base emissions only during the ozone season in each FIP area. Further, EPA proposes to require compliance with the program based on the season-long average of emissions. As already described, such operations may be highly variable. Although this variability tends to argue for a shorter compliance (e.g., a monthly period as in the stationary cap program), the longer period seems preferable to provide military commanders with the flexibility to conduct operations as necessary. EPA requests comment on the desirability of the seasonal compliance demonstration versus shorter periods.

(2) Key Regulatory Elements. (a) Summary. EPA proposes to specify in the final FIP a linear declining cap on total mobile source emissions from military air bases in each FIP area, excluding emissions from aircraft themselves. This declining cap will be designed to achieve the emissions reduction targets for each area as described under "Control Strategy." Military air bases will submit a baseline emissions report and annual compliance determination reports similar to those required for commercial airlines as discussed previously. Military air bases are defined for the purpose of this proposal as facilities owned and operated by the Department of Defense with a primary mission of aircraft operation. The Department of Defense also will be responsible for submitting baseline emissions reports and annual compliance reports for military operations that occur at civilian facilities in the control area.

(b) Baseline Inventory and Emission Caps. EPA currently does not have sufficient data for all subject emission sources included in the proposed military air base control program to establish a reasonable baseline inventory. EPA, therefore, will require each military air base in the control area to calculate and report total subject emissions for the baseline year of 1990 within 180 days following finalization of this rule. Information to be included in the baseline report is described in "Reporting and Recordkeeping" below. The military bubble will be the sum of emission inventories from all air bases in the basin.

EPA requests comment on the desirability of using an alternative baseline scheme, given the variability introduced by operations related to Desert Shield/Desert Storm during 1990. One alternative could be to require air bases to submit data for 1989 and 1990 so that a two-year average inventory can be calculated. The DOD working group recommended that installations have the option of identifying the baseline year, between the years 1989 and 1992, which resulted in the most representative total emissions. The DOD working group also requested a one time adjustment of the baseline inventory be allowed, based on actual inventory data, once the FIP requirements are in effect. The one time adjustment could help eliminate errors based on assumptions and estimates used in developing the baseline.

EPA will establish in a subsequent rulemaking action a series of declining seasonal emissions allowances for NO_x and VOC as described above using the modified baseline emissions inventory. Both the baseline inventory and the seasonal targets will be expressed as allowable tons of pollutant emitted on average per day during the control period.

An additional concern regards the requirement for baseline inventories for installations that are closing. The DOD working group further recommended that inventories not be required for bases closing before 2000. Emission sources are already being phased out and there would be no benefit derived from funding such inventories in terms of helping to design emission control strategies for those bases. On the other hand, the estimates of emissions eliminated by base closures will affect the effective stringency of a declining cap program if the baseline for the cap was prior to closure since there will be credit for base closings.

(c) Averaging and Trading. EPA proposes to determine compliance for military air base operations by averaging emissions across the control area, rather than establishing specific seasonal emission limits for individual air bases. Such a control strategy would provide the military with the flexibility to transfer operations between air bases as needed to meet realignment requirements or other specific mission needs, as long as the overall emissions reduction target is met. Alternatively, the Agency could establish seasonal emission allowances for each military air base in the control area. EPA requests comment on the desirability of using area-wide averaging to determine military compliance, and on possible alternative compliance determination schemes.

The Agency also requests comment on the inclusion of military air base operations in any civilian emission credit trading scheme if such a program is established by a local government. Such an expansion could provide the Department of Defense with additional incentive to implement emission reduction measures that generate tradable credits, or provide a mechanism for obtaining credits from other sources to ensure compliance should unforeseen difficulties arise. (See the discussion of averaging and trading for commercial aviation for more detail of this topic.)

Several of the military air installations in the FIP areas have already been identified for closure (Table F), and military operations will cease at the identified bases prior to the year 2000. These reductions do not even consider BRAC 95 which could result in further reductions. The DOD Working Group recommends that any emission reductions resulting from closure or realignment should be credited to the Military Department. These credits would then be available for transfer by the Military Department as part of the President's five point plan for community redevelopment at closing bases and/or to meet service Department needs within the specific FIP areas.

(d) Annual Compliance Determination. Beginning in 1999, military air bases will be required to submit annual emissions reports as described below. The total military emissions inventory from subject mobile sources at all air bases in the area will be compared to the given year's seasonal emissions target to determine compliance with the FIP requirements.

(e) Reporting and recordkeeping. (i) Compliance Plans. The stationary source cap program includes a requirement for affected sources to submit compliance plans that describe planned emission reduction measures. EPA could establish a similar requirement for military air bases as part of today's proposed control strategy. Such compliance plans would be submitted by Department of Defense in advance of the control period and would describe in some detail the various emission reduction measures planned for air base operations in the control areas.

Compliance plans would impose a significant administrative burden on EPA and the Department of Defense, however. EPA therefore requests comment on the desirability of requiring compliance plans, and on the information that should be provided should they be required. EPA does not contemplate that these plans, if required, would legally bind the military, since that would impede flexibility and is not essential to the effectiveness of the program. However, any deliberate misrepresentation in the compliance plan may be made a violation of the FIP.

(ii) Baseline Reports. As discussed above, EPA currently does not have sufficient information to establish a reasonable baseline military air base emissions inventory from which annual emission targets can be developed. EPA therefore will require military air bases to collect and report data concerning both aircraft operations and other air base operations in the baseline year of 1990, or alternative years as discussed in "Baseline Inventory and Emission Caps" above. These reports will be submitted to EPA no later than 180 days following finalization of this rule. These reports would be used by EPA to calculate the military's air base emissions baseline; seasonal emission targets will be established in a subsequent rulemaking action as a series of reductions from this baseline.

These baseline reports will include, but may not be limited to, the following information to be provided by each military air base:

- Aircraft type and model, engine type and model, and number of landing/take-off operations (LTOs)
- Times in mode by engine for each flight
- Auxiliary Power Unit (APU) operating time
- Ground Support Equipment (GSE) population by type
- GSE activity by fuel type, engine size, and annual use hours
- All other off-highway equipment activity by fuel type, engine size, and annual use hours
- Vehicle miles traveled (VMT) by highway certified vehicles (federal owned, contract personnel, privately owned, etc.) operated within air base boundaries

Although EPA is not proposing to include aircraft emissions in the FIP program, aircraft emissions are included in the above list of reporting items. EPA believes that information on aircraft operations and emissions will allow it to better review the submitted information on emissions from other sources. Comment is requested on the necessity and usefulness of this information to EPAs implementation of the FIP and to local air quality planning activities.

EPA recognizes that detailed information may not be available in each of these categories for 1990. In these instances military air bases may report estimated data; such estimates would be accompanied by a description of the estimation methodology used, including any supporting data. The Department of Defense will be required to identify a reporting entity for military operations at civilian airports; EPA also requests comment on alternative schemes for tracking and reporting such activity.

(iii) Annual Compliance Determination Reports. Beginning with a report describing activity during 1999, the FIP will require military air bases to submit annual reports within 60 days of the close of each calendar year. These reports will include information on emissions for that year's ozone season, as described below. EPA will use these reports to determine the military's compliance with the seasonal emissions targets. Initiating these annual reports in 1999 will provide the Department of Defense and EPA with an opportunity to assess data gathering and analysis requirements well in advance of the first emissions target in 2001, as well as providing the DOD with important information on its performance needs prior to the first round of required reductions. Failure to submit annual emissions reports will be subject to EPA enforcement.

Annual emissions reports will include the following information:

- Aircraft type and model for each flight during the ozone season
- Engine type and model for each affected flight
- Times in mode by engine for each affected flight
- Auxiliary Power Unit (APU) operating time during the ozone season
- Ground Support Equipment (GSE) population by type
- GSE activity by fuel type, engine size, and seasonal use hours
- All other off-highway equipment activity by fuel type, engine size, and seasonal use hours
- VMT by highway certified vehicles operating within air base boundaries during the ozone season

Military air bases will be required to track and report actual data for the above information categories. Default values will not be accepted for the purposes of determining annual compliance with the military's emissions target. As with baseline reports, the Department of Defense will be required to identify a reporting entity for military aircraft operations at civilian airports; EPA also requests comment on alternative schemes for tracking and reporting such activity.

Military air bases will be required to calculate their total hydrocarbon and NO_X emissions for the report year's ozone season using the above data and enter these emissions on the report form. Emission calculation methodology will be taken from existing EPA-approved documents. EPA also requests comment on the desirability of issuing additional specific technical guidance concerning emissions calculations for military aircraft operations.

(*f*) Exemptions. EPA requests comment on the desirability of providing exemptions from the requirements of this control program for certain types of military air base operations. For example, emissions resulting from actions in response to emergencies, such as those that support operations of the United States forces introduced into hostilities, introduced into situations where involvement in hostilities is indicated, actions to resolve in-flight emergencies, or rendering emergency humanitarian or natural disaster relief should be exempt from reporting requirements and not count towards the military's environmental performance. Other actions which should also be included in this category are those to extinguish wildfires and immediate responses to the release or discharge of oil or hazardous material in accordance with approved Spill Prevention and Response Plans or Spill Contingency Plans. In addition, certain small military facilities with only minimal aircraft activity might be unnecessarily burdened under this program relative to the emissions reductions that might be obtained. Therefore, EPA requests comment on the desirability and feasibility of establishing a de minimis exemption for this control program.

(*3*) Legal Authority. Section 118 of the Act requires all federal agencies, including the Department of Defense, to comply with rules and regulations promulgated under the Act in the same manner and to the same extent as non-governmental agencies. 42 U.S.C. Section 7418.

(*4*) Issues for Specific Comment. EPA requests comment on the proposed exemption of military aircraft from FIP requirements on the basis of national security considerations, and on the alternative proposals described in this section.

EPA requests comment on whether stationary source emission reduction targets are appropriate for use with a military control strategy.

EPA requests comment on the manner in which non-Department of Defense government-operated aircraft emission sources should be included in this FIP control strategy. EPA requests comment on the desirability of exempting such sources from the requirements of the control program.

EPA requests comment on potential alternatives to the seasonal control period proposed today.

EPA proposes to use 1990 as the baseline year for each military air base to establish a baseline emissions level, but also requests comment on the desirability of using an alternative baseline scheme, given the variability introduced by operations related to Desert Shield/Desert Storm.

EPA requests comment on the desirability of using area-wide averaging to determine military compliance, and on possible alternative compliance determination schemes.

EPA requests comment on the desirability of issuing additional specific technical guidance concerning emissions calculations for military air base operations.

EPA requests comment on alternative methods of tracking and reporting emissions resulting from military operations at civilian airports.

EPA requests comment on providing exemptions from the requirements of any control program for certain types of emergency or atypical military operations.

EPA requests comment on the desirability and feasibility of establishing a de minimis exemption for any control program.

EPA requests comment on national preparedness and response flexibility versus the degree and scope of the proposed emissions control program.

Persons submitting comments on these issues or other specific aspects of today's proposal should consider and discuss the possible impact of their comments on other elements of the control program, particularly when such comments propose alternative strategies that would achieve smaller or larger emission reductions from military air bases.

(d) General Aviation. (*1*) Source Description. The general aviation category consists of privately-owned aircraft operated under FAA Parts 91, 133, or 137. As such, it encompasses aircraft types with a variety of different engines, including piston, turboprop, and turbine. It also includes both fixed-wing and rotary-wing aircraft. Most general aviation aircraft are owned and operated by private individuals. Other aircraft are owned and operated by businesses. Much of the general aviation fleet is old, with few significant technological improvements in emissions performance expected in the foreseeable future.

General aviation aircraft operate at a variety of facilities in the control areas, ranging from large commercial airports to small privately-owned airstrips and helipads. The table below ("Civil Airports in FIP Areas") lists the civil airfields in the control areas, based on information provided by the FAA and discussed in the Technical Support Document. In addition to these civil airfields, FAA data for 1991 lists 198 helipads in the South Coast control area, 3 helipads in the Sacramento control area, and 12 helipads in the Ventura control area; this includes private helipads, medical facilities, and various local government facilities.

Civil Airports in FIP Areas

South Coast Air Basin

Avalon Bay
Bear Creek
Big Bear City
Billy Joe
Brackett Field
Burbank-Glen.-Pas.
Cable
Catalina
Chino
Compton
Corona Muni.
El Monte
Ernst Field
Flabob
French Valley
Fullerton Muni.
Goodyear Blimp Base
Hawthorne Muni.
Hemet-Ryan
John Wayne.
Long Beach Muni
L. A. Internat'l
Ontario Internat'l
Pebbly Beach
Perris Valley
Pines Airpark
Redlands Muni.
Rialto Muni.
Riverside Muni.
Santa Monica Muni.
Shepherd Field
Skylark Field
Torrance Muni.
Two Harbors
Van Nuys
Whiteman Airpark

Ventura County

Camarillo
Conover Air Lodge
Oxnard/Ventura
Santa Paula.

Sacramento Air Basin

Boeckmann Ranch
Bottimore Ranch
CHP Academy
Cameron Airpark
Flying B Ranch
Flying R
Franklin Field
Holtsmans
Lauppes Strip
Lucchetti Ranch
Mosier
Natomas
Rancho Murieta
Riego Flight Strip
Rio Linda
Sacramento Executive
Sacramento Metro.
Sky Way Estates
Spezia
Sunset Skyranch
Tenco Tractor
Van Vleck
Vestal Strip

Much less specific information is available concerning the emissions resulting from general aviation activity than is available for commercial and military aircraft operations. The FAA collects some information on general aviation operations at airports with FAA-operated (or contractor-operated) control towers, but these data are not comprehensive, and do not capture operations occurring at non-tower-controlled facilities. In particular, the lack of data specifically addressing general aviation operations by type of aircraft makes an accurate assessment of the emissions from this source more difficult.

(*2*) Overall Control Strategy. Although general aviation operations represent a small fraction of total emissions in most FIP areas, EPA is proposing to include this source in the FIP control strategy along with commercial and military aircraft operations as part of the broad, comprehensive control scheme for these areas. As described below, developing an effective comprehensive control strategy for this source, and effectively administering it, is an especially challenging task due to the diverse aircraft types and usage, the great number of individual owners/operators, and the large number of airfields in each most FIP areas. Nonetheless, if this source were excluded from the FIP, the potential reductions from this category would have to be achieved from another source.

Today's proposal would establish an operations fee to reduce the emissions from general aviation activity during the ozone season in each FIP area. The

Agency intends that the proposed approach provide the same level of benefits as the emission cap requirements for stationary sources in each of the FIP areas. (See section III.D.4.e.(2)(a)(*4*), above, for the specific percentage reductions.) Comments are also requested on three alternative control schemes. EPA has chosen not to apply a comprehensive emission cap to this source because the significant data requirements and level of EPA involvement in such a program make that strategy impractical.

In developing the proposed strategy, EPA notes that there appear to be few, if any, regulatory options for innovatively reducing emissions from general aviation aircraft, given the age and emissions performance of the general aviation fleet, and the economic status of the general aviation industry. Unlike many other sources, improving the emissions performance of these aircraft through new, industry-wide emission standards is problematic. Even if cleaner engines could be made available, the general aviation fleet is unlikely to experience significant introduction of cleaner alternatives, since fleet turnover is relatively low (sales of general aviation aircraft in fact have declined in the past several years).

This is not to suggest that emission benefits are unavailable through the careful selection of aircraft/engine combinations or the possible limited introduction of new models in the future. Rather, there are no substantially cleaner alternatives to current technology engines for the vast majority of the fleet. Therefore, the strategies that rely on turnover to cleaner technologies are unavailable in this instance.

Operational and procedural measures such as reduced-power takeoffs and direct routing from hardstand to runway also would be difficult to implement for general aviation on an area-wide basis, given the widely varying aircraft and facility characteristics found amongst general aviation operations. These measures also offer little opportunity for emission reduction, due to minimal congestion at most general aviation airports, short taxi distances, and relatively low power-range engines. As a result, the only available measures that would provide significant emission benefits appear to involve activity reductions.

The diverse and diffuse nature of general aviation operations creates significant obstacles for any emission control program. General aviation aircraft and the facilities at which they operate are controlled by a large and varied group of individuals and organizations. General aviation operations typically occur on a highly variable schedule and many operations can occur at completely uncontrolled airports. Despite these difficulties, EPA believes that an emission reduction program for general aviation could be implemented. The specific proposed control measures and alternatives discussed below reflect varying degrees of direct EPA involvement and participation by the general aviation community, with resultant variation in the certainty of obtaining emissions reductions.

The control strategy applies to general aviation aircraft operated at commercial airports as well as those operated at public and private general aviation facilities. It does not apply to civilian general aviation aircraft operations at military bases; these are included in the military control strategy described above.

Comments are specifically requested on the need to control emissions from general aviation in each area based on local air quality concerns, given the potential difficulty and likely resource-intensive nature of administering an effective program.

(*3*) Key Regulatory Elements. The EPA proposes an operations fee program to reduce emissions from general aviation activity. By implementing a fee system, EPA can avoid establishing direct allocation of landing slots for general aviation as discussed later in this section, thereby maintaining the flexibility that is desirable for general aviation operations.

EPA specifically proposes two options for an operations fee program. The first option implements a takeoff fee for all general aviation operations in the affected areas. Conceptually, the fee would be high enough to limit general aviation activity without making such activity prohibitively expensive. The second program option also implements a takeoff fee for all general aviation activity in these areas, but would incorporate a lifetime fee exemption for engines/aircraft meeting "clean" emission levels. For example, aircraft engines with emissions comparable to the levels originally required by EPA in 1973 (38 FR 19088), but subsequently withdrawn, would be deemed "clean" for the purpose of this program and would receive a lifetime exemption from any FIP general aviation takeoff fees. Certified engines/aircraft would be identified by a certificate or decal.

As with commercial aircraft, EPA proposes an initial fee based on $10,000 per ton of pollutant, and will commit in the final FIP to review the effect of this fee and adjust it upwards if necessary to achieve the target emission reductions. Emissions per LTO based on a representative fleet of general aviation aircraft are:[79]

VOC—0.394 pounds per LTO
$\mathrm{NO_X}$—0.065 pounds per LTO

On this basis the takeoff fee can be calculated as follows:

($10,000/ton)×(0.394 lbs/LTO) divided by 2,000 lbs/ton=$1.97/LTO for VOC

($10,000/ton)×(0.065 lbs/LTO) divided by 2,000 lbs/ton=$0.325/LTO for $\mathrm{NO_X}$

The total fee thus would be $2.30 per LTO. In light of this low dollar amount, and since EPA would plan in any case to adjust the fee upward to get the desired effect, the Agency requests comments on whether it is reasonable to depart from the $10,000 per ton level generally being used for all proposed fee systems in this NPRM, and start with a higher fee in the final rule for general aviation.

The Agency also requests comment on differentiating the fee to reflect the varying pollution potential of different aircraft (e.g., single- versus twin-engined and piston versus turbine powered). As a further differentiation, EPA requests comment on a variable fee structure for specific airports where other emission reduction schemes have been implemented by the airport proprietor beyond those required by the FIP or other regulations. This would encourage control measures such as vapor recovery.

A takeoff fee would be assessed by selling one-time takeoff permits. The program would be administered and ultimately enforced by EPA, presumably at each airport. Denial of takeoff permission is the most practical means of enforcement for most general aviation applications, given the number of individual pilots that would be involved in such a program. The Agency is consulting with the FAA in this regard, and requests comments on the legal authority for and practical consequences of enlisting FAA assistance in this program. At uncontrolled public and private airports, proprietors or owners may be able to refuse services such as tie-down facilities or refueling to noncomplying aircraft. Otherwise, EPA would have to have a presence or a credible prospect of enforcement against noncomplying pilots in order to enforce the program.

In order to accurately track and help enforce the proposed fee program, EPA will require owners or operators of civil airports in the control areas with general aviation activity to obtain a general aviation operations certificate and submit seasonal aircraft activity reports during the ozone season. This will provide EPA with the information necessary to verify that general aviation emission reductions are occurring as intended. Military air bases with general aviation activity will not be subject to these requirements, since such activity will be included in an air base's environmental performance evaluation as described in section III.D.4.e.(2)(c) above.

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[79] See Volume IV, Chapter 5 of EPA's *Procedures for Emission Inventory Preparation*.

All civilian airports in the control areas with general aviation activity will be required to obtain a general aviation operation certificate no later than December 31, 2000. Applications for these certificates will be submitted to EPA by March 20, 2000 and will include the following information:

- Airport name
- Airport location, including latitude and longitude
- Number of general aviation operations in 1999
- Number of general aviation aircraft based at the airport
- Services provided at the airport

This information will provide EPA with a measure of current activity levels, which in turn will be used to evaluate the effectiveness of the emission reduction program that is implemented. Beginning January 1, 2001, airports with general aviation activity in the absence of a certificate will be subject to EPA enforcement.

Beginning with the 2001 ozone season, civil airports will be required to submit seasonal activity reports during the ozone season on general aviation activity. These reports will include the following information:

- Airport name as indicated on the General Aviation Operation Certificate
- Total number of general aviation operations for the reported season
- For each general aviation operation during the reported season, the aircraft's FAA registration number ("N" number)

These reports will be submitted to EPA no later than the 60 days following end of the ozone season, and will be used to track the effectiveness of the activity reduction program that is implemented. Airports with general aviation activity during the control period that fail to submit reports will be subject to EPA enforcement.

The Agency recognizes the potentially burdensome nature of the above comprehensive reporting and recordkeeping scheme, and requests comment on the desirability and need for such a program element.

EPA is also interested in receiving comment on the desirability of providing exemptions from the requirements of this control program for certain types of general aviation aircraft operations. General aviation activity at non-tower controlled facilities could be exempted from this program; such activity likely represents only a small fraction of total general aviation activity and would be difficult to control under any of the programs discussed today, relative to the limited emissions benefits likely to result from such control. In addition, atypical aircraft operations beyond the control of a general aviation aircraft operator, such as emergency operations, could be exempted from the requirements of this control program.

The Agency also requests comments on three alternative concepts for reducing emissions from this source. Under the first alternative, EPA would implement a slot program for general aviation operations in the control areas. Such a program would require EPA to develop a baseline general aviation activity inventory and a series of declining activity targets designed to achieve emission reduction targets for each control area. The declining activity targets would be expressed as a number of allowable operations during an ozone season.

Operation "slots" would be distributed to the general aviation community; perhaps through an annual auction. General aviation operations that occur during the ozone season without an approved slot would be subject to enforcement. The program would require registration with EPA for each facility where general aviation operations occur, so that EPA can establish and track an accurate general aviation activity inventory. A slot program provides a great deal of certainty that emission reductions are taking place, but at the expense of an extensive administrative burden imposed on the general aviation community and the government.

Under the second alternative, EPA would establish an environmental surcharge on the sale of aviation fuel distributed to facilities that service and refuel general aviation aircraft. This surcharge would be set at a rate high enough to reduce general aviation activity without making such activity prohibitively expensive. The assumption in this case is that declining fuel use on the part of the general aviation community represents declining operations with resultant emissions reductions.

Airport proprietors could be responsible for collecting this surcharge each time that a general aviation aircraft refuels; alternatively, those parties supplying aviation fuel to general aviation facilities could collect the surcharge upon delivery of fuel to the facility. In either case, the surcharge would be remitted to the federal government on a regular basis along with a report detailing fuel use during the reporting period. Fuel costs are small relative to the total costs of owning and operating a general aviation aircraft. As a result, the effect of an environmental fuel surcharge is uncertain and the fee may need be quite large relative to the present cost of fuel in order to ensure the activity reductions. Also, refueling an aircraft with non-conforming fuel (e.g., aviation fuel imported from outside the area or automotive gasoline used in certain piston-powered aircraft engines) would have to be made an illegal act in order to prevent cheating.

Under the third and final alternative, EPA would implement a annual emissions registration fee for each general aviation aircraft residing in the FIP area. EPA would issue these certificates indicating that all applicable fees had been paid. As with the other programs described here, the FIP emissions registration fee would be set high enough to reduce operations. Airport proprietors or owners may be required to refuse services such as tie-down facilities or refueling to aircraft operators without the appropriate certificate. This alternative has the distinct disadvantage that it bluntly increases the cost of ownership without regard to how much any individual aircraft is used.

(4) Issues for Specific Comment. EPA requests comment on potential methods for obtaining verifiable and enforceable emission reductions from general aviation operations other than the emission reduction programs described today.

Comments are specifically requested on the need for an emissions control program for general aviation operations in each control area based on local air quality concerns.

EPA requests comment on whether the proposed operations fee is appropriate given the program's objective of reducing emissions from general aviation activity in the control areas.

EPA requests comment on the possibility of FAA assistance in EPA implementation of the proposed takeoff fee program at tower controlled airports.

The Agency solicits comment on the legal and policy implications of a strategy that has the potential to create economic incentives for general aviation to limit operations at airports in the FIP areas.

EPA requests comment on differentiating the operations fee structure for specific airports where other emission reduction schemes have been implemented by the airport proprietor.

EPA requests comment on the need for a comprehensive reporting requirement for general aviation airport owners/operators.

EPA requests comment on three alternative emission reduction concepts for general aviation: takeoff slot program; environmental surcharge on general aviation fuels; and registration fee program.

EPA requests comment on the desirability of providing exemptions from the requirements of this control program for certain types of general aviation aircraft operations, such as operations at non-tower controlled facilities or atypical operations.

Persons submitting comments on these issues or other specific aspects of today's proposal should consider and discuss the possible impact of their comments on other elements of the control program, particularly when such comments propose alternative strategies that would achieve smaller or larger emission reductions from general aviation.

(e) Public Aviation. EPA requests comment on the manner in which public aircraft emission sources should be included in the FIP control strategy. Such sources range from aircraft operated by federal agencies such as the Coast Guard and the Forest Service to aircraft operated by local governments, for example police helicopters. EPA does not have sufficient inventory data concerning such aircraft operations to assess their contribution to the overall emissions inventory in the control area, although such emissions are likely to be limited relative to other aviation sources. It may be desirable to exempt these types of aircraft operations from a specific FIP control program, given their importance to the local community and the limited emissions benefits that likely would result from their control. EPA requests comment on the desirability of such an exemption.

(3) Locomotives. (a) Introduction. Locomotives and locomotive engines contribute approximately 5 percent, 1 percent and 2 percent of the total NO_X emissions in the Sacramento, Ventura and South Coast areas respectively. As with all emission sources, NO_X emissions from locomotives and locomotive engines in the three California FIP areas must be reduced for the areas to reach attainment in the most equitable and cost effective manner possible. Locomotives are not significant sources of HC at this time.

In 1990 Congress passed major amendments to the Clean Air Act of 1970. New Section 213(a)(5) of the Act directs EPA to promulgate the first national regulation governing emissions from locomotives. EPA is required by statute to promulgate final national rules for the control of locomotive emissions by November 15, 1995. Final issuance of the national rule for locomotives is legally required within eight months of the date required for promulgation of the final rule for this FIP, and well in advance of the date required for compliance with the FIP regulations. Because of the imminence of the national rule for locomotives and because EPA's commitment to it is legally guaranteed, EPA believes it is appropriate to give credit in the FIP for the emissions reductions that will result from the national rule for locomotives. Moreover, since the locomotive rulemaking is national in scope, it would be inappropriate to foreshorten consideration of it solely to conform to the FIP schedule.

Some special issues are present in the development of locomotive emission regulations. These issues include the relationships between: (a) Locomotive life, rebuild practices and emissions benefits, (b) the mode selected for freight transportation and its effects on emissions, (c) interstate commerce and state and national standards and (d) the requirement for national control and the different emission control requirements in different areas of the nation. Each of these problem areas is briefly discussed in the following paragraphs.

The first point requiring special attention is the long life of locomotives and procedures used to keep the locomotive operating reliably throughout its life. Locomotives are typically operated by their original owners for millions of miles over periods of thirty years or more. At the end of these periods, the locomotive may be scrapped or sold to a smaller railroad and continue in service for many more years. During this total life of a locomotive, the engine and other components of the propulsion system undergo several rebuilds which restore the components to an essentially new condition. Typically these rebuilds occur on a five to seven year schedule. As a result of the long life spans of locomotives and their engines, replacement rates are low and it takes forty or more years for fleet turnover to occur.

This issue can have, if not addressed, a substantial effect on benefits of emission controls when applied to locomotives. First, because of the very slow turnover rate, the effects of emissions standards applicable to freshly manufactured locomotives require forty or more years to be fully realized. At this rate, the full effects of emissions standards applicable to freshly manufactured locomotives[60] will not be realized until midway into the twenty-first century. Second, because locomotives are rebuilt at several points during their total life, emission control regulations, if limited to a traditional useful life, would only be effective for a small fraction of the total life of a locomotive. If EPA only regulated locomotives or locomotive engines for a useful life, traditionally defined as miles and/or time operated to the first remanufacture,[61] the bulk of emission reductions possible would not be realized.

If a national program were to use the traditional useful life definition, many cost effective emissions reductions would be lost. California regulators, EPA, and the railroad industry have recognized this potential loss of benefit. A federal rule which relied on traditional useful life practices would achieve only small reductions and would deprive states of a means that could be helpful in their attainment of the health based standards for ozone and particulate. However, CARB regulators have expressed concerns that a federal rule would not require reductions sufficient to the needs of their state.

The second point of concern pertains to the amount of emissions produced from the movement of freight by different transportation modes. Information currently available to EPA shows that truck-based freight movement generates more pollutants per ton of freight hauled than rail-based forms of freight movement. Estimates quantifying the difference indicate that locomotives are on the order of three times cleaner than trucks on an emissions per ton moved basis. While stringent regulations would theoretically reduce emissions from locomotives, their actual effect could be to increase total emissions. This result is due to the substantially increased operating and equipment costs for the railroads caused by overly stringent control requirements. These increased costs would be reflected in the price of hauling freight and could even eliminate rail carriers from the market. In both of these cases customers would switch to trucks for the movement of their freight. Any freight normally carried by rail that is hauled by trucks instead of by rail will increase the overall emissions level, given railroads' overall efficiency benefits, ton per mile emissions, and productivity even at current emissions levels. The effects of any such shift are very undesirable in the South Coast. For this reason, it is essential that the current balance of rail based freight and truck based freight not be shifted toward increased use of truck based systems.

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[60] A freshly manufactured locomotive is a locomotive assembled completely from unused constituent parts.

[61] EPA has not as yet developed a specific definition for "remanufactured". EPA expects, however that the definition of remanufactured to be included in the national rule will encompass the replacement or reconditioning of those parts or components of the engine or locomotive that limit or control exhaust emissions. The emission control performance of the replacement or reconditioned parts built into the locomotive or locomotive engine at remanufacture will be required to be such that the locomotive complies with the applicable standards. The parts or components that EPA presently expects to include in remanufacturing requirements include: pistons and rings, cylinder liners, cylinder head, fuel injectors and controls, injection pump and controls, camshaft, valves, charge air cooler, turbocharger, and any emission control components incorporated into the locomotive by the manufacturer.

The third point of special concern is the effect that emission standards for locomotives could have on interstate commerce and on international commerce at ports. A substantial portion of the freight and people moved by railroads in California is on trips beginning and/or ending outside of the state. This fact raises two issues. The first is that much freight never has to enter California and would avoid the state if it saved money. The movement of that freight supplies jobs not only in the railroads, but also to tugboat operators, port operators, truckers and shippers in California. It also supplies revenue to the state. EPA is concerned that this FIP not affect California's economy unnecessarily.

Another concern is the effect that a patchwork of state locomotive regulations across the nation will have on interstate commerce. Depending on the treatment of remanufactured locomotives under this FIP and the national rule, such a patchwork could come to exist (see discussion of remanufactured engines). It would be exceedingly difficult for railroads that must cross multiple state lines to comply with multiple state emission levels. If a train had to proceed through several states with differing emission standards, either the locomotive(s) would have to meet the lowest state emission standard for the entire trip or the railroad company would be forced to change locomotives at state boundaries. Facilities for such changes do not exist. Even if such facilities were to exist, the process of changing locomotives at state borders would add significantly to operational costs and shipping times and could also result in increased idle emissions. For these reasons, safety regulations regarding locomotives and trains have historically been national. Lack of cohesive, uniform national regulations for locomotives could be expected to disrupt interstate commerce.

An additional complication exists in the form of the different promulgation deadlines required for the FIP, California's SIP, the national locomotive rulemaking and California's locomotive regulatory efforts. The FIP proposed today is not scheduled to be finalized until February of 1995. Meanwhile California will develop State Implementation Plans which must show attainment in the relevant areas and EPA will propose a national locomotive program. Additionally, CARB will submit a recommendation to the California legislature on a state rule for locomotives and will begin work on a regulation.

EPA is required by statute to promulgate a final national rule for the control of locomotive emissions by November 15, 1995. Since passage of the Clean Air Act in 1990, EPA has scheduled its investigative, research, contracting and rulemaking efforts towards meeting this November 15, 1995 deadline. Because this rulemaking is the first of its kind for locomotives, EPA has a full schedule of technical and operational issues to address. Many of these issues are not fully resolved at this time. Therefore, in describing the effects of a national rulemaking on California FIP areas in terms of emission reductions, EPA must base its estimates on a draft of its proposed national rulemaking that has not been fully developed. EPA stresses that the proposed national rulemaking described here, for purposes of estimating emission reductions in the California FIP areas, is preliminary and may be modified in the NPRM for the national locomotive rulemaking that EPA expects to propose in November of 1994.

A final additional issue exists regarding the level of emission reductions appropriate for California, the South Coast and the nation as a whole. South Coast authorities have indicated that they would like to see a 90 percent reduction in rail emissions in the South Coast. CARB has indicated that an 80 percent reduction statewide would be appropriate. EPA, as described below, is considering reductions on the order of 65 percent to 70 percent for the nation, phased in over several years. EPA is also proposing today substantially larger reductions, and a more swift implementation schedule, for the South Coast. Trying to fit different national, state and local needs together is difficult in the best of circumstances. When the potential economic and environmental costs of inappropriate requirements are as significant as they are here, it is much more difficult.

EPA's proposed locomotive FIP regulations are described below in three parts. The proposed regulations for freshly manufactured locomotives are the same as those EPA intends to propose in November for the national locomotive program. For remanufactured locomotives, EPA is considering two options. The first is a national program for such engines which requires that existing locomotives meet a significant reduction and that locomotives complying with national standards meet those standards throughout their full operating lives. The second is a California-only program with the same requirements. Under that option, California could replace such a California-only program with more stringent requirements if it finds such requirements are appropriate. The final part of this proposal is a fleet averaging standard program for the South Coast only.

(b) Freshly Manufactured Locomotives. This section describes EPA's current thinking regarding its planned November 1994 proposal for regulation of new locomotives and engines used in locomotives nationally. As described above, EPA is still analyzing data in preparation for that rule and hopes that it will receive additional useful data in response to this NPRM. At this time, EPA intends to propose that freshly manufactured locomotives and locomotive engines built between January 1, 2000 and December 31, 2004, be required to meet a NO_X emission standard no higher than 7.0 g/bhp-hr. EPA is carefully studying the possibility of lower standards, and is asking for comment on a NO_X standard as low as 5.0 g/bhp-hr. Estimates of emission rates from in-service locomotives range from 13.5 to 12.0 g/bhp-hr. This requirement represents approximately a 42 percent to 48 percent reduction in NO_X emissions from uncontrolled levels.

EPA is also currently planning to propose in November 1994, a second tier standard. Under this standard, beginning on January 1, 2005, freshly manufactured locomotives and locomotive engines will be required to meet a NO_X emission standard no higher than 6.0 g/bhp-hr. EPA is also considering standards more stringent than this number, to approximately 4.0

g/bhp-hr. EPA requests comment on the feasibility of these standards, especially on the use of diesel fuel. Again, on the basis of an average locomotive and an average train, this requirement represents a reduction of between 61 percent to 65 percent in NO_x emissions from uncontrolled levels when fully phased in.

EPA also intends to set standards for hydrocarbons, carbon monoxide, particulate and smoke emissions for freshly manufactured locomotives and locomotive engines. To the extent EPA regulates remanufactured engines, the standards for these pollutants will also apply to these engines. The standards that become effective in 2000 will be set at levels that approximately equal present emission levels. For the standards that become effective in 2005 for freshly manufactured locomotives, EPA is presently considering some increase in the stringency of the particulate standard.

Emission controls on freshly manufactured locomotives would achieve only limited emission reductions in the time frame required for compliance under the California FIPs without some effort to significantly enhance turnover. EPA's best estimate of emission reductions resulting from freshly manufactured locomotives is approximately a 5 percent to 7 percent reduction in locomotive NO_x emissions in 2005, and a 11 percent to 14 percent reduction in 2010.

(c) Remanufactured Locomotives. While EPA's authority to regulate freshly manufactured locomotives is clear from section 213(a)(5), EPA has not yet determined whether to regulate remanufactured engines in its national rule. National regulation of remanufactured locomotives would alleviate many of the concerns described above regarding interstate commerce and could potentially avoid intermodal shift. It would also get quicker and more lasting reductions in emissions for the nation than would a rule which only regulated freshly manufactured locomotives. However, it would be designed to achieve reductions appropriate for the nation and may not be as aggressive as regulations applied to other sources in California. EPA is therefore proposing two options for remanufactured engines, a national approach and a California only approach.

It is important to keep in mind that there are at least two types of remanufactured engines. First, there are those engines built before the effective date of EPA's regulations on new locomotives. Most of these engines can be remanufactured to achieve emissions levels lower than they are currently meeting. Second, there are those engines built to comply with EPA's national regulations on new locomotives. If EPA does not regulate remanufacture of these engines, most of the engines will be unregulated after they reach their first rebuild. Depending on the emissions standard they are designed to meet and the technology used to meet it, these engines could be remanufactured to meet substantially more stringent levels. On the other hand, requiring them, after remanufacture, to continue to meet the emissions levels they were designed to meet would not add any cost.

A national or state remanufactured engine emission standard could affect either or both groups of engines. EPA is discussing them together because they raise very similar legal and enforcement issues. Additionally, it is our understanding that CARB is considering regulations that will affect both groups of engines. Commenters are encouraged to consider the requirements and note any differences that need recognition in their comments. EPA also requests comment on any other alternative plan or plans to achieve meaningful emission reductions from remanufactured engines.

(*1*) Option I: National Regulations. Under Option I, a national locomotive program would be proposed in November 1994 which would regulate locomotives and locomotive engines remanufactured after January 2000. These locomotives and locomotive engines would be required to comply with an emission standard such that emissions would not exceed approximately 8.0 g/bhp-hr, for locomotives manufactured prior to January 2000, or the standard the engine was originally certified to meet, for locomotives manufactured beginning in January 2000. EPA expects that this option will be generally feasible for locomotives and locomotive engines manufactured after January 1, 1973 and would apply until scrappage to all locomotives affected.

According to the American Association of Railroads the usual time between rebuilds for Class I railroads is approximately 6 years. Therefore, most, if not all affected locomotives should be remanufactured within six years of the program being implemented, i.e. by January 2006. EPA's best estimate of emission reductions attributable to this option, including the reductions achieved from freshly manufactured locomotives, is approximately a 35 percent to 43 percent reduction in 2005, and a 38 percent to 46 percent reduction in 2010 from the unregulated baseline, depending on the assumed levels for today's unregulated engines.

EPA is still considering the proper standard for remanufactured engines built before the implementation date of the national rule. EPA is considering standards as low as 6.9 g/bhp-hr, approximately the national standard that has been proposed for new nonroad engines above 37 kw. The railroads have requested that EPA also consider a cap on the potential costs of remanufacture to meet lower emissions levels. While EPA is taking their recommendation under advisement, we do not currently intend to promulgate such a requirement. Cost cap provisions create definitional difficulties, and are potentially abused.

EPA is concerned that emission rates, expressed as grams of emissions per brake horsepower hour (g/bhp-hr), of pre-1973 engines may be significantly higher than corresponding rates from newer locomotives. Achieving significant emission reductions from these engines is expected, however, to be challenging and potentially costly. These engines, by the year 2000, will be almost exclusively used by Class 2 and 3 railroads[82] or for switching. They will therefore have relatively low usage and emissions rates when expressed as grams per year. Since the benefits from emission control could be low, expressed as an annual mass of emissions, and the costs of control high, the application of controls to these locomotives may prove to be inappropriate. EPA is continuing, however to evaluate the practicality of requiring these locomotives to be remanufactured or possibly requiring that these locomotives be repowered to achieve emission reductions.[83] Another solution may be to move these older locomotives out of non-attainment areas. However, there are concerns that any requirement may impose economic burdens on Class 2 and 3 railroads that tend to operate older engines, and which may not be able to absorb the economic burden.

Option I would be applicable nationwide, with emission reduction benefits realized across the nation. EPA would be proposing this option under its Section 213 authority. The requirement would preempt states from regulating both freshly manufactured and remanufactured locomotives or locomotive engines. States could however still regulate operational practices such as idling and speed.

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[82] Railroads are designated class 1, 2 or 3 railroads based upon their annual revenue. In 1992, the requirement for designation as a class 1 railroad was annual revenue of 251.4 million dollars, the requirement for a class 2 designation was annual revenue from 20.1 to 251.3 million dollars, and railroads with annual revenue of 20.0 million or less were designated as class 3 railroads. These numbers are annually adjusted for inflation.

[83] Repowering is the complete replacement of an existing engine and generator, including the engine block, with a new engine and generator compatible with the new engine.

(2) Option II: California Only Requirements. The second remanufacturing option would include the same requirements as the first option but would limit the requirements to locomotives operating in California. There would be no remanufacturing requirements for pre-2000 locomotives or post-2000 locomotives after their initial useful life for the rest of the nation. This option would produce approximately the same percent emission reductions for California as would be provided for the entire nation under option I. An enforcement mechanism would be required to ensure that only locomotives remanufactured since the effective date of the program, to the California standards would be permitted in California.

EPA is proposing this option by taking the narrowest reading of its authority under Section 213(a)(5). Under this reading, EPA may only regulate brand new engines and the states have authority to regulate in use engines. Therefore, California would have the authority to replace this program with a program it believes is more appropriate. Additionally, other states could choose to develop their own requirements or to adopt requirements designed for California. Each state could promulgate different standards for remanufactured locomotive engines. As described above, the result of such a scenario could be a disruption of interstate commerce and a corresponding shift to trucks and/or increase in transportation costs.

(d) Additional Measures for the South Coast. (*1*) Fleet Average Standard Program. The reductions required for the South Coast to attain the air quality standards by 2010 cannot be achieved without significant reductions in every source of emissions. EPA estimates the national program for freshly manufactured locomotives would reduce emissions in the South Coast by approximately 5 percent to 7 percent by 2005 and 11 percent to 14 percent by 2010. The addition of either option 1 or option 2 for in service locomotives would result in total reductions of NO_x emissions in the South Coast of approximately 35 percent to 43 percent in 2005 and 38 percent to 46 percent in 2010.[84] As the total NO_x reduction from all sources required in the South Coast is 70 percent, EPA would like to achieve percent reductions of this magnitude from the rail industry. These requirements call for a more stringent program regulating locomotive emissions. EPA's plan to further regulate locomotive emissions in the South Coast, hereafter referred to as the "South Coast locomotive fleet average standard program," is designed to achieve reductions on this order.

EPA is not currently proposing to require additional locomotive control measures for the Sacramento and Ventura FIP areas. EPA believes that Sacramento does not need further NO_x reductions beyond the programs described above to meet its attainment requirements. Ventura's train traffic is very limited, and any additional program there would only achieve small benefits, with costs out of proportion to the benefits received. EPA determined that further reductions are necessary for the South Coast, due to its massive non-attainment problems, and the significance therefore of any source of pollution. Locomotives currently contribute 2 percent of South Coast NO_x and that percent contribution would be expected to rise without further regulation, due to the regulation of other South Coast emission sources.

EPA proposes and asks for comment on the following locomotive NO_x emission reduction plan for the South Coast. All railroad locomotives or locomotive engines used by a railroad company in the South Coast area would be averaged together to achieve an average emission standard level. EPA proposes that NO_x emission levels from the regulated sources must be no greater than 5.5 g/bhp-hr by 2007 and 4.0 g/bhp-hr by 2010. Average emission levels would be calculated for each railroad company based upon fuel usage and engine emission levels. For each ton of emissions over this average, a noncompliance fee will be assessed based on the $10,000/ton figure used for on highway heavy-duty engines. EPA is interested in including other locomotive emission sources[85] in the average but has very little information regarding use or emissions levels. Commenters are urged to provide this information.

This program preserves as much flexibility as possible for railroad companies to meet the additional emission reductions in the South Coast. This flexibility will allow individual railroad companies to reduce emissions in the most cost effective manner possible for their companies. EPA believes that an averaging program will be the most cost effective method of reducing locomotive emissions in the South Coast.

Starting January 1, 2007 and effective until December 31, 2009, each individual railroad company that operates within the South Coast will be required to meet on average, an emissions level of 5.5 g/bhp-hr. Starting January 1, 2010 and in effect thereafter, each individual railroad company that intends to operate within the South Coast will be required to meet on average an emissions level of 4.0 g/bhp-hr. Average emissions would be calculated based on fuel usage. The g/bhp-hr level of a locomotive engine would be multiplied by the gallons of fuel that an engine consumed during a given year within the South Coast nonattainment area. The products of the locomotives' g/bhp-hr level and fuel usage would be summed for all of the engines in a railroad company's fleet. The resultant sum would then be divided by the total gallons of fuel used. The resultant g/bhp-hr average must be at or below 5.5 g/bhp-hr for the years 2007–2009 and below 4.0 g/bhp-hr for 2010 and thereafter. This calculation is summarized in an equation in the regulations.

EPA realizes there may be alternatives to basing the average calculation on fuel usage such as basing the average calculation on mileage or hours of operation. These two alternatives do not necessarily reflect emissions level well because they take improper account of idling. However, EPA is interested in comments regarding the appropriate measure.

EPA is proposing that electrified mileage be counted as producing zero emissions as long as the electrical powerplants supplying the electricity are located outside of the South Coast. If the powerplants were inside South Coast, some calculation of the pollutants created from the production of the electricity consumed would have to be used. Additionally, a conversion factor to equate kilowatt hours used to gallons of fuel used would be necessary so appropriate credit may be given for electrification for purposes of calculating the emissions average. The Department of Energy recently proposed a rule, (**Federal Register** Vol. 59, No. 24, February 4, 1994), that specifies how to calculate such a conversion factor. EPA requests comment on this proposal.

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[84] Actual emission reductions for the South Coast from the national program may be slightly lower than the national average because locomotives moving freight out of and into this area tend to be somewhat newer than the national fleet. Newer locomotives are generally cleaner than older locomotives; thus the emission reductions due to an emissions standard for a newer fleet would not be as large as that for an older fleet.

[85] Additional sources may include but not be limited to the following items: track maintenance equipment, locomotive maintenance equipment, and roundhouse emissions.

Additionally, EPA is proposing to allow companies to pool their operations for measurement of the emissions average. This proposal could facilitate investment in electrification or alternative fuel usage. By combining an investing company's average emissions with that of another company, the electrified or alternative fuel railroad company could help subsidize its investment.

EPA does not see the need for an emissions cap with this program. A cap may be necessary because the averaging program is based upon fuel used. EPA believes it unlikely that the amount of fuel used by railroad companies will increase in the South Coast. The trend in current engine design is toward increased fuel efficiency, and railroad companies place a high premium on saving fuel. It is in the best economic interests of the railroads to do so. EPA thus expects the positive trend in fuel efficiency to continue. The only way there could possibly be an increase in emissions or less emissions reductions for the rail sector than projected, due to increased fuel usage, would be for the railroad industry to experience rapid expansion. If this were to happen, actual net emissions in the South Coast would probably be positively affected because it would mean that more freight was being hauled by rail instead of truck. Alternatively it could be as a result of expansion in mass transit trains. In either case, the net emission impact in the South Coast would be in a positive direction. EPA therefore is not proposing an actual emissions cap at this time, however EPA requests comment on the need for including a cap on emissions produced from locomotive sources.

This regulatory program is aimed exclusively at the South Coast FIP area. Moreover, EPA's authority to propose this program is at least partially derived from California's own authority. EPA therefore encourages California authorities to manage this program or propose a program that achieves similar reductions. EPA believes that California would be more sensitive to the specific issues and problems of implementing a program of this nature. If California were to agree to manage this program, California would handle the administration and enforcement of this program. In any event, California will retain the right to regulate operational changes in the railroad industry within California. This includes but is not limited to time spent idling, rail lubrication, and operating times, etc.

(*2*) Compliance. EPA is proposing under the South Coast locomotive fleet average standard program that each railroad company that intends to operate locomotives or locomotive engines within the geographical confines of the South Coast should designate certain locomotives or locomotive engines which will operate within the South Coast. When these locomotives or locomotive engines operate in the South Coast, fuel usage for each locomotive type shall be recorded by the locomotive operator. Such records shall be submitted to EPA in March of each calendar year for the preceding year of operation and be kept for a period of five years. EPA will specify in its national regulation what test procedure and method will be used for certifying an engine at a particular emissions level.

EPA proposes that each individual railroad company which owns or operates locomotive emission sources within the South Coast keep a roster of engines and locomotives that operate within the South Coast. This roster would include the locomotive type, the engine type and relevant emission characteristic data on the engine. Summary rosters shall be reported to the Administrator yearly, and supporting data is proposed to be kept for a period of 5 years thereafter. Locomotives and locomotive engines that are designated to operate within the South Coast would be marked by a permanent identifier on the engine and labels displayed prominently on both sides of the exterior of the locomotive which will identify the locomotive as a South Coast designated locomotive.

EPA would reserve the right to audit any locomotive emission source in regard to performance and compliance, that EPA finds operating within the South Coast. EPA inspectors would be given rights of access to inspect railroad property and equipment. Any non-South Coast designated locomotive or locomotive engine or locomotive emission source that EPA finds operating in the South Coast without being properly identified or without proper maintenance could face instant fines as high as $25,000 per day of operation.

Each company that operates locomotives is responsible for meeting its individual fleet average emissions standard. EPA proposes to assess annual noncompliance penalties for companies similar to those described for heavy-duty noncompliance in section 3(D)(3) of this document. Each company that operates one or more locomotives will have to show compliance each year with the fleet average emissions standard. Any excess emissions produced beyond the average will be assessed an annual noncompliance fee of $10,000 per ton of emissions produced. This penalty is in addition to any charged for a violation as described in the preceding paragraphs.

(*3*) Authority. EPA is proposing this South Coast emission averaging standard program under its broad remedial authority under section 110(c). No provision of section 213, section 209, or any other sections of the Clean Air Act, clearly prohibits EPA from exercising its section 110(c) in the manner proposed herein.

(*4*) Emission Reductions. EPA believes the average g/bhp-hr level for line haul locomotives and locomotive engines operated by class 1 locomotives in California is approximately 13.5 g/bhp-hr. This estimate was developed from train data and locomotive emission data supplied to EPA by railroad companies that operate within California, and locomotive engine manufacturers.[86] The railroads have however claimed that the average emission level of locomotives operating in California is 12 g/bhp-hr. While they have provided no accounting of that average level, and the 13.5 g/bhp-hr level was calculated from data provided by the railroads, EPA has used both levels in its estimates of the benefits of this program. The range provides for conservative estimates both of the current emissions impact of locomotives and the reductions from this program. Other locomotives, those operated by class 2 and 3 railroads and switcher locomotives operated by class 1 railroads have g/bhp-hr levels higher than 13.5 g/bhp-hr.

To calculate a minimum emission reduction, one can assume that all locomotives are at 12 or 13.5 g/bhp-hr. EPA's 2007 requirement that railroad emissions average 5.5 g/bhp-hr would therefore provide overall emission reductions of 54 percent to 59 percent. The 2010 requirement that railroad emissions average 4.0 g/bhp-hr would therefore provide overall emission reductions of 67 percent to 70 percent. Since the current overall average emissions, due to switching operations and class 2 and 3 operation, must be higher than 13.5 g/bhp-hr, a reduction in excess of 70 percent is likely.

EPA believes the reductions necessary to meet the 5.5 g/bhp-hr emission average will be achievable through the use of clean diesel technology and operational changes. Some use of alternative fuels may be necessary to supplement the emission reduction achieved by clean diesel and operational changes or to allow significant growth. Electrification, under strong consideration for at least some South Coast lines would greatly facilitate compliance and reductions. EPA requests comment on what types of engines or strategies may be required to comply with this program.

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[86] Memo from Peter Hutchins to Chester J. France. February 14, 1994, "Current Emission Levels and Duty-Cycles."

EPA does not anticipate that additional measures of reduction will be required at this time. However several options, which EPA could not finalize due to technological issues, but could develop later as provided by section 182(e)(5) of the CAA, are widespread use of electrification and the use of fuel cells.

(5) Other Options. EPA requests comment on three other options being promoted by the South Coast, the CARB and the AAR, respectively. The South Coast Air Quality Management District is proposing that a 90 percent reduction in railroad emissions in the basin be required by the year 2010. This proposal requires electrification of all locomotive operations, including switching. They have not yet determined how such a project could be funded. For this reason, EPA is not proposing this option.

The CARB is considering an option that would require an 80 percent reduction in locomotive NO_X emissions statewide by 2003. Emissions of HC and CO would be allowed to rise and emissions of particulates would be reduced after 2003. It appears likely that this level of reduction could require that all locomotives used in California operate on a fuel other than diesel, with natural gas being a likely candidate. Alternatively, electrification of a number of lines may be necessary. EPA is concerned about the practicality and costs associated with electrification, and is therefore not proposing this option.

The AAR has proposed that linehaul locomotives be required to average 6 g/bhp-hr by the year 2010. This proposal could presumably build from national standards on new locomotives and some regulation of remanufactured locomotives. However, it does not affect switching and other non-line operations, such as loading and unloading. The effect of that omission has been variously estimated at from 5 to 30 percent of emissions depending on the geographic area. Because this program does not achieve sufficient reductions, EPA is not proposing this option. However, EPA requests comment on this and the other two options.

(4) Marine Vessels/Ports. (a) Background and Program Description. Marine vessels are the largest uncontrolled source of emissions of NO_X and SO_X in California. According to a study prepared by Sierra Research, Inc.,[87] marine vessels account for approximately 40 percent of all SO_X emissions and 12 percent of all NO_X emissions from both mobile and stationary sources statewide (Sierra report, p. 3). While most emissions associated with marine vessels occur at sea, a great deal occur while the vessel is at port, during maneuvering and hotelling activities (hotelling refers to the time a vessel "spends moored or at anchor, for such purposes as loading or unloading cargo or awaiting a berth"—Booz-Allen report,[88] p. II–16). Both at-sea and in-port emissions are of concern for ambient air quality in the South Coast area, since emissions from vessels at sea can be transported onshore by prevailing winds, and since emissions from vessels at port are added to those already occurring from stationary facilities at a port.

The contribution of diesel marine engine emissions to local air quality is influenced by at least two factors. The first concerns the nature of the engines themselves. Large marine vessels have high NO_X emissions because of the nature of the machinery and equipment used to power them. These vessels are typically powered by very large diesel engines that are optimized for power and fuel consumption, and those optimization processes (such as high temperatures) tend to boost NO_X emissions. In addition, marine engines are usually old and unregulated, and generally do not have many of the combustion improvements that are incorporated into new on-highway engines to reduce particulate matter and NO_X emissions.

The second determinant is the time spent and frequency of activity at or near port. Analysis of 1989 data shows that about 10 percent of the vessels in California's ports accounted for more than 50 percent of the emissions from marine vessels (Sierra report, p. 9). Control strategies are more effective which focus on those ships that contribute the most to air quality problems while in port. If those ships can be targeted, any reduction in their emissions will have a large impact on air quality.

Similarly, control strategies are more effective which target those ships that stop often in California. Vessels that do not frequently use South Coast ports do not contribute as much to local air quality problems. Based again on 1989 data, approximately 60 percent of the vessels at California's ports made merely one or two trips per year, each contributing only a relatively small fraction to total emissions (Sierra report, p. 9).

EPA has considered several strategies to achieve reductions in ship emissions. One potential emission control strategy would be to require vessels to be outfitted with NO_X and SO_X control equipment. There are several technologies available, and these technologies are associated with different levels of emissions decreases, ranging from 25 percent to 90 percent, depending on the nature, age, and condition of the ship's engine and equipment.[89] For example, fuels with ultra-low sulfur content can reduce SO_X emissions by as much as 96 percent and cause measurable NO_X decreases as well (Sierra report, p. 25). Selective catalytic reduction (SCR) can reduce NO_X emission by as much as 90 percent. Water/fuel emulsion technology can reduce NO_X by approximately 25 percent (Sierra report, p. 34). These technologies are discussed in more detail below.

At the same time, many of these techniques have substantial drawbacks, including increased capital and operating costs. NO_X control techniques are generally expensive and often difficult to retrofit on older vessels (although they can be cost-effective to incorporate on new engines) and may be costly to maintain.[90] In addition, many NO_X control technologies are also associated with a decrease in fuel efficiency of up to 5 percent (Sierra report, p. 71). Also, results depend on certain operating characteristics. For example, optimal SCR results depend on a steady-state operation mode. Reductions are less certain during maneuvering procedures when engine speed is constantly changing; yet, this is the kind of operation that is typical while a vessel is near or in-port. Controlling SO_X by fuel composition changes may be problematic for compliance reasons. This is because vessels would be required to use low-sulfur fuel only when they are in the vicinity of the California coastline and in California ports. While they operate at sea, ships could use conventional fuels. This means that vessels can be equipped with two kinds of fuel tanks: one for clean fuel for use in-port, and one for ordinary fuel for use at sea. However, for obvious reasons, it would be hard to verify that vessels use low-sulfur fuel while near shore or in-port.

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[87] Regulatory Strategies for Reducing Emissions from Marine Vessels in California Waters, prepared for California Air Resources Board by Sierra Research, Inc., Report No. SR91–10–01 (October 4, 1991).

[88] Inventory of Air Pollutant Emissions from Marine Vessels, Final Report, prepared for State of California—Air Resources Board, by Booz-Allen & Hamilton, Inc. (March 1991).

[89] See the Sierra report, pp. 22–32 for a more complete discussion of these technologies

[90] Retrofitting ships with aftertreatment technologies is very difficult because of onboard space limitations. Building upwards (where space is available) can raise the center of gravity. If the center of gravity is above the center of buoyancy, the ship will be destabilized.

Because of these and other potential drawbacks, EPA believes that it would be preferable at this point in time to avoid mandating the use of these control technologies by all ships when they are in California ports. There are at least three reasons why other solutions should be pursued at this time. First, as shown above, not all ships are high emitters. Therefore, it does not make sense to mandate special technologies for all ships, since this would mean imposing costly retrofits on some existing ships that are not high emitters. Second, and more importantly, not all ships spend a lot of operating time in California ports. It does not make sense to mandate permanent, expensive control technologies for ships that visit California ports only once or twice a year which, as noted above, is the case for approximately 60 percent of the vessels that use California's ports.

Finally, the regulation of oceangoing marine vessels registered in the United States has been traditionally undertaken by the United States Coast Guard, and through international organizations such as the International Maritime Organization (IMO), for ships registered outside the United States. International trade may be significantly harmed by unilateral and contradictory actions taken by various countries around the world mandating different control methods and technologies for vessels engaged in international trade. EPA believes that it is appropriate at this time to avoid unilaterally mandating the use of control technologies or other methods on ships that are inconsistent with the technologies currently being advocated by the United States in the IMO.[91] This is especially important in the South Coast region because approximately 80 percent of the larger marine vessels that call on the LA ports, for example, are registered in foreign countries. EPA believes that it is important to create a regime that will encourage all ship operators and owners to reduce their emissions of NO_X and SO_X while in California ports without creating significant problems for international trade.

Emission control strategies must also take into account economic realities. Ships and ports bring more than pollution to California. They also perform the obvious function of transporting products and raw materials to the area for manufacturing and production purposes, and they bring jobs and money. Many millions of dollars of imports and exports travel through the Ports of Los Angeles and Long Beach every day, on their way from the Midwest to the Far East or vice versa. Any program for the control of emissions from ships and ports must also consider the effects of such a program on this trade and on the South Coast economy. Inappropriate treatment could move the trade out of the area, or even out of the country, with corresponding economic effects. While it is true that trade has centered in the South Coast because the area is well situated to accept it, having adequate facilities for moving and processing the products delivered, it is also true that emission control strategies should stress appropriate regulations which would balance emissions reductions with possible negative impacts on trade.

For all of these reasons, EPA is proposing a flexible control strategy for the reduction of emissions from ships at port. This strategy will rely on economic incentives to encourage operators and owners of ships that frequently use California's South Coast ports to take the steps necessary to reduce their emissions. Specifically, this strategy involves imposing user fees for ships that use ports in the South Coast region. These fees will be based on the level of emissions of a ship using the port, among other things. EPA is proposing a three-tier fee structure, as more thoroughly described below. Like other emission charges proposed today, the ship fee will be based on a price of $10,000 per ton of NO_X emissions emitted to the atmosphere.

In addition to encouraging ship operators and owners to install and use emission control systems, the program contains two other features that should help reduce marine vessels' contribution to California's pollution while ships are berthed in port and while they are operating at sea. First, ship operators may receive a reduction in the fees outlined below if they use onshore power sources instead of internally generated power while they are at port (this is called "cold ironing"). Second, ship operators may receive a reduction in fees if they use a relocated Santa Barbara shipping channel. EPA is proposing that this shipping channel be located at least 70 miles from the shore to decrease the amount of marine emissions that are transported onshore by prevailing winds. Both of these aspects of the program are described in greater detail below. No fee will be assessed any shipper who uses the lowest emitting class of engine, cold irons and avoids the Ventura air basin.

There are several advantages to this type of emission control program. First, it allows a ship operator or owner to make decisions about which control technologies to adopt, if any, based not only on the characteristics of a particular vessel but also based on the extent to which the vessel uses South Coast ports. Those ships that use South Coast ports more frequently will be faced with higher annual fees and therefore will have a greater incentive to install more efficient emission control devices to reduce those annual fees. Vessels that use these ports infrequently are not faced with the same level of annual fees and would therefore probably elect to pay the fee instead of installing more expensive emission control devices. EPA believes this is a fair strategy because these vessels contribute less to overall regional air quality problems than those vessels that use these ports more often. At the same time, payment of a fee by a vessel that infrequently uses port facilities is justified because the vessel is contributing to local air quality while it uses the port.

A final advantage to this kind of emission control program is that the fees collected could be used to help ship owners and operators reduce their ships' emissions, thus advancing additional emission benefits. For example, the fees could be used to help ship owners and operators purchase and install emission reduction equipment, through loans or grants or other financial assistance programs. It should be noted, however, that the Miscellaneous Receipts Act requires EPA to submit any fees paid pursuant to this program to the U. S. Treasury. Therefore, in order to use the fees collected under such a program for emissions control, it is necessary for California or the South Coast to develop a replacement program that would supersede this proposed EPA program. Then, the fees would be paid to the State of California or the South Coast Air Quality Management District instead of to EPA, and those organizations could use the funds for such purposes. By adopting a replacement program, California or the South Coast could take steps to decrease any adverse economic impacts resulting from the program.

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[91] The IMO is currently developing an international agreement to control emissions from ships on international voyages. The IMO subcommittee working on this project (Bulk Chemicals Handling) was charged by the IMO with achieving a 30 percent worldwide reduction in ship NO_X emissions and a 50 percent SO_X reduction. The subcommittee is currently considering a rule for new engines only. The resolution of this issue will clearly have significant ramifications for this FIP. See Section (2)(A) Fee Categories, below, for additional discussion of this effort.

EPA is proposing to begin instituting the port fee schedule described below in 2001. This date is beneficial for two reasons. First, EPA hopes that in the intervening seven years, the California and IMO efforts to regulate ship emissions and the Coast Guard effort to move the shipping channel will have all borne fruit. Thus, 2001 allows enough time to respond to these changes and work out details about the form of this program in light of them. Second, by beginning to develop this program nine years before the attainment date, EPA allows time to adjust the fees and discounts to achieve the necessary emissions reductions at the least cost, as described below.

EPA anticipates that the ships and ports fees program described in this preamble will achieve an approximately 30 percent NO_x emission reduction in the South Coast. This estimate is based on the assumption that the 10 percent of the ships which create 50 percent of the emissions due to frequent visits will have on average 30 percent lower emissions after implementation of the program. This reduction will likely be achieved by ship operators and owners using newer ships for their California trips, by using better fuels, and by using timing retard technology, at least in the short run. A further 7.5 percent NO_x reduction should be achieved through increased cold ironing. The remaining 7.5 percent NO_x reduction will come from isolated use of available low emitting engines, such as turbines and SCR equipped ships, by the remaining 90 percent of the ships visiting the ports of Long Beach and Los Angeles.

In response to these fees and to ongoing actions by the Coast Guard to protect the Monterrey Bay Sanctuary, EPA expects most ship owners or operators will choose shipping routes that will take them away from Ventura's coast. This will have the effect of reducing the transfer of marine emissions to the coast in that area. The user fees will have this effect because the vast majority of ships that currently use the shipping channel that takes them along the shoreline close to Ventura will stop or have stopped at the Ports of Long Beach or Los Angeles. Under the proposed emission reduction strategy, these ship owners and operators can reduce the user fees they will be charged at these ports by using a relocated shipping channel that takes them away from the coastline. EPA believes that the discounts associated with using the relocated channel will be sufficient to eliminate most of that traffic. In addition, the Coast Guard has undertaken a study to evaluate the impact of relocating California shipping channels.[92] Such relocation may be necessary to reduce environmental damage to the Monterrey Bay Sanctuary due to ship traffic. As part of that study, the Coast Guard has requested comments regarding relocation of the channel near Ventura. EPA has recommended to the Coast Guard that the channel near Ventura should be moved as far as feasible from the coast. Such a decision by the Coast Guard will also reduce airborne marine emissions in Ventura.

These emission reduction estimates were made without sufficient knowledge of the effects of a fee on the behavior of shippers. Shippers may find it easy to reschedule their ships so that only the lowest emitting ones are used in the South Coast. On the other hand, shippers may have difficulty reducing their emissions if equipment and/or installation services are insufficient to meet demand. EPA intends to monitor the fee's effects and adjust the fees and discounts as necessary to achieve a NO_x emission reduction approximately similar to that required under the stationary source cap.

The following sections describe in greater detail the components of this fee-based control strategy. As described in Section III.D.4.e (5), this program does not apply to military vessels. EPA requests comments on all features and calculations associated with this proposed program, as well as the proper application. As described above, EPA is proposing to apply the program to the two major South Coast ports for ocean going ships: the Ports of Los Angeles and Long Beach. EPA requests comment on applying the program to all basin ports, all California ports, or only as proposed.

(b) Control Strategies—Fee System Based on Emission Levels. (*1*) Fee Categories. The goal of this proposal is to encourage the use of cleaner marine engines. A number of emission control technologies for reducing NO_x from marine diesel engines are described in the following section. Although the emission reduction strategies described in the following section each contain a range of reduction potential, there appears to be a number of technologies that offer the potential to achieve reductions of 30 percent or greater. Also, reductions of greater than 80 percent are possible through three options: Selective catalytic reduction (SCR), steam turbine engines and gas turbine engines. Other technologies, such as natural gas engines, may also achieve reductions in excess of 80 percent.

EPA proposes to encourage the use of cleaner marine engines through a three-tier fee program based on emission reductions from a diesel engine baseline. The first tier is a 0–10 percent fee (90 percent fee reduction) for engines that achieve greater than or equal to 80 percent NO_x reduction compared to typical marine diesel engines.[93] These could include SCR-equipped diesel engines, steam turbine engines or gas turbine engines, or engines equipped with other technologies that can be shown to achieve such reductions. The second tier is a 50 percent reduction from the full fee for engines that achieve greater than or equal to 30 percent and up to 80 percent NO_x reduction compared to typical marine diesel engines. Such engines could include such technologies as injection timing retard, engine fine tuning, EGR, water emulsification, and selective non-catalyst reduction, or other technologies that can be shown to achieve such reductions. The third tier would be a full fee for engines that do not achieve at least a 30 percent reduction in NO_x emissions from the baseline.

This fee structure can easily be adjusted to incorporate standards set out by the International Maritime Organization (IMO). The IMO is currently developing an annex to MARPOL (Marine Pollution Convention) 73/78 to control air pollution from ships on international voyages. Target emission reductions for the annex are a 30 percent reduction in NO_x and a 50 percent reduction in SO_x. As part of the compliance verification procedure, the IMO is currently considering type approval (i.e., test bed confirmation), and onboard surveys and re-surveys. The onboard surveys would consist of a simplified test for verification based on measuring NO_x and O_2 concentrations. For these surveys, the IMO is currently considering test procedures drafted by the International Standards Organization (ISO) for measuring emissions at site (ISO/DIS 8178–2: Reciprocating internal combustion engines—Exhaust emission measurement—Part 2: Measurement of gaseous and particulate emissions at site). EPA requests comments on the use of this test procedure to establish fee levels based on measured emission levels from marine engines.

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[92] See 58 FR 44634, August 24, 1993, for the Coast Guard notice announcing this study.

[93] Please review Section (4) Discount for Staying Outside the Region, for a description of when the 0 or 10 percent options apply.

Based on information supplied by Japan as input into the IMO air pollution annex development, NO_x emission levels showed the best correlation with engine speed as compared to other parameters. Slow speed engines generally have higher thermal efficiencies and therefore higher NO_x than medium and high speed engines. Many delegations to IMO believe the data provided by Japan to be the best published information on emission rates for the range of marine engines. Based on this data, Japan has proposed that a 30 percent NO_x reduction could be achieved by NO_x limits for the IMO air pollution annex of the form:

$$NO_x \text{ (g/kW-hr)} = 45 \times n^{-0.2}$$

where n is engine speed in revolutions per minute EPA proposes that the second tier fee level coincide with the IMO proposal. In other words, those engines that meet the proposed IMO standards are proposed to be eligible for a discounted fee (i.e., be categorized in the second tier fee level). To accomplish this, EPA proposes that the baseline emissions level, for fee calculation purposes, be of the form:

$$NO_x \text{ (g/kW-hr)} = 64.3 \times n^{-0.2}$$

where n is engine speed in revolutions per minute for any given RPM range, this equation calculates an emission rate baseline. The equation proposed by Japan for the IMO annex thus represents a 30 percent reduction in emissions from this baseline. Therefore, engines which can achieve emission reductions of greater than or equal to 30 percent from this baseline (i.e., that meet the IMO proposed standard) will be eligible for a fee discount (a 50 percent discount for engines achieving 30 percent to less than 80 percent NO_x reduction and a 90 percent discount for engines achieving greater than or equal to 80 percent reduction in NO_x).

The main caveat with this strategy is that the IMO emission standards are still under development. In addition to the proposal for NO_x limits based on engine speed, another proposal under consideration by IMO is for NO_x limits to be set based on specific fuel consumption of the engine. EPA requests comments on the appropriateness of the proposed baseline emissions equation or other approaches for the purposes of calculating fees.

The full fee level is proposed to be based on the above equation to generate the baseline emission rate. Also, the full fee level is proposed to be based on a fee of \$10,000/U.S. ton of NO_x, which is consistent with other fee levels proposed in this FIP. To obtain total tons of NO_x emitted, the number of hours of operation in the port area must be reported, as well as the rated power for each applicable engine on board. Thus, ships which enter and leave their berth efficiently will receive a lower fee. A load factor of 80 percent[94] of rated output is assumed, which is a typical load for vessels that are cruising at sea. For berthing and hotelling operations, a load factor of 25 percent is assumed for main propulsion engines. For auxiliary power generators, a load factor of 50 percent is assumed. EPA is proposing that cruise hours are determined as the hours that an engine operates when the ship is between 3 and 100 miles from port; and maneuvering/hotelling hours are hours that an engine operates when the ship is less than 3 miles from port. Both the cruise time and the maneuvering/hotelling time are proposed to be reported for each main propulsion engine and auxiliary engine of each ship entering port. CARB has indicated that emissions from these distances may affect shore pollution levels. However, EPA is currently evaluating, with the assistance of the State Department and Coast Guard, the appropriateness of applying these fees to foreign flag vessels in light of international maritime law and international trade concerns. EPA requests comment on the appropriateness of the distances proposed.

The way the proposed fee structure would work is illustrated by the following example. Based on the above equation, a 10,000 kW MCR (maximum continuous rating), 500 RPM engine would emit NO_x at a rate of 18.6 g/kW-hr ($64.3 \times (500)^{-0.2}$) at MCR. If this engine operated within the port area for 6 hours in cruising mode (0.8 load factor) and 12 hours in maneuvering and hotelling operations (0.25 load factor) it would be assessed a fee of about \$16,000 ($[18.6 \times 10{,}000 \times 0.8 \times 6 \times \$5.00 \times 1 \text{ lb}/453.59 \text{ gr}] + [18.6 \times 10{,}000 \times 0.25 \times 12 \times \$5.00 \times 1 \text{ lb}/453.59 \text{ gr}] = \$16{,}000$). By using technologies that achieve between 30 and 80 percent reduction, this fee would be reduced to \$8,000 (\$16,000×.50). Technologies achieving over 80 percent reduction would be charged \$1,600 (\$16,000×.10). Discounts described below will be applied on a percentage basis to these base fees, provided that no ship meeting the requirements for the 10 percent fee category, cold ironing and avoiding the Ventura Air Basin will be charged any fee.

These fees would be in addition to any fee assessed by the port for docking or other benefits. EPA requests comments on: the appropriateness of this fee calculation methodology, whether or not other methodologies are more appropriate, and how likely the proposed scheme encourages the use of technologies that would achieve the emissions reduction objectives. Specifically, EPA requests comments on the appropriate load factors for engines during cruising (at sea) and maneuvering/hotelling operations, and on the level of discount for the three fee levels.

(*2*) Emission Reduction Technologies. A number of technical designs/engine modifications are known to reduce, or are technologically feasible for reducing, emissions of NO_x from marine diesel engines. These technologies are presented in the table below and more fully discussed in the following text. Also, these technologies form the basis of the three-tier fee level described in the previous section.

New engines can easily achieve the IMO specified reductions and have achieved the lowest levels shown. Retrofitting some of these technologies, however, can be difficult.

Emission Reduction Strategies for Diesel Marine Engines

Technology	NO_x reduction[a] (percent)
Injection timing retard	10–30
Engine fine tuning	20–40
Exhaust gas recirculation	20–50
Water emulsified fuel	20–50
Selective catalytic reduction	90+
Gas turbines	83
Steam turbines	87
Speed reduction	45

[a] Reduction estimates were derived from CARB Mail-Out #91–42 and information gathered by the NO_x working group of the Bulk Chemical Handling (BCH) Subcommittee of the International Maritime Organization.

(*a*) Retarded Injection Timing. A feasible and simple means of reducing NO_x from diesel engines is by retarding injection timing. This method lowers the peak combustion temperature and pressure in the cylinder, resulting in lower levels of NO_x. This strategy has been estimated to reduce NO_x emissions by 10–30 percent. However, disadvantages include higher specific fuel consumption, lower power, harder startability, and higher levels of HC, CO, particulate matter and smoke emissions. To recover the lost fuel economy and performance or to reduce the amount of injection timing retard, additional technologies that improve fuel atomization have been employed. Fuel atomization can be improved by increasing fuel pump pressure, improving fuel pump advance strategies, and incorporating smaller injector nozzle tip holes.

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[94] Load factor estimates were derived from "Inventory of Air Pollutant Emissions from Marine Vessels, Final Report, prepared for State of California—Air Resources Board, by Booz-Allen & Hamilton, Inc. (March 1991).

(*b*) Engine Fine Tuning. Engine fine tuning includes modification of essential engine components and could result in 20–40 percent reduction in NO_X emissions. More specifically, engine fine tuning could include modifications in the injection system, charge air system, and combustion chamber design. Such changes on new onhighway engines have already achieved more than 50 percent NO_X reductions. However, retrofitting such changes on existing engines makes equally large reductions for marine vessels unlikely.

(*c*) Exhaust Gas Recirculation. Exhaust gas recirculation involves recirculating some of the exhaust gas back into the intake manifold. This lowers the combustion temperature and therefore can lower NO_X emissions by as much as 20–50 percent. For marine engines, the applicability of EGR is complicated by the quality of the fuel. Sulfur and soot from combustion gases can cause increased wear of piston rings, valves, and other components. Therefore, EGR is more likely to be used with engines running on cleaner distillate fuels.

(*d*) Water Emulsified Fuel. Water emulsification of the fuel is a technique which also lowers maximum combustion temperature, reducing NO_X by 20–50 percent without an increase in fuel consumption. There are at least two ways to accomplish the emulsification during combustion: in the combustion chamber or in the fuel tank. Combining water and fuel for the first time in the chamber requires significant changes to the cylinder head to add an injector. Combining water with fuel in the tank may introduce combustion problems due to unstable emulsion. Also, this technique requires a significantly redesigned fuel handling system to overcome the potential risk of corrosion and to maintain power output. In any event, extra liquid storage availability is necessary to retain similar range.

(*e*) Selective Catalytic Reduction (SCR). One of the most effective, but also most complex and expensive, means of reducing NO_X from large diesel engines is with the use of selective catalytic reduction (SCR). Emission reductions in excess of 90 percent can be achieved using SCR. In SCR systems, a reducing agent, such as ammonia, is injected into the exhaust and both are channelled through a catalyst where NO_X emissions are reduced. These systems are being successfully used for large stationary source applications which operate under constant, high load conditions.

A number of disadvantages are apparent for the use of current technology SCR systems on ships. The SCR system is effective only over a narrow range of exhaust temperatures. The effectiveness of the system is decreased at reduced temperatures exhibited during engine operation at partial loads. Also, excess ammonia in the exhaust (referred to as "ammonia slip") can occur during transient operation, where control of optimum ammonia injection is difficult. However, non-toxic urea can be used in place of toxic ammonia.

SCR is currently being used in the South Coast region on three new ships built with the technology incorporated (not retrofitted). Retrofitting ships with this technology is problematic and raises significant space and cost concerns. The SCR systems are very bulky and require high investment, operational, and maintenance costs.

(*f*) Speed Reduction. A potential operational method for reducing NO_X is speed reduction. By reducing speed, the load requirements on the engine are reduced. Speed reduction cannot be applied to all different ship types and sizes in the same manner, and may be beneficial only for certain types and sizes. Also, speed reduction does not address emissions from auxiliary engines. In addition, many coastal areas already have factors that limit vessel speed; for example, amount of traffic, distance to the shore and port, and water depth. Since speed reduction will affect the amount of cargo transported within a specified time, additional transport capacity or travel time must be accounted for when calculating emission benefits from such a strategy. EPA requests comments on how speed reduction could be figured into the fee scheme.

The technologies listed above are not intended to be an all- inclusive list of potential emission reduction technologies. EPA requests comments on other technologies that may be employed to reduce emission of NO_X from diesel marine engines. Comments should address the emission reduction potential, technological feasibility, cost, and safety issues of additional NO_X reduction methods.

(c) Control Strategies—Discount for Using Port Facilities While Hotelling. As noted earlier, marine vessels account for approximately 12 percent of all NO_X emissions from both mobile and stationary sources in the State of California. According to the Booz-Allen & Hamilton study, emissions from maneuvering and hotelling activities make up a large portion of those emissions. That report shows that maneuvering and hotelling activities by commercial vessels contribute an average of approximately 64.9 tons of NO_X to local air quality every day (Booz-Allen report, p. A–2). This amount is equal to an average of 16 percent of daily average NO_X emissions from all fishing, harbor, and commercial vessels that use these ports. For the South Coast, ship berthing and other ship port operations for commercial vessels contribute approximately 26 tons of NO_X emissions per day, of which 16.5 tons are attributable solely to hotelling operations.

Emissions from vessels at port affect local ambient air quality in the same way as stationary sources, in that the vessels assume the characteristics of large stationary plants when they are berthed in a port. According to the Sierra report, "total SO_X and NO_X emissions from marine vessels currently exceed the corresponding total (i.e., combined emissions) for the 100 largest SO_X and NO_X stationary sources in California" (Sierra Report, p. 70), which includes all of the state's larger power plants, oil refineries, and cement plants. This huge contribution is in large part because the stationary sources are subject to emission controls while the marine vessels currently are not.

A significant portion of the time a ship spends in a port is spent moored or at anchor, for loading or unloading purposes. In addition, vessels also spend time waiting for a berth. Typically, during the loading and unloading periods, a vessel uses its own engines to generate power for steam generation, auxiliary electrical power, hot water, and so on. This is referred to as hotelling. In this respect, ships act like stationary power plants while in port, contributing large amounts of NO_X emissions to local air quality in the same way as stationary sources.

There are several reasons why ships use their own power sources for hotelling. First, it is simpler for a ship to continue using its own power instead of taking the time to tap into port power facilities. Second, it is difficult and time-consuming to start a ship's very large primary and auxiliary engines once they have been shut off. Third, shore and vessel power characteristics and connecting hardware are sometimes incompatible. Because the time spent in port is relatively short, it often does not seem worth the trouble to spend the time connecting to port facilities or even ensuring that such connections are possible.

To reduce these emission levels, it is necessary to encourage ship operators to use port power facilities instead of generating power on board. The proposed control strategy will accomplish this by providing a discount to the port fees described in the previous section for ships that use port power facilities.

The amount of the discount is proposed to be equal to the average contribution to NO_X emissions levels from commercial vessels attributable to hotelling. This is because cold ironing would reduce NO_X emission by an equivalent amount. On a statewide basis, the Booz-Allen & Hamilton study estimates the portion of average daily NO_X emissions attributable to hotelling of commercial vessels to be 7.38 percent (Booz-Allen report. p. A–2). Requiring vessels to use port power facilities will reduce discharges of NO_X from these vessels by an equivalent amount. Therefore, using the Booz-Allen data, the amount of the discount for using port power facilities would be 7.38 percent. If average daily contribution of NO_X emissions by commercial vessels is limited to the South Coast, the relevant reduction is 24.12 percent, which would be associated with an equivalent discount. EPA requests comments on these discount levels and whether the average state or South Coast figures should be used.

As described above, EPA proposes to consider maneuvering (berthing) operations in calculation of the base fee.[95] Berthing operations must be powered by the ship's engine; ships cannot be powered by onshore power plants during those maneuvers. In addition, even if such emissions could be eliminated, berthing operations account for only about 9 percent of total NO_X emissions from commercial vessels. Therefore, EPA is not considering additional fee discounts for reductions in berthing emissions.

The primary argument against offering a discount for using local onshore power facilities when at port is that using those port facilities simply displaces emissions from one area to another. In other words, although the ship is not discharging NO_X and SO_X, the power plant that is supplying the electricity is. Thus, hotelling will cause an increased demand for electricity from the power plant, which will result in an increase in electric output from that utility. The power plant, in turn, will increase emissions to meet that increased demand.

EPA does not believe this is a concern for the South Coast region for at least three reasons. First, approximately half of the power generated in California is generated by technologies that do not generate harmful ground-level ozone-producing air pollutants.[96] Second, the NO_X emissions that are discharged by the generation of electricity using technologies based on petroleum products (primarily natural gas) are much less than those that are generated by today's ships for the same amount of energy.[97] This is because onshore electric power plants operate at optimal steady-state conditions, are required to use emission control systems, and generally use cleaner fuel than that used in ships. Finally, the power plants from which the electricity would be drawn for hotelling are located far from South Coast population centers. This means that any increase in emissions at the power generation source will occur away from the South Coast area, in areas that have less severe, if any, air quality problems.

EPA solicits comments on whether the full discount as proposed above should be allowed, or if that discount should be reduced to account for the displaced emissions. EPA also solicits comments on how the discount is calculated.

(d) Control Strategies—Discount for Staying Outside the Region. Emissions from marine vessels operating in the Santa Barbara Channel can be transported onshore by prevailing winds and can contribute to onshore air pollution in the South Central Coast Air Basin (which includes Ventura, Santa Barbara and San Luis Obispo Counties). Particularly of concern (for FIP purposes) are the offshore NO_X emissions that drift onshore and that can impact Ventura County's air quality. As discussed in section III.H. of this NPRM, ships are estimated to represent 15 percent of Ventura's total current NO_X emissions. Most of the offshore sources that contribute to NO_X emissions include: Outer Continental Shelf (OCS) activity (which represents support crew and supply boats), exploratory drilling vessels and oil platforms, tugs and tankers, recreational marine, U.S. Navy and Coast Guard vessels, and large foreign and U.S vessels.

Because of the reported 1990 emission inventory from marine vessel activity that occurs offshore and external requests to evaluate moving the shipping channel lanes, EPA is proposing to offer, as part of the emission reduction strategy described in this proposal, incentives for ships to use a relocated Santa Barbara shipping channel. This relocated channel would take marine vessels farther from land and reduce the amount of emissions that are transported inland. These incentives are intended to reduce the impact of marine vessel emissions on ozone concentrations in Ventura County.

The proposed control strategy for Ventura County targets both NO_X and VOCs for reduction in order to attain the ozone standard. Because the emissions from marine vessels represent a substantial portion (CARB estimates show approximately 12 percent statewide) of total emissions of NO_X, control of marine vessel emissions is potentially an important control strategy. EPA's proposed control strategy focuses primarily on the reduction of NO_X emissions from vessels, since they are nominal contributors to VOCs in Ventura County.

Summertime meteorological data for Ventura County indicate that emissions from marine vessels could be transported to Ventura County by prevailing air currents. This is also consistent with the meteorological data for the specific episode days chosen for photochemical modeling. The meteorological data indicates that the emissions from marine vessels could be transported onshore, and therefore have the potential to impact ozone concentration in Ventura County. However, the actual impact of the emissions on the ozone concentrations in Ventura County depends on the time the emissions arrive in the onshore area as well as the interaction of the marine vessel emissions with the emissions from other sources.

CARB has suggested that emissions from up to 100 miles out from the coastline have a significant impact on ozone concentration in the California coastal air basins. EPA is in the process of evaluating CARB's data to justify this distance. EPA believes that these uncontrolled mobile sources have the potential to affect the air quality onshore. EPA further believes that the farther out from shore the ship's activity, presumably, the more apt those emissions are to disperse before reaching the coast. EPA requests comment on the effect of offshore activity on onshore air quality and the proper distance to which the channel should be moved.

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[95] See Section (2)(A) Fee Categories, above, with regard to proposed fee calculations.

[96] EPA calculations, based on figures from ICF Inc., "Methodology for Analyzing the Environmental and Economic Effects of Electric Vehicles: An Illustrative Study," prepared for US EPA, September 1991 (Draft).

[97] See ICF., Inc. study, cited above.

EPA believes that it has authority to offer port charge rebates for operational changes such as controlling speed, cold ironing or, as described here, moving offshore. EPA FIP authority under section 110(c) of the Clean Air Act allows EPA to regulate sources contributing to air quality degradation provided EPA is not so prohibited. While the U.S. has historically allowed that nations do not have sovereignty in truly international waters, a surcharge provision of this type is significantly different. It applies charges to ships while they are in U.S. waters, and merely discounts the charges in light of operational changes the ships make, at their option, within and outside U.S. waters. EPA is unaware of any provision of a statute or international agreement that would prohibit such an approach.

In addition, the U.S. Coast Guard is directed to reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved, and has the experience in the areas of vessel traffic management, navigation, and ship handling. Also, the National Oceanic and Atmospheric Administration (NOAA) has been directed by the Department of Commerce (DOC) to identify and designate as national marine sanctuaries areas of the marine environment and implement coordinated plans for the protection and management of those areas. Finally, marine vessels operating in or near an IMO approved TSS (traffic separation scheme) are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea. EPA is working with all three groups to ensure that ships seeking to move further offshore can travel freely and safely.

EPA is proposing two different discount strategies to encourage ships to move off Ventura's coast. The two methods are proposed because it is difficult to quantify the appropriate fee. First, EPA does not know the impact of any fee on shippers. Second, EPA cannot quantify the exact benefits of moving further from Ventura. Finally, EPA cannot compare effects of the discounting on emissions reductions for Los Angeles and Ventura. EPA requests comments on the fee most likely to move shippers offshore of Ventura while still maintaining an incentive to use low emission ships in the area. As described above, EPA will monitor the fee structure and change it to achieve the intended air quality benefits. The first option is a discount of 50 percent from the fee otherwise applicable to any ship (before the hotelling discount is applied) for ships staying 70 miles from shore and outside the Ventura Air Basin (under this option a 10 percent fee is applied to ships in the low emission category). The second option would restrict any discounts to those ships which avoided the Ventura Air Basin. Thus even a ship in the low emission category would pay the highest fee if it entered the Ventura Air Basin (under this option a 0 percent fee would be applied to ships in the low emission category). This option would also offer a 50 percent reduction to ships which avoided the basin. Under both options, any ship in the low fee category which cold ironed and stayed out of the Ventura Air Basin would pay no fee.

EPA is also considering the option of requiring that shipping move outside of the air basin when not berthing or at port. To the extent that no fee structure is fully achieving its goals, such a requirement may be necessary. EPA requests comment on this option.

(5) Other Non-Air Base Military Installation. EPA requests comment on the feasibility and desirability of implementing a similar emission control strategy for military bases in the FIP areas with non-aircraft mobile sources of emissions, such as the Navy's construction base at Port Hueneme (with the exception of military vessels due to national security concerns as described for military aircraft), which is similar to that proposed for military air bases. These bases could be included in the proposed military air base control program described in section III.D.4.e.(2)(c) simply by expanding the definition of covered facilities to include all sources operated by the Department of Defense in the control areas.

5. Impact of the Economic Incentive Programs Rule on Fee Programs in the FIP

a. Introduction

The fee programs contained in today's proposal will be impacted by the rules and procedures established in EPA's Economic Incentives Program (EIP) Rulemaking (NPRM—58 FR 11110, February 23, 1993; NFRM due March 15, 1994). The EIP includes the Agency's guidance on fee programs and the requirements that must be met in order for them to be approvable as a SIP revision. It is EPA's intention that the FIP abide by these guidance provisions. The EIP, as applied to the FIP, requires that emission reductions credited to an economic incentive program be surplus to the reductions required by, and credited to, other implementation plan provisions to avoid double counting of reductions; quantifiable; enforceable at both the State and federal levels; consistent with SIP attainment and RFP demonstrations; and permanent within the timeframe specified by the program. These provisions address primarily the case of an economic incentive program in which emission sources are allowed to generate and trade emission reduction credits to show compliance with emission targets. The proposed FIP does not contain such a credits trading program. In addition, and directly relevant to the fee programs in the proposed FIP, an approvable emissions fee program must contain a provision that accounts for the uncertainties inherent in such programs, an auditing procedure, and reconciliation procedures; and must also contain an implementation schedule and administrative procedures. Each of these requirements is summarized below.

b. Requirements Under the EIP

(1) Surplus. All emission reductions achieved from a fee system must be surplus to those already being achieved under other control strategies in the FIP. The primary concern of the EIP is that the fee system not take credit for or "double count" reductions that are a result of other strategies. It is therefore necessary to define the baseline for the fee program and use this baseline as a basis for projecting program results.

Today's proposal clearly satisfies this requirement. The baseline is clearly described in section III.H.2 and EPA has made certain that there has been no double counting of emissions reductions.

(2) Quantifiable. The fee programs in the FIP must describe how emissions and changes in emissions will be quantified. The program must specify the minimum required credible, workable, and replicable procedures for quantifying emissions, which could include emission factor calculations, direct monitoring of usage, and the calculation procedures that will be used.

While today's proposal does not contain a comprehensive description of how EPA will quantify emissions changes caused by fees, the final FIP will.

(3) Enforceable. A fee program must include adequate enforcement consequences for noncompliance with any source requirements, including the monitoring, record keeping, and reporting requirements of the program.

Since the proposed fee programs will be federal programs, it is not necessary that they be enforceable by the state, but only federally enforceable. At this time, EPA has not developed regulatory language delineating the monitoring, record keeping, and reporting requirements that will be necessary for the FIP. However, EPA intends on producing this language when it promulgates the fee programs in the final rule and asks for comment on how these requirements should be structured.

(4) Consistent With SIP Attainment and RFP Demonstrations. The EIP states that programs must be consistent with SIP attainment and RFP demonstrations. The fee programs will be consistent with the SIP attainment demonstration since the requirement of the FIP is to show attainment. The fee program will not need to be consistent with the RFP demonstrations as EPA is not required to comply with the RFP demonstrations in the FIPs.

(5) Permanent. The EIP requires that all reductions be permanent within the timeframe specified by the program. The important issue for this requirement is the determination of the timeframe of the program. The fee programs will most likely have a timeframe of 1 year and therefore the desired effects during that period are what is important. Since the fees will have the result of either increased turnover or reduction of usage, and since these will presumably cause permanent reductions within the 1 year period, then the permanence requirement will be satisfied.

(6) Uncertainty Provisions. The EIP requires that projected emissions reductions from a fee program must be adjusted to reflect the uncertainties inherent in these programs through the use of a "program uncertainty factor." EPA must specify a value for this factor, between 0 and 1, which reflects the level of uncertainty inherent in the program. EPA must also include a justification for this value. This factor must then be applied to the predicted level of emission reductions expected from the fee program.

Today's proposal does not contain an estimate of an uncertainty factor, however, EPA fully intends to use one in the final promulgation. EPA is not proposing an uncertainty factor at this time because it feels that it does not have the best information. EPA wants to remain open minded about the range of possible impacts from the fee programs and asks for comment as to what uncertainty factors should be applied. It should be noted, however, that, as shown in section III.H, EPA's control strategies do achieve surplus emission reductions and therefore provide for some room should programs not perform as expected.

(7) Auditing. A fee program must also contain audit procedures designed to evaluate program implementation and track program results. The auditing methods and the timing must be specified in the FIP. These audits are to be performed at time intervals consistent with RFP milestones and other emission inventory requirements, which is generally once every three years. Since OGC has determined that EPA need not satisfy the state's RFP requirements, the time interval requirement under a FIP is unclear. Since the EIP also specifies that states are free to perform audits at shorter intervals as they deem appropriate, EPA believes it is free to develop any auditing time interval it deems reasonable and appropriate.

Today's proposal does not contain specific auditing procedures, however, EPA fully intends to specify specific auditing procedures for each fee program in the final promulgation. EPA invites comments on the auditing procedures that should be used for each of the fee programs.

(8) Reconciliation Procedures. Program audit provisions for fee programs must also be accompanied by reconciliation procedures, designed to compare credited emissions with actual emissions. The reconciliation procedures must specify a range of appropriate actions or revisions to the program requirements (e.g., increase the fee) that will make up for any shortfall between credited and actual emissions revealed by the audit. Such measures must be automatically executing to the extent necessary to make up the shortfall, with state action required only to identify which of the specified actions are necessary to make up the shortfall. Such measures must not require a revision to the SIP to be effectuated once identified by the state, rather the measures must be built into the original EIP design (or incorporated by reference). As with the auditing procedures, the EIP directs states to perform reconciliation procedures at time intervals consistent with RFP milestones and other emission inventory requirements.

The reconciliation procedures in the EIP clearly indicate that EPA can reconcile a fee program by increasing the fee; however this increase must execute automatically. This language indicates that EPA, for example, could propose that if it determines, through the auditing process, that a fee program for a given source category has not yielded within 10 percent of the predicted effect, it will increase the fees by 50 percent to reconcile this shortfall.

While EPA fully intends to include reconciliation procedures for each fee program in the final promulgation, this NPRM does not contain such procedures. EPA invites comment on the the best way to reconcile fee programs should the program audits show that the effect of a program is not what was estimated.

(9) Implementation Schedule. A fee program in the FIP must include an implementation schedule. The schedule must include dates for notifying potentially affected sources, as early as possible, about the impending program, initialization and start-up procedures, submittal requirements from affected sources, and the reconciliation process and any subsequent actions required to make up for any shortfall that occurs.

The implementation schedules for each fee program are contained in the detailed discussions of each program.

(10) Administrative Procedures. As part of a fee program, EPA must establish appropriate administrative procedures. For example, a fee program must ensure the proper administration of the fee collection process. Is should be noted that the EIP contains requirements for the use of collected fees. These rules do not supersede the Miscellaneous Receipts Act and are therefore not applicable to the Federal Government in the FIP.

While EPA fully intends to include administration procedures for each fee program in the final promulgation, this NPRM does not contain such procedures. EPA asks for comment as to how these procedures should be structured.

E. Fuels Programs

1. Reformulated Fuels

a. Federal Reformulated Gasoline. Since the 1970s, gasoline sold in California generally has been subject to two sets of emission related standards: federal standards promulgated by EPA under the Clean Air Act and California standards set by CARB. Both EPA and CARB have established two-phase reformulated gasoline programs which affect much or all of California's gasoline.

Reformulated gasoline, as prescribed by section 211(k) of the Act, is to improve air quality by requiring that gasoline be reformulated to reduce motor vehicle emissions of toxic and tropospheric ozone-forming compounds.

On December 15, 1993, the EPA Administrator signed the final rule requiring the sale of reformulated gasoline in the 9 largest metropolitan areas with the worst ozone nonattainment problems in the U.S., as well as in a larger number of areas which have voluntarily chosen to participate in the program. The Los Angeles Metropolitan Area (which includes Ventura County) is one of the mandated areas. Sacramento is not among the areas currently slated to receive federal reformulated gasoline, but a bump-up of Sacramento to "Severe" will subject that area to the reformulated gasoline requirement, effective one year after reclassification. Due to California's reformulated gasoline program described below, we do not propose to require the sale of federal reformulated gasoline in Sacramento in this FIP. In Los Angeles, federal Phase I reformulated gasoline will reduce VOC emissions by 13–21 percent beginning in 1995, relative to base California gasoline and depending on the type of I/M program in place. NO_X emissions will remain unchanged (no net increase over baseline NO_X levels). Beginning in the year 2000, a more stringent federal Phase II VOC standard will apply and VOC emissions will be reduced by 16 percent relative to pre-1995 California gasoline, assuming enhanced I/M is in place. In addition, beginning in the year 2000, EPA is requiring that reformulated gasoline reduce in-use NO_X emissions by 6.8 percent, on average, again relative to pre-1995 California fuel.

EPA's 7.8 RVP summertime standard under the federal Phase II volatility control program, which began in 1992, is the same as California's Phase I reformulated gasoline, which also began in 1992. The detergent requirement is also essentially equivalent to a CAA requirement affecting all gasoline which is required to begin in 1995, see section 211(l) of the CAA.

Toxic emissions, overall, are expected to decrease during the high ozone season due to Phase II RVP control. Reductions in non-exhaust VOC emissions will account for most of this decrease.

b. California Reformulated Gasoline (Phase II). The California Phase I reformulated gasoline program began in 1992 and applies to all gasoline sold in the state. It primarily requires that gasoline meet a 7.8 RVP standard and contain detergents which prevent deposits from accumulating in fuel injectors and intake valves.

In November 1991 CARB approved regulations for the Phase II reformulated gasoline program that begins on April 1, 1996. The California Phase II reformulated gasoline regulation established standards for eight gasoline characteristics, briefly summarized below. The 1.8 percent by weight oxygen content refers to wintertime only.

CALIFORNIA PHASE II REFORMULATED GASOLINE SPECIFICATIONS

Specification	Flat limit	Average limit	Absolute cap
RVP, psi	7.0		7.0
Sulfur, ppmw	40	30	80
Aromatics, vol%	25	22	30
Benzene, vol%	1.0	0.8	1.2
Olefins, vol%	6.0	4.0	10.0
Oxygen, wt%	1.8–2.2		(1)
90% distillation temperature, °F	300	290	330
50% distillation temperature, °F	210	200	220

[1] 2.7 maximum 1.8 minimum.

Refineries may choose whether to conform to the flat limits which apply to all batches of gasoline when it is initially sold from the product facility, or to the average limits which apply to the average of all fuel produced by a given refinery. In the case of a refiner choosing averaging, the absolute cap or absolute limit also must be met. California is also allowing the sale of alternative fuel formulations which meet the emission reduction potential of a fuel meeting the average limits. However, even these alternative gasolines must still meet the cap limits described above. Gasoline meeting the average limits will reduce VOC and NO_X emissions by 17–18 and 13–14 percent (relative to pre-1995), respectively, according to EPA's complex model as revised in November 1993. Thus, California Phase II gasoline should provide at least as much VOC and NO_X emission reductions as the federal Phase II standards.

In its recent rule, EPA determined that fuel meeting California's Phase II standards will produce greater emission benefits than federal Phase I reformulated gasoline and it was therefore appropriate to exempt California gasoline from the enforcement procedures for the federal Phase I standards. Thus, there would be no attainment benefit to requiring federal Phase I reformulated gasoline to be sold in Sacramento, although emissions reductions would be achieved during the summer of 1995. At this time it appears from the available data that California's fuel achieves as much reduction as federal Phase II reformulated gasoline and therefore EPA is not proposing any changes to California's gasoline program today. If later EPA determines that further reductions can be achieved through use of either federal Phase II reformulated gasoline or some new formulation, EPA will propose appropriate changes to the fuel program in California as a FIP revision if such reductions are needed.

c. California Reformulated Diesel Fuel. On August 21, 1990, EPA finalized its low-sulfur diesel rulemaking. CARB adopted their clean diesel fuel regulations in November 1988 and on December 26, 1991, enacted their clean diesel fuel program. Both the federal and CARB programs became effective on October 1, 1993. The two programs are similar, and are designed to substantially reduce sulfate particulate and NO_X emissions, and to allow manufacturers to comply with 1994 and newer emission standards for diesel vehicles. Important differences exist between California and the federal program, as outlined below.

The EPA program only applies to diesel fuel for use in on-highway vehicles. Trucks, automobiles, and buses would be affected, for example, but construction and farm equipment would not, unless they chose to use the low-sulfur diesel fuel. The regulation sets a 0.05 percent by weight sulfur limit for all on-road diesels, and requires a minimum cetane index of 40 or maximum 35 percent by volume aromatics percentage. The current maximum sulfur content in on-highway diesel fuel is approximately 500 ppm. Since direct measurement of aromatics is a somewhat complicated procedure, EPA chose to use a minimum cetane index as a surrogate for capping aromatics. Few refiners have had trouble meeting this requirement and those who cannot can sell fuel into the nonroad market. The price differential between high-sulfur and low-sulfur fuels is expected to be approximately 2¢/gallon once initial distribution blips have resolved themselves.

The California program applies to vehicular diesel fuel. Essentially any vehicle with wheels, including construction and farm equipment, is covered. The regulation establishes a 500 ppm sulfur limit as well as a 10 percent cap on aromatics (20 percent for small refiners). Diesel normally has about 30 percent aromatics. California and EPA believe aromatics contribute to the formation of NO_x and particulate emissions. California includes an equivalency provision which allows refiners to make diesel with more than 10 percent aromatics if engine testing demonstrates equivalent emissions.

Most if not all of the large California refiners are pursuing higher-aromatic equivalent fuels. While a few oil companies have received CARB certification for their equivalent fuels, only Chevron has gone public with its formulation at this time. One of Chevron's alternatives has 19 percent aromatics with 200 ppm sulfur and a cetane number of 59. The company estimates that it can manufacture this fuel at an incremental cost of 6–7 cents per gallon. This is about half the incremental cost to make a strict 10 percent aromatics fuel. California has granted temporary waivers from the requirements provided the refiner pays 6¢/gallon into a trust fund. However, prices in California initially jumped far more than 20 cents per gallon and California is in the process of investigating its rule.

EPA believes that California's rule is likely to achieve NO_x emissions reductions which will not be achieved by the federal program. CARB estimates these reductions will be approximately 4–7 percent of diesel engine NO_x. EPA therefore is not proposing any changes to California's diesel fuel regulations. EPA is working with California to help understand the reasons behind the huge price rise, supply, and injector/pump seal problems and will take note of any change to California's rule. The South Coast and Ventura have been using the low-sulfur fuel since 1985 without any problems.

Even if California were to relax its rule, EPA's diesel fuel standards still apply. However, since the FIP takes credit for the California rule which delivers more NO_x credits than the federal rule, EPA may have to propose additional FIP reductions if the California rule were to be relaxed.

F. Severe Area Requirements for Sacramento

1. Introduction

As discussed in section III.B.3., EPA is proposing attainment demonstrations for 1999 and 2005 for the Sacramento FIP. If EPA promulgates a 2005 attainment demonstration, the Sacramento area will be reclassified as a severe ozone nonattainment area and become responsible for meeting all applicable deadlines and requirements for SIP purposes, which include the requirements outlined in section III.B.3.e. As part of the alternative proposal for 2005, EPA will address the additional severe area requirements with the following.

2. Employee Commute Options Program

a. Introduction and Statutory Requirements. In the alternative that EPA bumps up Sacramento to "Severe" and establishes a 2005 attainment date, EPA proposes that an Employee Commute Options (ECO) program be included in the FIP package. Because more people are driving than ever before and they are driving longer distances, the ECO provision was included in the Clean Air Act Amendments of 1990 at section 182(d)(1)(B) (42 U.S.C. 7511a(d)(1)(B)). Currently, increasing numbers of drivers and vehicle miles traveled (VMT) offset a large portion of the emissions reductions achieved through producing and selling vehicles that operate more cleanly. Without limits on increasing vehicle travel, the emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the emissions reduced per vehicle from cleaner fuels and improved emission control technologies. Ultimately, this will result in an overall increase in motor vehicle emissions.

Section 182(d)(1)(B) of the CAA requires State or nonattainment areas with ozone pollution levels defined as "Severe" or "Extreme" under the CAA to develop and implement an ECO program designed to reduce work-related vehicle trips and vehicle miles travelled during peak commuting periods. Specifically, section 182(d)(1)(B) requires employers with 100 or more employees to participate in a trip reduction program. These employers must submit compliance plans to the state or governing agency two years after an ECO regulation is submitted to EPA for inclusion in the SIP. These employer compliance plans must convincingly demonstrate an increase in the average passenger occupancy (APO) of their employees who commute to work during the peak travel period by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area during the peak travel period. These compliance plans must also convincingly demonstrate that employers will meet the 25 percent increase APO target no later than four years after the ECO regulation is submitted to EPA.

b. ECO program requirements and Sacramento ECO regulation implementation approach. The proposed ECO regulation meets the basic ECO program requirements:

(1) calculate an AVO for the nonattainment area or for each zone if the area is divided into zones;
(2) specify target APO(s) which are no less than 25 percent above the AVO(s);
(3) include enforcement procedures to ensure that employers develop and implement compliance plans; and
(4) provide an ECO program that has a process for ensuring that compliance plans are a "convincing" compliance demonstration.

The proposed ECO regulation uses data collected from the 1991 Caltrans (California Department of Transportation) State Travel Survey to produce the baseline AVO for the nonattainment area and the target APO for the regulation. This survey estimated Sacramento regional AVO to be 1.11 in 1991. It is EPA's opinion that no substantial changes in travel patterns have taken place since that time such that there is reason to believe this number has changed since 1991. Consequently, a 25 percent increase in AVO produces a regional APO target of 1.38; the performance target included within the ECO regulation.

The Caltrans Statewide Travel Study attempted to estimate the number of persons telecommuting by asking the question, "do you work at home?". This survey question does not distinguish between those who work at home because they are self-employed and their business is located in their home and those who work away from home but participate in an employer-sponsored telecommuting program. EPA believes that a large percentage of those who work at home would be self-employed. Consequently, any APO target based on the Caltrans study and including all of these home workers as telecommuters would be inflated by some degree and result in a regional target APO of 1.46. EPA has chosen the 1.38 APO target because it is comparatively a more reliable baseline AVO estimate.

The third ECO program requirement concerns sufficient enforcement procedures. Through the provisions of the ECO regulation, EPA must be able to invoke penalties that are severe enough to provide an adequate incentive for employers to comply and no less than the expected cost of compliance. Section 113 of the Act provides the statutory authority for federal enforcement and the ability to assess penalties for violations under this ECO regulation. EPA may assess civil or criminal penalties up to $25,000 per day per violation; however, Section 113 requires EPA to consider the size of the business, the economic impact of the penalty on the business, the violator's compliance history and good faith efforts to comply, the duration of the violation, payment of penalties for previous similar violations, the economic benefit of noncompliance, and the seriousness of the violation in assessing a penalty fee.

Finally, Section 182(d)(1)(B) requires that employer compliance plans "convincingly demonstrate" prospective compliance with the target APO. EPA's *ECO Guidance* defines four ECO regulation design options for eliciting compliance plans that make this convincing demonstration. An ECO regulation may:

(1) provide for effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans and that unconvincing compliance plans will be rejected;
(2) contain a convincing minimum set of measures that all employers must implement to reach the target APO;
(3) provide that failure by the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan designed to meet the target APO; or
(4) include financial penalties and/or compliance incentives for employers who fail to meet the target APO that are large enough to provide a significant prospective incentive for the employer to design and implement an effective compliance plan.

An option can be used by itself or in combination with others. The proposed ECO regulation uses a combination of the first and the fourth program design options.

In sum, the proposed ECO regulation meets the basic ECO program requirements. Consequently, the proposed ECO regulation may be adopted by a state or locality to meet the requirements of Section 182(d)(1)(B). A general discussion of its requirements is included below in section (c). The detailed proposed ECO regulation is included in this Federal Implementation Plan NPRM at 40 CFR 52.2999.

c. Employer and compliance plan requirements. The proposed ECO regulation requires the following seven actions of employers:

(1) register with EPA as an employer subject to the regulation;
(2) designate an Employee Transportation Coordinator (ETC) at each work location;
(3) conduct an annual APO survey of its employees at each work location to determine employees' current commute patterns and report the results of the APO survey to the EPA;
(4) develop and submit to the EPA before March 1, 1997, 2 years from program inception, and in subsequent years as required by the regulation, trip reduction plans that describe activities to be implemented at the location under an ECO program;
(5) implement the ECO program described in the approved trip reduction plan;
(6) no later than March 1, 1999, 4 years from program inception, increase the average passenger occupancy (APO) at each location by not less than 25 percent over the average vehicle occupancy (AVO) for Sacramento ECO program area;
(7) maintain the target APO upon achieving it.

An employer failing to accomplish any or all of these actions would be in violation of the proposed ECO regulation and would be subject to penalties under section 113 of the Clean Air Act.

The required components of an employer's compliance plan are as follows:

(1) the name of the employer, address of the work location, and name, title, and signature of the Employee Transportation Coordinator (ETC) at the work location;
(2) the results of the most recent APO survey and a description of the procedure used to conduct the APO survey;
(3) a description of the physical and transportation service characteristics of the work location, and demographic, work, and travel-related characteristics of the employee population;
(4) a description of ECO strategies currently implemented that provide commute alternative incentives to employees at the work location and additional ECO strategies the employer will implement at the work location;
(5) activities planned by the employer to implement the ECO program and a time schedule for implementation of the program; and
(6) a description of the process by which the employer will periodically monitor and review progress toward the APO target.

Employer plans will be certified by a third party for completeness in order to reduce EPA's implementation burden. EPA will approve or disapprove plans. The Air Pollution Control Districts for the Sacramento nonattainment area will have the right of first refusal to certify plans of employers in their district. Should one or more APCDs decline the opportunity to certify employers, another organization or other organizations will be designated by EPA as plan certifiers.

By March 1, 1999, all employers must submit either a maintenance plan describing either how the employer will maintain the target APO, or an update compliance plan describing what additional measures the employer will take to reach the APO target within one year. An employer's update compliance plan must discuss good faith efforts to achieve the target APO, provide an explanation of why the ECO strategies included in the last plan did not produce the target APO, and discuss how the update compliance plans will cause the employer to achieve the target within one year if the target has not been met by then as required.

As part of the FIP, EPA is including a parking cash out regulation. Under this regulation, employers would offer employees the option of taking the cash value of employer paid parking as a financial incentive to reduce solo commuting. Where applicable, employers would be able to include a parking cash out incentive as part of their ECO program trip reduction plans.

d. ECO rule development issues. Because the following components are common to other trip reduction regulations in California or are discussed extensively in EPA's *ECO Guidance*, EPA wishes to discuss these issues and the agency's rationale for not incorporating them into the proposed ECO regulation.

First, this proposed ECO regulation does not allow for APO averaging, banking or trading. Including such a component within the ECO regulation would add an administrative and enforcement burden beyond EPA's present resources and is perhaps better administered at the local level. Should the state or local agencies develop an ECO regulation with APO averaging, banking, or trading consistent with EPA's *ECO Guidance*, EPA would accept such a regulation for review and possible approval and incorporation into the SIP as a replacement for the proposed federal ECO program.

Related to the issue of APO averaging and trading is the issue of consolidated compliance plans. The proposed ECO regulation requires employers to achieve the APO target at each work location. Again, this is due to EPA's administrative and enforcement resource constraints. Therefore, to provide this type of individual employer accountability for achieving the APO target, the proposed ECO regulation does not allow consolidated compliance plans. A single employer with multiple work locations or a confederation of employers with geographically related work locations, such as a business park, are thus not allowed to average their APO survey results together to achieve the target APO. However, the proposed ECO regulation does not preclude employers from forming or participating in transportation management associations or using complementary ridesharing and commuter matching services to reduce trips to their respective work locations and promote ridesharing, so long as they demonstrate compliance at each individual worksite.

Second, this ECO proposed regulation does not divide the Sacramento ECO program area into subregional AVO zones or target areas for the purpose of achieving the target APO. Subregional AVO zones or target areas would allow different geographic subregions to start from different existing AVO baselines for the purpose of calculating the APO target. Thus, different subregions could have different APO targets, but still meet the performance requirement of Section 182(d)(1)(B), a 25 percent increase in APO from the AVO baseline.

AVO zones may be applicable within the Sacramento ECO program area if there are significant subregional differences in commute patterns, land use, transit availability, and baseline AVO. However, EPA has no information to suggest that these differences do exist. To conclusively assess whether or not these differences exist and develop subregional AVO zones would require detailed surveys of home to work commute patterns in the Sacramento ECO program area to supplement 1990 census data and the 1991 Caltrans State Travel Survey. Should California conduct such surveys and determine it appropriate, the State could include AVO zones in its ECO SIP.

As a third and final issue, this regulation does not allow for APO crediting from the use of satellite work stations. Cold start emissions from motor vehicles are a significant proportion of motor vehicle emissions and will become an even larger proportion as future motor vehicles run cleaner. Consequently, EPA believes that satellite work stations are a relatively ineffective strategy for reducing vehicle emissions and vehicle trips unless they can reduce a significantly large vehicle miles traveled component of a work trip or allow an employee to substitute a commute mode of travel other than a motor vehicle. Based on its understanding of Sacramento commuting patterns, EPA concluded that this kind of vehicles miles traveled reduction through use of satellite work stations would not occur in Sacramento and has therefore not included credit for them in the FIP. However, this proposed ECO regulation does provide for telecommuting from home as an acceptable trip reduction strategy in employer compliance plans. EPA believes that telecommuting from home is a very effective trip reduction measure because an entire commute trip is eliminated when an employee works out of his or her home.

In summary, although EPA's *ECO Guidance* addresses the use of averaging, banking, and trading of APO credits as well as using AVO zones, EPA does not believe these elements are appropriate for the proposed ECO program. APO averaging, banking, and trading would add an administrative and enforcement burden beyond EPA's present resources and is perhaps better administered at the local level. In the case of AVO zones, EPA has no information suggesting that significant subregional differences in commute patterns, land use, transit availability, and baseline AVO exist to justify this approach. Finally, while EPA may approve a local or state ECO regulation incorporating crediting of satellite work stations under very restrictive conditions, EPA has chosen not to credit satellite work stations in the proposed ECO regulation for the reasons stated above.

3. RACT for 25 Ton Per Year Sources

a. Applicable requirements. As discussed in the General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13521), for "Severe" areas, reasonable available control technology (RACT) must be applied to any source that emits or has the potential to emit 25 tons per year of VOC or NO_x. If the Sacramento area is bumped-up from "Serious" (major source = 50 tons per year) to "Severe", in order to address this requirement, RACT regulations must be developed for sources which are caught by the more stringent major source definition. EPA believes that between current State and local regulatory requirements and today's proposed FIP regulations (Section III.C.), there should be few, if any, uncontrolled stationary sources which emit more than 25 tons per year. However, EPA plans to continue working with the State and local agencies to identify all stationary sources which have the potential to emit greater than 25 tons per year or more of VOC and NO_x and apply RACT regulations as needed.

4. New Source Review

a. Background. Today's proposed rule is based on the New Source Review rules in the affected air pollution control districts (APCDs). It includes necessary revisions to those rules that will satisfy severe area requirements, including a major source definition of 25 tons/year and a 1.3:1 offset ratio requirement. The rule also incorporates EPA's permitting requirements (primarily those at 40 CFR 51.165), and changes necessitated by the 1990 CAAA. EPA is expecting to shortly publish proposed changes to the regulations at 40 CFR 51.165 in order to codify and interpret changes to nonattainment permitting requirements pursuant to the CAAA. As appropriate, EPA will rely on that proposal as guidance in taking final action on today's rule.

If EPA's final action includes a severe-area classification for the Sacramento FIP areas, this rule will apply in each of the affected APCDs. EPA's main goal in following the structure and, where possible, the actual language of the existing rules is to provide a rule that is easy for the local APCDs to adopt and implement and familiar to industrial sources subject to NSR, and thus provide the least disruption when incorporated in the local programs. However, should the local APCDs fail to adopt the necessary requirements, EPA will implement the severe area NSR requirements through today's rule.

EPA is specifically soliciting comment on the issue of the source size affected by the rule. As the rule is structured in this proposal, it requires permits of all sources currently required to obtain permits at the APCDs. EPA has several reasons for including this requirement. First, EPA wants to make this rule as similar to the current District rules as possible so that the Districts can be reasonably certain that adopting this rule will lead to rapid SIP approval such that EPA will move into an oversight rather than permit issuance mode. The current District rules use an accumulation structure that sums all emissions increases, and triggers substantive requirements based on that accumulation. EPA considered making the rule only apply to sources with a potential to emit greater than 25 tpy. However, because the Districts' emissions inventory is based on actual emissions rather than potential emissions, EPA would be unable to know clearly to which sources the rule applies. Second, EPA is concerned that excising those portions of the rules related to minor sources will lead to increased confusion by sources as to jurisdiction and applicable requirements. Third, EPA believes that not including minor sources will result in a rule capturing fewer emissions than the current District rules, a result contrary to the intent of the FIP. On the other hand, EPA is concerned about the effective use of its resources, and about the burden placed on companies constructing very small sources having to obtain air pollution permits from two agencies. Even so, because EPA has the ability to delegate today's rule to the Districts, the effects of dual permitting should be short lived. EPA is therefore soliciting comment on whether to include minor sources or not, and, if a commenter suggests excluding minor sources, EPA solicits comment on the most effective way to exclude minor sources while maintaining the structure of the rule.

b. Overview of Rule Requirements. There are three sections of the rule that together establish the NSR requirements for the FIP areas. The first, 40 CFR 52.3000, describes which sources are required to obtain a pre-construction permit, and sets out most of the procedural requirements involved in permitting. The second section, 40 CFR 52.3001, contains the substantive requirements related to New Source Review, including control technology determinations and offset requirements. The third section, 40 CFR 52.3002, describes the procedure EPA will use to determine the amount of creditable reductions available and authorize them for use as offsets.

In general, the rule is designed to meet each of the severe area NSR requirements mandated by the Act, meet each applicable requirement for State and local NSR rules as set forth in 40 CFR 51.165, as well as be consistent with EPA's policies for permitting.

The rule requires that any source[98] owner proposing to construct an emitting piece of equipment obtain a permit prior to construction of that equipment. A permit applicant must provide EPA all information necessary to process the permit. Once all such information is received by EPA, the application is administratively complete and EPA will begin the process of analysis and permit preparation, and will then issue or deny the permit. Except for certain small sources, EPA will present a draft permit for public notice and provide an opportunity for comment.

The substantive requirements that may apply to construction or modification of certain larger emission units include: Best Available Control Technology (BACT), offsets, statewide compliance, and alternative siting analysis, and are discussed below.

(1) Lowest Achievable Emission Rate (LAER). LAER is required for any emission unit construction or modification where the potential emissions of that unit exceed ten pounds per day. This requirement is consistent with the Clean Air Act and is based on the requirements of the Districts' rules. The applicable Clean Air Act control technology requirement is Lowest Achievable Emissions Rate (LAER) (CAA section 173(a)(2)). The District rules use the term Best Available Control Technology, but define it to meet the LAER requirement. Therefore, as used in today's rule, the term "BACT" satisfies CAA section 173(a)(2).

(2) Offsets. Today's rule implements the offset requirement mandated by the Act for severe areas by adding a 1.3:1 offset ratio to the base District rule. The rule triggers the offset requirement once the potential to emit of the source exceeds 7,500 pounds per quarter (approximately 15 tons per year). Once the source exceeds the offset trigger, all subsequent emissions increases are required to be offset at this ratio.

(3) Statewide Compliance. The owner or operator of all major new sources and modifications is required to demonstrate that all major sources under his or her ownership or control within the state are in compliance or on a schedule for compliance with all Clean Air Act requirements. This requirement has been in effect since the 1977 Clean Air Act amendments, and is already part of all of the District rules.

(4) Alternative Siting Analysis. The requirement for an alternative siting analysis is found in section 173(a)(5) of the Clean Air Act. An applicant for a major new source or modification is required to perform an analysis of alternative sites, sizes, production processes and environmental control techniques and demonstrate that the benefits of the source significantly outweigh the environmental and social costs of construction of the source at that location. Today's rule implements the alternative siting analysis requirement at 40 CFR 52.3001 (c)(7).

c. Existing NSR Rules. The five Districts affected by today's Rule are all within the same air basin and Metropolitan Statistical Area. While each District adopts NSR rules independently, all but one of the Districts' rules are similar in structure and substance. Feather River Air Quality Management District's rules have similar definitions and substantially similar requirements as the other Disticts, but differ in minor structural and other respects. Today's rule is similar to the existing rules in Sacramento Metropolitan Air Quality Management District, Placer Air Pollution Control District, Yolo-Solano Air Pollution Control District and El Dorado Air Pollution Control District.[99] However, today's rule is numbered differently and is written to address only ozone precursors.

None of the District NSR rules in the State Implementation Plan currently meet all the requirements of the 1990 CAAA. On January 15, 1993, EPA found that Feather River AQMD, El Dorado APCD, Placer APCD, and Yolo-Solano APCD failed to submit NSR rules meeting certain requirements mandated by the CAAA. However, Feather River AQMD, Placer APCD, and Yolo-Solano APCD have since submitted rules for inclusion into the State Implementation Plan. EPA expects submittals from El Dorado APCD and Sacramento Metropolitan AQMD in the next year. Because all of these rules were written to only meet the requirements for serious nonattainment areas, they do not meet the requirements for severe nonattainment areas.

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[98] Source is generally defined as all emitting equipment at one location. This document uses the same definition as 40 CFR 51.165.

[99] The rules related to New Source Review in each of the Districts are as follows: Sacramento Metroplitan AQMD Rules 201, 202, and 204; Placer APCD Rules 501, 502, and 504; El Dorado APCD Rules 501, 523, and 524 (board adoption expected April 1994); Yolo-Solano APCD Rules 501, 502, and 504; Feather River APCD Rules 4.0, 10.1 and 10.2.

d. Changes From Original APCD Rules.

(1) Changes to Address Severe Area Requirements. In order to satisfy the provisions required by the Clean Air Act for severe areas, EPA has included several requirements in today's rule which differ from those of the current Districts' rules. The changes include the addition of a more stringent major source threshold and a more stringent offset ratio. These requirements are in accordance with Section 182(e) of the CAA. The minimum size threshold for a major source is 25 tons per year and the lowest acceptable offset ratio is 1.3 to 1.

(2) Changes to Address Federal Approvability. Significant changes in today's rule include deletion or revision of certain sections which exist in the Districts' current rules, as well as the inclusion of new sections to address federal requirements.

Federal new source review at 40 CFR 51.165 applies to certain source categories which were exempt from District new source review requirements. Therefore, such exemptions are excluded. Some of the District rules allow trading between different precursors of a secondary pollutant. As EPA does not currently allow trading between either of the ozone precursor criteria pollutants addressed in this rule, this rule does not, as proposed, allow such trading. In addition, 40 CFR 52.3000 contains wording which emphasizes the federal enforceability of an Authority to Construct and its validity for the life of the source. In order to match EPA's enforcement authority over past violations, and to be consistent with requirements in EPA's Operating Permits Program (40 CFR 70.6(a)(3)), today's rule requires retention of records for five years.

This rule contains certain other provisions which are not in the current District rules. A subsection is included in this rule to address the minimum offset ratio for emission reductions achieved from mobile sources. Furthermore, the ERC Authorization includes provisions to certify that ERCs are surplus at time of use, that prior shutdown credits are federally approvable, and that ERCs from non-permitted sources are surplus, permanent, enforceable, and quantifiable.

(3) Changes to Address Federal Implementation. Some significant changes in the APCD rule are necessary for federal implementation. Today's rule excludes all references to requirements contained in state law. All district fee requirements are removed and are replaced with a provision allowing EPA to collect fees. Upon delegation of authority to implement and enforce any portion of this NSR rule, EPA will cease to collect the fees associated with that portion of this rule, and the delegated agency will calculate and collect fees in accordance with the fee rules of that agency.

Language was added to section 52.3001 to provide the opportunity to request a public hearing as provided by 40 CFR 124.12. Language was also added to section 52.3000 to allow for petition to the Environmental Appeals Board for review and reconsideration within 30 days of any final decision issued pursuant to this NSR rule, including decisions made by a delegated agency pursuant to this NSR rule. A petition for review can also be filed with the U.S. Court of Appeals as provided in section 307(b) of the Act.

Because this rule is explicitly intended for preconstruction review for ozone precursors, it does not reference other criteria pollutants nor District operating permits programs.

The ERC Authorization section of this Rule allows sources to meet the offset requirements of this Rule through use of the existing District banking system. Functions of the District Banks and District Priority Reserve Banks are not affected by today's Rule.

e. Dual Permit Application and Review. Today's proposed NSR Rule does not replace the Districts' existing permitting programs. New or modified sources of ozone precursors must continue to meet the applicable District NSR requirements. This may result in sources of such pollutants having to apply for permits from both the EPA and the District in which the source is located.[100] As a practical matter, however, because EPA has maintained the structure and requirements of the existing District Rules, by meeting the requirements of this "bumped up" rule, the source will have also met the District NSR requirements. Additional preparation in the form of permit applications, modeling, or research on the part of the applicant would be minimal, if required at all. EPA has no statutory authority to repeal or supplant the existing State or local laws, nor would this be desirable since the existing District permitting programs regulate the emissions of pollutants not covered by this rule.

One difficulty EPA has encountered in proposing this "dual system" is how to operate federal emission reduction credit "banks" that meet federal requirements and still preserve the integrity of existing District banks. As required by the Act and set forth in section 40 CFR 52.3001 of this rule, new sources or modifications that emit ozone precursors above an established threshold must obtain offsets. Under current District programs, emission reduction credits can be certified and obtained from District banks to meet offset requirements. However, to be creditable for use as offsets under this rule, EPA must ensure that the credits in the District banks meet federal approvability criteria as set forth in the Emission Trading Policy Statement (ETPS, 51 FR 43815) and in the General Preamble to Title I at (57 FR 13553).

The ERC authorization process described in today's rule would allow emissions reductions to be certified directly by EPA and would also allow sources to use ERCs which have previously been certified by a District rule and authorized to meet federal NSR requirements. EPA requests comment on today's proposal and alternative methods that would preserve the integrity of the District banks under the proposed "dual" permitting system.

f. Operating Permits. The permits issued by EPA under today's NSR rule will not expire upon issuance of a District operating permit. The Districts are encouraged to include the requirements contained in permits issued by EPA, pursuant to this rule, in their operating permits since sources must continue to comply with the requirements of these EPA issued construction permits. Districts must include conditions contained in permits issued pursuant to this rule in any operating permit issued under a program adopted pursuant to 40 CFR part 70 or Title V of the Act, as discussed in section III.J of this preamble.

g. Federal Implementation and Delegation to Local Agencies. As discussed below in section III.J of this preamble, if EPA reclassifies the ozone nonattainment areas of the Sacramento Valley Air Basin as "severe", the applicable portions of the California SIP must be revised to meet the CAA requirements for a severe ozone nonattainment area and submitted to EPA on or before the date of final promulgation of this FIP. Until such time as EPA approves the revisions for the NSR portions of the applicable SIP, the NSR requirements of this FIP shall apply. When the revisions are approved into the SIP, EPA will withdraw this NSR portion of the FIP.

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[100] Sources must follow this "dual" permitting scheme in any area that does not have authority to implement federally mandated permitting programs.

EPA will encourage delegation of the final version of this NSR rule to the local Districts prior to SIP approvability, thus eliminating the need for sources to apply for permits from both the EPA and the local permitting agency. To do so, Districts must revise their existing NSR rule to meet the requirements of this federal rule, or adopt EPA's final NSR rule, through their existing notice and comment rulemaking procedures. The revised rule must then be submitted to EPA, which will evaluate the NSR rule for consistency with the requirements of the NSR portion of the Federal Implementation Plan. EPA will then delegate to the District, by letter, the authority to implement and enforce those portions of the FIP that are consistent with District requirements. When the revisions are ultimately approved in the SIP, EPA will withdraw the NSR portion of the FIP.

Revision of the District regulations is necessary to allow the local agencies to use their own requirements, such as fee provisions and enforcement procedures, to implement the requirements of this NSR rule. While both SIP revisions and delegation will require revision of the District regulations, delegation is a much more expedient process than EPA approval of revisions as part of the SIP.

5. TCMs to offset VMT increases. If bumped up to a severe nonattainment classification, Sacramento would also need to consider the requirements of Section 182(d)(1)(A). This section requires States containing severe ozone nonattainment areas to submit a SIP that identifies and adopts specific, enforceable transportation control measures, as necessary, to offset growth in vehicle emissions due to growth in vehicle miles traveled. Beyond demonstrating that these measures offset growth in emissions, they must be sufficient to allow total regional emission levels to comply with the reasonable further progress and attainment requirements of the Act.

As described in the General Preamble to Title I of the CAAA, 57 FR 13498 (April 16, 1992), the TCM offset SIPs required from areas already designated severe or extreme must: (1) Identify and adopt specific and enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips; (2) identify and adopt specific and enforceable transportation control strategies and TCMs that attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with RFP milestones; and (3) identify and adopt specific and enforceable transportation control strategies and TCMs that attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to demonstrate attainment of the NAAQS.

As discussed in the General Preamble, EPA has interpreted the provision to offset any growth in VOC from VMT increases to "require that sufficient measures be adopted so that projected vehicle VOC emissions will never be higher during the ozone season in one year than during the ozone season in the year before." Further, the attainment year is the last year for which this test applies. The calculation of VOC emissions from on road mobile sources may "include the effects of Federal measures such as new motor vehicle standards, Phase II RVP controls, and reformulated gasoline, as well as Clean Air Act-mandated SIP requirements such as enhanced I/M, the fleet clean-fuel vehicle program, and the employer trip reduction program."

For Sacramento, as can be seen in the Technical Support Document, on-road mobile source emissions through 2005 are never projected to be greater in one year than the year before once the FIP control strategies are implemented. Therefore, there is no need for TCMs in Sacramento to offset emissions increases from growth in VMT.

As for requirements (2) and (3) pertaining to TCMs for RFP and attainment demonstration, the FIP has addressed TCMs for Sacramento in the discussion of Employee Commute Options (III.F.2) and the discussion pertaining to fees on light duty vehicles (III.D.2.f).

6. Reformulated fuel. a. *Provision satisfied in FIP/SIP actions above.* Reclassification of the Sacramento area to "Severe" would mandate sale of reformulated gasoline in the area, effective one year after reclassification. There may be no emission reduction benefits from applying the federal reformulated fuel requirements to Sacramento, however, since the California reformulated fuel program already applies throughout the State. If the federal reformulated fuel program achieves greater reductions than the California program, EPA will impose the federal requirement in Sacramento. If the California program is more stringent, EPA would consider modifications to its enforcement program to avoid duplication with California's program.

G. Section 182(e)(5) New Technology Measures for the South Coast

1. Introduction.

After application of the FIP's stationary, area, and mobile source rule requirements, the ozone attainment requirements for the South Coast demand further reductions from the same source categories in order to achieve cumulative reductions from 1990 baseyear emissions of approximately 90 percent VOC and 70 percent NO_X.

Currently, there is no technological basis to prepare full regulations to achieve this additional level of control. Instead, the additional reductions will need to come from either new technologies or further improvements to existing technologies, such as those discussed in section III.B.5.d.iii. The federal control technology projects described in that section are current examples of federal initiatives supporting the development and commercialization of low-emitting products and technologies, pollution prevention approaches, and new control techniques. In each future year, additional federal projects will be undertaken which should help to provide the technical, commercial, and regulatory basis for the emission reductions needed for attainment in the South Coast.

In these circumstances, EPA believes it is appropriate to make federal commitments to promulgate in the future regulations based on the development of new technologies or control techniques, as authorized in section 182(e)(5) of the Act. Section III.B.5.c.4. of this NPRM discusses extensively this CAA section and provides the prerequisite demonstration that the new technology measures are not needed to meet the incremental reduction requirements for the period 1990–2000.

2. Commitment to adopt measures and schedule of emission reductions.

EPA's policy for implementation of section 182(e)(5) demands a commitment from the responsible agencies to achieve specified reductions by particular dates. The Act also explicitly requires a commitment to adopt contingency measures no later than 3 years before the scheduled reductions from the new technology provisions (section 182(e)(5)(B)). The contingency measures must be adequate, in combination with other controls, to achieve the periodic emission reduction requirements and attainment. EPA's commitments to both the new technology measures and the contingency measures appears at proposed 40 CFR 52.2951.

a. *Stationary and Area Sources.* (1) Sources Subject to Cap Rules. EPA proposes to make section 182(e)(5) commitments to prepare rules for each of the control categories covered by the cap rules described above in section

III.C.5. The commitments are identical for each stationary and area source category, and establish rulemaking and implementation schedules to achieve two additional increments of reduction beyond the sources' baseline emissions.

For VOC the schedule is as follows. At the beginning of 2005, the declining cap rule will have required sources to reduce baseline emissions by between 20 and 45 percent. The first new technology rule will be proposed by January 1, 2004, and promulgated by January 1, 2005, and will require a 60 percent reduction from baseline emissions by January 1, 2007. The second new technology rule will be proposed by January 1, 2006, and promulgated by January 1, 2007, and will require a 90 percent reduction from baseline emissions by January 1, 2009.

The schedule for NO_X is similar. At the beginning of 2005, the SCAQMD regulations, including the NO_X RECLAIM rules, will have achieved substantial reductions in baseline emissions. The first new technology rule will be proposed by January 1, 2004, and promulgated by January 1, 2005, and will require a 50 percent reduction from baseline emissions by January 1, 2007. The second new technology rule will be proposed by January 1, 2006, and promulgated by January 1, 2007, and will require a 70 percent reduction from baseline emissions by January 1, 2009.

(2) Consumer Products, Architectural Coatings, and Pesticides. For the consumer products (including aerosol paints), architectural coatings, and pesticides categories, including those sources subject to the proposed provisions of 40 CFR 52.2957, 40 CFR 2958, 40 CFR 52.2959, and 40 CFR 52.2960, EPA proposes to make section 182(e)(5) commitments to prepare new technology rules to reduce VOC emissions by a further increment of 80 percent, beyond the control level achieved under the proposed FIP statewide rules cited above.

The schedule for rule promulgation and compliance is as follows. The first new technology rule will be proposed by January 1, 2004, and promulgated by January 1, 2005, and will require a 40 percent reduction from baseline (year 2003) emissions by January 1, 2007. The second new technology rule will be proposed by January 1, 2006, and promulgated by January 1, 2007, and will require an 80 percent reduction from baseline emissions by January 1, 2009.

(3) Remaining Stationary and Area Sources. For remaining stationary and area emission sources emitting less than 4 tons per year and not already regulated under sections III.G.2.a.(1) or III G.2.a.(2), EPA proposes to make section 182(e)(5) commitments to prepare new technology rules to reduce VOC emissions by 80 percent from baseline emission levels.

Emission sources regulated under this section represent a large number of small sources which emit less than 4 tons per year and/or may be exempt from regulation. These sources account for an estimated 300 tons per day of the remaining VOC emissions after application of currently proposed FIP regulations. These sources include but are not limited to gasoline service stations, livestock waste operations, commercial food production and preparation, printing shops, miscellaneous coating and solvent cleaning operations, miscellaneous chemical/product manufacturing, bakeries, waste disposal sites (e.g., landfills), publicly owned treatment works, waste burning operations, miscellaneous fuel combustion sources, and miscellaneous fugitive emission sources.

The schedule for rule promulgation and compliance is as follows. The first new technology rule will be proposed by January 1, 2004, and promulgated by January 1, 2005, and will require a 40 percent reduction from baseline (year 2003) emissions by January 1, 2007. The second new technology rule will be proposed by January 1, 2006, and promulgated by January 1, 2007, and will require an 80 percent reduction from baseline emissions by January 1, 2009.

b. Mobile Sources. EPA believes that the utilization of technological advances for mobile sources, such as those discussed above in section III.B.5.d.iii., will ultimately allow the South Coast FIP area to attain the ozone NAAQS by the CAA deadline. Were EPA required to achieve the standards with mobile source measures that relied only on the current level of technology, EPA would be forced to propose measures which it believes would bring about severe economic hardship to the South Coast.

As indicated in the attainment demonstration discussion (section III.H.), ozone attainment in the South Coast requires approximately a 90 percent reduction in VOC and a 70 percent reduction in NO_X emissions from the 1990 baseline. Mobile source emissions will need to be reduced by this percentage to yield attainment. The proposed mobile source strategies presented in section III.D. will achieve reductions of 66 percent for VOC and 51 percent for NO_X from the 1990 baseline. EPA proposes to commit to achieving the remaining balance of 24 percent VOC and 19 percent NO_X reductions from future technologies, such as the ones discussed in section III.B.5.d.iii.

EPA proposes to make section 182(e)(5) commitments to accomplish these mobile source reductions according to the following schedule. New technology rules will be proposed by January 1, 2001, and promulgated by July 1, 2002. The rules will provide for the additional 24 percent VOC and 19 percent NO_X reductions by the year 2010. Since sufficient lead time to introduce any new technology will be needed, EPA proposes that the rules will begin implementation by January 1, 2006. This implementation date will allow for four years of fleet turnover to produce the needed reductions.

3. Commitment to adopt contingency measures.

In this NPRM, EPA also proposes to commit to issue by January 1, 1999, contingency measures sufficient to achieve the cumulative percent reduction in VOC and NO_X emissions assigned to each new technology measure. As the Act requires, these contingency measures would go into effect and achieve substitute emission reductions, if the new technology measures are not developed or fail to achieve the specified reductions.

H. Attainment Demonstrations

1. Introduction.

An attainment demonstration is a key part of a State or Federal Implementation Plan: using air quality modeling, it shows that the proposed emission control measures are sufficient for the NAAQS to be attained by the applicable deadline.[101] For ozone nonattainment areas classified "Serious", "Severe" or "Extreme", section 182(c)(2)(A) requires an attainment demonstration based on photochemical grid modeling, for which the Urban Airshed Model (UAM) is the EPA-approved model. (See Appendix W of 40 CFR part 51.) Under section 187(a)(7), SIPs for CO areas having design values above 12.7 ppm must also have an attainment demonstration, which EPA has generally interpreted to mean a UAM demonstration. As discussed previously in this NPRM, FIPs demonstrating attainment of the ozone NAAQS are required for Sacramento, South Coast, and Ventura, and a FIP carbon monoxide attainment demonstration is required for South Coast.

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[101] For ozone and CO nonattainment areas, the Act provides that SIPs (and FIPs) demonstrate attainment as expeditiously as practicable but not later than dates that are specified for each classification. For example, under section 181(a), "Serious" ozone nonattainment areas must demonstrate attainment as expeditiously as practicable but not later than November 15, 1999. In section III.B., EPA reviews the potential for demonstrating attainment in each of the FIP areas before the deadlines set in section 181(a) for ozone nonattainment areas and in section 186(a) for CO nonattainment areas. The attainment demonstration analyses presented below in this section do not repeat the discussion of alternative attainment dates.

It is a goal of EPA for the FIPs to match as closely as possible the ozone SIPs that California is developing for the November 1994 submittal. EPA and the State are coordinating FIP and SIP modeling to avoid duplication of effort and divergent FIP and SIP modeling conclusions. Projected reduction targets had to be determined well in advance of this NPRM in order to choose control strategies and develop regulations to implement them. Because the State and EPA are continuing to refine the modeling, the proposed FIP attainment demonstrations are based on preliminary modeling results for the three areas. Rather than using UAM to directly simulate the air quality benefit of the control measures, today's proposal shows attainment by reducing total emissions to meet UAM-generated reduction targets. The targets were derived from a series of UAM simulations of generic "across-the-board" emission reductions that attain the NAAQS. This method has shortcomings discussed below, but is the best procedure available at this time, and gives results that are comparable to a full simulation. If subsequent analysis by the State and EPA shows that different target levels and control strategies are more technically appropriate, EPA intends to incorporate these in the final FIP notice or in subsequent FIP revisions.

An additional issue for attainment demonstrations, not otherwise addressed in the FIP proposal, is the phenomenon of pollutant transport between air basins. If one area is causing nonattainment in another area downwind under some meteorological conditions, then additional controls may need to be applied in one or both areas. Ideally, a single large modeling domain incorporating both upwind and downwind areas should be used to assess pollutant transport between them. It is anticipated that the methods California will employ to address transport in the November 1994 ozone SIPs might be used in the final FIP. This could eventually result in revisions to the FIP, which may impose greater control requirements in the FIP areas than appear in today's proposal if there is, for example, transport from Los Angeles to San Diego and Ventura. The transport analysis could also result in additional FIP controls for areas not covered by the proposed FIPs, such as the San Francisco Bay Area or the San Joaquin Valley, which are upwind of Sacramento.

2. Baseline inventories.

(a) *Adjustments to State's emissions inventories.* California provided 1990 base-year annual and peak season emissions inventories for ozone precursors (ROG, NO_X, and CO) by air basin and county with the emissions inventory SIP submittal of November 13, 1992. EPA relied heavily on the November 1992 inventory in this NPRM. Revised inventories for the base-year were provided by CARB on November 15, 1993, and these have been partially incorporated in this NPRM. In some cases, however, EPA did not have sufficient time to fully evaluate and/or incorporate the November 1993 data into the FIP modeling. It should be noted that CARB uses ROG almost interchangeably with ROC (reactive organic compounds), but both include ethane, which EPA exempts from the definition of VOC under the assumption that ethane reacts too slowly for significant ozone formation in the period of concern (up to several days). CARB compensates for the difference between ROG and VOC by providing EPA a listing of the fractional ethane emitted from each Source Classification Code (SCC). For purposes of this NPRM, EPA also drew on inventories prepared by local air pollution control agencies as discussed below.

(b) Basis for projected emission inventories. Base-year (generally 1990) emission inventory estimates are projected to change in future years. EPA projects emissions for each emission category to the targeted attainment year (e.g., 2010 for South Coast) based on category specific emission factors. These factors include, for example, housing starts, employment, population, gasoline sales, and sales tax revenues

(c) Stationary Sources.

For stationary source categories whose facilities range in size, a cutpoint differentiates point and area sources. EPA guidance on emission inventories sets this cutpoint at 10 tpy for VOC sources, and 100 tpy for NO_X and CO.[102] Point source emissions are calculated by adding estimates of individual source facilities in a category. Area source emissions are generally determined by subtracting point sources from a total estimate derived from an emission factor assumed for the entire category. Certain source categories are estimated by the State while others are estimated by the local air pollution control agency

(1) Sacramento. For purposes of this NPRM, EPA relies largely on stationary source emission data provided in CARB's November 1992 inventory submittal. This inventory includes VOC and NO_X estimates for Sacramento, Sutter, Solano, Yolo, Placer and El Dorado counties for 1990, 1999 and 2005. This inventory is also similar to the inventory used in the 15 percent plan submitted by the Sacramento APCD in November 1993. EPA has, however, made several adjustments to CARB's inventory which are discussed in the technical support document.

The following table summarizes the estimated stationary source emissions used in this NPRM before applying FIP measures:

SACRAMENTO STATIONARY SOURCE BASELINE INVENTORIES

[Tons per summer day in 1999 and 2005]

	1999 VOC	1999 NO_X	2005 VOC	2005 NO_X
Fuel combustion	1.3	10.4	1.4	11.4
Waste burning	4.4	0.1	4.8	0.2
Architectural coating	15.2	....	17.4	....
Consumer products	14.3	....	16.3	....
Other solvent use:.				
Dry cleaning	2.1	....	2.4	....
Degreasing	4.5	....	5.0	....
Other surface coating	17.8	....	19.6	....

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[102] See *Guidance for Initiating Ozone/CO SIP emission Inventories Pursuant to the 1990 Clean Air Act Amendments* (OAQPS, February 13, 1991), page

22. These cutpoints are different from the definition of major stationary source used for the New Source Review of RACT regulations.

SACRAMENTO STATIONARY SOURCE BASELINE INVENTORIES—Continued

[Tons per summer day in 1999 and 2005]

	1999 VOC	1999 NO_x	2005 VOC	2005 NO_x
Asphalt paving	2.4		2.6	
Printing	2.3		2.5	
Industrial solvent use	0.9		1.0	
Other	0.2		0.2	
Petro process, storage, transfer:				
Petro marketing	4.2	1.1	4.3	1.1
Petro refining	0.2	0.1	0.2	0.1
Oil & gas extraction	5.1	0.0	5.1	0.0
Other	0.2	0.0	0.2	0.1
Industrial processes:				
Commercial bakeries	1.3	0.0	1.4	0.0
Other	4.6	0.3	5.1	0.4
Pesticide application	13.1		14.2	
Livestock waste	7.2		7.9	
Misc processes	3.1	0.0	4.3	
Total	104.2	12.1	115.7	13.4

(2) Ventura. EPA and the Ventura County Air Pollution Control District are jointly funding a coordinated SIP and FIP modeling effort in order to maximize consistency between these parallel efforts. Thus, for purposes of this NPRM, EPA is using Ventura County's 1991 Air Quality Management Plan (1991 AQMP)[103] as the starting point for estimating and projecting emissions from stationary sources in Ventura rather than CARB inventories. The 1991 AQMP inventory also provides the starting point for the 15 percent plan submitted by Ventura to EPA in November 1993. While the 15 percent plan incorporates a number of modifications to the growth factors, emission processing mapping, and other inputs to the 1991 AQMP inventory, EPA was not able to evaluate and incorporate these in time for this NPRM. In addition, the 15 percent plan only projects emissions through 1996, and projections are needed through 2005 for the FIP. EPA expects, however, that the inventory used for the final FIP attainment demonstration will incorporate many of the modifications included in the 15 percent plan. It should be noted that CARB's inventory forms the basis of many of the specific source category emissions estimates in Ventura's AQMP and 15 percent inventories.

The following table presents the 2005 stationary source emission estimates before applying FIP measures. These estimates are described further in the technical support document:

VENTURA STATIONARY SOURCE BASELINE EMISSIONS

[Tons per summer day in 2005]

	VOC	NO_x
Fuel combustion:		
Oil & gas production	0.2	1.6
Other manufacturing & industrial	1.0	3.6
Electric utilities	.5	3.3
Other services and commerce	.2	3.4
Residential	0	.8
Solvent use:		
Dry cleaning	.7	
Degreasing	4.2	
Architectural coating	6.8	
Other surface coating	10.3	
Asphalt paving	.5	
Printing	.7	
Domestic	7.5	
Industrial	1.6	
Petroleum process, storage and transfer:		
Oil and gas extraction	8.1	
Petroleum refining	.1	
Petroleum marketing	1.2	
Industrial processes	0.7	0
Pesticide application	13.5	
Solid waste landfill	.6	
Other stationary sources	.8	.1
Total	59.2	12.8

(3) South Coast. The FIP's 1990 base-year stationary source VOC emission estimates rely on the 1990 inventory described in South Coast AQMD's 15 percent Rate-of-Progress Plan that was submitted to EPA in November 1993. The FIP's 1990 base-year stationary source NO_x inventory is based on estimates described in SCAQMD's 1991 Air Quality Management Plan (1991 AQMP).[104] EPA is also using the 1991 AQMP for projecting VOC and NO_x emissions from stationary sources to the South Coast target attainment year of 2010. While CARB's inventory estimates are used for many specific source categories in the 1991 AQMP, EPA relies on the overall SCAQMD rather than the CARB inventory in order to maximize consistency between the SIP and FIP. The SCAQMD is in the process of updating its revised 2010 inventory for inclusion in the 1994 AQMP, which is due for submittal to EPA in November 1994. Upon release of the revised 2010 inventory estimates, EPA will incorporate applicable changes in its 2010 FIP inventory projections.

The following table represents a summary of the major categories and emissions in the 2010 stationary source inventory which are described further in the technical support document. Credit for adopted SIP and proposed FIP measures have not been included in this table.

SOUTH COAST STATIONARY SOURCE BASELINE EMISSIONS[a]

[Tons per summer day in 2010]

	VOC[b]	NO_x
Fuel combustion		
Oil and gas production	2.7	19.0
Petroleum refining	2.7	9.2
Other manufacturing and industrial	4.2	58.0
Electric utilities	1.5	14.5
Other services and commerce	4.6	48.0
Residential	3.7	25.4
Other	3.8	15.0

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[103] Ventura County Air Quality Management Plan, Ventura County Air Pollution Control District, October 1991.

[104] 1991 Air Quality Management Plan, South Coast Air Basin, July 1991.

SOUTH COAST STATIONARY SOURCE BASELINE EMISSIONS[a]—Continued

[Tons per summer day in 2010]

	VOC[b]	NO_x
Solvent use:		
Dry cleaning	22.0	-
Degreasing	40.7	-
Architectural coating	58.4	-
Other surface coating	188.4	.2
Asphalt paving	9.6	-
Printing	12.5	0.1
Consumer Products	131.6	-
Industrial	24.6	-
Other	14.8	—
Petroleum process, storage and transfer:		
Oil and gas extraction	17.4	1.4
Petroleum refining	21.1	6.1
Petroleum marketing	53.8	.3
Other	4.0	.2
Industrial processes:		
Chemical	15.6	2.1
Food and agricultural	19.8	.6
Mineral processes	.6	6.1
Other	16.5	2.5
Miscellaneous processes:		
Pesticide application	15.6	-
Farming operations	62.4	-
Waste disposal	2.2	.2
Waste burning	1.3	2.0
Other	3.8	.8
Totals	757	212

[a] SCAQMD's draft revised 2010 inventory makes significant revisions for architectural coatings (45 tpd increase); other surface coating (65 tpd increase); consumer product (27 tpd decrease); and farming operations (23 tpd decrease). These draft revisions will not be incorporated into the FIP inventory until SCAQMD finalizes its 2010 inventory revisions.

[b] VOC estimates are based on reactive organic compound estimates from SCAQMD.

d. *Mobile sources.*—(1) Highway vehicle emission factors. The on-highway emission factors for California vehicles are based on CAL15a, which is the March 1993 release of MOBILE5a with modified model year emission control groupings, basic emission rates, and registration age mix based on EMFAC7D.

The EMFAC model could not be used for the FIP for several reasons. Most importantly, an enhanced I/M program is a key part of the FIP proposal, and EMFAC does not allow the examination of I/M programs besides the one currently implemented in California. Similarly, there is no mechanism within EMFAC to address the enhanced in-use compliance program being proposed in the FIP.

There is now an in-house EPA version of MOBILE5a for California based on EMFAC7F, EMFAC7D's replacement, referred to simply as CAL15. More detailed descriptions of CAL15a and CAL15 are provided in the docket. EPA currently plans to use CAL15 in subsequent analyses for the FIP. EPA invites comments on the merits of the various models. Based on these comments and any new data that may become available, EPA may make inventory and control effectiveness adjustments in the final FIP. Such technical adjustments could require or allow changes in the control measures.

Vehicles certified to 49-State standards are assumed to comprise 10 percent of the light duty VMT and 20 percent of the heavy duty VMT in the FIP areas. The emission factors for these vehicles were based on MOBILE5a runs using the same inputs as for the CAL15a runs, except the LEV program was excluded, since it would not apply to 49-State vehicles.

It should be noted that the baseline emission calculations include control programs that have already been adopted. This includes the California LEV program, California Phase 2 Reformulated Gasoline, and California Clean Diesel Fuel.

(2) VMT Estimates. VMT estimates for Sacramento were derived mostly from an August 1993 draft of the Sacramento Area Council of Governments (SACOG) Metropolitan Transportation Plan (MTP). That draft included only 1990 and 2015 estimates, so intermediate years of 1999 and 2005 were estimated by linear interpolation. Also, SACOG does not currently include Solano County, which is partially within the FIP area. VMT for Solano County were calculated from the 1992 CalTrans MVSTAFF report using a CARB estimate of the portion of Solano County VMT in the FIP area. The final SACOG MTP includes specific VMT estimates for 2000 and 2005 which are somewhat higher than the interpolated values used by EPA. EPA plans to use the final MTP values in analyses for the final FIP rulemaking.

Ventura VMT estimates come directly from the August 1993 JHK & Associates report done for the Ventura County Air Pollution Control District. South Coast VMT are based on an August 1993 draft Southern California Area Governments (SCAG) analysis.

While EPA believes these are the most appropriate VMT estimates and projections for the FIP, comments are invited on the merits of other VMT estimates.

(3) Nonroad vehicles and engines. A full range of nonroad engines and vehicles are addressed in this NPRM, from small hand-held gasoline lawn and garden equipment to heavy duty diesel engines used in farm and construction work. The inventory for some of these categories is taken directly from CARB estimates, but for the categories listed below EPA either adjusted the CARB inventory with different growth rates or used a totally different basis for the inventory. In the first three categories listed (HD engines greater than 50 hp, lawn and garden equipment, and recreational boats) the base-year estimate comes from CARB. However, to be consistent with the national rulemakings for these categories, the growth rates are modified by EPA based on the most recent available population growth estimates for each area. Whereas CARB grew these inventories at roughly a straight line 2 percent of the base-year's inventory per year, EPA uses a straight line 3.4 percent per year for Sacramento, 3.0 percent per year for Ventura, and 1.8 percent per year for the South Coast.

(i) Heavy duty engines greater than 50 hp. EPA started with the 1990 CARB inventories for diesel and gasoline farm and construction equipment (Mobile Equipment). As discussed in the technical support document, the CARB inventory was then adjusted by a factor of 0.975 to account for engines less than 50 hp which are estimated to represent 2.5 percent of the emission inventory. The population growth assumption described above was then used to grow the heavy duty engine inventory.

(ii) Spark ignition engines less than 25 hp (lawn and garden). EPA started with the 1990 CARB inventory for residential and commercial utility (lawn and garden) equipment. The population growth assumption described above was then used to grow the inventory.

(iii) Recreational marine engines. EPA started with the 1990 CARB inventory for recreational gasoline and diesel boats. This was modified for Sacramento using new data obtained from California on boat registrations and navigable water area. This resulted in a greater 1990 inventory than CARB had been using. The EPA population growth assumptions described above were then used to grow the inventory from 1990. For Ventura and South Coast, the ratio of CARB's Ventura and South Coast tons to CARB's Sacramento tons was multiplied by the corrected Sacramento inventory to obtain consistent inventories for all three areas.

(iv) Locomotives. Inventories developed by Booz-Allen Hamilton for CARB show locomotive No_x contributions per summer day in 1990 of approximately: Nine tons in the Sacramento area, one ton in Ventura, and over thirty tons in the South Coast. These contributions constituted approximately 5 percent, 1 percent, and 2 percent of the total No_x emissions for Sacramento, Ventura and South Coast respectively. These inventories are summarized in the following table. EPA refers readers to the Booz-Allen reports entitled: Locomotive Emissions Study and Report on Locomotive Emission Inventory: Locomotive Emissions by County, presented as a supplement to the Locomotive Emission Study.

1990 NO_X INVENTORIES (BOOZ-ALLEN)

FIP area	NO_X tons per day	Percent of total inventory
Sacramento	9.0	5
Ventura	1.2	1
South Coast	30.5	2

Systems Applications International (SAI), under contract to EPA, recently completed a draft report entitled 1990 Emissions from Diesel Locomotives in Three California Federal Implementation Plan Areas. There are large differences between the emission estimates developed by Booz-Allen and SAI. As a result, EPA requests comment on the appropriate inventory and methodology for calculating inventories to use. Emission inventories calculated by SAI are summarized in the table below.

1990 NO_X INVENTORIES (SAI)

FIP area	NO_X tons per day	Percent of total inventory
Sacramento	7.8	4
Ventura	.7	0.5
South Coast	14.1	1

Due to the large differences between the SAI and Booz-Allen estimates, EPA requests comment on the appropriate inventory and methodology for calculating inventories to use

To calculate emission reductions (in tons), due to a regulatory program, it is necessary to first project an unregulated baseline into the future. EPA used two sources to estimate baseline locomotive emissions without FIP controls: Information from the Booz-Allen studies and information from the Association of American Railroads, (AAR). Booz-Allen developed emission inventory estimates based on locomotive application for the years 2000 and 2010. These estimates are illustrated in the following table.

BOOZ-ALLEN ESTIMATION OF YEAR 2000 AND 2010 BASELINE INVENTORIES

Area	2000 NO_X (tons/day)	2010 NO_X (tons/day)
Sacramento	8.4	7.8
Ventura	1.1	1.1
South Coast	28.5	26.7

The validity of Booz-Allen's estimates depends upon the accuracy of its baseline emission inventory work and the soundness of its growth projections. EPA has concerns regarding Booz-Allen's estimates of growth because they are based directly on 1987 data. Several developments in the rail industry since 1987, however, could significantly affect growth projections, particularly in the South Coast.

EPA therefore requests comment on two alternative methods for calculating growth based on national industry-wide averages. The first calculates growth based on historic trends in tons of freight originated and national locomotive fuel usage. The second estimate uses ton-miles and national locomotive fuel usage. Data used to construct these analyses came from Locomotive Facts, 1993 Edition, published by the Association of American Railroads. These estimates are summarized in the tables below. A complete description of the EPA methodology used to arrive at the figures used in this section is included in the EPA support document entitled: Baseline Locomotive Emissions for the Three California FIP areas.

EPA ESTIMATION OF BASELINE UNREGULATED FIP AREA NO_X EMISSIONS BASED ON HISTORICAL TONS ORIGINATED INDUSTRY DATA (TONS/DAY)

	1990 baseline	2000 projection	2005 projection	2010 projection
Sacramento	9.0	9.4	9.6	9.8
Ventura	1.2	1.3	1.3	1.3
South Coast	30.5	31.9	32.6	33.3

EPA ESTIMATION OF BASELINE UNREGULATED FIP AREA NO_X EMISSIONS BASED ON HISTORICAL TON-MILES INDUSTRY DATA (TONS/DAY)

	1990 baseline	2000 projection	2005 projection	2010 projection
Sacramento	9.0	10.2	10.9	11.6
Ventura	1.2	1.4	1.5	1.6
South Coast	30.5	34.7	37.0	39.6

(v) Aircraft and Airports.

For purposes of this NPRM, EPA relies on CARB's inventory for estimates of aircraft emissions. Emissions from mobile sources at airports also include ground access vehicles and airport ground service equipment. Ground access vehicle emissions are included in the overall FIP area numbers for on-highway vehicles described above in section (d)(1). Ground service equipment emissions are included in the overall FIP numbers for nonroad equipment described above in section (d)(3)(i).

The work done specifically on airport control strategies for the FIP proposal uses more recent inventories based on research done by EEA with input from the airports and the local governments in 1993, and in the final rule the EPA may use an updated version of this EEA inventory. Comments are requested on the most appropriate inventory to use for aircraft and airport related emissions.

(4) Mobile baseline inventory summary. The following tables summarize the baseline mobile source emissions in each of the three FIP areas.

SACRAMENTO MOBILE SOURCE VOC EMISSIONS

[Tons per summer day]

	1990
Highway vehicles	121.4
Off-Road vehicles/boats	11.6
Locomotives	.3
Ships	.0
Aircraft	1.5
Mobile equipment	5.7
Lawn/garden equipment	7.3
Total mobile	148

SACRAMENTO MOBILE SOURCE NO_X EMISSIONS

[Tons per summer day]

	1990
Highway vehicles	126.3
Off-Road vehicles/boats	1.5
Locomotives	8.7
Ships	.0
Aircraft	1.7
Mobile equipment	36.8
Lawn/garden equipment	.1
Total mobile	175

VENTURA MOBILE SOURCE VOC EMISSION

[Tons per summer day]

	1990
Highway vehicles	43.9
Off-Road vehicles/boats	3.0
Locomotives	.04
Ships	.35
Aircraft	.58
Mobile equipment	1.4
Lawn/garden equipment	1.0
Total mobile	50.3

VENTURA MOBILE SOURCE NO_X EMISSIONS

[Tons per summer day]

	1990
Highway vehicles	41.9
Off-Road vehicles/boats	2.0
Locomotives	1.2
Ships	8.4
Aircraft	.7
Mobile equipment	8.5
Lawn/garden equipment	.05
Total mobile	62.8

SOUTH COAST MOBILE SOURCE VOC EMISSIONS

[Tons per summer day]

	1990
Highway vehicles	880
Off-Road vehicles/boats	39
Locomotives	1.5
Ships	1.4
Aircraft	15
Mobile equipment	55
Lawn/garden equipment	24
Total mobile	1,016

SOUTH COAST MOBILE SOURCE NO_X EMISSIONS

[Tons per summer day]

	1990
Highway vehicles	668
Off-Road vehicles/boats	11
Locomotives	30
Ships	32
Aircraft	17
Mobile equipment	259
Lawn/garden equipment	.9
Total mobile	1,017

3. Air quality data and modeling analyses. The following sections describe the modeling analyses performed for each of the FIP areas. Included are brief descriptions of the pollution episodes modeled, the model application, and the base case simulations that resulted.

Specific EPA requirements for modeling procedures, data, and input parameters appear in Guideline for Regulatory Application of the Urban Airshed Model (EPA, 7/91) and Guideline for Regulatory Application of the Urban Airshed Model for Areawide Carbon Monoxide (EPA, 6/92). The UAM model uses an inventory of pollutant emissions, together with air quality and meteorological data, as input to a system of algorithms incorporating chemistry and dispersion, in order to simulate an observed pollution episode. Once a "base case" is developed that meets the minimum Guideline performance criteria, projected future emissions are used as input to simulate air quality in the attainment deadline year. Attainment is demonstrated when the modeled air quality with emission controls in effect is below the NAAQS throughout the geographical modeling domain.

For carbon monoxide, a local or "hot-spot" component is added to the UAM areawide component. UAM can simulate the accumulation of pollutants over several hours, from sources over a large area. By contrast, the CAL3QHC model is used to reflect the localized effect of idling motor vehicles at key congested intersections, which is not otherwise accounted for in UAM's typical one-mile resolution. For the attainment demonstration, the sum of the areawide and hot-spot component must be less than the NAAQS.

A modeling attainment demonstration is subject to several uncertainties. The meteorological and air quality inputs have their own associated uncertainties, both in measurement and in representativeness. In addition, not all variables can be measured for all hours, so default and interpolated values must be used. Processes such as chemical reaction and advection necessarily appear in the model in simplified form. The selected episodes may not represent all conditions conducive to high pollutant levels. Finally, the projection of the emissions is uncertain. In spite of these sources of uncertainty, photochemical grid modeling is the best tool that is available for determining the emission reductions that are needed for NAAQS attainment. However, refinements in model inputs that will occur over the next year are likely to change the combination and stringency of controls deemed necessary for attainment.

According to the EPA Guideline, control measures are to be used to adjust the emission inventory, which is then used as input to UAM. This captures the effect of the changes in spatial and temporal distribution of emissions. However, as of this writing the final modeling base cases are not ready for simulating the controls with UAM itself, since model inputs are undergoing revision to improve performance. Instead, for this FIP proposal, percent emission reduction targets were established using simulations of geographically and temporally uniform ("across-the-board") reductions. A series of these simulations are performed with various combinations of VOC and NO_X reductions. By interpolation, percent reductions of emissions of both pollutants that result in ozone concentrations less than the NAAQS are determined. Similarly, for carbon monoxide various across-the-board reductions of CO are simulated.

and then interpolated to find a target reduction that meets the CO NAAQS.

Though derived from simulation of the rectangular modeling domain, the targets are applied to the emission totals for just the nonattainment area, resulting in a maximum allowable level of emissions for the area. Attainment is demonstrated when the emissions from all sources after control measures are applied is less than this maximum. This method does not reflect the spatial and temporal variability in the effect of control measures, and so give a rougher estimate of controls needed than full UAM modeling would. Because of the limitations of this methodology, further analysis by the State and EPA may result in some changes in the control measures required between today's proposal and the final notice

(a) *Sacramento ozone*. The Sacramento area was classified as a "Serious" ozone nonattainment area based on a design value of .16 ppm recorded at the Folsom station. This was based on 1987–1989 data; the 1990–1992 value was also .16 ppm Exceedances of the ozone NAAQS occur in the Sacramento area about 15 times per year.

In order to simulate air quality for the SIP and other planning needs, CARB and the Sacramento local agencies started planning the Sacramento Area Ozone Study (SAOS) early in 1989, with intensive data collection performed during the summer of 1990. This involved an extended network of air quality and meteorological instruments, including on airplanes, to measure ozone and its precursors and also many meteorological inputs needed for UAM. The Sacramento Modeling Advisory Committee (SMAC) was established for technical oversight of the modeling effort, and includes regulatory, industry, and environmental group participants. CARB and its contractor, Systems Applications International, Inc., prepared a modeling protocol which was accepted by EPA as meeting EPA Guideline modeling requirements.

The episodes selected for modeling included days on which ozone maxima occurred in the Interstate 80 and Interstate 50 corridors, downwind of Sacramento. While the observed ozone peaks were less than the design value of .16, they are high enough to meet EPA guidelines for episode selection, especially considering the excellent database available for analysis. They had features typical of urban ozone episodes, including temperatures exceeding 100 °F, low winds, and a temperature inversion that tended to trap pollutants near the ground. Model performance statistics for a July 11–13, 1990 episode, while not outstanding, were within the performance goals set in EPA's Guideline. This episode's performance was judged adequate for determining emission reduction targets. A second episode, in August 1990, was strongly affected by upper air transport of pollutants into the area.

For the FIP proposal, only the July episode is being used. At the time the FIP proposal had to be designed, there were unresolved questions about model performance for the August episode. In addition, this latter episode was dominated by transport of pollutants from outside the Sacramento area. Through an analysis of wind trajectories, a contractor to EPA determined that at various times transport could occur from the San Francisco Bay Area in the west, and also from the San Joaquin Valley in the south. Conclusions on what additional controls, if any, are needed in these upwind areas will not be available for some time. In order to proceed with FIP development while the complex transport questions are resolved, EPA elected to proceed using the locally-generated ozone episode. The State's additional work on the August episode and/or work on the SARMAP modeling project may indicate what, if any, additional controls are needed in Sacramento or its upwind areas, in time for the final FIP. Since it is possible that transport analyses using SARMAP for the Sacramento area will not be ready even by the time of the final FIP, EPA invites comment on how transport should be addressed.

Using socioeconomic and VMT data from SACOG and other local planning agencies, an EPA contractor projected emissions to the year 1999. A series of "across-the-board" UAM simulations were then performed to determine an emission reduction target. This work showed that any of the combinations in the following table would result in attainment. Note that these are stated in terms of reductions from base-year 1990 levels, so that control measures would also have to make up for growth between 1990 and the attainment year, whether 1999 or 2005.

COMBINATIONS OF EMISSION REDUCTIONS FOR SACRAMENTO ATTAINMENT

VOC	71%	67%	61%	51%	40%
NO_x	10%	15%	20%	25%	30%

For the FIP proposal, anthropogenic emission reductions of 40 percent VOC and 30 percent NO_X were chosen as least disruptive of current residential, commercial, and industrial practices. Stated differently, for ozone attainment, 1999 or 2005 Sacramento area VOC emissions must be no greater than 60 percent of 1990 levels, and Nox emissions must be no greater than 70 percent of 1990 levels.

An additional simulation of interest involved the elimination of motor vehicle emissions. This translated to an ozone peak reduction about 5 percent greater than would be expected from an across-the-board reduction by the same amount of emissions. Thus the FIP may be somewhat conservative in assuring attainment, since it relies heavily on motor vehicle emission controls. This gives further assurance that the attainment demonstration method used will in fact result in attainment.

(b) Ventura ozone. Ventura County has been classified as a "Severe" ozone nonattainment area. The design value for the years 1987–1989 is based on the 0.17 ppm maximum hourly value recorded at Simi Valley during that period.

The FIP attainment demonstration modeling is based on air pollution episodes for which intensive field data were available through the 1984–1985 South Central Coast Cooperative Air Monitoring Project (SCCCAMP) field study. The SCCCAMP Exploratory Field Study consisted of intensive monitoring of meteorological and air quality variables over a geographical domain encompassing Ventura County as well as the southern half of Santa Barbara County. The study produced higher quality data than available through routine monitoring activities in the area, and thus provides a much more reliable basis for Urban Airshed Modeling (UAM) than more recent episode data Two SCCCAMP episodes, September 5–7, 1984, and September 16–17, 1984, were selected from the period of the study. Both of these episodes have ozone concentration maxima near the area's current ozone design value. As a result, the age of this data should not detract from the validity of the modeling.

Previous analysis of the episodes was used to establish "across-the-board" reduction targets of 40 percent VOC and 40 percent NO_x from a 1987 emissions baseline in order to attain the ozone standard. This translates to emission targets of 57 tpd VOC and 46 tpd NO_x, which are used as the basis of the attainment demonstration provided in paragraph III.H.5. of this NPRM.

EPA plans, however, to significantly improve the attainment demonstration included in the final FIP notice. These improvements are discussed in the technical support document, and include reevaluation of the base-year emission estimates, modeling and attainment targets by the VCAPCD and its contractor, Alpine Geophysics, partially funded by grants from EPA. When performance of the model is considered to meet Guideline criteria, the model will be used to project air quality in the year 2005, including the effect of various SIP and FIP control strategies. The results of this analysis will be used to reevaluate the amount of VOC and NO_x reductions needed from each source category to demonstrate attainment.

In addition, previous analysis has indicated that pollutant transport occurred from the South Coast Air Basin to Ventura during the September 5–7 episode. EPA is supporting, through grant funds to the SCAQMD, a study of the impact of the transport from the South Coast Air Basin to Ventura County.

(c) South Coast ozone. The South Coast Air Basin was classified as an "Extreme" ozone area, based on the design value of 0.33 ppm recorded at the Glendora monitoring site.

The attainment demonstration for South Coast is based on the air quality modeling performed by the SCAQMD in 1991, potentially enhanced by the addition of several additional ozone episodes. The SCAQMD's 1991 modeling covered three episodes (June 1985, August 1987 and June 1987). Based on that effort, "across-the-board" reductions of VOC and NO_x of 90 percent and 70 percent respectively were determined to be sufficient to attain the ozone standard.

More recently, several modifications have been made to the original modeling effort, including raising the height of the top of the modeling grid, expanding the domain to the east to encompass the entire non-attainment area, and lowering the level of pollutants entering the domain through the top boundary of the model. These changes will be incorporated into the 1994 SIP modeling efforts and the FIP attainment demonstration.

In addition, the possibility of modeling three new episodes is being explored (July 13–15, 1987, September 7–9, 1987, and October 7–9, 1992). The September 7–9, 1987 episode represents meteorological conditions conducive to high ozone in Orange County. The October 7–9, 1992 episode is a weekend episode. The performance of the additional episodes is being evaluated and improvements are being made. However, the performance may not be adequate in time for the final FIP attainment demonstration. In case the additional episodes do not meet Guideline performance criteria, the final FIP attainment demonstration will be based on the original three episodes.

The 1991 modeling effort, updated to include the model improvements as well as additional episodes, if warranted, will provide the base case for the final FIP attainment demonstration.

(d) South Coast CO. The South Coast Air Basin was classified as a "Serious" area for CO, based on a design value of 23.4 ppm measured in 1988 at the Lynwood site. More recent data (1991–1992) indicate a lower design value of 16.4 ppm.

In preparing the 1992 CO SIP attainment demonstration, the SCAQMD selected a December 5–7, 1989 episode for modeling because this episode included the first and second highest 8-hour average CO concentrations for the years 1989–1990: 21.75 ppm and 18.3 ppm. High 8-hour CO concentrations often occur during periods of high emissions, low wind speeds, and poor vertical dispersion (e.g. a temperature inversion).

The CO modeling for the FIP proposal is based on the April 29, 1993 correction to the November 1992 CO SIP. The hot-spot modeling, which predicts high CO concentrations at intersections, was performed using the CAL3QHC model at four intersections. For the 2000 attainment year, the traffic volume used was the same as that used for 1989, based on the assumption that the traffic at the most heavily travelled intersections had reached a maximum and could not be increased.

The results of the base case episode areawide and hot-spot modeling are shown in the table below.

EIGHT HOUR AVERAGE CARBON MONOXIDE CONCENTRATIONS (IN PPM) AT VARIOUS INTERSECTIONS FOR THE YEAR 1989

Intersection	Max area-wide	Max hot-spot	Combined result
Long Beach and Imperial Highway	18.5	6.2	24.7
Wilshire and Veteran Avenue, Westwood	10.6	8.2	18.8
Sunset and Highland, Hollywood	13.4	8.3	21.7
La Cienega Boulevard and Century Boulevard	17.5	9.9	26.4

The emission inventory was projected to the year 2000 by the CARB using VMT projections provided by SCAG. The air quality for the year 2000 was predicted, using the UAM with the projected emission inventory and meteorological conditions from the selected episode. The projected air quality, displayed in the table below, shows that the NAAQS of 9 ppm would be attained at all sites based on the application of three control measures and considering the combined impact of the areawide and hot-spot modeling results.

Projected Eight Hour Carbon Monoxide Concentrations (in ppm) at Various Intersections for the year 2000 with the implementation of the CARB's LEV program, oxygenated fuels program and enhanced I/M program.

Intersection	Max area-wide	Max hot-spot	Combined result
Long Beach and Imperial Highway	7.6	1.0	8.6
Wilshire and Veteran Avenue, Westwood	4.4	1.4	5.8
Sunset and Highland, Hollywood	5.7	1.5	8.2
La Cienega Boulevard and Century Boulevard	7.0	1.5	8.5

Based on modeling performed for the SCAQMD SIP for CO, an analysis of the "across-the-board" reductions of the overall CO emissions necessary to attain the NAAQS was performed, and compared to the emission reductions resulting from measures in the proposed FIP. A reduction of 45 percent of the overall CO emissions was determined to attain the CO standard. Baseline and projected CO emissions are shown in the table below.

BASELINE AND PROJECTED FUTURE CARBON MONOXIDE EMISSIONS IN THE SOUTH COAST BASIN (TONS/DAY)

Emissions scenario	On-road mobile	Other mobile	Area	Total
1990 Base Case	6629	417	38	7084
2000 with enhanced I+M/LEV	3842	470	37	4349
2000 with enhanced I+M/LEV and oxygenated fuels	3413	470	37	3920

The year 2000 case emissions with Enhanced I/M, LEV and Oxygenated Fuels program are 3920 tons/days, a 45 percent reduction from the 1990 base case.

This analysis, based on "across-the-board" assumptions, indicates that the proposed measures will attain the standard by the year 2000. As for Sacramento and Ventura, the final FIP may be adjusted as appropriate to reflect further analysis by the State and EPA, if that analysis shows that different target levels and control strategies are technically more appropriate to show attainment.

4. State and local control measures. For all three FIP areas, most existing State and local control measures are included in the emission projections used to compare to the target emission levels. However, since EPA uses the CAL15a motor vehicle emissions model and its own non-road mobile source inventory, the associated emission reductions may not match those assumed by California in its own projected inventories.

5. Attainment demonstrations. Emission reductions projected from proposed FIP measures are discussed in sections 3.C through 3.G of this NPRM. To show attainment, the projected ton/day benefits of the FIP control measures are subtracted from the baseline inventories for the appropriate attainment year in each FIP area. The results are then compared to the attainment target in each area as discussed in section 3.H.3 of this NPRM. This calculation is provided in detail in the technical support document.

I. Transportation Conformity

Section 176(c) of the Clean Air Act requires transportation plans, transportation programs, and transportation projects which are funded with title 23 U.S.C. or Federal Transit Act funds or approved by the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) of the U.S. Department of Transportation (U.S. DOT) to conform with the applicable implementation plan for a nonattainment area. After promulgation, the FIPs will be part of the applicable ozone and CO implementation plans for the Sacramento, Ventura, and South Coast nonattainment areas, and will therefore add certain criteria which must be satisfied before the MPOs for these areas or FHWA/FTA can find that a transportation plan, program, or project conforms. However, these additional criteria are limited, as explained below.

The proposed FIP will not alter the Criteria and Procedures for Determining Transportation Conformity which EPA promulgated on November 24, 1993 (58 FR 62188). The FIP itself will not impose any restriction on the selection and implementation of transportation projects which can be found to conform under the terms of the promulgated transportation conformity criteria and procedures. Furthermore, the FIP does not direct the expenditure of funds designated under title 23 U.S.C. or the Federal Transit Act to any specific projects or type of project.

The State of California is responsible for submitting to EPA a conformity SIP revision by November 24, 1994, as required by 40 CFR 51.396. The conformity SIP revision is a requirement added in the 1990 Clean Air Act Amendments, is not mentioned in any of the settlement agreements, and therefore is not an obligation for EPA under the court orders.

Because it establishes strategies for Sacramento and Ventura to attain by 2005, the FIP will establish motor vehicle emissions budgets for VOC and NO_X for those FIP areas for the year 2005. In addition, the CO attainment demonstration will establish a CO budget for the year 2000 for the South Coast. These budgets play no role for the purposes of conformity until the FIP is promulgated. (This is in contrast to state-submitted budgets, which do play a role upon submission to EPA.) Conformity determinations made after the FIP is promulgated must use the FIP's budgets for the years indicated and any subsequent analysis years, until the SIP process establishes different budgets for subsequent years (e.g., state-submitted plan with budgets is approved). At a minimum, the conformity of the transportation plan must be redetermined using the FIP's budget within 18 months of the FIP's promulgation (see 40 CFR 51.400(b)(3)(iii)). The conformity of transportation improvement programs must be redetermined within six months following the adoption of a transportation plan (see 40 CFR 51.400(c)(3)).

There is some ambiguity in Clean Air Act section 176(c) and EPA's conformity rule regarding whether the proposed FIP, when final, will create VOC and NO_X budgets for the South Coast, and if so, for which years. While the FIP analysis contains emissions projections for 2000, 2005, and 2010, EPA believes that its application of Clean Air Act section 182(e)(5) to the FIP means that the South Coast FIP will not specifically allocate 2010 emission reductions between transportation and other sources. Furthermore, there are no specific emission reduction requirements that the FIP must satisfy in 2000 and 2005. Therefore, the South Coast FIP will establish no emissions budget binding on the MPOs or U.S. DOT.

The FIP will not alter the fact that the motor vehicle emissions budgets for 1996, which are contained in the 15 percent SIPs submitted by California for these three nonattainment areas (required by Clean Air Act section 182(b)(1)(A)), must be used for the purposes of conformity according to the requirements of 40 CFR 51.448. If EPA disapproves such a SIP or finds it incomplete, the 1996 emissions budget shall be used for the purposes of conformity for 12 months following the final disapproval or incompleteness finding, if EPA explicitly states that the SIP submittal would have been considered approvable or complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form (see 40 CFR 51.448(a)(3) and (c)(1)(iii)). However, if there are other reasons for the disapproval or incompleteness finding, time clocks will be started after which new plans and TIPs may not be found to conform and existing plans and TIPs will lapse.

Budgets contained in any future state-submitted attainment and post-1996 RFP plans must also be observed. Such state-submitted budgets may not replace budgets established by the final FIP until the state-submitted budgets have been approved by EPA.

Demonstrations of conformity to the FIP may use the same motor vehicle emissions model which EPA uses to demonstrate attainment in the final FIP, unless EPA announces a revision to the model. (In that case, a grace period for use of the latest motor vehicle emissions model applies, as described in 40 CFR 51.414.) The final FIP will be based on a VMT growth estimate which is the MPO's own growth projection at the time of FIP promulgation. Difficulty demonstrating consistency with the FIP's budget would therefore most likely be due to VMT growth which is higher than the MPO expected.

The FIP does not propose any TCMs that are eligible for funding under title 23 U.S.C. or the Federal Transit Act. The Employee Commute Options program proposed for Sacramento might be eligible for such funding if it were adopted by local authorities, but EPA itself is not an eligible recipient. Therefore, determinations of conformity to the FIP will not have to demonstrate timely implementation of TCMs in the FIP.

J. FIP Implementation by State and Local Agencies

Congress has determined that the primary responsibility for air pollution control rests with state and local governments. CAA section 101(a)(3). Moreover, as discussed elsewhere in this NPRM, EPA lacks many of the authorities, instruments, and established local and regional organizations and trained staff to administer, on a daily basis, comprehensive air pollution control initiatives such as these FIPs, which affects hundreds of thousands of individual sources and activities. Massive federal intrusion would inevitably result if EPA were to shoulder the chief burden of enforcing the California FIP.

Accordingly, EPA has attempted to design the FIP rules to ensure that, wherever possible, State and local implementation is encouraged and facilitated by the FIP's regulatory approach. Thus, for example, the FIP generally employs local California rule organization and terminology in the proposed stationary and area source rules, including the new source review permitting rules (40 CFR 52.284 through 52.289, and 52.304).

1. State and local obligation to incorporate FIP requirements in operating permits. In Title V of the 1990 CAA Amendments, Congress established an important new state responsibility. Title V and EPA's implementing regulations require state and local air pollution control agencies to adopt and submit for EPA approval a regulatory program for issuing operating permits to major stationary sources, sources covered by emissions standards for hazardous air pollutants pursuant to section 112 of the Act, sources covered by any new source performance standards set under section 111 of the Act, and affected sources under the acid rain program. The operating permits must contain necessary limits and conditions to assure compliance with all applicable requirements of the Act, including all provisions of the applicable SIP and the FIP. Title V includes specific requirements for EPA oversight and for sanctions against states for failure to adopt, administer, or enforce the operating permit program.

Title V establishes the following timeframes for state and EPA action:

1. Program submittal by November 15, 1993;
2. EPA approval or disapproval within one year of program submittal, with the possibility of interim approval for up to two years;
3. EPA application of sanctions for failure to submit approvable programs, and establishment of a federal program by November 15, 1995, if a state or local program has not been approved;
4. Source operating permit application within one year after EPA approval (or interim approval) of a state or local program, or after EPA establishment of a federal program;
5. Issuance of all permits within three years after EPA approval of a state or local program or promulgation of a federal program; and
6. Operating permit application within one year of commencement of operation for new sources subject to New Source Review.

On July 21, 1992, EPA promulgated 40 CFR part 70, specifying the minimum elements of state operating permit programs (57 FR 32250). EPA's promulgation makes clear the Agency's interpretation that approvable operating permit programs must provide that the applicable permit include FIP emission limitations and other FIP requirements (57 FR 32258).

As noted, operating permits are required for all "major" stationary sources, as well as air toxics sources subject to requirements under section 112 of the Act (unless exempted), and sources subject to any new source performance standard under section 111.[105] In ozone nonattainment areas, section 182 defines major source according to the area's classification and the source's potential to emit VOC or NO_X: 50 tons per year in "Serious" areas, 25 tons per year in "Severe" areas, and 10 tons per year in "Extreme" areas.[106]

Consequently, each air pollution control agency in the FIP areas must, by virtue of Title V, incorporate and enforce all applicable FIP requirements in operating permits for every source with a potential to emit at or above the level prescribed in section 182 for the area's classification. Title V and EPA's operating permit regulations do not, however, mandate adoption of an operating permit program for nonmajor source categories (for example, in "Severe" areas, sources with a potential to emit less than 25 tons per year of VOC and NO_X). Nevertheless, some nonmajor sources are subject to operating permit requirements because they are major sources of air toxics,[107] and for these sources all applicable FIP requirements must be included in the permit and enforced by the air pollution control agency.

2. Full transfer of authority through delegation. EPA hopes that the State and local air pollution control agencies will quickly adopt SIP rules that are identical or comparable to the FIP rules, and which could be approved before the FIP regulation is scheduled for initial

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[105] Part 70 provides that certain nonmajor sources, including those subject to standards under section 111 and 112, may be exempted from the obligation to obtain a part 70 permit until EPA completes a rulemaking to determine how the program should be structured for nonmajor sources Section 70.3(b)(1).

[106] For this purpose, Title I treats VOC and NO_X sources somewhat differently. In areas qualifying for an exemption under section 182(f), NO_X sources with the potential to emit less than 100 tons per year would not be considered major sources. None of the three FIP areas covered in this Notice, however, qualify for the exemption, and thus the major sources cutoff is the same in these areas for NO_X as for VOC.

[107] Certain nonmajor sources subject to section 111 or 112 standards may also be subject in the future to air toxics and operating permit requirements. New section 112 standards may apply to area sources (nonmajor) as well as major sources; EPA will determine whether operating permits are required for these sources when the standards are promulgated

implementation. If a State or local agency adopts an essentially indistinguishable rule, EPA intends to delegate full implementation responsibilities to the agency immediately following State or local adoption, without opportunity for public comment, unless the delegation is under the authority of section 112, and not covered by a good cause exception. See EPA's enabling guidance for section 112(1). EPA will publish a notice of this delegation in the **Federal Register** and will otherwise try to ensure that affected sources are aware of that a State or local agency has assumed program implementation responsibilities. Subsequently, EPA will take normal SIP approval action on the State or local substitute rule, simultaneously rescinding the FIP rule in the jurisdiction's control area.

As noted in the discussion above regarding the California consumer product rules, EPA is issuing federal rules for these categories because the State has so far chosen not to submit the rules for SIP action. Since EPA's FIP rules are essentially identical, EPA intends to delegate to CARB the authority to implement the program if CARB has not yet submitted its own rules for SIP approval, and if California adopts adequate authority to implement the FIP. In the event that CARB fails to implement its own rules or amends the State's rules so that they become less stringent than the otherwise applicable federal rule, EPA will continue to directly enforce the provisions of the FIP consumer product rules.

In the future, EPA intends to promulgate in 40 CFR part 71 provisions for delegation of certain federal operating permit program responsibilities to State and local agencies with adequate authority to administer the program but lacking EPA approval of the State or local program. EPA could use this procedure to grant State and local agencies the authority to issue operating permits prior to full EPA approval of the agencies' permit program.

3. Full transfer of authority through SIP approval. A State or local agency may adopt a rule that is comparable to the FIP rule in emissions capture, but is significantly different in approach. In that event, immediate transfer of implementation and enforcement authority through delegation is inappropriate without opportunity for public review and comment. Instead, EPA will try to "parallel process" SIP approval and FIP rescission as the means to expedite State or local assumption of authority.[108] This will minimize the time during which affected sources are subject to overlapping and conflicting obligations, and during which EPA and the State or local agencies must undertake redundant permitting, compliance plan review, and enforcement.

4. Partial transfer of authority through delegation. To the extent that State law allows agencies to perform certain implementation responsibilities for FIP rules even without State and local rule adoption, EPA will encourage these agencies to agree to undertake, on EPA's behalf, administrative and substantive roles of FIP implementation consistent with the agencies' authorities and capabilities. These roles could include: procedural and engineering review of permit applications and compliance plans, preparation of draft permit and plan approval or disapproval actions, administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. Under these circumstances, EPA would retain the responsibility for actual federal permit issuance, where the FIP requires permits, and for enforcement actions against sources violating FIP provisions. EPA would also maintain direct authority to terminate, modify, or revoke permits, as well as responsibility for disapproving compliance plans.

Partial transfer of FIP implementation authorities would be effected through delegation by MOU between the EPA Region IX and the air pollution control officer or executive officer of the responsible agency. EPA will announce the terms of the partial delegation in a **Federal Register** notice, and will inform affected sources, with or without additional notice and opportunity for comment.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory actions are "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory actions" as ones that are likely to result in rules that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that the proposed Federal Implementation Plans are "significant regulatory actions". As such, these actions were submitted to OMB along with regulatory impact assessments of the proposed actions and salient alternatives.

The estimated annualized control cost to meet the Ozone NAAQS is $150 million in the Sacramento Metro Area as well as in Ventura County with 2005 as the attainment date for both areas. The estimated annualized control cost to meet the Ozone NAAQS in the South Coast Air Basin is $3 to $4 billion with 2010 as the attainment date. The incremental cost to achieve the Carbon Monoxide NAAQS in the South Coast Air Basin is zero. The enhanced inspection and maintenance provisions to achieve the Ozone NAAQS will together with other acceptable state measures also accomplish the Carbon Monoxide NAAQS objective. The estimated cost for the enhanced inspection and maintenance provision was reflected in the cost to achieve the Ozone NAAQS for the South Coast. The attainment date for the Carbon Monoxide NAAQS is 2000.

However, the environmental and economic gains from the Federal Implementation Plans are real and potentially large in terms of the human population affected as well as the amount of crop and forest acreage affected. Furthermore, because of the jointness of certain control measures, benefits will not be limited to reductions in ozone and carbon monoxide concentrations. Benefits will also accrue in the form of reductions in nitrogen dioxide, particulate matter and air toxics concentrations.

Scientific and data limitations preclude a quantitative and comprehensive assessment of benefits. Without such an assessment, the Agency cannot determine whether these FIPs are allocatively efficient.

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[108] In parallel process SIP approval, EPA, with the consent of the State, proposes approval of draft rules which may not yet have been fully adopted and submitted by the State. Final SIP approval could not occur until after all procedural SIP requirements (including State adoption and SIP submittal) have been completed.

Due to the short deadlines in the court ordered schedule for this rulemaking, OMB did not have time to carry out its normal review under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 and 1992 EPA guidelines require the identification of potentially adverse impacts of Federal regulations on small entities. Small entities include small businesses, organizations, and governmental jurisdictions. These proposed rules may adversely affect such entities. Consequently, a Regulatory Flexibility Analysis is required and has been prepared.

The potential impact of the proposed rules will vary among affected entities both large and small. In some cases, cost savings may accrue to affected entities. In other instances, cost increases may be relatively modest. In other instances, control costs may exceed 10 percent of anticipated sales. However, due to uncertainties regarding source identification, the Agency cannot distinguish between small emission sources owned by small entities and those owned by larger firms. Furthermore, uncertainties in the cost and process economics data preclude specific findings on where averting and mitigating measures are warranted.

C. Paperwork Reduction Act

The Paperwork Reduction Act requires that a Federal agency prepare an Information Collection Request to obtain OMB clearance for any activity that will involve collecting information from ten or more non-Federal respondents. The proposed Federal Implementation Plans necessitate preparation of an Information Collection Request. The information requirements associated with the proposed rules include reporting, monitoring, and recordkeeping and will affect the private sector as well as local, state, and Federal authorities.

The information collection requirements have been estimated and summarized in the Information Collection Request and forwarded to OMB for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Until OMB approves the Information Collection Request, the reporting, monitoring, and/or recordkeeping aspects of these rules are not effective. OMB is currently reviewing the Information Collection Request and supporting documentation. Given the potential for changes in elements of the package prior to promulgation, OMB will not approve the Information Collection Request until that time.

D. Federalism Implications

A federalism assessment has not been conducted under Executive Order 12612. However, federalism effects have been considered through the development of the proposed rules and will continue to be addressed in the period between proposal and promulgation. In particular, the Agency has worked closely with the local and state authorities to reflect their concerns in the fashioning of these rules.

Appendix I. Enhanced In-Use Compliance Program

A. Light-Duty Vehicles and Trucks

1. Introduction

As described in Section III.D.2.a and b of this preamble, VOC and NO_X emissions from light-duty vehicles (LDVs) and trucks (LDTs) represented significant fractions of the total VOC and NO_X emission inventories in the three FIP areas in 1990. Light-duty vehicles have remained a major source of emissions even though emission standards for light-duty vehicle exhaust hydrocarbon emissions have dropped more than 90 percent since 1970. The continuing high emissions derive from increases in VMT, the long life of vehicles in the temperate California climate and the failure of many current in-use vehicles to meet the standards to which they are certified when new.

California has adopted very stringent light-duty vehicle emission certification standards known as the LEV program. This program will assure that new vehicles sold in California will have very low emissions. This will be accomplished through use of advanced emission controls and a new onboard diagnostic (OBD) requirement which is intended by CARB to identify for the driver and the repair technician whenever an emission control system has degraded sufficiently to increase emissions 50 percent above the certification standards.

EPA expects the California Low Emission Vehicle (LEV) program will substantially reduce emissions of cars and light-duty trucks, compared to the federal standards. However, despite the use of advanced technologies and the OBD requirements, CARB projects LEVs will exceed their certification standards in-use, although, for the reasons noted in Section III.D.1.a(2), by a much smaller margin than has occurred in the past. Emissions above the certification standards, referred to as excess emissions, will occur because some models may experience more in-use deterioration than expected, or because individual vehicles experience component failure or improper maintenance which is not immediately corrected by the various existing in-use compliance programs, including enhanced I/M. Because the magnitude of the emission reductions needed for attainment is so great, the adoption of further measures to reduce these remaining excess in-use emissions will help reach attainment of the ozone standard.

EPA is therefore seeking comments on the need for and benefits of adopting an enhanced in-use compliance program which would provide extra emission reductions above and beyond the substantial reduction provided by the California LEV program, and cause in-use emissions to approach the certification standards.

EPA believes that much of the responsibility to ensure low in-use emissions must rest with vehicle manufacturers, since owners, although they have a significant part to play cannot ensure performance that is not available from the hardware. Traditionally, the incentive for manufacturers to build emissions durability into their vehicles has been limited. Owners do not have the ability, nor often the interest, to ensure their emissions control equipment is performing properly.

This section presents EPA's proposed enhanced in-use compliance program for LDVs, LDTs and certain medium-duty vehicles (MDVs). MDVs, as defined by CARB, have a gross vehicle weight rating (GVWR) between 6000 and 14,000 pounds. For those MDVs above 8500 pounds GVWR, CARB gives manufacturers the option of certifying as a specific and complete vehicle, or as a heavy-duty engine which can be placed in any heavy-duty vehicle. Since MDVs certified as complete vehicles are much more analogous to LDVs and LDTs than heavy-duty engines, chassis-certified MDVs are being included here in the enhanced in-use compliance program for light-duty vehicles and trucks. The enhanced in-use compliance programs for heavy-duty engines and nonroad engines are similar in purpose and are presented in Sections B. and C. of this appendix below.

The light-duty enhanced in-use compliance program attempts to encourage manufacturers to build additional durability into their emission control equipment by increasing the manufacturers responsibility for repairing problem vehicles identified by the inspection and maintenance (I/M) and recall programs. The I/M program is revised by shifting responsibility for repair to manufacturers if a significant percentage of vehicles are not performing close to certification levels in use. The potential responsibility shift should encourage manufacturers to build additional durability and improved repairability into their vehicles. The lower allowable I/M emission levels will ensure that vehicles are repaired if not performing satisfactorily. Also, the recall program is extended for the full useful life and all vehicles are tested and included provided they have not been obviously tampered or abused. Additionally, MDV emissions standards are reduced as significantly as light-duty standards have already been reduced.

2. New Vehicle Program

New vehicle certification, and particularly the associated emission standards, play an important role in defining the types of emission control hardware placed on vehicles. These standards also essentially define the best level of emission control that can be expected from in-use vehicles. The majority of current in-use emissions come not from vehicles meeting their emission standards, but from vehicles which exceed their standards. EPA believes that the CARB LEV program with enhanced I/M will substantially reduce the occurrence of vehicles which exceed their standards by a substantial margin. However, emission predictions indicate that on average vehicles will not meet their emission standards in use. Therefore, the focus of EPA's proposed enhanced in-use compliance program is on two programs, recall and I/M, which can provide additional incentives to vehicle manufacturers to build the lowest emitting vehicles possible. However, no changes to CARB's motor vehicle control program are necessary to implement these two approaches to an enhanced in-use compliance program for new LDVs, LDTs and MDVs.

EPA is proposing that the enhanced in-use compliance program be applied to all new vehicles that are defined under California regulations as passenger cars, light-duty trucks, or medium-duty vehicles, beginning in model year 1999. This would include all on-highway vehicles up to 14,000 pounds GVWR, with the exception of those MDVs which are certified as engines under both CARB's program and EPA's enhanced in-use compliance program described in Section B. Any of these vehicles offered for sale or first registered in California would need to comply with the enhanced in-use standards described below.

The application of this program on a statewide basis is considered necessary because vehicle traffic flow into and out of the areas covered by the FIPs is large. Any program constrained to only the FIP areas would be extremely difficult to implement and enforce. EPA is concerned that the benefits of the enhanced in-use compliance program may be diminished if a large number of vehicles first registered in other states are brought into California. These vehicles may be less expensive because they would not have to meet enhanced in-use or California low emission vehicle standards. EPA proposes, therefore, very strict restrictions on importation of 49-state vehicles (Section d.2.h. of the Preamble).

Because new vehicle programs such as this one are relatively slow in achieving their full emission reduction benefit due to the time required for fleet turnover, EPA solicits comments on the feasibility of implementing this program earlier, such as via a partial phase-in in model year 1998. The emissions reduction achieved by earlier implementation could reduce the need for increased stringency in other source categories.

As described below, the proposed enhanced in-use compliance program concerns only non-methane hydrocarbon (NMHC) and NO_X emissions, and does not cover CO emissions. California is projected to be in attainment with the NAAQS for CO by 2000 as required by the Clean Air Act, before the enhanced in-use compliance program would have had a chance to achieve any significant CO emissions reductions. In addition, the FIP addresses only ozone non-attainment and thus focuses only on ozone precursors, NMHC and NO_X.

EPA's proposed requirements for the enhanced in-use compliance program are presented in Sections A.(2)(a) and A.(2)(b), respectively. Descriptions of new recall and I/M requirements under the enhanced in-use compliance program follow in Sections A.(3) and A.(4).

a. *New light-duty vehicles and light-duty trucks.* California's LEV program greatly reduces the emissions permitted from new LDVs and LDTs. CARB's 100,000 mile NMOG and NO_X LEV standards for LDVs and small LDTs are 0.09 and 0.3 gram per mile (g/mi), respectively. Higher numerical standards apply to Transitional LEVs (TLEVs) and lower numerical standards apply to Ultra LEVs (ULEVs). By model year 2000, CARB's fleet average NMOG standards require the average vehicle to be slightly below the emission standards applicable to LEVs. Assuming a reactivity adjustment factor of 0.98 for NMOG (that for California Phase II reformulated gasoline), CARB's LEV standards are 70 and 50 percent below the Federal Tier I NMHC and NO_X standards, respectively. By model year 2003, CARB's fleet average NMOG standard for LDVs and small LDTs is even more stringent, 0.062 g/mi.

Under the enhanced in-use compliance program, EPA proposes that LDVs and LDTs comply with the in-use composite NMHC and NO_X standards contained in Table AI.A–1. EPA is proposing a single composite NMHC recall standard (for each vehicle class) that will apply throughout the useful life of the vehicle. The proposed NO_X standards for post-1998 model year LDVs and LDTs are the same as CARB's standards for LEVs. To afford a smoother transition to this program, EPA proposes that up to 25 percent of a manufacturer's 1999 model year LDV and LDT sales fleet may comply with "transitional" enhanced in-use standards also contained in Table AI.A–1. The transitional enhanced in-use NO_X standards are the same as CARB's NO_X standards for TLEVs. EPA is proposing this transition, because CARB's fleet average NMOG standard for the 1999 model year will still allow a significant number of TLEVs to be sold. However, after 1999, the fleet average NMOG standard becomes sufficiently stringent to prohibit any significant number of TLEVs from being sold. Given that the great majority of vehicles will be meeting the NO_X standards applicable it is not clear why any vehicles should be able to be sold which only meet the significantly less stringent TLEV standafds (usually a factor of two higher than the LEV standards).

PROPOSED CERTIFICATION AND IN-USE STANDARDS FOR POST-1998 MODEL YEAR LDVS AND LDTS

Vehicle class	Category	Composite NMHC (g/mi)	NO_X (g/mi)	
			Half life	Full life
LDVs and LDTs (0–3750 lbs LVW)	Enhanced In-use	0.20	0.20	0.30

PROPOSED CERTIFICATION AND IN-USE STANDARDS FOR POST-1998 MODEL YEAR LDVS AND LDTS—Continued

Vehicle class	Category	Composite[a] NMHC. (g/mi)	NOx (g/mi)	
			Half life	Full life
LDTs (3751–5750 lbs LVW)	Transitional	0.29	0.40	0.60
	Enhanced In-use	0.26	0.40	0.50
	Transitional	0.33	0.70	0.90

[a] Exhaust NMHC emissions plus evaporative hydrocarbon emissions; evaporative emissions include running loss, diurnal, hot soak emissions expressed on a gram/mile basis.

For NMHC, EPA is proposing a composite (exhaust plus evaporative) NMHC standard, as opposed to separate standards for exhaust NMHC emissions and the many types of evaporative-related NMHC emissions. This composite standard will allow greater flexibility, as well as reduced costs, while ensuring that the necessary in-use performance is attained.

In order to determine compliance with a composite NMHC standard, it was necessary to develop a method for combining exhaust emissions and the three different components of evaporative emissions (i.e., diurnal and hot soak emissions (measured on a gram/test basis) and running loss emissions (measured on a gram/mile basis)). Resting loss emissions are another form of evaporative emissions. However, there is no current standard or separate test for resting losses because they are measured during the various parts of the evaporative emissions test procedure, particularly during the diurnal emission test, and are accounted for in those results.

In support of its efforts to model in-use emissions (e.g., MOBILE5a), EPA has developed a methodology for combining exhaust and evaporative emissions into a composite emission factor. It essentially consists of converting those components not measured on a gram per mile basis to grams per mile and then summing the individual components. The key conversion factors are the number of trips per day (for hot soaks) and the number of miles driven per day (for hot soaks and diurnals). Estimates of these factors over the useful life of LDVs and LDTs were taken from MOBILE5a. Their use in converting individual NMHC emission levels into a single composite level or standard is shown in the equation below.[109]

$$\begin{array}{c}\text{Composite}\\ \text{Emissions}\\ \text{(g/mi)}\end{array} = \begin{array}{c}\text{Exhaust}\\ \text{(g/mi)}\end{array} + \frac{\left[\begin{array}{c}\text{Diurnal}\\ \text{(g/test)}\end{array} + \begin{array}{c}\text{Hot soak}\\ \text{(g/test)}\end{array} \times \left(4.2\,\frac{\text{trips}}{\text{day}}\right)\right]}{28.28\,\frac{\text{miles}}{\text{day}}} + \begin{array}{c}\text{Running}\\ \text{Loss}\\ \text{(g/mi)}\end{array}$$

EPA has not included refueling emissions in this equation given the uncertainty with respect to the use of onboard vehicle controls in California. EPA requests comments on their exclusion and on the option of including refueling emissions in the composite standard should California vehicles be subject to the onboard refueling requirement.

Refueling emissions would be relatively simple to include, as refueling emissions in terms of grams per gallon could simply be divided by fuel economy to obtain NMHC emissions per mile. The fuel economy used could either be measured over the FTP when exhaust NMHC and NO_x were measured (an urban only fuel economy) or taken from the certified urban/rural composite fuel economy value for that engine family. Including refueling emissions in this manner would give some credit for high efficiency vehicles, but would still represent additional testing and resultant cost. Given the high level of refueling emissions control expected with onboard controls, EPA believes that including refueling emissions in the composite standard would not justify the cost of the additional testing.

EPA believes that the composite NMHC standards contained in Table AI.A–1 are feasible, particularly given the flexibility afforded in trading off exhaust and evaporative emissions. For example, a vehicle meeting the current CARB LEV standards for exhaust NMOG emissions and CARB's evaporative emission standards applicable to all LDVs and LDTs would comply with the proposed enhanced in-use standards. The CARB LDV/LDT standards are 0.05 gram/mile for running losses and a total of 2.0 grams/test for diurnal and hot soak emissions combined. A vehicle meeting the running loss standard would contribute 0.05 g/mi or less to the equation presented above. The contribution of a vehicle meeting the 2.0 grams/test emission standard would depend on the breakdown between diurnal and hot soak emissions. The newly revised CARB and EPA evaporative emissions test procedures contain a one hour hot soak test and a multi-day diurnal test. This requires very stringent control of resting loss emissions, which occur during both tests. As the 2 gram standard requires the almost total elimination of NMHC emissions through the evaporative emission control canister, EPA expects that the bulk of in-use emissions will be resting losses. Given that hot soak emissions only include a single hour of resting losses, albeit at somewhat elevated temperatures, EPA expects that hot soak emissions will be very low relative to diurnal emissions and that the bulk of the 2 grams will be diurnal emissions. Specifically, assuming that vehicles meeting the 2.0 grams/test evaporative emission in-use emitted 1.9 grams/test diurnal and 0.1 gram/test hot soak, the overall contribution in the above equation would be 0.082 g/mi. With running losses of 0.05 g/mi, this represents a total non-exhaust NMHC emission of 0.132 g/mi.

CARB's 50,000 and 100,000 mile LDV NMOG standards for LEVs are 0.075 and 0.09 g/mi, respectively. While CARB's NMOG measurements include the direct measurement of aldehydes, which are undermeasured by 1–2 percent in the measurement of NMHC by the flame ionization detector (FID), this is balanced by the 0.98 reactivity adjustment factor allowed for CARB Phase II reformulated gasoline. Thus, numerically, for gasoline vehicles at least, NMOG and NMHC emissions will be roughly equivalent. A LDV certified to CARB's LEV standards which just met its exhaust and non-exhaust emission standards in use would exceed the proposed enhanced in-use composite NMHC standards by 0.007 g/mi at 50,000 miles and 0.022 g/mi at 100,000 miles. EPA believes that it is extremely unlikely that a vehicle would just meet all 4 of these NMHC emission standards simultaneously during certification with all of its emission controls performing as designed. Manufacturers utilize significant safety margins in certification to avoid the costs of modifying their design and retesting. Therefore, EPA does not expect that emission levels in certification will have to be reduced to meet the enhanced in-use standards relative to those otherwise occurring. The feasibility of meeting these standards in use is discussed in the next section addressing recall standards and testing.

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[109] "Average Trips/Day and Miles/Day in MOBILE5 for Light Duty Autos," EPA memorandum from Lois Platte to the Record, January 4, 1994.

As noted earlier in describing the enhanced in-use NO_x standards, EPA is proposing to allow up to 25 percent of a manufacturer's 1999 model year sales to meet transitional enhanced in-use standards. Comparing EPA's proposed transitional enhanced in-use standards to CARB's individual emission standards for non-exhaust NMHC and CARB's exhaust NMOG emission standards for TLEVs results in essentially the same comparison as that shown above for LEVs. EPA requests comments on the proposed enhanced in-use standards for LDVs and LDTs and on the methodology used to combine exhaust and non-exhaust NMHC emissions.

Manufacturers will have to demonstrate in their application for certification to EPA that each of their vehicle engine families will comply with the enhanced in-use standards described above, as well as the I/M standards described in Section A.(4) below. As discussed in Section A.(4), the enhanced in-use I/M standards are numerically less stringent than those described above. Also, the I/M 240 test does not include cold start emissions, which form the bulk of FTP NMHC emissions. Thus, EPA expects that the demonstration of compliance with the enhanced in-use standards will focus on those standards described above. For the great majority of post-1998 model year California vehicles, this demonstration will consist of the submission of information already required by CARB along with the calculation of composite NMHC emissions using the equation presented above and a showing that composite NMHC and NO_x emissions comply with the enhanced in-use standards contained in the table "Proposed Certification and In-Use Standards for Post-1998 Model Year LDVs and LDTs." The application would also include such other information as necessary to show that the vehicle engine family will meet these standards under typical in-use conditions (i.e., absent obvious tampering or abuse) over its full useful life, which would be enforced through the enhanced in-use compliance recall program.

As mentioned above, these standards apply to vehicles certified to operate on any fuel: Gasoline, diesel fuel or otherwise. This should not be a problem for hydrocarbon fuels such as natural gas or propane, as NMHC is an appropriate measure of their organic emissions vis-a-vis ozone production. However, organic emissions from alcohol fueled vehicles are highly oxygenated and not included in NMHC. EPA proposes that alcohol fueled vehicles have the same numerical standards for organics as shown in Table AI.A–1, but in terms of organic material hydrocarbon equivalent (OMHCE) emissions. OMHCE consists of the mass of both non-oxygenated and oxygenated HCs, with the mass of oxygen excluded (40 CFR 86.090–2). Such standards would apply to the same categories of vehicles to which the current EPA OMHCE standards apply (40 CFR 86.090–8 through –11 and any versions of these sections which apply to later model year vehicles). EPA requests comments on the use of OMHCE standards and the categories of those vehicles (i.e., fuel types) to which they should apply.

EPA also proposes to accept, for the purpose of certifying enhanced in-use compliance vehicles, the use of evaporative emissions and running losses measured using CARB's test procedure. For recall testing, however (see Section A.(3) below), due to lower cost, EPA proposes to use its own test procedures with the substitution of CARB's fuel specifications and ambient temperatures.

In their certification application for the 1999 model year, manufacturers will also have to identify which engine families are only meeting the somewhat less stringent transitional enhanced in-use standards. Manufacturers will also have to monitor the sales of these models to ensure they represent no more than 25 percent of total sales. As mentioned earlier, manufacturers would also have to certify that their vehicles would meet the enhanced in-use I/M standards proposed in Section A.(4) below. However, as that standard is 0.20 g/mi exhaust HC over a test which excludes cold start emissions, EPA expects this to be very easy to do relative to the certification and recall FTP standards. Natural gas fueled vehicles will have the greatest difficulty meeting this I/M 240 standard relative to compliance with the enhanced in-use FTP standards, because of these vehicles' relatively high emissions of methane relative to NMHC. The enhanced in-use standards over the full FTP exclude methane, (i.e., are in terms of NMHC) and CARB's NMOG standards greatly diminish methane's importance. However, the I/M 240 test includes methane (i.e., measures total HC). Overall, though, natural gas vehicles have very low levels of NMHC emissions and, given the warmed up nature of the I/M 240 test, are still expected to be able to meet this standard with little difficulty. EPA requests comments on how these vehicles should be addressed in conventional and enhanced in-use compliance I/M.

EPA also proposes that all enhanced in-use compliance vehicles provide easy access for I/M pressure and purge testing. Otherwise, the types of tests performed, the fuels used and other certification application details can continue to be performed in accordance with CARB rules.

b. New medium-duty vehicles. CARB's MDV standards for 1995 and later model years apply to vehicles between 6,000 and 14,000 pounds GVWR, not otherwise qualifying as LDTs. However, CARB allows, at the manufacturer's discretion, MDVs over 8500 pounds GVWR to be certified as engines according to their requirements for heavy-duty engines. EPA proposes that all 1999 and later model vehicles certified under CARB's LEV program as MDVs be subject to the enhanced in-use standards for MDVs. Engines certified under CARB's requirements as heavy-duty engines would be subject to EPA's enhanced in-use compliance program for heavy-duty engines described in Section B. below.

The table below ("Proposed Certification and In-Use Standards for MDVs under the Enhanced In-Use Compliance Program") contains the composite NMHC and NO_x emission standards being proposed for MDVs under the enhanced in-use compliance program. EPA is proposing a single composite hydrocarbon recall standard (for each subclass of MDVs) that will apply throughout the useful life of a MDV. Compliance with the composite NMHC standard would be performed in the same manner as that for LDVs and LDTs, using the equation presented above in Appendix I.A.2.a. These standards are designed to provide generally the same stringency of control as the enhanced in-use standards for the heavier LDTs presented in the previous section.

EPA believes that the technology being applied to heavier LDTs to meet the enhanced in-use standards can be applied to MDVs as well. EPA requests comments on the applicability of standards equivalent to the enhanced in-use standards for LDTs to MDVs.

PROPOSED CERTIFICATION AND IN-USE STANDARDS FOR MDVS UNDER THE ENHANCED IN-USE COMPLIANCE PROGRAM

Test weight (lbs) [a]	Category	Composite [b] NMHC (g/mi)	NOx (g/mi)	
			Half life	Full life
0–3750	Enhanced In-Use	0.28	0.2	0.3
	Transitional	0.35	0.4	0.6
3751–5750	Enhanced In-Use	0.31	0.4	0.5
	Transitional	0.40	0.7	1.0
5751–8500	Enhanced In-Use	0.34	0.6	0.8
	Transitional	0.45	1.1	1.5
8501–10000	Enhanced In-Use	0.37	0.7	0.9
	Transitional	0.50	1.3	1.8
10001–14000	Enhanced In-Use	0.43	1.0	1.4
	Transitional	0.60	2.0	2.8

[a] Test weight is the average of curb weight and GVWR.

[b] Exhaust NMHC emissions plus evaporative hydrocarbon emissions; evaporative emissions include running loss, diurnal, and hot soak emissions expressed on a gram/mile basis.

As mentioned earlier, EPA is proposing to allow up to 25 percent of a manufacturer's 1999 model year MDV sales fleet to comply with "transitional" standards that are less stringent than the enhanced in-use standards. The table above also contains the proposed standards for such "transitional" vehicles. The proposed composite standards for the transitional MDVs are roughly equivalent in stringency for MDVs as they are for LDTs. As with the enhanced in-use compliance LDTs, EPA is proposing a single composite hydrocarbon standard (for each subclass of MDVs) that will apply throughout the useful life of a transitional MDV.

California's definition of MDVs includes trucks which EPA includes in its definition of LDTs (i.e., those up to 8500 pounds GVWR), as well as trucks EPA considers heavy-duty trucks (i.e., those between 8501 and 14,000 pounds GVWR). In its past rulemakings establishing HC, CO and NO_x standards for LDTs, EPA found no technological concerns that would limit the application of engine or catalyst technology to only those trucks below 6000 pounds GVWR (50 FR 10651). EPA did find sufficient reason to limit catalyst technology to only those heavy-duty trucks below 14,000 pounds GVWR, but this distinction coincides with CARB's split between MDVs and heavy-duty vehicles. The primary means of meeting CARB's LEV standards will likely be an additional catalyst which begins operation very quickly to reduce cold-start emissions (e.g., an electrically heated catalyst). EPA is unaware of any evidence which would limit the use of this technology to only those vehicles up to 6000 pounds GVWR, particularly given the fact that trucks up to 14,000 pounds GVWR already are catalyst equipped. EPA requests comments on all of the proposed MDV standards, including the assumptions made regarding the levels of evaporative emissions from MDVs.

As will be the case for LDVs and LDTs, manufacturers would continue to certify to CARB's certification MDV standards. However, here, with regard to MDVs, the demonstration of compliance with the enhanced in-use standards would be more significant, given CARB's standards for post-1998 MDVs. Manufacturers would be still be required to submit information already required by CARB along with the calculation of composite NMHC emissions using the equation presented above and a showing that composite NMHC and NO_x emissions comply with the enhanced in-use standards contained in the above table. The application would also include such additional information as may be necessary to show that the vehicle engine family will meet these standards under typical in-use conditions for its full useful life, which would be enforced through the enhanced in-use recall program. Manufacturers would also have to demonstrate compliance with the enhanced in-use I/M standards. However, again, this will be much easier than that with respect to the full-life certification and recall standards.

For the 1999 model year only, manufacturers will have to designate those engine families certifying to the less stringent transitional enhanced in-use standards and monitor sales to ensure sales of these engine families stays at or below 25 percent of total sales. These standards would be applicable to all MDVs regardless of fuel type. As for LDVs and LDTs, all post-1998 model year MDVs will be required to provide easy access for I/M pressure and purge checks. Comments are requested on all these requirements and on the extent to which these requirements complement CARB's existing LEV program for MDVs.

For flexibility, EPA is also proposing optional engine-based standards for diesel-powered and incomplete vehicle engines used in MDVs with GVWR between 8,501 and 14,000 pounds (Under CARB's motor vehicle control program, such MDV engines have the option to certify to engine-based standards.) Manufacturers of such MDV engines may elect to comply with the chassis-based program discussed in this section or they may elect to certify to the engine-based standards described in Section B. of this appendix. The reader is directed to that section for more information on the proposed engine-based standards and other MDV/engine requirements under this program.

c. Authority. As explained above in Section III.A.2.a of the preamble, in promulgating a FIP under section 110(c), EPA may take any actions that the state could take. As section 209 of the CAA provides that California is not preempted from adopting and implementing a motor vehicle emissions control program provided its program satisfies the criteria of section 209(b). EPA believes that it, acting on behalf of California in the context of a FIP, may adopt a motor vehicle program or supplement California's own motor vehicle program provided that EPA's actions would satisfy the criteria of section 209(b) for a waiver of federal preemption. That section provides that EPA is to grant California a waiver of preemption if the State determines that its standards "will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards."

Section 209(b) further provides that no waiver is to be granted if EPA finds that (A) the determination of the State that the standards are, in the aggregate, at least as protective of public health and welfare as the otherwise applicable federal standards is arbitrary and capricious, (B) State standards are not needed to meet compelling and extraordinary conditions, or (C) the State standards and accompanying enforcement procedures are not consistent with section 202(a). EPA has interpreted the consistency criterion as meaning that California motor vehicle standards and accompanying enforcement procedures must satisfy the leadtime requirements of section 202(a)—that they be technologically feasible within the leadtime provided, taking into account the cost of compliance—and not impose inconsistent certification test procedure requirements such that the same vehicle could not be used to comply with both state and federal certification requirements (see e.g., 43 FR 32182 (July 25, 1978), 40 FR 30131 (July 18, 1975), 43 FR 1839 (January 12, 1978)).

EPA believes that the enhanced in-use compliance program for light and medium-duty vehicles that would be applicable to vehicles and engines in California under the proposed FIP would satisfy the section 209 waiver criteria. Thus, California could undertake the enhanced in-use compliance program described in this appendix, and, therefore, EPA has authority under section 110(c) to undertake the proposed programs.

With respect to the protectiveness of the standards, all of the proposed standards are at least as protective as the otherwise applicable federal standards (e.g., the Tier 1 NO_X and NMHC standards in the case of light-duty vehicles and the generally applicable NO_X and NMHC standards in the case of the vehicles and engines covered by the medium-duty and heavy-duty aspects of the enhanced in-use compliance program). Indeed, these standards are at least as stringent as the comparable standards that California has already adopted and for which waivers have already been granted.

With respect to the need to meet compelling and extraordinary conditions, EPA has repeatedly found that California's air quality problems satisfy the need criterion of section 209(b) (see, e.g., 49 FR 18887 and 18890 (May 3, 1984), 58 FR 4144 (January 13, 1993)). Moreover, the magnitude of the reductions in emissions needed to reach attainment in the FIP areas, including mobile source emissions (discussed above in Section III.H.2 of the preamble), provides ample evidence of the need for more stringent motor vehicle emission standards in California.

Finally, with respect to the criterion of consistency with section 202(a), EPA believes that its proposed enhanced in-use compliance program is consistent with both the technological feasibility and certification elements of that criterion. For the reasons explained below, EPA believes that the enhanced in-use compliance program is technologically feasible within the leadtime provided, taking into account the cost of compliance. Moreover, no aspect of the enhanced in-use compliance program establishes any new certification test procedures that are inconsistent with either existing federal or California test procedure requirements. Consequently, EPA believes that its proposed enhanced in-use compliance programs satisfy this prong of section 209 as well.

3. Enhanced In-use Compliance Recall Program

Historically, EPA has enforced emissions standards through an in-use testing program commonly referred to as the "recall" program (39 FR 44375, Dec. 23, 1974), as provided by section 207(c) of the CAA. This section requires manufacturers to take remedial actions if EPA finds that a "substantial" number of vehicles, although properly maintained and used, fail to conform to an applicable emissions standard during their useful life.

EPA is proposing a recall program under the enhanced in-use compliance program that is different in several aspects compared to the program established pursuant to CAA section 207(c) for 49 state vehicles and engines. The differences and the rationale for them are described fully in the paragraphs below. The recall provisions described in this section apply to 1999 and later model year light-duty vehicles, light-duty trucks, and medium-duty vehicles certified to the chassis-based standards described in the previous section. These recall provisions also apply to on-highway HDEs and nonroad engines, except as noted in the recall provisions contained in section B for HDEs and section C for nonroad engines below.

EPA has based the enhanced in-use compliance recall program on its current recall program, where possible. Thus, aspects of the program not specifically discussed here will be the same as in the current program (see 40 CFR part 85 subpart S). For example, all test procedures utilized will be current Federal procedures, with the exception of ambient temperatures used in the evaporative emission and running loss testing and the fuel used in all testing. EPA will utilize CARB's ambient temperatures and CARB Phase II reformulated gasoline in recall testing.

If CARB decides to enforce the enhanced in-use compliance recall program and assume responsibility for the recall program, CARB will likely use its own detailed recall methodologies, for which it has received waivers under section 209 of the CAA, with appropriate changes to ensure compliance with the changes described below. EPA requests comments on the use of current recall practices where not modified below, as well as the possible performance of recall testing by CARB using their procedures.

The proposed enhanced in-use compliance recall program is discussed in detail in the following sections: (a) Recall standards (b) consideration of maintenance, tampering, and abuse, (c) test vehicle selection, (d) testing throughout the vehicles' useful life, (e) vehicle family selection, (f) criteria for requiring recall, (g) mandatory owner participation in recall repairs, (h) geographic extent of recall, (i) technical feasibility, and (j) alternatives.

a. Recall standards. The key premise of the enhanced in-use compliance recall program is that vehicles meet their certified emission levels throughout their entire useful life. The standards which will apply under the enhanced in-use compliance recall program for LDVs, LDTs and MDVs will be those in the tables presented above in Section A.(2). Calculation of composite NMHC emissions will be according to the equation also presented in Appendix I.A.2.a. above.

b. Consideration of maintenance, tampering, and abuse. For 49 state vehicles, CAA section 207(c) limits manufacturers' responsibility to those vehicles that have been "properly maintained and used." Manufacturers are able to exclude vehicles that do not receive such care or cannot be proven to have received such care from the recall testing pool or, if they believe that such vehicles have been included, challenge the validity of any findings made. Due to this limitation, EPA generally only tests vehicles that have been maintained and used in strict accordance to the owner's maintenance manual. It is particularly difficult to find older vehicles with sufficient documentation to prove "proper care." The current program, therefore, provides little incentive to the manufacturer to design and build vehicles with durable emissions performance under normal or typical maintenance and use.

As mentioned in the introduction in Section 2.d of the preamble, the primary goal of the enhanced in-use compliance program is to ensure that vehicles remain in compliance with emissions standards in use over their full life under normal operating conditions. If motor vehicles are to cease to be a major source of ozone-related emissions and noncompliance with the NAAQS for ozone, manufacturers must make greater efforts to ensure continued in-use emissions performance. Therefore, EPA proposes not to exclude vehicles from recall testing unless they have been subject to obvious abuse or tampering. Obvious abuse or tampering includes: (1) Less than one half the recommended level of oil in the engine, (2) the deliberate removal of the catalyst or evaporative canister, (3) the turbocharging of a naturally aspirated engine, and (4) damage to the engine or emission controls resulting from a vehicular accident. EPA is proposing to exclude such vehicles from recall testing because such actions can severely affect vehicle emissions and the manufacturer has no reasonable way of controlling or limiting the impact of these items on emissions. EPA requests comments on other specific items that would meet these criteria.

In addition, EPA will not perform a vehicle "tune-up" or perform other emission related repairs or maintenance before testing. EPA believes that pre-recall maintenance would defeat the purpose of the enhanced in-use compliance recall program, which is to further encourage durable designs. Even [illegible] whose proper connection is critical to acceptable emission performance can be designed to be unlikely to disconnect during normal maintenance and use.

As with current recall testing, EPA will inspect vehicles prior to testing to determine if obvious abuse or tampering has occurred. As is current EPA practice, the vehicle manufacturer can be present at time of vehicle procurement and testing to help ensure that vehicles are appropriately screened for obvious abuse and tampering problems.

It is also important to point out, as will be discussed in more detail in the next section, that only vehicles which are subject to the new enhanced I/M program are candidates for enhanced in-use recall testing. Participation in this I/M program should encourage owners to perform reasonable maintenance and deter emission related tampering.

Again, EPA requests comments on the types of abuse or tampering which would allow for the exclusion of vehicles from the recall sample. Commenters should provide supporting rationale and data to the extent practicable so that EPA may ascertain the severity, likelihood, and possible mitigating actions.

c. Test vehicle selection. EPA proposes to select vehicles for enhanced in-use compliance recall testing from the portion of the vehicle family population that is subject to the enhanced I/M testing program described above. This would essentially limit testing to only vehicles that are registered in one of the three FIP areas, unless the State of California opts to adopt enhanced I/M procedures in other areas of the state. EPA is proposing to limit the sampling in this way because recall testing resources are limited and the vehicles registered in the three FIP areas are the most relevant with regard to air quality in these areas. Furthermore, problems that cause noncompliance within this subpopulation of vehicles are very likely to exist in the population as a whole. The reverse may not be true because I/M will be insuring reasonable maintenance and catching and correcting emissions problems. EPA believes it would be inappropriate to require a recall campaign due to a problem found outside of a FIP area that enhanced I/M would have possibly already corrected.

EPA requests comments on the above sampling methods. EPA also requests comments on other alternatives, including limiting the sampling to vehicles subject to basic I/M as well as enhanced I/M or sampling from the entire state's vehicle population.

d. Testing throughout the vehicle's useful life. EPA proposes to conduct recall testing throughout the useful life of the vehicles specified in the applicable regulations. EPA would also require any necessary remedial actions to be performed on all vehicles in the vehicle family still within their useful life. EPA believes that conducting recall in this manner is consistent with the intent of the enhanced in-use compliance program, which is to hold the manufacturers responsible for in-use emissions compliance over the full useful life period.

EPA recognizes that vehicles are often used for periods longer than the useful life period specified in the applicable regulations. In California, over 40 percent of onroad light-duty vehicles have over 100,000 miles on their odometers. EPA is concerned about the emissions of vehicles after the end of the vehicle's useful life because, although such vehicles will still be subject to I/M testing, manufacturers will be no longer responsible for ensuring that the vehicles remain in compliance with the in-use recall standards. Comments are requested on whether other in-use compliance programs such an enhanced OBD, which remain effective beyond the vehicle's statutory useful life, are feasible and may result in equal or greater emission reductions than the proposed enhanced in-use recall program.

For heavy-duty engines (discussed in section B. below), which are rebuilt several times and are used significantly longer than the useful life specified by the manufacturer on a regular basis, EPA is proposing rebuild regulations (see section B.) for engines beyond their originally certified useful life. EPA requests comments on adopting comparable rebuild provisions for light-duty and medium-duty vehicles that are certified to chassis-based standards in order to ensure that these vehicles continue to meet in-use recall standards throughout their operating lives.

e. Vehicle family selection. As with the 49 state recall program, EPA may select vehicle families for enhanced in-use compliance recall testing at its discretion. For the 49 state recall program, EPA examines a variety of items when choosing a vehicle family for recall testing including testing data from certification and production line audits, production volumes, and defect reports. EPA is likely to also examine these items for the enhanced in-use compliance recall program. Additionally, EPA is planning to examine enhanced I/M testing results for patterns of failure within exhaust engine families.

EPA also plans to track the various technologies being used to meet enhanced in-use standards. If EPA believes that a technology may be more susceptible to in-use emissions performance deterioration, EPA may choose to proceed with recall testing of vehicle families using that particular technology. Special concerns may arise related to the use of a particular fuel or, more likely, related to the complexity of a technology and therefore its additional areas for failure.

f. Criteria for requiring recall. EPA proposes to, at its discretion, require a manufacturer to recall vehicles and take remedial action if the average emissions of the test vehicles for any regulated pollutant exceed the applicable emissions standard. EPA proposes to retain the discretion not to order a recall if it determines that a recall action is not warranted. Manufacturers would be able to present data and reasoning to EPA for the Agency to consider in making a final decision on whether or not to proceed with a recall. However, EPA is concerned that the recall program may not be viewed as a strong enforcement tool if its authority is too discretionary. EPA wishes to make clear its intent to hold manufacturers responsible for in-use failures of essentially all vehicles except those that have been subject to obvious abuse or tampering.

EPA also recognizes that outlier vehicles in the recall sample could cause an inappropriate recall. The impact of an outlier on the results of a recall test could be substantial because the recall test sample could be relatively small (about 10 vehicles). EPA would allow manufacturers to provide additional test data showing that a vehicle is unrepresentative (i.e., an outlier), and this data may then be considered by EPA in making a final determination.

EPA is also concerned that vehicles representing a small percentage of the engine family population (e.g., 5 percent or less) could exhibit such relatively high emissions as to cause the average emissions of the entire engine family to greatly exceed the enhanced in-use standards. For example, if five vehicles per one hundred failed to their pre-control levels of 7 or 8 g/mi NMHC and the remaining vehicles had zero emissions, the engine family would still exceed its standard by 100 percent. EPA is concerned about the emissions impact of this engine family, but is also concerned about the cost, inefficiency and vehicle owner inconvenience of a traditional recall where 95 out of 100 vehicles would be returned to the dealer but require no repair. While the enhanced I/M program will reduce the likelihood of occurrence, such situations may still be common. Comments are requested on alternatives to conventional recall in such cases. Comments on innovative onboard diagnostic capabilities or other screening techniques are also requested. One such approach is discussed in section (j).

EPA requests comments on the recall criteria and authority described above for the enhanced in-use compliance recall program. EPA encourages any recommendations for adopting different criteria be supported by data and detailed rationale.

g. Mandatory owner participation in recall repairs. Because of the potential large negative impact that vehicles exceeding the standards have on air quality, EPA believes that owners should be required to bring their recalled vehicles in for repairs. While EPA's 49 state recall program does not require owners of recalled vehicles to go to a dealership for needed repairs, California does require recall repairs to be performed (see section 2129 of title 13 of the California Code of Regulations) and the requirement is enforced by denying vehicle reregistration until the repairs have been made. (Driving unregistered vehicles is, of course, unlawful and prohibited.) California currently begins to deny reregistrations six months after the manufacturer begins its remedial action plan. EPA proposes that vehicles subject to the enhanced in-use compliance program also be subject to the same mandatory repair requirements as other California vehicles.

h. Geographic extent of recall. EPA is proposing that the enhanced in-use compliance program apply to all vehicles sold in California for both enforceability and environmental reasons. EPA therefore proposes that any required recalls also apply to all vehicles of the affected engine family which have been sold throughout the state. This will also include vehicles from all model years that are part of the same engine family. Engine families consist of vehicles with the same basic emissions design and performance and problems with a single model year's vehicles should also exist on other model years' vehicles. EPA requests comments on the extension of recalls to all vehicles statewide versus only those vehicles registered in the three FIP areas.

i. Technical feasibility. As discussed in Section A.(2) above, EPA does not expect manufacturers to have to reduce the low-mileage emissions of properly operating vehicles in order to comply with the proposed recall provisions. The degree that vehicle design changes are necessary to better ensure improved in-use emission performance under this program will depend on the technologies and cost tradeoffs manufacturers will make in response to CARB's existing LEV and OBD programs and the enhanced I/M program. If a manufacturer has sufficient confidence that its vehicles will comply with the enhanced in-use standards, there will obviously be no technological or cost implications.

However, if a manufacturer lacks such confidence, then vehicle designs could be improved. In general, the durability of every aspect of a vehicles' current and future emission control system can always be improved. The primary issues are cost and the level of reliability. EPA expects each manufacturer to review the durability of each of its emission control system components and assess whether it is adequate given the additional financial disincentives of the emissions in-use compliance program which would occur should it fail. The decision would then be made to further improve design durability or accept the current durability as adequate.

If a manufacturer decided that it needed to increase the probability that its vehicles would comply with the enhanced in-use standards under typical conditions of maintenance and use, EPA believes that numerous methods exist with which this can be done. For example, vehicular emission control can be divided into two basic components, efficient combustion and catalytic conversion. Efficient combustion relies primarily on fuel management and sufficient ignition spark, including its timing. Efficient catalytic conversion depends most heavily on fuel management and sufficient active catalytic material. Fuel management in turn depends heavily on the onboard computer and the feedback control mechanism (i.e., the oxygen sensor) and the fuel injector.

EPA believes that CARB's existing fuel detergent program will help address manufacturers' concerns related to fuel injector, intake valve and combustion chamber deposits and the possible associated degradation of emission control performance. EPA also believes that fuel injection technology has reached a sufficient stage of development such that maintenance free operation is possible (i.e., EPA is not aware of any required maintenance for fuel injectors on LDVs, LDTs, or MDVs). Catastrophic failure of an individual injector can always occur, but this should be immediately identified by the OBD system. Likewise, recent electronic ignition systems are also maintenance free, with the exception of the spark plugs and possibly the ignition wires. If improvements were desired in these areas, gold and platinum tipped spark plugs could be considered. These plugs are already in limited use and offer the advantage of improved durability.

Manufacturers have already utilized, to a varying degree, high voltage ignition to lessen the importance of wire separation, as the higher ignition voltage will cross a sizable gap in the wire as well as across the spark plug tip. Onboard computers have clearly generated a track record of proper operation over the life of the vehicle.

NOx emission control as well as efficient combustion also depends on the proper operation of exhaust gas recirculation (EGR) valves. The primary in-use problem with EGR valves is plugging or sticking due to combustion products, particularly unburned fuel which can solidify with prolonged heating. A manufacturer could decide to redesign its valves by smoothing its channels, eliminating sharp bends, better lubricating valve axles, etc., as well as changing the valve location to control temperature and deposit formation.

The two remaining emission controls, the oxygen sensor and catalysts (both under body and quick light-off) are widely recognized as key components in maintaining proper in-use emissions performance. A manufacturer could decide to improve the durability of the active surface of the oxygen sensor or change its placement in the exhaust to limit deposits and thermal degradation. Likewise, more durable catalyst washcoats exist relative to those commonly used and the overall loading of catalytic material can also be increased.

Regarding evaporative emissions, its more basic operation should make a manufacturer's durability assessment much easier. The key components besides the onboard computer are the purge valve, the vapor lines and the charcoal canister. The design of a durable purge valve should be much easier to assess and improve if necessary, relative to an EGR valve, given the clean nature of the vapor flowing through the valve. Non-metal vapor lines can be replaced with metal lines if necessary to provide increased confidence of leak-free operation. With adequate purge, charcoal canister should not fall below their in-use design capacity with time or usage.

While uncertainty exists as to exactly how manufacturers will choose to comply with this program, the main issue appears to be one of further improvements in durability versus cost tradeoffs. The program appears to be technologically feasible. As for the costs, estimates of which are contained in the draft RIA supporting this FIP, EPA believes them to be reasonable.

j. Alternatives. The objective of the proposed enhanced in-use compliance recall program is to identify and correct systemic design defects or lack of durability within an engine family. However, as discussed in section A.(f)., the proposed enhanced in-use standards could be exceeded if just a few percent of the vehicles within an engine family had high emissions, even though the rest emitted at well below the standard. In this situation, recalling the entire engine family to correct random defects which result in a few high emitters is inefficient, inconvenient and costly. Hopefully, the enhanced I/M program will identify and correct these high emitters. However, in some situations such as a defect in the cold start emission control system, the I/M program will not identify the problem. On-board diagnostics could identify the problem, but it does not guarantee that the owner will seek repair of the defect in a timely manner. This may be especially a concern for older vehicles where the relative cost of repairs compared to the value of the car is high.

An alternative to the proposed enhanced in-use recall program involves the use of remote sensing to quickly identify individual vehicles with excess emissions. Remote sensing of emissions is now required by federal law in all non-attainment areas subject to enhanced I/M, including the three FIP areas. A potentially more effective approach could utilize recent advances in electronics which allow communication between the vehicle's on-board diagnostic system and a roadside transmitter. This type of communication with moving vehicles has been developed to substitute for toll booths on highways and bridges, and for collecting use-fees for heavy trucks. CARB will soon be demonstrating the application of this technology to on-board diagnostics. Under this concept, when prompted, a small transmitter on the vehicle would communicate the VIN and if the on-board computer has sensed any emission control system defects. The owners of vehicles with defects would be notified by mail to repair the vehicle and report to a smog inspection station for verification. This is the same remedy that will soon be required of owners whose vehicles fail a remote or roadside emission test in an area with enhanced I/M.

The advantages of such a system include assuring that vehicles with high emissions are repaired quickly, rather than up to two years later at the next I/M test. This would help lower average in-use emissions closer to the certification standard. In addition, this approach would remain effective throughout the vehicle's life, an important advantage over the proposed enhanced in-use compliance program, since over 40 percent of California's light-duty on-road vehicles have exceeded their 100,000 mile useful life.

Like the I/M 240 test, the objective of CARB's OBD program is to identify nearly all problems causing excess emissions. Thus, this same remote detection system could also lower the cost of periodic inspections since the inspection could be performed by driving by an unmanned sensor at any time. The cost of such an inspection would be minimal, and could quickly offset the cost of equipping new vehicles with an on-board transmitter.

The major disadvantage of this approach is that the remote sensing technology has not been fully demonstrated. Thus, EPA cannot yet propose the details of a regulation which would implement such a requirement as part of the FIP. However, EPA is seeking comments on whether this approach has sufficient merit to be considered as an alternative or complement to the proposed enhanced in-use compliance program.

4. I/M-Based Recall Program

The I/M aspect of the enhanced in-use compliance program (also referred to as the I/M-based recall program) proposed today applies only if a significant portion of vehicles do not meet the enhanced in-use I/M standards. The enhanced I/M test equipment, test procedures, and other physical elements of the program will remain unchanged from that described in Section III.D.2.c. of this preamble or from any equivalent program adopted by California. All 1999 and later model year California LDVs, LDTs and MDVs covered by the enhanced in-use standards described in Section A.(2) above will be included in this program, regardless of fuel type. (See section III.D.2.c. of this preamble for a description of I/M for non-California vehicles.)

Overall, the enhanced in-use I/M program does three things. First, it implements a more stringent set of I/M emission levels (hereafter referred to as the enhanced in-use I/M standards). Second, it creates a maximum fraction of any particular exhaust emission engine family which can fail the more stringent enhanced in-use I/M standards without consequence for the manufacturer (hereafter referred to as the liability threshold). Third, once the failure rate of the enhanced in-use I/M standards exceeds the liability threshold, it initiates a selective recall and makes the vehicle manufacturer liable for the repairs resulting from subsequent I/M failures. As described above, the purpose of this program is to encourage manufacturers to place a high design priority on in-use vehicle performance and ease of repair in order to ensure that vehicles comply with their certification standards in-use.

The sequence of events at a typical enhanced I/M test facility will be as follows. Vehicles brought for testing will be measured against two sets of standards: the conventional enhanced I/M standards described in Section III.D.2.c. of this preamble and the lower enhanced in-use I/M standards described below. Unless a significant portion of vehicles in any engine family have failed the enhanced in-use I/M standards, vehicle owners will only be required to repair their vehicles if they fail the conventional enhanced I/M standards. However, the number of vehicles failing the more stringent enhanced in-use I/M standards will be tallied. If the percentage of a specific engine family failing the enhanced in-use I/M standards exceeds the liability thresholds described below, two events occur. First, future vehicles of this particular engine family failing the more stringent enhanced in-use I/M standards now must be repaired and retested. Second, the manufacturer, and not the vehicle owner, will be responsible for the repairs for vehicles still within their statutory useful life which have not obviously been abused or tampered with in a manner likely to affect emissions (i.e., an I/M-based selective recall). As described below, the enhanced in-use I/M standards are numerically higher than the enhanced in-use FTP emission levels. Thus, as long as vehicles are performing close to the standards to which they are certified, only the conventional enhanced I/M program will apply and there will be no post-manufacturing consequence for the manufacturer of the enhanced in-use I/M program.

The sections below describe the nature of the proposed enhanced in-use I/M program including testing, enhanced in-use I/M standards, threshold for manufacturer liability, tracking of enhanced in-use I/M test results, repair responsibility, geographic coverage, and other administrative aspects of the program.

a. Testing. As discussed in more detail in Section III.D.2.c. of this preamble, three types of I/M tests will be performed on light- and medium-duty vehicles. First, exhaust emissions will be measured using the I/M 240 test. Second, purge and pressure tests will be performed to establish the evaporative system's functionality and integrity. Finally, a visual inspection will be performed to check for missing canisters, catalysts, etc. which would indicate that obvious tampering or abuse has occurred. Vehicles with obvious tampering or abuse which fail the enhanced I/M 240, pressure, or purge tests will require repair at the owner's expense.

EPA proposes to include post-1998 model year diesel- and alternative-fueled (CNG and LPG) vehicles in enhanced I/M testing, as well as gasoline vehicles. Evaporative system checks would be revised where appropriate for alternative-fueled vehicles, since some fuel types (e.g., diesel fuel and pressurized fuels) produce little or no evaporative emissions as long as their fuel tanks are not ruptured. Diesel-fueled vehicles are currently exempt from most I/M programs, because their HC emissions are inherently low and their historical control of NO_x emissions has not depended on technologies that deteriorate significantly over time. Alternative-fueled vehicles have been exempted because of their low numbers. However, as the emission standards applicable to post-1998 model year vehicles will be very stringent regardless of fuel type, EPA is proposing that every vehicle be tested under the enhanced I/M program, regardless of fuel type. EPA requests comment on the testing of diesel- and alternative-fueled vehicles in the proposed enhanced in-use I/M program.

b. Proposed enhanced in-use I/M standards. The table below ("Proposed Enhanced In-Use I/M Standards for LDVs and LDTs") summarizes the enhanced in-use I/M standards proposed in this NPRM for 1999 and later model year LDVs and LDTs. Passage or failure of these standards will be used to determine compliance with the liability thresholds. These standards will also be used to determine the need for repairs and retesting after the liability threshold has been exceeded

PROPOSED ENHANCED IN-USE I/M STANDARDS FOR LDVS AND LDTS

Vehicle class	Category	Exhaust THC [a] (g/mi)	NO_x (g/mi)	
			Half life	Full life
LDVs & LDTs (0–3750 lbs LVW)	Enhanced In-Use	0.20	0.30	0.45
	Transitional	0.34	0.60	0.90
LDTs (3751–5750 lbs LVW)	Enhanced In-Use	0.29	0.50	0.75
	Transitional	0.44	1.05	1.35

[a] An evaporative system pressure/purge check will also be performed during the inspection. If the vehicle passes the pressure/purge check, the evaporative emissions system is assumed to be functioning properly.

As mentioned above, under enhanced I/M, exhaust emissions will be measured over the I/M 240 test procedure, a shortened version of the certification test procedure. Emissions measured over the I/M 240 test procedure and the certification test procedure are somewhat different for a number of reasons. First, different vehicles with the same overall FTP emissions will perform differently over each segment of the FTP. Because only part of the certification driving cycle is used in the I/M 240 test, individual vehicles with the same FTP emissions may produce somewhat different I/M 240 emissions. Also, and most importantly for NMHC emissions, the absence of a cold start in the I/M test will tend to reduce variability and result in a lower g/mi value for the I/M test. Other factors contribute to greater variability between the full FTP and I/M 240 testing. These factors include the type of driving a vehicle encountered immediately previous to the test, the specific fuel in its tank, and numerous other environmental factors which can be controlled in certification and recall testing, but which cannot be controlled in I/M testing, such as temperature and humidity. Therefore, an important objective of the enhanced in-use I/M standards is to provide an incentive for manufacturers to design vehicles which do not have significant emissions increases when operated under such typical in-use conditions as compared to the highly standardized FTP. If vehicles continue to be produced with a high degree of emissions sensitivity, their increased emissions under typical use (versus the FTP) would substantially add to the emissions burden caused by light- and medium-duty vehicles.

Considering the factors just described and non-vehicle related test variability, the enhanced in-use I/M standards in the table above ("Proposed Enhanced In-Use I/M Standards for LDVs and LDTs") are being proposed. EPA believes these levels represent a reasonable balance between granting a cushion between certification and I/M emissions levels, and in establishing manufacturer liability and the need to provide a greater incentive for the design of emission controls systems which maintain low emissions under variations in typical in-use conditions. (For example, the proposed enhanced in-use THC I/M standard is 0.20 g/mi, 2.2 times higher than CARB's 100,000 mile certification NMHC standard for LDV LEVs of 0.9 g/mi.)

Due to the fact that the I/M 240 test only measures warmed-up exhaust emissions, compliance with these standards should not be any more technologically challenging or costly than compliance with the recall standards already discussed in Section A.(3) above. The only issue could be a vehicle's emissions variability over the IM240 test relative to the full FTP, as mentioned above. There is no inherent technical reason for exhibiting this variability, except a lack of concern that vehicles' emission controls operate fully over all types of normal driving and not only over the exact driving sequence embodied in the FTP. In fact, many if not most vehicles already exhibit similar control over both tests.

The enhanced in-use I/M standards for LDTs were derived using the same factors and methodology described above for LDVs. As with LDVs, EPA is also proposing a single THC I/M standard for each subclass of LDTs that will apply throughout the useful life of a LDT. EPA believes that the technology and emissions performance of LDTs will be similar to that of LDVs and therefore the same factors can be used for establishing the enhanced in-use I/M standards for LDTs. EPA requests comments on the reasonableness of this assumption.

Similar factors were used to derive the transitional enhanced in-use I/M standards. As described in Section A.(2) above, these standards will apply to up to 25 percent of each manufacturer's sales of 1999 model year vehicles. EPA requests comments on these levels, as well.

The table below ("Proposed Enhanced In-Use I/M Standards for MDVs") contains the proposed enhanced in-use I/M standards for MDVs. These standards will apply to all California MDVs certified to chassis-based standards. (Those MDV engines certified to the engine-based standards are not subject to the enhanced in-use I/M provisions, as described in Section B. below.) The enhanced in-use I/M standards for MDVs provide essentially the same cushion between themselves and the enhanced in-use standards for MDVs as described above for the enhanced in-use I/M standards for LDVs and LDTs.

PROPOSED ENHANCED IN-USE I/M STANDARDS FOR MDVS

Test Weight (lbs) [a]	Category	Exhaust [b] NMHC (g/mi)	NOx (g/mi)	
			Half life	Full life
0–3750	Enhanced In-Use	0.24	0.30	0.45
	Transitional	0.40	0.60	0.90
3751–5750	Enhanced In-Use	0.31	0.60	0.75
	Transitional	0.51	1.05	1.50
5751–8500	Enhanced In-Use	0.37	0.90	1.20
	Transitional	0.62	1.65	2.25
8501–10,000	Enhanced In-Use	0.43	1.05	1.35
	Transitional	0.73	1.95	2.70
10,001–14,000	Enhanced In-Use	0.57	1.50	2.10
	Transitional	0.95	3.00	4.20

[a] Test weight is the average of curb weight and GVWR.

[b] An evaporative system pressure/purge check will also be performed during the inspection. If the vehicle passes the pressure/purge check, the evaporative emissions system is assumed to be functioning properly.

Similar to the light-duty enhanced in-use I/M standards, the enhanced in-use compliance I/M standards for MDVs should be more easily met relative to the enhanced in-use MDV FTP emission standards for composite NMHC and NO_x described in Section A.(3) above. As was the case for light-duty vehicles, the lack of a cold start in the IM240 test, generally higher numerical standard levels and the fact that evaporative emissions are not quantitatively included together should more than compensate for any variability resulting from the use of the shorter IM240 cycle. This is particularly true given manufacturers will have the ability to design their vehicles for good emissions performance over the IM240 cycle as well as over the full FTP. EPA requests comments on the level of the proposed enhanced in-use I/M standards for LDVs, LDTs and MDVs, as well as the proposed transitional enhanced in-use I/M standards. EPA also requests comments on the use of a single enhanced in-use I/M NMHC standard and on the option of applying a more stringent standard for the first five years or 50,000 miles.

c. Threshold for manufacturers responsibility. Under enhanced I/M programs for conventional vehicles, owners are responsible for repairs of those vehicles which fail the enhanced I/M tests. EPA is proposing that manufacturers would become liable for repairs of a specific vehicle engine family (i.e., an I/M-based selective recall) if 5.0 percent of the tested vehicles of that engine family failed the enhanced in-use I/M standards during the first half of the family's useful life or if 10.0 percent failed before the end of the family's full useful life. That is, if more than 5.0 percent of tested vehicles of any engine family/model year combination fail the enhanced in-use I/M standards before 50,001 miles or fifth year after the production year (whichever comes first), then the responsibility for repair of any future failures of vehicles belonging to that engine family/model year combination will shift to the manufacturer. This percentage rises to 10.0 percent for vehicles up to 100,000 miles or in their sixth through the tenth years of use.

In staying below these thresholds, the manufacturer must consider the typical level of maintenance provided its vehicles in enhanced I/M areas. It is extremely difficult to identify the lowest level of maintenance short of abuse. It is also impossible to build vehicles such that none of the vehicles develop problems in-use. However, participation in the enhanced I/M programs will encourage individual vehicle owners to perform increased maintenance to reduce the likelihood of I/M failure and the subsequent burden of repair and re-test. Thus, a lower failure rate may be reasonable to expect from vehicles in enhanced I/M areas. EPA believes that the 5 and 10 percent failure rates proposed above balance the responsibilities of the manufacturer to build a vehicle which performs well under typical in-use conditions and those of the vehicle owner to properly care for the vehicle. EPA requests comment on the appropriateness of the two liability thresholds presented here. EPA also asks for comments on alternative liability thresholds, as well as appropriate justification for those alternatives.

EPA proposes that the liability threshold for the enhanced in-use compliance I/M program apply separately to each affected exhaust emission family in each model year after 1998. Since several exhaust families can fall into a single evaporative family, but generally not vice versa, EPA believes that isolating I/M repair liability within an exhaust family is the most appropriate approach. In addition, EPA is proposing that the liability thresholds apply separately for HC and NO_X emissions. Thus, if the number of HC emission failures exceeded a threshold, but the number of NO_X emission failures did not, manufacturers would only be responsible for repairing those vehicles which failed the enhanced in-use I/M HC standards. A difficult question arises when one of the two pollutant thresholds have been exceeded and a vehicle fails both of the enhanced in-use I/M standards. EPA desires to limit manufacturer liability as much as possible to the repair of the problems related to that pollutant exceeding its threshold. However, it may not be practical to separate what repairs affect each pollutant and determining such a split could lead to frequent disagreement between manufacturer and owner. Thus, EPA proposes that manufacturers be responsible for performing all repairs to those vehicles which failed both the enhanced in-use I/M HC and NO_X standards, but have exceeded only one (i.e, HC or NO_X) threshold. However, EPA requests comments on requiring manufacturers to only be liable for repairing the vehicle in order to meet the I/M standard for the pollutant exceeding its threshold.

d. Tracking of vehicle failures. Compliance with the liability thresholds will be determined on a model year/engine family basis (i.e., I/M test results will be segregated by engine family and model year). EPA proposes to segregate tracking by model year to prevent the I/M test results of more recent model year vehicles within a given engine family from diluting the test results of earlier model year vehicles. EPA requests comments on this approach.

While EPA will receive actual I/M 240 emission results from the performers of enhanced I/M testing, only pass or fail results will be tallied against the 5 and 10 percent thresholds. A vehicle will enter the tracking system when it receives its first enhanced I/M test. As long as it passes that and any subsequent enhanced I/M test, it will be considered a "pass" vehicle. Once it fails any of the three HC related tests (i.e., the enhanced in-use I/M standard for exhaust HC or the pressure or purge tests), it will be considered an HC failure. Once it fails the enhanced in-use I/M NO_X standard, it will be considered a NO_X failure. If a failure occurred while the vehicle is within its first half life (e.g., for a LDV, 5.0 years old and 50,001 miles or less), the failure will be included in the failure tally against both the 5 percent half-life and the 10 percent full-life thresholds. If the failure occurred while the vehicle is within its second half life (e.g., for a LDV, more than 5.0 years old and 50,000 miles but no more than 10.0 years old and 100,000 miles), the failure will only be included in the failure tally against the 10 percent full-life threshold. The failure rate for each model year/engine family combination will consist of the number of vehicles failing the enhanced in-use I/M HC or NO_X standards divided by the number of vehicles which have been tested in an enhanced I/M program. The I/M test results would cease to be counted after individual vehicles exceeded an age of 10 years or 100,000 miles (120,000 miles for MDVs), respectively.

For example, if 2.0 percent of an engine family's vehicles (from a single model year) fail the enhanced in-use I/M standards for a given pollutant over its first two years (i.e., a biennial program) and an additional 2.0 percent (i.e., different vehicles) fail over the next two years, the failure rate after 4 years is 4.0 percent. Comments are requested on the use of only pass/fail information and the calculation procedure.

Once a specific model year/engine family combination exceeded a liability threshold, EPA proposes that the manufacturer become liable for the selective recall and repair of vehicles not only from that model year, but for the repair of all vehicles which are part of that engine family. While this could significantly increase the potential liability faced by manufacturers, it will more equitably protect the consumer by treating all vehicles with essentially the same emission control design (and thus, performance) the same. EPA requests comments on this approach, as well as the option whereby manufacturers were only held liable for the repairs of vehicles from the specific model year which caused the exceedance of the enhanced in-use I/M liability threshold.

If exceedance of the liability threshold appears likely, typical failure modes could be determined and efficient repair methods developed. A manufacturer could even go so far as to take preventative action (e.g., a voluntary recall) to reduce the number of I/M failures (and the triggering of the liability threshold) and avoid the negative publicity or market response that may otherwise result.

EPA also proposes to exclude the I/M test results of vehicles if they have been obviously abused or tampered. (More discussion on what might constitute obvious abuse or tampering is included in Section A.(3) above addressing enhanced in-use compliance recall requirements.) EPA proposes to limit the definition of such abuse or tampering for the purpose of the enhanced in-use I/M program to a missing catalyst or evaporative canister. Tampering can be discouraged by the vehicle's design and performance. While EPA is aware that manufacturers cannot prevent all forms of less obvious tampering problems, the Agency wants to create incentives for manufacturers to design vehicles as tamper-resistant as is reasonable. EPA requests comments on the appropriate inclusion of specific determinations of obvious abuse and tampering which would be practical by I/M test personnel in an enhanced I/M test, while maintaining the integrity and purpose of the enhanced in-use I/M program.

e. Repair responsibility. Under conventional enhanced I/M, individual vehicle owners are responsible for repairs based on failures of either the enhanced I/M 240 cutpoints and the pressure/purge functional tests. Motorists are required to spend a maximum of $450 on repairs within a biennial test cycle related to the emission test failure before being eligible for a waiver of the requirement to comply.

If the enhanced in-use I/M liability threshold is reached, EPA proposes that manufacturers become subject to a selective recall and be responsible for all subsequent vehicle repairs that are identified by the enhanced I/M emission test at the enhanced in-use I/M standards (described previously) and the purge/pressure tests. Manufacturers would thereafter be responsible for all vehicle repairs within that engine family model year until the end of the vehicle's useful life. A manufacturer's repair responsibility would begin after the liability threshold is reached, with no retroactive liability. EPA is not proposing reimbursement from the manufacturer to individual vehicle owners for repairs that occurred prior to exceeding the enhanced in-use I/M liability threshold.

EPA is also concerned that some repairs to high mileage vehicles could cost more than the vehicle is worth. EPA is therefore proposing to allow a manufacturer to remedy an emissions failure by purchasing (or offering to purchase) the vehicle. The manufacturer could then remove the vehicle from service instead of making the necessary repairs. The actual value could be determined through a National Automobile Dealer's Association (NADA) publication (e.g., "Blue Book value") or via negotiation. The latter is always available, but, as the only option, could become quite involved and result in vastly different prices being paid for similar vehicles. EPA therefore proposes that the manufacturer be allowed to offer the average retail value for the vehicle in question as specified in the NADA "Official Used Car Guide," if the manufacturers elects this option. One option would utilize the national "Blue Book" to avoid the possible effects of this program on "Blue Book" levels in California. Another option would be to use the "Blue Book" applicable in the specific FIP area. EPA is also concerned that the "Blue Book" value may not fully compensate an owner for the time and energy needed to find a new vehicle and other intangibles. EPA requests comment on other methods of determining values that proximate the market value of the vehicle, as well as the value to its owner, but provide reasonable protection for the manufacturer.

Under this proposal, the vehicle owner has the option of rejecting the manufacturer's offer to purchase their vehicle. Instead, the owner could repair the vehicle at his or her own expense or sell the vehicle in an area not subject to enhanced I/M and the enhanced in-use compliance program. The manufacturer's liability to repair the vehicle would end after the offer to purchase the vehicle was either consummated or rejected in writing.

EPA is also concerned whether the manufacturer would exercise its responsibility to repair the vehicle in a way which minimized inconvenience to the owner. EPA therefore proposes that all required repairs be performed in an expeditious manner and requests comments on specific requirements that could be used to ensure this was in fact done. Specifically, EPA proposes, and requests comments on, requiring manufacturers to provide a rental vehicle of equivalent value and function free of charge if the repairs required more than two days in total.

f. Geographic coverage. EPA is proposing that enhanced I/M be used in the designated California FIP areas of Sacramento, Los Angeles, and Ventura. EPA is proposing to limit the geographic scope of the I/M-based recall program to the FIP areas. EPA does not believe it would be appropriate to apply the I/M-based recall program to areas not having full enhanced I/M based on the I/M 240 test.

However, vehicles from outside the three FIP areas do impact air quality in the three FIP areas. Therefore, EPA requests comment on the option of including the vehicles tested in qualifying enhanced I/M 240 test programs in other nonattainment areas in California in the I/M-based recall program. The test results from such vehicles would then also be used to determine compliance with the liability threshold. Under this option, only a state enhanced I/M program which either duplicates the federal program or is approved by the Administrator as equivalent would be allowed to participate.

g. Data collection from test-sites. The Agency proposes that enhanced I/M testing facilities submit the results of all I/M tests, as well as engine family data from the underhood label, on all vehicles tested, to EPA on a monthly basis. This information will be used to calculate failure rates. In addition, personnel at such facilities would be required to retain and maintain results from I/M tests for a period of one year.

h. Manufacturer notification of liability. The Agency will provide manufacturers with cumulative test results on their engine families on a monthly basis. Additionally EPA will notify vehicle manufacturers, by letter, within thirty days after the rate of failure meets or exceeds the liability threshold. Manufacturers' responsibility for repairs begins 30 days after EPA sends notification.

I/M personnel will notify owners of failing vehicles, when vehicles are brought in for emissions testing, with whom responsibility for repair lies. Vehicle owners must be informed when repair responsibility for vehicles has been shifted to the manufacturers. EPA requests comment on requiring manufacturers to inform all vehicle owners, by letter, if the failure rate for the enhanced in-use I/M standards has exceeded the liability threshold. Such a letter would state that vehicle owner repair responsibility has ended and that the manufacturer is thereafter responsible for vehicle emission repairs until the statutory useful life ends as long as the vehicle is participating in a qualifying enhanced I/M program and has not been abused or tampered. One negative aspect of such a requirement is that it may lead vehicle owners to care less carefully for their vehicles, given the knowledge that much maintenance would now be covered by the manufacturer.

5. Fleets

As indicated by the Clean Air Act's fleet program, Congress believed it appropriate to place more stringent controls on centrally fueled fleet vehicles due fleet operators' greater control over and flexibility in the fuel used by their vehicles. Likewise, EPA believes it appropriate to propose similar actions here to obtain necessary additional emission reductions.

Consequently, in addition to meeting the requirements of the enhanced in-use compliance program described above, EPA proposes an enhanced ILEV fleet program. This program would require that a fraction of the post-1998 model year vehicles purchased by fleets in the South Coast area having 10 of more vehicles which currently are, or are capable of, being centrally fueled must also qualify as ILEVs. EPA established a special class of clean fuel vehicles called Inherently Low Emission Vehicles (ILEVs) in regulations concerning exemptions from transportation control measures for clean fuel fleet vehicles (40 CFR 88.311–93). ILEVs are required to have no significant evaporative emissions even if their evaporative control systems malfunction. ILEVs therefore have an inherent emissions advantage over other clean fuel vehicles since under any realistic enforcement program, some vehicles will be operating with dysfunctional emission controls. Generally, ILEVs are alternative fueled vehicles since gasoline is a very volatile liquid; however, high-technology diesel or low volatility gasoline vehicles might also be able to comply. Enhanced ILEVs would produce all the emission benefits of other enhanced in-use compliance vehicles plus the benefits of no significant evaporative emissions in-use.

EPA proposes that 50 percent of all LDVs, LDTs, and MDVs purchased in 1999 by covered fleet operators for their covered fleet meet this requirement and 70 percent of LDVs, LDTs, and MDVs purchased in each calendar year thereafter.

EPA proposes to exempt from the enhanced ILEV fleet program the same types of vehicles which are exempt from the statutory Clean Fuel Fleet program (section 241(5) of the Clean Air Act). The definitions promulgated by EPA for the Clean Fuel Fleet program in 40 CFR 88.302–94 (i.e., for "covered fleet operator", "centrally fueled", and "capable of being centrally fueled", as well as several others) are proposed to apply to the enhanced ILEV fleet program. In addition, EPA proposes that the procedures laid out in the preamble for that final rule for determining how many vehicles are to be considered capable of being centrally fueled (58 FR 64684) are to be applied by fleet operators in the enhanced ILEV fleet program. EPA requests comment on whether this procedure should be converted to regulatory text and published in the final rule on this FIP.

In addition, EPA is proposing an enhanced ILEV purchase credit program similar to the Clean Fuel Fleet credit program (40 CFR 88.304–94). Each ILEV purchased early or in excess of a covered fleet operator's purchase requirement could generate one purchase credit. EPA would issue a qualifying covered fleet operator a credit document which could be held or sold. The original operator or any other covered fleet operator could redeem such credit documents in lieu of enhanced ILEV purchases.

EPA proposes that violations of the enhanced ILEV fleet program be subject to civil penalties of not more than $25,000. This proposed penalty is identical to that applied by the Clean Air Act (section 205(a)) to violations of the Clean Fuel Fleet program required by Part C of Title II.

Since the enhanced in-use vehicle standards apply to composite NMHC, it is possible that enhanced ILEVs could have higher exhaust NMHC emissions to compensate for their inherently low evaporative emissions. Therefore, EPA requests comments on the likelihood of this occurring and on the option of establishing a numerically lower composite NMHC standard for ILEVs. These more stringent enhanced in-use standards for ILEVs are shown in the table below. EPA is not proposing to change the enhanced in-use NO_X standards for ILEVs from those proposed for all enhanced in-use compliance vehicles in Section A.(2) above.

PROPOSED OPTIONAL CERTIFICATION AND IN-USE COMPOSITE NMHC STANDARDS FOR ENHANCED ILEVS

Vehicle class	Category	Composite [a] NMHC (g/mi)
LDVs & LDTs (0–3750 lbs LVW)	Enhanced	0.10
	Transitional	0.15
LDTs (3751–5750 lbs LVW)	Enhanced	0.13
	Transitional	0.17
Medium-duty vehicles (Test Weight (lbs) [b])		
0–3750	Enhanced	0.14
	Transitional	0.18
3751–5750	Enhanced	0.16
	Transitional	0.20
5751–8500	Enhanced	0.17
	Transitional	0.23
8501–10,000	Enhanced	0.19
	Transitional	0.25
10,001–14,000	Enhanced	0.22
	Transitional	0.30

[a] Exhaust NMHC emissions plus evaporative hydrocarbon emissions determined according to the equation presented earlier in Appendix I.A.2.a.

[b] Test weight is the average of curb weight and GVWR.

EPA is proposing that the enhanced ILEV fleet program be applicable to only vehicles purchased by covered fleet operators in the South Coast due to the fact that even with all the additional emission controls being proposed today, the South Coast is still not projected to in compliance with the ozone NAAQS by 2010. EPA requests comment on extending the enhanced ILEV fleet program to the other two FIP areas. EPA also requests comment on whether the program should be revised to ensure that vehicle turnover does not become artificially low in response to the enhanced ILEV fleet program but rather remains at or near current levels.

B. Enhanced In-Use Compliance Program for Heavy-duty Vehicles

1. Applicability

EPA is proposing that the enhanced heavy-duty vehicle program be applied to all new engines used in on-highway vehicles over 14,000 pounds GVWR, beginning in model year 1999. All such heavy-duty vehicles offered for sale or registered exclusively in California will need to comply with the enhanced vehicle standards described in the sections which follow. (As described in the section on 49-state vehicles, importation of heavy-duty vehicles not complying with the requirement of this program is prohibited after 1999.) Requirements that apply to multi-state registered vehicles are discussed later, in section B(7). The enhanced vehicle program would, as an option, allow manufacturers to certify engines for use in MDVs of GVWR between 8,500 and 14,000 pounds to engine-based standards, similar to the approach taken in California's program. However, such vehicles would need to meet all of the requirements of the enhanced heavy-duty vehicle program described in the sections below.

The application of the enhanced heavy-duty vehicle program on a statewide basis is considered necessary because of the large volume of heavy-duty vehicle traffic flow into and out of the areas covered by the FIP. Any program requiring usage of enhanced vehicles only in the FIP areas would be extremely difficult to implement and enforce. Also, EPA is concerned about the emissions from HDV's from other states operating in the FIP areas, and about the potential for an increase in this interstate traffic due to higher costs associated with enhanced HDV's. This issue is addressed in section B(6)

As with light-duty vehicles, EPA is interested in the possibility of achieving earlier inventory reductions by phasing in new vehicle emission standards sooner. The inventory reduction achieved by earlier implementation could reduce the rate at which heavy-duty vehicle turnover would have to occur. Therefore, in addition to requesting comment on the program proposed below, EPA requests comment on an earlier phase-in, requiring a portion of the 1998 model year heavy-duty vehicles sold to meet the enhanced vehicle requirements.

2. Authority

As explained above, in promulgating a FIP under section 110(c) of the Act, EPA may take any actions that the state could take and EPA believes that it, acting on behalf of California in the context of a FIP, may adopt a motor vehicle program or supplement California's own motor vehicle program provided that EPA's actions would satisfy the criteria of section 209(b) for a waiver of federal preemption. These criteria are discussed above in the context of the enhanced light-duty vehicle program.

EPA believes that the enhanced heavy-duty vehicle program that would be applicable to vehicles and engines in California under the proposed FIP would satisfy the section 209 waiver criteria. Thus, California could undertake the enhanced vehicle program described below, and, therefore, EPA has authority under section 110(c) to undertake the proposed programs

With respect to the protectiveness of the standards, all of the proposed standards are at least as protective as the otherwise applicable federal standards (and the generally applicable NO_X and NMHC standards in the case of the vehicles and engines covered by the enhanced heavy-duty vehicle program). Indeed, these standards are at least as stringent as the comparable standards that California has already adopted and for which waivers have already been granted.

With respect to the need to meet compelling and extraordinary conditions, EPA has repeatedly found that California's air quality problems satisfy the need criterion of section 209(b) (see, e.g., 49 FR 18887 and 18890 (May 3, 1984), 58 FR 4144 (January 13, 1993)). Moreover, the magnitude of the reductions in emissions needed to reach attainment in the FIP areas, including mobile source emissions (discussed in Preamble section III.H), provides ample evidence of the need for more stringent motor vehicle emission standards in California.

Finally, with respect to the criterion of consistency with section 202(a), EPA believes that its proposed enhanced vehicle program is consistent with both the technological feasibility and certification elements of that criterion. For the reasons explained below, EPA believes that the various elements of the enhanced vehicle program are technologically feasible within the leadtime provided, taking into account the cost of compliance. Moreover, no aspect of the enhanced vehicle program establishes any new certification test procedures that are inconsistent with either existing federal or California test procedure requirements. Consequently, EPA believes that its proposed enhanced vehicle programs satisfy this prong of section 209 as well.

EPA also notes that its proposed rebuild requirements for heavy-duty vehicles and its use restrictions on heavy-duty vehicles need not satisfy the section 209(b) criteria since those requirements, being in-use regulation of vehicles directed at vehicle owners, and not the original manufacturers, are not preempted by section 209(a). Thus, EPA has the authority to promulgate those requirements just as any other requirements not subject to preemption under section 209.

3. Emissions Standards

a. Oxides of Nitrogen Standard. As mentioned earlier, heavy-duty engines are a major source of NO_X emissions in the FIP areas. Because of this, EPA proposes to establish lower exhaust emission standards for heavy-duty engines in California vehicles beginning with the 1999 model year. The emission standard for NO_X is proposed to be 1.5 g/bhp-hr for all heavy-duty engines used in vehicles of GVWR above 8,500 pounds, except those optionally certified to chassis-based standards as discussed in previous sections.

The Agency is proposing this standard because this level of control is necessary in order to meet the FIP air quality goals and because this level represents a comparable reduction relative to other vehicle classes. As discussed further below, EPA recognizes that this standard presents a significant feasibility challenge for diesel engines. However, other fuel technologies such as natural gas and alcohol fuels have demonstrated the potential to achieve these stringent levels, as well as other engine designs. Given this, the Agency believes that the 1.5 g/bhp-hr standard is appropriate.

At the same time, EPA recognizes that implementing a 1.5 g/bhp-hr standard may present limitations that may be unacceptable for some unique heavy-duty vehicle applications. Therefore, the Agency is considering an additional, economic incentive program that allows the sale of higher emitting engines. The Agency solicits comments on a plan that would allow engines to be sold at a relaxed level of 2.5 g/bhp-hr NO_X, if a new vehicle emissions surcharge is paid. The program would begin with the 1999 model year and would apply to all engines subject to the 1.5 g/bhp-hr standard and their associated vehicles The surcharge would be assessed also for an engine bought separately to be installed in an existing chassis.

The proposed surcharge, shown in the table below ("New-Vehicle Emission Surcharges for Heavy-Duty Vehicles") for the different classes of heavy-duty vehicles and urban buses, is based on a cost of $10,000 per ton of increased NO_X emissions at a 2.5 g/bhp-hr level compared to the 1.5 g/bhp-hr standard. In computing the surcharge, estimated lifetime emissions were discounted to the year of sale using a seven percent discount rate. Urban buses, as defined under existing EPA regulations, are treated separately for surcharge purposes because of their unique operating characteristics; all other buses are considered heavy-duty vehicles in the table below. Details of the individual values can be found in the docket.[110]

[illegible] New Vehicle Equipment [illegible] [illegible]-Duty Onhighway and Nonroad Engines

[illegible] the California FIP," EPA Memorandum [illegible] the Docket from Alan Stout, February 1994

NEW-VEHICLE EMISSION SURCHARGES FOR HEAVY-DUTY VEHICLES

	GVWR (pounds)	Emissions surcharge
Urban buses	all	$16,000
Other heavy-duty vehicles	8,501–19,500	1,000
	19,501–60,000	7,000
	>60,000	20,000

As described in the sections addressing nonroad engines and the fleet averaging program, the surcharges being proposed today are all based on a value of $10,000 per ton of emissions reduced. The Agency intends this level to represent an appropriate level for valuing incremental NO_X control in California as well as to provide a strong incentive for manufacturers to develop, and customers to buy, engines meeting the 1.5 g/bhp-hr standard rather than pay the emissions surcharge. At the same time, it will provide an option for those few applications in which complying engines are unavailable. Comments are requested on the appropriateness of the surcharge levels, as well as on the 2.5 g/bhp-hr standard proposed for engines subject to the surcharge. Interested readers should review the docket for further information regarding the surcharge value ("Technical Support—Surcharge Evaluation" memo from Joann Jackson-Stephens to docket dated March 1994).

The projected impact of these more stringent NO_X standards on engine technology is discussed below. The impacts are presented separately for each major fuel type. The Agency recognizes that this discussion is based on information from technology development programs that are, in some cases, in their very early stages. More complete information may exist and the Agency solicits a full range of comments on this issue. Any information submitted confidentially will be treated appropriately, in accordance with the Code of Federal Regulations requirements.

Diesel-fueled engines. Manufacturers attempting to develop diesel-fueled engines that comply with the 1.5 g/bhp-hr standard must consider a variety of areas. These include: (1) improvements in fuel injection systems, such as very high pressure injection, electronic unit injectors with minimized sac volumes, improved fuel injection nozzles, and significant advances in fuel injection rate shaping, (2) improvements in intake air management, focusing on optimized intake air pressurization systems such as variable geometry turbochargers or wastegate turbochargers and more extensive use of air-to-air intercooling, (3) continued progress in lubricating oil control (to minimize any NO_X/particulate trade-offs), (4) major advances in exhaust gas recirculation using variable flow and variable temperature control mechanisms, and (5) more sophisticated, integrated electronic control of all engine systems.

Advances in oxidation catalysts (e.g., additional progress in catalytic materials and washcoating processes) may also be needed to control particulate emissions from diesel-fueled engines, while permitting further optimization of NO_X emission variables. Also, fuels improvements such as higher cetane levels may need to be considered.

While these changes will enable diesel-fueled engines to meet NO_X emission standards significantly lower than the current 5.0 g/bhp-hr standard, further advances may be necessary to reach 1.5 g/bhp-hr. One technology that is being actively researched to meet this challenge is a catalyst designed to reduce NO_X in the lean operating environment of the diesel engine. The current research into these devices has yielded NO_X reductions of about 10 to 20 percent, and researchers project that 50 percent NO_X reduction efficiencies under transient conditions may be possible. Research in Japan has shown 50 to 70 percent efficiencies under steady state conditions with a 5 percent fuel penalty. The work done to date has been performed on engines that have NO_X emissions higher than about 4.0 g/bhp-hr. It is not known if the efficiencies that have been reported will also apply to engines in the 2.5 g/bhp-hr range. The Agency also has no clear information on the fuel consumption impact, cost or durability of lean NO_X catalysts. This technology holds promise for significantly reducing NO_X from diesels. EPA requests comments on ongoing research activity related to NO_X control for diesels and the focus of such work.

EPA recognizes that numerous issues must be addressed before many of these technologies can be commercialized for diesel-fueled engines; such issues include durability, fuel consumption impacts, cost and availability of improved fuels, if they are needed. The Agency solicits input on these issues as well as the overall feasibility of the 1.5 g/bhp-hr NO_X standard for diesels.

The Agency has received information that certain on-highway heavy-duty diesel engines are using "transient sensing algorithms" that have the effect of retarding the timing during transient engine operating conditions and advancing the timing during certain steady state operating conditions.[111] Since injection timing has a very significant impact on NO_X emission rates, with advanced timing settings being associated with higher NO_X, the continued use of these algorithms could result in engines that appear to be very low NO_X emitters for certification purposes but would not be nearly so low when operated in-use. The Agency would consider such algorithms used to meet the 1.5 g/bhp-hr standard to be defeat devices. They would not be an acceptable strategy. The Agency solicits comments on appropriate means of discouraging use of such design approaches.

Gasoline-fueled engines. Heavy-duty gasoline-fueled engines currently control NO_X emissions to levels between 3 and 3.5 g/bhp-hr (in response to a 5.0 g/bhp-hr standard). The Agency sees no reason why these engines could not meet an exhaust emissions standard of 1.5 g/bhp-hr with the application of three-way catalysts and other technologies that are currently in use with light-duty vehicles and light-duty trucks. Improvements may be needed in the area of high temperature three-way catalyst materials to withstand the broader range of exhaust temperatures that are typical of heavy-duty gasoline-fueled engines. Also, careful application and integration of exhaust gas recirculation, port fuel injection, more sophisticated ignition systems and increased emphasis on optimized air management may also be needed.

Alternative-fueled engines. A methanol-fueled heavy-duty engine is currently certified at 1.7 g/bhp-hr NO_X and the Agency believes that with additional development this engine could achieve a NO_x emission level of 1.5 g/bhp-hr. The engine is a two-stroke engine. It is likely that with better fuel injection systems (for example, higher pressure injection), better air management (such as improvements in the blower by-pass control system), and other such optimization advances, this engine could achieve 1.5 g/bhp-hr or lower. Four-stroke engines using methanol have not yet been developed to the same extent, but it is likely that these engines could also show very low emissions. Methanol-fueled engines used in light-duty vehicle applications have already demonstrated the potential for achieving very low NO_x levels.

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[111] "Supplemental Deere & Company Comments on EPA Notice of Proposed Rulemaking: Control of Air Pollution; Emissions of Oxides of Nitrogen and Smoke From New Nonroad Compression-Ignition Engines at or above 50 Horsepower," July 23, 1993.

Ethanol-fueled engines can also produce low emissions. A limited amount of work has been done to optimize engines to operate at low emissions on ethanol, but there is the potential for much more improvement. The same two-stroke engine mentioned above was certified on denatured ethanol (95 percent ethanol, 5 percent gasoline) at 4.2 g/bhp-hr NO_x. Whereas the injection system was calibrated for the higher energy density of ethanol, it was not optimized for ethanol use and thus there is room for significant improvement in NO_x emissions performance. These improvements could result in achieving very low NO_x levels. However, if gasoline is used as a denaturant (as it commonly is), flame temperature tends to increase and more NO_x is produced. Thus, a different denaturant may have to be investigated. This same engine using a mixture of 80 percent ethanol, 20 percent distilled water (and no denaturant) produced NO_x emissions results of 1.4 g/bhp-hr.[112] There are long-term injector durability concerns with such a fuel that would have to be resolved before the engine could be commercialized. Many of the issues mentioned above in the methanol discussion apply to ethanol use as well.

Natural gas engines using either compressed or liquified gas can also achieve very low emission levels. Even though the emission optimization of natural gas engines has been focused on only recently, they are already being shown to be low-emission power sources. Lean-burn, homogeneous-charge engines operating on natural gas (including engines made by Cummins, Caterpillar and General Motors) are already achieving NO_x emissions less than 2.5 g/bhp-hr. With additional optimization, it is projected that these engines could achieve a level of 1.5 g/bhp-hr. Homogeneous-charge stoichiometric engines with three-way catalysts (including engines made by General Motors and Scania) are achieving emission levels lower than 1.5 g/bhp-hr NO_x. However, as with the alcohol engines discussed above, extensive opportunities remain for further improvement and optimization for both of these engine types. As with heavy-duty gasoline engines, the natural gas engines operate with high exhaust gas temperatures that need to be accommodated to ensure three-way catalyst durability.

EPA requests comment on the feasibility of meeting an NO_x standard of 1.5 g/bhp-hr for all engine applications, as well as on the need for the surcharge-based 2.5 g/bhp-hr standard. EPA also requests comment on the possibility of adopting an NO_x standard of 2.5 g/bhp-hr for all California on-highway heavy-duty engines without a new vehicle emissions surcharge.

The Agency also notes that in the longer term, significant potential exists for low NO_x emissions from different engine designs. Other possibilities include such engines as turbines and stirling engines, or fuel cell based designs. While such approaches may eventually offer attractive means of lowering NO_x emissions, EPA requests comment on the possibility of commercialization of any of these designs by 1999.

b. Hydrocarbon standard. Heavy-duty vehicles contribute hydrocarbon emissions from both exhaust and evaporative sources. To deal with exhaust emissions, EPA is proposing an exhaust HC standard of between 0.2 and 0.6 g/bhp-hr NMHC. The 0.6 g/bhp-hr level represents what is currently being achieved by most diesel engines. Most 1993 model year diesel-fueled engines are certified at levels less than 0.6 g/bhp-hr total HC without aftertreatment. Also, two of the three natural gas engines certified by CARB emit no more than 0.6 g/bhp-hr NMHC. The 0.2 g/bhp-hr NMHC standard represents the current performance of methanol-fueled engines and diesel-fueled engines equipped with catalysts; for the 1994 model year, such engines have been certified at levels less than 0.2 g/bhp-hr total HC. On the other hand, most heavy-duty gasoline engines are certified in the 1 g/bhp-hr range. However, with the application of optimized three-way feedback controlled catalyst systems these engines should be able to reach levels in the proposed range. EPA requests comments on the appropriate level for this standard.

With regard to evaporative emissions, EPA is planning to extend the concept of inherently low-emitting vehicles (ILEVs) to the FIP enhanced heavy-duty vehicle control program. EPA's rulemaking for Clean Fuel Fleets established the ILEV concept of a vehicle that maintains low evaporative emissions without an active control system (58 FR 11888, March 1, 1993). EPA proposes to adopt an "evaporative-free" requirement for all heavy-duty vehicles over 14,000 pounds GVWR to avoid a trade-off of increased evaporative emissions for reduced NO_x emissions as would likely occur with the use of gasoline fueled engines in this vehicle class. Engines in vehicles under 14,000 lbs GVWR certified to the optional engine-based standards also would need to demonstrate evaporative-free performance. This assurance is needed because vehicles equipped with these engines would not be subject to any in-use I/M testing of the evaporative control systems. The in-use effectiveness of evaporative control systems consequently could not be assured as it would be for vehicles subject to enhanced I/M and associated standards.

Qualifying as an evaporative-free vehicle would require a demonstration that the vehicle does not have the potential for significant evaporative emissions when operating in high temperature conditions. The demonstration would have to show a maximum emission level of 5 grams for combined diurnal (adjusted to a nominal 20 gallon fuel tank volume), hot soak, running loss, and resting loss emissions, without an active evaporative control system. Diurnal emissions would be based on the engine and fuel system being exposed to ambient heating from 72° to 96 °F using 9 psi RVP fuel (or the parallel California requirements of 65° to 105 °F using 7 psi RVP fuel). Also, the evaporative-free requirement only supplements existing evaporative emissions testing procedures; vehicles currently subject to evaporative emission testing would still have to comply with all applicable requirements.

For heavy-duty vehicles over 26,000 pounds GVWR, which already operate almost exclusively on diesel fuel, an evaporative-free requirement would prevent a potential market shift to fuels (such as gasoline) that may be able to meet the proposed NO_x standards but have the potential of high evaporative emission levels. Further, the requirement would decrease the HC contribution from this class of engines as a whole by eliminating any current evaporative emissions. The heavy-duty vehicles between 14,000 and 26,000 pounds GVWR, while relatively small in number, do consist of about two-thirds gasoline vehicles. EPA recognizes that the evaporative-free requirement may discourage the sale of these engines, however bladders and low volatility fuels could be explored as means of demonstrating evaporative-free performance. EPA requests comments on other options that could provide assurances that market shifts could not occur and that in-use evaporative systems for the gasoline vehicles in this class maintain their performance in use.

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[112] This result, as well as data cited in the following paragraph, can be found in "Technical Feasibility of Reducing NO_x and Particulate Emissions From Heavy-Duty Engines—Final Report," Acurex Corporation, April 30, 1993.

EPA specifically requests comment on an option that would establish a chassis-based certification option similar to that for heavy-duty vehicles less than 14,000 lbs. GVWR. Under this option, vehicles would be subject to enhanced I/M and other aspects of the enhanced light-duty vehicle program, including the fleets hydrocarbon standard (see the discussion of the fleet program under the enhanced light-duty vehicle portions of this appendix). Commenters supporting this alternative should comment on the appropriate numerical standards for certification, recall, and inspection-and-maintenance testing.

c. Test requirements. Under the proposed enhanced heavy-duty vehicle program, certification and enforcement testing of on-highway heavy-duty engines and vehicles subject to the new NO_x and hydrocarbon standards, including those medium-duty vehicles certified to engine-based standards, would be subject to EPA requirements. Exhaust emission testing would be conducted following standard Federal test procedures, with two exceptions. First, test fuels would be based on California specifications. Second, exhaust hydrocarbon measurements would be quantified as nonmethane hydrocarbons, or other fuel-specific equivalent. Assembly-line testing would be performed under EPA's Selective Enforcement Audit testing program as described in 40 CFR part 86 subpart K.

Manufacturers of engines subject to the inherently low evaporative emissions requirement would submit test results or an engineering evaluation to demonstrate that the certified vehicles have inherently low evaporative emissions. Test procedures are described in EPA Clean Fuel Fleet program regulations (58 FR 11888, March 1, 1993).

For vehicles certified under chassis-based requirements, EPA also proposes to require evaporative emission testing using the Federal test procedure and standards. CARB adopted a new evaporative emission test in August 1990 and is now in the process of making improvements to its test procedure before requesting a waiver from Federal requirements. It is unclear at this point how closely aligned the two test procedures will be. If CARB receives a waiver, EPA will consider the appropriateness of allowing manufacturers to certify vehicles using CARB's evaporative emission test. EPA and CARB specify standards of 4 and 2 grams per test, respectively, for vehicles between 14,000 and 26,000 pounds GVWR. EPA proposes to retain the 2 g/test standard for California vehicles. The numerical emission standards proposed for heavy-duty vehicles apply equally to certification and recall testing.

Other California standards and procedures would be unaffected by the FIP, as described above for light-duty vehicles. Applicable Federal or California regulations would continue to apply in all aspects of control programs for these emission sources, including certification, assembly line testing, and recall.

4. Heavy-Duty Engine Rebuild Program

a. Introduction. Heavy-duty engines are generally operated over mileages far exceeding the useful life specified when the engines are certified. This is due to their high mileage accumulation rates, high replacement costs, and overall durable designs. Additionally, the engine life is often extended by one or more engine rebuilds. Larger diesel engines, for example those used in line-haul trucks and transit bus applications, are manufactured with replaceable cylinder liners to facilitate engine rebuilding. Engines with replaceable cylinder liners can be readily rebuilt numerous times. It is not uncommon for such engines used in line-haul applications to continue operating for many times longer than their statutory useful life. Rebuilds are typically performed by a variety of parties including fleet operators, small independent garages, the original engine manufacturer, and large independent assembly line operations. Additionally, there are many independent rebuilders of engine components.[113]

Testing conducted on rebuilt engines by EPA has indicated that engine rebuilding is generally well done and emissions control does not usually suffer. However, EPA is concerned about whether this will continue to be the case in the future. Given the very stringent enhanced in-use compliance program emissions standards for HDEs being proposed and the new control technology which will be applied, the in-use emissions performance of rebuilt HDEs is unclear. There may be cost incentives to rebuild these engines to a non-OEM configuration which could substantially increase emissions. Given that most of the actual life of some larger engines is beyond the traditional statutory useful life, it is important to ensure that engines continue to meet standards even after rebuilds. Therefore, EPA is proposing to require rebuilt engines to be subject to the standards proposed today for new engines.

These requirements will apply to any 1999 and later model year heavy-duty vehicle subject to the enhanced standards that is registered in California and is equipped with an engine that has been certified to engine-based standards as opposed to chassis-based standards. Vehicles certified to chassis-based standards in these classes would be subject to full life I/M, similar to light-duty enhanced vehicles. Both requirements ensure that enhanced vehicles continue to meet applicable standards.

b. Program description. EPA's primary concern is that HDEs meet applicable standards in use throughout their life cycle, including after engine rebuilding To do this requires ensuring that, if vehicles are found not to comply at any time, someone is responsible for remedying the nonconformity. EPA proposes to require vehicle owners to be able to demonstrate at all times that their engine is certified to meet the emissions standards it originally met. If the engine is within its original useful life, nothing more would be required. After the end of the engine's original useful life, the owner would be required to obtain a useful life renewal certificate showing that the engine still met its original standards. Such a certificate must be issued by a party that has brought the owner's engine to a configuration that has been previously certified by EPA (certification requirements are discussed below). The certifier would specify a useful life renewal period on the certificate over which the certifier is responsible for emissions performance of the engine. Once the specified period expires, the vehicle owner would be required to acquire another useful life renewal certificate before reregistering their vehicle in California.

The certifier would perform all actions necessary to bring the engine to the certified configuration before issuing a useful life renewal certificate. Necessary actions may range from replacement of selected emission control and other hardware to major engine overhaul. Anyone able to meet the requirements of the program may certify an engine configuration and issue useful life renewal certificates. EPA would anticipate that candidates for certifiers would most likely be the original engine manufacturers, parts suppliers, and engine rebuilders. Once a useful life renewal certificate is issued to the vehicle owner, the certifier assumes all of the manufacturer's liability for the emissions performance of the engine as described in the proposal for new engines.

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[113] "Heavy-duty Engine Rebuild Practices", EPA Draft Report.

The marketplace, rather than EPA, should develop the most cost effective methods of ensuring effective emissions control for each engine. Engine rebuilding may not be necessary in all cases. Some engine manufacturers may elect to provide a longer original useful life. By extending the useful life, the manufacturer would allow owners to use their vehicles for a longer period of time without incurring the additional cost of an engine rebuild. The Agency believes that there will be significant market demand for longer useful life periods, that more closely match actual in-use engine rebuild practices.

The original engine manufacturer or another party may be able to provide a useful life renewal certificate upon the performance of some specified maintenance on the vehicle. Such maintenance would include anything that was needed to bring the engine to a certified configuration and ensure emissions control for the specified useful life renewal period, possibly including the replacement of emissions control devices. There are likely to be other possible options for the vehicle owner that EPA has not considered.

As previously mentioned, the vehicle owner must be in compliance with these requirements at all times. Enhanced engines without valid useful life certificates may not be registered in California. At time of registration, the owner would be required to show either that the engine was still within its original useful life or a useful life renewal period. The certifier would be required to provide a certificate to the vehicle owner (as described above) and label the engine, allowing such a demonstration to be made easily. The label must include information identifying the certificate, and the effective and expiration dates (mileages and/or hours as applicable) of the useful life renewal certificate as applied to the labeled engine. Furthermore, if the vehicle owner is found to be out of compliance through a roadside check or other means, EPA would consider the owner to be in violation of federal tampering provisions (see section 203(a) of the Clean Air Act) and the owner would be fined for every engine out of compliance. EPA requests comments on other ways to enhance its ability to enforce these owner requirements.

EPA recognizes that lighter HDEs are not usually rebuilt because their operating life is comparable to that of the chassis. Also, their lifetime mileage is generally lower than that of larger vehicles. For these reasons, there may not be as much incentive for the marketplace to offer as many options for lighter heavy-duty vehicles. If an engine reaches the end of its statutory useful life and there is no way to renew its useful life, the owner would no longer be able to register the vehicle with that engine in California. Operators of heavy-duty engines would be expected to purchase vehicles equipped with engines with a useful life comparable to their needs or purchase vehicles with engines that are designed to be rebuilt. It should be noted that these requirements only apply to vehicles certified on an engine test; many smaller trucks would be certified on a chassis test.

c. Certification requirements and liability. To help ensure continuous emissions control effectiveness, EPA proposes that anyone offering a useful life renewal certificate must certify the engine configuration that will result from the actions they will perform on the in-use engines. EPA also proposes to require that emissions durability be demonstrated for the useful life renewal period being provided by the certifier.

The resultant engine configuration must be certified in the same manner that a new engine is certified. A full emissions test would be required showing that in-use HDEs, after being restored to the engine configuration being certified, will meet all applicable HDE in-use recall emissions standards to which the engine was originally certified. EPA proposes that the test engine be representative of actual in-use engines and therefore, be an engine at or beyond its statutory useful life. EPA recognizes that this may be burdensome for the certifier in the early years of the program because available engines will generally be at low mileages. However, EPA believes that it is necessary to know how high mileage engines will perform after being brought to the configuration being certified. EPA requests comments on these and any other aspect of the certification testing requirements. EPA is especially interested in comments on effective but less burdensome test engine requirements.

In addition to the normally required engine certification information and data, the certification application would also be required to include: (1) Rationale for test engine selection, (2) a description of all actions necessary to bring an in-use engine to the configuration being certified, including a description of parts being replaced, (3) a description of any emissions related components not being replaced and rationale as to why their replacement is unnecessary, (4) a copy of all installation instructions and warranty, and (5) a copy of the engine label and useful life renewal certificate to be provided to the engine owner. EPA requests comments on these certification procedures and the items that are being required to be provided for certification.

d. Recall testing. EPA is proposing to apply the enhanced recall program for the light-duty enhanced vehicles, described in detail in section A.(5) of this appendix, and heavy-duty vehicles as described in more detail below. At the time an engine is restored to a certified configuration, the certifier, for purposes of this program, becomes the engine manufacturer for purposes of determining responsibility for the in-use emissions performance of the engine. The certifier may elect to have outside agents conduct installations. However, EPA proposes to hold the certifier solely liable for any failure of an engine to meet the enhanced HDE in-use standards during the useful life renewal period. EPA would have the authority to enforce in-use standards over the useful life renewal period by performing recall testing on engines within their useful life renewal period in the same manner that EPA would for engines still within the original useful life. EPA requests comments on the above approach for assessing liability for the emissions performance of rebuilt engines.

As mentioned above, EPA proposes to conduct recall testing throughout the operating life of engines. EPA believes that this is the most appropriate way to ensure that engines are meeting the enhanced HDE in-use standards. For recall testing after the end of the original useful life, EPA will group engines by the certified configuration. Any subsequent recall orders will hold the certifier of that engine configuration responsible for failure to comply with applicable emissions standards. Remedial actions would be solely the responsibility of the certifier.

EPA recognizes that the high cost of engine testing may present an impediment to enforcement of these rebuild requirements through recall testing alone. EPA requests comments on additional methods of enforcing the above rebuild provisions which may or may not include actual emissions testing. Additionally, EPA requests comments on all aspects of the enhanced recall provisions.

5. Inspection and Maintenance (I/M) Program

As discussed in Section III.D.2.c. of the Preamble, covering the enhanced I/M program, EPA is proposing to include pre-1999 model year heavy-duty vehicles of GVWR 8,500–19,500 pounds in the enhanced I/M program. Furthermore, as discussed in Section A(4) covering the enhanced vehicle I/M program for new light-duty vehicles, EPA is proposing to include new heavy-duty vehicles of GVWR 8,500–14,000 pounds in the LDV/LDT enhanced vehicle program for 1999 and later model years, including I/M. EPA also requests comment on the desirability and feasibility of extending the enhanced I/M and enhanced vehicle I/M programs to other heavy-duty vehicles, particularly those in the weight classes up to 26,000 pounds GVWR (or any portion thereof). If this were done, the need to require these vehicles to be evaporative emission free, as discussed in Section B(3), and the need for these vehicles to be rebuilt, as discussed in Section B(4), could be reconsidered.

In considering this issue, commenters should refer to the detailed discussion of enhanced light-duty vehicle inspection and maintenance program requirements which would be applicable to these heavier vehicles as well except as noted below. These requirements address such issues as geographic scope, testing, enhanced I/M threshold, manufacturer liability, tracking of enhanced I/M test results, threshold calculation, data collection, and manufacturer notification of liability.

In addition, EPA would like to note several issues for which an enhanced I/M program for heavy-duty vehicles above 14,000 pounds GVWR would differ from the light-duty vehicle and light-duty truck program. First, the regulatory useful life for heavy-duty vehicles is 110,000 miles, 185,000 miles, or 290,000 miles, depending on the vehicle class. Therefore, in a manner similar to that described for the light-duty vehicle I/M program, after the threshold level was exceeded, the engine manufacturer would be responsible for repairing vehicles failing a enhanced vehicle I/M standard during the useful life period, or prior to engine rebuild, whichever came first. After the useful life period or after the engine was rebuilt, the responsibility for I/M repairs would depend on whether these vehicles were included in the enhanced vehicle rebuild program. Second, an I/M program for heavy-duty trucks would require the addition of I/M testing capacity for these heavier vehicles. EPA requests comment on all aspects of this proposal and encourages commenters to suggest options that would facilitate the achievement of the program's objectives as well as implementation.

6. Recall Program

The enhanced recall program for light-duty vehicles has already been described in Section A(5). The heavy-duty program will be the same as the light-duty program except for a change related to vehicle selection described below. Like the light-duty program, it is intended to ensure that vehicles and engines meet applicable standards throughout their life. Its provisions also apply to medium-duty vehicles that are equipped with engines certified to engine standards rather than being certified to the medium-duty vehicle chassis-based standards. Medium-duty vehicles certified to chassis-based standards will be subject to the light-duty recall program requirements. Rather than repeat the detailed provisions of the enhanced recall program for light-duty vehicles, the reader is referred to the light-duty discussion for more information. Both programs are based on the current recall program which interested readers should also review (39 FR 44375, December 23, 1974).

There is one difference between the heavy-duty and light-duty recall programs. For light-duty enhanced vehicles, EPA is proposing to draw recall test samples from only those vehicles subject to EPA's enhanced I/M program, generally corresponding to vehicles registered in the FIP areas. This would focus testing on identifying problems which were not being corrected by the I/M program. Because there is no I/M program for HDEs, this approach is not appropriate for heavy-duty. Therefore, EPA proposes to draw HDE recall test samples from vehicle families registered throughout California although the FIP areas would clearly be an important focus.

7. Multiple-State High-Emitting Engines

Many trucks operating in California are engaged in interstate commerce. CARB data show that more than 20 percent of the mileage accumulated by heavy-duty vehicles in California is from trucks registered to operate in at least one other state.[114] Even if new emission standards are adopted for California trucks, some interstate trucks would continue to be certified to less stringent federal emission standards. In that case, a significant amount of the potential benefit of the California standards would be lost. Given the cost impact expected for the California standards, there would also be an incentive to circumvent the intent of the standards by registering trucks in other states and operating them in California. EPA wants to avoid such a competitive disadvantage for trucking firms based in California.

To engage in commerce in multiple states, state law requires that trucks must be registered to operate in each state. The registration requirements allow each state to enforce its traffic laws and engage in some taxing. There are therefore three types of trucks operating in California: Those operating exclusively in California, those based in California but also operating in other states, and those based in other states but operating in California. Emissions control for engines operated exclusively in California is handled through the fleet averaging and importation requirements of the FIP. This section affects the two categories of trucks operating in other states in addition to California. It affects both categories equally.

Except as described below, EPA is proposing that owners of trucks registered in multiple states be required to participate in the fleet averaging program. Only that portion of an interstate trucking fleet registered in California would be involved in the program, including the calculation and assessment of surcharges. Trucks that never enter California would not be included.

EPA is concerned about the burden that the fleet averaging program may place on interstate trucking firms, especially if engine manufacturers choose to base their compliance with the proposed enhanced engine standards on alternative fuel technologies. The declining fleet average emissions requirement will eventually force owners of all trucks entering California to meet these standards or to pay increasingly stiff surcharges. Further, to the extent different fuels are used, interstate truckers may have difficulty finding adequate fuel supplies for their low-emitting trucks when they are traveling outside California. As a result, they may be forced to maintain dedicated California fleets or to comply with the program requirements through the payment of surcharges, with little benefit to FIP area air quality.

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[114] "Update on the Feasibility of Reducing Oxides of Nitrogen and Particulate Matter Emissions from Heavy-Duty Vehicles," CARB, July 1993.

As an alternative to requiring all interstate truck fleets to participate in the fleet averaging program, EPA is proposing to allow fleet owners, at their option, to comply with a use restriction on higher emitting engines. Beginning in 2001, any time a non-fleet averaged truck which does not meet the enhanced vehicle heavy-duty engine standards and has multiple-state registrations operates in the state, it would be allowed to make no more than one stop in either the South Coast, Ventura, or Sacramento FIP areas. This requirement would apply to all such trucks, regardless of whether or not the base of operation is in California. Any pickup or delivery would be considered a stop. Also, such trucks making a stop in one of the FIP areas would not be permitted to make more than a total of two stops statewide including any stop in a FIP area. An operator who could show that a trip into California will involve no driving in the South Coast, Ventura, or Sacramento FIP areas would be allowed to operate freely throughout the rest of the state. Of course, any vehicle which meets the enhanced heavy-duty engine standards or is part of a fleet complying with the averaging requirements would be able to operate throughout the state without restriction.

EPA would enforce the delivery restrictions by random vehicle checks and inspection of driving logs. EPA could inspect papers at weigh stations and at pickup and delivery points. Any evidence that the restrictions had been violated would subject the operator to a maximum fine of $25,000 for every day in violation. EPA is requesting comment on a further penalty of revocation of the right to register in California if multiple violations are recorded.

EPA also requests comment on an option under which, beginning in 2005, only engines certified at or below the 1998 federal 4.0 g/bhp-hr NO_x standard would be allowed in trucks with multiple-state registrations operating in California. This requirement would also apply to all trucks, notwithstanding the base of operations. Preventing earlier models from operating in California is intended to reduce the emission contribution from the interstate portion of the heavy-duty vehicle fleet. It would ensure that the cleanest national trucks are used in California.

EPA would begin the two-stop limitation in 2001 and the clean multi-state truck requirement in 2005. The Agency believes that this would allow sufficient time for them to be implemented without overly disrupting trucking operations in California.

EPA requests comment on the proposal to require trucks operating in multiple states to participate in the fleet averaging program (with and without the option of choosing usage restrictions). EPA also requests comment on whether or not owners of such fleets should also be required to have their 1999 and later model year trucks meet the enhanced vehicle standards, similar to requirements for in-state fleet owners. Comments are also requested on all aspects of the discretion to limit stops of higher-emitting trucks in the FIP areas, and on the alternative of limiting entry of older high-emitting trucks into the state.

8. Alternative Fuel Availability

As discussed earlier, the proposed enhanced heavy-duty vehicle standards will present significant feasibility challenges for diesel-fueled and gasoline-fueled heavy-duty vehicles. At this time compliance with the standards is more certain through use of alternative-fueled vehicles. As described above, such fuels could include methanol, ethanol, compressed or liquified natural gas and possibly others. These fuels are not widely available for vehicle use at this time. Thus, to the extent that fuels other than diesel and gasoline are chosen for compliance, the availability of fuel for these vehicles could be of concern. California regulators have also faced this concern during development of the LEV program and have addressed it through regulation, as described below.

California's existing fuel availability rules require major fuel suppliers to provide alternative fuels at a minimum number of their retail outlets. The minimum number of fuel outlets for each alternative fuel depends on the number of in-use vehicles requiring that fuel (20,000 is the current minimum trigger for fuel availability) and on how many years the fuel has been required under the fuel availability program. For 1994–96, the requirements apply only within the SCAQMD, while for 1997 and beyond, they apply throughout the entire state. For example, the first year an alternative fuel is designated a required clean fuel (i.e., the number of vehicles on the road requiring that fuel exceeds 20,000), at least a total of 90 fuel outlets must provide the fuel. In the second year, the minimum number would increase to 200. The required number of retail outlets could be greater if more than 20,000 vehicles required that alternative fuel. These outlets would be allocated to each of the major fuel producers in the region according to the amount of motor vehicle fuel they supplied. The fuel outlets would have to be geographically dispersed throughout the applicable region.

It is uncertain at this time how many enhanced heavy-duty engines will be alternative-fueled since technologies which will meet the standards are still being developed. Most of the heavy-duty vehicles are found in fleets, where fuel availability is easier to control. Therefore, California's fuel availability requirements appear to be sufficient. Therefore, EPA is not proposing any additional alternative fuel availability requirements. However, EPA requests comments on this issue and what, if any, additional actions may be appropriate to insure fuel availability.

9. Fleet Averaging Program

The enhanced program for heavy-duty vehicles will reduce emissions as planned only if people continue to purchase new vehicles and retire old ones at past rates. If people keep their old trucks longer than they have in the past or buy used vehicles from out of state, the emissions reductions would be substantially less. Because these reductions are critical for achieving attainment, EPA needs to ensure that vehicle turnover continues to occur at historical rates.

EPA is proposing to ensure that turnover is maintained by implementing a declining fleet average NO_X emissions program. Under the proposed fleet average program, if a fleet's turnover rate falls behind the historical California fleet average turnover rate for heavy-duty vehicles, then an emissions surcharge will be assessed on the additional NO_X emissions caused by the higher emitting engines. The fleet average NO_X emissions level allowed is reduced each registration cycle to reflect the appropriate turnover rates.

A fleet owner would determine the total NO_X emissions from his or her fleet by adding up the annual amount of NO_X emitted by each vehicle in the fleet and computing an average value for their heavy-duty vehicles between 19,500 and 33,000 pounds GVWR and their heavy-duty vehicles above 33,000 pounds GVWR. These average values would then be compared to the fleet average standards for those classes in that calendar year. If the actual emission rate exceeded the standard, an emissions surcharge would be applied to the excess amount.

The table below shows the calculation of the fleet average emission rates for the two classes of heavy-duty vehicles covered by the program. Besides the two vehicle classes, entries are provided for model year groupings which have different applicable NO_X emission standards. The factors represent annual emissions of NO_X in tons for a vehicle in any given category. Adding each column and dividing by the number of vehicles in that class will yield the fleet's average per-vehicle NO_X emissions for the fleet owner's heavy-duty vehicles.

CALCULATION OF HEAVY-DUTY VEHICLE FLEET NO_X EMISSIONS

[tons]

Model year grouping	Emissions from HDVs 19,501–33,000 lbs GVWR	Emissions from HDVs >33,000 lbs GVWR
1999+	[a] #×0.071	#×0.28
1998	#×0.19	#×0.74
1991–97	#×0.24	#×0.93
1988–90	#×0.28	#×1.12
1984–87	#×0.24	#×0.95
pre–1984	#×0.51	#×1.99
Total actual emissions		
Average per vehicle emissions [b]		

[a] "#" represents the number of vehicles in the given fleet for the specific model year/vehicle type grouping.

[b] Average per vehicle emissions equals the total actual emissions for a vehicle category divided by the total number of vehicles of that category in the given fleet.

The table below lists the average NO_X emissions allowed for each calendar year. These numbers are derived from the expected model year makeup of the California fleet as older vehicles are retired and replaced with enhanced heavy-duty vehicles.[115]

AVERAGE NO_X EMISSIONS ALLOWED FOR HEAVY-DUTY VEHICLES BY CALENDAR YEAR

[Tons]

Calendar year	19,500–33,000 pounds GVWR	33,000 pounds and greater GVWR
2000	0.28	1.1
2001	0.26	1.02
2002	0.24	0.94
2003	0.22	0.87
2004	0.20	0.80
2005	0.19	0.74
2006	0.17	0.68
2007	0.16	0.62
2008	0.15	0.57
2009	0.13	0.52
2010	0.13	0.49
2011	0.12	0.47
2012	0.11	0.45
2013	0.11	0.43
2014	0.10	0.41
2015	0.098	0.39
2016	0.093	0.37
2017	0.089	0.35
2018	0.086	0.34
2019	0.083	0.33
2020	0.080	0.31
2021	0.077	0.30
2022	0.075	0.29

AVERAGE NO_X EMISSIONS ALLOWED FOR HEAVY-DUTY VEHICLES BY CALENDAR YEAR—Continued

[Tons]

Calendar year	19,500–33,000 pounds GVWR	33,000 pounds and greater GVWR
2023	0.072	0.29
2024 and later	0.071	0.28

Compliance with the fleet average standard would be determined by comparing the values in the second table with those calculated in the first. If the actual values are below the standard, no emission surcharge is due. If either of the actual values exceed the standard for that year, a surcharge would be due based on the difference. It would be determined by multiplying the difference by the number of vehicles affected (in the specific vehicle category) and then by the surcharge rate of $10,000 per ton. It is important to note that so long as a fleet continues to replace vehicles at historical rates, no surcharge would be required.

In order to assure the maximum flexibility, EPA is also proposing to allow individual fleets to join together into larger fleets for determining compliance with the fleet standard. This provision should accommodate those fleets which may turn over slower or more quickly than the average, notwithstanding any effects of the enhanced vehicle program. Additionally, it could benefit very small fleets, such as independently owned trucks. The flexibility to join together should ease the impact of the steady reduction in the fleet average emissions allowed on any fleets with special compliance problems.

The annual emission rates developed in the above two tables are based on diesel engine values, even though the program applies to all heavy-duty vehicles above 19,500 pounds GVWR. This is consistent with the fact that diesels make up the dominant fraction of the affected fleets. It also could serve to encourage turnover of gasoline fueled engines faster than they otherwise would. This is because, even though they are generally less expensive than diesel engines, they would provide the same credit in the fleet average as turning over a diesel engine. Given the high evaporative emissions from gasoline engines, this is a desirable result. Comments are invited on this approach.

It should also be noted that the declining fleet average standards described above are proposed to apply only to heavy-duty vehicles above 19,500 pounds. Lighter HDVs are not included because EPA is proposing to include these vehicles in its enhanced I/M program. Because this group has a large number of gasoline fueled vehicles (which would particularly benefit from an I/M program) and a large number of small fleets (which would find the declining fleet average program particularly burdensome), the Agency believes this to be the best approach for these vehicles. Exclusion of LHDVs from the averaging program would not affect the role of 1999 and later LHDV engines in the other enhanced heavy-duty vehicle requirements already described. Comments are invited on the alternative of including LHDVs in the declining fleet average program.

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[115] "Calculation of Average Emission Rates for Heavy-duty Onhighway and Nonroad Fleet Averaging Programs," EPA memo from Chris Lieske to Joanne Goldhand, February 1994.

As discussed earlier, EPA is considering allowing enhanced HDVs to be equipped with engines certified to a 2.5 g/bhp-hr standard rather than a 1.5 g/bhp-hr standard as long as an appropriate new vehicle surcharge is paid by the purchaser. Because the surcharge is based on the excess NO_X emitted over the entire life of the vehicle, EPA believes that it would be appropriate to count these vehicles in the fleet average as emitting at 1.5 g/bhp-hr rather than 2.5 g/bhp-hr. Otherwise, the fleet owner would be required to pay twice for the same incremental emissions.

As described more fully below in the nonroad fleet averaging program, EPA is concerned that engine and truck dealers may be significantly hurt if fleet owners prebuy 4.0 g/bhp-hr NO_X engines to reduce the need for purchases of 1.5 g/bhp-hr NO_X engines in the initial years of the program. Dealers are generally local, unlike all manufacturers and some fleet owners. They therefore may have trouble surviving more than a year of slow movement in the California market. Therefore, EPA is requesting comment on a manufacturer sales mandate for heavy-duty onhighway similar to that for nonroad engines. Interested readers should review section C.(7)(b) of this appendix for more information.

EPA requests comments on all aspects of the heavy-duty declining fleet average proposal.

10. Fleets

As described in the enhanced light-duty vehicle section (A(6)), EPA is proposing a revised Clean Fuel Fleet program in the South Coast and requesting comment on expanding it into the other two FIP areas. As described in the Clean Air Act Title II, Part C and in EPA's Clean Fuel Fleet program regulations (see 58 FR 32474, June 10, 1993 and 58 FR 64679, December 9, 1993) the national Clean Fuel Fleet program would require certain centrally fueled fleets to make a certain percentage of their new vehicle purchases clean fuel vehicles. The CAA HD fleet program applies to fleets up to 26,000 pounds GVWR and requires that 50 percent of all purchased be Clean Fuel Vehicles.

As described in the light-duty enhanced vehicle program, EPA is proposing to require that the affected fleets purchase ILEVs which meet a composite NMHC standard set to reflect their low evaporative emission potential, rather than merely clean fuel vehicles. This requirement ensures that the fleet program will achieve significant hydrocarbon reductions beyond what is required by the general enhanced vehicle program. The application of this program is straightforward for most vehicles up to 14,000 lbs. GVWR. On the other hand, for vehicles certified to engine based standards (all vehicles above 14,000 lbs GVWR and some under that threshold), an ILEV requirement is already in place and therefore no composite is necessary. EPA therefore is proposing to apply the fleet program only to vehicles certified to a chassis-based standard, currently to vehicles up to 14,000 lbs GVWR. If EPA extends the chassis-based certification option to vehicles between 14,000 and 26,000 lbs. GVWR, the fleet program will extend to these vehicles as well.

11. General Enforcement

It would be a violation of federal law for any engine manufacturers or owners to fail to comply with the specific requirements and prohibitions described above. In addition, under the enhanced heavy-duty vehicle program, it would be a violation of federal law for the California Department of Motor Vehicles (DMV) or any other department of the State of California (or any political subdivision thereof) to register any vehicle subject to any requirement for which a valid certificate of compliance or waiver (either paper-based or electronic) has not been presented. Any person providing fraudulent certification or otherwise aiding or abetting in the violation of this section, would also be violating federal law.

That is, it is a violation to permit registration or facilitate reregistration of a model year 1999 or later engine for which there is not in force a valid certificate of conformity from EPA (either for the engine or for the rebuild). Further it is a violation to register any model year 1998 or previous vehicle or engine after 2001 without EPA confirmation that the appropriate fleet average fee, if any, has been paid. Violations could result in civil penalties under federal law of up to $25,000 per violation. Each instance of unlawful registration would be considered a separate offense.

C. Enhanced In-Use Compliance Program for Nonroad Engines Over 37 kw

1. Applicability

EPA intends the enhanced in-use compliance program for nonroad engines to apply to most nonroad engines at or above 37 kw, with the exceptions described above. This means that the Agency is adding two categories of nonroad engines not covered under the nationwide federal rulemaking. The first category is spark-ignition engines for all categories except recreational marine engines. The second is high speed Diesel marine engines which are at or above 37 kw; these engines are not included in other FIP regulations

The enhanced nonroad engine program is proposed to include both CI and SI engines. EPA is concerned that applying more stringent emission standards only to CI engines would create an incentive to replace diesel (CI) engines with gasoline (SI) engines, because if left unregulated these engines could have a cost advantage. This shift would increase emissions because the unregulated gasoline engines would have higher exhaust levels and significantly higher evaporative emissions than diesel engines. EPA is therefore proposing exhaust emission regulations for both CI and SI engines (i.e., all engine types in the size range described) and adding a requirement to prevent evaporative emission increases. This strategy should level the playing field from an emissions perspective and avoid introducing an inappropriate encouragement to shift to gasoline and higher HC emissions.

The enhanced nonroad engine program is also proposed to include CI marine engines over 37 kw which have rated speeds at maximum torque of over 1200 revolutions per minute. These engines are generally used in non-oceangoing commercial vessels; oceangoing ships are dealt with in other portions of this FIP.

The Agency notes that the proposal would include generators at or above 37 kw used on oil platforms, if they fit the mobility requirements defining nonroad engines in EPA's nationwide rule. If not, they are regulated as part of the platform under EPA's Outer Continental Shelf (OCS) rules if they are permanently placed at the OCS site.

The provisions of this section apply only to engines sold for use in the FIP areas (although, as discussed later, EPA is considering options extending beyond the FIP areas). Nonroad engines are significantly less mobile than onhighway engines. Thus EPA has tailored its program to apply only to engines in the FIP areas. Any equipment with an applicable engine sold for use in a FIP area will be required to have a prominent exterior sticker showing that it meets the standards and other provisions of this program. A fleet averaging program, similar to that for on-highway, will also be applied to engines used in the FIP area to ensure continued turnover to cleaner engines.

The enforcement of these two requirements is discussed further in the nonroad fleets section below.

EPA proposes that after the inception of the nonroad engine program described in this Appendix, only engines complying with the provisions of this program may be imported for use into the FIP areas. Use of older engines, not previously used in the areas, is prohibited. Additionally, use of new engines which do not comply with the program is also prohibited.

2. Authority

EPA is proposing this enhanced in-use compliance program for nonroad engines using its broad remedial authority under section 110(c). Section 213 of the Clean Air Act provides EPA with specific authority to regulate nonroad engines. Moreover, no provision of section 213, or any other section of the Clean Air Act, prohibits EPA from exercising its section 110(c) authority in the manner proposed herein. EPA's data indicate that the engines regulated herein, nonroad engines at or above 37 kw including SI engines and diesel marine engines with speeds greater than 1200 RPM, contribute to ozone pollution in the FIP areas.

3. Emissions Standards

a. Oxides of Nitrogen Standard. Parallel to the onhighway requirements, EPA proposes that 1999 and later model year nonroad engines for use in the Ventura and South Coast nonattainment areas must meet a NO_x standard of 1.5 g/bhp-hr. For Sacramento, EPA proposes a 2.5 g/bhp-hr standard, reflecting a somewhat lesser need for control in that area, but is considering a 1.5 g/bhp-hr standard for reasons discussed below. EPA requests comment on these proposed standards and their areas of application.

As with onhighway engines, EPA is also considering an option to allow use of engines emitting up to 2.5 g/bhp-hr NO_x in the South Coast or Ventura areas, subject to an emissions surcharge which would be paid at the time of equipment purchase. This option is intended to cover unique applications where the 1.5 g/bhp-hr standard might present unacceptable limitations. The surcharge, shown in the table below for applicable nonroad categories, is based on a cost of $10,000 per ton of increased NO_x emissions over the life of the engine. The calculations are based on usage data supplied by manufacturers, as presented in EPA's "Draft Regulatory Support Document for Control of NO_x and Smoke Emissions from Nonroad Compression-Ignition Engines Greater than or Equal to 50 Horsepower" (April 1993). EPA assumed that each category of engines would be operated at its average annual rate (hours per year) for sixteen years. Lifetime emissions are discounted at a seven percent annual rate.

In computing the emissions surcharges, the Agency combined equipment types with similar surcharges into 7 different groups and assigned a surcharge value to each based on information from manufacturers. EPA is proposing that manufacturers of nonroad equipment containing an engine of over 37 kw must classify each type of equipment into one of these categories. Any equipment fitting possibly into two categories will be presumed to fit into the higher surcharge category unless further information is provided. Details of the individual values can be found in the docket.[116] EPA requests comment on the categories listed in the table below, especially whether any engine applications may be missing from the list, or whether the categories need further definition to distinguish between similar applications. EPA also requests comment on the possible need to further divide categories, perhaps by engine size, to avoid inappropriate fees for some engines. Any comments should reflect the need to keep the set of surcharges simple enough to maintain a manageable program.

SURCHARGES FOR HIGHER-POLLUTING NONROAD ENGINES

Class	Equipment types	Average rated HP	Load factor (percent)	Lifetime use (hrs)	Surcharge
I	Wood splitters	58	50	1,296	
	Sprayers	92	50	1,408	$400
	Swathers	82	62	1,600	
II	Other agricultural equipment	57	51	5,280	
	Combines	152	70	1,984	1,000
	Chippers/stump grinders	99	37	6,992	
	Balers	98	58	4,928	
III	Tractors/loaders/backhoes	71	38	11,200	
	Concrete/industrial saws	56	73	7,792	
	Forklifts	83	30	13,600	
	Rough terrain forklifts	84	35	13,968	
	Other matl. handling equip	111	59	6,496	3,000
	Paving equipment	99	53	8,112	
	Agricultural tractors	98	70	6,576	
	Concrete pavers	77	56	13,024	
	Asphalt pavers	77	56	13,024	
IV	Rollers	99	59	10,912	
	Other general indstrl equip	107	51	12,992	
	Other construction equipment	161	62	8,000	5,000
	Aircraft support equipment	137	51	11,712	
	Cranes	194	43	11,216	
	Bore/drill rigs	209	75	6,224	
V	Graders	147	54	14,784	
	Crawler tractors	134	57	16,336	
	Sweepers/scrubbers	97	68	19,904	
	Crushing/process equipment	127	78	13,440	
	Skidders	131	49	22,368	10,000
	Terminal tractors	96	82	19,200	

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[116] "New Vehicle/Equipment Surcharges for Heavy-Duty Onhighway and Nonroad Engines Under the California FIP," EPA memo to the Docket from Alan Stout, February 1994.

SURCHARGES FOR HIGHER-POLLUTING NONROAD ENGINES—Continued

Class	Equipment types	Average rated HP	Load factor (percent)	Lifetime use (hrs)	Surcharge
VI	Excavators	143	59	19,040	20.000
	Off-highway tractors	214	65	13,744	
	Rubber-tired loaders	175	54	22,368	
	Feller/bunchers	183	71	17,760	
	Rubber-tired dozers	356	59	13,088	
	Scrapers	290	60	22,160	
VII	Off-highway trucks	658	25	52,668	60.000

With respect to the feasibility of the enhanced nonroad engine standards, the reader is referred to the discussion of the onhighway standards feasibility question. EPA believes that the technological approaches expected to be used for onhighway engines will also find application for nonroad engines. More specifically, diesel engine manufacturers make engines for both onhighway and nonroad applications and some individual engine families have been used for both. The Agency therefore projects that the diesel engine developments applied to onhighway engines will also need to be applied to nonroad engines. Although at this time there are very few gasoline or alternative fuel (mainly LPG) engines in these categories, such engines may find it easier to meet the nonroad NO_x standards than the onhighway standards because of the steady-state nature of the in-use test. (Gasoline may have difficulty with the evaporative hydrocarbon requirements described below.) Optimization of these engines may be less complex because transient fuel/air mixture control is less of a concern. Alternative fuel related technology and longer-term engine changes described for onhighway engines are also candidates for use in the nonroad market.

EPA is aware that packaging concerns can be an issue for nonroad equipment, as they are for onhighway vehicles. Many manufacturers of nonroad equipment will have to make changes to their equipment designs if the profile of the engine is altered substantially or there are other, new, requirements such as fuel system changes. Moreover, there are also differences in use between nonroad and onhighway engines which lead to different load requirements. EPA believes that the four-year lead time provided in the FIP will be sufficient for such issues to be resolved but requests comment from equipment manufacturers on unique packaging and use issues for nonroad equipment.

b. Hydrocarbon standard. EPA proposes to set the exhaust NMHC standard at 1.2 g/bhp-hr, the current onhighway heavy-duty diesel engine standard. If EPA, in the national rule for CI nonroad engines at or above 37 kw, finalizes a different standard for these engines, EPA will consider that standard for FIP engines as well. Additionally, since these engines are a small but significant contributor to HC inventories in the areas, EPA requests comment on lower HC standards such as those described in the proposal for onhighway heavy-duty vehicles (section B.(3)(b) of this appendix).

Once again paralleling the onhighway heavy-duty vehicle provisions, EPA proposes to require nonroad equipment using engines over 37 kw to have inherently low evaporative emissions. Qualifying as low evaporative would require a demonstration that the equipment does not have the potential for significant evaporative emissions when operating in high temperature conditions. The demonstration (via testing or engineering analysis) would be based on a maximum emission level of 5 grams for combined diurnal (adjusted to a nominal 20 gallon fuel tank volume), hot soak, running loss, and resting loss emissions, without an evaporative control system. Diurnal emissions would be based on the engine and fuel system being exposed to ambient heating from 72° to 96° F with a 40 percent fill of 9 psi RVP fuel, or the parallel California requirements of 65° to 105° F using 7 psi RVP fuel (if gasoline is used). EPA would have the option of testing to confirm the results. This requirement will ensure that evaporative emissions remain low in use, which is especially important given there is no inspection and maintenance program for these engines.

EPA data show most heavy-duty nonroad applications at or above 37 kw use diesel fuel or liquefied petroleum gas (propane). Engines operating on these fuels are likely to be able to comply with the low evaporative requirement without modification. The low evaporative requirement, therefore, would affect the small portion of the nonroad fleet operating on gasoline and would prevent other changes in the makeup of the existing fleet that could increase the potential for evaporative emissions. In applications where gasoline-fueled engines are used, new engines in this size range would have to be redesigned to operate low evaporative. Very low volatility gasoline could be investigated as an option to use of diesel or other fuels.

EPA seeks comment on other options that could provide assurance that hydrocarbon emissions would not increase from these engines and that a shift to high volatility gasoline engines would not occur. Commenters should review the treatment of light-duty vehicles under the enhanced in-use compliance program (section A. of this appendix).

c. Test requirements. EPA is proposing to conduct certification and enforcement testing of nonroad heavy-duty engines regulated under this program using the federal nonroad procedures for NO_x and hydrocarbon emission measurement expected to be finalized by May 30, 1994, except that test fuels would be based on applicable California specifications. The eight mode steady state duty-cycle and other test procedures that will be finalized in the national rule for CI engines are proposed here to apply to both compression-ignition and spark-ignition engines, regardless of fuel type. Exhaust hydrocarbon measurements would be quantified as nonmethane hydrocarbons (NMHC), or other fuel specific equivalents. Assembly-line testing would be performed under EPA's Selective Enforcement Audit testing program as described in 40 CFR part 89 subpart F.

Since the test procedure being proposed today is a steady-state procedure, it may not result in control designs for nonroad engines that produce the degree of in-use emissions reductions expected. For example, spark-ignition engines can exhibit very different emissions characteristics on different test cycles, such as cycles with transient operating conditions. The Agency is also concerned that the 8-mode test may be inadequate for verifying the compliance of CI engines with the NMHC and NO_X standards proposed here, as discussed in the May 17, 1993 nationwide nonroad proposal.

Because of these concerns, the Agency will monitor engines produced and certified very carefully to be assured that engines do, in fact, yield proportional in-use emissions reductions. The Agency will also remain alert to the possible use of defeat devices or design approaches that result in non-proportional emissions reductions under operating conditions that are outside the test procedure operating conditions.

Additionally, the Agency is engaged in a program to characterize the in-use operation of nonroad engines. This program will allow EPA to develop representative duty cycles, evaluate the emissions impact of those cycles and determine which cycle will best ensure engine designs that will yield the expected level of in-use control. The Agency may change the duty cycle used to test nonroad engines in a subsequent rulemaking if the Agency determines that such a change is needed to assure that projected emission reductions actually occur in use.

Manufacturers of engines subject to the inherently low evaporative emissions requirement would submit test results or an engineering evaluation to demonstrate that the certified vehicles have inherently low evaporative emissions. Test procedures are described in EPA Clean Fuel Fleet program regulations (58 FR 11888, March 1, 1993).

The standards and procedures proposed for enhanced nonroad heavy-duty engines would apply equally to certification and vehicle recall testing. EPA requests comment on these test procedures, especially on the use of the steady-state test for spark ignition engines.

4. Inspection & Maintenance (I/M) Program

As mentioned earlier, EPA is not proposing I/M requirements for nonroad engines. Developing a new I/M program for the diverse set of applications involved would be a very difficult and complex undertaking and would present significant testing and administrative burdens. However, an in-use testing program (such as I/M) would allow EPA to reconsider the need to require nonroad engines to be low evaporative and the need for the nonroad engine rebuild requirements. EPA therefore requests comment on the feasibility and desirability of adopting an I/M program for heavy-duty nonroad engines covered under the enhanced in-use compliance program. The I/M program could apply to any or all nonroad engines over 50 hp sold for use in California's designated FIP areas. The reader is referred to the light-duty vehicle I/M discussion (section A.(4) of this appendix) for a detailed discussion of such enhanced vehicle requirements as geographic scope, testing, enhanced I/M threshold, manufacturer liability, tracking of enhanced I/M test results, threshold calculation, data collection, and manufacturer notification of liability.

Commenters recommending a nonroad I/M program should comment on the proper I/M test for heavy-duty nonroad engines and whether the capabilities for such tests would be needed at every facility. They should also comment on what the specifications for such a facility would be and whether any such facility could handle all types of nonroad equipment. An I/M program for nonroad engines would apply for the full operating life of the engine.

5. Nonroad Engine Rebuild Requirements

As with onhighway engines, nonroad engines are used for periods of time greatly exceeding the proposed useful life for nonroad engines (10 years, or 8000 hours, whichever comes first). For this reason, EPA proposes to apply the full rebuild program described for onhighway heavy-duty vehicles (section B.(4) of this appendix) to enhanced nonroad engines. As with onhighway engines, nonroad engines will not be subject to an I/M program and EPA is concerned about the possible adverse effect of engine rebuilding on the emissions from engines certified to the enhanced nonroad engine standards. If these engines are rebuilt improperly, they may have very high emissions which could outweigh many of the emissions benefits of the FIP programs.

EPA requests comments on all aspects of this proposal, especially on any aspects of the onhighway heavy-duty engine rebuild program which are inappropriate for nonroad engines.

6. Recall Program

EPA proposes to conduct all aspects of the enhanced nonroad engine recall program in the same manner as the enhanced onhighway recall program, as highlighted below. Interested readers should review the light-duty vehicle recall provisions (section A.(5) of this appendix) and the heavy-duty vehicle recall provisions (section B.(6) of this appendix) for additional details regarding this program.

Nonroad engines will be recall tested using certification test procedures and fuels discussed above in section C.(3)(c). As for the other enhanced vehicle programs, EPA proposes to test nonroad engines unless they have been subject to obvious abuse or tampering. If there are particular usage characteristics that could contribute to in-use emissions failures, manufacturers must consider them in the design of their products. For example, nonroad engines are likely to be used in environmental conditions that may include rough terrain, high levels of dust, and exposure to water. EPA would not consider exposure to such conditions grounds for excluding engines from the recall test sample. The Agency believes that addressing these challenges is appropriate and necessary to provide assurance that applicable emissions standards continue to be met in actual use throughout the life of the engine.

In connection with the engine rebuilding requirements described above, EPA also proposes to conduct recall testing throughout the operating life of engines. EPA believes that this is the most appropriate way to ensure that engines are meeting the enhanced nonroad engine standards in use. For recall testing after the end of the original useful life, EPA will group engines by the certified configuration. Any subsequent recall orders will hold the certifier of that engine configuration responsible for failure to comply with applicable emissions standards. Remedial actions would be solely the responsibility of the certifier.

EPA requests comments on all aspects of the enhanced in-use compliance recall program for nonroad engines, including the recall provisions that have been proposed for onhighway heavy-duty vehicles and light-duty vehicles.

7. Fleet Averaging Program

Like the heavy-duty onhighway program, the enhanced in-use compliance program for nonroad equipment will reduce emissions as projected only if new equipment is purchased and old equipment is retired at historical rates. Additionally, the use requirements which apply in the FIP areas must be obeyed to be effective. If old equipment is kept longer than in the past, the emissions reductions could be substantially less. These reductions are critical for achieving attainment; therefore, EPA is proposing fleet average and sticker programs to ensure traditional turnover rates and usage patterns continue. Due to the inherent complexities of such a program, among other things, EPA is also considering and requesting comment on a statewide nonroad program with sales requirements. Details of this alternative program are provided at the end of this fleet averaging section.

Just as with heavy-duty onhighway engines, EPA is proposing to ensure that turnover is maintained by implementing a declining fleet average NO_X emissions program. Under the proposed fleet average program, if a fleet's turnover rate falls behind the historic average turnover rate for nonroad equipment, then an emissions surcharge will be assessed on the additional NO_X emissions caused by the higher emitting engines. The fleet average NO_X emissions level allowed is reduced each calendar year to reflect the appropriate turnover rates.

Owners of any nonroad equipment (hereafter fleet owners) would determine the total NO_X emissions from their equipment by adding up the annual amount of NO_X emitted by each piece of equipment. The annual amount of NO_X emitted by a piece of equipment is determined by reference to its expected emissions based on the equipment class and model year, as delineated in the table below. An average would be computed by dividing by the number of pieces of equipment. These averages would then be compared to the average which would occur if normal turnover was maintained (see the table below). EPA is proposing to determine the emissions levels and averages required using the same seven classes of nonroad equipment described above in section C.(3)(a). These classes are based on total emissions from equipment and were developed to ensure that any tradeoff between equipment due to averaging which occurs is emissions neutral. The target average emissions level would be reduced each calendar year. If the actual emission rate exceeded the fleet average standard in any year, an emissions surcharge would be applied to the excess amount of emissions for that year. As with the heavy-duty onhighway engine program the surcharge is based on $10,000 per ton of NO_X emissions.

The table below shows how to calculate the fleet average emission rates for the first two classes of nonroad equipment. (The reader is directed to the regulations or the docket for similar information for the remaining classes of nonroad equipment.) For each equipment class, annual emission levels are provided for model year groups which have different applicable NO_X emission standards. The numbers represent annual emissions of NO_X in tons for equipment in each category and must be multiplied by the number of engines in that category in a fleet to get total emissions. Adding each column and dividing by the total number of engines in each class will yield the fleet's average per-engine NO_X emissions for that category.

CALCULATION OF FLEET NO_X EMISSIONS FOR THE FIRST TWO CLASSES OF NONROAD ENGINES

[tons]

Model year grouping	Emissions from class I nonroad engines	Emissions from class II nonroad engines
1999+	[a] #×0.0062	#×0.027
1998	#×0.028	#×0.12
pre-1998	#×0.037	#×0.17
Total actual emissions [b]		
Fleet average emissions per nonroad engine [c]		

[a] "#" represents the number of nonroad engines in the given fleet for the specific model year/equipment class grouping.

[b] Multiply the number of affected nonroad engines in the given fleet for the specific model year/equipment class grouping by the listed emissions rate and sum down.

[c] Fleet average emissions per nonroad engine equals the total actual emissions for an equipment class divided by the total number of affected nonroad engines for that equipment class in the given fleet.

The numbers in the table above (and the similar numbers contained in the regulations for the other classes of nonroad equipment) reflect usage patterns for nonroad engines as described in EPA's draft Regulatory Support Document for the national nonroad rule. They reflect typical annual hours of use and load for each equipment type and applicable emissions standards. Further information regarding the calculation of these estimates is available in the Docket for this FIP.[117] EPA did not incorporate any seasonal adjustment for nonroad equipment that may only be used in the non-ozone season. EPA invites comment on whether there are any types of equipment affected that are used in FIP areas only under conditions that preclude ozone violations (for example, snow grooming equipment).

The table below ("Average NO_X Emissions Allowed by Calendar Year for Class I Nonroad Engines") lists the allowable average NO_X emissions for the first class of nonroad equipment during each calendar year for the South Coast and Ventura. The charts for Sacramento (which reflect turnover to 2.5 g/bhp-hr engines rather than to 1.5 g/bhp-hr engines) and those for the other classes of equipment are included in the regulations and are calculated in the same manner. These numbers are derived from the same average activity levels, load factors (as an average percent of rated horsepower), and uncontrolled emission levels described above. In addition, historical fleet turnover rates are incorporated in the fleet averages. Once the average actual emissions is determined for a fleet, it would be compared to the number in this chart corresponding to the appropriate class and year. That number represents the average that would occur if normal turnover of nonroad engines was maintained. These estimates are based on average 50 percent survival rates calculated for the EPA Nonroad Study and the documents associated with the national nonroad program NPRM benefits analysis.[118] Further information regarding the calculation of these numbers may be found in the Docket for this FIP. EPA invites comment on the use of these estimates.

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[117] "Calculation of Average Emission Rates for Heavy-Duty Onhighway and Nonroad Fleet Averaging Programs," EPA memo from Chris Lieske to Joanne Goldhand, February 1994.

[118] "Calculation of Average Emission Rates for Heavy-Duty Onhighway and Nonroad Fleet Averaging Programs," EPA memo from Chris Lieske to Joanne Goldhand, February 1994.

AVERAGE NO_X EMISSIONS ALLOWED BY CALENDAR YEAR FOR CLASS I NONROAD ENGINES

[tons]

Calendar year	Class I
2000	0.035
2001	0.033
2002	0.031
2003	0.029
2004	0.027
2005	0.026
2006	0.024
2007	0.022
2008	0.021
2009	0.019
2010	0.017
2011	0.016
2012	0.015
2013	0.014
2014	0.013
2015	0.012
2016	0.011
2017	0.010
2018	0.0093
2019	0.0088
2020	0.0082
2021	0.0078
2022	0.0074
2023	0.0070
2024	0.0068
2025	0.0065
2026	0.0064
2027	0.0063
2028 and later	0.0062

Compliance with the fleet average standard would be determined by comparing the values in the second table with those calculated using the first. If the actual values are below the standard for that year, no emission surcharge is due. If the emissions level for any class of nonroad engines exceeds the standard for that year, a surcharge would be due based on the difference. The surcharge would be determined by multiplying the difference by the number of pieces of equipment in the class for the fleet and then by the surcharge rate of $10,000 per ton. It is important to note that so long as a fleet continues to replace equipment at historical rates, no surcharge would be charged.

In most other ways the declining average NO_X program for nonroad engines is similar to that for onhighway engines. They will both begin in 2000. In order to provide flexibility, EPA is proposing to allow individual fleets to join together into larger fleets for determining compliance with the fleet standard. (Because of the different NO_X standards for the Sacramento nonattainment area, individual fleets in Sacramento may only join with other fleets in Sacramento. Likewise, individual fleets in the South Coast Air Basin and Ventura County may only join together with fleets in the South Coast Air Basin and Ventura County.) This provision should accommodate those fleets which may turn over slower or more quickly than the average, notwithstanding any effects of the enhanced vehicle program. Additionally, it could benefit very small fleets. The flexibility to join together should ease the impact of the steady reduction in the fleet average emissions allowed on any fleets with special compliance problems. However, EPA is not proposing to allow averaging between different nonroad equipment classes because, due to the very different uses, there are few benefits to outweigh the complications an averaging scheme could create.

For the purpose of calculating surcharges, EPA will assume that all engines certifying at or below 1.5 g/bhp-hr NO_X have emission factors of 1.5 g/bhp-hr and that all engines certifying above 1.5 g/bhp-hr NO_X but at or below 2.5 g/bhp-hr NO_X have emission factors of 2.5 g/bhp-hr. However, if EPA permits use of engines certified at or below 2.5 g/bhp-hr NO_X in the South Coast or Ventura after payment of a lifetime emissions surcharge, as described above in section C.(3)(a), such engines will be treated as if they were 1.5 g/bhp-hr engines for the purpose of in-use fleet average emissions calculations.

a. *Administration of the fleet average nonroad program.* The fleet average requirement would be enforced through a program very similar to annual registration for onhighway vehicles. Nonroad registration is proposed to occur every January beginning in 1999. At that time, owners would bring documents representing their equipment to EPA along with a preliminary calculation of the surcharge due, if any. EPA would issue stickers for the equipment in the fleet as well as a certification that the fleet complies for that year.

Each piece of equipment that falls under the provisions of this section would be required to have an EPA sticker prominently displayed on it to be used or stored (except under certain conditions) in the FIP areas. EPA's regulations describe the size and color of the sticker and its placement. Individual stickers would be issued for each engine document (as described below) that has been reviewed by EPA. The engine documents would be designed to be marked each year in such a way that a fleet owner would be unable to use the same document to obtain two stickers. Documents would also show the name of the equipment owner, and only EPA could reissue documents when ownership is transferred. This system would be set up to limit the potential market for stolen documentation.

The documentation required must include the serial number of the engine, the equipment type, the horsepower rating, and the certified emission standard. For equipment produced after the effective date of this FIP, EPA proposes to require manufacturers to supply the documentation to purchasers just as do vehicle manufacturers. In the case of existing equipment, documentation would be created by EPA based on sworn statements by the owner. The documentation must also include the useful life renewal certificates as described in the rebuild program (for 1999 and later model year nonroad engines that are beyond their original useful life period) and proof that any necessary repairs have been performed by an authorized party for any nonroad engine subject to a recall action. Owners would be required to have documented all engines in their fleet by or during the first year of registration cycle in January 1999. Only those pre-1999 nonroad engines shown in a California fleet in that first year may be re-registered to be used in the FIP areas at any time after 1999. EPA retains the right to conduct physical inspections of the engines or deputize local government agencies to do so.

As with onhighway registration programs, stickers will be applied by owners since the equipment could not be brought into the surcharge office. To prevent cheating through the placement of stickers on improper equipment, stickers would be serially numbered and the sticker number recorded on the engine document and on a separate card with all fleet engine serial numbers which would be given to the owner. Stickers would also describe the engine type and serial number. EPA proposes that it or its deputies be able to inspect any site where affected engines are used or stored in the FIP areas and require surrender of such documentation.

EPA is proposing a system based on paper documents. However, a computerized registration data system, similar to the types of registration systems used for onhighway vehicles is possible. Such a system has the potential to minimize transaction problems, assist in title transfers, and reduce problems associated with sole reliance on physical documents. It would also require more resources. EPA is open to working with the California Department of Motor Vehicles to develop such a system and invites comments on its benefits and feasibility.

This sticker system will apply only to engines operated in the FIP areas.

However, the system is proposed to be accessible statewide to accommodate leasing companies which own a significant portion of the nonroad equipment used in the state. New nonroad equipment not meeting the enhanced in-use compliance program requirements will be allowed to be sold even in the FIP areas to accommodate distributors and such leasing companies. EPA plans to monitor sales and will target audits on any FIP area purchaser of significant numbers of non-FIP area equipment. EPA is proposing to require use of only stickered equipment in FIP areas year round. Such a program eases enforcement and is necessary, at least in Los Angeles, to prevent ozone exceedances. Nonstickered equipment will be allowed only if it is being transported through, or out of, the FIP area (and remains in a loaded condition while in the FIP area) or is being stored on an equipment leasing or distributor's lot for later use outside the FIP area. Such lots should not be on or adjacent to any job site in the FIP area.

EPA will have the authority to enter premises to inspect equipment, stickers, and other documentation. The unauthorized presence or operation of equipment without an appropriate sticker, the application of a sticker to any engine except the one for which it was designated, the use of false documents to obtain an EPA sticker, or the falsification of any documentation required under this section is strictly prohibited and will be punishable by fines of up to $25,000.

b. *Optional state-wide program.* EPA is concerned that the FIP areas may be too small to create sufficient market incentive for equipment manufacturers to develop and offer for sale equipment meeting the proposed standards and that therefore, little equipment would be provided meeting the requirements of this program. EPA is further concerned that even if there are such engines, that the availability of more traditional equipment in areas adjacent to the FIP areas will create incentives for people to attempt to avoid the fleet average requirements. Finally, EPA is concerned that FIP residents may choose to comply with the first years of the fleet average requirements by purchasing extra nationally-regulated engines right before the start of the program. While such a strategy does not impact air quality, provided full compliance occurs, it could be extremely destabilizing for the equipment dealers and could put the viability of dealers' businesses at risk.

To address these concerns, EPA is requesting comment on various revisions to the enhanced in-use compliance program for nonroad engines. First, as described in the standards discussion (section C.(3)), the Agency is requesting comment on a 1.5 g/bhp-hr NO_X standard for all three FIP areas. This revision would eliminate any problems that a Sacramento-only standard would create for manufacturers. Unfortunately, it would not address most of the other concerns.

Another option is to apply the enhanced nonroad emission standards statewide (including the 1.5 g/bhp-hr NO_X standard, the exhaust NMHC standard and the low evaporative requirements described in section C.(3)). Under this approach, only equipment certified to the enhanced nonroad engine standards would be available in California beginning in 1999. The statewide requirement expands the market available for engine and equipment manufacturers and should provide them sufficient incentive to offer all types of nonroad equipment. Further, in a statewide program, the size of the state and the location of the FIP areas should counteract any incentive to cheat by using higher emitting equipment available in neighboring areas.

Unfortunately, statewide application will not eliminate the possibility of significant pre-FIP purchasing and corresponding lack of purchasing in the early years of the program and the destabilizing effect on the economy both could have. EPA is therefore asking for comment on a requirement that engine manufacturers sell a similar fraction of their engines in the state in the FIP years as they did on average for the three years preceding the FIP. Fractional requirements would be converted into numerical requirements to facilitate averaging and trading among engine types and manufacturers. No banking would be allowed, since banking would create the destabilizing problems the program was designed to avoid. Trading and averaging permitted would be modeled on the current averaging, and trading program for heavy-duty on-highway engines (55 FR 30584, July 26, 1990). EPA is proposing to apply this requirement to engine manufacturers, rather than equipment manufacturers, because the equipment manufacturers cannot control the emissions level of their equipment without the cooperation of the engine manufacturers.

EPA is also considering a more flexible sales requirement to ensure that natural economic fluctuations do not affect compliance. Such a program would require that in the first year of the program manufacturers sell at least eighty percent of the number of engines they sold in the previous year. In the following several years the sales requirement could be reduced to seventy, sixty and fifty percent of the sales in the 1998 model year. Finally, once the transition to FIP engines was complete and market fluctuations were unlikely, the sales requirement could be dropped entirely.

Either form of the option would diminish somewhat the importance of the requirements for registration, fleet average determination, stickers and other enforcement programs directed towards the equipment user. Presumably, if manufacturers are selling the new equipment at historical rates, it is getting used and is replacing the old equipment at historical rates. EPA would consider, therefore, if it adopted a strict sales requirement, dropping the fleet average program and sticker enforcement. The Agency almost certainly would need to maintain a nonroad registration program as a check on the efficacy of the sales requirement. If the requirements proved to be ineffective in maintaining historical turnover, then EPA would have to implement a fleet average requirement in order to ensure the attainment targets were met.

While EPA acknowledges that sales requirements can force manufacturers to offer discounts and otherwise subsidize their engines, they are in a better position to accommodate the impacts of the program than fleets or dealers. Manufacturers sell throughout the nation and can recover costs by spreading small cost increases across a larger market than can fleets or dealers. On the other hand, lack of business in one area for a few years could put many dealers, which operate in much smaller areas, out of business. It is important to note that so long as the turnover rates stay at historical levels through the implementation of the FIP, both programs would be transparent to the regulated parties.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: February 14, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 52 and 81 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. 40 CFR part 52 is proposed to be amended by adding a new subpart GGG consisting of §§ 52.2950 through 52.3002 and Appendices A and B, to read as follows:

Subpart GGG—California Federal Implementation Plans

Sec.

52.2950 General FIP provisions.
52.2951 New technology measures applicable to VOC and NO_X.
52.2952 Stationary and area source caps (Sacramento).
52.2953 Stationary and area source caps (Ventura).
52.2954 Stationary and area source caps (South Coast).
52.2955 Stationary and area source NO_X cap rules (Ventura).
52.2956 Stationary and area source NO_X cap rules (South Coast) [Reserved].
52.2957 Consumer product rules.
52.2958 Aerosol coating products.
52.2959 Architectural coatings.
52.2960 Pesticides.
52.2961 Stationary and area source rules.
52.2962 Enhanced in-use compliance program for light- and medium-duty vehicles.
52.2963 Enhanced inspection/maintenance program.
52.2964 Importation of vehicles into California.
52.2965 Requirements for engines past their useful life.
52.2966 Enhanced in—use compliance heavy-duty engine and vehicle program.
52.2967–52.2968 [Reserved]
52.2969 Nonroad vehicles and engines, on-highway motorcycles.
52.2970 Civil aircraft operations.
52.2971 Locomotives.
52.2972 Military aircraft operations.
52.2973 Ships and ports.
52.2974 [Reserved]
52.2975 Enhanced in-use compliance program for nonroad engines over 37 kW.
52.2976–52.2998 [Reserved]
52.2999 Employee commute options program rule (Sacramento).
52.3000 General permit requirements (Sacramento).
52.3001 New source review (Sacramento).
52.3002 Emissions reduction credit authorization (Sacramento).

Appendix A to Subpart GGG of Part 52—Counties, Partial Counties, and Zip Codes for Partial Counties Included in the I/M Program

Appendix B to Subpart GGG of Part 52—Start-up and Final IM 240 Cutpoints for Light- and Heavy-duty Vehicles for the California FIP

Subpart GGG—California Federal Implementation Plans

§ 52.2950 General FIP provisions.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply.

Administrator means the Administrator of EPA or his or her authorized representative.

Capture efficiency means the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC, expressed as a percentage.

Capture system means all equipment (including, but not limited to, hoods ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

Clean Air Act means 42 U.S.C. 7401–7671q.

Control device means equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

Control efficiency means the product of the capture efficiency times the destruction or removal efficiency of a control system, expressed as a percentage.

Control system means a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

Destruction or removal efficiency means the amount of VOC destroyed or removed by a control device expressed as a percentage of the total amount of VOC entering the device.

EPA means the United States Environmental Protection Agency. Reports submitted to EPA shall be addressed care of U.S. EPA, Region IX (A–1), 75 Hawthorne Street, San Francisco, CA 94105.

Exempt compounds means any of the following compounds: methane; ethane; chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113); dichlorodifluoromethane (CFC-12); trichlorofluoromethane (CFC-11); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); or perfluorocarbon compounds which fall into these classes: Cyclic, branched, or linear, completely fluorinated alkanes; Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Facility means all of the pollutant-emitting activities that are located on one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control).

Grams of VOC per liter of coating, less water and less exempt compounds means the weight of VOC per combined volume of VOC and coating solids and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Coating, Less Water and Less Exempt Compounds} = \frac{W_S - W_W - W_{es}}{V_m - V_W - V_{es}}$$

Where: W_s=weight of volatile compounds in grams;

W_w=weight of water in grams;

W_{es}=weight of exempt compounds in grams;

V_m=volume of material in liters;

V_w=volume of water in liters; and

V_{es}=volume of exempt compounds in liters.

Person means any firm, business establishment, association, partnership, corporation or individual, whether acting as principal, agent, employee, or other capacity including any governmental entity or charitable organization.

Rate per calendar year means the amount applied between 12 a.m. January 1 and 11:59 p.m. December 31.

Rate per day means the amount applied between 12 a.m. and 11:59 p.m. on the same calendar day.

Transfer efficiency means the ratio of the weight of coating solids deposited on an object to the total weight of coating solids used in a coating application step, expressed as a percentage.

Volatile organic compound (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions other than those defined as exempt compounds. These exempt compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by test methods given in this section. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission standard. However, the U.S. EPA may require such owner or operator, as a precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the U.S. EPA, the amount of negligibly reactive compounds in the source's emissions.

§ 52.2951 New technology measures applicable to VOC and NO_x.

(a) The applicable area of control is the South Coast Air Basin Nonattainment Area for ozone, as defined in 40 CFR 81.305. For purposes of this regulation, the definitions of § 52.2950 shall apply.

(b) *Stationary and area source VOC cap categories to be controlled.* For the purpose of this paragraph, the following categories of VOC emissions sources shall constitute the control categories. The categories are further defined in § 52.2954. Facilities which emit greater than or equal to 4 tons per year of VOCs from any of the following processes or combination of these processes are affected:

(1) Industrial and commercial solvents and coatings;[1]

(2) VOC emissions associated with the manufacturing of products;

(3) Disposal of materials containing VOCs;

(4) Commercial food preparation and/or baking; and

(5) Petroleum and natural gas extraction, processing, and storage.

(c) *Promulgation schedule and VOC reduction requirements for stationary and area sources.* EPA commits to publish rules to control VOC emissions from the sources described in paragraph (b) of this section according to the following schedule:

Proposal	Promulgation	Effective	Percent reduction
1/1/2004	1/1/2005	1/1/2007	2007–2008—60%
1/1/2006	1/1/2007	1/1/2009	2009—90%

The percent reduction requirement is a cumulative percent reduction from the baseline VOC emissions as defined in § 52.2954.

(d) *Stationary and area source NO_x categories to be controlled.* For the purpose of this paragraph, the following categories of NO_x emissions sources shall constitute the control categories. The categories are further defined in § 52.2955. Facilities which emit greater than or equal to 4 tons per year of NO_x from any of the following processes or combination of these processes are affected:

(1) Boilers, heaters, furnaces, ovens, dryers, incinerators, test cells, and any solid, liquid or gaseous fueled equipment with a maximum rated capacity:

(i) Greater than or equal to 40 but less than 500 million Btu per hour and an annual heat input greater than 90 billion Btu per year;

(ii) 500 million Btu per hour or more irrespective of annual heat input;

(2) Any internal combustion engine with rated brake horsepower (bhp) greater than or equal to 50 bhp, regardless of operating time;

(3) Any gas turbine rated greater than or equal to 0.2 megawatts excluding any emergency standby equipment or peaking unit;

(4) Any petroleum refinery fluid catalytic cracking unit;

(5) Any petroleum refinery tail gas unit;

(6) Any kiln or calciner with a rated process weight greater than or equal to 10 tons per hour;

(7) Any equipment burning or incinerating solid fuels or materials;

(8) Any sulfuric acid production unit;

(9) Any existing equipment using NO_x CEMS or that is required to install CEMS under State or local regulation to be implemented as of [Insert date of publication of the final rule];

(10) Any NO_x source elected by the Facility Permit holder or required by the State or local agency to be monitored with a CEMS;

(11) Any NO_x source for which NO_x emissions reported to the State or local agency were equal to or greater than 4 tons per year for the calendar year 1990.

(e) *Promulgation schedule and NO_x reduction requirements for stationary and area sources.* EPA commits to publish rules to control NO_x emissions from the sources described in paragraph (d) of this section according to the following schedule:

Proposal	Promulgation	Effective	Percent reduction
1/1/2004	1/1/2005	1/1/2007	2007–2008—50%
1/1/2006	1/1/2007	1/1/2009	2009—70%

The percent reduction requirement is a cumulative percent reduction from the baseline NO_x emissions as defined in § 52.2955.

(f) *Consumer products, aerosol paints, architectural coatings, and pesticides.* For the purposes of this paragraph, the definitions of subject source categories in §§ 52.2957, 52.2958, 52.2959, and 52.2960 apply.

(g) *Promulgation schedule and VOC reduction requirements for consumer products, aerosol paints, architectural coatings, and pesticides.* EPA commits to publish rules to control VOC emissions from the sources described in paragraph (c) of this section according to the following schedule:

Proposal	Promulgation	Effective	Percent reduction
1/1/2004	1/1/2005	1/1/2007	2007–2008—50%
1/1/2006	1/1/2007	1/1/2009	2009—80%

The percent reduction requirement is a cumulative percent reduction from year 2003 baseline VOC emissions.

(h) *Remaining stationary and area sources of VOC and NO_x.* For purposes of this paragraph, subject sources include all stationary and area sources exempt from the provisions of paragraphs (b), (c), (d), and (e) of this section. Subject sources include but are not limited to gasoline service stations, livestock waste operations, commercial food production and preparation, printing shops, miscellaneous coating and solvent cleaning operations, miscellaneous chemical/product manufacturing, bakeries, waste disposal sites, publicly owned treatment works, waste burning operations, miscellaneous fuel combustion sources, and miscellaneous fugitive emission sources.

(i) *Promulgation schedule and reduction requirements for stationary and area sources of VOC and NO_x.* EPA commits to publish rules to control VOC and NO_x emissions from the sources described in paragraph (h) of this section according to the following schedule:

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[1] In the alternative, rules may apply to any manufacturer, or consortium of manufacturers, of industrial solvents or industrial/commercial coatings for sale or use within the State of California.

Proposal	Promulgation	Effective	Percent reduction
1/1/2004	1/1/2005	1/1/2007	2007–2008—50%
1/1/2006	1/1/2007	1/1/2009	2009—80%

The percent reduction requirement is a cumulative percent reduction from year 2003 baseline VOC emissions and from year 2003 baseline NO_x emissions.

(j) *Mobile source VOC and NO_x source categories.* For purposes of this paragraph, subject sources comprise all onroad and nonroad vehicles and engines.

(k) *Promulgation schedule and VOC and NO_x reduction requirements for mobile sources.* EPA commits to publish rules to control VOC and NO_x emissions from the sources described in paragraph (j) of this section according to the following schedule:

Proposal	Promulgation	Effective	Percent reduction
1/1/2001	1/1/2002	1/1/2006	2006—24% VOC—19% NO_x

The percent reduction requirement is a further reduction from year 1990 baseline VOC and NO_x emissions, beyond all mobile source reductions required or credited in the California FIP as of [*Insert date of publication of the final rule*].

(l) *Contingency Measures.* EPA commits to publish contingency measures by 1/1/1999 to achieve the cumulative percent reduction in VOC and NO_x emissions from the sources described in paragraphs (b), (d), (f), (h), and (j) of this section, on the schedule set forth in paragraphs (c), (e), (g), (i), and (k) of this section, if the new technology measures are not developed or fail to achieve the emissions reductions specified in paragraphs (c), (e), (g), (i), and (k) of this section.

§ 52.2952 Stationary and area source caps (Sacramento).[2]

(a) *General Provisions.*

(1) *Applicability.* The provisions of this section shall apply to all stationary emission sources located in the "control area" as defined as the Sacramento Metro ozone nonattainment area in 40 CFR 81.305, and all other persons identified in subsequent applicability paragraphs in this section.

(2) *Compliance dates.* Unless otherwise specified in this section, compliance with all requirements of this section is required as of [*Insert date of publication of the final rule*]. This paragraph (a)(2) shall not operate to provide additional time for compliance under section 113(d) of the Act, 42 U.S.C 7413(d), for sources subject to compliance as of [*Insert date of publication of the final rule*].

(3) *Definitions.* For the purposes of this section, the following definitions apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Actual emissions means the actual quantity of VOC emissions from an emissions source during a particular time period.

Actual emissions rate means the actual quantity of VOC emissions from an emissions source per unit of actual production or throughput.

Agency means the United States Environmental Protection Agency.

Air contaminant means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

Air pollution means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Air pollution control equipment means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

Allowable emissions rate means the most stringent of the applicable standards in 40 CFR parts 60 and 61; the applicable implementation plan; or a federally enforceable permit.

Baseline emissions means the emissions calculated using 1990 emission inventory data in the affected FIP areas and adjusted for emission reductions projected to occur by the implementation year of the FIP cap program in the affected FIP area. The baseline shall be denominated in pounds per year of FIP cap pollutant (e.g., pounds of VOC per year) and monthly caps shall be prorated based on this data.

Coating applicator means any equipment or device including but not limited to cloth, rollers, brushes, spray guns, or dip tanks used to apply a coating.

Day means a period of consecutive 24 hours beginning at 12 a.m. (midnight) local time, or beginning at a time consistent with a facility's operating schedule.

Emission rate means the total mass of VOCs released or discharged from an emissions source into the atmosphere per unit of production or throughput (e.g., pound VOC/gallon of coating solids).

Emission source or *source* means any building, structure, facility, property, equipment, device, container, or any combination thereof, at, from, or by reason which VOC is emitted or discharged into the atmosphere.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1987" (National Technical Information Service order No. PB 87–10012).

Federally enforceable means all limitations and conditions that are enforceable by the Administrator including those requirements contained in permits issued pursuant to 40 CFR parts 70 and 71, except those terms or conditions designated as not federally enforceable; those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, and 40 CFR 51.166.

Incinerator means a combustion apparatus in which solid, semi-solid, liquid, or gaseous combustible wastes are ignited and burned and from which the solid and gaseous residues contain little or no combustible material.

Monitor means to measure and record.

Organic compound means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, carbonates, and ammonium carbonate.

Organic vapor means the gaseous phase of an organic compound or a mixture of organic compounds present in the atmosphere.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, copartnership, firm, company, partnership, joint stock company, trust, association, State, municipality, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

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[2] EPA intends to issue a supplemental document in the **Federal Register** which addresses portions of proposed § 52.2952.

Process means any stationary emission source other than a fuel combustion emission source or an incinerator.

Source means emission source.

Standard conditions means a temperature of 20 °C (68 °F) and a pressure of 760 mm Hg (29.92 in. Hg).

Stationary emission source and *Stationary source* mean an emission source which is not self-propelled.

(4) *Test Methods and Procedures.*

(i) *Coatings, Inks, and Fountain Solutions.* The following test methods and procedures shall be used to determine the VOC content of as applied coatings, inks, and fountain solutions to determine compliance with the limitations set forth in this section.

(A) *Sampling.* Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C) of this section. For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(1) ASTM D3925–81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating. This practice is incorporated by reference in paragraph (c) of this section.

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals. This practice is incorporated by reference in paragraph (c) of this section.

(B) *Analyses.* The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(1) Method 24 of 40 CFR part 60, appendix A shall be used to determine the VOC content and density of coatings.

(2) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOC content and density of publication rotogravure printing inks and related coatings.

(3) The following ASTM methods and practices are the analytical procedures for determining VOC:

(i) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products. This test method is incorporated by reference in paragraph (c) of this section.

(ii) ASTM D2369–87: Standard Test Method for Volatile Content of a Coating. This test method is incorporated by reference in paragraph (c) of this section. The following minor modifications should be used for multicomponent coatings. All components of the coating are to be weighed in the proper proportion into the analysis container and mixed together just prior to analysis and the mixture is allowed to stand for at least one hour but no more than 24 hours prior to being oven dried at 110 degrees celsius for one hour.

(iii) ASTM D3792–86: Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph. This test method is incorporated by reference in paragraph (c) of this section.

(iv) ASTM D4017–81 (1987): Standard Test Method for Water Content in Paints and Paint Materials by the Karl Fischer Method. This test method is incorporated by reference in paragraph (c) of this section.

(v) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOC.) This test method is incorporated by reference in paragraph (c) of this section.

(vi) ASTM D2697–86: Standard Test Method for Volume Non-volatile Matter in Clear or Pigmented Coatings. This test method is incorporated by reference in paragraph (c) of this section.

(vii) ASTM E180–85: Standard Practice for Determining the Precision Data of ASTM Methods for Analysis and Testing of Industrial Chemicals. This practice is incorporated by reference in paragraph (c) of this section.

(4) Use of an adaptation to any of the analytical methods specified in paragraphs (a)(4)(i)(B)*(1)*, *(2)*, and *(3)* of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the analytical methods specified in paragraphs (a)(4)(i)(B)*(1)*, *(2)*, and *(3)* of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(C) *Calculations.* Calculations for determining the VOC content, water content, and the content of any compounds which are specifically exempted from the definition of VOC of coatings, inks, and fountain solutions as applied shall follow the guidance provided in the following documents.

(1) "A Guide for Surface Coating Calculation" EPA–340/1–86–016 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings" (revised June 1986) EPA–450/3–84–019 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "A Guide for Graphic Arts Calculations" August 1988 EPA–340/1–88–003 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ii) *Automobile or Light-Duty Truck Test Protocol.* The protocol for testing, including determining the transfer efficiency, of coating applicators at topcoat coating operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" December 1988 EPA–450/3–88–018 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161).

(iii) *Capture System Efficiency Test Protocols.*

(A) *Applicability.* The requirements of paragraph (a)(4)(iii)(B) of this section shall apply to all VOC emitting processes employing a capture system except those cases noted below.

(1) If a source installs a permanent total enclosure (PTE) that meets U.S.EPA specifications, and which directs all VOC to a control device, then the source is exempted from the requirements described in paragraph (a)(4)(iii)(B) of this section. The U.S.EPA specifications to determine whether a structure is considered a PTE are given in Procedure T of appendix B of 40 CFR 52.742. In this instance, the capture efficiency is assumed to be 100 percent and the source is still required to measure control efficiency using appropriate test methods as specified in paragraph (a)(4)(iv) of this section.

(2) If a source uses a control device designed to collect and recover VOC

(e.g., carbon adsorber), an explicit measurement of capture efficiency is not necessary provided that the conditions given below are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in § 60.433 of this chapter, with the following additional restrictions:

(*i*) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average, within 72 hours following the 24-hour period. In addition, one of the following two criteria must be met:

(*ii*) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process, or

(*iii*) If the solvent recovery system controls multiple processes, then the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all processes venting to the control system) meets or exceeds the most stringent standard applicable for any process venting to the control system.

(*3*) The following facilities are exempted from the requirements described in paragraph (a)(1)(iii)(B) of this section:

(*i*) Automobile-related assembly facilities subject to the "Automobile or Light-Duty Truck Test Protocol" described in paragraph (a)(4)(ii) of this section.

(*ii*) Heatset-web-offset lithographic printing units as defined in paragraph (b)(1)(i)(B) of this section.

(B) *Specific Requirements.* The capture efficiency of a process shall be measured using one of the four protocols given below. Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then the source must present an alternative capture efficiency protocol and obtain approval for it by the Administrator as a SIP or FIP revision.

(*1*) Gas/gas method using temporary total enclosure (TTE). The U.S. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$CE = G_w/(G_w + F_w)$

where

CE = capture efficiency, decimal fraction

G_w = mass of VOC captured and delivered to control device using a TTE

F_w = mass of fugitive VOC that escapes from a TTE Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G_w. Procedure F.1 in appendix B of 40 CFR 52.741 is used to obtain F_w.

(*2*) Liquid/gas method using TTE. The U.S. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$CE = (L-F_w)/L$

where

CE = capture efficiency, decimal fraction

L = mass of liquid VOC input to process

F_w = mass of fugitive VOC that escapes from a TTE Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.1 in appendix B of 40 CFR 52.741 is used to obtain F_w.

(*3*) Gas/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "G" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE = G/(G + F_B)$

where

CE = capture efficiency, decimal fraction

G = mass of VOC captured and delivered to control device

F_B = mass of fugitive VOC that escapes from building enclosure

Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G. Procedure F.2 in appendix B of 40 CFR 52.741 is used to obtain F_B.

(*4*) Liquid/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "L" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE = (L-F_B)/L$

where

CE = capture efficiency, decimal fraction

L = mass of liquid VOC input to process

F_B = mass of fugitive VOC that escapes from building enclosure

Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.2 in appendix B of 40 CFR 52.741 is used to obtain F_B.

(C) *Recordkeeping and Reporting.*

(*1*) All affected facilities must maintain a copy of the capture efficiency protocol submitted to EPA on file. All results of the appropriate test methods and capture efficiency protocols must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of five (5) years.

(*2*) If any changes are made to capture equipment, then affected facilities must notify EPA of these changes and a new test may be required by EPA.

(*3*) All affected facilities must notify the Administrator 30 days prior to performing any capture efficiency test. At that time, the source must notify the Administrator which capture efficiency protocol will be used.

(*4*) All affected facilities utilizing a PTE must demonstrate that this enclosure meets the requirement given in Procedure T in appendix B of 40 CFR 52.741 at all times.

(*5*) All affected facilities utilizing a TTE must demonstrate that their TTE meets the requirements given in Procedure T in appendix B of 40 CFR 52.741 for a TTE during testing of their control device. The source must also provide documentation that the quality assurance criteria for a TTE have been achieved.

(iv) *Control Device Efficiency Testing and Monitoring.*

(A) *Control Efficiency Test.* The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOC concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi) of this section.

(B) *Continuous Monitoring.* Any owner or operator that uses an afterburner or carbon adsorber to comply with any requirement of this section shall use continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications and which meets EPA-approved performance specifications at all times when the afterburner or carbon adsorber is in use. The continuous monitoring equipment must automatically monitor and record the following parameters:

(*1*) Combustion chamber temperature of each afterburner.

(*2*) Temperature rise across each catalytic afterburner bed or VOC concentration exhaust.

(*3*) The VOC concentration of each carbon adsorption bed exhaust.

(C) *Recordkeeping and Reporting.*

(1) All affected facilities must maintain a copy of all control efficiency test protocols for a period of five (5) years. All control test results must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of five (5) years.

(2) All affected facilities must maintain copies of all required continuous monitoring records for a period of five (5) years.

(3) If any changes are made to control equipment, affected facilities must notify EPA of these changes and a new control efficiency test may be required by EPA.

(4) All affected facilities must notify the Administrator 30 days prior to performing any control efficiency test. At that time, the source must notify the Administrator which test methods will be used.

(v) *Overall Efficiency.*

(A) The overall efficiency of each emission control system shall be determined as the product of the capture system efficiency and the control device efficiency or by the liquid/liquid test protocol as specified in paragraph (a)(4)(iii)(A)(2) of this section for each solvent recovery system.

(B) The overall efficiency of the capture system and control device used to control VOC emissions from a paper, fabric, film, can, coil, or miscellaneous metal parts and products coating line, as determined by the test methods and procedures specified in paragraphs (a)(4)(iii), (a)(4)(iv), and (a)(4)(v)(A) of this section, shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$$E = ([VOC_a - VOC_1]/VOC_a) \times 100$$

where:

E = Equivalent overall efficiency of the capture system and control device as a percentage,

VOC_a = Actual VOC content of a coating, or the daily-weighted average VOC content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) of this section in units of kg VOC/l (lb VOC/gal) of coating solids as applied, and

VOC_1 = The VOC emission limit specified in units of kg VOC/liter (lb VOC/gal) of coating solids as applied.

(vi) *Volatile Organic Compound Gas Phase Source Test Methods.* The methods in 40 CFR part 60, appendix A, delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, Methods 18, 25, 25A, or 25B, as appropriate to the conditions at the site, shall be used to determine VOC concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A) (*1*) and (*2*) of this section, the test shall consist of three separate runs, each lasting a minimum of 60 min., unless the Administrator determines that process variables dictate shorter sampling times.

(*1*) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(*2*) When the method is to be used to determine the efficiency of a carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, Method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, Method 2, 2A, 2C, or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, Method 3, 3A or 3B shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, Method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, Methods 2, 2A, 2C, or 2D; 3, 3A, or 3B; and 4 shall be performed, as applicable, at least twice during each test run.

(G) Use of an adaptation to any of the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(vii) *Leak Detection Methods for Volatile Organic Compounds.* Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) Leak Detection Monitoring.

(1) Monitoring shall comply with 40 CFR part 60, appendix A, Method 21.

(2) The detection instrument shall meet the performance criteria of 40 CFR part 60, appendix A, Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in 40 CFR part 60, appendix A, Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but no less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in 40 CFR part 60, appendix A, Method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4)(vii)(A)*(1)* through (vii)(A)*(5)* of this section shall apply.

(2) The background level shall be determined as set forth in 40 CFR part 60, appendix A, Method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 Controlling Volatile Organic Compound Emissions from Leaking Process Equipment" EPA-450/2-82-015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Portable Instrument User's Manual for Monitoring VOC Sources" EPA-340/1-86-015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP" EPA-450/3-88-010 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(4) "Petroleum Refinery Enforcement Manual" EPA-340/1-80-008 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161)

(viii) *Bulk Gasoline Delivery System Test Protocol.*

(A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR part 60, subpart XX, § 60.503.

(B) Other tests shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: appendix D" EPA–340/1–80–012 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: appendix A", EPA–450/2–77–026 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(ix) *Vapor Pressure of Volatile Organic Liquids.*

(A) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference as specified in paragraph (c) of this section or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference as specified in paragraph (c) of this section) or by the following equation:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

where:

P_{vol}=Total vapor pressure of the mixture,

n=Number of components in the mixture,

i=Subscript denoting an individual component,

P_i=Vapor pressure of a component determined in accordance with paragraph (a)(4)(ix)(A) of this section, and X_i = Mole fraction of the component in the total mixture.

(x) *Vapor Pressure of Organic Material or Solvent.*

(A) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{om} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{om}=Total vapor pressure of the portion of the mixture which is composed of organic material,

n=Number of organic material components in the mixture,

i=Subscript denoting an individual component,

P_i=Vapor pressure of an organic material component determined in accordance with paragraph (a)(4)(x)(A) of this section, and

X_i=Mole fraction of the organic material component of the total mixture.

(C) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or by the above equation.

(xi) *Vapor Pressure of Volatile Organic Compounds.*

(A) If the VOC consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOC is in a mixture made up of both VOC compounds and compounds which are not VOC, the vapor pressure shall be determined by the following equation:

$$P_{voc} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{voc}=Total vapor pressure of the portion of the mixture which is composed of VOC,

n=Number of VOC components in the mixture,

i=Subscript denoting an individual component,

P_i=Vapor pressure of a VOC component determined in accordance with paragraph (a)(4)(xi)(A) of this section, and

X_i=Mole fraction of the VOC component of the total mixture.

(C) If the VOC is in a mixture made up of only VOC compounds, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or by the above equation.

(xii) *Baseline Emissions.* Unless otherwise specified in paragraph (b) of this section, baseline VOC emissions shall be calculated for each emissions source in accordance with one of the procedures specified below:

(A) If daily emissions records which are consistent with the emission inventory data submitted by the State for the control area on November 15, 1992 are available for the calendar years 1989 and 1990, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(B) If daily emissions records are not available for the calendar years 1989 and 1990 or are inconsistent with the emission inventory data submitted by the State for the control area on November 15, 1992 or were not submitted, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If solvent or coating usage data are not available, emissions associated with solvent or coating usage may be estimated from purchase-order records. The operating or usage time for the two-year period shall be based on one of the criteria specified as follows:

(1) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period,

(2) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(3) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(xiii) *Implementation Year Monthly Baseline Emissions.* Baseline emissions as defined in paragraph (a)(4)(xii) of this section shall be adjusted prior to the implementation year (2001) of the FIP cap program in the control area as follows:

(A) The reductions that are projected to occur as a result of both SIP and FIP measures between 1990 and 2001 shall be subtracted from the baseline emissions. This value shall be defined as the reduced daily baseline emissions and is denoted in pounds of VOC/day.

(B) The reduced daily baseline emissions shall be annualized by multiplying the daily value by 365. This value shall be defined as the reduced annual baseline emissions and is denoted in pounds of VOC/year.

(C) The reduced annual baseline emissions shall be converted into a monthly value by dividing by 12. This value shall be defined as the implementation year monthly baseline.

(5) *Enforcement.*

(i) All sources and facilities subject to provisions of § 52.2952 shall be subject to unannounced inspections by representatives of the USEPA pursuant to section 114 of the Clean Air Act.

(ii) Documentation maintained by all sources, facilities, and persons subject to this section must be sufficient to demonstrate compliance with all requirements of this section and must be provided to representatives of USEPA upon request.

(iii) Failure to comply with any provision of this section is a violation of the applicable implementation plan for purposes of section 113 of the Clean Air Act.

(iv) Each 50 pounds of emissions in excess of a facility's monthly cap shall be a separate violation for federal enforcement purposes.

(b) *Stationary and Area Source Control Measures.*

(1) *Industrial and Commercial Solvents/Coatings.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(1) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(1) of this section, the following definitions also apply:

Adhesives means any substance or mixture of substances intended to serve as a joining compound.

Aerospace component means the fabricated part, assembly of parts, or completed unit of any aircraft or space vehicle.

Aerospace component coating facility means a facility that includes one or more aerospace component coating unit(s).

Aerospace component coating unit means a coating unit in which any protective, decorative, or functional coating or reinforcing material is applied on or impregnated into an aerospace component.

Aircraft means any machine designed to travel through the air above ground without leaving the earth's atmosphere, whether heavier or lighter than air, including airplanes, balloons, dirigibles, helicopters, and missiles.

Automobile means a motor vehicle capable of carrying no more than 12 passengers.

Can means any cylindrical, single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.); with or without a top, cover, spout, or handles; into which solid or liquid materials are packaged.

Can coating facility means a facility that includes one or more can coating unit(s).

Can coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

Coating means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and/or temporary protective coatings.

Coating applicator means any equipment or device, including but not limited to cloth, rollers, brushes, spray guns, and dip tanks, used to apply a coating onto or into a substrate.

Coating unit means a series of one or more coating applicators and any associated drying areas and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary to have an oven or a flashoff area in order to be included in this definition.

Coil means any continuous metal sheet or strip with thickness of 0.15 mm (0.006 in.) or more that is packaged in a roll or coil.

Coil coating facility means a facility that includes one or more coil coating unit(s).

Coil coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

Cold cleaning means the batch process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

Conveyorized degreasing means the continuous process of cleaning and removing soils from surfaces using either cold or vaporized solvents.

Degreaser means any equipment or system used in solvent cleaning.

Degreasing facility means a facility that includes one or more cold cleaning, open-top vapor degreasing, and/or conveyorized degreasing processes.

Dry cleaning facility means a facility engaged in the cleaning of fabrics using an essentially nonaqueous solvent by means of one or more solvent washes, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, washers, dryers, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

Fabric coating facility means a facility that includes one or more fabric coating unit(s).

Fabric coating unit means a web coating unit in which any protective, decorative, or functional coating or reinforcing material is applied on, saturated into, or impregnated into a textile fabric. A fabric printing unit is not considered a fabric coating unit.

Film coating facility means a facility that includes one or more film coating unit(s).

Film coating unit means a coating unit in which any protective, decorative, or functional coating is applied on, saturated into, or impregnated into any film substrate; other than paper, fabric, or vinyl; including but not limited to typewriter ribbons, photographic film, plastic film, magnetic tape, and metal foil.

Flatwood product means panels made of wood materials including; but not limited to; plywood, particle board, and hardboard.

Flatwood product coating facility means a facility that includes one or more flatwood product coating unit(s).

Flatwood product coating unit means a coating unit in which any protective, decorative, or functional coating is applied on or impregnated into a flatwood product.

Flexographic printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

Flexographic printing press means a printing press in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

Fountain solution means the solution which is applied to the lithographic printing plate to maintain hydrophilic properties of the nonimage areas.

Graphic arts coating facility means a facility that includes one or more graphic arts coating units.

Graphic arts coating unit means any packaging rotogravure printing, publication rotogravure printing, flexographic printing, lithographic printing, letterpress printing, laminating, or screen printing unit or any paper, fabric, or film coating unit operated in conjunction with a printing unit.

Group I vehicles and equipment means large-sized trucks, buses, and mobile equipment.

Group II vehicles means passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles.

Heatset means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

Heatset-web-offset lithographic printing unit means a lithographic printing unit in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

Heavy off-highway vehicle products means heavy construction, mining, farming, or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

Heavy off-highway vehicle products coating facility means a facility that includes one or more heavy off-highway vehicle products coating unit(s).

Heavy off-highway vehicle products coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

Highway means a way or place of whatever nature, publicly maintained and open to the public for purposes of vehicular travel. Highway includes street.

Industrial or commercial solvent use facility means any industrial or commercial facility that uses solvents which contain VOCs or substances that contain solvents which contain VOCs. Industrial and commercial solvent use facilities include, but are not limited to, perchloroethylene dry cleaning, petroleum dry cleaning, metal cleaning, degreasing, aerospace component coating, motor vehicle and mobile equipment assembly line coating, motor vehicle and mobile equipment refinishing, can coating, coil coating, fabric coating, film coating, flatwood product coating, graphic arts coating, large appliance coating, magnet wire coating, marine vessel coating, metal and wood furniture coating, miscellaneous metal parts and products coating, paper coating, and plastic parts coating facilities. Substances that contain solvents include, but are not limited to, coatings, inks, fountain solutions, adhesives, thinners, and clean-up solvents.

Ink means a coating used in printing, impressing, or transferring an image onto a substrate.

Laminating unit means a printing unit in which an adhesive is used to form two or more layers of material into a single, multiple-layer sheet.

Large appliance means the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products under SIC Code 363.

Large appliance coating facility means a facility that includes one or more large appliance coating unit(s).

Large appliance coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of component metal parts of large appliances.

Letterpress printing unit means a printing unit in which the image area is raised relative to the nonimage area on the roll printer and the ink is transferred to the paper directly from the image surface.

Light-duty truck means any motor vehicle rated at 3864 kg (8500 lb) gross vehicle weight or less, designed mainly to transport property.

Lithographic printing unit means a printing unit in which the image and nonimage areas are on the same plane of the roll printer.

Magnet wire coating facility means a facility that includes one or more magnet coating unit(s).

Magnet wire coating unit means a coating unit in which electrically insulating varnish or enamel is applied onto the surface of wire to be used in electrical machinery.

Marine vessel means a ship or boat used to travel on, or a submarine used to travel through, the sea.

Marine vessel coating facility means a facility that includes one or more marine vessel coating unit(s).

Marine vessel coating unit means a coating unit in which any protective, decorative, or functional coating is applied on the fabricated part, assembly of parts, or completed unit of any marine vessel.

Metal furniture means any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating unit coating miscellaneous metal parts or products.

Metal furniture coating facility means a facility that includes one or more metal furniture coating unit(s).

Metal furniture coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

Miscellaneous metal part or product means any metal part or metal product, even if attached to or combined with a nonmetal part or product.

Miscellaneous metal parts or products coating facility means a facility that includes one or more miscellaneous metal parts or products coating unit(s).

Miscellaneous metal parts or products coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

Mobile equipment means self-propelled equipment which is physically capable of being driven on a highway. Mobile equipment includes: Automobiles, motorcycles, trucks, vans, construction equipment (e.g., mobile cranes, bulldozers, concrete mixers), farming equipment (e.g., wheel tractors, pesticide sprayers), and miscellaneous equipment (e.g., street cleaners, golf carts, and hauling equipment used inside and around airports, docks, depots, and industrial and commercial plants).

Motor vehicle means a vehicle which is self-propelled and physically capable of being driven on a highway.

Motor vehicle or mobile equipment assembly line coating facility means a facility where parts are manufactured or finished for eventual inclusion into finished motor vehicles or mobile equipment ready for sale to motor vehicle or mobile equipment dealers. This definition does not include customizers, body shops, and/or other auto refinishing facilities.

Motor vehicle or mobile equipment refinishing facility means a facility where all or any part of used motor vehicles or mobile equipment is refinished, or customized, by the application of paint. This definition includes motor vehicles or mobile equipment dealerships who purchase new motor vehicle or mobile equipment from Original Equipment Manufacturers. This definition does not include motor vehicle or mobile equipment assembly line coating facilities.

Motorcycle means any motor vehicle other than a tractor having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and weighing less than 1,500 lbs, except that four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

Offset means a blanket cylinder that is used to transfer ink from a plate cylinder to the substance to be printed.

Open-top vapor degreasing means the batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

Oven means a chamber within which heat is used for one or more of the following purposes: To dry, bake, cure, or polymerize a coating or ink.

Packaging rotogravure printing means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

Packaging rotogravure printing press means a rotogravure printing press in which surface coatings are applied to paper, paperboard, metal foil, plastic film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

Paper coating facility means a facility that includes one or more paper coating unit(s).

Paper coating unit means a web coating unit where coating is applied to paper. Printing presses are not considered paper coating units. Products produced on a paper coating unit include, but are not limited to, adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes. Paper coating units include, but are not limited to, application by impregnation or saturation or by the use of roll, knife, or rotogravure coating.

Printing unit means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and/or ovens wherein one or more surface coatings are applied, dried, and/or cured. It is not necessary for an operation to have an oven, or flashoff area, or drying area to be included in this definition.

Publication rotogravure printing unit means a rotogravure printing unit in which surface coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed material.

Refinish means to restore or replace coatings on Group I vehicles (large-sized trucks, buses, and mobile equipment) and Group II vehicles (passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles) and equipment, or their parts and components, except Original Equipment Manufacturer coatings applied at motor vehicle or mobile equipment assembly line coating facilities.

Roll coater means an apparatus in which a uniform layer of coating material is applied by means of a roll or rolls across the entire width of a moving substrate which is fed from an unwinding roll.

Roll printer means an apparatus in which a surface coating is applied by means of a roll or rolls with only partial coverage across the width of a moving substrate which is fed from an unwinding roll. The partial coverage results in the formation of words, designs, or pictures on the substrate.

Rotogravure printing means the application of words, designs, and pictures to a substrate using a gravure cylinder by means of a roll printing technique in which the pattern to be applied is recessed relative to the nonimage area.

Rotogravure printing unit means a printing unit in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

Screen printing unit means a printing unit in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.

Solvent means a substance that is liquid at standard conditions that is used to dissolve or dilute another substance; this term includes, but is not limited to, organic materials used as dissolvers, viscosity reducers, degreasing agents, or cleaning agents.

Solvent cleaning means the process of cleaning soils from surfaces by cold cleaning, open-top vapor degreasing, or conveyorized degreasing.

Space vehicle means any vehicle designed to travel beyond the earth's atmosphere.

Street means a public road in a town or city.

Substrate means the surface to which a coating is applied on, saturated into, or impregnated into.

Vinyl coating facility means a facility that includes one or more vinyl coating unit(s).

Vinyl coating unit means a web coating unit in which any protective, decorative, or functional coating or printing ink is applied onto a continuous web of vinyl-coated fabric or vinyl sheets.

Web means an automatic system which supplies substrate from a continuous roll or an extrusion process.

Wood furniture means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

Wood furniture coating facility means a facility that includes one or more wood furniture coating unit(s).

Wood furniture coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto wood furniture.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(1 (iii)(A) and (B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of any degreasing facility or any motor vehicle or mobile equipment refinishing facility located in the control area as defined in paragraph (a)(1) of this section.

(B) The requirements of paragraphs (b)(1) (iii)(A) and (B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of VOC are greater than or equal to 6.8 kg (15 lbs) during any one day.

(C) The requirements of paragraphs (b)(1) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of VOC from all emissions sources are always less than 6.8 kg (15 lbs) during any one day. If actual emissions of VOC from a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section ever exceed 6.8 kg (15 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(1)(iii)(B) *(1)* through *(5)*, (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraphs (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraph (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[3]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(1)(ii) (A) or (B) of this section, shall limit actual monthly emissions of VOC from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

where[4]

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(2) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

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[3] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B)*(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

[4] The range 0.04 to 0.09 reflects the 4% to 9% cumulative annual rate of emission reductions currently under consideration. In the first year, emissions would be reduced by 4% to 9% off of baseline levels; in the second year, emissions would be reduced by 8% to 18% off of baseline levels, and so on until the minimum 20% VOC reduction is made. As discussed in the preamble to the regulations this range of annual reductions is based on EPA's preliminary rate of reduction analysis and may change as the analysis continues prior to final promulgation of this FIP. In addition, EPA plans to review this value every three years after final rule promulgation.

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_0=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B)*(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii)(A) or (B) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section, and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 6.8 kg (15 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(1)(iii)(A)*(2) (i)* and *(ii)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that actual emissions of VOC from the facility exceeded 6.8 kg (15 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraphs (b)(1)(ii) (A) or (B) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii)(C) of this section shall collect and record all information necessary to demonstrate that actual emissions of VOC from all emissions sources are less than 6.8 kg (15 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraphs (b)(1)(ii) (A) or (B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(2) *VOC Emissions Associated with the Manufacturing of Products.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(2) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(2) of this section, the following definitions also apply:

Facility which manufactures products containing VOCs means any facility where VOCs are emitted from processes which are used to manufacture or fabricate products. These products include, but are not limited to, the products specified in paragraphs *(1)* through *(7)* of this definition. This definition does not include facilities which are subject to any of the requirements of paragraph (b)(1), (b)(4), or (b)(5) of this section.

(1) Industrial and agricultural organic chemicals and gases. Industrial organic chemicals include, but are not limited to, gum and wood chemicals, cyclic organic crudes and intermediates, organic dyes and pigments, and the chemicals listed in 40 CFR 52.741, appendix A. Agricultural organic chemicals include, but are not limited to, pesticides, livestock dips, soil conditioners, and fertilizers.

(2) Plastic materials, synthetic resins, synthetic rubber, elastomizers, and cellulosic and manmade fibers.

(3) Drugs which include, but are not limited to, medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products.

(4) Soaps; detergents; cleaning, polishing, and sanitizing preparations; surface active agents, finishing agents, sulfonated oils, and assistants; and perfumes and cosmetics.

(5) Food additives and sweeteners.

(6) Paints, varnishes, lacquers, enamels, inks, primers, paint removers, thinners, stains, shellacs, cleaners, putty, coatings, adhesives, fillers, sealants, explosives, and carbon black.

(7) Fabricated rubber and miscellaneous plastics products including, but not limited to, tires and inner tubes; rubber and plastics footware, hose, belting, gasket, packing, and sealing devices; and molded, extruded, and lathe-cut mechanical rubber goods.

Manufacture means to produce or combine any ingredients contained in any product.

Manufacturing process means a process or a series of processes used to convert raw materials, feed stocks, subassemblies, or other components into a product which will be sold, offered for sale, supplied, or distributed or will be used as a component in a subsequent manufacturing process. This definition includes the storage and handling of organic compounds or gases which are used in a manufacturing process and the handling of organic compounds or gases used to clean-up a manufacturing process.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(2) (iii)(A), (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the control area as defined in paragraph (a)(1) of this section at which total VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(2) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the applicable area specified in paragraph (b)(2)(ii)(A) of this section at which total VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If uncontrolled VOC emissions from a facility which is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(2) (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraphs (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's title V (of the Clean Air Act) operating permit. For sources not subject to title V, sources shall submit all information which would be required for sources subject to title V.[5]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(2)(ii)(A) of this section, shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)
where
R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month.
R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.
i=Subscript denoting a specific emissions source, and
n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)
where
R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month.
R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.
i=Subscript denoting a specific emissions source, and
n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)
where
R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month.
R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.
i=Subscript denoting a specific emissions source, and
n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)
where
R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month.
R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.
i=Subscript denoting a specific emissions source, and

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[5] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B)*(1)* through *(5)* of this section. The methods may include but are not limited to: (1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

n=Total number of emissions sources at the facility.

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,
R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.
i=Subscript denoting a specific emissions source, and
n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section; and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section, shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(2)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of section to demonstrate compliance with the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(2)(ii)(B) to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(3) *Disposal of Materials Containing Volatile Organic Compounds.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(3) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(3) of this section, the following definitions also apply:

Biodegradable waste means any organic waste that can be broken down into its basic elements by microorganisms.

Biodegradable waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of biodegradable waste or to reclaim or recycle organic compounds or gases from biodegradable wastes.

Organic waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of organic wastes that contain VOCs or to reclaim or recycle organic compounds or gases from organic wastes that contain VOCs. Such facilities include, but are not limited to, biodegradable waste disposal facilities (e.g., landfills); publicly owned treatment works; hazardous waste treatment, storage, and disposal facilities; and sewage sludge, solid waste, and hazardous waste incinerators.

Publicly owned treatment work (POTW) means any device or system which is owned by a state or municipality and is used to treat (including recycling and reclamation) municipal sewage or industrial liquid waste.

(ii) *Applicability.* The requirements of paragraphs (b)(3) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any organic waste disposal facility located in the control area as defined in paragraph (a)(1) of this section.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's title V operating permit. For sources not subject to title V, sources shall submit all information which would be required for sources subject to title V.[6]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(3)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section; and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section.

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(3)(iii)(B)

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[6] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to: (1) the test methods and procedures specified in paragraph (a)(4) of this section, and (2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

(1) through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section.

(4) *Commercial Food Preparation and/or Baking.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(4) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(4) of this section, the following definitions also apply:

Brandy-making facility means a facility that distills wine, the refuse of a wine press, or any other fermented fruit juices to produce alcoholic liquors.

Charcoal means any substance obtained by charring wood or any other organic matter by a process of smothered combustion to exclude air.

Commercial baking facility means a facility that bakes bread, biscuits, rolls, pies, cakes, cookies, or other similar products.

Commercial charbroiling facility means a facility that broils any type of food over a charcoal or gas-fired broiler.

Food preparation facility means any commercial baking, commercial charbroiling, wine- or brandy-making, fruit and vegetable preservation, grain mill production, vegetable oil production, or malt beverage production facility. This definition includes restaurants involved in activities described in the previous sentence.

Fruit and vegetable preservation facility means a facility that preserves food by, but not limited to, canning, curing, pickling, salting, smoking, cooking, or freezing.

Grain mill production facility means a facility that grinds any grain including, but not limited to, wheat, rice, corn, or rye into flour or meal.

Malt beverage production facility means a facility engaged in malting, fermentation, aging, or packaging of barley or any other grain for the purpose of producing an alcoholic beverage.

Vegetable oil production facility means a facility that extracts oil from any vegetable seed.

Wine- or brandy-making facility means a facility that ferments juices from grapes or any other fruit for the purpose of producing alcoholic beverages.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(4) (iii)(A) and (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a commercial food preparation facility located in the control area as defined in paragraph (a)(1) of this section at which VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(4) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a commercial food preparation facility located in the applicable area specified in paragraph (b)(4)(ii)(A) of this section at which total uncontrolled VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If VOC emissions from a facility which is exempt from the limitations of paragraph (b)(4)(iii)(B) of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(4) (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A) *(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[7]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(4)(ii)(A) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

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[7] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B)*(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section; and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(4)(iii)(B)*(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B)*(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B)*(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B)*(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(4)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(4)(ii)(B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(5) *Petroleum and Natural Gas Extraction, Processing, and Storage.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(5) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(5) of this section, the following definitions also apply:

Crude oil means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

Extraction facility means any facility where drilling and servicing equipment, flow lines, separators, gathering lines, and auxiliary nontransportation related equipment are used to extract petroleum or natural gas from a well.

Gasoline means any petroleum distillate which is used as a motor fuel.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Processing facility means any facility where petroleum or natural gas is used as a feedstock to produce gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other related products.

Storage facility means any extraction facility, processing facility, bulk gasoline plant, bulk gasoline terminal, or any petroleum storage facility which distributes petroleum, natural gas, or gasoline to retail outlet and wholesale purchaser-consumer facilities. This definition does not apply to retail gasoline service stations.

(ii) *Applicability.* The requirements of paragraphs (b)(5) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any petroleum or natural gas extraction, processing, or storage facility located in the control area as defined in paragraph (a)(1) of this section.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[8]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph (b)(5) because of paragraph (b)(5)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

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[8] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \tag{4}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \tag{5}$$

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(5)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section; and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section.

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(5)(ii) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(5)(ii) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section.

(c) *Incorporated by Reference.* The materials listed below are incorporated by reference. The incorporation by reference was approved by the Director of the Office of Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[9] These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**.

(1) ASTM D3925–81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating.

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals.

(3) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products.

(4) ASTM D2369–87: Standard Test Method for Volatile Content of a Coating.

(5) ASTM D3792–86: Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph.

(6) ASTM D4017–81 (1987): Standard Test Method for Water Content in Paints and Paint Materials by the Karl Fischer Method.

(7) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph.

(8) ASTM D2697–86: Standard Test Method for Volume Non-volatile Matter in Clear or Pigmented Coatings.

(9) ASTM E180–85: Standard Practice for Determining the Precision Data of ASTM Methods for Analysis and Testing of Industrial Chemicals.

(10) ASTM Method D2879–86: Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope.

§ 52.2953 Stationary and area source caps (Ventura).[10]

(a) *General Provisions.*

(1) *Applicability.* The provisions of this section shall apply to all stationary emission sources located in the "control area" as defined as the Ventura ozone nonattainment area in 40 CFR 81.305, and all other persons identified in subsequent applicability paragraphs in this section.

(2) *Compliance dates.* Unless otherwise specified in this section, compliance with all requirements of this section is required as of [*Insert date of publication of the final rule*]. This paragraph shall not operate to provide additional time for compliance under Section 113(d) of the Act, 42 U.S.C 7413(d), for sources subject to compliance as of [*Insert date of publication of the final rule*].

(3) *Definitions.* For the purposes of this section, the following definitions apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Actual emissions means the actual quantity of VOC emissions from an emissions source during a particular time period.

Actual emissions rate means the actual quantity of VOC emissions from an emissions source per unit of production or throughput.

Agency means the United States Environmental Protection Agency.

Air contaminant means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

Air pollution means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Air pollution control equipment means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

Allowable emissions rate means the most stringent of the applicable standards in 40 CFR parts 60 and 61; the applicable implementation plan; or a federally enforceable permit.

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[9] Incorporation by reference is pending approval by the Office of Federal Register.

[10] EPA intends to issue a supplemental document in the **Federal Register** which addresses portions of proposed § 52.2953.

Baseline emissions means the emissions calculated using 1990 emission inventory data in the affected FIP areas and adjusted for emission reductions projected to occur by the implementation year of the FIP cap program in the affected FIP area. The baseline shall be denominated in pounds per year of FIP cap pollutant (e.g., pounds of VOC per year) and monthly caps shall be prorated based on this data.

Coating applicator means any equipment or device including but not limited to cloth, rollers, brushes, spray guns, or dip tanks used to apply a coating.

Day means a period of consecutive 24 hours beginning at 12 a.m. (midnight) local time, or beginning at a time consistent with a facility's operating schedule.

Emission rate means the total mass of VOCs released or discharged from an emissions source into the atmosphere per unit of production or throughput (e.g., pound VOC/gallon of coating solids).

Emission source or *source* means any building, structure, facility, property, equipment, device, container, or any combination thereof, at, from, or by reason which VOC is emitted or discharged into the atmosphere.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1987" (National Technical Information Service order No. PB 87–10012).

Federally enforceable means all limitations and conditions that are enforceable by the Administrator including those requirements contained in permits issued pursuant to 40 CFR parts 70 and 71, except those terms or conditions designated as not federally enforceable; those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, and 40 CFR 51.166.

Incinerator means a combustion apparatus in which solid, semi-solid, liquid, or gaseous combustible wastes are ignited and burned and from which the solid and gaseous residues contain little or no combustible material.

Monitor means to measure and record.

Organic compound means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, carbonates, and ammonium carbonate.

Organic vapor means the gaseous phase of an organic compound or a mixture of organic compounds present in the atmosphere.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, copartnership, firm, company, partnership, joint stock company, trust, association, State, municipality, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

Process means any stationary emission source other than a fuel combustion emission source or an incinerator.

Source means emission source.

Standard conditions means a temperature of 20°C (68°F) and a pressure of 760 mm Hg (29.92 in. Hg).

Stationary emission source and *Stationary source* mean an emission source which is not self-propelled.

(4) *Test Methods and Procedures.*

(i) *Coatings, Inks, and Fountain Solutions.* The following test methods and procedures shall be used to determine the VOC content of as applied coatings, inks, and fountain solutions to determine compliance with the limitations set forth in this section.

(A) *Sampling.* Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C) of this section. For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(1) ASTM D3925–81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating. This practice is incorporated by reference in paragraph (c) of this section.

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals. This practice is incorporated by reference in paragraph (c) of this section.

(B) *Analyses.* The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(1) Method 24 of 40 CFR part 60, appendix A shall be used to determine the VOC content and density of coatings.

(2) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOC content and density of publication rotogravure printing inks and related coatings.

(3) The following ASTM methods and practices are the analytical procedures for determining VOC:

(i) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products. This test method is incorporated by reference in paragraph (c) of this section.

(ii) ASTM D2369–87: Standard Test Method for Volatile Content of a Coating. This test method is incorporated by reference in paragraph (c) of this section. The following minor modifications should be used for multicomponent coatings. All components of the coating are to be weighed in the proper proportion into the analysis container and mixed together just prior to analysis and the mixture is allowed to stand for at least one hour but no more than 24 hours prior to being oven dried at 110 degrees celsius for one hour.

(iii) ASTM D3792–86: Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph. This test method is incorporated by reference in paragraph (c) of this section.

(iv) ASTM D4017–81 (1987): Standard Test Method for Water Content in Paints and Paint Materials by the Karl Fischer Method. This test method is incorporated by reference in paragraph (c) of this section.

(v) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOC.) This test method is incorporated by reference in paragraph (c) of this section.

(vi) ASTM D2697–86: Standard Test Method for Volume Non-volatile Matter in Clear or Pigmented Coatings. This

test method is incorporated by reference in paragraph (c) of this section.

(vii) ASTM E180–85: Standard Practice for Determining the Precision Data of ASTM Methods for Analysis and Testing of Industrial Chemicals. This practice is incorporated by reference in paragraph (c) of this section.

(4) Use of an adaptation to any of the analytical methods specified in paragraphs (a)(4)(i)(B) *(1)*, *(2)*, and *(3)* of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the analytical methods specified in paragraphs (a)(4)(i)(B) *(1)*, *(2)*, and *(3)* of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(C) *Calculations.* Calculations for determining the VOC content, water content, and the content of any compounds which are specifically exempted from the definition of VOC of coatings, inks, and fountain solutions as applied shall follow the guidance provided in the following documents.

(1) "A Guide for Surface Coating Calculation" EPA–340/1–86–016 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings" (revised June 1986) EPA–450/3–84–019 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "A Guide for Graphic Arts Calculations" August 1988 EPA–340/1–88–003 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ii) *Automobile or Light-Duty Truck Test Protocol.* The protocol for testing, including determining the transfer efficiency, of coating applicators at topcoat coating operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" December 1988 EPA–450/3–88–018 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161).

(iii) *Capture System Efficiency Test Protocols.*

(A) *Applicability.* The requirements of paragraph (a)(4)(iii)(B) of this section shall apply to all VOC emitting processes employing a capture system except those cases noted below.

(1) If a source installs a permanent total enclosure (PTE) that meets U.S.EPA specifications, and which directs all VOC to a control device, then the source is exempted from the requirements described in paragraph (a)(4)(iii)(B) of this section. The U.S.EPA specifications to determine whether a structure is considered a PTE are given in Procedure T of appendix B of 40 CFR 52.742. In this instance, the capture efficiency is assumed to be 100 percent and the source is still required to measure control efficiency using appropriate test methods as specified in paragraph (a)(4)(iv) of this section.

(2) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorber), an explicit measurement of capture efficiency is not necessary provided that the conditions given below are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in § 60.433 of this chapter, with the following additional restrictions:

(i) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average, within 72 hours following the 24-hour period. In addition, one of the following two criteria must be met:

(ii) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process, or

(iii) If the solvent recovery system controls multiple processes, then the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all processes venting to the control system) meets or exceeds the most stringent standard applicable for any process venting to the control system.

(3) The following facilities are exempted from the requirements described in paragraph (a)(1)(iii)(B) of this section:

(i) Automobile-related assembly facilities subject to the "Automobile or Light-Duty Truck Test Protocol" described in paragraph (a)(4)(ii) of this section.

(ii) Heatset-web-offset lithographic printing units as defined in paragraph (b)(1)(i)(B) of this section.

(B) *Specific Requirements.* The capture efficiency of a process shall be measured using one of the four protocols given below. Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then the source must present an alternative capture efficiency protocol and obtain approval for it by the Administrator as a SIP or FIP revision.

(1) Gas/gas method using temporary total enclosure (TTE). The U.S. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$CE=G_w/(G_w+F_w)$

where

CE=capture efficiency, decimal fraction

G_w=mass of VOC captured and delivered to control device using a TTE

F_w=mass of fugitive VOC that escapes from a TTE Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G_w. Procedure F.1 in appendix B of 40 CFR 52.741 is used to obtain F_w.

(2) Liquid/gas method using TTE. The U.S. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$CE=(L-F_w)/L$

where

CE=capture efficiency, decimal fraction

L=mass of liquid VOC input to process

F_w=mass of fugitive VOC that escapes from a TTE Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.1 in appendix B of 40 CFR 52.741 is used to obtain F_w.

(3) Gas/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "G" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE=G/(G+F_B)$

where

CE=capture efficiency, decimal fraction

G=mass of VOC captured and delivered to control device

F_B=mass of fugitive VOC that escapes from building enclosure

Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G. Procedure F.2 in appendix B of 40 CFR 52.741 is used to obtain F_B.

(4) Liquid/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "L" are measured while

operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE = [L - F_B]/L$

where

CE=capture efficiency, decimal fraction

L=mass of liquid VOC input to process

F_B=mass of fugitive VOC that escapes from building enclosure

Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.2 in appendix B of 40 CFR 52.741 is used to obtain F_B.

(C) *Recordkeeping and Reporting.*

(1) All affected facilities must maintain a copy of the capture efficiency protocol submitted to EPA on file. All results of the appropriate test methods and capture efficiency protocols must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of five (5) years.

(2) If any changes are made to capture equipment, then affected facilities must notify EPA of these changes and a new test may be required by EPA.

(3) All affected facilities must notify the Administrator 30 days prior to performing any capture efficiency test. At that time, the source must notify the Administrator which capture efficiency protocol will be used.

(4) All affected facilities utilizing a PTE must demonstrate that this enclosure meets the requirement given in Procedure T in appendix B of 40 CFR 52.741 at all times.

(5) All affected facilities utilizing a TTE must demonstrate that their TTE meets the requirements given in Procedure T in appendix B of 40 CFR 52.741 for a TTE during testing of their control device. The source must also provide documentation that the quality assurance criteria for a TTE have been achieved.

(iv) *Control Device Efficiency Testing and Monitoring.*

(A) *Control Efficiency Test.* The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOC concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi) of this section.

(B) *Continuous Monitoring.* Any owner or operator that uses an afterburner or carbon adsorber to comply with any requirement of this section shall use continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications and which meets EPA-approved performance specifications at all times when the afterburner or carbon adsorber is in use. The continuous monitoring equipment must automatically monitor and record the following parameters:

(1) Combustion chamber temperature of each afterburner.

(2) Temperature rise across each catalytic afterburner bed or VOC concentration exhaust.

(3) The VOC concentration of each carbon adsorption bed exhaust.

(C) *Recordkeeping and Reporting.*

(1) All affected facilities must maintain a copy of all control efficiency test protocols for a period of five (5) years. All control test results must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of five (5) years.

(2) All affected facilities must maintain copies of all required continuous monitoring records for a period of five (5) years.

(3) If any changes are made to control equipment, affected facilities must notify EPA of these changes and a new control efficiency test may be required by EPA.

(4) All affected facilities must notify the Administrator 30 days prior to performing any control efficiency test. At that time, the source must notify the Administrator which test methods will be used.

(v) *Overall Efficiency.*

(A) The overall efficiency of each emission control system shall be determined as the product of the capture system efficiency and the control device efficiency or by the liquid/liquid test protocol as specified in paragraph (a)(4)(iii)(A)*(2)* of this section for each solvent recovery system.

(B) The overall efficiency of the capture system and control device used to control VOC emissions from a paper, fabric, film, can, coil, or miscellaneous metal parts and products coating line, as determined by the test methods and procedures specified in paragraphs (a)(4)(iii), (a)(4)(iv), and (a)(4)(v)(A) of this section, shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$E = ([VOC_a - VOC_l]/VOC_a) \times 100$

where:

E=Equivalent overall efficiency of the capture system and control device as a percentage,

VOC_a = Actual VOC content of a coating, or the daily-weighted average VOC content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) of this section in units of kg VOC/l (lb VOC/gal) of coating solids as applied, and

VOC_l=The VOC emission limit specified in units of kg VOC/liter (lb VOC/gal) of coating solids as applied.

(vi) *Volatile Organic Compound Gas Phase Source Test Methods.* The methods in 40 CFR part 60, appendix A, delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, Methods 18, 25, 25A, or 25B, as appropriate to the conditions at the site, shall be used to determine VOC concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A) *(1)* and *(2)* of this section, the test shall consist of three separate runs, each lasting a minimum of 60 min., unless the Administrator determines that process variables dictate shorter sampling times.

(1) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used to determine the efficiency of a carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, Method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, Method 2, 2A, 2C, or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, Method 3, 3A, or 3B shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, Method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, Methods 2, 2A, 2C, 2D, 3, 3A, 3B, or 4 shall be performed, as applicable, at least twice during each test run.

(G) Use of an adaptation to any of the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(vii) *Leak Detection Methods for Volatile Organic Compounds.* Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) Leak Detection Monitoring.

(1) Monitoring shall comply with 40 CFR part 60, appendix A, Method 21.

(2) The detection instrument shall meet the performance criteria of 40 CFR part 60, appendix A, Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in 40 CFR part 60, appendix A, Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but no less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in 40 CFR part 60, appendix A, Method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4)(vii)(A) *(1)* through *(5)* of this section shall apply.

(2) The background level shall be determined as set forth in 40 CFR part 60, appendix A, Method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 Controlling Volatile Organic Compound Emissions from Leaking Process Equipment" EPA–450/2–82–015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(2) "Portable Instrument User's Manual for Monitoring VOC Sources" EPA–340/1–86–015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(3) "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP" EPA–450/3–88–010 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(4) "Petroleum Refinery Enforcement Manual" EPA–340/1–80–008 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(viii) *Bulk Gasoline Delivery System Test Protocol.*

(A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR 60.503.

(B) Other tests shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: appendix D" EPA–340/1–80–012 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161).

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: appendix A", EPA–450/2–77–026 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ix) *Vapor Pressure of Volatile Organic Liquids.*

(A) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference as specified in paragraph (c) of this section or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference as specified in paragraph (c) of this section) or by the following equation:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

where:

P_{vol}=Total vapor pressure of the mixture,

n=Number of components in the mixture,

i=Subscript denoting an individual component,

P_i=Vapor pressure of a component determined in accordance with paragraph (a)(4)(ix)(A) of this section, and X_i=Mole fraction of the component in the total mixture.

(x) *Vapor Pressure of Organic Material or Solvent.*

(A) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{om} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{om}=Total vapor pressure of the portion of the mixture which is composed of organic material,

n=Number of organic material components in the mixture,

i=Subscript denoting an individual component,

P_i=Vapor pressure of an organic material component determined in accordance with paragraph (a)(4)(x)(A) of this section, and

X_i=Mole fraction of the organic material component of the total mixture.

(C) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or by the above equation.

(xi) *Vapor Pressure of Volatile Organic Compounds.*

(A) If the VOC consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or the vapor pressure may be obtained from a published source such as: Boublik, T.,

V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOC is in a mixture made up of both VOC compounds and compounds which are not VOC, the vapor pressure shall be determined by the following equation:

$$P_{voc} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{voc}=Total vapor pressure of the portion of the mixture which is composed of VOC,

n=Number of VOC components in the mixture,

i=Subscript denoting an individual component,

P_i=Vapor pressure of a VOC component determined in accordance with paragraph (a)(4)(xi)(A) of this section, and

X_i=Mole fraction of the VOC component of the total mixture.

(C) If the VOC is in a mixture made up of only VOC compounds, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or by the above equation.

(xii) *Baseline Emissions.* Unless otherwise specified in paragraph (b) of this section, baseline VOC emissions shall be calculated for each emissions source in accordance with one of the procedures specified below:

(A) If daily emissions records which are consistent with the emission inventory data submitted by the State for the control area on November 15, 1992 are available for the calendar years 1989 and 1990, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(B) If daily emissions records are not available for the calendar years 1989 and 1990 or are inconsistent with the emission inventory data submitted by the State for the control area on November 15, 1992 or were not submitted, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If solvent or coating usage data are not available, emissions associated with solvent or coating usage may be estimated from purchase-order records. The operating or usage time for the two-year period shall be based on one of the criteria specified as follows:

(*1*) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period,

(*2*) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(*3*) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(xiii) *Implementation Year Monthly Baseline Emissions.* Baseline emissions as defined in paragraph (a)(4)(xii) of this section shall be adjusted prior to the implementation year (2001) of the FIP cap program in the control area as follows:

(A) The reductions that are projected to occur as a result of both SIP and FIP measures between 1990 and 2001 shall be subtracted from the baseline emissions. This value shall be defined as the reduced daily baseline emissions and is denoted in pounds of VOC/day.

(B) The reduced daily baseline emissions shall be annualized by multiplying the daily value by 365. This value shall be defined as the reduced annual baseline emissions and is denoted in pounds of VOC/year.

(C) The reduced annual baseline emissions shall be converted into a monthly value by dividing by 12. This value shall be defined as the implementation year monthly baseline.

(5) *Enforcement.*

(i) All sources and facilities subject to provisions of § 52.2952 shall be subject to unannounced inspections by representatives of the USEPA pursuant to section 114 of the Clean Air Act.

(ii) Documentation maintained by all sources, facilities, and persons subject to this section must be sufficient to demonstrate compliance with all requirements of this section and must be provided to representatives of USEPA upon request.

(iii) Failure to comply with any provision of this section is a violation of the applicable implementation plan for purposes of section 113 of the Clean Air Act.

(iv) Each 50 pounds of emissions in excess of a facility's monthly cap shall be a separate violation for federal enforcement purposes.

(b) *Stationary and Area Source Control Measures.*

(1) *Industrial and Commercial Solvents/Coatings.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(1) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(1) of this section, the following definitions also apply:

Adhesives means any substance or mixture of substances intended to serve as a joining compound.

Aerospace component means the fabricated part, assembly of parts, or completed unit of any aircraft or space vehicle.

Aerospace component coating facility means a facility that includes one or more aerospace component coating unit(s).

Aerospace component coating unit means a coating unit in which any protective, decorative, or functional coating or reinforcing material is applied on or impregnated into an aerospace component.

Aircraft means any machine designed to travel through the air above ground without leaving the earth's atmosphere, whether heavier or lighter than air, including airplanes, balloons, dirigibles, helicopters, and missiles.

Automobile means a motor vehicle capable of carrying no more than 12 passengers.

Can means any cylindrical, single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.); with or without a top, cover, spout, or handles; into which solid or liquid materials are packaged.

Can coating facility means a facility that includes one or more can coating unit(s).

Can coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

Coating means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and/or temporary protective coatings.

Coating applicator means any equipment or device, including but not limited to cloth, rollers, brushes, spray guns, and dip tanks, used to apply a coating onto or into a substrate.

Coating unit means a series of one or more coating applicators and any associated drying areas and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary to have an oven or a flashoff area in order to be included in this definition.

Coil means any continuous metal sheet or strip with thickness of 0.15 mm (0.006 in.) or more that is packaged in a roll or coil.

Coil coating facility means a facility that includes one or more coil coating unit(s).

Coil coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

Cold cleaning means the batch process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

Conveyorized degreasing means the continuous process of cleaning and removing soils from surfaces using either cold or vaporized solvents.

Degreaser means any equipment or system used in solvent cleaning.

Degreasing facility means a facility that includes one or more cold cleaning, open-top vapor degreasing, and/or conveyorized degreasing processes.

Dry cleaning facility means a facility engaged in the cleaning of fabrics using an essentially nonaqueous solvent by means of one or more solvent washes, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, washers, dryers, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

Fabric coating facility means a facility that includes one or more fabric coating unit(s).

Fabric coating unit means a web coating unit in which any protective, decorative, or functional coating or reinforcing material is applied on, saturated into, or impregnated into a textile fabric. A fabric printing unit is not considered a fabric coating unit.

Film coating facility means a facility that includes one or more film coating unit(s).

Film coating unit means a coating unit in which any protective, decorative, or functional coating is applied on, saturated into, or impregnated into any film substrate; other than paper, fabric, or vinyl; including but not limited to typewriter ribbons, photographic film, plastic film, magnetic tape, and metal foil.

Flatwood product means panels made of wood materials including; but not limited to; plywood, particle board, and hardboard.

Flatwood product coating facility means a facility that includes one or more flatwood product coating unit(s).

Flatwood product coating unit means a coating unit in which any protective, decorative, or functional coating is applied on or impregnated into a flatwood product.

Flexographic printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

Flexographic printing press means a printing press in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

Fountain solution means the solution which is applied to the lithographic printing plate to maintain hydrophilic properties of the nonimage areas.

Graphic arts coating facility means a facility that includes one or more graphic arts coating units.

Graphic arts coating unit means any packaging rotogravure printing, publication rotogravure printing, flexographic printing, lithographic printing, letterpress printing, laminating, or screen printing unit or any paper, fabric, or film coating unit operated in conjunction with a printing unit.

Group I vehicles and equipment means large-sized trucks, buses, and mobile equipment.

Group II vehicles means passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles.

Heatset means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

Heatset-web-offset lithographic printing unit means a lithographic printing unit in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

Heavy off-highway vehicle products means heavy construction, mining, farming, or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

Heavy off-highway vehicle products coating facility means a facility that includes one or more heavy off-highway vehicle products coating unit(s).

Heavy off-highway vehicle products coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

Highway means a way or place of whatever nature, publicly maintained and open to the public for purposes of vehicular travel. Highway includes street.

Industrial or commercial solvent use facility means any industrial or commercial facility that uses solvents which contain VOCs or substances that contain solvents which contain VOCs. Industrial and commercial solvent use facilities include, but are not limited to, perchloroethylene dry cleaning, petroleum dry cleaning, metal cleaning, degreasing, aerospace component coating, motor vehicle and mobile equipment assembly line coating, motor vehicle and mobile equipment refinishing, can coating, coil coating, fabric coating, film coating, flatwood product coating, graphic arts coating, large appliance coating, magnet wire coating, marine vessel coating, metal and wood furniture coating, miscellaneous metal parts and products coating, paper coating, and plastic parts coating facilities. Substances that contain solvents include, but are not limited to, coatings, inks, fountain solutions, adhesives, thinners, and clean-up solvents.

Ink means a coating used in printing, impressing, or transferring an image onto a substrate.

Laminating unit means a printing unit in which an adhesive is used to form two or more layers of material into a single, multiple-layer sheet.

Large appliance means the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products under SIC Code 363.

Large appliance coating facility means a facility that includes one or more large appliance coating unit(s).

Large appliance coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of component metal parts of large appliances.

Letterpress printing unit means a printing unit in which the image area is raised relative to the nonimage area on the roll printer and the ink is transferred to the paper directly from the image surface.

Light-duty truck means any motor vehicle rated at 3864 kg (8500 lb) gross vehicle weight or less, designed mainly to transport property.

Lithographic printing unit means a printing unit in which the image and nonimage areas are on the same plane of the roll printer.

Magnet wire coating facility means a facility that includes one or more magnet coating unit(s).

Magnet wire coating unit means a coating unit in which electrically insulating varnish or enamel is applied onto the surface of wire to be used in electrical machinery.

Marine vessel means a ship or boat used to travel on, or a submarine used to travel through, the sea.

Marine vessel coating facility means a facility that includes one or more marine vessel coating unit(s).

Marine vessel coating unit means a coating unit in which any protective, decorative, or functional coating is applied on the fabricated part, assembly of parts, or completed unit of any marine vessel.

Metal furniture means any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating unit coating miscellaneous metal parts or products.

Metal furniture coating facility means a facility that includes one or more metal furniture coating unit(s).

Metal furniture coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

Miscellaneous metal part or product means any metal part or metal product, even if attached to or combined with a nonmetal part or product.

Miscellaneous metal parts or products coating facility means a facility that includes one or more miscellaneous metal parts or products coating unit(s).

Miscellaneous metal parts or products coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

Mobile equipment means self-propelled equipment which is physically capable of being driven on a highway. Mobile equipment includes: automobiles, motorcycles, trucks, vans, construction equipment (e.g., mobile cranes, bulldozers, concrete mixers), farming equipment (e.g., wheel tractors, pesticide sprayers), and miscellaneous equipment (e.g., street cleaners, golf carts, and hauling equipment used inside and around airports, docks, depots, and industrial and commercial plants).

Motor vehicle means a vehicle which is self-propelled and physically capable of being driven on a highway.

Motor vehicle or mobile equipment assembly line coating facility means a facility where parts are manufactured or finished for eventual inclusion into finished motor vehicles or mobile equipment ready for sale to motor vehicle or mobile equipment dealers. This definition does not include customizers, body shops, and/or other auto refinishing facilities.

Motor vehicle or mobile equipment refinishing facility means a facility where all or any part of used motor vehicles or mobile equipment is refinished, or customized, by the application of paint. This definition includes motor vehicles or mobile equipment dealerships who purchase new motor vehicle or mobile equipment from Original Equipment Manufacturers. This definition does not include motor vehicle or mobile equipment assembly line coating facilities.

Motorcycle means any motor vehicle other than a tractor having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and weighing less than 1,500 lbs. except that four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

Offset means a blanket cylinder that is used to transfer ink from a plate cylinder to the substance to be printed.

Open-top vapor degreasing means the batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

Oven means a chamber within which heat is used for one or more of the following purposes: to dry, bake, cure, or polymerize a coating or ink.

Packaging rotogravure printing means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

Packaging rotogravure printing press means a rotogravure printing press in which surface coatings are applied to paper, paperboard, metal foil, plastic film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

Paper coating facility means a facility that includes one or more paper coating unit(s).

Paper coating unit means a web coating unit where coating is applied to paper. Printing presses are not considered paper coating units. Products produced on a paper coating unit include, but are not limited to, adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes. Paper coating units include, but are not limited to, application by impregnation or saturation or by the use of roll, knife, or rotogravure coating.

Printing unit means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and/or ovens wherein one or more surface coatings are applied, dried, and/or cured. It is not necessary for an operation to have an oven, or flashoff area, or drying area to be included in this definition.

Publication rotogravure printing unit means a rotogravure printing unit in which surface coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed material.

Refinish means to restore or replace coatings on Group I vehicles (large-sized trucks, buses, and mobile equipment) and Group II vehicles (passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles) and equipment, or their parts and components, except Original Equipment Manufacturer coatings applied at motor vehicle or mobile equipment assembly line coating facilities.

Roll coater means an apparatus in which a uniform layer of coating material is applied by means of a roll or rolls across the entire width of a moving substrate which is fed from an unwinding roll.

Roll printer means an apparatus in which a surface coating is applied by means of a roll or rolls with only partial coverage across the width of a moving substrate which is fed from an unwinding roll. The partial coverage results in the formation of words, designs, or pictures on the substrate.

Rotogravure printing means the application of words, designs, and pictures to a substrate using a gravure cylinder by means of a roll printing technique in which the pattern to be applied is recessed relative to the nonimage area.

Rotogravure printing unit means a printing unit in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

Screen printing unit means a printing unit in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.

Solvent means a substance that is liquid at standard conditions that is used to dissolve or dilute another substance; this term includes, but is not limited to, organic materials used as dissolvers, viscosity reducers, degreasing agents, or cleaning agents.

Solvent cleaning means the process of cleaning soils from surfaces by cold cleaning, open-top vapor degreasing, or conveyorized degreasing.

Space vehicle means any vehicle designed to travel beyond the earth's atmosphere.

Street means a public road in a town or city.

Substrate means the surface to which a coating is applied on, saturated into, or impregnated into.

Vinyl coating facility means a facility that includes one or more vinyl coating unit(s).

Vinyl coating unit means a web coating unit in which any protective, decorative, or functional coating or printing ink is applied onto a continuous web of vinyl-coated fabric or vinyl sheets.

Web means an automatic system which supplies substrate from a continuous roll or an extrusion process.

Wood furniture means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

Wood furniture coating facility means a facility that includes one or more wood furniture coating unit(s).

Wood furniture coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto wood furniture.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(1)(iii) (A) and (B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of any degreasing facility or any motor vehicle or mobile equipment refinishing facility located in the control area as defined in paragraph (a)(1) of this section.

(B) The requirements of paragraphs (b)(1)(iii) (A) and (B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of VOC are greater than or equal to 6.8 kg (15 lbs) during any one day.

(C) The requirements of paragraphs (b)(1)(iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of VOC from all emissions sources are always less than 6.8 kg (15 lbs) during any one day. If actual emissions of VOC from a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section ever exceed 6.8 kg (15 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(1)(iii)(B) *(1)* through *(5)*, (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B)*(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraph (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's title V operating permit. For sources not subject to title V, sources shall submit all information which would be required for sources subject to title V.[11]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(1)(ii) (A) or (B) of this section, shall limit actual monthly emissions of VOC from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

where [12]

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

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[11] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

[12] The range 0.04 to 0.09 reflects the 4% to 9% cumulative annual rate of emission reductions currently under consideration. In the first year, emissions would be reduced by 4% to 9% off of baseline levels; in the second year, emissions would be reduced by 8% to 18% off of baseline levels, and so on until the minimum 20% VOC reduction is made. As discussed in the preamble to the regulations this range of annual reductions is based on EPA's preliminary rate of reduction analysis and may change as the analysis continues prior to final promulgation of this FIP. In addition, EPA plans to review this value every three years after final rule promulgation.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii) (A) or (B) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section, and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 6.8 kg (15 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(1)(iii)(A) (2) *(i)* and *(ii)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that actual emissions of VOC from the facility exceeded 6.8 kg (15 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraphs (b)(1)(ii)(A) or (B) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii)(C) of this section shall collect and record all information necessary to demonstrate that actual emissions of VOC from all emissions sources are less than 6.8 kg (15 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraphs (b)(1)(ii) (A) or (B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(2) *VOC Emissions Associated with the Manufacturing of Products.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(2) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(2) of this section, the following definitions also apply:

Facility which manufactures products containing VOCs means any facility where VOCs are emitted from processes which are used to manufacture or fabricate products. These products include, but are not limited to, the products specified in paragraphs *(1)* through *(7)* of this definition. This definition does not include facilities which are subject to any of the requirements of paragraphs (b)(1), (b)(4), or (b)(5) of this section.

(1) Industrial and agricultural organic chemicals and gases. Industrial organic chemicals include, but are not limited to, gum and wood chemicals, cyclic organic crudes and intermediates, organic dyes and pigments, and the chemicals listed in 40 CFR 52.741, appendix A. Agricultural organic chemicals include, but are not limited to, pesticides, livestock dips, soil conditioners, and fertilizers.

(2) Plastic materials, synthetic resins, synthetic rubber, elastomizers, and cellulosic and manmade fibers.

(3) Drugs which include, but are not limited to, medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products.

(4) Soaps; detergents; cleaning, polishing, and sanitizing preparations; surface active agents, finishing agents, sulfonated oils, and assistants; and perfumes and cosmetics.

(5) Food additives and sweeteners.

(6) Paints, varnishes, lacquers, enamels, inks, primers, paint removers, thinners, stains, shellacs, cleaners, putty, coatings, adhesives, fillers, sealants, explosives, and carbon black.

(7) Fabricated rubber and miscellaneous plastics products including, but not limited to, tires and inner tubes; rubber and plastics footware, hose, belting, gasket, packing, and sealing devices; and molded, extruded, and lathe-cut mechanical rubber goods.

Manufacture means to produce or combine any ingredients contained in any product.

Manufacturing process means a process or a series of processes used to convert raw materials, feed stocks, subassemblies, or other components into a product which will be sold, offered for sale, supplied, or distributed or will be used as a component in a subsequent manufacturing process. This definition includes the storage and handling of organic compounds or gases which are used in a manufacturing process and the handling of organic compounds or gases used to clean-up a manufacturing process.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(2) (iii)(A), (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the control area as defined in paragraph (a)(1) of this section at which total VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(2) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the applicable area specified in paragraph (b)(2)(ii)(A) of this section at which total VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If uncontrolled VOC emissions from a facility which is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(2) (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V (of the Clean Air Act) operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[13]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(2)(ii)(A) of this section, shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

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[13] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

$$R_{2001} \le \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \tag{1}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \tag{2}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \tag{3}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \tag{4}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \tag{5}$$

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section; and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section, shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(2)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of section to demonstrate compliance with the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(2)(ii)(B) to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(3) *Disposal of Materials Containing Volatile Organic Compounds.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(3) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(3) of this section, the following definitions also apply:

Biodegradable waste means any organic waste that can be broken down into its basic elements by microorganisms.

Biodegradable waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of biodegradable waste or to reclaim or recycle organic compounds or gases from biodegradable wastes.

Organic waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of organic wastes that contain VOCs or to reclaim or recycle organic compounds or gases from organic wastes that contain VOCs. Such facilities include, but are not limited to, biodegradable waste disposal facilities (e.g., landfills); publicly owned treatment works; hazardous waste treatment, storage, and disposal facilities; and sewage sludge, solid waste, and hazardous waste incinerators.

Publicly owned treatment work (POTW) means any device or system which is owned by a state or municipality and is used to treat (including recycling and reclamation) municipal sewage or industrial liquid waste.

(ii) *Applicability.* The requirements of paragraphs (b)(3) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any organic waste disposal facility located in the control area as defined in paragraph (a)(1) of this section.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[14]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(3)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \le \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

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[14] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)(2) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section; and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section.

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section.

(4) *Commercial Food Preparation and/or Baking.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(4) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(4) of this section, the following definitions also apply:

Brandy-making facility means a facility that distills wine, the refuse of a wine press, or any other fermented fruit juices to produce alcoholic liquors.

Charcoal means any substance obtained by charring wood or any other organic matter by a process of smothered combustion to exclude air.

Commercial baking facility means a facility that bakes bread, biscuits, rolls, pies, cakes, cookies, or other similar products.

Commercial charbroiling facility means a facility that broils any type of food over a charcoal or gas-fired broiler.

Food preparation facility means any commercial baking, commercial charbroiling, wine- or brandy-making, fruit and vegetable preservation, grain mill production, vegetable oil production, or malt beverage production facility. This definition includes restaurants involved in activities described in the previous sentence.

Fruit and vegetable preservation facility means a facility that preserves food by, but not limited to, canning, curing, pickling, salting, smoking, cooking, or freezing.

Grain mill production facility means a facility that grinds any grain including, but not limited to, wheat, rice, corn, or rye into flour or meal.

Malt beverage production facility means a facility engaged in malting, fermentation, aging, or packaging of barley or any other grain for the purpose of producing an alcoholic beverage.

Vegetable oil production facility means a facility that extracts oil from any vegetable seed.

Wine- or brandy-making facility means a facility that ferments juices from grapes or any other fruit for the purpose of producing alcoholic beverages.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(4) (iii)(A), (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a commercial food preparation facility located in the control area as defined in paragraph (a)(1) of this section at which VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(4) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a commercial food preparation facility located in the applicable area specified in paragraph (b)(4)(ii)(A) of this section at which total uncontrolled VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If VOC emissions from a facility which is exempt from the limitations of paragraph (b)(4)(iii)(B) of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(4) (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraphs (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[15]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(4)(ii)(A) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \le \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \tag{1}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \tag{2}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \tag{3}$$

(See footnote to paragraph (b)(1)(iii)(B)(1) of this section.)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \tag{4}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \tag{5}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section; and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

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[15] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(4)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(4)(ii)(B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(5) Petroleum and Natural Gas Extraction, Processing, and Storage.

(i) *Definitions.*

(A) For the purpose of paragraph (b)(5) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(5) of this section, the following definitions also apply:

Crude oil means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

Extraction facility means any facility where drilling and servicing equipment, flow lines, separators, gathering lines, and auxiliary nontransportation related equipment are used to extract petroleum or natural gas from a well.

Gasoline means any petroleum distillate which is used as a motor fuel.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Processing facility means any facility where petroleum or natural gas is used as a feedstock to produce gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other related products.

Storage facility means any extraction facility, processing facility, bulk gasoline plant, bulk gasoline terminal, or any petroleum storage facility which distributes petroleum, natural gas, or gasoline to retail outlet and wholesale purchaser-consumer facilities. This definition does not apply to retail gasoline service stations.

(ii) *Applicability.* The requirements of paragraphs (b)(5) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any petroleum or natural gas extraction, processing, or storage facility located in the control area as defined in paragraph (a)(1) of this section.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application

of the reduction methods described in paragraphs (b)(2)(iii)(A)(*3*) of this section.

(*5*) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[16]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(5)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(5)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section; and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section.

(v) Recordkeeping. Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(5)(ii) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(5)(ii) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section.

(c) *Incorporated by Reference.* The materials listed below are incorporated by reference. The incorporation by reference was approved by the Director of the Office of Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[17] These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**.

(1) ASTM D3925–81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating.

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals.

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[16] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) (*1*) through (*5*) of this section. The methods may include but are not limited to: (1) The test methods and procedures specified in paragraph (a)(4) of this section, and (2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

[17] Incorporation by reference is pending approval by the Office of Federal Register.

(3) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products.

(4) ASTM D2369–87: Standard Test Method for Volatile Content of a Coating.

(5) ASTM D3792–86: Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph.

(6) ASTM D4017–81 (1987): Standard Test Method for Water Content in Paints and Paint Materials by the Karl Fischer Method.

(7) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph.

(8) ASTM D2697–86: Standard Test Method for Volume Non-volatile Matter in Clear or Pigmented Coatings.

(9) ASTM E180–85: Standard Practice for Determining the Precision Data of ASTM Methods for Analysis and Testing of Industrial Chemicals.

(10) ASTM Method D2879–86: Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope.

§ 52.2954 Stationary and area source caps (South Coast).[18]

(a) *General Provisions.*

(1) *Applicability.* The provisions of this section shall apply to all stationary emission sources located in the "control area" as defined as the Los Angeles-South Coast Air Basin ozone nonattainment area in 40 CFR 81.305, and all other persons identified in subsequent applicability paragraphs in this section.

(2) *Compliance dates.* Unless otherwise specified in this section, compliance with all requirements of this section is required as of [Insert date of publication of the final rule]. This paragraph (a)(2) shall not operate to provide additional time for compliance under Section 113(d) of the Act, 42 U.S.C 7413(d), for sources subject to compliance as of [Insert date of publication of the final rule].

(3) *Definitions.* For the purposes of this section, the following definitions apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Actual emissions means the actual quantity of VOC emissions from an emissions source during a particular time period.

Actual emissions rate means the actual quantity of VOC emissions from an emissions source per unit of actual production or throughput.

Agency means the United States Environmental Protection Agency.

Air contaminant means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

Air pollution means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Air pollution control equipment means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

Allowable emissions rate means the most stringent of the applicable standards in 40 CFR parts 60 and 61; the applicable implementation plan; or a federally enforceable permit.

Baseline emissions means the emissions calculated using 1990 emission inventory data in the affected FIP areas and adjusted for emission reductions projected to occur by the implementation year of the FIP cap program in the affected FIP area. The baseline shall be denominated in pounds per year of FIP cap pollutant (e.g., pounds of VOC per year) and monthly caps shall be prorated based on this data.

Coating applicator means any equipment or device including but not limited to cloth, rollers, brushes, spray guns, or dip tanks used to apply a coating.

Day means a period of consecutive 24 hours beginning at 12 a.m. (midnight) local time, or beginning at a time consistent with a facility's operating schedule.

Emission rate means the total mass of VOCs released or discharged from an emissions source into the atmosphere per unit of production or throughput (e.g., pound VOC/gallon of coating solids).

Emission source or *source* means any building, structure, facility, property, equipment, device, container, or any combination thereof, at, from, or by reason which VOC is emitted or discharged into the atmosphere.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1987" (National Technical Information Service order No. PB 87–10012).

Federally enforceable means all limitations and conditions that are enforceable by the Administrator including those requirements contained in permits issued pursuant to 40 CFR parts 70 and 71, except those terms or conditions designated as not federally enforceable; those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, and 40 CFR 51.166.

Incinerator means a combustion apparatus in which solid, semi-solid, liquid, or gaseous combustible wastes are ignited and burned and from which the solid and gaseous residues contain little or no combustible material.

Monitor means to measure and record.

Organic compound means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, carbonates, and ammonium carbonate.

Organic vapor means the gaseous phase of an organic compound or a mixture of organic compounds present in the atmosphere.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, copartnership, firm, company, partnership, joint stock company, trust, association, State, municipality, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

Process means any stationary emission source other than a fuel combustion emission source or an incinerator.

Source means emission source.

Standard conditions means a temperature of 20°C (68°F) and a pressure of 760 mm Hg (29.92 in. Hg).

Stationary emission source and *Stationary source* mean an emission source which is not self-propelled.

(4) *Test Methods and Procedures.*

(i) *Coatings, Inks, and Fountain Solutions.* The following test methods and procedures shall be used to determine the VOC content of as applied coatings, inks, and fountain solutions to determine compliance with the limitations set forth in this section.

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[18] EPA intends to issue a supplemental document in the **Federal Register** which addresses portions of proposed § 52.2954.

(A) *Sampling.* Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C) of this section. For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(1) ASTM D3925–81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating. This practice is incorporated by reference in paragraph (c) of this section.

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals. This practice is incorporated by reference in paragraph (c) of this section.

(B) *Analyses.* The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(1) Method 24 of 40 CFR part 60, appendix A shall be used to determine the VOC content and density of coatings.

(2) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOC content and density of publication rotogravure printing inks and related coatings.

(3) The following ASTM methods and practices are the analytical procedures for determining VOC:

(i) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products. This test method is incorporated by reference in paragraph (c) of this section.

(ii) ASTM D2369–87: Standard Test Method for Volatile Content of a Coating. This test method is incorporated by reference in paragraph (c) of this section. The following minor modifications should be used for multicomponent coatings. All components of the coating are to be weighed in the proper proportion into the analysis container and mixed together just prior to analysis and the mixture is allowed to stand for at least one hour but no more than 24 hours prior to being oven dried at 110 degrees celsius for one hour.

(iii) ASTM D3792–86: Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph. This test method is incorporated by reference in paragraph (c) of this section.

(iv) ASTM D4017–81 (1987): Standard Test Method for Water Content in Paints and Paint Materials by the Karl Fischer Method. This test method is incorporated by reference in paragraph (c) of this section.

(v) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOC.) This test method is incorporated by reference in paragraph (c) of this section.

(vi) ASTM D2697–86: Standard Test Method for Volume Non-volatile Matter in Clear or Pigmented Coatings. This test method is incorporated by reference in paragraph (c) of this section.

(vii) ASTM E180–85: Standard Practice for Determining the Precision Data of ASTM Methods for Analysis and Testing of Industrial Chemicals. This practice is incorporated by reference in paragraph (c) of this section.

(4) Use of an adaptation to any of the analytical methods specified in paragraphs (a)(4)(i)(B) *(1)*, *(2)*, and *(3)* of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the analytical methods specified in paragraphs (a)(4)(i)(B) *(1)*, *(2)*, and *(3)* of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(C) *Calculations.* Calculations for determining the VOC content, water content, and the content of any compounds which are specifically exempted from the definition of VOC of coatings, inks, and fountain solutions as applied shall follow the guidance provided in the following documents.

(1) "A Guide for Surface Coating Calculation" EPA–340/1–86–016 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings" (revised June 1986) EPA–450/3–84–019 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "A Guide for Graphic Arts Calculations" August 1988 EPA–340/1–88–003 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ii) *Automobile or Light-Duty Truck Test Protocol.* The protocol for testing, including determining the transfer efficiency, of coating applicators at topcoat coating operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" December 1988 EPA–450/3–88–018 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161).

(iii) *Capture System Efficiency Test Protocols.*

(A) *Applicability.* The requirements of paragraph (a)(4)(iii)(B) of this section shall apply to all VOC emitting processes employing a capture system except those cases noted below.

(1) If a source installs a permanent total enclosure (PTE) that meets USEPA specifications, and which directs all VOC to a control device, then the source is exempted from the requirements described in paragraph (a)(4)(iii)(B) of this section. The USEPA specifications to determine whether a structure is considered a PTE are given in Procedure T of appendix B of 40 CFR 52.742. In this instance, the capture efficiency is assumed to be 100 percent and the source is still required to measure control efficiency using appropriate test methods as specified in paragraph (a)(4)(iv) of this section.

(2) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorber), an explicit measurement of capture efficiency is not necessary provided that the conditions given below are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in § 60.433 of this chapter, with the following additional restrictions:

(i) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average, within 72 hours following the 24-hour period. In addition, one of the following two criteria must be met:

(ii) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process, or

(iii) If the solvent recovery system controls multiple processes, then the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all processes venting to the control system) meets or exceeds the most stringent standard applicable for any process venting to the control system.

(3) The following facilities are exempted from the requirements described in paragraph (a)(1)(iii)(B) of this section:

(i) Automobile-related assembly facilities subject to the "Automobile or Light-Duty Truck Test Protocol" described in paragraph (a)(4)(ii) of this section.

(ii) Heatset-web-offset lithographic printing units as defined in paragraph (b)(1)(i)(B) of this section.

(B) *Specific Requirements.* The capture efficiency of a process shall be measured using one of the four protocols given below. Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then the source must present an alternative capture efficiency protocol and obtain approval for it by the Administrator as a SIP or FIP revision.

(1) Gas/gas method using temporary total enclosure (TTE). The USEPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$CE=G_w/(G_w+F_w)$

where

CE=capture efficiency, decimal fraction

G_w=mass of VOC captured and delivered to control device using a TTE

F_w=mass of fugitive VOC that escapes from a TTE Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G_w. Procedure F.1 in appendix B of 40 CFR 52.741 in used to obtain F_w.

(2) Liquid/gas method using TTE. The USEPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of 40 CFR 52.741. The capture efficiency equation to be used for this protocol is:

$CE=(L-F_w)/L$

where

CE=capture efficiency, decimal fraction

L=mass of liquid VOC input to process

F_w=mass of fugitive VOC that escapes from a TTE Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.1 in appendix B of 40 CFR 52.741 is used to obtain F_w.

(3) Gas/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "G" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE=G/(G+F_B$

where

CE=capture efficiency, decimal fraction

G=mass of VOC captured and delivered to control device

F_B=mass of fugitive VOC that escapes from building enclosure

Procedure G.2 contained in appendix B of 40 CFR 52.741 is used to obtain G. Procedure F.2 in appendix B of 40 CFR 52.741 is used to obtain F_B.

(4) Liquid/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "L" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE=(L-F_B)/L$

where

CE=capture efficiency, decimal fraction

L=mass of liquid VOC input to process

F_B=mass of fugitive VOC that escapes from building enclosure

Procedure L contained in appendix B of 40 CFR 52.741 is used to obtain L. Procedure F.2 in appendix B of 40 CFR 52.741 is used to obtain F_B.

(C) *Recordkeeping and Reporting.*

(1) All affected facilities must maintain a copy of the capture efficiency protocol submitted to EPA on file. All results of the appropriate test methods and capture efficiency protocols must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of five (5) years.

(2) If any changes are made to capture equipment, then affected facilities must notify EPA of these changes and a new test may be required by EPA.

(3) All affected facilities must notify the Administrator 30 days prior to performing any capture efficiency test. At that time, the source must notify the Administrator which capture efficiency protocol will be used.

(4) All affected facilities utilizing a PTE must demonstrate that this enclosure meets the requirement given in Procedure T in appendix B of 40 CFR 52.741 at all times.

(5) All affected facilities utilizing a TTE must demonstrate that their TTE meets the requirements given in Procedure T in appendix B of 40 CFR 52.741 for a TTE during testing of their control device. The source must also provide documentation that the quality assurance criteria for a TTE have been achieved.

(iv) *Control Device Efficiency Testing and Monitoring.*

(A) *Control Efficiency Test.* The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOC concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi) of this section.

(B) *Continuous Monitoring.* Any owner or operator that uses an afterburner or carbon adsorber to comply with any requirement of this section shall use continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications and which meets EPA-approved performance specifications at all times when the afterburner or carbon adsorber is in use. The continuous monitoring equipment must automatically monitor and record the following parameters:

(1) Combustion chamber temperature of each afterburner.

(2) Temperature rise across each catalytic afterburner bed or VOC concentration exhaust.

(3) The VOC concentration of each carbon adsorption bed exhaust.

(C) *Recordkeeping and Reporting.*

(1) All affected facilities must maintain a copy of all control efficiency test protocols for a period of five (5) years. All control test results must be reported to EPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of five (5) years.

(2) All affected facilities must maintain copies of all required continuous monitoring records for a period of five (5) years.

(3) If any changes are made to control equipment, affected facilities must notify EPA of these changes and a new control efficiency test may be required by EPA.

(4) All affected facilities must notify the Administrator 30 days prior to performing any control efficiency test. At that time, the source must notify the Administrator which test methods will be used.

(v) *Overall Efficiency*.

(A) The overall efficiency of each emission control system shall be determined as the product of the capture system efficiency and the control device efficiency or by the liquid/liquid test protocol as specified in paragraph (a)(4)(iii)(A)*(2)* of this section for each solvent recovery system.

(B) The overall efficiency of the capture system and control device used to control VOC emissions from a paper, fabric, film, can, coil, or miscellaneous metal parts and products coating line, as determined by the test methods and procedures specified in paragraphs (a)(4)(iii), (a)(4)(iv), and (a)(4)(v)(A) of this section, shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$$E=([VOC_a-VOC_l]/VOC_a)\times100$$

where:

E=Equivalent overall efficiency of the capture system and control device as a percentage,

VOC_a=Actual VOC content of a coating, or the daily-weighted average VOC content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) of this section in units of kg VOC/l (lb VOC/gal) of coating solids as applied, and

VOC_l=The VOC emission limit specified in units of kg VOC/liter (lb VOC/gal) of coating solids as applied.

(vi) *Volatile Organic Compound Gas Phase Source Test Methods*. The methods in 40 CFR part 60, appendix A, delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, Methods 18, 25, 25A, or 25B, as appropriate to the conditions at the site, shall be used to determine VOC concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A) *(1)* and *(2)* of this section, the test shall consist of three separate runs, each lasting a minimum of 60 min., unless the Administrator determines that process variables dictate shorter sampling times.

(1) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used to determine the efficiency of a carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, Method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, Method 2, 2A, 2C, or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, Method 3, 3A or 3B shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, Method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, Methods 2, 2A, 2C, or 2D; 3, 3A, or 3B; and 4 shall be performed, as applicable, at least twice during each test run.

(G) Use of an adaptation to any of the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(vii) *Leak Detection Methods for Volatile Organic Compounds*. Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) Leak Detection Monitoring.

(1) Monitoring shall comply with 40 CFR part 60, appendix A, Method 21.

(2) The detection instrument shall meet the performance criteria of 40 CFR part 60, appendix A, Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in 40 CFR part 60, appendix A, Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but no less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in 40 CFR part 60, appendix A, Method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4)(vii)(A)*(1)* through (vii)(A)*(5)* of this section shall apply.

(2) The background level shall be determined as set forth in 40 CFR part 60, appendix A, Method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 Controlling Volatile Organic Compound Emissions from Leaking Process Equipment" EPA-450/2-82-015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Portable Instrument User's Manual for Monitoring VOC Sources" EPA-340/1-86-015 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP" EPA-450/3-88-010 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(4) "Petroleum Refinery Enforcement Manual" EPA-340/1-80-008 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(viii) *Bulk Gasoline Delivery System Test Protocol*. (A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR part 60, subpart XX, § 60.503.

(B) Other tests shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: appendix D" EPA-340/1-80-012 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161).

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: appendix A", EPA-450/2-77-026 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ix) *Vapor Pressure of Volatile Organic Liquids*.

(A) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in paragraph (c) of this section or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference as specified in paragraph (c) of this section) or by the following equation:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

where:

P_{vol} = Total vapor pressure of the mixture,

n = Number of components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of a component determined in accordance with paragraph (a)(4)(ix)(A) of this section, and Xi = Mole fraction of the component in the total mixture.

(x) *Vapor Pressure of Organic Material or Solvent.*

(A) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{om} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{om} = Total vapor pressure of the portion of the mixture which is composed of organic material,

n = Number of organic material components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of an organic material component determined in accordance with paragraph (a)(4)(x)(A) of this section, and

X_i = Mole fraction of the organic material component of the total mixture.

(C) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or by the above equation.

(xi) *Vapor Pressure of Volatile Organic Compounds.*

(A) If the VOC consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(B) If the VOC is in a mixture made up of both VOC compounds and compounds which are not VOC, the vapor pressure shall be determined by the following equation:

$$P_{voc} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{voc} = Total vapor pressure of the portion of the mixture which is composed of VOC,

n = Number of VOC components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of a VOC component determined in accordance with paragraph (a)(4)(xi)(A) of this section, and

X_i = Mole fraction of the VOC component of the total mixture.

(C) If the VOC is in a mixture made up of only VOC compounds, the vapor pressure shall be determined by ASTM Method D2879–86 (incorporated by reference in paragraph (c) of this section) or by the above equation.

(xii) *Baseline Emissions.* Unless otherwise specified in paragraph (b) of this section, baseline VOC emissions shall be calculated for each emissions source in accordance with one of the procedures specified below:

(A) If daily emissions records which are consistent with the emission inventory data submitted by the State for the control area on November 15, 1992 are available for the calendar years 1989 and 1990, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

(B) If daily emissions records are not available for the calendar years 1989 and 1990 or are inconsistent with the emission inventory data submitted by the State for the control area on November 15, 1992 or were not submitted, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If solvent or coating usage data are not available, emissions associated with solvent or coating usage may be estimated from purchase-order records. The operating or usage time for the two-year period shall be based on one of the criteria specified as follows:

(*1*) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period,

(*2*) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(*3*) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(xiii) *Implementation Year Monthly Baseline Emissions.* Baseline emissions as defined in paragraph (a)(4)(xii) of this section shall be adjusted prior to the implementation year (2001) of the FIP cap program in the control area as follows:

(A) The reductions that are projected to occur as a result of both SIP and FIP measures between 1990 and 2001 shall be subtracted from the baseline emissions. This value shall be defined as the reduced daily baseline emissions and is denoted in pounds of VOC/day.

(B) The reduced daily baseline emissions shall be annualized by multiplying the daily value by 365. This value shall be defined as the reduced annual baseline emissions and is denoted in pounds of VOC/year.

(C) The reduced annual baseline emissions shall be converted into a monthly value by dividing by 12. This value shall be defined as the implementation year monthly baseline.

(5) *Enforcement.*

(i) All sources and facilities subject to provisions of § 52.2952 shall be subject to unannounced inspections by representatives of the USEPA pursuant to section 114 of the Clean Air Act.

(ii) Documentation maintained by all sources, facilities, and persons subject to this section must be sufficient to demonstrate compliance with all requirements of this section and must be provided to representatives of USEPA upon request.

(iii) Failure to comply with any provision of this section is a violation of the applicable implementation plan for purposes of section 113 of the Clean Air Act.

(iv) Each 50 pounds of emissions in excess of a facility's monthly cap shall be a separate violation for federal enforcement purposes.

(b) *Stationary and Area Source Control Measures.*

(1) *Industrial and Commercial Solvents/Coatings.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(1) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(1) of this section, the following definitions also apply:

Adhesives means any substance or mixture of substances intended to serve as a joining compound.

Aerospace component means the fabricated part, assembly of parts, or completed unit of any aircraft or space vehicle.

Aerospace component coating facility means a facility that includes one or more aerospace component coating unit(s).

Aerospace component coating unit means a coating unit in which any protective, decorative, or functional coating or reinforcing material is applied on or impregnated into an aerospace component.

Aircraft means any machine designed to travel through the air above ground without leaving the earth's atmosphere, whether heavier or lighter than air, including airplanes, balloons, dirigibles, helicopters, and missiles.

Automobile means a motor vehicle capable of carrying no more than 12 passengers.

Can means any cylindrical, single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.); with or without a top, cover, spout, or handles; into which solid or liquid materials are packaged.

Can coating facility means a facility that includes one or more can coating unit(s).

Can coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

Coating means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and/or temporary protective coatings.

Coating applicator means any equipment or device, including but not limited to cloth, rollers, brushes, spray guns, and dip tanks, used to apply a coating onto or into a substrate.

Coating unit means a series of one or more coating applicators and any associated drying areas and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary to have an oven or a flashoff area in order to be included in this definition.

Coil means any continuous metal sheet or strip with thickness of 0.15 mm (0.006 in.) or more that is packaged in a roll or coil.

Coil coating facility means a facility that includes one or more coil coating unit(s).

Coil coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

Cold cleaning means the batch process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

Conveyorized degreasing means the continuous process of cleaning and removing soils from surfaces using either cold or vaporized solvents.

Degreaser means any equipment or system used in solvent cleaning.

Degreasing facility means a facility that includes one or more cold cleaning, open-top vapor degreasing, and/or conveyorized degreasing processes.

Dry cleaning facility means a facility engaged in the cleaning of fabrics using an essentially nonaqueous solvent by means of one or more solvent washes, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, washers, dryers, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

Fabric coating facility means a facility that includes one or more fabric coating unit(s).

Fabric coating unit means a web coating unit in which any protective, decorative, or functional coating or reinforcing material is applied on, saturated into, or impregnated into a textile fabric. A fabric printing unit is not considered a fabric coating unit.

Film coating facility means a facility that includes one or more film coating unit(s).

Film coating unit means a coating unit in which any protective, decorative, or functional coating is applied on, saturated into, or impregnated into any film substrate; other than paper, fabric, or vinyl; including but not limited to typewriter ribbons, photographic film, plastic film, magnetic tape, and metal foil.

Flatwood product means panels made of wood materials including; but not limited to; plywood, particle board, and hardboard.

Flatwood product coating facility means a facility that includes one or more flatwood product coating unit(s).

Flatwood product coating unit means a coating unit in which any protective, decorative, or functional coating is applied on or impregnated into a flatwood product.

Flexographic printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

Flexographic printing press means a printing press in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

Fountain solution means the solution which is applied to the lithographic printing plate to maintain hydrophilic properties of the nonimage areas.

Graphic arts coating facility means a facility that includes one or more graphic arts coating units.

Graphic arts coating unit means any packaging rotogravure printing, publication rotogravure printing, flexographic printing, lithographic printing, letterpress printing, laminating, or screen printing unit or any paper, fabric, or film coating unit operated in conjunction with a printing unit.

Group I vehicles and equipment means large-sized trucks, buses, and mobile equipment.

Group II vehicles means passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles.

Heatset means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

Heatset-web-offset lithographic printing unit means a lithographic printing unit in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

Heavy off-highway vehicle products means heavy construction, mining, farming, or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

Heavy off-highway vehicle products coating facility means a facility that includes one or more heavy off-highway vehicle products coating unit(s).

Heavy off-highway vehicle products coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

Highway means a way or place of whatever nature, publicly maintained and open to the public for purposes of vehicular travel. Highway includes street.

Industrial or commercial solvent use facility means any industrial or commercial facility that uses solvents which contain VOCs or substances that contain solvents which contain VOCs. Industrial and commercial solvent use facilities include, but are not limited to, perchloroethylene dry cleaning, petroleum dry cleaning, metal cleaning, degreasing, aerospace component coating, motor vehicle and mobile equipment assembly line coating, motor vehicle and mobile equipment refinishing, can coating, coil coating, fabric coating, film coating, flatwood product coating, graphic arts coating, large appliance coating, magnet wire coating, marine vessel coating, metal and wood furniture coating, miscellaneous metal parts and products coating, paper coating, and plastic parts coating facilities. Substances that contain solvents include, but are not limited to, coatings, inks, fountain solutions, adhesives, thinners, and clean-up solvents.

Ink means a coating used in printing, impressing, or transferring an image onto a substrate.

Laminating unit means a printing unit in which an adhesive is used to form two or more layers of material into a single, multiple-layer sheet.

Large appliance means the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products under SIC Code 363.

Large appliance coating facility means a facility that includes one or more large appliance coating unit(s).

Large appliance coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of component metal parts of large appliances.

Letterpress printing unit means a printing unit in which the image area is raised relative to the nonimage area on the roll printer and the ink is transferred to the paper directly from the image surface.

Light-duty truck means any motor vehicle rated at 3864 kg (8500 lb) gross vehicle weight or less, designed mainly to transport property.

Lithographic printing unit means a printing unit in which the image and nonimage areas are on the same plane of the roll printer.

Magnet wire coating facility means a facility that includes one or more magnet coating unit(s).

Magnet wire coating unit means a coating unit in which electrically insulating varnish or enamel is applied onto the surface of wire to be used in electrical machinery.

Marine vessel means a ship or boat used to travel on, or a submarine used to travel through, the sea.

Marine vessel coating facility means a facility that includes one or more marine vessel coating unit(s).

Marine vessel coating unit means a coating unit in which any protective, decorative, or functional coating is applied on the fabricated part, assembly of parts, or completed unit of any marine vessel.

Metal furniture means any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating unit coating miscellaneous metal parts or products.

Metal furniture coating facility means a facility that includes one or more metal furniture coating unit(s).

Metal furniture coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

Miscellaneous metal part or product means any metal part or metal product, even if attached to or combined with a nonmetal part or product.

Miscellaneous metal parts or products coating facility means a facility that includes one or more miscellaneous metal parts or products coating unit(s).

Miscellaneous metal parts or products coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

Mobile equipment means self-propelled equipment which is physically capable of being driven on a highway. Mobile equipment includes: automobiles, motorcycles, trucks, vans, construction equipment (e.g., mobile cranes, bulldozers, concrete mixers), farming equipment (e.g., wheel tractors, pesticide sprayers), and miscellaneous equipment (e.g., street cleaners, golf carts, and hauling equipment used inside and around airports, docks, depots, and industrial and commercial plants).

Motor vehicle means a vehicle which is self-propelled and physically capable of being driven on a highway.

Motor vehicle or mobile equipment assembly line coating facility means a facility where parts are manufactured or finished for eventual inclusion into finished motor vehicles or mobile equipment ready for sale to motor vehicle or mobile equipment dealers. This definition does not include customizers, body shops, and/or other auto refinishing facilities.

Motor vehicle or mobile equipment refinishing facility means a facility where all or any part of used motor vehicles or mobile equipment is refinished, or customized, by the application of paint. This definition includes motor vehicles or mobile equipment dealerships who purchase new motor vehicle or mobile equipment from Original Equipment Manufacturers. This definition does not include motor vehicle or mobile equipment assembly line coating facilities.

Motorcycle means any motor vehicle other than a tractor having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and weighing less than 1,500 lbs, except that four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

Offset means a blanket cylinder that is used to transfer ink from a plate cylinder to the substance to be printed.

Open-top vapor degreasing means the batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

Oven means a chamber within which heat is used for one or more of the following purposes: To dry, bake, cure, or polymerize a coating or ink.

Packaging rotogravure printing means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

Packaging rotogravure printing press means a rotogravure printing press in which surface coatings are applied to paper, paperboard, metal foil, plastic film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

Paper coating facility means a facility that includes one or more paper coating unit(s).

Paper coating unit means a web coating unit where coating is applied to paper. Printing presses are not considered paper coating units. Products produced on a paper coating unit include, but are not limited to, adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes. Paper coating units include, but are not limited to, application by impregnation or saturation or by the use of roll, knife, or-rotogravure coating.

Printing unit means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and/or ovens wherein one or more surface coatings are applied, dried, and/or cured. It is not necessary for an operation to have an oven, or flashoff area, or drying area to be included in this definition.

Publication rotogravure printing unit means a rotogravure printing unit in which surface coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed material.

Refinish means to restore or replace coatings on Group I vehicles (large-sized trucks, buses, and mobile equipment) and Group II vehicles (passenger cars, small-sized trucks and vans, medium-sized trucks and vans, and motorcycles) and equipment, or their parts and components, except Original Equipment Manufacturer coatings applied at motor vehicle or mobile equipment assembly line coating facilities.

Roll coater means an apparatus in which a uniform layer of coating material is applied by means of a roll or rolls across the entire width of a moving substrate which is fed from an unwinding roll.

Roll printer means an apparatus in which a surface coating is applied by means of a roll or rolls with only partial coverage across the width of a moving substrate which is fed from an unwinding roll. The partial coverage results in the formation of words, designs, or pictures on the substrate.

Rotogravure printing means the application of words, designs, and pictures to a substrate using a gravure cylinder by means of a roll printing technique in which the pattern to be applied is recessed relative to the nonimage area.

Rotogravure printing unit means a printing unit in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

Screen printing unit means a printing unit in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.

Solvent means a substance that is liquid at standard conditions that is used to dissolve or dilute another substance; this term includes, but is not limited to, organic materials used as dissolvers, viscosity reducers, degreasing agents, or cleaning agents.

Solvent cleaning means the process of cleaning soils from surfaces by cold cleaning, open-top vapor degreasing, or conveyorized degreasing.

Space vehicle means any vehicle designed to travel beyond the earth's atmosphere.

Street means a public road in a town or city.

Substrate means the surface to which a coating is applied on, saturated into, or impregnated into.

Vinyl coating facility means a facility that includes one or more vinyl coating unit(s).

Vinyl coating unit means a web coating unit in which any protective, decorative, or functional coating or printing ink is applied onto a continuous web of vinyl-coated fabric or vinyl sheets.

Web means an automatic system which supplies substrate from a continuous roll or an extrusion process.

Wood furniture means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

Wood furniture coating facility means a facility that includes one or more wood furniture coating unit(s).

Wood furniture coating unit means a coating unit in which any protective, decorative, or functional coating is applied onto wood furniture.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(1)(iii) (A) and (B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of any degreasing facility or any motor vehicle or mobile equipment refinishing facility located in the control area as defined in paragraph (a)(1) of this section.

(B) The requirements of paragraphs (b)(1)(iii) (A) and (B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of VOC are greater than or equal to 6.8 kg (15 lbs) during any one day.

(C) The requirements of paragraphs (b)(1) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of an industrial or commercial solvent use facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of VOC from all emissions sources are always less than 6.8 kg (15 lbs) during any one day. If actual emissions of VOC from a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section ever exceed 6.8 kg (15 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(1)(iii)(B) *(1)* through *(5)*, (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1,

1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraph (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[19]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(1)(ii) (A) or (B) of this section, shall limit actual monthly emissions of VOC from the subject facility to the level calculated by the following equations:

$$R_{2001} \le \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \tag{1}$$

where[20]

R~2001~

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \tag{2}$$

(See footnote to paragraph (b)(*1*)(iii)(B)(1) of this section.)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \tag{3}$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \tag{4}$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(*2*) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \tag{5}$$

(See footnote to paragraph (b)(1)(iii)(B)(*1*) of this section.)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)(2) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

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[19] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B)(*1*) through (5) of this section. The methods may include but are not limited to:

(1) The test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

[20] The range 0.04 to 0.09 reflects the 4% to 9% cumulative annual rate of emission reductions currently under consideration. In the first year, emissions would be reduced by 4% to 9% off of baseline levels; in the second year, emissions would be reduced by 8% to 18% off of baseline levels, and so on until the minimum 20% VOC reduction is made. As discussed in the preamble to the regulations this range of annual reductions is based on EPA's preliminary rate of reduction analysis and may change as the analysis continues prior to final promulgation of this FIP. In addition, EPA plans to review this value every three years after final rule promulgation.

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii) (A) or (B) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section, and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 6.8 kg (15 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(1)(iii)(A)*(2)* *(i)* and *(ii)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that actual emissions of VOC from the facility exceeded 6.8 kg (15 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraphs (b)(1)(ii) (A) or (B) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii)(C) of this section shall collect and record all information necessary to demonstrate that actual emissions of VOC from all emissions sources are less than 6.8 kg (15 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraphs (b)(1)(ii) (A) or (B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(2) *VOC Emissions Associated with the Manufacturing of Products.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(2) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(2) of this section, the following definitions also apply:

Facility which manufactures products containing VOCs means any facility where VOCs are emitted from processes which are used to manufacture or fabricate products. These products include, but are not limited to, the products specified in paragraphs *(1)* through *(7)* of this definition. This definition does not include facilities which are subject to any of the requirements of paragraphs (b)(1), (b)(4), or (b)(5) of this section.

(1) Industrial and agricultural organic chemicals and gases. Industrial organic chemicals include, but are not limited to, gum and wood chemicals, cyclic organic crudes and intermediates, organic dyes and pigments, and the chemicals listed in 40 CFR 52.741, appendix A. Agricultural organic chemicals include, but are not limited to, pesticides, livestock dips, soil conditioners, and fertilizers.

(2) Plastic materials, synthetic resins, synthetic rubber, elastomizers, and cellulosic and manmade fibers.

(3) Drugs which include, but are not limited to, medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products.

(4) Soaps; detergents; cleaning, polishing, and sanitizing preparations; surface active agents, finishing agents, sulfonated oils, and assistants; and perfumes and cosmetics.

(5) Food additives and sweeteners.

(6) Paints, varnishes, lacquers, enamels, inks, primers, paint removers, thinners, stains, shellacs, cleaners, putty, coatings, adhesives, fillers, sealants, explosives, and carbon black.

(7) Fabricated rubber and miscellaneous plastics products including, but not limited to, tires and inner tubes; rubber and plastics footware, hose, belting, gasket, packing, and sealing devices; and molded, extruded, and lathe-cut mechanical rubber goods.

Manufacture means to produce or combine any ingredients contained in any product.

Manufacturing process means a process or a series of processes used to convert raw materials, feed stocks, subassemblies, or other components into a product which will be sold, offered for sale, supplied, or distributed or will be used as a component in a subsequent manufacturing process. This definition includes the storage and handling of organic compounds or gases which are used in a manufacturing process and the handling of organic compounds or gases used to clean-up a manufacturing process.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(2)(iii)(A), (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the control area as defined in paragraph (a)(1) of this section at which total VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(2)(iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a facility which manufactures products containing VOCs located in the applicable area specified in paragraph (b)(2)(ii)(A) of this section at which total VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If uncontrolled VOC emissions from a facility which is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(2)(iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (a)(4)(xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)(3) of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V (of the Clean Air Act) operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[21]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(2)(ii)(A) of this section, shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(2)(iii)(A)*(2)* of this section.

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[21] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section; and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section, shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through (5) of this section, as described under paragraph (b)(2)(ii)(B) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(2)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraph (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of three years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(2)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of section to demonstrate compliance with the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(2)(ii)(B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section.

(3) *Disposal of Materials Containing Volatile Organic Compounds.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(3) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(3) of this section, the following definitions also apply:

Biodegradable waste means any organic waste that can be broken down into its basic elements by microorganisms.

Biodegradable waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of biodegradable waste or to reclaim or recycle organic compounds or gases from biodegradable wastes.

Organic waste disposal facility means any facility which is operated as a business or owned by a state or municipality and is used to treat, store, or dispose of organic wastes that contain VOCs or to reclaim or recycle organic compounds or gases from organic wastes that contain VOCs. Such facilities include, but are not limited to, biodegradable waste disposal facilities (e.g., landfills); publicly owned treatment works; hazardous waste treatment, storage, and disposal facilities; and sewage sludge, solid waste, and hazardous waste incinerators.

Publicly owned treatment work (POTW) means any device or system which is owned by a state or municipality and is used to treat (including recycling and reclamation) municipal sewage or industrial liquid waste.

(ii) *Applicability.* The requirements of paragraphs (b)(3) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any organic waste disposal facility located in the control area as defined in paragraph (a)(1) of this section.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility, including emissions associated with the use of architectural coatings and clean-

up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4) (xii) and (xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[22]

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section.)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)(2) of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(3)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section; and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section.

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(3)(ii) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(3)(iii)(B) *(1)* through *(5)* of this section.

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[22] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and

(2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

(4) *Commercial Food Preparation and/or Baking.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(4) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(4) of this section, the following definitions also apply:

Brandy-making facility means a facility that distills wine, the refuse of a wine press, or any other fermented fruit juices to produce alcoholic liquors.

Charcoal means any substance obtained by charring wood or any other organic matter by a process of smothered combustion to exclude air.

Commercial baking facility means a facility that bakes bread, biscuits, rolls, pies, cakes, cookies, or other similar products.

Commercial charbroiling facility means a facility that broils any type of food over a charcoal or gas-fired broiler.

Food preparation facility means any commercial baking, commercial charbroiling, wine- or brandy-making, fruit and vegetable preservation, grain mill production, vegetable oil production, or malt beverage production facility. This definition includes restaurants involved in activities described in the previous sentence.

Fruit and vegetable preservation facility means a facility that preserves food by, but not limited to, canning, curing, pickling, salting, smoking, cooking, or freezing.

Grain mill production facility means a facility that grinds any grain including, but not limited to, wheat, rice, corn, or rye into flour or meal.

Malt beverage production facility means a facility engaged in malting, fermentation, aging, or packaging of barley or any other grain for the purpose of producing an alcoholic beverage.

Vegetable oil production facility means a facility that extracts oil from any vegetable seed.

Wine- or brandy-making facility means a facility that ferments juices from grapes or any other fruit for the purpose of producing alcoholic beverages.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(4) (iii)(A) and (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a commercial food preparation facility located in the control area as defined in paragraph (a)(1) of this section at which VOC emissions are greater than or equal to 4.5 kg (10 lbs) during any one day.

(B) The requirements of paragraphs (b)(4)(iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a commercial food preparation facility located in the applicable area specified in paragraph (b)(4)(ii)(A) of this section at which total uncontrolled VOC emissions from all emissions sources are always less than 4.5 kg (10 lbs) during any one day. If VOC emissions from a facility which is exempt from the limitations of paragraph (b)(4)(iii)(B) of this section ever exceed 4.5 kg (10 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(4)(iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4)(xii) and (xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraph (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[23]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(4)(ii)(A) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \leq \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \qquad (1)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month.

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \leq \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

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[23] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to: (1) the test methods and procedures specified in paragraph (a)(4) of this section, and (2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \leq \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \leq \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

$$R_{2005} \leq \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(4)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section; and

(2) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section; and

(ii) Calculations which demonstrate that total baseline VOC emissions from all emissions sources at the facility are and will remain less than 4.5 kg (10 lbs) during any one day. Baseline emissions shall be calculated in accordance with the procedures specified in paragraphs (b)(4)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that total VOC emissions from the facility exceeded 4.5 kg (10 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section, shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(B) of this section, shall collect and record all information necessary to demonstrate that total VOC emissions from all emissions sources are less than 4.5 kg (10 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(4)(ii)(A) of this section, to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(4)(ii)(B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraphs (b)(4)(iii)(B) *(1)* through *(5)* of this section.

(5) *Petroleum and Natural Gas Extraction, Processing, and Storage.*

(i) *Definitions.*

(A) For the purpose of paragraph (b)(5) of this section, the general definitions in paragraph (a)(3) of this section apply.

(B) For the purpose of paragraph (b)(5) of this section, the following definitions also apply:

Crude oil means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

Extraction facility means any facility where drilling and servicing equipment, flow lines, separators, gathering lines, and auxiliary nontransportation related equipment are used to extract petroleum or natural gas from a well.

Gasoline means any petroleum distillate which is used as a motor fuel.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Processing facility means any facility where petroleum or natural gas is used as a feedstock to produce gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other related products.

Storage facility means any extraction facility, processing facility, bulk gasoline plant, bulk gasoline terminal, or any petroleum storage facility which distributes petroleum, natural gas, or gasoline to retail outlet and wholesale purchaser-consumer facilities. This definition does not apply to retail gasoline service stations.

(ii) *Applicability.* The requirements of paragraphs (b)(5) (iii), (iv), (v), and (vi) of this section shall apply to any owner or operator of any petroleum or natural gas extraction, processing, or storage facility located in the control area as defined in paragraph (a)(1) of this section.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to the FIP VOC emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a VOC emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline VOC emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of VOC emissions from all emissions sources at the facility including emissions associated with the use of architectural coatings and clean-up solvents. Baseline emissions shall be calculated as specified in paragraph (a)(4) (xii) and (xiii) of this section.

(3) Methods to be employed by the owner or operator to limit VOC emissions from emissions sources to within the emissions level required in paragraphs (b)(2)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual VOC emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraph (b)(2)(iii)(A)*(3)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[24]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph because of paragraph (b)(5)(ii) of this section shall limit total VOC emissions from the subject facility to the level calculated by the following equations:

$$R_{2001} \le \sum_{i=1}^{n} R_o(1-(0.04 \text{ thru } 0.09)) \tag{1}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2001}=Allowable VOC for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.08 \text{ thru } 0.18)) \tag{2}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable VOC for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.27)) \tag{3}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2003}=Allowable VOC for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.16 \text{ thru } 0.36)) \tag{4}$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable VOC for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

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[24] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the VOC emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to:

(1) the test methods and procedures specified in paragraph (a)(4) of this section, and (2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce VOC emissions.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(See footnote to paragraph (b)(1)(iii)(B)(1) of this section)

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.20 \text{ thru } 0.45)) \qquad (5)$$

where

R_{2005}=Allowable VOC for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline VOC emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(5)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(5)(ii) of this section shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section; and

(B) Documentation of methods used to achieve the VOC emissions reductions required in paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section.

(v) *Recordkeeping.* Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(5)(ii) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.* The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(5)(ii) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section to demonstrate compliance with the limitations of paragraphs (b)(5)(iii)(B) *(1)* through *(5)* of this section.

(c) *Incorporated by Reference.* The materials listed below are incorporated by reference. The incorporation by reference was approved by the Director of the Office of Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[25] These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**.

(1) ASTM D3925–81 (1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating.

(2) ASTM E300 Standard Practice for Sampling Industrial Chemicals.

(3) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products.

(4) ASTM D2369–87: Standard Test Method for Volatile Content of a Coating.

(5) ASTM D3792–86: Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph.

(6) ASTM D4017–81 (1987): Standard Test Method for Water Content in Paints and Paint Materials by the Karl Fischer Method.

(7) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph.

(8) ASTM D2697–86: Standard Test Method for Volume Non-volatile Matter in Clear or Pigmented Coatings.

(9) ASTM E180–85: Standard Practice for Determining the Precision Data of ASTM Methods for Analysis and Testing of Industrial Chemicals.

(10) ASTM Method D2879–86: Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope.

§ 52.2955 Stationary and area source NO_X cap rules (Ventura).[26]

(a) *General Provisions.*

(1) *Applicability.* The provisions of § 52.2955 shall apply to all stationary emission sources located in the "control area" as defined as the Ventura County ozone nonattainment area in 40 CFR 81.305, and all other persons identified in subsequent applicability paragraphs in § 52.2955(b).

(2) *Compliance dates.* Compliance with all requirements of this section is required upon promulgation unless otherwise indicated by compliance dates contained in specific paragraphs in this section. This paragraph (a)(2) shall not operate to provide additional time for compliance under section 113(d) of the Clean Air Act, for sources subject to compliance upon promulgation.

(3) *Definitions.* For the purposes of this section, the following definitions apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Actual emissions means the actual quantity of NO_X emissions from an emissions source during a particular time period. "Actual emissions rate" means the actual quantity of NO_X emissions from an emissions source per unit of actual production or throughput.

Agency means the United States Environmental Protection Agency.

Air contaminant means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

Air pollution means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Air pollution control equipment means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

Allowable emissions rate means the most stringent of the applicable standards in 40 CFR parts 60 and 61; the applicable implementation plan; or a federally enforceable permit.

Annual emissions report is a report which takes inventory of all pollutant emissions at a facility during a calendar year, submitted by the Facility to the EPA, within 30 days of the close of each year.

Baseline emissions means the emissions calculated using 1990 emission inventory data in the affected FIP areas and adjusted for emission reductions projected to occur by the implementation year of the FIP cap program in the affected FIP area. The baseline shall be denominated in pounds per year of FIP cap pollutant (e.g., pounds of NO_X per year) and monthly caps shall be prorated based on this data.

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[25] Incorporation by reference is pending approval by the Office of Federal Register.

[26] EPA intends to issue a supplemental document in the **Federal Register** which addresses portions of proposed § 52.2955.

Cement kiln is a device for the calcining and clinkering of limestone, clay and other raw materials, and recycle dust in the dry-process manufacture of cement.

Clinker is a mass of fused material produced in a cement kiln from which the finished cement is manufactured by milling and grinding.

Combustion equipment is any equipment that burns fuel, including but not limited to natural gas or fuel oil in order to operate. Combustion equipment includes, but is not limited to, boilers, turbines, heaters, engines, kilns, furnaces, ovens, dryers, flares, and afterburners.

Continuous emissions monitoring system (CEMS) means any system of equipment that continuously measures all parameters necessary to directly determine mass emissions of a pollutant, and which meets all performance standards for CEMS set forth in this regulation.

Continuously measure means to measure at least once every 15 minutes except during periods of routine maintenance and calibration, or as otherwise specified in this regulation.

Daily means occurring once between 12 midnight and 24 hours later at midnight.

Day means a period of consecutive 24 hours beginning at 12:00 a.m. (midnight) local time, or beginning at a time consistent with a facility's operating schedule.

Direct monitoring device is a device that measures the emissions of NO_X and all other variables as specified in this regulation.

Electric utility is all facilities which generate power and are owned or operated by any one of the following: Southern California Edison or any of its successors.

Emission rate means the total mass of NO_X released or discharged from an emissions source into the atmosphere per unit of production, throughput, or heat input (e.g., pounds NO_X/mmBtu).

Emission source or *source* means any building, structure, facility, property, equipment, device, container, or any combination thereof, at, from, or by reason which NO_X is emitted or discharged into the atmosphere.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1987" (incorporated by reference as specified in paragraph (b) of this section).

Federally enforceable means all limitations and conditions that are enforceable by the Administrator including those requirements contained in permits issued pursuant to 40 CFR parts 70 and 71, except those terms or conditions designated as not federally enforceable; those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to § 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, and 40 CFR 51.166.

Gaseous fuels include, but are not limited to, any natural, process, synthetic, landfill, sewage digester or waste gases with a gross heating value of 300 Btu per cubic foot or higher, at standard conditions.

Incinerator means a combustion apparatus in which solid, semi-solid, liquid, or gaseous combustible wastes are ignited and burned and from which the solid and gaseous residues contain little or no combustible material.

Monitor means to measure and record.

Natural gas is a mixture of gaseous hydrocarbons, with at least 80 percent methane (by volume), and of pipeline quality, such as the gas sold or distributed by any utility company regulated by the California Public Utilities Commission.

NO_X emissions means the sum of nitric oxides and nitrogen dioxides emitted, calculated as nitrogen dioxide.

Non-cap program pollutants are those pollutants other than NO_X and VOC.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, copartnership, firm, company, partnership, joint stock company, trust, association, State, municipality, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

Process means any stationary emission source.

Quarter is a three-month period from January 1 to March 31, April 1 to June 30, July 1 to September 30, or October 1 to December 31, inclusive.

Rated brake horsepower (bhp) is the maximum rating specified by the manufacturer and listed on the nameplate.

Rental equipment is equipment which is rented or leased for operation by someone other than the owner of the equipment.

Research operations are those operations the sole purpose of which is to permit investigation of experimental research to advance the state of knowledge or state-of-the-art technology.

Source means emission-source.

Standard conditions means a temperature of 20 °C (68 °F) and a pressure of 760 mm Hg (29.92 in. Hg).

Standard industrial code (SIC) is the classification number assigned to a facility based on its primary economic activity as specified in the "Standard Industrial Classification Manual," published by the Office of Management and Budget, dated 1987.

Stationary emission source and *Stationary source* mean an emission source which is not self-propelled.

Throughput means a measure of activity including, but not limited to: weight of glass pulled for a glass melting furnace, weight of clinker for cement kilns, amount of nitric acid used in metal stripping processes, amount of nitric acid manufactured for nitric acid manufacturing processes, weight of aluminum produced for aluminum production and/or fuel usage for all other sources as reported.

(4) *Test Methods and Procedures.*

(i) *Emissions monitoring and testing.* Major sources as defined under the CAA shall install CEMS that meet the quality assurance and quality control requirements of appendix A of the Enhanced Monitoring Program.[27] The test methods and procedures found in § 52.2961(m), (n), (o), (u), and (v) apply to all NO_X emission sources defined in paragraph (b) of this section. EPA-approved calculational methods shall be used in conjunction with the appropriate test methods found in § 52.2961 to determine mass emissions if conversion from a rate-based emissions result to a mass-based emissions result is necessary. [See additional discussion in section III.C.5.a.(5)(c) of the Supplementary Information section.]

(ii) *Baseline Emissions.* Unless otherwise specified in paragraph (b) of this section, baseline NO_X emissions shall be calculated for each emissions source in accordance with one of the procedures specified below:

(A) If daily emissions records which are consistent with the emission inventory data submitted by the State for the control area on November 15, 1992 are available for the calendar years 1989 and 1990, baseline emissions shall be based on the median value of daily emissions recorded for the two-year period.

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[27] Proposed rule published in the Federal Register of October 22, 1993 (58 FR 54648).

(B) If daily emissions records are not available for the calendar years 1989 and 1990 or are inconsistent with the emission inventory data submitted by the State for the control area on November 15, 1992 or were not submitted, baseline emissions shall be based on the average daily emissions value calculated for the two-year period. The average daily emissions value shall be calculated by dividing emissions for the two-year period by the operating or usage time for the two-year period. If emissions data are not available, emissions associated with fuel usage may be estimated from purchase records. The operating or usage time for the two-year period shall be based on one of the criteria specified as follows:

(1) The number of days specified in a federally enforceable permit if the emissions source operated under the conditions of a federally enforceable permit which restricted operating times during the two-year period,

(2) The average number of days that the emissions source was operated or used over the two-year period if documentation is available to support the number, or

(3) 730 days if documentation of the number of days that the emissions source was operated or used over the two-year period is not available.

(iii) *Implementation Year Monthly Baseline Emissions.* Baseline emissions as defined in paragraph (a)(4)(ii) of this section shall be adjusted prior to the implementation year (2001) of the FIP cap program in the control area as follows:

(A) The reductions that are projected to occur as a result of both SIP and FIP measures between 1990 and 2001 shall be subtracted from the baseline emissions. This value shall be defined as the reduced daily baseline emissions and is denoted in pounds of NO_X/day.

(B) The reduced daily baseline emissions shall be annualized by multiplying the daily value by 365. This value shall be defined as the reduced annual baseline emissions and is denoted in pounds of NO_X/year.

(C) The reduced annual baseline emissions shall be converted into a monthly value by dividing by 12. This value shall be defined as the implementation year monthly baseline.

(5) *Enforcement.*

(i) Inspections. All sources and facilities subject to provisions of this section shall be subject to unannounced inspections by representatives of the USEPA pursuant to section 114 of the Clean Air Act.

(ii) Information requests. Documentation maintained by all sources, facilities, and persons subject to this section must be sufficient to demonstrate compliance with all requirements of this section and must be provided to representatives of USEPA in response to information requests pursuant to section 114 of the Clean Air Act.

(iii) Failure to comply with any provision of this section is a violation of the applicable implementation plan for purposes of section 113 of the Clean Air Act.

(iv) Each 50 pounds of emissions in excess of a facility's monthly cap shall be a separate violation for federal enforcement purposes.

(b) *Stationary and area source control measures.*

(1) *NO_X* emission sources.

(i) *Definitions.* For purposes of this section, the general definitions in paragraph (a)(3) of this section apply.

(ii) *Applicability.*

(A) The requirements of paragraphs (b)(1), (iii)(A), (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of any of the following equipment at a facility located in the control area as defined in paragraph (a)(1) of this section:

(1) Any boiler, furnace, oven, dryer, heater, incinerator, test cell and any solid, liquid or gaseous fueled equipment with a maximum rated capacity greater than or equal to 2 million Btu per hour;

(2) Any internal combustion engine with rated brake horsepower (bhp) greater than or equal to 50 bhp, regardless of operating time;

(3) Any gas turbine rated greater than or equal to 0.2 megawatts excluding any emergency standby equipment or peaking unit;

(4) Any petroleum refinery fluid catalytic cracking unit;

(5) Any petroleum refinery tail gas unit;

(6) Any kiln or calciner;

(7) Any equipment burning or incinerating solid fuels or materials;

(8) Any sulfuric acid production unit;

(9) Any portable combustion and process equipment;

(10) Any emergency standby equipment or peaking unit;

(11) Any NO_X source for which NO_X emissions reported to the State or local agency were equal to or greater than 2 tons per year for the calendar year 1990.

(B) The requirements of paragraphs (b)(1), (iii)(A), (iii)(B), (iv)(A), (v)(A), and (vi)(A) of this section shall apply to any owner or operator of a NO_X source or combinations of sources, as described in paragraph (b)(1)(ii)(A) of this section at a facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of NO_X are greater than or equal to 6.8 kg (15 lbs) during any one day.

(C) The requirements of paragraphs (b)(1) (iv)(B), (v)(B), and (vi)(B) of this section shall apply to any owner or operator of a NO_X source or combinations of sources, as described in paragraph (b)(1)(ii)(A) of this section at a facility located in the applicable area specified in paragraph (b)(1)(ii)(A) of this section at which actual emissions of NO_X from all emissions sources are always less than 6.8 kg (15 lbs) during any one day. If actual emissions of NO_X from a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section ever exceed 6.8 kg (15 lbs) during any one day on or after January 1, 2000, the facility will lose its exempt status, and the owner or operator shall comply with the requirements of paragraphs (b)(1)(iii)(B), (b)(1)(iv)(A), (b)(1)(v)(A), and (b)(1)(vi)(A) of this section beginning January 1 of the calendar year following the date of the exceedance.

(iii) *Specific Provisions.*

(A) Each owner or operator of a source subject to FIP NO_X emissions cap program as defined in paragraph (b)(1)(ii) of this section shall submit a NO_X emissions reduction compliance plan to the Administrator by January 1, 1999. The plan shall be prepared for the years 2001 through 2005 and shall include all of the information specified in paragraphs (b)(1)(iii)(A) *(1)* through *(5)* of this section. Each owner or operator shall submit a revised plan to the Administrator within 30 calendar days of receipt of comments from the Administrator. Each owner or operator shall comply at all times with the provisions of the most recent plan approved by the Administrator.

(1) The name, title, address, and telephone number of the owner or operator of the facility, and of each person responsible for preparing the information required under paragraph (b)(1)(iii)(A)*(2)* of this section.

(2) Baseline NO_X emissions shall be calculated for each facility. Baseline emissions for each facility shall equal the sum of NO_X emissions from all emissions sources at the facility. Baseline emissions shall be calculated as specified in paragraphs (a)(4)(ii) and (a)(4)(iii) of this section.

(3) Methods to be employed by the owner or operator to limit NO_X emissions from emissions sources to within the emissions level required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. Methods may include but are not limited to:

(i) Installation of capture systems and control devices;

(ii) Modifications to increase the efficiency of existing capture systems and/or control devices;

(iii) Process modifications and/or substitutions; and

(iv) Reduction in operating schedules for one or more emissions sources at the facility. For those facilities choosing to comply through use of reduced operating schedules, operating schedules for baseline emissions levels and for emissions levels starting January 1, 2001, continuing for a period not less than 5 years.

(4) Projections of annual NO_X emissions for each emissions source through the year 2005 after application of the reduction methods described in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(5) For all sources subject to the FIP cap reduction requirements, all information required as part of the facility's Title V operating permit. For sources not subject to Title V, sources shall submit all information which would be required for sources subject to Title V.[28]

(B) Beginning January 1, 2001, each owner or operator of a facility which is subject to the limitations of this paragraph, as described under paragraph (b)(1) (ii)(A) or (ii)(B) of this section, shall limit actual monthly emissions of NO_X from the subject facility to the level calculated by the following equations:

$$R_{2001} \le \sum_{i=1}^{n} R_o(1-(0.06 \text{ thru } 0.09)) \qquad (1)$$

where[29]

R_{2001}=Allowable NO_X for all emissions sources at the facility for the year 2001 in units of kg (lbs) per month,

R_o=Baseline NO_X emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2002} \le \sum_{i=1}^{n} R_o(1-(0.12 \text{ thru } 0.18)) \qquad (2)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2002}=Allowable NO_X for all emissions sources at the facility for the year 2002 in units of kg (lbs) per month,

R_o=Baseline NO_X emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2003} \le \sum_{i=1}^{n} R_o(1-(0.18 \text{ thru } 0.27)) \qquad (3)$$

(See footnote to paragraph (b)(1)(iii)(B)(1) of this section)

where

R_{2003}=Allowable NO_X for all emissions sources at the facility for the year 2003 in units of kg (lbs) per month,

R_o=Baseline NO_X emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2004} \le \sum_{i=1}^{n} R_o(1-(0.24 \text{ thru } 0.36)) \qquad (4)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2004}=Allowable NO_X for all emissions sources at the facility for the year 2004 in units of kg (lbs) per month,

R_o=Baseline NO_X emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

$$R_{2005} \le \sum_{i=1}^{n} R_o(1-(0.30 \text{ thru } 0.45)) \qquad (5)$$

(See footnote to paragraph (b)(1)(iii)(B)*(1)* of this section)

where

R_{2005}=Allowable NO_X for all emissions sources at the facility for the year 2005 in units of kg (lbs) per month,

R_o=Baseline NO_X emissions in units of kg (lbs) per month for each emissions source at the facility. Baseline emissions shall be calculated in accordance with the requirements specified in paragraph (b)(1)(iii)(A)*(2)* of this section.

i=Subscript denoting a specific emissions source, and

n=Total number of emissions sources at the facility.

(iv) *Reporting.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii) (A) or (B) of this section, shall submit to the Administrator by March 1 of each calendar year, beginning in 2002, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the facility is in compliance with all of the requirements of this section, and

(2) Documentation of methods used to achieve the NO_X emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section shall comply with the following:

(1) By January 1, 2000, the owner or operator shall certify to the Administrator that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. This certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraph (b)(1)(ii)(C) of this section, and

(ii) Calculations which demonstrate that total baseline NO_X emissions from all emissions sources at the facility are and will remain less than 6.8 kg (15 lbs) during any one day. Baseline emissions shall be calculated in accordance with

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[28] This information shall include, for example, test or demonstration methods used to demonstrate achievement of the NO_X emissions reductions required in paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section. The methods may include but are not limited to: (1) the test methods and procedures specified in paragraph (a)(4) of this section, and (2) data and engineering calculations approved by EPA documenting process modifications that were made to reduce NO_X emissions.

[29] The range 0.06 to 0.09 reflects the 6% to 9% cumulative annual rate of emission reductions currently under consideration. In the first year, emissions would be reduced by 6% to 9% off of baseline levels; in the second year, emissions would be reduced by 12% to 18% off of baseline levels, and so on until the minimum 30% NO_X reduction is made. As discussed in the preamble to the regulations this range of annual reductions is based on EPA's preliminary rate of reduction analysis and may change as the analysis continues prior to final promulgation of this FIP. In addition, EPA plans to review this value every three years after final rule promulgation.

the procedures specified in paragraphs (b)(1)(iii)(A) *(1)* and *(2)* of this section.

(2) On and after January 1, 2000, the owner or operator shall notify the Administrator of any record showing that actual emissions of NO_X from the facility exceeded 6.8 kg (15 lbs) during any one day by sending a copy of such record to the Administrator within 30 calendar days after the exceedance occurs.

(v) *Recordkeeping.*

(A) Each owner or operator of a facility which is subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraphs (b)(1) (ii)(A) or (ii)(B) of this section shall collect and record all information necessary to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section for each emissions source and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(B) Each owner or operator of a facility which is exempt from the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section, as described under paragraph (b)(1)(ii)(C) of this section shall collect and record all information necessary to demonstrate that actual emissions of NO_X from all emissions sources are less than 6.8 kg (15 lbs) during each day and maintain the information at the facility for a period of five (5) years. The information shall be collected and recorded each day of each calendar year beginning in 2001 and ending with 2005.

(vi) *Testing and Monitoring.*

(A) The Administrator may require, at any time, any owner or operator of a facility subject to the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section because of paragraphs (b)(1)(ii) (A) or (B) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section and/or to install monitoring equipment to demonstrate compliance with the limitations of paragraphs (b)(1)(iii)(B) *(1)* through *(5)* of this section.

(B) The Administrator may require, at any time, any owner or operator of a facility which is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section because of paragraph (b)(1)(ii)(C) of this section to perform tests using the applicable test methods and procedures specified in paragraph (a)(4) of this section to demonstrate that the facility is exempt from the limitations of paragraph (b)(1)(iii)(B) of this section.

§ 52.2956 Stationary and area source NO_X cap rules (South Coast) [Reserved].

§ 52.2957 Consumer product rules.

(a) *Consumer products.*

(1) *Applicability.* The requirements of paragraphs (a)(1) through (a)(9) of this section shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products for use in California.

(2) *Definitions.* For the purposes of paragraphs (a)(1) through (a)(9) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Aerosol cooking spray means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

Aerosol product means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. Aerosol Product does not include pump sprays.

Agricultural use means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. Agricultural Use does not include the sale or use of pesticides in properly labeled packages or containers which are intended for: Home use; Use in structural pest control; or Industrial or Institutional use. For the purposes of this definition only: Home use means use in a household or its immediate environment. Structural pest control means a use requiring a license under Chapter 14 (commencing with Section 8500), Division 3, of the Business and Professions Code. Industrial use means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites. Institutional use means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

Air freshener means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. Air Freshener includes dual/purpose air freshener/disinfectant products. Air Freshener does not include products that are used on the human body, or products that function primarily as cleaning products as indicated on a product label or advertisement.

All other carbon-containing compounds means all other compounds which contain at least one carbon atom and are not a Table B or a LVP compound.

All other forms means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

Architectural coating means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

ASTM means the American Society for Testing and Materials.

Automotive brake cleaner means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

Automotive windshield washer fluid means any liquid designed for use in a motor vehicle windshield washer fluid system either as an anti-freeze or for the purpose of cleaning, washing, or wetting the windshield(s). Automotive Windshield Washer Fluid does not include any fluid which is placed in a new motor vehicle at the time the vehicle is manufactured.

Bathroom and tile cleaner means a product designed to clean tile or surfaces in bathrooms. Bathroom and Tile Cleaner does not include products specifically designed to clean toilet bowls or toilet tanks.

California sales means the sales (net pounds of product, less packaging and container, per year) in California for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, any consecutive 12 month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for California is not available, sales may be estimated by prorating national or regional sales data by population.

Carburetor-choke cleaner means a product designed to remove dirt and other contaminants from a carburetor. Carburetor-Choke Cleaner does not include products designed to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor.

Charcoal lighter material means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal Lighter Material does not include any of the following: electrical starters and probes; metallic cylinders using paper tinder; natural gas; and propane.

Colorant means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

Construction and panel adhesive means any one-component household adhesive having gap filling capabilities, and which distributes stress uniformily throughout the bonded area resulting in a reduction or elimination of mechanical fasteners. These materials are applied from 1/10 gallon or 11 fluid ounce caulking cartridges.

Consumer means any person who seeks, purchases, or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

Consumer product means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products but do not include paint, furniture coatings, or architectural coatings.

Contact adhesive means any household adhesive that: is nitrile-based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex; when applied to two substrates forms an instantaneous, non-repositionable bond; when dried to touch, exhibits a minimum 30 minute bonding range; and bonds only to itself without the need for reactivation by solvents or heat.

Container/packaging means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. Container/Packaging includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

Crawling bug insecticide means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. Crawling Bug Insecticide does not include products designed to be used exclusively on humans or animals.

Device means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

Disinfectant means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. 136 *et seq.* Disinfectant does not include any of the following: products designed solely for use on human or animals; products designed for agricultural use; products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

Distributor means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

Double phase aerosol air freshener means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

Dual purpose air freshener/disinfectant means an aerosol product that is represented on the product container for use as both a disinfectant and an air freshener, or is so represented on any sticker, label, packaging, or literature attached to the product container.

Dusting aid means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. Dusting Aid does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

Engine degreaser means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

Exempt compounds means any of the following compounds: methane; chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113); dichlorodifluoromethane (CFC-12); trichlorofluoromethane (CFC-11); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); or perfluorocarbon compounds which fall into these classes: Cyclic, branched, or linear, completely fluorinated alkanes; Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Existing product means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale in California prior to the effective date of this article or any subsequently introduced identical formulation.

Fabric protectant means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of water into the fabric's fibers. Fabric Protectant does not include silicone-based products whose function is to provide water repellency, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

Flea and tick insecticide means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and Tick Insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

Flexible flooring material means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

Floor polish or wax means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor Polish or Wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

Flying bug insecticide means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying Bug Insecticide does not include wasp and hornet insecticide, or products that are designed to be used exclusively on humans or animals.

Fragrance means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2 mm of Hg at 20 C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

Furniture maintenance product means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. Furniture Maintenance Product does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

Furniture coating means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

Gel means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

General purpose adhesive means any non-aerosol household adhesive designed for use on a variety of substrates. General Purpose Adhesive does not include contact adhesives or construction and panel adhesives.

General purpose cleaner means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General Purpose Cleaner includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces.

Glass cleaner means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

Hair mousse means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

Hair styling gel means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

Hairspray means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

Household adhesive means any household product that is used to bond one surface to another by attachment. Household Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. Household Adhesive also does not include units of product, less packaging, which weigh more than one pound or consist of more than 16 fluid ounces.

Household product means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

Household sealants and caulking compounds means any product designed to fill in cracks, close or secure an object, or to prevent seepage of moisture or air.

Insect repellent means a pesticide product that is designed to be applied on human skin, hair or attire worn on humans in order to prevent contact with or repel biting insects or arthropods.

Insecticide means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are: for agricultural use; for a use which requires a structural pest control license under Chapter 14 (commencing with Section 8500) of the Business and Professions Code; or restricted materials that require a permit for use and possession.

Insecticide fogger means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

Institutional product or industrial and institutional (I&I) Product means a consumer product that is designed for use in the maintenance or operation of an establishment that: manufactures, transports, or sells goods or commodities, or provides services for profit; or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional Product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

Label means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

Laundry prewash means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

Laundry starch product means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. Laundry Starch Product includes, but is not limited to, fabric finish, sizing, and starch.

Lawn and garden insecticide means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

Liquid means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D–4359–90. Liquid does not include powders or other materials that are composed entirely of solid particles.

LVP compound means any compound which contains at least one carbon atom and has either of the following: a vapor pressure less than 0.1 mm Hg at 20 C; or more than 12 carbon atoms, if the vapor pressure is unknown.

Manufacturer means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

Nail polish means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

Nail polish remover means a product designed to remove nail polish and coatings from fingernails or toenails.

Non-carbon containing compound means any compound which does not contain any carbon atoms.

Nonresilient flooring means flooring of a mineral content which is not flexible. Nonresilient Flooring includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

Oven cleaner means any cleaning product designed to clean and to remove dried food deposits from oven walls.

Paint means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

Paint stripper means any product designed to strip or remove paint from a substrate without markedly affecting the substrate itself.

Person means any individual, corporation, partnership, association, State, municipality, political subdivision of a state; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Personal fragrance product means any product which is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. Personal Fragrance Product does not include: products exclusively for human axillae; medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body; mouthwashes, breath fresheners and deodorizers; lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations; products designed exclusively for use on human genitalia; soaps, shampoos, and products primarily used to clean the human body; and fragrance products designed to be used exclusively on non-human animals.

Percent-by-weight means the total weight of VOC except those VOCs exempted under paragraph (a)(4) of this section, expressed as a percentage of the total net weight of the product exclusive of the container or package as calculated according to the following equation:

$$\text{Percent-By-Weight} = \frac{B-C}{A} \times 100$$

where,

A=net weight of unit (excluding container and packaging);

B=weight of VOCs, as defined in paragraph (a)(2) of this section, per unit; and

C=weight of VOCs, exempted under paragraph (a)(4) of this section, per unit.

Pesticide means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term pesticide will not include any substance, mixture of substances, or device which the Environmental Protection Agency does not consider to be a pesticide.

Principal display panel or panels means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

Product brand name means the name of the product exactly as it appears on the principal display panel of the product.

Product category means the applicable category which best describes the product as listed in paragraph (a)(2) of this section. *Product Form* for the purpose of complying with paragraph (a)(7) of this section only, means the applicable form which most accurately describes the product's dispensing form as follows: A=Aerosol Product; S=Solid; P=Pump Spray; L=Liquid; G=Gel; O=Other.

Propellent means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

Pump spray means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

Responsible party means the company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was manufactured for or distributed by, as noted on the label.

Restricted materials means pesticides established as restricted materials under Title 3, California Code of Regulations, section 6400.

Retail outlet means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

Retailer means any person who sells, supplies, or offers consumer products for sale directly to consumers.

Shaving cream means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

Single phase aerosol air freshener means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

Solid means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D–4359–90.

Spray buff product means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

Table B compound means any carbon-containing compound listed as an exception to the definition of VOC in paragraph (a)(2) of this section.

Type A propellent means a compressed gas such as CO_2, N_2, N_2O, or compressed air which is used as a propellent, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

Type B propellent means any halocarbon which is used as a propellent including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

Type C propellent means any propellent which is not a Type A or Type B propellent, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

Volatile organic compound (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions other than those defined as exempt compounds. These exempt compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by test methods given in this section. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission standard. However, the U.S. EPA may require such owner or operator, as a precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the U.S. EPA, the amount of negligibly reactive compounds in the source's emissions.

Usage directions means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

Wasp and hornet insecticide means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray a high volume directed stream or burst from a safe distance at the intended pest or its hiding place.

Wax means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

Wood floor wax means wax-based products for use solely on wood floors.

(3) *Standards.*

(i) Except as provided in paragraphs (a) (4), (5), and (7) of this section, no person shall sell, supply, offer for sale, or manufacture for sale in California any consumer product which, at the time of sale or manufacture, contains volatile organic compounds in excess of the limits specified in the following Table of Standards after the specified effective dates.

TABLE OF STANDARDS

[Percent Volatile Organic Compounds by Weight]

Product category	Effective dates	
	1/1/96	1/1/97
Aerosol Cooking Sprays	18	
Air Fresheners:		
Single Phase Aerosols	30	
Double Phase Aerosols	30	
Liquid/Pump Sprays	18	
Solids/Gels	....	3
Dual Purpose Air Freshener/Disinfectant Aerosols	60	
Automotive Brake Cleaners	....	50
Automotive Windshield Washer Fluids:		
Type A Areas •	35	
All Other Areas	10	
Carburetor-Choke Cleaners	75	
Charcoal Lighter Material (see paragraph (a)(3)(viii) of this section)		
Dusting Aids:		
Aerosol	35	25
All Other Forms	7	
Engine Degreasers	50	
Fabric Protectants	75	60
Floor Polishes/Waxes:		
Products for Flexible Flooring Materials	7	
Products for Nonresilient Flooring	10	
Wood Floor Wax	90	
Furniture Maintenance Products Aerosols	25	
All Other Forms except Solid or Paste Forms	7	
General Purpose Cleaners	10	
Glass Cleaners Aerosols	12	
All other forms	8	
Hairsprays	80	55 (1/98)
Hair Mousses	16	
Hair Styling Gels	6	
Household Adhesives:		
Aerosols	75	25
Contact	80	
Construction and Panel	40	
General Purpose	10	
Insecticides:		
Crawling Bug	40	20 (1/98)
Flea and Tick	25	
Flying Bug	35	
Foggers	45	
Lawn and Garden	20	
Laundry Prewash:		
Aerosols/Solids	22	
All Other Forms	5	
Laundry Starch Products	5	
Nail Polish Removers	75	
Oven Cleaners:		
Aerosols/Pump Sprays	8	
Liquids	5	
Personal Fragrance Products Products with 20% or less fragrance	80	75 (1/99)
Products with more than 20% fragrance	70	65 (1/99)
Insect Repellents:		
Aerosols	65	
Shaving Creams	5	

•Type A Areas include only the following: Del Norte, Shasta and Trinity Counties; the Great Basin Valley, Lake Tahoe, Mountain Counties, and the Northeast Plateau Air Basins, as defined in title 17, California Code of Regulations, Sections 60105, 60108, 60111, and 60113.

(ii) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted prior to use, the limits specified in paragraph (a)(3)(i) of this section shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this paragraph, minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(iii) Notwithstanding the provisions of paragraph (a)(3)(i) of this section, a consumer product manufactured prior to each of the effective dates specified for that product in the Table of Standards may be sold, supplied, or offered for sale for up to eighteen months after each of the specified effective dates. This paragraph does not apply to any consumer product which does not display on the product container or package the date on which the product was manufactured, or a code indicating such date.

(iv) For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 *et seq.*), the effective date of the VOC standards specified in paragraph (a)(3)(i) of this section is one year after the date specified in the Table of Standards. For those consumer products that are registered under FIFRA, the eighteen month period provided in paragraph (a)(3)(iii) of this section shall also begin one year after the date specified in the Table of Standards.

(v) Effective January 1, 1993, for any consumer product for which standards are specified under paragraph (a)(3)(i) of this section, no person shall sell, supply, offer for sale, or manufacture for sale in California any consumer product which contains any of the following ozone-depleting compounds: CFC–11 (trichlorofluoromethane), CFC–12 (dichlorodifluoromethane), CFC–113 (1,1,1-trichloro-2,2,2- trifluoroethane), CFC–114 (1-chloro-1,1-difluoro-2-chloro-2,2- difluoroethane), CFC–115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane), halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane), HCFC–22 (chlorodifluoromethane), HCFC–123 (2,2-dichloro-1,1,1-trifluoroethane), HCFC–124 (2-chloro-1,1,1,2-tetrafluoroethane), HCFC–141b (1,1-dichloro-1-fluoroethane), HCFC–142b (1-chloro-1,1-difluoroethane), 1,1,1-trichloroethane, and carbon tetrachloride.

(vi) The requirements of paragraph (a)(3)(v) of this section shall not apply to any existing product formulation that complies with the Table of Standards which is sold, supplied, offered for sale in California prior to the effective date of this article, or any product formulation that is sold, supplied, or offered for sale in California prior to the effective date of this article that is reformulated to meet the Table of Standards, as long as the ozone depleting compound content of the reformulated product does not increase.

(vii) The requirements of paragraph (a)(3)(v) of this section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

(viii) After January 1, 1996, no person shall sell, supply, or offer for sale charcoal lighter material unless the applicant demonstrates to the Administrator's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 ("SCAQMD Rule 1174 Testing Protocol").

(4) *Exemptions.*

(i) This article shall not apply to any consumer product manufactured in California for shipment and use outside of California.

(ii) The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in California a consumer product that does not comply with the VOC standards specified in paragraphs (a)(3)(i) or (a)(3)(viii) of this section, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of California, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to California. This paragraph does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in California.

(iii) The requirements of paragraph (a)(3)(i) of this section shall not apply to fragrances up to a combined level of 2 percent by weight contained in any consumer product.

(iv) The requirements of paragraph (a)(3)(i) of this section shall not apply to any VOC which:

(A) Has a vapor pressure of less than 0.1 mm Hg at 20 degrees Centigrade, or

(B) Consists of more than 12 carbon atoms, if the vapor pressure is unknown.

(v) The requirements of paragraph (a)(6)(ii) of this section shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. 136 *et seq.*)

(vi) The requirements of paragraph (a)(3)(i) of this section shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under paragraph (a)(2) of this section or exempted under paragraph (a)(4)(iv) of this section.

(vii) The requirements of paragraph (a)(3)(i) of this section shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

(viii) The requirements of paragraph (a)(3)(i) of this section shall not apply to:

(A) Existing personal fragrance products or personal fragrance products in development on or before April 1, 1992, provided that both:

(*1*) The registration data specified in paragraph (a)(7) of this section is submitted for every such product by the date specified in paragraph (a)(7)(i) of this section, or prior to July 1, 1993, whichever date occurs later, and

(*2*) Such product is sold in California prior to January 1, 1994. For the purposes of this subsection, a product in development means:

(*i*) A product which a fragrance materials manufacturer is designing at the request of a personal fragrance product manufacturer, or

(*ii*) A product which is the subject of a written marketing profile or other documentation authorizing the creation and marketing of the product.

(B) Personal fragrance products in development may be registered to qualify for this exemption under hypothetical trade names or pseudonyms, provided that the actual trade name is supplied to the Administrator within 30 days of marketing such products, or January 1, 1994, whichever occurs first.

(ix) The requirements of paragraph (a)(3)(i) of this section shall not apply to adhesives sold in containers of 1 fluid ounce or less.

(x) The requirements of paragraph (a)(3)(i) of this section shall not apply to any VOC which is a fragrance in a personal fragrance product.

(xi) The requirements of paragraph (a)(3)(i) of this section shall not apply to bait station insecticides. For the purpose of this paragraph, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5 percent active ingredients.

(xii) The January 1, 1999 VOC limits specified in paragraph (a)(3)(i) of this section for personal fragrance products shall not apply to such products which have been sold in California prior to January 1, 1999.

(5) *Innovative Products.*

(i) The Administrator shall exempt a consumer product from the requirements of paragraph (a)(3)(i) of this section if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(A) The VOC emissions from a representative consumer product which complies with the VOC standards specified in paragraph (a)(3)(i) of this section, or

(B) The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC standards specified in paragraph (a)(3)(i) of this section. VOC emissions shall be calculated using the following equation:

$E_R = E_{NC} \times VOC_{STD} \div VOC_{NC}$

Where:

E_R=the VOC emissions from the noncomplying representative product, had it been reformulated.

E_{NC}=the VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD}=the VOC standard specified in paragraph (a)(3)(i) of this section.

VOC_{NC}=the VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Administrator.

(ii) For the purposes of this section, representative consumer product means a consumer product which meets all of the following criteria:

(A) The representative product shall be subject to the same VOC limit in paragraph (a)(3)(i) of this section as the innovative product.

(B) The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

(C) The representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(iii) A manufacturer shall apply in writing to the Administrator for any exemption claimed under paragraph (a)(5)(i) of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the Administrator to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content.

(iv) Within 30 days of receipt of the exemption application the Administrator shall determine whether an application is complete.

(v) Within 90 days after an application has been deemed complete, the Administrator shall determine whether, under what conditions, and to what extent, an exemption from the requirements of paragraph (a)(3)(i) of this section will be permitted. The applicant and the Administrator may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Administrator shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in paragraph (a)(5)(i) of this section, and that such emissions reductions can be enforced.

(vi) In granting an exemption for a product the Administrator shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Administrator to be necessary. The Administrator shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

(vii) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Administrator in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Administrator within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Administrator in support of the exemption application.

(viii) If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this paragraph, shall have no force and effect as of the effective date of the modified VOC standard. This paragraph shall not apply to those innovative products which have VOC emissions less than the appropriate lowered VOC standard and for which a written notification of the product's emissions status versus the lowered VOC standard has been submitted to and approved by the Administrator at least 60 days before the effective date of such standard.

(ix) If the Administrator believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in paragraph (a)(5)(i) of this section, the Administrator may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

(6) *Administrative Requirements.*

(i) Most Restrictive Limit. Notwithstanding the definition of product category in paragraph (a)(2) of this section, if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC standard is specified in paragraph (a)(3)(i) of this section, then the lowest VOC standard shall apply. This requirement does not apply to general purpose cleaners.

(ii) Code-Dating. Each manufacturer of a consumer product subject to paragraph (a)(3)(i) or (a)(3)(viii) of this section shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in paragraph (a)(3)(i) of this section. The requirements of this provision shall not apply to personal fragrance products of 2 milliliters or less, which are offered to consumers free of charge for the purpose of sampling the product.

(iii) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to paragraph (a)(3)(i) or (a)(3)(viii) of this section an explanation of the code must be filed with the Administrator no later than twelve months prior to the effective date of the applicable standard specified in paragraph (a)(3)(i) of this section.

(7) *Registration.*

(i) No later than 90 days after the effective date of this paragraph, all responsible parties for the following household and I&I products must register products that are sold in California during the calendar year prior to the year the registration is due: products for which a VOC standard is specified in paragraph (a)(3)(i) of this section; products approved as an innovative product under paragraph (a)(5) of this section; and products claiming exemptions under paragraphs (a)(4)(vi), (a)(4)(vii), (a)(4)(viii) of this section. All registrations shall include the following information:

(A) The name of the responsible party and the party's address, telephone number, and designated contact person;

(B) Any claim of confidentiality made pursuant to 40 CFR part 2, subpart B;

(C) The product brand name for each consumer product subject to registration and upon request by the Administrator, the product label;

(D) The product category to which the consumer product belongs;

(E) The applicable product form(s) listed separately;

(F) An identification of each product brand name and form as a Household Product, I&I Product, or both;

(G) Separate California sales in pounds per year, to the nearest pound, and the method used to calculate California sales for each product form;

(H) For registrations submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in paragraph (a)(7)(i) of this section;

(I) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1%):

(*1*) Total Table B compounds,

(*2*) Total LVP compounds that are not fragrances,

(*3*) Total all other carbon-containing compounds that are not fragrances,

(*4*) Total all non-carbon-containing compounds,

(*5*) Total fragrance,

(*6*) For products containing greater than two percent by weight fragrance, but excluding personal fragrance products:

(*i*) The percent of fragrance that are LVP compounds, and

(*ii*) The percent of fragrance that are all other carbon-containing compounds.

(*7*) For "personal fragrance products", the density of the fragrance, and

(*8*) Total Paradichlorobenzene.

(J) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(*1*) Each Table B Compound.

(*2*) Each LVP Compound that is not a fragrance.

(K) If applicable, the weight percent comprised of propellent for each product;

(L) if applicable, an identification of the type of propellent (Type A, Type B, Type C, or a blend of the different types);

(ii) In addition to the requirements of paragraph (a)(7)(i)(J) of this section, the responsible party shall report or shall arrange to have reported to the Administrator the net percent by weight of each ozone-depleting compound which is listed in paragraph (a)(3)(v) of this section and contained in a product subject to registration under paragraph (a)(7)(i) of this section in any amount greater than 0.1 percent by weight.

(iii) Upon 90 days written notice, the Administrator may also require any manufacturer to supply all or part of the registration data listed in paragraph (a)(7)(i) of this section for any consumer product or products that the Administrator may specify.

(8) *Test Methods.*

(i) Testing to determine compliance with the requirements of this article, shall be performed using one or more of the following analytical methods which are incorporated by reference herein:

(A) Method 24–24A, 40 CFR part 60, appendix A;

(B) Method 18, 40 CFR part 60, appendix A;

(C) Method 1400, NIOSH Manual of Analytical Methods, Volume 1, February 1984;

(D) Environmental Protection Agency Method 8240 "GC/MS Method for Volatile Organics," September 1986;

(E) Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Administrator.

(ii) Testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the volatile organic compound content from records of the amounts of constituents used to make the product. Compliance determination based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(iii) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359–90 (May 25, 1990), which is incorporated by reference herein.

(iv) Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), which is incorporated by reference herein.

(v) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86–90 (Sept. 28, 1990), which is incorporated by reference herein.

(vi) Testing to determine the percent by weight of fragrance in personal fragrance products shall be performed according to the Association of Official Analytical Chemists (AOAC) Official Method of Analysis No. 932.11, 1990, "Essential Oil in Flavor Extracts and Toilet Preparations, Babcock Method" (AOAC Official Methods of Analysis, 15th Edition, 1990), which is incorporated by reference herein.

(9) *Severability.* Each part of this article shall be deemed severable, and in the event that any part of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

(b) *Antiperspirants and deodorants.*

(1) *Applicability.* Paragraphs (b)(1) through (b)(7) of this section shall apply to any person who sells, supplies, offers for sale, or manufactures antiperspirants or deodorants in the state of California.

(2) *Definitions.* For the purposes paragraphs (b)(1) through (b)(7) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Administrator means the Adminstrator of the USEPA or that person's designee.

Aerosol product means a pressurized spray system that dispenses antiperspirant or deodorant ingredients.

Antiperspirant means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

Colorant means any substance or mixture of substances, the primary purpose of which is to color or modify the color of something else.

Deodorant means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

Exempt compounds means any of the following compounds: methane; chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113); dichlorodifluoromethane (CFC-12); trichlorofluoromethane (CFC-11); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); or perfluorocarbon compounds which fall into these classes: Cyclic, branched, or linear, completely fluorinated alkanes; Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Existing product means any antiperspirant or deodorant formulation which was sold, supplied, offered for sale, or manufactured in California prior to January 1, 1996, or any identical antiperspirant or deodorant formulation which is sold, supplied, offered for sale, or manufactured in California by any person after January 1, 1996.

Fragrance means any substance or mixture of substances, the primary purpose of which is to impart an odor or scent.

High volatility organic compound (HVOC) means any organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20 C.

Manufacturer means any person or business entity that produces an antiperspirant or deodorant for sale in California.

Medium volatility organic compound (MVOC) means any organic compound that exerts a vapor pressure greater than

2 mm Hg and less than or equal to 80 mm Hg when measured at 20 C.

Non-aerosol product means any antiperspirant or deodorant that is not dispensed by a pressurized spray system.

Roll-on product means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

Stick product means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

Volatile organic compound (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions other than those defined as exempt compounds. These exempt compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by test methods given in this section. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission standard. However, the U.S. EPA may require such owner or operator, as a precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the U.S. EPA, the amount of negligibly reactive compounds in the source's emissions.

(3) *Standards.*

(i) Except as provided in paragraph (b)(4) of this section, no person shall sell, supply, offer for sale, or manufacture in California any antiperspirant or deodorant which, at the time of sale or manufacture, contains volatile organic compounds in excess of the limits specified in the following Table of Standards, after the specified effective date.

TABLE OF STANDARDS

[Percent volatile organic compounds by weight]

Product form	Effective date			
	2/15/95		1/1/99	
	HVOC[a]	MVOC[b]	HVOC	MVOC
Aerosol product:				
Antiperspirant	60	20	0	10
Deodorant	20	20	0	10
Non-aerosol product	0	0	0	0

[a] High volatility organic compounds, i.e., any organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20 C.

[b] Medium volatility organic compounds, i.e., any organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20 C.

(ii) No existing product may be reformulated to increase either the product's total VOC content or total ethanol content. An existing product may be reformulated to reduce the product's total ethanol content or total VOC content, as long as the reformulation does not increase the product's total HVOC content.

(iii) No person shall sell, supply, offer for sale, or manufacture in California any antiperspirant or deodorant which contains any of the following ozone-depleting compounds: CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane), CFC-114 (1-chloro-1,1- difluoro-2-chloro-2,2-difluoroethane), CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane), halon 1301 (bromotrifluoromethane), halon 2404 (dibromotetrafluoroethane), HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane), HCFC-124 (2-chloro- 1,1,1,2-tetrafluoroethane), HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro 1,1-difluoroethane), 1,1,1-trichloroethane, and carbon tetrachloride.

(4) *Exemptions.*

(i) This article shall not apply to any person who manufactures antiperspirants or deodorants in California for shipment and use outside of California.

(ii) The requirements of paragraph (b)(3)(i) of this section shall not apply to fragrances and colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant.

(iii) The requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this section shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20 C.

(iv) The medium volatility organic compound (MVOC) content standards specified in paragraph (b)(3)(i) of this section, shall not apply to ethanol contained in existing products.

(5) *Innovative Products.*

(i) The Administrator shall exempt a consumer product from the requirements of paragraph (b)(3)(i) or (b)(3)(ii) of this section if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(A) the VOC emissions from a representative consumer product which complies with the VOC Standards specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, or

(B) the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC standards specified in paragraph (b)(3)(i) and (b)(3)(ii) of this section. VOC emissions shall be calculated using the following equation:

$$E_R=E_{NC}\times VOC_{STD}+VOC_{NC}$$

Where:

E_R=The VOC emissions from the noncomplying representative product, had it been reformulated

E_{NC}=The VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD}=The VOC standard specified in paragraph (b)(3) of this section.

VOC_{NC}=The VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Administrator.

(ii) For the purposes of this section, representative consumer product means a consumer product which meets all of the following criteria:

(A) The representative product shall be subject to the same VOC limit in paragraphs (b)(3)(i) and (b)(3)(ii) of this section as the innovative product,

(B) The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

(C) The representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(iii) A manufacturer shall apply in writing to the Administrator for any exemption claimed under paragraph (b)(5)(i) of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the Administrator to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content.

(iv) Within 30 days of receipt of the exemption application the Administrator shall determine whether an application is complete.

(v) Within 90 days after an application has been deemed complete, the Administrator shall determine whether, under what conditions, and to what extent, an exemption from the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be permitted. The applicant and the Administrator may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Administrator shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in paragraph (b)(5)(i) of this section, and that such emissions reductions can be enforced.

(vi) In granting an exemption for a product the Administrator shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Administrator to be necessary. The Administrator shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, and sampling and laboratory procedures.

(vii) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Administrator in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Administrator within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Administrator in support of the exemption application.

(viii) If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this paragraph, shall have no force and effect as of the effective date of the modified VOC standard. This paragraph shall not apply to those innovative products which have VOC emissions less than the appropriate lowered VOC standard and for which a written notification of the product's emissions status versus the lowered VOC standard has been submitted to and approved by the Administrator at least 60 days before the effective date of such standard.

(ix) If the Administrator believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in paragraph (b)(5)(i) of this section, the Administrator may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

(6) *Administrative Requirements.* No later than three months after the effective date of this section, each manufacturer of an antiperspirant or deodorant subject to this article shall clearly display on each container of antiperspirant or deodorant, the date on which the product was manufactured, or a code indicating such date. If a manufacturer uses a code indicating the date of manufacture, an explanation of the code must be filed with the Administrator in advance of the code's use by the manufacturer.

(7) *Test Methods.*

(i) Testing to determine the volatile organic compound content of an antiperspirant or deodorant, or to determine compliance with the requirements of this article, shall be performed using one or more of the following methods which are incorporated by reference herein:

(A) Method 24–24A, 40 CFR part 60, appendix A;

(B) Method 18, 40 CFR part 60, appendix A;

(C) Method 1400, NIOSH Manual of Analytical Methods, Volume 1, February 1984; or

(D) Environmental Protection Agency Method 8240 "GC/MS Method for Volatile Organics," September 1986.

(E) Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon written approval by the Administrator.

(ii) Testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the volatile organic compound content from records of the amounts of constituents used to make the product. Compliance determination based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least five years. In the event of a conflict between EPA and a manufacturer over the results of compliance testing, EPA's results shall be used as the determinant result.

§ 52.2958 Aerosol coating products.

(a) *Applicability.* The provisions of paragraphs (a) through (f) of this section shall apply to any person who sells, supplies, offers for sale, applies, or manufactures aerosol coating products for use in the state of California.

(b) *Definitions.* For the purposes of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Adhesive means a product used to bond one surface to another.

Aerosol coating product means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications.

Anti-static spray means a product used to prevent or inhibit the accumulation of static electricity.

Art fixative or sealant means a clear coating, including art varnish, workable art fixative, and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces, or other closely related art uses, in order to provide a final protective coating or to fix preliminary stages of artwork while providing a workable surface for subsequent revisions.

ASTM means the American Society for Testing and Materials.

Auto body primer means a heavily pigmented automotive primer or primer surfacer coating labeled exclusively as such and applied directly to an uncoated vehicle body substrate or on top of a precoat for the purposes of corrosion resistance and building a repair area to a condition in which, after drying, it can be sanded to a smooth surface.

Automotive bumper and trim products means products, including adhesion promoters and chip sealants, formulated and labeled exclusively as such which are used to repair and refinish automotive bumpers and plastic trim parts.

Automotive underbody coating means a flexible coating which contains asphalt or rubber and is labeled exclusively for use on the underbody of motor vehicles to resist rust, abrasion and vibration, and to deaden sound.

Aviation or marine zinc primer means a zinc chromate or zinc oxide coating labeled exclusively as such and formulated to meet federal specification TT–P–1757.

Aviation propeller coating means a coating formulated and labeled exclusively as such which provides abrasion resistance and corrosion protection for aircraft propellers.

Belt dressing means a product applied on auto fan belts, water pump belting, power transmission belting, and industrial and farm machinery belting to prevent slipping, and to extend belt life.

Clear coating means a coating which is colorless, containing binders but no pigment, except flatting agents, and which is formulated to form a transparent or translucent solid film.

Coating solids means the nonvolatile portion of an aerosol coating product, consisting of the film forming ingredients, including pigments and resins.

Commercial use means the use of aerosol coating products in the production of goods, or the providing of services for profit, including touch-up and repair.

Corrosion resistant brass, bronze, or copper coating means a clear coating formulated and labeled exclusively as such to prevent tarnish and corrosion of uncoated brass, bronze, or copper metal surfaces.

Distributor means any person to whom an aerosol coating product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

Dye means a product containing no resins which is used to color a surface or object without building a film.

Electrical coating means a coating labeled exclusively as such, which is used exclusively to coat electrical components such as wire windings on electric motors to provide insulation and protection from corrosion.

Enamel means a coating which cures by chemical cross-linking of its base resin. Enamels can be readily distinguished from lacquers because enamels are not resoluble in their original solvent.

Exact match finish, automotive means a topcoat which meets all of the following criteria: the product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes; the product is labeled with the manufacturer's name for which they were formulated; and the product is labeled with either the original equipment manufacturer's (O.E.M.) color code number; the color name; or other designation identifying the specific O.E.M. color to the purchaser.

Exact match finish, engine paint means a coating which meets all of the following criteria: the product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint; the product is labeled with the manufacturer's name for which they were formulated; and the product is labeled with either the original equipment manufacturer's (O.E.M.) color code number, the color name, or other designation identifying the specific O.E.M. color to the purchaser.

Exact match finish, industrial means a coating which meets all of the following criteria: the product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products; the product is labeled with the manufacturer's name for which they were formulated; and the product is labeled with either the original equipment manufacturer's (O.E.M.) color code number; the color name; or other designation identifying the specific O.E.M. color to the purchaser.

Executive officer means the Executive Officer of the Air Resources Board, or his or her delegate.

Exempt compounds means any of the following compounds: methane; chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113); dichlorodifluoromethane (CFC-12); trichlorofluoromethane (CFC-11); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); or perfluorocarbon compounds which fall into these classes: Cyclic, branched, or linear, completely fluorinated alkanes; Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Flat paint products means a coating which, when fully dry, registers gloss less than or equal to 15 on an 85 gloss meter, or less than or equal to 5 on a 60 gloss meter, or which is labeled as a flat coating.

Flatting agent means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.

Floral spray means a coating labeled exclusively as such, which is sprayed on fresh flowers for the purposes of coloring, preserving or protecting their appearance.

Fluorescent coating means a coating labeled as such which converts absorbed incident light energy into emitted light of a different hue.

Glass coating means a coating labeled exclusively as such, which is applied to glass to tint or darken the color of the glass while retaining transparency.

Ground traffic/marking coating means a coating labeled exclusively as such, which is formulated for and applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots. Such coatings must be in a container equipped with a valve and sprayhead designed to direct the spray toward the surface when the can is held in an inverted vertical position.

High temperature coating means a coating labeled exclusively as such, which is formulated for and applied to substrates which will, in normal use, be subjected to temperatures in excess of 400 °F.

Hobby/model/craft coating means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces or less.

Ink means a fluid or viscous substance used in the printing industry to produce letters, symbols or illustrations, but not to coat an entire surface.

Lacquer means a thermoplastic film-forming material dissolved in organic solvent, which dries primarily by solvent evaporation, and hence is resoluble in its original solvent.

Layout fluid (or toolmaker's ink) means a coating labeled exclusively as such, which is sprayed on metal, glass or plastic, to provide a glare-free surface on which to scribe designs, patterns or engineering guide lines prior to shaping the piece.

Lubricant means a substance such as oil, petroleum distillates, grease, graphite, silicone, lithium, etc. that is used to reduce friction, heat, or wear when applied between surfaces.

Manufacturer means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

Marine spar varnish means a coating labeled exclusively as such which provides a protective sealant for marine wood products.

Maskant means a coating applied directly to a component to protect surface areas when chemical milling, anodizing, aging, bonding, plating etching, or performing other chemical operations on the surface of the component.

Metallic coating means a topcoat which contains at least 1 percent elemental metallic pigment and is labeled as "metallic".

Mold release means a coating applied to molds to prevent products from sticking to the surfaces of the mold.

Multi-component kits means aerosol spray paint systems which require the application of more than one component (e.g. foundation coat and top coat), where both components are sold together in one package.

Non-flat paint product means a coating which, when fully dry, registers a gloss greater than 15 on an 85 gloss meter or greater then five on a 60 gloss meter.

Percent VOC by weight means the ratio of the weight of VOC to the total weight of the product contents expressed as follows: Percent VOC By Weight=$(W_{voc}/W_{total})\times100$, where: for products not containing water and exempt compounds, W_{voc}=the weight of VOC; for products containing water or exempt compounds W_{voc}=the weight of VOC, less water and exempt compounds as defined in paragraph (b) of this section; and W_{total}=the total weight of the product contents.

Photograph coating means a coating formulated and labeled exclusively as such, applied to finished photographs to allow corrective retouching, protection of the image, changes in gloss level, or to cover fingerprints.

Pleasure craft means privately owned vessels used for noncommercial purposes.

Pleasure craft finish primer/surfacer/undercoat means any coating labeled exclusively as such which is formulated to be applied prior to the application of a pleasure craft topcoat for the purpose of corrosion resistance, adhesion of the topcoat and which promotes a uniform surface by filling in surface imperfections.

Pleasure craft topcoat means any coating labeled exclusively as such which is formulated to be applied to a pleasure craft as a final coat above the waterline and below the waterline when stored out of water.

Primer means a coating formulated and labeled as such to be applied to a surface to provide a bond between that surface and subsequent coats.

Propellant means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

Retailer means any person who sells, supplies, or offers aerosol coating products for sale directly to consumers.

Rust converter means a product designed and labeled exclusively to convert rust to an inert material and which contains a minimum acid content of 0.5 percent by weight, a maximum resin content of 0.5 percent by weight, and contains no pigments.

Shellac sealer means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (Laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Slip-resistant coating means a coating labeled exclusively as such which is formulated with synthetic grit, and used as a safety coating.

Spatter coating/multicolor coating means a coating labeled exclusively as such wherein spots, globules, or spatters of contrasting colors appear on or within the surface of a contrasting or similar background.

Stain means a coating which is formulated to change the color of a surface but not conceal the surface.

Vinyl/fabric/polycarbonate coating means a coating labeled exclusively as such, which is used to coat vinyl, fabric, or polycarbonate substrates.

Volatile organic compound (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions other than those defined as exempt compounds. These exempt compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by test methods given in this section. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emission standard. However, the U.S. EPA may require such owner or operator, as a precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the U.S. EPA, the amount of negligibly reactive compounds in the source's emissions.

Webbing/veiling coating means a coating labeled exclusively as such, which is formulated to give a stranded to spider webbed appearance when applied.

Weld-through primer means a coating formulated and labeled exclusively as such which provides a bridging or conducting effect to provide corrosion protection following welding.

Wood stain means a coating which is formulated to change the color of a wood surface but not conceal the surface.

Wood touch-up/repair/restoration means a coating formulated and labeled exclusively as such which provides an exact color or sheen match on finished wood products.

(c) *Standards.*

(1) Except as provided in paragraphs (d) and (g) of this section, no person shall sell, supply, offer for sale, apply, or manufacture for sale in California, any aerosol coating product which, at the time of sale, use, or manufacture,

contains volatile organic compounds in excess of the limits specified in the following Table of Standards after the specified effective dates.

TABLE OF STANDARDS

Percent Volatile Organic Compounds by Weight

Aerosol coating category	01/01/96	12/31/99
General Coatings:		
Clear Coating	67	40
Flat Paint Products	60	30
Fluorescent Coatings	75	45
Metallic Coatings	80	50
Non-Flat Paint Products	65	30
Primer	60	30
Speciality Coatings:		
Art Fixative or Sealant	95	70
Auto Body Primer	80	50
Automotive Bumper and Trim Products	95	75
Aviation Propeller Coating	84	75
Aviation/Marine Zinc Primer	80	70
Corrosion Resistant Brass, Bronze, or Copper Coatings	92	70
Pleasure Craft Topcoat	80	55
Exact Match Finish:		
Engine enamel	80	60
Automotive	88	50
Industrial	88	60
Floral Spray	95	85
Glass Coating	95	80
Ground Traffic Marking Coating	66	40
High Temperature Coating	80	55
Hobby/Model/Craft Coating:		
Enamel	80	70
Lacquer	88	70
Clear or Metallic	95	75
Marine Spar Varnish	92	70
Photograph Coating	95	70
Pleasure Craft Finish Primer Surfacer or Undercoater	75	55
Shellac Sealer:		
Clear	88	70
Pigmented	75	60
Slip-Resistant Coating	85	70
Spatter Coating	80	60
Vinyl/Fabric/Polycarbonate	95	70
Webbing/Veil Coating	95	70
Weld-Through Primer	75	60
Wood Stain	95	75
Wood Touch-Up, Repair or Restoration	95	95

(2) Notwithstanding the provisions of paragraph (c)(1) of this section, an aerosol coating product manufactured prior to each of the effective dates specified for that product in the Table of Standards may be sold, supplied, offered for sale, or applied for up to eighteen months after each of the specified effective dates. Paragraph (c)(2) of this section does not apply to any product which:

(i) Is subject to the provisions of Bay Area Air Quality Management District Rule 8–49 and is sold, supplied, offered for sale, or applied within the Bay Area Air Quality Management District; or

(ii) Does not display on the product container or package the date on which the product was manufactured, or a code indicating such date.

(3) After [Insert date of publication of the final rule], for any aerosol coating product for which standards are specified under paragraph (c)(1) of this section, no person shall sell, supply, offer for sale, apply, or manufacture for sale in California any aerosol coating product which contains methylene chloride, perchloroethylene, or an ozone depleting substance identified by EPA.[30] The requirements of this paragraph shall not apply to any existing product formulation that complies with the Table of Standards which was sold, supplied, or offered for sale in California prior to January 1, 1993, or any product formulation that was sold, supplied, or offered for sale in California prior to January 1, 1993, that is reformulated to meet the Table of Standards, as long as the content of methylene chloride, perchloroethylene, or ozone depleting substances as identified in this paragraph in the reformulated product does not increase.

(4) The requirements of paragraph (c)(3) of this section shall not apply to any aerosol coating product containing methylene chloride, perchloroethylene, or an ozone depleting substance as identified in paragraph (c)(3) of this section that are present as impurities in a combined amount equal to or less than 0.01% by weight of the product.

(5) No person shall sell, supply, offer for sale, apply, or manufacture for sale in California:

(i) Any multi-component kit as defined in paragraph (b) of this section, unless the total VOC emitted from the use of that multi-component kit does not exceed the VOC which would be allowed from a single-component product in the same product category listed in the Table of Standards; or

(ii) Any aerosol coating product assembled by adding bulk paint to aerosol containers of propellant and solvent, unless such products comply with the standards specified in paragraph (c)(1) of this section.

(6) Any manufacturer of an aerosol coating product subject to this article shall submit the following information by March 31, 1998 to EPA:

(i) The information required under paragraphs (e)(3)(ii) (A) through (G) and (e)(c)(3) of this section for the 1997 calendar year;

(ii) The information required under paragraphs (e)(3)(ii) (A) through (D), (e)(3)(ii) (F) and (G), and (e)(3)(iii) of this section for the products marketed after January 1, 1998; and

(iii) A written report describing the research and development efforts undertaken to achieve the December 31, 1999 VOC limits.

(d) *Exemptions.*

(1) This article shall not apply to aerosol lubricants, mold releases, automotive underbody coating, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes or inks.

(2) This article shall not apply to any aerosol coating product manufactured in California for shipment and use outside of California.

(3) The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in California an aerosol coating product that does not comply with the VOC standards specified in paragraph (c)(1) of this section, as long as the manufacturer or distributor can demonstrate both that the aerosol coating product is intended for shipment and use outside of California, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the aerosol coating product is not distributed to California. This paragraph (3) does not apply to aerosol coating products that are sold, supplied, or offered for sale by any person to retail outlets in California.

(4) The requirement in paragraph (c)(1) of this section prohibiting the application of aerosol coating products containing volatile organic compounds in excess of the limits specified in the Table of Standards shall not apply to any noncommercial application of aerosol coating products purchased prior to June 30, 1996.

(e) *Administrative requirements.*

(1) *Most restrictive limit.* If anywhere on the container of any aerosol coating product listed in the Table of Standards, or on any sticker or label affixed thereto, or in any sales or advertising literature, any representation is made that the product may be used as, or is suitable for use as a product for which a lower VOC standard is specified, then the

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[30] See 40 CFR part 81, subpart A, appendixes A and B.

lowest applicable VOC standard shall apply. However, notwithstanding the provisions of this paragraph, if an aerosol coating product is subject to both a general coating limit and a specialty coating limit, as listed in paragraph (c)(1) of this section, and the product meets all the criteria of the applicable specialty coating category as specified in paragraph (b) of this section, then the specialty coating limit shall take precedence over the general coating limit.

(2) *Labeling Requirements.* Each manufacturer of an aerosol coating product subject to paragraph (c)(1) of this section shall clearly display the following information on each product manufactured 90 days or more after the effective date of this article:

(i) The maximum VOC content of the product as specified in paragraph (c)(1) of this section, expressed as a percentage by weight;

(ii) The aerosol coating category as defined in paragraph (b) of this section, or an abbreviation of the coating category; and

(iii) The day, month, and year on which the product was manufactured, or a code indicating such date. If a manufacturer uses a code indicating the date of manufacture or an abbreviation of the coating category as defined in paragraph (b)(1) of this section, on any aerosol coating product subject to paragraph (c)(1) of this section, an explanation of the code or abbreviation must be filed with USEPA prior to the use of the code or abbreviation. The VOC content displayed may be calculated using product formulation data, or may be determined using the test method specified in paragraph (f) of this section. For cases where a new product subject to paragraph (c)(1) of this section is sold, supplied, or offered for sale more than 90 days after the effective date of this article, the labeling requirements specified in paragraph (e)(2) of this section shall immediately apply.

(3) *Reporting Requirements.*

(i) Any manufacturer of an aerosol coating product subject to this section which is sold, supplied, or offered for sale in California must supply the USEPA with the following information within 90 days: the company name, mail address, contact person, and the telephone number of the contact person. The manufacturer must also notify the USEPA within 90 days of any change in the information supplied to the USEPA pursuant to this paragraph.

(ii) Upon 90 days written notice, each manufacturer subject to this section shall submit to the USEPA a written report with all or part of the following information for each product they manufacture under their name or another company's name:

(A) The brand name of the product;

(B) Upon request, a copy of the product label;

(C) The owner of the trademark or brand names;

(D) The product category as defined in paragraph (b) of this section;

(E) The annual California sales in pounds per year and the method used to calculate California annual sales;

(F) The percent by weight VOC, water, solids, propellant, and any compounds exempt from the definition of VOC as specified in paragraph (b) of this section;

(G) An identification of each product brand name as a "household" or "industrial" product; and

(H) Any other information necessary to determine the emissions from aerosol coating products.

(iii) The information requested in paragraph (e)(3)(ii) of this section may be supplied as an average for a group of aerosol coating products within the same coating category when either of the following conditions are met:

(A) The products do not vary in VOC content by more than two percent (by weight), and the coatings are based on the same resin type; or

(B) The products are color variations of the same product (even if the coatings vary by more than 2 percent in VOC content).

(f) *Test Methods.*

(1) The VOC content of aerosol coating products subject to the provisions of this section shall be determined by the procedures set forth in ASTM D 5200–92, Standard Test Method for Determination of Weight Percent Volatile Content of Solvent-Borne Paints in Aerosol Cans, May 15, 1992, and, for water-containing aerosol coating products, by ASTM D 5325–92, Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints, November 15, 1992.

(2) Compounds exempt from the definition of VOC shall be analyzed according to the test methods listed below:

(i) The content of dichloromethane (methylene chloride) and 1,1,1-trichloroethane shall be determined by ASTM D 4457–85.

(ii) The following classes of compounds will be analyzed as exempt compounds only if manufacturers specify which individual compounds are used in the product formulations and identify the test methods, which, prior to such analysis, have been approved by the USEPA, and can be used to quantify the amounts of each exempt compound: cyclic, branched, or linear completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(3) The metal content of metallic aerosol coating products shall be determined by South Coast Air Quality Management District Test Method 311 (SCAQMD Laboratory Methods of Analysis for Enforcement Samples manual), June 1, 1991.

(4) Specular gloss of flat and nonflat coatings shall be determined by ASTM Method D 523–89, March 31, 1989.

§ 52.2959 Architectural coatings.

(a) *Applicability.* This section applies to any person who supplies, sells, offers for sale, applies, solicits the application of, or manufactures for use any architectural coating used in California.

(b) *Definitions.* For the purposes of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Antenna coatings are coatings applied to equipment and associated structural appurtenances which are used to receive or transmit electromagnetic signals.

Anti-fouling coatings are coatings registered with USEPA, Office of Pesticide Programs and which are applied to the underwater portion of a structure to prevent or reduce the attachment of biological organisms.

Appurtenances are accessories to an architectural structure, including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, (heating and air conditioning) equipment, other mechanical equipment, large fixed stationary tools and concrete forms.

Architectural coatings are any coatings applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

Below-ground wood preservatives are coatings formulated to protect below-ground wood from decay or insect attack and registered with USEPA, Office of Pesticide Programs.

Bituminous coatings materials are black or brownish coating materials, soluble in carbon disulfide, consisting mainly of hydrocarbons and which are obtained from natural deposits, or as residues from the distillation of crude petroleum oils, or of low grades of coal

Bond breakers are coatings applied between layers of concrete to prevent the freshly poured top layer of concrete from bonding to the substrate over which it is poured.

Clear wood finishes are clear and semi-transparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.

Colorants are solutions of dyes or suspensions of pigments.

Concrete-curing compounds are coatings applied to freshly poured concrete to retard the evaporation of water.

Dry-fog coatings are coatings which are formulated only for spray application so that when sprayed, overspray droplets dry before falling on floors and other surfaces.

Fire retardant coatings are coatings which have a flame spread index of less than 25 when tested in accordance with ASTM Designation E–84–87, "Standard Test Method for Surface Burning Characteristics of Building Material," after application to Douglas fir according to the manufacturer's recommendations.

Flat coatings are coatings which register gloss less than 15 on an 85° meter or less than five on a 60° meter, or which is labeled as a flat coating.

Form-release compounds are coatings applied to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

Grams of VOC per liter of coating, less water and less exempt compounds is the weight of VOC per combined volume of VOC and coating solids and can be calculated by the following equation:

$$\text{Grams VOC per 1 coating less water } \Lambda \text{ exempt compounds} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

Grams of VOC per Liter of Coating Less Water and Less Exempt

Where: W_s=weight of volatile compounds in grams

W_w=weight of water in grams

W_{es}=weight of exempt compounds in grams

V_m=volume of material in liters

V_w=volume of water in liters

V_{es}=volume of exempt compounds in liters

Graphic arts coatings (Sign Paints) are coatings formulated for and hand-applied by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals, including lettering enamels, poster colors, copy blockers, and bulletin enamels.

High-temperature industrial maintenance coatings are industrial maintenance coatings formulated for and applied to substrates exposed continuously or intermittently to temperatures above 400 degrees Fahrenheit.

Impact immersion coatings are an industrial maintenance, vinyl chloride based multicoat system formulated and recommended for application to submerged surfaces of locks, dams and other steel structures subjected to frequent severe abrasion.

Industrial maintenance anti-graffiti coatings are two-component clear industrial maintenance coatings formulated for and applied to exterior walls and murals to resist repeated scrubbing and exposure to harsh solvents.

Industrial maintenance coatings are high performance coatings formulated for and applied to substrates in industrial, commercial, or institutional situations that are exposed to one or more of the following extreme environmental conditions:

(1) immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(2) acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, chemical mixtures, or solutions;

(3) repeated exposure to temperatures in excess of 250 degrees Fahrenheit;

(4) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial solvents, cleaners, or scouring agents; or

(5) exterior exposure of metal structures. Industrial maintenance coatings are not for residential use or for use in areas of industrial, commercial, or institutional facilities such as office space and meeting rooms.

Lacquers are clear wood finishes, including clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction.

Low-solids stain means a wood stain containing 1 pound or less of solids per gallon of material.

Magnesite cement coatings are coatings formulated for and applied to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

Mastic coatings are coatings formulated to cover holes and minor cracks and to conceal surface irregularities, and applied in a thickness of at least 10 mils (dry, single coat).

Metallic pigmented coatings are coatings containing at least 0.4 pound of elemental metallic pigment per gallon (50 grams/liter of coating as applied) or non-bituminous coatings which are formulated with metalic pigment.

Multi-colored coatings are coatings which exhibit more than one color when applied and which are packaged in a single container and applied in a single coat.

Non-flat coatings are coatings which register gloss of 15 or greater on an 85° meter or five or greater on a 60° meter, and which are identified on the label as a gloss, semigloss, or eggshell enamel coating.

Non-flat high gloss coatings are coatings which register gloss of 70 or greater on a 60° meter, and which are identified on the label as a high gloss enamel coating.

NOS means not otherwise specified.

Nuclear power plant coatings are industrial maintenance coatings formulated and certified by the US Department of Energy for application to Level 1 containment structures at nuclear power facilities.

Opaque stains are all stains that are not classified as semitransparent stains.

Opaque wood preservatives are all wood preservatives not classified as clear or semitransparent wood preservatives or as below-ground wood preservatives.

Pre-treatment wash primers are coatings which contain a minimum of ½ percent acid by weight, applied directly to bare metal surfaces to provide necessary surface etching.

Primers are coatings applied to a surface to provide a firm bond between the substrate and subsequent coats.

Residential use is use in areas where people reside or lodge including, but not limited to single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

Roof coatings are coatings formulated for application to exterior roofs and for the primary purpose of preventing penetration of the substrate by water, or reflecting heat and reflecting ultraviolet radiation. Metallic pigmented roof coatings which qualify as metallic pigmented coatings shall not be considered to be in this category, but shall be considered to be in the metallic pigmented coatings category.

Sanding sealers are clear wood coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer a coating must be clearly labelled as such.

Sealers are coatings applied to substrates to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

Semitransparent stains are coatings which are formulated to change the color of a surface but not conceal the surface.

Semitransparent wood preservative are wood preservative stains formulated to protect exposed wood from decay or insect attack by the addition of a wood preservative registered with the USEPA, Office of Pesticide Programs, and which change the color of a surface but do not conceal the surface, including clear wood preservatives.

Shellacs are clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Solicit is to require for use or to specify, by written or oral contract.

Solventborne means a coating that contains only organic solvents. If water is present, the coating must contain less than or equal to five percent water by weight in its volatile fraction.

Specialty primers, sealers, and undercoaters means primers, sealers, and undercoaters used only to perform one of the following functions: repair fire, smoke or water damage; neutralize odor; block strains; block efflorescence; condition chalky surfaces; or coat accoustical materials without affecting their accoustical abilities.

Swimming pool coatings are coatings specifically formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

Swimming pool repair coatings are chlorinated rubber based coatings used for the repair and maintenance of swimming pools over existing chlorinated rubber based coatings.

Tint base is an architectural coating to which colorants are added.

Traffic coatings are coatings formulated for and applied to public streets, highways, and other surfaces including, but not limited to curbs, berms, driveways, and parking lots.

Undercoaters are coatings formulated and applied to substrates to provide a smooth surface for subsequent coats.

Varnishes are clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

Waterborne coating means a coating that contains more than five percent water by weight in its volatile fraction.

Waterproofing sealers are colorless coatings which are formulated for the sole purpose of preventing penetration of porous substrates by water and which do not alter surface appearance or texture.

(c) *Requirements.*

(1) Except as provided in paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) of this section, no person shall manufacture, supply, sell, offer for sale, blend, repackage, apply, or solicit the application for use within California any architectural coating which contains more than 250 grams of volatile organic compounds per liter of coating (excluding water and exempt solvents, and any colorant added to tint bases).

(2) Except as provided in paragraphs (c)(3), (c)(4) and (c)(5) of this section, no person shall manufacture, supply, sell, offer for sale, blend, repackage, apply, or solicit the application for use within California any architectural coating listed in the Table of Standards which contains volatile organic compounds (less water and exempt solvents, and excluding any colorant added to tint bases) in excess of the corresponding limit and date specified in the table.

VOC LIMIT TABLE OF STANDARDS

[Grams of VOC Per Liter less Water And Exempt Compounds]

Coating category	Effective date January 1		
	1996	2000	2003
Bond Breakers	350		
Clear Wood Finishes:			
Varnish	350	....	250
Sanding Sealers	350		
Lacquer Sanding Sealers	500	350	
Lacquer	650	350	
Concrete-Curing	350	250	
Dry-Fog Coatings	400	....	250
Fire Retardant Coatings:			
Clear	350		
Pigmented	350		
Flats	250	150	50
Form Release Compounds	250		
Graphic Arts Coatings	500	425	
Industrial Maintenance Coatings:			
NOS	340	....	275
Anti-Graffiti	340	275	
High Temperature	550	420	
Nuclear Power Plant	380	340	
Impact Immersion	420	340	
Antenna	420	340	
Anti-fouling	400	340	
Magnesite Cement	600	500	
Mastic Coatings	300		
Metallic Pigmented	500	450	340
Multi-Color Coatings	420		
Non-Flats NOS	250	....	150
Non-Flats-High Gloss	250		
Pretreat Wash Primers	780	420	
Primers, Sealers, and Undercoaters	350	....	150
Specialty Primers, Sealers, and Undercoaters	350		
Roof Coatings	250		
Traffic Paints	150	125	50
Shellac:			
Clear	650	600	
Pigmented	550	500	
Stains and Wood Preservatives:			
Semi-Transparent	350		
Opaque	250	200	150
Clear	350		
Below-Ground Wood	350		
Low-solids	120		
Swimming Pool Coatings	340		
Swimming Pool Repair and Maintenance Coatings	650	340	
Waterproof Sealers	400		

(3) If anywhere on the container of any coating listed in the Table of Standards, on any sticker or label affixed thereto, or in any sales or advertising literature, any representation is made that the coating may be used as, or is suitable for use as a coating for which a lower VOC standard is specified in the Table of Standards or in paragraph (c)(1) of this section, then the lowest VOC standard shall apply. This requirement does not apply to the representation of the following coatings in the manner specified:

(i) High-temperature industrial maintenance coatings, which may be represented as metallic pigmented coatings for use consistent with the definition of high temperature industrial maintenance coatings;

(ii) Metallic pigmented coatings, which may be recommended for use as primers, sealers, undercoaters, roof coatings, or industrial maintenance coatings; and

(iii) Shellacs.

(4) Sale or application of a coating manufactured prior to the effective date of the corresponding standard in the Table of Standards, and not complying with that standard, shall not constitute a violation of paragraph (c)(2) of this section until eighteen months after the effective date of the standard.

(5) Sale or application of a coating in a container of one quart capacity or less shall not constitute a violation of paragraph (c)(1) or (c)(2) of this section until January 1, 2003.

(6) All VOC-containing materials shall be stored in closed containers when not in use. In use includes, but is not limited to: being accessed, filled, emptied, or repaired.

(d) *Administrative Requirements.*

(1) Containers for all coatings subject to this section shall display the date of manufacture of the contents or a code indicating the date of manufacture. The manufacturers of such coatings shall file with the EPA an explanation of each code.

(2) Containers for all coatings subject to the requirements of this section shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. This recommendation shall not apply to the thinning of architectural coatings with water. The recommendation shall specify that the coating, is to be employed without thinning or diluting under normal environmental and application conditions, unless any thinning recommended on the label for normal environmental and application conditions does not cause a coating to exceed its applicable standard.

(3) Each container of any coating subject to this section shall display the maximum VOC content of the coating, as applied, and after any thinning as recommended by the manufacturer. VOC content shall also be displayed as grams of VOC per liter of coating (less water and exempt solvent, and excluding any colorant added to tint bases). VOC content displayed may be calculated using product formulation data, or may be determined using the test method in paragraph (e) of this section.

(4) The labels of all industrial maintenance coatings shall include the statement "Not for Residential Use," or "Not for Residential Use in California," prominently displayed.

(e) *Test Method.* The VOC content of a coating subject to the provisions of this section shall be determined using the following procedures:

(1) Method 24 of 40 CFR part 60, appendix A, shall be used in the determination of volatile matter content, water content, and density, volume solids, and weight solids of paint, varnish, lacquer or related surface coatings.

(2) To determine the volatile matter content, water content, and density, volume solids, and weight solids of paint, varnish, lacquer or related surface coatings which are multi-component coatings, the following procedures shall be used in addition to Method 24 of 40 CFR part 60, appendix A:

(i) The components shall be mixed in a storage container in proportions the same as those in the coating, as applied. The mixing shall be accomplished by weighing the components in the proper proportion into a container which is closed between additions and during mixing. About 100 ml of coating shall be prepared in a container just large enough to hold the mixture prior to withdrawing a sample.

(ii) A sample shall be withdrawn from the mixed coating, and then transferred to a dish where the sample shall stand for at least 1 hour, but no more than 24 hours prior to being oven dried at 100° C for 1 hour.

(3) The measurement of exempt solvents shall be determined using ASTM Test Method 4457–85 (re-approved 1992).

(4) Calculation of volatile organic compound content of coatings less water and exempt solvents shall be performed in accordance with ASTM Test Method D 3960–92.

(f) *Exemptions.*

(1) The provisions of this section shall not apply to:

(i) Until January 1, 2003, architectural coatings in containers having capacities of one quart; or

(ii) Architectural coatings sold in California for shipment outside of the state or for shipment to other manufacturers for repackaging; or

(iii) Emulsion type bituminous pavement sealers.

(2) Coatings subject to the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act are exempt from the labeling requirements listed under paragraph (d) of this section.

§ 52.2960 Pesticides.

(a) *Applicability.*

(1) The requirements of this section shall apply to all persons located inside or outside of the affected area who produce agricultural and/or structural pesticides that are registered in the State of California.

(2) The requirements of this section shall apply to all persons who distribute and/or store agricultural and/or structural pesticides within the affected area, unless such person can demonstrate both that the pesticide is intended only for shipment and use outside of the affected area, and that the person has taken reasonable prudent precautions to assure that the pesticide is not distributed within the affected area. Activities which shall not qualify as such reasonable prudent precaution include but are not limited to:

(i) Distribution to a retail distributor within the affected area; or

(ii) Failure to clearly identify pesticides as not for sale or use within California.

(3) The requirements of this section shall apply to all persons who apply agricultural and/or structural pesticides within the affected area.

(4) For the purposes of this section, the affected area is the State of California. For the purposes of this section, unless otherwise specified, the effective date is April 1, 1995.

(b) *Definitions.* For the purposes of this section, the following definitions will apply. All terms not defined herein shall have the meaning given them in the Clean Air Act (42 U.S.C. 7401–7671q) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*

Agricultural pesticide means a pesticide intended for:

(1) Use in the commercial production, transportation or storage of agricultural commodities, including but not limited to food, feed and fiber crops, farm animals, forest and timber commodities, ornamentals, flowers and turf;

(2) Use in, on or around agricultural premises or buildings, including but not limited to barns, silos, animal enclosures, greenhouses and similar agricultural structures; or

(3) Use on terrestrial, aquatic or forestry sites not directly related to the production of agricultural commodities, including but not limited to rights-of-way, golf courses, parks, mosquito control use, farm ponds, pasture and rangeland. A pesticide is not an agricultural pesticide if it is intended solely for: residential, institutional, industrial or structural pest control; consumer or personal use, including use on pets; non-commercial production of agricultural commodities (e.g., home gardens); or research or experimental pest control.

Applicator means any person who uses or supervises the use of any pesticide.

Distributor means any person who distributes, sells, offers for sale, holds for distribution, holds for sale, holds for shipment, ships, delivers for shipment, releases for shipment, or receives and (having so received) delivers or offers to deliver. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served. The term "distribute" means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver any pesticide. This includes persons who distribute pesticides to applicators or to other dealers or distributors.

EPA means the United States Environmental Protection Agency. Reports submitted to EPA shall be addressed in care of U.S. EPA, Region IX (A–1–1), 75 Hawthorne Street, San Francisco, CA 94105.

Exempt compounds means any of the following compounds: methane; ethane; 1,1,1-trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113); methylene chloride; trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); dichlorotetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); chlorodifluoroethane (HCFC–142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); and perfluorocarbon compounds which fall into these classes— cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Person means any firm, business establishment, association, partnership, corporation or individual, whether acting as principal, agent, employee, or other capacity including any governmental entity or charitable organization.

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Producer means the person who manufacturers, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide. The term "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not itself result in such individuals being included in the definition of "producer" for the purposes of this section.

Registered, with respect to a pesticide product, means that the product has been approved for sale and distribution within the State of California pursuant to the California Food and Agricultural Code (Division 7, Chapter 2, Article 4, § 12811).

Structural pesticide means a pesticide intended for use in the protection of structures, buildings or building materials, including but not limited to fumigants, termiticides, and wood preservatives.

Volatile organic vompound (VOC) means any compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions other than those defined as exempt compounds. These exempt compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with this section, VOC will be measured by test methods given in this section.

(c) *Specific provisions.*

(1) *Required submission of data.*

(i) By June 1, 1996 or 120 (one hundred and twenty) days after the effective date of this section, whichever is later, all persons who produce agricultural and/or structural pesticides that are registered in California must submit reports in accordance with paragraph (d) of this section that identify the VOC content of each pesticide. The VOC content will be determined according to the methodology provided in paragraph (f) of this section.

(ii) If EPA determines that a report does not affirmatively demonstrate compliance with the methodology in paragraph (f) of this section, EPA may assign the pesticide a VOC content value equal to the highest VOC content reported for any pesticide.

(2) *Establish VOC limit.* Upon compilation of the data received pursuant to paragraph (c)(1) of this section, EPA will determine a pesticide VOC limit based on the following criteria:

(i) EPA will establish a base-year inventory for each registered pesticide. This inventory will be based on the amount of each pesticide used in the affected area. These amounts will be based on data from the 1990 pesticide use report (PUR) and the inerts database, which are both maintained by the California Department of Pesticide Regulation (DPR), unless EPA determines that another year or years of PUR data or other information provides a more appropriate basis for the inventory.

(ii) EPA will rank all registered pesticides according to their VOC content as determined by the data submitted pursuant to paragraph (c)(1) of this section. The pesticide with the largest VOC content will be ranked "1".

(iii) EPA will multiply the VOC contents (as determined by paragraph (c)(1) of this section) by the inventory (as determined in paragraph (c)(2)(i) of this section) to determine "individual base-year VOC emissions" for each individual pesticide.

(iv) EPA will add the individual base-year VOC emissions for all pesticides to determine the "total base-year VOC emissions" from all pesticides combined.

(v) Starting with the pesticide or pesticides ranked "1" according to paragraph (c)(2)(ii) of this section, EPA will add the individual base-year VOC emissions for pesticides ranked 2, 3, 4 * * * etc, until the sum equals forty to seventy percent (40%–70%) [31] of the total base-year VOC emissions. The VOC content of the last pesticide needed to achieve 40%–70% of the total base-year VOC emissions becomes the "VOC limit."

(vi) EPA will promulgate the VOC limit with a summary of the assumptions and results from paragraphs (c)(2) (i) through (v) of this section.

(3) *Restrictions on pesticides.*

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[31] As discussed further in the preamble to the proposed regulations, the range of 40% to 70% reflects the target range of 20%–45% reductions in emissions from pesticide application. This range was selected for consistency with the VOC cap rules proposed as 40 CFR 52.2952 through 52.2954. Based on planned modeling and inventory analysis and comments received during the comment period, EPA hopes to select a specific reduction target from within this range for use in the final rule.

(i) On and after 1 (one) year after EPA publishes the VOC limit, all persons are prohibited from distribution within the affected area of pesticides with VOC contents in excess of the VOC limit.

(ii) On and after 2 (two) years after EPA publishes the VOC limit, all persons are prohibited from application and/or storage within the affected area of pesticides with VOC contents in excess of the VOC limit.

(4) *Revisions to the VOC limit.*

(i) EPA may, at any time, require producer(s) to reanalyze their pesticides according to the methodology described in paragraph (f) of this section and to submit the new data according to paragraph (d) of this section.

(ii) EPA may, at any time, revise the VOC limit consistent with the methodology described in paragraph (c)(2) of this section and based on information submitted pursuant to paragraph (c)(4)(i) of this section or elsewhere.

(d) *Reporting.*

(1) *Producers.* Reports submitted pursuant to paragraphs (c)(1)(i) and (c)(4)(i) of this section must include:

(i) Name, address, name of contact person, and telephone number of producer.

(ii) Name and description of pesticide product, including a copy of the pesticide product label.

(iii) Name, address and telephone number of the laboratory performing analysis; name of analyst; and date and time of analysis.

(iv) All raw data collected during analysis performed pursuant to paragraph (f) of this section. If, for example, TGA analysis is performed as described in paragraph (f)(1)(i) of this section, all thermograms produced must be submitted, as well as justification for rejecting any unacceptable thermogram.

(v) Summary and results of analysis performed pursuant to paragraph (f) of this section. If, for example, TGA analysis is performed, the summary of analysis shall include uncorrected weight percent VOC content (i.e., kg VOC per kg pesticide), weight percent water content, weight percent exempt solvents content, and weight percent VOC content corrected for water and exempt solvents, as applied.

(vi) Certification signed and dated by a responsible official of the producer stating the following:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) *Distributors.* Any person who distributes pesticides within the affected area must report the following information to EPA:

(i) *Distributor notification.* The distributor notification shall include the name, address, and telephone number of the distributor, and the name of a responsible official of the distributor. The report shall be postmarked not later than the date the VOC limit becomes effective (see paragraph (c)(3)(i) of this section) or 30 days after the distributor first begins distribution of pesticides, whichever is later.

(ii) *Annual report.* The annual report shall specify the type and amount of each pesticide sold, shipped, or otherwise distributed in the affected area. The annual report shall be submitted by January 30 of each year for the preceding year's data beginning with the year in which the effective date specified in paragraph (c)(3)(i) of this section occurs.

(3) *Applicators.* All applicators within the affected areas shall submit a copy of all PURs to EPA at the same time the PUR is submitted to DPR once the effective date specified in paragraph (c)(4)(ii) of this section occurs.

(e) *Recordkeeping.* All producers, distributors, and applicators must maintain all information necessary to demonstrate compliance with this section for a period of five (5) years. This information includes, but is not limited to, copies of all reports required in paragraph (d) of this section, and any technical support to those reports. Copies of this information must be provided to EPA upon request.

(f) *Test methods.*

(1) For the purposes of this section, the VOC content in pesticides shall be determined by the methods described in paragraphs (f)(1) (i) or (ii) of this section or by methods as stringent in accuracy, reliability, reproducibility, and frequency and approved by EPA.

(i) Thermogravimetric Analysis (TGA). The "American Standard Test Method (ASTM) for Compositional Analysis by Thermogravimetry" (ASTM E–1131–86) as modified in EPA's alternative control technology document (ACT) for pesticides ("Alternative Control Technology Document: Control of VOC Emissions from the Application of Agricultural Pesticides," EPA–453/R–92–011, March 1993, appendix C); or

(ii) Volatile Organics in Pesticides (VOP). The purge and trap procedure as described in EPA's ACT (EPA–453/R–92–011, appendix C).

(2) The exempt compound content of a pesticide may be determined by the statement of formulation required pursuant to FIFRA (7 U.S.C. 136a(c)(1)(E)).

(3) Pesticides that are diluted with VOC-containing material (e.g., gasoline, xylene, toluene, and other solvents), at any point before application, are to be tested diluted with said material at the average dilution used during application. Pesticides that are diluted with non-VOC-containing materials (e.g., water) are to be tested as sold rather than as applied.

§ 52.2961 Stationary and area source rules.

(a) *Solvent Cleaning Operations.*

(1) *Purpose and Applicability.* The purpose of this section is to reduce emissions of volatile organic compounds (VOC) from solvent cleaning operations, and from the storage and disposal of materials used in solvent cleaning operations. This section applies to any facility located in the affected area that uses VOC-containing materials in the production, repair, maintenance, or servicing of parts, products, tools, machinery, equipment, or general work areas, or that stores and/or disposes of VOC-containing materials used in solvent cleaning operations. For the purposes of this section, the affected area includes the Ventura County Area for ozone and the Sacramento Metro Area for ozone as described in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (a) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Aerosol product means a hand-held, nonrefillable container which expels pressurized product ingredients by means of a propellant-induced force.

Application line means that portion of a motor vehicle assembly production line which applies surface and other coatings to motor vehicle bodies, hoods, fenders, cargo boxes, doors, and grill opening panels.

Appurtenances means accessories to an architectural structure, including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, and large fixed stationary tools and concrete forms.

Architectural coatings means any coatings applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

Closed container means a container that encloses greater than 90% of the liquid surface area, except when depositing and removing objects to be cleaned or for maintenance and repair to the container itself.

Cured coatings, cured inks, and cured adhesives means coatings, inks, and adhesives which are dry to the touch.

Electronic components means circuit card assemblies, printed wire assemblies, printing wiring boards, soldered joints, ground wires, bus bars, and other electrical fixtures, except for the actual cabinet in which the components are housed.

Flexographic printing means a printing method utilizing flexible rubber or other elastomeric plate which employs rapid-drying liquid inks.

Grams of VOC per liter of material means the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where:

W_s=weight of volatile compounds in grams;

W_w=weight of water in grams;

W_{es}=weight of exempt compounds in grams; and

V_m=volume of material in liters.

Graphic arts means all screen, gravure, letterpress, flexographic, and lithographic printing processes.

Gravure printing means an intaglio process in which the ink is carried in minute etched or engraved wells on a roll or cylinder. The excess ink is removed from the surface by a doctor blade.

Institutions mean, but are not limited to, schools, hospitals, sanitariums, prisons, health clubs, and theaters.

Janitorial cleaning means the cleaning of building or facility components, such as the floor, ceiling, walls, windows, doors, stairs, bathrooms, etc.

Letterpress printing means the method in which the image area is raised relative to the nonimage area and the ink is transferred to the paper directly from the image surface.

Lithographic printing means a plane-o-graphic method in which the image and nonimage areas are on the same plane.

Liquid leak means a visible liquid solvent leak from a container at a rate of more than three drops per minute, or a visible liquid mist.

Maintenance cleaning means a solvent cleaning operation carried out to keep parts, products, tools, machinery, equipment, or general work areas in clean and good operational condition.

Manufacturing process means the process of making goods or articles by hand or by machinery.

Medical equipment means equipment used by physicians to cure diseases or conditions requiring surgical procedures that are implanted in the body or used during invasive medical procedures. Medical equipment includes, but is not limited to, heart valves, catheters, oxygenenators, pressure monitors, pharmaceutical and dental equipment.

Non-absorbent containers mean containers made of nonporous material which do not allow the migration of the liquid solvent through them.

Non-atomized solvent flow means the use of a solvent to remove uncured adhesives, uncured inks, uncured coatings, and contaminants from an article in the form of a liquid stream without atomization.

Non-leaking containers mean containers without liquid leaks.

Printing means any operation that imparts color, design, alphabet, or numerals on a substrate.

Remote reservoir cold cleaner means a cleaning device in which liquid solvent is pumped from a solvent container to a sink-like work area and the solvent from the sink-like area drains into an enclosed solvent container while parts are being cleaned.

Repair cleaning means a solvent cleaning operation carried out during a repair process.

Repair process means the process of returning a damaged object or an object not operating properly to good condition.

Screen printing means a process in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.

Solvent means a VOC-containing liquid used to perform solvent cleaning operations.

Solvent cleaning operation means the removal of loosely held uncured adhesives, uncured inks, uncured coatings, and contaminants which include, but are not limited to, dirt, soil, and grease from parts, products, tools, machinery, equipment, and general work areas. Each distinct method of cleaning in a cleaning process which consists of a series of cleaning methods shall constitute a separate solvent cleaning operation.

Solvent container means that part of a cleaning device that holds the solvent.

Solvent flushing means the use of a solvent to remove uncured adhesives, uncured inks, uncured coatings, or contaminants from the internal surfaces and passages of the equipment by flushing solvent through the equipment.

Stripping means the removal of cured coatings, cured inks, and cured adhesives.

Surface preparation means the removal of contaminants such as dust, soil, oil, grease, etc., prior to coating, adhesive, or ink applications.

Ultraviolet inks mean inks which dry by polymerization reaction induced by ultraviolet energy.

VOC composite partial pressure means the following:

$PP_c = A/B$

Where:

$$A = \sum_{i=1}^{n} (W_i)(VP_i)/MW_i$$

$$B = \frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}$$

and:

W_i=weight of the "i"th VOC compound, in grams;

W_w=weight of water, in grams;

W_e=weight of exempt compound, in grams;

MW_i=molecular weight of the "i"th VOC compound, in g/(g-mole);

MW_w=molecular weight of water, in g/(g-mole);

MW_e=molecular weight of exempt compound, in g/(g-mole);

PP_c=VOC composite partial pressure at 20 C, in mm Hg; and

VP_i=vapor pressure of the "i"th VOC compound at 20 C, in mm Hg.

Wipe cleaning means the method of cleaning a surface by physically rubbing it with a material such as a rag, paper, or a cotton swab moistened with a solvent.

(3) *Standards.*

(i) *Solvent requirements.* On and after January 1, 1996, a person shall not use a solvent to perform solvent cleaning operations, including the use of cleaning devices or methods, unless the solvent complies with the applicable requirements set forth below.

(A) *Substrate cleaning during manufacturing processes, and surface preparation for coating, adhesive, or ink applications.* The solvents used on substrates for cleaning during the manufacturing process or for surface preparation prior to coating, adhesive, or ink applications shall have a VOC content of 70 grams or less of VOC per liter of material.

(B) *Repair and maintenance cleaning.* The solvents used for repair or maintenance cleaning shall have a VOC content of 900 grams or less of VOC per liter of material and a VOC composite partial pressure of 20 mm Hg or less at 20 °C (68 °F).

(C) *Cleaning of coatings and adhesives application equipment.* The solvents used for cleaning coatings or adhesives application equipment shall have a VOC content of 950 grams or less of VOC per liter of material and a VOC composite partial pressure of 35 mm Hg or less at 20 °C (68 °F).

(D) *Cleaning of polyester resin application equipment.* The solvents used for cleaning polyester resin application equipment shall comply with one of the limits specified below:

(*1*) The solvent shall have a VOC content of 200 grams or less of VOC per liter of material; or

(*2*) The solvent shall have a VOC content of 1,100 grams or less of VOC per liter of material and a VOC composite partial pressure of 1.0 mm Hg or less at 20 °C (68 °F).

(E) *Cleaning of ink application equipment.* The solvents used for cleaning of ink application equipment in graphic arts shall meet the limits specified below.

(*1*) The solvents used in screen printing shall have a VOC content of 1,070 grams or less of VOC per liter of material and a VOC composite partial pressure of 5 mm Hg or less at 20 °C (68 °F).

(*2*) The solvents used in lithographic and letterpress printing not subject to provisions of paragraph (a)(3)(i)(E)(*4*) of this section shall have a VOC content of 800 grams or less of VOC per liter of material and a VOC composite partial pressure of 25 mm Hg or less at 20 °C (68 °F).

(*3*) The solvents used in gravure printing, flexographic printing, and printing operations not subject to provisions of paragraphs (a)(3)(i)(E)(*1*), (*2*), or (*4*) of this section shall have a VOC content of 100 grams or less of VOC per liter of material and a VOC composite partial pressure of 3 mm Hg at 20 °C (68 °F).

(*4*) The solvents used to remove ultraviolet inks from application equipment in graphic arts printing operations, except screen printing, shall have a VOC content of 800 grams or less of VOC per liter of material and a VOC composite partial pressure of 33 mm Hg or less at 20 °C (68 °F).

(F) *Cleaning of electronic components and medical equipment.* The solvents used for manufacturing or maintenance cleaning of electronic components or medical equipment shall have a VOC content of 900 grams or less of VOC per liter of material and a VOC composite partial pressure of 33 mm Hg or less at 20 °C (68 °F).

(ii) *Cleaning devices and methods requirements.* On and after January 1, 1996, a person shall not perform solvent cleaning operations unless one of the following cleaning devices or methods is used:

(A) Wipe cleaning;

(B) Spray bottles or closed containers from which solvents are applied without a propellant-induced force;

(C) Cleaning equipment using solvent within a closed container, except when depositing and removing objects to be cleaned, or for maintenance and repair to the cleaning equipment itself. This includes but is not limited to:

(*1*) Any cleaning device or mechanism which has been determined by EPA to result in equivalent or lower emissions; or

(*2*) Any remote reservoir cold cleaner used pursuant to the provisions of paragraph (a)(3)(iii) of this section;

(D) Non-atomized solvent flow method where the cleaning solvent is collected in a closed container; or

(E) Solvent flushing method where the cleaning solvent is discharged into a container. The discharged solvent from the equipment must be collected into containers without atomizing into the open air. The solvent may be flushed through the system by air or hydraulic pressure, or by pumping.

(iii) *Remote reservoir cold cleaners.* On and after January 1, 1996, any person owning or operating a remote reservoir cold cleaner shall comply with all of the following requirements:

(A) Prevent solvent vapors from escaping from the solvent container by using such devices as a cover or a valve when the remote reservoir is not being used, cleaned, or repaired;

(B) Direct solvent flow in a manner that will prevent liquid solvent from splashing outside of the remote reservoir cold cleaner;

(C) Not degrease porous or absorbent materials, such as cloth, leather, wood, or rope; and

(D) Use only solvent containers free of all liquid leaks. Auxiliary equipment, such as pumps, pipelines, or flanges, shall not have any liquid leaks, visible tears, or cracks. Any liquid leak, visible tear, or crack detected shall be repaired within one calendar day, or the leaking section of the remote reservoir cold cleaner shall be drained of all solvent and shut down until it is replaced or repaired.

(iv) *Storage and disposal.*

(A) All VOC-containing solvents shall be stored in non-absorbent, non-leaking containers which shall be kept closed at all times except when filling or emptying.

(B) All waste solvent and waste solvent residues shall be disposed of by at least one of the following methods:

(*1*) Disposal through a commercial reclamation service;

(*2*) Disposal at a facility that is federally or state licensed to treat, store or dispose of such waste; or

(*3*) Disposal by recycling in conformance with § 25143.2 of the California Health and Safety Code.

(v) *Emission control system.* In lieu of complying with the requirements in paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(v)(A) of this section, a person may comply by using an emission control system in association with the solvent cleaning operation regulated by this section provided:

(A) The emission control system maintains a capture efficiency of at least 90%, by weight, of the emissions generated by the solvent cleaning operation and a destruction or removal efficiency of at least 95% by weight; or

(B) The emission control system maintains a capture efficiency of at least 90%, by weight, of the emissions generated by the solvent cleaning operation and the output of the control system is less than 50 parts per million (ppm) calculated as carbon with no dilution; or

(C) The emission control system meets the requirements of an applicable source-specific section of the Federal or federally approved State Implementation Plan.

(vi) *General prohibitions.*

(A) On and after January 1, 1996, a person shall not atomize any solvent into open air.

(B) On and after January 1, 1996, a person shall not specify or require any person to use solvent or equipment subject to the provisions of this section that do not meet the requirements of this section.

(4) *Exemptions.*

(i) The following solvent cleaning operations are not subject to any provision of paragraph (a)(3) of this section.

(A) Cleaning performed in batch-loaded cold cleaners, open-top vapor degreasers, conveyorized degreasers, or film cleaning machines which are regulated under an equivalent (i.e., equally stringent) source-specific section contained in the Federal or federally approved State Implementation Plan.

(B) Cleaning operations performed at solvent dry cleaners and perchloroethylene dry cleaning systems which are regulated under an equivalent (i.e., equally stringent) source-specific section contained in the Federal or federally approved State Implementation Plan.

(C) Cleaning operations performed at semiconductor manufacturing facilities which are regulated under an equivalent (i.e., equally stringent) source-specific section contained in the Federal or federally approved State Implementation Plan.

(D) Cleaning operations performed at aerospace assembly and component manufacturing facilities which are regulated under an equivalent (i.e., equally stringent) source-specific section contained in the Federal or federally approved State Implementation Plan, except coating application equipment cleaning, and storage and disposal of VOC-containing materials used in solvent cleaning operations.

(E) Cleaning operations performed at remote reservoir cold cleaners which are regulated under an equivalent (i.e., equally stringent) source-specific section contained in the Federal or federally approved State Implementation Plan.

(F) Janitorial cleaning.

(G) Stripping of cured coatings, cured adhesives, and cured inks.

(H) Cleaning operations using solvents with a water content of 98% or more by weight.

(I) Cleaning operations using solvents for clean up of polyester resin application equipment provided they do not exceed 4 gallons a day.

(ii) Wipe cleaning is not subject to the provisions of paragraph (a)(3)(i) of this section when carried out for any of the following applications.

(A) Cleaning of solar cells, laser hardware, and high-precision optics.

(B) Cleaning for conducting performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories.

(C) Cleaning of polycarbonate plastics.

(iii) Internal cleaning of the tips of automated spray equipment systems, except for robotic systems, and cleaning with spray bottles or containers described in paragraph (a)(3)(ii)(B) of this section, are not subject to the provisions of paragraph (a)(3)(vi)(A) of this section.

(iv) Cleaning with aerosol products shall not be subject to the provisions of paragraphs (a)(3)(i) and (a)(3)(v)(A) of this section if 160 fluid ounces or less per day per facility of aerosol products are used.

(v) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics shall not be subject to paragraph (a)(3)(i) of this section.

(vi) A facility which uses non-compliant solvents in quantities less than 1 gallon a week shall not be subject to paragraphs (a)(3)(i)(A) and (B) of this section for those solvents.

(vii) Maintenance cleaning conducted at institutions and residential dwellings shall not be subject to paragraph (a)(3)(i)(B) of this section.

(5) *Reporting and Recordkeeping.*

(i) Records shall be maintained pursuant to paragraph (a)(5)(ii) of this section for all applications subject to this section, including those exempted under paragraph (a)(4) of this section, except for cleaning operations performed with a solvent which has a water content of 98% or more, by weight, or a VOC composite partial pressure of 0.1 mm Hg or less at 20 °C (68 °F).

(ii) Any source within the affected area that uses greater than 20 gallons per year of VOC-containing materials used in solvent cleaning operations shall comply with the following requirements:

(A) Maintain a current file of each VOC-containing material in use and in storage for solvent cleaning operations. The file shall provide all of the data necessary to evaluate compliance and shall include, but not be limited to, the following information, as applicable:

(*1*) A data sheet or material list giving material name, manufacturer identification and material application;

(*2*) Any thinners or other components used and the mix ratio; and

(*3*) The VOC content limit or vapor pressure limit from paragraph (a)(3) of this section and the actual VOC content, as applied, or vapor pressure of the solvent used for cleaning operations.

(B) Maintain records of the monthly volume of each solvent used.

(C) When compliance is achieved through the use of add-on control equipment pursuant to paragraph (a)(3)(v) of this section, maintain records on a daily basis of key operating parameters for the emission control equipment, including, but not limited to:

(*1*) Hours of operation;

(*2*) Routine and nonroutine maintenance;

(*3*) All information needed to demonstrate continuous compliance with paragraph (a)(3)(v) of this section, such as temperatures, pressures, and flowrates; and

(*4*) Maintain records of the daily volume of each VOC-containing solvent subject to abatement by add-on control equipment.

(D) Maintain records sufficient to demonstrate compliance with paragraph (a)(3)(iv)(B) of this section including, but not limited to:

(*1*) Date;

(*2*) Source of waste (e.g., "waste solvent from cold cleaner");

(*3*) Description of waste (e.g., "rags in two 55 gallon drums with 5–10% liquid");

(*4*) Amount of solvent in waste shipment; and

(*5*) Destination of each shipment of waste solvent and/or waste solvent residues off-site.

(E) All records shall be maintained for at least five years and shall be provided to EPA upon request.

(6) *Test Methods.* For the purpose of this section, the following test methods shall be used. VOC emissions or other parameters determined to exceed any limits established by this section through the use of any of the following test methods shall constitute a violation of the section.

(i) The VOC content of materials subject to the provisions of this section shall be determined by EPA Method 24 (40 CFR part 60, appendix A).

(ii) The efficiency of the collection device of the emissions control system, as specified in paragraph (b)(3)(v)(A) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iii).

(iii) The efficiency of the control device of the emission control system, as specified in paragraph (b)(3)(v)(B) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iv). The VOC content measured and calculated as carbon in the control device exhaust gases shall be determined by EPA Method 25 or 25A (40 CFR part 60, appendix A).

(iv) The identity of components in solvents shall be determined by EPA Method 18 (40 CFR part 60, appendix A).

(v) Vapor pressure of a VOC shall be determined by ASTM Method D2879–86 or may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973); Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984); CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87); and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(b) *Wood Products Coatings.*

(1) *Applicability.* This section applies to all persons applying coating, inks, stains, and/or strippers in wood product coating operations for the purpose of manufacture of wood products, including furniture and other coated objects made of solid wood and/or wood composition, and/or simulated wood material. This section shall not apply to residential noncommercial operations. For the purposes of this section, the affected area is the Sacramento Metro Area for ozone and the Ventura County Area for ozone as described in § 81.305.

(2) *Definitions.* For the purposes of paragraph (b) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Aerosol-spray coating means a coating which is sold in a hand-held, pressurized, non-refillable container of sixteen ounces or less and which is expelled from the container in a finely divided spray when a valve on the container is depressed.

Binders means non-volatile polymeric organic materials (resins) which form the surface film in coating applications.

Clean topcoat means a final coating which contains binders, but not opaque pigments, and is specifically formulated to form a transparent or translucent solid protective film.

Coating means a material which is applied to a surface and which forms a film in order to beautify and/or protect such surface.

Dip coat means to dip an object into a vat of coating material and drain off any excess coating.

Electrostatic application means charging of atomized paint droplets for deposition by electrostatic attraction.

Filler means a preparation used to fill in cracks, grains, etc., of wood before applying a coating.

Flow coat means to coat an object by flowing a stream of coating over an object and draining off any excess coating.

Grams of VOC per liter of material means the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where:

Ws=weight of volatile compounds in grams

Ww=weight of water in grams

Wes=weight of exempt compounds in grams

Vm= volume of material in liters

High-solids stains means stains containing more than 1 pound of solids per gallon, by weight, and can include wiping stains, glazes, and opaque stains.

High-volume, low-pressure (HVLP) spray means to spray a coating by means of a gun that operates between 0.1 and 10.0 pounds per square inch gauge (psig) air pressure.

Ink means a fluid that contains dyes and/or colorants and is used to make markings, but not to protect surfaces.

Low-solids stains means stains containing 1 pound of solids per gallon, or less, by weight.

Mold-seal coating means the initial coating applied to a new mold or repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

Multi-colored coating means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

Pigmented coatings means opaque coatings which contain binders and colored pigments which are formulated to hide the wood surface, either as an undercoat or topcoat.

Rate per calendar year means the amount applied between 12 a.m. January 1 and 11:59 p.m. December 31.

Rate per day means the amount applied between 12 a.m. and 11:59 p.m. on the same calendar day.

Repair coating means a coating used to recoat portions of a product which has sustained mechanical damage to the coating following normal painting operations.

Roll coater means a series of mechanical rollers that forms a thin coating film on the surface of the roller, which is applied to a substrate by moving the substrate underneath the roller.

Sealer means a coating, containing binders, which seals the wood prior to application of the subsequent coatings.

Simulated wood materials means materials, such as plastic, glass, metal, etc., that are made to give a wood-like appearance or are processed like a wood product.

Stencil coating means an ink or a pigmented coating which is rolled or brushed onto a template or stamp in order to add identifying letters and/or numbers to wood products.

Stripper means a liquid used to remove cured coatings, cured inks, and/or cured adhesives.

Toner means a wash coat which contains binders and dyes or pigments to add tint to a coated surface.

Touch-up coating means a coating used to cover minor coating imperfections appearing after the main coating operation.

Wash coat means a coating that contains no more than 1.0 pound of solids per gallon, by weight, which is used to seal wood surfaces, prevent undesired staining, and control penetration.

Wood product coating application operations means a combination of coating application steps which may include use of spray guns, flash-off areas, spray booths, ovens, conveyors, and/or other equipment operated for the purpose of applying coating materials.

Wood products means those surface-coated room furnishings which include cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, and any other coated objects made of solid wood, and/or wood composition, and/or made of simulated wood material used in combination with solid wood or wood composition.

(3) *Standards.*

(i) *VOC Content of Coatings and Strippers.*

(A) A person or facility shall not apply any coating to a wood product which has a VOC content, including any VOC-containing material added to the original coating supplied by the manufacturer, which exceeds the applicable limit specified below:

Coating	VOC limits—Grams per liter of material less water and less exempt compounds			
	On and after 1/1/96		On and after 7/1/96	
	(g/L)	(lb/gal)	(g/L)	(lb/gal)
Clear topcoats	275	(2.3)	275	(2.3)
Filler	500	(4.2)	275	(2.3)
High-solid stains:				
Non-glaze	700	(5.8)	240	(2.0)
Glaze	700	(5.8)	240	(2.0)
Inks	500	(4.2)	500	(4.2)
Mold-seal coating	750	(6.3)	750	(6.3)
Multi-colored coating	275	(2.3)	275	(2.3)
Pigmented coating	275	(2.3)	275	(2.3)
Sealer	550	(4.6)	240	(2.0)
Strippers	350	(2.9)	350	(2.9)
Low-solids stains, toner, or washcoat	480	(4.0)	120	(1.0)

(B) *Emission control system.* A person or facility may comply with the provisions of paragraph (b)(3)(i)(A) of this section by using an emission control system, provided that this system maintains a control efficiency (capture efficiency times destruction or removal efficiency) of the VOC emissions of at least 85 (eighty-five) percent by weight.

(ii) *Transfer Efficiency.* A person or facility shall not apply a coating subject to this section except by means of the following application methods:

(A) Electrostatic spray application;

(B) Flow coat application;

(C) Dip coat application;

(D) Hand application methods;

(E) High-volume low-pressure (HVLP) spray application; or

(F) Other coating application methods that are demonstrated to have a transfer efficiency at least equal to HVLP in the application, and which are used in such a manner that parameters under which they were tested are permanent features of the method. Such coating application methods shall be approved in writing by EPA.

(iii) *Solvent cleaning operations; storage and disposal of VOC-containing materials.* Cleanup solvents used for surface preparation, equipment cleanup, and thinning operations, including storage and disposal of VOC-containing materials, shall be subject to the provisions and requirements of § 52.2961(a), Solvent cleaning operations.

(iv) *Prohibition of specifications.* A person shall not specify the use in the affected area of any coating to be applied to any wood products subject to the provisions of this section that does not meet the limits and requirements of this section.

The requirements of this paragraph shall apply to all written or oral contracts.

(4) Exemptions.

(i) The provisions of paragraphs (b)(3)(i) and (ii) of this section shall not apply to:

(A) Aerosol-spray coatings for touch up and repair; or

(B) Facilities that use less than 1 gallon per day of coating subject to this section.

(ii) The provisions of this section shall not apply to coating operations for the purpose of manufacturing a finished wood panel intended for attachment to the inside walls of buildings, including, but not limited to, homes and office buildings, mobile homes, trailers, prefabricated buildings and similar structures, boats, and ships; or a finished exterior wood siding intended for use in construction.

(5) *Reporting and Recordkeeping.* Any source within the affected area that uses greater than 1 gallon of wood product coating materials (coatings, inks, fillers, stains, strippers, toners, washcoats, or solvents) per day shall comply with the following requirements:

(i) Maintain a current file of each wood product coating material in use and storage. This file shall provide all of the data necessary to evaluate compliance and shall include, but not be limited to, the following information, as applicable:

(A) A data sheet or material list giving material name, manufacturer identification, and material application;

(B) Any catalysts, reducers, or other components used and the mix ratio; and

(C) The VOC content limit from paragraph (b)(3) of this section and the actual VOC content, as applied, or vapor pressure of the wood product coating material.

(ii) Maintain records of the monthly volume (e.g., gallons) of each wood product coating material.

(iii) Control equipment records. Any person using an emission control system as a means of complying with this section shall maintain daily records of key system operating and maintenance procedures which will demonstrate continuous operation and compliance of the emission control device during periods of emission producing activities. Key system operating parameters are those necessary to ensure compliance with the requirements of paragraph (b)(3)(i)(B) of this section such as temperatures, pressures, and flowrates.

(iv) All records shall be maintained for at least five years and shall be made available to EPA upon request.

(6) *Test Methods.*

(i) *Determination of VOC content.*

(A) The VOC content of coatings and strippers shall be determined by using EPA Method 24 (40 CFR part 60, appendix A).

(B) The exempt compound content of coatings and strippers shall be determined by ASTM Method D–4457–85, which is limited to the measurement of dichloromethane and 1,1,1-trichloroethane only.

(C) The VOC content of emissions shall be determined by EPA Method 18 (40 CFR part 60, appendix A).

(ii) *Equipment test methods.*

(A) *Capture efficiency.* The efficiency of the collection device of the emission control system, as specified in paragraph (b)(3)(i)(B) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iii).

(B) *Destruction or removal efficiency.* The efficiency of the control device of the emission control system, as specified in paragraph (b)(3)(i)(B) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iv). The VOC content measured and calculated as carbon in the control device exhaust gases shall be determined by EPA Method 25 or Method 25A (40 CFR part 60, appendix A).

(C) *Transfer efficiency.* The transfer efficiency for other coating application methods, as defined in paragraph (b)(3)(ii)(6) of this section, shall be determined in accordance with South Coast Air Quality Management District (SCAQMD) method "Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989." This transfer efficiency (TE) test method is approved only for the limited purpose of comparing alternative application technologies under controlled conditions. The results of these tests are not transferable to a production setting. The test method is not acceptable for determining TE to establish VOC emission reduction credits to allow the use of higher VOC coatings, or to establish VOC credits for trading or offset purposes.

(c) *Automotive refinishing operations.*

(1) *Applicability.* This section applies to all coating operations of Group I vehicles and Group II vehicles and equipment, as described in paragraph (c)(2) of this section, or their existing parts and components, for the purpose of on-site refinishing and modification except Original Equipment Manufacturer (OEM) coatings applied at manufacturing plants. Facilities with coating operations considered within the scope of this section include: autobody repair/paint shops, production autobody paint shops, new car dealer repair/paint shops, fleet operator repair/paint shops, custom-made car fabrication facilities, and truck body-builders. For the purposes of this section, the affected area is the Sacramento Metro Area for ozone as described in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (c) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Acrylic enamel means an enamel coating derived from an acrylic polymer containing hydroxyl functionality.

Adhesion promoter means a coating applied over both an existing non-sanded topcoat and the coated area immediately adjacent to the non-sanded topcoat, to promote the adhesion of a subsequent topcoat. No topcoat, primer, primer sealer, or primer surfacer shall be classified as an adhesion promoter.

Alkyd enamel means an enamel coating derived from any of several different synthetic resins made by heating together a polybasic acid, such as phthalic or maleic acid, and a polyhydric alcohol, such as glycerin or a glycol.

Anti-glare safety coating means a coating formulated to eliminate glare for safety purposes on interior surfaces of a vehicle and which shows a reflectance of 25 or less on a 60° gloss meter.

Basecoat means a pigmented topcoat which is the first topcoat applied as part of a multistage topcoat system.

Basecoat/clearcoat topcoat system means a topcoat system composed of a basecoat portion and a clearcoat portion. The VOC content of a basecoat/clearcoat topcoat system shall be calculated according to the following formula:

$$VOC_{ms} = \frac{VOC_{bc} + 2\ VOC_{cc}}{3}$$

Where:

VOC_{ms}=the composite VOC content, less water and less exempt compounds to be used for compliance determination under the multistage topcoat system coating category.

VOC_{bc}=the VOC content, less water and less exempt compounds as applied, of any given basecoat.

2 VOC_{cc}=two times the VOC content, less water and less exempt compounds as applied, of any given clearcoat.

Bright metal trim repair coating means a coating applied directly to chrome-plated metal surfaces for the purpose of appearance.

Bus means any motor vehicle having a manufacturer's gross vehicle weight of more than 8,600 pounds, which is designed primarily for the transportation of persons and has a design capacity of over 12 persons.

Clearcoat means a topcoat which contains no pigments or only transparent pigments and which is the final topcoat applied as a part of a multistage topcoat system.

Coating means a material which is applied to a surface and which forms a film in order to beautify and/or protect such surface.

Elastomeric materials mean coatings which are specifically formulated and applied over coated or uncoated flexible plastic substrates for the purpose of adhesion.

Electrostatic application means charging of atomized paint droplets for deposition by electrostatic attraction.

Enamel means a coating that cures by chemical cross-linking of its base resin. Enamels can be readily distinguished from lacquers because enamels are not resoluble in their original solvent.

Extreme-performance topcoat means a topcoat used on the surface of Group II vehicles and mobile equipment, and which qualifies under the provisions of paragraph (c)(6)(vii) of this section.

General topcoat means any type of topcoat except extreme-performance topcoat, metallic topcoat, and any topcoat applied as part of a multistage topcoat system.

Grams of VOC per liter of material means the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where:

W_s=weight of volatile compounds in grams;

W_w=weight of water in grams;

W_{es}=weight of exempt compounds in grams; and

V_m=volume of material in liters.

Group I vehicles mean passenger cars, small-sized trucks and vans, medium-sized trucks and vans, motor homes, and motorcycles.

Group II vehicles and equipment mean large-sized trucks, buses, street and mobile equipment.

High-volume, low-pressure (HVLP) spray means equipment used to spray a coating by means of a gun that operates between 0.1 and 10 pounds per square inch gauge (psig) air pressure.

Highway means a way or place of whatever nature, publicly maintained and open to the public for purposes of vehicular travel. Highway includes street.

Impact-resistant coating means any coating applied to a rocker panel for the purpose of chip resistance to road debris.

Lacquer means a coating which dries primarily by solvent evaporation and, hence, is resoluble in its original solvent.

Metallic/iridescent topcoat means a topcoat which contains iridescent particles, composed of either metal as metallic particles or silicon as mica particles, in excess of 5 g/L (0.042 lb/gal) as applied, where such particles are visible in the dried film.

Midcoat means a semi-transparent topcoat which is the middle topcoat applied as part of a three-stage topcoat system.

Mobile equipment means self-propelled equipment which is physically capable of being driven on a highway. Mobile equipment includes, but is not limited to, the following: truck bodies, truck trailers, utility bodies, camper shells, and miscellaneous hauling equipment.

Motor home means any motor vehicle originally designed, or permanently altered, and equipped for human habitation as defined in Section 362 of the California Vehicle Code.

Motor vehicle means a vehicle which is self-propelled and which is physically capable of being driven on a highway.

Motorcycle means any motor vehicle other than a tractor having a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels in contact with the ground and weighs less than 1,500 pounds. Four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

Multistage topcoat system means any basecoat/clearcoat topcoat system or any three-stage topcoat system, manufactured as a system, and used as specified by the manufacturer.

Passenger car means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

Polyurethane enamel means an enamel coating derived from a thermosetting polymer produced by the condensation reaction of a polyisocyanate and an hydroxyl-containing material.

Precoat coating means a coating applied to bare metal primarily to deactivate the metal surface for corrosion resistance to a subsequent water-base primer.

Pretreatment coating means a coating which contains no more than 12 percent solids, by weight, and at least ½-percent acid, by weight, which is used to provide surface etching and is applied directly to bare metal surfaces to provide corrosion resistance and adhesion.

Primer means a coating applied for purposes of corrosion resistance or adhesion of subsequent coatings.

Primer sealer means a coating applied prior to the application of a topcoat for the purpose of color uniformity, or to promote the ability of an underlying coating to resist penetration by the topcoat.

Primer surfacer means a coating applied for the purpose of corrosion resistance or adhesion, and which promotes a uniform surface by filling in surface imperfections.

Rocker panel means the panel area of a motor vehicle which is no more than 10 inches from the bottom of a door, quarter panel, or fender.

Rubberized asphaltic underbody coating means a coating applied to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of the motor vehicle itself for the purpose of sound deadening or protection.

Specialty coating means any of the following coatings: adhesion promoters, uniform finish blenders, elastomeric materials, anti-glare safety coatings, impact-resistant coatings, rubberized asphaltic underbody coatings, water hold-out coatings, weld-thru coatings, and bright metal trim repair coatings.

Spot repairs mean repairs to motor vehicles in which the damaged area to be repaired is limited to only a portion of any given panel so that an entire panel need not be repaired.

Stencil coating means an ink or a pigmented coating which is rolled or brushed onto a template or a stamp in order to add identifying letters, symbols, and/or numbers to motor vehicles, mobile equipment, or their parts and components.

Three-stage topcoat system means a topcoat system composed of a basecoat portion, a midcoat portion and a transparent clearcoat portion. The VOC content of a three-stage topcoat system shall be calculated according to the following formula:

$$VOC_{ms} = \frac{VOC_{bc} + VOC_{mc} + 2\ VOC_{cc}}{4}$$

Where:

VOCms=the composite VOC content, less water and less exempt compounds to be used for compliance determination under the multistage topcoat system coating category.

VOCbc=the VOC content, less water and less exempt compounds as applied, of any given basecoat.

VOVmc=the VOC content, less water and less exempt compounds as applied, of any given midcoat.

2 VOCcc=two times the VOC content, less water and less exempt compounds as applied, of any given clearcoat.

Topcoat means a coating applied over any coating, for the purpose of appearance, identification, or protection.

Touch-up coating means a coating applied by brush or non-refillable aerosol can to cover minor surface damage and dispensed in containers of no more than 8 ounces.

Truck means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(1) *Large-sized truck* means a truck having a manufacturer's gross vehicle weight rating of more than 8,600 pounds.

(2) *Medium-sized truck* means a truck having a manufacturer's gross vehicle weight of 6,001 to 8,600 pounds.

(3) *Small-sized truck* means any motor vehicle having a manufacturer's gross vehicle weight rating at 6,000 pounds or less and which is designed primarily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling on-street or off-highway operation and use.

Uniform finish blenders mean coatings which are applied in spot repairs for the purpose of blending a paint overspray area of a repaired topcoat to match the appearance of an adjacent existing topcoat.

Van means a closed truck for carrying property or persons.

(1) *Medium-sized van* means a van having a manufacturer's gross vehicle weight rating of 6,001 to 8,600 pounds.

(2) *Small-sized van* means a van having a manufacturer's gross vehicle weight rating at 6,000 pounds or less and which is designed primarily for purposes of transportation of property and/or persons.

Vehicle means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

Water hold-out coating means a coating applied to the interior cavity areas of doors, quarterpanels, and rocker panels for the purpose of corrosion resistance to prolonged water exposure.

Weld-thru coating means a coating applied to metal immediately prior to welding to provide corrosion resistance.

(3) *Standards.*

(i) *VOC content of coatings.* On and after January 1, 1996, a person shall not apply a coating to Group I vehicles and Group II vehicles and equipment, or their existing parts and components, which has a VOC content which exceeds the limits contained in paragraphs (c)(3)(i) (A) and (B) of this section. Compliance with the VOC limits shall be based on VOC content including any VOC material added to the original coating supplied by the manufacturer, less water and exempt solvent, as applied to the vehicle, mobile equipment, or parts and components.

(A) *Group I vehicles.* A person who refinishes Group I vehicles, or their existing parts or components, or replacement parts or components, shall not apply a coating which has a VOC content in excess of the limits in the table of group 1 vehicle VOC limits

TABLE OF GROUP I VEHICLE VOC LIMITS

VOC limits—Grams per liter of coating, less water and exempt compounds	Coating	
	g/L	lb/gal
Pretreatment	780	6.5
Precoat	250	2.1
Primer/primer surfacer	250	2.1
Primer sealer	340	2.8
Topcoats	420	3.5
Acrylic enamel	420	3.5
Alkyd enamel	420	3.5
Polyurethane enamel	420	3.5
Lacquer	420	3.5
General	420	3.5
Metallic/iridescent	420	3.5
Multistage system	420	3.5
Specialty Coating	840	7.0

(B) *Group II vehicles and equipment.* A person who refinishes Group II vehicles and equipment, or their existing parts or components, or replacement parts or components, shall not apply a coating which has a VOC content in excess of the limits in the table of group II vehicle VOC limits.

TABLE OF GROUP II VEHICLE VOC LIMITS

VOC limits—grams per liter of coating, less water and exempt compounds	Coating	
	g/L	lb/gal
Pretreatment	780	6.5
Precoat	250	2.1
Pretreatment	780	6.5
Primer/Primer Surfacer/ Primer Sealer	250	2.1
Topcoats	340	2.8
General	340	2.8
Metallic/Iridescent	•340	•2.8
Multistage	•340	•2.8
Extreme-Performance	340	2.8
Specialty Coating	840	7.0

•Metallic topcoat and multistage topcoat system VOC content limits do not apply to spot repairs of Group II vehicles and mobile equipment. The use of metallic topcoats and multistage topcoat systems in spot repairs on Group II vehicles and mobile equipment shall be subject to the VOC content limits of paragraph (c)(3)(i)(A) of this section.

(ii) *Specialty coatings.* Use of all specialty coatings at a facility, as defined in paragraph (c)(2) of this section, shall not exceed 5.0% of all coatings applied, by volume, on a daily basis.

(iii) *Transfer efficiency.*

(A) A person shall not apply coatings subject to the provisions of this section except by the use of one of the following methods:

(*1*) Electrostatic application;

(*2*) High-volume, low-pressure (HVLP) spray;

(*3*) Flow coat;

(*4*) Roll coat;

(*5*) Dip coat;

(*6*) Hand application methods; or

(*7*) Other coating application methods that are demonstrated to have transfer efficiency at least equal to HVLP spray equipment in the application, and which are used in such a manner that the parameters under which they were tested are permanent features of the method. Such coating application methods shall be approved in writing by EPA.

(B) A person shall not apply coatings by any of the methods listed in paragraph (c)(3)(iii)(A) of this section unless the coating is applied with properly operating equipment and operated according to procedures recommended by the manufacturer.

(iv) *Cleanup solvent use.* Solvents used for surface preparation, equipment cleanup, and thinning operations, including storage and disposal of VOC-containing materials, shall be subject to the provisions and requirements of § 52.2961(a).

(v) *Emission control system.* A person may comply with the provisions of paragraph (c)(3)(i) of this section by using an emission control system, provided that this system maintains a control efficiency (capture efficiency times destruction or removal efficiency) of the VOC emissions of at least 85 (eighty-five) percent by weight.

(vi) *Prohibition of specifications.*

(A) A person shall not solicit from, or require any other person to use in the affected area, any VOC-containing material subject to the provisions of this section which, when applied as supplied or thinned or reduced according to the manufacturer's recommendation for application, does not meet the limits and requirements of this section. The prohibition against soliciting, or requiring the use of VOC-containing materials shall not apply with respect to solicitations from or requirements of persons operating pursuant to an approved emission control system, as provided for in paragraph (c)(3)(v) of this section.

(B) The requirements of this paragraph shall apply to all written or oral agreements executed and entered into.

(4) *Exemptions.*

(i) The provisions of paragraphs (c)(3)(i) and (iii) of this section shall not apply to:

(A) Touch-up coatings; or

(B) Stencil coatings.

(ii) The exemptions described in paragraphs (c)(4)(i) (A) and (B) of this section shall not apply to aerosol container applications.

(5) *Recordkeeping requirements.* Any person subject to this section shall comply with the following requirements:

(i) The person shall maintain and have available during an inspection the listed category of each of the coatings and the type of vehicle or equipment to which each coating was applied.

(ii) The person shall maintain and have available during an inspection a current list of coatings in use which provides all of the coating data necessary to evaluate compliance, including the following information, as applicable:

(A) Coating, catalyst, additives, and reducer used;

(B) Mix ratio of components used; and

(C) VOC content of coating as applied.

(iii) The person shall maintain records on a daily basis, including the following information:

(A) Coating and mix ratio of components in the coating used; and

(B) Quantity of each coating applied.

(iv) Any person using an emission control system as a means of complying with this section shall maintain daily records of key system operating and maintenance procedures which will demonstrate continuous operation and compliance of the emission control device during periods of emission-producing activities. Key system operating parameters are those necessary to ensure compliance with VOC content of coating requirements such as temperatures, pressures, and flowrates.

(v) All records shall be retained at the facility for at least five years and shall be provided to EPA upon request.

(6) *Test methods.* For the purposes of this section, the following test methods shall be used:

(i) *VOC content.*

(A) The VOC content of coatings shall be determined by EPA Method 24 (40 CFR part 60, appendix A);

(B) The VOC content of emissions shall be determined by EPA Method 18 (40 CFR part 60, appendix A); and

(C) The exempt compound content of coatings shall be determined by ASTM Test Method D-4457-85.

(ii) *Determination of iridescent particles in metallic/iridescent topcoat* The metal and silicon content of metallic/iridescent topcoat shall be determined by SCAQMD Method 26

(SCAQMD "Laboratory Method of Analysis for Enforcement Samples" manual).

(iii) *Acid content in pretreatment coatings.* The acid content of pretreatment coatings shall be determined by ASTM Test Method D–1613–85 (modified).

(iv) *Determination of efficiency of emission control systems.*

(A) *Capture efficiency.* The efficiency of the collection device of the emission control system, as specified in paragraph (c)(3)(v) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iii).

(B) *Destruction or removal efficiency.* The efficiency of the control device, as specified in paragraph (c)(3)(v) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iv). The VOC content measured and calculated as carbon in the control device exhaust gases shall be determined by EPA Method 25 or 25A (40 CFR part 60, appendix A).

(v) *Reflectance of anti-glare safety coatings.* The reflectance of anti-glare safety coatings shall be measured by ASTM Test Method D–523.

(vi) *Transfer efficiency.* The transfer efficiency for alternative coating application methods, as defined in paragraph (c)(3)(iii)(A)(*7*) of this section, shall be determined in accordance with the South Coast Air Quality Management District (SCAQMD) test method for determining transfer efficiency entitled, "Spray Equipment Transfer Efficiency (TE) Test Procedure for Equipment User, May 24, 1989." This transfer efficiency method is approved for the limited purpose of comparing alternative application technologies under controlled conditions. The results of these tests are not transferable to a production setting. The test method is not acceptable for determining transfer efficiency to establish VOC emission reduction credits to allow the use of higher VOC coatings, or to establish VOC credits for trading or offset purposes.

(vii) *Qualification and petition for classification as an extreme-performance topcoat.*

(A) *Extreme-performance topcoat qualification.* A topcoat is an extreme-performance topcoat if it is to be applied on Group II vehicles and equipment and will be repeatedly exposed to any of the following:

(*1*) Heavy abrasion, including mechanical wear and repeated scrubbing with industrial-grade detergents, cleaners, solvents, or abrasive scouring agents;

(*2*) Temperatures in excess of 250 F;

(*3*) Corrosive, caustic, or acidic agents, chemicals, chemical fumes, chemical mixtures or solutions; or

(*4*) Other similar environmental conditions as determined by EPA.

(B) *Extreme-performance coating petition.* Any person seeking to use an extreme-performance coating in any coating operation which is subject to the provisions of this section shall comply with the following requirements:

(*1*) A petition shall be submitted to EPA stating the performance requirements, volume of coating, and VOC level which is attainable.

(*2*) If EPA grants written approval, such petition will be repeated on an annual basis.

(*3*) If EPA grants written approval, such approval shall contain volume and VOC limit conditions.

(*4*) Records shall be maintained as in paragraph (c)(5) of this section.

(d) *Adhesives and sealants.*

(1) *Applicability.* This section applies to any person who supplies, sells, offers for sale, or uses adhesives, sealants, or adhesive primers in the affected area. This section does not apply to household adhesives which are subject to consumer products regulations in the California Code of Regulations (Title 17, Division 3, Subchapter 8.5—Consumer Products, §§ 94507–94517). For the purpose of this section, the affected area refers to the Sacramento Metro Area for ozone as described at 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (d) of this section, the following definitions apply. All terms not defined herein shall have the meaning given them in § 52.2950.

ABS adhesive means any substance that is intended for welding acrylonitrile butadiene styrene (ABS) plastic pipe.

Adhesive means any substance that is used to bond one surface to another surface by attachment.

Adhesive primer means a coating that is intended by the manufacturer to be applied to a substrate, prior to the application of an adhesive, to provide a bonding surface.

Aerosol adhesive means a mixture of rubber, resins, and liquid and gaseous solvents and propellants packaged in a disposable container for hand-held application.

Aerospace component means the fabricated part, assembly of parts, or completed unit of any aircraft or space vehicle excluding tires.

Aircraft means any machine designed to travel through the air without leaving the earth's atmosphere, whether heavier or lighter than air, including airplanes, balloons, dirigibles, helicopters, and missiles.

Automotive glass primer means any adhesive primer that is intended by the manufacturer to be applied to automotive glass prior to installation with an adhesive/sealant. This primer improves adhesion to the pinch weld and blocks ultraviolet light.

Ceramic tile installation means the installation of ceramic tile products using an adhesive formulated for that purpose.

Computer diskette manufacturing means the process where the fold-over flaps are glued to the body of a vinyl jacket.

Contact adhesive means any adhesive that is intended by the manufacturer to adhere to itself instantaneously upon contact. This adhesive is applied to both adherents and, when dry, develops a bond when the adherents are brought together without sustained pressure. For the purpose of this section, products that qualify as a contact adhesive using the above definition, and that are labelled exclusively for only one of the following applications, shall not be required to meet the VOC limit for "Contact adhesives" in paragraph (d)(3)(i)(A) of this section.

(1) Single-ply roofing material installation;

(2) Bonding of immersible products; or

(3) Bonding of flexible vinyl to flexible vinyl.

Cove base installation means the installation of cove base (or wall base), which is generally made of vinyl or rubber, on a wall or vertical surface at floor level using an adhesive formulated for that purpose.

Dry wall and panel installation means the installation of gypsum dry wall to studs or solid surfaces using an adhesive formulated for that purpose.

Fiberglass means fine filaments of glass.

Flexible vinyl means nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling-point organic solvent, that is incorporated into an adhesive to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260–73 or from product formulation data.

Floor covering installation means the installation of wood flooring, indoor carpet, outdoor carpet, resilient tile, cove base, or artificial grass, using an adhesive formulated for that purpose. Ceramic tile is excluded from this category.

Foam means a rigid or spongy cellular mass with gas bubbles dispersed throughout.

Grams of VOC per liter of material means the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_e}{V_m}$$

Where:

W_s=weight of volatile compounds, in grams;

W_w=weight of water, in grams;

W_e=weight of exempt compounds, in grams; and

V_m=volume of material, in liters.

Household adhesive means any adhesive subject to the consumer products regulations in Title 17, Division 3, Subchapter 8.5, §§ 94507–94517, of the California Code of Regulations.

Multipurpose architectural adhesive means any adhesive that is intended by the manufacturer to be applied for the installation, manufacture, or repair of various construction materials to bond architectural structures or appurtenances, including but not limited to drywall, subfloor, panel deck and lumber, seams, fiberglass reinforced plastic, ceiling tile and acoustical tile. Adhesives used to bond uninstalled cabinets, counters and other architectural appurtenances are subject to this adhesive category.

Nonmembrane roof installation/maintenance means any product that is intended for the installation or repair of roofs and that is not intended for the installation of prefabricated single-ply flexible roofing membrane. This category includes plastic or asphalt roof cement, asphalt roof coatings, or cold application cement.

Organic compound means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

Panel installation means the installation of plywood, pre-decorated hardboard (or tileboard), fiberglass, reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

Percent VOC by weight means the ratio of the weight of the VOC to the weight of the material, expressed as a percentage of VOC by weight. The percent VOC by weight can be calculated as follows:

$$\%\ \text{VOC weight} = \frac{W_s}{W} \times 100$$

Where:

W_s=weight of VOCs in grams; and

W=weight of material in grams.

Plastic cement welding means the use of adhesives made of resins and solvents which are formulated to dissolve the surfaces of plastic to form a bond between mating surfaces.

Plastic foam means a foam constructed of plastics.

Plastics means various synthetic materials chemically formed by the polymerization of organic (carbon-based) substances.

Porous material means a substance which has tiny openings, often microscopic, in which fluids may be absorbed or discharged. Such materials include but are not limited to paper and corrugated paperboard.

Propellant means a fluid under pressure which expels the contents of a container when a valve is opened.

PVC/CPVC welding adhesive means any adhesive intended by the manufacturer to weld polyvinyl chloride (PVC) or chlorinated polyvinyl chloride (CPVC) plastic pipe.

Rubber flooring installation means the installation of flooring material in which both the back and top surfaces are made of synthetic rubber, and may not be in sheet or tile form.

Sealant products mean any material with adhesive properties that is formulated to be used primarily to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant products include sealant, primers, and caulks.

Single-ply roof membrane installation/repair means the installing or fixing, mending and/or repairing of a single-ply membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and flashings to vents, pipes, and ducts that protrude through the roof. Repair includes gluing the edges of the tears together, attaching a patch over a hole, and applying flashings to vents, pipes or ducts installed through the membrane.

Structural glazing means the use of an adhesive/sealant to adhere glass, ceramic, metal, stone, or composite panels to exterior building frames.

Subfloor installation means the installation of subflooring material, typically plywood, over floor joists. Subflooring is covered by a finished surface material.

Thin metal laminating means a process of bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line(s) is less than .025 mils.

Tire repair means the expanding of a hole, tear, fissure, or blemish in a tire casing by grinding or grouping, applying adhesive, and filling the hole or crevice with rubber.

VCT means vinyl composition tile.

(3) *Standards.*

(i) *VOC limits.* On and after the dates specified below, a person shall not apply adhesives, adhesive bonding primers, adhesive primers, or sealants which have a VOC content (grams of VOC per liter of adhesive, less water and exempt compounds) in excess of the following limits. The sales prohibition in paragraph (d)(3)(v) of this section shall apply to the following adhesives, adhesive bonding primers, adhesive primers, or sealants except where exempted as indicated in paragraphs (d)(3)(v)(C)–(E) of this section.

TABLE OF VOC LIMITS

Grams VOC/liter adhesive, less water and exempt compounds	1/1/96	1/1/97	1/1/98
Adhesives products:			
Contact adhesives	200		
Floor covering, except ceramic tile installation	150		
Ceramic tile installation	150	130	

TABLE OF VOC LIMITS—Continued

Grams VOC/liter adhesive, less water and exempt compounds	1/1/96	1/1/97	1/1/98
Rubber floor installation	150		
VCT and asphalt tile installation	150		
Multipurpose architectural adhesive	200		
Cove base installation	200	150	
PVC and CPVC welding	850	480	
ABS welding	850	480	
Other plastic cement welding	650	480	
Computer diskette manufacturing	850		550
Nonmembrane roof installation/maintenance	300		
Single-ply roof membrane repair/installation	650	250	
Structural glazing	100		
Other adhesive products	250		
Sealants:			
Architectural and roadways	250		
Single-ply roof membrane material	450		
Nonmembrane roof installation/maintenance	300		
Other sealants	420		
Primers:			
Plastic cement welding primer	850	480	
Adhesive primer	250		
Single-ply roof membrane primer	650	250	
Automotive-glass adhesive primer	700		
Adhesives application onto substrate:			
Wood	30		
Metal	30		
Porous material (except wood)	150	120	
Plastic foam	120		
Fiberglass	200		
Flexible vinyl to flexible vinyl	660	250	
Flexible vinyl to other substrate	250		
Other substrates	250		

If an adhesive is used to bond dissimilar substrates together, except for bonding flexible vinyl to any other substrate, the applicable substrate category with the highest VOC content shall be the limit for that operation. Where more than one limit from the table of VOC limits could apply to a product or application, the first three groups of limits (adhesive products, sealants, and primers) shall be applicable rather than the fourth group of limits (adhesives application onto substrate).

(ii) *Aerosol spray products.* A person shall not use any adhesive aerosol spray unless the VOC content, including the propellant, does not exceed 25 percent by weight.

(iii) *Cleanup solvents.* Solvents used for surface preparation, equipment cleanup, and thinning operations, including storage and disposal of VOC-containing materials, shall be subject to the provisions and requirements of § 52.2961(a).

(iv) *Emission control system.* A person may comply with the provisions of paragraph (d)(3)(i) of this section by using an emission control system, provided that this system maintains a control efficiency (capture efficiency times destruction or removal efficiency) of the VOC emissions of at least 85 (eighty- five) percent by weight.

(v) *Prohibition of sales.*

(A) Except as provided in paragraphs (d)(3)(v)(C) through (E) is this section, no person shall supply, sell, or offer for sale any non-complying adhesive, sealant, or adhesive primer which, at the time of sale, is defined under a product category in the table of VOC limits of this section after the specified effective dates. This provision only applies to products that are supplied to or sold within the affected area.

(B) Except as provided in paragraphs (d)(3)(v)(C) or (E) of this section, no person shall supply, sell, or offer for sale, any adhesive aerosol which, at the time of sale, exceed the VOC limits listed in paragraph (d)(3)(ii) of this section after the specified effective dates.

(C) The sales prohibition in paragraphs (d)(3)(v) (A) and (B) of this section shall not apply to any supplier or seller of any adhesive, sealant, or adhesive primer as follows:

(*1*) Any adhesive shipped outside of the affected area for use outside of the affected area.

(*2*) The sale of adhesives to a person controlling the emissions from use of those adhesives by using an emission control system pursuant to paragraph (d)(3)(iv) of this section.

(D) The sales prohibition in paragraphs (d)(3)(v) (A) and (B) of this section shall not apply to the sale of any adhesive, sealant, or adhesive primer, except plastic cement welding adhesives or primers, if the product is sold in any container(s) having a capacity of 16 ounces or less (net volume) or 1 pound or less (net weight). The total weight or volume of two or more containers packaged together must be less than 1 pound (16 ounces) to qualify for this exemption.

(E) The sales prohibitions in paragraphs (d)(3)(v) (A) and (B) of this section shall not apply to any manufacture of any adhesive, sealant, or primer if the manufacturer has provided an accurate compliance statement and if:

(*1*) The product was not sold directly to a user or a sales outlet located in the affected area, or

(*2*) The product was sold to an independent distributor that is not a subsidiary, or under the direct control of, the manufacturer.

(vi) *Compliance statement requirement.* The manufacturer of any adhesive, sealant, or adhesive primer subject to this determination shall include a designation of maximum VOC content as supplied, including adhesive components, expressed in grams per liter of adhesive (or pounds per gallon) excluding water and exempt compounds (percent by weight for adhesive aerosols) from the appropriate test method, on labels or data sheets. This designation shall include recommendations regarding thinning, reducing, or mixing with any other VOC-containing material. This statement shall include the maximum VOC on an as-applied basis when used in accordance with the manufacturer's recommendations.

(vii) *Prohibition of specification.* No person shall solicit, require for use, or specify the application of any adhesive, primer, or sealant if such use or application results in a violation of the provisions of this section. This prohibition shall apply to all written or oral contracts.

(4) *Exemptions.*

(i) The provisions of paragraphs (d)(3)(i) and (ii) of this section shall not apply to the following:

(A) Adhesives used in tire repair, provided the label on the adhesive used states:

For Tire Repair Only

(B) Assembly and manufacturing of undersea-based weapon systems.

(C) Testing and evaluation of adhesive or sealant products in any research and development, quality assurance, or analytical laboratories, provided that:

(*1*) A record is kept of:

(*i*) The date when the adhesives, sealants, or adhesive primers are used, and the type of applications(s); and

(*ii*) The amount of adhesives, sealants, and adhesive primers used and the VOC content of such products; and

(*iii*) The amount of solvents used and the VOC content of such solvents.

(*2*) Such records shall be retained in accordance with the provisions of paragraph (d)(5) of this section.

(D) Solvent welding operations used in the manufacturing of medical devices.

(E) Plaque laminating operations where adhesives are used to bond a clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992. Any person seeking to claim this exemption shall notify EPA in writing that a complying adhesive is not available.

(F) Manufacturing operations of the following products: diving suits, rubber bladders, inflatable boats, life preservers, or other products designed for immersion in water or fuels. The adhesive products used by these operations must be labelled:

For the Bonding of Immersible Products Only

(ii) The provision of this section shall not apply to aerospace components.

(iii) The provisions of this section shall not apply to any adhesive or sealant that contains less than 20 g/L of VOC per liter of adhesive or sealant, less water and less exempt compounds, as applied.

(iv) Paragraph (d)(5) of this section shall not apply to facilities with a combined use of adhesives, sealants, adhesive primers, and solvents used in a total volume of less than 20 gallons on a calendar year basis. Any facility claiming this exemption must have information available, such as purchase orders, that will allow for the verification of facility usage.

(v) Until January 1, 1997, the provisions of paragraphs (d)(3)(i) and (ii) of this section shall not apply to any facility using 3 gallons per day or less of adhesive used exclusively for thin metal laminating operations, provided that the adhesive contains less than 600 grams of VOC per liter of adhesive, less water and less exempt compounds, as applied.

(5) *Reporting and Recordkeeping.* Any source within the affected area that uses greater than 20 gallons of adhesive and/or sealant product per year subject to paragraphs (d)(3)(i)(A)–(C) of this section shall comply with the following requirements:

(i) Maintain a current file of each adhesive, sealant, adhesive primer, and solvent in use and in storage. The file shall provide all of the data necessary to evaluate compliance and shall include, but not be limited to, the following information, as applicable:

(A) A data sheet or material list giving material name, manufacturer identification, and material application;

(B) Any catalysts, reducers, or other components used and the mix ratio; and

(C) The VOC content limit or vapor pressure limit from paragraph (d)(3) of this section and the actual VOC content, as applied, or vapor pressure of the adhesive, sealant, primer, or solvent.

(ii) Maintain records of the monthly volume of each adhesive, sealant, primer, or solvent used.

(iii) Any person using an emission control system as a means of complying with this section shall maintain daily records of key system operating and maintenance procedures which will demonstrate continuous operation and compliance of the emission control device during periods of emission-producing activities. Key system operating parameters are those necessary to ensure compliance with VOC content of coating requirements such as temperatures, pressures, and flowrates.

(iv) All records shall be maintained for at least five years and shall be available for inspection and provided to EPA upon request.

(6) *Test Methods.* For the purpose of this section, the following test methods shall be used:

(i) *VOC content.*

(A) The VOC content of aerosol adhesives and sealants shall be determined by EPA Method 24 (40 CFR part 60, appendix A);

(B) The VOC content of aerosol adhesives or aerosol adhesive primers shall be determined using South Coast Air Quality Management District (SCAQMD) Test Method 305 for Aerosol Coatings;

(C) The VOC content of emissions shall be determined by EPA Method 18 (40 CFR part 60, appendix A); and

(E) The exempt compound content of coatings shall be determined by ASTM Test Method D–4457–85.

(ii) *Determination of collection efficiency of emission control systems.*

(A) *Capture efficiency.* The efficiency of the collection device of an emission control system, as specified in paragraph (d)(3)(iv) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iii).

(B) *Destruction or removal efficiency.* The efficiency of the control device, as specified in paragraph (d)(3)(iv) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iv). The VOC content measured and calculated as carbon in the control device exhaust gases shall be determined by EPA Method 25 or 25A (40 CFR part 60, appendix A).

(iii) The active and passive solvent losses from spray gun cleaning systems shall be determined using SCAQMD's "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," dated October 3, 1989. The test solvent for this determination shall be any lacquer thinner with a minimum vapor pressure of 105 mm of Hg at 20 °C, and the minimum test temperature shall be 15 °C.

(iv) The test method used to determine plasticizer content and flexible vinyls shall be ASTM Method E260–73, "General Gas Chromatography Procedures."

(e) *Can and Coil Coating Operations.*

(1) *Applicability.* This section shall apply to all metal container, metal closure, and metal coil coating operations within the affected area except as specified in paragraph (e)(4) of this section. For the purposes of this

section, the affected area is the Sacramento Metro Area for ozone as described at 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (e) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Closure means any component which is used to close or seal a filled can, jar, or bottle.

Coating applicator means an apparatus used to apply a surface coating.

Coating line means an operation or process for applying, drying, or baking and/or curing surface coating, together with associated equipment, including a coating applicator, flash-off area, and oven.

Coil means any flat metal sheet or strip that is rolled or wound in concentric rings.

Container means any metal can, drum, pail, or tube.

Drum means any cylindrical metal shipping container larger than 12 gallons capacity but no larger than 110 gallons capacity.

End sealing compound means a compound which is coated onto can ends and which functions as a gasket when the end is assembled onto the can.

Exterior base coating means a coating applied to the exterior of a can body, end, or flat sheet to provide protection to the metal or to provide background for any lithographic or printing operations.

Exterior end coating means a coating applied to the exterior end of a can to provide protection to the metal.

Food/beverage can means a metal container in which food or beverages intended for human or animal consumption are packaged.

Hand application method means the application of coating by manually held, non-automatic equipment. Such equipment includes paint brush, hand roller, trowel, spatula, dauber, rag, and sponge.

High-volume, low-pressure (HVLP) spray means a coating application system which is designed to be operated at air and fluid supply pressures to the gun of between 0.1 and 10.0 pounds per square inch gauge (psig).

Ink means any coating used in any operation that imparts color, design, alphabet, or numerals on an exterior surface of a metal container, metal closure, or metal coil.

Interior base coating means a coating applied to the interior of a can body, end, or flat sheet to provide a protective lining between the product and the can.

Interior body spray means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.

Metal container, metal closure, and metal coil coating means any coating containing organic materials and applied by spray, roller, or other means to the inside and/or outside surfaces of metal cans, drums, pails, lids, closures, or to the surface of flat metal sheets, strips, rolls, or coils for further industrial or commercial use.

Necker lubricant means any fluid or solid lubricant applied to a can forming tool to reduce friction while reducing the can diameter to form a neck.

Overvarnish means a coating applied directly over a design coating to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.

Pail means any cylindrical metal shipping container of from 1-gallon to 12-gallon capacity and constructed of 29 gauge or heavier material.

Solvent cleaning operation means the removal of loosely held uncured adhesives, uncured inks, uncured coatings, and contaminants which include, but are not limited to, dirt, soil, and grease from parts, products, tools, machinery, equipment, and general work areas. Each distinct method of cleaning in a cleaning process which consists of a series of cleaning methods shall constitute a separate solvent cleaning operation.

Three-piece can side seam spray means a coating sprayed on the exterior and/or interior of a welded, cemented, or soldered seam to protect the exposed metal.

(3) *Standards.*

(i) *VOC limits.* On and after January 1, 1996, a person shall not use or apply any coating on any coating line of the type designated below which contains any volatile organic compound in excess of the following limits:

Coating	VOC limits—Grams per liter of coating, less water and exempt compounds	
	g/L	lb/gal
Can coating lines:		
Three-piece can sheet basecoat (exterior and interior and overvarnish)	180	1.5
Two-piece can exterior basecoat and overvarnish	250	2.1
Inks	300	2.5
Can interior body spray:		
Two-piece can	420	3.5
Three-piece can	310	2.6
Three-piece can side seam spray	660	5.5
End sealing compound:		
Food/beverage cans	440	3.7
Non-food cans	0	0
Drums, pails, and lids—		
New:		
Exterior	340	2.8
Interior	420	3.5
Reconditioned:		
Exterior	420	3.5
Interior	510	4.2
Necker Lubricants	100	0.8
Coil coating	200	1.7

(ii) *Emission control system.* Owners and/or operators may comply with paragraph (e)(3)(i) of this section by using an emission control system, provided that the VOC emissions from such operations and/or materials are reduced in accordance with the following provisions:

(A) The control device shall maintain a destruction or removal efficiency of the emissions from an emission collection system of at least 95 (ninety-five) percent, by weight; and

(B) The emission collection system which collects and transports emissions to the air pollution control device(s) shall maintain a capture efficiency of at least 90 (ninety) percent, by weight, of the emissions generated by the sources of emissions.

(iii) *Transfer Efficiency.* A person or facility shall not coat unless the coating is applied with properly operating equipment according to operating procedures specified by the equipment manufacturer or EPA, and by the use of one of the following application methods:

(A) Electrostatic application;

(B) Flow coat;

(C) Roll coat;

(D) Dip coat;

(E) High-volume, low-pressure (HVLP) spray;

(F) Hand application methods; or

(G) Other coating application methods that are demonstrated to have a transfer efficiency at least equal to HVLP spray equipment in the application, and which are used in such a manner that the parameters under which they were tested are permanent features of the method. Such coating application methods shall be approved in writing by EPA.

(iv) *Cleanup Solvent Use.* Solvents used for surface preparation, equipment cleanup, and thinning operations, including storage and disposal of VOC-containing materials, shall be subject to the provisions and requirements of § 52.2961(a), solvent cleaning operations.

(v) *Prohibition of sale.* A person shall not sell or offer for sale for use in the affected area any coating which contains VOCs in excess of the limits specified in this section for any application governed by this section unless the label on the product or the data sheets for the product clearly bear the warning that the coating shall not be used unless compliance with this section can be achieved.

(vi) *Prohibition of specification.*

(A) A person shall not solicit or require any other person to use, in the affected area, any coating or combination of coatings to be applied to any metal container, metal closure, or metal coil subject to the provisions of this section that does not meet the limits and requirements of this section.

(B) The requirements of paragraph (e)(3)(vi)(A) of this section shall apply to all written or oral agreements executed, entered into, or renewed.

(4) *Exemptions.* The provisions of this section shall not apply to the spray coating of 1 gallon per day or less of coatings at a single facility.

(5) *Reporting and recordkeeping requirements.* Any person subject to this section shall comply with the following requirements:

(i) Maintain and have available during an inspection, the listed category of each of the coatings and the type of metal container, metal closure, and/or metal coil to which each coating was applied.

(ii) Maintain and have available during an inspection, a current list of coatings in use which provides all of the coating data necessary to evaluate compliance, including the following information, as applicable:

(A) Coating, catalyst, additives, and reducer used;

(B) Mix ratio of components used; and

(C) VOC content of coating as applied.

(iii) Maintain records on a daily basis including the following information:

(A) Coating and mix ratio of components in the coating used; and

(B) Quantity of each coating applied.

(iv) Control equipment records. Any person using an emission control system as a means of complying with this section shall maintain daily records of key system operating and maintenance procedures which will demonstrate continuous operation and compliance of the emission control device during periods of emission producing activities. Key system operating parameters are those necessary to ensure compliance with paragraph (e)(3)(ii) of this section such as temperatures, pressures, and flowrates.

(v) All records shall be retained at the facility for at least five years and shall be made available to EPA upon request.

(6) *Test methods.* For the purpose of this section, the following test methods shall be used:

(i) VOC content.

(A) The VOC content of coatings subject to the provisions of this section shall be determined by EPA Method 24 (40 CFR part 60, appendix A).

(B) The VOC content of emissions shall be determined by EPA Method 18 (40 CFR part 60, appendix A).

(C) The exempt compound content shall be determined by ASTM Test Method D-4457-85.

(ii) Determination of efficiency of emission control systems.

(A) The efficiency of the collection device of the emission control system as specified in paragraph (e)(3)(ii)(B) of this section shall be determined by the EPA method described at § 52.741(a)(4)(iii).

(B) The efficiency of the control device, as specified in paragraph (e)(3)(ii)(A) of this section, shall be determined by the EPA method described at § 52.741(a)(4)(iv). The VOC content measured and calculated as carbon in the control device exhaust gases shall be determined by EPA Method 25 or 25A (40 CFR part 60, appendix A).

(iii) Transfer Efficiency. The transfer efficiency for other coating application methods as defined in paragraph (e)(3)(iii)(G) of this section, shall be determined in accordance with the South Coast Air Quality Management District (SCAQMD) test method for determining transfer efficiency entitled "Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989." This transfer efficiency method is approved for the limited purpose of comparing alternative application technologies under controlled conditions. The results of these tests are not transferable to a production setting. The test method is not acceptable for determining transfer efficiency to establish VOC emission reduction credits to allow the use of higher VOC coatings, or to establish VOC credits for trading or offset purposes.

(f) *Commercial bakeries.*

(1) *Applicability.* Except as provided in paragraph (f)(4) of this section, this section is applicable to bakery ovens which bake yeast-leavened products. For the purposes of this section, the affected area is the Sacramento Metro Area for ozone as described at 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (f) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Bakery oven means a convection oven which bakes yeast-leavened products, including but not limited to breads, buns, and rolls.

Fermentation time means the elapsed time between adding yeast to dough or sponge and placing the dough or sponge into an oven, expressed in hours.

Yeast percentage means the pounds of yeast added to a hundred pounds of total flour in the recipe.

(3) *Standards.*

(i) On and after January 1, 1997, no person shall operate a bakery oven subject to this section, unless VOC emissions are controlled using an air pollution control system which:

(A) Has been installed in accordance with an Authority to Construct issued by the applicable local air pollution control district or air quality management district; and

(B) Includes an emission collection system(s) which ducts the exhaust gases from all stacks and/or vents on all ovens to a VOC emission control device(s). Such ducting shall be maintained so as to be free of visible holes, breaks, openings or separations between adjoining components from which fugitive VOCs would be emitted to the atmosphere; and

(C) Has one or more VOC emission control devices, each with a destruction or removal efficiency of at least 95 percent by weight.

(ii) For an oven which commences construction on or after January 1, 1995, owners and operators shall be in compliance with paragraph (f)(3)(i) of this section by the date of commencement of oven operation.

(4) *Exemptions.*

(i) The provisions of this section shall not apply to bakery ovens which are located at a facility where the combined rated heat input capacity of all ovens is less than 2 million British Thermal Units (BTUs) per hour.

(ii) The provisions of this section shall not apply to ovens used exclusively for the baking of products leavened chemically without yeast.

(iii) The provisions of paragraph (f)(3) of this section shall not apply to bakery ovens which are located at a facility where the uncontrolled actual emissions of VOCs from all ovens combined is less than 6.5 tons per year.

(5) *Reporting and Recordkeeping.* A person operating a bakery oven subject to this section shall maintain records in accordance with the following:

(i) Maintain current records necessary to determine emissions for each oven including, but not limited to, type of each yeast-leavened baked product, yeast percentage for each product, and fermentation time for each product;

(ii) Maintain monthly records of production rates, by weight, of finished baked product for each yeast-leavened product; and

(iii) For control equipment subject to paragraph (f)(3) of this section, maintain daily records of key system operating and maintenance procedures which will demonstrate continuous operation and compliance of the emission control device during periods of emission producing activities. Key system operating parameters are those necessary to ensure compliance with paragraphs (f)(3) (i) and (ii) of this section such as temperature, pressure, and flow rates.
These records shall be maintained on site for at least five years and shall be made available to EPA upon request.

(6) *Test Methods.*

(i) For the purposes of this section, VOC emission factors for each yeast-leavened bakery product shall be determined in accordance with the table of bakery emission factors in this section. Annual emission rates shall be calculated by using those emission factors and the annual production rate for each yeast-leavened finished bakery product. Alternatively, VOC emission factors for any yeast-leavened bakery product may be determined by the method(s) specified in paragraph (f)(6)(ii) of this section, together with exhaust flow rates and oven throughput.

(ii) Measurement of VOC emission control device efficiency subject to paragraph (f)(3)(i)(C) of this section shall be conducted in accordance with the EPA method described at § 52.741(a)(4)(iv). The VOC content measured and calculated as carbon in the control device exhaust gases shall be determined by EPA Method 25 or 25A (40 CFR part 60, appendix A).

TABLE OF BAKERY EMISSION FACTORS

Yt[a]	Emission factor[b]	Yt[a]	Emission factor[b]	Yt[a]	Emission factor[b]
1.0	0.8488	11.0	5.2947	21.0	9.7405
1.5	1.0711	11.5	5.5170	21.5	9.9628
2.0	1.2934	12.0	5.7393	22.0	10.1851
2.5	1.5157	12.5	5.9616	22.5	10.4074
3.0	1.7380	13.0	6.1839	23.0	10.6297
3.5	1.9603	13.5	6.4061	23.5	10.8520
4.0	2.1826	14.0	6.6284	24.0	11.0743
4.5	2.4049	14.5	6.8507	24.5	11.2966
5.0	2.6272	15.0	7.0730	25.0	11.5189
5.5	2.8495	15.5	7.2953	25.5	11.7412
6.0	3.0718	16.0	7.5176	26.0	11.9635
6.5	3.2941	16.5	7.7399	26.5	12.1857
7.0	3.5163	17.0	7.9622	27.0	12.4080
7.5	3.7386	17.5	8.1845	27.5	12.6303
8.0	3.9609	18.0	8.4068	28.0	12.8526
8.5	4.1832	18.5	8.6291	28.5	13.0749
9.0	4.4055	19.0	8.8514	29.0	13.2972
9.5	4.6278	19.5	9.0737	29.5	13.5195
10.0	4.8501	20.0	9.2959	30.0	13.7418
10.5	5.0724	20.5	9.5182		

[a] Yt=(Yeast Percentage) × (Fermentation Time)
If yeast is added in two steps:
Yt=(percentage of initial yeast addition) × (time from initial yeast addition to placement in oven)
+(percentage of second yeast addition) × (time from second yeast addition to placement in oven)

[b] Emission Factor=pounds of VOC per ton of finished baked product.

(g) *Municipal solid waste landfills.*

(1) *Applicability.* This section shall apply to all municipal solid waste (MSW) landfills with a maximum design capacity of greater than 111,000 tons of solid waste, although facilities that have received less than 500,000 tons of decomposable solid waste during their operational lifetime are only subject to the requirements of paragraph (g)(5)(i) of this section. The refuse density shall be assumed to be 1,300 pounds per cubic yard and the decomposable fraction shall be assumed to be 70% by weight unless other site-specific factors are submitted to and approved by EPA. For the purposes of this section, the affected area refers to the Sacramento Metro Area for ozone as described at 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (g) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Active landfill means any MSW landfill which received waste at any time during the past six months.

Baseline condition means there are no leaks existing at:

(1) Any location on the surface of the landfill covered by final cover;

(2) Any location on the surface of the landfill which has been covered by intermediate cover for over 6 months; and

(3) Any location along the gas transfer path of the gas collection system.

Control device means any device that disposes of the collected gas by one or more of the following means: combustion, gas treatment and subsequent sale, sale and processing off site, or other equivalent methods.

Decomposable solid waste means any material which is not non-decomposable inert solid waste.

Design capacity means the maximum amount of waste a landfill can accept, as specified in the construction permit issued by the county or State agency responsible for regulating the landfill.

Destruction/treatment efficiency means a measure of the ability of the control device to combust, transform, or otherwise prevent the emissions to the atmosphere of non-methane organic compounds in landfill gas, expressed as a percentage.

Energy recovery equipment means any equipment that uses landfill gas to produce useful energy.

Excavation means any movement of landfill cover that triggers notification requirements of any government agency.

Final cover means cover material that is applied on areas where additional cells are not to be constructed and, therefore, must be highly resistant to erosion.

Gas collection system means a series of collectors and associated piping and equipment which provides a gas transfer path to the control device.

Gas transfer path means the piping, pumps, and other equipment used to transfer evolved landfill gas from the point of gas evolution through the control device.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes, that is not a hazardous waste regulated under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. 6901–6992k). Such waste may include, but is not limited to, the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Intermediate cover means cover material that is applied on areas where additional cells are not to be constructed for extended periods of time and, therefore, must resist erosion for a longer period of time than daily cover.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Landfill gas means any gas derived through a natural process through the decomposition of organic waste deposited in a landfill or from the evolution of volatile organic species in the waste.

Leak means any point where the concentration of total organic compounds measured as methane exceeds 1000 ppm by volume except non-repeatable momentary readings.

Leak free means the absence of the evidence of "leaks."

Municipal solid waste (MSW) landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

Non-decomposable inert solid waste means materials which do not degrade biologically to form landfill gas. Examples include, but are not limited to: earth, rock, concrete, clay products, inert tailings, plaster board, glass, inert slag, asbestos, and demolition materials containing less than 10% by volume wood and metals.

Non-methane organic compounds (NMOC) means any compound in a gaseous state at standard temperature and pressure which contains at least one atom of carbon except: methane, carbon monoxide, carbon dioxide, metallic carbides, carbonates, and carbonic acid, as measured according to paragraph (g)(6) of this section.

Non-repeatable, momentary readings means indications of the presence of organic gases using a detector meeting the apparatus requirements of EPA Method 21 (40 CFR part 60, appendix A) which persist for less than 5 seconds and do not recur when the sampling probe is placed in the same location for at least twice the response time of the instrument.

Owner means the fee owner of a solid waste disposal site and the person who through lease, or other arrangement with the fee owner is responsible for complying with all applicable federal, state and local requirements for landfill gas emissions; provided that upon the expiration of such person's responsibility for landfill gas emissions under such lease or other arrangement the fee owner shall be deemed the owner. Where specific requirements of this section apply to equipment at the MSW landfill that is owned or operated by a second party other than the fee owner, the second party shall be deemed the owner for the purpose of such section requirements as they relate to such equipment.

Perimeter means the outer boundary of the MSW landfill property.

Quarter means the months that define a "quarter." These are: January, February and March (1st quarter ends on March 31); April, May and June (2nd quarter ends on June 30); July, August and September (3rd quarter ends on September 30); and October, November and December (4th quarter ends on December 31).

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit requirements under 33 U.S.C. 1342, or sources of special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)

(3) *Standards.*

(i) *Gas collection system.*

(A) The owner shall install and operate a gas collection system which prevents overdraw that can cause fires or damage to the collection system while collecting, in each quarter, at least 90% of the target volume established for that quarter.

(B) The owner shall use the procedures in paragraph (g)(6)(i) of this section to establish baseline conditions. The owner may re-establish baseline conditions using the procedures in paragraph (g)(6)(i) of this section at any time. Each time that baseline conditions are achieved, the owner shall measure and record:

(*1*) The baseline gas collection flowrate, in standard cubic feet per minute (SCFM) for the entire landfill; and

(*2*) The baseline oxygen concentration in the collected landfill gas stream at the inlet to the control device before adding combustion air.

The owner shall notify EPA at least five days prior to each establishment of baseline conditions so that EPA personnel may be on site to confirm that baseline conditions exist.

(C) The owner shall measure and record the oxygen concentration at the inlet to the control device on at least four days each week. Each sampling run shall last at least twice the response time of the analyzer. Each sampling run shall establish the oxygen concentration for all preceding hours retroactive to the hour of the previous measurement.

(D) The owner shall monitor the total gas collection flowrate for the landfill at least once every 15 minutes and keep records at least once per hour. A chart recorder may be used for this purpose.

(E) Within two weeks after the end of each quarter the owner shall determine the overall effectiveness of the gas collection system for the past quarter. To make such a determination, the owner shall meet the following requirements.

(*1*) The owner shall establish a quarterly target for the volume of landfill gas to be collected. The target volume shall be the time-weighted average of all baseline collection flowrates (SCFM) established pursuant to paragraph (g)(3)(i)(B) of this section during the quarter, multiplied by the number of minutes in the quarter. The volume is calculated as follows:

Quarterly target volume=

$$\frac{\sum_{t=1}^{i} SCFM_i t_i \times \sum_{t=1}^{i} t_i}{\sum_{t=1}^{i} t_i}$$

or simply,

$$\sum_{t=1}^{i} SCFM_i t_i$$

(*2*) Each hourly flowrate record during which the measured oxygen concentration (established in paragraph (g)(3)(i)(C) of this section) exceeds the current baseline oxygen concentration (established in paragraph (g)(3)(i)(B)(*2*) of this section) by a measured value greater than 2% oxygen, shall be corrected using the following equation:

$$\text{Corrected Flow} = \text{Measured Flow} \times \left(\frac{20.9 - O_2 \text{ measured } (\%)}{20.9 - O_2 \text{ baseline } (\%)} \right)$$

(*3*) The owner shall use this corrected flowrate data to calculate the total volume of gas collected for the quarter.

(F) If the volume of gas collected in any quarter is less than 90% of the target volume established for that quarter, the owner shall be in violation of this section and shall re-establish baseline conditions pursuant to paragraph (g)(3)(i)(B) of this section within the first two weeks of the following quarter.

(G) Notwithstanding the requirements of paragraph (g)(3)(i)(F) of this section, the owner of any active landfill shall re-establish baseline conditions pursuant to paragraph (g)(3)(i)(B) of this section at least once every six months.

(H) The owner shall install and operate a gas collection system that effectively captures the gas that is generated within the landfill. The collection system shall:

(*1*) Be designed to handle the maximum expected gas flowrate over the lifetime of the gas control or treatment system equipment from the entire area of the landfill that warrants control. For the purposes of calculating the maximum expected gas generation flowrate from the landfill to determine compliance, the following equation shall be used:

$$Q_m = 2 L_o R \left(1 - e^{-kt}\right)$$

where

Q_m=maximum expected gas generation flow rate, m^3/yr;

L_o=refuse methane generation potential, m^3/Mg refuse;

R=average annual acceptance rate, Mg/yr;

k=methane generation rate constant, yr^{-1}; and

t=age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years.

A value of 230 m^3/Mg shall be used for L_o. A value of 0.02 $year^{-1}$ shall be used for k. A value of 15 years shall be used for gas mover equipment life. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(*2*) Collect gas from each area, cell, or group of cells in the landfill in which refuse has been placed for a period of two years or more. For the purposes of calculating the area of influence of the gas collection system to determine compliance, the owner shall use the EPA method.[32]

(*3*) Collect gas at a sufficient extraction rate. For the purpose of demonstrating whether the gas collection system flowrate is sufficient to determine compliance, the owner shall measure gauge pressure in the gas collection header. If a positive pressure exists, the gas collection system flowrate shall be increased until a negative pressure is measured. If the gauge pressure at a wellhead is positive, the valve shall be opened to restore negative pressure. If negative pressure cannot be achieved, an additional well shall be added.

(I) The owner shall:

(*1*) Maintain, monitor, operate, and improve as necessary the gas collection system and landfill cover to prevent leaks from:

(*i*) All locations on the surface of the landfill covered by final cover;

(*ii*) All locations on the surface of the landfill which have been covered by intermediate cover for over six months; and

(*iii*) All locations along the gas transfer path of the gas collection system.

When a leak is identified, it shall be conspicuously tagged with a marker which displays the date of identification. The marker shall not be removed until the leak is repaired. (Markers placed by EPA personnel may be removed only by EPA personnel, except as necessary during the repair of leaks.) Within 15 calendar days of identification, each leak shall be repaired to a leak-free state unless such repair requires excavation. Where repair requires excavation, the owner shall submit an excavation plan for approval by EPA which shows that repairs will be made promptly and which specifies the expected date of completion. The owner is in violation of this section if the leak is not repaired within 15 calendar days of identification, or if an excavation plan is not submitted to EPA within 15 calendar days after the date of identification.

(*2*) Repair leaks to a leak-free state using at least one of the following methods:

(*i*) Increasing the collection rate of existing wells.

(*ii*) Repairing the landfill cover.

(*iii*) Installing additional collection wells.

(*iv*) Repairing the gas transfer path.

(J) Whenever previously buried waste is brought to the surface during installation or preparation of wells, trenches, piping, or other equipment, or when solid waste is to be excavated and moved, the owner shall cover the excavated waste using fresh soil, plastic sheeting, vapor retarding foam, or other

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[32] Proposed rule published in the **Federal Register** of May 30, 1991 (56 FR 24511).

California Integrated Waste Management Board approved "Alternate Daily Cover," by the end of the working day or as necessary to prevent a public nuisance.

(ii) *Control equipment.* All landfill gases collected pursuant to this section shall be processed using control devices that meet the following requirements:

(A) All control devices shall meet either of the following requirements:

(*1*) Have a non-methane organic compound (NMOC) destruction/treatment efficiency of at least 98% by weight; or

(*2*) Reduce the NMOC concentration at the outlet of the control device to 30 ppm measured as methane and corrected to 3% oxygen.

(B) Open flares used as control devices shall be designed and operated in accordance with § 60.18.

(C) The owner shall demonstrate that each control device meets the requirements of this section using the source testing procedures in paragraphs (g)(6) (iv) and (vi) of this section. Source testing shall be performed when the device begins operation. Flares shall be source tested to demonstrate continuing compliance every two years thereafter. All other control devices shall be source tested annually to demonstrate continuing compliance.

(iii) *Violations.* Failure to comply with any provision of this section shall constitute a violation of the section.

(iv) *Compliance schedule.*

(A) The owner of any MSW landfill subject to the requirements of this section shall demonstrate compliance with this section no later than July 1, 1997.

(4) *Exemptions.*

(i) This section shall not apply to sites that have received only hazardous waste.

(ii) The provisions of paragraph (g)(3)(ii) of this section shall not apply to control devices for which a construction permit was issued by the applicable air pollution control district or air quality management district before March 1, 1995, provided that the control device has a NMOC destruction/treatment efficiency of at least 90% by weight or reduces the NMOC concentration at the outlet of the control device to 30 ppm or less measured as methane corrected to 3% oxygen, and annual source testing for NO_x, CO and NMOC is performed simultaneously using the procedures in paragraphs (g)(6)(iv) and (vi) of this section.

(5) *Reporting and Recordkeeping.* The following reporting requirements shall each apply independently:

(i) Each owner of an MSW landfill having a maximum design capacity greater than 100,000 megagrams (Mg) (111,000 tons) shall submit an initial design capacity report to EPA.

(A) The initial design capacity report shall contain the following information:

(*1*) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where refuse may be landfilled according to the provisions of the state or county permit;

(*2*) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the state or county construction or Resource Conservation and Recovery Act (RCRA) permit, a copy of the permit specifying the maximum design capacity may be submitted. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering principles. The calculations must be provided, along with such parameters as depth of refuse, refuse acceptance rate, and compaction practices. The state, county, or EPA may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(B) An amended design capacity report must be submitted to EPA providing notification of any increase in the size of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report must be submitted within 90 days of the issuance of an amended construction or operating permit, or the actual use of additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever comes first.

(ii) Each owner who installs a gas collection system and/or control system described in paragraph (g)(3) of this section, shall perform an initial performance test as described in § 60.8. The initial performance test report shall include, but not be limited to, the following:

(A) A diagram of the collection system showing vertical extraction well spacing, including the locations of any areas excluded from collection and the proposed sites for the future addition of wells;

(B) The documentation of the presence of asbestos for each area from which collection wells have been excluded based on the presence of asbestos;

(C) The sum of the gas generation rates for all areas from which collection wells have been excluded based on the presence of nondegradable materials and the calculations of the gas generation rate for each excluded area; and

(D) The provisions for increasing gas mover capacity with increased gas generation rate, if the present gas mover is inadequate to move the maximum flowrate expected over the life of the landfill.

(iii) Each owner of a controlled landfill shall, within 48 hours, report to EPA by telephone any malfunction, shutdown, or other event causing a reduction in the gas collection rate.

(iv) If any portion of the gas collection system is shut down which results in a gas collection flowrate of less than 80% of the target volume for longer than 24 hours due to scheduled or unscheduled maintenance activities, equipment breakdown, or any other reason, the owner shall notify EPA by telephone within 48 hours of the detection of such shutdown. A written follow-up report shall be forwarded to EPA within 15 calendar days describing the duration and reason for the shut down.

(v) Each owner of a controlled landfill shall submit a closure report to EPA. For the purposes of this section, closure means that refuse is no longer being placed in the landfill, and that no additional wastes will be placed into the landfill without filing a notification of modification. EPA may request such additional information as may be reasonably necessary to verify that permanent closure has taken place.

(vi) Each owner of a controlled landfill shall submit an equipment removal report to EPA prior to removal or cessation of operation of the control equipment.

(A) The equipment removal report shall contain the following items:

(*1*) A copy of the closure report submitted in accordance with paragraph (g)(5)(v) of this section;

(*2*) A copy of the initial performance test report demonstrating that the 15-year minimum control period has expired; and

(*3*) Dated copies of the three successive NMOC emission rate reports demonstrating that the landfill is no longer emitting above the level of the standard.

(B) EPA may request such additional information as may be reasonably necessary to verify that all of the conditions for removal have been met.

(vii) The following records shall be maintained in written form at the MSW landfill for a period of five years from the date of each entry and shall be made available to EPA upon request:

(A) Records of the gas collection flowrate, in SCFM, and the oxygen concentration, for each time that baseline conditions are established.

(B) Records of continuous measurements (at least hourly records or a chart record) of the total gas collection flowrate, in SCFM, including notes describing the reasons for down-time

(C) Records of the oxygen concentration measured at the inlet to the control device before adding combustion air (readings on at least four days per week).

(D) Records of all surface monitoring including the date, time, weather conditions, areas sampled, calibration records, and test results. Test results shall include the approximate location of each detected leak, the date of detection, the date of correction, and the repair method used.

(E) A map indicating the location of areas with intermediate cover and areas with final cover. The map shall indicate the date of cover placement for each area with intermediate cover.

(F) All records of perimeter well testing.

(G) Where an owner subject to the provisions of this paragraph seeks to demonstrate compliance with paragraph (g)(3)(i)(H) of this section:

(1) The calculated maximum expected gas generation flowrate using the method described in paragraph (g)(3)(i)(H)(*1*) of this section.

(2) The calculated area of influence of the extraction wells.

(3) Gauge pressure in the gas collection header at the point where each well is connected to the gas collection header pipe.

(H) Where an owner subject to the provisions of this paragraph seeks to demonstrate compliance through use of an enclosed combustion device:

(1) The average combustion temperature measured every 15 minutes and averaged over the same time period of the performance testing.

(2) The percent reduction of NMOC achieved by the control device.

(I) Where an owner subject to the provisions of this paragraph seeks to demonstrate compliance through use of a boiler:

(1) A description of the location at which the process vent stream is introduced into the boiler or process heater;

(2) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(J) Where an owner subject to the provisions of this paragraph seeks to demonstrate compliance through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flowrate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(K) Source test reports showing the NMOC destruction/treatment efficiency and emissions in units of pounds per million BTU of heat input for the control device.

(viii) *Operation and maintenance plan.* The owner shall prepare and adhere to an operation and maintenance plan. The plan shall be revised at least once every six months to reflect operating experience and changing site conditions. The plan shall be submitted to EPA upon request. This plan shall at a minimum contain:

(A) An engineering evaluation of the expected landfill gas generation rate, and design specifications for the gas collection system. Data concerning waste type, volume, tonnage and age shall be included if available.

(B) A map showing the location, spacing and depths of collection wells and/or trenches, and the direction of flow through the header system to the control device.

(C) A map indicating areas of steep slopes and any other safety hazards to personnel performing the surface emissions testing.

(D) Sampling and analysis methods to be used by the owner to meet the requirements of this section.

(E) Specific techniques to ensure that overdraw is minimized. These may include a schedule for periodic temperature measurements at wellheads and a schedule for periodic gas sampling including gas analysis methods.

(F) A schedule detailing inspection and maintenance intervals including dates and durations of expected system shutdowns.

(G) Written justification for less than continuous operation of the gas collection system.

(H) Operating procedures including system start-up, balancing, optimization, and shutdown.

(I) Qualifications and training requirements for on-site personnel.

(J) Safety precautions, protective clothing and equipment requirements, and emergency procedures.

(6) *Test Methods.*

(i) The following procedures shall be used to establish baseline conditions pursuant to paragraph (g)(3)(i)(B) of this section:

(A) The gas collection rate and landfill surface integrity shall be evaluated and brought to baseline conditions by testing for leaks and repairing all such leaks using the repair methods listed in paragraph (g)(3)(i)(H)(*1*) of this section. Surface leak testing shall be performed using an instrument which meets the apparatus specifications of EPA Method 21 (40 CFR part 60, appendix A). The instrument shall be calibrated before and after each test using zero air and an approximate 500 ppm methane standard calibration gas in accordance with the instrument manufacturer's recommendations.,

(B) Surface leak testing shall be performed by holding the detector probe 2 inches from the landfill surface while walking a pattern of parallel paths not more than 50 feet apart over all surface areas specified in paragraph (g)(3)(i)(H)(*1*) of this section. Cracks, holes, and other breaches in the surface as well as areas where buried waste interfaces with undisturbed, native soil shall also be evaluated. The owner is not required to monitor surfaces on steep slopes and other areas posing a hazard to testing personnel; however, leaks identified in such areas are not exempt from the provisions of paragraph (g)(3)(i)(H) of this section.

(C) Surface leak testing shall be performed only when the average wind speed is less than 5 miles per hour and instantaneous wind speed is less than 10 miles per hour, unless EPA approves alternate wind speed limits based on demonstrated recurrent site-specific conditions. Average wind speed shall be determined on a 10 minute average using an on-site anemometer with a continuous recorder. Surface testing shall not be conducted when the surface is wet or when there has been rain during the preceding 72 hours. Surface testing of landfill surfaces that are normally wet (i.e., a golf course) may be performed when the surface is wet. EPA personnel may randomly identify leaks without regard to the above wind speed and surface condition requirements.

(D) EPA Method 21 (40 CFR part 60, appendix A) shall be used to determine leaks along the gas transfer path.

(ii) EPA Method 2D (40 CFR part 60, appendix A) shall be used for the flowrate measurements required by paragraphs (g)(3)(i)(B)(*1*) and (g)(3)(i)(D) of this section.

(iii) EPA Method 3A (40 CFR part 60, appendix A) shall be used for the oxygen concentration measurements required by paragraphs (g)(3)(i)(B)(*2*) and (g)(3)(i)(C) of this section.

(iv) The non-methane organic compound destruction/treatment efficiency of a control device shall be determined using the following equation:

$$\text{Efficiency} = \left(1 - \left(\frac{\text{NMOC}_{\text{out}} \times \text{exhaust flow}}{\text{NMOC}_{\text{in}} \times \text{inlet flow}}\right)\right) \times 100\%$$

where:

NMOC_{out} = the measured concentration as methane of non-methane organic compounds in the exhaust, and

NMOC_{in} = the measured concentration as methane of non-methane organic compounds in the landfill gas entering the control device.

(A) NMOC_{in} and NMOC_{out} shall be determined using EPA Method 25 (40 CFR part 60, appendix A) sampling and analysis procedures modified to delete the condensate trap from the sampling train. Grab samples of landfill gas at the inlet to the control device, and exhaust from the control device shall be collected simultaneously and at a constant rate over a period of at least 10 minutes in identical clean Tedlar ®[33] bags (or equivalent). Each sample volume shall be sufficient to perform two NMOC analyses and to measure the sample's oxygen content. The oxygen concentration shall be measured at both the inlet to the control device and the exhaust from the control device and in each grab sample using EPA Method 3A (40 CFR part 60, appendix A). Corresponding oxygen concentrations (grab samples and sampling port readings) must agree to within 1% oxygen.

(B) The inlet flow shall be determined using:

(*1*) EPA Method 2 (40 CFR part 60, appendix A); or

(*2*) The continuous flow measuring system installed pursuant to paragraph (g)(3)(i)(D) of this section. The continuous flow measuring system shall be used if the entire flow it measures is directed to the control device being tested.

(C) The exhaust flow shall be determined during the collection of grab samples using EPA's design standard for flares, as described in § 60.18.

(v) NMOC emissions from the control device shall be determined using the following equation:

$$Q_e = F_e \times \text{NMOC}_{\text{out}} \times 3.69 \times 10^{-8}$$

where:

Q_e = NMOC emissions from the control device, in pounds per hour,

F_e = Exhaust flow in standard cubic feet per hour at the actual (measured) oxygen concentration, from paragraph (g)(6)(iv)(C) of this section,

NMOC_{out} = NMOC concentration in exhaust in ppm, from paragraph (g)(6)(iv)(A) of this section, and

3.69×10^{-8} assumes a molecular weight of 14.2 for NMOC as carbon, and 385 cubic feet per pound-mole.

(vi) NO_X and CO emissions from a control device in pounds per million BTU shall be determined using:

(A) EPA Method 7E (40 CFR part 60, appendix A) for NO_X.

(B) EPA Method 10 (40 CFR part 60, appendix A) for CO.

(C) ASTM D1826–77 for the gross (higher) calorific value (GCV) of landfill gas.

(D) EPA Method 3A (40 CFR part 60, appendix A) for Oxygen Concentration.

(E) The calculations contained in § 60.45(f)(5) and § 60.46b(f).

(h) Emissions from Livestock Waste.

(1) *Applicability.* On or after January 1, 1998, any owner or operator of a dairy cattle operation shall comply with the requirements of paragraphs (h)(1) through (h)(6) of this section. For the purposes of this paragraph, the affected areas include the Sacramento Metro Area, the Los Angeles-South Coast Air Basin Area, and the Ventura County Area as described for ozone in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (h) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Covered lagoon means a holding pond with a floating impermeable cover that effectively captures volatile organic compound and methane emissions, recovers them through a collection device and uses the methane for on-farm heating or cooling, electricity generation, or other end use technology.

Dairy cattle mean cows and calves managed as a dairy cattle operation.

Dairy cattle operation means any facility managing greater than 400 cows for the purpose of producing milk or milk products.

Digester means an enclosed non-pressurized vessel in which influent is managed to maximize the generation of methane for utilization in on-farm heating or cooling or electricity generation.

End use technology means the equipment powered by recovered methane gas and its use. Examples of end use technologies are internal combustion engines for generating electricity, boiler and space heaters to produce heat for various operations, and gas-fired chillers to be used for refrigeration.

Influent means manure-containing liquid from the feed apron and milk parlor areas of a dairy cattle operation, which flows to a covered lagoon or digester.

Livestock waste means livestock excrement including liquid wastes, fecal material, and decomposing manure.

Recovery system means a covered lagoon or digester.

Stockpile is manure that is temporarily stored at a designated location prior to shipment for handling at another on-site or off-site location.

(3) *Specific Provisions.*

(i) Dairy cattle operations shall install a recovery system, such as a covered lagoon or digester, to collect and recover livestock waste influent.

(A) A minimum of 55 percent of all livestock waste shall be collected and processed in the recovery system. If a minimum of 55 percent as described above can not be achieved, subject facilities shall identify alternative methods which will achieve an equivalent level of reduction. Facilities shall be subject to the 55 percent requirement until such time as the alternative methods are submitted and approved in writing by the USEPA.

(B) The recovery system shall achieve a minimum 80% control efficiency. Demonstration of control efficiency shall be performed in accordance with the methods specified in paragraph (h)(6) of this section.

(C) The recovery system shall be maintained and operated in a manner which is consistent with manufacturer specifications and which consistently achieves the control efficiency stated in paragraph (h)(3)(i)(B) of this section.

(ii) Manured areas shall be managed to minimize the pooling or accumulation of liquids and shall be sloped 2 to 4 percent to allow drainage of excess moisture. Any facility wastewater and precipitation on or drainage through manure areas shall meet the requirements specified in the California Code of Regulations, Title 23, Division 3, Chapter (Discharges of Waste to Land), "Article 6. Confined Animal Facilities."

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[33] Mention of trade names or specific products does not constitute endorsement by EPA.

(iii) Livestock waste not processed under paragraph (h)(3)(i) of this section and which is placed in a manure storage area or stockpile shall be maintained in long, narrow windrows, no higher than 6 feet. The windrows shall be turned every 5 days during the first 30 days of storage and shall be removed from the dairy cattle facility at least 3 times per year or applied to a disposal field or crop lands at least 3 times per year.

(4) *Reporting.*

(i) Each owner or operator of a facility that is subject to the provisions of paragraph (h)(3) of this section shall submit for approval to the EPA by January 1, 1998 information necessary to demonstrate compliance with the provisions of paragraph (h)(3) of this section by January 1, 1999. This information shall include, at a minimum:

(A) The type of recovery system to be used at the facility;

(B) The type and capacity of the end use technology;

(C) The type of instrumentation and/or techniques to be used for measuring the following parameters:

(*1*) Volume flow rate of gas produced by the recovery system measured in cubic feet per minute;

(*2*) Hours of operation of the recovery system;

(*3*) Hours of operation of the end use technology;

(*4*) Productivity of the end use technology measured in British Thermal Units (BTU), kilowatt-hours (kWh), etc.; and

(*5*) Determination of control efficiency.

(ii) Beginning in 2000, each owner or operator of a facility that is subject to the provisions of paragraph (h)(3) of this section shall submit to the EPA on or before January 1 of each calendar year, a certification of compliance with paragraph (h)(3) of this section for the previous calendar year. The certification shall include, at a minimum, the following information:

(A) The maximum number of cows and calves managed on the facility during the preceding calendar year;

(B) Certification of compliance with the provisions of paragraph (h)(3) of this section.

(5) *Recordkeeping.*

(i) Each owner or operator of a dairy cattle operation shall keep records that demonstrate compliance with paragraph (h)(3) of this section, and shall make these records available to the EPA upon request. At a minimum, these records shall provide the following information:

(A) Date of removal of stockpiled manure as specified by paragraph (h)(3)(iii) of this section;

(B) Values recorded for each parameter specified in paragraph (h)(4)(i)(C) of this section.

(6) *Test Methods.*

(i) Measurements of destruction or removal efficiency shall be determined in accordance with EPA Method 25 (40 CFR part 60, appendix A) or by an alternative method approved in writing by EPA.

(ii) Measurement of capture efficiency shall be determined in accordance with the EPA method[34] or by an alternative method approved in writing by EPA.

(i) *Fugitive Emissions from Gas Processing Plants, Refineries, Bulk Plants, Bulk Terminals, and Chemical Plants.*

(1) *Applicability.* The requirements of paragraphs (i)(1) through (7) of this section shall apply to any owner or operator of a refinery, bulk plant, bulk terminal, chemical plant, or gas processing plant. For the purposes of this section, the affected areas include the Sacramento Metro Area, the Los Angeles-South Coast Air Basin Area, and the Ventura County Area as described for ozone in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraphs (i)(1) through (7) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Background means a reading expressed as methane on a portable hydrocarbon detection instrument which is taken at least three meters upwind from any component to be inspected and which is not influenced by any specific emission point.

Bulk plant means any distributing facility which receives organic liquid; stores it in stationary tanks; and which loads it into tank trucks for delivery to other bulk plants, service stations or other distribution points.

Bulk terminal means any primary distributing plant which receives organic liquid; stores it in stationary tanks; loads it into transportable containers, excluding marine vessels, for delivery to bulk plants, service stations, or other distribution points.

Chemical plant means any facility engaged in producing organic or inorganic chemicals, and/or manufacturing chemical products by chemical processes. Any facility or operation that has 28 as the first two digits in its four digit Standard Industrial Classification (SIC) Code as defined in the SIC Manual is included.

Closed-vent system means any system that is not open to the atmosphere and is composed of piping, connections and, if necessary, flow-inducing devices that transport gases or vapors from a piece or pieces of equipment to a vapor recovery or disposal system.

Commercial natural gas means processed natural gas containing less than 10% VOC by weight.

Component means any valve, fitting, pump, compressor, pressure relief device, diaphragm, hatch, sight-glass, open-ended line, or meter.

Compressor means any device used to compress gases and/or vapors.

Control valve means a device that is used to regulate fluid pressure or volume in a process unit that, upon actuation, releases VOC from the process stream. Control valves which are actuated with non-process stream compressed air are excluded from this definition.

Critical component means any component that if shut down would require the shutdown of the associated process unit.

Fitting means a component used to attach or connect pipes, piping details, and other equipment, such as, vessels, heat exchangers, and condensers. These components include but are not limited to flanges, threaded connections, and other connectors.

Gas processing plant means any facility engaged in the separation of liquids from field gas and/or fractionation of the liquids into gaseous products, such as ethane, propane, butane, and natural gasoline. Excluded from the definition are compressor stations, dehydration units, sweetening units, field treatment, underground storage facilities, liquefied natural gas units, and field gas gathering systems unless these facilities are located at a natural gas processing plant.

Hatch means any covered opening system that provides access to a tank or container, usually through the top deck.

Inaccessible component means any component located over fifteen feet above ground when access is required from the ground; or any component located over six feet away from a platform when access is required from the platform.

Leak means a major gas leak, major liquid leak, minor gas leak, or minor liquid leak.

Leak minimization means reducing a leak to the lowest achievable level using best modern practices including tightening, adjusting, or adding sealing material and without shutting down the process which the component serves.

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[34] 40 CFR 52.741(a)(4)(iii)

Leak repair means any corrective action taken for the purposes of reducing a component leak to the lowest achievable level below the applicable standard using best modern practices.

Major component means any 4-inch or larger valve, any 5-horse-power (5-hp) or larger pump, any compressor, and any 4-inch or larger pressure relief device.

Major gas leak for any component except pressure relief devices means the detection of total gaseous organic compounds in excess of 10,000 ppmv as methane above background as measured according to the test procedures in paragraph (i)(7)(i) of this section. A major gas leak for a pressure relief device means the detection of total gaseous organic compounds in excess of 200 ppmv as methane above background as measured according to the test procedures in paragraph (i)(7)(i) of this section.

Major liquid leak means a visible mist or cloud or a continuous flow of liquid.

Minor component means any component that is not a major component.

Minor gas leak for any component means the detection of total gaseous organic compounds in excess of 500 ppmv (for valves and connectors) and 1,000 ppmv (for other components unless otherwise specified) but not more than 10,000 ppmv as methane above background as measured according to the test procedures in paragraph (i)(7)(i) of this section.

Minor liquid leak is any liquid leak which is not a major liquid leak and drips at a rate of more than three drops per minute.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, copartnership, firm, company, partnership, joint stock company, trust, association, State, municipality, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

Pipeline transfer station means a facility that handles the storage or transfer, or both, of petroleum products or crude petroleum in pipelines.

Platform means any raised, permanent, horizontal surface that provides access to components.

Pressure relief device means a pressure relief valve or a rupture disc.

Pressure relief valve (PRV) means any valve that is automatically actuated by upstream static pressure, and used for safety or emergency purposes.

Pump means any device used to transport fluids by the addition of mechanical energy.

Refinery means a facility that processes petroleum, as defined in the Standard Industrial Classification Manual as Industry Number 2911, Petroleum Refining.

Rupture disc means a diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

Unmanned facility means a remote facility which has no permanent sited personnel and is greater than five miles from the nearest manned facility.

Unsafe-to-monitor component means a component installed at a location that would prevent its safe inspection or repair as defined by Occupational Safety and Health Administration (OSHA) standards or in provisions for worker safety found in 29 CFR 1910.

Vacuum service or *In vacuum service* means that the equipment in VOC service is operating at an internal pressure that is at least 5 kPa (0.73 in. Hg) below ambient pressure.

Valve means a device that regulates or isolates the fluid flow in a pipe, tube, or conduit by means of an external actuator.

Vapor control system means any system that is not open to the atmosphere and is composed of piping, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a vapor recovery or disposal system.

Visual inspection means performing a survey to indentify signs of leaking liquid, visible mist, or audible leaks.

(3) *Specific provisions.* Each owner or operator of a gas processing plant, bulk plant, bulk terminal, refinery, or chemical plant shall be in compliance with the requirements of paragraphs (i)(3)(i) and (i)(3)(ii) of this section by January 1, 1996.

(i) *Identification requirements.* Components in VOC service shall meet the following identification requirements:

(A) All major and critical components shall be physically identified clearly and visibly for inspection, repair, replacement, and recordkeeping purposes.

(B) All major, critical, inaccessible, and unsafe-to-monitor components shall be clearly identified in Piping and Instrumentation (P&I) flow diagrams for inspection, repair, replacement, and recordkeeping purposes.

(C) All minor components shall be individually identified and/or grouped together functionally for identification in P&I flow diagrams for inspection, repair, replacement, and recordkeeping purposes.

(D) The EPA shall be notified of any changes in the identification of a major component within thirty days.

(ii) *Inspection and maintenance (I&M) program.* Any owner or operator of a facility subject to this section shall implement an I&M program that meets the requirements of paragraphs (i)(3)(ii)(A) through (i)(3)(ii)(C) of this section.

(A) *Inspection requirements.* The I&M program will be conducted with the following inspection requirements.

(*1*) All pump seals, compressor seals, and pressure relief valves (PRVs) shall be visually inspected for leaks once during every operating shift. Any vapor leak which is identified during the visual inspection of components under paragraphs (i)(3)(ii)(A)(1) of this section shall be measured to quantify emission concentrations according to the test method specified in paragraph (i)(7)(i) of this section.

(*2*) All components, except as provided in paragraphs (i)(3)(ii)(A)(*3*), (*4*) and (*5*) of this section, shall be inspected quarterly according to the method prescribed in paragraph (i)(7)(i) of this section. The time between inspections shall not exceed 110 consecutive days.

(*3*) The components specified in paragraphs (i)(3)(ii)(A)(*3*)(*i*) and (i)(3)(ii)(A)(*3*)(*ii*) of this section shall be subject to other than quarterly inspection requirements.

(*i*) All inaccessible components shall be inspected annually according to the method prescribed in paragraph (i)(7)(i) of this section. The time between inspections shall not exceed 13 consecutive months.

(*ii*) All fittings, including threaded connections and flanges, shall be inspected for leaks according to the method prescribed in paragraph (i)(7)(i) of this section immediately after being placed into service and semi-annually, not to exceed 195 consecutive days between inspections, thereafter.

(*4*) Unsafe-to-monitor components shall be inspected in accordance with an inspection plan approved by the EPA.

(*5*) PRVs shall be inspected according to the method prescribed in paragraph (i)(7)(i) of this section within three calendar days after every pressure relief event.

(*6*) The inspection frequency for all components except pump seals, compressor seals, and PRVs may be changed to annually, not to exceed 13 consecutive months between inspections, provided that all of the following conditions are met:

(*i*) All components at the facility have been successfully operated and maintained for a period of twelve consecutive months with no leaks exceeding the thresholds listed in the table of leak thresholds in this section.

(*ii*) The requirements specified in paragraph (i)(3)(ii)(A)(*6*)(*i*) of this section are substantiated by documentation and written approval obtained from the EPA.

(*7*) Any annual inspection frequency approved in paragraph (i)(3)(ii)(A)(6)(*ii*) of this section, shall revert to the inspection frequencies specified in paragraphs (i)(3)(ii)(A)(*2*) and (*3*) of this section, should liquid leaks or major gas leaks exceed 0.5 percent of the total components inspected per inspection period.

(*8*) A brightly colored, weather-proof tag shall be affixed to all leaking components showing the date of leak detection and the hydrocarbon concentration determined according to the method prescribed in paragraph (i)(7)(i) of this section.

(B) *Repair and maintenance requirements.* The I&M program shall be conducted in accordance with the following repair and maintenance requirements:

(*1*) All component leaks shall be immediately minimized following detection.

(*2*) All leaks from noncritical components shall be successfully repaired or replaced within the time period following detection of the leak, as specified in the table of repair periods in this section.

(*3*) For leaks from critical and unsafe-to-monitor components, the leaking component shall be replaced with Best Available Control Technology (BACT) equipment as determined by EPA within one year or during the next process turnaround, whichever occurs first.

(*i*) The percentage of valves in service and awaiting repair or replacement at any time shall not exceed the values below:

Effective date	Percentage of leaking valves
January 1, 1996	2
January 1, 1997	1
January 1, 1999	0.5

(*ii*) The percentage of pump and compressor seals in service and awaiting repair or replacement at any time shall not exceed the values below:

Effective date	Percentage of leaking pumps and compressors
January 1, 1996	10
January 1, 1999	1

(*4*) Any repaired or replaced component shall be re-inspected in accordance with the method prescribed in paragraph (i)(7) of this section by the owner or operator within 30 days of the repair or replacement.

(*5*) A component or parts thereof which incur five repair actions for a major gas or liquid leak within a continuous twelve month period shall be replaced with BACT equipment as determined by EPA.

(C) *Leak control requirements.* The owner or operator of any facility subject to this section shall comply with the following leak control requirements. The requirements of paragraphs (i)(3)(ii)(C) (*1*) and (*2*) of this section shall not apply to components being repaired or replaced within the specified repair or replacement period, as given in the table of repair periods in this section or paragraph (i)(3)(ii)(B)(*3*) of this section, if the requirements for leak minimization under paragraph (i)(3)(ii)(B)(*1*) of this section have been met.

(*1*) Any liquid leak detected during an inspection by EPA shall constitute a violation of this section.

(*2*) Any leak detected during an inspection by EPA, within any continuous 24-hour period, and numbering in excess of the leak thresholds for that component listed in the table of leak thresholds in this section, shall constitute a violation of this section.

(*3*) Any open-ended line or valve found to be leaking shall be sealed with a second valve, blind flange, cap, plug, or a second closed valve except during operations requiring process fluid flow through the open-ended line or valve.

(*4*) Hatches shall be closed at all times except during sampling, addition of process material, or attended maintenance operations.

(*5*) Effective twelve months after the adoption of this section, control valves shall be replaced or retrofitted so that a major leak shall not occur during valve actuation or at any other time.

(*6*) Effective twelve months after the adoption of this section, any component leak that is vented through a stack or other confined air stream shall be transported in a closed-vent system with a collection efficiency of at least 95% to a VOC control device with a control efficiency of at least 95%. The determination of control efficiency shall be made in accordance with the test method specified in paragraph (i)(7)(iv) of this section.

(4) *Exemptions.* The provisions of paragraphs (i)(3)(i) and (ii) of this section shall not apply to the following components:

(i) Pressure relief valves, pump seals, and compressor seals that are equipped with a closed-vent system with a VOC collection efficiency of at least 95% that transports the VOC emissions to a vapor control system with a VOC control efficiency of at least 95%. The determination of control efficiency shall be made in accordance with the test method specified in paragraph (i)(7)(iv) of this section.

(ii) The following cases, where the person seeking the exemption shall supply proof of the applicable criteria to the satisfaction of the EPA:

(A) Components buried below ground.

(B) Components, except those at gas processing plants, exclusively handling fluids with a VOC concentration of 10 percent by weight or less, as determined by the test method specified in paragraph (i)(7)(ii) of this section; or components exclusively handling fluids, if the weight percent evaporated is 10 percent or less at 150 degrees Celsius, as determined by the test method specified in paragraph (i)(7)(iii) of this section.

(iii) One-half inch and smaller stainless steel tube fittings which have been demonstrated to the EPA to be leak-free based on an initial inspection in accordance with paragraph (i)(7)(i) of this section.

(iv) Components in vacuum service.

(5) *Reporting.* Any owner or operator of a facility subject to this section shall comply with the following reporting requirements.

(i) A compliance plan shall be prepared and submitted to the EPA by July 1, 1995. The plan shall include the following information:

(A) Component identification methodology to meet the requirements of paragraphs (i)(3)(i)(A) through (C) of this section.

(B) An inspection schedule for all unsafe-to-monitor components pursuant to paragraph (i)(3)(ii)(A)(4) of this section.

(C) A description of all components meeting the exemption requirements of paragraphs (i)(4)(i) through (iv) of this section.

(ii) An annual certification of compliance shall be submitted to the

EPA on or before January 1, 1996, and annually thereafter. The certification of compliance shall include:

(A) A declaration that the facility is in compliance with all of the requirements of this section.

(B) A summary of any changes that have been made to component identification in the original compliance plan.

(6) *Recordkeeping.*

(i) Each facility operator shall maintain an inspection log containing, at a minimum, the following:

(A) Name, location, type of components, and description of any unit where leaking components are found.

(B) Date of leak detection, emission level (ppmv) of leak, and method of leak detection.

(C) Date of leak repair and description of repair action.

(D) Date and emission level of re-check after leak is repaired.

(E) Identification of leaks from critical components that cannot be repaired until the next process turnaround.

(F) If applicable, the API gravity of petroleum process fluids.

(G) The VOC content of leaking process fluids or gases.

(H) Total number of components inspected, and total number and percentage of leaking components found by component type.

(ii) Records of leaks detected by a quarterly or annual operator inspection and each subsequent repair and reinspection shall be submitted to the EPA upon request.

(iii) All records of operator inspection and repair shall be maintained at the facility for the previous two year period and be made available at the time of inspection by the EPA or immediately upon EPA request.

(7) *Test Methods.*

(i) Measurements of total gaseous organic compounds in leak concentrations shall be conducted according to EPA Reference Method 21. The analyzer shall be calibrated with methane.

(ii) The VOC content of fluids shall be determined using procedures that conform to ASTM Methods E 168, E 169, or E 260 or any other procedure that conforms to the above ASTM methods and is approved by the EPA in writing.

(iii) Determination of the evaporated compounds of liquids shall be performed in accordance with ASTM Method D 86–82.

(iv) Determination of the control efficiency of any VOC control equipment shall be performed in accordance with 40 CFR part 60, appendix A, Method 25 or 25A, or South Coast Air Quality Management District (SCAQMD) Test Method 25.1, which is available from EPA.

(v) Determination of the API gravity of crude oil shall be performed in accordance with ASTM Method D 287.

TABLE OF LEAK THRESHOLDS

Component type	Maximum No. of leaks	
	200 or less components inspected	More than 200 components inspected
Valves	1	0.5% of the number inspected.
Pump seals	2	1% of the number inspected.
Compressors	1	1
Pressure Relief Valves.	1	1
Other Components	1	1

TABLE OF REPAIR PERIODS

Type of leak	Time period (days) [a]
Minor Gas Leak	14
Major Gas Leak	5
Major Gas Leak over 50,000 ppmv	[b]1
Major Liquid Leak	[b]1
Minor Liquid Leak	[b]2

[a] Day means a 24 hour period from the time of leak detection.

[b] Unless prohibited by state safety standards or 29 CFR part 1910.

(j) *Gasoline Transfer and Dispensing.*

(1) *Applicability.* The requirements of paragraphs (j)(1) through (j)(7) of this section shall apply to any owner or operator of a gasoline dispensing facility. For the purposes of this paragraph, the affected areas include the Sacramento Metro Area, the Los Angeles-South Coast Air Basin Area, and the Ventura County Area as described for ozone in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (j) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Alteration(s) and/or repair(s) of a gasoline storage and/or dispensing facility is any of the following: the replacement of one or more existing storage tank(s); the removal or addition of storage tank(s) or dispensing nozzle(s), piping or any other component; the replacement of storage tanks, dispensing nozzle(s), piping or any other component with different characteristics from those of the existing or original equipment; or any excavation (exposure to view by digging) of an existing gasoline storage tank and/or the underground liquid piping from the storage tank(s) to the gasoline dispenser(s).

Balance system is a Phase II (Stage II) vapor recovery system that operates on the principle of vapor displacement.

CARB certified vapor recovery system is any Phase I or Phase II vapor recovery system which has been certified by the California Air Resources Board (CARB) pursuant to section 41954 of the California Health and Safety Code as capable of recovering or processing displaced gasoline vapors to an efficiency of ninety-five (95) percent or greater. For the purpose of this section, the term certified shall refer to CARB certification.

CARB executive orders(s) is the procedure, pursuant to Sections 39600, 39601, and 41954 of the California Health and Safety Code and Title 17 Section 94001 of the California Code of Regulations, used by the California Air Resources Board (CARB) to approve the certification, modification of a certification, or recertification of vapor recovery systems and/or related equipment. Copies of CARB Executive Orders can be obtained from CARB, Compliance Division, P.O. Box 2815, Sacramento, CA, 95812.

Gasoline is any petroleum distillate and/or mixture of petroleum distillates and oxygenates used as a fuel in spark ignition engines and having a Reid vapor pressure of four pounds per square inch or greater.

Gasoline storage and dispensing facility means an aggregate of one or more stationary storage tanks, any of which is subject to the provisions of paragraphs (j)(3) through (j)(7) of this section, together with dispensers and control equipment required by the section.

Hold-open latch is a certified device which is an integral part of the dispensing nozzle and is manufactured specifically for the purpose of dispensing gasoline without requiring the consumer's constant physical contact with the nozzle during fueling operations.

Insertion interlock is any certified mechanism which is an integral part of a bellows-equipped dispensing nozzle which prohibits the dispensing of fuel unless the bellows is compressed.

Liquid removal device is a device designed specifically to remove liquid from the vapor return portion of a coaxial hose.

Liquid tight means a liquid leak rate not exceeding three drops per minute.

Motor vehicle is any self-propelled vehicle registered or which requires registration for use on the highway.

Owner/operator is any person who owns, leases, operates, controls or supervises the operation of a gasoline dispensing facility.

Phase I or *Stage I* is gasoline vapor recovery during the transfer of gasoline into or out of stationary tanks at a gasoline dispensing facility.

Phase II or *Stage II* is gasoline vapor recovery during motor vehicle or utility equipment fueling operations from stationary tanks at gasoline dispensing facilities.

Rebuilt equipment is any component of a vapor recovery system that has undergone repair or replacement of any or all of its internal parts.

Reid vapor pressure means the absolute vapor pressure of volatile crude oil and volatile non-viscus petroleum liquids, except liquified petroleum gases, as determined by ASTM D323–89.

Submerged fill tube is any fill tube, the discharge opening of which is entirely submerged, when the liquid level above the bottom of the tank is: 15.2 cm (6 inches), for tanks filled from the top, except for flat bottom tanks where the liquid level above the bottom is 7.6 cm (3 in.); or 45.7 cm (18 inches) for tanks filled from the side.

Top off is the attempt to dispense gasoline to a motor vehicle or utility equipment fuel tank after the dispensing nozzle primary shutoff mechanism has engaged. The filling of those class of vehicle tanks which, because of the configuration of the fill pipe, cause premature activation of the primary shutoff, shall not be considered topping off.

Vacuum assist system is any Phase II vapor recovery system that utilizes a pump, blower, or other vacuum-producing device. Vacuum assist systems may also incorporate an incinerator to process any excess vapors generated by the collection system.

Vapor tight means the detection of less than 10,000 ppm hydrocarbon concentration, as determined by 40 CFR part 60, appendix A, Method 21, using an appropriate analyzer calibrated with methane.

(3) *Standards.*

(i) *Gasoline Transfer Into Stationary Storage Tanks (Phase I).* An owner/operator shall not transfer, permit the transfer or provide equipment for the transfer of gasoline into from any tank truck, trailer or railroad car into any stationary storage tank with a capacity of 950 liters (251 gallons) or more unless all of the following conditions are met:

(A) Such tank is equipped with a permanent submerged fill tube.

(B) Such tank is equipped with a CARB certified vapor recovery system at, or above 95 percent control efficiency, which is maintained and operated according to the manufacturers specifications.

(C) All vapor return lines are connected between the tank truck, trailer or railroad tank car, and the stationary storage tank and all associated hoses, fittings, and couplings are maintained in a vapor tight condition.

(D) The hatch on any tank truck, trailer, or railroad tank car shall not be opened for more than three minutes for each visual inspection, provided that:

(*1*) Transfer or pumping has been stopped for at least 3 minutes prior to opening; and

(*2*) The hatch is closed before transfer or pumping is resumed.

(E) Underground tank lines are gravity drained, and above-ground tanks are equipped with dry breaks such that upon line disconnect the liquid leak rate does not exceed 3 drops per minute.

(F) As of [Insert date of publication of the final rule], an owner/operator shall not install a coaxial Phase I vapor recovery system at a gasoline dispensing facility unless the Phase I system was certified after January 1, 1994. In addition, an owner/operator shall not install a Phase I vapor recovery system unless that system incorporates certified poppetted drybreaks or spring-loaded vapor check valves on the vapor return coupler of the system.

(G) As of one year after [Insert date of publication of the final rule], all open vent pipes on stationary tanks at gasoline dispensing facilities shall be equipped with a pressure-vacuum relief valve. Unless otherwise specified in the applicable CARB executive order, pressure relief shall be set at 3 inches water column and vacuum relief shall be set at 8 inches water column. For the purposes of this paragraph (j), vent pipes of gasoline storage tanks may be manifolded to a single valve when the storage tanks are manifolded according to the applicable CARB executive order.

(H) As of [Insert date of publication of the final rule], any time a gasoline storage tank or associated piping is replaced or installed this spill box must be equiped with an intregal vapor-tight drain valve to return spilled gasoline to the storage tank.

(I) Equipment subject to this paragraph (j) is operated and maintained, according to all of the following requirements:

(*1*) All fill tubes are equipped with vapor-tight covers, including gaskets;

(*2*) All dry breaks are equipped with vapor-tight seals and dust covers;

(*3*) Fixed or Spring-Loaded coaxial fill tubes are operated so that there is no obstruction of vapor passage from the storage tank back to the tank truck, trailer, or railroad tank car;

(*4*) The fill tube assembly, including fill tube, fittings and gaskets, is maintained to prevent vapor leakage from any portion of the vapor recovery system;

(*5*) All storage tank vapor return lines without dry breaks are equipped with vapor-tight covers, including gaskets.

(ii) *Gasoline Transfer Into Vehicle Fuel Tanks (Phase II).* An owner/operator shall not transfer, or permit the transfer, or provide equipment for the transfer of gasoline from a stationary storage tank into any motor vehicle fuel tank of greater than 19 liters (5 gallons) capacity unless all of the following conditions are met:

(A) The dispensing unit used to transfer the gasoline from the stationary storage tank to the motor vehicle fuel tank is equipped with a CARB certified vapor recovery system.

(B) The vapor recovery system and associated components are operated and maintained in a vapor-tight and liquid-tight manner in accordance with the manufacturer's specifications and the applicable CARB certification.

(C) As of [Insert date of publication of the final rule], an owner/operator shall not install any balance system vapor recovery nozzle unless a vapor check valve is located in the nozzle. In addition, a balance system shall not be operated with more than one check valve per nozzle and hose assembly.

(D) As of one year after [Insert date of publication of the final rule], the nominal inside diameter of the connection between the riser and dispenser cabinet shall not be less than 0.75 inches. If flexible tubing is used for this connection, the material shall be listed for use with gasoline and shall be capable of maintaining electrical continuity between the riser and dispenser.

(E) As of one year after [Insert date of publication of the final rule], an owner/operator shall not sell, offer for sale, or install a bellows-equipped vapor recovery nozzle unless it is equipped with a certified insertion interlock mechanism.

(F) As of one year after [Insert date of publication of the final rule], an owner/operator shall not install or operate a vapor recovery nozzle unless it is equipped with a coaxial hose.

(G) As of one year after [Insert date of publication of the final rule], all liquid removal devices required by CARB executive orders shall be maintained to achieve a minimum liquid removal rate of five milliliters per gallon transferred. This standard shall apply at dispensing rates exceeding five gallons per minute, unless a higher removal rate is specified by the Executive Order.

(H) As of [Insert date of publication of the final rule], any gasoline storage or dispensing facility that commences alterations or repairs shall comply with the equipment standards of paragraphs (j)(3)(ii) (C) through (G) of this section.

(I) Equipment subject to this section shall be operated and maintained with none of the following defects:

(1) Absence or disconnection of any component required to be used in the CARB executive order(s) that certified the system.

(2) A vapor hose which is crimped or flattened such that the vapor passage is blocked, or the pressure drop through the vapor hose exceeds by a factor of two or more the requirements in the system certified in the CARB Executive Order(s) applicable to the system.

(3) A nozzle boot which is torn in one or more of the following manner:

(i) Triangular-shaped or similar tear ½ inch or more to a side, or hole ½ inch or more in diameter or,

(ii) Slit 1 inch or more in length.

(4) Faceplate or flexible cone which is damaged in the following manner:

(i) For balance nozzles and for nozzles for aspirator and educator assist type systems, damage shall be such that the capability to achieve a seal with a fill pipe interface is affected for ¼ of the circumference of the faceplate (accumulated).

(ii) For nozzles for vacuum assist-type systems, more than ¼ of the flexible cone missing.

(5) Nozzle shutoff mechanisms which malfunction in any manner.

(6) Vapor return lines, including such components as swivels, anti-recirculation valves and underground piping, which malfunction or are blocked, or restricted such that pressure drop through the lines exceeds by factor of two or more requirements specified in the CARB Executive Order(s) that certified the system.

(7) Vapor processing unit which is inoperative.

(8) Vacuum producing device which is inoperative.

(9) Pressure/vacuum relief valves, vapor check valves, or dry breaks which are inoperative.

(10) Any equipment defect which is identified in an Executive Order certifying a system pursuant to the Certification Procedures incorporated in Section 94001 of Title 17, California Code of Regulations, as substantially impairing the effectiveness of the system in reducing air contaminants.

(11) All nozzles affected by the above defects are to be considered defective.

(iii) Additional Requirements.

(A) An owner/operator shall not offer for sale, sell, or install any new or rebuilt vapor recovery equipment unless the components and the parts are clearly identified or marked by the certified manufacturing company and/or the certified rebuilding company.

(B) An owner/operator shall not perform or permit the "pump-out" (bulk transfer) of gasoline from a storage tank subject to paragraph (j)(3)(i) of this section; unless such bulk transfer is performed using a vapor collection and transfer system capable of returning the displaced vapors to the stationary storage tank or unless the storage tank will be removed or filled with water for testing.

(C) An owner/operator shall not store, or allow the storage of, gasoline in any stationary storage tank with a capacity of 950 liters (251 gallons) or more unless such tank is equipped with a Phase I vapor recovery system.

(D) An owner/operator of any gasoline dispensing facility shall conspicuously post the following signs in the immediate gasoline dispensing area.

(1) "NOZZLE" operating instructions;

(2) Appropriate District toll-free telephone number; and

(3) A warning sign stating:

Toxic Risk—For Your Own Protection Do Not Breathe Fumes. Do Not Top Tanks

(E) All required signs shall conform to all of the following:

(1) For decal signs:

(i) Each sign shall be located adjacent to the dispenser price indicator (per gallon) on each side next to the driveway it serves; and

(ii) Sign shall be readable from a distance of 3 feet or more.

(2) All other signs:

(i) For pump toppers, one double-back sign per island;

(ii) For permanent (non-decal) signs, two single-sided or one double-sided sign(s) per two (2) dispensers.

(iii) All signs shall be readable from a distance of 6 feet or more.

(F) A dispenser that is never used to fuel motor vehicles shall have a sign posted on it restricting its use for vehicles.

(G) Gasoline shall not be stored in open container(s) of any size or handled in any other manner (spillage, spraying, etc.) that permit gasoline or gasoline vapors to enter the atmosphere, contaminate the ground, or the sewer.

(H) The failure of an owner/operator to meet any requirements of paragraphs (j)(3) (i), (ii), or (iii) of this section shall constitute a violation. Such equipment determined to be in violation shall be tagged "Out-of-Order."

(I) Except during repair activity, the "Out-of-Order" tag specified in paragraph (j)(3)(iii)(H) of this section shall not be removed and the tagged equipment shall not be used, permitted to be used, or provided for use unless all of the following conditions are satisfied:

(1) The tagged equipment has been repaired, replaced, or adjusted, as necessary;

(2) The District, Office of Operations, has been notified of the repairs by completing and signing the form supplied by the District;

(3) The tagged equipment has been reinspected and/or authorized for use by the District.

(4) Exemptions. The provisions of this section shall not apply to the transfer of gasoline into or from any stationary tank if its monthly throughput is used exclusively for the fueling of implements of husbandry, such as vehicles defined in Division 16 (Section 36000 *et seq.*) of the California Vehicle Code, provided such a tank is equipped with a submerged fill tube and its storage capacity is less than or equal to 550 gallons (2,082 liters).

(5) *Compliance Schedule.*

(i) The owner/operator of a new facility subject to this section shall comply with the provisions of this section at the time gasoline receiving and/or dispensing is initiated.

(ii) The owner/operator of any altered and/or repaired facility, who was previously exempted from Phase I or Phase II vapor control requirements shall comply with the provisions of this section at the time gasoline receiving and/or dispensing is initiated after completion of the alteration and/or repair.

(iii) The owner/operator of any other existing facility, who was previously exempt from Phase I or Phase II vapor control requirements, and who has not earlier been required to come into compliance, shall achieve compliance by January 1, 1996.

(6) *Testing.*

(i) For new or altered gasoline storage or dispensing facilities, once the system is in operational condition and ready for use, testing to verify the proper installation and function of the entire system (both infrastructure plumbing and aboveground equipment) shall be conducted. Tests of Phase II systems at gasoline dispensing stations shall be conducted in accordance with the following test procedures as found in appendix J of the EPA document, "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions a Gasoline Dispensing Facilities," Vol. II (EPA-450/3-91-022b), November 1991:

(A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure. In addition, CARB Test Procedure TP-201.3 may be used.

(B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/liquid Blockage Test Procedure. In addition, CARB Test Procedure TP-201.2 may be used, and

(C) Bay Area Source Test Procedure ST-37, Liquid Removal Devices.

(ii) In addition to the above tests, Phase I efficiency testing will be done in accordance with CARB TP-201.1.

(iii) Testing may be done by the facility or by a testing company provided that the testing meets the minimum criteria established by CARB for such tests.

(iv) Reverification of the function of the Phase I or Phase II vapor recovery system shall be performed as shown below or upon alteration or repair of any gasoline storage or dispensing facility. Functional tests may also be performed upon request by EPA or the local Air Pollution Control District. Where multiple tests are specified, a leak or blockage found by any method constitutes a violation of this section.

(A) A static pressure leak test using ST-30, TP-91-2 or CARB TP-201.3 shall be performed at least once per calendar year or upon alteration or repair of facilities equipped with a vacuum-assist Phase II system.

(B) A static pressure leak test using ST-30, TP-91-2 or CARB TP-201.3 shall be performed at least once every two years or upon alteration or repair of facilities equipped with a balanced Phase II system.

(C) A liquid blockage test using ST-27, TP-91-2, or CARB TP-201.2 shall be performed at least every five years.

(v) For existing gasoline storage and dispensing facilities, if the facility has not been verified for functional Phase I or Phase II vapor recovery systems within the last four years before the date of promulgation of this section, then functional tests shall be performed at the facility within one year of the date of promulgation of this section. Facilities which have been tested within four years and have the test results documented, shall perform the reverification tests within five years from the date of the tests. All other existing facilities shall be tested within one year of the date of promulgation of this section. Reverification of static pressure integrity shall be performed within one year after promulgation of this section for vacuum-assist systems or two years after promulgation or after the last test, whichever is earliest, for balanced systems.

(7) *Recordkeeping.* All permits or licenses to operate the facility or to operate a specific system at the facility shall be current at all times. The records required in paragraphs (j)(7) (i) through (iv) of this section shall be maintained at each facility for a minimum of five years, and should be made available to EPA and local enforcement personnel upon request.

(i) Verification that the vapor recovery system meets or exceeds the requirements of the tests specified in paragraphs (j)(6) (i), (ii), and (iv) of this section shall be maintained. The test results shall be dated and shall contain names, addresses, and telephone numbers of the parties responsible for the system installation and/or testing.

(ii) All maintenance conducted on any part of the vapor recovery system shall be logged on a maintenance record maintained in chronological order showing dates, description of any equipment replaced with its location, and a description of the system problem which resulted in repairs. The log shall also indicate the time period and duration of each malfunction of the system.

(iii) A file of all inspection reports issued by inspecting agencies shall be maintained in chronological order.

(iv) A chronologically organized file of all compliance records issued by regulating agencies shall be maintained separately from the inspection reports.

(k) *Emissions from Waste Burning.*

(1) *Applicability.* On or after January 1, 1996, any person conducting agricultural burning or open burning shall comply with the requirements of paragraphs (k) (4) and (5) of this section. For the purposes of this section, the affected areas include the Sacramento Metro Area, the Los Angeles-South Coast Air Basin Area, and the Ventura County Area as described for ozone in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraph (k) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Agricultural burning means open outdoor fires used in the following operations: agricultural operations; forest management; range improvement; improvement of land for wildlife and game habitat; disease or pest prevention; operation or maintenance of a system for the delivery of water used in any agricultural operation, forest management, range improvement, land improvement for wildlife and game habitat, and disease or pest prevention operation; wildland vegetation management.

Agricultural operations means the production of materials produced wholly from operations in the growing and harvesting of crops or raising of fowl or animals for the primary purpose of making a profit, of providing a livelihood, or of conducting agricultural research or instruction by an educational institution. In connection with open burning of materials produced from agricultural operations are the burning of grass and weeds in or adjacent to fields in cultivation or being prepared for cultivation, and the burning of materials not produced wholly from agricultural operations, but which are intimately related to the growing or harvesting of crops and which are used in the field (e.g., trays for drying raisins, date palm protection paper, and fertilizer and pesticide sacks or containers where the sacks or containers are emptied in the field.)

Designated agency means any agency designated by the State Air Resources Board as having authority to issue agricultural burning permits. The U.S. Forest Service, the California Department of Forestry, local air districts, local fire control agencies are designated for their respective jurisdictions.

Forest management burning means the use of open fires, as part of a forest management practice, to remove forest debris or for forest management practices which include timber operations, silvicultural practices or forest protection practices.

Local air district means any of the following districts: El Dorado County Air Pollution Control District (APCD), Feather River Air Quality Management District (AQMD), Placer County APCD, Sacramento Metropolitan AQMD, South Coast AQMD, Ventura County APCD, Yolo-Solano APCD.

No-burn day means a day on which agricultural burning and open burning are prohibited by the EPA, State Air Resources Board, or local air district due to a predicted exceedence of the State ambient air quality standard (0.09 ppm) for ozone.

Open burning means planned open burning of trash, leaves, and refuse from all activities except agricultural operations, forest management, range improvement, improvement of land for wildlife and game habitat, disease or pest prevention, operation or maintenance of a system for the delivery of water used in any agricultural operation, forest management, range improvement, land improvement for wildlife and game habitat, and disease or pest prevention operation, and wildland vegetation management where the products of combustion are not directed through a flue.

Permissive-burn day means a day on which agricultural burning and open burning are allowed by the EPA, State Air Resources Board, or local air district.

Range improvement burning means the use of open fires to remove vegetation for a wildlife, game or livestock habitat or for the initial establishment of an agricultural practice on previously uncultivated land.

Silvicultural practices means establish, development, care and reproduction of stands of timber.

Timber operations means cutting or removal of timber or other forest vegetation.

Waste burning means agricultural burning, range management burning, forest management burning, and open burning.

Wildland vegetation management burning means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral, trees, grass, or standing brush.

(3) *No-burn day determination.* A no-burn day may be declared by the USEPA, State Air Resources Board, or local air district if an exceedence of the State ambient air quality standard for ozone (0.09 ppm) is predicted. The following conditions will be evaluated each day for predicting the ozone level for the following day.

(i) Current hourly ozone level, in ppm, measured in the portion of the local air district that falls within the boundaries of the Sacramento FIP area;

(ii) Predicted meteorology including wind speed, and mixing height; and

(iii) Forecast temperature.

(4) *Permitting.* Agricultural burning is prohibited unless a valid burn permit is obtained from the appropriate designated agency.

(5) *Restrictions.*

(i) Agricultural burning shall be prohibited on a no-burn day.

(ii) Open burning shall be prohibited on a no-burn day.

(6) *Exemptions.* [Reserved].

(l) *Emissions of Oxides of Nitrogen from Natural Gas-fired Water Heaters.*

(1) *Applicability.* For the purposes of paragraph (l) of this section, the affected area includes the Sacramento Metro Area as described for ozone in 40 CFR 81.305. The requirements of paragraphs (l)(1) through (6) of this section shall apply to any person who manufactures, offers for sale, sells, or installs any natural gas-fired water heater with a rated heat input capacity less than 75,000 British thermal units per hour (Btu/hr).

(2) *Definitions.* For the purposes of paragraph (l) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

British thermal unit (Btu) means the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at one atmosphere.

Heat input means the actual amount of heat released by natural gas burned in a water heater.

Heat output means the product obtained by multiplying the recovery efficiency, as defined by Title 20, California Administrative Code, Chapter 2, Subchapter 4, Article 4, Sections 1603 and 1607, by the heating value of the natural gas furnished to the water heater.

Natural gas means a mixture of gaseous hydrocarbons containing at least 80 percent methane by volume as determined according to American Standard Test Method (ASTM) D1945–64.

Rated heat input capacity means the heat input capacity specified on the nameplate of the combustion unit. If the combustion unit has been altered or modified such that its maximum heat input is different than the heat input capacity specified on the nameplate, the new maximum heat input shall be considered as the rated heat input capacity.

Water heater means a device that heats water at a thermostatically-controlled temperature for delivery on demand.

(3) *Standards.* After May 31, 1995, no person shall manufacturer, offer for sale, sell, or install any natural gas-fired water heater with NO_X emissions in excess of 40 nanograms calculated as weight equivalent NO_X per joule (ng/j) [93 pounds per billion Btu (93 lb/10^9 Btu)] of heat output.

(4) *Exemptions.* The provisions of this section shall not apply to:

(i) Water heaters with a rated heat input of 75,000 Btu/hr or greater.

(ii) Water heaters used in recreational vehicles.

(iii) Water heaters used exclusively to heat swimming pools and hot tubs.

(5) *Reporting and Recordkeeping.*

(i) *Compliance Report.* A manufacturer shall submit to the Administrator a Compliance Report which demonstrates that each water heater model complies with the section. A manufacturer shall submit a new Compliance Report for any water heater model whose design is changed in any manner which may alter NO_X emissions. Compliance Reports, for either new models or altered models, shall be submitted to the Administrator at least 30 days before the water heater model is offered for sale, sold, or installed in the control area. The Compliance Report shall contain the following information:

(A) *General Information.*

(*1*) Name and address of manufacturer;

(*2*) Brand name and model;

(*3*) Model number as it appears on the rating plate of each water heater; and

(*4*) Description of each water heater model being certified.

(B) *Test Report.*

(*1*) All compliance test procedures and results for each water heater model; and

(*2*) All calculations for determining compliance of each water heater model.

(C) *Compliance Statement.* A signed and dated statement attesting to the accuracy of all statements and information in the Compliance Report.

(ii) *Labeling.* A manufacturer shall display the model number of the water heater on the shipping carton and rating plate of each water heater unit.

(iii) *Recordkeeping.* A manufacturer shall keep Compliance Reports, test reports, and compliance statements for as long as the water heater model is offered for sale, sold, or installed in the control area, or for five calendar years, whichever is longer.

(6) *Test Methods.* The manufacturer shall have each water heater model tested in accordance with the following procedures:

(i) Each water heater model tested shall be operated in accordance with Section 2.4 of American National Standards Institute (ANSI) Z21.10.1–1975 at normal test pressure, input rates, and with a 5-foot exhaust stack installed during the NO_X emissions tests, and

(ii) The measurement of NO_X emissions shall be conducted in accordance with the EPA Reference Methods or Submethods described in appendix A of 40 CFR part 60, or other methods as approved in writing by the Administrator.

(iii) The following procedure shall be used to calculate the NO_X emissions rate in ng/j (lb/10^9 Btu) of heat output:

$$N = \frac{5211 \times Cf \times P \times F}{Ho \times C}$$

Where:

N=Nanograms of NO_X expressed as weight equivalent NO_2 emitted per joule of heat output, ng/j (lb/10^6 Btu)

Cf=Carbon number of fuel, dimensionless

P=NO_X concentration in flue gas, parts per million by volume

F=Volume of fuel burned, cubic feet at 30 inches of mercury (Hg, and 60°F

Ho=Heat output, Btu

C=Concentration of CO_2 measured in flue gas; percent

The definitions of and the measurement procedures for the above parameters are described in the South Coast Air Quality Management District's Rule 1121 Nitrogen Oxides Emissions Compliance Testing for Natural Gas-Fired Water Heaters and Small Boilers. A manufacturer that has certified a water heater model to demonstrate compliance with a State or local agency rule that meets the requirements of this section, may submit the test results to EPA in lieu of conducting duplicative certification tests.

(m) *Emissions of oxides of nitrogen from stationary reciprocating internal combustion engines.*

(1) *Applicability*. For the purposes of this paragraph, the affected area includes the Sacramento Metro Area as described for ozone in 40 CFR 81.305.

(i) Any owner or operator of a stationary internal combustion engine rated at equal to or greater than 50 brake horsepower shall comply with the applicable requirements of paragraphs (m)(1) through (m)(7) of this section.

(ii) Any owner or operator of a stationary internal combustion engine that claims an exemption from the standards of paragraph (m)(3) of this section because of the exemption criteria specified in paragraph (m)(4)(ii) of this section shall comply with the monitoring requirements of paragraph (m)(6)(ii)(C) of this section.

(iii) Any owner or operator of a diesel stationary internal combustion engine that claims an exemption from the standards of paragraph (m)(3) of this section because of the exemption criteria specified in paragraph (m)(4)(viii) of this section shall comply with the monitoring and reporting requirements of paragraph (m)(4)(viii) of this section.

(2) *Definitions*. For the purposes of paragraphs (m)(1) through (m)(7) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Diesel engine means a compression ignited two or four-stroke engine in which liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

Emergency standby engine means an internal combustion engine used only when normal power line or natural gas service fails, or for the emergency pumping of water for either fire protection or flood relief. An emergency standby engine may not be operated to supplement a primary power source when the load capacity or rating of the primary power source has been either reached or exceeded.

Engine rating means the output of an engine as determined by the engine manufacturer and listed on the nameplate of the unit, regardless of any derating.

Higher heating value (HHV) means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015–85 for solid fuels; ASTM D240–87 or ASTM D2382–88 for liquid hydrocarbon fuels; or ASTM D1826–88 or ASTM D1945–81 in conjunction with ASTM D3588–89 for gaseous fuels.

Lean-burn engine means any two or four-stroke spark-ignited engine that is not a rich-burn engine.

Maintenance operation means the use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

Output means the shaft work output from an engine plus the energy reclaimed by any useful heat recovery system.

Peak load means the maximum instantaneous operating load.

Permitted capacity factor means the annual permitted fuel use divided by the manufacturers specified maximum fuel consumption times 8,760 hours per year.

Rich-burn engine means a two or four-stroke spark-ignited engine where the manufacturers original recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio is less than or equal to 1.1.

Shutdown means the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

Startup means the period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer.

Stationary internal combustion engine means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is portable equipment operated at a specific facility for more than 90 days in any 12-month period.

Stoichiometric air/fuel ratio means the air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

Unit means any diesel, lean-burn, or rich-burn stationary internal combustion engine as defined in this paragraph.

Waste gas means the fuel gas produced at either waste-water/sewage treatment facilities or landfills containing no more than 25 percent by volume supplemental gas.

(3) *Standards*.

(i) No owner or operator of a unit subject to the standards of this paragraph shall operate the unit unless the owner or operator complies with the requirements of paragraphs (m)(3)(i)(A), (B), (C), or (D) of this section. Any owner or operator that chooses to comply with this paragraph by means of paragraph (m)(3)(i) (C) or (D) of this section shall also comply with the requirements of paragraphs (m)(3)(ii) and (iii) of this section.

(A) Replace the unit with an electric motor in accordance with the applicable compliance schedule specified in paragraph (m)(5) of this section.

(B) Decrease the annual operating time of the unit to less than 200 hours per calendar year in accordance with the operating time phase-down schedule specified in paragraph (m)(5)(v) of this section. Any owner or operator that chooses to comply with this paragraph shall comply with the monitoring requirements of paragraph (m)(6)(ii)(C) of this section.

(C) No owner or operator of a stationary internal combustion engine shall cause to be discharged into the atmosphere any gases that contain NO_X in excess of the following applicable limit expressed as NO_2 corrected to 15 percent parts per million by volume (ppmv) stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes:

(*1*) Rich-burn, general: 25 ppmv.

(*2*) Lean-burn, general: 45 ppmv.

(*3*) Diesel: 80 ppmv.

(*4*) Rich-burn, waste gas: 50 ppmv.

(*5*) Lean-burn, waste gas: 125 ppmv.

(*6*) Each emission limit expressed in paragraphs (m)(3)(i)(C)(*1*) through (5) of this section may be multiplied by X, where X equals the engine efficiency (E) divided by a reference efficiency of 30 percent. Engine efficiency (E) shall be determined using one of the methods specified in paragraph (m)(3)(i)(C)(6)(i) or (ii) of this section, whichever provides a higher value. However, engine efficiency (E) shall not be less than 30 percent. An engine with an efficiency lower than 30 percent shall be assigned an efficiency of 30 percent.

(i) $$E = \frac{(\text{Engine output} \times 100)}{\text{Energy input}}$$

where energy input is determined by a fuel measuring device accurate to ±5 percent and is based on the HHV of the fuel. Percent efficiency (E) shall be averaged over 15 consecutive minutes and measured at peak load for the applicable engine.

(ii) $$E = \frac{(\text{Mftrs Rated Efficiency [Continuous] at LHV}) \times (\text{LHV})}{(\text{HHV})}$$

where

LHV=the lower heating value of the fuel; and

HHV=the higher heating value of the fuel

(D) In lieu of complying with the NO_x emission limit in paragraph (m)(3)(i)(C)(*1*), (*2*), or (*3*) of this section, an owner or operator shall achieve the applicable percent reduction of the NO_x concentration in the uncontrolled exhaust gas stream specified below. A controlled ppmv NO_x limit shall be established in accordance with the requirements of paragraph (m)(7) of this section for the purpose of demonstrating compliance with the applicable percent reduction.

(*1*) Rich-burn, general: 96 percent.

(*2*) Lean-burn, general: 94 percent

(*3*) Diesel: 90 percent

(ii) Standards for carbon monoxide (CO). Any owner or operator of a stationary internal combustion engine subject to the requirements of paragraph (m)(3)(i)(C) or (D) of this section shall establish a controlled ppmv CO emission limit that represents good operating and combustion practices. No owner or operator shall cause to be discharged into the atmosphere any gases that contain CO in excess of the lowest of one of the following limits:

(A) 120 percent of the CO ppmv level established by an initial compliance test in accordance with the requirements of paragraph (m)(7) of this section; or

(B) 4,500 ppmv.

The owner or operator shall subsequently comply with the limit once it is established. The ppmv CO emissions shall be corrected to 15 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes.

(iii) Standards for volatile organic compounds (VOC). Any owner or operator of a stationary internal combustion engine subject to the requirements of paragraph (m)(3)(i) (C) or (D) of this section shall establish a controlled ppmv VOC emission limit. No owner or operator shall cause to be discharged into the atmosphere any gases that contain VOC in excess of the lowest of one of the following limits:

(A) 120 percent of the VOC ppmv level established by an initial compliance test in accordance with the requirements of paragraph (m)(7) of this section; or

(B) 350 ppmv.

The owner or operator shall subsequently comply with the limit once it is established. The ppmv VOC emissions shall be corrected to 15 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes.

(4) *Exemptions.* The requirements of paragraphs (m) (3), (5), (6), and (7) of this section shall not apply to the following, unless otherwise specified:

(i) Engines rated at less than 50 brake horsepower.

(ii) Engines operated at less than 200 hours per calendar year. Owners or operators that claim an exemption from the standards of paragraph (m)(3) of this section by means of this paragraph shall comply with the monitoring requirements of paragraph (m)(6)(ii)(C) of this section.

(iii) Emergency standby engines operated during either an emergency or maintenance operation. Maintenance operation shall be limited to 50 hours per calendar year.

(iv) Engines used in a laboratory for the sole purpose of conducting research or teaching.

(v) Engines used directly and exclusively for agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(vi) Engine test stands used for evaluating engine performance.

(vii) Diesel engines used to power cranes necessary for emergency evacuation or safety of personnel.

(viii) Diesel engines rated at less than 125 brake horsepower and operated at less than 200,000 horsepower-hours per calendar year.

(A) To demonstrate that a unit is operated less than 200,000 horsepower-hours in a calendar year, the owner or operator shall install, operate, and maintain in calibration equipment that continuously monitors and records elapsed time of operation. For each year, the owner or operator shall also keep an operating log of start and stop times, type and quantity of fuel used, and cumulative annual hours and horsepower-hours of operation for each unit. Each operating log shall be maintained at the plant at which the unit is located for a period of five years. The operating log shall be made available to the Administrator upon request.

(B) The owner or operator of any unit that claims an exemption from the requirements of paragraph (m)(3) of this section under paragraph (m)(4)(viii)(A) of this section shall notify the Administrator within 7 days if the unit is ever operated equal to or greater than 200,000 horsepower-hours in a calendar year. If the unit is ever operated equal to or greater than 200,000 horsepower-hours in a calendar year, the exemption shall be permanently withdrawn and the owner or operator shall be subject to the compliance schedule in paragraph (m)(5)(iv) of this section and the applicable requirements of paragraphs (m) (3), (6), and (7) of this section. Nothing in this paragraph shall prevent EPA from bringing enforcement action for violation of paragraph (m)(3) of this section or for failure to demonstrate compliance with this paragraph (m)(3) of this section.

(5) *Compliance schedule.*

(i) Any owner or operator of a unit in existence prior to the date of adoption of this section that does not need to retrofit the unit, install new control equipment, or decrease annual operating hours to comply with the requirements of paragraph (m)(3) of this section shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1995.

(ii) Any owner or operator of a unit in existence prior to the date of adoption of this section that must retrofit the unit to comply with the requirements of paragraphs (m)(3)(i) (A), (C) or (D), (m)(3)(ii), and (m)(3)(iii) of this section, shall demonstrate compliance in accordance with the applicable schedule specified in paragraph (m)(5)(ii) (A) or (B) of this section.

(A) Any owner or operator that chooses to convert the unit to electric power shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1999. Any owner or operator of a unit to which this paragraph is applicable shall meet the following increments of progress:

(*1*) By January 1, 1997, apply for all authority-to-construct permits required by the local Air Pollution Control District for conversion of the unit to electric power, and

(*2*) By January 1, 1999, commence conversion of the unit to electric power, as approved by the local Air Pollution

Control District, to demonstrate compliance by May 15, 1999.

(B) Any owner or operator that chooses to retrofit the unit with combustion controls or install new control equipment shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1997. Any owner or operator of a unit to which this paragraph is applicable shall meet the following increments of progress:

(*1*) By January 1, 1996, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(*2*) By January 1, 1997, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance by May 15, 1997.

(iii) Any owner or operator of a new unit that is constructed on and after the date of adoption of this section shall apply for, and receive approval of, all authority-to- construct permits required by the local Air Pollution Control District prior to beginning construction of the unit. The owner or operator shall demonstrate that the unit will be operated in compliance with all of the applicable requirements of this section within 60 days after the date of the initial startup of the unit.

(iv) On and after the date of adoption of this section, any owner or operator of a diesel engine that claims an exempt from the requirements of paragraph (m)(3) of this section which operates the unit equal to or greater than 200,000 brake horsepower hours in a calendar year shall demonstrate compliance in accordance with the applicable schedule specified in paragraph (m)(5)(iv) (A) or (B) of this section.

(A) Any owner or operator that chooses to retrofit the unit with combustion controls or install new control equipment shall meet the following increments of progress:

(*1*) Within 2 months after the day that the unit is operated equal to or greater than 200,000 brake horsepower hours in a calendar year, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(*2*) Within 6 months after the day that the unit is operated equal to or greater than 200,000 brake horsepower hours in a calendar year, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance within 12 months after the day that the unit is operated equal to or greater than 200,000 brake horsepower hours in a calendar year.

(B) Any owner or operator that chooses to convert the unit to electric power shall meet the following increments of progress:

(*1*) Within 4 months after the day that the unit is operated equal to or greater than 200,000 brake horsepower hours in a calendar year, apply for all authority-to-construct permits required by the local Air Pollution Control District for conversion of the unit to electric power, and

(*2*) Within 18 months after the day that the unit is operated equal to or greater than 200,000 brake horsepower hours in a calendar year, commence conversion of the unit to electric power, as approved by the local Air Pollution Control District, to demonstrate compliance within 24 months after the day that the unit is operated equal to or greater than 200,000 brake horsepower hours in a calendar year.

(v) Any owner or operator of a unit in existence prior to the date of adoption of this section that chooses to comply with the requirements of paragraph (m)(3) of this section by means of paragraph (m)(3)(i)(B) of this section shall comply with the following increments of progress:

(A) From May 15, 1996 through May 14, 1997, no owner or operator shall operate a unit in excess of 4,380 hours. The owner or operator shall demonstrate that the unit is operated less than or equal to 4,380 hours in accordance with the requirements of paragraph (m)(6)(ii)(C) of this section.

(B) From May 15, 1997 through May 14, 1998, no owner or operator shall operate a unit in excess of 1,800 hours. The owner or operator shall demonstrate that the unit is operated less than or equal to 1,800 hours in accordance with the requirements of paragraph (m)(6)(ii)(C) of this section.

(C) From May 15, 1998 through May 14, 1999, no owner or operator shall operate a unit in excess of 900 hours. The owner or operator shall demonstrate that the unit is operated less than or equal to 900 hours in accordance with the requirements of paragraph (m)(6)(ii)(C) of this section.

(D) On and after May 15, 1999, no owner or operator shall operate a unit equal to or greater than 200 hours per calendar year. The owner or operator shall demonstrate that the unit is operated less than 200 hours in accordance with the requirements of paragraph (m)(6)(ii)(C) of this section.

(6) *Reporting, monitoring, and recordkeeping.*

(i) *Reporting requirements.* Any owner or operator subject to the requirements of paragraph (m)(3) of this section shall comply with the applicable notification requirements of § 60.7, and shall also comply with the following requirements:

(A) By May 15, 1995, submit to the Administrator the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with the section. For each unit identified, the following information shall be submitted to the Administrator:

(*1*) The rated brake horsepower and combustion method (i.e., rich-burn, lean-burn, or diesel) of the engine; type of gaseous and/or liquid fuel(s) that will be burned in the unit; purpose for which the unit is used; hours of operation and fuel consumption (cubic feet of gas or gallons of liquid) for each type of fuel for the previous one year period; brake horsepower hours for the previous one year period; and manufacturer, model designation, and age of the unit.

(*2*) A selection of the standard(s) in paragraph (m)(3) of this section with which the unit will comply.

(*3*) For owners or operators complying by means of paragraph (m)(3)(i) (C) or (D) of this section, a description of the NO_x control system that will be installed on the engine (if any), including type (e.g., selective or nonselective catalytic reduction, "clean-burn" combustion, etc.) and manufacturer, as well as a description of any ancillary equipment related to the control of emissions (e.g., automatic air/fuel ratio controller, fuel valves, etc.).

(B) Any owner or operator subject to the compliance schedule specified in paragraph (m)(5) (ii), (iii), or (iv) of this section shall notify the Administrator in writing of the following:

(*1*) The date construction is commenced on retrofits and/or additions of new control equipment to the unit.

(*2*) The anticipated date of initial startup of the unit after completing retrofits and/or additions of new control equipment to the unit.

(*3*) The actual date of initial startup of the unit after completing retrofits and/or additions of new control equipment to the unit.

(C) By the applicable compliance date specified in paragraph (m)(5) of this section, submit to the Administrator certification that the unit is in compliance with the applicable standards in paragraph (m)(3) of this section. Any owner or operator complying by means of paragraphs (m)(3)(i) (C) or (D), (3)(ii), and (3)(iii) of this section shall demonstrate compliance by submitting to the Administrator and the local Air Pollution Control District the results of an initial compliance test performed in accordance with the applicable requirements of paragraph (m)(7) of this section. The owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present. As a part of the certification, the owner or operator shall submit to the Administrator and the local Air Pollution Control District a written report of the results of the compliance test.

(D) Engine operator inspection plan. By the applicable compliance date specified in paragraph (m)(5) of this section, any owner or operator of a unit rated at equal to or greater than 50 brake horsepower and less than 300 brake horsepower that chooses to comply with the requirements of paragraph (m)(3) of this section by means of paragraphs (m)(3)(i) (C) or (D), (3)(ii), and (3)(iii) of this section shall submit an Engine Operator Inspection Plan to the Administrator and the local Air Pollution Control District. The owner or operator may request a change to the plan at any time. On and after the applicable compliance date specified in paragraph (m)(5) of this section, the plan shall be updated and submitted to the Administrator and the local Air Pollution Control District prior to commencing any change in operation The Plan shall include the following for each engine:

(*1*) The manufacturer, model number, rated brake horsepower, combustion method (i.e., rich-burn, lean-burn, or diesel), and company identification number and the location of the engine.

(*2*) A description of the NO_X control system installed on the engine (if any), including type (e.g., selective or nonselective catalytic reduction, "clean-burn" combustion, etc.) and manufacturer, as well as a description of any ancillary equipment related to the control of emissions (e.g., automatic air/fuel ratio controller, fuel valves, etc.).

(*3*) Establish engine operating parameters (e.g., timing, manifold vacuum pressure, valve set points, etc.) using the results of the initial compliance test required under paragraph (m)(6)(i)(C) of this section. In addition, the plan shall establish engine exhaust oxygen concentrations in accordance with the test data.

(*4*) A specific emission inspection procedure to assure that the engine is operated in continual compliance with the requirements of this section. The procedure shall include an inspection schedule requiring that inspections be conducted every calendar quarter or after every 2,000 hours of engine operation. In no event shall the frequency of inspection be less than once per calendar year.

(*5*) The plan shall require that a portable NO_X analyzer be used to take readings during any quarter in which source tests are not performed. The instrument readings for each parameter in the inspection plan, a description of the corrective actions taken, a determination of whether or not the engine is in compliance, and the name of the person recording the measurement shall be recorded in the inspection log.

(*6*) Each preventative or corrective maintenance procedure or practice that will be used to maintain the engine and NO_X control system in continual compliance with the provisions of this section.

(ii) *Monitoring requirements.*

(A) Any owner or operator of a unit rated at equal to or greater than 300 brake horsepower that chooses to comply with the requirements of paragraph (m)(3) of this section by means of paragraph (m)(3)(i) (C) or (D) and paragraph (m)(3)(ii) of this section shall comply with the following requirements:

(*1*) By the applicable compliance date specified in paragraph (m)(5) of this section, install, calibrate, operate, and maintain a continuous emissions monitoring system (CEMS) in accordance with the applicable requirements of Appendices B and F of 40 CFR part 60 to demonstrate continuous compliance with the requirements of paragraph (m)(3) (i) and (ii) of this section. The CEMS shall be installed and operational before conducting the initial compliance test required under paragraph (m)(6)(i)(C) and paragraph (m)(7) of this section. The owner or operator shall submit to the Administrator documentation that the CEMS is in compliance with the requirements of this paragraph.

(*2*) Each owner or operator shall submit an excess emissions and monitoring systems performance report, in accordance with the requirements of § 60.7(c) and § 60.13, to the Administrator within 30 days after the end of each calendar quarter.

(B) Any owner or operator of a unit rated at equal to or greater than 50 brake horsepower and less than 300 brake horsepower that chooses to comply with the requirements of paragraph (m)(3) of this section by means of either paragraph (m)(3)(i) (C) or (D), and paragraphs (m)(3)(ii) and (m)(3)(iii) of this section, shall comply with the following requirements:

(*1*) Complete an emission test at least once every 24 months in accordance with the requirements of paragraph (m)(7) of this section. If the results of an emission test indicate that a unit is in violation of the applicable NO_X, CO, and/or VOC emission standards specified in paragraphs (m)(3)(i)(C), (m)(3)(i)(D), (m)(3)(ii), and (m)(3)(iii) of this section, the owner or operator shall make any adjustments to the operating parameters of the unit and/or associated control equipment necessary to bring the unit into compliance as demonstrated through an emission test. If it is necessary to adjust the operating parameters of the unit and/or associated control equipment that are different from those specified in the Engine Operator Inspection Plan to bring the unit into compliance, the owner or operator shall revise the Engine Operator Inspection Plan to reflect the changes made to the operating parameters, and shall submit the revisions to the Administrator and the local Air Pollution Control District. Nothing in this paragraph shall prevent EPA from bringing an enforcement action for violation of the applicable emission standards in paragraphs (m)(3)(i)(C), (m)(3)(i)(D), (m)(3)(ii), and (m)(3)(iii) of this section or for failure to demonstrate compliance with this paragraph.

(*2*) By the applicable compliance date in paragraph (m)(5) of this section, each IC Engine subject to this part shall either install, calibrate, operate and maintain a CEMS for NO_X in accordance with the requirements of 40 CFR part 60, appendix B or shall have an engine parameter monitoring scheme developed which shall be capable of continuously predicting the NO_X emission concentration. By the applicable compliance date such parameter monitoring scheme shall be demonstrated to meet a 20% relative accuracy for predicting the 15 minute concentration of NO_X in the exhaust. This relative accuracy evaluation should be conducted in accordance with the techniques of 40 CFR part 60, appendix B and shall compare the predicted 15 minute NO_X concentration through a continuous parameter monitoring model to the NO_X emissions measured by a Method 7E stack test. The parameter monitoring scheme shall continually meet the 20% relative accuracy requirement and at a minimum the parameter monitoring scheme shall be reevaluated for the relative accuracy during each biannual test required by paragraph (m)(6)(ii)(B)(*1*) of this section.

(C) Any owner or operator of a unit rated at equal to or greater than 50 brake horsepower that chooses to comply with the requirements of paragraph (m)(3) of this section by means of paragraph (m)(3)(i)(B) of this section, and any owner or operator that claims an exemption from the standards of paragraph (m)(3) of this section by means of paragraph (m)(4)(ii) of this section, shall install, operate, and maintain in calibration equipment that continuously monitors and records elapsed time of operation to demonstrate compliance with the compliance schedule specified in paragraph (m)(5)(v) of this section. For each year, the owner or operator shall keep an operating log of start and stop times, type and quantity of fuel used, and cumulative annual hours of operation and brake horsepower hours for each unit. Each operating log shall be maintained at the plant at which the unit is located for a period of five years. The operating log shall be made available to the Administrator upon request.

(iii) *Recordkeeping requirements.* Any owner or operator of a unit subject to this section shall maintain all records necessary to demonstrate compliance with the section for a period of five calendar years at the plant at which the subject unit is located. The records shall be made available to the Administrator upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

(A) Identification and location of each engine subject to the requirements of this section.

(B) Calendar date of record.

(C) The number of hours the unit is operated during each day including startup, shutdown, and breakdown periods and the type and duration of maintenance and repairs.

(D) Date and results of each emission inspection.

(E) A summary of any emissions corrective maintenance taken.

(F) Any additional information required in the Engine Operator Inspection Plan.

(G) The results of all compliance tests.

(H) If a unit is equipped with a CEMS:

(*1*) Identification of time periods during which NO_x and CO standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances.

(*2*) Identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(7) *Test Methods.* Any owner or operator that is required to perform a compliance test to demonstrate compliance with the standards specified in paragraphs (m)(3)(i) (C) or (D), (m)(3)(ii), and (m)(3)(iii) of this section shall comply with the requirements of § 60.8 (c), (d), and (e). The test shall be performed and data reduced and reported as follows:

(i) Each emission test shall be conducted while the unit is operated at maximum operating capacity and operating under representative operating conditions.

(ii) Each emission test shall be conducted in accordance with the appropriate test methods in 40 CFR part 60, appendix A. Except for the modifications in this paragraph (m) and unless otherwise approved by the Administrator, NO_x shall be measured in accordance with Method 7E, CO shall be measured in accordance with Method 10, and the diluent shall be measured using Method 3A. Reactive organic compounds shall be measured in accordance with Method 25 or 25A, referenced to methane. If Method 25A is used, Method 18 shall be used to determine methane content. Testing shall be conducted for four 15 minute testing periods. Compliance shall be evaluated for each 15 minute period. Data recorded during testing to determine the 15 minute average shall either be continuously integrated by the testing instrument and data recorder, or recorded manually at 30 second intervals during each 15 minute test period. Zero and calibration checks shall be conducted after each 15 minute test period.

(iii) Any owner or operator that chooses to comply with the requirements of paragraph (m)(3) of this section by means of paragraph (m)(3)(i)(D) of this section shall calculate the applicable percent NO_x emission reduction using the pre- and post-controlled ppmv NO_x concentration. After demonstrating the applicable percent reduction by means of a post-controlled emissions test, the post-controlled NO_x concentration shall be used to establish the outlet ppmv NO_x emission limit for determining subsequent compliance. The outlet ppmv NO_x emission limit established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (m)(6)(i)(C) of this section.

(iv) The ppmv CO and VOC emission limits required by paragraphs (m)(3) (ii) and (iii) of this section, respectively, shall be established during the initial compliance test for NO_x emissions. The CO and VOC emission limits established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (m)(6)(i)(C) of this section.

(n) *Biomass boilers or steam generators.*

(1) *Applicability.* Any owner or operator of a biomass boiler or steam generator with a rated heat input capacity equal to or greater than 5 million British thermal units per hour (mmBtu/hr) and an annual heat input equal to or greater than 9 billion British thermal units per year (10^9 Btu/yr) shall comply with the applicable requirements of paragraphs (n) (1) through (7) of this section. For the purposes of this paragraph, the affected area includes the Sacramento Metro Area as described for ozone in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraphs (n)(1) through (n)(7) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Annual heat input means the actual amount of heat released by fuels burned in a unit during a 12 calendar month rolling period, based on the fuel's higher heating value. The annual heat input shall be calculated as the sum of the previous 12 monthly fuel use rates multiplied by the fuel's higher heating value.

Biomass means any solid organic material used as a fuel source for boilers or steam generators including, but not limited to, wood, almond shells, or agricultural waste.

Biomass boiler or steam generator means any combustion equipment used in any institutional, commercial, or industrial operation that is designed to burn biomass to produce steam, heat water and/or other fluids, and/or generate electricity. A biomass boiler or steam generator does not include any waste heat recovery boiler that is used to recover sensible heat from the exhaust of a combustion turbine or any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment.

British thermal unit (Btu) means the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at one atmosphere.

Heat input means the chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of incoming combustion air.

Higher heating value (HHV) means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015–85 for solid fuels; ASTM D240–87 or ASTM D2382–88 for liquid hydrocarbon fuels; or ASTM D1826–88 or ASTM D1945–81 in conjunction with ASTM D3588–89 for gaseous fuels.

Municipal-type solid waste means household, commercial/retail, and/or institutional waste. Household waste includes material discarded by single and multiple residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes material discarded by schools, hospitals, nonmanufacturing activities at prisons and government facilities and other similar establishments or facilities.

NO_X emissions means the sum of nitric oxides and nitrogen dioxide in the flue gas, collectively expressed as nitrogen dioxide.

Rated heat input capacity means the heat input capacity specified on the nameplate of the combustion unit. If the combustion unit has been altered or modified such that its maximum heat input is different than the heat input capacity specified on the nameplate, the new maximum heat input shall be considered as the rated heat input capacity.

Shutdown means the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

Startup means the period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer.

Unit means any biomass boiler or steam generator as defined in this paragraph.

Wood means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

(3) Standards.

(i) No owner or operator of a biomass boiler or steam generator shall cause to be discharged into the atmosphere any gases that contain NO_X in excess of one of the following standards, which ever is less stringent:

(A) 70 parts per million (ppm) corrected to 12 percent volume stack gas carbon dioxide (CO_2) on a rolling 3 hour average dry basis; or

(B) 50 percent (0.50) of the NO_X concentration in the uncontrolled exhaust gas stream. A controlled ppm NO_X limit shall be established in accordance with the requirements of paragraph (n)(7)(ii) of this section for the purpose of demonstrating continuous compliance with the 50 percent reduction.

(ii) The owner or operator of any biomass boiler or steam generator subject to one of the standards in paragraph (n)(3)(i) of this section shall establish a controlled ppm carbon monoxide (CO) emission limit that represents good operating and combustion practices. No owner or operator shall cause to be discharged into the atmosphere any gases that contain CO in excess of 120 percent of the CO ppm level established by an initial compliance test in accordance with the requirements of paragraph (n)(7)(iii) of this section. The owner or operator shall subsequently comply with the limit once it is established. The ppm CO emissions shall be corrected to 12 percent volume stack gas CO_2 on a rolling 3 hour average dry basis.

(4) *Exemptions.* The requirements of paragraphs (n) (3), (5), (6), and (7) of this section shall not apply to any owner or operator of the following:

(i) Any boiler or steam generator fired with only gaseous and/or liquid fuel that is subject to paragraph (u) of this section.

(ii) Any boiler or steam generator that is designed for the primary purpose of burning municipal-type solid waste.

(5) *Compliance Schedule.*

(i) Any owner or operator of a unit in existence prior to the date of adoption of this section that does not need to retrofit the unit or install new control equipment to comply with the requirements of paragraph (n)(3) of this section shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1995.

(ii) Any owner or operator of a unit in existence prior to the date of adoption of this section that must retrofit the unit or install new control equipment to comply with the requirements of paragraph (n)(3) of this section shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1997. Any owner or operator of a unit to which this paragraph is applicable shall meet the following increments of progress:

(A) By January 1, 1996, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment to the unit, and

(B) By January 1, 1997, commence construction of all retrofits and/or additions of new control equipment to the unit, as approved by the local Air Pollution Control District, to demonstrate compliance by May 15, 1997.

(iii) Any owner or operator of a new unit that is constructed on and after the date of adoption of this section shall apply for, and receive approval of, all authority-to-construct permits required by the local Air Pollution Control District prior to beginning construction of the unit. The owner or operator shall demonstrate that the unit will be operated in compliance with all of the applicable requirements of this section within 60 days after the date of the initial startup of the unit.

(iv) On and after the date of adoption of this section, any owner or operator of a unit exempt from the requirements of paragraph (n)(3) of this section that becomes subject to requirements of paragraph (n)(3) of this section because the unit's annual heat input rate equals or exceeds 9×10^9Btu/yr shall meet the following increments of progress:

(A) Within 7 months after the day that the unit is operated equal to or greater than 9×10^9 Btu/yr, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) Within 19 months after the day that the unit is operated equal to or greater than 9×10^9 Btu/yr, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance within 24 months after the day that the unit is operated equal to or greater than 9×10^9 Btu/yr.

(6) *Reporting, Monitoring, and Recordkeeping.*

(i) *Reporting Requirements.* Any owner or operator subject to the requirements of paragraph (n)(3) of this section shall comply with the applicable notification and reporting requirements of § 60.7, and shall also comply with the following requirements:

(A) By May 15, 1995, submit to the Administrator the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with the section. For each unit identified, the following information shall be submitted to the Administrator:

(*1*) The rated heat input capacity, hours of operation during the previous one-year period, anticipated annual operating time and annual heat input for 1995, type of fuel(s) that will be burned in the unit, and age and manufacturer of the unit.

(*2*) Documentation of existing emissions of NO_X and CO in accordance with the applicable requirements of paragraph (n)(7) of this section, a selection of the standard in paragraph (n)(3)(i) of this section with which the unit will comply, and the control method selected for achieving compliance.

(B) Any owner or operator subject to the compliance schedule specified in paragraph (n)(5) (ii), (iii), or (iv) of this section shall notify the Administrator in writing of the following:

(*1*) The date construction is commenced on all retrofits and/or additions of new control equipment to the unit.

(*2*) The anticipated date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(*3*) The actual date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(C) By the applicable compliance date specified in paragraph (n)(5) of this section, submit to the Administrator certification that the unit is in compliance with the applicable standard in paragraph (n)(3) of this section as demonstrated through a report of the initial compliance test performed in accordance with the applicable requirements of paragraph (n)(4)(ii)(A) or (n)(7) of this section. The owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present.

(ii) *Continuous Emissions Monitoring System (CEMS) Requirements.* Any owner or operator subject to the requirements of paragraph (n)(3) of this section shall comply with the following:

(A) By the applicable compliance date specified in paragraph (n)(5) of this section, install, calibrate, operate, and maintain a CEMS in accordance with the applicable requirements of Appendices B and F of 40 CFR part 60 to demonstrate continuous compliance with the requirements of paragraph (n)(3) of this section. The CEMS shall be installed and operational before conducting the initial compliance test required under paragraph (n)(6)(i)(C) and paragraph (n)(7) of this section. As a part of the certification requirement under paragraph (n)(6)(i)(C) of this section, the owner or operator shall submit documentation that the CEMS is in compliance with the requirements of this paragraph.

(B) Each owner or operator shall submit an excess emissions and monitoring systems performance report, in accordance with the requirements of § 60.7(c) and (d) and 60.13, to the Administrator within 30 days after the end of each calendar quarter.

(iii) *Recordkeeping Requirements.* Any owner or operator of a unit subject to this section shall maintain all records necessary to demonstrate compliance with the section for a period of five calendar years at the plant where the subject unit is located. The records shall be made available to the Administrator upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

(A) Identification and location of each unit subject to the requirements of this section.

(B) Calendar date of record.

(C) The number of hours the unit is operated during each day.

(D) Boiler load, fuel type, actual time of startups and shutdowns, breakdown periods, and the type and duration of maintenance and repairs.

(E) The results of all compliance tests.

(F) The rolling 3 hour average NO_X emission concentration (expressed as NO_2 corrected to 12 percent CO_2) measured.

(G) The rolling 3 hour average CO emission concentration (corrected to 12 percent volume stack gas CO_2) measured.

(H) Identification of time periods during which NO_X and CO standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances.

(I) Identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(*7*) *Test Methods.*

(i) Any owner or operator that chooses to comply with the standard specified in paragraph (n)(3)(i)(A) of this section shall perform an initial compliance test to demonstrate compliance with the standard in accordance with the applicable requirements of § 60.8, and shall also comply with the following:

(A) Each emission test run shall be conducted while the unit is operated at maximum operating capacity. No emission test shall be conducted during start-up, shutdown, or under breakdown conditions for the purpose of demonstrating compliance with this section.

(B) Sampling and analytical procedures shall be conducted in accordance with the applicable EPA Reference Methods and Submethods described in appendix A of 40 CFR part 60.

(C) The 70 ppm emission limit specified in paragraph (n)(3)(i)(A) of this section shall be corrected to 12 percent volume stack gas CO_2 on a rolling 3 hour average dry basis.

(ii) Any owner or operator that chooses to comply with the standard specified in paragraph (n)(3)(i)(B) of this section shall perform an initial compliance test to demonstrate compliance with the standard in accordance with the applicable requirements of § 60.8, and shall also comply with the following:

(A) The requirements of paragraphs (n)(7)(i)(A) and (B) of this section.

(B) The 50 percent NO_X emission reduction specified in paragraph (n)(3)(i)(B) of this section shall be calculated based on the pre- and post-controlled ppm NO_X concentration referenced at 12 percent volume stack gas CO_2 on a rolling 3 hour average dry basis. The pre-controlled ppm NO_X concentration to be used in demonstrating the 50 percent reduction shall be the ppm NO_X concentration submitted to the Administrator in accordance with the requirements of paragraph (n)(6)(i)(A)(*2*) of this section. After demonstrating a 50 percent reduction by means of a post-controlled emissions test, the post-controlled NO_X concentration shall be used to establish the outlet ppm NO_X emission limit for determining subsequent compliance. The ppm NO_X emission limit shall be corrected to 12 percent volume stack gas CO_2 on a rolling 3 hour average dry basis. The outlet ppm NO_X emission limit established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (n)(6)(i)(C) of this section.

(iii) Any owner or operator that is subject to the requirements of paragraph (n)(3)(ii) of this section shall perform a test for CO emissions during the initial compliance test for NO_X emissions to establish a ppm CO emission limit that represents good operating and combustion practices for the fuel(s) burned in the unit. Sampling of CO emissions shall be performed at the outlet of the control system in accordance with the applicable requirements of § 60.8 and the applicable EPA Reference Methods and Submethods described in appendix A of 40 CFR part 60. The ppm CO emissions shall be corrected to 12 percent volume stack gas CO_2 on a rolling 3 hour average dry basis. The outlet ppm CO emission limit established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (n)(6)(i)(C) of this section.

(o) *Emissions of oxides of nitrogen from stationary gas turbines.*

(1) *Applicability.* For the purposes of paragraph (o) of this section, the affected area includes the Sacramento Metro Area as described for ozone in 40 CFR 81.305. Any owner or operator of a stationary gas turbine with a rated heat output capacity equal to or greater than 0.3 megawatt (MW) shall comply with the applicable requirements of paragraphs (o) (1) through (7) of this section.

(2) *Definitions.* For the purposes of paragraph (o) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

British thermal unit (Btu) means the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at one atmosphere.

Chemical processing stationary gas turbine unit means a gas turbine that vents its exhaust gases into the operating stream of a chemical process.

Cogeneration cycle stationary gas turbine unit means a gas turbine that is operated both for the simultaneous production of shaft work and for the recovery of useful thermal energy from the exhaust gases or waste steam as defined by Section 25134 of the California Public Resources Code.

Combined cycle stationary gas turbine unit means a gas turbine that is operated both for the production of electrical energy from shaft work and the useful energy produced from heat recovered from its exhaust gases.

Emergency standby stationary gas turbine unit means a gas turbine that is operated only as a mechanical or electrical power source for a facility when the primary power source has been rendered inoperable, except due to power interruption pursuant to an interruptible power supply agreement. This does not include utility company electrical power plant units.

Exhaust after treatment means a control method for the post- combustion reduction of NO_X emissions, such as selective catalytic reduction.

Higher heating value (HHV) means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015–85 for solid fuels; ASTM D240–87 or ASTM D2382–88 for liquid hydrocarbon fuels; or ASTM D1826–88 or ASTM D1945–81 in conjunction with ASTM D3588–89 for gaseous fuels.

LHV means the lower heating value of a fuel.

NO_X emissions means the sum of nitric oxides and nitrogen dioxide in the flue gas, collectively expressed as nitrogen dioxide.

Measured NO_X emissions concentration corrected to International Standards Organization (ISO) standard conditions is: $NO_X = (NO_X\ \text{obs})(\text{Pref}/\text{Pobs})^{0.5}\,(288\text{K}/\text{Tamb})^{1.53}\,(e^{19\,(\text{Hobs}-0.00633)})$,

where:

NO_X=emissions of NO_X at 15 percent oxygen and ISO standard conditions on a dry basis, ppm.

NO_X obs=measured NO_X emissions at 15 percent oxygen on a dry basis, ppm.

Pref=reference ambient absolute pressure, 101.3 kilopascals (14.696 psia).

Pobs=measured ambient absolute pressure.

Hobs=measured absolute specific humidity of ambient air, pounds water per pound dry air.

e=transcendental constant (2.718).

Tamb=measured temperature of ambient air, degrees K.

Peaking unit means a stationary gas turbine that is used intermittently to produce energy on a demand basis.

Power augmentation means the increase in the gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

Rating of a unit means the continuous MW (megawatt) rating or mechanical equivalent by a manufacturer for gas turbine(s) without power augmentation.

Shutdown means the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

Startup means the period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer.

Stationary gas turbine (unit) means any gas turbine system that is gas and/or liquid fueled with or without power augmentation. This unit is either attached to a foundation at a facility or is portable equipment operated at a specific facility for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft shall be treated as one unit.

Thermal stabilization period means the two-hour start up time necessary to build-up steam pressure for NO_X control purposes in cogeneration cycle and combined cycle units.

(3) *Standards.*

(i) No owner or operator of a stationary gas turbine unit shall cause to be discharged into the atmosphere any gases that contain NO_X, at concentrations corrected for ISO standard conditions, in excess of the following standards:

$$\text{Compliance Limit} = \text{Reference Limit} \times \frac{\text{EFF}}{25\%}$$

where:

Compliance Limit=allowable NO_X emissions (ppm by volume).

Reference Limit=the NO_X emission limit (ppm by volume), calculated at ISO standard conditions, corrected to 15 percent oxygen on a dry basis, and averaged over 15 consecutive minutes.

The limits for various megawatt ratings (continuous rating by the manufacturer without power augmentation) are as follows:

Unit Size

Megawatt rating, MW	Reference limit, ppm
≥0.3 to <2.9 MW	25
≥2.9 MW	9

And,

$$EFF = \frac{3413 \times 100\%}{\text{Actual Heat Rate at HHV of Fuel (Btu/kw-hr)}}$$

The demonstrated percent efficiency of the gas turbine only as calculated without consideration of any downstream energy recovery from the actual heat rate [i.e., (British thermal units (Btu)/kilowatt-hour) or 1.34 Btu/horsepower-hour], corrected to the HHV of the fuel and ISO conditions, as measured at peak load for the turbine. The value of EFF shall not be less than 25 percent. Gas turbines with lower efficiencies will be assigned a 25 percent efficiency for this calculation.

or

$$EFF = \text{Manufacturer Rated Efficiency at LHV} \times \frac{LHV}{HHV}$$

The manufacturer's continuous rated percent efficiency (manufacturer's rated efficiency) of the gas turbine after correction from LHV to the HHV of the fuel, whichever efficiency is higher. The value of EFF shall not be less than 25 percent. Gas turbines with lower efficiencies will be assigned a 25 percent efficiency for this calculation.

(ii) The owner or operator of any stationary gas turbine subject to the standards in paragraph (o)(3) of this section shall establish a controlled ppm carbon monoxide (CO) emission limit that represents good operating and combustion practices. No owner or operator shall cause to be discharged into the atmosphere any gases that contain CO in excess of 120 percent of the CO ppm level established by an initial compliance test in accordance with the requirements of paragraph (o)(7)(ii) of this section. The owner or operator shall subsequently comply with the limit once it is established. The ppm CO emissions shall be corrected to 15 percent volume stack gas O 52 on a dry basis averaged over a period of 15 consecutive minutes.

(4) *Exemptions.*

(i) The requirements of paragraphs (o) (3), (5), (6), and (7) of this section shall not apply to the following:

(A) Laboratory units used in research and testing.

(B) Units operated exclusively for firefighting and/or flood control.

(C) Chemical processing gas turbine units.

(ii) Peaking Units and Emergency Standby Units.

(A) The requirements of paragraphs (o) (3), (5), (6), and (7) of this section shall not apply to peaking units or emergency standby units that operate less than 200 hours per calendar year. To demonstrate that a unit is operated less than 200 hours in a calendar year, the owner or operator shall install, operate, and maintain in calibration equipment that continuously monitors and records elapsed time of operation. The owner or operator shall also keep an operating log of start and stop times, type and quantity of fuel used, and cumulative hours of operation for each unit.

(B) The owner or operator of any stationary gas turbine exempt under paragraph (o)(ii)(A) of this section shall notify the Administrator within 7 days if the unit is operated equal to or greater than 200 hours in a calendar year. If the unit is ever operated equal to or greater than 200 hours in a calendar year, the exemption shall be permanently withdrawn and the owner or operator shall be subject to the applicable requirements of paragraphs (o) (3), (6), and (7) of this section in accordance with the compliance schedule in paragraph (o)(5)(iv) of this section.

(5) *Compliance Schedule.*

(i) Any owner or operator of a unit in existence prior to [*Insert date of publication of the final rule*] that does not need to retrofit the unit or install new control equipment to comply with the requirements of paragraph (o)(3) of this section shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1995.

(ii) Any owner or operator of a unit in existence prior to [*Insert date of publication of the final rule*] that must retrofit the unit or install new control equipment to comply with the requirements of paragraph (o)(3) of this section shall demonstrate compliance with all of the applicable requirements of this section by May 15, 1997. Any owner or operator of a unit to which this paragraph is applicable shall meet the following increments of progress:

(A) By January 1, 1996, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) By January 1, 1996, comply with the requirements of paragraph (o)(6)(ii)(A) of this section if the owner or operator chooses to monitor operating conditions of its turbine to demonstrate continuous compliance with the section.

(C) By January 1, 1997, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance by May 15, 1997.

(iii) Any owner or operator of a new unit that is constructed on and after [*Insert date of publication of the final rule*] the date of adoption of this section shall apply for, and receive approval of, all authority-to-construct permits required by the local Air Pollution Control District prior to beginning construction of the unit. The owner or operator shall demonstrate that the unit will be operated in compliance with all of the applicable requirements of this section within 60 days after the date of the initial startup of the unit.

(iv) On and after [*Insert date of publication of the final rule*], any owner or operator of a unit that becomes subject to requirements of paragraph (o)(3) of this section because of the loss of an exemption under paragraph (o)(4)(ii) of this section shall meet the following increments of progress:

(A) Within 7 months after the day that the unit is operated equal to or greater than 200 hours in a calendar year, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) Within 7 months after the day that the unit is operated equal to or greater than 200 hours in a calendar year, comply with the requirements of paragraph (o)(6)(ii)(A) of this section if the owner or operator chooses to monitor operating conditions of its turbine rather than installing a continuous emissions monitoring system to demonstrate continuous compliance with the section.

(C) Within 19 months after the day that the unit is operated equal to or greater than 200 hours in a calendar year, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance within 24 months after the day that the unit is operated equal to or greater than 200 hours in a calendar year.

(6) *Reporting, Monitoring, and Recordkeeping.*

(i) *Reporting Requirements.* Any owner or operator subject to the requirements of paragraph (o)(3) of this section shall comply with the applicable notification and reporting requirements of § 60.7, and shall also comply with the following requirements:

(A) By May 15, 1995, submit to the Administrator the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with the section. For each unit identified, the following information shall be submitted to the Administrator:

(*1*) The rated heat output capacity (in MW and brake horsepower units); type of fuel(s) (i.e., gaseous and/or liquid) that will be burned in the unit; anticipated annual heat output rate (Btu/kW-hr) corrected to the HHV for each type of fuel; hours of operation and fuel consumption (cubic feet of gas or gallons of liquid) for each type of fuel for the previous one year period; and manufacturer, model designation, and age of the unit.

(*2*) Identification of the standards in paragraph (o)(3) of this section with which the unit will comply, and the control method selected for achieving compliance.

(B) Any owner or operator subject to the compliance schedule specified in paragraph (o)(5) (ii), (iii), or (iv) of this section shall notify the Administrator in writing of the following:

(*1*) The date construction is commenced on all retrofits and/or additions of new control equipment to the unit.

(*2*) The anticipated date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(*3*) The actual date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(C) By the applicable compliance date specified in paragraph (o)(5) of this section, submit to the Administrator certification that the unit is in compliance with the applicable standard in paragraph (o)(3) of this section as demonstrated through a report of the initial compliance test performed in accordance with the applicable requirements of paragraph (o)(6)(ii) or (7) of this section. The owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present.

(ii) *Continuous Emissions Monitoring Requirements.* Any owner or operator of a unit with a rated heat output capacity less than 2.9 MW that is subject to the requirements of paragraph (o)(3) of this section shall either comply with the requirements of paragraphs (o)(6)(ii) (A) or (B) and (o)(6)(ii)(C) of this section. Any owner or operator of a unit with a rated heat output capacity equal to or greater than 2.9 MW that is subject to the requirements of paragraph (o)(3) of this section shall comply with the requirements of paragraphs (o)(6)(ii) (B) and (C) of this section.

(A) Any owner or operator that chooses to monitor operating conditions shall comply with the following:

(*1*) By the applicable compliance date specified in paragraph (o)(5) of this section, submit a plan to the Administrator that includes the following:

(*i*) Identify the specific operating conditions to be monitored and the relationship between the operating conditions and NO_X, CO, and O_2 emission concentrations in the flue gas. For stationary gas turbines, the most important operating variables are turbine load (i.e., actual heat output/design maximum heat output or actual steam generating rate/design maximum steam generating capacity), the level of excess air (i.e., flue gas O_2 level), and type and nitrogen content of each fuel.

(*ii*) In addition to those described in paragraph (o)(6)(ii)(A)(*1*)(*i*) of this section, the water or steam-to-fuel ratio and turbine load are important operating variables to be monitored for water- or steam-injection systems. For selective catalytic reduction systems, the reagent (i.e., ammonia or urea)-to-NO_X ratio and reagent injection pressure are important operating variables to be monitored.

(*iii*) Include the data and information that will be used to identify the relationship between NO_X, CO, and O_2 emission concentrations and the operating conditions.

(*iv*) Describe how the relationship between the operating conditions (including turbine load and fuel type) and NO_X, CO, and O_2 emission concentrations will be established during the initial compliance test. The relationship between the operating conditions and NO_X, CO, and O_2 emission concentrations shall be based on the maximum operating conditions at which the unit can be operated. Once the plan has been approved by the Administrator, the operating conditions used to establish the relationship will be the optimum operating conditions under which the owner or operator should operate the unit. Deviations from these optimum operating conditions in excess of 10% (averaged over the fifteen minute period) shall be recorded and reported in accordance with paragraph (o)(6)(ii)(C) of this section.

(*v*) Identify how the operating conditions, including turbine load and fuel type, will be monitored on a fifteen minute basis; the quality assurance procedures or practices that will be used to ensure that the data generated by monitoring the operating conditions will be representative and accurate; and the type and format of the records of the operating conditions, including turbine load and fuel type, that will be maintained by the owner or operator.

(*2*) By the applicable compliance date specified in paragraph (o)(5) of this section, and annually thereafter, submit to the Administrator certification that the turbine has been operated in accordance with all of the applicable requirements of this section specified under paragraphs (o)(3) and (o)(6)(ii)(A) of this section.

(B) Any owner or operator that is required or chooses to install an in-stack continuous emissions monitoring system (CEMS) shall comply with the following:

(*1*) By the applicable compliance date specified in paragraph (o)(5) of this section, install, calibrate, operate, and maintain a CEMS in accordance with the applicable requirements of appendices B and F of 40 CFR part 60 to demonstrate continuous compliance with the requirements of paragraph (o)(3) of this section. The CEMS shall be installed and operational before conducting the initial compliance test required under paragraphs (o)(6)(i)(C) and (o)(7) of this section. As a part of the certification requirement under paragraph (o)(6)(i)(C) of this section, the owner or operator shall submit documentation that the CEMS is in compliance with the requirements of this paragraph (o). The CEMS shall include equipment that measures and records the following:

(*i*) Exhaust gas NO_X and CO concentrations corrected to ISO conditions at 15 percent oxygen on a dry basis.

(*ii*) Flow rate of liquid or gaseous fuels and the ratio of water- or steam-to-fuel added to the combustion chamber or to the exhaust for the reduction of NO_X emissions.

(*iii*) Elapsed time of operation.

(*2*) [Reserved]

(C) Each owner or operator shall submit an operating conditions deviation or excess emissions report and a monitoring systems performance report, in accordance with the requirements of § 60.7(c) and (d) and

60.13, to the Administrator within 30 days after the end of each calendar quarter.

(iii) *Recordkeeping Requirements.* Any owner or operator of a unit subject to this section shall maintain all records necessary to demonstrate compliance with the section for a period of five calendar years at the plant where the subject unit is located. The records shall be made available to the Administrator upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

(A) Identification and location of each unit subject to the requirements of this section.

(B) Calendar date of record.

(C) The number of hours the unit is operated during each day including actual time of startups and shutdowns, breakdown periods, and the type and duration of maintenance and repairs.

(D) The results of all compliance tests.

(E) For owners or operators of units complying by means of the monitoring requirements of paragraph (o)(6)(ii)(A) of this section, the monitored operating conditions, including turbine load and fuel type, identified in the plan approved by the Administrator.

(F) The NO_X emission concentration (expressed as NO_2corrected to 15 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes) measured or predicted.

(G) The CO emission concentration corrected to 15 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes) measured or predicted.

(H) Identification of time periods during which NO_X and CO standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances.

(I) Identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(7) *Test Methods.*

(i) Any owner or operator subject to an emission standard under paragraph (o)(3) of this section and required to conduct stack testing shall comply with the requirements of § 60.8 (c), (d), and (e). The test shall be performed and data reduced and reported as follows:

(A) Each emission test shall be conducted while the unit is operated at maximum capacity and operating under representative operating conditions.

(B) Emission test shall be conducted in accordance with the appropriate test methods in 40 CFR part 60, appendix A. Except for the modifications in this paragraph and unless otherwise approved by the Administrator: NO_X shall be measured in accordance with 40 CFR part 60, appendix A, Method 7E; CO shall be measured in accordance with 40 CFR part 60, appendix A, Method 10; and the diluent shall be measured using 40 CFR part 60, appendix A, Method 3A. Testing shall be conducted for twelve 15 minute testing periods. Compliance shall be evaluated for each 15 minute period. Data recorded during testing to determine the 15 minute average shall either be continuously integrated by the testing instrument and data recorder, or recorded manually at 30 second intervals during each 15 minute test period. Zero and calibration checks shall be conducted after each 15 minute test period.

(ii) Any owner or operator that is subject to the requirements of paragraph (o)(3)(ii) of this section shall perform a test for CO emissions during the initial compliance test for NO_X emissions to establish a ppm CO emission limit that represents good operating and combustion practices for fuel(s) burned in the unit. The CO emission limit established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (o)(6)(i)(C) of this section.

(p) *RACT Determination—Formica Corporation.*

(1) *Applicability.*

The provisions of paragraph (p) of this section shall apply to the "Formica Corporation" (Formica Corporation) or any subsequent owner or operator of the Formica Corporation, Sierra Plant located at 3500 Cincinnati Avenue, Sunset Whitney Ranch, California.

(2) *Definitions.*

For the purpose of paragraph (p) this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Air Pollution Control Officer means the Executive Officer or his or her delegate of an air quality management district or an air pollution control district.

Coating applicator is an apparatus used to apply a surface coating.

Melamine treater means a paper treater that applies a melamine resin to the paper substrate.

Oven is a chamber within which heat is used for one or more of the following purposes: Dry, bake, cure, or polymerize a surface coating or ink.

Paper treating is a coating line process in which a uniform layer of phenolic or melamine resin is applied by dipping a continuous moving paper substrate into the resin and then using rollers to squeeze the excess resin from the paper.

Paper treating operations is the operation or process of paper treating, together with associated equipment including a coating applicator and oven.

Phenolic treater means a paper treater that applies a phenolic resin to the paper substrate.

Pounds of VOC per gallon of coating less water and less exempt compounds means the weight of VOC per combined volume of VOC and coating solids and is calculated by the following equation:

$$G_{voc}=(W_s-W_w-W_{es})/(V_m-V_w-V_{es})$$

where:

G_{voc}=Pounds VOC per gallon coating less water and exempt compounds;
W_s=Weight of volatile compounds in pounds;
W_w=Weight of water in pounds;
W_{es}=Weight of exempt compounds in pounds;
V_m=Volume of material in gallons;
V_w=Volume of water in gallons;
V_{es}=Volume of exempt compounds in gallons.

Reasonably Available Control Technology or *RACT*, for the purposes of paragraph (p) of this section, means the lowest emission limitation that a particular coating line is capable of meeting by using measures that are reasonably available in terms of technological and economic feasibility. Such measures may include either control system(s) or coating reformulation(s) or both.

(3) *Standards.*

(i) *Limits.* VOC emissions from paper treating operations as defined in paragraph (p)(2) of this section must meet the emission limit of 1.13 pounds of VOC per gallon of coating applied in phenolic treater operations and 0.002 pounds of VOC per gallon of coating applied in melamine treater operations, less water and less exempt compounds, as defined in paragraph (p)(2) of this section.

(ii) *Emission Control System.* Alternatively, a facility may comply with the provisions of paragraph (p)(3)(i) of this section by using an emission control system, provided that the overall efficiency of the system (capture efficiency multiplied by destruction efficiency) shall not be less than 85% by weight in reducing organic compounds. The emission control system, as well as the operation and maintenance plan necessary to ensure compliance on an ongoing basis, shall be approved in writing by the Executive Officer.

(iii) *Compliance Schedule.* Limits as defined in paragraphs (p)(3)(i) or (p)(3)(ii) of this section shall be achieved upon publication of the final rule Implementation Plan (FIP), whichever occurs first.

(4) *Test Methods.*

(i) *Determination of VOC content of coatings.* The VOC content of coatings subject to the provisions of paragraph (p) of this section, excluding exempt compounds, shall be analyzed as prescribed by U.S. EPA Reference Method 24 (40 CFR part 60, appendix A).

(ii) *Determination of exempt compounds.* Measurement of exempt compounds shall be conducted and reported in accordance with ASTM D 4457-85. For exempt compounds where no reference test method is available, a facility requesting the exemption shall provide appropriate test methods approved by the Administrator.

(iii) *Determination of destruction efficiency.* Destruction efficiency as specified in paragraph (p)(3)(ii) of this section shall be determined by U.S. EPA Reference Methods 25 and 25A (40 CFR part 60, appendix A).

(iv) *Determination of capture efficiency.* Measurement of capture efficiency of the emission control system as specified in paragraph (p)(3)(ii) of this section shall be conducted and reported in accordance with the U.S. EPA protocols,[35] or other capture efficiency methods approved by the Administrator.

(5) *Administrative Requirements.*

(i) *Coating and Solvent Records.*

(A) The facility shall maintain a current list of coatings and solvents in use which include the following information:

(1) Name and manufacturer information;

(2) Mixing instructions;

(3) VOC content of coatings as applied;

(4) Weight percent water; and

(5) Weight percent exempt solvent.

(B) The facility shall maintain records of the amounts of coatings and VOCs used according to the following schedule:

(1) Monthly records showing the types and amounts of coatings used that meet the coating standards in paragraph (p)(3)(i) of this section; and

(2) Daily records showing the types and amounts of coatings used when such usage was in conjunction with emission control equipment.

(ii) *Emission Control Equipment Records.* Any facility complying with the provisions of paragraph (p)(3)(ii) of this section by using air pollution control equipment shall maintain daily records of key system operating parameters, such as temperatures, pressures, and/or flow rates, for the emission control equipment.

(iii) *Proof of Compliance.* The facility shall prove compliance with the standards of paragraph (p)(3) of this section by conducting annual source testing of paper treating operations and analyzing resin content as per paragraph (p)(4) of this section.

(iv) *Retention of Records.* All records maintained pursuant to this section shall be retained and available for inspection by the Administrator for the previous five-year period.

(q) *Reasonably Available Control Technology for Emissions of Volatile Organic Compounds at SierraPine, Ltd.*

(1) *Applicability.* The requirements of paragraph (q) of this section shall apply to the owner or operator of SierraPine Limited (SierraPine), a medium density fiberboard plant, conducting operations at 4300 Dominguez Road, Rocklin, California.

(2) *Definitions.* For the purposes of paragraph (q) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950

Fiber drier means a device which uses steam-generated heat to reduce the moisture content of wood fibers.

Fiberboard press means a device which uses heat and pressure to form fiberboard from a preformed mat of wood fiber and resin.

Press line means a series of operations occurring within the press building including mat forming, fiberboard pressing, board unloading, and board cooling.

Press vent means a device used to exhaust fiberboard press line emissions from the press line building.

Wood waste-fired boiler means a combustion device which uses wood, wood fiber, sanderdust, or other wood byproducts as fuel to produce steam for process operations.

(3) *Standards.* The owner or operator of SierraPine shall demonstrate compliance with the requirements of paragraphs (q)(3) (i) through (iii) of this section by January 1, 1996.

(i) Emissions of unburned gaseous combustibles, including VOC and carbon monoxide, from the wood waste-fired boiler shall be minimized by maintaining proper combustion conditions. Proper combustion conditions include but are not limited to optimum combustion temperature, fuel moisture content, fuel firing rate, and sufficient secondary air. The owner or operator of the facility shall submit for approval by EPA a determination of proper combustion conditions. The source shall incorporate additional combustion conditions as recommended in writing by EPA.

(ii) A capture and control system shall be installed and operated to reduce VOC emissions from the wood fiber driers and which meets the following requirements:

(A) The capture and control system shall achieve a minimum 95% VOC control efficiency. Demonstration of VOC control efficiency shall be performed in accordance with the methods specified in paragraph (q)(6) of this section.

(B) The VOC capture and control system shall be operated at all times during the operation of the wood fiber driers The capture and control system shall be maintained and operated in a manner which consistently achieves the VOC control efficiency stated in paragraph (q)(3)(ii)(A) of this section.

(iii) A capture and control system shall be installed and operated to reduce VOC emissions from press vents and which meets the following requirements:

(A) The VOC capture and control system shall achieve a minimum 90% overall VOC control efficiency. Demonstration of VOC control efficiency shall be performed in accordance with the methods specified in paragraph (q)(6) of this section.

(B) The VOC capture and control system shall be operated at all times during the operation of the press vents. The VOC capture and control system shall be maintained and operated in a manner which consistently achieves the overall VOC control efficiency stated in paragraph (q)(3)(iii)(A) of this section.

(4) *Reporting.* The owner or operator of SierraPine shall be subject to the following reporting requirements.

(i) A compliance plan shall be submitted to the EPA prior to installation of any VOC capture and control system or by July 1, 1995, whichever comes first. The compliance plan shall include a description of how the requirements of paragraph (q) of this section shall be met, including:

(A) A description of the proposed VOC capture and control system to be installed at the facility including the following information at a minimum:

(*1*) Equipment supplier.

(*2*) Design drawings of the selected capture and control system, including necessary hooding and ducting.

(*3*) Operating principles of the selected equipment, including any anticipated complications.

(*4*) Anticipated VOC capture and control efficiency of any installed system.

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[35] 40 CFR 52.741(a)(4)(iii).

(*5*) Disposal of any VOCs that are collected, but not destroyed within the control equipment.

(*6*) A description of maintenance practices and schedules for the VOC capture and control system necessary to meet the requirements of paragraphs (q)(3)(ii)(B) and (q)(3)(iii)(B) of this section.

(B) Compliance test dates and test methods to be used to satisfy the requirements of paragraph (q)(3)(ii)(A) of this section.

(ii) An annual certification of compliance shall be submitted to the EPA on or before January 1 of each year. The certification of compliance shall include:

(A) A declaration that the facility is in compliance with all of the requirements of paragraph (q) of this section.

(B) The results of any compliance testing performed during the previous year.

(C) A description of any process upsets that occurred during the previous year that resulted in noncompliance with the emission limit or proper combustion conditions as approved by EPA stated in paragraph (q)(3) of this section and corrective actions taken to correct the noncompliance.

(iii) By January 1, 1996, the owner or operator of the facility shall submit for approval by EPA a determination of proper combustion conditions.

(5) *Recordkeeping*. The owner or operator of SierraPine shall maintain records on site sufficient to show compliance with paragraph (q) of this section for a period of five years. Records shall be made available to the EPA upon request. At a minimum the following information shall be recorded:

(i) Process data sufficient to show that efficient combustion practices are being utilized at the wood waste-fired boiler. These data will include, at a minimum, the following:

(A) Fuel feed rate and composition.

(B) Combustion temperature.

(C) Fuel moisture content.

(D) Percentage of overfire air.

(E) Boiler load.

(ii) VOC capture and control system operating parameters identified by the EPA following review and approval of the compliance plan submitted pursuant to paragraph (q)(4)(i) of this section.

(6) *Test Methods*.

(i) Measurements of destruction or removal efficiency shall be determined in accordance with 40 CFR part 60, appendix A, Method 25.

(ii) Measurement of capture efficiency shall be determined in accordance with the EPA method[38] or by an alternative method approved in writing by EPA.

(iii) Characterization of the stack gas shall be determined in accordance with the applicable EPA Reference Methods described in 40 CFR part 60, appendix A.

(r) *RACT Determination—Michigan-California Lumber Company*.

(1) *Applicability*.

The provisions of paragraph (r) of this section shall apply to the "Michigan-California Lumber Company" or any subsequent owner or operator of the Michigan-California Lumber Facility located at 3970 Carson Road, Camino, California. All provisions are RACT and the emissions standards only apply to the main wood waste-fired boiler (Boiler #3) at the facility.

(2) *Definitions*. For the purpose of paragraph (r) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Air Pollution Control Officer means the Executive Officer, or his or her delegate, or an air quality management district or an air pollution control district.

Boiler means any external combustion equipment fired with any fuel used to produce heat or steam.

Production rate is the total steam output of a boiler in pounds of steam per hour (lbs-steam/hour) of boiler operation.

Reasonably Available Control Technology or *RACT*, for the purposes of paragraph (r) of this section, means the lowest emission limitation that a particular boiler is capable of meeting by using measures that are reasonably available in terms of technological and economic feasibility. Such measures may include either control system(s) or improved combustion conditions, or both.

Total organic gases are any compounds that contain at least one carbon atom.

Wood wastes include bark, sawdust, shavings, hogged wood, and other wood refuse generated during processing operations.

(3) *Standards*.

(i) *Emission limits (ppmv)*. VOC emissions from wood waste boiler operations at a production rate exceeding an annual (calendar year) average of 50,000 lbs-steam per hour as defined in paragraph (r)(2)(i) of this section must meet the emission limit of 150 ppmv of VOC in the stack exhaust stream.

(ii) *Emission limit maintenance*. The VOC emission limit presented in paragraph (r)(3)(i) of this section shall be maintained through any one or more of the following provisions:

(A) Use of fuel with a maximum moisture content of 50%;

(B) Operation of the boiler at optimal combustion conditions;

(C) Proper operation and maintenance of pollution control equipment; and

(D) Periodic inspection, maintenance, and repairs on the boiler and other equipment.

(iii) *Compliance Schedule*. The VOC emission limit defined in paragraph (r)(3)(i) of this section shall be achieved upon publication of the final rule.

(4) *Test Methods and Calculations*.

(i) *Determination of VOC content of exhaust stream*. The VOC content of the exhaust gas stream subject to the provisions of paragraph (r) of this section, excluding exempt compounds, shall be analyzed as prescribed by 40 CFR part 60, appendix A, Methods 25 and 25A.

(ii) *Determination of exempt compounds*. Measurement of exempt compounds shall be conducted and reported in accordance with 40 CFR part 60, appendix A, Method 18.

(5) *Administrative requirements*.

(i) *Emissions testing and records*. The facility subject to the standards of paragraph (r)(3) of this section shall, at a minimum, conduct sample analysis for VOC pollutants at least once each year. The Air Pollution Control Officer (APCO) shall be provided with adequate advance notification at least 2 weeks before any scheduled emissions tests. The analysis results must be submitted to the Administrator and APCO within 60 days of the emissions test.

(ii) *Emission control records*. Any facility complying with the provisions of paragraph (r)(3)(i) of this section through the provisions of paragraph (r)(3)(ii) of this section with air pollution control equipment shall maintain applicable records of system operating parameters, including temperatures, pressures, fuel flow rate, and steam production rate, repair, fuel moisture, and all VOC control measures.

(iii) *Reporting*. The Administrator and APCO shall be notified within 48 hours of any event or incident that results in a known exceedance of this standard.

(iv) *Retention of records*. All records maintained pursuant to this section shall be retained and available for inspection by the Administrator for the previous five-year period.

(s) *RACT determination: Reynolds Metals Company*.

(1) *Applicability*.

The provisions of paragraph (s) of this section shall apply to the Reynolds Metals Company or any subsequent owner or operator of the Reynolds Metals Company's Rocklin Plant located at 3939 Cincinnati Avenue, Rocklin, California.

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[38] 40 CFR 52.741(a)(4)(iii).

(2) *Definitions.*

For the purposes of paragraph (s) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Air pollution control officer (APCO) means the Executive Officer or his or her delegate of an air quality management district or an air pollution control district.

Capture efficiency means the quantity of an air contaminant that is collected into the control device versus the total amount emitted, expressed as a percentage. This is defined by the following equation:

$$\frac{\text{Mass of Air Contaminants Collected into Control Device}}{\text{Total Mass of Air Contaminant Emitted by the Process}}\times 100$$

Control efficiency means the quantity of air contaminant removed from the inlet stream to the control device, expressed as a percentage. This is defined by the following equation:

$$\frac{\text{Inlet Mass of Contaminant} - \text{Outlet Mass of Contaminant}}{\text{Inlet Mass of Contaminant entering Control Device}}\times 100$$

Lubricant applicator is an apparatus used to apply a surface lube.

Oven is a chamber within which heat is used for one or more of the following purposes: dry, bake, cure, or polymerize a surface coating or ink.

Pounds of VOC per gallon of lubricant less water and less exempt compounds means the weight of VOC per combined volume of VOC and coating solids and is calculated by the following equation:

$G_{voc}=(W_s - W_w - W_{es}) / (V_m - V_w - V_{es})$

where:

G_{voc}=Pounds VOC per gallon lubricant less water and exempt compounds;

W_s=Weight of volatile compounds in pounds;

W_w=Weight of water in pounds;

W_{es}=Weight of exempt compounds in pounds;

V_m=Volume of material in gallons;

V_w=Volume of water in gallons;

V_{es}=Volume of exempt compounds in gallons.

Reasonably available control technology or *RACT*, for the purposes of paragraph (s) of this section, means the lowest emission limitation that a particular coating line is capable of meeting by using measures that are reasonably available in terms of technological and economic feasibility. Such measures may include either control system(s) or coating reformulation(s) or both.

Tab press lubrication is the process which uses a lubricated mechanical press to create beverage container lid tabs from flat aluminum metal stock.

(3) *Standards.*

(i) *Limits.* Tab press lubricant cannot exceed a VOC content of 5.73 pounds per gallon of lubricant used, less water and less exempt compounds, as defined in paragraph (s)(2) of this section; and VOC emissions from tab press lubricant usage cannot exceed 1.2×10^{-5} pounds of VOC per tab produced.

(ii) *Emission control system.* Alternatively, a facility may comply with the provisions of paragraph (s)(3)(i) of this section by using an emission control system, provided that the overall efficiency of the system (capture efficiency multiplied by destruction efficiency) shall not be less than 85% by weight in reducing organic compounds. The emission control system, as well as the operation and maintenance plan necessary to ensure compliance on an ongoing basis, shall be approved in writing by the Administrator.

(iii) *Compliance schedule.* Limits as defined in paragraphs (s)(3)(i) or (ii) of this section shall be achieved upon publication of the final rule.

(4) *Test methods.*

(i) *Determination of VOC content of lubricants.* The VOC content of coatings subject to the provisions of paragraph (s) of this section, excluding exempt compounds, shall be analyzed as prescribed by 40 CFR part 60, appendix A, Method 24.

(ii) *Determination of exempt compounds.* Measurement of exempt compounds shall be conducted and reported in accordance with ASTM D 4457–85. For exempt compounds where no reference test method is available, a facility requesting the exemption shall provide appropriate test methods approved by the Administrator.

(iii) *Determination of destruction efficiency.* Destruction efficiency as specified in paragraph (s)(3)(ii) of this section shall be determined by 40 CFR part 60, appendix A, Methods 25 and 25A.

(iv) *Determination of capture efficiency.* Measurement of capture efficiency of the emission control system as specified in paragraph (s)(3)(ii) of this section shall be conducted and reported in accordance with the U.S. EPA protocols,[37] or other capture efficiency methods approved by the Administrator.

(5) *Administrative requirements.*

(i) *Material usage records.*

(A) The facility shall maintain a current list of lubricants and solvents in use which include the following information:

(1) Name and manufacturer information;

(2) Mixing instructions;

(3) VOC content of tab press lubricants as applied;

(4) Weight percent water; and

(5) Weight percent exempt solvent. (B) The facility shall maintain records of the amounts of lubricants and VOCs used according to the following schedule:

(1) Monthly records showing the types and amounts of lubricants used that meet the standards in paragraph (s)(3)(i) of this section; and

(2) Daily records showing the types and amounts of lubricants used when such usage was in conjunction with emission control equipment.

(C) The facility shall maintain monthly records of the number of tabs produced by each type of tab press.

(ii) *Emission control equipment records.* Any facility complying with the provisions of paragraph (s)(3)(ii) of this section by using air pollution control equipment shall maintain daily records of key system operating parameters, such as temperatures, pressures, and/or flow rates, for the emission control equipment.

(iii) *Proof of compliance.* The facility shall prove compliance with the standards of paragraph (s)(3) of this section by conducting annual source testing of tab press lubrication operations and analyzing VOC content of the lubricants as per paragraph (s)(4)(i) of this section.

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[37] 40 CFR 52.741(a)(4)(iii).

(iv) *Retention of records.* All records maintained pursuant to this section shall be retained and available for inspection by the Administrator for the previous five-year period.

(t) *Fugitive emissions from oil and gas production facilities and conveying stations.*

(*1*) *Applicability.* The requirements of paragraph (t) of this section shall apply to any owner or operator of an oil or gas production field or conveying station. For the purposes of this paragraph, the affected areas include the Sacramento Metro Area, the Los Angeles-South Coast Air Basin Area, and the Ventura County Area as described for ozone in 40 CFR 81.305.

(2) *Definitions.* For the purposes of paragraphs (t)(1) through (t)(7) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Background means the ambient concentration of organic compounds expressed as methane as determined by a portable hydrocarbon detection instrument when the reading is taken at least three meters upwind from any component to be inspected and which is not influenced by any specific emission point.

Closed-vent system means any system that is not open to the atmosphere and is composed of piping, connections and, if necessary, flow-inducing devices that transport gases or vapors from a piece or pieces of equipment to a vapor recovery or disposal system.

Commercial natural gas means natural gas containing less than 10% VOC by weight.

Component means any valve, fitting, pump, compressor, pressure relief device, diaphragm, hatch, sight-glass, open-ended line, or meter.

Compressor means any device used to compress gases and/or vapors.

Control valve means a device used to regulate the fluid pressure or volume in a process unit that, upon actuation, releases process stream VOCs. Excluded from this definition are control valves that are actuated by non-process stream compressed air.

Conveying station means any compressor station, metering station, or other transfer station located between the extraction well and the refinery or gas processing plant.

Critical component means any component that if shut down would require the shutdown of a critical process unit.

Critical process unit means a process unit that has no standby equipment available, that cannot be bypassed, and that would be technically infeasible to repair leaks from without shutting down the associated process.

Fitting means a component used to attach or connect pipes, piping details, and other equipment, such as, vessels, heat exchangers, and condensers. These components include but are not limited to flanges, threaded connections, and other connectors.

Gas processing plant means any facility engaged in the separation of liquids from field gas and/or fractionation of the liquids into gaseous products, such as ethane, propane, butane, and natural gasoline.

Gas production facility means a facility at which petroleum gas or natural gas extraction and handling are conducted, as defined in the Standard Industrial Classification Manual as Industry Number 1311, Crude Petroleum and Natural Gas. This definition includes, but is not limited to, compressor stations, dehydration units, sweetening units, field treatment units, liquefied natural gas units, extraction wells, flow lines, gathering lines, separators, and other auxiliary nontransportation equipment used in petroleum gas or natural gas extraction and handling.

Hatch means any covered opening system that provides access to a tank or container, usually through the top deck.

Inaccessible component means any component located over fifteen feet above ground when access is required from the ground; or any component located over six feet away from a platform when access is required from the platform.

Leak means a major gas leak, major liquid leak, minor gas leak, or minor liquid leak.

Leak minimization means reducing a leak to the lowest achievable level using best modern practices including tightening, adjusting, or adding sealing material and without shutting down the process which the component serves.

Leak repair means any corrective action taken for the purposes of reducing a component leak to the lowest achievable level below the applicable standard using best modern practices.

Major component means any 4-inch or larger valve, any 5-horse-power (5-hp) or larger pump, any compressor, and any 4-inch or larger pressure relief device.

Major gas leak for any component means the detection of total gaseous organic compounds in excess of 10,000 ppmv as methane above background as measured according to the test procedures in paragraph (t)(7)(i) of this section.

Major liquid leak means a visible mist or cloud or a continuous flow of liquid

Minor component means any component that is not a major component.

Minor gas leak means for any component, except stuffing boxes and control valves, the detection of total gaseous organic compounds in excess of 1,000 ppmv but not more than 10,000 ppmv as methane above background as measured according to the test procedures in paragraph (t)(7)(i) of this section.

Minor liquid leak is any liquid leak which is not a major liquid leak and drips at a rate of more than three drops per minute.

Oil production facility means a facility at which crude oil extraction and handling is conducted, as defined in the Standard Industrial Classification Manual as Industry Number 1311, Crude Petroleum and Natural Gas. This definition includes, but is not limited to, extraction wells, flow lines, gathering lines, separators, and other auxiliary nontransportation equipment used in petroleum extraction and handling.

Open ended line means any valve, except safety relief valves, having one side of the valve seat in contact with the process fluid or gas and one side open to the atmosphere.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emissions source or air pollution control equipment.

Person means any individual, corporation, copartnership, firm, company, partnership, joint stock company, trust, association, State, municipality, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

Pipeline transfer station means a facility that handles the storage or transfer, or both, of petroleum products or crude petroleum in pipelines.

Platform means any raised, permanent, horizontal surface that provides access to components.

Pressure relief device (PRD) means a pressure relief valve, rupture disc, or any other equipment designed to relieve pressure within process a line when the static pressure reaches a setpoint.

Pressure relief event means a release from a pressure relief device resulting when the static pressure reaches the setpoint of the pressure relief device. A pressure relief event is not a leak.

Pressure relief valve (PRV) means any valve that is automatically actuated by upstream static pressure, and used for safety or emergency purposes.

Pump means any device used to transport fluids by the addition of mechanical energy.

Refinery means a facility that processes petroleum, as defined in the Standard Industrial Classification Manual as Industry Number 2911, Petroleum Refining.

Repair means any corrective action taken for the purposes of reducing a leak to below the applicable standard.

Rupture disc means a diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

Stuffing box means a packing gland, a chamber or "box" which holds packing material compressed around a moving pump rod or valve stem. For the purposes of paragraph (t) of this section, stuffing box seals are considered to be pump seals.

Unmanned facility means a remote facility which has no permanent sited personnel and is greater than five miles from the nearest manned facility.

Unsafe-to-monitor component means a component installed at a location that would prevent its safe inspection or repair as defined by Occupational Safety and Health Administration (OSHA) standards or in provisions for worker safety found in 29 CFR part 1910.

Vacuum service or *In vacuum service* means that the equipment in VOC service is operating at an internal pressure that is at least 5 kPa (0.73 in. Hg) below ambient pressure.

Valve means a device that regulates or isolates the fluid flow in a pipe, tube, or conduit by means of an external actuator.

Vapor control system means any system that is not open to the atmosphere and is composed of piping, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a vapor recovery or disposal system.

Visual inspection means performing a survey to identify signs of leaking liquid, visible mist, or audible leaks.

(3) *Specific provisions.* Each owner or operator of an oil or gas production field or conveying station shall be in compliance with the requirements of paragraphs (t)(3) (i) and (ii) of this section by January 1, 1996.

(i) *Identification requirements.* Components in VOC service shall meet the following identification requirements:

(A) All major and critical components shall be physically identified clearly and visibly for inspection, repair, replacement, and recordkeeping purposes. The physical identification shall consist of labels, tags, or other system approved by the EPA which enables the EPA and the operator to locate each individual component.

(B) All major, critical, inaccessible, and unsafe-to-monitor components shall be clearly identified in Piping and Instrumentation (P&I) diagrams for inspection, repair, replacement, and recordkeeping purposes. For identical field production units, the following items will satisfy the requirements of this paragraph:

(*1*) A single P&I diagram representing the typical component configuration.

(*2*) A listing of field production units by the identification number which is located on a lease map in use by the owner/operator.

(C) A list of all components subject to paragraph (t) of this section shall be prepared which includes separate identification of inaccessible, unsafe-to-monitor, and critical components. The list shall include component identification information as specified under paragraph (t)(3)(i)(A) of this section, the number of minor components by component type, and a description of the VOC service for each component or component type.

(D) The EPA shall be notified of any changes in the identification of a major component within thirty days. The notification shall include necessary amendments to the compliance plan specified under paragraph (t)(5)(i) of this section.

(ii) *Inspection and Maintenance (I&M) program.* Any owner or operator of a facility subject to this section shall implement an I&M program that meets the requirements of paragraphs (t)(3)(ii)(A) through (C) of this section within twelve months after [*Insert date of publication of the final rule*].

(A) *Inspection requirements.* The I&M program will be conducted in accordance with the following inspection requirements.

(*1*) Visual inspection requirements.

(*i*) All pumps, compressors, and pressure relief valves (PRVs) shall be visually inspected for leaks once during every operating shift, except for components located at oil and natural gas production fields.

(*ii*) All pumps, compressors, PRVs, and stuffing boxes located at manned oil and gas production fields shall be visually inspected for leaks once per day and the same components located at unmanned fields shall be inspected once per week.

(*iii*) Any vapor leak which is identified during the visual inspection of components under paragraphs (t)(3)(ii)(A)(*1*)(*i*) and (*ii*) of this section shall be measured to quantify emission concentrations according to the test method specified in paragraph (t)(7)(i) of this section.

(*2*) All components, except as provided in paragraphs (t)(3)(ii) (*1*), (*3*), (*4*), and (*5*) of this section, shall be inspected quarterly according to the method prescribed in paragraph (t)(7)(i) of this section. The time between inspections shall not exceed 110 consecutive days.

(*3*) The components specified in paragraphs (t)(3)(ii)(A)(*3*) (*i*) and (*ii*) of this section shall be subject to other than quarterly inspection requirements.

(*i*) All inaccessible components shall be inspected annually according to the method prescribed in paragraph (t)(7)(i) of this section. The time between inspections shall not exceed 13 consecutive months.

(*ii*) All fittings, including threaded connections and flanges, shall be inspected for leaks according to the method prescribed in paragraph (t)(7)(i) of this section immediately after being placed into service and semi-annually, not to exceed 195 consecutive days between inspections, thereafter.

(*4*) Unsafe-to-monitor components shall be inspected in accordance with an inspection plan approved by the EPA.

(*5*) PRVs shall be inspected according to the method prescribed in paragraph (t)(7)(i) of this section within three calendar days after every pressure relief event.

(*6*) The inspection frequency for all components except pump seals, compressor seals, PRVs, and stuffing boxes may be changed to annually, not to exceed 13 consecutive months between inspections, provided that all of the following conditions are met:

(*i*) All components at the facility have been successfully operated and maintained for a period of twelve consecutive months with no leaks exceeding the thresholds listed in the table of leak thresholds in paragraph (t) of this section. Leaks from stuffing boxes are not included in the total count of leaking components specified by paragraphs (t)(3)(ii)(*A*) (*6*) and (*7*) of this section.

(*ii*) The requirements specified in paragraph (t)(3)(ii)(A)(*6*)(*i*) of this section are substantiated by documentation and written approval obtained from the EPA.

(*7*) Any annual inspection frequency approved in paragraph (t)(3)(ii)(A)(*6*)(*ii*) of this section, shall revert to the inspection frequencies specified in paragraphs (t)(3)(ii)(A) (*2*) and (*3*) of this section, should liquid leaks or major gas leaks exceed 0.5 percent of the total components inspected per inspection period.

(*8*) A brightly colored, weather-proof tag shall be affixed to all leaking components showing the date of leak detection and the hydrocarbon concentration determined according to the method prescribed in paragraph (t)(7)(i) of this section.

(B) *Repair and maintenance requirements.* The I&M program shall be conducted in accordance with the following repair and maintenance requirements:

(*1*) All component leaks shall be immediately minimized following detection.

(*2*) All leaks from noncritical components shall be successfully repaired or replaced within the time period following detection of the leak, as specified in the table of repair periods in paragraph (t) of this section.

(*3*) For leaks from critical and unsafe-to-monitor components, the leaking component shall be replaced with Best Available Control Technology (BACT) equipment as determined by EPA within one year or during the next process turnaround, whichever occurs first.

(*i*) The percentage of valves in service and awaiting repair or replacement at any time shall not exceed the values below:

Effective Date Percentage of Leaking Valves

January 1, 1996—2%
January 1, 1997—1%
January 1, 1999—0.5%

(*ii*) The percentage of pump and compressor seals in service and awaiting repair or replacement at any time shall not exceed the values below:

Effective Date Percentage of Leaking Pumps and Compressors

January 1, 1996—10%
January 1, 1999—1%

(*4*) Any repaired or replaced component shall be re-inspected in accordance with the method prescribed in paragraph (t)(7)(i) of this section by the owner or operator within 30 days of the repair or replacement.

(*5*) A component or parts thereof which incur five repair actions for a major gas or liquid leak within a continuous twelve month period shall be replaced with BACT equipment as determined by EPA. Replacement with BACT equipment for all components except critical components shall take place within the time periods following the fifth repair action specified in the table of repair periods in paragraph (t) of this section. For critical components, replacement with BACT equipment shall take place within one year of the fifth repair action or at the next process turn around following the fifth repair action, whichever comes first.

(C) *Leak control requirements.* The owner or operator of any facility subject to this section shall comply with the following leak control requirements. The requirements of paragraphs (t)(3)(ii)(C) (*1*) and (*2*) of this section shall not apply to components being repaired or replaced within the specified repair or replacement period, as given in the table of repair periods or paragraph (t)(3)(ii)(B)(*3*) of this section, if the requirements for leak minimization under paragraph (t)(3)(ii)(B)(*1*) of this section have been met.

(*1*) A liquid leak from any component detected during an inspection by EPA shall constitute a violation of this section.

(*2*) Any leak detected during an inspection by EPA, within any continuous 24-hour period, and numbering in excess of the leak thresholds for that component listed in the table of leak thresholds, shall constitute a violation of this section.

(*3*) Any open-ended line or valve found to be leaking shall be sealed with a second valve, blind flange, cap, plug, or a second closed valve except during operations requiring process fluid flow through the open-ended line or valve.

(*4*) Hatches shall be closed at all times except during sampling, addition of process material, or attended maintenance operations.

(*5*) Effective twelve months after [*Insert date of publication of the final rule*], control valves shall be replaced or retrofitted so that a major leak shall not occur during valve actuation or at any other time.

(*6*) Effective twelve months after [*Insert date of publication of the final rule*], any component leak that is vented through a stack or other confined air stream shall be transported in a closed-vent system with a collection efficiency of at least 95% to a VOC control device with a control efficiency of at least 95%. The determination of control efficiency shall be made in accordance with the test method specified in paragraph (t)(7)(iv) of this section.

(*7*) Effective twelve months after [*Insert date of publication of the final rule*], any venting of wellhead gases shall be done through a closed vent system to a control device with a VOC control efficiency of at least 95%.

(4) *Exemptions.* The provisions of paragraphs (t)(3) (i) and (ii) of this section shall not apply to the following components:

(i) Pressure relief valves, pump seals, and compressor seals that are equipped with a closed-vent system with a VOC collection efficiency of at least 95% that transports the VOC emissions to a vapor control system with a VOC control efficiency of at least 95%. The determination of control efficiency shall be made in accordance with the test method specified in paragraph (t)(7)(iv) of this section.

(ii) The following cases, where the person seeking the exemption shall supply proof of the applicable criteria to the satisfaction of the EPA:

(A) Components buried below ground.

(B) Components exclusively handling fluids with a VOC concentration of 10 percent by weight or less, as determined by the test method specified in paragraph (t)(7)(ii) of this section; or components exclusively handling fluids, if the weight percent evaporated is 10 percent or less at 150 degrees Celsius as determined by the test method specified in paragraph (t)(7)(iii) of this section.

(C) Components at oil and gas production facilities or conveying stations handling liquids of:

(*1*) Less than or equal to 20 degree API gravity after the point of primary separation.

(*2*) Between 20 and 30 degree API gravity which are located either:

(*i*) Downstream of a wellhead equipped with a casing vapor recovery system, provided that the vapor recovery is at a pressure of less than 10 psig; or

(*ii*) After the point of primary separation of oil and gas, provided the separation vessel is equipped with a vapor recovery system and is operated at a pressure less than 25 psig.

(*3*) Components qualifying for an exemption under paragraph (t)(4)(ii)(C)(*2*) (*i*) or (*ii*) of this section shall be subject to the following requirements:

(*i*) Components shall be visually inspected on a quarterly basis. Upon detection of a visible leak, the leak shall be measured to quantify emission concentrations according to paragraph (t)(7)(i) of this section. The quarterly visual inspection can be changed to an annual inspection if the requirements of paragraph (t)(3)(ii)(A)(*6*) of this section are satisfied; and

(*ii*) Components shall either be subject to paragraph (t)(4)(ii)(C)(*3*)(*i*) of this section, or that any leak from components not subject to an inspection program that are detected by the EPA shall constitute a violation of this section.

(iii) One-half inch and smaller stainless steel tube fittings which ha been demonstrated to the EPA to be leak-free based on an initial inspection in accordance with paragraph (t)(7)(i) of this section.

(iv) Components in vacuum service.

(5) *Reporting.* Any owner or operator of a facility subject to paragraph (t) of this section shall comply with the following reporting requirements.

(i) A compliance plan shall be prepared and submitted to the EPA by July 1, 1995. The plan will include the following information:

(A) Component identification methodology to meet the requirements of paragraphs (t)(3)(i) (A) through (C) of this section.

(B) An inspection schedule for all unsafe-to-monitor components pursuant to paragraph (t)(3)(ii)(A)(*4*) of this section.

(C) A description of all components meeting the exemption requirements of paragraphs (t)(4) (i) through (iv) of this section.

(ii) A certification of compliance shall be submitted to the EPA on or before January 1, 1996, and annually thereafter. The certification of compliance shall include:

(A) A declaration that the facility is in compliance with all of the requirements of paragraph (t) of this section.

(B) A summary of any changes that have been made to component identification in the original compliance plan.

(6) *Recordkeeping.*

(i) Each facility operator shall maintain an inspection log containing, at a minimum, the following:

(A) Name, location, type of components, and description of any unit where leaking components are found.

(B) Date of leak detection, emission level (ppmv) of leak, and method of leak detection.

(C) Date of leak repair and description of repair action.

(D) Date and emission level of re-check after leak is repaired.

(E) Identification of leaks from critical components that cannot be repaired until the next process turnaround.

(F) If applicable, the API gravity of petroleum process fluids.

(G) The VOC content of leaking process fluids or gases.

(H) Total number of components inspected, and total number and percentage of leaking components found by component type.

(ii) Records of leaks detected by a quarterly or annual operator inspection and each subsequent repair and reinspection shall be submitted to the EPA upon request.

(iii) All records of operator inspection and repair shall be maintained at the facility for the previous two year period and be made available at the time of inspection by the EPA or immediately upon EPA request.

(7) *Test methods.*

(i) Measurements of total gaseous organic compounds in leak concentrations shall be conducted according to EPA Reference Method 21. The analyzer shall be calibrated with methane.

(ii) The VOC content of fluids shall be determined using procedures that conform to ASTM Methods E 168, E 169, or E 260 or any other procedure that conforms to the above ASTM methods and is approved by the EPA in writing.

(iii) Determination of the evaporated compounds of liquids shall be performed in accordance with ASTM Method D 86–82.

(iv) Determination of the control efficiency of any VOC control equipment shall be performed in accordance with 40 CFR part 60, appendix A, Method 25 or 25A; or SCAQMD Test Method 25.1, which is available from EPA.

(v) Determination of the API gravity of crude oil shall be performed in accordance with ASTM Method D 287.

TABLE OF LEAK THRESHOLDS

Component type	Maximum number of leaks	
	200 or less components inspected	More than 200 components inspected
Valves	1	(1)
Pump seals	2	(2)
Compressors	1	1
Pressure relief valves	1	1
Hatches	0	0
Open ended lines	0	0
Other components	1	1

[1] 0.5% of the number inspected.

[2] 1% of the number inspected.

TABLE OF REPAIR PERIODS

Type of leak	Time period (days)[a]	
	Onshore	Offshore
Minor Gas Leak	14	14
Major Gas Leak	5	5
Major Gas Leak over 50,000 ppmv	[b,c] 1	5
Major Liquid Leak	[b,c] 1	5
Minor Liquid Leak	[b] 2	5

[a] Day means a 24 hour period from the time of leak detection.

[b] Unless prohibited by state safety standards or 29 CFR 1910.

[c] Components located at unmanned oil and gas production facilities or conveying stations shall be repaired within two days.

(u) *Emissions of oxides of nitrogen from large institutional, commercial, and industrial boilers, steam generators, and process heaters.*

(1) *Applicability.* For the purposes of this paragraph, the affected area includes the Sacramento Metro Area as described for ozone in 40 CFR 81.305.

(i) Any owner or operator of a boiler, steam generator, or process heater with a rated heat input capacity equal to or greater than 5 million British thermal units per hour (mmBtu/hr) shall comply with the applicable requirements standards of paragraphs (u)(1) through (u)(7) of this section.

(ii) Any owner or operator of a boiler, steam generator, or process heater with a rated heat input capacity equal to or greater than 5 million British thermal units per hour (mmBtu/hr) that claims an exemption from the standards of paragraph (u)(3) of this section because of the exemption criteria specified under paragraph (u)(4)(ii) of this section shall comply with the applicable requirements of paragraph (u)(6)(iii)(I) of this section.

(2) *Definitions.* For the purposes of paragraph (u)(1) through (u)(7) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Annual heat input means the actual amount of heat released by fuels burned in a unit during a 12 calendar month rolling period, based on the fuel's higher heating value. The annual heat input shall be calculated as the sum of the previous 12 monthly fuel use rates multiplied by the fuel's higher heating value.

Boiler or steam generator means any combustion equipment used in any institutional, commercial, or industrial operation that is designed to burn gaseous and/or liquid fuel and used to produce steam, heat water and/or other fluids, and/or generate electricity. A boiler or steam generator does not include any waste heat recovery unit that is used to recover sensible heat from the exhaust of a combustion turbine or any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment.

British thermal unit (Btu) means the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at one atmosphere.

Heat input means the chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of incoming combustion air.

Higher heating value (HHV) means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015–85 for solid fuels; ASTM D240–87 or ASTM D2382–88 for liquid hydrocarbon fuels; or ASTM D1826–88 or ASTM D1945–81 in conjunction with ASTM D3588–89 for gaseous fuels.

Non-gaseous fuel means any fuel which is not a gas at 68 °F and one atmosphere.

NO_X emissions means the sum of nitric oxides and nitrogen dioxide in the flue gas, collectively expressed as nitrogen dioxide.

Process heater means any combustion equipment used in any institutional, commercial, or industrial operation that is designed to burn gaseous and/or liquid fuel and which transfers heat from combustion gases to water, heat transfer medium, or process streams. Process heater does not include any kiln or oven used for drying, baking, cooking, calcining or vitrifying; any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment; or any fuel-fired degreasing or metal finishing equipment.

Rated heat input capacity means the heat input capacity specified on the nameplate of the combustion unit. If the combustion unit has been altered or modified such that its maximum heat input is different than the heat input capacity specified on the nameplate, the new maximum heat input shall be considered as the rated heat input capacity.

Shutdown means the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

Stack gas oxygen trim system means the system of monitors that is used to measure stack excess combustion air, typically consisting of flue gas oxygen and/or carbon monoxide monitors that automatically provide a feedback signal to the combustion air controller that maintains the stack excess air at the desired level.

Startup means the period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer.

Unit means any boiler, steam generator, or process heater as defined in this definition.

(3) *Standards.*

(i) Any owner or operator that operates a unit with an annual heat input rate equal to or greater than 9 billion British thermal units per year (10^9 Btu/yr) shall:

(A) Not cause to be discharged into the atmosphere any gases that contain NO_X emissions in excess of the following:

(*1*) For gaseous fuels, 30 parts per million (ppm) corrected to 3 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes; or

(*2*) For liquid fuels, 40 ppm corrected to 3 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes; and

(*3*) Demonstrate initial compliance with the NO_X emission standard in accordance with the requirements of paragraph (u)(7)(i) of this section.

(B) Establish a controlled ppm carbon monoxide (CO) emission limit that represents good operating and combustion practices. No owner or operator shall cause to be discharged into the atmosphere any gases that contain CO in excess of the lowest of one of the following limits:

(*1*) 120 percent of the CO ppm level established by an initial compliance test in accordance with the requirements of paragraph (u)(7) of this section, or

(*2*) 400 ppm. The owner or operator shall subsequently comply with the limit once it is established. The ppm CO emissions shall be corrected to 3 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes.

(C) Demonstrate initial compliance with the NO_X and CO emission standards specified in paragraphs (u)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraphs (u)(6)(i)(C) and (u)(7)(i) of this section.

(D) Units with a rated heat input capacity equal to or greater than 5 mmBtu/hr and less than 40 mmBtu/hr shall demonstrate compliance with the NO_X and CO emission standards specified in paragraphs (u)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraph (u)(7)(i) of this section not less than once every 24 months since the previous compliance test.

(E) Units with a rated heat input capacity greater than 40 mmBtu/hr and less than 100 mmBtu/hr shall demonstrate compliance with the NO_X and CO emission standards specified in paragraphs (u)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraph (u)(7)(i) of this section not less than once every 12 months since the previous compliance test.

(F) Units with a rated heat input capacity equal to or greater than 100 mmBtu/hr shall demonstrate compliance with the NO_X and CO emission standards specified in paragraphs (u)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraph (u)(6)(ii)(A) of this section.

(ii) Any owner or operator that operates a unit with an annual heat input rate less than 9×10^9 Btu/yr shall comply with one of the following:

(A) The unit shall be tuned once every 6 months or after 750 hours of operation since the previous tuneup, whichever occurs last, but in no case less than once per calendar year. The unit shall be tuned in accordance with the procedures described in paragraph (u)(7)(ii) of this section; or

(B) The unit shall be operated in a manner that maintains stack gas oxygen concentrations at less than or equal to 3 percent on a dry basis for any 15 consecutive minute averaging period; or

(C) The unit shall be operated using a stack gas oxygen trim system set at 3 percent oxygen. The tolerance of the setting shall be ±5 percent; or

(D) Demonstrate compliance with the NO_X and CO emission standards specified in paragraphs (u)(3)(i) (A) and (B) of this section in accordance with the applicable requirements of paragraphs (u)(3)(i)(D), (E), or (F) of this section.

(E) Any owner or operator of a unit subject to the requirements of paragraph (u)(3)(ii) of this section shall comply with the requirements of paragraph (u)(3)(i) of this section if the unit is ever operated during any rolling 12 calendar month period at a total annual heat input rate equal to or greater than 9×10^9 Btu/yr.

(4) Exemptions.

(i) The requirements of paragraphs (u)(3), (u)(5), (u)(6), and (u)(7) of this section shall not apply to any owner or operator of a unit with a rated heat input capacity of less than 5 mmBtu/hr.

(ii) The requirements of paragraph (u)(3)(i)(A)(*1*) of this section shall not apply to any owner or operator of a unit normally operated on gaseous fuel under the following conditions:

(A) Non-gaseous fuel use is required due to the curtailment of natural gas service to the individual unit by the natural gas supplier. Non-gaseous fuel use in this case shall not exceed the period of natural gas curtailment.

(B) Non-gaseous fuel use is required to maintain the non-gaseous fuel system. Non-gaseous fuel use in this case shall not exceed 50 hours per year.

(C) Any owner or operator that claims an exemption under paragraph (u)(4)(ii) of this section shall comply with the recordkeeping requirements specified under paragraph (u)(6)(iii)(I) of this section.

(5) *Compliance schedule.*

(i) Any owner or operator of a unit in existence prior to *[Insert date of publication of the final rule]* that does not need to retrofit the unit or install new control equipment to comply with the requirements of paragraph (u)(3) of this section shall demonstrate compliance with all of the applicable requirements of paragraph (u) of this section by May 15, 1995.

(ii) Any owner or operator of a unit in existence prior to [Insert date of publication of the final rule] that must retrofit the unit and/or install new control equipment to comply with the requirements of paragraph (u)(3) of this section shall demonstrate compliance with all of the applicable requirements of paragraph (u) of this section by May 15, 1997. Any owner or operator of a unit to which paragraph (u) of this section is applicable shall meet the following increments of progress:

(A) By January 1, 1996, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) By January 1, 1997, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance by May 15, 1997.

(iii) Any owner or operator of a new unit that is constructed on and after [Insert date of publication of the final rule] the date of adoption of this section shall apply for, and receive approval of, all authority-to-construct permits required by the local Air Pollution Control District prior to beginning construction of the unit. The owner or operator shall demonstrate that the unit will be operated in compliance with all of the applicable requirements of paragraph (u) of this section within 60 days after the date of the initial startup of the unit.

(iv) On and after [Insert date of publication of the final rule], any owner or operator of a unit exempt from the requirements of paragraph (u)(3)(i) of this section that becomes subject to requirements of paragraph (u)(3)(i) of this section because the unit's rolling 12 calendar month annual heat input rate equals or exceeds 9×10^9 Btu/yr shall meet the following increments of progress:

(A) Within 7 months after the day that the unit is operated equal to or greater than 9×10^9 Btu/yr, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) Within 19 months after the day that the unit is operated equal to or greater than 9×10^9 Btu/yr, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance within 24 months after the day that the unit is operated equal to or greater than 9×10^9 Btu/yr.

(6) *Reporting, monitoring, and recordkeeping.*

(i) *Reporting requirements.* Any owner or operator subject to the requirements of paragraph (u)(3) of this section shall comply with the applicable notification and reporting requirements of § 60.7, and shall also comply with the following requirements:

(A) By May 15, 1995, submit to the Administrator the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with paragraph (u) of this section. For each unit identified, the following information shall be submitted to the Administrator:

(*1*) The rated heat input capacity, hours of operation during the previous one-year period, anticipated annual operating time and annual heat input for 1995, type of gaseous and/or liquid fuel(s) that will be burned in the unit, and age and manufacturer of the unit.

(*2*) Identification of the NO_X standard in paragraph (u)(3)(i) or (u)(3)(ii) of this section with which the unit will comply, and the control and compliance method selected for demonstrating compliance.

(B) Any owner or operator subject to the compliance schedule specified in paragraph (u)(5) (ii), (iii), or (iv) of this section shall notify the Administrator in writing of the following:

(*1*) The date construction is commenced on all retrofits and/or additions of new control equipment to the unit.

(*2*) The anticipated date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(*3*) The actual date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(C) By the applicable compliance date specified in paragraph (u)(5) of this section, any owner or operator of a unit subject to the requirements of paragraph (u)(3)(i) of this section shall submit to the Administrator certification that the unit is in compliance with the applicable standards in paragraph (u)(3)(i) of this section as demonstrated through the applicable requirements of paragraph (u)(6)(ii)(A) or (u)(7)(i) of this section. As a part of the certification, the owner or operator shall submit a written report of the results of the compliance method used. If an owner or operator demonstrates compliance by use of a compliance test in accordance with the requirements of paragraph (u)(7)(i) of this section, the owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present.

(D) Any owner or operator that must or chooses to demonstrate compliance with paragraph (u)(3)(i) of this section shall submit to the Administrator a written report of the results of all compliance tests required under paragraph (u)(3)(i)(D) or (E) of this section within 60 days after completing each compliance test. The owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present.

(E) By the applicable compliance date specified in paragraph (u)(5) of this section, any owner or operator of a unit subject to the requirements of paragraph (u)(3)(ii) of this section shall submit to the Administrator a report that documents the compliance method selected for demonstrating compliance with the requirements of paragraph (u)(3)(ii) of this section. The report shall also contain documentation of the procedure used or the results of the compliance method to demonstrate that the unit is in compliance with the requirements of paragraph (u)(3)(ii) of this section.

(F) Any owner or operator subject to the requirements of paragraph (u)(3)(ii) of this section shall submit to the Administrator a report every 12 months after the initial compliance date that contains documentation of the procedure used and the results of the compliance method to demonstrate that the unit is in compliance with the requirements of paragraph (u)(3)(ii) of this section.

(G) Any owner or operator subject to the monitoring requirements of paragraph (u)(6)(ii)(B) of this section shall notify the Administrator in writing within 30 days after the rolling 12 calendar month annual heat input rate of the unit equals or exceeds $9 \times 1.2 \times 10^9$ Btu/yr. Any owner or operator that becomes subject to the requirements of paragraph (u)(3)(i) of this section as a result of the requirements of this paragraph shall be subject to the compliance schedule in paragraph (u)(5)(iv) of this section and the applicable requirements of paragraphs (u)(6) and (u)(7) of this section.

(ii) *Monitoring requirements.*

(A) Continuous Emissions Monitoring System (CEMS) Requirements. Owners or operators subject to the requirements of this paragraph because of paragraph (u)(3)(i)(F) of this section shall comply with the following:

(*1*) By the applicable compliance date specified in paragraph (u)(5) of this section, install, calibrate, operate, and maintain a CEMS in accordance with the applicable requirements of appendices B and F of 40 CFR part 60 to demonstrate continuous compliance with the requirements of paragraphs (u)(3)(i) (A) and (B) of this section. The CEMS shall be installed and operational before conducting the initial compliance test required under paragraphs (u)(6)(i)(C) and (u)(7) of this section. The owner or operator shall submit to the Administrator documentation that the CEMS is in compliance with the requirements of paragraph (u) of this section.

(*2*) Each owner or operator shall submit an excess emissions and monitoring systems performance report, in accordance with the requirements of § 60.7 (c) and (d) and § 60.13, to the Administrator within 30 days after the end of each calendar quarter.

(B) Any owner or operator of a unit with an annual heat input rate of less than 9×10^9 Btu/yr and not complying with the requirements of paragraph (u)(3)(i) of this section shall install a totalizing fuel meter for each applicable unit and for each fuel. Meters shall be accurate to ± 1 percent, as certified by the manufacturer in writing. Fuel consumption for each unit shall be compiled monthly into a rolling 12 calendar month report.

(iii) *Recordkeeping requirements.* Any owner or operator of a unit subject to this section shall maintain all records necessary to demonstrate compliance with the section for a period of five calendar years at the plant where the subject unit is located. The records shall be made available to the Administrator upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

(A) Identification and location of each unit subject to the requirements of this section.

(B) Calendar date of record.

(C) The number of hours the unit is operated during each day.

(D) Boiler load, fuel type, actual time of startups and shutdowns, breakdown periods, and the type and duration of maintenance and repairs.

(E) The results of all compliance tests and monitored stack gas oxygen concentrations.

(F) If a unit is equipped with a flue gas recirculation system, records of the percentage of the flue gas that is recirculated to the combustion chamber of the unit.

(G) If a unit is equipped with a CEMS:

(*1*) The NO_X and CO emission concentrations measured, corrected to 3 percent volume stack gas O^2 on a dry basis averaged over a period of 15 consecutive minutes.

(*2*) Identification of time periods during which NO_X and CO standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances.

(*3*) Identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(H) For units with an annual heat input rate less than 9×10^9 Btu/yr, the monthly fuel consumption and the rolling 12 calendar month fuel consumption.

(I) Any owner or operator that uses a non-gaseous fuel in any unit, pursuant to the requirements of paragraph (u)(4)(ii) of this section, shall maintain daily records of each occurrence. Each record shall specify the reason why non-gaseous fuel is used in a unit and shall include the type of fuel, the quantity of fuel, and the hours of operation during the use of non-gaseous fuel. If non-gaseous fuel is used during a natural gas curtailment, the owner or operator shall obtain information from the natural gas supplier to verify the period of curtailment. If non-gaseous fuel is used to maintain the non-gaseous fuel system, the owner or operator shall maintain records of the total hours during which the unit was operated on non-gaseous fuel during each calendar year.

(*7*) *Test methods.*

(i) Any owner or operator of a unit that is required to perform a compliance test to demonstrate compliance with the standards specified in paragraph (u)(3(i) of this section, or chooses to perform a compliance test to demonstrate compliance with the requirements of paragraph (u)(3)(ii) of this section, shall comply with the requirements of § 60.8 (c), (d), and (e). The test shall be performed and data reduced and reported as follows:

(A) Each emission test shall be conducted while the unit is operated at maximum capacity and operating under representative operating conditions.

(B) Each emission test shall be conducted in accordance with the appropriate test methods in 40 CFR part 60, appendix A. Except for the modifications in this paragraph and unless otherwise approved by the Administrator: NO_X shall be measured in accordance with 40 CFR part 60, appendix A, Method 7E; CO shall be measured in accordance with 40 CFR part 60, appendix A, Method 10; and the diluent shall be measured using 40 CFR part 60, appendix A, Method 3A. Testing shall be conducted for twelve 15 minute testing periods. Compliance shall be evaluated for each 15 minute period. Data recorded during testing to determine the 15 minute average shall either be continuously integrated by the testing instrument and data recorder, or recorded manually at 30 second intervals during each 15 minute test period. Zero and calibration checks shall be conducted after each 15 minute test period.

(C) The ppm CO emission limit required by paragraph (u)(3)(i)(B) of this section shall be established during the initial compliance test for NO_X emissions to establish a ppm CO emission limit that represents good operating and combustion practices for fuel(s) burned in the unit. The CO emission limit established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (u)(6)(i)(C) of this section.

(ii) Any owner or operator that chooses to comply with the requirements of paragraph (u)(3)(ii) of this section by the compliance method specified in paragraph (u)(3)(ii)(A) of this section shall tune the unit using the equipment tuning procedure specified in this paragraph.[38] Nothing in the equipment tuning procedure shall be construed to require any act or omission that would result in unsafe conditions or would be in violation of any regulation or requirement established by Factory Mutual, Industrial Risk Insurers, National Fire Prevention Association, California Department of Industrial Relations (Occupational Safety and Health Division), Federal Occupational

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[38] This tuning procedure is based on a tune-up procedure developed by KVD, Inc. for the USEPA.

Safety and Health Administration, or other relevant regulations and requirements.

(A) *Step 1.* Operate the unit at the firing rate most typical of normal operation. If the unit experiences significant load variations during normal operation, operate it at its average firing rate.

(B) *Step 2.* At this firing rate, record stack gas temperature, oxygen concentration, and CO concentration (for gaseous fuels) or smoke-spot[39] number (for liquid fuels), and observe flame conditions after unit operation stabilizes at the firing rate selected. If the excess oxygen in the stack gas is at the lower end of the range of typical minimum values,[40] and if the CO emissions are low and there is no smoke, the unit is probably operating at near optimum efficiency at this particular firing rate. However, complete the remaining portion of this procedure to determine whether still lower oxygen levels are practical.

(C) *Step 3.* Increase combustion air flow to the furnace until stack gas oxygen levels increase by 1 to 2 percent over the level measured in Step 2. As in Step 2, record the stack gas temperature, CO concentration (for gaseous fuels) or smoke-spot number (for liquid fuels), and observe flame conditions for these higher oxygen levels after boiler operation stabilizes.

(D) *Step 4.* Decrease combustion air flow until the stack gas oxygen concentration is at the level measured in Step 2. From this level gradually reduce the combustion air flow, in small increments. After each increment, record the stack gas temperature, oxygen concentration, CO concentration (for gaseous fuels) and smoke-spot number (for liquid fuels). Also, observe the flame and record any changes in its condition.

(E) *Step 5.* Continue to reduce combustion air flow stepwise, until one of these limits is reached:

(*1*) Unacceptable flame conditions—such as flame impingement on furnace walls or burner parts, excessive flame carryover, or flame instability.

(*2*) Stack gas CO concentrations greater than 400 ppm.

(*3*) Smoking at the stack.

(*4*) Equipment-related limitations—such as low windbox/furnace pressure differential, built in air-flow limits, etc.

(F) *Step 6.* Develop an O_2/CO curve (for gaseous fuels) or O_2/smoke curve (for liquid fuels) similar to those shown in Figures 1 and 2 using the excess oxygen and CO or smoke-spot number data obtained at each combustion air flow setting.

(G) *Step 7.* From the curves prepared in Step 6, find the stack gas oxygen levels where the CO emissions or smoke-spot number equal the following values:

Fuel	Measurement	Value
Gaseous	CO Emissions.	400 ppm.
#1 & 2 oils	Smoke-spot	Number 1.
#4 oil	Smoke-spot number.	Number 2.
#5 oil	Smoke-spot number.	Number 3.
Other oils	Smoke-spot number.	Number 4.

The above conditions are referred to as CO or smoke threshold, or as the minimum excess oxygen level. Compare this minimum value of excess oxygen to the expected value provided by the combustion unit manufacturer. If the minimum level found is substantially higher than the value provided by the combustion unit manufacturer, burner adjustments can probably be made to improve fuel and air mixing, thereby allowing operation with less air.

(H) *Step 8.* Add 0.5 to 2.0 percent to the minimum excess oxygen level found in Step 7 and reset burner controls to operate automatically at this higher stack gas oxygen level. This margin above the minimum oxygen level accounts for fuel variations, variations in atmospheric conditions, load changes, and nonrepeatability or play in automatic controls.

(I) *Step 9.* If the load of the combustion unit varies significantly during normal operation, repeat Steps 1–8 for firing rates that represent the upper and lower limits of the range of the load. Because control adjustments at one firing rate may affect conditions at other firing rates, it may not be possible to establish the optimum excess oxygen level at all firing rates. If this is the case, choose the burner control settings that give best performance over the range of firing rates. If one firing rate predominates, settings should optimize conditions at that rate.

(J) *Step 10.* Verify that the new settings can accommodate the sudden load changes that may occur in daily operation without adverse effects. Do this by increasing and decreasing load rapidly while observing the flame and stack. If any of the conditions in Step 5 result, reset the combustion controls to provide a slightly higher level of excess oxygen at the affected firing rates. Next, verify these new settings in a similar fashion. Then make sure that the final control settings are recorded at steady-state operating conditions.

(v) *Emissions of oxides of nitrogen from small institutional, commercial, and industrial boilers, steam generators, and process heaters.*

(*1*) *Applicability.* For the purposes of this paragraph, the affected area includes the Sacramento Metro Area as described for ozone in 40 CFR 81.305.

(i) Any owner or operator of a boiler, steam generator, or process heater with a rated heat input capacity equal to or greater than 1 million British thermal units per hour (mmBtu/hr) and less than 5 mmBtu/hr shall comply with the applicable requirements standards of paragraphs (v)(1) through (v)(7) of this section.

(ii) Any owner or operator of a boiler, steam generator, or process heater with a rated heat input capacity equal to or greater than 1 mmBtu/hr and less than 5 mmBtu/hr that claims an exemption from the standards of paragraph (v)(3) of this section because of the exemption criteria specified under paragraph (v)(4) of this section shall comply with the applicable requirements of paragraph (v)(6)(iii)(H) of this section.

(*2*) *Definitions.* For the purposes of paragraph (v) of this section, the following definitions shall apply. All terms not defined herein shall have the meaning given them in § 52.2950.

Annual heat input means the actual amount of heat released by fuels burned in a unit during a 12 calendar month rolling period, based on the fuel's higher heating value. The annual heat input shall be calculated as the sum of the previous 12 monthly fuel use rates multiplied by the fuel's higher heating value.

Boiler or steam generator means any combustion equipment used in any institutional, commercial, or industrial operation that is designed to burn gaseous and/or liquid fuel and used to produce steam, heat water and/or other fluids, and/or generate electricity. A boiler or steam generator does not include any waste heat recovery unit that is used to recover sensible heat from the exhaust of a combustion turbine or any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment.

British thermal unit (Btu) means the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at one atmosphere.

Heat input means the chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of incoming combustion air.

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[39] The smoke-spot number can be determined with ASTM Test Method D–2156 or with the Bacharach method.

[40] Typical minimum oxygen levels for boilers at high firing rates are: 0.5 to 3 percent for natural gas; and 2 to 4 percent for liquid fuels.

Higher heating value (HHV) means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015–85 for solid fuels; ASTM D240–87 or ASTM D2382–88 for liquid hydrocarbon fuels; or ASTM D1826–88 or ASTM D1945–81 in conjunction with ASTM D3588–89 for gaseous fuels.

Non-gaseous fuel means any fuel which is not a gas at 68 °F and one atmosphere.

NO_X emissions means the sum of nitric oxides and nitrogen dioxide in the flue gas, collectively expressed as nitrogen dioxide.

Process heater means any combustion equipment used in any institutional, commercial, or industrial operation that is designed to burn gaseous and/or liquid fuel and which transfers heat from combustion gases to water, heat transfer medium, or process streams. Process heater does not include any kiln or oven used for drying, baking, cooking, calcining or vitrifying; any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment; or any fuel-fired degreasing or metal finishing equipment.

Rated heat input capacity means the heat input capacity specified on the nameplate of the combustion unit. If the combustion unit has been altered or modified such that its maximum heat input is different than the heat input capacity specified on the nameplate, the new maximum heat input shall be considered as the rated heat input capacity. This alteration or modification can be through either burner alteration or modification or installation of a fixed orifice. The new maximum heat input must be certified, in writing, by the manufacturer or installer and engineering calculations supporting the new maximum heat input rating must be submitted to the Administrator.

Shutdown means the period of time a unit is cooled from its normal operating temperature to cold or ambient temperature.

Stack gas oxygen trim system means the system of monitors that is used to measure stack excess combustion air, typically consisting of flue gas oxygen and/or carbon monoxide monitors that automatically provide a feedback signal to the combustion air controller that maintains the stack excess air at the desired level.

Startup means the period of time a unit is heated from cold or ambient temperature to its normal operating temperature as specified by the manufacturer.

Unit means any boiler, steam generator, or process heater as defined in paragraph (v) of this section.

(3) *Standards.*

(i) Any owner or operator that operates a unit with an annual heat input rate equal to or greater than 1.8 billion British thermal units per year (10^9 Btu/yr) shall:

(A) Not cause to be discharged into the atmosphere any gases that contain NO_X emissions in excess of 30 parts per million (ppm) corrected to 3 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes.

(B) Establish a controlled ppm carbon monoxide (CO) emission limit that represents good operating and combustion practices. No owner or operator shall cause to be discharged into the atmosphere any gases that contain CO in excess of the lowest of one of the following limits:

(*1*) 120 percent of the CO ppm level established by an initial compliance test in accordance with the requirements of paragraph (v)(7) of this section, or

(*2*) 400 ppm.

The owner or operator shall subsequently comply with the limit once it is established. The ppm CO emissions shall be corrected to 3 percent volume stack gas O_2 on a dry basis averaged over a period of 15 consecutive minutes.

(C) Demonstrate initial compliance with the NO_X and CO emission standards specified in paragraphs (v)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraphs (v)(6)(i)(C) and (v)(7)(i) of this section.

(D) Demonstrate compliance with the NO_X and CO emission standards specified in paragraphs (v)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraph (v)(7)(i) of this section not less than once every 24 months since the previous compliance test.

(ii) Any owner or operator that operates a unit with an annual heat input rate equal to or greater than 0.3×10^9 Btu/yr and less than 1.8×10^9 Btu/yr shall comply with one of the following:

(A) The unit shall be tuned once every 6 months or after 750 hours of operation since the previous tuneup, whichever occurs last, but in no case less than once per calendar year. The unit shall be tuned in accordance with the procedures described in paragraph (v)(7)(ii) of this section; or

(B) The unit shall be operated in a manner that maintains stack gas oxygen concentrations at less than or equal to 3 percent on a dry basis for any 15 consecutive minute averaging period; or

(C) The unit shall be operated using a stack gas oxygen trim system set at 3 percent oxygen for any 15 consecutive minute averaging period. The tolerance of the setting shall be ±5 percent; or

(D) Demonstrate compliance with the NO_X and CO emission standards specified in paragraphs (v)(3)(i) (A) and (B) of this section in accordance with the requirements of paragraphs (v)(3)(i) (C) and (D) of this section.

(iii) Any owner or operator of a unit exempt from the requirements of paragraph (v)(3)(i) of this section shall demonstrate that the unit is exempt by complying with the applicable reporting, monitoring, and recordkeeping requirements of paragraphs (v)(6)(i)(H), (v)(6)(ii), and (v)(6)(iii) of this section, respectively. If the unit is ever operated during any rolling 12 calendar month period at a total annual heat input rate equal to or greater than 1.8×10^9 Btu/yr, the owner or operator shall comply with the requirements of paragraph (v)(3)(i) of this section. If the unit is ever operated during any rolling 12 calendar month period at a total annual heat input rate equal to or greater than 0.3×10^9 Btu/yr and less than 1.8×10^9 Btu/yr, the owner or operator shall comply with the requirements of paragraph (v)(3)(ii) of this section.

(4) *Exemptions.* The requirements of paragraph (v)(3)(i) of this section shall not apply to any owner or operator of a unit operated on non-gaseous fuel under the following conditions:

(i) Non-gaseous fuel use is required due to the curtailment of natural gas service to the individual unit by the natural gas supplier. Non-gaseous fuel use in this case shall not exceed the period of natural gas curtailment.

(ii) Non-gaseous fuel use is required to maintain the non-gaseous fuel system. Non-gaseous fuel use in this case shall not exceed 50 hours per year.

(iii) Any owner or operator that claims an exemption under paragraph (v)(4) of this section shall comply with the recordkeeping requirements specified under paragraph (v)(6)(ii)(I) of this section.

(5) *Compliance schedule.*

(i) Any owner or operator of a unit in existence prior to the [*Insert date of publication of the final rule*] that does not need to retrofit the unit or install new control equipment to comply with the requirements of paragraph (v)(3) of this section shall demonstrate compliance with all of the applicable requirements of paragraph (v) of this section by May 15, 1995.

(ii) Any owner or operator of a unit in existence prior to [*Insert date of publication of the final rule*] that must retrofit the unit and/or install new control equipment to comply with the requirements of paragraph (v)(3) of this section shall demonstrate compliance with all of the applicable requirements of this paragraph (v) of this section by May 15, 1997. Any owner or operator of a unit to which paragraph (v) of this section is applicable shall meet the following increments of progress:

(A) By January 1, 1996, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) By January 1, 1997, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance by May 15, 1997.

(iii) Any owner or operator of a new unit that is constructed on and after [*Insert date of publication of the final rule*] shall apply for, and receive approval of, all authority-to-construct permits required by the local Air Pollution Control District prior to beginning construction of the unit. The owner or operator shall demonstrate that the unit will be operated in compliance with all of the applicable requirements of paragraph (v) of this section within 60 days after the date of the initial startup of the unit.

(iv) On and after [*Insert date of publication of the final rule*], any owner or operator of a unit exempt from requirements of paragraph (v)(3)(i) of this section that becomes subject to requirements of paragraph (v)(3)(i) of this section because the unit's rolling 12 calendar month annual heat input rate equals or exceeds 1.8×10^9 Btu/yr shall meet the following increments of progress:

(A) Within 7 months after the day that the unit is operated equal to or greater than 1.8×10^9 Btu/yr, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) Within 19 months after the day that the unit is operated equal to or greater than 1.8×10^9 Btu/yr, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance within 24 months after the day that the unit is operated equal to or greater than 1.8×10^9 Btu/yr.

(v) On and after [*Insert date of publication of the final rule*], any owner or operator of a unit exempt from the requirements of paragraph (v)(3)(ii) of this section that becomes subject to requirements of paragraph (v)(3)(ii) of this section because the unit's rolling 12 calendar month annual heat input rate equals or exceeds 0.3×10^9 Btu/yr shall meet the following increments of progress:

(A) Within 7 months after the day that the unit is operated equal to or greater than 0.3×10^9 Btu/yr, apply for all authority-to-construct permits required by the local Air Pollution Control District for all retrofits and/or additions of new control equipment, and

(B) Within 19 months after the day that the unit is operated equal to or greater than 0.3×10^9 Btu/yr, commence construction of all retrofits and/or additions of new control equipment, as approved by the local Air Pollution Control District, to demonstrate compliance within 24 months after the day that the unit is operated equal to or greater than 0.3×10^9 Btu/yr.

(6) *Reporting, monitoring, and recordkeeping.*

(i) *Reporting requirements.* Any owner or operator subject to the requirements of paragraph (v)(3) of this section shall comply with the applicable notification requirements of § 60.7, and shall also comply with the following requirements:

(A) By May 15, 1995, submit to the Administrator the identification number and type of each unit subject to the section, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with paragraph (v) of this section. For each unit identified, the following information shall be submitted to the Administrator:

(*1*) The rated heat input capacity, hours of operation during the previous one-year period, anticipated annual operating time and annual heat input for 1995, type of gaseous and/or liquid fuel(s) that will be burned in the unit, and age and manufacturer of the unit.

(*2*) Identification of the NO_X standard in paragraph (v)(3)(i) or (v)(3)(ii) of this section with which the unit will comply, and the control and compliance method selected for demonstrating compliance.

(B) Any owner or operator subject to the compliance schedule specified in paragraph (v)(5) (ii), (iii), (iv), or (v) of this section shall notify the Administrator in writing of the following:

(*1*) The date construction is commenced on all retrofits and/or additions of new control equipment to the unit.

(*2*) The anticipated date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(*3*) The actual date of initial startup of the unit after completing all retrofits and/or additions of new control equipment to the unit.

(C) By the applicable compliance date specified in paragraph (v)(5) of this section, any owner or operator of a unit subject to the requirements of paragraph (v)(3)(i) of this section shall submit to the Administrator certification that the unit is in compliance with the applicable standards in paragraph (v)(3)(i) of this section as demonstrated through the applicable requirements of paragraph (v)(7)(i) of this section. As a part of the certification, the owner or operator shall submit a written report of the results of the compliance method used. If an owner or operator demonstrates compliance by use of a compliance test in accordance with the requirements of paragraph (v)(7)(i) of this section, the owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present.

(D) Any owner or operator that must or chooses to demonstrate compliance with paragraph (v)(3)(i) of this section shall submit to the Administrator a written report of the results of all compliance tests required under paragraph (v)(3)(i)(D) of this section within 60 days after completing each compliance test. The owner or operator shall provide the Administrator at least 30 days prior notice of the compliance test to afford the Administrator the opportunity to have an observer present.

(E) By the applicable compliance date specified in paragraph (v)(5) of this section, any owner or operator of a unit subject to the requirements of paragraph (v)(3)(ii) of this section shall submit to the Administrator a report that documents the compliance method selected for demonstrating compliance with the requirements of paragraph (v)(3)(ii) of this section. The report shall also contain documentation of the procedure used or the results of the compliance test to demonstrate that the unit is in compliance with the requirements of paragraph (v)(3)(ii) of this section.

(F) Any owner or operator subject to the requirements of paragraph (v)(3)(ii) of this section shall submit to the Administrator a report every 12 months after the initial compliance date that contains documentation of the procedure used and the results of the compliance method to demonstrate that the unit is in compliance with the requirements of paragraph (v)(3)(ii) of this section.

(G) Any owner or operator subject to the monitoring requirements of paragraph (v)(6)(ii) of this section shall notify the Administrator in writing within 30 days after the rolling 12 calendar month annual heat input rate of the unit equals or exceeds 1.8×10^9 Btu/yr or 0.3×10^9 Btu/yr. Any owner or operator that becomes subject to the requirements of paragraph (v)(3)(i) or (v)(3)(ii) of this section as a result of the requirements of this paragraph shall be subject to the compliance schedule in paragraph (v)(5)(iv) or (v)(5)(v) of this section and the applicable requirements of paragraphs (v)(6) and (v)(7) of this section.

(ii) *Monitoring requirements.* Any owner or operator of a unit with an annual heat input rate of less than 1.8×10^9 Btu/yr and not complying with the requirements of paragraph (v)(3)(i) of this section shall install a totalizing fuel meter for each applicable unit and for each fuel. Meters shall be accurate to ±1 percent, as certified by the manufacturer in writing. Fuel consumption for each unit shall be compiled monthly into a rolling 12 calendar month report.

(iii) *Recordkeeping requirements.* Any owner or operator of a unit subject to paragraph (v) of this section shall maintain all records necessary to demonstrate compliance with the section for a period of five calendar years at the plant where the subject unit is located. The records shall be made available to the Administrator upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

(A) Identification and location of each unit subject to the requirements of this section.

(B) Calendar date of record;

(C) The number of hours the unit is operated during each day;

(D) Boiler load, fuel type, actual time of startups and shutdowns, breakdown periods, and the type and duration of maintenance and repairs.

(E) The results of all compliance tests and monitored stack gas oxygen concentrations.

(F) If a unit is equipped with a flue gas recirculation system, records of the percentage of the flue gas that is recirculated to the combustion chamber of the unit.

(G) For units with an annual heat input rate less than 1.8×10^9 Btu/yr, the monthly fuel consumption and the rolling 12 calendar month fuel consumption.

(H) Any owner or operator that uses a non-gaseous fuel in any unit, pursuant to the requirements of paragraph (v)(4) of this section, shall maintain daily records of each occurrence. Each record shall specify the reason why non-gaseous fuel is used in a unit and shall include the type of fuel, the quantity of fuel, and the hours of operation during the use of non-gaseous fuel. If non-gaseous fuel is used during a natural gas curtailment, the owner or operator shall obtain information from the natural gas supplier to verify the period of curtailment. If non-gaseous fuel is used to maintain the non-gaseous fuel system, the owner or operator shall maintain records of the total hours during which the unit was operated on non-gaseous fuel during each calendar year.

(7) *Test methods.*

(i) Any owner or operator of a unit that is required to perform a compliance test to demonstrate compliance with the standards specified in paragraph (v)(3)(i) of this section, or chooses to perform a compliance test to demonstrate compliance with the requirements of paragraph (v)(3)(ii) of this section, shall comply with the requirements of § 60.8 (c), (d), and (e). The test shall be performed and data reduced and reported as follows:

(A) Each emission test shall be conducted while the unit is operated at maximum capacity and operating under representative operating conditions.

(B) Each emission test shall be conducted in accordance with the appropriate test methods in 40 CFR part 60, appendix A. Except for the modifications in this paragraph and unless otherwise approved by the Administrator: NO_X shall be measured in accordance with 40 CFR part 60, appendix A, Method 7E; CO shall be measured in accordance with 40 CFR part 60, appendix A, Method 10; and the diluent shall be measured using 40 CFR part 60, appendix A, Method 3A. Testing shall be conducted for four 15 minute testing periods. Compliance shall be evaluated for each 15 minute period. Data recorded during testing to determine the 15 minute average shall either be continuously integrated by the testing instrument and data recorder, or recorded manually at 30 second intervals during each 15 minute test period. Zero and calibration checks shall be conducted after each 15 minute test period.

(C) The ppm CO emission limit required by paragraph (v)(3)(i)(B) of this section shall be established during the initial compliance test for NO_X emissions to establish a ppm CO emission limit that represents good operating and combustion practices for fuel(s) burned in the unit. The CO emission limit established for determining subsequent compliance shall be documented in the applicable certification report required under paragraph (v)(6)(i)(C) of this section.

(ii) Any owner or operator that chooses to comply with the requirements of paragraph (v)(3)(ii)(A) of this section shall tune the unit using the equipment tuning procedure specified in this paragraph.[41] Nothing in these equipment tuning procedure shall be construed to require any act or omission that would result in unsafe conditions or would be in violation of any regulation or requirement established by Factory Mutual, Industrial Risk Insurers, National Fire Prevention Association, California Department of Industrial Relations (Occupational Safety and Health Division), Federal Occupational Safety and Health Administration, or other relevant regulations and requirements.

(A) *Step 1.* Operate the unit at the firing rate most typical of normal operation. If the unit experiences significant load variations during normal operation, operate it at its average firing rate.

(B) *Step 2.* At this firing rate, record stack gas temperature, oxygen concentration, and CO concentration (for gaseous fuels) or smoke-spot[42] number (for liquid fuels), and observe flame conditions after unit operation stabilizes at the firing rate selected. If the excess oxygen in the stack gas is at the lower end of the range of typical minimum values,[43] and if the CO emissions are low and there is no smoke, the unit is probably operating at near optimum efficiency at this particular firing rate. However, complete the remaining portion of this procedure to determine whether still lower oxygen levels are practical.

(C) *Step 3.* Increase combustion air flow to the furnace until stack gas oxygen levels increase by 1 to 2 percent over the level measured in Step 2. As in Step 2, record the stack gas temperature, CO concentration (for gaseous fuels) or smoke-spot number (for liquid fuels), and observe flame conditions for these higher oxygen levels after boiler operation stabilizes.

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[41] This tuning procedure is based on a tune-up procedure developed by KVD, Inc. for the USEPA.

[42] The smoke-spot number can be determined with ASTM Test Method D–2156 or with the Bacharach method.

[43] Typical minimum oxygen levels for boilers at high firing rates are: 0.5 to 3 percent for natural gas; and 2 to 4 percent for liquid fuels.

(D) *Step 4.* Decrease combustion air flow until the stack gas oxygen concentration is at the level measured in Step 2. From this level gradually reduce the combustion air flow, in small increments. After each increment, record the stack gas temperature, oxygen concentration, CO concentration (for gaseous fuels) and smoke-spot number (for liquid fuels). Also, observe the flame and record any changes in its condition.

(E) *Step 5.* Continue to reduce combustion air flow stepwise, until one of these limits is reached:

(*1*) Unacceptable flame conditions—such as flame impingement on furnace walls or burner parts, excessive flame carryover, or flame instability.

(*2*) Stack gas CO concentrations greater than 400 ppm.

(*3*) Smoking at the stack.

(*4*) Equipment-related limitations—such as low windbox/furnace pressure differential, built in air-flow limits, etc.

(F) *Step 6.* Develop an O_2/CO curve (for gaseous fuels) or O_2/smoke curve (for liquid fuels) similar to those shown in Figures 1 and 2 using the excess oxygen and CO or smoke-spot number data obtained at each combustion air flow setting.

(G) *Step 7.* From the curves prepared in Step 6, find the stack gas oxygen levels where the CO emissions or smoke-spot number equal the following values:

Fuel	Measurement	Value
Gaseous	CO Emissions.	400 ppm.
#1 & #2 oils ..	Smoke-spot number.	number 1.
#4 oil	Smoke-spot number.	number 2.
#5 oil	Smoke-spot number.	number 3.
Other oils	Smoke-spot number.	number 4.

The above conditions are referred to as CO or smoke threshold, or as the minimum excess oxygen level. Compare this minimum value of excess oxygen to the expected value provided by the combustion unit manufacturer. If the minimum level found is substantially higher than the value provided by the combustion unit manufacturer, burner adjustments can probably be made to improve fuel and air mixing, thereby allowing operation with less air.

(H) *Step 8.* Add 0.5 to 2.0 percent to the minimum excess oxygen level found in Step 7 and reset burner controls to operate automatically at this higher stack gas oxygen level. This margin above the minimum oxygen level accounts for fuel variations, variations in atmospheric conditions, load changes, and nonrepeatability or play in automatic controls.

(I) *Step 9.* If the load of the combustion unit varies significantly during normal operation, repeat Steps 1–8 for firing rates that represent the upper and lower limits of the range of the load. Because control adjustments at one firing rate may affect conditions at other firing rates, it may not be possible to establish the optimum excess oxygen level at all firing rates. If this is the case, choose the burner control settings that give best performance over the range of firing rates. If one firing rate predominates, settings should optimize conditions at that rate.

(J) *Step 10.* Verify that the new settings can accommodate the sudden load changes that may occur in daily operation without adverse effects. Do this by increasing and decreasing load rapidly while observing the flame and stack. If any of the conditions in Step 5 result, reset the combustion controls to provide a slightly higher level of excess oxygen at the affected firing rates. Next, verify these new settings in a similar fashion. Then make sure that the final control settings are recorded at steady-state operating conditions.

§ 52.2962 Enhanced in-use compliance program for light-and medium-duty vehicles.

(a) *General applicability.*

(1) Every new 1999 and later model year light-duty vehicle, light-duty truck, and medium-duty vehicle manufactured for sale, sold, offered for sale, introduced, or delivered for introduction to commerce, or imported into the State of California for sale or resale shall be covered by a certificate of conformity issued pursuant to paragraph (d) of this section. Medium-duty vehicles whose engines are covered by a certificate of conformity applicable to heavy-duty engines issued by the State of California pursuant to the California Code are exempted from this requirement, but must comply with the requirements of § 52.2966.

(2) Any manufacturer, dealer, or other person who violates paragraph (a)(1) of this section shall be subject to a civil penalty of not more than $25,000. Any such violation with respect to paragraph (a)(1) of this section shall constitute a separate offense with respect to each motor vehicle.

(3) Certain vehicle fleet operators, as defined in paragraph (g) of this section, are subject to the provisions contained in that paragraph.

(b) *Definitions and abbreviations.* The definitions and abbreviations of 40 CFR parts 86 and 88, § 52.2963, and the definitions contained in the Clean Air Act (42 U.S.C. 7401–7671q) apply to this section unless the term is defined in this section. If defined in this section, the definition in this section governs.

California emission standards means standards for the emission of pollutants from motor vehicles and engines set by the California Air Resources Board which have received waivers from the Administrator under section 209 of the Clean Air Act.

Composite non-methane hydrocarbon emission level means the combined exhaust and evaporative emission non-methane hydrocarbon level, expressed in g/mi (or g/km). Conversion factors are applied to measured evaporative emissions to generate the composite level and measured evaporative hydrocarbon levels are equated to evaporative non-methane hydrocarbon levels.

Enhanced ILEV means a vehicle for which the Administrator has issued the manufacturer a certificate of conformity designating the vehicle as an ILEV under 40 CFR 88.311–93 and as complying with the provisions of paragraph (d) of this section.

FIP I/M program means any motor vehicle inspection and maintenance program meeting the provisions of § 52.2963.

Full life means up to and including 100.0 percent of the full useful life mileage and age.

Half life means up to and including 50.0 percent of the full useful life mileage and age.

Light-duty truck means any motor vehicle rated at 6000 pounds GVWR or less which is designed primarily for purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off- highway operation and use.

Medium-duty vehicle means any heavy-duty vehicle having a GVW of 14,000 pounds or less, or any motor vehicle having a GVW greater than 6000 pounds but less than 14,000 pounds.

New, when applied to motor vehicles, means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser. It is conclusively presumed that the equitable or legal title to a motor vehicle, other than a motorcycle, with an odometer reading of 7,500 miles or more, has been transferred to an ultimate purchaser, and that the equitable or legal title to a motor vehicle, other than a motorcycle, with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

Obvious abuse or tampering means the deliberate removal of the catalyst or evaporative emissions canister, turbocharging of a naturally aspirated engine, operation with less than one half the recommended level of oil in the engine, or damage to the engine or emission controls resulting from a vehicular accident.

(c) *Emissions standards and design specifications.*

(1) *Emission standards: light-duty vehicles and light-duty trucks.*

(i) The emissions standards for 1999 and later model year light-duty vehicles (LDVs) and light-duty trucks (LDTs) as measured under 40 CFR part 86, subpart B are as follows:

Class	Loaded vehicle weight (pounds)	Category	Full life composite non-methane hydrocarbons (grams/mile)	Oxides of nitrogen (grams/mile)	
				Half Life	Full Life
LDV	All	Enhanced	0.20	0.20	0.30
LDV	All	Transitional	0.29	0.40	0.60
LDT	0-3750	Enhanced	0.20	0.20	0.30
LDT	0-3750	Transitional	0.29	0.40	0.60
LDT	3751-5750	Enhanced	0.26	0.40	0.50
LDT	3751-5750	Transitional	0.33	0.70	0.90

(ii) For the 1999 model year only, the transitional standards specified in paragraph (c)(1)(i) of this section apply to up to 25 percent of a vehicle manufacturer's sales of LDVs, LDTs below 3751 pounds loaded vehicle weight and LDTs above 3750 pounds loaded vehicle weight. The sales in each of the above three vehicle categories is accounted for separately. The enhanced in-use standards apply to at least 75 percent of 1999 model year sales of these vehicles and to all 2000 and later model year sales.

(iii) Composite non-methane hydrocarbon (NMHC) emissions are determined according to the following equation:

$$\begin{array}{c}\text{Composite}\\ \text{NMHC}\\ \text{Emissions}\\ \text{(g/mi)}\end{array} = \begin{array}{c}\text{Exhaust}\\ \text{(g/mi)}\end{array} + \frac{\left[\begin{array}{c}\text{Diurnal}\\ \text{(g/test)}\end{array} + \begin{array}{c}\text{Hot soak}\\ \text{(g/test)}\end{array} \times \left(4.2\,\dfrac{\text{trips}}{\text{day}}\right)\right]}{28.28\,\dfrac{\text{miles}}{\text{day}}} + \begin{array}{c}\text{Running}\\ \text{Loss}\\ \text{(g/mi)}\end{array}$$

where:

(A) Exhaust=Exhaust NMHC emissions in g/mi using the test procedures specified in 40 CFR part 86, subpart B and as calculated at § 86.144–94(l) of this chapter, with the fuel specifications contained in paragraph (c)(1)(iv) of this section.

(B) Diurnal=Diurnal breathing loss emissions in grams using the test procedures specified in 40 CFR part 86, subpart B and as calculated per § 86.143–96 of this chapter, with the fuel specifications and test temperatures contained in paragraph (c)(1)(iv) of this section.

(C) Hot soak=Hot soak emissions in grams using the test procedures specified in 40 CFR part 86, subpart B and as calculated in § 86.143–96 of this chapter, with the fuel specifications and test temperatures contained in paragraph (c)(1)(iv) of this section.

(D) Running Loss=Running loss emissions in g/mi using the test procedures specified in 40 CFR part 86, subpart B and as calculated in § 86.143–96 of this chapter, with the fuel specifications and test temperatures contained in paragraph (c)(1)(iv) of this section.

(iv)(A) In testing the vehicle for both exhaust and evaporative emissions under 40 CFR part 86, subpart B, the test fuel used shall meet the specifications contained in paragraph 9(a)(1)(ii) of the California Exhaust Emission Standards and Test Procedures for 1998 and subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, as referenced in § 1956.8 of Title 13 of the California code of Regulations.

(B) In testing the vehicle for diurnal, hot soak, and running loss emissions under 40 CFR part 86, subpart B, the following temperatures shall be used with no change in the specified tolerance about the mean temperatures:

(*1*) In testing diurnal emissions, the following sequence of temperatures shall be repeated three times and substituted for those specified in table 1 of appendix II to 40 CFR part 86:

Minute	Temperature (°F)	Minute	Temperature (°F)
0	65.0	780	101.1
60	66.6	840	95.3
120	72.6	900	88.8
180	80.3	960	84.4
240	86.1	1020	80.8
300	90.6	1080	77.8
360	94.6	1140	75.3
420	98.1	1200	72.0
480	101.2	1260	70.0
540	103.4	1320	68.2
600	104.9	1380	66.5

Minute	Temperature (°F)	Minute	Temperature (°F)
660	105.0	1440	65.0
720	104.2		

(*2*) In testing hot soak emissions, 105 °F shall be substituted for 95 °F in 40 CFR 86.138–96(e).

(*3*) In testing running loss emissions, 105 °F shall be substituted for 95 °F in 40 CFR 86.134–96(g)(1) (xii) and (xiv) of this chapter.

(v) NO_X emissions are determined in g/mi using the test procedures specified in 40 CFR part 86, subpart B and as calculated at 40 CFR 86.144–94(1), with the fuel specifications contained in paragraph (c)(1)(iv) of this section.

(vi) The exhaust HC and NO_X emissions standards for 1999 and later model year light-duty vehicles (LDVs) and light-duty trucks (LDTs) as measured over the IM240 transient mass emissions test specified in § 52.2963(i)(5) are as follows:

Class	Loaded vehicle weight (pounds)	Category	Full life total hydrocarbons (grams/mile)	Oxides of nitrogen (grams/mile)	
				Half life	Full life
LDV	All	Enhanced	0.20	0.30	0.45
LDV	All	Transitional	.34	.60	.90
LDT	0–3750	Enhanced	.20	.30	.45
LDT	0–3750	Transitional	.34	.60	.90
LDT	3751–5750	Enhanced	.29	.60	.75
LDT	3751–5750	Transitional	.44	1.05	1.35

(vii) For the 1999 model year only, the transitional standards specified in paragraph (c)(1)(iv)(A) of this section apply to those sales of LDVs and LDTs to which the transitional standards specified in paragraph (c)(1)(v) of this section apply. The enhanced in-use standards apply to all other 2000 and later model year sales of LDVs and LDTs.

(2) *Emission standards: medium-duty vehicles.*

(i) The emissions standards for 1999 and later model year medium-duty vehicles (MDVs) (excluding those MDVs powered by engines certified under the heavy-duty engine emissions standards contained in § 52.2966) as measured under 40 CFR part 86, subpart B are as follows:

Test weight (pounds)	Category	Full Life composite non-methane hydrocarbons (grams/mile)	Oxides of nitrogen (grams/mile)	
			Half life	Full life
0–3750	Enhanced	0.28	0.2	0.3
0–3750	Transitional	.35	.4	.6
3751–5750	Enhanced	.31	.4	.5
3751–5750	Transitional	.40	.7	1.0
5751–8500	Enhanced	.34	.6	.8
5751–8500	Transitional	.45	1.1	1.5
8501–10000	Enhanced	.37	.7	.9
8501–10000	Transitional	.50	1.3	1.8
10001–14000	Enhanced	.43	1.0	1.4
10001–14000	Transitional	.60	2.0	2.8

(ii) For the 1999 model year only, the transitional standards specified in paragraph (c)(2)(i) of this section apply to up to 25 percent of a vehicle manufacturer's sales of MDVs. The enhanced in-use standards apply to at least 75 percent of 1999 model year sales of MDVs and to all 2000 and later model year sales of MDVs.

(iii) Composite NMHC and NO_X emissions are determined according to paragraphs (c)(1)(iii) and (iv) of this section.

(iv) The exhaust HC and NO_X emissions standards for 1999 and later model year MDVs (excluding those MDVs powered by engines certified under the heavy-duty engine emissions standards contained in § 52.2966) as measured over the IM240 transient mass emissions test specified in § 52.2963(i)(5) are as follows:

Test weight (pounds)	Category	Full life total hydrocarbons (grams/mile)	Oxides of nitrogen (grams/mile)	
			Half life	Full life
0–3750	Enhanced	.24	.30	.45
0–3750	Transitional	.40	.60	90
3751–5750	Enhanced	.31	.60	.75
3751–5750	Transitional	.51	1.05	1.50
5751–8500	Enhanced	.37	.90	1.20

Test weight (pounds)	Category	Full life total hydrocarbons (grams/mile)	Oxides of nitrogen (grams/mile)	
			Half life	Full life
5751–8500	Transitional	.62	1.65	2.25
8501–10000	Enhanced	.43	1.05	1.35
8501–10000	Transitional	.73	1.95	2.70
10001–14000	Enhanced	.57	1.50	2.10
10001–14000	Transitional	.95	3.00	4.20

(v) For the 1999 model year only, the transitional standards specified in paragraph (c)(2)(iv) of this section apply to those sales of MDVs to which the transitional standards specified in paragraph (c)(2)(i) of this section apply. The enhanced in-use standards specified in this paragraph apply to all other 2000 and later model year sales of MDVs.

(3) *Canister access requirement.* All 1999 and later model year LDV, LDTs, and MDVs (excluding those MDVs powered by engines certified under the heavy-duty engine emissions standards contained in § 52.2966) shall be designed and manufacturered such that enhanced I/M evaporative pressure and purge functional tests can be readily conducted (i.e., the evaporative vapor storage canister(s) can be easily and quickly accessed and the pressure and purge test equipment (described in § 52.2963(t) and (u)) can be easily and quickly attached without damaging the post-test integrity of the evaporative emission control system.

(d) *Application for certification.*

(1) A separate application for a certificate of conformity shall be made for each set of standards and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment. The application shall meet all of the requirements set forth in 40 CFR 86.094–21, unless otherwise provided in the California application specified in paragraph (d)(2) of this section.

(2) The application shall contain a copy of the application for certification specified in § 1960.1 of title 13 of the California Code of Regulations.

(3) The application shall also demonstrate that throughout all testing conducted by the manufacturer in fulfilling the application for certification specified in § 1960.1 of title 13 of the California Code of Regulations, and such additional testing as may be necessary, that the vehicle(s) for which certification is being requested meet all the applicable emission standards and design specifications specified in paragraph (c) of this section.

(4) The applications shall also contain a statement by the manufacturer that the vehicle(s) for which certification is being requested will meet the emission standards specified in paragraph of this section over its full useful life (or half life, as applicable) in the absence of obvious abuse or tampering, as defined in paragraph (e)(iii)(B) of this section. Vehicles found to not do so under the provisions of paragraph (e) of this section will be subject to recall per the provisions of paragraph (e) of this section.

(e) *Enhanced in-use recall provisions.*

(1) Except as otherwise provided in paragraph (e) of this section, the provisions of subpart S or 40 CFR part 85, and the associated established practices of EPA, shall apply to the recall of vehicles subject to the requirements of this section.

(2) *Vehicle selection.* Vehicles shall be selected by EPA for purposes of recall testing from the portion of the vehicle population subject to enhanced inspection and maintenance testing described in § 52.2963. EPA may test vehicles at any time or mileage within their applicable useful life.

(3) *Vehicle testing.* (i) Selected vehicles will be tested unless EPA determines that a selected vehicle(s) has been subjected to obvious abuse or tampering.

(ii) For purposes of paragraph (e) of this section, obvious abuse or tampering includes the following conditions:

(A) The presence of less than one half of the recommended volume of motor oil in the engine crankcase;

(B) The deliberate removal of the catalyst or evaporative canister;

(C) The addition of a turbocharger to a naturally aspirated engine;

(D) The presence of damage to the engine or emission controls resulting from a vehicular accident; and

(E) Other factors which the Administrator may consider appropriate for determining the presence of obvious abuse or tampering.

(iii) The manufacturer may be present at the time of vehicle procurement and testing and request that a vehicle not be tested due to obvious abuse or tampering. The Administrator may request that such a request from a manufacturer be supported by appropriate documentation, though the final determination rests with the Administrator.

(iv) Vehicles that EPA determines have been subject to obvious abuse or tampering will be removed from the test sample.

(v) EPA will test vehicles in the condition in which the vehicles are received from the owner. No repair or maintenance will be conducted on the vehicle prior to testing.

(vi) Vehicles shall be tested according to the same test procedures prescribed in paragraph (c) of this section.

(4) (i) *Discretionary recall authority.* Based on the criteria contained in 40 CFR 85.1802, the Administrator may determine that a nonconformity with an applicable standard under paragraph (c) of this section exists for a vehicle engine family. In addition, the Administrator may make such a determination of nonconformity when the average emissions of the test vehicles for any pollutant exceeds the applicable recall emission standard specified in paragraph (c) of this section.

(ii) Any vehicle recall conducted by a manufacturer under paragraph (e) of this section shall apply to all vehicles of the affected engine family which have been sold in the State of California.

(5) (i) *Prohibitions.* Should the Administrator make a determination of nonconformity under paragraph (e)(4) of this section:

(A) The Secretary of State of California, the California Department of Motor Vehicles, its employees, and any other persons representing the State of California are prohibited from registering any vehicle covered by this nonconformity unless evidence is presented that the required remedies have been performed on that vehicle; and

(B) Operators of motor vehicles covered by this nonconformity are prohibited from registering the vehicle without first obtaining the required remedies for their vehicle.

(ii) The penalties contained in Section 43016 of the California Health and Safety Code for the failure by a vehicle owner to have needed repairs made to a recalled vehicle shall apply to the failure by a vehicle owner to have needed repairs made to a recalled vehicle under paragraph (e) of this section.

(f) *I/M-based selective recall requirements.*

(1) *Liability for I/M-related repairs.*

(i) Except as noted in paragraphs (f)(1)(v) and (vi) of this section, the manufacturer of a vehicle shall be responsible for its repair sufficient for it to pass an emission inspection performed as part of a FIP I/M program, including the enhanced in-use I/M standards specified in paragraph (f)(2) of this section, and for obtaining official certification of the successful passage of the above emission inspection (i.e., repeat test) if:

(A) That vehicle has failed an emission inspection performed as part of a FIP I/M program for the pollutant for which the I/M based selective recall liability threshold has been exceeded in paragraph (f)(1)(i)(B) of this section; and

(B) At least one model year's sales of that vehicle's exhaust engine family has exceeded a liability threshold for either HC or NO_X emissions, as defined in paragraph (f)(4) of this section.

(ii) This liability shall begin 30 days after receipt of notification of exceedance of a liability threshold from the Administrator.

(iii) (A) The vehicle manufacturer shall be liable to remedy the defects and for the repairs necessary for the vehicle to pass all aspects of an emission inspection which is part of a FIP I/M program applicable to that vehicle at the time of the failure of the I/M emission inspection referred to in paragraph (f)(1)(i)(A) of this section, regardless of whether the liability threshold for only one of the two pollutants was exceeded or both were exceeded.

(B) At minimum, manufacturers must allow the repairs required under paragraph (f)(1)(i) of this section to be performed at any of its manufacturer authorized repair facilities. Nothing here shall be construed to limit the performance of such repairs to only manufacturer dealerships.

(iv) In performing the repairs conducted under this section, the manufacturer shall promptly schedule and expeditiously repair the vehicle. In doing so, the manufacturer shall provide a loaner vehicle of equivalent or better quality free of charge to the owner of the vehicle being repaired:

(A) During the period of time when the vehicle is at the manufacturer authorized repair facility whenever the repairs will require more than one day to complete, or

(B) Starting 14 days after the vehicle owner initially contacted the manufacturer authorized repair facility regarding the repair of the vehicle and continuing to the time the vehicle is delivered to the vehicle owner along with official certification that the vehicle has successfully passed the repeat emission inspection, if the vehicle has not already been so delivered by this time.

(v) (A) In lieu of performing the repairs required in paragraph (f)(1)(i) of this section, a manufacturer may purchase the vehicle and remove it from use in California.

(B) The manufacturer's responsibility for performing the repairs required in paragraph (f)(1)(i) of this section ends if the vehicle owner declines to sell the vehicle to the manufacturer at a price equal to Average Retail Value listed in the N.A.D.A. Official Used Car Guide published by the National Automobile Dealers Used Car Guide Co., 8400 Westpark Dr., McLean, VA 22102–9985 for the month containing the date of the emission inspection failure referred to in paragraph (f)(1)(i)(A) of this section and for the smallest geographical area covered by the above Guide which contains the area covered by the FIP I/M program.

(vi) *Exempted repairs.* (A) Manufacturers are not responsible for repairs to vehicles to which there has been obvious abuse or tampering, as defined in paragraph (e)(3)(i) of this section and determined by the FIP I/M program test provider.

(B) Manufacturers are not responsible for repairs of vehicles that have exceeded their useful life.

(2) *Applicable enhanced in-use I/M standards.*

(i) (A) The enhanced in-use I/M standards for exhaust HC emissions specified in paragraph (c) of this section shall be substituted for the exhaust HC emission standards specified in appendix 2 of § 52.2963 for all vehicles of an exhaust engine family if at least one model year's sales of that exhaust engine family has exceeded a liability threshold for HC emissions, as defined in paragraph (f)(4) of this section.

(B) The enhanced in-use I/M standards for NO_X emissions specified in paragraphs (c) of this section shall be substituted for the NO_X emission standards specified in appendix 2 of § 52.2963 for all vehicles of an exhaust engine family if at least one model year's sales of that exhaust engine family has exceeded a liability threshold for NO_X emissions, as defined in paragraph (f)(4) of this section.

(ii) This substitution shall begin 30 days after the date on which notification from the Administrator of the exceedance of the liability threshold is received by the manager of the affected I/M test facility.

(3) *Notification to Vehicle Owners.* Immediately following the failure of an emission inspection for a pollutant (i.e., HC or NO_X) by a vehicle for which the FIP I/M program test provider has received notification of exceedance of a liability threshold per paragraph (f)(2) of this section for that pollutant, the certifed emission inspector shall:

(i) Determine whether or not the vehicle has been obviously abused or tampered with, per paragraph (e)(3)(ii) of this section,

(ii) If the vehicle was not obviously abused or tampered with, inform the vehicle owner (or the vehicle operator present at the test) that the vehicle manufacturer is responsible for remedial repairs, and

(iii) Provide the vehicle owner with a written copy of the test results and the determination that the vehicle was not obviously abused or tampered with. This document shall be signed by the certified emission inspector and the manager or an assistant manager of the FIP I/M test facility.

(4) *Exceedance of an I/M-based selective recall liability threshold.*

(i) The liability threshold is 5.0 percent for vehicles that have not exceeded 50.0 percent of their useful life and 10.0 percent for vehicles that have not exceeded 100.0 percent of their full useful life.

(ii) An exhaust engine family is deemed to have exceeded the liability threshold for NO_X or HC if the NO_X or HC failure rate for any model year of that exhaust engine family, per paragraph (f)(5) of this section, exceeds the half- or full-life liability threshold at any time, after three months of data have been submitted for that model year's vehicles. Exceedance of the liability thresholds for HC and NO_X are determined independently.

(5) *Calculation of failure rates.*

(i) The failure rate (in percent) for a specific pollutant for each model year of each exhaust engine family will consist of the total number of failing vehicles for that pollutant divided by the total number of vehicles multiplied by 100, where:

(A) The total number of vehicles refers to the sum of all vehicles from a specific model year and exhaust engine family which have been tested in a FIP I/M program,

(B) The total number of failing vehicles includes those vehicles included under paragraph (f)(5)(i)(A) of this section which:

(*1*) At any time exceeded the applicable IM240 exhaust NO_X standard specified in paragraph (c)(1)(vi) or (c)(2)(iv) of this section, as applicable, (considered a failure for NO_X); or

(*2*) At any time exceeded the applicable IM240 exhaust HC standard specified in paragraph (c)(1)(vi) or (c)(2)(iv) of this section, as applicable, or failed either the purge or pressure functional tests described in § 52.2963(t) and (u), respectively (considered a failure for HC).

(C) Separate failure rates for each pollutant will be calculated for vehicles which have not exceeded 50.0 percent of their full useful life and for vehicles which have not exceeded 100.0 percent of their full useful life.

(D) Failure rates shall be expressed as a percentage, rounded to one figure after the decimal.

(ii) On a monthly basis, the Administrator will calculate the HC and NO_X failure rates for each exhaust engine family and notify each vehicle manufacturer, as applicable, of the results for their engine families.

(iii) Within thirty days after a liability threshold for an exhaust family has been determined to be exceeded, the Administrator shall, by registered mail, notify the manufacturer of the affected vehicles and managers of enhanced I/M test facilities required to meet the requirements of § 52.2963.

(g) *Enhanced ILEV fleet program.*

(1) Fleet operators which control 10 or more vehicles which operate at any time in the South Coast Air Basin Nonattainment Area for Ozone as defined in 40 CFR 81.305 shall determine whether they are a covered fleet operator. This determination is to be made as follows:

(i) The fleet operator shall not count the following types of vehicles:

(A) Vehicles with a GVWR greater than 26,000 pounds;

(B) Law enforcement and other emergency vehicles;

(C) Nonroad vehicles;

(D) Vehicles garaged at a private residence that are not centrally fueled;

(E) Vehicles held for lease or rent to the general public;

(F) Vehicles held for sale by motor vehicle dealers (including demonstration vehicles); and

(G) Vehicles used for motor vehicle manufacturer product demonstrations and tests.

(ii) Fleet operators shall determine the number of vehicles not exempted in paragraph (g)(1)(i) of this section that can be centrally fueled (as defined in 40 CFR 88.302–94).

(iii) If a fleet operator determines under paragraph (g)(1)(ii) of this section that 10 or more non-exempt vehicles can be centrally fueled, then the fleet operator shall be considered to be a covered fleet operator.

(2) Except as provided in paragraph (g)(3) of this section, covered fleet operators acquiring vehicles to replace vehicles meeting the provisions of paragraph (g)(1) of this section, or acquiring additional vehicles which meet the same provisions, shall acquire a number of enhanced ILEVs equal to the number of such vehicles acquired multiplied by the appropriate percentage as follows:

(i) For model year 1999 light-duty vehicles, light-duty trucks, and medium-duty vehicles, 50 percent;

(ii) For model year 2000 and later light-duty vehicles, light-duty trucks, and medium-duty vehicles, 70 percent.

(3) *Enhanced ILEV purchase credits.* Covered fleet operators may satisfy the enhanced ILEV purchase requirements provided in paragraph (g)(2) of this section wholly or in part by redeeming an appropriate number of enhanced ILEV purchase credits. Enhanced ILEV purchase credits may be generated as follows:

(i) A covered fleet operator which purchases enhanced ILEVs in excess of the enhanced ILEV purchase requirement may receive one enhanced ILEV purchase credit for each excess vehicle; and

(ii) A covered fleet operator which purchases enhanced ILEVs earlier than required may receive one enhanced ILEV purchase credit for each such vehicle.

(iii) The Administrator shall issue a credit document or documents to a covered fleet operator which requests enhanced ILEV credit or credits and which provides evidence of the appropriate purchases.

(iv) The Administrator shall approve the reduction of any covered fleet operator's enhanced ILEV purchase requirement by a number equal to the number of credits presented to the Administrator for redemption, subject to confirmation of the legitimacy of the credit documents so presented.

(4) *Reporting.* Fleet operators which control 10 or more vehicles which operate at any time in the South Coast Air Basin Nonattainment Area for Ozone as defined in 40 CFR 81.305 shall submit the following information to the Administrator by January 1 of each year beginning January 1999:

(i) Total number of vehicles operated in the covered area;

(ii) Numbers of vehicles by class (e.g., LDV, LDT) and fueling characteristics (e.g., centrally fueled) acquired during the previous calendar year;

(iii) Numbers of vehicles by class and fueling characteristics expected to be acquired in the coming calendar year;

(iv) Numbers of enhanced ILEVs purchased during the previous calendar year and expected during the coming calendar year;

(v) Vehicle Information Numbers (VINs) and engine family designations (see 40 CFR 86.092–24) for each of the vehicles reported in paragraphs (g)(4)(ii) through (iv) of this section.

(vi) The identity of the responsible party which has control of vehicle acquisition decisions; and

(vii) The covered fleet operator's calculated minimum purchase requirement from paragraph (g)(2) of this section.

(5) *Violations.* The following shall be considered violations of the enhanced ILEV fleet program:

(i) Failure to submit required data to the Administrator;

(ii) Failure to meet the appropriate purchase requirements; or

(iii) Counterfeiting or commerce in counterfeit enhanced ILEV purchase credit documents.

(6) *Penalties.* Any person which the Administrator finds in violation of the provisions of paragraph (g)(4)(v) of this section shall be subject to a civil penalty of not more than $25,000.

§ 52.2963 Enhanced inspection/maintenance program.

(a) *Applicability of 40 CFR part 51, subpart S.* For the purposes of this section, except as otherwise provided, the definitions and requirements of 40 CFR part 51, subpart S (Inspection/Maintenance Program Requirements) apply.

(b) *Additional definitions.*

Centralized inspection network means a network of vehicle inspection facilities owned and operated by a single, identifiable entity, such as a state or other governmental entity, or an agreed upon agent of a state or other governmental entity.

Certificate of compliance means a serially numbered instrument (either paper-based or electronic) indicating that a vehicle has met the requirements of this section, either by passing all applicable emission tests, or by being granted a waiver (see "Waiver" in paragraph (b) of this section.

Certified emission inspector means a person who has successfully completed all necessary training and who is certified by the Administrator or his/her designee as qualified to perform emission inspections on subject vehicles. Such certification must be periodically renewed, and is subject to suspension and permanent revocation as a result of violating the requirements of this section.

Emission inspection means the full range of emission-related inspections a vehicle is subject to as a result of participating in an I/M program, including the sampling and analysis of tailpipe exhaust, purge and pressure testing of the evaporative system, and any visual inspections for the presence and proper connection of specific emission control devices.

Emission inspection test report means an automated report of a vehicle's emission inspection results, coded to a specific vehicle through the use of unambiguous vehicle identifiers, such as the license plate number and vehicle identification number (VIN). The emission inspection test report is a separate document and distinguished from the certificate of compliance by virtue of the fact that a test report shall not be accepted as valid for registration purposes.

Enhanced I/M program means a program meeting the enhanced I/M performance standard as established under EPA's I/M rule (40 CFR 51.351).

Farm equipment means a vehicle designed or adapted and determined by the Administrator to be used exclusively for agricultural operations and only incidentally operated or moved upon highways.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer on the Federal weight certification label as the loaded weight of a single vehicle. For the purposes of the FIP's I/M program, California-certified vehicles shall be considered to fall under the same gross vehicle weight ratings as comparable, 49-state vehicles.

Heavy-duty vehicles means trucks weighing more than 8,500 pounds GVWR.

Light-duty trucks 1 (LDT1) means trucks weighing less than 6,000 pounds GVWR.

Light-duty trucks 2 (LDT2) means trucks weighing from 6,000 to 8,500 pounds GVWR.

Light-duty vehicles means passenger cars or multi-purpose vehicles weighing less than 6,000 pounds GVWR.

Onboard diagnostic device (OBD) means a system for monitoring the in-use emission performance of a vehicle which provides feedback to the driver concerning actual or potential malfunctions through the illumination of a malfunction indicator light (MIL). The event triggering MIL illumination is also stored on the OBD computer as a trouble code which can be downloaded at a vehicle testing or repair facility.

Oversight contractor(s) means a contractor or contractors who have been awarded a contract by the Administrator to conduct and report the results of overt and covert audits of the test provider(s) sites and personnel. The information generated by the oversight contractor shall be used by the Administrator to substantiate enforcement actions taken by EPA against the test provider and its employees.

Qualifying repairs means those vehicle repairs necessary to correct the deficiencies which resulted in a vehicle's failure of an emissions inspection and which count toward the minimum dollar amount required before a waiver may be issued. For those repairs where repair or replacement of emission-related parts requires replacement of other non-emission related equipment constructed as one indivisible unit by the manufacturer, the total replacement costs or repair costs may be counted toward qualifying repairs.

Recognized repair facility means a business engaged in the diagnosis and repair of automotive engines and related systems.

Recognized repair technician means a person who has received and has proof of formal training in the diagnosis and repair of automotive engines and related systems, or holds a valid license issued by the California Bureau of Automotive Repair, or is employed by a recognized repair facility primarily for the purpose of diagnosing and repairing automotive engines and their related systems.

Remote Sensing Devices (RSD) means a transportable system of devices designed for the remote gathering of vehicle emissions and identification data while vehicles are being operated on public roads.

Special mobile equipment means vehicles not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including ditch digging apparatus; well boring apparatus; earth moving and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, graders, finishing machines, road rollers, scarifiers, earth moving carryalls, scrapers, power shovels and draglines; and self-propelled cranes and tractors, other than truck tractors. The term does not include house trailers; dump trucks; truck-mounted transit mixers, cranes or shovels; or other vehicles designed for the transportation of persons or property to which machinery has been attached.

Test provider(s) means one or more entities with whom the Administrator has entered into a legal agreement, for the purposes of providing vehicle emission testing and other FIP I/M program activities except those activities which would clearly constitute a conflict of interest or are otherwise impractical, such as overt and covert auditing of the testing element, program effectiveness evaluation, and enforcement. As part of this legal agreement, the test provider(s) would be reimbursed for operating expenses and allowed a reasonable profit by way of a test fee to be collected directly from motorists at the time of testing.

Transient test means a vehicle emission test in which exhaust emissions are sampled and analyzed under conditions simulating actual on-road driving conditions, including the use of loaded operation simulation, and a standardized driving cycle. For the purposes of the FIP I/M program, a transient test known as the IM240 shall be used for vehicle exhaust emissions testing.

Unsafe condition means a defect, malfunction or other condition of a vehicle which may expose an emission inspector to harm in the performance of an emission inspection of that vehicle. A vehicle which is presented for testing in an unsafe condition may be rejected from testing until such time as the factors contributing to the vehicle's unsafe condition have been corrected.

Vehicle model year means the date of manufacture of a vehicle as specified by the vehicle identification number (VIN), or, if this number is not available or cannot be interpreted for the year, the annual production period of the vehicle as designated by the manufacturer.

Waiver means a notation on the emission inspection certificate of compliance indicating that the requirement of passing the otherwise required reinspection test has been waived.

(c) *Subject vehicles.* Subject vehicles include all model year 1966 to 1998 gasoline-fueled vehicles to 19,500 pounds GVWR (including vehicles with engine-based certification), and all model year 1999 and newer vehicles of all fuel types to 14,000 pounds GVWR (excluding vehicles with engine-based certification from 8,500 to 14,000 pounds GVWR) which are:

(1) Registered in or required to be registered in a FIP I/M program area.

(2) Leased vehicles with registration or titling in the name of an equity owner other than the lessee or user where the motor vehicle is registered or required to be registered in a FIP I/M program area.

(3) Available for rent in a FIP I/M program area or used in a FIP I/M program area, regardless of where the vehicles are registered.

(4) part of a fleet registered in and/or primarily operated within a FIP I/M program area.

(5) Federally-owned vehicles operated within a FIP I/M program area, with the exception of tactical military vehicles.

(6) Vehicles owned, leased or operated by civilian and military personnel on Federal installations, except for vehicles belonging to or operated by visiting agency, employee or military personnel whose stays do not exceed a total of 60 calendar days per calendar year.

(d) *Exempted vehicles.* Exempted vehicles shall include vehicles operated or registered as one of the following:

(1) Special mobile equipment.

(2) Farm equipment.

(3) Motorcycles.

(4) Motorized pedalcycles.

(5) Vehicles repossessed by a financier or debt collector through the use of miscellaneous motor vehicle business registration plates. This vehicle exemption will no longer hold once a repossessed vehicle has been resold or leased or is otherwise being operated on a routine basis in the FIP I/M program area.

(e) *Prohibitions.* (1) The Secretary of State of California, the California Department of Motor Vehicles, its employees, and any other persons representing the State of California are prohibited from reregistering any subject vehicle registered in the name of an owner or lessee whose primary residence is located within one of the FIP I/M areas unless evidence is presented that the EPA Administrator or his/her designee has issued such a vehicle a certificate of compliance with or a waiver from the applicable requirements of this section.

(2) Operators of subject motor vehicles registered in the FIP I/M areas are prohibited from obtaining vehicle registration without first meeting all applicable FIP I/M program requirements.

(3) The test provider(s) and its employees, as part of an agreement with the Administrator, shall be prohibited from the intentional improper testing or retesting of vehicles subject to the FIP I/M program.

(f) *Commencement date.* The enhanced I/M program, as described in this section, will commence with 100 percent vehicle testing coverage on January 1, 1997. Given the lateness of this starting date, no phase-in of vehicle coverage shall be assumed, contrary to the provisions of 40 CFR 51.373.

(g) *Vehicle emission inspection cycle.*

(1) *Biennial inspection.* Vehicles subject to the current California I/M program which are registered in the FIP I/M areas shall be subject to the FIP I/M program and will be tested on the same biennial schedule as is currently used, with the exception that such vehicles shall go to official FIP I/M program test provider(s) for valid testing. New vehicles which are registered in the FIP I/M areas shall be tested in the next even numbered calendar year after the initial titling if the model year is even, or in the next odd numbered calendar year after the initial titling if the model year is odd, and shall be subject to regular FIP I/M testing every two years thereafter. Once a vehicle has been tested as part of the FIP I/M program, it will remain on the same biennial testing schedule until such time as the FIP I/M program is discontinued. The sale of a vehicle shall not change that vehicle's regularly scheduled testing date. Vehicles previously registered in California but outside the FIP I/M areas which move into a FIP I/M area shall be tested in time to meet the I/M requirement for their first registration as residents of a FIP I/M area, and shall be tested every two years thereafter.

(2) *Out-of-cycle inspection.* Vehicles otherwise subject to the FIP I/M program's requirements which are targeted as potential high emitters as a result of RSD detection must be presented for an enhanced I/M inspection within 30 days of notification of the failure (or sooner, if the regularly scheduled inspection deadline occurs first). If the vehicle fails this confirmatory test, it shall be subject at that time to the same repair, retest, and waiver requirements as apply to vehicles which fail the regularly scheduled biennial inspection. Failure to comply with this out-of-cycle testing requirement shall result in the assessment of a late fee to be collected prior to testing whenever the vehicle is next presented for regular testing. A late fee of $10 will be assessed for each full week past the testing deadline. Being subject to an out-of-cycle inspection does not change the deadline for the vehicle's regularly scheduled biennial inspection, unless it occurs within 30 days of the out-of-cycle test.

(h) *Notification of requirement for emission inspection.* A letter of notification shall be sent to subject vehicle owners or lessees such that the letter shall have been received by the individual owner or lessee no later than 45 days prior to the regularly scheduled test deadline and no later than 30 days prior to an out-of-cycle confirmatory test deadline. In the case of the out-of-cycle inspection requirement, the notification shall be sent by registered mail to ensure documentation of the owner or lessee's receipt of notification.

(i) *Emission inspection period.* The period during which a subject vehicle may be presented for an I/M inspection shall be stated on the emission inspection notification form along with the deadline for completing the inspection process. Subject vehicles presented for an initial inspection or reinspection after the time period shown on the emission inspection notification shall be charged a late fee of $10 for each full week that a vehicle is late. This late fee shall be collected prior to the initiation of testing.

(j) *Inspection failure.*

(1) If a subject vehicle fails any phase of the enhanced emission inspection, the vehicle owner shall have the vehicle repaired and submit the vehicle for retesting along with a repair form supplied by the test provider (to be completed by the vehicle repair provider). No reinspection shall occur without a completed repair form.

(2) If the subject vehicle fails the retest, and it otherwise meets the waiver requirements for enhanced I/M programs addressed under 40 CFR 51.360(a), the vehicle owner may apply for a waiver.

(k) *Enhanced I/M program requirements.* The FIP I/M program design shall include the following program elements:

(1) *Network type.* Testing shall be performed through a centralized system of official emission inspection stations which shall be operated by one or more test provider(s) under agreement with the Administrator.

(2) *Test-only.* Official emission inspection stations shall conduct vehicle emission testing only and shall not perform vehicle repairs, except to restore the vehicle to the as-received condition after testing (including the reattachment of hoses disconnected for the evaporative system check). Official emission inspection stations shall meet all the requirements for test-only stations established in 40 CFR 51.353.

(3) *Geographic coverage.* The FIP I/M program shall cover the same geographic areas within the Sacramento, Ventura and South Coast FIP areas as are covered by the existing California Smog Check program as of [*Insert date of publication of the final rule*]. (See 40 CFR part 52, subpart GGG, appendix A for a detailed listing of I/M FIP area coverage by zip code.)

(4) *Exhaust emission test type.* All 1966 and newer subject vehicles shall be tested using the IM240 transient mass emission test as specified by EPA guidance and regulation.

(5) *Emission control device visual inspection.* All 1971 and newer subject vehicles shall be visually inspected for the presence and proper connection of the air pump and positive crankcase

ventilation (PCV) systems. The visual inspection of these components shall be conducted in compliance with procedures established by EPA guidance and regulation.

(6) *Evaporative system tests.* All 1971 and newer subject vehicles shall be subject to an evaporative system pressure test and an evaporative system purge test conducted as specified by EPA guidance and regulation.

(7) *Onroad testing.* Onroad testing shall be conducted on approximately 10 percent of the subject fleet using RSD on an annual basis. Subject vehicles have been targeted by RSD as potential high-emitters shall be subject to out-of-cycle testing requirements as specified in paragraph (t) of this section.

(l) *Documentation of compliance for vehicles operated on Federal installations.* Federal installations located within the FIP I/M program area shall provide annual documentation of proof of compliance with paragraphs (c)(5) and (c)(6) of this section to EPA. This documentation shall be updated periodically, but at least once per inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

(1) Presentation of a valid certificate of compliance with or waiver from the FIP I/M program or a comparable I/M program (i.e., one meeting the enhanced I/M performance standard as set forth in 40 CFR 51.351). In the event the FIP I/M program adopts an electronic-based instrument for certifying vehicle compliance, the test provider(s) shall make arrangements for issuing a special "Federal vehicle," paper-based certificate of compliance. Such a certificate of compliance shall clearly read "Not Valid for Vehicle Registration in the State of California" in a point size and location which will make it impossible to remove this message without destroying the certificate.

(2) Presentation of proof of vehicle registration for each vehicle operating on the grounds of the Federal installation which is already registered within the geographic area covered by the FIP I/M program.

(m) *Emission inspection criteria for vehicles operated with miscellaneous motor vehicle business registration plates or dealer registration plates.* A subject vehicle which displays a miscellaneous motor vehicle business registration plate or a dealer registration plate shall be exempt from the requirements for emission inspection until it reaches two years of age (based on model year) at which that time it shall be subject to emission inspection.

(n) *Repair technician training.* Repair technician training shall be provided to all qualified applicants. This training will include, at a minimum:

(1) Diagnosis and repair of malfunctions in computer controlled close-loop vehicles.

(2) Application of emission control theory and diagnostic data to the diagnosis and repair of failures of the transient emission test and the evaporative system function tests.

(3) Utilization of diagnostic information on systematic or repeated failures observed in the transient emission test and the evaporative system function tests.

(4) Generalized training on the various subsystems related to emission control.

(o) *Emission test procedures.* Emission tests and functional tests shall be subject to the following requirements:

(1) Flexibly fueled vehicles (i.e., those capable of operating both on gasoline and other fuels) shall at a minimum be subject to testing and shall be tested while operating in the gasoline mode unless the vehicle is never operated with gasoline.

(2) An initial test is the emission test that occurs the first time in a test cycle. The initial test shall be performed without repair or adjustment at the emission inspection station prior to the test, except as provided for in the evaporative system integrity test. An emission inspection performed after failure of the initial test in a test cycle shall be considered a retest.

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of an invalid test condition or unsafe conditions.

(4) Tests involving measurements shall be performed with approved equipment that has been calibrated according to the quality control procedures contained in EPA guidance or regulation.

(5) Vehicles shall not be tested if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition.

(6) The vehicle owner or driver shall have access to an area in the inspection station which permits observation of the entire official inspection procedure. This access may be limited but it may not prevent full observation.

(7) In the inspection process, vehicles that have been altered from their original certified configuration shall be tested in the same manner as other subject vehicles, in accordance with the following:

(i) Vehicles with engines other than the engine originally installed by the manufacturer, or an identical replacement engine, shall be subject to the test procedures and standards for the chassis type and model year, regardless of the engine replacement, including visual equipment inspections for parts that are part of the original certified configuration and part of the normal inspection for such configuration. An exception may be made if the vehicle meets new certification standards for that chassis and model year.

(ii) Vehicles which are switched to a fuel type for which there is no certified configuration shall be tested according to the emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the Administrator determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without these devices.

(p) *Emission standards.* Subject vehicles shall be tested and passed or failed according to the IM240 cutpoints provided in appendix B of subpart GGG of this part.

(q) *Emission inspection test report.* The test provider(s) shall provide the vehicle owner or driver with a computer-generated emission inspection test report which includes the following:

(1) A vehicle description, including license plate number, vehicle title number, VIN, vehicle make and model and odometer reading.

(2) The date and time of the test.

(3) The name or identification number of the individuals performing the tests and the location of the test station and lane number.

(4) The type of tests performed, including emission tests, visual checks for the presence of emission control components, and functional, evaporative system checks.

(5) The applicable test standards.

(6) The test results, including exhaust concentrations and pass/fail results for each mode measured, pass/fail results for evaporative system checks, and which emission control devices inspected were passed, failed or not applicable.

(7) A statement indicating the availability of warranty coverage as required in section 207 of the Clean Air Act (42 U.S.C. 7525).

(8) A certification that tests were performed in accordance with this section.

(9) For vehicles that fail the tailpipe emission test, any available information on the possible causes of the specific pattern of high emission levels found during the test.

(10) For vehicles that fail the enhanced I/M test, a description of the

consumer complaint procedure, including a statement indicating that any administrative challenge regarding the performance or results of the test must be made by the vehicle owner or operator within 10 days of the failure of the emission inspection.

(r) *Retest*.

(1) *Procedure*. Vehicles that fail the initial test or a retest shall be retested after repair to determine if the repairs were effective for any portion of the inspection that was failed on the previous test. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs performed as a result of the vehicle's failing either the evaporative system purge or pressure test shall be cause for a complete retest covering all of the initial test requirements.

(2) *Prerequisites*. For a retest, the vehicle owner or driver shall present to the inspection station the emission inspection test report and a completed repair data form. If the repairs were performed by the owner or someone other than a recognized repair technician, the repair data form shall be completed by the person performing the repair. If the repairs were performed at a recognized repair facility, the repair data form completed by the repair facility shall be presented to the emission inspection station.

(3) *Content of repair data form*. The repair data form shall include the following:

(i) The repairs performed.

(ii) The cost of repairs.

(iii) The repair technician's number or name if the person who made the repairs does not have a license number issued by the California Bureau of Automotive Repair.

(iv) Any repairs recommended by the repair facility that were not performed.

(v) The name, address and telephone number of the repair facility.

(s) *Issuance of a waiver*. The emission inspection station shall issue a certificate of emission inspection with an indicator to show that the vehicle has received a waiver if all of the following are complied with:

(1) The subject vehicle has failed the initial emission inspection, qualifying repairs have been completed and the subject vehicle has failed the retest.

(2) Emission control devices, as originally equipped, are installed. Vehicles with emission devices which are obsolete and cannot be obtained through the original equipment manufacturer, aftermarket manufacturers or suppliers of used parts are exempt from this paragraph.

(3) The amount spent on qualifying repairs shall:

(i) Be at least $450 adjusted annually in January by the percentage by which the Consumer Price Index for the current year differs from the 1989 Consumer Price Index.

(ii) Include parts costs and labor costs paid for qualifying emission repair services performed on the vehicle if paid by the vehicle owner and if the qualifying repairs were performed by a recognized repair technician. For qualifying emission repair services performed on pre-1980 vehicles, by someone other than a recognized repair technician, parts costs but not labor costs shall be counted toward the minimum cost limit. For qualifying emission repair services performed on 1980 and newer vehicles, by someone other than a recognized repair technician, neither parts costs nor labor costs may be counted toward the minimum cost limit.

(iii) Be considered qualifying if they are appropriate to the cause of the test failure.

(iv) Exclude expenses which are incurred in the repair of emission control devices which are found to be tampered with, rendered inoperative, or not installed.

(v) Exclude costs recoverable under an emission warranty, insurance policy or prepaid maintenance agreement. These recoverable cost repairs shall be completed before necessary repair costs can be applied toward the waiver cost limitations. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act (42 U.S.C. 7525(b)) shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived.

(vi) Exclude the fee for emission inspection.

(vii) Exclude charges for giving a written estimate of needed repairs.

(viii) Exclude charges for checking for the presence of emission control devices.

(ix) Exclude costs for repairs performed on the vehicle before the initial test failure.

(4) The vehicle owner or driver shall present the original of repair bills to the inspection station to demonstrate compliance with the qualifying dollar amount for that year. The bills shall:

(i) Include the name, address and phone number of the repair facility.

(ii) Describe the repairs that were performed.

(iii) State the labor and parts costs separately for each repair.

(5) Upon completion of waiver requirements and a visual check to determine that repairs were actually made, a certification of emission inspection, with a waiver indicator, shall be made for the subject vehicle.

(t) *Onroad testing*. Onroad testing of subject vehicles shall be conducted using RSD in each FIP I/M program area using a carbon monoxide (CO) cutpoint of 4 percent to screen for potential gross emitters. The onroad testing program will be aimed at identifying 10 percent of the subject fleet for follow-up, out-of-cycle confirmatory testing.

(1) *Failure of onroad emission test*. The owner or operator of a subject vehicle that fails an onroad emission test shall be notified by registered mail to report for an out-of-cycle confirmatory test. The notification of the need for confirmatory testing shall be received by the vehicle owner or lessee no later than 30 days prior to the confirmatory test deadline. If the subject vehicle does not have a valid emissions test waiver and fails the confirmatory test, the owner or operator shall have 30 days following the initial confirmatory test failure in which to have the failed vehicle repaired and retested. The vehicle owner or operator shall be notified of this obligation as part of the initial RSD-failure notification process.

(2) *Failure to produce proof of correction of onroad emission test failure*. If the owner of the subject vehicle fails to comply with a notice of RSD failure within 30 days of receiving the notice by registered mail, a late penalty will be assessed at the time the vehicle is presented for confirmatory testing, or at the time of the next regularly scheduled test, whichever comes first. The late penalty is a $10 fee for each full week beyond the 30-day deadline after initial notification of the need for confirmatory testing.

(3) *Failure to procure repairs and retest after initial confirmatory test failure*. If a subject vehicle fails an initial confirmatory test and the owner or lessee fails to procure the necessary repairs and retest within 30 days of the initial confirmatory test failure, a late penalty shall be assessed at the time the vehicle is presented for retesting, or at the time of the next regularly scheduled test, whichever comes first. The late penalty is a $10 fee for each full week beyond the 30-day deadline for receiving a passing retest or waiver after the initial confirmatory test failure.

(u) *Certified emission inspectors*.

(1) *General*. Personnel who perform emission inspections at each emission inspection station operated by the test provider(s) shall be certified by the Administrator as emission inspectors.

The emission inspection shall only be performed by certified emission inspectors.

(2) *Certified emission inspector requirements.* An inspector desiring to be certified shall:

(i) Be at least 18 years of age.

(ii) Have completed an emission inspection training course, approved by the Administrator, that includes, at a minimum, information on the following:

(A) The air pollution problem, including its cause and effects.

(B) The purpose, function and goal of the inspection program.

(C) Emission inspection regulations and procedures.

(D) Technical details of the test procedures and the rationale for their design.

(E) Emission control device function, configuration and inspection.

(F) Test equipment operation, calibration and maintenance.

(G) Quality control procedures and their purpose.

(H) Public relations.

(I) Safety and health issues related to the inspection process.

(iii) Passed a required written test addressing the above elements with a minimum of 80 percent correct test responses.

(iv) Demonstrated the ability to properly utilize test equipment and to follow other required procedures by means of a hands-on test addressing the complete emission inspection. The inability to properly conduct the test procedures shall constitute failure of the test.

(v) Renew the certification every 2 years under procedures established by the Administrator.

(3) *Identification.* While conducting inspections, a certified emission inspector shall have in his/her possession a currently valid inspector certification card issued by the Administrator.

(v) *Test provider(s) obligations and responsibilities.*

(1) *Personal liability.* The test provider(s) or those acting as agents of the test providers(s) shall assume full responsibility for:

(i) Conducting the business of the official emission inspection station honestly and in a manner consistent with this section, and making every reasonable effort to inspect all vehicles upon request.

(ii) Making official emission inspection regulations and supplements available for the use of certified emission inspectors and other employees involved in the emission inspection process.

(iii) Notifying EPA and the oversight contractor when a certified emission inspector is hired, resigns or is dismissed.

(iv) Maintaining emission inspection records for examination by EPA or the oversight contractor.

(v) Providing the vehicle emission inspection test report to motorists after testing and having the repair requirements stated on a form provided to the vehicle owner or operator.

(vi) Insuring full compliance with this section with respect to:

(A) Every emission inspection conducted at the emission inspection station.

(B) Every emission inspection waiver issued at the emission inspection station.

(C) Every certification of emission inspection made to and by each emission inspection station.

(D) Every provision of this section related to emission inspections performed by an employee of the emission inspection station.

(E) Assuring the proper maintenance and calibration of emission inspection equipment according to procedures established in EPA's high-tech procedures guidance.

(F) Completing and retaining emission equipment maintenance and calibration records as required by EPA.

(G) Placing emission equipment out of service when calibration cannot be performed.

(H) Maintaining computer records of each inspection.

(I) Making records available to EPA or the oversight contractor during periodic station audits.

(2) *Emission test data.* The requirements for data collection and transmission shall be as specified in the agreement between the Administrator and the test provider(s).

(3) *Repair performance monitoring.* The test provider(s) shall be responsible for collecting and maintaining emission repair information concerning subject vehicles that have failed the emission inspection and have been returned for a retest. The particulars of this requirement will be detailed in the agreement between the EPA Administrator and the test provider(s).

(w) *Quality control.*

(1) *Quality control requirements for test provider(s).* Quality control measures shall be implemented by the test provider(s) and shall ensure that emission measurement equipment is calibrated and maintained according to the procedures in this section and in the agreement between the EPA Administrator and the test provider(s). Inspection, calibration records and control charts shall be accurately created and recorded and maintained as prescribed in this section and in the agreement between the Administrator and the test provider(s).

(2) *General requirements.* General requirements for quality control practices for test equipment shall be as follows:

(i) The practices described in this section, in the agreement and in 40 CFR part 51, subpart S, appendix A (relating to calibrations, adjustments and quality control), and EPA's high-tech procedures document shall be followed.

(ii) Preventive maintenance on inspection equipment shall be performed on a periodic basis, as provided by in the agreement between the Administrator and the test provider(s) consistent with the equipment manufacturer's requirements.

(iii) To assure quality control, computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering with test equipment and circumstances which require a service representative to work on the equipment.

(iv) To assure test accuracy, equipment shall be maintained according to demonstrated good engineering practices.

(v) Computer control of quality assurance checks and quality control charts shall be used whenever possible.

(3) *Requirements for transient exhaust emission testing equipment.* Calibration and maintenance procedures for transient exhaust emission testing equipment shall be conducted as specified in EPA guidance and regulation.

(4) *Requirements for the purge analysis system.* Calibration and maintenance procedures for the purge analysis system shall be conducted as specified in EPA guidance and regulation.

(5) *Requirements for evaporative system pressure test equipment.* Calibration and maintenance procedures for evaporative system pressure test equipment shall be conducted as specified in EPA guidance and regulation.

(x) *Quality assurance.*

(1) *Performance audits.* The oversight contractor(s) will conduct performance audits on a periodic basis to determine whether inspectors are correctly performing the tests and other required functions.

(i) Performance audits shall be of two types:

(A) Overt performance audits which shall include the following:

(*1*) A check for appropriate document security.

(*2*) A check to see that required recordkeeping practices are being followed.

(*3*) A check for licenses or certificates and other required display information.

(*4*) Observation and written evaluation of each inspector's ability to properly perform an inspection.

(B) Covert performance audits which shall include the following:

(*1*) Remote visual observation of inspector and inspection station personnel performance, which may include the use of binoculars or video cameras.

(*2*) Site visits using covert vehicles presented for inspection.

(*3*) Other activities deemed appropriate by the EPA Administrator.

(ii) The test provider(s) and the employees of the test provider(s) shall make available information requested by the oversight contractor(s) and shall fully cooperate with the oversight contractor's personnel who conduct the audits and other authorized EPA representatives or agents.

(2) *Document security.* Measures shall be taken to maintain the security of documents and/or instrumentation by which compliance with the inspection requirements is established.

(y) *Penalties for test provider(s).* The test provider(s) shall assume full responsibility, with or without actual knowledge, for the complete operation of an official emission inspection station, including the actions of emission inspectors. Failure to comply with the appropriate provisions of this section or the provisions prescribed in the agreement between the Administrator and the test provider(s) will be considered sufficient cause for imposing civil penalties for violation of the applicable implementation plan or damages under the contract, as applicable. In addition thereto, intentional violations may be subject to criminal prosecution where they meet the grounds for prosecution under any federal criminal statute.

(z) *Penalties for emission inspectors.* (1) An emission inspector shall assume full responsibility for his/her acts as an emission inspector. Failure to comply with the appropriate provisions of this section will be considered sufficient cause for suspension of an emission inspector's certification. In addition, intentional violations may also be subject to criminal prosecution where they meet the grounds for prosecution under any federal criminal statute. After providing the emission inspector with an opportunity for a hearing, the Administrator may impose suspensions or penalties upon the emission inspector for the following categories of offenses:

(i) Category 1.

(A) Issuance or possession of altered, forged, stolen or counterfeit certificates of emission inspection.

(B) Furnishing, lending, giving, selling or receiving a certificate of emission inspection without inspection.

(C) Fraudulent recordkeeping.

(D) Fraudulent inspection.

(ii) Category 2.

(A) Improper recordkeeping.

(B) Improper inspection.

(C) Improper assigning of certificate of emission inspection.

(2) *Duration of suspension.*

(i) Category 1.

(A) First offense: 1 year.

(B) Second offense: permanent.

(ii) Category 2.

(A) First offense: 3 months.

(B) Second offense: 6 months.

(C) Third offense: 1 year.

(3) *Multiple violations.* Violations affecting more than one vehicle will be treated as separate violations.

(4) *Opportunity for an EPA hearing.* Except for a penalty or sanction imposed directly under the terms of the agreement between the EPA Administrator and the test provider(s), a person charged with a violation of this section shall have the right to request a hearing regarding the charges.

§ 52.2964 Importation of vehicles into California.

(a) The State of California may not permit California residents to register for the first time in California any vehicle that was previously registered in another state, unless that vehicle was originally certified to the FIP's durable vehicle standards for its class.

(b) California residents may not own and keep a car in California that is currently registered in another state.

(c) As an exception to paragraphs (a) and (b) of this section, the State of California may allow recent immigrants to California (defined as residents of California for less than three months) to register a car, over 7500 miles, that they had previously registered for at least three months in another state while a resident of that state.

(d) *Implementation date.* This program shall be implemented on January 1, 1999.

§ 52.2965 Requirements for engines past their useful life.

(a) *General applicability.* Heavy-duty on-highway engines certified to applicable engine standards contained in § 52.2966(c) and (d) and nonroad engines certified to applicable engine standards contained in § 52.2975 (c) and (d) shall be subject to the provisions contained in this section.

(b) *Definitions and abbreviations.* The definitions and abbreviations of parts 86 and 89 of this chapter, the definitions contained in § 52.2966(b), and the definitions contained in the Clean Air Act apply to this section unless a term is also defined in this section.

Engine configuration means a complete set of engine and emissions control system parts, components, specifications, calibrations, and other items deemed necessary by a engine configuration certifier to restore an engine to its original configuration or another configuration meeting applicable recall emissions standards.

Useful life renewal means the period in years and miles or hours specified by the engine configuration certifier over which the engine configuration certifier assumes recall liability for engines of the certified configuration.

(c) *Owner requirements.* An owner of a vehicle or equipment equipped with an engine subject to the provisions of this section, at all times must be able to demonstrate either:

(1) That the engine in the vehicle or nonroad equipment being registered is within its original useful life, or

(2) That the engine in the vehicle or nonroad equipment being registered is within the useful life renewal period as defined by the certifier of the engine's configuration pursuant to paragraph (d) of this section. The owner shall make this demonstration by presenting the useful life renewal certificate furnished by the engine configuration certifier pursuant to paragraph (f) of this section. Failure to provide such demonstration at time of vehicle or equipment registration shall result in the denial of vehicle or equipment registration.

(d) *Useful life renewal.* The certifier of an engine configuration shall define the useful life renewal period in years and miles or hours over which the engine configuration certifier accepts liability for an engine(s) that does not conform to applicable recall standards.

(e) *Useful life renewal certificate.* (1) The certifier of an engine configuration shall provide to the owner a certificate with each engine that is restored to the certified engine configuration. The certificate shall contain the following:

(i) The useful life renewal period;

(ii) For on-highway engines, the effective date and the odometer mileage of the useful life renewal period; For nonroad engines, the effective date and hours; and

(iii) The vehicle or equipment identification number.

(2) The engine configuration certifier shall designate an office or officer to

receive a copy of completed certificates. The certificates shall be stored in an adequately organized and indexed file or the information required by paragraph (e)(1) of this section shall be entered into a database completely and stored. The certificate or information in the database shall be stored for a period not less than the useful life renewal period.

(f) *Engine configuration certification.* Engine configuration certifiers shall demonstrate certification compliance as follows:

(1) *Test procedure and emission results.* Certification emissions testing of engine configurations shall be conducted using new engine certification testing procedures specified in § 52.2966(e) for on-highway heavy-duty engines and § 52.2975(e) for nonroad engines. Certification emissions testing must be carried out using representative production equipment as provided in paragraph (f)(2) of this section. The test results must demonstrate that engines restored to the engine configuration being certified will comply with the applicable recall standards over the useful life renewal period.

(2) *Emissions test engine selection.* The test engine shall be an engine representative of the engine family and that is at or beyond the end of its original useful life.

(3) To demonstrate compliance with the applicable recall standards, the test engine shall be restored to the engine configuration being certified in accordance with the instructions that are to be followed when restoring actual in-use engines. No other maintenance or adjustments shall be performed on the test engine.

(4) *Test fuel.* The engine configuration shall be certified using the same fuel used for new engine certification as specified in § 52.2966 (f) for heavy-duty on-highway engines and § 52.2975 (f) for nonroad engines.

(5) *Component selection.* Where replacement components are used to restore an engine to the configuration being certified, certification shall be based upon tests utilizing representative production parts and components selected in a random manner.

(6) *Replacing original equipment parts.* Changes to an engine shall not result in the permanent removal or rendering inoperative of any original equipment emission related part other than the part(s) being replaced. Furthermore, engine changes shall not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the vehicle or equipment manufacturer's emission related part.

(7) *Effects on engine on-board diagnostic system.* Changes to an engine shall not alter or render inoperative any feature of the on-board diagnostic system incorporated by the engine manufacturer. The engine configuration being certified may integrate with the existing diagnostic system if it does not alter or render inoperative any features of the system.

(g) *In-use recall.* Engines restored to an engine configuration certified pursuant to paragraph (f) of this section within its useful life renewal period, shall be subject to the recall provisions contained in § 52.2966(g).

(h) *Notification of intent to certify.* (1) Prior to the issuance of any useful life renewal certificate, notification of the intent to certify must be approved by the MOD Director.

(2) All notifications shall include:

(i) Identification and description of the candidate engine configuration to be certified, including a list of replacement parts and part numbers;

(ii) Identification of the engine family including make(s), engine model(s), model year(s), engine size(s) and all other specific configuration characteristics;

(iii) Identification and description of any emissions related component(s) not being replaced and rationale as to why its replacement is unnecessary;

(iv) All results and documentation of tests and procedures used by the engine configuration certifier as evidence of compliance with applicable recall emission standards;

(v) A description of the test replacement part selection criteria used, and a statement that the replacement parts used for certification testing is representative production equipment consistent with paragraph (f)(1)(v) of this section;

(vi) A description of the test engine selection criteria used, and rationale that supports the technical judgment of the engine configuration certifier that the engine meets the requirements of paragraphs (f)(1)(ii) and (f)(1)(iii) of this section;

(vii) Results of durability testing and an engineering analysis showing that the emissions performance of engines can be expected to be maintained over the useful life renewal period;

(viii) A copy of any written installation instructions that are to be used and a copy of the warranty to be provided to the owner;

(ix) A copy of the written instructions for proper maintenance and use of the engine during the useful life renewal period;

(x) A copy of the useful life renewal certificate to be provided to the owner pursuant to paragraph (e) of this section;

(xi) A statement of commitment and willingness to comply with all the relevant terms and conditions of this section;

(xii) A statement by the engine configuration certifier that changes done to an engine to bring it to the engine configuration being certified will not cause a substantial increase to engine emissions in any normal driving mode not represented during certification testing; and

(xiii) The office or officer of the engine configuration certifier authorized to receive correspondence regarding certification requirements pursuant to this subpart.

(3) The notification shall be signed by an officer of the engine configuration certifier attesting to the accuracy and completeness of the information supplied in the notification.

(4) Notification to the Agency shall be by certified mail or another method by which date of receipt can be established.

(5) Two complete and identical copies of the notification and any subsequent industry comments on any such notification shall be submitted by the engine configuration certifier to: MOD Director, MOD (6405J), Attention: Engine Configuration Certification, 401 "M" Street SW, Washington, DC 20460.

(i) [Reserved].

(j) *Objections to certification.* (1) At any time prior to certification, the MOD Director may notify the engine configuration certifier that such its engine configuration shall not be certified pending further investigation. The basis upon which this notification shall be made may include, but not be limited to, information or test results submitted by the engine configuration certifier including:

(i) The test procedure used to demonstrate compliance with the applicable recall standards does not meet the requirements of paragraph (f) of this section;

(ii) Use of the candidate engine configuration could cause or contribute to an unreasonable risk to public health, welfare or safety in its operation or function;

(iii) Installation of the candidate replacement parts requires procedures or materials which would likely cause such parts to be improperly installed under normal conditions or would likely result in an engine being misadjusted; or

(iv) Information and/or data required to be in the notification of intent to certify as provided by paragraph (h) of this section have not been provided or may be inadequate.

(2) The engine configuration certifier must respond in writing to the statements made in the notification by the MOD Director, or the MOD Director shall withdraw the notification of intent to certify.

(3) The MOD Director may, at his or her discretion, allow oral presentations by the engine configuration certifier.

(4) If notification has been provided to an engine configuration certifier pursuant to paragraph (j) of this section, the MOD Director shall, after reviewing all pertinent data and information, render a decision and inform the engine configuration certifier in writing as to whether such engine configuration may be certified and, if so, under what conditions the engine configuration may be certified. The written decision shall include an explanation of the reasons therefor.

(i) The decision by the MOD Director shall be provided to the engine configuration certifier after receipt of all necessary information by the certifier or interested parties, or of the date of any oral presentation regarding the certification, whichever occurs second.

(ii) Within 20 days of receipt of a decision made pursuant to paragraph (j)(4)(i) of this section, any party may file a written appeal to the Office Director. The Office Director may, in his or her discretion, allow additional oral or written submissions, prior to rendering a final decision.

(iii) If no party files an appeal with the Office Director within 20 days, then the decision of the MOD Director shall be final.

(iv) The Office Director shall make a final decision regarding the certification of engine configuration after receipt of all necessary information by the engine configuration certifier or from the date of any oral presentation, whichever occurs later.

(k) *Changes after certification.* The engine configuration certifier shall recertify any engine configuration which was certified pursuant to paragraph (f) of this section and to which modifications are made affecting emissions or the capability of the engine to meet any other requirement of this section.

(l) *Labeling requirements.* (1) All engine configurations certified pursuant to this section shall contain a label affixed to the rebuilt engine that states:

(i) Identification of the engine configuration;

(ii) The useful life renewal period provided by the certifier pursuant to paragraph (d) of this section;

(iii) A place for the certifier to record the date and the mileage of the useful life renewal period. The label containing the information must be made durable and readable for at least the useful life renewal period; and

(iv) The statement:

Certified to EPA In-Use Recall Emissions Standards

contains:

(2) The certifier shall ensure that all of the information that is entered on the label supplied by the engine configuration certifier pursuant to paragraph (l)(1) of this section is accurate and complete and that the label is securely affixed to the engine, upon the completion of all activities necessary to bring the engine to the certified configuration.

(3) The package in which any replacement parts are contained, or an insert as described in paragraph (j)(4) of this section, must have the following information conspicuously placed thereon:

(i) The statement "Certified by (name of engine configuration certifier) to EPA In-use Recall Emission Standards"; and

(ii) The engine family for which the parts are certified.

(4) The package in which the parts are contained must include the following information provided on a written insert:

(i) The engine family for which the parts are certified, unless such information is provided as specified in paragraph (j)(2) of this section;

(ii) A list of all of the parts and identification numbers for the parts included;

(iii) The instructions for proper installation of the parts;

(iv) A description of the maintenance necessary to be performed on the engine during its useful life renewal period.

(m) *Maintenance and submittal of records by engine configuration certifiers.*

(1) For each certified engine configuration, the engine configuration certifier must establish, maintain and retain for 5 years from the date of certification the following adequately organized and indexed records:

(i) Detailed production drawings showing all dimensions, tolerances, performance requirements and material specifications and any other information necessary to completely describe the engine configuration;

(ii) All data obtained during testing of the engine configuration and subsequent analyses based on that data, including the mileage and the vehicle or engine configuration determinants;

(iii) All information used in determining the engine for which the replacement parts or components are represented as being equivalent from an emissions standpoint to the original equipment parts being replaced;

(iv) A description of the quality control plan used to monitor production and assure compliance of in-use engines with the applicable requirements;

(v) All data taken in implementing the quality control plan, and any subsequent analyses of that data; and

(vi) All in-service data, analyses performed by the engine configuration certifier and correspondence with rebuilders, vendors, distributors, consumers, retail outlets or engine manufacturers regarding any design, production or in-service problems associated with 25 or more engines of the same engine configuration.

(2) The records required to be maintained in paragraph (m)(1) of this section shall be made available to the Agency upon the written request of the MOD Director.

(n) *Decertification.*

(1) The MOD Director may notify a engine configuration certifier that the Agency has made a preliminary determination that a certain engine configuration should be decertified.

(i) Such a preliminary determination may be made if there is reason to believe that the engine configuration has failed to comply with the requirements of this section. Information upon which such a determination will be made includes but is not limited to the following:

(A) The engine configuration was certified on the basis of emissions tests, and the procedures used in such tests were not in substantial compliance with a portion or portions of the test procedures required to be used pursuant to paragraph (e)(1) of this section; or

(B) Use of the certified engine configuration is causing emissions to exceed any in-use recall emission standard; or

(C) Use of the engine configuration causes or contributes to an unreasonable risk to public health, welfare or safety or severely degrades driveability operation or function; or

(D) The engine configuration has been modified in a manner requiring recertification pursuant to paragraph (k) of this section; or

(E) The engine configuration certifier has not established, maintained or retained the records required pursuant to paragraph (m)(1) of this section or fails to make the records available to the MOD Director upon written request pursuant to paragraph (m)(2) of this section.

(ii) Notice of a preliminary determination to decertify shall contain:

(A) A description of the noncomplying engine configuration;

(B) The basis for the MOD Director's preliminary decision; and

(C) The date by which the certifier must:

(*1*) Terminate the issuance of useful life renewals; or

(*2*) Make the necessary change (if so recommended by the Agency); or

(*3*) Request an opportunity in writing to dispute the allegations of the preliminary decertification.

(2) If the engine configuration certifier requests an opportunity to respond to the preliminary determination, the manufacturer and other parties interested in the MOD Director's decision whether to decertify the engine configuration shall, within 15 days of the date of the request, submit written presentations, including the relevant information and data, to the MOD Director. The MOD Director, in his or her discretion, may provide an opportunity for oral presentations.

(i) Any interested party may request additional time to respond to the information submitted by the engine configuration certifier. The MOD Director upon a showing of good cause by the interested party may grant an extension of time to reply up to 30 days.

(ii) The engine configuration certifier may have an extension of up to 30 days to reply to information submitted by interested parties. Notification of intent to reply shall be submitted to the MOD Director within 10 days of the date information from interested parties is submitted to the MOD Director.

(3) If a engine configuration certifier has disputed the allegations of the preliminary decisions, the MOD Director shall, after reviewing any additional information, notify the engine configuration certifier of his or her decision whether the engine configuration may continue to be sold as certified. This notification shall include an explanation upon which the decision was made and the effective date for decertification, where appropriate.

(4) Within 20 days from the date of a decision made pursuant to paragraph (n)(3) of this section, any adversely affected party may appeal the decision to the Office Director.

(i) A petition for appeal to the Office Director must state all of the reasons why the decision of the MOD Director should be reversed.

(ii) The Office Director may, in his or her discretion, allow additional oral or written testimony.

(iii) If no appeal is filed with the Office Director within the permitted time period, the decision of the MOD Director shall be final.

(5) If a final decision is made to decertify an engine configuration under paragraph (n)(4) of this section, the engine configuration certifier shall notify his immediate customers that, as of the date of the final determination, the engine configuration in question has been decertified. The engine configuration certifier shall offer to replace engines of the decertified engine configurations in the customer's inventory with certified replacement engines or, if unable to do so, shall at the customer's request repurchase such inventory at a reasonable price. The immediate customers must stop selling the engines once the certifier has notified the customer that the engine configuration has been decertified.

(6) Notwithstanding the requirements of paragraph (n)(5) of this section, an engine purchased by an owner prior to decertification, shall be considered certified pursuant to this section.

§ 52.2966 Enhanced in-use compliance heavy-duty engine and vehicle program.

(a) *General applicability.* New 1999 model year and later heavy-duty vehicles and engines, other than medium-duty vehicles certified to the standards contained in § 52.2962, that are registered exclusively in California or that are offered for sale in California, shall meet the standards and requirements specified in paragraphs (c) through (h) of this section, and in § 52.2965. Other state and federal requirements may also apply to these vehicles and engines. Heavy-duty vehicles that are registered in California and that are also registered in other states shall be subject to the requirements specified in paragraph (h) of this section.

(b) *Definitions and abbreviations.* The definitions and abbreviations of parts 86 and 88 of this chapter and the definitions contained in the Clean Air Act apply to this section unless a term is also defined in this section. *New,* when applied to motor vehicles, means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser. It is conclusively presumed that the equitable or legal title to a motor vehicle, other than a motorcycle, with an odometer reading of 7,500 miles or more, has been transferred to an ultimate purchaser, and that the equitable or legal title to a motor vehicle, other than a motorcycle, with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

(c) *Emission standards.* For the purposes of certification and recall testing, exhaust emissions shall not exceed the following:

(1) *Non-methane hydrocarbons.* 0.2 to 0.6 grams per brake horsepower-hour, as measured under transient operating conditions.

(2) *Oxides of nitrogen.* 1.5 grams per brake horsepower-hour, as measured under transient operating conditions.

(d)(1) For the purposes of certification and recall testing, evaporative hydrocarbon emissions shall not exceed the applicable federal heavy-duty engine evaporative emissions standards described in 40 CFR part 86.

(2) Manufacturers' applications for certification shall include test results or an engineering evaluation demonstrating compliance with the inherently low evaporative emission requirements of § 88.311–93(a)(1)(ii) and (a)(2) of this chapter. Diurnal emission levels shall be adjusted to reflect corresponding results for a nominal 20 gallon fuel tank volume. This demonstration may be based on a diurnal temperature excursion of 65°F to 105°F and California certification fuel rather than the EPA conditions and test fuel.

(e) *Test procedures.* (1) The exhaust emission standards set forth in paragraph (c) of this section refer to the exhaust emissions collected under the conditions and measured in accordance with the procedures set forth in 40 CFR part 86, subpart N, except as specified in paragraph (f) of this section. Assembly line testing procedures are those set forth in 40 CFR part 86, subpart K, except as specified in paragraph (f) of this section.

(2) The evaporative standards set forth in paragraph (d)(1) of this section refer to the evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in 40 CFR part 86, subpart M, except as specified in paragraph (f) of this section.

(f) *Test fuels.* All certification, assembly line, and recall testing performed on vehicles and engines covered under this section shall use the fuels provided for by California as found in the California regulations. Testing performed to demonstrate compliance with the inherently low evaporative emission requirements of paragraph (d)(2) of this section may, as an alternative, be conducted with fuels meeting the federal specifications of 40 CFR part 86. Assembly line and recall testing shall use the same type of fuel as used in certification testing.

(g) *Recall program.* (1) Engines certified to the standards set forth in this section shall be subject to the recall provisions described in this paragraph.

For purposes of recall testing under this section, the term "engine" includes all emissions control systems.

(2) The recall provisions for light-duty vehicles contained in § 52.2962(e) shall apply to engines subject to the provisions of this paragraph as well, with appropriate references to applicable standards and test procedures, except that:

(i) Engines shall be selected by EPA for purposes of recall testing from the vehicle population of the entire state rather than only from areas subject to enhanced inspection and maintenance testing; and

(ii) The provisions of § 52.2965 shall also apply.

(h) *Fleet averaging program.* (1) *General applicability.* The requirements of this program apply to all heavy-duty vehicles of over 19,500 pounds GVWR that are registered in California.

(2) Effective January 1, 2000, any person who owns one or more heavy-duty vehicles of over 19,500 pounds GVWR that are registered in California shall submit the following information on each of these affected fleet vehicles to EPA by January 31st of every calendar year. The submittal shall reflect the owner's affected fleet as it existed on January 1st of the same calendar year. Owners may combine their affected vehicles with those of other vehicle owners for the purposes of this program. Required information per affected vehicle:

(i) Vehicle license number;

(ii) Engine model year;

(iii) Engine identification number; and

(iv) GVWR.

(3)(i) The results of the following Fleet Average Emissions (FAE) calculations contained in Tables 2966–1 and 2966–2 shall be submitted concurrently with the per vehicle information specified in paragraph (h)(2) of this section; separate calculations shall be performed, and results submitted, for affected vehicles of GVWR between 19,501–33,000 pounds and for affected vehicles of over 33,000 pounds GVWR:

TABLE 2966–1.—CALCULATION OF MEDIUM HEAVY-DUTY VEHICLE FLEET NO_X EMISSIONS

Model year grouping	A: No. of vehicles in affected fleet (19500–33000 pounds GVWR)	B: Per vehicle NO_X emissions (tons)	C: Total NO_X emissions from model year grouping (C=A×B)
1999 and later		× 0.071	
1998		× 0.19	
1991–1997		× 0.24	
1988–1990		× 0.28	
1984–1987		× 0.24	
Pre-1984		× 0.51	

D: Total Fleet Emissions for all Model Year Groupings, (sum of numbers in Column C)
E: Total Number of Affected Vehicles (19500–33000 pounds GVWR) in Fleet, (sum of numbers in Column A)
F: Fleet Average Emissions (FAE), (F=D÷E)

TABLE 2966–2.—CALCULATION OF HEAVY HEAVY-DUTY VEHICLE FLEET NO_X EMISSIONS

Model year grouping	A: No. of vehicles in affected fleet (>33000 pounds GVWR)	B: Per vehicle NO_X emissions (tons)	C: Total NO_X emissions from model year grouping (C=A×B)
1999 and later		× 0.28	
1998		× 0.74	
1991–1997		× 0.93	
1988–1990		× 1.12	
1984–1987		× 0.95	
Pre-1984		× 1.99	

D: Total Fleet Emissions for all Model Year Groupings, (sum of numbers in Column C)
E: Total Number of Affected Vehicles (>33000 pounds GVWR) in Fleet, (sum of numbers in Column A)
F: Fleet Average Emissions (FAE), (F=D÷E)

(ii) The submittal shall also include the name and address of each owner of vehicles included in the calculations, and a designated mailing address for subsequent EPA correspondence.

(4) The fleet owner, or owner group, shall compare the calculated Fleet Average Emissions with the Baseline Emission Level (BEL) in Table 2966–3 applicable to the calendar year for which the calculation applies (that is, the calendar year in which the submittal is due), and shall calculate the fleet averaging program surcharge according to the following equation:

$$\text{Surcharge} = \$10{,}000 \times (\text{FAE} - \text{BEL} \times (\text{Number of Affected Vehicles})$$

This calculation shall be performed separately for vehicles in the 19,501 to 33,000 pound GVWR range, if the fleet contains any such vehicles, and in the over 33,000 pound GVWR range, if the fleet contains any such vehicles. If the calculated surcharge is less than zero for either category of vehicles, the surcharge for that category of vehicles shall be set to zero. The sum of the surcharges for the two categories of vehicles shall be paid concurrently with the submittal of information described in paragraphs (h)(2) and (3) of this section.

TABLE 2966–3.—HEAVY-DUTY VEHICLE BASELINE EMISSION LEVELS (BEL)

Calendar year	BEL for vehicles 19,501–33,000 pounds GVWR	BEL for vehicles >33,000 pounds GVWR
2000	0.28	1.1
2001	0.26	1.02
2002	0.24	0.94
2003	0.22	0.87
2004	0.20	0.80
2005	0.19	0.74
2006	0.17	0.68
2007	0.16	0.62
2008	0.15	0.57
2009	0.13	0.52
2010	0.13	0.49
2011	0.12	0.47
2012	0.11	0.45
2013	0.11	0.43
2014	0.10	0.41
2015	0.098	0.39
2016	0.093	0.37
2017	0.089	0.35
2018	0.086	0.34
2019	0.083	0.33
2020	0.080	0.31
2021	0.077	0.30
2022	0.075	0.29
2023	0.072	0.29
2024 and later	0.071	0.28

(5) Within 30 days of receipt of an adequate owner's submittal, including sufficient payment, EPA shall send a certificate of compliance to the designated mailing address. The certificate shall indicate the license numbers of the vehicles to which it applies. Inadequate owners' submittals, including insufficient payment of fees, shall be returned to the designated mailing address, along with an explanation of why the submittal was found inadequate, within 30 days of receipt. Resubmittals by owners shall be responded to by EPA within 30 days of receipt.

(6) Certificates of compliance shall be valid only through March 1st of the calendar year following the year in which they are issued. Expiration dates shall be indicated on the certificates.

(7) Effective March 15, 2000, no vehicle subject to the requirements of the fleet averaging program shall be allowed to register in California without proof of compliance in the form of a valid certificate covering the subject vehicle, unless the vehicle has not previously been subject to the requirements of this program because it is a new vehicle or had not been previously registered in California.

§§ 52.2967–52.2968 [Reserved]

§ 52.2969 Nonroad vehicles and engines, on-highway motorcycles.

(a) *Applicability.* All provisions of this section will apply to nonroad vehicles and engines and on-highway motorcycles manufactured after December 31, 1995 and manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported in the State of California.

(b)(1) *Compression-ignition Engines at or above 37 kW.* EPA will finalize national rules for new compression-ignition engines at or above 37 kW by May 1994 which will achieve a cumulative 37 percent NO_x emission reduction from the fleet of uncontrolled compression-ignition engines in this category.

(2) *Additional measures.* If EPA fails to publish a national rule which achieves the cumulative 37 percent reduction in NO_x emissions from compression-ignition engines described in paragraph (b)(1) of this section, EPA will promulgate additional compression-ignition engine control measures applicable to such engines in the State of California or the FIP areas. These additional measures will cumulatively achieve the targeted 37 percent reduction.

(c)(1) *Spark-ignition Engines at or Below 19 kW.* EPA will finalize national Phase 1 and 2 rules for new spark-ignition engines at or below 19 kW which will achieve a cumulative 90 percent VOC emission reduction from the fleet of uncontrolled spark-ignition engines in this category. A Phase 1 rule will be finalized by May 1995 and a Phase 2 rule will be finalized by May 1997.

(2) *Additional measures.* If EPA fails to publish Phase 1 and 2 national rules which achieve a cumulative 90 percent reduction in VOC emissions from spark-ignition engines described in paragraph (c)(1) of this section, EPA will promulgate tighter standards for all users of such engines and/or fees for commercial users of such engines in the State of California or in the FIP areas. These additional measures will cumulatively achieve the targeted 90 percent reduction.

(d)(1) *Spark-ignition Marine Engines.* (i) EPA will finalize national rules for new spark-ignition marine engines by November 1995 which will achieve a cumulative 50–60 percent VOC emission reduction from the fleet of uncontrolled spark-ignition marine engines in this category. The national regulations shall be phased in commencing with model year 1998 and later spark-ignition outboard, sterndrive, and inboard engines and all model year 1999 and later personal watercraft spark-ignition engines that are sold, manufactured for sale, offered for sale, introduced or delivered for introduction into commerce or imported into the State of California.

(ii) A marine engine is any nonroad engine which is used on a "vessel" as defined in 1 U.S.C. 3.

(2) *Additional measures.* If EPA fails to publish a national rule which achieves a cumulative 50–60 percent reduction in VOC emissions from spark-ignition marine engines described in paragraph (d)(1) of this section, EPA will promulgate a fee schedule for users of such spark-ignition marine engines in the FIP areas. The additional measures will cumulatively achieve the targeted 50–60 percent reduction.

(e) *On-highway motorcycles and engines used in nonroad motorcycles.*

(1) *General applicability.* This regulation applies to new gasoline and methanol fueled on-highway motorcycles and nonroad motorcycles manufactured after December 31, 1995 and manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the State of California, including motorcycles with engine displacements less than 3.1 cubic inches (50 cc).

(2) *Definitions.*

Nonroad motorcycle means any motorized land vehicle designed for transporting person or property and which has two wheels, or three or more wheels and a curb mass less than or equal to 680 kilograms; it does not include devices regulated by the State of California as other classes of motor vehicles or devices regulated by EPA as other classes of nonroad engines nor does it include devices designed solely for operation on rails.

On-highway motorcycle means any motor vehicle with a headlight, taillight, and stoplight and having: two wheels, or three wheels and a curb mass less than or equal to 680 kilograms.

(3) *Emission standards applicable in California for 1996 and later model year on-highway motorcycles and nonroad motorcycles.*

(i) Exhaust emissions from 1996 and later model year on-highway motorcycles and nonroad motorcycles subject to this paragraph shall not exceed:

(A) Hydrocarbons or Organic material hydrocarbon equivalent: 0.8 grams per vehicle kilometer.

(B) Carbon monoxide: 12 grams per vehicle kilometer.

(C) Oxides of nitrogen: 0.8 grams per vehicle kilometer.

(ii) The standards set forth in paragraph (a) of this section refer to the exhaust emitted over driving schedules set forth in 40 CFR part 86, subpart F and measured and calculated in accordance with those procedures.

(iii) No crankcase emissions shall be discharged into the ambient atmosphere from any on-highway motorcycle subject to this subpart.

(iv) Evaporative emissions from on-highway motorcycles shall not exceed 2.0 grams diurnal and hot soak according to State of California procedures referenced in 13 CCR 1976.

(4) On-highway motorcycles and nonroad motorcycles subject to this paragraph shall be subject to the definitions and requirements of 40 CFR 86.401 through 86.544, except as otherwise provided in this paragraph (e).

§ 52.2970 Civil aircraft operations.

(a) *Definitions.* [Reserved]

(b) *Commercial aviation control measures.*

(1) *Applicability.* The provisions of § 52.2970(b) shall apply to all commercial aircraft operators with aircraft operations in the South Coast, Ventura, and Sacramento control areas as defined in 40 CFR 81.305.

(2) *Specific provisions.*

(i) Environmental performance targets.

(A) Commercial aircraft operators subject to the provisions of this section per paragraph (b)(1) of this section shall operate aircraft in the control areas at emission rates not to exceed those presented in Tables 2970–1 and 2970–2.

TABLE 2970–1.—EXAMPLE NO_X ENVIRONMENTAL PERFORMANCE TARGETS FOR COMMERCIAL AVIATION IN THE SOUTH COAST AIR BASIN

Control period	Environmental performance target
1990	0.162 pounds/PEU.
2001	0.128 pounds/PEU.
2002	0.113 pounds/PEU.
2003	0.100 pounds/PEU.
2004	0.086 pounds/PEU.
2005	0.073 pounds/PEU.
2005 +	0.073 pounds/PEU.

TABLE 2970–2.—EXAMPLE VOC ENVIRONMENTAL PERFORMANCE TARGETS FOR COMMERCIAL AVIATION IN THE SOUTH COAST AIR BASIN

Control period	Environmental performance target
1990	0.087 pounds/PEU.
2001	0.068 pounds/PEU.
2002	0.061 pounds/PEU.
2003	0.053 pounds/PEU.
2004	0.046 pounds/PEU.
2005	0.039 pounds/PEU.
2005 +	0.039 pounds/PEU.

(ii) *Reporting.*

(A) *Compliance plan.* [Reserved]

(B) *Baseline report.* [Reserved]

(C) *Annual report.*

(*1*) Each commercial aircraft operator subject to paragraph (b)(2)(i)(A) of this section shall submit annual reports to the Administrator on covered activity and emissions as defined in paragraph (b)(2)(ii)(C)(*3*) of this section.

(*2*) Annual reports submitted pursuant to paragraph (b)(2)(ii)(C)(*1*) of this section shall be submitted no later than March 1 of each calendar year describing covered aircraft operations during the ozone season of the preceding calendar year pursuant to the information requirements in paragraph (b)(2)(ii)(C)(*3*) of this section. The first annual report shall be submitted no later than March 1, 2000 describing covered aircraft operations during the calendar year 1999.

(*3*) Annual reports submitted pursuant to paragraph (b)(2)(ii)(C)(*1*) of this section shall include the following information. For each flight operating in the control areas during the ozone season of each area: Flight number; aircraft type and model; engine type and model; taxi/idle time by engine; APU operating time; number of passengers carried; and weight of non-passenger cargo. In addition, annual reports shall include the following information for all airports in the control areas at which the reporting operator had aircraft operations: GSE population by type; and GSE by fuel type, engine size, emission control level, and annual ozone season use hours. The annual ozone seasons for each of the three FIP areas are:

(*i*) Sacramento—May through October.

(*ii*) Ventura—April through October.

(*iii*) South Coast—March through October.

(*4*) Commercial aircraft operators submitting annual reports pursuant to paragraph (b)(2)(ii)(C)(*1*) of this section shall calculate their total annual ozone season emissions of VOC and NO_X in pounds and include this information in the annual report. EPA-approved methods for calculating aircraft emissions shall be used for determining VOC and NO_X emissions during the control period.

(*5*) Commercial aircraft operators submitting annual reports pursuant to paragraph (b)(2)(ii)(C)(*1*) of this section shall calculate their annual ozone season environmental performance in pounds of VOC per passenger equivalent unit and pounds of NO_X per passenger equivalent unit and include this information in the annual report. The following calculations shall be used to determine annual environmental performance:

(*i*) *For VOC,* [control period VOC emissions] divided by [(number of passengers carried during control period) + (weight of non-passenger cargo carried during control period divided by 200)]

(*ii*) *For NO_X,* [control period NO_X emissions] divided by [(number of passengers carried during control period) + (weight of non-passenger cargo carried during control period divided by 200)]

(*6*) The accuracy of all information submitted pursuant to this section shall be certified according to the requirements of paragraphs (b)(2)(ii)(D) (*1*) through (*4*) of this section.

(*7*) A commercial aircraft operator subject to the provisions of this section who fails to submit an annual report as required under paragraphs (b)(2)(ii)(C)(*1*)–(*6*) of this section will be subject to enforcement as described in paragraphs (b)(2)(vii) of this section.

(D) *Certification.*

(*1*) All permit applications submitted pursuant to this regulation shall be signed as follows:

(*i*) *For a corporation* by a responsible corporate officer. For the purposes of this regulation, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(*ii*) *For a partnership or sole proprietorship* by a general partner or the proprietor, respectively.

(*2*) All annual reports and other supplemental information submitted pursuant to this regulation shall be signed by a person described in paragraph (b)(2)(ii)(D)(*1*) of this section, or by a duly authorized representative of that person. For the purposes of this regulation, a person is a duly authorized representative if:

(*i*) The authorization is made in writing by a person described in paragraph (b)(2)(ii)(D)(*1*) of this section;

(*ii*) The authorization specifies an individual or a position having responsibility for the overall operation of the regulated sources, or an individual or a position having overall responsibility for environmental matters for the company; and

(*iii*) The written authorization is submitted to the Administrator.

(*3*) If an authorization submitted under paragraph (b)(2)(ii)(D)(*2*) of this section is no longer accurate because of personnel changes or changes in authority, a new authorization satisfying the requirements of paragraph (b)(2)(ii)(D)(*2*) of this section must be submitted to the Administrator prior to or together with any reports or supplemental information signed by an authorized representative.

(*4*) Any person signing a document under paragraph (b)(2)(ii)(D) (*1*) or (*2*) of this section shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(*iii*) *Compliance determination.*

(A) Compliance with paragraph (b)(2)(i)(A) of this section shall be determined annually, using information provided in the annual report submitted pursuant to paragraphs (b)(2)(ii)(C)(*1*) through (*6*) of this section, by comparing the reported pounds-per-PEU environmental performance to the relevant environmental performance standard from Tables 2970–1 and 2970–2.

(B) Commercial aircraft operators whose reported pounds-per-PEU environmental performance exceeds the relevant environmental performance standard shall pay an emissions fee calculated according to the provisions of paragraph (b)(2)(iv)(B) of this section.

(iv) *Emissions fee.*

(A) Emissions fees imposed on a commercial aircraft operator pursuant to paragraph (b)(2)(iii)(B) of this section will be calculated using emissions and activity data reported by that operator in the annual submitted under paragraph (b)(2)(ii)(C)(*1*) of this section. The provisions of this section apply separately for VOC and NO$_X$ emissions.

(B) Emissions fees will be based on the quantity of pollutants emitted in excess of the emission rates presented in Tables 2970–1 and 2970–2, calculated as follows:

(*1*) The applicable emission rate from Tables 2970–1 and 2970–2 is multiplied by the operator's reported Passenger Equivalent Unit (PEU) control period total to determine the operator's total emission quantity target for the relevant year.

(*2*) This total emission quantity target is subtracted from the operator's reported emissions for the relevant year to determine the quantity of pollutants emitted in excess of the total emission quantity target.

(*3*) This excess quantity of pollutants is subject to the emissions fee described in paragraph (b)(2)(iv)(C) of this section.

(C) *Emissions fee rate.* [Reserved]

(D) Emissions fees paid pursuant to the provisions of this section must be remitted along with the relevant annual report submitted under paragraph (b)(2)(ii)(C)(*1*) of this section.

(E) A commercial aircraft operator subject to the requirements of this section who fails to pay fees as required under paragraphs (b)(2)(iv) (A) through (D) of this section will be subject to enforcement as described in paragraph (b)(2)(vii) of this section.

(v) *Recordkeeping.* Commercial aircraft operators subject to the provisions of paragraphs (b)(2) (i) through (iv) of this section shall collect and record all information necessary to demonstrate compliance with the requirements of paragraph (b)(2)(i) of this section and maintain the information for a period of three (3) years. The information shall be collected and recorded each day of the control period beginning in 1999.

(vi) *Exemptions.* [Reserved]

(vii) *Enforcement.* [Reserved]

(c) *General aviation control measures.*

(1) *Applicability.* The provisions of § 52.2970 (c) shall apply to all general aviation operations in the South Coast, Ventura, and Sacramento control areas as defined in 40 CFR 81.305.

(2) *Specific provisions.*

(i) All general aviation aircraft subject to paragraph (c)(1) of this section shall pay a fee for each operation during the control period beginning in 2001, except for those aircraft operations exempted pursuant to paragraph (c)(1)(v) of this section.

(ii) For the purpose of this section, general aviation operations subject to this fee are defined as take-offs from airports located in the control areas.

(iii) *Reporting.*

(A) *General aviation operation certificate.*

(*1*) All airports with general aviation operations subject to paragraph (c)(1) of this section must obtain a General Aviation Operation Certificate.

(*2*) All airports with general aviation operations subject to paragraph (c)(1) of this section shall submit to the Administrator an application for a general aviation operation certificate.

(*3*) This application shall include the following information:

(*i*) Airport name;

(*ii*) Airport location, including latitude and longitude;

(*iii*) Number of general aviation operations in 1999;

(*iv*) Number of general aviation aircraft based at the airport; and

(*v*) Services provided at the airport.

(*4*) This application shall be submitted to the Administrator no later than March 20, 2000.

(*5*) The accuracy of all information submitted pursuant to this section shall be certified according to the requirements of paragraph (c)(2)(iii)(C) of this section.

(*6*) Airports with general aviation operations in the absence of a general aviation operation certificate after January 1, 2001 will be subject to enforcement as described in paragraph (b)(2)(vii) of this section.

(B) *Monthly general aviation activity reports.*

(*1*) All airports subject to paragraph (c)(2)(iii)(A) of this section shall submit to the Administrator monthly general aviation activity reports for the control period.

(*2*) Monthly general aviation activity reports shall include the following information:

(*i*) Airport name as indicated on the General Aviation Operation Certificate;

(*ii*) Total number of general aviation operations for the reported month; and

(*iii*) For each general aviation operation during the reported month, the aircraft FAA registration number ("N" number).

(*3*) Monthly general aviation activity reports shall be submitted no later than the tenth day of the following month. The first report shall be submitted no later than February 10, 2001 covering general aviation operations in January 2001.

(*4*) The accuracy of all information submitted pursuant to this section shall be certified according to the requirements of paragraph (c)(2)(iii)(C) of this section.

(*5*) Failure to submit a monthly general aviation activity report as required in this section will be subject to enforcement as described in paragraph (c)(2)(vii) of this section.

(C) *Certification.* [Reserved]

(iv) *Fee Rate.* [Reserved]

(v) *Fee Collection.* [Reserved] ■

(vi) *Exemptions.*

(A) *Atypical operations.* [Reserved]

(B) *Other exemptions.* [Reserved]

(vii) *Enforcement.* [Reserved]

§ 52.2971 Locomotives.

(a) *General provisions.*

(1) *Applicability.* (i) The provisions of paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(4)(i), (a)(4)(ii) and (a)(4)(iii) of this section, shall apply specifically to all locomotives operating in California.

(ii) The provisions of paragraphs (a)(2)(iv), (a)(2)(v), (a)(4)(iv), (a)(4)(v), (b), (c) and (e) of this section shall apply to all locomotives located in the "control area" defined as the South Coast Air Basin ozone nonattainment area in 40 CFR 81.305.

(2) *Compliance dates.* The dates for compliance with the requirement of this section are as follows:

(i) January 1, 2000 for locomotives manufactured before January 1, 2000 and after January 1, 1973, and remanufactured on or after January 1, 2000 for compliance with the standard in paragraph (a)(4)(i) of this section.

(ii) January 1, 2000 for locomotives manufactured between January 1, 2000 and December 31, 2004 at the time of manufacture and at each remanufacturing on or after January 1, 2000 for compliance with the standard in paragraph (a)(4)(ii) of this section.

(iii) January 1, 2005 for locomotives manufactured after January 1, 2005 at the time of manufacture and at each remanufacturing on or after january 1, 2005 for compliance with the standard in paragraph (a)(4)(iii) of this section.

(iv) January 1, 2007 for railroads operating in the control area for compliance with the standard in paragraph (a)(4)(iv) of this section.

(v) January 1, 2010 for railroads operating in the control area for compliance with the standard in paragraph (a)(4)(v) of this section.

(3) *Definitions.*

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Engine used in a locomotive means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

Locomotive means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight, or passenger traffic.

Railroad company means any company or organization that operates one or more locomotives.

(4) *Emissions standards.*

(i) NO_X emissions from a locomotive manufactured before January 1, 2000 and after January 1, 1973, following remanufacturing on or after January 1, 2000, shall comply with a standard such that the emissions from the locomotive average 8 g/bhp-hr or less.

(ii) NO_X emissions from a locomotive manufactured on or after January 1, 2000 and before January 1, 2005 shall comply with a NO_X standard of 6.5 g/bhp-hr.

(iii) NO_X emissions from a locomotive manufactured on or after January 1, 2005 shall comply with a NO_X standard of 5.5 g/bhp-hr.

(iv) NO_X emissions from locomotives owned or operated by a railroad company and operated in the South Coast shall average 5.5 g/bhp-hr or less effective January 1, 2007.

(v) NO_X emissions from locomotives owned or operated by a railroad company and operated in the South Coast shall average 4 g/bhp-hr or less effective January 1, 2010.

(5) *Test methods and procedures.* Test methods and procedures which will be adopted for the national locomotive emission control program shall apply in this South Coast Locomotive FIP. The applicable reference for the national locomotive emission control program will be provided when promulgated.

(6) *Enforcement.*

(i) *Inspections.* All sources subject to provisions of this section shall be subject to unannounced inspections by representatives of EPA pursuant to section 114 of the Clean Air Act (42 U.S.C. 7401–7671q).

(ii) *Information requests.* Documentation maintained by all sources, facilities, and persons subject to paragraph (c) of this section must be sufficient to demonstrate compliance with all the requirements of paragraph (b) of this section and must be provided to representatives of EPA in response to information requests pursuant to section 114 of the Clean Air Act.

(iii) *Testing.* All sources subject to provisions of this section shall be subject to testing by representatives of EPA pursuant to section 114 of the Clean Air Act.

(iv) Failure to comply with any provisions of this section is a violation of the applicable implementation plan for purposes of section 113 of the Clean Air Act.

(b) *Compliance.*

(1) *Average emission rate.* Immediately following the end of each year, each railroad company shall calculate its average emission rate in the control area for the preceding year as follows:

$$LEV = \frac{\sum_{i=1}^{n}(EL_i \times FU_i)}{\sum_{i=1}^{n} FU_i}$$

Where:

LEV=RR Company Annual Emission Level

EL_i=Emission level of each locomotive (i) owned or operated by the railroad company in g/bhp-hr

FU_i=Fuel used by each locomotive (i) owned or operated by the railroad company in gallons

n=Number of locomotives/engines the company owns

i=The ith locomotive of the company's locomotive fleet

(2) *Labelling.* All locomotive or locomotive engines that are designated to operate in the South Coast subject to the requirements of this section shall have labels affixed such that the labels clearly identify the locomotive and locomotive engine as being a designated South Coast locomotive or locomotive engine. The locations and sizes of the labels shall be as follows:

(i) Each locomotive shall display two labels measuring 15 inches (38 centimeters) by 15 inches (38 centimeters). One label shall be attached to each side of the locomotive in a location that will allow the label to be visible from outside of the locomotive. The labels shall be permanently attached to a part of the locomotive necessary for normal operation, and not to parts of the locomotive that can be easily removed. The labels shall consist of the green letters "SC" set upon a white background. Each letter shall be 13 inches (33 centimeters) high by 6 inches (15 centimeters) wide.

(ii) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in a locomotive and shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life. The labels shall have dimensions of 6 inches (15 centimeters) x 6 inches (15 centimeters)and shall contain the green letters "SC" set upon a white background. Each letter shall be 4 inches (10 centimeters) high by 2 inches (5 centimeters) wide.

(c) *Reporting and recordkeeping.* Each owner or operator of a locomotive emission source which is subject to the limitations of this section, shall submit to the administrator by April 1, of each calendar year, beginning in 2007, a certification of compliance with this section for the previous calendar year. This certification shall include:

(1) A declaration that the company is in compliance with all the requirements of this section, and

(2) Documentation of the methods used to meet the NO_X fleet emission average required in paragraph (a)(4) of this section.

(3) Each owner or operator of locomotive emission sources which is subject to the limitations of this section shall collect and record all information necessary to demonstrate compliance with this section. These records shall be maintained for a period of 5 years. The information shall be collected and recorded for each year starting in 2007.

(d) *Testing and monitoring.* The Administrator may require, at any time, any owner or operator of a locomotive emission source subject to the limitations of this section to perform tests using the applicable test methods defined in the national locomotive emission control program when finalized, to demonstrate compliance with the limitations of this section.

(e) *Fees and noncompliance penalties.* (1) Railroad companies that own and/or operate a locomotive within the confines of the South Coast which is designated as a South Coast locomotive engine shall pay an annual fee for each locomotive engine they operate in the South Coast. [Such fee is to be developed in this rulemaking.]

(2) Any engine that EPA finds operating in the South Coast that is not properly identified as a designated South Coast locomotive or without proper maintenance shall be fined an amount not to exceed $25,000 per day of improper operation.

(3) A noncompliance penalty for each ton of emissions produced by a railroad company above its emission cap as provided for in paragraph (a)(4) of this section, shall be assessed at a rate of $10,000 per ton of emissions.

§ 52.2972 Military aircraft operations. [Implementing program described in section III(D)(4)(e)(2)(c) of the Supplementary Information section.]

§ 52.2973 Ships and ports. [Implementing program described in Section III(D)(4)(e)(iv) of the Supplementary Information section.]

§ 52.2974 [Reserved]

§ 52.2975 Enhanced in-use compliance program for nonroad engines over 37 kw.

(a) *General applicability.* (1) New 1999 model year and later nonroad engines, except those exempted in paragraph (a)(2) of this section, that are operated in the Los Angeles-South Coast Air Basin, Ventura, or in the Sacramento Metropolitan ozone nonattainment areas as defined in 40 CFR 81.305 shall meet the requirements specified in paragraphs (c) through (g) of this section, in paragraph (j) of this section, and in § 52.2965. Other state and federal requirements may also apply to these engines. Owners of nonroad engines of any model year, except those exempted in paragraph (a)(2) of this section, that are operated in the Los Angeles-South Coast Air Basin, Ventura, or Sacramento Metropolitan ozone nonattainment areas as defined in 40 CFR 81.305 shall meet the requirements specified in paragraphs (h) and (j) of this section.

(2) *Exempted nonroad engines.* The following nonroad engines are exempted from the requirements of this section:

(i) Engines rated below 37 kw;

(ii) Compression-ignition engines used in marine applications that have a rated speed at maximum torque of 1200 RPM or less;

(iii) Spark-ignition engines used in marine applications;

(iv) Engines used in aircraft as defined in § 87.1(a) of this chapter;

(v) Engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR parts 7, 31, 32, 36, 56, 70, and 75; and

(vi) Engines used to propel locomotives, as defined in § 85.1602 of this chapter.

(3)(i) *Labeling requirements.* (A) For 1999 and later model year nonroad equipment, the equipment manufacturer shall affix a label meeting the requirements of paragraph (j) of this section to every piece of nonroad equipment operated, stored, or transported in the South Coast Air Basin, in Ventura County, or in the Sacramento Metropolitan ozone nonattainment areas as defined in 40 CFR 81.305, except those pieces of equipment and associated engines exempted in paragraphs (a)(2) and (a)(3)(ii) of this section.

(B) For 1998 and earlier model year nonroad equipment, effective March 15, 2000, a label meeting the requirements of paragraph (j) of this section shall be affixed to every piece of nonroad equipment operated, stored, or transported in the South Coast Air Basin, in Ventura County, or in the Sacramento Metropolitan ozone nonattainment areas as defined in 40 CFR 81.305, except those pieces of equipment and associated engines exempted in paragraph (a)(2) and (a)(3)(ii) of this section.

(ii) *Labeling exceptions.* The labeling requirements of paragraph (a)(3)(i) of this section do not apply to:

(A) Equipment stored on the premises of an equipment dealer or leaser, unless such location is on or adjacent to a site at which work is being done that could gainfully employ the equipment; and

(B) Equipment transported through or out of the FIP area that is not unloaded from its carrier while in the FIP area.

(b) *Definitions and abbreviations.* The definitions and abbreviations of § 52.2966 and parts 86 and 89 of this chapter, and the definitions contained in the Clean Air Act apply to this section unless the term is defined in this section.

(c) *Exhaust emission standards.* For the purposes of certification, assembly line, and recall testing, exhaust emissions from nonroad engines to which these requirements apply shall not exceed the following:

(1) *Non-methane hydrocarbons.* 1.2 grams per brake horsepower-hour, as measured under steady-state operating conditions.

(2) *Oxides of nitrogen.* (i) For engines operated in the South Coast Air Basin or in Ventura County: 1.5 grams per brake horsepower-hour, as measured under steady-state operating conditions.

(ii) For engines operated in the Sacramento Metropolitan ozone nonattainment areas as defined in 40 CFR 81.305: 2.5 grams per brake horsepower-hour, as measured under steady-state operating conditions.

(d) *Evaporative emission requirements.* Manufacturers' applications for certification shall include test results or an engineering evaluation demonstrating compliance with the inherently low evaporative emission requirements of § 88.311–93 (a)(1)(ii) and (a)(2) of this chapter. Diurnal emission levels shall be adjusted to reflect corresponding results for a nominal 20 gallon fuel tank volume. This demonstration may be based on a diurnal temperature excursion of 65 °F to 105 °F and California certification fuel rather than the EPA conditions and test fuel.

(e) *Test procedures.* The exhaust standards set forth in paragraph (c) of this section refer to the exhaust emitted over the operating schedule set forth in the Federal nonroad regulations, and measured and calculated in accordance with the procedures set forth in the Federal nonroad regulations. Assembly line testing procedures are those set forth in 40 CFR part 86, subpart K, except as specified in paragraph (f) of this section.

(f) *Test fuels.* All certification, assembly line, and recall testing performed as described in paragraph (e) of this section shall use the fuels provided for by California as found in the California nonroad regulations. Testing performed to demonstrate compliance with the inherently low evaporative emission requirements of paragraph (d) of this section may, as an alternative, be conducted with fuels meeting the federal specifications of 40 CFR part 86. Assembly line and recall testing shall use the same type of fuel as used in certification testing.

(g) *Recall program.* (1) Engines certified to the standards set forth in paragraphs (c) and (d) of this section shall be subject to the recall provisions of part 89, subpart H of this chapter and the associated established practices of EPA, except as otherwise provided in paragraph (g) of this section.

(2) For purposes of the recall testing under this section, the term "engine" includes all emissions control systems.

(3) The recall provisions for light-duty vehicles contained in paragraphs (e) (3), (4), and (5) of this section shall apply to engines subject to the provisions of paragraph (g) of this section as well, with appropriate references to applicable standards and test procedures, except that:

(i) Engines shall be selected by EPA for the purposes of recall testing from the equipment population of the South Coast, Ventura, and Sacramento nonattainment areas; and

(ii) The prohibitions on registering vehicles contained in paragraph (e)(5)(i) of this section shall apply to equipment used in the South Coast, Ventura, and Sacramento nonattainment areas;

(h) *Fleet averaging program.*

(1) *General Applicability.* The requirements of this program apply to owners of equipment equipped with a nonroad engine that is operated in the South Coast Air Basin, in Ventura County, or in the Sacramento Metropolitan ozone nonattainment areas as defined in 40 CFR 81.305, except those pieces of equipment and associated engines exempted in paragraph (a)(2) of this section.

(2) Effective January 1, 1999, any person who owns one or more pieces of equipment described in paragraph (h)(1) of this section shall submit the following information on each such piece of equipment to EPA by January 31st of every calendar year. The submittal shall reflect the owner's affected fleet as it existed on January 1st of the same calendar year. Owners in the South Coast Air Basin and Ventura County may combine their affected equipment with that of other equipment owners in the South Coast Air Basin and Ventura County for the purposes of this program.[44] Required information per affected piece of equipment:

(i) Type of equipment and equipment class as specified in Table 2975–1;

(ii) Engine model year;

(iii) Engine serial number;

(iv) The NO_X certification level (for 1999 and later model year engines only);

(v) The useful life renewal certificate as described in § 52.2965(d) (for 1999 and later model year engines beyond their original useful life period only); and

(vi) Proof that remedial actions have been performed by an authorized party for any engine subject to a recall action as described in paragraph (g) of this section.

TABLE 2975–1.—NONROAD EQUIPMENT CLASSES

Class	Equipment types
I	Wood splitters.
	Sprayers.
	Swathers.
II	Other agricultural equipment.
	Combines.
	Chippers/stump grinders.
	Balers.
III	Tractors/loaders/backhoes.
	Concrete/industrial saws.
	Forklifts.
	Rough terrain forklifts.
	Other material handling equipment.
	Paving equipment.
	Agricultural tractors.
	Concrete pavers.
	Asphalt pavers.
IV	Rollers.
	Other general industrial equipment.
	Other construction equipment.
	Aircraft support equipment.
	Cranes.
	Bore/drill rigs.
V	Graders.
	Crawler tractors.
	Sweepers/scrubbers.
	Crushing/process equipment.
	Skidders.
	Terminal tractors.
	Excavators.
	Off-highway tractors.
	Rubber-tired loaders.
VI	Feller/bunchers.
	Rubber-tired dozers.
	Scrapers.
VII	Off-highway trucks.

(3)(i) The results of the following Fleet Average Emissions (FAE) calculations contained in Table 2975–2 shall be submitted concurrently with the information specified in paragraph (h)(2) of this section; separate calculations shall be performed, and results submitted, for each equipment class specified in Table 2975–1:

TABLE 2975–2.—CALCULATION OF NONROAD FLEET NO_X EMISSIONS FOR A GIVEN EQUIPMENT CLASS

Model year grouping	A: Pieces of affected equipment in equipment class	B: Per engine emissions from table 2975–3 (tons)	C: Total NO_X emissions from model year grouping (C=A×B)
1999 and later			
1998			
1997			
1996			
Pre-1996			

D: Total Fleet Emissions for all Model Year Groupings, (sum of numbers in Column C)
E: Total Pieces of Affected Equipment for the Given Equipment Class, (sum of numbers in Column A)
F: Fleet Average Emissions (FAE), (F=D÷E)

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[44] Owners in the Sacramento ozone nonattainment area may combine their affected equipment with that of other equipment owners in the Sacramento ozone nonattainment area for the purposes of this program.

TABLE 2975–3.—PER ENGINE EMISSIONS

Model year grouping	Per engine emissions by class (tons)						
	I	II	III	IV	V	VI	VII
1999+							
1.5 g/bhp-hr2.5 g/bhp-hr	0.0062	0.027	0.047	0.090	0.16	0.32	0.89
2.5 g/bhp-hr	0.010	0.045	0.079	0.15	0.27	0.53	1.49
1998	0.028	0.12	0.22	0.41	0.75	1.47	4.11
1997	0.037	0.17	0.35	0.41	0.75	1.47	4.11
1996	0.037	0.17	0.35	0.70	1.25	1.47	4.11
Pre-1996	0.037	0.17	0.35	0.70	1.25	2.10	7.09

(ii) The submittal shall also include the name and address of each owner of nonroad equipment included in the calculations, and a designated mailing address for subsequent EPA correspondence.

(4) By January 1, 2000 and every year thereafter, the fleet owner, or owner group, shall compare the calculated Fleet Average Emissions (FAE) with the Baseline Emission Level (BEL) in Table 2975–4 (for equipment in the South Coast Air Basin or in Ventura County) or Table 2975–5 (for equipment in the Sacramento ozone nonattainment area), applicable to the appropriate equipment class and calendar year for which the calculation applies (that is, the BEL for the calendar year in which the submittal is due), and shall calculate the fleet averaging program surcharge according to the following equation:

$$\text{Surcharge}_n = \$10{,}000 \times (\text{FAE} - \text{BEL}) \times \begin{pmatrix} \text{Number of} \\ \text{Pieces of} \\ \text{Affected} \\ \text{Equipment} \end{pmatrix}$$

where n is the class of equipment as indicated in table 2975–1.

This calculation shall be performed separately for each equipment class as specified in Table 2975–1. If the calculated surcharge is less than zero for any equipment class, the surcharge for that equipment class shall be set to zero. The sum of the surcharges for all of the equipment classes shall be paid concurrently with the submittal of information described in paragraphs (h)(2) and (3) of this section.

TABLE 2975–4.—SOUTH COAST AND VENTURA BASELINE EMISSION LEVELS

Calendar year	Class specific baseline emission level (tons)						
	I	II	III	IV	V	VI	VII
1999	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2000	0.035	0.16	0.32	0.62	1.12	1.86	6.15
2001	0.033	0.15	0.30	0.59	1.05	1.75	5.77
2002	0.031	0.14	0.28	0.55	0.99	1.65	5.41
2003	0.029	0.14	0.27	0.52	0.92	1.54	5.05
2004	0.027	0.13	0.25	0.48	0.86	1.44	4.70
2005	0.026	0.12	0.23	0.45	0.80	1.34	4.35
2006	0.024	0.11	0.21	0.41	0.74	1.25	4.02
2007	0.022	0.10	0.20	0.38	0.68	1.15	3.70
2008	0.021	0.094	0.18	0.35	0.63	1.06	3.40
2009	0.019	0.087	0.17	0.32	0.57	0.98	3.11
2010	0.017	0.080	0.15	0.29	0.53	0.90	2.84
2011	0.016	0.074	0.14	0.27	0.48	0.83	2.60
2012	0.015	0.068	0.13	0.24	0.44	0.76	2.37
2013	0.014	0.062	0.12	0.22	0.40	0.70	2.16
2014	0.013	0.057	0.11	0.20	0.37	0.64	1.97
2015	0.012	0.053	0.098	0.19	0.33	0.59	1.80
2016	0.011	0.049	0.090	0.17	0.31	0.55	1.65
2017	0.010	0.045	0.083	0.16	0.28	0.51	1.52
2018	0.0093	0.042	0.077	0.15	0.26	0.47	1.40
2019	0.0088	0.039	0.071	0.13	0.24	0.44	1.30
2020	0.0082	0.037	0.066	0.13	0.23	0.42	1.21
2021	0.0078	0.035	0.062	0.12	0.21	0.39	1.13
2022	0.0074	0.033	0.058	0.11	0.20	0.37	1.07
2023	0.0070	0.031	0.055	0.10	0.19	0.36	1.01
2024	0.0068	0.030	0.052	0.099	0.18	0.34	0.97
2025	0.0065	0.029	0.050	0.096	0.17	0.33	0.94
2026	0.0064	0.028	0.049	0.093	0.17	0.33	0.92
2027	0.0063	0.028	0.048	0.092	0.17	0.32	0.91

TABLE 2975-4.—SOUTH COAST AND VENTURA BASELINE EMISSION LEVELS—Continued

Calendar year	Class specific baseline emission level (tons)						
	I	II	III	IV	V	VI	VII
2028	0.0062	0.027	0.047	0.091	0.16	0.32	0.90
2029 and later	0.0062	0.027	0.047	0.090	0.16	0.32	0.89

TABLE 2975-5.—SACRAMENTO NONROAD FLEET BASELINE EMISSION LEVELS CLASS SPECIFIC BASELINE EMISSION LEVEL

Calendar Year	Class specific baseline emission level (tons)						
	I	II	III	IV	V	VI	VII
2000	0.035	0.16	0.32	0.63	1.12	1.87	6.19
2001	0.033	0.16	0.31	0.60	1.06	1.78	5.85
2002	0.032	0.15	0.29	0.56	1.01	1.69	5.52
2003	0.030	0.14	0.27	0.53	0.95	1.60	5.20
2004	0.029	0.13	0.26	0.50	0.89	1.51	4.88
2005	0.027	0.12	0.24	0.47	0.84	1.42	4.57
2006	0.026	0.12	0.23	0.44	0.79	1.34	4.27
2007	0.024	0.11	0.21	0.41	0.73	1.25	3.98
2008	0.023	0.10	0.20	0.38	0.68	1.18	3.71
2009	0.021	0.098	0.19	0.36	0.64	1.10	3.46
2010	0.020	0.092	0.17	0.33	0.59	1.03	3.22
2011	0.019	0.086	0.16	0.31	0.55	0.97	3.00
2012	0.018	0.081	0.15	0.29	0.52	0.91	2.79
2013	0.017	0.076	0.14	0.27	0.48	0.86	2.61
2014	0.016	0.072	0.13	0.25	0.45	0.81	2.44
2015	0.015	0.068	0.12	0.24	0.42	0.77	2.29
2016	0.014	0.064	0.12	0.22	0.40	0.73	2.16
2017	0.014	0.061	0.11	0.21	0.38	0.69	2.04
2018	0.013	0.058	0.10	0.20	0.36	0.66	1.94
2019	0.013	0.056	0.10	0.19	0.34	0.64	1.85
2020	0.012	0.054	0.095	0.18	0.33	0.61	1.77
2021	0.012	0.052	0.091	0.17	0.31	0.59	1.70
2022	0.011	0.050	0.088	0.17	0.30	0.58	1.64
2023	0.011	0.049	0.085	0.16	0.29	0.56	1.59
2024	0.011	0.048	0.083	0.16	0.29	0.55	1.56
2025	0.011	0.047	0.081	0.16	0.28	0.54	1.53
2026	0.010	0.046	0.080	0.15	0.28	0.53	1.51
2027	0.010	0.046	0.079	0.15	0.27	0.53	1.50
2028	0.010	0.046	0.078	0.15	0.27	0.53	1.49
2029 and later	0.010	0.045	0.078	0.15	0.27	0.53	1.49

(5) Within 30 days of receipt of an adequate owner's submittal, including sufficient payment, EPA shall send a certificate of compliance to the designated mailing address. The certificate shall indicate the serial numbers of the engines to which it applies. Inadequate owners' submittals, including insufficient payment of fees, shall be returned to the designated mailing address, along with an explanation of why the submittal was found inadequate, within 30 days of receipt. Resubmittals by owners shall be responded to by EPA within 30 days of receipt.

(6) Certificates of compliance shall be valid only through March 1st of the calendar year following the year in which they are issued. Expiration dates shall be indicated on the certificates.

(7) Effective January 1, 2000, no piece of nonroad equipment that is equipped with an engine of model year 1998 or earlier, except equipment and associated engines exempted in paragraph (a)(2) of this section, shall be allowed to be registered unless it was included in the 1999 information submittal specified in paragraph (h)(2) of this section.

(8) Effective January 1, 1999, no piece of nonroad equipment that is equipped with an engine of model year 1999 or later, except equipment and associated engines exempted in paragraph (a)(2) of this section, shall be allowed to be registered for use in the FIP areas without proof that it meets the enhanced in-use compliance program engine standards of paragraphs (c) and (d) of this section.

(i) [Reserved]

(j) *Label specifications.* (1) For new 1999 and later model year nonroad engines, the equipment manufacturer shall affix a permanent 12 inch by 14 inch white label to each piece of nonroad equipment. The label shall be applied to the exterior of the equipment at the highest location, and shall be affixed in such a manner that it is readily visible from the ground. The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(i) The label heading: Enhanced In-use Compliance Program—Nonroad Engine;

(ii) The prominent statement:

______Model Year;

(iii) The serial number of the engine powering the nonroad equipment;

(iv) The nonroad equipment class as specified in Table 2975-1; and

(v) The NO_X standard, in grams per brake horsepower-hour, to which the engine is certified.

(2) For 1998 and earlier model year nonroad engines, the equipment owner shall affix a permanent label, that is provided by EPA to the equipment owner along with the certificate of

compliance described in paragraph (h)(5) of this section, to the appropriate piece of nonroad equipment specified on the label. The label shall be permanently affixed to the exterior of the equipment at the highest location, and shall be affixed in such a manner that it is readily visible from the ground. The equipment owner shall apply the most recent label directly over the previously existing labels for that piece of equipment.

§§ 52.2976–52.2998 [Reserved]

§ 52.2999 Employee commute options program rule (Sacramento).

(a) Applicability.

This section applies to all employers in the Sacramento ECO program area as defined in paragraph (c) of this section who employ 100 or more employees at a work location unless exempted under the provisions of paragraph (d)(2) of this section.

(b) *Purpose.* The purpose of this section is to reduce work trips by requiring employers of 100 or more employees to implement work trip reduction plans designed to attain an average passenger occupancy (APO) target which is 25% over the average occupancy for all peak period work trips in the area. This section will increase the average vehicle occupancy (AVO) of work-related trips and reduce the number of work-related trips and miles traveled.

(c) *Definitions.*

For the purposes of this section, the following definitions shall apply:

Administrator means the Administrator of the U.S. Environmental Protection Agency or a designated and delegated representative.

Average passenger occupancy (APO) means the average passenger occupancy of commuting vehicles arriving at an employer's work location during the peak travel period. The APO is equal to the number of employees arriving at the location during the peak travel period divided by the number of vehicles in which employees arrive at the same location during the peak travel period.

Average passenger occupancy survey (APO survey) means the survey of employees' commute patterns required to be conducted at a work location by employers in accordance with paragraph (h) of this section.

Average vehicle occupancy or *AVO* means the average occupancy of all commuting vehicles arriving at all work locations within the Sacramento ECO Program Area during the peak travel period.

Carpool means a group of two to eight employees commuting to and from work by means of a vehicle.

Clean Air Act means the Federal Clean Air Act, as amended (42 U.S.C. 7401 et seq.)

Commute alternative means the mode of travel between a person's place of residence and place of employment, which is other than in a motor vehicle occupied by one person. Commute alternatives include, but are not limited to, public transportation, carpools, vanpools, buspools, ferries, bicycling, and walking, which may be used independent of or in conjunction with compressed work week schedules, telecommuting and like measures. For purposes of this section, telecommuting is considered a commuting alternative.

Compliance plan means the specific plan an employer is required to submit before March 1, 1997 and subsequently implement demonstrating that the employer will reach the APO target before March 1, 1999.

Compressed work week means a schedule in which employees work 35 or more hours in fewer than five work days or more than 70 hours in fewer than ten work days. Compressed work week refers to schedules that include but are not limited to: "4 day-40 hour", "3 day-36 hour", 9 day-80 hour", "9 day-72 hour" schedules, and other work schedules that reduce the number or frequency of required commute trips.

Employee means a partner or limited partner in a partnership, or any person employed by an employer, in a full-time or part-time, permanent, temporary or contract position, excluding volunteers, who either reports to work or is assigned primarily to a work location 80 or more hours per 28-day period for at least two months in any four consecutive months. A contract position is one in which the employee reports to the work location for a period of at least two months and whose work hours and assignments are defined by the employer at any time after the effective date of this section.

Employee transportation coordinator (ETC) means an employee appointed by an employer to develop, implement, monitor, and market a trip reduction program at a work location as required in this section.

Employer means any person(s), trust, firm, business, joint stock company, corporation, partnership, association, non-profit agency or corporation, educational institution, school district, hospital or other health care facility, or federal, state, city or county government department, agency, or district, or subdivision or instrumentality thereof, or any other special purpose public agency or district that employs 100 or more employees reporting to a single work location. A city or county is a single employer for purposes of this section, not individual departments or agencies of the city or county. Individual departments or agencies of the State of California and the federal government are separate employers for the purposes of this section.

Highest ranking responsible officer means the president, executive or managing director, other chief executive or operating officer, or other highest ranking employee located at a work location, who has primary responsibility for the operation and management of that work location.

Maintenance plan means the plan an employer who achieves the APO target implements after that date to maintain the APO target at the work location.

Peak travel period means the time period between the hours of 6 a.m. and 10 a.m. inclusive, Monday through Friday.

Plan means any plan an employer is required to submit to the Administrator in accordance with paragraph (i) of this section. Specific plans an employer may submit under this section include initial compliance plans, update plans, or maintenance plans.

Public transportation means rail passenger service, motorbus regular route service, paratransit service, and motorbus charter service or other transportation services available to the traveling public whose purpose is to carry passengers between two or more locations. Chauffeured limousines and taxi cabs are not considered public transportation for purposes of this section.

Sacramento ECO program area means the Sacramento ozone nonattainment area as defined in 40 CFR 81.305.

Telecommuting means a strategy in which an employee substitutes the location at which work is performed for an entire day. Work otherwise assigned to be done at the work location is instead done at the employee's residence.

Transportation management association (TMA) means a nonprofit organization that coordinates local commuter transportation services, including but not limited to public transportation, vanpools, carpools, bicycling and pedestrian modes, as well as strategies such as alternative work hours; and provides other similar services for corporations, employees, developers, individuals, and other groups.

Travel demand management (TDM) means a system of actions whose purpose is to alleviate traffic-related problems through improved management of vehicle trip demand. Primarily directed at commuter travel, TDM actions are structured to reduce the dependence on and use of single occupant vehicles.

Update plan means the plan submitted by an employer who has not achieved the APO target by March 1, 1999 showing what additional actions the employer will implement to achieve the target APO within 1 year.

Vanpool means a group of nine to fifteen employees, including the driver, commuting to and from their work location using a vehicle that is used and maintained for the primary purpose of ridesharing.

Vehicle means a highway vehicle powered by a gasoline or diesel internal combustion engine used for commuting purposes with the exception of public transportation, vanpools and vehicles used to convey disabled persons as described in paragraph (g)(4)(viii) of this section.

Work location or *location* means an area, building, or grouping of buildings in actual physical contact or separated only by a private or public roadway or other private or public right-of-way that does not represent an impassable barrier to bicycle or pedestrian travel located within the Sacramento ECO Program Area under the ownership, operation, or control of the same employer. Businesses operated separately and distinctly shall be considered separate work locations even if they are owned by the same employer and are physically located in the same or adjacent buildings.

(d) *Employer requirements and exemptions.*

(1) *Overview of employer requirements.* This section requires the following seven actions of all subject employers. An employer failing to undertake any or all of these actions shall be considered in violation of this section and shall be subject to penalties in accordance with paragraph (l) of this section.

(i) Register with the Administrator as an employer subject to the provisions of this section (paragraph (f) of this section).

(ii) Designate an Employee Transportation Coordinator (ETC) at each work location (paragraph (i) of this section).

(iii) Conduct an annual APO survey of employees at each work location to determine employees' commute patterns and report the results of the survey to the Administrator (paragraph (h) of this section).

(iv) Develop and submit to the Administrator by March 1, 1997 and in subsequent years as required by this section, compliance, update, or maintenance plans that describe activities to be implemented at the location under an employee commute option (ECO) program (paragraph (i) of this section).

(v) Implement the program outlined in the compliance, update, or maintenance plan (paragraph (i) of this section).

(vi) No later than March 1, 1999, increase the average passenger occupancy (APO) at each location by not less than 25 percent over the average vehicle occupancy (AVO) for the Sacramento ECO program area (paragraph (g) of this section).

(vii) Maintain the target APO after achieving it.

(2) *Exemptions.* An employer that meets any of the criteria described in paragraph (d)(2) (i) or (ii) of this section may apply to the Administrator for an exemption from the requirements of this section. Requests for exemptions shall be made in writing and shall be signed by the highest ranking responsible officer at the work location.

(i) Any employer that employs 100 or more employees at a single work location, but has fewer than 33 employees reporting to work during the peak travel period may apply to the Administrator for an exemption from the requirements of this section.

(ii) Any employer whose employee population at a work location decreases to fewer than 100 employees for a 12 month period, calculated as a monthly average, may apply to the Administrator for an exemption from the requirements of this section. The employer must submit documentation demonstrating an employee population of less than 100.

(e) *Employer notification.*

The Administrator will notify employers individually and by published notice of the requirements of this section.

(1) *Individual notification of employers.* By May 1, 1995 or 90 days after final promulgation of this section whichever is later, the Administrator shall notify employers known to be subject to this section by certified mail of their obligations under this section. The notification letter shall outline the procedure for employer registration and be accompanied by a standard registration form described in paragraph (f) of this section. In each year after the initial notices are mailed, The Administrator shall send notices to any employer known to be added to the employer list since the previous notification mailing.

(2) *General notification of employers.* Not later than May 1, 1995 or 90 days after final publication of this section whichever is later and annually thereafter, the Administrator shall publish notice and information concerning Sacramento employers' obligations under this section. The notice shall provide information on how employers can obtain required forms from EPA and shall establish a date by which employers must return a completed form to the Administrator. The Administrator shall publish the notice beginning on the date of the first individual notification mailings and shall run the notice for at least three days over a two week period in Sacramento regional newspapers. Also, the Administrator shall publish the notice in the first **Federal Register** released after the date of the first notification mailings.

(3) Failure to receive an individual notification as provided for in paragraph (e)(1) of this section shall not relieve any employer of the obligation to meet all applicable requirements of this section.

(f) *Employer registration.*

(1) *Registration deadlines.*

(i) By the due date specified in the notification mailing and as published in the public notice (see paragraph (e) of this section), each employer who received by certified mail the standard registration form shall submit a completed standard registration form to the Administrator. Notwithstanding that an employer may not have been mailed or received notice from the Administrator, an employer is required to complete the registration form and submit the completed form to the Administrator by the deadline specified in the published notice. Copies of the registration form may be obtained upon request from the EPA.

(ii) Any employer that receives a notification packet must respond even if the employer believes it is not subject to this section. An employer that does not meet the definition of employer under this section is not required to submit the standard registration form, but instead must submit an ECO program return card included in the notification packet indicating the reason for non-applicability. The Administrator may request the employer to submit additional documentation to verify an employer's non-applicable status.

(iii) An employer who is not subject to this section at the time the first notices are mailed, but subsequently becomes an employer subject to this section, shall submit a registration form to the Administrator within 60 days of becoming subject to this section.

(iv) An employer that moves its work location within the Sacramento ECO program area after registering with the Administrator must submit a new registration form within 60 days after the date of the relocation.

(2) *Completion and submittal of registration form.*

(i) Each employer who is subject to this section or who receives by certified mail a standard registration form shall complete a standard registration form for each work location in the Sacramento ECO Program Area. The form must be signed by the highest ranking responsible officer at the location who shall attest to the accuracy of the information reported. An employer shall provide the following information on the form:

(A) The name of the employer and address of the work location;

(B) The name and telephone of the highest ranking responsible officer at the location;

(C) Designation of the location as a single site, headquarters, or branch;

(D) The total number of employees at the location and the number assigned to report to the work location during the peak travel period; and

(E) The name, telephone number, and address (if different from that named in paragraphs (f)(2)(i) (A) and (B) of this section) of the employee transportation coordinator (ETC) at the location to receive APO survey and compliance plan forms and who will serve as the employer's contact with the EPA.

(ii) An employer with more than one location in the Sacramento ECO Program Area shall complete a separate registration form for each work location, but individual registration forms may be submitted together. The employer shall designate an ETC for EPA to contact at each location. Notwithstanding this provision, an employer may designate a single contact person to receive APO survey and compliance plan forms for all work locations.

(g) *Average Passenger Occupancy (APO) target.*

(1) *Designation of target APO.* The CAA has established average passenger occupancy (APO) at a work location as the performance measure for determining an employer's compliance. The APO performance target is 125 percent of the average vehicle occupancy (AVO) for the Sacramento ECO Program Area. Given a baseline AVO of 1.11, the target APO for the Sacramento ECO Program Area is 1.38.

(2) *Deadline for compliance with the target APO.* Not later than March 1, 1999, each employer is required to increase the APO at the employer's work location during the peak travel period to the target APO. An employer that has achieved the target APO is required to maintain the location APO at a level at least as high as the target APO, but is not required to increase its APO beyond the target APO. Each employer shall annually document achievement of the target APO at each work location through the APO survey described in paragraph (h) of this section, and report the location's compliance with the target APO to the Administrator in the maintenance plan, as required by paragraph (i) of this section.

(h) *Average Passenger Occupancy (APO) survey requirements.*

(1) *Notice of requirement to survey.* Within 180 days of receiving completed registration forms from employers, but not later than March 1, 1996, the Administrator shall notify each employer of the requirement to conduct an APO survey and to develop and implement a compliance plan in accordance with the requirements of paragraph (h)(1)(i) of this section. The notice shall include copies of the required APO survey and compliance plan forms. Failure of an employer to receive such notification shall not relieve any employer of the obligation to comply with all applicable obligations of this section. Employers not receiving such forms may request them from EPA by contacting the Region IX office.

(2) *Requirement to survey.* For the purpose of documenting the work location APO, each employer shall conduct annual APO surveys of the commute patterns of the employees who arrive at its work location during the peak travel period. An employer with more than one location in the Sacramento ECO Program Area shall conduct a survey at each location.

(3) *Survey procedure.* An employer shall conduct an APO survey of all employees assigned to report to the work location during the peak travel period using the following procedure, except as provided in paragraph (h)(3)(iii) of this section:

(i) Except as provided below, an employer shall use the standard APO survey form provided by the EPA. The APO survey form is designed to collect information on the commute patterns of employees and to allow the employer to calculate the work location APO as described in this paragraph. The standard form shall be used without alteration. If the employer's individual survey form has been submitted to and approved by the Administrator prior to administration of the survey, the Administrator may permit the employer to use this pre-approved form as a substitute for the standard APO survey form. The Administrator shall not approve any survey form that could be expected, in the Administrator's judgement, to produce different survey results than if the standard form had been used. An employer is permitted to attach additional survey forms to the standard form if desired, without prior approval of the Administrator.

(ii) Employers shall choose a typical week in which to conduct the APO survey. A week shall not be considered typical if it:

(A) Includes a holiday observed by the employer;

(B) Immediately follows a week in which a holiday was observed on Friday or precedes a week in which a holiday will be observed on Monday;

(C) Is a week during which the employer holds a rideshare fair or other intensive information promotion related to the ECO program;

(D) Is a week in which the location has a partial or complete shutdown of its operation; or

(E) Is a week with any other anomalous change or fluctuation in the number of employees reporting to the work location.

(iii) An employer shall survey all employees arriving at or scheduled to report to the work location during the peak travel period in the survey week. An employer with 400 or more employees arriving at a single location during the peak travel period may survey a random sample of those employees if approved by the Administrator. All employees selected for the random sample must be accounted for either by the survey data, or a documented leave of absence. Any employee designated for the random sample that does not respond to the survey must be counted as arriving in a single occupancy vehicle. Employers desiring to conduct a random sample survey shall submit the following information to the Administrator: a sampling process and statistical methodology that will produce reliable and valid results consistent with a 95 percent confidence level; and, documentation that the person or persons conducting the survey have the qualifications to ensure the survey will be conducted in a statistically valid manner. The Administrator shall grant or deny approval for the random sample survey within 30 days of receipt of the methodology.

(iv) An employer shall achieve an APO survey response rate of at least 75 percent of all employees assigned to report to the work location during the peak travel period. An employer that fails to achieve at least a 75 percent response rate on any APO survey shall repeat the survey until the required response rate is achieved. If the response rate is less than 90% but 75% or greater, all non-respondents shall be treated as single occupant vehicle commuters. If the response rate is 90% or greater, non-respondents shall be treated as having the same commute behavior as that of the average of the respondents.

(v) An employer may use its own staff to conduct the APO survey or arrange with a market research or transportation consultant, local government, TMA, or other entity outside the employer to conduct the survey.

(4) *Calculating work location APO.* An employer shall demonstrate its compliance with this section by documenting achievement of the target APO specified in paragraph (g) of this section.

(i)(A) An employer shall calculate the APO for its work location from the results of the APO survey as follows:

$$\text{Work location APO} = \frac{\text{Number of employees arriving}}{\text{Number of vehicles arriving}}$$

where:

Employees arriving is: total number of employees arriving at the location between 6 a.m. and 10 a.m., Monday through Friday of the survey week, and

Vehicles arriving is: total number of vehicles in which employees arrive at the location between 6 a.m. and 10 a.m., Monday through Friday of the survey week.

(B) To illustrate the calculation of APO, the following example is provided:

	Mon.	Tue.	Wed.	Thur.	Fri.	Total week
No. Employees	205	198	201	202	194	1,000
No. Vehicles	165	170	180	175	170	860

$$\text{Location APO} = \frac{\text{1,000 Employees Arriving}}{\text{860 Vehicles Arriving}} = 1.16$$

(ii) Calculation of location APO shall count employees arriving at the location during the peak travel periods, Monday through Friday of the survey week as follows:

(A) Each employee that arrives at the location during the peak travel period shall be counted as one employee arriving for each of the days Monday through Friday of the survey week that the employee reports to the location, regardless of the length of time the employee remains at the location.

(B) Each employee that telecommutes all day from the employee's home shall be counted as one employee arriving for each day the employee telecommutes.

(C) Each employee that works a compressed work week shall be counted as one employee arriving for each day the employee works and for each compressed work week day off.

(iii) For calculation of APO, the count of vehicles arriving shall include:

(A) Passenger cars and trucks, with fewer than nine employees; and

(B) Motorcycles and mopeds.

(iv) The following shall be counted as zero vehicles arriving:

(A) Vanpools with nine or more employees;

(B) Public or private buses, trains, or other mass transportation vehicles and;

(C) Bicycles and other non-motorized vehicles.

(v) An employee that works a compressed work week or telecommutes the entire day at home shall be counted as arriving at the work location in a zero vehicle on the day he or she does not report to the work location.

(vi) An employee that is dropped off at the work location by another employee or employees commuting to their work location or locations shall be counted as arriving in a share of a vehicle proportional to the number of occupants in the vehicle. An employee that is dropped off at the work location by a person not traveling to his or her work location shall be counted as arriving in a single occupant vehicle.

(vii) An employee that commutes in a commute alternative for 50 percent or more of the total length of his or her work trip or in a commute alternative for 10 or more one-way miles, whichever is less, shall be counted as arriving in that commute alternative in the APO calculation.

(viii) An employer shall not count employees who have disabilities which require the use of a single-occupant vehicle (or a chauffeured vehicle) for commuting or their vehicles in the APO calculation.

(ix) An employee that does not respond to the APO survey as described in paragraph (h)(3)(iv) of this section shall be considered for purposes of the APO calculation to have arrived at the work location in a single-occupant vehicle and be counted as one employee arriving in one vehicle, unless the response rate of the survey is 90 percent or above.

(5) *Reporting of APO survey results.* An employer shall tabulate the APO survey results and report the results to the Administrator on a standard form provided by the EPA. An employer shall submit the APO survey results as a component of the compliance plan in accordance with paragraph (i) of this section. In years in which the employer is required to document and provide its work location APO to the Administrator but is not required to submit a plan, survey results shall be submitted as an APO survey report.

(6) *Required components of APO survey reports.* A complete APO survey report submittal will consist of the following elements:

(i) Completed APO survey report, prepared on standard forms provided by the EPA; and

(ii) A letter signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who attests to the accuracy of the information included in the report.

(i) *Compliance, update, and maintenance plans.*

(1) *Requirements.* Each employer shall prepare and implement compliance, update, or maintenance plans in accordance with the procedures and schedules established in this section.

(2) *Plan submittal schedule.* Each employer shall submit compliance, update, or maintenance plans, as described in paragraph (i)(3) and (4) of this section respectively, to the Administrator in accordance with the following schedule.

(i) Not later than March 1, 1997, each employer shall prepare and submit to the Administrator a compliance plan for each work location. An employer that becomes subject to this section after March 1, 1997 shall be given a minimum of 180 days from the date it registers with the Administrator, as required by paragraph (f) of this section, to prepare and submit a compliance plan. This employer further shall not be required to demonstrate achievement of the target APO until two years following submittal of the compliance plan.

(ii) Not later than March 1, 1999, each employer who has not achieved the target APO shall prepare and submit to the Administrator an update plan for each work location as described in paragraph (i)(4) of this section. An employer that fails to meet the target APO by March 1, 1999 shall be subject to the penalty for failure to reach the target APO as of March 1, 1999.

(iii) Not later than March 1, 1999, each employer who has achieved the target APO shall prepare and submit to the Administrator a maintenance plan. If an employer determines that no additional measures are needed to maintain the APO target, the original compliance plan may be referenced to meet this requirement. Additional update plans demonstrating achievement and maintenance of the target APO may be required later if an employer is not in compliance with the target APO.

(iv) An employer that moves its work location within the Sacramento ECO Program Area, desires to modify the elements of its compliance plan, or experiences a change in its work location operations that could reasonably be expected to affect the appropriateness or effectiveness of an approved compliance, update, or maintenance plan, shall submit a revised plan within 90 days of the change.

(3) *Components of a plan.*

(i) An employer shall prepare a plan using a standard plan form developed by the EPA. The plan will include all information required by the standard plan form, including the following information:

(A) The name of the employer, address of the work location, and name, title, and signature of the Employee Transportation Coordinator (ETC) at the work location appointed by the employer;

(B) The results of the most recent APO survey and a description of the procedure used to conduct the APO survey;

(C) A description of the physical and transportation service characteristics of the work location, and demographic, work, and travel-related characteristics of the employee population;

(D) A description of ECO strategies currently implemented that provide commute alternative incentives to employees at the work location and additional ECO strategies the employer will implement at the work location; an employer desiring advice and suggestions on ECO strategies should refer to resource materials provided by the EPA.

(E) Activities planned by the employer to implement the ECO program and a time schedule for implementation of the program;

(F) A description of the process by which the employer will periodically monitor and review progress toward the APO target.

(ii) Each employer shall provide information included in paragraphs (i)(3)(i) (A) through (F) of this section in the compliance plan to establish a baseline against which future years can be compared. Beginning with the 1999–2000 update plan and for any subsequent update plan, an employer that has not achieved the target APO shall update any changes to the information under paragraphs (i)(3)(i) (A) through (F) of this section and provide the following:

(A) A discussion of the employer's "good faith efforts", described in paragraph (k)(4) of this section, to achieve the target APO;

(B) An explanation of why the ECO strategies included in the last plan did not produce the target APO; and

(C) A discussion of how the employer plans to achieve the APO target within one year.

(4) *Required additional elements of plan submittals.* A complete compliance plan submittal to the Administrator shall include of the following additional elements:

(i) An executive summary plan that shall consist of a cover sheet that includes information described in paragraphs (i)(3)(i) (A) and (B) of this section, and a summary of information described in paragraphs (i)(3)(i) (C) through (F) of this section, and paragraph (i)(3)(ii) of this section as appropriate;

(ii) A letter signed by the highest ranking responsible officer at the work location who shall attest that the employer will implement the plan as described, retain all ECO documents on file, as required by paragraph (i)(7) of this section, and make such documents available for review by the Administrator or an agent designated by the Administrator;

(iii) A letter signed by the highest ranking responsible officer at the work location or plan preparer, if different from the employer, who shall attest to the correctness of the information included in the plan.

(5) *Alternative plan preparers.* An employer may contract with a transportation planning consultant, TMA or outside entity to prepare or assist in preparation of a compliance plan or report. The use of an outside entity for this purpose shall not, however, remove or reduce the responsibility of the employer with regard to any of the requirements of this section.

(6) *Requirement for an ETC.* An employer shall designate an employee transportation coordinator (ETC) at each work location with 100 or more employees to administer the ECO program at that work location.

(7) *Document recordkeeping.* An employer shall maintain copies of all documents prepared or used in the document preparation by the employer or by other entities acting on behalf of the employer in accordance with this section in the office of the ETC for a period not less than four years from the date the documents were first generated. These documents shall include, but not be limited to documents related to:

(i) Conduct of the APO survey;

(ii) Calculation of work location APO;

(iii) Preparation of compliance, update, and maintenance plans and APO survey reports;

(iv) Program implementation, including all organizational policies and procedures; and

(v) Program monitoring and evaluation.

(j) *Plan certification.* Prior to submittal to the Administrator, plans shall be certified as to completeness. Notwithstanding this provision, an employer that submits a revised or maintenance plan in accordance with paragraph (i)(2)(iv) or paragraph (k)(1) of this section shall not be required to have the plan certified prior to its submittal to the Administrator.

(1) *Plan Certifiers.* The Administrator shall designate an organization or organizations as plan certifiers for the Sacramento ECO program area.

(i) The Administrator will provide the Air Districts in the Sacramento ECO area with the first opportunity to become designated certifiers for employer plans for employers in the geographic areas for their jurisdiction. In addition to certifying plans for completeness, the Air Districts may provide, if they so choose, a recommendation regarding the approvability of plans.

(ii) Should any or all of the Air Districts in the Sacramento area decline the opportunity to become designated certifiers, the Administrator will designate another organization or organizations to certify plans.

(2) *Plan certification criteria.* In assessing whether a plan can be certified, the certifier shall consider the following criteria:

(i) The completeness of the plan based on the presence of all required components of plan submittals as described in paragraphs (i)(3) and (4) of this section.

(ii) The accuracy of the work location APO computation;

(iii) Consistency with this section.

(3) *Certification procedures.*

(i) A certifier shall review the plan utilizing EPA approved training and the criteria described in paragraph (j)(2) of this section. The certifier may contact the employer to clarify questions related to the plan or to request reasonable additional documentation from the employer.

(ii) If the certifier deems the plan to meet the certification criteria, the certifier shall certify the plan and return it to the employer for submittal to the Administrator. Plans not meeting the certification criteria shall be returned to the employer with an explanation of the reasons the plan was returned, indication of the sections of the plan that are unacceptable, and an indication of where corrections are necessary in order to make the plan meet certification requirements. The employer shall revise its plan as appropriate and re-submit the revised plan to the certifying agency.

(iii) It is the responsibility of an employer to allow adequate time for certification. Failure of the certifier to certify the employer's plan in time to allow submittal of the plan to the Administrator prior to the deadline shall not excuse the employer from this obligation. Notwithstanding this provision, however, an employer that submits a certifiable plan to a certifier at least 90 days prior to the plan submittal deadline shall not be considered in violation of the plan submittal deadline until 60 days after the scheduled submittal date to the Administrator.

(k) *Plan review and approval.*

(1) Plan review and approval schedule. The Administrator will strive to approve or disapprove plans within 90 days of receipt of a plan. An employer whose plan is returned shall have 60 days from the date of return to revise and resubmit the plan to the Administrator. The employer shall not be required to have the plan recertified prior to re-submittal to the Administrator.

(2) Plan review guidelines. The Administrator shall review and approve plans based on the following criteria:

(i) The presence of all required plan sections and minimum plan requirements, as described in paragraph (i) of this section;

(ii) The accuracy of the APO calculation, in accordance with the formula provided in paragraph (h) of this section; and,

(iii) A demonstration of plan certification, in accordance with the procedures defined in paragraph (j) of this section.

(iv) The appropriateness of the commute alternatives proposed in the plan to the location and employee population;

(v) The appropriateness of the ECO program services and incentives selected by the employer to the commute alternatives;

(vi) The likely effectiveness of the ECO strategies in producing the target APO by the scheduled deadline;

(vii) The ability of the proposed implementation schedule to ensure ECO strategies included in the plan are implemented in a timely and thorough manner; and

(viii) The ability of the proposed monitoring process to allow a timely and effective review of the employer's progress toward the target APO.

(l) *Enforcement and penalties.*

(1) *Noncompliance.* An employer shall be subject to civil or criminal penalties according to 42 U.S.C. 7413 (section 113 of the Clean Air Act) for violations of any provisions of this section. Upon determining that a violation has occurred, the Administrator shall issue the employer a notice of violation. Penalties for continued noncompliance may accrue from the date of the notice of violation.

(2) *Penalties.* The Administrator may assess civil penalties of up to $25,000 per day of violation. Penalties under this section will be assessed according to criteria in 42 U.S.C. 7413(e). These criteria include:

(i) The size of the business;

(ii) The economic impact of the penalty on the business;

(iii) The violator's compliance history and good faith efforts to comply;

(iv) The duration of the violation;

(v) Prior payment of penalties for similar violations;

(vi) The economic benefit of noncompliance; and

(vii) The seriousness of the violation.

(3) *Work location audits.* To verify implementation of work location programs, the Administrator shall have the authority to conduct or cause to be conducted audits of an employer's location. The employer shall provide the Administrator access to all records pertaining to the development, implementation, and administration of the ECO program described in the employer's plan, and access to employees at the location.

(4) *Good faith effort.* A good faith effort will be taken into account when penalties are determined. The Administrator may consider any or all of the following criteria in assessing an employer's good faith effort:

(i) Did management at the location demonstrate significant commitment to implementation of the program and institute written employee policies that encouraged the use of commute alternatives?;

(ii) Did the employer assess the transportation needs and interests of employees through employee surveys or other techniques?;

(iii) Did the employer periodically review its progress toward the target APO, at a minimum through conduct of an APO survey of its employees in the second program year (1996–1997), and through other actions designed to assess the continuing appropriateness of the employer's ECO program services and incentives?;

(iv) If the employer's 1997–1998 APO survey showed the APO increase was less than 50 percent of that needed to achieve the target APO, did the employer increase and or modify its program to include appropriate contingency strategies?;

(v) Did the employer seek advice from the EPA, a TMA, a transportation consultant, or other entity with TDM experience, prior to September 1, 1998, regarding desirable future actions to increase APO?;

(vi) Did the employer have strategies like those known to be implemented by others like it?; and

(vii) Did the APO at the work location increase a reasonable amount compared to other employers with similar work location characteristics and employee populations?

(m) *Extensions.*

(1) *Deadline extensions.* An employer that, for reasons beyond its control, is unable to meet a deadline established in this section may petition the Administrator for an extension of the deadline. All requests shall be submitted in writing and signed by the highest ranking responsible officer at the site. The Administrator will strive to rule on extensions of scheduled deadlines within 30 days from receipt of the request. Extensions may be considered for hardship circumstances or other unusual circumstances that may make it impossible to meet the deadlines established in this section. Requests for deadline extensions must be filed in the following manner.

(i) A request for an extension of the deadline to register as an employer shall be submitted not less than 45 days in advance of the deadline for registration.

(ii) A request for extension of the deadline to submit a plan or APO survey report shall be submitted not less than 90 days in advance of the deadline.

§ 52.3000 General permit requirements (Sacramento).

(a) *Purpose.* This section provides an orderly procedure for the review of new sources of air pollution and the orderly review of the modification of existing sources through the issuance of permits.

(b) *Definitions.* When used in this section, § 52.3001, New Source Review, and § 52.3002, Emissions Reduction Credit Authorization, the following terms have the meanings given below.

Actual emissions means measured, or estimated if measurement is not possible, emissions which most accurately represent the emissions from an emissions unit. Fugitive emissions associated with the emissions unit shall be included in the actual emissions of the emissions unit.

Actual emissions reductions means reductions of emissions from an emissions unit. Actual emission reductions shall be calculated pursuant to paragraphs (d)(12) and (13) of § 52.3001, New Source Review, and authorized pursuant to section § 52.3002, Emissions Reduction Credit Authorization, and shall meet all of the following criteria:

(1) The emissions reductions shall be real, enforceable, quantifiable, and permanent.

(2) The emissions reductions shall be surplus emissions reductions in excess of any emissions reduction which is:

(i) Required or encumbered by any laws, rules, regulations, agreements, or orders; or

(ii) Attributed to a control measure noticed for workshop in the district, or proposed or contained in a State Implementation Plan or Federal Implementation Plan; or

(iii) Proposed or contained in the district air quality attainment plan for attaining the annual reductions required by the Clean Air Act.

(3) Emission reductions attributed to a proposed control measure contained in the District Air Quality Attainment Plan (AQAP) may be re-eligible as an offset emission reduction only if such measure has been removed from the AQAP during the next AQAP update.

(4) Source shutdowns and curtailments may not be given emission reduction credit in the case of non-attainment pollutants, including precursors, if the shutdown or curtailment occurred prior to the date of application unless:

(i) The crediting of shutdown emissions complies with the most recent emission trading policy of the EPA. and

(ii) The proposed new source or modification is a replacement, and the shutdown or curtailment occurred after August 7, 1977, and

(iii) The shutdown or curtailment was claimed by the affected facility as a credit within 180 days of the last date of operation, or

(iv) The district has met statutory planning mandates and air quality improvement milestones.

Actual interruptions of electrical power means when electrical service is interrupted by an unforeseeable event.

Actual operating days means any day of operation which results in the emission of an affected pollutant from the emissions unit.

Administrative permit amendment means an amendment to an Authority to Construct which:

(1) Corrects a typographical error; or

(2) Identifies a minor administrative change at the stationary source; for example, a change in the name, address, or phone number of any person identified in the permit; or

(3) Requires more frequent monitoring or reporting by a responsible official of the stationary source; or

(4) Transfers ownership or operational control of a stationary source, provided that, prior to the transfer, the EPA receives a written agreement which specifies a date for the transfer of permit responsibility, coverage, and liability from the current to the prospective permittee.

Ambient air quality standards means state and federal ambient air quality standards for the purpose of submittal to the EPA for inclusion in the California State Implementation Plan. All references in this section, § 52.3001, and § 52.3002 to ambient air quality standards shall be interpreted as National Ambient Air Quality Standards.

Applicable requirements means air quality requirements with which a facility must comply pursuant to the State Implementation Plan, the Federal Clean Air Act as amended in 1990 and implementing regulations, other provisions of the United States Code, and the Code of Federal Regulations.

Authority to construct means a preconstruction permit authorizing construction prior to the start of construction and conforming to the requirements of § 52.3001, New Source Review.

Authorized means emission reduction credits (ERCs) which have been evaluated by the EPA to verify that they are quantifiable, enforceable, permanent and surplus at the time of use. Authorization of the ERCs must occur both prior to approval of, and concurrent with, the application for use of the ERCs as offsets pursuant to § 52.3001, New Source Review.

Banking means the system of quantifying, adjusting, certifying, recording, and storing ERCs for future use and transfer. Procedures for banking ERCs are described in applicable district banking rules.

Begin actual construction means initiation of physical, on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Best available control technology (BACT) means:

(1) For any emissions unit, an emission limit based on the most stringent of the following:

(i) The most effective emission control device, emission limit, or technique, singly or in combination, which has been required or used for the type of equipment comprising such an emissions unit unless the applicant demonstrates to the satisfaction of the EPA that such limitations required on other sources have not been demonstrated to be achievable.

(ii) Any alternative basic equipment, fuel, process, emission control device or technique, singly or in combination, determined to be technologically feasible and cost-effective by the EPA.

(iii) For replacement equipment only, the emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source.

(2) In making a BACT determination for a nonattainment pollutant, the EPA may consider the overall effect on other nonattainment pollutants. In some cases the lowest emission rates may be required for one or more nonattainment pollutants at the cost of not achieving the lowest emission rate for other nonattainment pollutants. The EPA shall discuss these considerations in the Preliminary Decision prepared pursuant to the provisions of § 52.3001(d)(3).

(3) Under no circumstances shall BACT be determined to be less stringent than the emission control required by an applicable provision of district, state or federal laws or regulations unless the applicant demonstrates to the satisfaction of the EPA that such limitations are not achievable.

Best available retrofit control technology (BARCT) means an emission limitation that is based upon the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source. The criteria for BARCT are specified in "California Clean Air Act - Guidance for the Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology," California Air Resources Board, April 1990.

California Environmental Quality Act (CEQA) means the California Environmental Quality Act, Public Resources Code, Section 21000, et seq.

Cargo carriers means trains dedicated to a specific source and marine vessels while docked at a specific source.

Certified means emission reduction credits which have been evaluated under the requirements of a district banking rule.

Commence means that the owner or operator has all of the necessary permits or approvals required under state and federal air quality control laws, district rules and regulations, and those air quality control laws and regulations which are part of the California State Implementation Plan or any applicable Federal Implementation Plan, and has:

(1) Begun, or caused to begin, a continuous program of on-site construction of the source, to be completed in a reasonable time; or

(2) Entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Complete application means an application for an Authority to Construct a new or modified emission unit that, on the basis of the criteria of 40 CFR part 70.5(c) of the Federal Operating Permit Program and the applicable requirements of this section, contains adequate information for the EPA to evaluate the application for compliance with the applicable requirements of this section. Such determination shall be made after receipt of payment of an application filing fee, as determined by the EPA, that reflects the costs to the EPA to review the application and issue permits.

Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

Contiguous property means two or more parcels of land with a common boundary or separated solely by a public roadway or other public right-of-way.

Cost-effective means a cost per unit of emissions reduction which is lower than or equivalent to the maximum unit costs, for the regulated pollutant or source category, of the same emission reduction through the use of Best Available Control Technology, calculated in current year dollars in accordance with methodology and criteria specified in the EPA OAQPS Control Cost Manual (EPA 450/3–90–006).

District means the local air pollution permitting agency with jurisdiction within the area in which this section applies. "District" may also refer to the geographic area in which the local permitting agency has jurisdiction.

Emission decrease means any modification which would result in a decrease of actual emissions. The emission decrease shall be calculated by subtracting the proposed emissions from the historic actual emissions.

Emission reduction credits (ERC) means reductions of actual emissions from an emission unit that are registered with the district in accordance with the requirements of a district banking rule.

Emissions limitation means one or a combination of permit conditions specific to an emissions unit which restricts its maximum emissions, at or below the emissions associated with the maximum design capacity. An emissions limitation shall be:

(1) Contained in the latest Authority to Construct and contained in or enforceable by the latest district or federal permit to operate for the emission unit; and

(2) Enforceable on a daily basis or quarterly basis pursuant to provisions of § 52.3001(d)(7)(ii). Emission limitations should be stated in a manner consistent with testing procedures. Emission limitations may be expressed as enforceable design, operational, or equipment standard pursuant to provisions of § 52.3001(d)(7)(iii); and

(3) No less stringent that the applicable emission standards given at 40 CFR part 60, Standards of Performance for New Stationary Sources, and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants.

Emissions unit means an identifiable operation or piece of process equipment such as an article, machine, or other contrivance which controls, emits, may emit, or results in the emissions of any regulated air pollutant or hazardous air pollutant (HAP), directly or as fugitive emissions. An emissions unit shall not include the open burning of agricultural biomass.

Enforceable means verifiable and legally binding. Enforceable, for the purposes of federal requirements, means all federally enforceable limitations and conditions enforceable by the EPA, including NSPS; NESHAP; requirements within any applicable State Implementation Plan; any permit requirement established pursuant to 40 CFR 52.21, 40 CFR 51.160 through 166, or 40 CFR 70.

EPA means an official of the U.S. Environmental Protection Agency, or his or her authorized representative.

ERC certificate means a document identifying the quantity and type of ERCs issued by the district pursuant to a banking rule to the source identified on the Certificate.

Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Halogenated hydrocarbons means the following: 1,1,1-trichloroethane, methylene chloride, 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113), 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114), chloropentafluoroethane (CFC-115), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 1,1,1-trifluoroethane (HFC-143a), chlorodifluoromethane (HCFC-22), trifluoromethane (HFC-23), 1,1-difluoroethane (HFC-152a), and the following four classes of perfluorocarbon compounds: Cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers, with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. Perfluorocarbon compounds will be assumed to be absent from a product or process unless a manufacturer or facility operator identifies the specific individual compounds (from the broad classes of perfluorocarbon compounds) and the amounts present in the product or process and provides a validated test method which can be used to quantify the specific compounds.

Hazardous air pollutant (HAP) means any air pollutant listed pursuant to section 112(b) of the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Historic actual emissions means:

(1) The actual emissions for the existing emissions unit averaged over the consecutive two-year period

immediately preceding the date of application for authorized emission reduction credits. If the last two years are unrepresentative of normal source operations as determined by the EPA, then any two consecutive years of the last five years that represent normal source operation may be used.

(2) If, at any time during the two-year period, actual emissions exceeded the allowed or permitted emission levels, then actual emissions shall be reduced to reflect emission levels that would have occurred if the unit were in compliance with all applicable limitations and rules.

(3) Where an emissions unit has been in operation for less than two years, a shorter averaging period of at least one year may be used, provided that the averaging period is representative of the full operational history of the emissions unit. If an emissions unit has been in operation for less than one year, then the historic actual emissions shall be zero.

Historic potential emissions means emissions based on the potential to emit of the emissions unit prior to modification. In determining the potential to emit, daily emissions limitations shall be treated as part of an emissions unit's design only if the limitations are representative of normal operations, of in the facility has provided offsets form previous permitting actions. If there are no enforceable limiting conditions, an emissions unit's potential to emit shall be limited to the unit's historic actual emissions. For a new emissions unit, historic potential emissions are equal to zero. For the purposes of the above determination, "normal operations" is defined as the usual or typical daily operating of an emissions unit resulting in actual emissions which are at least 80% of the specific limits contained in the emission unit's authority to construct or permit to operate.

Lake Tahoe air basin means that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said lake, plus that area in the vicinity of the head of the Truckee River described as follows (as established pursuant to section 39606 of the Health and Safety Code of the State of California and as described in Title 17, California Code of Regulations, section 60113 (b)): Commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B. & M.), and following that line in a westerly direction to the northwest corner of section 3, Township 15 North, Range 16 East, (M.D.B. & M.), thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B. & M., to the intersection with the drainage crestline, thence following the said drainage area boundary in a southwesterly, then northeasterly, direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly, direction to the point of beginning. This Lake Tahoe Air Basin is delineated on an official map on file at the California Air Resources Board Headquarters Office.

Major stationary source means any stationary source which emits or has the potential to emit 25 tons per year or more of NO_X or 25 tons per year or more of ROC. In addition, any physical change occurring at a stationary source not otherwise qualifying as a major stationary source, which would constitute a major stationary source by itself makes the source a major stationary source.

Major modification means a modification to a major stationary source which, when aggregated with all other increases in potential to emit over the period of five consecutive years before the application for modification, and including the calendar year of the most recent application, results in an increase in the potential to emit greater than 25 tons per year of NO_X or 25 tons per year of ROC.

Modification means any physical change, change in method of operation (including change in fuel characteristics), change in hours of operation, or change in production rate, which:

(1) For an emissions unit:

(i) Would necessitate a change in permit conditions; or

(ii) Is not specifically limited by a permit condition; or

(iii) Results in an increase, a decrease, or no change in emissions which are not subject to an emissions limitation.

(2) For a stationary source:

(i) Is a modification of its emissions unit; or

(ii) Is an addition of any new emissions unit.

The following shall not be considered a modification: a change in ownership; routine maintenance and repair; a reconstructed stationary source or emissions unit which shall be treated as a new stationary source or emissions unit, not as a modification; and the addition of a continuous emission monitoring system.

Mountain Counties air basin means (as established pursuant to Section 39606 of the Health and Safety Code of the State of California and as described in Title 17, California Code of Regulations, section 60111 (i)), all of Placer County except that portion included in the Lake Tahoe Air Basin, defined by 17 CCR 60113(b), and that portion included in the Sacramento Valley Air Basin, defined by 17 CCR 60106(k).

Non-permitted emissions means those emissions of an regulated pollutant which are not required to obtain a permit pursuant to this section. Non-permitted emissions may include emissions from mobile sources, indirect sources, and exempt equipment.

Nonattainment pollutant means any pollutant and its precursors that have been designated "nonattainment" by the EPA in the **Federal Register**.

Offset means the use of an emission reduction credit to compensate for an emission increase of an regulated pollutant from a new or modified source subject to the requirements of § 52.3001, New Source Review.

Permanent means only permanent reductions in emissions can be authorized as emission reduction credit. For stationary sources, permanence shall be assured for sources subject to federal requirements through federally enforceable changes in source permits..

PM_{10} means particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns as measured by an applicable reference test method or methods found acceptable by the EPA.

Portable equipment means equipment which is periodically relocated and is not operated more than a total of 180 days at any one location in the district within any continuous 12-month period.

Potential to emit means the maximum daily physical and operational design capacity to emit an air pollutant during each calendar quarter. Any limitation on the physical or operational design capacity, including emission control devices and restrictions on hours of operation, or on the type or amount of material combusted, stored, or processed, may be considered as part of the design only if the limitation, or the effect it would have on emissions, is incorporated into the Authority to Construct as an enforceable permit condition as daily emissions limitations. Fugitive emissions associated with the emissions unit or stationary source shall be included in the potential to emit of the emissions unit or stationary source.

Precursor means a pollutant that, when emitted into the atmosphere, may undergo either a chemical or physical change which then produces another pollutant for which an ambient air quality standard has been adopted, or whose presence in the atmosphere will contribute to the violation of one or more ambient air quality standards. The following precursor-secondary air contaminant relationships shall be used for the purposes of this section, § 52.3001 and § 52.3002:

Precursor	Secondary air contaminant
Reactive organic compound.	(1) Photochemical oxidants (ozone). (2) Organic fraction of PM_{10}.
Nitrogen oxides	(1) Nitrogen dioxide. (2) Nitrate fraction of PM_{10}. (3) Photochemical oxidants (ozone).

Proposed emissions means emissions based on the potential to emit for the new or modified emissions unit.

Quantifiable means the ability to estimate emission reductions in terms of both their amount and characteristics. The same method of estimating emissions shall be used to quantify the emission levels before and after the reduction.

Quarterly means calendar quarters beginning in January, April, July, and October.

Quarterly emissions limitation means one or a combination of permit conditions specific to an emissions unit which restricts its maximum emissions, in pounds per quarter, at or below the emissions associated with the maximum design capacity. A quarterly emissions limitation must be:

(1) Contained in the latest Authority to Construct and contained in or enforceable by the latest Permit to Operate for the emission unit; and

(2) Enforceable on a quarterly basis.

Reactive organic compound means any compound containing carbon except methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonates, and halogenated hydrocarbons.

Real means actually occurring, implemented, and not artificially devised.

Reasonably available control technology (RACT) means the lowest emission limitation that a particular source is capable of meeting by the application of emission control technology that is reasonably available considering technical and economic feasibility. The criteria for RACT are specified in "California Clean Air Act Guidance for the Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology," California Air Resources Board, April 1990 and in the General Preamble to Title I, April 16, 1992.[45]

Reconstructed source means any stationary source or emissions unit undergoing physical modification where the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable, entirely new stationary source or emissions unit. Fixed capital cost means the capital that is needed to provide all the depreciable components. A reconstructed source shall be treated as a new stationary source or emissions unit.

Register means a document maintained pursuant to a district banking rule which records all ERC deposits, withdrawals, transfers, and transactions.

Regulated air pollutant means any pollutant that is emitted into or otherwise enters the ambient air, and for which the EPA has adopted an emission limit, standard, or other requirement. Regulated air pollutants include:

(1) Oxides of nitrogen and volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated pursuant to section 109 of the Clean Air Act;

(3) Any pollutant subject to a new source performance standard promulgated pursuant to section 111 of the Clean Air Act;

(4) Any ozone-depleting substance specified as a Class I (chlorofluorocarbons) or Class II (hydrofluorocarbons) substance pursuant to Title VI of the Clean Air Act;

(5) Any pollutant subject to a standard or requirement promulgated pursuant to section 112 of the Clean Air Act, including:

(i) Any pollutant listed pursuant to section 112(r) of the Clean Air Act (Prevention of Accidental Releases), which shall be considered a "regulated air pollutant" upon promulgation of the list.

(ii) Any hazardous air pollutant subject to a standard or other requirement promulgated by the EPA pursuant to section 112(d) or adopted by the district pursuant to 112(g) and (j) of the Clean Air Act which shall be considered a "regulated air pollutant" for all sources or categories of sources upon promulgation of the standard or requirement or 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3) of the Clean Air Act.

(iii) Any HAP subject to a district case-by-case emissions limitation determination for a new or modified source, prior to the EPA promulgation or scheduled promulgation of an emissions limitation, which shall be considered a "regulated air pollutant" when the determination is made pursuant to section 112(g)(2) of the Clean Air Act. In case-by-case emissions limitation determinations, the HAP shall be considered a "regulated air pollutant" only for the individual source for which the emissions limitation determination was made.

Replacement equipment means:

(1) *Routine replacement*: The replacement or modification of emission units(s) where the replacement unit(s) serves the identical function as the unit(s) being replaced, and the maximum rating and the potential to emit any pollutant will not be greater from the new or modified emissions unit(s) than the replaced unit(s), when the emissions unit(s) is operated at the same permitted conditions. The EPA will determine, on a case-by-case basis, whether a project to replace an emissions unit in whole or part with functionally equivalent equipment is a routine repair, commonly made in the industry. Projects intended to extend the expected useful life of the unit may not be considered routine replacements.

(2) *Identical replacement*: The total or partial replacement of an emissions unit where the replacement is the same as the original unit in all respects except for serial number.

Responsible official means an individual with the authority to certify that a source complies with all applicable requirements, including the conditions of permits issued to sources. A "responsible official" means one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the EPA; or

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively; or

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[45] Proposed rule published in the **Federal Register** of April 16, 1992 (57 FR 13498).

(3) For a municipality, state, federal, or other public agency, either a principal executive officer or a ranking elected official; or

(4) For an acid rain unit subject to Title IV (Acid Deposition Control) of the Clean Air Act, the "responsible official" is the designated representative of that unit for any purposes under Title IV.

Sacramento Valley air basin means that portion of Placer County which lies west of Range 9 east, Mount Diablo Base and Meridian (M.D.B. & M.), as established pursuant to section 39606 of the Health & Safety Code of the State of California and as described in title 17, California Code of Regulations, § 60106(k).

Shutdown means the earlier of either the permanent cessation of emissions from a source or an emission unit or the surrender of that unit's or source's operating permit.

Startup means the setting in operation of a stationary source or emission unit for any purpose.

Stationary source (source or facility) means any building, structure, facility, or emissions unit which emits or may emit any regulated pollutant directly or as fugitive emissions.

(1) The terms "building," "structure," "facility," or "emissions unit" include all pollutant-emitting activities which:

(i) Belong to the same industrial grouping; and

(ii) Are located on one property or on two or more contiguous properties; and

(iii) Are under the same or common ownership, operation, or control or which are owned or operated by entities which are under common control.

(2) Pollutant-emitting activities shall be considered as part of the same industrial grouping if:

(i) They belong to the same two-digit standard industrial classification code under the system described in the 1987 Standard Industrial Classification Manual; or

(ii) They are part of a common production process. (Common production process includes industrial processes, manufacturing processes and any connected processes involving a common material.)

(3) The emissions within district boundaries of cargo carriers associated with the stationary source shall be considered emissions from the stationary source to the extent that emission reductions from cargo carriers are proposed as offsets.

Surplus means emission reductions that are in excess of any emissions reduction which is:

(1) Required or encumbered by any laws, rules, regulations, agreements, or orders; or

(2) Attributed to a control measure noticed for workshop in the district, or proposed or contained in a State Implementation Plan or Federal Implementation Plan; or

(3) Proposed or contained in a district air quality attainment plan for attaining reductions required by the Clean Air Act.

Temporary source means emission sources such as pilot plants, and portable facilities that will be terminated or located outside the district after less than a cumulative total of 90 days of operation in any 12 continuous months, and the emissions resulting from the construction phase of a new source.

Title V permits means permits issued, denied, renewed, amended, or reopened pursuant to the Clean Air Act as amended in 1990 (42 U.S.C. 7401 *et seq.*), and 40 CFR part 70, "State Operating Permit Programs."

Total reduced sulfur compounds means the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide and dimethyl disulfide.

(c) *Standards.*

(1) *Authority to construct.* Any person building, erecting, altering or replacing any article, machine, equipment or other contrivance, the use of which may cause, eliminate, reduce, or control the issuance ROC or NO_X, shall obtain authorization for such construction from the EPA as specified in paragraph (e)(3) of this section, prior to beginning actual construction. An Authority to Construct shall remain in effect until it expires or the application is cancelled. An Authority to Construct shall expire no later than two years following the date of permit issuance, unless the applicant has commenced construction prior to that date. If the applicant has commenced construction, the Authority to Construct shall remain in effect for the life of the emissions unit(s), unless the EPA has taken action to modify or revoke it.

(i) An Authority to Construct shall be valid beyond two years if:

(A) Commencement of construction has occurred; and

(B) Construction is completed in a reasonable period of time, as determined by the EPA.

(ii) If a written request to extend the Authority to Construct is received by the EPA prior to the expiration of the Authority to Construct, an extension may be granted for up to two years at the discretion of the EPA.

(iii) The EPA shall be notified of the anticipated date of initial startup or operation of any permitted article, machine, equipment or other contrivance. Such notice shall be made no less than 30 days prior to the startup date.

(iv) The EPA shall be notified of the actual date of initial startup within five days after such date.

(2) *Standards for granting applications.*

(i) The EPA shall deny an Authority to Construct except as provided in § 52.3001, New Source Review, if the applicant does not show that every article, machine, equipment or other contrivance, the use of which may cause, eliminate, reduce, or control the issuance of air contaminants, is so designed, controlled, equipped, and operated with such air pollution control equipment that it may be shown to operate without emitting or without causing to be emitted air contaminants in violation of these rules and regulations or of such state or federal statutes as may be enforceable by the EPA on the date the application is deemed complete.

(ii) The EPA shall require enforceable emission limitations as permit conditions in Authorities to Construct to assure compliance with all analyses performed for the issuance of the permit, including the permanence of surplus actual emissions reductions applied for use as internal reductions or authorized emission reduction credits in accordance with § 52.3001, New Source Review, and § 52.3002, Emissions Reduction Credit Authorization.

(iii) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable requirements, including applicable provisions of the California State Implementation Plan or any applicable Federal Implementation Plan, district rules and regulations, or state or federal law.

(3) *Provision of sampling and testing facilities.* In addition to the monitoring and testing required to comply with state or federal laws or regulations, the EPA may, upon reasonable written notice or before an Authority to Construct is granted, require the applicant or the owner or operator of any article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants, or the use of which may eliminate, reduce, or control the issuance of air contaminants to:

(i) Provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the equipment in question. In the event of such a requirement, the EPA shall notify the applicant in writing of the required size, number and location of sampling holes; the size and location of the sampling platform; the access to the sampling platform; and the utilities for operating the sampling, testing, and air monitoring equipment. Such platform and access shall be constructed in accordance with the applicable General Industry Safety Orders of the State of California.

(ii) Provide and maintain sampling and monitoring apparatus to measure emissions of air contaminants when the EPA has determined that such apparatus is available and should be installed.

(A) Continuous emission monitoring systems at a minimum shall be installed when required, and to the performance specifications required by § 52.3001.

(B) A violation of emission standards of these rules, as shown by the stack-monitoring system, shall be reported by the owner or operator to the EPA within 96 hours, or such earlier time as may be required by any permit issued pursuant to this section.

(C) In the event of a breakdown of monitoring equipment, the owner or operator shall notify the EPA within 48 hours and shall initiate repairs. The owner or operator shall inform the EPA of the intent to shutdown any monitoring equipment at least 24 hours prior to the event.

(iii) If the EPA determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of a numerical emission standard infeasible, the EPA may instead prescribe a design, operational, or equipment standard. In such cases, the EPA may require the installation or modification of process monitoring devices such that the design characteristics or equipment will be properly maintained, or that the operational conditions will be properly performed, so as to continuously achieve the assumed degree of control. To the extent applicable, reporting requirements for process monitors shall be the same as for continuous emission monitoring systems.

(iv) A person operating or using a stack monitoring system shall, upon written notice from the EPA, provide a summary of the data obtained from such systems. This summary of the data shall be in the form and manner prescribed by the EPA. The summary of data shall be available for public inspection at the office of the Air Pollution Control District. Records from the monitoring equipment shall be kept by the owner or operator for a period of five years, during which time they shall be available to the EPA in such form as directed.

(5) *Transfer.* An Authority to Construct shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another. In the event any person contemplates or desires to make any such transfer as herein above described, said person shall make an application for authorization in accordance with paragraph (e)(3) of this section.

(6) *Performance testing.* Within 60 days after achieving the maximum production rate or the maximum rate of emissions to which the source is limited by enforceable conditions, but not later than 180 days after initial startup of such source, or as otherwise required by the EPA to determine continuous compliance with emission limitations or to confirm emission reductions claimed, the owner or operator of such source shall conduct performance test(s) in accordance with methods and under operating conditions as are approved by the EPA and furnish the EPA a written report of the results of such performance test(s).

(i) Such test(s) shall be at the expense of the owner or operator.

(ii) Testing shall be conducted with the source(s) of emissions operating at maximum capacity or other rate conforming to the maximum rate of emissions to which the source(s) are limited by enforceable condition(s).

(iii) The EPA may monitor such tests and may also conduct performance tests.

(iv) The owner or operator of a source shall provide the EPA 15 days prior notice of the performance test to afford the EPA the opportunity to have an observer present.

(v) The EPA may waive the requirement for performance tests if the owner or operator of a source has demonstrated by other means to the EPA's satisfaction that the source is being operated in compliance with all local, state and federal regulations which are part of the California State Implementation Plan or any applicable Federal Implementation Plan.

(d) *Exemptions.*

(1) *General.* The exemptions contained in this section shall not apply to an otherwise exempt piece of equipment which is part of a process that requires a permit. An Authority to Construct shall not be required for the equipment listed in paragraphs (d)(2) to (11) of this section unless an emissions unit is:

(i) Subject to New Source Performance Standards; or

(ii) Subject to National Emission Standards for Hazardous Air Pollutants; or

(iii) An emissions unit or stationary source for which emission reduction credits have been requested or granted in accordance with § 52.3002, Emissions Reduction Credit Authorization; or

(iv) Any emissions unit that, in combination with other emissions units at the source, would cause the source to exceed the offset trigger as specified in § 52.3001.

(2) *Vehicles.*

(i) Vehicles used to transport passengers or freight, but not including any article, machine, equipment or other contrivance mounted on such a vehicle that would otherwise require a permit under the provisions of this section and §§ 52.3001 and 52.3002.

(ii) Locomotives, airplanes and watercraft used to transport passengers or freight. This exemption shall not apply to equipment used for dredging of waterways or equipment used in pile driving adjacent to or in waterways, nor to the emissions from watercraft while docked at a stationary source.

(3) *Combustion and heat transfer equipment.*

(i) Internal combustion engines with a manufacturer's maximum continuous rating of 50 brake horsepower or less or gas turbine engines with a maximum heat input rate of 3,000,000 British Thermal Units (Btu) per hour or less at ISO standard day conditions (288 degrees Kelvin, 60% relative humidity, and 101.3 kilopascals pressure). The ratings of all engines or turbines used in the same process will be accumulated to determine whether this exemption applies.

(ii) Any combustion equipment that has a maximum heat input of less than 1,000,000 Btu per hour (gross) and is equipped to be fired exclusively with purchased quality natural gas, liquefied petroleum gas or any combination thereof. The ratings of all combustion equipment used in the same process will be accumulated to determine whether this exemption applies.

(4) *Residential structures.* Equipment utilized exclusively in connection with any structure, when the structure is designed for and used exclusively as a dwelling for not more than four families.

(5) *Plastics and ceramics processing.* Ovens, kilns, or furnaces fired by electricity used exclusively for the heating, curing, softening, or annealing of plastics or ceramics, and not emitting more than 5 pounds of volatile organic compound (VOC) emissions in any one day. These exemptions shall not apply

to ovens used for heating or curing of fiberglass reinforced plastics.

(6) *Storage and transfer.* Tanks, reservoirs, vessels or other containers and their associated dispensing, pumping and compression systems used exclusively for the storage of:

(i) Liquefied or compressed gases.

(ii) Unheated organic materials with an initial boiling point of 150°C (302°F) or greater, as determined by the testing procedure specified in paragraph (f)(1)(ii) of this section, or with an organic vapor pressure of 5 mm Hg (0.1 psia) or less at 20°C, as determined by the testing procedure specified in paragraph (f)(1)(iii) of this section.

(iii) Organic liquids with a vapor pressure of 77.5 mm Hg (1.5 psia) or less at 20°C, as determined by the testing procedure specified in paragraph (f)(1)(iii) of this section, having a capacity of 23,000 liters (6,076 gallons or less). Equipment used exclusively for the transfer of organic liquids with a vapor pressure of 77.5 mm Hg (1.5 psia) at 20°C to or from storage.

(iv) Unheated solvent dispensing containers of 380 liters (100 gallons) capacity or less.

(7) *Surface coating and preparation.*

(i) Water solution for surface preparation, cleaning, stripping, etching (other than chemical milling) or the electrolytic plating with electrolytic polishing of, or the electrolytic stripping of brass, bronze, cadmium, copper, iron, lead, nickel, tin, zinc, and precious metals.

(ii) Surface coating operations using a combined total of 1 gallon per day or less of coating material and solvent.

(iii) Unheated non-conveyorized solvent-rinsing containers or unheated non-conveyorized coating dip tanks of 380 liters (100 gallons) capacity or less.

(8) *Food processing.* The following processing equipment for food or other human consumables and exhaust systems or collectors serving exclusively such equipment used in:

(i) Eating establishments for the purpose of preparing food for human consumption.

(ii) Smokehouses in which the maximum horizontal inside cross-sectional area does not exceed 2 square meters (21.5 square feet).

(iii) Mixers and blenders used in bakeries.

(iv) Confection cookers.

(v) Grinding, blending or packaging tea, cocoa, spices, or roasted coffee.

(9) *Laboratory equipment.* Laboratory equipment used exclusively for chemical or physical analysis and bench-scale tests, including associated vacuum-producing equipment.

(10) *Repairs and maintenance.* Routine repairs or maintenance not involving changes to any equipment for which a permit has been granted under paragraph (c)(1) of this section.

(11) *Other equipment.* Other equipment authorized for exemption by the EPA and which would emit less than 2 pounds in any 24-hour period of any pollutants without the benefit of air pollution control devices.

(e) *Administrative requirements.*

(1) *Posting.* A person who has been granted a permit to operate any article, machine, equipment, or other contrivance described in paragraph (c)(1) of this section shall maintain a legible copy of said permit on the premises of the subject equipment. Other information, analysis, plans or specifications which disclose the nature, extent, quantity, or degree of air contaminants which are or may be discharged from such source shall be readily available for inspection by the EPA.

(2) *Altering of permit.* A person shall not willfully deface, alter, forge, counterfeit, or falsify an Authority to Construct any article, machine, equipment, or other contrivance described in paragraph (c)(1) of this section. A permit amendment or revision requested by the owner or operator, other than an administrative permit amendment or an amendment pursuant to paragraph (c)(1) of this section, shall require the filing of an application. For an administrative permit amendment, a responsible official may implement the change addressed in the written request immediately upon submittal of the request.

(i) After designating the permit revisions as an administrative permit amendment, the EPA may revise the permit without providing notice to the public or any affected state.

(ii) The EPA shall provide a copy of the revised permit to the responsible official.

(iii) While the EPA need not make a completeness determination on a written request, the EPA shall notify the responsible official if it determines that the permit can not be revised as an administrative permit amendment.

(3) *Applications.* An application for an Authority to Construct, Permit to Operate, change of ownership, or an application for a permit amendment, permit reopening, or revision shall be filed in the manner and form prescribed by the EPA, and shall give all the information necessary to enable the EPA to make the determinations required by paragraph (c)(2) of this section and § 52.3001, New Source Review.

(i) A responsible official representing the owner or operator shall certify the truth, accuracy and completeness of application forms.

(ii) When the information submitted with the application is insufficient for the EPA to make the determination required by paragraph (c)(2) of this section, § 52.3001, and any other applicable rule, regulation, or order, a responsible official shall supplement any complete application with additional information upon the written request of the EPA within the time frame specified by the EPA.

(iii) A responsible official shall promptly provide additional information in writing to the EPA upon discovery of submittal of any inaccurate information as part of the application or as a supplement thereto, or of any additional relevant facts previously omitted which are needed for accurate analysis of the application.

(iv) Intentional or negligent submittal of inaccurate information shall be reason for denial of an application.

(v) An application for an Authority to Construct, permit amendment or revision shall be accompanied by payment of the application filing fee as determined by the EPA.

(vi) An application for an Authority to Construct shall be accompanied by evidence of a sufficient number of authorized emission reduction credits, to meet any offset obligation in accordance with § 52.3001, New Source Review.

(4) *Action on applications.* The EPA shall notify the applicant in writing of its approval, conditional approval, suspension, or denial of the application for an Authority to Construct.

(i) In the event said notification or notification of application completeness pursuant to § 52.3001, New Source Review, is not received by the applicant within 30 days of the filing of the application, or within 30 days of providing further information as required by paragraph (e)(3) of this section, the applicant may, at his or her option, deem the application to construct denied.

(ii) Service of said notification may be made in person or by mail, and such service may be proved by the written acknowledgement of the person(s) served or affidavit of the person making the service.

(5) *Conditional approval.* The EPA may issue an Authority to Construct subject to conditions which will bring the operation of any article, machine, equipment or other contrivance, the use of which may cause the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, within the standards of paragraph (c)(2) of this

section. The conditions shall be specified in writing. Commencing work under such an Authority to Construct shall be deemed acceptance of all the conditions so specified. The EPA shall issue an Authority to Construct with revised conditions upon receipt of a new application, if the applicant demonstrates that the article, machine, equipment or other contrivance, the use of which may cause the issuance of air contaminants, can operate under the revised conditions within the standards of paragraph (c)(2) of this section.

(6) *Denial of application.* In the event of a denial of an Authority to Construct, the EPA shall notify the applicant in writing of the reasons therefore. Service of this notification may be made in person or by mail, and such service may be proved by the written acknowledgement of the person(s) served or affidavit of the person making the service. The EPA shall not accept a further application unless the applicant has complied with the objections specified by the EPA as his or her reasons for denial of the Authority to Construct.

(7) *Disclosure.* The EPA, at any time, may require from an applicant, or holder of any permit provided for in these rules and regulations, such information, analyses, plans, or specifications which will disclose the nature, extent, quality, or degree of air contaminants which are, or may be, discharged by the source for which the permit was issued or applied. A responsible official representing the owner or operator shall certify the truth, accuracy and completeness of disclosures. Studies necessary to provide such information shall be completed at the expense of the owner or operator of the source for which a permit was issued or applied.

(8) *Suspension.* The EPA may suspend a permit if a holder of such permit willfully fails and refuses to furnish information, analyses, plans, and specifications, within a reasonable time, as requested by the EPA pursuant to any law, rule, regulation, agreement, or order enforceable by the EPA. The EPA shall serve notice, in writing, of such suspension and the reasons therefore. Service of said notification may be made in person or by mail, and such service may be proved by the written acknowledgement of the persons served or affidavit of the person making the service. The permit shall be reinstated when the EPA is furnished with all requested information, analyses, plans, and specifications.

(9) *Cancellation of application.* An Authority to Construct application may be cancelled by the EPA:

(i) At the request of the applicant; or

(ii) If additional information has been requested of the applicant in accordance with paragraph (e)(3) of this section without the subsequent submittal of information within a reasonable time.

(f) *Monitoring and records.*

(1) *Testing procedures.*

(i) *General requirements.* Except as otherwise specified in the district rules and regulations, the State Implementation Plan, any applicable Federal Implementation Plan, any Authority to Construct issued pursuant to this section, testing methods for determining compliance with emission limits shall be:

(A) The appropriate methods of 40 CFR part 50, appendix M, Recommended Test Methods for State Implementation Plans; or

(B) Any appropriate method of 40 CFR part 60, appendix A, Test Methods; or

(C) An alternative method following review and approval of that method by the California Air Resources Board and EPA.

(ii) *Initial boiling point.* ASTM D–1078–86, "Test Method for Distillation Range of Volatile Organic Liquids."

(iii) *Vapor pressure.* ASTM D–2879–86, "Vapor Pressure-Temperature Relation and Initial Decomposition Temperature of Liquids by Isoteniscope."

(2) *Monitoring.* As applicable, each emission source subject to the requirements of paragraph (c)(1) of this section shall comply with the following monitoring requirements:

(i) The requirements of 40 CFR part 51, appendix P, *Minimum Emission Monitoring Requirements.*

(ii) The applicable federal requirements for monitoring of Title V of the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*)

(3) *Recordkeeping.*

(i) The following records shall be maintained and provided to the EPA upon request.

(A) Emissions monitoring and process data records necessary for the determination and reporting of emissions, in accordance with applicable provisions of the applicable rules and regulations, shall be maintained. Records shall be kept for at least five years.

(B) Other records of the nature and amounts of emissions or any other information as may be deemed necessary by the EPA to determine whether the stationary source or emissions unit is in compliance with applicable emission limitations, credited emission reductions, exemptions from rule provisions, or other requirements. The information must include emission measurements, continuous emission monitoring system performance testing measurements, performance evaluations, calibration checks and adjustments, maintenance performed on such monitoring systems, and other records and reports required by 40 CFR part 51, appendix P, Minimum Emission Monitoring Requirements.

(C) Operation and maintenance plans shall be submitted to the district for all add-on capture and control equipment for review and approval by the EPA. Such plans shall demonstrate, though the use of specific recordkeeping requirements, continuous operation of the add-on control equipment when emission-producing operations are occurring. The plan shall also specify records to be kept to document the performance of required periodic maintenance. Records shall be consistent with compliance time frames and employ the most recent EPA recordkeeping guidance.

(D) The EPA may require monitoring or recordkeeping and may authorize inspections pursuant to Section 114 of the Clean Air Act and the regulations thereunder.

(E) All monitoring, reporting, inspection and compliance requirements authorized under the Clean Air Act shall apply.

(ii) The EPA may require recordkeeping to verify or maintain any exemption.

§ 52.3001 New source review (Sacramento).

(a) *Purpose.* The purpose of this section is to provide for the review of new and modified stationary air pollution sources and to provide requirements, including emission offsets, for issuing Authority to Construct permits for such sources without interfering with the attainment or maintenance of ambient air quality standards.

(b) *Applicability and exemptions.* This section shall apply to all new stationary sources and emissions units and all modifications to existing stationary sources and emissions units which, after construction, emit or have the potential to emit nitrogen oxides (NO_X) or reactive organic compounds (ROC). This section shall not apply to prescribed burning of forest, agriculture or range land; road construction or any non-point source common to timber harvesting or agricultural practices; open burning in accordance with the following district regulations:

District	Rule/Regulation
Feather River	
Sutter County	Rule 2.0.
Yuba County	Rule 2.0.
Yolo/Solano	Rule 2.8.
El Dorado	Regulation 3.
Placer	Regulation 3.
Sacramento	Regulation 5.

Exemptions allowed in this section shall not be used to exempt from permit requirements any stationary source or modification which would be subject to review under U.S. Environmental Protection Agency (EPA) regulations or review pursuant to the operating permit requirements of Title V of the Clean Air Act as amended in 1990 (42 U.S.C. 7401 *et seq.*) The regulations in effect at the time any application for an Authority to Construct is deemed complete shall apply.

(1) *Exemptions for emergency electrical generating equipment.* Except as otherwise required for sources subject to the requirements of Title V of the Clean Air Act as amended in 1990 (42 U.S.C. 7401 *et seq.*) the EPA shall exempt an application from the requirements of paragraphs (c)(2) and (3) of this section if the emissions unit would provide emergency electrical power or emergency water pumping for flood control or emergency fire fighting and is not a major source or major modification, provided the requirements of paragraphs (b)(1)(i) and (ii) of this section are met. This exemption shall not apply to emissions units supplying power to a serving utility for distribution on the electric transmission grid nor the operation of standby power sources due to a voluntary reduction in power by the serving utility.

(i) Operation for maintenance purposes of internal combustion engines used solely as a source of emergency electrical power, not otherwise exempt, shall be limited to 100 hours per year, and such maintenance shall be scheduled in cooperation with the district so as to have no adverse air quality impact or shall be mitigated by emission offsets or on-site reductions so that there is no net increase in emissions; and

(ii) Operation for other than maintenance purposes shall be limited to actual interruptions of electrical power by the serving utility. Operation shall not exceed 24 hours without prior authorization by the EPA.

(2) *Exemptions to notification requirements.* Except as otherwise required for sources subject to the requirements of Title V of the Clean Air Act as amended in 1990 (42 U.S.C. 7401 *et seq.*) the requirements of paragraphs (d)(3) through (6) of this section relating to notification, publication, and public inspection of preliminary decisions; and notification, publication, and public inspection of final action shall not apply if the application is for a new or modified stationary source whose emissions, calculated pursuant to paragraph (d)(12) or (13) of this section, are less than 2500 pounds per quarter of nitrogen oxides or reactive organic compounds.

(3) *Exemptions for relocated equipment.* The requirements of paragraphs (c)(2) and (3) of this section shall only apply once to relocation of emission units solely within the district and within the air basin of which the district is part, and the relocation does not result in an increase in emissions. This exemption requires the performance of an air quality analysis pursuant to paragraph (c)(5) of this section.

(4) *Exemptions for replacement equipment.* The requirements of paragraphs (c) (2) and (3) of this section shall not apply to replacement equipment, as defined in paragraph (b) of § 52.3000 General Permit Requirements, providing the replacement does not result in any emissions increase.

(5) *Exemptions for temporary sources.* The requirements of paragraphs (c) (2) and (3) of this section shall not apply to temporary stationary emission sources, emission units, and portable equipment which will be operated on a temporary basis. This exemption requires the performance of an air quality analysis pursuant to paragraph (c)(5) of this section.

(c) *Standards.*

(1) *Best Available Control Technology.* An applicant shall apply Best Available Control Technology to a new emissions unit or modification of an existing emissions unit, except cargo carriers, for each emissions change of NO_X or ROC which would create an increase in emissions, according to procedures specified in paragraph (d)(10) of this section, and the potential to emit of the new or modified emissions unit would equal or exceed the levels specified in this paragraph. In addition, BACT shall be applied to each source that applies for a major modification as defined and calculated in § 52.3000(b). A condition which reflects BACT in a manner consistent with testing procedures, such as ppmv NO_X, g/liter VOC, or lbs/hr, shall be contained in the latest Authority to Construct and Permit to Operate.

Pollutant	lb/day
Reactive organic compounds	10
Nitrogen oxides	10

(2) *General offset requirements*

(i) Applicants for major modifications to major sources of NO_x or ROC shall provide offsets for the affected pollutant, obtained pursuant to § 52.3002 Emissions Reduction Credit Authorization, in the amount calculated pursuant to paragraphs (d) (12) and (13) of this section.

(ii) An applicant shall provide offsets for the affected pollutant, obtained pursuant to § 52.3002 Emissions Reduction Credit Authorization, for new and modified sources where the cumulative emission changes of ROCs or NO_X calculated pursuant to paragraph (d)(11) of this section exceed the level specified in paragraph (c)(2)(ii) of this section. Sufficient offsets shall be provided, from the same calendar quarter as the emissions, to offset positive emissions changes of ROCs or NO_X calculated according to procedures specified in paragraph (d)(13) of this section. Facilities shall be required to curtail operations if sufficient offsets are not obtained as required by permit conditions. Offsets used to mitigate emission increases must be of the same pollutant. The facility is ultimately responsible for ensuring offsets.

Pollutant	Pounds per quarter
ROC	7,500
NO_X	7,500

(iii) In no case shall halogenated hydrocarbons be used as offsets for ROCs, nor shall exempt compounds or other compounds excluded from the definition of ROCs be used as offsets for ROCs.

(iv) Portable equipment shall be evaluated for offsets at the initial location only. In the event such portable equipment is shutdown, emission reduction credits shall be granted based on the emissions calculated at the initially permitted location. If operated a cumulative total of less than 90 days within a continuous 12-month period, at all locations within the same non-attainment designated area and in any air basin of which the district is a part, the portable equipment is considered a temporary source.

(v) Offsets can only come from regions with air quality classifications that are the same as or worse than those in which the emissions unit or stationary source that requires the offsets is located.

(3) *Location of offsets and offset ratios.*

(i) Except as provided in paragraphs (c)(3) (ii), (iii), (iv) and (v) of this section, an applicant shall provide offsets for emissions from a proposed stationary source subject to the requirements of paragraph (c)(2) of this section according to the following ratios and requirements as a minimum:

Location of offset	Offset ratio ROC and NO_x pollutants
Same source (see paragraph (c)(3)(iv) of this section).	1.3 to 1.0.
Within 15-mile radius and within the district.	1.3 to 1.0.
Within 15-mile radius outside the district, but within the same air basin.	1.3 to 1.0.
Greater than 15 miles but within 50-mile radius and within district	2.0 to 1.0.
Greater than 15 miles but within 50-mile radius and outside the district, but within the same air basin.	2.1 to 1.0.
More than 50-mile radius and within the same air basin.	Greater than 2.1 to 1.0.

(ii) Offsets obtained from locations not satisfying the location criteria of paragraph (c)(3)(i) of this section shall be subject to an offset ratio of at least 1.3 to 1.0. An air quality analysis pursuant to paragraph (c)(5) of this section shall be performed. The EPA may impose, based on the air quality analysis, a higher offset ratio such that the new or modified stationary source will not prevent or interfere with the attainment or maintenance of any ambient air quality standard.

(iii) Offsets which are obtained pursuant to paragraphs (c)(2) and (c)(3) of this section and pursuant to permitting actions in a district other than that in which the proposed source is located may be used only if the EPA has reviewed the permit conditions issued by the other district in which the proposed offsets are obtained and certifies that the impacts of using such offsets meet the requirements of all applicable rules and regulations. Emission reduction credits used to offset project emissions in another district shall be implemented through an interdistrict agreement to ensure their enforceability and permanence.

(iv) Applicants providing internal offsets for major modifications at major sources of NO_x or ROCs must provide them at a 1.3 to 1 offset ratio.

(v) Offsets which are achieved from mobile emission reduction credits shall be subject to an offset ratio of 2.0 to 1.0.

(4) *Emission reductions, shutdowns, and curtailments.* Actual emission reductions from a shutdown or curtailment of permitted emission units may be credited for the purposes of banking and offsets pursuant to § 52.3002, Emissions Reduction Credit Authorization, provided:

(i) Application is made for emission reduction credits; and

(ii) The crediting and disbursement of emission reductions from source shutdowns and curtailments are in accordance with the most current EPA emissions trading policy and applicable federal regulations; and

(iii) Emissions decreases are ensured and documented by enforceable emission limitations contained in the Authority to Construct; or

(iv) Emissions decreases are ensured by the permanent surrender or cancellation of the Authority to Construct.

(5) *Ambient air quality standards.* In no case shall emissions from the new or modified stationary source prevent or interfere with the attainment or maintenance of any applicable ambient air quality standard. The EPA may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of a new or modified stationary source, and verify that the new or modified stationary source will not prevent or interfere with the attainment or maintenance of any ambient air quality standard. In making this determination, the EPA shall take into account the mitigation of emissions through offsets pursuant to this section and the impacts of transported pollutants on downwind pollutant concentrations. The EPA may impose, based on an air quality analysis, offset ratios greater than the requirements of paragraph (c)(3) of this section.

(6) *Denial, failure to meet standards.* The EPA shall deny any Authority to Construct if the EPA finds that the subject of the application would not comply with the standards set forth in federal rules or regulations. Stationary sources and emission units are required to curtail operations corresponding to the extent that required offsets are not obtained, or are not permanently maintainable. The owner or operator of the stationary source or emissions unit requiring offsets has the ultimate responsibility for ensuring that offsets are real, surplus, permanent, and quantifiable.

(7) *Alternative siting analysis.* By means of an analysis of alternative sites, sizes, production processes, and environmental control techniques for a new or modified stationary source, the owner or operator of the proposed stationary source or modification shall demonstrate to the satisfaction of the EPA that the benefits of the proposed source significantly outweigh the environmental and social costs incurred as a result of its location, construction, or modification. Whenever any proposed source or modification is subject to action by a state or federal agency that might necessitate the preparation of an environmental impact statement, which includes an alternative siting analysis, the EPA may accept the alternative sitings analysis prepared pursuant to that action to meet this requirement to the extent appropriate.

(d) *Administrative requirements.* The following administrative requirements shall apply to any activities regulated by this section.

(1) *Complete application.* The EPA shall determine whether the application is complete no later than 30 days after receipt of the application, or after such longer time period that the applicant and the EPA have agreed to in writing. If the EPA determines that the application is not complete, the applicant shall be notified in writing of the decision specifying the information required. Upon receipt of any resubmittal of the application, a new 30-day period to determine completeness shall begin. Completeness of an application or a re-submitted application shall be evaluated on the basis of the information requirements set forth in 40 CFR 70.5(c), Federal Operating Permit Program and the information required by this section. The EPA may, at any time during the processing of the application, request an applicant to clarify, amplify, correct, or otherwise supplement the information submitted in the application.

(2) *Air quality models.* All air quality models used for the purposes of this section shall be consistent with the requirements provided in the most recent edition of the EPA's "Guidelines on Air Quality Models, OAQPS 1.2–080," unless the EPA finds that such model is inappropriate for use. After making such a finding, the EPA may designate an alternate model only after allowing for public comment. Credit shall not be given for stacks higher than dictated by good engineering practice. All modeling costs associated with the siting of a stationary source shall be borne by the applicant.

(3) *Preliminary decision.* Except as provided in paragraph (b)(2) of this section, following acceptance of an application as complete, the EPA shall perform the evaluations required to determine compliance with all applicable requirements of this section

and make a preliminary written decision as to whether an Authority to Construct should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis.

(4) *Publication, public comment, and requests for public hearings.* Except as provided in paragraph (b)(2) of this section, within 10 calendar days following a preliminary decision pursuant to paragraph (c) of this section, the EPA shall publish, in at least one newspaper of general circulation in the district, a notice stating the preliminary decision of the EPA noting how the pertinent information can be obtained, and inviting written public comment for a 30-day period following the date of publication. The notice shall also provide that any interested person may submit a written request for a public hearing, and that such request must include a statement of the issues proposed to be raised in the hearing. If a written request for a public hearing is received during the public comment period, the EPA shall use the procedures given at 40 CFR 124.12, Public Hearings, applicable to PSD permits, to grant or deny the request and to hold a public hearing.

(5) *Public inspection.* Except as provided in paragraph (b)(2) of this section, the EPA shall make available for public inspection, at the district's office and the Regional Office of the EPA, the information submitted by the applicant and the EPA's analysis no later than the date the notice of the preliminary decision is published pursuant to paragraph (d)(4) of this section. Information submitted that contains trade secrets shall be handled in accordance with the requirements of 40 CFR part 2.

(6) *Authority to Construct, final action.* Except as provided in paragraph (b)(2) of this section, the EPA shall provide written notice of the final action to the applicant, and shall make the notice and all supporting documents available for public inspection at the district's office and Regional Office of the EPA. Within 30 days after the final decision has been made on the authority to construct, the applicant or any person who filed comments of the preliminary determination, may petition the EPA to review any condition of the permit. Any person who failed to file comments on the preliminary decision, may petition for administrative review only on the changes from the preliminary to the final determination.

(7) *Requirements, authority to construct.*

(i) *General conditions.* As a condition for the issuance of an Authority to Construct, the EPA shall require that the emissions unit and stationary source, and any emissions units which provide offsets, be operated in the manner stated in the application in making the analysis required to determine compliance with this section, and as conditioned in the Authority to Construct.

(ii) *Emissions limitations.* All of the following emissions limitations shall be included in the Authority to Construct, if applicable:

(A) The Authority to Construct shall include emission limitations which reflect Best Available Control Technology. Such condition(s) shall be expressed in a manner consistent with testing procedures, such as ppmv NO_X, g/liter VOC, or lbs/hr.

(B) A quarterly emissions limitation for each affected pollutant for which offsets are being provided pursuant to paragraph (c)(2) of this section shall be contained in the Authority to Construct.

(C) A daily emission limitation shall be contained in the Authority to Construct when offsets are not being provided pursuant to paragraph (c)(2) of this section, or when required to be consistent with ambient air quality standards.

(iii) *Design, operational, or equipment standards.* If the EPA determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of a numerical emission standard infeasible, the EPA may instead prescribe a design, operational, or equipment standard. In such cases, the EPA shall make a best estimate as to the emission rate that will be achieved. Any permits issued without an enforceable numerical emission standard must contain enforceable conditions that assure that the design characteristics or equipment will be properly maintained, or that the operational conditions will be properly performed, so as to continuously achieve the assumed degree of control.

(iv) *Offsets.*

(A) Except as provided in paragraph (b) of this section, the operation of any emissions unit or stationary source which provides offsets shall be subject to enforceable permit conditions, containing specific emissions and operational limitations, to ensure that the emission reductions shall be provided in accordance with the provisions of this section and shall continue for the reasonably expected life of the proposed emissions unit or stationary source.

(B) Where the source of offsets is not required to obtain an Authority to Construct pursuant to § 52.3000, General Permit Requirements, and § 52.3002(c)(2), a legally binding contract shall be required between the applicant and the owner or operator of such source. Such contract, by its terms, shall be enforceable by the EPA. For such non-permitted sources, a source-specific SIP revision is required.

(C) An internal emission offset will be considered federally enforceable if it is made a SIP requirement by inclusion as a condition of the authority to construct.

(D) External offsets must be made enforceable either by revision of an offsetting source's Authority to Construct or by a SIP revision prior to the operation of the emissions unit.

(E) A violation of the emission limitation provisions of any contract pursuant to the above stipulations shall be a violation of this section by the applicant.

(F) The operation of any emissions unit or stationary source which uses offsets provided by another emissions unit or stationary source shall be subject to enforceable permit conditions, containing specific emissions and operational limits, to ensure that the emission reductions are used in accordance with the provisions of all applicable rules and shall continue for the reasonably expected life of the proposed emissions unit or stationary source.

(G) The permanence of emissions reductions may be demonstrated by federally enforceable changes in source permits to reflect a reduced level of allowable emissions.

(8) *Issuance, replacement unit.* Where a new or modified stationary source is, in whole or in part, a replacement for an existing stationary source on the same property, the EPA may allow a maximum of 90 days as a startup period for simultaneous operation of the existing stationary source and the new source or replacement.

(9) *Regulations in force.* An Authority to Construct shall be granted or denied based on Best Available Control Technology requirements and offset requirements of paragraphs (c)(1) and (c)(2) of this section in force on the date the application is deemed complete as defined in § 52.3000(b). In addition, the EPA shall deny an Authority to Construct for any new stationary source or modification, or any portion thereof, unless:

(i) The new source or modification, or applicable portion thereof, complies with the provisions of this section and all other applicable district rules and regulations; and

(ii) The owner or operator of the proposed new or modified source has certified that all existing major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in California which are subject to emission limitations are in compliance, or on an expeditious schedule for compliance, with all applicable emission limitations and standards.

(10) *Calculation of emissions—BACT.* The emissions change for a new or modified emissions unit shall be calculated by subtracting historic actual emissions from proposed emissions. Calculations shall be performed separately for each emissions unit for each calendar quarter.

(11) *Calculation of emissions—offsets trigger for ROC and NO$_X$.* The potential to emit for each calendar quarter for a stationary source shall be the sum of the potential to emit, including fugitive emissions, for all emissions units based on current Authority to Construct permits, information contained in current Permits to Operate, the pending application, and banked authorized emission reduction credits.

(12) *Calculation of emissions—offsets general.* The emissions change for a new or modified emissions unit shall be calculated by subtracting historic potential emissions from proposed emissions. Calculations shall be performed separately for each pollutant and each emissions unit for each calendar quarter. Negative emissions changes shall be processed under the procedures specified in § 52.3002, Emissions Reduction Credit Authorization.

(13) *Calculation of emissions—offsets required for ROC and NO$_X$.* The cumulative net emissions increase pursuant to paragraph (d)(12) of this section for a stationary source shall be the sum of emissions from each of the following for each calendar quarter expressed in terms of pounds per quarter.

(i) The potential to emit including associated fugitive emissions not previously offset, for all emissions units installed after September 21, 1993, based on current Authority to Construct permits, information contained in current Permits to Operate, and the pending application.

(ii) All emission increases, including associated fugitive emissions not previously offset, from the modification to emissions units installed before September 21, 1993, as determined by procedures specified in paragraph (d)(12) of this section. Any emissions increase represented by an Authority to Construct, which has been canceled by the EPA or has expired, shall not be included in the cumulative emissions increase calculation.

(e) *Fees.*

(1) The EPA will collect permit fees calculated in accordance with the fee requirements imposed in the district, not to exceed the costs to EPA to issue permits and administer the permit program.

(2) If this section is delegated, the delegated agency will collect fees calculated in accordance with the fee requirements imposed in the district. Upon delegation of any portion of this section, the EPA will cease to collect fees imposed in conjunction with that portion.

(f) *Monitoring and records.* The following records shall be maintained for five years and shall be provided to the EPA upon request.

(1) *Emergency electrical generating equipment.* Records of operation for maintenance purposes, for actual interruptions of power.

(2) *Portable and temporary equipment.* Records of operating location and corresponding dates of operation.

§ 52.3002 Emissions reduction credit authorization (Sacramento).

(a) *Purpose.* To provide an administrative mechanism for authorizing surplus emission reductions for transfer to other sources as offsets pursuant to § 52.3001, New Source Review. Actual emission reductions certified in a district bank shall be reevaluated and authorized under the requirements and procedures specified in this section.

(b) *Applicability.* This section shall apply to all emissions reduction credits which are to be used for offsets pursuant to § 52.3001, New Source Review.

(c) *Standards.*

(1) *Authorization.* Only actual emission reductions shall become authorized ERCs. Such actual emission reductions shall meet the following requirements to be authorized as ERCs:

(i) Be certified in accordance with a district banking rule except as provided in paragraph (c)(3) of this section.

(ii) Receive written approval of the EPA, as described in paragraph (e)(4) of this section.

(iii) If the emission reduction is created from an emission unit where the demand for the services or product could shift to other similar sources in the district, submittal of data to document that such reductions will result in district-wide emission reductions may be required by the EPA. Such documentation must be approved by the EPA.

(iv) Emissions reductions shall be prescribed by enforceable emission limitations contained in Authority to Construct permits.

(2) *Non-permitted sources.* If state or federal law prohibits the permitting authority from requiring an Authority to Construct or a Permit to Operate pursuant to § 52.3000, General Permit Requirements, the applicant for authorized emission reduction credits shall execute a legally binding contract with one or more owner(s) or operator(s) of the non-permittable emissions unit that ensures the sum of all emission reductions will be provided in accordance with the requirements of this section, and will continue for the life of the stationary source using the credits or life of the credits as provided in the application. Such a contract shall be filed with the EPA and, by its terms, be enforceable by the EPA. In the absence of federally enforceable conditions, the execution of a source-specific SIP revision is required.

(3) *Certification of ERCs in the absence of a district banking rule.* If the applicable district does not have a banking rule, the EPA will certify the ERC in accordance with EPA's most recent emission trading policy.

(d) *Exemptions.* Concurrent stationary source modification: Concurrent reductions need not be authorized prior to use as offsets, if those reductions satisfy all criteria established by this section; § 52.3000, General Permit Requirements; and § 52.3001, New Source Review. For the purposes of this exemption, "concurrent stationary source modification" means the simultaneous modification of emission units and/or the addition of new emissions units to a stationary source with all emission reductions occurring after the issuance of the Authority to Construct authorizing such reductions, but before the start of operation of the new or modified emissions unit(s) with emission increases.

(e) *Administrative requirements.*

(1) *Procedures for authorization of ERCs.*

(i) Any person or entity, or an authorized agent, applying to use an ERC in accordance with § 52.3001, New Source Review, must submit a complete application for authorization of ERCs 60 days prior to submitting an Authority to Construct Application under § 52.3001.

(ii) The person or entity requesting ERC authorization shall submit an application on forms approved by the EPA.

(iii) Except as provided in paragraph (c)(3) of this section, the application must include an engineering evaluation and verification of district certification of the ERC and any other information necessary to calculate the emission reductions as described in paragraph (e)(2) of this section. Documents submitted and received according to a district banking rule may be sufficient for the application for authorization.

(iv) Applicants may claim confidentiality for submitted information to the extent allowed and provided for by Federal Regulation at 40 CFR part 2.

(v) To verify emission reductions claimed in conjunction with an application for ERC authorization, the EPA may require source tests by approved methods, continuous monitoring, production records, fuel use records, or any other appropriate means.

(2) *General calculation of emission reductions.* The following procedures apply to the calculation of ERCs for all sources:

(i) Actual emission reductions from modifications to, or shutdowns of, existing emissions units shall be calculated for each calendar quarter by subtracting the proposed emissions from historical actual emissions. Any positive value shall qualify for conversion to an emission reduction credit.

(ii) Credits shall be quantified in terms of pounds of pollutants per quarter for each calendar quarter.

(iii) In addition to the criteria explained in the definition of Actual Emission Reductions above, actual emission reductions shall be adjusted to at least reflect those emission rates achievable with reasonably available control technology (RACT), or best available retrofit control technology (BARCT), or any requirement of federal or state implementation plan rules, whichever results in the greatest adjustment.

(iv) The EPA may adjust the credits to maintain any discounting by the district prior to district certification of the ERCs. Such discounting includes adjustments made by the district for deposit into a district priority reserve bank and reductions claimed by the district to meet any federal planning requirements.

(v) The original ERC Certificate should be surrendered prior to authorization of an ERC.

(3) *Notification.* Following the authorization of emission reduction credits, the EPA shall issue a Authorization Certificate to the owner(s) by certified mail or in person. The authorization certificate shall contain the following information:

(i) Authorization Certificate number;

(ii) Date of authorization which expires pursuant to paragraph (e)(6) of this section;

(iii) Street address and Application Number of the site creating the surplus emissions reductions for which the ERC Certificate is issued;

(iv) Signature of the responsible EPA official;

(v) The name of the owner, typed on the certificate, and the owner's signature. If the owner is a public or private business entity, a person authorized to sign on behalf of the owner shall sign the certificate;

(vi) The life of the credit specifying the date and duration (and time of year, for seasonal emissions reductions) of the expected reduction;

(vii) Conditions of operation or use, including restrictions on the use of the reductions (e.g., on site only, replacement equipment only, seasonal equipment only, etc.), and current rules which affect the value of the ERCs; and

(viii) The mechanism by which the credit was created (e.g., shutdown, installation of Flue Gas Recirculation system, 1D/3D cyclone, etc.).

(4) *Registration.* When an Authority to Construct permit using authorized emission reduction credits has been issued, the following information shall be entered in the register:

(i) All information required in paragraph (e)(3) of this section except the information in paragraph (e)(3)(v) of this section, which can not be entered into the register;

(ii) Date that the Authorized ERC Certificate was surrendered to the EPA;

(iii) Permit numbers to which ERCs are being applied;

(iv) Name and address of ERC user;

(v) Name (if any), address, and application number of site where ERCs are being used as offsets; and

(vi) Number of ERCs being used for offsets.

(5) *Public inspection.* The information entered in the register pursuant to paragraph (e)(4) of this section shall be available for public inspection at the EPA Region IX office after the date of use of authorized ERCs as offsets. In addition, all such information shall be transmitted to the district, the California Air Resources Board, and (for trades proposed within 100 km of a Class I area, or for trades more than 100 km from a Class I area that might reasonably be anticipated to impact such area) the appropriate Federal Land Manager.

(6) *Expiration of authorization.* If an Authority to Construct permit is not granted within one year of the authorization of an ERC, the ERC will lose its authorized status and must reapply for authorization when a source again applies to use the ERC.

(7) *Moratorium.* If the EPA determines that additional emission reductions are necessary, a moratorium on authorizations of ERCs may be imposed. Prior to imposing a moratorium, the EPA shall provide notice to holders of ERCs and other interested parties and a 30-day opportunity for public comment on the proposed issuance of a moratorium. The moratorium shall be lifted upon determination by the EPA that additional emission reductions are not necessary.

Appendix A to Subpart GGG of Part 52—Counties, Partial Counties, and ZIP Codes for Partial Counties Included in the I/M Program

(I) Counties in which the entire county is in the program: Los Angeles, Orange, Sacramento, Solano, Sutter, Ventura, Yolo.

(II) Counties in which a portion of the county is in the program:

El Dorado, Placer, Riverside, San Bernardino.

(III) ZIP Codes for partial counties in the program:

El Dorado County

95613–95614
95619
95623
95630
95633–95636
95643
95651
95656
95664
95667
95672
95682
95684
95709
95720–95721
95725–95727
95735

Placer County

95603–95604
95631
95648
95650
95658
95661
95663
95677–95678
95681
96701
95703–95704
95713–95715
95717
95722
95736
95746

Riverside County

91718–91720
91752
91760
92201
92202
92210
92220
92223
92230
92234
92236
92240
92253–92254
92257–92258
92260–92264
92270
92274
92276
92282
92320
92340
92501–92523
92530
92532
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92596

San Bernardino County

91701
91708–91710
91729–91730
91739
91743
91759
91761–91764
91785–91786
92252
92256
92268
92277–92278
92284–92286
92301
92304–92305
92307–92312
92314–92319
92321–92322
92324–92327
92329
92333–92336
92338–92339
92341–92342
92345–92347
92352
92354
92356–92359
92365
92368–92369
92371–92378
92382
92385–92386
92391–92392
92394
92397–92399
92401–92418
92423
92427
93516
93558
93562

Appendix B to Subpart GGG of Part 52—Start-up and Final IM240 Cutpoints for Light- and Heavy-Duty Vehicles for the California FIP

Start-up Standards. The following standards shall be used during calendar years 1997 and 1998:

LIGHT DUTY VEHICLES

Model Years	HC		CO		NO$_x$	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
All LEVs	0.80	0.50	15.0	12.0	2.0	(Reserved).
1994+ Tier 1	0.80	0.50	15.0	12.0	2.0	Do.
1991–95 Tier 0	1.20	0.75	20.0	16.0	2.5	Do.
1983–90	2.00	1.25	30.0	24.0	3.0	Do.
1981–82	2.00	1.25	60.0	48.0	3.0	Do.
1980	2.00	1.25	60.0	48.0	6.0	Do.
1977–79	7.50	5.00	90.0	72.0	6.0	Do.
1975–76	7.50	5.00	90.0	72.0	9.0	Do.
1973–74	10.00	6.00	150.0	120.0	9.0	Do.
1968–72	10.00	6.00	150.0	120.0	10.0	Do.

LIGHT DUTY TRUCKS 1 (LESS THAN 6000 POUNDS GVWR)

Model years	HC		CO		NO$_x$	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1994+ Tier 1 and all LEVs:						
(≤3750 LVW)	0.80	0.50	15.0	12.0	2.0	(Reserved).
(>3750 LVW)	1.00	0.63	20.0	16.0	2.5	Do.
1991–95 Tier 0	2.40	1.50	60.0	48.0	3.0	Do.
1988–90	3.20	2.00	80.0	64.0	3.5	Do.
1984–87	3.20	2.00	80.0	64.0	7.0	Do.
1979–83	7.50	5.00	100.0	80.0	7.0	Do.
1975–78	8.00	5.00	120.0	96.0	9.0	Do.
1973–74	10.00	6.00	150.0	120.0	9.0	Do.
1968–72	10.00	6.00	150.0	120.0	10.0	Do.

LIGHT DUTY TRUCKS 2 (GREATER THAN 6000 POUNDS GVWR)

Model years	HC		CO		NO$_x$	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1994+ Tier a and all LEVs:						
(≤5750 LVW)	1.00	0.63	20.0	16.0	2.5	(Reserved).
(>5750 LVW)	2.40	1.50	60.0	48.0	4.0	Do.
1991–95 Tier 0	2.40	1.50	60.0	48.0	4.5	Do.
1988–90	3.20	2.00	80.0	64.0	5.0	Do.
1984–87	3.20	2.00	80.0	64.0	7.0	Do.
1979–83	7.50	5.00	100.0	80.0	7.0	Do.
1975–78	8.00	5.00	120.0	96.0	9.0	Do.
1973–74	10.00	6.00	150.0	120.0	9.0	Do.
1968–72	10.00	6.00	150.0	120.0	10.0	Do.

HEAVY-DUTY TRUCK STANDARDS

Model years	HC		CO		NO$_x$	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1998+	2.00	1.30	30.0	24.0	4.0	(Reserved).
1991–1997	3.00	1.90	60.0	48.0	6.0	Do.
1987–1990	3.00	1.90	60.0	48.0	8.0	Do.
1985–1986	5.00	3.10	75.0	60.0	8.0	Do.
1979–1984	6.00	3.80	100.0	80.0	8.0	Do.
1974–1978	10.00	6.30	150.0	120.0	10.0	Do.

HEAVY-DUTY TRUCK STANDARDS—Continued

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1970–1973	10.00	6.30	175.0	140.0	10.0	Do.
pre-1970	20.00	12.50	200.0	160.0	15.0	Do.

Second-Cycle Standards. The following exhaust emissions standards, in grams per mile, shall be used for vehicles tested in calendar years 1999 and 2000:

LIGHT DUTY VEHICLES

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
All LEVs	0.60	0.40	10.0	8.0	1.5	(Reserved).
1994+ Tier 1	0.60	0.40	10.0	8.0	1.5	Do.
1983–95 Tier 0	0.80	0.50	15.0	12.0	2.0	Do.
1981–82	0.80	0.50	30.0	24.0	2.0	Do.
1980	0.80	0.50	30.0	24.0	4.0	Do.
1977–79	3.00	2.00	65.0	52.0	4.0	Do.
1975–76	3.00	2.00	65.0	52.0	6.0	Do.
1973–74	7.00	4.50	120.0	96.0	6.0	Do.
1968–72	7.00	4.50	120.0	96.0	7.0	Do.

LIGHT DUTY TRUCKS 1 (LESS THAN 6000 POUNDS GVWR)

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1994+ Tier 1 and all LEVs:						
(≤3750 LVW)	0.60	0.40	10.0	8.0	1.5	(Reserved).
(>3750 LVW)	0.80	0.50	13.0	10.0	1.8	Do.
1988–95 Tier 0	1.60	1.00	40.0	32.0	2.5	Do.
1984–87	1.60	1.00	40.0	32.0	4.5	Do.
1979–83	3.40	2.00	70.0	56.0	4.5	Do.
1975–78	4.00	2.50	80.0	64.0	6.0	Do.
1973–74	7.00	4.50	120.0	96.0	6.0	Do.
1968–72	7.00	4.50	120.0	96.0	7.0	Do.

LIGHT DUTY TRUCKS 2 (GREATER THAN 6000 POUNDS GVWR)

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1994+ Tier 1 and all LEVs:						
(≤5750 LVW)	0.80	0.50	13.0	10.0	1.8	(Reserved).
(>5750 LVW)	0.80	0.50	15.0	12.0	2.0	Do.
1988–95 Tier 0	1.60	1.00	40.0	32.0	3.5	Do.
1984–87	1.60	1.00	40.0	32.0	4.5	Do.
1979–83	3.40	2.00	70.0	56.0	4.5	Do.
1975–78	4.00	2.50	80.0	64.0	6.0	Do.
1973–74	7.00	4.50	120.0	96.0	6.0	Do.
1968–72	7.00	4.50	120.0	96.0	7.0	Do.

HEAVY-DUTY TRUCKS

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1998+	2.00	1.30	30.0	24.0	4.0	(Reserved).
1991–97	2.00	1.30	40.0	32.0	5.0	Do.
1987–90	2.00	1.30	40.0	32.0	6.0	Do.
1985–86	3.00	1.90	50.0	40.0	6.0	Do.
1979–84	5.00	3.10	75.0	60.0	6.0	Do.
1974–78	10.00	6.30	150.0	120.0	10.0	Do.
1970–73	10.00	6.30	175.0	140.0	10.0	Do.
pre-1970	20.00	12.50	200.0	160.0	15.0	Do.

Final Standards. The following exhaust emissions standards, in grams per mile, shall be used for vehicles tested in calendar years 2001 and later:

LIGHT DUTY VEHICLES

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
All LEVs	0.60	0.40	10.0	8.0	1.5	(Reserved).
1994+ Tier 1	0.60	0.40	10.0	8.0	1.5	Do.
1983–95 Tier 0	0.60	0.40	10.0	8.0	1.5	Do.
1981–82	0.60	0.40	10.0	8.0	1.5	Do.
1980	0.80	0.50	30.0	24.0	4.0	Do.
1977–79	3.00	2.00	65.0	52.0	4.0	Do.
1975–76	3.00	2.00	65.0	52.0	6.0	Do.
1973–74	7.00	4.50	120.0	96.0	6.0	Do.
1968–72	7.00	4.50	120.0	96.0	7.0	Do.

LIGHT DUTY TRUCKS 1 (LESS THAN 6000 POUNDS GVWR)[a]

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1994+ Tier 1 and all LEVs:						
(≤3750 LVW)	0.60	0.40	10.0	8.0	1.5	(Reserved).
(>3750 LVW)	0.80	0.50	13.0	10.0	1.8	Do.
1988–95 Tier 0	1.60	1.00	40.0	32.0	2.5	Do.
1984–87	1.60	1.00	40.0	32.0	4.5	Do.
1979–83	3.40	2.00	70.0	56.0	4.5	Do.
1975–78	4.00	2.50	80.0	64.0	6.0	Do.
1973–74	7.00	4.50	120.0	96.0	6.0	Do.
1968–72	7.00	4.50	120.0	96.0	7.0	Do.

[a] The final cutpoints for LDT1, LDT2, and Heavy-duty trucks have not been modified from the second-cycle for those vehicles.

LIGHT DUTY TRUCKS 2 (GREATER THAN 6000 POUNDS GVWR)

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1994+ Tier 1 and all LEVs:						
(<5750 LVW)	0.80	0.50	13.0	10.0	1.8	(Reserved).
(≤5750 LVW)	0.80	0.50	15.0	12.0	2.0	Do.
1988–95 Tier 0	1.60	1.00	40.0	32.0	3.5	Do.
1984–87	1.60	1.00	40.0	32.0	4.5	Do.
1979–83	3.40	2.00	70.0	56.0	4.5	Do.
1975–78	4.00	2.50	80.0	64.0	6.0	Do.
1973–74	7.00	4.50	120.0	96.0	6.0	Do.
1968–72	7.00	4.50	120.0	96.0	7.0	Do.

HEAVY-DUTY TRUCKS

Model years	HC		CO		NO_x	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1998+	2.00	1.30	30.0	24.0	4.0	(Reserved).
1991–97	2.00	1.30	40.0	32.0	5.0	Do.
1987–90	2.00	1.30	40.0	32.0	6.0	Do.
1985–86	3.00	1.90	50.0	40.0	6.0	Do.
1979–84	5.00	3.10	75.0	60.0	6.0	Do.
1974–78	10.00	6.30	150.0	120.0	10.0	Do.
1970–73	10.00	6.30	175.0	140.0	10.0	Do.
pre-1970	20.00	12.50	200.0	160.0	15.0	Do.

PART 81—[AMENDED]

27. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

28. Section 81.305 is proposed to be amended in the table for California—Ozone by revising the entry for "Sacramento Metro Area" to read as follows:

§ 81.305 California—

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
*	*	*	*	*
Sacramento Metro Area	[Insert date 30 days from date of publication of final rule].	Non-attainment .	[Insert date 30 days from date of publication of final rule].	Severe.

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94–9963 Filed 5–4–94; 8:45 am]

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federal register

Thursday
May 5, 1994

Part III

United States Sentencing Commission

Submission to Congress of Amendments to the Sentencing Guidelines; Notices

UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines.

SUMMARY: Pursuant to its authority under section 994(p) of title 28, United States Code, the Commission on April 28, 1994, submitted to the Congress amendments to the sentencing guidelines, policy statements, and official commentary together with reasons for the amendments.

DATES: Pursuant to 28 U.S.C. 994(p), as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988), the Commission has specified an effective date of November 1, 1994, for these amendments. Comments regarding amendments that the Commission should specify for retroactive application to previously sentenced defendants should be received no later than June 30, 1994.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attn: Public Information.

FOR FURTHER INFORMATION CONTACT: Mike Courlander, Public Information Specialist, telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the U.S. Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review periodically and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1994) by operation of law.

Notice of the amendments submitted to the Congress on April 28, 1994, was published in the **Federal Register** of December 21, 1993 (58 FR 67521). A public hearing on the proposed amendments was held in Washington, DC, on March 24, 1994. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments, each having been approved by at least four voting Commissioners.

In connection with its ongoing process of guideline review, the Commission welcomes comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Specifically, the Commission solicits comment on which, if any, of the amendments submitted to the Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants under Policy Statement 1B1.10.

Authority: 28 U.S.C. 994(a), (o), (p); sec. 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

William W. Wilkins, Jr.,
Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988, the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor. As authorized by this section, the Commission specifies an effective date of November 1, 1994, for these amendments.

Policy Statements, and Official Commentary

1. Amendment: The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 2 by inserting the following additional paragraph as the eighth paragraph:

"A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant's joining the conspiracy, even if the defendant knows of that conduct (e.g., in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant's joining the conspiracy is not included as relevant conduct in determining the defendant's offense level). The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant's culpability; in such a case, an upward departure may be warranted.".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 9(B) by deleting "and the time interval between offenses" and inserting in lieu thereof:

", the regularity (repetitions) of the offenses, and the time interval between the offenses. When one of the above factors is absent, a stronger presence of at least one of the other factors is required. For example, where the conduct alleged to be relevant is relatively remote to the offense of conviction, a stronger showing of similarity or regularity is necessary to compensate for the absence of temporal proximity.".

Reason for Amendment: This amendment clarifies the operation of § 1B1.3 (Relevant Conduct) with respect to the defendant's accountability for the actions of other conspirators prior to the defendant's joining the conspiracy. The amendment is in accord with the rule stated in recent caselaw. See, e.g., United States v. Carreon, 11 F.3d 1225 (5th Cir. 1994); United States v. Petty, 982 F.2d 1374, 1377 (9th Cir. 1993); United States v. O'Campo, 973 F.2d 1015, 1026 (1st Cir. 1992). Cf. United States v. Miranda-Ortiz, 926 F.2d 172, 178 (2d Cir. 1991); United States v. Edwards, 945 F.2d 1387, 1393 (7th Cir. 1991)) (applying earlier versions of § 1B1.3). By expressly addressing this issue, this amendment will ensure consistency in guideline interpretation. In addition, this amendment adds a well-phrased formulation developed by the Ninth Circuit in United States v. Hahn, 960 F.2d 903 (9th Cir. 1992), to the commentary addressing the circumstances in which multiple acts constitute the "same course of conduct.".

2. Amendment: Section 1B1.10(a) is amended by deleting "guidelines" and inserting in lieu thereof "Guidelines Manual", by deleting "may be considered" and inserting in lieu thereof "is authorized", by inserting "and thus is not authorized" immediately following "policy statement", and by deleting "subsection (d)" wherever it appears and inserting in lieu thereof in each instance "subsection (c)".

Section 1B1.10(b) is amended by inserting ", and to what extent," immediately before "a reduction", and by deleting "originally imposed had the guidelines, as amended, been in effect at that time" and inserting in lieu thereof "imposed had the amendment(s) to the guidelines listed in subsection (c) been in effect at the time the defendant was sentenced".

Section 1B1.10 is amended by deleting subsection (c), and by redesignating subsection (d) as subsection (c).

The Commentary to § 1B1.10 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by deleting Note 1 and inserting in lieu thereof:

"1. Eligibility for consideration under 18 U.S.C. 3582(c)(2) is triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range.

2. In determining the amended guideline range under subsection (b), the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.".

The Commentary to § 1B1.10 captioned "Background" is amended in the last paragraph by deleting "subsection (d)" and inserting in lieu thereof "subsection (c)".

Reason for Amendment: This amendment revises § 1B1.10 to substantially simplify its operation. Under this amendment, the court will recalculate the guideline range using only those amendments expressly designated as retroactive. In addition, this amendment deletes current § 1B1.10(c), a rather complex subsection, as an unnecessary restriction on the court's consideration of a revised sentence in response to an amended guideline range. Finally, this amendment makes a number of minor clarifying revisions.

3. *Amendment:* Section 2D1.1(c) is amended by deleting subdivisions 1–3, by renumbering subdivisions 4–19 as 2–17, and by inserting the following as subdivision 1:

"(1) 30 KG or more of Heroin (or the equivalent Level 38 amount of other Schedule I or II Opiates);
150 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
1.5 KG or more of Cocaine Base;
30 KG or more of PCP, or 3 KG or more of PCP (actual);
30 KG or more of Methamphetamine, or 3 KG or more of Methamphetamine (actual), or 3 KG or more of 'Ice';
300 G or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
12 KG or more of Fentanyl;
3 KG or more of a Fentanyl Analogue;
30,000 KG or more of Marihuana;
6,000 KG or more of Hashish;
600 KG or more of Hashish Oil.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 16 by deleting "40" and inserting in lieu thereof "38", by deleting "35" wherever it appears and inserting in lieu thereof in each instance "33", and by deleting "4 levels" and inserting in lieu thereof "2 levels".

The Commentary to § 2D1.6 captioned "Application Note" is amended in Note 1 by deleting "(§ 2D1.1(c)(16))" and inserting in lieu thereof "(§ 2D1.1(c)(14))"; and by deleting "(§ 2D1.1(c)(19))" and inserting in lieu thereof "(§ 2D1.1(c)(17))".

Reason for Amendment: This amendment sets the upper limit of the Drug Quantity Table in § 2D1.1 at level 38. The Commission has determined that the extension of the Drug Quantity Table above level 38 for quantity itself is not required to ensure adequate punishment given that organizers, leaders, managers, and supervisors of such offenses will receive a 4-, 3-, or 2-level enhancement for their role in the offense, and any participant will receive an additional 2-level enhancement if a dangerous weapon is possessed in the offense.

4. *Amendment:* The Commentary to § 4B1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof:

"'Offense Statutory Maximum,' for the purposes of this guideline, refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, not including any increase in that maximum term under a sentencing enhancement provision that applies because of the defendant's prior criminal record (such sentencing enhancement provisions are contained, for example, in 21 U.S.C. 841(b)(1)(A), (b)(1)(B), (b)(1)(C), and (b)(1)(D)). For example, where the statutory maximum term of imprisonment under 21 U.S.C. § 841(b)(1)(C) is increased from twenty years to thirty years because the defendant has one or more qualifying prior drug convictions, the 'Offense Statutory Maximum' for the purposes of this guideline is twenty years and not thirty years.".

Reason for Amendment: This amendment defines the term "offense statutory maximum" in § 4B1.1 to mean the statutory maximum prior to any enhancement based on prior criminal record (i.e., an enhancement of the statutory maximum sentence that itself was based upon the defendant's prior criminal record would not be used in determining the offense level under this guideline). This rule avoids unwarranted double counting as well as unwarranted disparity associated with variations in the exercise of prosecutional discretion in seeking enhanced penalties based on prior convictions.

It is noted that when the instruction to the Commission that underlies § 4B1.1 (28 U.S.C. 994(h)) was enacted by the Congress in 1984, the enhanced maximum sentences provided for recidivist drug offenders (e.g., under 21 U.S.C. 841) did not exist.

5. *Amendment:* The Commentary to § 5G1.2 is amended in the fourth paragraph by deleting "3D1.2" and inserting in lieu thereof "3D1.1", and by inserting the following additional sentence at the end:

"Note, however, that even in the case of a consecutive term of imprisonment imposed under subsection (a), any term of supervised release imposed is to run concurrently with any other term of supervised release imposed. See 18 U.S.C. 3624(e).".

Reason for Amendment: This amendment revises the Commentary to § 5G1.2 to clarify that the Commission's interpretation is that 18 U.S.C. 3624(e) requires multiple terms of supervised release to run concurrently in all cases. This interpretation is in accord with the view stated in *United States* v. *Gullickson*, 982 F.2d 1231, 1236 (8th Cir. 1993). In contrast, two courts of appeals have cited the current commentary as supporting the view that, notwithstanding the language in 18 U.S.C. 3624(e) stating that terms of supervised release run concurrently, a court may order that supervised release terms run consecutively under certain circumstances. See *United States* v. *Shorthouse*, 7 F.3d 149 (9th Cir. 1993); *United States* v. *Maxwell*, 966 F.2d 545, 551 (10th Cir. 1992).

6. *Amendment:* The Introductory Commentary to Chapter Five, Part H, is amended in the second paragraph by inserting the following additional sentence at the end:

"Furthermore, although these factors are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range, they may be relevant to this determination in exceptional cases. See § 5K2.0 (Grounds for Departure).".

Section 5K2.0 is amended by inserting the following additional paragraph as the fourth paragraph:

"An offender characteristic or other circumstance that is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range may be relevant to this determination if such characteristic or circumstance is present to an unusual degree and distinguishes the case from the 'heartland' cases covered by the guidelines in a way that is important to the statutory purposes of sentencing.".

Section 5K2.0 is amended by inserting the following commentary at the end:

Commentary

The last paragraph of this policy statement sets forth the conditions under which an offender characteristic or other circumstance that is not ordinarily relevant to a departure from the applicable guideline range may be relevant to this determination. The Commission does not foreclose the possibility of an extraordinary case that, because of a combination of such characteristics or circumstances, differs significantly from the 'heartland' cases covered by the guidelines in a way that is important to the statutory purposes of sentencing, even though none of the characteristics or circumstances individually distinguishes the case. However, the Commission believes that such cases will be extremely rare.

In the absence of a characteristic or circumstance that distinguishes a case as sufficiently atypical to warrant a sentence different from that called for under the guidelines, a sentence outside the guideline range is not authorized. See 18 U.S.C. 3553(b). For example, dissatisfaction with the available sentencing range or a preference for a different sentence than that authorized by the guidelines is not an appropriate basis for a sentence outside the applicable guideline range.".

Reason for Amendment: This amendment provides guidance as to when an offender characteristic or other circumstance (or combination of such characteristics or circumstances) that is not ordinarily relevant to a determination of whether a sentence should be outside the applicable guideline range may be relevant to this determination. Such guidance should enhance consistency in decisions regarding guideline departures.

[FR Doc. 94–10782 Filed 5–4–94; 8:45 am]

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To suspend temporarily the duty on the personal effects of participants in, and certain other individuals associated with, the 1994 World Cup Soccer Games, the 1994 World Rowing Championships, the 1995 Special Olympics World Games, the 1996 Summer Olympics, and the 1996 Paralympics. (Apr. 30, 1994; 108 Stat. 530; 2 pages)

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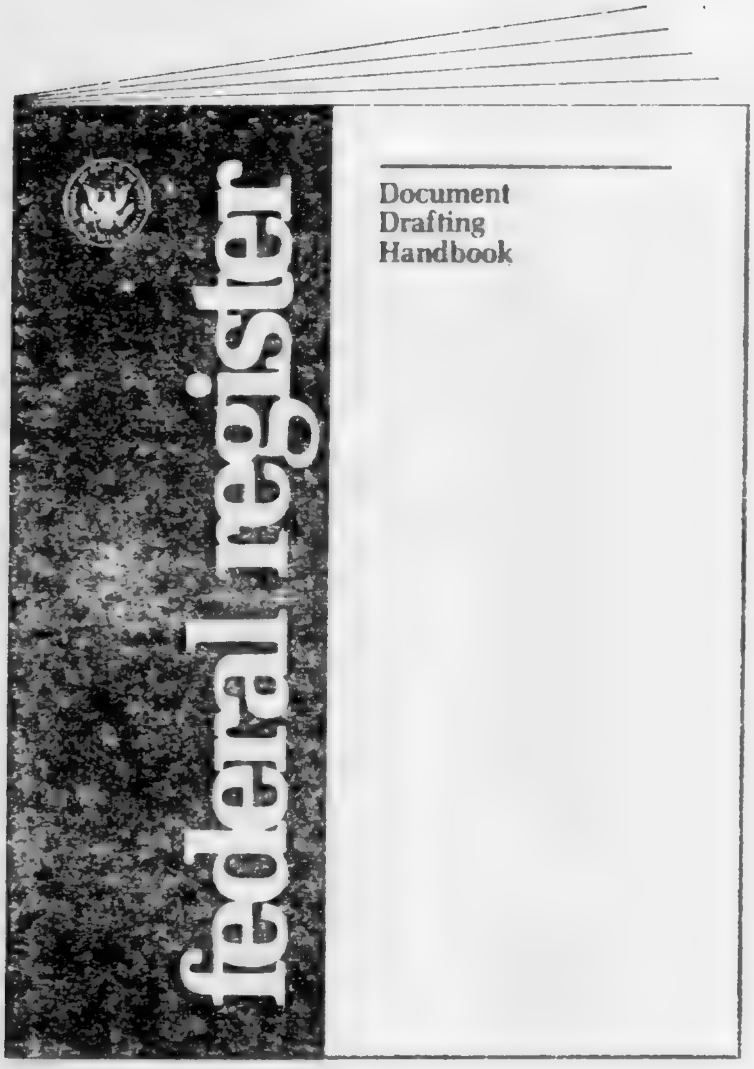

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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Friday, May 6, 1994

Presidential Documents

Title 3—

The President

Proclamation 6682 of May 3, 1994

Public Service Recognition Week, 1994

By the President of the United States of America

A Proclamation

At a time when Government is confronting the challenge of serving the public more efficiently and effectively than ever while facing substantial resource constraints, it is especially fitting to recognize the dedication of our Nation's public employees. The Federal Government, in its efforts to work better and cost less, has often found inspiration in the creative innovations initiated by State and local government employees. Moreover, the new spirit of partnership between labor and management in the public sector has reduced the time and money wasted in unproductive adversarial proceedings so that more attention can be devoted to improving the services provided to the public.

Americans at all levels of government have made a significant difference in the lives of their fellow citizens, and it is most appropriate that we set aside this week to honor them. Public employees educate our children, administer programs to aid needy citizens, conduct biomedical research, help protect the environment, ensure the safety of our food supply, maintain our transportation networks, provide for the common defense, and enforce the Constitution and laws of the United States. These devoted women and men bring enormous talent, knowledge, and integrity to their work.

In recognition of the achievements of government employees, the Congress, by Senate Joint Resolution 150, has designated the week of May 2, 1994, through May 8, 1994, as "Public Service Recognition Week" and has authorized and requested the President to issue a proclamation calling for observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of May 2, 1994, through May 8, 1994, as Public Service Recognition Week. I urge the people of the United States to participate in appropriate ceremonies and activities to recognize the vital contributions of employees of Federal, State, and local government. I also encourage young Americans to learn more about the work done by public employees and to consider careers in public service.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–11117
Filed 5–4–94; 2:01 pm]
Billing code 3195–01–P

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Rules and Regulations

Federal Register

Vol. 59, No. 87

Friday, May 6, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On January 6, 1993, the Food and Drug Administration announced in a final rule that, effective May 8, 1994, the current food label reference values, the U.S. Recommended Daily Allowances (U.S.RDAs), will be identified as the Reference Daily Intakes, or RDIs. This change is to be one of designation only and the reference values are not being modified. The purpose of this rule is to replace the term "U.S.RDA" wherever used in Food and Nutrition Service program regulations with "RDI".

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Lori LeGault, Section Head, Food Science and Nutrition Section, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, (703) 305–2556.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Acting Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. The actual values used in the regulation are not being changed, only the name for the values is changing. Therefore, this change will have no effect on small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Catalog of Federal Domestic Assistance

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.553 respectively. Both programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983).

Paperwork Reduction Act

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this rule.

The Administrator of FNS has determined pursuant to 5 U.S.C. 553(b)(3)(B) that prior notice and comment on this rule prior to implementation is unnecessary and contrary to public interest, and therefore good cause exists for making this rule effective without prior public comment. This document makes technical changes and imposes no new requirements. This rule updates 7 CFR parts 210 and 220 to incorporate a change made in the Food and Drug Administration's (FDA) nutrition labeling regulations. There is no need for public comment because the change from the U.S.RDA reference to the RDI reference does not effect the basis of the regulation. In addition, FDA has already made this change in the nutrition labeling regulations the competitive foods rule must make the change in order to refer to an accepted reference.

Background

The Food and Drug Administration (FDA) requires that certain food products be labeled with information sufficient to apprise consumers of the nutritional content and value of the products. Food product labels are required to indicate on a per serving basis the percentage contribution of the product to the recommended daily consumption of certain vitamins and minerals considered essential for human nutrition. The amounts of these vitamins and minerals recommended for daily consumption are known as the U.S. Recommended Daily Allowances or U.S.RDAs. The U.S.RDAs are derived by FDA from the "Recommended Daily Allowances," published by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (NAS–NRC). The Department employs the U.S.RDAs in the National School Lunch, 7 CFR 210.11(b); Appendix B, and School Breakfast, 7 CFR 220.12(b)(1); appendix B, program regulations in describing foods of minimal nutritional value which are prohibited from being sold in school food service areas during regular meal service. The NAS–NRC Recommended Daily Allowances are referenced by the Department in the National School Lunch and Food Stamp Program regulations to describe nutritional goals of the programs.

In part to eliminate the public's confusion from the widespread use of both the U.S.RDAs and the NAS–NRC Recommended Daily Allowances, and in part to reflect recent increases in the scientific knowledge concerning human nutrition requirements, FDA is discontinuing use of the U.S.RDAs as of May 8, 1994. On that date, the U.S.RDAs will be replaced by the Reference Daily Intakes, or RDIs, and the Daily Reference Values or DRVs. RDIs will be used to describe recommended vitamin, mineral and protein consumption and DRVs in discussing fats and carbohydrates. RDI and DRV information will not be used on food product labels. Rather, FDA is adopting a new nutrition labeling reference, known as the Daily Value, which will combine RDI and DRV information and will be required on most packaged food products.

To coincide with FDA's replacement of the U.S.RDAs with RDIs and DRVs, the Department is updating its references to the U.S.RDAs in the regulations it administers. Effective May 8, 1994, the National School Lunch and School Breakfast Program regulations will be amended by substituting the term RDI in place of U.S.RDA. The Department's current references to the U.S.RDAs involve only vitamin and mineral content of food products. Therefore, no reference need be made by the Department to the DRVs as that term will refer only to the fats and carbohydrates. References to the NAS–NRC Recommended Daily Allowances in 7 CFR 210.10(b) and 272.5(b) will be unaffected by this regulatory change.

List of Subjects

7 CFR Part 210

Food Assistance Programs, National School Lunch Program, Commodity School Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food Assistance Programs, School Breakfast Programs, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: The provisions of part 210 issued under sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 17511760, 1779.

2. In § 210.11, the first sentence of paragraph (a)(2) is revised to read as follows:

§ 210.11 Competitive food services.

(a) * * *

(2) *Food of minimal nutritional value* means: (i) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intakes (RDI) for each of eight specified nutrients per serving; and (ii) in the case of all other foods, a food which provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. * * *

* * * * *

3. In appendix B, Categories of Foods of Minimal Nutritional Value, paragraph (b)(1) is amended by removing the acronym "USRDA" from the second sentence and adding the words "Reference Daily Intake (RDI)" in its place, and by removing the acronym "USRDA" from the third sentence and adding the acronym "RDI" in its place.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.2, the first sentence of paragraph (i-1) is revised to read as follows:

§ 220.2 Definitions.

* * * * *

(i-1) *Foods of minimal nutritional value* means: (1) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intake (RDI) for each of eight specified nutrients per serving; (2) in the case of all other foods, a food that provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. * * *

* * * * *

§ 220.12 [Amended]

3. In § 220.12, the second and third sentences of paragraph (b)(1) are amended by removing the acronym "USRDA" and adding the acronym "RDI" in its place.

Dated: March 31, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–10887 Filed 5–5–94; 8:45 am]

BILLING CODE 3410–30–U

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB67

Business and Industrial Loan Program

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) and Rural Development Administration (RDA) adopt their interim rule published August 3, 1993 (58 FR 41171), as a final rule without change. This action makes final the rule removing the deadline for filing applications for loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, Public Law 102–368. The intended effect is to provide no regulatory deadline for filing such applications.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, Ag. Box 3221, Washington, DC 20250–3221, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is:

10.768 Business and Industrial Loans.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and has been assigned OMB control number 0575–0029 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Send comments regarding this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0629), Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag Box 0743, Washington, DC 20250.

Discussion of the Rule

Business and Industry Disaster (BID) loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act cover costs arising from the consequences of natural disasters, such as Hurricanes Andrew and Iniki and Typhoon Omar, that occur after August 23, 1992, and receive a Presidential declaration. Since the legislative authority to issue guarantees under BID expired on September 30, 1993, a deadline of July 31, 1993, to file applications was placed in the regulation. This was intended to give RDA staff time to process any applications before the guarantee authority expired. Due to additional disasters that occurred in 1993, the application deadline is removed to allow additional time to apply for assistance.

This action was published as an interim rule in the **Federal Register** on August 3, 1993 (58 FR 41171), with a comment period ending September 2, 1993. No comments were received.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations, is amended by adopting the interim rule published August 3, 1993 (58 FR 41171), as a final rule without change.

Dated: April 28, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–10884 Filed 5–5–94; 8:45 am]

BILLING CODE 3410–07–U

FARM CREDIT ADMINISTRATION

12 CFR Part 608

RIN 3052–AB02

Collection of Claims Owed the United States; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 608 on March 21, 1994 (59 FR 13187). The final regulation adds 12 CFR part 608 to provide procedures for the FCA to administer claims owed to the United States arising from activities under FCA jurisdiction. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 6, 1994.

EFFECTIVE DATE: The regulation adding 12 CFR part 608, published on March 21, 1994 (59 FR 13187) is effective May 6, 1994.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

Philip J. Shebest, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: May 3, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–10995 Filed 5–5–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–57–AD; Amendment 39–8910; AD 94–10–03]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes Equipped With Honeywell Flight Management Computers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires deactivation of the Visual Omnidirectional Receiver/Localizer (VOR/LOC) option by revising the program pin wiring for the Flight Management Computer/Flight Control Computer (FMC/FCC). This amendment is prompted by reports of uncommanded roll mode changes on these airplanes during takeoff and landing due to incorrect initialization of VOR/LOC logic within the FMC. The actions specified in this AD are intended to prevent the airplane from deviating from its intended flight path due to an uncommanded change in the course of direction.

DATES: Effective on May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5343; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of uncommanded roll mode changes that have occurred on McDonnell Douglas Model MD–11 series airplanes during takeoff and landing. The airplanes involved in these incidents have been equipped with Honeywell Flight Management Computers (FMC) having part numbers 4059050–907 and 4059050–908. The incidents occurred when these FMC's were operating with the Visual Omnidirectional Receiver/Localizer (VOR/LOC) option selected.

Investigation revealed that these incidents of uncommanded roll mode changes were caused by one of the two FMC's not automatically resetting or clearing all VOR mode logic upon landing. If the VOR mode was selected on the previous inbound flight, and if this VOR mode is not automatically cleared after the airplane lands, the VOR logic may remain valid (in operation) in one of the two FMC's onboard the airplane. If, during a subsequent flight, the autoflight system is engaged to the FMC that still has the valid VOR logic [either by disconnecting the autopilot (AP) or by swapping autopilots (AP1 to AP2, or vice versa) with the "AUTOFLIGHT" switch], that FMC will automatically command the airplane into a VOR roll mode. The airplane will then follow this VOR mode logic guidance and fly in a direction not planned by the flight crew. Such an uncommanded change in course direction, if not corrected, could result in the airplane deviating from its intended flight path.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletin A34–55, dated April 22, 1994, that describes procedures for deactivating the VOR/LOC option on the subject Honeywell FMC's by removing the VOR/LOC pin from the Flight Management Computer/Flight Control Computer (FMC/FCC) configuration plug on the main avionics rack. This procedure will minimize the possibility of uncommanded roll mode changes.

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 and MD–11F series airplanes of the same type design, this AD is being issued to prevent the airplane from deviating from its intended flight path due to an uncommanded change in the course of direction. This AD requires deactivating the VOR/LOC option on certain Honeywell FMC's by removing the VOR/LOC pin from the FMC/FCC configuration plug on the main avionics rack. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–57–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–03 McDonnell Douglas: Amendment 39–8910. Docket 94–NM–57–AD.

Applicability: Model MD–11 and MD–11F series airplanes; equipped with Honeywell Flight Management Computers having part numbers 4059050–907 or 4059050–908, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from deviating from its intended flight path due to an uncommanded change in the course of direction, accomplish the following:

(a) Within 30 days after the effective date of this AD, deactivate the Visual Omnidirectional Receiver/Localizer (VOR/LOC) option by removing the VOR/LOC pin from the Flight Management Computer/Flight Control Computer (FMC/FCC) configuration plug on the main avionics rack, in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A34–55, dated April 22, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The deactivation procedure shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A34–55, dated April 22, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 23, 1994.

Issued in Renton, Washington, on April 29, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10776 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 92–ASO–22]

Alteration of Jet Routes; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of several jet routes in Florida. Alteration of the current jet route structure between Charleston, SC, Ormond Beach, FL, Savannah, GA, and Craig, FL, will enhance safety by increasing separation between Jet Routes J–79, J–121, J–174, and J–103 and the western boundary of Warning Areas W–157, W–158, and W–159.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On April 5, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several jet routes in Florida (58 FR 17541). An increase in the separation of the current jet route structure between Charleston, SC, Ormond Beach, FL, Savannah, GA, and Craig, FL, from the western boundary of Warning Areas W–157, W–158, and W–159 will enhance safety.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received from the Air Transport Association (ATA). The ATA believes that readjusting the boundaries of the warning areas is a better option for increasing the airspace clearance between the jet routes and the warning areas rather than creating doglegs. ATA contends that these changes will increase route mileage approximately .7 nautical miles, which translates into increased flight times, and increased operating costs to the airline industry.

In order to ensure adequate airspace separation between the warning areas' western boundaries and Jet Routes J–79, J–121, J–174, and J–103, it is necessary to realign these jet routes. Experience has shown that during the winter months, very strong westerly winds exist at the jet route altitudes which can cause aircraft to rapidly drift east of course toward the western boundaries of the warning areas. By moving the jet routes further to the west, this action will enhance safety by increasing the distance from the warning areas.

Adjusting the boundaries of the warning areas is not a feasible alternative at this time. Radar, telemetry equipment, and other range resources are strategically located based on existing warning area boundaries in order to support the essential military activity. Relocation of these resources would be a costly and lengthy process. Therefore, the FAA has determined that the most expeditious and cost-effective alternative is to alter the current jet route structure. Except for editorial changes, and the previous amendments to Jet Routes J–79 and J–174 (contained in Airspace Docket No. 92–ANE–45; effective May 27, 1993), this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of several jet routes in Florida. Alteration of the current jet route structures between Charleston, SC, Ormond Beach, FL, Savannah, GA, and Craig, FL, will increase separation from the western boundary of Warning Areas W–157, W–158, and W–159 and the jet routes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–51 [Revised]

From Craig, FL; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Columbia, SC; INT Columbia 042° and Flat

Rock, VA, 212° radials; Flat Rock; Nottingham, MD; Dupont, DE; to Yardley, NJ.

* * * * *

J-55 [Revised]

From Miami, FL; INT Miami 335° and Craig, FL, 192° radials; Craig; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

J-79 [Revised]

From Key West, FL, via Miami, FL; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 356° and Savannah, GA, 184° radials; INT Savannah 184° and Charleston, SC, 212° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 060° and Nantucket, MA, 254° radials; INT Nantucket 254° and Marconi, MA, 205° radials; Marconi; INT Marconi 006° and Bangor, ME, 206° radials; Bangor.

* * * * *

J-103 [Revised]

From Ormond Beach, FL; INT Ormond Beach 356° and Savannah, GA, 184° radials; Savannah.

* * * * *

J-121 [Revised]

From Craig, FL; INT Craig 016° and Charleston, SC, 212° radials; Charleston; Kinston, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Sandy Point, RI; INT Sandy Point 031° and Kennebunk, ME, 190° radials; to Kennebunk.

* * * * *

J-174 [Revised]

From Craig, FL; INT Craig 016° and Charleston, SC, 212° radials; Charleston; Wilmington, NC; Dixon NDB, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Hampton, NY; INT Hampton 069° and Marconi, MA, 228° radials; Marconi, to the INT of Marconi 090° and Nantucket, MA, 066° radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00"N., long. 74°43'59"W. Airspace above FL 410 is excluded between Snow Hill and Hampton

* * * * *

Issued in Washington, DC, on April 28, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division

[FR Doc. 94-10957 Filed 5-5-94; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 94-AAL-02]

Establishment of Class E Airspace; Saint George Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Saint George Island, AK. A Non-Directional Beacon/Distance Measuring Equipment (NDB/DME) standard instrument approach procedure (SIAP) has been developed for the new St. George Airport at Saint George Island Controlled airspace extending from 700 and 1200 feet above ground level (AGL) is needed for aircraft executing the approach and departure procedures. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL-531, Federal Aviation Administration, 222 W. 7th Ave. #14, Anchorage, AK, 99513-7587; telephone number: (907) 271-5898.

SUPPLEMENTARY INFORMATION:

History

On February 23, 1994, the FAA proposed to amend part 10 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Saint George Island, AK. (59 FR 12874.) A SIAP was being developed for the New St. George Airport at Saint George Island. The proposal was to add controlled airspace extending from 700 feet and 1200 feet AGL for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections to the proposal were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and controlled airspace extending upward from 700 or 1200 feet above ground level is now Class E airspace. Class E airspace designations for airspace areas extending upward from 700/1200 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Saint George Island, AK, to provide controlled airspace from 700/1200 feet AGL for aircraft executing the NDB/DME SIAP and departure procedures into and out of the New St. George Airport at Saint George Island.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AAL AK ES Saint George Island, AK [New]

New St. George Airport, AK

(lat. 56°34'42"N, long. 169°39'42"W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the New St. George Airport; and that airspace extending upward from 1,200 feet above the surface within a 10-mile radius of the New St. George Airport.

* * * * *

Issued in Anchorage, AK, on April 26, 1994.

Willis C. Nelson,

Manager, Air Traffic Division, Alaska Region.

[FR Doc. 94–10956 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–42]

Amendment to Class E Airspace; Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at the Portland International Airport, Portland, OR. Establishment of a new instrument approach procedure requires additional controlled airspace for the procedure. The Class E airspace will be depicted on aeronautical charts for pilot reference when the new approach procedures become effective.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–42, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 23, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace for the Portland International Airport, Portland, OR (59 FR 8568). Except for a typographical omission of one line in the description, and reconsideration and deletion of another line in the description, this rule is the same. No additional airspace, except that required for the new procedure, is required to compensate for those omissions and deletions. Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "control zone extension" and "transition area," replacing them with the designation "Class E airspace." Class E airspace designations for airspace areas extending upward from the surface of the earth, and Class E airspace designations for airspace areas extending upward from 700 feet above ground level, are published in Paragraphs 6003 and 6005 respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North American Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Portland, Oregon. It will provide controlled airspace for a new instrument approach procedure at the Portland International Airport. Amendment of the Class E airspace will result in greater safety and efficiency at, and in the vicinity of, the airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6003 Class E airspace areas designated as an extension to a Class C surface area

* * * * *

ANM OR E3 Portland, OR [Revised]

Portland International Airport, OR
(lat. 45°35′19″N., long. 122°35′51″W.)
Battleground VORTAC, WA
(lat. 45°44′52″N., long. 122°35′30″W.)
Portland VOR/DME, OR
(lat. 45°35′37″N., long. 122°36′23″W.)
Laker NDB, OR
(lat. 45°32′29″N., long. 122°27′44″W.)
OM
(lat. 45°37′24″N., long. 122°41′48″W.)
Pearson Airpark, WA
(lat. 45°37′14″N., long. 122°39′23″W.)

That airspace extending upward from the surface within 1.8 miles each side of the Battleground VORTAC 180° radial extending from the 5-mile radius of Portland International Airport to 3.1 miles south of the VORTAC and within 2.2 miles each side of the Portland Runway 10R ILS localizer west course extending from the 5-mile radius of the airport to 0.9 miles west of the OM; and that airspace within 3.8 miles each side of the Portland VOR/DME 055° radial extending from the 5-mile radius of the airport to 19 miles northeast of the VOR/DME; and that airspace within 1.8 miles north and 2.7 miles south of the 299° bearing from the Laker NDB, extending from the 5-mile radius to the NDB, excluding the airspace within the Portland-Troutdale, OR, Class D airspace area during the dates and times it is effective.

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Portland, OR [Revised]

Portland International Airport, OR
(lat. 45°35′19″N., long. 122°35′51″W.)
Newburg VORTAC, OR
(lat. 45°21′12″N., long. 122°58′41″W.)
Corvallis VOR/DME, OR
(lat. 45°29′58″N., long. 123°17′37″W.)
McMinnville Municipal Airport, OR
(lat. 45°11′40″N., long. 123°08′09″W.)

That airspace extending upward from 700 feet above the surface within a line beginning at lat. 45°59′59″N, long. 123°30′04″W; to lat 45°59′59″N, long. 122°07′50″W; thence via a 6.25-mile radius centered at lat. 45°54′50″N, long. 122°02′50″W; clock-wise to lat. 45°49′40″N, long. 121°58′00″W; thence via a line to lat. 45°46′30″N, long. 122°04′00″W; south along long. 122°04′00″W; bounded on the south by lat. 45°09′59″N, and on the west by long. 123°30′04″W, and within a 4.3-mile radius of the McMinnville Municipal Airport and within 2 miles each side of the Newburg VORTAC extending from lat. 45°09′59″N, to 19.8 miles southwest of the Newburg

VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°30′29″N, extending from 2.7 miles offshore to V–25, and on the east by V–25, on the south by V–536 to Corvallis VOR/DME, thence via lat. 44°29′59″N, to a point 2.7 miles offshore, and on the west by a line 2.7 miles offshore to the point of beginning.

* * * * *

Issued in Seattle, Washington, on April 18, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 94–10955 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–1]

Establishment of Class E Airspace; Morris, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Morris, IL, to accommodate an amended Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Morris Municipal-James R. Washburn Field Airport, Morris, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable Visual Flight Rules (VFR) requirements.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, February 8, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Morris, IL, (59 FR 5740). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace near Morris, IL, to accommodate an amended VOR–A instrument approach procedure to Morris Municipal-James R. Washburn Field Airport, Morris, IL. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for IFR operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Morris, IL [New]

Morris Municipal-James R. Washburn Field Airport, IL
(lat. 41°25′32″N., long. 88°25′07″W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of the Morris Municipal-James R. Washburn Field Airport, excluding that airspace which overlies the Chicago, IL, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on April 20, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–10954 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–41]

Establishment of Class E Airspace; Longmont, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace at the Vance Brand Airport, Longmont, CO. Establishment of a new instrument approach procedure requires additional controlled airspace for the procedure. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," replacing it with the designating "Class E airspace." The Class E airspace will be depicted on aeronautical charts for pilot reference when the new approach procedures become effective.

EFFECTIVE DATE: 0901 UTC, June 23 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–41, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1994, the FAA proposed to amend part 71 of the

Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace for the Vance Brand Airport, Longmont, Colorado (59 FR 8149). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," and airspace extending upward from 700 feet above ground level is now designated Class E airspace. Class E airspace designations for airspace extending upward from 700 feet above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North American Datum 93.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Longmont, Colorado. It will provide controlled airspace for a new instrument approach procedure at the Vance Brand Airport. Establishment of the Class E airspace will result in greater safety and efficiency at, and in the vicinity of, the airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Longmont, CO [New]

Vance Brand Airport, CO
(lat. 40°09′51N″, long. 105°09′41″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Vance Brand Airport, excluding the Fort Collins and Denver International Airport, Colorado, Class E airspace.

* * * * *

Issued in Seattle, Washington, on April 18, 1994.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 94–10953 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AAL–05]

Modification of Class D Airspace and Establishment of Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at Adak, Anchorage Merrill Field, Bethel, Juneau, Kenai, King Salmon, and Kodiak, AK, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

DATES: Effective date—0901 U.T.C., June 23, 1994. Comment date: Comments must be received on or before June 23, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 94–AAL–05, Federal Aviation Administration, 222 West 7th Ave. Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA receives no adverse comments in response to this action, this rule will become effective on the date specified in the "DATES" section. After the review, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Adak, Anchorage Merrill Field, Bethel, Juneau, Kenai, King Salmon, and Kodiak, AK, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective

September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The action also establishes Class E airspace during the hours the control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

AAL AK D Adak, AK [Revised]

Adak NAS Airport, AK
(lat. 51°52′53″N, long. 176°38′50″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Adak NAS Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK D Anchorage Merrill Field, AK [Revised]

Anchorage Merrill Field, AK
(lat. 61°12′52″N, long. 149°50′46″W)
Elmendorf Localizer
(lat. 61°15′14″N, long. 149°46′48″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at the mouth of Fish Creek, thence along Fish Creek to Northern Lights Boulevard, thence direct to the intersection of Tudor Road and the New Seward Highway, thence east along Tudor Road to its intersection with Muldoon Road, thence north along Muldoon Road to the Glenn Highway, thence direct to the mouth of Ship Creek, thence southwest along the southeast shore of Knik Arm to a line 2 miles south of and parallel to the Elmendorf localizer southwest course, thence west along that line to a line direct from Point McKenzie to the mouth of Fish Creek; thence southeast along that line to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

AAL AK D Bethel, AK [Revised]

Bethel Airport, AK
(lat. 60°46′47″N, long. 161°50′17″W)
Bethel VORTAC
(lat. 60°47′05″N, long. 161°49′27″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.1-mile radius of the Bethel Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK D Juneau, AK [Revised]

Juneau International Airport, AK
(lat. 58°21′18″N, long. 134°34′34″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 3-mile radius of the Juneau International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

AAL AK D Kenai, AK [Revised]

Kenai Municipal Airport, AK
(lat. 60°34′17″N, long. 151°14′52″W)
Kenai VOR/DME
(lat. 60°36′53″N, long. 151°11′43″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of the Kenai Municipal Airport; excluding the airspace below 1,100 feet MSL beyond 4 miles from Kenai Municipal Airport extending from the 312° bearing clockwise to the 348° bearing from the Kenai Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

AAL AK D King Salmon, AK [Revised]

King Salmon Airport, AK
(lat. 58°40′36″N, long. 156°38′58″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.2-mile radius of the King Salmon Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

AAL AK D Kodiak, AK [Revised]

Kodiak Airport, AK
(lat. 57°45′00″N, long. 152°29′38″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 3.1-mile radius of the Kodiak Airport, excluding that airspace west of a line 1.8 miles west of and parallel to the Kodiak Airport Runway 18–36. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AAL AK E2 Adak, AK [New]

Adak NAS Airport, AK
(lat. 51°52′53″N, long. 176°38′50″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Adak NAS Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK E2 Anchorage Merrill Field, AK [New]

Anchorage Merrill Field, AK
(lat. 61°12′52″N, long. 149°50′46″W)
Elmendorf Localizer
(lat. 61°15′14″N, long. 149°46′48″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at the mouth of Fish Creek, thence along Fish Creek to Northern Lights Boulevard, thence direct to the intersection of Tudor Road and the New Seward Highway, thence east along Tudor Road to its intersection with Muldoon Road, thence north along Muldoon Road to the Glenn Highway, thence direct to the mouth of Ship Creek, thence southwest along the southeast shore of Knik Arm to a line 2 miles south of and parallel to the Elmendorf localizer southwest course, thence west along that line to a line direct from Point McKenzie to the mouth of Fish Creek; thence southeast along that line to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK E2 Bethel, AK [New]

Bethel Airport, AK
(lat. 60°46′47″N, long. 161°50′17″W)
Bethel VORTAC
(lat. 60°47′05″N, long. 161°49′27″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.1-mile radius of the Bethel Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK E2 Juneau, AK [New]

Juneau International Airport, AK
(lat. 58°21′18″N, long. 134°34′34″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 3-mile radius of the Juneau International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

AAL AK E2 Kenai, AK [New]

Kenai Municipal Airport, AK
(lat. 60°34′17″N, long. 151°14′52″W)
Kenai VOR/DME
(lat. 60°36′53″N, long. 151°11′43″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of the Kenai Municipal Airport; excluding the airspace below 1,100 feet MSL beyond 4 miles from the Kenai Municipal Airport extending from the 312° bearing clockwise to the 348° bearing from the Kenai Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK E2 King Salmon, AK [New]

King Salmon Airport, AK
(lat. 58°40′36″N, long. 156°38′58″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.2-mile radius of the King Salmon Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

AAL AK E2 Kodiak, AK [New]

Kodiak Airport, AK
(lat. 57°45′00″N, long. 152°29′38″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 3.1-mile radius of the Kodiak Airport, excluding that airspace west of a line 1.8 miles west of and parallel to the Kodiak Airport Runway 18–36. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on April 26, 1994.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 94–10952 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rule Concerning Disclosures of Energy Consumption and Water Use Information About Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act; Range of Comparability for Clothes Washers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for clothes washers will remain in effect until new ranges are published. Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges published on April 16, 1991, will remain in effect until new ranges are published.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy an Conservation Act of 1975,[2] covering certain appliance categories, including clothes washers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all clothes washers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a clothes washer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, under § 305.10 of the rule, the Commission publishes new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15% Otherwise, the Commission publishes a statement that the prior range or ranges remain in effect for the next year.

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[1] 44 FR 66466, 16 CFR Part 305.

[2] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6294 *et seq.*

[3] Reports for clothes washers are due by March 1.

The annual reports for clothes washers have been received and analyzed and it has been determined to retain the ranges that were published on April 16, 1991.[4] In consideration of the foregoing, the present ranges for clothes washers, which were based on a national average electric rate of 8.24 cents per kilowatt hour and a national average natural gas rate of 60.54 cents per therm, will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–10936 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–001]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued: May 2, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule that adopted regulations to standardize the content of, and procedures for accessing, information relevant to the availability of service on interstate pipelines. The Commission is granting rehearing on one issue: the requirement to provide file downloads in an ASCII flat file format.

DATES: The implementation date for the regulations published on January 5, 1994 (59 FR 516) is June 1, 1994, except when specified otherwise.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

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Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Standards for electronic bulletin boards required under part 284 of the Commission's Regulations, Docket No. RM93–4–001.

Order No. 563–A

Order on Rehearing

Issued May 2, 1994.

I. Introduction

In Order No. 563,[1] the Commission adopted a final rule requiring the standardization of information relating to transportation of natural gas across the interstate pipeline grid. The standards adopted by the Commission reflected the consensus agreements reached by the natural gas industry through a series of informal conferences established by the Commission. Under these standards, pipelines will have to provide access to the required information both on their Electronic Bulletin Boards (EBBS) and through files which users can download from the pipelines' computers to their own computers. Pipelines are required to implement the requirements of this rule by June 1, 1994, except for the requirements regarding a common code for gas transaction points which are to be implemented by November 1, 1994.

Nineteen parties have sought rehearing or clarification regarding some of the requirements of the rule and the standards and communication protocols.[2] The Commission grants rehearing on one issue, downloads in a standardized ASCII flat file format. The

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[4] 56 FR 15274.

[1] Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993).

[2] The parties seeking rehearing and clarification are listed in Appendix A.

Commission had required pipelines to provide for file downloads in two formats: The first complied with established communication standards and protocols for Electronic Data Interchange (EDI) and the second would have required that downloads be made available in a standardized ASCII flat file specified by the Commission. The Commission agrees with those seeking rehearing that the future of communications in the industry will be enhanced by the development of one industry standard based on established communication standards and protocols, rather than by promulgation of a second non-standardized methodology that has significant disadvantages compared with EDI. The Commission also clarifies the requirements of the rule and the protocols as discussed below.

II. Background and Summary of Order No. 563

In Order No. 636,[3] the Commission required pipelines to establish EBBs to provide shippers with equal and timely access to relevant information about the availability of service on their systems, including service available through capacity release transactions and firm and interruptible capacity available directly from the pipeline.[4] The Commission recognized that the efficiency of capacity allocation would be enhanced by standardizing both the content of capacity release information and the methods by which shippers could access that information.[5]

To facilitate the development of industry standards, the Commission established informal conferences between the staff and all interested members of the gas industry. The participants at these conferences divided their efforts into five Working Groups.[6] The Working Groups submitted a series of reports to the Commission summarizing their deliberations and the agreements reached. The Commission noticed these reports and provided an opportunity for public comment.

The final rule adopted the consensus agreements reached by the industry in the Working Groups, with only slight modifications. Sections 284.8(b)(5) and 284.9(b)(4) require pipelines to provide standardized information relating to firm and interruptible service on their EBBs and to provide users with the ability to download the standardized information in compliance with standardized procedures and protocols. The rule provides that the details of the required information, procedures, and protocols will be made available in a document entitled "Standardized Data Sets and Communication Protocols," which will be available at the Commission's Public Reference and Files Maintenance Branch.

The standardized data sets specify the information concerning capacity availability that pipelines must provide both on their on-line EBBs and through downloadable files.[7] This information includes offers to sell firm capacity (either by the pipeline or releasing shippers), bids for capacity, awards of capacity, withdrawals of capacity offers and bids, operationally available (*i.e.*, interruptible) and unsubscribed firm capacity, and system-wide notices. In addition, the Commission established a mechanism for creating a common code data base for identifying pipeline transaction points, such as receipt and delivery points.

The communication protocols establish principles and procedures relating to the operation of pipeline EBBs and the provision of downloadable files to users. The most important of these protocols is the requirement that the pipelines provide downloadable files that conform to the standards for Electronic Data Interchange (EDI) promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12.[8] In addition to EDI, the Commission had required the pipelines to provide for file downloads in a standardized ASCII flat file format,[9] but the Commission is deleting this requirement on rehearing.

In the rule, the Commission recognized that as pipelines began the process of implementing the data sets, they could discover problems requiring modifications. The Commission stated that pipelines should communicate any problems to the Working Groups, which should make the necessary modifications to the data set and submit them to the Commission in sufficient time to permit implementation of the requirements by June 1, 1994.

On March 4, 1994, Working Groups 1 & 2 filed revised capacity release data sets and an implementation guide for downloading these data sets using EDI. Public notice was given of the filing with an opportunity for comments. By order dated April 1, 1994, the Commission accepted the revised data sets and implementation guide.[10]

The initial Working Group reports included a number of issues on which the Working Groups had not yet reached agreement. In the Notice of Proposed Rulemaking (NOPR), the Commission concluded that the Working Groups should take more time to consider these issues and try to reach consensus. The Commission provided that the Working Groups submit reports on these matters to the Commission by February 1, 1994. In Order No. 563, the Commission found that resolution of these issues should await the February 1, 1994 reports. Nevertheless, many of the requests for rehearing and clarification address the same issues.

The Commission has received a number of reports from the Working Groups, which were publicly noticed with an opportunity for comments.[11]

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[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992).

[4] 18 CFR 284.8(b)(3)(4), 284.9(3)(4).

[5] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,549.

[6] Working Groups 1 and 2 were responsible for developing data sets setting forth the information concerning available capacity. Working Group 3 was responsible for developing standards relating to business transactions between pipelines and their customers unrelated to the sale or release of capacity. Working Group 4 was responsible for developing a set of communication protocols governing the dissemination of the information. Working Group 5 was responsible for developing codes to identify companies and common transaction points.

[7] On-line EBB refers to a continuous computer connection between a pipeline EBB and a user's computer in which the information from the pipeline's computer is displayed visually on the user's computer and the user can enter data directly to the pipeline's computer. File downloading refers to the transfer, in computerized format, of a file from the pipeline's computer to the user's computer. The user then can use other computer programs to manipulate the data off-line when it is not connected to the pipeline's computer.

[8] ASC X12 standards provide an electronic data submission capability that allows computers to exchange information over communication lines using standardized formats. Since the ASC X12 transaction sets provide generic data groups applicable to a range of potential applications, the transaction sets must be customized to individual applications by correlating or "mapping" the specific information to an ASC X12 transaction set through an implementation guide.

[9] ASCII refers to the American Standard Code for Information Interchange, a code for character representation. ASC X12 downloads also use ASCII characters. The term ASCII flat file download refers to a standardized file download capability that does not meet the requirements of the ASC X12 standards.

[10] 59 FR 16537 (Apr. 7, 1994), 67 FERC ¶ 61,006 (1994).

[11] Working Groups 1 & 2 could not reach consensus on several issues, and submitted reports from participants on the following issues: proposals for electronic index of purchasers which would provide information about the capacity rights of firm shippers, position papers on whether to require disclosure of aggregate firm and interruptible nominations at pipeline points, and position papers on the methods for recovering

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When appropriate, the Commission will address these issues in this order to provide the Working Groups with guidance as to how to proceed.

The Commission will address the issues raised by the rehearing requests in the following areas: data set implementation and maintenance; specific information included, or proposed to be included, in the data sets (operationally available capacity, unsubscribed firm capacity, and firm and interruptible flowing volume); electronic communication issues (ASCII flat file downloads, file uploads, and subset downloads); common codes for companies and gas transaction points; additional standards for an Index of Purchasers and non-capacity business transactions; and proposals relating to the method for recovering the costs for implementing standards.

III. Issues Relating to Data Set Implementation And Maintenance

A. Implementation Date

AER/MRT contend that the June 1, 1994 implementation date places too great a burden on the pipelines, because they are still in the midst of refining their restructured services and the compliance burden falls during the critical shoulder months between January and March. They suggest a December 1, 1994 date. In particular, they contend that they require the implementation guide for the ASC X12 data sets by February 1, 1994, and suggest that, if that date is not met, the June 1, 1994 date should be relaxed.

The Commission will not change the implementation date. In Order No. 563, the Commission agreed to extend the implementation date from the April 1, 1994 date proposed in the NOPR until June 1, 1994. But, with this extension, the Commission expected a fully operational set of standards to be in place by June 1. Working Groups 1 and 2 stated in their comments that the June 1 date can be met if the ASC X12 implementation guide is available by March 1, 1994, and the Working Groups substantially met this deadline, filing the data sets and implementation guide with the Commission on March 4, 1994, with public notice given on March 7, 1994. AER/MRT is the only party alleging that the June 1 date cannot be met, and they have not provided sufficient justification for extending the date further.

B. Periodic Reports

In Order No. 563, the Commission found no need for requiring pipelines to file tariffs specifying how they would comply with the rule or to file periodic reports of their implementation progress. UDC/AGD renew their request that pipelines be required to file periodic reports. Without such reports, they maintain no formal procedure would exist to provide information on implementation progress or problems. They further claim such reports would provide useful information about the development of the secondary market and the interplay between interruptible and released capacity.

The Commission denies the request for rehearing. As stated in Order No. 563, the Commission will monitor implementation of the rule by accessing the pipelines' EBBs, continuing to hold industry conferences, and by examining complaints. These mechanisms provide a far more flexible method of oversight than attempting to specify particular items of information for inclusion in periodic reports. As stated earlier, the Commission is committed to monitoring the EBBs and the implementation of the standards, and to making revisions when needed.

C. Mechanism for Making Revisions to the Data Sets

In Order No. 563, the Commission recognized that the standardization process was an ongoing one, which would require revisions and modifications to the data sets and protocols as the industry obtains experience with operations under the standards. The Commission stated it would continue the informal conferences and the Working Groups as the best means for monitoring the standards, but did not adopt a specific mechanism for implementing proposed changes. The Commission found that its determination of the proper method for making revisions may depend on the type of change contemplated. The Commission stated, however, that in considering proposed changes, it would comply with the Administrative Procedure Act (APA) and ensure parties have notice and an opportunity to comment on proposed changes.

Tenneco Gas asserts that providing a mechanism for addressing changes to the standards is critical and requests the Commission to adopt a specific mechanism for making changes, which is both flexible and responsive. KGPC contends many participants are unable to commit the resources to remain actively involved in the Working Group process and urges the Commission to ensure adequate communication to the industry of proposed changes with an opportunity for comment. AER/MRT similarly request clarification that the Commission will comply with the APA and provide notice and an opportunity for comment.

The Commission recognizes that the standards and protocols will have to be revised and that a flexible mechanism is needed for effectuating such changes. To provide the needed flexibility, the Commission adopted only a general regulation referencing the separate standards and protocols and did not include those standards and protocols in the Code of Federal Regulations. However, as explained in Order No. 563, the Commission cannot commit to one method for making revisions because different circumstances may demand different procedural mechanisms; for example, maintenance of the existing data sets may be treated differently than implementation of new requirements. As stated in Order No. 563, in making changes, the Commission will adhere to the APA and provide notice and an opportunity for public comment before implementing changes.

The Commission will clarify that the process for maintenance of the data sets promulgated in the rule will be generally the same as the process used previously to adopt the revised data sets and implementation guide. The Working Groups will file their suggested changes, which will be noticed with an opportunity provided for comment. To facilitate discussion or improve understanding of proposed changes, Commission staff may convene a technical conference to review the changes with the industry. The Commission will then issue an order adopting the data sets. This process will enable the Commission to make changes in a timely fashion while still preserving the industry's ability to comment on the changes. The Commission also encourages the Working Groups to consider other methods of informing non-participants of impending changes prior to filing with the Commission so that the Working Groups themselves will be able to avail themselves of a broad spectrum of input.

While the Commission recognizes the need to revise the data sets, it also recognizes that making revisions and changes on a piecemeal basis may be cumbersome and create added programming costs for both the pipelines and those obtaining

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electronic communication costs. Working Group 5 submitted reports on a consensus agreement for implementing a common code for company names. Working Group 4 submitted a final report on communication protocols and operational logistics. Working Group 3 submitted a report containing a proposal for implementing standards for nominations and confirmations and a schedule for developing standards for other business transactions. Several participants also submitted position papers on the issue of ASCII flat file downloads.

information either from the EBBs or through downloadable files. The Commission encourages the Working Groups to consider an appropriate schedule for accumulating and submitting revisions.

Tenneco Gas states it did not understand that the Working Groups would continue indefinitely. AER/MRT contend that the Working Groups provide only a temporary solution and urge the Commission to recognize the contemplated Gas Industry Standards Board (GISB) as the appropriate group to handle standards development. Although GISB is still in its formative stage, AER/MRT recommend the Commission endorse GISB and charge it with the mission of further standards development. Columbia Distribution suggests that one Working Group would be more efficient than the current five, because the participants in the five Working Groups are essentially the same and one Working Group would streamline the process.

The Commission finds that some mechanism for consideration and modification of the standards, whether GISB or the Working Groups, must continue into the future. At this point, reliance on the GISB concept is premature, and the Commission will continue the Working Group process which has worked very well in developing standards. As stated in Order No. 563, the Commission will consider the GISB concept when a final proposal has been developed and the Commission can consider its impact on all facets of the gas industry. Meanwhile, the Working Groups should not delay or defer development of standards in anticipation of the implementation of GISB. The Commission will leave the structure of the Working Groups to be resolved by the industry at the informal conferences.[12]

D. Operation of the Data Sets

1. Mandatory, Optional, and Conditional Nature of the Fields

In the consensus data sets adopted by Order No. 563, data fields were denominated as mandatory, optional, and conditional.[13] The Commission found that the rule required all pipelines to support the mandatory data fields. Pipelines would choose whether to support the optional fields, unless they were required to support these fields by their tariff. The Commission also stated that pipelines were required to display all information, whether mandatory or optional, on their on-line EBBs.

AER/MRT seek clarification that the Commission was standardizing only the information to be provided on the on-line EBBs, not the format in which the information is to be displayed. Others seek clarification about the display of all the mandatory data fields on the on-line EBBs.[14] They contend certain mandatory fields in the downloadable data sets are required only for file transfers, but not for interactive, on-line transactions. They assert users of on-line EBBs will know some of the information in the mandatory fields without having it displayed, so that required posting of the information is unnecessary and will only clutter the EBB screens.[15] They maintain that the only requirement should be that the on-line EBB contain information comparable to the data sets.

KGPC, PEC Pipeline Group, and AER/MRT also request clarification that pipelines are not required to display optional information on their on-line EBBs unless they choose to do so or their tariffs require the display of that information. NGC requests clarification that pipelines must support the conditional fields.

The Commission will clarify its requirements. The Commission required all pipelines to support the mandatory fields because Order No. 563 included certain substantive requirements that pipelines may not previously have been required by their restructuring orders to disclose on their EBBs. For example, not all pipelines may be providing the information found in the operationally available capacity and critical notice data sets on their EBBs. The intent of the requirement was only to ensure that the downloadable data sets and the on-line EBBs conveyed comparable information. Accordingly, the Commission agrees that fields not required for on-line EBB use need not be displayed, so long as the on-line EBB and the downloadable data set convey comparable information.

Display of optional fields on the on-line EBB must take place when such fields are included in the downloadable data sets (unless, as stated above, they are not necessary for on-line use). Conditional fields must be supported by the pipelines when the conditional field is dependent on information in a mandatory field.[16] If the conditional field is predicated on the response to an optional field, the conditional field will have to be supported only if the pipeline supports the optional field.

2. Pipeline Modification of the Data Sets

In Order No. 563, the Commission stated that pipelines could not add fields to, or delete fields from, the data sets, finding that standardization required that all pipelines use the same structure for downloading. ASC X12 software is keyed to specific fields on the implementation guide, and the Commission was concerned that if pipelines could add or delete fields, shippers' software could not interpret the information. The Commission pointed out that the data sets were designed flexibly to accommodate special release offers or unique circumstances by including fields for special terms and miscellaneous notes.

KGPC contends EDI permits the addition of fields without inhibiting communication with parties not using the additional fields. It asserts the Commission should not unnecessarily inhibit the ability of the pipelines to customize their EDI transactions with trading partners.

Although KGPC is correct that fields can be added to the ASC X12 data sets without affecting the ability of others to use the original version, the Commission is concerned that if pipelines routinely add fields, the result would be a plethora of non-standard data bases, and users of multiple pipeline data bases could have difficulty accessing information that others could obtain.[17] The Commission, therefore, will not permit pipelines to add additional fields.

Working Groups 1 & 2 are concerned about situations in which the circumstances facing a particular pipeline do not fit the standardized format. They cite, as an example, a mandatory data field denominated a yes/no (Y/N) field and a pipeline needing a third category (U) for unknown. They suggest the following working principle for dealing with these problems: the pipeline will make a good faith effort to comply with the data sets, but if it cannot, it must explain any discrepancies and seek a correction through the Working Group process.

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[12] At an informal conference held on April 12, 1994, the participants did decide to consolidate into one Working Group. *See* Notice of Consolidation of Electronic Bulletin Board Working Groups, issued April 19, 1994. The Commission expects the combined Working Group to adhere to the schedules set forth in the rehearing requests and other filings submitted by the individual Working Groups.

[13] Conditional fields are filled only when a condition in another field is met.

[14] KGPC, PEC Pipeline Group, Tenneco Gas, Working Groups 1 & 2.

[15] Working Groups 1 & 2 point to the fields for rate schedule, stand-alone offer indicator (whether the offer is tied to another offer), and offer type (indicating the type of capacity being offered) as examples of information that would be implicitly known to users of on-line EBBs and so need not be included on the EBB display.

[16] For example, the prearranged deal field is a mandatory field requiring a yes/no response Pipelines, therefore, must support all the fields conditioned on the response to the prearranged deal field.

[17] A simple example would be a standardized data set with 30 items. If pipeline 1 added data item 31 and pipeline 2 added data item 31 to provide different information, a user of both pipelines would be unable to use the 31st data item because its meaning would not be standardized.

The Commission is concerned about pipelines changing the meaning of data set items. While the addition of an unknown element for a field, as Working Group 1 & 2 suggest, would seem unlikely to cause major communication difficulties, the Commission cannot determine whether other changes in meaning might adversely affect those seeking to obtain information from multiple pipelines.[18] Thus, pipelines should make every effort to use the data sets as promulgated, for instance, using a "no" indicator or the miscellaneous note field even if these are not optimum solutions. When pipelines encounter difficulties in using the standardized data sets, they should inform the Working Groups so that revisions can be considered. Once changes are received from the Working Groups, the Commission is committed to reviewing them as quickly as possible, but the Working Group changes may not be implemented unilaterally without Commission approval.

IV. Issues Relating to Specific Information Included in the Data Sets

A. Operationally Available (Unscheduled) Capacity

The Commission adopted the Working Groups' consensus agreement to require the pipelines to provide information on the amount of unscheduled capacity available at specific locations, such as receipt and delivery points, mainline, or mainline segments. The Commission found that this information satisfied the pipelines' obligation to post the capacity available for interruptible service.[19]

1. Objection To Posting the Amount of Operationally Available Capacity

TGPL requests rehearing of the requirement to post the actual quantity of unscheduled capacity. It contends the posting of detailed information on unscheduled capacity will serve only to reduce the value of interruptible and firm service, because potential shippers can use the unscheduled capacity information to demand the lowest price for the capacity. It asserts the regulatory obligation to post interruptible capacity could be satisfied by the pipelines simply indicating that interruptible capacity is available.

The Commission denies TGPL's rehearing request. The Working Groups reached a consensus agreement to provide unscheduled capacity, and TGPL is the only party raising an objection. Moreover, a marker indicating that interruptible capacity is available is not sufficient to comport with the regulatory requirement to post available capacity. Under the Commission's open access regulations, pipelines cannot withhold available capacity, and shippers, therefore, have the right to know the amount of capacity available. Moreover, shippers need to know the amount of interruptible capacity available in order to make a reasonable determination of whether interruptible service is sufficient for their needs or whether they need to seek released firm service.

2. Derivation of the Estimates of Operationally Available Capacity

In Order No. 563, the Commission stated that the data for operationally available capacity could be estimates, and left to the Working Groups the issue of whether an additional field would be needed to describe how the estimates were derived. Working Groups 1 & 2 reached agreement that a new field was not needed. They suggest a good faith effort by each pipeline to provide a commercially reasonable estimate using internally consistent methods is sufficient. The Commission, therefore, will not require the additional field at this time.

B. Unsubscribed Firm Capacity

KGPC requests clarification that the Commission's reference in Order No. 563 to pipelines' posting their available firm capacity in the offer data set does not require any change in its current practices for posting its available firm capacity. KGPC states that, because it is a grid system with thousands of receipt and delivery points, it cannot post in the offer data set the myriad configurations of firm capacity paths that might be available.[20] Instead, it states that it posts on its EBB the capacity available at each point and the subscribed capacity at each point. Potential shippers then request possible combinations of capacity paths, and if KGPC determines firm capacity is available along these paths, the resulting firm service will be posted in the capacity offer section of the EBB.

The revised data sets submitted by Working Groups 1 & 2, and adopted by the Commission have accommodated KGPC's concern. The operationally available capacity data set includes fields permitting pipelines to post unsubscribed capacity available at receipt and delivery points, as KGPC states it does now. Once a potential shipper submits a request for a capacity path that is available, the pipeline would then post the offer for that path in the offer data set.

C. Information on Firm and Interruptible Flowing Volume

NGSA and NGC contend the Commission needs to require additional information to satisfy the pipelines' obligations to post available firm and interruptible service.[21] NGSA asserts the firm capacity available through capacity release is only a piece of the total picture of firm capacity needed by potential shippers. NGSA contends the Commission also should require pipelines to post the total amount of unscheduled (potentially available) firm capacity. NGC contends potential shippers cannot make reasonable pricing decisions unless they know flowing primary firm volumes, flowing secondary firm volumes, flowing interruptible volumes, and unscheduled volumes. KGPC, on the other hand, maintains that the Commission should not require the posting of any information in addition to the unscheduled capacity already required.

Working Groups 1 & 2 were unable to reach consensus on whether to require additional information about firm and interruptible volumes or nominations at each point. Their February 24, 1994 report contained papers from three groups on this issue. One group[22] supported the arguments of NGSA and NGC that detailed information about flowing firm and interruptible volumes is needed for shippers to make informed decisions about the capacity to purchase.

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[18] For example, those using multiple pipelines may have difficulty learning of such changes, and their computer software may not be able to effectively process data sets from multiple pipelines if the meanings of elements are different.

[19] 18 CFR 284.9(b)(3).

[20] The offer data sets would require the pipeline to define the points between which the capacity is being offered.

[21] 18 CFR 284.8(b)(3).

[22] Ad hoc Group of Power Generators, American Iron & Steel Institute, Amoco Production Company, Baltimore Gas & Electric, Chevron U.S.A. Production Company, Conoco, Inc., Destec Energy, Edison Electric Institute, Fuel Manager's Association, Gaslantic Corporation, GPM Gas Corporation, Marathon Oil Company, Natural Gas Clearinghouse, New England Power Company, O & R Energy Inc., Oryx Gas Marketing Company, Oryx Energy Company, Phillips Gas Marketing Company, Phillips Petroleum, Company, Process Gas Consumers, Texaco Gas Marketing, Inc., Vastar Gas Marketing, Inc., Virginia Power Company.

A second group[23] opposes providing any additional data. They contend the information is not readily available, the costs of providing it would be high, and the information is not related to capacity release. They also assert the information would tilt the capacity release market to favor capacity seekers at the expense of capacity holders. Whenever the information showed that significant interruptible volumes are scheduled to flow, they maintain the value of released firm capacity would be devalued. They further contend the now devalued released capacity will displace interruptible pipeline capacity, thereby reducing the interruptible revenue credits provided to firm shippers.

A third group[24] submitted a compromise seeking to balance the need for information about flowing volumes with the costs of providing that information. Under their proposal, the pipelines would provide a "flag" indicating that interruptible volumes are flowing at a point which would otherwise have no operationally available capacity. They assert that this flag would alert both buyers and sellers that firm capacity at the point is available and could be valuable: if interruptible volumes are flowing at a point that is operationally full, a purchaser of firm capacity could bump the interruptible shippers.[25] They assert the cost of providing this flag is less than the cost of providing the estimated quantities.

Public notice of these filings was given on March 3, 1994, and the PEC Pipeline Group submitted a comment supporting the interruptible flag proposal. It contends the flag provides a reliable indicator of the availability of firm capacity (by showing that interruptible gas is flowing), but at a fraction of the cost of the proposal to post flowing volumes.

The Commission finds that the flag proposal identifying when interruptible capacity is flowing at constraint points provides a reasonable compromise between informing users that firm capacity may be available at certain locations and the costs of providing that information. With the addition of information on interruptible capacity provided by the "flag," shippers will have a sufficiently broad range of information about capacity availability. They will know the amount of capacity available at points (operationally available capacity), whether firm capacity is available at constraint points (interruptible flag), the firm capacity available through posted release transactions, and the unsubscribed firm capacity available from the pipeline. This information should be sufficient for shippers to make reasonable decisions about the transportation option to select. The Working Groups must include the interruptible flag in the next iteration of the data sets.

V. Electronic Data Interchange

A. ASCII Flat File Downloads

In addition to adopting the consensus agreement to require EBB operators to provide for electronic file downloading using EDI, the Commission also required pipelines to make the data sets available in a standardized ASCII flat file format in an effort to ease the transition to EDI for those not familiar with this technology. The Gas*Flow group, which was to develop the EDI implementation guide, also was to provide the ASCII flat file formats.

A number of parties seek rehearing or modification of the requirement to provide downloads in a standardized ASCII flat file format.[26] They contend the requirement for ASCII flat file downloads goes beyond the consensus agreement of Working Group 4, which left the provision of ASCII flat file downloads up to the pipeline. They assert that imposing a redundant download capability is costly and provides little benefit. Natural and INGAA contend the requirement is unjustified since only two comments on the NOPR requested ASCII flat file downloads and the Commission failed to make an effort to estimate the number of customers wanting to use ASCII flat files. Tenneco Gas maintains ASCII flat file downloads pose a risk to the receiver of information, because they do not contain the safeguards inherent in the ASC X12 process. AER/MRT assert the Commission should limit the requirement to provide ASCII flat file downloads to seven months, which will provide a sufficient transition period while reducing the burden on the pipeline to maintain two formats indefinitely. A number of parties also argue that Gas*Flow will not be supporting ASCII flat file standards because such an effort goes beyond its charter.[27]

Working Groups 1 & 2, PEC Pipeline Group, TGPL, and Tenneco Gas suggest that, if the ASCII flat file requirement is not eliminated, the Commission modify the requirement that the pipelines provide ASCII flat file downloads according to a standardized format. Instead, they recommend the pipelines be free to develop their own ASCII flat file format.[28] TGPL believes standardization is not needed because customers wanting to use ASCII flat files in place of ASC X12 are most likely to be small customers transacting business primarily, if not exclusively, on a single pipeline.

The Commission also has received filings from Working Group 3 and other parties arguing that while ASCII flat file downloads are easy to document and import into spreadsheet programs, communication using ASCII flat files has significant disadvantages when compared with ASC X12 communication.[29] The cited disadvantages of ASCII flat file downloads are: the ASCII flat file format itself is inefficient and inflexible, because it relies on sequential data display; ASCII flat files are less reliable because validation programs are available for ASC X12, but not for ASCII flat files; the lack of validation also makes using ASCII flat files more labor intensive and expensive; and ASCII flat files do not provide a foundation for further standardization in the industry as does ASC X12.

Although Enron Gas Services Corporation created an ASCII flat file format should the Commission wish to use it, neither Enron nor Gas*Flow supports the use of ASCII downloads. Enron further states that requiring pipelines to provide ASCII flat file downloads is not necessary even for users wanting to use a flat file format. It maintains that these users can obtain commercially available software at low cost which will translate the ASC X12 information into an ASCII flat file format.

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[23] ANR Pipeline Company, Brooklyn Union Gas Company, Colorado Interstate Gas Company, Great Lakes Gas Transmission Limited Partnership, Koch Gateway, Natural Gas Pipeline Company, Transco Gas Pipeline, Williston Basin.

[24] Algonquin Gas Transmission, Consolidated Natural Gas, East Tennessee Natural Gas, Enron Corp., Kern River Gas Transmission, Midcon, Midwestern Gas Transmission, National Registry, Natural Gas Pipe Line, Panhandle Eastern Pipe Line, Producer-Marketer-Transportation Group, Southern California Edison, Southern California Gas, Tennessee Gas Pipeline, Texas Eastern Transmission, Trunkline Gas Company, Washington Gas, Williston Basin Interstate Pipeline.

[25] If the shipper sought to use interruptible transportation, it might not be able to receive service if the point was constrained. Its ability to receive service would depend on the pipeline's tariff mechanism for allocating interruptible capacity when requests exceed demand.

[26] AER/MRT, INGAA, Natural, PEC Pipeline Group, Tenneco Gas, TGPL, Working Groups 1 & 2.

[27] Natural, TGPL, Tenneco Gas, Working Groups 1 & 2.

[28] Working Groups 1 & 2 assert each pipeline should be responsible for defining its ASCII flat file in either a fixed field or delimited form. It encourages the pipelines to use the same field names as in the Commission approved data sets and to apply the pipelines' format (fixed field or delimited) consistently across all customers.

[29] March 9, 1994, filing from Working Groups 1 & 2, and March 25, 1994 filing from Working Group 3.

The Commission will grant rehearing and eliminate the requirement that pipelines provide an ASCII flat file download.[30] Working Group 4 reached consensus on using only EDI as the industry standard for file downloading.[31] Both Working Groups 1 & 2 and Working Group 3 oppose the ASCII flat file requirement as not being in the long term interest of the industry. Moreover in response to the NOPR's request for comment on this issue, only two commenters favored a requirement that pipelines provide a flat ASCII download.

On reconsideration, the Commission agrees with those requesting rehearing that the future of electronic communications in this industry will be better served by establishing one industry standard based on already established communication protocols, such as ASC X12 EDI, rather than by developing a second system which is not based on recognized communication standards and which would provide a less reliable method of communication. The provision of a transition period to EDI does not warrant the expense of establishing a standardized ASCII download capability. Users that are not currently EDI capable will still be able to use the EBBs to conduct capacity release transactions while they are learning EDI.[32] In addition, ASCII flat files may be designed in different configurations depending on the customer's use for that data. The Commission's specification of a particular format, therefore, would not necessarily have met customers' needs.

Moreover, the Commission's adoption of ASC X12 EDI standards for communication has created the foundation for software vendors to develop specific software or other services which will convert the standardized ASC X12 EDI data into the file structures needed by users, whether large or small. For example, in other industries, software vendors have developed low-cost desktop EDI translators for personal computers that convert from EDI to a flat ASCII file structure (a "canned" file structure) without the user having to understand EDI or learn how to program or operate the translator.[33] The Commission is confident that all customers will be able to acquire software or other services that meet their individual data communication needs at reasonable prices. Relying on the market to develop such services is preferable to the Commission mandating a second file download structure that may not even provide a good fit with customers' needs.

B. Uploading and Subset Downloading

In Order No. 563, the Commission stated that the ability of users to transmit (upload) capacity release files to the pipelines' computers and to download subsets of files would enhance communication efficiency for capacity release transactions. File upload capability would permit users to submit offers to release and bids without using the pipelines' EBBs, while subset downloads would permit users to obtain only the capacity release files they need.

KGPC contends the development of file uploads and subset downloads should be driven by market demand, so the pipeline has some assurance its customers want the service before being compelled to provide it. Tenneco Gas suggests the development of file uploads for capacity be delayed until after the upload capability being developed by the Working Groups for nominations and confirmations is underway. It contends most industry participants at the Commission's conference gave first priority to the development of upload capability for nominations and that upload capability for capacity release, particularly for bids, is more difficult to develop. It also states upload capability should be market driven, because the parties supplying the upload information are not pipelines. NGSA supports the development of file upload and subset download capability and suggests this task is within the purview of Working Group 1, not Working Group 4 (as stated by the Commission).

In their March 4, 1994, filing, Working Groups 1 & 2 provided data sets that would enable users to download subsets of capacity release information and these have been adopted by the Commission. Working Groups 1 & 2 have agreed to report by June 1, 1994 on capacity release uploading and ask the Commission not to prejudge the issue.

The Commission still is interested in the use of file uploads to facilitate capacity release by eliminating the need for shippers and bidders to go through the process of signing-on to EBBs to submit offers and bids. But the Commission will not require the Working Groups to go forward with this approach until Working Groups 1 & 2 have the opportunity to make their June 1, 1994 filing on this issue.

VI. Common Codes

A. Common Company Codes

In the NOPR, the Commission stated that it expected Working Group 5 to finalize its proposal for identifying companies by use of a common code by February 1, 1994. In its March 24, 1994 report, the Working Group stated it has reached consensus on a procedure for assigning company codes. The Working Group states that use of company names alone is unreliable because different abbreviations and aliases would render electronic posting ineffective. The Working Group, therefore, selected the D-U-N-S Number assigned to companies by the Dun & Bradstreet Corporation as the common code number. The Working Group states that Dun & Bradstreet will assign a D-U-N-S number free of charge to any company that can establish that it is a business entity located at a specific address and engaged in a legitimate business. Dun & Bradstreet also allows trading partners to exchange D-U-N-S numbers without charge and will provide the company name and address corresponding to a D-U-N-S number to any other party requesting the information for internal use.

The Working Group proposes that pipelines provide a means by which capacity release participants can provide common code numbers to be used in EDI transactions involving the capacity release data sets. The participants would be solely responsible for obtaining the common code numbers from Dun & Bradstreet and providing them to the pipeline. Those participants that do not have a D-U-N-S number would so inform the pipeline and only their company name would be included in the data sets. The Working Group asserts this process would be self-implementing by the participants and would not require any new institutional arrangements to implement.

The National Registry submitted comments stating that its understanding of the Working Group 5 agreement was that any company having one or more

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[30] The provision of file downloads through EDI will be sufficient to satisfy the Commission's requirement for file downloads in Order No. 636. 18 CFR 284.8(b)(4)(i). Pipelines, however, are still free to provide an ASCII download to their customers.

[31] The Working Group left the issue of whether to provide ASCII flat file downloads up to each pipeline depending on its assessment of its customers' needs.

[32] Those pipelines that currently provide ASCII downloads in the pipeline's proprietary format must provide a grace period for their users if they do not intend to continue to support such downloads in the future.

[33] Other EDI translators permit customers to map the EDI data set to the customers' individual needs. While this feature provides greater versatility than a specified or canned translation, it does require understanding of EDI and the translator program.

D-U-N-S numbers would supply at least one valid D-U-N-S number to the pipeline. According to the National Registry, the only exception to the requirement is when a company does not have a D-U-N-S number. The National Registry further contends that D-U-N-S numbers should be included in any of the data sets when releaser or bidder company name information is supplied. Great Lakes Gas Transmission Limited Partnership (Great Lakes) supports the Working Group 5 proposal because parties can acquire D-U-N-S numbers at no charge and the use of D-U-N-S numbers is self-implementing by capacity release participants.

The Commission already has adopted the revised data sets submitted by Working Groups 1 & 2 which contain fields for display of D-U-N-S numbers. No further Commission action on this proposal seems required at this time. Those using the EBB should provide the pipelines with their D-U-N-S numbers (if they have them) and the pipelines will display those numbers on their EBBs and the downloadable data sets.

B. Common Transaction Point Codes

In Order No. 563, the Commission accepted the consensus approach proposed by Working Group 5 for identifying common pipeline transaction points. Under this approach, a third-party code assignor, the Petroleum Information Corporation (PI-GRID), will prepare a computerized cross-reference table correlating pipelines' proprietary codes (as verified and updated by the pipelines) to a common code. Those wanting to use the common code will maintain the cross-reference table on their computers and can convert proprietary pipeline codes to the common code, and *vice versa*. All transactions with the pipeline will take place using the pipelines' proprietary codes.

In the communication protocols, the Commission required the pipelines to provide the validated computerized data base by November 1, 1994. Pipelines were required to verify the required information about their transaction points to the code assignor. The Commission also required each pipeline to provide the code assignor with sufficient information to enable users to locate the position of each common code point on that pipeline in relation to other points, such as by using geographic coordinates, line numbers, or line markers. In line with the Working Group proposal, the Commission required the pipelines to ensure that users can obtain the common code data base from PI-GRID, and any updates, without charge, except for reasonable distribution and handling fees.

1. Pipeline Responsibility To Provide the Data Base and Ensure Reasonable Fees

Columbia Distribution contends the use of the common code translation table is an inefficient method of communicating common codes. Instead, it maintains the Commission should require the pipelines to adopt the common code.

Several parties object to the Commission's requirement that the pipelines be responsible for ensuring that a validated computerized base is available by November 1, 1994, and that the fees charged by PI-GRID are reasonable.[34] They contend the Commission's requirements are at odds with the Working Group 5 process in which an industry consortium would be negotiating and signing the contract with PI-GRID. TGPL argues that placing the compliance burden on the pipelines gives PI-GRID unreasonable leverage in negotiating its duties as code assignor. TGPL asserts the Commission should do nothing more than accept the Working Group 5 proposal and require the pipelines to validate their proprietary point information to PI-GRID. KGPC suggests that the Commission set up a process to monitor the provision of services by PI-GRID, rather than placing that burden on the pipelines. AER/MRT argues that instead of placing the burden on the pipelines to ensure a November 1, 1994 implementation date, the Commission should set a compliance date for PI-GRID and, if this deadline is not met, should give the pipelines additional time to comply with the common code requirements.

TGPL, Tenneco Gas, Natural, and KGPC contend that pipelines should not be responsible for ensuring the reasonableness of fees because they will not be signatories to the contract with PI-GRID and, therefore, can have only an indirect influence on the contracts. Natural further contends the requirement to ensure reasonable fees is unduly vague and establishes no basis for determining when such costs are reasonable. INGAA maintains the industry consortium approach of Working Group 5 provides a competitive market mechanism for controlling fees that is superior to imposing a requirement on only one segment of the industry. INGAA points out that the contract with PI-GRID requires that PI-GRID make the codes available at a cost covering only shipping and handling.

On the other hand, NGSA contends the Commission did not place sufficient requirements on the pipelines to ensure that the November 1, 1994 implementation date is met. It suggests the Commission require the pipelines to cooperate with the code assignor by designating, prior to a specified date, a pipeline liaison who will work with the code assignor to establish and validate the transaction points.

The Commission denies the request by Columbia Distribution to require the pipelines to adopt the common code. Such a requirement goes beyond the consensus reached by the Working Group. The translation table provides users with the benefits of common codes within a reasonable time frame, while, at the same time, pipelines need not incur the burden and expense of making an immediate conversion of their computer systems and operations to accommodate the common codes. However, as pipelines review and update their financial systems to accommodate the new business conditions created by Order No. 636, the Commission fully expects them to incorporate the use of common codes.

The Commission will clarify its position on pipeline responsibility. The Commission is accepting the code assignor approach put forward by the Working Group. While the Commission recognizes that other parties have been involved in developing the concept and will be signing the contract with PI-GRID, the pipelines are the only jurisdictional entity involved in the transaction. The pipelines can fulfill their obligation by either individually, or through their trade association INGAA, entering into the contract with PI-GRID as developed and presented by the Working Groups. The Commission understands that this contract will specify that the charges for obtaining the common code data base cannot exceed reasonable shipping and handling costs. The Commission, at this point, will leave the monitoring of these costs to the signatories to the contract.

The Commission has required the pipelines to confirm their proprietary point information to PI-GRID, and the Commission expects no problems in pipeline cooperation with PI-GRID. However, to facilitate PI-GRID's development of the common code data base, each pipeline must designate a liaison to work with PI-GRID and must cooperate with the schedule set up by PI-GRID so that the data base will be available by the November 1, 1994 date.

2. Point Locator Information

TGPL and INGAA seek rehearing of the Commission's requirement that pipelines provide PI-GRID with information sufficient to locate pipeline points in relation to other points. They argue the two comments to the NOPR requesting such information do not provide a sufficient basis for the Commission to reject the consensus agreement of Working Group 5 under which pipelines would provide this information only if they have it readily available. They maintain Working Group 5 treated this information as optional to avoid imposing additional burdens on pipelines that do not maintain this information in electronic form, while providing useful data when the information is readily available and accessible.

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[34] KGPC, INGAA, Natural, Tenneco Gas, TGPL.

The Commission denies the request to make point locator information optional. Shippers considering capacity release offers need information about point location to determine whether a particular offer fits their needs. Point locator information provides shippers with the ability to determine electronically whether the transportation path they desire is encapsuled within the transportation path of the posted release. For instance, without such information, the shipper cannot determine whether the delivery point it wants to use is upstream or downstream of the delivery point on the capacity release offer

Nevertheless, the Commission recognizes that some pipelines may have a large number of receipt points and may not maintain the geographic location of these points in an easily accessible form. The Commission also considers the geographic location of delivery points to be more important to evaluating capacity release offers than receipt point information, because the potential bidder generally needs only to determine whether the path of the capacity release offer extends to its desired delivery point. To ease the burden on those pipelines without easily accessible information, the Commission will require that they confirm to PI-GRID the geographic location of their delivery points and most important receipt points in time to meet the November 1, 1994 deadline. Those pipelines would then be responsible for completing the confirmation process for all their receipt points as soon as possible, but no later than May 1, 1995. Pipelines desiring to take advantage of this exception should file a request for an extension of time, explaining their system for maintaining geographic information and justifying their inability to make full compliance by November 1, 1994. Such extensions will be granted only upon good cause shown.[35]

KGPC requests clarification that the Commission's reference to geographic coordinates referred to latitude and longitude. The Commission agrees. Natural states that its paper pooling and storage points used for nominations have no identifiable location on the pipeline and it presumes that for such points, it need only include an identifier showing the points have no geographical location. Pipelines should consult with PI-GRID to determine how to report points without identifiable geographic locations.

The National Registry states that most pipelines appear to be cooperating with the requirement to provide point locator information in a form that will enable users to locate points in relation to each other. It requests clarification that the Commission's complaint process is the appropriate means of dealing with possible situations in which pipelines do not provide the point locator information in usable form. The Commission does not anticipate that any problems will develop, but, if they do, an attempt should be made to resolve the problem through the Working Group, and, if that fails, the Commission's complaint procedure or enforcement hotline would be appropriate vehicles for pursuing a problem.

3. Establishment of New Receipt and Delivery Points

In the final rule, the Commission adopted the agreement reached by Working Group 5 that information concerning new receipt and delivery points, or modifications to existing points, must be provided to the code assignor 10 days before any business will be transacted using the new or modified point. Natural requests clarification that shippers may utilize a new receipt or delivery point prior to the expiration of the 10-day period. It contends situations arise in which a shipper has an immediate need for a new receipt or delivery point and a 10-day delay would pose an unnecessary hardship. It also argues pipelines sometimes need to add a point immediately, for example, to identify a second proprietary code for an existing point or create a paper point for accounting purposes. It suggests that no more than a one day delay in implementing points should be mandated.

The requirement for a delay in implementing points was intended to ensure that parties using the common code data base would not be at a disadvantage to those using the pipelines' proprietary points as listed on the EBB. Except in emergency situations, pipelines should give PI-GRID at least 10 days advance notice of new points or modifications to point information so that those using the common code data base will not be disadvantaged relative to those using the pipeline's EBB.

VII. Additional Standards

Parties had requested that the Commission require an electronic Index of Purchasers, which would disclose information about capacity rights, and require the development of standards for non-capacity release business transactions. The Working Groups were continuing their deliberations in these areas, and, in Order No. 563, the Commission stated that it would await the Working Group reports before making decisions on these issues. The Working Groups have submitted reports on these issues. Several rehearing petitions address these issues as do comments received on the Working Group reports, and the Commission will address these issues below.

A. Index Of Purchasers

The National Registry and Gaslantic support the so-called Tennessee compromise being developed by the Working Groups, but, in the event the compromise falls through, the National Registry requests the Commission to grant rehearing and require the pipelines to implement the limited Index the National Registry proposes. KGPC suggests that, if an electronic Index of Purchasers is required, the Commission should eliminate or modify its current regulations that require pipelines to file similar information with the Commission.

Working Groups 1 & 2 failed to reach consensus on an Index. One group, consisting of 44 participants drawn from a cross-section of the industry (Group 1),[36] support a compromise proposal under which the Commission would eliminate the paper reporting requirements relating to firm and interruptible transportation, including the initial and subsequent reports (but not the annual reports or the reports on bypasses) and the requirement to include an Index of Purchasers in a pipeline's tariff. These reports would be replaced by an electronic Index provided in downloadable form consisting of the following nine data elements for each firm transportation and storage shipper: shipper's name, contract identifier, rate schedule, contract start date, contract end date, contract quantity, receipt points (and associated maximum daily quantities (MDQs)), delivery points (and associated MDQs), and conjunctive restrictions, if any.[37] The information would be updated whenever a new contract for firm capacity was written or a pipeline filed a section 4(e) rate case.

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[35] The Director of the Office of Pipeline Regulation can approve such requests pursuant to its delegated authority under section 375.307(d)(4) of the Commission's regulations.

[36] Algonquin Gas Transmission, American Iron and Steel Institute, Amoco Production Company, Aquila Energy Marketing Corporation, Aquila Energy Resources Corporation, Bass Enterprises Production Co., BP Exploration Inc., BridgeGas U.S.A. Inc., Chevron, Conoco, East Tennessee Natural Gas, EnerSoft, Fuel Managers Association, Gaslantic Corporation, Georgia Industrial Users Group, Heath Petra Resources, Inc., Independent Oil & Gas Association of Pennsylvania, Independent Oil & Gas Association of West Virginia, KCS Energy Marketing, Inc., Kern River Gas Transmission, Marathon Oil, Midland Marketing Corporation, . Midwestern Gas Transmission, Mobil, National Fuel Gas, National Registry of Capacity Rights,

A smaller number of participants (11) (Group 2)[38] support a more limited Index which essentially excludes the receipt and delivery point information contained in the first group's proposal. The parties supporting this proposal state that they do not believe any Index is truly necessary, but that, in the spirit of compromise, their proposal would provide a reasonably cost effective Index.[39] They are concerned that disclosing specific receipt and delivery points potentially could place firm shippers at a disadvantage with respect to future gas purchase options.

The Arkla Companies[40] oppose any Index. They assert the justification given for the Index (that it is needed so capacity buyers can locate available capacity) is unsupported. They argue that this function is satisfied by the firm shipper's incentive to release capacity and potential buyers' ability to place "want ads" advertising their interest in acquiring capacity. If firm shippers, not already posting firm capacity, fail to respond to a "want ad," the Arkla Companies maintain the capacity holder is unlikely to be interested in releasing capacity. Further, they assert that small users (who are alleged to be at an information disadvantage to large users) would not likely be sophisticated enough to manipulate the data on the thousands of contracts electronically available through the Index. If the Commission does require an Index, they maintain the Commission should eliminate its Part 284 reporting requirements and permit the pipelines to charge a fee for the use of the Index.

Public notice of these filings was given on March 3, 1994, and the National Registry and PEC Pipeline Group filed comments supporting Group 1's proposal containing the nine data elements. The National Registry contends the information on receipt and delivery point MDQs is needed so the market can be aware of receipt and delivery point capacity that can be acquired through capacity release. It points out that many pipelines allocate greater firm receipt and delivery point capacity than they do mainline capacity and shippers may want to acquire the receipt or delivery point capacity independently of mainline capacity.[41] In response to those opposing disclosure of receipt and delivery point information, the National Registry contends that capacity information should not be considered proprietary. It also argues that disclosure of receipt points is unlikely to reveal a purchaser's gas purchase strategy, since it does not disclose pricing, duration, or delivery conditions and, in most cases, even the supplier could not be divined from the information.

The PEC Pipeline Group supports the Group 1 proposal because this option actually will reduce costs by eliminating the duplicate reporting requirements for firm transportation contracts. It points out that the information required by the Index is essentially the same as is now required to be filed in the initial and subsequent reports under Part 284, so no additional costs for gathering the information are created by the proposal.

The Commission finds that the Group 1, more inclusive, proposal has significant merit, and the Commission is very interested in pursuing this proposal further. The proposal provides useful information to the market about capacity, while also setting the stage for reducing filing burdens on pipelines and streamlining the Commission's reporting requirements. The Group 2, more limited, proposal is not as attractive because, without receipt and delivery point information, it would not reduce filing burdens. Moreover, information on receipt and delivery points would be of value to those seeking releasable capacity and disclosure of such capacity information is not confidential, since it presently is disclosed publicly through the initial and subsequent reports.

The Commission, however, is unsure about some details of the proposal. For example, as framed, it would eliminate the initial and subsequent reports for firm and interruptible transportation, but would provide only information about firm transportation in the electronic Index. The proposed Index would be updated only when a new contract was written or upon the filing of a section 4 rate case, whereas the subsequent reports now must be filed whenever a material change in the contract occurs. The proposal states that the Index would be available in downloadable form, but does not specify the format for the download (EDI or another format) nor whether shippers will have access to the information in other forms. In addition, the proposal does not discuss how the information will be archived in the event access to historical data is needed. The Commission staff and the Working Group, therefore, should work to develop a final proposal to be provided to the Commission by September 30, 1994.

B. Business Practice Standards

In Order No. 563, the Commission concluded that standardization of business transactions unrelated to capacity release should be the next step in the standardization process. Working Group 3 had been considering such standards and had identified 33 high priority items, of which ten were

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Natural Gas Clearinghouse, New York Mercantile Exchange, New York State Electric and Gas, Panhandle Eastern Pipe Line, Peoples Gas Systems, Premier Gas Company, Process Gas Consumers Group, Producer-Marketer-Transportation Group, Richardson Products Co., Samson Resources Company, Tenneco Gas Marketing Co., Tennessee Gas Pipeline, Texas Eastern Transmission, Transcontinental Gas Pipe Line, Trunkline Gas Company, Valero Gas Marketing, L.P., Virginia Power, Washington Gas.

[37] Conjunctive restrictions were undefined in the proposal. According to the comment by the National Registry, one of the signatories to the agreement, conjunctive restrictions are provisions that operate across multiple points or contracts and may limit a shipper's rights at a particular receipt or delivery point. It gives as an example a shipper with stated rights 2,000 MDQs at three points, but a restriction that it cannot ship more than a total of 2,500 MDQ's from all three points on a single day.

[38] American Gas Association, Brooklyn Union Gas Company, Colorado Interstate Gas Company, Consolidated Edison Company of New York, Inc., Enron Interstate Pipelines, Koch Gateway Pipeline Company, Natural Gas Pipeline Company of America, Peoples Gas Light & Coke Company, Public Service Company of Colorado, Southern California Gas Company, Williston Basin Interstate Pipeline Company.

[39] They assert that those seeking the Index claim that it will help users locate available firm capacity. But the group argues that an Index is not needed for this purpose because firm capacity holders have every incentive to post their available firm capacity and shippers seeking capacity can post "want ads" advertising their need for capacity.

[40] ANR Pipeline Company, Arkla Energy Resources Company, Mississippi River Transmission Corporation, and Minnegasco.

[41] For example, it asserts that a replacement shipper (having obtained a package of mainline capacity) and using a particular point as an alternate point may want to acquire firm rights at that point from another shipper.

considered most critical.[42] The Commission found that standardization of these ten, or most of them, provided a good departure point for this effort. The Commission stated that the Working Group should propose an appropriate implementation schedule for the ten identified data elements. The Working Group also was to continue its efforts to identify which of the remaining 23 high priority data elements, as well as any others, require standardization and propose a schedule for implementation of standards for these elements as well.

PEC Pipeline Group contends the Commission should not be issuing mandatory standards for non-capacity release transactions. It asserts mandatory standards for such transactions would be inconsistent with the Commission's position in restructuring orders that Order No. 636 required only the posting of information related to available capacity and not information on nominations, scheduling, and gas flow. PEC Pipeline Group and Tenneco Gas assert that implementation of non-capacity release standards should be determined by the market, not regulation. Tenneco Gas also states that the industry is working on standardization related to nominations and that these standards should be reviewed first before additional standardization is attempted. Natural seeks clarification that the Commission is not prejudging or dictating the items to be standardized, but is relying on Working Group 3 to make this determination.

On the other side, NGC and NGSA contend the Working Groups are deadlocked on whether pipelines should be required to implement the high priority data elements. They contend the Commission should direct the pipelines, in conjunction with Working Group 3, to develop an implementation schedule for all 33 high priority data elements. NGC suggests that the schedule for the ten high priority items should be submitted by April 1, 1994 and for the remaining 23 by June 1, 1994.

On March 25, 1994, Working Group 3 filed a consensus agreement regarding the development of standards for non-capacity release business transactions. They anticipate completion of 12 upload and download data sets relating to confirmations and nominations by June 1, 1994.[43] At the time of the filing, 55 trading partners, including a number of pipelines, have committed to begin implementation of these data sets in June 1994, with pilot testing by December 31, 1994. Several pipelines and their trading partners are expected to be in full implementation by January 1995. The Working Group encourages other industry participants that are EDI capable to support these data sets by September 1995.

Working Group 3 anticipates it will complete its consideration of the other high priority data sets by January 1, 1995, with development of data sets by January 1, 1996 and implementation within the 6 month period from January to June, 1996. The Group states this schedule may be affected by the Group's analysis of the transactions involved and its evaluation of the use of EDI for capacity release and for nominations and confirmations.

The consensus of Working Group 3 was that significant and sufficient progress can be made in developing and implementing these standards without the Commission mandating implementation. It, therefore, recommends that the Commission accept the consensus agreement without mandating compliance with the data sets by the pipelines.[44] The Working Group commits to making quarterly progress reports, starting July 1, 1994, which will be made available to the Commission and other interested parties.[45]

Although the Commission began the standardization process with capacity release, the Commission recognizes that the process now needs to be expanded to include other business practices in order to facilitate the movement of gas across multiple pipelines. In addition to standards governing electronic communication, such standards could include other business practices, such as standardization of gas days and nomination times to help shippers schedule deliveries across multiple pipelines. The Working Group's use of a pilot program, implemented as quickly as possible, appears to be a worthwhile approach for assessing the value of proposed standards and approaches, so that lessons learned can be applied to other areas and the process can move forward quickly.

At this point, the Commission will honor the consensus agreement of Working Group 3 and allow the industry to proceed in developing such standards, without Commission mandate. The Commission applauds the progress of the industry to date and hopes that a consensus can be achieved on implementing the nomination/confirmation standards on schedule as well as implementing the additional proposed standards by the targeted dates if not earlier. The Commission also recognizes that other efforts are underway in the industry to standardize business practices. The Working Group should keep abreast of these developments and coordinate these efforts. The Commission staff will continue to actively monitor the Working Group's progress in developing these standards. Depending on the progress made by the industry in this endeavor, the Commission will evaluate the need for mandating compliance with such standards either in this docket or in another appropriate forum.

VIII. Recovery Of EBB Costs

In Order No. 563, the Commission responded to comments addressing the mechanism for recovering the costs of standardization. As a general matter, the Commission stated that its policy of permitting recovery of fixed costs through a reservation charge and variable costs through a usage charge was appropriate for the basic EBB service, which would include the downloadable data sets and communication protocols of this rule. The Commission stated that these services should be included in the basic EBB package because they were needed to provide a viable capacity release market and would provide system-wide benefits to all users. For enhancements to the basic EBB package, the Commission stated it was open to cost recovery approaches that would recover fixed costs from the limited number of users deriving benefit from the service.

KGPC states that EBB implementation and development costs should be recovered as fixed costs. Columbia Distribution and UDC/AGD, on the other hand, object to the Commission's statement that the fixed costs of the basic EBB package should be recovered through reservation charges. They assert the Commission's statement is at odds with its statement in the NOPR that it would be open to cost recovery methods that would spread costs across all those benefitting from the standards. Edison similarly contends that "data aggregators" (companies which are not shippers on pipelines, but which will be downloading data from multiple EBBs to provide electronic services) should pay their share of the costs for additional services provided at their request. All three contend the Commission should adopt a policy on cost recovery under which the costs would be equitably shared among all users of EBBs with the precise method of cost allocation determined in section 4 rate proceedings.

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[42] The ten elements were: timely flowing volume; timely volume allocation reports; predetermined allocations and shipper ranking; imbalance status; customer scheduled receipts and deliveries; customer specific curtailment/interruption information; customer specific operational flow orders; daily nominated volume acknowledgement; customer penalty status; and input and modify gas nominations.

[43] These data sets deal with the nomination, the request to confirm, the confirmation, and the scheduled volumes.

[44] If parties are dissatisfied with progress under the voluntary agreement, they have reserved the right to request Commission action at a later time.

[45] Great Lakes filed a comment supporting the Working Group 3 proposal and stated that it will be adding its name to the list of trading partners intent on meeting the time table set out by the Working Group.

UDC/AGD also request clarification of the criteria the Commission will use to determine which enhancements are not to be included in the basic EBB package. They state, for example, that some of the non-capacity release standards which the Working Groups are developing may not be of general benefit. KGPC suggests that any standards imposed by the Commission should be treated as part of the standard EBB service.

Columbia Distribution and UDC/AGD further assert the Commission's statement on cost recovery could interfere with the development of alternative cost recovery approaches by the Working Groups, and UDC/AGD contend that if the Commission does not revisit this issue, it should, at least, refer the issue to the Working Groups for further consideration. In contrast, NGSA contends that the method of cost recovery is a policy issue outside the scope of this proceeding and that the Working Groups should not be asked to resolve this issue since they are set up to deal with technical issues.

NGC requests clarification that all cost recovery related to EBBs will take place in full section 4 rate cases so that savings as well as costs can be taken into account. NGC further argues that variable costs should not be recovered through usage charges because a usage charge ignores the system-wide benefits of EBBs and other forms of electronic nominations. If the Commission does permit a separate charge for EBB use, NGC contends the Commission should not permit EDI users to be singled out for separate charges. NGC maintains that some in the industry have argued for a separate charge for EDI users because not all users find EDI suitable. NGC responds that some users find on-line EBBs equally unsuitable.

As part of the Working Groups 1 & 2 report, position papers were filed reiterating the points made above. One group[46] contends the interminable debate over the cost issue is impeding the ability of the Working Groups to complete their work.[47] They urge the Commission to resolve this issue by stating that the cost issue should be left to section 4 proceedings, and not be considered by the Working Groups.

Another group[48] supports an equitable sharing of costs by all EBB users. They assert that if firm capacity holders are required to pay all EBB costs through a reservation charge, the firm holders will be subsidizing other users of the system. They further assert that having to absorb all EBB costs will place firm users at a competitive disadvantage compared with brokers and marketers that can obtain the EBB services at no cost. This group asserts the Commission state that its policy is to equitably share costs, with the mechanics of the cost sharing approach to be developed in section 4 cases, in which the parties could consider a number of options, such as annual user fees or on-line usage charges.

The Commission will clarify its position on cost recovery. As provided in Order No. 636, the recovery of all EBB costs must take place in a full section 4 rate filing.[49] Parties are free in these proceedings to propose alternative methods of cost recovery.

The Commission recognizes that those supporting cost sharing raise a legitimate concern that users should be responsible for paying the costs that their use imposes on the system. On the other hand, in Order No. 636–A, the Commission rejected a user fee approach to EBB cost recovery in favor of a reservation charge approach out of concern about potential consequences of user fees. The Commission intended EBBs to provide for wide dispersion of information about capacity availability as well as information concerning market and system operational information. In fact, to further the secondary capacity market, the Commission has sought to remove impediments to the development of services by third parties that would aggregate information from multiple pipeline EBBs, thereby improving access to information.[50] The Commission, therefore, rejected user fees for EBBs because high user fees can work to the disadvantage of firm shippers by discouraging the use of EBBs for capacity release transactions and by providing advantages to the pipelines' sale of interruptible transportation at the expense of capacity release.[51] Without more detail about how cost sharing would work, the Commission cannot endorse a policy of equitable cost sharing at this point. The Commission, however, is not ruling out adoption of a fully supported and justified proposal of this nature. At this point, these issues are best examined in the context of an individual rate case.

Similarly, the Commission does not have sufficient basis to establish a generic standard for cost recovery for enhancements to the basic EBB package. All the standards the Commission has adopted are of sufficient system-wide benefit to be included in the basic EBB package. Also, as discussed above, the Commission will not be mandating implementation of the non-capacity release standards proposed by Working Group 3 at this time. The Working Group is proposing a pilot program to evaluate its efforts, so an attempt to develop a generic cost recovery approach for these standards is premature. At this point, cost recovery for implementation of the standards is best addressed in individual rate cases.

The Commission agrees with NGSA that cost recovery is a policy issue that need not be resolved by the Working Groups, and the Working Groups should not permit debates over cost recovery to side-track them from their work on developing standards. If parties have developed concrete proposals for alternate methods of cost recovery for particular standards, they can submit the proposals in comments on the Working Group reports or address the issue in individual section 4 cases in which EBB cost recovery is an issue.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, and clarifies Order No. 563 as described above.

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[46] American Iron & Steel Institute, Amoco Production Company, Chevron U.S.A. Production Company, Conoco Inc., Enron Gas Services, Gaslantic Corporation, GPM Gas Corporation, Marathon Oil Company, Natural Gas Clearinghouse, Phillips Petroleum Company, Phillips Gas Marketing Company, Process Gas Consumers, Texaco Gas Marketing Inc., Vastar Gas Marketing, Inc., Virginia Power Company.

[47] They assert some parties have held up consensus on further standardization until the group agrees to a cost allocation statement.

[48] Baltimore Gas & Electric Company, Brooklyn Union Gas Company, The Columbia Distribution Companies, Consolidated Edison of New York, New York State Electric & Gas Company, Southern California Gas Company, United Distribution Companies, Washington Gas Light Company, American Public Gas Association, Associated Gas Distributors, and New England Gas Distributor Group.

[49] Order No. 636, III FERC Stats. & Regs. Preambles at 30,460: Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,664.

[50] Northwest Pipeline Corporation, 63 FERC ¶61,124 (1993), *aff'd*, 65 FERC ¶61,007 (1993).

[51] *See* Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,563–64 (rejecting user charges for EBB to eliminate advantages for pipelines' interruptible service); ANR Pipeline Company, 66 FERC ¶61,335 (1994) (rejecting $50 usage charge).

By the Commission.

Lois D. Cashell,

Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

APPENDIX A—DOCKET NO. RM93-4-001—PARTIES FILING REQUESTS FOR REHEARING AND CLARIFICATION

Filer	Abbreviation
ANR Pipeline Company and Colorado Interstate Gas Company.	ANR/CIG.
Arkla Energy Resources Company and Mississippi River Transmission Corporation.	AER/MRT.
Columbia Gas Distribution Companies[52].	Columbia Distribution.
Gaslantic Corporation	Gaslantic.
Interstate Natural Gas Association of America.	INGAA.
Kern River Gas Transmission Company.	Kern River.
Koch Gateway Pipeline Company	KGPC.
National Registry of Capacity Rights.	National Registry.
Natural Gas Pipeline Company of America.	Natural.
Tenneco Gas	Tenneco Gas.
Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company.	PEC Pipeline Group.
Transcontinental Gas Pipe Line Corporation.	TGPL.
United Distribution Companies and Associated Gas Distributors.	UDC/AGD.
Southern California Edison Company.	Edison.
Natural Gas Supply Association	NGSA.
Texaco Gas Marketing, Inc	TGMI.
Enron Interstate Pipelines (Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company).	Enron.
Natural Gas Clearinghouse	NGC.
Working Groups 1 & 2	Working groups 1 and 2.

[52] Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Commonwealth Gas Services, Inc.

[FR Doc. 94-10920 Filed 5-5-94; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 660

[Docket No. 92N-0497]

Biological Products; Blood Specificity Designators; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to correct certain omissions from the designators for blood specificities and make other minor, technical amendments. This action is being taken to clarify and improve the accuracy of the regulations.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM-635), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301-594-3074.

SUPPLEMENTARY INFORMATION: FDA is correcting certain errors that have been incorporated into the biologics regulations in parts 606 and 660 (21 CFR parts 606 and 660). The errors in the regulations are as follows:

1. In the **Federal Register** of April 19, 1988 (53 FR 12760), FDA changed the name of "Blood Grouping Serum" to "Blood Grouping Reagent" to more accurately describe the product's derivation and intended use. However, in §§ 606.65(c) and 606.121(c)(12)(i), (c)(12)(ii), and (c)(12)(iii), the name change was inadvertently omitted. The agency is correcting these errors.

2. In the **Federal Register** of February 11, 1985 (50 FR 5574), FDA changed the name of "Anti-Human Serum" to "Anti-Human Globulin" to reflect that this product may be produced from immunoglobulin-secreting cell lines as well as from serum. However, in § 606.65(c), the name change was inadvertently omitted. The agency is correcting this error.

3. Further, in § 660.28(a), the agency is revising the blood group antibody designations "Anti-c̲," and "Anti-k," as "Anti-c̄," and "Anti-k̄,"respectively.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure and delayed effective date on this final rule are unnecessary because the changes are editorial in nature and nonsubstantive (5 U.S.C. 553(b) and (d)).

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 606 and 660 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 510, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374); secs. 215, 351, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263a, 264).

§ 606.65 [Amended]

2. Section 606.65 *Supplies and reagents* is amended in the table in paragraph (c), under the heading "Reagent or solution" by removing the words "Anti-human serum" and adding in their place the words "Anti-human globulin", and by removing the words "Blood grouping serums" and adding in their place the words "Blood grouping reagents".

§ 606.121 [Amended]

3. Section 606.121 *Container label* is amended in paragraphs (c)(12)(i), (c)(12)(ii), and (c)(12)(iii) by removing the word "Serum" wherever it appears, and by adding in its place the word "Reagent".

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

4. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 660.28 [Amended]

5. Section 660.28 *Labeling* is amended in the table in paragraph (a)(1), under the heading "Blood grouping reagent" by removing "Anti-ć" and adding in its place "Anti-c̄"; in paragraph (a)(4), in the second sentence, by removing "Anti-k" the second time it appears and adding in its place "Anti-k̄".

Dated: May 2, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–10997 Filed 5–5–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 0

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under delegated authority, the Administrator of the Drug Enforcement Administration (DEA), Department of Justice, is amending the appendix to the Justice Department regulations to redelegate certain functions and authority which were vested in the Attorney General by the Controlled Substances Act and subsequently delegated to the Administrator.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537. Telephone number: (202) 307–8010.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) (21 U.S.C. 801 set seq.) establishes a detailed regulatory scheme governing the manufacture and distribution of controlled substances and listed chemicals. The CSA requires that every person who manufactures, distributes, or dispenses a controlled substance or who manufactures, distributes, exports or imports certain listed chemicals must obtain a registration from DEA. An application for such registration may be denied or a registration revoked pursuant to specific provisions of the CSA.

The Attorney General has delegated her functions under the CSA to the Administrator of the Drug Enforcement Administration. See 21 U.S.C. 871(a) and 28 CFR 0.100(b). Regulations implementing the CSA empower the Administrator, for example, to issue final orders to deny applications for registration or revoke registrations, to schedule controlled substances, to designate chemicals as listed chemicals and to establish quotas.

The Attorney General has also authorized the Administrator to redelegate any of his functions under the CSA to any of his subordinates. See 28 CFR 0.104. To further enhance the administration of the CSA and its attendant regulations, the Administrator is redelegating to the Deputy Administrator the authority to exercise all necessary functions under 21 CFR part 1300 which have not already been redelegated in subpart R of 28 CFR 0.104. This redelegation will empower the Deputy Administrator, among other things, to issue final orders relating to the suspension, denial or revocation of registration, scheduling actions, designation of chemicals as listed chemicals, establishment of production quotas for certain controlled substances, and to grant or deny waivers of CSA regulations relating to registrants. This redelegation will include the authority to exercise all regulatory functions which may be delegated to the Administrator in the future pursuant to subsequent amendments to 21 CFR part 1300 and not otherwise specifically assigned or reserved by the Administrator.

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to Executive Order 12866, this is not a significant regulatory action since it relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget and does not require certification under Executive Order 12778. This action has been analyzed in accordance with Executive Order 12616. It has been determined that this matter has no federalism implications which would warrant the preparation of a federalism assessment.

List of Sections in 28 CFR Part 0

Authority delegations (Government Agencies), Organization and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28, of the Code of Federal Regulations, part 0, appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. The Appendix to subpart R is amended as follows:

a. Sec. 12 is added to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 12. *All other functions.* The Deputy Adminstrator is authorized to exercise all necessary functions under 21 CFR Part 1300, except those functions otherwise delegated within this subpart. This will include functions which may be vested in the Administrator in subsequent amendments to 21 CFR Part 1300 and not otherwise specifically assigned or reserved by him.

Appendix to Subpart R—[Amended]

b. Sec. 7. (a), (g), (i), and (j) shall be amended by inserting the word "Deputy" before the word "Administrator" each place it appears.

Dated: April 29, 1994.

Thomas A. Constantine,

Administrator.

[FR Doc. 94–10743 Filed 5–5–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA56

National Archives at College Park, MD; Location of Records and Hours of Use

AGENCY: National Archives and Records Administration.

ACTION: Final rule; confirmation of interim final rule.

SUMMARY: The National Archives and Records Administration (NARA) is adopting as a final rule the interim final rule providing the location of records and hours of use at the National Archives at College Park (Archives II) facility which has opened in College Park, MD, and removing from the regulations the Pickett Street facility in Alexandria, VA, which is no longer open for research. This rule will affect the public.

DATES: The effective date of this rule is March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on (301) 713–6730.

SUPPLEMENTARY INFORMATION: NARA published an interim final rule on February 14, 1994 (59 FR 6899) establishing the hours for the research complex at the National Archives at College Park facility located at 8601 Adelphi Road, College Park, MD 20740–6001. The effective date of the interim final rule was March 16, 1994. No comments were received during the 60-day comment period, which closed on April 15, 1994. Therefore, we are confirming in this final rule the research complex hours established in the interim final rule. These hours are 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; and 8:45 a.m. to 4:45 p.m., Saturday.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

Accordingly, under the authority of 44 U.S.C. 2104(a), the interim final rule published at 59 FR 6899 amending 36 CFR part 1253 is adopted as final without change.

Dated: April 28, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–10988 Filed 5–5–94; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7041

[CO–930–4210–06; COC–28636]

Opening of Lands, Under Section 24 of the Federal Power Act, in the Secretarial Order Dated June 19, 1929, Which Established Power Site Classification No. 225; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 211.59 acres of public land and 354.47 acres of National Forest System land withdrawn by a Secretarial order that established Power Site Classification No. 225. This action will permit disposal of the lands, but will retain the power rights to the United States. The lands have been and continue to be open to mineral leasing and, under the provision of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Alexa Watson, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3796.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to determination by the Federal Energy Regulatory Commission in DVCO–543, it is ordered as follows:

1. At 9 a.m. on June 6, 1994, the following described land withdrawn by Secretarial Order dated June 19, 1929, which established Power Site Classification No. 225, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act, as specified by the Federal Energy Regulatory Commission in determination DVCO–543, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

T. 13 S., R. 72 W.,
  Sec. 19, lots 1, 2, 3, and SE¼NW¼.
T. 13 S., R. 73 W.,
  Sec. 12, SE¼SE¼.

The area described contains 211.59 acres of public land in Park County.

2. At 9 a.m. on June 6, 1994, the following described National Forest System land withdrawn by Secretarial Order dated June 19, 1929, for Power Site Classification No. 225, will be opened to disposal subject to the provisions of section 24 of the Federal Power Act, as specified by the Federal Energy Regulatory Commission in determination DVCO–543, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

Pike National Forest

T. 13 S., R. 72 W.,
  Sec. 20, lots 3, 4, 5, 8, 9, 10, 11, 16, and W½ of lot 18;
  Sec. 29, lots 5, 6, 7, and 10.

The area described contains 354.47 acres of National Forest System land in Park County.

3. The State of Colorado was afforded 90 days, as provided by the Act of June 10, 1920, as amended (16 U.S.C. 818 (1988)), but did not exercise its preference right for public highway rights-of-way and material sites on the public land described in paragraph 1.

Dated: April 14, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–10968 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 931249–3349; ID.# 042694D]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment to trip limits; clarifications; request for comments.

SUMMARY: NMFS announces a change in the trip limit for rockfish taken with set nets in the open access fishery for groundfish in the U.S. exclusive economic zone off the coast of California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). This action is intended to keep landings as close as possible to the open access allocation without causing excessive discards. Clarifications to the management measures for 1994 also are announced. The clarifications do not result in changes to Federal management of the fishery.

DATES: Effective May 3, 1994 through December 31, 1994. Comments will be accepted by June 6, 1994.

ADDRESSES: Comments should be sent to Mr. J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the Office of the Director, Northwest Region, NMFS, (Regional Director) or may be obtained from the Pacific Fishery Management Council (Council), by writing Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: At its April 4–8, 1994, meeting in Burlingame, CA, the Council recommended changes to the 1994 groundfish fishery specifications and management measures published in the **Federal Register** at 59 FR 685, on January 6, 1994. NMFS concurs with the Council's recommendations, and herein announces the following changes and clarifications for the reasons stated below.

A. Change the Open Access Trip Limit for Rockfish Caught With Set Nets

The current trip limit for all open access gear except exempted trawl gear is 10,000 pounds (4,536 kg) per trip for all rockfish combined, not to exceed 40,000 pounds (18,144 kg) cumulative in a month. Representatives of the California set net fleet testified that they frequently catch more than 10,000 pounds (4,536 kg) per trip, resulting in significant discards. The Council agreed that the 10,000-pound (4,536 kg) trip limit could be removed for the set net fishery to minimize discards and disruption of traditional fishing patterns, but the 40,000 pound (18,144 kg) cumulative limit per month must remain in effect. No change was recommended for any other open access gear because these gears have different fishing patterns and the per trip limit is not as likely to cause discards. Data are inadequate at this time to determine landings by the set net fishery or to project whether the open access allocation for rockfish will be reached before the end of the year. The set net fishery is expected to take about 20 percent of the open access allocation of rockfish. The Council agreed that the 10,000-pound (4,536 kg) trip limit may be inappropriate for this sector of the industry if large levels of discards are occurring, but warned that more severe restrictions will be implemented later in the year if necessary to avoid exceeding the open access allocation. Set nets are legal gear only south of 38° N. Latitude.

The revised trip limit modifies the document published on January 6, 1994 (59 FR 697), at paragraph IV.G.(1)(a), as follows:

G. Vessel Limits in the Open-Access Fishery

(1) Set net, hook-and-line, pot, and other exempt gear except exempted trawl gear:

(a) *Rockfish.* No more than 40,000 pounds (18,144 kg) cumulative of rockfish may be taken and retained, possessed, or landed per vessel per month. No more than 10,000 pounds (4,536 kg) of rockfish may be taken and retained, possessed, or landed per vessel per fishing trip, unless caught with a set net, in which case the 10,000-pound (4,536 kg) trip limit does not apply. Rockfish means the Sebastes complex (including yellowtail rockfish), shortbelly rockfish, widow rockfish, Pacific ocean perch, and thornyheads, as listed at 50 CFR 663.2. Within these limits, a vessel may not take and retain, possess or land more widow rockfish, Pacific ocean perch, thornyheads, DTS complex, Sebastes complex, yellowtail rockfish, or bocaccio than authorized for the limited-entry fishery. (See paragraphs B.(1), C.(2), D.(1), and E.(3).)

B. Clarify the Provision for "Fishing Ahead" on the Next Limit

Some confusion has arisen regarding the provision at 59 FR 695, paragraph IV.A.(4), that allows a vessel that already has landed its cumulative or daily limit for a species to "fish ahead" on its limit for the next cumulative or daily period. Some vessels would off-load part of their catch, keeping trip limit species on board for offloading after the next legal period begins. This is not permitted because, if a vessel off-loads any fish, all fish on board count toward the limit for the current period. The definition of "landing" at 50 CFR 663.2 states that "once transfer begins, all fish aboard the vessel are counted as part of the landing." Therefore, if a vessel off-loads any species of fish (including groundfish with no trip limits, shrimp, prawns or other nongroundfish species) while having on board a species or species group whose cumulative (or daily) limit has been reached, the fish on board will be counted toward the current period's cumulative or daily limit, which then is exceeded. Paragraph IV.A.(4) is clarified as follows:

(4) Unless the fishery is closed, a vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period so long as no fish (including but not limited to groundfish with no trip limits, shrimp, prawns or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated in the regulations at 50 CFR 663.2, once offloading of any species begins, all fish aboard the vessel are counted as part of the landing.

C. Clarify the Calculation of the Sablefish Trawl Trip Limit

The Council originally recommended a sablefish trip limit of 25 percent of the DTS complex (Dover sole, thornyheads, and trawl-caught sablefish). This has caused some confusion. The legal limit for sablefish is difficult to determine because it is based on the total amount of legal DTS complex, including sablefish. To simplify this trip limit, NMFS is restating it in equivalent terms that are easier to calculate—25 percent of the DTS complex (including sablefish) is equivalent to 33.333 percent (approximately one third) of the legal thornyheads and Dover sole (i.e. the DTS complex excluding sablefish). Paragraph IV.E.(3)(b)(ii), at 59 FR 696, is restated below:

(b) *Trip and Size Limits*—(ii) *Trip limits.* Coastwide, no more than 50,000 pounds (22,680 kg) cumulative of the DTS complex may be taken and retained, possessed, or landed per vessel per month. Within this 50,000 pounds (22,680 kg), no more than 30,000 pounds (13,608 kg) cumulative may be thornyheads, and no more than 12,000 pounds (5,443 kg) cumulative may be trawl-caught sablefish. In any landing of the DTS complex, the trip limit for trawl-caught sablefish is 1,000 pounds (454 kg), or 33.333 percent of the legal thornyheads and Dover sole, whichever is greater. In any landing, no more than 5,000 pounds (2,268 kg) of sablefish may be smaller than 22 inches (56 cm) (total length).

Note: 33.333 percent of thornyheads and Dover sole (the DTS complex excluding sablefish) is equivalent to 25 percent of the DTS complex (including sablefish). As stated in paragraph A.(6), at 59 FR 695, percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

D. Yellowtail Rockfish Declarations

Federal trip limits for yellowtail rockfish are found at 59 FR 695, paragraph IV.C. The States of Oregon and Washington have implemented declaration procedures that enable vessels that transit or operate north of Cape Lookout (where the trip limit currently is 14,000 pounds (6,350 kg) cumulative of yellowtail rockfish per month) to fish south of Cape Lookout and retain up to the southern limit (currently 30,000 pounds (13,608 kg) cumulative per month). Details of the declaration procedure are set forth in the respective state regulations. Therefore, specific descriptions of state requirements are being removed from the **Federal Register** notice at 59 FR 696 by deleting the following sentence from paragraph IV.C.(2)(c): "For any vessel that takes and retains or lands yellowtail rockfish during the month, a declaration must be filed for each fishing trip that crosses the line at Cape Lookout during that month, must be made before leaving port on the fishing trip, and may not be changed once the vessel has left port." In the same paragraph, the reference to the "Washington Department of Fisheries" is changed to the "Washington Department of Fish and Wildlife".

The other provisions at 59 FR 695, paragraph IV.C., that apply to vessels landing yellowtail rockfish are not changed. Vessel operators are cautioned that the States of Oregon and Washington are in the process of revising their requirements, and therefore the state where the fish will be landed should be contacted to ensure compliance with state law (Oregon Department of Fish and Wildlife, Newport, OR at 503–867–4741 or 503–867–0300; or Washington Department of Fish and Wildlife, Montesano WA, 206–249–4628).

E. Clarification of Yellowtail Rockfish Areas

Two errors occurred in the 1994 groundfish fishery specifications and management measures in the description of the stock assessment and harvest guideline areas for yellowtail rockfish. The clarifications, explained below, cause no change in management of the fishery. (1) Footnote "p" to Table 1 at 59 FR 689 incorrectly states that the stock assessment for yellowtail rockfish divides the Columbia area at Cape Lookout, OR. The geographic scope of the yellowtail rockfish acceptable biological catch (ABC) is correctly described at 59 FR 690 in the third column—ABCs were determined for the areas north and south of Cape Falcon, OR. Therefore, the first sentence of footnote "p" should read: "The yellowtail rockfish assessment addresses three separate areas: Vancouver, Columbia north of Cape Falcon, and Columbia south of Cape Falcon plus Eureka." (2) The text in the first column at 59 FR 691 incorrectly states that the harvest guidelines for yellowtail rockfish apply to the areas north and south of Cape Falcon. Cape Falcon divides a major fishing ground, making differential trip limits on either side of the line impractical. Instead, Cape Lookout, OR, which is 26 nautical miles south of Cape Falcon, was used for purposes of establishing the yellowtail rockfish harvest guidelines. Therefore, the harvest guidelines and trip limits for yellowtail rockfish apply north and south of Cape Lookout, as previously announced at 59 FR 687, Table 1, and at 59 FR 695, paragraph IV.C.

F. Renumbering Paragraphs

At 59 FR 697, paragraphs IV.G.(3) (i), (ii), and (iii) regarding open access limits for California halibut or sea cucumber trawls were inappropriately numbered, and are redesignated IV.G.(3) (a), (b), and (c), respectively. At 59 FR 698 in the first column, paragraph IV. on Recreational Fishing is redesignated as paragraph H.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until May 18, 1994.

This action is taken under the authority of 50 CFR 663.23(c) and section III.C.1. of the Appendix to 50 CFR part 663.

This notice is exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10900 Filed 5–3–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 87
Friday, May 6, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 73

[Docket No. PRM–50–59]

Virginia Power; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment a notice of receipt of petition for rulemaking dated December 30, 1993, which was filed with the Commission by Virginia Power. The petition was assigned Docket No. PRM–50–59 on January 19, 1994. The petitioner requests that the Commission amend its regulations to change the frequency with which each licensee conducts independent reviews and audits of its safeguards contingency plan and security program from annually to biennially.

DATES: Submit comments July 20, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Docketing and Service Branch, Washington DC 20555. For a copy of the petition, write to the Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations currently require that independent reviews and audits of each licensee's safeguards contingency plan and security program be conducted every 12 months by personnel who have no direct responsibility for the subject areas.

The NRC is considering rulemaking in several program areas that would modify audit requirements so that the frequency, scope, and depth of auditing activities would be based on review of program performance indicators but would not exceed a 36-month interval to accomplish an audit of all program elements. Final NRC action on this petition would be consistent with actions taken on modifications to other program audit requirements.

Petitioner's Request

Virginia Power requests that the NRC amend its regulations in 10 CFR parts 50 and 73 to change the requirements that each licensee provide for a review at least every 12 months (annually) of its safeguards contingency plan and security programs to nominally every 24 months (biennially). The petitioner also requests that appendix C to 10 CFR part 73 be amended to change the requirement that each licensee provide for a review and audit of its safeguards contingency plan at intervals not to exceed 12 months to a frequency of 24 months.

The petitioner states that the proposed amendments would require each licensee to conduct independent reviews and audits of its safeguards contingency plan and security program at least biennially. The petitioner states that the resources presently used for audits in each area could be reallocated if justified by performance to address more safety-significant concerns that might be identified. The petitioner also states that the proposed audit frequency provides a greater degree of flexibility in applying resources, thereby permitting a licensee to implement a more performance-based audit program.

Grounds for Request

The petitioner states that the changes requested are identified as present requirements that are resource intensive but of marginal importance to safety. The petitioner offers the following reasons for the request.

1. The underlying purpose of the requirements is to overview and ensure effective implementation of security programs. Given the available objective criteria that industry performance is commendable in this area, aggressive overview activities do not seem to be warranted. Resources, which previously would have been strictly dedicated to the conduct of mandatory audits, could now be more effectively used to address performance issues having safety significance. Biennial audits are sufficient to provide an acceptable, formal confirmation of security program implementation. The underlying purpose of the existing requirement will continue to be met by the proposed rule.

2. The current industry Systematic Assessment of Licensee Performance (SALP) average for the security category is 1.27 as of October 15, 1993. Clearly, this represents a commendable overall performance in this area and supports the move to biennial audits which can be supplemented as performance warrants. Based on the overall industry SALP ratings concerning safeguards contingency plan and security program effectiveness, Virginia Power concludes that changing the audit frequency to two years will have no adverse impact on implementation of the plan and program.

3. A two-year audit schedule would permit the licensee an increased degree of flexibility to concentrate available audit resources in areas of observed weakness based on performance rather than conducting a mandatory annual audit of marginal safety significance. Thus, personnel resources would be allowed to address and resolve issues having greater safety significance.

4. Regulatory Guide 1.33, Quality Assurance Program Requirements (Operation), prescribes a two-year audit frequency for most operational phase activities commensurate with the activity's operational safety significance. The proposed rule would be consistent with this previously defined regulatory position and the present safety significance as evidenced by industry performance.

5. The requirements to conduct annual audits are not of themselves necessary to achieve the underlying purpose of 10 CFR 50.54(p) and 10 CFR part 73. Biennial audits are sufficient to provide an acceptable formal confirmation of program effectiveness.

Supporting Information

The petitioner states that the regulations that require licensees to implement safeguards contingency plans and security programs are essential to ensure operation of the facilities in an environment free from external threats. The petitioner notes that independent audits of these programs are required to overview their effectiveness. Furthermore, the petitioner believes that the frequency or extent of overview of these plans and programs by mandatory audits is not providing a commensurate performance in security programs. According to the petitioner, safeguards contingency plans and security programs have been in place in the industry for an extended period and that despite recent reconsideration of the design basis threat, nuclear security is otherwise being adequately addressed and implemented by the plans and programs as they are presently configured. The petitioner believes that a biennial audit frequency would more than adequately provide the requisite feedback and assurance regarding the effectiveness of each licensee's safeguards contingency plan and security program.

The petitioner further states that technological advancements and applications have resulted in and will continue to generate improvements to security equipment and facilities. The petitioner asserts that industry-wide programmatic enhancements continue to be made available to improve the effective utilization of security staff as well as equipment and that the results of the improvements to equipment and facilities and programmatic enhancements within nuclear safeguards and security programs over the past decade have elevated plan effectiveness throughout the industry. The petitioner notes that the improvement is evidenced, in part, through the SALP program which is used to assess security indicators.

Proposed Amendments to 10 CFR Part 50

The petitioner proposed that in § 50.54, paragraph (p)(3) be revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(p) * * *

(3) The licensee shall provide for the development, revision, implementation, and maintenance of its safeguards contingency plan. To this end, the licensee shall provide for a review nominally every 24 months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems, along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of three years.

* * * * *

Proposed Amendments to 10 CFR Part 73

The petitioner proposes that in § 73.55, paragraph (g)(4) be revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(g) * * *

(4) The security program must be reviewed nominally every 24 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the security program review, management's findings on whether the security program is currently effective, and any actions taken as a result of recommendations from prior program reviews must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. These reports must be maintained in an auditable form, available for inspection, for a period of three years.

* * * * *

The petitioner proposes that the text of appendix C to part 73 following the Audit and Review heading be revised to read as follows:

Appendix C—Licensee Safeguards Contingency Plans

* * * * *

Audit and Review

Nominally every 24 months, the licensee shall provide for a review of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include an audit of safeguards contingency procedures and practices, and an audit of commitments established for response by local law enforcement authorities. The licensee shall document the results and the recommendations of the safeguards contingency plan review, management findings on whether the safeguards contingency plan is currently effective, and any actions taken as a result of recommendations from prior reviews in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. The report must be maintained in an auditable form, available for inspection for a period of three years.

Conclusion

The petitioner states that this petition for rulemaking merely allows successful, existing functions to continue without formal review at a frequency of nominally every two years rather than once per 12 months. The petitioner states that the annual audit frequency is not necessary to ensure an adequate safeguards contingency plan and security program, nor is it commensurate with present industry performance in this area. Further, the petitioner states that it is not required to support NRC evaluation of program adequacy.

Dated at Rockville, Maryland, this 2nd day of May 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission

[FR Doc. 94–10917 Filed 5–5–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–11]

Modification of Class D Airspace; Traverse City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action would modify the official description of the Class D airspace associated with the Cherry Capital Airport, Traverse City,

Michigan, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory." On September 18, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Traverse City, Michigan, Airport Traffic Control Tower at Cherry Capital Airport.

DATES: Comments must be received on or before June 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the official description of the Class D airspace associated with the Cherry Capital Airport, Traverse City, Michigan. The purpose of this proposed amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Traverse City ATCT.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AGL MI D Traverse City, MI [Revised]

Cherry Capital Airport, MI
(Lat. 44°44′27″ N., long 85°34′57″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.4-mile radius of Cherry Capital Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on April 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–10958 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 93–ASW–28]

Proposed Establishment of Restricted Area R–6302E; Fort Hood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Restricted Area R–6302E, Fort Hood, TX, above the existing Restricted Areas R–6302A, B, C, and D, at Fort Hood, TX. The proposed Restricted Area R–6302E would provide special use airspace to accommodate the firing of heatseeker missiles at the Fort Hood Army Airfield (AAF) weapons complex.

DATES: Comments must be received on or before June 22, 1994

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 93–ASW–28, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASW–28." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Director, Engineering and Housing, Environmental Management Office, Fort Hood, TX 76544–5056. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area, R–6302E, Fort Hood, TX, above the existing Restricted Areas R–6302A, B, C, and D, to accommodate the firing of heatseeker missiles at the Fort Hood AAF weapons complex. The maximum altitude of the existing Fort Hood restricted area is 30,000 feet mean sea level (MSL). The proposed Restricted Area R–6302E would coincide with the existing lateral boundaries of Restricted Areas R–6302A, B, C, and D, and would extend from 30,000 feet MSL to 45,000 feet MSL. This action is a result of a Special Use Airspace Review conducted at the Fort Hood AAF in May 1993. The proposed Restricted Area R–6302E would be a joint-use restricted area, activated by NOTAM 48 hours in advance, not to exceed 90 days per year, weather makeup days included. The airspace would be returned to the controlling agency when not required for military activities. The U.S. Army does not expect any increase in the total annual usage of the area as a result of this proposal.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be reviewed for environmental impact prior to any final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a) 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 73.63 is amended as follows:

§ 73.63 [Amended]

R–6302E Fort Hood, TX [New]

Boundaries: Beginning at lat. 31°24′01″–N., long. 97°48′01″–W.;
To lat. 31°23′01″ N., long. 97°43′01″ W.;
To lat. 31°22′08″ N., long. 97°41′56″ W.;
To lat. 31°21′01″ N., long. 97°41′01″ W.;
To lat. 31°20′01″ N., long. 97°41′01″ W.;
To lat. 31°14′01″ N., long. 97°33′01″ W.;
To lat. 31°06′01″ N., long. 97°33′01″ W.;
To lat. 31°08′01″ N., long. 97°39′01″ W.;
To lat. 31°10′01″ N., long. 97°41′01″ W.;
To lat. 31°09′01″ N., long. 97°43′31″ W.;
To lat. 31°09′01″ N., long. 97°55′01″ W.;
To lat. 31°16′01″ N., long. 97°54′01″ W.;
To lat. 31°19′01″ N., long. 97°51′01″ W.;
To the point of beginning.

Designated altitudes: 30,000 feet MSL to 45,000 feet MSL.

Times of designation: By NOTAM 48 hours in advance.

Controlling agency: FAA, Houston ARTCC.

Using agency: U.S. Army, Commanding Officer, Fort Hood, TX.

Issued in Washington, DC, on April 26, 1994.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 94-10959 Filed 5-5-94, 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 300

Rules and Regulations Under the Wool Products Labeling Act of 1939

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Rules and Regulations under the Wool Products Labeling Act of 1939 (the "Wool Act"). The Commission is also requesting comments about the overall costs and benefits of the Rules and their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 6, 1994.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, Room H-159, Sixth & Pennsylvania Ave. NW., Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Wool Act, 16 CFR part 300—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024, (310) 575-7890.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Rules and Regulations under the Wool Act.

The Wool Act (15 U.S.C. 68) requires marketers of covered wool products to mark each product with (1) the generic names and percentages by weight of the constituent fibers present in the wool product; (2) the name under which the manufacturer or other responsible company does business, or in lieu thereof, the registered identification number (RN) of such company; and (3) the name of the country where the wool product was processed or manufactured. Furthermore, the Wool Act contains advertising and recordkeeping provisions. Pursuant to Section 6(a) of the Wool Act, "[t]he Commission is authorized and directed to make rules and regulations for the manner and form of disclosing information required by this Act * * * and to make such further rules and regulations under and in pursuance of the terms of this Act as may be necessary and proper for administration and enforcement." (15 U.S.C. 68d(a).) These implementing rules and regulations are set forth at 16 CFR part 300. The Commission solicits public comments on the following questions:

1. Is there a continuing need for the Rules and Regulations issued under the Wool Act?

a. What benefits have the Rules provided to purchasers of the products or services affected by the Rules?

b. Have the Rules imposed costs on purchasers?

2. What changes, if any, should be made to the Rules to increase the benefits of the Rules to purchasers?

a. How would these changes affect the costs the Rules impose on firms subject to their requirements?

3. What significant burdens or costs, including costs of compliance, have the Rules imposed on firms subject to their requirements?

a. Have the Rules provided benefits to such firms?

4. What changes, if any, should be made to the Rules to reduce the burdens or costs imposed on firms subject to their requirements?

a. How would these changes affect the benefits provided by the Rules?

5. Do the Rules overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Rules were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rules?

Authority: 15 U.S.C. 68 *et seq.*

List of Subjects in 16 CFR Part 300

Advertising, Labeling, Recordkeeping, Wool products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-10940 Filed 5-5-94; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 301

Rules and Regulations Under the Fur Products Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Rules and Regulations under the Fur Products Labeling Act (the "Fur Act"). The Commission is also requesting comments about the overall costs and benefits of the Rules and their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 6, 1994.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, room H-159, Sixth & Pennsylvania Ave., NW., Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Fur Act, 16 CFR part 301—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024, (310) 575-7890.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Rules and Regulations under the Fur Products Labeling Act.

The Fur Act (15 U.S.C. 69) requires covered furs and fur products to be labeled, invoiced, and advertised to show (1) the name(s) of the animal that produced the fur(s); (2) that the fur is used fur or that the fur product contains used fur, when such is the fact; (3) that the fur product or fur is bleached, dyed, or otherwise artificially colored, when such is the fact; and (4) the name of the country of origin of any imported furs used in the fur product. Furthermore, the Fur Act contains invoicing, advertising, and recordkeeping provisions. Pursuant to Section 8(b) of the Fur Act, "[t]he Commmision is authorized and directed to prescribe rules and regulations * * * as may be necessary and proper for purposes of administration and enforcement of this Act." (15 U.S.C. 69f(b).) These implementing rules and regulations are set forth at 16 CFR part 301.

Currently, Rules 19 and 27 (16 CFR 301.19 and 301.27) include provisions where measurements are expressed exclusively in inches or fractions of inches. Under Executive Order 12770 of July 25, 1991 (56 FR 35801, July 29, 1991), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205b), all federal agencies are required to use the SI metric system of measurement in all procurements, grants, and other business-related actvities (which includes rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. To comply with these requirements, should the Commission elect to retain Rules 19 and 27 after conducting this review, the wording of these provisions will be altered to include the metric equivalents in parentheses beside the measurements in inches.

Rule 19(i)(1) (16 CFR 301.19(i)(1)) would be revised to read: "Any person dressing, processing, or treating a fur pelt in such a manner that it is required under paragraph (e) or (h) of this section to be dsecribed as 'color altered' or 'color added' shall place a black stripe at least one half inch (1.27 cm) in width across the leather side of the skin immediately above the rump or place a stamp with a solid black center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use black ink for all other stamps or markings on the leather side of the pelt."

Rule 19(i)(2) (16 CFR 301.19(i)(2)) would be revised to read: "Any person dressing, processing or treating a fur pelt which after processing is considered natural under paragraph (g) of this section shall place a white stripe at least one-half inch (1.27 cm) in width across the leather side of the skin immediately above the rump or place a stamp with a solid white center in the form of either a 2-inch (5.08 cm) square or a circle at least 2 inches (5.08 cm) in diameter on the leather side of the pelt and shall use white ink for all other stamps or markings on the leather side of the pelt."

Rule 19(i)(3) (16 CFR 301.19(i)(3)) would be revised to read: "Any person dressing, processing or treating a fur pelt in such a manner that it is considered dyed under paragraph (d) of this section shall place a yellow stripe at least one-half inch (1.27 cm) in width across the leather side immediately above the rump or place a stamp with a solid yellow center in the form of either a 2-inch (5.08 cm) square or a circle at least 2 inches (5.08 cm) in diameter on the leather side of the pelt and shall use yellow ink for all other stamps or markings on the leather side of the pelt."

Rule 19(1)(2) (16 CFR 301.19(1)(2)) would be revised to read: "A recommended method for preparation of samples would be: Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of $\frac{1}{16}$ inch (1.59 mm). The pliers should be inserted at the same angle as the guard hairs with the tip opened to ¼ inch (6.35 mm). After contact with the hide, the tip should be raised about ¼ inch (6.35 mm), closed tightly and pulled quickly and firmly to remove the hair."

The first sentence of Rule 27 (16 CFR 301.27) would be revised to read: "At all times during the marketing of a fur product the required label shall have a minimum dimension of one and three-fourths (1¾) inches by two and three-fourths (2¾) inches (4.5 cm × 7 cm)."

These are technical, non-substantive amendments to Rules 19 and 27 which merely provide metric equivalents to the measurements expressed in inches; they do not create any new requirements. Thus, under the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), no formal rulemaking proceeding is necessary to implement these revisions.

If the Commission elects to retain Rule 43 (16 CFR 301.43), "Use of deceptive trade or corporate names, trademarks or graphic representations prohibited," after conducting this review, it intends to update certain terms to reflect statutory and policy changes that have occurred since Rule 43 was originally promulgated. The phrase "capacity or tendency to mislead or deceive" would be changed to conform with the language regarding deception that is set forth in Cliffdale Associates, Inc., 103 F.T.C. 110, 164–65 (1984) and subsequent cases.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the Rules and Regulations issued under the Fur Act?

a. What benefits have the Rules provided to purchasers of the products or services affected by the Rules?

b. Have the Rules imposed costs on purchasers?

2. What changes, if any, should be made to the Rules to increase the benefits of the Rules to purchasers?

a. How would these changes affect the costs the Rules impose on firms subject to their requirements?

3. What significant burdens or costs, including costs of compliance, have the Rules imposed on firms subject to their requirements?

a. Have the rules provided benefits to such firms?

4. What changes, if any, should be made to the Rules to reduce the burdens or costs imposed on firms subject to their requirements?

a. How would these changes affect the benefits provided by the Rules?

5. Do the Rules overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Rules were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rules?

Authority: 15 U.S.C. 69 *et seq.*

List of Subjects in 16 CFR Part 301

Advertising, Invoicing, Labeling, Recordkeeping, Fur products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–10939 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Rules and Regulations under the Textile Fiber Products Identification Act (the "Textile Act"). The Commission is also requesting comments about the overall costs and benefits of the Rules and their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 6, 1994.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, room H–159, Sixth & Pennsylvania Ave., NW., Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Textile Act, 16 CFR part 303—Comment."

FOR FURTHER INFORMATION CONTACT:

Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or revision.

At this time, the Commission solicits written public comments concerning the Commission's Rules and Regulations under the Textile Act.

The Textile Act (15 U.S.C. 70) requires marketers of covered textile products to mark each product with (1) the generic names and percentages by weight of the constituent fibers present in the textile product; (2) the name under which the manufacturer or other responsible company does business, or in lieu thereof, the registered identification number (RN) of such company; and (3) the name of the country where the textile product was processed or manufactured. Furthermore, the Textile Act contains advertising and recordkeeping provisions. Pursuant to section 7(c) of the Textile Act, "[t]he Commission is authorized and directed to make such rules and regulations, including the establishment of generic names of manufactured fibers, under and in pursuance of the terms of this Act as may be necessary and proper for administration and enforcement." (15 U.S.C. 70e(c).) These implementing rules and regulations are set forth at 16 CFR part 303.

Currently, Rules 10, 21, 32, and 45 (16 CFR 303.10, 303.21, 303.32, and 303.45) include provisions where measurements are expressed exclusively in inch/pound units. Under Executive Order 12770 of July 25, 1991 (56 FR 35801, July 29, 1991), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205b), all federal agencies are required to use the SI metric system of measurement in all procurements, grants, and other business-related activities (which includes rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. To comply with these requirements, should the Commission elect to retain Rules 10, 21, 32, and 45 after conducting this review, the wording of these provisions will be altered to include the metric equivalents in parentheses beside the measurements in inch/pound units.

Rule 10(b) (16 CFR 303.10(b)) would be revised to read: "Where drapery or upholstery fabrics are manufactured on hand-operated looms for a particular customer after the sale of such fabric has been consummated, and the amount of the order does not exceed 100 yards (91.44 m) of fabric, the required fiber content disclosure may be made by listing the fibers present in order of predominance by weight with any fiber or fibers required to be designated as "other fiber" or "other fibers" appearing last, as for example:

Rayon
Wool
Acetate
Metallic
Other fibers"

Rule 21(a)(1) (16 CFR 303.21(a)(1)) would be revised to read: "If the samples, swatches, or specimens are less than two square inches (12.9 cm^2) in area and the information otherwise required to appear on the label is clearly, conspicuously, and non-deceptively disclosed on accompanying promotional matter in accordance with the Act and regulations;"

Rule 32 (16 CFR 303.32) would be revised to read: "Any upholstered product, mattress, or cushion which contains stuffing which has been previously used as stuffing in any other upholstered product, mattress, or cushion shall have securely attached thereto a substantial tag or label, at least 2 inches (5.08 cm) by 3 inches (7.62 cm) in size, and statements thereon conspicuously stamped or printed in the English language and in plain type not less than ⅓ inch (8.38 mm) high, indicating that the stuffing therein is composed in whole or in part of "reused stuffing," "secondhand stuffing," "previously used stuffing," or "used stuffing."

Rule 45(a)(xv) (16 CFR 303.45(a)(xv)) would be revised to read: "Flags with heading or more than 216 square inches (13.9 dm^2) in size;"

These are technical, non-substantive amendments to Rules 10, 21, 32, and 45 which merely provide metric equivalents to the measurements expressed in inch/pound units; they do not create any new requirements. Thus, under the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), no formal rulemaking proceeding is necessary to implement these revisions.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the Rules and Regulations issued under the Textile Act?
   a. What benefits have the Rules provided to purchasers of the products or services affected by the Rules?
   b. Have the Rules imposed costs on purchasers?
2. What changes, if any, should be made to the Rules to increase the benefits of the Rules to purchasers?
   a. How would these changes affect the costs the Rules impose on firms subject to their requirements?
3. What significant burdens or costs, including costs of compliance, have the Rules imposed on firms subject to their requirements?
   a. Have the Rules provided benefits to such firms?
4. What changes, if any, should be made to the Rules to reduce the burdens or costs imposed on firms subject to their requirements?
   a. How would these changes affect the benefits provided by the Rules?
5. Do the Rules overlap or conflict with other federal, state, or local laws or regulations?
6. Since the Rules were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rules?

Authority: 15 U.S.C. 70 *et seq.*

List of Subjects in 16 CFR Part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 94–10938 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 455

Regulatory Flexibility Act and Periodic Review of Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is soliciting comments on the Used Motor Vehicle Trade Regulation Rule (the "Used Car Rule" or "Rule"). Specifically, the Commission is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. Additionally, in accordance with the Regulatory Flexibility Act, the Commission is soliciting comments and data on whether the Used Car rule has

had a significant economic impact on small entities, and if it has, whether the Rule should be amended to minimize any such economic impact on small entities. The Commission also is soliciting comments on two nonsubstantive amendments the Commission proposes to make to the Spanish language version of the Buyers Guide.

DATES: All comments and data should be received by the Commission no later than July 5, 1994.

ADDRESSES: Comments and data should be sent to Secretary, Federal Trade Commission, Washington DC 20580. Submissions should be identified as "Used Car Rule—"Review Comment."

FOR FURTHER INFORMATION CONTACT: George Brent Mickum IV, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580, (202) 326-3132.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Used Car Rule, 16 CFR part 455, under the authority of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* ("FTC Act"), and the Magnuson Moss Warranty Act, 15 U.S.C. 2309, on November 19, 1984. 49 FR 45692 (1984). The Rule became effective on May 9, 1985. Any violation of the Rule constitutes an unfair or deceptive act or practice under the FTC Act, and is subject to civil penalties of up to $10,000 per violation.

The Used Car Rule is primarily intended to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule provides a uniform method for written disclosure of warranty information on a window sticker called the "Buyers Guide." The Rule requires clear disclosure on the Buyers Guide of the basic terms and conditions of any warranty offered in connection with the sale of a used car, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty.

The Rule also requires other disclosures that must be printed directly on the Buyers Guide, including:

(1) A suggestion that consumers ask the dealer if a pre-purchase inspection is permitted;

(2) A warning against reliance on spoken promises that are not confirmed in writing; and

(3) A list of fourteen major systems of an automobile and the major problems that may occur in these systems. The Rule also provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. When used car dealers conduct sales in the Spanish language, Spanish language Buyers Guides are required.

II. Rule Reviews

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the FTC conduct a periodic review of rules that have or may have a significant economic impact on a substantial number of small entities. In addition, as part of its oversight responsibilities, the Commission has determined to review rules and guides periodically. See 59 FR 2955 (Jan. 20, 1994). Both reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission.

The purpose of the RFA review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consistent with the state objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities. For the purpose of the RFA review, a "small entity" is a used motor vehicle dealer with less than $11.5 million in annual sales, as defined by the Small Business Size Standards, 13 CFR 121.601. The purpose of the Commission's periodic review is to solicit comment on issues relating to the operation of the Rule. This review is not limited to the Rule's impact on small entities, but encompass all affected entities.

III. Request for Comment

The Commission solicits comment on the following questions and requests that any factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

1. Is there a continuing need for the Rule?

a. What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

b. Has the Rule imposed costs on purchasers?

2. What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

a. How would these changes affect the costs the Rule imposes on firms subject to its requirements?

3. What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

a. Has the Rule provided benefits to such firms?

4. What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the Rule?

5. Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

7. What significant burdens or costs, including costs of compliance, has the Rule imposed on small firms subject to its requirements?

a. How do these burdens or costs differ from those imposed on larger firms subject to the Rule's requirements?

8. To what extent are the burdens or costs that the Rule imposes on small firms similar to those that small firms would incur under standard and prudent business practices?

9. What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small firms?

a. How would these changes affect the benefits of the Rule?

b. Would such changes adversely affect the competitive position of larger firms?

10. How many used vehicles (as defined by § 455.1(d)(2) of the Rule) are sold annually in the United States?

11. How many used car dealers have under $11.5 million in annual sales?

12. Should the Rule's requirement that the Buyers Guide be posted in a side window of a used vehicle, as set forth in § 455.2(a)(1) of the Rule, be modified to allow posting in a different location (for example, in the rear window of a pickup truck or other vehicle without side rear windows), as long as the Buyers Guide is conspicuous and both sides may be readily viewed?

13. What changes to the format of the Buyers Guide should be considered in order to reduce compliance costs or burdens? Would such changes have any detrimental effect on the benefits provided by the Rule? Is there any empirical or other evidence to support opinions that such changes would or would not have a detrimental effect on benefits?

14. What changes to the format of the Buyers Guide should be considered in

order to increase its benefits? What effect would such changes have on the costs or burdens imposed by the Rule? Is there any empirical or other evidence to support opinions that such changes would or would not increase costs or burdens?

IV. Non-Substantive Amendments to the Rule

The Commission also solicits comment on two non-substantive amendments the Commission proposes to the Rule involving the Spanish language version of the Buyers Guide, § 455.5 of the Rule. The first proposed change is grammatical: The "As Is" ("Como Esta-Sin Garantia") section of the Buyers Guide reads "El vendedor no asume ninguna responsabilidad por cualquier *las reparaciones* * * *" (emphasis added). This language will be amended to read: "El vendedor no asume ninguna responsabilidad por cualquier reparacione * * *" The second suggested modification appears in the "Warranty" ("Garantia") section of the Buyers Guide. The word "vendedo" in the second full sentence will be amended to read "Pida al *vendedor* una copia del documento * * *."

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 94–10937 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Withdrawal of State program amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed regulatory program amendment (Administrative Record No. KY–1260) filed by Kentucky on November 17, 1993, pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), relating to the disposal of coal combustion fly ash, bottom ash and scrubber sludge.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503 Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

Background

By letter dated November 17, 1993 (Administrative Record No. KY–1260), Kentucky submitted a proposed program amendment that would add a new section (405 KAR 7:200) to Kentucky's Administrative Regulations. The proposed new regulation offers surface coal mining permittees the option to dispose of coal combustion waste on the permit area under the special waste permit-by-rule established at 401 KAR 45:060 Section 1(6).

OSM announced receipt of the proposed amendment in the January 13, 1994, **Federal Register** (59 FR 1921) and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 14, 1994.

By letter dated April 18, 1994, Kentucky gave OSM notice that it was withdrawing the program amendment, submitted on November 17, 1993, from further consideration. The regulation, which was the subject of the amendment, completed the promulgation process and took effect on March 13, 1994. During promulgation, a letter of objection was attached to the regulation by the Administrative Regulation Review Subcommittee, with the result that the regulation expired April 15, 1994, upon adjournment of the regular session of the 1994 Kentucky General Assembly. During the same legislative session, Senate bill 266 which addresses the same issues, was enacted into law and has been submitted to OSM as a proposed amendment to the Kentucky regulatory program and will be the subject of a separate rulemaking by OSM.

Therefore, the proposed program amendment published in the **Federal Register** dated January 13, 1994, related to the disposition of coal combustion fly ash, bottom ash and scrubber sludge is withdrawn.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 1994.

Ronald C. Recker,
Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–10866 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 298

Defense Investigative Service Freedom of Information Act Program

AGENCY: Defense Investigative Service, Defense.

ACTION: Proposed rule and request for comments.

SUMMARY: This document is published to conform to the final rule published for the Department of Defense regarding implementation of the Freedom of Information Act Program. It addresses organizational and administrative changes within the Defense Investigative Service. It proposes changes to the agency directive which implements the Freedom of Information Act.

DATES: Comments are requested by July 5, 1994.

ADDRESSES: Forward comments to Defense Investigative Service, ATTN: Mr. Dale L. Hartig, Chief, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, Virginia 33214–1651. FAX No. (703) 325–6545.

FOR FURTHER INFORMATION CONTACT: Mr. Dale L. Hartig, Chief, Office of Information and Public Affairs, (703) 325–5324; FAX No. (703) 325–6545.

SUPPLEMENTARY INFORMATION: It has been certified that this proposed rule does not exert a significant economic impact on a substantial number of small entities. This determination is made based upon the fact that the rule merely recodifies the procedural aspects of the Defense Investigative Service Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the Defense Investigative Service; it imposes no new requirements, rights, or benefits on small entities; and will have neither a beneficial nor adverse affect on small entities. Prior publication of this rule may be found at 53 FR 36968, September 23, 1988. Redesignated and amended at 56 FR 58180, November 16, 1991.

List of Subjects in 32 CFR Part 298

Freedom of information.

Accordingly, 32 CFR part 298 is proposed to be revised to read as follows:

PART 298—DEFENSE INVESTIGATIVE SERVICE (DIS) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
298.1 Purpose.
298.2 Organization.
298.3 Records maintained by DIS.
298.4 Procedure for release of DIS records.
298.5 Information requirements.

Authority: 5 U.S.C. 552

§ 298.1 Purpose.

This part states the intent of the agency regarding policy and procedures for the public to obtain information from the Defense Investigative Service (DIS) under the Freedom of Information Act (FOIA).

§ 298.2 Organization.

(a) The DIS organization includes a Headquarters located in Alexandria, Virginia; four Regions and one investigative area with subordinate operating locations throughout the Continental United States (CONUS), Alaska, Hawaii, and Puerto Rico; the Defense Industrial Security Clearance Office (DISCO), Columbus, Ohio; the Personnel Investigations Center (PIC) and National Computer Center (NCC) in Baltimore, Maryland; Office of Industrial Security International Europe (OISI–E), located in Brussels, Belgium with a subordinate office in Mannheim, Germany; Office of Industrial Security International Far East (OISI–FE) located at Camp Drake, Japan; and the Department of Defense Security Institute, located in Richmond, Virginia.

(b) A copy of the DIS Directory showing the addresses of all offices, is available to the public upon request and may be obtained by following the procedures outlined in § 298.4. The names and duty addresses of DIS personnel serving overseas are not released.

§ 298.3 Records maintained by DIS.

It is the policy of DIS to make publicly available all information which may be released under the Freedom of Information Act (FOIA), consistent with its other responsibilities. In implementing this policy, DIS follows the procedures set forth in 32 CFR part 286. DIS maintains the following records which may be of interest to the public:

(a) The Defense Clearance and Investigations Index (DCII), which contains references to investigative records created and held by DoD Components. The records indexed are primarily those prepared by the investigative agencies of the DoD, covering criminal, fraud, counterintelligence, and personnel security information. This index also includes security clearance determinations made by the various components of the Department of Defense. Information in the DCII is not usually available to the general public, since general release would violate the privacy of individuals whose names are indexed therein.

(b) Records created as required by DoD Directive 5105.42,[1] "Defense Investigative Service (DA&M)," (32 CFR part 377) including investigative and industrial security records.

(c) Publications referenced in "DIS Directives Listing" (DIS 00–1–L). A copy of DIS 00–1–L may be obtained upon request from the DIS Office of Information and Public Affairs (V0020), 1340 Braddock Place, Alexandria, VA 22314–1651. While this document will be provided for the convenience of possible users of the materials, such release does not constitute a determination that all or any of the publications listed affect the public or have been cleared for public release.

§ 298.4 Procedures for release of DIS records.

(a) All requests will be submitted in writing to: Defense Investigative Service, Office of Information and Public Affairs (V0020), 1340 Braddock Place, Alexandria, Virginia 22314–1651.

Requests directed to any agency activity (headquarters or field elements) will be forwarded to the Office of Information and Public Affairs.

(b) All requests shall contain the following information:

(1) As complete an identification as possible of the desired material including to the extent known, the title, description, and date. 32 CFR part 286 does not authorize "fishing expeditions." In the event a request is not reasonably described as defined in 32 CFR part 286, the requester will be notified by DIS of the defect.

(2) The request must contain the first name, middle name or initial, surname, date and place of birth, social security number, and, if applicable, military service number of the individual concerned, with respect to material concerning investigations of an individual.

(3) A statement as to whether the requester wishes to inspect the record or obtain a copy of it.

(4) A statement that all costs for search (in the case of "other" and "commercial" requesters), duplication (in the case of all categories of requesters), and review (in the case of "commercial requesters") will be borne by the requester even if no records, or no releasable records, are found, if appropriate. See 32 CFR part 286 for information on fees and fee waivers.

(5) The full address (including ZIP code) of the requester.

(c) A notarized request by an individual requesting investigative or other personnel records may be required to avoid the risk of invasion of privacy. Requesters will be notified and furnished appropriate forms if this requirement is deemed necessary. In lieu of a notarized statement, an unsworn declaration in accordance with 28 U.S.C. 1746 may be required.

(d) When a request is incomplete or fails to include all of the information required, the requester will be contacted for additional information prior to beginning release procedures.

(e) DIS shall normally respond to requests within 10 working days after receipt by the Office of Information and Public Affairs, unless an extension is required and the requester is notified in writing. If a significant number of requests prevents responding in 10 working days, requests will be processed on a first-come, first-served basis to ensure equitable treatment to all requesters.

(f) When the release of information has been approved, a statement of costs computed in accordance with the DoD Fee Schedule (32 CFR part 286), or a statement waiving the fee, will be included in the notification of approval. Records approved for release will generally be mailed immediately following the receipt of fees. Fees may be waived or reduced in accordance with 32 CFR part 286. Remittances must be in the form of a personal check, bank draft, or postal money order. Remittances are to be made payable to the Treasurer of the United States. Certified documents may be requested for an official government or legal function, and will be provided at a rate established by 32 CFR part 286 for each authentication.

(g) When requests are denied in whole or in part in accordance with 32 CFR part 286, the requester will be advised of the identity of the official making the denial, the reason for the denial, the right of appeal of the decision, and the identity of the person to whom an appeal may be addressed.

(h) Facilities for the review or reproduction of records following approval of the request or appeal are available at the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, Virginia 22314–1651. All other transactions will be conducted by mail.

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[1] Copy may be obtained at cost from National Technical Information Service (NTIS), 5285 Port Royal, Springfield, VA 22161.

(i) Appeal of Denial of DIS Records and Information:

(1) All appeals will be submitted in writing and reach the following appellate authority no later than 60 days after the date of the initial denial letter: Director, Defense Investigative Service (V0000), 1340 Braddock Place, Alexandria, Virginia 22314–1651.

(2) All appeals will contain at least the same identification of the records requested as the original request, and a copy of the letter denying the request, if available. Requesters will be given appeal rights when a search has been conducted and no records are located.

(3) All appeals will be reviewed by the Director, DIS, or the Special Assistant to the Director, DIS. Responses to appeals normally shall be made within 20 working days after receipt, unless an extension is required and the appellant is notified. When a request is approved on appeal, the procedures set forth in § 298.4(f) will be followed.

§ 298.5 Information requirements.

The DIS Office of Information and Public Affairs is responsible for preparation of the annual "Freedom of Information Act Report." This report has been assigned control symbol PA (TRA&AN) 1365. No forms or publications are required by this part.

Dated: May 3, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10931 Filed 5–5–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 92–065]

RIN 2115–AE37

Expanded Hull Identification Number and New Requirements for Certificates of Origin

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the regulations concerning vessel Hull Identification Numbers (HIN) and establishing new regulations requiring Certificates of Origin for new vessels offered for sale in the United States. The Coast Guard is proposing the regulations in order to provide additional information identifying vessels and establishing evidence of vessel ownership to aid in marine investigations, deter theft, and provide a more useful vessel identifier for the purposes of developing the vessel identification system, as required by legislation. The Coast Guard also proposes to make several editorial corrections to its HIN regulations.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 92–065), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 1505, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 92–065) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Alston Colihan, Project Manager, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Secretary of Transportation is required to establish the Vessel Identification System (VIS) (46 U.S.C. chapters 125, 131 & 313) for use by the public and law enforcement officials. The Secretary has delegated to the Commandant, U.S. Coast Guard, the authority to implement VIS. VIS will provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels and deter vessel theft. This rulemaking would aid in the development of VIS by expanding the existing 12 character HIN to include certain vessel-specific information and thereby create a more useful vessel identification number. Further, requiring vessel manufacturers and importers to provide a Certificate of Origin with each vessel produced or imported for the purposes of sale would ensure the availability of documentation certifying this information and establishing a chain of ownership.

Discussion of Proposed Amendments

Investigations of lost and stolen vessels depend in large part on the proper authorities' ability to identify a vessel and establish a chain of ownership. The proposed regulations would aid in this pursuit by expanding the current 12 character HIN to include detailed information about each vessel. In addition, a check digit in the expanded HIN would make alteration of an HIN more difficult thereby helping to prevent fraud in the sale of vessels. The proposed regulations would also require that vessel manufacturers provide a Certificate of Origin certifying the truth about certain information in the HIN and for use as the first document in the paper trail establishing proof of vessel ownership.

Removal of the definition for "model year" would clear up a drafting error which has existed since the last time the HIN regulations were amended in 1984. Finally, removal of the references to "State Boating Law Administrator" in 33 CFR 181.31(c) would allow States which use their Department of Motor Vehicles as vessel numbering and titling authorities to issue HINs to individuals building their own vessels.

The following discusses the proposed changes to 33 CFR part 181:

(a) "Model Year" Definition

The definition of "model year" would be removed from § 181.3. Up until 1984 the regulations allowed for two methods of indicating the date of manufacture in the last four characters of the 12 character HIN. When those two formats were devised, it was the Coast Guard's understanding that the new model year would not commence prior to August. Some manufacturers complained that they wanted to vary the introduction date of the new model year from year to year, but that they were prevented from doing so by the HIN regulations which defines model year as the period beginning August 1 of any year and ending on July 31 of the following year. The Coast Guard amended the HIN regulations in 1984 to give vessel manufacturers the freedom to designate model year in the HIN as they requested. The Coast Guard amended § 181.25(a) to require characters 11 and 12 to indicate the model year using the last two characters of the model year such as "84" for 1984. However, due to a drafting error, the Coast Guard failed to delete the outdated and superfluous definition of "model year." The proposed amendments would remove the definition of "model year" from part 181.

(b) Incorporation by Reference

The following material would be incorporated by reference in § 181.4:

International Organization for Standardization (ISO) Standard 3166 "Codes for the representation of names of countries." International Organization for Standardization (ISO) Standard 1073/I–1976 "Alphanumeric character sets for optical recognition—Part I: Character Set OCR–A—Shapes and dimensions of the printed image." Copies of the material are available for inspection where indicated under **ADDRESSES.** Copies of the material are available at the addresses in § 181.4. Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporations by reference.

ISO Standard 3166 contains two character alphabetic codes which would be used to indicate the "country code" in the expanded HIN. ISO Standard 1073/I–1976 prescribes shapes and sizes of alphanumeric characters for optical character recognition (OCR) systems, which means that the characters are both human and machine readable.

(c) Nineteen Character Hull Identification Number

The existing Hull Identification Number (HIN) is a unique 12 character serial number required on each recreational vessel manufactured in or imported into the United States for the purposes of sale. The Coast Guard assigns the first three characters, a Manufacturer Identification Code (MIC) which identifies the manufacturer or importer; characters four through eight are a manufacturer serial number; characters nine and ten indicate date of certification for vessels subject to safety standards or the date of manufacture for vessels not subject to standards; and characters eleven and twelve indicate the model year.

There are two serious problems involving the current 12 character HIN format. Thieves can alter an HIN and "launder" a stolen vessel in States with ineffective titling and registration programs. Similarly, the last four characters in many HINs are fraudulently altered as a means of misrepresenting vessels as "newer."

As early as May 1987, the National Auto Theft Bureau (NATB), which is supported by more than 600 casualty insurance companies, recommended that the Coast Guard adopt a 17 character HIN format (similar to the format required for the Vehicle Identification Number [VIN] on an automobile) as a means of detecting and deterring vessel theft. Each VIN contains certain characters which describe features such as body style and engine type which are specific to the automobile to which the VIN is assigned. A VIN also contains a check digit which assures the integrity of the other characters in a VIN. According to the NATB and officials of the National Association of State Boating Law Administrators (NASBLA), the additional HIN characters would lead to increased recovery of stolen vessels and more successful enforcement efforts, thereby deterring would-be thieves.

During meetings with the International Standards Organization (ISO) some ISO member countries expressed a desire for the Coast Guard to include a two character country of MIC registration code as part of the expanded HIN format to distinguish between MICs issued by different foreign countries. The Coast Guard agrees that including the two character country of MIC registration code in the proposed HIN would be appropriate.

The proposed expanded HIN would consists of 19 characters. The additional seven characters would indicate country of MIC registration, length, hull material, principal means of propulsion, vessel type and a check digit. The expanded HIN with its check digit would reflect additional information useful to law enforcement authorities investigating vessel thefts and provide a useful means of identifying vessels in VIS.

Section 181.25 would be revised to require that each of the Hull Identification Numbers prescribed by § 181.23 must consist of 19 characters uninterrupted by slashes, hyphens or spaces:

(1) Characters one and two would be the two character alphabetic "country code" from ISO Standard 3166. The country code for Manufacturer ID Codes the Coast Guard assigns in the United States, for example, would be "US."

(2) Characters three through five would be the existing manufacturer identification code the Coast Guard assigns to the vessel manufacturer in accordance with § 181.31(a).

(3) Characters six through ten would be the serial number the manufacturer currently assigns in accordance with § 181.25(b).

(4) Characters eleven and twelve would indicate date of certification for vessels subject to safety standards or the date of manufacture for vessels not subject to standards in accordance with the existing format specified in § 181.25(c).

(5) Characters thirteen and fourteen would indicate the model year in accordance with the existing format specified in § 181.25(d).

(6) The fifteenth character would indicate overall length of the vessel using a corresponding letter of the English alphabet. The character, "A," would indicate a vessel with a hull length of less than six feet; "B" would indicate a vessel with a hull length of six feet to 10 feet, 11 inches; "C" would indicate 11 feet; "D" would indicate 12 feed, and so on. The character, "Z", would indicate a vessel with a hull length of more than 31 feet. Inches would not be included in the measurement of length, therefore, 15 feet, 10 inches is 15 feet and 16 feet, 2 inches is 16 feet.

(7) The sixteen character would indicate hull material using a

corresponding Arabic numeral. Arabic numerals one through eight would indicate aluminum, ferrocement, fiber reinforced plastic (FRP), flexible fabric, foam, plastic, steel and wood, respectively.

(8) The seventeenth character would indicate the principal means of propulsion of the vessel using a corresponding Arabic numeral. Arabic numerals one through nine would indicate air propeller, bracket mounted outboard, inboard, inboard jet, inboard/outdrive, nonpowered, outboard, sail and sail with inboard auxiliary, respectively. Footnotes to a table in this section would distinguish between which Arabic numerals to use to indicate nonpowered vessels, sailboats and sailboats with auxiliary power.

(9) The eighteenth character would indicate the type of vessel using a corresponding Arabic numeral. Arabic numerals one through nine would indicate air cushion vehicle; canoe, kayak, sailboard or surfboard; inflatable; monohull/cabin configuration; monohull/closed bow; monohull/open bow; multihull/cabin or closed bow; multihull/open deck; and personal watercraft, respectively. Footnotes to a table in this section would distinguish between which Arabic numerals to use to indicate the vessel types described above.

(10) The nineteenth character would be a check digit determined by performing certain arithmetic calculations involving the previous 18 characters. Characters consisting of letters of the English alphabet would be converted to corresponding numerical values. A diagram in the section would show how the calculations should be performed. The Coast Guard has developed a computer program which calculates the check digit and is available to any vessel manufacturer with a computer. The Coast Guard has also developed several work sheets to help determine the HIN for a vessel which are also available.

(d) Reference to State Boating Law Administrator

Section 181.31 prescribes the regulations on the assignment of a Manufacturer Identification Code (MIC) to each recreational vessel manufacturer and importer. According to § 181.31(c), persons who are building vessels for their own use and not for the purposes of sale, must obtain an entire Hull Identification Number from the State Boating Law Administrator of the State where the vessel will be principally used, in lieu of applying for a MIC. A number of the States use their Department of Motor Vehicles (DMV) for numbering and titling of vessels and the DMV would issue a State HIN. Under the proposed amendments, references to "State Boating Law Administrator" would be removed from the section and the words "the issuing authority of the State" would be added in their place.

(e) Certificate of Origin

The Secretary is required to include information assisting law enforcement officials in VIS (46 U.S.C. 12501(b)(6)). A Certificate of Origin (COO) is a document issued by a product's manufacturer certifying to the truth of certain facts. Many States require vessel owners to provide a COO before they will issue a title or register and number a vessel. Thus, a COO is usually the first document in the paper trail identifying a vessel and establishing proof of ownership. Unfortunately, many vessel manufacturers do not issue COOs for vessels they manufacture or they issue COOs which many States consider unacceptable.

A purchaser's possession of a standardized COO for a vessel would ensure that documentation of the vessel's chain of ownership is established. This would aid law enforcement investigations by providing a means to demonstrate vessel ownership as well as providing a means to certify vessel information that could be used in the development of VIS.

Under the proposed amendments the Coast Guard would add a new Subpart D—"Certificates of Origin for Boats." The proposed amendments would require manufactures and U.S. importers of foreign-built vessels to provide a completed COO with each vessel manufactured or imported. The issuing authorities in the States would be given the option of issuing COOs to individuals building their own vessels or exempting them from the requirement altogether.

Discussion of Proposed Form

The Coast Guard is considering the development of a standardized COO form. For the reader's convenience, a prototype of a proposed form is reproduced in appendix A. This form should be considered in conjunction with the proposed regulations. Comments or suggestions pertaining to the format or content will be welcomed. Also, the Coast Guard specifically seeks comments on the most cost efficient manner to create and distribute the forms. Any proposed form will be submitted to the Office of Management and Budget for approval prior to publication of the final rule.

Discussion of Requirement for Certificate of Origin

A COO furnished with a recreational vessel in accordance with § 181.43 would:

(a) Be signed by or on behalf of the vessel manufacturer; and

(b) Recite the following:

(1) The vessel's 19 character hull identification number assigned in accordance with § 181.25;

(2) The date on which the COO is issued;

(3) The model name or numerical designation for the vessel;

(4) The length of the vessel in feet and inches;

(5) The beam of the vessel in feet and inches;

(6) Whether the vessel is for commercial or recreational use;

(7) The name and address of the dealer or individual to whom the vessel is first transferred; and

(8) The place the vessel is constructed (plant location).

Solicitation of Views

The Coast Guard is particularly interested in receiving comments on the following issues:

(a) The majority of the recreational vessel manufacturers are small volume builders who lack computers and cannot use a computer program developed by the Coast Guard. These manufacturers may have a difficult time determining the check digit in the proposed 19 character Hull Identification Number. When using simple arithmetic, those calculations may take as long as 15 minutes per vessel. Is 15 minutes a reasonable estimate for performing the calculation?

(b) Should the Coast Guard consider expecting certain classes of low cost vessels from the 19 character HIN, or do States which number all watercraft insist on universal application of this requirement?

(c) Are there other methods for calculation of the check digit which are not as time consuming and will still assure the integrity of the other characters in an HIN?

(d) The proposed regulations will require a COO for each new vessel manufactured or imported. Since a COO is unique to the vessel to which it is assigned, there may be some additional requirements associated with ensuring that the proper COO accompanies each vessel, particularly for importers of inflatables and similar, high volume, low cost vessels which are shipped in bulk containers. As a result, the COO requirement in the proposed regulations may require change in the manner in which small, high volume vessels are packaged for shipment. Should the Coast Guard consider excepting from the COO requirement certain classes of low cost vessels, or vessels involving special problems associated with the manner in which they are shipped?

(e) Do the States which number all watercraft insist on universal application of the COO requirement?

(f) A prototype of a proposed COO form is reproduced in appendix A. The Coast Guard proposes issuing a COO template to all boat manufactures and importers which they could copy to make COO forms for each boat. The Coast Guard would partially complete the COO templates with each manufacturer (or importer) name and address and the first five characters of the HIN as a means for minimizing information collection burdens.

However, the Coast Guard is seeking comments on whether the proposed COO contains sufficient security features and information to make it an effective document. The NASBLA Numbering and Titling Committee has recommended, through a mailing to the Coast Guard, that the COO form be machine readable utilizing the OCR–A font which provides the criteria for character set and print quality for optical character recognition; be uniform in all jurisdictions; and conform to the following format, standards, security, and specifications:

(1) Have an engraved border produced from banknote engraved artwork;

(2) Feature a prismatic, i.e., rainbow printing which is used as a deterrent to color copying, and/or a copy void pantograph, i.e., the word "void" appears when the document is copied;

(3) Be printed using erasable fluorescent background inks which fluoresce under ultraviolet light and react to any attempt to erase information;

(4) Include a background security design consisting of a repetitious pattern which hinders counterfeiting efforts;

(5) Be printed on sensitized security paper that is reactive to chemicals commonly used to alter documents;

(6) Be printed on non optical brightener paper without added optical brighteners which will not fluoresce under ultraviolet light;

(7) Include a microline—a line of small alpha characters in capital letters which requires a magnifying glass to read;

(8) Bear a pre-printed consecutive number for control purposes;

(9) Consist of complex colors which are developed by using a mixture of two or more of the primary colors (red, yellow and blue) and black if required; and

(10) Contain a security thread with or without a watermark, and/or an intaglio print with or without a latent image, and/or a security laminate.

The Coast Guard's preliminary investigations indicate that due to the high cost of creating forms meeting the NASBLA suggested requirements, the Coast Guard could not absorb the cost of printing COO forms meeting the NASBLA security features. The Coast Guard does not have the authority to charge manufacturers to reimburse the Coast Guard for its expenditures on COO forms. Therefore, if the Coast Guard were to adopt the NASBLA récommended security features, manufacturers would be responsible for creating or purchasing the forms on their own.

Are there interested parties who believe the NASBLA recommended security features would be appropriate for a State issued certificate of title, but are excessive for a manufacturer issued certificate of origin?

Some manufacturers build thousands of vessels annually, while others may build as few as a single vessel annually. What do printers estimate would be the costs to various volume boat manufacturers for creating and printing forms meeting the NASBLA recommended security features?

If the Coast Guard were able to obtain authorized funding, what would be the cost to the Coast Guard for creating, printing, partially completing, and distributing forms meeting the NASBLA recommended security features to various volume boat manufacturers?

Once the contents and security features of a finalized COO form are developed, based upon comments received, what are the most equitable and cost-efficient methods for creating, printing, and distributing COO forms to boat manufacturers?

(g) The proposed § 181.47 addresses the subject of duplicate COO forms.

(1) Who should be able to apply for a duplicate COO form from a boat manufacturer?

(2) What information should a duplicate COO contain?

(3) Should an affidavit or other type of proof be required as a condition to obtaining a duplicate COO form?

(4) If a duplicate COO must contain the same information as an original, should the regulations require the manufacturer to retain a copy of each original COO form? For how long?

Regulatory Assessment

This proposal is not a significant regulatory action under Executive Order 12866, and has not been reviewed by the Office of Management and Budget. It is also not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Assessment is unnecessary.

This project would benefit law enforcement officers by aiding in deterrence and detection of vessel fraud and theft. An estimated 2,000,000 recreational vessels are manufactured or imported annual. Issuing authorities in the States issue an estimated 17,000 HINs to individuals building their own vessels annually. This means an estimated 2,017,000 HINs are affixed annually. The estimated average cost for the affixing the existing 12 character HIN is $.50 per vessel. The estimated cost of expansion to a 19 character format is an additional $.25 per vessel, for a total cost of approximately $.75 per vessel.

The Coast Guard is soliciting specific comments on the estimated costs for COOs.

The Coast Guard considered three alternatives in developing the proposed rulemaking.

(a) Take no action. If the Coast Guard fails to take any action, the numbers of vessels stolen and the incidence of vessel fraud involving altered HINs will continue to increase. In addition, the development of VIS requires a means for identification of each vessel and proof of vessel ownership. Use of the 19 character HIN and a COO requirement appear to be the best way to accomplish those requirements. Many of the States and many law enforcement agencies support the proposal for a 19 character HIN and NASBLA, the National Boating Safety Advisory Council (NBSAC) and the National Association of Marine Investigators (NAMI), all support Coast Guard adoption of the 19 character HIN. The Coast Guard has also received numerous complaints from owners who are unable to register their vessels because they do not have a COO.

(b) Initiate a rulemaking to:

(1) Amend the HIN regulations in 33 CFR part 181 to require additional information about the vessel to be reflected in the HIN and add a requirement for a check digit to aid in the prevention of fraud, thereby expanding the current HIN format from 12 to 19 characters; and

(2) Require manufacturers and importers to complete a Builder's Certification.

Expanding the HIN to 19 characters would provide the best means of developing a vessel identifier for VIS and help to discourage and detect alterations of HINs through inclusion of the check digit. While requiring all vessel manufacturers to provide a completed Builder's Certification would have the advantage of utilizing one form for all vessels whether documented, numbered or titled, it would prove overly burdensome to many manufacturers and importers.

The Builder's Certification is designed for use by those documenting a vessel under 46 CFR part 67. Obtaining endorsements for documented vessels requires detailed information about the vessel, including the country in which the vessel and its major components were manufactured. Since a COO does not satisfy these documentation information requirements, it is not accepted as evidence of ownership for the purposes of documentation. The Builder's Certification satisfies documentation requirements, but would require information well beyond what is needed for VIS purposes and it would be overly burdensome to require manufacturers and importers to complete a Builder's Certification for every recreational vessel. The estimated reporting burden for the Builder's Certification is 30 minutes, while the estimated burden to complete the COO is five minutes. Therefore, requiring a Builder's Certification is not the preferred alternative for establishing the chain of ownership for the purposes of VIS.

(c) Initiate a rulemaking to:

(1) Amend the HIN regulations in 33 CFR part 181 to require additional information about the vessel to be reflected in the HIN and add a requirement for a check digit to aid in the prevention of fraud, thereby expanding the current HIN format from 12 to 19 characters; and

(2) Require manufacturers and importers to provide a completed COO for each recreational vessel they manufacture or import. This is the preferred alternative.

This alternative would provide VIS with the preferred 19 character HIN as well as the best method of establishing the chain of ownership for VIS purposes through the COO requirement. The COO requirement would provide all the information necessary for VIS and would take just five minutes to complete.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small business that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The proposed regulations will apply to the following small entities: Small manufacturers building vessels, small importers importing vessels and State issuing authorities.

There are reporting requirements associated with an expanded HIN that could be more burdensome to small entities than to the larger volume manufacturers, especially in the calculation of the check digit. Eighty percent of the new recreational vessels manufactured annually are build by 20 percent of the industry. These are large companies with engineering departments that are equipped with computers and the expertise to understand and properly encode the additional characters and the check digit. The majority of the recreational vessel manufacturers, however, are small volume builders who may have a more difficult time implementing the regulations and making the necessary calculations to determine the check digit. When using simple arithmetic, those calculations may take as long as 15 minutes per vessel. The Coast Guard has developed a computer program which calculates the check digit which is available to any vessel manufacturer with a computer. The Coast Guard has also developed several work sheets to help determine the HIN for a vessel and the worksheets are also available. Therefore, preliminary analysis indicates that a 19 character HIN will not have a significant economic impact on a substantial number of small entities.

The requirement for a COO may also result in additional requirements for small entities. Since a COO is unique to the vessel to which it is assigned, there may be some additional requirements associated with assuring that the proper COO accompanies each vessel, particularly for importers of inflatables and similar, high volume, low cost vessels which are shipped in bulk containers. As a result, the COO requirement in the proposed regulations may require changes in the manner in which small, high volume vessels are packaged for shipment. However, a preliminary analysis indicates that the COO requirement will not result in a significant impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, labeling and other, similar requirements.

This proposal contains collection of information requirements in the following sections: 181.23, 181.31 and 181.43. The following particulars apply:

DOT: 2115.

OMB CONTROL No.: 2115–XXXX.

Administration: U.S. Coast Guard

Title: Expanded Hull Identification Number and New Requirements for Certificates of Origin.

Need for Information: The information collection requirements contained in this proposal are necessary to meet statutory requirements of 46 U.S.C. chapter 125 regarding the establishment of a national vessel identification system for recreational vessel owners.

Proposed Use of Information: To be used by State agencies, local law enforcement, the Coast Guard and other Federal agencies and be available, on a fee basis, to private businesses involved in the maritime industry (such as banking firms and insurance companies) as a centralized data base regarding recreational vessels.

Burden Estimate: See discussion below.

Respondents: Boat manufacturers and importers (4,000), individuals building their own vessels (17,000) and issuing authorities in States and territories of the United States (56).

Forms: Hull Identification Number and Certificate of Origin

Average Burden Hours Per Respondent: Variable. There is no practical way to estimate the burden per respondent for the Hull Identification Number regulations. The respondents are vessel manufacturers and importers and State vessel registration and numbering authorities and members of the public who build their own vessels.

Some manufacturers produce thousands of vessels annually, while others may produce only a single vessel annually.

There are approximately 4,000 U.S. manufacturers and importers of recreational vessels. They manufacture or import an estimated 2,000,000 recreational vessels annually.

Eighty percent are built by major manufacturers. For those manufacturers the Coast Guard estimates five minutes per vessel to determine the HIN and affix it to the vessel:

.80×2,000,000=1,600,000 vessels
5×1,600,000=8,000,000 minutes=133,333 hours.

Twenty percent of the vessels are built by small and often non-sophisticated manufacturers. For those manufacturers the Coast Guard estimates 15 minutes per vessel to determine the HIN and affix it to the vessel:

.20×2,000,000=400,000 vessels
15×400,000=6,000,000 minutes=100,000 hours.

An estimated 17,000 individuals build their own vessels annually. Individuals building their own vessels are assigned an entire Hull Identification Number by the State in which they reside. The Coast Guard estimates that it takes an individual approximately 15 minutes to affix the HIN to a vessel:

17,000×15=255,000 minutes=4,250 hours
133,333+100,000+4,250=237,583 hours a total annual burden.

This total annual burden estimate would vary from year to year depending upon the state of the national economy which impacts upon annual production figures.

There is also no practical way to estimate the burden per respondent for the proposed COO requirement. The respondents are vessel manufacturers and importers and State vessel registration and numbering authorities and members of the public who build their own vessels. Most manufacturers with a computer will not suffer from significant burdens, because the computer can be programmed to generate completed COOs. For those manufacturers the Coast Guard estimates 3 minutes per vessel to complete a COO:

.80×2,000,000=1,600,000 vessels
3×1,600,000=4,800,000 minutes=80,000 hours.

Twenty percent of the vessels are built by small and often non-sophisticated manufacturers. For those manufacturers the Coast Guard estimates 5 minutes per vessel to type the required information (security standards would require that the COO be machine prepared):

.20×2,000,000=400,000 vessels
5×400,000=2,000,000 minutes=33,333 hours.

Approximately 17,000 individuals build their own vessels annually. The States assign Hull Identification Numbers to individuals building their own vessels. For individuals the Coast Guard estimates 30 minutes per vessel to obtain a COO from the State.

30×17,000=510,000=8,500 hours.

States and territories participating in VIS and assigning Hull Identification Numbers would have computers to generate the COO and HIN on the basis of information supplied by an individual. The Coast Guard estimates 5 minutes for States or territories to enter information about a vessel into a computer and generate a COO:

5×17,000=85,000=1,416 hours
80,000+33,000+8,500+1,416=122,916 hours total annual burden.

This annual burden estimate could be substantially higher or lower from year to year depending upon the state of the national economy, which impacts upon annual production figures.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. These regulations will benefit State boating authorities enforcing State titling and registration regulations.

Title 46 U.S.C. 4302 authorizes the Coast Guard to establish HIN regulations. Unless the Secretary provides an exemption, a State may not establish, continue in effect, or enforce a law or regulation that is not identical to a regulation prescribed under 46 U.S.C. 4302. Therefore, the Coast Guard intends to preempt State and local laws and regulations which are not identical to the Coast Guard's HIN or COO requirements. Title 46 U.S.C. chapter 125 requires the Coast Guard to establish VIS requirements. The States' participation in VIS is entirely voluntary; however, once a State elects to participate, it must comply with the requirements of VIS in order to ensure the integrity and uniformity of the system. Therefore, only those States meeting all of the VIS requirements will be allowed to participate in the VIS system, and the Coast Guard would preempt State and local laws prescribing requirements for VIS which are not identical to those the Coast Guard prescribes.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.b.2(1) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal governs labeling and the issuance of COOs for vessels, and has no environmental consequences. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 181 as follows:

PART 181—MANUFACTURER REQUIREMENTS

1. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302, 12501, 12502; 49 CFR 1.46.

2. In § 181.3, paragraph (f) is revised to read as follows:

§ 181.3 Definitions.

* * * * *

(f) *Certificate of origin* means form CG–XXXX.

* * * * *

3. In § 181.4, paragraph (b) is amended by adding the following incorporations by reference in alphabetical order:

§ 181.4 Incorporation by reference.

* * * * *

(b) * * *

American National Standards Institute, Customer Service Sales Department, 11 West 42nd Street, New York, NY 10036.

ISO 3166–88 Codes for the representation of names of countries	§ 181.25(a)
ISO 1073/I–1976 Alphanumeric character sets for optical recognition—Part I: Character Set OCR–A—Shapes and dimensions of the printed image	§ 181.45(b)

* * * * *

4. Section 181.25 is revised to read as follows:

§ 181.25 Hull identification number format.

Each of the hull identification numbers required by § 181.23 must consist of nineteen characters, uninterrupted by slashes, hyphens, or spaces, as follows:

(a) The first two characters must be an alphabetic code from column 2 of ISO 3166–88 indicating the country of manufacturer identification code registration.

(b) Characters three through five must be a manufacturer identification code assigned under § 181.31(a) or the importer designation assigned under § 181.31(b).

(c) Characters six through ten must be a serial number assigned by the manufacturer in letters of the English alphabet, or Arabic numerals, or both, and may not include the letters, I, O and Q.

(d) Characters eleven and twelve must indicate the month and year of certification when a date of certification is required. In all other cases characters eleven and twelve must indicate the date of manufacture. The date indicated can be no earlier than the date construction or assembly began and no later than the date the vessel leaves the place of manufacture or assembly or is imported into the United States for the purposes of sale. Character eleven must be indicated using letters of the English alphabet. The first month of the year, January, must be designated by the letter "A", the second month, February, by the letter "B", and so on until the last month of the year, December. Character twelve must be the last digit of the year of manufacture or certification and must be an Arabic numeral.

(e) Characters thirteen and fourteen must indicate the model year using Arabic numerals for the last two numbers of the model year such as "94" for 1994 and "95" for 1995.

(f) The fifteenth character must indicate the overall length of the vessel using the corresponding letter of the English alphabet from Table 181.25(f).

TABLE 181.25(F).—CHARACTERS REPRESENTING LENGTH OF BOAT [1]

Character	Length
A	Less than 6 ft.
B	6 ft to 10 ft.
C	11 ft.
D	12 ft.
E	13 ft.
F	14 ft.
G	15 ft.
H	16 ft.
J	17 ft.
K	18 ft.
L	19 ft.
M	20 ft.
N	21 ft.
P	22 ft.

TABLE 181.25(F).—CHARACTERS REPRESENTING LENGTH OF BOAT [1]—Continued

Character	Length
R	23 ft.
S	24 ft.
T	25 ft.
U	26 ft.
V	27 ft.
W	28 ft.
X	29 ft.
Y	30 ft.
Z	31 ft or more.

[1] Inches are not included in the measurement of length, e.g., 15 ft 10 in is 15 ft and 16 ft 3 in is 16 ft.

(g) The sixteenth character must indicate the hull material of the vessel using the corresponding Arabic numeral from Table 181.25(g).

TABLE 181.25(G).—CHARACTERS REPRESENTING HULL MATERIAL OF VESSEL

Character	Hull material
1	Aluminum.
2	Ferrocement.[1]
3	Fiber Reinforced Plastic.
4	Flexible Fabric.[2]
5	Foam.
6	Plastic.[3]
7	Steel.
8	Wood.

[1] Ferrocement includes all types of concrete and portland cement.

[2] Flexible fabric can be distinguished from plastic sheet by the absence of any woven material.

[3] Plastic includes flexible plastic sheet, rigid sheet which has been thermoformed, and rotational molded plastic.

(h) The seventeenth character must indicate the principal means of propulsion of the vessel using the corresponding Arabic numeral from Table 181.25(h).

TABLE 181.25(H).—CHARACTERS REPRESENTING PRINCIPAL MEANS OF PROPULSION

Character	Principal propulsion
1	Air Propeller.
2	Bracket mounted outboard.
3	Inboard.
4	Inboard jet.
5	Inboard/Outdrive.
6	Non-powered.[1]
7	Outboard.
8	Sail.[2]
9	Sail w/Inboard Auxiliary.

[1] Non-powered includes pedals, paddles and oars, but not sails.

[2] Sail includes sailboats which may have a small outboard engine for auxiliary power.

(i) The eighteenth character must indicate the type of vessel using the corresponding Arabic numeral from Table 181.25(i).

TABLE 181.25(I).—CHARACTERS REPRESENTING TYPE OF BOAT

Character	Type
1	Air Cushion Vehicle.[1]
2	Canoe, Kayak, Sailboard, Surfboard.
3	Inflatable.[1]
4	Monohull/Cabin Configuration.[2]
5	Monohull/Closed Bow.[3]
6	Monohull/Open Bow.[4]
7	Multihull/Cabin or closed Bow.[2,3,5]
8	Multihull/Open Deck.[4,5]
9	Personal Watercraft.[6]

[1] Air Cushion Vehicle is sometimes called a hovercraft, which is a registered trademark.

[2] Cabin configuration includes full cabin, cuddy cabin, houseboat, and in general any shelter containing berths, or other accommodations for personnel.

[3] Closed bow is most commonly called a runabout and includes any type of forward deck which is not a shelter for personnel.

[4] Open bow or Open Deck includes utility boats, open deck bass boats, and most center console vessels.

[5] Multihull includes any watercraft where there are distinct hulls connected by a common deck such as trihulls, catamarans and pontoon boats.

[6] Personal watercraft comprise a wide variety of craft on which the operator and/or passengers ride, rather than occupy a passenger carrying area inside the hull.

(j) The nineteenth character must be a check digit calculated as follows:

(1) On line A of Figure 181.25(j) enter the first eighteen characters of the HIN.

(2) On line B enter the value of each character in the HIN.

(3) Multiply each number in line B by its corresponding number in line C for each of the eighteen digits and enter the product of each of these separate computations in the appropriate spaces in line D.

(4) Add all the numbers recorded in line D together.

(5) Divide the final sum by the number, 10. The remainder of this division is the check digit, the nineteenth character in the HIN. If the remainder is zero, the nineteenth character is 0.

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FIGURE 181.25(j)

DIAGRAM FOR CALCULATING CHECK DIGIT

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
A																		
B[1]																		
C	9	8	7	6	5	4	3	2	9	8	7	6	5	4	3	2	9	8
D																		

[1] Values of characters in Hull Identification Number (line B)

A-2
B-3
C-4
D-5
E-6
F-7
G-8

H-9
I-1
J-2
K-3
L-4
M-5
N-6

O-0
P-7
Q-0
R-8
S-9
T-2
U-3

V-4
W-5
X-6
Y-7
Z-8

1-1
2-2
3-3
4-4
5-5
6-6
7-7

8-8
9-9
0-0

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5. In § 181.31, paragraph (c) is revised to read as follows:

§ 181.31 Manufacturer identification code assignment.

* * * * *

(c) Each person required to identify a vessel under § 181.23(b) must obtain a hull identification number from the issuing authority of the State where the vessel will be principally used, or, if the States does not assign these numbers, from the Coast Guard District office in the area of principal use.

* * * * *

6. A new subpart D is added to read as follows:

Subpart D—Certificates of Origin for Boats

Sec.

181.41 Purpose and applicability.
181.43 Certificate of Origin required.
181.45 Required information for Certificate of Origin
181.47 Duplicate Certificate of Origin form.
181.49 Source for Certificate of Origin form.
181.51 Alteration of Certificate of Origin.
181.53 Fraudulent use of Certificate of Origin
181.55 Unauthorized name or address change

Subpart D—Certificates of Origin for Boats

§ 181.41 Purpose and applicability.

This subpart prescribes requirements for the issuance of Certificates of Origin (CG–XXXX) to vessels to which this part applies.

§ 181.43 Certificate of Origin required.

(a) A manufacturer (or importer) as defined in § 181.3 of this part, shall furnish with each new recreational vessel that is sold or offered for sale, a Certificate of Origin (CG–XXXX) containing the information required by this subpart.

(b) No person shall sell or offer for sale a new recreational vessel unless a Certificate of Origin (CG–XXXX) meeting the requirements of this subpart is furnished with the recreational vessel.

§ 181.45 Required information for Certificate of Origin.

A Certificate of Origin (CG–XXXX) furnished with a recreational vessel in accordance with § 181.43 must—

(a) Be signed by or on behalf of the vessel manufacturer; and

(b) Recite the following:

(1) The vessel's 19 character hull identification number assigned in accordance with § 181.25.

(2) The date the Certificate of Origin is issued.

(3) The model name or numerical designation for the vessel.

(4) The length of the vessel in feet and inches.

(5) The beam of the vessel in feet and inches.

(6) Whether the vessel is for commercial or recreational use.

(7) The name and address of the dealer or individual to whom the vessel is first transferred.

(8) The place the vessel is constructed (plant location).

§ 181.47 Duplicate Certificate of Origin form.

A duplicate Certificate of Origin form (CG–XXXX) issued by a boat manufacturer or importer that is used as a replacement for an original CG–XXXX, must:

(a) Incorporate the same security features as the original CG–XXXX;

(b) Recite the same information as the original CG–XXXX required in § 181.45, except for the date of issuance; and

(c) State clearly on the face of the document that it is a "Duplicate."

§ 181.49 Source for Certificate of Origin form.

A manufacturer (or importer) as defined in § 181.3 of this part, must obtain Certificate of Origin forms (CG–XXXX) from: [Address to be inserted in final rule].

§ 181.51 Alteration of Certificate of Origin.

No person shall intentionally alter a Certificate of Origin (CG–XXXX).

§ 181.53 Fraudulent use of Certificate of Origin.

No person shall knowingly use a Certificate of Origin (CG–XXXX) in a fraudulent manner.

§ 181.55 Unauthorized name or address change.

No manufacturer or importer who issues Certificates of Origin (CG–XXXX) in accordance with this subpart shall change the company name or address without notifying the U.S. Coast Guard Recreational Boating Product Assurance Branch, 2100 Second Street SW., Washington, DC 20593–0001 in writing.

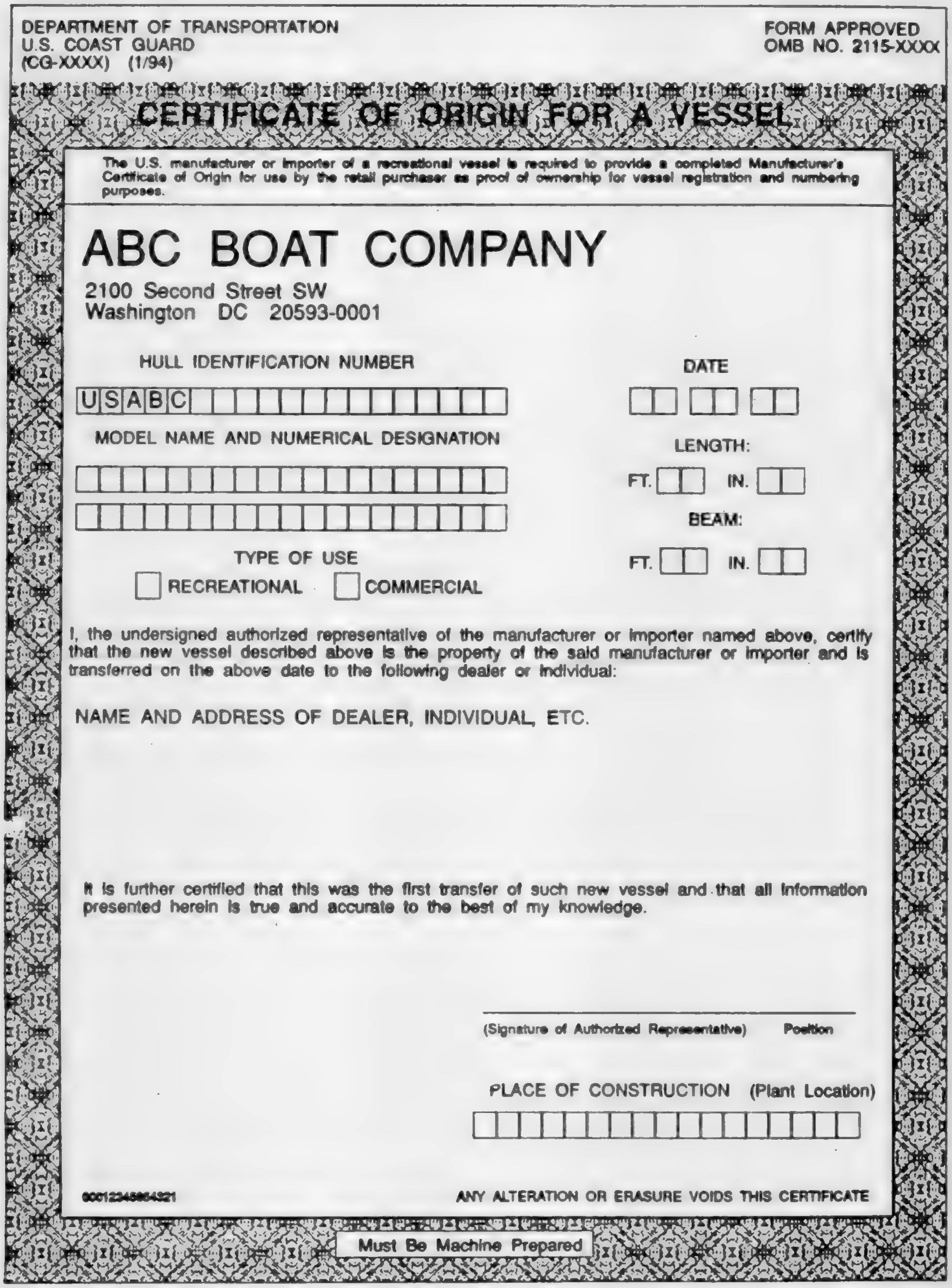
Dated: April 28, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

BILLING CODE 4910–14–M

Appendix A to This Document Sample Forms



DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
(CG-XXXX) (1/94)

FORM APPROVED
OMB NO. 2115-XXXX

CERTIFICATE OF ORIGIN FOR A VESSEL

The U.S. manufacturer or importer of a recreational vessel is required to provide a completed Manufacturer's Certificate of Origin for use by the retail purchaser as proof of ownership for vessel registration and numbering purposes.

ABC BOAT COMPANY
2100 Second Street SW
Washington DC 20593-0001

HULL IDENTIFICATION NUMBER
USABC

DATE

MODEL NAME AND NUMERICAL DESIGNATION

LENGTH:
FT. IN.

BEAM:
FT. IN.

TYPE OF USE
☐ RECREATIONAL ☐ COMMERCIAL

I, the undersigned authorized representative of the manufacturer or importer named above, certify that the new vessel described above is the property of the said manufacturer or importer and is transferred on the above date to the following dealer or individual:

NAME AND ADDRESS OF DEALER, INDIVIDUAL, ETC.

It is further certified that this was the first transfer of such new vessel and that all information presented herein is true and accurate to the best of my knowledge.

(Signature of Authorized Representative) Position

PLACE OF CONSTRUCTION (Plant Location)

00012345654321

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

Must Be Machine Prepared

FIRST ASSIGNMENT

FOR VALUE RECEIVED, I THE UNDERSIGNED, TRANSFER THE VESSEL DESCRIBED ON THE FACE OF THIS CERTIFICATE TO:

NAME OF
PURCHASER(S): ______________________________
ADDRESS: ______________________________

AND CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THE VESSEL IS NEW AND HAS NOT BEEN REGISTERED IN THIS OR ANY OTHER STATE AND THE VESSEL IS NOT SUBJECT TO ANY SECURITY INTERESTS OTHER THAN THOSE DISCLOSED HEREIN AND WARRANT TITLE TO THE VESSEL

____

____
Amount of Lien Date Of Lien In Favor Of

Address: ______________________________

By:
____
TRANSFEROR (Firm Name) SIGNATURE POSITION

Being duly sworn under oath says that the statements set forth are true and correct. Subscribed and sworn to me before this ________ day of ____________ 19 ____

______________________________ Notary Public Notary Seal

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

SECOND ASSIGNMENT

FOR VALUE RECEIVED, I THE UNDERSIGNED, TRANSFER THE VESSEL DESCRIBED ON THE FACE OF THIS CERTIFICATE TO:

NAME OF
PURCHASER(S): ______________________________
ADDRESS: ______________________________

AND CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THE VESSEL IS NEW AND HAS NOT BEEN REGISTERED IN THIS OR ANY OTHER STATE AND THE VESSEL IS NOT SUBJECT TO ANY SECURITY INTERESTS OTHER THAN THOSE DISCLOSED HEREIN AND WARRANT TITLE TO THE VESSEL

____

____
Amount of Lien Date Of Lien In Favor Of

Address: ______________________________

By:
____
TRANSFEROR (Firm Name) SIGNATURE POSITION

Being duly sworn under oath says that the statements set forth are true and correct. Subscribed and sworn to me before this ________ day of ____________ 19 ____

______________________________ Notary Public Notary Seal

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

[FR Doc. 94-10853 Filed 5-5-94; 8:45 am]

BILLING CODE 4910-14-C

National Highway Traffic Safety Administration

49 CFR 571

[Docket No. 94-31; Notice 01]

RIN 2127-AF29

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Compressed Natural Gas Vehicles Over 4536 Kilograms Gross Vehicle Weight Rating

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: The purpose of this notice is to assess the need to regulate the fuel system integrity of vehicles with a gross vehicle weight rating (GVWR) of greater than 4536 kilograms that are fueled with compressed natural gas (CNG). Comments are requested regarding the need for fuel system integrity standards for CNG-powered vehicles with a GVWR of greater than 4536 kilograms, including transit buses, intercity buses, trucks, and other heavy vehicles.

DATES: Comments must be received by July 5, 1994.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to the Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Gary Woodford, General Engineer, Special Projects Staff, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4931.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) anticipates a significant increase in the number of alternatively fueled motor vehicles in the United States. This expectation stems from initiatives by the President, Congress, State and local governments, and private interest, since these vehicles will help reduce air pollution and conserve petroleum fuel. NHTSA has undertaken a comprehensive program to address the safe performance of these vehicles on the road and in crashes. Further, because the Clean Air Act specifies that vehicle fleets in non-attainment areas (mostly large cities) must be converted to clean burning fuels, many city transit bus fleets are being converted to run on fuels such as compressed natural gas (CNG). As NHTSA has become more aware of these fleets of heavy vehicles powered by CNG, the agency believes that their safe performance merits examination.

On January 21, 1993, NHTSA published a notice of proposed rulemaking (NPRM) which proposed requirements for CNG fuel system and fuel container integrity (58 FR 5323). The vehicle fuel system requirements were proposed to apply to vehicles with a GVWR of 4536 kilograms or less, and all school buses. The container requirements were proposed to apply to CNG fuel containers for any vehicle.

On April 25, 1994, the agency published a final rule (59 FR 19648), which addresses the fuel system integrity of CNG vehicles. The new regulation, Federal Motor Vehicle Safety Standard (FMVSS) No. 303, applies to all passenger cars, trucks, buses, and multipurpose passenger vehicles with a GVWR of 4536 kilograms of less, and all school buses regardless of weight. FMVSS No. 303 sets allowable leakage limits for the vehicle fuel system after a barrier crash test. With regard to the fuel container requirements, NHTSA anticipates issuing another final rule that will specify performance requirements addressing the strength, durability, and pressure relief of CNG fuel containers. In addition, as a result of public comments on the January 1993 NPRM, the agency anticipates issuing a supplemental notice of proposed rulemaking for CNG fuel containers addressing internal corrosion, brittle fracture under low temperatures, environmental degradation, external damage, and fragmentation.

The January 1993 NPRM briefly discussed the issue of whether vehicles with a GVWR of over 4536 kilograms, other than school buses, should be included in the vehicle requirements. The agency believes that an opportunity should be provided for a more focused view on this issue. This request for comment will serve that purpose.

A total of 58 comments were received on the NPRM, of which six addressed CNG safety for vehicles over 4536 kilograms GVWR other than school buses. Four of the six commenters, Navistar, Chrysler, Flexible, and Amoco, believed that federal safety requirements should not apply to CNG-powered heavy vehicles. The main reason given by the commenters was that the vehicle applicability of the CNG fuel system integrity standard should be the same as that for NHTSA's liquid fuel system integrity standard, FMVSS No. 301, "Fuel System Integrity." The latter only applies to vehicles with a GVWR of 4536 kilograms or less, and school buses. However, two commenters believed that the requirements should apply to heavier vehicles. The Transportation Manufacturing Company, a bus manufacturer, believed that heavy vehicles should have requirements that are comparable to those for smaller vehicles. No rationale was provided. The Washington Superintendent for Public Instruction (WSPI), also believed that these vehicles should be regulated. WSPI stated that the agency should consider including these vehicles in the proposed rule, but did not offer a rationale.

Because of the lack of accident data indicating a fuel system integrity problem for CNG-powered heavy vehicles, and the lack of rationale from the two supporters, the agency concluded that FMVSS No. 303 should not apply to heavy vehicles. However, because of the increasing number of CNG-powered transit buses, the agency seeks information by which to consider whether federal safety action is desirable, for both transit buses and or other heavy vehicles. It may be that action is merited with regard to buses, which carry many occupants and can have high traffic exposure, but not other heavy vehicles with only one or two occupants.

Current and Proposed Regulations

As part of NHTSA's inquiry in this notice, the agency seeks comments on the desirability of actions which would be harmonized with those of Canada.

United States Requirements

FMVSS No. 303 requires that school buses, regardless of weight, must comply with a moving contoured barrier crash test. In this test, a barrier traveling longitudinally at 48 kilometers per hour impacts the bus at any point and angle. During and after the impact, the fuel pressure drop must not exceed a specified limit. The final rule contains no requirements for heavy vehicles other than school buses with a GVWR of over 4536 kilograms.

Canada's Existing and Proposed Requirements

Currently, Canadian motor vehicle safety standard No. 301.2, "CNG Fuel System Integrity," requires that all vehicles with a GVWR of more than 4536 kilograms be subjected to a 48 kilometers per hour contoured barrier crash test. This is similar to the test NHTSA requires for school buses in FMVSS No. 303. On December 11, 1993, Canada proposed an amendment to its standard. Under the amendment, the current requirement would apply to vehicles with containers mounted lower than 183 centimeters from the ground.

If the fuel containers are mounted 183 centimeters or more above the ground, the vehicle would need to meet the requirements of the National Standard of Canada CAN/CGA–B149.4–M91 Natural Gas for Vehicles Installation Code, dated January 1991 (copy available in the docket). This is a design standard which specifies in great detail the method for building a CNG vehicle.

Request for Comments

NHTSA seeks two types of information in this notice. First, the agency seeks information regarding the current and projected population size and vehicle type (transit bus, intercity bus, heavy truck, or other heavy vehicle) for CNG vehicles with a GVWR of over 4536 kilograms. Second, NHTSA seeks information about the potential safety problems of these vehicles. When appropriate, please comment by vehicle type, i.e., transit bus, intercity bus, heavy truck, or other type of heavy vehicle.

CNG Heavy Vehicle Population: Current and Projected

1. The agency requests information on how many CNG transit buses, intercity buses, heavy trucks, and other heavy vehicles of over 4536 kilograms GVWR are in service or are planned to be placed in service in the United States. How many of these vehicles are made by an original equipment manufacturer (OEM) and how many are aftermarket vehicles that are converted from a vehicle powered by gasoline, diesel, or other fuel?

2. How many entities manufacture heavy CNG vehicles by type, i.e., transit bus, intercity bus, heavy truck, or other type of heavy vehicle? How many convert them from other fuels, by type, if appropriate? What specifications are used for converting these vehicles? Do voluntary industry guidelines exist? Please describe and provide the guidelines or citations.

3. How long have heavy CNG vehicles (by type) been used in this country? What are the projections for their future use, in terms of numbers and in type of usage?

4. What are the various locations for mounting CNG containers on heavy vehicles? Which are more common; less common? Why? At what height are the CNG containers mounted? Are they typically protected by shielding or cages? What factors go into deciding where to mount the container on the vehicle? How many CNG containers are typically placed on a heavy vehicle, and how much do the containers weigh? Does the number of containers vary, depending upon the type of vehicle, i.e., transit bus, intercity bus, heavy truck, or other type of heavy vehicle?

CNG Heavy Vehicle Safety Problems

The agency foresees four potential areas for examination with regard to these vehicles:

—Performance in Crashes
—Venting
—Leakage Detection
—Refueling

Performance in Crashes

The agency is interested in obtaining specific information about crashes involving these heavy vehicles. General information about the number of accidents as well as information regarding specific issues such as container detachment would be helpful.

5. Have there been any CNG fuel container or fuel system failures in these types of vehicles? If so, describe the failure, e.g., sequence of events, what failed, and how it failed. If the failure occurred as the result of a crash, was another vehicle involved? Please describe the other vehicle.

6. Was the vehicle a transit bus, intercity bus, heavy truck, or some other type of heavy vehicle? Was it an OEM vehicle or a conversion? Who was the manufacturer of the vehicle? If it was a conversion, who did the conversion? Was the conversion done before or after the vehicle's first consumer purchase?

7. Please identify and describe any situations where a container became detached in a crash situation? Did the container leak? If crashes occurred, were they reported to a policy agency, hazardous materials agency, or other State/local agency?

8. Should the agency specify how the fuel containers should be attached to the vehicles? Should a requirements apply to all vehicles or just for those with containers mounted greater than 183 centimeters above the ground (such as referenced in the Canadian proposal)? Are CNG tanks rigidly mounted or are they mounted so as to be isolated from shock in a crash, permitting some allowable design movement? What is the typical orientation of the CNG tank with respect to the longitudinal axis of the vehicle? Does a CNG tank's mounting orientation and method affect its useful life?

9. Were there any injuries to the vehicle occupants, pedestrians, emergency personnel, or other individuals? What was the type and seriousness of the injury?

10. What type (steel, aluminum, fiberglass wrap, carbon fiber wrap, hoop wrap, full wrap, all composite, or other) was the fuel container? What were the dimensions of the container? What was the service pressure of the container? Who manufactured the container? How long had it been in service? To which design specification or standard were the tanks built?

11. Should any Federal standard include a labeling requirement to address the periodic reinspection of fuel systems on alternatively fueled vehicles? Should States establish guidelines to address the periodic reinspection or recertification of such fuel systems? Should these schedules be set at specified time or mileage intervals? After a vehicle is involved in an accident?

12. Should CNG heavy vehicles, which are not school buses, be crash tested for fuel system integrity in the same way as heavy school buses under FMVSS No. 303, i.e., a contoured barrier traveling at 48 kilometers per hour striking the test vehicle at any point and angle? If so, which types of CNG heavy vehicle should be included, i.e., transit bus, intercity bus, heavy truck, or other type? Are there other tests or guidelines which would be more appropriate to assure the fuel system integrity of such vehicles? If so, what are they?

Venting

Because of the size of these vehicles, there may be large enclosed areas in which natural gas could accumulate if there is a slow leak in the CNG fuel system.

13. Are there instances where gas accumulated? Did any of them result in explosions?

14. Should venting of the container away from possible areas of accumulation and potential ignition sources be required to address leakage accumulation?

15. What experimental or observed data are available regarding the dispersion behavior that results from a CNG fuel system leak? Will the gas rise or remain near the ground? If the gas remains near the ground, how long will it remain there?

Leakage Detection and Warning

If there is a leak in the fuel system, there would be little or no visible evidence of the gas accumulation. If persons nearby could not smell the gas, it could accumulate in an area near them without notice, which would increase the potential for an explosion.

16. Are there instances where CNG leaked out of a vehicle fuel system and caused a safety problem before the natural gas was detected? Describe how the situation occurred.

17. Should a leakage detection/warning system be required in vehicles with a GVWR of over 4536 kilograms to

detect leakage of CNG as well as to warn persons nearby of the potential hazard? What type of system? Is it commercially available? What would be the cost? Would the leakage detection/warning system, including its power source, become a potential ignition sources when activated?

Refueling

NHTSA seeks information on potential safety hazards associated with the refueling of heavy CNG vehicles.

18. Are manufacturers or fleet operators aware of safety hazards or accidents that have occurred during refueling operations? If so, please provide information on them.

19. What items are included in current guidelines or procedures for CNG refueling, such as the need for grounding straps, operator protective clothing, etc.?

20. Is a small amount of CNG normally released during connecting/disconnecting of the refueling equipment? If so, how much? Are devices, such as excess flow valves, used in refueling equipment to prevent excess CNG leakage in the event of a refueling line rupture? To what extent are such devices used?

21. What standards or guidelines currently exist for refueling couplers and related equipment?

Submission of Comments

The agency invites written comments from all interested parties. It is requested that 10 copies of each written comment be submitted.

No comment may exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to a comment without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after the closing date.

To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on May 2, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–10897 Filed 5–5–94; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 301, 671, 672, 675, 676, and 677

[Docket No. 940412–4112; I.D. 033194E]

RIN 0648–AD80

North Pacific Fisheries Research Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and notice of hearings.

SUMMARY: NMFS issues a proposed rule to implement the North Pacific Fisheries Research Plan (Research Plan) for the Gulf of Alaska (GOA) groundfish fishery, Bering Sea and Aleutian Islands management area (BSAI) groundfish fishery, Bering Sea and Aleutian Islands area king and Tanner crab fisheries, and Pacific halibut fishery in convention waters off Alaska. The Research Plan would provide an industry-funded observer program and promote management, conservation, and scientific understanding of groundfish, halibut, and crab resources off Alaska.

DATES: Comments on this proposed rule must be received by July 5, 1994.

Public hearings on the proposed Research Plan will be held as follows:

1. June 7, 1994, 7:00 p.m., Anchorage, Alaska.
2. June 15, 1994, 10:30 a.m., Seattle, Washington.
3. June 16, 1994, 10:00 a.m., Portland, Oregon.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Individual copies of the proposed Research Plan and the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

Public hearings will be held at the following locations:

1. Anchorage—Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, Alaska (907–272–7411)
2. Seattle—Alaska Fisheries Science Center Auditorium, 7600 Sand Point Way Northeast, Building 9, Seattle, Washington (206–526–4197)
3. Portland—Red Lion Inn, 909 North Hayden Island Dr., Jantzen Beach, Portland, Oregon (503–283–4466).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries of the BSAI and GOA in the exclusive economic zone (EEZ) are managed under the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the FMP for Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and are implemented for the U.S. fishery by regulations at 50 CFR parts 620, 672, and 675. The domestic fishery for Pacific halibut off Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k), with implementing regulations at 50 CFR part 301. Regulations implementing individual fishing quotas (IFQs) for the domestic groundfish and halibut fisheries off Alaska are at 50 CFR part 676. The king and Tanner crab fisheries of the Bering Sea and Aleutian Islands area are managed under the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands. This FMP delegates management of the crab resources in the Bering Sea and Aleutian Islands area to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the crab FMP appear at 50 CFR part 671.

Section 313 of the Magnuson Act, as amended by section 404 of the High Seas Driftnet Fisheries Enforcement Act, Pub. L. 102–582, authorizes the Council to prepare, in consultation with the Secretary of Commerce (Secretary), a Research Plan for all fisheries under the Council's jurisdiction except salmon fisheries. The proposed Research Plan would require that observers be stationed on certain fishing vessels and U.S. fish processors participating in the BSAI groundfish, GOA groundfish, and Bering Sea and Aleutian Islands area king and Tanner crab fisheries, and it would allow these requirements to be extended to the halibut fishery off Alaska. Observers would be deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries under the Council's authority. The Research Plan also would establish a system of fees to pay for the costs of implementing the Research Plan. The fees would be based on the exvessel value of retained catch in the BSAI and GOA groundfish fisheries, the Bering Sea and Aleutian Islands area king and Tanner crab fisheries, and the Pacific halibut fishery off Alaska (Research Plan fisheries). Future recommendations by the Council to include other fisheries under the Research Plan would require an amendment or amendments to the Research Plan and to the regulations implementing it.

Regulations implementing Amendments 18 and 13 to the FMPs for Groundfish of the GOA and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, respectively (54 FR 50386, December 6, 1989), authorized a data collection program to obtain information necessary for conservation and management of the groundfish fisheries. One of the measures in Amendments 18 and 13 authorized a comprehensive domestic fishery observer program. The Secretary, in consultation with the Council, prepared and implemented an Observer Plan to implement provisions of that program (55 FR 4839, February 12, 1990). The Alaska Board of Fisheries (Board) implemented a Shellfish Onboard Observer Program for the king and Tanner crab fisheries off Alaska in April 1988 (5 AAC 39.645). Currently, no observer program is established for the Pacific halibut fishery in convention waters off Alaska.

Two problems with the current Federal and State observer programs have been identified. First, the costs of observer coverage are not borne by all fishery participants. Under the current Federal observer program, some groundfish operations are required to pay for 100 percent observer coverage, others are required to pay for 30 percent coverage, and still other operations that benefit from the observer program pay none of the cost. The last group includes some groundfish and all halibut operations, because they have no observer coverage requirements. State king and Tanner crab regulations require observer coverage for all vessels that process king or Tanner crab in waters off Alaska, but mandate no observer coverage for crab catcher vessels or shoreside processors.

Second, the current method of paying for observers under the Federal and State observer programs limits NMFS and State control over the observer programs and impedes the agencies' ability to manage the programs effectively. Observer contractors are not solely responsible to NMFS or to the State for the quality of their work performance; sometimes they have conflicting responsibilities to their clients, to whom they are providing observers, and to NMFS or to the State. The owners and operators of vessels and processing facilities now are responsible for making arrangements with an observer contractor of their choice to meet observer requirements and for paying the costs of observers directly to that contractor. This direct business relationship, and the ability of an owner or operator to select among the group of contractors, mean that the contractors and, indirectly, the observers, work for the operations they are observing. This relationship could provide a means for an operation to reward or penalize contractors and their observers and thus negatively influence the work performance of the observers and quality of the data collected. This appearance of a conflict of interest could reduce the credibility of observer data.

To resolve these problems, the Council initiated development of the Research Plan. A draft EA/RIR for the Research Plan was initially reviewed and approved for public distribution and comment by the Council and its advisory bodies at their January 15–17, 1991, meetings. After reviewing written comments and advice from its advisory bodies, and hearing public testimony at its meetings of April 23–26, 1991, the Council further refined the Research Plan. A revised EA/RIR was reviewed and approved for public distribution and comment by the Council and its advisory bodies at their April 20–26, 1992, meetings. After reviewing written comments, obtaining further advice from its advisory bodies, and hearing public testimony at its June 23–28, 1992, meeting, the Council adopted the Research Plan and recommended that it be submitted to the Secretary for review. The EA/RIR was updated in December 1993 to reflect newly available information. The Council approved the Research Plan as described in this proposed rule at its December 1993 meeting.

Description of the Proposed Research Plan

Objectives

1. Provide a framework for an observer program for the Alaska groundfish fisheries and the Pacific halibut fishery to accommodate inseason management and stock assessment needs, and to provide accurate, real-time data of sufficient quality to implement an individual vessel incentive program developed to meet specified management objectives of the Council;
2. Provide a framework for an observer program for Bering Sea and Aleutian Islands area king and Tanner crab fisheries to accommodate inseason management needs, monitor industry compliance with Federal and State regulations, and collect biological and management data necessary to achieve the sustained yield of the crab resource without overfishing;
3. Ensure that the groundfish and crab observer programs are efficient and cost effective, that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revisions to the programs, and that such changes are necessary to meet fishery management needs; and
4. Provide for cooperation and coordination between the groundfish observer program administered by NMFS and the crab observer program administered by the Alaska Department of Fish and Game (ADF&G).

Determination of Research Plan Fees

NMFS would annually establish a Research Plan fee percentage for the upcoming calendar year. As described in this preamble, the fee percentage would be based on standard exvessel prices by species and projections of the following: (1) Retained catches by species (i.e., catch retained by either at-sea or shoreside processors) in all Research Plan fisheries; (2) observer program costs; and (3) the surplus in the North Pacific Fishery Observer Fund (Fund), other sources of funding for the Research Plan, and nonpayments. After consulting with the Council and State, NMFS would publish the fee percentage and the values of the variables on which it is based in the **Federal Register** and invite comments. After considering comments received and again consulting with the Council and the State, NMFS would publish final values in the **Federal Register**.

Standard Exvessel Prices. NMFS would annually establish standard exvessel prices for species harvested in Research Plan fisheries. These prices would be used in estimating the total exvessel value of the Research Plan fisheries for the coming year and in assessing fees. The standard exvessel prices would be based on: (1) Exvessel price information for the most recent 12-month period for which data are available, (2) factors that are expected to change exvessel prices in the upcoming calendar year, and (3) any other relevant information that may affect expected exvessel prices during the upcoming calendar year.

Retained Catch. NMFS would project retained catch, by species, for the Research Plan fisheries annually, using the best available information concerning expected catches and discards.

Total Exvessel Value. NMFS would annually calculate the total exvessel value of retained catches for Research Plan fisheries as the sum of the products of the standard exvessel prices and projected retained catches, for all Research Plan species.

Observer Program Costs. NMFS and ADF&G would each prepare an annual budget that identifies expected recoverable Research Plan costs for the upcoming calendar year. Recoverable costs identified in each budget would include: (1) Costs for observer training, certification, briefing, and debriefing; (2) costs for stationing observers, including travel, salaries, benefits, and insurance; (3) costs for data collection, transmission, input, processing, and management; and (4) contract services and general program operational costs, excluding overhead. The estimated budget would be based on anticipated observer coverage and the anticipated costs directly incurred in carrying out the Research Plan. The observer program costs also would include the costs associated with a risk-sharing pool to provide comprehensive insurance coverage for vessels and owners if such an insurance program is established under section 313 of the Magnuson Act (see Risk-sharing Pool, in this preamble.)

Surplus Funds, Other Sources of Funding, and Fee Nonpayment. Annually, NMFS would project each of the following: (1) The surplus that would be in the Fund at the end of the current calendar year, (2) the funds that would be available from other sources for use in funding the Research Plan during the upcoming calendar year, and (3) the nonpayment rate on fees assessed under the Research Plan during the upcoming calendar year.

Calculation of the Fee Percentage. Under the Magnuson Act, the fee percentage established to pay for the costs of implementing the Research Plan may not exceed 2 percent of the exvessel value of fish harvested under the authority of the Council (except salmon), including shellfish and the Northern Pacific halibut fishery. Annually, the fee percentage for the upcoming calendar year will be set equal to the lesser of 2 percent of the exvessel value of retained catch in the Research Plan fisheries or the fee percentage calculated using the equation described above and set out at § 677.11(a)(3).

If the fee percentage calculated using this formula is greater than 2 percent, there would be a funding shortfall due to the 2 percent limit in the Magnuson Act. This would require a reevaluation of the levels of coverage that would be required and funded. Available funds would be utilized to address the Research Plan objectives in the following priority: (1) Status of stock assessments (i.e., collection of data on total catch, species composition, size, sex, and age); (2) inseason management; (3) bycatch monitoring; and (4) vessel incentive programs and regulatory compliance.

Fee Assessments

Processors would be responsible for collecting all fee assessments and for paying them bimonthly (i.e., every 2 months). Section 313 of the Magnuson Act stipulates that fees shall be assessed against all fishing vessels and U.S. fish processors participating in Research Plan fisheries under the jurisdiction of the Council, including those not required to have observers. Fee assessments would not apply to fish, except halibut, caught in the territorial sea (0–3 miles), or to any fish caught in internal waters of the State. Recordkeeping and reporting requirement changes that would require processors to indicate if fish are caught in Federal or State waters will be developed prior to implementation of the fee collection system.

Catcher vessels would be expected to pay half of the fee liabilities on their retained catches to the processor(s) responsible for making the bimonthly fee assessment payments to NMFS.

NMFS would calculate bimonthly fee assessments by multiplying the fee percentage times the standard exvessel price times the round weight or round-weight equivalent of all retained catches, by species, in Research Plan fisheries. For example, if the fee percentage for Research Plan fisheries were 1.00 percent, and the standard exvessel price of pollock were $0.09/lb ($0.20/kg), a retained catch of 500,000 lbs (227,727 kg) of pollock would result in a fee assessment due from the processor of:

0.0100×$0.09/lb.×500,000 lbs=$450.00.

Retained catch is defined as the catch retained by either at-sea or shoreside processors. The round weight of fish delivered to shoreside processors would be determined from scale weights. Standard product recovery rates would be used to derive round-weight equivalents when other than whole fish is delivered to shoreside processors. Standard product recovery rates also would be used to calculate round-weight equivalents of groundfish and halibut harvested by or delivered to at-sea processors. For crab at-sea processors, scale weights of sample catches would be used to calculate weight of retained catch. NMFS is developing a regulatory amendment to establish standard product recovery rates that would be used throughout the industry to calculate round-weight equivalents of retained catch. Assuming Secretarial approval, NMFS anticipates that standard product recovery rates will be effective by 1995. If a more reliable system for determining total weights is implemented in the future, these regulations would be amended accordingly. Public comment is specifically encouraged on this aspect of the proposed Research Plan.

NMFS would obtain values for the weight of retained catch to be used in calculating fee assessments through existing data reporting systems. Groundfish data would be obtained from Weekly Production Reports or from ADF&G fish tickets for those vessel operators who are not required to submit Weekly Production Reports under Federal regulations but who sell catch directly to consumers. Crab data would be obtained from ADF&G Weekly Processor Reports, fish tickets, or other required reports. Halibut data would be obtained from the IPHC or from Individual Fishing Quota (IFQ) reports, when available.

NMFS would bill processors bimonthly for their fee assessments. The bimonthly periods would be determined on the basis of weekly reporting periods. NMFS is preparing a rule to revise the definition of a weekly reporting period. Assuming its approval, the 1995 bimonthly periods would be January 1 through February 25; February 26 through April 29; April 30 through July 1; July 2 through September 2; September 3 through October 28; and October 29 through December 31. The Director, Alaska Region, NMFS, (Regional Director) would need to receive payments within 30 days of the date the bill is issued. Interest and administrative charges would be charged for late payments. Payments would be deposited in the Fund within the U.S. Treasury.

A processor would be required to notify the Regional Director, in writing, within 30 days of issuance of the bill, if any billed amount is disputed. The processor would be responsible for paying the undisputed amount of the bill within 30 days of its issuance, and for providing documentation supporting the disputed amount claimed to be under- or over-billed. Within 60 days of the date of issuance of the disputed bill, the Regional Director would review the disputed bill and the documentation provided by the processor, and would notify the processor of his determination. If the Regional Director determines a billing error has occurred, the processor's account would be rectified by credit or subsequent billing. If the Regional Director determines a billing error has not occurred, the balance of the disputed bill would be due within 15 days of issuance of the determination. Interest and administrative charges would be assessed for payments that are not received within 15 days. Processor permits would not be issued until all fee assessments are paid. (See Permit and Recordkeeping Requirements in this preamble).

The Council recommended requiring guarantees equal to the maximum estimated quarterly fee assessment for the upcoming calendar year to secure anticipated fee liabilities, in the form of prepayments, letter of credit, surety bond, or lien on property. NMFS believes that the requirement of such guarantees is premature and could be burdensome to the industry, particularly to smaller enterprises, and costly to administer. Small or marginally profitable enterprises could have difficulty in securing such guarantees. There are irrecoverable costs associated with guarantees such as letters of credit and surety bonds. Some guarantees may be of limited value in ensuring necessary cash flows and achieving the objectives of the Research Plan. Collection could also be difficult to accomplish in a timely and cost-effective manner.

Instead, NMFS is proposing a simplified system to encourage timely fee assessment payments by processors that would consist of: (1) Bimonthly billing, (2) semi-annual processor permitting with a requirement that all Research Plan fee assessments must be current before a permit would be issued, (3) a prohibition against processing landings from Research Plan fisheries without a valid processing permit, and (4) a prohibition against delivery of catch from Research Plan fisheries to a processor not possessing a valid processing permit. This system also has the advantage of greatly simplified reporting and recordkeeping requirements for processors and reduced administrative costs for NMFS. The extent of nonpayment of fee assessments, which is inherent in any fee collection system, would be taken into account in determining the fee percentage rate for the following year. The proposed system is designed to minimize such nonpayment.

First Year of the Research Plan

During the first, or start-up, year of the Research Plan, NMFS would accumulate necessary start-up funds in the Fund. Fees would be assessed against all fishing vessels and U.S. fish processors participating in Research Plan fisheries under the authority of the Council. Processors would be responsible for collecting all fee assessments and for paying them bimonthly. The observer coverage requirements in the Federal Observer Plan and existing State Bering Sea and Aleutian Islands area king and Tanner crab regulations (5 AAC 39.645) would remain in effect during the start-up year.

During the first year of the Research Plan (1995), all processors and vessels participating in Research Plan fisheries would pay the full fee assessment. Vessel operators and processors that currently are required to carry observers under the Federal Observer Plan and under State regulations would continue to do so during the first year of the Research Plan. NMFS would issue rebates to those who paid directly for required observer coverage during the first year of the Research Plan. The rebate per standard observer day would equal either the actual payment to an observer contractor per standard observer day or the standardized cost of a standard observer day, whichever is less. A standard observer day is defined as all or part of a 24-hour period that begins at 0001 hours Alaska local time (A.l.t.) and ends at 2400 A.l.t., during which an observer is stationed on a vessel or at a shoreside facility for purposes of complying with observer coverage requirements set forth in the proposed rule at § 677.10(a). A standard observer day cannot be attributed to more than one vessel or shoreside facility.

The standardized cost of a standard observer day would be based on the estimate(s) of the cost per observer day used to calculate both the total cost of the Research Plan and the fee percentage during 1995. Proposed standardized cost(s) will be published in the **Federal Register** for public review and comment as part of the annual Research Plan specification process set forth at § 677.11 of the proposed rule. At this time, NMFS anticipates that standardized cost(s) could range between $170 and $265 per day, depending on whether 100 percent or 30 percent observer coverage is obtained.

The rebates issued for vessel or processor observer coverage may exceed Research Plan fee payments. However, issuance of a rebate to a processor would be dependent on the processor being current with respect to submitting its fee payments. The rebates would be based on information provided to NMFS by observer contractors on an Observer Coverage Rebate Application (Form FPP–2). This information would include the number of standard observer days paid for by each vessel or processor and the amount paid for those observer days. The required information would be submitted by each observer contractor within 15 days after the end of each calendar month in which it received payments for providing observers. Initial rebates would not be issued before mid-year, to allow for the collection of sufficient funding for the rebate program. Subsequent rebates for 1995 observer coverage would be issued on a more regular basis, e.g. bimonthly.

NMFS believes that a fund equal to approximately two-thirds of the estimated annual cost needed to operate the Research Plan is the minimum amount needed to begin full operation of the Research Plan and to ensure that cash flow is adequate to meet start-up costs. Assuming approval of regulations implementing the Research Plan, full implementation of the observer and fee portions of the Research Plan is anticipated to begin January 1, 1996.

Permit and Recordkeeping Requirements

After the first year of the Research Plan, most of the burden of recordkeeping would rest with processors, who would be responsible for collecting and paying the bimonthly

Research Plan fee assessment when billed by NMFS. During the first year of the Research Plan, additional reporting requirements would be implemented for observer contractors to support the rebate program for direct observer costs. The rebate program and associated recordkeeping requirements are described above.

All processors of Research Plan fisheries would need a Federal Processing Permit. A Federal Processing Permit Application (Form FPP–1) would be required to obtain a processing permit, and would serve to gather information about the processor and its owner. Fishermen who sell their catch directly to the public at a dock, roadside, or elsewhere would be considered processors under the Research Plan. Each processing vessel or shoreside facility would be required to submit a separate permit application, even if several vessels or facilities are owned by the same company.

Permits would be issued for each of the two 6-month periods—January 1 through June 30, and July 1 through December 31. No permit would be issued until the permit application is complete and all fee assessments paid. Processors that have paid their accounts and submitted complete permit applications would be issued a permit within 30 days. Permits would not be issued to those processors not submitting complete applications or to those whose accounts are past due, until their applications are complete and their accounts are paid. Processing fish from Research Plan fisheries without a valid permit, or delivering fish from Research Plan fisheries to a processor not possessing a valid permit, would be prohibited. NMFS would make available to the public a list of those processors holding valid permits to process fish from Research Plan fisheries.

Observer Coverage

During the first year of the Research Plan (1995), observer coverage levels in the groundfish fishery would be as currently required by the Federal Observer Plan. All king and Tanner crab catcher/processors and mothership processors in the Bering Sea and Aleutian Islands area would continue to carry observers under the State Shellfish Onboard Observer Program. Observer coverage would not be required for the halibut fishery.

Starting with the second year of the Research Plan (1996), NMFS would annually determine the level of observer coverage necessary to achieve the objectives of the Research Plan. NMFS would consider the amount of available funds, as well as the objectives of the program, in determining the appropriate observer coverage levels. NMFS would annually present an analysis of observer coverage, including criteria for selection of vessels to carry observers if coverage is less than 100 percent, to the Council, and to the State in the case of the Bering Sea and Aleutian Islands area king and Tanner crab fisheries. NMFS would then publish the proposed levels of coverage in the **Federal Register** and invite comments. State costs for observer coverage in the Bering Sea and Aleutian Islands area king and Tanner crab fisheries allowable under the Magnuson Act would be paid from fees collected from all Research Plan fisheries. After considering comments received and again consulting with the Council, and with the State in the case of the Bering Sea and Aleutian Islands area king and Tanner crab fisheries, NMFS would publish the final levels of observer coverage for the upcoming year in the **Federal Register**.

Inseason Changes in Observer Coverage

The Regional Director may increase or decrease the observer coverage requirements for the groundfish, halibut, and crab observer programs at any time during the effective period of the Research Plan to improve the accuracy, reliability, and availability of observer data, and to ensure solvency of the observer program, so long as the conditions set forth in section 313 of the Magnuson Act are met, and based on one or more of the following findings:

1. A significant change in fishing methods, times, or areas for a specific fishery or fleet component has occurred, or is likely to occur.

2. A significant change in catch or bycatch composition for a specific fishery or fleet component has occurred, or is likely to occur.

3. Unanticipated shortfalls in the North Pacific Fishery Observer Fund require decreased observer coverage to maintain solvency of the observer programs.

4. An increase in observer coverage is necessary to ensure or improve data availability or quality in order to meet specific fishery management objectives.

Any decrease in observer coverage due to unanticipated funding shortfalls must be consistent with the following priorities: (a) Status of stock assessments (i.e., collection of data on total catch, species composition, size, sex, and age); (b) inseason management; (c) bycatch monitoring; and (d) vessel incentive programs and regulatory compliance. Any increased costs must be commensurate with the quality and usefulness of the data to be derived from any revised program and necessary to meet fishery management needs.

The Regional Director would consult with the Commissioner of ADF&G prior to making inseason changes in observer coverage level for the crab observer program. NMFS would publish changes in observer coverage requirements in the **Federal Register**, with the reasons for the changes and any special instructions to vessels required to carry observers, at least 10 calendar days prior to their implementation.

Groundfish and Halibut Observers

Groundfish and halibut observers would be either employees of NMFS or employees of NMFS observer contractors. Observer contracts would be subject to a competitive bid process and would comply with Federal and agency procurement regulations. A minimum of three contractors would be used in accordance with the procurement regulations, if cost effective, and if three or more bidders are qualified.

Observers would possess the education and specific training as specified in the contracts issued by the Federal Government to provide groundfish or halibut observers. The observers' duties are described in detail in the NMFS observer manual, which is updated as necessary and is available from the NMFS Observer Program, Alaska Fisheries Science Center, 7600 Sand Point Way N.E., BIN C15700, Building 4, Seattle, WA 98115. Observer duties may include the collection of data on catch, effort, bycatch, and discards of finfish and shellfish, including prohibited species catches, to facilitate inseason management. Observers may collect information on gear, processing, or other fishing information; biological samples to determine species, length, weight, age, sex composition of catch, and predator-prey interactions; or any other information needed to manage the fisheries. They may collect data on marine mammals, seabirds, and other species as appropriate. Information obtained from observers would also be used to monitor compliance with fishing and related regulations.

The Regional Director would review fishery monitoring programs and report to the Council on methods to improve data collection and sampling techniques and to provide for real-time data transmission from the groundfish and halibut fleet, including daily reporting and other measures as appropriate to improve the accuracy and efficiency of fishery monitoring programs.

A final rule was published on April 29, 1994, (59 FR 22133) that authorizes

NMFS to disclose specified observer data on prohibited species bycatch or bycatch rates. This authority would continue under the Research Plan and is included in this proposed rule (§ 677.10(f)).

Bering Sea and Aleutian Islands Area King and Tanner Crab Observers

Crab observers would either be employees of ADF&G, or employees of NMFS observer contractors. The observers would be required to possess the education and specific training requirements as specified in the contracts issued by the Federal Government to provide crab observers. The observers' duties are described in detail in the ADF&G observer manual, which will be updated as necessary. The ADF&G observer manual is available from ADF&G, Box 308, Dutch Harbor, AK 99692–0308. Crab observer duties may include the collection of data on catch, effort, bycatch, and discards of finfish and shellfish to facilitate inseason management. Observers may also collect biological samples to determine information such as species, length, weight, age, sex composition of catch, predator-prey interactions, or any other biological information needed to manage the fisheries. They may also collect data on marine mammals, seabirds, and other species as appropriate. Crab observers also provide an effective means to ensure management compliance.

The State would review its fishery monitoring and data transmission programs in conjunction with NMFS, to coordinate methods to improve data collection and sampling techniques, provide for real-time data transmission from the fleet, including daily reporting, improve the accuracy and efficiency of fishery monitoring programs, and improve coordination between State and Federal agencies. Initially, data collection, transmission, and input programs would be the same as specified under existing State regulations and guidelines to facilitate inseason management.

Notification of Observer Contractors by Processors and Operators of Vessels Required To Carry Observers

Processors and operators of vessels required to carry observers under the Research Plan would be responsible for meeting their observer coverage requirements. To ensure that an observer will be available, processors and vessel operators would be required to notify the appropriate agency or observer contractor, as identified by NMFS, not less than 60 days prior to their need for an observer. This notification must be in writing or facsimile copy. A second notification to the appropriate observer contractor, in writing, facsimile copy, or by telephone, must be made not less than 10 days prior to the need for an observer, to make final arrangements for observer deployment. Proposed ports from which observers may embark/disembark are Akutan, Atka, Beaver Inlet, Chignik, Cordova, Craig, Dutch Harbor, Homer, Juneau, Ketchikan, Kenai, King Cove, Kodiak, Petersburg, Sand Point, Seward, Sitka, St. George, St. Paul, Valdez, Wrangell, and Yakutat. Ports were selected using the following criteria: (1) Previous selection by observer contractors, (2) accessibility and transportation costs, and (3) availability of overnight accommodations. Public comments on this list of ports is specifically encouraged. This list would be reviewed annually by NMFS, in consultation with the Council and the State, during the annual budget review process.

During the first year of the Research Plan (1995), observer coverage requirements would be as described in § 677.10(a). NMFS would publish subsequent observer coverage requirements, along with the names of the observer contractors, information for contacting contractors, and a list of embarkment/disembarkment ports for observers, annually in the **Federal Register**, prior to the beginning of the calendar year to which the coverage requirements apply (see Observer Coverage in this preamble).

Coordination Between the Federal Groundfish Observer Program and the State King and Tanner Crab Observer Program Under the Research Plan

Under authority of the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands, the State king and Tanner crab observer program for the Bering Sea and Aleutian Islands area was designed by the Board and is administered by ADF&G.

NMFS and ADF&G would form a work group to maximize efficiency in administration and implementation of the groundfish, halibut, and king and Tanner crab observer programs. The University of Alaska, as an observer training entity, would be a member of this work group when required to help in the development of observer training and debriefing procedures. The work group would review costs and identify possible cost-saving measures, including the use of contractors to perform some or all of the duties under the Research Plan, other than briefing or debriefing. The work group also would review the costs and benefits of training observers in Alaska or elsewhere.

The work group would address items including: (1) Development of consistent, cost-effective, and compatible observer training and debriefing procedures; (2) development of a consistent data collection, transmission, and processing system, including a single database available to both agencies on a real-time basis; and (3) identification of costs that are appropriate for reimbursement to the State pursuant to the Magnuson Act. NMFS and ADF&G would annually provide to the Council a report detailing steps taken to improve overall coordination between the two observer programs and to improve administrative efficiency.

Observer Oversight Committee

The Council Chairman would establish an Observer Oversight Committee (Committee) to provide advice to the Council, the Board, the Commissioner of ADF&G, and the Regional Director on general provisions of the observer and fee portions of the Research Plan. NMFS, with the assistance of ADF&G, would annually provide Research Plan reports and budget documents to the Committee. The Committee would consist of industry representatives from the following groups: Factory trawler, catcher trawler, shoreside processor, crab catcher vessel, freezer longliner, non-freezer longliner, crab catcher-processor, vessels under 60 ft (18.3 m) in length overall, observers, observer contractors, and an independent observer training representative. The Committee would meet with NMFS and ADF&G staff within the annual cycle of the Research Plan to review the reports and budgets and provide input to the Council on fee levels and observer coverage needs. The Committee would not have oversight of the daily operations of the Federal and State observer programs.

Risk-sharing Pool

Under section 313 of the Magnuson Act, the Secretary will review the feasibility of establishing a risk-sharing pool to provide comprehensive commercial insurance coverage for vessels and owners, and the availability of such insurance for vessels and owners, against liability from civil suits by observers. If the Secretary determines that a risk-sharing pool is feasible, any implementing regulations would be codified at subpart B of 50 CFR part 677.

Public Comment and Hearings

Public comments on the proposed Research Plan and its implementing regulations are invited for 60 days. During this comment period, the Secretary will conduct public hearings, as required by the Magnuson Act, in Alaska, Oregon, and Washington for the purpose of receiving public comments on the proposed regulations (see **DATES** and **ADDRESSES** for dates and locations). NMFS will consider public comments received in preparing the final rule implementing the Research Plan.

Classification

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Although it would affect all firms in the Research Plan fisheries, it would not decrease revenues by more than 2 percent. Since costs are approximately equal to revenues in the Research Plan fisheries, costs are not expected to go up by more than 2 percent. Thus, while a substantial number of small entities would be affected, the effect is not expected to be economically significant.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These collections of information have been submitted to the Office of Management and Budget for approval. Public reporting burden for each year of this collection is estimated to average 0.5 hours per response for completing the semi-annual Federal Processing Permit Application, 0.25 hours per response for notifying contractors of needs for observers, and 1.0 hour per response to provide information to document claims of disputed bills. For the first year of the Research Plan, completion of Observer Coverage Rebate Application forms is estimated to average 0.16 hours per response. All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 301, 671, 672, 675, 676, and 677

Fisheries, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, title 50 CFR is proposed to be amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. Section 301.23 is added to read as follows:

§ 301.23 North Pacific Fisheries Research Plan.

Permit requirements, observer requirements, and fee assessments for the Northern Pacific halibut fishery under the North Pacific Fisheries Research Plan are contained in part 677 of this chapter.

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

3. The authority citation for part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. A new § 671.4 is added to read as follows:

§ 671.4 Permits.

All processors of Bering Sea and Aleutian Islands area king and Tanner crab must comply with permit requirements contained in § 677.4 of this chapter.

5. A new § 671.21 is added to read as follows:

§ 671.21 Observer requirements.

Bering Sea and Aleutian Islands area king and Tanner crab observer requirements are contained in part 677 of this chapter.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

6. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

7. In § 672.4, introductory text of paragraph (b) is redesignated introductory text of paragraph (b)(1); existing paragraphs (b)(1) through (10) are redesignated paragraphs (b)(1) (i) through (x), respectively; and a new paragraph (b)(2) is added to read as follows:

§ 672.4 Permits.

* * * * *

(b) * * *

(2) All processors of Gulf of Alaska groundfish must comply with permit requirements contained in § 677.4 of this chapter, in addition to any applicable requirements of this § 672.4.

* * * * *

8. Section 672.27 is revised to read as follows:

§ 672.27 Observer requirements.

Gulf of Alaska groundfish observer requirements are contained in part 677 of this chapter.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

9. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

10. In § 675.4, introductory text of paragraph (b) is redesignated introductory text of paragraph (b)(1); existing paragraphs (b)(1) through (10) are redesignated paragraphs (b)(1) (i) through (x), respectively; and a new paragraph (b)(2) is added to read as follows:

§ 675.4 Permits.

* * * * *

(b) * * *

(2) All processors of Bering Sea and Aleutian Islands management area groundfish must comply with permit requirements contained in § 677.4 of this chapter, in addition to any applicable requirements of this § 675.4.

* * * * *

11. Section 675.25 is revised to read as follows:

§ 675.25 Observer requirements.

Bering Sea and Aleutian Islands management area groundfish observer requirements are contained in part 677 of this chapter.

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF ALASKA

12. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

13. In § 676.13, paragraph (a)(1) introductory text is revised to read as follows:

§ 676.13 Permits.

(a) * * *

(1) In addition to the permit and licensing requirements prescribed at 50 CFR parts 301, 672, 675, and 677, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have onboard:

* * * * *

14. In § 676.16, paragraph (r) is added to read as follows:

§ 676.16 General prohibitions.

* * * * *

(r) Any person who is issued a registered buyer permit under § 676.13(a)(2) of this part and who also is required to obtain a Federal processing permit under § 677.4 of this chapter may not transfer or receive sablefish harvested in Federal waters or halibut unless the person possesses a valid permit issued under § 677.4 of this chapter.

15. Part 677 is added to read as follows:

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

Subpart A—General Provisions of the North Pacific Fisheries Research Plan.

Sec.

677.1 Purpose and scope.
677.2 Definitions.
677.3 Relation to other laws.
677.4 Permits.
677.5 Recordkeeping and reporting.
677.6 Research Plan fee.
677.7 General prohibitions.
677.8 Facilitation of enforcement.
677.9 Penalties.
677.10 General requirements.
677.11 Annual Research Plan specifications.
677.12 Compliance.

Subpart B—General Provisions of Risk-Sharing Pool for Insurance Purposes. [Reserved]

Figures—Part 677

Figure 1—Federal Processing Permit Application (Form FPP–1).
Figure 2—Observer Coverage Rebate Application (Form FPP–2).

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions of the North Pacific Fisheries Research Plan.

§ 677.1 Purpose and scope.

(a) These regulations implement the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations in this part govern elements of the Research Plan for the following fisheries under the Council's authority: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, and Bering Sea and Aleutian Islands area king and Tanner crab in the exclusive economic zone; and halibut from convention waters off Alaska.

§ 677.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

At-sea processor means a catcher/processor or mothership processor vessel as defined in this section.

Bering Sea and Aleutian Islands management area is defined at § 675.2 of this chapter.

Bering Sea and Aleutian Islands area is defined at § 671.2 of this chapter.

Bimonthly refers to a time period calculated on the basis of weekly reporting periods as follows: Each bimonthly period begins at 0001 hours A.l.t. of the first Sunday of the first weekly reporting period that has at least 4 days in the associated calendar month and ends at 2400 hours A.l.t., the last Saturday of the last weekly reporting period that has at least 4 days in the next calendar month, with the exception of the first bimonthly period, which begins at 0001 hours, A.l.t., January 1, and the last bimonthly period, which ends at 2400 hours, A.l.t., December 31. Dates of each bimonthly period will be published in the **Federal Register** prior to the beginning of the calendar year for which they apply.

Catcher vessel means a vessel that is used for catching fish.

Catcher/processor means a processor vessel that is used for catching fish and processing that fish.

Commissioner of ADF&G means the principal executive officer of ADF&G.

Convention waters off Alaska means all waters off Alaska in halibut regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E as defined in 50 CFR part 301.

Exvessel price means the price in dollars received by a harvester for fish from Research Plan fisheries. Exvessel price excludes any value added by processing.

Fee percentage means the annually calculated assessment rate, in percent of exvessel value of Research Plan fisheries, used to determine fee assessments under the Research Plan.

Fishing day means a 24-hour period, from 0001 A.l.t. through 2400 A.l.t., in which fishing gear is retrieved and groundfish, as defined at § 672.2 or § 675.2 of this chapter, halibut, or king or Tanner crab are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

Fishing trip means the time period during which one or more fishing days occur that starts on the day when fishing gear is first deployed and ends on the day the vessel: offloads groundfish, as defined at § 672.2 or § 675.2 of this chapter, halibut, or king or Tanner crab; returns to an Alaskan port; or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

Groundfish is defined at § 672.2 or § 675.2 of this chapter.

Gulf of Alaska is defined at § 672.2 of this chapter.

Halibut means Pacific halibut (*Hippoglossus stenolepis*).

King crab means red king crab (*Paralithodes camtschatica*), blue king crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), and scarlet (or deep sea) king crab (*Lithodes couesi*).

Landing is defined at § 672.2 of this chapter.

Length overall is defined at § 672.2 of this chapter.

Mothership processor vessel means a processor vessel that receives and processes fish from other vessels and is not used for catching fish.

Processing or *to process* means the preparation of fish to render it suitable for human consumption, industrial uses, or long term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor means any facility or vessel that processes fish for commercial use or consumption, any person who receives fish from fishermen for commercial purposes, and fishermen who sell fish directly to another individual for use as bait or personal consumption.

Regional Director means the Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

Research Plan means the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

Research Plan fisheries means the following fisheries: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, Bering Sea and Aleutian Islands area king and Tanner crab; and halibut from convention waters off Alaska.

Retained catch means the catch retained by either at-sea or shoreside processors, in round weight or round-weight equivalents, from Research Plan fisheries.

Round weight or round-weight equivalents means:

(1) *For groundfish processed by shoreside processors*—scale weights of retained catches; for other than whole fish delivered to shoreside processors, fish product weight, as defined at § 672.2 of this chapter, divided by NMFS standard product recovery rates.

(2) *For groundfish processed by at-sea processors*—fish product weight, as defined at § 672.2 of this chapter, of each product divided by NMFS standard product recovery rates.

(3) *For Bering Sea and Aleutian Islands area crab processed by catcher/processors*—scale weight of a subsample multiplied by the number of subsamples comprising the retained catch.

(4) *For Bering Sea and Aleutian Islands area crab processed by mothership processor vessels*—scale weights of retained catches.

Shoreside processor or *shoreside processing facility* means processor as defined in this section.

Standard exvessel price means the exvessel price for species harvested in Research Plan fisheries, calculated annually by NMFS for each species or species group, from exvessel price information for all product forms, used in determining fee assessments.

Standard observer day means all or part of a 24-hour period that begins at 0001 hours Alaska local time (A.l.t.) and ends at 2400 A.l.t., during which an observer is stationed on a vessel or at a shoreside facility for purposes of complying with observer coverage requirements at § 677.10(a). A standard observer day cannot be attributed to more than one vessel or shoreside facility.

Standardized cost of an observer day means the cost per observer day used to calculate both the annual total cost of the Research Plan and the fee percentage specified under the annual Research Plan specification process at § 677.11.

Tanner crab means *Chionoecetes* species or hybrids of these species.

§ 677.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (c) of this section.

(b) *Domestic fishing for groundfish*. Regulations governing the conservation and management of groundfish in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area are set forth at 50 CFR parts 672 and 675, respectively. The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by Alaska State regulation at 5 AAC 28 and Alaska Statute at A.S. 16.

(c) *King and Tanner crab fishing*. Regulations governing the conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands area are governed by Alaska Statutes at A.S. 16 and Alaska State regulations at 5 AAC 34, 35, and 39; and at part 671 of this chapter.

§ 677.4 Permits.

(a) *General*. In addition to the permit and licensing requirements at §§ 301.3, 672.4, 675.4, and 676.13 of this chapter, all processors of fish from Research Plan fisheries must have a Federal Processing Permit issued by the Regional Director under this section. Such permits shall be issued without charge.

(b) *Application*. The permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a completed Federal Processing Permit Application (Form FPP–1; see figure 1) containing the following information:

(1) The semi-annual period for which the permit is requested.

(2) The Research Plan fishery or fisheries for which the permit is requested.

(3) If the application is for an amended permit, the current Federal Processing Permit number and an indication of the information that is being amended.

(4) The processor owner's name or names; mailing address; person responsible, if the owner is a company; managing company, if any; telephone number; FAX number; and telex number.

(5) If the processing facility is a shoreside processor, the plant's name, address, ADF&G Processor Code, telephone number, FAX number, and telex number.

(6) If the processing facility is a vessel, the vessel's name, home port, net tonnage, length overall, U.S. Coast Guard number, telephone number, FAX number, telex number, INMARSAT (satellite communications) number, and ADF&G number.

(7) The owner's name, signature, and date.

(c) *Issuance*. (1) Permits required under this section will be issued by the Regional Director semi-annually.

(2) The Regional Director will issue a permit required under paragraph (a) of this section upon receipt of a complete application, if all Research Plan fees due are paid. Upon receipt of an incomplete or improperly completed application, the Regional Director will notify the applicant of the deficiency. No permit will be issued to an applicant until a complete application is submitted and all fees are paid.

(d) *Notification of change*. Any person who has applied for and received a permit under this section must notify the Regional Director, in writing, of any change in the information provided under paragraph (b) of this section within 10 days of the date of that change.

(e) *Duration*. The permit issued by the Regional Director will continue in full force and effect for the period January 1 through June 30, or July 1 through December 31, of the year for which it was issued, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) of this chapter.

(f) *Alteration*. No person may alter, erase, or mutilate any permit issued under this section. Any permit that has been intentionally altered, erased, or mutilated is invalid.

(g) *Transfer*. Permits issued under this section are not transferable or assignable. Each permit is valid only for the processor for which it is issued. The Regional Director must be notified of a change in ownership, pursuant to paragraph (d) of this section.

(h) *Inspection*. The permit issued under this section must be maintained on the processor vessel or at the shoreside processor. The permit must be available for inspection upon request by an authorized officer or any employee of NMFS or ADF&G designated by the Regional Director or Commissioner of ADF&G.

(i) *Sanctions*. Procedures governing permit sanctions are found at subpart D of 15 CFR part 904.

(j) *Disclosure*. NMFS will maintain a list of permitted processors that may be disclosed for public inspection.

§ 677.5 Recordkeeping and reporting.

(a) *Applicability*. Any processor that processes fish from a Research Plan fishery is responsible for compliance with the applicable recordkeeping and reporting requirements of this part.

(b) *General requirements*. Any form, record, or report that is required to be submitted or provided to the Regional Director must be addressed or delivered to the National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Submissions must be complete, legible, and in English.

§ 677.6 Research Plan fee.

(a) *Fee percentage*. The fee percentage will be set annually under procedures at § 677.11, such that the total fees equal the lesser of the following:

(1) The cost of implementing the Research Plan, including nonpayments,

minus any other Federal funds that support the observer program and any existing surplus in the North Pacific Fishery Observer Fund; or

(2) Two percent of the exvessel value of all Research Plan fisheries.

(b) *Bimonthly fee assessment.* The Research Plan bimonthly fee assessment is the fee percentage established pursuant to § 677.11 for the calendar year, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by the round weight or round-weight equivalent of retained catch for each species from Research Plan fisheries during the bimonthly period.

(c) *Fee assessment payments.* Each processor that retains fish for processing from a Research Plan fishery must collect and pay the Research Plan fee. NMFS will bill each processor of Research Plan fisheries for bimonthly fee assessments, based on the best available information on retained catches processed during that bimonthly period. Bimonthly fee assessment payments must be in the form of certified check, draft, or money order payable in U.S. currency to "NOAA-NMFS." The Regional Director must receive payment in full within 30 calendar days from the date of issuance of each bimonthly fee assessment bill. Payments will be deposited in the North Pacific Fishery Observer Fund within the U.S. Treasury.

(d) *Disputed fee assessments.* A processor must notify the Regional Director, in writing, within 30 days of issuance of the bimonthly fee assessment bill, if any portion of the bimonthly fee assessment bill is disputed. The processor must pay the undisputed amount of the bimonthly fee assessment bill within 30 days of its issuance, and provide documentation supporting the disputed portion claimed to be under- or over-billed. The Regional Director will review the disputed bimonthly fee assessment bill and the documentation provided by the processor, and will notify the processor of his determination within 60 days of the date of issuance of the disputed bimonthly fee assessment bill. If the Regional Director determines a billing error had occurred, the processor's account will be rectified by credit or issuance of a corrected bimonthly fee assessment bill. If the Regional Director determines that a billing error had not occurred, the balance of the disputed bimonthly fee assessment bill is due within 15 days of issuance of the determination. Late charges will be assessed for payments not received within 15 days. If the processor does not dispute the amount of the bimonthly fee assessment bill within 30 days of its issuance, the bimonthly fee assessment will be final, and will be due to the United States.

(e) *Late charges.* The NOAA Office of the Comptroller shall assess late charges in the form of interest and administrative charges for late payment of fee assessments. Interest will accrue on the unpaid amount at a percentage rate established by the Federal Reserve Board and applied to funds held by the U.S. Treasury for each 30-day period, or portion thereof, that the payment is overdue.

(f) *Rebates for observer coverage (Applicable from January 1, 1995, through December 31, 1995.)*—(1) *General.* During the first year of the Research Plan, NMFS will rebate the cost for required observer coverage.

(2) *Applicability.* (i) Each processor that retains fish for processing from a Research Plan fishery must collect and pay the Research Plan fee under procedures set forth under paragraphs (b) through (e) of this section.

(ii) All catcher vessels and processors of Research Plan fisheries must obtain observer coverage based on coverage requirements at § 677.10(a).

(iii) Catcher vessels and processors that pay for required observer coverage are eligible for rebates issued by NMFS during the first year of the Research Plan.

(3) *Recordkeeping and reporting, for purposes of this paragraph (f)*—(i) *Requirement.* All NMFS-certified observer contractors and observer contractors supplying observers for processor vessels participating in the Bering Sea and Aleutian Islands area king and Tanner crab fishery under Alaska State regulations must submit to the Regional Director a completed Observer Coverage Rebate Application (Form FPP–2; see figure 2). Completed forms must be submitted within 15 days after the end of each calendar month during which payment is received for observer services provided by the observer contractor for vessel or processor compliance with observer coverage requirements at § 677.10(a).

(ii) *Observer Coverage Rebate Application.* Observer contractors may obtain Observer Coverage Rebate Application forms from the Regional Director. The application form requests the following information:

(A) Observer contractor name and signature of a person serving as a representative for the observer contractor;

(B) The name and mailing address of the person from whom payment of observer coverage was received and to whom the rebate will be issued:

(C) Identification of the vessel or shoreside processing facility that received observer coverage;

(D) The total amount paid for observer coverage and the total number of standard observer days paid for; and

(E) Name of the observer(s) and date(s) of standard observer day(s) paid for.

(4) *Issuance of rebates.* (i) Rebates for observer coverage will be based on information provided to NMFS by observer contractors on the Observer Coverage Rebate Application.

(ii) NMFS will issue rebates to the persons who paid an observer contractor for observer services. The rebate for each standard observer day an observer is deployed for service at a processor or aboard a vessel will equal either the actual payment to the observer contractor per standard observer day or the standardized cost of a standard observer day, whichever is less.

(iii) NMFS will issue rebates authorized under this paragraph (f) within 6 months of the receipt of the completed application form described under paragraph (f)(3) of this section. No rebate will be issued to a processor until all Research Plan fees required under this section are paid.

§ 677.7 General prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it shall be unlawful for any person to do any of the following:

(a) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer.

(b) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(c) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(d) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(e) Process fish from a Research Plan fishery without a valid permit issued pursuant to this part.

(f) Deliver fish from a Research Plan fishery to a processor not possessing a valid permit issued pursuant to this part.

(g) Apply for or receive a rebate for observer coverage under provisions of § 677.6(f) that is based on false or inaccurate information.

(h) Fail to carry an observer when required by the Regional Director.

(i) Fish without an observer aboard a vessel that is required to carry an observer under § 677.10.

(j) Require an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

§ 677.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 677.9 Penalties.

See § 620.9 of this chapter.

§ 677.10 General requirements.

(a) *Compliance requirements applicable through December 31, 1995*—(1) *Compliance by operators of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish vessels*—(i) *Coverage requirements.* Observer coverage is required as follows:

(A) A mothership processor vessel of any length that processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer on board the vessel each day it receives or processes groundfish during that month.

(B) A mothership processor vessel of any length that processes from 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer on board the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(C) A catcher/processor or catcher vessel 125 ft (38.1 m) in length overall or longer must carry a NMFS-certified observer at all times while fishing for groundfish, except for vessels fishing for groundfish with pot gear as provided in paragraph (a)(1)(i)(F) of this section.

(D) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) in length overall, but less than 125 ft (38.1 m) in length overall, must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which it participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry a NMFS-certified observer during at least one fishing trip during that calendar quarter for each of the groundfish fishery categories defined under paragraph (a)(1)(ii) of this section in which it participates.

(E) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (a)(1)(i)(D) of this section must carry a NMFS-certified observer during at least one fishing trip in the Eastern Regulatory Area of the Gulf of Alaska during each calendar quarter in which it participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(F) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) in length overall fishing with pot gear must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which it participates for more than 3 days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish using pot gear must carry a NMFS-certified observer during at least one fishing trip during a calendar quarter for each of the groundfish fishery categories defined under paragraph (a)(1)(ii) of this section in which it participates.

(ii) *Groundfish fishery categories requiring separate coverage*—(A) *Pollock fishery.* Fishing that results in a retained catch of pollock, during any weekly reporting period, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(B) *Pacific cod fishery.* Fishing that results in a retained catch of Pacific cod, during any weekly reporting period, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(C) *Sablefish fishery.* Fishing that results in a retained catch of sablefish, during any weekly reporting period, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(D) *Rockfish fishery.* Fishing that results in a retained aggregate catch of rockfish of the genera Sebastes and Sebastolobus, during any weekly reporting period, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(E) *Flatfish fishery.* Fishing that results in a retained aggregate catch of all flatfish species, except Pacific halibut, during any weekly reporting period, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(F) *Other species fishery.* Fishing that results in a retained catch of groundfish, during any weekly reporting period, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (a)(1)(ii) (A) through (E) of this section.

(iii) *Assignment of vessels to fisheries* During any weekly reporting period, a vessel's retained catch composition of groundfish species or species groups for which a TAC has been specified under § 672.20 or § 675.20 of this chapter, in round weight or round-weight equivalents, will determine to which of the fishery categories listed under paragraph (a)(1)(ii) of this section the vessel is assigned.

(A) Catcher/processor vessels will be assigned to fishery categories at the end of each weekly reporting period based on the round weight or round-weight equivalent of the retained catch composition of groundfish reported on the vessels' weekly production report submitted to the Regional Director under § 672.5(c)(2) or § 675.5(c)(2) of this chapter.

(B) Catcher vessels that deliver to mothership processors in Federal waters during a weekly reporting period will be assigned to fishery categories based on the round weight or round-weight equivalent of the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership processor under § 672.5(c)(2) or § 675.5(c)(2) of this chapter.

(C) Catcher vessels delivering groundfish to shoreside processors or to mothership processors in Alaska State waters during a weekly reporting period will be assigned to fishery categories based on the round-weight equivalent of the groundfish delivered to processors during that weekly reporting period and reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(2) *Compliance by managers of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish shoreside processing facilities*—(i) *Coverage requirements.* Observer coverage is required as follows:

(A) A shoreside processing facility that processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility each day it receives or processes groundfish during that month.

(B) A shoreside processing facility that processes 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) *Compliance by processing vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab.* An operator of a vessel that processes king or Tanner crab must have one or more State of Alaska-certified observers on board the vessel whenever king or Tanner crab are received or processed, if the operator is required to do so by Alaska State regulations at 5 AAC 39.645.

(b) *Compliance requirements applicable after December 31, 1995*—(1) *General compliance requirements for Research Plan fisheries*—(i) *Compliance by operators of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish vessels from the EEZ and halibut from convention waters off Alaska.* An operator of a vessel that catches and retains groundfish or halibut, or a vessel that processes groundfish or halibut, must carry one or more NMFS-certified observers on board the vessel whenever fishing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b)(2) of this section.

(ii) *Compliance by managers of shoreside processing facilities of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish from the EEZ and halibut from convention waters off Alaska.* A manager of a shoreside processing facility that processes groundfish or halibut received from vessels regulated under this part must have one or more NMFS-certified observers present at the facility whenever groundfish or halibut are received or processed, if the manager is required to do so by the Regional Director under paragraph (b)(2) of this section.

(iii) *Compliance by vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab.* An operator of a vessel subject to this part must carry one or more NMFS-certified observers or ADF&G employees on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b)(2) of this section.

(iv) *Compliance by managers of shoreside processing facilities of Bering Sea and Aleutian Islands area king and Tanner crab.* A manager of a shoreside processing facility that processes king or Tanner crab received from vessels regulated under this part must have one or more NMFS-certified observers, or ADF&G employees, present at the facility whenever king or Tanner crab is received or processed, if the manager is required to do so by the Regional Director under paragraph (b)(2) of this section.

(2) *Observer coverage for Research Plan fisheries*—(i) *Annual determination of coverage level.* The appropriate level of observer coverage necessary to achieve the objectives of the Research Plan, given the funds available from the North Pacific Fishery Observer Fund, will be established annually under procedures in § 677.11.

(ii) *Inseason changes in coverage level*—(A) The Regional Director may increase or decrease the observer coverage requirements for the groundfish, halibut, and crab observer programs at any time to improve the accuracy, reliability, and availability of observer data, and to ensure solvency of the observer program, so long as the standards of section 313 of the Magnuson Act and other applicable Federal regulations are met, and the changes are based on one or more of the following:

(*1*) A finding that there has been, or is likely to be, a significant change in fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component.

(*2*) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(*3*) A finding that any decrease in observer coverage resulting from unanticipated funding shortfalls must be consistent with the following priorities:

(*i*) Status of stock assessments;
(*ii*) Inseason management;
(*iii*) Bycatch monitoring; and
(*iv*) Vessel incentive programs and regulatory compliance.

(*4*) A determination that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revised program, and are necessary to meet fishery management needs.

(iii) The Regional Director will consult with the Commissioner of ADF&G prior to making inseason changes in observer coverage level for the crab observer program.

(iv) NMFS will publish changes in observer coverage requirements made under paragraph (b)(2)(ii) of this section in the **Federal Register**, with the reasons for the changes and any special instructions to vessels required to carry observers, at least 10 calendar days prior to their implementation.

(c) *Vessel responsibilities.* All vessels required to carry observers must have passed a U.S. Coast Guard safety inspection within the past 2 years and must carry proof to that effect on board. An operator of a vessel must:

(1) Provide, at no cost to observers, the State of Alaska, or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel.

(2) Maintain safe conditions on the vessel for the protection of observers during the time observers are on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(3) Allow observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States.

(4) Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(7) Allow observers to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, any other logbook or document required by regulations,

printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(8) Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to, assisting the observers in measuring decks, codends, and holding bins; providing the observers with a safe work area adjacent to the sample collection site; providing crab observers with the necessary equipment to conduct sampling, such as scales, fish totes, and baskets; assisting in collecting bycatch when requested by the observers; assisting in collecting and carrying baskets of fish when requested by observers; and allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(9) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking observers.

(10) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(11) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(12) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(13) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(d) *Shoreside processor responsibilities.* A manager of a shoreside processing facility must:

(1) Maintain safe conditions at the processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(2) Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish, crab, or halibut prior to receipt of those fish

(3) Allow the observers to use the processing facility's communication equipment, on request, for the entry, transmission, and receipt of work-related messages at no cost to the observers or the United States.

(4) Allow observers free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(5) Allow observers to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(6) Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to, assisting the observer in moving and weighing totes of fish, cooperating with product recovery tests, and providing a secure place to store baskets of sampling gear.

(e) *Notification of observer contractors by processors and operators of vessels required to carry observers.* Processors and operators of vessels required to carry observers under the Research Plan are responsible for meeting their observer coverage requirements. Processors and vessel operators must notify the appropriate observer contractor, as identified by NMFS, in writing or facsimile copy, no less than 60 days prior to the need for an observer, to ensure that an observer will be available. Processors and vessel operators must notify the appropriate observer contractor again, in writing, facsimile copy, or by telephone, no less than 10 days prior to the need for an observer, to make final arrangements for observer deployment. Names of observer contractors, information for contacting contractors, and a list of embarkment/disembarkment ports for observers will be published in the **Federal Register** annually prior to the beginning of the calendar year (see § 677.11).

(f) *Release of observer data to the public*—(1) The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi Tanner* crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) The information listed in paragraphs (f)(2) (i) through (xiii) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public. The identity of the vessels from which these data are collected will not be released. The information consists of the following:

(i) Date;

(ii) Time of day gear is deployed;

(iii) Latitude and longitude at beginning of haul;

(iv) Bottom depth;

(v) Fishing depth of trawl;

(vi) The ratio of the number of chinook salmon to the total round weight of groundfish;

(vii) The ratio of the number of other salmon to the total round weight of groundfish;

(viii) The ratio of total round weight of halibut to the total round weight of groundfish;

(ix) The ratio of total round weight of herring to the total round weight of groundfish;

(x) The ratio of the number of king crab to the total round weight of groundfish:

(xi) The ratio of the number of *C. bairdi Tanner* crab to the total round weight of groundfish;

(xii) Sea surface temperature (where available); and

(xiii) Sea temperature at fishing depth of trawl (where available).

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (f) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7

§ 677.11 Annual Research Plan specifications.

(a) *Proposed Research Plan specifications.* Annually, after consultation between the Regional Director, the Council, and, in the case of observer coverage levels in the crab fisheries, the State of Alaska, NMFS will publish in the **Federal Register**, with opportunity for public comment: Proposed standard exvessel prices, total exvessel value, fee percentage, levels of observer coverage for Research Plan fisheries, standardized cost(s) of an observer day, and embarkment/disembarkment ports for observers, for the calendar year.

(1) *Standard exvessel prices.* Standard exvessel prices will be used in

determining the annual fee percentage for the calendar year and will be the basis for calculating bimonthly fee assessments. Standard exvessel prices for species harvested in Research Plan fisheries for each calendar year will be based on:

(i) Exvessel price information for the most recent 12-month period for which data are available;

(ii) Factors that are expected to change exvessel prices in the calendar year; and

(iii) Any other relevant information that may affect expected exvessel prices during the calendar year.

(2) *Total exvessel value.* The total exvessel value of Research Plan fisheries will be calculated as the sum of the product of the standard exvessel prices established under paragraph (a)(1) of this section and projected retained catches, by species.

(3) *Research Plan fee percentage.* The Research Plan fee percentage for a calendar year will equal the lesser of 2 percent of the exvessel value of retained catch in the Research Plan fisheries or the fee percentage calculated using the following equation:

Fee percentage=[100x(RRPC–FB–OF)/V]/(1–NPR)

where RRPC is the projection of recoverable Research Plan costs for the coming year, FB is the projected end of the year balance of funds collected under the Research Plan, OF is the projection of other funding for the coming year, V is the projected exvessel value of retained catch in the Research Plan fisheries for the coming year, and NPR is the percent (expressed as a decimal) of fee assessments that are expected to result in nonpayment.

(4) *Observer coverage.* For the period January 1, 1995, through December 31, 1995, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1995, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

(5) *Standardized cost of an observer day.* Standardized cost of an observer day is used to determine the Research Plan fee percentage. During the first year of the Research Plan, NMFS will use standardized cost(s) of an observer day, specified under paragraph (b) of this section, as a basis for rebates issued under § 677.6(f) of this part.

(6) *Embarkment/disembarkment ports.* Ports to be used to embark and disembark observers will be selected on the basis of convenience to the affected industry and on the availability of facilities, transportation, and accommodations deemed by the Regional Director to be necessary for the safe and reasonable deployment of observers.

(b) *Final Research Plan specifications.* NMFS will consider comments received on the proposed specifications and, following consultation with the Council, and with the State, in the case of observer coverage in the crab fisheries, will publish the final total exvessel value; standard exvessel prices; fee percentage; levels of observer coverage for Research Plan fisheries, including names of observer contractors and information for contacting them; standardized cost(s) of an observer day; and embarkment/disembarkment ports in the **Federal Register** annually prior to the beginning of the calendar year.

§ 677.12 Compliance.

The operator of any fishing vessel subject to this part, and the manager of any shoreside processing facility that receives groundfish, halibut, or king and Tanner crab from vessels subject to this part, must comply with the requirements of this part. The owner of any fishing vessel subject to this part, or any shoreside processing facility that received groundfish, halibut, or king and Tanner crab from vessels subject to this part, must ensure that the operator or manager complies with the requirements of this part and is liable, either individually or jointly and severally, for compliance with the requirements of this part.

Subpart B—General Provisions of Risk Sharing Pool for Insurance Purposes [Reserved]

BILLING CODE 3510–22–P

Figure 1. Federal Processing Permit Application (Form FPP-1)

NOAA-[illegible]

OMB Approval No.______
Expires ______

United States Department of Commerce
National Oceanic & Atmospheric Administration
National Marine Fisheries Service
P.O. Box 021668
Juneau, Alaska 99802-1668

FEDERAL PROCESSING PERMIT APPLICATION (FORM FPP-1)

Application for Federal Processing Permit for Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, Bering Sea and Aleutian Islands king and Tanner Crab, and North Pacific Halibut (from Convention waters off Alaska).

BLOCK A - PERMIT INFORMATION

Enter the semi-annual permitting period for which you are applying: [ ] January 1 to June 30 Year________
[ ] July 1 to December 31

The following fisheries require a Federal Processing Permit.

Check (√) the appropriate fisheries you would like to apply for:

[ ] Gulf of Alaska Groundfish (GOA)

[ ] Bering Sea and Aleutian Islands Groundfish (BSAI)

[ ] North Pacific Halibut (from Convention waters off Alaska)

[ ] Bering Sea and Aleutian Islands king and Tanner Crab

BLOCK B - AMENDED PERMIT INFORMATION

If this is an application for an amended permit:

Provide your current Federal Processing Permit Number: ______________________________

Check (√) the item(s) that have changed:

[ ] Permit information (BLOCK A)

[ ] Owner information (BLOCK C)

[ ] Processing facility information (BLOCK D)

BLOCK C - OWNER INFORMATION

1. Owner name(s) (Last - First - M.I.)	5. Telephone number ( )
2. Mailing address (street number, city, state, Zip code)	6. FAX number ( )
3. Person responsible if owner is a company	7. Telex number
4. Managing company, if any	

BLOCK D - PROCESSING FACILITY INFORMATION

If the processing facility is shoreside:

1. Plant's Name	4. Telephone number ( )
2. Address (street number, city, state, Zip code)	5. FAX number ( )
3. ADF&G processor code —	6. Telex number

If the processing facility is a vessel:

1. Vessel's name	6. Telephone number ( )
2. Home port (city, state)	7. FAX number ( )
3. Net tonnage	8. Telex number
4. Length overall	9. INMARSAT number
5. Coast Guard number	10. ADF&G number

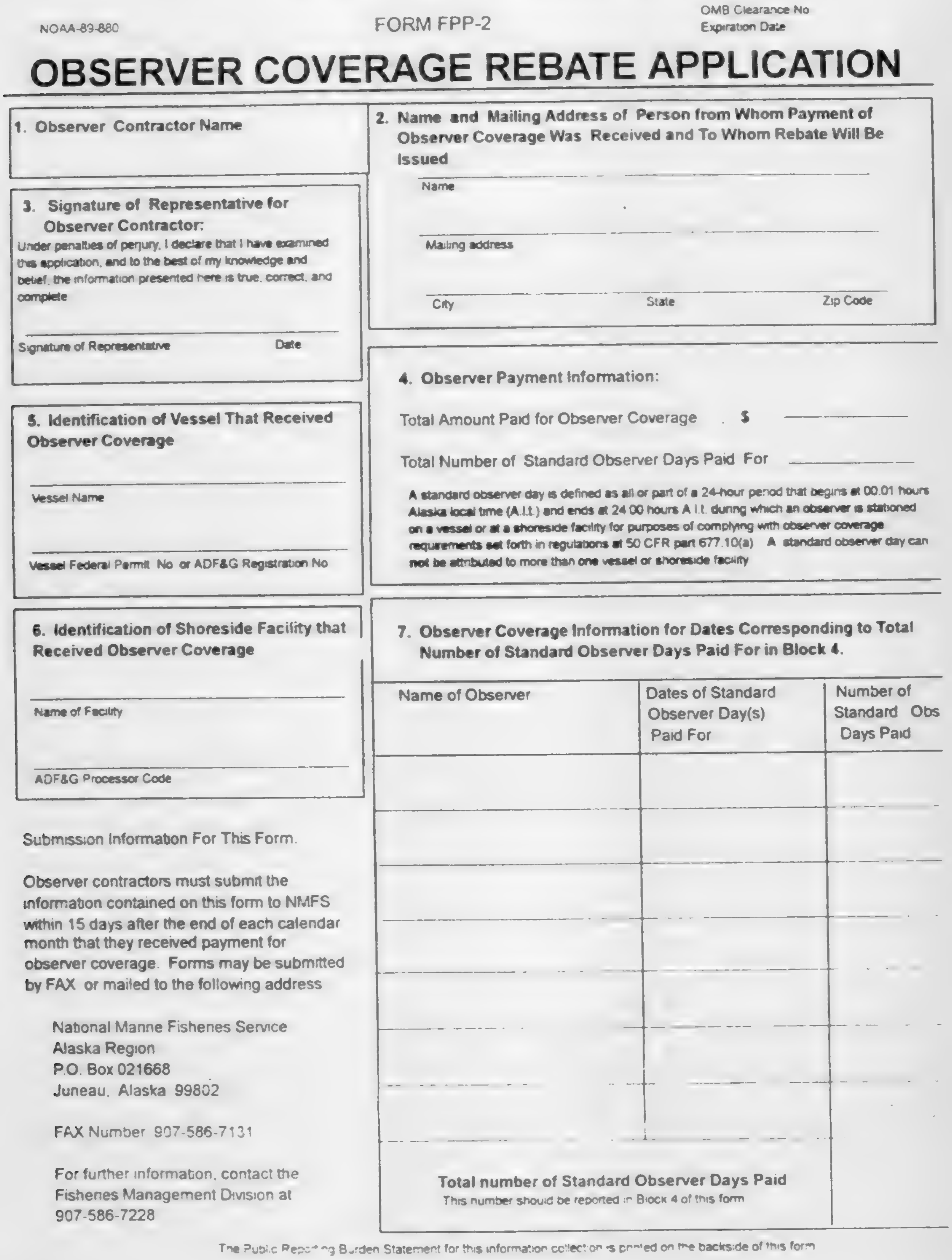
BLOCK E - SIGNATURE

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, the information presented here is true, correct and complete.

Owner's name (please print or type)	Signature	Date

The Federal Processing Permit is issued on a semi-annual basis. An application is considered incomplete if any prior fee payments are past due.

Figure 2. Observer Coverage Rebate Application (Form FPP-2)



NOAA-89-880

FORM FPP-2

OMB Clearance No
Expiration Date

OBSERVER COVERAGE REBATE APPLICATION

1. Observer Contractor Name

2. Name and Mailing Address of Person from Whom Payment of Observer Coverage Was Received and To Whom Rebate Will Be Issued

Name

Mailing address

City State Zip Code

3. Signature of Representative for Observer Contractor:

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, the information presented here is true, correct, and complete

Signature of Representative Date

4. Observer Payment Information:

Total Amount Paid for Observer Coverage $ ____________

Total Number of Standard Observer Days Paid For ____________

A standard observer day is defined as all or part of a 24-hour period that begins at 00.01 hours Alaska local time (A.l.t.) and ends at 24 00 hours A l.t. during which an observer is stationed on a vessel or at a shoreside facility for purposes of complying with observer coverage requirements set forth in regulations at 50 CFR part 677.10(a) A standard observer day can not be attributed to more than one vessel or shoreside facility

5. Identification of Vessel That Received Observer Coverage

Vessel Name

Vessel Federal Permit No or ADF&G Registration No

6. Identification of Shoreside Facility that Received Observer Coverage

Name of Facility

ADF&G Processor Code

7. Observer Coverage Information for Dates Corresponding to Total Number of Standard Observer Days Paid For in Block 4.

Name of Observer	Dates of Standard Observer Day(s) Paid For	Number of Standard Obs Days Paid
Total number of Standard Observer Days Paid This number should be reported in Block 4 of this form		

Submission Information For This Form.

Observer contractors must submit the information contained on this form to NMFS within 15 days after the end of each calendar month that they received payment for observer coverage. Forms may be submitted by FAX or mailed to the following address

National Marine Fisheries Service
Alaska Region
P.O. Box 021668
Juneau, Alaska 99802

FAX Number 907-586-7131

For further information, contact the Fisheries Management Division at 907-586-7228

The Public Reporting Burden Statement for this information collection is printed on the backside of this form

BILLING CODE 3510-22-C

Public Reporting Burden Statement

NMFS estimates that the public reporting burden will average 10 minutes per response for completing the Observer Coverage Rebate Application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), and to the Office of Management and Budget, Paperwork Reduction Project (0634–), Washington DC 20503 (Attn: NOAA Desk Officer)

[FR Doc. 94–10765 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 642

[I.D. 050294A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before July 1, 1994.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review/initial regulatory flexibility analysis and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX 813–225–7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, suite 306, Charleston, SC 29407–4699, FAX 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared amendment to a fishery management plan be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 7 proposes the following actions. (1) The eastern zone commercial quota for the Gulf migratory group of king mackerel would be divided into equal quotas for Florida east and west coast fisheries. The Florida east coast sub-zone would encompass the waters off the east coast of Florida from a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′N. lat.) to a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′N. lat.). The east coast sub-zone would exist from November 1 through March 31, when the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary. From November 1 through March 31, the Florida west coast sub-zone would encompass the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County, Florida boundary to a line extending directly south from the Alabama/Florida boundary (87°31′06″–W. long.). From April 1 through October 31, when the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48′N. lat.), the west coast sub-zone would extend from the Monroe/Collier County, Florida boundary to the Alabama/Florida boundary. (2) The west coast sub-zone quota would be further subdivided into equal quotas for fishermen harvesting with hook-and-line and those using run-around gillnet gear. (3) Persons would be allowed to fish under the gillnet quota in the west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone. All harvest of Gulf group king mackerel in the west coast sub-zone by vessels with such an endorsement would be counted against the gillnet quota.

Proposed regulations to implement Amendment 7 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11001 Filed 5–5–94; 8:45 am]

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Notices

Federal Register
Vol. 59, No. 87
Friday, May 6, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service and Commodity Credit Corporation

Feed Grain Donations; Fort Totten Indian Reservation of North Dakota

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Executive Vice President, Commodity Credit Corporation (CCC) and the Administrator, Agricultural Stabilization and Conservation Service, is announcing that the reservation and grazing land of the Fort Totten Indian Reservation of North Dakota is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

FOR FURTHER INFORMATION CONTACT: John Newcomer, Livestock Programs Branch, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, DC 20013–2415, 202–720–6157.

SUPPLEMENTARY INFORMATION: Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, notice is being given that I have determined that:

1. The chronic economic distress of the needy members of the Devils Lake Sioux Tribe (the Tribe) of the Fort Totten Indian Reservation of North Dakota has been materially increased and become acute because of excessive rains in the summer of 1993, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by CCC for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the Tribe to be an acute distress area and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon May 1, 1994, and shall be made available through May 31, 1994, or such other date as may be stated in a notice issued by the Administrator, Agricultural Stabilization and Conservation Service.

Signed at Washington, DC, on May 2, 1994.

Grant Buntrock,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–10933 Filed 5–5–94; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

[Docket No. 92–190–4]

Animal Damage Control Program; Availability of the Final Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a final environmental impact statement for the Animal Damage Control program. The final environmental impact statement addresses the function, methods of operation, locations, and the biological, sociocultural, economic, and physical impacts of reasonable alternatives for the agency's Animal Damage Control program.

ADDRESSES: Copies of the final environmental impact statement are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250;

Operational Support Staff, Animal Damage Control, APHIS, USDA, room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782;

Eastern Regional Office, Animal Damage Control, APHIS, USDA, Suite 370, 7000 Executive Center Drive, Brentwood, TN 37027;

Denver Wildlife Research Center, Building 16, Denver Federal Center, Denver, CO 80225;

Western Regional Office, Animal Damage Control, APHIS, USDA, 12345 W. Alameda Parkway, suite 313, Lakewood, CO 80228.

Interested persons may obtain a copy of the final environmental impact statement by writing to Richard L. Wadleigh at the address listed below under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Wadleigh, Environmental Management Staff Officer, Animal Damage Control, APHIS, USDA, room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281.

SUPPLEMENTARY INFORMATION:

Background

Animal Damage Control (ADC) of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, in cooperation with the Bureau of Land Management of the U.S. Department of the Interior, and the Forest Service of the U.S. Department of Agriculture, has prepared a final environmental impact statement (EIS) for the ADC program. Copies of this document were filed with the Environmental Protection Agency (EPA) on April 26, 1994, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)), and the EPA Notice of Availability appeared in the **Federal Register** on May 6, 1994.

On January 14, 1993 (58 FR 4404–4405, Docket No. 92–190–1), we published a notice of intent to make available a supplement to the draft EIS for the ADC program. The draft EIS, made available on June 18, 1990 (55 FR 24597–24598, Docket No. 90–099), evaluated environmental impacts associated with wildlife damage control activities. On February 12, 1993, we published in the **Federal Register** (58 FR 8252, Docket No. 92–190–2) a notice advising the public that the supplement to the draft EIS for the ADC program was available for public review and comment. Comments were due on or before March 29, 1993.

Because of the size and complexity of the supplement to the draft EIS, and in response to a number of requests, on March 29, 1993, we published in the **Federal Register** (58 FR 16520, Docket No. 92–190–3) a notice advising the public that we were extending the comment period until April 28, 1993.

By close of business April 28, 1993, we had received 1,493 comments on the draft EIS and its supplement. Based on suggestions and information offered in the comments, we have revised the draft EIS and its supplement, and have produced a final EIS.

This notice is issued in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 28th day of April 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–10669 Filed 5–5–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held May 26, 1994, 8:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of export controls affecting sensors and lasers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, EA/OAS—room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: May 3, 1994.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 94–10994 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

βA-421-805α

Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 6,1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Katt or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.; Washington, DC 20230; telephone: (202) 482-0498 or (202) 482-2613, respectively.

FINAL DETERMINATION: We determine that imports of aramid fiber formed of poly-phenylene terephthalamide (PPD-T aramid fiber) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination on December 9, 1993 (58 FR 65699, December 16, 1993), the following events have occurred:

On December 16, 1993, we received a request from the sole respondent in this investigation, Aramide Maatschappij V.O.F. (Arami) and Akzo Fibers, Inc. (the U.S. selling agent) (collectively Akzo) to postpone the final determination in this investigation until 135 days after the date of publication of the preliminary determination. On December 22, 1993, we did so and postponed this final determination until May 2, 1994 (58 FR 69329, December 30, 1993).

On February 23, 1994, petitioner (E.I. Du Pont de Nemours & Company) requested that references to tire cord fabric be deleted from the scope of the investigation. On April 21, 1994, petitioner revised its previous request, asking that tire cord fabric be expressly excluded from the scope of this investigation. (See "Scope of the Investigation" section of this notice, below.) Akzo submitted supplemental responses to sections B (third-country sales), C (United States sales) and D (cost of production/constructed value) of the questionnaire, revisions and corrections to its sales responses, and/

or revised computer tapes in December 1993, as well as February, March and April of 1994.

We conducted verification of Akzo's sales and cost questionnaire responses in the Netherlands and the United States in February and March of 1994, respectively.

Akzo and petitioner submitted case and rebuttal briefs on March 28 and 31, 1994, respectively. At Akzo's request, a public hearing was held on April 1, 1994.

Scope of the Investigation

The products covered by this investigation are all forms of poly parà-phenylene terephthalamide aramid fiber from the Netherlands. These consist of PPD-T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-based nonwovens, chopped fiber and floc. Tire cord fabric is excluded from the class or kind of merchandise under investigation. PPD-T aramid fiber is classifiable under subheadings 5402.10.3020, 5402.10.3040, 5402.32.3000, 5503.10.0000, 5601.30.0000 and 5902.10.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Changes to the Scope of the Investigation

Prior to our preliminary determination, petitioner requested that we clarify that "tire cord fabric" constructed of PPD-T aramid fiber is included within the scope of this investigation. After considering comments from both parties, we preliminarily determined that this product is included within the scope of this investigation (58 FR 65699, December 16, 1993). We also invited comments from interested parties on this issue. Subsequent to the preliminary determination, petitioner requested that tire cord fabric be expressly excluded from the scope of this investigation. Also, Akzo submitted arguments opposing the inclusion of tire cord fabric. We have therefore excluded tire cord fabric from the class or kind of merchandise covered by this investigation.

Petitioner also requested that the term "nonwovens", as used in the description of the scope of the investigation, be clarified to include only spun-based and spun-laced nonwovens composed of PPD-T aramid fiber. We have made this clarification.

Finally, at the request of the U.S. International Trade Commission, we have replaced the words "this includes" with the words "these consist of" to further clarify the products covered by this investigation.

Class or Kind

Prior to our preliminary determination, Akzo argued that this investigation should involve at least three classes or kinds of merchandise: Yarn, staple fiber and pulp. After considering extensive comments from both parties, we preliminarily determined that the products covered by this investigation constitute a single class or kind of merchandise, and three such or similar categories. (See Preliminary Concurrence Memorandum, dated December 9, 1993, on file in room B-099 of the main building of the Department of Commerce). In our preliminary determination, we invited additional comments from interested parties on this issue. However, no additional evidence supporting a finding of three classes or kinds has been submitted. In addition, no comments in opposition to our preliminary determination have been filed. We therefore continue to find that the products covered by this investigation constitute a single class or kind of merchandise.

Period of Investigation

The period of investigation (POI) is January 1, 1993, through June 30, 1993.

Such or Similar Comparisons

We made fair value comparisons using the following such or similar categories: (1) Yarn; (2) staple fiber; and (3) pulp. Where we were not able to compare U.S. sales to sales of identical merchandise, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, on file in room B-099 of the main building of the Department of Commerce. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

Fair Value Comparisons

To determine whether Akzo's sales to the United States of PPD-T aramid fiber were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. We included certain sales in our calculation of USP which Akzo contends were pursuant to a long-term contract negotiated prior to the POI. (For a further discussion of these sales, see comment 1 below.)
2. We increased U.S. indirect selling expenses by the amount of G&A expenses allocated to the aramid fibers business unit of Akzo Fibers Inc. by its parent company, Akzo America Inc. (see comment 6 below).
3. We recalculated inventory carrying costs incurred in the Netherlands on U.S. sales to reflect the short-term borrowing rate of Arami, (*i.e.*, the actual producer and seller of subject merchandise), (see comment 8 below).
4. We used the date of the start of the Dutch sales verification for all missing payment dates.

Foreign Market Value

As stated in our preliminary determination, we determined that the home market was not viable for any of the three such or similar categories. We selected Germany as the third country market for sales of yarn and staple fiber, and Japan as the third country market for sales of pulp. We calculated FMV as noted in the "Price-to-Price" and "Price to Constructed Value (CV)" sections of this notice.

Cost of Production

Petitioner alleged that Akzo's third country sales were made at prices below the cost of production (COP). On the basis of petitioners' allegations, we gathered and verified data on production costs.

We compared Akzo's third country prices to the COP as explained in our preliminary determination.

In order to determine whether third country prices were above the COP, we calculated the COP based on the sum of Arami's (i.e., the actual producer and seller of subject merchandise) submitted costs of materials, fabrication, general expenses, and packing, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated interest expense based solely on Arami's financial statements (see DOC position for comment 12);
2. We included certain non-operating expenses in general and administrative (G&A) expenses (see DOC position for comment 17); and
3. We disallowed Arami's claimed reduction in fixed overhead for certain intercompany charges (see DOC position for comments 14 and 15)

Accordingly, we increased its submitted cost of manufacturing.

Price-to-Price Comparisons

For those products for which we had an adequate number of sales at prices equal to or greater than the COP, we based FMV on third country prices. We calculated FMV using the methodology described in our notice of preliminary determination, with the following exceptions:

1. We recalculated inventory carrying costs incurred in the Netherlands on German and Japanese sales and German credit expenses to reflect the short-term borrowing rate of Arami (see comment 7 below).

2. We used the average credit days of all transactions with a reported shipment and payment date for sales missing both a shipment and payment date. We have inserted the date of the start of the Dutch sales verification for those sales with missing payment dates only.

3. We corrected a clerical error in the calculation of third country indirect selling expenses.

Price to CV Comparisons

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. In accordance with section 773(e)(1)(B) (i) and (ii) of the Act we: (1) Included the greater of Arami's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate and; (2) for profit, we used the higher of the statutory minimum of eight percent of the sum of COM and general expenses or the actual profit incurred as calculated on a market specific basis (see Comment 18). As a result, for the German market we used actual profit and for the Japanese market we used the statutory minimum of eight percent. We calculated CV based on the methodology described in the calculation of COP above, with the following exceptions:

1. In the financing calculation, we included additional interest expense based on market value (See Comment 13).

2. We corrected a clerical error in the calculation of third country profit.

In instances where we compared Akzo's U.S. prices to CV, we made deductions, where appropriate, for the weighted-average third country direct selling expenses. We also deducted the weighted-average third country indirect selling expenses. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Final Determination of Critical Circumstances

Petitioner alleged that "critical circumstances" exist with respect to imports of PPD-T aramid fiber from the Netherlands. Pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we have analyzed the allegations using the Department's standard methodology as discussed in our preliminary determination, except that for purposes of determining whether there have been massive imports we compared imports in five-month periods rather than four-month periods (see DOC position for comment 4). Accordingly, we find that critical circumstances do not exist.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by Akzo by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Certain comments cannot be discussed in this notice due to their business proprietary nature. The comments which have been excluded do not lend themselves to public summarization, and therefore have been discussed in the business proprietary version of the Final Concurrence Memorandum dated May 2, 1994 (Final Concurrence Memorandum), on file in room B-099 of the main building of the Department of Commerce.

Comment 1: Petitioner argues that the Department of Commerce (the Department) should include in its calculation of U.S. price Akzo's shipments during the POI made pursuant to a long-term agreement negotiated prior to the POI. Petitioner contends that the particular terms and circumstances of Akzo's agreement with this customer do not create a binding commitment on the part of either the buyer or seller and therefore do not create an enforceable sales contract.

Akzo argues that these shipments were pursuant to a long-term contract established prior to the POI and therefore are properly excluded from the U.S. database. Akzo further argues that certain terms and circumstances of the agreement should not prevent it from being considered a contract with a date of sale prior to the POI because the two parties acted upon and adhered to the contract. Finally, respondent points out that the Department confirmed at verification that all sales to this customer during the period of the contract were at the contract price.

DOC Position: In order for this agreement to be considered a long-term contract established prior to the POI, the agreement must fix both the price and quantity. At verification we examined all invoices to the customer for sales pursuant to the agreement during its effective period. Although we found that all sales were made at the specified price, we also found that the quantity purchased was substantially less than the amount specified in the contract.

Therefore, we conclude that the quantity was not fixed by the terms of the agreement because the quantities actually purchased over the period of the agreement were unrelated to those specified by the agreement. For this reason, we determine that the date of the agreement does not constitute the date of sale. Accordingly, we have used the date of shipment as the date of sale and have included all shipments to this customer during the POI in our calculation of U.S. price.

Comment 2: Petitioner argues that the Department should include in its calculation of U.S. price Akzo's shipments during the POI pursuant to a supply agreement which was signed prior to the POI but modified during the POI. Petitioner asserts that the modification to the agreement, in effect, created a new agreement with a date of sale within the POI.

Akzo argues that the contract modification did not alter the essential terms of the contract. Therefore, according to Akzo, all POI shipments pursuant to this agreement have a date of sale prior to the POI and thus are properly excluded from the U.S. sales database.

DOC Position: We agree with Akzo. We verified that the essential terms of the contract, the price and quantity, were not altered as a result of the modification. Therefore, we consider Akzo's agreement with this customer to be a long-term contract with a date of sale prior to the POI. Consequently, the shipments in question were properly not reported.

Comment 3: Petitioner argues that Akzo's shipments made pursuant to supply contracts with two customers during the POI should be reported as U.S. sales, if not already reported.

Akzo contends that these sales have been reported.

DOC Position: The sales in question were reported.

Comment 4: Petitioner argues that the Department should find that imports of subject merchandise were massive over a relatively short period of time and that consequently, critical circumstances exist in this investigation under 735 (a)(3)(B) of the Act. In its analysis, petitioner compared shipments to the United States with a base period prior to the filing of the petition of May-July, 1993, with shipments to the United States in the post-petition comparison period of August-October, 1993. Using this comparison, petitioner found that imports had increased during the comparison period by more than 15 percent, the Department's benchmark.

Akzo argued that imports were not massive, and that the petitioner's methodology was not consistent with the practice of the Department.

DOC Position: We agree with Akzo. In this case, the petition was filed on July 2, 1993. It is the Department's standard policy, in cases where the petition is filed during the first half of the month, to include the month of filing in the post-petition comparison period, not the base period, as petitioner suggests (See, e.g., Certain Portable Electronic Typewriters from Singapore, 58 FR 43337 (1993)). Additionally, although 19 CFR 353.16(g) requires that we examine at least three months, it is the Department's practice to examine the longest period for which information is available up until the preliminary determination (See, e.g., Certain Cut-to-Length Carbon Steel Plate from the United Kingdom, 58 FR 37216 (1993)). When the five month period subsequent to and including the month that the petition was filed is compared to the previous five months, we find that imports were not at levels we consider massive.

Comment 5: Petitioner argues that certain sales of scrap (which were excluded from our analysis in the preliminary determination because the quantity involved was insignificant) should be included in the calculation of U.S. price for the following reasons: (1) The fact that the quantities are small is irrelevant; (2) other sales of the merchandise in question are included in the cost of production calculations; and (3) according to product specifications in Akzo's invoices, the merchandise in question is clearly a form of PPD–T aramid fiber which is subject to investigation.

Akzo argues that the Department properly excluded sales of scrap from its preliminary determination because the quantities sold in the United States were small and there were no similar sales of scrap in the comparison third country markets. Additionally, Akzo asserts that exclusion of scrap sales is consistent with the treatment of non-prime material in the recent carbon flat steel cases, where the Department disregarded sales of second quality merchandise in the U.S. market where there were no similar sales in the home market and they constituted an insignificant portion (less than five percent) of the respondent's total U.S. sales, (Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled and Certain Cold-Rolled Steel from the Netherlands, 58 FR 37199, 37201 (July 9, 1993)).

Akzo further argues that petitioner's reliance on the product designations on the invoices is misplaced because scrap is generated as part of the beaming (*i.e.*, repacking) process in the United States.

DOC Position: We agree with Akzo. The volume of scrap sales is insignificant and there are no comparable third country sales. Therefore, we have continued to exclude these sales from our calculations. In addition, at verification we verified that most of the scrap is tailings generated by the U.S. repacking operation and that, invoice descriptions notwithstanding, the product is sold as waste and the customer has no recourse to quality claims.

Comment 6: Petitioner argues that we should not exclude certain (G&A) expenses incurred by Akzo America, Inc. in the calculation of indirect selling expenses for purposes of the ESP deduction from U.S. price. Petitioner further argues that it is long-standing Department practice to consider G&A expenses incurred by the U.S. selling arms of a foreign producer to be indirect "selling expenses" for purposes of this deduction.

Akzo argues that it has captured all expenses of the selling affiliate, Akzo Fibers, in its calculation of indirect selling expenses. In addition, Akzo asserts that it has captured all selling-related expenses which were allocated to the aramid fiber business unit of Akzo Fibers by Akzo America. Akzo contends that all remaining G&A expenses carried on the books of Akzo America are not associated with the selling function at Akzo Fibers and therefore are properly not included in the calculation of U.S. indirect selling expenses.

DOC Position: We agree with petitioner. Akzo America is the parent company that provides administrative, accounting and finance services for all of Akzo's North American subsidiaries. In addition, there is no evidence that it provides any services for Akzo N.V. (its parent company in the Netherlands) other than to facilitate the activities of the subsidiaries in the United States. Therefore, all expenses incurred by Akzo America, including those classified on its books as G&A, are indirectly related to the selling activities of the subsidiaries. Consequently, we have included in the calculation of U.S. indirect selling expenses the amount of Akzo America's G&A expenses which have been allocated to the aramid fibers business unit of Akzo Fibers.

Comment 7: Petitioner argues that certain other G&A expenses listed on the June 1993 financial statement of Akzo America have not been allocated to any of the North American subsidiaries and that the representative portion attributable to the aramid fiber business unit should be included in the calculation of indirect selling expenses for purposes of the ESP deduction from U.S. price.

Akzo argues that these G&A costs are the same G&A expenses which are the subject of Comment 6 above.

DOC Position: We agree with petitioner that the G&A expenses of Akzo America should be included in the calculation of indirect selling expenses for purposes of the ESP deduction from U.S. price (see comment 6). However, we agree with Akzo that these G&A costs are the same G&A expenses which are the subject of Comment 6 (see memorandum to the file, dated April 22, 1994). Therefore, no additional increase to U.S. indirect selling expenses is necessary.

Comment 8: Petitioner argues that in calculating the Dutch portion of U.S. inventory carrying costs, the Department should use the short-term borrowing rate of Arami (*i.e.*, the actual producer and seller of the subject merchandise), rather than the rate of Akzo N.V., the parent company. Petitioner asserts that Arami's borrowing rate is appropriate because Arami is the company which actually financed the inventory and is a separate corporate entity from Akzo N.V.

Akzo argues that Akzo N.V.'s short-term borrowing rate should be used in calculating the Dutch portion of the inventory carrying cost for the same reasons it argues that Akzo N.V. and Arami should be consolidated for determining a financial expense ratio for CV and COP. (See the discussion below at Comment 11). Respondent also argues, in the event that the Department decides not to collapse the two companies and uses Arami's short-term borrowing rate in calculating U.S. inventory carrying cost, that the

Department should also use Arami's short-term borrowing rate in the calculation of inventory carrying costs incurred in the Netherlands on sales made in Japan and Germany and in the calculation of German credit.

DOC Position: As noted in our response to Comment 11 below, we have determined that it is not appropriate to collapse Arami and Akzo N.V. Therefore, we agree with petitioner and have used the short-term borrowing rate of Arami in calculating the inventory carrying costs incurred in the Netherlands on U.S., German and Japanese sales. We have also applied Arami's rate in the calculation of German credit expense, as suggested by Akzo.

Comment 9: Petitioner argues that Akzo's U.S. customs duty calculation may be incorrect because there are discrepancies between the list of customs entries for subject merchandise entering Akzo's warehouses in the United States during the POI and the list of all shipments to the United States provided by Akzo in connection with the critical circumstances allegation.

Akzo argues that petitioner has erroneously assumed that the entries included in the two lists should correspond exactly. In fact, respondent argues, the list of shipments includes additional entries that did not enter Akzo's warehouse but were transferred directly to U.S. customers, entries made after the POI, and invoices that were cancelled.

DOC Position: We agree with Akzo. The two lists will not correspond exactly. One list represents the volume of subject merchandise entering Akzo's U.S. warehouses during the POI, while the other represents the volume of subject merchandise shipped from the Netherlands during the POI. In addition, at verification we determined that the list of entries used for Akzo's U.S. duty calculation was complete and accurate.

Comment 10: Akzo argues that the Department made clerical errors in its calculation of the ESP offset and difference in merchandise adjustment in its preliminary determination.

DOC Position: We agree with respondent. We have corrected these errors in our final determination. Also, see our response to Comment 18.

Comment 11: Petitioner argues that Arami and Akzo N.V. should not be consolidated for COP or CV calculations. Petitioner states that while they were clearly related, Akzo N.V. held only a 50 percent equity interest in Arami and their operations were never consolidated for financial reporting or any other purposes. According to both Dutch and U.S. generally accepted accounting principles (GAAP), consolidation is required when one company holds more than a 50 percent equity interest in another company. Petitioner asserts that the reorganization of the Arami joint venture should not be factored into the Department's cost analysis because this development occurred after the POI. Petitioner claims that if the Department departed from its practice of investigating costs and prices during the POI, it would constitute an arbitrary departure from established practice as well as an invitation for post-POI cost and price manipulation by foreign producers.

Petitioner maintains that the Department's reason for collapsing transactions between related parties which do not reflect "arm's length" costs is to eliminate any substantial risk of price and cost manipulation between those companies. Petitioner states that the legal and operational structure of Arami was designed so that its operations would not be consolidated under Dutch law. Additionally, petitioner asserts that the actual cost of producing aramid fiber is more accurately reflected by Arami's own books and records instead of its records consolidated with the Akzo Group. Petitioner contends that the companies in the cases cited by Arami do not relate to this case because the companies met the requirements for consolidation and should have been consolidated under GAAP (*i.e.*, equity ownership was greater than 50 percent).

Arami claims that Akzo N.V. exerted significant control over its operation not only in 1993, but in all preceding years. Arami states evidence of this close interrelationship is illustrated by its financing transactions as well as evidence of organizational and operational control. Arami argues that it is the Department's practice to combine financing activities of companies where one company exerts significant control over the other company. It also claims that this is in keeping with the Department's position on fungibility of capital. Arami has informed the Department that Akzo Fibers Aramide B.V., a wholly-owned subsidiary of Akzo N.V., increased its equity interest in Arami to 95 percent effective December 31, 1993. Arami concludes that, based on the fungibility of capital, increased equity ownership and significant control, the Department should consolidate Arami with Akzo N.V. for cost of production and constructed value purposes. Arami states that it was consolidated with Akzo N.V. for balance sheet reporting purposes as of December 31, 1993, and would be fully consolidated on both the income statement and balance sheet in the fiscal year 1994.

Additionally, Arami claims that in previous cases, the Department has combined the parent and subsidiary's costs even though consolidation did not occur in the normal course of business. In citing the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-weld Pipe Fittings from Thailand (pipe fittings), 57 FR 21065 (1992), respondent quotes the Department as saying: "* * * it is the Department's policy to combine the financing activities of a parent and subsidiary when the parent exercises control over the subsidiary (*i.e.* meets the requirements for consolidation)." Respondent also cites the Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil (Ferrosilicon), 59 FR 732 (1994), to further support its claim.

DOC Position: We agree with petitioner, and have not consolidated Arami and Akzo N.V. for purposes of this antidumping investigation. The corporate reorganization which was effective December 31, 1993, was not considered by the Department because it occurred subsequent to the POI.

Each of the joint venture partners had equal control over decisions involving Arami's operations until the new agreement was signed in 1994. Under Dutch GAAP, if a company does not have equity ownership of greater than 50 percent, but still has control over another company, it is required to consolidate. Since Arami was not consolidated with Akzo prior to reorganization, we can reasonably conclude that Akzo did not have sufficient control over Arami to warrant consolidation under Dutch GAAP. Therefore, consolidation of Arami and the Akzo N.V. for antidumping purposes based on a significant control argument is unwarranted.

In the two cases cited by Arami, the GAAP of those countries required consolidation when one company owned more than 50 percent of another. In the Pipe Fittings case, the Japanese parent company, Awaji Sangyo K.K. Company Ltd. (ASK) owned more than 50 percent of Awaji Sangyo Co. Ltd., (AST) of Thailand. Although ASK and AST did not prepare consolidated financial statements, the Department in its cost verification report (April 4, 1992, pg.3) noted "* * * the operations should have been consolidated in accordance with generally accepted accounting principles." In Ferrosilicon, the parent company owned greater than 50 percent of Minasligas, its subsidiary under investigation. Brazilian and U.S. GAAP require consolidation when the equity interests exceed 50 percent. In each of those cases, control was indicated by equity ownership and GAAP required consolidation. In contrast to the above cases, Arami did not meet the requirements for consolidation. For further analysis of this issue, see the Final Concurrence Memorandum.

Comment 12: Since Arami was not consolidated with Akzo N.V. during the POI, petitioner asserts interest expense should be calculated based solely on Arami's 1992 audited financial statements. Petitioner argues that the Department must disregard the reorganization finalized subsequent to the POI which resulted in Arami being consolidated with Akzo N.V. for balance sheet purposes. In addition, petitioner states this consolidation did not affect the income statement encompassing the POI.

Arami argues that the combined 1992 financial statement data of Arami and Akzo N.V. is the correct basis for computing interest expense because Akzo N.V. exerts significant control over Arami's operations and capital is fungible. Arami argues that the consolidation for balance sheet purposes as of December 31, 1993, affects the entire fiscal year 1993.

DOC Position: We disagree with respondent. A company's balance sheet presents a snapshot of its assets and claims on those assets (liabilities and equity) as of a specific point in time (*i.e.*, 12/31/93). An income statement reports a company's performance over a specified period of time (*i.e.*, 1/1/93-12/31/93). Arami's operating results were not consolidated with the results of the Akzo N.V. Group in 1993. Based on the Department's decision not to consolidate Arami with Akzo N.V., we calculated interest expense for COP and CV based solely on Arami's financial statements. For further analysis of this issue, see the Final Concurrence Memorandum.

Comment 13: Petitioner asserts that interest on loans provided by a related party should be included in the calculation of Arami's financing costs for COP and CV purposes. Petitioner states that according to the Court of Appeals for the Federal Circuit in *IPSCO, Inc.* v. *U.S.*, 965 F.2d 1056 (1992), cost of production is linked to constructed value. Thus, the petitioner states that the constructed value provision authorizing the Department to disregard related party transactions which are not arms-length in nature can be applied to cost of production calculations. Petitioner asserts that Arami's argument for consolidation does not eliminate the costs associated with these loans. Furthermore, the year end reorganization does not modify costs incurred during the POI. Petitioner contends that consolidation did not affect the income statement for the period January 1 through December 31, 1993.

Arami claims that as a result of the new joint venture agreement signed in 1994, Arami's balance sheet was consolidated with that of Akzo N.V., eliminating all related party loans. Therefore, the Department cannot impute an interest cost to loans that do not exist as of December 31, 1993. Arami claims its 1992 audited financial statement data should be used in calculating interest expense, but adds that the significant change in Arami's corporate structure must be considered. Arami continues that if the Department determines consolidation is unwarranted, and decides imputation of interest expense is necessary for CV, it should not impute interest for COP. Arami argues that the Department's long standing policy is to compute COP based on a company's actual costs, thus, there is no basis on which to impute interest for COP.

DOC Position: According to section 773(e)(2) of the Act, for CV, if a transaction between related companies does not fairly reflect the market value, the Department may determine that element of value using the best evidence available. In this case, we found that the loans in question were at below-market interest rates. Thus, we included the interest incurred on the loans provided by Arami's related party in the calculation of financing costs for CV purposes.

We determined that no related party financing adjustment is necessary for COP purposes. In determining actual costs of production, the Department normally adheres to the GAAP of the respondent's home country. Under Dutch GAAP, economic activities are normally consolidated for all companies that have direct or indirect ownership greater than 50 percent. In accordance with ITA's standard practice, the supplier's actual costs of production should be used to value inputs acquired from companies that are directly or indirectly related by more than 50 percent. Inputs acquired from companies that have direct or indirect ownership of 50 percent or less, should normally be valued using transfer prices (i.e., purchaser's actual cost). Accordingly, for COP purposes, we used Arami's transfer prices.

For further analysis of these issues, see the Final Concurrence Memorandum.

Comment 14: Petitioner states that certain charges were paid by Arami for services rendered by related Akzo companies. Since certain of these charges are used to approximate the price charged in an arm's length transaction and were actual costs incurred, Petitioner states it is appropriate to include these costs in the cost of manufacturing.

Arami claims certain of these charges are intracompany transactions which do not represent true costs and will be discontinued in 1994, therefore, these costs should be excluded from the cost of manufacturing for both COP and CV purposes.

DOC Position: We disagree with respondent. These charges relate to intercompany transactions between Arami and another company, which represent actual costs incurred by Arami and recorded on its books during the POI. Arami incorrectly categorized these costs as intracompany transactions which relates to transactions between divisions within a company. The fact that this charge may be discontinued in 1994 does not mean the costs should be excluded for 1993. Accordingly, we included these charges in Arami's COP and CV calculations.

Comment 15: Petitioner states that certain costs incurred by Akzo N.V. prior to the POI and recorded in Arami's 1992 audited financial statements in accordance with GAAP should be included in the COP. Petitioner states that this expense should be either charged to U.S. sales as a selling expense or to all sales as a general and administrative expense.

Akzo argues that these costs incurred by Akzo N.V. do not represent true costs for Arami during the POI. The accrual on Arami's books for this cost has not been paid to Akzo N.V. and the expense will no longer be charged in 1994. Therefore, this intercompany transaction should be excluded from the submitted cost of manufacturing.

DOC Position: Since this expense relates to the general production activity of Arami, we included it in Arami's general and administrative expense calculation for COP and CV purposes. This expense represents an actual cost recorded on Arami's books during the POI and the fact that the expense will no longer be charged in 1994 is not relevant.

Comment 16: Petitioner asserts that the Department should disallow a certain adjustment to Arami's fixed overhead costs for grants because it is not recorded in Arami's cost accounting system and the reduction in costs attributed to this adjustment distorts Arami's true cost of manufacturing

Petitioner notes that if the Department allows this reduction, we should self-initiate a countervailing duty investigation.

Arami claims that it properly adjusted its fixed overhead costs by a certain amount because this adjustment is recorded in Arami's financial accounting system, and is included in its audited financial statements. Arami notes that inclusion of this adjustment in no way distorts Arami's costs, because it reflects amounts actually incurred. Additionally, Akzo notes that because not all grants are countervailable, the Department should resist petitioner's statements requesting self-initiation of a countervailing duty investigation.

DOC Position: This adjustment reflects actual costs incurred by Arami as recorded on its books in accordance with GAAP, and was properly included in its submitted COP and CV. We believe subsidies are more properly handled in the context of the countervailing duty law. Petitioner is free to submit a countervailing duty petition. Should such a petition be submitted and meet the requirements of the countervailing duty regulations (19 CFR 355.12), the Department would initiate such an investigation. However, no justification has been presented here for a departure from the Department's general policy of not self-initiating countervailing duty investigations.

Comment 17: Petitioner claims that several other non-operating expense items should be included in G&A costs because each of these expenses relate to the aramid fibers business. Petitioner asserts all G&A expenses related to the subject merchandise should be included in cost of production and constructed value.

Arami claims that no additional adjustment to G&A expense for non-operating expenses is warranted. Arami asserts that two of the expenses noted by petitioner are already included in the submitted G&A calculation. Additionally, Arami contends that the related party provision included in other non-operating expenses is an intracompany payment and has no relevance in the context of this dumping investigation.

DOC Position: We adjusted the G&A calculation to include the related party payment and two other non-operating expense items noted in the cost verification report which were associated with the general operations of Arami. The related party payment is an actual cost incurred by Arami and recorded on its books in accordance with GAAP. Two of the other non-operating expenses mentioned by the petitioner are already included in submitted G&A costs, thus no adjustment is necessary.

Comment 18: Arami contends that for purposes of constructed value, the Department should calculate a weighted-average profit figure for pulp sales in Japan and yarn and staple sales in Germany.

DOC Position: We disagree with Arami. We believe that it is appropriate to calculate all selling expenses and profit specific to the market in which the products in question were sold rather than average profit across two or more countries. Consequently, we calculated one average profit for pulp sold in Japan and another for yarn and staple sold in Germany.

However, we corrected a clerical error in the calculation of profit noted by Arami which resulted in double counting.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of PPD–T aramid fiber from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after December 16, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Akzo	55.84
All Others	55.84

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: May 2, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10993 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–817]

Electroluminescent High Information Content Flat Panel Displays and Display Glass Therefor From Japan; Court Decision and Suspension of Liquidation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of court decision.

SUMMARY: On April 14, 1994, the United States Court of International Trade (CIT) affirmed the International Trade Commission's amended determination on remand that there is no material injury to the U.S. industry from imports of electroluminescent (EL) flat panel displays and display glass therefor (FPDs) from Japan. If the case is not appealed, or is affirmed on appeal, then the antidumping duty orders on El FPDs will be revoked.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F. 2d.337 (Fed. Cir. 1990), Commerce will continue to order the suspension of liquidation of the subject merchandise.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1991, the International Trade Commission (ITC) determined that a U.S. industry was being materially injured by reason of imports of FPDs from the Japan (56 FR 43937, Sept. 5, 1991). On September 4, 1991, the Department published an antidumping duty order on EL FPDs (56 FR 43741).

The ITC decision was appealed, and the CIT remanded the determination to the ITC to reconsider its injury determination. On March 8, 1993, the ITC determined on remand that no U.S. industry was being materially injured by reason of imports of El FPDs. This remand was affirmed by the CIT on April 14, 1994, *Hosiden Corporation* v.

United States, Slip Op. 94–60 (CIT April 14, 1994).

Accordingly, absent an appeal, or, if appealed, upon a final decision by the Court of Appeals for the Federal Circuit (CAFC) affirming the CIT, the antidumping duty order will be revoked. Plaintiffs in the proceedings obtained an injunction enjoining liquidation of entries of EL FPDs that remain unliquidated as of 5 p.m., January 24, 1994. Therefore, revocation of the order will be effective for all entries that remain unliquidated as of the date of revocation.

Suspension of Liquidation

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's or the ITC's respective determinations. Publication of this notice fulfills that obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a final decision in the action. Therefore, the Department is continuing to suspend liquidation at the current cash deposit rate pending the expiration of the period of appeal of, if appealed, pending a final decision of the CAFC.

Dated: April 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10992 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–614–801]

Fresh Kiwifruit From New Zealand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the New Zealand Kiwifruit Marketing Board, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review covers one exporter and the period November 27, 1991, through May 31, 1993. The review indicates the existence of margins for the exporter.

As a result of this review, we preliminarily determine to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Amer M. Kayani or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5346 or 482–3814, respectively.

Background

On June 2, 1992, the Department of Commerce (the Department) published the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203). The Department published a notice of "Opportunity to Request Administrative Review" on June 7, 1993 (58 FR 31941). The respondent, the New Zealand Kiwifruit Marketing Board (NZKMB), requested that we conduct an administrative review for the period November 27, 1991, through May 31, 1993. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on July 21, 1993 (58 FR 39007), announcing an administrative review of the NZKMB. The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The product covered by this review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of this review. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

United States Price

Exporter's Sales Price: As provided in section 772(c) of the Tariff Act, we used the exporter's sales price (ESP) as U.S. price for certain sales by the NZKMB to the United States; these sales were made to the first unrelated party in the United States after importation, and hence warranted ESP methodology.

We calculated ESP based on packed F.O.B. (ex-New Zealand coolstore), and packed F.O.B., freight-prepaid prices. We made deductions, where appropriate, for New Zealand inland freight (coolstore to port), loading charges in New Zealand, ocean freight, basic marine insurance, charter insurance, U.S. import duties, U.S. brokerage and handling, U.S. inland freight (decreased to account for prepaid freight where applicable), and price discounts (*i.e.*, advertising allowances, special advertising allowances, market adjustment discounts, advertising rebates which actually constituted discounts, and discounts for quality problems). In accordance with sections 772(e) (1) and (2) of the Tariff Act, we made additional deductions, where appropriate, for agent commissions, broker commissions, credit, direct advertising, and indirect selling expenses. Indirect selling expenses included inventory carrying costs, repacking, U.S. primary and U.S. satellite coolstore charges, New Zealand and U.S. instore insurance, fire insurance, product liability and tamper insurance, earthquake insurance, indirect advertising, quality control expenses, miscellaneous selling-agent-related charges, U.S.-incurred indirect expenses, and New Zealand incurred indirect selling expenses associated with selling in the United States. We increased the U.S. price to account for post sale price adjustments not reflected in the gross price.

Purchase Price: As provided in section 772(b) of the Tariff Act, we used purchase price to represent the U.S. price for sales made on a CIF basis directly by the NZKMB. Deductions were made, where appropriate, for ocean freight, foreign inland freight, and inland/marine insurance in accordance with section 772(d)(2) of the Tariff Act.

Foreign Market Value

The Department determined that home market sales did not constitute a viable basis for calculating foreign market value (FMV). Therefore, in accordance with 19 CFR 353.48 and 353.49(b), the Department chose sales to Japan as the basis of FMV. Japan is the largest third-country market based on information submitted by the NZKMB. Neither the petitioner nor the respondent raised in this review any other factor relevant to third country selection, hence we did not consider any other factor in determining the third-country market.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. In consideration of the significant volume of third-country sales involved in this review, we decided to test respondents' third-country sales to determine whether we could use annual FMVs as a basis of comparison to U.S. sales. To determine whether a period of review (POR) weighted-average price was representative of the transactions under consideration, we performed a three-step test. See *Antifriction Bearings from Japan, et al.; Final Results of Review*, 58 FR 42289 (1993).

We first compared the monthly weighted-average third-country price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary more than plus or minus 10 percent from the monthly weighted-average prices. We did this test for each model of kiwifruit. We then compared the volume of sales of all models of kiwifruit whose POR weighted-average price did not vary more than plus or minus 10 percent from the monthly weighted-average price with the total volume of sales of kiwifruit. If the POR weighted-average price of at least 90 percent of sales of kiwifruit did not vary more than plus or minus 10 percent from the monthly weighted-average price, we considered the POR weighted-average price to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for each model. We found that no significant correlation existed between price and time (See analysis memorandum to the file, 4/25/94). That is, prices did not consistently rise or fall so as to make annual weighted-average prices unrepresentative of home market prices.

Because many of the NZKMB's sales were determined to be at prices below the cost of production (COP) during the investigation, the Department initiated a COP investigation for the purposes of this administrative review. Just as the Department found in the investigation, we find that in comparing third-country sales to COP, the reseller/exporter's acquisition prices are irrelevant because section 773(b) of the Tariff Act requires that the Department look at the actual COP of the subject merchandise. Thus, we used the cost incurred by kiwifruit farmers, the actual producers of the subject merchandise, to calculate the COP benchmark.

Due to the large number of growers from which the NZKMB purchased kiwifruit during the POR, the Department determined that sampling was both administratively necessary and methodologically appropriate to calculate a representative cost of producing the subject merchandise for purposes of this administrative review (See section 777A of the Tariff Act). Based on comments submitted by the petitioner and the respondent, we decided to select kiwifruit growers on a stratified basis across the categories of regional location. Farms were stratified by geographic regions into either the Bay of Plenty region or non-Bay of Plenty regions. This division was made because 70 percent of the New Zealand kiwifruit is produced in the Bay of Plenty region and it is considered to be the most cost-effective area in which to grow kiwifruit. Once farms were categorized into two geographic regions, a random sample of 20 growers was selected. Since 70 percent of the New Zealand kiwifruit production originates in the Bay of Plenty region, we selected 14 growers representing this region. An additional six growers were selected from the non-Bay of Plenty regions.

We sent COP questionnaires through the NZKMB to the 20 kiwifruit growers, all of which responded to the Department's questionnaire. These 20 responses, along with supplemental responses and verification results, were analyzed and relied upon, where appropriate, in reaching the preliminary results of the review.

We calculated the cost of cultivation for each grower by summing all costs for the 1992 kiwifruit season. These costs included the cost of materials, farm labor, farm overhead, and packing. We allocated the cost on a per tray-equivalent basis over the total number of tray-equivalents submitted by each grower to the NZKMB. We then adjusted those costs to reflect the fruit loss of 22 percent, which was disclosed by the NZKMB in its financial statement. We added the NZKMB's general and administrative expenses to the farm's average cost per tray.

The orchard set-up costs for all growers were amortized over 20 years (See memorandum to Holly A. Kuga, 4/21/94). Because several growers failed to provide actual orchard set-up costs, we must base our determination on the "best information available" (BIA), pursuant to 19 CFR 353.37(a). For those growers that did not or could not provide actual set-up costs, we used grower number 17's average cost per hectare, collected at verification, as BIA to calculate set-up costs. These are the highest orchard set-up costs of the 20 growers in our sample.

For growers that allocated costs over the productive area, that is, canopy area, we made adjustments to include the headlands and sidelands in the productive area of the kiwifruit orchard for the purpose of allocating costs.

We made adjustments to growers' cost for depreciation, interest, labor, repairs, management, vehicles, fertilizer, spraying, rates (property tax), electricity, shelter, water, general and administrative, pruning, and mowing on a farm-specific basis where appropriate.

For the grower that failed verification, we used BIA to determine its COP, pursuant to 19 CFR 353.37(a). This BIA was based on the highest COP we calculated for all responding growers.

We calculated a simple average COP from the sampled growers' individual COPs. The total COP was calculated on a New Zealand dollar per single-layer tray equivalent basis (NZ$/SLT).

Pursuant to Department practice, in conducting our COP analysis, if over 90 percent of a respondent's sales of a particular model were at prices above the COP, we did not disregard any below-cost sales of that model because we determined that the respondent's below-cost sales were not made in substantial quantities, as required under section 773(b) of the Tariff Act. See *Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand; Final Determination of Sales at Less Than Fair Value*, 57 FR 21065 (1992). If between 10 and 90 percent of a respondent's sales of a particular model were at prices above the COP, we retained the sales above cost for analysis, and we examined the sales below cost to determine whether they occurred over an extended period of time. Consistent with the Departments' practice, the Department disregarded those sales made below cost if occurring in more than two months. Where we found that more than 90 percent of respondent's sales of a model were at prices below the COP and over an extended period of time, we disregarded all home market sales of that model and based FMV on constructed value (CV) in accordance with section 773(b) of the Tariff Act. There is no information on the record demonstrating that prices of below cost sales would recover all costs within a reasonable period of time.

To calculate CV, the statutory minimum profit of eight percent was added because the NZKMB's actual profit was less than the statutory minimum (See section 773(e) of the Tariff Act). We added selling, general and administrative expenses for the NZKMB to the farm's average cost per tray because the actual expenses were higher than the statutory minimum of 10 percent.

We adjusted third-country prices, where appropriate, to reflect deductions for rebates, New Zealand inland freight, New Zealand inland freight insurance, New Zealand port loading expenses, ocean freight and charter insurance. Direct advertising, imputed credit, and letter of credit charges were also deducted. We also deducted indirect selling expenses including inventory carrying costs, New Zealand instore and fire insurance, product liability and tamper insurance, indirect advertising, and other indirect selling expenses when calculating FMV for comparison to ESP transactions. This deduction for third country indirect selling expenses was capped by the amount represented by U.S. indirect selling expenses plus U.S. commissions, in accordance with 19 CFR 353.56(b).

Preliminary Results of Review

We have preliminarily determined that the following margin exists for the period November 27, 1991, through May 31, 1993:

Manufacturer/exporter	Margin (percent)
New Zealand Kiwifruit Marketing Board	35.86

Interested parties may request disclosure within five days of the date of publication of this notice, and a hearing within 10 days of the date of publication. Any hearing requested will be held as early as convenient for parties but not later than 44 days after the date of publication, or the first workday thereafter. Case briefs, or other written comments, from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication. The Department will publish the final results of review, including its results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; and (2) the cash deposit rate for merchandise exported by all other manufacturers and exporters who are not covered by this or any previous administrative review conducted by the Department will be the "all others" rate of 98.60 percent established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 29, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94-10989 Filed 5-5-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Termination of Circumvention Inquiry of Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of termination of circumvention inquiry of antidumping duty order.

SUMMARY: On June 9, 1992, the Department of Commerce (the Department) received a request from Brecoflex Corporation (Brecoflex) for a circumvention inquiry of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Japan with respect to imports by Mectrol Corporation (Mectrol). Pursuant to that request, the Department initiated a circumvention inquiry on October 18, 1993 (58 FR 53706). The circumvention inquiry covers the period January 1, 1992 through June 30, 1993.

Based on a review of Brecoflex's submissions in conjunction with the International Trade Commission's (ITC) analysis of the manufacturing process for production of industrial power belts, the Department determines that Brecoflex does not have standing as a domestic producer of a like product to file the request in the instant inquiry. Therefore, we are terminating the circumvention inquiry.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberley Huffman at (202) 482-0780 or Wendy Frankel at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department published the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Japan (54 FR 25314). On August 4, 1989, we published an amended order (54 FR 32104). On June 9, 1992, Brecoflex, who identified itself as a producer of a like product in the United States, alleged that the antidumping duty order on industrial belts from Japan was being circumvented and requested that the Department investigate the matter. The Department initiated a circumvention inquiry on October 18, 1993.

In several submissions, Mectrol alleged that Brecoflex did not have standing to file a request for a circumvention inquiry. Therefore, on February 1, 1994, and February 28, 1994, the Department issued a standing questionnaire and supplemental standing questionnaire, respectively, to Brecoflex. Brecoflex responded to the standing questionnaires on February 17, 1994, and March 4, 1994.

Analysis

Standing To File a Request for a Circumvention Inquiry

Section 353.29 of the Department's regulations states that "[a]ny interested party, as defined in § 353.2(k), may file" a request for a circumvention inquiry (19 CFR 353.29). In its June 9, 1993, request for a circumvention inquiry, Brecoflex claimed standing to bring the request as a domestic producer of industrial power belts. The provision in the Department's regulations for standing as a producer is § 353.2(k)(3) which includes in the definition of interested party "[a] producer in the United States of the like product" (19 CFR 353.2(k)(3)).

Brecoflex's U.S. Operations

In its June 9, 1992, request for a circumvention inquiry, Brecoflex claimed standing to bring the request as a producer in the United States of a like product as covered by the antidumping duty order on industrial belts from Japan. Pursuant to questions raised by Mectrol concerning Brecoflex's standing to bring this request for a circumvention inquiry, the Department issued a standing questionnaire to Brecoflex. In its standing questionnaire response, Brecoflex explained its U.S. operations as follows.

Brecoflex states that it imports from Germany polyurethane timing belts and performs secondary operations on these belts in its only United States facility in Eatontown, New Jersey. The secondary operations consist of the following:

(1) Slitting of roll stock and truly endless belts to narrower belt widths;
(2) Cutting roll stock to specific lengths;
(3) Splicing and welding of open-ended roll stock to finished belts;
(4) Attaching injection molded profiles to belt backs; and
(5) Machining of finished belts such as edge grinding, removing sections of teeth, providing holes for joining belts in linear drives, and grinding of belt back.

Brecoflex states that it fabricates, markets and sells three basic types of synchronous polyurethane timing belts that it considers to be subject merchandise. These belts include the Breco M, the Breco V, and the Brecoflex. Brecoflex performs the operations listed above on these three belts. (See the Department's April 15, 1994, Recommendation Memorandum for further detail.)

Production of Industrial Power Belts

In its final report during the injury investigation in 1989, the ITC determined that there are four main stages in the manufacturing of industrial power transmission belts:

(1) Parts manufacturing,
(2) Assembling or building,
(3) Curing or vulcanizing, and
(4) Finishing and packaging (see Industrial Belts from Japan, USITC Pub. 2194 (1989) (ITC Report) at 6 and 7). In addition, the ITC Report describes the three main components of most industrial power belts: (1) A tensile member (a textile, fiberglass, or steel cord, yarn, or fabric), which adds strength to withstand the tension imposed in transmitting power;

(2) The base material (usually synthetic rubber, such as neoprene or plastics), which forms the bulk of the belt and encloses the tensile member, and is referred to as the undercord and the overcord; and

(3) Adhesion material or gum, which bonds all the components together (USITC Pub. 2194 at a–2).

As discussed above, Brecoflex either sells the German belts as imported, or performs secondary operations on the belts in preparation for sale. We determine that these secondary operations listed above do not add to the material composition of the belts or fundamentally alter the essential nature of the merchandise as imported. Specifically, the merchandise as imported already incorporates the three main components of industrial belts as described in the ITC Report. Furthermore, the belting stock as imported has already undergone, before arrival in the United States, the first three stages of the belt manufacturing process as described in the ITC Report.

As Brecoflex indicated in its request for a circumvention inquiry, the major cost in producing timing belts is incurred in production of the belt stock from which the finished belts are made. As Brecoflex itself explained, completion of a finished belt from belt stock requires merely slitting to width, cutting to length, and possibly die cutting to length and welding. According to Brecoflex, these operations—the same secondary operations that Brecoflex performs in its U.S. facility—involve some skilled labor but little in the way of machinery or capital investment. Thus, as indicated in its submissions, Brecoflex performs only secondary operations in its U.S. facility, all of which fall within the fourth stage of the belt manufacturing process as described in the ITC Report, i.e., finishing and packaging. Brecoflex also markets and services the imported roll stock it sells in the United States.

Based on the above analysis and the information submitted by Brecoflex, the Department determines that Brecoflex is not a domestic producer of industrial belts and, therefore, is not an interested party within the meaning of 19 CFR 353.2(k)(3) entitled to file a request for a circumvention inquiry. As such, the Department determines that Brecoflex does not have standing to file a request for a circumvention inquiry against Mectrol.

Conclusion

Because Brecoflex Corporation is not a producer of industrial power belts in the United States and, therefore, does not have standing under 19 CFR 353.2(k) to file a request for a circumvention inquiry with regard to the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Japan, the Department hereby terminates this circumvention inquiry.

Dated: April 27, 1994.

Susan G. Esserman,
Assistant Secretary for Import Administration.

[FR Doc. 94–10986 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–504]

Porcelain-On-Steel Cooking Ware From Mexico; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 16, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 43327) the final results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. Based on corrections of clerical errors, we have changed the margins for one company and are now amending the final results.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1993, the Department published the final results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico (58 FR 43327). The review covered the period December 1, 1989 through November 30, 1990.

On August 24, 1993, we received a letter from counsel for CINSA, S.A., alleging that the Department had made ministerial errors. Petitioner submitted rebuttals to respondent's comments on September 1, 1993. On December 23, 1993, we determined that ministerial errors were made. (See Memorandum to Joseph A. Spetrini dated December 23, 1993; Corrections of Alleged Clerical/Ministerial Errors in Antidumping Duty Administrative Review.) Although these final results are the subject of litigation before the Court of International Trade (the Court), by order dated March 31, 1994, the Court granted the Department leave to correct these errors.

Amended Final Results of Review

After reviewing all comments, we have corrected the errors where appropriate.

We corrected the double counting of CINSA's freight expenses for U.S. sales by deducting only the U.S. dollar factor amount, instead of both the dollar and pesos amounts, from U.S. prices to arrive at the net price used in our price-to-price comparisons.

We recalculated the brokerage charges on U.S. sales and used the correct brokerage expense factor to derive total brokerage charges.

We made an additional correction. We recalculated the home market sales price used in our determination of sales below cost by adding the value added tax to the home market price as stated in our notice of final results.

For further discussion of the Department's positions on the above corrections, see Memorandum to Joseph A. Spetrini dated December 23, 1993: Corrections of Alleged Clerical/Ministerial Errors in Antidumping Duty Administrative Review.

As a result of our corrections of clerical errors, we determine the margin for CINSA, S.A., to be 6.71 percent.

Based on this rate, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties and to assess antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of this review (58 FR 43327). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is in accordance with sections 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: April 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-10990 Filed 5-5-94; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 94-00004." A summary of the application follows.

Summary of the Application

Applicant: Allegheny Highland Hardwoods, Inc., 6495 Webster Road, Portland, New York 14769. Contact: Jerry R. Miller, Telephone: 716-792-9482.

Application No.: 94-00004.

Date Deemed Submitted: April 22, 1994.

Members (in addition to applicant): Pomeroy Lumber, Inc., Nineveh, NY; Wright's Hardwood Inc., Fredonia, NY; J.A. Yansick Lumber Co., Inc., Arcade, NY; C.A. Elliott Lumber Co., Inc., Roulette PA; Lewis and Hockenberry, Inc., Emporium, PA; Whitesville Wood Products Co., Inc., Whitesville, NY; Aurora Woodworks, Ltd., Buffalo, NY; and Peter DeVivi Productions, Inc., Waterloo, NY.

Allegheny Highland Hardwoods, Inc. ("AHH") seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

Forest products, including but not limited to, hardwood lumber, S4S Dimension, solid squares, laminated squares, furniture blanks, moulding, flooring, dowels, and panels, but excluding paper, cardboard, containerboard, and similar products.

2. Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

Export Trade Facilitation Services including professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, shipping, export management, documentation, insurance and financing.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, as an Export Intermediary, AHH, Inc. and/or its Members may:

1. Enter into exclusive or non-exclusive agreements wherein AHH agrees to act as the Members' Export Intermediary. Exclusive agreements are

those wherein AHH agrees not to represent entities other than the Members in the sale of Products and provision of Export Trade Facilitation Services in any Export Market.

2. Meet to negotiate and agree on the terms of participation in each bid, invitation, or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its Products for export, and the quantity of Products each Member will commit to the foreign sale or bid opportunity.

During the course of such meetings, the following information may be exchanged:

a. Information that is generally available to the public.

b. Information that is specific to a particular Export Market, including but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications.

c. Information on expenses specific to exporting to a particular Export Market, including, but not limited to, ocean freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing.

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market.

e. Information on AHH's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by foreign customers, and reports by foreign sales representatives.

f. Information on each Member's ability to supply Products in a timely fashion pursuant to a specific export order.

3. AHH may enter into exclusive or non-exclusive agreements with other Export Intermediaries for the sale of Products in the Export Markets. Exclusive agreements are those wherein the Export Intermediary agrees to represent only AHH and/or its Members in the sale of Products and to provide Export Trade Facilitation Services only to AHH and/or its Members.

4. AHH may enter into exclusive agreements with foreign customers of Products offered by AHH whereby the customer agrees not to purchase Products from entities other than AHH.

5. Either with AHH's Members and/or Export Intermediaries with which AHH has entered into agreements pursuant to paragraph 3 above, AHH may discuss and agree on export prices to be charged by AHH, AHH's Members, or Export Intermediaries.

6. AHH may limit its membership.

7. AHH may publish and distribute a list of export prices for Products to be charged by AHH, AHH's Members, and Export Intermediaries with which AHH has entered into agreements pursuant to paragraph 3 above.

8. AHH may allocate orders for export sales, and divide profits from such sales among AHH's Members as provided in the membership agreement between AHH and AHH's Members.

9. AHH and/or AHH's Members may forward to the appropriate individual Member requests for information received from a foreign government or the foreign government's agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs); and if such individual Member elects to respond, the Member shall respond directly to the requesting foreign government or the foreign government's agent with respect to such information.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Member* means a person who has a membership in Allegheny Highland Hardwoods, Inc. and who has been certified as a "Member" within the meaning of § 325.2(1) of the Regulations.

Dated: May 2, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–10893 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–DR–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–045. *Applicant:* University of Wisconsin, 1500 Johnson Dr., #1109, Madison, WI 53706. *Instrument:* Complete Reflection High Energy Electron Diffraction System. *Manufacturer:* Staib Instrumente, Germany. *Intended Use:* The instrument will be used to study the electron diffraction pattern from the growth surface during the deposition of semiconductor materials in vacuum systems. *Application Accepted by Commissioner of Customs:* April 11, 1994.

Docket Number: 94–046. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. *Instrument:* Submersible Profiling Spectroradiometer and High Resolution In-water Deck Cell. *Manufacturer:* Satlantic Inc., Canada. *Intended Use:* The instrument will be used to provide sea surface reflectance measurements to act as ground truth for the SeaWIFS satellite ocean color sensor. The collected data will be used to support the development of algorithms for phytoplankton biomass and productivity. In addition, the instrument will be used for training graduate students interested in remote sensing techniques. *Application Accepted by Commissioner of Customs:* April 12, 1994.

Docket Number: 94–047. *Applicant:* University of South Dakota, 414 E. Clark Street, Vermillion, SD 57069. *Instrument:* Rapid Kinetics Accessory. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument and accompanying accessories will be used in conjunction with a UV-visible spectrophotometer to monitor the rates of chemical reactions with half-lives in the range of about 5 seconds to 10 milliseconds. *Application Accepted by Commissioner of Customs:* April 12, 1994.

Docket Number: 94–049. *Applicant:* Mayo Foundation, 200 1st Street, SW, Rochester, MN 55905. *Instrument:* Mass Spectrometer with Combined Gas Chromatograph/Combustion Interface, Model Delta S. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used primarily to measure the enrichment of stable isotope labelled amino acids such as leucine and phenylalanine, incorporated into isolated muscle protein (e.g. myosin), skeletal muscle protein, plasma proteins (e.g. albumin, fibrinogen apo-lipoproteins) and the uptake of the labelled species into other plasma amino acids. *Application*

Accepted by Commissioner of Customs: April 12, 1994.

Docket Number: 94–050. *Applicant:* Wayne State University, 540 E. Canfield Avenue, Detroit, MI 48201. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for studies of ocular and neuronal tissues (cornea, retina, lens) with the objective of defining pathogenesis of bacterial ocular disease; retinal neurotransmission; visual system connectivity; cataractogenesis; and properties of ocular basement membrane. *Application Accepted by Commissioner of Customs:* April 12, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–10987 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: State of Connecticut (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from September 1, 1994 to August 31, 1995 is estimated at $222,196. The total Federal Amount is $188,867 and is composed of $184,260 plus the Audit Fee Amount of $4,607. The application must include a minimum cost-share of 15% ($33,329) of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the State of Connecticut geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal Awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is June 10, 1994. Applications must be postmarked on or before June 10, 1994. The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, room-3720, New York, New York 10278. (Area Code & Telephone Number): (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: William R. Fuller, Acting Regional Director, New York Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days, Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contract person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Ourstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 2, 1994.

William R. Fuller,

Acting Regional Director, New York.

[FR Doc. 94–10910 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of prospective grant of exclusive patient license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent 5,274,545, titled, "Device and Method for Providing Accurate Time and/or Frequency" to Space Time, having a place of business in Columbus, Ohio. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, building 221, room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent 5,274,545 relates to a device and method for providing an accurate output from a unit, such as an oscillator and/or clock providing an output indicative of frequency and/or time.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 59, No. 45 (March 8, 1994). A copy of the patent may be obtained from NIST at the foregoing address.

Dated: April 29, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–10930 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 040494B]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement; request for scoping comments.

SUMMARY: NMFS announces its intention to prepare a proposed rule pursuant to the Endangered Species Act (ESA) that would amend NMFS' regulations relating to endangered and threatened species of sea turtles. The purpose of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation in the preparation of the environmental impact statement (EIS) as required by the National Environmental Protection Act (NEPA).

DATES: Written comments will be accepted by NMFS until June 6, 1994.

ADDRESSES: Written comments on this notice should be addressed to William W. Fox, Jr., Ph.D., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD. 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Acting Chief, Endangered Species Division, (301) 713–2319; Doug Beach, Protected Species Program Coordinator, NMFS Northeast Regional Office, (508) 281–9254; or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*) and olive ridley

(*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, and the breeding population of olive ridley turtles on the Pacific coast of Mexico, which are listed as endangered.

In 1990, the National Academy of Sciences (NAS) completed a review of the biology of sea turtles, and the causes and significance of their decline. The NAS concluded that incidental capture in shrimp trawls without turtle excluder devices (TEDs) is by far the leading cause of human-induced mortality to sea turtles at sea, but collectively, the activities in the non-shrimp fisheries constitute the second largest source of mortality. The study identified finfish trawls, seine nets, pompano gillnets, and various passive fishing gear such as sink gillnets, weirs, traps and longlines as potential sources of mortality to sea turtles.

NMFS is considering sea turtle conservation measures addressing incidental takings in non-shrimp fisheries. NMFS is considering many options, including: (1) Requiring the use of nets equipped with NMFS-approved turtle excluder devices (TEDs) at certain times of the year by non-shrimp bottom trawl fishing vessels fishing in waters of Delaware through Texas, to protect threatened and endangered sea turtles; (2) establishing a mandatory observer requirement in all fisheries that may take sea turtles incidental to fishing operations; and (3) providing a mechanism to allow NMFS to respond quickly to emergency situations that threaten listed sea turtles. Through these management actions, NMFS intends to protect endangered and threatened sea turtles in a manner that is compatible with commercial fishing operations. NMFS intends to solicit further public comments and to hold public hearings during the rulemaking process.

1. TED-Use Requirement

Under the current regulations, most shrimp trawlers are required to use TEDs in inshore and offshore waters from North Carolina through Texas. Other bottom-trawl vessels using essentially the same equipment are not required to use TEDs, despite operating in areas with turtles. NMFS has determined that non-shrimp bottom trawlers, such as summer flounder bottom trawlers, are as likely to capture and drown sea turtles as are shrimp trawlers. Through an interim rule (58 FR 48797, September 20, 1993), NMFS currently requires the summer flounder fishery to use TEDs in the waters off North Carolina and southern Virginia.

Turtle stranding and observation data suggest that turtles are found year-round off portions of North Carolina, in the waters of Virginia and Maryland from May through December, and in New York coastal bays from July through October. Information on turtle occurrence and capture is limited for areas north of Delaware Bay. However, NMFS is collecting data on the possible incidental take of turtles in the North Atlantic.

NMFS is considering requiring bottom trawlers operating in offshore waters south of Cape May, NJ, to use TEDs, and is collecting information regarding when and where bottom trawlers interact with sea turtles. NMFS requests comments on bottom trawl gear and fisheries that may capture sea turtles.

2. Mandatory Observer Coverage

Under the current regulations (50 CFR 227.72), NMFS must propose a temporary rule in order to require mandatory observer coverage in any non-shrimp fishery that may take sea turtles.

Non-shrimp fisheries using longlines, bottom trawls, gillnets, pound nets and traps are suspected to be major causes of sea turtle mortality at sea. The NAS recommended that NMFS conduct a comprehensive observer-based assessment of incidental capture of sea turtles in non-shrimp fisheries.

NMFS is considering establishing a mandatory observer requirement in those fisheries that are not already required to carry observers upon NMFS request. The observer system would require NMFS to publish a finding that a specific fishery is believed to be taking sea turtles. This finding would notify the fishery that the Regional Director may require observers at any time, and will notify vessel owners by personal communication. An observer requirement might also include a registration requirement, observer access requirement and observer treatment standards.

3. Emergency Response Framework

Under the current regulations (50 CFR 227.72), NMFS cannot take timely action during emergencies that result in mass turtle strandings. Unpredictable situations, despite compliance with current regulations, may require immediate sea turtle conservation measures that cannot wait for lengthy agency and public review. Emergency rulemaking can take 2 weeks to 2 months to implement, depending on the required measures and complexity of the rule.

NMFS is considering the establishment of framework measures to respond to specific sea turtle emergencies. For example, if NMFS determines that high concentrations of small juvenile turtles that are not excluded by standard TEDs are occurring with fishing activity, it may notify the fishery (through the **Federal Register** and various media) of immediate conservation measures such as gear modification, observers, or area closures. Because the industry will have been notified in advance through rulemaking that specific emergency measures may be required for specific purposes, delayed effectiveness and prior notice would not be required. Emergency conservation measures could be in effect for up to 30 days.

(**Authority:** 42 U.S.C. 4332 et seq.; 16 U.S.C. 1531 et seq.)

Dated: April 28, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–10962 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 042294D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of public display permit no. 915.

SUMMARY: Notice is hereby given that Film Animals, Inc. (Birds & Animals Unlimited), 1000 Universal Plaza, Orlando, FL 32819, has been issued a permit for public display purposes.

ADDRESSES: The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, rm. 13130, Silver Spring, MD 20910 (301) 713–2289;

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508) 281–9300);

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Dr., St. Petersburg, FL 33702–3432;

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (310) 9800–4016; and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206) 526–6150).

SUPPLEMENTARY INFORMATION: On Thursday, July 8, 1993, notice was published in the **Federal Register** (58 FR 36655) that an application (P530) has been filed by Birds and Animals Unlimited, Universal Studios Florida, 1000 Universal Plaza, Orlando, FL 32837. A public display permit was requested to obtain the care and custody of two California sea lions (*Zalophus californianus*). The requested permit has been issued subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the conditions hereinafter set out.

Dated: April 28, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–10912 Filed 5–5–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 6, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Disk, Flexible
7045–01–283–4362
(15% of the Government requirement)
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–10979 Filed 5–5–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 6, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Snowshoes, Assault
8430–00–NSH–0002
(Requirements for the U.S. Marine Corps, Washington, DC)
NPA: Pride Industries, Bismarck, North Dakota

Services

Janitorial/Custodial, for the following Asheville, North Carolina locations: Asheville Federal Building, Patton Avenue and North French Broad Avenue, Federal Building and U.S. Courthouse, Otis and Post Streets
NPA: Goodwill Industries of Northwest North Carolina, Inc., Winston-Salem, North Carolina
Laundry Service, Lodging Colored Linen, McChord Air Force Base, Washington

NPA: Northwest Center for the Retarded, Seattle, Washington
Mailing Service, U.S. Government Printing Office, Washington, DC
NPA: Virginia Industries for the Blind, Richmond, Virginia

Deletions

The following commodities and service have been proposed for deletion from the Procurement List:

Bracket, Duct and Angle
  5340–01–180–5984
  5340–00–435–6451
  5340–00–798–0897
Retainer
  5340–00–409–8491
Cloth, Abrasive
  5350–00–229–3085
  5350–00–229–3088
Clamp Strap Fastener Assembly
  5820–00–937–9844
Gown, Hospital, Patient's Bedshirt
  6532–01–005–8411
  6532–01–005–8412
Medical Packet, Individual Survival Kit, Airman's
  6545–00–231–9421
Table, Office, Steel
  7110–00–113–0507
  7110–00–113–0509
Paper, Teletypewriter, Roll
  7530–00–223–7966
  7530–01–056–2900

Service

Food Service Attendant, Seneca Army Depot, Romulus, New York

Beverly L. Milkman,
Executive Director.
[FR Doc. 94–10980 Filed 5–5–94; 8:45 am]
BILLING CODE 6820–33–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Foster Grandparent and Senior Companion Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of revision of income eligibility levels for the Foster Grandparent Program and Senior Companion Program.

SUMMARY: This notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP) and Senior Companion Program (SCP), published in 58 FR 13735, March 15, 1993 and 58 FR 40405, July 28, 1993

The revised schedules are based on changes in program regulations published in 59 FR 15120, March 31, 1994 and in the Poverty Guidelines from the Department of Health and Human Services (DHHS), published in 59 FR 6277, February 10, 1994. The change in regulations eliminates the SSI (Supplemental Security Income) adjustment to income eligibility used in prior years. No volunteer currently participating in these programs shall become ineligible as a result of this change in guidelines.

In accordance with the revised program regulations, the income eligibility level for each State is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living in which case the guideline shall be 135 percent of the DHHS Poverty Guidelines.

The level of eligibility is rounded to the next highest multiple of $5.00.

For purposes of determining eligibility, an amount not to exceed 15 percent of the applicable FGP/SCP income guideline is deductible from gross income for out-of-pocket medical expenses of the applicant, enrollee, or spouse.

Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

Schedule of Income Eligibility Levels: Foster Grandparent and Senior Companion Programs

1994 FGP/SCP INCOME ELIGIBILITY LEVELS
[Based on 125 Percent of DHHS Poverty Guidelines]

States	Family units of			
	One	Two	Three	Four
All, except High Cost Areas, Alaska & Hawaii.	$9,200	$12,300	$15,400	18,500

For family units with more than four members, add $3,100 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

1994 FGP/SCP INCOME ELIGIBILITY LEVELS FOR HIGH COST AREAS
[Based on 135 Percent of DHHS Poverty Guidelines]

Area	Family units of			
	One	Two	Three	Four
All, except Alaska, & Hawaii	$9,940	$13,285	$16,635	$19,980
Alaska	12,240	16,605	20,790	24,975
Hawaii	11,435	15,285	19,130	22,980

(For family units with more than four members, add: $3,350 for all areas, $4,185 for Alaska, and $3,850 for Hawaii, for each additional member.

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas (Including All Counties/Locations Included in That Area as Defined by the Office of Management and Budget)

Alaska

(All Locations)

California

Los Angeles—Long Beach
Marin County
Santa Barbara/Santa Maria/Lompoc
Santa Cruz-Watsonville
Santa Rosa
San Diego
San Jose
San Francisco

Oakland
Orange County
Ventura

District of Columbia/Maryland/Virginia

District of Columbia (and Surrounding Counties in MD. & VA.)

Hawaii

(All Locations)

Illinois

Chicago

Massachusetts

Boston
Salem-Gloucester
Worcester

New Jersey

Bergen-Passaic
Middlesex/Somerset/Hunterdon
Monmouth/Ocean
Newark
Trenton

New York

Nassau/Suffolk
New York
Westchester

Pennsylvania

Philadelphia

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

1994 DHHS POVERTY GUIDELINES FOR ALL STATES

States	Family units of			
	One	Two	Three	Four
All, except Alaska/Hawaii	$7,360	$9,840	$12,320	$14,800
Alaska	9,200	12,300	15,400	18,500
Hawaii	8,470	11,320	14,170	17,020

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program, Corporation for National and Community Service, 1100 Vermont Avenue, NW., Washington, DC 50525 or Telephone (202) 606–5000.

SUPPLEMENTARY INFORMATION: These programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Public Law 93-113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guidelines published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: April 28, 1994

James Scheibel,

Vice President, Corporation for National and Community Service, Director, Domestic Volunteer Service Programs.

[FR Doc. 94–10864 Filed 5–5–94; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia 22304–6178, 803–274–7325.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, Chairperson.
Mr. Russell Richards, Assistant Director, Operations, Defense Contract Audit Agency, member.
Mr. Michael Thibault, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. Francis Summers, Regional Director, Northeastern, Defense Contract Audit Agency, Chairperson.
Mr. William Kraft, Regional Director, Mid-Atlantic, Defense Contract Audit Agency, member.
Mr. Arlin Tueller, Deputy Regional Director, Western, Defense Contract Audit Agency, member.

Dated: May 2, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10865 Filed 5–5–94; 8:45 am]

BILLING CODE 5000–4–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 176. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 176 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: May 1, 1994.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per

Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000-04-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
06-01--09-15	147	64	211	06-01-94
09-16--05-31	81	57	138	05-01-94
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	105	83	188	11-01-93
BETHEL	76	67	143	02-01-94
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA	60	81	141	01-01-94
CRAIG	67	35	102	07-01-91
DENALI NATIONAL PARK	113	68	181	05-01-94
DILLINGHAM	85	64	149	11-01-93
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
ELMENDORF AFB				
06-01--09-15	147	64	211	06-01-94
09-16--05-31	81	57	138	05-01-94
EMMONAK	62	61	123	10-01-93
FAIRBANKS				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
06-01--09-15	147	64	211	06-01-94
09-16--05-31	81	57	138	05-01-94
FT. WAINWRIGHT				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
HOMER				
05-01--09-30	71	60	131	05-01-94
10-01--04-30	60	58	118	02-01-94
JUNEAU				
04-30--09-14	92	74	166	04-30-94
09-15--04-29	78	73	151	01-01-94

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KATMAI NATIONAL PARK	$ 89	$ 59	$148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	104	74	178	04-02-94
10-01--04-01	67	71	138	01-01-94
KETCHIKAN				
04-01--09-30	82	71	153	04-01-94
10-01--03-31	69	70	139	01-01-94
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	74	65	139	01-01-94
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA				
06-01--10-01	95	58	153	06-01-94
10-02--05-31	72	56	128	02-01-94
MURPHY DOME				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG				
04-16--10-14	77	56	133	05-01-94
10-15--04-15	72	56	128	10-15-94
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	90	65	155	05-01-94
10-01--04-30	52	62	114	01-01-94
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	79	71	150	01-01-94
SKAGWAY				
04-01--09-30	82	71	153	04-01-94
10-01--03-31	69	70	139	01-01-94
SPRUCE CAPE	74	65	139	01-01-94
ST. GEORGE	100	39	139	06-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
ST. MARY'S	$ 77	$ 59	$136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
05-02--09-30	60	58	118	05-02-94
10-01--05-01	51	57	108	01-01-94
UMIAT	97	63	160	12-01-90
VALDEZ				
05-01--09-14	95	61	156	05-01-94
09-15--04-30	79	59	138	01-01-94
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
04-01--09-30	82	71	153	04-01-94
10-01--03-31	69	70	139	01-01-94
YAKUTAT	77	58	135	11-01-93
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	21	20	41	10-01-93
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	48	77	125	05-01-94
SAIPAN	89	80	169	05-01-94
TINIAN	50	72	122	05-01-94
OTHER	20	13	33	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05-01--12-14	$ 93	$ 73	$166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

6/ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily Rate
DOD Personnel	$13

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Non-DOD Personnel	$30

May 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10934 Filed 5–5–94; 8:45 am]

BILLING CODE 5000-04-C

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 17–19 May 1994.

Time of Meeting: 0900–1700.

Place: Pentagon, Washington DC (Room 1A1071 and 3A678).

Agenda: The Army Science Board's Summer Study Panel on "Technical Architecture for C4I" will meet to hear briefings on Architecture and Standards. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10963 Filed 5–5–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 23–26 May 1994.

Time of Meeting: 0800–1700, 0900–1700, 0900–1600, 0900–1600 consecutively.

Place: Monterey, CA, San Jose, CA.

Agenda: The Army Science Board's Ad Hoc Subgroup on "Science and Engineering Requirements for Military Officers and Civilian Personnel in the High Tech Army of Today and Tomorrow" will meet on 23 May at the Naval Postgraduate School to receive faculty briefings and discuss science and engineering requirements for Army personnel with faculty and students. On 24 May the group will meet at the Crew Station Research and Development Facility, Ames, NASA to receive advanced technology briefings and discuss their impact on science and engineering requirements for Army personnel. On 25–26 May the group will attend the Association of the United States Army (AUSA) Symposium and Exhibition to gather further information on advanced technologies and science and engineering requirements for Army personnel.

This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–11064 Filed 5–5–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Availability of Draft Environmental Impact Statement (DEIS) for the Proposed Anacostia River and Tributaries, District of Columbia and Maryland Feasibility Study

AGENCY: U.S. Army Corps of Engineers, Baltimore District, DOD.

ACTION: Notice of availability.

SUMMARY: The Baltimore District of U.S. Army Corps of Engineers investigated the feasibility of construction of fish and wildlife restoration measures in the Anacostia River basin. The District Engineer recommends the restoration of 80 acres of wetlands, t miles of streams and 33 acres of bottomland habitat. The feasibility study of the potential restoration actions was conducted under authority of a U.S. House of Representatives Committee on Public Works and Transportation resolution adopted September 8, 1988. The non-Federal sponsors for the feasibility phase of the project are: Montgomery County, Prince Georges County, the District of Columbia, the State of Maryland, the Interstate Commission on the Potomac River Basin, and the Metropolitan Washington Counsel of Governments.

DATES: Written comments must be submitted by June 5, 1994.

ADDRESSES: Send comments to: Colonel J. Richard Capa, District Engineer, P.O. Box 1715, Attn: CENAB–PL–PR, Baltimore, Maryland 21203–1715.

FOR FURTHER INFORMATION CONTACT: Mr. Marak McKevitt, Study Manager, (410) 962–2650.

SUPPLEMENTARY INFORMATION:

1. The U.S. House of Representatives, Committee on Public Works and Transportation, authorized the Anacostia River and Tributaries study in a resolution adopted on September 8, 1988. The resolution requested the Corps of Engineers to determine if further improvements for flood control, navigation, erosion, sedimentation, water quality and other related water resources needs are advisable on the Anacostia River and Tributaries.

2. The Anacostia River basin is a 170-square-mile sub-basin of the Potomac River. Headwaters of the Anacostia River are in the Piedmont and coastal plain areas of Montgomery and Prince Georges Counties, Maryland and it joins with the Potomac River in the District of Columbia. The entire river system is freshwater; although, the total tidal influence extends for approximately 9 miles above the confluence with the Potomac River.

3. The Corps of Engineers involvement in the basin dates back more than 115 years and includes projects and programs for navigation, flood control, debris removal and aquatic vegatation control. These Federal actions have served their intended purposes well and have benefited the area in terms of improved navigation and reduced flood damage. However, from 1902 through the 1960s, project construction eliminated approximately 2,600 acres of wetlands, 99,000 linear feet of aquatic habitat and 700 acres of bottomland hardwoods. These ecosystems performed numerous beneficial ecological functions for the Anacostia basin and the associated Potomac River and Chesapeake Bay. One of the primary functions of these ecosystems is fish and wildlife habitat. Historically, the Anacostia River basin contained a diverse assemblage of fish and wildlife species. However, populations of many species have sharply declined due to the habitat loss and degradation in the Anacostia basin.

Site	Action	Target stream	Location
Wetland Restoration			
Kingman Lake	WR	Anacostia River	Washington, DC.
River Fringe Wetlands	WR	Anacostia River	Washington, DC.
Fordham Street Wetland	WR	Northwest Branch	Prince George's Co.
Aquatic Restoration			
NW Branch-PG Co	SR	Northwest Branch	Prince George's Co.
Tanglewood Retrofit	WR/SM/SR	Little Paint Branch	Montgomery Co.
Snowden's Mill I	WR/SM/SR	Paint Branch	Montgomery Co.

Site	Action	Target stream	Location
Snowden's Mill II	WR/SM/SR	Paint Branch	Montgomery Co.
Stewart/April Lane	WR/SM/SR	Paint Branch	Montgomery Co.
Lockridge Drive	WR/SM/SR	Northwest Branch	Montgomery Co.
Gum Springs	SR	Gum Springs	Montgomery Co.
Sligo Creek	SR	Sligo Creek	Montgomery Co.
NW Branch-Mont. Co.			
Paint Branch	SR	Paint Branch	Montgomery Co.

*WR—Wetland Restoration.
SM—Stormwater Management.
SR—Stream Restoration.

5. The Baltimore District has prepared a DEIS which describes the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS also apply guidelines issued by the Environmental Protection Agency, under authority of Section 404 of the Clean Water Act of 1977 (Pub. L. 95–217). An evaluation of the proposed actions on the waters of the United States was performed pursuant to the guidelines of the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. The Section 404(b)(1) evaluations show that the proposed actions meet all guidelines under the Clean Water Act, and an exemption under Section 404(r) of Public Law 92–500, as amended is therefore requested.

6. The public involvement included meetings and close coordination with interested private individuals and organizations, as well as concerned Federal, state and local agencies. A public notice requesting comments on the proposed project and DE is being provided to appropriate agencies and the public through printed media and mailings. The Baltimore District invites potentially affected Federal, state and local agencies, and other interested organizations and parties to comment on the study recommendations. Agencies that are currently involved in the feasibility study and EIS process include, but are not limited to the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Geological Service, U.S. Soil Conservation Service, National Park Service, National Capital Planning Commission, Montgomery County Department of Environmental Protection, Prince George's County Department of Environmental Resources, District of Columbia Department of Consumer and Regulatory Affairs and Department of Public Works, Maryland Department of Natural Resources, Maryland Department of the Environment, Maryland National Capital Park and Planning Commission, Interstate Commission on the Potomac River Basin, and the Metropolitan Washington Council of Governments.

7. In accordance with the National Environmental Policy Act (NEPA) and the Clean Water Act, the Corps of Engineers is soliciting comments from the public, Federal, state and local agencies and officials, and other interested parties. Any comments received will be considered by the Corps of Engineers in the decision to implement the projects. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other interest factors listed above. Comments are also used to determine the overall public interest and the need for a public hearing on the proposed activities. This public notice is being sent to organizations and individuals known to have an interest in the restoration of the Anacostia River basin. Please bring this notice to the attention of any other individuals with an interest in this matter.

8. Any person who has an interest in the proposed projects may make comments and/or request a public hearing. Comments must clearly set forth the interest which may be adversely affected by these activities and the manner in which the interest may be adversely affected. Copies of the DEIS are available upon request. Written comments must be submitted within 30 calendar days of the date of the notice in the **Federal Register.**

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–10911 Filed 5–5–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee will meet on May 18 and 19, 1994. The meeting will be held at the Naval Air Warfare Center, Weapons Division, China Lake, California. The meeting will commence at 8 a.m. and terminate at 6 p.m. on May 18; and commence at 8 a.m. and terminate at 4 p.m. on May 19, 1994. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the Committee related to airborne tactical weapons systems, naval surface missile systems, tactical and strategic deterrent weapons, and research, design, development, test and evaluation and support throughout the weapons system life cycle. The agenda will consist of briefings, discussions and demonstrations on weapons system support, test and evaluation, modeling and simulation technology, core capabilities, composites fabrication, energetic materials, ordnance, and propulsion, antenna research, and the science and technology process. These briefings, discussions and demonstrations will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code..

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Commander Richard C. Lewis, USN, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: May 3, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11086 Filed 5–5–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF93–129–001]

Syracuse Power Co.

May 2, 1994.

On April 6, 1994, the Commission issued a notice of petition to intervene and motion to revoke self-certification (notice), in the above-docketed proceeding. The notice was published in the **Federal Register** on April 12, 1994 (59 FR 17365), making the due date for comments May 12, 1994. By this notice, the date for the filing of comments or protests is shortened to and including May 6, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10901 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–215–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 2, 1994.

Take notice that on April 28, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of May 1, 1994:

Original Sheet No. 94D
Ninth Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to update the portion of balance in Algonquin's Account No. 186 attributable to Algonquin's former transportation and compression tracker to reflect a refund from an upstream transporter.

Algonquin requests that the Commission Waive § 154.22 of the Commission's regulations to the extent that may be necessary to place this tariff sheet into effect as requested.

Albonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10903 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–214–000]

Black Marlin Pipeline Co; Petition for Waiver

May 2, 1994.

Take notice that on April 15, 1994, Black Marlin Pipeline Company (Black Marlin) filed a request for waiver of the Commission's requirements in Docket No. RM93–4–000 Standards for Electronic Bulletin Boards (EBB) Required Under Part 284 of the Commission's Regulations (Order No. 563) issued December 23, 1993.

Black Marlin states that its customers have indicated that the additional costs of the standards required in Order No. 563 are unwarranted with the extremely low transaction volume on Black Marlin's EBB. Therefore, Black Marlin request waiver of the Commission's requirements of the order effective June 1, 1994.

Black Marlin states that copies of the filing have been served to all Black Marlin's EBB subscribers and to all firm transportation customers.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10904 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–213–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 2, 1994.

Take notice that on April 26, 1994, CNG Transmission Corporation (CNG), filed for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 1994:

Original Sheet No. 31
Original Sheet Nos. 200–209
1st Revised Sheet Nos. 308, 309, 346, and 349
Original Sheet Nos. 439–444
Sheet Nos. 27,210, and 443

CNG states that the tariff sheets contain proposed Rate Schedule MCS—Market Center Services, and a form of service agreement applicable to service under Rate Schedule MCS.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10905 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–205–001]

Koch Gateway Pipeline Co; Proposed Changes in FERC Gas Tariff

May 2, 1994.

Take notice that on April 28, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for as part of its FERC Gas Tariff, Fifth Revised Volume

No. 1, the following tariff sheets to be effective April 1, 1994:

First Revised Original Sheet No. 25
First Revised Original Sheet No. 26
First Revised Original Sheet No. 404
First Revised Original Sheet No. 503

Koch Gateway states that the above referenced tariff sheets reflect Koch Gateway's compliance with the Commission's March 31, 1994 Order granting Koch Gateway's application to charge market-based storage rates and removing refund condition. Koch Gateway states that these tariff sheets reflect modifications to the tariff sheets approved in this docket by the March 31, 1994 order to reflect language previously accepted in Koch Gateway's restructuring proceeding.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94–10906 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–379–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

May 2, 1994.

Take notice that on April 26, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–379–000 a request pursuant to § 157.205 of the Commission's Regulations to partially abandon existing facilities and to construct and operate replacement facilities at the Genesee Meter Station in Whitman County, Washington to maintain the ability to accommodate its existing firm maximum daily delivery obligations (MDDO) to The Washington Water Power Company (Water Power), a local distribution company, under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to replace a two-inch positive displacement meter at the Genesee Meter Station in Whitman County, Washington with a two-inch Roots meter which will decrease the maximum design delivery capacity of the station from 350 dth per day to approximately 185 dth per day at 150 psig. Northwest states that the smaller design capacity would be adequate to deliver the current MDDO of 128 dth per day at this point. Northwest states that the estimated cost of replacing the facilities at the Genesee Meter Station is $30,440, including the $2,622 cost of removing the retired facilities. Northwest indicates that since it initiated this project to replace obsolete equipment, Northwest would not require any cost reimbursement from Water Power.

Further, Northwest states that no significant impact on Northwest's peak day or annual deliveries is projected from the proposed facility replacement. Northwest's tariff does not prohibit the modification of delivery point facilities and any volumes delivered to the Genesee delivery point would be within the authorized entitlements of any shipper.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 94–10902 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–103–015]

Panhandle Eastern Pipe Line Company; Refund

May 2, 1994.

Take notice that on April 21, 1994, Panhandle Eastern Pipe Line Company (Panhandle) as required by Ordering Paragraphs (C) and (D) of the Commission's Order on Remand issued on March 22, 1994 filed its refund report. 66 FERC ¶61,329 (1994).

Panhandle states that it is refunding to Western Resources, Inc. (formerly Kansas Power & Light Co.) (Western) amounts collected for Rate Schedule T–53 forward haul and backhaul services rendered during the period March 1, 1988, to March 31, 1989, that exceeded the pre-existing rates.

Accordingly, this report reflects the calculation of refulds to be paid to Western, under the Commission's Order on Remand, as well as the recalculation of the Docket No. RP87–103–000 refund amounts to other customers and the determination of the amounts to be billed to Panhandle's customers as a result of the Commission Order on Remand and as permitted by the Settlement filed March 22, 1990, in this docket.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 94–10908 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–768–000]

Public Service Company of Oklahoma; Filing

May 2, 1994.

Take notice that on April 25, 1994, Public Service Company of Oklahoma (PSO) amended its July 2, 1993, filing by submission of revised Service Schedules for the sale of general purpose energy and short term power and a revised purchase and resale adder under the Amended Interconnection Agreement, dated April 2, 1993, between Public Service Company of Oklahoma and The Empire District Electric Company. PSO also submitted revised cost data in support of the amended rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10909 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–125–003]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 2, 1994.

Take notice that on April 26, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of March 3, 1994:

Second Substitute First Revised Sheet No. 224
Second Substitute First Revised Sheet No. 225
Second Substitute First Revised Sheet No. 226
Substitute Original Sheet No. 226A
Substitute Original Sheet No. 226B
Substitute Original Sheet No. 226C

Texas Gas states that the revised tariff sheets are being filed in response to two (2) Commission Orders issued April 14, 1994, in Docket Nos. RP94–125–002 and RS92–24–015, which directed Texas Gas to revise Section 33.2 of its tariff to use the twelve months ending October 31, 1992, for purposes of establishing customer allocation percentages for the commodity portion of the PGA direct bill and to use demand determinants as of October 31, 1992, annualized, as appropriate, for the demand portion of the direct bill. Texas Gas also states that the tariff sheets listed above restate allocation factors and amounts to be billed as directed by the Commission.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10907 Filed 5–5–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4711–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 18, 1994 Through April 22, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–UAF–K11052–CA Rating EC2, Travis Air Force Base, Defense Base Closure and Realignment, KC–10 Aircraft Realignment and Additional KC–10 Basing Proposal, Fairfield, CA.

Summary: EPA expressed environmental concerns and requested that the FEIS contain greater discussion concerning air quality impacts, air quality conformity, wetlands delineation, and hazardous waste issues. EPA recommended that the Air Force develop additional alternatives for analysis in the FEIS.

Final EISs

ERP No. F–AFS–E65042–TN 1996 Olympic Whitewater Slalom Venue, Construction and Operation, Site Selection, Ocoee River, Cherokee National Forest, Ocoee Ranger District, Polk County, TN.

Summary: EPA found that the preferred alternative for the proposed Whitewater Slalom facilities should not have major impacts on the Ocoee River watershed or airshed.

Dated: May 3, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 94–10977 Filed 5–5–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4710–9]

Environmental Impact Statements; Notice of Availability

Note: Due to the holiday for President Nixon's funeral the notice of availability for environmental impact statements filed during the Week of April 18, 1994 through April 22, 1994 was not published until May 2, 1994. The 45 and 30 day comment periods will still be calculated from April 29, 1994.

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed April 25, 1994 Through April 29, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940159, FINAL EIS, APH, Nationwide Cooperative Animal Damage Control Program, Integrated Pest Management Approach, Implementation, Due: June 06, 1994, Contact: Richard Wadleigh (301) 436–8281.

EIS No. 940160, FINAL EIS, FHW, WI, US–53/Hastings Way Study Corridor Transportation Improvement, I–94 to US 53/WI–124 Interchange, Funding and Possible Section 404 Permit, Eau Claire and Chippewa Rivers, Eau Claire and Chippewa Counties, WI, Due: June 13, 1994, Contact: Richard C. Madrzak (608) 264–5968.

EIS No. 940161, DRAFT EIS, FHW, VA, VA–37 Highway Transportation Improvement, Construction from VA–37/I–81/US–11 (south) to VA–37/US–11 (north), Funding and COE Section 404 Permit, City of Winchester, Frederick County, VA, Due: June 24, 1994, Contact: James M. Tumlin (804) 771–2371.

EIS No. 940162, DRAFT EIS, FHW, MI, US–2/141 Alternate Highway, Construction in the vicinity of City of Iron Mountain, Funding, NPDES Permit and COE Section 404 Permit, Dickinson County, MI, Due: June 20, 1994, Contact: Norman R. Stoner (517) 377–1880.

EIS No. 940163, DRAFT EIS, FHW, AK, Sterling Highway (Miles Post 37–60) Transportation Project, Reconstruction between Skilak Lake Road (east) and the Seward Wye, Funding, COE Section 10 and 404 Permits, NPDES Permit, Special-Use

Permit and US Coast Guard Permit, AK, Due: June 20, 1994, Contact: Phillip A. Smith (907) 586–7428.

EIS No. 940164, FINAL EIS, APH, NY, Gull Hazard Reduction Program, John F. Kennedy International Airport, Implementation, Gateway National Recreation Area, Jamaica Bay National Wildlife Refuge, Queens County, NY, Due: May 19, 1994, Contact: Janet Bucknall (908) 735–5654. Under section 1506.10(d) of the Council on Environmental Quality Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act a Waiver has been granted for the above project.

EIS No. 940165, DRAFT EIS, NOA, Western 1995 Atlantic Bluefin Tuna Fishery, Regulation Amendment, Implementation, Due: September 01, 1994, Contact: Rolland A. Schmitten (301) 713–2239.

Amended Notices

EIS No. 940059, DRAFT EIS, FHW, MT, US 93 (Somers to Whitefish West) Transportation Improvements, Funding and COE Section 404 Permit, Glacier National Park and Flathead National Forest, Flathead County, MT, Due: May 16, 1994, Contact: Dale Paulson (406) 449–5305. Published FR 02–25–94 - Review period extended.

EIS No. 940093, FINAL EIS, COE, LA, MS, West Pearl River Navigation Project, Operation and Maintenance, Portions of West Pearl River to the vicinity of Bagalusa, Implementation, Washington and St. Tammany Parishes, LA and Pearl River County, MS, Due: May 31, 1994, Contact: Gary Young (601) 631–5960. Published FR –03–25–94– Review period extended.

Dated: May 3, 1994.

Richard E. Sanderson,

Director Office of Federal Activities.

[FR Doc. 94–10978 Filed 5–5–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4882–7]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on May 10, 1994.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on May 10, 1994, 9 a.m. to 4 p.m.

ADDRESSES: Place: The meeting will be held at: The Holiday Inn at University Center, 100 Lytton Avenue, Pittsburgh, PA 15213.

FOR FURTHER INFORMATION CONTACT: Doug Gutro State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3383.

FOR PRESS INQUIRIES CONTACT: Pam DiSalvo, Pennsylvania Department of Environmental Resources, MSSOB, 16th Floor, Box 2063, Harrisburg, PA 17105–2063, (717) 787–1323.

FOR DOCUMENTS CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street NW., suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the Commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on May 10, 1994. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 on Tuesday, May 3, 1994. The purpose of the meeting is to receive reports from its committees, particularly on the Low Emission Vehicle program and control measures being studied for the November 15, 1994 State Implementation Plan revisions.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 94–10976 Filed 5–5–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 4, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Section 76.970, Commercial leased access rates.

Action: Extension of expiration date of a currently approved collection without any change in the substance or in the method of collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 62,000 responses; 9 hours average burden per response; 278,000 hours total annual burden.

Needs and Uses: "Cable television, rates, leased access" Section 76.970 requires cable operators to calculate the maximum reasonable rates for each rate classification annually and to provide a schedule of rates upon request. Cable operators must also maintain sufficient supporting documentation to justify scheduled rates.

OMB Number: None.

Title: Section 76.917, Notification of certification withdrawal.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirements.

Estimated Annual burden: 25 responses; 0.5 hours average burden per response; 13 hours total.

Needs and Uses: "Cable television, franchise authority, rates" Section 76.917 requires a franchise authority that has been certified to regulate rates to notify the Commission if it no longer intends to regulate basic cable rates.

OMB Number: None.

Title: Section 76.923, Rates for equipment and installation used to receive the basic service tier.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Responses: On occasion reporting requirement.

Estimated Annual Burden: 31,000 responses; 5 hours average burden per response; 155,000 hours total annual burden.

Needs and Uses: "Cable television, rates, records (documents)" Section 76.923 requires cable operators to maintain adequate documentation to demonstrate that charges for the sale and lease of equipment and for installations have been developed in conjunction with FCC rules. The data is used by cable operators to justify rates for equipment and installations.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11118 Filed 5–5–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064–0052.

Expiration Date of OMB Clearance: July 31, 1994.

Respondents: Insured state nonmember commercial and savings banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,310.

Number of Responses Per Respondent: 4.

Total Annual Responses: 29,240.

Average Number of Hours Per Response: 26.28.

Total Annual Burden Hours: 768.374.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0052, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Wsahington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before [insert 60 days after date of publication in the **Federal Register**].

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Consolidated Reports of Condition and Income (Call Reports) are filed quarterly by insured state nonmember commercial banks and savings banks for use by the FDIC in monitoring the financial condition of reporting banks and the industry as a whole. The reports are available to the public.

Dated: May 2, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–10886 Filed 5–5–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Salinas International Freight Co., 102 Decker Court #150, Irving, TX 75062, Officers: Gilbert Raymond Khoury, President, Francesca Johnson, Vice President

Hancock International Corporation, 702 W. Rosevelt Rd., #A5, Wheaton, IL 60187, Officer: Nathan A. Hancock, President/Stockholder

Profreight Brokers, Inc., 177–14 149th Road, Jamaica, NY 11434, Officers: Monika Munro, President/Director/Stockholder, Alastair Blair Munro, Secretary/Treasurer/Director

Export of International Appliances, Inc., 8820 Monard Drive, Silver Spring, MD 20910, Officers: Naresh Chand Jain, President, Bhadresh R. Dhilla, C.E.O.

Hi-Tech Air Shipping, Inc., 7006 NW 46th Street, Miami, FL 33166, Officers: Robert E. Booth, President, Fiorella Booth, General Manager

Serv Pak International, Inc., 1331 Royal Lane, Dallas, TX 75261, Officers: Rolanda Sue Whelpley, President/Treasurer, Sharon Ellershaw, Executive Vice President, Marsha K. West, Secretary

Combined Transport Services Inc., 16,234 42nd Ave., South, Seattle, WA 98188, Officers: Paul Newcombe, President/Director, Jal Dinshaw, Executive Vice President/Director, Eduardo Lopes, Vice President/Director, Donna Swaw, Corp. Financial Manager/Director

S.Q. Unlimited Transportation Services, Inc., dba S.Q. Ocean Services, 1040 Industry Drive, Seattle, WA 98188, Officers: Susan Lee Beecher, President/Stockholder, Jacques Elizabeth Lassoie, Stockholder

Mundi Export, Inc., dba Mundi Cargo Services, S.A., 7220 N.W. 36th Street, #629, Miami, FL 33166, Officers: Cesar A. Baez, President, Rafael E. Salas, Vice President

Pegasus Freight Services, Inc., 18439 Viscount Road, Houston, TX 77032, Officers: Debra A. Capko, President/Treasurer/Stockholder, David S. Hall, Vice President/Secretary

Caraval, Inc., 1120 S.W. 86th Court, Miami, FL 33144, Officer: Leslie Diaz. President/Director

Anthony Naimoli, 12 Sylvia Lane, Plainview, NY 11803, Sole Proprietor

International Transportation Network Inc., 254 Orangeburg Road, Old

Tappan, NJ 07675, Officer: Steven R. Goodglass, Director/President
Anthem Express World Transportation Inc., St 1 No. 2, Ste. 304, Metro Office Park, Guaynabo, PR 00968–1705, Officers: Anthony Emposimato, President, Tracey Emposimato, Secretary, Leopoldo Melendez, Vice President, John J. Powers, Vice President
World Asia Freight Systems, Inc., 1065 Sneath Lane, San Bruno, CA 94066, Officer: Harrison Park, President
Quad City Port Services, Inc., dba Central Iowa Port Services, 985 Lincoln Road, #219, Bettendorf, IA 52722, Officers: Richard R. Weeks, President, Linda H. Weeks, Secretary/Treasurer, Wendy K. Weeks, Vice President, Cheryl A. Burlage, Vice President.

Dated: May 2, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–10892 Filed 5–5–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BankAmerica Corporation, San Francisco, California; Application To Engage in Nonbanking Activities

BankAmerica Corporation, San Francisco, California (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through BA Futures, Inc., Chicago, Illinois (Company), a futures commission merchant registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), in executing and clearing, and clearing without executing the following contracts on the following exchanges: Light Sweet Crude Oil Futures, Options on Light Sweet Crude Oil Futures, No. 2 Heating Oil Futures and Options on No. 2 Heating Oil Futures on the New York Mercantile Exchange; Corn Futures, Options on Corn Futures, Wheat Futures, Options on Wheat Futures, Soybean Futures and Options on Soybean Futures on the Chicago Board of Trade; and Live Cattle Futures, Options on Live Cattle Futures, Feeder Cattle Futures, Options on Feeder Cattle Futures, Live Hog Futures and Options on Live Hog Futures on the Chicago Mercantile Exchange. Applicant proposes to conduct these activities throughout the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the closely related to banking test if it is demonstrated that banks have generally provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806, January 5, (1984).

The Board previously has approved acting as a futures commission merchant in executing and clearing the proposed commodity contracts. *See* Bank of Montreal, 79 Federal Reserve Bulletin 1049 (1993); *J.P. Morgan & Co. Incorporated*, 80 Federal Reserve Bulletin 151 (1994)(*J.P. Morgan*). The Board also previously has approved providing a combination of advisory services regarding nonfinancial commodity derivatives and acting as a futures commission merchant in the execution and clearance of these derivatives. *J.P. Morgan*.

Applicant proposes to conduct the proposed activities in a manner that differs slightly from what previously has been approved by the Board. Specifically, in *J.P. Morgan* the Board conditioned approval of the application on J.P. Morgan's commitment that it would not perform execution, clearance or investment advisory services for commodity funds (or commodity pools) owned, sponsored by, or otherwise affiliated with, J.P. Morgan. In contrast, Applicant proposes that Company's customers would include a managed commodity fund formed outside of the United States, sponsored by an affiliate of Applicant.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 23, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, May 2, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94–10921 Filed 5–5–94; 8:45 am]

BILLING CODE 6210–01–F

FNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the

Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 31, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FNB Corp., Asheboro, North Carolina; to acquire 100 percent of the voting shares of Home Savings Bank of Siler City, SSB, Siler City, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin and Firstar Corporation of Wisconsin; to acquire 100 percent of the voting shares of First Southeast Banking Corp., Lake Geneva, Wisconsin, and thereby indirectly acquire First Bank Southeast, N.A., Milwaukee, Wisconsin and First Bank Southeast of Lake Geneva, N.A., Lake Geneva, Wisconsin.

Board of Governors of the Federal Reserve System, May 2, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10922 Filed 5-5-94; 8:45 am]

BILLING CODE 6210-01-F

Mainline Bankshares of Portland, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mainline Bankshares of Portland, Inc., Portland, Arkansas; to engage *de novo* in conducting lending activities as permitted by § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 2, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-10923 Filed 5-5-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 922 3170]

AJM Packaging Corporation, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Michigan seller of disposable paper plates and its president from representing that any product it sells offers any environmental benefit unless it can substantiate the claim, or from misrepresenting that any paper product or package is capable of being recycled, or the extent to which recycling collection programs for them are available.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Engle, FTC/H-476, Washington, DC 20580. (202) 326-3161.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

AJM Packaging Corporation, a Corporation, and Abram Epstein, Individually and as Officer of Said Corporation; Agreement Containing Consent Order To Cease and Desist

[File No. 922 3170]

The Federal Trade Commission having initiated an investigation of certain acts and practices of AJM Packaging Corporation, a corporation, and Abram Epstein, individually and as officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between AJM Packaging Corporation, and Abram Epstein, by their duly authorized officer and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent AJM Packaging Corporation is a Michigan corporation with its office and principal place of business at 6910 Dix Avenue, Detroit, Michigan 48209.

Proposed respondent Abram Epstein is the president of said corporation. In his capacity as president, he formulates, directs, and controls the acts and practices of said corporation, and his business address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply: "Product or package" means any product or package, including but not limited to bags and plates, that is offered for sale, sold, or distributed to the public by respondents, their successors and assigns, under the "Nature's Own Green Label" brand name or any other brand name of respondents, their successors and assigns; and also means any such product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

I

It is ordered that respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

(1) That any such product or package is degradable, biodegradable, or photodegradable; or,

(2) Through the use of such terms as degradable, biogradable, photodegradable, or any other substantially similar term or expression, that the degradability of any such product or package offers any environmental benefit when disposed of as trash that is ordinarily buried in a sanitary landfill,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered that respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such paper product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

III

It is further ordered that respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product or package offers any environmental benefit, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

IV

It is further ordered that respondents may continue to deplete their existing inventory of "Penthouse" brand paper plates product packaging in the normal course of business without violating this Order until October 31, 1993.

V

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation or the basis relied upon for such representation, including complaints from consumers.

VI

It is further ordered that respondent AJM Packaging Corporation shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this Order.

VII

It is further ordered that the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the service date of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale, or distribution of paper products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale, or distribution of paper products. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VIII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents AJM Packaging Corporation, a Michigan corporation, and Abram Epstein, an officer of said corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the package labeling of "Nature's Own Green Label" disposable paper plates. The Commission's complaint in this matter charges that respondents' labeling falsely represented that "Nature's Own Green Label" disposable paper plates are recyclable after ordinary use. In fact, the complaint alleges, while "Nature's Own Green Label" disposable paper plates are capable of being recycled, the vast majority of consumers cannot recycle the product because there are virtually no collection facilities that accept used paper plates for recycling. The complaint further charges that the respondents' labeling contained unsubstantiated representations concerning the plates' alleged degradability and the environmental benefits that could be obtained when the bags were disposed of as trash that is subsequently buried in a sanitary landfill (customary disposal). The complaint alleges that the respondents represented that "Nature's Own Green Label" disposable paper plates offer a significant environmental benefit when consumers customarily disposed of them, and that "Nature's Own Green Label" disposable paper plates will completely break down, decompose and return to nature—*i.e.*, decompose into elements found in nature—within a reasonably short period of time after customary disposal.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires that the respondents cease representing, in any manner, directly or by implication, that any of their paper products or packages are "degradable," "biodegradable," or "photodegradable," or through the use of such terms or similar terms, that any such product or package offers any environmental benefits when consumers dispose of them as trash that is buried in a sanitary landfill, unless the respondents have competent and reliable scientific evidence to substantiate the representations at the time they are made.

Part II of the proposed order requires that the respondents cease misrepresenting, in any manner, directly or by implication, the extent to which any paper product or package is capable of being recycled or the extent to which recycling collection programs are available.

Part III of the proposed order requires the respondents to cease representing that their products or packages offer any environmental benefit, unless at the time of making such a representation, the respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representations.

Part IV of the proposed order permitted the respondents to deplete their existing inventory of certain paper plate product packaging in the normal course of business without violating the order until October 31, 1993.

The proposed order also requires the respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–10943 Filed 5–5–94; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9234]

Adventist Health System/West, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order dismisses a lawsuit challenging the acquisition of Ukiah General Hospital by Adventist Health System/West in Ukiah, California. According to the Commission decision, the evidence did not support the relevant geographic markets alleged in the complaint, which were limited to specific areas of California.

DATES: Complaint issued November 7, 1989. Final order issued April 1, 1994.[1]

FOR FURTHER INFORMATION CONTACT: David Newman or Erika Wodinsky, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA. 94103. (415) 744–7920.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–10942 Filed 5–5–94; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9257]

Del Dotto Enterprises, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based corporation and its officers from making false claims regarding real estate, credit, investments, or business opportunities in the future. In addition, the order prohibits the respondents from misrepresenting that any endorsement for a product or service represents the typical or ordinary experience of previous users, and from representing that any advertisement is not paid advertising.

DATES: Complaint issued April 19, 1993. Order issued April 21, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Chris Couillou or Andrea Foster, FTC/Atlanta Regional Office, 1718 Peachtree St. NW., room 1000, Atlanta, GA. 30367. (404) 347–4837.

SUPPLEMENTARY INFORMATION: On Tuesday, November 9, 1993, there was published in the **Federal Register**, 58 FR 59473, a proposed consent agreement with analysis In the Matter of Del Dotto Enterprises, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–10945 Filed 5–5–94; 8:45 am]

BILLING CODE 6750-01-M

[Docket C–3482]

The Hairbow Company, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the California-based corporations and officers, who purported to sell hairbow kits, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for which the respondents are offering a work opportunity. In addition, the order sets a redress payment, however, based upon financial statements submitted by the respondents, the redress payments have been suspended.

DATES: Complaint and Order issued March 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 5, 1994, there was published in the **Federal Register**, 59 FR 577, a proposed consent agreement with analysis In the Matter of The Hairbow Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–10946 Filed 5–5–94; 8:45 am]

BILLING CODE 6750-01-M

[Docket C–3483]

Homespun Products, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the California-based corporations and an officer, who purported to market pillows and Christmas ornaments, from making any material misrepresentations regarding earnings or profits of

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[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Final Order, and Statement of Commissioners Owen and Yao are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

[1] Copies of the Complaint, and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for which the respondents are offering a work opportunity. In addition, the order sets a redress payment, however, based upon financial statements submitted by the respondents, the redress payments have been suspended.

DATES: Complaint and Order issued March 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/ San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 5, 1994, there was published in the **Federal Register**, 59 FR 580, a proposed consent agreement with analysis In the Matter of Homespun Products, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–10947 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 912 3364]

LePage's, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Pennsylvania manufacturers of glues and adhesive tapes from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making unsubstantiated claims that its products or packages are degradable, biodegradable or photodegradable, or that their degradability offers any environmental benefit when disposed of as trash in a sanitary landfill.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

LePage's Inc., a Corporation, and LP Holdings, Inc., a Corporation; Agreement Containing Consent Order To Cease and Desist

[File No. 912 3364]

The Federal Trade Commission having initiated an investigation of certain acts and practices of proposed respondents LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between LePage's, Inc. and LP Holdings, Inc., by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent LePage's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania.

Proposed respondent LP Holdings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. It dominates and controls the acts and practices of its wholly-owned subsidiary, LePage's, Inc.

The proposed respondents have their principal offices or places of business at 120 Delta Drive, Pittsburgh, Pennsylvania 15238.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

The term "product or package" means any product or package that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the LePage's brand name or any other brand name of respondents, their successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

"Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents, LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

(1) That any such product or package is degradable, biodegradable, or photodegradable; or,

(2) Through the use of such terms as degradable, biodegradable, or photodegradable or any other similar terms or expression, that any such product or package offers any environmental benefits when consumers dispose or it as trash that is buried in a sanitary landfill,

unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

II

A. *It is further ordered* that respondents, LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

(1) Any such product or package is capable of being recycled; or,

(2) Recycling collection programs for such product or package are available.

B. *Provided*, however, respondents will not be in violation of Part II(A)(2) of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-foam polystyrene or any non-corrugated paperboard or cardboard product or package, if they truthfully represent that such product or package is recyclable, provided that:

(1) Respondents disclose clearly, prominently, and in close proximity to such representation:

(a) In regard to any non-foam polystyrene product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene; and in regard to any non-corrugated paperboard or cardboard product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-corrugated paperboard or cardboard; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and

(2) In addition, in the case of a non-foam polystyrene product or package, such product or package itself bear a clear identification of the specific plastic resin(s) from which it is made.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

III

It is further ordered that respondents, LePage's, Inc., a corporation, and LP Holdings, Inc, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product or package offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

VI

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations under this Order.

VII

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents LePage's, Inc., a Pennsylvania corporation, and LP Holdings, Inc., a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of LePage's Biodegradable Transparent Tape. The Commission's complaint in this matter alleges that LePage's Biodegradable Transparent Tape is a cellophane tape made from wood pulp and adhesive material; that the retail tape product is sold with a hard clear non-foam polystyrene plastic dispenser that does not identify the type(s) of plastic resin from which it is made; and that the tape and dispenser are attached to a non-corrugated paperboard or cardboard backcard. The complaint charges that the respondents represented without substantiation that LePage's Biodegradable Transparent Tape will completely break down and return to nature—*i.e.*, decompose into elements found in nature—within a reasonably short period of time after customary disposal and that compared to other transparent tape, LePage's Biodegradable Transparent Tape offers a significant environmental benefit after customary disposal. The complaint further charges that the respondents falsely represented that the plastic tape dispenser and paperboard backcard of LePage's Biodegradable Transparent Tape are recyclable. In fact, the complaint alleges, the plastic tape dispenser and the paperboard package are not recyclable, because there are only a few collection facilities nationwide that will accept the non-foam polystyrene tape dispenser or the non-corrugated paperboard or cardboard backcard for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires that the respondents cease and desist from representing, in any manner, directly or by implication, that any of their products or packages are degradable, biodegradable, or photodegradable, or more specifically through the use of such terms or similar terms that any such product or package offers any environmental benefits when consumers dispose of it as trash that is buried in a sanitary landfill, unless at the time of making such representation, the respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

Part II of the proposed order requires that the respondents cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any product or package the extent to which it is capable of being recycled or to which recycling collection programs are available. Part II also contains a provision that allows the respondents to advertise non-foam polystyrene and non-corrugated paperboard and cardboard products or packages as recyclable without violating Part II of the order. The respondents may do so if they truthfully represent that such products or packages are capable of being recycled; disclose clearly, prominently and in close proximity to such claim (a) that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene or for non-corrugated paperboard or cardborad; or (b) the approximate number of U.S. communities with recycling collection programs for such product or package; or (c) the approximate percentage of U.S. population to which recycling collection programs for such product or package are available; and in addition, in the case of any non-foam polystyrene product or package, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

Part III of the proposed order provides that if the respondents represent in advertising or labeling that any product or package offers any environmental benefit, they must have a reasonable basis consisting of competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claims.

The proposed order also requires the respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-10944 Filed 5-5-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 922 3373]

Mia Rose Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based corporation and its officer from making any representation about the efficacy or performance of any air cleaning, air

freshening, or insecticidal product, unless the respondents possess and rely upon competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Linda Badger, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Mia Rose Products, Inc., and Mia Palencar ("respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between respondents and by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mia Rose Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California. The principal place of business of this corporation is located at 3555–B Harbor Gateway South, Costa Mesa, California 92626.

Proposed respondent Mia Palencar is an officer of the corporate respondent. She formulates, directs, and controls the acts and practices of the corporate respondent and her address is the same as that of corporate respondent.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

6. This agreement contemplates that it it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the attached draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Mia Rose Products, Inc., a corporation, its successors and assigns, and its officers, and Mia Palencar, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of Air Therapy, Pet Air or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product is effective in cleaning or purifying indoor air.

B. Such product is more effective in cleaning or purifying indoor air than conventional air cleaning products.

C. Spraying such product into the air eliminates smoke.

D. Spraying such product into the air eliminates pollen.

E. Spraying such product into the air eliminates airborne bacteria.

F. Spraying such product into the air eliminates household insects.

G. Spraying such product into the air eliminates pet dander.

H. Spraying such product into the air eliminates rather than masks odors.

For the purposes of this Order, "substantially similar product" shall mean any air cleaning or air freshening product which contains d-limonene as its sole active ingredient.

II

It is further ordered that respondents, Mia Rose Products, Inc., a corporation, its successors and assigns, and its officers, and Mia Palencar, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any air cleaning, air freshening, or insecticidal product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the efficacy or performance of any such product, unless such representation is true, and at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that provisions of this Order shall not apply to the printing on cans of Air Therapy or Pet Air which were manufactured prior to September 1, 1993, and shipped by respondents to distributors or retailers prior to four (4) months from the date of issuance of this Order.

V

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is further ordered that the individual respondent shall, for a period of five (5) years after the date of service of this Order upon her, promptly notify the Commission, in writing, of her discontinuance of her present business or employment and of her affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII

It is further ordered that the corporate respondent shall, within ten (10) days from the date of service of this Order upon them, distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or is in communication with customers or prospective customers, or who have any responsibilities with respect to the subject matter of this Order; and for a period of five (5) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

VIII

It is further ordered that respondents shall, within sixty (60) days from the date of service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Mia Rose Products, Inc., a California corporation, and Mia Rose Palencar, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns two products, named "Air Therapy" and "Pet Air," sold by Mia Rose Products, Inc. ("the company"). Air Therapy and Pet Air are air sprays made from the essential oils of citrus fruit and/or herbs. These two products have identical ingredients, and are both sold for their alleged air freshening, air cleaning and insecticidal effects. The Commission's complaint charges that respondents' advertising contained false and unsubstantiated representations that these products are effective in eliminating indoor air pollutants and household insects. Specifically, the complaint alleges that respondents falsely represented that: (1) These products are effective in cleaning or purifying indoor air; (2) these products are more effective in cleaning or purifying indoor air than conventional air cleaning products; (3) spraying these products into the air eliminates smoke; (4) spraying these products into the air eliminates pollen; (5) spraying these products into the air eliminates airborne bacteria; (6) spraying Pet Air into the air eliminates pet dander; (7) spraying Air Therapy into the air eliminates household insects; and (8) spraying these products into the air eliminates, rather than masks, odors.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit the company from making any of the false claims delineated above for Air Therapy, Pet Air, or any products with substantially similar ingredients.

Part II of the proposed order includes broad fencing-in relief, requiring the respondents to cease and desist from representing the efficacy or performance of any air cleaning, air freshening, or insecticidal product unless such representation is true, and at the time of making such representation, Mia Rose possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part IV of the proposed order is a provision that allows the company a period of four months from the date the proposed order becomes final before it is obligated to re-word its labeling on its current inventory of Air Therapy and Pet Air cans. All other provisions of the order become effective immediately upon the Commission's issuance of the order as final.

The proposed order also requires the respondents to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, or in communication with the company's customers or prospective customers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; to notify the Commission of certain changes in the business or employment of the named individual respondent; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–10948 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C-3485]

New Mexico Custom Designs, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the New Mexico-based corporation and its officer, who claimed to sell beaded earrings, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for which the respondents are offering a work opportunity. In addition, the order sets a redress payment, however, based upon financial statements submitted by the respondents, the redress payments have been suspended.

DATES: Complaint and Order issued March 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 5, 1994, there was published in the **Federal Register**, 59 FR 582, a proposed consent agreement with analysis In the Matter of New Mexico Custom Designs, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–10949 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3162]

Oak Hill Industries Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York manufacturer of plastic tableware from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making any unsubstantiated representation that any product or package it markets offers any environmental benefit.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Oak Hill Industries Corp., a corporation, and Malcolm Foster, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Oak Hill Industries Corp., a corporation, and Malcolm Foster, individually and as an officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Oak Hill Industries Corp., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Oak Hill Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office or place of business at 330 East 59th Street, New York, NY 10022.

Proposed respondent Malcolm Foster is an officer of said corporation. He formulates, directs, and controls the acts and practices of said corporation. His address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

The term *product or package* means any product or package that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the Oak Hill brand name or any other brand name of respondents, their successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

Competent and reliable scientific evidence shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

A. It is ordered that respondents, Oak Hill Industries Corp., a corporation, its successors and assigns, and its officers, and Malcolm Foster, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which:

(1) Any such product or package is capable of being recycled; or,

(2) Recycling collection programs for such product or package are available.

B. Provided, however, respondents will not be in violation of part I(A)(2) of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-foam polystyrene, polypropylene film, or low-density polyethylene film product or package, if they truthfully represent that such product or package is recyclable, provided that:

(1) Respondents disclose clearly, prominently, and in close proximity to such representation:

(a) In regard to any non-foam polystyrene product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene; in regard to any polypropylene film product or package, that such product or package is recyclable in the few communities with recycling collection programs for polypropylene film; and in regard to any low-density polyethylene film product or package, that such product or package is recyclable in the few communities with recycling collection programs for low-density polyethylene film; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and

(2) In addition, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

II

It is further ordered that respondents, Oak Hill Industries Corp., a corporation, its successors and assigns, and its officers, and Malcolm Foster, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product or package offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the corporate respondents shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, products, labels or other such sales materials covered by this Order.

V

It is further ordered that the individual respondent shall notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of any plastic product or package or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution, and/or manufacturing of any plastic product or package. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII

It is further ordered that respondents shall, within sixty (6) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Oak Hill Industries Corp., a New York corporation, and Malcolm Foster, individually and as an officer of the corporate respondent.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of Oak Hill brand plastic plates, bowls and utensils. The Commission's complaint in this matter alleges that Oak Hill brand plastic plates, bowls and utensils are made from non-foam polystyrene; that they are packaged in thin plastic packaging which is sometimes made from polypropylene film and at other times from low-density polyethylene film; and that such plastic products and packaging do not identify the type(s) of plastic resin from which they are made. The complaint charges that Oak Hill falsely represented that the plastic plates, bowls and utensils and the plastic film packaging are recyclable. In fact, the complaint alleges, the plastic products and packaging are not recyclable, because there are only a few collection facilities nationwide that will accept non-foam polystyrene plates, bowls or utensils or the polypropylene film or low-density polyethylene film plastic packaging for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires that respondents cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any product or package the extent to which it is capable of being recycled or to which recycling collection programs are available. Part I also contains a proviso that allows the respondents to advertise non-foam polystyrene, polypropylene film or low-density polyethylene film products or packages as recyclable without violating Part I of the order. The respondents may do so if they truthfully represent that such products or packages are capable of being recycled; disclose clearly, prominently and in close proximity to such claim: (a) That such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene, polypropylene film or low-density polyethylene film; or (b) the approximate number of U.S. communities with recycling collection programs for such product or package; or (c) the approximate percentage U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and in addition, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

Part II of the proposed order provides that if the respondents represent in advertising or labeling that any product or package offers any environmental benefit, they must have a reasonable basis consisting of competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claims.

The proposed order also requires respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–10950 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3484]

William E. Taylor and Susan L. Taylor, d/b/a Sandcastle Creations; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Oregon-based respondents, who marketed potholders and mohair for use as doll's hair, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for which the respondents are offering a work opportunity. In addition, the order sets a $536,000 redress payment, however, based upon financial statements submitted by the respondents, the order suspends all redress payments, except for a $25,000 payment by the individual respondents in this matter.

DATES: Complaint and Order issued March 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, January 5, 1994, there was published in the Federal Register, 59 FR 587, a proposed consent agreement with analysis In the Matter of Sandcastle Creations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–10951 Filed 5–5–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the changes in Chapter KK, The Office of Financial Management 56 FR 42335 as last amended, August 20, 1993. Specifically, to elevate the Financial and Grants Policy Staff to Division level and revise the functional responsibility of the Division of Discretionary Grants.

The changes are as follows:

1. Amend KK.10 Organization. Delete this section in its entirety and replace it with the following:

KK.10 Organization. The Office of Financial Management (OFM) is headed by a Director who reports to the Director of Program Support and is organized as follows:

Director Office of the Director (KKA)
Division of Financial and Grants Policy (KKB)
Division of Budget and Finance (KKC)
Division of Formula, Entitlement, and Block Grants (KKD)
Division of Discretionary Grants (KKE)
Division of Audit Resolution and Grant Oversight (KKF)

2. Amend KK.20 Functions. Delete paragraph B in its entirety and replace it with the following:

B. The Division of Financial and Grants Policy provides management and direction of ACF financial and grants policy activities as they relate to ACF mandatory and discretionary grants programs. Provides expert guidance on financial and grants management policy issues to ACF program and staff components in headquarters and regional offices as well as to external entities such as grantees and officials of other Federal agencies. Maintains liaison and coordination with appropriate HHS organizations to ensure consistency with Departmental financial and grants management policies and procedures. Advises the Director of the Office of Financial Management, the Assistant Secretary of ACF, Program Office Heads and Regional Administrators on significant financial and grants policy initiatives and issues.

The Division is responsible for: development and interpretation of financial and grants policy for programs and activities administered by ACF; prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management policy issues; analyzes pending legislation and proposed program or grants regulations to determine financial and/or grants policy implications; reviews policy inquiries and prepares and disseminates definitive policy guidance consistent with Federal, HHS and ACF policies and procedures; directs the distribution and maintenance of ACF's grants management policy manuals and directives; provides training and technical assistance to ACF staff and grantees on proper grants administration; advises on and assists with development of monitoring plans and strategies for ACF programs; reviews all ACF program announcements and other solicitation instruments for compliance with Federal, HHS and agency policies and adherence to applicable laws and regulations; reviews all noncompetitive grant applications to ensure compliance with HHS and ACF policies on competition; disseminates a wide array of financial and grants management information to ACF program and staff offices and seeks ways to enhance the utility of such information and the manner in which it is provided; assists the Assistant Secretary of ACF and the Director of the Office of Financial Management in strategic planning of grant-making activities; directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs.

3. Amend KK.20 E. Division of Discretionary Grants to delete the first paragraph in its entirety and replace it with the following:

E. Division of Discretionary Grants provides management and technical administration of ACF discretionary grants and cooperative agreements. It serves as the principal office within ACF for ensuring that the business aspects of discretionary grants administration are carried out and monitors programs and grantee performance in these areas: oversees the competitive review process and prepares ranking lists; negotiates grant budgets and special terms and conditions; prepares grant awards, ensuring incorporation of necessary grant terms and conditions; monitors grantee expenditure of funds; prepares reports and analyses on grantees' use of funds; monitors receipt of and analyzes content of financial status reports and other required reports and takes appropriate action based on those reports; processes actions for disallowances or other financial adjustments; review grantee financial management operations; and closes out expired grants.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

EFFECTIVE DATE: April 28, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 94–10915 Filed 5–5–94; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 94N–0118]

Preamendments Class III Devices; Strategy Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is making available a document that sets forth the agency's strategy for implementing the provisions of the Safe Medical Devices Act of 1990 (the SMDA) which require FDA to review the classification of certain class III (premarket approval) devices, and either reclassify the devices into class I (general controls) or class II (special controls) or retain them in class III. The statute also requires FDA to establish a schedule for requiring the submission of premarket approval applications (PMA's) for those devices retained in class III.

DATES: Written comments by August 4, 1994.

ADDRESSES: Submit written requests for single copies of the strategy document to the Division of Small Manufacturers Assistance (HFZ–200), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the strategy document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The strategy document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–4765, ext. 157.

SUPPLEMENTARY INFORMATION: Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. This notice refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date, as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. However, submission of a PMA, or a notice of completion of a product development protocol (PDP), is not required until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Similarly, a preamendments device is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring submission of a PMA for the device. To date, FDA has issued eight final rules requiring submission of PMA's for preamendments class III devices. Nine additional proposed rules have been issued.

The SMDA (Pub. L. 101–629) added new section 515(i) to the act (21 U.S.C. 360e(i)). This section requires FDA to order manufacturers of class III preamendments devices for which no final rule has been issued requiring the submission of PMA's to submit to FDA a summary of, and citation to, any information known or otherwise available to the manufacturer respecting such devices, including adverse safety and effectiveness information that has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 515(i) of the act further directs FDA to publish a regulation before December 1, 1995, for each device subject to section 515(i) either revising the classification of the device into class I or class II or retaining the device in class III. Within 12 months after publication of a regulation retaining a device in class III, the statute requires FDA to establish a schedule for the promulgation of a rule requiring the submission of PMA's for the device. However, the SMDA does not prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedure in section 515(i) of the act.

Since enactment of the SMDA, FDA has issued proposed rules to require the submission of PMA's for five devices: Silicone inflatable saline filled breast prostheses; penile implants; testicular implants; nonroller cardiovascular blood pumps; and cranial electrotherapy stimulators. FDA is now announcing the availability of a document outlining its plans for either revising the classification, or requiring the submission of PMA's for the remaining preamendments class III devices.

FDA has divided this universe of devices into three groups:

1. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA will require the submission of PMA's for these devices in the near future. FDA intends to issue proposed rules to require the submission of PMA's for the 15 highest priority devices in this group in phases over the next 3 years. In accordance with the procedures in section 515(b) of the act, manufacturers will have an opportunity to petition for reclassification of these devices by submitting a reclassification petition within 15 days of publication of the proposed rule to require submission of PMA's. Manufacturers who wish to petition for reclassification should begin preparing petitions for reclassification as soon as possible. FDA will initiate the 515(i) process for the remaining Group 3 devices.

2. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. For these devices, FDA intends to issue an order under section 515(i) of the act requiring

manufacturers to submit a summary of, and citation to, any information respecting these devices. A manufacturer who wishes to have one of these devices reclassified will be required to submit information to support reclassification of the device.

3. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are very limited in use. FDA believes that, for these devices, rulemaking under section 515(b) of the act will not result in viable PMA's or reclassification petitions. FDA intends to initiate a rulemaking proceeding to require the submission of PMA's for this group of devices. FDA will review any information received in response to the proposed rule to determine whether to issue a final rule requiring the submission of PMA's.

The strategy document lists the devices by categories in each of these groups. It also describes in more detail FDA's plans for implementing these procedures.

FDA believes that the procedures set forth in this strategy document are consistent with the congressional intent in enacting section 515(i) of the act. The Senate report makes clear the need to require submission of PMA's as soon as possible for those devices that are to remain in class III. (See S. Rept. 513, 101st Cong., 2d sess. 18 (1990)). Furthermore, the House of Representatives Report of the Safe Medical Devices Act of 1990 stated:

> In formulating these schedules [for requiring the submission of a PMA], the FDA should take into account its priorities and limited resources, together with the Committee's intention that the evaluation process be expeditious.

(See H. Rept. 808, 101st Cong., 2d sess. 26 (1990)).

Interested persons may, on or before July 9, 1994, submit to the Dockets Management Branch (address above) written comments regarding this strategy document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The strategy document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-10998 Filed 5-5-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94M-0129]

Pace Medical, Inc.; Premarket Approval of the Model 4553 MICRO-PACE™ Dual-Chamber, DDD, Temporary Cardiac Pacemaker

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pace Medical, Inc., Waltham, MA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Model 4553 MICRO-PACE™ Dual-Chamber, DDD, Temporary Cardiac Pacemaker (Model 4553 MICRO-PACE™). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 10, 1994, of the approval of the application.

DATES: Petitions for administrative review by June 6, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James Cheng, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-2720.

SUPPLEMENTARY INFORMATION: On June 30, 1992, Pace Medical, Inc., Waltham, MA 02154, submitted to CDRH an application for premarket approval of the Model 4553 MICRO-PACE™. The device is a temporary external pulse generator and is indicated for use in any clinical situation in which the use of a temporary pacemaker on a patient provides therapeutic or diagnostic value or serves a prophylactic purpose. Indications for the use of temporary cardiac pacemakers include, but are not limited to, the following: Intermittent or complete heart block associated with asystole or bradycardia, symptomatic sinus bradycardia, surgically induced heart block, and heart block accompanying an acute myocardial infarction.

Additionally, temporary cardiac pacing has been used to overdrive, and thereby terminate, atrial arrhythmias, including atrial flutter. It has been used in preparation for permanent pacemaker implantation to ascertain the thresholds for sensing and pacing on the acute lead system. Although the intended uses of the Model 4553 MICRO-PACE™ are primarily therapeutic and prophylactic, the ability to extensively program both the amplitude of the constant voltage output and the pulse width in the Model 4553 MICRO-PACE™ does make it, when necessary, a satisfactory alternative to a properly functioning pacing system analyzer for the thresholds for sensing and stimulation.

In accordance with the provisions of section 515(f)(2) of the act (21 U.S.C. 360e(f)(2)) as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101-629), this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On March 10, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 6, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 20, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy; Center for Devices and Radiological Health.

[FR Doc. 94-10919 Filed 5-5-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94M-0126]

United Contact Lens; Premarket Approval of UCL-55 and UCL-55 TORIC (Ocufilcon C) Soft (Hydrophilic) Contact Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by United Contact Lens (UCL), Lynwood, WA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the UCL-55 and UCL-55 TORIC (ocufilcon C) Soft (hydrophilic) Contact Lenses. The devices are to be manufactured under an agreement with N & N Contact Lens International, Inc., Lynwood, WA, which has authorized UCL to incorporate information contained in the approved premarket approval application (PMA) and related supplements for the SOFTOUCH and SOFTOUCH TORIC (ocufilcon C) Soft (hydrophilic) Contact Lenses. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter on March 7, 1994, of the approval of the application.

DATES: Petitions for administrative review by June 6, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-1744.

SUPPLEMENTARY INFORMATION: On February 28, 1992, United Contact Lens, Inc., Lynnwood, WA 98036, submitted to CDRH an application for premarket approval of the UCL-55 and UCL-55 TORIC (ocufilcon C) Soft (hydrophilic) Contact Lenses. The UCL-55 and UCL-55 TORIC (ocufilcon C) Soft (hydrophilic) Contact Lenses are indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic (near-sighted) and hyperopic (farsighted). The spherical lens may be worn by persons who may exhibit astigmatism of 1.25 diopters (D) or less that does not interfere with visual acuity. The toric lens is indicated for the correction of astigmatism of 7.00 D or less. In addition, the lens is to be disinfected using a chemical lens care system. The application includes authorization from N & N Contact Lens International, Inc., Lynwood, WA 98046, to incorporate information contained in the approved PMA and related supplements for the SOFTOUCH and SOFTOUCH TORIC (ocufilcon C) Soft (hydrophilic) Contact Lenses. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, and FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On March 7, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 6, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 20, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94-10918 Filed 5-5-94; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious

Diseases, on June 2–3, 1994, at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m., on June 2, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on June 2, and from 8 a.m. until adjournment on June 3. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Peter R. Jackson, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C13, Rockville, Maryland 20892, telephone 301–496–8426, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: April 29, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–10868 Filed 5–5–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and a roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Leonard Jacubczak (301) 594–7198.

Date of Meeting: May 10, 1994.

Place of Meeting: Westwood Bldg, Rm325C, NIH, Bethesda, MD.

Time of Meeting: 2 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11007 Filed 5–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; the National Diabetes and Digestive and Kidney Diseases Advisory Council and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on June 1–2, 1994. The meeting of the full Council will be open to the public June 1, from 8:30 a.m. to 12 noon and again on June 2, from 11:30 a.m. to 1 p.m., Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland, to discuss administrative details relating to Council business and special reports. The following subcommittee meetings will be open to the public June 1 from 1 p.m. to 2 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee meeting will be held in Wilson Hall, Building 1; Digestive Diseases and Nutrition Subcommittee meeting will be held in Conference Room 9A51, Building 31A; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 7, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on June 1, from 2 p.m. to 5 p.m. and on June 2 from 8:30 a.m. to 10 a.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The full Committee meeting will be closed on June 2, from 10:30 a.m. to 11:30 a.m. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 594–7527, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6623.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: April 29, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-10867 Filed 4-5-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittee B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Scientific Review Administrators indicated.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrators at least two weeks prior to the meeting date.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Scientific Review Administrator: Michael W. Edwards, Ph.D, Westwood Building, room 607, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-594-9300.

Dates of Meeting: June 10, 1994.

Place of Meeting: The Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: 8 a.m.-8:15 a.m.

Closed: 8:15 a.m.-adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Scientific Review Administrator: Daniel Matsumoto, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-594-7587.

Dates of Meeting: June 10, 1994.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: 8:30 a.m.-8:45 a.m.

Closed: 8:45 a.m.-adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Scientific Review Administrator: Ann A. Hagan, Westwood Building, room 604, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-594-7575.

Dates of Meeting: June 10, 1994.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: 8:00 a.m.-8:15 a.m.

Closed: 8:15 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: April 29, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-10869 Filed 5-5-94; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 15, 1994.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of request).

1. Health Study in Silver Valley, Idaho—New—This study will look at the effects of ambient lead exposure on two different cohorts in Silver Valley, Idaho. One cohort will consist of children living in the area in 1974 and 1975. This study will investigate possible associations between childhood exposure and adult neurologic, reproductive or kidney effects. The other cohort will consist of former female workers at the Bunker Hill facility. The study will include a comparison of the body burden of lead with the development of osteoporosis. Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Children Study	2,700	1	1.75
Female Workers	250	1	3.55

Estimated Total Annual Burden—5,625 hours.

2. Evaluation of Smoke Detector Inventions—New—Through an inventory of smoke detector programs and an evaluation of smoke detector give-away programs, the Centers for Disease Control and Prevention will determine the best methods to distribute and maintain smoke detectors in the homes of residents who have the greatest risk of fire-related injury and death. Respondents: Individuals or households; State or local governments, Non-profit Institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Give-away .	1,129	1	.41
Inventory ...	55	1	.78

Estimated Annual Total Burden—510 hours.

3. Evaluation of NIDA Technology Transfer Programs—New—This project is necessary to determine the effectiveness of The National Institute on Drug Abuse's (NIDA) technology transfer programs which disseminate research information to drug abuse prevention and treatment practitioners. Results will be used to direct NIDA technology transfer activities and will be shared with other NIH Institutes and Government agencies. Respondents: Individuals or households; State or local governments, businesses or other for-profit, Federal agencies or employees, Non-profit Institutions, Small businesses or organizations, Number of Respondents: 1,467; Number of Responses per Respondent: 1.45; Average Burden per Response: .26 hour; Estimated Annual Burden: 593 hours.

4. Annual Census of State and County Mental Hospital Inpatient Services, 1994–1996—0930–0093 (Extension, no change)—This voluntary data collection will provide the Center for Mental Health Services, the States and others with statistics on the changes in the utilization of State and county mental hospitals by different age-sex-diagnosis subgroups. These data are needed to measure variability in service utilization patterns and to understand deinstitutionalization practices in the United States and each State. Respondents: State or local governments; Number of Respondents: 71; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 142 hours.

5. The Framingham Study—0925–0216 (Extension, no change)—This project involves physical examination and testing of the surviving members of the Framingham Study cohort and their offspring. This study will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle age and older men and women. Respondents: Individuals or households; State or local governments, businesses or other for-profit, Non-profit Institutions, Small businesses or organizations; Number of Respondents: 2,400; Number of Responses per Respondent: 1; Average Burden per Response: 1.5625 hours; Estimated Annual Burden: 3,750 hours.

6. Grantee Reporting Requirements for the Ryan White comprehensive AIDS Resources and Emergency Act of 1990, Title III, Part B—0915–0158 (Revision)—Section 2664 of the Ryan White CARE Act requires reporting on the number of individuals to whom the grantee provides early intervention services pursuant to the grant, epidemiological and demographic data on the population of such individuals, the average cost of providing each category of early intervention services, and the aggregate amounts expended for each category; The purpose of this revision is to clarify and simplify reporting instructions and requirements. Respondents: State or local governments, Non-profit institutions; Number of Respondents: 130; Number of Responses per Respondent: 1; Average Burden per Response: 500 hours; Estimated Annual Burden: 65,000 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: May 2, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–10870 Filed 5–5–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–82]

Federal Property Suitable As Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: April 29, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 05/06/94

Suitable/Available Properties

Buildings (by State)

Arizona

700 Units of Family Housing
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210096
Status: Pryor Amendment
Base closure, Number of Units: 700
Comment: 1-story, 2–5 bedrooms, military family housing

15 Temporary Living Quarters
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210097
Status: Pryor Amendment
Base closure, Number of Units: 15
Comment: 1–3 story, concrete block and stucco structures including dorms and lodging

5 Support & Service Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210098
Status: Pryor Amendment
Base closure, Number of Units: 5
Comment: one 3-story fire station, one 1-story brick chapel, a gate house, post office and education center

24 Miscellaneous Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210099
Status: Pryor Amendment
Base closure, Number of Units: 24
Comment: 1–2 story structures including a library, gymnasium, a theater, commissary, stores, and bowling, youth and recreation centers

6 Recreation Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210100
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 1 story structures including golf club bldgs., bathhouses, and swimming pools

6 Medical Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210102
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 1 story, block and concrete structures including a hospital, clinics and a pharmacy

9 Laboratories
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210103
Status: Pryor Amendment
Base closure, Number of Units: 9
Comment: eight 1-story and one 3-story metal and concrete/block structures

36 Training & Admin Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210104
Status: Pryor Amendment
Base closure, Number of Units: 36
Comment: 1–3 story, concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities

12 Warehouse/Stor. Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210105
Status: Pryor Amendment
Base closure, Number of Units: 12
Comment: 1 story concrete, wood and steel structures including warehouses and storage bldgs.

52 Support/Maint. Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210106
Status: Pryor Amendment
Base closure, Number of Units: 52
Comment: 1 story, concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops

14 Hazardous/Explosive Storage
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210107
Status: Pryor Amendment
Base closure, Number of Units: 14
Comment: 1 story concrete and concrete/metal structures

California

1,402 Family Housing/Garages
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420008
Status: Pryor Amendment
Base closure, Number of Units: 1402
Comment: Includes family housing residences and garages, various square feet units, 3–4 bedrooms, wood siding, concrete or stucco frame, scheduled to be vacated 3/96.

7 Dormitories
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420009
Status: Pryor Amendment
Base closure, Number of Units: 7
Comment: 1686–48,000 sq. ft., 1–3 story, concrete frame, includes dorms, officer's quarters, scheduled to be vacated 3/96

6 Educational Facilities
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420010
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 2400–25,774 sq. ft., 1&3 story, concrete block, masonry or metal frame, includes band center, NCO prof. education cntr, dorms, scheduled to be vacated 3/96.

6 Medical Offices
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420011
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 200–174,110 sq. ft., 1&5 story, concrete frame, includes dental clinic, hospital, medical training, AMB shelter, scheduled to be vacated 3/96.

2 Chapels
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420012
Status: Pryor Amendment
Base closure, Number of Units: 2
Comment: 10,231 & 21,810 sq. ft., 1 story, concrete frame, includes chapels, scheduled to be vacated 3/96.

13 Administrative Offices
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420013
Status: Pryor Amendment
Base closure, Number of Units: 13
Comment: 300–67,440 sq. ft., 1–3 story, wood, concrete or metal stud frame, includes base engineer bldg., reserves training, env. health, family cntr support, sched. to be vacated 3/96.

5 Child Care Facilities
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420014

Status: Pryor Amendment
Base closure, Number of Units: 5
Comment: 848–13,200 sq. ft., concrete, brick, wood or stucco frame, includes child care centers, youth center, scheduled to be vacated 3/96.

14 Munitions Storage Facs.
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420015
Status: Pryor Amendment
Base closure, Number of Units: 14
Comment: 1047–2,392 sq. ft., 1 story, concrete frame, includes igloo storages, scheduled to be vacated 3/96.

2 Munitions Shops
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420016
Status: Pryor Amendment
Base closure, Number of Units: 2
Comment: 1920 & 5,564 sq. ft., 1 story, concrete or masonry frame, scheduled to be vacated 3/96.

8 Covered Storage Facilities
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420017
Status: Pryor Amendment
Base closure, Number of Units: 8
Comment: 384–85,937 sq. ft., 1 story, wood, concrete block, metal or masonry frame, includes hazardous storage, BE storage, material servs., troop warehouse, sched. to be vacated 3/96.

5 Utility Support Structures
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420018
Status: Pryor Amendment
Base closure, Number of Units: 5
Comment: 456–4,826 sq. ft., 1 story, concrete frame, includes utility vault, heating facility, water support, training lodge bldg., scheduled to be vacated 3/96.

12 Maintenance Shops
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420019
Status: Pryor Amendment
Base closure, Number of Units: 12
Comment: 540–16,250 sq. ft., 1 story, wood or metal frame, includes BE storage sheds, BE maint. shops, BE ground facilities, scheduled to be vacated 3/96.

15 Commercial Facilities
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420020
Status: Pryor Amendment
Base closure, Number of Units: 15
Comment: 250–116,562 sq. ft., 1–2 story, concrete, wood, steel or masonry frame, includes library, theater, commissary, hobby ship, sales stores, open mess, sched. to be vacated 3/96.

6 Recreational Facilities
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number: 199420021
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 85–5,779 sq. ft., 1 story, concrete block or metal frame, includes golf equipment clubhouses, scheduled to be vacated 3/96.

Florida

9 Industrial Storage Bldgs.
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340003
Status: Pryor Amendment
Base closure, Number of Units: 9
Comment: 792–23,415 sq. ft.; 1 story, needs rehab, (Fac. #s 615,619, 736 & 757 being used by Govt. for at least 2 yrs). avail. subject to environmental clean up requirements.

21 Administrative Bldgs.
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340004
Status: Pryor Amendment
Base closure, Number of Units: 21
Comment: 100–51,793 sq. ft., need repairs, 1–3 story, (Fac #s 718, 755, 756, 931 & 999 are being used by Govt. for at least 2 yrs.) avail. subject to environmental clean up requirements.

13 Dormitories
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340005
Status: Pryor Amendment
Base closure, Number of Units: 13
Comment: 13,426–26,034 sq. ft.; 2–3 story, need repairs, (Fac #938 being used by Govt. for at least 2 yrs.), avail. subject to environmental clean up requirements.

7 Miscellaneous Bldgs.
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340006
Status: Pryor Amendment
Base closure, Number of Units: 7
Comment: 1,344 to 93,202 sq. ft., 1–2 story, need repairs, incs. dining hall, child care center, dental clinic, classroom, avail. subject to environmental clean up requirements.

8 Recreational Facilities
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340007
Status: Pryor Amendment
Base closure, Number of Units: 8
Comment: 384–27,953 sq. ft., 1–2 story, need repairs, includes bathhouse, swimming pool, bowling center, officers club, golf club house, avail. subject to env. clean up requirement.

6 Warehouses
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340008
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 3,600–90,683 sq ft., 1 story, need repairs, (Fac #s 618 & 624 being used by Govt. for at least 2 yrs.), avail. subject to environmental clean up requirements.

Illinois

16 Living Quarters
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420005
Status: Pryor Amendment
Base closure, Number of Units: 16
Comment: 2,356 to 32,512 sq. ft., wood or masonry frame, 1–3 story, includes officer's quarters, enlisted quarters, scheduled to be vacated 9/94.

6 Educational Facilities
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420006
Status: Pryor Amendment
Base closure, Number of Units. 6
Comment: 3,800 to 25,648 sq. ft., wood or masonry frame, includes reserve training, academic instruction, intel production trng, aviation trng., scheduled to be vacated 9/94.

5 Administration Buildings
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420007
Status: Pryor Amendment
Base closure, Number of Units: 5
Comment: 3,552 to 35,936 sq. ft., wood frame, includes police station, reserve admin., admin. offices, 1–2 story, scheduled to be vacated 9/94.

3 Retail/Security Facilities
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420008
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 3,749 to 21,315 sq. ft., wood/ masonry frame, includes exchange bldg., club house, fire station. 1–2 story, scheduled to be vacated 9/94.

8 Industrial/Maintenance Facs.
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420009
Status: Pryor Amendment
Base closure, Number of Units: 8
Comment: 21,671 to 185,084 sq. ft., 1–5 story, steel or wood frame, includes maint.

hangars & shops, air craft hangars, public works shop, scheduled to be vacated 9/94.

3 Restaurants/Chapel
Naval Air Station
Glenview Co: Cook IL 60026-
Landholding Agency: Navy Base Close
Property Number: 789420010
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 3,907 to 24,769 sq. ft., wood frame, 1 story, includes chapel, enlisted dining, enlisted club/warehouse, scheduled to be vacated 9/94.

Medical Clinic
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420011
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 49,182 sq. ft., wood frame, 1 story, scheduled to be vacated 9/94.

2 Storage Facilities
Naval Air Station
Glenview Co: Cook IL 60026-
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number: 789420012
Status: Pryor Amendment
Base closure, Number of Units: 2
Comment: 4,800 & 68,040 sq. ft., steel or masonry frame, 1–2 story, includes public works storage and general warehouse, scheduled to be vacated 9/94.

Indiana

378 Multifamily Housing
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330002
Status: Pryor Amendment
Base closure, Number of Units: 378
Comment: 1,410 to 2,826 sq. ft., 2–4 bedrooms, 1 and 2 unit bldgs., attached garages or carports, scheduled to be vacated 9/30/94.

168 Multifamily Housing
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330003
Status: Pryor Amendment
Base closure, Number of Units: 168
Comment: 1,619 to 3,960 sq. ft., 3–4 bedrooms, 1 and 2 unit bldgs. scheduled to be vacated 9/30/94.

44 Multifamily Housing
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330004
Status: Pryor Amendment
Base closure, Number of Units: 44
Comment: 5,256 to 7,430 sq. ft., 2–4 bedrooms, w/detached carports, 4 and 6 unit bldgs.

10 Dormitories
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330005
Status: Pryor Amendment
Base closure, Number of Units: 10
Comment: 1,984 to 26,739 sq. ft., presence of asbestos, includes dorms, scheduled to be vacated 9/30/94.

6 Temporary Living Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330006
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 1984 sq. ft., includes temporary facilities w/attached carports, scheduled to be vacated 9/30/94.

Bldg. 162
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330007
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 2,160 sq. ft., presence of asbestos, most recent use—reserved forces training, scheduled to be vacated 9/30/94.

11 Administration Buildings
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330008
Status: Pryor Amendment
Base closure, Number of Units: 11
Comment: 1,226 to 55,797 sq. ft., includes law centers/admin., presence of asbestos, 3 near airport clear zone, scheduled to be vacated 9/30/94.

22 Support Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330009
Status: Pryor Amendment
Base closure Number of Units: 22
Comment: 784 to 55,267 sq. ft., presence of asbestos, includes snack bar, library commissary, animal clinic, credit union, base exchange, chapel, scheduled to be vacated 9/30/94.

2 Communication Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330010
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 3,098 to 6,832 sq. ft., presence of asbestos, scheduled to be vacated 9/30/94.

12 Maintenance Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330011
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 323 to 130,492 sq. ft., presence of asbestos, 3 in airport clear zone, incs. sheds, hangars, BE maintenance, covered storage, scheduled to be vacated 9/30/94.

11 Storage Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330012
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 587 to 21,214 sq. ft., presence of asbestos, 2 in airport clear zone, includes warehouses, open storage, scheduled to be vacated 9/30/94.

2 Medical Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330013
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 5,573 to 58,291 sq. ft., presence of asbestos, includes dental clinic, medical clinic, scheduled to be vacated 9/30/94.

5 Recreational Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330014
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: Includes hay barn, bowling, swimming pool, golf clubhouse, and storage, scheduled to be vacated 9/30/94.

Maine

71 Wherry Family Housing
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320033
Status: Pryor Amendment
Base closure Number of Units: 71
Comment: 1,894 to 22,302 sq. ft., 1 & 2 story wood frame residences, scheduled to be vacated 9/30/94.

29 Capehart Family Housing
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320034
Status: Pryor Amendment
Base closure Number of Units: 29
Comment: 7,748 to 7,989 sq. ft., 2 story shingled frame residences, scheduled to be vacated 9/30/94.

26 Family Housing
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320035
Status: Pryor Amendment
Base closure Number of Units: 26
Comment: 1,420 to 10,800 sq. ft., 1, 2 & 3 story, aluminum and wood frame residences, scheduled to be vacated 9/30/94.

3 Officer's Quarters
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320036
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 3,688 to 38,058 sq. ft., 1 & 2 story, aluminum and wood frame, scheduled to be vacated 9/30/94.

117 Housing Garages
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320037
Status: Pryor Amendment

Base closure Number of Units: 117
Comment: Wood/cedar frame, 1 story, various sq. ft., scheduled to be vacated 9/30/94.

12 Storage Bldgs.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320038
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 288 to 3,729 sq. ft., wood frame, 1 story, includes storage & maintenance shops, scheduled to be vacated 9/30/94.

40 Admin/Community Support
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320039
Status: Pryor Amendment
Base closure Number of Units: 40
Comment: 900 to 145,877 sq. ft., 1–3 story, brick, concrete or wood frame, includes chapel, post office, dining hall, child care cntrs., library, theater, pool, sched. to be vacated 9/30/94.

29 Vehicle Maint./Storage
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320040
Status: Pryor Amendment
Base closure Number of Units: 29
Comment: Wood, metal or concrete structures, includes storage facs., vehicle maint., maintenance shops, dry cleaners, auto shop, water supply, scheduled to be vacated 9/30/94.

59 Nose Docks/Hangars
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320041
Status: Pryor Amendment
Base closure Number of Units: 59
Comment: Concrete, metal or brick structures, incs., fuel bldgs., pump stations, vehicle parking, storage sheds & bldgs., security operations, scheduled to be vacated 9/30/94.

22 Flightline Support
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320042
Status: Pryor Amendment
Base closure Number of Units: 22
Comment: Concrete/metal/wood/brick structures, incs., fire stations, correction facility, avionics shop, maint. shops, vehicle parking, utility vault, scheduled to be vacated 9/30/94.

86 Weapons Storage Area
Loring Air Force Base
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320043
Status: Pryor Amendment
Base closure Number of Units: 86
Comment: Concrete/metal/brick structures, incs. inspection bldgs., igloos storage, munitions storage, warehouses, police bldg., storage magazines, scheduled to be vacated 9/30/94.

Bldgs. 1–16, Loring AFB
Family Housing Annex
U.S. Route #1
Caswell Co: Aroostook ME 04750–
Landholding Agency: Air Force-BC
Property Number: 199420001
Status: Pryor Amendment
Base closure Number of Units: 16
Comment: 1,116 sq. ft. each, 1 story frame residence, no utilities, asbestos and radon tests pending, fuel tanks removed, sewage line need repairs.

Michigan

Bldg. 1101, Housing
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240001
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1,073 sq. ft., 1 story wood frame.

300 SF Housing, Manufactured
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240002
Status: Pryor Amendment
Base closure Number of Units: 300
Comment: 1,170 sq. ft. each, 1 story (10000 area).

948 Family Housing, Capehart
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240003
Status: Pryor Amendment
Base closure Number of Units: 948
Comment: 3,502 to 14,363 sq. ft., 1,2,4,6 & 8 unit buildings, (8000 and 9000 area).

100 Family Housing, Appr 50–69
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240004
Status: Pryor Amendment
Base closure Number of Units: 100
Comment: 1,192 to 7,574 sq. ft., 1,2,6 & 7 unit buildings (1700 and 1800 area).

13 Dormitories
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240005
Status: Pryor Amendment
Base closure Number of Units: 13
Comment: 3,025 to 90,501 sq. ft., 1,2,3 & 4 story, single military housing.

4 Recreation Pavilions
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240006
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 668 to 2,398 sq. ft., most recent use—recreational activities.

3 Recreational Facilities
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240007
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 4,317 to 13,162 sq. ft., includes youth center, child care, recreation center.

3 Dining Facilities
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240008
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 13,388 to 15,062 sq. ft., includes open mess.

4 Retail Outlets
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240009
Status: Pryor Amendment
Base closure, Number of Units: 4
Comment: 4,208 to 40,701 sq. ft., includes service outlet exchange, sales store, exchange branch, base package store.

4 Warehouses
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240010
Status: Pryor Amendment
Base closure, Number of Units: 4
Comment: 7,856 to 104,213 sq. ft., includes commissary, supply and equipment base, traffic facility.

4 Storage Facilities
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240011
Status: Pryor Amendment
Base closure, Number of Units: 4
Comment: 384 to 960 sq. ft., needs rehab, includes open mess.

3 Office Trailers
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240012
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 480 to 1,440 sq. ft., includes child care center, admin offices, petroleum ops. bldg.

11 Office Buildings
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240013
Status: Pryor Amendment
Base closure, Number of Units: 11
Comment: 596 to 30,154 sq. ft., includes personnel offices, environmental, headquarters group, maintenance, family housing management office.

6 Maintenance Buildings
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240014
Status: Pryor Amendment
Base closure, Number of Units: 6
Comment: 928 to 26,933 sq. ft., includes vehicle operations, vehicle maintenance shops, arts & crafts center.

Bldg. 440, Theatre
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240015
Status: Pryor Amendment

Base closure, Number of Units: 1
Comment: 5,825 sq. ft., 1 story, masonry and concrete frame.

Bldg. 1135
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240016
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 569 sq. ft., 1 story, most recent use—swimmers bath house.

Bldg. 420
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240017
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 14,522 sq. ft., 1 story, most recent use—bowling alley.

Bldg. 418
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240018
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 8,210 sq. ft., 1 story, concrete frame, most recent use—library.

Bldg. 445
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240019
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 19,977 sq. ft., 1 story concrete/masonry frame, roof leaks, most recent use—chapel.

Bldg. 228
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240020
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 14,946 sq. ft., 1 story, concrete & masonry frame, most recent use—education facility.

Facility 7295
Wurtsmith Air Force Base
Oscoda Co: Iosco MI 48753–
Landholding Agency: Air Force-BC
Property Number: 199240021
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 1,911 sq. ft., 2 story, octagon shaped, corrugated metal frame, most recent use—radar bldg.

Missouri

Facility 918
Richards-Gebaur Air Force Base
15360 Hangar Road
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320022
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 68,767 sq. ft., 1 story concrete block, most recent use—aircraft hangar, scheduled to be vacated 9/30/94.

3 Dormitories
Richards-Gebaur Air Force Base
Elmwood Street
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320023
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 9,722 to 9,739 sq. ft., 2 story wood frame, (Fac. #'s 243, 250, 252), scheduled to be vacated 9/30/94.

Facility 248
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320024
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 25,536 sq. ft., 2 story concrete block/wood frame, most recent use—mess hall, scheduled to be vacated 9/30/94.

11 Offices
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320026
Status: Pryor Amendment
Base closure, Number of Units: 11
Comment: 856 to 67,816 sq. ft., 1 & 2 story, wood, concrete block, prefab steel or corrugated metal, incs. ofc clinics, base exchange, ofcs., ofc maint shop, sched to be vacated 9/30/94.

2 Recreation Facilities
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320027
Status: Pryor Amendment
Base closure, Number of Units: 2
Comment: 1,083 & 1,624 sq. ft., 1 story wood/steel frames, incs: pool bath house, base park shelter house, scheduled to be vacated 9/30/94.

Facility 1049
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320028
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 611 sq. ft., 1 story concrete block. most recent use—office/storage/small arms range, scheduled to be vacated 9/30/94.

Facility 924
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number 199320029
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 569 sq. ft., 1 story wood frame, most recent use—grounds shop, scheduled to be vacated 9/30/94.

3 Community Support Facilities
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320030
Status: Pryor Amendment
Base closure, Number of Units: 3
Comment: 308 to 10,417 sq. ft., wood & concrete block, incs. fire station, communications support, control tower (7 story), scheduled to be vacated 9/30/94.

10 Maintenance Shops/Hangars
Richards-Gebaur Air Force Base
Kansas City Co: Jackson, MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320031
Status: Pryor Amendment
Base closure, Number of Units: 10
Comment: 1,812 to 23,404 sq. ft., 1 story corrugated metal or concrete block, scheduled to be vacated 9/30/94.

28 Storage Facilities
Richards-Gebaur Air Force Base
Kansas City Co: Jackson MO 64147–
Landholding Agency: Air Force-BC
Property Number: 199320032
Status: Pryor Amendment
Base closure, Number of Units: 28
Comment: 141 to 97,400 sq. ft., wood, concrete block or steel beams, incs. covered open storage, ofc./storage and sheds, scheduled to be vacated 9/30/94

New York

316 Military Family Housing
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420023
Status: Pryor Amendment
Base closure Number of Units: 316
Comment: Various sq. ft. per unit, 2–4 bedrooms, wood frame, single to six-plex bldgs., pres. of asbestos, includes 2 detached garages, scheduled to be vacated 9/30/95.

4 Temporary Lodging Facilities
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency. Air Force-BC
Property Number: 199420024
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 400–5,611 sq. ft., wood frame, pres. of asbestos, includes temporary lodging & support bldgs., scheduled to be vacated 9/30/95.

28 Administrative Building
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420025
Status: Pryor Amendment
Base closure Number of Units: 28
Comment: Various sq. ft., concrete, brick, wood, or metal bldgs., 1–2 story, pres. of asbestos, incs. credit union, offices, law & ed. center, police ops., sched. to be vacated 9/30/95.

11 Dorm/Officer Quarters
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420026
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 6,136–81,144 sq. ft., brick, wood or metal frame, 1–3 story, includes dorms, officer quarters, correctional custody, scheduled to be vacated 9/30/95.

2 Medical Facilities
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420028
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 3,700–102,800 sq. ft., concrete frame, 1 & 3 story, includes ambulance

shelter and comp. medical facility, scheduled to be vacated 9/30/95.

15 Recreational Buildings
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420029
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 785–25,858 sq. ft., concrete, metal brick or wood frame, 1–2 story, incs. bowling alley, theater, gym, swimming pool, pavilion, recreation center, sched. to be vacated 9/30/95.

Steam Plant
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420031
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: Seven bldgs., 544–40,347 sq. ft., concrete or metal frame, 1–2 story, includes heating facilities, scheduled to be vacated 9/30/95.

40 Shop Facilities
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420032
Status: Pryor Amendment
Base closure Number of Units: 40
Comment: Various sq. ft., concrete or metal frame, 1–2 story, presence of asbestos, incs. civil engineering, storage, parking sheds, vehicle maint., sched. to be vacated 9/30/95.

41 Warehouses/Storage
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420033
Status: Pryor Amendment
Base closure Number of Units: 41
Comment: 168–211,236 sq. ft., concrete, metal & brick frame, 1–3 story, pres. of asbestos, incs. hazardous storage, igloo storages, hsg. maint., commissary sched to be vacated 9/95.

3 Hangars
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420034
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 19,200–178,196 sq. ft., concrete/metal frame, 1–2 story, pres. of asbestos, incs. maintenance hangars, scheduled to be vacated 9/30/95.

Ohio

2 Military Housing
Gentile Air Force Station
Kettering Co: Montgomery OH 45444–
Landholding Agency: Air Force-BC
Property Number: 199420002
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1318 & 3651 sq. ft., includes commander's residence and visitors quarters, scheduled to be vacated 12/96.

11 Office Buildings
Gentile Air Force Station
Kettering Co: Montgomery OH 45444–
Landholding Agency: Air Force-BC
Property Number: 199420003
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 930–240,385 sq. ft., includes admin., dispensary, child care center, cafeteria, logisticla fac., engineering ofc., scheduled to be vacated 12/96.

4 Support Service Facilities
Gentile Air Force Station
Kettering Co: Montgomery OH 45444–
Landholding Agency: Air Force-BC
Property Number: 199420005
Status: Pryor Amendment
Base Closure Number of Units: 4
Comment: 3,710–11,860 sq. ft., includes fire station, power station, heating facility, grounds storage, scheduled to be vacated 12/96.

3 Commercial Facilities
Gentile Air Force Station
Kettering Co: Montgomery OH 45444–
Landholding Agency: Air Force-BC
Property Number: 199420006
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 3,000–201,060 sq. ft., includes exchange store/barber shop, storage, bath house/thrift shop, scheduled to be vacated 12/96.

11 Warehouses
Gentile Air Force Station
Kettering Co: Montgomery OH 45444–
Landholding Agency: Air Force-BC
Property Number: 199420007
Status: Pryor Amendment
Base Closure Number of Units: 11
Comment: 2,819–196,563 sq. ft., includes carpenter shop, typewriter maintenance shop, grounds storage, paper recycling, multi-purpose blds. scheduled to be vacated 12/96.

South Carolina

448 Buildings/800 Units
Military Family Housing
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210001
Status: Pryor Amendment
Base closure Number of Units: 800
Comment: 2–4 bedrooms single family dwellings and duplexes with attached carports.

13 Dormitories/Quarters
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210002
Status: Pryor Amendment
Base closure Number of Units: 13
Comment: 2 to 3 story masonry and block structures.

12 Miscellaneous Buildings
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210003
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 1 to 2 story structures including a chapel, theater, child care centers, retail sales stores and dining hall, (recreation center leased to community).

Medical Sup. Bldg.
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210004
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 3-story hospital and six 1-story medical support buildings.

44 Administrative Type Bldgs
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210005
Status: Pryor Amendment
Base closure Number of Units: 44
Comment: 1 to 2 story modular, block, wood and brick structures.

12 Recreation Buildings
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210006
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 1-story recreation buildings including bath houses, bowling center, gymnasium (golf course bldgs. are leased to local community).

36 Utility Type Buildings
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210009
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 1-story structures including warehouses, shops and sheds.

3 Security Police Buildings
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210010
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 1-story masonry structures including a jail.

11 Ammunition Storage Bldgs.
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210011
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 1-story concrete and masonry storage structures.

Land (by State)

Arizona

14 Recreation Facilities
Williams Air Force Base
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force-BC
Property Number: 199210101
Status: Pryor Amendment
Base closure, Number of Unites: 14
Comment: Baseball, softball and soccer fields, tennis courts, track, golf course and driving range, and a camp.

California

Land
March Air Force Base
Riverside Co: Riverside CA 92518–1728
Landholding Agency: Air Force-BC
Property Number 199420022

Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 2,000 acres, includes golf course and recreational land, scheduled to be vacated 3/96.

Florida

Land
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number 199340001
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 1,150 acres, part of 2.940 entire installation. Some acreage is vacant, some is improved w/structures. Facs. damaged may be demolished by AF. Govt may use some of underlying land.

Land—underlying housing
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number 199340009
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 428 acres—housing on land scheduled for demolition.

Illinois

120 Acres
Naval Air Station
Glenview Co: Cook IL 60026–
Location: Lehigh Avenue. East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number 789420001
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: Golf course, scheduled to be vacated 9/94.

720 Acres
Naval Air Station
Glenview Co: Cook IL 60026–
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number 789420002
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: Open land/runways, scheduled to be vacated 9/94.

86.54 Acres
Naval Air Station
Glenview Co: Cook IL 60026–
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number 789420003
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: Great Lakes housing area (approx. 15–20 acres vacant), scheduled to be vacated 9/94.

159.95 Acres
Naval Air Station
Glenview Co: Cook IL 60026–
Location: Lehigh Avenue, East; Shermer Road & CNW Railroad, West; East Lake Avenue, South
Landholding Agency: Navy Base Close
Property Number 789420004
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: Buildings/operations area, scheduled to be vacated 9/94.

Indiana

Land
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number 199330001
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 13 parcels totalling 839 acres, easement restrictions.

18 Recreational Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number 199330015
Status: Pryor Amendment
Base closure, Number of Units: 18
Comment: Includes softball/baseball fields, tennis courts, recreation courts, golf course and range.

Maine

Land—On Base
Loring Air Force Base
Limestone Co: Aroostook ME 04750–
Landholding Agency: Air Force-BC
Property Number 199320045
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 5.233 acres of which 3.583 is unimproved, improved land includes aprons, roads, runways, parking, etc.

Land—Off Base
Loring Air Force Base
Limestone Co: Aroostook ME 04750–
Landholding Agency: Air Force-BC
Property Number 199320046
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 4,517 acres of which 4.047 is unimproved, improved land includes roads, runways, parking, etc.

New York

Recreational Land
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420030
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: Various acreage, includes recreational facilities, baseball, football, & track fields, tennis courts, scheduled to be vacated 9/30/95.

Ohio

8 Recreational Facilities
Gentile Air Force Station
Kettering Co: Montgomery OH 45444–
Landholding Agency: Air Force-BC
Property Number: 199420004
Status: Pryor Amendment
Base closure, Number of Units: 8
Comment: Two bldgs. & land areas; includes NCO Club, officer's open mess, basketball/tennis courts, softball field, pool, golf green, scheduled to be vacated 12/96.

South Carolina

Recreational Areas
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210007
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: Approx. 65 acres including 3 soccer fields, 6 tennis courts, 3 softball fields, 4 youth ball fields, track, campground.

Golf Course
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210008
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 224 acre golf course.

Land
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force Force-BC
Property Number: 199210014
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 1,179 acres, includes improvements, mobile home park, airfield & aviation support area. 1,555 remaining acres is part of a land exchange to the State of South Carolina.

Forest
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210015
Status: Pryor Amendment
Base closure, Number of Units: 1
Comment: 1,678 acres.

Unsuitable Properties

Buildings (by State)

Florida

1600 Family Housing Units
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199340002
Status: Pryor Amendment
Base closure, Number of Units: 1,600
Reason: Extensive deterioration.

Indiana

6 Operations Facilities
Grissom Air Force Base
Grissom Co: Miami IN 46971–5000
Landholding Agency: Air Force-BC
Property Number: 199330016
Status: Pryor Amendment
Base closure, Number of Units: 6
Reason: Within airport runway clear zone.

Maine

7 Water/Waste Facilities
Loring Air Force
Caribou Co: Aroostook ME 04736–
Landholding Agency: Air Force-BC
Property Number: 199320044
Status: Pryor Amendment
Base closure, Number of Units: 7
Reason: Other
Comment: Waste/water treatment bldgs.

New York

Bldg. 923
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420027

Status: Pryor Amendment
Base closure, Number of Units: 1
Reason: Extensive deterioration.

Bldg. 308—Admin Area
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420035
Status: Pryor Amendment
Base closure, Number of Units: 1
Reason: Extensive deterioration.

Bldg. 2633—Housing Area
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force-BC
Property Number: 199420036
Status: Pryor Amendment
Base closure, Number of Units: 1
Reason: Extensive deterioration

South Carolina

Bldg. 544, Small Arms Bldg.
Myrtle Beach Air Force Base
Myrtle Beach Co: Horry SC 29579–5000
Landholding Agency: Air Force-BC
Property Number: 199210016
Status: Pryor Amendment
Base closure, Number of Units: 1
Reason: Extensive deterioration.

Land (by State)

Florida

Airfield/Support Land
Homestead Air Force Base
Miami Co: Dade FL 33218–0001
Landholding Agency: Air Force-BC
Property Number: 199420037
Status: Pryor Amendment
Base closure, Number of Units: 1
Reason: Within airport runway clear zone.

[FR Doc. 94–10741 Filed 5–5–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: The Peregrine Fund, Inc., Boise, Idaho. The applicant wishes to establish a cooperative breeding program for the Harpy eagle (*Harpia harpyja*). The applicant wishes to be an active participant in this program and, has assumed responsibility for the oversight of this consortium that includes the Fort Worth Zoo, the Los Angeles Zoological Society, the Oklahoma Zoo and, the San Diego Zoological Society.

Applicant: William A. McClure, Pinellas Park, Florida. The applicant wishes to establish a cooperative breeding program for the Yellow Crowned Amazon Parrot (*Amazona ochrocephala xantholaema*). The applicant wishes to be an active participant in this program with two other private individuals. The Sun Coast Avian Society, Inc. has assumed responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2280).

Dated: May 2, 1994.

Susan Lieberman,

Acting Chief, Branch of Operations Office of Management Authority.

[FR Doc. 94–10924 Filed 5–5–94; 8:45 am]
BILLING CODE 4310–55–P

National Park Service

Marsh-Billings National Historical Park, Woodstock, VT; Intent To Prepare an Environmental Impact Statement and Notice of Public Scoping Period

In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 section 102(2)(c)), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the Marsh-Billings National Historical Park (Marsh-Billings NHP), located in Woodstock, Vermont. The purpose of the EIS is to assess the impacts of alternative management strategies which will be described in the General Management Plan for Marsh-Billings NHP. A range of alternatives will be formulated for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold a series of community meetings throughout the spring of 1994, which will serve as public scoping for the GMP/EIS. The meetings, which will be announced through various local media will be held at various locations throughout the community. Additionally, the NPS will issue a community survey in May 1994. The purpose of these meetings and the survey is to obtain both written and verbal comments concerning the future development of Marsh-Billings NHP. Those persons who wish to comment verbally or in writing, who wish to participate in a small group meeting, or to complete a questionnaire should contact Marjorie Smith, Planning Team Captain, North Atlantic Region, National Park Service, 15 State Street, Boston, Massachusetts 02109–3572, or telephone (617) 223–5133.

The draft GMP/EIS is expected to be completed and available for public review in 1995. After public and interagency review of the draft document, comments will be considered, and a final EIS and Record of Decision will be prepared.

The responsible official is Marie Rust, Regional Director, North Atlantic Region, National Park Service, 15 State Street, Boston, MA 02109–3572.

Dated: April 29, 1994.

John C. Reed,

Deputy Regional Director.

[FR Doc. 94–10879 Filed 5–5–94; 8:45 am]
BILLING CODE 4310–70–P

Weir Farm National Historic Site, Wilton and Ridgefield, CT; Draft General Management Plan/Environmental Impact Statement; Availability and Public Comment Period

In accordance with the National Environmental Policy Act (Pub. L. 91–190) the National Park Service (NPS) announces that the Weir Farm National Historic Site Draft General Management Plan and Environmental Impact Statement will be available for public review and comment from May 16 to July 18, 1994.

The draft document presents three alternatives for managing the site and addressing planning issues, including resource preservation and provision of visitor services. Once approved, the final plan will guide the management of the site for fifteen to twenty years.

During the sixty-day comment period, interested persons may review the document and provide written comments to the Superintendent, Weir Farm National Historic Site, 735 Nod Hill Road, Wilton, CT 06897.

The NPS will distribute a summary of the draft plan to the site's mailing list, interested individuals and institutions. The NPS will then distribute a complete version of the draft to federal, state, regional, and local agencies. Both versions will be available at local libraries and at Weir Farm National Historic site. The NPS will hold public meeting(s) during the sixty-day period and will advertise the meeting(s) in local media outlets.

Queries and requests for copies of the complete draft or of the summary of the draft should be directed to Weir Farm National Historic Site at (203) 834–1896.

Dated: April 29, 1994

John C. Reed,

Deputy Regional Director.

[FR Doc. 94–10880 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–70–P

Cap Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, May 20, 1994.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of section 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Park Headquarters, Marconi Station for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Reports of Officers
4. Old Business
5. Superintendent's Report
6. GMP subcommittee recommendations
7. Dune shack leasing
8. Transportation
9. New Business
10. Agenda for next meeting
11. Date for next meeting
12. Communications/Public Comment
13. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: April 29, 1994.

John C. Reed,

Deputy Regional Director.

[FR Doc. 94–10881 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–70–M

Gates of Arctic National Park Subsistence Resource Commission; Meeting

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and the Chairpersonof the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.
(2) Roll call.
(3) Approval of summary of minutes.
(4) Review agenda.
(5) Superintendent's introductions and review of SRC function and purpose.
(6) Superintendent's Management Reports.
(7) Public and other agency comments.
(8) Old business:
  (a) Review Resource Management Plan.
  (b) Review letter on Federal Region 10 boundary.
(9) Set time and date of next meeting
(10) Adjournment.

DATES: The meeting will be held on Tuesday and Wednesday, May 10 and 11, 1994. The meeting will begin at 8:30 a.m. and conclude around 5 p.m. each day.

LOCATION: The meeting will be held at Sophie's Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, PO Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of of the Federal Advisory Committees Act.

Paul R. Anderson,

Deputy Regional Director.

[FR Doc. 94–10875 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 1:30 p.m. (PDT) on Saturday, May 14, 1994, at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California to hear presentations on issues related to management of the Point Reyes National Seashore and adjoining Golden Gate National Recreation lands.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Included on the agenda for this public meeting will be:

1. Point Reyes issues.
   A. National Parks Week (May 15–21).
   B. International Migratory Bird Day.
   C. Report on Range Conditions.
   D. Report on Proposed Environmental Education Center Annex and the Completion of Bull Point and Estero Trailheads.
   E. Report on Preliminary Plan for Revamping Bear Valley Trailhead Parking Area and Replacing South Beach Restroom.
2. GGNRA issues: Presentation of Staff Report on Giacomini Wetlands Restoration Feasibility Study.

Public officials are invited to express their views in person at the May 14 public meeting. This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript for this meeting will be available after June 3, 1994. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: April 28, 1994.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 94–10876 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–70–P

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 sec. 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, May 26, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m. at the Great Meadows National Wildlife Refuge Headquarters (GMNWR), in Sudbury, MA. Driving directions are as follows: From south—take Rte. 27 to Water Row in Sudbury, turn right at end on to Lincoln Road, left on Weir Hill Road, follow signs to GMNWR Headquarters. From north—from Concord Road, turn left on Lincoln Road in Sudbury, left on Weir Hill Road, follow signs for GMNWR Headquarters. Or, take Rte. 126 north or south to Sherman's Bridge Road, cross Sudbury River, turn right on Weir Hill Rd.

The agenda for the meeting will be:

I. Welcome and introductions, approval of minutes from 3/24/94 meeting.
II. Brief questions and comments from public.
III. Brief Water Resources and Public Participation Subcommittee Reports.
  A. Water Resources Subcommittee: Water Resources Study.
  B. Public Participation Subcommittee; June Event.
IV. Issues of Local Concern.
V. Opportunity for public questions and comments.
VI. Other Business.
  A. Next meeting dates and locations.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: April 29, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–10882 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through December 31, 1994, and contract actions that have been completed or discontinued since the last publication of this notice on January 21, 1994. From the date of this publication, future quarterly notices will be limited to modified, new, completed or discontinued contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means being used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by the Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. These public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Christopher L. Kenney, Acting Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240; telephone 202–208–3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process in 1994. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made

available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate Reclamation officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP)	Boulder Canyon Project
(CAP)	Central Arizona Project
(CUP)	Central Utah Project
(CVP)	Central Valley Project
(CRSP)	Colorado River Storage Project
(D&MC)	Drainage and Minor Construction
(FR)	Federal Register
(IDD)	Irrigation and Drainage District
(ID)	Irrigation District
(M&I)	Municipal and Industrial
(O&M)	Operation and Maintenance
(P–SMBP)	Pick-Sloan Missouri Basin Program
(Pub. L.)	Public Law
(R&B)	Rehabilitation and Betterment
(SRPA)	Small Reclamation Projects Act
(WCUA)	Water Conservation and Utilization Act
(WD)	Water District

PACIFIC NORTHWEST REGION: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5342.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.

2. Irrigation, M&I, and Miscellaneous Water Users; Columbia Basin, Crooked River, Minidoka, Rathdrum Prairie, Rogue River Basin, and Umatilla Projects; Idaho, Montana, Oregon, and Washington: Temporary or interim repayment and water service contracts for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin Water Users, Rogue River Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for the term of the contract.

4. Willamette basin Water Users, Willamette Basin Project, Oregon: Water service contracts.

5. American Falls Reservoir District Number 2, Burgess Canal Company, Clark and Edwards Canal and Irrigation Company, Craig-Mattson Canal Company, Danskin Ditch Company, Enterprise Canal Company, Ltd., Farmers Friend Irrigation Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Long Island Irrigation Company, Parks and Lewisville Irrigation Company, Ltd., Parson Ditch Company, Peoples Canal and Irrigation Company, Poplar ID, Rigby Canal and Irrigation Company, Rudy Irrigation Canal Company, Ltd., Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for the term of the contract.

7. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for the term of the contract.

8. Willow Creek Water Users, Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

9. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

10. Hermiston ID, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Cold Springs Dam.

11. Ochoco ID and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman and Ochoco Dams.

12. The Dalles ID, The Dalles Project, Oregon: SRPA loan repayment contract; proposed loan obligation of approximately $2,000,000.

13. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

14. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet of water.

15. Douglas County, Milltown Hill Project, Oregon: SRPA loan repayment contract; proposed loan obligation of approximately $24.5 million and grant of approximately $5.8 million.

16. Mitigation, Inc., Palisades/Ririe Projects, Idaho: Contract for storage space in Palisades and Ririe Reservoirs (18,980 and 80,500 acre-feet, respectively) pursuant to section 5(a) of the Fort Hall Indian Water Rights Act of 1990.

17. U.S. Fish and Wildlife Service, Boise Project, Idaho: Irrigation water service contract for the use of approximately 200 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used on crops for wildlife mitigation purposes.

18. City of Madras, Deschutes Project, Oregon: Renewal or replacement of municipal water service contract for approximately 125 acre-feet annually from the project water supply.

19. Willamette Basin water users, Willamette Basin Project, Oregon: Add language to water service contract to provide for periodic reviews, with adjustments if necessary to mitigate for impacts to natural resources.

20. Willamette Basin water users, Willamette Basin Project, Oregon: Two water service contracts for the exchange of up to 225 acre-feet of water for diversion above project reservoirs.

21. Lewiston Orchards ID, Lewiston Orchards Project, Idaho: Repayment contract for reimbursable cost of dam safety repairs to Reservoir "A."

22. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam.

No contract actions have been completed or discontinued in the Pacific Northwest Region since this notice was last published on January 21, 1994.

MID-PACIFIC REGION: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Tuolumne Utility District (formerly Tuolumne Regional WD), CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

2. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note.* Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

3. Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing long-term water service contracts with contractors whose contracts expire in December 1994 and 1995; water quantities in existing contracts range from 400 to 175,440 acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Pub. L. 102–575.

4. Contra Costa WD, CVP, California: Amendatory water service contract to add the operation of the Los Vaqueros Project, including an additional point of delivery; the amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy, and Pub. L. 102–575.

5. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Pub. L. 100–516 or prepaying the loan at a discounted rate pursuant to Pub. L. 102–575.

6. Truckee Carson ID, Newlands Project, Nevada: New repayment contract for the unpaid construction cost repayment obligation from the original contract which was terminated on August 17, 1983, by the U.S. district Court in Nevada.

7. San Louis WD, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

8. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add a point of diversion at the turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area. This amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy, and Pub. L. 102–575.

9. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet; Stony Creek Watershed above Black Butte Dam.

10. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet, above Black Butte Dam.

11. San Luis WD, CVP, California: Amendment to Contract No. 14–06–200–7773A to include assigned lands and allocated share of CVP water supply to San Luis WD from Romero WD.

12. Romero WD, CVP, California: Amendment to Contract No. 14–06–200–7758 to assign lands and allocated share of CVP water supply to San Luis WD.

13. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

14. Sierra Pacific Power Company, Pyramid Lake Tribe, Washoe County Water Conservation District; Washoe and Truckee-Storage Projects; Nevada and California: Interim storage contract, authorized under Pub. L. 101–618, and the provision of the Warren Act as supplemented by the Reclamation States Emergency Drought Act to convey and/or store non-project water in Stampede Reservoir and in Boca Reservoir.

15. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service Agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

16. Del Puerto WD, CVP, California: Amend water service Contract No. 14–06–200–922 to include M&I use.

17. El Dorado County Water Agency, San Juan Suburban WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan Suburban WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Pub. L. 101–514.

18. Non-Federal entity, CVP, California: Cost-sharing agreement with a yet to be determined non-Federal entity for the Folsom Dam and Reservoir reoperation.

19. Central Coast Water Authority, Cachuma Project, California: Long-term Warren Act contract for use of Cachuma Project facilities when excess capacity exists. Approximately 13,750 acre-feet of water per year from the California State Water Project will be made available under a Warren Act contract to users along the South Coast of California.

20. California Department of Fish and Game, CVP, California: Renewal of existing long-term agreement for furnishing water for fish hatchery purposes.

21. Widren WD, CVP, California: Amend water service Contract No. 14–06–200–8018 to include M&I use, conform to Pub. L. 102–575 and assign water supply to City of Tracy.

22. Gateway WD, CVP, California: Combine by assignment twelve Delta-Mendota Canal water service contracts into 1-entity to be renamed Gateway WD for administrative and operation purposes.

23. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD; CVP; California: Water service contracts to provide Level II water supplies for refuges within the CVP pursuant to Pub. L. 102–575; exchange agreements and wheeling contracts to deliver some of the increased refuge water supplies; quantity to be contracted for is approximately 450,000 acre-feet.

24. Monterey County Water Resources Agency, Castroville Irrigation Water Supply Project, SRPA, California: Loan repayment contract in the amount of $32,600,000 to construct an irrigation distribution system to reduce sea water intrusion in the ground water aquifers.

25. Monterey Regional Water Pollution Control Agency, Water Reclamation Facility for Crop Irrigation Project, SRPA, California: Loan repayment contract in the amount of $20,544,400 to reduce sea water intrusion in the ground water aquifers.

26. State of California, CVP, California: Cost sharing agreement with State of California pursuant to CVP Improvement Act (Pub. L. 102–575). The cost sharing agreement with the State will provide for the general principles and administration of cost sharing for and implementation of specific restoration actions identified in Pub. L. 102–575.

27. Santa Barbara County Water Agency, Cachuma Project, California: Renewal of existing long-term water service contract which expires May 14, 1995; water quantity in existing contract 32,000 acre-feet.

28. United Water Conservation District, SRPA, California: District can prepay the loan at a discounted rate pursuant to Pub. L. 102–575.

29. San Juan Suburban WD and the Place County Water Agency, CVP, California: Renewal of existing long-term wheeling contract allowing the Agency to use CVP facilities to deliver its water to the District for use on District land within Placer County.

30. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Pub. L. 102–575.

The following contract actions have been completed or discontinued in the Mid-Pacific Region since this notice was last published on January 21, 1994:

1. Proposed Action: Madera Irrigation District (ID), Hidden Division, Central Valley (CVP), California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1994. This contract action will be accomplished through interim contracts pursuant to Pub. L. 102–575. ACTION: Interim contract executed on February 28, 1994, Contract No. 14–06–200–4020IR. Long-term contract remains to be completed.

2. Proposed Action: Chowchilla Water District, Buchanan Division, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1994. This contract action will be accomplished through interim contracts to Pub. L. 102–575. ACTION: Interim contract executed on February 28, 1994, Contract No. 14–06–200–3844IR. Long-term contract remains to be completed.

3. Proposed Action: U.S. Department of Veterans Affairs, CVP, California: Long-term contract, for M&I water purposes in support of the new San Joaquin Valley National Cemetery near Santa Nella, California. ACTION: Contract executed January 1, 1993, Contract No. 3–07–20–W1124.

4. Proposed Action: IDs and similar water user entities, CVP, California: Amendatory water service contracts; to change the definition of "year" to conform to the standard CVP water year of March 1 through the end of February. ACTION: All applicable contracts have been amended.

5. Proposed Action: Pershing County Water Conservation District, Humboldt Project, Nevada: Safety of Dams Repayment contract for modification of Rye Patch Dam; reimbursable obligation of the District approximately $1,050,000. ACTION: District not interested in modification to dam as it is presently envisioned.

6. Proposed Action: Shasta Dam Area Public Utility District, CVP, California: Renewal of existing temporary contract which expires February 28, 1994; water quantity in contract is 2,750 acre-feet. This contract action will be accomplished through interim contracts pursuant to Pub. L. 102–575. ACTION: Contract executed March 1, 1994, Contract No. 4–07–20–W1134. Contractor also changed name to the City of Shasta Lake.

LOWER COLORADO REGION: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

2. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Stephen Sturges, Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 15,557 acre-feet per year total.

3. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land. This contract action reflects an increase in a prior contract recommendation in the amount of 6,292 acre-feet per year.

4. Armon Curtis, Arlin Dulin, Jacy Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts; purpose is to amend their contracts to exempt them from the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

6. Cibola Valley IDD, BCP, Arizona: Cibola Valley IDD is looking at the possibility of transferring, leasing, selling, or banking its entitlement of 22,560 acre-feet, for use in Arizona, California, and Nevada.

7. Ft. Yuma Indian Reservation (Quechan Indian Reservation), Yuma Project, Arizona and California: Surplus water contract to receive Colorado River water in the States of Arizona and California. The contract may include surplus and unused apportionment entitlements (51,616 acre-feet or 7,743 acres, whichever is less) and wheeling arrangements with Bard ID.

8. Imperial ID, Lower Colorado Water Supply Project, California: Contract providing for administration, operation, maintenance, and replacement of the project well field.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

10. County of San Bernardino, San Sevaine Creek Water Project, SRPA, California: Project and loan repayment contracts are under reformulation.

11. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

12. Bullhead City, Consolidated Water Co., Lake Havasu City, Havasu Water Co., Quartzsite, McAllister Subdivision, City of Parker, Marble Canyon, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 15,146 acre-feet per year as recommended by the Arizona Department of Water Resources.

13. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment present perfected right of 500 acre-feet of diversions annually, and the National Park Service's Federal Establishment perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

14. Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

15. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water

Rights Settlement Act, dated November 17, 1988.

16. Elsinore Valley Municipal WD, Temescal Valley Project, SRPA, California: Repayment contract for a $22.3 million loan.

17. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service areas, diversion points, and RRA exemption.

18. Miscellaneous present perfected rights entitlement holders, BCP, Arizona and California: Contracts for entitlements of Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the BCP. Miscellaneous present perfected rights holders are listed in the *Arizona* v. *California* settlement.

19. Federal Establishment present perfected rights entitlement holders: Individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

20. Yuma County Water Users' Association, Yuma Project, Arizona: Contract to enable the Association to administer non-irrigation water within its service area.

21. City of Yuma, BCP, Arizona: Amendment to Contract No. 14–067–W–106 for additional points of diversion.

22. Imperial ID and The Metropolitan WD of Southern California, BCP, California: Temporary contract to store approximately 200,000 acre-feet of water that is expected to be saved over a 2-year period under a test water savings program that involves land fallowing and a modified irrigation plan for alfalfa.

23. Crystal Beach Water Conservation District, BCP, Arizona: Contract for delivery of 132 acre-feet per year of Colorado River water for domestic use, as recommended by the Arizona Department of Water Resources.

24. Robert B. Griffith Water Project, BCP, Nevada: Revision of water delivery contract to amend points of diversion.

25. Southern Nevada Water Authority, BCP, Nevada: Assignment or transfer of 14,550 acre-feet of Basic Management, Inc.'s water entitlement to the Southern Nevada Water Authority as a result of Basic Management, Inc.'s water conservation efforts.

26. Santa Ana Watershed Project Authority, SRPA, California: Chino Basin Desalination Program, environmental cleanup to remove salt from ground water, $32 million project.

27. Gila River Indian Community/Gila River Farms, CAP, Arizona: Repayment/deferment/O&M contract for distribution system not to exceed $4 million. Execution of this contract facilitates construction under Pub. L. 93–638 funding and work performance contract.

28. Gila River Farms, SRPA, Arizona: Amendatory contract to reschedule payments due in 1991, 1992 and subsequent years in line with payment capacity.

29. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for agricultural use, of Arizona's Colorado River water that is not used by higher priority Arizona entitlement holders.

30. Curtis Family Trust et al., BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for agricultural water.

31. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for agricultural use.

32. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

33. Central Arizona Water Conservation District, CAP, Arizona: Amendment of the contract between the United States and Central Arizona Water Conservation District for the delivery of water and repayment of costs of the CAP (Master Repayment Contract) to increase the repayment ceiling set forth in subarticle 9.3(e) from $2.0 billion to $2.3 billion.

34. Mohave County, BCP, Arizona: Assignment, transfer, or reallocation of 18,500 acre-feet of water from the City of Kingman to a new water authority being formed to serve Mohave County.

35. Yuma Mesa Irrigation and Drainage District, Gila Project, Arizona: Amendment to provide for increase in domestic water allocation (from 10,000 to 20,000 acre-feet) within its overall use in the district.

The following contract actions have been completed or discontinued in the Lower Colorado Region since this notice was last published on January 21, 1994:

1. Proposed Action: Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona. ACTION: Sale will be coordinated by the Bureau of Reclamation's Native American Affairs Division in Phoenix, Arizona.

2. Proposed Action: Town of Payson, Central Arizona Project (CAP), Arizona: Assignment of Payson's CAP water entitlement of 4,995 acre-feet per year to the City of Scottsdale. ACTION: Contract assigned March 23, 1994, No Assignment Number.

UPPER COLORADO REGION: Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801–524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract: 20 acre-feet per year for municipal use.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Vermejo Conservancy District, Vermejo Project, New Mexico: Amend contract pursuant to Pub. L. 96–550 to relieve the district of the requirement to make annual payments until the Secretary of the Interior determines that further payments are feasible; the current obligation exceeds $2 million.

7. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 2,00 acre-feet of project water for irrigation purposes.

8. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City to 3,000 acres; extend terms of water rights authority of the Public Service Board.

9. Mancos Water Conservancy District, Mancos Project, Colorado: Amendatory contract to remove contract restrictions that prevent the Mancos project.

10. The National Park Service, Bureau of Land Management, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for between 180,000 to 740,000 acre-feet of project water to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

11. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for 500 acre-feet for 1-year for municipal and domestic use.

12. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

13. Collbran Conservancy District, Collbran Project, Colorado: Amendatory contract defining priority of use of project water.

14. U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers; water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually; contract will define the terms and conditions associated with delivery of this water.

15. Rio Grande Water Conservation District, Closed Basin Division, San Luis Valley Project, Colorado: Water service contract for furnishing priority 4 water to third parties; contract will allow District to market priority water, when available, for agricultural, municipal and/or industrial use.

16. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

17. Central Utah Water Conservancy District, Provo River Water Users Association, CUP, Utah: Operating agreement for the Jordanelle Reservoir and the Deer Creek Reservoir pursuant to Section 209 of Pub. L. 102–575.

The following contract actions have been completed or discontinued in the Upper Colorado Region since this notice was last published on January 21, 1994.

1. Proposed Action: Emery Water Conservancy District, Emery County Project, Utah: Repayment contract for installation of early warning system for Joe's Valley Dam pursuant to safety of dams legislation. Action: Contract executed January 4, 1994, Contract No. 94–07–40–R1630.

GREAT PLAINS REGION: Bureau of Reclamation, P.O. Box 36900, Federal Building 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Individual irrigators, M&I, and miscellaneous water users; Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for the conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation, municipal, and industrial purposes; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Repayment contracts; second round contract negotiations for municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir pending completion of NEPA review.

5. Cedar Bluff ID No. 6 Cedar Bluff Unit, P–SMBP, Kansas: In accordance with Section 901 of Pub. L. 102–575, 106 Stat. 4600, terminate the Cedar Bluff Irrigation District's repayment contract and transfer use of the District's portion of the reservoir storage capacity to the State of Kansas for fish, wildlife, recreation, and other purposes.

6. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

7. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

8. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

9. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs of the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

10. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

11. Midvale ID, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

12. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Contingent upon passage of authorizing legislation, negotiate amendatory contract to increase irrigable acreage within the project.

13. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Pub. L. 101–628 for the Lake Meredith National Recreation Area.

14. Lakeview ID, Shoshone Project, Wyoming: new long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

15. Hidalgo County ID No. 6, Texas: SRPA contract for a 20-year loan for up to $5,712,900 to rehabilitate the District's irrigation facilities.

16. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

17. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

18. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

19. North Platte Projects and Glendo Unit, P–SMBP, Wyoming and Nebraska contractors: Repayment contracts under the safety of dam programs for the modification of Pathfinder, Guernsey, and Glendo Dams.

20. State of Colorado, Armel Unit, P–SMBP, Colorado: Repayment contract under the safety of dams program for the modification of Bonny Dam.

21. Ainsworth ID, Almena ID, Bostwick ID, Frenchman-Cambridge ID, Frenchman Valley ID, Kansas-Bostwick ID, Kirwin ID, Loup Basin Reclamation District, Webster ID; P–SMBP; Kansas and Nebraska: Renewal of existing water service and repayment contracts for irrigation water supplies, pending completion of NEPA review.

22. Mountain Park Master Conservancy District, Mountain Park

Project, Oklahoma: In accordance with Section 3102 of Pub. L. 102–575, 106 Stat. 4600, amend the District's contract to either reflect a discounted prepayment of the City of Fredrick's obligation for the reimbursable costs of its M&I water supply or to reschedule its payments based on ability to pay.

23. Northern Cheyenne Indian Reservation, Montana: In accordance with Section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act 1992, the U.S. and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P–SMBP, in Montana. The Tribe will pay the U.S. both captial and O&M costs associated with each acre-foot or water the Tribe sells from this storage for M&I purposes.

24. Canadian River Municipal Water Authority, Canadian River Project, Texas: Contract for the United States to pay up to 33 percent of the costs of the salinity control project. These costs are to used for the design and construction management of the project facilities.

25. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation for the planning and construction of a rural water supply system.

26. Angostura ID, Angostura Unit, P–SMBP: The District's current contract for water services expires on January 1, 1995. The current contract also provides for the District to operate and maintain the dam and reservoir. The proposed contract would provide a continued water supply for the District and the District's continued operation and maintenance of the facility.

27. West River Conservancy Sub—District, Shadehill Unit, P–SMBP, South Dakota: Water service contract expires June 10, 1995. The proposed contract would provide irrigation water to the District pursuant to terms acceptable to both the United States and the District.

The following contract actions have been completed or discontinued in the Great Plains Region since this notice was last published on January 21, 1994:

1. Proposed Action: East Bench Irrigation District, East Bench Unit, P–SMBP, Montana: Drainage and Minor Construction (D&MC) contract for $300,000 for minor construction work for up to a 10-year period. ACTION: Alternative means of conveying funds were utilized.

2. Proposed Action: Belle Fourche Irrigation District, Belle Fourche Unit, Pick-Sloan Missouri Basin Program (P–SMBP), South Dakota: Amendment to D&MC contract to extend work through 1995 and provide an additional $1 million to complete the work. ACTION: Alternative means of conveying funds were utilized.

Dated: May 2, 1994.

J. Austin Burke,

Director, Operations.

[FR Doc. 94–10996 Filed 5–5–94; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31989]

The Elk River Railroad, Inc.—Construction and Operation Exemption—Clay and Kanawha Counties, WV

The Commission's Section of Environmental Analysis (SEA) hereby notifies all interested parties that SEA will prepare a Draft Environmental Impact Statement (DEIS) and conduct scoping meetings in this proceeding. The Elk River Railroad, Inc. (TERRI) filed a petition for exemption seeking authority to construct and operate a 30-mile line of railroad from Hartland to Falling Rock, in Clay and Kanawha Counties, WV. Because of the proposed construction and operation's potential for significant environmental impacts, SEA has determined that preparation of a DEIS is necessary.

The DEIS will address the environmental impacts associated with this proposed construction and operation and will be served on all the parties to the proceeding and made available to the public. There will be a 45 day comment period from the date the DEIS is served to allow the public opportunity to comment. After assessing all of the comments to the DEIS, SEA will then issue a Final Environmental Impact Statement (FEIS) that will include SEA's final recommendations to the Commission. The Commission will consider the FEIS and the environmental record in making its decision.

The purpose of the scoping process is to identify significant environmental issues and determine the scope of issues to be addressed in the DEIS. Issues typically addressed in DEIS's include alternatives to the proposed action, impacts on transportation systems, land use, socio-economic impacts directly related to changes in the physical environment, energy resources, air quality, noise quality, public health and safety, biological resources, water quality, historic resources, coastal zone management consistency review, and mitigation to reduce or avoid impacts on the environment. Persons that cannot attend the scoping meetings may submit questions and comments in writing up to 30 days after the scoping meetings. Written comments may be submitted directly to the Commission no later than July 1, 1994. Public scoping meetings will be held on the following dates:

- May 31, 1994, from 3 p.m. to 7 p.m at the Clendenin Community Center (next to the Town Hall) and
- June 1, 1994, from 4 p.m. to 7:30 p.m. at the Clay High School Cafeteria.

FOR FURTHER INFORMATION CONTACT: Michael J. Dalton at (202) 927–6202 or Vicki Dettmar at (202) 927–6211, Section of Environmental Analysis, Room 3219, Office of Economic and Environmental Analysis, 12th and Constitution Avenue, NW., Interstate Commerce Commission, Washington, DC 20423. TDD for hearing impaired: (202) 927–5721.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10983 Filed 5–5–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted contained provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Pennsylvania
  PA940066 (May 6, 1994)

Volume V

Missouri
  MO940064 (May 6, 1994)
  MO940065 (May 6, 1994)
  MO940066 (May 6, 1994)
  MO940067 (May 6, 1994)
  MO940068 (May 6, 1994)
  MO940069 (May 6, 1994)

Volume VI

Washington
  WA940027 (May 6, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
  NJ940002 (Feb. 11, 1994)
  NJ940003 (Feb. 11, 1994)
  NJ940004 (Feb. 11, 1994)

Volume II

District of Col
  DC940001 (Feb. 11, 1994)
Maryland
  MD940048 (Feb. 11, 1994)
Pennsylvania
  PA940030 (Feb. 11, 1994)
Virginia
  VA940104 (Feb. 11, 1994)

Volume III

Alabama
  AL940034 (Mar. 25, 1994)
Florida
  FL940002 (Feb. 11, 1994)
Kentucky
  KY940001 (Feb. 11, 1994)
  KY940002 (Feb. 11, 1994)
  KY940004 (Feb. 11, 1994)
  KY940007 (Feb. 11, 1994)
  KY940025 (Feb. 11, 1994)
  KY940027 (Feb. 11, 1994)
  KY940028 (Feb. 11, 1994)
  KY940029 (Feb. 11, 1994)
  KY940035 (Feb. 11, 1994)

Volume IV

Illinois
  IL940001 (Feb. 11, 1994)
  IL940002 (Feb. 11, 1994)
  IL940003 (Feb. 11, 1994)
  IL940004 (Feb. 11, 1994)
  IL940005 (Feb. 11, 1994)
  IL940007 (Feb. 11, 1994)
  IL940008 (Feb. 11, 1994)
  IL940009 (Feb. 11, 1994)
  IL940011 (Feb. 11, 1994)
  IL940012 (Feb. 11, 1994)
  IL940013 (Feb. 11, 1994)
  IL940014 (Feb. 11, 1994)
  IL940015 (Feb. 11, 1994)
  IL940016 (Feb. 11, 1994)
  IL940048 (Apr. 15, 1994)
Indiana
  IN940006 (Feb. 11, 1994)
Minnesota
  MN940003 (Feb. 11, 1994)
  MN940005 (Feb. 11, 1994)
  MN940007 (Feb. 11, 1994)
  MN940008 (Feb. 11, 1994)
  MN940012 (Feb. 11, 1994)
  MN940015 (Feb. 11, 1994)
  MN940017 (Mar. 25, 1994)
  MN940027 (Mar. 25, 1994)
  MN940031 (Mar. 25, 1994)
  MN940035 (Mar. 25, 1994)
  MN940039 (Mar. 25, 1994)
  MN940043 (Mar. 25, 1994)
  MN940044 (Mar. 25, 1994)
  MN940045 (Mar. 25, 1994)
  MN940046 (Mar. 25, 1994)
  MN940047 (Apr. 1, 1994)
  MN940048 (Apr. 1, 1994)
  MN940049 (Apr. 1, 1994)
Ohio
  OH940001 (Feb. 11, 1994)
  OH940002 (Feb. 11, 1994)
  OH940003 (Feb. 11, 1994)
  OH940012 (Feb. 11, 1994)
  OH940014 (Feb. 11, 1994)
  OH940026 (Feb. 11, 1994)
  OH940027 (Feb. 11, 1994)
  OH940028 (Feb. 11, 1994)
  OH940029 (Feb. 11, 1994)
  OH940034 (Feb. 11, 1994)
  OH940035 (Feb. 11, 1994)
  OH940036 (Feb. 11, 1994)

Volume V

Kansas
  KS940009 (Feb. 11, 1994)
  KS940013 (Feb. 11, 1994)
  KS940025 (Feb. 11, 1994)
  KS940028 (Feb. 11, 1994)
Louisiana
  LA940001 (Feb. 11, 1994)
  LA940005 (Feb. 11, 1994)
  LA940015 (Feb. 11, 1994)
  LA940018 (Feb. 11, 1994)
New Mexico
  NM940001 (Feb. 11, 1994)
Texas
  TX940003 (Feb. 11, 1994)
  TX940018 (Feb. 11, 1994)

Volume VI

North Dakota
  ND940026 (Apr. 1, 1994)
South Dakota
  SD940006 (Feb. 11, 1994)
Washington
  WA940017 (Feb. 11, 1994)
  WA940025 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 29th Day of April 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94-10685 Filed 5-5-94; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-28,782]

Torch Operating Company; Houma, LA; and Operating in the Following States: TA-W-28,782A TX; TA-W-28,782B MS; TA-W-28,782C AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Torch Operating Company, Houma, Louisiana. The certification notice was issued on July 30, 1993 and published in the **Federal Register** on August 17, 1993 (58 FR 43657).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages are reported under an unemployment insurance (UI) tax account in Texas, Mississippi and Arkansas. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-28,782 is hereby published as follows: All workers of Torch Operating Company, Houma, Louisiana and operating at locations in Texas, Mississippi and Arkansas who became totally or partially separated from employment on or after May 15, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of April, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-10928 Filed 5-5-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,592]

Valdese Textiles, Incorporated; New York, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Valdese Textiles, Incorporated, New York, New York. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-29,592; Valdese Textiles, Incorporated, New York, New York (April 25, 1994)

Signed at Washington, DC this 26th day of April, 1994.

Violet L. Thompson,

Deputy Director, Office of Adjustment Assistance.

[FR Doc. 94-10929 Filed 5-5-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103-182) are eligible to apply for NAFTA-TAA under subcphapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Director of OTAA not later than May 16, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than May 16, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of April 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
United Technologies Corporation; Otis Elevator Company (Co.).	Tucson, AZ	04/20/94	NAFTA–00082	Electronic elevator controls.
Miami Trim, Inc. (Co.)	Miami, FL	04/18/94	NAFTA–00083	Buttons and assorted apparel related trim items.
Laidlaw Corporation of the West (Wkrs)	Stockton, CA	04/25/94	NAFTA–00084	Suit and children's clothes hangers.
Beaver Dam Products Corporation; Division of the Chrysler Corporation (UPIU).	Beaver Dam, WI	04/25/94	NAFTA–00085	Marine, industrial and service replacement engines and related parts.

[FR Doc. 94–10927 Filed 5–5–94; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel on Structural Geology and Geoengineering; Update on the Status of the ESF

Pursuant to its authority under section 5051 of Public Law 100–230, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on Structural Geology & Geoengineering will hold a meeting on Monday, June 13 and Tuesday, June 14, 1994, in Las Vegas, Nevada. The meeting will be held at the Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, NV 89109; tel (702) 369–4400, fax (702) 369–3770. The meeting, which is open to the public, will run from 1 p.m. to 5 p.m. on Monday, June 13; then continue on Tuesday, June 14 at 8 a.m. The meeting on Tuesday should end around noon.

During the meeting, panel members will hear presentations from the Department of Energy (DOE) and its contractors on improving the efficiency of underground exploration and construction of the exploratory studies facility (ESF). Efforts are under way to identify potential ways to reduce costs and shorten the excavation schedule by simplifying the design of the underground facility. Additional topics that will be addressed at the meeting include how the administration's new funding proposal for the high-level waste management program (Scenario A) will affect site-suitability issues; how to use the tunnel boring machine most efficiently during excavation of the five-mile, portal-to-portal main loop; how thermal loading issues could affect repository design; and how the proposed plan for 100-year retrievability, including in Scenario A, could affect the design of the repository.

The Nuclear Waste Technical Review Board was created in the 1987 amendments act to evaluate the technical and scientific activities in the DOE's civilian radioactive waste management program, including site characterization, storage, and transport. A site at Yucca Mountain, Nevada, currently is being characterized by the DOE for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning July 26, 1994. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 3, 1994.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 94–10970 Filed 5–5–94; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

AGENCY: Office of Personnel Management.

National Partnership Council; Meeting

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the seventh meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet May 11, 1994, 2 p.m., in the OPM Conference Center, Room 1350, at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5F12, Washington, DC 20415–0001, (202) 606–1800.

SUPPLEMENTARY INFORMATION: The Council will receive reports on and discuss activities contained in its work plan for calendar year 1994, Strategy To Promote Change, which was adopted at the April 12, 1994, meeting.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by May 6, in order to be considered at the May 11, meeting.

Office of Personnel Management

James B. King,

Director.

[FR Doc. 94–10935 Filed 5–5–94; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on May 25, 1994, at 10 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 19th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 19th Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: April 29, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–10873 Filed 5–5–94; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33983; File No. SR–CBOE–94–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Modifications of Exchange Fees

April 29, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish the following fees: (1) A $350 monthly fee for CBOE members who install ILX/WDN personal computer ("PC") terminals in their floor booth(s); and (2) a $150 quarterly fee for non-clearing Designated Primary Market Makers ("DPMMs") for the Exchange's work in reviewing their SEC Form X–17A–5 reports and conducting annual financial audits to ensure their compliance with the Commission's net capital rule, as amended, effective April 1, 1994.[1] In addition, the Exchange proposes to expand its customer box spread fee rebate program, which is currently limited to positions in Standard & Poor's 500 ("SPX") index options, to make the rebate available on a member's request for qualifying public customer positions in any and all European-style index options.[2]

The text of the proposed fee changes is available at the office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish two new fees and to extend the CBOE's current fee rebate program for SPX options to additional classes of European-style options. The first new fee is a $350 monthly fee to CBOE members who install ILX/WDN PC terminals in their floor booth(s). These terminals, which will replace booth-installed Quotron terminals, will use Windows-based software and will include and ILX window for display of market data as well as a CBOE WDN window for internal CBOE displays and functions.

The second new fee is a $150 quarterly fee to be paid by non-clearing DPMMs for the Exchange's work in reviewing their reports on SEC Form X–17A–5 and conducting annual financial audits of such DPMMs to ensure compliance with the Commission's net capital rule, as amended, effective April 1, 1994.[3] In the past, because non-clearing market makers were exempt from the net capital rule, the CBOE'S financial oversight of non-clearing DPMMs was less extensive, as were the CBOE'S costs therefor. Beginning on April 1, 1994, however, non-clearing DPMMs will be required to meet portions of the Commission's net capital rule, and the Exchange's oversight costs will increase accordingly. The CBOE believes that the $150 quarterly fee will recover a substantial portion of the new oversight costs which the Exchange estimates it will incur.

In addition to the two new fees described above, the CBOE proposes to expand the customer box spread fee rebate program, which is currently limited to positions in SPX options.[4] The expansion will make the rebate available on a member's request for qualifying public customer positions in any and all European-style index options. The existing rebate program, which was approved permanently in February 1993,[5] enables members to reduce certain transaction and trade match fees which they pay to the Exchange.

The terms of the fee rebate and the rebate procedures proposed for all European-style index options will be identical to the rebate terms and procedures applicable to SPX options. Under the current rebate program, as under the proposal, CBOE members may request a rebate of 50% of their transaction and trade match fees[6] assessed an options transactions that meet the following parameters: (1) The options transaction(s) are executed for a customer account; and (2) the transactions are box spreads[7] on a European-style index that total 500 or more contracts for the four sides of the spread (i.e., 125 contracts per side).

Members seeking a fee rebate must submit a rebate request together with supporting documentation to the Exchange's Accounting Department. At a minimum, the supporting documentation must include the trade date, the executing broker acronym, and the contract class, series, premium, and quality.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using the CBOE's facilities.

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[1] See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (File No. S7–27–88).

[2] The current box spread rebate program provides a 50% rebate on transaction and trade match fees for box trades by public customers in SPX options, provided the box trade totals 500 or more contracts for the four sides of the trade. See Securities Exchange Act Release No. 31386 (February 8, 1993), 58 FR 8639 (File No. SR–CBOE–93–06) ("Fee Rebate Approval Order").

[3] *See* Securities Exchange Act Release No. 32737, *supra* note 1.

[4] *See* Fee Rebate Approval Order, *supra* note 2.

[5] *Id.*

[6] The rebate is $.22 per contract ($.20 transaction fee, plus $.02 trade match fee) on contracts with a premium greater than or equal to $1 and $.12 per contract ($.10 transaction fee, plus $.02 trade match fee) on contracts with a premium less than $1.

[7] For purposes of the rebate, a box spread is a four-sided option spread on a given European-style index that is composed of (i) a long call and a short put at one strike price and (ii) a short call and long put at a different strike price. All four sides must expire in the same month.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by May 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10888 Filed 5–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20261; 812–8696]

Bando McGlocklin Capital Corporation et al.; Application

April 29, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bando McGlocklin Capital Corporation ("Bando") and Bando McGlocklin Small Business Investment Corporation (the "SBIC Subsidiary").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 17(b) of the Act from sections 8(b), 12(d), 17(a), 18(a), 18(c), 30(a), 30(b), and 30(d) of the Act and rules 8b–16, 30a–1, 30b1–1, and 30d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit Bando to form two new subsidiaries and engage in certain transactions with the new subsidiaries. The order also would permit modified asset coverage requirements for Bando and one of the subsidiaries and, in addition, permit certain reports to be filed on a consolidated basis. The requested order would amend two prior orders.

FILING DATE: The application was filed on November 19, 1993 and amended on February 11, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 13555 Bishops Court, Brookfield, WI 53005.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0576, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Bando and the SBIC Subsidiary, Wisconsin corporations, are registered closed-end investment companies. In 1992 and 1993, the SEC issued orders to permit Bando and the SBIC Subsidiary to create a holding company structure with the SBIC Subsidiary being a wholly-owned subsidiary of Bando, and to permit Bando to issue a class of senior security (the "Prior Order").[1] Bando was licensed to operate as a small business investment company under the Small Business Investment Act of 1958. On March 26, 1993, Bando transferred substantially all of its assets and its small business investment company license to the SBIC Subsidiary. Presently, the SBIC Subsidiary provides secured loans to small businesses.

2. Bando proposes to form two additional subsidiary corporations. One of these will be a small business lender ("the SBL Subsidiary") participating in a government guaranteed loan program and the other will be the "Bankruptcy Remote Subsidiary." The SBL and Bankruptcy Remote Subsidiaries will be registered closed-end investment companies under the Act.

3. Subject to the approval of the Small Business Administration ("SBA"), the SBL Subsidiary will operate as a qualified lender licensed under the government guaranteed loan program authorized by section 7(a) of the Small Business Act (the "7(a) Program"). The 7(a) Program's objective is to provide funds to small business concerns, which otherwise may have limited access to credit. The SBA guarantees up to 70 to 85% of the principal amount of loans made by lenders under the 7(a) Program. The SBA has notified Bando that Bando's participation in the 7(a) Program must be effected in a

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[1] Investment Company Act Release Nos. 19030 (Oct. 15, 1992) (notice), 19092 (Nov. 10, 1992) (order) (initial order permitting Bando to establish and operate the SBIC Subsidiary as a wholly-owned subsidiary), 19584 (July 21, 1993) (notice), and 19636 (Aug. 17, 1993) (order) (order amending initial order to permit Bando to issue one class of senior security which is a stock).

corporation separate from the Bando and the SBIC Subsidiary.

4. The Bankruptcy Remote Subsidiary will facilitate the "securitization" of portfolio loans of Bando, the SBIC Subsidiary, and the SBL Subsidiary. Securitization of loans held by the SBL and SBIC Subsidiaries will be effected by the sale of the loans to Bando, followed by the sale of the loans to the Bankruptcy Remote Subsidiary. The Bankruptcy Remote Subsidiary then will sell the loans to a "company" that is not taxed as a corporation under the Internal Revenue Code, in exchange for cash and securities issued by the company. The directors of the Bankruptcy Remote Subsidiary will not be identical to those of Bando, the SBIC Subsidiary, or the SLB Subsidiary. This will enable certain securities issued by a company and collateralized by the loans purchased from the Bankruptcy Remote Subsidiary to obtain an investment grade rating. A majority of the directors of the Bankruptcy Remote Subsidiary will be directors of Bando. All loans would be sold on a non-recourse basis and neither Bando nor any of its subsidiaries would guarantee payment of such loans.

Applicants' Legal Analysis

A. Section 12(d)

1. Section 12(d)(1) of the Act limits the amount of securities a registered investment company may hold of other investment companies. Section 12(e) provides an exemption to the section 12(d)(1) limitations for acquisitions of securities of certain corporations, such as those that furnish capital to industry, provided that, among other things, the aggregate cost of the securities does not exceed 5% of the total assets of the acquiring company at the time of purchase. Subsequent to the Bando's initial acquisition of the outstanding common stock of the SBL Subsidiary, Bando's additional purchases of the SLB Subsidiary's common stock may exceed 5% of Bando's total assets and, therefore, the section 12(e) exemption will no longer be available.

2. In addition, because Bando will hold more than 3% of the outstanding voting stock of the SBL Subsidiary, Bando's loans to the SBL Subsidiary could violate section 12(d)(1) if such loans were considered acquisitions of the SBL Subsidiary's debt securities. Bando's organization of the Bankruptcy Remote Subsidiary and subsequent purchases of the subsidiary's common stock also will violate section 12(d)(1) absent an exemption, and section 12(e) will not be available because the Bankruptcy Remote Subsidiary will not engage in any of the businesses specified in section 12(e). Accordingly, Bando requests an exemption from section 12(d)(1) to permit Bando to (a) make further acquisitions of the common stock of the SBL Subsidiary, (b) acquire notes and other indebtedness of the SBL Subsidiary, and (c) acquire the common stock of the Bankruptcy Remote Subsidiary.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and any affiliated person of that company. Bando, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary will be affiliated persons. Since the SBL Subsidiary will be fully owned by Bando, Bando's initial acquisition of the outstanding common stock of the SBL Subsidiary will be exempt under rule 17a–3 from section 17(a).[2] In addition, applicants assert that investments in the SBL Subsidiary in the form of stock purchases, capital contributions, or loans do not violate section 17(a) because the seller is the issuer and is controlled by Bando. Purchases and sale of portfolio securities between Bando and the SBL Subsidiary, however, appear to be violations of section 17(a).[3] Accordingly, applicants request an exemption from section 17(a) to the extent necessary to permit purchases and sales of portfolio securities between Bando and the SBL Subsidiary.

2. Applicants assert that the organization and operation of the Bankruptcy Remote Subsidiary does not raise any issues under section 17(a) because it will be able to rely on the rule 17a–3 exemption.

C. Section 18

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in the section. "Asset coverage" is defined in section 18(h) to mean the ratio which the value of the total assets of an issuer, less all liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Under section 18(a), senior securities of closed-end investment companies representing indebtedness must have an asset coverage of 300% immediately after their issuance and senior securities of such companies representing stock must have an asset coverage of 200%. Section 18(c) prohibits a registered closed-end investment company from issuing more than one class of senior securities representing indebtedness.

2. Bando, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary are subject to the asset coverage requirements of section 18(a) on an individual basis, and Bando on a consolidated basis because Bando may be an indirect issuer of senior securities with respect to the SBL and Bankruptcy Remote Subsidiaries' indebtedness. Accordingly, Bando would be required to treat as its own any liabilities of the SBL and Bankruptcy Remote Subsidiaries.

3. Absent exemptive relief, the asset coverage limitations of section 18(a) would prevent the SBL Subsidiary from using borrowings from Bando to fund 7(a) Program loans. Similarly, without an exemption, section 18(c) would preclude the SBL Subsidiary from issuing more than one class of securities to finance such borrowings. In addition, if deemed to be an indirect issuer of the SBL Subsidiary's indebtedness, sections 18 (a) and (c) would impose the same limitations on Bando with respect to the SBL Subsidiary's borrowings on a consolidated basis. Accordingly, applicants request an exemption from 18(a) to the extent necessary to treat the SBL Subsidiary's borrowings from Bando as "liabilities and indebtedness not represented by senior securities" within the meaning of section 18(h) in applying the asset coverage requirements of section 18(a). Applicants also request an exemption from section 18(c) to permit Bando and the SBL Subsidiary, on an individual basis, to have more than one class of senior security representing indebtedness, subject to condition 5 below. The organization and operation of the Bankruptcy Remote Subsidiary does not raise any issues under section 18 because it will not issue senior securities.

D. Sections 8 and 30

In the absence of an exemption, each of Bando, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary would be required to file annual amendments to its registration statement and transmit to its shareholders annual and/or semi-annual reports on form N–SAR pursuant to sections 8(b), 30(a), 30(b), and 30(d) and rules 8b–16, 30a–1, 30b1–1, and 30d–1. Applicants request an exemption to permit: (a) Bando to file on behalf of itself, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary amendments to its registration statement containing information with respect to Bando, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary on a consolidated basis only; (b) Bando to file on behalf of itself and the SBL Subsidiary semi-annual reports on form N–SAR containing information with respect to Bando, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary on a consolidated basis only; and (c) Bando to transmit to its shareholders semi-annually reports containing the financial information for Bando, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary on a consolidated basis only.

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[2] Rule 17a–3 provides in part that transactions solely between a registered investment company and one or more of its "fully owned subsidiaries" are exempt from section 17(a). Rule 17a–3 defines a "fully owned subsidiary" as a subsidiary that, among other things, is not indebted to any person other than its parent, the parent's other fully owned subsidiaries, and/or banks or insurance companies in any amount that is material in relation to the particular subsidiary.

[3] After the SBL Subsidiary begins operations, it will no longer be considered a "fully owned subsidiary" under rule 17a–3 to the extent that the SBL Subsidiary becomes indebted to parties other than Bando, the SBIC Subsidiary, the Bankruptcy Remote Subsidiary, banks, or insurance companies in any "material amount."

E. Modification of Condition 6 of Prior Order

1. Condition 6 of the Prior Order provides that if 10% or more of Bando's total assets on a consolidated basis are invested in assets other than securities issued by the SBIC Subsidiary, then, in addition to the consolidated financial statements of Bando and the SBIC Subsidiary, there shall be included in such reports separate financial statements of the SBIC Subsidiary. Absent exemptive relief, applicants assume that if 10% or more of Bando's total assets on a consolidated basis are invested in assets other than the SBIC, SBL, and Bankruptcy Remote Subsidiaries, separate financial statements would be required.

2. In the future, Bando may make loans directly and may purchase loans from the SBIC or SBL Subsidiaries, and may therefore have more than 10% of its assets on a consolidated basis invested in assets other than the SBIC, SBL, and Bankruptcy Remote Subsidiaries. Accordingly, applicants request that condition 6 of the Prior Order be modified to require separate financial statements of the SBIC, SBL, and Bankruptcy Remote Subsidiaries if 10% or more of Bando's total assets on a consolidated basis are invested in assets other than securities issued by the SBIC, SBL, and Bankruptcy Remote Subsidiaries and securities similar to securities in which the subsidiaries invest.

F. Standards for Exemption Under Sections 6(c) and 17(b)

1. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. The relationship of Bando's shareholders to the activities to be carried out by the SBL and Bankruptcy Remote Subsidiaries will be no different than if such activities were carried out by Bando because (a) the SBL and Bankruptcy Remote Subsidiaries will be wholly-owned subsidiaries of Bando; and (b) Bando has agreed that it will exercise its rights as the shareholder of the SBL and Bankruptcy Remote Subsidiaries on matters required by the Act to be approved by shareholders only as directed by Bando's shareholders. Accordingly, applicants believe that the requested exemptions meet the section 6(c) standards.

2. Section 17(b) of the Act permits the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants believe that the requested relief from section 17(a) meets these standards.

Applicants' Conditions

Applicants state that as a condition to the granting of the exemptive relief requested, each of Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary will comply with the following conditions:

1. Bando will at all times own and hold beneficially and of record all of the outstanding voting capital stock of the SBIC, SBL, and Bankruptcy Remote Subsidiaries.

2. The SBIC and SBL Subsidiaries will have the same fundamental policies of Bando, as set forth in Bando's registration statement; the SBIC and SBL Subsidiaries will not engage in any of the activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Bando. The Bankruptcy Remote Subsidiary will not engage in any of the activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Bando.

3. No person shall serve or act as investment adviser to the SBIC, SBL, or Bankruptcy Remote Subsidiaries under circumstances subject to section 15 of the Act, unless the directors and shareholders of Bando shall have taken the action with respect thereto also required to be taken by the directors and shareholders of the SBIC, SBL, or Bankruptcy Remote Subsidiaries, as the case may be.

4. No person shall serve as a director of the SBIC, SBL, or Bankruptcy Remote Subsidiaries who shall not have been elected as a director of Bando at its most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provision thereof relating to the filling of vacancies, provided that the Bankruptcy Remote Subsidiary may have two directors who are not directors of Bando as long as a majority of its board of directors consists of directors who are also directors of Bando. Notwithstanding the foregoing, (a) the board of directors of the SBIC and SBL Subsidiaries will be elected by Bando as the sole shareholder of both corporations, and such board will be composed of the same persons that serve as directors of Bando and (b) the board of directors of the Bankruptcy Remote Subsidiary will be elected by Bando as the sole shareholder of the Bankruptcy Remote Subsidiary and such board will be composed of the same persons that serve as directors of Bando except to the extent noted above.

5. Bando will not itself issue or sell any senior security representing indebtedness if immediately thereafter Bando will have outstanding more than one class of senior security representing indebtedness; and Bando will not issue or sell any senior security which is a stock if immediately thereafter Bando shall have outstanding more than one class of senior security which is a stock, as provided under section 18(c) of the Act. Bando shall not guarantee any borrowings of the SBIC or SBL Subsidiaries, nor shall Bando enter into any express or implied agreement that is the functional equivalent of such a guarantee, including any agreement that will ensure that the SBIC or SBL Subsidiaries has a tangible net worth of a specified amount. Bando will not cause or permit the SBIC or SBL Subsidiaries to issue or sell any senior security of which the SBIC or SBL Subsidiaries is the issuer except as hereafter set forth: the SBIC and SBL Subsidiaries may issue and sell to banks, insurance companies, and other financial institutions their secured or

unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, and the SBIC Subsidiary may issue debt securities held or guaranteed by SBA, provided the following conditions are met: (a) Such notes or evidences of indebtedness are not intended to be publicly distributed; and (b) such notes or evidences of indebtedness are not convertible into, exchangeable for or accompanied by any options to acquire, any equity security. Immediately after the issuance or sale of any class of senior security by Bando or the issuance or sale of any such notes or evidences by the SBIC or SBL Subsidiaries, Bando, the SBIC Subsidiary, and the SBL Subsidiary on a consolidated basis, and Bando and the SBL Subsidiary individually, shall have the asset coverage required by section 18(a), except that, in determining whether Bando, the SBIC Subsidiary, and the SBL Subsidiary, on a consolidated basis, and the SBL Subsidiary on an individual basis, have the asset coverage required by section 18(a), any borrowings by the SBIC Subsidiary or any borrowings by the SBIC Subsidiary or any borrowings by the SBL Subsidiary from Bando, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities. The Bankruptcy Remote Subsidiary will not issue senior securities.

6. Bando will file with the SEC pursuant to rule 8b–16 amendments to its registration statement pursuant to section 8(b) of the Act on behalf of itself, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary containing information with respect to, and financial statements of, Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary on a consolidated basis only, such amendments to be in lieu of and in satisfaction of the separate filing obligations of Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary pursuant to rule 8b–16. Bando will file with the SEC pursuant to sections 30(a) and 30(b) of the Act and rules 30a–1 and 30b1–1 thereunder semi-annual reports on form N–SAR, or appropriate successor form, on behalf of itself, the SBIC Subsidiary, and the SBL Subsidiary containing information with respect to Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary on a consolidated basis only, such consolidated semi-annual reports to be lieu of and in satisfaction of the separate filing obligations of Bando, the SBIC Subsidiary, and the SBL Subsidiary pursuant to sections 30(a) and 30(b) and rules 30a–1 and 30b1–1. Bando will in response to the appropriate item of form N–SAR or appropriate successor form indicate that the report is being filed on behalf of the SBIC, SBL, and Bankruptcy Remote Subsidiaries and include the "811" number of each of the SBIC, SBL, and Bankruptcy Remote Subsidiaries. Bando will transmit to its shareholders semi-annually pursuant to section 30(d) of the Act and rule 30d–1 thereunder reports containing the financial information and statements prescribed and required by such section and rule for Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary on a consolidated basis only, which reports shall be in lieu of and in satisfaction of the separate reporting obligations of Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary pursuant to section 30(d) and rule 30d–1, only so long as the amount of Bando's total assets on a consolidated basis invested in assets other than securities of the SBIC, SBL, and Bankruptcy Remote Subsidiaries, or securities similar to those in which such subsidiaries invest, does not exceed 10%. Notwithstanding anything in this condition, Bando shall not be relieved of any of its reporting obligations including, but not limited to, any consolidating statement setting forth the individual statements of the SBIC, SBL, or Bankruptcy Remote Subsidiaries required by rule 6–03(c) of regulation S–X. The selection of any independent public accountant who signs a consolidated financial statement filed by Bando, the SBIC Subsidiary, the SBL Subsidiary, and the Bankruptcy Remote Subsidiary with the SEC shall be ratified in accordance with section 32(a)(2) of the Act by a majority of the outstanding voting securities (as defined in section 2(a)(42) of the Act) of Bando.

7. Bando will acquire securities of the SBIC Subsidiary representing indebtedness only if, in each case, the prior approval of SBA has been obtained. Bando and the SBIC Subsidiary will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of SBA has been obtained.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10891 Filed 5–9–94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–20262, 812–8898]

The Haven Fund, et al.; Notice of Application

April 29, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Haven Fund (the "Fund"), HCM Partners, L.P. (the "Partnership"), and Haven Capital Management, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the exchange of shares of the Fund for portfolio securities of the Partnership. Thereafter, the Partnership will dissolve and distribute the shares it received in the exchange pro rata to its partners.

FILING DATE: The application was filed on March 18, 1994. By supplemental letter dated April 29, 1994, counsel to applicants agreed to file an amendment during the notice period to make certain changes to its application. This notice reflects the changes to be made to the application by that amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Haven Capital Management, Inc., 655 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized in 1984 as a limited partnership under New York state Law. It has not been registered under the Act in reliance upon section 3(c)(1) of the Act, and the Partnership interests have not been registered under the Securities Act of 1933 in reliance upon section 4(2) thereof. The general partners of the Partnership, Messrs. Stephen Ely, Colin C. Ferenbach, and Denis M. Turko (the "General Partners"), have exclusive control over the management and business of the Partnership. The General Partners have maintained an investment in the Partnership not less that 1% of the net assets of the Partnership, and are allocated net income, gains, and losses of the Partnership in proportion to their respective investments.

2. The Fund is the initial series of The Haven Capital Management Trust, a business trust formed under the laws of Delaware on March 17, 1994. The Fund, an open-end management investment company, filed a notification of registration under the Act on Form N–8A and a registration statement under the Act and the Securities Act on Form N–1A on March 18, 1994. The registration statement has not yet been declared effective, and no offering of shares has commenced.

3. The Adviser is the investment adviser to the Partnership and will be the investment adviser to the Fund. PFPC, Inc. and Provident Distributors, Inc., which are not affiliated with any of the applicants, will act as the Fund's administrator and principal underwriter, respectively. The Fund does not currently intend to enlist the assistance of other broker-dealers to market shares and there is no intention to advertise the Fund in newspapers or other media. Neither the Adviser nor Provident intends to solicit widespread public interest in the Fund.

4. Applicants propose that, prior to offering the shares to the public, the Fund will exchange shares for the assets of the Partnership, less funds required to pay the liabilities of the Partnership. Thereafter, the Partnership will dissolve and distribute the shares it received to its partners *pro rata*, including the General Partners. Partners of the Partnership will constitute all of the holders of shares, except for shares representing seed capital contributed to the Fund by the Adviser pursuant to section 14(a) of the Act. The Fund was designed as a successor investment vehicle to the Partnership, with investment objectives and policies substantially the same as those of the Partnership. The same persons who selected the investments for the Partnership will select them for the Fund.

5. The Fund intends to adopt a plan of distribution pursuant to rule 12b–1 under the Act. Under the rule 12b–1 plan, the Fund may spend no more than 0.25% of its average daily net assets for sales activities including compensation paid to Provident and the printing and mailing of prospectuses and sales literature. The Fund will comply with rules regarding distribution expenses adopted by the National Association of Securities Dealers.

6. The proposed exchange will be effected pursuant to an agreement and plan of exchange (the "Plan") to be approved by the limited partners of the Partnership. Under the Plan, the portfolio securities of the Partnership will be acquired at their independent "current market price," as defined in rule 17a–7 under the Act. The Fund will not acquire securities that, in the opinion of the Adviser, are overvalued or would result in a violation of the Fund's investment objectives, policies, or restrictions. It is not expected that the Partnership will hold any such securities. Any remaining securities will be liquidated by the partnership for cash and these proceeds distributed *pro rata* to the partners of the Partnership.

7. The General Partners of the Partnership will consider the desirability of the exchange from the point of view of the Partnership and must conclude that (a) the exchange is in the best interests of the Partnership and its partners and (b) upon the exchange, the interests of the partners of the Partnership will not be diluted as a result of the exchange.

8. The Fund's board of trustees will consider the desirability of the exchange from the point of view of the Fund and a majority of the trustees, including a majority of the non-interested members, must conclude that: (a) The exchange is desirable as a business matter from the point of view of the Fund; (b) the exchange is in the best interest of the Fund; (c) upon the exchange, the interests of existing shareholders of the Fund will not be diluted as a result of the exchange; and (d) the terms of the exchange as reflected in the Plan have been designed to meet the criteria contained in section 17(b) of the Act. The trustees will consider each aspect of the exchange, including: (i) The method of valuing the portfolio securities to be acquired from the Partnership, (ii) the value of the shares to be delivered to the Partnership, (iii) the procedure for selecting among the portfolio securities of the Partnership, (iv) the possibility of incurring excessive brokerage costs, (v) the allocation of the costs of the exchange, (vi) the possibility of adverse tax consequences to future shareholders of the Fund, (vii) the benefits from the exchange accruing to the Adviser, and (viii) the benefits from the exchange accruing to the General Partners.

9. The exchange will not be effected unless: (a) The registration statements of the Fund have been declared effective, (b) the limited partners of the Partnership have approved the Plan and an amendment to the partnership agreement authorizing the General Partners to take such actions as they deem necessary or appropriate to effect the exchange, (c) the requested order has been granted, and (d) the limited partners have received an opinion of counsel that: (i) The distribution of shares from the Partnership to its limited partners, which will be in liquidation of the Partnership, will not cause taxable gain or loss to be recognized by the limited partners, (ii) the basis to the limited partners for the shares will be equal to the adjusted basis of the limited partners' interests in the Partnership, and (iii) the limited partners' holding periods with respect to the shares will include their holding periods for their Partnership interests.

10. The Partnership, the Fund, and the Adviser will each pay their respective costs in connection with the forming of the Fund and completing the exchange. No brokerage commission, fee, or other remuneration will be paid in connection with the exchange.

Applicants' Legal Conclusions

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling to or purchasing from such investment company any security. The Fund and the Partnership may be affiliated persons of each other because they are under the common control of the Adviser and the General Partners. Thus, the proposed exchange may be prohibited by section 17(a). Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act.

2. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). They contend

that because the Fund and the Partnership have similar investment objectives and policies, the Fund will obtain portfolio securities that initially will be substantially identical to those held by the Partnership. The Fund will acquire the Partnership securities at their independent "current market price." Applicants believe that this price will be as advantageous to the Fund as open-market purchases. In addition, by acquiring suitable securities from the Partnership, the Fund will avoid incurring brokerage and other transactions costs. Applicants believe that the exchange can be viewed as a change in the form in which the assets are held, rather than as a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10689 Filed 5–5–94 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–20265; 812–8710]

Kemper Technology Fund, Inc., et al.; Notice of Application

May 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Kemper Technology Fund, Kemper Total Return Fund, Kemper Growth Fund, Kemper Small Capitalization Equity Fund, Kemper Income and Capital Preservation Fund, Kemper Municipal Bond Fund, Kemper Diversified Income Fund, Kemper High Yield Fund, Kemper U.S. Government Securities Fund, Kemper International Fund, Kemper State Tax-Free Income Series, Kemper Investment Portfolios, Kemper Adjustable Rate U.S. Government Fund, Kemper Blue Chip Fund, Kemper Global Income Fund, Kemper Environmental Services Fund, Kemper Short-Term Global Income Fund, Sterling Funds, and any existing or future open-end management investment companies or series thereof for which Kemper Financial Services, Inc. ("KFS") or any person directly or indirectly controlling, controlled by or under common control with KFS serves or may in the future serve as investment adviser or principal underwriter (collectively, the "Funds"), and KFS.[1]

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) and from rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities and to permit the Funds to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of certain shares.[2]

FILING DATE: The application was filed on December 1, 1993 and amended on February 28, 1994. By letters dated April 20, 1994 and April 28, 1994, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on May 26, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 120 South LaSalle Street, Chicago, Illinois 60603

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Fund is an open-end management investment company registered under the Act. KFS serves as the investment adviser and principal underwriter for each Fund. Each Fund has a non-rule 12b–1 administrative services agreement ("Administrative Plan") with KFS providing for a service fee[3] at an annual rate of up to .25% of average daily net assets.

2. Applicants propose to establish a Multiple Distribution System (the "Multiple Distribution System"). Under the Multiple Distribution System, each Fund would have the opportunity to offer investors the option of purchasing shares subject to: (i) A front-end sales load that may vary among Funds and a service fee ("Class A shares"), (ii) without a front-end sales load, but subject to a CDSC, a rule 12b–1 distribution fee and a service fee (the "Deferred Option" or "Class B shares"), (iii) without a front-end sales load or CDSC but subject to a rule 12b–1 plan distribution fee and to a service fee (the "Level Load Option" or "Class C shares"), and (iv) without a front-end load, CDSC, distribution fee or service fee ("Class I shares").[4]

3. The Funds may create one or more additional classes of shares in the future, the terms of which will differ from the Class A, B, C, and I shares in the following respects: Any such class: (a) May bear different distribution fees and any other costs relating to implementing or amending the rule 12b–1 plan for such class; (b) may bear different service fees; (c) may bear different shareholder servicing fees;[5] (d) may bear different "Class Expenses," that may include any or all of the

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[1] No existing Funds other than those named as applicants currently intend to rely upon the requested exemptive order.

[2] Certain applicants have received exemptive orders with respect to (i) issuance of multiple classes of shares (Kemper Investment Portfolios, Investment Company Act Release Nos. 18385 (Oct. 31, 1991) (notice) and 18422 (Nov. 27, 1991) (order)) and (ii) imposition and waiver of a CDSC upon the redemption of certain shares (Investment Portfolios, Inc., Investment Company Act Release Nos. 13676 (Dec. 16, 1983) (notice) and 13720 (Jan. 13, 1984) (order) and Kemper Blue Chip Fund, Investment Company Act Release Nos. 18801 (June 19, 1992) (notice) and 18849 (July 15, 1992) (order) *as amended and restated in* Kemper Blue Chip Fund, Investment Company Act Release Nos. 20036 (Jan. 26, 1994) (notice) and 20089 (Feb. 23, 1994) (order)) (collectively, the "Prior Orders"). The order requested hereby, if granted, would supersede the Prior Orders.

[3] As used herein, the term "service fee" has the meaning given to that term in Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD") and the term "distribution fee" means an "asset-based sales charge" as defined in said NASD rule.

[4] No Fund will charge a service fee under a rule 12b–1 plan.

[5] As used herein, the term "shareholder servicing fees" means fees and out-of-pocket expenses paid by the Funds to their shareholder servicing agent for transfer agency, account maintenance or dividend disbursing functions or for administering dividend reinvestment or systematic investment plans. "Shareholder servicing fees" does not refer to "service fees" as described in Article III, section 26 of the Rules of Fair Practice of the NASD

following expenses: (i) Printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (ii) Commission registration fees incurred by a specific class; (iii) litigation or other legal expenses relating to a specific class of shares; (iv) Trustee fees or expenses incurred as a result of issues relating to a specific class; and (v) accounting expenses relating to a specific class; (e) may bear a different name or designation; (f) will have exclusive voting rights as to any rule 12b–1 plan adopted exclusively with respect to such class except as provided in condition 16 below; (g) may have different conversion features; (h) may have different exchange privileges; (i) may be sold under different sales arrangements, including selling only to a particular type of investor; and (j) may bear any other incremental expenses subsequently identified that should be properly allocated to such class and that shall be approved by the Commission.

4. Any distribution arrangement of a Fund, including distribution fees, service fees, and front-end and deferred sales loads, will comply with Article III, section 26, of the Rules of Fair Practice of the NASD.

5. After a shareholder's Class B shares remain outstanding for a period of time, they automatically will convert to Class A shares of the same Fund at the relative net asset values of the two classes and will thereafter not be subject to a rule 12b–1 plan. Shares purchased through the reinvestment of distributions paid upon Class B shares will be treated as Class B shares and will be converted to Class A shares on a *pro rata* basis with the Class B shares. The Level Load Option differs from the Deferred Option in that the Class C shares would not automatically convert to Class A shares after a specified period of time as would the Class B shares.

6. Any other class of Non-Institutional Shares (as defined below) may provide that shares in that class (the "Purchase Class") will, after a period of time, automatically convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge provided that, after conversion, the converted shares would be subject to an asset-based sales charge and/or service fee, if any, that in the aggregate are lower than the asset-based sales charge and/or service fee to which the Purchase Class shares were subject prior to the conversion.

7. Any conversion of shares of one class to shares of another class is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. Any such conversion may be suspended if such a ruling or opinion is no longer available.

8. Class I shares would be offered for purchase only by the following investors (the "Institutional Investors"): (a) Tax-exempt retirement plans of KFS and its affiliates, and (b) the following investment advisory clients of KFS and its investment advisory affiliates that invest at least $1 million in a Fund: (1) benefit plans unaffiliated with KFS, such as qualified retirement plans (other than individual retirement accounts and self-directed retirement plans), (2) banks and insurance companies unaffiliated with KFS purchasing for their own accounts, and (3) endowment funds of non-profit organizations unaffiliated with KFS.

9. Future classes may be offered to meet the specific investment needs of non-institutional investors (herein, such future classes together with Class A, B, and C shares are "Non-Institutional Shares"). Other future classes, in addition to Class I shares, may be offered to meet the specific investment needs of a particular category of Institutional Investor (together with Class I shares, "Institutional Shares"). Still other future classes may be offered to various market segments or through various types of intermediaries.

10. Only Institutional Investors will be eligible to invest in Institutional Shares. Applicants may choose not to make a particular class of Institutional Shares available to one or more categories of Institutional Investors. If no class of Institutional Shares is made available to a particular category of Institutional Investor, Institutional Investors in this category will be permitted to purchase Non-Institutional Shares. However, no Institutional Investor that is eligible to invest in any class of Institutional Shares will be permitted by applicants to invest in any class of Non-Institutional Shares. Accordingly, there will be no overlap between the investors eligible to invest in Institutional Shares and investors eligible to invest in Non-Institutional Shares of a Fund or series thereof.

11. Under the Multiple Distribution System, certain expenses may be attributable to a Fund, but not to a particular series thereof. All such expenses will be borne by each class on the basis of the relative aggregate net assets of the classes, except in the case of a Fund that has series, in which case they will first be allocated among series, based on the relative aggregate net assets of such series. Expenses that are attributable to a particular series, but not to a particular class thereof, will be borne by each class on the basis of the relative aggregate net assets of the classes.

12. Applicants also propose to assess and, under certain circumstances, waive or reduce a CDSC on certain redemptions of their shares. The CDSC will not be imposed upon a redemption of shares that were purchased more than a specified period of time prior to the redemption (the "CDSC Period") or upon shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed upon an amount that represents share appreciation.

13. The Funds request the ability to waive the CDSC as described below: (a) On redemptions following the total disability (as evidenced by a determination by the federal Social Security Administration) of the shareholder (including a registered joint owner) occurring after the purchase of the shares being redeemed, (b) in the event of the death of the shareholder (including a registered joint owner), (c) on redemptions pursuant to the Funds' right to liquidate small accounts or to charge an annual small account fee, (d) on redemptions of shares acquired as a result of the investment of distributions from shares of a class of one Fund into shares of the same class of another Fund, (e) for redemptions made pursuant to a systematic withdrawal plan, and (f) in connection with the following redemptions of shares held by employer sponsored employee benefit plans maintained on the subaccount record keeping system made available by KFS: (i) Redemptions to satisfy participant loan advances (loan repayments would constitute new purchases for purposes of the contingent deferred sales charge and the conversion privilege), (ii) redemptions in connection with retirement distributions (limited at any one time to 10% of the total value of plan assets invested in the Fund), (iii) redemptions in connection with distributions qualifying under the hardship provisions of Internal Revenue Code section 403(b)(7) or in Treasury Regulation 401(k)–1(d)(2), as amended, and (iv) redemptions representing returns of excess contributions to such plans.

14. The Funds will provide a credit (i.e., a reimbursement) for any CDSC paid by a redeeming shareholder in connection with a redemption of shares of a class followed by a reinvestment in

any shares of the same class of the same Fund or, as permitted by KFS, the same class of another Fund, effected within such number of days of the redemption as may be specified in a Fund's prospectus. The CDSC credit will be paid by KFS. Upon redemption thereafter, when calculating the amount of the CDSC the shares will be deemed to have been held for the period from purchase through reinvestment, except for the period between redemption and reinvestment, until such shares are finally redeemed.

Applicants' Legal Analysis

1. The creation of multiple classes of shares may result in shares of a class having priority over another class as to payment of dividends and having unequal voting rights, because under the proposed arrangement: (1) Shareholders of different classes (i) would pay different fees because of the rule 12b–1 plan (and related costs) and (ii) may pay different service fees, shareholder servicing fees and Class Expenses and (2) each class would be entitled to exclusive voting rights as to matters concerning its rule 12b–1 plan.

2. The abuses that section 18 of the Act is intended to address as set forth in section 1(b) of the Act are that the interest of investors are adversely affected when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities or operate without adequate assets or reserves. The Multiple Distribution System does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds, since all such shares will participate *pro rata* in all the Fund's appreciation, income and expenses (with the exception of the different distribution fees payable by each class of shares and any other costs relating to implementing the rule 12b–1 plan for such class or an amendment to such plan including obtaining shareholder approval of the rule 12b–1 plan for such class or any amendment to such plan), any different service fees, shareholder servicing fees, and Class Expenses.

3. Applicants believe that the imposition of the CDSC is fair and in the best interests of their shareholders. The proposed CDSC provides shareholders the advantage of having more investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase. Furthermore, the CDSC described above is fair to shareholders because it applies only to amounts representing purchase payments and does not apply to amounts representing share appreciation, or to amounts representing reinvestment of distributions.

Applicants Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects to each other class, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) Different distribution fee payments associated with any rule 12b–1 plan for a particular class of shares and any other costs relating to implementing or amending such Plan (including obtaining shareholder approval of such Plan or any amendment thereto) which will be borne solely by shareholders of such classes, (b) different service fees, (c) different shareholder servicing fees, (d) different Class Expenses, which will be limited to the following expenses determined by the Trustees to be attributable to a specific class of shares: (i) Printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (ii) Commission registration fees incurred by a specific class; (iii) litigation or other legal expenses relating to a specific class; (iv) Trustee fees or expenses incurred as a result of issues relating to a specific class; and (v) accounting expenses relating to a specific class; (e) the voting rights related to any 12b–1 Plan affecting a specific class of shares, except as provided in condition 16 below; (f) conversion features; (g) exchange privileges; and (h) class names or designations. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly applied to one class of shares shall not be so applied unless and until approved by the Commission by an amended order.

2. The Trustees of each Fund, including a majority of the Independent Trustees, will approve the Multiple Distribution System for a particular Fund prior to its implementation by that Fund. The minutes of the meetings of the Trustees of each Fund regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multiple Distribution System will reflect the reasons for the Trustees' determination that the proposed Multiple distribution System is in the best interests of both the Fund and its shareholders.

3. The initial determination of any Class Expenses that will be applied to a class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees, including a majority of the non-interested Trustees. Any persons authorized to direct the application and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. Any distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to conform to such standards; and such compliance standards will require that all investors eligible to purchase Institutional Shares will be sold only Institutional Shares rather than any other class of shares offered by a Fund, and that all investors eligible to purchase Non-Institutional Shares will be sold only Non-Institutional Shares.

5. The Administrative Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. KFS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, KFS at its own cost will remedy such conflict up to and including establishing a new registered management investment company.

7. The Trustees of the Funds will receive quarterly and annual statements concerning distribution and servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements only expenditures properly attributable to the sale or servicing of a

particular class of shares will be used to support any distribution or service fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to support any distribution or servicing fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review of the Independent Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund as to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that any distribution fees, service fees, shareholder servicing fees and Class Expenses allocated to a class will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses between or among the various classes has been reviewed by an expert (the "Expert") who has rendered to the applicants a report, which has been provided to the staff of the Commission, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert concerning such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Expert is a "Report on Policies and Procedures in Existence," and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness," as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as they may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses between or among such classes of shares; and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur with the ongoing reports.

11. The prospectuses of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation as to one class of Fund shares in relation to another.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds concerning the Multiple Distribution System will be set forth in guidelines that will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares other than Institutional Shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Institutional Shares will be offered solely pursuant to a separate prospectus. The prospectus for Institutional Shares will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of Institutional Shares and will identify the persons eligible to purchase Institutional Shares. The shareholder reports on each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis for all classes of shares of that Fund. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares except Institutional Shares. Advertising materials reflecting the expenses or performance data for Institutional Shares will be available only to those persons eligible to purchase Institutional Shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present separately each class of shares except Institutional Shares.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution plans or Administrative Plan in reliance upon the exemptive order.

15. Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to its rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 service plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such actions as are necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New

Purchase Class"), identical to the existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6 above, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the investment adviser and principal underwriter. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (November 2, 1988) as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10981 Filed 5–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20263; 812–8920]

National Equity Trust; Notice of Application

May 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: National Equity Trust.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3).

SUMMARY OF APPLICATION: Applicant seeks a conditional order on behalf of its series (the "Series") to permit each Series to invest up to twenty percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on April 1, 1994. By supplemental letter dated April 29, 1994, counsel, on behalf of applicant, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 27, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Prudential Securities Incorporated, 32 Old Slip, New York, New York 10292 (Attn: Richard R. Hoffmann).

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Prudential Securities Incorporated ("Prudential") is applicant's depositor. Prudential currently intends to offer a new Series four times a year at about the beginning of each calendar quarter.

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately 20%, but in no event more than 20.5%,[1] of the value of such Series' total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the Dow Jones Industrial Average ("DJIA") having the highest dividend yields. Dividend yields will be calculated by annualizing the last quarterly or semi-annual ordinary dividend distributed on that security and dividing the result by the market value of the security at the close of the New York Stock Exchange either on or shortly before such Series' initial date of deposit.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of *The Wall Street Journal*. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with Prudential or any Series, and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of Prudential. Prudential will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, Prudential may deposit additional securities, maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Subsequent deposits made after the 90-day period following the initial date of deposit must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the five highest dividend yielding stocks.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions and at the termination of the trust. Prudential will have no discretion as to when securities will be sold except that it is authorized to direct the trustee to sell securities upon failure

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[1] Prudential will attempt to purchase securities so that each of the five common stocks in a Series portfolio represents twenty percent of the value of a Series' total assets on the initial date of deposit. Prudential may purchase the securities for a Series in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, a Series may purchase securities of a securities related issuer that represent over twenty percent, but in no event more than 20.5 percent, of a Series' assets on the initial date of deposit to the extent necessary to enable Prudential to meet its purchase requirements and to obtain the best price for the securities.

of the issuer of a security held by a Series to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings against the issuer, default by the issuer under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that, in the opinion of Prudential, would make retention of such securities by a Series detrimental to the interests of the unit holders. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3), with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1(b) exempts from section 12(d)(3) purchases by an investment company of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1(c) prohibits any registered investment company from acquiring any security issued by that company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter.

2. Applicant seeks an exemption to permit any Series to invest up to approximately twenty percent, but in no event more than 20.5 percent, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each series will comply with all of the provisions of rule 12d3–1, except for the five percent limitation on the amount of assets that may be invested in securities of issuers that derived more than fifteen percent of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicant asserts that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risk of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in connection with its application because neither the applicant nor the sponsor has discretion in choosing the securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with Prudential and applicant, and must also qualify as one of the five highest dividend yielding securities as calculated by the objective formula described above.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minmis.* Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. According to applicant, it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market valuer of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the portfolio of a Series, nor any affiliate thereof, acting as broker for any Series in the purchase of any security for the Series' portfolio.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10982 Filed 5–5–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–26043]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 29, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for completed statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 23, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation, et al. (70–7918)

Central and South West Corporation ("CSW"), a registered holding company, and two of its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW Development-I, Inc. ("Energy Sub"), a nonutility subsidiary of Energy Sub, CSW Mulberry, Inc. ("CSW Mulberry"), and a proposed nonultility subsidiary of Energy Sub, CSW Mulberry II, Inc. ("Mulberry LP Sub"), each located at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202; and three other nonutility subsidiaries, ARK/CSW Development Partnership ("Joint Venture"), Polk Power Partners, L.P. ("Partnership") and Polk Power GP

("JV Sub"), Inc., and a proposed nonutility subsidiary of Joint Venture, Polk Power GP II, Inc. ("Mulberry GP sub"), each located at 23046 Avenida de la Carlota, Suite 400, Laguna Hills, California 92653 (collectively, "Applicants"), have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), and 12(c) of the Act and Rules 42, 43, 45 and 50(a)(5) thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45, 50(a)(5) and 51 thereunder.

By order dated February 18, 1992 (HCAR No. 25477) ("February Order"), CSW, Energy, Energy Sub and the Joint Venture were authorized, among other things, to contribute up to $9 million to the capital of the Partnership, to borrow up to $120 million ("Construction Financing") to construct and develop a 122.2 megawatt, gas-fired cogeneration facility and integrated carbon dioxide plant steam host ("Project") located near Bartow in Polk County, Florida, and to convert such borrowings to a term loan facility ("Term Loan Financing") with a lender or group of lenders ("Lenders") upon completion of the project. Under the February Order, CSW, Energy, Energy Sub and the Joint Venture were also authorized to organize the Partnership to own and operate the Project and organize JV Sub to be the sole general partner of the Partnership.

Once operational, the Project would be a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). JV Sub is a wholly owned subsidiary of the Joint Venture, a general partnership owned equally by Energy Sub and ARK Energy, Inc. ("ARK"), a nonassociate corporation. JV Sub, a corporation, has a 1% interest in the Partnership. The two limited partners are Energy Sub and ARK. They each hold a 49.5% interest in the Partnership.

By subsequent order dated August 6, 1992 (HCAR No. 25599) ("August Order"), the Commission authorized, among other things, certain technical changes to the Project description and the Partnership to enter into a construction agreement with Energy or Energy Sub for the purpose of developing and constructing the Project. The August Order also authorized the Applicants to increase the amount of Construction Financing to $135 million and to increase the amount of capital contributions that Energy Sub and ARK would each contribute to the Partnership to $13.5 million.

By order dated March 19, 1993 (HCAR No. 25762) ("March Order"), the Applicants were authorized to: (1) increase the amount of Construction Financing to $160 million (2) increase the maximum amount, excluding advances, as defined below, of the aggregate equity contributions to the Partnership by JV Sub and Energy Sub to $32 million, constituting a maximum equity contribution equal to 20% of the amount to be financed; and (3) make, directly or indirectly through Energy, loans, open account advances, or additional equity contributions to the Partnership in an aggregate amount not to exceed $85 million ("Advances").

By order dated January 31, 1994 (HCAR No. 25983), the Commission authorized a change in the description of the Project and the formation of CSW Mulberry. In addition, the Commission authorized the investment of a new limited partner ("New Limited Partner") in the Partnership in lieu of the term loan financing for the Project and the issuance of corporate guaranties by the Applicants or stand-by letters of credit with the Applicants as account party in an amount not to exceed $50 million, such guaranties or letters of credit to support payment obligations of the Partnership required by the provider of third party financing for the Project or fuel suppliers, fuel transportation or other third parties under various project agreements.

The Applicants now propose that Energy Sub form a special purpose wholly owned subsidiary to be known as CSW Mulberry II, Inc. ("Mulberry LP Sub"). Mulberry LP Sub would be incorporated under the laws of the State of Delaware with an authorized capital of up to 1,000 shares of common stock without par value. In exchange for an assignment from Energy Sub to Mulberry LP Sub of all of Energy Sub's right, title and interest in and to CSW Mulberry, Energy Sub would subscribe to all of Mulberry LP Sub's common stock. It is further proposed that the Joint Venture form a special purpose wholly owned subsidiary to be known as Polk Power GP II, Inc. ("Mulberry GP Sub"). Mulberry GP Sub would be incorporated under the laws of the State of Delaware with an authorized capital of up to 1,000 shares of common stock without par value. In exchange for an assignment from the Joint Venture to Mulberry GP Sub of all of the Joint Venture's right, title and interest in and to JV Sub, the Joint Venture would subscribe to all of Mulberry GP Sub's common stock.

In the event that Mulberry LP Sub and Mulberry GP Sub are formed pursuant to the authority sought, the Applicants request authority to include Mulberry LP Sub and Mulberry GP Sub in the flow of funds for equity contributions, open account advances and intercompany loans on the terms and in the manner authorized by the prior orders of the Commission in this matter, above.

The Applicants request the authority to form Mulberry LP Sub and Mulberry GP Sub in order to limit the liability of Energy Sub and the Joint Venture and aid in the procurement of the Term Financing. It is anticipated that a pledge of the stock of CSW Mulberry and JV Sub by their holders, Energy Sub and the Joint Venture, respectively, which was required in connection with the Construction Financing, will be required in connection with the Term Financing. The requested authority is desirable to limit the liability of Energy Sub and the Joint Venture, which have acquired interests in several other partnerships and corporations that are unaffiliated with the Project. If Energy Sub and the Joint Venture make such pledges and the Partnership defaults in its repayment obligations under the terms of such Construction Financing or Term Financing, interests of Energy Sub and the Joint Venture that are not associated with the Project could be adversely affected by the actions taken by the provider(s) of such Construction Financing or Term Financing.

GPU Nuclear Corporation (70–8393)

GPU Nuclear Corporation ("GPUN"), One Upper Pond Road, Parsippany, NJ 07054, a wholly owned utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an application under Sections 9(a) and 10 of the Act.

GPUN proposes to offer to non-affiliates, with nuclear or non-nuclear plants in the U.S. and abroad, a range of services that are based on the skills, expertise, experience, resources and facilities that it has developed relative to its normal core business operations ("Services"). The application outlines three general categories of Services that GPUN now contemplates—(i) Engineering and Technical Services, which would include power plant inspections and risk analysis, power plant accident analysis, power plant stress analysis, power plant operations analysis, power plant life extension analysis, nuclear fuels cycle analysis, power plant modification, design, installation, evaluation, testing and project management, power plant equipment corrosion control and failure analysis, chemical and metallurgical laboratory services, human factors engineering services, commercial grade dedication of equipment, radioactive waste services, plant decommissioning services, mechanical, electrical and structural engineering services, nondestructive testing and examination services, and instrument calibration services; (ii) Management and Consulting Services, which would include nuclear plant decommissioning and decontamination management and consulting services, nuclear plant outage management and consulting services, quality assurance audits, medical services management and consulting services, and Final Safety Analysis Report licensing consultation and operations analysis; and (iii) Training and Education Services, which would include computer-based training, instructor training, nuclear plant operating room simulator certification and training, simulator maintenance and modification training, fire safety and plant and facility security training, and diesel equipment training.

The application also proposes to license or lease to non-affiliates the use of intellectual and proprietary property as well as the reserve capacity of laboratory or other support facilities. It is stated that the reserve capacity licensed or leased would not exceed 50% of the capacity of the laboratory and other support facilities available to GPUN.

The application proposes that GPUN be authorized through December 31, 1999 to enter into agreements, with terms of up to ten years and negotiated on an arm's-length basis, for the Services. It is stated that revenues received and expenses incurred in connection with the Services will be accounted for under appropriate accounts in accordance with the Uniform System of Accounts. The application also states that the net revenues from the Services will be used to reduce the cost of GPUN service charges to GPU electric public utilities.

The application states that GPUN expects not to materially increase its staff or capital investments to provide the Services. In addition, it is stated that for the five-year period for which an authorization is sought, the aggregate annual revenues from and expenses associated with the Services are not anticipated to exceed 5% of the total annual operating expenses of GPUN, which in 1993 were $421 million.

The application states that it could be advantageous to provide the Services through one or more new wholly-owned subsidiaries, each of which the application proposes that GPU form and acquire through the purchase of $1,000 in capital stock. Finally, the application states that GPUN will, on or before May 1, of each year, report to the Commission the Services provided for the preceding year as well as the revenues derived therefrom and the expenses associated therewith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–10890 Filed 5–5–94; 8:45 am]

BILLING CODE 8010–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Region 5 Advisory Board

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Location announcement.

SUMMARY: This is to announce the location for the Region 5 Advisory Board meeting scheduled for May 17 in Santa Fe as published in the **Federal Register**, April 13, 1994, page 17635.

DATE: Tuesday, May 17, 9 a.m. to 12:30 p.m.

ADDRESSES: Hotel Plaza Real, Nambe Room, 125 Washington Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

Dated: May 3, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–10984 Filed 5–5–94; 8:45 am]

BILLING CODE 222–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Aviation Security Advisory Committee Meeting

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held May 23, 1994, from 10 a.m. to 2 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held May 23, 1994, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. The agenda for the meeting will include reports from the Universal Access System Working Group, recommendations on airline ID/access, and an update on the Streamlined Enforcement Program. Attendance at the May 23, 1994, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7451.

Issued in Washington, DC on May 2, 1994.

Cathal L. Flynn,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 94–10960 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sonoma County Airport, Santa Rosa, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use revenue from a PFC at Sonoma County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Andrews, Director of Aviation, Sonoma County Airport at the following address: 2200 Airport Boulevard, Santa Rosa, California 95403–1091. Air carriers and foreign air carriers may submit copies of written comments previously provided to Sonoma County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sonoma County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 20, 1994, the FAA determined that the application to impose and use a PFC submitted by the Sonoma County Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 19, 1994.

The following is a brief overview of the application.

Level of proposed PFC: $3.00

Proposed charge effective date: October 1, 1994

Proposed charge expiration date: April 1, 1998

Total estimated PFC revenue: $315,650.00

Brief description of the proposed projects: Land Acquisition for Approach Protection, Airfield Signage and Security Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sonoma County Airport.

Issued in Hawthorne, California, on April 20, 1994.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94–10961 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Federal Transit Administration

[FHWA/FTA Docket No. 94–11]

A Review of the Congestion Mitigation and Air Quality Improvement Program; Public Meeting; Request for Comments

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments; public meeting.

SUMMARY: The FHWA and the FTA request comments which will be used in developing and conducting a review of the Congestion Mitigation and Air Quality Improvement (CMAQ) Program, to be undertaken by the FHWA and the FTA in cooperation with the Environmental Protection Agency (EPA). The review's purpose is to determine whether the CMAQ program is meeting its goals under the Intermodal Surface Transportation Efficiency Act (ISTEA), Public Law 102–240, 105 Stat. 1914, and the Clean Air Act (CAA) as amended in 1990, Public Law 101–549, 104 Stat. 2399, to support transportation measures intended to assist nonattainment areas in meeting the National Ambient Air Quality Standards (NAAQS) and to maximize the program's effectiveness. Comments are solicited on the structure and content of the program review, specific policy questions raised in this notice, and other areas of policy and implementation which should be investigated.

This notice also announces a public meeting to be held on June 2, 1994. The purpose of the meeting is also to solicit input for the review. Those intending to participate are asked to notify Mr. Mike Savonis at the number listed under the **FOR FURTHER INFORMATION CONTACT** caption below.

DATES: Comments should be received on or before June 20, 1994. The public meeting will be held on June 2, 1994 at 11 a.m.

ADDRESSES: The public meeting will be held at the Nassif Building, U.S. Department of Transportation, Room 2230, 400 Seventh Street SW., Washington, DC 20590. Submit written, signed comments to FHWA/FTA Docket 94–11, Federal Highway Administration, Room 4232, HCC–10, Office of Chief Counsel, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Savonis, Office of Environment and Planning, FHWA at (202) 366–2080 or Mr. Abbe Marner, Office of Planning, FTA at (202) 366–0096. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

(I) Background

Authorized at $6 billion for years 1992–1997, the CMAQ Program provides funds to States for transportation projects and programs that will contribute to attainment of an NAAQS. The Program focuses primarily on reductions in ozone precursors (hydrocarbons and oxides of nitrogen) and carbon monoxide emissions, but under certain conditions funds may be expended on projects to reduce small particulate matter (PM–10), as well. Typical projects include: development of HOV lanes, improvements to public transit facilities and equipment, traffic signalization and incident management improvements, bicycle and pedestrian projects, new ridesharing services, and establishment of vehicle inspection and maintenance programs.

The FHWA and the FTA, in consultation with the EPA, issued guidance providing eligibility criteria to govern CMAQ program expenditures on October 16, 1992. A series of questions and answers were also issued subsequent to the program guidance to address specific issues and eligibility questions as they have arisen. The program guidance was published in the **Federal Register** on January 4, 1993 (58 FR 146) and, with the questions and answers, is available through the Federal Electronic Bulletin Board System (202–366–3764). In addition, a brochure, "A Guide to the Congestion Mitigation and Air Quality Improvement Program," was issued in January 1994.

Three apportionments have been made for fiscal years 1992–1994, making a total of $2.7 billion available for the States' use. In FY 1992, $340 million was obligated by all States which was 42 percent of the amount available. In

FY 1993, $600 million was obligated for a rate of 62 percent. Overall, $940 million was obligated during the program's first two years for a cumulative rate of 53 percent. Unobligated funds under the CMAQ program lapse and are no longer available to the States after four years from the beginning of the fiscal year for which they were apportioned.

(II) Proposed Purpose and Scope

As with any new program, implementation of the CMAQ program has generated questions about new areas of eligibility, the purpose and effectiveness of funded projects and the coordination processes between transportation and air quality agencies at the Federal, State and local levels. Consequently, a review of CMAQ program implementation will be undertaken, as noted in the FHWA–FTA program guidance of October 16, 1992.

(A) Purpose

The review has two intended purposes: (1) To determine whether the CMAQ Program is meeting its goals under ISTEA and the CAA to support transportation measures intended to assist nonattainment areas to meet the National Ambient Air Quality Standards, and (2) to identify how the CMAQ program's benefits can be maximized.

(B) Objectives

(1) To evaluate the kinds of projects funded under the CMAQ program, their emission reductions, cost-effectiveness, the length of time the funding process took, and other attributes, and to determine what was not funded.

(2) To determine what transportation control measures (TCMs) have been included in the States' Implementation Plans and whether funding sources have been identified for them.

(3) To raise key issues, like the air quality impacts of various TCMs such as traffic flow improvements, possible obstacles to innovative projects, etc., and to evaluate those issues.

(4) To identify any barriers or constraints to effective program implementation, especially with respect to coordination processes between transportation and air quality agencies at the Federal, State and local levels.

(5) To identify, document and disseminate examples of well-thought-out projects, project development and coordination processes, and transportation/air quality analytical techniques for each of the transportation-related pollutants.

(6) To determine the effectiveness of current guidance, with an eye toward possible mid-course policy adjustments.

(7) To determine how projects funded under the CMAQ program affect greenhouse gases.

(C) Approach

The review will be conducted by the FHWA and the FTA, in cooperation with the EPA. It will be conducted in an open way to solicit concerns, recommendations and issues from all interested parties, including environmental groups, transportation agencies, energy interests, State air quality agencies and others.

A public meeting will be held to solicit ideas from any group wishing to comment, especially national transportation and air quality groups, State and local agencies, environmental interest groups, industry groups, and other interested parties. Those commenting should address the structure of the review, relevant policy questions, and their experience in program implementation. The need for a second meeting to describe review findings will be determined as the evaluation progresses.

The review will focus on the effectiveness of current policies and guidance as implemented at the project level. As such, the review will begin and end with policy considerations, but any potential changes in policy will be based on a review of specific projects and existing coordination processes. Issues will be examined from both a public policy and legal perspective with review of the CMAQ provisions of the ISTEA (Section 1008) and other relevant provisions of the ISTEA or CAA, as necessary.

(D) Policy Questions

Several policy questions have arisen as CMAQ program implementation has progressed. They serve as a starting point for the review. Other policy considerations will be evaluated as they arise. Current questions include:

(1) Have the needed coordination mechanisms between the transportation and air quality communities at the Federal, State and local levels been established? Have they been effective? What have the impediments been? What can Federal agencies do to smooth coordination processes?

(2) How effective are the projects that have been funded under the CMAQ program in reducing transportation emissions? How can their effectiveness be improved? Is it possible at this time to identify the types of projects that have the greatest air quality impact?

(3) What are the short term and long term impacts of funded projects? How should these considerations be included in the determination of funding priorities under the CMAQ program?

(4) Will the low obligation rate for the first two years of the program ultimately result in the lapsing of Federal funds? What can be done to avoid this?

(5) How should projects that have the potential to increase oxides of nitrogen be treated? Should they be eligible as long as aggregate emissions are reduced in line with the Clean Air Act's conformity requirements?

(6) Under current guidance, new or expanded rideshare services are eligible for CMAQ funds, but the routine funding of existing services for ridesharing, transit, traffic control and inspection and maintenance programs, etc., is ineligible. Is the current policy too restrictive because it assumes that further emission reductions will not result by funding currently existing services?

(7) Traffic flow improvements are legislatively eligible for CMAQ funding as a transportation control measure identified in the Clean Air Act. What are the pros and cons of funding these projects for emission reduction purposes? Should changes be pursued to exclude them from eligibility?

(8) Under the current legislation, projects in a nonattainment area are no longer eligible for CMAQ funds once the area achieves attainment of the NAAQS and is redesignated as a maintenance area. Would a change to allow the use of CMAQ funds in newly redesignated areas constitute good public policy even if the State's remaining nonattainment areas lose CMAQ funds as a result?

(9) Projects that are not expected to contribute to emission reductions prior to the scheduled attainment date under the Clean Air Act are not eligible for CMAQ funds. Should any project which reduces emissions be eligible even if it is scheduled for completion after the attainment date?Should a project whose construction is not expected to start until after the attainment date be eligible?

(E) Project-Level Review

The project-level review will focus on implementation of the CMAQ program in the 10 States with the worst ozone and carbon monoxide pollution. These States receive the largest apportionments under the CMAQ program, almost two-thirds of each year's total. The States and their share of apportionments are:

	Percent
California	14.8
Texas	9.9
New Jersey	5.8
Ohio	4.4
Maryland	3.1
New York	10.5
Pennsylvania	6.0
Illinois	4.9
Massachusetts	4.1
Florida	3.0
Total	66.5

If time permits, the projects funded under the CMAQ program in one State in FHWA Regions 7, 8 and 10 will also be reviewed.

Each State will be visited by FHWA, FTA and EPA representatives to conduct interviews with Federal, State, and MPO officials and other interested parties. A sample of each State's projects will be examined in detail in light of the policy considerations above, the program guidance, and other factors as they arise. A representative sample will be developed in keeping with standard review and statistical procedures.

Sources of information on the CMAQ program as a whole will also be consulted. Such sources will include the States' annual reports on CMAQ program obligations, DOT fiscal and management reporting data, and reports on the program from government and nongovernment agencies.

To determine the CMAQ program's impact on greenhouse gases, information will be taken from the States' annual reports on funded projects and other sources, and background information on carbon dioxide emissions from transportation sources.

(F) Expected Schedule

Site visits to the States mentioned above will be conducted in the spring and early summer of 1994. A final report providing findings and recommendations will be released later in the year, with additions or changes to the program guidance to follow, as necessary. The report will be available from the FHWA Office of Environment and Planning hotline at (202) 366–2069.

Issued on: May 2, 1994.

Rodney E. Slater,

Federal Highway Administrator.

Gordon J. Linton,

Federal Transit Administrator.

[FR Doc. 94–10898 Filed 5–5–94; 8:45 am]

BILLING CODE 4910–22–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

USTR Termination of Section 1377 Determination

AGENCY: Office of the United States Trade Representative.

ACTION: Termination of Affirmative Determination under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 of a Violation of a Trade Agreement by Japan.

SUMMARY: On February 28, 1994, the Office of the U.S. Trade Representative (USTR) published a Federal Register notice (59 FR 9503) announcing an affirmative determination under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) that certain practices of Japan with respect to cellular telephone products and services were not in compliance with Japan's commitments under a June 28, 1989 agreement on third party radio and cellular telecommunications equipment. Following negotiations with Japan, the Governments of Japan and the United States reached an agreement on March 12, 1994 that resolves U.S. concerns. On April 11, 1994, the Government of Japan forwarded to USTR the deployment plan called for under the March 12 agreement. As a result, on April 11, 1994, the U.S. Trade Representative terminated the affirmative determination under Section 1377.

FOR FURTHER INFORMATION CONTACT: Questions concerning this termination notice should be directed to David Long, Office of Industry Affairs, (202) 395–6160, or Laura B. Sherman, Office of the General Counsel, (202) 395–3150, Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–10925 Filed 5–5–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 87
Friday, May 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:36 a.m. on Wednesday, May 4, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice or the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: May 4, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–11139 Filed 5–4–94; 3:19 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:19 a.m. on Tuesday, May 3, 1994, the Corporation's Board of Directors determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of personnel matters.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Dated: May 3, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–11013 Filed 5–3–94; 4:53 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 11, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94–11119 Filed 5–4–94; 2:19 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure

(Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately nine-thirty a.m. on Tuesday, April 19, 1994 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide nine appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: April 21, 1994.

Edward F. Reilly, Jr., Chairman,

U.S. Parole Commission.

[FR Doc. 94–11012 Filed 5–3–94; 4:52 pm]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 59, No. 87
Friday, May 6, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

American Indian Agricultural Resource Management Act

Correction

In proposed rule document 94-9701 beginning on page 21872, in the issue of Tuesday, April 26, 1994, make the following correction:

On page 21872, in the second column, under **DATES:**, in the ninth line, "May 26, 1994" should read "June 27, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

[Order No. 1, Amendment 6]

Superintendents, et al., Rocky Mountain Region; Delegation of Authority

Correction

In notice document 94-9898 appearing on page 19740 in the issue of Monday, April 25, 1994, in the first column, in the first paragraph, in the second line, "February 27, 1994" should read "February 27, 1974".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 94-023]

Port Access Routes; Approaches to Delaware Bay

Correction

In proposed rule document 94-7103 beginning on page 14126 in the issue of Friday, March 25, 1994, make the following correction:

1. On page 14128, in the first column, under the heading Precautionary Area, in the last line "754°" should read "75°".

BILLING CODE 1505-01-D

federal register

Friday
May 6, 1994

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 32 and 52

Federal Acquisition Regulation; Prompt Payment Act; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 91-91]

Federal Acquisition Regulation; Prompt Payment Act

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the Federal Acquisition Regulation (FAR) to amend FAR policies and clauses on Prompt Payment. This proposed rule, in combination with changes made by Federal Acquisition Circular 84–45, dated March 31, 1989, will complete the implementation of changes made in OMB Circular A–125 (Revised), dated December 12, 1989, to comply with the Prompt Payment Act Amendments of 1988 (Public Law 100–496). Changes are also proposed to clarify, simplify, and correct inconsistencies in the existing FAR text and clauses. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 5, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR case 91–91 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 91–91.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 84–45 published a final FAR rule in the **Federal Register** at 54 FR 13332, March 31, 1989, to implement changes required by the Prompt Payment Act Amendments of 1988 (Public Law 100–496). The Office of Management and Budget (OMB) implemented the statutory requirements by revising OMB Circular A–125, Prompt Payment. The Circular was published as a final rule in the **Federal Register** on December 21, 1989, and became effective 30 days after publication. OMB's final guidance differed somewhat from earlier proposed coverage which served as the basis for the FAR changes published in FAC 84–45. This proposed FAR rule implements the guidance published in OMB Circular A–125 (Revised).

Major FAR changes proposed include: (1) Clarifying policy on partial payments for partial performance by establishing coverage at FAR 32.102(d) and 32.903(f); (2) revising and adding definitions at FAR 32.902 to be in consonance with definitions in OMB Circular A–125 and to make related editorial changes; (3) adding coverage at FAR 32.904 to address an ongoing problem with contracts containing more than one set of payment terms; (4) clarifying policy at FAR 32.905(a)(1)(ii) concerning use of extended acceptance periods; (5) adding coverage at FAR 32.905(c)(6) to address construction prime contractor certification requirements under the clause at FAR 52.232–5; (6) adding coverage at FAR 32.905(j) to address the use and payment of "mixed" invoices; (7) adding coverage at FAR 32.907–1(b)(3) concerning interest penalties in relation to electronic funds transfers; (8) adding coverage at FAR 32.907–1(g) concerning additional interest penalties and contractor demands for such penalties; (9) adding coverage at FAR 32.910 to address construction contractors' payment of interest on unearned amounts under the clauses at FAR 52.232–5 and 52.232–27; and (10) revising the clause at FAR 52.232–5 to include the specific criteria required by A–125 for construction contractors' requests for progress payments. FAR clauses 52.232–5, 52.232–8, and 52.232–25, 52.232–26, 52.232–27, and 52.232–28 are amended to reflect the proposed FAR text changes. In addition, numerous changes are proposed to clarify, simplify, and correct inconsistencies in the existing FAR text and clauses. (Note: The requirements that no late payment penalty payments be made to certain foreign vendors were removed from the FAR by FAC 90–20, Item XIII, March 10, 1994, 59 FR 11368.)

B. Regulatory Flexibility Act

The proposed changes to FAR 32.102, subpart 32.9, and related part 52 clauses at 52.232–5, 52.232–8, 52.232–25, 52.232–26, 52.232–27, and 52.232–28 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule will apply to all small businesses who contract with the Federal Government and to all small businesses who enter into construction contracts with contractors holding prime Federal construction contracts. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 91–91), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Approval for the affected FAR segments was originally provided under OMB Control Number 9000–0102.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: April 29, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 32 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.102 is amended by revising paragraph (d) to read as follows:

32.102 Description of contract financing methods.

* * * * *

(d) Partial payments for accepted supplies and services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255). OMB

Circular A–125, Prompt Payment, requires agencies to pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, contract statements of work and pricing arrangements shall be designed to permit acceptance and payment for discrete portions of the work, as soon as accepted (but see 32.903(f)(2)).

* * * * *

3. Section 32.902 is amended by revising the definitions "Day", "Designated billing office", "Discount for prompt payment", and "Payment date"; and adding, in alphabetical order, the definitions "Invoice" and "Specified payment date" to read as follows:

32.902 Definitions.

* * * * *

Day, as used in this subpart, means calendar day, including weekends and holidays, unless otherwise indicated. (However, see 32.903(e)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

Designated billing office, as used in this subpart, means the office or person (governmental or nongovernmental) designated in the contract where the contractor first submits invoices and contract financing requests. This might be the Government disbursing office, contract administration office, office accepting the supplies delivered or services performed by the contractor, contract audit office, or a nongovernmental agent. In some cases, different offices might be designated to receive invoices and contract financing requests.

* * * * *

Discount for prompt payment means an invoice payment reduction voluntarily offered by the contractor, in conjunction with the clause at 52.232–8, Discounts for Prompt Payment, if payment is made by the Government prior to the due date. The due date is calculated from the date of the contractor's invoice. If the contractor has not placed a date on the invoice, the due date is calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day and a discount may be taken.

* * * * *

Invoice means a contractor's bill or written request for payment under the contract for supplies delivered or services performed.

* * * * *

Payment date means the date on which a check for payment is dated or the date an electronic funds transfer is specified for settlement at a Federal Reserve Bank (see 32.903(e)(2)).

* * * * *

Specified payment date means, for an electronic funds transfer (EFT) payment, the date which the Government has placed in the EFT payment transaction instruction given to the transfer network, as the date on which funds are to be transferred to the contractor's financial institution.

4. Section 32.903 is revised to read as follows:

32.903 Policy.

(a) All solicitations and contracts subject to this subpart shall specify payment procedures, payment due dates, and interest penalties for late invoice payment.

(b) The Government shall not make invoice and contract financing payments earlier than 7 days prior to the due dates specified in the contract unless the agency head, or designee, determines to make earlier payment on a case-by-case basis (see 32.908 for required clauses).

(c) Payment will be based on receipt of a proper invoice or contract financing request and satisfactory contract performance.

(d) Agency procedures shall ensure that, when specifying due dates, full consideration is given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

(e)(1) Checks shall be mailed on the same day they are dated.

(2) Payments made by electronic funds transfer shall be specified by the Government (see 32.902 definition of *specified payment date*) for settlement at a Federal Reserve Bank on or before the established due date.

(3) When the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(f)(1) Contracting officers shall, where the nature of the work permits, write contract statements of work and pricing arrangements that allow contractors to deliver, and receive invoice payments for, discrete portions of the work as soon as completed and found acceptable by the Government (see 32.102(d)).

(2) Unless specifically prohibited by the contract, the contractor is entitled to payment for accepted partial deliveries of supplies or partial performance of services that comply with all applicable contract requirements and for which prices can be calculated from the contract terms.

(3) Under some types of contracts, such as many cost-reimbursement contracts, partial payments cannot be made because the invoice price cannot be determined until after settlement of total contract costs and other contract-wide final arrangements. However, interim payments or contract financing payments may be made in accordance with the terms of the contract.

(g) Discounts for prompt payment offered by the contractor shall be taken only when payments are made within the discount period specific by the contractor.

(h) Agencies shall pay an interest penalty, without request from the contractor, for late invoice payments or improperly taken discounts for prompt payment. The interest penalty shall be absorbed within funds available for administration or operation of the program for which the penalty was incurred. The temporary unavailability of funds to make a timely payment does not relieve an agency from the obligation to pay interest penalties or the additional interest penalties discussed in 32.903(i) and 32.907–1(g).

(i) For contracts awarded after October 1, 1989, if the interest penalty is not paid within 10 days after it is due and the contractor makes a written demand for payment within 40 days after payment of the principal amount due, agencies shall pay an additional penalty amount, which shall be calculated in accordance with 32.907–1(g).

(j) If the contractor has assigned a contractor identifier (such as an invoice number) to an invoice or financing request, each payment shall use the contractor identifier (in addition to any Government or contract information) in describing any payment made.

5. Section 32.904 is revised to read as follows:

32.904 Responsibilities.

(a) Agency heads—

(1) Shall establish policies and procedures to implement this subpart;

(2) May prescribe additional standards for establishing due dates on

voice payments (32.905) and contract financing payments (32.906) necessary to support agency programs and foster prompt payment to contractors;

(3) May adopt different payment procedures to accommodate unique circumstances, provided such procedures are consistent with the policies in this subpart; and

(4) Shall inform contractors of points of contact within their cognizant payment offices to enable contractors to obtain status of invoices.

(b) Contracting officers, in drafting solicitations and contracts, shall identify for each contract line item number, subline item number, or exhibit line item number—

(1) Which of the applicable Prompt Payment clauses applies to each item when the solicitation or contract contains items which will be subject to different payment terms; and

(2) The applicable Prompt Payment food category (*i.e.*, which item numbers are meat or meat food products, which are perishable agricultural commodities, etc.), when using the clause at 52.232–25 which contains multiple payment terms for various classes of foods and edible products.

6. Section 32.905 is revised to read as follows:

32.905 Invoice payments.

(a) Except as prescribed in paragraphs (b), (c), and (d) of this section, the due date for making an invoice payment by the designated payment office shall be as follows:

(1) The 30th day after the designated billing office has received a proper invoice from the contractor (except as provided in paragraph (a)(2) of this section); or the 30th day after Government acceptance of supplies delivered or services performed by the contractor, whichever is later.

(i) On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. Except in the case of a contract for the purchase of a commercial item or service as defined in 15.804–3(c)(3), including a brand name commercial item for authorized resale (*e.g.*, commissary items), the contracting officer may specify a longer period for constructive acceptance in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed. The contract file shall indicate the justification for extending the constructive acceptance period beyond 7 days. Extended acceptance periods shall not be a routine agency practice but shall be used only when necessary to permit proper Government inspection and testing of the supplies delivered or services rendered.

(iii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(2) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(b) The due date for making payments on contracts that contain the clause at 52.232–10, Payments under Fixed-Price Architect-Engineer Contracts, shall be as follows:

(1) The due date for work or services completed by the contractor shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the contractor.

(ii) The 30th day after Government acceptance of the work or services completed by the contractor. On a final invoice where the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance shall be deemed to have occurred on the effective date of the settlement. For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also paragraph (b)(4) of this section). In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(2) The due date for progress payments shall be the 30th day after Government approval of contractor estimates of work or services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor, Government approval shall be deemed to have occurred constructively on the 7th day after contractor estimates have been received by the designated billing office (see also paragraph (b)(4) of this section). In the event that actual approval occurs within the constructive approval period, the determination of an interest penalty shall be based on the actual date of approval.

(3) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 30th day after the date of the contractor's invoice or payment request, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(4) The constructive acceptance and constructive approval requirements described in paragraphs (b)(1) and (b)(2) of this section are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested progress payment amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed.

(c) The due date for making payments on construction contracts shall be as follows:

(1) The due date for making progress payments based on contracting officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, shall be 14 days after receipt of a proper payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of

receipt, the payment due date shall be the 14th day after the date of the contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements. The contracting officer may specify a longer period in the solicitation and resulting contract if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract. The contract file shall indicate the justification for extending the due date beyond 14 days. The contracting officer or his representative shall not approve progress payment requests unless the certification and substantiation of amounts requested are provided as required by the clause at 52.232-5, Payments under Fixed-Price Construction Contracts.

(2) The due date for payment of any amounts retained by the contracting officer in accordance with the clause at 52.232-5, Payments under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval by the contracting officer for release to the contractor. This release of retained amounts shall be based on the contracting officer's determination that satisfactory progress has been made.

(3) The due date for final payments based on completion and acceptance of all work (including any retained amounts), and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract) shall be as follows:

(i) Either the 30th day after receipt by the designated billing office of a proper invoice from the contractor, or the 30th day after Government acceptance of the work or services completed by the contractor, whichever is later. If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(ii) On a final invoice where the payment amount is subject to contract settlement actions (*e.g.*, release of contractor claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(4) For the sole purpose of computing an interest penalty that might be due the contractor for payments described in paragraph (c)(3)(i) of this section, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also paragraph (c)(5) of this section). In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(5) The constructive acceptance and constructive approval requirements described in paragraph (c)(4) of this section are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(6) Construction prime contracts contain special provisions concerning prime contractor payments to subcontractors, along with special prime contractor certification requirements. The Office of Management and Budget has determined that these certifications are not to be construed as final acceptance of the subcontractor's performance. The certification in 52.232-5(c) implements this determination; however, certificates are still acceptance if the contractor deletes paragraph (c)(4) of 52.232-5.

(d) Due dates for payments of contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are as follows:

(1) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(2) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), will be as close as possible to, but not later than, the 7th day after product delivery.

(3) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(4) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise about the proper classification of a specific product, prevailing industry practices should be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the bidder making the representation.

(e) A proper invoice must include the items listed in paragraphs (e)(1) through (e)(8) of this section. If the invoice does not comply with these requirements, the contractor must be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils). The reason that the invoice is not a proper invoice must be specified. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907-1(b).

(1) Name and address of the contractor.

(2) Invoice date. (Contractors are encouraged to date invoices as close as possible to the date of mailing or transmission.)

(3) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(4) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (*e.g.*, shipment number and date of shipment, Prompt Payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(7) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(8) Any other information or documentation required by the contract (such as evidence of shipment).

(9) While not required, contractors are strongly encouraged to assign an identification number to each invoice.

(f) All invoice payments shall be supported by a receiving report or any other Government documentation authorizing payment. The agency receiving official should forward the receiving report or other Government documentation to the designated payment office by the 5th working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in 32.905. Acceptance should be completed as expeditiously as possible. The receiving report or other Government documentation authorizing payment shall, as a minimum, include the following:

(1) Contract number or other authorization for supplies delivered or services performed.

(2) Description of supplies delivered or services performed.

(3) Quantities of supplies received and accepted, if applicable.

(4) Date supplies delivered or services performed.

(5) Date supplies or services were accepted by the designated Government official (or progress payment request was approved if being made under the clause at 52.232–5, Payments under Fixed-Price Construction Contracts, or the clause at 52.232–10, Payments under Fixed-Price Architect-Engineer Contracts).

(6) Signature, or when permitted by agency regulations, electronic equivalent, printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions.

(7) If the contract provides for the use of Government certified invoices in lieu of a separate receiving report, the Government certified invoice must also contain the information described in paragraphs (f)(1) through (f)(6) of this section.

(g) When a discount for prompt payment is to be taken, payment will be made as close as possible to, but not later than, the end of the discount period. Payment terms are specified in the clause at 52.232–8, Discounts for Prompt Payment.

(h) The designated billing office shall immediately annotate each invoice with the actual date it receives the invoice.

(i) The designated payment office shall annotate each invoice and receiving report with the date a proper invoice or receiving report was received by the designated payment office.

(j) Contractors may be encouraged, but cannot be required to submit separate invoices for products with different payment due dates under the same contract or order. When an invoice is received which contains items with different payment periods (a mixed invoice), the payment office shall comply with all contractual and statutory payment provisions. In dealing with mixed invoices the payment office may, subject to agency policy—

(1) Pay all items at the later of the due dates, provided applicable interest penalties are also paid;

(2) Pay all items at the earlier of the due dates; or

(3) Split invoice payments, making payment by the due date applicable to each payment class.

32.906 [Amended]

7. Section 32.906 is amended in the first sentence of paragraph (a) by inserting the words "or designee," after the word "head,".

8. Section 32.907–1 is amended in paragraphs (a)(1) and (a)(2) by removing the words "has been" and inserting "was" in their place; and by revising paragraphs (b), (d), and (g) to read as follows:

32.907–1 Late invoice payment.

* * * * *

(b) The interest penalty computation shall not include—

(1) The time taken by the Government to notify the contractor of a defective invoice, unless it exceeds the periods prescribed in 32.905(e);

(2) The time taken by the contractor to correct the invoice. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in 32.905(e), the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the contractor will be based on this adjusted due date; and

(3) The period between the date of an attempted electronic funds transfer and the date the contractor furnishes correct electronic funds transfer data; *provided*, the Government notifies the contractor of the defective data within 7 days after the Government receives notice that the transfer could not be completed because of defective data.

* * * * *

(d) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). The rate in effect on the day after the due date shall remain fixed during the period for which an interest penalty is calculated. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. Information concerning this interest rate can be obtained from the Department of the Treasury, Finance Management Branch, Washington, DC 20227, telephone (202) 208–1515. Interest calculations shall be based upon a 360-day year. The interest penalty will accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. The interest penalty amount, interest rate and the period for which the interest penalty was computed, will be separately stated by the designated payment office on the check, in accompanying remittance advice, or for Electronic Funds Transfer (EFT) by an appropriate electronic or other remittance advice. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

* * * * *

(g)(1) For contracts awarded on or after October 1, 1989, a penalty amount (calculated in accordance with paragraph (g)(3) of this section) shall be paid, in addition to the interest penalty amount, only if the contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand to the designated payment office for additional penalty payment in accordance with paragraph (g)(2) of this section, postmarked not later than 40 days after the date the invoice amount is paid.

(2)(i) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(A) Specifically assert that late payment interest is due under a specific invoice and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(B) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(C) State that payment of the principal has been received, including the date of receipt.

(ii) Demands must be postmarked on or before the 40th day after payment was made, except that—

(A) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made, or

(B) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the contractor has placed on the demand; *provided*, such date is no later than the 40th day after payment was made.

(3)(i) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except—

(A) For additional penalties due on or before January 22, 1992, such penalties shall not exceed $2,500;

(B) After January 22, 1992, the additional penalty shall not exceed $5,000;

(C) The additional penalty shall never be less than $25.

(ii) If the interest penalty ceases to accrue in accordance with the limits stated in paragraphs (e) (1) and (2) of this section, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, but shall not exceed the limits specified in paragraph (g)(3)(i) of this section.

(iii) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(iv) The additional penalty does not apply to payments regulated by other Government regulations (for example, payments under utility contracts subject to tariffs and regulation).

9. Section 32.910 is added to read as follows:

§ 32.910 Additional Construction Policies.

(a) The Payments under Fixed-Price Construction clause (52.232–5), paragraph (d), and Prompt Payment for Construction Contracts clause (52.232–27), subparagraph (e)(6), provide for the contractor to pay interest on unearned amounts in certain circumstances. This interest shall be recovered from subsequent payments to the contractor. Therefore, no demand for payment shall normally be made. Contracting officers shall—

(1) Compute the amount in accordance with the clause;

(2) Provide the contractor with a final decision; and

(3) Notify the payment office of the amount to be withheld.

(b) The payment office shall be responsible for making the deduction of interest. Amounts collected in accordance with these provisions shall revert to the Treasury of the United States.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.232–5 is amended by revising paragraphs (b), (c), and (d)(2); adding paragraph (j); and adding paragraph headings to paragraphs (a), and (d) through (i) to read as follows:

52.232–5 Payments Under Fixed-Price Construction Contracts.

* * * * *

Payments Under Fixed-Price Construction Contracts (Date)

(a) *Payment of price.* * * *

(b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payment shall include the following substantiation:

(i) An itemization of the amounts requested related to the various elements of work required by the contract covered by the payment request.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

____

Name

____

Title

____

Date

(d) *Refund of unearned amounts.* * * *

* * * * *

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—

* * * * *

(e) *Retainage.* * * *

(f) *Title, liability, and reservation of rights* * * *

(g) *Reimbursement for bond premiums.* * * *

(h) *Final payment.* * * *

(i) *Limitation because of undefinitized work.* * * *

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause shall be—

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills

auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

11. Section 52.232–8 is amended by revising paragraph (b) of the clause to read as follows:

52.232–8 Discounts for Prompt Payment.

* * * * *

Discounts for Prompt Payment (Date)

* * * * *

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer is specified for settlement at a Federal Reserve Bank. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

(End of clause)

12. Section 52.232–25 is revised to read as follows:

52.232–25 Prompt Payment.

As prescribed in 32.908(c), insert the following clause:

(a) As authorized in 32.905(a)(1)(ii), the Contracting Officer may modify the date in subdivision (a)(5)(i) of this clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or evaluate the services performed, except in the case of a contract for the purchase of a commercial item or service as defined in FAR 15.804–3(c)(3), including a brand-name commercial item for authorized resale (*e.g.*, commissary items).

(b) As prescribed in 32.906(a), and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment (Date)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in Federal Acquisition Regulation 32.902. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Due date.* (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt, at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; *provided* a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Certain food products and other payments.* (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils, are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), as further defined in Public Law 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(44)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise about the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the bidder making the representation.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils). Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of the clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (Contractors are encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number of other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, Contractors are strongly encouraged to assign an identification number to each invoice.

(4) *Interest penalty.* An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (*e.g.*, tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) The period between the date of an attempted electronic funds transfer and the date the Contractor furnishes correct electronic funds transfer data; provided, the Government notifies the Contractor of the defective data within 7 days after the Government receives notice that the transfer could not be completed because of defective data.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(6) *Prompt payment discounts.* An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) *Additional interest penalty.* (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with (a)(7)(iii) of this clause shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(*1*) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made, or

(*2*) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; *provided*, such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except—

(*1*) For additional penalties due on or before January 22, 1992, such penalties shall not exceed $2,500;

(*2*) After January 22, 1992, the additional penalty shall not exceed $5,000;

(*3*) The additional penalty shall never be less than $25.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified above.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (for example, payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments*—(1) *Due dates for progress payments.* For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (*insert day as prescribed by agency head; if not prescribed, insert 30th day*) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) *Due dates for other contract financing.* For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213–1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

13. Section 52.232–26 is revised to read as follows:

52.232–26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.908(a), insert the following clause:

(a) As authorized in 32.905(b)(4), the Contracting Officer may modify the date in subdivision (a)(4)(i) of this clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required, to afford the Government a practicable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(b) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of this clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment for Fixed-Price Architect-Engineer Contracts (Date)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in Federal Acquisition Regulation 32.902. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Due date*. The due date for making invoice payments shall be—

(i) For work or services completed by the Contractor, the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(iii) of this clause).

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government approval of Contractor estimates of work or services accomplished.

(iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, at the time of receipt, the payment due date shall be the 30th day after the date of the Contractor's invoice or payment request, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice*. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(viii) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (Contractors are encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (*e.g.*, prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by the contract.

(ix) While not required, Contractors are strongly encouraged to assign an identification number to each invoice.

(3) *Interest penalty*. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount*. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (*e.g.*, tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(4)(i) (A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) The period between the date of an attempted electronic funds transfer and the date the Contractor furnishes correct electronic funds transfer data; *provided*, the Government notifies the Contractor of the defective data within 7 days after the Government receives notice that the transfer could not be completed because of defective data.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at 52.233–1, Disputes.

(5) *Prompt payment discounts.* An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) *Additional interest penalty.* (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owned an interest penalty;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(*1*) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated billing office on or before the 40th day after payment was made, or

(*2*) If the postmark is illegible or nonexistent and the designated billing office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; *provided*, such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except:

(*1*) For additional penalties due on or before January 22, 1992, such penalties shall not exceed $2,500.

(*2*) After January 22, 1992, the additional penalty shall not exceed $5,000.

(*3*) The additional penalty shall never be less than $25.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified above.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (for example, payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments*—(1) *Due dates for progress payments.* If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (*insert day as prescribed by agency head; if not prescribed, insert 30th day*) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) *Due dates for other contract financing.* For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.

(End of clause)

14. Section 52.232–27 is revised to read as follows:

52.232–27 Prompt Payment for Construction Contracts.

As prescribed in 32.908(b), insert the following clause:

(a) As authorized in 32.905(c)(1), the Contracting Officer may modify the date in subdivision (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(b) As authorized in 32.905(c)(5), the Contracting Officer may modify the date in subdivision (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(c) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

Prompt Payment for Construction Contracts (Date)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in Federal Acquisition Regulation 32.902. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Types of invoice payments.* For purposes of this clause, there are several types of invoice payments which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt, at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt, at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date. (Contractors are encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (*e.g.*, prompt payment discount terms).

(vi) Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232–5, Payments under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, Contractors are strongly encouraged to assign an identification number to each invoice.

(3) *Interest penalty.* An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (*e.g.*, tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) The period between the date of an attempted electronic funds transfer and the date the Contractor furnishes correct electronic funds transfer data; provided, the Government notifies the Contractor of the defective data within 7 days after the Government receives notice that the transfer could not be completed because of defective data.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(5) *Prompt payment discounts.* An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) *Additional interest penalty.* (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with (a)(6)(iii) of this clause shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with (a)(6)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(*1*) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated billing office on or before the 40th day after payment was made, or

(*2*) If the postmark is illegible or nonexistent and the designated billing office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; *provided*, such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except—

(*1*) For additional penalties due on or before January 22, 1992, such penalties shall not exceed $2,500.

(*2*) After January 22, 1992, the additional penalty shall not exceed $5,000.

(*3*) The additional penalty shall never be less than $25.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified above.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (for example, payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments*—(1) *Due dates for progress payments.* If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (*insert day as prescribed by agency head; if not prescribed, insert 30th day*) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) *Due dates for other contract financing* For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) *Subcontract clauses requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause which obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause which obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty

(3) *Subcontractor clauses flowdown.* A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clauses interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i) of this clause); or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended.

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) *Third party deficiency reports*—(1) *Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding.* A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

15. Section 52.232–28 is revised to read as follows:

52.232–28 Electronic Funds Transfer Payment Methods.

As prescribed in 32.908(d), insert the following clause:

Electronic Funds Transfer Payment Methods (Date)

Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. No later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(a) *FEDLINE information.* For payment through FEDLINE, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfer of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) *ACH information.* For payment through ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) *Change of institution.* In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) *Contractor documents.* The documents furnishing the information required in this clause must be dated and contain signature, title, and telephone number of the contractor official authorized to provide it, as well as the Contractor's name and contract number.

(e) *Delay of payment.* Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(f) *Prompt payment.* (1) Payments made by electronic funds transfer shall be specified (see 32.902 definition of *specified payment date*) for settlement at a Federal Reserve Bank by the established due date.

(2) When payment by electronic funds transfer cannot be made because the Contractor furnished incorrect or incomplete data, no interest penalty is due for the period between the date of the attempted transfer and the date on which the Contractor furnishes correct data: *provided,* the Government notifies the Contractor within 7 days after the Government receives notice that the transfer could not be completed because of defective data.

(End of clause)

[FR Doc. 94–10802 Filed 5–5–94; 8:45 am]

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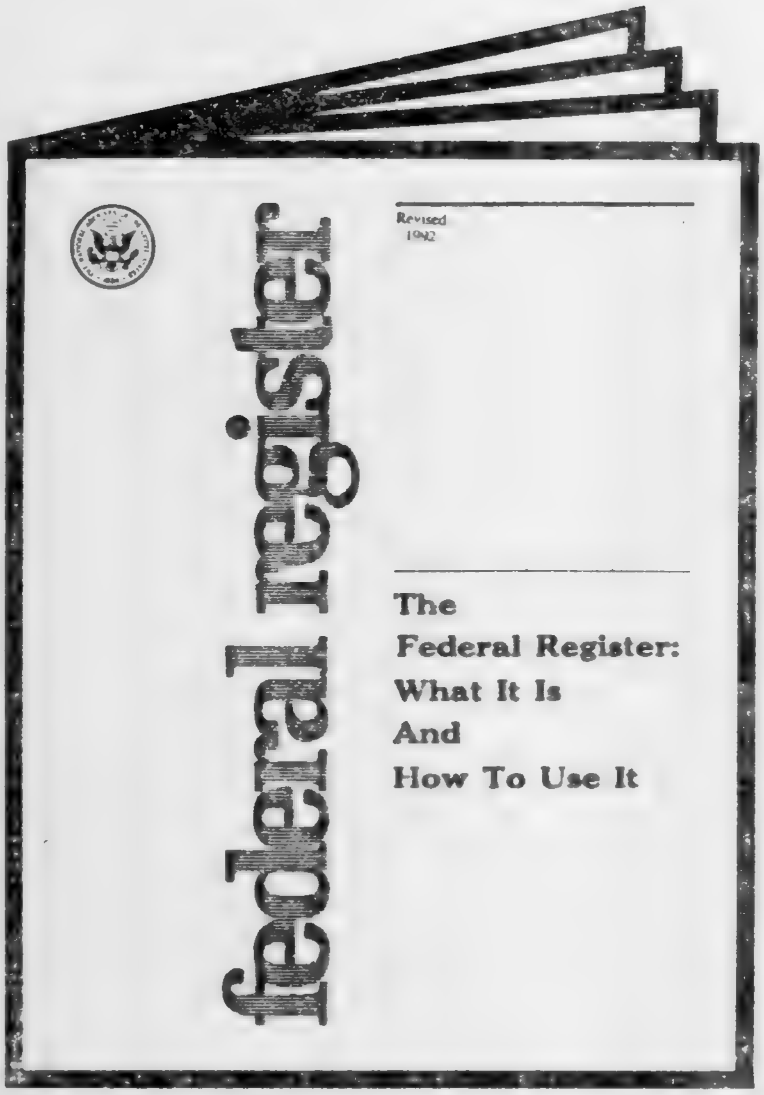

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Monday
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Federal Register
Vol. 59, No. 88
Monday, May 9, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1434

RIN 0560–AD73

General Price Support Regulations for Honey

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the Honey Price Support Loan Program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 207 of the Agricultural Act of 1949, as amended (the 1949 Act). The amendments made by this interim rule will provide price support loan rates for 1991 and subsequent crop years; revise the limitation on the total amount of payments a producer may receive; revise the provisions of the honey marketing assessment; lessen the administrative actions CCC imposes on producers who violate the loan and loan deficiency payment (LDP) agreements; provide more authority to State and county committees in administering the program; eliminate obsolete provisions, and incorporate the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994 and the Omnibus Budget Reconciliation Act of 1993.

DATES: Interim rule effective May 9, 1994. Comments must be received on or before June 8, 1994 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7641. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3623, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Tegeler, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–3110.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This interim rule has been reviewed pursuant to Executive Order 12788. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this interim rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The information collections have previously been cleared under the current regulations by the Office of Management and Budget (OMB), and assigned OMB Nos. 0560–0087 and 0560–0129.

Comments

Since producers are currently making decisions regarding honey which may be pledged as collateral for CCC price support loans, it has been determined that it is impractical and contrary to the public interest for CCC to comply with any further rulemaking requirements with respect to amending the eligibility requirements. Accordingly, the provisions of this interim rule are effective upon publication in the **Federal Register**. Comments are requested, however, and will be taken into consideration when developing the final rule. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities. Section 207 of the 1949 Act was amended by the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (Budget Act). In addition, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994, Public Law 103–111 (Appropriations Act) provides special provisions that affect the operation of the honey price support program in fiscal year 1994. This interim rule amends the regulations for the price support program for honey to reflect these legislative changes. In addition, this interim rule amends the regulations to provide more authority to State and county committees in administering the programs, lessen the administrative actions CCC imposes on producers who violate the loan and LDP agreements, and make minor changes for the correction of errors and omissions as specified herein.

The Budget Act amended the 1949 Act to:

(1) Provide price support loan rates for the crop years 1991 through 1998;

(2) Eliminate the marketing assessment for the 1994 and subsequent crops of honey; and

(3) Limit the total amount of payments that a person may receive.

The Appropriations Act provides that no funds made available by that Act may be used to support the price of honey which results in the following:

(1) Elimination of payments to producers during the 1994 fiscal year for the 1994 crop of honey; and

(2) Limiting the amount of forfeitures of 1994-crop honey loan collateral during 1994 fiscal year to support the price of honey to zero pounds of honey.

Accordingly, this interim rule amends: (1) Sections 1434.1(a), 1434.25(a)(1) and 1434.27(c)(3) to exclude, for the 1994 fiscal year for the 1994 crop year of honey, the provisions that allow a producer to:

(a) Repay a loan at less than the principal loan amount plus charges and interest;

(b) Request and obtain a LDP by agreeing to forego a loan on that quantity of honey; and

(c) Deliver the quantity of honey pledged as collateral for loan to CCC in settlement for such loan;

(2) Section 1434.6(b) to incorporate the price support loan rates;

(3) Section 1434.7 to add paragraphs (c)(1) and (c)(2) which were inadvertently omitted in the CCC final rule published on November 4, 1993, (58 FR 58739);

(4) Section 1434.13(b) to update the provisions of the marketing assessment for honey to specify that such assessment applies only to the 1991 through 1993 crops of honey;

(5) Section 1434.14 by removing and reserving the section because administrative offsets are currently provided in part 3 of this title and part 1403 of this chapter;

(6) Section 1434.16(a)(1) to correct the title of Form CCC–666 LDP;

(7) Section 1434.17 to revise the provisions of the payment limitation to specify such limitation for the 1994 through 1998 crop years; and

(8) Section 1434.27(c) by adding paragraph (3) to provide that if the amount of the loan indebtedness for 1994-crop year loan during the 1994 fiscal year is not repaid and CCC forecloses on the honey in accordance with § 1434.28, the settlement value of the honey shall be determined by CCC to be the proceeds received as a result of the sale of such honey.

In addition to the amendments provided by the Budget Act and Appropriations Act, the following regulatory revisions are intended to make the price support program for honey more user friendly.

Producers who violate the loan note and security agreement by moving farm-stored loan collateral from the structure designated for the storage of such loan collateral, without prior written consent of the county committee, are subject to liquidated damages. In some cases, collateral is moved to other structures on the farm which makes it possible for CCC to perfect its security on such collateral. CCC has determined that when such security can be established, producers should not be subject to such liquidated damages. Accordingly, this interim rule amends § 1434.23(b)(2) to clarify that unauthorized removal only includes cases where CCC cannot obtain the first lien on the collateral.

It is difficult to prove the amount of damages to CCC for loan and LDP violations committed by producers; however, 20 and 50 percent of the loan and LDP rates, as applicable, were established for first and second offenses, respectively, when the county committee determined that the producer acted in good faith. CCC has determined that the liquidated damages can be reduced without affecting the administration of the loan and LDP programs. Accordingly, this interim rule amends § 1434.23 to: (a) Decrease the liquidated damages amounts; and (b) add paragraph (k) to provide that any or all of the liquidated damages may be waived under certain conditions.

In addition, under certain conditions, producers who violated loan and LDP provisions may be denied loans and LDP's on commodities stored on the farm. CCC has determined that this penalty is severe and should only be assessed when the county committee determines that such action is necessary to protect the interest of CCC. Accordingly, in § 1434.23, paragraphs (d)(2)(i), (d)(2)(ii), and (e) have been amended to remove the requirement for denial of farm-stored loans or LDP's.

In addition, in § 1434.23, paragraphs (a)(2), (a)(3), and (c), and in § 1434.26, paragraph (b)(3) have been amended to delete the references to Forms CCC–700 and CCC–701 and include the Form CCC–666 LDP.

This interim rule amends § 1434.24 by adding paragraph (f) to provide if a producer moves honey from storage without prior approval on a nonworkday, the producer will not be subject to administrative actions providing the producer notifies the county office on the next workday that the honey has been moved and such movement is approved by CCC.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR part 1434 is amended as follows:

PART 1434—HONEY

1. The authority citation for 7 CFR part 1434 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq; 15 U.S.C. 714b and 714c.

2. Section 1434.1 is amended by revising paragraph (a) to read as follows:

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1991 and subsequent crops of extracted honey, except that §§ 1434.24(a)(2)(ii), (e)(1)(ii), and (e)(2); 1434.25(a)(2); 1434.26; and 1434.27 are not applicable for the 1994 crop in fiscal year 1994. These regulations set forth the terms and conditions under which price support loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation (CCC). Additional terms and conditions are set forth in the note and security agreement or the loan deficiency payment application which must be executed by a producer in order to receive a price support loan or loan deficiency payment. Purchase agreements shall not be offered for the 1991 and subsequent crops of honey.

* * * * *

3. Section 1434.6 is amended by revising paragraph (b) to read as follows:

§ 1434.6 Availability, disbursement, and maturity.

* * * * *

(b) Price support loans at a national average price support rate of 53.8 cents per pound for 1991 through 1993; 50 cents per pound for 1994 and 1995; 49 cents per pound for 1996; 48 cents per pound for 1997; and 47 cents per pound for 1998 crops of honey are available to producers as soon as announced by CCC, but not earlier than April 1 of the year in which the honey is produced and extracted and not later than March

31 of the year following the year in which the honey is produced and extracted. However, whenever the final date of availability falls on a nonworkday for county offices, the applicable final date shall be extended to include the next workday. Price support loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is approved. However, when the final date of maturity falls on a nonworkday for county offices the final date shall be extended to include the next workday.

* * * * *

4. Section 1434.7 is amended by adding paragraphs (c)(1) and (c)(2) to read as follows:

§ 1434.7 Eligible honey.

* * * * *

(c) * * *

(1) The 5-gallon containers must hold approximately 60 pounds of honey and shall be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable.

(2) Steel drums must be open-end type and filled no closer than 2 inches from the top of the drums. In addition, such drums must be new or must be used drums which have been reconditioned inside and outside. Drums must:

(i) Be clean,

(ii) Be treated inside and outside to prevent rusting,

(iii) Be fitted with gaskets which provide a tight seal, and

(iv) Have an inside coating suitable for honey storage.

* * * * *

5. Section 1434.13 is amended by revising paragraph (b) to read as follows:

§ 1434.13 Fees, charges and interest.

* * * * *

(b) Effective only for each of the 1991 through 1993 crops of honey, producers and producer-packers of honey as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) shall remit to CCC a nonrefundable marketing assessment. Such marketing assessment shall be computed by multiplying an amount equal to one percent of the national average price support loan rate by the loan quantity of the crop. The assessment shall be collected from the loan deficiency payments and loan proceeds for the crop of honey. However, producers exempt from the payment of the honey research and promotion fee as provided in paragraph (e) of this section are also exempt from this marketing assessment.

* * * * *

§ 1434.14 [Removed and Reserved]

6. Section 1434.14 is removed and reserved.

7. Section 1434.16 is amended by revising paragraph (a)(1) to read as follows:

§ 1436.16 Determination of quality.

(a)(1) Loans and loan deficiency payments on farm-stored honey will be made on the basis of the floral source and color of the honey as declared and certified by the producer on Form CCC–666 (Honey), Honey Loan Certification and Worksheet for loans, and Form CCC–666 LDP, Loan Deficiency Payment Application and Certification for loan deficiency payments, at the time the honey is either pledged as collateral for a loan or the loan deficiency payment application is made. The producer is also required to declare and certify on Form CCC–666 (Honey) or Form CCC–666 LDP the color and class (table or nontable) of the honey at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made.

* * * * *

8. Section 1434.17 is amended by:

A. Revising paragraphs (a)(3) and (a)(4), and

B. Adding paragraphs (a)(5), (a)(6), and (a)(7) to read as follows:

§ 1434.17 Payment and forfeiture limitations.

(a) * * *

(3) $150,000 in the 1993 crop year;

(4) $125,000 in the 1994 crop year;

(5) $100,000 in the 1995 crop year;

(6) $75,000 in the 1996 crop year; and

(7) $50,000 in each of the 1997 and 1998 crop years.

* * * * *

9. Section 1434.23 is amended by:

A. Revising paragraphs (a)(2), (a)(3), (b)(1), (b)(2), and (c),

B. Revising introductory text to paragraph (d),

C. Revising paragraph (d)(2),

D. Revising paragraph (e), and

E. Adding paragraph (k) to read as follows:

§ 1434.23 Incorrect certification, unauthorized removal and unauthorized disposition.

(a) * * *

(2) When signing Form CCC–666 LDP, Loan Deficiency Payment Application and Certification that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes.

(3) That violation of the terms and conditions of the Form CCC–677 or Form CCC–666 LDP, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity which is not actually in existence or for a quantity on which the producer is not eligible.

(b) * * *

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures which were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1434.24, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral.

* * * * *

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC–677 or Form CCC–666 LDP, as applicable, liquidated damages shall be assessed on the quantity of the commodity which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense, or

(2) Did not act in good faith with regard to the violation, or for cases other

than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

* * * * *

(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

* * * * *

(k) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

10. Section 1434.24 is amended by adding paragraph (f) to read as follows:

§ 1434.24 Release of the honey pledged as collateral for a loan.

* * * * *

(f) If the honey is moved on a nonworkday from storage without obtaining prior approval to move such honey, such removal shall constitute unauthorized removal or disposition, as applicable, of such honey unless the producer notifies the county office the next workday that such honey has been moved and such movement is approved by CCC.

11. Section 1434.25 is amended by revising paragraph (a)(1) to read as follows:

§ 1434.25 Liquidation of loans.

(a) * * *

(1) Repay the loan by payment of the amount of loan and any charges, plus interest, or with the exception of 1994 crop in the 1994 fiscal year, an amount, without interest, which is less than the loan level determined in accordance with 1434.24(e)(1)(ii), or,

* * * * *

12. Section 1434.26 is amended by revising paragraph (b)(3) to read as follows:

§ 1434.26 Loan deficiency payments.

* * * * *

(b) * * *

(3) File and request payment on Form CCC–666 LDP;

* * * * *

13. Section 1434.27 is amended by adding paragraph (c)(3) to read as follows:

§ 1434.27 Settlement.

* * * * *

(c) * * *

(3) If, during fiscal year 1994, CCC forecloses on 1994 crop honey pledged as collateral for a loan, in accordance with § 1434.28, the settlement value will be determined by CCC to be the proceeds received as a result of the sale of such honey.

* * * * *

Signed in Washington, DC on April 29, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–11016 Filed 5–6–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–55–AD; Amendment 39–8904; AD 94–09–15]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires repetitive inspections of the aft bulkhead to detect cracks, and repair, if necessary. This amendment requires expansion of the inspection area and modification of the aft pressure bulkhead, which terminates the inspection requirements. This amendment is prompted by a tear down inspection conducted by the manufacturer, which revealed fatigue cracking in additional areas of the aft pressure bulkhead. The actions specified by this AD are intended to prevent potential loss of cabin pressurization.

DATES: Effective June 8, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 84–08–03, Amendment 39–4848 (49 FR 16762, April 20, 1984), which is applicable to certain Airbus Model A300 series airplanes, was published in the **Federal Register** on September 3, 1993 (58 FR 46914). The action proposed to supersede AD 84–08–03 to require expansion of the inspection area to include areas 3 and 4 of the aft pressure bulkhead, and repair, if necessary; and modification of the aft pressure bulkhead, which will terminate the inspection requirements of this AD. This modification entails increasing the strength of the aft pressure bulkhead by attaching additional stiffeners. (This modification was optional in AD 84–08–03, Amendment 39–4848.)

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 738 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $4,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $267,540, or $44,590 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4848 (49 FR 16762, April 20, 1984), and by adding a new airworthiness directive (AD), amendment 39–8904, to read as follows:

94–09–15 Airbus Industrie: Amendment 39–8904. Docket 93–NM–55–AD. Supersedes AD 84–08–03, Amendment 39–4848.

Applicability: Model A300 B2–1A, B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes, on which Airbus Modification 2476/D1842 and Airbus Modification 2476/D1869 have not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of cabin pressurization, accomplish the following:

Note 1: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph A. of AD 84–08–03. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 84–08–03, paragraph (a) of this AD requires that the next scheduled inspection be performed within the 6,000 flight cycles after the last inspection performed in accordance with paragraph A. of AD 84–08–03.

(a) Prior to the accumulation of 12,000 total flight cycles, or within 180 days after June 11, 1984 (the effective date of AD 84–08–03, Amendment 39–4848), whichever occurs later, inspect the aft bulkhead in areas 1 and 2 to detect fatigue cracking, in accordance with Airbus Service Bulletin A300–53–152, Revision 1, dated January 30, 1981; or Revision 4, dated March 13, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair the crack, in accordance with Airbus Service Bulletin A300–53–152, Revision 1, dated January 30, 1981; or Revision 4, dated March 13, 1992. Subsequent to repair, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(b) Prior to the accumulation of 17,000 total flight cycles, or within 1 year after June 11, 1984 (the effective date of AD 84–08–03, Amendment 39–4848), whichever occurs later, accomplish Airbus Modification 2476/D1869, in accordance with Airbus Service Bulletin A300–53–122, Revision 2, dated January 30, 1981.

(c) Prior to the accumulation of 32,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, inspect the aft pressure bulkhead in areas 3 and 4 to detect fatigue cracking, in accordance with Airbus Service Bulletin A300–53–152, Revision 4, dated March 13, 1992.

(1) If no crack is detected, repeat the inspection at intervals not to exceed 9,000 flight cycles.

(2) If any crack is detected as a result of any inspection required by paragraph (b) of this AD, prior to further flight, repair the crack in accordance with Airbus Structural Repair Manual 51–41–30. Subsequent to repair, repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles.

(d) Within 6 years after the effective date of this AD, accomplish Airbus Modification 2476/D1842, in accordance with Airbus Service Bulletin A300–53–121, Revision 3, dated January 30, 1981. Accomplishment of this modification constitutes terminating action for the inspections required by this AD.

(e) Accomplishment of Airbus Modification 2476/D1842, in accordance with Airbus Service Bulletin A300–53–121, Revision 3, dated January 30, 1981, constitutes terminating action for the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and repairs shall be done in accordance with the following Airbus service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300–53–121, Revision 3, January 30, 1981	1–4	3	January 30, 1981.
	2, 7, 10–15, 17	2	December 30, 1980.
	6, 8, 9, 16, 18	1	September 30, 1980.
	5	Original	April 10, 1980.
A300–53–152, Revision 1, January 30, 1981	1–2	1	January 30, 1981.
	3–18	Original	October 24, 1980.
A300–53–152, revision 4, March 13, 1992	1–10, 18	4	March 13, 1992.
	11–17, 19–21	3	(These pages are not dated.)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 8, 1994.

Issued in Renton, Washington, on April 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10507 Filed 5–6–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–33998]

Delegation of Authority to Director of Division of Enforcement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate authority to the Director of Division of Enforcement to institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to a validly-issued Commission subpoena. This amendment will expedite the investigation process by enabling the staff to more quickly compel individuals or entities to comply with Commission subpoenas.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Emily P. Gordy, Assistant Director, Division of Enforcement, 942–4627, Stephen M. DeTore, Associate Chief Counsel, 942–4593 or Earle B. Wilson, Attorney, 942–4842.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced amendments to its rules governing delegation of authority to the Division of Enforcement ("Division").

The amendment to Rule 30–4[1] authorizes the Director of Division of Enforcement ("Division Director") to institute subpoena enforcement proceedings in federal court to seek an order compelling individuals or entities to comply with Commission subpoenas. This delegation will expedite the investigation process by enabling the Division to more quickly seek to compel compliance with Commission subpoenas in cases where the entry of a court order is necessary. Notwithstanding this delegation of authority, in instances where potential subpoena enforcement action raises any close or controversial issues, the Division may consult with the Commission before the action is filed in federal court.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,[2] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–4 is amended by adding paragraph (a)(10) to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(10) To institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to subpoenas issued pursuant to paragraph (a)(1) of this section in connection with investigations pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utilities Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(b)).

* * * * *

Dated: May 3, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11028 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 123

[T.D. 94–44]

RIN 1515–AB41

Small Vessel Reporting of Arrival in Miami District

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document removes a section of the Customs Regulations which sets forth special requirements for the report of arrival by operators of small vessels whose intended destination is at a point within the Miami, Florida, Customs District. As a result of this change, such small vessels will be subject to the reporting requirements applicable to vessels in general as prescribed by statute and elsewhere in the Customs Regulations. The change will confer a benefit on the public by doing away with procedural requirements which have proven to be cumbersome and inconvenient.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Greg Burns, Office of Inspection and Control (202–927–0381).

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1988, T.D. 88–71 was published in the **Federal Register** (53 FR 46081) to adopt, as a final rule, interim amendments to Part 4 of the Customs Regulations (19 CFR part 4) which included, *inter alia*, the addition of a new § 4.2a (19 CFR 4.2a) setting forth special requirements for the report of arrival by operators of small vessels whose intended destination is at a point within the Miami, Florida, Customs

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[1] 17 CFR 200.30–4.

[2] 5 U.S.C. 553(b)(3)(A).

District. Section 4.2a was adopted as part of Customs continuing efforts to prevent smuggling, or other introduction contrary to law, of controlled substances and other merchandise and to enforce the currency reporting laws.

Under § 4.2a, an operator of a small vessel (defined as any vessel of less than 5 net tons, or any private pleasure vessel regardless of displacement) arriving from a foreign port or place, as defined therein, with an intended destination at a point within the limits of the Miami Customs District must immediately report the arrival, by use of a special clearly marked Customs telephone provided for that purpose at that location designated by Customs which is nearest to the vessel destination point, before proceeding to that destination point; the background portion of T.D. 88–71 listed 24 small vessel reporting stations designated by Customs but further stated that the District Director of Customs in Miami would retain authority to change the reporting locations. Section 4.2a also specifies the civil and criminal penalties that may be applied to the master or person in charge of a vessel who fails to report arrival as required under that section.

Experience with the operation of § 4.2a since publication of T.D. 88–71 has demonstrated that the reporting procedures set forth in the regulation are unnecessarily cumbersome and otherwise inconvenient for the general public. In this regard, Customs notes the following specific problems with the § 4.2a reporting requirements: (1) The number of private vessel arrivals in the Miami District exceeds the ability of the telephone reporting system to accommodate the calls in a timely manner, with the result that vessel operators sometimes must wait for more than an hour before getting through to the Customs office; and (2) private marinas, which constitute the majority of the designated reporting stations, have experienced economic hardship, particularly on busy weekends, because vessels trying to report occupy dock space to the exclusion of other private vessels wishing to do business at the marina. Customs believes that these problems are sufficiently significant as to warrant removal of § 4.2a.

Customs notes that removal of § 4.2a, which is primarily procedural in effect, will not have any substantive effect on the basic vessel reporting requirement and the enforcement thereof by Customs. In this regard it is noted that on December 21, 1993, Customs published in the **Federal Register** (58 FR 67312) T.D. 93–96 setting forth, as a final rule effective on the date of publication, amendments to the Customs Regulations concerning reporting requirements for vessels, vehicles and individuals. Included in T.D. 93–96 were: (1) A revised § 4.2(a) which provides, *inter alia*, that, upon arrival of any vessel from a foreign port or place, the master of the vessel shall immediately report that arrival to the nearest Customs facility or other location designated by the district director; (2) transferral of the definition of "foreign port or place" from § 4.2a to a new § 4.2(b); and (3) a new § 4.3a setting forth a general recitation of the penalties for violation of vessel reporting and entry requirements. Accordingly, while removal of § 4.2a will eliminate the burden on the public occasioned by the special reporting procedures contained in that regulatory provision, the basic legal responsibilities of operators of small vessels will remain unchanged: Under § 4.2(a) they will still have to immediately report to Customs upon arrival from a foreign port or place, and they will remain liable for civil and criminal penalties for a failure to do so as outlined in § 4.3a.

In addition to the removal of § 4.2a, this document contains consequential cross-reference amendments to § 4.2(a) and to § 123.1(c) which was also revised by T.D. 93–96 as discussed above.

Inapplicability of Notice and Delayed Effective Date Requirements

Because these amendments confer benefits by reducing burdens and relieving restrictions on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d) (1) and (3), a delayed effective date is not required.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Harbors, Imports, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Vessels, Yachts.

19 CFR Part 123

Canada, Customs duties and inspection, Imports, International boundaries, Mexico, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, parts 4 and 123, Customs Regulations (19 CFR parts 4 and 123) are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citation for § 4.2 are revised to read as follows:

Authority: 5 U.S.C. 301: 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.2 also issued under 19 U.S.C. 1441, 1486;

* * * * *

§ 4.2 [Amended]

2. In § 4.2, paragraph (a) is amended by removing from the second sentence the words "prescribed in § 4.2a of this part, or as".

§ 4.2a [Removed]

3. Section 4.2a is removed.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised, and the specific authority citation for § 123.1 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1431, 1433, 1624;

Section 123.1 also issued under 19 U.S.C. 1459.

* * * * *

§ 123.1 [Amended]

2. In § 123.1, paragraph (c) is amended by removing the words "see §§ 4.2 and 4.2a" and adding, in their place, the words "see § 4.2".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 15, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–11004 Filed 5–6–94; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH–11–2–6106; OH–12–2–6107; FRL–4881–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is giving partial approval, partial disapproval, and partial limited approval/limited disapproval to specified portions of the requested revisions to the Ohio's ozone State Implementation Plan (SIP). The requested revisions consist of amendments to the Ohio Volatile Organic Compound (VOC) Rules. The revisions were submitted by the State of Ohio on June 9, 1988, and August 24, 1990, to satisfy part D requirements of the Clean Air Act as amended in 1990 (CAA). The USEPA has evaluated each revised rule and finds that a number of the regulations are fully approvable, and a number are not approvable, and is partially approving and partially disapproving these portions accordingly. The remainder of the regulations, while deficient in some respects, would nevertheless strengthen the existing SIP if federally approved. Therefore, the USEPA is giving limited approval to these remaining regulations in order to strengthen the SIP. Concurrently, the USEPA is giving limited disapproval to these rules because they still contain deficiencies that were required to be corrected by section 182(a)(2)(A) and, as a result, do not fully meet the part D requirements of the CAA.

EFFECTIVE DATE: This final rule becomes effective June 8, 1994.

ADDRESSES: Copies of the SIP revision request, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Bonnie Bush at (312) 353–6684, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision request to the Ohio ozone SIP is also available for inspection at the following address:

Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Bonnie Bush, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353–6684.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On June 9, 1988, the Ohio Environmental Protection Agency (OEPA) submitted volatile organic compound (VOC) regulations governing 11 sources not covered by United States Environmental Protection Agency (USEPA) Control Technique Guidelines (CTG) and the associated technical support for these regulations. On August 24, 1990, the OEPA submitted further revisions to the ozone portion of the Ohio State Implementation Plan (SIP), specifically, revisions to Ohio Administrative Code (OAC) Chapter 3745–21, "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards," including amendments to the following rules: OAC 3745–21–01, Definitions; OAC 3745–21–04, Attainment Dates and Compliance Time Schedules; OAC 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources; OAC 3745–21–10, Compliance Test Methods and Procedures; and OAC 3745–21–11, Reasonably Available Control Technology Studies for Ozone. On July 23, 1991, the OEPA sent a letter to Region V withdrawing OAC 3745–21–11 from the August 1990 SIP revision request. The USEPA evaluated the remaining revision requests from both the June 1988 and August 1990 submittals as the OEPA's effort to address the reasonably available control technology (RACT) "Fixup" requirements under section 182(a)(2)(A) of the Clean Air Act as amended in 1990 (CAA).

On September 23, 1993, the USEPA published a notice of proposed rulemaking in the **Federal Register** (58 FR 49458), proposing partial approval, partial disapproval, and partial limited approval/limited disapproval of the submittals. Public comments on this proposal were accepted through October 25, 1993. Three comments were received, from: (1) Navistar International Transportation Corporation, commenting on the USEPA's proposed action on OAC 3745–21–09(U); (2) Porter, Wright, Morris & Arthur, attorneys for Armco Steel Company, commenting on the USEPA's proposed action on OAC 3745–21–09(OO); and (3) International Paper, commenting on the USEPA's proposed action on OAC 3745–21–09(II).

II. Public Comment/USEPA Response

The following evaluation summarizes each comment received, along with a summary of the USEPA's proposed action on the portion of the requested revisions that received the comment, and the USEPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the USEPA's proposed actions based on the CAA and cited references, appears in USEPA technical support documents (TSD's) dated October 19, 1988, and March 3, 1993.

A. Navistar International Transportation Corporation

Navistar commented on the USEPA's proposed action on OAC 3745–21–09(U), Ohio's regulation for surface coating of miscellaneous metal parts and products.

1. Proposed Action

The USEPA proposed disapproval of Rule –09(U) because of a number of deficiencies involving inconsistency with RACT as defined by the USEPA, lack of enforceability, and violation of the General Savings Clause of the Clean Air Act. The inconsistencies with RACT include an unjustified emission limit which is less stringent than RACT, an unjustified emission limit which is a relaxation from the approved ozone SIP, an inappropriate, unsupported applicability cutoff, and an inappropriate use of a five percent equivalency demonstration. The unsupported applicability cutoff requested in the revision is 10 gallons or less of coating applied per day. The USEPA has defined the RACT cutoff as 15 lbs or less VOC emitted per day. The enforceability deficiencies include use of vague language and language allowing director's discretion without requiring USEPA approval.

2. Comments on Proposed Action and USEPA Response

a. Comment. Navistar supports the rule's applicability cutoff of 10 gallons or less of coating employed per day. The USEPA's RACT applicability cutoff of 15 lbs VOC emitted or less per day is economically unreasonable. Navistar's Springfield Assembly Plant in Clark County is using coatings with more than 3.5 lbs VOC per gallon, and if these lines were subject to the requirements of this rule, the cost of control would range from $70,016 to $115,093 per ton of VOC removed. Navistar would have to apply for variances, which is wasteful of both time and resources.

b. USEPA Response. The cost of control quoted in the comment is higher than control costs usually associated with RACT, but the comment contains no documentation supporting these control cost figures. There is also no documentation submitted with this comment that demonstrates the unavailability of complying coatings or that this facility cannot use complying coatings as a means of VOC control. Most importantly, even if the commenter had submitted documentation of the quoted control costs, this would apply to Navistar alone; statewide relaxation of this applicability cutoff based on one facility would be unacceptable and insupportable. If Navistar has documented support for the cost control figures, the appropriate step for the company to take would be application for a site-specific SIP revision. If Navistar does not wish to apply for a SIP revision, the use of complying coatings is an acceptable alternative method of compliance.

B. Porter, Wright, Morris & Arthur

Porter, Wright, Morris & Arthur commented on OAC Rule 3745–21–09(OO), a non-CTG rule for the Armco Steel Company in Middletown, Ohio.

1. Proposed Action

The USEPA proposed concurrent limited approval (based on the SIP strengthening effect of the rule) and limited disapproval of Rule –09(OO) (based on lack of enforceability and inconsistency with RACT). The SIP strengthening effect of the rule stems from the fact that this rule provides some regulation for this source where no federally enforceable regulation exists now. The enforceability deficiency stems from a lack of recordkeeping requirements for the facility, and the rule contains an unjustified VOC content limit for a coating operation which is inconsistent with RACT recommendations. The rule also lacks consideration of all non-CTG VOC sources at the plant, and rule development for VOC emissions from volatile organic liquid (VOL) storage tanks has been omitted.

2. Comments on Proposed Action and USEPA Response

a. Comment 1. Armco objects to limited approval of rules submitted in 1988 and 1990. The emission limit of 0.3 lb VOC per gallon of rolling oil excluding water in Rule –09(OO)(1) is an error. Armco perfected an appeal of Ohio's adoption of this rule to the Ohio Environmental Board of Review. Ohio subsequently adopted a new limit for rolling oil, which is contained in the OEPA's June 7, 1993, submittal to the USEPA. The USEPA should address only the new limit.

b. USEPA Response. The USEPA has had discussions with the OEPA about the emission limit for rolling oil and understands that the 0.3 lb VOC per gallon limit was issued in error. The USEPA acknowledges that this error has been addressed in Ohio's VOC rules submittal of June 7, 1993; nonetheless, under section 110(k) of the CAA, the USEPA is required to take action on the June 1988 and August 1990 submittals. The USEPA agrees that it is inappropriate to approve into the SIP a limit which is unreasonable and in error. The USEPA also believes that the SIP strengthening effect of the remainder of this rule is relatively insignificant. Therefore, the USEPA is disapproving Rule –09(OO), rather than granting limited approval/limited disapproval. The VOC rules package submitted on June 7, 1993, including a revised rule for Armco Steel, is under review, and will be addressed in a subsequent separate rulemaking action.

c. Comment 2. The recordkeeping inadequacies cited in the proposed action have been corrected with Ohio's June 7, 1993, submittal.

d. USEPA Response. This rulemaking action addresses only the June 1988 and August 1990 submittals, which lack the necessary recordkeeping and reporting requirements for Armco Steel. Under section 110(k) of the CAA, the USEPA is required to take action on the June 1988 and August 1990 submittals. The VOC rule package submitted on June 7, 1993, including a revised rule for Armco Steel, is under review, and will be addressed in a subsequent separate rulemaking action.

e. Comment 3. Armco believes that the emission limit for anti-galling material of 6.4 lb VOC per gallon, cited as deficient in the March 3, 1993, USEPA TSD supporting the proposed action, constitutes RACT as of the time of Ohio's most recent rulemaking action. Armco is converting to a much lower VOC material, and this could form the basis for a lower VOC limit, which should resolve any continuing concern with this particular rule.

f. USEPA Response. As discussed in the notice of proposed rulemaking, the State did not submit any demonstration that a lower VOC content material was not available. The comment also lacks a demonstration that a lower VOC content material was unavailable at the time the rule was developed. However, the comment states that such a material is available now; therefore, the 6.4 lbs VOC per gallon emission limit clearly does not constitute RACT for this source. As discussed above in the responses to Comments 1 and 2, this rulemaking action addresses the June 1988 and August 1990 submittals only. The most recent rule revision is under review, and will be addressed in a subsequent separate rulemaking.

g. Comment 4. The USEPA's position that VOL storage tank emissions must be addressed is inconsistent with a January 16, 1992, letter from the USEPA to the OEPA which states that rule development is unnecessary.

h. USEPA Response. The January 16, 1992, letter states, "*** Ohio is not required to develop a rule for this category at this time." Any major source not covered by a CTG is subject to non-CTG RACT, as required by sections 172(c), 182(a)(2)(A), and 182(b)(2) of the CAA. The USEPA's March 1993 TSD and the notice of proposed rulemaking indicate that the State is required to develop a rule for VOL storage. However, lack of such rule development was not cited as the sole deficiency for Rule 3745–21–09(OO) and was not the basis for disapproval. The appropriate action on Rule –09(OO) remains disapproval based on lack of recordkeeping requirements and a VOC content limit which is inconsistent with RACT (see USEPA Responses to Comments 1, 2, and 3).

C. International Paper

International Paper commented on OAC Rule 3745–21–09(II), a non-CTG rule for the International Paper Company facility in Springdale, Ohio.

1. Proposed Action

The USEPA proposed concurrent limited approval/limited disapproval of this rule. The SIP strengthening effect of the rule stems from the fact that this rule provides some regulation for this source where no federally enforceable regulation exists now. The proposal of limited disapproval is based on deficiencies which include lack of enforceability due to the absence of recordkeeping requirements for the facility and a VOC content limit for fountain solution which is inconsistent with RACT. The State submittal contains no demonstration that a lower VOC content material is unavailable.

2. Comments on Proposed Action and USEPA Response

a. Comment. International Paper supports the OEPA's position as set forth in the June 7, 1993, submittal. The

June 1988 and August 1990 version of International Paper's rule "specified limitations which were erroneously developed and derived, and which have been corrected in subsequent rulemakings." The USEPA should act only on the June 7, 1993, package.

b. USEPA Response. International Paper did not specify which limitations they believe are in error, nor did they include in the comments any information substantiating the error. International Paper had opportunity to comment on this rule prior to its adoption by the State during Ohio's public comment period. However, the record of comments submitted into the Public Hearing Record included in Ohio's June 1988 submittal contains no comments from International Paper. Under section 110(k) of the CAA, the USEPA is required to take action on the June 1988 and August 1990 submittals. The VOC rule package submitted on June 7, 1993, including a revised rule for International Paper, is under review, and will be addressed in a subsequent separate rulemaking action.

III. Rulemaking Action

The comments were found to warrant one change from proposed to final action on this SIP revision request. The USEPA has reconsidered its position on OAC Rule 3745–21–09(OO): rather than giving concurrent limited approval/limited disapproval, the USEPA is disapproving Rule –09(OO).

In summary, the USEPA is disapproving the following rules: OAC 3745–21–01 (D)(6), (D)(8); OAC 3745–21–09 (I), (L), (N), (O), (Q), (R), (U), (W), (Z), (DD), (EE), (OO); OAC 3745–21–10 (A), (C), (E), (O). The USEPA is giving concurrent limited approval/limited disapproval to the following rules: OAC 3745–21–01 (D)(45); OAC 3745–21–09 (A), (B), (C) through (H), (J), (K), (S), (T), (X), (Y), (FF) through (NN), (PP); OAC 3745–21–10 (B). The USEPA is approving the following rules: OAC 3745–21–01 (A), (B), (C), remainder of (D), (E) through (S); OAC 3745–21–04 (A), (B), (C); OAC 3745–21–09 (M), (P), (V), (BB), (CC); OAC 3745–21–10 (D), (F), (G), (I) through (N), (P).

Under section 179(a)(2), if the Administrator disapproves a required submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, one of the sanctions set forth in section 179(b) will apply, as selected by the Administrator, unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides for two types of sanctions: highway funding and offsets. The 18 month period referred to in section 179(a) will begin to run for those provisions that the USEPA is disapproving (in full or in a limited manner) as of the date the USEPA publishes this final action. Moreover, this disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). The sanctions and FIP clocks are not started for Wood and Medina Counties by this final action because the State was not required to submit RACT fix-up rules for these areas.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that the approved portions of this action conform with those requirements irrespective of the fact that the submittal preceded the date of enactment. The Agency has determined that other portions of this action do not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 22, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(96) On June 9, 1988, and August 24, 1990, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the State Implementation Plan for ozone. The revisions consist of new non-Control Technique Guideline volatile organic compound (VOC) rules and corrections to existing VOC rules.

(i) Incorporation by reference.

(A) OEPA Ohio Administrative Code (OAC) Rule 3745–21–01, Definitions, Paragraphs (A), (B), (C), (D)(1) through (5), (D)(7), (D)(9) through (62), (E) through (S); effective August 22, 1990.

(B) OEPA OAC Rule 3745–21–04, Attainment Dates and Compliance Time Schedules, Paragraphs (A), (B), (C); effective August 22, 1990.

(C) OEPA OAC Rule 3745–21–09, Control of Emissions of Volatile Organic Compounds from Stationary Sources, Paragraphs (A), (B), (C) through (H), (J), (K), (M), (P), (S), (T), (V), (X), (Y), (BB), (CC), (FF) through (NN), (PP), effective August 22, 1990.

(D) OEPA OAC Rule 3745–21–10, Compliance Test Methods and Procedures, Paragraphs (B), (D), (F), (G), (I) through (N), (P); effective August 22, 1990.

[FR Doc. 94–11072 Filed 5–6–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 185

[OPP–300238B; FRL–4780–8]

RIN 2070–AB78

Pesticides; Stay of Effective Date for Order Revoking Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Stay of effective date.

SUMMARY: EPA is staying the effective date of a final rule revoking the food additive regulation for dicofol (1,1-*bis*[*p*-chlorophenyl]-2,2,2-trichloroethanol) in or on dried tea, which was published in the **Federal Register** of March 9, 1994. EPA received petitions to stay the May 9, 1994 effective date for the stated final rule. As allowed in the March 9, 1994 final rule, EPA is staying the effective date indefinitely in order to review the petition and determine whether to grant the petition for a stay and if so, for what length of time. EPA is allowing 15 days for public comment on the petition requesting a stay of the effective date, which is available in the OPP public docket and is summarized in this document. Any decision associated with this action will be published in the **Federal Register**.

DATES: This stay is effective May 9, 1994. Any affected person may submit comments on the stay request summarized in this document on or before May 24, 1994.

ADDRESSES: Comments, identified by the document control number, [OPP–300238B], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Niloufar Nazmi, Special Review Branch (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, Telephone: (703) 308–8208.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 9, 1994 (59 FR 10993), EPA issued a final rule revoking the food additive regulation for dicofol on dried tea (hereinafter referred to as the "final rule") based on the determination that this food additive regulation is inconsistent with the Delaney Clause in section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). In the final rule, EPA set an expiration date of May 9, 1994.

Any person adversely affected was given a 30-day opportunity to: (1) file written objections to the order, (2) file a written request for an evidentiary hearing on the objection, and (3) file a petition for a stay of the effective date. EPA stated that if any petition for a stay were received, the Agency would stay the May 9, 1994 effective date of the final rule for such time as is required to review and make a determination on the stay petition. If the stay petition is denied, the final rule will be effective 30 days after date of publication of the petition denial in the **Federal Register**.

Makhteshim-Agan of North America, Inc., and Röhm and Haas Co. (together "the Dicofol Task Force") filed an objection to the final rule, a request for an evidentiary hearing on the factual issues raised in the objections, and a stay of the final rule pending final resolution of the issues. In addition, the National Agricultural Chemical Association (NACA) submitted a separate objection.

Outlined below are summaries of the petition to stay the effective date of the March 9, 1994 final rule and other objections which EPA has received. Full copies of the stay requests or objections may be viewed or ordered from the OPP Docket under the document control number, OPP-300238B]. The OPP Docket is located in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, telephone (703)–305–5805.

The basis for the stay petition is that the Dicofol Task Force will allegedly suffer irreparable injury if a stay is not granted. They contend they have satisfied the four criteria outlined in the final rule for granting a stay.

First, according to the Task Force, not only will there be impacts from the loss of dicofol on tea, other uses of dicofol will suffer because products containing dicofol will be tarnished by being labeled "carcinogenic."

Second, the Task Force asserts that their case is not frivolous and is being pursued in good faith since EPA's decision to revoke the food additive regulation for dicofol on dried tea is insupportable on factual and legal grounds.

They cite the following reasons. The Task Force argues that EPA has failed to apply the appropriate standard for determining whether dicofol "induces cancer" within the meaning of the Delaney Clause because EPA has not followed the Food and Drug Administration's rigorous standard in determining whether a substance induces cancer. In addition, the Task Force asserts that a proper evaluation of all the relevant biological and statistical information would lead to the conclusion that the weight-of-the-evidence does not support a finding that dicofol induces cancer in man or animals. The Dicofol Task Force further argues that, even assuming that dicofol induces cancer in animals, the food additive regulation "poses essentially no risk, or at most a negligible risk," to consumers of tea beverages.

Third, the Task Force contends that the growers and the general public will suffer irreparable injury from the impact resulting from this revocation and the labeling of dicofol as a pesticide that "induces cancer." They argue that since there are not many alternative pesticides available, the revocation will result in the use of less effective, environmentally unsafe, and more costly products.

Finally, the Task Force argues that because EPA has stated in public notices that the use of dicofol poses no more that a negligible risk, a delay resulting from a stay is not outweighed by any public health or other public interest.

NACA's objections state that NACA and its members, which include the Task Force, are adversely affected by EPA's interpretation of the Delaney Clause because EPA's interpretation is not consistent with the language of FFDCA or with the current state of scientific knowledge of carcinogenicity. Furthermore, NACA argues that it is affected by other procedural deficiencies in the adoption of the Final Rule, specifically, EPA's failure to conduct a weight-of-the-evidence evaluation on the issue of whether dicofol "induces cancer" in animals based on tests "which are appropriate for the evaluation of the safety of food additives."

NACA also requests that EPA withdraw the Final Rule and provide an adequate opportunity for the submission of comments, and conduct a proper weight of the evidence evaluation to determine whether dicofol triggers the "induce cancer" standard of the Delaney Clause. NACA urges the EPA to apply a standard to determining when a pesticide is found to "induce cancer that is in accord with current data evaluation standards, current scientific knowledge of carcinogenicity, and FDA precedent."

Any comments regarding the requests for stay of the May 9, 1994 effective date for the food additive regulation for dicofol on dried tea, identified by the document control number OPP-300238B, may be forwarded within 15 days of publication of this **Federal Register** to the Hearing Clerk at the address marked in the section "Addresses" section above in this document."

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: May 4, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

PART 185—[AMENDED]

Therefore, the effective date of May 9, 1994, of the final rule published at page 10993 in the **Federal Register** of March 9, 1994, removing § 185.410 *Bis(p-chlorophenyl)-2,2,2-trichloroethanol* is stayed indefinitely.

[FR Doc. 94-11232 Filed 5-5-94; 3:41 pm]

BILLING CODE 6560-50-F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1842, and 1852

[NFS Case 933705]

NASA FAR Supplement; Contractor Cost Reporting

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: Until now, the NFS has had only a prescription for use of the cost reporting (NASA Form 533 series) clauses, with no policy guidance. Also, the prescriptions' dollar thresholds for use of the clauses are stated only by reference to a NASA Management Instruction (NMI), thus requiring the reader to find and use the NMI in order to determine when the clauses are required. This change provides the thresholds and adds some guidance regarding the contracting officer's duties, allowable changes, and deviation approval authority. There is also some minor clarification in the wording of the clauses, and the coverage is relocated to a more appropriate subpart.

DATES: This interim rule is effective May 9, 1994. NASA will accept written comments until July 8, 1994.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space Administration, Procurement Policy Division (Code HP), Washington, DC 20546. Please cite HP number 933705 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Frances Sullivan, (202) 358-0488, or William T. Childs, (202) 358-0454.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783-3238. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Background

This case was opened based on General Accounting Office Report AFMD-93-3, October 29, 1992, NASA's Financial Management Operations, which included a finding that procurement officials did not always follow agency directives to include contractor reporting requirements in solicitations and contracts.

Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule does not significantly change existing policies or procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection represented by the NASA Forms 533 has previously been approved under OMB Control No. 2700-0003, through 12/21/96.

List of Subjects in 48 CFR Parts 1804, 1842, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1804, 1842, and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1804, 1842, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Sections 1804.675 and 1804.675–1 are removed and reserved.

PART 1842—CONTRACT ADMINISTRATION

3. Subpart 1842.72 is added to read as follows:

Subpart 1842.72—NASA Contractor Financial Management Reporting

Sec.
1842.7201 General.
1842.7202 Contract clauses.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

(a) *Contracting officer responsibilities.* (1) Successful cost management will only result from a team approach among the procurement, financial/resources management, and project management communities. Contracting Officers should play a primary role in managing cost performance. They must ensure contracts require cost reporting consistent with both policy requirements and project needs. Contracting Officers should monitor contractor cost reports on a regular basis to ensure cost data reported is accurate and timely. Contracting Officers should independently review cost report data. Adverse trends or discrepancies discovered in cost reports should be pursued through discussions with financial and project team members.

(2) Whenever cost performance threatens contract performance, Contracting Officers shall require corrective action plans from the contractors. When contracts are modified to accommodate contractor-responsible cost performance problems, consideration is required from the contractor; e.g., reduced fee earning potential.

(b) *Reporting requirements.* (1) Reporting utilizing NASA Contractor Financial Management Reports, the NASA Form 533 series, is required (see NMI 9501.1, NASA Contractor Financial Management Reporting System) on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Criteria		Report format		
Contract value/scope	Period of performance	533M	533Q	533P
$500K up to $1M/all	1 year or more	Required	Optional	Optional.
$1,000,000 and greater/all	Less than 1 year	Required	Optional	Optional.
$1,000,000 and greater/all	1 year or more	Required	Required	Optional.
$25,000,000 and greater/supply contracts	1 year or more	Required	Required	Required.

(2) Where it is probable that a contract will ultimately meet the criteria through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract as initially awarded.

(3) Performance analysis reporting using the 533P format is mandatory for supply contracts over $25,000,000. Although non-supply contracts over $25,000,000 require only 533M and 533Q reporting, Performance Measurement System reports can be an effective management tool and should be routinely considered as a possible requirement for non-supply contracts over $25,000,000.

(c) *Substitution of contractor reports.* With the Contracting Officer's approval, the contractor's internal automated printout reports may be substituted for the 533 reporting formats only if the substitute reports contain all the data elements that would be provided by the corresponding 533's. If substitution is made for the 533P report, schedule data must be reported as of same date and in the same reporting categories as the financial data. The Contracting Officer shall coordinate any proposed substitute with the installation financial management office.

(d) *Contract requirements.* (1) The reporting requirements, including a description of the reporting categories, shall be detailed in the procurement request, and the reports shall be required by inclusion of the appropriate clause or clauses prescribed in 1842.7202. The contract schedule must also indicate the addressees and number of copies. The reporting categories specified shall be coordinated with the Installation Financial Management Office to ensure that data required for agency cost accounting will be provided by the reports. Reporting due dates shall be in accordance with the provisions of NHB 9501.2, Procedures for Contractor Reporting of Correlated Cost and Performance Data. No changes to these submission requirements shall be negotiated except in unusual circumstances and no due dates shall be later than the date by which the Installation Financial Management Office requires the reports for entering cost data in the accounting system.

(2) The contractor shall be required to submit an "Initial Report," in complete detail, time-phased for the expected life of the contract, within 10 days after authorization to proceed has been granted, unless otherwise specified by the Contracting Officer. Regular monthly and quarterly reporting will begin within 30 days of contract award.

(e) *Deviations.* Deviations from the financial management reporting provisions of the clauses prescribed herein will require approval in accordance with subpart 1801.4. The Associate Administrator for Procurement will obtain concurrences of the Director, Financial Management Division, and the Associate Administrator of the cognizant Headquarters Program Office.

1842.7202 Contract clauses.

(a) The clause at 1852.242–73, NASA Contractor Financial Management Reporting, shall be used when any of the NASA Form 533 series of reports are required from the contractor.

(b) The clause at 1852.242–74, NASA Contractor Financial Management Reporting (Performance Analysis Report), shall be used in conjunction with the clause at 1852.242–73 when the Monthly Contractor Financial Management Performance Analysis Report (533P) is required from the contractor.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–71 and 1852.204–72 [Removed]

3. Sections 1852.204–71 and 1852.204–72 are removed.

4. Sections 1852.242–73 and 1852.242–74 are added to read as follows:

1852.242–73 NASA Contractor Financial Management Reporting.

As prescribed in 1842.7202(a), insert the following clause in contracts that require submission of any of the NASA Form 533 series of reports.

NASA Contractor Financial Management Reporting (April 1994)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, shall be set forth in the contract Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information reported to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract Schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor shall require first-tier subcontracts that meet the established reporting criteria set forth in 1842.7201(b)(1) to report cost data using the NASA Form 533 reports. Copies of subcontractor Form 533 reports shall be submitted along with the Contractor's Form 533 reports in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

1852.242–74 NASA Contractor Financial Management Reporting (Performance Analysis Report).

As prescribed in 1842.7202(b), insert the following clause, in addition to the clause at 1852.242–73, in contracts that require submission of NASA Form 533P.

NASA Contractor Financial Management Reporting (Performance Analysis Report) (April 1994)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

[FR Doc. 94–11017 Filed 5–6–94; 8:45 am]

BILLING CODE 7510–01–P

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48 CFR Part 1843

[NFS Case 933704]

NASA FAR Supplement; Undefinitized Contract Action

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA contracting activities are instructed that contract modifications and task orders generally must be fully negotiated and priced ("definitized") prior to issuance. If circumstances require issuance prior to definitization, actions with an estimated cost over $1,000,000 must be approved by the head of the contracting activity, except that for actions under Space Station contracts, the threshold is $10,000,000 and the approving authority is the Headquarters official responsible for the Space Station program. These approval levels cannot be delegated. Undefinitized actions should be issued as bilateral agreements, should contain a cost ceiling or not-to-exceed price, and should be definitized within 180 days. Certain exceptions apply.

DATES: This interim rule is effective May 9, 1994. NASA will accept written comments until July 8, 1994.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space Administration, Procurement Policy Division (Code HP), Washington, DC 20546. Please cite HP number 933704 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Roger Wilson, (202) 358–0486, or William T. Childs, (202) 358–0454.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Background

Many NASA contracts involve research and development where discoveries made during performance dictate a change in the work, and it is more efficient to issue an unpriced change than to allow the work to proceed in a direction that is obviously no longer desirable. However, the too-frequent use of undefinitized contract actions has contributed to a perception that the agency lacks discipline in the management of changes and the control of contract costs. Without full definitization, there is a risk of misunderstanding as to what effort is planned and what the programmatic and cost impacts are.

Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule is limited to a change in internal agency procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq*

List of Subjects in 48 CFR Part 1843

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1843 is amended as follows.

1. The authority citation for 48 CFR part 1843 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1843—CONTRACT MODIFICATIONS

2. Subpart 1843.1 is added as follows:

Subpart 1843.1—General

Sec.
1843.101 Definitions.
1843.102 Policy.
1843.103 Procedures.
1843.104 Exceptions.
1843.105 Definitization.

Subpart 1843.1—General

1843.101 Definitions.

Undefinitized contract action (UCA) means a unilateral or bilateral contract modification or work/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and modifications to letter contracts are governed by subpart 1816.6.)

1843.102 Policy.

Undefinitized contract actions shall be executed by contracting officers on an exception basis and shall be limited to the Agency's minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

1843.103 Procedures.

(a) Issuance of undefinitized contract actions with a Government estimated cost or price over $1,000,000 must be approved in writing by the Center Director, except that Space Station undefinitized contract actions with a Government estimate over $10,000,000 must be approved in writing by the Deputy Associate Administrator for Space Flight (Space Station). These approval authorities are not delegable. Issuance of undefinitized contract actions with a Government estimated cost or price less than or equal to $1,000,000 shall also be minimized but may be approved on an exception basis in accordance with Center procedures.

(b) (1) Undefinitized contract actions exceeding $1,000,000 approved by the Center Director shall be issued as bilateral agreements duly executed by an authorized representative of the contractor. These bilateral agreements shall set forth a ceiling price or "not to exceed" estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the "not to exceed" estimated cost figure shall be non-fee bearing. The ceiling price or "not to exceed" estimated cost figures shall be separately identified in the UCA instrument from any increases in the estimated cost or Limitation of Government Liability.

(2) The Center Director or Deputy Associate Administrator for Space Flight (Space Station) may waive the ceiling price or "not to exceed" estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than $1,000,000 and not excepted under subpart 1843.104, a 180 day funding profile shall be obtained from the contractor and reviewed by the cognizant NASA personnel prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than $1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the Contracting Officer visibility into actual costs incurred pending definitization. The Contracting Officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

1843.104 Exceptions.

(a) Exceptions to the requirement for Center Director or Deputy Associate Administrator for Space Flight (Space Station) approval for issuance of undefinitized contract actions as specified in 1843.103(a) are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modifications resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modifications to letter contracts.

(b) The contract file for any of the above modifications shall be documented to justify UCA issuance in addition to citing the appropriate exception to Center Director or Deputy Associate Administrator for Space Flight (Space Station) approval.

1843.105 Definitization.

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitize UCAs within 180 days from date of issuance. This goal in no way compromises the Agency's continuing requirement for sound cost analysis, arms-length negotiations, and fair and reasonable settlements.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

[FR Doc. 94-11018 Filed 5-6-94; 8:45 am]
BILLING CODE 7510-01-P

Proposed Rules

Federal Register
Vol. 59, No. 88
Monday, May 9, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Development Administration

7 CFR Part 4285

RIN 0537–AA00

Federal-State Research on Cooperatives Program

AGENCY: Rural Development Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking establishes within the Rural Development Administration (RDA) a matching fund cooperative research agreement program to State Departments of Agriculture, State Agricultural Experiment Stations, and other related State Agencies to conduct marketing research related to cooperatives. This rule establishes the procedures to be followed annually in the solicitation of cooperative agreement proposals, the evaluation of such proposals, and the award of the cooperative agreements under this program. These rules are necessary to award the funds appropriated to Agricultural Marketing Service in fiscal year 1994 for research on cooperatives under the Federal-States Marketing Improvement Program. The intended effect is to encourage more research at state levels that will enhance the well-being of agricultural cooperatives and their members.

DATES: Comments are invited from interested individuals and organizations and must be received on or before June 8, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, Rural Development Administration, USDA, Ag Box 3252, Washington, DC 20250–3252, Phone: 202–690–0368.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Paperwork Reduction Act

The information collection or recordkeeping requirements contained in this regulation will be submitted for approval by the Office of Management and Budget (OMB) under the provision of 44 U.S.C. chapter 35 and will be assigned an OMB control number in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Public reporting burden for this collection of information is estimated to vary from 10 minutes to 36 hours per response with an average of 3.48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RDA, Ag Box 0743, Washington, DC 20250.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Intergovernmental Review

This program is considered a part of "Technical Assistance To Cooperatives" as listed as No. 10.350 in the "Catalog of Federal Domestic Assistance". For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of RDA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Discussion of Proposed Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment not withstanding the exemption of 5 U.S.C. 553 with respect to such rules. While Executive Order 12866 recommends at least a 60-day comment period for most proposed rules, the agency has determined that 30 days is sufficient in this case. The 30-day period meets Administrative Procedures Act requirements. The FY 1994 appropriations for this program also must be obligated before September 30, 1994; therefore, a 30-day comment period is desired to allow research proposals to be developed in time for cooperative agreements to be awarded within the fiscal year. Furthermore, the procedures set out in the proposed rule are similar to other USDA cooperative agreement procedures and, therefore, are unlikely to elicit adverse comments.

Only $435,000 was appropriated for this program for FY 1994 and may not be appropriated in subsequent years. However, it is the Agency's expectation that funds will be appropriated for this program either as a separate item or as part of the general appropriations for the Agency in future years. Therefore, this proposed rule establishes the guidelines for administering the program for future years.

The Federal-State Research on Cooperatives Program (FSROC) is authorized under section 204(b) of the Agricultural Marketing Act of 1946 (7

U.S.C. 1623 (b)). The Agricultural Appropriations Act for 1994 specifically appropriated funds to Agricultural Marketing Service (AMS), USDA to be used as a matching fund program designed to provide assistance to State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives. In order to use the cooperative expertise available only in RDA, these funds, appropriated as part of the Federal-State Marketing Improvement Program (FSMIP), have been transferred to the Rural Development Administration, Cooperative Services (RDA–CS) to administer. Previous funding for a similar program in Agricultural Cooperative Service which has become RDA–CS was done on a noncompetitive basis with Land-Grant Universities. It was the apparent intent of Congress to have funds available for research on cooperatives on the same basis as funds used in AMS's FSMIP. Since FSMIP has been an effective program that has evolved since its authorization in 1946, it is apparent that the procedures developed at AMS should be closely mirrored in this new program with a cooperative content.

Under the proposed FSROC, RDA will solicit State Departments of Agriculture, State bureaus and departments of markets, State Agricultural Experiment Stations, and other appropriate State agencies to submit research proposals to be funded on a competitive basis. The solicitation will include broad areas of research that the Agency wishes to emphasize so that the limited funds may more likely result in research being done in the areas determined by the RDA staff to be high priority. However, these areas of emphasis (§ 4285.58(b)(1)(v)) do not restrict the submission of proposed projects that will be considered if they meet the purposes of agricultural marketing as given in the Agricultural Marketing Act of 1946 (7 U.S.C. 1623).

Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)) restricts the funds for this program to be used on a cooperative basis with State Departments of Agriculture, State bureaus and departments of markets, State Agricultural Experiment Stations, and other appropriate State agencies. Since these funds are specifically for research related to agricultural marketing, it is the Agency's interpretation that the other appropriate State agencies are primarily 1862 and 1890 Land Grant Colleges, since they conduct research related to agricultural marketing. USDA's OGC will make a determination if a particular college or university legally qualifies as a State agencies. Other State agencies would be considered appropriate if they have the ability and reason to conduct research related to cooperatives and to agricultural marketing.

In addition to the statutes' requirement that the funds go to a State agency, RDA is proposing limiting it to those Agencies that have financial, legal, administrative and actual capacity to conduct the research. The necessity of fiscal responsibility requires RDA to only provide cooperative funds to those Agencies that also have the fiscal and administrative ability to assure that the funds are expended according to the purposes of the Agricultural Marketing Act of 1946.

Further, the Agricultural Marketing Act of 1946 requires that no funds shall be allotted for any fiscal year to any State agency in excess of the amount which such State agency makes available out of its own funds for such research. RDA has interpreted this to mean the use of cooperative agreements with the States agency providing at least half of the funds for conducting the research on cooperatives. In addition, RDA is limiting the funds to use by Agencies that can legally and administratively conduct business with cooperative agreements since it has determined that cooperative agreements are the appropriate instrument to use for these funds.

The research proposals will be evaluated by a panel of Agency technical experts to determine the proposals that are likely to result in the most needed research that can be done with the limited funds appropriated. The evaluation panel will make recommendations to the Assistant Administrator for Cooperative Services, RDA who will have the final decision on awarding the cooperative agreements. The panel of Agency technical experts are necessary to evaluate what is expected to be a variety of very technical proposals dealing with agricultural marketing research and cooperatives. An outside peer review panel is not being proposed because the Agency has the expertise to evaluate such proposals, the outside panel would be extremely costly relative to the small amount of total funds available, and the need to evaluate the proposals in a timely manner.

To assure a consistency in the evaluation process the proposed rule establishes a set of evaluation criteria (§ 4285.70) to assure the research is consistent with the intent of the program and is worth the funds that are to be spent on the project. The heaviest weight of the objective criteria is placed on assuring that the research is based on significant problems to assure that funds are not expended on insignificant items nor in other fiscally irresponsible ways. The second highest weight of the criteria is placed on the adequacy, soundness, and appropriateness of the proposed approach to the research in order that research is conducted that will be meaningful. The relatively low weight put on the criteria of the feasibility and probability of success of solving the problem was done because nearly all projects are expected to be feasible and it is extremely difficult to determine the likely success or failure of projects, but at the same time the Agency's technical experience can be used to predict approaches or problems that are not likely to give the desired results. The relatively heavy weight placed on the personnel that are conducting the research was done to assure that the best equipped and qualified to conduct the research are selected as required by the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). Although cost is a significant factor, no specific weight is assigned to the cost since cost must be measured relative to the complexity of the problem, the likely outcome of the project, the significance of the problem identified, and relative to other proposals and the total appropriated funds.

Upon recommendations of the technical panel, the Assistant Administrator for Cooperative Services will determine which cooperative agreements to fund. The Assistant Administrator for Cooperative Services will also determine the reasonable length of time in which the project should be completed. To assure timely research results the agreements will be limited to three years from the time of the award. However, if justified, that time can be renewed, but the total time would be limited to 4 fiscal years so as to allow orderly closing of the financial records of the Federal Government.

The accounting for the funds awarded for the cooperative agreement will be subject to the normal rules for cooperative agreements within USDA as given in part 3016 of this title. The proposed application format is used to assure that sufficient information is obtained to complete a cooperative agreement as given in part 3016 of this title. In addition, the application format is similar to that used by Cooperative State Research Service, USDA for their competitive grants programs as given in Part 3200 of this title, since that format appears to be very effective in helping assure projects that will be carried out in a fiscally responsible manner.

The definition of agricultural products given below is repeated from the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The cooperative agreement instrument is as defined in the Implementation of Federal Grant and Cooperative Agreement Act of 1977 (Pub.L. 95–224). The proposed classification of the cooperative agreements as new, renewal, or supplemental are used to facilitate administering the agreements. The authorized and prohibited uses of cooperative agreements funds given below (§ 4285.25 and § 4285.46) are to clarify the uses of funds as given in the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)) and follow the guidelines as used by the AMS FSMIP. Because research requires doing things that may not be known before the agreement is signed, the proposed rule allows for changes in the cooperative agreement. To assure the cooperative agreement stays in line with the intent of the program, however, all substantive changes are required to be approved by the Assistant Administrator for Cooperative Services.

List of Subjects in 7 CFR Part 4285

Agricultural commodities, Agricultural research, Cooperatives, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Ch. XLII is proposed to be amended by adding part 4285 to read as follows:

PART 4285—COOPERATIVE AGREEMENTS

Subpart A—Federal-State Research on Cooperatives Program

Sec.

4285.1 Objective.
4285.2 Cooperative agreement purposes.
4285.3 Definitions.
4285.4–4285.23 [Reserved]
4285.24 Eligibility.
4285.25 Authorized use of cooperative agreement funds.
4285.26–4285.45 [Reserved]
4285.46 Prohibited use of cooperative agreement funds.
4285.47 Limitations.
4285.48–4285.57 [Reserved]
4285.58 How to apply for cooperative agreement funds.
4285.59–4285.68 [Reserved]
4285.69 Evaluation and disposition of applications.
4285.70 Evaluation criteria.
4285.71–4285.80 [Reserved]
4285.81 Cooperative agreement awards.
4285.82 Use of funds; changes.
4285.83–4285.92 [Reserved]
4285.93 Other Federal statutes and regulations that apply.
4285.94 Other conditions.
4285.95–4285.100 [Reserved]

Authority: 7 U.S.C. 1623, 2201; Pub. L. 103–111, 107 Stat. 1046; Pub. L. 103–211, 108 Stat. 3; USDA Secretary's Memorandum 1020–39, dated September 30, 1993.

Subpart A—Federal-State Research on Cooperatives Program

§ 4285.1 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Federal-State Research on Cooperatives cooperative agreement funds to finance programs of research on cooperatives as authorized under Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The primary purpose of this matching fund program, via cooperative agreements, is to encourage State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives.

§ 4285.2 Cooperative agreement purposes.

Rural Development Administration (RDA) may enter into a cooperative agreement with a State agency to provide funds to the State agency to:

(a) Conduct marketing research related to agricultural cooperatives.

(b) Assist other organizations in conducting marketing research related to agricultural cooperatives.

§ 4285.3 Definitions.

As used in this part:

Agreement period. The total period of time approved by the Assistant Administrator for Cooperative Services for conducting the proposed project as outlined in an approved application. The time period is normally no more than 3 years, renewable for cause not to exceed a total of 4 fiscal years.

Agricultural products. Agricultural products include agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed or manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof.

Assistant Administrator for Cooperative Services. The Assistant Administrator for Cooperative Services, Rural Development Administration, USDA or any authorized delegate.

Awarding official. The Assistant Administrator for Cooperative Services or authorized delegate.

Cooperative Agreement. A legal instrument reflecting a relationship between the United States Government and a State where:

(1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State agency to carry out research related to cooperatives; and

(2) Substantial involvement is anticipated between RDA, acting for the Federal Government, and the State or other recipient during performance of the research in the agreement.

Cooperator. The State agency designated in the cooperative agreement award document as the responsible legal entity to whom a cooperative agreement is awarded under this part.

Department. The U.S. Department of Agriculture.

Methodology. The research approach to be followed to carry out the project.

Principal investigator. A single individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the cooperative agreement application and approved by the Assistant Administrator for Cooperative Services.

Project. The particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a cooperative agreement under this part.

State agencies. State agencies include, among others, State Agricultural Experiment Stations and State Departments of Agriculture in the 50 States, territories or possessions of the United States and other appropriate State agencies. Final determination of whether certain 1890 or 1862 Land Grant institutions qualify as state agencies will be determined on a case-by-case basis by the Office of the General Counsel (OGC), USDA.

§§ 4285.4–4285.23 [Reserved]

§ 4285.24 Eligibility.

To enter into a cooperative agreement for these funds, the applicant must:

(a) Be a State Agency as defined in § 4285.3;

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of economic, business management, or other needed research area; or

(2) Have the necessary administrative and supervisory controls in place to assure an agreed upon contracting organization has the proven ability to perform responsibly in the field of economic, business management, or other needed research area;

(c) Legally obligate itself to administer cooperative agreement funds, provide adequate accounting of the expenditure of such funds, and comply with the cooperative agreement;

(d) Provide at least 50 percent of the funds necessary to conduct the research from non-federal funds; and

(e) Agree to conduct proposed research related to cooperatives and agricultural marketing.

§ 4285.25 Authorized use of cooperative agreement funds.

Funds received for research under cooperative agreements in this program shall only be used for:

(a) Payment of salaries and necessary employee benefits of personnel as agreed upon in the Cooperative Agreement. Included are salaries and benefits of State employees assigned full-time to one or more projects, or the percent of the salaries and benefits related to project work for State employees assigned part-time to research on one or more projects. Salaries and benefits include basic salary, other compensation such as holiday pay, sick or annual leave, and personnel benefits (quarters allowance, payments to other funds such as employees' life insurance, health benefits, retirement, Federal Insurance Contributions Act (FICA), accident compensation, and similar payments). For any of the benefit items when the State usually pays the employer share, Federal funds may be used to pay the proportionate share of such employer contributions.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the cooperator determines it to be more economical than renting. However, as a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations and would not be an allowable expense. Planned purchases of equipment costing more than $200 per unit must be approved by RDA. Equipment purchased becomes State property pursuant to the cooperative agreement.

(c) Payment of necessary and reasonable costs of printing publications of research project results. However, all such publications should show the RDA as cooperator in the project and bear the following statement: "State funds for this project (publication) were matched with Federal funds under the Federal-State Research on Cooperatives Program of the U.S. Department of Agriculture, Rural Development Administration, Cooperative Services, as provided by the Agricultural Marketing Act of 1946 and (appropriate) fiscal year appropriations."

(d) Purchase of office supplies (such as paper, pens, pencils, and trade magazines) and postage needed for project activities.

(e) Payment of necessary and reasonable travel expenses.

§§ 4285.26–4285.45 [Reserved]

§ 4285.46 Prohibited use of cooperative agreement funds.

(a) The Agricultural Marketing Act prohibits the use of Federal funds to pay for newspaper or periodical space and radio and television time, either directly to the media or indirectly though an advertising agency or other firm. County and State fair exhibits, as well as commodity months and weeks, are also excluded as the research on cooperatives program activities.

(b) Federal funds cannot be used to purchase products or samples of products to give away to the public.

(c) Federal program funds cannot be used to purchase:

(1) Promotional pieces such as point-of-sale materials, promotional kits, billboard space and signs, streamers, automobile stickers, table tents, and placemats; or

(2) Promotion items of a personal gift nature.

(d) Cooperative agreement funds cannot be used to conduct general publicity or information programs designed to build the image of the State's agriculture or of a particular State Department of Agriculture or Agricultural Experiment Station.

(e) Project funds cannot be used to pay for the salary and travel of employees of cooperatives, trade associations, commodity groups, and other industry organizations, or of State personnel while engaged in managing market orders, cooperatives, or other group endeavors.

(f) Commissioners, Directors, and Secretaries of State Departments of Agriculture, Agricultural Experiment Stations, and other State agencies cannot charge their salaries and travel to project funds, with the exception of travel to workshops or conferences devoted to the Federal-State Research On Cooperatives Program.

(g) Funds made available for this program shall not be subject to reduction for indirect costs or for tuition remission.

§ 4285.47 Limitations.

The amount of funds available for the cooperative agreements under this program is limited to the amount appropriated for the fiscal year.

§§ 4285.48–4285.57 [Reserved]

§ 4285.58 How to apply for cooperative agreement funds.

(a) A program solicitation will be prepared and announced through publications such as the **Federal Register**, professional trade journals, agency or program handbooks, and/or any other appropriate means, as early as practicable each fiscal year in which funds are appropriated for the program.

(b) The annual program solicitation will contain information sufficient to enable all eligible applicants to prepare proposals including:

(1) Desired research topics. The FY–94 solicitation will encourage studies:

(i) To improve the efficiency and effectiveness of marketing of agricultural cooperatives;

(ii) To measure the impact of rural cooperatives on the local economies;

(iii) That help identify opportunities to develop cooperatives for new or alternative market uses of agricultural products;

(iv) That help identify ways to develop agricultural marketing cooperatives; and,

(v) Addressing other cooperative marketing objectives;

(2) Explanation of eligibility requirements as outlined in § 4285.24;

(3) The notice of availability of application forms and instructions for submission of applications;

(4) The notice of deadline dates for postmarking proposal packages;

(c) *Executive Order 12372.* The cooperative agreements for research related to cooperatives are subject to the provisions of Executive Order 12372 (3 CFR, 1982 Comp., p. 197), which allows States to review all its applications for funds and/or actions under specific Federal programs. Most of the States have designated a "Single Point of Contact" within the State for the listed programs and have established a procedure to handle applications. If the State has adopted this procedure, Section 16 of the Standard Form 424, "Application for Federal Assistance," needs to be completed when applying for the cooperative agreement funds under this part.

(d) *Format for proposals.* Unless otherwise indicated by the Department in the annual program solicitation, the following information must be submitted for the preparation of proposals under this program:

(1) Form SF–424, "Application for Federal Assistance."

(2) Form SF–424A, "Budget Information - Non-Construction Programs."

(3) Form SF–424B, "Assurances - Non-Construction Programs."

(4) Statement of Work. The application must include a narrative statement describing the nature of the proposed research. The Statement of Work must include at least the following:

(i) Title of the Project. The title of the proposal must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the name(s) of the principal investigator(s). Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale behind the proposed research must be presented. The need for the proposed research must be clearly related to marketing and to the needs of agricultural cooperatives.

(iv) Objectives of the project. The specific description of the overall project goal(s) and supporting objectives must be presented.

(v) Procedures for conducting the research. The hypotheses or questions being asked and the methodology being applied to the proposed project must be described. A description of any subcontracting arrangements that will be used for conducting the research must be included. A tentative schedule for conducting major steps involved in the investigation must also be included.

(vi) The expected output of the project. A description of how the results of the research will be disseminated should be presented. Responsibility for publishing any research reports or other types of output should also be identified.

(5) *Collaborative arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (*i.e.*, letters of intent) should be provided to assure reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(6) Personnel support. To assist reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following must be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum Vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, *e.g.*, educational, employment and professional history, and honors and awards. Unless pertinent to the project, it should not include meetings attended, seminars given, or personal data such as birth date, martial status, or community activities; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list other non-refereed technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

§§ 4285.59–4285.68 [Reserved]

§ 4285.69 Evaluation and disposition of applications.

(a) *Evaluation.* (1) All proposals received from eligible applicants and postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Assistant Administrator for Cooperative Services through an RDA staff panel. The Assistant Administrator for Cooperative Services will select the evaluation panel from staff determined to be highly qualified in the subject matter areas that were emphasized in the current year's solicitation and from those with no potential conflict of interest with the applicants.

(2) Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (*e.g.*, relationship of proposal to research topic(s) listed in solicitation). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(3) Proposals will be ranked based on evaluation criteria established in § 4285.70 and financial support levels will be recommended to the Assistant Administrator for Cooperative Services by the panel within the limitation of the total funding available in the fiscal year. The purpose of these evaluations is to provide information upon which the Assistant Administrator for Cooperative Services may make informed judgements in selecting proposals. Such recommendations are advisory only and are not binding on the awarding official of RDA. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* (1) On the basis of the Assistant Administrator for Cooperative Services's evaluation of an application in accordance with paragraph (a) of this section, the Assistant Administrator for Cooperative Services will either:

(i) Approve support using currently available funds;

(ii) Defer support due to lack of funds or need for further evaluation; or

(iii) Disapprove support for the proposed project in whole or in part.

(2) With respect to any approved project, the Assistant Administrator for Cooperative Services will determine the project period during which the project may be funded.

(3) Any deferral or disapproval of an application will not preclude its reconsideration or reapplication during subsequent fiscal years. However, applicants must reapply if reconsideration is desired.

(4) The Assistant Administrator for Cooperative Services will not make a cooperative agreement funding award, based upon an application covered by this part, unless the application has been properly reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

§ 4285.70 Evaluation criteria.

(a) In evaluating the proposal, the RDA staff review panel and the awarding official will take into account the degree to which the proposal demonstrates the following:

(1) Focus on a practical solution to a significant problem involving one or more of the following on a cooperative business basis: the preparation for market, processing, packaging, handling, storing, transporting, distributing, or marketing of agricultural products. (35%)

(2) Adequacy, soundness, and appropriateness of the proposed approach to solve the identified problem. (30%)

(3) Feasibility and probability of success of project solving the problem. (10%)

(4) Qualifications, experience in related work, competence, and availability of project personnel to direct and carry out the project. (25%)

(b) In addition, the cost relative to the expected research results will be considered in determining the awarding of the agreements.

§§ 4285.71–4285.80 [Reserved]

§ 4285.81 Cooperative agreement awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's "Uniform Federal Assistance Regulations" (part 3015 of this title) and the Department's "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (part 3016 of this title).

(b) *Cooperative agreement award document and notice of award*—(1) *Cooperative agreement award document.* The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Assistant Administrator for Cooperative Services has competitively awarded funds under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying cooperative agreement number assigned by RDA;

(v) Project period, specifying the amount of time the Agency intends to support the project without requiring recompetition for funds;

(vi) Total amount of Agency financial assistance approved by the Assistant Administrator for Cooperative Services during the project period;

(vii) Legal authority(ies) under which the cooperative agreement is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement award; and

(ix) Other information or provisions deemed necessary by RDA to carry out its agreement activities or to accomplish the purpose of a particular cooperative agreement.

(2) *Notice of award.* The notice of award of funds for the cooperative agreement will be in the form of a letter providing pertinent instructions or information to the cooperator.

(c) *Types of cooperative agreement instruments.* The types of cooperative agreements shall be as follows:

(1) *New agreement.* This is an agreement instrument by which RDA agrees to support a specified level of effort for a project not supported previously under this program. This type of agreement is approved on the basis of an RDA Staff evaluation review and recommendation.

(2) *Renewal agreement.* This is an agreement instrument by which RDA agrees to provide additional funding for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Supplemental agreement.* This is an instrument by which RDA agrees to provide small amounts of additional funding under a new or renewal cooperative agreement as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually one year or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature will not require additional review.

(d) *Obligation of the Federal Government.* The approval of any application or the award of any funds for a cooperative agreement shall not commit nor obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(e) *Obligation of the cooperator.* The cooperator shall be responsible for:

(1) Making a brief quarterly progress reports at the end of each December, March, June and September to the FSROC program staff for the duration of the research project;

(2) Presenting a final administrative report on the project at the end of the research project; and

(3) Preparing and publishing a report(s) of research findings for dissemination to interested producers, cooperatives, and agencies. Include recognition to financial and other assistance received from the FSROC program.

§ 4285.82 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The cooperator may not, in whole or in part, delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) *Change in project plans.* (1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved cooperative agreement shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the cooperator and/or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Assistant Administrator for Cooperative Services for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes. Normally, no requests for such changes outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or realignment of other key project personnel shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes, except as may be allowed in the terms and conditions of a cooperative agreement award.

(c) *Changes in project period.* The project period determined pursuant to § 4285.81(b) may be extended by the Assistant Administrator for Cooperative Services without additional financial support, for such additional period(s) as the Assistant Administrator for

Cooperative Services determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed four (4) years and shall be further conditioned upon prior request by the cooperator and approval in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, except as may be allowed in the terms and conditions of a cooperative agreement award.

(d) *Changes in approved budget.* The terms and conditions of a cooperative agreement will prescribe circumstances under which written Agency approval must be requested and obtained prior to instituting changes in an approved budget.

§§ 4285.83–4285.92 [Reserved]

§ 4285.93 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to cooperative agreement proposals considered for review or to agreements awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964 in order to assure nondiscrimination;

(d) 7 CFR Part 1473—National Agricultural, Research, Extension, and Teaching Policy Act Amendments of 1981 if the project involves a college or university;

(e) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3), as well as general policy requirements applicable to recipients of Departmental financial assistance;

(f) 7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(g) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(h) 7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

(i) 7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(j) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

(k) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award requirements of subparts C and D of part 3016 of this title apply.

§§ 4285.95—4285.100 [Reserved]

Dated: March 28, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–10883 Filed 5–6–94; 8:45 am]

BILLING CODE 3410–07–W

Animal and Plant Health Inspection Service

9 CFR Parts 50, 77, and 92

[Docket No. 93–014–1]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. This action appears necessary to prevent infected steers and spayed heifers from Mexico from spreading tuberculosis to U.S. cattle.

We are also proposing to deny claims for indemnity for Mexican-origin steers or spayed heifers that test positive to the 60-day post-entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals. This action would discourage importation of Mexican-origin steers and spayed heifers of questionable disease status.

DATES: Consideration will be given only to comments received on or before July 8, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–014–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis or TB) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis.* Tuberculosis in affected animals causes weight loss, general debilitation, and sometimes death.

In accordance with regulations in 9 CFR parts 50, 77, and 92 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis in cattle and bison.

The regulations in 9 CFR part 50 provide for payment of Federal indemnity to owners of certain cattle or bison destroyed because of tuberculosis.

The regulations in 9 CFR part 77 regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States. Cattle or bison that are exposed, reactors, suspects, or from herds containing suspects, are eligible to move interstate directly to slaughter, under specified conditions. In addition, exposed cattle on the island of Molokai, Hawaii, are eligible to be moved interstate to a quarantined feedlot.

The regulations in 9 CFR part 92 prohibit or restrict the importation of certain animals, including cattle from Mexico, to prevent the introduction into the United States of communicable diseases of livestock. Section 92.427(c)(1) requires, among other things, that steers imported into the United States from Mexico: (1) Have been tuberculin-tested, with negative results, either within 60 days before the date the steers are offered for entry into the United States or at the port of entry; or (2) originated in a herd declared tuberculosis-accredited by the Government of Mexico, provided that they were moved directly to the U.S. port of entry from their herd of origin and were not commingled with cattle from any herd not so accredited; or (3) are consigned from the port of entry to a recognized slaughtering establishment, in accordance with § 92.429.

The regulations are intended to prevent the importation of TB-infected cattle into the United States. Despite the regulations, however, more than half of all cattle with tuberculous lesions detected at slaughter in the United States during the past decade have been traced back to Mexico. During the 18 months ending March 31, 1993, for example, 1,090 TB-infected cattle were detected at slaughter in the United States. Of those, 713 were identified as Mexican-origin steers.

Therefore, to safeguard the health of domestic cattle, we propose to amend § 92.427(c) to require certain steers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. We believe this action would minimize the exposure of domestic cattle to TB-infected cattle imported from Mexico. We propose to add to 9 CFR part 77 a new § 77.6, providing the specific requirements for a quarantined feedlot, quarantined pasture, and for post-entry quarantine and TB-testing at a quarantined holding facility.

In addition, we propose to add to the regulations specific provisions for spayed heifers imported into the United States from Mexico. Until recently, U.S. importers expressed little interest in Mexican-origin spayed heifers. Conditions have changed, however, and importers have requested that we set forth specific provisions for the importation of Mexican-origin spayed heifers.

Lacking reproductive organs, neutered females and neutered males are indistinguishable in terms of susceptibility to TB and other diseases. This means that, for regulatory purposes, spayed heifers and steers are identical, and that the provisions applicable to steers apply equally to spayed heifers. Therefore, under the proposed regulations, spayed heifers would be regulated under the same terms as steers. The specific provisions for steers from Mexico, at § 92.427(c), would be amended to include spayed heifers from Mexico.

In addition, we propose to hold importers accountable for the health of the animals they import by amending § 50.14(f) to categorically deny indemnity claims for Mexican-origin steers and spayed heifers that test positive to the 60-day post-entry tuberculin test, and for any cattle exposed to such reactors. This change would increase the financial stake that importers have in the quality of the TB-testing on which they base their purchase and importation decisions. That is, it would provide importers with an incentive to purchase only steers and spayed heifers that present little or no risk of TB-infection, encouraging a more active interest in herds of origin and test histories. We expect that this heightened accountability would sharply reduce the number of TB-infected animals imported into the United States from Mexico.

Restricted Status Cattle

As stated above, we propose to require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. The affected steers and spayed heifers would be known as "restricted status cattle," and would include all steers and spayed heifers except the following:

- Those that are consigned from the port of entry to a recognized slaughtering establishment, in accordance with § 92.429;
- Those that have been tuberculin tested, with negative results for the entire lot, at the port of entry (a definition of *lot* would be added to § 77.1 to read as follows: "All the members of a group of cattle in a single consignment.");
- Those that originated in a herd declared to be tuberculosis-accredited by the Government of Mexico, and were moved directly to the port of entry from their herd of origin without commingling with cattle from a non-accredited herd; and
- Those that originated in a herd in a state participating in the Mexican National Tuberculosis Eradication Program, and that (as part of the Mexican National Tuberculosis Eradication Program) were tuberculin tested at a ranch of origin monitored by the animal health service of the National Government of Mexico or at a testing pen under the full-time supervision of the animal health service of the National Government of Mexico. This latter provision would afford the animal health service of the National Government of Mexico greater control over testing and post-test movement. A definition of "restricted status cattle" would be added to § 77.1. We would also add a definition of "herd of origin (originated in a herd)" to § 77.1 to read as follows: "Any herd in which cattle are born and remain until movement or any herd in which cattle remain for 120 days immediately prior to movement. As used in this part, "originated in a herd" shall have the same meaning as set forth here for "herd of origin." We would require that the cattle remain in a herd for 120 days to reflect the testing criteria for herd additions found in APHIS's *Uniform Methods and Rules—Bovine Tuberculosis Eradication,* which is incorporated by reference in part 77.

Under the current regulations, steers and spayed heifers that are consigned from the port of entry to a recognized slaughtering establishment have no opportunity to spread TB to animals not consigned to slaughter, and pose no disease risk to domestic livestock. Therefore, we are proposing no new restrictions on the post-entry movement of these animals.

The other steers and spayed heifers excluded from the proposed category of restricted status cattle would either have tested negative to TB at the U.S. port of entry or would have originated in a TB-accredited herd or in a herd in a state participating in the Mexican National Tuberculosis Eradication Program. (The states participating in the Mexican National Tuberculosis Eradication Program would be listed in the proposed definition of Mexican National Tuberculosis Eradication Program that would be added to § 77.1.) We are confident in the reliability of the port-of-entry testing that would be conducted by APHIS, on the basis of which any test-positive or exposed animals would be refused entry into the United States. We are equally confident in the stringent standards of the National Tuberculosis Eradication Program recently established by the Government of Mexico. The

Government of Mexico has allocated $92 million to be spent on this comprehensive disease-prevention and eradication program during the next 5 years, with a goal of TB eradication in Mexico by 1998. As its proposed definition in § 77.1 states, Mexico's National Tuberculosis Eradication Program incorporates methods and rules for TB testing, traceback, and eradication that have been determined by the Administrator to be equivalent to those set forth in APHIS's Uniform Methods and Rules—Bovine Tuberculosis Eradication, which is incorporated by reference in part 77. The Mexican TB-eradication program is equivalent to the program adopted by a State establishing or maintaining modified accredited state status in the United States under the Bovine Tuberculosis Eradication program. As in the United States, participation is on a state-by-state basis. The full funding of the Mexican National Tuberculosis Eradication Program redoubles our confidence in the national standards the Government of Mexico uses to determine that a herd qualifies for TB-accredited status, and that any steers or spayed heifers from a TB-accredited herd would have had no opportunity to commingle with potentially TB-infected animals. The rigorous monitoring for tuberculosis undergone by steers and spayed heifers in the three categories discussed in this paragraph justifies their exclusion from restricted status cattle.

Restricted status cattle would be subject to the restrictions set forth in proposed § 77.6. A cross-reference to this effect would be added to the regulations at proposed § 92.427(c)(5). Specifically, restricted status cattle could only be moved from the port of entry to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. Quarantined pastures, quarantined feedlots, and quarantined holding facilities could be located only in States that are not classified as accredited-free. This provision would safeguard accredited-free States from the possibility that a potentially TB-infected steer or spayed heifer from a quarantined pasture, quarantined feedlot, or quarantined holding facility could, as a result of an accident or other misfortune, jeopardize the TB-free status of any accredited-free State. Restricted status cattle being moved from the port of entry to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test, would be required to be moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, or one of their designees. This proposed requirement would ensure that restricted status cattle have no contact with other animals while in transit from one facility to another. Further, restricted status cattle would have to be accompanied by a permit any time they are being moved, except when being moved directly to slaughter. (The definition of *permit* in § 77.1 would be expanded to provide both for issuance of permits at the port of entry, and for identification of restricted status cattle, and to provide for movement only in accordance with applicable State and Federal regulations.)

Quarantined Pastures, Quarantined Feedlots, Quarantined Holding Facilities

We have developed the proposed requirements for quarantined pastures, quarantined feedlots, and quarantined holding facilities (proposed §§ 77.6(b), (c), and (d)) on the basis of State and Federal experience with other disease-control programs. That experience has shown the proposed provisions for the three kinds of premises to be effective in preventing livestock of unknown disease status from spreading disease to other livestock.

Definitions of quarantined feedlot, quarantined pasture, and quarantined holding facility would be added to § 77.1. "Quarantined feedlot" would be defined as a confined drylot for finish feeding of restricted status cattle, with no facilities for pasturing or grazing, that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine. "Quarantined pasture" would be defined as a confined grazing area established for the forage-feeding of restricted status cattle that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine. "Quarantined holding" facility would be defined as a confined drylot that has been approved by the State representative and an APHIS representative for the post-entry quarantine and tuberculosis-testing of restricted status cattle, and that is under State quarantine. (In a drylot, all water and feed are brought to the animals in troughs.)

To prevent restricted status cattle from being commingled with other livestock, the proposed regulations provide that only restricted status cattle may be moved into a quarantined pasture, quarantined feedlot, or quarantined holding facility. There may be cases where a feedlot operator introduces new cattle into a quarantined feedlot. In such cases, any non-restricted cattle that enter a quarantined feedlot and commingle with restricted status cattle would assume restricted status. Further, as discussed above, restricted status cattle that are not being moved directly to slaughter could be moved from a quarantined pasture, quarantined feedlot, or quarantined holding facility only if accompanied by a permit issued at the pasture, feedlot, or holding facility from which they are being moved. (Cattle in a lot that tests negative for tuberculosis in the 60-day post-entry tuberculin test would no longer be classified as restricted status cattle, and would be issued a certificate for movement from the quarantined holding facility, in accordance with proposed § 77.6, paragraphs (d)(5) and (d)(6)(ii)).

Restricted status cattle would at all times be required to be isolated from other livestock by a distance sufficient to prevent physical contact. In quarantined pastures, where structures and pens would not provide such isolation, double fences 10 feet apart, natural barriers, or the absence of adjacent herds would serve this purpose. To ensure that the area surrounding a quarantined pasture does not undergo significant changes that might affect the isolation of the restricted status cattle quarantined on the premises, the Administrator would approve a quarantined pasture for a period not to exceed 10 months.

In quarantined feedlots, commingling of different lots of restricted status cattle would be allowed. In quarantined holding facilities, however, each lot of restricted status cattle would be isolated from other restricted status cattle by double fences 10 feet apart. This would ensure that potentially infected animals would be prevented from spreading tuberculosis to cattle in other lots.

In quarantined feedlots and quarantined holding facilities, the proposed regulations would require that the structures, pens, implements, and conveyances be cleaned and disinfected within 15 days after the removal of each lot of restricted status cattle, in accordance with §§ 71.4, 71.7, and 71.10 through 12 in 9 CFR part 71.

Because of the post-entry tuberculin testing to be performed at quarantined holding facilities, proposed § 77.6(d)(4) requires that each such facility be equipped to handle the chute inspection and tuberculin testing of cattle. To ensure that animal health officials are available when needed, proposed § 77.6(d)(2)(i) requires that the importer contact the State representative to schedule inspection and quarantine services no less than 14 days before the proposed date of entry of the restricted status cattle into the facility.

Proposed § 77.6(d)(5) provides for issuance of a certificate for movement from the quarantined holding facility, in accordance with individual State requirements, for restricted status cattle from a lot that tests negative for tuberculosis in the 60-day post-entry tuberculin test. As stated earlier, cattle from such a lot would no longer be classified as restricted status cattle. Proposed § 77.6(d)(6) requires that any cattle that test positive for tuberculosis in the 60-day post-entry tuberculin test (reactors) must be sent directly to slaughter or destroyed and subjected to a postmortem examination by an APHIS representative or a State representative trained in TB-postmortem techniques. All other cattle in that lot would be held at the quarantined holding facility until slaughter examination of the reactors. If gross or microscopic tuberculous lesions are detected in the reactors during slaughter or laboratory examination, the other cattle in the lot must be moved from the quarantined holding facility to a quarantined pasture, a quarantined feedlot, or directly to slaughter. All provisions for restricted status cattle discussed above would continue to apply.

If the slaughter or laboratory examination detects no tuberculous lesions in the reactors, the other cattle in the lot would be allowed to remain at the quarantined holding facility for retesting 60 days after the original post-entry tuberculin test; if the entire lot subsequently tests negative for tuberculosis, these cattle would be issued a certificate, in accordance with § 77.6(d)(5). However, if any retested cattle test positive for tuberculosis, the other cattle in the lot must be moved to a quarantined pasture, a quarantined feedlot, or directly to slaughter. All provisions for restricted status cattle discussed above would continue to apply.

To ensure that restricted status cattle of unknown disease status do not present a risk of exposing other livestock to tuberculosis, we further propose that:

- The Administrator and the State animal health official would establish procedures for: (1) Accounting for all restricted status cattle entering and leaving quarantined pastures, quarantined feedlots, and quarantined holding facilities, including the recording of official Mexican blue eartag numbers; and (2) the monitoring of quarantined pastures, quarantined feedlots, and quarantined holding facilities by an APHIS representative or a State representative. State and Federal representatives would then be responsible for following the established procedures.
- Restricted status cattle could be moved into quarantined pastures on a lot-basis only; only the cattle comprising a single lot of restricted status cattle could be moved into the quarantined pasture. As a further safeguard, owners of adjacent properties would be notified of the presence of a quarantined pasture.

Miscellaneous

Because Hawaii has attained accredited-free status, we propose to remove § 50.16, "Certain cattle on the Island of Molokai in Hawaii," from the regulations; to remove the proviso referring to § 50.16 from the definition of "Permit" in § 50.1; and to remove the exception for exposed cattle moved in accordance with § 50.16 from § 77.5(b).

We propose to revise the definition of "Cattle and bison not known to be affected" in § 77.1, which currently reads "All cattle and bison except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect cattle or bison." The nonsubstantive editorial change we propose would define "Cattle and bison not known to be affected" in more general terms, as "All cattle and bison of unknown disease status."

For clarity, we propose to reorganize § 92.427(c)(1) into subparagraphs and make nonsubstantive editorial changes to the text. We also propose to remove from § 92.427(c) the requirement that tattoos be described on certificates for cattle from Mexico. Current requirements for the identification of all cattle from Mexico to be identified by official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers make the tattoo requirement unnecessary.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any communicable disease of animals from a foreign country into the United States. This proposed rule would allow the importation of certain steers and spayed heifers from Mexico under restrictions that appear necessary to prevent the introduction or dissemination of tuberculosis.

Cattle imported into the United States from Mexico in 1993 accounted for about 1 percent of the total U.S. bovine population (1 million/99.4 million). The total value of imported Mexican cattle slightly exceeded $361 million, which is less than 1 percent of the 1991 value of the U.S. live cattle inventory, estimated at more than $64 billion.

Under the proposed rule, certain steers and spayed heifers from Mexico that are not being shipped directly to slaughter would be regarded as "restricted status cattle." As such, they would be required to move from the port of entry to a quarantined pasture, to a quarantined feedlot, or to a quarantined holding facility for the 60-day post-entry tuberculin test. If the entire lot in the quarantined holding facility is TB-free, the cattle would no longer be regulated as restricted status cattle. Any restricted status cattle that test positive for TB, and any cattle exposed to such reactors, would be ineligible for indemnity claims (indemnity payments amount to a maximum of $750 per animal).

Although we have no basis for estimating the extent to which the quarantined holding facilities being proposed would be used, we expect most importers to move restricted status cattle to quarantined pastures or quarantined feedlots for finish feeding, and then to slaughter.

For importers who currently ship Mexican-origin cattle to pastures or feedlots, and then to slaughter, shipping, feeding, and grazing costs would not change. Therefore, we foresee little or no increase in importation costs because of the proposed requirement that the animals be shipped to quarantined pastures or quarantined feedlots.

Importers of rodeo steers appear to have the greatest interest in the post-entry tuberculin testing that would require selection of the quarantined holding facility, because certificates would be required for these cattle to be moved from rodeo to rodeo, and certificates for restricted status cattle could be issued only at a quarantined holding facility. However, most rodeo steers imported into the United States from Mexico originate in states participating in the Mexican National Tuberculosis Eradication Program, and would be exempt from the proposed requirements.

By disallowing indemnity for test-positive restricted status cattle and animals exposed to such cattle, APHIS would shift the burden of risk from the taxpayer to the importer. Because it is impossible to project how many restricted status cattle will be identified as TB reactors as a result of the 60-day post-entry tuberculin test, it is also impossible to know how many importers might be affected by the denial of indemnity claims for such animals. As stated in the preceding paragraph, however, we expect few importers to opt for post-entry tuberculin testing at quarantined holding facilities. Accordingly, the economic effect of denying indemnity claims for test-positive restricted status cattle at quarantined holding facilities, and animals exposed to such cattle, is expected to be minimal.

For importers who ship Mexican-origin cattle to quarantined holding facilities, the costs associated with the post-entry tuberculin testing will slightly increase importation costs. Information on the potential effects of the proposed changes on feedlot owners is unavailable.

This proposed rule contains paperwork and recordkeeping requirements. Under this proposed rule, a permit would have to be issued by an APHIS representative, State representative, or accredited veterinarian before restricted status cattle could be moved anywhere other than directly to slaughter. A certificate would have to be issued for cattle that test negative for tuberculosis before they could be moved from the quarantined holding facility. In addition, this proposed rule would require that the official Mexican Government blue eartag numbers (or replacement eartags) of all restricted status cattle entering and leaving a quarantined pasture, quarantined feedlot, and quarantined holding facility, be recorded, in accordance with procedures to be established by the Administrator and the State animal health official.

The alternatives to this proposed rule would be to take no action or to prohibit the importation of certain steers and spayed heifers from Mexico. We do not consider taking no action a reasonable alternative, because it would not reduce the risk that TB-infected steers and spayed heifers from Mexico might spread tuberculosis to U.S. livestock. We also do not consider importation under conditions other than those proposed a viable option, because we believe the proposed conditions are necessary to ensure that potentially infected steers and spayed heifers from Mexico do not spread tuberculosis to U.S. livestock.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 50, 77, and 92 would be amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 50.1 [Amended]

2. In § 50.1, the definition of Permit would be revised by removing the proviso after the semicolon and replacing the semicolon with a period.

3. In § 50.14, new paragraph (f) would be added to read as follows:

§ 50.14 Claims not allowed.

* * * * *

(f) If the cattle infected with tuberculosis are Mexican-origin steers or spayed heifers that tested positive to the post-entry tuberculin test performed in accordance with § 77.6(d) of this chapter, or are cattle that were exposed to such animals.

§ 50.16 [Removed]

4. Section 50.16 would be removed.

PART 77—TUBERCULOSIS

5. The authority citation for part 77 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 77.1, the definitions of *Cattle and bison not known to be affected* and *Permit* would be revised, and definitions of *Herd of origin (originated in a herd), Lot, Mexican National Tuberculosis Eradication Program, Quarantined feedlot, Quarantined holding facility, Quarantined pasture,* and *Restricted status cattle* would be added, in alphabetical order, to read as follows:

§ 77.1 Definitions.

* * * * *

Cattle and bison not known to be affected. All cattle and bison of unknown disease status.

* * * * *

Herd of origin (originated in a herd). Any herd in which cattle are born and remain until movement or any herd in which cattle remain for 120 days immediately prior to movement. As used in this part, *originated in a herd* shall have the same meaning as set forth here for *herd of origin.*

* * * * *

Lot. All the members of a group of cattle in a single consignment.

Mexican National Tuberculosis Eradication Program. (1) A program for bovine tuberculosis eradication established by the National Government of Mexico that incorporates methods and rules that have been determined by the Administrator to be equivalent to the rules and methods set forth in the *Uniform Methods and Rules—Bovine Tuberculosis Eradication*, in which participation is on a state-by-state basis, and that has been determined by the Administrator to be equivalent to the testing, traceback, and eradication program adopted by any State establishing or maintaining modified accredited state status in the United States, in accordance with the *Uniform Methods* and Rules—Bovine Tuberculosis Eradication.

(2) The following Mexican states have attained status equivalent to modified accredited State status in the United States, as determined by the Administrator: [No states]

* * * * *

Permit. An official document (VS Form 1–27 or comparable State form) issued by an APHIS representative, State representative, or an accredited veterinarian at the point of origin or port of entry, for the movement of cattle or bison to be moved, under this part, directly to slaughter, or to a quarantined pasture, quarantined feedlot, or quarantined holding facility, which shows the tuberculosis status of each animal (reactor, suspect, exposed, or, in the case of restricted status cattle from Mexico, unknown), the eartag number and the name of the owner of such animal, the slaughtering establishment or quarantined pasture, quarantined feedlot, or quarantined holding facility to which the animals are to be moved, the official seal numbers, the purpose for which the animals are to be moved, and that they are eligible for such movement under the applicable Federal regulations.

* * * * *

Quarantined feedlot. A confined drylot for feeding of restricted status cattle that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine. (In a drylot, there are no provisions for pasturing or grazing, and all food and water is brought to the cattle in troughs.)

Quarantined holding facility. A confined drylot that has been approved by the State representative and an APHIS representative for the quarantine and post-entry tuberculosis-testing of restricted status cattle, and that is under State quarantine. (In a drylot, there are no provisions for pasturing or grazing, and all food and water is brought to the cattle in troughs.)

Quarantined pasture. A confined grazing area established for the forage-feeding of a single lot of restricted status cattle, that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine.

* * * * *

Restricted status cattle. All steers and spayed heifers from Mexico except those steers and spayed heifers that:

(1) Originated in a herd in a state that is participating in the Mexican National Tuberculosis Eradication Program and that is listed in the definition of *Mexican National Tuberculosis Eradication Program* in this section as having attained status equivalent to modified accredited State status in the United States, as determined by the Administrator; have been tuberculin tested by a salaried veterinarian of the National Government of Mexico or by a veterinarian accredited by the National Government of Mexico not more than 60 days before the date the animals are offered for entry into the United States, at a ranch of origin monitored by the animal health service of the National Government of Mexico or at a testing pen under the full-time supervision of the animal health service of the National Government of Mexico; and are moved directly to the port of entry from their ranch of origin or testing pen without having commingled with other cattle while en route to the port of entry; or

(2) Originated in herds declared to be tuberculosis-accredited by the Government of Mexico, if they are moved directly to the port of entry from their herd of origin without having commingled with cattle from any non-accredited herd while en route to the port of entry; or

(3) Were tuberculin tested with negative results for the entire lot at the port of entry, as provided in § 92.427(c)(3)(i) of this chapter; or

(4) Are consigned from the port of entry to a recognized slaughtering establishment, as provided in § 92.429 of this chapter.

* * * * *

§ 77.5 [Amended]

7. In § 77.5, the heading, the word "comtaining" would be removed and the word "containing" would be added in its place.

8. In § 77.5, paragraph (b), the introductory text, the words "Except for the movement of exposed cattle to a quarantined feedlot in accordance with § 50.16 of this chapter, exposed" would be removed and the word "Exposed" would be added in their place.

9. Section 77.6 would be redesignated as § 77.7 and a new § 77.6 would be added to read as follows:

§ 77.6 Restricted status cattle from Mexico.

Restricted status cattle are subject to the post-entry restrictions provided in this section, to other applicable provisions of this part, and to § 50.14(f) of this chapter.

(a) Restricted status cattle may be moved from the port of entry only if:

(1) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, or person designated by the APHIS representative or State representative;

(2) Accompanied by a permit; and

(3) Moved to a quarantined pasture, quarantined feedlot, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test, as provided in paragraph (b), (c), or (d) of this section. Quarantined pastures, quarantined feedlots, and quarantined holding facilities may be located only in States that are not accredited-free States.

(b) *Quarantined feedlot*. (1) The Administrator will approve a quarantined feedlot after an APHIS representative or a State representative inspects the confined area and determines that all restricted status cattle will be secure and isolated from contact with other livestock. Any non-restricted cattle that commingle with restricted status cattle in a quarantined feedlot shall assume restricted status.

(2) The official Mexican Government blue eartag numbers of all restricted status cattle entering and leaving the feedlot must be recorded. (If any such eartag is missing, the APHIS representative, State representative, or accredited veterinarian must replace it with an APHIS-approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System.)

(i) The Administrator and the State animal health official will jointly establish procedures for accounting for all restricted status cattle.

(3) An APHIS representative or a State representative will monitor all quarantined feedlots on a regular basis.

(i) The Administrator and the State animal health official will jointly establish procedures for monitoring quarantined feedlots.

(4) Cattle leaving a quarantined feedlot must be moved either to another quarantined feedlot or directly to slaughter. They must be moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, or

person designated by the APHIS representative or State representative, and must be accompanied by a permit issued at the feedlot. Cattle being moved directly to slaughter are exempt from the permit requirement.

(5) Structures, pens, implements, and conveyances must be cleaned and disinfected within 15 days after removal of each lot of cattle.

(c) *Quarantined pasture.* (1) The Administrator will approve a quarantined pasture for use by a single lot of restricted status cattle after an APHIS representative or a State representative inspects the confined area and determines that all fences, gates, and loading facilities are adequate; and that restricted status cattle will be isolated from contact with other livestock by double fencing (perimeter and inner fences 10 feet apart), by natural barriers, or by the absence of adjacent herds. The Administrator will approve a quarantined pasture for a period not to exceed 10 months.

(2) The official Mexican Government blue eartag numbers of all cattle entering and leaving the pasture must be recorded. (If any such eartag is missing, the APHIS representative, State representative, or accredited veterinarian must replace it with an APHIS-approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System.)

(i) The Administrator and the State animal health official will jointly establish procedures for accounting for all restricted status cattle.

(3) State or APHIS representatives will monitor all quarantined pastures on a regular basis.

(i) The Administrator and the State animal health official will jointly establish procedures for monitoring quarantined pastures.

(4) Cattle leaving a quarantined pasture must be moved either to another quarantined pasture, a quarantined feedlot, or directly to slaughter. They must be accompanied by a permit on which, among other things, the official seal numbers are recorded; and moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, or person designated by the APHIS representative or State representative. Cattle being moved directly to slaughter are exempt from the permit requirement.

(5) Owners of adjacent properties will be notified by the APHIS representative or the State representative of the presence of a quarantined pasture.

(d) *Quarantined holding facility.* The Administrator will approve a quarantined holding facility to be used to hold restricted status cattle for a 60-day post-entry tuberculin test if:

(1) The State in which the facility is located has entered into a written agreement with the Administrator, in which the State agrees to enforce its laws and regulations to control tuberculosis in accordance with the *Uniform Methods and Rules—Bovine Tuberculosis Eradication,* and to abide by the conditions established in this section.

(2) The facility is under the general supervision of a State veterinarian, is monitored by State or APHIS representatives, and is used exclusively to quarantine and tuberculin-test restricted status cattle.

(i) The importer must contact the State representative to schedule inspection and quarantine services no less than 14 days before the proposed date of entry of the restricted status cattle into the facility; and

(3) The quarantined holding facility and its maintenance and operation meet the minimum requirements of this paragraph.

(4) The APHIS representative or a State representative has inspected the confined area and determined that each lot of restricted status cattle will be secure and isolated from contact with other restricted status cattle by double fencing (perimeter and inner fences 10 feet apart), and that the facility is equipped with chutes for tuberculin testing.

(5) The official Mexican Government blue eartag numbers of all restricted status cattle entering and leaving the feedlot must be recorded. (If any such eartag is missing, the APHIS representative, State representative, or accredited veterinarian must replace it with an APHIS-approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System.)

(i) The Administrator and the State animal health official will jointly establish procedures for accounting for all restricted status cattle.

(6) Restricted status cattle in a lot that tests negative for tuberculosis in the post-entry test are no longer classified as restricted status cattle, and will be issued a certificate for movement from the quarantined holding facility.

(7) The reactors in a lot of restricted status cattle must be sent directly to slaughter or destroyed and subjected to a postmortem examination by an APHIS representative or a State representative trained in TB-postmortem techniques. The other cattle in that lot must be held at the quarantined holding facility until slaughter examination of the reactors.

(i) If gross or microscopic tuberculous lesions are detected in the reactors, the other cattle in the lot must be moved from the quarantined holding facility to a quarantined pasture, a quarantined feedlot, or directly to slaughter. These restricted status cattle must be accompanied by a permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, or person designated by the APHIS representative or State representative.

(ii) If no gross or microscopic tuberculous lesions are detected in the reactors, the other cattle in the lot may remain at the quarantined holding facility for retesting 60 days after the original post-entry test and, if the entire lot tests negative for tuberculosis, may be moved with a certificate, as provided in paragraph (d)(6). If any retested cattle test positive for tuberculosis, the other cattle in the lot must be moved to a quarantined pasture, a quarantined feedlot, or moved directly to slaughter.

(8) Quarantined holding facilities may be used to hold restricted status cattle for post-entry tuberculosis testing only.

(9) Structures, pens, conveyances, and other equipment must be cleaned and disinfected within 15 days after removal of each lot of cattle, in accordance with §§ 71.4, 71.7, and 77.10 through 12 of this chapter.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

10. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

11. In § 92.427, paragraph (c)(1) would be revised, and a new paragraph (c)(5) would be added to read as follows:

§ 92.427 Cattle from Mexico.

* * * * *

(c) *Tuberculosis.* (1) In addition to the provisions required in the certificate under paragraph (b) of this section, the certificate shall also show, for all cattle from Mexico except as provided in paragraph (c)(1)(v) of this section or consigned from the port of entry to a recognized slaughtering establishment, in accordance with § 92.429:

(i) That a review of the available herd history, including any tuberculin test results, traceback slaughter reports and postmortem record, and any other available records or information, does not indicate evidence of tuberculosis or exposure to tuberculosis during the preceding 60 days.

(ii) For cattle other than steers and spayed heifers, that all cattle in the herd of origin, except steers and spayed heifers, were tuberculin tested with negative results not more than 365 days and not less than 90 days before the date the animals are offered for entry into the United States, and that, excepting the natural increase in the herd, all animals were included in the herd of origin at the time of the pre-entry herd test.

(iii) For steers and spayed heifers, that each was tuberculin tested with negative results, by a salaried veterinarian of the National Government of Mexico or a veterinarian accredited by the National Government of Mexico, not more than 60 days before the date the animals are offered for entry into the United States, with the following exception:

(A) The importer may elect to have the tuberculin test completed at the port of entry, under the supervision of the port veterinarian.

(iv) The date and place of inspection, the date and place and results of the tuberculin test if applicable, the name of the herd owner, the name of the consignor and consignee, and an individual description of each animal including breed, age, sex, and official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers.

(v) Cattle that originated in herds declared to be tuberculosis-accredited by the Government of Mexico do not have to comply with the other provisions of this paragraph if they are moved directly to the port of entry from their herd of origin without having commingled with cattle from any non-accredited herd en route to the port of entry, and they are accompanied by a health certificate, issued by a salaried veterinarian of the Government of Mexico or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, certifying that the veterinarian issuing the certificate was authorized to do so, stating that the cattle originated in a tuberculosis-accredited herd, and identifying the animals by official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers.

* * * * *

(5) Steers and spayed heifers imported into the United States from Mexico that are not imported for immediate slaughter in accordance with § 92.429, or that are defined as restricted status cattle in § 77.1 of this chapter, must be moved directly from the port of entry to a quarantined pasture, quarantined feedlot, or quarantined holding facility, as provided in § 77.6 of this chapter. Such cattle may be moved from the port of entry only in vehicles sealed with seals of the United States Government, applied and removed by an APHIS representative, State representative, or person designated by the APHIS representative or State representative.

* * * * *

Done in Washington, DC, this 29th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–11100 Filed 5–6–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Morgan City, Louisiana

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Morgan City, Louisiana. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, (202) 927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the port of entry of Morgan City, Louisiana.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, Morgan City is listed as a port of entry in the New Orleans, Louisiana, Customs District within the South Central Region.

Previous Development of Port

The Morgan City port of entry was originally established by T. D. 54682 (published in the **Federal Register** on September 16, 1958, 23 FR 7131) with specific geographical limits which may be described generally as encompassing the southeastern one-third of St. Mary Parish and including the town of Morgan City where the office of the Customs Port Director is currently located. The geographical limits of the Morgan City port of entry were republished without a change in connection with a restatement of all New Orleans Customs district port boundaries in T. D. 84–126 (published in the **Federal Register** on May 31, 1984, 49 FR 22629).

In addition, in § 101.4, Houma, Louisiana (located within Terrebonne Parish), and Galliano, Louisiana (located within Lafourche Parish) were listed as Customs stations within the New Orleans Customs District and under the supervision of the Morgan City port of entry. Customs stations are defined in § 101.1(d), Customs Regulations, as "any place, other than a port of entry, at which Customs officers or employees are stationed * * *" for the purpose of entering and clearing vessels, accepting entries of merchandise, collecting duties, and enforcing the various provisions of the Customs and navigation laws of the United States. Thus, Customs stations are by definition located outside the limits of a port of entry, and Customs services are normally provided to the public at Customs stations on a reimbursable basis.

The Morgan City port of entry was established primarily to provide vessel documentation (now the function of the United States Coast Guard) in southwest Louisiana, and for a number of years after creation of the port of entry most Customs functions could be adequately carried out within the port limits as originally established by T. D. 54682.

The Customs workload increased significantly in both volume and geographical scope, with the result that the majority of Customs service provided by the Morgan City port of entry took place outside the port limits, extending to Iberia Parish to the west of St. Mary Parish and, on the east, to the parishes of Terrebonne and Lafourche and the town of Grand Isle in Jefferson Parish.

Iberia Parish received foreign steel shipments by LASH-type barge and had a livestock export facility at its airport. International trade activities, including the construction of warehousing and other support facilities, were on the increase in both Iberia Parish and in the western portion of St. Mary Parish.

Terrebonne and Lafourche Parishes included four major shipyards where vessel construction and drydock repairs took place and where Customs clearance was required in connection with vessels arriving for repairs. Approximately 20 additional vessel arrivals took place each month at docking facilities along the Intracoastal Waterway within these 2 parishes.

In addition, Port Fourchon, located in Lafourche Parish, served as a hub for helicopter and service launch traffic to lightering vessels and tankers at the Louisiana Offshore Oil Port (LOOP) supertanker unloading terminal, resulting in approximately 100 helicopter and 45 service launch clearances by Customs each month in addition to the Customs services rendered in connection with the approximately 270 tanker arrivals at the LOOP each year. Port Fourchon was also used as a base for foreign-flag research vessels and derrick barges operating in the Gulf of Mexico, and vessels carrying containerized and other cargo from foreign countries arrived at Port Fourchon on a weekly basis.

Finally, the town of Grand Isle was the home port for a large number of private seagoing vessels which were required to report to Customs upon arrival from any foreign port or place. Customs services in connection with all of these activities were provided by personnel assigned to the Morgan City port of entry.

Based on the Customs workload pattern described above, by a final rule document published in the **Federal Register** on April 21, 1993 (58 FR 21350), Customs extended the limits of the Morgan City port of entry by including all territory within the parishes of Iberia, St. Mary, Terrebonne, and Lafourche, as well as the incorporated limits of the town of Grand Isle in Jefferson Parish and that portion of the state highway which connects Grand Isle to Lafourche Parish.

Customs believes that the extension discussed above provided significant benefits to both Customs and the public. Extension of the port limits enabled Customs to move the office of the Port Director to Galliano in Lafourche Parish, which was more centrally located given the workload. The relocation increased the efficiency and productivity of the Port Director's office by reducing the time and effort required for travel and transportation of documents between the office and other locations within the extended port of entry, by enabling the Port Director to more effectively administer outside assignments and oversee other port details, and by streamlining Customs duty and other collection procedures. This increase in Customs efficiency and productivity had corresponding benefits for the public by enabling Customs to be more responsive to the needs of the trade community. In addition, by extending the port entry limits to include areas formerly serviced by Customs on a reimbursable basis, the proposal reduced the operating costs of private sector recipients of those services and led to an improvement in the overall prospects for increased international trade in the area covered by the new port of entry limits.

Current Proposed Expansion

During the comment period for the previous expansion of the port of Morgan City, it was suggested that the port limits be further expanded to include Lafayette Parish. Inasmuch as this suggestion was not part of the notice of proposed rulemaking published in the **Federal Register** for public comment on June 16, 1992 (57 FR 26806), Customs believed that such an additional expansion should be handled under separate notice and comment procedures, and it so advised the public in the final rule.

Customs is now proposing to further expand the port of Morgan City to include Lafayette Parish.

The Louisiana political community has shown considerable support for and interest in this latest expansion. Customs South Central Region and its New Orleans District strongly support this proposed expansion and feel confident that the challenges of this expansion can be met. Some of the local organizations strongly in favor are the Lafayette City and Parish Councils, the Greater Lafayette Chamber of Commerce, the Lafayette Airport Commission, the Lafayette Economic Development Authority, the Lafayette Region Airport, and the Lafayette LeCentre Internationale.

Many of the reasons cited for the recent expansion of the port of Morgan City hold true for the proposed inclusion of Lafayette Parish. It was inadvertent not to have included Lafayette, the only Acadiana parish omitted, in the previous boundary change. The Greater Lafayette Chamber of Commerce states that Lafayette has traditionally been called the heart of Acadiana.

Several sources stated that the addition of Lafayette Parish would complement the current international trade activities in the parishes of Iberia, St. Mary, Terrebonne, and Lafourche and the town of Grand Isle, thus providing an economic boost to southern Louisiana. The area of Lafayette Parish is not large, but the city of Lafayette has a population of over 100,000, making it a significant population center. Lafayette Parish is adjacent to Iberia Parish, which currently represents the northwest limit of the port of entry.

Lafayette Parish is known as one of the largest centers of trade in southern Louisiana. The Lafayette Regional Airport, where the majority of Customs services will be performed, is the largest airport in the Acadiana area.

It is only twelve miles from the Iberia parish line, which is the current western boundary of the port of Morgan City. Lafayette Parish's inclusion in the international port of entry would provide a boost to the economy of southern Louisiana. It would reduce the operating costs of recipients of Customs services, thereby greatly improving prospects for international trade. It is our understanding that the Greater Lafayette Chamber of Commerce intends to establish an expanded freight trade to and from points south of the United States border—*i.e.*, Central and South America.

The added area that Lafayette Parish would bring to the port is minimal and would not create an excessive burden on services already being provided. The port of Morgan City is staffed by a Port Director, two Customs Inspectors, and an Inspection Aide. The staff currently operates out of two offices, one in the town of Morgan City and the other in the town of Galliano. There is a need for an office on the western boundary, and such an office would be provided at the Lafayette Regional Airport Facility free of charge if this expansion is approved.

Initially, work assignments would be on an as-needed basis with actual workload determining permanent staffing requirements. Inspectors assigned to the Lafayette Airport would be in an excellent position to provide service to the ports in Iberia, West St. Mary, and Morgan City. It would be closer to dispatch an inspector to those locations from Lafayette than from the port office in Galliano.

It would also reduce the operating costs of recipients of Customs services, thereby greatly improving prospects for international trade. The port expansion would enable Customs to service the proposed points of entry without establishing separate port administrations.

Proposed Extended Port Limits

The proposed extended geographic limits of the Morgan City port of entry are as follows: In the State of Louisiana: All of the territory within the Parishes of Iberia, Lafayette, Lafourche, St. Mary, and Terrebonne; the Corporate limits of the town of Grand Isle; and that portion of the right-of-way pertaining to State Highway 1 extending in a northeasterly direction from the Lafourche Parish and Jefferson Parish boundary line to the corporate limits of the town of Grand Isle.

If this proposed extension of the Morgan City port of entry limits is adopted, the list of Customs regions, districts and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11 (b), Customs Regulations (19 CFR 103.11 (b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street, NW., suite 4000, Washington DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: April 16, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–11005 Filed 5–6–94; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4882–8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.Action: Notice of intent to delete the Bioclinical Laboratories site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Bioclinical Laboratories (BCL) site from the National Priorities List (NPL) and requests public comment on this action. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further action is appropriate at the BCL site under CERCLA. Moreover, EPA and the State have determined that activities conducted at the BCL site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the BCL site from the NPL may be submitted on or before May 9, 1994.

ADDRESSES: Comments concerning the BCL site deletion may be mailed to:

Mr. Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, room 29–100, 26 Federal Plaza, New York, New York 10278.

Background information on the BCL site is contained at the EPA Region II public docket, located at EPA's Region II office, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. Damian J. Duda at (212) 264–9589.

The public docket on the BCL site is also available for viewing at the document repositories located at:

Connetquot Public Library, 760 Ocean Avenue, Bohemia, New York 11716; and

Sachem Public Library, 150 Holbrook, Holbrook, New York 11741.

The formal and more comprehensive Administrative Record for the BCL site is located at the Connetquot Library only.

FOR FURTHER INFORMATION CONTACT: Damian Duda at (212) 264–6589.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the BCL site from the NPL and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such sites warrant such action.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the BCL site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties isappropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the BCL site:

1. EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local BCL site information repositories.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this national Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on May 9, 1994 and concluding on June 7, 1994.

The comments received during the comment period will be evaluated before any final decision is made. If necessary, EPA Region II will prepare a Responsiveness Summary which will address any comments received during the public comment period.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a notice of deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The BCL site is located at 1585 Smithtown Avenue in the Hamlet of Bohemia, Town of Islip, Suffolk County, New York and is approximately 0.5 mile south of Long Island's MacArthur Airport.

The BCL site consists of a 10-unit (A-J), one-story building situated on a 2.6-acre paved lot. The building has approximately 39,000 square feet of floor space. The building is serviced by two distinct on-site sanitary systems, each consisting of a septic tank, distribution pool, and related storm drain drywells, located south of the building on the east and west sides.

BCL was founded in 1972 to formulate and repackage industrial chemicals for wholesale distribution to manufacturers and previously occupied Unit I of the 10-unit building. BCL utilized the east sanitary system. In 1984, BCL moved its operations to another location. As of April 1990, BCL had ceased operations altogether.

Panatone Finishing Corporation (Panatone), which leased Unit D, was determined to be another source of organic and inorganic contamination at the BCL site. Panatone was involved in the preparation and application of finished metal products and discharged to the west sanitary system of the building. Panatone is no longer in operation.

Previous BCL site investigations showed that there had been:

(1) Unregulated discharges to the on-site sanitary systems and to an on-site leaching pool; and

(2) Unacceptable raw material (chemicals) and waste handling practices which resulted in frequent spills to the surface soils.

The BCL site was proposed for the NPL on June 1, 1986 (52 FR 21099) and was promulgated final to the NPL on March 31, 1989 (54 FR 13296).

Historically, the Suffolk County Department of Health Services (SCDHS) issued enforcement actions against both BCL and Panatone, and some cleanup actions had been performed, with the most recent cleanup action occurring in May 1992.

Under the direction of EPA, Ebasco Services, Inc. conducted a remedial investigation (RI) from May 1989 to March 1992 to characterize the geology, groundwater hydrology and chemical quality of the soils and groundwater at the BCL site. The investigation consisted of sampling the suspected source areas, the subsurface soils, the surface soils and the sediments and liquids in the two sanitary systems, a soil-gas survey, monitoring well installation (on-site and off-site), well-point sampling, groundwater sampling and geotechnical testing. All sampling results, both organic and inorganic, were compared with New York State and Federal applicable or relevant and appropriate requirements (ARARs).

Four rounds of groundwater sampling data, taken over the course of over two years, indicated isolated organic and inorganic contamination; in some cases, State or Federal maximum contaminants levels (MCLs) were exceeded. The contamination was determined to be the result of the following non-site related conditions: (1) Background or upgradient conditions; (2) high total suspended solids in some samples, which were not representative of the quality of the groundwater; and/or (3) ongoing discharges to the existing sanitary systems. The concentrations of contaminants in the sanitary sediments/aqueous samples were also found to be related to ongoing discharges into the existing sanitary systems.

At the conclusion of the RI process, EPA, in consultation with the State of New York, issued a Record of Decision (ROD) on September 30, 1992, that determined that the BCL site does not pose a significant threat to human health or the environment and that no further action was required.

Having met the deletion criteria, EPA proposes to delete the BCL site from the NPL.

Dated: April 8, 1994.

Kathleen C. Callahan,

Acting Regional Administrator.

[FR Doc. 94–11084 Filed 5–6–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 434 and 435

[MB–044–P]

RIN 0938–AF15

Medicaid Program; Requirements for Certain Health Insuring Organizations and OBRA '90 Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to: make those health insuring organizations (HIOs) that provide or arrange for health care services to Medicaid recipients, but are not subject to the requirements for health maintenance organizations (HMOs) set forth in section 1903(m)(2)(A) of the Social Security Act, subject to the regulations governing prepaid health plans (PHPs); and

Incorporate technical amendments relating to HMO enrollment, disenrollments, guaranteed eligibility and provisional status made by 1990 legislation.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 8, 1994.

ADDRESSES: Mail written comments (original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–044–P, P.O. Box 7518, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–044–P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. phone: (202) 690–7890.

FOR FURTHER INFORMATION CONTACT: Mike Fiore, (410) 966–4460.

SUPPLEMENTARY INFORMATION:

I. Health Insuring Organizations

A. Background

Under the Medicaid program, States may arrange for the provision of services to Medicaid recipients through contracts with managed care entities such as health maintenance organizations (HMOs), health insuring organizations (HIOs), and prepaid health plans (PHPs).

An HIO is an entity that receives a premium or subscription charge from the State, typically based on the number of persons enrolled in the HIO, and assumes some risk of loss if the cost of the actual services exceeds the monthly capitation amount. Unlike HMOs or PHPs, the original HIOs did not themselves provide or arrange for health care services for their enrollees, but merely paid for the cost of services furnished to their members by independent providers. These original HIOs were essentially risk-bearing fiscal agents.

In recent years, certain entities that contracted with providers and required their enrolled members to obtain all of their medical care exclusively from these providers have either retained or adopted the label "HIO" in order to avail themselves of the less burdensome regulatory requirements applicable to HIOs, compared to the requirements applicable to HMOs or CMPs. This practice has had the effect of subjecting enrollees to the same membership restrictions that are characteristic of HMOs and PHPs, without the regulatory safeguards afforded the HMO and PHP enrollees.

Contracts between State agencies and HIOs that act as risk-bearing fiscal agents are made under the broad authority of section 1902(a)(4)(A) of the Social Security Act (the Act), which provides for "such methods of administration * * * as are found by the Secretary to be necessary for the proper and efficient operation of the plan", and are subject to the regulatory requirements of 42 CFR 434.40. Section 434.40 provides that HIO contracts must meet certain capitation, underwriting risk, and reinsurance requirements, but it is silent with regard to emergency services, grievance procedures, marketing practices, inspection of financial records, and other important regulatory issues that apply to HMOs and PHPs. Section 434.40 also specifies that HIO contracts must conform to § 434.6, that is, the general requirements for all contracts and subcontracts entered into between State agencies and providers as set forth in part 434.

Contracts with HMOs (and, as a result of legislation discussed below, some HIOs) that provide or arrange for "comprehensive services" on a risk basis are subject to the requirements of section 1903(m)(2) of the Act and implementing regulations under §§ 434.20 through 434.36. "Comprehensive services" are defined under § 434.21(b) as inpatient hospital services and any of the following services, or any three or more of the following services or groups of services: (1) Outpatient hospital services and rural health clinic services; (2) other laboratory and x-ray services; (3) skilled nursing facility (SNF) (now referred to as nursing facility (NF)) services and early and periodic screening, diagnosis, and treatment (EPSDT), and family planning; (4) physicians' services; and (5) home health services.

Those HIOs which provided or arranged for the delivery of comprehensive services (and assumed financial risk for those services) were made subject to these HMO requirements by section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) with some exceptions. The provisions of section 9517(c) of COBRA '85 were not made applicable to HIOs that became operational before January 1, 1986. Also, HIOs that became operational after that date but which operate under a waiver approved under section 1915(b) of the Act before that date, were exempted by section 9517(c) from HMO requirements related to composition of enrollment and the right of enrollees to disenroll without cause, under sections 1903(m)(2)(A)(ii) and 1903(m)(2)(A)(vi) of the Act, respectively. (Note: Section 9517(c)(2)(b) of COBRA erroneously identified the exception clauses as (ii) and (iv). Section 1895(c)(4) of the Tax Reform Act of 1986, Public Law 99–514, corrected this error.)

Section 9517(c) of COBRA '85 was silent on the requirements applicable to HIOs which it did not subject to HMO requirements. This would include those HIOs within the explicit exceptions discussed above, as well as HIOs with risk contracts providing less than comprehensive services.

We believe that it would be inappropriate to permit an HIO that provides or arranges for services, yet is not subject to HMO rules, to remain subject to the HIO rules at § 417.40 governing those HIOs that only function as risk-bearing fiscal agents. We did not, however, include such a provision in proposed regulations published on August 25, 1988 (53 FR 32406). Those proposed regulations, which were designed to implement the statutory amendment subjecting some HIOs to section 1903(m) of the Act, thus would permit HIOs that provide or arrange for less than comprehensive services on a risk basis to be subject only to the rules governing HIOs that perform the original basic HIO services of paying for and assuming risk for health care services. In the final rule published on December 13, 1990 (55 FR 51292), we recognized the omission and declared our intent to publish, in a separate proposed rule, revisions to the regulations that would make all HIOs that provide or arrange for services subject to the same regulations as PHPs if they are exempt from section 1903(m)(2)(A). However, we did not provide for a comment period on this policy. This document provides that comment period. Regulations that apply to PHPs are contained in §§ 434.20 through 434.36 and are derived from the authority granted to the Secretary under section 1902(a)(4)(A) of the Act, not section 1903(m)(2)(A) as discussed above. These are the same regulations that apply to Medicaid-contracting HMOs.

B. Provisions of the Proposed Rule

This proposed rule would subject all HIOs that assume risk and provide or arrange for services, but are exempt from section 1903(m)(2)(A) of the Act, to the same requirements that apply to PHPs as set forth in §§ 434.20 (d) and (e), 434.21 through 434.36, and 434.50 through 434.65. It would affect (1) HIOs that provide or arrange for comprehensive services and either were operational before January 1, 1986 or are otherwise exempted from section 1903(m)(2)(A) of the Act by statute, and (2) HIOs that provide or arrange for less than comprehensive services. We propose to amend § 434.44 by adding a new paragraph (c) to incorporate this provision.

This proposed rule also would expressly limit the applicability of the existing HIO requirements at § 434.40 to HIOs that only process claims and underwrite risk and do not provide or arrange for the delivery of health care services.

In addition, we propose revising the definition of "prepaid health plan" at § 434.2 to include HIOs that provide or arrange for health care services.

II. Technical Revisions—Omnibus Budget Reconciliation Act of 1990

Section 4732 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) made several changes to the Social Security Act which affected HMOs and Medicare-contracting competitive medical plans (CMPs) (defined in § 417.407(c)) which participate in the Medicaid program.

A. Waiver of Enrollment Requirements

Before the enactment of OBRA '90, an HMO that was a public entity could receive a waiver of the composition of enrollment requirement that Medicare and Medicaid recipients constitute less than 75 percent of the entity's total enrollment only if HCFA determined that the entity had special circumstances and the entity continued efforts to enroll individuals who were not eligible for Medicare or Medicaid. Section 4732(a) of OBRA '90 eliminated the requirement that special circumstances must exist as the basis for granting the waiver.

We propose to revise our regulations at § 434.26 (b)(2) and (b)(3) to eliminate the requirement for the existence of special circumstances in order for HCFA to grant a waiver of the composition of enrollment requirements.

B. Guaranteed Eligibility in CMPs

Section 4732(b)(1) of OBRA '90 amended section 1902(e)(2)(A) of the Act (which allows for a minimum guaranteed enrollment period of up to 6 months) to add CMPs that contract with Medicare under section 1876 to the list of entities that, at a State's option, may deem individuals who lose eligibility before the end of the minimum enrollment period, to continue to be eligible until the end of the period.

We propose to amend §§ 435.212 and 435.326 to identify CMPs that contract with Medicare as one of the entities with which States may guarantee Medicaid eligibility.

C. Disenrollments in CMPs

Section 4732(b)(2) of OBRA '90 amended section 1903(m)(2)(F) of the Act, which, for purposes of Federal financial participation (FFP) imposes disenrollment restrictions on certain prepaid health plans, to add CMPs that contract with Medicare to the list of entities that may, at a State's option, restrict disenrollment without cause for Medicaid enrollees for up to 6 months. Disenrollment without cause would be permitted only in the first month of each period of enrollment.

We propose to amend § 434.27(d)(1) to add a new paragraph (vi) to identify CMPs that contract with Medicare as one of the organizations, with which States may contract, that may restrict disenrollment rights of Medicaid enrollees.

D. Reenrollment in HMOs

Section 4732(c) of OBRA '90 amended section 1903(m)(2) of the Act to provide that if a Medicaid-eligible individual is enrolled in an HMO in a given month and loses eligibility in the next month (or in the next 2 months) but in the succeeding month is again eligible for Medicaid benefits, the State agency may enroll that individual in the same HMO in which he or she was enrolled at the time of loss of eligibility.

We propose to add a new § 434.25(c) to incorporate this provision. We also propose to add a new paragraph (h) to § 434.27 to explain that a new restricted period of disenrollment begins following each period of ineligibility as outlined by § 434.25(c).

E. Elimination of Provisional Qualification of HMOs

Section 4732(d) of OBRA '90 amended section 1903(m) of the Act to eliminate a provision under which a State Medicaid agency could determine that a Federally qualified HMO was in provisional status because more than 90 days had elapsed since the HMO applied to the Public Health Service (PHS) for Federal qualification and the PHS had not made a final determination. This status continued until the PHS made the final determination or the contract with the Medicaid agency was terminated, whichever occurred first.

Section 434.20 of the Medicaid regulations contained the provision that allowed State agencies to contract with provisional status HMOs and § 434.72 provided for FFP in expenditures for payments to these provisional status HMOs. We propose to revise § 434.2 to delete the definition of a provisional status HMO, revise § 434.20(a)(1) to remove all references to provisional status HMOs, and delete § 434.72 in its entirety.

III. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We do not consider States to be small entities. However, we do consider HMOs, PHPs, and HIOs to be small entities.

The provision that would subject HIOs that provide or arrange for services to the requirements governing PHPs would affect HIOs in at least three States. HIOs in two of these States that are currently fully operational serve a combined Medicaid enrollment of approximately 43,800 individuals. These HIOs currently operate under section 1915(b) freedom of choice waivers which require adequate access to quality services. They are also regulated by their respective States in a manner similar to HMOs and PHPs. There is no anticipated change in operation other than they would be required to afford HIO Medicaid enrollees the same protections as those

Medicaid enrollees enrolled in other prepaid plans that arrange for or provide services.

The technical provisions in this proposed rule are necessary to conform the Medicaid regulations to provisions of OBRA '90. We anticipate that these provisions would have a negligible impact.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that are subject to review by the Executive Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of the final rule that is issued.

List of Subjects

42 CFR Part 434

Grant programs-health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages. 42 CFR Chapter IV would be amended as follows:

A. Part 434 would be amended as set forth below:

PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 434.2, the introductory text is republished, the definition of "Prepaid health plan" is revised and the definition of "Provisional status HMO" is removed, to read as follows:

§ 434.2 Definitions.

As used in this part, unless the context indicates otherwise—

* * * * *

Prepaid health plan (PHP) means an entity, including an HIO, that provides or arranges for the provision of medical services to enrolled recipients, under contract with the Medicaid agency and on the basis of prepaid capitation fees, but is not subject to the requirements in section 1903(m)(2)(A) of the Act.

* * * * *

3. In § 434.20, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract for the scope of services specified in § 434.21 only with an entity that—

(1) Is a Federally-qualified HMO;

* * * * *

4. In § 434.25, a new paragraph (c) is added to read as follows:

§ 434.25 Coverage and enrollment.

* * * * *

(c) If a Medicaid eligible individual is enrolled in an HMO in a given month and loses eligibility in the next month (or in the next 2 months) but in the succeeding month is again eligible for Medicaid benefits, the State agency may enroll that individual in the same HMO that he or she was enrolled in at the time of loss of eligibility.

5. In § 434.26, paragraphs (b)(2) and (3) are revised to read as follows:

§ 434.26 Composition of enrollment.

* * * * *

(b) *Exceptions—*

* * * * *

(2) *Waiver for public HMOs with risk comprehensive contracts.* The Regional Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for an HMO that is owned or operated by a State, county, or municipal health department or hospital if the HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

(3) *Waiver for certain nonprofit HMOs with risk comprehensive contracts.* The Regional Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for a nonprofit HMO which has a minimum of 25,000 members; is and has been federally qualified for a period of at least 4 yrs; provides basic health services through members of its staff; is located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act; and has previously received a waiver under section 1115 of the Act of the requirement described in paragraph (a) of this section, if the HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

* * * * *

6. In § 434.27, (d) introductory text and (d)(1) introductory text are republished, paragraph (d)(1)(v) is revised, and new paragraphs (d)(1)(vi) and (h) are added, to read as follows:

§ 434.27 Termination of enrollment.

* * * * *

(d) A State plan may provide for contracts with certain organizations which restrict disenrollment rights of Medicaid enrollees under paragraph (b)(2) of this section if the following conditions are met:

(1) The organization is—

* * * * *

(v) An entity described in § 434.26(b)(3); or

(vi) A competitive medical plan as defined in § 417.407(c) of this chapter that has a valid contract with HCFA under section 1876 of the Act; and

* * * * *

(h) When an agency has elected to restrict disenrollment, the restricted disenrollment period commences with each enrollment, including reenrollments permitted under § 434 25(c). Disenrollment without cause will be permitted during the first month of each new restricted disenrollment period.

7. In § 434.40, paragraphs (a) introductory text is revised to read as follows:

§ 434.40 Contract requirements.

(a) Contracts with health insuring organizations that are not subject either to the requirements in section 1903(m)(2)(A) of the Act or to §§ 434.21 through 434.36 must:

* * * * *

8. In § 434.44, a new paragraph (c) is added to read as follows:

§ 434.44 Special rules for certain health insuring organizations.

* * * * *

(c) A health insuring organization that provides or arranges for the provision of services, and meets the definition of a PHP in § 434.2, must meet the requirements in §§ 434.20(d) and (e), §§ 434.21 through 434.36 and in §§ 434.50 through 434.65 that apply to PHPs.

§ 434.72 [Removed]

9. § 434.72 is removed.

B. Part 435 would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.212, the introductory text is revised to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a federally qualified HMO (under a risk contract as specified in § 434.20(a)(1) of this chapter) or a competitive medical plan with a current Medicare contract under section 1876 of the Act and who becomes ineligible for Medicaid is considered to continue to be eligible—

* * * * *

3. Section 435.326 is revised to read as follows:

§ 435.326 Individuals who would be ineligible if they were not enrolled in an HMO.

If the agency provides Medicaid to the categorically needy under § 435.212, it may provide Medicaid under the same rules to medically needy recipients who are enrolled in a federally qualified HMO or in an entity specified in § 417.407(c) of this chapter with a current contract with Medicare under section 1876 of the Act; § 434.20(a)(3) and (a)(4), § 434.26(b)(3), or § 434.26(b)(5)(ii) of this chapter, or section 1903(m)(6) of the Act which provides services as described in § 434.21(b) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: November 3, 1993.

Bruce C. Vladeck

Administrator, Health Care Financing Administration.

Dated: February 20, 1994.

Donna E. Shalala

Secretary.

Editorial Note: This Document was received at the Office of the Federal Register on May 4, 1994.

[FR Doc. 94–11097 Filed 5–6–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Public Comment Period on Proposed Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, (Act) gives notice that a public hearing will be held on the proposal to designate critical habitat in Washington, Oregon, and California for the marbled murrelet (*Brachyramphus marmoratus marmoratus*). The hearing will allow all interested parties to submit oral and written comments on the proposal. The public comment period will be reopened until June 9, 1994.

DATES: A public hearing will be held from 2 p.m. to 5 p.m. and from 6:30 p.m. to 9:00 p.m on May 24, 1994, in North Bend, Oregon. Each session will begin with a presentation on the proposal, after which a panel of Fish and Wildlife Service staff will answer questions and take verbal comments on the proposal from people who have registered to speak. The public comment period will be reopened until June 9, 1994.

ADDRESSES: The public hearing will be held at the North Bend Community Center, 2222 Broadway, North Bend, Oregon. Written comments and materials may be submitted at the hearing and may be sent to the Assistant Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 911 Northeast 11th Avenue, Portland, Oregon, 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Ecological Services at the above address (503/231–6159).

SUPPLEMENTARY INFORMATION: The marbled murrelet is a small seabird of the Alcidae family that feeds on small fish in near-shore marine waters and nests in mature and old-growth forests up to 50 miles inland. The subspecies ranges from the Aleutian Archipelago in Alaska to central California. The subspecies is listed as threatened in Washington, Oregon, and California.

Between 8,000 and 10,000 birds are estimated in Washington, Oregon, and California. Estimated recruitment rates of juvenile birds are extremely low, indicating a declining population. The species is primarily threatened by historic and ongoing loss of forest nesting habitat, with additional mortality from gill-net fishery operations and oil spills.

The U.S. Fish and Wildlife Service proposed on January 27, 1994, (59 FR 3811) to designate critical habitat in Washington, Oregon, and California, for the marbled murrelet (*Brachyramphus marmoratus marmoratus*), a threatened species under the Act. Proposed critical habitat units are located on Federal lands.

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to the proposed rule, Cary J. Jones, Executive Director, Douglas Timber Operators, requested a public hearing in a letter dated March 14, 1994. As a result, the Service has scheduled a public hearing at North Bend Community Center, 2222 Broadway, North Bend, Oregon on May 24, 1994.

Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements and questions may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits on the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments must be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes on June 9, 1994.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting, and recordkeeping requirement, and Transportation.

Dated: May 2, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11088 Filed 5–6–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 88
Monday, May 9, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Availability of Housing Application Packaging Grant (HAPG) Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces the availability of Housing Application Packaging Grant (HAPG) funds for Fiscal Year (FY) 1994. This action is taken to publish notice of the availability of HAPG funds to eligible packaging organizations in targeted, underserved counties and colonias for Sections 502, 504, 514, 515, 516, 524, and 533 housing programs. The intended effect is to make the public aware of housing application packaging grant funds available through FmHA.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Marty Horwath, Senior Loan Specialist, Single Family Housing Loan Processing Division, at (202) 720–1486 or Sue Harris-Green, Senior Loan Specialist, Multi-Family Housing Processing Division at (202) 720–1660. The address is USDA–FmHA, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700.

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405—Farm Labor Housing Loans and Grants
10.410—Very Low to Moderate Income Housing Loans
10.411—Rural Housing Site Loans
10.415—Rural Rental Housing Loans
10.417—Very Low-Income Housing Repair Loans and Grants
10.433—Rural Housing Preservation Grants
10.442—Housing Application Packaging Grants

Discussion of Notice

On November 3, 1993, FmHA published a final rule announcing the implementation of the Housing Application Packaging Grants (HAPG) for FmHA's Rural Housing programs. This notice provides guidance of the availability of funds for FY 1994.

Funding for FY 1994 for HAPG is $6.5 million. Initial set aside for Sections 502/504 is $2.5 million. Each participating State's funds is based on its number of eligible counties/colonias, with each county/colonia receiving a prorata share of the total funds available. See the spreadsheet at the end of this notice for the allocation of funds.

Funding for sections 514, 515, 516, 524, and 533 is $1 million and will be held in reserve in the National Office. All States are encouraged to request funds for Multi-Family programs which will be considered on a first-come-first-served basis.

A National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular allocation. A total reserve of $3 million is available for all programs.

Pooling of unused HAPG funds is tentatively scheduled for July 15, 1994, and may be changed administratively, based upon fund usage. All unused grant funds will be rolled over into FY 1995.

The following is a list of HAPG funds allocated for FY 1994 for Section 502/504 Programs for participating states:

FARMERS HOME ADMINISTRATION—SECTIONS 502/504 RURAL HOUSING APPLICATION PACKAGING GRANT FUNDING
[FY 1994]

State	Number of counties eligible	Percent of total counties	Allocation	Number of packaging grants per allocation
Alabama	13	4.32	108,000	216
Alaska	5	1.66	41,500	83
Arizona	8	2.66	66,400	133
Arkansas	5	1.66	41,500	83
California	3	1.00	24,900	50
Colorado	1	0.33	8,300	17
Florida	2	0.66	16,600	33
Georgia	22	7.31	182,700	365
Idaho	1	0.33	8,300	17
Kentucky	25	8.31	207,600	415
Louisiana	10	3.32	83,100	166
Mississippi	27	8.97	224,300	449
Montana	2	0.66	16,600	33
New Mexico	11	3.65	91,400	183
North Carolina	4	1.33	33,200	66
North Dakota	3	1.00	24,900	50
Ohio	1	0.33	8,300	17
South Carolina	6	1.99	49,800	100
South Dakota	9	2.99	74,800	150
Tennessee	2	0.66	16,600	33
Texas	45	14.95	373,800	748

FARMERS HOME ADMINISTRATION—SECTIONS 502/504 RURAL HOUSING APPLICATION PACKAGING GRANT FUNDING—Continued
[FY 1994]

State	Number of counties eligible	Percent of total counties	Allocation	Number of packaging grants per allocation
Utah	1	0.33	8,300	17
Virginia	4	1.33	33,200	66
Washington	2	0.66	16,600	33
West Virginia	4	1.33	33,200	66
Wisconsin	1	0.33	8,300	17
Puerto Rico	77	25.58	639,700	1,278
Virgin Islands	2	0.66	16,600	33
West Pac Terr	5	1.66	41,500	83
Total counties	301	100.00		
State total			$2,500,000	5.000
National total			$6,500,000	

$1 million for sections 514/516, 515, 524, and 533 to be held in the national office, available on a first-come-first-served basis.

A total reserve of $3 million is available for all programs.

Dated: May 1, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94-11015 Filed 5-6-94; 8:45 am]

BILLING CODE 3410-07-U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Single-User Toilet and Bathing Facilities; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold an informational meeting on access to single-user toilet and bathing facilities in Washington, DC on May 24, 1994.

DATES: The meeting is scheduled for Tuesday, May 24, 1994 from 10 a.m.–3 p.m.

ADDRESSES: The meeting will be held at 1331 F Street, NW., Washington, DC in the third floor training room of the President's Committee on Employment of People With Disabilities.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 21 (Voice); (202) 272–5449 (TTY). These are not toll free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Access Board has received comments from organizations representing people with disabilities and from individuals who, because they are provided personal assistance by members of the opposite sex, need toilet or bathing facilities that accommodate both persons. When multiple fixture facilities are provided, the privacy of both the individual with a disability and other users of the facility may be compromised. The purpose of the meeting is to provide interested persons an opportunity to further define the scope of the problem and to recommend a plan for action. Persons may present oral or written statements.

The meeting site will be accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Marsha Mazz by May 16, 1994 at (202) 275–5434 ext. 21 (Voice) or (202) 275–5449 (TTY). These are not toll free numbers.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 94-11014 Filed 5-6-94; 8:45 am]

BILLING CODE 8150-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Public Assistance Payments by County.

Form Number: Agency-NA; OMB—0608–0037.

Type of Request: Renewal of currently approved collection.

Burden: 24 Respondents; 144 reporting hours.

Average Hours Per Response: 6 Hours.

Needs and Uses: The Bureau of Economic Analysis prepares county estimates of personal income. To produce county estimates of public assistance payments, which are a part of personal income, it is necessary to request data directly from the responsible State agencies. The data which are compiled by the States for their own administrative purposes are only available from the State administering the programs.

Affected Public: State Government agencies.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room H5327, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk officer, room 3228, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–11128 Filed 5–6–94; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB) DOC has Submitted to OMB for Clearance, the Following Proposal for Collection of Information Under the Provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35)

Agency: Minority Business Development Agency.

Title: Competitive Application Package for funding to operate technical assistance projects (SF 424 and Evaluation Criteria).

Form Number: SF–424; and MBDA 0640–0006.

Type of Request: Revision of a currently approved collection.

Burden: 550 respondents; 44,000 reporting hours; 80 average hours per response.

Needs and Uses: MBDA 0640–0006 is needed to evaluate applicant's experience and resources against uniform program standards.

Affected Public: Individuals or households, state or local government, businesses or other for-profit institutions, and non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, 202–395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, 202/482–3271, Department of Commerce, room H5317, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 1994.

Edward Michals,

Department of Commerce Clearance Officer, Office of Management and Organization.

[FR Doc. 94–11129 Filed 5–6–94; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology.

Title: Energy-Related Invention Evaluation Request.

Form Number: Agency Number: NIST–1019, OMB, Number: 0693–0002.

Type of Request: Revision.

Burden: 2,000 responses; 2,000 reporting hours.

Needs and Uses: Need the information to evaluate inventions. The information is used solely for evaluating the inventions submitted and in communicating with the inventor or their representative.

Affected Public: Individuals or households, businesses or others for profit, small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required for Benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OBM Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 1994.

Edward Michals,

Departmental Clearance Officer; Office of Management and Organization.

[FR Doc. 94–11130 Filed 5–6–94; 8:45am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan; Affirmation of the Results of Redetermination Pursuant to Court Remand

SUMMARY: On February 15, 1994, the United States Court of International Trade (CIT) affirmed the Department of Commerce's redetermination on remand and amendment to the redetermination on remand of the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Japan (57 FR 4951, February 11, 1992) *NSK Ltd. and NSK Corporation* v. *United States* (Slip. Op. 93–178, September 10, 1993) (*NSK I*) and *NSK Ltd. and NSK Corporation* v. United States (Slip. Op. 93–216, November 18, 1993) (*NSK II*). The results covered the period October 1, 1988 through September 30, 1989.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1993, the CIT issued an order remanding to the Department of Commerce (the Department) the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Japan (57 FR 4951, February 11, 1992), and on November 18, 1993, the CIT issued an order to the Department further remanding these results.

In its decision in *NSK I*, the CIT remanded the final results to the Department: (1) To correct the misidentification of a part's 19-digit number, (2) to search for and average difference-in-merchandise adjustment (difmer) data reported for the quarter during which a particular TRB model was sold and for the preceding quarter if it finds none in the same quarter as that in which the sale occurs, and (3) to enable the Department to reconsider all cost-of-production information on the record, including cost information reported for quarters subsequent to sale.

In *NSK II*, the CIT further remanded the case to the Department to add NSK's U.S. direct selling expenses to foreign market value, rather than subtracting them from United States price.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. These remand instructions constitute a decision not in harmony with the Department's final results of review. This notice fulfills the publication requirements of *Timken*.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Japan to reflect the amended margin of 15.02 percent in the Department's amended redetermination on remand, which was affirmed by the CIT.

Dated: April 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–11126 Filed 5–6–94; 8:45 am]

BILLING CODE 3510–DS–M

Notice of Disposition of Application for Duty-Free Entry of Scientific Instrument

We have been advised that no tariff was levied on the entry covered by Docket Number 94-017 (See notice at 59 FR 13705, March 23, 1994). We are treating the docket as a withdrawal pursuant to Sec. 301.5(g) of the regulations and have discontinued processing.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–11125 Filed 5–6–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: State of Connecticut (Service Area)

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice.

SUMMARY: Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Minority Business Development Center program to operate the State of Connecticut MBDC for a three (3) year period, starting June 1, 1994 to May 31, 1995 in the State of Connecticut SMSA (Closing date March 7, 1994). Refer to the **Federal Register**, dated Thursday February 3, 1994, Volume 59, No. 23, Page 5178.

Dated: May 3, 1994.

William R. Fuller,

Acting Regional Director, New York, Regional Office.

[FR Doc. 94–11135 Filed 5–6–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 042894C]

Regional Fishery Management Councils; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Chairmen of the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, and Western Pacific Fishery Management Councils (Councils) will meet on May 15–16, 1994, at the Vista Hotel, 1400 M Street, NW., Washington, DC to address the agenda items noted below. The meeting will begin at 9 a.m. on May 15, at 8 a.m. on May 16, and end at approximately noon on May 16.

The following will be discussed:

On May 15, Magnuson Fishery Conservation and Management Act reauthorization and briefing on other fishery related legislation. On May 16, administrative matters, as listed below:

(1) Paying for unused sick and annual leave;

(2) Workload analysis;

(3) Designating a single grants management specialist for all Councils;

(4) Locality pay;

(5) Standards for Council member removal;

(6) Financial disclosure;

(7) Establishing standard definitions for marine recreational fishermen/fishing and charterboat vessels;

(8) Policy on Indigenous People;

(9) Social Science Research and Data Collection; and

(10) The Food and Agricultural Organization of the United Nations Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and the United Nations conference on straddling stocks and highly migratory species.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least 5 days prior to the meeting date.

Dated: May 3, 1994

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 94–11073 Filed 5-6-94; 8:45 a.m.]

BILLING CODE 3510–22–F

[I.D. 042594C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of Application to Modify Permit No. 788 (P129I).

SUMMARY: Notice is hereby given that Bruce R. Mate, Ph.D., Professor, Fisheries and Wildlife, Oregon State University, Newport, OR 97365–5296, has requested a modification to Permit No. 788.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4016); and

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C51700, Seattle, WA 98115 (206/526–6150).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 788, issued on August 10, 1992 (57 FR 37527) is requested under the authority of the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 788 authorizes the Holder to incidentally harass up to 440 sperm whales (*Physeter macrocephalus*) while attempting to satellite tag up to 10 per year in the Gulf of Mexico.

The Holder has requested authorization to extend the area of take to the North Pacific Ocean, specifically 20 miles south of Point Sur north to Bodega Bay and the Southern California Bight, site of the proposed Acoustic Thermometry of Ocean Climate (ATOC) project. No additional animals are requested and the research protocol authorized in Permit No. 788 will not change.

Dated: April 29, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-11080 Filed 5-6-94; 8:45a.m.]

BILLING CODE 3510-22-F

[I.D. 042694A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P351E).

SUMMARY: Notice is hereby given that the North Gulf Oceanic Society, P.O. Box 15244, Homer, AK 99603, has applied in due form for a permit to take by potential harassment humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written comments must be received by June 8, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668.

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant seeks authorization for the potential harassment of up to 100 humpback whales annually during repeated (an average of 6 times annually per individual whale) approaches for purposes of photo-identification. The applicant proposes to initiate this work upon permit issuance. Activities will be conducted primarily in the months of May through September over a 5-year period, in Prince William Sound and waters from the Copper River Delta to Kachemak Bay.

Dated: April 29, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-11081 Filed 5-6-94; 8:45a.m.]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations With the Government of El Salvador on Certain Cotton and Man-Made Fiber Textile Products

May 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 25, 1994, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on December 9, 1993, the Government of the United States requested consultations with the Government of El Salvador with respect to men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in El Salvador.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of El Salvador, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period which began on April 25, 1994 and extends through April 24, 1995, at a level of not less than 373,803 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of El Salvador.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—El Salvador

Category 340/640—Men's and Boys' Cotton and Manmade Fiber Woven Shirts

April 1994

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and manmade fiber woven shirts, Category 340/640, from El Salvador reached 373,803 dozen for the year ending January 1994, more than nine times the 41,246 dozen imported a year earlier. Imports from El Salvador were 35,803 dozen in 1992.

The sharp and substantial increase in Category 340/640 imports from El Salvador is disrupting the U.S. market for men's and boys' cotton and manmade fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production and imports of men's and boys' cotton and manmade fiber woven shirts, Category 340/640, declined during the recession years 1990 and 1991. Production recovered slightly in 1992, while imports surged. In 1993, U.S. production fell 2 percent below the 1992 level and was 26 percent below the pre-recession 1989 level. In contrast, 1993 imports increased by five percent over the 1992 level, and were 19 percent above the 1989 pre-recession level.

The ratio of imports to domestic production increased from 157 percent in 1989 to 253 percent in 1993. The U.S. producer's share of the domestic market fell from 39 percent in 1989 to 28 percent in 1993, a decline of 11 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 340/640 imports from El Salvador during the year ending January 1994 entered under HTSUSA numbers 6205.20.2025—men's cotton dress shirts, other than yarn dyed; 6205.20.2065—men's woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling; and 6205.20.2075—boys' woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling, other than imported as a part of a playsuit. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 94–11127 Filed 5–6–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: DoD FAR Supplement, Part 207, Acquisition Plans; Part 237, Service Contracting, and Part 252, Solicitation Provisions and Clauses.

Type of Request: New Collection.

Average Burden Hours/Minutes per Response: 3.25 hours.

Response per Respondent: 1.

Number of Respondents: 100.

Annual Burden Hours: 325.

Annual Responses: 100.

Needs and Uses: The Department of Defense has a requirement for continuation of contract services that have been identified as essential during crisis situations (as defined in DoD Directive 3020.37, Continuation of Essential DoD Contractor Services During Crises). If continued performance of the essential services is directed by the contracting officer during a crisis situation, the contractor agrees to continue performance of any and all essential services under the contract. If such performance causes an increase or decrease in the contractor's cost of, or the time required for performance of any part of the work under the contract, the contractor must assert its right to an equitable adjustment by submitting a written statement describing the general nature and amount of the proposal. The contracting officer shall use the contractor's assertion of its right to an adjustment as the basis for making an equitable adjustment and modifying the contract in writing.

Affected Public: Businesses and other for profit institutions, non-profit institutions and small businesses or organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal may be obtained from Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: May 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–11000 Filed 5–6–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Privacy Act of 1974; Delete and amend systems of records

AGENCY: Department of the Air Force, (DoD).

ACTION: Delete and amend systems of records.

SUMMARY: The Department of the Air Force proposes to delete one and amend 14 systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deleted system is effective May 9, 1994.

The amended systems will be effective June 8, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, SAF/AAIA, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703)697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force Privacy systems of records notices have been published in the **Federal Register** and are available from the address above. The deleted and amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety, as amended.

Dated: April 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

F200 AFIC A

SYSTEM NAME:

DIA Program for Foreign Intelligence Collection *(November 23, 1993, 58 FR 61893).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

AMENDMENTS

F033 ATC A

SYSTEM NAME:

Lead Management System (LMS) *(February 22, 1993, 58 FR 10319).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F033 AETC A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a Civilian Contractor who is engaged by the Air Force to provide lead fulfillment services - location depends on the Contractor. Contact System Manager for specific locations).

Air Force recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Insert 'Education and' between the words 'Air' and 'Training.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.'

* * * * *

F033 AETC A

SYSTEM NAME:

Lead Management System (LMS).

SYSTEM LOCATION:

Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a Civilian Contractor who is engaged by the Air Force to provide lead fulfillment services - location depends on the Contractor. Contact System Manager for specific locations).

Air Force recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Respondents to United States Air Force Recruiting Service advertisements and referrals made by active duty military personnel, retired military personnel and Air Force civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Respondent's inquiry record containing name, address, date of birth, sex, telephone number, advertising medium, recruiting program in which interested, and source of referral, including name and Air Force base assigned. Recruiter contact records containing success of contact efforts, reason for not contacting, how contact was made, confirmation of educational level, qualification and status of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, Air Education and Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force.

PURPOSE(S):

The contractor fulfills requests from respondents for information about the Air Force and notifies appropriate recruiting activities of respondent's interest. Contractor develops statistical summaries which are used by USAF Recruiting Service to evaluate the effectiveness of the advertising and referral programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained by contractor at the AFOC for two years after end of FY in which all actions are completed, then records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150–4527.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual respondent and automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AFCC A

SYSTEM NAME:

Scope Leader Program *(February 22, 1993, 58 FR 10338).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AFC4A A.'

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'Air Force Communications Command (AFCC)' and insert 'Air Force Command, Control, Communications and Computers Agency (AFC4A).'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Communications Command' and insert 'Air Force Command, Control, Communications and Computers Agency.'

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PURPOSE(S):

Delete 'Air Force Communications Command (AFCC)' and insert 'Air Force Command, Control, Communications and Computers Agency.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.

Include full name, rank and Social Security Number.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.

Include full name, rank and Social Security Number.'

* * * * *

F035 AFC4A A

SYSTEM NAME:

Scope Leader Program.

SYSTEM LOCATION:

Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, officer grade, assigned to Air Force Command, Control, Communications and Computers Agency (AFC4A).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel selected as potential candidates for 'tough job' and commander positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Command, Control, Communications and Computers Agency Regulation 500–16; and E.O. 9397.

PURPOSE(S):

Used to monitor the assignment and replacement of unit Commanders in Air Force Command, Control, Communications and Computers Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.G. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and computer system requiring user codes and passwords for access.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, macerating, burning or degaussing. Also destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.

Individual should provide full name, rank and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225–5233.

Individual should provide full name, rank and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System *(February 22, 1993, 58 FR 10347).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC B.'

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SYSTEM LOCATION:

Delete entry and replace with 'Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.'

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 45–39' and insert Air Force Instruction 36–2010.' Add to end of entry 'and E.O. 9397.'

* * * * *

SAFEGUARDS:

Add to end of entry 'Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Add to end of entry 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address. Visitors must show armed forces identification card and some additional source of positive identification.'

* * * * *

F035 AETC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System.

SYSTEM LOCATION:

Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Junior Reserve Officer Training Corps (AFJROTC) instructor applicants and instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for AFJROTC instructor duty, processing checklist, applicant evaluation forms, interview record, last 10 Airman Performance Reports or Officer Effectiveness Reports or summary of last 10 reports which includes period of supervision and overall evaluation, letter requesting Defense Central Index of Investigation (DCII) name check, photograph, Report of Separation from Active Duty, Retirement Order (if applicable), Commander's recommendation (for noncommissioned officers on active duty only), miscellaneous correspondence such as resume and letter of recommendation, copy of AF retirement physical and Physical Evaluation Board Findings if applicant is retired with 30 percent or more disability awarded by VA, letter requesting medical evaluation of AFJROTC instructor applicants for personnel retired with 30 percent or more disability, letter verifying dependents, instructor preference card, instructor intent letter, contract data cards, termination letters, certification certificates, AFROTC Form 0–217, Change in AFJROTC Instructor Status, AFROTC Form 0–214, AFJROTC Instructor Contract Card, AFROTC Form 98 or 0–218, Air Force Junior ROTC Instructor Evaluation Report, letters pertaining to appeals of ratings and/or comments on AFROTC Form 98 or 0–218 and instructor termination questionnaire.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 102, Junior Reserve Officers' Training Corps; Air Force Instruction 36–2010, Air Force Junior Reserve Officers' Training Corps; and E.O. 9397.

PURPOSE(S):

Used to evaluate applicant qualifications for employment as AFJROTC instructors. Also used to determine if instructor is meeting Air Force standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer magnetic tape and computer printouts.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting and overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

Visitors must show armed forces identification card and some additional source of positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, the bureau of motor vehicles, a state or local government, witnesses and from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC C

SYSTEM NAME:

Air Force Reserve Officer Training Corps Qualifying Test Scoring System *(February 22, 1993, 58 FR 10348).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110, and portions pertaining to each Air Force Reserve Officer Training Corps (AFROTC) detachment located at the respective detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235–5601 is official repository for permanent record of all Air Force Officer Qualifying Test scores.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 45–48 and insert Air Force Instruction 36–2011.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.'

* * * * *

F035 ATC C

SYSTEM NAME:

Air Force Reserve Officer Training Corps Qualifying Test Scoring System.

SYSTEM LOCATION:

Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110, and portions pertaining to each AFROTC detachment located at the respective detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235–5601 is official repository for permanent record of all Air Force Officer Qualifying Test scores.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force applicants testing at Air Force detachments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, detachment, date of test, test scores, Social Security Number, air science year, number of test administrations, institution category, race, sex, marital status, education level, and program applying for.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 103, Senior Reserve Officers' Training Corps; Military Selective Service Act of 1967, Section 6, (50 U.S.C. 456); 10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Instruction 36–2011, Air Force Reserve Officer Training Corps (AFROTC), and E.O. 9397.

PURPOSE(S):

Scores are used to evaluate applicants against criteria for entrance into AFROTC, and as a measure of quality. Scores are entered in cadet records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, visible file binders/cabinets, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number, location of test administration and date of testing.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

HQ AFROTC/RRAF will maintain records of scores attained on tests administered at AFROTC detachments for a period of four years or when no longer needed for research. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–1325; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC D

SYSTEM NAME:

Basic Trainee Interview Record *(February 22, 1993, 58 FR 10349).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC D.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Insert 'Education and' between the words 'Air' and 'Training.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.'

* * * * *

F035 AETC D

SYSTEM NAME:

Basic Trainee Interview Record.

SYSTEM LOCATION:

United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Basic Trainees who register complaints concerning their enlistment in the United States Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from personal interviews with basic trainees who file complaints about their enlistment, including, but not limited to, investigations on each complaint, conclusions and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns; Air Education and Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force, and E.O. 9397.'

PURPOSE(S):

Provides a record of interviews with basic trainees who register complaints about the enlistment procedure. The data is used by the Recruiting Service Liaison Office to investigate the complaints and keep the Commander, United States Air Force Recruiting Service advised of the nature of complaints being received. It is also used as the basis for making procedural changes in the United States Air Force Recruiting Service when a trend develops in a specific area.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Records are cut off at the end of each calendar year in which case files are closed, held for one additional year, then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236–5724.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records contain specific complaints/allegations made by the individual and responses to the complaints/allegations by appropriate Air Force Recruiting Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC G

SYSTEM NAME:

Recruiting Activities Management Support System (RAMSS) *(February 22, 1994, 58 FR 10349).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC G.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527, Directorate of Recruiting, and recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Request must contain full name, Social Security Number and current mailing address.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Request must contain full name, Social Security Number and current mailing address.'

* * * * *

F035 AETC G

SYSTEM NAME:

Recruiting Activities Management Support System (RAMSS).

SYSTEM LOCATION:

Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527, Directorate of Recruiting, and recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force enlisted personnel entering active duty. Individuals tested and processed for Air Force enlistment. Potential Air Force enlistees qualified through the Armed Services Vocational Aptitude Battery (ASVAB) high school testing program. Other military services Delayed Enlistment Program (DEP) and active duty enlistees. Applicants for Air Force officer commissioning programs. Air Force enlisted personnel on recruiting duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Air Force enlistment processing records showing name, Social Security Number, scores on all qualification tests, physical job qualifications, job preferences, jobs offered, jobs accepted, other personal data relevant to jobs offered, recruiting and processing locations, education data, and dates of processing.

Airman trainee history records containing name, Social Security Number, and other personnel data for assignment from basic military training, revised job preferences, security clearance investigations, dependent data, education, test scores, grade and promotions, biographical history, physical information, drug abuse history, enlistment personal and guaranteed training enlistee program data, separation data, classification data, service dates, technical school eliminations, separations, honor graduates, and Article 15/courts-martial actions.

Records for high school seniors who are ASVAB tested and meet the basic Air Force enlistment criteria showing name, mailing address, test scores, and high school where tested.

Enlistment processing records for other military services showing Social Security Number, name, state and county of residence, test scores, educational level, physical profile, processing date and location, prior service, and other personal data such as age, sex, race, marital status, and number of dependents.

Officer applicant records showing Social Security Number, name, and other educational and personal data necessary for the processing of candidates for commissioning as Air Force Officer.

Air Force enlisted recruiter individual records showing such items as Social

Security Number, name, recruiting office assigned, and date assigned to Recruiting Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, Air Education and Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force, and E.O. 9397.

PURPOSE(S):

To furnish leads to the field recruiters derived from the high school ASVAB testing program, evaluate Air Force recruiters on effectiveness of screening out potential under/overweight applicants, evaluate recruiter's and job counselor's activity and efficiency levels, analyze pre-enlistment job cancellations for common reasons, analyze post-enlistment training pipeline attritions for common reasons, evaluate Air Force job reservation pool and past enlistments for effect of potential changes in enlistment policies in areas such as mental qualifications and physical qualifications, evaluate interservice recruiting performance, screen other service enlistees from Air Force advertising lead files, determine pass/fail rates for mental and physical testing, track training performance of Air Force enlistees, study the correlation of job held with performance on the job, study correlation of quality indicators with post-enlistment performance, feedback to field recruiters of individual records on all training attritions, and analyze advertising responses.

Used by the personnel record maintenance activity to cross-check file completeness and accuracy. Individual records are aggregated into various statistical analyses for all levels to ascertain recruiting and seasonal procurement trends, to predict future potential developments, and to assist in the development of procurement, classification, and assignment policies for Air Force military personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Enlistment processing records and recruiter records are retained until no longer needed; recruiter personnel records are retained for one year after individual is removed from recruiter production status; potential enlistee records and high school test records are retained for two years or when no longer needed, whichever is sooner; advertising lead records are retained for two years after end of FY and interservice recruiting records are retained for three months after the end of the month case file was received by the recruiter. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting. These retentions are built into the computer system program with automatic software controlled deletions from the machine-readable record.

SYSTEM MANAGER(S) AND ADDRESS:

Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Request must contain full name, Social Security Number and current mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Request must contain full name, Social Security Number and current mailing address.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of all records in the system are from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC H

SYSTEM NAME:

Recruiting Research and Analysis System *(February 22, 1993, 58 FR 10351).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC H.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.'

* * * * *

F035 AETC H

SYSTEM NAME:

Recruiting Research and Analysis System.

SYSTEM LOCATION:

Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force enlisted personnel entering active duty. Individuals tested and processed for Air Force enlistment. Potential Air Force enlistees qualified through the Armed Services Vocational Aptitude Battery (ASVAB) high school testing program. Applicants for the Officer Training School. Air Force active duty officer and enlisted personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey analysis records containing such items as Social Security Number, biographical and opinion survey data, supervisor's ratings, achievement, aptitude, reading, vocational interest and adjustment and temperament inventory scores, Air Force tech training class score, statistics and trend analysis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, Air Education and Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force, and E.O. 9397.

PURPOSE(S):

Research statistical reference file used by Headquarters United States Air Force Recruiting Service. Specific uses are to: (1) Evaluate the quality of Air Force military personnel procured by Air Force Recruiting Service; (2) develop a more objective screening process for entry into recruiting duty; and (3) develop opinion-based recommendations for recruiting effort improvements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number, study control number or name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained until no longer needed. ASVAB records are destroyed after two months. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, supervisors, from Air Force Technical Training Centers and from the Recruiting Activities Management Support System (RAMSS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC I

SYSTEM NAME:

Status of Ineffective Recruiter *(February 22, 1993, 58 FR 10351).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC I.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315.'

* * * * *

F035 AETC I

SYSTEM NAME:

Status of Ineffective Recruiter.

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty ATC enlisted and officer recruiter personnel relieved from duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual military record containing active case data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting Campaigns, and Air Education and Training Command Regulation 33–2, Recruiting Procedures for the United States Air Force.'

PURPOSE(S):

DCS/P and USAFRS use data to monitor relief actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Stored in locked building.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150–4315.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for accessing records, and contesting contents and appealing initial determinations are published in Air Force Instruction 37–132, 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from source documents, such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC J

SYSTEM NAME:

Drug Abuse Control Case Files *(February 22, 1993, 58 FR 10352).*

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC J.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Sensitive Skills Element (Special Counseling), 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction 36–3208, Administration Separation of Airman, and Air Force Pamphlet 36–2702, Social Actions Education Program.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

* * * * *

F035 AETC J

SYSTEM NAME:

Drug Abuse Control Case Files.

SYSTEM LOCATION:

Sensitive Skills Element (Special Counseling), 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel and Reserve personnel referred to drug abuse office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various letters describing drug abuse information such as notification of disposition, recommendation for disposition, drug abuse determination of urinalysis cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by: Air Force Instruction 36–3208, Administration Separation of Airman, and Air Force Pamphlet 36–2702, Social Actions Education Program.

PURPOSE(S):

Discharge authority, Sensitive Skills Element (Special Counseling), and squadron commanders determine extent of prior service drug abuse and make determinations of discharge or retention in the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record systems notices apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3, 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from squadron commanders, base surgeons, classification interviewers, medical institutions and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC K

SYSTEM NAME:

Processing and Classification of Enlistees (PACE) *(February 22, 1993, 58 FR 10352).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC K.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Education and Training Command, 550 D Street East, Randolph Air Force Base, TX 78150–4433, input/output remote at 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Instruction 36–2108, Airman Classification. E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.'

* * * * *

F035 AETC K

SYSTEM NAME:

Processing and Classification of Enlistees (PACE).

SYSTEM LOCATION:

Headquarters Air Education and Training Command, 550 D Street East, Randolph Air Force Base, TX 78150–4433, input/output remote at 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150–4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel. Attached records for Air National Guard and Air Force reserve personnel attending basic military training and the Officer Training Group. Active duty enlisted personnel attending Officer Training Group in TDY status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Airmen trainee records containing name, Social Security Number, and other personal data for assignment from basic military training, security investigation, job preferences, dependent data, education, test scores, grade and promotions, biographical history, physical data, drug abuse history, enlistment personnel and guaranteed training enlistee program data, separation information, classification data, service dates, and basic training flight, squadron, entry and graduation dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Instruction 36–2108, Airman Classification. E.O. 9397.

PURPOSE(S):

To create an initial record for the Base Level Military Personnel Data System (BLMPS); to provide Air Force Military Personnel Center (AFMPC) with initial accession information on non-prior service enlistees; provide for improved classification and assignment procedures using computer processes; provide necessary information to Joint Unit Military Pay System (JUMPS) and Lackland Entering Pay System (LEAPS) for establishment of military pay records; interface the data ring process to the maximum extent with other functional areas; and to standardize and simplify personnel processing for the 3700 Mission Support Squadron, Lackland Air Force Base, TX, so that they may more effectively control record preparation, processing, and classification actions necessary to transition civilian enlistees to military status.

Aptitude tests are administered; biographical history and job and assignment preferences are collected; and personal data is collected from enlistment records to establish a mechanized record necessary to support classification and assignment of trainees. Accession and update data is furnished through automatic interface to the advanced Personnel Data System (PDS) at AFMPC and Air Training Command, Randolph Air Force Base, TX; to JUMPS at Defense Accounting and Finance Center, Denver, CO, and to LEAPS at accounting and finance, Lackland Air Force Base, TX.

History records are furnished monthly to the Human Resources Laboratory, Personnel Research Division (HRLPRD) Brooks Air Force Base, TX, for statistical analysis and to HQ USAF Recruiting Service/RSO, Randolph Air Force Base, TX, for use in the enlistee quality control monitoring system. Data is used to prepare forms, processing schedules, reassignment and promotion orders, classification actions, transaction and error rosters, autodin lists, and management products necessary to administer trainees while at Lackland Air Force Base, TX. Standard BLMPS products such as JUMPS transaction registers, strength balance reports, and suspense lists are prepared. Changes in basic data, promotions, reassignments, separations, and duty status changes are reported to PDS, JUMPS, and LEAPS as the action occurs. History records used at HRLPRD and the enlistee quality control monitoring system are augmented by additional data from PDS and technical training centers and are used to evaluate the quality of airmen enlisted in the USAF and the effects of changes in procurement and classification policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records for basic trainees are retained in active file until departure from basic military training is confirmed then transferred to history file on magnetic tape for one year. Records for Officer trainees are maintained in the active file until end of fiscal year in which they enter training and then transferred to history file on magnetic tape for one year. History file is destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236–5605.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces, from source documents such as reports, and from forms prepared during enlistment processing and completed during interviews and testing at 3731 Personnel Processing Squadron.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC A

SYSTEM NAME:

Officer Training Group Resource Management System - Officer Trainees *(February 22, 1993, 58 FR 10397).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AETC A.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. Chapter 907 - Schools and camps as implemented by Air Force Instruction 36–2013, Airman Commissioning Programs and Officer Training School; Air Education and Training Command Regulation 53–3, Administration of the Officer Training School (OTS) Program, and E.O. 9397.'

* * * * *

F050 AETC A

SYSTEM NAME:

Officer Training Group (OTG) Resource Management System - Officer Trainees.

SYSTEM LOCATION:

3700 Officer Training Group, Lackland Air Force Base, TX 78236–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer trainees while attending OTG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer trainee record showing name, Social Security Number; demographic data such as college degree, major institution, and year awarded; OTG selection data such as Air Force Officer Qualifying Test scores; performance data such as test scores, measurement evaluation, merits and demerits earned, involvement in remedial programs; health data to include height, weight aerobic program requirements and performance; injuries that require waivers to training or delay of commissioning; student disposition indicators showing in-training, eliminated, recycled, holdover or graduated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 907 - Schools and camps as implemented by Air Force Instruction 36–2013, Airman Commissioning Programs and Officer Training School; Air Education and Training Command Regulation 53–3, Administration of the Officer Training School (OTS) Program, and E.O. 9397.

PURPOSE(S):

To track attrition to the OTG program by cause and type comparing that against demographic and performance data of the individual, and to monitor the progress of an individual toward completion of the program. Records may be grouped by class, squadron, flight, a demographic or performance factor in the accomplishment of evaluations of the program or the individual in relation to peers. Studies, analyses, and evaluations that use these records are intended to improve the quality of the training program, and develop a more accurate profile of those individuals who can be expected to accomplish the OTG program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, disk units, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained for two years after class graduation then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, 3700 Officer Training Group (OTG/MT), Lackland Air Force Base, TX 78236–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Registrar, 3700 Officer Training Group (OTG/MT), Lackland Air Force Base, TX 78236–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Registrar, 3700 Officer Training Group (OTG/MT), Lackland Air Force Base, TX 78236–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, flight commanders, OTG instructors, personnel specialists and members of the registrar's office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC B

SYSTEM NAME:

Community College of the Air Force Student Record System *(February 22, 1993, 58 FR 10398).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AETC B.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'The system is centrally administered by the Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6307. Computer processing for the system is performed by the Systems Development Branch.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 9315, Community College of the Air Force: Associate degree; Air Force Instruction 36–2304, Community College of the Air Force, and E.O. 9397.'

* * * * *

SAFEGUARDS:

Add to end of entry 'Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Add to end of entry 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'President, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6307.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Persons who have not registered in the college should address inquiries regarding records maintained by the college to Chief, Student Records Branch, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6307. Persons who have registered in the college may address inquiries as above or to Chief, Academic Programs Division also at Maxwell Air Force Base. Such inquiries will need to include the full name (and former names if appropriate), Social Security Number, and birth date of the inquirer, and should include a full return address (including ZIP Code). Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the System Manager, or to addresses listed above.

Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.'

* * * * *

F050 AETC B

SYSTEM NAME:

Community College of the Air Force Student Record System.

SYSTEM LOCATION:

The system is centrally administered by the Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6307. Computer processing for the system is performed by the Systems Development Branch.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system may have a record for any person who since January 1, 1968 has completed a formal course of instruction conducted by one of the Air Force schools identified in the current Community College of the Air Force General Catalog. Such courses do not include pre-commissioning courses and courses conducted exclusively for officers or their civilian counterparts. The system includes records reflecting Air Force courses completed before 1968 and other educational accomplishments for persons who as enlisted members of the Air Force registered in programs of study leading to credentials awarded by the college. Both here and where appropriate below, the general term Air Force includes the regular Air Force, the Air Force Reserve, and the Air National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual academic records and, where necessary to serve airmen registered in study programs leading to credentials awarded by the college, a variety of source or substantiating records such as copies of registration applications and document control records derived from such applications, civilian college transcripts, college level examination program score reports; copies of educational records originated by other Air Force and non-Air Force agencies external to the college (such as the Federal Aviation Agency, the United States Armed Forces Institute, and the Defense Activity for Non-traditional Education Support), copies of a variety of Air Force personnel records (such as documents derived from master records maintained by the Air Force Manpower and Personnel Center and microfiche records of locator data); and records of credentials awarded to graduates. The college also maintains copies and related records of communications from, to, or regarding persons interested in the college, its educational programs, its student record system, and related matters. Copies of and statistical records derived from individual responses to surveys, questionnaires, and similar instruments authorized by HQ USAF may also be maintained as needed for managerial evaluation and planning by officers of the college.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9315, Community College of the Air Force: Associate degree; Air Force Instruction 36–2304, Community College of the Air Force, and E.O. 9397.

PURPOSE(S):

Records originated in the system document, in terms of credit awarded or accepted in transfer by the college, individual educational accomplishments which satisfy curricular requirements of study programs leading to an Associate in Applied Science degree offered by the college. Transcripts of records in the college are, at the written request of persons concerned, furnished to any recipient(s) designated in such requests. Such recipients typically include Air Force Education Services Centers, other offices where Air Force personnel are stationed, educational institutions, and potential or current employers. CCAF transcripts and copies of other records originated in the college are also used to support educational and occupational counselling, planning, and development; admission to other colleges; and related individual affairs. Disclosures of information recorded in the system may be made to employees of civilian contractors engaged by the Air Force to provide services which directly or indirectly support the record system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Permanent student computer records are maintained on and as necessary reproduced from magnetic media. Paper records are maintained in file folders, card files, and special binders/cabinets designed for computer listings.

RETRIEVABILITY:

Computer records are retrievable by a combination of Social Security Number and certain letters of last name. Paper records are retrievable by either Social Security Number or name.

SAFEGUARDS:

Records maintained in the college are normally disclosed only upon written request from the subject of the records or upon written request from an Air Force officer or employee responsible to provide educational or related services to Air Force personnel. Disclosures to non-Air Force agencies not requested by the subject of the records require approval of an officer of the college. Except for disclosures within the college as may be necessary to its operations, requests by telephone and other unwritten means will not be honored unless in the judgment of a responsible member of the college staff the requester is a member or employee of the Air Force acting on behalf of, or is, the person whose record is requested. Special care is exercised to ensure complete identification of the requester, the person whose record is to be disclosed, and intended use. Other systematic safeguards to ensure integrity of records include secure storage of successive generations of computer master files, existence and long-term retention in other Air Force facilities of records needed to rebuild the entire system in the event of catastrophe, and traditional measures to ensure the security of Air Force facilities. All records in the system are attended by responsible Air Force personnel during duty hours and stored in locked facilities under constant or periodic surveillance by Air Force security police during non-duty hours. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference. Specific rules for retention of permanent microfiche have not yet been determined. It is anticipated that such records may need to be retained for not less than 30 and not more than 50 years beyond the latest entries on each such record. Active master file records on the computer are by their nature evolutionary and will be maintained permanently. Paper records maintained to serve students registered in study programs are retained so long as a registrant remains active in his or her program. Such records are destroyed 1 year after a registrant completes his or her study program. Other records are typically retained only so long as they may serve a useful purpose, which is typically between 30 and 90 days. No rule has yet been defined for retaining records which verify awards of credentials by the college, but it is expected that such records will need to be archival. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

President, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6307.

NOTIFICATION PROCEDURE:

Persons who have not registered in the college should address inquiries regarding records maintained by the college to Chief, Student Records Branch, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6307. Persons who have registered in the college may address inquiries as above or to Chief, Academic Programs Division also at Maxwell Air Force Base. Such inquiries will need to include the full name (and former names if appropriate), Social Security Number, and birth date of the inquirer, and should include a full return address (including ZIP Code). Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the System Manager, or to addresses listed above.

Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, automated system interfaces and from source documents submitted to the college by or at the request of individuals concerned, or by other Air Force agencies acting on behalf of individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC I

SYSTEM NAME:

Defense English Language Management Information System (DELMIS) *(February 22, 1993, 58 FR 10399).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AETC I.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 16–103/OPNAVINST 1550.11/MCO 1550.24, Management of the Defense English Language Program; and E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.'

* * * * *

F050 AETC I

SYSTEM NAME:

Defense English Language Management Information System (DELMIS).

SYSTEM LOCATION:

Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

International Military Students (IMS) and active duty military personnel assigned to the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and Social Security Number; demographic data such as date of birth, sex, marital status, ethnic group; educational data; performance data such as test scores; measurement data; individual training progress and proficiency; class schedule; locator, and academic status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 16–103/OPNAVINST 1550.11/MCO 1550.24, Management of the Defense English Language Program; and E.O. 9397.

PURPOSE(S):

To track attrition of the program by cause and type, and to compare that against demographic and performance data of the individual, and to monitor the progress of each individual toward completion of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computer and computer output products.

RETRIEVABILITY:

Retrieved by name or student control number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Access to the computer system requires user code and password.

RETENTION AND DISPOSAL:

Output products are retained until no longer needed; computerized records will be retained for ten years after individual completes or discontinues training. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236–5231.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, source documents, commanders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F177 ATC A

SYSTEM NAME:

Air Force Reserve Officer Training Corps Cadet Pay System*(February 22, 1993, 58 FR 10495).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F177 AETC A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Reserve Officer Training Corps (AFROTC), 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110, and AFROTC detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; 37 U.S.C. 209, Members of Senior Reserve Officers' Training Corps, and E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Comptroller of the Air Force, Headquarters United States Air Force, 1450 Air Force Pentagon, Washington, DC 20330–1450, and Director of Financial Management, AFROTC, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Accounting and Finance Division, HQ AFROTC, Maxwell Air Force Base, AL 36112–6334.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFOTC, and must present driver's license or Social Security card.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Accounting and Finance Division, HQ AFROTC, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFROTC, and must present driver's license or Social Security card.'

* * * * *

F177 AETC A

SYSTEM NAME:

Air Force ROTC Cadet Pay System.

SYSTEM LOCATION:

Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110, and Air Force Reserve Officer Training Corps (AFROTC) detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior AFROTC contract cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly pay disbursement and documents for senior AFROTC contract cadets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; 37 U.S.C. 209, Members of Senior Reserve Officers' Training Corps, and E.O. 9397.

PURPOSE(S):

Used by detachments to verify entitlements, and by AFROTC to summarize costs of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer magnetic tapes and on computer paper printouts.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software. Building secured after duty hours.

RETENTION AND DISPOSAL:

Retained in office file for three years after completion of training, then destroyed by tearing, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Air Force, Headquarters United States Air Force, 1450 Air Force Pentagon, Washington, DC 20330–1450, and Director of Financial Management, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Accounting and Finance Division, Headquarters Air Force Reserve Officer Training Corps, Maxwell Air Force Base, AL 36112–6334.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFOTC, and must present driver's license or Social Security card.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Accounting and Finance Division, Headquarters Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFROTC, and must present driver's license or Social Security card.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enrollment and attendance records as translated to pay days.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–11149 Filed 5–6–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 May 1994.

Time of Meeting: 0830–1700.

Place: Hughes Aircraft Company, Tucson, AZ.

Agenda: The Army Science Board's Independent Assessment Panel on "Missile Shelf Life" will meet for discussions with members of the management and engineering staff of Hughes Aircraft Company to see how the company responds to missile shelf requirements for Army, Navy and Air Force Programs. Cost and benefit trade-offs for various shelf life activities will be discussed, as well as corporate positions on the use of commercial components, missile specifications, and critical technologies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–11095 Filed 5–6–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24–25 May 1994.

Time of Meeting: 0800–1700, 0800–1500 (classified).

Place: MPRI, Alexandria, VA

Agenda: The Threat Team II of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to hear briefings on and discuss advanced and novel technology forecasts, operational enhancements and future force structure/doctrinal implications. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary

[FR Doc. 94–11096 Filed 5–6–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 26–27 May 1994.

Time of Meeting: 0900–1700.

Place: Army Research Lab, Adelphi, MD, CECOM Night Vision & Electronic Sensors, Directorate, Ft. Belvoir, VA.

Agenda: The Army Science Board's Ad Hoc Study on "Aided Target Recognition (ATR)" will meet to review military aided target acquisition projects and results. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–11089 Filed 5–6–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Board of Advisors to the President; Naval War College; Newport, Rhode Island; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App 2), notice is given that the Board of Advisors to the President, Naval War College; will meet on May 18-19, 1994, in room 210, Conolly Hall, Naval War College, 686 Cushing Road, Newport, Rhode Island. The first session will commence at 8:30 a.m. and terminate at 5:30 p.m. on May 18; and the second session will commence at 8:30 a.m. and terminate at approximately 12 p.m. on May 19. The purpose of the meeting is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs, and plans of the College, and all sessions of the meeting will be open to the public.

For further information contact: Mrs. Mary E. Estabrooks, Assistant to the Dean of Academics, Naval War College, 686 Cushing Road, Newport, RI 02841-1207, Telephone number (401) 841-3589.

Dated: April 26, 1994

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-11136 Filed 5-6-94; 8:45 am]

BILLING CODE 3810-AE-F

Electranic Data Systems Corp.; Intent To Grant Partially Exclusive Patent License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant partially exclusive patent license; Electronic Data Systems Corporation.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Electronic Data Systems Corporation a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/473,258 entitled "Selective Polygon Map Display Method" filed January 31, 1990.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Dated: April 28, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-11114 Filed 5-6-94; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 8, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Wallace McPherson, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Wallace McPherson (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provides interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Wallace McPherson at the address specified above.

Dated: May 3, 1994

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office for Civil Rights

Type of Review: Reinstatement

Title: Fall 1994 Elementary and Secondary School Civil Rights Compliance Report

Frequency: Biennially

Affected Public: State or local governments

Reporting Burden:

Responses: 49,900

Burden Hours: 399,200

Recordkeeping Burden:

Recordkeepers: 90,000

Burden Hours: 90,000

Abstract: This survey will collect information from public school districts for determining compliance with applicable civil rights laws. The Department will use this data in identifying sites for compliance reviews and tracking trends and issues related to civil rights compliance.

Office of Postsecondary Education

Type of Review: Revision

Title: Application for the Comprehensive Program of the Fund for the Improvement of Postsecondary Education

Frequency: Annually

Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations

Reporting Burden:

Responses: 2,275

Burden Hours: 27,150

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by State Educational agencies to apply for funding under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education. The Department will use the information to make grant awards.

[FR Doc. 94–11010 Filed 5–6–94; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Closed Teleconference Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: June 1, 1994.

TIME: 11 a.m. (edt).

LOCATION: 800 North Capitol Street NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Office, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the national Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On June 1, 1994, the Executive Committee of the National Assessment Governing Board will meet in a closed teleconference meeting to review and discuss the performance of the NAGB excepted-appointment staff in their respective positions. The review and subsequent discussion will relate solely to the internal rules and practices of an agency and disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of this closed teleconference and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: May 3, 1994.

Roy Truby,

Executive Director.

[FR Doc. 94–11011 Filed 5–6–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1180–000, et al.]

Idaho Power Co., et al.; Electric Rate and Corporate Regulation Filings

May 2, 1994.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Co.

[Docket No. ER94–1180–000]

Take notice that on April 25 1994, Idaho Power Company tendered for filing two agreements with the Bonneville Power Administration. The first is a modification which would extend the term of the Idaho Water Rental Pilot Project. The second is an offer of storage services by Bonneville Power. Idaho Power has requested an effective date for both agreements of not more than 60 days from the date of filing.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER94–1182–000]

Take notice that Entergy Services, Inc. (Entergy Services), acting as agent for Louisiana Power & Light Company (LP&L), on April 26, 1994, tendered for filing a revised appendix B to the Electric System Interconnection Agreement Between Cajun Electric Power Cooperative, Inc. (Cajun) and LP&L, which provides for the identification of Delivery Points thereunder. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the revised appendix A to be made effective January 1, 1994.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER94–1183–000]

Take notice that Entergy Services, Inc. (Entergy Services), acting as agent for Louisiana Power & Light Company (LP&L), on April 26, 1994, tendered for filing a revised appendix A to the Electric System Interconnection Agreement Between Louisiana Energy and Power Authority (LEPA) and LP&L, which provides for identification of Delivery Points thereunder. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the revised appendix A to be made effective January 1, 1994.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Co.

[Docket No. ER94–1184–000]

Take notice that on Southwestern Public Service Company (Southwestern) on April 26, 1994, tendered for filing a proposed amendment to the Agreement for Wholesale Full Requirements Electric Power Service to Cap Rock Electric Power Service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The amendment reflects an increase in the maximum commitment of the Vealmoor delivery point from 100,000 KVA to 115,000 KVA to accommodate Cap Rock's increased load requirements. No rate change is being proposed in the filing.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER94–1185–000]

Take notice that PacifiCorp, on April 26, 1994, tendered for filing, the final draft of the AC Intertie Operation and Maintenance Agreement (O&M Agreement) between PacifiCorp and Bonneville Power Administration (Bonneville), Contract No. DE–MS79–93BP94278.

The O&M Agreement provides for the operation and maintenance of jointly owned facilities which are part of the AC Intertie.

PacifiCorp respectfully requests that the Commission grant a waiver of prior notice, and that an effective date of December 7, 1993 be assigned.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Louis Dreyfus Electric Power Inc.

[Docket No. ER92–850–003]

Take notice that on April 25, 1994, Louis Dreyfus Electric Power, Inc. (Dreyfus) filed an amendment to its informational filing for the quarter ended March 31, 1994, containing certain information required by the Commission's December 2, 1992 letter order in this proceeding. 61 FERC ¶ 61,303 (1992). Copies of Dreyfus' informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11037 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–05836T Oklahoma–84]

United States Department of the Interior, Bureau of Land Management; NGPA Determination by Jurisdictional Agency Denying Designation of Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton, Viola, and Deep Bromide Formations, underlying portions of Garvin and Stephens Counties, in Oklahoma, do not qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The subject area consists of the Indian lands portion of the NW/4 of Section 14, in T2S, R4W, in Stephens County, and the Indian lands portion of the SE/4 of Section 3, in T2N, R2W, in Garvin County, Oklahoma.

The notice of determination also contains the BLM's findings that the referenced portions of these formations do not meet the requirements of the Commission's regulations, as set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11052 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05843T Oklahoma–81; Docket No. JD94–05844T Oklahoma–82; Docket No. JD94–05845T Oklahoma–83]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Hunton, and Viola Formations, underlying portions of McClain and Grady Counties, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The Oklahoma–81 recommended area consists of all of Section 25 and the E/2 of section 26, in T5N, R4W, in McClain County, Oklahoma. The Oklahoma–82 recommended area consists of all of Section 29, in T5N, R4W, in McClain County, Oklahoma. The Oklahoma–83 recommended area consists of all of Section 34, in T5N, R6W, in Grady County, Oklahoma.

The notices of determination also contain Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for these determinations is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell

Secretary.

[FR Doc. 94–11053 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05842T Oklahoma–80]

State of Oklahoma; NGPA Determination By Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton, and Viola Formations, underlying a portion of Stephens County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the State and/or private lands portion of the NW/4 of section 14, in T2S, R4W, in Stephens County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11054 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05841T Oklahoma-79]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton, Viola and Deep Bromide Formations, underlying a portion of Garvin County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the NE/4 of section 5, in T1N, R3W, in Garvin County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11055 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05840T Oklahoma-78]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton and Viola Formations, underlying a portion of Garvin County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the State and/or private lands portion of the SE/4 of section 3, the NE/4 of section 10, and the NW/4 of section 11, in T2N, R2W, in Garvin County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11056 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05837T Oklahoma–75]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Cleveland-Jones Formation, underlying a portion of Oklahoma County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the SE/4 of section 10, and the SW/4 of section 11, in T14N, R1W, in Oklahoma County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11058 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–221–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 9
Third Revised Sheet No. 13
Third Revised Sheet No. 16
Third Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to commence recovery of $8.1 million of gas supply realignment ("GSR") costs that have been incurred by ANR as a result of the implementation of Order Nos. 636, et seq. ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the GSR costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS shippers to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective June 1, 1994.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11040 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–43–000]

ANR Pipeline Co.; Motion to Place Rates into Effect

May 3, 1994.

Take notice that on April 29, 1994, ANR Pipeline Company (ANR) filed a Motion To Place Rates And Tariff Sheets

In Effect On May 1, 1994. By its motion, ANR places into effect, on May 1, 1994, rates and revised tariff sheets to ANR's Second Revised Volume No. 1 and Original Volume No. 2 FERC Gas Tariffs, which rates and revised tariff sheets were filed by ANR on April 7, 1994, in compliance with the Commission's March 23, 1994, "Order Granting and Denying Summary Disposition and Establishing Hearing Procedures." Copies of the revised tariff sheets being moved into effect were appended to ANR's motion.

ANR states that all persons designated on the Restricted Service List that has been established by the Presiding Administrative Law Judge in this proceeding have been served with this filing (other than the previously served tariff sheets) via U.S. Mail.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 94-11050 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-170-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 28, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet:

Original Sheet No. 97A

The proposed effective date of the tariff sheet is April 1, 1994.

Algonquin states that the purpose of this filing is to revise the sheet number of the tariff sheet submitted in Algonquin's filing dated April 14, 1994 in Docket No. RP94-170-001. Algonquin states that there is no change in rate.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions and parties on the service list in Docket No. RP94-170-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11047 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-223-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994

Take notice that on April 29, 1994, Colorado Interstate Gas Company (CIG) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified below:

Primary Tariff Sheets

First Revised Sheet No. 343
Original Sheet No. 343A
Original Sheet No. 343B
Original Sheet No. 343C
Original Sheet No. 343D
Original Sheet No. 343E

Alternate Tariff Sheets

Second Revised Sheet No. 7
Second Revised Sheet No. 8
Fourth Revised Sheet No. 11
Alternate First Revised Sheet No. 343
Alternate Original Sheet No. 343A
Alternate Original Sheet No. 343B
Alternate Original Sheet No. 343C
Alternate Original Sheet No. 343D

CIG states that the purpose of these revised tariff sheets is to establish a tracking mechanism to recover certain stranded Account No. 858 costs associated with CIG's capacity on Overthrust Pipeline Company and Canyon Creek Compression Company.

By the identified Primary sheets CIG proposes to track changes from a representative level of approximately $2.1 million which are already included in its "base rates" in Docket No. RP93-99. By the Alternative sheets CIG is proposing to recover all of such costs via a tracker and to make a downward adjustment in the presently effective (subject to refund) rates in Docket No. RP93-99. The tracker under both the primary and the alternative proposals will utilize a fixed-rate surcharge to recover the tracked costs. Such surcharge will apply to all customers under CIG's Rate Schedules NNT-1, NNT-2, TF-1 and TF-2.

CIG requests waiver of all requirements so as to allow these proposed tariff sheets be made effective on May 1, 1994.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11039 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-219-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A attached to the filing.

Columbia Gulf states that the instant filing (a) implements a general rate increase under Section 4 of the Natural Gas Act in order to permit recovery of increased costs, in part caused by increased operation and maintenance expense and construction since the last Section 4 general rate proceeding, (b) implements other changes in the cost of service, throughput and demand billing determinants through the end of the test period, and (c) proposes certain other tariff changes. According to Columbia Gulf, in large measure, this filing is being made as a result of the termination of the T-1 Rate Schedule service agreement by Columbia Gas

Transmission Corporation (Columbia) effective as of October 31, 1994 and pending abandonment of that service by Columbia Gulf. As a result of such termination and abandonment, Columbia Gulf. As a result of such termination and abandonment, Columbia Gulf will no longer have a cost of service tariff on and after November 1, 1994.

Columbia Gulf states that the tariff sheets identified in Appendix A bear an issue date of April 29, 1994. Columbia Gulf requests a waiver of the Commission's regulations to permit an effective date of November 1, 1994, for these tariff sheets.

Columbia Gulf states that the tariff sheets submitted with this filing reflect the following primary elements: (1) Revised non-gas transportation service rates based upon a cost of service for the 12 months ended January 31, 1994, adjusted for known and measurable changes anticipated to occur on or before October 31, 1994; (2) revised depreciation rates; (3) the assignment of Administrative and General costs to the various rate zones based on a combination of labor and revenues; (4) a representative level of revenue attributable to discounted transportation; (5) revisions of the ITS revenue crediting mechanism to (a) adjust the revenues to be shared for any actual inflation experienced during the applicable year, and (b) withhold revenue credits from delinquent customers or firm customers which dispute their bills subject to reversal in the event the dispute is resolved in such customer's favor; (6) a tariff revision to provide for an adjustment to rates to account for the completion of the flow-back of excess deferred income taxes under the Reverse South Georgia methodology; and (7) revisions to certain Volume No. 2 tariff changes to correct page references to the retainage factor in the Second Revised Volume No. 1 tariff.

Columbai Gulf states that its proposed rates result in approximately $23 million of additional revenue annually compared to the underlying rates in Docket No. RP92-2 which became effective April 1, 1992.

Columbia Gulf states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11042 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-217-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 28, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of June 1, 1994:

Second Revised Sheet No. 42
Second Revised Sheet No. 43
First Revised Sheet No. 499
First Revised Sheet No. 501
First Revised Sheet No. 502
First Revised Sheet No. 503
First Revised Sheet No. 508
Second Revised Sheet No. 509

FGT states that its pre-636 FERC Gas Tariff provided for the scheduling of deliveries under Rate Schedule ITS-1 on a first-come, first-served basis predicated on priority dates established at the time service was requested. Any modifications requested to delivery points altered the priority date assigned to a contract. Under the current terms of FGT's FERC Gas Tariff, Third Revised Volume No. 1, the scheduling of deliveries under Rate Schedule ITS-1 is based on economics with the highest price paid scheduled first. However, FGT's currently effective tariff necessitates that an IT Shipper specify the delivery points desired and that Exhibit A to the Shipper's service agreement be amended if the Shipper wishes to modify its delivery points. FGT states this is not consistent with the nature of service anticipated by Order No. 636.

FGT states that the instant filing proposes changes that render Rate Schedule ITS-1 an interruptible transportation service which can be used for delivery to all delivery points in FGT's Market Area or to all delivery points in FGT's Western Division, depending on whether the service agreement is for Market Area or Western Division service. FGT states that this enhancement facilitates the allocation of capacity and eliminates unnecessary administrative burden. In addition, certain other minor tariff changes have been made simply for clarification purposes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11044 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-216-000]

Florida Gas Transmission Co.; Transition Cost Recovery Report

May 3, 1994.

Take notice that on April 28, 1994 Florida Gas Transmission Company (FGT) tendered for filing a Transition Cost Recovery Report pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, approved by the Commission's September 17, 1993 Order in Docket No. RS92-16, et al.

FGT states that the Transition Cost Recovery Report filed summarizes the activity which has occurred in its TCR Account and Order 636 Account through April 30, 1994 and includes $23,364,011 of recoverable transition costs not previously reported. Because the currently effective surcharge rates are at the maximum levels permitted by FGT's tariff, no tariff revisions are required as a result of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11045 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–80–002]

National Fuel Gas Supply Corp; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 26, 1994, National Fuel Gas Supply Corporation (National Fuel) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective February 1, 1994:

Sub. First Revised Sheet No. 133
Sub. Original Sheet No. 133–A
Sub. Original Sheet No. 133–B

National Fuel states that such tariff sheets are being submitted to add a Hub in the above-captioned Docket.

National Fuel states that the application avers that it has come to National Fuel's attention that First Revised Sheets No. 133 and Original Sheet Nos. 133–A and 133–B inadvertently omitted pertinent information. Specifically, that based on operational experience, the originally submitted tariff sheets failed to designate a sufficient number of locations for potential shippers to nominate both receipt and delivery points on their nominations form.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11049 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–179–001 and RP94–86–001]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 317, to be effective April 1, 1994.

Natural states that the purpose of the filing is to comply with the Commission's "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions and Granting Waiver," issued April 14, 1994 in these dockets. The filing relates to Natural's mechanism for recovery of Account No. 858 costs.

Natural requested specific waivers of Section 21 of its Tariff and the Commission's Regulations, including the requirements of § 154.63, to the extent necessary to permit the tariff sheet to become effective April 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11046 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–000]

Northwest Pipeline Corp.; Changes in FERC Gas Tariff

May 3, 1994

Take notice that on April 29, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing changes to its FERC Gas Tariff to be effective June 1, 1994, consisting of the following tariff sheets:

Primary Tariff Sheets

Third Revised Volume No. 1

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 5–A
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Fourth Revised Sheet No. 8
First Revised Sheet No. 8.1
Second Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 117
Second Revised Sheet No. 200
First Revised Sheet No. 269
First Revised Sheet No. 270
Second Revised Sheet No. 271
First Revised Sheet No. 272
Second Revised Sheet No. 273
Original Sheet No. 273–A
Original Sheet No. 273–B

Original Volume No. 2

Eighteenth Revised Sheet No. 2
Twelfth Revised Sheet No. 2.1
Eighteenth Revised Sheet No. 2–A

Pro Forma Tariff Sheets

Third Revised Volume No. 1

Pro Forma Sheet No. 375
Pro Forma Sheet No. 376
Pro Forma Sheet No. 377
Pro Forma Sheet No. 378
Pro Forma Sheet No. 379
Pro Forma Sheet No. 380

Northwest states that the changes reflect an overall change in its jurisdictional rates for the twelve months ended January 31, 1994, adjusted for known and measurable changes through October 31, 1994, to provide additional revenues related to an increased revenue requirement and redesign of rates of approximately $22.5 million.

Northwest further states that the increase in jurisdictional rates reflected in its filing is necessary to permit Northwest the opportunity to recover its revenue requirements due to increased costs of operating its system primarily because of capital additions and to provide for the redesign of rates based on reduced contract demand resulting from the expiration of a firm transportation contract.

Northwest's filing includes various other minor changes to its tariffs to provide for: (1) A change to the interruptible cost allocation amount applicable to interruptible revenue crediting procedures, (2) modification to the annual contract quantity tariff provisions applicable to Rate Schedule TF–2, (3) a clarification to the Rate Schedule T–1 Btu/Mcf conversion factor which is applicable to that service's Daily Transportation Contract Quantity, and (4) a provision whereby Northwest will credit to firm transportation shippers any revenues it receives under discounted contracts over and above the amount credited to cost of service in rate design.

Northwest also submitted with the filing a pro forma index of Shippers to illustrate the contracts and services which are expected to be effective at the time when the new rates become effective.

Northwest states that this filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11041 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–5–023]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 28, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets with a proposed effective date of April 1, 1994:

Third Revised Volume No. 1

Substitute Third Revised Sheet No. 5
Substitute Third Revised Sheet No. 5–A
Substitute Third Revised Sheet No. 8
Substitute Original Sheet No. 100
Substitute First Revised Sheet No. 375
Second Substitute First Revised Sheet No. 376
Substitute First Revised Sheet No. 377
Substitute First Revised Sheet No. 378
Substitute Original Sheet No. 380

Original Volume No. 2

Substitute Eleventh Revised Sheet No. 2.1
Substitute First Revised Sheet Nos. 1187 through 1189
Substitute Second Revised Sheet Nos. 1190 and 1191
Substitute First Revised Sheet No. 1192
Substitute Third Revised Sheet No. 1193

Northwest states that the purpose of this filing is to comply with the Commission's directives in the Order Accepting Tariff Sheets Subject to Conditions, dated April 6, 1994, in Docket Nos. RP93–5–021 and –022 to change certain rates and the Index of Shippers as a result of revised billing determinants and to correct certain typographical errors. In addition, Northwest states that it is updating the Index of Shippers.

Northwest states that a copy of this filing has been served upon all intervenors in Docket Nos. RP93–5–021 and –022, Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11051 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–218–000]

Pacific Gas Transmission Co; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Original Sheet No. 6D, to set forth the amount to be refunded as a result of the closeout of its Account No. 191. PGT request an effective date of April 29, 1994, and requests waiver of applicable notice requirements.

PGT states that the tariff sheet provides for a refund of $8,967,911 to its former sales customer, Pacific Gas and Electric Company, which reflects prior period adjustments charged and refunded to PGT in the six-month period since the termination of its Purchased Gas Adjustment (PGA) mechanism and the removal, as of March 31, 1993, of the billing adjustment for purchases from the Fontenelle Field at issue in PGT's last annual PGA proceeding in Docket No. TA93–1–86–000. PGT also requests termination of the technical conference established in Docket No. TA93–1–86–000.

PGT further states that a copy of its filing is being served on the affected customer and interested state regulatory agencies as well as all parties on the service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11043 Filed 5–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–6–000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets:

First Revised Sheet No. 7
First Revised Sheet No. 92
First Revised Sheet No. 93

South Georgia states that the proposed tariff sheets are being filed with a proposed effective date of June 1, 1994. South Georgia states that the aforesaid tariff sheets eliminate South Georgia's recovery of monthly fixed take-or-pay, buy-out, and buy-down charges.

South Georgia notes that copies of South Georgia's filing will be served upon all of South Georgia's customers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§ 385.214 and 385.211). All such petitions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11036 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY APP; SOUTHERN

Federal Energy Regulatory Commission

[Docket No. TM94-4-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 1994:

Fourth Revised Sheet No. 14
Sixth Revised Sheet No. 15
Fourth Revised Sheet No. 16
Sixth Revised Sheet No. 17
Sixth Revised Sheet No. 18
Fourth Revised Sheet No. 22
Second Revised Sheet No. 41
First Revised Sheet No. 42
Second Revised Sheet No. 53
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 206
Second Revised Sheet No. 207
First Revised Sheet No. 208

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of May 1, 1994, in compliance with the requirements of the Stipulation and Agreement approved by the Commission order of March 23, 1989 in Docket Nos. RP83-58-000, et al.

Southern states that the proposed tariff sheets eliminate all references to the expiring fixed take-or-pay charge related to Southern's buy-out and buy-down costs and volumetric surcharge mechanisms related to settlement payments made directly by Southern.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers, shippers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11035 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-165-002]

Southern Natural Gas Co., GSR Cost Recovery Filing

May 3, 1994.

Take notice that on April 29, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect an increase in GSR billing units effective May 1, 1994 due to the implementation of a pipeline expansion and other new transportation commitments under Rate Schedule FT:

Seventh Revised Sheet No. 15
Seventh Revised Sheet No. 17
Fifth Revised Sheet No. 29
Fifth Revised Sheet No. 30
Fifth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11048 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-224-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets:

FERC Gas Tariff

First Revised Volume No. 1

Sixth Revised Sheet No. 12
Third Revised Sheet No. 229

FPC Gas Tariff

Original Volume No. 2

Sixteenth Revised Sheet No. 82
Seventeenth Revised Sheet No. 547
Nineteenth Revised Sheet No. 982
Seventeenth Revised Sheet No. 1005
Eleventh Revised Sheet No. 1085

Texas Gas states that the revised tariff sheets are being filed to reflect the GSR component of the Interruptible Transportation rate attributable to 10 percent of total GSR costs.

Texas Gas requests an effective date of May 1, 1994, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11038 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4882–6]

Public Meetings on Alternatives for Ground-Water Monitoring at Small Dry/Remote Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a series of four public, one-day meetings on alternatives for ground-water monitoring at small, dry/remote municipal solid waste landfills (MSWLFs). These meetings will offer an opportunity for interested parties to express their views and provide information on the issues and impacts associated with alternatives for ground-water monitoring at MSWLFs that qualify for the small landfill exemption under 40 CFR 258.1(f). The Agency will use this information in preparing any further action on alternatives to ground-water monitoring for these affected landfills. These meetings will be held in Midland, Texas; Salt Lake City, Utah; Anchorage, Alaska; and Washington, DC, as discussed below. Interested parties may submit comments directly to the Agency without speaking or attending a meeting if they choose.

FOR FURTHER INFORMATION CONTACT: For information on meeting plans or to pre-register to present a statement at any of the meetings, please call the U.S. EPA Alternatives to Ground-Water Monitoring Hot Line at 800–230–3564. For technical information, contact Scott Ellinger, Municipal and Industrial Solid Waste Division, U.S. Environmental Protection Agency (Mail Code 5306) 401 M Street, SW., Washington, DC 20460 (202–260–1350). If you require sign language or voice language interpreting services, please call 800–230–3564 through relay.

A summary of the meetings and all written comments received by EPA on alternatives to ground-water monitoring will be placed in a public docket and made available for viewing in the RCRA Information Center (RIC), which is located in room M2616, U.S. EPA, 401 M Street SW., Washington, DC 20460. Please place the docket number F–94–AGAP–FFFFF on all documents submitted to the Agency. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call 202–260–9327 for an appointment. Copies cost $0.15 per page.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated a Final Rule (40 CFR part 258) for Municipal Solid Waste Landfills (MSWLFs) under Subtitle D of the Resource Conservation and Recovery Act (RCRA). See 56 FR 50978. The Final Rule set forth minimum federal criteria for MSWLFs, including location restrictions, facility design and operating criteria, ground-water monitoring requirements, corrective action requirements, financial assurance requirements, and closure and post-closure care requirements. In addition, the Final Rule included an exemption for owner/operators of certain small MSWLF units from the design (Subpart D) and ground-water monitoring and corrective action (Subpart E) requirements of the criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day (TPD), on an annual average basis, exhibit no evidence of ground-water contamination, and serve either:

(1) A community that experiences an annual interruption of surface transportation of at least three consecutive months that prevents access to a regional waste management facility, or

(2) A community that has no practical waste management alternative and the landfill is located in an area that receives less than or equal to 25 inches of precipitation annually.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50911 (October 9, 1991). In January, 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC alleged, among other things, that EPA exceeded its statutory authority when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued its opinion (*Sierra Club* versus *United States Environmental Protection Agency, 992 F.2d 337 (D.C. Cir. 1993)),* stating that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination", not whether such monitoring is "practicable." Thus, the Court vacated the small community exemption as it pertains to ground-water monitoring. (The Court did not require EPA to remove the exemption for design requirements.)

Accordingly, the Agency, as part of the October 1, 1993 final rule delaying the effective date of the MSWLF criteria (58 FR 51536, October 1, 1993), rescinded the small landfill ground-water monitoring exemption. At the same time, however, to assure that owners and operators of such small MSWLFs had adequate time to decide whether to continue to operate under the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate, EPA delayed the effective date of the MSWLF criteria for these facilities for two years.

This additional two years provides the time for EPA to determine if there were practical and affordable alternative monitoring systems/approaches which were adequate to detect contamination. The U.S. Court of Appeals, in its decision, did not preclude the possibility that EPA could establish separate ground-water monitoring standards for these small, dry/remote landfills that take into account size, location, and climate, as long as these separate requirements ensured that an owner/operator could detect ground-water contamination. The Agency, therefore, solicited comments on alternative ground-water monitoring requirements in the publication of the proposed rule to extend the effective date of the MSWLF criteria (56 FR 40568, July 28, 1993). Today's announcement of public meetings provides interested parties with an additional opportunity to provide the Agency with information regarding alternative ground-water monitoring requirements.

B. Meeting Format, Dates, and Locations

The Agency is inviting interested parties to provide factual information to assist the Agency in better understanding alternatives to ground-water monitoring. Interested parties (including representatives from State and local governments; landfill owners and operators; consultants, geologists, engineers, and others involved in waste management; and environmental and other public interest organizations) may attend the meetings, present a statement, and/or submit written information to the Agency. Speakers should register at least one week in advance of the meeting at which they wish to speak. Speakers should limit their oral statement to approximately five minutes. In addition, speakers may be asked to respond to questions from the EPA panel. Interested parties may submit written comments at the meeting without speaking, or directly to the public docket without attending the meeting (see information above). All written statements should be submitted in an original and two copies. Meeting attendees who do not wish to speak do not need to register in advance.

Each meeting will begin at 8:30 a.m. and will continue until 5 p.m., (except for the Salt Lake City meeting which will begin at 9 a.m.), with a break for lunch from 12 noon to 1 p.m. EPA will give its introductory remarks at the beginning of each meeting. Depending on the number of speakers, the meetings may adjourn earlier than 5 p.m. if all attendees who have registered to make a statement have completed their presentations earlier than 5 p.m. Speakers generally will be scheduled in the order of registration. Speakers may be asked to limit their statement to less than five minutes, depending on the number of speakers. If there is sufficient time available after all pre-registered speakers have been scheduled, additional speakers who register at the meeting site will be able to present a statement.

The schedule for the public meetings is listed below. Please note that meeting space is limited to a first-come, first-serve basis.

June 8, 1994—Salt Lake City, Utah: The Chapman Library, 577 South 900 West, Meeting Room 1.
June 10, 1994—Anchorage, Alaska: Federal Building, 222 West 7th Avenue, Rooms 137 and 139.
June 14, 1994—Midland, Texas: The Permian Basin Regional Planning Commission Conference Room, 2910 LaForce Boulevard, Midland International Airport.
June 28, 1994—Washington, DC: The U.S. EPA Auditorium, Waterside Mall, 401 "M" Street, Southwest.

C. Issues Associated with Alternatives to Ground-Water Monitoring

Although EPA would like to learn of any issues that the Agency should address for future actions on alternatives to ground-water monitoring for MSWLFs, the Agency encourages interested parties to focus their comments and provide factual information regarding the following:

- What would it cost these small, dry/remote communities to comply with the full set of ground-water monitoring requirements as specified in 40 CFR part 258, Subpart E?
- The Agency is investigating the potential for using alternatives to conventional ground-water monitoring well systems that may be capable of detecting ground-water contamination, taking into account such factors as landfill size and location; leachate quantity and quality; and local climate hydrology, geology, and hydrogeology. Examples of such alternatives include: monitoring of the unsaturated (vadose) zone; surface geophysical techniques such as electrical resistivity and ground penetrating radar, and the sampling of seeps, springs, and nearby drinking water or agricultural supply wells. The Agency solicits ideas regarding potential alternatives and their costs and limitations, particularly with respect to implementation by small landfill owners and operators.
- Should no alternative ground-water monitoring techniques be appropriate for a small dry/remote landfill, and ground-water monitoring wells are required, in what ways can the Agency modify the ground-water monitoring regulations (e.g., monitoring parameters, schedules) to provide greater implementation flexibility?
- The "no-migration" demonstration currently available under 40 CFR 258.50(b) allows an approved State to suspend ground-water monitoring at a landfill if the owner/operator can demonstrate that there will be no potential for migration from the landfill to the uppermost aquifer during the active life and post-closure care of the landfill. The Agency seeks comment on whether owners/operators of these small landfills can collect the information needed in order to make this demonstration at their particular landfill.
- The Agency is considering preparation of additional guidance that would assist owners and operators of small dry/remote landfills in making no-migration demonstrations. The Agency solicits ideas for this guidance.

Dated: April 15, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 94–11063 Filed 5–6–94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2008]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 4, 1994.

Petitions for reconsiderations and clarifications have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed May 24, 1994. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (MM Docket No. 92–265)
Number of Petitions Filed: 1.
Subject: Review of the Pioneer's Preference Rules (ET Docket No. 93–266)
Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11002 Filed 5–6–94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1025–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1025–DR), dated April 26, 1994, and related determinations.

EFFECTIVE DATE: April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 26, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding on April 9, 1994 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Cass, Champaign, DeWitt, Douglas, Iroquois, Menard, Sangamon and Vermilion Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94-11109 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1023-DR]

Missouri; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-1023-DR), dated April 21, 1994, and related determinations.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 5, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11112 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1023-DR]

Missouri; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-1023-DR), dated April 21, 1994, and related determinations.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated April 21, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 21, 1994:

Cole and Pemiscot Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11111 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1015-DR]

Pennsylvania; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA-1015-DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania dated March 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 10, 1994:

Armstrong, Monroe, Montour and Susquehanna Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11110 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Heartland Financial USA, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Heartland Financial USA, Inc.*, Dubuque, Iowa; to acquire Keokuk Bancshares, Inc., Keokuk, Iowa, and its wholly owned subsidiary First Community Bank, a Federal Savings Bank, Keokuk, Iowa, and its wholly owned subsidiary KFS Services, Inc., Keokuk, Iowa, and thereby engage in the nonbanking activity of acting as principal, agent or broker for credit related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11060 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

Old National Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to engage *de novo* through its subsidiary The ONB Trust Company, N.A., Evansville, Indiana in activities solely of a fiduciary, agency and/or custodial nature as permitted under § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11061 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

Security Capital Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 2, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Security Capital Bancorp*, Salisbury, North Carolina; to acquire 100 percent of the voting shares of First Federal Savings and Loan Association of Charlotte, Charlotte, North Carolina, and First Charlotte Interim Bank, Charlotte, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Summit Bancshares, Ltd.*, Olney, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Olney, Olney, Illinois.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11062 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

Waterhouse Investor Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-5691) published on page 11608 of the issue for Friday, March 11, 1994.

Under the Federal Reserve Bank of New York heading, the entry for Waterhouse Investor Services, Inc., is revised to read as follows:

1. *Waterhouse Investor Services, Inc.*, New York, New York, to become a bank holding company by acquiring 100 percent of the voting shares of Waterhouse National Bank, White Plains, New York, a *de novo* bank.

In connection with this application, Applicant has also applied to acquire Waterhouse Securities, Inc., and Washington Discount Brokerage Corp., both of New York, and thereby engage in providing securities brokerage services restricted to buying and selling securities solely as agent for the account of customers pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

Comments on this application must be received by May 23, 1994.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11063 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C–3492]

Archer Daniels Midland Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Illinois-based firm from making any claims, unless substantiated by competent and reliable scientific evidence, that any of its products or plastic product additives is degradable, biodegradable, or photodegradable when disposed of in sanitary landfills, or that such products or additives offer any environmental benefit compared to other products when disposed of as trash buried in a sanitary landfill or incinerated.

DATES: Complaint and Order issued April 12, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: On Thursday, January 21, 1993, there was published in the **Federal Register**, 58 FR 5394, a proposed consent agreement with analysis In the Matter of Archer Daniels Midland Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–11106 Filed 5–6–94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9189]

Detroit Auto Dealers Association, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the association of motor vehicle dealers and a former officer, James Daniel Hayes, from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation of any dealer in the Detroit area. In addition, the consent agreement would require the respondent association to amend its bylaws to comply with the provisions of the order, and to place advertisements, in the city's two daily newspapers, stating that certain area dealers are required by the Commission order to maintain extended hours (at least 62 hours a week) for a one-year period.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ernest Negata, FTC/H–394, Washington, DC 20580. (202) 326–2714.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Detroit Auto Dealers Association, Inc., a corporation, et al.

The agreement herein, by and between Detroit Auto Dealers Association, Inc. ("DADA") and James Daniel Hayes, individually, hereafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent DADA is an incorporated trade association for motor vehicle dealers with its principal place of business located at 1800 W. Big Beaver Rd., Troy, MI 48084.

2. Respondent James Daniel Hayes was, at relevant times, an officer of DADA, and as such formulated, directed and controlled the acts and practices of DADA. James Daniel Hayes' mailing address is 2845 Palmerston Rd., Troy, MI 48084.

3. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them and others with violation of section 5 of the Federal Trade Commission Act, and have filed answers to said complaint denying said charges.

4. Respondents admit all the jurisdictional facts relating to Count I set forth in the Commission's complaint in this proceeding.

5. Respondents waive the following with respect to Count I of the complaint:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of Count I of the complaint issued by the Commission in this proceeding.

7. This agreement is for settlement purposes only and relates solely to Count I of the Commission's complaint in this proceeding; this agreement does not constitute an admission by the respondents that the law has been violated as alleged in Count I of the complaint issued by the Commission.

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[1] Copies of the Complaint, and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to the respondents (1) issue its decision containing the following Order to cease and desist in disposition of Count I of the complaint issued by the Commission in this proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or to contradict the terms of the Order.

9. Respondents have read the complaint and the Order contemplated hereby. They understand that once the Order has been issued, they may be required to file one or more compliance reports showing they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

It is ordered, that for the purposes of this order, the following definitions shall apply:

1. *Person* means any natural person, corporation, partnership, association, joint venture, trust, or other organization or entity, but not governmental entities.

2. *Dealer* means any person who receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. *Dealer association* means any trade, civic, service, or social association whose membership is composed primarily of dealers.

4. *Detroit area* means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

5. *Hours of operation* means the times during which a dealer is open for business to sell or lease motor vehicles.

6. *Weekday hours* means the hours of 9 a.m. to 6 p.m. Monday through Friday.

7. *Non-weekday hours* means hours other than 9 a.m. to 6 p.m. Monday through Friday.

8. *Respondent* means any dealership, individual, or association respondent.

I

It is further ordered, that DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy, in or affecting commerce (as "commerce" is defined in the Federal Trade Commission Act), with any other respondent or other dealer or dealer association in the Detroit area to establish, fix, maintain, adopt, or adhere to any hours of operation.

II

It is further ordered, that DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, performing any of the following acts or practices or encouraging, inducing, or requiring any person to perform any of the following acts or practices, or entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Exchanging information or communicating with any other respondent or other dealer or dealer association in the Detroit area concerning hours of operation, except to the extent necessary (i) to comply with any order of the Federal Trade Commission, (ii) after two (2) years from the date this order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements, and (iii) in connection with special sales events or promotions sponsored or coordinated by DADA, including but not limited to the North American International Auto Show; or

B. Requesting, recommending, coercing, influencing, inducing, encouraging, or persuading, or attempting to request, recommend, coerce, influence, induce, encourage, or persuade, any other respondent or other dealer or dealer association in the Detroit area to maintain, adopt or adhere to any hours of operation.

III

It is further ordered, that respondent DADA shall:

A. Beginning thirty (30) days after this order becomes final, and for a period of not less than four (4) weeks thereafter, place and cause to be disseminated each week at least four (4) advertisements, including one in the Thursday editions of the Detroit News and the Detroit Free Press, one in the Saturday edition of the combined Detroit News and Free Press, and one in any other edition of the Detroit News, the Detroit Free Press, or the combined Detroit News and Free Press. Each advertisement shall: (1) List all dealership respondents which within ten (10) days prior to the placement of the advertisement are subject to a final Commission order to maintain minimum weekly hours of operation, (2) list all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent who within ten (10) days prior to the placement of the advertisement is subject to a final Commission order to maintain minimum weekly hours of operation, and (3) disclose that all such orders have a minimum hours requirement of 62 hours per week, or 58 hours per week where applicable. For the purpose of complying with Part III.A.(2), above, DADA shall use its best efforts to identify all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent. The advertisements shall be devoted exclusively to the content set forth in paragraph B. hereto. The advertisements shall be clear and prominent containing a banner headline in 24 point or larger bold type so that it can be readily noticed, with the principal portion of the text in 12 point or larger type, and the list of respondent and non-respondent dealerships in 9 point or larger type. The advertisement shall be a minimum of one-eighth (1/8) of a page and shall be placed in the same location at which advertisements for the sale of new automobiles ordinarily appear; and

B. The advertisements referred to in paragraph A. of this section shall state as follows:

Auto Dealers Open For Extended Hours

Prior to [date of Order] most Detroit area automobile dealers have not been open for business on Saturday or on Tuesday, Wednesday, or Friday evening. As a result of a consent order of the Federal Trade Commission, the following Detroit area automobile dealers must offer expanded shopping hours of a minimum of 62 hours per week for one year and are free to choose their own hours thereafter.

[list dealerships]*

IV

It is further ordered, that DADA shall, for a period of five (5) years from the date this order becomes final, cause to be made minutes of all business meetings of its membership, its board of directors, and its committees. Such minutes shall: (i) Identify all persons attending such meeting, (ii) include a certification, signed by the presiding officer and the secretary under penalty of perjury, that states whether hours of operation were discussed at the meeting, and (iii) summarize what was discussed at the meeting. If hours of operation were discussed at any business meeting subject to this order, then the minutes of such meeting shall identify the participants in the discussion of hours of operation and state in detail the substance of the discussion(s). DADA shall retain such minutes (including, but not limited to, the required certifications) for a period of five (5) years from the date the minutes were created. Such minutes shall be provided to the Commission upon request.

V

It is further ordered, that DADA shall:

A. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to eliminate any provision inconsistent with any provisions of this order;

B. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to incorporate:

(1) A provision that prohibits its members from discussing at any formal or informal membership, board of directors, or committee meeting the hours of operation of any dealer, except to the extent necessary to comply with any order of the Federal Trade Commission; and

(2) A provision that requires expulsion from membership of any member who violates such prohibition;

(C) Within ten (10) days after the amendment of any bylaws, rules or regulations pursuant to this order, furnish a copy of such amended bylaws, rules or regulations to all members, and within ten (10) days of any new member joining DADA, furnish to such new member a copy of the bylaws, rules and regulations of DADA; and

D. Within sixty (60) days after receiving information from any source concerning a potential violation of any bylaw, rule, or regulation required by part V.B. of this order, investigate the potential violation, record the findings of the investigation, and expel for a period of one (1) year any member who is found to have violated any of the bylaws, rules or regulations required by part V.B. of this order.

VI

It is further ordered, that DADA shall, for a period of five (5) years from the date this order becomes final, provide to the Commission the name and address of any member expelled pursuant to the requirements of part V.D. of this order within ten (10) days after such expulsion.

VII

It is further ordered, that within ten (10) days after the date this order becomes final DADA shall provide a copy of the order to each of its officers, directors, members and employees. For a period of five (5) years from the date this order becomes final, DADA shall provide a copy to each new member and new employee, within ten (10) days after the date the employee is hired or the new member joins DADA.

VIII

It is further ordered, that DADA and James Daniel Hayes shall, within ninety (90) days after this order becomes final and annually thereafter for a period of five (5) years, file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. The requirements of parts VIII and IX shall not apply to James Daniel Hayes; provided, however, that James Daniel Hayes shall, within ninety (90) days after this order becomes final, file with the Commission a verified written report stating that he is no longer employed by DADA or any other dealer association in the Detroit area and does not own or operate a dealership in the Detroit area; provided, further, that if circumstances change whereby James Daniel Hayes shall become employed by DADA or any other dealer association in the Detroit area, or shall own or operate a dealership in the Detroit area, then he shall notify the Commission at the earliest practicable date of such a change and shall begin complying with the requirements of parts VIII and IX of this order.

IX

It is further ordered, that for a period of five (5) years from the date this order becomes final, DADA shall notify the Commission at least thirty (30) days prior to any proposed change in corporate status (such as dissolution, assignment, or sale) that results in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in DADA which may affect compliance obligations arising out of the order. James Daniel Hayes shall, for five (5) years from the date the order becomes final, promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include his new business address and a statement of the nature of the business or employment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with the new business or employment.

DADA of 1800 W. Big Beaver Rd., Troy, Michigan 48084 and James Daniel Hayes of 2845 Palmerston Rd., Troy, MI 48084 hereby agree to the terms and conditions of the Consent Agreement containing an order to cease and desist from engaging in the acts and practices identified in Count I of the complaint in In the Matter of Detroit Auto Dealers Association, Inc. a corporation, et al., Docket No. 9189.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Detroit Automobile Dealers Association, Inc. ("DADA") and James Daniel Hayes, a former officer of the association.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested parties. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On December 20, 1984, the Commission issued an administrative complaint alleging that DADA, James Daniel Hayes and certain automobile dealers and dealer associations agreed among themselves and with others to limit competition in the sale of new motor vehicles in the Detroit, Michigan area in violation of section 5 of the Federal Trade Commission Act, by adopting and adhering to a schedule limiting hours of operation for the sale or lease of motor vehicles in the Detroit area. The alleged agreement limited weekday evening hours to Mondays and Thursdays and eliminated Saturday hours altogether, except for occasional special sales.

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* Dealers noted with an asterisk must offer a minimum of 62 shopping hours per week during Daylight Savings Time and a minimum of 58 hours at other times.

On July 14, 1987, the Administrative Law Judge ("ALJ") issued an Initial Decision dismissing the complaint. The ALJ found that the dealers and the other respondents had acted in response to employee demands for shorter hours and, therefore, that the dealers' agreement was exempt from the antitrust laws by reason of the nonstatutory labor exemption.

Counsel supporting the complaint appealed the Initial Decision to the Commission. On February 22, 1989, the Commission issued a decision reversing the ALJ. The Commission held that the dealers were not entitled to the nonstatutory labor exemption because their uniform hours restrictions were not the result of any collective bargaining activity with employees; on the contrary, the dealers had agreed among themselves in order to avoid collective bargaining. The Commission's Final Order, among other provisions, prohibited the dealers from conspiring in any way to fix hours of operation. As a corrective measure the Final Order also required the dealers to remain open a minimum of 64 hours a week for one year. The Commission found that "a cease and desist order alone would be inadequate to remedy the respondents' violations of section 5." Because of the history of violent enforcement of the hours restrictions, the Commission found that "[d]ealers individually will decide to remain closed for fear of reprisals if they try to extend hours. Only if many dealers are open at the same time, making enforcement of the restriction difficult or impossible, will the fear of being singled out for enforcement be overcome." Detroit Auto Dealers Ass'n, Inc., 111 F.T.C. 417, 506 (1989). The Commission's Final Order also required DADA to print newspaper advertisements informing the Detroit-area public that dealers were now required to maintain expanded hours for a one year period pursuant to the Commission's order.

DADA, James Daniel Hayes, the respondent dealers and other respondents appealed the Commission's decision to the United States Court of Appeals for the Sixth Circuit. On January 31, 1992, the Court of Appeals affirmed the Commission's decision in substantial part and remanded the case to the Commission for the "limited purpose" of reconsidering certain issues.

On January 24, 1994, the Commission accepted, and on February 10, 1994, published for public comment, an Agreement Containing a Consent Order to Cease and Desist in order to resolve the allegations in the administrative complaint as to 146 respondents, consisting of dealerships, owners or managers of dealerships and dealer associations. Detroit Automobile Dealers Ass'n, Inc., Proposed Consent Agreement With Analysis to Aid Public Comment, 59 F. R. 6263 (Feb. 10, 1994). DADA and James Daniel Hayes were not parties to that agreement.

DADA and James Daniel Hayes subsequently entered into a separate Agreement Containing a Consent Order to Cease and Desist to resolve the allegations in the administrative complaint against them. Under part I of the proposed order, DADA and James Daniel Hayes would be prohibited from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation.

Part II.A of the proposed order would prohibit DADA and James Daniel Hayes from exchanging information or communicating with any dealer or association concerning hours of operation, except to the extent necessary: (i) To comply with any order of the Commission, (ii) after two (2) years from the date the order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements, and (iii) in connection with special sales events or promotions sponsored or coordinated by DADA, such as the North American International Auto Show.

Part II.B of the proposed order would prohibit DADA and James Daniel Hayes from requesting, recommending, coercing, influencing, inducing, encouraging or persuading any dealer or dealer association to maintain, adopt or adhere to any hours of operation.

Under part III of the proposed order, DADA would be required to place four weekly advertisements, specified in part III.B of the order, in the Detroit News and Detroit Free Press for a four-week period, stating that certain dealers are required by Commission order to maintain extended hours for a one-year period, and listing the dealers subject to such a requirement. The advertisements must be printed in a "clear and prominent manner" using a banner headline in 24 point or larger bold type and twelve point or larger type for the principal portion of the text so that it can be readily noticed.

Under part IV of the proposed consent order, DADA would be required to maintain detailed certified minutes of any meeting at which hours of operation are discussed.

Part V of the proposed order would require DADA to amend its bylaws, rules and regulations to:

(i) Eliminate any provision inconsistent with any provision of the order;

(ii) Incorporate a provision that prohibits its members from discussing hours of operation at any meeting; and

(iii) Expel from membership any member who violates such prohibition.

DADA would also be required to furnish a copy of the amended bylaws, rules and regulations to every member and new member, and within 60 days after receiving information concerning a potential violation of any bylaw, rule or regulation required by the order, conduct an investigation and expel for one year any person who is found to have committed a violation. Under part VI of the proposed order, DADA would be required to provide to the Commission the name and address of each member expelled pursuant to paragraph V.

The remainder of the proposed order contains provisions regarding compliance, record-keeping and distribution of the order to various persons. Part VII would require DADA to give a copy of the order to each employee and member, and to each new employee and member, as the case may be. Part VIII would require DADA and James Daniel Hayes to file annual compliance records for a period of five years. The reporting requirement for James Daniel Hayes would be waived, provided that he submits an initial verified report stating that he is no longer employed by DADA or any other dealer association and does not own or operate a dealership in the Detroit area. The reporting requirement would be re-activated if he again becomes employed by DADA or another dealer association or comes into ownership or operation of a dealership in the Detroit area. Part IX of the proposed order would require DADA and James Daniel Hayes to report any change of status that may affect their obligations under the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–11107 Filed 5–6–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3332]

Hayes Microcomputer Products, Inc.; Proposed consent agreement With Analysis to Aid Public Commentg

AGENCY: Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Georgia manufacturer and distributor of computer communications products from making certain representations regarding any modem-related product, unless the respondent possesses and relies upon competent and reliable substantiating evidence.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Linda Badger, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Hayes Microcomputer Products, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hayes Microcomputer Products, Inc., a corporation ("proposed respondent"), and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Hayes Microcomputer Products, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Hayes Microcomputer Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 5835 Peachtree Corners East, in the City of Norcross, State of Georgia.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. The term *Improved Escape Sequence with Guard TIme* means the escape method technology described, among other things, in United States Patent Number 4,549,302, titled as "Modem With Improved Escape Sequence With Guard Time Mechanism."

B. The term *Time Independent Escape Sequence, or Ties*, means an escape sequence consisting of three escape characters (*eg.*, "+++") followed by a valid AT command, which can be followed by additional at commands, and ended with another character, typically a carriage return.

C. The term *modem-related product* means any modem, any component of any modem, or any hardware or software used in the operation of any modem.

I

It is ordered that respondent, Hayes Microcomputer Products, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of products containing the Improved Escape Sequence with Guard Time, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Because a modem does not incorporate the Improved Escape Sequence with Guard Time, the use of that modem creates a substantial risk of data destruction;

B. When incorporated in modems, the "Time Independent Escape Sequence" ("TIES") creates a substantial risk of data transmission failure;

C. The Improved Escape Sequence with Guard Time is the only escape method that does not create a substantial risk of data transmission failure; or

D. The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time entails a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard Time;

unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered that respondent, Hayes Microcomputer Products, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any modem-related product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the risk of experiencing data destruction, data loss or data transmission problems due to any escape method, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent that may effect compliance obligations under this Order such as dissolution, assignment, or sale resulting in the emergence of successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

V

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, to all company executives, and to all marketing and sales managers; and for a period of three (3) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

VI

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Hayes Microcomputer Products, Inc., ("Hayes") a Georgia corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Hayes manufactures and distributes products for computer communications, including modems, local area networks, and software. This matter concerns a patented "escape sequence" which Hayes developed for use in its modems, and licenses to other companies. An escape sequence is a mechanism by which modems end a data transmission. The name of the Hayes escape sequence at issue is the "Improved Escape Sequence with Guard Time." The Commission's complaint charges that respondent's advertising contained false representations that the use of other escape methods creates a substantial risk of experiencing data transmission problems. For example, the complaint charges that Hayes made false representations regarding the Time Independent Escape Sequence ("TIES"), an escape method developed by several of Hayes' competitors. Specifically, the complaint alleges that the respondent falsely represented that:

(1) Because a modem does not incorporate the Improved Escape Sequence with Guard Time, the use of that modem creates a substantial risk of data destruction;

(2) When incorporated in modems, the "Time Independent Escape Sequence" ("TIES") creates a substantial risk of data transmission failure;

(3) The Improved Escape Sequence with Guard Time is the only escape method that does not create a substantial risk of data transmission failure; and

(4) The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time entails a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard Time.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit the company from making any of the false claims delineated above, unless they are true, and at the time of making them, the respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed order includes fencing-in relief, prohibiting the company from making representations relating to any modem-related product, regarding the risk of experiencing data loss, data destruction, or data transmission problems due to any escape method, unless, at the time of making such representations, the company possesses and relies upon a reasonable basis, which when appropriate, must include competent and reliable scientific evidence. It is to be noted that this fencing-in provision relates to any method used to switch a modem to the command mode—this would include out-of-band escape sequences as well as in-band escape sequences such as TIES or Hayes' Improved Escape Sequence with Guard Time.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The proposed of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–11108 Filed 5–6–94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. No. C–3489]

Nu Skin International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Utah-based marketing companies and their officers from making deceptive claims about their products or similar products, and requires them to possess competent and reliable scientific evidence to substantiate hair growth, wrinkle removal or burn claims, and performance, benefits, efficacy or safety claims of any food, drug, device or cosmetic they offer in the future. The respondents also are required to make certain disclosures regarding future earnings claims to prospective distributors and disgorge a total of $1.225 million.

DATES: Complaint and Order issued April 1, 1994.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Nicholas Franczyk, FTC/Chicago Regional Office, 55 East Monroe St., Suite 1437, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: On Tuesday, January 25, 1994, there was published in the **Federal Register**, 59 FR 3639, a proposed consent agreement with analysis In the Matter of Nu Skin International, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–11105 Filed 5–6–94; 8:45 am]

BILLING CODE 6750-01-M

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF–94–X]

Youth Gang Drug Prevention Program; Availability of Fiscal Year 1994 Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF); Administration for Children and Families (ACF); Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of funds and request for applications under the Youth Gang Drug Prevention Program.

SUMMARY: The Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF) announces the availability of funds for competing discretionary grants under the Youth Gang Drug Prevention Program. The purpose of this program is to conduct community-based, comprehensive and coordinated activities to reduce and prevent the involvement of youth in gangs that engage in illicit drug-related activities. This announcement is a departure from ACYF's traditional approach to youth gang prevention. ACYF intends to demonstrate that multi-dimensional prevention strategies concentrated in small socially and economically isolated communities have great potential for positively impacting young adolescents as they develop to adulthood.

This announcement describes the grant application process and covers the single demonstration priority area for which new grants will be awarded in Fiscal Year 1994: Community Planning Grants.

DATES: The closing date for submittal of applications under this announcement is July 8, 1994.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, OFM/DDG, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, ACF/ACYF, Family and Youth Services Bureau, Division of Program Support, P.O. Box 1182, Washington, DC 20013. Telephone (202) 205–8074.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I briefly discusses the importance of addressing the developmental needs of youth, especially those who live in socially and economically isolated communities, and provides background information on the Youth Gang Drug Prevention Program. Part II describes the programmatic priority area under which applications are being solicited. Part III describes the evaluation criteria that will be used to review grant applications and make funding decisions. Part IV describes the application process. Part V provides instructions for the development and submission of applications. Part VI provides information on the State Single Points of Contact and all the necessary forms and instructions for applying for a grant under this announcement. No additional materials are available or needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

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Part I. General Information

A. Reframing the Youth Agenda

Today, as always, most American youth complete school, avoid committing or being victimized by violence, avoid substance abuse, and stay on track for a healthy and successful adulthood. Yet at the same time, too many youth have far less successful outcomes, and the rapid proliferation of youth gangs, alcohol and drug activity, and violence has become an ever-greater concern for youth themselves, their families, communities, and the broader public.

Public and private systems, such as schools and community programs that traditionally support the successful healthy development of children through adolescence to adulthood are underfunded and frequently unable to keep pace with the changing developmental needs of youth. They are also increasingly asked to provide primary support to youth in response to the weakening role of the family in youth's lives.

Gangs and their violent activities are too often a lure for youth who perform marginally in or drop out of school. Approximately one quarter of all urban schools have dropout rates around 50 percent. Of the 400,000 young people who dropped out of high school between October 1989 and October 1990, one-third were unemployed in 1991. The relationship between dropping out of high school and unemployment is especially strong in socially and economically isolated communities. In the 50 largest U.S. cities in 1991, the higher the poverty rate of a census tract, the more likely adolescent males were to be unemployed and to have dropped out of school. While there is no definitive data on how many of these youth were involved in gangs, there is anecdotal data from FYSB grantees and other practitioners which suggest a strong correlation between school failure and gang involvement. The diminished opportunities and stressful environmental circumstances in socially and economically isolated communities coupled with the risk-taking behavior normally associated with adolescent development become critical obstacles for adolescents to overcome if they are to develop into healthy and positive adults.

Over the past decade we have seen ever increasing numbers of adolescents become involved in violent and illegal risk-taking behavior that negatively impacts on them, their families and communities. The following data exemplify this trend:

- In 1992, juveniles were responsible for 17.5 percent of all violent crime arrests.
- Between 1990 and 1992, the number of juveniles under age 15 arrested for violent crimes increased 25 percent.
- Arrests of juveniles under age 15 increased 23.2 percent for weapons violations and 18.8 percent for drug abuse violations in the most recent one year reporting period of the Uniform Crime Reports.

Youth Agenda Within the Context of the Social Environment

Promoting individual change is difficult in an environment that does not support positive and healthy outcomes. Likewise, effecting community- or neighborhood-level change outside the context of the wider society is also difficult. For this reason, prevention strategies must be comprehensive, intensive and multi-dimensional, reaching across all aspects of a youth's social environment to effect individual change. At the same time, it is important to realize that individual change depends in part on changing community attitudes and norms.

Our traditional, categorical perspective has tended to ignore the major influence that the social environment has on the behavior and life outcomes of youth. It has also tended to ignore the vast social isolation and alienation from the wider society that many youth experience. Increasingly, we are becoming aware that youth living in areas with high concentrations of poverty, unemployment, weak family structures, poor role models and violence have fewer opportunities for successful outcomes than do their counterparts in other communities. The normal adolescent dependence on the peer environment is greatly exaggerated and increasingly dangerous in many of these communities. Youth with little or no family and/or community supports are frequently prone to involvement in activities that adversely affect their life outcomes, such as high rates of adolescent child bearing, gang involvement and school dropout.

Prevention strategies designed to counteract the attractions of destructive behaviors such as gang participation must take into account that as youth develop they need an environment that provides safety and comfort as well as challenging new opportunities for growth. It is our belief that the combination of a safe environment and access to opportunities and experiences allow youth to develop the self-esteem and decisionmaking abilities necessary to avoid non-constructive, delinquent, and dangerous behaviors and thereby exhibit constructive behaviors and participate in healthy activities. It is especially important that these opportunities be focused on 9 to 12 year olds and their families, a critical developmental stage from childhood to adolescence.

Flaws in the Present Response to These Needs

For several reasons, our programmatic responses have been unable to keep up with the burgeoning needs of youth, their families and communities. Among the reasons identified by practitioners and observers:

1. Public and community-based service systems are unable to compensate as families become more isolated from traditional sources of

support and as youth become more isolated from both families and communities. Often, parents are unable to provide their children with the necessary emotional, psychological and material support. In response, parents turn to underfunded and overburdened community agencies such as schools, day care centers and recreation centers to fulfill their children's social and developmental needs.

2. Publicly funded programs are too often defined in narrow categorical terms that fail to respond to the reality of youth's experiences, goals, strengths, and needs. Rather than providing youth a supportive environment that will help them develop into socially productive, healthy adults, we have developed a diversity of public and private programs that, too often, respond only to a small percentage of youth on a short-term basis and that provide fragmented funding for narrow categorical purposes.

3. Programs targeted to youth have been slow to acknowledge the developmental needs of youth and the effect of changes in social and economic structures on youth's life choices. In developing youth programs, we frequently fail to realize that adolescence is a developmental stage when youth typically experiment with different activities, distance themselves from family, identify more with peers, and develop more independent behaviors. Historically, youth programs have been focused on intervening once youth have participated in delinquent or negative behaviors, rather than on preventing these behaviors and working with youth during the critical transition stage from childhood to adolescence (ages 9 to 12).

Reframing the Youth Agenda to Respond to Youth's Needs

Recently, the Department of Health and Human Services along with the Departments of Justice, Education, Labor, and Housing and Urban Development participated in an effort aimed at identifying how to prevent youth from becoming involved in violence as perpetrators and/or victims. Discussions with those involved in youth issues, including representatives from programs, foundations, research institutions and universities, identified a set of core strategies that have been effective in involving youth in more socially positive and productive behaviors. They emphasized that first and foremost prevention strategies have to be grounded within a youth development framework rather than the usual problem-oriented approach. Included among their strategies are:

- Intervening early and providing sustained services to youth over a long period of time. Youth need to be connected to a stable force which can help them make a successful transition from childhood to adolescence and ultimately to adulthood. Too often youth in this critical age range of 9 to 12 are finding gangs the most stable, nurturing force in their lives.
- Involving youth in the formation and development of policies and programs that focus on their strengths, address their needs and reduce their involvement in violence and other destructive behaviors. The social environment in which youth develop is a critical factor affecting their perspective of the future and their connection to the broader society; thus, their environment must provide opportunities for youth to establish their self-worth and receive affirmation of their importance to society.
- Promoting the economic and social competence of youth; connecting them to their families, communities and society at-large; and fostering their ability to make positive contributions. Current society has developed no clear social or economic role for youth. As a result, it is difficult for youth to envision the positive contributions they can make as they move from adolescence to adulthood.
- Responding to youth as individuals, not merely as a monolithic group. Youth are diverse and have differing needs. They need services that are multi-disciplinary, gender-specific, age-appropriate, and culturally appropriate.
- Supporting the involvement of families (however they define themselves) in programs that respond to youth issues.
- Empowering community leaders and institutions in socially and economically isolated communities to play a more active role in guiding and assisting youth and in identifying and responding to the specific needs of youth in their communities. Local leaders must work collaboratively with families and other residents to change the overall attitudes about what is acceptable behavior in the community, and these attitudes and expectations must be communicated effectively to youth.
- Connecting youth services to existing institutions, particularly educational institutions, strengthens their role in the lives of youth, and enhances the ability of institutions to provide comprehensive and responsive care and education to youth.

Individual strategies alone, however, do not work. Communities must come together to identify the developmental needs of their local youth and how these needs can best be addressed.

B. Legislative Authority and Funding History

Congress enacted the Drug Education and Prevention Relating to Youth Gangs (Youth Gang Drug Prevention) Program as part of the Anti-Drug Abuse Act of 1988. See 42 U.S.C. 11801–11806. The legislation specifically identifies the Administration on Children, Youth and Families (ACYF) as the administering agency.

The program received its first appropriation of $15 million in Fiscal Year 1989. In response to ACYF's first announcement soliciting proposals for the Youth Gang Drug Prevention Program, applications were received from public and private agencies in 36 States and the District of Columbia.

The ACYF solicited proposals again in Fiscal Years 1990 and 1992, and applications again were received from large and small cities, suburbs and rural areas all over the country.

Since 1989, ACYF has awarded almost $76.5 million to fund 112 State and local efforts to respond to the nation's youth gang problem. These grants ranged from $1,000,000 community-based consortia projects in large urban centers to $50,000 planning projects in small communities.

C. Purpose and Goals of the Youth Gang Drug Prevention Program

The Administration on Children, Youth and Families (ACYF) has implemented the Youth Gang Drug Prevention Program to help communities experiencing gang crime and violence take a proactive approach to halting the escalation of illegal gang activity by funding prevention activities targeting youth in at-risk situations. Prevention is increasingly at the heart of local efforts to deal with an emerging gang problem. It recognizes that gangs are a symptom of larger community problems, such as poverty, unemployment, and feelings of disenfranchisement due to race or socio-economic status. In jurisdictions with a chronic gang problem, prevention of youth involvement in gangs remains a critical strategy for keeping the situation from worsening over time.

The Family and Youth Service Bureau's demonstration grant efforts are designed to:

- Expand our understanding of why youth become involved in gangs and in behaviors leading to gang participation and similarly destructive outcomes. Of equal importance is to identify factors which help youth develop positively especially through the difficult transition from childhood to adolescence and into adulthood;

- Demonstrate and assess various methods of preventing the further recruitment and involvement of youth in at-risk situations in gang activities; and
- Develop successful, replicable approaches that prevent youth involvement in gangs, illegal drug activities and related violence and delinquency.

D. Models and Programmatic Approaches of Youth Gang Drug Prevention Grantees

Since there is no single cause for youth involvement in gangs, there is no single prevention model. Previously funded Youth Gang Drug Prevention Program grantees have implemented a number of different models and strategies designed to meet various prevention goals. Evaluation results of some of these previously funded projects suggest that those that work with the same children, youth and families over several years have a greater potential for positively affecting their lives than projects which focus on short-term (weeks, months, one-year) interventions. These results and feedback from grantees, coupled with the recommendations of the Inter-Departmental youth workgroup, have led to our refocusing our prevention efforts toward a youth development approach. Gang participation should not be viewed as a single problem in and of itself, but rather as part of a multi-dimensional array of risks facing youth. Many youth do not have the positive support systems necessary to transition successfully into adolescence and later into adulthood. Prevention and intervention strategies should seek to establish or strengthen neighborhood and family-based support systems that will enhance youth's potential for success.

D.1. Gang Prevention Models

Community-based consortia: A major emphasis of the Youth Gang Drug Prevention Program has been on supporting the development of community-based consortia to conduct innovative, comprehensive approaches to the current and emerging problems of youth gangs and their involvement with illicit drugs. Each consortium is a broad-based partnership which draws upon the resources, expertise, energies and commitments of many different groups within the community. These groups represent both the public and private sectors and include representatives of human service agencies, schools, juvenile justice system, mental health agencies, housing authorities, businesses, churches, media, and community-based organizations. The organizational structures and operational procedures of the community consortia vary, but the most promising consortia brought together a broad array of public and private agencies, community groups and youth to design and implement their local prevention strategies. As important as the comprehensive mix of services that these agencies brought together was the consortia's focus on youth gang prevention as a community-wide issue in which all parties have a stake.

Community planning efforts: In order to help communities with emerging gang problems and those with established gangs but with no cohesive prevention strategies, 12 community planning grants were awarded in Fiscal Year 1990. It was hoped that by the end of the two-year funding period, these grantees would be able to build the framework for successful consortia and/or other prevention strategies. The most promising grantees focused planning and community organizing strategies on local neighborhoods or target areas within larger communities. One grantee began its planning efforts by conducting a needs assessment to identify the specific high-need neighborhoods where it would focus its strategy development. Another grantee found that different problems and issues required different approaches and levels of organizing groups. For example, school issues required a neighborhood group organized around the school feeder areas, while a city-wide steering committee was essential for garnering the necessary political support and media attention.

These grantees centered their activities around planning and organizing efforts, not on direct service delivery to youth and families. In several cases, these planning grantees were prohibited by their own charters from delivering direct services or came to a realization in the course of the project that they could not effectively facilitate planning while at the same time delivering services. One grantee developed action plans that addressed the specific needs of eight neighborhoods in a large inner city. Various components of these action plans were implemented, some as service programs and others as pilot projects to test their viability. Perhaps more important than the services and projects, this planning effort enabled the organizing group and neighborhood action teams to market their needs and proposed responses more effectively to other funding sources.

D.2. Programmatic Approaches

Based on the experience of the Youth Gang Drug Prevention Program, we have found that no single prevention model fits the needs of all communities. Therefore, each community must assess its own needs, strengths, weaknesses, and resources and design a model which has the greatest potential for success. In developing individually appropriate models, communities should take advantage of adapting and using programmatic approaches which have shown promise in other communities. The following approaches are meant to be illustrative, not exhaustive.

- Many agencies focused on community organizing activities in an effort to assist the community in solving its own problems. For example, one previously-funded agency instituted community support groups which met monthly on block and school safety issues and developed a newsletter and a youth resource directory. Another agency used block-by-block organizing to mobilize neighborhood residents against drug trafficking and gang violence. Residents operated phone-trees to gather information on new drug trafficking sites, graffiti or gang meeting sites. This information was then relayed to law enforcement officials. Residents also marched as a group through these areas to bring unwanted publicity to the dealers and gangs.
- Other grantees centered many of their activities around or in the local schools. Many grantees conducted tutoring, recreation, outward bound activities, and cultural programs on school grounds or in nearby locations after normal school hours or during summer vacation. One grantee instituted school-based leadership clubs and community-based outreach clubs. Many grantees developed cooperative agreements with schools to use their facilities after school hours and on weekends to provide a wide range of recreational, social and cultural activities for youth. In another community, a grantee worked with two elementary schools to implement a self-esteem curriculum which included planning for a successful journey, maintaining a healthy attitude and using common sense.
- Another popular approach tested by many of the grantees involved the use of empowerment strategies with families. The intent of the approach was to draw on the strength of the family and its values in promoting the healthy development of youth. Parenting classes were conducted to help parents understand and use effective techniques

for dealing with discipline, setting goals, understanding their responsibilities and rights and developing positive relationships with their children. One grantee established a School for Parents. In order to develop an effective curriculum, the instructors met with the children of the enrollees to explore their particular needs. These needs provided the basis for the content of the school sessions for the parents.

- Some grantees designed positive activities that were centered around cultural values to help youth accomplish the transition from childhood to adulthood. One grantee developed a culturally-based leadership training program for 13- to 18-year old youth. To participate in the program, youth must be recommended by a faculty member, maintain a 2.0 grade point average, write an essay and have a parent/guardian attend an orientation meeting. The youth attended a 60-hour classroom course, including a 3-day live-in seminar, and were evaluated during a 60-hour field experience. The curriculum included philosophy and styles of leadership, perceptions and beliefs, group process and dynamics, individual and group assessment processes, and yin/yang theory.

The common elements apparent in successful projects are the focus on the developmental needs of youth and their families and an emphasis on the provision of appropriate positive developmental opportunities for them.

Part II. Priority Area—Community Planning Grants

Eligible applicants: Any State, unit of local government, combination of units of local government, public or nonprofit private agency, organization, institution, other nonprofit entity or individual is eligible to apply for these funds. Successful applicants under this competition will be eligible to compete for five year grants to implement the plans they develop.

Grantees with current Youth Gang Drug Prevention Community-Based Consortia grants (funded under the FY 1992 announcement) are not eligible to apply under this announcement.

Program purpose, goals, and objectives: The Administration on Children, Youth and Families (ACYF) will award approximately 10–30 community planning grants during Fiscal Year 1994. The purpose of these grants is to help community and neighborhood groups organize into formal coalitions which will be responsible for developing five-year action plans that concentrate prevention resources on a specific socially and economically isolated neighborhood or target area. Only those applicants who receive planning grants under this announcement and who perform satisfactorily will be eligible to apply for the 8 to 15 implementation grants, which ACYF plans to announce in Fiscal Year 1995, subject to the availability of funds.

Plans developed under this priority area should articulate a vision for youth and include community-wide strategies and interventions designed to change the environment, circumstances and attitudes which put youth at risk of unhealthy and destructive behavior so that these youth may develop into healthy, productive and responsible adults.

The planning processes used by the coalitions should be characterized by broad consultation and involvement of youth, families, businesses and community organizations in identifying the developmental needs of youth; deciding what existing services and strategies are available and effective in addressing these needs; identifying gaps in services; and, how these gaps can best be addressed, while strengthening the permanent institutions (e.g., school, social, community health and justice systems) dedicated to the development of individuals and communities. The coalitions will also address the communities' particular youth violence problems, and the resources that can be brought to bear so that the developmental needs of youth are met and the problems of violence can be alleviated.

Successful grantees under this announcement must participate in activities leading to a rigorous third-party evaluation of the program strategies to be funded under the Fiscal Year 1995 announcement. Active participation in the evaluation will be a requirement of program implementation funding. Evaluation activities will be funded by the Administration for Children and Families and will focus on measuring the interventions' effects on positive community and behavioral change and the processes by which these changes take place.

The specific goals of this priority area are to:

- Demonstrate the feasibility of developing comprehensive youth development policies and programs targeting socially and economically isolated communities;
- Demonstrate the viability of supporting concerted planning efforts prior to committing Federal resources to long-term demonstration and evaluation efforts;
- Demonstrate the effectiveness of awarding planning grants that are accompanied by intensive training and technical assistance to narrow the field of eligible applicants for subsequent implementation demonstration grants;
- Evaluate whether conducting a comprehensive multi-agency planning effort leads to the development of more effective strategies for integrating and coordinating efforts to address the developmental needs of youth and, thereby, the issues related to youth violence;
- Rigorously evaluate whether comprehensive youth development policies and strategies are effective in reducing the amount and intensity of youth violence in targeted socially and economically isolated neighborhoods; and
- Identify critical elements that are needed within each community to positively impact community norms and to increase the opportunities for youth to develop into adults with a positive future.

Background: Since 1989 the ACYF has funded a variety of activities aimed at aiding communities in the development of strategies for helping youth avoid illegal gang and drug activities and adopt positive lifestyles. Based on the experience of the youth gang consortia and planning grantees, it is clear that gang prevention is only one part of a continuum of integrated services that promotes healthy lifestyles for children and youth ranging in age from pre-school through early adulthood. This announcement supports the creation of community coalitions and the development of five-year community action plans which focus on comprehensive strategies that target the broader needs and experiences of youth in high-risk situations. The goal of these action plans is to concentrate services and interventions so that the day-to-day experiences of youth are affected. This requires focusing services on limited areas such as specific neighborhoods or groups of small community areas.

The community action plans developed by the coalitions must identify a continuum of services in specifically defined socially and economically isolated neighborhoods that will meet the developmental needs of the youth residing there and foster behaviors which will enable youth to function positively both within and outside their community. The plan should incorporate existing as well as proposed prevention services aimed at 9 to 12 year olds and their families. These include, but are not limited to, educational enrichment, tutoring, recreational activities, conflict mediation, individual and family counseling, cultural enrichment, skills training, employment services/job counseling, support groups, mentoring, alcohol and drug abuse prevention education and parenting skills.

The plan should address existing service delivery systems, their adequacy, and the manner of involvement of a variety of organizations representing the disciplines of education, social services, health and mental health, labor and housing in the community. The plan must indicate how services will be provided to meet the developmental needs of youth within the context of their families, their communities and the broader society in a manner that is culturally appropriate both in terms of race/ethnicity and family dynamics.

The coalitions will also be responsible for cooperating with research and evaluation activities to be funded and coordinated by ACYF. Willingness and commitment to participate in a rigorous evaluation of the effectiveness of program services will be a critical consideration in the award of the FY 1995 implementation grants.

Training and technical assistance (T&TA) funded by ACYF will be provided to planning grantees. The T&TA will include information on action planning, consensus building, and the developmental needs of youth and will include training on violence prevention and intervention methods.

These are not service delivery grants. Applications that propose to deliver services will not be considered for funding. Agencies receiving funds under this priority area shall not use these funds for direct service provision to youth or families.

Successful applicants who perform satisfactorily under the terms of this grant may be invited to apply for five-year grants to assist them in implementing the action plan they develop. The community action plan will become part of an implementation proposal they will develop and submit to this agency in response to a future announcement of the availability of funds for implementation grants. Subject to the availability of funds, approximately 8–15 implementation grants will be awarded in Fiscal Year 1995.

Part III. Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application and should be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. In the section following the Evaluation Criteria are detailed descriptions of the minimum requirements for project design, in terms of each criterion. The Program Narrative information provided by the applicant in response to the priority area description identified in Part II of this announcement should be organized and presented according to these five evaluation criteria.

Criterion 1. *Objectives and need for assistance (15 Points).* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached.

Criterion 2. *Results or benefits expected (20 Points).* Identify the results and benefits to be derived from the project. Estimate the number and characteristics of the youth population this project will possibly affect in the future as a result of implementation of the community plan and the nature of the changes in services expected. Identify the kinds of data to be collected and maintained.

Criterion 3. *Approach (35 Points).* Outline a plan of action pertaining to the scope of the project and detail how the planning coalition's work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvement. Explain the planning methodology that will be used and how the objectives listed in Objectives and Need for Assistance will be achieved.

Criterion 4. *Staff background and organizational experience (20 Points).* List each organization, consultant, or other key individual(s) who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization(s). Demonstrate the ability to effectively manage the project including the ability to lead community planning/organizing efforts and to coordinate activities with other agencies. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.)

Criterion 5. *Budget appropriateness (10 Points).* Demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

Minimum requirements for project design: As part of addressing the evaluation criteria outlined above, each applicant must respond to the following items in the program narrative section of their application.

Objectives and Need for Assistance

- Identify the geographic area that the planning effort will target. Describe the targeted area, provide data on its general population and explain what makes the area an identifiable community or neighborhood. The area must have boundaries recognized by the residents in the community and be small enough to allow a concentration of resources that result in an appreciable difference for the youth in the community as a result of the proposed project.
- Describe the developmental needs of youth in the target community, the known strategies and services currently in place to address these needs and preliminary views of gaps in current plans and services.
- Discuss the emerging or current youth gang and violence problems and prevalence of other destructive behaviors among youth in the target community. Provide data on the number, age, gender, ethnic/cultural background of youth in the target area, as well as data on family characteristics and dynamics, drug-related youth gang activity, and other non-constructive and health-compromising activities of community youth.
- Describe the goals and objectives of the proposal and how the proposal builds upon or differs from previous planning efforts.
- Indicate how this proposal builds upon the existing service delivery systems (e.g., health, mental health, child welfare, substance abuse) and how it could result in more relevant and/or expanded service delivery capabilities in the targeted area.

Results and Benefits

- Describe how this proposal will result in the development of a five-year action plan that describes the specific strategies and activities that the coalition will undertake to address the developmental needs of youth and to prevent or intervene in youth violence, especially as it relates to youth at-risk of or involved with gang activity and other dangerous outcomes.
- Describe how this effort will expand our knowledge and

understanding of the critical issues surrounding: (1) Identification of models and strategies that will serve to meet the developmental needs of youth, (2) the circumstances and factors in the community which contribute to socially unproductive and destructive youth behavior and which will be affected by this effort, (3) the circumstances and factors in the community that contribute to positive youth development, (4) youth gang members, their families, and youth at risk of gang participation or other violent and health-compromising conduct in the community, and (5) how individuals' behaviors affect the overall health of the community or neighborhood.

- Estimate the number and characteristics of the youth population this project will possibly affect in the future as a result of implementation of the community action plan and the nature of the change in strategies or services expected.
- Describe how the quality of the targeted community is expected to improve because of the project.
- Provide evidence that the planning coalition can and intends to generate the financial, programmatic, policy and other types of support and commitments that will be required to implement the action plan once it is developed.
- Provide evidence that the planning coalition can secure the support and participation of youth, families, and community members in this effort.

Approach

- Describe a process for conducting an in-depth needs assessment of the target community following grant award.
- Describe what makes the proposal innovative.
- Describe the planning process to be used, including methodology, timelines and task charts as well as a discussion of why this methodology was chosen as most appropriate for the youth and families in the targeted community.
- Indicate how the planning effort will be documented as it unfolds so as to communicate information on successes and lessons learned for dissemination to and use in other communities.
- Describe planning activities which may involve locally sponsored forums or hearings to gather citizen and youth input and reaction, data collection and analysis regarding the extent of youth violence, community assessments of community needs and available resources, and development of strategies to access foundation, local, State and Federal resources.
- Describe the applicant's ability to coordinate with other Federally-funded programs which are State or locally administered. The applicant should specifically address the proposed interrelationship between this effort and Family Support and Family Preservation State Planning Councils, National Service Projects, Empowerment Zones and Enterprise Communities, where applicable.
- In addition to the agencies mentioned above, identify and describe the proposed role of additional groups or organizations within the community such as neighborhood associations, churches, youth groups, local civic organizations, local businesses and community-based nonprofit organizations, as well as local, county or State units of government that might also be invited to participate as coalition members. Identify strategies for encouraging them to actively participate.
- Describe the applicant's ability to provide leadership and facilitate coordination and cooperation among local education, juvenile justice, law enforcement, employment and social services agencies; drug abuse referral, treatment and rehabilitation programs; mental health and other health care providers for the purposes of producing a plan which attempts to meet the developmental needs of youth; helping youth develop productive and healthy lifestyles; and preventing or reducing the participation of youth in the illegal and violent activities of gangs.
- Describe in detail how the applicant will achieve each of the goals and objectives listed above in Objectives and Need for Assistance.
- Provide: (1) An assurance that the applicant will cooperate with any data collection, research or evaluation efforts independently funded and sponsored by the Administration for Children and Families and (2) a commitment to participate in a rigorous evaluation of the effectiveness of proposed program services should the applicant be chosen for an implementation grant in FY 1995.
- Provide assurance that the applicant will cooperate with, and participate in the activities of, training and technical assistance providers sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

- Identify skills and experience criteria, as well as a recruitment strategy, that will be used for hiring the project director and other key staff.
- Demonstrate that the project director and/or other key staff have the knowledge and experience needed to participate in and collaborate with a third-party evaluator.
- Provide information on the proposed project director and other key staff regarding skills and experience in community planning/organizing efforts and knowledge of youth and family issues or programs.
- Demonstrate the applicant agency's ability to work effectively with the community and to organize and coordinate a community-wide planning effort.
- Include letters of endorsement and/or commitment that show evidence of broad youth, family and community support in the geographic area to be served by the plan, specifying any type of direct involvement that organizations or individuals will have with the planning process and indicating the level of effort committed to the project.

Budget Appropriateness

- Discuss and justify the costs of the proposed project in terms of the size of and conditions in the target area that the plan will affect.
- Describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received under this program announcement.
- Include in the proposed budget a four-day trip to Washington, DC, for the project director and four other key staff persons to attend a grant implementation training session. For planning purposes the training session will be held during the first quarter of the grant project period (October 1–December 31, 1994). The applicant should plan for covering travel and per diem expenses; lodging will be prepaid by ACYF's contractor.
- Include in the proposed budget funds for travel to a Family and Youth Services Bureau-sponsored national conference in the Washington, DC, area during the second quarter of Fiscal Year 1995 (January–March 1995). At a minimum, the project director must attend this three-day conference. All applicants must include in their budgets funds for this conference.

Duration of project: This announcement solicits applications for one-year planning projects. Grant awards, made on a competitive basis, will be for a one-year (12-month) budget period. Grantees who perform satisfactorily will be eligible to compete for five-year implementation grants contingent upon the availability of funds.

Maximum Federal share and grantee share of the project: The maximum

Federal share of project costs is $100,000 for 12 months. The applicant share of project costs is 25 percent of total project costs. For example, a project requesting $100,000 in Federal funds must include a match of at least $33,333 (25 percent of a total project cost of $133,333).

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded.

Part IV. Application Process

A. Application Requirements

To be considered for a Youth Gang Drug Prevention grant, each application must be submitted on the forms provided at the end of this announcement (see Part VI, Appendix B of this announcement) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

All applicants must indicate in their applications their willingness to fully cooperate in any data collection, research and/or evaluation efforts mandated by ACF.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

B. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub.L. 96–511, as amended, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications by OMB.

C. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 17 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they must be addressed to: Youth Gang Drug Prevention Program, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix A of this announcement.

D. Availability of Forms and Other Materials

A copy of the forms required to be submitted as part of each application for a youth gang drug prevention grant, and instructions for completing the application, are provided in Part VI, Appendix B. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix A.

E. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria and the Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of experts knowledgeable in the areas of youth development and family support, youth gang prevention programs and other youth service programs. Applications for grants will be reviewed as a part of a national competition.

The experts will review the applications based on the Evaluation Criteria and the specific Minimum Requirements for Project Design contained in Part III of this announcement and will assign a score to each application. The results of the competitive review will be analyzed by Federal staff who will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by the Anti-Drug Abuse Act of 1988, priority for funding under the Youth Gang Drug Prevention Program will be given to applicants who propose to carry out projects and activities (1) in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and (2) that the applicant demonstrates broad support of community-based organizations in such geographical areas.

In addition to scores assigned by non-Federal reviewers, consideration also will be given to adequate geographic distribution of projects and the Commissioner may show preference for applications proposing projects in areas that would not otherwise be served. The Commissioner also may elect to consider an applicant's past performance in providing services to at-risk youth and also may elect not to fund any applicants having known management, fiscal or other problems which make it unlikely that they would be able to perform effectively.

Grant awards will be made by September 30, 1994. Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-

Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part V. Application Assembly and Submission

A. *Contents of application.* Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–88) (page i).
2. Budget Information (Standard Form 424A, REV 4–88) (pages ii–iii).
3. Budget Justification (Typed on standard size plain white paper) (pages iv–v).
4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88) (pages vi–vii).
5. Certification Regarding Lobbying (page viii).
6. Project Summary Description (page ix).
7. Program Narrative Statement (pages 1 and following; 30 pages maximum, double-spaced, at least half-inch margins).

Special Note: Applicants are strongly encouraged to limit the program narrative statement portion of the application to 30 double-spaced pages. Pages exceeding this limit will be discarded and not reviewed by panel.

8. Organizational Capability Statement (pages OC–1 and following; 3 pages maximum).
9. Supporting Documents (pages SD–1 and following; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Application Components

Standard Forms 424 and 424A: Follow the instructions in Part VI, Appendix B. In Item 8 of Form 424, check New. In Item 10 of the 424, clearly identify the Catalog of Federal Domestic Assistance Program Number and Title for the program for which funds are being requested (93.660, Youth Gang Drug Prevention Program).

Budget justification: Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and Certification Regarding Lobbying: Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. By signing and submitting its application, the applicant is certifying its compliance with the requirements set forth in the attached Drug-Free Workplace and Debarment certification notices.

Project summary description: Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424 and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products (such as plans, training materials, manuals, etc.) that will result from the proposed project. The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

Program Narrative Statement: Use the Evaluation Criteria in Part III as a way to organize the Narrative. Be sure to address all the specifics contained in the Minimum Requirements for Project Design. The narrative section is limited to 30 typed pages, double spaced, printed only on one side, with at least ½ inch margins. Pages over the 30-page limit will be discarded and not reviewed by the panel. Past attempts by applicants to exceed page limits or to circumvent space limitations by using very small print have resulted in negative responses from reviewers. It is, therefore, in the best interest of applicants to ensure that the narrative statement is easy to read, logically developed in accordance with the preceding evaluation criteria and minimum requirements and adheres to page limitations.

Organizational Capability Statement: Applicants must provide a description (no more than three pages, double-spaced) of how the applicant agency is organized; its expertise in the area of youth development and/or violence prevention; its ability to bring together a broad coalition of agencies and organizations; and the planning and management capabilities it possesses. Provide an organizational chart showing the relationship of this project to the current organization. If the agency is a recipient of funds from the Administration on Children, Youth and Families for programs other than that applied for in this application, identify those programs and explain the extent to which they might be involved in this project.

Supporting Documentation: The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include resumes, newspaper clippings, and evidence of the program's efforts to coordinate youth services at the local level. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

C. Application Submission

To be considered for a grant, each applicant must submit one signed original and two additional copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, fasten or in any way separate subsections of the application, including supporting documentation.

1. Closing Date for the Receipt of Applications

The closing date for submission of applications for the grant program contained in this announcement is July 8, 1994. Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, 6th Floor, OFM/DDG, 901 D Street, SW, Washington, DC 20447.

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Youth Gang Drug Prevention Program.

2. Deadline for Submission of applications

a. *Deadline.* Applications will be considered as meeting the deadline if they are either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria stated above are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The granting agency may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application

____ One original application signed in black ink and dated plus two copies;

____ A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424, if applicable;

____ SF 424 (The original application must have the word ORIGINAL hand printed in bold block letters at the top margin of its SF 424);

____ SF 424A;

____ Budget Justification;

____ SF 424B;

____ Certification Regarding Lobbying;

____ Project Summary Description;

____ Program Narrative Statement (maximum of 30 double-spaced pages);

____ Organizational Capability Statement (maximum of three pages double-spaced); and

____ Supporting Documents (maximum of 10 pages double-spaced).

(*Catalog of Federal Domestic Assistance* Number 93.660, Youth Gang Drug Prevention Program)

Dated: April 21, 1994

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Appendix A—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW, Suite 500, Washington DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New

Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656, Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

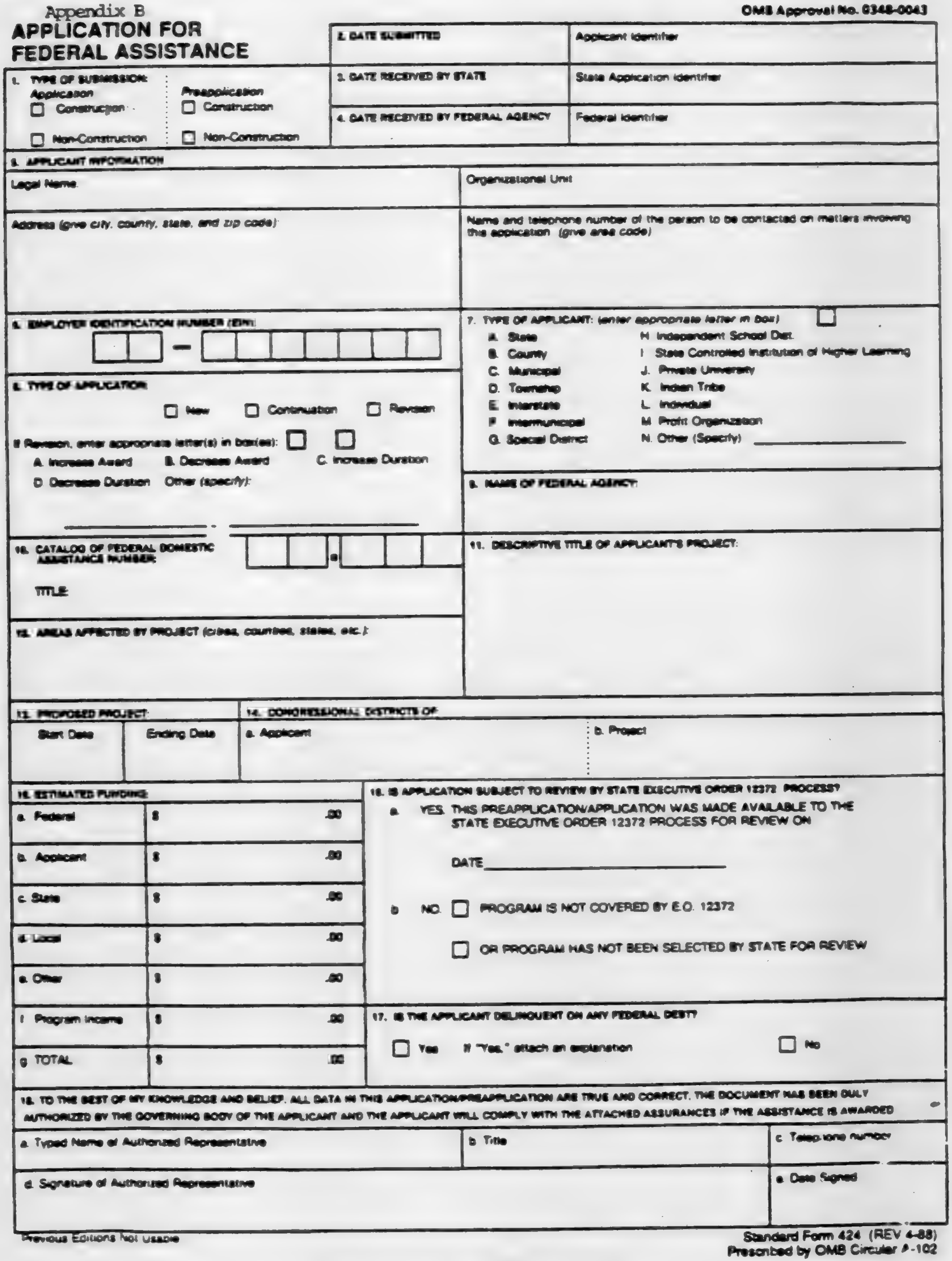
Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

Appendix B



OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED
Applicant Identifier

1. TYPE OF SUBMISSION:
Application
☐ Construction
☐ Non-Construction
Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE
State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY
Federal Identifier

5. APPLICANT INFORMATION
Legal Name:
Organizational Unit:
Address (give city, county, state, and zip code):
Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:
Start Date
Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant
b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE ____________
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative
b. Title
c. Telephone number
d. Signature of Authorized Representative
e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State is applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities)
13. Self—explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) For Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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BILLING CODE 4184-01-C

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring*, budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a) and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Column (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will established safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin;

(b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;

(i) Any other nondiscrimination provisions in the specific statue(s) under which application for Federal assistance is being made; and

(j) The requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components for the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

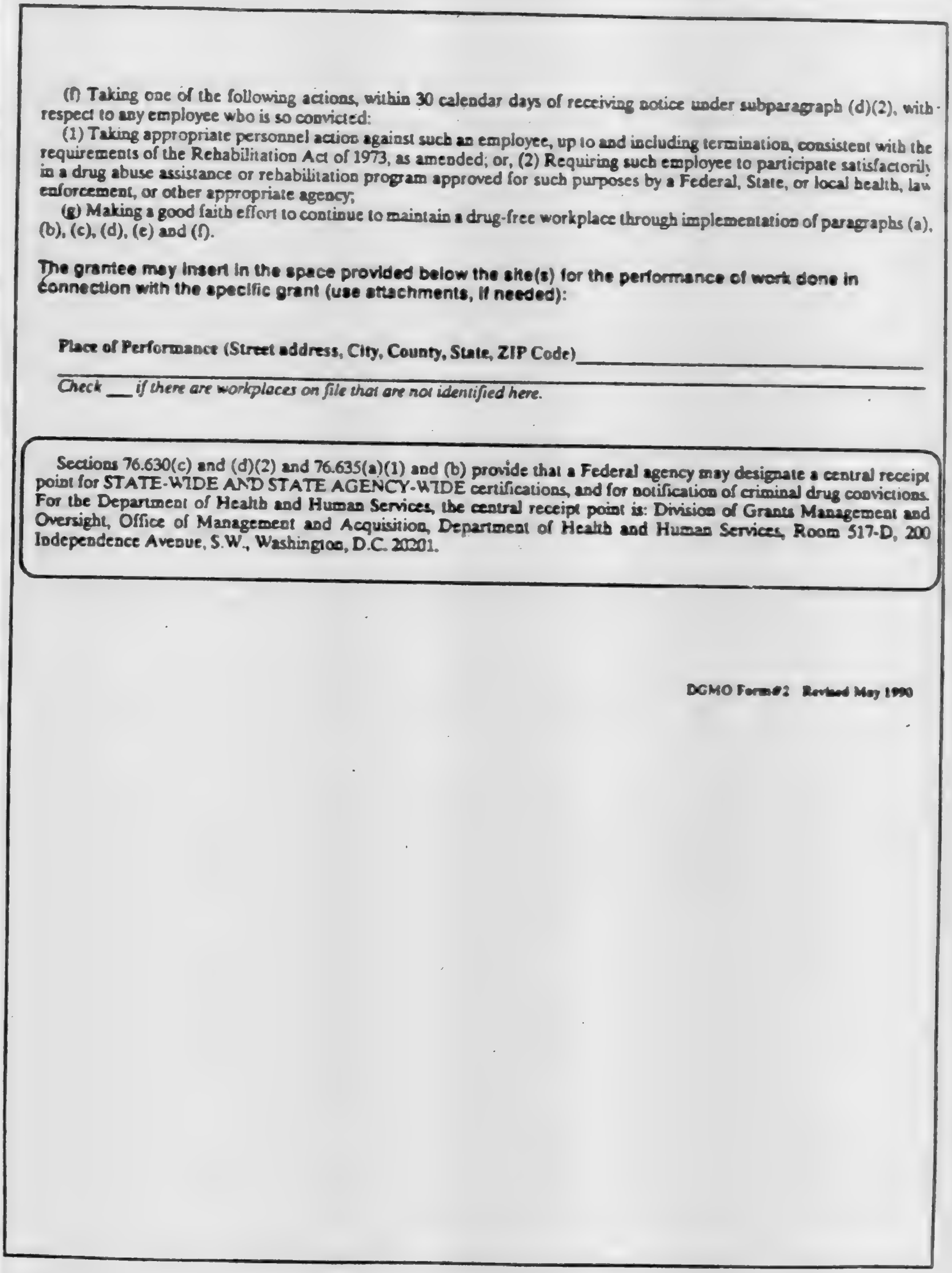
(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;



(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)____________________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction. "provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is an material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year ______ quarter ____
date of last report ________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____ , *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: ___________

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ ______________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature ______________
value ______________

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ______________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ______________________
Print Name: ______________________
Title: ______________________
Telephone No.: ____________ **Date:** ____________

Federal Use Only:

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Standard Form - LLL

[FR Doc. 94–10647 Filed 5–6–94; 8:45 am]

BILLING CODE 4184–01–C

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the changes in Chapter KR, The Office of Refugee Resettlement (ORR) (56 FR 42349). Specifically, to delete the functional responsibility of providing information and referral services and other services to refugees and entrants, service providers and state and federal agencies solely in the state of Florida.

The change is as follows:

Amend KR.20 Functions. Paragraph A to delete it in its entirety and replace it with the following:

KR.20 Functions. A. Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing direction, leadership, guidance and general supervision to the component's of ORR. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office of the Director, administrative staff assist the Director and Deputy Director in managing the formulation of program and salaries and expenses budgets; and in providing administrative, personnel and data processing support services.

The Office coordinates with the lead refugee and entrant program offices of other federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities; acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department; and coordinates and provides leadership for policies and administration of the legalization assistance grants to a wide variety of public and private interests.

Effective Date: May 3, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 94-11137 Filed 5-6-94; 8:45 am]

BILLING CODE 4184-01-P

Food and Drug Administration

[Docket No. 94N-0161]

Drug Export; RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Chiron Corp. has filed an application requesting approval for the export of the biological product RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay (SIA) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Chiron Corp., 4560 Horton St., Emeryville, CA 94608-2916, has filed an application requesting approval for the export of the biological product RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay (SIA) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

The RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay (SIA) is an in vitro qualitative enzyme immunoassay for the detection of antibodies to Human Immunodeficiency Virus Types 1 and 2 in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on March 11, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 19, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: April 25, 1994.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 94-11069 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 84N-0102]

Cumulative List of Orphan-Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1993. FDA has announced the availability of previous lists, which are brought up-to-date monthly, identifying the drugs and biologicals granted orphan-drug designation pursuant to the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4718.

FOR FURTHER INFORMATION CONTACT: Peter Vaccari, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4718.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and acts on applications submitted by sponsors seeking orphan-drug designation under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a monthly basis and is available upon request from the Office of Orphan Products Development (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals, including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the **Federal Register** of April 21, 1989 (54 FR 16294). This list is available on request from the Dockets Management Branch (address above). Those requesting a copy should specify the docket number found in brackets in the heading of this document.

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1993, and, therefore, brings the March 2, 1993 (58 FR 12041) publication up to date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.) Copies of the regulations (see 57 FR 62076, December 29, 1992) for use in preparing an application for orphan-drug designation may be obtained from the Office of Orphan Products Development (address above).

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for those products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established or proper name.

Dated: May 3, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–11070 Filed 5–6–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the Statutory Funding Preference for Allied Health Project Grants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference for fiscal year (FY) 1994 Allied Health Project Grants funded under the authority of section 767, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purposes

Section 767 authorizes the award of grants to assist in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this section may include:

(1) Those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(2) Those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(3) Those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(4) Those that provide career advancement training for practicing allied health professionals;

(5) Those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) Those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) Those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) Those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research; and

(9) Those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(A) who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(B) who agree upon completion of the training program to practice in a medically underserved community; that shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary.

To maximize program benefit, programs that provide financial assistance in the form of traineeships to students will not be considered for funding in FY 1994.

Funding Preference

The statutory preference identified in section 767(b)(2) and the statutory preference identified in section 791(a) of the PHS Act have been combined in the following preference which will be applied to Allied Health Project Grants for fiscal year 1994:

(A) expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; or

(B) demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working in medically underserved communities (high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; OR

(C) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

A notice which proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference for Allied Health Project Grants was published in the Federal Register on November 18, 1993 at 58 FR 60863. No comments were received during the comment period. Therefore, the minimum percentages for "high rate" and "significant increase in the rate" remain as proposed. The final percentages are listed below.

"High rate" is defined as a minimum of 20 percent of graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional Information

If additional programmatic information is needed, please contact: Dr. Norman Clark, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6763.

The *Catalog of Federal Domestic Assistance* number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 3, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–11065 Filed 5–6–94; 8:45 am]

BILLING CODE 4160–15–M

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1994.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 1, 1994; 9 a.m.–5 p.m. June 2, 1994; 9:00 a.m.–3:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission:

(1) Advises the Secretary on the implementation of the Program,

(2) On its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table,

(3) Advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) Surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) Recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The full Commission will meet commencing at 9 a.m. on Wednesday, June 1 until 5 p.m., and from 9 a.m. to 3 p.m. on Thursday, June 2. Agenda items will include, but not be limited to, a report on the March 15 meeting of the Ad-hoc Subcommittee of the National Vaccine Advisory Committee on the Institute of Medicine's review of "Pertussis Immunization and Serious Acute Neurologic Illnesses in Children" (The Miller Study), a report on the FDA's assessment of different vaccine lots, a report by the Department of Justice on the efforts to streamline the damages process, a report on the task force on safer vaccines, an update on the vaccine information materials, a report on the National Vaccine Plan, routine Program reports; reports from the National Vaccine Program, and reports from the ACCV Subcommittees. In addition, on June 1, following the meeting of the full Commission, there will be simultaneous meetings of two of the Commission's Working Subcommittees:

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Time: June 1, 1994, 4 p.m.–5 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee reviews quarterly, with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund.

If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full Commission and, if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will meet and discuss the trust fund balance for the post-1988 claims and the status of spending on the pre-1988 claims.

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Time: June 1, 1994, 4 p.m.–5 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Court of Federal Claims, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Subcommittee will meet and discuss recent update on the VAERS project.

Additionally, on June 2, following the meeting of the full Commission, there will be a meeting of one of the Commission's Working Subcommittees:

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines.

Time: June 2, 1 p.m.–3 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioner's attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and procedures used by the various parties involved in the VICP.

Agenda: To be determined.

Public comment will be permitted at the respective Subcommittee meetings before they adjourn in the evening; before noon and at the end of the full Commission meeting on June 1; and before noon and before they adjourn on the second day on June 2. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 8A–35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443–1533.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10 a.m. on June 1 and 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443–1533.

Agenda Items are subject to change as priorities dictate.

Dated: May 3, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–11066 Filed 5–6–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 17, 1994, in the Crystal Ballroom of the Hyatt Hotel, 1 Bethesda Metro Center, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, telephone (301) 496–0545, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11025 Filed 5–6–94; 8:45 am]

BILLING CODE 4140–1–M

National Cancer Institute; Meeting of the Frederick Cancer Research and Development Center Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Frederick Cancer Research and Development Center Advisory Committee, June 13–14, 1994, Building 549, Executive Board Room, NCI Frederick Cancer Research and Development Center, Frederick, Maryland.

This meeting will be open to the public on June 13 from 8:30 a.m. to approximately 10:30 a.m. to discuss administrative matters such as future meetings, budget, and informational items related to the operation of the NCI Frederick Cancer Research and Development Center. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 13 from approximately 10:30 a.m. to recess and on June 14 from 8:30 a.m. to adjournment for discussion of the previous site visit recommendations for the Chemistry of Carcinogenesis Laboratory under contract with Advanced BioScience Laboratories-Basic Research Program (ABL–BRP) and site visit review of the ABL–BRP Mammalian Genetics Laboratory.

These discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the Contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9906, Tel. (301) 496–5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research and Development Center Advisory Committee, National Cancer Institute Frederick Cancer Research and Development Center, P.O. Box B, Frederick, Maryland 21702–1201, Tel. (301) 846–1108, will furnish substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Cedric Long, Tel. (301) 846–1108 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1102 Filed 5–6–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 27–28, 1994, at the Executive Plaza North Building, Conference room G, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public from 9 a.m. to 10 a.m. on June 27 to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 27 from 10 a.m. to recess and on June 28 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9903, Tel. (301) 496–5708, will provide a summary of the meeting and roster of the committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Contracts Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 601C, 9000 Rockville Pike, Bethesda, Maryland 20892–9903, Tel. (301) 496–7030, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Alma O. Carter on (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93–394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11022 Filed 5–6–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health National Cancer Institute; Meetings of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on May 31 and June 1, 1994. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Dr. Marvin R. Kalt, Executive Plaza North, room 600A Bethesda, MD 20892; (301) 496–5147.

Dates of Meeting: May 31–June 1, 1994.

Place of Meeting: Building 31C, Conference Room 10.

Open: May 31—8 a.m. to approximately 12 noon.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: May 31—3 p.m. to recess.

Agenda: For review and discussion of individual grant applications.

Open: June 1—8 a.m. to adjournment.

Agenda: Policy and Scientific Presentations, subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Cherie Nichols, Building 31, room 11A19 Bethesda, MD 20892; (301) 496–5515.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference Room 8.

Open: 2 p.m. to 3 p.m.

Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Clinical Investigations Task Force.

Executive Secretary: Dr. Bruce Chabner, Building 31, room 3A52 Bethesda, MD 20892; (301) 496–4291.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference Room 8.

Open: Immediately following the recess of the NCAB's closed session.

Agenda: To discuss clinical investigational issues.

Name of Committee: Subcommittee for Special Priorities.

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48 Bethesda, MD 20892; (301) 496–5534.

Date of Meeting: May 31, 1994

Place of Meeting: Building 31C, Conference Room 9.

Open: 2 p.m. to 3 p.m.

Agenda: To discuss issues related to special priorities.

Name of Committee: Subcommittee on Information and Cancer Control.

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892; (301) 496–6631.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference Room 9.

Open: 1 p.m. to 2 p.m.

Agenda: To discuss cancer control issues.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300 Bethesda, MD 20892; (301) 496–8537.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference 8.

Open: 1 p.m. to 2 p.m.

Agenda: To discuss the cancer centers.

Name of Committee: Subcommittee on Environmental Carcinogenesis.

Executive Secretary: Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496–6618.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference 9.

Open: Immediately following the recess of the NCAB's closed session.

Agenda: To discuss environmental carcinogenesis.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1994

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11023 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting: National Digestive Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on June 6, 1994 from 8:30 a.m. until 4 p.m. The focus of the morning portion of the meeting will be devoted to discussion of recommendations from "The Role of Transjugular Intrahepatic Portal-Systemic Shunt" (TIPS) conference. The Board will also hear follow up reports on other issues including the impact of Health Care Reform, the Clinical Trials Program, and patient and professional educational activities. This meeting will be open to the public and will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Ms. Tommie S. Tralka, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, two weeks prior to the meeting. In addition, her office will provide a membership roster of the Board and an agenda and summaries of the actual meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11026 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Health

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 3, 1994. The meeting will be held at the National Institutes of Health, Federal Building, Conference Room B-19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11027 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Meeting

Notice is hereby given of a change in the agenda of the meeting of the National Advisory Neurological Disorders and Stroke Council (NINDS) on May 26-27, 1994, published in the **Federal Register** on April 15, 1994 (59 FR 18141).

The scientific presentation by an NINDS intramural scientist and the Director of the NIH Office of Alternative Medicine will not be reported. The agenda will include a report by the Acting Director, Division of Extramural Activities, NINDS, and a presentation by an NINDS grantee.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11024 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

[GN # 2241]

National Vaccine Advisory Committee (NVAC), Subcommittee on Future Vaccines; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing for the forthcoming meeting of the Future Vaccines Subcommittee of the National Vaccine Advisory Committee.

DATES: *Date, Time and Place:* June 3, 1994, at 9 a.m. to 5 p.m., Maryland Conference Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, HHH Building, room 730E, 200 Independence Avenue, SW., Washington, DC 20201, (202) 401-8141.

AGENDA: OPEN PUBLIC HEARING: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee. Because of limited seating, those desiring to make such presentations should make a request to the contact person before May 27, and submit a brief description of the information they wish to present to the Subcommittee. Requests should include the names and addresses of proposed participants. A maximum of 10 minutes will be allowed for a given presentation, but the time may be adjusted depending on the number of persons presenting. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the Chairperson's discretion.

OPEN SUBCOMMITTEE DISCUSSION: The Subcommittee is charged with developing guidance that will lead to the development, licensure, and best use of existing and new vaccines in the simplest possible immunization schedules. The discussions will include the desirable scope, focus, organization, outcome, presentation, and timing of its deliberations.

A list of Subcommittee members and the charter of the NVAC Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: April 26, 1994.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 94-11099 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[GN# 2240]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 51 FR 39424, October 28, 1986) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

FDA proposes to revise the substructure of the Office of Legislative Affairs within the Office of External Affairs. The purpose of the revisions to the substructure is to organize around program areas rather than the current oversight and legislative functional areas to increase the efficiency of FDA's legislative and oversight support on issues that pertain to specific programs including biologics, drugs, and devices; and provide the appropriate specialization that is required to more effectively perform these functions.

Under section HF-B, Organization:

1. Delete subparagraphs (d-1) Oversight and Investigations Staff (HFADA) and (d-2) Legislation and Special Projects Staff (HFADB) in their entirety and insert the new subparagraphs (d-1) Congressional Affairs Staff I (HFADA), (d-2) Congressional Affairs Staff II (HFADC), and (d-3) Special Projects Staff (HFADD) under paragraph Office of Legislative Affairs (HFAD) under Office of External Affairs (HFAQ) reading as follows:

Congressional Affairs Staff I (HFADA). Serves as the Agency focal point with Congress, the Department, PHS, and other agencies on all congressional and legislative issues and activities as they pertain to the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, the National Center for Toxicological Research, and cross-cutting Agency organizational components and issues.

Coordinates and prepares Agency responses to congressional and legislative inquiries and other sensitive correspondence on various issues that affect the Agency including proposed legislation, oversight, investigative, and constituent matters.

Initiates, coordinates, and provides in-depth analyses of Agency legislative needs and proposed and pending legislation by preparing supporting documents, legislative proposals, and position papers for the Commissioner, Deputy Commissioners, other Agency officials, Congress, and OMB.

Develops and coordinates testimony for the Agency and the Department for presentation to congressional committees; monitors hearings; and edits transcripts of Agency testimony.

Provides information on the Agency's legislative programs and proposals to consumers and regulated industry.

In collaboration with other FDA and Department offices, initiates and conducts appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Congressional Affairs Staff II (HFADC). Serves as the Agency focal point with Congress, the Department, PHS, and other agencies on all congressional and legislative issues and activities as they pertain to the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health.

Coordinates and prepares Agency responses to congressional and legislative inquiries and other sensitive correspondence on various issues that affect the Agency including proposed legislation, oversight, investigative, and constituent matters.

Initiates, coordinates, and provides in-depth analyses of Agency legislative needs and proposed and pending legislation by preparing supporting documents, legislative proposals, and position papers for the Commissioner, Deputy Commissioners, other Agency officials, Congress, and OMB.

Develops and coordinates testimony for the Agency and the Department for presentation to congressional committees; monitors hearings; and edits transcripts of Agency testimony.

Provides information on the Agency's legislative programs and proposals to consumers and regulated industry.

In collaboration with other FDA and Department offices, initiates and conducts appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Special Projects Staff (HFADD). Coordinates studies and investigations of Agency components that are conducted by outside organizations including the Office of Technology Assessment (OTA), Congressional Research Service (CRS), and the General Accounting Office (GAO).

Monitors all GAO/OTA activities regarding FDA.

Under Section HF-D, Delegation of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the Office of Legislative Affairs in effect prior to this date shall continue in effect in them or their successors.

Dated: April 12, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94-11098 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4210-04-P; MTM 80345]

Order Providing for Opening of Public Land in Yellowstone County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open land reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 255-2829.

SUPPLEMENTARY INFORMATION:

1. The following described lands have been reconveyed by exchange to the

United States pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716 from the State of Montana:

Principal Meridian, Montana

T. 1 S., R. 26 E.,
Sec. 23, NE¼SW¼, N½SE¼, SE¼SE¼.

Comprising 160.00 acres in Yellowstone County.

2. At 9 a.m. on July 15, 1994, the reconveyed lands described above will be opened to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 15, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. At 9 a.m. on July 15, 1994, the reconveyed lands described above will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: April 25, 1994.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

Distribution

Original and 2 copies to **Federal Register**.
SO Bulletin Board.
Phyllis Belcher, (MT–950), 4210–04, $125.00.
DM, Miles City.
AM, Billings Resource Area.
Honorable Marc Racicot, Governor of Montana, Helena, Montana 59601.
Montana Department of Fish, Wildlife and Parks,
Attn: James A. Posewitz, 1420 East Sixth Avenue, Helena, Montana 59620.
Yellowstone County Commissioners, Yellowstone County Courthouse, Billings, Montana 59101.

[FR Doc. 94–11074 Filed 5–6–94; 8:45 am]

BILLING CODE 4310–DN–P

Fish and Wildlife Service

Availability of a Draft Recovery Plan for *Platanthera praeclara* (Western Prairie Fringed Orchid) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for the threatened *Platanthera praeclara* (western prairie fringed orchid). This terrestrial orchid is currently known to occur in 74 populations in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, and the Canadian province of Manitoba on Federal, state, county, township, and private land. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 8, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, 55111–4056 (telephone: 612/725–3276). Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Platanthera praeclara (western prairie fringed orchid) is currently known to occur in the western Central Lowlands and eastern Great Plains of the United States (in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma) and the Interior Plains of south-central Canada (in Manitoba). Habitat includes fire- and grazing-adapted communities including unplowed, calcareous prairies and sedge meadows, old fields, and roadside ditches. The major threat to the species is the destruction of habitat for cropland. Habitat alteration due to land use practices (burning, grazing, and mowing) and hydrologic change (filling of wetlands) also adversely affects the species. Recovery efforts will concentrate on protecting and maintaining self-sustaining populations in habitat known to support extant populations in applicable physiographic regions of each state within the species' historical range. These actions include, but are not limited to: Identifying and searching potential habitat, maintaining habitat of known populations as native prairie, conducting appropriate research and monitoring, developing and implementing habitat management plans that sustain and enhance populations of the species, disseminating information about the species to a variety of audiences, and providing the highest level of legal protection appropriate for all populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1433(f).

Dated: May 3, 1994.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94–11082 Filed 5–6–94; 8:45 am]

BILLING CODE 4310-55-M

Availability of Final Environmental Impact Statement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a final Environmental Impact Statement for the proposed reintroduction of gray wolves to Yellowstone National Park and Central Idaho.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Project leader Gray Wolf EIS, Box 8017, Helena, Montana 59601 (406) 449–5202.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the above address. Copies of the final EIS have been distributed to public libraries throughout Wyoming, Montana, and Idaho, to federal, state, local, and tribal agencies, and organizations that commented on the draft EIS, and to individuals requesting copies. Copies of the EIS and copies of public comment on the draft EIS are also available for inspection at the U.S. Department of the Interior, Fish and Wildlife Service, Endangered Species/Ecological Service Offices in Helena, Montana, Boise, Idaho, and Cheyenne, Wyoming. Any comments on the proposal must be received no later than 30 days after the date of publication of the notice of availability of the EIS on the reintroduction of gray wolves to Yellowstone National Park and Central Idaho, by EPA in the **Federal Register**. No action will be taken on this proposal before 30 days following publication of the notice of availability of the EIS by EPA.

Dated: May 4, 1994.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–11132 Filed 5–6–94; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

[DES 94–22]

Gulf of Mexico Region; Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings for Proposed Central and Western Gulf of Mexico Sales 152 and 155, et al.

The Minerals Management Service has prepared a draft Environmental Impact Statement (EIS) relating to proposed 1995 Outer Continental Shelf (OCS) Oil and Gas Lease Sales 152 and 155 in the Central and Western Gulf of Mexico. The proposed Central Gulf Sale 152 will offer for lease approximately 30.9 million acres and the Western Gulf Sale 155 will offer approximately 27.9 million acres.

Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS–5034), 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana 70123–2394.

Copies of the draft EIS will also be available for review by the public in the following libraries:

Texas

Austin Public Library, 402 West Ninth Street, Austin
Houston Public Library, 500 McKinney Street, Houston
Dallas Public Library, 1513 Young Street, Dallas
Brazoria County Library, 410 Brazoport Boulevard, Freeport
LaRatama Library, 505 Mesquite Street, Corpus Christi
Texas Southmost College Library, 1825 May Street, Brownsville
Rosenberg Library, 2310 Sealy Street, Galveston
Texas State Library, 1200 Brazos Street, Austin
Texas A&M University, Evans Library, Spence and Lubbock Streets, College Station
University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin
The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson
Lamar University, Gray Library, Virginia Avenue, Beaumont
East Texas State University Library, 2600 Neal Street, Commerce
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches
University of Texas, 21st and Speedway Streets, Austin
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin
Baylor University Library, 13125 Third Street, Waco
University of Texas at Arlington, 701 South Cooper Street, Arlington
University of Houston-University Park Library, 4800 Calhoun Boulevard, Houston
University of Texas at El Paso, Wiggins Road and University Avenue, El Paso
Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene
Texas Tech University Library, 18th and Boston Streets, Lubbock
University of Texas at San Antonio, John Peace Boulevard, San Antonio.
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi

Louisiana

Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston
New Orleans Public Library, 219 Loyola Avenue, New Orleans
University of New Orleans Library, Lakeshore Drive, New Orleans
Louisiana State University Library, 760 Riverside Road, Baton Rouge
Lafayette Public Library, 301 W. Congress Street, Lafayette
Calcasieu Parish Library, 411 Pujo Street, Lake Charles
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux
University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette
LUMCOM, Library, Star Route 541, Chauvin

Mississippi

Harrison County Library, 14th and 21st Avenues, Gulfport
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula

Alabama

Auburn University at Montgomery, Library, Taylor Road, Montgomery
University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa
Mobile Public Library, 701 Government Street, Mobile
Montgomery Public Library, 445 South Lawrence Street, Montgomery
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores
Dauphin Island Sea Lab, Marine Environmental Science Consortium

Library, Bienville Boulevard, Dauphin Island
University of South Alabama, University Boulevard, Mobile

Florida

University of Florida Libraries, University Avenue, Gainesville
Florida A&M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee
Florida Atlantic University, Library, 20th Street, Boca Raton
University of Miami Library, 4600 Rickenbacker Causeway, Miami
University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville
St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg
West Florida Regional Library, 200 West Gregory Street, Pensacola
Florida Northwest Regional Library System, 25 West Government Street, Panama City
Leon County Public Library, 127 North Monroe Street, Tallahassee
Lee County Library, 3355 Fowler Street, Fort Myers
Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte
Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa
Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo
Selby Public Library, 1001 Boulevard of the Arts, Sarasota
Collier County Public Library, 650 Central Avenue, Naples
Marathon Public Library, 3152 Overseas Highway, Marathon
Monroe County Public Library, 700 Fleming Street, Key West.
Environmental Library, Sarasota County, 7112 Curtiss Avenue, Sarasota

In accordance with 30 CFR 256.26, the Minerals Management Service will hold public hearings to receive comments and suggestions relating to the draft EIS for Sales 152 and 155 from individuals, public and private groups, and Government agencies. The hearings will provide the Secretary of the Interior with information from interested parties which will help in the evaluation of the potential effects of proposed lease Sales 152 and 155.

In addition, the hearings will serve as an early opportunity for helping to determine the scope of significant issues related to the development of a draft EIS for the next proposed lease sales in the Gulf of Mexico Region, Sales 157 and 161. The hearings will provide information for the development of appropriate alternatives and mitigating measures, as well as to identify significant issues, to be considered in the draft EIS.

The hearings will be held on the following dates and times at the locations indicated:

June 13, 1994

Marriott International Airport Hotel, 18700 John F. Kennedy Boulevard, Houston, Texas, 7 p.m. to 9 p.m.

June 14, 1994

Austin Marriott at the Capitol, 701 East 11th Street, Austin Texas, 3 p.m. to 5 p.m. and, 7 p.m. to 9 p.m.

June 15, 1994

Mineral Management Service, Conference Room 111, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 1 p.m. to 3 p.m.

June 16, 1994

Ramada Airport Resort and Conference Center, 600 S. Beltline Highway, Mobile, Alabama, 7 p.m. to 9 p.m.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings may register the day of the hearing at the hearing sites beginning 1 hour prior to the hearing. Oral testimony should be limited to 10 minutes. Each hearing will begin at the specified time and will recess when all speakers have had an opportunity to testify. If there are no additional speakers, the hearing will adjourn immediately after the recess. An oral statement may be supplemented by a written statement which may be submitted to the presiding hearing official at the time of the oral presentation or by mail until July 28, 1994. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until July 28, 1994, and should be addressed to the Regional Director, Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Scoping comments on proposed Gulf of Mexico Sales 157 and 161 should be submitted by June 13, 1994, to the same address.

Dated: April 22, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 94–11071 Filed 5–6–94; 8:45 am]

BILLING CODE 4310–MR–P

Environmental Document Prepared for Offshore Storage and Treatment Vessel (OS&T) Abandonment Project on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the availability of environmental document prepared for the Santa Ynez Unit OS&T Abandonment Project on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following Santa Ynez Unit Development and Production Plan Modifications.

PARTIES: Exxon Company, U.S.A.

Activity	Location	Date
Abandonment and removal of offshore storage and treatment vessel (OS&T) and associated single-leg anchor mooring (SALM).	Santa Barbara Channel, Santa Ynez Unit, Lease OCS–P 0188.	5/94 through 9/94.

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EA's and FONSI's prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Office of Environmental Evaluation, Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Mail Stop 7300, Camarillo, California 93010, telephone (805) 389–7801.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals that relate to research and development of mineral resources on the Pacific OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: April 20, 1994.

Peter L. Tweedt,

Acting Regional Director, Pacific OCS Region.

[FR Doc. 94-10969 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32173 et al.]

Orange County Transportation Authority/Riverside County Transportation Commission/San Bernardino Associated Governments/San Diego Metropolitan Transit Development Board/North San Diego County Transit Development Board; Acquisition Exemption; The Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: By a separate decision in this docket, served April 7, 1994, the Commission, on its own motion, is: (a) exempting the acquisition by the San Bernardino Associated Governments (SANBAG) and the Orange County Transportation Authority (OCTA) of railroad property owned by Southern Pacific Transportation Company; and (b) granting these agencies exemptions from the Interstate Commerce Act concerning their operation of these properties. These exemptions are subject to the labor protection conditions described in the separate decision. The purpose of the exemptions is to facilitate the provision of rail mass transportation service by these agencies. The separate decision may be obtained as described below.

DATES: This exemption is effective on June 8, 1994. Petitions to stay must be filed by May 19, 1994. Petitions to reopen must be filed by May 30, 1994.

FOR ADDITIONAL INFORMATION CONTACT: Maynard Dixon (202) 927-5293 or Joseph Dettmar (202) 927-5660. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: As explained in the separate decision in this proceeding, we asserted jurisdiction over the transfer of these properties to another party, Los Angeles County Transportation Commission (LACTC), and exempted their operation in *Southern Pac. Transp. Co.—Aban.—L.A. County, CA*, 8 I.C.C.2d 495 (1992), *Reconsidered and Clarified*, 9 I.C.C.2d 385 (1993) (*Southern Pacific*). Without our knowledge, however, the transfers to LACTC were never consummated. Instead SANBAG and OCTA assumed LACTC's contractual rights to acquire and operate the properties. Exemptions for these agencies' acquisitions of the properties (in the place of LACTC) is justified for the same reasons given in *Southern Pacific*. Because an adequate record and explanation to support our exemptions were developed in *Southern Pacific*, we are not seeking additional comments here. As noted in the April 7, 1994 decision, these exemptions will be effective 30 days from the publication of this notice. SANBAG and OCTA had until May 7, 1994, to inform this Commission as to whether they wish to proceed with the exemptions.

For a copy of our separate decision in this proceeding, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721].

Decided: April 8, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11131 Filed 5-6-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Nashua Corporation, et al*, Civil Action No. 88-287, was lodged on April 13, 1994 with the United States District Court for the District of Delaware. This proposed consent decree would resolve this cost recovery action under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for the New Castle Abandoned Container Site, a warehouse facility in New Castle, Delaware, for a payment of $300,000 toward reimbursement of expenditures from the Superfund to conduct removal actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Nashua Corporation, et al*, DOJ Ref. # 90-11-3-300.

The proposed consent decree may be examined at the Office of the United States Attorney, Chemical Bank Plaza, suite 1100, 1201 Market Street, Wilmington, DE 19899; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202-264-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-10184 Filed 5-6-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer can, upon request, advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Departmental Management

Audit Resolution and Appeal Requirements

1225–0017

State or local governments; Businesses or other for-profit; Small businesses or organizations

222 respondents; 6.23 hours per response; 1,383 hours.

This information collection, 29 CFR part 96, is designed to provide a process for resolving the issues questioned in audits during the resolution process by recipients of Federal assistance and a standard method of appealing the grant or contracting officers final decision.

Extension

Pension and Welfare Benefits Administration

1210–0085

Recordkeeping

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

1 respondent; 1 hour per response; 1 total hour.

This class exemption permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plan.

Revision

Bureau of Labor Statistics

Consumer Expenditure Diary and Interview Survey

1220–0050

Questionnaires and Cover Letters CE–300, CE–301, CE–302, CE–302 Supp., CE–303 (L1–L6), CE–380, CE–383, CE–375, CE–801, CE–802, CE–803, CE–880, CE–875, CE–305, CE–900

Daily, Diary; Quarterly, Interview.

Requirements	Responses	Average time per respondents	Subtotal—burden hours
Reporting	45,386	1.0148	48,088
Recordkeeping	6,060	3.5	21,210
69,298 total hours.			

The Consumer Expenditure Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Extension

Departmental Management

Salary Offset

1225–0038

Individuals or households

Regulatory requirement	Respondents	Frequency	Average time per response
20 CFR 20.80	150	On occasion	1.25 hours.
20 CFR 20.81	150	On occasion	1.25 hours.
375 total hours.			

Information is collected from debtors to assist in developing whether an individual is actually indebted to the Department of Labor, and if so, indebted, to evaluate the individual's ability to repay the debt.

Reinstatement

Occupational Safety and Health Administration

Student Data Form

1218–0172; OSHA 182

Individual or households; State or local governments; Businesses or other for-profit; Small businesses or organizations 10,000 responses; 5 minutes per response; 830 total hours; 1 form.

The OSHA 182 will be used to collect information from OSHA Training Institute students on employer groups and emergency contact information. The information will be used in the event of an emergency situation arising; employer group data will be entered into the office computer for historical reporting purposes and could also be used as a check system for tuition collection purposes.

Signed at Washington, DC this 28th day of April, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–11124 Filed 5–6–94; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–027]

NASA Advisory Council; Task Force on Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Task Force on Shuttle-Mir Rendezvous and Docking Missions.

DATES: May 24, 1994, 9 a.m. to 3 p.m.; and May 25, 1994, 9 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, room 945, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT:

Mr. William L. Vantine, Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–1698.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the upcoming Shuttle-Mir missions from the following perspectives: training, operations, rendezvous and docking.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 3, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–11059 Filed 5–6–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ENDOWMENT ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on May 13–14, 1994 from 9 a.m. to 6 p.m. on May 13, 1994 and from 9 a.m. to 3:30 p.m. on May 14, 1994, in room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on May 13, 1994, from 9 a.m. to 6 p.m. and from 9 a.m. to 1:30 p.m. on May 14, 1994. Topics for discussion will include opening remarks; remarks by the Honorable Wilbur Smith, Mayor of Fort Myers, FL and member of the Conference of Mayors Arts Committee; an update on the President's Committee on the Arts and the Humanities; a Legislative Update; an update on Goals 2000 and related Education Legislation; a preliminary discussion of the FY 96 Budget; an Update on the Assessing Impact of Arts and Humanities on the National Information Infrastructure; and a Program and/or Guidelines and/or Application Review for the Arts in Education, State and Regional Arts Agencies, Local Arts Agencies, Presenting and Commissioning, International, and Literature Programs.

The remaining portion of this meeting on May 14, 1994 from 1:30 p.m. to 3:30 p.m., is for the purpose of reviewing nominations for the National Medal of Arts. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(6) and 9(B) of section 552b of Title 5, United States Code.

Also, in the course of application review, if it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Furhter information with reference to this meeting can be obtained from Ms. Karen Young, at 202/682–5570, Office of Public Affairs, National Endowment for the Arts 20506.

Dated: May 2, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11019 Filed 5–6–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Literature Advisory Panel (Translator Fellowships Section) to the National Council on the Arts will be held on June 14–15, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on June 14, 1994 and from 9 a.m. to 5 p.m. on June 15, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 5 p.m. on June 15, 1994 for a guideline review, a policy discussion, and updates, review and discussion regarding the Literature Field Overview Study.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on June 14, 1994 and from 9 a.m. to 2:30 p.m. on June 15, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: April 26, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11020 Filed 5–6–94; 8:45 am]

BILLING CODE 7537-01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene its next regular meeting of the Advisory Committee on Medical Uses of Isotopes (ACMUI) on May 19 and 20, 1994. The Meeting was noticed in the **Federal Register** on April 26, 1994. In accordance with Subsection 10(d), of the Federal Advisory Committee Act, Public Law 92–463AA, a portion of this meeting may be closed to protect the privacy of a physician whose training and experience will be reviewed by the ACMUI in connection with the physician's application to be an authorized user under a license authorizing medical use of byproduct material.

The description of the discussion of inadvertent administration to the wrong patient in the Federal Register Notice of April 26, 1994, is clarified to provide notice that this discussion will include patient notification following misadministration.

During the discussion of Efficacy of Quality Assurance Requirements for Brachytherapy, the staff will invite comments on the significance of fractionation of high-dose-rate brachytherapy.

DATES: The closed portion of the meeting will begin at 4:30 p.m., May 19, 1994.

ADDRESSES: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–503–3417.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Act (5 U.S.C. App); and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated: May 3, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–11122 Filed 5–6–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 64th meeting on Tuesday and Wednesday, May 17 and 18, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Tuesday, May 17, 1994—8:30 a.m. until 6 p.m.

Wednesday, May 18, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Tectonics of the Proposed Yucca Mountain Site*—Discuss research and technical assistance being performed by the NRC staff and the Center for Nuclear Waste Regulatory Analyses related to the tectonics of the Yucca Mountain site.

B. *Natonal Academy of Science's Panel on the Technical Bases for Yucca Mountain Standard*—Hear a report from a member of ACNW who attended an April 28–29, 1994 meeting of the Academy's Panel to update the Committee on current progress.

C. *Preparation of ACNW Reports*—Prepare ACNW reports on issues considered during this and previous meetings.

D. *Future Activities*—Discuss topics proposed for consideration by the full Committee on working groups.

E. *New Members*—Discuss matters related to the appointment of new members, and organizational and personnel matters related to the ACNW members and ACNW staff. Portions of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

F. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The ACRS Office is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the ACRS Office as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive

Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: May 3, 1994.

John C. Hoyle,

Advisory Commitee Management Officer.

[FR Doc. 94–11123 Filed 5–6–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33993; File No. SR–Amex–93–15]

Self-Regulatory Organizations; Order Granting Partial Permanent Approval to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the After-Hours Trading Facility

May 2, 1994.

I. Introduction

On April 21, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to request permanent approval of the Exchange's After-Hours Trading ("AHT") facility.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33802 (March 22, 1994), 59 FR 14690 (March 29, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Amex requests permanent approval of its After-Hours Trading ("AHT") facility.[3] The Commission's order approving the Exchange's AHT facility contained a two-year "sunset" provision.[4] The Commission several times extended the "sunset" date for the AHT facility, most recently until April 30, 1994.[5] During the pilot period, the Amex submitted periodic monitoring reports on its AHT facility.[6]

In August 1991, the Commission partially approved the Exchange's AHT facility on a temporary basis. Under the current Amex AHT facility, members and member organizations ("members"), not including specialists,[7] enter both proprietary and agency orders in any Exchange-traded equity security (*e.g.*, stocks, rights, warrants, American Depositary Receipts ("ADRs"), and equity derivative products)[8] for execution at the Exchange's last closing regular way price.[9] Specifically, commencing at 4:15 p.m.,[10] single-sided round lot orders can be entered through the PER system[11] or left with the specialist or his or her authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price, *i.e.*, the last price at which the equity traded on the Exchange during the normal 9:30 a.m. to 4 p.m. trading session. In addition, coupled buy and sell round lot, odd lot, and partial round lot orders can be entered through PER or left with the specialist or his or her representative for execution at 5 p.m. against each other at the Exchange's last regular way price.[12]

Members are also able to designate good 'til cancelled ("GTC")[13] limit orders entered during the 9:30 a.m. to 4 p.m. trading session as eligible for execution during the after-hours session. Such orders are identified as "GTX," indicating that after the close of the normal trading session, those that are executable at the Exchange's last closing regular way price will migrate to the after-hours facility for possible execution. Only unconditioned round lot and partial round lot limit orders are allowed to be designated as GTX; any market, stop, stop limit, or odd lot orders so designated will be rejected. For purposes of execution during the after-hours session, GTX orders have priority over all other single-sided closing-price orders, and, among themselves, retain the same priority as they had on the specialist's book. Members are permitted to designate GTC orders transmitted both through PER and manually to the specialist during the regular trading session as eligible for after-hours execution.

Eligible orders may be entered and cancelled until 5 p.m. However, the AHT session is not available for any issue that remains halted as of the close of the regular trading session. Similarly, trading in the after-hours session may not take place if a market-wide "circuit breaker" trading halt remains in effect at the close of the regular trading session. In addition, if at any time between 4 and 5 p.m. the Exchange determines, based on news or other events, that the AHT facility should not be available for a particular issue, a notice of such determination will be disseminated through a Common Message Switch ("CMS") broadcast and over the Consolidated Tape System ("CTS") high-speed line and low speed ticker, and all single-sided and coupled closing-price orders in that issue will be considered cancelled. GTX orders which had migrated to the after-hours session will be returned to the specialist's book, where they will remain the same priority among themselves as they had originally.

After commencement of the AHT session, employees of the specialist unit "strip their racks," or remove from their limit order books, all GTX orders executable at the Exchange's last closing regular way price. Single-sided and coupled closing-price orders transmitted through PER will print out at the specialist post continuously until 5 p.m., during which time members are also able to manually delivery such orders to the post. Specialists or their employees match GTX and single-sided closing-price buy and sell orders on a first-in, first-out ("FIFO") basis and set them aside for execution at 5 p.m.[14] In the event of cancellations, the specialists or their employees will re-match the remaining orders to ensure that they retain their FIFO priority.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Concurrently with this order, the Commission is also permanently approving related proposals submitted by the New York Stock Exchange, Inc. ("NYSE"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Stock Exchange, Inc. ("PSE"), relating to their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR–NYSE–93–50; BSE–93–24; SR–CHX–93–23; SR–Phlx–94–8; and SR–PSE–94–2.

[4] The Commission partially approved the Exchange's AHT facility in 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991). The Commission subsequently approved extensions of the Exchange's AHT facility. See Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) and 33561 (February 1, 1994), 59 FR 5789 (February 8, 1994) (order granting partial accelerated approval to File No. SR–Amex–93–15).

[5] See Release Nos. 33561 and 32363, *supra* note 4.

[6] See letters from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Louis A. Randazzo, Attorney, Derivative and Exchange Oversight, SEC, dated March 14, 1994; to Diana Luka-Hopson, Branch Chief, SEC, dated September 30, 1993; and to Diana Luka-Hopson, Branch Chief, SEC, dated May 21, 1993.

[7] The Commission is not approving the portion of the proposed rule change which allows specialists to participate in the AHT facility by entering proprietary or customer orders.

[8] The Commission notes that the term "equity derivative products" in the context of this rule filing is limited only to products that may be derivative of another equity security and eligible for routing through the PER system. It does not include standardized options, such as options on individual stocks or on indexes of securities, such as Amex's Major Market Index ("XMI").

[9] The Amex's proposal changes existing Amex rules and adopts a new "1300 series" of rules that apply solely to the after-hours facility (Rules for After-Hours Trading Facility").

[10] The 15-minute interval between the close of the normal trading session and the commencement of the after-hours facility will allow Exchange systems sufficient time for switch-over to the operations necessary for the after-hours facility.

[11] The Amex's Post Execution Reporting Service ("PER") electronically routes market and limit orders in equity securities to the applicable specialist post.

[12] A member is not permitted to enter coupled buy and sell orders if both are for accounts in which any member, or an associated person, has a direct or indirect interest.

[13] A GTC order is an order to buy or sell which remains in effect until it is either executed or cancelled. Amex Rule 131(j).

At 5 p.m., all matched GTX and single-sided closing-price orders are executed by the specialists, with reports of execution being delivered to the entering members (either though PER or manually, depending on how the order was entered). Any unmatched, and therefore unexecuted, single-sided closing-price order is reported back as such to the entering firm. Any unexecuted portion of a GTX order is returned to the specialist's book, maintaining its priority, and may therefore participate in the next day's normal trading session, unless cancelled beforehand. Coupled closing-price orders, if not cancelled, are also executed at 5 p.m.

After 5 p.m., there are separate prints for each issue that participated in the after-hours session: The first representing the aggregate number of shares of the issue that was traded through single-sided (including GTX) orders, and the second representing the aggregate number of shares traded through coupled orders. The latter will be printed as a "sold" sale to ensure that the price of coupled orders is not selected as the day's consolidated closing price or used as the basis for the next day's Intermarket Trading System ("ITS") pre-opening application.

III. Discussion

After careful consideration, the Commission believes that the portion of the Amex proposal establishing an after-hours session which would enable members, not including specialists, to enter both proprietary and agency orders in any Exchange-traded equity security, including stocks, rights, warrants, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price, is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges. For these reasons and for the reasons set forth below and in the approval orders for the Amex pilot,[15] the NYSE pilot,[16] and the NYSE order granting permanent approval of its OHT facility also being approved today,[17] the Commission finds that permanent approval of the Amex's AHT trading session, as originally adopted without specialist participation, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[18]

In its most recent monitoring report, the Amex stated that, in 1993, 57 trades having a volume of 611,300 shares were traded during the Amex AHT session. From September 1993 through February 1994, a total of 51 firms entered orders in the AHT session. Data submitted in the monitoring reports does not indicate that the AHT trading session had any effect on volatility, quote spreads or block trading during the last hour of the regular trade session.

The Amex proposal is substantially similar, and a reasonable competitive response, to the NYSE's Crossing Session I.[19] By allowing members to enter single-sided and coupled orders into an after-hours facility,[20] as well as permitting the migration of certain limit orders (GTX orders) from the regular 9:30 a.m. to 4 p.m. trading session for possible execution in the after-hours facility, the Exchange is providing a benefit to investors who wish to participate in an after-hours trading session. The AHT facility also is a mechanism for maintaining the Amex's individual marketplace on a competitive level with the NYSE and the regional exchanges.

The Commission believes that, although Amex specialists will know which limit orders are designated "GTX" and will manually execute matched GTX and one-sided orders, they should not be able to use this information to their own advantage because specialists will be prohibited from entering orders into the after-hours facility. The Commission expects that the Amex will monitor carefully the execution of GTX, single-sided and coupled orders to ensure that Amex specialists are not taking unfair advantage of this information.[21]

The Commission believes that the AHT facility provides benefits to the marketplace generally, and is reasonably consistent with the maintenance of fair and orderly markets. The AHT facility retains some features of an auction market system in that it is a limited purpose facility designed to bring buyers and sellers together with the benefits associated with exchange trading and maintains priority rules for migrated limit orders.[22] With respect to price discovery, the Commission notes that the Amex closing price has been determined by auction market trading during the regular trading session.[23]

The Commission expects that the Amex, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the after-hours facility. Specifically, the Commission expects the Amex to monitor closely the trading of equity derivative products in the after-hours facility to ensure that trading in these issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Moreover, the Commission expects the Amex to keep the Commission apprised of any technical problems which may arise regarding the operation of the after-hours facility.

IV. Conclusion

Based on the foregoing, the Commission finds that permanent approval of the AHT facility is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[24] that the portion of the proposed rule change (SR-Amex-93-15) establishing an after-hours trading facility in which members, not including specialists, may enter both proprietary and agency orders in Exchange-traded equity securities for execution at the Exchange's last closing regular way price, is hereby approved.

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[14] As noted above, GTX orders will have priority over single-sided closing-price orders entered after commencement of the after-hours session.

[15] See AHT Approval Orders, *supra* note 4 for a complete description of the Amex AHT facility and the Commission's rationale for approving the proposal on a pilot basis. The discussions in those orders are incorporated by reference into this order.

[16] See Securities Exchange Act Release No. 29237 (May 24, 1991) (order approving File Nos. SR-NYSE-90-52 and SR-NYSE-90-53)

[17] See Securities Exchange Act Release No. 33992 (May 2, 1994).

[18] 15 U.S.C. 78f and 78k-1 (1988).

[19] For a description of NYSE Crossing Session I, *see* Release No. 29237, *supra* note 16.

[20] But see limitation on member orders described in note 14, *supra*.

[21] The Amex requested and received an exemption from Rule 10a-1 under the Act to permit, subject to certain conditions, short sales of certain orders during the AHT sessions without complying with the "tick" provisions of the Rule, and interpretive advice under Rule 10b-18 under the Act to permit issuers to purchase their securities in the AHT sessions. See letter from Larry E Bergmann, Associate Director, Division of Market Regulation, Commission, to Scott I. Noah, Assistant Vice President, Amex, dated August 5, 1991

[22] See *supra* note 14

[23] The Commission continues to believe that, in the event that multiple, comparable after hours trading systems develop, resolution of intermarket issues would be the equal responsibility of all marketplaces offering those sessions

[24] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11033 Filed 5–6–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–33991; File Nos. SR–CHX–93–23; SR–BSE–93–24; SR–PSE–94–2; SR–Phlx–94–8]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Pilot Programs Providing Price Protection of Limit Orders Executable After the Close of Regular Trading Hours

I. Introduction

The Chicago Stock Exchange, Inc. ("CHX"), Boston Stock Exchange, Inc. ("BSE"), Pacific Stock Exchange, Inc. ("PSE"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Regional Exchanges") have filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to request permanent approval of their respective pilot programs relating to price protection of limit orders.[3]

The proposed rule changes were published for comment in Securities Exchange Act Release Nos. 33798 (March 22, 1994), 59 FR14693 (March 29, 1994); 33800 (March 22, 1994), 59 FR 14691 (March 29, 1994); 33799 (March 22, 1994), 59 FR 14697 (March 29, 1994); and 33801 (March 22, 1994), 59 FR 14700 (March 29, 1994). No comments were received on the proposals. This order grants permanent approval to the pilot programs.

II. Description of the Proposal

The Regional Exchanges request permanent approval of their respective pilot programs relating to price protection of limit orders based on after-hours prints in a primary market.[4] The pilot programs require Exchange specialists to provide primary market protection for those limit orders entered during an Exchange's primary trading session which are designated as executable after the close of the regular Exchange auction market trading session, known as "GTX" orders ("good until canceled, executable in the afternoon session").[5]

III. Discussion

The Commission finds that permanent approval of the Regional Exchanges' respective pilot programs to provide price protection to limit orders executable after the close of regular trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposals are reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.[6]

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[7] Although the Regional Exchanges' programs do not establish after-hours sessions identical to that of the NYSE, the Commission believes that they provide a reasonable competitive response. By allowing GTX orders that would be executed on the NYSE and Amex to receive a similar fill on the Regional Exchanges, the programs provide a mechanism for maintaining each Regional Exchange's individual marketplace on a competitive level with the primary market.[8]

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[25] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The CHX originally submitted File No. SR–CHX–93–23 to request permanent approval of its pilot program relating to price protection of limit orders. On December 22, 1993, the CHX filed Amendment No. 1 to the proposal requesting that, in addition, the Commission approve a three month extension of its pilot program until April 30, 1994. *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated December 21, 1993.

[4] For a complete description of each Regional Exchange's pilot program, See their respective approval orders, *infra* note 5.

The Commission notes that the PSE, in an earlier proposed rule change (File No. SR–PSE–91–21) proposed to permit the creation and trading of a new type of order, one-sided ("OS") closing price orders for after hours trading. The proposed OS order is a "day limit order" entered for execution after 1 p.m. PT and eligible for execution as determined by the Exchange. The PSE has withdrawn the request for OS orders for after hours trading. See letter to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, from David P. Semak, Vice President, PSE, dated April 20, 1994.

[5] On June 13, 1991, the Commission approved, on a pilot basis, File Nos. SR–MSE–91–11 (in 1991, the CHX was named the Midwest Stock Exchange or MSE), SR–BSE–91–04, SR–PSE–91–21, and SR–Phlx–91–26, which amended the Exchanges' respective Rules relating to price protection of limit orders. See Securities Exchange Act Release No. 29297, 56 FR 28191 (June 19, 1991) ("MSE Approval Order"); Securities Exchange Act Release No. 29301, 56 FR 28182 (June 19, 1991) ("BSE Approval Order"); Securities Exchange Act Release No. 29305, 56 FR 28208 (June 19, 1991) ("PSE Approval Order"); and Securities Exchange Act Release No. 29300, 56 FR 28212 (June 19, 1991 ("Phlx Approval Order"). Additional approvals were granted in Securities Exchange Act Release Nos. 29543 (August 16, 1991), 56 FR 40929 ("Order approving File No. SR–PSE–91–28") and 29749 (October 4, 1991), 56 FR 50405 ("Order approving File No. SR–Phlx–91–32"). These pilot programs were established in response to the new after hours trading sessions established by the New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex"). The NYSE Off-Hours trading ("OHT") sessions extend the NYSE's trading hours beyond the 9:30 a.m. to 4:00 p.m. trading session. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR–NYSE–90–52 and NYSE–90–53), and Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (approving File No. SR–Amex–91–15). The Regional Exchanges' procedures provide primary market protection for customer GTX orders (good until cancelled, executable in the afternoon session) in securities listed both on the NYSE and on the Amex. The Commission several times approved extensions of all the pilot programs, most recently until April 30, 1994. *See* Securities Exchange Act Release No. 32365 (May 25, 1993), 58 FR 31560 (June 3, 1993) (order extending approval of File No. SR–BSE–93–10); Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) (order extending approval of File No. SR–Amex–93–19); Securities Exchange Act Release No. 32368 (May 25, 1993), 58 FR 31563 (June 3, 1993) (order extending approval of File No. SR–MSE–93–6); Securities Exchange Act Release No. 32367 (May 25, 1993), 58 FR 31570 (June 3, 1993) (order extending approval of File No. SR–PSE–93–6); Securities Exchange Act Release No. 32364 (May 25, 1993), 58 FR 31574 (June 3, 1993) (order extending approval of File No. SR–Phlx–93–16); Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993) (order extending approval of File No. SR–NYSE–93–23); Securities Exchange Act Release No. 33561 (February 1, 1994), 59 FR 5789 (February 8, 1994) (order extending approval of File No. SR–Amex–93–15); Securities Exchange Act Release No. 33562 (February 1, 1994), 59 FR 5792 (February 8, 1994) (order approving File Nos. SR–CHX–93–23; SR–BSE–93–18: SR–PSE–94–1; and SR–Phlx–94–7); and Securities Exchange Act Release No. 33563 (February 1, 1994), 59 FR 5795 (February 8, 1994) (order approving File No. SR–NYSE–93–51).

[6] As requested by the Regional Exchanges, the Commission has granted an exemption from Rule 10a–1 under the Act to permit short sales of GTX orders on the Exchanges without complying with the "tick" provisions of the rule, subject to certain conditions. See letters from Larry E. Bergmann, Associate Director, Division of Market Regulation, Commission, to William W. Uchimoto, General Counsel, Phlx, dated June 13, 1991; Daniel J. Liberti, Associate Counsel, MSE, dated June 13, 1991; Karen A. Aluise, BSE, dated June 13, 1991; and David P. Semak, Vice President, PSE, dated June 13, 1991.

[7] See Securities Exchange Act Release No. 29237, *supra* note 5.

The Commission believes that the Regional Exchanges' programs demonstrate the competitiveness of the U.S. securities markets. As a result, investors have new opportunities for trading. Moreover, the Commission believes that the increased competition that results from permitting Regional specialists to attract GTX order should enhance the quality of customer order execution. In addition, the Commission believes that the Regional programs are consistent with the maintenance of fair and orderly markets and contribute to the practicability of brokers achieving a best execution for customer orders. The programs achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. Additionally, since the parameters of the rule are expressed clearly in the text of the rule and do not disturb the priority rules currently in force at the Exchanges, the programs provide fair and reasonable procedures for the protection of limit orders.

Furthermore, the Commission believes that, although specialists will know which limit orders are designed "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. The programs consist of execution guarantee systems. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. The Commission expects, however, that the Exchanges will monitor carefully the execution of GTX orders to ensure that specialists are not taking unfair advantage of this information.

The Commission continues to expect the Regional Exchanges, through use of their surveillance procedures, to monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from these programs. In addition, the Commission continues to request that the Exchanges keep the Commission apprised of any technical problems which may arise regarding the operation of the programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[9] that the proposed rule changes (SR–CHX–93–23, SR–BSE–93–24, SR–PSE–94–2, and SR–Phlx–94–8) are hereby approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11030 Filed 5–6–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–33985; File No. SR–DTC–94–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Revised Fee Schedule for Services

May 2, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 1, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–94–03) as described in Items I, II, and III below, which items have been prepared primarily by DTC, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a revised fee schedule for DTC services.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which will be effective for services provided on and after March 1, 1994, is to adjust the fees charged for various services in order to bring the fees closer to, or to, their respective estimated service costs for 1994. Continuing DTC's annual practice to align service fees with estimated service costs, DTC's Board of Directors completed a review of DTC's estimated unit service costs for 1994 and adjusted many DTC service fees accordingly.

The 1994 fee schedule has been set to yield $10 million less in operating revenues during the twelve months it will be in effect than the 1993 fee schedule would have yielded. This will mark the eighth consecutive year in which DTC has not had to increase its schedule of service fees to users; moreover, for the fifth consecutive year a fee reduction will be implemented.

The proposed rule change is consistent with the requirements of the Act and in particular section 17A(b)(3)(C) of the Act[3] and the rules and regulations thereunder because fees will be more equitably allocated among DTC participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4[5] because the proposed rule change establishes a due, fee, or other change. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[8] The Commission's rationale for approving the proposals on a pilot basis is contained in the discussion section of the original approval orders. The discussions in those orders are incorporated by reference into this order.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The 1994 Revised DTC Service Fees schedule is set forth in its entirety in the Annex to Exhibit I in this filing, File No. SR–DTC–94–03.

[3] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(2) (1993).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–94–03 and should be submitted by May 31, 1994.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11031 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33981; File No. SR–GSCC–94–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing of Proposed Rule Change Relating to Minimum Financial Standards for Bank Netting System Members

April 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 18, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–94–03) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will lower the minimum shareholders' equity standard for GSCC bank netting system members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow GSCC to change the minimum shareholders' equity standard for bank netting system members. In 1989, prior to the commencement of GSCC's netting system, a minimum admission and continuance standard of $250 million in shareholders' equity was established for banks or trust companies ("banks") that are, or are applying to become, members of GSCC's netting system. This level was chosen because, at the time, it encompassed roughly the 100 largest banks in the United States and, thus, reflected GSCC's initial focus on providing its netting and attendant risk protection services to only the largest market participants.

As part of its ongoing process of consideration of how best to broaden access to its netting and risk management services in a prudent manner, GSCC has determined it appropriate to lower the minimum shareholders' equity standard for bank netting system members, so as to allow a greater number of banks that are active participants in the government securities market to receive the benefits of GSCC's services.

Specifically, the proposed rule change would lower the minimum shareholders' equity standard for bank netting members to $100 million. This standard would ensure that each bank netting member, while not necessarily among the largest banks in the country, is still a sizeable one.

In addition, GSCC would explicitly impose in its rules an additional standard on all bank netting system applicants and members; in particular, that their capital ratios (*i.e.*, total risk-based ratio, tier 1 risk based ratio, and tier 1 leverage ratio) meet the minimum levels specified by the applicable bank regulatory agency. In conjunction with this change, each bank netting member would be required to periodically report to GSCC each of its capital ratios for which its appropriate regulatory authority has established standards (or the capital ratios that it would be required to report to the Board of Governors of the Federal Reserve System ("Fed") if it were a Fed member bank). GSCC will routinely use such information on a bank netting member's capital ratios as a part of its ongoing surveillance of those members.

GSCC believes that since the proposed rule change allows GSCC to broaden access to its netting and risk management services so as to allow a greater number of banks and trust companies to receive the benefits of its services, it is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to GSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. GSCC members will be notified of the rule filing, and comments will be solicited, by a GSCC Important Notice. GSCC will then notify the Commission of any written comments received by GSCC regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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[6] 17 CFR 200.30–3(C)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) by order approve such proposed rule change or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–94–03 and should be submitted by May 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11032 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33992; File No. SR–NYSE–93–50]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Off-Hours Trading Facility.

May 2, 1994.

I. Introduction

On December 23, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to request permanent approval of the Exchange's Off-Hours Trading facility.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33803 (March 22, 1994), 59 FR 14694 (March 29, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE requests permanent approval of its Off-Hours Trading ("OHT") facility.[3] During the pilot, the NYSE submitted monitoring reports.[4] The Commission's order approving the Exchange's Off-Hours Trading facility contained a two-year "sunset" provision.[5] The Commission several times extended the "sunset" date for the Crossing Sessions I and II, most recently until April 30, 1994.[6]

The Exchange's OHT facility, consisting of Crossing Sessions I and II, extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session ("regular trading session"). Crossing Session I permits the execution of single-stock, single-sided closing-price orders and crosses of single-stock, closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock (portfolios of 15 or more securities) aggregate price buy and sell orders.

Crossing Session I accepts orders in a particular stock for execution at the last price at which the stock traded on the NYSE during the 9:30 to 4 session. Two different types of closing-price orders could be entered into, and executed in, Crossing Session I: (1) Single-stock, single-sided orders ("closing-price single-sided orders") in round lots of up to 99,900 shares only, including certain limit orders from the regular trading session; and (2) coupled single-stock orders (odd lots and partial round lots permitted), so long as both sides of such orders are not proprietary to members ("closing-price coupled orders").

Crossing Session I, which operates on each day that the Exchange is open, commences following the close of the regular trading session and ends at 5 p.m. Orders are executed at 5 p.m. Closing-price single-sided and coupled orders can be entered into the OHT facility only through the NYSE's Designated Order Turnaround System ("SuperDOT"), the Exchange's network of electronic order processing and post-trade systems. In addition, only NYSE-listed equity securities that have been designated by the Exchange and are not subject to a trading halt as of the close of the regular trading session may be entered into Crossing Session I.[7]

In addition to closing-price single-sided and coupled orders that are entered into the OHT facility after 4 p.m., certain limit orders that have migrated from the regular trading session would be able to participate in Crossing Session I. Members may designate unconditional round-lot limit orders entered during the regular trading session as "GTX" ("good 'til cancelled,[8] executable through crossing session") to enable the orders to be executed against closing-price single-sided orders during Crossing Session I.[9] When the NYSE closing price of a security is known, SuperDOT "sweeps" the specialists' limit order books for GTX orders that are at or better than the closing price and enters those orders into the OHT facility.[10]

Migrated GTX orders would retain the same priority among themselves as existed on the specialist's book, and would have priority over all closing-price single-sided orders. Closing-price single-sided orders would have priority based on the time of entry into the OHT facility. Traditional rules of priority or precedence based on price or size would not apply to transactions effected in Session I. Closing-price coupled orders would be executed without regard to the priority of other orders entered into the OHT facility and would not interact with the single-sided orders.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The NYSE also requested permanent approval of its pilot program for procedures regulating matched market-on-close orders ("MOC"). The Exchange subsequently withdrew the request for permanent approval of the matched MOC procedures. As a result, the matched MOC pilot expired on April 30, 1994. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Brandon Becker, Director, Division of Market Regulation, Commission, dated April 29, 1994.

[4] See letters from Catherine R. Kinney, Executive Vice President, Equities/Audit, NYSE, to Brandon Becker, Director, Division of Market Regulation, Commission, dated September 30, 1993 and March 15, 1994.

[5] See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) (File Nos. SR–NYSE–90–52 and SR–NYSE–90–53) ("OHT Approval Order").

[6] See Securities Exchange Act Release Nos. 33563 (February 1, 1994), 59 FR 5795 (February 8, 1994), and 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993).

[7] The Exchange has stated that any SuperDOT-eligible issue, including rights, warrants, and American Depositary Receipts, may be entered into the OHT facility.

[8] NYSE Rule 13 states that a good 'til cancelled (or "GTC") order to buy or sell remains in effect until it is either executed or cancelled.

[9] Orders for an account in which the specialist, the specialist's member organization, or any associated party has an interest may not migrate to the OHT facility. If GTX is appended to (i) any market, stop, or stop limit order; (ii) any odd-lot order; or (iii) any order entered during the OHT session, the system would reject it. Under the proposal, NYSE members would not have access to the closing-price order file nor would NYSE systems indicate to specialists whether limit orders would be eligible for Crossing Session I.

[10] Although the system would begin as soon as possible after the NYSE close by sweeping the limit order book for eligible GTX orders, as a practical matter, closing-price single-sided and coupled orders cannot be entered into the OHT facility until 4:15 p.m. in order to allow Exchange computer systems sufficient time to perform the mechanics necessary for commencement of the OHT facility.

Trading halts occurring during the regular trading session would affect trading in Crossing Session I. For instance, if a particular security is the subject of a trading halt at the end of the regular trading session, then Crossing Session I would not be available for that security that day. In addition, during the operation of Crossing Session I, the Exchange may announce that, as the result of news of a corporate development with respect to a particular security, it has determined to: (i) Return unexecuted GTX orders to the specialist's book, maintaining their priority; (ii) cancel all unexecuted single-sided or coupled orders in that stock; and (iii) preclude the entry of new closing-price orders into the OHT facility. Similarly, trading in Crossing Session I would not commence if market activity during the regular trading session were to trigger a market wide trading halt pursuant to NYSE Rule 80B, the circuit breaker rule,[11] and the trading halt was in effect at the close of the regular trading session.

At 5 p.m., both closing-price single-sided orders (including GTX orders) and closing-price coupled orders would be executed. Members may enter and cancel closing-price orders and GTX orders up until this time. Any closing-price single-sided orders not executed during Crossing Session I would expire; they would have to be re-entered to participate in the next day's opening. Unexecuted GTX orders would be returned to the book, maintaining their priority; therefore, they would participate in the next day's opening, unless cancelled prior to the opening by the entering broker. Closing-price coupled orders, which would be entered without the possibility of break-up, would be executed in full.

The NYSE implements trade reporting for Crossing Session I by reporting executions of closing-price single-sided orders and closing-price coupled orders at 5 p.m. over the high speed facility of the Consolidated Tape Association ("CTA") Plan and the low speed line as two transactions per stock—one for closing-price single-sided orders (and GTX orders) and one for closing-price coupled orders. Each print would include the closing price and aggregate volume for each stock. Closing-price coupled orders are printed as "sold" sales.

Crossing Session II, which occurs from 4 p.m. to 5:15 p.m., is an aggregate-price session that enables members to enter crosses of buy and sell program orders that include at least 15 NYSE-listed stocks having a total market value of $1,000,000 or more ("aggregate-price coupled orders"), and to effect their execution at an aggregate price.

Like closing-price single-sided orders and closing-price coupled orders, aggregate-price coupled orders could not be entered until after the close of the regular trading session. To participate in Crossing Session II, members transmit data regarding aggregate-price coupled orders to the Exchange via facsimile. Each side of the aggregate-price order entered on a coupled basis is executed against the other side without regard to the priority of other orders entered into the OHT facility. The facsimiles are time-stamped immediately and confirmed back to the entering brokers, thereby effecting continuous executions of aggregate-price coupled orders upon entry into the OHT facility.

The NYSE proposes to implement trade reporting for the aggregate-price session by reporting the total number of shares and the total market value of the aggregate-price trades. After 5:15 p.m., the NYSE would transmit the report over the high speed line as an administrative message.

A trading halt occurring during the regular trading session in one or more individual stocks would not affect the execution of aggregate-price coupled orders. Moreover, the unavailability of the OHT facility to one or more individual stocks due to post-4 p.m. corporate news would not affect the execution of aggregate-price coupled orders. NYSE Rule 80B, however, would have the same effect on Crossing Session II as it would have on Crossing Session I: a market-wide halt pursuant to Rule 80B that is still in effect at 4 p.m. would halt aggregate-price crossing.

III. Discussion

For the reasons discussed below, the Commission finds that permanent approval of the NYSE's OHT facility is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[12] and in particular, with the requirements of sections 6(b)(5) and 11A.[13] The Commission is approving the NYSE's OHT facility on a permanent basis because the Commission believes that the NYSE's OHT facility, comprised of Crossing Sessions I and II, is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system.[14]

There has been an increasing trend toward the internationalization of the securities markets and the development of 24 hour markets in which world class securities can be traded around the globe.[15] This has been accompanied by an increased desire among institutional investors to be able to trade U.S. stocks outside of regular trading hours. The NYSE has offered the OHT sessions in an effort to attract back to the U.S. order flow in NYSE listed securities that is being executed offshore.

In the Commission's order temporarily approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.[16] The Commission stated its belief that Crossing Session I would provide investors whose orders were not executed during the regular trading session with another opportunity to have their orders executed at the NYSE closing price. Crossing Session I also would provide investors the flexibility to decide whether they want a particular order to participate in this Session. With respect to good til cancelled ("GTC") orders entered for execution during the 9:30 a.m. to 4 p.m. trading session, a customer would have the option of deciding whether to designate that order as a GTX (good til cancelled. executable through crossing session) order, thus allowing the order to migrate to Crossing Session I for possible execution. In addition, a customer would have the option of cancelling any order entered into Crossing Session I at any time prior to its execution at 5 p.m. The benefits of Crossing Session I would accrue to both individual and institutional investors. Moreover, the Commission stated its belief that Crossing Session I may help recapture overseas order flow by enabling firms wishing to facilitate portfolio trading strategies involving small programs of stocks that are not eligible for Crossing Session II to achieve executions at the NYSE closing price.

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[11] NYSE Rule 80B provides procedures for a one-hour trading halt in the trading of all securities after a 250-point decline in the Dow Jones Industrial Average ("DJIA") and a two-hour trading halt after a 400-point decline.

[12] See OHT Approval Order, *supra* note 5 for a complete description of the NYSE OHT facility and the Commission's rationale for approving the proposal on a pilot basis. The discussions in those orders are incorporated by reference into this order.

[13] 15 U.S.C. 78f(b)(5) and 78k–1 (1988).

[14] As previously noted, the NYSE also requested permanent approval of the Exchange's market-on-close ("MOC") pilot program. The NYSE withdrew this request on April 29, 1994. Accordingly, the matched MOC pilot expired on April 30, 1994. See *supra* note 3.

Concurrently with this order, the Commission is also permanently approving similar proposals submitted by the Chicago Stock Exchange, Inc., the American Stock Exchange Inc., the Philadelphia Stock Exchange, Inc., the Boston Stock Exchange, Inc., and the Pacific Stock Exchange, Inc. See File Nos. SR–CHX–93–23; BSE–93–24; SR–Amex–93–15; SR–Phlx–94–8; and SR–PSE–94–2.

[15] *See* Division of Market Regulation, SEC, *The October 1987 Market Break*, at 11–1 to 11–2 (February 1988); *Report of the Presidential Task Force on Market Mechanisms*, at I–1 (January 1988). *See also* U.S. Congress, Office of Technology Assessment ("OTA"), *Trading Around the Clock: Global Securities Markets and Information Technology-Background Paper*, OTA–BP–CIT–66, (July 1990); U.S. Congress, OTA, *Electronic Bulls and Bears: U.S. Securities Markets and Information Technology*, OTA–CIT–469 (September 1990); and Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments*, at 29 (January 1994).

[16] *See* OHT Approval Order, *supra* note 5.

Similarly, the Commission stated its belief that Crossing Session II would benefit the investing public by offering members the opportunity to enter aggregate-price crossing portfolio orders with their customers after-hours to be executed against each other. The Commission recognized that Crossing Session II could help to recapture overseas trade of U.S. stocks by providing a mechanism by which portfolio trades arranged off the floor can be effected in an exchange trading system.

The OHT facility has proved to be successful during the pilot period. In its filing, the NYSE noted that in 1993, Crossing Session I averaged 175,000 shares per day and has averaged nearly 260,000 shares per day thus far in the fourth quarter of 1993. Members use Crossing Session I primarily for the execution of small, two-sided baskets which are ineligible for Crossing Session II and, most recently, for index rebalancing. Over 200 firms have received executions in Crossing Session I.

In addition, Crossing Session II has averaged approximately 3.9 million shares per day in 1993. To date, there have been 11 days where volume has exceeded 15 million shares, with the record being 57 million shares. The NYSE believes that Crossing Session II has successfully repatriated business from foreign after-hours markets; the Exchange's member firms have executed approximately 50 percent of all post-4 p.m. program trades in Crossing Session II.

Finally, data submitted by the NYSE in the monitoring reports does not indicate that trading in the OHT sessions has had any impact on volatility, spreads or block transactions during the last hour of the regular trading session.

Based on the above, the Commission believes that the NYSE's OHT facility has provided benefits to the marketplace. While the Commission recognizes that Crossing Session I is not a full auction market, the Commission believes it to be consistent with the maintenance of fair and orderly markets because it is a limited purpose facility designed to bring buyers and sellers together with the benefits associated with exchange trading. While it is not an auction market in terms of price discovery, the Commission notes that the NYSE closing price would not represent an artificial price, but rather a price that has been determined by auction market trading during the 9:30 a.m. to 4 p.m. trading session. Moreover, Crossing Session I also retains certain other characteristics of an auction market, such as maintaining auction priority rules for migrated limit orders. In addition, although Crossing Session II does not provide a traditional auction market for portfolio trades, the reality of the marketplace is that these portfolio trades currently are being effected off-exchange and, frequently, overseas. By bringing institutional trades that currently are being exported overseas within the purview of U.S. regulatory bodies, the marketplace generally benefits, for example, through Commission and Exchange oversight, trade reporting, and consolidated surveillance.[17]

In the original Approval Order the commission noted concerns about transaction reporting. The NYSE requested exemptive relief from the requirement of Rule 11Aa3–1(b)(2)(iv) under the Act that the NYSE disseminate on a consolidated basis trading volume for each of the component stocks traded in Crossing Session II. The Commission approved the exemption on a temporary basis but requested that the NYSE consider how to disseminate data on the volume of the individual stocks in the aggregate-price orders executed in Crossing Session II before the next day's opening. The NYSE has developed a plan under which the Exchange would collect the required trade detail information by T+3 and would publish this information on an aggregate stock basis in the Daily Sales Report on T+4. The Commission acknowledges that this plan would provide more information to market participants.[18] Nevertheless, the Commission believes the NYSE should continue to examine ways to report such information earlier.[19]

The Commission continues to expect the Exchange, through use of its surveillance procedures, to monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from these programs. In addition, the Commission continues to request that the Exchange keep the Commission apprised of any technical problems which may arise regarding the operation of the programs.

IV. Conclusion

Based on the foregoing, the Commission finds that permanent approval of the OHT facility is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[20] that the proposed rule change (SR–NYSE–93–50) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11029 Filed 5–6–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34000; File No. SR–NASD–93–61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Instituting Proceedings to Determine Whether to Disapprove Rule Change Relating to the SelectNet Service

May 3, 1994.

I. Introduction

On November 1, 1993, the National Association of Securities Dealers, Inc.

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[17] The Commission continues to believe that the issue of linkages between markets remains open, and that should multiple, comparable after hours trading sessions develop, the resolution of intermarket issues would fall equally upon all marketplaces offering such sessions.

[18] *See* letter from Katherine A. England, Assistant Director, Commission, to Catherine Kinney, Executive Vice President, NYSE, dated May 2, 1994.

[19] The NYSE also requested and received an exemption from Rule 10a–1 under the Act to permit, subject to certain conditions short sales of certain orders during the OHT sessions without complying with the "tick" provisions of the Rule; and interpretive advice under Rule 10b–18 under the Act to permit issuers to purchase their securities in the OHT Sessions. See letter from Larry E. Bergmann, Associate Director, Division of Market Regulation, Commission, to Catherine R. Kinney, Senior Vice President, NYSE, dated June 13, 1991.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1991).

("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to modify the operational features of the SelectNet service.[1] The NASD is proposing to install a price validation screen that will prohibit entry of orders into SelectNet priced away from the inside market on Nasdaq. If approved, the NASD will amend the SelectNet User Guide to clarify that orders entered into SelectNet during normal market hours (9:30 a.m. to 4 p.m.) will be prohibited by the system if the orders are priced outside the best bid or offer in the Nasdaq system, unless unusual market conditions, such as locked, crossed, one-side, or no-quote markets exist in a security.

Notice of the proposed rule change appeared in the **Federal Register** on November 9, 1993.[2] Three comments opposing the NASD's proposal were received in response to the Commission release. The substance of these comments is discussed in detail below.

II. Description of SelectNet's Prohibition Against Entering Orders Outside the Inside Nasdaq Market

In response to the difficulties experienced in the Nasdaq market during the market break of October 1987, the NASD developed an auxiliary service, the Order Confirmation Transaction Service ("OCT"), to process orders during market extremes by providing an alternative method of negotiating trades when traditional telephone negotiation is difficult or infeasible. The Commission originally approved OCT in January 1988.[3] OCT, renamed SelectNet in 1990, currently operates from 9 a.m. to 5:15 p.m. Eastern Time,[4] and increases communications capacity by enabling eligible firms to enter electronic messages. SelectNet supports the continuous, orderly operation of the Nasdaq Stock Market during difficult or unusual market conditions. Since in inception, the NASD has enhanced SelectNet in an effort to provide greater flexibility in the automated execution of orders and to facilitate market maker's and order entry firms' (collectively referred to as "participants") use of SelectNet.[5]

The service currently allows participants to broadcast orders to all market makers in a security or direct order to a specific market maker. In addition, market makers can broadcast to all participants watching a particular security (a feature known as "all call"). To enter an order in SelectNet, a participant enters the normal trade information (*i.e.*, security symbol, side, size, and price). In addition, the participant may provide that an order or counter-offer will be in effect for anywhere from 3 to 99 minutes, specify a day order, or indicate whether price and/or size are negotiable or whether a specific minimum quantity is acceptable.[6] Participants may accept, counter or decline a SelectNet order. In the event that a participant elects to counter an offer, the service allows negotiations to be conducted between the participants by exchanging counter-offers until an agreement is reached.

A. The NASD's Basis for the Prohibition

The NASD seeks to amend the SelectNet operating manual[7] to prohibit entry of orders in SelectNet priced outside the inside Nasdaq market during normal market hours (:30 a.m. to 4 p.m.), unless unusual market conditions, such as locked, crossed, one-sided, or no-quote markets exist in a security. The NASD had represented that it is proposing to prohibit entry of orders priced outside the inside Nasdaq market to eliminate a large number of what it believes to be erroneous transactions occurring through the service.

The NASD believes that these orders are put into SelectNet in two ways: (1) as errors, where the party intended to place the order at or within the inside bid and offer and mistyped the trade information into SelectNet, ignored the reverse colored warning screen and instructed the computer to override the warning, or (2) as a "concerted attempt to trick" recipients of the orders into executing obviously erroneous trades.[8]

In support of its position, the NASD included in its filing with the Commission part of the results of an analysis of SelectNet orders and trades during September 1993. According to the NASD, the analysis demonstrates that, on average, over 1,000 orders a day are placed in SelectNet at prices outside the inside Nasdaq market. According to the NASD, this resulted, on average, in more than 100 executions a day at prices the NASD has concluded, without input from the parties of the transactions, are erroneous and wholly unrelated to current market prices. The NASD further represented that during September 1993 it received, in total, 46 requests to reverse trades as clearly erroneous,[9] notwithstanding the daily average of 100 executions at prices outside the inside Nasdaq market.

Subsequently, the NASD provided the Commission with more specific information concerning the NASD's analysis of SelectNet orders and trades during September 1993.[10] This information indicated that during the month, 34,957 (on average, 1.665/day) orders were entered in SelectNet outside the inside Nasdaq Market and that 2,802 (on average, 133/day) of these orders were executed. In addition, this information indicated that during September 1993 the NASD received 44 requests to deem trades clearly erroneous where the trade occurred outside the inside Nasdaq Market. This information further indicated that the NASD granted 32 of these requests.

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[1] The NASD originally filed the proposed rule change on October 25, 1993 pursuant to section 19(b)(3)(A) of the Act. On October 29, 1993, the Commission issued an Order of Summary Abrogation abrogating the NASD's October 25th rule change. The Commission's Order of Summary Abrogation suggested that the procedures provided by section 19(b)(2) of the Act provide a more appropriate mechanism for determining whether the NASD's rule change is consistent with the Act. Thus, on November 1, 1993, the NASD refiled its rule change under section 19(b)(2).

[2] Securities Exchange Act Release No. 33141 (Nov. 3, 1993), 58 FR 59504 (Nov. 9, 1993).

[3] Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988) (order approving SelectNet, previously referred to as the Order Confirmation Transaction Service, on a Temporary accelerated basis). See also, Securities Exchange Act Release No. 25523 (Mar. 28, 1988), 53 FR 10965 (Apr. 4, 1988) (order extending temporary approval of SelectNet); Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988) (order granting permanent approval of SelectNet).

[4] Securities Exchange Act Release No. 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992).

[5] Securities Exchange Act Release No. 28636 (Nov. 21, 1990), 55 FR 49732 (Nov. 30, 1990).

[6] The identity of a participant entering an order is anonymous when broadcasting an order, unless the participant elects to identify itself; once the order is executed, each participant to the transaction learns of the identity of the other. In contrast, the recipient of a directed order is provided with the identity of the participant who sent the order.

[7] The current SelectNet rules are contained in the SelectNet User Guide, but are not included in the NASD Manual. See SelectNet User Guide (Nov. 1990). The NASD has represented that it will update these rules and submit, by March 31, 1994, a rule filing, pursuant to section 19(d) of the Act and Rule 19b–4 thereunder, to incorporate the SelectNet rules into the NASD Manual. Letter from Beth E. Weimer, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Jan. 14, 1994). To date, the Commission has not received this filing.

[8] For example, if the inside market in a Nasdaq security is 20 bid, 20¼ offer, and order entry firm may place an order to buy stock priced at 19⅛. According to the NASD, traders traditionally deal in fractions, frequently not even stating the integer amount of a price when transacting business over the telephone, and an order priced at 19⅛ could be read or interpreted as 20⅛. Thus, the market maker would accept the order, believing that it was executing an order priced within the spread, at 20⅛. Instead, the market maker would have executed the order a full point below the price it thought it was getting, and ⅞ of a point below the best bid.

[9] Letter from Robert E. Aber, Vice president and General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Jan. 14, 1994).

[10] Letter from Beth E. Weimer, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Mar. 7, 1994). In its letter to the Commission, the NASD requested confidential treatment of the information accompanying its letter. The NASD requested this treatment pursuant to 17 CFR 204.24b–2 and Exemption 4 of the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

B. Exceptions to the Prohibition

The NASD has determined to allow entry of orders on SelectNet outside the inside Nasdaq market under three circumstances. Any order entered during an exception period, described below, will remain active in SelectNet even after the exception period has passed.

1. Pre-Opening and Post-Closing Exception

Because the inside Nasdaq market during non-market periods might not reflect current market conditions and, therefore, may be one-sided or may simply reflect the closing bid and offer on Nasdaq, the prohibition of entering orders outside the inside Nasdaq market will only be in effect during normal market hours (*i.e.*, 9:30 a.m. until 4 p.m.)

2. Exception for Locked, Crossed, One-Sided Quote or No Quote Markets

If the market in a security becomes locked or crossed or experiences a one-sided quote or no quote, the NASD will allow entry or orders outside the inside Nasdaq market. In the event of these unusual market conditions, SelectNet will be programmed to lift the prohibition automatically for that security until the unusual condition no longer exists.

3. Exception for Emergency Conditions or Extraordinary Market Conditions

Under Article VII, Section 3 of the NASD By-Laws,[11] the NASD will retain authority to lift the prohibition during an emergency or when extraordinary market conditions exist.[12]

III. Comment Letters

The Commission received three comments letters in response to the NASD's proposed rule change.[13] Two of these commenters opposed approval of the NASD's proposed rule change. Without explicitly opposing the NASD's proposed change, the third commenter generally criticized the SelectNet Service and used its response to the NASD's filing to support its continuing contention that SelectNet is a "quotation driven trading system" rather than a communication system. The NASD responded to the issues raised by the commenters in a letter dated January 14, 1994.[14]

One commenter opposing the proposal argued that there are legitimate risk management and trading strategies that involve entering orders outside the inside Nasdaq market.[15] Another commenter opposing the proposal argued that entering orders outside the inside market is typical practice when dealing with large retail orders and during volatile market conditions.[16] This commenter took further exception with the NASD's assertion that it must review and reverse as clearly erroneous many of the orders executed outside the inside Nasdaq market, offering examples of instances where the NASD refused to reverse a trade executed outside the inside Nasdaq market. In addition, this commenter argued that the NASD's proposed prohibition is not necessary because SelectNet includes a feature that alerts participants who accept orders priced outside the inside market and requires confirmation of the participant's acceptance of such orders.

In response, the NASD acknowledged that legitimate bases exist for entering orders outside the inside Nasdaq market.[17] Nonetheless, the NASD has determined that on balance, the benefits of the prohibition outweigh the costs. The NASD argued that erroneous trades are costly to the industry and, when reported to the tape, mislead and confuse issuers and investors. Moreover, the NASD pointed out that the alternative of negotiating a trade outside the inside Nasdaq market over the telephone remains.

IV. Proceedings to Determine Whether to Disapprove SR-NASD-93-61 and Grounds for Disapproval Under Consideration

The NASD's proposal is presented as an effort to prevent market makers from inadvertently executing SelectNet orders at prices outside the inside market. Nevertheless, prohibiting the entry of SelectNet orders at prices outside the inside market may be neither the most effective means of accomplishing this objective nor the least restrictive. Accordingly, the Commission is interested in the reasons market participants may have for entering SelectNet orders outside the inside market, and whether there may be less restrictive means of preventing erroneous trades.

The Commission, therefore, is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of disapproval proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings, however, does not indicate that the Commission has formulated any conclusions with respect to any of the issues involved and the Commission seeks and encourages interested persons to comment on the proposed rule change. The sections of the Act applicable to the proposed rule change include:

- Section 15A(b)(6), which requires that the rules of a national securities association, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.
- Section 11A(a)(1)(B), which sets forth the Congressional finding that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

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[11] *NASD Manual*, By-Laws, Art. VII, Sec. 3, (CCH) ¶ 1132A.

[12] "Emergency conditions" include unexpected events such as a declaration of war, a presidential assassination or an electrical black-out. "Extraordinary market conditions" include market breaks (such as October 1987), market declines and any other occasions where the market is experiencing highly volatile trading conditions such that prompt intervention is necessary for the market's continued efficient operation. Securities Exchange Act Release No. 26072 (Sept. 12, 1988), 53 FR 36143 (Sept. 16, 1988) (order approving rule to provide the NASD Board of Governors and a proposed committee the authority to take action during an emergency or under extraordinary market conditions). See also, Securities Exchange Act Release No. 33292 (Dec. 6, 1993), 58 FR 65214 (Dec. 13, 1993) (NASD Policy Statement on Market Closings in the event of an emergency or extraordinary market conditions).

[13] Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange ("NYSE"), to Jonathan Katz, Secretary, SEC (Nov. 30, 1993). The NYSE's letter also referred to another pending NASD proposed rule change which would include exchange listed securities in SelectNet (File No. SR-NASD-92-16). The focus of the NYSE's letter concerned SR-NASD-92-16 and SelectNet in general.

[14] Letter from Robert E. Aber, Vice President and General Counsel, NASD, to Selwyn J. Notelovitz, Branch Chief, SEC (Jan. 14, 1994).

[15] Letter from Harold S. Bradley, Vice President and Director of Trading, Investors Research Corporation, to Jonathan G. Katz, Secretary, SEC (Dec. 8, 1993).

[16] Letter from Simon S. Kogan to Margaret McFarland, Deputy Secretary, SEC (Dec. 1, 1993).

[17] Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Selwyn Notelovitz, Branch Chief, SEC (Jan. 14, 1994).

- Section 11A(a)(1)(C), which sets forth the Congressional finding that it is in the public interest to assure economically efficient execution of securities transactions.
- Section 11A(a)(2), which directs the Commission to facilitate the establishment of a national market system for securities in accordance with the findings set forth in Sections 11A(a)(1) (B) and (C).

With respect to the proposal, the Commission specifically requests that commenters address, if applicable, the following items:

(a) The NASD acknowledges that legitimate bases exist for entering SelectNet orders at prices outside the inside market. These could include: (i) Communicating limit orders to market makers; (ii) negotiating large block transactions; (iii) obtaining executions in fast markets; or (iv) exploring the level of market interest at the prices quoted in Nasdaq. The Commission invites comment on the circumstances in which a market maker or customer would use SelectNet to enter orders outside the inside market.

(b) The NASD submitted data indicating that during the month of September 1993, although approximately 130 trades are executed daily (2,730 per month) through SelectNet outside the inside market, it received a total of only 44 requests to reverse trades as clearly erroneous and granted 32 of these requests. One commenter opposed to the proposal submitted copies of two NASD decisions upholding trades executed through SelectNet outside the inside market. As such, the Commission invites commenters to discuss whether such decisions reflect aberrations based on special circumstances or reflect legitimate use of SelectNet and of the Nasdaq market. The Commission also invites SelectNet users to discuss whether they cancel executions outside the inside by agreement with the other party (and therefore not reflected in the NASD's data) and/or if they choose not to cancel/seek reversal for other reasons (*e.g.*, determination that cancelling/reversing is not worth the administrative cost).

(c) The Commission invites suggestions for alternative means to prevent erroneous SelectNet executions, such as the development by member firms of facilities for preventing inadvertent executions.

(d) The extent, if any, to which investors may be confused by reports to the type of trades effected outside the inside Nasdaq market using SelectNet.

(e) The potential benefits of the proposal and whether those benefits outweigh any costs or burdens imposed on members and/or public customers.

(f) Order delivery systems exist in and among other markets. The rules of some of these systems, such as the Intermarket Trading System (ITS), prohibit limit orders and create a conclusive presumption that an order executed outside the inside bid or offer is an obvious error. Other systems, on the other hand, such as the New York Stock Exchange's SuperDot System, allow limit orders and have no restrictions on the price of orders. The Commission invites commenters to discuss the distinctions among these systems with respect to the issues raised by the NASD.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with the provisions of the Act and the rules and regulations thereunder, specifically sections 15A(b)(6), 11A(a)(1) (B), and (C). Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, arguments and data, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[18]

Interested persons are invited to submit written data, views and arguments regarding the proposed rule change by June 8, 1994. Section 19(b)(2) of the Act requires that proceedings to determine whether to disapprove a proposed rule change be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change, unless the Commission finds good cause to extend the time for the conclusion of such proceedings. To provide ample opportunity for commenters to submit views and for the Commission to give consideration of these views, the Commission finds good cause to extend the time for the conclusion of the proceedings.

Persons desiring to submit written data, views and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–NASD–93–61.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11075 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Collins & Aikman Group, Inc., 15% Subordinated Notes Due 1995; 11⅜% Usable Subordinated Debentures Due 1997; 7½% 10% Debentures Due 2005) File No. 1–6761

May 3, 1994.

Collins & Aikman Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Exchange, the Operating Committee of the Board of Directors of the Company ("the Committee"), pursuant to lawfully delegated authority, unanimously approved resolutions on February 15, 1994, to withdraw the Company's Debt Securities from listing on the PSE and to maintain its listing of the Debt Securities on the Amex. The decision of the Committee followed a study on the matter, and was based upon the belief that the listing of the Debt Securities on the PSE was no longer beneficial to the Company because:

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[18] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

> The Company undertook a study of the costs of its dual listing of the Debt Securities on the PSE and the Amex and determined that the continuance of such dual listing was no longer cost-effective in light of the absence of significant trading volume for the Debt Securities on the PSE, the presence of a substantial national and liquid market for these securities on the Amex and the continuing need for the Company to reduce the costs of doing business in the current competitive environment in which the Company operates.

The debt securities were originally listed on the PSE, in part, because the Company was headquartered in California, and had retail stores (Builders Emporium, Wickes Furniture, Orchard Supply Hardware, Mode O Day, Womens World, and Toy World) and manufacturing facilities located in California. Those operations have been closed or sold. The Company's remaining businesses are primarily located in the Southeast and, in 1993, the Company moved its headquarters to North Carolina. As a result, it feels that a PSE listing is no longer beneficial.

Any interested person may, on or before May 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-11077 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20266; File No. 812-8858]

John Hancock Mutual Variable Life Insurance Account UV, et al.

May 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: John Hancock Mutual Variable Life Insurance Account UV ("Variable Account UV"), John Hancock Variable Life Account V ("Variable Account V"), John Hancock Mutual Life Insurance Company ("John Hancock"), and John Hancock Variable Life Insurance Company ("JHVLICO"). (Variable Account UV and Variable Account V shall be referred to collectively as the "Variable Accounts"; the Variable Accounts, John Hancock, and JHVLICO shall be referred to collectively as the "Applicants.")

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act for exemptions from the following: those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e-2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c-1, and 27f-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to offer and sell certain multi-option variable life insurance policies (individually, the "Policy," collectively, the "Policies") that provide for the following: A death benefit which will not always vary based on investment performance; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of an administrative surrender charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard mortality risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables"); elimination of, or reduction in, front-end sales charges in certain cases; the holding of mutual fund shares funding the Variable Accounts in an open account arrangement, without a trust indenture and the use of a trustee; and a "free look" right which may provide for the return of amounts other than total premiums paid upon cancellation of a Policy.

FILING DATE: February 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the Secretary of the Commission, and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 27, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, John Hancock Place, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. An application very similar to this one was filed by Variable Account V, JHVLICO, and John Hancock on August 18, 1987 (File No. 812-6835). An order was granted by the Commission on December 29, 1987.[1] A second, very similar application was filed by Variable Account UV and John Hancock on June 3, 1993 (File No. 812-8426). An order was granted by the Commission on September 29, 1993.[2] Applicants are filing this new application because John Hancock and JHVLICO are proposing to issue a new form of Policy which contains changes in certain features of the policies described in those 1987 and 1993 applications. The changes relate principally to the forms of death benefit which may be elected by the Policy owner, the minimum premium requirements, the pricing of the Policy, and the elimination of certain Policy provisions relating to the use of any "excess value"[3] available under the

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[1] The original application was amended on November 12, 1987. The notice of the filing of the application was issued on November 30, 1987 (Investment Company Act Release No. 16152); an order was granted on December 29, 1987 (Investment Company Act Release No. 16197).

[2] Investment Company Act Release No. 19746 (Sept. 29, 1993).

[3] "Excess value" may result from favorable investment performance, the insurers' deduction of Policy charges at less than the maximum

Continued

Policy. In most other respects, the Policies retain the essential nature of the policies that were the subject of the 1987 and 1993 applications.

2. John Hancock is a mutual life insurance company chartered under the laws of Massachusetts in 1862. JHVLICO, a subsidiary of John Hancock, is a stock life insurance company organized under the laws of Massachusetts in 1979. (John Hancock and JHVLICO are sometimes referred to herein as the "insurers.")

3. The Board of Directors of John Hancock established Variable Account UV on May 10, 1993, pursuant to Massachusetts law. Each Variable Account is registered under the 1940 Act as a unit investment trust type of investment company. Variable Account UV and Variable Account V are separate investment accounts of John Hancock and JHVLICO, respectively, to which assets will be allocated from time to time to support benefits payable under each insurer's variable life insurance policies, including the Policies.

4. Variable Account UV and Variable Account V each consists of seven subaccounts (the "Subaccounts"), each of which will invest its assets in a different portfolio of John Hancock Variable Series Trust I (the "Fund"). Subaccounts may be added or deleted from time to time.

5. The Policy incorporates certain fundamental features characteristic of scheduled premium variable life insurance policies contemplated by Rule 6e–2, including a guarantee against lapse if specified required premiums are paid by their due dates.[4] In addition, Policy owners will have the options of:

(i) Making premium payments in excess of the required premiums, or

(ii) Omitting required premium payments due at any time when there is any excess value under the Policy.

6. The insurers will deduct a premium expense charge of 8.6% of each premium paid. This deduction is for sales expenses (5%) and state premium taxes (2.35%), and a federal deferred acquisition cost tax charge (1.25%).[5]

7. The insurers will waive a portion of the sales charge deducted from each premium paid on a Policy with a guaranteed death benefit of $250,000 or higher. The continuation of this waiver, however, is not contractually guaranteed, and the waiver may be withdrawn or modified by the insurers at any time. Moreover, because the initial guaranteed death benefit may be reduced after issue, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy. The deduction from premiums for sales expenses during any Policy year is limited to 5% of premiums paid in that year that do not exceed one year's required premium.

8. The insurers also will deduct a contingent deferred sales charge ("CDSC") upon surrender or lapse of a Policy during the first thirteen Policy years. The CDSC is a percentage of the lesser of (a) the total amount of premiums paid before the date of surrender or lapse or (b) the sum of the base policy premiums due on or before the date of surrender or lapse. Excess value may be withdrawn from the Policy without imposition of any CDSCs.

9. The maximum CDSC is an amount equal to 15% of the base policy premium for the first through sixth Policy years. The greatest CDSC will be applied to Policies that are surrendered or lapse at the end of Policy years six or seven. In the seventh through thirteenth Policy years, the CDSC decreases each Policy year until it is zero in and after the fourteenth Policy year.

10. A portion of the CDSC will be charged on a partial surrender of the guaranteed death benefit during the first thirteen Policy years.

11. The total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(13) for a conventional scheduled premium variable life insurance policy, and a Policy owner who surrenders his or her Policy or whose Policy lapses prior to the fourteenth policy year pays no more dollars in sales load than could be charged if the load were deducted entirely from premiums.

12. An issue charge will be deducted from account value on monthly anniversaries in twelve equal installments of $20 per Policy in the first Policy year. This charge is to help cover expenses incurred in connection with the issuance of the Policy, other than sales expenses. Such expenses include medical examinations, insurance underwriting costs, and costs incurred in processing applications and establishing permanent Policy records. This charge is not designed to yield a profit to Applicants.

13. An administrative surrender charge may be deducted if the Policy is surrendered or lapses in the first nine Policy years. This charge is to compensate partially for estimated administrative expenses such as the cost of collecting and processing premiums, processing applications, conducting medical examinations, establishing Policy records, determining insurability and assigning the insured to a risk classification, and issuing the Policy. These expenses exclude any costs properly attributable to sales or distribution activity.

14. The maximum administrative surrender charge is $5 per $1000 of the Policy's guaranteed death benefit if the lapse or surrender is in the first six Policy years, $4 per $1000 of its guaranteed death benefit if the lapse or surrender is in the seventh or eighth Policy years, and $3 per $1000 of guaranteed death benefit if the lapse or surrender is in the ninth Policy year. For insureds age 24 or younger at time of issue of a Policy, the charge will never exceed $200 and will be charged only in the first four Policy years.

15. Currently, the insurers do not intend to assess an administrative surrender charge with respect to a Policy of $250,000 or more of guaranteed death benefit at the time of surrender or lapse. Nor do the insurers currently intend to assess such a charge if a Policy of less than $250,000 of guaranteed death benefit is surrendered or lapsed after the fourth Policy year. The insurers currently intend to charge no more than $300 for a surrender or lapse in the first four Policy years of a Policy of less than $250,000 of guaranteed death benefit. These lower current charges may be withdrawn or modified by the insurer at any time.

16. A maintenance charge will be deducted from account value on each monthly anniversary at a rate of $6 (which monthly rate may not be raised to more than $8) per Policy. This charge is to help cover the ongoing costs of administering a Policy, and is not designed to yield a profit to Applicants.

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guaranteed rates, or the payment of premiums in excess of the required premiums.

[4] The required premiums are level until the insured reaches age 70. At that time, a "premium recalculation" is performed, if the Policy owner has not previously elected to have the premium recalculated. The premium recalculation may result in lower or higher subsequent required premiums.

In addition to the "base policy premium" under a Policy (i.e., an amount determined at Policy issuance based on the age, gender, and smoking status of the insured,) the required premium for each Policy year includes an additional amount if the insured is in a substandard risk category or if optional fixed insurance benefits have been added to the Policy by rider. Part of this additional premium will be collected by the insurers out of any premium payments which are paid during the year. The remaining additional premium will be deducted from cash value in equal monthly installments during the year.

[5] The deferred acquisition cost component of the premium expense charge will be deducted by Applicants in conformity with, and reliance upon, previously obtained exemptive relief. Investment Company Act Rel. No. 19868 (Nov. 24, 1993), 55 SEC Docket 1446 (Dec. 7, 1993) (File No. 812–8446).

17. Twenty-five dollars ($25) will be deducted from account value upon each withdrawal of excess value. This charge will be designed only to defray the estimated costs of effecting excess value withdrawals.

18. Each insurer will assess a daily mortality and expense risk charge at an effective rate of 0.6% per annum of the Variable Account assets attributable to the Policy. This charge is for the risk that insureds may live for shorter periods of time than estimated, and that costs of issuing and administering the Policies may be higher than estimated.

19. Each insurer will deduct cost of insurance charges from account value on each monthly anniversary of a Policy at rates that do not exceed those prescribed in the 1980 CSO Tables. Generally, the actual rates initially charged will be lower than the maximum guaranteed rates, and insureds in a non-smoker or preferred category will have more favorable cost of insurance rates than insureds in the standard risk classification.

20. The insurers also will charge lower current cost of insurance rates under a Policy with a current guaranteed death benefit of $250,000 or more. These lower cost of insurance rates are not contractually guaranteed, and may be changed or withdrawn by the insurers at any time.

21. The insurers reserve the right to make charges for federal, state, and local taxes. Fund investment advisory expenses and certain other operating expenses of the Fund are indirectly borne by Policy owners.

22. The insurers impose two death benefit guarantee risk charges:

(i) A monthly charge of up to $0.03 (currently $0.01) per $1,000 of guaranteed death benefit; and

(ii) Up to 3% (currently 1.5%) of the amount applied on a premium recalculation, where the new level premium is less than what it would have been had the Policy originally been issued without the premium recalculation feature. These charges compensate the insurers for the risk that they assume in guaranteeing death benefits under the Policies, including the risk that the account value will not be sufficient to support the guarantees.

23. Under the laws of some states, the insurers may now or in the future be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their "free look" right. In such cases, and under the terms of the Policy, the insurers will refund the sum of the account value as of the date the insurers receive the returned Policy, plus the sum of all charges deducted from premium payments and all other charges imposed on amounts allocated to the Variable Accounts.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to section 6(c) of the 1940 Act from: Those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e–2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c–1, and 27f–1 thereunder. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating To Definition of "Variable Life Insurance Contract"

1. Rule 6c–3 grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support variable life insurance policies. The exemptions provided by Rule 6c–3 are available only to registered separate accounts whose assets are derived solely from the sale of "variable life insurance contracts" that meet the definition set forth in Rule 6e–2(c)(1) or "flexible premium variable life insurance contracts" that meet the definition set forth in Rule 6e–3(T)(c)(1) under the 1940 Act, and from certain advances made by the insurer.

2. A "variable life insurance contract" is defined in Rule 6e–2(c)(1) to include only life insurance policies that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as premiums are duly paid in accordance with the terms of the policy.

3. At the time of application for a Policy, the owner may select from three death benefit options. One of the options is a variable death benefit which generally is equal to the sum of the guaranteed death benefit and any excess value. The remaining two options provide a level death benefit which generally is equal to the guaranteed death benefit.

4. The variable death benefit under the Policy will vary based upon investment performance to the extent that favorable investment performance creates excess value that is applied to increase the guaranteed death benefit. The death benefit under any Policy will vary with investment performance when the account value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit must be increased. This could happen, for example, because of very favorable investment performance, the payment of excess premiums, or both. Indeed, in anticipation of such variations, the Policy owner, by choosing among the available death benefit options, determines whether the "guideline premium and cash value corridor test" or the "cash value accumulation test" (as defined in each case in section 7702 of the Internal Revenue Code) will be used for this purpose.

5. Applicants submit that the death benefit under the Policy varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the death benefit under the Policy is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Policy contains other provisions that are not specifically addressed in Rule 6e–2. Accordingly, Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e–2(c)(1) and from all sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set froth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e–2, except as otherwise set forth herein.

6. Applicants submit that the definition of "variable life insurance contract" in Rule 6e–2(c)(1) was drafted at a time when all the variable life insurance policies then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e–2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such consideration depend on whether a scheduled premium policy also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants submit that, under the types of variable life insurance policies that have been issued in reliance on Rule 6e–2, the extent to which favorable

investment experience is used to increase death benefits rather than cash values differs considerably among the policies offered by different issuers. Applicants further submit that, under all policy designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the policy.

8. Applicants assert that, generally speaking, higher death benefits require higher cost of insurance deductions, which in turn result in lower cash values. Applicants submit that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance. Applicants represent that Policy owners can do this within the framework of the Policy by, for example, deciding which of the three available death benefit options to select.

9. Applicants further submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to each Variable Account and the Policy, and that the exemptions provided by these rules should be granted to Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

10. Applicants note that proposed amendments to Rule 6e–2 would amend Rule 6e–2(c)(1) to require only that the death benefit may vary based on investment performance.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that proceeds of all payments under a Policy be deposited in the appropriate Variable Account and that no payment be made from the Variable Account to either insurer or any affiliated person of either insurer, except for bookkeeping and other administrative services. Each insurer's imposition of a CDSC may be deemed inconsistent with the foregoing provisions, to the extent that the deduction would constitute payment for an expense not specifically permitted. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the CDSC to be deducted, as described herein, upon surrender (full or partial) or lapse of a Policy.

2. Section 2(a)(35) and Rules 6e–2 (b)(1) and (c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. Each insurer's deduction of a CDSC may be deemed inconsistent with these provisions. Applicants request exemptions from section 2(a)(35) and Rules 6e–2 (b)(1) and (c)(4), to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part as a CDSC.

3. Applicants submit that Rule 6e–2(c)(4) can be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring, in paragraphs (i) and (ii), for example, to other amounts that are not deducted from premiums.

4. Section 27(a)(1) and Rule 6e–2(b)(13)(i) may be construed to contemplate that the sales charge under the Policy will be deducted from premiums. Each insurers's deduction of part of its sales charge on a contingent deferred basis may be deemed inconsistent with the foregoing provisions, to the extent that the sales charge is deducted from other than premiums. Applicants request an exemption from these provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part to be deducted as a CDSC.

5. Sections 2(a)(32), 27(c)(1), and 27(d), in pertinent part, prohibit Applicants from selling the Policy unless it is a "redeemable security."[6] Rules 6e–2(b)(12), (b)(13)(iv), and (b)(13)(v) afford exemptions from section 27(c)(1), and Rules 6e–2(b)(13)(iv) and (b)(13)(v) afford exemptions from section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by Rules 6e–2(b)(12), (b)(13)(iv), and (b)(13)(v) may not contemplate a contingent deferred sales charge. Moreover, the insureds' deduction of the CDSC may be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the Variable Account's current net assets. Applicants request an exemption from the foregoing provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part to be deducted as a CDSC.

6. Applicants represent that Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than subsequently has been permitted. Because of these features, particularly premium flexibility, less than the full amount of required premiums may be paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e–2 apply under such circumstances, particularly with respect to a contingent deferred sales charge.

7. Applicants submit that the CDSC is similar to the "redemption" charge authorized in section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a redemption charge, which is expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

8. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for full or partial surrender and withdrawals of excess value. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her "proportionate share" of the Variable Account—*i.e.*, the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

9. Rule 22c–1, adopted pursuant to section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e–2(b)(12) affords exemptions from Rule 22c–1. Rules 22c–1 and 6e–2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. Each insurer's CDSC may be deemed inconsistent with section 22(c) and Rule 22c–1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the CDSC will not have the dilutive effect which Rule 22c–1 is designed to prohibit

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[6] Section 2(a)(32) offers the following definition of "redeemable security": "Any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled * * * to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

because a surrendering Policy owner would "receive" no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his Policy and after receipt of his request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, even if they could be so used, the CDSC would discharge, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Variable Account, and be available to earn a return for the Policy owner, will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(13) for a conventional scheduled premium variable life insurance policy; for a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from a Policy's premium payments. Third, the cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Variable Account reduces the amount at risk (i.e., the amount of death benefit less the account value) upon which the cost of insurance charge is based. Moreover, Applicants represent that the insurers' sales load structures provide equitable treatment to both surrendering and persisting Policy owners.

12. The CDSC, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the CDSC may not fall neatly within the literal pattern of all provisions discussed briefly above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e–2 would permit assessment of a sales charge on a contingent deferred basis, and that such charges also are authorized by Rule 6e–3(T) for insurance policies able to rely on that Rule.

13. Applicants represent that the insurers' respective percentages of sales load will never exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in section 27(a)(2), Rule 6e–2 (b)(13)(i) and (b)(13)(v).

14. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating To Collection of Administrative Surrender Charge

1. Applicants' deduction of the administrative surrender charge pursuant to the Policies may be deemed to violate sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c–1 for essentially the same reasons as the CDSC might be deemed to violate those 1940 Act provisions and rules. Applicants request exemptions from the foregoing provisions to the extent necessary to permit the deduction of the administrative surrender charge upon early surrender or lapse of a Policy.

2. Applicants submit that imposition of the administrative surrender charge is more favorable to Policy owners than a charge deducted entirely from premiums or from account value over the life of the Policy. The reduction of the owner's investment in the Variable Account is less than it would be were this charge taken in full in the first Policy year. This results in a larger account value initially earning a return for the Policy owner. For a Policy owner who does not lapse or surrender in the early Policy years, the total dollar amount of the charges for issuance and maintenance expenses is lower than the insurers would be permitted to deduct from premium payments or by way of periodic deductions from a Policy's account value. As to all Policy owners, the total dollar amount of the administrative surrender charge will be no higher than the insurers would be permitted to deduct if this charge were in the form of a deduction from premium payments and/or from account value prior to a Policy's lapse or surrender.

3. Applicants represent that this charge has not been increased to take account of the time value of money (i.e., the insurers' respective investment costs attributable to deferment of the charge) or the fact that not all Policy owners would incur the charge.

4. Neither insurer anticipates making a profit on the administrative surrender charge.

5. Administrative charges deducted in the form of a surrender charge are specifically permitted by Rule 6e–3(T) for variable life insurance policies offered and sold in reliance on that rule. Applicants submit that their requested relief with respect to the administrative surrender charge under the Policies is equally appropriate.

D. Request for Exemptions Relating To Deduction of Insurance Charges From Account Value

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act may be construed to prohibit the insurers from deducting certain insurance charges from the account value.[7] Applicants request exemptions from the foregoing sections and Rule 6e–2(b)(13)(iii)[8] to the extent necessary to permit deduction of certain insurance charges from account value, as described herein.

2. Applicants submit that deduction of cost of insurance charges from account value is fair and reasonable, and in accordance with the practice of most other variable life insurance policies. Applicants further submit that deduction of a portion of the charges for substandard risks and incidental insurance benefits from account value is also reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for the insurers to (a) reduce the premium flexibility under the Policy and/or (b) further limit the classes of insureds for whom the Policy will be available and limit or eliminate the kinds of rider benefits the insurers intend to make available.

3. Applicants submit that their methods of deducting insurance charges is not designed to yield more revenues than if these charges were assessed solely against premiums.

4. Applicants submit that Rule 6e–3(T) authorizes deductions from account value for all of these insurance charges in connection with policies eligible to

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[7] The insurers seek to deduct the following insurance charges from account value: cost of insurance charges; charges assessed for incidental insurance benefits or for substandard risk classifications; the charge deducted for the risk of guaranteeing the guaranteed death benefit; and the charges imposed for assuming the risk of the additional death benefit guarantees associated with certain required premium reductions as a result of premium recalculations.

[8] In pertinent part, Rule 6e–2(b)(13)(iii) provides an exemption from sections 26(a)(2)(C) and 27(c)(2), subject to certain conditions which Applicants represent that they satisfy.

rely on that rule, and that proposed amendments to Rule 6e–2 would authorize deductions from account value of this risk charges for guaranteed benefits.

5. Applicants submit that each insurer's method of deducting cost of insurance charges is fair and reasonable, and consistent with general industry practice.

6. Applicants submit that charges for substandard risks and incidental insurance benefits must be deducted from account value, as a practical matter.

7. Each insurer assesses two death benefit guarantee risk charges. These charges compensate each insurer for the risk it assumes in guaranteeing death benefits under the Policy, including the risk that the account value will not be sufficient to support the guarantees. Because of the Policy owner's flexibility with respect to the payment of premiums, the insurer's method of assessing the risk charges for the death benefit guarantees permits each Policy owner to pay charges more commensurate with the risks under his or her own Policy. Applicants submit that it is more appropriate and suitable to deduct those charges from the account value than from premiums, as deducting the charges from premiums would require Policy owners who pay more premiums to subsidize the guarantee risks assumed under the Policies of Policy owners who pay fewer premiums.

8. Each insurer represents that the level of the death benefit guarantee risk charges is reasonable in relation to the risks assumed by each insurer under the Policy. The methodology used to support this representation is an analysis of each insurer's mortality risks, taking into account such factors as each insurer's contractual right to increase insurance charges above current levels, the level of risk inherent in the various insurance benefits provided by the Policy and the possibility of "anti-selection" risks resulting from Policy owners' exercise of the various flexibility features under the Policy, all based on each insurer's experience with other insurance products. Each insurer undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

9. Each insurer further represents that there is a reasonable likelihood that the distribution financing arrangement of each Variable Account will benefit the Variable Account and Policy owners. Each insurer will keep and make available to the Commission on request a memorandum setting forth the basis of this representation.

10. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: Each Variable Account will invest only in management investment companies which have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 CSO Tables

1. Rule 6e–2(b)(1) makes the definition of "sales load" in Rule 6e–2(c)(4) applicable to the Policy. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from section 27(a)(1) to the extent that "sales load," as defined Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Table.

2. Rule 6e–2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and the assumed investment return specified in the Policy. Following the adoption of Rule 6e–2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables. The guaranteed cost of insurance rates under each insurer's Policy are based on the 1980 CSO Tables. Applicants request exemptions from section 27(a)(1) and Rules 6e–2(b)(1), (b)(13)(i), and (c)(4) to the extent necessary to permit cost of insurance to be calculated for purposes of testing compliance with the rule based on the 1980 CSO Tables.

3. Applicants represent that proposed amendment to Rule 6e–2 would permit use of either the 1958 or the 1980 CSO Tables for purposes of Rule 6e–2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under an insurance policy.[9]

4. Applicants represent that state insurance laws require that each insurer use 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the Policy.

5. Applicants further represent that cost of insurance charges based on the 1980 CSO Tables generally are lowered than those based on the 1958 CSO Tables, and that, for the most part, this results in lower charges and higher Policy values than if the charges are based upon the 1958 CSO Tables. Furthermore, Applicants assert that the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which they expect under the Policy.

F. Request for Exemptions Relating to "Stair-Step" Requirements

1. Section 27(a)(3) of the 1940 Act generally provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment and that the amount deducted from any subsequent payment cannot exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e–2(b)(13)(ii) grants an exemption from section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment, unless the increase is caused by the grading of cash values into reserves or reductions in the annual cost of insurance.

3. Applicants represent that section 27(a)(3) of the 1940 Act and Rule 6e–2(b)(13)(ii)—commonly referred to as the "stair-step" provisions—may be deemed inconsistent with deduction of a deferred sales charge. Moreover, Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than has been permitted subsequently. Because of these "flexibility features," particularly premium flexibility, more or less than the full amount of the required premiums may be paid on or before the relevant due dates. For these reasons, Applicants request an exemption from section 27(a)(3) and Rule 6e–2(b)(13)(ii) to the extent necessary to permit deduction of the front-end sales charge as part of the premium expense charge, and deduction of the CDSC on surrender or lapse of a Policy or partial surrender of the basic death benefit.

4. Applicants do not believe that either section 27(a)(3) or Rule 6e–2(b)(13)(ii) apply to deferred sales loads. In this regard, Applicants assert that both the statutory provision and the rule apply by their terms only to "amounts deducted from payments," and a

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[9] In addition, Applicants note that Rule 6e–3(T) requires that the 1980 CSO Tables be used for all policies offered in reliance on that Rule.

deferred sales load is not deducted from payments.

5. Applicants note that proposed amendments to Rule 6e–2 would modify the stair-step provisions to make them applicable to sales loads deducted other than from payments. Applicants assert that if a modification is necessary to apply these provisions to a deferred sales load, then without such modification the provisions should not apply.

6. Applicants represent that the CDSC (if calculated as a percentage of based policy premiums due to date) never increases from year to year; the total increase annually by 15% of one year's based policy premium in the early years and is reduced in later years. In no case is the percentage increase in the CDSC (if calculated as a percentage of one year's base policy premium) for any year greater than that for the previous year.

7. In addition, Applicants represent that each insurer will waive a portion of any sales charge otherwise deducted from premiums paid on a Policy with a guaranteed death benefit of at least $250,000. The continuation of this waiver is not contractually guaranteed, however, and the waiver may be withdrawn or modified by each insurer at any time. Because the waiver of the front-end sales charge applies only when the guaranteed death benefit is at least $250,000, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy. Because section 27(a)(3) and Rule 6e–2(b)(13)(ii) appear to prohibit this condition, Applicants request an exemption from those provisions to the extent necessary to permit them to waive the sales charge deducted from premiums under the circumstances described herein.

8. The insurers will not impose the 5% front-end sales charge upon the amount of any premium payments received in any Policy year that are in excess of the annual required premium for the year ("Excess Premiums"). Accordingly, the front-end sales charge may apply to some premium payments and not to others. Because section 27(a)(3) and Rule 6e–2(b)(13)(ii) appear to prohibit this, Applicants request an exemption from those provisions to the extent necessary to omit deducting any sales charge from Excess Premiums.

9. The insurers have designed the Policies so that they are "refund proof"—i.e., they never will require the repayment of any sales charges pursuant to Rule 6e–2(b)(13)(v)(A). The Policies would remain refund proof, and (subject to the exemptive relief requested in the application) would continue to comply with all of the other sales charge limitations and requirements in Rule 6e–2, even if the front-end sales charge were deducted from *all* premium payments. This front-end charge structure, however, also would be less favorable to Policy owners than that provided under the Policies.

10. The higher sales charge on the first required premium paid under a Policy in any Policy year, as compared with that imposed on Excess Premiums, in part reflects the fact that the insurers will incur lower overall distribution costs (e.g., commissions paid to sales persons) in connection with Excess Premiums over the life of the Policies. To impose the full 5% sales charge on Excess Premiums would generate more revenue than the insurers believe is necessary to adequately defray such expenses. Thus, Applicants' design provides a significant benefit to Policy owners by passing through to them a portion of the insurers' lower distribution costs with respect to Excess Premiums. Applicants submit that it would not be in the interest of Policy owners to require the imposition of a sales charge on Excess Premiums that is higher than Applicants deem necessary.

11. Applicants represent that the prospectus for the Policies will contain disclosure informing Policy owners how to minimize sales charge deductions from premiums paid.

12. Applicants assert that the stair-step requirements are designed to discourage unduly complicated sales load structures. Applicants submit that the sales charge design of the Policy is not unduly complicated and will be fully disclosed in the prospectus pertaining to the Policy.

13. Applicants submit that sales charges are not designed to generate more revenues from later payments than from earlier payments.

14. Applicants represent that the precise amount of sales load assessed depends on, among other things, the degree to which a Policy owner exercises the premium and other flexibility features of the Policy. The exercise of these features is within the sole control of the Policy owner. Applicants note that in amending Rule 6e–3(T), the Commission specifically indicated that sales charge policies underlying the stair-step requirement are not contravened by fluctuations in sales load which result from factors beyond the issuer's control. Applicants submit that this principle should be equally applicable in the present context.

G. Request for Exemptions Relating To Custodianship Arrangements

1. In pertinent part, sections 26(a)(1) and (a)(2) of the 1940 Act prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which each insurer and the applicable Variable Account invest.

2. In pertinent part, section 27(c)(2) of the 1940 Act may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e–2(b)(13)(iii) under the 1940 Act affords an exemption from sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that each insurer complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee or custodian for the Variable Account, and assuming that each insurer meets the other requirements set forth in the rule.

4. Applicants represent that the holding of Fund shares by each insurer and each Variable Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from those provisions, to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Variable Accounts, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the purchase and sale of such shares by separate accounts and generally saves costs.

6. Applicants note that, in contrast to the Policy (which is covered by Rule 6e–2), policies covered by Rule 6e–3(T) may rely on Rules 6e–3(T)(b)(13)(iii) (B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e–2(b)(13)(iii) to permit life insurers (such as the insurers) to hold the assets of a separate account without a trust indenture or other such instrument, and to permit a separate account organized as a unit investment trust (such as the Variable Accounts) to hold the securities of any registered investment company (such as the Fund) that offers its shares to the separate account in

uncertificated form. Applicants also note that the Commission has adopted Rule 26a–2 which affords exemptions in connection with variable annuity separate accounts that are essentially similar to those requested here. Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings, safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates.

7. Each insurer represents that: it will comply with all other applicable provisions of section 26 as if it were a trustee or custodian for its Variable Account (subject to the other exemptive relief requested in the application); it will file with the insurance regulatory authority of Massachusetts an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners—the most recent such statement indicated that each insurer has a combined capital and surplus of at least $1,000,000; it is examined from time to time by the insurance regulatory authority of Massachusetts as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemption Relating To "Free Look" Right

1. Section 27(f) of the 1940 Act provides that periodic payment plan certificate holders may, within a specified time period, surrender their certificates and receive the account value plus all deductions from gross purchase payments; Rule 27f–1 provides for notices in connection therewith.

2. Rule 6e–2(b)(13)(viii) provides an exemption from section 27(f) and Rule 27f–1, provided that the Policy owner has the right to:

(i) Return the Policy no later than 45 days after execution of the application for the Policy or, if later, within 10 days after receipt of the Policy or the notice of right of withdrawal by the owner; and

(ii) Receive a refund of all payments made thereunder.

3. Each insurer intends generally to comply with Rule 6e–2(b)(13)(viii), but anticipates that under the laws of some states, it may now or in the future be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their "free look" right.

4. Applicants assert that section 27(f) presumes that the security owner will bear any investment gains and losses during the "free look" period, and that Rule 6e–3(T)(b)(13)(viii) would permit each insurer's proposed "free look" procedures for a policy relying on that Rule. Applicants also note that no state laws required return of account value pursuant to "free look" procedures at the time Rule 6e–2 was adopted, and that under the policy designs prevalent at time, the amount of investment depreciation or appreciation during the "free look" period was not likely to be great because premiums in excess of scheduled premiums were not permitted to be paid, and relatively large front-end charges reduced the amount initially allocated to the separate account. For these reasons, and because no state laws required "free look" right procedures when Rule 6e–2 was adopted, Applicants do not regard as particularly significant the failure of Rule 6e–2(b)(13)(viii) to authorize such "free look" procedures.

5. Applicants request an exemption from section 27(f) and Rules 27f–1 and 6e–2(b)(13)(viii) to the extent necessary to permit the "free look" procedures the insurers have prescribed for the Policies.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from (i) those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e–2 thereunder, other than sections 7 and 8(a), as well as (ii) sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f), and Rules 63–2 (b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c–1, and 27f–1, meet the standards of section 6(c) of the 1940 Act. The requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11034 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Sierra Health Services, Inc., Common Stock, $0.005 Par Value) File No. 1–8865

May 3, 1994.

Sierra Health Services, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on April 26, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before May 24, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11078 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Westamerica Bancorporation, Common Stock, No Par Value) File No. 1-9383

May 3, 1994.

Westamerica Bancorporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on March 24, 1994, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before May 24, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11076 Filed 5–6–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1999]

Advisory Committee on International Law; Renewal

The Department of State has renewed the Charter of the Advisory Committee on International Law. This advisory committee will continue to obtain the views and advice of a cross-section of the country's outstanding members of the legal profession on significant issues of international law. The committee's consideration of legal issues in the conduct of our foreign affairs provides a unique contribution to the creation and promotion of U.S. foreign policy. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

The committee consists of former Legal Advisers of the Department of State and not more than twenty individuals appointed by the Legal Adviser of the Department of State. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provide in the **Federal Register** at least 15 days prior to the meeting date.

For further information, please call: Bruce C. Rashkow, Assistant Legal Adviser for United Nations Affairs, (202) 647–6771.

Dated: April 18, 1994.

Conrad K. Harper,

The Legal Adviser.

[FR Doc. 94–11115 Filed 5–6–94; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 1998]

United States International Telecommunications Advisory Committee, Radiocommunication Sector Task Group 1/4; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Task Group 1/4, will meet on June 3, 1994, 1 p.m. to 4 p.m. in room 1605 at the U.S. Department of Commerce, Main Commerce Building, 14th St. and Pennsylvania Ave., NW., Washington, DC.

In November 1993, the International Telecommunication Union's (ITU) Radiocommunication Assembly adopted a resolution "* * * to develop guidance for an informal exchange of information through electronic means to share spectrum management information". In Decision ITU–R 2/1, Study Group 1 decided to (i) establish Task Group 1/4; and (ii) designate Norbert Schroeder (USA/NTIA) as the Chairman. The work of Task Group 1/4 includes:

(i) An exchange of experiences in the development and implementation of existing electronic document exchange systems; and

(ii) The development of guidance for an informal exchange of information through electronic means to share spectrum management information.

This initial meeting of U.S. Task Group 1/4 will begin preparations for the international meeting scheduled for August 16–18, 1994. The issues mentioned above will be addressed as they apply to the United States.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Acting U.S. Representative Mr. Norbert Schroeder. Anyone planning to attend the meeting is requested to contact Mr. Schroeder no later than 5 days before the meeting, (i) by phone, 202 482–3999; (ii) by fax on 202 482–4396; (iii) on the NTIA bulletin board (dial in 202 482–1199 or Internet/telnet: ntiabbs.ntia.doc.gov); or (iv) Internet E–Mail (nschroeder@ntia.doc.gov).

Dated: April 21, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU Radiocommunication Sector.

[FR Doc. 94–11116 Filed 5–6–94; 8:45 am]

BILLING CODE 4710–45–M

TRADE AND DEVELOPMENT AGENCY

Public Information Collection Requirements Submitted To Office of Management and Budget for Review

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: The U.S. Trade and Development Agency (TDA) has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. chapter 35, section 3507).

FOR FURTHER INFORMATION CONTACT: David Denny, Trade and Development Agency, State Annex 16 room 309, Washington, DC 20523–1602, Tel. (703) 875–4142.

Copies of these submissions may be obtained from TDA's Information Officer, Carol Stillwell, SA–16, room 309, Washington, DC 20523–1602, Tel. (703) 875–4357.

Persons wishing to comment on these collections of information with suggestions for ways to reduce the burdens should also contact Jefferson Hill, room 3208, NEOB, Washington, DC 20503, Tel. (202) 395–7340.

Title: Evaluation of TDA World Bank Trust Fund Projects.

Action: New Request for OMB Approval.

Respondents: U.S. private consultants and World Bank officials.

Frequency of Response: One time only.

Estimated Annual Burden: 60 Respondents. One hour burden for 20 World Bank officials; One-half hour burden for 40 U.S. private sector officials; Total Annual Burden of 40 hours.

Needs and Uses: TDA is undertaking an evaluation of three funds that it has established at the World Bank. The funds are used by World Bank officials to hire U.S. citizens to assess potential projects. TDA has selected a contractor to survey World Bank loan officers and the U.S. consultants that were involved in TDA supported projects. The information gathered will help TDA develop guidelines and plans for similar future activities. The contractor and TDA estimate that there are 60 individuals (40 U.S. private consultants and 20 World Bank officials) who were involved in these activities.

Lisa DeSoto,

General Counsel.

[FR Doc. 94–11090 Filed 5–6–94; 8:45 am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94–10; Notice 2]

AC Cars Ltd; Grant of Petition for Temporary Exemption From Standard No. 208

AC Cars Ltd. of Weybridge, Surrey, England, petitioned for a temporary exemption until November 1, 1996, for its Ace model, from the automatic protection requirements of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition was that compliance would cause substantial economic hardship.

Notice of receipt of the petition was published on February 2, 1994, and an opportunity afforded for comment (59 FR 4964). This notice grants the petition.

Petitioner's Hardship Arguments

Under 15 U.S.C. 1410(a)(1)(A), the Administrator may provide a temporary exemption upon a finding that "compliance would cause substantial economic hardship and that the manufacturer has, in good faith, attempted to comply * * *."

The following is a summary of AC's petition. The company is privately owned and produced no motor vehicles during the 12 months preceding the filing of its petition. The first prototype of the Ace was shown in 1986. Since then, the company has spent much time redesigning it "to meet the increasingly higher standards of emissions and safety * * * with the original intentions of achieving first sales into North America." As of the date of the petition, the petitioner has spent approximately 5,000,000 Pounds Sterling on the project, 100,000 of which (and 1,250 man hours) have been spent in the two years preceding the filing of the petition in research and development relating to meeting the automatic restraint requirements of Standard No. 208. Because the Ace is a full convertible, the company found that it could not adopt an automatic seat belt system. Additional design changes, development and actual testing are necessary in order to install in the Ace an airbag system that meets Standard No. 208. Being a small manufacturer of motor vehicles, the petitioner has had to rely on the expertise of outside parties in the design and development of necessary components.

AC concluded that modifications of the following will be required to accommodate driver and passenger side airbag systems: interior dash and cockpit components, seats, steering wheel and chassis. The estimated cost of these modifications is 750,000 Pounds Sterling, exclusive of testing costs. The company's balance sheet shows that its cumulative losses, which were approximately 1,500,000 Pounds Sterling as of December 31, 1989, increased to approximately 4,275,000 Pounds Sterling as of September 30, 1993.

The company anticipates that it will be able to conform by November 1, 1996. It projects total sales of 200 units in 1994 and 350 in 1995, half of which are proposed for North American sales.

Arguments Why an Exemption Would be in the Public Interest and Consistent With Traffic Safety Objectives

In order to grant an exemption, the Administrator must also find that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act (the Act). In support of its petition, AC informed NHTSA that the Ace will be equipped with a three-point restraint system that conforms to Standard No. 208, "the mountings of which have been tested in accordance with and achieved FMV210 (sic) US standard approval." Further, except for the automatic restraint requirements, the Ace has been designed to meet all other Federal motor vehicle safety standards, and the bumper standard. It will be manufactured "using the following US sourced components: Ford engine, transmission, exhaust, wiring and associated components." According to the petitioner, "US parts sourcing and dealer network labor involvement is also in the best interest of the US economy."

No comments were received on the petition.

The agency is cognizant of the history of AC Cars Ltd., a manufacturer of ancient lineage whose production during the 70 years or so of its existence has been minimal, and, in the past decade, sporadic. The Ace is a refinement of a 1986 prototype which had not entered production as of the time that the company filed its petition. In spite of its cumulative net losses, AC has been able to engineer a passenger car that it avers is in compliance with all Federal motor vehicle safety and bumper standards with the exception of the standard for which it seeks temporary exemption. With respect to Standard No. 208, NHTSA is aware of the problems that small manufacturers have in interesting outside concerns to engineer and supply automatic restraint systems for unique vehicles of very limited production. AC appears to have determined the areas of its product that must be revised in order to conform to Standard No. 208, and to have established a schedule for achieving compliance. The Ace will be equipped with a three-point restraint system in each of its two designated seating positions. The decision to engineer for airbags appears particularly appropriate given the mandate that all cars be equipped with driver and passenger airbags and given the extra expense that would result from designing first for automatic belts and then for air bags. The car will utilize a US-manufactured drive train and other components.

Accordingly, it is hereby found that to require compliance would cause the petitioner substantial economic hardship and that the petitioner has made a good faith effort to comply with the standard for which exemption is requested. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of the Act. AC Cars Ltd. is granted NHTSA Temporary Exemption 94–3, expiring November 1, 1996, from S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Crash Protection.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on: May 3, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–11008 Filed 5–6–94; 8:45 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1251.
Regulation ID Number: PS–005–91 Final.
Type of Review: Extension.
Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.
Description: Section 1.613A–3(e)(6)(i) of the regulations requires each partner to separately keep records of the partner's share of the adjusted basis of partnership oil and gas property.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 1,500,000.
Estimated Burden Hours Per Recordkeeper: 2 minutes.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 49,950 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–11091 Filed 5–6–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0675.
Form Number: IRS Form 1040EZ.
Type of Review: Revision.
Title: Income Tax Return for Single and Joint Filers With No Dependents.
Description: This form is used by certain individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 21,755,603.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 minutes
Learning about the law or the form—44 minutes
Preparing the form—1 hour, 19 minutes
Copying, assembling and sending the form to the IRS—1 hour, 15 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 38,058,821 hours.

OMB Number: 1545–1045.
Form Number: None.
Type of Review: Reinstatement.
Title: Conducting 1994 Focus Group Interviews on Federal Tax Forms.
Description: Focus group interviews are necessary to obtain public input on a revised tax form. The results will be used to further simplify and improve the form so that taxpayers will understand it more easily.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,200.
Estimated Burden Hours Per Respondent:
Screening time—100 hours
Focus group session—180 hours
Frequency of Response: Other (one-time focus group review).
Estimated Total Reporting Burden: 280 hours.

OMB Number: 1545–1058.
Form Number: IRS Form 8655.
Type of Review: Revision.
Title: Report Agent Authorization.
Description: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns on magnetic tape, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized reporting agents. Reporting agents are persons or organizations preparing and filing magnetic tape equivalents of Federal tax returns and/or submitting Federal tax deposits.
Respondents: Businesses or other for-profit, Non-profit institutions, Small business or organizations.

Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000: hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–11092 Filed 5–6–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0097.
Form Number: None.
Type of Review: Extension.
Title: Customs Regulations Relating to Copyrights.

Description: Copyrights owners who choose to record a copyright with Customs for import protection must establish validity of the copyright, pay an administration fee, and provide samples and other information to aid Customs officers in identifying pirated copies.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 600 hours.

OMB Number: 1515–0174.
Form Number: None.
Type of Review: Extension.
Title: Electronic Entry Filing.

Description: This information collection permits qualified brokers, importers and service bureaus to file electronically through Automated Broker Interface (ABI) immediate deliver/entry and entry summary data.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours, 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 9,576 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–11093 Filed 5–6–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0085.
Form Number: PD F 5261.
Type of Review: Extension.
Title: Treasury Note or Bond Reinvestment Request.

Description: This form is used by owner, to have redemption proceeds of a security reinvested at maturity in a new security in the same form registration.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15,000 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–11094 Filed 5–6–94; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on October 22, 1993, (58 FR 203).

FOR FURTHER INFORMATION CONTACT: Carol A. Kummer, Office of Human Resources Management (053), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–4937.

VA Performance Review Board (PRB)

Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration (Chairperson)
Shirley Carozza, Deputy Assistant Secretary for Budget
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
C. Wayne Hawkins, Deputy Under Secretary for Health for Administration and Operations
Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity
Mary Lou Kenner, General Counsel
William T. Merriman, Deputy Inspector General
Roger R. Rapp, Director of Field Operations, National Cemetery System
John Vogel, Under Secretary for Benefits

Veterans Benefits Administration PRB

David A. Brigham, Director, Veterans Assistance Service (Chairperson)

Raymond H. Avent, Director, Eastern Area

J. Gary Hickman, Director, Compensation and Pension Service

Rhoda R. Mancher, Director, Office of Information Technology

Richard Peil, Jr., Deputy Chief of Staff, Office of the Secretary

David M. Walls, Director, Western Area

Veterans Health Administration PRB

John T. Farrar, M.D., Deputy Under Secretary for Health (Chairperson)

C. Wayne Hawkins, Deputy Under Secretary for Health for Administration and Operations (Co-Chairperson)

Bernice P. Dorse, R.D., Director, Dietetic Service

Barbara L. Gallagher, Regional Director, Eastern Region

Sanford M. Garfunkel, Associate Chief Medical Director (CMD) for Operations

Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary

DAvid H. Law, M.D., Acting Associate Deputy CMD for Clinical Programs

Richard P. Miller, Regional Director, Southern Region

Alline L. Norman, Associate CMD for Administration

Elizabeth M. Short, M.D., Associate CMD for Academic Affairs

Dennis H. Smith, Chief of Staff for the Under Secretary for Health

Nancy M. Valentine, Ph.D., R.N., Assistant CMD for Nursing Programs

Charles V. Yarbrough, Associate CMD for Construction Management

Thomas T. Yoshikawa, M.D., Assistant CMD for Geriatrics and Extended Care

Albert Zamberlan, Regional Director, Central Region

Office of Inspector General PRB

Milton M. Macdonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)

David A. Brinkman, Assistant Inspector General for Analysis and Follow-up, Department of Defense.

Sebastian R. Lorigo, Deputy Inspector General for Investigations, Department of Housing and Urban Development

Dated: April 29, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–11134 Filed 5–6–94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 88
Monday, May 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 9 a.m., Wednesday, May 18, 1994.

PLACE: Renoir Room, Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The staff briefing will consist of matters relating to:

1. Panel discussion regarding privatization of the RTB. Guest speakers scheduled include representatives from the National Telephone Cooperative Association (NTCA); United States Telephone Association (USTA); Rural Telephone Finance Corporation (RTFC); Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO); National Rural Telephone Association (NRTA); and CoBank.
2. Review of election procedures in connection with the upcoming Board of Directors election.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 10 a.m., Thursday, May 19, 1994.

PLACE: Williamsburg Room, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Approving the Minutes of the February 10, 1994, Board meeting.
3. Report on loans approved in the second quarter of FY 1994.
4. Report on requests for waiver of prepayment premium.
5. Review of financial statements for the second quarter of FY 1994.
6. Report of ad hoc committee on privatization of the RTB.
7. Report of ad hoc committee on prepayments, if necessary.
8. Consideration of RTB's 22nd Annual Report of the Board of Directors for FY 1993.
9. Consideration of resolution establishing the date of, and also scheduling various actions in connection with, the upcoming Board of Directors election.
10. Consideration of resolution to appoint Tellers to tabulate election results.
11. Consideration of resolution to replace lost stock certificate.
12. Establish date and location of the next regular Board meeting.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: May 5, 1994.

Wally Beyer,

Governor, Rural Telephone Bank

[FR Doc. 94–11295 Filed 5–5–94; 4:15 pm]

BILLING CODE 3410–15–P

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, May 11, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Five Gallon Buckets

The staff will brief the Commission on issues related to the safety of five gallon buckets.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 4, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–11303 Filed 5–5–94; 4:14 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 12, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Upholstered Furniture Petition FP 93–1

The Commission will consider options for Commission action on petition FP 93–1 from the National Association of State Fire Marshals requesting the development of a flammability standard for upholstered furniture.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: May 4, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–11302 Filed 5–5–94; 4:14 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME : May 11, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS : Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, May 11, 1994 Meeting, Regular Meeting (10:00 a.m.)

CAH–1.
  Project No. 2376–002, Appalachian Power Company
CAH–2.
  Project No. 2547–044, City of Swanton Village, Vermont
CAH–3.
  Omitted
CAH–4.
  Project No. 10078–011, Carl and Elaine Hitchcock
CAH–5.
  Project No. 10895–002, Michiana Hydro-Electric Power Corporation
CAH–6.
  Project No. 11038–004, County of Arapahoe and Town of Parker, Colorado
CAH–7.

Project Nos. 1835–094 and 103, Nebraska Public Power District

CAH–8.

Project No. 10900–003, Thomas Hodgson & Sons, Inc.

CAH–9.

Project No. 8800–021, Western Hydro Electric, Inc.

CAH–10.

Project No. 4017–041, Pittsburgh Water and Sewer Authority

Consent Agenda—Electric

CAE–1.

Docket No. ER94–209–000, Kentucky Utilities Company

CAE–2.

Docket No. ER94–1043–000, Virginia Electric and Power Company

CAE–3.

Docket No. ER94–1045–000, Kansas City Power & Light Company

CAE–4.

Docket No. QF93–129–001, Syracuse Power Company

CAE–5.

Docket Nos. ER92–595–000 and ER92–596–000, Pacific Gas and Electric Company

Docket No. ER92–626–000, Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company

CAE–6.

Docket No. ER94–1054–000, Carolina Power & Light Company

CAE–7.

Docket No. ER94–1074–000, New England Power Company

CAE–8.

Docket No. ER94–108–000, Heartland Energy Services, Inc.

CAE–9.

Docket No. ER93–940–000, Boston Edison Company

CAE–10.

Docket No. ER93–889–001, Citizens Utilities Company

CAE–11.

Docket No. EL89–44–003, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company

CAE–12.

Docket No. ER90–144–011, Northeast Utilities Service Company (Re: Public Service Company of New Hampshire)

CAE–13.

Docket Nos. ER94–504–001 and ER94–505–001, Public Service Company of Colorado

CAE–14.

Docket No. ER93–540–001, American Electric Power Service Corporation

CAE–15.

Omitted

CAE–16.

Docket Nos. EC92–21–004 and ER92–806–005, Entergy Services, Inc. and Gulf States Utilities Company

CAE–17.

Docket Nos. EL94–36–000 and QF84–256–003, Oxbow Geothermal Corporation

CAE–18.

Docket No. EG94–42–000, Sarnia Cogeneration Joint Ventures

CAE–19.

Docket No. EG94–38–000, Meshelfco No. 162 Pty Ltd.

CAE–20.

Docket No. EG94–37–000, Sei Holdings VII, Inc.

CAE–21.

Docket No. EG94–39–000, Sunshine State Power (No. 2) B.V.

CAE–22.

Docket No. EG94–41–000, Sunshine State Power B.V.

CAE–23.

Docket Nos. EL94–1–000 and ER94–6–000, Intercoast Power Marketing Company

CAE–24.

Docket No. EL94–39–000, City of Orangeburg, South Carolina v. South Carolina Electric & Gas Company

CAE–25.

Docket No. EG94–40–000, NRG Gladstone Operating Services Pty Ltd.

Consent Agenda—Oil and Gas

CAG–1.

Omitted

CAG–2.

Docket No. RP94–136–003, Northwest Pipeline Corporation

CAG–3.

Docket No. RP94–154–001, Northern Natural Gas Company

CAG–4.

Docket No. RP93–70–000, Black Marlin Pipeline Company

CAG–5.

Docket No. ST94–3914–000, Transok, Inc.

CAG–6.

Docket No. CP90–1391–003, Arcadian Corporation v. Southern Natural Gas Company

CAG–7.

Docket Nos. RP94–59–000, RP94–27–000 and RP94–46–001, Transcontinental Ga Pipe Line Corporation

CAG–8.

Docket No. RP94–93–000, K N Interstate Gas Transmission Company

CAG–9.

Docket No. RP94–180–000, Southern Natural Gas Company

CAG–10.

Docket No. RP94–207–000, Alabama-Tennessee Natural Gas Company

CAG–11.

Docket No. FA90–65–000, Northern Border Pipeline Company

CAG–12.

Docket Nos. RP85–177–119, *et al.*, RP92–171–000, RP93–122–000, RP93–125–000, *et al.*, RP93–128–000, RP93–181–000, RP93–204–000, RP94–33–000, RP94–66–000, RP94–99–000, RP94–135–000, TM93–2–17–000 and TM94–2–17–000, Texas Eastern Transmission Corporation

CAG–13.

Docket No. RP94–181–000, Overthrust Pipeline Company

CAG–14.

Docket Nos. TA94–1–23–002, 000, 001 and TM94–2–23–000, Eastern Shore Natural Gas Company

CAG–15.

Docket No. RP94–24–000, Pacific Gas Transmission Company

CAG–16.

Docket No. RP91–166–000, Northwest Pipeline Corporation

CAG–17.

Docket No. RP93–3–006, Arkla Energy Resources Company

CAG–18.

Docket No. RP94–135–001, Texas Eastern Transmission Corporation

CAG–19.

Docket No. RP94–150–001, ANR Pipeline Company

CAG–20.

Docket No. RP94–67–007, Southern Natural Gas Company

CAG–21.

Docket Nos. RP94–133–003 and RP94–67–006, Southern Natural Gas Company

CAG–22.

Docket No. RP87–103–016, Panhandle Eastern Pipe Line Company

CAG–23.

Docket No. RP91–203–038, Tennessee Gas Pipeline Company

CAG–24.

Omitted

CAG–25.

Docket Nos. RP89–224–010, RP89–203–007, RP90–139–012 and RP91–69–003, Southern Natural Gas Company

CAG–26.

Docket No. RP92–134–008, Southern Natural Gas Company

CAG–27.

Docket Nos. RP85–203–007 and RP88–203–006, Panhandle Eastern Pipe Line Company

Docket Nos. RP85–202–000 and 006, Trunkline Gas Company

Docket Nos. RP85–203–016 and RP88–203–013, Panhandle Eastern Pipe Line Company

Docket No. RP85–202–013, Trunkline Gas Company

Docket No. RP85–170–011, Texas Eastern Transmission Corporation

Docket No. RP85–181–007, Texas Gas Transmission Corporation

CAG–28.

Docket Nos. GP83–11–003 and RI83–9–004, Colorado Interstate Gas Company

CAG–29.

Docket No. OR89–2–005, Trans Alaska Pipeline System

Docket No. IS89–7–006, *et al.*, Amerada Hess Pipeline Corporation

Docket No. IS89–8–006, *et al.*, ARCO Transportation Alaska, Inc.

Docket No. IS89–9–006, *et al.*, BP Pipelines (Alaska), Inc.

Docket No. IS89–10–006, *et al.*, Exxon Pipeline Company

Docket No. IS89–11–006, *et al.*, Mobil Alaska Pipeline Company

Docket No. IS89–12–006, *et al.*, Phillips Alaska Pipeline Corporation

Docket No. IS89–13–006, *et al.*, Unocal Pipeline Company

CAG–30.

Docket No. RP93–35–002, Northwest Pipeline Corporation

CAG–31.

Docket No. RP94–127–001, Tennessee Gas Pipeline Company

CAG–32.

Omitted

CAG–33.

Docket Nos. MG92–4–000 and MG93–1–000, Gas Transport, Inc.

CAG–34.
Docket Nos. RS92–45–014, 016, RP94–87–000, 001, RP94–122–000, 001, RP94–169–000 and RP94–195–000, Natural Gas Pipeline Company of America

CAG–35.
Docket Nos. RS92–10–009, RP92–134–010, RP93–15–006 and CP71–273–007, Southern Natural Gas Company

CAG–36.
Docket No. RS92–64–012, High Island Offshore System
Docket No. RS92–88–014, U-T Offshore System

CAG–37.
Docket No. RS92–23–021, Tennessee Gas Pipeline Company Docket No. RS92–33–008, East Tennessee Natural Gas Company

CAG–38.
Omitted

CAG–39.
Omitted

CAG–40.
Docket No. CP93–425–001, CNG Transmission Corporation

CAG–41.
Docket Nos. CP90–1777–000, 001 and 006, TransColorado Gas Transmission Company

CAG–42.
Docket No. CP91–2069–000, Arkla Energy Resources Company

CAG–43.
Omitted

CAG–44.
Omitted

CAG–45.
Omitted

CAG–46.
Docket No. CP94–92–000, Columbia Gas Transmission Corporation

CAG–47.
Docket Nos. CP93–431–000 and 001, Questar Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket Nos. TX93–4–000 and EI93–51–000, Florida Municipal Power Agency v. Florida Power & Light Company. Order on service under section 211 of the Federal Power Act.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1
Reserved

II. Restructuring Matters

RS–1.
Docket Nos. RS92–5–017, 018, RP90–108–025, RP91–82–016, RP91–161–022, RP92–3–013, RP93–66–005 and RP93–115–005, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–015, 016, RP90–107–022, RP91–160–020, RP92–2–013 and CP93–736–004, Columbia Gulf Transmission Company. Order on Order No. 636 compliance filing and rehearing.

RS–2.
Docket Nos. RS92–12–010, 011, RP89–183–055, RP91–152–028, RP93–171–002, TC89–8–011 and TM91–3–43–011, Williams Natural Gas Company. Order on Order No. 636 compliance filing and rehearing.

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP93–361–000 and 001, Sunshine Interstate Transmission Company. Order on application for certificate authorizing construction of new pipeline.

Dated: May 4, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11291 Filed 5–5–94; 4:15 pm]

BILLING CODE 6717–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 2:30 p.m., Tuesday, May 3, 1994.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *U.S. Steel Mining Company, Inc.* Docket No. WEVA 92–783. (Issues include consideration of a judge's certification for interlocutory review.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. It was also determined that it be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Dated: May 2, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–11305 Filed 5–5–94; 4:14 pm]

BILLING CODE 6735–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–15]

TIME AND DATE: May 11, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–696–698 (Preliminary) (Magnesium from China, Russia, and the Ukraine)—briefing and vote.
5. Outstanding action jacket: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: May 4, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11292 Filed 5–5–94; 4:15 pm]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 9:04 a.m., Thursday, May 5, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–11290 Filed 5–5–94; 4:14 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 23262, May 5, 1994]

STATUS: Open meeting/Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: May 5, 1994.

CHANGE IN THE MEETING: Cancellation/Change of Time.

The open meeting scheduled for Monday, May 9, 1994, at 10 a.m. has been cancelled. The time for the closed meeting, scheduled for Monday, May 9, 1994 following the open meeting, has been changed to 10 a.m.

Commissioner Roberts, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For future information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Walsh at (202) 272–2000.

Dated: May 5, 1994.

Margaet H. McFarland,

Deputy Secretary.

[FR Doc. 94–11304 Filed 5–5–94; 4:14 pm]

BILLING CODE 8010–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE: 9 a.m. to 5 p.m., May 13, 1994; 9 a.m. to 12 p.m., May 14, 1994.

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

MATTERS TO BE CONSIDERED: Institute business and pending grant requests.

PORTIONS OPEN TO THE PUBLIC: Board business meeting and consideration of grant requests.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 94–11293 Filed 5–5–94; 4:14 pm]

BILLING CODE 6820–SC–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 1 p.m., May 20, 1994.

PLACE: Uniformed Services University of the Health Sciences, room D3001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—7 February 1994; (2) Awards; (3) Medical Student Degrees; (4) Graduate Degrees; (5) Faculty Matters; (6) Department Reports; (7) Financial Report; (8) Report—President, USUHS; (9) Comment—Chairman, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: Bobby D. Anderson, Executive Secretary of the Board of Regents, 301/295–3116.

Dated: May 5, 1994.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–11215 Filed 5–5–94; 4:14 pm]

BILLING CODE 5000–04–M

federal register

Monday
May 9, 1994

Part II

Department of Health and Human Services

Administration for Children and Families
Office of Community Services

Request for Applications Under the Office of Community Services' Fiscal Year 1994 Discretionary Grants Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services

[Program Announcement No. OCS–94–9]

Request for Applications Under the Office of Community Services' Fiscal Year 1994 Discretionary Grants Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Administration for Children and Families, Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of 1981, as amended. This Program Announcement consists of seven parts:

Part A covers information on legislative authorities and defines terms used in the Program Announcement;

Part B lists the three program priority areas under which grants will be made, describes the types of projects that will be considered for funding under each priority area, and defines which organizations are eligible to apply;

Part C provides details on application prerequisites, funds available in each priority area, limitations on grant amounts, project periods, who should benefit from the programs, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and compliance with Federal requirements regarding the drug-free workplace and debarment requirements in submitting the application;

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF–424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and

Part G details post-award information and reporting requirements.

CLOSING DATES: The closing date for submission of applications is June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Joseph D. Reid, Acting Director, Division of Community Discretionary Programs, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401–9345.

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Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act, as amended, authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

2. Departmental Goals

This announcement is particularly relevant to the Departmental goal of strengthening the American family and promoting self-sufficiency. These programs have objectives of increasing the access of low-income people to employment-related opportunities, improving job skills, and improving the integration, coordination, and continuity of the various HHS (and other Federal Departments') funded services potentially available to families living in poverty.

3. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—*Affiliate:* A private non-profit entity which has legal and/or financial ties to a community development corporation, and which also meets the statutory requirement that it be governed by a board consisting of residents of the community and business and civic leaders.

—*Community development corporation:* A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

—*Distressed community:* A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—*Eligible applicant:* (See appropriate Priority Area under part B.)

—*Indian tribe:* A tribe, band, or other organized group of Indians recognized in the State in which it resides or which is considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose. For the purpose of Priority Area 1.0 (Urban and Rural Community Economic Development) an Indian tribe or Indian organization is ineligible unless the applicant organization is a private non-profit community economic development corporation.

—*Job Creation:* Jobs that were not in existence prior to grant. (NOTE: Do not confuse this with Job Placement which is putting a person in a vacant job.)

—*Migrant farmworker:* An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—*Rural:* An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and contiguous communities with a population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located entirely within one State or made up of contiguous interstate communities.

—*Seasonal farmworker:* Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—*Budget period:* The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

—*Project period:* The total time for which a project is approved for support, including any approved extensions.

—*Employment Education and Training Program:* A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations (JOBS, JTPA, etc).

—*Technical Assistance:* A problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program are as follows:

Priority Area
- 1.0 Urban and Rural Community Economic Development.
- 1.1 Urban and Rural Community Economic Development (Operational).
- 1.2 Urban and Rural Community Economic Development (HBCU Set-Aside).
- 1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside).
- 1.4 Technical Assistance (Set-Aside)

Priority Area
- 2.0 The Planning and Development of Rural Housing (including rental housing for low-income individuals) and Community Facilities.
- 2.1 Rural Housing (including rental housing for low-income individuals).
- 2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development).

Priority Area
- 3.0 Assistance for Migrants and Seasonal Farmworkers.
- 3.1 Assistance for Migrants and Seasonal Farmworkers (General).
- 3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside).

Priority Area 1.0 Urban and Rural Community Economic Development

Eligible applicants are private, locally initiated, non-profit community development corporations (or private non-profit affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders which sponsor enterprises providing employment and business development opportunities for low-income residents of the community.

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities for low-income people through business, physical or commercial development, and generally to improve the quality of the economic and social environment of low-income residents, including displaced workers, at-risk teenagers, individuals residing in public housing, and individuals who are homeless, especially those with developmental disabilities. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. Sub-Priority Area 1.4 is intended to provide technical assistance to current Office of Community Services' grantees who are experiencing problems in urban and rural community economic development projects.

To this end, the program also seeks to attract additional private capital into distressed communities, including state enterprise zones, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

Sub-Priority Area 1.1 Urban and Rural Community Economic Development (Operational)

Funds will be provided to a limited number of private non-profit community development corporations (or private non-profit affiliates of such corporations) for business development activities at the local level. Funding will be provided for specific projects and will require the submission of business plans or developmental proposals that meet the test of economic feasibility.

Projects must further the Departmental goals of strengthening American families and promoting their self-sufficiency. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applicants located in State enterprise zones, i.e., an area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are urged to submit applications. Such applicants may request funds for a business development project or a project that demonstrates innovative ways to create jobs in the poverty community.

Applications must show that the proposed project:

(1) Creates full-time permanent jobs. Seventy-five percent (75%) of those jobs created must be filled by low-income residents of the community and must also provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance, with particular emphasis on at-risk teenagers, AFDC recipients who are participating in the JOBS program, individuals residing in public housing, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projects concentrate on those jobs created during the duration of the OCS project period; and/or

(2) Creates a significant number of business development opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses; and

(3) Provides for establishing the self-sufficiency of program participants.

In the evaluation process, favorable consideration will be given to applicants under this priority area who show the lowest cost-per-job created. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job in OCS funds exceeds $15,000.

In addition, favorable consideration in the evaluation process will be given to applicants who demonstrate their intention to coordinate services with the local JOBS office and/or other employment education and training offices that serve the proposed area. The JOBS or other employment education and training offices should serve welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals (as defined by DHHS poverty guidelines). Applicants should submit a written agreement from the JOBS or other local employment education and training office that indicates what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. The agreement should include the goals and objectives (including target groups) that the applicant and the employment education and training office expect to reach through their collaboration. It should describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project, and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. Documentation that illustrates the organizational experience of the employment education and training program should also be included.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include in its application a written agreement with the third party that commits the latter to the following:

1. A minimum of 75% of the jobs to be created under the grant will be for low-income individuals.

2. The grantee will have authority to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.

3. The grantee will have a seat on the Board of Directors of the third party's firm if the grantee's investment equals 25% or more of the firm's assets. (Not applicable to loans made to third parties.)

4. Reports will be made on a quarterly basis to the grantee on the use of grant funds.

5. A procedure will be developed to assure that there are no duplicative counts of jobs created.

6. Detailed information will be provided on how the grant funds will be used by the third party by submitting a Source and Use of Funds Statement. In addition, the agreement will provide details on how the community development corporation will provide support and technical assistance to the third-party in areas of recruitment and retention of low-income individuals.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those poverty level individuals who have been selected for employment in the grant supported project.

OCS encourages applications that create linkages with community organizations administering the JOBS program which will train and place residents dependent on public assistance into jobs created by the project funded under this priority area.

Projects which would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

OCS will not consider applications that propose to establish or expand revolving loan funds, nor proposals that are geared towards the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving the funding of applications which propose to sub-grant all or most of the grant activities to an unrelated entity.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, i.e., businesses must be in place, and low-income individuals actually employed in those businesses.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)

For Fiscal Year 1994, a set-aside fund of $2,250,000 will be included under this priority area for eligible applicants that submit projects that will be carried out in conjunction with Historically Black Colleges and Universities through contract or sub-grant. Such projects must conform to the purposes, requirements and prohibitions applicable to those submitted under Sub-Priority Area 1.1.

Any funds that are proposed to be used for training must be directly related to the project and all individuals trained must be placed in a newly created job or business.

These projects should reflect a significant partnership role for the college or university, and the applicant in doing so will be considered to have fulfilled the goals of the Public-Private Partnerships evaluation criterion and will be granted the maximum number of points in that category. Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under Sub-Priority Area 1.1.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)

OCS intends in this priority area to provide funds to recently-establishment private, locally initiated non-profit community development corporations (or affiliates of such corporations) which propose to undertake economic development activities in distressed communities.

OCS recognizes that there are a number of newly-organized non-profit community development corporations who have identified needs in their communities but who have not had the staff or other resources to develop projects to address those needs. This lack of resources also might be affecting their ability to compete for funds, such as those provided under OCS's Urban and Rural Community Development Program (Operational Grants) since their limited resources would preclude them from developing a comprehensive business plan and/or mobilizing resources. OCS has an interest in providing support to these new entities in order to enable them to become more firmly established in their communities, thereby bringing technical expertise and new resources to these previously unserved or underserved communities. Therefore, OCS is setting aside $750,000 in Fiscal Year 1994 for grants to private non-profit community development corporations which have been in existence for no more than three years and have never received OCS funding. From this sum, grants of up to $75,000 each will be made to eligible applicants. These grants will be made for a period of one year and will not require matching funds.

The grants will be pre-developmental grants under which CDCs or their affiliates may incur costs to: (1) Evaluate the feasibility of potential projects which address identified needs in the low-income community and which conform to those projects and activities allowable under Sub-Priority Areas 1.1 and 1.2; (2) develop a Business Plan related to one of those projects; and (3) mobilize resources to be contributed to projects, including the utilization of Historically Black Colleges and Universities. Based on the availability of funds in Fiscal Year 1996, OCS will consider establishing a set-aside to provide operational funds to those organizations which received pre-developmental grants. Grants might be for a maximum of $250,000 and competition for those funds will be restricted to those organizations receiving Fiscal Year 1994 pre-developmental grants. The Business Plan developed as a result of the pre-developmental grants would be submitted as part of the competitive application.

Each application for Fiscal Year 1994 funded under this Priority Area must include the following as part of the project narrative in Part IV of the SF-424.

1. Description of the impact area, i.e., a description of the low-income area it proposes to address;

2. Analysis of need in the distressed community;
3. Project objectives and measurable impact, i.e., a discussion of the types of projects that might be implemented to address the identified needs and how the proposed projects relate to the applicant's organizational goals and previous experience (if any); and
4. Implementation factors and quarterly work plans with specific task timelines.

Sub-Priority Area 1.4 Technical Assistance

Funds will be awarded under this sub-priority area for the purpose of providing technical assistance to grantees funded under the Office of Community Services' Discretionary Grants Program. OCS recognizes that there are grantees which encounter problems in attempting to implement their projects. Some of the grantees lack staff capability or resources to resolve these problems. Therefore, OCS intends to provide funds to two private, non-profit, locally initiated community development corporations which will allow these organizations to provide assistance to other grantees. The grants would be for a maximum of $250,000 with a grant period not to exceed 17 months. Requests for assistance would be initiated by OCS with the concurrence of the grantee to be assisted, or the request could be initiated by the grantee with the concurrence of OCS. The requests should relate to specific, identified problems. The assistance may be given on-site, by telephone, or by other means of communication. Assistance will be provided free of charge to the grantee by the technical assistance provider.

Priority Area 2.0 The Planning and Development of Rural Housing (Including Rental Housing for Low-Income Individuals) and Community Facilities

Sub-Priority Area 2.1 Rural Housing (Including Rental Housing for Low-Income Individuals)

Eligible applicants are States, public agencies or private non-profit organizations, including Historically Black Colleges and Universities.

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) Provide technical assistance to help low-income families and individuals more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-income people, e.g., the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These applications should not include projects which can be funded through other existing Federal programs.

OCS also encourages the submission of proposals with the aim of assisting homeless families and those at risk of homelessness. Innovative ways to address housing needs of homeless families is of particular interest to OCS.

Projects should produce the following types of tangible improvements and benefits related to housing conditions for rural poor people: interior or exterior structural repairs including weatherization and alternative energy systems; jobs created for local unskilled residents while assuring quality work; technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Such projects should be conducted with maximum use of voluntary services of professional and community personnel, and development of innovative housing strategies to help low-income rural residents acquire housing.)

Applications calling for new construction or gut rehabilitation will only be considered if the application documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people for at least three years after completion of repairs and rehabilitation.

OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area of rural housing.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area to help low-income rural communities develop the capability and expertise to establish and/or maintain affordable, adequate and safe water and waste water treatment facilities.

Funds provided under this priority area may not be used for construction of water and waste water treatment systems or for operating subsidies for such systems, but other mobilized funds may be used for these activities. Therefore, it is suggested that applicants coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

Eligible applicants are public or private non-profit organizations, including Historically Black Colleges and Universities. In accordance with the authorizing legislation, funding priority will be given to private non-profit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at section 681(1)(2)(D) of the Community Services Block Grant Act.

See Part F.6, for special instructions on developing a work program for this priority area.

Priority 3.0 Assistance for Migrants and Seasonal Farmworkers

Sub-Priority 3.1 Assistance for Migrants and Seasonal Farmworkers (General)

Eligible applicants are States, public agencies and private non-profit organizations, including Historically Black Colleges and Universities.

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: Homelessness; crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair, rehabilitation, and ownership; direct assistance to low-income farmworkers, including at-risk teenagers, to improve their job skills for them to qualify for long term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work. Linkages with the local JOBS program are encouraged wherever appropriate.

Applicants must provide quantifiable objectives for each of the above activities which will be included in the project. OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group.

For projects that relate to job skills and training, OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement in permanent jobs must be an integral activity of any training project.

Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor and the Department of Agriculture's Women, Infants and Children (WIC) program.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)

For Fiscal Year 1994, a fund of $300,000 will be set aside for Historically Black Colleges and Universities to enable them to offer continuing education to migrants and seasonal farmworkers and to increase participant employment opportunities. Applicants must provide quantifiable objectives for each of the activities which will be included in the project. Applications which are not funded within this set-aside due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under Sub-Priority Area 3.1.

See Part F, 6, for special instructions on developing a work program for this priority area.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in Part B, above.

2. Availability of Funds

a. FY 1994 Funds. The Office of Community Services expects to award funds by September 30, 1994 for new grants. The maximum amount of funds available for each Priority Area is summarized below:

Priority area	Fiscal year 1994 funds
1.0 Urban and Rural Community Economic Development:.	
1.1 Urban and Rural Community Economic Development (Operational)	$18,733,000
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)	2,250,000
1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)	750,000
1.4 Technical Assistance (Set Aside)	500,000
2.0 Planning and Development of Rural Housing and Community Facilities Development	5,460,000
3.0 Assistance for Migrants and Seasonal Farmworkers.	
3.1 Assistance for Migrants and Seasonal Farmworkers (General)	2,647,000
3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)	300,000

b. Grant Amounts. No more than the below stated amounts will be granted for projects under the Priority Areas as indicated:

Sub-priority area	Funding limit
1.1	$700,000
1.2	750,000
1.3	75,000
1.4	250,000
2.1	250,000
2.2	425,000
3.1	250,000
3.2	75,000

3. Project and Budget Periods

For Sub-Priority Areas 1.1, and 1.2, applicants with projects involving construction only, may request project and budget periods of up to 36 months. Applicants for other economic development projects under those priority areas and Sub-Priority Areas 1.4, 2.1, 3.1 and 3.2 may request project and budget periods of up to 17 months. For Sub-Priority Area 2.2, grantees will be funded for a 12 month project period. For Sub-Priority Area 1.3, applicants may request project and budget periods of up to 12 months. By fully funding the projects in FY 94 funding stability in future years will be insured.

4. Mobilization of Resources

OCS encourages and strongly supports mobilization of resources through public/private partnerships which can mobilize cash and/or third-party in-kind contributions. (See Part D, Criteria VA.)

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this Announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under Sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public law 99–603) may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

6. Number of Projects in Application

An application may contain only one project (except for Priority Areas 1.3, 1.4, and 3.1 where applicants are researching various opportunities, providing assistance to current OCS grantees, or having a multi-faceted approach to Migrants' issues) and this project must be identified as responding to one of the program priority areas stated in this Announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project. However, an applicant will receive only one grant in any Priority Area.

8. Sub-Contracting or Delegating Projects

OCS does not fund projects where the role of the applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested.

9. Previous Performance and Current Grants

Previous performance of applicants will be a determining factor in the grant award decisions. Any applicant which has three or more active OCS grants may only be funded under exceptional circumstances.

Part D—Application Procedures

1. Availability of Forms

Attachments B, C, and D contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF–424, SF–424A, and SF–424B, regardless of the priority area governing the project. Applications proposing construction projects will also present all required financial data using SF–424A. Instructions for completing the SF–424, SF–424A, and SF–424B are found in Attachments B, C, and D.

Part F contains instructions for the project narrative and project abstract. They will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment J provides a checklist to aid applicants in preparing a complete application package for OCS.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

2. Application Submission

Applications must be submitted to ACF by the closing date. Refer to Closing Date at the beginning of this document for the specific date.

Applications may be mailed to: Administration for Children and Families, Office of Financial Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor (OCS–94–9), Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at the below listed address: Administration for Children and Families, Office of Financial Management, Division of Discretionary Grants, 901 D Street SW., 6th Floor (OCS–94–9), Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies are required. The first page of the SF–424 must contain in the lower right-hand corner, **a designation indicating under which priority area funds are being requested (See Part F, section 1, subsection 11).**

3. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Alabama, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seventeen jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Financial Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5a and b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants. Applicants with three or more incomplete grants at the time of review may be denied funding.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applicants

a. Initial screening. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 Application for Federal Assistance (SF 424), a budget (SF–424A), and signed Assurances (SF 424B) completed according to instructions published in Part F and Attachments B, C, and D of this Program Announcement.

(2) A project narrative and a project abstract must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) The application must be submitted for consideration under one priority area only.

b. Pre-rating review. Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable. Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of Projects:* An application may contain only one project (except for Priority Areas 1.3, 1.4, and 3.1 where applicants are researching various opportunities, providing assistance to current OCS grantees, or have a multi-faceted approach to Migrants' issues) and this project must be identified as responding to one of the program priority areas stated in this Announcement.

(3) *Grant amount:* The amount of funds requested does not exceed the limits indicated in Part C, 2, b for the appropriate priority area.

(4) *Written Agreement When Applicant Proposes to Make Equity Investment, Loan, or Sub-Grant:* (Sub-Priority Areas 1.1, and 1.2): The application contains a written agreement signed by the applicant and the third party which includes all of the elements required in Part B.

An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation criteria. Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area as described in Part B.

Note: the following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.

6. Criteria for Review and Evaluation of all Applications Except Sub-Priority Areas 1.3 and 1.4

(a) *Criterion I: Analysis of Need (Maximum: 5 points).* The application documents that the project addresses a vital need in a distressed community and provides statistics and other data and information in support of its contention.

(b) *Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 points)*—(i) *Organizational Experience in Program Area (sub-rating: 0–5 points).* Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

Applicable to Sub-Priority Areas 1.1, and 1.2

The applicant has demonstrated the ability to implement major activities in such areas as business development, commercial development, physical development, or financial services; the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) *Staff Skills, Resources and Responsibilities (sub-rating 0–10 points).* The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(c) *Criterion III: Project Implementation (Maximum: 25 points).* The Work Plan, or Business Plan where appropriate, is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

(d) *Criterion IV A: Significant and Beneficial Impact (Maximum: 30 points)* (Applicable to Sub-Priority Areas 1.1, and 1.2)—(i) *Significant and Beneficial Impact (sub-rating: 0–15 points).* The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the community. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones.

(ii) *Cost-per-Job (sub-rating: 0–10 points).* During the project period the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below $15,000 in OCS funds.

Note: The maximum number of points will be given to those applicants proposing cost-per-job estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.

(iii) *Career Development Opportunities (sub-rating: 0–5 points).* The application documents that the jobs to be created for low-income people have career development opportunities which will promote self-sufficiency.

(e) *Criterion IV B: Significant and Beneficial Impact (Maximum: 30 points)* Applicable to Sub-Priority Areas 2.1, 2.2, 3.1 and 3.2)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and significantly enhance the self sufficiency of program participants. Results are quantifiable in terms of program area expectations, e.g., number of units of housing rehabilitated, agricultural and non-agricultural job placements, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income and/or distressed communities and/or designated enterprise zones.

(f) *Criterion V: Public-Private Partnerships (Maximum: 20 points)*—(1) *Mobilization of resources: (sub-rating: 15 points).* The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this Criterion. Lesser contributions will be given consideration based upon the value documented. Applicants under Sub-Priority Area 1.2 who are proposing to enter into a partnership with Historically Black Colleges and Universities are deemed to have fully met this criterion and will receive the maximum number of points if they document the participation of the HBCU.

(2) *Integration/coordination of services: (sub-rating: 5 points)* The applicant demonstrates a commitment to coordination with the local JOBS office and/or other employment education and training program (such as JTPA) to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals will be trained and placed in the newly created jobs. The applicant provides written agreement from the local JOBS or other employment education and training office indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested.

Specifically, the agreement should include: (1) The goals and objectives that the applicant and the JOBS or other employment education and training office expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/coordinating activities; (5) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (6) how those activities will be significant in relation to their impact on the success of the OCS-funded project.

The applicant should also provide documentation that illustrates the organizational experience related to the employment education and training program (refer to Criterion II for guidelines).

(g) *Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).* Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

7. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.3

a. *Criterion I: Organizational Capability and Capacity (Maximum: 20 Points)*—(1) *Organizational experience in program area (sub-rating: 5 Points).* Where the applicant has a history of prior achievement in economic development, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants must also indicate why they feel that they can successfully implement the project for which they are requesting funds.

(2) *Management capacity (sub-rating: 5 points).* Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) *Staffing (sub-rating: 5 points).* The application must fully describe (e.g., resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

(4) *Staffing responsibilities (sub-rating: 5 points).* The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

b. *Criterion II: Significant and Beneficial Impact (Maximum: 35 Points).* The work plan funded under this announcement must show that there is a clearly identified need in a low-income area which is not being effectively addressed currently.

Project funds under this announcement must be used to develop a Business Plan for a project which would produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and mobilize non-discretionary program dollars from private sector individuals, public resources, corporations, and foundations if the project is implemented. The project around which the Business plan is developed with the use of OCS grant funds must be targeted into low-income communities, and/or designated enterprise zones, with the goals of increasing the economic conditions and social self-sufficiency of residents. Activities must be designed to achieve the specific Program Priority Area 1.3 objectives as defined in this program announcement.

c. *Criterion III: Project Implementation and Evaluation (Maximum: 30 Points).* (1) *Project implementation component (sub-rating: 25 points).* The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) *Evaluation component (sub-rating: 5 points).* All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. *Criterion IV: Budget Appropriateness and Reasonableness (Maximum: 15 points).* Each applicant should carefully review the requirements of Program Sub-Priority Area 1.3 and the budget submitted must coincide with those requirements.

The proposal's request for funds must include a detailed budget breakout for each of the pertinent budget categories in part III, section B of the SF–424. (Please identify any positions for which less than full-time funding is requested.)

8. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.4

(a) *Criterion I: Organizational Experience In Program Area and Staff Responsibilities (Maximum: 20 points)*—(i) *Organizational Experience in Program Area (sub-rating: 0–10 points.* Applicant has documented the capability to provide leadership in solving long-term and immediate problems locally and/or nationally in such areas as business development, commercial development, organizational and staff development, board training, and micro-entrepreneurship development. Applicant must document a capability (including access to a network of skilled individuals and/or organizations) in two or more of the following areas: Business Management, including strategic planning and fiscal management; Finance, including development of financial packages and provision of financial/accounting services; and Regulatory Compliance, including assistance with zoning and permit compliance. Further, the applicant has the demonstrated ability to mobilize dollars from sources such as the private sector (corporations, banks, foundations, etc.) and the public sector, including state and local governments. Applicant also demonstrates that it has a sound organizational structure and proven organizational capability as well as an ability to develop and maintain a stable program in terms of business, physical or community development activities that have provided permanent jobs, services, business development opportunities, and other benefits to poverty community residents.

Applicants must indicate why they feel that their successful experiences would be of assistance to existing grantees which are experiencing difficulties in implementing their projects.

(ii) *Staff Skills, Resources and Responsibilities (sub-rating 0–10 points).* The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but who has professional capabilities relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(b) *Criterion II: Work Program (Maximum: 30 points).* Based upon the applicant's knowledge and experience related to OCS's Discretionary Grants Program (particularly community economic development), the application should demonstrate in some specificity a thorough understanding of the problems a grantee may encounter in implementing a successful project. The application should include a strategy for assessing the specific nature of the problems, outlining a course of action and identifying the resources required to resolve the problems.

(c) *Criterion III: Significant and Beneficial Impact (Maximum: 30 points).* Project funds under this sub-priority area must be used for the purpose of providing technical assistance directly or by a contract with a third party, to other OCS funded grantees. Applicants must document how the success or failure of the assistance provided will be documented.

Applicants must demonstrate an ability to disseminate results on the kinds of assistance provided and successful strategies that they may have developed to serve grantees during the grant period. Applicants must state whether the results of the project will be included in a handbook, a progress paper, an evaluation report or a general manual and why the particular methodology chosen would be most effective in assisting other grantees.

d. *Criterion IV: Public-Private Partnerships (15 points).* The applicant demonstrates that it has worked with local, regional, state or national offices to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals have been trained and placed in newly created jobs.

Applicant should demonstrate how it will design a comprehensive strategy which makes use of other available resources to resolve typical and recurrent grantee problems.

e. *Criterion V: Budget Appropriateness and Reasonableness (Maximum: 5 points).* Applicant documents that the funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the appropriate budget categories in the SF–424A. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, whether involving construction or not, should include one original and four additional copies of the following:

a. A signed Application for Federal Assistance (SF–424);

b. Budget Information-Non-Construction Programs (SF–424A);

c. A signed Assurances-Non-Construction Programs (SF–424B);

d. A Project Abstract

e. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation;

(ii) Analysis of Need (except for Sub-Priority 1.4);

(iii) Organizational Experience and Staff Responsibilities;

(iv) Work Program (including Executive Summary);

(v) Appendices, including By-Laws; Articles of Incorporation; proof of non-profit status where applicable; resumes; written agreements re grants, coordination with JOBS, etc.; Single Point of Contact comments, where applicable; certification regarding anti-lobbying activities; and a disclosure of lobbying activities.

The application package should not exceed 50 pages for applications submitted under sub-priority areas 1.1, and 1.2. and 30 pages for all applications submitted under the other sub-priority areas.

Applications should be two holed punched at the top center and fastened with a compressor slide paper fastener or a binder clip. The submission of bound applications, or applications enclosed in binders, is especially discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8 1/2 X 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded, if included.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement notice. The identification number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9234.

Part F—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970–0062. The standard forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.)

It is suggested that you reproduce the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write NA for Not Applicable.

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 Application for Federal Assistance Item

1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications. Also for the purposes of this announcement, construction projects are those which involve major renovations or new construction. All others are considered non-construction. Check the appropriate box under Application.

5. and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (PIN/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter N in the box and specify non-profit corporation in the space marked Other. Proof of non-profit status, such as IRS determination or appropriate sections of the Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are New.

9. Enter DHHS–ACF/OCS.

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is CSBG Discretionary Awards.

11. The following letter program priority area designations must be used:

UR—for Sub-Priority Area 1.1. Urban and Rural Community Economic Development (Operational)
HB—for Sub-Priority Area 1.2. Urban and Rural Community Economic Development (HBCU Set-Aside)
PD—for Sub-Priority Area 1.3. Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)
UT—for Sub-Priority Area 1.4. Technical Assistance (Set-Aside)
RH—for Sub-Priority Area 2.1. Rural Housing Repairs and Rehabilitation (including rental housing for low-income individuals).
RF—for Sub-Priority Area 2.2. Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)
MS—for Sub-Priority Area 3.1. Assistance for Migrants and Seasonal Farmworkers (General)
HM—for Sub-Priority Area 3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)

2. SF–424A—Budget Information—Non-Construction Programs

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the Federal Funds budget entries will relate to the requested OCS discretionary funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS discretionary funding should be included in Non-Federal entries.

The budget forms in SF–424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF–424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4
Col. (a):
  Line 1 Enter CSBG Discretionary;
Col. (b):
  Line 1 Enter 93.570;
Col. (c) and (d):
  Applicants should leave columns (c) and (d) blank.
Col. (e)–(g):
  For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the budget period.

Line 5 Enter the figures from Line 1 for all columns completed as required, (c), (d), (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR parts 74 and 92. Columns (1) and (5):

In OCS applications, it is only necessary to complete Columns (1) and (5).

Column 1: Enter the total requirements for OCS Federal funds by the Object Class Categories of this section:

Personnel-Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of all travel by employees of the project. Travel costs for the Executive Director or Project Director to attend a two day national workshop in Washington, DC should be included. Do not enter costs for consultant's travel. Provide justification for requested travel costs.

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. Non-expendable personal property means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this form (SF–424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation, repair, or new construction. Provide narrative justification and breakdown of costs.

Other-Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another Federal agency or is awaiting such approval. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates,* and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Line 8:

Column (a): Enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12: Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Line 13: Enter the amount of Federal (OCS) cash needed for this grant by quarter. During the budget period for grants which are more than twelve (12) months, submit a separate sheet for each additional twelve (12) months or portion thereof.

Line 14: Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15: Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

Completion not required.

Section F—Other Budget Information

Line 21: Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative.

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22. Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. *SF–424B Assurances-Non-Construction*—All applicants, whether or not project involves construction, must fill out, sign and date form found at Attachment D.

4. *Restrictions on Lobbying Activities*—Certification for Contracts, Grants, Loans, and Cooperative Agreements: Fill out, sign and date form found at Attachment H.

5. *Disclosure of Lobbying Activities,* SF–LLL: Fill out, sign and date form found at Attachment H, if applicable.

6. *Project Abstract*

The project abstract is a brief summary of the project to include specific benefits such as number of jobs to be created, especially jobs for low-income individuals. The abstract must not exceed 150 characters (including words, spaces and punctuation) on a separate sheet of plain paper headed by the applicant's name as shown in item 5 of the SF 424 and the priority area number as shown by you at the bottom of the SF 424.

7. *Project Narrative*

The project narrative must address the specific concerns mentioned under the relevant priority area description in Part B. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5 c of this Program Announcement and should follow the format below:

a. *Eligibility confirmation.* This section must explain how the applicant has complied with each of the basic requirements listed in Part D, 5b(1)–(5), i.e., (1) that the applicant meets the eligibility requirements for the sub-priority area under which funds are being requested; (2) an application submitted under subpriority areas 1.1, 1.2, 2.1, 2.2, or 3.2 contains only one project; (3) the amount of funds requested does not exceed the limits indicated in Part C, Section 2, b for the appropriate sub-priority area; (4) (Sub-Priority Areas 1.1, and 1.2) if an applicant proposes to use OCS funds for an equity investment, a loan, or a sub-grant, the application contains a written agreement signed by the applicant and the third party which includes all of the elements required in Part B. An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

b. *Analysis of need.* The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should also include documentation supportive of its needs assessment such as employment statistics, housing statistics, etc.

c. *Organizational experience and staff responsibilities.* (i) *Organizational experience.* Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

Applicable to Sub-Priority Areas 1.1, 1.2 and 1.4

Applicants in these priority areas must also document a firmly established and quantifiable performance record that shows the following:

- The ability to implement major activities such as business development, commercial development, physical development, or financial services;
- Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;

—A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;

—An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities and other benefits to community residents, and impact on community-wide economic problems and needs;

—Sound administrative and fiscal systems and controls, and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism or executives on loan.

(ii) *Staff Skills, Resources and Responsibilities.* The application must fully describe (e.g. a resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

d. *Work program.* The application must contain a detailed and specific work program, or Business Plan where appropriate, (to include an Executive Summary) that is both sound and feasible. (For those applicants submitting proposals under Sub-Priority Areas 1.1, and 1.2, the Business Plan will be accepted in lieu of the work program.) The Executive Summary should not exceed five pages. This summary must address the program principles within this announcement and document that the proposed project will have national or regional significance. The work program will be evaluated according to Criteria III, IV, and V set forth in Part D of this announcement: Project Implementation, Significant and Beneficial Impact, and Public-Private Partnerships.

Projects funded under this announcement must be designed to produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

It must set forth realistic quarterly time targets by which the various work tasks will be completed. It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained despite such potential problems.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

Applicable to Sub-Priority Areas 1.1, and 1.2

Applications submitted under Sub-Priority Areas 1.1, and 1.2 which propose to use the requested OCS funds to make an equity investment or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include a written agreement between the community development corporation and the recipient of the grant funds which contains all of the elements listed in Part B under the appropriate Priority Area.

Applications submitted under Sub-Priority Areas 1.1, and 1.2 must include a complete Business Plan where it is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be disqualified and returned to the applicant.

In some cases a Business Plan may not be required under the Priority Areas. All applicants under the Priority Areas, however, must nevertheless submit the information which is required in Sections 7 through 10, as set forth below.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. It must be well prepared and address all the major issues noted herein.

The following guidelines show what should be included in order to produce a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The Business Plan should include the following:

1. *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry;

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold;

b. *Proprietary Position:* Describe proprietary features if any of the product, e.g. patents, trade secrets;

c. *Potential:* Features of the product or service that may give it an advantage over the competition;

3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment.

b. *Market Size and Trends:* State the size of the current total market for the product or service offered;

c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services;

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market;

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan

should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the JOBS program will be developed. The following project benefits must be described:

Economic

—Number of permanent jobs that will be created for low-income people during the grant period;
—Number of jobs to be created for low-income people that will have career development opportunities and a description of those jobs
—number of jobs that will be filled by individuals on public assistance;
—Ownership opportunities created for poverty-level project area residents;
—Specific steps to be taken to promote the self-sufficiency of program participants. Other benefits which might be discussed are:

Human Development

—New technical skills development and associated career opportunities for community residents;
—Management development and training.

Community Development

—Development of community's physical assets;
—Provision of needed, but currently unsupplied, services or products to community;
—Improvement in the living environment.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

a. Profit and Loss Forecasts—quarterly for each year;
b. Cash Flow Projections—quarterly for each year;
c. Pro forma balance sheets—quarterly for each year;
d. Initial sources of project funds;
e. Initial uses of project funds; and
f. Any future capital requirements and sources.

Applicable to Sub-Priority Area 1.4 Only

Applicants in this priority area must document its experience and capability to provide assistance and leadership in two or more of the following areas:

—Business/Development;
—Micro-Entrepreneurship Development;
—Commercial Development;
—Organizational and Staff Development;
—Board Training;
—Business Management, including Strategic Planning and Fiscal Management;
—Finance, including Business Packaging and Financial/Accounting Services, and/or
—Regulatory Compliance including Zoning and Permit Compliance

The applicant must document staff competence or the accessibility of third party resources with proven competence. If the work program requires the significant use of third party (consultant/contractor) resources, those resources should be identified and resumes of the individuals or key organizational staff provided. Resumes of the applicant's staff, who are to directly provide assistance, should also be included. The applicant must document successful experience in the mobilization of resources (both cash and in-kind) from private and public sources. The applicant must also clearly state how the information learned from this project may be disseminated to other interested grantees.

Applicable to Sub-Priority Area 2.1 Only

Each applicant must include a full discussion of the project including the following information:

—*Basic Housing Data for Targeted Area.* Information on the number of substandard housing units available to low-income people in the target area, deficiencies of the housing units to be repaired, i.e., lack of or inadequate plumbing, upgrading of electrical systems, etc., new construction inventory, property values, rents and mortgage rates. While specific census data may be included, this information must be project specific. Applicants must show that other Federal programs do not exist to address the rehabilitation needs of the targeted area.
—*Priorities.* Provide a rationale for the strategies and priorities for which OCS support is requested.
—*Participant Application Process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.

—*Types of Work to be Performed.* The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

Applications proposing to repair or rehabilitate low-income rental housing (see Part B, Sub-Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units. Applicants should also state the number of low-income residents who will be helped to purchase or acquire adequate housing.

—*Job Creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.

—*Public-Private Partnership.* A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized.

Applicable to Sub-Priority Area 2.2

Each applicant must include a full discussion of how the proposed use of funds will enable low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water systems. Applicants must also discuss how they will disseminate information about water and waste water programs serving rural communities, and how they will better coordinate Federal, State, and local water and waste water program financing and development to assure improved service to rural communities.

Among the benefits that merit discussion under this sub-priority area are: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connection units); the increase in local capacity in engineering and other areas of expertise; and the amount of non-discretionary program dollars expected to be mobilized.

Applicable to Sub-Priority Areas 3.1 and 3.2

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in Part B.

Among the benefits which merit discussion under these priority areas are: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers and/or their dependents who will be afforded an opportunity to continue their formal education; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary program dollars expected to be mobilized, and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this Announcement.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR parts 74 and 92.

Grantees will be required to submit semi-annual progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92 and OMB Circular A–128 or A–133. If an applicant will not be requesting indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: April 26, 1994.

Donald Sykes,

Director, Office of Community Services.

Attachment A

1994 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,360
2	9,840

1994 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII AND THE DISTRICT OF COLUMBIA—Continued

Size of family unit	Poverty guideline
3	12,320
4	14,800
5	17,280
6	19,760
7	22,240
8	24,720

For family units with more than 8 members, add $2,480 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,200
2	12,300
3	15,400
4	18,500
5	21,600
6	24,700
7	27,800
8	30,900

For family units with more than 8 members, add $3,100 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$8,470
2	11,320
3	14,170
4	17,020
5	19,870
6	22,720
7	25,570
8	28,420

For family units with more than 8 members, add $2,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

BILLING CODE 4184-01-P

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name

Organizational Unit:

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ______________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

Start Date

Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ______________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative

b. Title

c. Telephone number

d. Signature of Authorized Representative

e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Attachment B

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Attachment C

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Attachment D

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Attachment E

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)______________________________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (710) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3213

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

Attachment H—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year ________ quarter _____
date of last report _________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____________

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _________________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _________________
value _________________

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _________________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _________________________
Print Name: _________________________
Title: _________________________
Telephone No.: _____________ **Date:** _____________

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Attachment I

The following DHHS regulations apply to all applicants/grantees under the Discretionary Grants Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Procedures of the Department Grant Appeals Board

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections 74.62(a) Non-Federal Audits

74.173 Hospitals

74.174(b) Other Nonprofit Organizations

74.304 Final Decisions in Disputes

74.710 Real Property, Equipment and Supplies

74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension form Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination

Under Programs Receiving Federal Assistance through the Department of Health and Human Services

Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, signed SF–424, "Application for Federal assistance". The letter code for the priority area e.g., UR) should be in the lower right hand corner.

2. A completed "Budget Information—Non-Construction" (SF–424A);

3. A signed "Assurance—Non-Construction" (SF–424A);

4. A Project Abstract

5. A Project Narrative beginning with a Table of Contents that describes the project in the following order:

(a) Eligibility Confirmation

(b) Analysis of Need (except for Sub-Priority 1.4)

(c) Organizational Experience and Staff Responsibilities

(d) Work Program (including Executive Summary)

6. Appendices, including By-Laws; Articles of Incorporation, proof of non-profit status where applicable; resumes, written agreements re grants, coordination with JOBS, etc.; Single Point of Contact comments (where applicable); certification regarding anti-lobbying activities; and a disclosure of lobbying activities.

7. A signed copy of "Certification Regarding Anti-Lobbying Activities.

8. A completed "Disclosures of Lobbying Activities", if appropriate; and

9. A self-addressed mailing label which can be affixed to a notice to acknowledge receipt of application.

The application should not exceed a total of 50 pages for applications submitted under sub-priority areas 1.1 and 1.2 and 30 pages for all applications submitted under the other subpriority areas. It should include one original and four identical copies, printed on white 8½ by 11 inch paper only. Applications should be two holed punched at the top center and fastened with a compressor slide paper fastener or a binder clip. All pages should be numbered.

[FR Doc. 94–10914 Filed 5–6–94; 8:45 am]

BILLING CODE 4184–01–P

federal register

Monday
May 9, 1994

Part III

Library of Congress

Copyright Office

37 CFR Parts 251, 252, etc.
Copyright Arbitration Royalty Panels; Rules and Regulations; Interim Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 253, 254, 255, 256, 257, 258, 259, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311

[Docket No. RM 94–1A]

Copyright Arbitration Royalty Panels; Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations to revise the rules and regulations of the former Copyright Royalty Tribunal adopted by the Office on December 22, 1993. The Office is seeking comments on these interim rules, which will govern the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993 until final regulations are adopted.

DATES: Effective May 9, 1994.

Written comments should be received by June 15, 1994. Reply comments should be received by July 15, 1994.

ADDRESSES: Fifteen copies of written comments should be addressed, if sent by mail, to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, room LM–407, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, U.S. Copyright Office, Library of Congress, Washington, DC 20540, (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Public Law 103–198, eliminated the Copyright Royalty Tribunal (CRT) and replaced it with a system of ad hoc Copyright Arbitration Royalty Panels (CARPs), administered by the Librarian of Congress and the Copyright Office, for purposes of distributing royalties and adjusting royalty rates for the various compulsory licenses and statutory obligations of the Copyright Code. The CRT Reform Act, which was effective immediately upon its enactment, directed the Librarian and the Office to adopt the rules and regulations of the CRT found in chapter 3 of 37 CFR, 17 U.S.C. 802(d), and provided that the CRT's regulations were to remain in effect until the Librarian adopts "supplemental or superseding regulations." The Office adopted the CRT's rules and regulations on an interim basis on December 22, 1993, and notified the public that it intended to begin a rulemaking proceeding to revise and update those rules. 58 FR 67690 (1993). Today's interim regulations are the latest result of that rulemaking proceeding.

I. Notice of Proposed Rulemaking

On January 18, 1994, the Copyright Office of the Library of Congress published a Notice of Proposed Rulemaking (NPRM) establishing a new set of rules and regulations intended to revise those of the former CRT. The NPRM contained long and substantial revisions required by the dual structure of the royalty rate adjustment and distribution system created by the CRT Reform Act. Instead of a single administrative body (the CRT), the new system features a division of authority. The Librarian and the Copyright Office are responsible for doing the preliminary work necessary for the operation of both the distribution and the rate adjustment proceedings, including the organization and selection of the CARPs. The CARPs are given sole authority to determine the appropriate distribution of royalties and the royalty rates. Their determinations are later reviewed by the Librarian of Congress. Since the CRT's rules were not designed to implement a system such as this, we were obliged to institute this rulemaking proceeding.

The NPRM proposed removal of parts 301 through 311 of chapter III of 37 CFR and creation of subchapters A and B of chapter II. Subchapter A comprises the Copyright Office's rules and procedures, consisting of parts 201–211, which remain unchanged. New subchapter B, which is the subject of this rulemaking, comprises parts 251–259, and is devoted entirely to the rules and procedures of the CARPs. In the NPRM, part 251, the Copyright Arbitration Royalty Panel Rules of Procedure, consisted of proposed regulations to govern the organization of the CARPs, access to CARP meetings and records, rules governing the conduct and course of proceedings, and procedures applicable to rate adjustments and distributions. The NPRM also reserved a subsection for standards of conduct for arbitrators, and sought comment as to what the appropriate ethical and financial standards should be.

New part 252 proposed revised rules for the filing of claims to cable copyright royalties, modeled after the system used by the CRT for the filing of digital audio (DART) royalty claims. Parts 253 to 256—Use of Certain Copyrighted Works in Connection With Noncommercial Educational Broadcasting; Adjustment of Royalty Rate for Coin-Operated Phonorecord Players; and Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords—proposed only technical changes to the former CRT's rules. Like part 252, part 257—Filing of Claims to Satellite Carrier Royalty Fees—was modeled after the royalty claim procedures used by the CRT for DART. Finally, parts 258 and 259—Adjustment of Royalty Fee for Secondary Transmissions by Satellite Carriers and Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments—contained only minor technical amendments. Since the CRT Reform Act eliminated the jukebox compulsory license, 17 U.S.C. 116, and replaced it with a provision for negotiated licenses, the NPRM proposed elimination of the CRT's rules governing the filing of jukebox claims (formerly part 305 of 37 CFR).

Following issuance in the **Federal Register** of the NPRM, the Copyright Office invited the interested parties to a public meeting to discuss the proposed regulations concerning rules and procedures for Copyright Arbitration Royalty Panels. The public meeting was held on February 1, 1994, at Hearing room 921 of the Office of the former Copyright Royalty Tribunal. More than 50 individuals attended; comments were noted in an unofficial transcript and became part of the Administrative Record.[1] Written comments on the proposed rulemaking were due on or before February 15, 1994. Both oral and written comments are reflected in our current proceeding.

The Office received a total of 11 comments.[2] Many parties filed joint comments, and some of the joint commentators also filed separate comments. The commentator groups for each of the 11 comments were as follows:

Recording Industry Association of America, Inc and the Alliance of Artists and Recording Companies, Inc. (referred to collectively as "RIAA/AARC");

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[1] Individuals wishing to inspect the unofficial transcript of this meeting may contact the Copyright General Counsel's Office at (202) 707–8380.

[2] The first ten comments were filed on time. The 11th comment, from the Public Broadcasting Service, was filed April 21, 1994, more than two months late, and included a motion for leave to file the comment. The Copyright Office sees no reason why consideration of the comment should be denied, and we are therefore granting PBS' motion and considering the views expressed in the comment for this rulemaking.

National Music Publishers Association and the Harry Fox Agency (collectively "Music Publishers");
Electronic Industries Association ("EIA");
American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. (collectively "Performing Rights Societies");
United Video Division of United Video Satellite Group, Inc. ("United Video");
National Cable Television Association ("NCTA");
Program Suppliers, Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively "Copyright Owners"); [3]
Program Suppliers ("Program Suppliers");
Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively "Certain Copyright Owners").
Gospel Music Coalition and Copyright Management, Inc. (collectively "Gospel Music");
Public Broadcasting Service ("PBS").

II. CRT Precedent and Pending Matters

The NPRM addressed a significant preliminary issue: How the Copyright Office should deal with matters that were pending before the CRT at the time of its elimination. The Office stated that it was "of the firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal" and that it was therefore making a "preliminary finding that all proceedings pending before the Tribunal at the time of its elimination were terminated at that time." 59 FR 2551 (1994). Parties wishing to have pending matters considered by either the Office, or the CARPs, or both, would have to resubmit the matters to the Office. *Id.*

The Office went on to discuss the precedential effect, if any, of orders and rulings of the Tribunal issued in proceedings that were pending before the Tribunal at the time of its termination. We concluded:

> The Office has no intention of questioning or reopening matters decided by the former Tribunal with respect to ongoing proceedings. However, we understand that the termination of pending Tribunal proceedings and the requirement of new filings will likely raise again some of the issues previously decided by the Tribunal. The Copyright Office of the Library of Congress makes a preliminary finding that, while we will look to the Tribunal's decisions and orders for guidance, neither the Office nor the Copyright Arbitration Royalty Panels are legally bound by those decisions. All legal issues related to proceedings pending before the Tribunal at the time of its elimination may therefore be resubmitted to the Copyright Office and, where appropriate, to the Arbitration Panels for consideration. *Id.*

We also noted in a footnote to this paragraph:

> The Copyright Office acknowledges that it is of course bound by rate adjustments and distributions that the Tribunal had conducted and concluded before its elimination. Thus, for example, the Office will not entertain any petitions to reexamine cable distributions for years earlier than 1990.

Id. at fn. 1.

These statements concerning the refiling of pending matters, and the possible effect as legal precedent of CRT rulings in pending proceedings, drew comments from two parties. The Copyright Owners favored the Office's position that all pending CRT matters terminated with enactment of the CRT Reform Act and would have to be refiled with the Office, the CARPs, or both. Copyright Owners, comment at 2. They noted that the largest single matter to be affected by this policy decision is the 1990 cable distribution, and asked that the parties to that proceeding be allowed to resubmit their cases with the Copyright Office, but with two qualifications. First, according to the Copyright Owners, the "parties should be permitted to comment on the appropriate dates for submittal of the 1990 cases and the start of the 1990 hearing before a panel." *Id.* at 3. Second, they asked that the parties in the 1990 distribution not be restricted to evidence submitted to the CRT: in other words, that they be allowed to update their cases in their filings with the Office rather than being bound by what they previously submitted to the Tribunal. *Id.* at 3–4.

On the issue of rulings by the CRT in pending proceedings, the Copyright Owners agreed in principle with the Office's preliminary finding that these CRT rulings are not binding, but suggested "slight changes to the phrasing of the discussion." *Id.* at 4. According to the Copyright Owners, the NPRM was unclear as to whether the Office's statement—that neither it nor the CARPs are bound by CRT rulings—applied only to matters pending at the time of the CRT's termination, or whether it was intended to apply to all CRT decisions. If the language in the NPRM was intended to refer to all CRT rulings, then the Copyright Owners argued that it is contrary to the intent and language of 17 U.S.C. 802(c). *Id.* at 4–5.

RIAA/AARC also questioned the NPRM's statement regarding treatment of CRT precedent. Their comments suggest that they interpret the NPRM as asserting that the Office and the CARPs are free to ignore CRT precedent in all cases. RIAA/AARC, comment at 1. RIAA/AARC appears to be arguing that any and all decisions of the CRT—not only those in concluded matters but also those in matters pending on or before December 17, 1993—represent legal precedent that is binding on the Office and the CARPs. *Id.* at 2.

On reexamination of the NPRM, and especially in light of these comments, we have to admit that our discussions both of the refiling of pending matters and the legal effect of CRT decisions were unclear. These are extremely important issues, and we will try to clear up the confusion here.

First of all, the Office restates its "firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal." 59 FR 2551 (1994). Second, we adhere to the policy determination that any proceeding still pending before the CRT on the date of its elimination, December 17, 1993—whether it involved rate adjustment, distribution, rulemaking, or administration—terminated as of that date. The legal effect of that termination is that the proceeding has ceased to exist, and that any rulings or decisions made by the Tribunal during the proceeding are null and void and without any binding effect, as precedent or otherwise, on the Copyright Office, the CARPs, or the parties.

In cases where a proceeding was terminated by operation of the CRT Reform Act on December 17, 1993, the parties will be obliged to refile in the Copyright Office in accordance with these new CARP regulations, and present their arguments and, as a general rule, their evidence,[4] as if there had never been a proceeding before the CRT. Parties to the 1990 cable distribution are not bound by their earlier filing with the CRT, and may refile their cases and evidence as they see fit.[5]

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[3] The parties comprising the Copyright Owners derive their names from their "Phase I" categories in the former Tribunal's cable royalty distribution proceedings. The Program Suppliers are more than 100 producers and distributors of syndicated series, movies, and television specials represented by the Motion Picture Association of America. The Joint Sports Claimants consist of Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association. NAB represents claiming television and radio stations. PBS represents claiming member television stations and producers of public television programs. ASCAP, BMI and SESAC are three performing rights societies, also known as the Music Claimants, representing their members and affiliates. The Devotional Claimants consist of several producers and syndicators of religious programming. The Canadian Claimants represent Canadian programs broadcast by Canadian television stations. NPR represents its claiming member radio stations.

Section 802(c) of the Copyright Code requires the CARPs to "act on the basis of * * * prior decisions of the Copyright Royalty Tribunal." We emphasize, however, that this requirement applies only to proceedings that were concluded by the Tribunal. For example, CRT rulings from the 1989 cable distribution have precedential effect because the 1989 distribution is a concluded proceeding, but rulings made during the 1990 cable distribution are without precedential effect.

We should add that, although rulings and orders from proceedings that were pending before the CRT at the time of its elimination do not constitute binding precedent, the Copyright Office will review those rulings and orders for information and guidance if the same issues arise during the course of a refiled proceeding, and will call them to the attention of the CARP.

There is an important distinction to be made here. What we have said so far applies to cases where a proceeding was underway at the CRT before December 17, 1993, except for claims to royalties filed with the CRT before its elimination. Royalty claims are required to be filed during specific time periods set by the Copyright Code, and any valid claims filed with the CRT before the statutory deadlines, and still pending on December 17, 1993, are unaffected by the new law. For example, the Code requires claims for DART royalties to be filed in January and February of each year with respect to royalties from the preceding calendar year. 17 U.S.C. 1007(a)(1). Claims to 1992 royalties had to be filed with the CRT by February 28, 1993. It is not now necessary to refile those claims with the Copyright Office, even though 1992 DART royalties have yet to be distributed. The Copyright Office has received from the CRT all claims to 1992 DART royalties that had been filed with the Tribunal, and it is therefore unnecessary, and without legal effect, to refile those claims with the Office.

Finally, in connection with DART filings, an issue raised by one of the commentators brings up questions related to those we have been discussing. The comment of the Performing Rights Societies contests the validity of the rule proposed in § 259.2 of the NPRM, which would require a performing rights society "* * * to obtain from its members or affiliates separate specific and written authorization signed by members, affiliates or their representatives to file claims to the Musical Works Fund * * *". Performing Rights Societies, comment at 1. This rule was promulgated by the CRT on October 18, 1993, and, as directed by the CRT Reform Act, the Office adopted it in its December 22, 1993, regulation. 58 FR 67690 (1993). Our NPRM did not propose to amend the regulation beyond renaming it and assigning it a new section number (§ 259.2). The Performing Rights Societies filed a petition for reconsideration of the rule with the CRT on November 3, 1993, before the Tribunal was terminated, and are now asking for Copyright Office consideration of the question in the context of this rulemaking. Gospel Music has filed an opposition. Gospel Music, comment at 1–3.

Although referred to as a "comment," the letter from the Performing Rights Societies is more in the nature of a petition to address the issue anew. They say that they wish "to petition to reopen the Tribunal's former rulemaking proceeding," and to have the matter addressed by the Copyright Office. The CRT had adopted a rule contrary to the Performing Rights Societies' petition; if the Societies had not petitioned the CRT for reconsideration, or if the CRT had acted one way or the other on the reconsideration request before it expired, we would consider the matter of the petition settled. As things stand, however, the petition for reconsideration was a pending CRT matter, and the Copyright Office will consider the Performing Rights Societies' "comment" as a separate petition for rulemaking, not as part of this rulemaking proceeding. The "comment" of Gospel Music will be treated as an opposition to that petition. At a later date we will publish notice of a separate rulemaking in response to the Performing Rights Societies' petition, and will invite interested parties to comment at that time. Section 259.2, as adopted in 58 FR 67690 (1993) and renamed and renumbered in this rulemaking, remains in effect until the conclusion of the separate proceeding.

III. Interim Regulations

Today's interim regulations reflect a comprehensive review of the entire body of the former Tribunal's rules and regulations, and a thorough analysis of the new procedures needed to implement the bifurcated system of ad hoc arbitration panels administered by the Librarian of Congress. The comments included a number of suggestions and proposed amendments, most of which were constructive and many of which we have adopted. In general the commentators were supportive of the Office's overall approach and most of the language in the NPRM.

It was the consensus of the parties at the February 1, 1994, public meeting that a reply period for comments on the proposed rules would be desirable. At the time of the public meeting we thought it would be impossible to provide periods for reply comments addressed either to the responses to the NPRM or to these interim regulations; this was because the CARP infrastructure must be in place before proceedings can begin, and one of the deadlines for starting DART distribution proceedings was supposed to fall on March 30, 1994.[6] On further consideration, however, the Office concluded that it would be virtually impossible to carry out the necessary procedures for appointing arbitrators before that date, and we issued a notice postponing the deadline, see 59 FR 9773 (1994) (postponing time period for declaration of controversy with respect to 1993 DART royalties to June 30, 1994). Even so, there is still the need to implement the CARP rules immediately, and to begin the screening and selection of potential arbitrators.

In order to get revised regulations into effect immediately and, at the same time, to offer an opportunity to see how they work in practice and to elicit meaningful comments and suggestions, the Office is adopting today's regulations on an interim basis.[7] All proceedings before the Office and the CARPs will be governed by the December 22, 1993, interim rules as amended by these interim rules, unless and until they are further amended or superseded. Comments are due on June 15, 1994, and reply comments on July 15, 1994, whereupon the Office plans to make another comprehensive review and analysis before adopting final regulations.

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[4] A question was raised in the February 1, 1994, meeting as to the possibility, when the 1990 cable distribution proceedings are initiated by a CARP, of incorporating by reference, rather than completely refiling, one or more long documents already filed by a party in the suspended CRT proceedings. We agree that, to avoid wasteful and needless duplication, the CARP should have the prerogative to permit incorporation by reference.

[5] As recommended in the comments of the Copyright Owners, we will at a later date invite the parties to the 1990 cable distribution to comment on when the proceeding should commence before the CARP.

[6] Sec. 1007(b) of the Copyright Code states that, "Within 30 days after the period established for the filing of claims [January-February] * * *, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalties * * *", and sec. 1007(c) states that, if a controversy exists, "the Librarian shall * * * convene a copyright arbitration royalty panel to determine the distribution of royalty payments."

[7] These interim regulations consist of the earlier "interim regulations" adopted by the Copyright

The Librarian and the Office are committed to creating the fairest, most efficient possible system for adjusting royalty rates and distributing royalties. We believe that the rules and procedures adopted today will work, but during the coming months we will continue to monitor the CARP experience very closely and to identify any problems that need solving and any improvements that can be made.

The following is a section-by-section summary of the amended regulations, together with a discussion of the applicable comments on the corresponding provisions of the NPRM.

(a) *Part 251—Copyright Arbitration Royalty Panels Rules of Procedure*

Part 251 contains most of the rules and procedures governing the operation of the CARPs, and therefore received the greatest number of observations and suggestions from the commentators.

(1) *Status of certain DART proceedings.* As a preliminary matter, it is important to consider the scope of part 251 with respect to digital audio proceedings under chapter 10 of the Copyright Code. It is the Office's reading of the CRT Reform Act that neither of the following is to be a CARP proceeding:

(*i*) the proceeding raising the maximum rate for digital audio tape royalties which, under 17 U.S.C 1004(a)(3), is to be handled solely by the Librarian;

(*ii*) the arbitration proceeding under 17 U.S.C. 1010 to determine if a digital audio recording or interface device is subject to royalty payments. We reach this conclusion based on the 1993 amendments to section 801 of the Copyright Code. Former section 801(b)(4), which assigned to the Tribunal the authority to distribute DART royalties, and "to carry out its other responsibilities under chapter 10," was deleted; except for DART royalty distribution, which reappears in the new section 801(b)(3), that former authority was not reassigned to the Copyright Arbitration Royalty Panels. For these reasons the Office has not proposed any regulations in this rulemaking as to the raising of the DART maximum royalty payment or the status of a DART device. These are matters that will be covered later in separate DART regulations.

We invite comments from the parties on the following:

Is our interpretation concerning the status of DART proceedings under the CARP legislation correct?

If it is correct, to what extent does the Office have authority to adopt regulations governing standards of conduct in DART proceedings?

(2) *Organization of Part 251.* Part 251, which tracks the original format of the former Tribunal's regulations, is divided into seven subparts, identified as subparts A through F.

Subpart A, entitled "Organization," describes the composition and selection process for the CARPs. Subparts B and C—"Public Access to Copyright Arbitration Royalty Panel Meetings" and "Public Access to and Inspection of Records"—remain virtually the same as the former Tribunal's rules, with only a few minor technical amendments. Subpart D, "Standards of Conduct," consists of a completely new set of rules prescribing the financial and ethical requirements for arbitrators, and governs *ex parte* communications, billing, sanctions for misconduct, and other matters involving ethical standards. Subpart E, "Procedures of Copyright Arbitration Royalty Panels," prescribes the procedures to be followed by the CARPs in conducting proceedings, including those governing submission of evidence, conduct of hearings, reports of the CARPs, and orders of the Librarian. Subparts F and G—"Rate Adjustment Proceedings" and "Royalty Fee Distribution Proceedings"—provide certain additional requirements inherent in rate adjustment and distribution proceedings, and contain only a few changes of the former Tribunal's rules.

The following summarizes the additions and changes in the various subparts of part 251.

(b) Subpart A—Organization

As the NPRM explained, subpart A was in need of complete revision because of the differences between the statutory organization of the CRT and that of the CARPs. In addition to the changes proposed in the NPRM, these interim regulations incorporate additional revisions based on the comments and our own further review.

(1) *Official address.* The Copyright Office has secured a special Post Office box for receiving mail relating to the CARPs and any other matters arising under subchapter B of chapter II of this title (37 CFR). As the NPRM said, establishment of a single official address is important, since arbitration proceedings will not necessarily take place at a single location, within the Library of Congress or elsewhere. There may sometimes be an incentive for parties to deliver filings directly to the actual location where a CARP is meeting, but, for the reasons summarized in the NPRM, we believe it would be a mistake to allow official filings to go to locations different from the mailing address specified in these regulations.

Therefore, all filings required by this subchapter, if sent by mail, should be marked for delivery to the official address contained in § 251.1. The same address should be used for all correspondence or inquiries concerning the CARPs, distributions of royalties, rate adjustments, and other matters arising under this subchapter B. Note that, under § 251.44, the CARPs are required to establish procedures under which filings may be delivered directly to them, as long as a copy is also delivered to the official address.

(2) *Purpose of the CARPs.* Section 251.2 describes the royalty distribution and rate adjustment responsibilities of the CARPs with respect to the various compulsory licenses and statutory obligations established under the Copyright Code.[8] The Copyright Owners requested deletion of the word "television" from the phrase "cable television" in subsection (e), pointing out that fee distributions for cable retransmissions under sections 111 of the statute cover radio as well as television distant signal carriage. We have corrected subsection (e) and have amended later references to "cable television" to read simply "cable."

(3) *List of arbitrators—(i) The NPRM proposals.* To facilitate the process for selecting arbitrators, the NPRM proposed creation of a yearly list of qualified arbitrators obtained from professional arbitration associations or organizations. The association or organization would supply the names of

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Office on December 22, 1993, 58 FR 67690 (1993), as amended by today's changes.

[8] It is significant that, while adjustment of royalty rates for the cable compulsory license is one of the duties of the CARPs listed in § 251.2, there is no similar provision for the satellite carrier compulsory license. This is because the current satellite rates were adjusted in 1992, before enactment of the CRT Reform Act, and the satellite carrier license is due to expire on December 31, 1994. Congress is currently moving legislation to extend the duration of the license and provide for another arbitrated adjustment of the royalty rates. The Office anticipates that, when and if the pending satellite bill is enacted, it will include a provision making the satellite arbitration a CARP proceeding. In that event we will amend these rules to reflect the legislative changes.

arbitrators meeting the qualifications set out in § 251.5, together with a brief summary of each person's educational and employment history, qualifications, and "any other information which the professional arbitration association or organization may consider relevant." The Librarian would then publish the list of qualified candidates in the **Federal Register**, and this would constitute the master list from which all selections for CARPs would be drawn for the calendar year.

(*ii*) *Comments of copyright owners.* The Copyright Owners recommended several changes to § 251.3 as proposed in the NPRM. Copyright Owners, comment at 16–19.

First, they suggested that the Copyright Office solicit names of qualified arbitrators from at least five professional arbitration associations or organizations, including organizations that list former judges. Although, according to their predictions, the cost of an arbitration organization's list will be approximately $1,000, they "think that it is appropriate for a reasonable amount of money to be spent compiling these lists." *Id.* at 16. They also recommended consultation with not-for-profit arbitration associations that make no charge for their services.

Second, the Copyright Owners suggested that the master list be confined to 50 names. This, they said, "should provide a large enough group from diverse sources to avoid repeating the solicitation process in any one year." *Id.* at 17.

Third, to assist in the control of costs of the arbitration process—a concern voiced by most of the commentators—the Copyright Owners suggested that § 251.3(a) be amended to expand the required information provided to the Librarian by professional arbitration organizations; they recommended that this information include a description of the potential arbitrators' anticipated hourly, daily, or annual fees, including per diem expense requirements. *Id.* at 18.

Fourth and finally, the Copyright Owners sought amendment of § 251.3(a)(2), which would require arbitration associations and organizations to provide "a brief summary of the member's employment history." They took the position that a brief summary would not provide adequate information upon which to formulate objections, and asked for an amendment requiring information on the potential arbitrators' "areas of expertise, general nature of clients represented and types of proceedings in which the member represented clients." *Id.* at 19.

(*iii*) *Changes in § 251.3.* On the whole we think the comments and suggestions on lists of arbitrators make good sense, and we have adopted most of them with modifications and additions of our own.

(*A*) *Change in date for first lists provided by arbitration associations.* Subsection (a) is amended by deleting "March 1, 1994" and replacing it with "on or before May 6, 1994" as the date the Office is to receive from arbitration associations the lists of qualified arbitrators in accordance with § 251.3. We are providing a longer period in which to compile this year's lists since we could not complete the process of selection by March 1, 1994, and since the beginning of DART royalty distribution has been postponed from March 30 to June 30, 1994. See 59 FR 9773 (1994).

(*B*) *References to "member" stricken.* In the NPRM, § 251.3 referred throughout to the persons to be included in the list as "members" of the associations and organizations submitting their names. It now seems clear that this term would be questionable or inaccurate in some cases. We have therefore substituted the phrase "persons qualified to serve as arbitrators" and the term "person" in the subsection.

(*C*) *Public availability of information.* The NPRM left open the question of whether the information provided by the arbitration associations or organizations under subsection (a) would be available to the public. This interim regulation has been amended to make clear that this information will be available to the public for inspection and copying, but only with respect to those potential arbitrators whose names are published in the Librarian's list.

(*D*) *Employment or professional affiliation history.* As suggested in the comments, we have amended subsection (a)(2) to call for more detailed information about the person's professional career and expertise. The interim regulation also calls for information about clients represented and types of proceedings in which the person has been involved, but only if that information is available to the association or organization submitting the name. We recognize that a potential arbitrator's client base is not always the type of information available to a professional arbitration association or organization, and that potential arbitrators may be reluctant to disclose that kind of information publicly. Arbitrators will be required to disclose this and other information to the Librarian as part of their confidential financial disclosure statements, see § 251.32.

(*E*) *Disclosures of fees to be charged.* We agree with the points made in the comments: That the costs of the arbitration process should be kept as low as possible, that arbitrators' fees will comprise a major part of the costs, and that the rates a particular arbitrator will charge are an important element in the selection process. We have therefore added a new subsection (a)(5) calling for detailed information about the arbitrator's rates for fees. This information should include the basis on which the fee is to be computed (hourly, daily, etc.), any variation on that basis (overtime, etc.), and the amount of the basic rate. (As further discussed in the preamble to § 251.38, recovery of expenses will be available only to the arbitrators coming from outside the Washington, DC area, and then will be limited to the Government per diem rate.)

(*F*) *Date of publication of arbitrator list.* For the reasons mentioned above in connection with subsection (a), subsection (b) now calls upon the Librarian to publish the arbitrator list after May 6, 1994, rather than after March 1. In future years the lists will be published after January 1.

(*G*) *Number of names on arbitration list.* The Copyright Office agrees with the comments of the Copyright Owners that the number of names on an arbitrator list should not be left completely open, but we do not agree that the regulations should set an exact number. We believe that the interests of diversity will be served by publishing a list of at least 30 arbitrators, as opposed to an exact number; this should provide the flexibility necessary to the publication of a balanced list, which in some years might require more than 30. As a practical matter, the Office will try to produce a list that generally contains about 50 names. However, since we do not anticipate circumstances that would require a list with more than 75 names, we are adopting that number as the upper limit.

(*H*) *Number of arbitration associations or organizations.* The Copyright Owners also asked that the regulations quantify the number of associations or organizations from which the Librarian will obtain lists of potential arbitrators, and recommended that the number be set at five. We agree that the number should be quantified and that under the statute it must be more than one, but we think five is too many. Several of the arbitration associations listed by the Copyright Owners in an appendix to their comment each represent several thousand arbitrators. The Office believes that three associations or organizations are likely to provide more than enough eligible candidates in most cases. The rule as now written, we think, is flexible enough to provide diversity, including the presence of former judges, on the arbitrator list.

(4) *Arbitrator list: Objections.* Under § 251.4, objections to individuals on an arbitration list published in the **Federal Register** in accordance with § 251.3 may be lodged with the Librarian, but only by parties to a particular proceeding and only during a designated 30-day time period that will begin and end before the proceeding starts. In the case of rate adjustment proceedings the objection period coincides with the pre-proceeding period for consideration of possible settlements provided by § 251.63. For royalty distribution proceedings the period for objections is the same as the period for precontroversy motions and objections prescribed by § 251.45. In both cases the Librarian's notice in the **Federal Register** will set out the inclusive dates of the objection period. A party to the proceeding may lodge objections to one or more of the potential arbitrators on the Librarian's list; the grounds for each objection must be stated plainly and in detail.

(i) *Comments on objection procedures—(A) RIAA/AARC.* In their comments RIAA/AARC urged that, instead of tying the objection procedure to specific proceedings, the regulations provide for an objection period to come before publication of the annual list of arbitrators. RIAA/AARC, comment at 2–3. In their view, the proposed system of confirming objections to a period before the proceedings begin would expose the objecting party to—

> * * * the risk of having arbitrators against whom they had just filed objections selected for the proceeding. This would inevitably have a chilling effect on the parties, thereby negating the purpose of the proceeding.

According to RIAA/AARC, a procedure under which potential parties to any proceedings could lodge objections to names proposed for the master list before it is published in final form would have the advantage of expanding overall participation by the parties in the process of choosing arbitrators. *Id.* at 3.

(*B*) *Music publishers.* The Music Publishers had an alternative objection process to propose. They took the view that the NPRM's disclosure requirements for arbitrators were insufficient, and for this reason they recommended that the Librarian publish a "select list" of 10 to 15 names before proceedings begin, with the requirement that those potential arbitrators file a financial disclosure statement. Under this plan, parties to the proceeding would be allowed to review the statements and then file their objections, if any. Music Publishers, comment at 5.

(*ii*) *Changes in § 251.4.* The Office is adopting amendments to § 251.4 resulting from our decision not to provide any pre-proceeding period for discovery (discussed below in connection with §§ 251.45 and 251.63). Under the changes, the time period for filing objections to arbitrators has been reduced to 30 days. After consideration, however, we are unable to agree with the recommendations of either the RIAA/AARC or the Music Publishers. The RIAA/AARC proposal would require publication of a preliminary list that would be open to objections, followed by publication of a "clean" list of arbitrators whose names provoked no objections or who were found by the Librarian to be acceptable despite the objection. This would require substantial added administrative burdens, costs, and delays, and the "preliminary" lists would have to be long enough to insure a final list of at least 30 names.

We are not convinced that the procedure we are adopting will produce any chilling effect on participation by the parties. As we stated in the NPRM, 59 FR 2552 (1994), no peremptory challenges will be allowed, and all objections must be fully substantiated. Serious, well-grounded objections will certainly disqualify an arbitrator from selection to a CARP. Where the objections are not sufficient to prevent an arbitrator from being selected, the ethics rules of subpart D should be adequate to prevent biased decisions resulting from an objection.

Again, publication of "select" lists as proposed by the Music Publishers would be an additional and costly administrative burden, and would essentially eliminate the need for a master list. The conduct rules of subpart D of this interim regulation will require individuals appearing on the arbitrator list to file financial disclosure statements with the Librarian, and this requirement should satisfy the Music Publishers' primary concern.

(5) *Qualifications of Arbitrators.* Under § 251.5, as proposed in the NPRM, an individual must possess three basic qualifications to serve as a CARP arbitrator: Admission to the practice of law; 10 or more years of legal practice; and experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes. This proposal drew considerable comment from the parties, and there was substantial disagreement among them as to whether the arbitrators should all be lawyers.

(*i*) *Comments on requirement for legal qualifications—(A) Certain copyright owners.* A group identified as "Certain Copyright Owners"[9] favored adoption of the lawyer requirement because, they said, lawyers and judges have experience in operating under procedural and evidentiary rules and applying precedent. Certain Copyright Owners, comment at 3. They argued that there is "no need for panel members to possess any substantive expertise beyond knowledge and experience in the adjudication and resolution of disputes." *Id.* at 4. If non-lawyers were allowed to serve as arbitrators there might be some encouragement for the selection of experts such as economists; this, according to the comment, could "distort the process" by permitting the expert to "dominate the panel's consideration of any disputed questions within his or her area of expertise," and could create the potential for "unilateral decisionmaking." *Id.* at 4–5.

(*B*) *Program suppliers.* Program Suppliers believed that non-lawyers should be allowed to serve as arbitrators, although they proposed that each CARP include at least one lawyer. Program Suppliers, comment at 2. They welcomed the expertise a non-lawyer might bring to the arbitration process. In their view the participation of a non-lawyer could promote collegiality in the decision-making process, and they noted that the CRT Reform Act contains no provision forbidding consideration of non-lawyers. *Id.* at 6–7.

(*ii*) *Comments on selection of former judges.* The comments of Certain Copyright Owners, Program Suppliers, and Copyright Owners generally are agreed that the Librarian should give strong consideration to the selection of former judges as arbitrators. They proposed that § 251.5(c) be amended to read that a potential arbitrator must have "[e]xperience in conducting arbitration proceedings, or facilitating *or presiding over* the resolution and settlement of disputes." (emphasis added). Certain Copyright Owners, comment at 5; Program Suppliers, comment at 8; Copyright Owners, comment at 21. This amendment, they said, would make clear that individuals with judicial experience are qualified to serve on CARPs.

(*iii*) *Comments on continuity of membership.* There was considerable disagreement on the issue of continuity of membership from one CARP to another.

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[9] This group was comprised of Sports Claimants, the NAB, PBS, NPR, Devotional Claimants, and Canadian Claimants.

(*A*) *Copyright owners.* Noting Chairman Hughes' floor statement on the desirability of continuity, the Copyright Owners argued that having the same arbitrators on multiple CARPs is "essential" to the efficient operation of the royalty rate adjustment and distribution process. Copyright Owners, comment at 20. In their view, continuity would "ensure consistency in the decisionmaking process," thereby fostering the likelihood of settlement among the parties to a proceeding. *Id.* To encourage continuity, the Copyright Owners proposed that § 251.5 be amended by adding a new subsection (d) to include an additional factor in the selection process, giving preference to any arbitrator who had previously served on a panel:

> (d) In addition, arbitrators who have previously served on a CARP should be given a preference for selection to a subsequent CARP; provided, however, that no arbitrator shall be selected as a member of a CARP following the sixth anniversary of the date of his or her first selection as a member of a CARP.

Id. at 20–21.

(*B*) *Certain copyright users.* Commentators representing two groups of copyright users opposed the principle of continuity on the CARPs. NCTA argued that creating a preference based on service on an earlier CARP "could favor those, such as copyright owners, who regularly participate before the panels." NCTA, comment at 2. United Video echoed NCTA's concern, stating its belief that the creation of ad hoc arbitration panels was intended as Congress' remedy to the insular nature of the CRT:

> As a practical matter, the licensees have no desire to see the CRT recreated in the guise of "stable" CARPs. Such "stability" would mean that copyright owners can yet again develop a body of mystical, impenetrable, unreasoned standards into which compulsory licensees are plunged every five years. . .".

United Video, comment at 2. Both NCTA and United Video argued that, at the very least, the Copyright Office should ensure that arbitrators who have served on CARPs in distribution proceedings are not also chosen to serve on CARPs in ratemaking proceedings. NCTA comment at 2; United Video, comment at 2.

(*iv*) *Amendment of § 251.5.* The Copyright Office has considered the varying viewpoints of the parties on qualifications of arbitrators, but we have decided to adopt § 251.5 as proposed with only one technical amendment to subsection (a). That subsection is intended to require arbitrators to be admitted to the practice of law. Since membership in a bar association is not synonomous with admission to the practice of law, we are broadening the requirement accordingly.

(*A*) *Legal qualifications.* On the issue of whether arbitrators should be lawyers, we continue to believe that the adjudicatory nature of CARPs requires arbitrators to have experience in operating under procedural and evidentiary rules, applying precedent, and evaluating the legal significance of conflicting evidence. The importance of legal training is underscored by the relatively short period (180 days) allowed for conducting proceedings which are often long and complicated. Arbitrators will be called upon to decide substantive and procedural matters arising both during the hearings and in motions and pleadings, and there would be little or no time to train non-lawyers in how to handle them.

(*B*) *Former judges.* The Copyright Office believes that § 251.5 as drafted is certainly broad enough to allow appointment of former judges. Subsection (c), which is taken directly from section 802(b) of the Copyright Code, requires an arbitrator to have experience either in conducting arbitration proceedings or in facilitating the resolution and settlement of disputes. Unlike the Copyright Owners, we believe that experience in "facilitating the resolution and settlement of disputes" includes judges as well as mediators, and that the proposed "presiding over" language is unnecessary. The Office is therefore adopting subsection (c) as proposed.

(*C*) *The question of continuity.* Neither the Copyright Office nor the Library has had experience in selecting arbitrators under circumstances such as these, and for the present we think it is important to maintain flexibility in the selection process. The CRT Reform Act grants the Librarian considerable discretion in selecting arbitrators, and he intends to exercise that discretion to guard against any possibility of bias or undue influence. We therefore believe it would be a mistake to be bound to any system of preferences or exclusions in the selection process at this time. The Congress expressly chose not to make continuity among panel members a requirement. See 139 Cong. Rec. H10973 (daily ed. November 22, 1993) (floor statement of Rep. Hughes) ("The Librarian certainly has discretion to chose [sic] individuals willing to serve for 6 years. The Senate decided not to make this a requirement, however, and I agree with that decision."). At the same time, we understand that under certain circumstances, especially in the case of distribution proceedings, continuity could have important advantages.

Without expressing it as a binding policy or writing it into the regulations as a requirement, we agree with Chairman Hughes that, in choosing arbitrators for future proceedings, the Librarian should look to the quality of service and soundness of decision-making an individual has displayed as a member of an earlier CARP. We also agree that, in the selection process for a rate-adjustment CARP, the familiarity a former arbitrator in a distribution proceeding has demonstrated with respect to particular parties and their arguments should be taken into account in weighing the possibility of bias. Experience with the CARPs will help to determine, later on, whether some system of preferences or exclusions should be written into these regulations.

(6) *Composition and selection of CARPs: Quorum requirements.* Section 251.6 of the NPRM described the procedure for selecting the members and chairperson of a CARP, and dealt with quorum requirements under various circumstances. Subsection (e) of the NPRM provided:

> If for any reason one or more of the arbitrators selected by the Librarian is unable to serve during the course of the proceedings, the Librarian shall promptly appoint a replacement: Provided, that once hearings have commenced, no such appointment shall be made and the remaining arbitrators shall constitute a quorum necessary to the determination of the proceeding.

This provision would leave the possibility of a single arbitrator deciding an entire proceeding.

(*i*) *Comments of copyright owners.* To avoid the dangers inherent in a rule that would allow a quorum of one, the Copyright Owners proposed that subsection (e) be revised to read:

> (e) If for any reason two of the arbitrators selected by the Librarian are unable to serve during the course of the proceedings, the Librarian will suspend the proceedings until at least one new arbitrator is selected. Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

Copyright Owners, comment at 22.

(*ii*) *Amendment of § 251.6.—(A) Quorum requirement.* The Copyright Office shares the Copyright Owners' concern, and is therefore adopting the requirement that two arbitrators constitute a quorum necessary to the determination of a proceeding. Should a CARP panel be reduced to one serving arbitrator for any reason, it would be necessary either to replace one or both of the other arbitrators or terminate the proceeding. However, there are inherent problems in adopting a process of replacing arbitrators, especially after hearings have begun.

(B) *Problems presented by replacement of arbitrators.* Our concerns go to the heart of the fairness of the proceedings and compliance with the requirements of the Administrative Procedure Act. If a new arbitrator is selected midway through hearings in a proceeding, he or she will lose the benefit of earlier live testimony, and rights of parties to the proceeding under the APA could be compromised. We also recognize that proceedings cost a great deal of money, and that the parties may be reluctant or financially unable to repeat the hearing process in its entirety for the benefit of a new arbitrator. One partial solution to the fairness problem might be to require all CARP hearings to be recorded on videotape. As an alternative to terminating the proceedings completely and starting the whole process anew, videotaping might provide substantial monetary savings in the long run.

(C) *Compromise solution.* In an effort to ensure that a quorum of two will exist, and to provide rational, fair, and economical procedures for replacing arbitrators, including chairpersons, in various situations, the Copyright Office is adopting a compromise provision. Where one or two of the arbitrators has left a CARP panel, the Librarian of Congress may be called upon to suspend the proceedings (thus tolling the running of the statutory periods).[10] If the hearing has not yet begun, the Librarian is obliged to bring a CARP back up to its full complement of three members; but, if the hearing is underway, no replacement will be made unless necessary to provide the required quorum of two members.

(*a*) *Hearings Not Yet Begun.* If hearings in the proceeding have not yet begun and the CARP has fallen below its statutory three-person complement (two arbitrators selected by the Librarian and a third chosen—as member and chairperson—by the other two), the Librarian will suspend the proceeding and inaugurate a procedure to bring the CARP back up to three members. Where one or two vacancies are to be filled, and either or both of the vacant seats were previously occupied by arbitrators chosen by the Librarian, the Librarian will select the necessary replacement or replacements. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators will select the replacement. If there are two vacancies, and one was previously occupied by the chairperson, the Librarian will select one replacement, and that person will join with the remaining arbitrator to choose the replacement.

(*b*) *Hearings begun.* If hearings have begun, the Librarian will not suspend the proceedings and select replacements unless it is necessary to do so to achieve a quorum. In other words, if the hearing is underway with the full complement of arbitrators and one drops out, nothing need be done. However, if two of the three arbitrators drop out at once, or if the hearing is going forward with two arbitrators and one drops out, the Librarian will need to suspend the proceedings and select one new arbitrator (not two) to provide the necessary quorum.

Where the hearing has started and the CARP loses its chairperson, a problem arises since the Librarian has no authority under the statute to fill the chair of a CARP. The solution in this situation is to ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to decide between themselves which of the two of them will serve as chairperson.

A more serious problem arises from the fact that a new arbitrator in an ongoing hearing will not have had the benefit of hearing and seeing the earlier testimony and arguments. In an effort to accommodate the rights of the parties under the APA and, at the same time to save time and money, the interim regulation requires that the Librarian's selection of a replacement arbitrator in an ongoing hearing receive the unanimous written agreement of all parties to the proceeding. If the parties agree, the hearings will continue from the point of suspension; if not, the Librarian will terminate the proceeding and start the whole process anew.

(7) *Suspension of proceedings.* Several provisions of these interim regulations, including those on the replacement of arbitrators under § 251.6 and the removal and replacement of an arbitrator for misconduct under Subpart D, require the Librarian to suspend any ongoing proceedings long enough to make the necessary replacement or replacements. Upon considering the problem the Copyright Office has concluded that these regulations should also contain a section governing the conditions and procedures for suspensions, making clear in particular that suspension tolls the running of the 180-day hearing period or any other time period in effect. We have added this provision as § 251.8, at the end of subpart A.

Under subsection (a) of the new § 251.8, whenever an arbitrator must be replaced for any reason, the Librarian is obliged to order a suspension of the proceeding by notice to all parties in writing, to make the replacement expeditiously, and to give written notice to the parties of the resumption of the proceeding "from the time and point at which it was suspended." Subsection (b) is intended to deal with cases in which the Librarian is convinced that, because of temporary situations such as serious illness or personal tragedy affecting an arbitrator, it would be extremely difficult or impossible to continue the proceeding for the time being. In these situations, not involving replacement of an arbitrator, the proceeding may be suspended only with the written consent of all parties, and for a stated period of one month or less.

Section 251.8(c), which applies to all suspensions, provides that the suspension "shall result in a complete cessation of all aspects of the proceeding, including the running of any statutory period provided for completion of the proceeding." We believe it is necessary and important during the time of suspension to toll the periods provided for proceedings in the statute, particularly the 180-day period prescribed by 17 U.S.C. 802(e). The tolling provision is intended to allow sufficient time for selection of replacements without cutting into and reducing the full period the arbitrators will need for hearing the case and rendering a decision.

(c) *Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings*

Subpart C—Public Access to and Inspection of Records

The Copyright Office is adopting all of subparts B and C, as proposed in the NPRM, with changes regarding recordings and photographs at open meetings. The Copyright Owners requested a minor change in § 251.12, which governs the conduct of open meetings held by a CARP, to say that the right of a witness to withhold authorization of a recording of his or her testimony does not apply to the official transcript. We agree, but on further consideration we think § 251.12 could have been too strict in operation. We see no reason why the CARP proceedings should not be conducted with the greatest possible openness.

Section 251.12 now reads that the public and the news media will be able to take photographs and to make audio or video records of the proceedings, so long as the CARP is informed in advance and nothing is done to disrupt the proceedings. The permission of the participants in the proceedings would not be required.

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[10] The Copyright Office has added a new § 251.8 to Subpart A dealing with suspension of proceedings and tolling of the running of statutory periods, including the 180-day hearing period. This new section is discussed below.

(d) *Subpart D—Standards of Conduct*

The CRT Reform Act amended section 802(b) of the Copyright Code to provide that the "Librarian of Congress, upon recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter." The need to provide standards of conduct for arbitrators in these regulations is particularly important because the CARP arbitrators are not employees of the Federal Government. They are private individuals to whom controversies are being referred under this particular form of alternative dispute resolution. Since the established standards of conduct for government employees are not applicable to the CARP arbitrators, these regulations must adopt those and other standards in the specific provisions of part 251.

Instead of proposing specific regulations in our NPRM, we asked for recommendations as to what standards of conduct should apply to the CARP arbitrators.

(1) *Comments and recommendations.* Three of the written comments addressed standards of conduct.

(i) *RIAA/AARC.* The RIAA/AARC strongly supported a code of conduct. On the ground that the characteristics of CARP arbitrators are closest to those of administrative law judges, they recommended that the Office base its regulations on the "Model Code of Judicial Conduct for Federal Administrative Law Judges," and attached to their comment pertinent provisions of the Code. RIAA, comments at 3–4, and Appendix.

(ii) *Music publishers.* The Music Publishers also suggested that the Office adopt rules based on the "Model Code of Judicial Conduct," and emphasized that the rule should prohibit all ex parte communications with the CARPs. Music Publishers, comments at 10.

(iii) *Copyright owners.* The Copyright Owners advocated strict standards, noting that royalty distributions can involve hundreds of millions of dollars. They specifically recommended that the Librarian investigate persons under consideration as arbitrators for conflicts of interest, and that, if any conflicts are found to exist before or during the proceeding, the particular individual be disqualified. With respect to employment of a potential or actual arbitrator by any interested party, they recommended a pre-employment ban of five years and a post-employment ban of three years. In their view, however, current conflicts of interest or recent past employment with an interested party need not be disqualifying if the parties to the proceeding unanimously waive the disqualification. The Copyright Owners also recommended that strict regulations be adopted to prohibit ex parte communications, or any other appearances of impropriety, and to rule out unreasonable billing by the arbitrators. Copyright Owners, comments at 25–29.

(2) *Meeting with endispute representatives.* As the result of questions raised during an informal meeting of Copyright Office officials with two representatives from Endispute, an arbitration association, we have made some modifications to our sections on billing (§§ 251.3, 251.38, 251.54) and our definition of employment (§ 251.36). Those modifications are explained below in our discussion of each applicable section. A summary of our meeting with Endispute has been placed in the comment file of this docket and is available for public inspection.

(3) *Basic conclusions.* In formulating our interim rules for standards of conduct, the Copyright Office has considered the recommendations of the parties, and has incorporated some of them, as explained below. On the fundamental question of the model to follow, however, we have decided to base the rules on those promulgated by the Office of Government Ethics (OGE), rather than the codes of judicial conduct or codes governing administrative law judges. OGE's rules are more detailed and rely less on self-reporting or recusal. We believe it is important that the standards be clearly expressed so that the public is assured of fairness and the arbitrators know precisely what is expected of them. It is also important that, rather than merely expressing good intentions, the rules be enforceable and enforced.

(4) *Interim regulations on standards of conduct.* Part D of these interim regulations (§§ 251.30–39) reflects the Copyright Office's conclusions as to the general and specific standards to govern the conduct of CARP arbitrators. The following is a summary of these interim rules, and we solicit detailed comments on any or all of them.

(i) *Basic obligations of arbitrators.* Section 251.30 provides the basic obligations of the arbitrators in general terms. It is derived from Title 5, § 2635.101 of the rules of the Office of Government Ethics, as modified to meet circumstances applicable to the CARP arbitrators.

The general obligations set out in § 251.30 apply both to the arbitrators selected to preside in a particular proceeding and to the arbitrators who are listed as available but who have not yet been selected. They specify that arbitrators: Shall not use their position for private gain; shall not hold any conflicts of interest; shall not solicit or accept gifts from interested parties; shall not reveal nonpublic information; shall not give preferential treatment to any party, shall not engage in outside activities that conflict with their duties; shall not seek employment with any interested party; and shall endeavor to avoid all appearances of impropriety.

In establishing these general obligations, the Copyright Office has also incorporated provisions from the Model Code for Administrative Law Judges recommended by the RIAA/AARC. These provisions address the behavior of arbitrators at hearing: To maintain order and decorum, to be patient, dignified, and courteous to the parties and witnesses, and to dispose of business promptly. RIAA, comment at Appendix.

These general obligations are to be considered just as binding as the specific obligations that follow in §§ 251.31–38. They are meant to cover situations not anticipated by the specific sections, but which nonetheless would constitute a violation of ethical standards. Complaints based on these general provisions are as valid, and must be taken as seriously, as those based on specific obligations. While most of the general obligations have more specific counterparts in the obligations spelled out in §§ 251.31–38, some do not. One example is § 251.30(f), which prohibits bias on the part of an arbitrator. A specific rule on bias would probably be futile because it could not envision all possible situations; but, if supported, a charge of bias could be grounds for disqualification.

(ii) *Financial interests.* Section 251.31 specifies what constitutes a financial conflict of interest that would result in an automatic disqualification to serve. This section does not cover all areas of potential bias; it applies only to those that involve a current financial conflict and would result in automatic disqualification. Other areas of potential bias would be covered by the objection procedure in § 251.4, as discussed above in connection with that section and below in connection with these Standards of Conduct regulations.

(A) *Distribution proceedings.* Section 251.31 states that, in a distribution proceeding, the arbitrator may not have a financial interest in any claimant to that proceeding, or in any copyright owner that ultimately receives royalties from a claimant to the proceeding, whether or not the claimant is party to a voluntary settlement. The reason for disqualifying anyone with a financial interest in a party that has already settled its dispute is that, since distributions are annual proceedings, the arbitrator might otherwise be tempted to insert precedent that could help that party in the following year's controversy.

As noted, the prohibition against financial conflicts applies more widely than merely to interests in claimants to the proceeding. It also covers interests in copyright owners who receive royalties from a claimant to the proceeding, such as a television producer who does not file a claim herself but receives royalties from a syndicator who does.

(*B*) *Rate adjustment proceedings.* In a rate adjustment proceeding the arbitrator may not have a financial interest in any copyright owner or user entity that would be affected by the outcome of the proceeding.

(*C*) *Definition of financial interest.* For purposes of both distribution and rate adjustment proceedings, § 251.31(b) defines "direct or indirect financial interest" to include employment and other affiliations, ownerships of securities, and deriving any income, however small, from an interested party. Section 251.31(c) makes two specific exceptions to the definition of "financial interest": (1) Where the individual's money is invested in a mutual fund or blind trust and he or she cannot control the investment decisions; and (2) where the individual is receiving fixed post-employment benefits that would not be affected by the outcome of the proceeding, such as benefits from health insurance or a pension.

(*D*) *Curing a conflict of interest.* Section 251.32(b) provides two ways to cure a conflict of interest: (1) The potential arbitrator may divest himself or herself of the interest that caused the disqualification; or (2) the parties may be asked to consider the nature and degree of the conflict and, if all parties agree that the conflict is not sufficient to result in disqualification, the individual may serve.

(*E*) *Objection procedure.* Even if the arbitrator does not have a financial conflict of interest, parties who nonetheless believe a potential for bias exists for any other reason may petition the Librarian under the objection procedure described in § 251.4. Parties will have available to them the employment history, affiliations, and the general nature of the clients represented by the potential arbitrators upon which to base their objections. The Librarian will rule on objections on a case-by-case basis.

(*F*) *Interests of relatives and associates.* Section 251.31(d) specifies that the financial interests of the arbitrator's spouse, minor child, and business associates are to be imputed to the arbitrator. This paragraph is derived directly from § 2635.402(b)(2) of the OGE's regulations.

(*iii*) *Financial disclosure statement.* Section 251.32 requires all listed arbitrators to file confidential financial disclosure statements with the Librarian, within one month following publication in the **Federal Register** of the annual list of arbitrators containing their names. To maintain the confidentiality of the statements, only the Librarian and designated Library staff will be permitted to review them. The Librarian will not select any arbitrator who has a conflict of interest as defined in § 251.31. When the two selected arbitrators pick their chairperson, they will have to consult first with the Librarian to see that the person they nominate has no conflict of interest. If the Librarian finds that a conflict does exist, the two selected arbitrators will be asked to choose another arbitrator who has no conflict of interest.

After the panel is selected, the arbitrators will have one week to file updated financial disclosure forms with the Librarian: This requirement is intended to ensure that no conflicts had developed between the time the arbitrators were listed and the time they were selected. If any conflicts arise during the later course of the proceeding, or if any change in an arbitrator's financial interests presenting a disqualifying conflict of interest is found during the hearing to have gone unreported, the Librarian will suspend the proceeding in accordance with § 251.8 of these interim regulations and replace the arbitrator with another arbitrator from the arbitrator list.

(*iv*) *Ex Parte communications.* Section 251.33 sets out the varying circumstances under which a ban is imposed on ex parte communications with: (1) The Librarian of Congress or the Register of Copyrights; (2) staff of the Library or the Copyright Office; (3) persons selected as arbitrators in a proceeding; and (4) persons named in the current list of qualified arbitrators. The section also describes what anyone receiving a prohibited communication must do, and the possible consequences of a violation of the rule.

(*A*) *Prohibited communications*—(aa) *Communications with librarian or register.* (1) Who is banned from communicating: Anyone outside the Library of Congress or Copyright Office;

(2) What communications are banned: The merits or status of any matter, procedural or substantive, relating to royalty distribution or rate adjustment;

(3) When communications are banned: Any time.

(4) Exceptions: Statements on public policies involved in CARP operations where the discussion is unrelated to specific proceedings; for example, a discussion on the advisability of amending the copyright statute.

(bb) *Communications with Library of Congress or Copyright Office staff.* (1) Who is banned from communicating: anyone outside the Library or the Office;

(2) What communications are banned: The substantive merits of any past, pending, or future royalty distribution or rate adjustment proceeding;

(3) When communications are banned: Any time.

(4) Exceptions: procedural inquiries. If the employee does not know the answer, he or she will relay the question to the CARP and pass the answer back to the inquirer.

(cc) *Arbitrators selected by the librarian.* (1) Who is banned from communicating: Interested parties or anyone acting at their instance;

(2) What communications are banned: Total ban on all communications for any reason.

(3) When communications are banned: A period beginning with the arbitrator's selection and ending with the filing of the CARP's report, and, if the matter is remanded, the period starting with the reconvening of the CARP, and ending with the filing of the final report.

(4) Exceptions: None

(dd) *Arbitrators listed as qualified in current list.* (1) Who is banned from communicating: Interested parties or anyone acting at their instance;

(2) What communications are banned: The merits of any past, pending, or future royalty distribution or rate adjustment proceeding;

(3) When communications are banned: The period when the individual's name appears on the Librarian's current list of qualified arbitrators;

(4) Exceptions: None.

(*B*) *Action required by recipients of banned communication.* Anyone who receives a prohibited communication is required immediately to end the communication and place on the public record of the proceeding the actual communication, if written or recorded, or a description of the communication, if oral, together with a memorandum describing any further responses. The communication may not be considered by the CARP unless and until it is properly submitted into evidence by one of the parties.

(iii) Action taken by librarian or CARP. Either the Librarian or the CARP may require the party responsible for the prohibited communication to show cause why that party's interest in the proceeding should not be dismissed or otherwise adversely affected. This provision is derived from section 557 of the Administrative Procedure Act.

(v) Gifts and other things of monetary value. Section 351.34 deals with the ethical question of when, if ever, an arbitrator may accept gifts or other things of monetary value "from a person or organization having an interest that would be affected by the outcome of the proceeding," whether or not there was any intent to influence the outcome. The ban would be total for arbitrators actually selected for a CARP, and somewhat less stringent for individuals named as qualified on the Librarian's current list. The prohibition covers both direct and indirect solicitation and acceptance of gifts or things of value; it extends to gifts or other monetary benefits to the individual's family, or to a charity, if provided with the knowledge of or at the instance of the selected or listed arbitrator.

(A) Selected arbitrators. For arbitrators who have been selected to serve on a CARP, § 251.34 establishes a total ban on the solicitation or acceptance of any gifts or other monetary benefits, no matter how small in value. The prohibition would be in effect from the time of the arbitrator's selection through the submission of the CARP report, and during any court-ordered remand.

(B) Listed arbitrators. The ban also applies to arbitrators named on the Librarian's current list, but with two exceptions: (1) Acceptance of gifts or other things, including meals, where their value is less than $20 per occasion and less than $50 in a calendar year; and (2) acceptance of gifts or other things when the circumstances make it clear that the action was motivated purely by family and personal relationships. These two exceptions are derived from the OGE's regulations, and are intended to make plain that nominal, unsolicited benefits cannot be used to disqualify a potential arbitrator. They are not intended to encourage gift-giving under any circumstances, especially where, as here, arms-length relationships should be the rule rather than the exception.

(vi) Outside employment and other activities. Section 251.35 specifies that, once an arbitrator has been selected for a CARP and until all possibility of a court-ordered remand is ended, the arbitrator is required to refrain from any outside activity that would raise a question about the individual's ability to render an impartial decision. This ban extends beyond matters that could be considered a financial conflict of interest, and beyond receipt of gifts or other things of value. The following are examples of prohibited activities: giving free legal advice; attending a gathering sponsored by an interested party; giving a speech related to the proceedings; or accepting direct or indirect payment of honoraria. The ban on honoraria covers appearances, speeches, and articles that are related to the proceeding or, if the offer is from an interested party, that are related to any matter.

(vii) Pre-arbitration and post-arbitration employment restrictions. Section 251.36 provides that no arbitrator will be selected for a CARP if he or she had been employed within the previous five years by a party financially interested in the proceeding, although this rule may be waived under certain circumstances with the unanimous consent of the parties. The section also prohibits arbitrators from arranging future employment with any party to the proceeding, and from entering into employment with any party for three years after the date of the CARP report. "Employment" for these purposes is given its most expansive meaning to include any business relationship that involves the providing of personal services, but not including service as an arbitrator, mediator, or neutral. The five-year rule for pre-arbitration employment, and the three-year rule for post-arbitration employment, is based on the comments of the Copyright Owners. Copyright Owners, comment at 26–27. The definition of "employment" comes from § 2635.603(a) of the OGE's regulations. The exception for employment as an arbitrator, mediator, or neutral was adopted following our discussion with Endispute.

(viii) Use of nonpublic information. As noted earlier, it is our intention that CARP proceedings be conducted as openly as possible. In proceedings such as these, however, there will necessarily be information that must be kept confidential, and § 251.37 deals with these situations. Arbitrators are not to reveal any information from filings, pleadings, or evidence that the CARP has ruled to be confidential. Nor, unless required by law, are arbitrators to disclose any of the following: Intra-panel communications, or communications between the Library and the panel, intended to be confidential; draft rulings or decisions; and the final CARP report before it is submitted to the Librarian. Section 251.37(c) also prohibits an arbitrator from using nonpublic information for personal profit or for the profit of anyone else. This provision was derived from § 2635.703 of the OGE's regulations.

(ix) Billing and commitment to standards. In response to requests from the parties that these regulations seek to ensure that arbitrators' charges are reasonable, we have adopted the following provisions on billing:

(A) Bound by initial proposal. Arbitrators will be bound by the hourly or daily charge they proposed when their names were first submitted for listing by the Librarian. See § 251.3. They will not be allowed to charge in excess of those rates. We think this requirement will induce arbitrators to quote reasonable rates, since they know that their selection by the Librarian will be based in part on this factor.

In our discussions with Endispute a suggestion was made to allow arbitrators to charge a reasonable cancellation fee if a proceeding is settled early, to compensate them for having cleared their schedules. We have not adopted the proposal in these interim regulations, but we solicit comments on whether a cancellation fee is justifiable and, if so, how it might be worked into the overall CARP scheme for paying arbitrators.

(B) Incidental expenses. Arbitrators residing within the Washington, DC metropolitan area [11] will not be allowed to bill for incidental expenses such as local travel, meals, telephone calls, postage, and the like. All their incidental expenses will have to be absorbed entirely in the hourly or daily rate the arbitrator proposes. Arbitrators can, and doubtless will, take their incidental expenses into account when proposing their rate. In addition, as required by section 801(d) of the Copyright Code, the Library and the Copyright Office will provide the CARPs with necessary administrative services, and this will sharply reduce some of the arbitrators' incidental expenses. Arbitrators who reside outside the Washington, DC metropolitan area will be allowed to add their expenses for travel, lodging, and

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[11] The Washington, DC metropolitan area is comprised of the District of Columbia, the independent cities of Alexandria, Fairfax, and Falls Church, the Virginia counties of Arlington, Fairfax, and Loudoun, and the Maryland counties of Montgomery and Prince Georges.

meals to their bills so long as these expenses do not exceed the applicable government rate.[12]

(C) Detailed accounting. Arbitrators are required to submit a detailed account of the work they performed during their billed time. This should give the parties a means of reviewing the reasonableness of the charges.

(D) No billing for support services. Except for support services provided by the Library of Congress and the Copyright Office, the arbitrators will be required and expected to perform their own work, including research, analysis of the record, and decision-writing. Although it might be argued that delegating some more routine work to others could lower the bill, this practice would undermine the full use of the arbitrators' experience and expertise, which were the reasons for their selection.

(E) Signed agreement. Finally, the Library will require all arbitrators to sign an agreement at the time of their selection, stating that they will abide by all of the standards of conduct and billing restrictions specified in this subpart. Failure to sign the agreement will preclude selection of the individual for a CARP.

(x) Sanctions and remedies. Section 251.39 specifies some of the sanctions and remedies for the violation of the standards of conduct provided by this subpart. The listings, which are not exhaustive, are divided into subsections laying out the sanctions and remedies applicable to: (1) Selected arbitrators; (2) listed arbitrators; and (3) interested parties who engaged in ethical violations. A final subsection, applicable to any and all violations of the standards of conduct under these regulations, authorizes the Librarian of Congress to refer the matter to the Department of Justice or other law enforcement authority for criminal prosecution. The following is a summary of § 251.39:

(A) Selected arbitrators. Sanctions and remedies applicable only against arbitrators selected to serve on a CARP: Removal from the proceeding;

(B) Selected and listed arbitrators. Sanctions and remedies applicable against both arbitrators selected to serve on a CARP and persons listed as qualified in the Librarian's current list:

(aa) Permanent removal of the person's name from the current and any future list of available arbitrators published by the Librarian;

(bb) Referral of the matter to the organized bar of which the person is a member for possible disciplinary action; and

(cc) Referral of the matter to competent law enforcement authority for possible criminal prosecution.

(C) Interested parties or individuals. Sanctions and remedies applicable against interested parties or individuals who violate the ethical standards established by this regulation:

(aa) Referral of the matter to the organized bar or professional association of which the offending individual is a member for possible disciplinary action;

(bb) Barring the offending individual from current appearances before the CARP, from future appearances, or both;

(cc) Designation of an issue in the current or in a future proceeding, requiring the party to show cause why its interest should not be dismissed, denied, or otherwise adversely affected; and

(dd) Referral of the matter to competent law enforcement authority for possible criminal prosecution.

On the question of referral of cases for criminal prosecution we note that, although arbitrators are not Federal Government employees, we are firmly of the opinion that U.S. criminal provisions do apply to attempts to influence them. Title 18 U.S.C. 201, which prohibits the influencing of public officials, defines public officials as

> * * * an officer or employee or *person acting for or on behalf of the United States, or any department, agency or branch of Government thereof,* including the District of Columbia, *in any official function, under or by authority of any such department, agency, or branch of Government,* or a juror. [emphasis supplied]

We believe that arbitrators are persons acting for or on behalf of the Library of Congress by the authority of the Librarian. Therefore, although we certainly hope the situation never arises, we will not hesitate to refer for criminal prosecution attempts to influence the arbitrators.

Questions may well be asked as to how the Library of Congress would go about removing a selected arbitrator from a proceeding under this subpart, and the legal basis for such an action. We believe that the appropriate procedure for the Librarian would involve suspension of the proceeding under § 251.8, issuance of an order declaring the arbitrator's seat vacant and the reasons for that action, and appointment of a replacement under § 251.6. The legal basis for the action would be the arbitrator's violation of these regulations, and the breach of his or her contract with the Librarian of Congress under which the individual was committed to observe these regulations. We invite comments on these conclusions, and on other possible sanctions and remedies for violations of these rules.

(xi) Appendix to this preamble: Examples of typical fact situations. In setting these standards of conduct, the Office is aware that the interests that could be affected by rate adjustment and royalty distribution proceedings are quite extensive. We therefore wish to make sure, especially in the area of financial conflicts of interest, that we have set the standard at an appropriate point. Should we cast the net wider in our efforts to anticipate bias, or, on the contrary, have we gone too far? As an appendix to this preamble, we have set out ten examples (with their related section numbers) of situations that seem likely to occur in the next few years. We solicit comments as to whether or not these situations should be grounds for eliminating an arbitrator from consideration by the Librarian to serve on a panel. Please note that these examples are intended solely to focus thought and elicit opinions; they are in no way intended to suggest our opinions on how they should be answered.

(e) Subpart E—Procedures of Copyright Arbitration Royalty Panels

(1) *Formal hearings—(i) Phase I and Phase II proceedings.* In cable royalty distribution proceedings, the former Tribunal traditionally divided the proceeding into two phases. In Phase I, the Tribunal determined the percentage allocation of the royalty pool among nine categories of claimants.[13] Then, if there were any disputes within a claimant category, the Tribunal would move to Phase II and make a suballocation. However, this procedure was "common law" at the Tribunal and was not embodied in § 251.41, which states only that formal hearings will be conducted for royalty distribution. It was not adopted, even as "common law," for satellite royalty distribution proceedings because the first three yearly funds were completely settled.

We solicit comments on the following:

Is the procedure of dividing a cable distribution proceeding into Phases I and II a precedent that is binding on the Copyright Office?

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[12] As of January 1, 1994, the government rate for the Washington, DC metropolitan area is lodging not to exceed $113 a day, and $36 for meals ($8 breakfast, $8 lunch, $20 dinner).

[13] The nine Phase I categories were: Program Suppliers, Sports, Commercial Television, Music, Noncommercial Educational Television, Devotional Claimants, Canadian Claimants, Noncommercial Educational Radio, and Commercial Radio. The claimant categories resulted mostly from the way the claimants themselves coalesced before the Tribunal, as they were entitled to do under section 111.

If not, should it nonetheless be followed?

If it should be followed, should we adopt rules governing the procedure?

Should those rules include a definition of each of the Phase I categories?

(ii) "Paper" proceedings. As proposed, § 251.41(b) of the NPRM permitted the parties to petition the Librarian to have their controversy decided solely on the submission of written pleadings. However, the section did not identify the basis on which the Librarian would rule in favor of the petition. The Music Publishers urged that the basis should be the same as that for summary judgment set forth in Rule 56 of the Federal Rules of Civil Procedure: "that there is no genuine issue as to any material fact." Music Publishers, comment at 9–10.

The Copyright Owners proposed a procedure called "summary decision," which would use the same standard: "no genuine issue for a hearing." They also proposed including a procedure for "motions to dismiss" for disposing of claims or petitions, which would be handled within the same framework. Motions for "summary decision" and "motion to dismiss" could be filed with the CARP panel or, if no panel had been constituted, with the Librarian. Copyright Owners, comment at 24.

The Office agrees with Music Publishers and Copyright Owners: the grounds for granting a petition for a "paper hearing" should be that no genuine issue exists as to any material fact. We have added a second ground supporting petitions for "paper hearings": if all parties to the proceeding agree to the petition.

As under the NPRM, petitions asking that a controversy be decided on the basis of written pleadings may be filed with the Librarian during the 30-day pre-hearing periods provided in §§ 251.45 and 251.63. If the Librarian finds that there is no factual issue requiring a formal hearing, or that all parties agree that the petition should be granted, he or she may decide in favor of "paper proceedings." Unlike the NPRM, however, § 252.41 now gives the Librarian alternative discretion to designate the request for a paper proceeding as an issue for the CARP. Similarly, the procedure for a motion to dismiss, to be found in § 251.45(b), is to file it with the Librarian who may, in his or her discretion, decide the motion to dismiss or designate it an issue for the panel.

(2) *Suspension or waiver of rules.* Section 251.42 provides that a CARP, for purposes of that panel's individual proceeding only, may waive the procedural provisions of the rules upon a showing of good cause. Copyright Owners have asked that any waiver of the procedural rules by the panel be allowed only if all the parties to the proceeding agree. Copyright Owners, comment at 23.

The Copyright Owners may be concerned that the discretion of the panel to waive rules could lead to a denial of due process, but the proposal to allow waivers only with the unanimous consent of the parties may go too far in the opposite direction. It might hinder a CARP's efforts to do justice in an individual instance, and it might give the party opposing the waiver unfair leverage. For example, the panel might want to waive the rules that allow only direct and rebuttal testimony, thus permitting surrebuttal testimony in the interest of getting more information. If unanimous consent were needed for the waiver, however, the party that might be disadvantaged by the additional information would have a veto.

The Office has decided to retain this provision as written, but we will closely monitor the circumstances under which future CARPs find good cause to suspend or waive the rules. Should any patterns of unfairness or denial of due process begin to emerge, we will revisit this provision.

(3) *Filing and service of written cases and pleadings—(i) Attestation of Written Testimony.* Section 251.44(d) requires that the written testimony of each witness be accompanied by an affidavit or declaration. Copyright Owners asked that this requirement be deleted and be made optional because witnesses testify orally under oath, and, in essence, swear twice. Copyright Owners, comment at 23. However, because some testimony is stipulated and is entered into the record without oral testimony, we have decided to retain the provision.

(ii) Typographical error. With regard to subsection (e)(1) of § 251.44, the Copyright Owners noted a typographical error: The word "not" was inadvertently left out when the subparagraph was carried over from the former Tribunal's rules. Copyright Owners, comment at 23. The correction has been made.

(iii) Service list. Subsection (f) requires the parties to a proceeding to serve everyone on the service list when making a filing with the CARP or the Librarian. The Copyright Owners asked that the section be amended to require the Librarian to develop a service list for each proceeding and distribute it to the parties so that they can comply with the requirements of service. The Copyright Owners also asked for the rule to specify that each party to a proceeding has an obligation to inform the Librarian of changes in its name or address affecting the service list. Copyright Owners, comment at 23. These are both good suggestions with which we agree, and we have amended the subsection accordingly.

(iv) Oppositions and replies. Copyright Owners requested that one or more new paragraphs be added to § 251.44 to provide for automatic pleading cycles whenever motions are filed in a proceeding. They recommended that oppositions to motions be filed within ten days and replies to oppositions be filed within five days of the date of service. Copyright Owners, comment at 23–24. The former Tribunal's rules did not contain provisions on these points, which we agree will be useful. Accordingly we have added a new subsection (g) to § 251.44.

(4) Precontroversy motions and discovery. Section 251.45, as proposed in the NPRM, provided a period for precontroversy exchange of documents and discovery, and the filing of precontroversy motions and objections. The resolution of these precontroversy actions would have been made by the Librarian.

(i) Comments of copyright owners. The Copyright Owners supported, in principle, the concept of a period of discovery to take place before the 180-day arbitration period, as a means of reducing hearing costs and focusing the issues to be decided. However, they argued that precontroversy discovery would be a "wasted effort" if it were to occur before the filing of the written direct cases, and that discovery requests should be focused on actual written cases rather than general information. They also urged that resolution of precontroversy matters should be made by the CARP, not by the Librarian, because the panel would ultimately be the body to determine the relevance of the proffered facts. Copyright Owners, comment at 6–9. To achieve what the Copyright Owners want—precontroversy discovery handled by the CARP and based on written direct cases—it would be necessary to have the written direct cases filed, and the CARP empaneled, before the beginning of the 180-day arbitration period.

To accomplish this goal in accordance with the provisions of the Copyright Code, the Copyright Owners recommended that a distinction be made between "the commencement of proceedings," 17 U.S.C. 803(d), and the "notice initiating an arbitration proceeding," 17 U.S.C. 802 (b) and (e). Under this theory the Office would first declare the "commencement of proceedings" and thereupon require the filing of written direct cases and empanel the CARP; discovery motions and objections would be ruled on by the CARP. After discovery is complete the Office would then "initiate an arbitration proceeding," and at that point the 180-day arbitration period would begin to run. Copyright Owners, comment at 9–12.

(ii) Amendment of § 251.45. We agree with the Copyright Owners that precontroversy discovery before the filing of written direct cases would not be productive. At worst it could raise the costs of litigation and become a fishing expedition to harass an opposing claimant. However, as a matter of statutory construction, the Office cannot agree that the "commencement of proceedings" can be conceptually separated from "initiating an arbitration proceeding" so as to permit the CARP to sit earlier than the 180-day arbitration period. Section 802(b), which first uses the phrase "initiating an arbitration proceeding," employs it in the context of "a notice in the **Federal Register** initiating an arbitration proceeding under section 803 * * *" In § 803, the notice to which § 802(b) refers is the "notice of commencement of proceedings." Therefore, the phrases refer to each other and must be considered synonymous. Although, as noted in the NPRM, Chairman Hughes in his statement accompanying the CRT Reform Act recommended that our regulations provide for precontroversy discovery "to the extent practicable," we have come to the conclusion that there is no way to accomplish this goal under the statutory scheme.

We have therefore amended § 251.45 to eliminate the proposal for precontroversy discovery, and we have not adopted the Copyright Owners' recommendation to have discovery of written direct cases ruled on by the Panel before the 180-day period, because we do not believe that the statute allows for it.

(5) *Transcript and record.* We have reviewed § 251.49 on our own motion. The former Tribunal's rules required persons wishing a copy of the hearing transcript to purchase it from the official reporter, but we think the public should not only be able to inspect the transcript but also to make their own copies. We have therefore amended the section to provide that, during the proceeding, the public will have the opportunity to copy the transcript at a location specified by the CARP chairperson. After the proceeding, the transcript and the rest of the written record will be available at the Copyright Office for copying.

In addition, partly for reasons discussed above in connection with § 251.6, we solicit comments on whether the hearing sessions should be recorded on video as well as audio tape. Videotaping would add to the costs of the proceeding, but it would have several advantages: (1) Ensuring the accuracy of the official transcript, (2) allowing the arbitrators to reach a better decision by helping them to review the case more accurately, and (3) affording arbitrators who missed any portion of the proceeding, because of illness or because they were appointed after the proceeding had begun, an opportunity to make up for their absences.

(6) *Assessment of costs of arbitration panels.* Section 251.54 provides for the assessment of the costs of the Arbitration Panels.

(i) Comments on assessments in distribution proceedings. The Copyright Owners and RIAA/AARC have asked that the section be amended to provide that, in distribution proceedings, the costs of the CARPs be deducted from the relevant royalty fund. Copyright Owners, comment at 24. RIAA/AARC, comment at 4. The Office finds that it does not currently have authority to adopt this proposal. Section 802(h)(1) of the Copyright Code states: "The Librarian of Congress and the Register of Copyrights may * * * deduct from royalty fees * * * the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter." It does not provide that the Office can deduct the costs incurred by the CARP.

We agree that this is an unsatisfactory result. The Librarian of Congress, with input from the Copyright Office, is in the process of drafting "financial reform" legislation that would deal with this problem among other fiscal matters affecting the Library; we hope that the legislation will be introduced and enacted in the 103rd Congress. As currently drafted, title V of the proposed bill would add the following provision dealing with the point at issue here:

> In distribution proceedings, the Librarian of Congress and the Register of Copyrights may deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the copyright royalty panels, and pay the arbitrators from such deductions at such intervals and in such manner as the Librarian of Congress shall by regulation provide. Such deduction shall be made before the fees are distributed to any copyright claimants. Claimants shall bear the costs of the copyright arbitration royalty panels in direct proportion to their share in the distribution.

We invite further comments on this problem. Should the proposed legislation be enacted we would, of course, go forward with additional regulatory proceedings aimed at implementing it.

(ii) Comments and assessments in ratemaking proceedings. NCTAs expressed concern about the assessment of costs in a ratemaking proceeding. Section 251.54(a)(1) repeats the statutory language from § 802(c): "In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct." NCTA believes that it would be unfair for it to be assessed part of the costs of a rate adjustment proceeding it did not initiate; speculating that it could find itself defending an existing rate only because some other party petitioned to have it reconsidered. NCTA asked that the arbitrators be instructed to proceed on the presumption that the party seeking the rate adjustment should bear the costs of the proceeding. NCTA, comment at 3.

When the Tribunal was in existence, the costs of a rate adjustment proceeding were borne by the taxpayers, because the only authority the Tribunal had to assess its costs to the parties was for distribution proceedings. See, former 17 U.S.C. 807. Therefore, neither the petitioners nor the nonpetitioners paid any of the costs of a rate adjustment proceeding. With the adoption of the CRT Reform Act, Congress made a policy decision that taxpayers no longer would pay for the rate adjustment proceedings, and that the costs would be entirely borne by the parties. However, we cannot find any suggestion, nor is there any reason to believe, that Congress wanted to put the costs of the proceeding on the petitioner alone. On the contrary, Congress expressly stated that all the parties to a ratemaking proceeding shall pay, and left it to the panel to decide only the manner and proportion of their payments. The effect of putting the costs on the petitioner would be to make petitioners pay a high price for the periodic rate reviews that are already scheduled and contemplated by Congress.

NCTA's concern about a frivolous petitioner for rate adjustment may be justified. However, § 803 of the Copyright Code provides that only petitioners with a significant interest in the rate can initiate a rate adjustment proceeding. Therefore, frivolous petitions or petitions from noninterested persons will be dismissed. However, once a petitioner with a significant interest petitions, the rate review becomes a matter of the public interest, because any member of the public may potentially pay, be a recipient of, or be affected by the rate. Therefore, since the burden should be shared by both the owners and users in an inquiry as to which rate would best serve the public interest, we cannot agree with NCTA's request.

(iii) Comments on billing cycle. Endispute expressed concern with the NPRM's proposal to have the arbitrators bill the parties only after the submission of the panel's report to the Librarian. In a 180-day proceeding, the arbitrators might have to wait seven to eight months before receiving any compensation. Endispute urged that the arbitrators be able to bill the parties monthly, but this would raise difficulties in a distribution proceeding. There, the parties, by law, are to pay the arbitrators in proportion to their share of the fund, but their share will not be known until the end of the proceeding.

Because of this problem we have not included a provision for monthly billing in this interim regulation. At the same time we are soliciting comments on the advisability of monthly billing and how it might be accomplished, given the statutory requirement that parties pay in proportion to their share of the fund. We are also interested in comments on the feasibility of alternatives to monthly billing, such as requiring the parties to make advance partial payments until a final bill can be prepared.

(4) Amendment of § 251.54. After reviewing the question of assessments, we have decided to modify the rule to take account of the possibility that, after the CARP has made its report, the Librarian may change the final distribution percentages or the percentages may be changed because of a court-ordered remand. As amended, the section requires the parties who have paid the arbitrators according to earlier percentages to reimburse each other to reflect the final percentages.

(f) *Subpart F—Rate Adjustment Proceedings*

(1) *Scope and commencement of adjustment proceedings.* In its comments EIA challenged the Office's characterization in §§ 251.60 and 251.61 of the authority to raise the DART royalty maximum as a "rate" adjustment proceeding. They argued that the charge—2% of the transfer price—cannot be changed by the Librarian, and that only the maximum of $8/$12 per device can. EIA, comment at 3–4. Whether the word "rate" encompasses only the applicable percentage, or whether it also includes the floors and ceilings on that percentage, does not have to be addressed here because, as noted above, the review of the DART royalty maximum by the Librarian is not a CARP proceeding. Therefore, the Office has deleted the references to it in §§ 251.60 and 251.61.

(2) *Period for consideration.* Section 251.63 provides a 30-day period before a rate adjustment proceeding to give the parties an opportunity to settle their differences.

(i) Comments of copyright owners. The Copyright Owners have asked that the first sentence be amended to clarify that the period is for consideration "of settlement." Copyright Owners, comment at 25. The Office concurs, but has further modified the phrase to read "consideration of their settlement." This is because it cannot be known officially who all the parties to a rate adjustment proceeding will be until the proceeding is initiated and everyone has had an opportunity to file notices of intent to participate. Therefore, pre-proceeding settlements can be reached only by those parties who make themselves known to each other, and the most that can be achieved is a settlement of their differences.

(ii) Comments of music publishers. The Music Publishers asked how a rate settlement reached during the period before convening of the CARP could be approved by the Librarian. Music Publishers, comment at 7–8. If there is a settlement among the known parties, no approval by the Librarian is necessary. Either it will result in a withdrawal of the rate petition, or it will become the jointly-held position of the parties to the settlement as to what the new rate should be. Once their jointly-held position becomes known, it cannot be considered a full settlement until the rate is proposed to the United States public, either in a notice-and-comment proceeding or in a CARP proceeding.[14]

(iii) Request for comments. The Office has made no changes in the interim rule. However, we are interested in comments concerning the 30-day settlement period in rate adjustment proceedings. We have two specific questions:

If a settlement is reached, would it be a useful alternative to the convening of a CARP for the Library/Office to propose the agreed-upon rate to the public in a notice-and-comment proceeding?

Does the Librarian have authority to adopt such a procedure, or would the convening of a CARP be required?

(3) *Assessment of costs.* Section 251.65 is based on § 802(h)(1) of the statute as amended by the CRT Reform Act, which allows the Librarian of Congress and the Copyright Office to assess their reasonable costs to the parties "to the most recent relevant arbitration proceeding." EIA commented that this assessment is only permitted, according to § 802(h)(1), "if no royalty pool exists from which their costs can be deducted." EIA, comment at 4. EIA's point is well-taken, and the Office has modified the section accordingly.

EIA requested further that the costs of the proceeding to raise the DART royalty maximum by the Librarian be assessed to the DART royalty pool. EIA, comment at 5. However, as noted above, this proceeding is not a CARP proceeding and is therefore not germane to this rulemaking.

(g) *Subpart G—Royalty Fee Distribution Proceedings*

The Copyright Office is adopting subpart G as proposed in the NPRM with one technical amendment. The reference to "cable television" in § 251.72(a) and § 251.73 is being changed to read "cable," as noted in the preamble discussion to § 251.2.

(h) *Part 252—Filing of Claims to Cable Royalty Fees*

Part 252 prescribes the filing requirements for claims to cable royalties. As noted in the NPRM, the procedural system for filing cable claims borrows heavily from the one adopted by the former Tribunal for the filing of digital audio claims. See 58 FR 53822 (1993).

(1) *Content of claims.* Section 252.3 prescribes the general requirements for the submission and content of cable royalty claims.

(i) Joint claimants. The CRT's requirements for filing DART claims included provisions dealing with joint claims. In setting out the required content of claims, subsection (a)(3) provides:

> If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements.

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[14] The settlement that was reached in the 1987 mechanical license rate adjustment among Music Publishers, RIAA and the Songwriters Guild of America (SGA) was not approved as a final disposition of the rate adjustment by the Tribunal. It was proposed to the public in a notice-and-comment proceeding to see if the jointly-held position of these three organizations should become the basis of the Tribunal's rate adjustment. The comments agreed with Music Publishers/RIAA/SGA's proposal, and only then did the Tribunal adopt it. *1987 Adjustment of the Mechanical Royalty Rate*, 52 FR 22637 (1987).

Subsection (e), as adopted from the CRT's regulations and proposed in the NPRM, provided:

> All claimants filing a joint claim shall make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim.

(A) Comments of PBS. According to PBS, when it comes to joint claims it is unclear, under subsections (a)(3) and (e) of § 252.3, how to satisfy the requirement in subsection (a)(4) for identifying a secondary transmission that "establish[es] the basis for the claim." Would the requirement be satisfied by identifying at least one secondary transmission for at least one of the claimants included within a joint claim? Or is it necessary to identify at least one such transmission for each individual claimant included within the joint claim? PBS, comment at 2.

PBS argues that the former interpretation is the correct one, since the requirement in subsection (e) for filing a list identifying all joint claimants would not be necessary if each joint claimant had to identify a secondary transmission. Further support for this interpretation is drawn from the fact that § 252.3 is adopted from the filing requirements for DART, which clearly do not require each joint claimant to identify one or more of his or her songs that were the subject of a digital transmission. PBS, comment at 2–3.

PBS asks us to clarify this matter and amend § 251.3 so as not to require identification of a secondary transmission for each joint claimant. They note that they currently spend upwards of 300 hours a year on this requirement,[15] which they argue serves no substantive purpose beyond providing a jurisdictional basis for a party to participate.

(B) Amendment of § 252.3(e). We acknowledge that § 252.3 as proposed in the NPRM muddies the waters for the filing of cable royalty claims, and of satellite royalty claims as well. We are troubled, however, by changing what had been a longstanding requirement at the Tribunal for obliging all claimants to identify at least one secondary transmission of their copyrighted works. While such requirement does undoubtably add to the time and expense burdens of joint claimants such as PBS, it is not without purpose. The law states plainly that cable compulsory license royalties are only to be distributed to "copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3). To support such a claim, each claimant may reasonably be asked to identify at least one secondary transmission of his or her work, thus permitting the Copyright Office to screen the claims and dismiss any claimants who are clearly not eligible for royalty fees. The requirement will also help to reduce time spent by a CARP determining which claimants have a valid claim: If only one secondary transmission is identified for one of the joint claimants, then it could not readily be determined if the other claimants were even eligible for cable royalties.

In an effort to end this confusion we are deleting subsection (e) with its requirement that joint claimants submit a list identifying all the claimants. Instead, we are amending subsection (a)(4) to require that each claimant to a joint claim, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, must identify at least one secondary transmission of his or her works.

(ii) Address and name change. Subsection (c) of § 253.3 provides that "[i]n the event that the legal name and/or address of the claimant changes after the filing of a claim, the claimant shall notify the Copyright Office of such change within 30 days of the change." Failure to provide this notification could, under certain circumstances, make the claim subject to dismissal. Copyright Owners request that subsection (c) be deleted in its entirety because "it could be an unnecessary draconian trap for the unwary (or wary) claimant." Copyright Owners, comment at 25.

It is not the intention of the Copyright Office that subsection (c) should be used to dismiss otherwise valid claims. The concern is that the Office must be able to communicate with the claimants, especially if an action requires prompt disposition. To take one example, suppose one party files a motion to dismiss another party's claim, and the Copyright Office asks the claimant to respond to the motion; the claimant has moved and there is no response. There would be no means to find out whether the first party's motion is valid in that situation. Subsection (c) is intended to give the Office authority to dismiss for failure to prosecute a claim in cases where the Office was not given timely notice of the change of address or name.

At the same time, we acknowledge the possibility that the 30-day deadline for notifying the Office of an address or name change could work hardships. We have therefore amended subsection (c) to provide that dismissal may only occur after the Office has made a good faith attempt to communicate with the claimant, and the effort failed because the claimant did not inform the Office of a change in legal name or address.

(2) Compliance with statutory dates. Section 252.4 implements the statutory requirement that cable claims must be made in the month of July for royalties from the preceding calendar year. Subsection (b) provides that a cable claim is timely filed if it is mailed with the U.S. Postal Service and bears a U.S. postmark during the month of July.

(i) Comments of copyright owners: Canadian and Mexican mailings. The Copyright Owners have asked that the provision for a July U.S. postmark be expanded to include mailings from Canadian and Mexican post offices. Copyright Owners, comment at 25. The Copyright Owners did not document their request, and the Office is uncertain about the authority or feasibility of acceding to it. We have therefore decided not to accept the Copyright Owners' proposed amendment at this time, but we invite them, and any other interested parties, to provide further information and comments on the question.

(ii) Amendments of § 252.4. After reviewing the timeliness requirement, we have decided to add a new subsection (b) to § 252.4, in recognition of § 703 of the Copyright Code.[16] The new subsection provides that, when the last day of July falls on a Saturday, Sunday, holiday, or other nonbusiness day in the District of Columbia or the Federal Government, the Copyright Office will accept claims received in the Office on the first business day in August, and will also accept claims bearing a U.S. postmark dated on the first August business day.

The Copyright Office is also amending § 252.4 by making a consequential change in subsection (c), and by adding new subsections (d) and (e). Subsection (d) provides that no claim may be filed by facsimile transmission. Under new subsection (e), parties whose claims were not timely received by the Office will be given an opportunity to offer proof of delivery. A claimant who sent a claim which was properly addressed [17] and properly mailed, but which was nonetheless received late by the Copyright Office or was not received at all, may still be able to prove the validity of his or her filing. If the claim was sent by certified mail, return receipt requested, we will accept the claim if the claimant can produce the receipt showing that it was properly mailed. We will not accept as evidence either the affidavit of an officer or employee of the claimant, or the affidavit of a U.S. postal worker.

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[15] It is clear that under § 302.7 of the former Tribunal's rules each joint claimant was required to identify at least one secondary transmission of its copyrighted works.

[16] Section 703 of the Copyright Code states, "In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired."

(3) Proof of fixation of works. Section 252.5 of our earlier interim regulation, which was imported from the CRT rules, provided a detailed procedure for proving fixation of a work for which a cable claim had been filed. The Copyright Owners have asked that the section be deleted in its entirety because it is no longer necessary. Copyright Owners, comment at 25. The Copyright Office agrees. If there are any future controversies involving whether a work was fixed in a tangible medium, they can be resolved under the general authority of the Library and the CARPs to issue dispositive determinations during the course of a proceeding.

(4) Copies of claims. In place of "Proof of fixation of works," the Copyright Office is adopting a new text in § 252.5. The new section provides that all claimants must submit an original and two copies of their claims to cable royalty fees.

(i) *Part 257—Filing of Claims to Satellite Carrier Royalty Fees*

Although none of the commentators requested any changes in part 257, the Copyright Office is making several amendments modeled after, and for the same reasons as, the changes made in part 252. Subsection 257.3(a)(4) is amended, and subsection (e) is deleted, to clarify that each claimant in a joint claim must identify at least one secondary transmission of his or her works. (See the discussion of filing of cable claims under § 252.3 above.) Subsection (c) is amended to allow the Copyright Office to dismiss a claim if it has made a good faith effort to contact a claimant, but has failed because the claimant has not informed the Office of a change in name or address. Section 251.4—Compliance with Statutory Dates—is amended by allowing claimants to file on the first business day in August whenever July 31 falls on a non-business day, adding a prohibition of submission of claims by facsimile transmission, and allowing claimants to offer proof of mailing for claims properly mailed but not received by the Copyright Office. Finally, § 251.5—Proof of Fixation of Works—is eliminated and replaced with a provision requiring claimants to submit an original and two copies of each claim to satellite carrier royalty fees.

(j) *Part 259—Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments*

Corresponding to our amendments to the rules for filing cable and satellite claims, we are making the same changes with regard to filing a DART claim. Section 259.3(c) removes the provision for requiring name and address changes to be filed within 30 days, and replaces it with a general obligation to report changes. Section 259.4 is amended by adding a new subsection (e) which prohibits the filing by facsimile transmission of the notice of appointment of an independent administrator. Section 259.5 is changed to allow claimants to file on the first business day in March whenever the last day in February falls on a Federal Government nonbusiness day, to prohibit the filing of claims by facsimile transmission, and to allow claimants who send their claims by certified mail, return receipt requested, to offer proof of mailing if the Copyright Office has not timely received the claim. A new section § 259.6, modeled after § 252.6 and § 257.5, is added to part 259 requiring the filing of an original and two copies of claims to DART royalties.

Appendix A to Subpart D—Standards of Conduct

Note: The following Appendix will not appear in the Code of Federal Regulations

We use this Appendix to offer ten examples of hypothetical situations that are intended to probe the proper extent of the restrictions on financial interests. Many of them refer to Phase I or Phase II of the former Tribunal's cable proceedings. This is not intended to presume the actual structure of the CARP proceedings, but rather to improve the quality of the comments by providing concrete situations.

§ 251.31(a)(1)

Example 1: An arbitrator is being considered for a cable controversy among five Phase I categories. He has a financial interest in a claimant that is in one of the other Phase I categories which has settled its interest in the proceeding. Does he have a financial conflict of interest?

Example 2: An arbitrator is being considered for a Phase I cable controversy that includes the Commercial Television Station category. She has a financial interest in a commercial broadcast station. However, the station is not a claimant in the proceeding because it is not carried as a distant signal by any cable system. Does she have a financial conflict of interest?

Example 3: An arbitrator is being considered for a cable controversy in which there is a complete Phase I settlement, but there is one Phase II controversy. He has a financial interest in a claimant outside of the Phase II category that has the controversy. Does he have a financial conflict of interest?

Example 4: An arbitrator has a financial interest in a motion picture production company which does not file a claim for cable royalties. However, the distributor who syndicates the company's movies to television does file claims for royalties, and remits to the film producer a percentage of all his syndication revenues. Does the arbitrator have a financial conflict of interest?

§ 251.31(a)(2)

Example 5: An arbitrator is being considered for a cable rate adjustment proceeding that would review the 3.75% rate. She has a financial interest in a cable system that grosses less than $292,000 per half year. The 3.75% rate only applies to cable systems that gross more than $292,000 per half year. Does she have a financial conflict of interest?

Example 6: An arbitrator is being considered for a cable rate adjustment proceeding that would review the 3.75%. He has a financial interest in a cable network which negotiates carriage on cable systems in the private marketplace. Does he have a financial conflict of interest?

§ 251.31(b)

Example 7: An arbitrator is being considered for a satellite carrier distribution proceeding. He is an affiliate of a performing rights society, and receives, on average, $100 a year for a song he wrote 30 years ago. Does he have a financial conflict of interest?

§ 251.31(c)(1)

Example 8: An arbitrator is being considered for a mechanical rate adjustment hearing. He has a stock mutual fund which is currently invested in several recording companies. Does he have a financial conflict of interest?

§ 251.31(c)(2)

Example 9: An arbitrator is being considered for a Phase I cable distribution proceeding. From 1960 to 1970, she worked for a program syndicator. She is now receiving a fixed pension from the syndicator for her ten years' work. Does she have a financial conflict of interest?

§ 251.36(c)

Example 10: An arbitrator has presided over a cable rate adjustment proceeding which reviewed the 3.75% rate. The time for all appeals has passed, and no one has appealed. The arbitrator returns to private practice and a cable system wants to hire the arbitrator to be its attorney on matters before the FCC. During the proceeding, the cable industry was represented by NCTA and CATA. The cable system that wants to hire the arbitrator was not a party to the proceeding, nor did it authorize NCTA or CATA to represent it in the proceeding; however, the cable system was affected by the change in the 3.75% rate. Can the arbitrator take the cable system on as a client?

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[17] A claim addressed to the former Tribunal will not be considered properly addressed.

List of Subjects

37 CFR Parts 251 and 301

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Parts 252 and 302

Cable television, Claims, Copyright.

37 CFR Parts 253 and 304

Copyright, Music, Radio, Rates, Television.

37 CFR Parts 254 and 306

Copyright, Jukeboxes, Rates.

37 CFR Parts 255 and 307

Copyright, Music, Recordings

37 CFR Parts 256 and 308

Cable television, Rates.

37 CFR Parts 257 and 309

Cable television, Claims.

37 CFR Parts 258 and 310

Copyright, Satellite.

37 CFR Parts 259 and 311

Claims, Copyright, Digital audio recording devices, and Media.

37 CFR Parts 303

Copyright, Jukeboxes.

37 CFR Parts 305

Claims, Jukeboxes.

Interim Rules

For the reasons set out in the preamble, 37 CFR chapters II and III are amended under authority of 17 U.S.C. 802(d) as follows:

1. Part 301 of chapter III is removed.

1a. Existing parts 201 through 211 are designated as subchapter A, and a new heading for subchapter A is added to read as follows: Subchapter A—Copyright Office and Procedures.

1b. New subchapter B—Copyright Arbitration Royalty Panel Rules and Procedures—is added to chapter II consisting of parts 251–259.

2. A new part 251 is added to subchapter B of chapter II to read as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

Subpart A—Organization

Sec.

251.1 Official address.
251.2 Purpose of Copyright Arbitration Royalty Panels.
251.3 Arbitrator lists.
251.4 Arbitrator lists: Objections.
251.5 Qualifications of the arbitrators.
251.6 Composition and selection of Copyright Arbitration Royalty Panels.
251.7 Actions of Copyright Arbitration Royalty Panels.
251.8 Suspension of Proceedings.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

251.11 Open meetings.
251.12 Conduct of open meetings.
251.13 Closed meetings.
251.14 Procedure for closed meetings.
251.15 Transcripts of closed meetings.
251.16 Requests to open or closed meetings.

Subpart C—Public Access to and Inspection of Records

251.21 Public records.
251.22 Public access.
251.23 FOIA and Privacy Act.

Subpart D—Standards of Conduct

251.30 Basic obligations of arbitrators.
251.31 Financial interests.
251.32 Financial disclosure statement.
251.33 Ex parte communications.
251.34 Gifts and other things of monetary value.
251.35 Outside employment and other activities.
251.36 Pre-arbitration and post-arbitration employment restrictions.
251.37 Use of nonpublic information.
251.38 Billing and commitment to standards.
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Subpart E—Procedures of Copyright Arbitration Royalty Panels

251.40 Scope.
251.41 Formal hearings.
251.42 Suspension or waiver of rules.
251.43 Written cases.
251.44 Filing and service of written cases and pleadings.
251.45 Precontroversy motions, and discovery.
251.46 Conduct of hearings: Role of arbitrators.
251.47 Conduct of hearings: Witnesses and counsel.
251.48 Rules of evidence.
251.49 Transcript and record.
251.50 Rulings and orders.
251.51 Closing the hearing.
251.52 Proposed findings and conclusions.
251.53 Report to the Librarian of Congress.
251.54 Assessment of costs of arbitration panels.
251.55 Post-panel motions.
251.56 Order of the Librarian of Congress.
251.57 Effective date of order.
251.58 Judicial review.

Subpart F—Rate Adjustment Proceedings

251.60 Scope.
251.61 Commencement of adjustment proceedings.
251.62 Content of petition.
251.63 Period for consideration.
251.64 Disposition of petition: Initiation of arbitration proceeding.
251.65 Deduction of costs of rate adjustment proceedings.

Subpart G—Royalty Fee Distribution Proceedings

251.70 Scope.
251.71 Commencement of proceedings.
251.72 Determination of controversy.
251.73 Declaration of controversy: Initiation of arbitration proceeding.
251.74 Deduction of costs of distribution proceedings.

Authority: 17 U.S.C. 801–803.

Subpart A—Organization

§ 251.1 Official address.

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning copyright royalty rates for the cable compulsory license, 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for making and distributing phonorecords, 17 U.S.C. 115.

(c) To make determinations concerning copyright royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license authorized by 17 U.S.C. 116 expires or is terminated and is not replaced by another such license agreement.

(d) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations of certain copyrighted works, 17 U.S.C. 118.

(e) To distribute cable and satellite carrier royalty fees and digital audio recording devices and media payments under 17 U.S.C. 111, 119, and chapter 10, respectively, deposited with the Register of Copyrights.

§ 251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit, on or before May 6, 1994, and before January 1 of each year thereafter, a list of persons qualified to serve as arbitrators on a Copyright Arbitration

Royalty Panel. The list shall contain the following for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

(b) After May 6, 1994, and after January 1 of each year thereafter, the Librarian of Congress shall publish in the **Federal Register** a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter. With respect to persons on the arbitrator list, the Librarian will make available for copying and inspection the information provided under paragraph (a) of this section.

§ 251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to a proceeding may, during the 30-day period specified in § 251.63, file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 30-day time period specified in § 251.45(a), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

§ 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a Copyright Arbitration Royalty Panel, a person must, at a minimum, have the following qualifications:

(a) Admitted to the practice of law in any state, territory, trust territory, or possession of the United States.

(b) Ten or more years of legal practice.

(c) Experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes.

§ 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the **Federal Register** initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two arbitrators from the arbitrator list for that calendar year.

(b) The two arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same arbitrator list. The third arbitrator shall serve as the chairperson of the panel during the course of the proceedings.

(c) If the two arbitrators fail to agree upon the selection of the third, the Librarian will promptly select the third arbitrator from the same arbitrator list.

(d) The third arbitrator so chosen shall serve as the chairperson of the panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the panel.

(e) Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

(f) If, before the commencement of hearings in a proceeding, one or more of the arbitrators is unable to continue service on the CARP, the Librarian will suspend the proceeding as provided by § 251.8, and will inaugurate a procedure to bring the CARP up to the full complement of three arbitrators. Where one or two vacancies exist, and either or both of the vacant seats were previously occupied by arbitrators selected by the Librarian, the Librarian will select the necessary replacements from the current arbitrator list. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators shall select the replacement from the arbitrator list, and the person chosen shall serve as chairperson. If there are two vacant seats, and one of them was previously occupied by the chairperson, the Librarian will select one replacement from the arbitrator list, and that person shall join with the remaining arbitrator to choose the replacement, who shall serve as chairperson.

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum. If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under § 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

§ 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the **Federal Register** according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the **Federal Register**.

§ 251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under § 251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the

Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§ 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in § 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings are to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding.

In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a recorded vote of the panel and included in the announcement.

§ 251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to be present does not include the right to participate or make comments.

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under § 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

(c) Following such a vote, the following information shall be published in the **Federal Register** as soon as possible:

(1) The vote of each arbitrator; and

(2) The appropriate exemption under § 251.13; and

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of § 251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least two years, or for at least one year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under § 251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the panel and, if at that time the chairperson determines that they should be disclosed, he or she will resubmit the question to the CARP to gain authorization for their disclosure.

§ 251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned "Request to Open" or "Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Subpart C—Public Access to and Inspection of Records

§ 251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the **Federal Register** in accordance with § 251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for inspection and copying at the address provided in § 251.1 with the exception of:

(1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, the Copyright Office, or the Library of Congress;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a CARP concerning the drafting of decisions, opinions, reports, and findings on any CARP matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators, or findings on any matter or proceeding conducted under 17 U.S.C. chapter 8;

(7) Offers of settlement that have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as "exempted" if a CARP or the Librarian of Congress finds compelling reasons for such action.

§ 251.22 Public access.

(a) *Location of Records.* All of the following records relating to rate adjustment and distribution proceedings under this subchapter shall be maintained at the Copyright Office:

(1) Records required to be filed with the Copyright Office; or

(2) Records submitted to or produced by the Copyright Office or Library of Congress under 17 U.S.C. 801 and 802, or

(3) Records submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding. In the case of records submitted to or produced by a CARP that is currently conducting a proceeding, such records shall be maintained by the chairperson of that panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

(c) *Fees.* Fees for photocopies of CARP or Copyright Office records are $0.40 per page. Fees for searching for records, certification of documents, and other costs incurred are as provided in 17 U.S.C. 705, 708.

§ 251.23 FOIA and Privacy Act.

Freedom of Information Act and Privacy Act provisions applicable to CARP proceedings can be found in parts 203 and 204 of subchapter A of this chapter.

Subpart D—Standards of Conduct

§ 251.30 Basic obligations of arbitrators.

(a) *Definitions.* For purposes of these regulations, the following terms shall have the meanings given in this subsection:

(1) A "selected arbitrator" is a person named by the Librarian of Congress, or by other selected arbitrators, for service on a particular CARP panel, in accordance with § 251.6 of these regulations;

(2) A "listed arbitrator" is a person named in the "arbitration list" published in accordance with § 251.3 of these regulations.

(b) *General principles applicable to arbitrators.* Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall apply these principles where applicable.

(1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.

(2) Arbitrators shall not hold financial interests that conflict with the conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be

patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

§ 251.31 Financial interests.

(a) No selected arbitrator shall have a direct or indirect financial interest—

(1) in the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) in the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) "Direct or indirect financial interest" shall not include—

(1) owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or

(2) receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interest of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

(1) the arbitrator's spouse;

(2) the arbitrator's minor child;

(3) the arbitrator's general partner; or

(4) an organization or entity which the arbitrator serves as officer, director, trustee, general partner or employee.

§ 251.32 Financial disclosure statement.

(a) Each year, within one month of publication in the **Federal Register** of the list of available arbitrators, each listed arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.30.

(b) If any conflicts of interest do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except—

(1) the listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve, or

(2) the listed arbitrator may disclose on the record the conflict of interest causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding. Any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP panel, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are any changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of § 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest—

(1) during the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) if the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

§ 251.33. Ex parte communications.

(a) *Communications with Librarian or Register.* No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) *Selected arbitrators.* No interested party shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian.

(c) *Listed arbitrators.* No interested party shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as a arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) *Library and Copyright Office personnel.* No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) *Outside contacts.* The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) *Responsibilities of recipients of communication.* (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding: (i) all such written or recorded communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

§ 251.34 Gifts and other things of monetary value.

(a) *Selected arbitrators.* From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) *Listed arbitrators.* No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except—

(1) a listed arbitrator may accept unsolicited gifts having an aggregate market value of $20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed $50 in a calendar year, or

(2) a listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift—

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall—

(1) engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments—

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

§ 251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner—

(1) intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) draft interlocutory rulings or draft decisions; or

(3) the CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

§ 251.38 Billing and commitment to standards.

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under § 251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under § 251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress, arbitrators shall perform their own work, including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

§ 251.39 Remedies.

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following—

(a) in the case of a selected arbitrator,

(1) removal of the arbitrator from the proceeding;

(2) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(3) referral of the matter to the bar of which the arbitrator is a member.

(b) in the case of a listed but not selected arbitrator—

(1) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(2) referral of the matter to the bar of which the listed arbitrator is a member.

(c) in the case of an interested party or individual who engaged in the ethical violation—

(1) referral of the matter to the bar or professional association of which the interested individual is a member;

(2) barring the offending individual from current and/or future appearances before the CARP;

(3) designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.

(d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

Subpart E—Procedures of Copyright Arbitration Royalty Panels

§ 251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under 17 U.S.C. 803 for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

§ 251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of § 251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the 30-day period specified in § 251.45(a) for filing motions in a distribution proceeding, or during the 30-day period described in § 251.63 for settling rate differences, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP panel decide the controversy or rate adjustment on the basis of written pleadings. The Librarian, upon recommendation of the Register of Copyrights, may rule on the petition or designate it as an issue to be ruled upon by the CARP. The petition may be granted if—

(1) there is no genuine issue as to any material fact, or

(2) all parties to the controversy agree with the petition.

§ 251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

§ 251.43 Written cases.

(a) The proceedings of a Copyright Arbitration Royalty Panel for rate adjustment or royalty fee distribution shall begin with the filing of written direct cases of the parties who have filed a notice of intent to participate in the hearing.

(b) The written direct case shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP panel has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

§ 251.44 Filing and service of written cases and pleadings.

(a) *Copies filed with a Copyright Arbitration Royalty Panel.* In all filings with a Copyright Arbitration Royalty Panel, the submitting party shall deliver, in such a fashion as the panel shall direct, an original and three copies to the panel. The submitting party shall also deliver one copy to the Copyright Office at the address listed in § 251.1. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, a CARP may reduce the number of copies required by the panel, but a complete copy must still be submitted to the Copyright Office. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) *Copies filed with the Librarian of Congress.* In all pleadings filed with the Librarian of Congress, the submitting party shall deliver an original and five copies to the Copyright Office. In no case shall a party tender any pleading by facsimile transmission.

(c) *English language translations.* In all filings with a CARP or the Librarian of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support it, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) *Service.* The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings with a CARP or the Librarian of Congress, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the CARP panel or the Copyright Office. If a party files a pleading that requests or would require action by the panel or the Librarian within 10 or fewer days after the filing, it must serve the pleading upon all other counsel or parties by means no slower than overnight express mail on the same day the pleading is filed. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP panel.

(g) *Oppositions and replies.* Except as otherwise provided in these rules or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within ten business days of the date of service of the motion, and replies to oppositions shall be filed within five business days of the date of service of the opposition. The date of service shall be deemed to be the third business day following service by mail or the next business day following service by overnight delivery, by hand, or by telefacsimile.

§ 251.45 Precontroversy motions, and discovery.

(a) *Precontroversy motions and objections.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, in the notice asking the claimants whether any controversies exist concerning distribution of the royalty funds, designate a 30-day period in which any party to the proceeding may file with the Librarian of Congress objections to, or motions to dismiss, any party's royalty claim, or motions for declaratory rulings, or for procedural or evidentiary rulings, on any proper ground. In the case of a rate adjustment proceeding, the 30-day period shall correspond with the 30-day period specified in § 251.63 for settling rate differences.

(b) Any party to the proceeding wishing to file a response to such motion or objection may do so within two weeks. The Librarian, upon recommendation of the Register of Copyrights, shall rule on the motion or objection prior to the initiation of an arbitration proceeding, or may designate the motion or objection as an issue for the panel to rule on.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of the written direct and rebuttal cases in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of the written cases, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

§ 251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;
6I11(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the CARP panel's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a CARP panel, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

§ 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the CARP panel expands the witness's testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the hearing without leave from the CARP panel. See § 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the panel sustains an objection; no separate motion will be required.

(h) If the panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The CARP panel shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the CARP panel and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(l) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP panel desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, That no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

§ 251.51 Closing the hearing.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the panel may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume, except upon ten days' notice to all parties.

§ 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues specifically affecting that person.

§ 251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law specified in § 251.52, and not later than 180 days from publication in the **Federal Register** of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the panel found relevant to its determination.

(b) The determination of the panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinion shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

§ 251.54 Assessment of costs of arbitration panels.

(a) After the submission of the panel's report to the Librarian of Congress, the panel may assess its ordinary and necessary costs, according to § 251.38, to the participants to the proceeding as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a royalty distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution.

(3) In the case of a change in the share of distribution because of the Librarian's substitution of a new determination, or a determination reached as a result of a court-ordered remand, the parties shall make restitution to each other for the difference in payments that resulted from the change.

(b) The chairperson of the panel shall cause to be delivered to each participating party a statement of the total costs of the proceeding, the party's share of the total cost, and the amount owed by the party to each arbitrator.

(c) All parties to a proceeding shall have 30 days from receipt of the statement of costs and bill for payment in which to tender payment to the arbitrators. Payment should be in the form of a money order, check, or bank draft. Failure to submit timely payment may submit the nonpaying party to the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies.

§ 251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

§ 251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see § 251.55, but within 60 days from receipt of the report of the determination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the order shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the **Federal Register**.

§ 251.57 Effective date of order.

An order of determination issued by the Librarian under § 251.56 shall become effective 30 days following its publication in the **Federal Register**, unless an appeal has been filed pursuant to § 251.58 and notice of the appeal has been served on all parties to the proceeding.

§ 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under § 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the **Federal Register**.

(b) If no appeal is brought within the 30 day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees specified by those sections.

Subpart F—Rate Adjustment Proceedings

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), and noncommercial educational broadcasting (17 U.S.C. 118). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, phonorecords, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Phonorecords: During 1997 and each subsequent tenth calendar year.

(3) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the **Federal Register** on June 30, 1997, and at five year intervals thereafter.

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable television, phonorecords, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

§ 251.63 Period for consideration.

To allow time for parties to settle their differences regarding rate adjustments, the Librarian of Congress shall, after the filing of a petition, or prior to the commencement of proceedings made under 17 U.S.C. 118(b), designate a 30-day period for consideration of their settlement. The Librarian shall cause notice of the consideration period to be published in the **Federal Register**, and such notice shall include the effective dates of that period.

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

At the end of the 30-day period for settling rate differences, and after the Librarian has ruled on all motions filed during that period under § 251.45(b), the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the **Federal Register** a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting in accordance with 17 U.S.C. 118. Such notice shall, to the extent feasible, describe the nature, general structure, and schedule of the proceeding.

§ 251.65 Deduction of costs of rate adjustment proceedings.

The Librarian of Congress and the Register of Copyrights may deduct the reasonable costs the Library of Congress and the Copyright Office incurred as a result of a rate adjustment proceeding from the relevant royalty pool. If no royalty pool exists, the Librarian of Congress and the Register of Copyrights may assess their reasonable costs directly to the parties participating in the most recent relevant proceedings.

Subpart G—Royalty Fee Distribution Proceedings

§ 251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable (17 U.S.C. 111), satellite carrier (17 U.S.C. 119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.71 Commencement of proceedings.

(a) *Cable.* In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers.* In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

§ 251.72 Determination of controversy.

(a) *Cable.* After the first day of August each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of cable compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

(b) *Satellite carriers.* After the first day of August of each year, the Librarian shall determine whether a controversy exists among the claimants of the satellite carrier compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

(c) *Digital audio recording devices and media.* Within 30 days after the last day of February each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. 1006(b) (1) and (2). In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

§ 251.73 Declaration of controversy: initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

§ 251.74 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceeding, from the relevant royalty pool.

3. Part 302 of chapter III is removed.

3a. A new part 252 is added to subchapter B of chapter II to read as follows:

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.
252.1 Scope.
252.2 Time of filing.
252.3 Content of claims.
252.4 Compliance with statutory dates.
252.5 Copies of claims.

Authority: 17 U.S.C. 111(d)(4), 801, 803.

§ 252.1 Scope.

This part prescribes procedures under to 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

§ 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 252.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to cable compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements.

(4) For both individual claims and joint claims, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, a general statement of the nature of each claimant's copyrighted works and identification of at least one secondary transmission by a cable system of each claimant's copyrighted works establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, a claimant chooses to negotiate a joint claim, either the particular joint claimant or the individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

§ 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

§ 252.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to cable royalty fees.

PART 303—[REMOVED]

4. Part 303—Access to Phonorecord Players (Jukeboxes) of chapter III is removed.

PART 304—[REDESIGNATED AS PART 253]

5. Part 304 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 253.

6. The heading for part 253 is revised to read as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

7. The authority citation to part 253 is revised to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.4 [Amended]

8. Section 253.4 is amended in the introductory text of the section by removing "§§ 304.5 and 304.6" and adding "§§ 253.5 and 253.6".

§ 253.8 [Amended]

9. Section 253.8(e) is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.9 [Amended]

10. Section 253.9 is amended by removing "CRT" and adding "Copyright Office".

§ 253.10 [Amended]

11. Section 253.10 is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.10b [Amended]

11a. Section 253.10(b) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.10c [Amended]

11b. Section 253.10(c) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.12 [Amended]

12. Section 253.12 "Amendment of certain regulations" and 253.13 "Issuance of interpretative regulations" are removed.

PART 305—[REMOVED]

13. Part 305 Claims to Phonorecord Player (Jukebox) Royalty Fees of chapter III is removed.

PART 306—[REDESIGNATED AS PART 254]

14. Part 306 is transferred to chapter II, subchapter B and is redesignated as part 254.

15. The heading for part 254 is revised to read as follows:

PART 254—ADJUSTMENT OF ROYALTY RATE FOR COIN-OPERATED PHONORECORD PLAYERS

16. The authority citation for part 254 is revised to read as follows:

Authority: 17 U.S.C. 116, 801(b)(1).

§ 254.1 [Amended]

17. Section 254.1 is amended by removing "306" and adding "254" and by removing "and 804(a)".

PART 307—[REDESIGNATED AS PART 255]

18. Part 307 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 255.

19. The heading for part 255 is revised to read as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

20. The authority citation for part 255 is revised to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803

§ 255.1 [Amended]

21. Section 255.1 is amended by removing "307" and adding "255".

§ 255.2 [Amended]

22. Section 255.2 is amended by removing "§ 307.3" and adding "§ 255.3".

§ 255.3 [Amended]

23. Section 255.3 is amended in paragraph (g)(1) by removing "Copyright Royalty Tribunal" and in (g)(1) and (g)(2) by removing "CRT" each place it appears and adding "Librarian of Congress" in each place, respectively.

PART 308—[REDESIGNATED AS PART 256]

24. Part 308 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 256.

25. The heading for part 256 is revised to read as follows:

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

PART 309—[REDESIGNATED AS PART 257]

26. Part 309 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 257.

27. Part 257 is revised to read as follows:

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.
257.1 General.
257.2 Time of filing.
257.3 Content of claims.
257.4 Compliance with statutory dates.
257.5 Copies of claims.
257.6 Separate claims required.

Authority: 17 U.S.C. 119(b)(4).

§ 257.1 General.

This part prescribes the procedures under 17 U.S.C. 119(b)(4) whereby parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Office.

§ 257.2 Time of filing.

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 257.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to satellite carrier compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements.

(4) For both individual claims and joint claims, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, a general statement of the nature of each claimant's copyrighted works and identification of at least one secondary transmission by a satellite carrier of each claimant's copyrighted works establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, an interested copyright party chooses to negotiate a joint claim, either the particular joint claimants or individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

§ 257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

§ 257.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to satellite carrier royalty fees.

§ 257.6 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Office. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

PART 310–[REDESIGNATED AS PART 258]

28. Part 310 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 258.

29. The heading for part 258 is revised to read as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

29a. The authority citation for part 258 continues to read as follows:

Authority: 17 U.S.C. 119(c)(3)(F).

§ 258.1 [Amended]

30. Section 258.1 is amended by removing "310" and adding "258".

§ 258.2 [Amended]

31. Section 258.2 is amended by removing "§ 310(3)(b)" and adding "§ 258(3)(b)".

PART 311—REDESIGNATED AS PART 259]

32. Part 311 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 259.

33. The heading for part 259 is revised to read as follows:

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

33a. The authority citation for part 259 is amended to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.1 [Amended]

34. Section 259.1 is amended by removing "Copyright Royalty Tribunal" and adding "Copyright Office".

§ 259.2 [Amended]

35. Section 259.2 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

§ 259.3 [Amended]

36. Section 259.3 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

36a. Section 259.3 is amended by revising paragraph (c) to read as follows:

§ 259.3 Content of claims.

* * * * *

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

* * * * *

§ 259.4 [Amended]

37. Section 259.4 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

37a. A new paragraph (e) is added to § 259.4 to read as follows:

§ 259.4 Content of notices regarding independent administrators.

* * * * *

(e) No notice may be filed by facsimile transmission.

§ 259.5 [Amended]

38. Section 259.5 is revised to read as follows:

§ 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are received in the offices of the Copyright Office during normal business hours during the months of January or February, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which the last day of February falls on Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after the last day of February, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a postal worker will be accepted as proof in lieu of the receipt.

39. Section 259.6 is revised to read as follows:

§ 259.6 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to digital audio recording devices and media royalty payments.

CHAPTER III—[REMOVED]

41. Chapter III is removed.

Dated: May 3, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-10985 Filed 5-6-94; 8:45 am]

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federal register

Monday
May 9, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 527

Transfer of Inmates After Conviction;
Rescission; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

[BOP–1023–F]

Transfer of Inmates After Conviction; Rescission

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is rescinding its regulations on Transfer of Inmates after Conviction because the provisions contained in these regulations are sufficiently expressed in pertinent Federal Rules and consequently do not need to be restated as regulations.

EFFECTIVE DATE: May 9, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is rescinding its regulations on Transfer of Inmates after Conviction (28 CFR 527.20). A final rule on this subject was published in the **Federal Register** April 4, 1980 (45 FR 23365).

In accordance with E.O. 12866, the Bureau of Prisons is reviewing its regulations for the purpose of ensuring that it promulgates only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need. The Bureau has determined that provisions for transfer of inmates after conviction pertinent to Rule 38 of the Federal Rules of Criminal Procedure (more specifically, paragraph (b) with respect to inmates convicted of offenses committed on or after November 1, 1987, and paragraph (a)(2) for inmates convicted of offenses committed prior to November 1, 1987) are sufficiently expressed in the pertinent statute and that consequently there is no need to restate these provisions in Bureau regulations.

Section 527.20 had stated that the Bureau of Prisons adhered to Rule 38(a)(2) of the Federal Rules of Criminal Procedure. This Rule provides, in part, that if a sentence of imprisonment is not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where the appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals. Section 527.20 further stated that the Bureau shall make every effort to place the inmate in such a facility, unless a reason exists for not placing the inmate in that facility, in which case the matter is called to the attention of the court and an attempt is made to arrive at an acceptable place of confinement.

The Bureau has explicit statutory authority and delegated authority to designate the place of a prisoner's confinement (see 18 U.S.C. 3621, 4082 (applicable to offenses committed prior to November 1, 1987), and 28 CFR 0.96(c)). Internal agency procedures provide sufficient guidance in consideration of court recommendations for the place of confinement made under either Rule 38(a)(2) or (b).

Because this rescission imposes no new restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 527

Prisoners.

Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 527 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100–4115, 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 4201–4218, 5003, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart C—[Removed and Reserved]

2. Subpart C, consisting of § 527.20, is removed and reserved.

[FR Doc. 94–11101 Filed 5–6–94; 8:45 am]

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Monday
May 9, 1994

Part V

Department of Education

34 CFR Part 388

State Vocational Rehabilitation Unit In-Service Training; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 388

RIN 1820–AB24

State Vocational Rehabilitation Unit In-Service Training

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Unit In-Service Training program. The regulations are needed to implement changes made by the Rehabilitation Act Amendments of 1992. The proposed regulations incorporate new statutory requirements, reference changes in Education Department General Administrative Regulations, incorporate new phraseology from the Act, limit eligibility to designated State agencies, and provide funding allocation information.

DATES: Comments must be received on or before June 8, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to the Acting Commissioner, U.S. Department of Education, 400 Maryland Avenue SW., room 3038 Switzer Building, Washington, DC 20202–2531.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue SW., room 3422 Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement the changes to the State Vocational Rehabilitation Unit In-Service Training program made to the Rehabilitation Act of 1973 (the Act) by the Rehabilitation Act Amendments of 1992 (the Amendments), Public Law 102–569, enacted October 29, 1992.

The Amendments require that at least 15 percent of the sums appropriated to carry out section 302 of the Act be allocated among designated State agencies to be used, directly or indirectly, for projects for in-service training of rehabilitation personnel. The Secretary proposes to award funds to State agencies with approved projects based on the number of full-time equivalent staff employed by State rehabilitation agencies to ensure that all agencies have access to support for in-service training. The Department proposes to distribute 80 percent of the funds available to approved projects by formula based on the number of staff in designated State units and provide minimum shares to those small designated units. The remaining funds will be allocated on the basis of quality of the application and the extent to which an application addresses one or more specific priorities established by these regulations in § 388.22 and announced in the application notice.

The current regulations do not address allocation of funds by formula or on the basis of quality of the application. The Secretary has determined that the language on allocation requires that a formula be created by regulations. The Secretary reviewed a number of options for the allocation of funds and determined that the fairest approach would distribute funds based on the number of full-time equivalent staff since the purpose of in-service training is the training of that staff. Moreover, the Secretary reserved a minimum share for small agencies, as is done in other rehabilitation formula programs, to ensure that small agencies that lack training resources have sufficient funds to provide training for their staff. The requirement to distribute no less than eighty percent of the funds by formula was based on the Secretary's assessment that the funds remaining after formula allocation at that level would be an incentive for States to prepare high-quality proposals addressing the Secretary's priorities.

The Department will continue to use the information reported annually by designated State units to the Rehabilitation Services Administration on Form RSA–2, (Annual Vocational Rehabilitation Program/Cost Report), in determining allocations of funds based on the number of person years for each designated State unit.

The State Vocational Rehabilitation Unit In-Service Training program is one of six important programs in the Rehabilitation Training program. The Department envisions these six programs as an integrated response to the purpose for the rehabilitation training programs in section 301 of the Act. The six programs are: Rehabilitation Long-Term Training, Experimental and Innovative Training, State Vocational Rehabilitation Unit In-Service Training, Rehabilitation Continuing Education Programs, Rehabilitation Short-Term Training, and Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind. These programs, as a whole, are designed to meet the need to prepare qualified rehabilitation professionals to provide effective rehabilitation services across the service continuum of programs under the Rehabilitation Act to individuals with disabilities.

In addition to these proposed regulations for in-service training, notices of proposed rulemaking (NPRMs) have been published for 34 CFR Part 386, Rehabilitation Training: Rehabilitation Long-Term Training (58 FR 52606), and for 34 CFR Part 396, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind (59 FR 8350). Technical amendments to existing regulations for the remaining three training programs (34 CFR Part 387, Experimental and Innovative Training, 34 CFR Part 389, Rehabilitation Continuing Education Programs, and 34 CFR Part 390, Rehabilitation Short-Term Training) and general provisions for Rehabilitation Training (34 CFR Part 385) were published on February 18, 1994 (58 FR 8330).

Designated State rehabilitation agencies, in developing their in-service training programs, are expected to interact with and use the resources of activities supported under the other rehabilitation training programs. Likewise, the purpose of activities supported under the other rehabilitation training programs is to support the work of designated State rehabilitation agencies.

Funding for approved applications will be allocated by a combination of award considerations: (1) A formula component that reflects the number of staff employed by an agency. (2) A qualitative component that awards funds based upon the overall ranking of the application in the review process. The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the selection criteria in § 388.20 and address one or more priority areas identified in § 388.22. The formula component ensures that all agencies with an approved project will receive a proportional share of the majority of available funds. The Secretary believes that a minimum score is necessary to ensure that all funded applications are of a high quality. The Secretary does not anticipate setting a standard that any State unit will not be able to meet. Nevertheless, if a State unit falls below the standard, the Secretary's first recourse would be to work with the applicant under the provisions of section 80.12 of the Education Department General Administrative Regulations to determine special conditions or restrictions in the award that correspond to the high risk conditions identified in the review. Only if negotiations fail to resolve those problems would an award not be made and the funds reallocated.

The Secretary expects that the quality component's minimum score will ensure that only agencies with high quality proposals will receive awards for the remaining amount not distributed by formula. The application notice will identify which priorities are to be used for the competition, and applicants must address the priority in their proposal to be eligible to receive additional funding. The application notice will publish a table presenting the formula allocation by State unit.

In-service grants were awarded for one year to designated State agencies in fiscal year (FY) 1993 through a competitive process conducted under the existing regulations and a statement of policy. The FY 1993 process awarded funds using a formula component and a qualitative component similar to what is proposed in these regulations. Based upon the experience in FY 1993 and consultation with the leadership of designated State rehabilitation agencies, the proposed regulations would change the basis on which qualitative funds are allocated. Instead of awarding qualitative funds based on rank order only, the Secretary would reserve funds over and above the formula for proposals that receive a rating of 80 points or more and address one or more priority areas established by the regulations and announced in the application notice. The Secretary believes that model, high-quality in-service training projects addressing the priority areas in § 388.22 will benefit many States beyond the recipient program through replication and dissemination of training approaches.

Executive Order 12866

1. *Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. *Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 388.20 What selection criteria does the Secretary use?) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue SW. (room 5125, FOB–6), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 388.20 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State agencies that participate in the State Rehabilitation Unit In-Service Training program would have to comply with the information collection requirements in these proposed regulations. The Department needs and uses the information to make grants and to report on the training provided to recipients. Annual public reporting and recordkeeping burden for this collection of information is estimated to average 80 hours per response for 81 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The aggregate burden is estimated to be 6480 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 388

Grant programs—education, In-service training, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.265, State Vocational Rehabilitation Unit In-Service Training)

Dated: March 25, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 388 to read as follows:

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.
388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?
388.2 Who is eligible for an award?
388.3 What types of projects are authorized?
388.4 What activities may the Secretary fund?
388.5 What regulations apply?
388.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

388.20 What selection criteria does the Secretary use?
388.21 How does the Secretary determine the amount of a basic State award?
388.22 What priorities does the Secretary consider in making an award?

Subpart D—What Conditions Must be Met After an Award?

388.30 What are the matching requirements?
388.31 What are the allowable costs?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable staff personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed—

(a) To address recruitment and retention of qualified rehabilitation professionals;

(b) To provide for succession planning;

(c) To provide for leadership development and capacity building; and

(d) For fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.2 Who is eligible for an award?

Each designated State agency is eligible to receive an award under the basic State award program described in § 388.21. If a designated State agency does not apply for an award during an announced competition, no funds may be made available for inservice training of the staff of that designated State agency under this program until there is a new competition for funding. At least 15 percent of the sums appropriated to carry out section 302 of the Act must be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training of rehabilitation personnel.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.3 What types of projects are authorized?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to ensure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for individuals with disabilities, especially those with severe disabilities, to ensure employment outcomes.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.4 What activities may the Secretary fund?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program. Projects may—

(1) Address recruitment and retention of qualified rehabilitation professionals;

(2) Provide for succession planning;

(3) Provide for leadership development and capacity building; and

(4) For fiscal year 1994, provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(b) Training methods may include—

(1) The development of State unit training institutes related to the specific aspects of State unit administration or service provision;

(2) Group employee training at courses conducted in cooperation with or by an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice;

(4) Employee access to current agency instructional resources for books, films, videos, tapes, and other human resource development resources;

(5) Distance learning through telecommunications; and

(6) Dissemination and information sharing with other designated State agencies.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.5 What regulations apply?

The following regulations apply to the State Vocational Rehabilitation Unit In-Service Training program:

(a) The regulations in this part 388.

(b) The regulations in 34 CFR Part 385.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.6 What definitions apply?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: 29 U.S.C. 711(c) and 771(a)(g)(3))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 388.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Evidence of need.* (20 points)

(1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The need for the in-service training project has been adequately justified and relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) The State unit in-service training plan responds to needs identified in the training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Act for each designated State unit to develop a comprehensive system of personnel development; and

(iii) The State has conducted an annual needs assessment of the in-service training needs for all of the State unit employees.

(b) *Nature and scope of training program.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The objectives to be achieved by the project will address the needs as determined by the assessment;

(ii) The scope and nature of the training activities will accomplish the project objectives;

(iii) The training conducted can be measured and evaluated as to how it accomplished the project objectives; and

(iv) The program primarily includes an integrated sequence of—

(A) Workshops, seminars, distance education, and other special courses for new counselors and other classes of State unit personnel concerned with State unit procedures and policies;

(B) Concentrated training activities focusing on improving State unit staff skills in working with specific groups of individuals with disabilities; and

(C) Directed individualized or group staff development activities designed to enable selected staff to acquire special skills.

(c) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of how the project will achieve each objective;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iii) An effective plan of management that ensures proper and efficient administration of the project;

(iv) A clear description of how the applicant will provide equal access and treatment for State agency personnel who are members of groups that have been traditionally underrepresented, such as individuals with disabilities, the elderly, women, and members of racial or ethnic minority groups; and

(v) For FY 1994, a clear description of how the applicant will provide training regarding the 1992 amendments to the Rehabilitation Act of 1973.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel, including consultants, to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as individuals with disabilities, the elderly, women, and members of minority groups.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The budget clearly identifies activities to be conducted under § 388.21(a), as well as activities conducted under § 388.21(b), if applicable.

(f) *Evaluation.* (15 points)

(1) The Secretary reviews each application to determine the usefulness of the proposed project training in improving services to individuals with disabilities to ensure employment outcomes, including—

(i) The extent to which training outcomes are objective; and

(ii) The extent to which the training will result in improved individual competency recognized through licensure, certification, or award of academic degrees or certificates.

(2) The Secretary looks for qualitative and quantitative measures that show training methods and materials are appropriate for the project and, to the extent possible, will be useful in determining how in-service training improves the impact and effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act to ensure employment outcomes.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.21 How does the Secretary determine the amount of a basic State award?

(a) The Secretary distributes no more than 80 percent of the funds available for these awards as follows:

(1) For each competition the Secretary will determine a minimum score based upon the selection criteria in § 388.20 that an applicant must receive in order for its application to be approved by the Secretary.

(2) Each designated State agency that submits an approved application receives an amount based upon a formula that provides each approved project an amount equal to the percentage that the designated State agency's staff, as reported by total person years to the Secretary on Form RSA–2, represents of all staff of all designated State agencies, as reported to the Secretary on Form RSA–2 for the most recent reporting period. A copy of Form RSA–2 may be obtained from the Department of Education, 400 Maryland Avenue, SW., 3211 Switzer Building, Washington, DC 22204–2735.

(3) No designated State agency with an approved project receives less than one-third of one percent of the sums made available for the fiscal year.

(4) Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect) are each allotted not less than one-eighth of one percent of the amounts made available for each fiscal year for submission of an application that is approved for funding.

(b) After determining a designated State agency's award under paragraph (a) of this section, the Secretary reserves the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the criteria in § 388.20 and the priorities in § 388.22.

(c) Prior to award, negotiations may be conducted with applicants to resolve any problems or weaknesses in the application identified by the review process.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.22 What priorities does the Secretary consider in making an award?

(a) The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in § 388.20.

(b) In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following priorities announced in the application notice:

(1) *Development and dissemination of model in-service training materials and practices.* The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) *Distance education.* The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel at their job sites through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) *Enhanced employment outcomes for specific populations.* The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

Subpart D—What Conditions Must be Met After an Award?

§ 388.30 What are the matching requirements?

(a) The Secretary may make grants for paying part of the costs of projects under this program. Except as provided for in paragraphs (b) and (c) of this section, the grantee shall provide at least 10 percent of the total costs of the project.

(b) Grantees designated in § 388.21(a)(3) to receive a minimum share of one third of one percent of the sums made available for the fiscal year shall provide at least four percent of the total costs of the project.

(c) Grantees designated in § 388.21(a)(4) to receive not less than one-eighth of one percent of the amounts made available for each fiscal year shall provide at least two percent of the total costs of the project unless exempted by other applicable Federal laws or regulations.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.31 What are the allowable costs?

In addition to those allowable costs established in 34 CFR 75.530 through 75.562 (Education Department General Administrative Regulations), the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs.

(b) Trainee travel in connection with a training course.

(c) Trainee tuition and fees.

(d) Telecommunications and technology fees in connection with a distance learning training course.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

[FR Doc. 94–11009 Filed 5–6–94; 8:45 am]

BILLING CODE 4000-01-P

federal register

Monday
May 9, 1994

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, totaling $7.3 million.

The deferral affects the Department of Health and Human Services. The details of the revised deferral is contained in the attached report.

William J. Clinton.

The White House,
May 2, 1994.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of Health and Human Services:	
	Social Security Administration:	
D94-7A	Limitation on administrative expenses	7,319
	Total, deferrals	7,319

Deferral No. D94-7A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-7, which was transmitted to Congress on October 13, 1993.

This revision increases by $2,214 the previous deferral of $7,316,594 in the Department of Health and Human Services, resulting in a total deferral of $7,318,808. The increase reflects recoveries of prior-year obligations.

Deferral No. 94-7A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services **BUREAU:** Social Security Administration	**New budget authority** .... * $ 220,000,000 (P.L. 103-112 and 103-211) **Other budgetary resources** ..... * $ 14,618,522 **Total budgetary resources** ...... * $ 234,618,522
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X0704	**Amount to be deferred:** **Part of year** .... $ ________ **Entire year** .... * $ 7,318,808
OMB identification code: 20-8007-0-7-651 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1013):** ☒ Antideficiency Act ☐ Other ____________
Type of account or fund: ☐ Annual ☐ Multi-year: ________ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ____________

JUSTIFICATION: This account provides funding for construction, renovation, and expansion of Social Security Trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park, which is located in Baltimore, MD. In FY 1994, the Social Security Administration has received an approved apportionment for $50,000 to cover potential upward adjustments in FY 1994. This deferral reflects the actual amount available for construction in FY 1994, less the $50,000 apportioned for potential upward adjustments in FY 1994. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-6A).

* Revised from previous report.

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, totaling $7.3 million.

The deferral affects the Department of Health and Human Services. The details of the revised deferral is contained in the attached report.

William J. Clinton

THE WHITE HOUSE,
May 2, 1994.

CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL

CERTIFYING OFFICER

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of Health and Human Services:	
	Social Security Administration:	
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OMB identification code: 20-8007-0-7-651 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1013):** ☒ Antideficiency Act ☐ Other ______
Type of account or fund: ☐ Annual ☐ Multi-year: ______ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ______

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Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-6A).

* Revised from previous report.

[FR Doc. 94-11138 Filed 5-6-94; 8:45 am]

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federal register

Monday
May 9, 1994

Part VII

Federal Trade Commission

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 309

RIN 3084–AA57

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 406(a) of the Energy Policy Act of 1992 directs the Federal Trade Commission ("Commission") to establish uniform labeling requirements for alternative fuels and alternative fueled vehicles. This notice announces the substance of the Commission's proposed rule implementing that directive. The Commission invites interested persons to submit written comments addressing any issue they believe may bear upon the proposed rule. Following the period for written comments, Commission staff will conduct a Public Workshop-Conference to afford interested persons an opportunity to discuss issues raised during the comment period. The Public Workshop-Conference will be held on July 20–21, 1994. After reviewing comments received in response to this notice, the transcript of the Public Workshop-Conference, and any other properly filed submissions, the Commission will publish a Supplemental Notice of Proposed Rulemaking in which it will propose the text of a labeling rule.

DATES: Written comments must be submitted on or before June 23, 1994. Notification of interest to participate in the Public Workshop-Conference must be received on or before June 8, 1994. The Public Workshop-Conference is scheduled to be held at the Federal Trade Commission, Sixth and Pennsylvania Avenue, NW., Washington, DC, on July 20–21, 1994, from 9 a.m. until 5 p.m.

ADDRESSES: Written comments and requests to participate in the Public Workshop-Conference should be sent to the Division of Enforcement, Federal Trade Commission, 601 Pennsylvania Avenue, NW., Washington, DC 20580, Attn: Jeffrey E. Feinstein, Room S–4618. The Commission requests that original submissions be filed with six copies, if feasible. Submissions should be identified as "16 CFR Part 309—Comment" and "16 CFR Part 309—Request to Participate in Public Workshop-Conference" as appropriate. If submissions are made by facsimile transmission, please call 202/326–2372 to confirm receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey E. Feinstein, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, telephone 202/326–2372.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 406(a) of the Energy Policy Act of 1992 ("EPA 92") directs the Commission to issue a rule establishing uniform labeling requirements, to the greatest extent practicable, for alternative fuels[1] and alternative fueled vehicles[2] ("AFVs").[3] The Act does not specify what information should be displayed on these labels. Instead, it provides generally that the rule must require disclosure of "appropriate" cost and benefit information to enable the consumer to make reasonable purchasing choices and comparisons.[4] In formulating the rule, the Commission must consider the problems associated with developing and publishing "useful and timely" information, taking into account lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors.[5] The labels themselves must be simple and, where appropriate, consolidated with other labels providing information to consumers.[6]

EPA 92 further directs the Department of Energy ("DOE") to coordinate its development of an information package with the Commission's promulgation of labeling requirements.[7] Specifically, section 405 of EPA 92 requires DOE to produce and make available an information package for consumers to help them choose among alternative fuels and AFVs.[8] DOE's information package must provide "relevant and objective" information addressing seven "motor vehicle and fuel characteristics as compared to gasoline" (including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety), information about the conversion of conventional motor vehicles to AFVs, and "such other information as the Secretary [of DOE] determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles."[9]

According to EPA 92, the DOE Secretary is to provide technical assistance to the Commission in developing its labeling requirements,[10] and the Commission is to issue this notice of proposed rulemaking "in consultation with" the DOE Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation.[11] EPA 92 requires the Commission to issue a final labeling rule within one year of this notice of proposed rulemaking and to update its rule "periodically to reflect the most recent available information."[12]

This is the Commission's second rulemaking concerning labeling requirements for alternative fuels. In a separate proceeding also required by EPA 92,[13] the Commission recently extended the requirements of its former Octane Rule[14] (renamed the "Fuel Rating Rule") beyond gasoline to include *liquid* alternative fuels.[15] As a result, retailers of such fuels are now required, among other things, to post labels identifying the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.[16]

EPA 92 requires the Commission, in formulating its rule, to obtain the views of affected industries, consumer organizations, Federal and State agencies, and all other interested parties.[17] The Commission has concluded that EPA 92 authorizes use of the notice and comment rulemaking procedures of the Administrative Procedure Act ("APA") to obtain the views of these entities.[18] Pursuant to section 553(b)(3) of the APA, the Commission has elected to publish the substance, instead of the specific language, of its proposed rule.[19]

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[1] "Alternative fuels" are defined as:

> [M]ethanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]

42 U.S.C.A. 13211(2) (West Supp. 1993).

[2] An "alternative fueled vehicle" is "a dedicated vehicle or a dual fueled vehicle." 42 U.S.C.A. 13211(3) (West Supp. 1993). Each term is further defined in 42 U.S.C.A. 13211(6) and (8) (West Supp. 1993).

[3] Pub. L. No. 102–486, 106 Stat. 2776 (1992). Section 406(a) is codified at 42 U.S.C.A. 13232(a) (West Supp. 1993).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] 42 U.S.C.A. 13232(b) (West Supp. 1993).

[8] 42 U.S.C.A. 13231 (West Supp. 1993).

[9] *Id.*

[10] *Id.*

[11] 42 U.S.C.A. 13232(a) (West Supp. 1993). During its development of this notice, Commission staff discussed the proposed labeling requirements with staff from DOE, EPA, and DOT's National Highway Traffic Safety Administration.

[12] *Id.*

[13] 15 U.S.C.A. 2821–2823 (West Supp. 1993).

[14] Octane Posting and Certification, 16 CFR Part 306.

[15] 58 FR 41356, 41373, Aug. 3, 1993 (to be codified at 16 CFR 306.0(i)(2)). In that proceeding, the Commission had no authority to extend its requirements beyond liquid alternative fuels. 15 U.S.C.A. 2821 (West Supp. 1993).

[16] 58 FR at 41373 (to be codified at 16 CFR 306.0(j)(2)). The Fuel Rating Rule became effective October 25, 1993. *Id.* at 41356.

[17] 42 U.S.C.A. 13232(a) (West Supp. 1993).

The Commission seeks comment (written comment in response to this notice and oral testimony during the Public Workshop-Conference) on whether the proposed rule will accomplish the purposes of section 406(a). The Commission also seeks comment on whether some variation of this proposal, or other options or variations not proposed here, would be more appropriate.

II. The Commission's Advance Notice of Proposed Rulemaking

To assist in the development of its proposed labeling requirements and this notice, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") in the **Federal Register** on December 10, 1993,[20] seeking comment until January 26, 1994, on basic issues raised by this proceeding. In its ANPR, the Commission requested comment on issues relating to which fuels and vehicles should be covered by the labeling requirements (i.e., the proposed rule's scope), and what information should be required to be displayed on labels (i.e., the proposed rule's disclosures). The Commission also sought comment on how the labeling requirements should be updated, and the extent to which the labels should be consolidated with other labels providing information to consumers.

In response to the ANPR, the Commission received a total of 28 comments. These comments were from vehicle manufacturers,[21] fuel producers,[22] governmental entities,[23] and organizations representing affected interests.[24] All the comments were placed on the public record pertaining to this proceeding.[25] Comments addressing issues raised in the ANPR are discussed below.

A. Scope

1. Alternative Fuels

To help determine which fuels should be addressed by the proposed rule, the Commission requested comment on which alternative fuels are presently available for consumer use.[26] The comments stated that compressed and liquefied natural gas ("CNG" and "LNG," respectively),[27] ethanol,[28] methanol,[29] liquefied petroleum gas ("LPG"),[30] electricity,[31] coal-derived liquid fuels,[32] reformulated petroleum,[33] and soy diesel[34] are all alternative fuels presently available for consumer use. In response to a separate question, several comments also addressed the composition, means of production, and the costs and benefits involved in utilizing alternative fuels for transportation.[35]

The Commission also asked whether the scope of its labeling requirement should be limited to presently available alternative fuels.[36] Sixteen comments addressed this issue: Seven recommended that coverage be limited to presently available alternative fuels,[37] three recommended that coverage not be limited to such fuels,[38] and six recommended that the Commission adopt an approach flexible enough to cover new alternative fuels as they become commercially available.[39]

Because not every alternative fuel is dispensed from a conventional fuel pump (e.g., electricity is dispensed from a recharging unit), the Commission requested comment regarding how such alternative fuels should be labeled.[40] No comments provided specific suggestions on this point. ETC and Ford stated that only public recharging stations should be labeled.[41] Six other commenters stated that all such refueling stations should be labeled to help consumers choose the correct fuel for their engines.[42] Mobil stated that "it is moot as to where the data should be labeled" because "labeling of information that is not technically proven is not recommended at this time."[43] NPGA suggested that no comparative information be disclosed for alternative fuels because comparative information is not needed when refueling.[44]

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[18] 5 U.S.C. 553 (b) and (c).

[19] 5 U.S.C. 553(b)(3).

[20] 58 FR 64914, Dec. 10, 1993.

[21] The Flxible Corporation (Flxible), D–4; Ford Motor Company (Ford), D–10; General Motors (GM), D–12; Honda North America, Inc., American Honda Motor Co., Inc., Honda of America, Mfg., Inc., and Honda Motor Co. Ltd. (Honda), D–15; Volvo GM Heavy Truck Corporation (Volvo/GM), D–1.

[22] Boston Edison Company (Boston Edison), D–11; Mobil Oil Corporation (Mobil), D–16; Sun Company, Inc. (Sun), D–13.

[23] City of Chicago (Chicago), E–4; Minnesota Department of Agriculture (Minnesota), E–8; Nebraska Energy Office, Alternative Fuels Advisory Committee, Suppliers Subcommittee (Nebraska AFAC), E–6; U.S Department of Energy (DOE), E–10; U.S. Department of Energy, Energy Information Administration, Energy Demand and Integration Division (EIA/EDID), E–1; U.S. Department of Energy, Energy Information Administration, Energy End Use and Integrated Statistics Division (EIA/EEU-ISD), E–9; U.S. Department of Energy, Energy Information Administration, Office of Integrated Analysis and Forecasting (EIA/OIAF), E–3; U.S. Department of Transportation, National Highway Traffic Safety Administration (DOT/NHTSA), E–2; U.S. Environmental Protection Agency (EPA), E–5; Wisconsin Department of Natural Resources (WDNR), E–7.

[24] American Automobile Manufacturers Association (AAMA), D–3; American Gas Association (AGA) and Natural Gas Vehicles Coalition (NGVC), D–8; American Methanol Institute (AMI), D–7; American Petroleum Institute (API), D–17; Electric Transportation Coalition (ETC), D–14; Engine Manufacturers Association (EMA), D–18; National Corn Growers Association (NCGA), D–9; National Propane Gas Association (NPGA), D–5; Propane Consumers Coalition (PCC), D–6; Renewable Fuels Association (RFA), D–2.

[25] Commission's Rulemaking Record No. R311002. Comments from nongovernmental sources were coded "D"; comments from governmental agencies were coded "E."

[26] 58 FR at 64915. In the Fuel Rating Rule proceeding, the Commission had identified six commercially-available liquid alternative fuels: methanol; denatured ethanol; M85 (85% methanol, 15% gasoline); E85 (85% denatured ethanol, 15% gasoline); liquefied natural gas (LNG); and liquefied petroleum gas (LPG). 58 FR 16464, 16464, Mar. 26, 1993.

[27] AAMA, D–3, 1; AGA/NGVC, D–8, 4–5 (CNG and LNG); API, D–17, 2–3 (LNG); Boston Edison, D–11, 9 (CNG and LNG); Chicago, E–4, 1 (CNG); DOE, E–10, 2 (CNG); DOT/NHTSA, E–2, 1 (CNG); EIA/OIAF, E–3, 1; Ford, D–10, 1; Mobil, D–16, 1 (CNG); NCGA, D–9, 1 (CNG); RFA, D–2, 2 (CNG); Sun, D–13, 1 (CNG and LNG).

[28] AAMA, D–3, 1 (E85); API, D–17, 2–3; Boston Edison, D–11, 9; Chicago, E–4, 1; DOE, E–10, 2 (E85); EIA/OIAF, E–3, 1; Ford, D–10, 1 (E85); Minnesota, E–8, 1; Mobil, D–16, 1 (E85 through E100); NCGA, D–9, 1; RFA, D–2, 2 (E85); Sun, D–13, 1 (E85).

[29] AAMA, D–3, 1 (M85 and M100); AMI, D–7, 1 (M85, M100G for gasoline engines, and M100D for diesel engines); API, D–17, 2–3; DOE, E–10, 2 (M85); Boston Edison, D–11, 9; EIA/OIAF, E–3, 1; Ford, D–10, 1 (M85 and M100); Minnesota, E–8, 1; Mobil, D–16, 1 (M85 through M100); NCGA, D–9, 1; RFA, D–2, 2 (M85); Sun, D–13, 1 (M85).

[30] AAMA, D–3, 1; API, D–17, 2–3; Boston Edison, D–11, 9 (propane); DOE, E–10, 2; EIA/OIAF, E–3, 1; Ford, D–10, 1; Mobil, D–16, 1; NCGA, D–9, 1; NPGA, D–5, 1; RFA, D–2, 2; Sun, D–13, 1.

[31] AAMA, D–3, 1; API, D–17, 2–3; Boston Edison, D–11, 9; Chicago, E–4, 1; DOE, E–10, 2; EIA/OIAF, E–3, 1; ETC, D–14, 1; Ford, D–10, 1; Mobil, D–16, 1; NCGA, D–9, 1; Sun, D–13, 1.

[32] API, D–17, 2–3.

[33] Boston Edison, D–11, 9. Reformulated gasoline, however, may not constitute an alternative fuel for purposes of the statute because it is merely a reformulation of conventional gasoline. See 42 U.S.C.A. 13211(2) (West Supp. 1993) (alternative fuels are "substantially not petroleum").

[34] Chicago, E–4, 1.

[35] AAMA, D–3, Att. 2; AGA/NGVC, D–8, 4–6; Boston Edison, D–11, 7; ETC, D–14, 1–3; Mobil, D–16, 1; NPGA, D–5, 1–3; RFA, D–2, 2–3.

[36] 58 FR 64914, 64915, Dec. 10, 1993.

[37] Boston Edison, D–11, 9; Chicago, E–4, 2; EIA/EEU–ISD, E–9, 2; EIA/OIAF, E–3, 1; EMA, D–18, 2; Mobil, D–16, 2; RFA, D–2, 3.

[38] DOE, E–10, 3 (coverage should also extend to M100 and E100); NPGA, D–5, 3 (coverage should extend to presently "recognized" alternative fuels); PCC, D–6, 1 (coverage should extend to all alternative fuels specified in EPA 92, including any that the DOE Secretary designates).

[39] AAMA, D–3, 1; API, D–17, 3; EIA/EDID, E–1, 1; ETC, D–14, 3; Ford, D–10, 1; NCGA, D–9, 1.

[40] 58 FR 64914, 64915, Dec. 10, 1993.

[41] ETC, D–14, 4 (requiring private electrical outlets to be labeled would be "impractical"; however, new, EV-only outlets and public recharging facilities should be labeled); Ford, D–10, 1 ("[o]nly public alternative fueling (or recharging) stations should be covered"). Ford stated that "[t]he types of labels should be consistent for all types of fuel dispensers," but did not indicate why the labeling requirement should be limited to public stations.

[42] AAMA, D–3, 2; API, D–17, 3; Boston Edison, D–11, 9; Chicago, E–4, 2; EIA/EDID, E–1, 2; EMA, D–18, 2.

2. Alternative Fueled Vehicles

To address the Commission's responsibility to issue labeling requirements for AFVs (to the extent practicable), the Commission sought comment on whether it should require labeling for all or only some AFVs.[45] Fifteen of the twenty-one responsive comments stated that all dedicated and dual fueled vehicles should be covered.[46] Three comments recommended that medium and heavy-duty, commercial vehicles be excluded from coverage because these vehicles are custom ordered by purchasers well informed about the operating costs and performance of their planned purchase.[47]

AAMA, Honda and Mobil, without explaining how the Commission could otherwise satisfy the statutory directive, recommended that no vehicles be subjected to a labeling requirement.[48] AAMA stated that all the relevant information necessary for making comparisons among AFVs is already available on existing vehicle labels.[49] Honda stated that labeling should be postponed until the market and infrastructure are more developed.[50] Mobil stated that until such time as scientifically sound data can be published, made available for public comment, and accepted by the appropriate governmental agencies, labeling of fuels or vehicles with benefit and cost claims appears to be an inappropriate action.[51]

The Commission also requested comment regarding whether its labeling requirements should extend to vehicles converted to use alternative fuels "after market" (i.e., after sale of the vehicles by original equipment manufacturers).[52] Eighteen comments addressed this issue. Twelve said that coverage should extend to all aftermarket conversions because all AFVs should be subjected to the same labeling requirements.[53] Five comments stated that labeling requirements would be difficult, and perhaps unnecessary, for vehicles already owned and operated.[54]

B. Labeling Disclosures

As noted previously, the cost and benefit information required by the Commission's labeling rule must be "appropriate," "useful," and "timely."[55] None of those terms, however, is defined in EPA 92. In its ANPR, the Commission thus sought comment addressing three issues concerning the information to be disclosed in its labeling requirements.

First, the Commission sought comment on whether it should target required labeling to a particular audience of consumers (e.g., individual purchasers or fleet owners).[56] In response, eight comments indicated that the Commission should not target particular market segments.[57] RFA stated that the information required on vehicle labels should be easily understandable by all consumers.[58] AAMA, however, stated that the information should be targeted to individual consumers (presumably as opposed to fleet owners) "so that consumers can make reasonable choices."[59]

Second, the Commission sought comment on what information consumers would need to compare different alternative fuels and AFVs.[60] To compare conventional fuels (i.e., gasoline and diesel) with alternative fuels, the comments stated that information regarding the following would be important: price,[61] emissions,[62] mileage,[63] energy content,[64] domestic content (i.e., the percentage of the fuel derived from domestic natural resources),[65] and hazards, if any.[66] The comments further stated that information about similar factors would help consumers choose among different alternative fuels.[67]

To compare conventional vehicles with AFVs, the comments stated that consumers will need cost information relating to the fuel, initial vehicle price, and vehicle operation and maintenance.[68] In addition to cost, the comments stated that information on the following additional factors would be useful: emissions;[69] fuel type;[70] mileage;[71] average tank, fuel or storage unit capacity;[72] refueling time;[73] cruising range;[74] availability and access to refueling stations and facilities;[75] safety;[76] resale value;[77] and tax consequences.[78]

The comments stated that comparing different AFVs would require an evaluation of the same factors.[79] For those comparisons, the comments also indicated that consumers will need to know the AFV's price,[80] maintenance costs,[81] passenger and cargo space,[82] vehicle performance,[83] and fuel composition.[84] Three comments also stated that consumers will need telephone numbers for additional sources of information about alternative fuels and AFVs.[85]

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[43] Mobil, D–16, 3.

[44] NPGA, D–5, 3.

[45] 58 FR at 64915.

[46] AGA/NGVC, D–8, 7; API, D–17, 4; Boston Edison, D–11, 10; Chicago, E–4, 2; DOE, E–10, 3; EIA/EDID, E–1, 2; EIA/EEU–ISD, E–9, 2; ETC, D–14, 4; Flxible, D–4, 2; Ford, D–10, 1; Honda, D–15, 5; FCC, D–6, 2; RFA, D–2, 3; Sun, D–13, 2; WDNR, E–7, 1. EIA/OIAF suggested that AFV's available for purchase by "the public" (i.e., individual purchasers or fleet owners) should be labeled. That comment did not explain the reason for this formulation. EIA/OIAF, E–3, 1.

[47] EMA, D–18, 1–2; GM, D–12, 1; Volvo/GM, D–1, 1.

[48] AAMA, D–3, 2; Mobil, D–16, 3. Ford and GM indicated that they supported AAMA's comments. Ford, D–10, 1; GM, D–12, 1.

[49] AAMA, D–3, 2.

[50] Honda, D–15, 7.

[51] Mobil, D–16, 3.

[52] 58 FR 64914, 64915, Dec. 10, 1993.

[53] AAMA, D–3, 2; Boston Edison, D–11, 10; Chicago, E–4, 3; EIA/EEU-ISD, E–9, 2; EIA/EDID, E–1, 2; Flxible, D–4, 2; Honda, D–15, 4–5; NCGA, D–9, 2; NPGA, D–5, 4; PCC, D–6, 2; RFA, D–2, 3 (but only a portion of the information required of new vehicles should appear on the label); Sun, D–13, 2. DOT/NHTSA stated that it is considering labeling information for CNG-powered vehicles, and that this information "would be equally applicable if the container is fitted to a new vehicle or a converted vehicle." DOT/NHTSA, E–2, 1.

[54] AGA/NGVC, D–8, 8; DOE, E–10, 3–4; EIA/OIAF, E–3, 1; ETC, D–14, 4; Ford, D–10, 1.

[55] 42 U.S.C.A. 13232(a) (West Supp. 1993).

[56] 58 FR at 64915.

[57] AGA/NGVC, D–8, 8; Boston Edison, D–11, 11; Chicago, E–4, 4; EIA/EDID, E–1, 2; ETC, D–14, 5; Mobil, D–16, 3; NPGA, D–5, 4; PCC, D–6, 2.

[58] RFA, D–2, 3.

[59] AAMA, D–3, 2. This comment did not further explain why the Commission's labeling requirements should target this audience.

[60] 58 FR 64915.

[61] AGA/NGVC, D–8, 9–10, 12; ETC, D–14, 5; Mobil, D–16, 4; NPGA, D–5, 5; PCC, D–6, 2–3.

[62] Boston Edison, D–11, 6, 12–14; Chicago, E–4, 4; ETC, D–14, 5; NPGA, D–5, 5.

[63] Chicago, E–4, 4; NPGA, D–5, 5.

[64] AGA/NGVC, D–8, 9–10, 12; ETC, D–14, 5.

[65] Boston Edison, D–11, 6, 12–14; Chicago, E–4, 4; ETC, D–14, 5.

[66] Boston Edison, D–11, 12; Chicago, E–4, 4.

[67] *Fuel cost:* AMI, D–7, 3; DOE, E–10, 3; ETC, D–14, 6; EIA/EEU-ISD, E–9, 1; Mobil, D–16, 4; *emissions:* NPGA, D–5, 5; AMI, D–7, 3; and ETC, D–14, 6; *composition:* AMI, D–7, 3; *octane or cetane rating:* AMI, D–7, 3; EMA, D–18, 2; Nebraska AFAC, E–6, 2; *domestic content:* NCGA, D–9, 2; *health and safety:* NCGA, D–9, 2; EMA, D–18, 2; Nebraska AFAC, E–6, 2; WDNR, E–7, 1; *refueling access and ease:* ETC, D–14, 6; *usage limitations:* ETC, D–14, 6; EMA, D–18, 2; *usage requirements:* ETC, D–14, 6.

[68] AGA/NGVC, D–8, 10–11; API, D–17, 5; Chicago, E–4, 4; ETC, D–14, 5–6; PCC, D–6, 4.

[69] AGA/NGVC, D–8, 10–11; API, D–17, 5; Chicago, E–4, 4; ETC, D–14, 5–6; NPGA, D–5, 5; PCC, D–6, 4; RFA, D–2, 3–4.

[70] API, D–17, 5; ETC, D–14, 5–6.

[71] Chicago, E–4, 4; NPGA, D–5, 5; RFA, D–2, 3–4.

[72] RFA, D–2, 3–4.

[73] API, D–17, 5.

[74] API, D–17, 5; PCC, D–6, 4; RFA, D–2, 3–4.

[75] API, D–17, 5; NPGA, D–5, 5; PCC, D–6, 4.

[76] Chicago, E–4, 4; PCC, D–6, 4.

[77] ETC, D–14, 5–6; PCC, D–6, 4.

[78] API, D–17, 5. API did not specify what those consequences would be.

[79] *Fuel type:* AAMA, D–3, 1–2; AMI, D–7, 4–5; DOT/NHTSA, E–2, 2; EIA/EEU-ISD, E–9, 1; Flxible, D–4, 2; Honda, D–15, 3–4; NCGA, D–9, 2; Nebraska AFAC, E–6, 1; WDNR, E–7, 1; *fuel economy:* AAMA, D–3, 1–2; AMI, D–7, 4–5; DOE, E–10, 4; Honda, D–15, 3–4; NPGA, D–5, 5; Sun, D–13, 2; WDNR, E–7, 1; *fuel cost:* AAMA, D–3, 1–2; AMI, D–7, 4–5; DOT/NHTSA, E–2, 2; EIA/OIAF, E–3, 1; Honda, D–15, 3–4; Nebraska AFAC, E–6, 1; Sun, D–13, 2; *emissions certification:* AAMA, D–3, 1–2; AMI, D–7, 4–5; EIA/EDID, E–1, 2–3; EIA/EEU-ISD,

Third, the Commission sought comment on the information that should be disclosed (as opposed to merely what is relevant) to consumers to help them make reasonable purchasing choices and comparisons.[86] The most frequently mentioned factor to be disclosed on fuel dispensers was unit pricing information comparing the cost of the fuel to a standard unit (e.g., a gallon of gasoline).[87] Other factors included health and safety information,[88] and fuel type (or name),[89] rating (octane or cetane, as appropriate),[90] emissions,[91] energy content,[92] principal ingredient,[93] and quantity purchased.[94] Boston Edison stated that the labels should identify the percentage of fuel that comes from domestic sources.[95] The Minnesota Department of Agriculture said there is no need to mandate labels on the fuel dispenser itself because "[w]hen the fuel is being sold by private marketers, they will provide the most appropriate labeling for any individual marketplace."[96]

As to vehicle labeling, the comments recommended that information regarding cost,[97] emissions,[98] fuel economy,[99] safety,[100] fuel type,[101] and performance (e.g., cruising range)[102] be disclosed on a label on the vehicle. Other suggested disclosures included domestic content of the fuel,[103] ownership type (individual or fleet),[104] tank capacity,[105] and fuel availability.[106] Two comments recommended certain disclosures for AFVs, but did not specify where the required information should be disclosed (i.e., on a label, in a fact sheet, or elsewhere).[107] API suggested that the Commission develop a brochure for consumers disclosing pertinent information.[108]

C. Updating Labeling Disclosures

Because EPA 92 requires the Commission to update its labeling requirements "periodically," the Commission sought comment on how frequently it should update its labeling requirements.[109] Eight comments stated that the Commission should review its labeling requirements at regular intervals (i.e., either annually,[110] or every two,[111] three,[112] or five to ten years).[113] Other comments indicated that the Commission should update labels only when necessary to reflect practical developments in technology.[114] Mobil stated that label updating should reflect fuel cost changes.[115]

D. Consolidation

Finally, the Commission sought comment regarding section 406(a)'s direction that the Commission consolidate its labels with other labels providing information to consumers "where appropriate."[116] Four comments suggested that the required information could be consolidated with existing fuel economy labels.[117] Five other comments suggested that consolidation would be difficult or would provide no benefit to consumers.[118] One comment stated that these labeling requirements should not duplicate existing labels.[119]

III. Proposed Labeling Rule

In developing its labeling proposal, the Commission is required to reconcile several competing concerns. As noted previously, EPA 92 directs the Commission to develop uniform labels disclosing appropriate cost and benefit information.[120] However, in determining what information is appropriate, it must consider the problems associated with developing and publishing such information.[121] The information to be disclosed also must be displayed on simple labels.[122] Given this context, and after considering the comments, the Commission proposes separate labeling requirements for alternative fuels and AFVs, to become effective 90 days after publication of a final rule in the **Federal Register**. Because few consumers have extensive experience with either alternative fuels or AFVs, the Commission's proposal is designed to be of use to a general consumer audience.

E–9, 1; ETC, D–14, 6; Nebraska AFAC, E–6, 1; NPGA, D–5, 5; WDNR, E–7, 1; *cruising range:* DOE, E–10, 4; EIA/OIAF, E–3, 1; ETC, D–14, 6; Honda, D–15, 3–4; Sun, D–13, 2; WDNR, E–7, 1; *fuel tank capacity:* EIA/EEU-ISD, E–9, 1; Sun, D–13, 2; *safety:* EIA/EDID, E–1, 2–3; NCGA, D–9, 2; Nebraska AFAC, E–6, 1; *refueling ease and access:* ETC, D–14, 6; Nebraska AFAC, E–6, 1; NPGA, D–5, 5; *refueling time:* DOE, E–10, 4; EIA/OIAF, E–3, 1.

[80] AAMA, D–3, 1–2; EIA/EDID, E–1, 2–3; ETC, D–14, 6.

[81] AMI, D–7, 4–5; EIA/EDID, E–1, 2–3; Nebraska AFAC, E–6, 1.

[82] EIA/EEU-ISD, E–9, 1; ETC, D–14, 6.

[83] EIA/EDID, E–1, 2–3; ETC, D–14, 6; Nebraska AFAC, E–6, 1.

[84] Nebraska AFAC, E–6, 1. The comments further indicated that consumers will need to know whether the vehicle has been converted to alternative fuel operation and, if so, the identity of the manufacturer of the conversion kit and the installer of the system. AAMA, D–3, 1–2; AMI, D–7, 4–5; NCGA, D–9, 2. One comment stated that consumers will need to know the expected battery life for electric vehicles. EIA/OIAF, E–3, 1.

[85] EIA/EEU-ISD, E–9, 1; Minnesota, E–8, 2–3; NCGA, D–9, 2.

[86] 58 FR 64914, 64915, Dec. 10, 1993.

[87] AAMA, D–3, 2; AMI, D–7, 3; Boston Edison, D–11, 12; DOE, E–10, 3; EIA/EEU-ISD, E–9, 2; ETC, D–14, 7; Mobil, D–16, 5; PCC, D–6, 3.

[88] EMA, D–18, 3; EMA, D–18, 3; ETC, D–14, 7; Nebraska, E–6, 2; NHTSA, E–2, 2; WDNR, E–7, 2.

[89] AAMA, D–3, 2; AMI, D–7, 3; API, D–17, 4–5; EIA/EEU-ISD, E–9, 2; Nebraska, E–6, 2; NHTSA, E–2, 2; Sun, D–13, 1.

[90] AMI, D–7, 3; EMA, D–18, 3; Nebraska, E–6, 2.

[91] AMI, D–7, 3; Boston Edison, D–11, 12.

[92] AGA/NGVC, D–8, 9–10 (labels should compare "the amount of energy in different fuels by indicating the quantity * * * of different fuels needed to equal the energy content in gasoline"); Boston Edison, D–11, 11 (the British Thermal Unit "provides the most accurate unit of measure that can be used to evaluate the relative merits of each type of fuel").

[93] AMI, D–7, 3.

[94] EIA/EEU-ISD, E–9, 2.

[95] Boston Edison, D–11, 12.

[96] Minnesota, E–8, 3.

[97] AGA/NGVC, D–8, 9–10; AMI, D–7, 5; Boston Edison, D–11, 12; EIA/EDID, E–1, 2; EIA/EEU-ISD, E–9, 2; EIA/OIAF, E–3, 1; ETC, D–14, 7; RFA, D–2, 4.

[98] AGA/NGVC, D–8, 10–11; Boston Edison, D–11, 12; EIA/EEU-ISD, E–9, 2; ETC, D–14, 7; RFA, D–2, 4; WDNR, E–7, 2.

[99] AMI, D–7, 5; DOE, E–10, 4; RFA, D–2, 4; Sun, D–13, 2; WDNR, E–7, 2.

[100] EIA/EDID, E–1, 2–3; EIA/EEU-ISD, E–9, 2; NHTSA, E–2, 2; WDNR, E–7, 2.

[101] AMI, D–7, 4; API, D–17, 6; EIA/EEU-ISD, E–9, 2; Flxible, D–4, 2; Minnesota, E–8, 3; NHTSA, E–2, 2; WDNR, E–7, 2.

[102] Boston Edison, D–11, 12; EIA/EDID, E–1, 2; EIA/EEU-ISD, E–9, 2; EIA/OIAF, E–3, 1; RFA, D–2, 4; WDNR, E–7, 2.

[103] Boston Edison, D–11, 12; RFA, D–2, 4.

[104] WDNR, E–7, 2.

[105] EIA/EEU-ISD, E–9, 2; RFA, D–2, 4. DOE recommended refueling time and refueling frequency. DOE, E–10, 4.

[106] EIA/EEU-ISD, E–9, 2.

[107] Chicago, E–4, 4 (alternative fuel mix ratio, economic advantages, energy efficiency, environmental performance, miles/alternative fuel gallon); NCGA, D–9, 2 (domestic content, renewable content, Global Warming Index rating, health/safety information).

[108] API, D–17, 5. The suggested brochure would disclose "relative fuel costs, maintenance costs, operational costs, emissions reductions, possible tax consequences, and the type of fuel needed to power an AFV."

[109] 58 FR 64914, 64915, Dec. 10, 1993.

[110] AGA/NGVC, D–8, 13; Boston Edison, D–11, 16; DOE, E–10, 4; EIA/OIAF, E–3, 1.

[111] Chicago, E–4, 4–5; ETC, D–14, 8.

[112] AMI, D–7, 5.

[113] RFA, D–2, 5.

[114] NCGA, D–9, 3; NPGA, D–5, 6.

[115] Mobil, D–16, 5.

[116] 42 U.S.C.A. 13232(a) (West Supp. 1993).

[117] AGA/NGVC, D–8, 13; EPA, E–5, 3 (consolidation with EPA labels should be "investigate[d]"); Ford, D–10, 1; NPGA, D–5, 6.

[118] API, D–17, 7; DOE, E–10, 4; Mobil, D–16, 6; NCGA, D–9, 3; RFA, D–2, 5.

[119] ETC, D–14, 8.

[120] 42 U.S.C.A. 13232(a) (West Supp. 1993).

[121] *Id.*

[122] *Id.*

A. Alternative Fuel Labeling

For the fuel labeling requirement, the Commission proposes that retailers of non-liquid alternative fuels post standard labels identifying the commonly used names of those fuels on fuel dispensers and recharging stations servicing consumers. The labels would be placed conspicuously in full view of consumers and as near as reasonably practical to the fuel's unit price. The Commission also proposes requiring disclosure of the fuel's principal component and permitting disclosure of other components, expressed as minimum percentages. These proposals are analogous to provisions in the Fuel Rating Rule pertaining to liquid alternative fuels.[123] The Commission requests comment on the feasibility of such disclosures and how they may best be accomplished. The Commission also seeks comment on whether a different measure of content (e.g., requiring disclosure of voltage for electricity) would be more appropriate.

CNG, electricity, and hydrogen are the only non-liquid fuels defined as "alternative fuels" in EPA 92.[124] Although section 406(a) directs the Commission to issue labeling requirements for "alternative fuels" (presumably for all such fuels), the liquid alternative fuels currently are subject to similar requirements imposed by the Fuel Rating Rule. In accordance with section 406(a)'s directive to review the rule "periodically to reflect the most recent available information," [125] the Commission will supplement the list of covered fuels as new non-liquid alternative fuels are designated as alternative fuels by DOE.

The Commission developed this relatively simple labeling requirement for fuel dispensers after considering how it might best balance consumers' need for useful and timely cost and benefit information with the problems associated with displaying such information in a simple label format. The requirement provides consumers with the most important pieces of information needed when refueling: Fuel type and composition. Although in the absence of this requirement sellers could be expected to identify the fuel sold, they may not do so in a standardized format. The Commission believes that a standardized format assists consumers in identifying the proper fuel.[126] Furthermore, it is uncertain whether they would provide information regarding the precise composition of the fuel.

In addition, comparative information at the fuel pump is unlikely to be necessary in most instances. For consumers with dedicated AFVs (i.e., vehicles capable of operating on only one fuel), the selection process between competing fuels is concluded once an AFV is acquired. Consumers driving dual or flexible fueled vehicles (i.e., vehicles capable of being powered both by a conventional and an alternative fuel) will be limited to purchasing fuels meeting their engines' requirements (one being gasoline, with which consumers are already familiar and which is already labeled with pertinent information). Thus, providing consumers with information comparing various types of alternative fuels is best done prior to the time the vehicle is acquired.

There also are reasons to avoid requiring additional, less important information. One consideration is the avoidance of information overload. In contrast to vehicle purchases, consumers' fuel purchases typically occur in a quick transaction. In a Report to Congress assessing the need for a uniform national label on fuel pumps, the Commission noted that time constraints may affect how consumers read, understand, and use information.[127] Indeed, "studies show that less accurate information processing occurs under time constraints; test subjects focus on fewer pieces of information and unduly emphasize negative information." [128] Simplicity therefore is a greater consideration in labeling of fuels than in the labeling of AFVs.

To avoid cluttering labels further, the Commission also believes that it should not consolidate these labels with other mandatory labels or require otherwise duplicative disclosures.[129] For example, a labeling proposal that the National Conference on Weights and Measures ("NCWM"), a consensus standards-writing organization for state and local regulatory agencies, is considering would require that retail CNG dispensers display the quantity of CNG in gallons-of-gasoline equivalents to help consumers compare the price of CNG to gasoline.[130]

The proposed labeling requirement also has the advantage of placing equal regulatory requirements on all competing fuels.[131] The Fuel Rating Rule's labeling requirements cover only liquid alternative fuels. Although that Rule serves a different purpose,[132] the Commission believes that harmonizing labeling requirements, when practicable, is appropriate.[133] Fuel Rating Rule labels for liquid alternative fuels must identify the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.[134] That Rule also permits disclosure of other components, also expressed as a minimum percentage.[135] The Commission is proposing disclosure of the same information for non-liquid alternative fuels. The Commission further proposes that the alternative fuels labels follow the same size and format requirements of the Fuel Rating Rule.[136] The Commission also seeks comment regarding how the components of those fuels can be calculated or expressed.

B. AFV Labeling

For the AFV labeling requirement, the Commission proposes that original equipment manufacturers ("OEMs") and AFV conversion companies affix, and AFV dealers maintain,[137] standard labels on new AFVs sold or offered for sale to consumers.[138] The labels would consist of three parts. The first part would disclose fuel tank capacity of the labeled AFV; the second part would contain a list of comparative factors relevant to AFVs in general; and the third part would direct consumers to other sources of information.

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[123] 58 FR at 41374 (to be codified at 16 CFR 306.10(b)(1) and 306.10(f)).

[124] 42 U.S.C.A. 13211(2) (West Supp. 1993).

[125] 42 U.S.C.A. 13232(a) (West Supp. 1993).

[126] Comments stating that fuel type (or name) should be disclosed are cited at note 89.

[127] Federal Trade Commission, Study Of A Uniform National Label For Devices That Dispense Automotive Fuels to Consumers (1993) (hereinafter *FTC Study*), at 29.

[128] *Id.* at 29 n.152.

[129] *See* ETC, D–14, 7–8 (AFV labels should not duplicate existing labels).

[130] U.S. Department of Commerce, National Institute of Standards and Technology, *Report of the 78th National Conference on Weights and Measures* 229–33 (1993).

[131] RFA, D–2, 5 (labeling should extend to all alternative fuels, as that term is defined in EPA 92, sold to consumers); Sun, D–13, 1 (same).

[132] The purpose of the EPA 92 amendments to title II of the Petroleum Marketing Practices Act, 15 U.S.C. 2821–2825, was to give purchasers information they need to choose the correct type or grade of fuel for their vehicles. 58 FR at 41356.

[133] *See* API, D–17, 4, 8 (labels required by Fuel Rating Rule provide sufficient information); RFA, D–2, 5 (same); Sun, D–13, 1 (fuel descriptor labels should apply to all available alternative fuels). Retailers of liquid alternative fuels have additional responsibilities under the Fuel Rating Rule, e.g., posting consistent with rating certified to retailer and maintaining required records. *See* 58 FR at 41374 (to be codified as 16 CFR 306.10(d) and 306.11). The Commission believes that those requirements are beyond the scope of its mandate under Section 406(a).

[134] 58 FR at 41373 (to be codified at 16 CFR 306.0(j)((2)).

[135] *Id.*

[136] 58 FR at 41375 (to be codified at 16 CFR 306.12). Labels required by the Fuel Rating Rule are 3 inches wide by 2½ inches long, with process black type on an orange background.

[137] EPA's fuel economy label is required to be affixed and maintained in a similar fashion. 46 U.S.C. 2006.

[138] The term "consumer" is not defined in EPA 92. The Commission proposes that "consumer" be defined as a person (i.e., an individual, corporation, or any other business organization) purchasing a new AFV from a dealer or AFV conversion

As noted previously, the Commission believes that comparative information would be most useful to consumers prior to the time the vehicle is purchased. In developing its proposal for AFV labeling, the Commission considered requiring disclosure of information pertaining to all the factors cited in the comments, including fuel and/or operating costs and environmental impact (i.e., emissions). Information about those factors would clearly help consumers make purchasing choices, assuming the information was accurate, understandable and comparable.

For most of those factors, however, the Commission has tentatively decided that the level of detail necessary to convey balanced, accurate information to consumers cannot be contained on the "simple" label envisioned by Congress. For example, an accurate assessment of the life-cycle environmental impact of driving a particular vehicle requires a review of numerous factors, including emissions resulting from fuel production, distribution, handling, storage, dispensing, and combustion.[139] Measuring each of those factors itself requires an analysis of numerous chemical compounds, including carbon monoxide, nitrogen oxides, hydrocarbons, chlorofluorocarbons, volatile organic carbons, radioactive particles, particulate matter, and aerosols. Similarly, evaluating the true costs associated with driving a particular AFV would require information about the vehicle's acquisition (i.e., capital costs in acquiring or converting an AFV) and operation (e.g., fuel costs, repair and maintenance costs, and any tax consequences).[140] All of this information cannot be presented accurately on a simple label.

Other cost-benefit information (e.g., comparing reliability by measuring each alternative fuel's ability to start a cold engine) is also difficult to disclose on a simple label because no technical standards exist for measuring some factors.[141] The Commission often relies on consensus standards-setting organizations, such as the American Society for Testing and Materials ("ASTM"), or governmental agencies with engineering and technical expertise to develop such standards.[142] Here, the comments did not identify any such standards, and the Commission is not otherwise aware that standards exist for all the factors. Without standards upon which to base required disclosures, the information manufacturers would provide would not necessarily be comparable, and this could be confusing to consumers.

EPA 92 also requires DOE to produce a brochure that provides consumers with "relevant and objective" comparative information about AFVs and alternative fuels, including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety.[143] DOE's information package also must include information regarding conversion of conventional vehicles to run on alternative fuels.[144] The brochure format will allow DOE latitude to present valuable information in fuller measure. Accordingly, there is less need for the Commission to attempt to present complex information in the constrained format of an AFV label.

As with labeling for alternative fuels, the Commission also believes that it should not consolidate these labels with other mandatory labels or require otherwise duplicative disclosures. For AFV labeling, EPA has proposed that its fuel economy labels (which display estimated miles per gallon and annual fuel cost information) be affixed on AFVs powered by CNG, ethanol, and methanol.[145] For dual fueled vehicles operating on these or conventional fuels, the proposed regulations would require that fuel economy data be provided only for the conventional fuels; manufacturers would be given the option of posting such data for the alternative fuels.[146] EPA also has been directed to promulgate rules that require fuel economy labeling for vehicles powered by LPG, hydrogen, electricity, and other alternative fuels.[147] Rules requiring disclosure of information about emissions certification [148] and safety [149] are also in effect or under active consideration by other governmental bodies. Because consumers will have immediate access to this information in other required labels, the Commission believes that providing the same information on its AFV labels (in a different format) could confuse consumers, and is not thus appropriate.

As noted previously, EPA 92 directs the Commission to update its labeling requirements "periodically to reflect the most recent available information." [150] The Commission therefore intends to monitor the industry as standards for evaluating other relevant objective factors are developed. As those standards are issued by recognized organizations and agencies, the Commission expects to update this part of the AFV labeling requirements accordingly.

Based on the above considerations, the Commission proposes a labeling requirement containing three parts: (1) Disclosure of fuel tank capacity, (2) a list of factors consumers should consider in purchasing AFVs, and (3) a notice directing consumers to other sources of information.

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company (i.e., not directly from the manufacturer as a special order). *See* GM, D–12, 1 (medium and heavy-duty trucks should be excluded from proposed rule's scope because most are custom ordered); Volvo/GM, D–1, 1 (heavy duty trucks, because they are custom ordered, should be excluded). The Commission seeks comment on this definition.

[139] Assessing only tail-pipe emissions could be easier, but potentially misleading because of the significance of the environmental impact involved in, for example, fuel production.

[140] *See, e.g.*, 26 U.S.C.A. 30, 179A (West Supp. 1993) (creating tax credits for qualified electric vehicles and deductions for clean-fuel vehicles and certain refueling property).

[141] Some comments stated that the supporting data on alternative fuels in general are "controversial, ambiguous or misleading," Minnesota, E–8, 3, or "still unproven," Mobil, D–16, 2–3, 5.

[142] *See, e.g.*, 16 CFR 306.0(a), (b) (octane rating based on ASTM specifications); 16 CFR 305.5 (appliance labeling based on DOE test procedures).

[143] 42 U.S.C.A. 13231 (West Supp. 1993). DOE's information package must be completed within 18 months after EPA 92's enactment date (April 1994) and updated annually "to reflect the most recent available information." *Id.*

[144] *Id.*

[145] 56 FR 8856, 8860, 8869–71, Mar. 1, 1991; EPA, E–5, 2–4.

[146] 56 FR at 8861; EPA, E–5, 3–4. EPA expects that these regulations will be issued "in the near future." EPA, E–5, 5.

[147] 15 U.S.C.A. 2006 (West Supp. 1993).

[148] EPA currently requires emissions certification labels (which state that the vehicle conforms to applicable EPA regulations) for certain 1994 model year AFV's powered by methanol. *See* 40 CFR 86.094–35(c)(1)(ii)(A) (light duty vehicles); 40 CFR 86.094–35(c)(1)(ii)(B)(1) (light duty trucks). In California, state regulations require that AFV's powered by CNG, ethanol, methanol, and LPG, and conventional vehicles converted to run on any of these fuels, also carry such labels. Section 1965, Title 13, California Code of Regulations (CCR); California Air Resources Board Mail-Out No. 93–34

[149] The National Highway Traffic Safety Administration (NHTSA) has proposed requiring a permanent label on CNG storage tanks disclosing the name and address of the tank manufacturer, the month and year of manufacture, and the maximum service pressure. 58 FR 5323, Jan. 21, 1993. NHTSA is also considering whether it should require labeling as to the need for periodic reinspection of the CNG container, the need to remove the container from service after its useful life, and the proper fill pressure for refueling the container. DOT/NHTSA, E–2, 1.

[150] 42 U.S.C.A. 13232(a) (West Supp. 1993).

1. Disclosure of Fuel Tank Capacity

Section 406(a) mandates that the labels disclose cost and benefit information. One principal piece of cost-benefit information is cruising range.[151] To help consumers estimate this from available data,[152] the Commission proposes that fuel tank capacity be calculated and displayed for each AFV sold or offered for sale to consumers. Fuel tank capacity would be expressed in gallons for AFVs powered by liquid alternative fuels, and the Commission seeks comment on how it should be disclosed for gaseous and electric powered AFVs.[153]

2. List of Comparative Factors

The second part of the proposed label would provide consumers with a standard framework for evaluating issues relevant to AFVs in general. Information contained on this part could help consumers evaluate information disclosed on other labels, in advertising, and from other sources. The Commission has tentatively determined that requiring disclosure of a list of issues relevant to AFVs in general will help consumers make choices and comparisons. The Commission also expects that this aspect of its labeling requirement will encourage AFV manufacturers, converters, and dealers to provide additional information to meet consumers' expectations and needs.[154]

The AFV label would contain a form notice stating, in substance, that vehicles powered by different fuels have different costs and benefits, and that consumers should consider those differences when considering an AFV purchase. The label would then list factors consumers should consider before purchasing an AFV.[155] Based on the comments received, the Commission proposes that the second part of the AFV label identify the following six factors: fuel type (i.e., the fuel or fuels that power the vehicle); operating costs; environmental impact; health and safety; on-road performance (i.e., cruising range, cold start capability and refueling time); and fuel availability.

Each factor would be supplemented with a brief explanation of how it is relevant to an AFV purchase. For example, for fuel type, the label would contain a statement that AFVs are designed to be powered by a certain fuel or fuels, and that consumers should be aware of which fuel(s) powers that particular AFV. For operating costs, the label would state that the total cost of operating an AFV includes, among other things, fuel and maintenance costs, and that those costs for AFVs are different than for gasoline-fueled vehicles and can vary considerably. The label would also advise consumers that if the vehicle posts an EPA alternative fuel-economy rating ("AFER"),[156] they can estimate their fuel costs per mile by dividing their fuel cost (obtained from alternative fuel retailers) by the AFER.

For environmental impact, the labels would state that all vehicles (conventional and AFVs) affect the environment in ways both direct (e.g., how the vehicle processes the fuel) and indirect (e.g., how the fuel is produced and brought to market). Accordingly, in evaluating the environmental impact of a particular AFV, consumers should consider all environmental costs associated with driving a vehicle powered by that alternative fuel, as well as any benefits as compared to gasoline.

The other factors would follow a similar format. For health and safety, the labels would notify consumers that different fuels raise different health and safety concerns. As a result, consumers should consider any health and safety issues associated with normal driving and refueling, and in the event of an accident. For on-road performance, the labels would advise consumers that vehicles powered by different fuels will differ in terms of their cruising range (i.e., how many miles the vehicle will go on a full supply of fuel), cold start capabilities (i.e., ability to start a cold engine) and refueling and/or recharging time (i.e., how long it will take to refill the vehicle's fuel tank to full capacity). For fuel availability, the labels would advise consumers to determine whether a refueling and/or recharging infrastructure has been developed for the AFV under consideration which meets their driving needs.

3. Direction to Other Sources of Information

The third part of the proposed label would direct consumers to additional sources of objective information regarding AFVs. Several comments stated that information not required to be disclosed by the Commission would be available to consumers in DOE's information package.[157] However, EPA 92 does not require AFV dealers or conversion companies to provide consumers with copies of the DOE information package or to notify them of its availability. Accordingly, the third part of the proposed label would contain a statement informing consumers that further information about alternative fuels and AFVs is available from DOE.[158]

4. Label Size

With respect to label size, the Commission has tentatively determined that a label larger than the fuel pump label is needed to accommodate the greater number of required disclosures. Accordingly, the Commission proposes requiring that AFV labels be 7½ inches wide by 11 inches high. This is the same size as the labels required by the Commission's Used Car Rule, which have adequate room to display effectively a large amount of information.[159]

IV. Invitation to Comment

The Commission invites interested persons to address any questions of fact, law, or policy that they believe may bear upon the proposed rule. The Commission particularly desires comment, however, on the questions listed below.

All comments should reference the aspect of the proposed rule or question being discussed. Comments opposing the proposed rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data explaining why the alternative would better serve the purposes of EPA 92 and section 406(a).

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[151] *See* notes 74 and 102, and accompanying text. Several comments stated that related considerations (e.g., fuel tank capacity and refueling time) are important in their own right. *See* notes 72, 73, 79, and 105 and accompanying text.

[152] For AFVs with EPA fuel economy labels, cruising range can be estimated by multiplying fuel tank capacity by the posted miles-per-gallon rating for that vehicle.

[153] For AFVs capable of operating on both alternative and conventional fuels, the labels would disclose the capacity of the tank or battery storing the alternative fuel. For AFVs capable of operating on multiple alternative fuels, the labels would disclose the capacity of the tank or battery storing each alternative fuel.

[154] *See* Boston Edison, D–11, 13 ("market forces will create incentives for sellers to identify and respond to consumer demands for information").

[155] In an unrelated context, the Commission has previously concluded that a list of purchasing considerations could convey useful information to consumers. *See* Used Motor Vehicle Trade Regulation Rule, Statement of Basis and Purpose, 49 FR 45692, 45706, Nov. 19, 1984 (list of major defects that can occur in used motor vehicles provides consumers with a framework for evaluating and comparing warranty coverage and counteracts dealer misrepresentations).

[156] As noted previously, for dual fueled vehicles, EPA's proposed regulations would give manufacturers the option of posting fuel economy data for the alternative fuel. *See* note 149 and accompanying text.

[157] *See* AAMA, D–3, 2; Ford, D–10, 2; GM, D–12, 1.

[158] *See* ETC, D–14, 8 (labels could include cross-references to availability of DOE brochures); Minnesota, E–8, 3 (brochures with general consumer information, including phone numbers of additional information resources, could be made available at the point of purchase).

[159] Labels required by the Used Car Rule are no smaller than 11 inches high by 7¼ inches wide in black type on a white background. 16 CFR 455.2(a)(2).

Before adopting a final rule, consideration will be given to any written comments timely submitted to the Commission. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act[160] and the Commission's Rule of Practice,[161] during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

A. *Proposed Labeling Rule*

1. Alternative Fuel Labeling

The Commission is proposing that retailers of non-liquid alternative fuels post standard labels identifying the commonly used names of those fuels on fuel dispensers and on recharging stations selling to consumers.

(a) Should the Commission issue its proposal for labeling of non-liquid alternative fuels as a final rule? If yes, why; if no, why not?

(b) What are the advantages of the Commission's proposal?

(c) What costs or problems are associated with the Commission's proposal? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(d) Would any disclosures specified by law (either federal, state, or local) affect the Commission's alternative-fuels labeling proposal?

(e) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

The Fuel Rating Rule requires that the standard labels for liquid alternative fuels identify the amount of the fuel's principal component, and permits disclosure of other components, expressed as minimum percentages by volume. The Commission is proposing this requirement for non-liquid alternative fuels.

(f) Should the Commission require disclosure of the principal component of the non-liquid alternative fuels, and permit disclosure of other components, expressed as minimum percentages?

(1) If yes: (a) Why? (b) What are the benefits of such a requirement? (c) What are the principal components of each of the non-liquid alternative fuels? (d) Do the compositions of the non-liquid alternative fuels vary from supplier to supplier? (e) How should information about those components be calculated and displayed? (f) What costs or problems are associated with requiring such a disclosure? (g) How might the Commission minimize any such costs or problems, while maintaining the benefits?

(2) If no: (a) Why not? (b) Is disclosure of a different measure of content more appropriate (e.g., requiring disclosure of voltage for electricity)? (c) What should that disclosure be, and why?

(g) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

The Commission proposes that the labels for the non-liquid alternative fuels follow the same size and format required by the Fuel Rating Rule for liquid alternative fuels.

(h) Should the Commission require the same size and format in its labeling for non-liquid alternative fuels as required by the Fuel Rating Rule for liquid alternative fuels?

The Commission proposes that labeling requirements for alternative fuels become effective 90 days after publication of a final rule in the **Federal Register**.

(i) Does the proposed effective date allow affected interests sufficient time to comply with the proposed requirements?

(1) If yes, why?

(2) If no: (a) Why not? (b) How much extra time would be necessary to comply with the proposed labeling requirements for alternative fuels? Why is that extra time necessary?

2. AFV Labeling

The Commission proposes that OEMs and AFV conversion companies selling or offering to sell AFVs to consumers affix, and that dealers maintain, standard labels on the vehicles disclosing that particular AFV's fuel tank capacity, a list of issues relevant to AFVs in general, and a statement informing consumers that further information about alternative fuels and AFVs is available from DOE.

(a) Should the Commission issue its proposal for AFV labeling as a final rule? If yes, why; if no, why not?

(b) What are the advantages of the Commission's proposal?

(c) What costs or problems are associated with the Commission's proposal? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(d) Would any disclosures specified by law (either federal, state, or local) affect the Commission's AFV labeling proposal?

(e) Is fuel tank capacity a useful measure for consumer comparisons?

(1) If yes: (a) Why? (b) Will this information be provided by OEMs and AFV conversion companies in the absence of a regulatory requirement? (c) Will disclosure of fuel tank capacity help consumers calculate or estimate cruising range or any other important purchasing criteria? If so, which purchasing criteria? (d) Is measuring fuel tank capacity in gallons appropriate for AFVs powered by liquid fuels? (e) How should fuel tank capacity be measured for AFVs powered by gaseous fuels or electricity?

(2) If no, why not?

(f) Is a list of six issues relevant to AFVs in general on the AFV label sufficient to alert consumers to issues they should consider before purchasing an AFV?

(1) If yes: (a) Why? (b) Should the factors include the types of statements the Commission outlined for each factor in Part III(B)(2)?

(2) If no, why not?

(g) Should the AFV label notify consumers of the availability of DOE's information package? Why or why not?

(h) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

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[160] 5 U.S.C. 552.

[161] 16 CFR 4.11.

The Commission proposes that the term "consumer" be defined as a person (i.e., an individual, corporation, or any other business organization) purchasing a new AFV from a dealer or AFV conversion company (i.e., not directly from the manufacturer as a special order).

(i) Is the Commission's proposed definition of "consumer" consistent with section 406(a)'s mandate and purpose?

(1) If yes, why?

(2) If no: (a) Why not? (b) How should the definition be modified to reflect more accurately section 406(a)'s mandate and purpose? (c) Should the Commission exclude used AFV purchases from the scope of the proposed rule? Why or why not?

The Commission proposes that the labels for AFVs be of the same size and format as the labels required by the Commission's Used Car Rule.

(j) Should the Commission require the same size label in its AFV labeling as required by the Commission's Used Car Rule?

(k) Should the Commission specify other format issues, such as layout and type size?

The Commission proposes that AFV labeling requirements become effective 90 days after publication of a final rule in the **Federal Register**.

(l) Does the proposed effective date allow affected interests sufficient time to comply with the proposed requirements?

(1) If yes, why?

(2) If no: (a) Why not? (b) How much extra time would be necessary to comply with the proposed requirements? Why is that extra time necessary?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[162] requires agencies to prepare regulatory flexibility analyses when publishing proposed rules[163] unless the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."[164] Here, the economic impact of both proposed requirements appears to be *de minimis*; the Commission proposes no recordkeeping requirements,[165] and the proposed disclosures consist of information that is basic and easily ascertainable. The Commission tentatively concludes that the proposed rule also will not affect a substantial number of small entities because information the Commission currently possesses indicates that relatively few companies currently sell alternative fuels or manufacture, convert, or sell AFVs. Of those that manufacture or sell AFVs, most are not "small entit[ies]" as that term is defined either in section 601 of RFA[166] or applicable regulations of the Small Business Administration.[167]

In light of the above, the Commission certifies that the proposed rule would not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, that a regulatory analysis is not necessary. The Commission requests comment on this certification, and whether the proposed rule will have a significant impact on a substantial number of small entities. After reviewing any comments received on this subject, the Commission will decide whether the preparation of a final regulatory flexibility analysis is appropriate.

C. Regulatory Review

The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicits comments on the following questions:

1. What changes, if any, should be made to the Proposed Rule to increase the benefits of the Rule to purchasers?

a. How would these changes affect the costs the Proposed Rule would impose on firms subject to its requirements?

2. What significant burdens or costs, including costs of compliance, will the Proposed Rule impose on firms subject to its requirements?

a. Will the Proposed Rule provide benefits to such firms?

3. What changes, if any, should be made to the Proposed Rule to reduce the burdens or costs that would be imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the Proposed Rule?

D. Paperwork Reduction Act

If promulgated, the Commission's labeling requirements would not involve the "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB")[168] implementing the Paperwork Reduction Act ("PRA").[169] Because the Commission's proposed rule contains disclosure requirements only, there is no "information collection" in this proceeding to submit to OMB for clearance. However, to ensure the accuracy of its conclusion, the Commission solicits comment on any paperwork burden that the public believes the proposed requirements may impose.

E. Metric Usage

The metric measurement system is the preferred system of weights and measures for United States trade and commerce.[170] Federal law requires federal agencies to use the metric measurement system in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to United States firms.[171] The Commission has identified one section of the proposed rule with a potential for use of metric terms. Specifically, the Commission is proposing that AFV labels disclose fuel tank capacity in gallons. The Commission seeks comment on whether to require metric or dual (i.e., metric and non-metric) units for this disclosure.

F. Public Participation

1. Public Workshop-Conference

The Commission's staff will conduct a Public Workshop-Conference to discuss written comments received in response to this Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties an opportunity to discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with its consideration of the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

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[162] 5 U.S.C. 601–612.

[163] 5 U.S.C. 603(a).

[164] 5 U.S.C. 605(b).

[165] In 1993 the Commission certified that the Fuel Rating Rule's requirements that retailers post labels and keep required records would not have a significant impact. 58 FR 41356, 41371, Aug. 3, 1993.

[166] 5 U.S.C. 601(6).

[167] 13 CFR Part 121.

[168] 5 CFR 1320.7(c).

[169] 44 U.S.C. 3501–3520.

[170] 15 U.S.C. 205b. *See also* Exec. Order No. 12,770, 56 FR 35801, July 21, 1991 (implementing section 205b).

[171] *Id*.

Persons interested in participating in the Public Workshop-Conference must notify Commission staff by June 8, 1994 (the "Public Workshop notification date") as directed under the heading **ADDRESSES**, above. Commission staff will select a limited number of parties from among those who submit both requests to participate and written comments to represent significant interests affected by the proposed rule. These parties will participate in an open discussion of the issues. The selected parties may ask and answer questions based on their respective comments. In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

If the number of parties who request to participate in the Public Workshop-Conference is so large that it would inhibit effective discussion among the participants, then Commission staff will select as the participants a limited number of parties to represent the interests of those who submit written comments. The selections will be made on the basis of the following criteria:

1. The party submits a written comment by the comment due date.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest by the Public Workshop notification date.
3. The party's attendance would promote a balance of interests being represented at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the rulemaking proceeding.
5. The party has expertise in issues raised in the proposed rules.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

If they wish, commenters may designate a specific party to represent their shared group interests in the Public Workshop-Conference.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements. If any person cannot complete the presentation of his or her statements in the allotted time, that person will be allowed, within one week thereafter, to file a written statement covering those relevant matters that he or she did not present orally. Except for written statements submitted under these circumstances, written submissions will not be accepted after the comment due date.

A neutral, third-party facilitator will be retained for the Public Workshop-Conference. The Public Workshop-Conference is currently scheduled to be held at the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, NW., Washington, DC, on July 20–21, 1994. Prior to the conference, parties selected to participate in the Public Workshop-Conference will be provided with copies of written comments received in response to this Notice of Proposed Rulemaking. A transcript of the Public Workshop-Conference will be placed on the public record.

2. Supplemental Notice of Proposed Rulemaking

After reviewing comments received in response to this notice, the transcript of the Public Workshop-Conference, and any other properly filed submissions, the Commission will publish a supplemental notice of proposed rulemaking in which it will propose the text of a labeling rule. The public will be given an additional opportunity to comment on that supplemental notice.

3. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission. Such motions or petitions will be transmitted to a Presiding Officer. The Presiding Officer will be responsible for the orderly conduct of the proceeding and shall have all powers necessary to that end, including the authority to rule on all motions or petitions.

Applications for review of rulings by a Presiding Officer will not be entertained by the Commission prior to its review of the entire record in the rulemaking proceeding, unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

V. Communications by Outside Parties or Their Advisors

Pursuant to Commission Rule of Practice 1.26(b)(5),[172] communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment: Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communication and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Labeling, Trade practices.

Authority: 42 U.S.C.A. 13232(a) (West Supp. 1993).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–11102 Filed 5–6–94; 8:45 am]

BILLING CODE 6750–01–P

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[172] 16 CFR 1.26(b)(5).

federal register

Monday
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Part VIII

The President

Proclamation 6683—Mother's Day, 1994

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Title 3—

The President

Proclamation 6683 of May 5, 1994

Mother's Day, 1994

By the President of the United States of America

A Proclamation

With the signing of the first Mother's Day Proclamation 80 years ago, President Woodrow Wilson set aside the second Sunday in May as a special time to pay tribute to America's mothers. This year I join with Americans across this great land on May 8, 1994, to honor our mothers with the appreciation and affection they so richly deserve.

Indisputably, the role of mothers has changed greatly in the last half-century. They are bread makers and breadwinners, heads of households and heads of state, caretakers of elderly parents and of newborn infants. They are also volunteers in our communities, schools, and religious organizations. Mothers find time to inspire and challenge their children to dream big dreams and to do good deeds. They provide encouragement to their children to reach for the stars and to strive for excellence. When our mothers succeed, our children succeed. When children succeed, our Nation's future is assured.

Mothers are not only our life-givers, but they are also our nurturers who sustain us with deep and unconditional love. In a world of constant change, they establish a reliable foundation of unchanging values. By instilling strong moral principles and showing concern for social improvement and well-being, mothers have used their talents, ideals, and energies to shape our families, communities, and Nation. For their abiding devotion, love, patience, and loyalty, mothers, whether biological, foster, or adoptive, hold an enduring place in our hearts. They are anchors of their American families—our Nation's most important source of strength. My own mother's courage and determination profoundly influenced me in so many ways, and she will always remain a guiding force throughout my life.

Mother's Day gives us time to pause and reflect on the manner in which mothers contribute to their families and the Nation through their hard work, dedication, and daily sacrifices. We can best observe Mother's Day by expressing our thanks and our gratitude for the blessings and bounties that motherhood holds.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Sunday, May 8, 1994, as "Mother's Day." I urge all Americans to express their love and respect for their mothers and to consider how much they have contributed to the well-being of our country. I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–11366
Filed 5–6–94; 11:21 am]
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H.R. 2884/P.L. 103–239

School-to-Work Opportunities Act of 1994 (May 4, 1994; 108 Stat. 568; 41 pages)

H.R. 821/P.L. 103–240

To amend title 38, United States Code, to extend eligibility for burial in national cemeteries to persons who have 20 years of service creditable for retired pay as members of a reserve component of the Armed Forces and to their dependents (May 4, 1994 108 Stat. 609; 1 page)

H.R. 3693/P.L. 103–241

To designate the United States courthouse under construction in Denver, Colorado, as the "Byron White United States Courthouse" (May 4, 1994; 108 Stat. 610; 1 page)

S. 375/P.L. 103–242

Rio Grande Designation Act of 1994 (May 4, 1994; 108 Stat. 611; 2 pages)

S. 1574/P.L. 103–243

To authorize appropriations for the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes. (May 4, 1994; 108 Stat. 613; 1 page)

S.J. Res. 143/P.L. 103–244

Providing for the appointment of Frank Anderson Shrontz as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 4, 1994; 108 Stat. 614; 1 page)

S.J. Res. 144/P.L. 103–245

Providing for the appointment of Manuel Luis Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 4, 1994; 108 Stat. 615; 1 page)

S.J. Res. 150/P.L. 103–246

To designate the week of May 2 through May 8, 1994, as "Public Service Recognition Week". (May 4, 1994; 108 Stat. 616; 2 pages)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
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7 Parts:			
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27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

Public Laws

103d Congress, 2d Session, 1994

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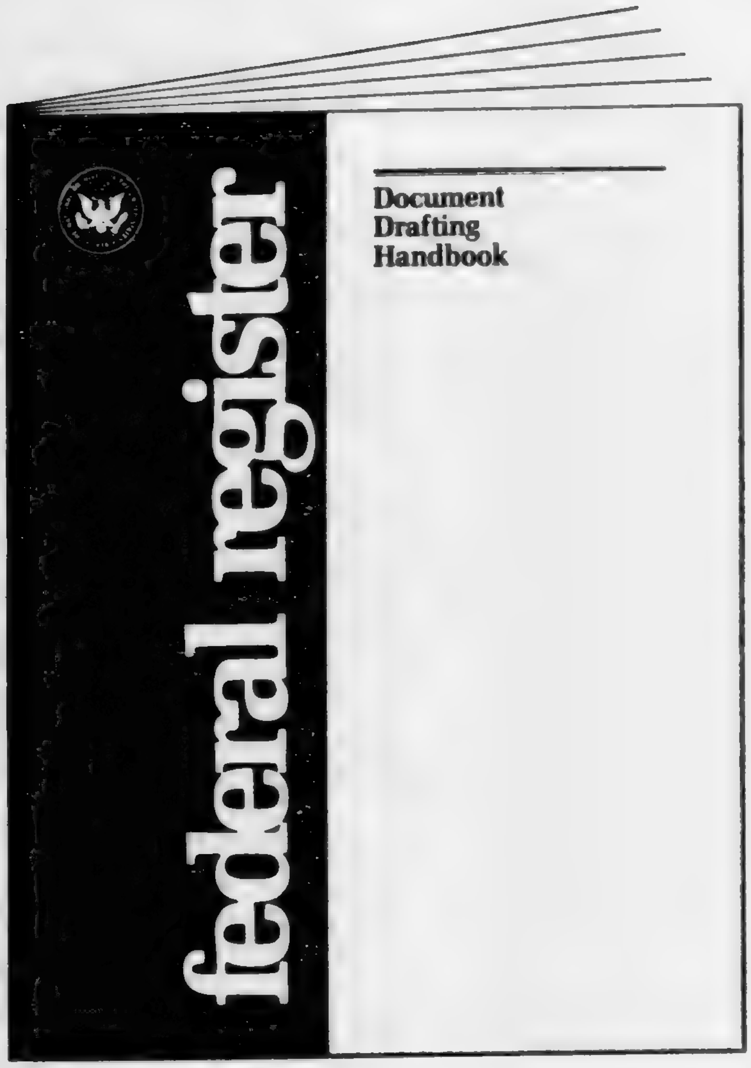

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Proposed Rules:

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Rules and Regulations

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AG04

Pay Under the General Schedule; Within-Grade Increases

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is revising a regulation relating to interim relief provisions authorized under the Whistleblower Protection Act of 1989. The existing regulations on interim within-grade increases are being modified to provide that an interim within-grade increase must be made effective on the date of the appellate decision ordering interim relief.

DATES: These interim regulations were effective on March 2, 1992. Comments must be submitted on or before July 11, 1994.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) published final regulations on interim relief under the Whistleblower Protection Act of 1989 (WPA) (5 U.S.C. 7701(b)(2)(A)) in the **Federal Register** on January 31, 1992 (57 FR 3707). The requirements for interim within-grade increases in 5 CFR 531.414(b) provide that "an interim within-grade increase granted under paragraph (a) of this section shall become effective on the first day of the first pay period beginning on or after the date of the favorable within-grade increase determination."

However, the U.S. Merit Systems Protection Board (MSPB) issued a decision on December 22, 1993 (*Andrew W. Harrell* v. *Department of the Army*, AT–531D–93–0559–I–1), which stated that "OPM's provision contradicts the express language of 5 U.S.C. 7701(b)(2)(A), which states that 'the employee or applicant shall be granted the relief provided in the decision *effective upon the making of the decision'* (emphasis added). Accordingly, we find that the agency has failed to provide evidence of complete relief, as ordered, and dismiss the agency's petition for review."

OPM's final regulation on the effective date of an interim within-grade increase was intended to carry out the purpose of the statute without creating an undue administrative burden for agencies and to be consistent with longstanding requirements governing the effective date of within-grade increases. OPM believed the regulation was consistent with the spirit and purpose of the WPA. While we are not persuaded that this regulation is inconsistent with the spirit and purpose of the WPA, we recognize that the interpretation reflected in MSPB's recent decision is a plausible reading of the law. Further, we do not wish to create undue difficulty for agencies that are required to provide interim relief under the WPA. Therefore, upon reconsideration, we have determined that the effective date of an interim within-grade increase must be the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective in less than 30 days. This regulation is being made effective on March 2, 1992, the effective date of the final regulations on interim relief (57 FR 3707), in order to be consistent with an interpretation of law in a decision of the U.S. Merit Systems Protection Board (*Andrew W. Harrell* v. *Department of the Army*, AT–531D–93–0559–I–1, December 22, 1993).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of the Performance Management and Recognition System Termination Act of 1993, 107 Stat. 981; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), 104 Stat. 1462, 5 U.S.C. 5304, 5305, and 5553, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under section 404 of FEPCA, 104 Stat. 1466, section 3(7) of Pub. L. 102–378 (October 2, 1992), section 302 of FEPCA, 104 Stat. 1462, and 5 U.S.C. 5304, 5305, and 5553;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2):

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553, and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR, 1993 Comp., p. 682.

Subpart D—Within-Grade Increases

3. In § 531.412, paragraph (a) is revised to read as follows:

§ 531.412 Effective date of within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. Interim within-grade increases shall become effective as provided in § 541.414(b).

* * * * *

3. In § 531.414, paragraph (b) is revised to read as follows:

§ 531.414 Interim within-grade increase.

* * * * *

(b) An interim within-grade increase granted under paragraph (a) of this section shall become effective on the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

* * * * *

[FR Doc. 94–11163 Filed 5–9–94; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 890

RIN 3206–AG03

Federal Employees Health Benefits Program: Debarment

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to incorporate into regulations the statutory requirement that carriers in the Federal Employees Health Benefits (FEHB) Program may not deny claims for services or supplies due to the debarment of the providers who supplied them if the claimants could not have known that the provider was debarred. The purpose of these regulations is to comply with the provision of law that requires OPM to prescribe regulations on this issue.

DATES: These interim regulations are effective June 9, 1994. Comments must be received on or before July 11, 1994.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 3415, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606–0191.

SUPPLEMENTARY INFORMATION: On October 30, 1989, OPM published interim regulations in the **Federal Register** (54 FR 43939) implementing title I of Public Law 100–654, which allowed OPM to exclude from further participation in the FEHB Program any health care provider (1) convicted of fraud or various other cited examples of unethical professional conduct, or (2) determined by OPM to have committed various cited offenses against the FEHB Program.

Public Law 100–654 contained a provision requiring OPM to prescribe regulations allowing payment of claims for service or supplies furnished by debarred providers if the claimant could not reasonably have known of the debarment. This issue was inadvertently not addressed by the regulations published October 30, 1989. Therefore, in compliance with the requirements of 5 U.S.C. 8902a(i) OPM is now issuing these interim regulations.

Under these interim regulations, carriers cannot deny claims based on debarment if there was no reasonably way the claimant could have known that the provider was debarred. When an individual who has not previously been notified of a provider's debarment, submits a claim for services or supplies furnished by a debarred provider, the carrier must (1) honor the claim under the terms of its contract with OPM, and (2) inform the individual about the debarment of the provider and the minimum period of time remaining under the terms of the debarment.

In practical terms, this generally means that the first claim(s) an enrollee submits for services or supplies received after a provider has been debarred, but before the enrollee has been informed of the debarment, is (are) paid to the same extent it (they) would have been paid had the provider not been debarred. The carrier must, at the same time, inform the enrollee concerning the debarment. The carrier will deny any subsequent claims for service or supplies furnished during the period the provider is debarred.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. code, I find that good cause exists for waiving the general notice of rulemaking because this regulation primarily affects Federal employees and annuitants and merely incorporates statutory requirements into regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees and annuitants.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management
Lorraine A. Green,
Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064

2. In subpart J, a new § 890.1006 is added to read as follows:

§ 890.1006 Payment of claims for service or supplies furnished by debarred providers.

Health plans may not deny claims for services or supplies based on debarment of the provider under this subpart if the claimant did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved must take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

[FR Doc. 94–11164 Filed 5–9–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036 and 1049

[Docket Nos. AO–166–A61; AO–179–A56; and AO–319–A39; DA–90–015; Docket Nos. AO–166–A62–RO2; AO–179–A57–RO2; and AO–319–A40–RO2; DA–91–013]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations which were published Tuesday, August 17, 1993 (58 FR 43504), and Wednesday, December 1, 1993 (58 FR 63283). The final rules amended the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Federal milk marketing orders on the basis of evidence received at a hearing held in August 1990 to consider a multiple component pricing plan for the three orders, and at two hearings held in 1991 and 1992 to consider Class III–A pricing under 27 orders for milk used to make nonfat dry milk. This

docket amends the orders to correct the errors.

EFFECTIVE DATE: The correcting amendments are effective December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections inadvertently omitted several paragraphs of regulatory language which should be added. These paragraphs were omitted from a final rule incorporating multiple component pricing for the three orders effective October 1, 1993, and resulted in the incorrect designation of paragraphs for these three orders included in a final rule establishing Class III–A pricing for 27 milk orders, effective December 1, 1993.

Need for Correction

As published, the final regulations do not contain language that is needed for the proper administration of the three orders.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

Accordingly, 7 CFR parts 1033, 1036 and 1049 are corrected by making the following correcting amendments:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for part 1033 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1033.60, redesignate paragraph (m) as paragraph (n), and add a new paragraph (m), to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

* * * * *

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In Section 1036.60, redesignate paragraph (m) as paragraph (n), and add a new paragraph (m), to read as follows:

§ 1036.60 Computation of handlers' obligation to pool.

* * * * *

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

* * * * *

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. The authority citation for part 1049 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1049.60, redesignate paragraph (l) as paragraph (m), and add a new paragraph (l), to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

* * * * *

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

* * * * *

Dated: May 2, 1994.

Charles R. Brader,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 94–11006 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210a

[INS No. 1635–93]

RIN 1115–AB05

Expiration of the Replenishment Agricultural Worker Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service (Service) relating to Replenishment Agricultural Workers (RAWs) under section 210A of the Immigration and Nationality Act (Act). Specifically, this rule removes the regulations pertaining to the RAW program as the program expired at the end of Fiscal Year 1993.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald S. Chirlin, Senior Immigration Examiner, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: On December 9, 1993, the Immigration and Naturalization Service (Service) published in the **Federal Register** at 58 FR 64695, a proposed rule to remove 8 CFR part 210a from the Code of Federal Regulations. Section 210A of the Immigration and Nationality Act, the Replenishment Agricultural Worker (RAW) program, was added by the Immigration Reform and Control Act of 1986, Pub. L. 99–603, dated November 6, 1986. According to section 210A(a)(1) of the Act, the RAW program was to be effective from Fiscal Year 1990 through the end of Fiscal Year 1993. The program was enacted as a means of providing additional seasonal agricultural workers to United States agricultural employers to alleviate possible shortages of workers for perishable crops. The program allowed the government to replenish the supply of farmworkers by providing foreign workers with legal resident status if the Secretaries of Agriculture and Labor determined that a shortage of such workers existed.

In the three years during which the program was in place, however, a shortage of agricultural workers was never found to exist. Therefore, no immigration benefits were ever granted through the RAW program. As Congress gave no indication that it would extend the RAW program beyond the statutory expiration date, the Service found it appropriate to remove the regulations implementing the RAW program.

The Service received comments from two organizations as a result of the proposed rule. Both organizations supported the removal of part 210a from the Code of Federal Regulations, as the Service's authority to implement the RAW program expired on September 30, 1993. Both commenters also suggested that the Service inform all RAW registrants who contact the Service that the program has expired and that they are not eligible for work authorization under that program. The Service will ensure that all registrants who inquire about the program are informed about the program's expiration either orally or in writing, depending on the nature of the inquiry.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. Since the RAW program was never implemented because a shortage of agricultural workers was never found to exist, any adverse economic impact on small entities would be minimal, if any.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service has certified that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this rule will not have an impact on family formation, maintenance, or general well-being.

List of Subjects in 8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

PART 210a—[REMOVED]

Accordingly, under the Commissioner's authority, 8 U.S.C. 1103, part 210a of chapter I of title 8 of the Code of Federal Regulations is removed.

Dated: April 25, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–11235 Filed 5–9–94; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0818]

Truth in Savings; Final Preemption Determination (Wisconsin)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final determination that Wisconsin's Truth in Savings law is not inconsistent with the federal Truth in Savings Act and Regulation DD, and therefore is not preempted.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667; for the hearing impaired *only* contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) General

Section 273 of the Truth in Savings Act (12 U.S.C. 4312) states that the act does not supersede provisions of the law of any State relating to the disclosure of yields payable or account terms, except to the extent that those laws are inconsistent with the provisions of the federal statute, and then only to the extent of the inconsistency. The act also grants the Board the authority to determine whether any inconsistencies exist between federal and state law.

Regulation DD (12 CFR part 230), which implements the act, provides the standards for preemption determinations in appendix C. State requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also inconsistent if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

Preemption determinations for the act are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.9(c)(5), as amended December 15, 1993, 58 FR 65539).

(2) Discussion of Specific Request and Final Determination

The Board was asked to determine whether specific provisions of Wisconsin Statutes section 224.08 regarding disclosures for deposit accounts at banks are inconsistent with the act and Regulation DD and are therefore preempted. The Board published a proposed determination on December 14, 1993 (58 FR 65293), stating that the provisions of the Wisconsin law found in Wisconsin Statutes section 224.08 are not inconsistent with the federal Truth in Savings law, and therefore are not preempted by the federal law.

The act and Regulation DD require depository institutions to give consumers disclosures before opening a deposit account and upon a request made by a consumer. The act also sets out requirements for the payment of interest on accounts, provides rules for account advertisements and change in terms notices, and mandates certain information to be provided on periodic statements for accounts that receive such statements. In addition, the act and Regulation DD provide for an "annual percentage yield" to aid consumers in making comparisons between the rates paid on different accounts.

Section 224.08 of the Wisconsin Statutes requires disclosure statements to be given for each account offered by a bank, setting forth the following information: a description of the account, the conditions (if any) on which the account is offered, the terms of interest offered for the account, and all fees charged for the account. The disclosure statement under state law may include a separate interest rate table or fee schedule, or both. Banks must provide this information at the time of the depositor's initial deposit into the account, upon any change in any of the information applicable to a depositor's account (other than a change in the interest rate of a variable interest rate account if the variability of the interest rate was disclosed at the time of the initial deposit), and upon request. Finally, the state law requires that the disclosure statement for an account be accompanied by a brief description of all other accounts offered by the bank and a statement that more detailed information is available on request.

The Board received three comment letters on its proposal, all opposing the Board's proposed determination and requesting that the Board preempt the Wisconsin law based on inconsistencies with the federal provisions. After careful review, the Board has made a final determination *not* to preempt the Wisconsin law for the reasons discussed below.

Coverage of Institutions

The requesting party suggested that state law is inconsistent with the act and Regulation DD because the state law covers only state-chartered banks, whereas the federal law covers *all* depository institutions, including savings associations and national banks. The Board has determined that a state law providing for more limited coverage than federal law is not inconsistent with the act, and therefore is not preempted.

Content and Format of Disclosures

The requesting party asked the Board to determine that the content of the state law disclosures is inconsistent with the federal law. The state law permits disclosures to be more general than the federal law allows—for example, by mandating only a statement of the "terms of interest offered for the account," and not requiring an "annual percentage yield" to be given, using that term. However, state law does not prohibit institutions from being more specific in fulfilling their state disclosure requirements. Therefore, the Board believes institutions can comply with the state provisions while still complying with the more detailed federal requirements.

Similarly, the requesting party suggested that preemption of the state law is warranted, based on the format of the required state disclosures because Wisconsin law requires that each account disclosure include a "brief description" of all other accounts offered by the bank along with a statement that more detailed information is available upon request. The federal law contains no similar requirement, and in fact permits an institution to combine disclosures for all of its accounts, as long as it is clear which disclosures are applicable to the consumer's account (12 CFR 230.3(a)). However, Regulation DD provides a very narrow preemption standard: preemption is appropriate only where a state law requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. The Board believes that banks are able to comply with Wisconsin law without contradicting the requirements of the federal law. Thus, preemption of the state requirement to provide information about other available accounts is not warranted.

Moreover, the Wisconsin Commissioner of Banking, the state enforcement agency for Wisconsin-chartered banks, has provided an interpretation to the Board stating that banks would comply with this provision of the Wisconsin law by providing disclosures in keeping with the federal law. The agency has stated that the "brief description" of other accounts was intended as an accommodation to banks to provide something less than full disclosures for each available account; thus, banks would not violate state law if they provide full account disclosures for all accounts offered by the institution, as federal law allows. Finally, agency officials confirmed that they would not require the statement that more detailed information is available upon request if full account disclosures are provided for all accounts in compliance with the requirements of Regulation DD.

Change in Terms Notice

The requesting party asked that the Board find the provision of the Wisconsin law requiring a change in terms notice to be inconsistent with the federal law and therefore preempted for three reasons. First, the state law requires redisclosure of all state law disclosures when any term is changed. In contrast, federal law requires notice to consumer account-holders only of the specific term being changed. Second, state law requires a change in terms notice to be sent upon any change to a depositor's account that was initially required to be disclosed (except a change in the interest rate for a variable rate account). Federal law requires such a notice only for a change that reduces the annual percentage yield or adversely affects the consumer. See § 230.5(a). Third, state law redisclosure is required upon any change in the account. Federal law generally requires a change in terms notice at least 30 days prior to the effective date of the change.

As stated above, the Board believes the state Truth in Savings law is not inconsistent simply because the state law requires more information than federal law requires, or because the state law requires disclosures in cases where the federal law is silent. A Wisconsin-chartered bank can comply with the advance change in terms notice required under federal law while providing the more detailed disclosures required by the state law. The Board notes that Regulation DD allows institutions to comply with change in terms requirements by sending new account disclosures if the changed terms are specifically brought to the consumer's attention (for example, by highlighting them in some way). Although state and federal laws have different requirements in this regard, the Board believes that they are not inconsistent, given that a bank can comply with both requirements without violating either.

Finally, the Board has determined that the state law requirement that a bank redisclose all applicable information "upon" any change in a term that was initially disclosed is not inconsistent with the federal provision requiring at least 30 days advance notice of the effective date of the change. As stated in the Board's proposed determination, State officials have indicated to the Board that institutions providing the disclosures required under state law at least 30 days in advance of the effective date of the change, as the federal provisions require, would comply with the state law. As Wisconsin banks are therefore able to comply with both the federal and state laws, the Board has determined that this provision is not preempted by the federal law.

(3) Regulatory Flexibility Analysis and Paperwork Reduction Act

The determination that State law is not preempted is not likely to have a significant impact on institutions' costs, including those of small institutions.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Federal Reserve System, Truth in savings.

By order of the Board of Governors of the Federal Reserve System, May 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–11152 Filed 5–9–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–156–AD; Amendment 39–8901; AD 94–09–12]

Airworthiness Directives; McDonnell Douglas Model DC–8, DC–9, and DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes; that requires inspection of the center and side windshields, and replacement of discrepant windshields. This amendment is prompted by reports that the core ply of certain windshields was incorrectly tempered during the manufacturing process. The actions specified by this AD are intended to prevent failure of the windshield.

DATES: Effective June 9, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210; or Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 15, 1994 (59 FR 7233). That action proposed to require inspection of the center and side windshields, and replacement of discrepant windshields.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposed rule.

One commenter requests that inspections performed prior to the effective date of the AD be considered acceptable for compliance with the inspection requirement in the proposal. The FAA concurs. As allowed by the phrase, "unless accomplished previously," in the "Compliance" section of this AD, if the inspection has been accomplished prior to the effective date of the AD, this AD does not require that it be repeated. Therefore, no change to the final rule is necessary.

One commenter requests that the final rule be revised to include the option of reviewing purchasing records in lieu of the proposed inspection requirement. The commenter asserts that a review of purchasing records would be more cost effective, and safety would not be compromised since the end result would be the same: a determination of the manufacturing source of the windshields. The FAA does not concur. Since tracking systems for shipping and purchasing records vary from operator to operator, the possibility exists for windshields to be tracked by part number alone. These common part numbers may be assigned to several manufacturers. Therefore, purchasing records would not be reliable in determining the manufacturing source of windshields.

One commenter requests that the proposed compliance time of 30 days to inspect the windshields be extended to 90 days or at the next regularly scheduled "B" check. The commenter states that a compliance time of 30 days would impose an unnecessary hardship on operators of large fleets. Two commenters also express concern that replacement parts would not be available in sufficient quantities; therefore, the extension in compliance time would give the manufacturer sufficient time to produce an adequate quantity of replacement windshields. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of inspecting and installing the necessary parts within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA has verified that, of the original 730 discrepant windshields known to have been produced and in service, 599 (82%) have already been removed from service and returned to the vendor; that leaves only 131 windshields remaining in service. Further, the FAA also has verified that an adequate supply of replacement windshields will be available for affected operators to accomplish the requirements of this AD within the 30-day compliance time. In light of all of these factors, the FAA has determined that the 30-day compliance time is warranted and appropriate. However, under the provisions of paragraph (d) of the final rule, operators may apply for the approval of an alternative method of compliance or adjustment of the compliance time by submitting justification for such an alternative or adjustment to the FAA.

One commenter requests that proposed paragraphs (a)(2)(ii), (b)(2)(ii), and (c) be changed to limit applicability only to those airplanes on which the windshield has been replaced after February 1992. The FAA does not consider that this suggested change is necessary. Since the applicability statement of the AD states that the AD applies to "airplanes on which the . . . windshield has been replaced after February 1992," that statement applies to paragraphs (a), (b), and (c) of the AD. Therefore, no change to the final rule is warranted.

This same commenter requests that the final rule be revised to include a requirement to inspect for discrepant windshields that are identifiable by part numbers and serial numbers beginning with the letters "SWU." The FAA does not concur. Windshields that have a part number or serial number beginning with "SWU" are made of acrylic and, as such, are not subject to the unsafe condition addressed by this AD. The unsafe condition addressed by this AD is the result of incorrect tempering of the core ply of certain glass windshields during the manufacturing process. NOTE 2 has been added to the final rule to make clear that the requirements of this AD apply only to windshields made of glass.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 235 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC–8 series airplanes is estimated to be $3,850, or $27.50 per airplane.

There are approximately 1,978 Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes is estimated to be $29,673, or $27.50 per airplane.

Based on the figures discussed above, the total cost impact of the AD actions on U.S. operators is estimated to be $33,523.

Should an inspection reveal that a discrepant windshield was installed, the replacement of that windshield will require approximately 10 additional work hours to accomplish, at an average labor rate of $55 per work hour. Required replacement parts will be provided at no cost to operators. Based on these figures, the total cost impact for the replacement of discrepant windshields for U.S. operators will be $550 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that 599 out of 730 discrepant windshields already have been identified and returned by affected operators; therefore, the future total cost impact of this AD is expected to be much less than the figures indicated above.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–09–12 McDonnell Douglas: Amendment 39–8901. Docket 93–NM–156–AD.

Applicability: Model DC–8–60 and –70 series airplanes, on which the center windshield has been replaced after February 1992; and Model DC–9–10, –20, –30, –40, and –50 series airplanes, Model DC–9–81, –82, –83, and –87 airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, on which the center and/or side (glass) windshield(s) has been replaced after February 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Replacement of any subject windshield that has been accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–8 Service Bulletin A56–16, dated June 15, 1993, or Revision 1, dated July 1, 1993 (for Model DC–8 series airplanes); or McDonnell Douglas DC–9 Alert Service Bulletin A56–15, dated June 15, 1993, or Revision 1, dated September 15, 1993; is considered acceptable for compliance with the applicable action specified in this amendment.

Note 2: This AD only addresses center and side flight compartment windshields made of glass. Windshields used in other locations on these airplanes and windshields manufactured with materials other than glass are not addressed in this AD.

To prevent failure of the windshield, accomplish the following:

(a) For Model DC–8–60 and –70 series airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield to determine the manufacturer.

(1) If the windshield was not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center windshield with one of the windshields specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A56–16, Revision 2, dated December 13, 1993.

(i) A center windshield that was not manufactured by Pilkington Aerospace.

(ii) A center windshield that has been manufactured by Pilkington Aerospace, but recertified and re-identified by Pilkington Aerospace.

(iii) A center windshield that was manufactured by Pilkington Aerospace after September 30, 1993.

(b) For Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; Model MD–88 airplanes; and C–9 (military) airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield and side windshield to determine the manufacturer.

(1) If the center and side windshields were not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, or side windshields, part numbers 5912290–501 and 5912290–502, were manufactured by Pilkington Aerospace: Prior to further flight, replace the center and/or side windshield(s) with one of the windshields specified in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A56–15, Revision 2, dated November 9, 1993.

(i) A center and/or side windshield(s) that was not manufactured by Pilkington Aerospace.

(ii) A center and/or side windshield(s) that has been manufactured by Pilkington Aerospace, but recertified and re-identified by Pilkington Aerospace.

(iii) A center and/or side windshield(s) that was manufactured by Pilkington Aerospace after September 30, 1993.

(c) As of the effective date of this AD, no person shall install on any airplane a center windshield, part number 5887275–501, or side windshields, part numbers 5912290–501 and 5912290–502, that have been manufactured by Pilkington Aerospace between February 1, 1992, and September 30, 1993, inclusive. Those windshields must be recertified and re-identified by Pilkington Aerospace before use.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement shall be done in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A56–16, Revision 2, dated December 13, 1993; or McDonnell Douglas DC–9 Alert Service Bulletin A56–15, Revision 2, dated November 9, 1993; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 9, 1994.

Issued in Renton, Washington, on April 21, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10116 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ANM–45]

Amendment to Class E Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Twin Falls, ID. Establishment of a new instrument approach procedure requires additional controlled airspace for the procedure. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area" replacing it with the designation "Class E airspace. The Class E airspace will be depicted on aeronautical charts for pilot reference when the new approach procedures become effective.

EFFECTIVE DATE: 0901 u.t.c. June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–45, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace for the Twin Falls-Sun Valley Regional, Joslin Field Airport, ID (59 FR 8148). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," and certain airspace extending upward from 700 feet above ground level is now designated Class E airspace. Class E airspace designations for airspace extending upward from 700 feet above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North America Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Twin Falls, Idaho. It will provide controlled airspace for a new instrument approach procedure at the airport. Amendment of the Class E airspace will result in greater safety and efficiency at, and in the vicinity of, the airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Twin Falls, ID [Revised]

Twin Falls-Sun Valley Regional, Joslin Field, ID
(lat. 42°28′55″ N, long. 114°29′16″ W)
Twin Falls VORTAC
(lat. 42°28′47″ N, long. 114°29′22″ W)

That airspace extending upward from 700 feet above the surface within 8.3 miles north and 4.3 miles south of the Twin Falls VORTAC 086° and 281° radials extending from the VORTAC to 26.1 miles east and 16.1 miles west, and within 4.3 miles each side of the Twin Falls 156° radial extending upward from 1,200 feet above the surface bounded on the northeast by a line beginning at the intersection of long. 114°01′03″ W and V–500, extending south along long. 114°01′03″ W and V–500, to V–269, southwest along V–269 to the 18.3 mile radius of the Twin Falls VORTAC, thence clockwise via the 18.3-mile radius to V–484, northwest along V–484 to the 14.4 mile radius of the Twin Falls VORTAC, thence clockwise along the 14.4-mile radius to V–293, southwest along V–293 to the intersection of V–293 and long. 115°00′00″ W, thence north along long. 115°00′00″ W to a point 7.9 miles southwest of V–253, thence northwest and parallel to V–253 for 25.9 miles, thence to the intersection of V–4, V–253, and V–330, east along V–330 to V–293, north along V–293 to V–500, then to the point of beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on April 19, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 94–11283 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–24]

Proposed Amendment to Class D Airspace; Medford, Portland-Hillsboro, and Salem, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Medford, Portland-Hillsboro, and Salem, Oregon, Class D airspace. This action is necessary to correct a portion of the airspace descriptions inadvertently omitted during the airspace reclassification process. This action would amend the Class D airspace from full-time to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area" and "control zones" with operating control towers, replacing them with the designation "Class D airspace." This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before June 28, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–24, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–24, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Medford, Portland-Hillsboro, and Salem, Oregon, to correct an error in the Class D airspace descriptions. During the airspace reclassification process (57 FR 38962; August 27, 1992) the language designating the Class D airspace at these locations as part-time was inadvertently omitted. This action would correct that omission. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and "control zones" with operating control towers, and replaced them with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General.

* * * * *

ANM or D Medford, OR [Revised]

Medford-Jackson Airport, OR
(lat. 42°22′20″ N, long. 122°52′21″ W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of the Medford-Jackson Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM or D Portland-Hillsboro, OR [Revised]

Portland-Hillsboro Airport, OR
(lat. 45°32′25″ N, long. 122°56′59″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of the Portland-Hillsboro Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM or D Salem, OR [Revised]

Salem, McNary Field, OR
(lat. 44°54′34″ N, long. 123°00′09″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4-mile radius of McNary Field. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on April 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–11284 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–11]

Amendment of Class D Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Grand Junction, Colorado, Class D airspace from full-time to part-time. It will correct that part of the airspace description which was inadvertently omitted during the airspace reclassification process. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and "control zones" with operating control towers, replacing them with the designation "Class D airspace." This amendment brings publications up-to-date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 UTC, June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–11, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On March 16, 1994, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) by amending the Grand Junction, Colorado Class D airspace designation (59 FR 12208). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

During the airspace reclassification process (57 FR 38962, August 27, 1992) the language designating the Grand Junction, Colorado Class D airspace as part-time was inadvertently omitted. This action corrects that omission. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area" and "control zone" with operating control towers, and replaced them with the designation "Class D airspace." Class D airspace is published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class D airspace at Grand Junction, Colorado. The coordinates in this final rule are in North American Datum 83.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Grand Junction, CO [Revised]

Grand Junction, Walker Field, CO
(Lat. 39°07′21″ N, long 108°31′36″ W)

That airspace extending upward from the surface to and including 7,400 feet MSL within a 4.7-mile radius of Walker Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on April 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-11286 Filed 5-9-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N-135D]

RIN 0905-AD96

Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances; Corrections and Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; corrections and technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 4, 1994 (59 FR 354). The document amended the food labeling regulations to establish requirements for the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. The document was published with some typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5587.

The Corrections

In FR Doc. 93-31813, appearing on page 354, in the **Federal Register** of Tuesday, January 4, 1994, the following corrections are made:

1. On page 354, in the third column, in the "EFFECTIVE DATE:" caption, "July 5, 1995" is corrected to read "July 1, 1995".

2. On page 361, in the second column, in the 8th line from the bottom, the acronym "EASDDL's" is corrected to read "ESADDI's".

3. On page 364, in the second column, in the first full paragraph, in line 7, the word "is" is removed; and in the third column, beginning in the 16th line from the bottom, the phrase "label references values" is corrected to read "label reference values".

4. On page 366, in the first column, in the second full paragraph, in the 9th line from the bottom of the paragraph, the word "supplement" is corrected to read "supplements".

5. On page 368, in the second column, in lines 28 and 30, the word "parallel" is corrected to read "perpendicular".

6. On page 370, in the third column, in the first full paragraph, in line 11, the word "suggest" is corrected to read "suggests".

7. On page 371, in the second column, in reference 3, in line 3, the word "More" is removed; and in reference 6, in line 1, the name "Taylor M. Quinn" is corrected to read "L. Robert Lake".

The Technical Amendments

§ 101.12 [Amended]

8. Section 101.12 *Reference amounts customarily consumed per eating occasion* is amended in Table 2, in footnote 2, by removing the phrase "dry, fresh, and frozen pasta" and adding in its place "fresh and frozen pasta".

§ 101.36 [Amended]

9. Section 101.36 *Nutrition labeling of dietary supplements of vitamins and minerals* is amended in paragraph (b)(4) introductory text, by removing the phrase "molybdenum, selenium" and adding in its place the phrase "molybdenum, and selenium"; in paragraph (b)(4)(vi), by removing the phrase "that is followed" and adding in its place "and is followed"; in paragraph (c)(10), the sample label is amended by removing the entries "Calcium 162 mg" and "Phosphorus 125 mg" and adding in their place "Calcium 0.162 g" and "Phosphorus 0.125 g"; and in paragraph (g), the word "mineral" is revised to read "minerals".

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure and delayed effective date on these changes are unnecessary, because FDA is merely remedying editorial and nonsubstantive errors.

Dated: May 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-11201 Filed 5-5-94; 11:44 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8538]

RIN 1545-AS50

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations on the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. These regulations affect issuers of tax-exempt bonds and provide guidance for complying with the arbitrage and related restrictions. The text of the temporary regulations also serves as the text of a portion of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective on June 9, 1994.

For dates of applicability of these regulations, see § 1.148-11T.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo at 202-622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1347.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Section 148 restricts the use of proceeds of tax-exempt State and local bonds to acquire higher yielding investments. Proposed regulations relating to the arbitrage and related rules were published at §§ 1.148–0 through 1.148–11, 1.149(d)–1, 1.149(g)–1, 1.150–1, and 1.150–2 in the **Federal Register** for November 6, 1992. Written comments were received on the proposed regulations, and additional public comments were received at a public hearing held on February 2, 1993. After consideration of the comments, the proposed regulations were modified and adopted in final form in the **Federal Register** for June 18, 1993 (the June 1993 regulations).

This document contains temporary and final regulations amending the Income Tax Regulations (26 CFR part 1) under sections 103, 148, 149, and 150 of the Internal Revenue Code to clarify and revise certain provisions of the June 1993 regulations. The amended provisions of the June 1993 regulations contain references to applicable provisions of the temporary regulations, and the final regulations apply as if the changes contained in the appropriate portion of the temporary regulations were incorporated therein. For example, § 1.148–1(c)(4)(ii)(A) is amended to reference § 1.148–1T(c)(4)(ii)(A), which contains provisions that apply in lieu of those formerly contained in § 1.148–1(c)(4)(ii)(A).

Explanation of Provisions

A. § 1.103–8T—Interest on Bonds To Finance Certain Exempt Facilities

The June 1993 regulations amended the "official action" rules of § 1.103–8(a)(5) to better coordinate those rules and the reimbursement bond rules of § 1.150–2. The temporary regulations clarify the application of these rules to situations in which the financed facility is placed in service after the issuance of the bonds.

B. § 1.148–1T—Definitions and Elections

The June 1993 regulations provide that replacement proceeds may arise if a working capital reserve is financed but not to the extent that the issuer maintained a working capital reserve. The temporary regulations provide guidance to determine whether an issuer has maintained a working capital reserve.

C. § 1.148–4T—Yield on an Issue of Bonds

1. Certain Variable Yield Bonds Aggregated for Fixed Yield Treatment

The temporary regulations expand the types of bonds eligible for fixed yield treatment to include certain variable yield bonds that, if aggregated and treated as a single bond, would be a fixed yield bond.

2. Qualified Hedging Transactions

The June 1993 regulations permit certain qualified hedges to be taken into account in determining the yield on an issue. The temporary regulations revise and clarify these rules. Most significantly, the temporary regulations amend the rules treating certain variable yield bonds as fixed yield bonds to provide fixed yield treatment for bonds that are hedged with certain other hedges, such as certain interest rate caps. Municipal financing transactions with so-called embedded derivative products raise significant policy issues under any contingent interest regulations that may be promulgated under section 1275. For this reason, under the original issue discount regulations, certain of these transactions do not qualify as "variable rate debt instruments" and are subject to the contingent payment rules. The modifications to the qualified hedging rules do not imply a conclusion by the IRS and Treasury that the "interest" payments in these financings are properly treated as tax-exempt. It is expected that future regulations will deal specifically with these issues. In a related change, the temporary regulations clarify that a hedge (other than a qualified hedge) may constitute investment-type property. The proposed amendments to the arbitrage regulations also provide special rules for purposes of determining whether interest rate caps are investment-type property.

D. § 1.148–5T—Yield and Valuation of Investments

1. Permissive Single Investment Rule

The temporary regulations limit the rule that permits yield restricted investments to be treated as a single investment for arbitrage rebate purposes to nonpurpose investments in a refunding escrow fund and in a sinking fund that is related to the refunding escrow fund.

2. Fair Market Valuation

The temporary regulations limit the exception to the fair market valuation rule for certain transferred proceeds allocations, universal cap allocations, and investments in a commingled fund to those involving exclusively tax-exempt bond issues.

E. § 1.148–9—Arbitrage Rules for Refunding Issues

Multipurpose Issue Allocations

The June 1993 regulations provide that allocations of multipurpose issues must be reasonable. For multipurpose refunding issues, in addition to the reasonableness requirement, the June 1993 regulations provide additional limitations. Comments are requested on possible changes to the allocation rule that generally focuses on matching the debt service structure of the prior issue that would provide additional flexibility for refundings involving extensions of maturity.

F. § 1.148–11T—Effective Dates

Overpayment of Rebate

The temporary regulations allow for retroactive application of the provisions of the June 1993 regulations relating to recovery of overpayments.

G. § 1.149(d)–1T—Limitations on Advance Refundings

Savings Test

The temporary regulations clarify the application of the multipurpose issue rules to the section 149(d) requirement that the refunded bonds in an advance refunding be retired at the first call date if savings are produced.

H. § 1.150–1T—Definitions

Definition of Issue

The June 1993 regulations define "issue" for purposes of the tax-exempt bond restrictions. The temporary regulations clarify certain aspects of this definition including whether bonds are expected to be paid from the same source of funds.

I. Effective Dates

The temporary and final regulations apply to bonds sold after June 6, 1994. In addition, issuers may apply these regulations to other bonds to which the June 1993 regulations apply.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is William P. Cejudo, Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

PART 602—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.148–11T also issued under 26 U.S.C. 148(f), (g), and (i). * * *

Par. 2. In § 1.103–8, paragraph (a)(5) is revised to read as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

(a) * * *

* * * * *

(5) See § 1.103–8T.

* * * * *

Par. 3. Section 1.103–8T is added to read as follows:

§ 1.103–8T Interest on bonds to finance certain exempt facilities (temporary).

(a)(1) through (4) [Reserved]. For guidance see § 1.103–8.

(5) *Limitation.* (i) A facility qualifies under § 1.103–8 only to the extent that there is a valid reimbursement allocation under § 1.150–2 with respect to expenditures that are incurred before the issue date of the bonds to provide the facility and that are to be paid with the proceeds of the issue. In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under § 1.103–8 if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility, and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(A) An official intent for the facility is adopted under § 1.150–2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(B) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted.

(ii) A facility the original use of which commences (or the acquisition of which occurs) on or after the issue date of bonds to provide that facility qualifies under § 1.103–8 only to the extent that an official intent for the facility is adopted under § 1.150–2 by the issuer of the bonds within 60 days after the commencement of the construction, reconstruction, or acquisition of that facility. Temporary construction or other financing of a facility prior to the issuance of the bonds to provide that facility will not cause that facility to be one that does not qualify under this paragraph (a)(5)(ii).

(iii) For purposes of paragraph (a)(5)(i) of this section, *substantial user* has the meaning used in section 147(a)(1); *related person* has the meaning used in section 144(a)(3); and a user that is a governmental unit within the meaning of § 1.103–1 is disregarded.

(iv) Except to the extent provided in § 1.150–2(j) and § 1.148–11T(i), this paragraph (a)(5) applies to bonds issued after June 30, 1993.

Par. 4. In § 1.148–0, paragraph (c) is amended as follows:

1. The introductory text is revised.

2. The entry for § 1.148–4, paragraph (b)(5) is redesignated paragraph (b)(6).

3. A new entry for § 1.148–4, paragraph (b)(5) is added.

4. An entry for § 1.148–11, paragraph (i) is added.

§ 1.148–0 Scope and table of contents.

* * * * *

(c) *Table of contents.* This paragraph (c) lists the table of contents for §§ 1.148–1, 1.148–2, 1.148–3, 1.148–4, 1.148–5, 1.148–6, 1.148–7, 1.148–8, 1.148–9, 1.148–10 and 1.148–11.

* * * * *

§ 1.148–4 Yield on an issue of bonds.

* * * * *

(b) * * *

(5) Special aggregation rule treating certain bonds as a single fixed yield bond

* * * * *

§ 1.148–11 Effective dates

* * * * *

(i) Transition rule for certain amendments.

Par. 5. In § 1.148–1, paragraph (c)(4)(ii)(A) is revised to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) *In general.* See § 1.148–1T(c)(4)(ii)(A).

* * * * *

Par. 6. Section 1.148–1T is added to read as follows:

§ 1.148–1T Definitions and elections (temporary).

(a) [Reserved]. For guidance see § 1.148–1.

(b) *Certain definitions.*

Investment-type property. See § 1.148–1(b). Investment-type property also includes a contract that would be a hedge (within the meaning of § 1.148–4(h)) except that it contains a significant investment element.

(c) through (c)(4)(i) [Reserved]. For guidance see § 1.148–1.

(c)(4)(ii) *Bonds financing a working capital reserve*—(A) *In general.* Except as otherwise provided in § 1.148–1(c)(4)(ii)(B), replacement proceeds arise to the extent a working capital reserve is, directly or indirectly, financed with the proceeds of the issue (regardless of the expenditure of proceeds of the issue). Thus, for example, if an issuer that does not maintain a working capital reserve borrows to fund such a reserve, the issuer will have replacement proceeds. To determine the amount of a working capital reserve maintained, an issuer may use the average amount maintained as a working capital reserve during annual periods of at least one year, the last of which ends within a year before the issue date. For example, the amount of a working capital reserve may be computed using the average of the beginning or ending monthly balances of the amount maintained as a reserve (net of unexpended gross proceeds) during the one year period preceding the issue date.

Par. 7. In § 1.148–2, paragraph (b)(2)(ii) is revised to read as follows:

§ 1.148–2 General arbitrage yield restriction rules.

* * * * *

(b) * * *

(2) * * *

(ii) *Exception to certification requirements.* See § 1.148–2T(b)(2)(ii).

* * * * *

Par. 8. Section 1.148–2T is added to read as follows:

§ 1.148–2T General arbitrage yield restriction rules (temporary).

(a) through (b)(2)(i) [Reserved]. For guidance see § 1.148–2.

(b)(2)(ii) *Exceptions to certification requirement.* An issuer is not required to make a certification for an issue under § 1.148–2(b)(2)(i) if—

(A) The issuer reasonably expects as of the issue date that there will be no unspent gross proceeds after the issue date, other than gross proceeds in a bona fide debt service fund (e.g., *equipment lease* financings in which the issuer purchases equipment in exchange for an installment payment note); or

(B) The issue price of the issue does not exceed $1,000,000.

Par. 9. In § 1.148–3, paragraph (h)(3) is amended by adding a sentence after the last sentence to read as follows:

§ 1.148–3 General arbitrage rebate rules.

* * * * *

(h) * * *

(3) * * * See also § 1.148–3T(h)(3).

* * * * *

Par. 10. Section 1.148–3T is added to read as follows:

§ 1.148–3T General arbitrage rebate rules (temporary).

(a) through (h)(2) [Reserved]. For guidance see § 1.148–3.

(h)(3) *Waivers of the penalty.* For purposes of § 1.148–3(h)(3), willful neglect does not include a failure that is attributable solely to the permissible retroactive selection of a short first bond year if the rebate amount that the issuer failed to pay is paid within 60 days of the selection of that bond year.

Par. 11. Section 1.148–4 is amended as follows:

1. Paragraph (b)(5) is redesignated as paragraph (b)(6).
2. New paragraph (b)(5) is added.
3. Paragraph (g) is revised.
4. Paragraph (h)(1) is revised.
5. Paragraph (h)(2)(vii) is revised.
6. Paragraph (h)(2)(ix) is revised.
7. Paragraphs (h)(3), (4), and (5) are revised.
8. The revised and added provisions read as follows:

§ 1.148–4 Yield on an issue of bonds.

* * * * *

(b) * * *

(5) *Special aggregation rule treating certain bonds as a single fixed yield bond.* See § 1.148–4T(b)(5).

* * * * *

(g) *Yield on certain mortgage revenue and student loan bonds.* See § 1.148–4T(g).

(h) * * *

(1) *In general.* See § 1.148–4T(h)(1).

(2) * * *

* * * * *

(vii) *Timing and duration.* See § 1.148–4T(h)(2)(vii).

* * * * *

(ix) *Identification.* See § 1.148–4T(h)(2)(ix).

(3) *Accounting for qualified hedges.* See § 1.148–4T(h)(3).

(4) *Certain variable yield bonds treated as fixed yield bonds.* See § 1.148–4T(h)(4).

(5) *Authority of the Commissioner.* See § 1.148–4T(h)(6).

Par. 12. Section 1.148–4T is added to read as follows:

§ 1.148–4T Yield on an issue of bonds (temporary).

(a) through (b)(4) [Reserved]. For guidance see § 1.148–4.

(b)(5) *Special aggregation rule treating certain bonds as a single fixed yield bond.* Two variable yield bonds of an issue are treated in the aggregate as a single fixed yield bond if—

(i) Aggregate treatment would result in the single bond being a fixed yield bond; and

(ii) The terms of the bonds do not contain any features that could distort the aggregate fixed yield from what the yield would be if a single fixed yield bond were issued. For example, if an issue contains a bond bearing interest at a floating rate and a related bond bearing interest at a rate equal to a fixed rate minus that floating rate, those two bonds are treated as a single fixed yield bond only if neither bond may be redeemed unless the other bond is also redeemed at the same time.

(c) through (f) [Reserved]. For guidance see § 1.148–4.

(g) *Yield on certain mortgage revenue and student loan bonds.* For purposes of section 148 and § 1.148–4, section 143(g)(2)(C)(ii) applies to the computation of yield on an issue of qualified mortgage bonds or qualified veterans' mortgage bonds. For purposes of applying sections 148 and 143(g) to a variable yield issue of qualified mortgage bonds, qualified veterans' mortgage bonds, or qualified student loan bonds, the yield on that issue is computed over the term of the issue, and § 1.148–4(d) does not apply to the issue. As of any date before the final maturity date, the yield over the term of the issue is based on the actual amounts paid or received to that date and the amounts that are reasonably expected (as of that date) to be paid or received over the remaining term of the issue.

(h) *Qualified hedging transactions*—(1) *In general.* Payments made or received by an issuer under a qualified hedge (as defined in § 1.148–4(h)(2)) relating to bonds of an issue are taken into account (as provided in paragraph (h)(3) of this section) to determine the yield on the issue. Except as provided in paragraphs (h)(4) and (h)(5)(ii)(C) of this section, the bonds to which a qualified hedge relates are treated as variable yield bonds. These hedging rules apply solely for purposes of sections 143(g), 148, and 149(d).

(2) (i) through (vi) [Reserved]. For guidance see § 1.148–4(h)(2).

(2)(vii) *Timing and duration.* For a contract to be a qualified hedge under § 1.148–4(h)(2), payments must not begin to accrue under the contract on a date earlier than the issue date of the hedged bonds and must not accrue longer than the hedged interest payments on the hedged bonds.

(viii) [Reserved]. For guidance see § 1.148–4(h).

(ix) *Identification.* For a contract to be a qualified hedge under § 1.148–4(h)(2), the contract must be identified by the actual issuer on its books and records maintained for the hedged bonds not later than three days after the date on which the parties enter into the contract. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. The identification must contain sufficient detail to establish that the requirements of § 1.148–4(h)(2), and if applicable, paragraph (h)(4) of this section are satisfied. The existence of the hedge must be noted on all forms filed with the Internal Revenue Service for the issue on or after the date on which the hedge is entered into.

(3) *Accounting for qualified hedges*—(i) *In general.* Except as otherwise provided in paragraph (h)(4) of this section, payments made or received by the issuer under a qualified hedge are treated as payments made or received, as appropriate, on the hedged bonds that are taken into account in determining the yield on those bonds. These payments are reasonably allocated to the hedged bonds in the period to which the payments relate, as determined under paragraph (h)(3)(iii) of this section. Payments made or received by the issuer include payments deemed made or received when a contract is terminated or deemed

terminated under this paragraph (h)(3). Payments reasonably allocable to the reduction of risk of interest rate changes and to the hedge provider's overhead under this paragraph (h) are included as payments made or received under a qualified hedge.

(ii) *Exclusions from hedge.* Payments for services or other items under the contract that are not expressly treated as payments under the qualified hedge under paragraph (h)(3)(i) of this section are not payments with respect to a qualified hedge.

(iii) *Timing and allocation of payments.* The period to which a payment made by the issuer relates is determined under general Federal income tax principles, including, without limitation, § 1.446–3, and adjusted as necessary to reflect the end of a computation period and the start of a new computation period. Except as provided in paragraphs (h)(3)(iv) and (h)(5)(ii) of this section, a payment received by the issuer is taken into account in the period that the interest payment that the payment hedges is required to be made.

(iv) *Termination payments*—(A) *Termination defined.* A termination of a qualified hedge includes any sale or other disposition of the hedge by the issuer, or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed and when a hedge ceases to be a qualified hedge of the hedged bonds. In the case of an assignment by a hedge provider of its remaining rights and obligations on the hedge to a third party or a modification of the hedging contract, the assignment or modification is treated as a termination with respect to the issuer only if it results in a deemed exchange of the hedge and a realization event under section 1001.

(B) *General rule.* A payment made or received by an issuer to terminate a qualified hedge, including loss or gain realized or deemed realized, is treated as a payment made or received on the hedged bonds, as appropriate. The payment is reasonably allocated to the remaining periods originally covered by the terminated hedge in a manner that reflects the economic substance of the hedge.

(C) *Special rule for terminations when bonds are redeemed.* Except as otherwise provided in this paragraph (h)(3)(iv)(C) and in paragraph (h)(3)(iv)(D) of this section, when a qualified hedge is deemed terminated because the hedged bonds are redeemed, the fair market value of the contract on the redemption date is treated as a termination payment made or received on that date. When hedged bonds are redeemed, any payment received by the issuer on termination of a hedge, including a termination payment or a deemed termination payment, reduces, but not below zero, the interest payments made by the issuer on the hedged bonds in the computation period ending on the termination date. The remainder of the payment, if any, is reasonably allocated over the bond years in the immediately preceding computation period or periods to the extent necessary to eliminate the excess.

(D) *Special rules for refundings.* To the extent that the hedged bonds are redeemed using the proceeds of a refunding issue, the termination payment is accounted for under paragraph (h)(3)(iv)(B) of this section by treating it as a payment on the refunding issue, rather than the hedged bonds. In addition, to the extent that the refunding issue, rather than the hedged bonds, has been redeemed, paragraph (h)(3)(iv)(C) of this section applies to the termination payment by treating it as a payment on the redeemed refunding issue.

(E) *Safe harbor for certain non-level payments.* A non-level payment to terminate a hedge does not result in that hedge failing to satisfy the applicable provisions of paragraph (h)(3)(iv)(B) of this section if the payment is allocated to each bond year for which the hedge would have been in effect in accordance with this paragraph (h)(3)(iv)(E). For a variable yield issue, an equal amount (or for any short bond year, a proportionate amount of the equal amount) must be allocated to each bond year such that the sum of the present values of the annual amounts equals the present value of the non-level payment. Present value is computed as of the day the hedge is terminated, using the yield on the hedged bonds, determined without regard to the non-level payment. The yield used for this purpose is computed for the period beginning on the first date the hedge is in effect and ending on the date the hedge is terminated. On the other hand, for a fixed yield issue, the non-level payment is taken into account as a single payment on the date it is paid.

(4) *Certain variable yield bonds treated as fixed yield bonds*—(i) *In general.* Except as otherwise provided in this paragraph (h)(4), if the issuer of variable yield bonds enters into a qualified hedge, the hedged bonds are treated as fixed yield bonds paying a fixed interest rate if:

(A) *Start date.* The date on which payments begin to accrue on the hedge is not later than 15 days after the issue date of the hedged bonds.

(B) *Maturity.* The term of the hedge is equal to the entire period during which the hedged bonds bear interest at variable interest rates.

(C) *Payments closely correspond.* Payments to be received under the hedge correspond closely in time to the hedged portion of the payments on the hedged bonds. Hedge payments received within 15 days of the related payments on the hedged bonds generally so correspond.

(D) *Aggregate payments fixed.* Taking into account all payments made and received under the hedge and all payments on the hedged bonds (i.e., after netting all payments), the issuer's aggregate payments are fixed and determinable as of a date not later than 15 days after the issue date of the hedged bonds. Payments on bonds are treated as fixed for purposes of this paragraph (h)(4)(i)(D) if payments on the bonds are based, in whole or in part, on one interest rate, payments on the hedge are based, in whole or in part, on a second interest rate that is substantially the same as, but not identical to, the first interest rate and payments on the bonds would be fixed if the two rates were identical. Rates are treated as substantially the same if they are reasonably expected to be substantially the same throughout the term of the hedge. For example, an objective 30-day tax-exempt variable rate index or other objective index (e.g., J.J. Kenny Index, PSA Municipal swap index, a percentage of LIBOR) may be substantially the same as an issuer's individual 30-day interest rate.

(ii) *Accounting.* Except as otherwise provided in this paragraph (h)(4)(ii), in determining yield on the hedged bonds, all the issuer's actual interest payments on the hedged bonds and all payments made and received on a hedge described in paragraph (h)(4)(i) of this section are taken into account. If payments on the bonds and payments on the hedge are based, in whole or in part, on variable interest rates that are substantially the same within the meaning of paragraph (h)(4)(i)(D) of this section (but not identical), yield on the issue is determined by treating the variable interest rates as identical. For example, if variable rate bonds bearing interest at a weekly rate equal to the rate necessary to remarket the bonds at par are hedged with an interest rate swap under which the issuer receives payments based on a short-term floating rate index that is substantially the same as, but not identical to, the weekly rate on the bonds, the interest payments on the bonds are treated as equal to the payments received by the issuer under the swap for purposes of computing the yield on the bonds.

(iii) *Effect of termination*—(A) *In general.* Except as otherwise provided in this paragraph (h)(4)(iii) and paragraph (h)(5) of this section, the issue of which the hedged bonds are a part is treated as if it were reissued as of the termination date of the qualified hedge covered by paragraph (h)(4)(i) of this section in determining yield on the hedged bonds for purposes of § 1.148–3. The redemption price of the retired issue and the issue price of the new issue equal the aggregate values of all the bonds of the issue on the termination date. In computing the yield on the new issue for this purpose, any termination payment is accounted for under paragraph (h)(3)(iv) of this section, applied by treating the termination payment as made or received on the new issue under this paragraph (h)(4)(iii).

(B) *Effect of early termination.* Except as otherwise provided in this paragraph (h)(4)(iii), the general rules of paragraph (h)(4)(i) of this section do not apply in determining the yield on the hedged bonds for purposes of § 1.148–3 if the hedge is terminated or deemed terminated within 5 years after the issue date of the issue of which the hedged bonds are a part. Thus, the hedged bonds are treated as variable yield bonds for purposes of § 1.148–3 from the issue date.

(C) *Certain terminations disregarded.* This paragraph (h)(4)(iii) does not apply to a termination if, based on the facts and circumstances (e.g., taking into account both the termination and any qualified hedge that immediately replaces the terminated hedge), there is no change in the yield. In addition, this paragraph (h)(4)(iii) does not apply to a termination caused by the bankruptcy or insolvency of the hedge provider if the Commissioner determines that the termination occurred without any action by the issuer (other than to protect its rights under the hedge).

(5) *Special rules for certain hedges*—(i) *Certain acquisition payments.* A payment to the issuer by the hedge provider (e.g., an up-front payment for an off-market swap) in connection with the acquisition of a hedge that, but for that payment, would be a qualified hedge, does not cause the hedge to fail to be a qualified hedge provided the payment to the issuer and the issuer's payments under the hedge in excess of those that it would make if the hedge bore rates equal to the on-market rates for the hedge are separately identified in a certification of the hedge provider and not taken into account in determining the yield on the issue of which the hedged bonds are a part. The on-market rates are determined as of the date the parties enter into the contract.

(ii) *Anticipatory hedges*—(A) *In general.* A contract does not fail to be a hedge under § 1.148–4(h)(2)(i)(A) solely because it is entered into with respect to an anticipated issuance of tax-exempt bonds. The identification required under § 1.148–4T(h)(2)(ix) must specify the reasonably expected governmental purpose, principal amount, and issue date of the hedged bonds, and the manner in which interest is reasonably expected to be computed.

(B) *Special rules.* Payments made in connection with the issuance of a bond to terminate or otherwise close (*terminate*) an anticipatory hedge of that bond do not prevent the hedge from satisfying the requirements of § 1.148–4(h)(2)(vi) and paragraph (h)(2)(vii) of this section. Amounts received or deemed to be received by the issuer in connection with the issuance of the hedged bonds to terminate an anticipatory hedge are treated as proceeds of the hedged bonds.

(C) *Fixed yield treatment.* A bond that is hedged with an anticipatory hedge is a fixed yield bond if, taking into account payments on the hedge that are made or fixed on or before the issue date of the bond and the payments to be made on the bond, the bond satisfies the definition of fixed yield bond. See also paragraph (h)(4) of this section.

(6) *Authority of the Commissioner*—(i) *In general.* A contract is not a qualified hedge if the Commissioner determines, based on all the facts and circumstances, that treating the contract as a qualified hedge would provide a material potential for arbitrage, or a principal purpose for entering into the contract is that arbitrage potential. For example, a contract that requires a substantial nonperiodic payment may constitute, in whole or part, an embedded loan, investment-type property, or other investment.

(ii) *Other qualified hedges.* The Commissioner, by publication of a revenue ruling or revenue procedure, may specify contracts that do not otherwise meet the requirements of § 1.148–4(h)(2) as qualified hedges and contracts that do not otherwise meet the requirements of paragraph (h)(4) of this section as causing the hedged bonds to be treated as fixed yield bonds.

(iii) *Recomputation of yield.* If an issuer enters into a hedge that is not properly identified, fails to properly associate an anticipatory hedge with the hedged bonds, or otherwise fails to meet the requirements of this section, the Commissioner may recompute the yield on the issue taking the hedge into account if the failure to take the hedge into account distorts that yield or otherwise fails to clearly reflect the economic substance of the transaction.

Par. 13. Section 1.148–5 is amended as follows:

1. Paragraph (b)(2)(iii) is revised.
2. Paragraph (c)(2)(i) is revised.
3. Paragraph (c)(3)(ii) is revised.
4. Paragraph (d)(3)(ii) is revised.
5. A sentence is added at the end of paragraph (e)(2)(ii)(B).
6. Paragraph (e)(2)(iii) is revised.
7. The revised provisions read as follows:

§ 1.148–5 Yield and valuation of investments.

* * * * *

(b) * * *

(2) * * *

(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* See § 1.148–5T(b)(2)(iii).

* * * * *

(c) * * *

(2) * * *

(i) *In general.* See § 1.148–5T(c)(2)(i).

* * * * *

(3) * * *

(ii) *Exception to yield reduction payments rule for advance refunding issues.* See § 1.148–5T(c)(3)(ii).

(d) * * *

(3) * * *

(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds.* See § 1.148–5T(d)(3)(ii).

(e) * * *

(2) * * *

(ii) * * *

(B) * * * See also § 1.148–5T(e)(2)(B).

(iii) *Special rule for guaranteed investment contracts.* See § 1.148–5T(e)(2)(iii).

* * * * *

Par. 14. Section 1.148–5T is added to read as follows:

§ 1.148–5T Yield and valuation of investments (temporary).

(a) through (b)(2)(ii) [Reserved]. For guidance see § 1.148–5.

(b)(2)(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* For all purposes of section 148, an issuer may treat all of the yield restricted nonpurpose investments in a refunding escrow and a sinking fund that is reasonably expected as of the issue date to be maintained to reduce the yield on the investments in the refunding escrow as a single investment having a single yield, determined under § 1.148(b)(2).

(b)(2)(iv) through (c)(1) [Reserved]. For guidance see § 1.148–5.

(c)(2) *Manner of payment*—(i) *In general.* Except as otherwise provided in § 1.148–5(c)(2)(ii), an amount is paid under § 1.148–5(c) if it is paid to the United States at the same time and in the same manner as rebate amounts are required to be paid or at such other time or in such manner as the Commissioner may prescribe. For example, yield reduction payments must be made on or before the date of required rebate installment payments as described in § 1.148–3(f). The date a payment is required to be paid is determined without regard to § 1.148–3(h). An amount that is paid untimely is not taken into account under this paragraph (c) unless the Commissioner determines that the failure to pay timely is not due to willful neglect. The provisions of § 1.148–3(i) apply to payments made under § 1.148–5(c).

(c)(2)(ii) through (c)(3)(i) [Reserved] For guidance see § 1.148–5.

(c)(3)(ii) *Exception to yield reduction payments rule for advance refunding issues.* Section 1.148–5(c)(1) does not apply to investments allocable to gross proceeds of an advance refunding issue, other than—

(A) Transferred proceeds to which § 1.148–5(c)(3)(i)(C) applies;

(B) Replacement proceeds to which § 1.148–5(c)(3)(i)(F) applies; and

(C) Transferred proceeds to which § 1.148–5(c)(3)(i)(E) applies, but only to the extent necessary to satisfy yield restriction under section 148(a) on those proceeds treating all investments allocable to those proceeds as a separate class.

(d)(1) through (d)(3)(i) [Reserved]. For guidance see § 1.148–5.

(d)(3)(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds.* Section 1.148–5(d)(3)(i) does not apply if the investment is allocated from one issue to another issue as a result of the transferred proceeds allocation rule under § 1.148–9(b) or the universal cap rule under § 1.148–6(b)(2), provided that both issues consist exclusively of tax-exempt bonds. In addition, § 1.148–5(d)(3)(i) does not apply to investments in a commingled fund (other than a bona fide debt service fund) unless it is an investment being initially deposited in or withdrawn from a commingled fund described in § 1.148–6(e)(5)(iii).

(e)(1) through (e)(2)(ii)(A) [Reserved]. For guidance see § 1.148–5.

(e)(2)(ii)(B) *External commingled funds.* For any semiannual period, a commingled fund satisfies the 10 percent requirement of § 1.148–5(e)(2)(ii)(B) if—

(*1*) Based on average amounts on deposit, this requirement was satisfied for the prior semiannual period; and

(*2*) The fund does not accept deposits that would cause it to fail to meet this requirement.

(iii) *Special rule for guaranteed investment contracts.* For a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the provider is treated as an administrative cost and, except in the case of an issue that satisfies section 148(f)(4)(D)(i), is not a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, exceeds the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. For this purpose, present value is computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate.

Par. 15. In § 1.148–6, paragraph (d)(3)(iii)(C) is revised to read as follows:

§ 1.148–6 General allocation and accounting rules.

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(C) *Qualified endowment funds treated as unavailable.* See § 1.148–6T(d)(3)(iii)(C).

* * * * *

Par. 16. Section 1.148–6T is added to read as follows:

§ 1.148–6T General allocation and accounting rules (temporary).

(a) through (d)(3)(iii)(B) [Reserved]. For guidance see § 1.148–6.

(d)(3)(iii)(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(*1*) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(*2*) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(*3*) There is an independent verification (e.g., from an independent certified public accountant) that the fund is reasonably necessary as part of the organization's permanent capital.

Par. 17. Section 1.148–9 is amended as follows:

1. Paragraph (c)(2)(ii)(B) is revised.
2. Paragraph (h)(4)(vi) is added.
3. The revised and added provisions read as follows:

§ 1.148–9 Arbitrage rules for refunding issues.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) *Permissive allocation of non-proceeds to earliest expenditures.* See § 1.148–9T(c)(2)(ii)(B).

* * * * *

(h) * * *

(4) * * *

(vi) See § 1.148–9T(h)(4)(vi).

* * * * *

Par. 18. Section 1.148–9T is added to read as follows:

§ 1.148–9T Arbitrage rules for refunding issues (temporary).

(a) through (c)(2)(ii)(A) [Reserved]. For guidance see § 1.148–9.

(c)(2)(ii)(B) *Permissive allocation of non-proceeds to earliest expenditures.* Excluding amounts covered by § 1.148–9(c)(2)(ii)(A) and subject to any required earlier expenditure of those amounts, any amounts in a mixed escrow that are not proceeds of a refunding issue may be allocated to the earliest maturing investments in the mixed escrow, provided that those investments mature and the proceeds thereof are expended before the date of any expenditure from the mixed escrow to pay any principal of the prior issue.

(d) through (h)(4)(v) [Reserved]. For guidance see § 1.148–9.

(h)(4)(vi) *Exception for refundings of interim notes.* Section 1.148–9(h)(4)(v) need not be applied to refunding bonds issued to provide permanent financing for one or more projects if the prior issue had a term of less than 3 years and was sold in anticipation of permanent financing, but only if the aggregate term of all prior issues sold in anticipation of permanent financing was less than 3 years.

Par. 19. Section 1.148–10 is amended as follows:

1. Paragraph (b)(2) is revised.
2. A sentence is added at the end of paragraph (c)(2)(ix).
3. The added and revised provisions read as follows:

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

* * * * *

(b) * * *

(2) *Application.* See § 1.148–10T(b)(2).

(c) * * *

(2) * * *

(ix) * * * See also § 1.148–10T(c)(2)(ix).

* * * * *

Par. 20. Section 1.148–10T is added to read as follows:

§ 1.148–10T Anti-abuse rules and authority of Commissioner (temporary).

(a) through (b)(1) [Reserved]. For guidance see § 1.148–10.

(b)(2) *Application.* The provisions of § 1.148–10(b) only apply to the portion of an issue that, as a result of actions taken (or actions not taken) after the issue date, overburdens the market for tax-exempt bonds, except that for an issue that is reasonably expected as of the issue date to overburden the market, those provisions apply to all of the gross proceeds of the issue.

(c) through (c)(2)(viii) [Reserved]. For guidance see § 1.148–10.

(c)(2)(ix) For purposes of § 1.148–10(c)(2), excess gross proceeds do not include gross proceeds allocable to fees for a qualified hedge for the refunding issue.

Par. 21. Section 1.148–11 is amended by adding paragraph (i) to read as follows:

§ 1.148–11 Effective dates.

* * * * *

(i) *Transition rule for certain amendments.* See § 1.148–11T(i).

Par. 22. Section 1.148–11T is added to read as follows:

§ 1.148–11T Effective dates (temporary).

(a) through (c)(3) [Reserved]. For guidance see § 1.148–11.

(c)(4) *Retroactive application of overpayment recovery provisions.* An issuer may apply the provisions of § 1.148–3(i) to any issue that is subject to section 148(f) or to sections 103(c)(6) or 103A(i) of the Internal Revenue Code of 1954.

(d) through (h) [Reserved]. For guidance see § 1.148–11.

(i) *Transition rule for certain amendments.* Sections 1.103–8(a)(5), 1.148–1 through 1.148–11, 1.149(d)–1, and 1.150–1, as amended on June 6, 1994 (the effective date) to reflect amendments to §§ 1.103–8(a)(5), 1.148–1 through 1.148–11, 1.149(d)–1, and 1.150–1 (as contained in 26 CFR Part 1 edition revised April 1, 1994), and sections 1.103–8T, 1.148–1T, 1.148–2T, 1.148–3T, 1.148–4T, 1.148–5T, 1.148–6T, 1.148–9T, 1.148–10T, 1.148–11T, 1.149(d)–1T, and 1.150–1T apply in whole, but not in part,—

(1) To bonds sold after the effective date;

(2) To bonds issued prior to July 1, 1993, if the issuer, after the effective date, first applies §§ 1.148–1 through 1.148–11, to the bonds under § 1.148–11 (b) or (c); and

(3) At the option of the issuer, to bonds to which §§ 1.148–1 through 1.148–11, as in effect before the effective date, apply.

Par. 23. In § 1.149(d)–1, paragraph (f)(3) is revised to read as follows:

§ 1.149(d)–1 Limitations on advance refundings.

* * * * *

(f) * * *

(3) *Application of savings test to multipurpose issues.* See § 1.149(d)–1T.

* * * * *

Par. 24. Section 1.149(d)–1T is added to read as follows:

§ 1.149(d)–1T Limitations on advance refundings (temporary).

(a) through (f)(2) [Reserved]. For guidance see § 1.149(d)–1.

(f)(3) *Application of savings test to multipurpose issues.* Except as otherwise provided in this paragraph (f)(3), the multipurpose issue rules in § 1.148–9(h) apply for purposes of the savings test. If any separate issue in a multipurpose issue increases the aggregate present value debt service savings on the entire multipurpose issue or reduces the present value debt service losses on that entire multipurpose issue, that separate issue satisfies the savings test.

Par. 25. Section 1.150–1 is amended as follows:

1. Paragraph (c)(1) is revised.
2. The paragraph heading for (c)(4) is revised.
3. Paragraph (c)(4)(iii) is added.
4. The revised and added provisions read as follows:

§ 1.150–1 Definitions.

* * * * *

(c) *Definition of issue*—(1) *In general.* See § 1.150–1T(c)(1).

* * * * *

(4) *Special rules for certain financings*—(i) * * *

* * * * *

(iii) See § 1.150–1T(c)(4)(iii).

* * * * *

Par. 26. Section 1.150–1T is added to read as follows:

§ 1.150–1T Definitions (temporary).

(a) through (b) [Reserved]. For guidance see § 1.150–1.

(c) *Definition of issue*—(1) *In general.* Except as otherwise provided, the provisions of this paragraph (c) apply for all purposes of sections 103 and 141 through 150. Except as otherwise provided in this paragraph (c), two or more bonds are treated as part of the same issue if all of the following factors are present:

(i) *Sold at substantially the same time.* The bonds are sold at substantially the same time. Bonds are treated as sold at substantially the same time if they are sold less than 15 days apart. For this purpose only, a variable yield bond is treated as sold on its issue date.

(ii) *Sold pursuant to the same plan of financing.* The bonds are sold pursuant to the same plan of financing. Factors material to the plan of financing include the purposes for the bonds and the structure of the financing. For example, generally—

(A) Bonds to finance a single facility or related facilities are part of the same plan of financing;

(B) Short-term bonds to finance working capital expenditures and long-term bonds to finance capital projects are not part of the same plan of financing; and

(C) Certificates of participation in a lease and general obligation bonds secured by tax revenues are not part of the same plan of financing.

(iii) *Payable from same source of funds.* The bonds are reasonably expected to be paid from substantially the same source of funds, determined without regard to guarantees from parties unrelated to the obligor.

(2) through (4)(ii) [Reserved]. For guidance see § 1.150–1 (c)(3) through (c)(4)(ii).

(c)(4)(iii) *Certain general obligation bonds.* Bonds are part of the same issue if secured by a pledge of the issuer's full faith and credit (or a substantially similar pledge) and sold and issued on the same dates pursuant to a single offering document.

(5) [Reserved]. For guidance see § 1.150–1(c)(5).

(6) *Sale date.* The sale date of a bond is the first day on which there is a binding contract in writing for the sale or exchange of the bond.

Dated: April 14, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–11104 Filed 5–5–94; 2:17 pm]

BILLING CODE 4830-01-U

Fiscal Service

31 CFR Part 347

[Department of the Treasury Circular, Public Debt Series No. 22–75]

Regulations Governing 2 Percent Treasury Bonds—REA Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends Title 31 by removing Part 347. The action is being taken because all outstanding 2 Percent Treasury Bonds—REA Series, have been redeemed and such bonds are no longer being offered.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Pyatt, Director, Division of Special Investments, Bureau of the Public Debt, Parkersburg, WV (304) 480–7752.

SUPPLEMENTARY INFORMATION: Department of the Treasury Circular, Public Debt Series, No. 22–75, dated July 10, 1975, provides for the offering of 2 Percent Treasury Bonds—REA Series. 2 Percent Treasury Bonds—REA Series are offered by the Department of the Treasury to borrowers from the Rural Electrification Administration, U.S. Department of Agriculture. The bonds bear an interest rate of 2 percent per annum, payable on a semi-annual basis, and mature 12 years from the issue date.

All outstanding 2 Percent Treasury Bonds—REA Series have been redeemed by the Department of the Treasury and the REA has terminated the bond program. Accordingly, part 347, which sets the terms for the offering of these securities, is unnecessary and, therefore, should be removed from Title 31 of the CFR.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply. Because this final rule relates to public contracts and procedures for United States securities, the notice, public comment and effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) are inapplicable. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply. There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 347

Banks, Banking, Bonds, Electronic funds transfer, Government securities.

PART 347—[REMOVED]

Accordingly, under the authority at 31 U.S.C. 3105 and 5 U.S.C. 301, 31 CFR Part 347 is hereby removed.

Dated: May 3, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 94–10926 Filed 5–9–94; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville 94–056]

RIN 2115–AA97

Security Zone Regulations; Port Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 500 yard moving security zone around HMS VANGUARD while the vessel is underway in U.S. waters in the vicinity of Port Canaveral Florida. The vessel will make multiple entries and exists into Port Canaveral Florida between April 21 and August 15, 1994. The zone is needed to safeguard HMS VANGUARD against destruction from sabotage or other subversive acts, accidents, or other causes of a similar nature while the vessel transits through the Port Canaveral Entrance Channel to and from the East Basin in Port Canaveral, Florida. Entry into this zone is prohibited unless authorized by the Captain of the Port Jacksonville, Florida.

EFFECTIVE DATES: This regulation becomes effective on April 21 and terminates August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Varamo, MSO Jacksonville, FL at Tel: (904) 232–2648.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to prevent damage to or destruction of the HMS VANGUARD.

Drafting Information

The drafters of this regulation are Lieutenant A. Varamo, project officer for the Captain of the Port, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the arrival and departure of HMS VANGUARD into U.S. waters enroute to Port Canaveral. Florida. The vessel is scheduled to make multiple entries and exits into the Port of Canaveral between April 21 and August 15, 1994. A security zone is necessary to safeguard HMS VANGUARD from sabotage, or other subversive acts, accidents, or other causes of a similar nature within U.S. Waters. The Security Zone will be enforced by representatives of the Captain of the Port Jacksonville, Florida. The Captain of the Port may be assisted by other federal agencies and civil law enforcement authorities.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The moving security zone extends 500 yards in all directions around the HMS

VANGUARD when the vessel enters U.S. territorial seas. The security zone remains in effect as long as the vessel is underway in U.S. waters and terminates upon arrival at the East Basin, Port Canaveral, Florida. Upon departure, the 500 yard moving security zone shall be in effect until the vessel transits beyond the U.S. territorial seas, unless terminated earlier by the Captain of the Port Jacksonville, Florida.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T07–056 is added to read as follows:

§ 165.T07–056 Security Zone: Port Canaveral Entrance Channel.

(a) *Location.* The following area is a Security Zone: All waters 500 yards in all directions around HMS VANGUARD as it transits to and from the Port Canaveral East Basin through the Port Canaveral Entrance Channel. The security zone will remain in force while the vessel is underway in U.S. waters.

(b) *Effective date.* This section becomes effective two hours prior to arrival and departure of the vessel in U.S. waters. The vessel is expected to make multiple entries and exits into the Port of Canaveral between April 21 and August 15, 1994. It remains in effect as long as HMS VANGUARD is underway in U.S. waters and terminates upon arrival at the East Basin in Port Canaveral, or on departure, transits beyond the U.S. territorial seas, unless terminated earlier by the Captain of the Port Jacksonville, FL. Commencement of this Security zone will be announced in a Local Broadcast Notice to Mariners immediately prior to arrival into U.S. waters.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) This regulation does not apply to United States Naval vessels or other authorized law enforcement agencies operating within the Security Zone.

Dated: April 21, 1994.

D.F. Miller,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Jacksonville, Florida.

[FR Doc. 94–11224 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Wilmington, NC 94–002]

Safety Zone Regulations; Masonboro Inlet, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Masonboro Inlet in the vicinity of Wrightsville Beach, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with dredge operations being conducted by the U.S. Army Corps of Engineers near Masonboro Inlet. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATES: This regulation is effective from 12:01 a.m., on April 27, 1994 to 11:59 p.m., on June 15, 1994, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: LCDR M.L. BLAIR, USCG, c/o U.S. Coast Guard Captain of the Port, Suite 500, 272 N. Front Street, Wilmington, North Carolina 28401–3907, Phone: (910) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would not have been possible since the conditions warranting the establishment of this safety zone were not realized until April 26, 1994.

Drafting Information

The drafters of this regulation are LTJG G.A. HOWARD, project officer for the Captain of the Port, Wilmington, North Carolina, and LT M.L. LOMBARDI, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

On April 26, 1994, the U.S. Army Corps of Engineers requested that the Coast Guard provide a safety zone for the dredge operations they are conducting in the Masonboro Inlet. The dredge operations are ongoing 24 hours a day in shallow water areas frequented by the surfing community. The strong suction of the dredge poses a great danger to the surfers, as well as small watercraft. Additionally, dangers are posed by the increased traffic caused by vessels supporting the dredge operation. This safety zone is needed to protect the public from the potential hazards near the dredge operation. It will consist of an area of water within a radius of 100 yards, surrounding the Dredge Alaska.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T05–024 is added, to read as follows:

§ 165.T05–024 Safety Zone: Masonboro Inlet Dredge Operations, Masonboro Inlet, Onslow Bay, Vicinity of Wrightsville Beach, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of Onslow Bay and Masonboro Inlet circumscribed by a radial line drawn from the centerpoint of the Dredge Alaska for 100 yards in all directions.

(b) *Effective date.* This section is effective from 12:01 a.m. April 27, 1994 to 11:59 p.m. on June 15, 1994, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Any person or operator of any vessel in the immediate vicinity of this safety zone shall proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina, to act on his behalf.

(e) *Points of contact.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina, can be contacted at telephone number (910) 343–4895. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

Dated: April 26, 1994.

C.F. Eisenbeis,

Captain, Coast Guard Captain of the Port, Wilmington, NC.

[FR Doc. 94–11288 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG59

Veterans Education; Clarification of Eligibility Requirements for the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rules.

SUMMARY: Generally, someone who receives a commission upon graduating from a service academy or who receives a commission upon completion of a program of educational assistance under the Reserve Officers Training Corps Scholarship Program is not eligible for educational assistance under the Montgomery GI Bill—Active Duty. However, this does not apply to those who already had established entitlement under this program before being commissioned. These amended regulations will make this policy clear to the public.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–233–2092.

SUPPLEMENTARY INFORMATION: On pages 50873 through 50875 of the **Federal Register** of September 29, 1993, there was published a Notice of Intent to amend 38 CFR part 21 in order to clarify certain eligibility requirements for the Montgomery GI Bill—Active Duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the regulations final.

Generally, someone who, after December 31, 1976, receives a commission upon graduating from a service academy or who receives a commission upon completion of a program of educational assistance under the Reserve Officers Training Corps Scholarship Program is not eligible for educational assistance under the Montgomery GI Bill—Active Duty. However, this does not apply to those who already had established entitlement under this program before being commissioned.

For example, there have been instances where someone established entitlement under the Montgomery GI Bill—Active Duty by entering active duty as an enlisted person after June 30, 1985; having his or her pay reduced by $1200; and serving for at least two years. Then the servicemember was chosen to attend a service academy. Upon graduation from the academy the individual sought educational assistance under the Montgomery GI Bill—Active Duty. By amending the appropriate regulations it will be clear that these individuals maintain their eligibility for educational assistance.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs finds that good cause exists for making the amendments to §§ 21.7042 and 21.7044, like the provisions of law they implement, retroactively effective on July 1, 1985.

It is necessary to make the effective date of the regulations July 1, 1985. That date is the first date anyone could qualify for educational assistance under the Montgomery GI Bill—Active Duty. An effective date of July 1, 1985, will ensure that everyone who has filed a claim in the past and to whom these regulations apply would qualify for educational assistance.

The Catalog of Federal Domestic Assistance number for the program affected by these amended regulations is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

2. Section 21.7042 is amended by revising the introductory text in paragraph (f)(2) and adding paragraph (f)(3) and its authority citation to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(f) *Restrictions on establishing eligibility.* * * *

(2) Except as provided in paragraph (f)(3) of this section, an individual is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon—

* * * * *

(3) Paragraph (f)(2) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a), (b) or (c) of this section before receiving a commission in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

* * * * *

3. Section 21.7044 is amended by revising paragraph (d), introductory text, and adding paragraph (e) and its authority citation to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(d) *Restrictions on establishing eligibility.* Except as provided in paragraph (e) of this section, an individual, who would otherwise be eligible for educational assistance under paragraphs (a) or (b) of this section, is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces—

* * * * *

(e) *Exception to restrictions on establishing eligibility.* Paragraph (d) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a) or (b) of this section before receiving a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

[FR Doc. 94–11147 Filed 5–9–94; 8:45 am]

BILLING CODE 8320-01-P

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38 CFR Part 21

RIN 2900–AF30

Veterans Benefits; Eligibility for the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the Montgomery GI Bill—Active Duty. These regulations will acquaint the public with the way in which VA (the Department of Veterans Affairs) will administer these new provisions of law.

EFFECTIVE DATE: The amendments to the following regulations, like the sections of law they implement, are retroactively effective on October 19, 1984: §§ 21.7042(a)(5) (v) and (vi), 21.7042(b)(6) (v) and (vi), 21.7042(b)(7)(i)(E) and (F), 21.7044(a)(4)(ii)(E) and (F), 21.7044(b)(7)(v) and (vi), 21.7044(b)(8)(i)(E) and (F) and 21.7072(b)(1)(iii) (D) and (E). The amendments to the remainder of the regulations, as well as the new sections §§ 21.7045 and 21.7073, like the sections of law they implement, are retroactively effective on November 5, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–233–2092.

SUPPLEMENTARY INFORMATION: On pages 39488 through 39493 of the **Federal Register** of July 23, 1993, there was published a notice of intent to amend 38 CFR part 21 in order to implement those provisions of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) which affect the Montgomery GI Bill—Active Duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections.

In the proposal VA would have redesignated several sections and adopted a new § 21.7073. However, after considering the fact that there are references to the current §§ 21.7073, 21.7074 and 21.7075 in various VA publications, all of which would have to be revised, VA has decided instead to include the material which was proposed as a new § 21.7073 in the current § 21.7073. This made many of the revisions which were proposed to § 21.7072 unnecessary since those revisions merely inserted references to the newly designated sections. The current §§ 21.7074 and 21.7075 will retain their present designations. None of the changes from the proposal are substantive. VA is adopting the remainder of the proposal without change.

Sections 561, 562 and 563 of Public Law 101–510 contain provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. This is done both by creating a new class of eligible veterans and by providing an additional type of discharge which will qualify veterans for the program. These regulations implement these sections of the act.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making the amendments to §§ 21.7042(a)(5), 21.7042(b)(6), 21.7042(b)(7), 21.7044(a)(4), 21.7044(b)(7), 21.7044(b)(8) and 21.7072(b)(1), like the provision of law they implement, retroactively effective on October 19, 1984. VA finds that good cause exists for making the remainder of the amendments as well as the new sections, §§ 21.7045 and 21.7073a, like the provisions of law they implement, retroactively effective on November 5, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for this program is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501.

2. In § 21.7020 paragraph (b)(1)(iii) and its authority citation are added to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) *Other definitions.*

(1) * * *

(iii) When referring to individuals who, before November 30, 1989, had never served on active duty (as that term is defined by § 3.6b of this title), the term "active duty" when used in this subpart includes full-time National Guard duty first performed after November 29, 1989, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the servicemember's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing or training the National Guard.

(Authority: 38 U.S.C. 3002(7); Pub. L. 101–510, sec. 563(b)) (Nov. 5, 1990)

* * * * *

3. In § 21.7042 the introductory text is revised and its authority citation is added; paragraph (a)(5)(v) is revised, paragraph (a)(5)(vi) is added and the authority citation for paragraph (a) is revised; paragraph (b)(6)(v) is revised, paragraph (b)(6)(vi) is added and an authority citation for paragraph (b)(6) is added; paragraph (b)(7)(i)(E) is revised, paragraph (b)(7)(i)(F) and an authority citation for paragraph (b)(7)(i) are added and paragraph (f)(1) is revised and the authority citation for paragraph (f)(1) is revised to read as follows:

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044 or § 21.7045 in order to be eligible for basic educational assistance. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018A; Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(5) * * *

(v) Involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(b) *Eligibility based on active duty service and service in the Selected Reserve.*

(6) * * *

(v) Involuntarily, for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(7) * * *

(i) * * *

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

(f) *Restrictions on establishing eligibility.* (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section or in § 21.7045(b) of this part.

(Authority: 38 U.S.C. 3018, 3018A; Pub. L. 100–689, Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

4. In § 21.7044 paragraph (a)(4)(ii)(E) is revised, paragraph (a)(4)(ii)(F) is added and the authority citation for paragraph (a)(4) is revised; paragraph (b)(7)(v) is revised and paragraph (b)(7)(vi) and an authority citation for paragraph (b)(7) are added; paragraph (b)(8)(i)(E) is revised and paragraph (b)(8)(i)(F) and an authority citation for paragraph (b)(8)(i) are added to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(4) * * *

(ii) * * *

(E) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.*

* * * * *

(7) * * *

(v) Involuntarily, for the convenience of the government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(8) * * *

(i) * * *

(E) Is discharged involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) Is discharged for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

5. Section 21.7045 and its authority citations are added to read as follows:

§ 21.7045 Eligibility based on involuntary separation.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance if he or she meets the requirements of this section.

(a) *Service requirements.* The individual must—

(1) Be on active duty or full-time National Guard duty on September 30, 1990, and

(2) After February 2, 1991, be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge.

(Authority: 10 U.S.C. 1141, 38 U.S.C. 3018A; Pub. L. 101–510) (Nov. 5, 1990)

(b) *Required election.* (1) If the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, as provided in § 21.7042(f), he or she must irrevocably withdraw that election. The withdrawal must—

(i) Occur before the involuntary separation, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) If the individual is a participant in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must—

(i) Occur before the individual is involuntarily separated, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) If the individual is not described in either paragraph (b)(1) or (b)(2) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must—

(i) Occur before the individual is involuntarily separated, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3018A(a); Pub. L. 101–510) (Nov. 5, 1990)

(c) *Reduction in basic pay.* The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b) of this section must be reduced by $1,200. If through error or other reason the basic pay of an individual described in paragraphs (a) and (b) of this section is not reduced by $1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3018A(b); Pub. L. 101–510) (Nov. 5, 1990)

(d) *Educational requirement.* (1) Before the date on which VA receives the individual's application for benefits, the individual must have completed successfully either—

(i) The requirements of a secondary school diploma (or equivalency certificate), or

(ii) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(2) If a veteran has not met the requirements of paragraph (d)(1) of this section at the time of his or her application for educational assistance, he or she will be permitted to apply at a later date after those requirements are met.

(Authority: 38 U.S.C. 3018A(a); Pub. L. 101–510) (Nov. 5, 1990)

6. In § 21.7072 paragraph (b)(1)(iii)(D) is revised, paragraph (b)(1)(iii)(E) is added and the authority citation for paragraph (b)(1) is revised to read as follows:

§ 21.7072 Entitlement to basic educational assistance.

* * * * *

(b) *Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship or involuntarily for the convenience of the government as a result of a reduction in force.* (1) * * *

(iii) * * *

(D) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(E) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3013(a))

* * * * *

7. Section 21.7073 is revised to read as follows:

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) *Individuals who establish eligibility during the open period.* (1) The provisions of this paragraph apply to a veteran or servicemember who:

(i) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(ii) Has less than $1,200 deducted from his or her military pay; and

(iii) Before completing the period of service which the individual was obligated to service on December 1, 1988, the individual:

(A) Is discharged or released from active duty for a service-connected disability, a medical condition which preexisted that service, or hardship; or

(B) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(C) Is involuntarily discharged or released from active duty for convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3301(c))

(2) A veteran described in paragraph (a)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of:

(i) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is $1,200, or

(ii) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 3013(c))

(b) *Individuals who establish eligibility following involuntary separation.* (1) The provisions of this paragraph apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

(Authority: 38 U.S.C. 3018A)

(2) A veteran described in paragraph (b)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(i) 36 months, or

(ii) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013)

8. In § 21.7136 paragraph (a)(1) and its authority citation are revised, the introductory text of paragraph (c) is revised, and paragraphs (d) (1) and (2) and (e) and the authority citations for paragraphs (d) and (e) are added to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137, the monthly rate of the basic educational assistance payable to a veteran is the rate stated in these tables. The rates in these tables and the other rates in this paragraph also apply to a veteran who formerly was eligible under 38 U.S.C. ch. 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989. The rates in these tables as well as the other rates listed in this paragraph always apply to a veteran who establishes eligibility under § 21.7045 before an involuntary separation, regardless of the length of the veteran's initial obligated period of active duty or whether or not the veteran was once eligible for educational assistance allowance under 38 U.S.C. ch. 34.

(i) For training which occurred before October 1, 1991, the following table applies.

Training	Monthly rate
Full time	$300.
¾ time	225.
½ time	150.
Less than ½ but more than ¼ time.	150 See § 21.7136 (d) or (e).
¼ time	75 See § 21.7136 (d) or (e).

(ii) For training which occurs after September 30, 1991, the following table applies.

Training	Monthly rate
Full time	$350.00.
¾ time	262.50.
½ time	175.00.
Less than ½ but more than ¼ time.	175.00 See § 21.7136 (d) or (e).
¼ time or less	87.50 See § 21.7136 (d) or (e).

(Authority: 38 U.S.C. 3015)

* * * * *

(c) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but (except as provided in paragraph (e) of this section)—

* * * * *

(d) *Less than one-half-time training and rates for servicemembers.* The monthly rate for a veteran who is pursuing a course on a less than one-half time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of—

(1) The monthly rate stated in either paragraph (a) or (b) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (c) or (e) of this section, or

(2) The monthly rate of the cost of the course.

* * * * *

(Authority: 38 U.S.C. 3015, 3032)

(e) *Increase in basic educational assistance rates ("kicker") for those* *eligible under § 21.7045.* A veteran who formerly was eligible to receive educational assistance under 38 U.S.C. ch. 32, and becomes eligible for educational assistance under 38 U.S.C. ch. 30 as described in § 21.7045(b)(2), may receive an increase in basic educational assistance allowance (kicker). The increase will be determined as follows.

(1) The basis of the increase will be that portion of the amount of money—

(i) Which remains in the VEAP fund after the veteran has been paid all assistance due him or her under 38 U.S.C. ch. 32 and refunded all of his or her contributions to the VEAP fund, and—

(ii) Which represents the Secretary of Defense's additional contributions for the veteran as stated in § 21.5132(b)(3) of this part.

(2) For a student pursuing a program of education by residence training—

(i) VA will determine the monthly rate of the increase by dividing the amount of money described in paragraph (e)(1) of this section by the number of months of entitlement to educational assistance under 38 U.S.C. chapter 30 which the veteran has at the time his eligibility for benefits under 38 U.S.C. chapter 30 is first established;

(ii) VA will use the monthly rate of the increase determined in paragraph (e)(2)(i) of this section if the veteran is pursuing his or her program full time;

(iii) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .75 for a student pursuing his or her program three-quarter time;

(iv) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .5 for a student pursuing his or her program half time; and

(v) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .25 for a student pursuing his or her program less than one-half time.

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (e)(2)(i) of this section by .8.

(4) For a veteran pursuing a program of apprenticeship or other on-job training VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section

(i) By .75 for a veteran in the first six months of pursuit of training,

(ii) By .55 for a veteran in the second six months of pursuit of training, and

(ii) By .35 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e))

[FR Doc. 94–11079 Filed 5–9–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-4883-6]

State Implementation Plan Processing Reform

AGENCY: Environmental Protection Agency (EPA).

ACTION: Procedural change.

SUMMARY: This document describes changes being implemented as a method for handling direct final State implementation plan (SIP) actions. Presently, when the Regional Offices publish direct final SIP actions in the **Federal Register**, if adverse comments are submitted on these actions or notification is received that adverse comments are going to be submitted, the Regional Office writes and publishes another document which withdraws the direct final action. After the direct final action has been withdrawn, the Regional Office prepares a third document which serves as the proposal, and then a fourth document is written and published for promulgation.

Under the revised procedure, when the direct final is published in the **Federal Register**, a short informational document will be published, simultaneously, in the proposal section of the **Federal Register**. The purpose of the informational document is to inform the public of the direct final, and states that if adverse comments are received, a withdrawal notice will be published in the **Federal Register**, then the substance of the direct final document will serve as a proposed rule action. If such comments are received, the direct final document serves as the detailed basis for the proposal, and the adverse comments will be addressed in the promulgation document. If no such comments are received, the direct final stands "as is" and no additional action will need to be taken by the Regional Office. This revised procedure eliminates the need for a new proposed rule and an additional comment period, and assists in getting these SIP actions published in a more expedient manner.

EFFECTIVE DATE: This action is effective on May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry M. Stubberfield, Acting Branch Chief, Regional Operations Branch, Air Quality Management Division, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–0876.

SUPPLEMENTARY INFORMATION:

Background

Recommendation for improving SIP processing at EPA has been presented and approved in full to the Deputy Administrator (memorandum from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, to the Air Program Director, Regions I–X, dated December 23, 1987). An intra-agency work group took necessary action to put these wide-ranging recommendations into place. One recommendation involved the expanded use of direct final rulemaking procedures. The recommendation concerned not only more frequent use of direct final where appropriate but also more aggressive application of the concept. Consequently, it is policy to achieve increased use of direct final processing consistent with previously published criteria.

Proposed in 1981 and finalized in 1982 (46 FR 44477, September 4, 1981 and 47 FR 27073, June 23, 1982), direct final rulemaking has been used to great advantage by several Regional Offices in the intervening years. Under our current direct final procedures, SIP actions that are noncontroversial, and where no adverse public comments are expected, can be processed as direct final rules. This type of processing has been demonstrated to cut the review time in half. Since its inception, hundreds of changes have progressed to direct final, with very few engendering any adverse public comment (which under existing procedures would require withdrawal of the change, followed by full review and comment processing).

This history of very little public intervention suggests that we are not using, as we might, an effective tool for speeding review and decision making on SIP's. During these 3 years, only 2 of 134 packages were withdrawn because of adverse comments.

A wide variety of SIP actions can be candidates for direct final, the primary criteria being that the action be noncontroversial and that no adverse public comment is anticipated. These actions do not have to be limited to trivial administrative changes. Although the risk of aggressive action is a possible increase in the number of SIP's drawing comment, this risk should be more than offset by the expected improvement in timely processing and in numbers processed, without jeopardizing air quality.

Dated: May 2, 1994.

Steven J. Hitte,

Acting Director, Air Quality Management Division.

[FR Doc. 94–11275 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300320A; FRL–4777–5]

RIN 2070–AB78

d-Limonene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of d-limonene (CAS Registry No. 5989-27-5) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest, or to animals.

EFFECTIVE DATE: This regulation becomes effective May 10, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number [OPP-300320A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Opearations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: Tina Levine, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Dr., 6th Fl., North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1994 (59 FR 8581), EPA issued a proposed rule that gave notice that Orange Sol, Inc., 955 N. Fiesta Blvd., Suite #1, Gilbert, AZ 85234, had submitted pesticide petition (PP) 3E4172 requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of d-limonene (CAS Registry No. 5989-275) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops only or raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents, and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Two comments were received in response to the proposed rule. One commenter noted that d-limonene is toxic by ingestion and that, since most pesticides do not smell like oranges, special labeling should be used to warn the public about this special hazard. In addition, this commenter was concerned about potential kidney toxicity of d-limonene and did not believe that it should be allowed in unlimited amounts in pesticides, noting that the American Industrial Hygiene Association (AIHA) had established an 8-hour time-weighted Workplace Environmental Exposure Level (WEEL) for d-limonene of 30 parts per million, primarily on the basis of toxicity to the kidney. The commenter also noted that the Agency should determine whether d-limonene is functioning as an active ingredient as well, and that if it is functioning as an active ingredient, it should be registered. The commenter included a fact sheet on d-limonene which discussed the concerns noted in the response letter.

The Agency considered the toxicity data on d-limonene before proposing the exemption from tolerance. The acute toxicity of d-limonene (LD_{50} = 4.4 g/kg in rats and 5.6 g/kg in mice) puts it in the category of moderately to slightly toxic. The commenter noted that the acute toxicity of d-limonene would require it to be labeled to prevent ingestion by children under the Hazardous Substances Act. The Agency uses the same labeling criteria to label products under FIFRA. All end-use pesticide products are tested for acute toxicity. Labeling for the product is based upon the results of this testing. If a product containing d-limonene is acutely toxic, it will be labeled appropriately.

The Agency also considered the issue of allowing a food fragrance in a pesticide before developing this exemption. In 1975, a policy was established in the Registration Division which essentially prohibited the use of food or food-like fragrances in certain pesticide formulations (Standards and Labeling Policy Notice No. 2155.1, November 20, 1975). The policy was based on the premise that food or food-like fragrances in pesticide formulations "could be attractive to children and constitute an unwarranted hazard." A review of the benefits of this policy concluded that there are no scientific data which demonstrate that the addition of a food or food-like fragrance to a pesticide formulation increases the likelihood of accidental ingestion. The Consumer Product Safety Commission (CPSC) was also consulted to determine if they had addressed the effect of food or food-like fragrances on the exposure incidence of household products for children under 5 years of age. The CPSC has taken no regulatory action regarding the additions of such factors to household products because there is no evidence that the absence of such factors deters accidental ingestions. Pesticide product epidemiological data from the 1991 Annual Report of the American Association of Poison Control Centers National Data Collection System confirm that the absence of food or food-like fragrances in pesticide products is not effective in preventing/reducing the exposure incidence to pesticides for children under 5 years of age. Therefore, the Agency rescinded its 1975 policy.

The Agency also discussed the data it considered on kidney toxicity and tumor formation in the proposed rule. The demonstrated nephropathy and tumor formation produced by d-limonene has been related to alpha-2u-globulin accumulation specifically in the male rat. The Agency's position regarding compounds producing renal tubule tumors (in male rats) attributable solely to chemically induced alpha-2u-globulin accumulation is that these tumors will not be used for human cancer hazard identification and that the associated nephropathy is not an appropriate endpoint for determining noncancer risks in humans. This position was described in the proposed rule.

AIHA decided to develop a WEEL for d-limonene because of its widespread use and in order to peer review the positive National Toxicology Program (NTP) tumor results in male rat kidney. In fact, the 30 ppm, 8-hour time-weighted WEEL developed by the AIHA was not based on kidney toxicity for the same reason that the Agency has decided not to use the male rat kidney data. The WEEL value was developed based on no-observed-effect levels (NOELs) in the 2-year NTP study where liver effects were noted in male mice at 500 mg/kg and reduced survival was noted in female rats at 600 mg/kg. The NOELs for these effects were 250 mg/kg and 300 mg/kg, respectively (AIHA, WEEL, d-Limonene, 1993). As discussed in the proposal, EPA considered these data in concluding that a tolerance was not necessary to protect the public health.

The Agency agrees with the commenter that when d-limonene functions as an active ingredient in a product, it should be regulated as such. The exemption from tolerance for d-limonene applies to its use as an inert ingredient only. If it is determined that d-limonene is acting as an active ingredient, it will be regulated as an active ingredient.

The other commenter endorsed the proposed rule and requested that it be expanded to include the use of d-limonene as an inert ingredient in pesticide formulations applied to animals. The data submitted in the proposal and other relevant material have been evaluated and discussed in the proposed rule. As stated in the proposed rule, the Agency believes that the data on d-limonene demonstrate low toxicity. For this reason, the Agency will expand the exemption for d-limonene to include its use as a fragrance or solvent in pesticide formulations applied to animals. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order. Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 26, 1994.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraphs (c) and (e) by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
d-Limonene (CAS Reg. No. 5989-27-5)	....	Solvent, fragrance.
* * *	* *	* *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
d-Limonene (CAS Reg. No. 5989-27-5)		Solvent, fragrance.
* * * * * * *		

[FR Doc. 94-11194 Filed 5-9-94; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 1E4031/R2058; FRL-4777-2]

RIN 2070-AB78

Pesticide Tolerance for 3-Dichloroacetyl-5-(2-Furanyl)-2,2-Dimethyl-Oxazolidine (Mon 13900)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of MON 13900, 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine (CAS Reg. No. 121776-33-8), when used as an inert ingredient (safener) in or on field corn, grain and field corn, fodder and forage at 0.01 part per million (ppm). Monsanto Co. submitted a request to establish a maximum permissible level for residues of the inert ingredient in or on the commodities. These time-limited tolerances expire June 30, 1996.

EFFECTIVE DATE: This regulation becomes effective May 10, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1E4031/R2058], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346. Section 408 authorizes EPA to establish tolerance levels and exemptions from the requirements of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities.

Inert ingredients of pesticide chemicals are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

A policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), included data requirements which were to be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. The minimal ("base set") data requirements for inert ingredients were listed in that policy statement. It was also noted that, based upon the results of the "base set" studies, the Agency may elect to require additional data such as would be required under 40 CFR part 158 for an active ingredient. Included among these additional requirements are residue chemistry data which would support the establishment of a finite tolerance for the residues of an inert ingredient in raw agricultural commodities and/or processed foods.

In those cases where the toxicity of an inert ingredient is such that exposure to the inert ingredient must be restricted to assure that the use of the inert ingredient in a pesticide formulation does protect the public health, EPA will propose to establish a tolerance for residues of the inert ingredient on raw agricultural commodities.

II. Provisions of Rule

Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, submitted pesticide petition (PP) 1E4031 proposing to amend 40 CFR part 180 by establishing a regulation to establish negligible (N) residue tolerances for the safener MON 13900, 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine, in or on field corn, grain at 0.01 ppm (N) and field corn, fodder and forage at 0.01 ppm (N). A safener is a herbicidal antidote that protects desirous crops while allowing the herbicide to act on the intended weed targets. EPA issued a notice, published in the **Federal Register** of November 24, 1993 (58 FR 62123), announcing receipt of this petition. No comments were received in response to the notice.

The data submitted in the petitions and other relevant material have been evaluated. This inert ingredient is considered useful for the purpose for which the tolerance is sought. Toxicological, ecological, and environmental fate data were considered in evaluating this inert ingredient for use in pesticides. The data considered in support of the proposed tolerance include:

1. An acute rat oral toxicity study with an acute oral LD_{50} of 869 milligrams (mg)/kilogram (kg).

2. An acute rabbit dermal toxicity study with an acute dermal LD_{50} estimated to be >5,000 mg/kg.

3. A rabbit eye irritation study in which MON 13900 is determined to be a mild irritant to the ocular tissue of the rabbit.

4. An acute rat inhalation toxicity study with a 4-hour inhalation LC_{50} of >2.3 mg/L, the highest attainable concentration.

5. A rabbit primary dermal irritation study indicating that MON 13900 is a negligible dermal irritant.

6. A dermal sensitization study in guinea pigs indicating the MON 13900 does not produce delayed contact hypersensitivity.

7. A 21-day repeated-dose dermal toxicity study in rats with a no-observed effect level (NOEL) >1,000 mg/kg.

8. A 90-day rat oral toxicity study with a NOEL of 100 parts per million (ppm) or 7 mg/kg/day.

9. A 90-day dog oral toxicity study with a NOEL of 5 mg/kg/day.

10. A rat developmental effects study with a NOEL for maternal toxicity of 10 mg/kg/day and developmental toxicity of 10 mg/kg/day.

11. Mutagenicity studies including *in vivo/in vitro* unscheduled DNA synthesis in rat hepatocytes, Gene Mutation in Cultured Chinese Hamster Ovary Cells (CHO/HGPRT), *In Vivo* Micronucleus Assay in Mice were negative. Salmonella typhimurium/ mammalian microsome mutagenicity assay with and without metabolic activation indicated that MON 13900 induced a reproducible mutagenic response, but only at a high and precipitating dose.

A reference dose (RfD) has been established for this chemical at 0.005 mg/kg/day. This is based on the 90-day feeding study in dogs with a NOEL of 5.0 mg/kg/day, an uncertainty factor of 100 to account for inter-species and intra-species extrapolation, and an additional uncertainty factor of 10 to account for the extrapolation from subchronic to chronic exposure. The theoretical worst-case maximum residue contribution (TMRC) from the proposed tolerance is estimated to be 0.0000034 mg/kg-bwt (bodyweight)/day for the overall U.S. population, representing 0.07% of the RfD for MON 13900. The TMRC for the most highly exposed subgroup, nonnursing infants less than 1 year, is 0.0000009 mg/kg-bwt/day, or approximately 0.02% of the RfD.

This tolerance is being established as a time-limited tolerance because the Agency does not have final data from two chronic feeding/oncogenicity studies which are part of the toxicology data typically required to be submitted in support of a tolerance request. These studies will be required to be submitted to the Agency by June 30, 1995. When the Agency receives these chronic feeding/oncogenicity studies it will reassess the tolerance.

Preliminary information from the registrant has indicated that Mon 13900 can cause an increase in liver tumors in both sexes of rats and mice and an increase in lung tumors in female mice. The data are not available for a complete risk assessment but, nevertheless, certain conclusions can be reached. Based on the estimated exposure of 0.0000034 mg/kg/day, a rough estimate of the cancer potency from the preliminary data, and the limited duration of this tolerance, any potential cancer risk from this use would be negligible. Therefore, the Agency does not believe that this time-limited tolerance poses significant risks.

This tolerance will expire June 30, 1996. Residues not in excess of these tolerances will not be considered actionable if a pesticide containing this inert ingredient is legally applied during the term of a conditional registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended and in accordance with the acceptable labeling under a conditional registration. This tolerance will be revoked if any data indicate such revocation is necessary to protect the public health.

An analytical method for determination of the nature of the residue, gas-liquid chromatography using an electron-capture detector, has been reviewed by the Agency, and will be made available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. In the interim, the method will be available at the address given below. By mail: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

Based upon the above information considered by the Agency, the amendment to 40 CFR part 180 to establish the tolerance would protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 29, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.471 to subpart C, to read as follows:

§ 180.471 3-Dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine; tolerances for residues.

Tolerances, to expire June 30, 1996, are established for residues of 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine (CAS Reg. No. 121776-33-8) when used as an inert ingredient (safener) in pesticide formulations in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Corn, fodder (field).	0.01	June 30, 1996.
Corn, forage (field).	0.01	June 30, 1996.
Corn, grain (field).	0.01	June 30, 1996.

[FR Doc. 94–11192 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 180, 185, and 186

[PP 4F3103, FAP 3H5654/R2055; FRL–4775–3]

RIN 2070–AB78

Pesticide Tolerances for Methoprene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the insecticide methoprene in or on various agricultural commodities. Zoecon Corp., A Sandoz Co., requested this regulation to establish the maximum permissible levels of methoprene in or on the commodities. This document also deletes certain obsolete food additive tolerances for methoprene.

EFFECTIVE DATE: This regulation becomes effective May 10, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 4F3103, FAP 3H5654/R2055], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 11, 1994 (59 FR 11570), EPA proposed to delete an expired, temporary food additive tolerance of 10 parts per million (ppm) for residues of the insecticide methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes resulting from applictions of methoprene in accordance with the provisions of an experimental use permit that expired September 21, 1986. The tolerance was established under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) and appears in chapter I of title 40 of the Code of Federal Regulations (40 CFR 185.4150(b)). This temporary tolerance was established with issuance of an experimental use permit (EUP) and expired on September 21, 1986. The tolerance is obsolete, and EPA is removing it.

In the same **Federal Register** proposed rule (59 FR 11570, March 11, 1994), EPA described the submission of pesticide petition (PP) 4F3103 and food additive petition (FAP) 3H5654 from Zoecon Corp., A Sandoz Co., and proposed to establish tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for the insecticide methoprene in or on various agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 20, 1994.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.359, to read as follows:

§ 180.359 Methoprene; tolerances for residues.

Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley	5.0
Buckwheat	5.0
Cattle, fat	1.0
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Corn (except popcorn and sweetcorn)	5.0
Eggs	0.1
Goats, fat	1.0
Goats, meat	0.1
Goats, meat byproducts	0.1
Hogs, fat	1.0
Hogs, meat	0.1
Hogs, meat byproducts	0.1
Horses, fat	1.0
Horses, meat	0.1
Horses, meat byproducts	0.1
Milk	0.1
Millet	5.0
Mushrooms	1.0
Oats	5.0
Peanuts	2.0
Peanut hulls	40.0
Poultry, fat	1.0
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Rice	5.0
Rye	5.0
Sheep, fat	1.0
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sorghum (milo)	5.0
Wheat	5.0

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.4150, by revising paragraph (b), to read as follows:

§ 185.4150 Methoprene.

* * * * *

(b) A tolerance of 10 parts per million is established for residues of isopropyl ((E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

PART 186—[AMENDED]

3. In part 186:

Authority: 21 U.S.C. 348.

b. In § 186.4150, by adding new paragraph (d), to read as follows:

§ 186.4150 Methoprene.

* * * * *

(d) Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following feed additive commodities:

Feed	Parts per million
Cereal grain milled fractions (except flour and rice hulls)	10
Rice hulls	25

[FR Doc. 94-11197 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 93-063]

Vessel Rebuild Standards

AGENCY: Coast Guard, DOT.

ACTION: Policy statement.

SUMMARY: The Coast Guard is planning to undertake rulemaking to develop standards for vessel rebuild determinations. In order to help it determine the scope of the issues involved, the Coast Guard conducted two public meetings, the first on November 16, 1993, and the second on February 15, 1994. At the meetings, attendees discussed problems encountered under existing procedures and expressed confusion concerning the Coast Guard's current rebuild standard. This notice states the Coast Guard's regulatory standard for rebuild determinations and related practices and procedures.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch at (202) 267-1492.

SUPPLEMENTARY INFORMATION: Under 27 of the Merchant Marine Act, 1920 (46 U.S.C. app. 883), a vessel entitled to engage in the coastwise trade by virtue of having been built in the United States which is later rebuilt outside the United States, loses its eligibility to engage in the coastwise trade. Under 46 U.S.C. 12106, a vessel not eligible for the coastwise trade cannot receive a Great Lakes endorsement on its Certificate of Documentation. In addition, under 46 U.S.C. 12108, a fishing vessel which has been rebuilt outside the United States and which does not qualify for the rebuild savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, is not eligible for a fishery endorsement on its Certificate of Documentation.

In accordance with the Coast Guard's regulatory standard, a vessel is rebuilt when "any considerable part of its hull or superstructure is built upon or is substantially altered." Prior to September 1989, the Coast Guard evaluated whether work performed on a vessel constituted a rebuilding under that standard by focusing on whether the nature of the work was structural or nonstructural. In September 1989, the Coast Guard issued a rebuild determination for work performed on the vessel *Monterey*. The *Monterey* decision analyzed and explained the Coast Guard's regulatory standard as a two step process. The first step in applying the standard is to identify that work which involves building upon or alteration of the hull or superstructure. Once the relevant work has been identified, the second step is to determine whether that work involves a considerable part of the hull or superstructure. If it does, then the vessel has been rebuilt. A determination that a vessel has been rebuilt, if the rebuilding was done outside the U.S., results in a permanent loss of the eligibility of the vessel to engage in the restricted trades, with a commensurate loss in value. Effective January 1, 1994, the Coast Guard's regulatory standard for rebuild determinations is found in 46 CFR 67.177. (See final rule published in the **Federal Register** issue of Monday, November 15, 1993, page 60256.)

As a result of the regulatory requirement, the Coast Guard frequently receives applications for preliminary determinations that work to be performed on a vessel does not constitute a rebuilding. In support of an application for a rebuild determination, the applicant will generally enclose extensive documentation addressing the character and scope of the work to be performed including plans, drawings, contracts, work orders, and materials lists. The applicant will then attempt to show that the work will not build upon or "substantially" alter "any considerable part" of the vessel's hull or superstructure. Often, comparisons are made between the before and after area of the hull and superstructure; the weight of steel to be replaced or added will be compared to the vessel's total steelweight; or the cost of the planned work will be compared to the value of the vessel. Sometimes, the vessel representative submits no documentation until after the work is performed, which assumes the risk that the Coast Guard may determine that the vessel has been rebuilt, with the disastrous consequence of loss of trading entitlements. In other cases, the work actually done on the vessel differs from or exceeds the planned work, with possible adverse effects on the final determination. In any event, following completion of the work the vessel representative applies for a final determination.

The Coast Guard is planning to initiate rulemaking to develop standards for determining when work on a vessel constitutes a rebuilding and to define the terms involved in rebuild determinations. In support of the decision to initiate a rulemaking, the Coast Guard conducted a review of its rebuild determinations since the *Monterey* decision. The Coast Guard's experience has been that work performed on a vessel which involved five percent or less of the vessel's steelweight has never been determined to constitute a rebuilding. Barring unusual circumstances, the Coast Guard anticipates that this trend will continue. However, pending publication of a final rule on this matter, the Coast Guard will adhere to the published regulatory standard and will continue to follow its current practice of making case-by-case determinations as described above.

Dated: April 18, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-11223 Filed 5-9-94; 8:45 am]

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Proposed Rules

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AF74

Federal Employees Health Benefits Program: Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: These regulations propose a number of changes to the Federal Employees Health Benefits (FEHB) Program. The changes would improve the administration of the FEHB Program and result in better service to enrollees.

DATES: We must receive comments on or before July 11, 1994.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 707, Washington, DC 20044, or deliver to OPM, room 3415, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco, (202) 606–0191.

SUPPLEMENTARY INFORMATION: These regulations would enhance the administration of the Federal Employees Health Benefits (FEHB) Program and improve service to enrollees by:

1. Clarifying that the last day of Open Season will be the Monday of the second full workweek in December, instead of the Friday of the first full workweek in December. This clarification is necessary because the second full workweek in November includes the Veterans Day holiday.

2. Giving retirement system staff the discretion to allow retirees to make FEHB coverage changes by other methods, such as telephone requests. Current policy requires retirees to fill out registration forms to make coverage changes. Allowing retirees to request FEHB coverage changes by telephone would result in the coverage changes taking effect sooner by eliminating the time spent requesting, completing, and returning a form. Retirees must still provide proof, satisfactory to the retirement system staff, that they meet the requirements to make the coverage change.

The ability to use methods other than a registration form to make FEHB coverage changes is limited to retirees because of two significant distinctions between retirees and employees. The first distinction is that the vast majority of retirees cannot quickly obtain and then submit registration forms because of the limited number of retirement system worksites. For example, retirees in the Civil Service Retirement System or the Federal Employees Retirement System who do not live near worksites in either Washington, DC or Boyers, Pennsylvania must wait for the registration form to be mailed to them and then wait for the completed form to be returned to the retirement system staff before the change in coverage can become effective. In comparison, most employees can easily obtain and submit registration forms to the office responsible for their health benefits actions because the office is located near the employee's worksite.

The second distinction is that employees must complete and sign registration forms to document their FEHB coverage during the course of their Federal employment. Retirement systems staff use the completed registration forms to determine whether the employee was covered by an FEHB plan during his or her last 5 years of employment. The employee must meet the 5 year requirement to continue his or her FEHB coverage into retirement. In contrast, once the retirement system staff determines a retiree meets the 5 year requirement and can continue his or her FEHB coverage into retirement there is no longer a need to document the retiree's FEHB coverage through signed registration forms.

3. Allowing a legally separated employee or annuitant covered as a family member under his or her spouse's FEHB enrollment to enroll in FEHB for self only or self and family coverage.

Current policy allows dual enrollment only to ensure all family members have FEHB coverage. For example, if two employees who are married to each other both have children from prior marriages who do not live with them, then both employees need to enroll for self and family coverage to provide FEHB coverage for all their children.

Under this regulation most couples who are legally separated will decide not to have two self and family enrollments because one self and family enrollment covers both spouses and all of their eligible children and is less expensive. However, in a limited number of cases, circumstances will lead the covered spouse to enroll for FEHB coverage in his or here own right. One example is when separation resulted in the covered spouse moving out of the service area of a comprehensive medical plan and the spouse carrying the enrollment refused to switch to a different plan. The covered spouse would find it very difficult to obtain covered health care. Another example is when the spouse finds it very difficult to obtain reimbursement for medical payments under a fee-for-service plan, because reimbursements are sent to the spouse carrying the enrollment.

The proposed regulations would not allow dual coverage. Each enrollee would have to notify the insurance carrier of the names of family members covered under his or her enrollment that are not covered under the other enrollment.

4. Extending to certain employees the option of reinstating FEHB coverage upon retirement. This option would be available to employees whose employing office terminated their FEHB enrollment because they entered on duty in a uniformed service, and who retire on an immediate annuity from their Federal civilian position while on such duty. The individual must make the request for reinstatement to the retirement system within 60 days after his or her retirement. If the individual does not exercise this option, the retirement system will automatically reinstate the FEHB enrollment on the day the person separates from the uniformed service. In either case, reinstatement will only take place if the Federal retiree meets the 5-year requirement for continuing FEHB coverage into retirement. Currently, retirement systems can reinstate the FEHB enrollment only on the day the person separates from the uniformed service.

5. Permitting retirees, whose entire annuity or compensation has been

waived or suspended, to pay FEHB premiums directly to the retirement system or the Office of Workers' Compensation Programs (OWCP) for any period of waiver or suspension which is 3 months or more. Currently, a retiree's FEHB coverage terminates when the period of the waiver or suspension exceeds 3 months. The retirement system or OWCP automatically reinstates FEHB coverage on a prospective basis when annuity or compensation payments resume. The proposed rule provides better service to retirees by allowing them to continue their FEHB coverage when their annuity or compensation is waived or suspended for more than 3 months.

6. Establishing a requirement that agencies counsel employees entering leave without pay status, or whose pay is insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. These regulations are intended to ensure employees are fully aware of these alternatives. Furthermore, because the regulations establish a procedure under which the employee voluntarily arranges to have the debt recovered from salary in a specified amount after returning to duty or after salary increases to cover the amount of the health benefits contributions, the involuntary offset provisions of 5 U.S.C. 5514 and subpart K of 5 CFR part 550 do not apply.

7. Deleting the sentence in section 890.701 that lists the States determined to be "medically underserved areas" effective January 1, 1988, because the list is out of date. Since 1988, the list of States determined to be "medically underserved areas" for each contract year have been published on an annual basis in a notice in the **Federal Register**.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.101, the definition of *Register* is revised to read as follows:

§ 890.101 Definitions; time computations.

* * * * *

Register means to file with the employing office a properly completed health benefits registration form, either electing to be enrolled in a health benefits plan or electing not to be enrolled. Retirement systems may accept alternative means, such as telephone requests, in substitution of a properly completed health benefits registration form. *Register to enroll* means to register an election to be enrolled. *Enrolled* means a valid registration form has been accepted by the employing office, or an alternative method has been accepted by the retirement system, and the enrollment in a health benefits plan approved by OPM under this part has not been terminated or cancelled.

§ 890.301 [Amended]

3. In § 890.301, paragraph (c) is amended by removing "§ 890.304(a)(4)" and adding in its place "§ 890.304(a)(5)"; paragraph (d)(1) introductory text is amended by removing "through the Friday of the first full work-week in December" and adding in its place "through the Monday of the second full workweek in December".

4. In § 890.302, paragraph (a)(2) is revised, and paragraph (a)(3)(i) is amended by adding the words "or legally separated" after the word "divorced", to read as follows:

§ 890.302 Coverage of family members.

(a) * * *

(2) *Dual enrollment—spouse.* (i) To protect the interests of the children, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though is or her spouse also has a self and family enrollment. Generally, such dual enrollments are permitted only where two employees or annuitants are married, each with children from prior marriages who do not live with them, or are legally separated, with each spouse retaining custody of his or her own children by a prior marriage. To ensure that no person receives benefits under more than one enrollment, each enrollee must tell the insurance carrier which family members are covered under his or her enrollment. These individuals are not covered under the other enrollment.

(ii) To protect the interests of legally separated Federal employees, annuitants and their children, a legally separated employee or annuitant may enroll in his or her own right in a self only or self and family enrollment even though his or her spouse also has a self and family enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must tell the insurance carrier which family members are covered under his or her enrollment. These individuals are not covered under the other enrollment.

* * * * *

5. In § 890.305, paragraph (b) is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

* * * * *

(b) An employee whose employing office terminates his or her enrollment because his or her order to enter on duty in a uniformed service is for a period longer than 30 days, and who retires on an immediate annuity from his or her Federal civilian position while on such duty, may reinstate his or her enrollment by asking to do so within 60 days after retirement. In the absence of such a request, the retirement system automatically reinstates the enrollment on the day the person separates from the uniformed service. For the retirement system to reinstate the enrollment, the individual must have been covered under this part since his or her first opportunity or for the 5 years of civilian service (excluding the period of uniformed service) immediately preceding the civilian retirement, whichever is shorter.

6. Section 890.307 is revised to read as follows:

§ 890.307 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraphs (b) and (f) of this section, when annuity or compensation is entirely waived or suspended, the annuitant's enrollment continues for not more than 3 months (not more than 12 weeks for annuitants whose compensation under subchapter I of chapter 81 of title 5, United States Code, is paid each 4 weeks). If the waiver or suspension continues beyond this period, the employing office will notify the annuitant in writing that the employing office will terminate the enrollment effective at the end of the period, subject to the temporary extension of coverage for conversion, unless the annuitant elects to make payment of the premium directly to the employing office during the period of waiver. If the annuitant elects to have the enrollment terminated, the employing office automatically reinstates the enrollment on a prospective basis when the annuitant again receives payment of annuity or compensation. The employing office will make the withholding for the period of suspension or waiver during which enrollment was continued (i.e., 3 months or less).

(b) If the annuitant elects to pay premiums directly, he or she must send to the employing office his or her share of the subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. The annuitant must pay after each pay period he or she is covered in accordance with a schedule established by the employing office. If the employing office does not receive payment by the date due, the employing office will notify the annuitant by certified mail return receipt requested that coverage will continue only if payment is made within 15 days after receipt of the notice. The employing office will terminate the enrollment of an annuitant who fails to pay within the specified time frame. The employing office will automatically reinstate the enrollment on a prospective basis when payment of annuity or compensation resumes.

(c) If the annuitant is prevented by circumstances beyond his or her control from paying within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the employing office. The annuitant must file the request within 30 calendar days from the date of termination, and must include supporting documentation. The employing office will determine if the annuitant is eligible for reinstatement of coverage; and, when the determination is affirmative, reinstate the coverage of the annuitant retroactive to the date of termination. If the determination is negative, the annuitant may request a review of the decision as provided in § 890.104.

(d) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (b) of this section is retroactive to the end of the last period for which the employing office timely received payment.

(e) The employing office will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by that office.

(f) If suspension of annuity or compensation is because of reemployment, the reemploying office must make the withholding currently and enrollment continues during reemployment.

7. In § 890.502, the heading, paragraphs (a), (b), (c), and (d) are revised; paragraphs (e), (f), and (g) are removed; and paragraph (h) is redesignated as paragraph (e), to read as follows:

§ 890.502 Employee withholdings and contributions and direct payment of premiums.

(a) *Employee and annuitant withholdings and contributions.* (1) Except as provided in paragraph (a)(2) of this section, an employee or annuitant is responsible for payment of the employee share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee withholding required for each pay period that health benefits withholdings or direct premium payments are not made but during which the enrollment continues.

(2) An individual is not required to pay withholdings for the period between the end of the pay period in which he or she separates from service and the commencing date of an immediate annuity, if later.

(3) Temporary employees who are eligible to enroll under 5 U.S.C. 8906a must pay the full subscription charges including both the employee share and the Government contribution. Employees with provisional appointments under § 316.403 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

(4) The employing office must determine the withholding for employees whose annual pay is paid during a period shorter than 52 workweeks on an annual basis and prorate the withholding over the number of installments of pay regularly paid during the year.

(5) The employing office must make the withholding required from enrolled survivor annuitants in the following order. First, withhold from the annuity of a surviving spouse, if any. If that annuity is less than the withholding required, the employing office must make the withholding to the extent necessary from the annuity of the children, if any, in the following order. First, withhold from the annuity of the youngest child, and if necessary, then from the annuity of the next older child, in succession, until the withholding is satisfied.

(6) Surviving spouses in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants whose health benefits premiums exceed the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office in accordance with procedures set out in paragraph (d) of this section.

(b) *Procedures when employee enters LWOP status or pay is insufficient to cover premium.* (1) The employing office must counsel employees concerning the health benefits options available to them when the premium payments cannot be made either because the employees will be entering leave-without-pay status or because the employees' pay is insufficient to cover the premiums.

(2) Employees must elect in writing either to continue health benefits coverage or terminate it. If they elect to continue coverage, they must—

(i) Agree to pay the premium directly to the agency on a current basis, or

(ii) Agree to have the accrued premiums deducted from salary in a specified amount upon returning to employment, or upon pay becoming sufficient to cover the premiums.

(3) If an employee does not return to work or the employing office cannot recover the debt in full from salary, it may recover the debt from whatever other sources it normally has available for recovery of a debt to the United States.

(c) *Procedures when an agency under withholds.* (1) An agency that withholds less than or none of the proper health benefits contributions from an individual's pay, annuity, or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of title 5, United States Code, to OPM for deposit in the Employees Health Benefits Fund.

(2) The agency must make the deposit to OPM described in paragraph (c)(1) of this section as soon as possible, but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when

the agency recovers the underdeduction. A subsequent agency determination whether to waive collection of the overpayment of pay caused by failure to properly withhold employee health benefits contributions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR chapter I, subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

(d) *Direct premium payments for annuitants.* (1) If an annuity, excluding an annuity under Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium due or if a surviving spouse receives a basic employee death benefit, the retirement system will provide information to the annuitant regarding the available plans and notify him or her in writing of the opportunity to either: register to be enrolled in any plan in which the enrollee's share of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system.

(2) The retirement system must establish a method for accepting direct payment for health benefits premiums from surviving spouses who have received or are currently receiving basic employee death benefits as well as from annuitants whose annuities are too low to cover their health premiums. The annuitant must continue to make direct payment of the health benefits premium even if the annuity increases to the extent that it covers the premium.

(3) The surviving spouse or annuitant must pay to the retirement system his or her share of the premium for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. The surviving spouse or annuitant must pay after each pay period in which he or she is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the surviving spouse or annuitant by certified mail return receipt requested that coverage will continue only if payment is made within 15 days after receipt of the notice. The retirement system will terminate the enrollment of a surviving spouse or annuitant who fails to pay within the specified time frame. A surviving spouse or annuitant whose enrollment is terminated because of nonpayment of premium may not reenroll or reinstate coverage, except as provided in paragraph (d)(4) of this section.

(4) If the surviving spouse or annuitant is prevented by circumstances beyond his or her control from paying within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. The surviving spouse or annuitant must file the request within 30 calendar days from the date of termination, and must include supporting documentation. The retirement system will determine if the surviving spouse or annuitant is eligible for reinstatement of coverage; and, when the determination is affirmative, reinstate the coverage of the surviving spouse or annuitant retroactive to the date of termination. If the determination is negative, the individual may request a review of the decision as provided in § 890.104.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (d)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by that office.

* * * * *

§ 890.701 [Amended]

8. Section 890.701 is amended by removing the last sentence of the definition of Medically underserved area.

§ 890.808 [Amended]

9. In § 890.808, paragraph (a) is amended by removing "§ 890.805(d)" and adding in its place "§ 890.805(b)" and by removing "§ 890.805(e)" and adding in its place "§ 890.805(c)".

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF03

Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement Public Law 101–508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately $513 million.

DATES: The comment period expires June 9, 1994. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101–508 requires that NRC collect the FY 1994 fees by September 30, 1994, requests for extensions of the comment period will not be granted.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–504–1678).

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4301.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Environmental Impact: Categorical Exclusion.
V. Paperwork Reduction Act Statement.
VI. Regulatory Analysis.
VII. Regulatory Flexibility Analysis.
VIII. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed include the review of applications for the issuance of new licenses or approvals, amendments to or renewal of licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published five final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR part 170 hourly rate and fees and the 10 CFR part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties; the U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR part 171 lowered in some cases the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), the NRC published final rules in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992 and FY 1993 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669–72). The NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. In response to the March 16, 1993 judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided in nonprofit institutions. The Commission denied that request on March 17, 1994, (59 FR 12555).

Section 2903(c) of the Energy Policy Act of 1992 required the NRC to undertake a broad review of its annual fee policies under section 6101(c) of OBRA–90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC found were needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees for FY 1994. OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1994 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection, and annual fees.

For FY 1994, the NRC's budget authority was originally $547.7 million. The Commission, in its effort to streamline operations, proposed a $12.7 million rescission to the original appropriation for FY 1994. Congress approved this NRC proposed reduction resulting in a revised budget authority of $535.0 million. Approximately $22.0 million of the revised budget was appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $513.0 million in FY 1994 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount for FY 1994 is about $6 million less than the total amount for FY 1993. The NRC estimates that approximately $116.2 million will be recovered in FY 1994 from the fees assessed under 10 CFR part 170. The remaining $396.8 million will be recovered through the 10 CFR part 171 annual fees established for FY 1994.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666) with the following exceptions. The Commission has reinstated the annual fee exemption for nonprofit educational institutions. In this proposed rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licenses that they support. As a result of this direct assignment, the cost per direct FTE is about 3% less than it would have been without the additional direct assignment.

The NRC contemplates that any fees to be collected as a result of this proposed rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1994, as stipulated in the Public Law. Therefore, as in FY 1991, FY 1992, and FY 1993, the fees, if adopted, will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the FY 1994 rule, which is estimated to be August 1, 1994.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes four amendments to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the NRC proposes that the agency-wide professional hourly rate, which is used to determine the part 170 fees, be increased from $132 per hour to $133 per hour ($231,216 per direct FTE). The rate is based on the FY 1994 direct FTEs and that portion of the FY 1994 budget that is not direct program support (contractual services costs) and not recovered through the appropriation from the NWF. As indicated earlier, the decrease in the FY 1994 budget compared to the FY 1993 budget is primarily for direct program support which is not included in the hourly rate. Thus, the reduction in the budget has limited impact on the hourly rate but will show as a direct reduction to the amount allocated to the various classes of licensees.

Second, the NRC proposes that the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees be adjusted to reflect the very small increase in the hourly rate.

Third, the NRC is also proposing to revise the definition of special projects as provided in § 170.3 of the regulations. This change is proposed because of (1) our experience in implementing the 100 percent fee recovery program during the past three years and (2) the NRC's most recent fee policy review that was required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR part 171 annual fees rather than assessing specific fees under 10 CFR part 170. These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulatory guides and policy statements), and resolution of safety issues applicable to a class of licensees such as those addressed in generic letters. Therefore, the NRC proposes that the definition in § 170.3 as well as the footnotes in §§ 170.21 and 170.31 be revised to indicate that 10 CFR part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

Fourth, the NRC is proposing to amend Category 16 of § 170.31, reciprocity, to include a fee to recover the costs expended by the NRC for the review of revisions to the information submitted on the NRC Form 241 filed by 10 CFR 150.20 general licensees during the remainder of the calendar year. Persons engaging in activities in a non-Agreement State under the reciprocity provisions of § 150.20 are required to file an NRC Form 241 for the initial application in a calendar year. Revisions to the initial NRC Form 241 are filed for review and authorization in lieu of filing additional Forms 241 when persons using the 10 CFR 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

B. Amendments to 10 CFR part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes six amendments to 10 CFR Part 171. First, the NRC is proposing to amend § 171.11(a)(2) to provide that State-owned research reactors used primarily for education and training and academic research purposes will be exempt from the annual fee. The NRC believes that this proposed change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and research purposes.

Second, NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1994 to recover approximately 100 percent of the FY 1994 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Third, NRC proposes to amend fee Category 18 of § 171.16(d) to assess fees to the Department of Energy (DOE) for the general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Pub. L. 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481, July 10, 1991). As a result, DOE would be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Since DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC proposes to assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Fourth, the NRC is proposing to amend 10 CFR 171.17 to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees would be prorated based on applications filed after October 1 of the fiscal year either to reduce the scope of a license or to terminate a license. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to downgrade the license or terminate the license would pay one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications on or after April 1 of the fiscal year to downgrade or terminate a license would pay the full annual fee. Those licensees who file for termination or downgrade must also permanently cease operations of those licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses or licenses of increased scope during the fiscal year would also be charged a prorated annual fee based on the date of issuance of the new license or license amendment increasing its scope. New materials licenses issued during the period October 1 through March 31 would be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee category(ies). New licenses issued on or after April 1 would not be assessed an annual fee.

In addition, materials licenses amended during the period from October 1 through March 31 to increase the scope would be assessed one-half the annual fee for the new fee category(ies). Materials licenses amended on or after April 1 to increase the scope of the license would not be assessed the annual fee for the new fee category(ies).

The NRC proposes to amend the proration provision in § 171.17 applicable to reactors to provide that for licensees who have requested amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession only license was issued or the license was terminated.

Fifth, the NRC is proposing to modify Footnote 1 of 10 CFR 171.16(d) to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage license prior to October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993, would be subject to FY 1994 annual fees. This change is in recognition of the fact that since the final FY 1993 rule was published in July 1993, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1993 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1993. Similar situations existed after the FY 1991 and FY 1992 rules were published, and in those cases NRC provided an exemption from the requirement that the annual fee is waived only where a license is terminated before October 1 of each fiscal year.

Sixth, the NRC is proposing to amend § 171.19 to credit the quarterly partial payments already made by certain licensees in FY 1994 either toward their total annual fee to be assessed or to make refunds, if necessary.

The proposed 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991, FY 1992, and FY 1993 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The proposed amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec., at H12692–93).

During the past three years, many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainties regarding agency policy on this issue, the NRC amended 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993.

C. FY 1994 Budgeted Costs

The FY 1994 budgeted costs, by major activity, to be recovered through 10 CFR parts 170 and 171 fees, are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY

(Dollars in-millions)

Recovery method	Estimated amount
Nuclear waste fund	$22.0
Part 170 (license and inspection fees)	116.2
Other receipts	.1
Part 171 (annual fees):	
Power reactors	306.0
Nonpower reactors	.4
Fuel facilities	16.8
Spent fuel storage	2.2
Uranium recovery	2.1
Transportation	4.0
Material users	[1] 38.6
Subtotal part 171	370.1
Costs remaining to be recovered not identified above	$26.6
Total	535.0

[1] Includes $6.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The NRC is proposing that the $26.6 million identified for those activities which are not identified as either 10 CFR Parts 170 or 171 or the NWF in Table I be distributed among the classes of licensees as follows:

$24.4 million to operating power reactors;

$.7 million to fuel facilities; and

$1.5 million to other materials licensees.

In addition, approximately $6.3 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1994 budget authority in accordance with OBRA–90, the NRC is proposing to recover $5.3 million of the $6.3 million from operating power reactors and the remaining $1.0 million from other nonreactor entities that do not meet NRC small entity size standards.

This distribution results in an additional charge (surcharge) of approximately $275,000 per operating power reactor; $55,600 for each HEU, LEU, UF_6 and each other fuel facility license; $1,500 for each materials license in a category that generates a significant amount of low level waste; and $170 for other materials licenses. When added to the base annual fee of approximately $2.8 million per reactor, this will result in an annual fee of approximately $3.1 million per operating power reactor. The total fuel facility annual fee would be between approximately $1.2 million and $3.2 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

The proposed additional charges not directly or solely attributable to a specific class of NRC licensees and costs not recovered from all NRC licensees on the basis of previous Commission policy decisions would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in Section III of this proposed rule.

III. Section-by-Section Analysis

The following analysis of those sections that are affected under this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.3 Definitions

This section would be amended to revise the definition of special projects. This proposed change is based on our experience during the past three years in implementing the 100 percent fee recovery program and the fee policy review required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees instead of assessing specific fees under 10 CFR Part 170. Therefore, it is proposed that the definition in § 170.3, as well as the footnotes in §§ 170.21 and 170.31, be revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

Section 170.20 Average Cost per Professional Staff Hour

This section would be amended to reflect an agency-wide, professional staff-hour rate based on FY 1994 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1994 for all fee categories that are based on full cost is $133 per hour, or $231,216 per direct FTE. The rate is based on the FY 1994 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991, FY 1992, and FY 1993. The method is as follows:

1. All direct FTEs are identified in Table II by major program. It is noted that for FY 1994 the NRC has traced additional direct effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The cost for these activities had previously been included in overhead, but are now being directly assigned to the class of licensees that they support.

TABLE II.—ALLOCATION OF DIRECT FTEs BY MAJOR PROGRAM

Major program	Number of direct FTEs[1]
Reactor Safety & Safeguards Regulation	1,034.4
Reactor Safety Research	111.3
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	352.5
Reactor Special and Independent Reviews, Investigations, and Enforcement	111.7
Nuclear Material Management and Support	19.0
Total direct FTE	[2]1,628.9

[1] FTE (full time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:

(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct program support, which is the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining $376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of $231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is $133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities."

TABLE III.—FY 1994 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$259.5
Administrative support	86.7
Travel	15.9
Total nonprogram support obligations	362.1
Program support	150.9
Total Budget Authority	513.0
Less direct program support and offsetting receipts	136.4
Budget Allocated to Direct FTE	376.6
Professional Hourly Rate	133

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect the FY 1994 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule would be assessed at the FY 1994 rate shown in § 170.20. The amount of the import and export licensing fees in § 170.21, facility Category K, has not changed from FY 1993 as a result of the very small increase in the hourly rate from $132 per hour to $133 per hour. Although the amount of the fees did not change, they are being published for purposes of convenience.

For those applications currently on file and pending completion, the NRC is proposing to revise footnote 2 of § 170.21 to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section would be modified to recover the FY 1994 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are adjusted to reflect the very small increase in the professional hourly rate from $132 per hour in FY 1993 to $133 per hour in FY 1994. In many cases, the fees for FY 1994 are the same as those assessed in FY 1993.

The amounts of the licensing and inspection flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The proposed fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

The NRC is proposing to amend Category 16, reciprocity, to include a fee to recover the costs incurred by the NRC for the review of revisions to the information submitted on the NRC Form-241 filed by the 10 CFR 150.20 general licensees during the remainder of the calendar year. Persons engaging in activities in a non-Agreement State under the reciprocity provision of § 150.20 are required to file an NRC Form 241 for the initial application in a calendar year. Revisions to the initial NRC Form 241 are filed for review and authorization in lieu of filing additional Forms 241 when persons using the 10 CFR 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $133, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Part 171

Section 171.11 Exemptions

Paragraph (a)(2) of this section would be amended to exempt State-owned reactors used primarily for educational training and research purposes from annual fees. The NRC believes that this proposed change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and research purposes. There is one research reactor, owned by the Rhode Island Atomic Energy Commission, that would be exempt under this proposed amendment to § 171.11.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised to reflect FY 1994 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) would be revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1994. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1994 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor safety and safeguards regulation (RSSR):				
Standard reactor designs	$9,531	96.3	$9,361	92.8
Reactor license renewal	600	33.9	600	33.9
Reactor and site licensing	1,810	34.7	1,810	29.8
Resident inspections		207.0		207.0
Region-based inspections	2,780	235.0	2,780	229.8
Interns (HQ and regions)		23.0		23.0
Special inspections	970	42.7	970	42.7
License maintenance and safety evaluations	4,142	208.5	4,142	208.5
Plant performance	927	52.1	927	52.1
Human performance	4,760	54.7	4,403	51.1
Other safety reviews and assistance	3,443	46.5	3,213	38.8

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES[1]—Continued

	Program element total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
RSSR program total	....	....	28,206	1,009.5
Reactor safety research (RSR):				
Standard reactor designs	16,676	29.3	16,676	29.3
Reactor aging and license renewal	23,273	13.7	22,573	13.6
Plant performance	3,173	4.2	3,173	4.2
Human reliability	4,428	7.0	4,428	7.0
Reactor accident analysis	20,284	26.7	20,284	26.7
Safety issue resolution and regulatory improvements	10,240	30.4	10,240	30.4
RSR program total	....	....	77,374	111.2
Nuclear material and low level (NMLL)				
NMLL (NMSS):				
Fuel cycle safety and safeguards	4,783	85.8	1,494	2.8
LLW licensing and inspection	592	14.3	....	1.4
Uranium recovery licensing and inspection	265	14.4	21	0
Decommissioning	2,215	30.8	[illegible]	6.7
NMLL (RES):				
Environmental policy and decommissioning	2,410	9.0	964	3.6
NMLL program total	....	....	2,488	14.5
Reactor special and independent reviews, investigations, and enforcement				
AEOD:				
Diagnostic evaluations	288	5.0	288	5.0
Incident investigations	26	1.0	26	1.0
NRC incident response	1,854	26.0	1,854	24.0
Operational experience evaluation	5,447	30.0	5,447	29.0
Committee to review generic requirements	....	2.0	....	2.0
AEOD subtotal	....	....	7,615	61.0
Advisory committee on reactor safeguards	....	....	181	20.5
Office of investigations	....	....	....	17.0
Office of enforcement	....	....	10	7.0
RSIRIE program total	....	....	7,806	105.5
Total base fee amount allocated to power reactors	....	....	402.7 million[2]	....
Less estimated part 170 power reactor fees	....	....	96.7 million	....
Part 171 base fees for operating power reactors	....	....	306.0 million	....

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1994 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR large dry containment	$2,841,000
2. Beaver Valley 2	......do	2,841,000
3. Braidwood 1	......do	2,841,000
4. Braidwood 2	......do	2,841,000
5. Byron 1	......do	2,841,000
6. Byron 2	......do	2,841,000
7. Callaway 1	......do	2,841,000
8. Comanche Peak 1	......do	2,841,000
9. Comanche Peak 2	......do	2,841,000
10. Diablo Canyon 1	......do	2,839,000
11. Diablo Canyon 2	......do	2,839,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
12. Farley 1	......do	2,841,000
13. Farley 2	......do	2,841,000
14. Ginna	......do	2,841,000
15. Haddam Neck	......do	2,841,000
16. Harris 1	......do	2,841,000
17. Indian Point 2	......do	2,841,000
18. Indian Point 3	......do	2,841,000
19. Kewaunee	......do	2,841,000
20. Millstone 3	......do	2,841,000
21. North Anna 1	......do	2,841,000
22. North Anna 2	......do	2,841,000
23. Point Beach 1	......do	2,841,000
24. Point Beach 2	......do	2,841,000
25. Prairie Island 1	......do	2,841,000
26. Prairie Island 2	......do	2,841,000
27. Robinson 2	......do	2,841,000
28. Salem 1	......do	2,841,000
29. Salem 2	......do	2,841,000
30. Seabrook 1	......do	2,841,000
31. South Texas 1	......do	2,841,000
32. South Texas 2	......do	2,841,000
33. Summer 1	......do	2,841,000
34. Surry 1	......do	2,841,000
35. Surry 2	......do	2,841,000
36. Turkey Point 3	......do	2,841,000
37. Turkey Point 4	......do	2,841,000
38. Vogtle 1	......do	2,841,000
39. Vogtle 2	......do	2,841,000
40. Wolf Creek 1	......do	2,841,000
41. Zion 1	......do	2,841,000
42. Zion 2	......do	2,841,000
43. Catawba 1	PWR—Ice condenser	2,840,000
44. Catawba 2	......do	2,840,000
45. Cook 1	......do	2,840,000
46. Cook 2	......do	2,840,000
47. McGuire 1	......do	2,840,000
48. McGuire 2	......do	2,840,000
49. Sequoyah 1	......do	2,840,000
50. Sequoyah 2	......do	2,840,000
Combustion engineering:		
1. Arkansas 2	PWR large dry containment	2,840,000
2. Calvert Cliffs 1	......do	2,840,000
3. Calvert Cliffs 2	......do	2,840,000
4. Ft. Calhoun 1	......do	2,840,000
5. Maine Yankee	......do	2,840,000
6. Millstone 2	......do	2,840,000
7. Palisades	......do	2,840,000
8. Palo Verde 1	......do	2,838,000
9. Palo Verde 2	......do	2,838,000
10. Palo Verde 3	......do	2,838,000
11. San Onofre 2	......do	2,838,000
12. San Onofre 3	......do	2,838,000
13. St. Lucie 1	......do	2,840,000
14. St. Lucie 2	......do	2,840,000
15. Waterford 3	......do	2,840,000
Babcock & Wilcox:		
1. Arkansas 1	......do	2,840,000
2. Crystal River 3	......do	2,840,000
3. Davis Besse 1	......do	2,840,000
4. Oconee 1	......do	2,840,000
5. Oconee 2	......do	2,840,000
6. Oconee 3	......do	2,840,000
7. Three Mile Island 1	......do	2,840,000
General Electric:		
1. Browns Ferry 1	Mark I	2,821,000
2. Browns Ferry 2	......do	2,821,000
3. Browns Ferry 3	......do	2,821,000
4. Brunswick 1	......do	2,821,000
5. Brunswick 2	......do	2,821,000
6. Clinton 1	Mark III	2,821,000
7. Cooper	Mark I	2,821,000
8. Dresden 2	......do	2,821,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
9 Dresden 3	......do	2,821,000
10 Duane Arnold	......do	2,821,000
11. Fermi 2	......do	2,821,000
12. Fitzpatrick	......do	2,821,000
13. Grand Gulf 1	Mark III	2,821,000
14. Hatch 1	Mark I	2,821,000
15. Hatch 2	......do	2,821,000
16. Hope Creek 1	......do	2,821,000
17. LaSalle 1	Mark II	2,821,000
18. LaSalle 2	......do	2,821,000
19. Limerick 1	......do	2,821,000
20. Limerick 2	......do	2,821,000
21. Millstone 1	Mark I	2,821,000
22. Monticello	......do	2,821,000
23. Nine Mile Point 1	......do	2,821,000
24. Nine Mile Point 2	Mark II	2,821,000
25. Oyster Creek	Mark I	2,821,000
26. Peach Bottom 2	......do	2,821,000
27. Peach Bottom 3	......do	2,821,000
28. Perry 1	Mark III	2,821,000
29. Pilgrim	Mark I	2,821,000
30. Quad Cities 1	......do	2,821,000
31. Quad Cities 2	......do	2,821,000
32. River Bend 1	Mark III	2,821,000
33. Susquehanna 1	Mark II	2,821,000
34. Susquehanna 2	......do	2,821,000
35. Vermont Yankee	Mark I	2,821,000
36. Washington Nuclear 2	Mark II	2,818,000
Other Reactor:		
1. Big Rock Point	GE dry containment	2,821,000

The "Other Reactor" listed in Table V was not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. The NRC proposes to grant a similar partial exemption in FY 1994 to Big Rock Point, a smaller older reactor, based on a request filed with the NRC in accordance with § 171.11.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1993 to FY 1994. Paragraph (c)(2) would be amended to show the amount of the surcharge for FY 1994. This surcharge is added to the base annual fee for each operating power reactor shown in Table V. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1994 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

[Dollars in millions]

Category of costs	FY 1994 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. reviews for DOE/DOD reactor projects, and West Valley Demonstration Project;	$2.4
b. international cooperative safety program and international safeguards activities; and	8.2
c. low level waste disposal generic activities;	6.0
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. Licensing and inspection activities associated with nonprofit educational institutions; and	7.8
b. costs not recovered from Part 171 for small entities	5.3
Total budgeted costs	$29.7

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$29.7\text{ million}}{108} = \begin{array}{c}\$275{,}000\text{ per}\\ \text{operating power reactor}\end{array}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,841,000 and an additional charge of $275,000 for a total annual fee of $3,116,000 for FY 1994.

Paragraph (d) would be revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, $373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $62,200 per operating license. The Energy Policy Act establishes an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695), final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC intends to continue to grant exemptions from the annual fee to those Federally owned reactors who meet the exemption criteria as specified in § 171.11. The NRC is proposing to amend § 171.11(a)(2) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission.

Section 171.16 Annual Fees

Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

§ 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $250,000 to $3.5 million pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

Paragraph (d) would be revised to reflect the FY 1994 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1994 generic costs totalling $63.7 million that apply to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Fee Category 18 would be amended to assess fees to the Department of Energy (DOE) for use of the general license provided under 10 CFR 40.27. Currently, DOE is billed for the issuance of transportation Certificates of Compliance. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Pub. L. 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The § 40.27 general license covers only post-reclamation closure custody and site surveillance. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent in the FY 1991 final fee rule to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481, July 10, 1991). As a result, DOE would be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the IOAA, the NRC proposes to assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
NMLL (research):				
Radiation protection/health effects	$1,575	5.3	315	1.1
Environmental policy and Decommissioning	2,410	9.0	241	.9
NMLL (RES) program total	....	....	556	2.0
NMLL (NMSS)				
Fuel cycle safety and safeguards	4,783	85.8	2,432	57.1
Event evaluation	0	14.9	0	4.2
Decommissioning	2,215	30.8	309	10.5
Uranium recovery (DAM SAFETY)	250	7.6	3	0
NMLL (NMSS) program total	....	....	2,744	71.8
NMLL (MSIRIE).				
Incident response	....	....	0	1.0
Enforcement	....	....	0	1.2
NMLL MSIRIE program total	....	....	0	2.2
Total NMLL	....	....	3,300	76.0
Total base fee amount allocated to fuel facilities	....	....	$20.8	

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES[1]—Continued

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Less part 170 fuel facility fees	....	....	[2] million 4.0 million	
Part 171 base fees for fuel facilities	....	....	16.8 million	

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1994 BUDGET TO MATERIAL USERS' BASE FEES[1]

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
NMLL (Research):				
Materials licensee performance	$450	1.2	$405	1.1
Materials regulatory standards	1,495	12.2	1,346	11.0
Radiation protection/health effects	1,575	5.3	1,134	3.8
Environmental policy and decommissioning	2,410	9.0	1,085	4.1
Total NMLL (RES)	....	....	3,970	20.0
NMLL (NMSS):				
Licensing/inspection of materials users	$965	109.3	869	99.5
Event Evaluation	....	16.2	....	11.4
Information technology—NMSS	1,100	....	89	....
Decommissioning	2,215	30.8	1,707	12.0
Low level waste—on site disposal	592	14.3	71	2.3
Total NMLL (NMSS)	....	....	2,736	125.2
NMLL (MSIRIE):				
Analysis and evaluation of operational data	$186	6.0	167	4.5
Office of Investigations	....	7.0	....	6.3
Office of Enforcement	10	6.8	9	5.0
Total NMLL program	....	....	$6,882	161.0
Base amount allocated to materials users ($,M)	....	....	44.1 [2] million	
Less part 170 material users fees	....	....	5.5 million	
Part 171 base fees for material users			38.6 million	

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $16.8 million in budgeted costs to the individual fuel facilities is based, as in FY 1991, FY 1992, and FY 1993, primarily on the OBRA–90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as compared to other facilities. However, safety program assessment and safety event evaluation costs for fuel facilities are uniformly allocated to HEU and LEU facilities because these activities apply equally to each of the HEU and LEU facilities.

Using this approach, the base annual fee for each facility is shown below.

ANNUAL FEE

	Safeguards and safety
High enriched fuel:	
Nuclear fuel services	$3,176,000
Babcock and Wilcox	3,176,000
Subtotal	6,352,000
Low Enriched Fuel:	
Siemens Nuclear Power	1,429,000
Babcock and Wilcox	1,429,000
General Electric	1,429,000
Westinghouse	1,429,000
Combustion Engineering (Hematite)	1,429,000

ANNUAL FEE—Continued

	Safeguards and safety
General Atomic	1,429,000
Subtotal	8,574,000
UF$_6$ Conversion	
Allied Signal Corp.	1,114,000
Other fuel facilities (3 facilities at $254,000 each)	762,000
Total	16,802,000

One of Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, directing the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC proposes to grant an exemption to one of CE's low enriched uranium fuel facilities for FY 1994. The NRC will therefore exclude this facility from the calculation of the FY 1994 annual fees for the low enriched fuel category.

Of the $2.1 million attributable to the uranium recovery class of licensees, about $1.5 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating power reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under Part 171. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook Wyoming site had been achieved. It is estimated that approximately 44 percent of the remaining costs of $639,000 for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 39 percent of the $639,000 for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 17 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities—$94,300
Class II facilities—$41,200
Other facilities—$36,200

The annual fees for FY 1994 for the uranium recovery class of licensees are about 40 percent less than the FY 1992 fees and are about 60 percent higher than the FY 1993 annual fees. The total amount of fees that must be recovered from the uranium recovery class has decreased by about 10 percent compared to FY 1993; however, the annual fee per facility has increased for two basic reasons. First the amount that is expected to be recovered through Part 170 fees has decreased as a result of completing the licensing of the Envirocare 11.e(2) byproduct disposal facility. This requires relatively more costs to be recovered through annual fees. The second cause of the increases is a decrease in the number of licensees in the class to be assessed annual fees for FY 1994.

For spent fuel storage licenses, the generic costs of $2.2 million have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $363,500.

To equitably and fairly allocate the $38.6 million attributable to the approximately 6,500 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency. Inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Inspection Fee/Inspection Priority)×Constant+ (Unique Category Costs).

The constant is the multiple necessary to recover $38.6 million and is 2.6 for FY 1994. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1994, unique costs of approximately $2.6 million were identified for the medical improvement program which is attributable to medical licensees. Materials annual fees for FY 1994 are 13–17% higher compared to the FY 1993 annual fees. There are two basic reasons for the changes in the fees from FY 1993. First, the FY 1994 budgeted amount attributable to materials licensees is about 10 percent higher than the comparable FY 1993 amount. Second, the number of licensees to be assessed annual fees in FY 1994 has decreased (from about 6,800 to about 6,500 resulting in a 4% increase in fees). The materials fees must be established at the proposed levels in order to comply with the mandate of OBRA–90 to recover approximately 100 percent of the NRC's FY 1994 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the $4.0 million attributable to the transportation class of licensees, about $923,000 would be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.1 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $64,700 for users and fabricators and $900 for users only.

The amount or range of the FY 1994 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$3.2 million.
Part 70—Low enriched fuel.	$1.4 million.
Part 40—UF$_6$ conversion.	$1.1 million.
Part 40—Uranium recovery.	$36,200 to $94,300.
Part 30—Byproduct material.	[1]$970 to $30,900.
Part 71—Transportation of radioactive material.	$900 to $64,700.
Part 72—Independent storage of spent nuclear fuel.	$363,500.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $430,500.

Paragraph (e) would be amended to establish the additional charge which is to be added to the base annual fees shown in paragraph (d) of this final rule. The Commission is continuing the approach used in FY 1993 so as to assess the budgeted LLW costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $8.1 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1994 budgeted costs (millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$8.1

Of the $8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $55,600 per facility. Thus, the LLW charge will be $55,600 per HEU, LEU, UF_6 facility, and each of the other 3 fuel facilities. The remaining $1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: $1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,500 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $22,800.

Of the $6.3 million not recovered from small entities, $1.0 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of $170 per category for each fuel facility and materials licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility (a high enriched fuel fabrication licensee, for example) would pay a base annual fee of $3,176,000 and an additional charge of $55,770 for LLW activities and small entity costs. A medical center with a broad-scope program would pay a base annual fee of $30,900 and an additional charge of $1,670, for a total FY 1994 annual fee of $32,570.

Section 171.17 Proration

10 CFR 171.17 would be amended to add a proration provision for materials licenses and to revise the provision for reactors. The annual fee for materials licenses would be prorated based on applications filed after October 1 of the fiscal year either to reduce the scope of a license or to terminate a license. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to downgrade the license or terminate the license would pay one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications to downgrade or terminate a license on or after April 1 of the fiscal year would pay the full annual fee. Those licensees who file for termination or downgrade must also permanently cease operations of those licensed activities during the periods mentioned for the fee to be reduced. Similarly, materials licensees who were issued new licenses or licenses of increased scope during the fiscal year would also be charged a prorated annual fee based on the date of issuance of the new license or license amendment increasing the scope. New materials licenses issued during the period October 1 through March 31 would be assessed one-half of the FY 1994 annual fee stated in § 171.16(d) for the applicable fee categories. New licenses issued on or after April 1 would not be assessed the FY 1994 annual fee. Materials licenses amended during the period October 1 through March 31 to increase the scope would be assessed one-half the annual fee for the new fee category(ies). Materials licenses amended on or after April 1 to increase the scope would not be assessed the annual fee for the new fee category(ies).

The NRC proposes to amend the proration provision in § 171.17 applicable to reactors to provide that for licensees who have requested a license amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession-only license was issued or the license was terminated.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of the annual fees for those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1993, and permanently cease licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993 would be subject to the FY 1994 annual fees.

Section 171.19 Payment

This section would be revised to give credit for partial payments made by certain licensees in FY 1994 toward their FY 1994 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1994 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, as necessary. As in FY 1993, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past three years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1994 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1994 budget of $535.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1994. The proposed rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170, and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 902).

2. In § 170.3, the definition *special projects* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1994 budget is $133 per hour.

4. In § 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised and a new footnote 4 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1] [2]
* * * * * *	*
J. Special Projects:[4]	
Approvals and preapplication/licensing activities.	Full cost
Inspections	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$8,600.
Amendment	$8,600.
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	$5,300.
Amendment	$5,300.
3. Application for export of components requiring foreign government assurances only.	
Application—new license	$3,300.
Amendment	$3,300.
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances.	
Application—new license	$1,300.
Amendment	$1,300.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1][2]
Amendment	$130

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[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

[4] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

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5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2][3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application—New license	$570
Renewal	680
Amendment	360
Inspections	670
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application—New license	600
Renewal	430
Amendment	330
Inspections	1,200
E. Licenses for construction and operation of a uranium enrichment facility.	
Application	125,000
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2][3]
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize only the possession, use and/or installation of source material for shielding:	
Application—New license	230
Renewal	160
Amendment	270
Inspections	560
C. All other source material licenses:	
Application—New license	2,500
Renewal	1,400
Amendment	450
Inspections	2,500
3 Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	2,700
Renewal	1,700
Amendment	470
Inspections	9,800[5]
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	1,300
Renewal	2,200
Amendment	600
Inspections	3,000[5]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	3,500
Renewal	3,000
Amendment	490
Inspections	3,400
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	1,300
Renewal	550
Amendment	370
Inspections	3,000
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	930
Renewal	760
Amendment	330
Inspections	1,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	1,300
Renewal	1,000
Amendment	330
Inspections	1,300
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	5,300
Renewal	4,800
Amendment	640
Inspections	4,100
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	2,400
Renewal	2,300

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2][3]
Amendment	800
Inspections	1,100
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	4,600
Renewal	2,700
Amendment	1,100
Inspections	1,000
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	2,100
Renewal	1,400
Amendment	370
Inspections	1,800
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	2,000
Renewal	1,400
Amendment	270
Inspections	1,000
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	4,100
Renewal	2,200
Amendment	530
Inspections	4,700
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	1,400
Renewal	1,500
Amendment	690
Inspections	2,200
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	1,700
Renewal	2,100
Amendment	680
Inspections	2,400
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	3,800
Renewal	2,900
Amendment	690
Inspections	3,500[5]
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	570
Renewal	680
Amendment	360
Inspections	1,500
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	4,000
Renewal	2,100
Amendment	430

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
Inspections	2,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	1,500
Renewal	1,100
Amendment	250
Inspections	2,800
D. Licenses specifically authorizing the receipt from other persons of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	3,700
Renewal	3,900
Amendment	650
Inspections	3,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
Inspections	1,300
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	4,500
Renewal	2,900
Amendment	700
Inspections	4,500
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	3,700
Renewal	1,200
Amendment	560
Inspections	2,300
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	2,700
Renewal	3.500
Amendment	500
Inspections	8,700
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	1,100
Renewal	1,400
Amendment	500
Inspections	2,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	670
Renewal	700
Amendment	480
Inspections	1,100
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	3,700
Amendment—each device	1,300
Inspections	Full Cost
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	1,900
Amendment—each device	670
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	800
Amendment—each source	270
Inspections	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	400
Amendment—each source	130
Inspections	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	370
Renewal	280
Amendment	320
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [6]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application-new license	8,600
Amendment	8,600
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8).	
Application-new license	5,300
Amendment	5,300
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application-new license	3,300
Amendment	3,300
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application-new license	1,300
Amendment	1,300
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	130
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (each filing of Form 241)	700
Renewal	N/A
Revisions	200

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2][3]
Inspections	Fees as specified in appropriate fee categories in this section.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 and 6 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual supoort services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the final rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993 rules, as appropriate. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. In § 171.11, paragraph (a)(2) is revised to read as follows:

§ 171.11 Exemptions.

(a) * * *

* * * * *

(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

8. In § 171.15, paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1994 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1994, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1994 surcharge to be added to each operating power reactor is $275,000. This amount is calculated by dividing the total cost for these activities ($29.7 million) by the number of operating power reactors (108).

(d) The FY 1994 part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY[1]

[Fees in thousands]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2,840	275	$3,115	$21,805
Combustion Eng.	15	2,840	275	3,115	46,725
GE Mark I	24	2,821	275	3,096	74,304
GE Mark II	8	2,821	275	3,096	24,768
GE Mark III	4	2,821	275	3,096	12,384
Westinghouse	50	2,841	275	3,116	$155,800
Totals	108				$335,786

[1] Fees assessed will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$62,200
Test reactor	$62,200

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1994 as follows:

	Maximum annual fee per licensed category
Small Businesses and Small not-for-profit Organizations (Gross Annual Receipts):	
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private Practice Physicians (Gross Annual Receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	1,800

* * * * *

(4) For FY 1994, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1994 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses			Annual Fees[1][2][3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.			
High Enriched Fuel	License No.	Docket No.	
Babcock and Wilcox	SNM–42	70–27	$3,176,000
Nuclear Fuel Services	SNM–124	70–143	3,176,000
Low Enriched Fuel:			
B&W Fuel Company	SNM–1168	70–1201	1,429,000
Combustion Engineering (Hematite)	SNM–33	70–36	1,429,000
General Electric Company	SNM–1097	70–1113	1,429,000
Siemens Nuclear Power	SNM–1227	70–1257	1,429,000
Westinghouse Electric Company	SNM–1107	70–1151	1,429,000
General Atomic	SNM–696	70–734	1,429,000
Surcharge			55,770
A. (2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form			254,000
Surcharge			55,770
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)			363,500
Surcharge			1,670
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers			1,800
Surcharge			170
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)			2,200
Surcharge			1,670
E. Licenses for the operation of a uranium enrichment facility			[11] N/A
2. Source material:			
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			1,114,000
Surcharge			55,770
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.			
Class I facilities[4]			94,300
Class II facilities[4]			41,200
Other facilities			36,200
Surcharge			170
B. Licenses which authorize only the possession, use and/or installation of source material for shielding			800
Surcharge			170
C. All other source material licenses			8,700
Surcharge			1,670
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			19,700
Surcharge			1,670
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			6,000
Surcharge			1,670
C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			12,000
Surcharge			1,670
D. Licenses and approvals issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			6,000
Surcharge			170
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)			3,500
Surcharge			170
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes			4,500
Surcharge			170

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,400
Surcharge	170
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,800
Surcharge	170
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	12,500
Surcharge	170
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	6,600
Surcharge	170
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	6,100
Surcharge	170
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to part 30 and 33 of this chapter for research and development that do not authorize commercial distribution	14,700
Surcharge	1,670
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,100
Surcharge	1,670
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
Surcharge	1,670
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	19,000
Surcharge	170
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,300
Surcharge	170
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	130,200[5]
Surcharge	1,670
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	16,400
Surcharge	1,670
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,500
Surcharge	1,670
D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to the fees in Category 2.A.(2)	8,700
Surcharge	1,670
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	12,700
Surcharge	170
B. Licenses for possession and use of byproduct material for field flooding tracer studies	15,400
Surcharge	1,670
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	15,600
Surcharge	1,670
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	16,900
Surcharge	170

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license[9]	30,900
Surcharge	1,670
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license[9]	5,900
Surcharge	170
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	2,100
Surcharge	170
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	9,600
Surcharge	170
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,900
Surcharge	170
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,100
Surcharge	170
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,000
Surcharge	170
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	64,700
Users	900
Surcharge	170
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	363,500
Surcharge	170
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72.	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	430,500
Surcharge	22,970
18. Department of Energy:	
a. Certificates of Compliance	[10] 923,000
b. Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	1,449,000
Surcharge	170

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[1] Annual fees will be assessed based on whether a licensee holds a valid license with the NRC which authorizes possession and use of radioactive material. Annual fees for licenses terminated or downgraded during the fiscal year and for new licenses issued or licenses whose scope increased during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1995 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is proposed for each category, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $55,600 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,500 has been added to fee Categories 1.B., 1 D., 2.C., 3.A., 3.B., 3.C., 3 L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $22,800 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $170 has been added to each fee Category, except Categories 1E, 10.A., 11., 12., 13.A., 14., 15. and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $170 additional charge.

* * * * *

10. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) *Reactors.* The annual fee for a reactor (power or nonpower) licensee that is subject to fees under this part that is granted a license to operate on or after October 1 of a FY is prorated on the basis of the number of days remaining in the FY. Thereafter, the full fee is due and payable each subsequent FY. Licensee who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before the possession only license was issued or the license was terminated.

(b) *Materials licenses.* The annual fee for a materials license that is subject to fees under this part that is granted a license on or after October 1 of a FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Similarly, licenses amended during the period from October 1 through March 31 to increase the scope will be assessed one-half the annual fee for the new category(ies) for that FY. Licenses amended on or after April 1 to increase the scope of the license will not be assessed an annual fee for the new category(ies) for that FY. Thereafter, the full fee is due and payable each subsequent FY. Licenses that are downgraded or terminated after October 1 of a FY will be prorated on the basis of when the application for downgrade or termination is filed with the NRC. Licenses for which applications for downgrade or termination are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for downgrade or termination are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

11. In § 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1994 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1994 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** Notice pursuant to § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 29th day of April, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Proposed Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241, December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million and the amount to be collected in FY 1994 is approximately $513 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the proposed fees to be assessed for FY 1994. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, D.C. Cir. 1993). The FY 1993 LLW allocation method has been continued in the FY 1994 proposed rule.

II. Impact On Small Entities

The comments received on the proposed FY 1991, FY 1992, and FY 1993 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991, FY 1992, and FY 1993 fee rules. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, and FY 1993 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past three years, approximately 2,600 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472, July 10, 1991) in the FY 1992 rule (57 FR 32691, July 23, 1992 and in the FY 1993 rule (58 FR 38666, July 20, 1993). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, and FY 1993 evaluation of the these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is proposing to continue for FY 1993, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1994, the NRC proposes to rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees, or any adjustments to these fees during the past year, do not have a significant impact on them. In issuing this proposed rule for FY 1994, the NRC concludes that the proposed materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1994 costs ($33.3 million of the total $38.6 million) attributable to them. Therefore, the NRC is proposing to continue, for FY 1994, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992 and FY 1993, the NRC will continue the lower-tier small entity fee of $400 for small entities with relatively low gross annual receipts for FY 1994. This lower tier small entity fee was established in the final rule published in the **Federal Register** of April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of $400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, the FY 1992, and the FY 1993 fee rules in this proposed rule establishing the FY 1994 fees. Therefore, the analysis and conclusions established in the FY 1991, the FY 1992, and the FY 1993 rules remain valid for this proposed rule for FY 1994.

[FR Doc. 94–10916 Filed 5–9–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–11]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received July 11, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27657, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C. on May 3, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27652

Petitioner: Para-Gear Equipment Company, Inc. and The Parachute Industry Association

Regulations Affected: 14 CFR part 65, subpart F

Description of Rulechange Sought: To amend the certification requirements for parachute riggers.

[FR Doc. 94–11278 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–26]

Proposed Amendment to Class E Airspace; Trinidad, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Trinidad, Colorado, Class E airspace to provide controlled airspace for a new instrument approach procedure at the Trinidad, Perry Stokes Airport, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–26, 1601 Lind Avenue S.W. Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–26, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone: (206) 227–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Trinidad, Colorado, to provide controlled airspace for a new instrument approach procedure at the Perry Stokes Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace extending upward from the surface of the earth and from 700 feet or more above the surface of the earth is now designated Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from the surface of the earth and from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005 respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E Airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM CO E2 Trinidad, CO [Revised]

Trinidad, Perry Stokes Airport, CO
(lat. 37°15'36" N, long. 104°20'24" W)
Trinidad NDB
(lat. 37°18'22" N, long. 104°20'00" W)

That airspace extending upward from the surface within a 4.2-mile radius of the Perry Stokes Airport, and within 2.6 miles each side of the 355° bearing from the Trinidad NDB extending from the 4.2-mile radius to 7 miles north of the NDB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Trinidad, CO [Revised]

Trinidad, Perry Stokes Airport, CO
(lat. 37°15'36" N, long 104°20'24" W)
Trinidad NDB
(lat. 37°18'22" N, long 104°20'00" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Perry Stokes Airport and within 3.1 miles each side of the 355° bearing from the Trinidad NDB extending from the 6.7-mile radius to 10 miles north of the NDB; that airspace extending upward from 1,200 feet above the surface within 10.4 miles west and 16.8 miles east of the 355° and 175° bearing from the Trinidad NDB extending from 19.7 miles south to 28 miles north of the NDB.

* * * * *

Issued in Seattle, Washington, on April 21, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–11285 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–7–94]

RIN 1545–AS49

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. The text of the temporary regulations also serves as a portion of the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by July 11, 1994.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, POB 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (FI–7–94), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.148–4T(h)(2)(ix). This information is required by the IRS to verify that an issuer of tax-exempt bonds is properly complying with the arbitrage restrictions under section 148. The recordkeepers are States and political subdivisions that issue bonds and entities that issue bonds on behalf of States or political subdivisions.

Estimated total annual recordkeeping burden: 6000 hours.
Estimated average annual burden per recordkeeper: 2 hours.
Estimated number of recordkeepers: 3000.

Background

Sections 1.103–8, 1.148–1T, 1.148–2T, 1.148–3T, 1.148–4T, 1.148–5T, 1.148–6T, 1.148–9T, 1.148–10T, 1.148–11T, 1.149(d)–1T, and 1.150–1T published in the rules and regulations portion of this issue of the **Federal Register** are issued to provide guidance on certain aspects of the arbitrage and related restrictions under sections 103, 148, 149(d), and 150 of the Internal Revenue Code. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

This document also proposes to amend the definition of "investment-type property" under the arbitrage regulations. Under § 1.148–1T, which appears elsewhere in this issue of the **Federal Register** and serves as a portion of the comment document for this notice of proposed rulemaking, the term "investment-type property" includes a contract that would be a hedge except that it contains a significant investment element.

For an issuer borrowing at tax-exempt rates, paying for an interest rate cap through an up-front payment or in annual installments presents concerns regarding the extent to which the issuer is receiving an arbitrage benefit similar to the benefit obtained by making a prepayment. This arbitrage benefit arises to the extent that payments for the interest rate cap are made earlier than the period to which the cap relates (e.g., an up-front payment for the portion of the cap fee that relates to later years under the cap).

The proposed regulations provide specific situations in which interest rate caps contain a significant investment element, and, therefore, will be treated as investment-type property. First, the issuer may not pay for the cap more quickly than in level annual installments. Second, the cap may not hedge a bond unless that bond is a variable rate debt instrument within the meaning of the original issue discount regulations. Finally, the cap rate generally cannot be less than the on-market swap rate. These provisions would apply prospectively to bonds sold after the adoption of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is William P. Cejudo, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.103–8 (a)(5) is revised as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

[The text of proposed paragraph (a)(5) is the same as the text of § 1.103–8T(a)(5) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.148–1 is amended as follows:

1. Paragraph (b) is amended by removing the definition of *investment-type property*.

2. Paragraph (e) is added to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) *Investment-type property*—(1) *In general.* Investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income.

(2) *Non-customary prepayments.* Except as otherwise provided, a prepayment for property or services is investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment is not investment-type property if—

(i) The prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment, or

(ii) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

(3) *Certain hedges.* Investment-type property also includes a contract that would be a hedge (within the meaning of § 1.148–4(h)) except that it contains a significant investment element. An interest rate cap contains a significant investment element if the payments for the cap are made more quickly than in level annual installments over the term of the cap or the cap hedges a bond that is not a variable rate debt instrument under § 1.1275–5. In addition, a cap generally contains a significant investment element if the cap rate is less than the on-market swap rate on the date the cap is entered into. This paragraph (e)(3) applies to bonds sold after [*Insert the date 30 days after the date of publication of final regulations in the* **Federal Register**].

Par. 4. Section 1.148–1 is further amended as follows:

§ 1.148–1 Definitions and elections.

[The text of the further amendments proposed for this section is the same as the text of § 1.148–1T published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.148–2 is amended as follows:

§ 1.148–2 General arbitrage yield restriction rules.

[The text of the amendments proposed for this section is the same as the text of § 1.148–2T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 1.148–3 is amended as follows:

§ 1.148–3 General arbitrage rebate rules.

[The text of the amendments proposed for this section is the same as the text of § 1.148–3T published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.148–4 is amended as follows:

§ 1.148–4 Yield on an issue of bonds.

[The text of the amendments proposed for this section is the same as the text of § 1.148–4T published elsewhere in this issue of the **Federal Register**].

Par. 8. Section 1.148–5 is amended as follows:

§ 1.148–5 Yield and valuation of investments.

[The text of the amendments proposed for this section is the same as the text of § 1.148–5T published elsewhere in this issue of the **Federal Register**].

Par. 9. Section 1.148–6 is amended as follows:

§ 1.148–6 General allocation and accounting rules.

[The text of the amendments proposed for this section is the same as the text of § 1.148–6T published elsewhere in this issue of the **Federal Register**].

Par. 10. Section 1.148–9 is amended as follows:

§ 1.148–9 Arbitrage rules for refunding issues.

[The text of the amendments proposed for this section is the same as the text of § 1.148–9T published elsewhere in this issue of the **Federal Register**].

Par. 11. Section 1.148–10 is amended as follows:

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

[The text of the amendments proposed for this section is the same as the text of § 1.148–10T published elsewhere in this issue of the **Federal Register**].

Par. 12. Section 1.148–11 is amended as follows:

§ 1.148–11 Effective dates.

[The text of the amendments proposed for this section is the same as the text of § 1.148–11T published elsewhere in this issue of the **Federal Register**].

Par. 13. Section 1.149(d)–1 is amended as follows:

§ 1.149(d)–1 Limitations on advance refundings.

[The text of the amendments proposed for this section is the same as the text of § 1.149(d)–1T published elsewhere in this issue of the **Federal Register**].

Par. 14. Section 1.150–1 is amended as follows:

§ 1.150–1 Definitions.

[The text of the amendments proposed for this section is the same as the text of § 1.150–1T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 94–11103 Filed 5–5–94; 2:17 pm]

BILLING CODE 4830–01–U

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26 CFR Part 1

[IL–21–91]

RIN 1545–AS24

Imposition of Accuracy-Related Penalty; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that provide guidance on the

imposition of the accuracy-related penalty.

DATES: The public hearing will be held on Monday, September 19, 1994, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 29, 1994.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [IL-21-91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under sections 6662(e) and (h), and 6664(c). These proposed regulations appeared in the **Federal Register** for Wednesday, February 2, 1994 (59 FR 4876).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 29, 1994, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94-11141 Filed 5-9-94; 8:45 am]

BILLING CODE 4830-01-P

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26 CFR Part 31

[IA-8-92]

RIN 1545-AR72

Taxpayer Identification Number (TIN) Matching Program; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the establishment of a Taxpayer Identification Number (TIN) matching program.

DATES: The public hearing originally scheduled for Friday, May 20, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 3406(i) of the Internal Revenue Code. A notice of proposed rulemaking by cross-reference to temporary regulations and public hearing appearing in the **Federal Register** for Tuesday, March 22, 1994 (59 FR 13470), announced that a public hearing on the proposed regulations would be held on Friday, May 20, 1994, beginning at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Friday, May 20, 1994, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 94-11142 Filed 5-9-94; 8:45 am]

BILLING CODE 4380-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME-5-1-5497; A-1-FRL-4883-5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Presque Isle Nonattainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing full approval of the State implementation plan (SIP) submitted by the State of Maine to satisfy certain Federal requirements for the Presque Isle nonattainment area. The purpose of the Federal requirements is to bring about the attainment of the National ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). EPA also proposes to modify the borders of the Presque Isle nonattainment area to more closely contain the actual area where PM-10 concentrations approach ambient standards. EPA also proposes to approve an update of Maine's emergency episode regulation applicable state-wide. This action is being taken under the Implementation Plans section of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by July 11, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director; Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203-2211. Copies of the State's submittal and EPA's technical support document are available for inspection by appointment during normal business hours at Air, Pesticides, and Toxics Management Division; U.S. Environmental Protection Agency, Region I; One Congress Street, 10th floor; Boston, Massachusetts; and at the Bureau of Air Quality Control; Department of Environmental Protection; 71 Hospital Street; Augusta, Maine 04333.

FOR FURTHER INFORMATION CONTACT: Brian Hennessey, (617)565-3223.

SUPPLEMENTARY INFORMATION:

Background

Part D, subparts 1 and 4 of title I of the Act set out air quality planning requirements for moderate PM-10 nonattainment areas. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In this rulemaking action on the Maine moderate PM–10 SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, before taking final action on this proposal, EPA will consider any timely submitted comments.

By November 15, 1991, States containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following:

Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994, and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188 and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 [see section 189(a)]. Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

Summary of Maine's SIP Submittal

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is proposing to grant full approval of the plan revisions submitted to EPA on August 14, 1991 and October 22, 1991, which completed the attainment plan for Presque Isle by meeting all of the applicable requirements of the Act. Interested parties should consult the Technical Support Document (TSD) dated January 2, 1994 or Maine's submission for details on the aspects of Presque Isle's SIP summarized in the following paragraphs.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

The State of Maine held a public hearing on July 31, 1990 to entertain public comment on the implementation plan proposed for Presque Isle. Following the public hearing the plan was adopted by the Maine Department of Environmental Protection (DEP) on March 11, 1991 and submitted to EPA on August 14, 1991 as a proposed revision to the SIP by the Governor's designee, the Director of the Bureau of Air Quality Control. On August 22, 1990, the State of Maine held a public hearing on changes to its emergency episode regulation concerning PM–10. The Maine Board of Environmental Protection adopted the revised emergency episode regulation on October 10, 1990, and the Governor's designee submitted it to EPA on October 22, 1991 as a proposed revision to the SIP.

The submittals were reviewed by EPA to determine completeness, in accordance with the criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). They were found to be complete and a letter dated January 13, 1992, from the EPA Regional Administrator informed the Governor's designee that the submittals had been determined complete and explained how the review process would proceed. In today's action EPA proposes to approve Maine's PM–10 SIP submittal for Presque Isle and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because such inventories are necessary to an area's attainment demonstration, the emissions inventories must be received with the attainment SIP submission (see 57 FR 13539).

Maine submitted an emissions inventory for base year 1988. Entrainment of dust by vehicular traffic over paved streets contributed 3007 tons of the base year actual PM–10 emissions, which totalled 3436 tons. Point sources contributed 171 tons, and area sources, mainly oil combustion at industrial and commercial facilities, added 67 tons more.

EPA could not duplicate Maine's inventory of 1988 base year PM–10 emissions, but for 1989 estimated that entrained road dust contributed 2884 tons to the nonattainment area's 3163 ton actual PM–10 emission total. Although section 172(c)(3) requires that the inventory be "current," an analysis based on receptor modeling is better supported by an inventory for the period subject to that analysis, in this case 1987–1990. EPA believes a 1989 inventory base year is a reasonable compromise between the requirements for a current inventory and the need to perform receptor modeling on PM–10 samples collected in earlier years. This review satisfied EPA that Maine's inventory was sufficiently accurate and comprehensive for determining the adequacy of the attainment demonstration for Presque Isle consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[2] Therefore, EPA is

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[1] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10

Continued

proposing to approve the emissions inventory. The TSD has further details.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

The submission attributed highest PM–10 concentrations in Presque Isle to the large amounts of antiskid materials which the city must use for snow and ice control each winter. Diesel exhaust contributes to high PM–10 in much smaller but detectable amounts. No other sources or source categories impact high PM–10 levels.

The submission includes a memorandum of understanding (MOU) by which the City of Presque Isle, the Maine Department of Transportation, and DEP apply measures which will reduce the entrainment of spent antiskid materials by vehicular traffic in central Presque Isle. At traffic levels projected for 2001, these control measures, described in the section on enforceability issues below, reduce allowable PM–10 emissions by 1800 tons annually. DEP determined that further control of diesel exhaust or point source emissions would not expedite attainment of, or maintain, PM–10 NAAQS in Presque Isle. The TSD discusses individual source contributions more fully and explains why other available control measures were not implemented. The implementation of Maine's control strategy in its PM–10 nonattainment plan control strategy provides for attainment of the PM–10 NAAQS and will maintain compliance with standards through January 1, 1998, as EPA requires. By this document, EPA is proposing to approve the control strategy as meeting RACM and RACT requirements.

4. Demonstration

As noted, initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The Maine DEP submitted an attainment demonstration based on a determination of PM–10 design concentrations based on 6 years of PM–10 measurements. Design concentrations lower than the NAAQS. DEP analyzed PM–10 nonattainment in Presque Isle with a microinventory of PM–10 emissions, optical and scanning electron/energy dispersive electroprobe microscopy of PM–10 filters, and analyses of aerometric data collected since 1980. Version 7.0 of the Chemical Mass Balance Model (CMB7) was the primary means by which DEP examined and modeled maintenance of the 24-hour PM–10 NAAQS, however.

The 24-hour PM–10 NAAQS is 150 micrograms per cubic meter (μg/m^3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3 is equal to or less than one (see 40 CFR 50.6). Based on 1986–88 data, the 24-hour design concentration for Presque Isle was 140 μg/m^3. This demonstrates, and all later data confirms, that Presque Isle is not violating the 24-hour PM–10 NAAQS. The annual PM–10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m^3. The annual design concentration of 27 μg/m^3 for 1988 demonstrates that Presque Isle is not violating the annual PM–10 NAAQS.

An analysis of DEP's CMB7 receptor modeling indicates that the control strategy, summarized above in the section titled "RACM (including RACT)," will maintain PM–10 NAAQS in Presque Isle to January 1, 1998, area-averaged growth rates assumed. This meets the EPA requirement for a minimum 3-year maintenance projection beyond the statutory December 31, 1994 attainment deadline. The TSD provides more details on EPA's review of the maintenance demonstration and the control strategy used.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for Presque Isle demonstrates that high 24-hour PM–10 concentrations are solely attributable to direct particulate matter emissions from entrainment of snow and ice control materials by traffic on paved roads and from diesel exhaust. EPA has determined that gaseous emissions, such as VOC, SO_2, and NO_2, do not form PM–10 and contribute to PM–10 levels above the NAAQS in Presque Isle. Consequently, stationary sources in Presque Isle need no further emission controls for possible PM–10 precursors. The TSD contains a further discussion of the data and analyses addressing the contribution of possible precursor sources in this area.

Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area regarding the impact of PM–10 precursors. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

Section 171(1) defines reasonable further progress (RFP) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994 (see section 189(c) of the Act).

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(1)). The State of Maine's PM–10 SIP requires that all measures required for attainment be fully implemented effective December 1, 1991. EPA considers this to meet the requirement for quantitative milestones because no more expeditious implementation schedule could be prescribed. Maine has until early 1995 (i.e., shortly after the statutory attainment date) to report to EPA whether Presque Isle has actually complied with its single milestone.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State

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SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply exclusively to the entrainment of spent snow and ice control materials from public paved roads in central Presque Isle. Under part B of a memorandum of understanding (MOU) which DEP entered into on March 11, 1991, with the City of Presque Isle and the Maine Department of Transportation, the city must use improved (i.e., low entrainment) antiskid materials on its roads. As noted previously, the MOU is included in DEP's submission and will be incorporated into the SIP. Between December 1 and May 1 each year, as a surrogate for PM–10 emission limitations, the city must also maintain silt loadings on dry roads below 10 g/m^2. Part B lists the streets where these requirements apply. DEP or EPA may require Presque Isle to test antiskid material stockpiles by methods prescribed in Part B, keep records, and report records and test results. Part B also specifies the method DEP must use to determine compliance by the city with the silt loading limit.

Consistent with the attainment demonstration described above, the MOU requires that all affected activities must be in full compliance with the applicable SIP provisions by December 1, 1991. In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information. With the compliance methods prescribed, EPA believes that the requirements in part B of the MOU will be achievable by the city and enforceable by either EPA or DEP. Moreover, DEP has a regional office in Presque Isle and its personnel can ensure that all signatories meet their obligations under the MOU. Appendix B to EPA's TSD examines the enforceability of Presque Isle's PM–10 SIP in greater detail and refers interested parties to salient sections of Maine's submittal.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures. See generally 57 FR 13543–14544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

As noted above, EPA indicated that States containing initial moderate nonattainment areas, including Maine, did not need to submit the contingency measures required under 172(c)(9) until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). DEP's SIP submission for the Presque Isle nonattainment area contained no contingency measures. There is nothing else in the Act nor in the actions that are subject to this document that relieves Maine of the statutory obligation to meet the contingency measures requirement. On January 26, 1994, EPA sent Maine a formal finding of failure to submit PM–10 contingency measures for the Presque Isle nonattainment area. Maine will be providing contingency measures, pursuant to section 172(c)(9), in a separate submittal. EPA will act on this requirement in a separate document.

9. Other Section 110 Requirements

DEP has also revised its Chapter 109 "Emergency Episode Regulation." The regulation now contains the PM–10 alert, warning and emergency levels that appear in EPA's "Example Regulations for Prevention of Air Pollution Emergency Episodes" (appendix L to part 51). The regulation continues to apply statewide and with its adoption DEP has met all section 110 requirements that currently apply to the Presque Isle PM–10 nonattainment area.

10. Boundaries of the Nonattainment Area

If a State makes a persuasive demonstration (SIP equivalent) over the proper scope of a disputed nonattainment area designation, EPA will consider whether it would be appropriate to correct the error relying on the authority in section 110(k)(6) of the Act. (See 56 FR 37656 (8 August 1991).) DEP's SIP submission includes a request that EPA replace the present borders of the nonattainment area, which consist of township boundaries enclosing 80 square miles, with borders which are comprised of a series of streets bounding an area of roughly 0.6 square mile. The attainment demonstration in Presque Isle's PM–10 SIP supplants past DEP submittals on the spatial extent of elevated PM–10 levels in Presque Isle. The modeling in the SIP submittal includes a detailed, gridded PM–10 microinventory and shows that the 0.6 square mile area mentioned above circumscribes the area of high emission densities and ambient PM–10 levels. Since Presque Isle is not actually violating the PM–10 NAAQS, EPA believes it is appropriate to redefine the nonattainment area as comprising just that area containing those heavily trafficked paved roads, which are shown to dominate PM–10 air quality in downtown Presque Isle, and which the MOU will control. Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to modify the boundaries of the Presque Isle nonattainment area as DEP requests.

Implications of EPA's Proposed Approval

The EPA is proposing to approve the plan revisions submitted to EPA for the Presque Isle nonattainment area on August 14, 1991, and the updated emergency episode requirements applicable statewide submitted on October 10, 1991. EPA also proposes to alter the boundaries of the Presque Isle PM–10 nonattainment area as requested by DEP. Among other things, the State of Maine has demonstrated that the Presque Isle moderate PM–10 nonattainment area will achieve compliance with the PM–10 NAAQS by December 31, 1994 and maintain compliance at least until 1 January 1998. As noted, additional submittals for the Presque Isle nonattainment area are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. EPA will consider any written comments received by July 11, 1994 at the Region I office listed in the ADDRESSES section of this document.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

The Office of Management and Budget has exempted this action from the requirements of section 6 of Executive Order 12866.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofsection 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 25, 1994.

Harley Laing,

Acting Regional Administrator, Region I.

[FR Doc. 94–11274 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR PART 180

[OPP–300338; FRL–4777–5]

RIN No. 2070–AC18

Diethylene Glycol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the current exemption from the requirement of a tolerance for residues of diethylene glycol by expanding its use as an inert ingredient, to read "deactivator, adjuvant for formulations used before crop emerges from the soil." Texaco Chemical Co. requested this regulation.

DATES: Comments, identified by the document control number [OPP-300338], must be received on or before June 9, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: Texaco Chemical Co., P.O. Box 27707, Houston, TX 77227-7707, has submitted pesticide petition (PP) 2E4191 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by amending the current exemption from the requirement of a tolerance for residues of diethylene glycol by expanding its use as an inert ingredient, to read "deactivator, adjuvant for formulations used before crop emerges from the soil."

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support a proposed tolerance exemption for diethylene glycol will not need to be submitted because the addition of the adjuvant use in pesticide formulations applied to preemergent crops only will not significantly increase exposure to this inert ingredient. EPA has found that, when used in accordance with good agricultural practice, this ingredient does not pose a risk to human health or the environment. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300338]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Diethylene glycol	....	Deactivator, adjuvant for formulations used before crop emerges from soil.
* *	* * *	* *

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[FR Doc. 94–11195 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 6E3447/P573; FRL–4744–5]

RIN No. 2070–AC18

Pesticide Tolerance for Cadusafos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a permanent tolerance be established for residues of the insecticide/nematicide cadusafos, *O*-ethyl *S,S*-di-*sec*-butyl phosphorodithioate, in or on the raw agricultural commodity bananas. The proposed regulation to establish a maximum permissible level for residues of the insecticide/nematicide in or on the commodity was requested in a petition submitted by the FMC Corp.

DATES: Comments, identified by the document control number [PP 6E3447/P573], must be received on or before June 9, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: EPA issued a rule in the **Federal Register** of October 23, 1992 (57 FR 48327), which announced its decision to establish a time-limited tolerance for residues of the pesticide cadusafos on bananas for a period extending to October 24, 1994. The Agency limited the period of time that the regulation was to be in effect because of the need for confirmatory usage data required to ensure that cadusafos was being applied on bananas in a manner that would not result in an increase in the anticipated residue level.

The FMC Corp., Agricultural Chemicals Group, 200 Market St., Philadelphia, PA 19103, has submitted the confirmatory usage data and has requested that EPA, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a permanent tolerance for residues of the nematicide/insecticide cadusafos in or on the RAC bananas at 0.01 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) at 0.001 milligram/kilogram/day (mg/kg/day). The lowest effect level (LEL) was 0.005 mg/kg/day for cholinesterase (ChE) inhibition. Levels tested were 0.0002, 0.001, 0.005, and 0.02 mg/kg.

2. A 2-year rat feeding carcinogenicity study with a NOEL of 1.0 ppm for both systemic effects and ChE inhibition. The study was negative for carcinogenic effects under the conditions of the study at all feeding levels. Systemic effects observed at the 5.0 ppm dose level consisted of decreased locomotion and elevated clinical chemistry values for serum aspartate aminotransferase (SGOT) in females. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

3. A 2-year mouse carcinogenic study which was negative for carcinogenic effects under the conditions of the study at all feeding levels. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

4. A two-generation reproduction study in rats with a NOEL of 0.1 ppm (equivalent to 0.005 mg/kg/day) for reproductive effects consisting of a significant decrease in the live birth index at the 0.5 ppm (0.025 mg/kg)

level. Levels tested were 0.1, 0.5, and 5.0 ppm.

5. A rat teratology study with a NOEL of 6.0 mg/kg/day for developmental effects associated with the toxicity of cadusafos. Levels tested were 0.2, 6.0, and 18.0 ppm.

6. A rabbit teratology study with a NOEL greater than 0.9 mg/kg/day for developmental toxicity. Levels tested were 0.1, 0.3, and 0.9 mg/kg.

7. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tesed was 8.0 mg/kg).

8. An Ames test was not mutagenic at the highest doses tested, 600 and 900 micrograms (ug)/plate, with or without metabolic activation, respectively.

9. An unscheduled DNA synthesis test in rat hepatocytes was not mutagenic at the highest dose tested, 45 nanoliter (nL)/milliliter (mL).

10. A chromosome aberration assay in Chinese hamster ovary cells was not mutagenic at the highest dose tested, 75 nL/mL with or without metabolic activation.

11. In an *in vitro* cell transformation test, it was concluded that cadusafos was capable of inducing morphological transformations of mouse embryo cells in the presence of metabolic activation at the highest three out of the four dose levels tested, which were 0.06, 0.07, 0.08, and 0.09 uL/mL. A positive finding in a mutagenicity test such as this one suggests that the test substance has the potential for inducing carcinogenic effects. Based on the negative findings of the 2-year rat and mouse carcinogenicity studies described above, the pesticide is not considered to be a carcinogen.

12. In a metabolism study with rats, 63 to 79 percent of the dose was excreted in the urine within 24 hours. The major urinary metabolites were methane sulfonic acid; o-ethyl S-(2-butyl)phosphorothioic acid; the threo and erythro stereoisomers of methyl 1-methyl-2-hydroxypropyl-sulfone; and S,S-di(2-butyl) phosphorodithioate.

The reference dose (RfD) based on the 1-year feeding study in dogs with a NOEL for ChE at 0.001 mg/kg/day and using an uncertainty factor of 100 is calculated to be 0.00001 mg/kg of body weight (bwt)/day. The theoretical maximum residue contribution (TMRC) resulting from this action will be 0.000002 mg/kg/bwt/day for the overall U.S. population and represents 23 percent of the RfD. The TMRC for the highest exposed subgroup, nonnursing infants less than 1 year old, is 0.000011 mg/kg/bwt/day, or 108.38 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

However, the Agency believes that actual residues to which the public is likely to be exposed are considerably less than indicated for the following reasons.

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level at the time of consumption.

To take the second factor into account, the Agency recalculated the TMRC using the anticipated residues. The anticipated residue value of 0.005 ppm, the limit of detection of the analytical method for cadusafos, was used in the recalculation. This value was used considering the fact that most bananas are eaten or processed with the peel removed. Moreover, the available data showed no detectable residues in the pulp even for exaggerated application rates. Following this adjustment, the estimate of exposure from the proposed tolerance is 0.000001 mg/kg bwt/day, or 11.5 percent of the RfD for the overall population, and the estimate of exposure to nonursing infants less than 1-year old is 0.000005 mg/kg/ bwt/day, or 54.2 percent of the RfD.

The Agency requested usage data from FMC. That data submitted by FMC confirms that cadusafos is being applied on bananas in a manner that would not result in an increase in the anticipated residue level.

The nature of the residues in bananas is adequately understood, and an adequate analytical method, gas liquid chromatography using either a flame photometric detector or an alkali ionization detector, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Residue methodology data using the Food and Drug Administration pesticide multiresidue method protocol D have been provided.

Bananas are not considered to be a livestock feed item. Thus, there is no reasonable expectation of secondary residues in eggs, milk, and meat byproducts from the use of cadusafos on bananas.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

The proposed tolerance of .01 ppm agrees with the tolerance proposed by the Codex Alimentarius Commission for residues of cadusafos in or on bananas.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3447/P573]. All written comments filed in response to this document will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.461, to read as follows:

§ 180.461 Cadusafos; tolerances for residues.

A tolerance is established for residues of the nematicide/insecticide cadusafos, O-ethyl *S,S*-di-*sec*-butyl phosphorodithioate, in or on the following raw agricultural commodity:

Commodity	Parts per million
Bananas	0.01

There are no U.S. registrations as of May 10, 1994 for the nematicide/insecticide cadusafos.

[FR Doc. 94-11196 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92-237, FCC 94-79]

Administration of the North American Numbering Plan

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In light of the response to the Commission's earlier Notice of Inquiry and subsequent developments, the Commission has adopted and released a Notice of Proposed Rulemaking concerning the future administration of the North American Numbering Plan and some narrower numbering issues. In its rulemaking notice, the Commission draws tentative conclusions, makes proposals, and seeks comment on these and related issues.

DATES: Comments must be filed on or before June 7, 1994, and reply comments must be filed on or before June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Peyton Wynns, Common Carrier Bureau, Industry Analysis Division (202-632-0745), or Allen A. Barna, Common Carrier Bureau, Tariff Division (202-632-6917).

SUPPLEMENTARY INFORMATION:

Background

This is a summary of the Commission's Notice of Proposed Rulemaking (Notice), adopted March 30, 1994, and released April 4, 1994, FCC 94-79, in the Common Carrier Docket No. 92-237 proceeding entitled, "Administration of the North American Numbering Plan" (the Plan). This Notice follows the Commission's earlier Notice of Inquiry (Inquiry). See Administration of the North American Numbering Plan, CC Docket No. 92-237, 7 FCC Rcd 6837 (1992), 57 FR 53462 (Nov. 10, 1992).

Before divestiture, the American Telephone and Telegraph Company (AT&T) developed and administered the Plan to coordinate the telephone numbers used in most of North America. As part of the 1984 divestiture of AT&T, administration of the Plan was transferred from AT&T to Bell Communications Research, Inc. (Bellcore). Following release of the Commission's Inquiry, Bellcore advised that it desired to relinquish administration of the Plan. In addition to the Commission's efforts, several industry groups are considering proposals to improve future administration of the Plan and to address specific numbering issues.

Phase One of this proceeding primarily focuses on who should administer the Plan and how such administration might be improved. Phase Two primarily focuses on the planned expansion of Feature Group D (FGD) Carrier Identification Codes (CICs). The Commission adopted the Notice to present its tentative conclusions and rulemaking proposals, and also to seek comment on these and related matters. This action was taken pursuant to sections 1, 4(i), 201-205, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 201-205, and 403.

Summary of Notice of Proposed Rulemaking

1. Phase One

In the first phase of the Notice, the Commission tentatively concluded that no federal government agency is ideally suited to administer the U.S. portion of the Plan but that the Commission could best assume those ministerial functions if they are to be performed by any such agency. Among existing non-government agencies, the Commission sought comment on whether the Alliance for Telecommunications Industry Solutions (ATIS) or some component of ATIS could handle Plan administration. Noting the possible advantages of a new, non-government entity to handle such administration, the Commission also sought comment on whether such a new entity should be established for this purpose. The Commission then tentatively concluded that ministerial administration of the Plan should be undertaken by a single, non-government entity established by the Commission and subject to its oversight, but also separate from the Commission and not closely identified with any particular industry segment. The Commission sought comment on these tentative conclusions and also on the appropriate parameters defining the mission, management, structure, functions, personnel, and capabilities of the new Plan administrator.

2. To finance future administration of the Plan, the Commission tentatively concluded that it has authority under the Communications Act to establish a set of Commission numbering fees or to create a new fund to finance future Plan administration. The Commission sought comment on these and other possible funding mechanisms. For example, if only a small amount is needed each year to finance administration of the Plan, the Commission seeks comment on whether it should impose a numbering surcharge on one of the funds currently administered by the National Exchange Carrier Association or use a portion of the annual surplus from one or more of these funds. The Commission tentatively concluded that it should impose fees to offset the costs of regulating U.S. numbering resources and sought comment on this and its other conclusions. The Commission also sought comment on whether a new numbering policy board should be established to assist regulators.

3. The Commission invited comment on the international implications of its various proposals to select, organize, and fund a replacement for the current Plan administrator. For example, in the event there are administrative costs of

the Plan which are not covered by Commission-imposed fees, the Commission proposed to establish with other World Zone 1 regulators a system of charges payable directly to the new Plan administrator by those who directly benefit from the operation of the Plan subject to appropriate oversight. The Commission also sought comment on the specific problems presented by the absence of uniform nationwide dialing arrangements and on the specific steps the Commission could take to remedy those problems.

4. *Phase Two.* In Phase Two, the Commission explained that Carrier Identification Codes (CICs) are numeric codes widely used within the telephone industry to provide local exchange access to long distance carriers, to route traffic, identify types of service, bill access purchasers, and for other purposes. In view of anticipated demand, the Commission indicated that the stock of three-digit Feature Group D (FGD) CICs available for assignment will likely be exhausted within a year or so. To increase the number of such codes, the Commission noted that a plan was developed by the industry to expand the format of these codes from three digits to four digits and also expand the format of carrier access codes (CACs) from five digits (10XXX) to seven digits (101XXXX). In light of various objections, the Commission's earlier inquiry sought comment on whether these planned changes should be reconsidered.

5. In the Notice, the Commission tentatively concluded that FGD CICs should be expanded to a four-digit format and sought comment on that tentative conclusion. However, to facilitate the changeover to the new codes, the Commission also proposed a transition period of six years during which subscribers could use both the current three-digit and the new four-digit CICs. In addition, the Commission sought comment on whether it should require local exchange carriers to cease screening and completing interstate, intraLATA "1+" Message Toll Service (MTS) calls and instead deliver those calls to the carrier preselected by the end user.

Initial Regulatory Flexibility Analysis

6. The Commission certified that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. While the rules proposed by the Commission would apply to telecommunications corporations of all sizes that are now assigned telephone numbers or that may in the future seek such assignments, the impact on small business entities served by these corporations and on small telecommunications companies is not likely to be significant. Similarly, the Commission's proposed rules on interstate, intraLATA toll traffic are not expected to have a significant impact on small telecommunications companies or other small business entities. The Commission Secretary was directed to send a copy of the Notice, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

Comments

7. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 7, 1994, and reply comments on or before June 30, 1994. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ex Parte Analysis

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Ordering Clause

9. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 201–205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, and 403, that *Notice is hereby given* of the proposed regulatory actions described above and *comment is sought* on these proposals.

List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 94–11168 Filed 5–9–94; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807 and 1815

Revision to NASA FAR Supplement Coverage on Procurement Plans, Instructions for Technical Proposal and Business Management Proposal Submissions, and Contents of the Prenegotiation Position Memorandum

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the regulations pertaining to procurement plans, the instructions for technical and business management proposals, and the contents of the prenegotiation position memorandum in order to emphasize the importance of facilities in the contract planning and decision making process.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, Contract Pricing and Finance Division (Code HC), Office of Procurement, NASA Headquarters, Washington, DC 20546. Comments on the paperwork burden should also be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

Over the last several years, NASA's Office of the Inspector General has issued several reports critical of the agency and its contractors regarding facilities leasing practices. One report addressed the issue on an agency-wide basis. That report stated that NASA was paying several times over for the same facilities due to contractors entering into a series of short-term leases. The proposed rule emphasizes the importance of facilities by requiring installation procurement plans address facilities, specifying the information needed from contractors in their business management plans for the agency to properly evaluate the proposed costs, and requiring that the prenegotiation memorandum discuss the factors considered in the evaluation of facilities. The proposed rule also revises the current coverage on procurement plans requiring Headquarters approval to better address the major facilities issues which should be considered.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h). The information will be used by NASA contracting personnel and technical personnel to evaluate and select proposals for contracts over $1,000,000. If this information is not collected, NASA will be less able to evaluate contract costs and ensure that those costs are fair and reasonable. The estimated annual paperwork burden of 300 hours in calculated by multiplying the estimated number of respondents (300) by the estimated hours (1 hour) for each respondent to prepare the information.

List of Subjects in 48 CFR Part 1807 and 1815

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1807 and 1815 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1807 and 1815 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

PART 1807—ACQUISITION PLANNING

2. Section 1807.170–1 is amended by revising paragraph (b)(10)(i) to read as follows:

180.170–1 Procurement plans requiring approval by NASA Headquarters.

* * * * *

(b) * * *

(10) *Item 10. Contractor-owned or leased and Government-furnished property.* (i) If the proposed contract period of performance (exclusive of options) will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities (as defined in (FAR) 48 CFR 45.301), the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, and the facilities will represent a significant cost to the contract, then the procurement plan shall discuss the feasibility of the Government acquiring the right to use the facilities for longer than the proposed contract period, as well as the proposed procurement strategy for accomplishing this use.

(A) If program uncertainties for continuing beyond the contract period of performance (exclusive of options) are significant, it may be in the Government's best interests to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer-term Government facilities obligations;

(B) If the program uncertainties for continuing beyond the contract period of performance (exclusive of options) are not significant, it may be in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period of performance (exclusive of options) in order to take advantage of economies in long-term facilities investment. In such cases, the following shall be considered:

(1) Whether the amount of the potential cost savings to the Government arising from the contractor entering into a long-term arrangement (lease, purchase or construction) continuing beyond the contract period of performance (exclusive of options) could be significant;

(2) If a long-term investment by the contractor could result in significant cost savings to the Government, the type of long-term arrangement that is believed would be most appropriate (e.g., long-term lease with the right of assignment to a third party or the Government, at the Government's option; purchase or construction of the facilities, with depreciation and cost of money either accelerated to cover the contract period of performance (exclusive of options) or over the useful life of the facilities); and

(3) Whether the contractor might require a financial guarantee be provided by the Government in order to enter into a long-term arrangement and, if so, what the potential amount of such a guarantee might be, should the contract end (e.g., options are not exercised, or the contractor is not selected in a recompetition).

* * * * *

3. Section 1807.170–2 is revised to read as follows:

1807.170–2 Procurement plans requiring approval at the installation level.

Procurement plans prepared for installation-level approval shall be prepared in accordance with 1807.170–1 or in the format prescribed by the installation. Installation prescribed formats shall ensure all contract management considerations enumerated at 1807.170–1(c) are addressed. In addition, installation prescribed formats shall ensure that plans for procurements in excess of $2,500,000 address the considerations at 1807.170–1(b)(10).

PART 1815—CONTRACTING BY NEGOTIATION

4. Section 1815.406–70 is amended by republishing paragraph (b) introductory text and paragraph (b)(5) introductory text and revising paragraph (b)(5)(iii) to read as follows:

1815.406–70 Instructions for technical proposal and business management proposal submission.

(a) * * *

(b) *Business management proposal.* Proposals should include the following:

* * * * *

(5) A statement as to—

* * * * *

(iii) The cost of any additional facilities (as defined at (FAR) 48 CFR 45.301) required to perform the work and how the costs are to be charged, with information as to whether the facilities will be contractor-furnished or Government-furnished and, if contractor-furnished, the alternatives considered (e.g., short-term lease, long-term lease with option to transfer the lease to a third party, purchase), including the long and short term benefits of each alternative, a description of any unique requirements or arrangements involved with each alternative, as well as the reasons for the alternative selected, a copy of the proposed lease or purchase agreement, identification of all costs included in the lease and ownership alternatives considered; and

* * * * *

5. Paragraph (c)(5) of section 1815.807–70 is revised to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(c) * * *

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government). Although not all inclusive, the following are to be covered:

(i) The facilities needed by the contractor;

(ii) How the facilities are to be provided (Government or contractor);

(iii) If to be provided by the contractor, the alternatives considered (operating lease, capital lease, contractor purchase or construction, or other alternatives);

(iv) Whether a financial guarantee has been requested by the offeror;

(v) The reasons for the alternative selected; and

(vi) How the costs are to be charged.

* * * * *

[FR Doc. 94–11144 Filed 5–9–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC52

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Castilleja Levisecta (Golden Paintbrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the plant *Castilleja levisecta* (golden paintbrush) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This species once occurred from Oregon north to Vancouver Island in British Columbia, Canada. Only 10 disjunct populations of this plant now exist, in open grasslands ranging from south of Olympia, Washington, in Thurston County, north through the Puget Trough to southwest British Columbia, Canada. One of these populations may be extirpated. Threats to the species include competition with encroaching native and alien plant species, habitat modification through succession in the absence of fire, predation, and the reduced ability of small, isolated populations to recover from stochastic (random) events. Direct human-caused threats include development of habitat, possible damage associated with road maintenance, and catastrophic fire. This proposal, if made final, would implement the Federal protection and recovery provisions of the Act for this plant.

DATES: Comments from all interested parties must be received by July 11, 1994. Public hearing requests must be received by June 24, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. Comments and materials received will be available by appointment for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Alison Beck Haas or Dr. Robert Parenti at the above address (208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

Castilleja levisecta (golden paintbrush) was first collected near Mill Plain, Washington, by Thomas Jefferson Howell in 1880 and was described by Jesse More Greenman in 1898 (Greenman 1898). A perennial herb of the snapdragon family (Scrophulariaceae), *C. levisecta* typically has 5 to 15 erect to spreading unbranched stems, reaches a height of 0.5 meter (m) (20 inches (in)), and is covered with soft, sticky hairs. The lower leaves are entire and narrowly pointed; the upper leaves are broader, usually with one to three pairs of short lateral lobes on the distal end. The flower, mostly hidden by the overlapping bracts, has a calyx 15 to 18 millimeters (mm) (0.6 to 0.7 in) long and deeply cleft, and a corolla 20 to 23 mm (0.8 to 0.9 in) long, with a slender galea (concave upper lip) three to four times the length of the unpouched lower lip (Hitchcock and Cronquist 1978). It is distinguished from the other *Castilleja* species within its range by brilliant golden to yellow floral bracts. The plant flowers from April to June. When not flowering, the plant is inconspicuous. The species may be semi-parasitic like other members of the genus *Castilleja*, requiring a host plant for seedling development (Heckard 1962, Sheehan and Sprague 1984).

The plant tends to grow in clumps. One genet (genetic individual) may consist of 1 to 15 ramets (stems), making the calculation of exact numbers of individual plants difficult. Also, a wide variability of numbers of ramets per plant among genets and sites exists. Determining the number of ramets that comprise an individual plant generally requires destroying the plant (Reid Schuller, Natural Area Scientist, Washington Department of Natural Resources, pers. comm., 1992). In addition, variation in census methods exists. Therefore, estimates of population densities are difficult.

Western Oregon and Washington (and southern Vancouver Island) have a maritime climate, characterized by wet, mild winters and cool, relatively dry summers. Precipitation averages 800 to 1,350 mm (31 to 53 in) in the Puget-Willamette Trough (Sheehan and Sprague 1984).

The plant occurs in open grasslands at elevations below 100 m (328 feet (ft)) around the periphery of the Puget Trough. Most populations occur on glacially derived soils, either gravelly glacial outwash or clayey glacio-lacustrine sediments (Sheehan and Sprague 1984). Associated species include *Festuca idahoensis, Festuca rubra, Plantago lanceolata, Holcus lanatus, Achillea millefolium, Pteridium aquilinum*, and several species of *Vicia* and *Bromus* (Sheehan and Sprague 1984). Frequent, low intensity fires can be important in maintaining habitat for some plant species. Historically, periodic fires in the Puget Trough were instrumental in maintaining native grassland habitat by limiting successional encroachment of trees and shrubs (Sheehan and Sprague 1984).

Historically, *Castilleja levisecta* has been reported from over 30 sites in the Puget Trough of Washington and British Columbia, and as far south as the Willamette Valley of Oregon (Sheehan and Sprague 1984). In 1984, the Service conducted an assessment of the status of the species throughout its range. The plant was found to be extirpated from more than 20 historic sites (Sheehan and Sprague 1984). Many populations were found to be extirpated by conversion of habitat to agricultural, residential, and commercial development. In Oregon, *C. levisecta* historically occurred in the grasslands and prairie of the Willamette Valley; the species has been extirpated from all of these sites as the habitat has disappeared. The area around the type locality at Mill Plain, Washington, was converted to pasture and orchards some time after the plant was first collected there in 1880. Housing developments currently occupy the site (Sheehan and Sprague 1984).

Castilleja levisecta is now known from 10 extant populations. Seven occur in Washington: one just south of Olympia in Thurston County, five on Whidbey Island in Island County, and one on San Juan Island in San Juan County. In British Columbia, Canada, three populations exist: two populations on islands off the southern coast of

Vancouver Island and one in the city of Victoria, Vancouver Island.

The southernmost population of *Castilleja levisecta* occurs at the Rocky Prairie site south of Olympia, Washington, in Thurston County. The site is owned by the Washington Department of Natural Resources and is designated as a Natural Area Preserve that is managed primarily for protection of *C. levisecta* and *Aster curtus*, and preservation of the remnant native grassland community (R. Schuller, pers. comm., 1991). In 1983, the time of the last complete census, 15,000 plants were sporadically distributed throughout the 15-hectare (ha) (37-acre (ac)) site. A fire in 1985 eliminated the southernmost patch of *C. levisecta*, and the population was estimated to be about 7,000 plants in 1991 (R. Schuller, pers. comm., 1991). A population census at this burned area in 1993 revealed approximately 2,000 plants (Schuller, pers. comm., 1994).

Five populations are located on the north half of Whidbey Island, Island County, in Puget Sound. The largest of these occurs near Forbes Point on the west side of Crescent Harbor and is owned by the Department of Defense (Whidbey Island Naval Air Station). Navy personnel conducted a census of *Castilleja levisecta* in 1985 and counted more than 10,000 stems at the site (Clampitt 1985). The population was monitored in 1990, when it was estimated to be in the thousands, and again in 1991, when a reduction in density of about 25 percent was observed. The site was mapped and measures about 20 by 60 m (66 by 197 ft) (Matt Klope, Whidbey Island Naval Air Station, pers. comm., 1992).

A second population on Whidbey Island is located at Fort Casey State Park where approximately 120 plants occur on a 0.04 ha (0.10 ac) site (John Gamon, Botanist, Washington Natural Heritage Program, pers. comm., 1994). This State-owned historic site is managed as a park for recreational use (Ken Hagerman, Fort Casey State Park Manager, Washington Department of Parks, pers. comm., 1991).

A third Whidbey Island population of *Castilleja levisecta* occurs on the Bocker Environmental Preserve. This population occurs on two sites: one is 60 by 150 m (197 by 492 ft) on the Preserve, and a second is adjacent to the Preserve in a 4-square m (43-square ft) area. In 1993, 273 individuals existed (J. Gamon, pers. comm., 1994). The Preserve is owned by Seattle Pacific University and is used for environmental education courses (Keith Ludemann, Environmental Education Supervisor, Bocker Environmental Preserve, pers. comm., 1992).

A fourth Whidbey Island population occurs at Ebey's Landing, where 300 to 400 plants are found in a 10 by 30-m (33 by 98-ft) area (Sheehan and Sprague 1984). This site is privately owned.

The fifth Whidbey Island population of *Castilleja levisecta* is located at West Beach, at a site approximately 0.66 ha (1.6 ac) in size. The property is privately owned and is adjacent to a county road. In 1991 it supported 10 to 20 plants (M. Klope, pers. comm., 1991), down from about 200 in 1984 (Sheehan and Sprague 1984). In a letter to the Island County engineer, a citizen reported that roadside maintenance activities by the county had resulted in the elimination of the population (Steve Erickson, Whidbey Environmental Action Network, *in litt.*, 1991). Subsequent field inspection by Washington Natural Heritage Program staff confirmed that the population had been reduced to about five plants; however, the cause of the plant's decline at this site is unknown (Mark Sheehan, Washington Natural Heritage Program, *in litt.*, 1992).

The final U.S. population occurs on San Juan Island (San Juan County), and is located on a privately owned parcel near the Mar Vista Resort at False Bay. The site is approximately 4.3 by 3.0 m (14.1 by 9.8 ft) in size, and is comprised of 20 to 25 plants (Mark Sheehan, pers. comm., 1991; Sheehan and Sprague 1984).

Three extant populations of *Castilleja levisecta* occur near Victoria, British Columbia, Canada. One population is located on Alpha Islet, consisting of 200 to 300 plants, and is under the management of the Ministry of Parks. A second population, estimated at several thousand plants, in an area of about 2.3 ha (5.7 ac), is located on the Trial Islands and is currently managed by the Ministry of Parks as an Ecological Reserve. A third site consists of one clump (fewer than 10 plants) and was known to occur at Beacon Hill Municipal Park within the city of Victoria (Adolf Ceska, Curator of Botany, Royal British Columbia Museum, pers. comm., 1991). The current status of the Beacon Hill population is unknown.

Castilleja levisecta is threatened by habitat modification through succession of grassland to shrub and forest habitat, and low potential for expansion and refugia due to constriction of habitat. In addition, because the current distribution of the species has been greatly reduced from the historic distribution, the species is vulnerable to other threats such as collecting by recreational users, reduced vigor and reproductive potential due to predation, interspecific competition with native and exotic woody species, and a reduced ability to recover from catastrophic natural or human-caused events, such as catastrophic fire or accidental chemical spills from an adjacent highway and railroad. Two sites are vulnerable to potential residential or commercial development.

Previous Federal Action

Federal action on this species began when the Service published a notice of review for plants on December 15, 1980 (45 FR 82480). In this notice, *Castilleja levisecta* was included as a category 1 candidate. Category 1 candidates are those species for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Pending completion of updated status surveys, the status was changed to category 2 in the November 28, 1983, supplement to the Notice of Review (45 FR 53640). Category 2 candidates are those species for which information in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. *C. levisecta* remained a category 2 candidate in the September 27, 1985, Notice of Review for plants (50 FR 39526). In the February 21, 1990, Notice of Review (55 FR 6184), *C. levisecta* was elevated to category 1 status, based on additional data collected by the Washington Natural Heritage Program. The species remained in category 1 in the September 30, 1993, Notice of Review for plants.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Castilleja levisecta* Greenman (golden paintbrush) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historic loss of prairie/grassland habitat in the Puget Trough has reduced the range of *Castilleja levisecta*, and habitat loss continues to be the primary threat to remaining populations. Currently, encroachment by native and exotic woody species, as discussed in more detail under Factor E, is the primary cause of this habitat modification.

Development for residential or commercial use is a potential threat at two of the privately owned sites, West Beach and False Bay. The False Bay site is adjacent to a resort that may be sold in the near future, which ultimately may lead to expansion (M. Sheehan, pers. comm., 1991). The West Beach site is surrounded by residences and may be developed in the future. Although no plans for development have been initiated so far at these sites, the habitat for these two populations remains vulnerable to threats due to the adjacency to areas that receive high human use, and to the potential for development on these privately owned commercial and residential sites.

In recent history, fire suppression played a critical role in the reduction of grassland habitat in the Puget Trough and, therefore, in the reduction in numbers and sizes of *Castilleja levisecta* populations. A large, high intensity fire at any of the remaining sites where *C. levisecta* occurs could potentially eliminate populations, though the Service is unaware of permanent extirpations of this species due to fire. The ecology of the species should be studied further to determine the relationship between its habitat needs and fire, the effects of fire on reproductive viability, and the subsequent success of recruitment from outside burned areas.

The Washington Department of Natural Resources is conducting some experimental burning, and the Navy has also expressed interest in conducting burns (R. Schuller, M. Klope, pers. comm., 1991). Fire is a potential tool for maintaining and expanding habitat, however, because *Castilleja levisecta* has been reduced to 10 disjunct populations, and the potential for recruitment from other populations is low. The use of fire must be carefully considered to avoid the potential for extirpations. Interspecific competition and the role of fire in maintaining *C. levisecta* habitat are overlapping factors (see Factor E).

Loss of suitable habitat from either encroachment of woody species or development in the areas surrounding the disjunct populations prevents expansion of the species and affords no refugia in the case of catastrophic events that affect existing populations. Because the grassland habitat in the areas surrounding the existing populations has been lost, it is doubtful that the populations would expand naturally. Thus, the continued existence of *Castilleja levisecta* is threatened by the absence of available habitat for recruitment and colonization.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Castilleja levisecta has no known commercial use. Because of its showy golden-yellow bracts, recreational users may pick flowers at public sites. Fort Casey State Park, Bocker Environmental Preserve, Forbes Point, and Beacon Hill Municipal Park are sites of high levels of public use; collection and trampling are potential threats at these sites (see Factor E). For example, Fort Casey State Park receives a high amount of recreational use, and the potential for overcollection is considered a genuine threat. Visitor use has increased within the last decade, and park users have been observed picking the flowering plant at Fort Casey State Park (K. Hagerman, pers. comm., 1991). Once numbering over 500 plants (Hagerman, pers. comm., 1991), the Fort Casey State Park population had significantly declined to approximately 120 individuals by 1993 (J. Gamon, pers. comm., 1994). Some taxa have become vulnerable to collection by curiosity seekers as a result of increased publicity following publication of a listing proposal.

C. Disease or Predation

Disease is not known to be a factor threatening *Castilleja levisecta*. Populations may have been reduced from historical levels by grazing by livestock and browsing by rabbits (Sheehan and Sprague 1984). Browsing of the tops of *C. levisecta* plants, probably by rabbits and/or deer, has been observed at the Bocker Environmental Preserve. The effect of that browsing is unknown, although presumably it could affect seed number and reproductive viability (K. Ludemann, pers. comm., 1991). Grazing by livestock and exotic feral rabbits also threatens the False Bay population (Sheehan and Sprague 1984). In 1990 and 1991 at the Forbes Point site, Klope (pers. comm., 1991) observed heavy predation on herbaceous material and seeds by rodents. Signs of predation also were noted there in 1984 and 1985 (Clampitt 1985), which may be reducing the reproductive potential at that site.

The Rocky Prairie Natural Area Preserve population of *Castilleja levisecta* has historically harbored a population of the Whulge checkerspot butterfly (*Euphydryas editha taylori*), a state sensitive species, which is a potential seed predator. Because *C. levisecta* is not a specific host and no individual butterflies were observed at the site in 1991, the threat is probably low at this time (Mark Sheehan, pers. comm., 1991). Though several species of caterpillar were known to prey on *C. levisecta* (Sheehan and Sprague 1984, Evans *et al.* 1984), they do not currently pose a threat (R. Schuller, pers. comm., 1991).

Predation by native species is one of the natural pressures historically faced by *Castilleja levisecta*, but populations that have been reduced due to other factors are very vulnerable to decline and are less able to rebound after periods of heavy predation.

D. The Inadequacy of Existing Regulatory Mechanisms

No legal mechanism for the protection of *Castilleja levisecta* or its habitat exists. The species is listed as endangered by the Washington Natural Heritage Program (Washington Natural Heritage Program 1990), and as a category R4 species (restricted distribution, large population) by the province of British Columbia (A. Ceska, pers. comm., 1991). Four sites are included among the Natural Heritage Program's Registry of Natural Areas (L. Smith, pers. comm., 1991). The Rocky Prairie site was acquired by the Washington Department of Natural Resources for the purpose of protection of *C. levisecta* and *Aster curtus*, a Federal category 2 candidate (R. Schuller, pers. comm., 1991). All of these designations are important because they recognize the sensitive status of the species and encourage land managers and agencies to consider the species in management plans; however, they provide no protection under the law. Therefore, changing land management priorities or inadequate funding for protection could leave the species vulnerable at many of the sites.

Except for the Rocky Prairie Natural Area Preserve population, all publicly owned *Castilleja levisecta* populations are managed for purposes other than plant preservation. Thus, when conflicts between those purposes and management of the species arise, the primary function likely will take priority.

The Rocky Prairie Natural Area Preserve population has the highest level of protection of the 10 sites. Existing on State-owned property actively managed for plant conservation, this is the only site with known efforts to eliminate non-native species, including prescribed burning and hand removal of invasive plants. Efforts by the Washington Department of Natural

Resources to eliminate the invasive *Cytisus scoparius* at this site are voluntary, and not based in governmental statutory requirements; hence, State regulatory protection is not ensured. The long-term viability of the population continues to face threats from invasion of woody species and potentially catastrophic events, such as accidental spills from the nearby highway and railroad or large, high intensity fires.

The Fort Casey population is also on publicly -owned land, the Fort Casey State Park. Although present managers are employing limited protective measures, the plant is vulnerable to picking (see Factor B) and stochastic events due to the population's small size.

The Forbes Point population occurs on Federal land, on Whidbey Island Naval Air Station. The Department of Defense is currently participating in the Washington Registry of Natural Areas Program. A Navy staff biologist has undertaken measures to evaluate the population's status. Efforts have also been made to eradicate some invasive alien species. However, funding for more aggressive means of protecting the plant, such as fencing to preclude rodent predation and human trampling, has not been available. Signs have been erected designating the site as a research area, but there is no enforcement against public use of this site, which receives considerable foot traffic associated with a popular beach area nearby (M. Klope, pers. comm., 1991).

The populations of *Castilleja levisecta* at Ebey's Landing and the Bocker Environmental Preserve are also listed on the Washington Registry of Natural Areas. Ebey's Landing is on private property surrounded by the Ebey's Island Historic Reserve. The Bocker Environmental Preserve, owned by Seattle Pacific University, is currently managed as a natural area used for education purposes, and no active management to retain grassland habitat exists. Although *C. levisecta* is considered in the current management of the Historic Reserve, the area is not managed specifically for the plant, and the population is threatened by predation and invasion of woody species. The West Beach and False Bay populations of the species are on private property and receive no legal protection.

The *Castilleja levisecta* populations in Canada also receive no regulatory protection. Legislation to protect endangered species has been proposed to the British Columbia government, but currently no Federal or Provincial law protects sensitive species. Trial Islands, offshore from the city of Victoria, is designated as an Ecological Reserve by the British Columbia Ministry of Parks. The small population at Alpha Islet also is located within a designated Ecological Reserve. However, this designation does not require specific management recommendations for the plant. Because this designation is an administrative one, it could potentially be reversed by administrative decision, and the site could be used for other purposes (M. Sheehan, pers. comm., 1990).

The third Canada population of *Castilleja levisecta*, at Beacon Hill Municipal Park, is unprotected. The population consists of fewer than 10 plants and occurs in a portion of the park that receives heavy recreational use (A. Ceska, pers. comm., 1991).

In summary, no comprehensive management plan exists for *Castilleja levisecta*, and protection and recovery efforts have not been coordinated among population sites. Therefore, regulatory mechanisms are not adequate to ensure the continued existence of this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Grassland habitat has historically been maintained by periodic fires that prevented encroachment of woody plant species (Sheehan and Sprague 1984). Fire suppression in recent years has led to invasion of grasslands by native species such as *Pseudotsuga menziesii*, *Rosa* sp., and *Berberis aquifolim*. Encroachment by non-native species such as *Cytisus scoparius* and *Hiracium pilosella* also occurs. These species are naturally invasive and tend to become the dominant species in areas where they occur, competing with *Castilleja levisecta* for space and nutrients.

Interspecific competition is a serious threat to the continued existence of *Castilleja levisecta*. Loss of grassland habitat due to invasion of woody species threatens the plant at the Rocky Prairie Natural Area Preserve (R. Schuller, pers. comm., 1991), Bocker Environmental Preserve (K. Ludemann, pers. comm., 1991), Ebey's Landing (Jim Larson, Chief, Division of Natural Resources, National Park Service, pers. comm., 1991), West Beach (Laura Smith, Associate State Director, The Nature Conservancy, pers. comm., 1991), and Forbes Point (M. Klope, pers. comm., 1991) sites. *C. levisecta* cannot survive under a closed canopy, and species such as *Pseudotsuga menziesii*, *Rosa* sp., *Berberis aquifolim*, and the non-native *Cytisus scoparius* overtop *Castilleja levisecta*. Those species may also outcompete *C. levisecta* for root space and nutrients (Sheehan and Sprague 1984). The species appears to be unable to compete successfully against species that tend toward monoculture (J. Gamon, pers. comm., 1990).

Control of invasive species and the prevention of conversion of habitat is difficult. Some efforts have been made to remove interspecific competitors mechanically or by hand at the population sites of *Castilleja levisecta*. However, the practice is expensive, labor intensive, and dependent upon volunteer workers and discretionary efforts by land managers (Sheehan and Sprague 1984; R. Schuller, K. Hagerman, and M. Klope, pers. comm., 1991). At the Rocky Prairie Natural Area Preserve site, volunteers associated with The Nature Conservancy and the Washington Department of Natural Resources have made efforts to control *Cytisus scoparius*, but it still remains a threat.

The *Castilleja levisecta* habitat at four of the Whidbey Island population sites (Fort Casey State Park, Forbes Point, Bocker Environmental Preserve, and West Beach) are also threatened with the succession of tree and shrub communities. If left unchecked, encroachment of *Rosa* sp. will soon eliminate the population at the West Beach site (L. Smith, pers. comm., 1991). Clampitt (1985) noted the encroachment of several other aggressive plants, specifically *Rubus* sp. (blackberry), *Vicia* sp. (vetch) and *Trifolium* sp. (clover) onto *C. levisecta* habitat at Forbes Point. Invasive shrubs are succeeding in competition with *C. levisecta* at the Bocker Environmental Preserve site. Numbering over 1,200 individuals in 1984, by 1993 the population had declined significantly to 273 individuals (J. Gamon, pers. comm., 1994).

In 1985, approximately 10 percent of the *Castilleja levisecta* population at the Rocky Prairie Natural Area Preserve site was burned when a prairie fire was started by sparks from an adjacent railroad line. Abundance of *C. levisecta* at the burned site was initially reduced by about 85 percent within the burned area. Monitoring in subsequent years has shown a slow recovery of numbers; in 1991 the population was up to about 50 percent of its pre-fire density. Experimental burning has since been used at that site to study the effects of fire on *C. levisecta*, which is ongoing with no conclusive results as yet (R. Schuller, pers. comm., 1991). While fire may temporarily reduce the abundance of *C. levisecta*, it may also promote the plant over time by maintaining open prairie habitat that would otherwise become shrub and forest lands through natural succession.

Trampling by recreationists threatens the plant at several locations. The few plants that occur at the Beacon Hill Municipal Park site in Victoria are located in a heavily used area of the park. A cross country ski event in 1991 apparently damaged the existing clump of plants (A. Ceska, pers. comm., 1991). The Forbes Point site on Whidbey Island is accessible to the public; clam diggers have been observed walking through the *Castilleja levisecta* site (M. Klope, pers. comm., 1991).

The isolation and small sizes of *Castilleja levisecta* populations make the species vulnerable to extirpation from stochastic (i.e., random) events. Because of the disjunct distribution of the plant, recolonization of a population following a catastrophic elimination is unlikely. Genetic variability is also reduced in small, isolated populations, and the chances of adapting to environmental change is less likely.

Adjacent land use activities also threaten the species' survival. Conversion of surrounding habitat to later successional stages and conversion to development eliminate refugia, and limit the ability of *Castilleja levisecta* to recolonize areas beyond the existing sites. Threats from a railroad line, a highway, and a residential area bordering the Rocky Prairie site include catastrophic fire and chemical spills. Digging by domestic dogs from nearby subdivisions has destroyed habitat within the enclosure at Rocky Prairie (R. Schuller, pers. comm., 1991). Road maintenance adjacent to the West Beach site may have destroyed that population (S. Erickson, *in litt.*, 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Castilleja levisecta* as threatened. Threats to *C. levisecta* include habitat destruction and modification through succession of prairie and grassland habitats to shrub and forest lands; development of property for industrial, residential and agricultural use; low potential for expansion and refugia due to constriction of habitat; recreational picking; predation; absence of legal mandates for protection of the plant or its habitat; interspecific competition with native and exotic woody species; and stochastic events due to the small size of the populations and limited number of individuals.

Because many of the sites are designated as preserves or afforded some level of protection through current management efforts, the species is not currently in danger of extinction. However, because the species' distribution is much reduced from historic records, and the current sites face threats from the factors listed above, *Castilleja levisecta* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The species therefore fits the definition of threatened as defined by the Act. Critical habitat is not being proposed for this species for reasons discussed in the Critical Habitat section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to *Castilleja levisecta.* As discussed above under Factor B in the Summary of Factors Affecting the Species, *C. levisecta* is vulnerable to taking. Publication of precise maps and critical habitat descriptions in the **Federal Register** would be likely to increase the degree of threats from taking and vandalism, and would increase enforcement problems. All involved parties and landowners have been notified of the importance of the species' habitat. Protection of its habitat will be addressed through the recovery and section 7 consultation processes. Therefore, the Service finds that designation of critical habitat for *C. levisecta* is not prudent at this time, because a designation would increase the degree of threat from vandalism, collecting, and other human activities, and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Recovery efforts encourage communication and cooperative efforts among various land managers and owners. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. That would encourage protection and recovery efforts at Rocky Prairie Natural Area Preserve and Fort Casey State Park, sites owned by the State of Washington. The protection required by Federal agencies and prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The population of *Castilleja levisecta* at Forbes Point occurs on Federal land at Whidbey Island Naval Air Station. Any Federal actions there would be subject to section 7 requirements.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Castilleja levisecta*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered or threatened plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered or threatened plant on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities and their possible impacts on this species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal. The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and sent to the Field Supervisor, Boise Field Office (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Clampitt, C. 1985. Report: Census of *Castilleja levisecta* population at Forbes Point. Prepared for L. Smith, The Nature Conservancy, Washington Field Office, Seattle, Washington. 4pp.

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Washington Natural Heritage Program. 1990. Endangered, threatened and sensitive vascular plants of Washington. Department of Natural Resources, Olympia. Second printing. 52pp.

Authors

The primary author of this proposed rule is Alison Beck Haas, Boise Field Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Scrophulariaceae—Snapdragon family:						
•	•	•	•	•	•	•
Castilleja levisecta	Golden paintbrush	U.S.A. (WA, OR), Canada (B.C.).	T	....	NA	NA
•	•	•	•	•	•	•

Dated: April 25, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11257 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AC50

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Insects From the Santa Cruz Mountains of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mount Hermon June beetle (*Polyphylla barbata*) Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*). These three insects are located in Santa Cruz County, California, and are threatened by urban development, recreational use, sand mining, agricultural activities, and alteration of natural fire frequency. This proposal, if made final, would implement the Federal protection and recovery provisions of the Act for these three species.

DATES: Comments from all interested parties must be received by July 11, 1994. Public hearing requests must be received by June 24, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Hohman at the above address (telephone 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

The Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*) are endemic to restricted sandstone deposits in the Santa Cruz Mountains, Santa Cruz County, California. The Santa Cruz Mountains are a relatively young range composed of igneous and metamorphic rocks overlain by thick layers of sedimentary material uplifted from the ocean floor and ancient shoreline zone (Caughman and Ginsberg 1987). These Miocene marine terraces, referred to as the Santa Margarita formation (Marangio and Morgan 1986), persist as pockets of sandstones and limestones that are geologically distinct from the volcanic origins of the mountain range. Soils that formed from these sandstone deposits occur in scattered pockets covering about 3,240 hectares (ha) (8,000 acres (ac)) (Marangio and Morgan 1986), and are referred to as the Zayante series (USDA Soil Conservation Service 1980). Pockets of Zayante soils are deep, coarse-textured and poorly developed, and occur in three clusters in the Santa Cruz Mountains. The largest cluster is in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, and Olympia, and the city of Scotts Valley. A second cluster is in the Bonnie Doon area, and the third, which is the smallest, is in the vicinity of the community of Corralitos (Marangio 1985).

Predominant vegetation of the Santa Cruz Mountains consists of redwood forest (Zinke 1988) and mixed evergreen forest (Sawyer *et al.* 1988). Within the Santa Cruz Mountains, however, two unique communities are restricted to the Zayante soil series: maritime coast range ponderosa pine forest and northern maritime chaparral (Griffin 1964, Holland 1986). Maritime coast ponderosa pine forests are open park-like areas that usually contain ponderosa pine (*Pinus ponderosa*), knobcone pine (*P. attenuata*), coast live oak (*Quercus agrifolia*), and, at a few sites, the federally endangered Santa Cruz cypress (*Cupressus abramsiana*) (Griffin 1964, Holland 1986, Morgan 1983). Northern maritime chaparral, locally referred to as "silver-leaf manzanita mixed chaparral" (Marangio 1985, Marangio and Morgan 1986), is dominated by the endemic silver-leaved manzanita (*Arctostaphylos silvicola*), a candidate for Federal listing.

Both the knobcone pine and Santa Cruz cypress are dependent on naturally occurring fires at appropriate frequencies for regeneration. The association of these fire dependent species with maritime coast ponderosa pine forests indicates that fire frequency plays a role in the survival of this vegetation community. The ponderosa pines and associated trees occur in scattered to dense stands with an understory of small herbaceous plants and grasses and frequently little shrub understory. Maritime coast ponderosa pine forest may include areas lacking ponderosa pine. Local botanists refer to maritime coast ponderosa pine forest in this area as "ponderosa pine sand parkland" (Marangio 1985, Morgan 1983) or "ponderosa pine sandhill" (California Native Plant Society 1986). Because of their disjunct distribution, ponderosa pine sand parklands have been called "biological islands" (Marangio 1985).

The Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle have very restricted ranges within the Santa Cruz Mountains. With the exception of two sightings, all known localities for the three taxa are within a 52 square kilometer (20 square mile) range on ponderosa pine sand parklands.

The Mount Hermon June beetle was first described by Cazier (1938) from Mount Hermon, Santa Cruz County, California. It is 1 of 28 species of *Polyphylla* in America north of Mexico and 1 of 15 species of the *diffracta* complex within the genus *Polyphylla* (Young 1988). Young (1988) recently made several nomenclatural adjustments of the genus *Polyphylla* but retained *P. barbata*. Two other species of *Polyphylla* occur in the Ben Lomond-Mt. Hermon area, *P. crinita* and *P. nigra*. *P. crinita* occurs from British Columbia, Idaho, and Montana south to California and Nevada. *P. nigra* occurs from British Columbia south to Baja California, Mexico. The Mount Hermon June beetle is distinguished from other species of *Polyphylla* by the presence of relatively dense, long, erect hairs scattered randomly over the elytra (thick leathery front wings) and short erect hairs on the pygidium (abdominal segment) (Young 1988).

The adult male Mount Hermon June beetle is a cryptic small scarab beetle with a black head, dark blackish-brown elytra clothed with scattered long brown hair, and a striped body (Borror *et al.* 1976, Young 1988). Elytral vittae are broken, often reduced to discontinuous clumps of scales but still form identifiable lines (Young 1988). Females are larger, with a black head, chestnut color clypeus (plate on lower part of face) and elytra, and golden hairs on head, thorax, and legs (Young 1988). The one adult female described was 22 × 11 millimeters (mm) (0.87 × 0.43 inches (in)) while the holotype male was 20 × 9.7 mm (0.79 × 0.38 in) (Young 1988).

The Mount Hermon June beetle requires about 2 to 3 years to mature from hatching through the adult form. Most of the life cycle is spent in the larval form. The larvae are subterranean and feed on the roots of certain grasses (Dr. Art Evans, Los Angeles County Museum of Natural History, pers.

comm., 1993). Adults may feed on leaves (Dr. Fred Andrews, California Department of Food and Agriculture, pers. comm., 1993). Adult males are strong fliers and females are fossorial; they may be reluctant to fly because of their large body size (A. Evans, pers. comm., 1993; Dr. Alan Hardy, California Department of Food and Agriculture, pers. comm., 1993). For 1 to 2 months in spring and early summer, the adults emerge at dusk for mating and the males fly in search of females. This limited time period for mating suggests that a specific mechanism to ensure reproductive success is employed such as emission of pheromones by females to attract males (Lilly and Shorthouse 1971 *in* Young 1988). Within a short time after mating and egg-laying, the adults die.

The Mount Hermon June beetle is found on ponderosa pine sand parklands in the immediate vicinity of the communities of Mount Hermon, Glen Arbor, Olympia, and Ben Lomond in Santa Cruz County, California (Young 1988). A lone beetle specimen collected in 1968 is labeled as occurring in Santa Cruz. This specimen may have been a waif, since these beetles are strong fliers, or the location on the label was inaccurate (Stephen McCabe, California Native Plant Society, *in litt.*, 1991). Recent collections of Mount Hermon June beetles (1990) are from ponderosa pine sand parklands between the communities of Ben Lomond and Mount Hermon (S. McCabe, *in litt.*, 1991).

The limited range of the Mount Hermon June beetle is probably due to various factors including substrate preferences, food sources, and the apparent restricted home range of the females. Beetles of this genus prefer sand/grass or sand/grass and coniferous forest (substrate/plant) associations such as those found in ponderosa pine sand parkland (Borror *et al.* 1976; Young 1988; A. Hardy, pers. comm., 1993). The Mount Hermon June beetle seems to prefer grasses and conifers (A. Evans, pers. comm., 1993) associated with ponderosa pine sand parkland (Marangio and Morgan 1986).

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) was first described from a ponderosa pine sand parkland area of the Santa Cruz Mountains, Santa Cruz County, California (Rentz and Weissman 1984). It is 1 of 54 species in the genus *Trimerotropis* (Rentz and Weissman 1984). This species is similar in appearance to *T. occulans*, which is restricted to San Luis Obispo and Santa Barbara Counties (Otte 1984), and *T. koebelei*, which is larger in size and has a wider frontal costa (wing vein), lower pronotal crest (dorsal body wall plate of the prothorax), and more distinct pronotal carinae (keel).

The Zayante band-winged grasshopper is one of the smallest species in the genus. The body and forewings are pale gray to light-brown with dark crossbands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band (Otte 1984, Rentz and Weissman 1984). The hind tibiae are blue-gray and the eye is banded. The pronotum possesses lateral carinae represented as tubercles. Individual flights are between 1 to 2 meters (m) (3 to 7 feet (ft)), and the grasshoppers stridulate while flying, producing a buzzing sound (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground and are conspicuous in flight because of the color of the hind wings and the crackling sound made by the wings (Borror *et al.* 1976).

Locality records and recent collections indicate the distribution of the Zayante band-winged grasshopper is restricted to ponderosa pine sand parklands in the Santa Cruz Mountains, specifically in the vicinity of the community of Felton (Rentz and Weissman 1988; R. Morgan, private consultant, Soquel, California, *in litt.*, 1992). Efforts to collect Zayante band-winged grasshoppers from numerous localities in central Santa Cruz County and various habitats including grassland and chaparral have been unsuccessful except at ponderosa pine sand parklands (R. Morgan, *in litt.*, 1992). The Zayante band-winged grasshopper often occurs in association with the Ben Lomond wallflower (*Erysimum teretifolium*) (R. Morgan, *in litt.*, 1992), a federally endangered species that is also restricted to ponderosa pine sand parklands.

Horn (1888a, 1888b *in* Horvore 1977) described a new species of rain beetle from near the city of Santa Cruz as *Pleocoma conjugens*. Subsequently, Horvore's (1977) analysis of rain beetles identified two allopatric subspecies, one restricted to the Santa Cruz Mountains *(Pleocoma conjugens conjugens)* and the second restricted to the Santa Lucia Mountains (Pleocoma conjugens lucia) in Monterey County. These subspecies differ in morphological characteristics and food preferences of larvae. The Santa Cruz rain beetle is the only species of rain beetle known to occur in the Santa Cruz Mountains. The closest known population of any other species of rain beetles is located in the western Santa Clara Valley and is within a complex of populations assigned to *Pleocoma behrensi* (Frank Horvore, Placerita Canyon Nature Center, *in litt.*, 1993).

Adult male Santa Cruz rain beetles are generally stout-bodied, convex from above, relatively large when compared to other rain beetles (about 25 mm (1 in) in length), unicolorous, shining reddish-brown to blackish in color, and the ventral surface of the body is clothed with long hair (Horvore 1979). The head is specifically modified for digging. The elytra are not truncate at the apex and cover the entire abdomen. Front tibiae are dilated, flattened, and coarsely scalloped or toothed along the outer edge (Borror *et al.* 1976, Horvore 1977). Segment 3 of the antenna is elongate and strongly angulated anteriorly at apical 1/3. In the female, segment 6 of the antenna has lamellae distinctly shorter than segment 7; segment 9 is longest (Horvore 1977). Females are small (27 to 32 mm (1 to 1.3 in) in length) when compared to other species of rain beetles, with the pronotal surface (dorsal body plate of the thorax) shining and moderately densely punctate. Antennal segment 3 is short and subcylindrical; segment 9 is longest. They lack functional wings and are usually fatter than males (Horvore 1979). Adults lack working mouthparts and cannot feed (Horvore 1979).

Both male and female Santa Cruz rain beetles in the Mount Hermon area have been found in dry sandy soils in open areas (F. Horvore, pers. comm., 1993). Hazeltine (1950) located larvae in an area of grass and ponderosa pine, which is a description of ponderosa pine sand parkland. Larvae and adults are subterranean except when adult males emerge to fly in search of females. Eggs are laid in the female's burrow in spring or summer following mating in the fall or winter. Burrows may be up to 1 m (3 ft) deep. Egg development takes about 2 months. The larvae live in the soil and feed on the roots of plants (Borror *et al.* 1976). Probable host plants are *Pinus ponderosa, Gnaphalium* sp., and *Quercus agrifolia* (Hazeltine 1950). Larval lifespan extends for several years, 13 years for some *Pleocoma* species. Following transformation through the pupal stage to the adult stage and the onset of winter rains, the adult rain beetles emerge from underground burrows at dawn or dusk to mate (Borror *et al.* 1976, Horvore 1979). Females excavate a tunnel to the surface, release a pheromone, return to the tunnel, and await the arrival of a male (Dr. James Chemsak, University of California, Berkeley, pers. comm., 1993). That is the only time a female is above ground. Males locate females by flying and tracking pheromones emitted by the females (James Robertson, Los Angeles

County Museum of Natural History, pers. comm., 1993). Populations are often restricted to a few acres of habitat (Horvore 1979). The size and distribution of a population is limited to the area that flightless females can tunnel through to lay eggs and that larvae can excavate while feeding on roots.

Locality records indicate the Santa Clara rain beetle is limited to the Santa Cruz Mountains in the area of the communities of Ben Lomond, Felton, Mount Hermon, Scotts Valley, Redwood Glen, and Waddell Creek (Hazeltine 1950, Horvore 1977, F. Horvore *in litt.* 1993). All locations, except Waddell Creek, are within ponderosa pine sand parkland. The male rain beetle's ability for strong and sustained flight and its attraction to reflections of light from water may explain the locality record from Waddell Creek.

Historic and recent collection records indicate that the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Clara rain beetle are restricted to ponderosa pine sand parkland habitat. More than 50 percent of this habitat has been lost or altered from human development (e.g., housing development, agriculture, mining, recreation) and alteration of fire frequency. By 1986, approximately 100 ha (250 ac) of ponderosa pine sand parklands scattered over about 20 sites remained undeveloped (Marangio and Morgan 1986). By 1992, less than 40 ha (100 ac) was estimated to remain (R. Morgan, pers. comm., 1992).

Approximately 40 percent of the remaining known and potential ponderosa pine sand parkland habitat for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle is privately owned. Public land within existing and potential habitat includes Quail Hollow Ranch, owned by the County of Santa Cruz; a preserve adjacent to Quail Hollow Ranch and Bonny Doon Ecological Preserve, owned by the California Department of Fish and Game (Department); and Henry Cowell Redwoods State Park.

Previous Federal Action

The Service included the Mount Hermon June beetle as a category 2 candidate species in the January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), Animal Notices of Review. Category 2 species are those for which information in the Service's possession indicates that listing is possibly appropriate, but for which substantive data on biological vulnerability and threats are not currently available to support proposed rules. On February 11, 1991, the Service was petitioned by Mr. Stephen McCabe, California Native Plant Society, to emergency list the Mount Hermon June beetle as an endangered species.

The Service made a 90-day finding on June 10, 1991, that substantial information had been presented indicating that the petitioned action may be warranted, and announced this decision in the August 19, 1992, **Federal Register** (57 FR 37513). The Service initiated a status review of the Mount Hermon June beetle at that time.

The Service was petitioned on July 16, 1992, by Dr. David Weissman, California Academy of Sciences, to list the Zayante band-winged grasshopper as an endangered species. This proposed rule constitutes the final finding for the petitioned actions for the Mount Hermon June beetle and Zayante band-winged grasshopper, in accordance with section 4(b)(3)(B)(ii) of the Act.

The Service learned of the status of and threats to the Santa Cruz rain beetle during its status reviews of the Mount Hermon June beetle and Zayante band-winged grasshopper. During the status reviews of the three taxa, the Service examined the available data on life history, ecology, locality records, and species' range. Sources of status and threat information for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle include reports and plans supplied by proponents and reviewing agencies for development projects within the range of these three species, and published and unpublished data from scientists with expertise on these taxa and their habitat needs. Following completion of the status reviews, the Service determined that enough information exists to propose the species for listing.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle inhabit restricted pockets of ponderosa pine sand parklands in the Santa Cruz Mountains. The imminent threat facing these species and their associated habitat is the ongoing and threatened destruction and adverse modification of habitat by one or more of the following activities: urban development, agriculture, sand mining, recreational use, and alteration of fire frequency (see Factor E below).

Historically there were approximately 200 ha (500 ac) of ponderosa pine sand parklands. By 1986, only about 100 ha (250 ac) of ponderosa pine sand parklands scattered over about 20 sites remained (Marangio and Morgan 1986). By 1992, estimates of remaining ponderosa pine sand parklands totalled less than 40 ha (100 ac) (R. Morgan, pers. comm., 1992).

Urban development has resulted in alteration and loss of habitat for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle. Construction of private homes, roads, and businesses has removed vegetation and modified soils through compaction and disruption of the soil's horizon. More than 480 ha (1,200 ac) of sandhills vegetation has been lost to residential development. One site where the Zayante band-winged grasshopper previously had been collected has since been converted to a parking lot (D. Weissman, pers. comm., 1992). Existing Santa Cruz County and Scotts Valley plans, zoning designations, and approved permits indicate that development will continue in this area and further fragment and reduce the habitat for these taxa (Marangio 1985).

Historically, portions of sandhills vegetation were cleared for agriculture, but they were unproductive, prone to erosion, and of little agricultural value (Griffin 1964, Storie *et al.* 1944 as cited in Griffin 1964). Although ponderosa pine sand parklands are not heavily used for agricultural purposes, past clearing for cattle grazing has contributed to their fragmentation and decline.

Sand deposits have been actively mined for construction purposes within the ponderosa pine sand parklands for at least five decades (Storie *et al.* 1944 *in* Griffin 1964). Much of the remaining habitat of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle is threatened by sand mining. The type locality for the Zayante band-winged grasshopper has been mined and is currently an unvegetated deep pit (R.

Morgan, *in litt.*, 1992). Four large quarries with mining permits exist in the vicinity of known occurrences of the three insect species. Three of these mines are currently active: Quail Hollow Quarry, with current plans for expansion (John Gilchrist and Associates 1990); Olympia Quarry, also with plans for expansion; and Kaiser-Felton Quarry (Suzanne Smith, County of Santa Cruz Planning Department, pers. comm., 1993). Geyer Quarry, although currently inactive, was mined as recently as 1991 and could begin production again with adequate financing (S. Smith, pers. comm., 1993). Long-term plans of quarry operators are to mine the entire properties (S. Smith, pers. comm., 1993). Santa Cruz County is requesting and has received mining revegetation plans from some quarries. However, revegetation efforts likely will not provide for all of the essential requirements of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle for successful feeding, cover, reproduction, and growth.

Recreational off-road motorcycle use has become popular in the Santa Cruz Mountains. Large group events (200+ people) occur on ponderosa pine sand parklands (Al Haynes, Watershed Analyst, San Lorenzo Water District, pers. comm., 1993). This recreational activity crushes and removes vegetation, causes compaction of soils, promotes soil erosion and runoff, and occasionally results in oil and gasoline spills.

Recreational use on public lands also threatens habitat occupied by these species. Henry Cowell Redwoods State Park includes about 8 ha (20 ac) of ponderosa pine sand parklands. An existing campground encompasses about half of this ponderosa pine habitat (Deborah Hilliard, California Department of Fish and Game, pers. comm., 1993, Sue Steinmetz, Henry Cowell Redwoods State Park, pers. comm., 1993). Quail Hollow Ranch, recently purchased by the county of Santa Cruz for development as a multipurpose regional park, contains approximately 17 ha (42 ac) of ponderosa pine sand parklands suitable for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle (County of Santa Cruz 1990). The master plan for the park includes establishment of sports fields for soccer and softball, equestrian use with stables, picnic facilities, and an amphitheater. Without careful planning and consideration, facility construction and use will result in adverse impacts to these species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Amateur collecting for the Mount Hermon June beetle and Santa Cruz rain beetle has and does occur on a limited basis. Collection is restricted to the time period the species spend above ground as an adult (A. Hardy, pers. comm., 1993; Marilyn Perry, Santa Cruz County Agricultural Commissioners' Office, pers. comm., 1993). As these species become more uncommon, the interest of collectors is likely to increase; however, overutilization by collection is not known to occur at this time.

C. *Disease or predation.* Not known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not provide adequate protection of the Mount Hermon June beetle, Zayante band-winged grasshopper, Santa Cruz rain beetle, or their habitat. There is no legal requirement for Federal agencies to consider and manage for these species during project design and implementation, although some Federal agencies have policies that encourage consideration of candidate species in the design and implementation of Federal projects.

At the State and local levels, regulatory mechanisms are also limited. These three taxa are not listed by the State of California under the California Endangered Species Act. State and local agencies may consider these taxa when evaluating certain activities for compliance with the California Environmental Quality Act and local zoning regulations. If an activity is identified as having a potential impact on these species, mitigation measures may be required by State and local regulating agencies to offset these impacts. Santa Cruz County requires that proposed projects comply with both general zoning requirements and environmental designations. However, the County has designated ponderosa pine sand parklands for quarry activity and zoned the area for special use that includes mining (S. Smith, pers. comm., 1993).

Public land ownership of existing and potential ponderosa pine sand parkland habitat for these three species is limited to two ecological preserves and two parks in the area. Only the Bonnie Doon Ecological Preserve and the small preserve within Quail Hollow Ranch provide protection for ponderosa pine sand parkland habitats. The two parks do not operate under mandates to manage for the Mount Hermon June beetle, Zayante band-winged grasshopper, Santa Cruz rain beetle, or ponderosa pine sand parklands.

E. *Other natural or manmade factors affecting its continued existence.* Pesticide use could pose a threat to these three taxa. If Mediterranean fruit flies or similar pest species are found within the Santa Cruz Mountains, aerial spraying of malathion or similar insecticide may occur within the range of the Mount Hermon June beetle, Zayante band-winged grasshopper, or Santa Cruz rain beetle. Local landowners may use pesticides to control targeted species of invertebrates around their homes and businesses. These pesticides may drift and kill non-targeted species such as the Mount Hermon June beetle, Zayante band-winged grasshopper, or Santa Cruz rain beetle. Pesticide application is expected at existing and planned golf courses and may occur on a limited basis at vineyards in the Santa Cruz Mountains.

Habitat loss has fragmented the already limited range of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle into a patchwork of small, isolated remnants. Because of reduced population size and limited habitat availability, most of the remaining populations are vulnerable to extirpation from unpredictable environmental, genetic, and demographic events (Gilpin 1987). Extinction rates increase as habitat size decreases and distance from neighboring populations increases. These factors apply to the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle. As the remaining habitat units decrease in size, edge effect becomes increasingly important (i.e., smaller habitats have less space available to buffer adverse impacts from outside influences such as human disturbance or chemical contamination). In addition, populations in smaller habitat fragments are subject to the effects of genetic drift (the random loss of genetic variability). This phenomenon also reduces the ability of individuals and populations to successfully respond to environmental stresses, such as increased predation, diseases, or changes in climate.

Because the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle are adapted and restricted to ponderosa pine sand parkland, changes in primary vegetation are likely to result in decreased population viability and eventually local extirpation of these species. Ponderosa pine sand parkland is exhibiting a gradual change to mixed evergreen forest in some locations. Coast live oak, madrone, and other species typical of mixed evergreen forest are encroaching into ponderosa pine sand parkland (Marangio and Morgan 1986). This encroachment has been attributed to the reduced frequency of fire (Morgan 1983). Historically, fire may have prevented the invasion of these mixed evergreen forest species that are not as well adapted to survive fire. Recent settlement of the area and associated suppression of fires to prevent property damage has aided in the establishment of mixed evergreen forest species in ponderosa pine sand parklands. The need for fire in maintaining ponderosa pine sand parkland is also supported by the occurrence of knobcone pine and, in some locations, Santa Cruz cypress (Holland 1986), both of which are fire tolerant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Because the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle are threatened by one or more of the following factors—urban development, agriculture, recreational use, sand mining, fire frequency, pesticide use, and genetic restriction—the preferred action is to list the Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*) as endangered. Critical habitat is not being proposed for these species for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Service designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is imperiled by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

In the case of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle, the second criterion is met. All populations of the three species are found on State or private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to land-use activities occurring within critical habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to the species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is expected for activities occurring within habitats currently occupied by the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle.

Under section 4 of the Act, listing the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle would provide for the development of a recovery plan, which would bring together Federal, State, local government, and private agencies and individuals to develop conservation strategies for these species. The recovery plan would develop a framework of recovery activities, priorities, and funding requirements to accomplish conservation objectives and ensure the survival and recovery of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on listed wildlife and inquiries regarding them should be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241, facsimile 503/231- 6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rule is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Judy Hohman, Ventura Field Office (see **ADDRESSES** section) (telephone 805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended for animals by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Insects							
*	*	*	*	*	*	*	
Beetle, Mount Hermon June.	*Polyphylla barbata*	U.S.A. (CA)	NA	E		NA	NA
*	*	*	*	*	*	*	
Beetle, Santa Cruz rain	*Pleocoma conjugens conjugens.*	U.S.A. (CA)	NA	E		NA	NA
*	*	*	*	*	*	*	
Grasshopper, Zayante band-winged.	*Trimerotropis infantilis*	U.S.A. (CA)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: April 25, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11258 Filed 5–9–94; 8:45 am]

BILLING CODE 4310-55-P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review of 27 Foreign Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service announces the 90-day finding that a petition to add seven kinds of foreign butterflies to the List of Endangered and Threatened Wildlife has presented substantial information indicating that the action may be warranted. A status review of these butterflies, together with 20 others that may be of similar concern, is initiated.

DATES: The finding announced herein was made on May 2, 1994. Comments and information may be submitted until September 7, 1994.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act of 1973, as amended, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition has presented substantial information indicating that the requested action may be warranted, and that such finding be published promptly in the **Federal Register**. If the finding is positive, section 4(b)(3) also requires commencement of a review of the status of the involved species. The U.S. Fish and Wildlife Service (Service) now announces a 90-day finding on a recently received petition.

The petition was submitted by Ms. Dee E. Warenycia of Roseville, California. It was dated January 1, 1994, and was received by the Service on January 10, 1994. It requests that the following seven kinds of foreign swallowtail butterflies be added to the List of Endangered and Threatened Wildlife (50 CFR 17.11); *Teinopalpus imperialis, Eurytides marcellinus, Eurytides lysithous harrisianus, Parides ascanius, Parides hahneli, Troides (=Ornithoptera) meridionalis*, and *Papilio esperanza*. It was accompanied by appropriate detailed data sheets from the World Conservation Union (IUCN) Red Data Book *Threatened Swallowtail Butterflies of the World* (by N. Mark Collins and Michael G. Morris, 1985). The seven butterflies are classified therein as endangered, vulnerable, or rare, mainly because of environmental disruption and overcollection.

Of the petitioned species, *Teinopalpus imperialis* is reportedly threatened by overcollecting and rapid destruction of the Himalayan mountain forests upon which it depends. *Eurytides marcellinus* has a very restricted breeding habitat in Jamaica, where its larval foodplants are being destroyed by cultivation. *Eurytides lysithous harrisianus* has been eliminated by habitat destruction from all but one known site in southeastern Brazil, which itself is now under development. *Parides ascanius* is jeopardized by the drainage and development of its subcoastal swamp habitat near Rio de Janeiro. *Parides hahneli* is known only from three localities in Amazonian Brazil, with very specialized habitat, and is threatened by overcollection for commercial purposes. *Troides meridionalis* is threatened by the lumbering of its specialized rainforest habitat in New Guinea. *Papilio esperanza* is known only from one site in the cloud forest of Oaxaca, Mexico, and is vulnerable to overcollection.

The Service has examined the petition and supporting data, finds that substantial information has been presented indicating that the requested listing of the seven taxa of butterflies may be warranted, and now initiates a status review of these butterflies. In addition, the Service will take this opportunity to review the 20 other kinds of foreign swallowtail butterflies that are classified as endangered or vulnerable by the IUCN, and that are not now on the U.S. List of Endangered and Threatened Wildlife. Therefore, a total of 27 swallowtail butterflies, as designated in the accompanying table, is now under review.

TABLE.—SWALLOWTAIL BUTTERFLIES UNDER REVIEW

Name	Range
Teinopalpus imperialis.	Himalayas.
Eurytides marcellinus	Jamaica.
Eurytides lysithous harrisianus.	Brazil.
Eurytides iphitas	Brazil.
Graphium levassori ..	Comoro Islands.
Graphium sandawanum.	Philippines.
Battus zetides	Hispaniola.
Parides ascanius	Brazil.
Parides hahneli	Brazil.
Parides burchellanus	Brazil.
Parides (Atrophaneura) jophon.	Sri Lanka.
Parides (Atrophaneura) schadenberqi.	Philippines.
Troides dohertyi	Talaud (Indonesia).
Troides (Ornithoptera) meridionalis.	New Guinea.
Troides (Ornithoptera) croesus.	Moluccas (Indonesia).
Papilio esperanza	Mexico.
Papilio himeros	Brazil.
Papilio maraho	Taiwan.
Papilio osmana	Philippines.
Papilio carolinensis ...	Philippines.
Papilio moemeri	New Ireland (Papua New Guinea).
Papilio benguetanus .	Philippines.
Papilio phorbanta	Reunion Island.
Papilio desmondi teita.	Kenya.
Papilio morondavana	Madagascar.
Papilio leucotaenia ...	Central Africa.
Papilio leucotaenia ...	Central Africa.
Papilio neumoegeni ..	Sumba (Indonesia).

The Service encourages the submission of appropriate data, opinions, and publications regarding these butterflies, as well as other kinds of foreign swallowtails that may warrant consideration for addition to the List of Endangered and Threatened Wildlife. In accordance with section 4(b)(3) of the Act, within 12 months of receipt of the petition, the Service will make another finding as to whether the requested listing of seven kinds of butterflies is warranted, not warranted, or warranted but precluded by other listing measures, and may also announce decisions with respect to other kinds of butterflies.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 2, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–11256 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940423–4124, I.D. 031594E]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final notification to take no action under Flexible Area Action System (FAAS) #8.

SUMMARY: NMFS issues this notification of the Regional Director's concurrence with the recommendation of the New England Fishery Management Council (Council) to take no action pursuant to FAAS #8, as provided for under implementing regulations for Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP). FAAS #8 initiated a process to consider specified management actions to close an area to fishing due to suspected high levels of discards affecting mortality on juvenile, sub-legal, and spawning haddock in and around an area located offshore of Cape Cod, MA.

ADDRESSES: Copies of the fact-finding report of the Director, Northeast Region, NMFS (Regional Director), and the

Council's impact analysis may be requested from the New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01960.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe (NMFS, Fishery Policy Analyst), 508–281–9272.

SUPPLEMENTARY INFORMATION: Section 651.26 of title 50 CFR specifies that FAAS's may be proposed and implemented to provide protection to concentrations of juvenile, sub-legal, or spawning fish. As part of the FAAS process, the Regional Director, at the request of the Council's Multispecies Committee, initiates a fact-finding investigation of alleged discard problems, and the Council provides an impact analysis of alternative measures that might be implemented under a given FAAS action.

A notification initiating actions under proposed FAAS #8 was published on March 24, 1994 (59 FR 13923), informing the public of a potential problem with discards of spawning and sub-legal sized haddock in and around Closed Area I off Cape Cod, MA. The notification stated that the Council was considering recommending action to close the area to the use of gear capable of taking multispecies. As an alternative, the Council was also considering the implementation of other measures under the FMP and its implementing regulations, including, but not limited to, mesh size restrictions, catch limits, and other less restrictive measures. The notification specified that the required reports would be available on April 1, 1994, and that written comments on the action would be accepted through April 7, 1994, at which time a public hearing on the matter would be held.

A public hearing was conducted by the Council on April 7, 1994, where oral and written public comments were received. Two written comments were received by the close of business on the day of the public hearing. Both commenters supported implementation of FAAS #8, one citing a sea-sampled trip that occurred prior to or during the proposed FAAS #7; the other, expressing regret that FAAS #7 was not implemented.

None of the commenters who testified at the public hearing expressed support for FAAS #8 based on the additional data collected. Three of the four commenters expressed regret at the disapproval of FAAS #7, as did several members of the Council, who went on record as planning to consider protection of spawning haddock in and around Closed Area I under the provisions of Amendment 5 as a priority for the 1995 season. After careful consideration of the data, the Council concluded that the data indicated an apparent abatement of the discard problem, and recommended that the Regional Director take no action under proposed FAAS #8. After reviewing information presented in the required documents and the public testimony, the Regional Director concurred with the Council's recommendation not to implement any management measures under the proposed FAAS #8.

Classification

This action is authorized by 50 CFR part 651 and is consistent with the Magnuson Act and other applicable law.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–11247 Filed 5–9–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 11 in room 600, 301 4th Street, SW., Washington, DC from 10 a.m. to 12 p.m.

From 10 a.m. to 11:30 a.m. the Commission will hold a panel discussion on public diplomacy in Africa. The panelists are Ambassador Lannon Walker, Senior Advisor to the Undersecretary of State for Political Affairs; and Robert LaGamma, Director, Office of African Affairs, USIA. At 11:30 a.m. the Commission will meet with Mr. Douglas Wilson, Director, Office of Congressional and Intergovernmental Relations, to discuss the State/USIA authorization for FY 1994–95 and USIA Congressional issues.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: May 5, 1994.

Cathy Brown,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–11231 Filed 5–5–94; 4:34 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 94–014N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on Tuesday, May 24 and Wednesday, May 25, 1994, from 8 a.m. to 5 p.m. each day, at the Fountain Suites Hotel, 321 Bercut Drive, Sacramento, California 95814, telephone (916) 441–1444.

The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3) and 661(c) and sections 5(a)(3), 5(a)(4), 5(c), 8(b) and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

The meeting will include discussion of as much of the following topics as time will permit:

1. Topics suggested by the Committee;
2. Standards and labeling issues;
3. Exemptions update;
4. Hazard Analysis and Critical Control Point (HACCP);
5. Unfinished business and items from the audience.

The Committee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Mr. Fedchock on (202) 720–9150.

Done at Washington, DC, on May 5, 1994.

Terry L. Medley,

Acting Administrator.

[FR Doc. 94–11267 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 940403–4103]

RIN 0648–ZA03

Request for Proposals for Site Characterizations of the Monterey Bay and Gray's Reef National Marine Sanctuaries

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division is soliciting proposals to complete site characterizations of the Monterey Bay National Marine Sanctuary and the Gray's Reef National Marine Sanctuary.

DATES: Proposals must be postmarked by June 9, 1994. Applicants will be notified of results of review by August 8, 1994.

ADDRESSES: Helen Golde, Elizabeth Moore, or Delores Washington. Sanctuaries and Reserves Division, NOAA, 1305 East-West Highway, #12430, Silver Spring, Maryland, 20910. Phone: 301–713–3145; Fax: 301–713–0404.

CDR Terry Jackson. Monterey Bay National Marine Sanctuary, 299 Foam Street, suite D, Monterey, CA 93940. Phone: 408–647–4201; Fax: 408–647–4250.

Reed Bohne. Gray's Reef National Marine Sanctuary, 30 Ocean Science Circle, Savannah, GA 31411. Phone: 912–598–2345; Fax: 912–598–2367.

FOR FURTHER INFORMATION CONTACT: Monterey Bay: Elizabeth Moore at 301–713–3141, or Terry Jackson at 408–647–4258. Gray's Reef: Reed Bohne at 912–598–2345, or Delores Washington at 301–713–3132. Either site: Helen Golde at 301–713–3145.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et. seq.*) (MPRSA) establishes the National

Marine Sanctuary Program (NMSP). The Act authorizes the Secretary of Commerce to designate discrete areas as National Marine Sanctuaries (NMS) to promote comprehensive management of their ecological, research, conservation, education, historical, recreational, and aesthetic resources. National Marine Sanctuaries may be designated in coastal and ocean waters, in submerged lands and in the Great Lakes and their connecting waters. The National Marine Sanctuaries are administered by the Sanctuaries and Reserves Division (SRD) of the National Oceanic and Atmospheric Administration (NOAA) in the U.S. Department of Commerce. Section 309 of the MPRSA authorizes NOAA to conduct research, monitoring, evaluation, and education programs within NMS. Cooperative agreements are available to States, local governments, regional agencies, or other persons to carry out the purposes and policies of the MPRSA as described in this notice and authorized under section 311 of the MPRSA. This program is listed in the Catalog of Federal Domestic Assistance under "Marine Sanctuary Program," Number 11.429.

II. Information on National Marine Sanctuaries

A. Monterey Bay National Marine Sanctuary

The Monterey Bay National Marine Sanctuary (MBNMS) surrounds diverse habitats that are highly productive, due in part to the presence of strong upwelling of nutrient-rich waters. The mosaic of soft and hard bottoms, submarine canyon, rocky and sandy intertidal areas, and kelp forests of giant and bull kelp support a rich and abundant population of marine flora and fauna. The species-rich invertebrate population includes soft coral, sponges, clams, snails, crab, shrimp, abalone, sea urchins, mussels, and sea anemones. Over 345 species of fish are found in the Sanctuary and include pelagic, demersal, and benthic species. About 94 species of birds have been identified as utilizing the Sanctuary; the site is important to seabirds as a migratory stopover and as wintering grounds. Four species of sea turtles (leatherback, green, loggerhead, and Pacific ridley) occur within the waters of the Sanctuary. Breeding, feeding, and migration areas are provided for over 26 species of marine mammals.

The Sanctuary is accessible and hosts a high level of recreational use. Commercial fisheries such as salmon, rockfish, swordfish, tuna, squid, and anchovy are important to the regional economy, as is tourism. Oil and gas extraction, sand mining, and designation of ocean dump sites are prohibited within the Sanctuary. Major shipping lanes and military activity occur in portions of the site. Over 300 shipwrecks may exist within the boundaries and significant prehistoric cultural sites exist throughout the site and coastal areas.

B. Gray's Reef National Marine Sanctuary

Designated in January 1984, the Gray's Reef National Marine Sanctuary (GRNMS) surrounds one of the largest and most diverse nearshore "live bottom" habitats on the south Atlantic Continental Shelf. The variety and abundance of life at Gray's Reef in comparison with the barren sand flats which surround it is why the Reef is referred to as a "live bottom." The limestone outcrops, deposited over 13 million years ago, provide a firm and stable substrate to which a variety of sessile invertebrates can attach and prosper. The large invertebrate population includes sponges, hydroids, hard and soft corals, tubeworms, tunicates, sea urchins, and sea stars. The fish population includes pelagic, demersal, and benthic species such as blennies, groupers, basses, porgies, spadefishes, amberjacks, and, seasonally, the tropical fishes bluefish, mackerals, and barracudas. A variety of seabirds use the Sanctuary for feeding and as a migratory stopover. The threatened loggerhead sea turtle is frequently encountered around the ledges in the Sanctuary. The endangered northern right whale uses the waters of the Sanctuary during the winter calving season.

The Sanctuary is located off shore of Savannah, Georgia approximately 17.5 nautical miles from the nearest point of land. Recreational fishermen and scuba divers are the most frequent visitors to the Sanctuary. Commercial fishing is usually not found within the Sanctuary as wire fish traps and bottom trawling are prohibited.

III. Scope of Work

The objective of these projects is to collect and synthesize existing information and draft site descriptions of the MBNMS or the GRNMS. The recipient(s) will be responsible for gathering existing information on environment, communities, habitats, and cultural resources in the MBNMS or GRNMS. The scope of these projects does not include collection of new data. This information is to be synthesized together into documents which provide comprehensive descriptions of the Sanctuaries. These documents will give interested parties an overview of the resources and characteristics of the Sanctuaries. In addition, they will serve to identify gaps in knowledge about the Sanctuaries, which will help to target future research and monitoring efforts.

Specific Tasks

The ideal scope of work includes the following tasks.

(1) The recipient will be responsible for conducting a search of published and unpublished literature and data associated with the MBNMS or GRNMS. This should include, but is not limited to, government reports; theses, dissertations and other student reports; final reports of grants and other competitive awards; scientific literature publications; books; and available databases.

(2) All literature is to be entered into a bibliographic database. Claris FileMaker Pro should be used.

(3) The collected literature is to be evaluated and synthesized into a comprehensive document describing the Sanctuary. Existing review papers and the Monterey Bay National Marine Sanctuary or Gray's Reef National Marine Sanctuary Final Environmental Impact Statements should be used as a basis for this synthesis. This document should include:

- An introduction to the MBNMS or GRNMS, including a description of the National Marine Sanctuary Program.
- Descriptions of the environmental, cultural, historical, and socioeconomic resources within the Sanctuary. (The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), mandates that Federal agencies that manage public lands must assess and inventory the cultural resources under their aegis).
- Descriptions of the biological communities within the Sanctuary. This should include description of the prominent species, including threatened and endangered species, and interactions found within each of these communities.
- Descriptions of ecosystem functions. This should include discussion of how the various biological communities interact with one another. Discussions of spatial and temporal variability should also be included.

Identification of data gaps should be included. A detailed outline of the topics to be covered in this document is included in Appendices I and II. An existing site characterization is available from SRD upon request. No new data should be collected for this document; all analyses should be based on existing information. The document is to be submitted in hard copy and on 3.5" floppy disk. Microsoft Word for Macintosh should be used, if possible. SRD will be responsible for printing of the final document.

All draft and final reports shall be written in clear, concise and correct English. All products should be thoroughly proofread by an experienced technical editor identified in the work plan. The technical editor shall ensure that grammar, punctuation, table and figure formats, and sentence and paragraph structure are correct and consistent throughout. Particular attention shall be paid to producing a final report that communicates technical issues in an understandable form.

IV. Availability of Funds & Project Duration

Up to $100,000 for MBNMS and $30,000 for GRNMS are available in FY94 for these projects. Funds will be awarded through a cooperative agreement between NOAA and the selected applicant(s). SRD is aware that these projects may take longer than one year to complete; the duration of the award may be up to 36 months. The Department of Commerce may not incrementally fund research work orders of multiple year duration that are nonseverable. Thus, although the work under this notice may be completed over a period of up to 36 months, a finished work product must be completed with the alloted budget. The applicant is responsible for determining the scope of the finished work product based on what s/he feels can be completed with this budget. Future funding may be available to complete additional work products. (For example, an applicant may determine that only a characterization of the biological component of Sanctuary resources may be feasible with the alloted budget. Pending the availability of additional funds, the Sanctuary might then issue an additional RFP to complete the cultural resources assessment.) Although in-kind match of Federal funds is not mandatory, it is encouraged (see evaluation criteria).

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of DOC.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made. In addition, any researchers who are past due for submitting acceptable final reports of any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

V. Guidelines for Proposal Preparation; Proposal Review and Evaluation

Proposals not following these guidelines will be returned to the applicant without further review. Applicants should submit three copies of proposals postmarked by June 9, 1994, to: Ms. Elizabeth Moore (MBNMS) or Ms. Helen Golde (GRNMS) at the Sanctuaries and Reserves Division (see addresses section).

A. Application Kit

Application kits are available from any of the addresses listed in the addresses section. Application kits will include all necessary Federal forms, checklist for complete application packet, complete budget preparation information, and description of necessary proposal narrative. The contents of the application kit is outlined below.

1. Federal Forms

Federal forms SF–424, SF–424A, SF–424B, CD–511, CD–512 (copy where applicable), SF–LLL (where applicable), negotiated indirect cost rate and audit information must all be submitted with the application. These forms are described in the application kit and Section VI. General Requirements, below.

2. Table of Contents, Lists of Figures and Tables

These should list the major contents of the proposal and the appropriate page numbers.

3. Project Description

The main body of the proposal should be a detailed statement of the work to be undertaken, not exceeding 20 double spaced pages. It should describe in detail the amount and scope of work to be completed during the project, how this work will be completed, the proposed project duration, and the qualifications of the applicant and any subrecipients to complete the work (see evaluation criteria).

The proposal must include a complete description of how the project will be managed, including the name and expertise of the principal investigator and the name(s), expertise, and task assignments of team members. Evidence of ability to successfully complete the proposed project should be supported by reference to similar efforts performed and areas of expertise. Curricula vitae (not to exceed 3 pages for each investigator) listing qualifications related to professional and technical personnel should be provided. The proposal should discuss and explain any portion of work expected to be subcontracted, and identify subrecipient(s).

Complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal must also be included.

4. Milestone Schedule

A milestone schedule is required in the proposal. This schedule should show, in table form, anticipated dates for completing data collection, data analysis, database completion, progress reports, the draft technical report, the final technical report and other related activities. Use "Month 1, Month 2," rather than June, July, etc., in preparing these charts. (SRD Headquarters requires at least six weeks from time of receipt to review draft technical reports.) The milestone schedule should reflect the entire duration of the project.

5. Budget

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to complete the projects and are determined to be in accordance with 15 CFR part 24 and OMB Circulars A–21, A–122, A–87, and A–110. A complete description of budget constraints is provided in the application kit.

The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and any non-Federal shares side by side:

—Salaries and Wages.
—Fringe Benefits.
—Equipment.
—Travel.
—Other Direct Costs.
—Indirect Costs.

B. Evaluation Criteria and Selection Procedures

Proposals will be reviewed by SRD staff, Sanctuary research advisory committees, and, if necessary, outside peer reviewers. Proposals will be evaluated on the criteria listed below. Each reviewer will score all proposals on each of the categories and give written comments. The scores will be weighted according to the percentages listed in parentheses. Final funding decisions will be made by the appropriate site and regional managers for each sanctuary based on average scores and written comments. If written comments merit, the proposal with the highest numerical rank may not be chosen. Applicants will be notified of results of review by August 8, 1994.

Scope of Work & Schedule: (45%)

The specific tasks that the applicants plan to complete over the duration of the award will be considered. A realistic schedule to complete the entire project should be presented. Preference will be given to otherwise qualified applicants able to complete the most amount of work.

Applicant Expertise: (30%)

- Literature search ability: The applicant should show experience in conducting comprehensive literature searches. Access to appropriate data bases should be shown.
- Knowledge of the existing literature and area: The applicant should describe their knowledge of the Monterey Bay or Gray's Reef area and their familiarity with the existing literature.
- Scientific and technical expertise: The applicant must show appropriate background to compile and synthesize the information. This should include expertise in marine and coastal sciences, damage assessment/restoration, and cultural/historical resources. This criterion is very important as the recipient must be able to synthesize the information into the final document.
- Writing ability: The applicant should show a history of writing and editing ability.

Budget: (25%)

A realistic budget, appropriate to the amount of work to be completed should be presented. Any matching funds should be identified. Preference will be given to otherwise qualified applicants able to secure matching funds or in-kind services.

VI. General Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC regulations, policies, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, Sections 606 (a) and (b).

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form, prescribed above;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form, prescribed above;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

4. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," prescribed above as required under 15 CFR Part 28, Appendix B.

5. *Lower Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure from SF–LLL, "Disclosure of Lobbying Activities," prescribed above. The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

VII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law because this notice concerns grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Approval Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Dated: March 30, 1994.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

Appendix I: Outline of MBNMS Site Characterization

I. Executive Summary of the Site Characterization
II. Introduction to the MB National Marine Sanctuary
A. Objective of the Site Characterization
B. The National Program and Establishment of MBNMS
C. Significance of Resources
III. Environmental and Historical/Cultural Conditions That Shape MBNMS
A. Geologic History & Mineral Resources
B. Present Geology
  1. Structure and tectonics
  2. Geohazards
  3. Nearshore sedimentary and canyon processes
C. Climate
D. Meteorology and Physical Oceanography
  1. Currents and other physical forces
  2. Water characteristics (i.e. temperature, salinity, chemistry, etc.)
  3. Seasonal and other temporal patterns
E. Archaeological, Cultural and Historical Resources
F. Socioeconomic Uses
  1. Fishing
  2. Vessel traffic
  3. Ecotourism
  4. Recreation
IV. Biological Communities
A. Kelp Forest and Rocky Subtidal Habitats
B. Rocky Intertidal Habitat
C. Soft Benthic Habitats
  1. Sandy beaches
  2. Shallow demersal habitats
  3. Deeper demersal (shelf) habitats
D. Canyon and Steep Slope Habitats
E. Pelagic Habitats
  1. Near-surface zone
  2. Mid-water zone
  3. Abyssal zone
F. Estuarine Habitats
V. Ecosystem Function
A. Nutrient Interactions
B. Energy Flow
C. Temporal and Spatial Variability
VI. Appendices
A. Maps
B. Common Species Lists For Biological Communities
C. Lists of Threatened and Endangered Species (State and Federal Listing)
D. Bibliography (including both cited and uncited literature)

Appendix II: Outline of GRNMS Site Characterization

I. Executive Summary of the Site Characterization
II. Introduction to the GR National Marine Sanctuary
A. Objective of the Site Characterization
B. The National Program and Establishment of GRNMS
C. Significance of Resources
III. Environmental and Historical/Cultural Conditions That Shape GRNMS
A. Geologic History & Mineral Resources
B. Present Geology and Sedimentary Processes
C. Climate
D. Meteorology and Physical Oceanography
  1. Currents and other physical forces
  2. Water characteristics (i.e. temperature, salinity, chemistry, etc.)
  3. Seasonal and other temporal patterns
E. Archaeological, Cultural and Historical Resources
F. Socioeconomic Uses
  1. Fishing
  2. Vessel traffic
  3. Tourism
  4. Recreation
  5. Military Operations
IV. Biological Communities
A. Plankton
B. Seaweeds
C. Invertebrates
D. Finfish
E. Turtles and other marine reptiles
F. Pelagic Birds
G. Marine Mammals
V. Ecosystem Function
A. Nutrient Interactions
B. Energy Flow
C. Temporal and Spatial Variability
D. Community Ecology
VI. Appendices
A. Maps
B. Common Species Lists for Biological Communities
C. Lists of Threatened and Endangered Species (State and Federal Listing)
D. Bibliography (including both cited and uncited literature)

[FR Doc. 94-11003 Filed 5-9-94; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, DC, on May 18–19, 1994. Less than 15 days notice is being given due to difficulty in convening all advisory committee members for this session.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense through the USD(A&T) on all matters relating to BMD acquisition, system development, and technology.

In accordance with section 10(d), as amended (5 U.S.C., App. II, (1982)), it has been determined that this BMD Advisory Committee meeting concerns matters listed in (5 U.S.C. 552(c)(1) (1982)) and that accordingly this meeting will be closed to the public.

Dated: March 4, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-11148 Filed 5-9-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for the Realignment of the Naval Air Station Pensacola, FL

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Realignment of NAS Pensacola, Florida.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission and to legislative requirements in the 1990 Base Closure and Realignment Act (Pub. L. 101–510), Naval Training Center San Diego, California, is to be closed and NAS Memphis, Tennessee, is to be realigned. Some of the naval training now offered at these centers will be relocated to NAS Pensacola, Florida. This consolidation of service schools at NAS Pensacola would bring approximately 1,100 military-staff personnel and an on-board average of 4,230 students. Twenty construction projects are required that include instructional training, and administrative facilities, enlisted quarters, and approximately 118 new family housing units at nearby Corry Station. The proposed projects are sited to be consistent with surrounding land use and to occur on previously disturbed land.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice. A public hearing will be held at Pensacola Junior College, Warrenton Campus, room 3000, 555 West Highway 98, Pensacola, Florida, on Thursday evening, on May 26, 1994, from 7 p.m. until the end of public comment or until 12 midnight.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and other interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by June 13, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Ronnie Lattimore (Code 203RL), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, telephone (803) 743–0888.

Dated: May 5, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11204 Filed 5–9–94; 8:45 am]

BILLING CODE 3810–AE–M

Notice of Public Hearing for the Draft Programmatic Environmental Impact Statement for the Miramar Landfill General Development Plan, Fiesta Island Replacement Project/Northern Sludge Processing Facility, and the West Miramar Landfill Overburden Disposal, at Naval Air Station Miramar, San Diego, CA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy, in cooperation with the City of San Diego, has prepared and filed with the U.S. Environmental Protection Agency the Draft Programmatic Environmental Impact Statement (DPEIS) for the Miramar Landfill General Development Plan, Fiesta Island Replacement Project/Northern Sludge Processing Facility, and the West Miramar Landfill Overburden Disposal, at Naval Air Station Miramar, San Diego, California.

The DPEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and libraries. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DPEIS findings and to solicit comments will be held on Tuesday, May 31, 1994, beginning at 7 p.m., in the Madison High School auditorium, 4883 Doliva Street, San Diego, California.

The public hearing will be conducted by the Navy. Federal, state and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record for the study. Equal weight will be given to both oral and written statements. Oral statements should be limited to five minutes or less.

Statements may also be submitted to the address listed at the end of this notice. All written statements must be postmarked by June 13, 1994, to become part of the official record.

The DPEIS identifies a General Development Plan proposed by the City of San Diego for phased long-term implementation and a number of specific projects comprising Phase I, which is proposed for 1994 implementation. These projects are needed to accomplish the City's master plan to expand existing solid waste facilities and to site new waste processing and biosolids processing facilities.

The point of contact for obtaining copies of the DPEIS is Commanding Officer, Naval Air Station Miramar, Attn: Mr. Roger Hillhouse (Code 187RH), 45249 Miramar Way, San Diego, California 92145–5005, telephone: (619) 537–1102.

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, or to request a sign language or oral interpreter for the meeting, call the Metropolitan Wastewater Department at (619) 533–4200 at least five working days prior to the meeting to ensure availability. Assistive listening devices are available for the meeting upon request.

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11205 Filed 5–9–94: 8:45 am]

BILLING CODE 3810–AE–M

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of Dredged Materials in San Diego Bay, San Diego, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the disposal of dredged materials in San Diego Bay, San Diego, California.

Several dredging projects are proposed by the Navy in the central portion of San Diego Bay. Maintenance dredging is required for maintaining existing channels and berthing areas. Pier 2 and Pier 3 dredging projects will provide additional safe navigational and berthing depth for deep draft power intensive ships which will be homeported in San Diego Bay through Base Realignment and Closure (BRAC) at naval stations in Long Beach and the San Francisco Bay area, and ships which are planned for construction.

Approximately half of the dredged materials are expected to contain contaminated sediments which may be restrained from disposing them in the ocean. These sediments have accumulated in the bay bottom either from urban-industrial source runoff upstream from San Diego Bay, or potentially from past pier-side maintenance activities. Determination of appropriate processes and locations for placement of dredged contaminated sediments and their effect on the regional environment will be evaluated in the EIS.

Disposal alternatives for dredged contaminated sediments currently identified for consideration in the EIS are: (1) Placement in a confined location capped with clean materials, such as sand or clay, inside San Diego Bay; (2) placement with capping in areas such as the Seventh Street Channel (Paleta Creek) to create or enhance biological habitat; (3) placement behind bulkheads in bay waters such as Paleta Creak to create "fastland" or reclaimed land; (4) placement at a confined upland location such as sites on Naval Station, San Diego or Naval Air Station North Island for dewatering and drying; and (5) placement of contaminated sediments in either non-hazardous waste landfills (if treated or "remediated" to remove hazardous components) or hazardous waste landfills (if not remediated).

Environmental issues which will be discussed in the EIS include: Methods of dredging and disposal; biological impacts resulting from dredging and sediment disposal; geological impacts caused by dredging; air quality impacts from dredging equipment operations and disposal activity; hydrological and water quality impacts from dredging and disposal; treatment technologies; aesthetics, cultural resources, and health and safety impacts. Issue analysis will include an evaluation of direct, indirect, short-term, long-term, and cumulative impacts associated with the proposed action. The decision to implement the proposed action or any alternatives to the proposed action will not be made until the NEPA process is complete.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to this action. The Navy will hold a public scoping meeting on Thursday, 26 May, 1994, beginning at 7 p.m. at the Naval Facilities Engineering Command, Southwest Division, 1220 Pacific Highway, San Diego, California. This meeting will be advertised in San Diego area newspapers.

A formal presentation will precede public testimony. Navy representatives will be available at the scoping meeting to receive comments from the public. It is important that federal, state, and local agencies, as well as interested individuals, take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than 13 June 1994 to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Ms. Sherry Ashbaugh, Code 232.SA), telephone (619) 532–1159.

Dated: May 5, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11206 Filed 5–9–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 9, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Linda Clark Tague, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Linda Clark Tague (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Linda Clark Tague at the address specified above.

Dated: May 5, 1994.

Linda Clark Tague,

Acting Director, Information Resources Management Service.

Office of the Under Secretary

Type of Review: New

Title: National Evaluation of the Set-Aside for Teacher Training and Innovation in Adult Education

Frequency: One time

Affected Public: State or local governments

Reporting Burden:

Responses: 52

Burden Hours: 104

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This survey of state directors of adult education is part of a comprehensive evaluation of the Section 353 (National Literacy Act) set-aside designed to provide the Department a description of how these funds are administered and the nature and effectiveness of the training and innovation activities they support.

[FR Doc. 94–11236 Filed 5–9–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Cancellation of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the postponement of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Supplementary Information: The meeting of the Environmental Management Advisory Board scheduled to be held at the Radisson Suite Hotel, 700 H Avenue East, Arlington, Texas 76011 on May 17 and 18, 1994 is postponed. (Previously published on 4-20-94 (59 FR 18803))

A notice will be published in the **Federal Register** when this meeting is rescheduled.

For Further Information Contact: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4400.

Issued at Washington, DC on May 5, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–11262 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for Idaho Wildlife Mitigation Projects

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to fund and implement the Wildlife Mitigation Agreement for Dworshak Dam (Dworshak Agreement) in floodplains and wetlands located in Nez Perce, Lewis, and Latah Counties, Idaho. The purpose of the Dworshak Agreement is to establish an arrangement whereby BPA would provide funds to the State of Idaho and the Nez Perce Tribe to mitigate wildlife and wildlife habitat losses within the State of Idaho that resulted from construction of Dworshak Dam and its reservoir.

In addition to the Dworshak Wildlife Mitigation Project, BPA is also proposing to fund and implement the South Fork Snake River Programmatic Management Plan in floodplains and wetlands located in Bonneville, Jefferson, and Madison Counties, Idaho. The purpose of the project is to mitigate wildlife and wildlife habitat losses that resulted from construction of Palisades Dam and its reservoir.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain and wetlands assessment and will perform these proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplains and wetlands.

The assessment will be included in the environmental assessments (EAs) being prepared for the proposed projects in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EAs.

DATES: Comments are due to the address below no later than June 2, 1994.

FOR FURTHER INFORMATION CONTACT: Roy B. Fox, PG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–4261, fax number 503–230–3752.

SUPPLEMENTARY INFORMATION: Activities for the Dworshak Wildlife Mitigation Project would be conducted by two different entities: the State of Idaho and the Nez Perce Tribe. The State would conduct activities within the Pene Lands area. This project area consists of 24,000 hectares (60,000 acres) in the Craig Mountains located southeast of Lewiston, Idaho. This area ranges from 335 to 1,585 meters (1,100 to 5,200 feet) in elevation and is located between the Salmon and Snake Rivers. As specified in the proposed Dworshak Agreement, the State would only implement wildlife and wildlife habitat protection, mitigation, and enhancement activities. The types of activities that may be implemented include: fencing to exclude livestock to protect wetlands, riparian areas, and water quality; planting native plant species to increase the quantity and quality of native plant communities; rehabilitating and enhancing riparian areas and wetlands; planting riparian vegetation to compensate for vegetation adversely affected by livestock grazing; as well other activities that would benefit wildlife and wildlife habitat.

The Tribe is focusing on the lower Clearwater River drainage between Hatwai Creek and Kooskia, Idaho. All activities that the Tribe would implement would take place within an approximate 117 kilometer (73-mile) segment of the Clearwater River from Hatwai Creek to the Middle Fork of the Clearwater River near Kooskia, Idaho. The types of activities that may be implemented include: protecting island habitat for Canada geese along the Clearwater River and its tributaries; creating perch sites for raptors; as well as other activities that would benefit wildlife and wildlife habitat.

All activities for the South Fork Snake River Programmatic Management Plan would take place within the river corridor of the 104 kilometer (65 mile) segment of the South Fork Snake River starting downstream of the Palisades Dam and ending at the confluence of the South Fork with the Henry's Fork. Proposed mitigation activities include: (1) Land and easement purchases which would have no effect on wetlands or floodplains; (2) fencing riparian areas to protect riparian vegetation from livestock grazing; (3) planting riparian vegetation (e.g., cottonwoods) in suitable areas to compensate for vegetation adversely affected by the operation of Palisades Dam and livestock grazing; (4) improving bald eagle nest sites by tree topping, pruning, thinning, planting, and installing artificial nest structures; and (5) revegetating agricultural lands with riparian or upland vegetation. These activities may take place within the 100-year floodplains of the South Fork Snake River and its tributaries, as well as within riparian wetlands along the river. Because the activities are expressly for the purpose of protecting and enhancing riparian areas, there are no alternatives to conducting them in these areas other than the No-Action Alternative.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on April 15, 1994.

Roy B. Fox,

NEPA Compliance Officer, Office of Power Sales.

[FR Doc. 94–11261 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Floodplain and Wetlands Involvement for Lower Yakima Valley Wetlands and Riparian Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to implement an agreement with the Yakima Indian Nation to secure property and conduct wildlife habitat restoration activities for the Lower Yakima Valley Wetlands and Riparian Mitigation Project in floodplain and wetlands located on the Yakima Indian Reservation in the State of Washington.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

DATES: Comments are due to the address below no later than June 2, 1994.

FOR FURTHER INFORMATION, CONTACT: Roy B. Fox, PG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–4261, fax number 503–230–3752. Or Robert Shank, PG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5115.

SUPPLEMENTARY INFORMATION: The project area is 20,340 hectares (50,308 acres) of lower elevation bottomlands, which includes restorable aquatic, riparian, and upland habitats. The majority of the land is presently used for agricultural practices. The proposed activities are necessary to mitigate for wildlife and wildlife habitat adversely affected by the construction of Bonneville, The Dalles, John Day, and McNary Federal Dams, and their reservoirs located on the lower Columbia River.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on April 15, 1994.

Roy B. Fox,

NEPA Compliance Officer, Office of Power Sales.

[FR Doc. 94–11260 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–M

Availability of the Non-Federal Participation Federal Marketing and Joint Ventures Record of Decision

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Record of Decision (ROD) on Non-Federal Participation Federal Marketing and Joint Ventures.

SUMMARY: BPA has adopted Federal Marketing and Joint Ventures which constitutes a comprehensive BPA marketing objective for the Pacific Northwest-Pacific Southwest Intertie. To implement this concept, BPA intends to negotiate an array of flexible, market-oriented contracts, expanded Intertie access for non-BPA parties, efficient use of Federal Columbia River resources, and facilitation of efficient, coordinated West Coast development of generating resources. Federal Marketing and Joint Ventures will facilitate non-BPA Intertie access in a manner consistent with the Energy Policy Act of 1992.

DOCUMENTS AVAILABLE: If you would like a copy of the Non-Federal Participation Federal Marketing and Joint Ventures ROD, please call our document request line, toll-free 800–622–4520, and ask for the Non-Federal Participation Federal Marketing and Joint Ventures Record of Decision.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Flynn at 206–418–2136, or the Public Involvement office in Portland. Telephone numbers, voice/TTY, for the Public Involvement office are: 503–230–3478 in Portland, and toll-free 800–622–4519 for the rest of the United States.

Issued in Portland, Oregon on April 14, 1994.

Jack Robertson,

Deputy Administrator.

[FR Doc. 94–11259 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 9088–017 New Hampshire]

Lower Village Water Power Associates; Availability of Environmental Assessment

May 4, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed an application to amend the license for the Lower Village Hydroelectric Project located on the Sugar River, Sullivan County, New Hampshire. The application is to (1) allow the licensee to retain a partially constructed dam about 250 feet downriver from the authorized location of the dam and (2) change the configuration of the licensed project. An Environmental Assessment (EA) was prepared for the application. In the EA, Commission staff finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriated documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 9088–017 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11181 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. JD94–05838T Oklahoma–76 and JD94–05839T Oklahoma–77]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton and Viola Formations, underlying portions of McClain and Garvin Counties, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The Oklahoma–76 recommended area consists of the NE/4 of Section 35, in T6N, R4W, in McClain County, Oklahoma. The Oklahoma–77 recommended area consists of the NW/4 of Section 16, in T4N, R3W, in Garvin County, Oklahoma.

The notices of determination also contain Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11202 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR94–8–000]

All American Pipeline Co.; Notice of Complaint

May 4, 1994.

Take notice that on April 29, 1994, Chevron U.S.A. Products Company (Chevron) filed a complaint against All American Pipeline Company (AAPL).

Chevron argues that AAPL is violating section 3 of the Interstate Commerce Act

(ICA), 49 U.S.C. 3, and its FERC Tariff No. 23 by commingling certain crude oil in its common stream. Chevron requests that the Commission act on an emergency basis and order AAPL to show cause why the Commission should not find AAPL to be in violation of Section 3 of the ICA and its FERC Tariff No. 23.

Chevron states that it is a producer and shipper on AAPL of crude oil produced from the Point Arguello field offshore California. Chevron states that it ships in AAPL's Outer Continental Shelf (OCS) common stream. AAPL has announced that, beginning as soon as May 1, 1994, it will accept for shipment in the OCS common stream crude oil produced by Exxon U.S.A. Company (Exxon) from two new offshore platforms, the Heritage and Harmony platforms. Chevron argues that the Heritage and Harmony platforms are not in the Point Arguello field. Chevron states that Exxon has refused to provide information about the quality and/or characteristics of the crude oil from these two platforms. Chevron submits that AAPL's imminent commingling and transportation of Harmony and Heritage crude oil in its OCS common stream discriminates against existing OCS common stream shippers and poses a severe threat of material disadvantage and significant economic and other injury to the existing shippers and producers of Point Arguello crude oil.

Chevron submits that until the matters raised by this complaint are resolved, existing shippers and producers of Point Arguello crude will be unduly disadvantaged and commercially injured. Chevron argues that AAPL's apparent intention to ignore Item No. 10 of its Tariff by accepting tenders of Harmony and Heritage production and commingling it with the OCS common stream is in contravention of the ICA.

Chevron requests that the Commission issue an order shortening the time for filing answers to the complaint.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before May 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before May 20, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11182 Filed 5-9-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-182-001 and TM94-3-31-001]

Arkla Energy Resources Co., Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Arkla Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Sub Fourth Revised Sheet No. 4
Sub Fourth Revised Sheet No. 4.1 (effective April 1, 1994)
Sub Fifth Revised Sheet No. 4
Sub Fifth Revised Sheet No. 4.1 (effective May 1, 1994)
First Revised Sheet No. 4.3 (effective April 1, 1994)

AER states that the revised tariff sheets are being filed in compliance with the April 14, 1994, order of the Commission in Docket No. RP94-182-000 and the April 20, 1994, letter order in Docket No. TM94-3-31-000.

Pursuant to said orders, AER states that the proposed tariff sheets reflect AER's balancing revenue credit as a negative surcharge.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11180 Filed 5-9-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-521-000]

Columbia Gulf Transmission Co.; Application

May 4, 1994.

Take notice that on May 3, 1994, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP94-521-000 an application pursuant to section 7(b) of the natural Gas Act for authorization for Columbia Gulf to abandon a transportation and exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that, by Commission order issued December 21, 1978, in Docket No. CP78-539, Columbia Gulf, Columbia Gas Transmission Corporation (Columbia Gas) and Tennessee Gas Pipeline Company (Tennessee) were authorized to perform a transportation and exchange service involving deliveries at points of interconnection of their systems located in the states of Louisiana, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey and Offshore Louisiana. Columbia Gulf indicates that the service was performed under the terms of a letter agreement dated January 24, 1978, on file as Columbia Gulf's Rate Schedule X-59, Columbia Gas' Rate Schedule X-78 and Tennessee's Rate Schedule X-58. It is indicated that deliveries were made on a gas-for-gas basis, and imbalances were eliminated within sixty days.

Columbia Gas informed Columbia Gulf by letter dated January 12, 1994, that is desired to have the service terminated. It is stated that Tennessee and Columbia Gas have agreed to a stipulation and agreement, filed in Docket No. RP-113-000, terminating all firm transportation and storage contracts between Columbia Gas and Tennessee through the permanent assignment of the Tennessee capacity to Columbia Gas' customers and the payment of a negotiated exit fee by Columbia Gas to Tennessee in consideration for Tennessee's agreement to the abandonment of the unassigned capacity. It is also stated that, as part of that stipulation, Tennessee and Columbia Gas have agreed to terminate various services, including the above-mentioned transportation and exchange service, involving Columbia Gulf. Columbia Gulf states that it is filing for abandonment authorization separately because it is not a party to the above-mentioned stipulation and agreement.

Columbia Gulf does not propose to abandon any facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 18, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11183 Filed 5-9-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-229-000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, containing changes in rates for effectiveness on June 1, 1994:

Third Revised Sheet No. 21
Fourth Revised Sheet No. 22
Third Revised Sheet No. 23

According to Granite State, the increased rates for firm and interruptible transportation services rendered for its affiliated distribution customers, Bay State Gas Company and Northern Utilities, Inc., are based on a test period cost of service consisting of the 12 months of actual operations ending December 31, 1993, adjusted for known and measurable changes occurring by September 30, 1994. It is further stated that the test period cost of service reflects costs for recent additions to plant, projected additions during the test period, adjusted operating and maintenance expenses, and ad valorem taxes.

Granite State states that the depreciation charges in the cost of service are based on the depreciation rates established in Granite State's last rate case. According to Granite State, the test period cost of service reflects its current costs for debt and equity, for return on its adjusted rate base and related federal and state income taxes. It is stated that the debt and equity costs are based on an adjusted capital structure consisting of 60.3 percent equity and 39.7 percent debt. Granite State states that an overall return of 11.67 percent is claimed on rate base which includes and implicit return of 14.2 percent on the equity component in the adjusted capital structure.

Granite State further states that the test period cost of service includes an increase in the annual amortization of the costs to convert a leased crude oil pipeline to natural gas service approved by the Commission in Docket No. CP87-39-000. Granite State Gas Transmission, Inc., 40 FERC 61,165 (1987).

According to Granite State, the amortization of the conversion costs reflected in its existing rates is based on a life of the lease extending to March 31, 1999. Granite State states that the owner of the leased pipeline exercised an option to terminate the lease on March 31, 1996 and Granite State negotiated an extension of the lease to March 31, 1999. It is said that the new termination date shortens the period that Granite State will be operating the leased line by 29 months and the amortization of the investment costs to convert the leased line to natural gas service has been adjusted in the test period cost of service to reflect the shortened life of the lease.

Granite State further states that, in connection with the extension of the lease of the converted pipeline it agreed to pay for part of the dismantling, removal and restoration costs to reconvert the pipeline to oil transportation service. According to Granite State, its commitment is limited to $1 million and in this filing the test period cost of service includes an adjustment to amortize this amount over the 29 months of the extended lease to establish a reserve account to hold the funds until required for the dismantling and restoration.

According to Granite State, copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11174 Filed 5-9-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC94-3-000]

Illinois Power Co., Order Granting Authorization for Proposed Corporate Restructuring and Clarifying Jurisdiction Over Indirect Mergers of Public Utilities Owned By Public Utility Holding Companies

Issued May 3, 1994.

Introduction

This order authorizes Illinois Power Company (Illinois Power) to create a holding company, IP Holding Company (IP Holding), of which Illinois Power will become a wholly-owned subsidiary. We also take this opportunity to clarify our jurisdiction under section 203 of the Federal Power Act (FPA). While this Commission does not have jurisdiction over public utility holding company mergers or consolidations,[1] we conclude that, ordinarily, when public utility holding companies merge, an indirect merger involving their public utility subsidiaries also takes place, and that our approval under section 203 is required for the indirect merger of the public utilities.

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[1] Although mergers and consolidations differ in the mechanics of the combination (mergers involve one company acquiring the other, while consolidations entail forming a new entity), Black's Law Dictionary, at 309 (Revised Sixth Ed. 1990), for ease of presentation, we will refer to both types of combinations as mergers.

Accordingly, in this order we establish and announce a rebuttable presumption that an indirect merger of the public utility subsidiaries occurs simultaneously with the merger of the holding company parents. Therefore, prior to public utility holding companies merging, their public utility subsidiaries must either rebut the presumption or obtain our approval under section 203 of the FPA. If applicants can show us that there will not be an indirect merger or consolidation of the facilities of the public utility subsidiaries, our jurisdiction will not apply until such time as the public utility subsidiaries themselves seek to merge or consolidate.

Background

On November 15, 1993, Illinois Power submitted an application pursuant to section 203 of the Federal Power Act for authority to effect a "disposition of facilities" that would be deemed to occur as a result of a proposed corporate restructuring.[2] Illinois Power states that the proposed restructuring would be accomplished through the creation of a holding company, IP Holding, of which Illinois Power would become a subsidiary.

Illinois Power states that the proposed restructuring is intended to permit the establishment of non-utility businesses that can take advantage of new business opportunities on a timely basis without the need for prior regulatory approvals, to increase financial flexibility, to enhance managerial accountability for separate business activities, and to insulate utility ratepayers and security holders from the risks of non-utility projects. Illinois Power states that the proposed restructuring will not affect its jurisdictional facilities, rates or services.

The proposed restructuring would be accomplished as follows:

1. Illinois Power has formed a subsidiary, IP Holding, under Illinois law.
2. IP Holding, in turn, has formed a subsidiary, IP Merging Corporation (IP Merging), also an Illinois corporation.
3. Following all necessary approvals, IP Merging will merge with and into Illinois Power. In the merger, all outstanding shares of Illinois Power common stock will be converted on a share-for-share basis into IP Holding common stock by operation of law, and IP Holding will become the owner of all outstanding shares of Illinois Power common stock.[3] Illinois Power common stock will thereafter cease to be listed and traded on the stock market, and the common shares of IP Holding will be listed and traded instead.

Notice of the application was published in the **Federal Register**,[4] with comments due on or before December 8, 1993. None was filed.

Discussion

A. The Application

The Commission has held that the transfer of a public utility's common stock from its existing shareholders to a holding company constitutes a transfer of the "ownership and control" of the utility's jurisdictional facilities and is thus a "disposition of facilities" subject to Commission review and approval under section 203 of the Federal Power Act. See Central Vermont Public Service Corp., 39 FERC ¶ 61,295 (1987) (Central Vermont). Because Illinois Power's proposed restructuring would entail the transfer of the ownership of its common stock from existing shareholders to IP Holding, the restructuring is subject to the requirements of section 203.

The Commission is obligated to approve a proposed "disposition of facilities" under section 203 if it would be "consistent with the public interest."[5] In making such a determination, the Commission considers, *inter alia*: (1) The effect on utility operating costs and rate levels: (2) the contemplated accounting treatment; (3) the reasonableness of the purchase price; (4) the possibility of coercion; (5) the effect on competition; and (6) the impact on the effectiveness of regulation. *Commonwealth Edison Co.,* 36 FPC 927, 936–42 (1966), *aff'd sub nom. Utility Users League v. FPC,* 394 F.2d 16 (7th Cir.), *cert. denied,* 393 U.S. 953 (1968).

The Commission finds that Illinois Power's proposed restructuring will be compatible with each of the relevant factors. First, the proposed restructuring will have no effect on either Illinois Power's operating costs or its rate levels. The Applicant does not request a rate increase as part of its filing. Any future changes in Illinois Power's wholesale rates would be subject to Commission review and approval under section 205 of the FPA.

Second, the contemplated accounting treatment will be appropriate. The merger of Illinois Power and IP Merging will be accounted for on a "pooling of interests" basis under generally accepted accounting principles. Illinois Power's books and records will continue to be maintained in accordance with the Commission's Uniform System of Accounts.

Third, the proposed restructuring entails no "purchase price." The proposed restructuring involves the conversion of each share of Illinois Power common stock into a share of IP Holding common stock. Therefore, the proportion of each shareholder's ownership will be unchanged.

Fourth, because the proposed reorganization only involves Illinois Power and its affiliates, there is no possibility of coercion.

Fifth, because no facilities will be combined with those of any other public utility, the proposed restructuring will not have an adverse effect on competition.

Sixth, the proposed restructuring will not impair effective regulation of Illinois Power. Illinois Power's services, rates and facilities will be unaffected by the restructuring and will continue to be regulated by the Illinois Commerce Commission and by this Commission.

B. Clarification of Jurisdiction Over Indirect Mergers of Public Utilities Owned By Public Utility Holding Companies

While there is no current proposal to merge IP Holding with another public utility holding company, it is possible that in the future such a merger may take place.[6] In our view, most mergers of public utility holding companies will simultaneously involve an indirect merger of the public utility subsidiaries of such holding companies. Accordingly, we take this opportunity to announce a clarification of our jurisdiction when there is a merger of public utility holding companies. To assure that the public interest is protected when public utility holding companies merge, we will establish a rebuttable presumption that an indirect merger of jurisdictional facilities of the public utility subsidiaries occurs at the time the holding company parents merge. Prior to the public utility holding companies merging, their public utility subsidiaries must file under section 203 of the FPA either sufficient information to rebut the presumption, or for Commission approval of the indirect merger of the public utilities.

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[2] In support of its application Illinois Power presents information as required by section 33.2 of the Commission's regulations.

[3] IP Holding has filed an application with the Securities and Exchange Commission (SEC) for authority to acquire Illinois Power's common stock, pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 (PUHCA).

[4] 58 FR 62,649 (1993).

[5] An applicant need not show that a positive benefit to the public will result. *See* Pacific Power & Light Company v. FPC, 111 F.2d 1014, 1016–17 (9th Cir. 1940).

[6] With the recent and projected increase of competition in the electric utility industry, mergers may become an increasingly popular tool for utilities seeking to achieve greater efficiency and become more competitive. Our decision today is necessary to ensure the continued adequacy of our merger policies in protecting the public interest.

The public utilities may rebut the presumption by showing that after the merger of the holding companies, the public utility subsidiaries will still effectively compete with each other. If they make such a showing, jurisdiction under 203 will not attach until such time as the public utilities themselves seek to combine.

1. The Three Step Process

Section 203(a) of the FPA provides that:

> No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person * * * without first having secured an order of the Commission authorizing it to do so.

The provision applies to any public utility, which section 201(e) of the FPA defines as "any person [with certain exceptions specified in section 201(e) which are not relevant here] who owns or operates facilities" for the sale of electric energy at wholesale or the transmission of electric energy in interstate commerce. Public utility holding companies, in contrast to public utilities, do not normally own such facilities.[7] Therefore, we have no jurisdiction over public utility holding companies that are not also public utilities and thus have no jurisdiction over most mergers of holding companies.

In recent years, however, some public utilities have followed a three-step process to reorganize. In "step one," a public utility forms a company and transfers ownership of all of the utility's stock to a newly created company, which becomes the parent holding company of the public utility.[8] In "step two," the public utility holding company merges with another public utility holding company. In "step three," the public utilities under the control of the single public utility holding company formally merge their facilities.

Central Vermont and *Missouri Basin Municipal Power Agency* v. *Midwest Energy Company* and *Iowa Resources*, Inc., 53 FERC ¶61,368 (1990), *reh'g denied*, 55 FERC ¶61,464 (1991) (*Missouri Basin*) describe our jurisdiction (or lack thereof) at each of the three steps. In *Central Vermont*, the Commission found jurisdiction under section 203 when a public utility establishes a holding company, because the shareholders of the public utility transfer ownership and control over jurisdictional facilities in the course of the transaction. In *Missouri Basin*, the Commission found that the merger of two public utility holding companies was subject to the SEC's jurisdiction, but not to our jurisdiction. The Commission determined that neither of the holding companies in *Missouri Basin* owned or operated FERC-jurisdictional facilities, and therefore neither holding company was a public utility under the FPA when the merger was consummated. Thus, the Commission found, the merger did not fall within the Commission's jurisdiction under section 203. The Commission stated that if, in the future, the public utility subsidiaries should merge—a "step three" transaction—Commission approval would be required.[9] The Commission later approved the merger of the affiliated public utilities.[10]

2. Reasons for Clarification

a. *The Presumption*. Our decision to adopt a presumption of indirect merger and to require the public utility subsidiaries to rebut the presumption by showing that after merger of their parents they will continue to compete with each other, is informed by the Supreme Court's decision in *Copperweld Corp.* v. *Independence Tube Corp. (Copperweld)*, 467 U.S. 752 (1984). The Court held that section 1 of the Sherman Antitrust Act, which outlaws conspiracies or combinations in restraint of trade, regards as one company a parent and subsidiary that maintain separate operations. The two cannot conspire because they do not compete in the economic sense. *Copperweld* holds that even if companies maintain separate corporate form, if they pursue a common economic interest, they no longer compete.

The Court explained:

> A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousness, but one. They are not unlike a multiple team of horses drawing a vehicle under the control of a single driver. With or without a formal "agreement," the subsidiary acts for the benefit of the parent, its sole shareholder. If a parent and a subsidiary do "agree" to a course of action, there is no sudden joining of economic resources that had previously served different interests, and there is no justification for § 1 scrutiny.
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> * * * * *
>
> [i]n reality a parent and a wholly owned subsidiary *always* have a "unity of purpose or a common design" * * * whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interest.
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> 467 U.S. at 771–72 (emphasis in original; footnote deleted).

The courts have applied *Copperweld* to electric utilities and their affiliates. In *City of Mount Pleasant, Iowa* v. *Associated Electric Co-op*, 838 F.2d 268, 274–77 (8th Cir. 1988), for example, which involved municipal and cooperative utilities, the Eight Circuit held:

> Even though [affiliates] may quarrel among themselves on how to divide the spoils of their economic power, it cannot be reasonably said that they are independent sources of that power. Their power depends, and has always depended, on the cooperation among themselves. They are interdependent, not dependent.
>
> 838 F.2d at 277 (emphasis deleted).

While *Copperweld* applies to the Sherman Act, the rationale of the decision suggests that the common interest between members of an enterprise affects their standing as competitors for FPA purposes as well. While this Commission has no responsibility to enforce the antitrust laws,[11] it must weigh competitive considerations in its merger analyses.[12]

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[7] Certain public utility holding companies, however, are also public utilities. *E.g.*, Cincinnati Gas and Electric Company.

[8] Illinois Power seeks Commission authorization of a "step one" transaction in this docket.

[9] 53 FERC at 62,298–99.

[10] Iowa Public Service Company, Iowa Power, Inc., and Midwest Power Systems, 60 FERC ¶61,048 (1992). The Commission has generally approved mergers between affiliated public utilities. See, e.g., Wisconsin Electric Power Company, 59 FPC 1196 (1977) ("while technically a merger, this action is more in the nature of an intrasystem consolidation and does not present the potential evils which are inherent in the merger of two non-affiliated systems"); Delmarva Power & Light Company, 5 FERC ¶61,201 (1978) ("the transaction would only simplify the corporate structure by merging these subsidiaries into the parent"); Union Electric Company, 25 FERC ¶61,394 (1983), reh'g denied, 26 FERC ¶61,184 (1984) ("the nature of the proposed transaction is essentially a consolidation of operating utilities presently under one ownership rather than the acquisition of any additional electric or gas utility"); and Kentucky Utilities Company and Old Dominion Power Company, 56 FERC ¶61,184 (1991) ("because Kentucky Utilities already wholly owned Old Dominion and, in effect, controls the use of Old Dominion's system, the merger will not alter Kentucky Utilities' control").

Moreover, while *City of Mount Pleasant* involved municipal utilities suing an electric co-op (none of which were subject to our section 203 jurisdiction), at least one court has applied *Copperweld* to a jurisdictional public utility. *Rosemont Cogeneration Joint Venture* v. *Northern States Power*, 91–1 Trade Cases (CCH) ¶69,351 at 65,408 (D MN 1991).

The above case law supports our conclusion that when public utility holding companies merge, their public utility subsidiaries likely retain no real corporate independence. Rather, decision-making for the public utility subsidiaries appears to rest with the new holding company. The voting stock of the public utilities belongs to the shareholders of the new holding company; the new holding company board of directors presumably sets or can set corporate policy for all subsidiaries; and management of the public utility subsidiaries presumably gains access to proprietary financial and corporate information of the entire system of the new holding company. For us to assume that a merger of the public utilities occurs only when the new parent proposes to combine its subsidiaries may, in most instances, elevate corporate form over economic substance.

We therefore will presume, subject to rebuttal, that mergers between public utility holding companies also accomplish an indirect merger of their public utility subsidiaries. If the public utilities can rebut the presumption, we will find that jurisdiction will not attach until such time as the public utility subsidiaries formally merge or consolidate their facilities. If the public utilities cannot rebut the presumption, section 203 approval of the indirect merger of the public utilities will be required.[13]

b. *Rebutting the Presumption*. The Eighth Circuit in *City of Mount Pleasant* left open the possibility for courts to consider affiliates as separate enterprises for antitrust purposes. In granting summary judgment to the co-op, the panel held:

> The record bears out the defendants' claim that the cooperative organization is a single enterprise pursuing a common goal—the provision of low-cost electricity. * * * The burden [falls] therefore on the City to show specific facts which present a triable issue as to whether any of the defendants has pursued interests diverse from those of the cooperative itself. By "diverse" we mean interests that show that any two of the defendants are, or have been, actual or potential competitors, * * * or at the very least, interests which are sufficiently divergent so that a reasonable juror could conclude that the entities have not always worked together for a common cause. In the language of *Copperweld*, the City must show facts that could lead a reasonable juror to find the coordination between any two defendants to be a "joining of two independent sources of economic power previously pursuing separate interests."
>
> 838 F.2d at 276 (citations omitted).

Informed by the analysis in *Copperweld* and *City of Mount Pleasant*, we will require section 203 applicants, in order to rebut the presumption, to show that the new holding company will not interfere with the independence of the public utility subsidiaries, and will allow them to operate and compete with each other in the same manner as before the merger of the holding companies. In order to rebut the presumption of an indirect merger, the public utilities must show: (1) That they will continue to exercise independent decision-making authority; (2) that their proprietary, financial and corporate information will not be available to each other, either directly or indirectly; and (3) that they will compete on price and service in the same markets to the same extent they have competed in the past.[14]

The Commission Orders

(A) The disposition of the jurisdictional facilities of Illinois Power in the above-described corporate restructuring is hereby authorized subject to the following conditions:

(1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

(2) The Commission retains authority under section 203(b) of the Federal Power Act to issue supplemental orders as appropriate;

(3) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, determinations of cost, or any other matter whatsoever now pending or which may come before this Commission;

(4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted; and

(B) In the event IP Holding should seek to merge with another public utility holding company, the public utilities will be required to file under section 203 of the FPA evidence to rebut a presumption that such a merger would not also result in an indirect merger of the public utility subsidiaries, or alternatively for approval of an indirect merger of the public utilities.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11184 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–228–000]

Federal Energy Regulatory Commission

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet Nos. 237A and 237B and Original Sheet No. 237F with a proposed effective date of May 1, 1994.

National states that the proposed tariff sheets flow through to National's customers, in accordance with Section 21.5 of the General Terms and Conditions of its FERC Gas Tariff, the costs allocated to National in the Account No. 191 transition cost recovery filing made by Tennessee Gas Pipeline Company. In addition, National states that the filing proposes to flow through costs and refunds related to historic sales and transportation imbalances that remained outstanding after the implementation of restructuring on its system. Further, National states that the filing proposes to recover costs associated with the resolution of a gas pricing dispute with Northwest Natural Gas Company.

National also requests waiver of section 21 of the General Terms and

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[11] Northern Natural Gas Co. v. FPC, 399 F.2d 953, 960 (D.C. Cir. 1968), citing California v. FPC, 369 U.S. 482, 490 (1962).

[12] *See, e.g.*, Northeast Utilities Service Co. 56 FERC ¶61,369 at 61,998–62,011 (1991), *order on reh'g*, 58 FERC ¶61,070, *further order on reh'g*, 58 FERC ¶61,042 (1992), *remanded on other grounds*, 939 F.2d 937 (1st Cir. 1993) (*NU*).

[13] Section 203 requires approval *prior* to a merger. Therefore, the public utilities must file under section 203 evidence to rebut the presumption that an indirect merger of public utilities will occur when the holding companies merge, and/or alternatively an application for approval under section 203.

[14] We do not believe there can be competition between public utilities if they do not exercise independent decision-making or if they share information. Accordingly, elements (1) and (2) must be met. However, the fact that (1) and (2) are met in and of themselves is not sufficient to show that the affiliates will compete. Applicants therefore must submit additional evidence that they will compete with each other. For example, one indicia of competition would be that they will separately participate in competitive solicitations.

Conditions of its FERC Gas Tariff to the extent necessary to file to recover out-of-period adjustments to its Account No. 191 through April 1, 1995. In this regard, National states that several of its former upstream pipeline-suppliers have Account No. 191 out-of-period adjustment authority beyond the nine months provided for in Section 21 of National's tariff, and therefore, National will incur additional Account No. 191 adjustments beyond the current adjustment period.

Nationa further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11175 Filed 5-9-94; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP94-231-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on May 2, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to establish a mechanism to flow through Dakota Gasification Transition Costs billed to Panhandle by ANR Pipeline Company (ANR). Panhandle proposes that the tariff sheets submitted herewith become effective June 1, 1994.

Second Revised Sheet No. 11
Second Revised Sheet No. 12
Second Revised Sheet No. 13
First Revised Sheet No. 14
Original Sheet No. 321F
Original Sheet No. 321G
Original Sheet No. 321H

Panhandle states that on February 28, 1994, ANR filed its first quarterly filing (RP94-150-000) to initiate recovery of capacity and supply costs associated with ANR's obligations to Dakota Gasification Company. On March 30, 1994, the Commission accepted ANR's tariff sheets for filing, subject to refund and the outcome of a technical conference, permitting ANR to apply a reservation surcharge of $1.104 per Dth of MDQ applicable to ANR's Shippers as of March 1, 1994.

Panhandle states it is subject to ANR's Dakota Gasification transition cost reservation surcharge because it uses ANR's firm transportation service under Rate Schedule FTS-1 to transport gas to and from storage provided to Panhandle by ANR Storage Company under Rate Schedule X-4. These upstream services are part of the third party storage capacity that Panhandle has aggregated with its own pipeline storage to provide the Market Area storage services under Rate Schedules WS, PS, FS and IWS pursuant to Panhandle's restructured First Revised Volume No. 1 Tariff and as approved in Docket Nos. RS92-22-000, et al. Panhandle states that it will pay ANR $68,011 in Dakota Gasification reservation surcharges for the three months, commencing March 1, 1994.

Panhandle states that the mechanism to flow through the Dakota Gasification transition costs is contained in new Section 18.11 of the General Terms and Conditions. Section 18.11 provides that Panhandle will file quarterly to establish a surcharge to flow through the Dakota Gasification transition costs for the three months preceding the effective date of the surcharge. The surcharge will be applied to the deliverability charge for Panhandle's firm Market Area storage services under Rate Schedules WS, PS and FS, and to the monthly inventory charge for Panhandle's interruptible Market Area storage service under Rate Schedule IWS. Panhandle proposes to establish a deferred account to record differences between the Dakota Gasification transition costs Panhandle pays to ANR and its monthly recoveries with carrying charges on these differences and to file annually to flow through the deferred account activity to "true-up" recoveries with Panhandle's actual costs.

Panhandle requests that the Commission grant all necessary waivers of the Regulations so as to place the instant tariff sheets and attendant surcharge into effect on June 1, 1994.

Panhandle states that a copy of this tariff filing is being served on all affected customers and state commissions.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11173 Filed 5-9-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-222-000]

Tennessee Gas Pipeline Company; Petition for Declaratory Order

May 4, 1994.

Take notice that on April 29, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a petition for declaratory order seeking Commission approval of a settlement agreement Tennessee recently entered into with Dakota Gasification Company (Dakota) and the United States of America on behalf of the Department of Energy with respect to Tennessee's purchase of synthetic gas produced from the Great Plains Gasification Plant and Dakota's transportation of such gas for Tennessee.

Tennessee seeks a declaratory order from the Commission that:

(a) Approves the settlement and finds that it is in the public interest;

(b) Waives or amends Opinion No. 119, 15 FERC ¶ 61,106 (1981), as necessary to permit the settlement's pricing provisions to be implemented; and

(c) Authorizes Tennessee to recover the costs incurred under the settlement under a special component of the GSR cost recovery procedures in effect from time to time in Tennessee's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11179 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–225–000]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets:

FERC Gas Tariff

First Revised Volume No. 1

Fifth Revised Sheet No. 10
Seventh Revised Sheet No. 12
Third Revised Sheet No. 18

FPC Gas Tariff

Original Volume No. 2

Seventeenth Revised Sheet No. 82
Eighteenth Revised Sheet No. 547
Twentieth Revised Sheet No. 982
Eighteenth Revised Sheet No. 1005
Twelfth Revised Sheet No. 1085.

Texas Gas states that the revised tariff sheets are being filed pursuant to § 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its IT customers. Texas Gas states that the total GSR costs proposed to be recovered by this filing are $21,709,900.

Texas Gas requests an effective date of June 1, 1994, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11178 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–227–000]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective June 1, 1994:

108th Revised Sheet No. 5
14th Revised Sheet No. 5A
6th Revised Sheet No. 5A.02
6th Revised Sheet No. 5A.03
12th Revised Sheet No. 5B
Original Sheet No. 5N
11th Revised Sheet No. 48
2nd Revised Sheet No. 83
1st Revised Sheet No. 84
9th Revised Sheet No. 87

Transwestern states that the purpose of the filing is to implement a Purchase Gas Adjustment Alternative Rate Recovery Mechanism to enable it to collect $10.7 million in unrecovered purchased gas costs (including interest) through a reservation surcharge.

Transwestern states that copies of the filing were served upon Transwestern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20246, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11176 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–226–000]

Viking Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 1, 1993:

Second Revised Sheet No. 34
Second Revised Sheet No. 35

Viking states that the purpose of this filing is to amend Section 6(a)(ii) of the monthly imbalance cash out mechanism under Rate Schedule LMS in two respects.

Viking states that this section currently provides that in calculating cash outs, "[t]he 'Transportation Component' shall be equal to the commodity rate under Rate Schedule FT–A for transportation to the applicable zone multiplied by the monthly imbalance, plus any applicable fuel an use charges."

Viking's Rate Schedule FT–A has a two-part rate, with a fixed cost reservation charge and a variable cost volumetric charge. Viking's other services, however, under Rate Schedules FT–GS, IT and AOT, have a one-part volumetric rate that recovers both fixed and variable costs.

Consequently, a mismatch may occur if the FT–A commodity charge is used in calculating monthly cash outs for service under Rate Schedules FT–GS, IT or AOT.

To cure this potential problem, Viking proposes to amend this section to provide that [t]he 'Transportation Component' shall be equal to the commodity rate under the applicable rate schedule for transportation to the applicable zone multiplied by the monthly imbalance, plus any applicable fuel and use charges."

The second proposed change concerns the calculation of the published Index Price under the monthly cash out mechanism. The Index Price is based on an "Average

Monthly Index Price," which is an average of the Weekly Index Prices for the month. The Weekly Index Price equals the price of gas delivered to Transporter at Emerson, Manitoba as published in the "Weekly Price Survey" of Gas Daily.

Section 6(a)(ii), however, does not address the situation of how to calculate the Average Monthly Index Price in the event Gas Daily does not include in its Weekly Price Survey a price for gas delivered to Viking at Emerson, Manitoba for any of the weeks in the month because of an insufficient number of transactions. This, in fact, occurred in December, 1993.

To remedy this situation, Viking proposes to amend Section 6(a)(ii) by including the following language:

> If none of the Gas Daily "Weekly Price Surveys" for a given month include a price for gas delivered to Transporter at Emerson, Manitoba ("Weekly Emerson Price"), the "Average Monthly Price Index" for such month shall be the average of: (1) the last Weekly Emerson Price published by Gas Daily preceding that month; and (2) the first Weekly Emerson Price published by Gas Daily following that month.

Viking proposes an effective date of November 1, 1993, for the proposed changes to section 6(a)(ii), and hereby requests such waivers as are necessary to permit the changes to become effective on that date.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11177 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency and Water Standards: Public Meeting To Discuss Recommendations for Establishing State and Local Incentive Programs for Voluntary Replacement of Plumbing Products by Consumers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Energy Policy Act of 1992 requires the Department of Energy (DOE or Department) to issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the standards established in the legislation.

In order to consult with government and industry representatives about the development of such recommendations, the Department will hold a public meeting in New York City to solicit ideas and plan a future workshop. All persons are hereby given notice of the opportunity to submit written comments and/or attend the public meeting.

DATES: Written comments on the agenda items listed in this notice should be submitted in quadruplicate by June 9, 1994. Individuals who wish to participate in the discussion meeting should let the Department know before June 13, 1994. The public meeting will be held on Monday, June 20, 1994.

ADDRESSES: Written comments and requests to participate should be labeled "Incentive Programs for Voluntary Replacement of Plumbing Products" and submitted to Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. Telephone: (202) 586–9127; FAX: (202) 586–4617.

The meeting will begin at 12:30 p.m. and will be held in room 551 at the New York Hilton & Towers, 1335 Avenue of the Americas, New York City, New York, in conjunction with the annual conference of the American Water Works Association.

Copies of the public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC (202) 586–6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

The Energy Policy Act of 1992 (EPACT; Pub. L. 102–486) identifies several new categories of products and equipment for inclusion in a range of required and voluntary testing and information programs to promote energy efficiency and conserve water. Section 123 of EPACT establishes maximum water use standards for showerheads, faucets, water closets and urinals for equipment manufactured after January 1, 1994. In addition, Section 123 requires the Secretary of Energy to issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the new standards. In developing the recommendations, the Secretary is required to consult with the heads of other Federal agencies, including the Administrator of the Environmental Protection Agency; State officials; manufacturers, suppliers, and installers of plumbing products and other interested parties.

2. Background

The June 20, 1994, meeting is designed to be a planning session for a future workshop. The Department would like to receive suggestions on how that workshop can be effectively organized to elicit both broad participation and coverage of all pertinent issues regarding State and local incentive programs. Working committees will be established.

3. Discussion

Agenda items for the planning session will include the following:

- Identification of key issues and barriers confronting those working on existing water efficiency programs.
- Identification of participants to include in the future workshop, ensuring a broad base of interests and issues.
- Determination of a prospective date, format, and location for the larger workshop.
- Establishment of volunteer committees to assist workshop planning.

4. Public Meeting Procedure

The primary focus of the meeting will be to determine the proper vehicle for a future, more in depth workshop. DOE will make a presentation at the beginning of the meeting to provide an overview of legislative requirements and current Federal activities. Although subsequent discussion among participants will be informal, a professional facilitator will be used to focus on pertinent topics and achieve the goals of the meeting.

Issued in Washington, DC, May 3, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 94–11265 Filed 5–9–94; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 94–6—Certification Notice—133]

Wallkill Generating Company, L.P., Notice of Filing of Coal Capability, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: On April 28, 1994, Wallkill Generating Company, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of April 28, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Wallkill Generating Company, L.P., Bethesda, Maryland
Operator: U.S. Operating Services Company, Rockville, Maryland
Location: Wallkill, New York
Plant Configuration: Topping Cycle, Combined Cycle
Capacity: 95.1 megawatts
Fuel: Natural gas
Purchasing Utilities: Orange and Rockland Utilities, Inc.
In-Service Date: Fourth quarter of 1995

Issued in Washington, DC, May 3, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11264 Filed 5–9–94; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4881–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1672.01; Request for Information for Bioremediation Field Initiative Database Systems; was approved 04/12/94; OMB No. 2080–0048; expires 04/30/97.

EPA ICR No. 1632.01; Containment Structure Regulations; was approved 04/12/94; OMB No. 2070–0133; expires 04/30/97. This collection supports the proposed rule.

EPA ICR No. 0010.07; Information Requirements for Importation of Nonconforming Vehicles; was approved 04/01/94; OMB No. 2060–0095; expires 03/31/97.

EPA ICR No. 1680.01; Combined Sewer Overflow Policy; was approved 04/05/94; OMB No. 2040–0170; expires 04/30/97.

EPA ICR No. 1643.01; Approval and Delegation of Federal Air Toxics Programs under 112(1)(2), Application Requirements; was approved 07/21/93; OMB No. 2060–0264; expires 07/31/96.

EPA ICR No. 1353.04; Hazardous Waste Management System: Land Disposal Restrictions "No-Migration" Variances; was approved 04/14/94; OMB No. 2050–0062; expires 04/30/97.

EPA ICR No. 1666.01; NESHAP for Ethylene Oxide Commercial Sterilization and Fumigation Operations, Reporting and Recordkeeping Requirements—Part 63, Subpart 0; was approved 04/18/94; OMB No. 2060–0283; expires 04/30/97.

OMB Disapprovals

EPA ICR No. 1631.01; Container Design and Residue Removal; was disapproved 04/12/94. This collection supports the proposed rule.

EPA ICR No. 1659.01; NESHAP for Source Categories: Stage 1 Gasoline Distribution: Monitoring, Reporting and Recordkeeping; was disapproved 04/11/94.

EPA ICR No. 0270.31; Information Collection Requirements Rule: Cryptosporidium, Giardia, Viruses, Disinfection by-Products, and other Information Requirements; was disapproved 04/06/94.

OMB Extension of Expiration Dates

EPA ICR No. 1198.03; Chemical Specific Rules, Section 8(A); OMB No. 2070–0067; expiration date was extended to 10/31/94.

EPA ICR No. 1425.02; Application for Reimbursement to Local Governments; OMB No. 2050–0077; expiration date was extended to 10/31/94.

Dated: May 3, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–11277 Filed 5–9–94; 8:45 am]

BILLING CODE 6560-60-F

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board

[FRL-4883-8]

Notification of Public Advisory Committee Meetings; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Environmental Economics Advisory Committee

The Environmental Economics Advisory Committee (EEAC) of the SAB will meet on May 31, 1994, at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria VA 22314. The hotel telephone number is (703) 684-5900.

The meeting, which is open to the public, will start at 8:45 AM, and adjourn no later than 5:00 PM. Its main purpose is to: (a) Receive briefings on economic issues and analytic activities in the Offices of Air and Radiation, Pesticides, and Toxic Substances, and the Office of Environmental Equity; (b) receive a briefing on, and discuss, the collection of pollution control cost data by the Department of Commerce's Bureau of Economic Analysis; (c) review economic issues in the draft reports prepared by other SAB Committees as part of the SAB Futures project, and (d) discuss possible future review topics.

Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at (202) 260-2559, via Internet to RONDBERG. SAMUEL EPAMAIL.EPA.GOV, or by mail to him at: U.S. Environmental Protection Agency (1400F), 401 M Street, S.W., Washington D.C. 20460.

Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by May 24, 1994. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

2. Subcommittee on Ecological and Economic Sustainability

On June 1, 1994, the Subcommittee on Ecological and Economic Sustainability, a joint subcommittee of the Ecological Processes and Effects Committee and the Environmental Economics Advisory Committee of the SAB, will meet at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314 (at the King Street Metrorail Stop). The hotel telephone number is (703) 684-5900. The meeting will begin at 8:00 a.m. and end no later than 5:00 p.m. The Subcommittee will review the Agency's project entitled "Assessing the Sustainability of Ecological and Economic Systems." The project involves the development of an integrated economic-ecosystem model to illustrate how humans intervene in an ecosystem and how different ecosystem configurations contribute to human welfare and sustainability. The initial research is focused on the development of a pilot model for the Patuxent Watershed in Maryland.

To obtain a draft meeting agenda, please contact Ms. Dorothy Clark, SAB Staff Secretary, at (202) 260-6552 or Internet address Clark.Dorothy@EPAMAIL.EPA.GOV. Single copies of the review materials provided to the Subcommittee may be obtained from Ms. Evangeline Iverson, EPA Office of Policy, Planning, and Evaluation (mail code 2127), 401 M Street, SW, Washington, DC 20460, telephone (202) 260-3354. Anyone wishing to make a brief oral presentation at the meeting must notify Stephanie Sanzone, Designated Federal Official for the Subcommittee, at (202) 260-6557 and forward twenty copies of a written statement to her no later than May 24, 1994. Oral comments to the Subcommittee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: April 26, 1994.

Robert Flaak,

Acting Staff Director, Science Advisory Board

[FR Doc. 94-11276 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66192; FRL 4774-2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 8, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 36 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00196	Bonide Benomyl 50% Wp	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000070–00117	Kill-Ko New Improved Roach and Ant Killer	*o*-Isopropoxyphenyl methylcarbamate 2,2-Dichlorovinyl dimethyl phosphate
000100–00627	Dual 15g Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00677	Duet Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000352–00443	Dupont Gemini Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352 WA–90–0018	Dupont Lorox L Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000400 AZ–89–0017	B-Nine Sp	Butanedioic acid mono(2,2-dimethylhydrazide)
000707–00102	Dithane M-45 Concentrate Agricultural Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
000769–00744	AFC Pivalyl Concentrate - Anti-Coagulant Rat and Mouse	2-Pivalyl-1,3-indandione
000769–00745	Rodenticide, Bait, Anticoagulant Pivalyl	2-Pivalyl-1,3-indandione
000769–00751	Rodenticide, anticoagulant, univ Cntrl of Common Rats & Mouse	2-Pivalyl-1,3-indandione
000769–00759	Rodenticide, Anticoagulant, 0.5% Pival	2-Pivalyl-1,3-indandione
000813–00013	Dixichlor Special	Sodium hypochlorite
000875–00151	Oxford Kilz-M	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide Pyrethrins
001021–01516	Evercide Concentrate 2357	*d*-cis-trans-Allethrin *N*-Octyl bicycloheptene dicarboximide 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
001677–00053	Trichlor-O-Cide Formula XP-100	Sodium dichloroisocyanurate dihydrate
001812–00241	Super-Cu Copper Fungicide	Basic copper sulfate (Declare copper equivalent)
001812 LA–90–0007	Kocide Sd Seed Dressing Agricultural Fungicide	Copper hydroxide
003125 NC–80–0019	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
003125 NC–82–0031	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
003125 OH–81–0033	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
003125 OH–82–0015	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
005481–00267	Royal Brand Peanut Dust	Basic copper sulfate (Declare copper equivalent) Sulfur
006199–00004	PDIC (potassium Dichloro Iso Cyanurate) Granular 59%	Potassium dichloro-*s*-triazinetrione
007173 VT–76–0002	Rozol Tracking Powder	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
010182–00013	Granular P.D.I.C. (Potassium Dichloroisocya	Potassium dichloro-*s*-triazinetrione
010279–00001	Betadine Whirlpool Concentrate	Polyvinylpyrrolidone - iodine complex
010445–00029	Metasol J-26 Liquid	*N*-(.alpha.-(Nitroethyl)benzyl)ethylenediamine, potassium salt
010445–00052	H-700 Microbiocide	*N*-(.alpha.-(Nitroethyl)benzyl)ethylenediamine, potassium salt
010806–00098	Contact Liquid Ant & Roach Killer III	*d*-trans-Chrysanthemum monocarboxylic acid ester of *d*-2-allyl-4-hydroxy-3- *o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide
010867–00006	Algae-Trol R	Copper citrate
014775–00018	Diazinon AG 50 Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
035138–00064	Aerochem Roach & Ant Spray	(3-Phenoxyphenyl)methyl *d*-cis and trans 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
037425–00005	Adams Anti-Crawl	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Pyrethrins
045639–00007	Norton Granule	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate, (+-)-
055272–00001	Oxycop WP	Basic copper chloride

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000400	Uniroyal Chemical Co Inc., 74 Amity Rd, Bethany, CT 06524.
000707	Rohm & Haas Co, Agri Chemicals Registration & Regulatory, 100 Independence Mall W., Philadelphia, PA 19106.
000769	Sureco Inc., c/o H.R. McLane, Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.
000813	DPC Industries, Inc., 300 Jackson Hill, Houston, TX 77007.
000875	Diversey Corp., 12025 Tech Center Dr, Livonia, MI 48150.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
001677	Ecolab Inc., 370 Wabasha St., Ecolab Center, St Paul, MN 55102.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
006199	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897.
007173	Liphatech, Inc., 3101 W. Custer Ave, Milwaukee, WI 53209.
010182	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897.
010279	Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856.
010445	Calgon Corp., Calgon Center - Box 1346, Pittsburgh, PA 15230.
010806	Contact Industries Inc., 641 Dowd Ave., Elizabeth, NJ 07201.
010867	Water Services, Inc., Box 22339, Knoxville, TN 37933.
014775	Asgrow Florida Co, 4144 Hwy., 39 N. Plant City, FL 33565.
035138	Aerochem, Inc., 1396 Lee Lane, Raymond, MS 39154.
037425	Smithkline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380.
045639	Nor-Am Chemical Co, Little Falls Centre One, 2711 Centerville Rd, Wilmington, DE 19808.
055272	Paragon Global Services, Agent For: Ingenieria Industrial Sa De C, Box 5126, Valdosta, GA 31603.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 8, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 20, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–11199 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34056; FRL 4774–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on August 8, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request. The requests included in this notice were received in response to the Worker Protection Standard (WPS), and are intended to remove the products from the scope of the WPS.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 253 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before August 8, 1994 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete from Label
000004–00017	Bonide 1.00 % Rotenone	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00062	Bonide Sulphur Plant Fungicide Micronized Spray or Dust	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00099	Malathion 50% EC	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00143	Bonide Sevin 5% Dust Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00146	Crabgrass Preventer & Weed Killer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00180	Bonide Lawn Disease Control	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00252	Bonide Dipel .86% W.P. Home & Garden Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00290	Bonide Turf, Garden & Ornamental Fungicide 50% WP	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00296	Bonide Turf & Ornamental Herbicide 75% W.P.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00300	Bonide Garden Turf and Ornamental Herbicide 5G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00309	Bonide Rose, Flower, & Ornamental Ready-To-Use Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00315	Bonide Liquid Rotenone/pyrethrins Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
000004–00319	Bonide Home Pest Control Concentrate	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00334	Bonide Slug and Snail Beater	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00340	Bonide Tobacco Dust	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00350	Bonide Insect Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00352	Bonide Last Slime Slug-N-Snail Beater	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00355	Bonide Home Orchard Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000070–00113	Kill-Ko Cygon 2-E Systemic Insecticide	Aerial application
000070–00126	Kill-Ko Thiodan 4 Dust	Cotton, tobacco
000070–00142	Kill-Ko Thiodan Emulsifiable Insecticide	Tobacco
000264–00396	Weedone DPC Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000270–00261	Farnam Natural Bug Guard Mist A	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03062	Dragnet FT Termiticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03070	Cynoff WP Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03081	Cynoff EC Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03085	Cynoff WSB Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03092	Flee Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03109	Cynoff 50 WP Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03117	Cynoff 50 WSB Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00452	Sbp-1382 Insecticide Aqueous Pressurized Spray 0.25%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00454	Your Brand SBP-1382 Aqueous Pressurized Spray Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00455	SBP-1382 Pressurized Spray Insecticide 0.25%	Tent caterpillars
000432–00482	SBP-1382/bioallethrin Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00505	24.3% SBP-1382–2 E.C.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00517	SBP-1382 0.35% Space and Residual Aqueous Pressurized	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00536	SBP-1382/bioallethrin Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00543	SBP-1382 Insecticide Transparent Emulsion Spray 0.35%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00544	Ultratec Insecticide W/SPB-1382 Tran. Emul. Dil. Conc.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00548	SBP-1382 Insecticide Transparent Emulsion Spray 0.25%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00582	Bioram 0.15% + 0.25% Insect. Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
000432–00585	Bioram 0.2% + 0.2% Insect. Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00592	Pramex 0.25% Aqueous Pressurized Spray for House	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00593	SBP-1382/bioallethrin (0.2 + 0.4) II Professional	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00626	SBP-1382/esbiothrin/P.B.O Insecticide Aq. Press Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00627	SBP-1382/esbiothrin/P.B.O. Insecticide Aq. Press. Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00631	SBP-1382/esbiothrin/P.B.O. Insecticide Aq. Press. Spray	Greenhouses, lathhouses, plants being grown for sale or other commercial use, commercial seed production, or research purposes
000524–00456	Dimension 0.25G Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000498–00144	Spray Pak Flying and Crawling Insect Killer Formula 2	Nurseries, seed houses
000538–00026	Scotts Proturf Weedgrass Preventer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00075	Scotts Proturf 16–21–5 Starter Fertilizer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00088	Proturf Systemic Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00103	Proturf Fungicide II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00108	Proturf FFII	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00111	Proturf Insecticide III	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00112	Scotts Proturf New K-O-G Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00159	Proturf Fungicide VI	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00161	Proturf Fungicide 7	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00162	Proturf Insecticide 4	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00164	Proturf Goosegrass/crabgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00196	Proturf Fertilizer Plus Turf Weedgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00203	Proturf Fluid Fungicide II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00206	Proturf Fertilizer Plus Southern Turf Weedgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00216	Proturf Fluid Fungicide III	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00226	Fertilizer Plus Insecticide/preemergent Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00230	High K Fertilizer with Tgr Poa Annua Control	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000538–00239	TGR (r) Turf Enhancer 50 WP	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00241	14–21–10 Turf Starter Plus Preemergent Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00242	Fungicide IX	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
000572–00200	Rockland Garden Clean with Trifluralin	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000572–00219	Rockland Super Professional Dursban Chinch Bug Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000572–00273	Rockland Three-Wav Lawn Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000572–00292	Rockland 5% Diazinon Granular Lawn Insecticide	Turf being grown for sale or other commercical use as sod, or for commercial seed production, or for research purposes
000655–00683	Prentox Pyronyl Oil Concentrate #15A	Mushrooms
000655–00684	Prentox Pyronyl Oil Concentrate #15	Mushrooms
000746–00125	Dursban Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000802–00560	Lilly/miller 1% Chlorban Insect Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000802–00576	Lilly/miller Ultragreen Crabgrass Control & Lawn Food	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
001109–00036	Tri-Basic Copper Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
001381–00145	4 LG	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
002217–00426	Formec 80 Turf & Ornamental Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
002217–00682	Norosac 4G Dichlobenil Granules	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
002217–00692	Gordon's Professional Turf Products Teremec SP Turf	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
002548–00027	Max Kill Malathion 57-WE	Vegetables, fruits, nuts, field crops, pastures, range grasses, stored products, fly/mosquite control, outdoor ornamentals, forest trees, around the home, around cull fruit/vegetable dumps, around wineries, non-food areas of processing plants
003125–00083	Di-Syston 2% Granular	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00116	Di-Syston Systemic Insecticide Granules	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00126	Di-Syston Systemic Insecticide for Vegetables	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00152	Systemic 2 In 1 Rose Care 10–10–10 Rose Food	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00318	Bayleton 25% Wettable Powder	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00331	Oftanol 1.5% Granular	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003772–00013	Earl May Sevin Wettable Powder	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003772–00043	Dipel Bio Garden Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003862–00078	Kamikaze	Mushroom production & processing
004816–00442	Multi-Purpose Pyrenone Insecticide Concentrate	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00470	Tetralate Multi-Purpose Insecticide S.E.C.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00496	Pyrenone Flexi-Dust	Vegetable, ornamental plants
004816–00537	Pyrenone Dursban Dual Use E.C.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00607	Pyrenone Aqueous 30–3	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
004816–00690	Permanone Multi-Use Insecticide Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00706	Pyrenone 25–2.5 W.P.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00709	Permanone General Purpose Aqueous Insecticide II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00714	Permanone Multi-Purpose 0.25% Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
006133–00013	Surge 25–3–9 Turf Fertilizer with Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
008378–00020	Shaw's 18–5–9 Turf Food with XL Crabgrass Control	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
008590–00556	Dursban 4E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
008590–00582	Agway Dipel 4L	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00008	Weed n' Feed 10–6–4	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00016	Frank S Garden King Weed and Feed	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00026	Turf Care for Professional Lawn Maintenance W/1.2%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00030	Turf Care for Professional Lawn Maintenance 20–4–10	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00031	Turf Care Fertilizer 18–3–5 with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00032	Turf Care for Lawn Maintenance 38–0–0 with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00037	Tee Time Fertilizer 20–4–10 with Benefin/Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00039	Turf Care Dursban 2.5G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00040	Fortify Premium Crabgrass Preventer & Plant Food 18-4-I	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00043	Turf Care for Southern Lawns 0.47% Chloropyrifos	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00044	Turf Care Granular Lawn Insect Control Plus Lawn Food X	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00045	Turf Care Granular Lawn Insect Control Plus Lawn Food	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00046	Andersons Weed and Feed XX-XX-XX	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00047	Andersons Weed Killer 0.84% 2.4-D and 0.84% MCPP	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00048	Andersons Weed Killer 0.63% 2.4-D and 0.60% MCPP	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00049	Andersons Weed and Feed XX-XX-XX	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00050	Anderson's Pre-Emergent Crabgrass Killer Plus Fertil.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00051	Andersons "Two In One" Lawn Food Plus Crabgrass Prevent	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00052	Andersons Crabgrass Preventer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
009198–00053	Anderson's Weed and Feed III 28–3–9	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00054	Anderson's Weed and Feed II 28–3–9	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00055	Anderson's Weed and Feed 20–6–10 contains 2,4-D	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00056	Pel-Tech Benefin Concentrate 10	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00057	Pel-Tech Benefin Concentrate 15	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00058	Pel-Tech Benefin Concentrate 20	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00059	Pel-Tech Benefin Concentrate 25	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00060	Easy Weeder Flower and Garden Weed Preventer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00061	Turf Care Lawn Insecticide 2% Diazinon	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00062	Turf Care Lawn and Garden Insecticide 5% Diazinon	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00064	Loft's Lawn Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00065	Lofts Crabgrass Preventer with Tupersan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00066	Lofts Crabgrass Preventer Plus Lawn Food 25–3–3	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00067	K-Mart Crabgrass Preventer 25–3–3 with Benefin	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00068	The Andersons 1% Dursban Brand Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00070	Green Thumb Weed & Feed 12–3–5	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00072	Custom Mix 20–4–10 with Betasan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00073	Custom Mix 25–6–10 with Betasan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00075	Tee Time Fertilizer 20–4–10 with Ronstar	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00076	Andersons Tee Time 32–3–5 with Oftanol	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00077	Tee Time Sprayable Herbicide with Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00078	Tee Time Sprayable Herbicide II with Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00079	Anderson Tee Time 25–3–8 Plus Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00080	Anderson Tee Time 20–4–10 with 1.04 Balan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00081	Tee Time Fertilizer 20–4–10 with 1.15 Balan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00082	Tee Time Fertilizer with 0.52% Dursban 30–3–5	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00083	Anderson Tee Time 2.5 Balan Crabgrass Preventer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00084	Andersons Tee Time 30–3–5 with 0.65% Dursban	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
009198–00085	Tee Time Fertilizer with 0.71% Dursban 30–3–5	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00086	Anderson Pre-Emergence Crabgrass Preventer with Balan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00088	Anderson's Tee Time with 1.5% Oftanol	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00089	Tee Time 5–10–30 with Balan and Surflan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00090	Tee Time 5–10–30 with Balan and Surflan Formula I	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00091	Andersons Tee Time 25–3–8 Plus Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00092	Greensweep Spray-On Liquid Weed & Feed for Southern	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00093	Greensweep Spray-On Liquid Weed & Feed for Northern	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00094	Andersons Tee Time 20–4–10 Plus Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00098	Anderson's Tee Time 25–3–8 with Team/dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00099	Andersons Tee Time 19–5–9 with Team/dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00100	The Andersons Tee Time Insecticide with Dylox	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00101	The Andersons Tee-Time 25–3–8 Plus 0.87% Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00102	The Andersons Tee Time 25–3–8 with 0.87% Team/0.58%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00106	The Andersons Tee Time Fertilizer with Sevin (r)	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00108	The Anderson's Tee Time Lawn Food with Crabgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00110	The Andersons Tee Time Insecticide with 6.2 Dylox	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00111	The Anderson's Tee Time with 1.0% Bayleton Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00112	The Anderson Tee Time With 0.5% Bayleton Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00115	Granular Turf Fungicide contains Daconil-2787	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00116	Twin Light Granular Lawn Insecticide with Dursban	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00117	The Andersons Dimension Herbicide IV	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00119	The Andersons Turcam Insecticide II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00120	The Andersons Dimension Herbicide II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00121	The Andersons Dimension Herbicide III	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00122	The Andersons Turcam Insecticide I	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00032	Foam spray Products Sevin* General Outdoor Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
010370–00036	Ford's Dursban 1/2 G Granular Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00037	Ford's Dursban 2E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00047	Ford's Lawn Granules	Fieldcorn, popcorn, sweet corn, peanuts and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00048	Ford's Lawn & Ornamental Spray	Cherries, citrus fruit, field corn, sweet corn, popcorn, nectarines, peaches, peanuts, sunflowers, sugar beets, tree fruits and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00054	Ford's Dursban 2.5% G Granular Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010370–00058	Ford's Malathion 57%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00064	Ford's Dursban 1-E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00115	Sevin-5 Dust	Beans, cotton, application by aircraft and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00121	Ford's Snail and Bug Bait	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00129	Sevin 10 Dust	Beans, cotton, application by aircraft and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00147	Ford's 50% Malathion Emulsifiable Concentrate	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00152	Ford's 5% Sevin Bait	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00169	Ford's Crabgrass and Foxtail Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010370–00202	Lawn Fungicide Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010370–00207	Organicide Dip	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00212	Forty-Nine Plus (permethrin)	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00285	Clean Crop Sevin Brand Carbaryl Insecticide Liquid 11.7	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00293	Best Rose & Ornamental Plant Food with Systemic Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00001	Lescopex Clover-Chickweed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00006	Lakeshore 18–5–9 Turf Fertilizer with Balan	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00007	Lesco 12–4–8 Weed & Feed for Lawn Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00010	Lesco Thiram 75W	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00011	Lesco Diazinon 500	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00013	Super Lescopex	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00014	Lesco 30–5–7 Plus Diazinon	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00015	Lesco 2.32 Granular Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
010404–00021	Lesco A-4d Herbicide 2,4-D Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00023	Lesco Diazinon 5g	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00027	Lesco 40–0–0 Fertilizer with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00028	Lesco 39–0–0 Fertilizer with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00029	Lesco 32–5–7 Fertilizer with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00031	Lescosan 4-E Selective Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00032	Lescosan 7-G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00036	Lesco 2.5 Benefin Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00037	Lesco Pcnb & Fertilizer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00038	Lesco Pcnb-10% Granular Soil Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00039	Lesco Fertilizer & Atrazine 22–5–7 + Fe+mn	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00040	Lesco 20–0–10 Fertilizer w/dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00043	Lesco Three-Way Selective Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00044	Lesco Bentgrass Selective Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00045	Lesco 24–4–12 Fertilizer with 1.5% Oftanol	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00047	Lesco Oftanol 1.5% Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00056	Lesco Turf Fertilizer with 1.15% Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00057	Lesco Turf Fertilizer with 1.25% Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00058	Lesco Granular Turf Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00059	Lesco Tfc Dispersible Granule Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00060	Lesco Two-Some Flowable Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00061	Lesco 6.3% Sevin (r) Brand Granular Carbaryl Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
011474–00003	No-Crab Crabgrass Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00004	Select-Kil High Concentrate	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00013	Over Grass & Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00026	Sungro Treat-Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00030	Sunbugger Water Base Insecticide Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
011474–00067	Sungro Permith with Permanone	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
011474–00068	Sunbugger 8	Not for use on agricultural establishments in hopper- box, planter-box, slurry-box, or other seed-treatment applications at or immediately before planting
011474–00071	Perm II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
011540–00001	ULD BP-300 Insecticide	Mushroom houses, mushroom production
011540–00009	ULD BP-100 Insecticide	Mushroom houses, mushroom production
011540–00013	ULD BP-50 Insecticide	Mushroom houses, mushroom production
011540–00018	ULD BP-5025 Insecticide	Mushroom houses, mushroom production
028293–00210	Dursban 1-E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00007	All Season Balan Granular 2.5g	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00011	Benefin 1.3% Plus	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00019	Dursban Insecticide 0.7 Plus 16–3–5 Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00065	Chlorpyrifos 2E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00066	Clean Crop Chlorpyrifos 4E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00216	Betasan 36 Weed & Feed	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00229	Clean Crop Diazinon 4E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00449	Clean Drop Chlorpyrifos 1.14G Insecticide + Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
046579–00003	Ryra-Fog I Contact and Space Spray	Mushroom production & processing
046579–00005	Pyra-Fog 3 Contact and Space Spray	Mushroom production & processing
046579–00006	Pyra-Fog 5 Contact and Space Spray	Mushroom production & processing
059144–00009	Green Charm Dursban 1% Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27025.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85013.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000432	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000498	Chase Products Co., The Quality First Co., Box 70, Maywood, IL 60153.
000524	Monsanto Co., c/o Roy G. Danhaus, 700 14th St., N.W., Suite 1100, Washington, DC 20005.
000538	O.M. Scott & Sons Co., 14111 Scottslawn Rd., Marysville, OH 43041.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
000746	Imperial Inc., Agent For: MFA Oil Co., Box 98, Shenandoah, IA 51601.
000802	Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
001109	Boliden Intertrade Inc., 3379 Peachtree Rd NE, Atlanta, GA 30326.
001381	Cenex/Land O'lakes, Box 98, Shenandoah, IA 51601.
002217	Chemical Consultants Intl., Agent For: PBI/gordon Corp., 7270 W 98th Terrace, Suite 1, Overland Park, KS 66212.
002548	Research Products Co., Division of Mcshares, Inc., Box 1460, Salina, KS 67402.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd Box 4913, Kansas City, MO 64120.
003772	Bonide Products Inc., Agent For: Earl May Seed & N, 2 Wurz Ave, Yorkville, NY 13495.
003862	ABC Compounding Co, Inc., Box 16247, Atlanta, GA 30321.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 07645.
006133	Cadwell & Jones Inc., 46 Adams St. Box G Buckland, Manchester, CT 06040.
008378	H.R. Mclane, Agent For: Knox Fertilizer Co., 7210 S W 57th Ave., Suite 212A, Miami, FL 33143.
008590	Universal Cooperatives Inc., Agent For: Agway Inc., Box 460, Minneapolis, MN 55440.
009198	The Andersons Lawn Fertilizer, DBA/ Free Flow Fertilizer, Box 119, Maumee, OH 43537.
010370	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010404	Lesco Inc., 20005 Lake Rd., Box 16915, Rocky River, OH 44116.
011474	Sungro Chemicals, Inc., P. O. Box 24632, Los Angeles, CA 90024.
011540	Micro-Gen Equipment Corp., 10700 Sentinel Dr., San Antonio, TX 78217.
028293	Unicorn Labs & Phaeton Corp., 1000 118th Ave N, St. Petersburg, FL 33716.
032802	H R Mclane Inc., Agent For: Howard Johnson's, 7210 Red Rd., Suite 206, Miami, FL 33143.
034704	William M. Mahlburg, Agent For: Platte Chemical Co., Box 667, Greeley, CO 80632.
046579	Dickson Chemical Co., Inc., 2110 S. Prairie, Stuttgart, AR 72160.
059144	Gro Tec Inc., Box 290, Madison, GA 30650.

III. Existing Stocks Provisions

The products listed in this notice are within scope of theWorker Protection Standard (WPS), but the current labeling doesnot comply with WPS. As a result, after April 21, 1994, exceptas provided in PR Notice 93-11, registrants cannot distribute orsell products under the current approved labeling.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 20, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94-11198 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50786; FRL-4777-3]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous and Genetically Modified Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Department of Plant Pathology, Cornell University, a notification of intent to conduct small-scale field testing in New York with four nonindigenous strains and eleven genetically modified strains of *Erwinia herbicola*.

DATES: Comments must be received on or before June 9, 1994.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Steven D. Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: A Notification of intent to conduct small-scale field testing pursuant to EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated March 31, 1994, has been received from the Department of Plant Pathology, Cornell University, Ithaca, NY 14853. The purpose of the proposed testing is to evaluate the efficacy of four nonindigenous strains and eleven genetically modified strains of *Erwinia herbicola* for the control of fire blight in apples. The nonindigenous strains were isolated from fruit trees in Israel. The genetically modified strains were produced from indigenous and nonindigenous strains of *Erwinia herbicola* by transposon mutagenesis. The proposed field tests would be conducted in the state of New York on a total area of less than 10 acres.

Dated: April 21, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-11193 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30361; FRL-4770-4]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 9, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30361] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
PM 21 Sidney C. Jackson, (Acting)	Rm. 227, CM #2 (703–305–6900).	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 22 Cynthia Giles-Parker,	Rm. 229, CM #2 (703–305–5540).	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 55638–RT. Applicant: Ecogen Inc., 2005 Cabot Blvd, West, Langhorne, PA 19047–1810. Product name: AQ-10 Technical Powder. Microbial Fungicide. Active ingredient: *Ampelomyces quisqualis* isolate M-10 at 1 percent. Proposed classification/Use: None. For manufacturing end-use products and for application on apples, cucurbits, grapes, ornamentals, strawberries, and tomatoes. (PM 21)

2. File Symbol: 55638–RA. Applicant: Ecogen Inc. Product name: AQ-10 Biofungicide. Microbial Fungicide. Active ingredient: *Ampelomyces quisqualis* isolate M-10 at 1.0 percent. Proposed classification/Use: None. For the control of powdery mildew on certain crops. (PM 21)

3. File Symbol: 264–LUI. Applicant: Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Product name: Chipco Bromuconazole. Fungicide. Active ingredient: Bromuconazole 1-((2-(2,4-dichlorophenyl) 4-bromotetrahydro-2-furanyl) methyl)-1*H*-1,2,4-triazole at 20.0 percent. Proposed classification/Use: None. For prevention and control of certain diseases of turfgrass. (PM 21)

4. File Symbol: 264–LUT. Applicant: Rhone-Poulenc Ag Co. Product name: Bromuconazole Technical. Fungicide. Active ingredient: Bromuconazole 1-[[4-bromo-2-(2,4-dichlorophenyl) tetrahydro-2-furanyl] methyl]-1*H*-1,2,4-triazole at 97.0 percent. Proposed classification/Use: None. For manufacturing, formulating, and repackaging use only. (PM 21)

5. File Symbol: 59174–G. Applicant: Appropriate Technology, Inc., 3601 Garden Brook, Dallas, TX 75234. Product name: Agrispon Technical. Nematocide. Active ingredient: Plant extract at 0.56 percent. Proposed classification/Use: None. For manufacturing use to be formulated into end-use products for use on food, ornamentals, and forestry. (PM 22)

6. File Symbol: 56872–R. Applicant: Gardens Alive, Inc., 5100 Schenley Place, Lawrenceburg, IN 47025. Product name: A-Maizing Lawn. Herbicide. Active ingredient: Maize gluten meal at 100 percent. Proposed classification/Use: None. For use on turfgrass and ornamentals. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: April 21, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–11200 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 94–298]

Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In fulfillment of requirements of the Americans with Disabilities Act of 1990 (ADA), the Commission added rules which requires the Telecommunications Relay Services (TRS) fund administrator to file annual estimated TRS fund requirements for the shared-funding mechanism to recover the costs of providing interstate TRS. As stated in FCC Order in CC Docket 90–571 (DA 94–298) adopted April 1, 1994 and released April 5, 1994, the National Exchange Carrier Association, Inc. (NECA), who is the interim fund administrator, has filed its estimates for the period April 1994 through March 1995. Based on those estimates, the contribution factor and the "1994 TRS Fund Worksheet" (FCC Form 431 attached hereto) were adopted.

EFFECTIVE DATE: April 5, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808, or James Lande, Industry Analysis Division, Common,Carrier Bureau, (202) 632–1371.

SUPPLEMENTARY INFORMATION: Pursuant to the Order, the TRS Fund Worksheet, FCC Form 431, is effective for the period April 26, 1994 through March 25, 1995. All subject carriers are required to file the form annually and contribute to the TRS Fund. The TRS Fund reimburses TRS providers for the costs of providing interstate TRS. The Order provides that the Commission publish the 1994 TRS Fund Worksheet, FCC Form 431, in the **Federal Register.**

Federal Communications Commission.

A. Richard Metzger, Jr.,

Acting Chief, Common Carrier Bureau.

Instructions for Completing the Worksheet for Calculating and Filing Carrier Contributions to Fund Interstate Telecommunications Relay Service (TRS)

TRS Fund Worksheet

Notice to individuals: Section 64.604(c)(4)(iii) of the Commission's Rules requires all carriers providing interstate service to complete this worksheet and to contribute funding for interstate Telecommunications Relay Services (TRS). The collection of information and fees stems from the Commission's authority under the Communications Act of 1934. Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 201, 211, 218, 219, 220, 225 48 Stat. 1073, 1077, as amended; 47 U.S.C. 201, 211, 218, 219, 220, 225. The data in the report will be used to ensure that carriers properly fund interstate TRS. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's Rules. All carriers providing interstate telecommunications service must file this worksheet. Other telecommunications carriers may voluntarily file this worksheet.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Records Management Division, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, DC 20503.

I. Introduction

On July 15, 1993, the Commission adopted rules that require all providers of interstate telecommunications services to contribute to the provision of TRS based on their proportionate share of gross interstate revenues. Section 64.604(c)(4)(iii) directs carriers to calculate and file their contribution in accordance with TRS Fund Worksheet.

Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet", which will be prepared and published in the Federal Register. The worksheet sets forth information that must be provided by the contributor, the formula for computing the contribution, the manner of payment, and due dates for payments.

II. Filing Requirements and General Instructions

A. Who Must File

All common carriers providing interstate telecommunications services within the United States must file this worksheet. For this purpose, the United States is defined as the conterminous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

For the purpose of calculating TRS contributions, interstate telecommunications service includes, but is not limited to the interstate portion of the following types of services: cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including Subscriber Line Charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, international, intraLATA, and resale services. Note, that all local exchange carriers provide interstate access services, and therefore must file.

Carriers need not file if they provide only intrastate service. Carriers need not file if they did not provide interstate service in calendar year 1993. However, all such carriers are encouraged to file because all carriers that file will be included in the FCC Carrier Locator. The Carrier Locator is a directory of telecommunications common carriers available to the public through the Commission's contract copier or on-line through the FCC-State Link computer bulletin board at (202) 632–1361. All carriers that are required to file or that voluntarily file must include a TRS fund contribution. The minimum contribution is $100.

Entities may not file summary reports for more than one carrier. Each legal entity that provides Interstate telecommunications service must file separately. Entities that have distinct articles of incorporation are separate legal entities. All affiliates or subsidiaries should identify the ultimate controlling parent or entity in Block 1, Line (1c)—Holding Company.

B. When and Where to File

The 1994 TRS contribution period will fund interstate TRS provided between May 1, 1994 and April 30, 1995. Monthly contributions for the 1994 TRS contribution period must be received by the 26th of each month for April 1994 through March 1995. A revised TRS Worksheet will be released for the 1995 TRS contribution period.

The legal name of the carrier and the TRS Company Code (if known) should be shown on all checks exactly as it appears on the completed TRS Fund Worksheet. Do not mail the TRS worksheet or TRS contribution checks to the FCC. Payments must be received by the FCC TRS Fund Administrator—the National Exchange Carrier Association (NECA)—no later than the dates indicated below. The filing schedule is as follows:

Mailing address	Worksheet due 4/26/94	Payments due 4/26/94 through 3/26/95*
NECA TRS, P.O. Box 360090, Pittsburgh, PA 15251–6090.	....	Check**.
NECA, FCC TRS Fund Administration, 100 South Jefferson Rd., Whippany, NJ 07981; Telephone: 201–884–8173; Fax: 201–884–8469.	Completed worksheet.	Photocopy of check**.

* Carriers whose total 1994 TRS contribution is less than $1,200 must pay the total amount to the FCC TRS Fund Administrator no later than April 26, 1994. Carriers whose total 1994 TRS contribution is $1,200 or greater may elect to make twelve equal monthly payments with the first payment due to the FCC TRS Fund Administrator no later than April 26, 1994.

** Carriers are encouraged to contact the FCC TRS Fund Administrator to make arrangements for Electronic Funds Transfer.

C. Rounding of Numbers

All information provided in the worksheet, except the signature, should be neatly printed in ink or typed. Reported revenues in block 2, column (b) may be rounded to the nearest thousand dollars. Regardless of rounding, all dollar amounts must be reported in whole dollars. For example, $2,271,881.93 could be reported as $2,271,882 or as $2,272,000, but could not be reported as $2,272 thousand or $2.272 million. Please enter $0 if there was no revenue for the line for 1993.

Percentages reported in block 2, column (c) should be rounded to the nearest whole percent. For example, if the ratio of interstate to total revenue was .4269155, then the figure 43% should be reported. Percentages between 0% and 1% should be reported as 1%. Please enter 0% if there was no interstate revenue for the line for 1993.

Interstate revenues are calculated as total revenues in column (b) times the percentage shown in column (c). Calculated interstate revenues should be rounded to the nearest whole dollar and entered in column (e). Similarly, the total contribution (block 3, line (18)) and amounts enclosed with the filing (block 3, line (19)) should be rounded to the nearest whole dollar.

D. Compliance

Carriers failing to file the TRS Worksheet in a timely fashion are subject to the fines prescribed in Section 219(b) of the Communications Act of 1934 (the Act). Carriers filing false information are subject to fines or imprisonment as specified in Section

220(e) of the Act. Carriers failing to contribute in a timely fashion are subject to fines prescribed in Section 503(b) of the Act. In addition, Section 64.604(c)(4) of the Commission's Rules authorizes the FCC Fund Administrator to bill a carrier for reasonable costs, including legal fees, that are caused by improper filing of the worksheet or overdue TRS contributions.

III. Specific Instructions

A. Block 1: Carrier Identification

Block 1 of the TRS Fund Worksheet requires identification information. Line 1a requests the legal name of the carrier as it appears on articles of incorporation or other legal documents. Line 1b provides a checkoff for the principal carrier activity. Please check the category that best describes the carrier.

LEC—Local Exchange Carrier—provider of franchised local exchange service.

Cellular—Cellular telephone company.

Mobile—Any non-cellular provider of mobile services, such as a radio telephone, paging, or PCS.

OSP—Operator Service Providers—are companies other than LECs that provide services to customers needing assistance of an operator such as to complete away from home calls, or calls using alternate billing arrangements. These companies typically employ operators as well as credit and cash card technologies to complete calls.

IXC—Interexchange Carrier.

CAP—Competitive Access Provider—competes with local exchange carriers to provide services that link customers with interexchange facilities, local exchange networks, or other customers.

Pay Telephone—Provides customers access to telephone networks through pay telephone equipment, special teleconference rooms, etc.

Reseller—Leases underlying transmission facilities for purposes of providing interexchange service.

Other—Check other if none of the above categories describes the carriers.

Line 1c requests the name of the holding company or controlling entity, if any. All affiliates should have the same name for line 1c. Line 2 requests the principal business name under which the company conducts carrier activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries. For example, American Telephone and Telegraph, Inc. might show AT&T. Line 3 requests the complete mailing address of the corporate headquarters. Line 4 requests a telephone number that can be used for customer inquiries. Information provided in Block 1 will be published in the industry Analysis Division Carrier Locator.

B. Block 2: Carrier Revenue for Calendar Year 1993

1. Column (b)

Provide gross revenues for all telecommunications services for calendar 1993. Gross revenues include revenues from regulated, detariffed, and nonregulated telecommunications services. Gross revenues should not include nontelecommunications services, such as the lease of customer premises equipment. Gross revenues consist of total revenues billed to customers with no allowances for uncollectibles. Billed revenues may be distinct from booked revenues. NECA pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. For international services, gross revenues consist of gross revenues billed by U.S. carriers with no allowances for settlement payments. Gross revenues should also include any surcharges on communications services that are billed to the customer and either retained by the carrier or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded as revenue, but which are instead remitted to government bodies. Carrier revenue data for calendar 1993 should be taken from the latest available company official records as of April 1994.

Report carrier revenues using the categories shown in column (a) of Block 2. Carriers required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their response on their USOA account data. Other carriers should divide gross revenues based on the following descriptions.

Line (5)—Local exchange service—should include the basic local service revenues of local exchange carriers except for local private line revenue, access revenues, and revenues from providing mobile or cellular services to the public. Line (5) should include Account 5001—basic area revenue; Account 5002—Optional extended area revenue; Account 5003—Cellular mobile revenue (revenue to the local exchange carrier for messages between a cellular customer and another station within the mobile service area); Account 5050—Customer premises revenue; Account 5060—Other local exchange revenue; and, Account 5069—Other local exchange revenue settlements. Line (5) should also include amounts in Account 5004—Other mobile services revenue—that were derived from connecting with mobile service carriers.

Line (5) should not include Account 5010—pay telephone revenues. Such revenues should be included in line (11)—Operator service and pay telephone revenues. In addition, Line (5) should not include revenues from the Universal Service Fund and Lifeline Assistance Revenues (reimbursement for the waived portion of subscriber line charges). Such revenues should be included in Line (9)—interstate access revenues.

Line (6)—Local private line service—should include revenues from providing local services that involve dedicated-circuits, private switching arrangements and/or predefined transmission paths. Line (6) should include amounts recorded in Account 5040—Local private line revenue.

Line (7)—Mobile radio, cellular, and paging—should include revenues from the provision of mobile radio, cellular, and paging services to the public. Line (7) should also include amounts in Account 5004—Other mobile services revenue—that were derived from providing service directly to the public.

Line (8)—Alternative access, PCS & other—should include all other local service revenues, including revenues for competitive access providers, personal communications services (PCS), etc. Line (8) should include Account 5200—Miscellaneous revenue.

Long distance revenues include intrastate, interstate, and international long distance services. Divide long distance revenues between access service, operator service, other switched service, long distance private line services, and all other long distance services.

Line (9)—Interstate access—should include revenues in Account 5081—End User revenue; Account 5082—Switched access revenue; and, Account 5083—Special access revenue. In addition, line (9) should include revenues from the Universal Service Fund and Lifeline Assistance Revenues (reimbursement for the waived portion of subscriber line charges). Only carriers collecting revenues pursuant to interstate access tariffs filed with the FCC should be reporting non-zero amounts on line (9).

Line (10)—Intrastate access—should include revenues in Account 5084—State access revenue. Only carriers collecting revenues pursuant to intrastate access tariffs should be reporting data in line (10).

Line (11)—Operator service and Pay Telephone—should include all calling card or credit card calls, person to person calls, and calls with alternative billing arrangements such as third number billing and collect calls. In addition, Line (11) should also include all pay telephone revenue, including all revenue in Account 5010. Operator service revenues should include all toll traffic from coin, public and semi-public, accommodation and prison telephones.

Line (12)—Non-operator switched toll service—should include amounts from Account 5100—Long distance message revenue—except for amounts reported in Line (11). Line (12) includes WATS, 800, 900, "WATS like" and similar switched service.

Line (13)—Long distance private line service—should include revenue from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area. Line (13) should include Account 5120—Long distance private network revenue.

Line (14)—All other long distance—should include all other revenues from providing long distance communications services. Line (14) should include Account 5160—Other long distance revenue.

Total the figures in column (b) for Line (5) through Line (14) and enter this amount in Line (15b). This should represent the total communications revenues for the company.

2. Column (c) and Column (d)

For each entry in Line (5) through Line (14), estimate the percentage of revenues in Column (b) that are for interstate and/or international service, and enter this percentage in Column (c). Interstate revenues include all revenues received for calls that do not originate and terminate in the same state. For example, if a cellular carrier collects a fixed amount of revenue per minute of traffic, and 10% of minutes are interstate, then interstate revenues would include 10% of the per minute revenues.

Wherever possible, carriers should calculate the percentage of total revenues that are interstate by using information from their books of accounts and other internal data reporting systems. Carriers who cannot calculate a percentage by using information from their books of accounts and other internal data reporting systems, may elect to rely on a special study to estimate the percentages. Place a check mark in Column (d) if the percentage shown in Column (c) was based on a study e.g., not based on a direct calculation from revenue amounts taken from the carrier's book of account.

3. Column (e)

Multiply the gross revenues reported in Column (b) by the interstate percentages reported in Column (c), putting the results in Column (e). The sum of the figures in Column (e), Lines (5) through (14), should be entered in Line (15e).

C. Block 3: Calculation of Contribution

Use block 3 in the worksheet to calculate the TRS contribution for the period May 1, 1994 through April 30, 1995. Total interstate revenues from Line (15e) should be copied to Line (16). This amount must be multiplied by the Contribution Rate shown in Line (17), with the result entered in Line (18). The contribution rate is 0.00030 for the 1994 filing year.

If the result of the calculation is less than $100, then the total contribution is $100. If the total contribution is less than $1,200, then the carrier should remit the total contribution with the worksheet. If the total liability is equal to or greater than $1,200, then the carrier may elect to make 12 equal monthly payments. The monthly contribution should be calculated as the amount in Line (18) divided by 12.0, rounded to the nearest whole dollar. Enter the amount of the April 26, 1994 fund contribution in Line (19). If the carrier elects to make monthly contributions, the eleven additional monthly contributions must be received by the 26th of succeeding months, May 1994 through March 1995.

Section II—B above provides directions for mailing the completed TRS Fund Worksheet and checks for amounts due to the FCC Fund Administrator. Carriers who check the box in Line (19) will receive monthly payment reminders. These reminders will be mailed to the address shown in Line (3). Contact the NECA, the FCC Fund Administrator to make other arrangements. Failure to receive a reminder notice will not justify late payments.

D. Block 4. Certification

An officer of the fund contributor must examine the data provided in the TRS Fund Worksheet and certify that the information provided therein is accurate. In addition, the fund contributor should provide the name of a contact person who can provide clarifications, if necessary, and who could serve as the first point of contact in the event that either the FCC or the FCC Fund Administrator should choose to audit information provided by the company.

Line (26) provides a check off to show whether the worksheet is the original filing for 1994, or whether the worksheet is a revised 1994 filing. A carrier must file a revised worksheet if it discovers an error in the data that it reports. Carriers generally close their books for financial purposes by April. Carriers should not report routine out of period adjustments to revenue data unless such adjustments would affect a reported amount by more than 10%. Carriers should not file a revised Form 431 to reflect mergers, acquisitions, or sale of operating units. In the event that a carrier that filed a Form 431 no longer exists, the successor company to the carrier's assets or operations is responsible to continue making payments for the funding period.

IV. Reminders

—Each affiliate or subsidiary must file separately. Each should show the same holding company name on Line 1c.

—Provide data for all lines that apply. Show a zero for all items where the carrier had no revenue for calendar 1993.

—Only LECs should be reporting revenue on Line 5.

—Only carriers with access tariffs should be reporting access revenues on line 9 and line 10.

—All pay telephone, credit card, debit card, and operator assisted revenue should be included on Line 11.

—Check the special study box for each line where the percentage of interstate revenues cannot be directly calculated from revenue amounts taken from the carrier's books of account.

—Include the legal name of the carrier (Line 1a) on all TRS fund checks. Also include the TRS company code on checks. The TRS company code is assigned by NECA, the fund administrator.

BILLING CODE 6712-01-M

1994 TRS FUND WORKSHEET

(Please read instructions before completing)

Approved by OMB
3060-0536
Expires 02/28/96
Estimated Average Burden Hours Per Response: 2 Hours

Block 1: Carrier Identification TRS Company Code supplied by NECA ›

1a Legal Name of Carrier ▶

1b Principal Communications Business (check only one)
☐ LEC ☐ Cellular ☐ Mobile ☐ OSP ☐ IXC ☐ CAP ☐ Pay Telephone
☐ Reseller ☐ Other (explain):

1c Holding Company ▶

2 Principal Business Name for Carrier ▶

3 Complete Mailing Address of Carrier Corporate Headquarters ▶

4 Telephone # for Customer Inquiries ▶ ( )–

Block 2: Carrier revenue for calendar year 1993 Note: Please report whole dollars without further rounding.

(a)	Gross Revenues (b)	% Interstate (c)	Special study (d)	Interstate Revenues (e) = (b) x (c)
Local Services				
5 Local exchange service	$	%		$
6 Local private line service	$	%		$
7 Mobile radio, cellular, and paging	$	%		$
8 Alternative access, PCS & other	$	%		$
Long Distance				
9 Interstate access	$	100 %		$
10 Intrastate access	$	0 %		$ 0
11 Operator service and Pay Telephone	$	%		$
12 Non-operator switched toll service	$	%		$
13 Long distance private line service	$	%		$
14 All other long distance	$	%		$
15 Total lines 5 through 14	$			$

Block 3: Calculation of Contribution Note: Please report whole dollars without further rounding.

16 Interstate Revenues from Line 15e	$
17 Contribution Rate:	x 0.00030
18 Total CONTRIBUTION for April 1994 through March 1995: line 16 x line 17 (The minimum contribution is $100)	$
19 Contribution to be paid this month: (Enter the amount from line 18 if it is less than $1200. Otherwise, the contributor may divide line 18 by 12.0 to calculate equal monthly contributions). **Check here for monthly billing reminders** ▶ ☐	$

Block 4: Certification

I certify that I am an officer of the carrier named above, that I have examined the foregoing report and that to the best of my knowledge, information and belief, all statements of fact contained in this worksheet are true and that said worksheet is an accurate statement of the affairs of the above named carrier for the period January 1, 1993 through December 31, 1993.

20 Printed Name of Officer ▶

21 Position with carrier ▶

22 Signature ▶

23 Date ▶

24 Contact Person ▶

25 Telephone Number of Contact Person ▶ ( )–

25 This filing is: ☐ Original filing for 1994 ☐ Revised filing for 1994

Mail checks to: NECA TRS P.O. Box 360090 Pittsburgh, PA 15251-6090. For additional information call NECA 201-884-8173.

Mail worksheet and photocopy of checks to: NECA – FCC TRS Fund Administration 100 South Jefferson Rd. Whippany, NJ 07981

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER THE COMMUNICATIONS ACT, 47 U.S.C. 220(e).

FCC 431
March 1994

BILLING CODE 6712-01-C

Notice to individuals: Section 64.604(c)(4)(iii) of the Commission's Rules requires all carriers providing interstate service to complete this worksheet and to contribute funding for interstate Telecommunications Relay Services (TRS). The collection of information and fees stems from the Commission's authority under the Communications Act of 1934, Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 201, 211, 218, 219, 220, 225, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 201, 211, 218, 219, 220, 225. The data in the report will be used to ensure that carriers properly fund interstate TRS. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's Rules. All carriers providing interstate telecommunications service must file this worksheet. Other telecommunications carriers may voluntarily file this worksheet.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Records Management Division, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, DC 20503.

[FR Doc. 94–11067 Filed 5–9–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2009]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 5, 1994.

Petitions for reconsiderations and clarifications have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed May 25, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Establish New Narrowband Renewal Communications Services (Gen. Docket No. 90–314, ET Docket No. 92–100).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11171 Filed 5–9–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1022–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1022–DR), dated April 14, 1994, and related determinations.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee dated April 14, 1994, is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 14, 1994:

Blount, Hamilton, Jefferson, Monroe, Polk, Sevier, and Unicoi Counties for Public Assistance. (Already designated for Individual Assistance.)

Cocke, Grainger, Hawkins, Johnson, Marion, Putmam and Van Buren Counties for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–11221 Filed 5–9–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1026–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1026–DR), dated April 29, 1994, and related determinations.

EFFECTIVE DATE: April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 29, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Texas, resulting from severe storms and tornadoes on April 25, 1994 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Cooke and Dallas Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–11222 Filed 5–9–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Compass Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Compass Bancorp*, New Bedford, Massachusetts; to become a bank holding company by acquiring 100 percent of Compass Bank for Savings, New Bedford, Massachusetts, and thereby indirectly acquire 9.74 percent of the voting shares of Mayflower Cooperative Bank, Middleborough, Massachusetts.

Upon the reorganization, Compass Bank for Savings will continue to participate in the Massachusetts Savings Bank Life Insurance program.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Copper Bancshares, Inc., Silver City, New Mexico, and thereby indirectly acquire American National Bank of Silver City, Silver City New Mexico.

C. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Morrill Bancshares, Inc.*, Sabetha, Kansas; to acquire 100 percent of the voting shares of Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Company, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11237 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

Garrett Bancshares. Ltd., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Garrett Bancshares, Ltd.*, Bloomfield, Iowa; to engage *de novo* through its subsidiary in the making and servicing of loans, for the one time extension of credit to North Side of the Square, Inc., a wholly owned subsidiary of Garrett Bancshares' subsidiary bank, Davis County Savings Bank, Bloomfield, Iowa, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First State Bancorp, Inc.*, La Crosse, Wisconsin; to engage *de novo* through its subsidiary Community First Development Corporation, La Crosse, Wisconsin, in establishing a community development corporation pursuant to § 225.25(b)(6) of the Board's Regulation Y, and engage in the construction of low- and moderate-income housing in and around the La Crosse, Wisconsin area; to construct or rehabilitate rental housing for low-and-moderate income familes; and to purchase, rehabilitate and sell affordable owner-occupied housing for low and moderate income persons.

2. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* in forming a joint venture, Legacy Mortgage, which will engage in residential mortgage, lending business pursuant to § 225.25(b)(1) of the Board's Regulation Y. The joint venture will be equally owned by one of Norwest's subsidiaries, Norwest Mortgage, Inc., and Heritage Realtors, Centerville, Ohio. These activities will be conducted in the state of Ohio.

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11238 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Incorporated; Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 94-10526) published on page 22853 of the issue for Tuesday, May 3, 1994.

Under the Federal Reserve Bank of New York heading, the entry for JP Morgan & Co. Incorporated is revised to read as follows:

1. *J.P. Morgan & Co. Incorporated*, New York, New York; to retain a partnership investment of 39.6 percent

of equity and to increase its interest to 59.4 percent, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y; to retain 6.06 percent equity interest in The New York Equity Fund 1989 Limited Partnership and a 18.73 percent partnership interest in HUDCTC Limited Partnership, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Comments on this application must be received by May 27, 1994.

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11239 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire American Land Title Company of Kansas City, Inc., Kansas City, Missouri, and thereby engage in activities customary of title insurance agencies operating in the states of Missouri and Kansas, including acting as agent for the title insurance company in issuing commitments and policies of title insurance; acting as escrow agent in real estate transactions; and providing real estate settlement services, pursuant to § 225.25(b)(3) of the Board's Regulation Y and Norwest Corporation, 76 Federal Reserve Bulletin 1058 (1990).

Board of Governors of the Federal Reserve System, May 4, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11240 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Notice of State Application for Exemption From the Provisions of the Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Invitation to comment on requested exemption from the provisions of the Fair Debt Collection Practices Act.

SUMMARY: The Commission is hereby publishing a notice that the State of Maine has filed an application for exemption from the provisions of the Fair Debt Collection Practices Act for various classes of debt collection practices in Maine.

DATES: Written comments will be accepted until August 8, 1994.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington DC 20580. Requests for copies of the application and of the Fair Debt Collection Practices Act should be directed to the Federal Trade Commission Public Reference Branch, Room 130; telephone (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: John F. LeFevre or Roger J. Fitzpatrick, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3224.

SUPPLEMENTARY INFORMATION: The Fair Debt Collection Practices Act, 15 U.S.C. 1691 *et seq.* ("Act" or "federal Act"), prohibits a number of deceptive, unfair and abusive practices by third party debt collectors. The Act prohibits debt collectors from using false or misleading statements, harassing or abusive conduct or any unfair methods to collect debts. Among those things which are specifically prohibited are making false threats to coerce payment (such as false threats of suit); using deceptive collection notices that falsely appear to be from an attorney or a court; and engaging in any sort of harassment, such as threatening violence, using profanity and obscenities, or making continuous phone calls. The Act also restricts the extent to which debt collectors may call a consumer at work, and prohibits them from making calls to consumers very early in the morning or late at night. With a few narrow exceptions, it prohibits collectors from contacting third parties and revealing the existence of a consumer's debt. In addition, the Act prohibits collectors from adding charges to a debt unless the consumer involved agrees to them or they are permitted by law, and from filing suit against a consumer outside of the district (1) of the consumer's residence or (2) where the contract creating the debt was signed.

Under the Act, if a consumer disputes the debt in writing, the collector is required to stop all collection efforts until the debt is verified. The Act also states that if the consumer demands in writing that the debt collector cease all further collection efforts, the debt collector must comply even if the debt is valid. Finally, the Act gives a consumer the right to bring suit against a debt collector in any court for violations of the Act and, if successful, receive actual damages and additional damages up to $1,000, as well as costs and attorney's fees.

The Act is enforced primarily by the Federal Trade Commission. A violation of the Act is deemed an unfair or deceptive practice in violation of the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the Act. The Commission may enforce the provisions of the Act in federal courts seeking civil penalties and injunctive and other relief as appropriate.

The Act requires that the Commission exempt from its requirements any class of debt collection practices within any State if the Commission determines under the law of that State that a class of debt collection practices is subject to requirements substantially similar to those imposed by the Act, and that there is adequate provision for enforcement.

The Commission has promulgated procedures for State application for exemption from the provisions of the Act which are published in 16 CFR 901 *et seq.* (1992) ("Rule"). Section 901.2 of the Rule provides that any State may apply to the Commission for a determination that under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under Sections 803 through 812 of the Act and that there is adequate provision for State enforcement of such requirements. Section 901.4 of the Rule describes the criteria for making the determination. In making that determination the Commission primarily will consider each provision of the State law in comparison with each corresponding provision in Sections 803 through 812 of the Act, and not the Sate law as a whole in comparison with the Act as a whole.

Section 901.3 of the Rule requires that an application be accompanied by a variety of documents including (1) the State law; (2) a comparison of the provisions of the State law with various sections of the Act; (3) a copy of the full text of the law that provides for its enforcement; (4) a comparison of the provisions of the law that provides for enforcement with the provisions of Section 814 of the Act; and (5) a statement identifying the State office designated to administer the State law along with a description of the ability of that office to effectively administer the statute. If an application is filed in accordance with these procedures, Section 901.5 states that the filing shall be published in the **Federal Register.** Section 901.6 provides that the Commission may grant an exemption under the provisions of the Rule.

On February 25, 1993, the State of Maine Bureau of Consumer Credit Protection ("applicant") filed an application seeking exemption from the provisions of the federal Act for various classes of debt collection practices in Maine governed by Title 32 of Maine Revised Statutes, section 11001 *et seq.* Maine seeks an exemption for the following classes of practices: collection by means of the mails and other interstate and intra-state written communication; collections by use of telephone and other electronic means of transmission; in-person collection; and repossession or other "enforcement of security interest" activity.

On May 27, 1993, applicant filed an addendum to its application of February 25, 1993, stating that certain changes had been made to Title 32 of the Maine Revised Statutes, Section 11002.6. The definition of the term "debt collector" was broadened to include attorneys whose principal activities include collection of debts for clients. Subsection 6 was further amended by including within the definition of debt collector any person who regularly engaged in the enforcement of security interests securing debts, but excluding any person who retrieves collateral when a consumer has voluntarily surrendered possession. A new Section 11017 authorizes a debt collector to take possession of collateral after default under certain conditions.

Applicant asserts that the provisions of Maine's Fair Debt Collection Practices Act ("state Act"), 32 Maine Revised Statutes Annotated, Section 11001 *et seq.*, and related statutes are substantially similar to, or provide greater protection for consumers than, the equivalent provisions of the federal Act, and that the State of Maine is able to provide appropriate enforcement of the state Act's requirements.

I. Description of Differences Between the Federal Act and State Act and Request for Comments on Differences

As summarized below, applicant compares Sections 803 through 812 of the federal Act with comparable sections of the state Act.

(A) *Definitions* (Section 803 of the federal Act; Sections 11002, 11003 and 11012 of the state Act).

Applicant asserts that (1) most of the definitions in the state Act are identical or substantially similar to those in the federal Act; (2) other terms are comparable given the different levels of jurisdiction involved (e.g., the federal Act's definition of "Commission" and the state Act's definition of "Superintendent" each define the responsible authority); and (3) other differences are not substantive.

The differences between the two statutes are as follows:

1. Applicant explains that the defining phrase set out in Section 11002.2, "conducting business within this State," limits its scope to the activities of any debt collectors who: (1) Are located in Maine, or (2) solicit business and then collect debts or repossess collateral in Maine, regardless of the collector's location. This application seeks exemption of only those practices of debt collectors conducting business within Maine, and the activities of debt collectors who have voluntarily subjected themselves to Maine law by obtaining a debt collector's license from Maine.

Public comment is sought as to whether the definition of "conducting business within this State" set out in Section 11002.2 of the state Act affects the level of protection afforded by the state Act as compared to the protection afforded by the federal Act.

2. Section 11002.6 of the state Act includes within the definition of debt collector "persons who furnish collection systems carrying a name which simulates the name of the debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor."

Public comment is sought as to whether the above included provision in the definition of debt collector affects the level of protection afforded by the state Act as compared to the protection afforded by the federal Act.

3. Section 11003.8 of the state Act excludes from the definition of "debt collector" collection activities that are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Maine Revised Statutes Annotated, Title 9–B, Maine Banking Code.[1] Applicant believes that this section of the state Act is non-substantive. Section 803(6) of the federal Act does not contain this exclusion.

Public comment is sought as to whether the exclusion of certain businesses, including financial institutions, among others, in Section 11003.8 of the state Act affects the level of protection afforded by the state Act as compared to the protection afforded by Section 803(6) of the federal Act.

4. Section 11002.6 of the state Act includes within the definition of debt collector "any attorney-at-law whose principal activities include collection debts as an attorney on behalf of and in the name of clients."[2]

Section 803(6) of the federal Act defines debt collector as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."[3]

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[1] Applicant points out that the drafters of the Maine law chose to place the "exclusions" as a separate section, as opposed to itemizing those within the definition of debt collector.

[2] Section 11003.6 of the state Act, which previously excluded attorneys from the definition of debt collector, was repealed following Maine's request for exemption dated February 25, 1993. Maine submitted an addendum to its application dated May 27, 1993, wherein its exemption request was modified to reflect the inclusion of attorneys within the state Act, as amended. (Maine Public Law 126, May 18, 1993).

Public comment is sought as to whether the inclusion of attorneys-at-law as debt collectors in Section 11002.6 of the state Act affects the level of protection afforded by the state Act as compared to the protection afforded by Section 803(6) of the federal Act.

5. Section 11002.6 of the state Act, as amended,[4] includes within its definition of debt collector any person regularly engaged in the enforcement of security interests securing debts. Persons who had engaged in the enforcement of security interests more than five times in the previous calendar year would be covered. If a person does not meet those numerical standards for the previous calendar year, the numerical standards are to be applied to the current calendar year. The term does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession.

The federal Act's definition of debt collector in Section 803(6) "includes any person * * * in any business the principal purpose of which is the enforcement of security interests."

Public comment is sought as to whether the difference in coverage between Section 11002.6 of the state Act and Section 803(6) of the federal Act affects the level of protection afforded by the state Act as compared to the federal Act.

6. Section 11017 of the state Act[5] provides that a debt collector acting on behalf of a creditor may take possession of collateral only if possession can be obtained without entry into a dwelling, unless that entry has been authorized after default and without the use of force or other breach of the peace. A debt collector must take inventory of any unsecured property acquired along with the repossessed collateral and immediately notify the consumer that the property will be made available in a manner convenient to the consumer. There is no comparable provision in the federal Act.

Public comment is sought as to whether the difference in coverage between the state Act and the federal Act affects the level of protection afforded by the state Act as compared to the federal Act.

(b) *Acquisition of location information* (Section 804 of the federal Act; Section 11011 of the state Act).

Applicant asserts that the state Act is virtually identical to its federal counterpart and therefore meets the substantially similar test set out in Section 901.2 of the Rule.

(C) *Communications in connection with debt collection* (Section 805 of the federal Act; Section 11012 of the state Act).

Applicant asserts that, with the exception of non-substantive stylistic language differences and differing references to the appropriate respective state or federal related provisions, the two sections are virtually identical and therefore are substantially similar as required under Section 901.2 of the Rule.

(D) *Harassment or abuse, false and misleading representations and unfair practices* (Sections 806, 807, and 808 of the federal Act; Sections 11013.1, .2 and .3 of the state Act).

1. Section 11013.1.C of the state Act prohibits publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, Chapter 210 of the Maine statutes, which is the Maine Fair Credit Reporting Act.

The language of the state Act and the federal Act is identical except for the differing references to the federal Fair Credit Reporting Act and the state Fair Credit Reporting Act.

Public comment is sought as to whether reference to the Maine Fair Credit Reporting Act, in lieu of reference to the federal Fair Credit Reporting Act, affects the level of protection afforded by the state Act as compared to the federal Act.

2. Applicant states that Section 806 of the federal Act and Section 11013.1 of the state Act both deal with harassment and abuse and contain identical language. In addition, Section 11013.1.G of the state Act includes prohibitions against use of "shame cards"; "shame automobiles" and similar devices, and these additions arguably provide greater protection to consumers.

Public comment is sought as to whether the reference to "shame cards", "shame automobiles" or similar devices in Section 11013.1.G of the state Act affects the level of protection afforded by the state Act as compared to the federal Act.

3. Applicant states that Section 807 of the federal Act and Section 11013.2 of the state Act dealing with false or misleading representations are virtually identical and the state Act therefore is substantially similar to the federal Act as required by Section 901.2 of the Rule.

4. Section 11013.2.F(2) of the state Act prohibits the false representation that a sale, referral or other transfer of any interest in a debt shall cause the consumer to become subject to any practices prohibited by the state Act or Title 9–A, the Maine Consumer Credit Code.

Public comment is sought as to whether the reference to Title 9–A of the Maine Consumer Credit Code in Section 11013.2.F(2) affects the level of protection afforded by the state Act as compared to the federal Act.

5. Section 11013.2.P of the state Act prohibits the false representation or implication that a debt collector operates or is employed by a consumer reporting agency, as defined by Title 10, Section 1312, subsection 4 of the Maine Fair Credit Reporting Act.

Public comment is sought as to whether the reference to Title 10, Section 1312, subsection 4, of the Maine Fair Credit Reporting Act affects the level of protection afforded by the state Act as compared to federal Act.

6. Applicant asserts that comparison of Section 808 of the federal Act and Section 11013.3 of the state Act, dealing with unfair practices, reveals that the state Act prohibits the same practices as the federal Act, as well as several additional unfair practices.

The added unfair practices (subsections 11013.3. I through N) include use of notaries or public officials authorized to serve legal papers to collect debts; employing the services of an attorney unless this is specifically authorized by the creditor in writing and none of the lawyer's fees will be sought or received by the collector; failing to return claims to the creditor, failing to account to a client for monies collected, and failing to return valuable papers to the creditor; commingling collector and creditor funds; use of creditor's money in collection of debts; soliciting loans to pay a debt or recommending persons as a source of funds to pay a debt; and threatening to bring legal action in the collector's own name or instituting suits on behalf of others or furnishing legal advice.

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[3] The federal Act's definition of "debt collector" was amended in 1985 to repeal the attorney at law exemption previously set out in former Section 803(6)(F). An attorney is now a debt collector under the federal Act, as amended, if the attorney's efforts regularly to collect consumer debts on behalf of clients include activities traditionally associated with debt collection, such as sending demand letters (dunning notices) or making collection telephone calls to consumers. See Commentary on the Fair Debt Collection Practices Act, 53 FR 50097, 50102 (1988).

[4] Section 11002.6 was recently amended by the State of Maine. See Maine Public Law 126, May 18, 1993.

[5] This section was recently enacted by the state of Maine in the same statute that included attorneys within the definition of debt collector. Although it is in a section separate from Section 11002 of the state Act, it deals with a debt collector's rights and obligations when repossessing property for creditors.

Thus, applicant asserts that the state Act is substantially similar to the federal Act, as required by Section 901.2 of the Rule, and arguably provides greater protection than the federal Act with the addition of the several added unfair practices.

Public comment is sought as to whether the additional designated unfair practices contained in subsections 11013.3. I through N affect the level of protection afforded by the state Act as compared to the federal Act.

7. Section 11013.4 of the state Act provides that a debt collector may not report solely in its own name any credit or debt information to a consumer reporting agency as defined by Title 10, Section 1312, subsection 4. The applicant asserts that this additional requirement provides clarification to consumers regarding their credit reports by requiring that debt collectors report debts using the names of the original creditors.

Public comment is sought as to whether the additional requirement in Section 11013.4 of the state Act affects the level of protection afforded by the state Act as compared to the federal Act.

(E) *Validation of Debts and Multiple Debts* (Sections 809 and 810 of the federal Acts; Sections 11014 and 11015 of the state Act).

Applicant states that the Maine provisions are virtually identical to the federal Act and therefore are substantially similar as required by Section 901.2 of the Rule.

(F) *Legal actions by debt collectors* (Section 811 of the federal Act).

Applicant states that since the state Act prohibits debt collectors from filing lawsuits (Section 11013.3.N), no provisions relating to venue are set out in the Maine law because they are not needed. Applicant asserts, therefore, that the lack of a state equivalent to Section 811 of the federal Act (restricting venue in suits brought by collectors) does not result in a diminution of protection afforded Maine consumers.

Public comment is sought as to whether the absence of a venue provision in the state act affects the level of protection afforded by the state Act as compared to the federal Act.

(G) *Furnishing certain deceptive forms* (Section 812 of the federal Act; Section 11016 of the state Act).

Applicant asserts that since the language of both sections is virtually identical, the state Act is substantially similar to its federal counterpart as required by Section 901.2 of the Rule.

Applicant also asserts that in all of the above discussed Maine statutory provisions, except as noted: (1) each of the provisions of the state Act is either identical or substantially similar to Sections 803 through 812 of the federal Act as prescribed by Section 901.2 of the Rule; and (2) no other state laws, including administrative or judicial interpretations, are related to or would have a diminishing effect upon the effectiveness of the state Act.

II. Comparison of Provisions for Enforcement Between Federal Act and State Act

As summarized below, applicant compares Sections 813 and 814 of the federal Act to the state Act.

(A) *Civil liability* (Section 813 of the federal Act; Section 11054 of the state Act).

Applicant states that Section 11054 of the state Act, titled "Civil liability," is identical to those provisions of Section 813 of the federal Act. The state Act establishes private causes of action for aggrieved consumers, while at the same time protecting debt collectors who pattern their activities in conformance with advisory rulings of the state administrator. Remedies under the state Act are identical to those set forth in the federal Act. The one year limitation of action found in the federal Act is mirrored in Section 11054.4 of the state Act.

(B) *Administrative enforcement* (Section 814 of the federal Act; Sections 11040, 11051, 11053 and Subchapter III of the state Act, Licensing and Administration).

1. Applicant states that much of the regulatory authority of Maine's Bureau of Consumer Credit Protection, the relevant state agency, is derived from the licensing powers granted in the state Act. To the extent that the state agency is held responsible not only for the initial licensing, bonding and safety and soundness of collection companies, but also for the subsequent management of debt collectors if they become financially unsound, the state Act arguably provides greater protection to consumers than the general enforcement provisions of Section 814 of the federal Act, since the federal Act does not provide licensing authority. Additionally, state law specifically provides for the investigation of practices and examination of records of collectors by state examiners. State law also permits assessing charges for expenses incurred pursuant to these examinations.

Public comment is sought as to whether the provisions for licensing and administration in Subchapter III of the state Act affect the level of protection afforded by that Act as compared to the federal Act.

2. Sections 11051 and 11040 of the state Act provide for license revoking authority and criminal penalties for operation without a debt collector's license. The federal Act grants no licensing authority to the Commission.

Section 11053 of the state Act authorizes the Superintendent for Consumer Credit Protection, acting through the Attorney General of Maine, to bring an action for civil penalties, not to exceed $5,000, against any person who willfully violates the state Act. No civil penalty pursuant to the state Act may be imposed for violations of the state Act occurring more than 2 years before the civil action is brought.

Section 814 of the federal Act authorizes the Commission to exercise all its functions and powers under the Federal Trade Commission Act, 15 U.S.C. *et seq.*, to enforce the federal Act. A violation of the federal Act constitutes an unfair or deceptive act or practice in violation of the Federal Trade Commission Act. The Federal Trade Commission Act authorizes a civil penalty of up to $10,000 for each violation of the federal Act done with actual or implied knowledge of that Act. 15 U.C.S. 45(m)(1)(A). Additionally, the Commission is empowered to seek injunctive relief, as appropriate. 15 U.S.C. 53(b).

No remedy under the Federal Trade Commission Act is available for violations occurring more than 5 years before the civil action is brought. 28 U.S.C. 2462.

Public comment is sought as to the level of protection afforded by the enforcement authority granted by Sections 11051, 11053 and 11040 of the state Act as compared to that in the federal Act.

III. Information Regarding the Bureau of Consumer Credit Protection and Its Ability To Administer Maine's Debt Collection Laws

Applicant states that Maine's Bureau of Consumer Credit Protection enforces the state Act as well as Maine's Fair Credit Reporting Act. The Bureau includes an office staff of ten individuals, plus five examiners in the field. It conducts reviews of collection agency practices through a staff of examiners and it licenses collection agencies. It also requires bonding of collection agencies and reviews of the financial posture of collection firms applying for licenses. Staff members are trained to handle consumer complaints and questions from consumers concerning debt collection activities;

thousands of educational consumer brochures are distributed. A Bureau newsletter distributed within Maine and throughout New England chronicles license and enforcement actions.

The agency receives funding through licensing fees, examination reimbursement costs, and other assessments that, when combined, make up approximately $100,000 of the agency's $800,000 total budget.

Public comment is sought as to whether the Maine Bureau of Consumer Credit Protection's ability to administer the state Act affects the level of protection afforded by the state Act as compared to the federal Act.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-11233 Filed 5-9-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement 415]

Program To Conduct Health Consultations and Public Health Assessment Activities

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for public health agencies to build capacity to conduct health consultations. This program is also intended to provide public health agencies with the capacity to conduct activities, in cooperation with ATSDR, during ATSDR's preparation of public health assessments at sites listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 104(i) (4), (6) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (4), (6) and (15)], and the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) [42 U.S.C. 6939a (b) and (c)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance is limited to official health departments of States or their bona fide agents or instrumentalities which have fifteen or less sites listed or proposed for listing on the National Priorities List (NPL). This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $178,000 will be available in FY 1994 to fund an estimated 3 awards. It is expected that the average new award will be $60,000, ranging from $40,000 to $80,000. It is expected that the awards will begin on or about September 29, 1994, and will be made for a 12-month budget period with a 3-year project period. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is for public health agencies to build capacity, in coordination with ATSDR, to conduct health related activities under CERCLA and RCRA. This includes conducting health consultations, providing public health advice and information, and coordinating public health activities during ATSDR's preparation of public health assessments at sites listed on the CERCLIS and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment. This program is directed to public health agencies which have a limited number (15 or less) of proposed or listed sites on the NPL, but have a considerable need to build capacity to address health issues related to hazardous substance releases into the environment within their jurisdictional boundary.

ATSDR currently has a cooperative agreement program which provides funding to support public health assessment activities in twenty-two States. Historically, this program has targeted those States with the greatest number of NPL sites. Because of the number of CERCLIS sites and operational RCRA facilities, there are a number of States which have a clearly demonstrated need to develop a program to address environmental health issues related to hazardous substances. These States have not qualified for funding under the existing program, however, because of the low number of NPL sites within their jurisdictional boundary. This program will enable ATSDR to address this need by providing financial assistance specifically to States with fewer NPL sites but who need to build capacity to address environmental health issues.

Program Requirements

The recipient and ATSDR activities are listed below:

A. Recipient Activities

1. Health Consultations

Conduct health consultations and provide public health advice and information in response to a question or request for information on specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance. Participate in the Health Activities Recommendation Panel (HARP) review of health consultations.

2. Public Health Assessment Activities

Conduct public health evaluation of sites listed on CERCLIS and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment. These activities may include:

(1) Site evaluations.

(2) Community outreach and interaction activities.

(3) Exposure investigations to further characterize the extent of human exposure for improving public health decision making.

(4) Participating in the HARP review of public health assessments of sites within recipient's jurisdiction.

B. ATSDR Activities

1. Health Consultations

Assist recipient in conducting health consultations in providing public health advice and information in response to a question or request for information on specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance.

2. Public Health Assessment Activities

Assist recipient during public health evaluation of sites listed on CERCLIS and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Proposed Program—50%

Applicant's ability to address the following:

1. Ability to respond to specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance. (20%)

2. Method described to evaluate and analyze toxicological, community, and environmental health data; community outreach and interaction; and exposure investigations. (20%)

3. Description of HARP participation and involvement in public health meetings and with communities in response to concern about a particular site's impact on public health. (10%)

B. Program Personnel—30%

The extent to which the proposal has described or provided biographical data on the:

1. Appropriate qualifications, experience, leadership ability, and percentage of time principal investigator (or project director) will commit to the project;

2. Appropriate qualifications, experience, and description of how staff will be utilized in relation to the activities to be performed to accomplish the work and their percentage of time to be spent on the project;

3. If contractors are proposed, recipient will adhere to "Third Party Agreements" under "OTHER REQUIREMENTS" of this announcement. Additionally, the following must be provided: name of contractor, method of selection, period of performance, detailed budget and justification (budget not scored).

C. Capability—20%

Description of the applicant's capability to carry out the proposed project and suitability of facilities and equipment available or to be purchased for the project.

D. Human Subjects—(Not Scored)

If the application involves the use of human subjects, the extent to which the applicant discusses all of the issues relevant to protection of the subjects and assesses whether or not subjects are adequately protected.

E. Program Budget—(Not Scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds.

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-13, Atlanta, Georgia 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.202.

Other Requirements

A. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Cost Recovery

CERCLA, as amended by SARA, provides for the recovery of costs incurred for response actions at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific response actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions and documentation of work performed, for possible use in a cost recovery case, for a minimum of ten years after submission of a final financial status report, unless there is litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the recipient and the third party. The written agreement shall, at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the terms of the grant and/or cooperative agreement, including requirements concerning technical review (ATSDR selected reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant-supported project or activity.
2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal government purposes.
3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the government's right in that work.
4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the recipient of any part of its responsibility or accountability to PHS under the cooperative agreement. The agreement shall, therefore, retain sufficient rights and control to the recipient to enable it to fulfill this responsibility and accountability.

D. Disclosure

Recipient is required to provide proof by way of citation to State code or regulation or other State pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before July 15, 1994. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or (b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Edward Skowronski, Program Manager, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–57, Atlanta, Georgia 30333, telephone (404) 639–6360.

Please Refer to Announcement Number 415 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 5, 1994.

Claire V. Broome,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–11186 Filed 5–9–94; 8:45 am]

BILLING CODE 4163–70–P

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of May 1994:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: May 20, 1994, 8 a.m.

Place: Parklawn Conference Center, Conference Room P, 5600 Fishers Lane, Rockville, Maryland 20857.

Open May 20, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: This panel is charged with conducting the initial review of health services research training grant applications from educational institutions, individuals, or organizations for Federal support to ensure that highly-trained scientific personnel will be available in adequate numbers and in the appropriate research areas and fields to maintain the nation's health services research agenda.

Agenda: The open session on May 20 from 8 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed session of the meeting will be devoted to a review of research training grant applications. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Administrator, Agency for Health Care Policy and Research (AHCPR) has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with applications.

This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Mrs. Linda W. Blankenbaker, Agency for Health Care Policy and Research, 2101 E. Jefferson Street, suite 602, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 3, 1994.

Linda K. Demlo,

Acting Administrator.

[FR Doc. 94–11243 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9 a.m.–5 p.m., June 7, 1994; 8:30 a.m.–4:30 p.m., June 8, 1994.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; to explore information needs for health reform; and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: May 4, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–11187 Filed 5–9–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0055]

Kemin Industries, Inc.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kemin Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of propionic acid as an antimicrobial agent to control *Salmonella* in animal feed and feed ingredients when used at the rate of 10 kilograms per ton.

DATES: Written comments on petitioner's environmental assessment by July 25, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center For Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2229) has been filed by Kemin Industries, Inc., 2100 Maury St., P.O. Box 70, Des Moines, IA 50301. The petition proposes to amend the food additive regulations to provide for the safe use of propionic acid as an antimicrobial agent to control *Salmonella* in animal feed and feed ingredients when used at the rate of 10 kilograms per ton.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 25, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 3, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–11269 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Oncologic Drugs Advisory Committee

Date, time, and place. June 7, 1994, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1)

Investigational new drug application (IND) 37–761, Tamoxifen Breast Cancer Prevention Trial, National Surgical Adjuvant Breast and Bowel Project; and (2) new drug application (NDA) 20–388, Navelbine® for injection (vinorelbine tartrate, Burroughs Wellcome Co.), for treatment of patients with metastatic breast cancer who have failed standard chemotherapy for metastatic disease and for patients with metastatic breast cancer who have relapsed within 6 months of anthracycline-based adjuvant therapy.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 4, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–11268 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–01–F

Pesticide Residue Monitoring Data Base for Fiscal Year 1992; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Fiscal Year (FY) 1992 pesticide residue monitoring data on computer diskettes. This is the first annual comprehensive compilation and public release of FDA monitoring data for pesticide residues in foods. The agency is making the information available on computer diskettes to facilitate its dissemination to interested persons.

ADDRESSES: Pesticide residue monitoring data on computer diskettes may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield VA 22161. Orders must reference NTIS order number PB94–500899 and include a payment of $140.00. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or by billing arrangements made with NTIS. Charge card orders must include the charge account number and expiration date. For telephone orders or further information on placing an order call NTIS at 703–487–4650.

FOR FURTHER INFORMATION CONTACT: Marcia G. Houston, Center for Food Safety and Applied Nutrition (HFS–308), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–4152.

SUPPLEMENTARY INFORMATION: FDA is making available its FY 92 pesticide residue monitoring data as a set of six personal computer diskettes. The data base includes FDA pesticide monitoring coverage and findings for FY 92 by country/food product/pesticide combination. The data base is accompanied by a search program and report formats, written in dBase III+. Each year FDA receives numerous requests for these data. FDA has determined that it will facilitate dissemination of these data to interested persons if the agency provides for their general availability in a standardized diskette. A user's manual will be provided that contains installation instructions and describes the structure and content of the data base.

Dated: April 29, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–11270 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–125–N]

Medicare and Medicaid Programs; Medicare-Medicaid Coverage Data Bank Requirements: Preliminary Guidance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice informs the public about section 1144 of the Social Security Act, which is self-implementing, and provides preliminary guidance to employers who are required to report information about all individuals covered by group health plans to a newly established Medicare-Medicaid Coverage Data Bank. Information in the data bank will be used to help identify situations where employer group health plans are responsible for making primary payments for services received by Medicare or Medicaid beneficiaries. This notice provides: information on the background and legislative authority for the data bank; definitions of key terms; reporting requirements; the identity of entities that are required to, or may, report; reporting dates; penalties for noncompliance; and methods of reporting.

DATES: Employers must report this information for each calendar year beginning January 1, 1994, and before January 1, 1998. Reports for calendar year 1994 must be filed no later than February 28, 1995. Reports for future years must be filed no later than the end of February of the following year.

ADDRESSES: *Comments:* Written requests for information or comments on provisions included in this notice should be addressed as follows:

For all aspects of this notice other than methods of reporting: Mr. William Zavoina, Bureau of Program Operations, 367 Meadows East Building, 6300 Security Boulevard, Baltimore, MD 21207, (410) 966–5882 and 966–9188 (faxes).

For methods of reporting: Mr. John Van Walker, Bureau of Data Management and Strategy, 1705 Building, E–2, 6300 Security Boulevard, Baltimore, MD 21207, (410) 966–6371 (faxes).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Van Walker, (410) 966–6347, Methods of reporting; William Zavoina, (410) 966–7461, All other issues.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, section 1862(b) of the Social Security Act (the Act) provides that there are circumstances under which other third party payers, such as automobile medical, all forms of no-fault and all forms of liability insurance, worker's compensation, and certain group health plans, are primary payers to Medicare. Section 1862(b) of the Act also requires that HCFA obtain from the Internal Revenue Service information concerning working beneficiaries and working spouses of beneficiaries and determine whether they have health insurance through their own or their spouse's employers. Under the Medicaid program, section 1902(a)(25) of the Act, States must use all reasonable methods to ascertain the availability of third parties who are legally liable to pay for the medical care of Medicaid recipients.

Section 13581 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) added a new section 1144 to title XI of the Act. This section requires the Secretary of HHS to establish a Medicare-Medicaid Coverage Data Bank. Under this section, employers having or contributing to group health insurance plans must report annually to the Secretary certain information, including the following: the name and taxpayer identification number (TIN) of the electing individual; the type of group health plan elected; the name, address, and identification number of the group health plan; the name and TIN of every other person covered as a result of the electing individual's election to have group health plan coverage; the period during which such coverage is elected; and the name, address, and TIN of the employer. Employers must report this information for each calendar year beginning January 1, 1994, and before January 1, 1998.

The data bank was established to further the purposes of section 1862(b) of the Act in the identification of, and collection from, third parties responsible for payment for health care items and services furnished to Medicare beneficiaries and in the identification of, and the collection from, third parties responsible for the reimbursement of costs incurred by any State plan under title XIX with respect to Medicaid beneficiaries, upon request by the Medicaid State agency administering the plan.

The Secretary must establish fees for services provided under section 1144 of the Act to cover the administrative costs to the data bank of providing the services. (These fees will not affect employers or other public parties and thus are not discussed in this notice.)

The law limits disclosure of information by the Secretary under rules similar to those of section 6103(a) and (p) of the Internal Revenue Code of 1986 and provides for penalties for unauthorized willful disclosure. The Secretary is authorized, until September 30, 1998, to disclose any information in the data bank, obtained pursuant to section 6103(l)(12) of the Internal Revenue Code 1986 and the data bank provisions. In addition, the Secretary is authorized, until September 30, 1998, to disclose any other information in the data bank to the Medicaid State agency (as described in section 1902(a)(5) of the Act), employer, or group health plan solely for the purposes for which the data bank was established.

The law also provides for penalties for failure to report required information as described in part II of subchapter B of chapter 68 of the Internal Revenue Code of 1986.

Section 1144 of the Act defines several terms as well. These are Medicare beneficiary, Medicaid beneficiary, group health plan, TIN, electing individual, and employer.

HCFA, acting on behalf of the Secretary, is carrying out the statutory provisions relating to the Medicare-Medicaid Coverage Data Bank.

The provisions of section 1144 of the Act discussed in this notice are self-implementing. We are publishing this notice to provide general guidance to employers and other interested parties as soon as possible. We plan in the future to publish additional guidance as necessary. Employers and other interested parties may rely on the guidance provided in this notice in planning the processes and procedures that they will use to comply with the data bank requirements.

We are recommending that the Congress enact legislation that delays implementation for 18 months. This proposed schedule will allow us to work with Congress and the business community to ensure that the data bank is consistent with health care reform. Although we are recommending a delay, employers should continue to comply with the existing data bank provisions in the absence of legislative changes.

II. Reporting Requirements

Key Definitions

For purposes of this notice, the following definitions apply.

An "employer" is defined as any entity who has, or contributes to, a group health plan, with respect to which at least one employee of such employer is an electing individual. Included in the definition of an employer are State and local governments, and religious and charitable organizations.

An "electing individual" is defined as an individual associated, or formerly associated, with the employer in a business relationship and who elects coverage under the employer's group health plan. This includes former employees, retirees, franchisees and their employees, contractors and their employees, and employees covered as a result of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) continuation of health care coverage requirements. Also included in the definition of an electing individual are "guest workers," who are individuals who have come to the United States from other countries. Excluded from the definition are employees who provide domestic services in the home of an employer and who receive less than a specified amount in cash remuneration for those services in a quarter. Currently, the specified amount is $50.

A "group health plan" is defined as a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization, to provide health care (directly or otherwise) to the employees, former employees, employer, others associated or formerly associated with the employer in a business relationship, or their families. This includes those group health plans that cover only a limited number of services. Also included in this definition are multiple employer plans, Taft-Hartley trusts, and other multiemployer health and welfare benefit trusts to which an employer contributes. Also included are group health plans sponsored by an employer to which the employer does not contribute ("employee-pay-all" plans).

A "Medicare beneficiary" is an individual who is entitled to benefits under part A, or enrolled under Part B, of title XVIII of the Act, except that individuals 65 years of age or older who qualify solely for Medicare Part A benefits on the basis of paying premiums are excluded for purposes of the data bank provisions.

A "Medicaid beneficiary" (also referred to as a Medicaid recipient) is an individual entitled to benefits under a State plan for medical assistance under title XIX of the Act. The definition includes State plans operating under a Statewide waiver under section 1115, "Demonstration Projects." All States and territories have such a Medicaid program.

A "TIN," or tax identification number, is the social security number of an individual and the employer identification number of an employer.

Required Information

Each employer, directly or indirectly, must provide or make a reasonable good faith effort to provide the information summarized below. The information must be provided for each calendar year beginning on or after January 1, 1994 and before January 1, 1998. When an employer is unable to provide all the information specified below with respect to an electing individual, the employer must provide all available information and explain the reasons for the failure to provide the missing information.

(1) The name and TIN of the electing individual.

(2) The type of group health plan coverage (single or family) elected by the electing individual.

(3) The name, address, and identifying number of the group health plan elected by such electing individual. This means the name and address of the group health plan elected by the electing individual and the identification number that the employer uses to identify that group health plan; and the name and address of the entity that processes claims on behalf of the group health plan and the identification number used by that entity to identify the group health plan.

(4) The name and TIN of each other individual covered under the group health plan pursuant to such election. This means each other covered individual covered for some portion of the calendar year. The employer is not obligated to report TINs of infants under one year of age at the end of the calendar year for which a report will be filed and those prohibited by law from having a social security number, such as dependents of migrant farm workers who are not U.S. citizens.

(5) The period during which such coverage is elected. This means the actual dates that the electing individual had coverage under the group health plan.

(6) The name, address, and TIN of the employer.

The employer's report with respect to each electing individual must include the required information on all group health plans of or contributed to by the reporting employer under which the electing individual has elected coverage during the calendar year and all entities that processed claims on behalf of the group health plans during any period of the calendar year.

An employer is expected to obtain the name and TIN of the electing individual (item 1), the type of coverage (item 2), the plan and claims processing entity information (item 3), the coverage period information (item 5), and the employer information (item 6). When the employer does not provide the names and TINs of other covered individuals, an employer is deemed to have made a reasonable good faith effort to provide the information with respect to the name and TIN of each other individual covered by the group health plan (item 4) with respect to the reports for a specified calendar year if the employer can prove that it has established a systematic method to obtain the necessary information that includes both (i) a documented initial effort to obtain the necessary information from the electing individual and (ii) a documented follow-up effort if the electing individual does not respond to the initial effort.

Reporting Entities

The data bank provisions require employers to provide the required reports. Section 1144(c)(1)(B) of the Act contains a special rule that permits an employer to satisfy the reporting requirement if the report is made in accordance with section 101(f) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1021). This conforming amendment to ERISA, enacted by section 4301 of OBRA 93, imposes certain obligations on plan sponsors, plan administrators, insurers, third party administrators, and any other persons who, under the plan, maintain the information necessary to enable the employer to comply with the data bank reporting requirements (hereafter referred to as "information maintainers"). Upon request of any employer with (a) fewer than 50 employees and (b) a plan other than a multiemployer or multiple employer plan, the information maintainer must provide the required information directly to the data bank. Upon request of an employer with (1) any number of employees and (2) a multiemployer or multiple employer plan, an information maintainer must provide the required information, at the option of the information maintainer, to the data bank or the employer. In any other case, the information maintainer must provide the required information, at the option of the employer, to the data bank or to the employer.

The data bank will also accept required information from entities other than information maintainers who act as agents of the employer for the purpose of providing information to the data bank.

Dates of Reporting

Reports for calendar year 1994 must be filed no later than February 28, 1995. Reports for future years must be filed no later than the end of February of the following year.

Penalties for Failure to Report

Under the Act, HCFA may impose certain penalties described in the Internal Revenue Code when there is a failure by an employer, other than a governmental entity, to report. The penalties are those otherwise associated with a failure to file a correct informational return with the Internal Revenue Service. The current base penalty is $50 for each failure associated with a report with respect to a single individual. The current potential maximum base penalty for any employer is $250,000. The penalty is increased in the case of intentional disregard of the reporting requirement. The penalty is not imposed if it can be shown that the failure is due to reasonable causes.

In determining whether to impose these penalties in a particular case, we will consider all attendant circumstances, including the nature of the failure and the employer's reasonable good faith efforts to obtain and provide the required information.

As previously described, there is a special rule at section 1144(c)(1)(B) of the Act that permits some employers to satisfy data bank reporting obligations through a filing in accordance with section 101(f) of ERISA. Section 4301(c)(2) of OBRA 93, enacted as a conforming amendment to section 502(c) of ERISA, authorizes the Secretary of Labor to assess a civil penalty of not more than $1000 on information maintainers for each failure to provide information to the data bank or the employer as provided in section 101(f)(1) of ERISA. A failure relates to specific information deficiencies with respect to a single electing individual. These provisions and their implementation are the responsibility of the Secretary of Labor.

We will not impose a penalty under the data bank provisions upon an employer if an information maintainer has the responsibility to provide complete and accurate information to the data bank, or if the failure of the employer is attributable to the failure of an information maintainer to provide complete and accurate information to the employer, unless the failure of the information maintainer results from the failure of the employer to provide complete and accurate information to the information maintainer.

We will impose penalties as described above upon an employer if the employer's agent (other than an information maintainer) fails to provide the requisite information to the data bank.

Methods of Reporting

OBRA 93 specifically charges us with minimizing the burden of reporting on employers. We are therefore providing for at least three methods for filing data bank reports. We will make available scannable paper forms and pre-formatted diskettes upon request by employers and publish the electronic format to be used by employers submitting reports on magnetic cartridges. We may establish limitations on employer choices based on the number of electing individuals for whom reports must be filed by an employer, information maintainer, or other entity serving as an agent of the employer in any reporting year. All reports will be sent to a single location that we will designate later this year. Additionally, we will designate a coding system to permit employers to explain certain data consistency and completeness problems when filing data bank reports and thereby greatly reduce the need for us to contact employers later concerning reporting irregularities.

Additional information on methods of reporting for 1994 will be furnished to employers if the Congress does not delay implementation as we have suggested.

III. Collection of Information Requirements

This document contains information collection requirements that must be approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504). We are publishing our estimate of the burden that this information collection activity will place on reporting entities in a separate **Federal Register** notice in accordance with our standard procedure pertaining to information collection requirements submitted to OMB for approval. That notice invites interested parties to comment on the estimate by writing to the address provided.

IV. Impact Analysis Statement

Executive Order 12866 (E.O. 12866) requires us to submit to the Office of Management and Budget (OMB) for review any regulatory action that is identified as economically significant; that is, may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

In addition, we generally prepare a flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare an impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We recognize that the collective costs of complying with the requirements outlined in this notice may meet the $100 million threshold of E.O. 12866. The costs associated with this notice are the result of the statute and not established by any discretionary requirements imposed by HCFA. However, due to the economic significance of the provisions, we have submitted this notice to OMB for review and are soliciting comments on the costs and burdens associated with data bank compliance. When the final guidance is issued, a final analysis of the costs and benefits of the data bank will be made available.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773 Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 14, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–11345 Filed 5–9–94; 8:45 am]

BILLING CODE 4120–01–P

Department of Health and Human Services

Health Resources and Services Administration

[PN 2217]

RIN 0905–ZA43

Availability of Funds for Grants for School Health Services and Health Education/Promotion for Homeless and At-Risk Children and Youth, and for School Health Staff Development

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $5.75 million under the appropriation for fiscal year (FY) 1994, for HRSA's new school health initiative: the Healthy Schools, Healthy Communities Initiative. The Bureau of Primary Health Care (BPHC) and the Maternal and Child Health Bureau (MCHB) will jointly manage this initiative within HRSA.

Under this initiative, approximately $3.25 million is available for discretionary grants to provide school-based primary health care services to homeless and at-risk children and youth. This money was appropriated under Public Law 103–112, the FY 1994 Labor/HHS Appropriations Act, and is included as part of the funding for the Outreach and Primary Health Services for Homeless Children Program. The grants will be awarded under section 340(s) of the Public Health Service (PHS) Act, 42 U.S.C. 256.

The remainder of the funding for the initiative, approximately $2.5 million, is available through MCHB's Special Projects of Regional and National Significance (SPRANS) as authorized under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2). One million dollars of the SPRANS money is for health education/promotion services provided to homeless and at-risk children and youth through school-based health centers. The remaining $1.5 million is available for school health staff development grants.

The $5.75 million for the Healthy Schools, Healthy Communities Initiative will be awarded through two grant programs. First, $4.25 million is available for grants to provide school-based primary health care services and health education/promotion for homeless and at-risk children and youth. Second, $1.5 million is available for grants for school health staff development.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. The Healthy Schools, Healthy Communities Initiative will contribute to meeting the objectives cited for children and youth, particularly children and youth who are homeless, at-risk, in low-income families, and/or minorities. In addition, the initiative will contribute to meeting three of the six National Education Goals included in the Goals 2000: Educate America Act. The initiative will address Goal 1 which states: by the year 2000, all children in America will start school ready to learn; Goal 2 which states: by the year 2000, the high school graduation rate will increase to at least 90 percent, and Goal 6 which states: by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning. In addition, this program is consistent with many of the elements of the proposed Health Security Act, particularly Title III, Subtitle G. Potential applicants may obtain a copy of Healthy People 2000 (Full Report—Stock No. 017–001–00474–0 or Summary Report—Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402–9325 (telephone 202–783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

DUE DATES: To receive consideration, applications for the health services/health education grant and the staff development grant are due July 15, 1994. Applications are considered as having met the deadline if they are: (1) Received on or before the established deadline date; or (2) sent on or before the established deadline date and received in time for orderly processing. Applicants should obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service or obtain a legibly dated U.S. Postal Service postmark. . Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES FOR HEALTH SERVICES/EDUCATION GRANTS: Application kits and additional guidance (Form PHS 5161–1 with revised face sheet DHHS form 424, as approved by the OMB under control number 0937–0189) for the health services/health education grants may be obtained from, and completed applications should be mailed to: Alice H. Thomas, Grants Management Officer (GMO), Bureau of Primary Health Care. Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland, 20814. The telephone number is (301) 594–4260 and the fax number is (301) 594–4073. Application kits will be distributed up to two weeks before the application due date. The Grants Management staff is available to provide assistance on business management issues.

ADDRESSES FOR STAFF DEVELOPMENT GRANTS: Application kits and additional guidance (Form PHS 5161–1 with revised face sheet DHHS form 424, as approved by the OMB under control number 0937–0189) for the staff development grants may be obtained from, and completed applications should be mailed to: John Gallicchio, Grants Management Officer, Maternal and Child Health Bureau, Health Resources and Services Administration, Parklawn Building, Room 18–12, 5600 Fishers Lane, Rockville, Maryland, 20857. The telephone number is (301) 443–1440 and the fax number is (301) 443–6686. Application materials will be available after April 1, 1994.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Jane Martin, Program Director, School Health Program, Perinatal and Child Health Branch, Division of Programs for Special Populations, Bureau of Primary Health Care, 4350 East-West Highway, Bethesda, Maryland 20814, (301) 594–4470, fax (301) 594–4989, or contact Linda Johnston, Co-Director, School Health Initiative, Adolescent Health Branch, Division of Maternal, Infant and Child Health, Maternal and Child Health Bureau, Parklawn Building, room 18A–39, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4026, fax (301) 443–1296.

SUPPLEMENTAL INFORMATION

School-Based Health Services and Health Education/Promotion Grants for Homeless and At-Risk Children and Youth

Grant Amounts: Approximately $4.25 million is available for grants to provide school-based health services and health education/promotion to homeless and at-risk children and youth. Of the $4.25 million, $3.25 million is for primary and preventive health care services; $1.0 million is for health education/promotion purposes. Each grantee will only receive one grant award that will include funds for both health services and health education/promotion.

Number of Awards: Approximately 15–20 awards will be made, with a total possible maximum of $285,000 for each grant. Awards will range from $100,000 to $220,000 for school-based health services and from $40,000 to $65,000 for school health education/promotion. Awards will be made for a one-year budget period and a three-year project period.

Match Requirements: Only grantees that are hospitals are required to contribute (directly or through donations from public or private entities) not less than $1 in non-Federal contributions for each $1 of Federal funds provided in the health services portion of the grant. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment, or other services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions. It is important to note that this match does not apply to the health education/promotion portion of the grant.

Eligible Applicants: An eligible applicant is a community-based primary health care provider. Eligible health care providers are community-based public or nonprofit private entities that have a history of providing primary health services to a substantial number of homeless, at-risk, or medically underserved children and youth in the community, e.g., health care for the homeless centers, community and migrant health centers, local health departments, public housing primary care centers, and children's hospitals.

The provider must have established a partnership with a school or school district, but only the health care provider is the applicant. Together the health provider and school must have established a cooperative arrangement with at least one community organization that will supplement, expand, and enrich the services provided through the school-based health center. Applicants are encouraged to establish as many cooperative arrangements as are desirable and feasible (e.g., with Health Care for the Homeless projects, homeless shelters, soup kitchens, other community organizations that serve the homeless, community mental health centers, social service agencies, local youth organizations, and community service organizations).

Grantees must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement. This requirement may be waived if the organization does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program. It is expected that grantees will maximize third party reimbursement to which they are entitled, including Medicaid.

Grants will be made for a variety of arrangements, including programs in rural and urban areas. Grants will be awarded for programs in elementary schools, middle schools or junior high schools, high schools, or a combination of schools. Funds are not available to enhance existing school-based health centers. The funds are intended to be used to establish new school-based health centers that offer comprehensive primary care services. An applicant that currently operates a school-based health center may use these funds to establish a new center in another school.

Other Requirements: Restrictions on the use of grant funds are as follows: (1) Grant funds may not be used to pay for inpatient services, except for residential treatment for substance abuse provided in settings other than hospitals; (2) grant funds may not be used to make cash payments to intended recipients of primary health, substance abuse or mental health services; and (3) grant funds may not be used to purchase major medical equipment or to purchase or improve real property (other than minor remodeling of existing improvements to real property, which is allowable for rebudgeting without prior approval for amounts up to a cumulative maximum of $25,000). The Secretary may waive this restriction upon request by an applicant demonstrating that the purposes of the project cannot otherwise be carried out.

The grantee must, directly or through contract, provide services without regard to ability to pay for the services. If a charge is imposed for the delivery of services, such charge: (1) Will be made according to a schedule of charges that is made available to the public; (2) will not be imposed on any individual with an income less than the official poverty level (the nonfarm income official poverty line defined by the Office of Management and Budget); and (3) will be adjusted to reflect the income and resources of the individual involved.

Program Services: Grants will be awarded to school-based health center programs that will offer comprehensive primary care and health education/promotion services including, but not limited to: (1) Outreach and other access-related services including care coordination/case management, translation, and transportation, as needed; (2) diagnosis and treatment of acute and chronic conditions; (3) laboratory services necessary to diagnose and treat acute and chronic conditions (these may be provided directly, through contract arrangements, or through formal referrals); (4) preventive health services, including health screenings and immunizations; (5) mental health and counseling services, and necessary referrals for child abuse prevention and treatment, specialized mental health services, social services, and substance abuse treatment; (6) preventive dental services (these may be provided directly, through contract arrangements, or through formal referrals); (7) a school health education/promotion program; and (8) arrangements for coverage during non-school hours. The health education/promotion activities should build on and be integrated with existing health education/promotion activities and should address the unmet needs of students.

Target Populations: This program is designed to serve children in kindergarten through the twelfth grade who are homeless or at imminent risk of homelessness, including children in unstable housing situations or who have incomes or family incomes below 200% of the federal poverty level (the nonfarm income official poverty line defined by the Office of Management and Budget).

While the school-based health center will target services to those children described above, the school-based health center must serve all students in the school who wish to enroll in the center.

Data and Management Information System (MIS) Requirements: The funding agencies will provide the software to be used for the acquisition of data needed for program monitoring and the national evaluation. Purchase of appropriate hardware to run the software will be an allowable expense under the grant. The system to be employed will meet very specific requirements to be further articulated in the program guidance. Broad data categories include, but are not limited to, demographics, insurance status, diagnoses, services provided, referrals, and follow-up. The data requirements for the national evaluation are subject to OMB approval and will not be implemented until approval is obtained.

Criteria for Evaluation: Applicants will be evaluated on their plan for health services and health education/promotion based upon the following criteria:

- Need: Degree of need for school-based health services, which must include but not be limited to the following indicators: (1) Estimate of the number of homeless children and children at imminent risk of homelessness in the school and community, with estimation method specified; (2) level of poverty in school and community, including school receipt of Chapter 1 funds, and in particular, school designation as a Chapter 1 school-wide program; (3) the number of children who are eligible for free or reduced price lunches; (4) degree to which the population in the community is medically underserved; (5) presence of significant barriers to health care for students in the community (e.g., lack of transportation, language); and (6) indicators of health risks for school-aged children and youth such as intentional and unintentional injuries, violence, alcohol and other drug abuse, sexually transmitted disease, adolescent pregnancy, juvenile justice involvement, and high proportion of children with special health care needs;
- Proposed Plan and Project Description: The extent to which the applicant has: (1) Demonstrated its capability to successfully implement and administer the proposed plan; (2) specified appropriate and measurable goals and objectives that address the needs of the target population identified through a completed community needs assessment; (3) demonstrated the feasibility of implementing the program based on the time frame proposed; (4) described an appropriate multidisciplinary team of health professionals who will deliver services; (5) provided for an arrangement between the health care provider and the school that specifies how referrals and off site treatment will be handled and, where appropriate, specified the role of the school nurse, school psychologist, and other school personnel in the staffing of the clinic and the provision of health services to students; (6) outlined a suitable quality assurance program for services provided under the grant; (7) specified administrative procedures for fiscal control and fund accounting procedures which provide for reasonable financial administration of Federal and non-Federal funds; (8) specified plans for and evidence of financial ability to continue program beyond project period; (9) included health education/promotion activities that will adequately address unmet health education needs of students; (10) integrated health education/promotion services with new and existing school health services, health education/promotion programs, and other education programs, if any, (e.g., counseling, special education, services provided by a school nurse, including those provided under IDEA, and activities funded under the Drug Free Schools and Communities Act); and (11) specified health education/promotion activities that complement the existing health education curriculum (the activity should target those health education/promotion needs which are identified as top priority based upon the needs assessment);
- Project Collaboration, Coordination and Community Support: (1) The extent to which the health provider and school have established cooperative arrangements with community groups that will supplement, expand, and enrich the services provided through the school-based health center; (2) the degree to which the applicant has and will continue to work with other Federal, State and local programs (particularly State health agencies and their Primary Care Cooperative Agreement staff and the Maternal and Child Health (Title V) staff, local schools, mental health service agencies, substance abuse service agencies, and Medicaid); (3) the extent of community support, particularly among families, caregivers and the students themselves; (4) the extent of support from school personnel and organizations (e.g., principal, school board, school nurses, PTA, Student Council); and (5) evidence of willingness of collaborating and/or supporting organizations to contribute resources, both cash and in kind, for the school-based health center program;
- Budget: Adequacy and appropriateness of the proposed budget (i.e., detailed projections of revenue and costs in accordance with grant application instructions), including the health education/promotion budget subsection;
- Outcome and Evaluation: (1) The strength of the self-evaluation plan to monitor the progress of the program and to assess and document outcomes of the program; and (2) evidence of applicant's commitment to participate in a national evaluation and use the software provided by the funding agency.

SUPPLEMENTAL INFORMATION

School Health Staff Development Grants

Background: The purpose of these grants is to build capacity at the State and local levels, consistent with the goals of the proposed Health Security Act, in order to provide staff development for local education agency and local health agency personnel involved in school-based health centers or in school-linked programs. Proposed programs could include training for the following types of staff: health care providers, allied health professionals, and health educators. Emphasis should be placed on training to work with a multidisciplinary team.

Grant Amounts and Number of Awards: There will be approximately $1.5 million available for up to 10 school health staff development grants for Fiscal Year 1994, to enhance the operation of school-related health services. Awards will be made for a one-year budget and project period.

Eligible Applicants: Eligible applicants are State health agencies or public and private nonprofit institutions of higher learning. The applicant must demonstrate full partnership between the State health agency and the institution of higher learning and, as appropriate, other community organizations and/or professional associations.

Criteria for Evaluation: Grantees will be evaluated based upon the following criteria:

- Need: Degree of need for school health program staff development as identified in a needs assessment;
- Proposed Plan: The extent to which the proposed plan has: (1) Specified appropriate goals and objectives (e.g., specify knowledge expected to be learned to upgrade skills and competencies to work in school health settings); (2) provided a description of proposed program to provide staff development for individuals who work in school health settings; (3) utilized existing staff development programs, where appropriate (e.g., the Interdisciplinary Adolescent Health Project(s) and the Center for Continuing Education in Adolescent Health supported by funds from MCHB); and (4) demonstrated the soundness of the project's proposed management, as assessed by the qualifications of the staff of the proposed project, the applicant's facilities and resources, and the capability to fulfill the proposed goals and objectives to meet staff development needs;
- Budget: Adequacy and appropriateness of proposed budget;

- Outcome and Evaluation: (1) The adequacy of the plan to monitor the progress of the program and to assess and document outcomes of the program; and (2) evidence of commitment to participate in a national evaluation.

Other Award Information

The programs under the Healthy Schools, Healthy Communities Initiative are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate deadline dates. The Health Resources and Services Administration does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs", Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements.)

These programs are subject to the Public Health System Reporting Requirements approved by the Office of Management and Budget (0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit certain information to the head of the appropriate State and local health agencies in the area(s) to be impacted. This information should be submitted no later than the Federal application receipt due date. The information includes:

a. A copy of the face page of the application (SF 424).

b. A summary of the project PHSIS, not to exceed one page, which provides:

1. A description of the population to be served.

2. A summary of the services to be provided.

3. A description of the coordination planned with the appropriate State and local health agencies.

The OMB Catalog of Federal Domestic Assistance numbers for the HRSA Healthy Schools, Healthy Community Initiative are 93.151 and 93.110.

Dated: March 18, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–11143 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Community Integrated Service Systems Set-Aside Program

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Advance notice of application deadline date.

SUMMARY: The Health Resources and Services Administration (HRSA), in collaboration with the Administration for Children, Youth and Families, will provide funding during fiscal year 1994 for Maternal and Child Health Community Integrated Service Systems (CISS) Set-Aside Program grants authorized under section 502(b)(1)(A) of Title V of the Social Security Act. In fiscal year 1994, funding for new CISS projects will be focused on development of home visiting programs which carry out the intent of the "Home Visiting Services for At-Risk Families" Program, as authorized by Title V of the ADAMHA Reorganization Act (Pub. L. 102–321). The purpose of this announcement is to give early notice to potential applicants of the amount of funding and application deadline date.

FOR FURTHER INFORMATION CONTACT: Potential applicants may contact the Chief, Grants Management Branch, Maternal and Child Health Bureau, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440 for application information and other information concerning this program.

SUPPLEMENTARY INFORMATION: A Notice of Availability of Funds will be published in the **Federal Register** for this program, announcing program provisions, priorities, and review criteria.

Program	Application deadline	No. of awards (est.)	Funds available (est.)
Community Integrated Service Systems (CISS)	June 30, 1994	50	$2.5 million.

Dated: May 4, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–11242 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–1500–P

National Institutes of Health

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 22–23, 1994, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 22 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on June 22 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on June 23 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: May 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11156 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Meeting: National Advisory Council for Nursing Research and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Institute of Nursing Research; and its Subcommittees, June 3 and 7–8, 1994, National Institutes of Health, Bethesda, Maryland.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session June 7, Building 31C, Conference Room 6, from 1 p.m. to 5 p.m., and on June 8, from approximately 10 a.m. to adjournment. Agenda items will include: The NINR Director's Report, Report from Directors of the Exploratory Centers, Prioritization of the Science for NINR, Post Review Policy Issues Relevant to Grant Review, NACNR Subcommittee Issues, 1994 Nursing Task Force, Nursing Systems Report, NAS Report, Report on Reinventing Government.

Each of the Subcommittees listed below will be held by telephone conference.

The Planning Subcommittee will meet in open session June 3, Building 31, Conference Room 5B03, from 11:30 a.m. to 1 p.m., to discuss long-term and strategic planning and policy issues.

The National Nursing Research Agenda Subcommittee will meet in open session June 3, Building 31, Conference Room 5B03, from 3 p.m. to 5 p.m., to discuss issues related to the National Nursing Research Agenda.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee June 3, from 1 p.m. to 3 p.m., will be closed to the public, and the meeting of the full Council will be closed on June 8, from 8:30 a.m. to approximately 10 a.m., for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Ernest Marquez, 301–594–7865, in advance of the meeting.

Dr. Ernest Marquez, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Westwood Building, room 740, Bethesda, Maryland 20892, 301–594–7865, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: May 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11157 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June and July 1994.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, Telephone: 301–496–7301, FAX: 301–402–0224, will provide a summary of the meeting and a roster of committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301–594–7758.

Dates of Meeting: June 7–8, 1994

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: June 7, 8:30 a.m.—9:30 a.m.

Closed: June 7, 9:30 a.m.—5 p.m., June 8, 8:30 a.m.—adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, room 9A18, Westwood Building, Telephone: 301–594–7741.

Dates of Meeting: June 9, 1994.

Place of Meeting: Embassy Suites, Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Open: June 9, 8:30 a.m.—9:30 a.m.

Closed: 9:30 a.m.—adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, room 9A13, Westwood Building, Telephone: 301–594–7758.

Dates of Meeting: June 13, 1994.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: June 13, 8:30 a.m.—9:30 a.m.

Closed: June 13, 9:30 a.m.—adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee.

Scientific Review Administrator: Dr. Richard Martinez, room 9A18, Westwood Building, Telephone: 301-594-7803.

Dates of Meeting: June 16–17, 1994.

Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: June 16, 8:30 a.m.—9:30 a.m.

Closed: June 16, 9:30 a.m.—5 p.m., June 17, 8:30 a.m.—5 p.m.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.

Scientific Review Administrator: Dr. Jean Flagg-Newton, room 9A13, Westwood Building, Telephone: 301–594–7708.

Dates of Meeting: July 14–15,1994.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: July 14, 8:30 a.m.—9:30 a.m.

Closed: July 14, 9:30 a.m.—5 p.m., July 15, 8:30 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institute of Health)

Date: May 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11158 Filed 5–9–94; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of Subcommittees A and B meetings of the Biological and Clinical Aging Review Committee, and of Subcommittees A and B meetings of the Neuroscience, Behavior and Sociology of Aging Review Committee.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed for the meeting, in advance of the meeting.

Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated below:

Name of Subcommittee: Subcommittee A—Biological and Clinical Aging Review Committee.

Scientific Review Administrator: Dr. Arthur Schaerdel, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Date of Meeting: June 10, 1994.

Place of Meeting: Teleconference call.

Open: June 10—1 to 1:15 p.m.

Closed: June 10—1:15 to 5 p.m.

Name of Subcommittee: Subcommittee B—Biological and Clinical Aging Review Committee.

Scientific Review Administrator: Dr. James Harwood, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Date of Meeting: June 8, 1994.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland.

Open: June 8—8:30 to 9 a.m.

Closed: June 8—9 a.m. to adjournment on June 8, 1994.

Name of Subcommittee: Subcommittee A—Neuroscience, Behavior and Sociology of Aging Review Committee.

Scientific Review Administrators: Dr. Maria Mannarino, Dr. Louise Hsu, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: June 14–16, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 14—7 to 8 p.m.

Closed: June 14—8 to adjournment on June 16, 1994.

Name of Subcommittee: Subcommittee B—Neuroscience, Behavior and Sociology of Aging Review Committee.

Scientific Review Administrator: Dr. Walter Spieth, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: June 9–11, 1994.

Place of Meeting: Marriott Suites Bethesda, 6711 Democracy Blvd., Bethesda, Maryland 20814.

Open: June 9—8 to 8:45 p.m.

Closed: June 9—8:45 p.m. to adjournment on June 11, 1994.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated May 4, 1994.

Susan K. Feldman,

* * * * *

Committee Management Officer, NIH.

[FR Doc. 94–11159 Filed 5–9–94; 8:45 am]

BILLING CODE 4140-01-M

National Institutes Of Health

Prospective Grant of Exclusive License: Anti-viral Agents F-ddA and F-ddI Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Application SN 07/762,082 (FWC of 07/288,652, CIP of 07/039,402) entitled "Acid Stable Purine Dideoxynucleosides Active Against The Cytopathic Effects Of Human Immunodeficiency Virus" and U.S. Patent Application SN 07/556,713 entitled "2′-Fluorofuranosyl Derivatives And Novel Method Of Preparing 2′-Fluoropyrimidine and 2′-Fluoropurines" and corresponding foreign patent applications to U.S. Bioscience, Inc. of West Conshohocken, Pennsylvania. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of treatment of human immunodeficiency virus (HIV) infection in humans using 9-(2,3 dideoxy-2-fluoro-β-Dthreo-pentofuranosyl)-adenine (F-ddA) and 9-(2,3 dideoxy-2fluoro-β-D-threo-pentofuranosyl)-hypoxanthine (F-ddI). This prospective exclusive license may be granted unless

within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application SN 07/762,082 describes novel acidstable 2-fluoropurine dideoxynucleosides that have been shown to inhibit HIV reverse transcriptase and the cytopathic effects of HIV in vitro and are thus are expected to be useful in the treatment of HIV-infection. These 2-fluoropurine dideoxynucleosides withstand the acidic conditions in the stomach and may be orally administered without the need for antacids. U.S. Patent Application SN 07/556,713 describes an method of synthesis for these compounds.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7735; Facsimile: (301) 402–0220; Internet: Steve Ferguson%NIHOD601.BITNET@CU.NIH.GOV.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered. A signed Confidential Disclosure Agreement will be required to receive a copies of the patent applications.

Dated: May 2, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–11161 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

National Toxicology Program; Fiscal Year 1992 Annual Report

The National Toxicology Program (NTP) announces the availability of the NTP Annual Plan for Fiscal Year 1992, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation. In the interest of accuracy due to the lateness of publication, the FY 1992 edition has been titled the NTP Annual Report.

The fourteenth edition consists of two parts. First, the NTP Annual Report for Fiscal Year 1992 describes FY 1992 NTP plans in research, applied studies, methods development and validation efforts, as well as resources and FY 1991 program accomplishments. Second, the Review of Current DHHS, DOE, and EPA Research Related to Toxicology lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Overall objectives are to:

- Broaden the spectrum of toxicological information obtained on selected chemicals;
- Increase the numbers of chemicals studied, within funding limits;
- Develop and validate assays and protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Primary program oversight is provided by the NTP Executive Committee, which links DHHS health research institutes and centers with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry
- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1992 Annual Report) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director reports to the Assistant Secretary for Health.

Scientific activities are divided into four major program areas: carcinogenesis; cellular and genetic toxicology; reproductive and developmental toxicology; and toxicologic characterization. The latter area covers activities in cardiac, immunologic, neurobehavioral, and respiratory toxicologies, and includes programs in chemical disposition, toxicities of AIDS therapeutics, and toxicity of Superfund chemicals. Program and project leaders, along with addresses and telephone numbers, are identified in the 1992 Annual Report.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.

II. Production, use, occurrence, and analysis data.

III. Toxicology information.

IV. Chemical disposition and structure-activity relationships.

V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the NTP Annual Report for Fiscal Year 1992, and the FY 1992 Review of Current DHHS, DOE, and EPA Research Related to Toxicology, please write or telephone the NTP Central Data Management, P.O. Box 12233, MD A0–01, Research Triangle

Park, N.C. 27709, (telephone 919/541–3419).

Comments on the FY 1992 NTP Annual Report are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone 919/541–3971).

Dated: May 4, 1994.

Richard Griesemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–11160 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–P

National Institutes of Health

Regulations Review Plan

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is announcing plans to review its regulations in conjunction with other review initiatives already announced by the Department of Health and Human Services (HHS) to implement Executive Order 12866. The NIH review is intended to determine whether any NIH regulations, including those determined to be "significant" by the Office of Management and Budget (OMB), as defined under E. O. 12866, and those determined to be "not significant" need to be modified to make them more effective, less burdensome, and more in alignment with the President's priorities and regulatory principles. NIH invites the submission of data, information, and ideas by interested individuals and organizations to assist in the review.

DATES: In order to be considered in the review process, comments must be received on or before July 11, 1994.

ADDRESSES: Comments should be sent to Jerry Moore, Regulatory Affairs Officer, Office of Management Assessment, National Institutes of Health, Building 31, Room 3B11, Bethesda, Maryland 20894.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, Regulatory Affairs Officer, telephone (301) 496–4606 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The President issued Executive Order 12866, "Regulatory Planning and Review," on September 30, 1993. The basic purpose of E. O. 12866 is to make regulations less burdensome, more effective, and in greater alignment with the President's priorities and regulatory principles. Section 5 of E.O. 12866 requires that each agency periodically review its existing significant regulations to determine whether these regulations should be modified or eliminated so as to make the agencies' regulatory programs more effective. For the purposes of E. O. 12866, a "significant" regulation means a regulation that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

On January 20, 1994, HHS published a notice in the **Federal Register** (59 FR 3040) describing its plan for implementing E.O. 12866 and for continuing its implementation of the Regulatory Flexibility Act, Public Law 96–354, which requires each agency to review regulations issued by the agency which will have a significant economic impact on a substantial number of entities. Among other things, the HHS plan invites the public, especially those most affected by existing regulations, to submit data, information, and views to assist HHS in its review of regulations issued by the Department including those issued by NIH. NIH will use whatever information is collected by HHS to help identify what reforms are needed to make those regulations which are determined by OMB to be "significant" more effective and less burdensome.

Additionally, NIH believes that in the spirit of the President's efforts to provide a more effective and less burdensome regulatory system it would be beneficial at this time for NIH to also review those regulations which may be determined by OMB to be "not significant." Therefore, NIH invites comments from the public, especially from those most affected by regulations issued by NIH, to help identify opportunities for making all of NIH regulations more effective and less burdensome. Comments will be most helpful when they clearly identify the regulation to which the comment is addressed and specifically explain why and how the regulation imposes unnecessary or disproportionately burdensome demands on those regulated. NIH encourages the submission of information, particularly data concerning the costs of the regulation, that support the comment. NIH also encourages the submission of ideas for more actively involving those most affected by NIH regulations in the planning of regulations before they are formally proposed in the **Federal Register** or in future reviews, including how electronic forums might best be used for the exchange of information among NIH and affected parties; and the submission of ideas for improving the clarity of its regulations.

Careful review of regulations can require a significant amount of time and resources. Therefore, NIH will consider what is practicable and reasonable, given its current resources and other responsibilities and comments made in response to this Notice and HHS's previous Notice, in prioritizing regulations for review, and in establishing long range schedules for beginning and ending reviews. NIH will issue another notice summarizing the information that it receives from the HHS notice concerning "significant" regulations issued by NIH and the comments that it receives from the public concerning regulations determined to be "not significant." At that time, NIH will also set forth more detailed plans for pursuing identified opportunities for making its regulations more effective and less burdensome.

Dated: April 28, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–11162 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–4210–06–P; U–72189; 4–00152]

Proposed Withdrawal; Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 260 acres of public land near St. George, Utah, to protect the Baker Dam Recreation Site. This notice closes these lands for up to two years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for public meeting must be received on or before August 8, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Utah State Director, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Utah State Office, (801) 539–4119.

SUPPLEMENTARY INFORMATION: On April 22, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. ch 2), subject to valid existing rights:

Salt Lake Meridian

T. 39 S., R. 16 W.,
sec. 21, N½SE¼, SE¼SE¼;
sec. 22, SW¼SW¼, W½SE¼SW¼;
sec. 28, N½NE¼.

The area described contains 260 acres in Washington County, Utah.

The purpose of the proposed withdrawal is to protect the recreational values of Baker Dam Recreation Site and the investment of federal funds which have been, and will be expended to develop the site. It is a popular area for fishing, as well as other water-related activities, for local residents of nearby communities, the St. George area, and visitors from Nevada and California.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specific above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Ted D. Stephenson,
Acting State Director.

[FR Doc. 94–11172 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council Telephone Conference

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of telephone meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public via speaker phones at the locations listed below.

DATES: The Klamath Fishery Management Council will meet via telephone at 1:30 p.m. on Monday, May 23, 1994.

PLACES FOR PUBLIC LISTENING AND COMMENT:

Port of Brookings, 16374 Lower Harbor Road, Brookings, Oregon;
National Marine Fisheries Service—Tiburon Lab, 3150 Paradise Drive, Tiburon, CA;
U.S. Fish and Wildlife Service—Arcata Field Office, 1125 16th Street, Room 209, Arcata, California;
U.S. Fish and Wildlife Service—Klamath River FRO, 1215 South Main Street, Room 214, Yreka, California;
Oregon Department of Fish and Game, 2501 S.W. 1st Avenue, 3rd Floor, Portland, Oregon;
Yurok Tribal Office, Hwy. 101 (between Don's Gas Station and Fortains Trailer Park), Klamath, California;
Hoopa Tribal Office—Neighborhood Facility Building—Council Chambers; Hwy. 96, Hoopa, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25638). The principal agenda item will be consideration of the technical review of the Hoopa Valley Tribe's proposal for applying deficit accounting to the management of fall chinook salmon spawning escapement in the Klamath River Basin.

Dated: May 3, 1994.

Marvin L. Plenert,
Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11188 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, June 15, 1994, in the St. Bernard Parish Council Chambers, 8201 West Judge Perez Drive, Chalmette, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafittee National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Park Operations Update
—General Management Plan Subcommittee Report
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statement may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of

Jean Lafitte National Historical Park and Preserve.

Dated: April 25, 1994.

Mary R. Bradford,

Deputy Regional Director, Southwest Region.

[FR Doc. 94–11246 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Citizens Advisory Council Meeting Schedule

AGENCY: National Park Service, Interior.

ACTION: Notice of change of meeting schedule.

SUMMARY: This notice establishes the revised schedule for calendar year 1994 meetings of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Saturday, May 14, 1994, 9 a.m. until 3:30 p.m., Project Learning Tree.

Address: Camp Koinonia, Route 55, Highland Lake, New York.

Meeting Date and Time: Saturday, June 11, 1994, 9 a.m. until 3:30 p.m., Rural community planning.

Address: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

Meeting Date and Time: Tuesday, June 14, 1994, 7 p.m. until 9 p.m., Business.

Address: National Park Service Headquarters, 2428 River Road, Beach Lake, PA 18405.

Meeting Date and Time: Tuesday, July 12, 1994, 7 p.m. until 9 p.m., Endangered Species.

Address: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

Meeting Date and Time: Tuesday, August 9, 1994, 7 p.m. until 9 p.m., Business Meeting.

Address: National Park Service Headquarters, 2428 River Road, Beach Lake, Pennsylvania.

Meeting Date and Time: Tuesday, September 13, 1994, To be announced.

Address: To be announced.

Meeting Date and Time: Tuesday, October 11, 1994, 7 p.m. until 9 p.m., Business meeting.

Address: National Park Service Headquarters, 2428 River Road, Beach Lake, Pennsylvania.

Meeting Date and Time: Tuesday, November 18, 1994, 7 p.m. until 9 p.m. Rain Date: December 10, 1994, The Lenape: Upper Delaware Native Americans.

Address: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

Press Releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-State Gazette
The Pike County Dispatch
The Pike County Courier
The Wayne Independent
The Hawley News Eagle
The Weekly Almanac

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, WVOS and WJFF.

FOR FURTHER INFORMATION CONTACT: Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159, 717–729–8251.

Dated: April 19, 1994.

B.J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 94–11245 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 30, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 25, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

FLORIDA

Dade County

MacFarlane Homestead Historic District, Roughly bounded by Jefferson St., Frow Ave., Brooker St. and Grand Ave., Coral Gables, 94000533

Sarasota County

Corrigan House, 463 Sapphire Dr., Sarasota, 94000528

GEORGIA

Grady County

Cairo Commercial Historic District, Roughly bounded by Broad St., Railroad Ave. and Martin Luther King Ave., with adjacent properties on 2nd Ave. and 1st St. Cairo., 94000525

Meriwether County

Bulloch, Benjamin F., House, Spring St., Warm Springs, 94000524

Upson County

Barron, Sydney, House, 505 Stewart Ave., Thomaston, 94000526

NORTH CAROLINA

Brunswick County

T. B. McClintic, Tripp's Marina, Shallotte Point, 94000532

Davie County

Foord—Tatum House, At end of NC 1101, Cooleemee vicinity, 94000530

Duplin County

Herring, Needham Whitfield, House, 201 NC 24–50, Kenansville, 94000529

Lee County

Euphronia Presbyterian Church, (Lee County MPS), 3800 Steel Bridge Rd., Sanford, 94000527

PENNSYLVANIA

Bucks County

Uhlerstown Historic District, Roughly bounded by the Delaware R., Jugtown Hill Rd., and the Delaware Canal, Tinicum Township, Uhlerstown, 94000517

Cambria County

Colver Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Ninth Ave., the Ebensburg Coal Company Power Building and Bakerville, Cambria Township, Colver, 94000521

Fayette County

Shoaf Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Nos. 1–170 First St., Second St., processing buildings and the bank of coke ovens, Georges Township, Shoaf, 94000518

Smock Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Redstone Cemetery, Colonial Mine No. 1, Smock Hill, Colonial Mine No. 2 and Redstone Cr., Smock, 94000520

Huntingdon County

Mount Union Historic District, Roughly bounded by Water and Greene Sts., the I.O.O.F Cemetery, Washington and Lafayette Sts., Shirley Township, Mount Union Borough, 94000516

Philadelphia County

University Avenue Bridge, 1000 block S. University Ave., Philadelphia, 94000515

Somerset County

Boswell Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Hower Ave., Atkinson Way, Quemahoning Creek, Main St. and Juniata St., Boswell, 94000519

Yairnbrook Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by the Penn Central RR tracks, McGregor Ave., Windber Ave. and John St., Shade Township, Cairnbrook, 94000523

Westmoreland County

Slickville Historic District, (Bituminous Coal and Coke Resources of Pennsylvania (MPS), Roughly bounded by Greenburg and Second Ave. and Delmont, Court, Cottage and Fred Sts., Salem Township, Slickville, 94000522

UTAH

Summit County

Bardsley, Dr. William, House, (Residences of Mining Boom Era Park City MPS), 517 Park Ave., Park City, 94000531

Utah County

Lehi Roller Mills, 700 E. Main St., Lehi, 94000535

Utah Southern Railroad Depot, Approximately 813 N. 150 East (N of Union Pacific RR tracks), Lehi, 94000536

Wasatch County

Burgener—Boss Farmstead, 102 W. 100 North, Midway, 94000534

WISCONSIN

Dane County

Sure Johnson Mound Group, (Late Woodland Stage in Archeology, Region 8 MPS), 1 mile WSW of jct. Elvehjem Rd. and County Rd. AB, McFarland vicinity, 94000537

[FR Doc. 94–11244 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Final)]

Aramid Fiber Formed of Poly Paraphenylene Terephthalamide ("PPD-T") From the Netherlands; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon the request of the respondents in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for May 5, 1994, *in camera.* See Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: James Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that unusual circumstances are present in these investigations so as to make it appropriate to hold a portion of the hearing *in camera.* This decision is made in light of the desirability of affording a full discussion at the hearing of business proprietary information (BPI) concerning (1) the condition of the domestic industry or industries; (2) confidential pricing, capacity, and capacity utilization data; and (3) confidential data regarding profitability, cost of goods sold, and sales, general and administrative expenses relating to a small number of domestic producers. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible, its business should be conducted in public.

Authority: The Acting General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR § 201.39) that, in his opinion, a portion of the Commission's hearing in the above-captioned investigation may be closed to the public to prevent the disclosure of business proprietary information.

Issued: May 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11169 Filed 5–9–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–647 (Final)]

Certain Steel Wire Rod From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On April 18, 1994, the Commission received a letter from counsel for petitioner in the subject investigation (Wiley, Rein & Fielding) withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping duty investigation concerning certain steel wire rod from Canada (investigation No. 731–TA–647 (Final)) is terminated.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: May 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 94–11241 Filed 5–9–94, 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32491]

Grand Trunk Western Railroad Incorporated, Successor to Grand Trunk Western Railroad Company; Trackage Rights Exemption; Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) and Grand Trunk Western Railroad Incorporated (GTW), successor to Grand Trunk Western Railroad Company, have agreed to amend their existing trackage rights agreement.[1] The agreement granted GTW overhead trackage rights between Riverdale and Franklin Park, IL as follows: (1) Between IHB's connection with the Union Pacific Railroad at Dolton Tower and IHB's connection with the Chicago and Northwestern Transportation Company's (CNW) at Proviso yard, and (2) between IHB's connection with GTW and GTW's tower at Blue Island, IL, and IHB's connection with CNW at Proviso yard. The amended agreement will allow GTW to operate over an additional 2.8 miles between IHB's connection with GTW at Blue Island, IL and IHB's connection with the Wisconsin Central Railway Ltd. at Norpaul in Franklin Park, IL. The trackage rights became effective on April 26, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Stanko, Attorney, Grand Trunk Western Railroad Incorporated, 1333 Brewery Park Blvd., Detroit, MI 48207–2699, and Joseph A. Markase,

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[1] The existing trackage rights were acquired by GTW under a Notice of Exemption in *Grand Trunk Western Railroad Company—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company,* Finance Docket No. 31611 (ICC served Mar. 23, 1990).

Counsel, Indiana Harbor Belt Railroad Company, Office of the General Manager, 2721 161st St., Hammond, IN 47623.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: May 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11207 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32146 (Sub-No. 1)]

Minnesota Transportation Museum, Inc.—Renewal of Trackage Rights Exemption—Wisconsin Central, Ltd.

Wisconsin Central, Ltd. (WCL) has agreed to extend for 5 years its grant of trackage rights to Minnesota Transportation Museum, Inc. (MTM), to conduct passenger operations over its line between milepost 23.7 at Withrow, MN, and milepost 63.1 at Amery, WI, a distance of 39.4 miles.[1] The extension of the trackage rights will become effective on or after May 5, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Byron D. Olsen, 4200 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402–4302.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: May 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11211 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 140X)]

Norfolk and Western Railway Company—Abandonment Exemption—in Charles Town, WV

[Docket No. AB–55 (Sub-No. 482X)]

CSX Transportation, Inc.—Abandonment Exemption—in Charles Town, WV

Norfolk and Western Railway Company (NW) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon their jointly-owned 0.99-mile line of railroad between mileposts 0.00 and 0.99 at Charles Town (Ranson), in Jefferson County, WV.[1]

NW and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 9, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by May 20, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 31, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510; and Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St. J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

NW and CSXT have filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 13, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 29, 1994.

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[1] The existing trackage rights were granted by WCL to MTM under a Notice of Exemption in *Minnesota Transportation Museum, Inc.—Trackage Rights Exemption—Wisconsin Central Ltd.,* Finance Docket No. 32146 (ICC served and published Sept. 11, 1992, 57 FR 41779).

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[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicants, in their verified notice, indicated a proposed consummation date of June 1, 1994. Because the verified notice was not filed until April 20, 1994, consummation should not have been proposed to take place prior to June 9, 1994. Applicants' representative has confirmed that the correct consummation date is on or after June 9, 1994.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 94-11210 Filed 5-9-94; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-33 (Sub-No. 84)]

Union Pacific Railroad Company—Abandonment—In Sutter County, CA (Yuba City Branch)

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its 1.91-mile line of railroad from milepost 5.20 at Sutter, CA to the end of the line at milepost 7.11 in Sutter County, CA. The certificate will be issued 30 days after publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant within 10 days after publication.

Any financial assistance offer must be filed with the Commission and applicant no later than 10 days from the publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB-OFA." Any offer previously made must be remade within the 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: April 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Vice Chairman Phillips approved in part and dissented in part with a separate expression. Commissioner Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 94-11209 Filed 5-9-94; 8:45 am]

BILLING CODE 7035-01-P

Release of Waybill Data

The Commission has received a request from ALK Associates Inc. for permission to use certain data from the Commission's 1992 and 1993 (Aug. 1994) ICC Waybill Samples.

A copy of the request (WB547—3/31/94) may be obtained from the ICC Office of Economics and Environmental Analysis.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economics and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927-6196.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 94-11212 Filed 5-9-94; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 31960 (Sub-No. 1)]

Wisconsin Central Ltd.; Trackage Rights Exemption; Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. (WCL) over 3.86-miles of rail line between IHB's connection with the Belt Railway Company (BRC) in Bedford Park, IL, to its connection with the Norfolk Southern Railway Company at Chicago Ridge, IL. These trackage rights are in addition to trackage rights previously granted in a 1991 Agreement between the parties,[1] which allowed overhead trackage rights between Norpaul Yard and BRC and Consolidated Rail Corporation at Elsdon, Chicago, IL. The trackage rights granted to WCL by IHB in this and the previous matter total 17.39 miles. The trackage rights were to become effective on April 28, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet H. Gilbert, 6250 North River Road, suite 900, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11208 Filed 5-9-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is a notice that on January 28, 1994, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 9, 1994.

Dated: May 3, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-11218 Filed 5-9-94; 8:45 am]

BILLING CODE 4410-09-M

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[1] The existing trackage rights were acquired by WCL under a notice of exemption in *Wisconsin Central Ltd.—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company*, Finance Docket No 31960 (ICC served Nov. 4, 1991).

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 26, 1994, Organix Inc., 65 Cummings Park, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols (7370).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 9, 1994.

Dated: May 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-11217 Filed 5-9-94; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 7, 1994, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Branchburg, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315) .	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 9, 1994.

Dated: May 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94-11216 Filed 5-9-94; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Revisions to the Standard Review Plan for the Review of License Application for a Low-Level Radioactive Waste Disposal Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of Final Revision 3 to the SRP.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of Final Revision 3 to the Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility (SRP). The availability of Proposed Draft Revision 3 to the SRP (NUREG-1200) was noticed for public comment in the **Federal Register** on July 12, 1993. In this final revision, NRC made changes to the proposed SRP draft sections in response to comments from the Advisory Committee on Nuclear Waste, State regulators, and the general public. In addition, three administrative changes to the SRP have also been completed during finalization of this revision. The additional changes were not contained in draft version of the SRP noticed for comment because they are considered administrative and not technical changes. The three administrative modifications are: (1) Providing each SRP reference with a designation of essential or helpful; (2) providing each SRP section a designation which indicates the technical, disciplines sufficient to assure a meaningful review of a license application which contains the information requested in NUREG-1199, "Standard Format and Content of a License Application for a Radioactive Low-Level Waste Disposal Facility" (SF&C) and; (3) replacing references to the old Part 20 with new sections appropriate for the new Part 20 issued on May 20, 1991. These administrative changes have required revisions to each section of the SRP and this entire final version has thus been issued as Revision 3 dated March 1994.

Comments and suggestion for improvements in regulatory guidance documents such as Standard Review Plans are encouraged at any time. Regulatory guidance documents will be revised periodically, to accommodate appropriate comments and reflect new information or experience.

DATES: The document is effective as of March 1994.

ADDRESSES: Copies of Final Revision 3 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5283 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) staff has developed guidance for regulators to review an application for a low-level radioactive waste disposal facility license (NUREG-1200). This guidance has been revised in the light of developing technology and as a result of continual internal review and interaction with the State regulatory agencies. The Low-Level Radioactive Waste Policy Amendments Act of 1985 required that NRC "establish procedures and develop the technical capability" to process such license applications (PL 99-240; Sec 9(1)). As a result NRC staff developed both a Standard Format and Content Guide (SF&CG) and a Standard Review Plan (SRP), NUREG-1199 and NUREG 1200 respectively, to facilitate the licensing process. These documents, which sufficient to prepare and review an application, have undergone additional review by the NRC staff and the States and the Advisory Committee on Nuclear Waste.

The NRC staff has formalized the revisions suggested by this review process in the form of Revision 3 to the SRP. This final revision is based upon experience gained in using the SRP for reviews and recognition that guidance on special issues would be helpful to the States. NRC anticipates periodic review and revision of the SRP as practical experience with its use continues and as technological changes occur which indicate a need to revise the SRP.

Some administrative aspects of Revision 3 affect the entire document. However, SRP chapters with technical changes in revision 3 are as follows:

1	Licensing Process (A New SRP Chapter)
3.2	Design Considerations
3.2	A Guidance on Soil Cover Systems Placed Over Low-Level Radioactive Waste
4.1	Receipt and Inspection of Waste
4.2	Waste Handling and Interim Storage
4.3	Waste Disposal Operations
6.1	Release of Radioactivity-Introduction
7.1	Occupation Radiation Exposures
7.2	Radionuclide Inventories
7.3	Radiation Protection Design Features and Operating Procedures
7.4	Radiation Protection Program

Copies of the final revisions (Revision 3) may be obtained from the NRC Public Document Room at the address listed under the **SUMMARY** section of this notice.

FOR FURTHER INFORMATION CONTACT: LeRoy S. Person, Office of Nuclear Materials Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 504-2575.

Dated at Rockville, Maryland, this 8th day of April 1994.

For the Nuclear Regulatory Commission.

John J. Surmeier,

Acting Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-11230 Filed 5-9-94; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-5004 (which should be mentioned in all correspondence concerning this draft guide), is the proposed Revision 3 to Regulatory Guide 5.52, "Standard Format and Content of a Licensee Physical Protection Plan for Strategic Special Nuclear Material at Fixed Sites (Other than Nuclear Power Plants)." DG-5004 is being revised and developed to describe the standard format recommended by the NRC staff for preparing physical protection plans for strategic special nuclear material at fixed sites other than nuclear power plants, as well as guidance on the content of the physical protection plans.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data or a rationale. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by July 15, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of April 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94-11228 Filed 5-9-94; 8:45 am]

BILLING CODE 7590-01-M

Entergy Operations, Inc.; Correction to Partial Denial of Amendment to Facility Operating License and Opportunity for a Hearing

[Docket No. 50-368]

In notice document 94-10122 beginning on page 22028, in the issue dated Thursday, April 28, 1994, make the following correction:

In the second column, the second paragraph, the last line reading "proposed change by a letter dated * * *" correct to read "proposed change by a letter dated April 20, 1994." Also, in the sixth paragraph, the last line reading "letter to the licensee dated * * *" correct to read "letter to the licensee dated April 20, 1994."

Dated at Rockville, Maryland this 2nd day of May 1994.

For the Nuclear Regulatory Commission.

William D. Beckner,

Project Director, Project Directorate IV-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-11229 Filed 5-9-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Company (San Onofre Nuclear Generating Station, Unit 1); Exemption

I

Southern California Edison Company (SCE or the licensee) is the holder of Facility Operating License No. DPR-13, which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility consists of a permanently shutdown pressurized water reactor at the SCE site located in San Diego County, California. SONGS 1 is co-located with San Onofre Nuclear Generating Station, Units 2 and 3, which remain operational.

II

SONGS 1 was permanently shut down in November 1992, and defueling of the reactor completed in March 1993. Upon licensee certification of the defueling on March 9, 1993, Amendment No. 150 to Facility Operating License No. DPR-13, modifying the license to preclude reactor operation, became effective.

Title 10 of the Code of Federal Regulations, § 140.11(a)(4) (10 CFR 140.11(a)(4)), requires each licensee to have and maintain primary nuclear liability insurance in an amount equal to $200 million. In addition, each licensee is required to maintain secondary financial protection in the form of private liability insurance under an industry retrospective plan. However, 10 CFR 140.8 allows that the Commission may, upon application of any interested period or upon its own initiative, grant such exemptions from the requirements of part 140 as it determines are authorized by law and are otherwise in the public interest.

By letter dated February 2, 1993, the licensee requested the elimination of the current requirement for SONGS 1 to participate in the industry retrospective rating plan for secondary level coverage as required in 10 CFR 140.11(a)(4).

III

The Justification presented by the licensee for the request is that the secondary financial protection requirements imposed by 10 CFR 140.11(a)(4) are applicable only to a reactor that is licensed to operate and that is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more. The licensee contends that the provisions of 10 CFR 140.11(a)(4) are no longer applicable to SONGS 1, and there is no credible risk of an accident at SONGS 1 with damages exceeding the $200 million primary coverage which will remain in effect at the SCE site. SCE asserts that because SONGS 1 will not benefit from secondary coverage it should not be obligated to extend such coverage. Additionally, exclusion of SONGS 1 from the secondary financial program will remove the potential liability (up to $75.5 million per event, but not more than $10 million per year per event) that must be reported on SCE financial statements.

The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shut down reactors in SECY–93–127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the Commission has discretionary authority to respond to licensee requests for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Depending on the plant-specific configuration and the time since permanent shutdown, the staff also concluded that potential hazards may exist at permanently shut down reactors for which financial protection is warranted. The staff also concluded that accidents and hazards ensured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR Part 100 and cases interpreting the application of that regulation. The Commission issued a staff requirements memorandum (SRM) addressing SECY–93–127 on July 13, 1993.

In the exercise of its discretionary authority, the Commission may, as long as a potential hazard exists at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time as the hazard is determined to no longer exist, the Commission may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shut down. With regard to SONGS 1, the staff concluded that in view of the time that has elapsed since plant shutdown, aside from the handling, storage, and transportation of spent fuel and radioactive materials, no reasonably conceivable potential accident exists that could cause significant offsite damage.

A severe transportation accident could potentially result in local contamination requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance. The liabilities and indemnification requirements associated with the transfer of spent fuel from the licensee to the Department of Energy will be evaluated on a case-by-case basis at a future time when spent fuel is shipped to a repository.

Typically, the most significant accident sequence for a permanently defueled and shutdown reactor involves the complete loss of water from a light water reactor spent fuel pool. For a spent fuel pool that contains fuel clad with Zircaloy, this beyond-design-basis accident sequence could result in a Zircaloy fuel cladding fire that could propagate through the spent fuel storage pool and result in significant offsite consequences. Although such an accident is beyond the design bases, it may be considered "reasonably conceivable" and could warrant financial protection. Such an accident is possible during the first year after reactor shutdown for a low density spent fuel storage configuration and during the first two to three years after shutdown for spent fuel stored in certain high density configurations. However, the likelihood of occurrence of a fuel cladding fire at SONGS 1 is negated because stainless steel, rather than Zircaloy, cladding is used at SONGS 1. Zircaloy is a pyrophoric material which can undergo spontaneous oxidation before it reaches its melting point. Zircaloy fuel cladding can therefore oxidize by a self-sustaining reaction (at a temperature of approximately 1650°). Stainless steel, however, cannot attain self-sustaining oxidation before it reaches its melting point. This is due to the presence of chromium which forms an impervious oxide film which prevents oxygen from reaching the metal surface. Consequently, there is no temperature at which stainless steel fuel cladding can support a self-sustaining oxidation reaction. Therefore, the postulated cladding fire accident scenario is not possible at SONGS 1. However, using the Zircaloy fuel cladding analysis conservatively bounds the time at which fuel clad melting and fission product release could occur at SONGS 1.

Once the requisite cooling period after reactor shutdown has elapsed, fuel clad melting after a postulated loss of water is no longer a concern since the fuel would air cool sufficiently. Possible accident scenarios, after these cooling periods have elapsed, have greatly reduced consequences, but could result in small releases or precautionary evacuations which could result in offsite liability.

The staff considered liability coverage needs associated with decommissioning activities and transportation of radioactive materials. The staff recognizes that the potential hazards and consequences associated with a reactor which has been permanently shut down with no spent fuel are greatly reduced, that such a reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor and that relief from financial protection requirements would then be warranted. The results of our evaluation, as embodied in the July 13, 1993, SRM on SECY–93–127, allow a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. Although the licensee presented an opinion regarding the application of the Price-Anderson Act and 10 CFR Part 140 to permanently shut down reactors, the staff did not concur with this licensee opinion. Nonetheless, SCE meets the criterion established in SECY–93–127 for relief from secondary financial protection requirements for low density spent fuel storage. Specifically, more than 16 months have elapsed since SONGS 1 was permanently shut down. This time period is conservative for SONGS 1. The one-year cooling period prescribed in SECY–93–127 was based on fuel with Zircaloy cladding; SONGS 1 fuel is fabricated with stainless steel cladding which negates the likelihood and consequences of the cladding fire sequence and shortens the time after shutdown when fuel clad melting could occur upon loss of pool water, as discussed above.

IV

The staff, based on its independent evaluation as embodied in the July 13, 1993, SRM on SECY–93–127 "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the San Onofre Nuclear Generating Station, Unit 1. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V

Based on Sections III and IV above, the Commission has determined that, pursuant to 10 CFR 140.8, this exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission grants an exemption from the requirements of 10 CFR 140.11(a)(4) to the extent that exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for the San Onofre Nuclear Generating Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 22872, dated May 3, 1994).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 4th day of May 1994.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11227 Filed 5–9–94; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel on the Engineered Barrier System: Impact of High-Level Defense Wastes on DOE Waste Management System

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Engineered Barrier System will hold a meeting on Wednesday, June 15, 1994, in Richland, Washington, and a tour of the Hanford facility on Thursday, June 16, 1994. The meeting will be held at the Tower Inn and Conference Center, 1515 George Washington Way, Richland, Washington 99352; tel (509) 946–4121, fax (509) 946–2222. The meeting is open to the public and will begin at 8:30 a.m.

The panel meeting will focus on three areas of interest to the Board. First, panel members will hear about the Department of Energy's (DOE) current plans for processing and packaging high-level tank waste (defense reprocessing waste) at Hanford into forms suitable for transportation and disposal. Second, presentations will be heard on the quantities and characteristics of irradiated materials at Hanford that have not been reprocessed, as well as any plans for their processing and/or packaging into forms suitable for transportation and disposal. Third, panel members have invited appropriate DOE headquarters personnel to talk about activities and plans for the ultimate disposal of surplus weapons plutonium and the affect of this material on the planned high-level waste repository. A site at Yucca Mountain, Nevada, currently is being characterized by the DOE for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste.

On Thursday, June 16, the panel will participate in a tour of the Hanford facilities discussed in the previous day's meeting. While the Board normally makes every effort to ensure that the general public has access to all of its activities, we have been asked to limit the number of people attending this tour due to space limitations and safety and security requirements at the Hanford facility. Consequently, invitations have been extended to a limited number of representatives from the state of Nevada, Nevada affected units of local government, the Nevada state legislature, the Nuclear Regulatory Commission, and the Department of Energy to attend the tour with the Board.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning July 28, 1994. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 4, 1994.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 94–11170 Filed 5–9–94; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities

Morgan Stanley Africa Investment Fund
  Common Stock, $.01 Par Value (File No. 7–12338)
Camden Property Trust
  Shares of Beneficial Interest, $.01 Par Value (File No. 7–12339)
Equitable of Iowa Co.'s, Inc.
  Common Stock, No Par Value (File No. 7–12340)
Enersis S.A.
  American Depositary Shares, No Par Value (File No. 7–12341)
Equity Residential Property Trust
  Shares of Beneficial Interest, $.01 Par Value (File No. 7–12342)
Health Management Associates, Inc.
  Class A Common Stock, No Par Value (File No. 7–12343)
Liberty Corp.
  Common Stock, $.01 Par Value (File No. 7–12344)
Northern Border Partners LP
  Units of Ltd. Partnership (File No. 7–12345)
CoastCast Corp.

- Common Stock, No Par Value (File No. 7–12346)
- Sturm Ruger & Co., Inc.
  - Common Stock, $.01 Par Value (File No. 7–12347)
- Morrison Restaurants, Inc.
  - Common Stock, $3.33½ Par Value (File No. 7–12348)
- Statesman Group, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12349)
- Sofamor/Danek Group, Inc.
  - Common Stock, No Par Value (File No. 7–12350)
- Western National Corp.
  - Common Stock, $.001 Par Value (File No. 7–12351)
- Centex Construction Products, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12352)
- Debartolo Realty Corp. S.A.
  - Common Stock, No Par Value (File No. 7–12353)
- Grand Casino's Inc
  - Common Stock, $.01 Par Value (File No. 7–12354)
- Glimcher Realty Trust
  - Shares of Beneficial Trust, $.01 Par Value (File No. 7–12355)
- Lear Seating Corp.
  - Common Stock, $.01 Par Value (File No. 7–12356)
- Mills Corporation
  - Common Stock, $.01 Par Value (File No. 7–12357)
- Rayonier, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12358)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretory.

[FR Doc. 94–11253 Filed 5–9–94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

- Agree Realty Corporation
  - Common Stock, $.0001 Par Value (File No. 7–12359)
- Carl Karcher Enterprises, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12360)
- Debartolo Realty Corporation
  - Common Stock, No Par Value (File No. 7–12361)
- Grand Casinos, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12362)
- Mills Corporation
  - Common Stock, $.01 Par Value (File No. 7–12363)
- Senior Strategic Income Fund, Inc.
  - Common Stock, $.10 Par Value (File No. 7–12364)
- Rayonier, Inc.
  - Common Stock, $1.00 Par Value (File No. 7–12365)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11250 Filed 5–9–94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

- Bankers Trust New York Corp.
  - Depositary Shares (rep. 1/100 sh. Adj. Rte. Cm. Pfd. Ser. Q) (Filed No. 7–12366)
- Cold Metal Products, Inc.
  - Common Stock $.01 Par Value (File No. 7–12367)
- Digital Equipment Corp.
  - Depositary Shares (rep. ¼ sh. Ser. A Cm. Pfd. Stock, $1.00 Par Value (File No. 7–12368)
- Emerging Markets Floating Rate Fund, Inc.
  - Common Stock, $.001 Par Value (File No. 7–12369)
- Emphesys Financial Group, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12370)
- EOTT Energy Partners, L.P.
  - Common Units rep. L.P. Interests (File No. 7–12371)
- Executive Risk, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12372)
- Fidelity Advisory Emerging Asia Fund, Inc.
  - Common Stock, $.001 Par Value (File No. 7–12373)
- First USA, Inc.
  - 6¼ PRIDES Cv. Pfd., $.01 Par Value (File No. 7–12374)
- Grupo Embotellador de Mexico, S.A. de C.V.
  - Global Depositary Shares (rep. 2 Ord. Partic. Ctfs.) (File No. 7–12375)
- International Colin Energy Corp.
  - Common Stock, No Par Value (File No. 7–12376)
- JDN Realty Corp.
  - Common Stock, $.01 Par Value (File No. 7–12377)
- Macerich Co.
  - Common Stock, $.01 Par Value (File No. 7–12378)
- Morgan Stanley European Emerging Markets Fund, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12379)
- Puget Sound Power & Light Co.
  - Adj. Rte., Cm. Pfd. Ser. B, $25.00 Par Value (File No. 7–12380)
- RCM Strategic Global Government Fund, Inc.
  - Common Stock, $.00001 Par Value (File No. 7–12381)
- Regency Health Services, Inc.
  - Common Stock, $.01 Par Value (File No. 7–12382)
- Rhodes, Inc.
  - Common Stock, No Par Value (File No. 7–12383)
- Rouge Steel Co.
  - Class A Common Stock, $.01 Par Value (File No. 7–12384)
- Santander Finance Ltd.

Non-Cm. Gtd. Pref. Sh. Ser. B, $25.00 Par Value (File No. 7–12385)
Scudder World Income Opportunities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12386)
Security Capital Industrial Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12387)
Storage USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12388)
Titan Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–12389)
Titan Wheel International, Inc.
Common Stock, No Par Value (File No. 7–12390)
Valero Energy Corp.
$3.125 Cv. Pfd. Stock (File No. 7–12391)
Turner Broadcasting
Class A Stock, $.0625 Par Value (File No. 7–12392)
Turner Broadcasting
Class B Stock, $.0625 Par Value (File No. 7–12393)
Rayonier, Inc.
Common Stock, No Par Value (File No. 7–12394)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11252 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 2, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rayonier, Inc.
Common Stock, No Par Value (File No. 7–12396)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11254 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rayonier, Inc.
Common Stock, $.01 Par Value (File No. 7–12395)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11251 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Three-Five Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7–12319)
Fortune Petroleum Corporation
Common Stock, $0.01 Par Value (File No. 7–12320)
Lone Star Industries
Warrants, Expiring December 31, 2000 (File No. 7–12321)
Debartolo Realty Corporation
Common Stock, $.01 Par Value (File No. 7–12322)
InterlCom Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12323)
Citizens, Inc.
Class A Common Stock, No Par Value (File No. 7–12324)
AZCO Mining, Inc.
Common Stock, $.002 Par Value (File No. 7–12325)
Mills Corporation
Common Stock, $.01 Par Value (File No. 7–12326)
Agree Realty Corporation
Common Stock, $.0001 Par Value (File No. 7–12327)
Lehman Brothers Holdings, Inc.
Japanese Yen Warrants Expiring March 5, 1996 (File No. 7–12328)
Morgan Stanley Group, Inc.
Japanese Yen Warrants Expiring September 9, 1995 (File No. 7–12329)
PaineWebber Group, Inc.

US Dollar Japanese Yen Warrants Expiring March 6, 1996 (File No. 7–12330)
Grand Casinos, Inc.
  Common Stock, $.01 Par Value (File No. 7–12331)
Carl Karcher Enterprises, Inc.
  Common Stock, $.01 Par Value (File No. 7–12332)
Conagra, Inc
  9 PC Series A Cum. Pfd. Securities (File No. 7–12333)
TII Industries, Inc.
  Common Stock, $.01 Par Value (File No. 7–12334)
East Group Properties
  Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–12335)
RJR Nabisco Holding Corporation
  Series C Depositary Shares (File No. 7–12336)
Kemper Strategic Income Fund
  Shares of Beneficial Interest, $.01 Par Value (File No. 7–12337)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11255 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20277; 811–5106]

Bull & Bear Financial News Composite Fund, Inc.; Notice of Application

May 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Bull & Bear Financial News Composite Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 11 Hanover Square, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, open-end management investment company organized as a Maryland corporation. On April 10, 1987, applicant filed a notification of registration on Form N–8A and a registration statement on Form N–2. The registration statement became effective on or about September 18, 1987, and applicant commenced its initial public offering immediately thereafter. In connection with applicant's conversion to an open-end management investment company, applicant filed a registration statement on Form N–1A on April 28, 1989, which became effective on or about September 19, 1989.

2. On November 3, 1993, applicant's board of directors adopted an agreement and plan of reorganization and liquidation (the "Plan"). The Plan provided that applicant would transfer all of its assets and liabilities to Bull & Bear Quality Growth Fund (the "Acquiring Fund"), a portfolio of Bull & Bear Funds I, Inc., in exchange for shares of the Acquiring Fund. In approving the Plan, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

3. On November 8, 1993, applicant filed an application for an order of the SEC pursuant to sections 17(b) and 17(d) of the Act and rule 17d–1 thereunder to permit the proposed reorganization. An order of the SEC was granted on January 4, 1994.[1]

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC and mailed to applicant's shareholders on or about December 16, 1993. Applicant's shareholders approved the Plan at a meeting held on January 21, 1994.

5. On January 21, 1994, the reorganization was consummated. Applicant transferred all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund. The exchanges were made at net asset value determined as of the close of business on January 21, 1994. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

6. All expenses incurred in connection with applicant's liquidation and reorganization were borne by Bull & Bear Advisers, Inc., applicant's investment adviser. Such expenses, totalling $40,361, included legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11249 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] Bull and Bear Financial News Composite Fund, Inc., Investment Company Act Release Nos. 19927 (Dec. 7, 1993) (notice) and 19997 (Jan. 4, 1994) (order).

[Investment Company Act Release No. 20275; 811-7114]

Nuveen Select Tax-Free Income Portfolio 5; Notice of Application

May 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Select Tax-Free Income Portfolio 5.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on April 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 333 West Wacker Drive, Chicago, Illinois 60606-1286.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as a closed-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. On August 21, 1992, Applicant filed a registration statement on Form N-1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was not declared effective. Applicant has never made a public offering of its shares.

2. As of the date of this application, Applicant has no securityholders; no assets, debts and liabilities; and is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11248 Filed 5-9-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20274; File No. 812-8782]

The Travelers Insurance Company, et al.

May 3, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Travelers Insurance Company ("The Travelers") and The Travelers Fund BD for Variable Annuities ("Fund BD").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Fund BD of a mortality and expense risk charge imposed under certain individual flexible premium variable annuity contracts ("Contracts").

FILING DATE: The application was filed on January 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applications with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on May 31, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Julie E. Rockmore, Counsel, The Travelers Insurance Company, One Tower Square, Hartford, Connecticut 06183-1051.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Wendell M. Faria, Acting Assistant Director, on (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Travelers, an indirect wholly-owned subsidiary of The Travelers Inc., is a stock life insurance company organized under the laws of the State of Connecticut in 1864.

2. Fund BD was established by The Travelers on October 22, 1993 as a separate account under Connecticut law to fund individual and group flexible premium deferred variable annuity contracts issued by The Travelers. Fund BD is subdivided into subaccounts, each of which will invest its assets exclusively in the shares of one of the portfolios of the SBA Variable Products Series Fund, an open-end series-type management investment company.

3. The Contract is an individual flexible premium variable annuity contract which can be purchased on a qualified or nonqualified basis. Purchase payments under the Contract may be allocated to the subaccounts of Fund BD and/or a fixed account. Upon retirement, annuity payments will be made on a fixed or variable basis.

4. If either the annuitant or the Contract owner dies before the maturity date of the Contract, The Travelers will pay a death benefit. Under the standard death benefit, The Travelers will pay the greatest of (a) the Contract value; (b) the total purchase payments under the Contract; or (c) the Contract value on the fifth Contract year anniversary immediately preceding the receipt by The Travelers of proof of death, less applicable premium tax or surrenders no previously deducted. If the death occurs after age 75 but before age 85, the standard benefit will be the greatest of (a) or (b) above or the Contract value on the latest fifth Contract year on or before the deceased's 75th birthday, less applicable premium tax or surrenders not previously deducted. After age 85,

the benefit will be the Contract value. Under the enhanced death benefit, The Travelers will pay the greater of the Contract value or a guaranteed death benefit equal to purchase payments (minus surrenders and applicable premium taxes) increased by 5% on every Contract date anniversary up to the anniversary following the deceased's 75th birthday, with a maximum benefit of 200% of purchase payments minus surrenders and minus applicable premium taxes. After age 75 but before age 85, the enhanced benefit will be the greater of the guaranteed death benefit as of the deceased's 75th birthday, plus additional purchase payments, minus surrenders and applicable premium taxes or the Contract value less premium taxes. After age 85, The Travelers will pay the Contract value, less applicable premium taxes.

5. The Travelers will assess an annual Contract administrative charge of $30 under the Contracts. This charge will not be assessed after an annuity payout has begun, at the death of the annuitant or the Contract owner, or if the Contract owner has a Contract value greater than $40,000 on the assessment date. The Travelers also will assess the subaccounts of Fund BD a daily asset charge at an effective rate of 0.15% per annum for administrative expenses. Applicants represent that these charges cannot be increased during the life of the Contracts and that they represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts.

6. To compensate The Travelers for assuming mortality and expense risks, The Travelers will deduct from the subaccounts of Fund BD an amount equal on an annual basis to a maximum of 1.02% of the net asset value of the subaccounts in connection with Contracts providing the standard death benefit, and a maximum of 1.30% of the net asset value of the subaccounts in connection with Contracts providing the enhanced death benefit. The Travelers estimates that in connection with the 1.02% fee approximately 75% of the fee is for assumption of the mortality risk and 25% of the fee is for assumption of the expense risk, and in connection with the 1.30% fee approximately 80% of the fee is for assumption of the mortality risk and 20% of the fee is for assumption of the expense risk.

7. The Travelers assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant under annuity options which involve life contingencies. This assures that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under a Contract. The Travelers assumes additional mortality and expense risks by its contractual obligation to pay either the standard or the enhanced death benefit if either the annuitant or the Contract owner dies prior to the maturity date. Because the enhanced death benefit provides a potentially higher level of benefits than the standard death benefit, the mortality risks for the enhanced death benefit exceed those for the standard death benefit. Therefore, Contracts with an enhanced death benefit are assessed a higher mortality and expense risk charge. The Travelers assumes an expense risk because the administrative charge may be insufficient to cover actual expense.

8. Applicants state that if the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by The Travelers. Conversely, if the amount deducted proves more than sufficient, the excess will represent a profit to The Travelers. The Travelers does not expect to profit from the administrative charges, however, it does expect to profit from the mortality and expense risk charge. Any profit would be available to The Travelers for any proper corporate purpose, including payment of distribution expenses.

9. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge ("surrender charge") will be assessed upon certain full or partial surrenders. A surrender charge applies if all or part of the Contract value is surrendered during the first six years following a purchase payment. The surrender charge starts at 6% of a purchase payment in the first, second and third years following the payment, and reduces to 3% in the fourth year, 2% in the fifth year and 1% in the sixth year following the payment. There is no charge after the sixth year following a purchase payment. After the first Contract year, Contract owners may surrender 15% of their Contract value (as of the beginning of the Contract year) without incurring a surrender charge (the "free withdrawal amount"). The free withdrawal allowance applies to partial surrenders of any amount and to full surrenders except full surrenders where the Contract value is directly transferred to annuity contracts issued by other financial institutions. In addition, there is no charge on Contract earnings, which equal: (1) The Contract value; minus (2) the sum of all purchase payments received that have not been previously surrendered; minus (3) the 15% free withdrawal amount. Surrenders will be deemed to have been taken first from any applicable 15% free withdrawal amount; next from purchase payments (on a first-in, first-out basis); and finally from Contract earnings (in excess of any 15% free withdrawal amount). The Travelers does not expect that the surrender charge will cover sales and distribution expense incurred in connection with the Contracts.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

2. Applicants represent that the 1.02% mortality and expense risk charge for Contracts providing the standard death benefit is reasonable in relation to the risks assumed by The Travelers under the Contracts and is within the range of industry practice for comparable annuity contracts. The Travelers states that it has reviewed publicly available information regarding products of other companies taking into consideration such factors as guaranteed minimum death benefits, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, market sector, investment options and the availability of a product for use in qualified and non-qualified plans. Based on this review, The Travelers has concluded that the mortality and expense risk charge for Contracts providing the standard death benefit is within the range of charges determined by industry practice. The Travelers represents that it will maintain at its principal office, and make available upon request of the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology used in, and the results of, the comparative review.

3. Applicants represent that the mortality and expense risk charge of 1.30% for the enhanced death benefit Contracts is reasonable in relation to the risks assumed by The Travelers under the Contracts. In arriving at this determination, The Travelers ran a large number of computer generated trials at various issue ages to determine the

expected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of enhanced death benefit payable in the event of the hypothetical annuitant's or Contract owner's death during the year in question. By analyzing the results of several thousand such simulations, The Travelers was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, The Travelers determined that an additional mortality risk charge of 0.28% was a reasonable charge for the enhanced death benefit as compared to the charge for the standard death benefit. The Travelers undertakes to maintain at its home office a memorandum, available to the Commission or its staff upon request, setting forth in detail the methodology used in determining that the additional risk charge of 0.28% for the enhanced death benefit is reasonable in relation to the risks assumed by The Travelers under the Contracts.

4. Applicants acknowledge that the surrender charge may be insufficient to cover all distribution costs and that, if a profit is realized from the mortality and expense risk charge, all or a portion of that profit may be offset by distribution expenses not reimbursed by the surrender charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the cost relating to distribution of the Contracts. Notwithstanding this, The Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund BD and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by The Travelers at its principal office and will be available to the Commission or its staff upon request.

5. The Travelers also represents that Fund BD will invest only in underlying mutual funds which have undertaken to have a board of directors or board of trustees, as applicable, a majority of whom are not "interested persons" under the Act, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Conclusion

Applicants submit for all of the reasons stated herein, that their request for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act meets the standards set out in Section 6(c) of the Act and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11155 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before June 9, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBIR Mailing Lists and Confirmation Requests.

Form No.: SBA 1386, 1906.

Frequency: On Occasion.

Description of Respondents: Small businesses interested in participating in the SBIR/STTR solicitation process.

Annual Responses: 60,000.

Annual Burden: 500.

Dated: May 3, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–11190 Filed 5–9–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Minority and Women Owned Banks/Thrifts Customer Satisfaction Survey.

Form No.: N/A.

Frequency: On Occasion.

Description of Respondents: Minority/Women Small Business Companies.

Annual Responses: 146.

Annual Burden: 2,482.

Dated: May 3, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–11289 Filed 5–9–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended April 29, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49525
Date filed: April 25, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 25, 1994
Description: Application of Federal Express Corporation pursuant to Section 401(d)(1) of the Act and sbpart Q of the Regulations, requests renewal of its existing fixed-term certificate authority to provide scheduled foreign air transportation of property and mail between Harlingen, Texas, on the one hand, and Mexico City, Guadalajara and Monterrey, Mexico, on the other hand, as contained in Segments 1, 2 and 3 of Federal Express' certificate of public convenience and necessity for Route 568.

Docket Number: 49526
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for renewal of Segment 1 of its certificate for Route 470, issued by Order 89–9–45, authorizing scheduled foreign air transportation of persons, property, and mail between the coterminal points Houston and Dallas/Ft. Worth, Texas, the intermediate points Calgary and Edmonton, Alberta, Canada, and the coterminal points Anchorage and Fairbanks, Alaska.

Docket Number: 49527
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to provide foreign air transportation of persons, property, and mail between Chicago, Dallas/Ft. Worth, Los Angeles, and New York, on the one hand, and Osaka, Japan, on the other, and beyond to Hong Kong, Seoul, Singapore, and Taipei.

Docket Number: 49529
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of USA Jet Airlines, Inc., pursuant to Section 401(d)(1) of the Act, applies for a certificate of public convenience and necessity authorizing USA Jet to provide worldwide foreign charter air transportation of property and mail. Initially, USA Jet plans to operate charters to points in Canada and Mexico from various points in the United States.

Docket Number: 49530
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of USA Jet Airlines, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing USA Jet to provide interstate and overseas charter air transportation of property and mail.

Docket Number: 49533
Date filed: April 29, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 27, 1994
Description: Application of United Parcel Service Co., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests renewal of its existing certificate authority to provide scheduled foreign air transportation of property and mail between Houston, Texas, on the one hand, and Mexico City, Guadalajara and Monterrey, Mexico, on the other hand, as contained in Segments 1, 2 and 3 of UPS's certificate of public convenience and necessity for Route 569. UPS requests that the foregoing authority be renewed for an additional five-year terms, through October 27, 1999, or for five years after the effective date of the DOT's final order granting this Application, whichever is later.

Docket Number: 45959
Date filed: April 28, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 26, 1994
Description: Application of Amerijet International, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests renewal of a certificate of public convenience and necessity issued by Order 89–9–36 authorizing Amerijet to provide scheduled all-cargo air transportation between Miami, Florida, on the one hand, and Mexico City, and Merida, Mexico, on the other.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 94–11151 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary

Regional Liaison Outreach and Services Program (L.O.S.P.); Announcement of Request for Proposals

AGENCY: Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.), Department of Transportation.

ACTION: Notice of request for proposals.

SUMMARY: The Department of Transportation's Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.) is responsible for the Department's implementation and execution of the functions and duties under sections eight (8) and fifteen (15) of the Small Business Act (15 U.S.C. 637) for developing policies and procedures consistent with Federal statutes to provide policy direction for minority, women-owned, small, and disadvantaged business (S/DBE) participation in the Department's procurement and Federal financial assistance activities. The office is also responsible for implementing and monitoring the Department's goals for minority, women-owned and small and disadvantaged businesses. The Secretary of Transportation has encouraged DOT operating administrations to expand opportunities for these entrepreneurs to participate fully in all DOT-funded procurements and assisted programs. This request solicits competitive proposals from organizations classified as minority trade associations and/or minority Chambers of Commerce for participation under OSDBU's Liaison Outreach and Services Program (LOSP). Eligible applicants must be registered

with the Internal Revenue Service as 501 C(6) tax-exempt organizations. OSDBU will enter into Cooperative Agreements with these organizations to provide liaison services between the DOT, its grantees, recipients, contractors, subcontractors, and minority, women-owned; and disadvantaged business enterprises. This Request for Proposals contains information concerning: (1) The principal objectives of the competition, eligible applicants, activities and factors for award; (2) the application process, including how to apply and the criteria used for selection; and (3) a checklist of application submission requirements.

FOR GENERAL AND SPECIFIC INFORMATION CONTACT: Mr. Art Jackson or Mr. David Benton, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., room 9410, Wash., DC 20590, Tel. (202) 366–2852 or (800) 532–1169.

SEND PROPOSALS TO: Mr. Art Jackson, Financial Analyst, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., room 9410, Washington, DC 20590.

DATES: Proposals must be received at the above location by June 6, 1994 4 p.m., Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and not reviewed. DOT plans to give notice of awards on all applications by June 30, 1994.

Dated: May 9, 1994.

Luz Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

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SUPPLEMENTARY INFORMATION:

1. Introduction

1.1 Background

The United States Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The OSDBU administers the Department's Small and Disadvantaged Business Enterprise (DBE) Program which is designed to ensure that small businesses, including small disadvantaged and minority firms, have an equitable opportunity to participate in DOT's procurement and Federal financial assistance programs and that they receive a fair share of the resulting contract awards. Because DOT's policy is to encourage and increase DBE participation in the contracts and programs that it funds, during FY 1993, DBEs received over $2.6 billion or 14.4 percent of highway, transit, air and rail contracts from DOT-assisted State and local transportation agencies.

OSDBU develops Department-wide policy and administers a number of programs and activities to implement the OSDBU's Congressional mandate of increasing the level of participation of DBEs in the Federal financial assistance and direct contracting programs of all modal administrations of DOT. OSDBU's Direct Contracting and Financial Assistance Division (DC/FA) is responsible for the development and implementation of an effective program of activities directed at ensuring DBE participation in the Department's direct procurement and Federal financial assistance activities. This division monitors all DOT procurement activities that involve the participation of DBEs, including the goal settings and procurement practices of DOT financial assistance recipients, namely, State and local transportation agencies. The division also serves an important function in assisting firms in their marketing of the Department and all of its operating administrations. OSDBU's Minority Business Resource Center (MBRC) is responsible for developing and administering programs to encourage, stimulate, promote and assist DBEs to obtain and manage transportation-related contracts, subcontracts and projects. The MBRC administers the Short Term Lending Program (STLP) and the Bonding Assistance Program, two financial assistance efforts which provide assistance in obtaining short-term working capital and bonding for DBEs. Under the STLP, lines of credit up to $500,000 are available at prime interest rates to finance accounts receivable for transportation-related contracts. The Bonding Assistance Program enables DBEs to apply for bid, performance and payment bonds on contracts up to $1,000,000.

1.2 Program Description and Goals

An area where the OSDBU has focused considerable efforts has been that of increasing DBE access to DOT financial assistance programs and contracting opportunities through the Liaison Outreach and Services Program (LOSP). This broad-based initiative utilizes Cooperative Agreements with a number of minority Chambers of Commerce and minority trade associations to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors and DBEs. The LOSP includes activities such as information dissemination, outreach services, conference and seminar participation and referrals to technical assistance agencies (i.e., MBDCs, SBDCs and State DOT highway supportive services contractors) which offer management and technical assistance in financial assistance, marketing and other business areas. In addition, the minority organizations include DOT and other transportation-related information in their monthly or quarterly newsletters and provide one-on-one business counseling to DBEs currently doing business or that have the potential for doing business with DOT at the Federal, state or local levels.

Information dissemination and outreach include the distribution of the following DOT marketing materials: DOT Bonding Assistance Program Brochures; DOT Bonding Assistance Fact Sheets; DOT Short-Term Lending Program Brochures; DOT Short-Term Lending Fact Sheets; Procurement Forecasts; DOT Small Business Subcontracting Opportunities Directory; Contracting with the United States Department of Transportation Booklets; DOT Bonding Assistance Program Applications; and DOT Short-Term Lending Program Applications. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive document which serves as a resource and reference tool.

Participating LOSP organizations make referrals to technical assistance agencies offering assistance to DBEs in the completion and submission of Short-Term Lending and Bonding Assistance Program applications.

The LOSP was established by the OSDBU in May 1992 in response to the continuing need to outreach to the small and minority business community and increase their participation in DOT contracting and financial assistance programs. To address this need, the LOSP seeks to increase the number of small businesses and DBEs that enter into transportation-related contracts and that receive DOT STLP lines of credit and bonding assistance. This goal is accomplished by the OSDBU working closely with minority Chambers of Commerce and minority trade associations to:

(1) Establish a communications link between DOT, its grantees, recipients, contractors, subcontractors and the small and disadvantaged business community.

(2) Increase awareness of DOT contracting opportunities and financial assistance programs by disseminating DOT marketing materials and relevant information at selected conferences, seminars and marketplace events.

(3) Develop and/or strengthen linkages with State DOTs, local transportation agencies, transportation prime contractors, State highway supportive services contractors, Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs) and other minority Chambers of Commerce and minority trade associations to encourage DBE participation in DOT programs.

(4) Stimulate referrals of DBEs to obtain technical assistance from Federal, State and local agencies such as MBDCs, SBDCs and State DOT highway supportive services contractors for management and other business-related assistance including completion and submission of DOT Short-Term Lending Program and Bonding Assistance Program application packages.

(5) Increase awareness of DOT programs by providing DOT representation at selected conferences, seminars and marketplace events and by providing DOT ads and articles in organizations' newsletters.

(6) Develop and maintain databases of transportation-related DBEs as potential participants in DOT procurement and/or financial assistance programs.

1.3 Description of Competition

The purpose of this RFP is to solicit proposals from eligible national and regional minority Chambers of Commerce and minority trade associations to participate in the Liaison and Outreach Services Program (LOSP). The LOSP shall enable the OSDBU to establish a regional presence by assisting small businesses and DBEs in securing information on DOT procurement opportunities, Financial Assistance Programs and the short-term lending and bonding assistance programs to increase the number of DBEs that enter into transportation-related contracts. The LOSP is intended to increase collaboration between OSDBU, minority Chambers of Commerce and minority trade associations to strengthen and enhance their ability to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors and DBEs. As the program requirements and selection criteria indicate, the OSDBU also intends that the LOSP be multi-dimensional; that is, the selected organizations must have the capacity to effectively access and provide supportive services to the broad range of small business and DBE clients within their respective geographical areas and must be able to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources and avoid duplication of effort.

Cooperative agreement awards will be up to $95,000. It is DOT's intent to fund one agreement in each of ten (10) regions, however, there may be multiple awards, if warranted. The geographical distribution of DOT regions is shown in map form in Attachment 1. The DOT regions, with states and territories comprising each, are listed below:

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Region 2: New Jersey, New York, Puerto Rico
Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, Texas
Region 7: Iowa, Kansas, Missouri, Nebraska
Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Region 9: Arizona, American Samoa, California, Guam, Hawaii, Nevada
Region 10: Alaska, Idaho, Oregon, Washington

1.4 Duration of Agreements

Cooperative agreements will be awarded for a period of 12 months (one year) with a one year renewable option. Continuation funding will be contingent upon satisfactory performance and the availability of funds in subsequent fiscal years.

1.5 Authority

DOT is authorized under 49 U.S.C. 322 (Pub. L. 97–449), to develop by Cooperative Agreements, support mechanisms including liaison and assistance programs, that will enable small businesses and DBEs to take advantage of transportation-related contracts.

1.6 Eligibility Requirements

An eligible applicant organization will be: An established, non-profit, minority Chamber of Commerce or minority trade association which has the documented experience and capacity necessary to successfully operate and administer a coordinated, regional liaison outreach effort within a region of the United States.

In addition, to be eligible, a minority Chamber of Commerce or minority trade association must:

(a) Be an established 501 C(6) tax-exempt organization (provide documentation as verification);

(b) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, management and marketing assistance services and referral to technical assistance agencies to DBEs within the LOSP regional service area in which proposed services will be provided; and

(c) Have an office physically located within the LOSP regional service area.

No application will be accepted without proof of tax-exempt status.

2. Program Requirements

In conducting the activities to achieve the goals of the LOSP, the recipient shall be responsible for implementing the activities under 2.1 and 2.2 below. The OSDBU shall be responsible for conducting activities under 2.3.

2.1 Recipient Responsibilities

1. Each LOSP participant shall: (a) Collaborate with and coordinate on programs, activities, services and technical assistance with other Federal, State and local organizations and agencies serving transportation-related small businesses and DBEs, particularly State DOTs and DOT grantees.

(b) Initiate, develop and maintain interagency referral arrangements with agencies offering specialized management and technical assistance including DOT/state supportive services contractors, MBDCs, SBDCs and other appropriate programs.

(c) Establish a transportation advisory committee comprised of members who have demonstrated expertise in the preparation of financial statements and bid/proposal development to advise on the development and implementation of LOSP activities.

(d) Conduct one (1) regional conference to address contracting opportunities within DOT modal administrations and from state and local transportation agencies within the region.

(e) Develop structured, consultative relationships with key constituent groups within the region to help build and reinforce collaboration. Such relationships will ensure that DOT non-minority and minority prime contractors as well as minority Chambers of Commerce and minority trade associations facilitate awareness and utilization of LOSP services.

(f) Implement information dissemination and education activities and strategies to maximize outreach regarding DOT procurement opportunities and the short-term lending and bonding assistance programs.

(g) Conduct an on-going evaluation of activities funded through this cooperative agreement. Evaluation will quantitatively and qualitatively describe LOSP activities, the services and the recipients of services. Each applicant must develop and implement an on-going evaluation plan.

(h) Develop structured, consultative relationships with the private sector financial community and Federal, State, regional and local agencies which provide specialized financial technical assistance services to DBEs.

(i) Establish and maintain an 800 toll free line to be made available to minority, women-owned, small and disadvantaged businesses interested in transportation-related procurements and information on the application process for the DOT Short Term Lending and Bonding Assistance Programs. Referral services shall be provided.

(j) Furnish all labor, facilities and equipment to perform the services described in this announcement.

2.2 Work Requirements

Each LOSP participant must perform work in the following functional areas:

(a) Information Dissemination and Outreach
(b) Conference and Seminar Participation
(c) Referrals to Technical Assistance Agencies
(d) Database Development

a. Information Dissemination and Outreach

Each LOSP program director shall meet with OSDBU officials to become familiar with DOT materials and literature to disseminate appropriate documents to DBEs at conferences, seminars, workshops, and to those interested in and have the capacity to perform transportation-related projects. This LOSP "core service" includes distribution of general information on DOT's overall DBE program, specific information on DOT's short-term lending and bonding assistance programs; and information and assistance on DOT's procurement opportunities. Materials to be disseminated shall include, but are not limited to, fact sheets, brochures, short-term lending and bonding assistance program applications, and reports and advertisements which are directed toward the DBE communities in each region.

The LOSP participant shall publish stories/articles and features in the recipient's newsletter which contain information regarding the accessibility to procurement opportunities within DOT, and the short-term lending and bonding assistance programs. The Director, OSDBU, shall approve all stories, articles, and special features prior to their publication in the recipient's monthly or quarterly newsletter.

b. Conference and Seminar Participation

The LOSP participant shall participate in regional, state and local procurement conferences on behalf of the OSDBU and disseminate DOT procurement information, short-term lending and bonding assistance program literature and other materials. The conferences/seminars shall be transportation-related and each shall be approved by the Director, OSDBU, prior to participation. The LOSP participant shall identify regional, state and local conferences where a significant number of DBEs with transportation-related capabilities are expected to be in attendance. The LOSP participant shall maintain the DOT booth at transportation-related conferences/seminars. A list of proposed DBE conferences and seminars being considered for participation under the Cooperative Agreement shall be forwarded to OSDBU for review and approval.

The LOSP participant shall conduct one (1) regional conference and shall be responsible for all conference planning and logistics which include identifying and contacting DBEs, mailing invitational letters, handling details for exhibit booths and luncheons, preparing conference brochures as well as tentative and final conference agendas, and securing media coverage. A conference report shall be submitted to OSDBU no later than 30 days after the conference.

c. Referrals to Technical Assistance Agencies

Each LOSP participant shall provide technical assistance services by referring DBEs to agencies that offer assistance in the preparation of DOT procurement documents and applications for loans and bonds for submission on transportation-related projects. In addition, specific referrals shall be made to agencies that certify DBEs using DOT guidelines.

d. Database Development

Each LOSP participant shall develop a comprehensive data base of firms within its regional service area that have the capability to perform transportation-related contracts.

2.3 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

The OSDBU shall perform the following roles as its contribution to the attainment of LOSP objectives:

1. Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.
2. Provide orientation and training to applicants awarded funding for participation in the LOSP.
3. Systematically monitor the performance of successful applicants' activities and program compliance.
4. Assist successful applicants in collaborating and developing or strengthening linkages with State DOTs, technical assistance agencies and DOT grantees within regional geographical areas served.
5. Facilitate the exchange and transfer of successful LOSP activities and program information among regional LOSP participants.

3. Submission of Proposals

3.1 Content and Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the information set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization (as defined in § 1.6 of this announcement) shall submit only one proposal for consideration by DOT.

Applications should be double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus four bound copies, should be submitted. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Proposals should be submitted to: Art Jackson, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street, SW., room 9410, Washington, DC 20590.

Proposals must be received by DOT/OSDBU no later than June 6, 1994, 4 p.m., EST.

4. Selection Criteria

4.1 General Criteria

DOT will use the following criteria to rate and rank applications received in response to this announcement for the applicant's region. Applications will be evaluated for each region on a point system (maximum number of points = 100). The following five (5) maximum weighted categories will constitute DOT's selection criteria:

—Approach (25 points)
—Linkages (25 points)
—Organizational Capability (25 points)
—Staff Capabilities and Experience (15 points)
—Cost (10 points)

A. Approach and Linkages (50 Points)

1. Approach (25 Points). The applicant must describe the activities proposed to be implemented under the cooperative agreement and how the work will be accomplished across the LOSP regional area. Present a well-constructed plan of action. DOT will consider the extent to which the proposed objectives are specific, measurable, time-phased, consistent with LOSP goals and the proposed activities are consistent with the applicant organization's overall mission. DOT will give priority consideration to applicants that demonstrate innovation and creativity of approach in increasing the ability of DBEs to access information on DOT contracting opportunities and financial assistance programs. DOT will also rate the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

2. Linkages (25 Points). DOT will consider innovative aspects of the applicant's approach which build upon the applicant's strength(s) and facilitate and encourage linkages to existing resources available within the region. The applicant's structure for linking urban and rural DBEs to the LOSP should be outlined. The applicant should describe support and intended collaboration on LOSP activities from DOT grantees, prime contractors, subcontractors, State DOTs, State highway supportive services contractors, SBDCs, MBDCs and colleges and universities serving minorities including Historically Black Colleges and Universities (HBCUs), Hispanic Association of Colleges and Universities' affiliations (HACUs) and Tribal-Affiliated Colleges and Universities (TACUs). DOT will also rate the effectiveness of the applicant's strategy to provide outreach, networking and liaison activities to the regional area to be served. In rating this factor, DOT will consider the extent to which the applicant demonstrates ability to effectively access and network supportive services to the broad and diverse range of DBEs within the applicant's regional service area. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to identified needs that can be successfully carried out within the period of this agreement and a plan for forming and involving an internal transportation advisory committee in the execution of that strategy.

B. Organizational Capability (25 Points)

The applicant organization must have outreach resources and relevant experience in carrying out the purposes of the LOSP. In rating this factor, DOT will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of minority businesses in general and transportation-related DBEs in particular. The applicant must also describe the technical and administrative resources it plans to use in achieving proposed objectives (i.e., computer facilities, voluntary staff time, space and financial resources).

C. Staff Capabilities and Experience (15 Points)

The applicant organization should provide a list of proposed personnel for the project with salaries, educational levels and previous experience delineated. The applicant's project team must be well-qualified and knowledgeable (ensuring diversity) which shows evidence of the ability to deal effectively with the broad range of DBE clients to be served. Resumes must be submitted for all proposed key personnel, outside consultants and subcontractors. Experience of key personnel in providing services similar in scope and nature to the proposed effort must be presented in detail. The Project Director will serve as the responsible individual for the project a minimum of 50 percent of his/her time. He/she must be designated in the proposal and his/her resume must reflect appropriate knowledge of the regional area and supervisory experience.

DOT will consider the extent to which the applicant's proposed management plan (a) clearly delineates staff responsibilities and accountability for all work required and (b) presents a work plan with a clear and feasible schedule for conducting all project tasks.

D. Cost (15 Points)

The budget is the applicant's estimate of the total cost of establishing and administering its participation in the LOSP. The applicant's budget must be adequate to support the project and costs must be reasonable in relation to project objectives. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category not to exceed the maximum number of points allowed for each category. Applications which are not responsive to the established criteria above will be disqualified.

Appendix A—Application Form for Proposals for the Department of Transportation, Regional Liaison Outreach and Services Program (LOSP)

Proposals for the DOT Regional Liaison Outreach and Services Program (LOSP) should contain all of the following information and should be submitted in the following format.

Applications should be double spaced and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus four bound copies, should be submitted. Applications, excluding attachments, will be limited to 35 pages. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to: Art Jackson, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street, SW., room 9410, Washington, DC 20590.

Proposals Must be Received by DOT/OSDBU no Later than June 6, 1994, 4 p.m. EST.

All applications must contain the following sections in the following order.

1. *Table of Contents*—Identify all parts, sections and attachments of the application.
2. *Application Summary Page*—Provide a one page overview of the following:
   - —The applicant's proposed LOSP, its related activities including key elements of the plan of action/methodology to achieve project objectives.
   - —The applicant's relevant organizational experience and capabilities.
3. *Understanding of the Work*—Provide a narrative which contains specific project information as follows:
   - —The applicant will describe its understanding of the LOSP, program goals and the role of the applicant's proposed LOSP in advancing the applicant's goals.
   - —The applicant will describe specific outreach needs of transportation-related DBEs in the region served and how the LOSP will address the identified needs.
4. *Approach/Methodology*
   - —Describe the applicant's methodology or plan of action for conducting the project in terms of the tasks to be performed.
   - —Describe the specific services or activities to be performed and how these services/activities will be implemented.
   - —Describe innovative and/or creative approaches to be implemented through the LOSP to increase the ability of DBEs to access information on DOT contracting opportunities and financial assistance programs.
5. *Linkages*
   - —Describe outreach activities and linkages to be implemented to ensure that rural small and minority disadvantaged businesses participate in LOSP activities.
   - —Describe or indicate evidence of linkages or collaborations developed or to be developed with State DOTs, DOT grantees, DOT prime contractors, other minority Chambers of Commerce as well as minority trade associations and technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs and SBDCs and minority institutions including HBCUs, HACUs and TACUs.
6. *Organizational Capabilities*
   - —Describe recent, relevant and successful experience in advocating for and addressing the needs of small and minority businesses in general and transportation-related DBEs in particular.
   - —Describe relevant experience in working or collaborating with minority Chambers of Commerce and minority trade associations, DOT grantees, State DOTs, technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs, SBDCs and minority institutions including HBCUs, HACUs and TACUs.
   - —Describe internal resources available to use in successfully performing/completing the work.
7. *Staff Capabilities*—Describe the qualifications and relevant experience, in relation to project requirements, of the key personnel to be used in the project.
8. *Management Plan*—Describe how personnel are to be organized in the project and how they will be used to accomplish project objectives. Outline staff responsibilities, accountability and a schedule for conducting all project tasks.
9. *Budget Narrative*—Outline all proposed budget/cost information in detail.
10. *Assurances Signature Form*—Complete the attached form identified as Attachment 2.
11. *Certification Signature Form*—Complete the attached form identified as Attachment 3.
12. *Standard Form 424*—(Request for Federal Assistance). Complete the attached Standard Form 424 identified as Attachment 4.

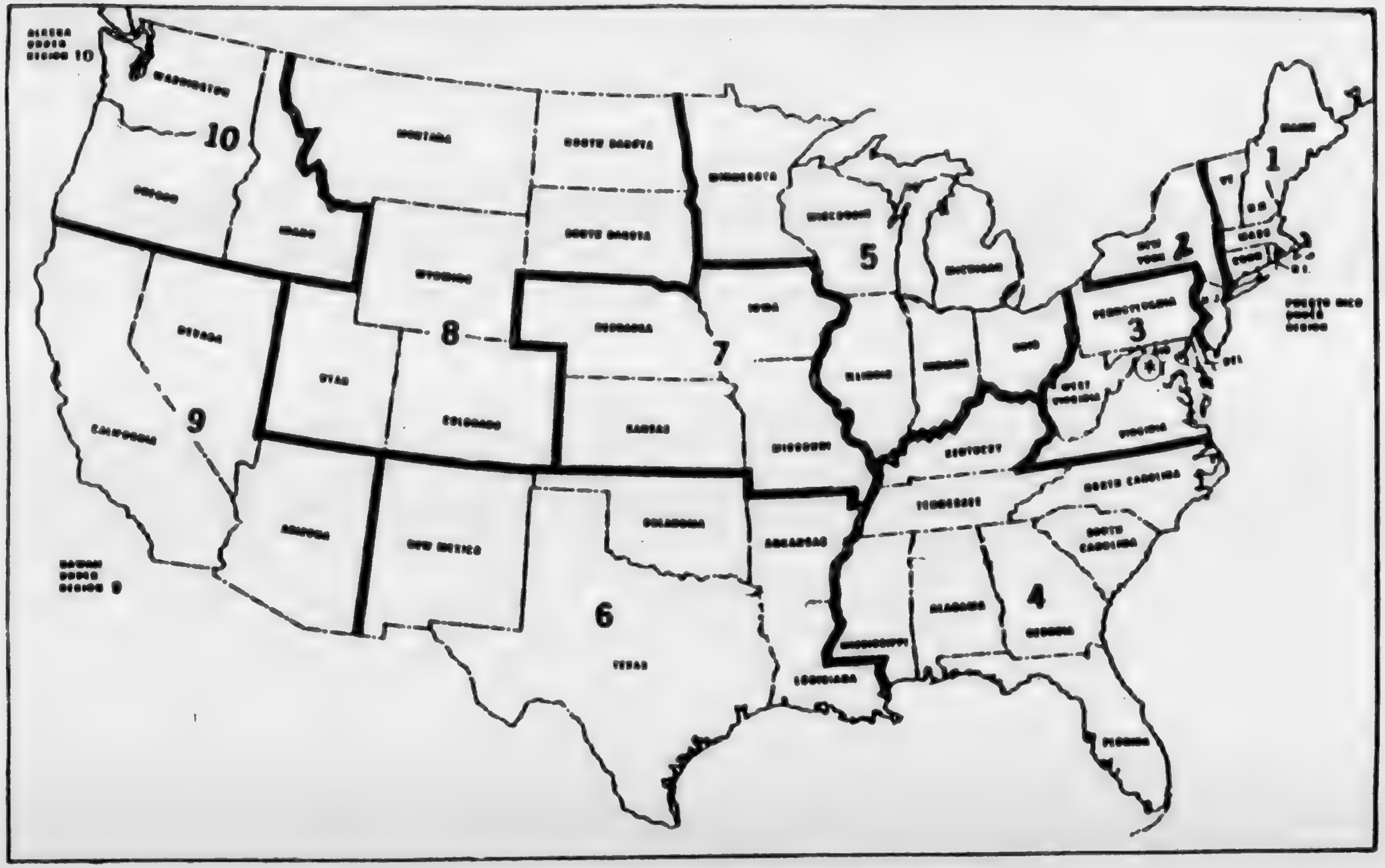
Please Be Sure That All Forms Have Been Signed by an Authorized Official Who Can Legally Represent the Organization.

BILLING CODE 4910–62–P

ATTACHMENT 1

LIAISON OUTREACH & SERVICES PROGRAM
LOSP

GEOGRAPHICAL BOUNDARIES (REGIONAL)



U.S. DEPARTMENT OF TRANSPORTATION (DOT)
OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION
OSDBU

ATTACHMENT 2

Assurances

All recipients of Federal funding are required to assure that the recipient:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

- Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900; Subpart F).

- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C.290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

- Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a and 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for Federally assisted construction subagreements.

- Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires the recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

- Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

- Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

- Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U S C 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A-133. Audits of Institutions of Higher Learning and other Non-profit Institutions.

- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:

- Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.

- Will not use the assistance to replace State and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year

- Will use the assistance only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of the program.

- Will comply with the Notice, Hearing, and Grievance Procedures found in § 176 of the Act.

- Will comply with the nondisplacement rules found in § 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining; agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave, an employee who is on strike or is being locked out, or an employee who is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances - Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the attached Assurances.

NOTE: This form must be signed and included in the application.

Organization Name

Project Name

Name and Title of Authorized Representative

Signature

Date

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certified that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

1. **Inability to Certify.** The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.

2. **Erroneous Certification.** The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.

3. **Notice of Error in Certification.** The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. **Definitions.** The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a "prospective primary participant in a covered transaction" as defined in the rules implementing Executive Order 12549. You may contact the Corporation for assistance in obtaining a copy of those regulations.

5. **Certification Requirement for Subgrant Agreements.** The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. **Certification Inclusion in Subgrant Agreements.** The applicant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. **Certification of Subgrant Principals.** A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. **Prudent Person Standard.** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. **Non-Certification in Subgrant Agreements.** Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ATTACHMENT 3

Certifications

Before completing certification, please read Certification Instructions on the following page.

Certification - Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(1). The applicant certifies to the best of its knowledge and belief, that it and its principals:

(a). Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency,

(b). Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property,

(c). Are not presently indicted *for* or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and

(d). Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default;

(2). Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification - Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 34 CFR Part 85, Section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1). Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2). Establishing a drug-free awareness program to inform employees about --

(a) the dangers of drug abuse in the workplace,

(b) the grantee's policy of maintaining a drug-free workplace,

(c) any available drug counseling, rehabilitation, and employee assistance programs, and

(d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3). Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4). Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) abide by the terms of the statement, and

(b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5). Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6). Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted--

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7). Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification - Lobbying Activities

As required by Section 1352, Title 31 of the US Code, the applicant certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Certification – Signature

Before You Start. Before completing certification, please read Certification Instructions.

NOTE: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

•Certification:	Debarment, Suspension, and Other Responsibility Matters
•Certification:	Drug-Free Workplace
•Certification:	Lobbying Activities

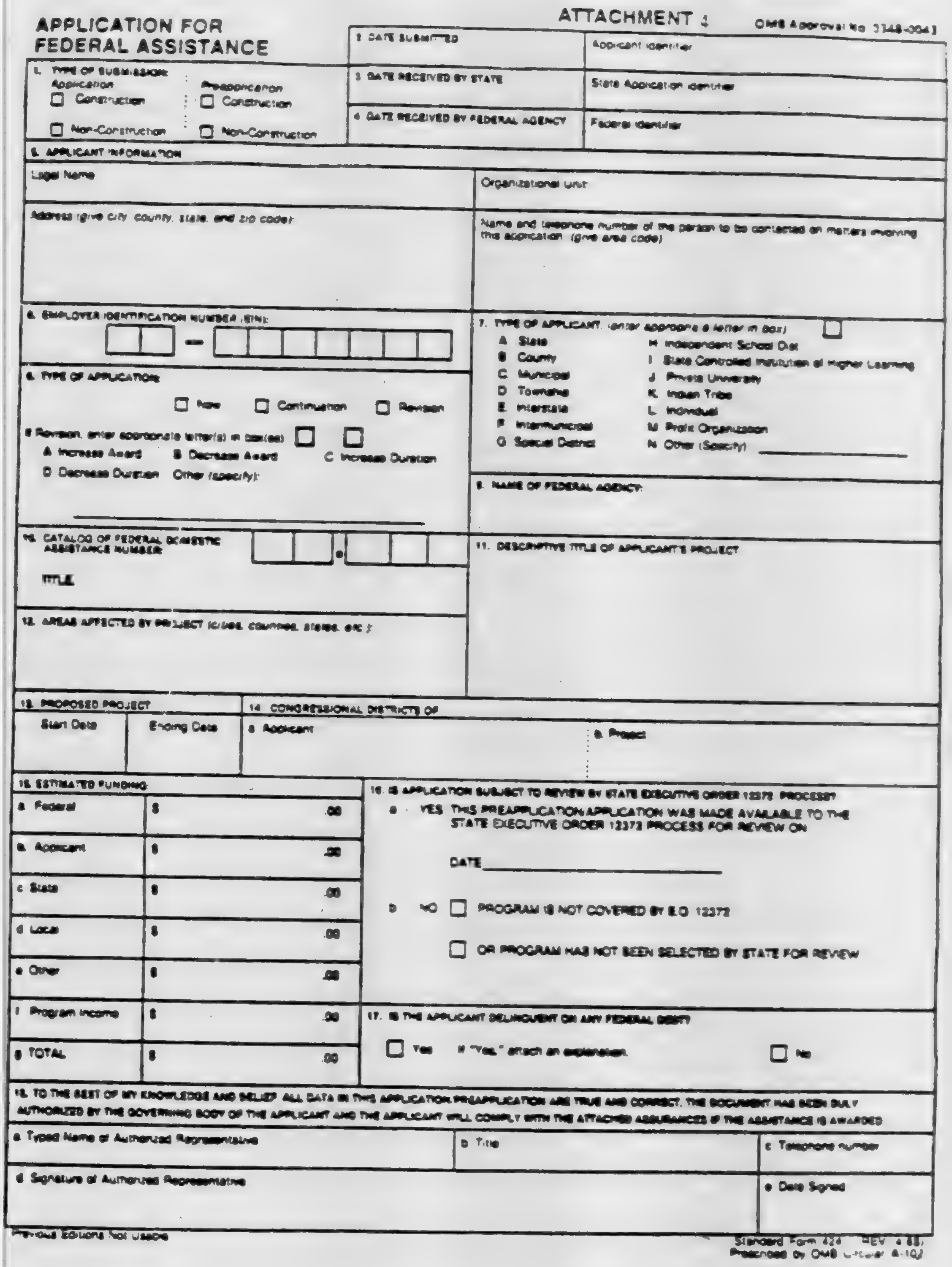
Organization Name

Project Name

Name and Titled of Authorized Representative

Signature

Date



ATTACHMENT 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ______________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ______________________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 94-11150 Filed 5-9-94; 8:45 am]

BILLING CODE 4910-62-C

Coast Guard

[CGD08-94-011]

Houston/Galveston Navigation Safety Advisory Committee; Solicitation for Membership

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice: solicitation for new members.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee. Present appointments will expire October 1, 1994.

DATES: Requests for applications should be received no later than June 15, 1994. Completed applications should be returned no later than July 15, 1994.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

SUPPLEMENTARY INFORMATION: The Commission shall consist of eighteen members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the inshore and the offshore waters of the Gulf of Mexico:.

(1) Two members who are employed by the Port of Houston Authority or have been selected by that entity to represent them.

(2) Two members who are employed by the Port of Galveston or the Texas City Port Complex or have been selected by those entities to represent them.

(3) Two members from organizations that represent shipowners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas.

(4) Two members representing organizations that operate tugs or barges that utilize the port facilities at Galveston, Houston, and Texas City Port Complex.

(5) Two members representing shipping companies that transport cargo from the Ports of Galveston and Houston on liners, break bulk or tramp steamer vessels.

(6) Two members representing those who pilot or command vessels that utilize the Ports of Galveston and Houston.

(7) Two at-large members who may represent a particular interest group but who utilize the port facilities at Galveston, Houston, and Texas City.

(8) One member representing labor organizations which load and unload cargo at the Ports of Galveston and Houston.

(9) One member representing licensed merchant marines, other than pilots, who perform shipboard duties on vessels which utilize the port facilities of Galveston and Houston.

(10) One member representing environmental interests.

(11) One member representing the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Houston/Galveston areas as required by the Coast Guard. The committee normally meets three times a year at various locations in the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 1, 1996.

Dated: April 29, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94-11225 Filed 5-9-94; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-94-18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 30, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. ______, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 3, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 23869

Petitioner: Strong Enterprises, Inc. & the Relative Workshop, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a)

Description of Relief Sought/Disposition: To extend the termination date of Exemption No. 4943, which would allow Strong Enterprises, Inc., and the Workshop, Inc. to continue to allow their respective employees, representatives, and other volunteer experimental parachute test jumpers under their direction and control to make parachute jumps.

Docket No.: 27235

Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR Part 121, Appendix H
Description of Relief Sought/ Disposition: To amend Exemption No. 5807, which would allow United Airlines to add relief to authorized pilot in command training and checking to the exemption and to delete conditions 3 and 4 of the exemption.

Docket No.: 27539
Petitioner: Seaborne Seaplane Adventures
Sections of the FAR Affected: 14 CFR 135.173
Description of Relief Sought/ Disposition: To permit ProMech to operate its DeHavilland Twin Otter aircraft without weather radar or thunderstorm detection equipment in the Caribbean.

Docket No.: 27625
Petitioner: Robert M. Wilbur, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit Mr. Wilbur to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27641
Petitioner: Seawind
Sections of the FAR Affected: 14 CFR 21.24(a)(1)(ii)
Description of Relief Sought: To allow issuance of a type certificate for amphibious primary category aircraft that exceed 2700 pounds.

Docket No.: 27666
Petitioner: William H. Williams
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Williams to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27668
Petitioner: George Lee Meyners
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Meyners to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27676
Petitioner: Clifford E. Magnor
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Magnor to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 27599
Petitioner: Seaborne Seaplane Adventures
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought/ Disposition: To continue operating its DeHavilland Twin Otter aircraft without Ground Proximity Warning Systems (GPWS) after the April 20, 1994, mandatory compliance date.
DENIAL, 4/18/94, Exemption No. 5872

Docket No.: 27645
Petitioner: Trans World Express, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought/ Disposition: To permit Trans World Express, Inc. (TWE) to operate aircraft registration number N3108 without a ground proximity warning system (GPWS) installed therein until April 23, 1994.
GRANT, 4/21/94, Exemption No. 5883

Docket No.: 27692
Petitioner: Air Anguilla, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To continue operating its one DHC–6 Twin Otter aircraft without Ground Proximity Warning Systems (GPWS) after the April 20, 1994, mandatory compliance date.
DENIAL, 4/20/94, Exemption No. 5877

Docket No.: 27706
Petitioner: Northwest Express Regional Airlines
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To permit NERA to operate its fleet of 20 Fairchild Metro III airplanes after April 20, 1994, without an operational ground proximity warning system (GPWS).
GRANT, 4/20/94, Exemption No. 5878

Docket No.: 27707
Petitioner: Air Vegas, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought/ Disposition: To permit Air Vegas to operate its four Beechcraft Be-C99 aircraft with an inoperative Airtell Centaurus ground proximity warning system (GPWS)
GRANT, 4/20/94, Exemption No. 5879

Docket No.: 27716
Petitioner: Gulfstream International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To permit Gulfstream International Airlines, Inc. to operate four Beachcraft Be–C99 aircraft without having a CIC 8800M Encoder for its ground proximity warning system (GPWS).
GRANT, 4/20/94, Exemption No. 5882

Docket No.: 27718
Petitioner: Arizona Airways, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To allow Arizona to operate its two Beechcraft 1300 aircraft with an inoperative Sunstrand Data ground proximity warning system (GPWS).
GRANT, 4/20/94, Exemption No. 5884

[FR Doc. 94–11279 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

Amendments to Passenger Facility Charge (PFC) Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Amendments to PFC Approvals.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is to publish the amendments to those PFC approvals under part 158, § 158.37 (a) and (b)(1). These amendments have been approved through March, 1994. Future amendments will be published with the regular monthly notice.

Public Agency: Muscle Shoals Regional Airport Authority, Muscle Shoals, Alabama.

PFC Record of Decision Approval Date: February 18, 1992.

Amendment Number: 92–01–C–01–MSL.

Amendments: Deletes Taxiway B phase III, Increases the estimated cost of the terminal building renovations to $40,000, Reduces the estimated cost of the access road to $30,000, Increases the estimated cost of taxiway B-phase II to $30,000, Reduces the total amount to be collected from $104,100 to $100,000.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: Port of Oakland, Oakland, California.

PFC Record of Decision Approval Date: June 26, 1992.

Amendment Number: 92–01–I–01–OAK.

Amendments: Modifies the project description and increases the total approved PFC collection from $780,000 to $4,780,000, Increases the total approved PFC revenues to be collected from $12,343,000 to $16,343,000 to cover increases in project costs, Charge expiration date has been extended from September 1, 1993 to April 30, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: City of Palm Springs, Palm Springs, California.

PFC Record of Decision Approval Date: June 25, 1992.

Amendment Number: 92–01–C–01–PSP.

Amendments: Increases the total PFC revenue to be collected from $44,612,350 to $81,888,919 to cover increases in project costs and PFC administration costs, Changes the estimated expiration date from October 30, 2022, to October 30, 2032, Modifies from two projects (terminal expansion phase 1A and terminal expansion phase 2) to a single terminal expansion project with a 10-year implementation program.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western-Pacific Region Airports Division, (310) 297–1029.

Public Agency: City of San Jose, San Jose, California.

PFC Record of Decision Approval Date: June 11, 1992.

Amendment Number: 92–01–C–01–SJC.

Amendments: Increases the amount approved for use on project 27, noise attenuation from $25,728,826 to $30,073,826, Changes the estimated charge expiration date to August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Rodiquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Lee County Port Authority, Fort Myers, Florida.

PFC Record of Decision Approval Date: August 31, 1992.

Amendment Number: 92–01–C–01–RSW.

Amendments: Increases the amount approved for professional services for the extension of runway 6/24, etc., from $1,500,000 to $2,590,500, Increases the amount approved for a Part 150 noise compatibility study from $45,000 to $132,000.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Lee County Port Authority, Fort Myers, Florida.

PFC Record of Decision Approval Date: May 10, 1993.

Amendment Number: 93–02–U–01–RSW.

Amendment: Increases the amount approved for the FIS/Commuter Terminal from $787,000 to $919,750.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

PFC Record of Decision Approval Date: November 27, 1992.

Amendment Number: 92–01–C–01–MCO.

Amendments: Increases the estimated cost of the roadway to the southern connector to $6,635,000, Reduces the estimated cost of the international passenger terminal/landside Federal Inspection Services facility to $111,575,000, Increases the estimated cost of the west ramp rehabilitation/taxiland A rehabilitation to $4,200,000, Increases the total amount of PFC collection to $10,108,000 to cover interest on bridge loans, Reduces the total amount to be collected from $167,574,527 to $154,617,527.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Panama City-Bay County Airport and Industrial District (District), Panama City, Florida.

PFC Record of Decision Approval Date: December 1, 1993.

Amendment Number: 93–01–I–01–PFN.

Amendment: Increases the amount of PFC to collection from $7,422,988 to $8,238,499 to cover PFC administration costs.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Dubuque Airport Commission, Dubuque, Iowa.

PFC Record of Decision Approval Date: October 6, 1992.

Amendment Number: 93–01–C–01–DBQ.

Amendments: Increases the PFC revenue approved for collection from $108,500 to $148,500 to cover increases in project costs, Changes the estimated charge expiration date to May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, Central Region Airports Division, (816) 426–4728.

Public Agency: Clark County Department of Aviation, Las Vegas, Nevada.

PFC Record of Decision Approval Date: February 24, 1992.

Amendment Number: 91–01–C–01–LAS.

Amendments: Increases the amount approved for collection from $428,054,380 to $754,192,500 to cover financing costs, Changes the estimated charge expiration date from February 1, 2004, to January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Lawton Metropolitan Area Airport Authority, Lawton, Oklahoma.

PFC Record of Decision Approval Date: May 8, 1992.

Amendment Number: 92–01–C–01–LAW.

Amendments: Revises PFC level from $2.00 to $3.00, Increases the total PFC revenue to be collected from $334,078 to $482,135, Changes the estimated charge expiration date from January 1, 1996 to March 31, 1996.

The following projects have been modified:

a. *Amended:*
  (1) Construct phase I, terminal expansion,
  (2) Acquire aircraft rescue and firefighting (ARFF) vehicle and mechanical lift device,
  (3) Install emergency power generator and electric security gates,
  (4) Reconstruct ARFF access roads.
b. *Deleted:*
  (1) Engine runup apron and runway distance-to-go markers,
  (2) T-hangar taxiways and general aviation drainage improvements.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Austin, Austin, Texas.

PFC Record of Decision Approval Date: June 4, 1993.

Amendment Number: 93–01–C–01–AUS.

Amendments: Revises PFC collection level from $2.00 to $3.00, Changes the estimated charge expiration date from June 1, 1995, to December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.

Issued in Washington, DC, May 2, 1994

Donna Taylor,

Manager, Passenger Facility Charge Branch

[FR Doc. 94–11282 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 9, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary J. Dellapa, Aviation Director of the Dade County Aviation Department at the following address: Miami International Airport, Concourse E, Fifth Floor, Miami, Florida 33122.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dade County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Airports Plans & Programs Manager, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 3, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Dade County Aviation Department for the Board of County Commissioners of Dade County, Florida was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1994
Proposed charge expiration date: July 31, 1996
Total estimated PFC revenue: $64,770,000
Brief description of proposed project(s):
Impose and Use Projects:
  Concourse A Phase 1A
  Concourse A Phase 1B
  Concourse A Phase 1 Apron & Utilities
  Ground Transportation Improvements (GTI)—C2
Impose Only Projects:
  Concourse A Phase II
  Concourse A Phase II Apron & Utilities

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dade County Aviation Department.

Issued in Orlando, Florida on May 3, 1994.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 94–11280 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tupelo Municipal Airport—C. D. Lemons Field, Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tupelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 10, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississipp 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roger L. Blickensderfer, Executive Director of the Tupelo Airport Authority at the following address:

631 Jackson Ext., suite A, Tupelo, Mississippi 38801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tupelo Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Project Manager, FAA Airports District Office, 120 North Hangar Dive, suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tupelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 3, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tupelo Airport Authority was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than August 6, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: August 1, 1994

Proposed charge expiration date: September 30, 1999

Total estimated PFC revenue: $461,000

Brief description of proposed project(s): (1) Reconstruct terminal ramp pavement (2) Overlay and groove asphalt runway (3) Expand Airport Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: none.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tupelo Airport Authority.

Issued in Jackson, Mississippi, on May 3, 1994.

Elton E. Jay,

Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 94–11281 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Nominations for the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Request for Nominations for the Trade and Environment Policy Advisory Committee (TEPAC).

SUMMARY: By Executive Order 12905 of March 25, 1994 (59 FR 14733), the President established in the Office of the United States Trade Representative (USTR) a Trade and Environment Policy Advisory Committee (TEPAC). TEPAC will be composed of representatives from environmental interests groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government and consumer interests. The Office of the USTR is requesting nominations to the TEPAC. Letters of nomination should be sent no later than June 15, 1994 to Debbie Leilani Shon, Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Christine Collins, Special Assistant for Public Liaison, Office of the United States Trade Representative at (202) 395–6120.

BACKGROUND: By Executive Order 12905 of March 25, 1994 (59 FR 14733), the President established in the Office of the United States Trade Representative (USTR) a Trade and Environment Policy Advisory Committee (TEPAC). The TEPAC will provide the USTR with policy advice on issues involving trade and the environment and will review trade agreements to advise whether and to what extent the agreement promotes the interests of the United States. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

Debbie Leilani Shon,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 94–11381 Filed 5–9–94; 8:45 am]

BILLING CODE 3190–01–M

President's Advisory Committee for Trade Policy and Negotiations and Intergovernmental Policy Advisory Committee Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The May 10, 1994 joint meeting of the President's Advisory Committee for Trade Policy (ACTPN) and the Intergovernmental Policy Advisory Committee (IGPAC) will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting is scheduled for May 10, 1994, unless otherwise notified.

ADDRESSES: The meetings will be held at the Old Executive Office Building, Executive Office of the President, from 12 p.m. until 3:30 pm unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christine Collins, Special Assistant for Public Liaison, Office of the United States Trade Representative, Executive Office of the President at (202) 395–6120).

Debbie Leilani Shon,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 94–11382 Filed 5–9–94; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage To Determine Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 11.19 percent.

EFFECTIVE DATE: The new percentage is effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. (202) 233–3668.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, *et seq.* The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. VA also includes in the new value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties during the prior fiscal year.

VA annually updates the "net value" percentage and publishes a notice of the new percentage in the **Federal Register**. For Fiscal Year 1993, the percentage was 14.16 percent. For Fiscal Year 1994, the percentage will be 11.19 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses which are accounted for separately in each case, for Fiscal Years 1991, 1992, and 1993, and property resale experience for Fiscal Year 1993. Accordingly, VA will subtract 11.19 percent for the fair market value of the property to be foreclosed in order to arrive at the "net value" of the property to VA. This new percentage will be used in "net value" calculations made by VA on and after December 10, 1993.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–11146 Filed 5–9–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon., Monday, May 16, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposals regarding a Federal Reserve Bank's building requirements.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 6, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–11385 Filed 5–6–94; 11:26 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on May 13, 1994. The meeting will commence at 9:00 a.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Ballroom 1, Atlanta, Georgia 30309, (404) 881–9898.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 15, 1994 Meeting
3. Consideration and Review of Budget and Expenses for the Six-Month Period Ending March 31, 1994
4. Consideration and Review of Expense Projections for the Period of April 1, 1994 to September 30, 1994
   a. Consideration of Possible Need for Internal Budgetary Adjustment
   b. Consideration of Possible Reallocation of Fiscal Year 1994 Consolidated Operating Budget
5. Presentation on the Project Advisory Group's Recommendations for Corporation Priorities in Allocation of its Fiscal Year 1995 Appropriation
6. Consideration of the Inspector General's Process and Criteria for Selection of the Corporation's Auditor for Fiscal Year 1994
7. Consideration of the Contractual Nature of the Inspector General's Employment

CONTACT PERSON FOR INFORMATION: Patricia Batie 9202) 336–8800

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11479 Filed 5–6–94; 3:55 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on May 13, 1994. The meeting will commence at 9:00 a.m. It is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10:00 a.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Atlanta, GA 30309, (404) 881–9898.

STATUS OF MEETING: *Open*, except that portion of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on April 15, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (e), and (h)].[1] The closing will be certified by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda

Closed Session

2. Approval of Minutes of April 15, 1994 Executive Session
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party
4. Consider and Act on Internal Personnel and Operational Matters

Open Session: (Resumed)

5. Approval of Meetings of April 15, 1994 Meeting
6. Panel Presentation on Diversity In the Workplace In the Legal Services Community
7. Consider Update on the Reauthorization Legislative Process
8. Consider and Act on Proposed Amendments to Part 1607 of the Corporation's Regulations
9. Consider and Act on Whether to Publish Proposed Changes to Part 1607 of the Corporation's Regulations for Public Comment
10. Public Comment
11. Consider and Act on Other Business

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11480 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on May 13, 1994. The meeting will commence at 9:00 a.m.

PLACE: Occidential Grand Hotel, 75 Fourteenth Street, Ballroom 3, Atlanta, Georgia 30309, (404) 881–9898.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 15, 1994 Meeting
3. Status Report by the Director of the Offices of Program Services and Program Evaluation, Analysis and Review
4. Status Reports on Progress of the PICA and Delivery Workgroups
5. Presentation on the Advocacy Efforts of Legal Services Providers in the State of Georgia
6. Presentation by Representative of the Health Law Task Force of the SE Region
7. Update on the National Support Planning Process

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11481 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on May 13, 1994. The meeting will commence at 2:00 p.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Ballroom 2, Atlanta, Georgia 30309, (404) 881–9898.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d) (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 16, 1994 Meeting
3. Welcoming Remarks by Harold G. Clarke, Chief Justice (Ret.), Supreme Court of Georgia
4. Presentation by Representatives of the Legal Services Community Regarding the Provision of Legal Services to Clients in the State of Georgia
5. Chairman's and Members' Reports
6. President's Report
7. Consider and Act on Operations and Regulations Committee Report
8. Consider and Act on Provision for the Delivery of Legal Services Committee Report
9. Consider and Act on Audit and Appropriations Committee Report
   a. Consideration of the Inspector General's Process and Criteria for Selection of the Corporation's Auditor for Fiscal Year 1995
10. Consider and Act on Presidential Search Committee Report
11. Inspector General's Report

Closed Session

12. Consultation by Board with the President on Internal Personnel and Operational Matters
13. Consider and Act on Internal Personnel and Operational Matters
14. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters

Open Session: (Resumed)

15. Public Comment
16. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11482 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on May 14, 1994. The meeting will commence at 8:30 a.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Dali Room, Atlanta GA 30309, (404) 881–9898.

STATUS OF MEETING: *Open*, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, consider the qualifications of candidates for the position of President of the Corporation. In addition, the Committee will consider for approval the minutes of the executive session(s) held on March 12, 1994 and April 14, 1994.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a) and (e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 14, 1994 Meeting

Closed Session

3. Approval of Minutes of March 12, 1994 Executive Session
4. Approval of Minutes of April 14, 1994
5. Consider, With Advisory Committee, Qualifications of Candidates for the Position of President of the Corporation.

Open Session

6. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notice will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary

[FR Doc. 94–11483 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:00 p.m., Thursday, May 12, 1994.

PLACE: Festival Center, 1640 Columbia Road, NW., Washington, DC.

STATUS: Open.

BOARD BRIEFINGS:

1. Insurance Fund Report.
2. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Amendments to Section 701.32, NCUA's Rules and Regulations, Nonmember Deposits.
3. Final Interpretive Ruling and Policy Statement on Chartering and Field of Membership.

TIME AND DATE: 9:00 a.m., Thursday, May 12, 1994.

PLACE: Board Room, 7th Floor, Room 7047; 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Appeal by Credit Union of Determination under Part 701, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Delegation of Authority. Closed pursuant to exemptions (8) and (9)(B).
4. Personnel Policies. Closed pursuant to exemption (2).

RECESS: 10:30 a.m.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–11344 Filed 5–6–94; 9:01 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 9, 16, 23, and 30, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 9

Monday, May 9

2:30 p.m.
Discussion of Salem Unit 1 Restart (Public Meeting)
(Contact: John White, 215–337–5114)

Wednesday, May 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 16—Tentative

Wednesday, May 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Minor Procedural Rule Change on Time for Requesting a Hearing Under Part 2, Subpart L
(Contact: Peter Crane, 301–504–1622)

Friday, May 20

10:00 a.m.
Briefing on Status of Thermo-Lag (Public Meeting)
(Contact: Ashok Thadani, 301–504–1274)
1:00 p.m.
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–492–3904)

Week of May 23—Tentative

Wednesday, May 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 30—Tentative

There are no meetings scheduled for the Week of May 30.

ADDITIONAL INFORMATION: By a 4–0 vote on May 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Salem Unit 1 Restart" (Public Meeting) be held on May 9, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: May 6, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–11438 Filed 5–6–94; 2:07 pm]

BILLING CODE 7590–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, 7:00 p.m., May 19, 1994—Saturday, 1:00 p.m., May 21, 1994.

LOCATION: Airlie Conference Center, Airlie, Virginia.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-fourth Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of 1994 National Peace Essay Contest Winners; Annual Program Review.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: May 6, 1994.

Charles E. Nelson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 94–11354 Filed 5–6–94; 10:18 am]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[AMS-FV-93-704C]

RIN 0581-AB23

Honey Research, Promotion, and Consumer Information Order and Rules and Regulations Issued Thereunder; Termination of Order Provision and Conforming Correction of the Rules and Regulations

Correction

In rule document 94-10220 beginning on page 22492 in the issue of Monday, May 2, 1994, in the third column, under **DATES**, in the last line, "May 2, 1994" should read "June 1, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty-in-Kind (RIK) Program

Correction

In notice document 94-9721 beginning on page 19207 in the issue of Friday, April 22, 1994, make the following correction:

On page 19208, in the third column, in the second full paragraph, in the second line, "to" should read "not".

BILLING CODE 1505-01-D

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federal register

Tuesday
May 10, 1994

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 317 et al.

Nutrition Labeling; Use of "Healthy" and Similar Terms on Meat and Poultry Product Labeling; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91-006F-HLTH]

RIN 0583-AB34

Nutrition Labeling; Use of "Healthy" and Similar Terms on Meat and Poultry Product Labeling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to permit the use of the term "healthy" or any other derivative of the term "health," such as "healthful" or "healthier," on the labeling of meat and poultry products. FSIS is taking this action to provide consumers with accurate, informative labeling on meat and poultry products that conforms with such labeling on other foods. This final rule provides a definition for the implied nutrient content claim "healthy" for individual foods and meal-type products, and is designed to parallel the definition issued by the Food and Drug Administration (FDA) for other foods.

EFFECTIVE DATE: November 10, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

FSIS has examined the economic implications of its final rule on use of the term "healthy" and any other derivative of the term "health" on the labeling of meat and poultry products, as required by Executive Order 12866. FSIS has determined that this final rule is economically significant for purposes of Executive Order 12866.

Regulatory Options

1. *No Definition.* FSIS could choose not to define the term "healthy." However, in its nutrition labeling final rule issued on January 6, 1993, FSIS determined that the term "healthy" is an implied nutrient content claim. If FSIS does not define the term "healthy," its use on labeling, except on those products using the claim in their brand name prior to November 27, 1991, or in a non-nutritional context, would misbrand the food. This option would result in large costs, including labeling costs, and a valuable signal used by consumers to alert them to foods that may assist them in meeting dietary goals would be lost.

FSIS could alternatively decide to propose to reverse its previous determination that use of the term "healthy" is an implied nutrient content claim. However, FSIS could only make such an amendment if it were persuaded that its original determinations were in error. FSIS did not receive any information that would support such a conclusion. Furthermore, such an action would require separate rulemaking, and would not take effect until well after the effective date of the nutrition labeling regulations. Therefore, until FSIS published a final rule, this alternative would have the same impact as not defining the term "healthy."

2. *Different Definition Than Proposed.* FSIS could determine that an alternative definition for the term "healthy" would be more appropriate that that which was proposed. FSIS and FDA simultaneously published proposals that would define the term "healthy." However, the definitions were different. FSIS proposed to link the definition of the term "healthy" to the definition for the nutrient content claim "lean" with an added sodium restriction. Consequently, there would be limits for fat, saturated fat, cholesterol, and sodium. FDA proposed a definition that linked the term "healthy" to definitions for the nutrient content claims "low fat" and "low saturated fat" with restrictions on cholesterol and sodium.

There was overwhelming agreement among commenters that if "healthy" is defined, both FSIS and FDA should adopt uniform criteria so as not to undermine the benefits consumers will ultimately realize through application of the same definition.

Costs of the Final Regulations

FSIS has identified 27 uses of "healthy" or derivatives of the term "health" in brand names, trade names, product lines, or prominent displays on labeling of meat and poultry products. This information was obtained by a search of the FSIS files from its prior label approval system. The manufacturers of these products include five large companies with annual sales of over $50 million and an estimated 20 medium-size companies with annual sales between $5 million and $50 million. FSIS has not identified usage of "healthy" on labeling by small companies with annual sales of less than $5 million. However, based on the percentage of medium-size companies using the term, FSIS estimates that possibly 38 small companies might use "healthy" or derivatives of the term "health" on product labeling. FSIS's Final Regulatory Impact Analysis (FRIA) for nutrition labeling estimates that large companies average 250 labels per company and 2.3 average labels per product; medium companies average 80 labels per company and 2 average labels per product; and small companies average 30 labels per company and 1.5 average labels per product. Based on this information, FSIS found that at most a total of 3,990 labels and 2,100 products could be affected by the final rule. However, FSIS expects that a much lower number of labels will be influenced.

Manufacturers of products not meeting the definition of "healthy" have three options to bring their products into compliance with the regulations: Reformulate, cease marketing, or relabel. Of these three options, complete reformulation would be the most expensive. Assuming, as an upper bound for total costs to the industry, all the estimated 2,100 products that might be affected had to be completely reformulated, the total costs to companies based on initial analytical, administrative, printing, and inventory costs for an 18-month implementation period presented in the FRIA would be $33.1 million for large companies, $18.9 million for medium companies, and $3.6 million for small companies. Not all labeling will be affected and some products could be reformulated with minimal cost.

FSIS examined data for 61 meals from a leading brand name producer. These meals weighed between 7 and 13.5 ounces. Of these, 49 (80 percent) are FSIS-regulated products, and 12 are regulated by FDA. Nutrient values were compared to criteria for maximum fat, saturated fat, and cholesterol levels that meet the "healthy" definition for meals. Only three meals failed to meet the lipid cutoff levels. The three meals—meat loaf, chicken enchilada, and an FDA-regulated manicotti—failed by exceeding the saturated fat cutoff level. Meal sodium contents ranged from 220 to 580 milligrams in the 61 meals so that all could meet the 1994 maximum level of 600 milligrams per serving. When compared to the 1997 phase-in criterion of 480 milligrams, 17 meals (28 percent) failed the sodium test. On the other hand, 72 percent did meet the level.

FSIS staff went to grocery stores to record current label values for other FSIS meal products labeled "healthy" and obtained information on 16 additional meals beyond those of the leading brand. When these 16 meals were compared to the cutoff level for fat components, four failed by only small amounts. The majority did not meet the 1994 sodium limit of 600 milligrams.

Based on the data reviewed, FSIS believes many meals can easily meet the "healthy" definition for fat, saturated fat, and cholesterol levels. FSIS also believes all meals can be formulated to meet the 1994 sodium criterion of 600 milligrams per serving. Regarding the 1997 phase-in criterion of 480 milligrams, 72 percent of the leading brand meals meet that criterion now. This indicates that it is technologically feasible to formulate products acceptable to current consumer taste.

Individual processed meat and poultry products, such as luncheon meats and frankfurters, will have more difficulty meeting the criteria. Generally, individual processed meat and poultry products can meet the fat, saturated fat, and cholesterol levels when the reference amounts are less than 2 ounces or if they do not contain too much meat or poultry when the reference amounts are over 8 ounces.

Of about 100 individual food product types for which minimum meat and/or poultry contents are established by FSIS's "Standards and Labeling Policy Book," FSIS estimates that approximately one-half could not be labeled as "healthy" if made with lean meat or poultry to meet the minimum meat or poultry content. However, this still leaves many individual food product types with the potential to be labeled "healthy." Furthermore, more foods could be so labeled if made with extra-lean meat or made as nonstandardized versions with less meat or poultry content.

FSIS also examined current labeling values for individual food products now carrying the term "healthy" in the brand name. All luncheon meats met the fat criteria; most did not meet the 1994 sodium criterion of 480 milligrams per reference amount and labeled serving, although they were not far off. None of the products were close to the 360 milligram criterion for 1997. Most soups met the fat criteria, but would need some reformulation to meet the current sodium standard, and would require major reformulation to meet the 1997 sodium criterion of 360 milligrams. Overall, the sodium level will cause the most problem for this food category. Nonetheless, FSIS believes that the market can reach the 480 milligrams and 360 milligrams levels within the timeframes allowed as consumer sodium tastes continue to change.

Under the extra-lean criterion for raw, unprocessed meat and poultry cuts, a limited number of raw meat and poultry cuts will be able to meet the cutoff level for fat, saturated fat, and cholesterol. FSIS is not aware that any of the cuts of meat and poultry that can meet the definition currently are labeled "healthy" in brand names. FSIS believes that the use of the extra-lean criteria for these foods and the resulting healthy status of the very leanest of these products enforce the fact that these foods can be part of a healthy diet. FSIS also notes that the lean meats can be trimmed, prepared, and incorporated into meals so that the resulting meal can be labeled "healthy." Since all single-ingredient muscle meats and poultry are low in sodium, at less than 100 milligrams per 100 grams on both a raw and cooked basis, a maximum sodium restriction is unnecessary.

In conclusion, FSIS recognizes that the above information is not a strict representation of the marketplace, but believes that it gives some expectation of the reformulation problems that will be faced by the industry. Many products, especially meals, will not face major changes.

Some manufacturers might not be able to reformulate their products or may determine that the costs of reformulation are prohibitive. The manufacturers may choose to market their products under a different brand name. New resources must also be expended in marketing the product and in informing consumers that the product has a new name. A brand name is an intangible asset representing capital just as a tangible asset is capital. Brand names act as signals that help consumers identify quality differences and shop more efficiently. Manufacturers invest real resources in developing and maintaining their brand identities.

FSIS acknowledges that it could be a cost to the individual manufacturers of products currently branded "healthy" if the brand names were, in fact, removed from the market. The loss of a brand name could be a societal loss, as is the loss of any productive asset. The price consumers are willing to pay for the product may have been due to consumer misperception about the nutritional profile of the product bearing the term "healthy." Although most of these products are nutritionally labeled, some consumers use the term "healthy" as a signal to buy the product and do not read the information on the nutrition panel on the back of the product.

Manufacturers of those products that make "healthy" claims on products that are not sold under "healthy" brand names may choose to relabel products without the claim when reformulation is either too costly or not technologically feasible. In its FRIA for the nutrition labeling regulations, FSIS determined that average costs of redesigning and printing new labels and inventory losses fell significantly as the compliance period increased. Costs approach zero when the compliance period is long enough so that mandated changes can be accomplished in conjunction with planned labeling changes. FSIS has no information regarding the number of products that make "healthy" claims but do not use the term in the brand name, but assumes this number is not very large for meat and poultry products.

Benefits of the Final Rule

In its cost-benefit analysis for the nutrition labeling regulations, FSIS noted many significant benefits of improved nutrition labeling, including decreased rates of three types of cancer and coronary heart disease. The Agency concluded that, as consumers are given more informative labeling, uncertainty concerning the nutritional value of the foods they eat will decrease, and many consumers will select more nutritious, healthier foods. The improved health status of Americans expected to result from the nutrition labeling rule pertaining to meat and poultry products was estimated to be about $1.6 billion over a period of 20 years.

It is possible that some products that are currently marketed as "healthy" but do not fit the definition may be misleading consumers. Removal of these products from the marketplace may actually increase health benefits to consumers. It is also possible that a small number of products that could assist some consumers in reducing their consumption of fat, saturated fat, cholesterol, or sodium will be unable to bear the claim "healthy," thus potentially reducing benefits. Some products may be reformulated to meet the requirements for the claim, but may lose sales from lack of consumer taste satisfaction. It is expected, however, given the selling power of the term "healthy" and the technological advances present in the food industry, that this rule will increase the number of products bearing the term "healthy."

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule provides a definition for the implied nutrient content claim "healthy" and its derivatives and provides for its use on the labeling of meat and poultry products. Small meat and poultry establishments are exempt from nutrition labeling, provided the labeling of their products bears no nutrition claims or nutrition information.

However, small entities with products that currently bear labeling that FSIS is regulating as a defined implied nutrient content claim, i.e., labeling bearing the term "healthy" or its derivatives that is an implied nutrient content claim under FSIS's regulatory definition of an implied nutrient content claim, may be impacted by this regulation. If such products do not conform to the regulatory definition of "healthy," the labeling would need to be changed so as not to misbrand the product, or the product would need to be reformulated to meet the criteria for the definition. While the term "healthy" has been widely used on labeling, FSIS believes that the number of small entities with products bearing such labeling is not substantial because most of the firms using such labeling are large.

Small manufacturers opting to use the term "healthy" or its derivatives as an implied claim on their labeling, as defined by these regulations, would be required to comply with the nutrition labeling requirements, thereby, incurring the costs associated with such compliance. However, the use of the defined implied nutrient content claim on the labeling would be voluntary. Decisions by individual manufacturers on whether to use the claim on their product labeling would be based on their conclusions that the benefits would outweigh the costs of including such a claim on the labeling. To minimize the impact on firms with products that do not conform to the regulations, FSIS is allowing an 18-month implementation period, with an additional 24 months to achieve a further reduction in sodium levels.

Paperwork Requirements

The final rule specifies the regulations permitting the use of the term "healthy," or any other derivative of the term "health" on the labeling of meat and poultry products. The final rule requires those manufacturers opting to use the term "healthy" or its derivatives as an implied claim on their labeling, as defined by this regulation, to revise their labeling and submit such labeling to FSIS for approval.

The paperwork requirements contained in this final rule have been submitted to the Office of Management and Budget for review.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. These regulations contain, in part, provisions governing use of implied nutrient content claims on product labeling. At 9 CFR 317.313(b) and 381.413(b), FSIS cross-referenced provisions pertaining to nutrient content claims at 21 CFR 101.13(b) to define an implied nutrient content claim as one that either describes a food or ingredient in a manner suggesting a nutrient is absent or present in a certain amount, or suggests the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient. FSIS did not provide a regulatory provision covering the use of the term "healthy" in its final nutrition labeling regulations.

In that same issue of the **Federal Register** (58 FR 688), FSIS published a proposed rule to solicit comments from the public on regulatory provisions for the definition and use of the term "healthy" or any other derivative of the term "health." FSIS proposed that the implied nutrient content claim "healthy" or any other derivative of the term "health" be permitted on the labeling of meat and poultry products that meet the following criteria: Contain less than 10 grams (g) of fat, less than 4 g of saturated fatty acids, less than 95 milligrams (mg) of cholesterol, and less than 480 mg of sodium per 100 g and Reference Amount Customarily Consumed for individual foods, and per 100 g and labeled serving for meal-type products, as defined in 9 CFR 317.313(l) and 381.413(l). FSIS stated that the proposed rule would apply the criteria for "healthy" to any term used anywhere on the label that includes the term "health." FSIS proposed to include the "healthy" provisions contained in the proposed rule (58 FR 688) in 9 CFR 317.309(j) and 381.409(j). FSIS now believes that the proposed "healthy" provisions were inappropriately placed in a section of the regulations that do not relate to general or specific requirements for nutrient content claims. Therefore, FSIS is correcting that oversight in this final rule by promulgating those provisions at 9 CFR 317.363 and 381.463, which are reserved for nutrient content claim requirements.

On January 6, 1993, FDA also published a proposal (58 FR 2944) that would establish a definition for the implied nutrient content claim "healthy" for foods under its jurisdiction. FDA proposed to permit the term "healthy" to be used on foods that meet regulatory definitions for "low fat" and "low saturated fat," and that do not exceed disclosure levels for cholesterol and sodium. In their final nutrition labeling regulations, FSIS and FDA adopted identical definitions for the express nutrient content claims of "low fat" and "low saturated fat." As defined in 9 CFR 317.362 and 381.462, "low fat" claims may only be made on products containing 3 g or less total fat per reference amount when they are individual foods and per 100 g when they are meal-type products. "Low saturated fat" claims may only be made on products containing 1 g or less saturated fat per reference amount when they are individual foods and per 100 grams when they are meal-type products. As defined in 21 CFR 101.13(h), FDA's disclosure levels for cholesterol are 60 mg per reference amount and labeled serving for individual foods, 90 mg per labeled serving for main dishes, and 120 mg per labeled serving for meal products. Sodium disclosure levels are 480 mg per reference amount and labeled serving for individual foods, 720 mg per labeled serving for main dishes, and 960 mg per labeled serving for meal products.

Discussion of Comments and Final Rule

FSIS received 47 comments in response to the January 6, 1993, proposed rule (58 FR 688). The majority of the comments (31) were submitted by food manufacturers, while 5 were received from consumer groups; 3 from academia; 2 from professional organizations; 2 from trade associations; 1 from a foreign government; 1 from a State government; 1 from a food retailer; and 1 from a consumer. All comments submitted with respect to the proposed rule were given due consideration. A summary of the comments and FSIS's responses follow.

Use of the Term "Healthy"

Some commenters questioned FSIS's authority to regulate use of the word "healthy." These commenters argued that the term is an adjective which does not characterize the quantity of nutrients in food products. Other commenters wanted use of "health" banned altogether because the term offers shoppers no substantial information on which to base food choices, and is only a marketing tool. A foreign government stated that any differences in nutrition labeling requirements between the U.S. and other countries will create significant trade barriers. A few commenters contended that if "healthy" is not defined, it should not be grandfathered, i.e., used as an implied nutrient content claim as part of brand names in use prior to November 27, 1991, as long as such use is not false or otherwise misleading, but it should be available for use by all companies.

The majority of responses supported defining the term because of current inconsistent usage in the marketplace that serves to confuse and mislead consumers. Several commenters cited the 1992 National Consumers League opinion poll, and another cited internal market research to show that consumers often expect products labeled as "healthy" to be low in nutrients of public health concern, such as fat and sodium. A few manufacturers or products with brand names, trade names, or product lines now containing the term "healthy" advised that their products were specially formulated to be "good for you" and/or control nutrients that health authorities recommend be consumed at decreased dietary levels in order to lessen the risk of diet-related diseases or health conditions. There was overwhelming agreement among commenters that if "healthy" is defined, both FSIS and FDA should adopt uniform criteria so as not to undermine the benefits consumers will ultimately realize through application of the same definition.

FSIS has authority to require nutrition labeling and to regulate the labeling of meat and poultry products based upon the statutory provisions concerning misbranding in the FMIA (21 U.S.C. 601(n)(1)) and the PPIA (21 U.S.C. 453(h)(1)). Under these statutory provisions, an article is misbranded if it is false or misleading in any particular. FSIS agrees with the many commenters who concluded that use of the term "healthy" on the labeling of meat and poultry products conveys a powerful message to consumers about the nutritional attributes of those products. FSIS believes that in the absence of a regulatory definition for the term, its use on product labeling has great potential to be false or misleading to consumers. Accordingly, FSIS is establishing regulatory provisions governing use of the term "healthy" as an implied nutrient content claim. FSIS's intent is not to hamper free trade by this action, but, rather, to eliminate misleading the American consumer through inconsistent use of implied nutrient content claims.

The grandfathering provisions contained in 9 CFR 317.313(q)(1) and 381.413(q)(1) do not exempt defined implied nutrient content claims. Therefore, upon the effective date of this final rule, the term "healthy" or any other derivative of the term "health" may no longer appear as an implied nutrient content claims in brand names of products that were initially marketed prior to November 27, 1991, unless the product meets the regulatory requirements covering use of nutrient content claims.

FSIS and FDA carefully reviewed and assessed their respective comments regarding the need for a uniform definition for "healthy." Both agencies agree with the comments that requested consistency in the FSIS and FDA definition of "healthy," and recognize that having different definitions for the same nutrient content claim could likely lead to consumer confusion and undermine the usefulness and credibility of the claim. FSIS and FDA have jointly reached a decision to establish a uniform definition of the term "healthy" as it applies to all foods regulated by both agencies.

Derivatives and Synonyms

Commenters who addressed applying the criteria for "healthy" to any term that includes the term "health" agreed with FSIS's proposed position to include derivatives of "health" in the definition because they are viewed by consumers as having the same general meaning. Derivatives of "health" include, but are not limited to, the following terms: Healthful, healthfully, healthfulness, healthier, healthiest, healthily, and healthiness.

Several commenters asserted that products with labeling bearing synonymous terms or phrases such as "nutritious," "wholesome," "smart choice," and "foods for today's diets," all of which relay a "good for you" message, should be defined or required to meet the "healthy" definition. FSIS believes that such terms and phrases can be implied nutrient content claims depending on the context in which they are used. However, FSIS does not have sufficient information to establish definitions for such terms or to determine that they are synonyms for "healthy." Therefore, such synonymous terms or phrases are not included in this final rule.

Nutritional Context

Some commenters supported FSIS's proposed approach to treat the term "healthy" as an implied nutrient content claim when it is used in a brand name or elsewhere on the labeling of a product, except as it pertains to general dietary guidance language. For example, one commenter stated that when the term is used without context, either in a brand name or standing alone, or when it is used on labeling that bears other nutrient content claims, it should be presumed, based on scores of examples on the market today, that consumers will believe the term is used in reference to the nutritional properties of the labeled food. Without context, the possible meaning is ambiguous, at a minimum, which should be construed against the manufacturer, who has the opportunity to provide clarifying language if a different meaning is intended.

Other commenters urged FSIS to consider the textual use of the term in determining whether it constitutes an implied nutrient claim, contending that there will be circumstances where the term "healthy" neither explicitly nor implicitly characterizes the level of nutrients in a food. Many were concerned that the vast bulk of published, authoritative guidance material would be prohibited from use with any USDA-regulated product under FSIS's proposed approach.

After careful review of all comments, FSIS has reconsidered usage of "healthy" on labeling, and concludes that it would not be in the best interest of consumers to preclude use of dietary guidance statements, which frequently include the term "healthy," on the labeling of meat and poultry products. Also, FSIS recognizes that there may be circumstances where the term "healthy" neither explicitly or implicitly characterizes the level of a nutrient in a product, and where it can be placed in proper context, for example, in advertising copy on product labeling. FSIS is now convinced that it should evaluate the term within the context of the entire labeling to determine if it is used as an implied nutrient content claim as provided for in 9 CFR 317.313(b) and 381.413(b).

However, comments strongly suggest that use of the term "healthy" or any other derivative of the term "health" in the brand name of a product or standing alone, including in a phrase, as in a banner or flagged statement, and either with or without other nutrient content claims, might lead consumers reasonably to believe that the labeled product is useful in achieving a total diet conforming to dietary guidelines by virtue of the nutritional attributes of the specific product. While clarifying language might be used to identify non-nutritional meaning, FSIS does not believe that such statements standing alone, which might take the form of "healthy, a big portion" or "healthy, no chemical preservatives," would necessarily negate a nutritional meaning, and consumers might assume reasonably that "healthy" has a double meaning in those situations.

While FSIS agrees that use of the term "healthy" or any other derivative of the term "health" in the brand name of a product or standing alone is not inherently misleading, FSIS believes that such use may be placed in a nutritional context in the absence of other explicit or implied nutrient content claims on the labeling of the product. Products bearing "healthy" in the brand name or standing alone often are advertised and promoted to highlight the fact that they are specially formulated to contain nutrients at levels that will assist consumers to maintain healthy dietary practices. The product lines frequently cover a wide variety of products, and the names are recognized as characterizing products that can help consumers to meet dietary recommendations.

FSIS believes that a nutritional context for a term may be established by written statements, symbols, or vignettes on a product's labeling, and by advertising, promotional materials, or other relevant action. Therefore, FSIS views use of the term "healthy" or any other derivative of the term "health" in a brand name or standing alone to be in a nutritional context, even in the absence of other nutrient claims, when such appearance implies that the product is useful in maintaining healthy dietary practices. A nutritional context would not be established when the term appears in a name listed only as part of the identification of the manufacturer, packer, or distributor as required in 9 CFR 317.2(c)(3) and 381.122 for meat and poultry products, respectively, because associations would be to a company as opposed to a specific product.

Individual Foods

Some commenters requested that FSIS restrict use of the term "healthy" to meal-type products. They argued that the term should be limited to complete meals containing proper proportions of foods from different food groups because the Food Guide Pyramid and other traditional approaches to sound nutrition recommend certain numbers of a variety of foods from several food groups for the average person. Other commenters agreed with FSIS that the definition should not be limited solely to meal-type products because many individual foods have special nutritional attributes that contribute to a healthy diet. FSIS is not persuaded that the definition should be confined to meal-type products, and believes that both individual foods and meal-type products can be used with a variety of foods to assist consumers to achieve a total diet conforming to dietary guidelines.

Uniform Definition

FSIS received numerous comments that suggested definitions for use of the term "healthy" on food labeling. As mentioned previously, there was overwhelming agreement that FSIS and FDA adopt a uniform definition. Both agencies conclude that because of the term's widespread appeal and its potential usefulness in denoting foods than can assist consumers in maintaining healthy dietary practices, the definition should be reasonable and practical. The following discussion addresses fat and saturated fat, cholesterol, sodium, and nutritive value in turn.

1. *Fat and Saturated Fat.* Most commenters who maintained that the term "healthy" should be defined by regulation supported limitations on amounts of fat and saturated fat as prerequisites to use the term on the labeling of meat and poultry products. Some agreed with the proposed criteria of parallel levels for fat and saturated fat, as required for use of the term "lean" without providing further grounds for support other than those presented by FSIS in the preamble to its proposal. The majority of commenters opposed the proposed criteria for fat and saturated fat, on the basis that the levels were too high under most conditions. Other commenters urged FSIS not to apply the same criteria to individual foods as to meal-type products because the latter generally contribute a larger fraction of total daily nutrients and energy than most individual foods.

Some commenters who objected to the proposed definition voiced concern that it might mislead consumers who purchase a product labeled as "healthy" in an effort to minimize their intake of fat and saturated fat. They argued that linking the definition of "healthy" to the definition of "lean" was not appropriate because foods labeled as "healthy" are more than merely foods that can be incorporated into a healthy diet. They asserted that the term "healthy," as understood by consumers and used by manufacturers, should be reserved for those products that are the very best in helping consumers to limit their intake of nutrients of public health concern, such as fat, cholesterol, and sodium.

FSIS has carefully considered these comments, and concludes that the criteria established for use of the term "healthy" on the labeling of meat and poultry products should minimize intakes of fat and saturated fat. FSIS is convinced that products low in fat and saturated fat meet this goal. Accordingly, FSIS has modified the proposed criteria of less than 10 g of fat and less than 4 g of saturated fat to require that products meet the regulatory definitions for "low fat" and "low saturated fat." These new restrictions recognize that a significant characteristic of the American diet is an excess of fat and saturated fat, and will assure consumers that foods labeled "healthy" are among the lowest in fat and saturated fat on the market. Selection of "low fat" and "low saturated fat" criteria for use of the term "healthy" is also responsive to the assertion that individual foods and meal-type products should not be treated uniformly because the latter, by definition, make a substantial contribution to the diet.

One commenter suggested that the fat and saturated fat content of meal-type products be capped at 10 g and 4 g per labeled serving, respectively, to ensure that products labeled as "healthy" are lower in these nutrients than meal-type products bearing competing claims such as "low fat" and "lean." FSIS rejects this suggestion because the "low" criteria are designed to help consumers construct a diet that is consistent with dietary guidelines, and FSIS believes they are adequate to minimize fat intake.

A manufacturer of a line of meal-type products bearing the term "healthy" and exceeding the limit of 12 ounces per serving (container) prescribed at 9 CFR 317.313(l) and 281.413(l) for meal-type products for the purposes of making nutrient content claims requested that limits on fat and saturated fat be indexed up for single-serving meals that exceed 12 ounces in weight. In response, FSIS notes that the "low fat" and "low saturated fat" criteria are indexed on the per-100-g basis. Therefore, FSIS does not perceive a need to evaluate meal-type products that weigh more than 12 ounces on a case-by-case basis for use of the implied nutrient content claim "healthy." Accordingly, FSIS is including meals that weigh more than 12 ounces in the definition of a meal-type product for purposes of using the term "healthy" on the labeling of these products.

2. *Cholesterol.* Most of the commenters who supported limitations on fat and saturated fat also supported limitations on cholesterol so that products labeled as "healthy" would assist consumers to minimize their intake of cholesterol. While some commenters argued for a strict "low cholesterol" criterion, a number agreed that the proposed levels were appropriate because they were not overly restrictive and were consistent with the cholesterol content of muscle meat.

Regarding comments favoring a "low cholesterol" criterion, FSIS is not persuaded that a definition for "healthy" that requires a product to be low in cholesterol is warranted. Such a definition would virtually preclude use of the term on a large majority of food products for the general public that are in the marketplace today—an outcome that would be a disservice to both consumers and manufacturers alike. Dietary guidelines advise consumers to eat a variety of foods, choosing different foods from five major food groups that include vegetables; fruits; grain products; dairy products; and meat, poultry, fish, dry beans, eggs, and nuts. FSIS believes that the "healthy" definition should encompass appropriate foods from all of these food groups in order to be useful to consumers in selecting foods that can be used to construct a healthy diet. Cholesterol is not ubiquitous in the food supply but only found in foods of animal origin. Cholesterol is not present in a number of foods, such as fruits and vegetables, that are included in healthy diets, and dietary reductions in both total fat and saturated fat facilitate reduction in dietary cholesterol. Because FSIS is adopting in this final rule "low fat" and "low saturated fat" criteria for the definition of "healthy," it concludes that a need to require a "low cholesterol" criterion is not justified.

In view of concerns expressed by commenters that criteria for "healthy" should minimize intake of cholesterol, as well as fat and saturated fat, FSIS has reconsidered its proposed criteria for cholesterol. FSIS had proposed a limit of no more than 95 mg per 100 g and per labeled serving (container) for meal-type products. Because these products must weigh at least 6 ounces as defined in 9 CFR 317.313(l) and 381.413(l), they are restricted to less than 95 mg of cholesterol in an entire serving. A commenter observed that it is reasonable to expect meal-type products to contain no more than this level. Even if meal-type products provided a third of a day's food intake, their cholesterol content would have to fall under 100 mg for an individual to consume less than the 300-mg recommended daily intake.

FSIS examined the disclosure level for cholesterol defined by FDA at 21 CFR 101.13(h)(3) for a main dish product, as defined in 21 CFR 101.13(m) and that weighs at least 6 ounces. This level is 90 mg of cholesterol per labeled serving and represents the lowest cholesterol disclosure level for meal-type products of all weights. Because low fat foods generally help individuals in reducing their intake of saturated fat and cholesterol, and FSIS is adopting "low fat" and "low saturated fat" criteria for use of the term "healthy," FSIS concludes that it is reasonable to apply a limitation of 90 mg of cholesterol per labeled serving for use of the term "healthy" on meal-type products. FSIS believes the 90 mg of cholesterol limit used in conjunction with "low fat" and "low saturated fat" criteria combine to set technologically feasible parameters that should encourage manufacturers to design a broad range of these food products. When cholesterol-containing foods such as meat, poultry, fish, eggs, or cheese are components of meal-type products, manufacturers should be able to meet the 90 mg of cholesterol limit by decreasing the amount of cholesterol-containing foods in the products.

Commenters noted that most individual foods play a smaller role in the daily diet than meal-type products so that it is anomalous to apply the same disqualifying levels to both types of products. They stated further that, as it was appropriate for FSIS to develop different nutrient content claim criteria for individual foods and for meal-type products, it is likewise appropriate that this same rationale be applied in defining "healthy." FSIS is now convinced that the cholesterol criterion for individual foods should be lower than the proposed 95-mg limit. FSIS believes that the limit of 60 mg of cholesterol per reference amount customarily consumed and per labeled serving size proposed by FDA for individual foods is a reasonable and appropriate limit to minimize cholesterol intake from these products when considering that the products must also meet "low fat" and "low saturated fat" criteria. Accordingly, FSIS is adopting in this final rule FDA's cholesterol criterion for the definition of "healthy" as applied to individual food products.

3. *Sodium.* While a few commenters suggested that a limit on sodium for a healthy food is unnecessary, most agreed that a limit is appropriate, noting it is widely recognized that the average daily sodium intake of Americans is higher than optimal under the Dietary Guidelines for Americans, and that it is worth striving for the control of sodium in food products. Although some commenters urged FSIS to adopt FDA's proposed limits on sodium, the majority expressed the opinion that FDA's sodium restrictions for meal products, main dishes, and individual foods are too high. They further stated that while FSIS's proposed limits may be reasonable for meal-type products, they are too low for individual food products, in some cases, because they must qualify on the per-100-g basis, as well as per reference amount. A few commenters urged FSIS to adopt "low sodium" criteria for individual foods and meal-type products. One commenter suggested a cap of 480 mg of sodium per labeled serving for meal-type products if "low sodium" criteria are adopted for this category of products.

After review and evaluation of the comments, FSIS concludes that the concept of using disclosure levels as limits on the sodium content in foods labeled as "healthy" does not minimize sodium intake from such products. FSIS believes that a level above 480 mg of sodium per labeled serving in meal-type products may not be helpful to consumers who might choose products labeled as "healthy" as a means to achieve the recommended daily intake of 2,400 mg of sodium per day. However, FSIS maintains that "low sodium" criteria are overly restrictive because a diet limited to "low sodium" products is not required to meet dietary recommendations. FSIS is not persuaded by the comments to change its proposed sodium criterion for meal-type products. FSIS is convinced that a level of 480 mg of sodium per labeled serving is both appropriate and technologically feasible. FSIS is deleting the per-100-g basis on the sodium criterion for meal-type products because it is superfluous for products that, by definition, weigh over 100 g.

Evidence supplied by commenters shows that many meal-type products currently bearing the term "healthy," or similar terms, on their labeling average well below FDA's proposed cutoff levels of 720 mg of sodium per labeled serving for main dishes and 960 mg for meal products. While a number of the products are at or slightly below the limit of 480 mg of sodium per labeled serving proposed by FSIS, there are a number that exceed this level. A commenter suggested that a sodium limit of 600 mg per labeled serving might be a reasonable level for meal-type products that would provide room for consumption of beverages and snacks throughout the day. Other commenters stressed that it would be counterproductive to establish restrictions on sodium that would diminish consumer acceptance of otherwise healthy products and damage their marketability.

Based on information about the sodium content of meal-type products on the market, FSIS believes that additional time should be afforded manufacturers to reformulate products to meet the level FSIS is adopting. This action minimizes compliance costs, ensures that products will continue to meet consumer expectations, and is consistent with FDA's approach. Accordingly, with regard to use of the term "healthy" on meat and poultry products, FSIS is establishing an interim criterion of 600 mg of sodium per labeled serving for meal-type products. Although this criterion must be met by the effective date of the regulations, FSIS is allowing an additional 24 months for affected parties to comply with the sodium criterion of 480 mg per labeled serving.

Regarding individual foods, several commenters objected to FSIS's proposed criterion of 480 mg of sodium per 100 g as too low in some cases, contending that salt is a necessary addition to processed meats, not a discretionary addition as with other processed food products. One commenter stated that sodium is required for the production, shelf life and safety of processed meats at some minimal level which exceeds 480 mg per 100 g. The commenter further argued that even though potassium salt has been able to replace sodium salt to some degree (up to 40 percent), a level of 700 mg of sodium per 100 g of product could be reached at best. A commenter also suggested that products reflecting a meaningful reduction in a nutrient from a previous recipe should be allowed to qualify for use of the term "healthy."

Based on information received in the comments and discussions with FDA, FSIS concludes that, in order for the definition of "healthy" as it applies to individual foods to be useful in assisting consumers to achieve dietary goals, the amount of sodium permitted should be significantly less than 20 percent of the recommended daily level of 2,400 mg per day, i.e., less than 480 mg per reference amount and labeled serving. A significant reduction in a nutrient, as provided for in 9 CFR 317.313(j) and 381.413(j) for relative claims, is at least 25 percent. However, for the definition of "healthy," the reduction cannot be applied to a particular food because the term "healthy" is not defined as a relative claim, but as an implied nutrient content claim. By applying the significant reduction principle to FDA's sodium disclosure level for individual foods, FSIS arrives at a level of 360 mg (75 percent of 480 mg) per reference amount and labeled serving. Accordingly, FSIS is establishing the sodium criterion for the "healthy" definition as it applies to individual foods at 360 mg per reference amount and labeled serving.

For the same reasons discussed for meal-type products, FSIS believes that additional time should be afforded manufacturers for product reformulation to comply with the criterion of 360 mg of sodium for the "healthy" definition as it applies to individual foods. As with meal-type products, such action minimizes compliance costs, ensures continued product acceptability, and is consistent with the approach FDA is adopting. Accordingly, with regard to use of the term "healthy" on meat and poultry products, FSIS is establishing an interim criterion of 480 mg of sodium per reference amount and labeled serving for products that are individual foods. Although this criterion must be met by the effective date of the regulations, FSIS is allowing an additional 24 months for affected parties to comply with the sodium criterion of 360 mg per reference amount and labeled serving.

Based on the comments submitted and other data it reviewed, FSIS is aware that many meat and poultry products, which are individual foods, exceed the 360 mg of sodium limit. Only a few products meet the limit at this time, while somewhat more meet the interim limit of 480 mg of sodium. Considering the 3½-year phase-in period allowed and the information reviewed, FSIS believes the 360-mg level is a reasonable and practical limit that both minimizes sodium intake and encourages production of improved products. Furthermore, manufacturers have options other than "healthy" to choose other claims such as "light" and "reduced" to describe products that fit into a healthy diet, should their products fail to meet the sodium qualification for the "healthy" definition.

To ensure full compatibility with FDA's sodium criterion for individual foods, FSIS is providing identical allowances for foods with reference amounts of 30 g or less or 2 tablespoons or less, and for dehydrated products that must be reconstituted with water or diluents containing insignificant amounts of nutrients.

4. *Nutritive Value.* In its proposal on use of the term "healthy," FSIS stated that it had solicited comments on use of the term in its proposed rule entitled "Nutrition Labeling of Meat and Poultry Products" published in the **Federal Register** on November 27, 1991 (56 FR 60302). Although FSIS did not propose requirements for essential nutrients in its proposal on "healthy" issued on January 6, 1993, FSIS noted that a few comments were received in response to the November 27, 1991, proposal. Some commenters stated that the term should not only be equated with controlled amounts of fat, saturated fatty acids, cholesterol, and sodium, but that use of the term should also meet the "high" definition for a certain number of micronutrients.

In response to FSIS's proposal on "healthy," some commenters opposed additional definition requirements that a food labeled as "healthy" contain certain specified amounts of essential vitamins, minerals, or other nutrients, on the basis that many nutritious foods might fail to qualify, or that such a requirement might limit a manufacturer's ability to formulate improved products. However, others stated it would be absurd if foods without nutritional value could be labeled as "healthy" while nutrient-dense lean meat products might fail to qualify because of the inherent fat content of muscle tissue. Most commenters favored an essential nutrient requirement because foods labeled as "healthy" should make a nutritional contribution to the diet, in addition to minimizing intake of nutrients of public health concern. One commenter cited a recent survey by the American Association of Retired Persons showing that 63 percent of respondents said they expect a product labeled as "healthy" to be a good source of some important vitamins and minerals.

Commenters suggested that requirements for six essential nutrients for which labeling disclosure is mandatory, i.e., vitamin A, vitamin C, calcium, iron, protein, and dietary fiber, be established at 10 percent of the Reference Daily Intake or Daily Reference Value, i.e., an amount consistent with the definition for good source of a nutrient, based on the weight of the food product as follows: Meal products should provide at least three of the six nutrients; main dishes should provide at least two of the six nutrients; and individual foods should be a good source of at least one of the six nutrients. Commenters also recommended that requirements for essential nutrients be met prior to nutrient addition to food products, so as to preclude addition solely for the purpose of meeting the criteria for the claim "healthy."

FSIS has carefully considered these comments and suggested requirements, and agrees that products labeled as "healthy" should provide essential nutrients in the amounts recommended by commenters prior to nutrient addition. Accordingly, FSIS is adopting the suggested requirements of meal products, main dishes, and individual foods prior to nutrient addition. To provide consistency with FDA's meal categories on a weight basis, FSIS is applying the requirements per labeled serving suggested for FDA's main dish products to FSIS-regulated meal products weighing at least 6 ounces, but less than 10 ounces, and the requirements per labeled serving suggested for FDA's meal products to FSIS-regulated meal products weighing 10 ounces or more, including those weighing more than 12 ounces.

FSIS interprets nutrient addition as an addition of nutrients specifically to meet the requirements for "healthy." For example, the requirement does not preclude claims on products where a nutrient is added to meet a standard of identity; a nutrient is added for technological purposes, e.g., L-ascorbic acid (vitamin C) in curing meats; a non-meat or non-poultry ingredient fortified in accordance with FDA requirements and policy is used; or an ingredient is used that is a source of a nutrient, such as textured vegetable protein.

Single-Ingredient, Raw Products

Several commenters suggested that FSIS establish a separate category for muscle cuts of meat and poultry based on criteria for "extra lean," which might also be appropriate for fish and game meats under FDA jurisdiction. Based on information submitted by commenters and otherwise available, FSIS believes that a number of meat and poultry products that are individual foods comprised of more than one ingredient readily can be formulated to meet the criteria for fat, saturated fat, and cholesterol that FSIS is adopting. For example, many soups that contain lesser amounts of meat or poultry and certain luncheon products with added water or non-meat ingredients and that have 55-g reference amounts currently meet the criteria.

However, FSIS realizes that single-ingredient, raw meat and poultry products are severely impacted by the restrictions on fat, saturated fat, and cholesterol. Information reported in USDA's Agriculture Handbook No. 8 shows that no single cut of beef, pork, lamb, veal, or chicken could meet all three requirements, and only skinless light meat cuts of turkey could qualify to use the term.

A number of commenters stressed that "healthy" should be defined in such a way that it is consistent with dietary guidelines. They mentioned that many recommendations from public health organizations and the Dietary Guidelines for Americans advise choosing lean meats, fish, and poultry without skin as a means of achieving nutritious diets low in fat, saturated fat, and cholesterol. They further stated that if lean meats cannot be labeled as "healthy" because of the inherent fat content of muscle tissue, there is little incentive for industry to further its research and production of leaner red meat.

FSIS believes that products failing to meet the definition for "healthy" can also have a place in a healthy diet. Choosing lean versus fattier cuts of meats makes it easier for Americans to meet dietary guidelines. FSIS is fully aware that lean cuts of meat and poultry, which of themselves do not meet definitions for "low fat" and "low saturated fat," and do not contain 60 mg or less of cholesterol per reference amount and labeled serving, can be incorporated readily into meal-type products and individual food mixtures that do meet the "healthy" definition. As stated in the preamble to its proposal, FSIS believes that the criteria for "healthy" should not interfere with dietary guidance messages of encouraging consumption of a variety of foods and increased use of lean meats and poultry products.

FSIS is convinced that products labeled as "healthy" should both assist consumers in meeting dietary guidelines, as well as minimize intake of nutrients of public health concern. FSIS finds merit in those comments suggesting that criteria for "extra lean" be considered for use of the term "healthy" in connection with cuts of meat and poultry. Accordingly, FSIS is providing in this final rule that single-ingredient, raw meat and poultry products that meet the requirements for "extra lean" may qualify to use the term "healthy" on the labeling, provided they meet all other requirements to bear the claim. Products qualify for the "extra lean" claim when they contain less than 5 g of fat, less than 2 g of saturated fat, and less than 95 mg of cholesterol per 100 g and per reference amount customarily consumed. Single-ingredient, raw meat and poultry products may meet the "extra lean" requirements in lieu of meeting definitions for "low fat" and "low saturated fat" and the limitation of 60 mg or less of cholesterol per reference amount and labeled serving. Although "extra lean" criteria as applied to single-ingredient, raw products are slightly less stringent than the criteria adopted for processed, multi-ingredient individual food products, they both recognize the inherent nutrient profile of muscle tissue and identify the very leanest of meat and poultry products available to consumers in the marketplace. Thus, "extra lean" criteria meet the goal of minimizing fat intake from this important category of products that are staples in the American diet.

FSIS is not specifying a sodium criterion for single-ingredient, raw meat and poultry products because these products are inherently low in sodium, containing amounts well below the limit established for individual foods.

Implementation Date

In its proposed rule on use of the term "healthy," FSIS advised that it intended to make any final rule that derived from the rulemaking effective the same effective date as the final rule entitled "Nutrition Labeling of Meat and Poultry Products," which is July 6, 1994. FSIS further stated that, if, for some reason, a final rule on "healthy" and similar terms is not issued in time to meet the same effective date as FSIS's final rule on nutrition labeling, the use of "healthy" and similar terms would be subject to the nutrient content claim provisions set forth in the final rule on nutrition labeling.

In response to comments on the proposed rule, the provisions of this final rule differ from the provisions contained in the proposed rule. The differences are of a magnitude that will require the relabeling, reformulation, and/or reanalysis of some products currently on the market, i.e., those with labeling currently bearing the term "healthy" or any other derivative of "health," and which do not meet the requirements set forth in this final rule.

Therefore, FSIS has decided that sufficient time should be allotted to make any changes necessary for manufacturers to comply with this rule. FSIS has determined that this final rule will be implemented 18 months from the date of its promulgation, with an additional 24 months to achieve further reductions in sodium levels. This 18-month period is the same period as allowed for the nutrition labeling regulations based on comments received from the public on issues related to its implementation date. This timeframe is also consistent with FDA's enforcement strategy as discussed in its companion rulemaking on use of the term "healthy."

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.363 is added to read as follows:

§ 317.363 Nutrient content claims for "healthy."

(a) The term "healthy," or any other derivative of the term "health," may be used on the labeling of any meat or meat food product, provided that the product is labeled in accordance with § 317.309 and § 317.313.

(b)(1) The product shall meet the requirements for "low fat" and "low saturated fat," as defined in § 317.362, except that single-ingredient, raw products may meet the total fat and saturated fat criteria for "extra lean" in § 317.362.

(2) The product shall not contain more than 60 milligrams (mg) of cholesterol per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 grams (g) or less or 2 tablespoons (tbsp) or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 317.309(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh more than 12 ounces (oz) per serving (container), shall not contain more than 90 mg of cholesterol per labeled serving size; and

(ii) Single-ingredient, raw products may meet the cholesterol criterion for "extra lean" in § 317.362.

(3) The product shall not contain more than 360 mg of sodium, except that it shall not contain more than 480 mg of sodium during the first 24 months of implementation, per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 g or less or 2 tbsp or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 317.309(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh more than 12 oz per serving (container), shall not contain more than 480 mg of sodium, except that it shall not contain more than 600 mg of sodium during the first 24 months of implementation, per labeled serving size; and

(ii) The requirements of this paragraph (b)(3) do not apply to single-ingredient, raw products.

(4) The product shall contain 10 percent or more of the Reference Daily Intake or Daily Reference Value as defined in § 317.309 for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition, except that:

(i) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh at least 6 oz but less than 10 oz per serving (container), shall meet the level for two of the nutrients per labeled serving size; and

(ii) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh 10 oz or more per serving (container), shall meet the level for three of the nutrients per labeled serving size.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

4. Section 381.463 is added to read as follows:

§ 381.463 Nutrient content claims for "healthy."

(a) The term "healthy," or any other derivative of the term "health," may be used on the labeling of any poultry product, provided that the product is labeled in accordance with § 381.409 and § 381.413.

(b)(1) The product shall meet the requirements for "low fat" and "low saturated fat," as defined in § 381.462, except that single-ingredient, raw products may meet the total fat and saturated fat criteria for "extra lean" in § 381.462.

(2) The product shall not contain more than 60 milligrams (mg) of cholesterol per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 grams (g) or less or 2 tablespoons (tbsp) or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 381.409(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh more than 12 ounces (oz) per serving (container), shall not contain more than 90 mg of cholesterol per labeled serving size; and

(ii) Single-ingredient, raw products may meet the cholesterol criterion for "extra lean" in § 381.462.

(3) The product shall not contain more than 360 mg of sodium, except that it shall not contain more than 480 mg of sodium during the first 24 months of implementation, per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily

consumed of 30 g or less or 2 tbsp or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 381.409(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh more than 12 oz per serving (container), shall not contain more than 480 mg of sodium, except that it shall not contain more than 600 mg of sodium during the first 24 months of implementation, per labeled serving size; and

(ii) The requirements of this paragraph (b)(3) do not apply to single-ingredient, raw products.

(4) The product shall contain 10 percent or more of the Reference Daily Intake or Daily Reference Value as defined in § 381.409 for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition, except that:

(i) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh at least 6 oz but less than 10 oz per serving (container), shall meet the level for two of the nutrients per labeled serving size; and

(ii) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh 10 oz or more per serving (container), shall meet the level for three of the nutrients per labeled serving size.

Done at Washington, DC, on: May 4, 1994

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

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May 10, 1994

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N–384H]

RIN 0905–AD08

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food and Drug Administration, HHS

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to establish a definition for the term "healthy" under the Federal Food, Drug, and Cosmetic Act (the act). This final rule will provide a definition for this implied nutrient content claim and provide for its use on the food label. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: This regulation is effective May 8, 1994. Before January 1, 1998, the sodium content of individual foods, main dish, and meal products shall be consistent with § 101.65(d)(2)(ii)(A), (d)(2)(ii)(B), (d)(3)(ii)(A), (d)(3)(ii)(B), or (d)(4)(ii)(A), as appropriate. After January 1, 1998, the sodium content of individual foods, main dish, and meal products that bear the claim "healthy" shall be consistent with the requirements in § 101.65(d)(2)(ii)(C)(*1*), (d)(2)(ii)(C)(*2*), (d)(3)(ii)(C)(*1*), (d)(3)(ii)(C)(*2*), or (d)(4)(ii)(B), as appropriate.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 6, 1993 (58 FR 2302), FDA published a final rule entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food" (hereinafter referred to as "the general principles final rule") that, among other things, provided for the use of implied nutrient content claims on the labels and in the labeling of individual foods and meal-type products. While the agency recognized that, as provided by section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), a food is prohibited from bearing an implied nutrient content claim on its label or in its labeling unless the claim is defined by FDA by regulation, it was unable to adopt a comprehensive set of definitions for implied nutrient content claims in the general principles final rule because of resource constraints and the strict timeframes under which that rulemaking was accomplished. Although the agency did not establish a comprehensive set of definitions, it did determine, among other things, that the term "healthy" is an implied nutrient content claim when it is used on the label or in labeling in a nutritional context, for example, when it appears in association with an explicit or implicit claim or statement about a nutrient (58 FR 2302 at 2375). The agency said that, for example, in the statement "healthy, contains less than 3 g of fat," "healthy" is an implied nutrient content claim.

Because of the complex nature of this term, the agency concluded that it was not possible to arrive at a final regulation for a definition of the term "healthy" as part of the general principles final rule (58 FR 2302, January 6, 1993). However, in that same issue of the **Federal Register**, FDA published a proposal entitled, "Food Labeling: Nutrient Content Claims, Definition of Term: Healthy" (hereinafter referred to as "the healthy proposal"), to establish a definition for the implied nutrient content claim "healthy" for individual foods, main dishes, and meal products (58 FR 2944, January 6, 1993). The agency tentatively concluded that foods labeled with the term "healthy" could be used with a variety of foods to assist consumers in maintaining healthy dietary practices, that is, to achieve a total diet that conforms to current dietary guidelines. In other words, FDA tentatively concluded that foods bearing a "healthy" claim should be those that, based on their nutrient profile, would assist consumers in achieving dietary recommendations. Consequently, the agency proposed to permit the use of the term "healthy" as an implied nutrient content claim on products that meet the definitions for "low fat" and "low saturated fat" and that do not exceed the disclosure levels for sodium and cholesterol (proposed § 101.65(d)(2) (21 CFR 101.65(d)(2))). (Disclosure levels are defined as levels of total fat, saturated fat, sodium, and cholesterol in a food above which a referral statement is required when the food bears a nutrient content claim (see § 101.13(h) (21 CFR 101.13(h))). The agency further stated that when "healthy" is not used as an implied nutrient content claim, it would be subject to the general misbranding provisions of section 403(a) of the act (58 FR 2944 at 2945).

The agency advised that it intended to make any final rule that derived from the proposal effective on the date of applicability of the general principles final rule and the final rule on mandatory nutrition labeling (i.e., May 8, 1994) (58 FR 2944). However, FDA stated that if for some reason a final rule had not been issued by that date, "healthy" would be subject to the general nutrient content claim requirements for implied claims or the general misbranding clause (58 FR 2944).

In a companion document in the January 6, 1993 issue of the **Federal Register** (58 FR 686), the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) proposed a definition for "healthy" or any other derivative of the term "health" on meat and poultry products. FSIS proposed to permit "healthy" to be used on the label or in labeling of a meat or poultry product that contains less than 10 grams (g) of fat, less than 4 g saturated fat, less than 95 milligrams (mg) of cholesterol, and less than 480 mg of sodium per 100 g and per reference amount customarily consumed (RACC) for individual foods and per 100 g and per labeled serving for meal-type products. FSIS further proposed that any use of the term "healthy," whether in a brand name or in conjunction with a nutrient, must meet this definition.

FDA received approximately 50 letters in response to the "healthy" proposal. Each letter contained one or more comments. The letters were from a wide range of sources, including consumers, consumer organizations, professional associations, State and local government agencies, industry, and industry trade associations. Some of the comments supported various provisions of the proposal. Other comments suggested modifications, revisions, or revocations of various provisions of the proposal. A summary of the comments, the agency's responses to the comments, and a complete discussion of the agency's conclusions with respect to use of the term "healthy" follow.

II. Comments and Agency Response

A. Purpose in Defining "Healthy"

The agency views the term "healthy" as a unique nutrient content claim. This term not only characterizes the level of the nutrients in a food but implies a judgment about the food itself, based on its nutrient profile. Polls and surveys discussed in the comments that FDA received on the "healthy" proposal show that consumers have many ideas about what this term means. Some believe that it means that the food is low in fat and low in sodium; others believe that the term means that the food is low in cholesterol; while still others believe that the term means that consumption of the food would lead to a healthy diet. Taken together, however, these comments establish not only that "healthy" conveys a strong message about the nutrient content of a food, but that consumers associate it with the nutrient levels that have generally been recommended over the past few years.

The agency finds, therefore, that the fundamental purpose of a "healthy" claim is to highlight those foods that, based on their nutrient levels, are particularly useful in constructing a diet that conforms to current dietary guidelines. As stated in the "healthy" proposal (58 FR 2944 at 2946), and supported by the comments, foods labeled with the term "healthy" should be those that can be consumed to assist consumers in maintaining healthy dietary practices, that is, in achieving a total diet that conforms to current dietary recommendations. Thus, "healthy" is different from other nutrient content claims that FDA has defined in that, while the other nutrient content claims characterize only the level of the nutrient (or, in the case of "light," nutrients) that is the subject of the claim, "healthy" characterizes both the level of the nutrient in a food and, derivatively, the food itself.

1. One comment stated that in order for a definition of "healthy" to be meaningful, unique nutrient criteria should be developed for each food category.

The agency disagrees with this comment. Although the agency would consider it inappropriate if the definition of "healthy" were to exclude an entire category of foods that is recommended in dietary guidelines, FDA believes that to establish different criteria for each food category would not be helpful to consumers. Not only would consumers have to learn that the meaning of the term varied from food type to food type, but they would have to learn what the term meant in each food category if they were to use it in structuring a diet that conforms to dietary recommendations. Such a situation would defeat the purpose of the claim. Instead of being able to rely on the term as one that highlights foods that are particularly useful in structuring a healthy diet, consumers would be left to judge each food's place in the overall diet that they were consuming. For example, if the agency took into account the fact that some dairy products have a higher fat content than some other foods, and that some cheeses have a higher saturated fat content than some other foods, and so forth, consumers would be left with a situation in which even if they ate a significant number of foods labeled as "healthy," they could have no confidence that their intake of these nutrients would be within dietary guidelines.

The agency believes that the definition of "healthy" that it is establishing in this final rule will permit a sufficient number and variety of foods in all food categories to bear the term to help consumers achieve a total diet that is consistent with current dietary recommendations. Thus, the agency is not establishing a definition of "healthy" that is based on unique nutrient criteria for each food category.

2. A few comments stated that the definition of "healthy" should include alternative criteria that the product may meet to be able to bear the term. The comments argued that any product that can bear an approved health claim should be able to bear the term "healthy." These comments asserted that for a food to make a health claim about one of its nutrients, it cannot contain levels of other nutrients that exceed disclosure levels. Thus, a food that can bear a health claim will not contain levels of a nutrient that will increase the risk of diet-related disease to the general population and in that regard represents a healthy food.

The agency rejects these comments. A health claim is based on the relationship of a substance to a specific disease or health-related condition. While the provisions governing health claims do not permit such claims on products that contain nutrients at levels above the disclosure levels (see § 101.14(e)), a product that bears a health claim may not be helpful in assisting consumers in lowering their daily intake of those nutrients that are not the subject of the claim, but of which reduced daily intake has been recommended. While the agency recognizes that Congress anticipated that health claims can be used to reinforce the Surgeon General's recommendations and to help Americans maintain a healthful diet (H. Rept. 101–538, 101st Cong., 2d sess., 9–10 (June 13, 1990)), the fundamental concerns that underlie a health claim are different from those that underlie the definition of "healthy." FDA's goal in defining "healthy" is to define the term in such a way that it will highlight foods that, because of their nutrient content, will be most helpful to consumers in constructing a diet that is consistent with dietary recommendations. The purpose of a health claim, on the other hand, is to make consumers aware of scientifically valid nutrient-disease relationships and of foods that have a level of the nutrient in question such that consumption of the food may help to affect the risk of developing the disease in question.

In some circumstances these purposes overlap. In others they do not. For example, a woman in her 20's may wish to consume foods that are good sources of calcium, even though the levels of fat in such foods would not qualify them to bear a "healthy" claim. Thus, simply because a food qualifies to bear a health claim does not mean that it should also qualify to bear the term "healthy." Consequently, the agency is not granting the comments' request to permit the term "healthy" on foods that qualify to bear a health claim, unless, of course, the product also meets the definition of "healthy."

3. Some comments argued that "healthy" is not an absolute claim but a relative claim, and that it should be regulated as such. These comments stated that when foods in a given product line have been reduced in fat, saturated fat, sodium, or cholesterol, and an appropriate reference food exists, the product should be able to make a "healthy" claim. For instance, according to these comments, if a particular type of fat or oil, such as canola oil, has a lower amount of saturated fat than another type of oil, then the canola oil represents a healthier choice and should be able to bear the "healthy" claim.

The agency disagrees with these comments. As fully discussed above, the purpose of the "healthy" claim is to highlight those foods that, because of their nutrient profile, are useful in assisting consumers in structuring their diets to conform to dietary guidelines. The usefulness of a food labeled "healthy" is not based on how it compares to a similar food, but on how it contributes to achieving a total diet consistent with dietary recommendations. In contrast, the purpose of comparative claims is to distinguish those foods that contain modified levels of the specified nutrient when compared to the level of that nutrient in an appropriate reference food. Thus, the purpose of a "healthy" claim is significantly different from that of a comparative claim. While both types of claims can be beneficial to consumers in structuring their diets, they do different things. Therefore, the agency considers it inappropriate to define "healthy" as a comparative claim. However, the agency advises that products that bear a comparative claim such as "reduced" and "less" and meet the requirements for a "healthy" claim can bear both terms.

B. Need for Definition

4. A few comments asserted that FDA did not have the authority under the 1990 amendments to define "healthy" because the statute did not set forth an intent or direction to regulate words and expressions that do not relate to the absence, presence, or quantity of nutrients in a food, preventive claims, or curative claims, all of which are subject to scientific verification. The comments further asserted that the 1990 amendments did not authorize FDA to extend express or implied nutrient content claim regulations in a manner that would prohibit words or descriptive free speech that may be useful to consumers in selecting foods that are helpful in achieving a total diet consistent with current dietary recommendations.

One comment from a foreign government advised that its policy is to not allow food products to be described as "healthy," although their labeling may bear statements that the food can be consumed as part of a healthy diet. Thus, the comment argued that such a provision would be a barrier to free trade with the United States.

Other comments supported the agency's position to establish a definition for "healthy." These comments stated that if the term were not defined, products that had the term in their brand names before October 1989 would be permitted to continue to use the term under the "grandfather" provision (§ 101.13(q)(1) implementing section 403(r)(2)(C) of the act) and thus continue to mislead consumers. The comments contended that unevenly restricting usage of the term would allow one company to use "healthy" in a brand name and preclude other manufacturers with equivalent or superior products from using the term.

The agency does not agree with the comments that argued that it does not have authority to define "healthy." Nor is it persuaded by those comments that argued that by establishing a definition for this term, FDA would be prohibiting words or descriptive free speech that could be useful to consumers. Establishment of a definition for "healthy" when it is used in a nutritional context is required by section 403(r)(1)(A) of the act itself. When used in such a context, "healthy" is making an implied claim about the levels of the nutrients in the food; that is, that these levels are such that the food would be useful in achieving a total diet that conforms to current dietary recommendations (56 FR 60421 at 60423, November 27, 1991). Such a claim, under the terms of section 403(r)(1)(A), would misbrand a food unless it is made in accordance with a definition of the Secretary (and, by delegation, FDA) or with one of the other provisions in section 403(r)(2) of the act.

The agency has no intention of depriving consumers of information that may be useful to them in selecting foods that are helpful in achieving a total diet that is consistent with current dietary recommendations. The whole purpose of this rulemaking is to ensure that "healthy" is defined in a way that enables consumers to have confidence that the foods that bear this term will in fact be useful for the purpose highlighted by the comment. The agency also points out, as pointed out by some of the comments, that because "healthy" is an implied nutrient content claim that was in use in the brand names of some foods before October 25, 1989, the term could continue to be used in the brand names of those foods if FDA did not define the term. A survey of those brand names shows, however, that "healthy" means one thing on one product and something else on another (58 FR 2944 at 2946). Thus, it would in fact be contrary to the interest of consumers for FDA not to define this term because continuing use of the term would be in a confusing and inconsistent manner. It would also mean that foods that came onto the market after October 25, 1989, including those that are as, or are even more, useful than those that bore the term before the October 1989 date, would be unable to bear the term. Such a situation makes no sense.

FDA fully considered the question of whether the nutrient content claims regime established by the 1990 amendments interfered with free speech in the nutrient content claims final rule (58 FR 2302 at 2392). The agency concluded that it did not. The discussion of this issue in the nutrient content claims final rule is incorporated herein. The comments that argued that defining "healthy" would prohibit descriptive free speech did not provide any basis for questioning the agency's earlier conclusion. Thus, FDA rejects these comments.

FDA notes that preventive claims and curative claims, mentioned in some of these comments, were not the subject of the 1990 amendments. These claims are drug claims, not food claims. The 1990 amendments addressed only foods.

In response to the comment from the foreign government, the agency recognizes that as a consequence of its decision to define "healthy," some manufacturers may have to maintain dual label inventories for products that are exported to countries that do not permit "healthy" on the label. While it is not FDA's intent to hamper free trade, FDA concludes, based on the considerations that it has set out above, that it is necessary for it to define this term.

5. A few comments urged FDA to regulate the term "healthy" as an implied nutrient content claim regardless of whether it is used in a nutritional context. The comments asserted that such a regulatory approach would provide consistent treatment of the term between USDA and FDA because USDA had not proposed a contextual basis for the use of the term "healthy." Further, the comments argued that to do otherwise could confuse consumers, who are not likely to recognize that the meaning of the term may vary when it appears on different food labels. One of these comments contended that if use of the term is not subject to regulation as an implied nutrient content claim when the use is not in a nutritional context, e.g., when it is used as part of a brand name without accompanying nutrient content claims, FDA will be creating a substantial loophole to the new regulations. The comment argued that this loophole will result in misleading uses of the term in food labeling.

Another of these comments stated that the agency's proposed definition recognizes that the term is, in essence, a nutrient content claim for multiple nutritional characteristics, and that therefore, the agency should not require that there be other statements that create a nutritional context before a "healthy" claim is treated as an implied nutrient content claim. This comment stated that the use of "healthy" in a brand name should also be regulated as an implied nutrient content claim because companies whose products cannot meet the agency's criteria for the term as an implied nutrient content claim will simply place it in their products' brand names and not make any other nutrient claim, as a means of avoiding the agency's definition.

The agency is not persuaded by these comments that "healthy" should be regulated as an implied nutrient content claim when not used in a nutritional context. The comments have not provided the agency with information on which to conclude that consumers would not be able to discern the context in which the claim appears on the label.

The agency does not believe that the term "healthy" inherently implies the absence or presence of a nutrient in a particular amount, or that the food that bears the term necessarily has a nutrient profile that would be helpful to consumers in structuring a diet that conforms to dietary guidelines. Rather, such inferences are likely to be drawn only if the term "healthy" is accompanied by additional language or graphic material or is otherwise presented in a context that explicitly or implicitly suggests that the food has a particular nutrient profile.

FDA believes that when "healthy" is used in a context in which it is not an implied nutrient content claim, the consumer will be able to understand that fact. For example, in the statement "eat lots of fruits and vegetables for a healthy diet," the term "healthy" does not imply the absence or presence of a nutrient in a particular amount, nor does it imply that the food bearing the term is particularly useful in achieving dietary recommendations. Instead, the term is used to provide general dietary guidance. Thus, such a statement would not be a claim subject to the requirements of section 403(r) of the act.

The determination as to whether the use of the term alone or in a brand name conveys a message about the usefulness of the food in achieving dietary recommendations because of its nutrient content is appropriately made on a case-by-case basis. Simply moving "healthy" from a claim elsewhere on the label to the brand name does not necessarily change the context in which the claim is made or cause the term not to be an implied claim. For example, the statement "low in fat" on the label of a food with the brand name "Healthy Bites" would place the term "healthy" into a nutritional context and subject it to the provisions of section 403(r) of the act. Likewise, the statement "high in oat bran," that implies that the food is high in fiber, on the label of a food bearing the term "healthy" in the brand name would place the term into a nutritional context.

Additionally, there may be instances when the use of a vignette on the label of a food bearing "healthy" would place the term in a nutritional context. Furthermore, the term "healthy" in a brand name may be placed in a nutritional context, even in the absence of other label claims, statements, or vignettes, for example, when the brand name covers a variety of products that are advertised and marketed as "healthy" because of their nutrient profile. The agency advises that in such circumstances, the use of the brand name itself is conveying a message to consumers about the nutrient profile of the product. The product line is represented as including foods that are useful in assisting consumers in structuring a diet that is consistent with current dietary recommendations. Thus, the agency is establishing in this final rule a definition for "healthy" when it is used in a nutritional context on the label, in the labeling, or in the advertising for a food product. Such a context is established when "healthy" appears in association with an explicit or implicit claim or statement about a nutrient, or when the term appears in a brand name that by virtue of its use implies that the product is useful in achieving dietary recommendations.

Even when "healthy" is not used in a nutritional context, however, as fully discussed in the "healthy" proposal (58 FR 2944 at 2945), the agency would have significant reservations about the use of this term if it appears on a product that has nutrients at levels that exceed their disclosure levels as established in § 101.13(h). It seems highly unlikely that the use of this term on a product that contains a nutrient at a level that would not assist consumers in maintaining healthy dietary practices would not be misleading.

Consequently, the agency concludes that it is possible that "healthy" could be used in food labeling in a way that would not subject its use to regulation as a nutrient content claim, and the agency's regulatory approach appropriately must recognize that fact. Nonetheless, FDA finds that under section 403(a) of the act, it has ample authority to ensure that "healthy" is not used in a misleading manner, even when it is not used in a nutritional context.

6. In its January 6, 1993, proposal, FDA solicited comment on whether it should adopt a regulation using its authority under the general misbranding sections of the act, sections 201(n) (21 U.S.C. 321(n)), 403(a), and 701(a) (21 U.S.C. 371(a)), to provide further guidance on the circumstances under which use of "healthy" in a context that is not nutritional might be false or misleading and thus misbrand the product. The agency stated that if comments supported adopting such a regulation, FDA would consider doing so in this final rule. In response, two comments stated that FDA should provide further guidance on the circumstances under which use of the term "healthy" might be false or misleading but did not provide suggestions on how such circumstances should be defined. The majority of comments, however, did not ask FDA to provide further guidance. Many comments stated that the guidance in the preamble to the proposal is sufficient to regulate use of the term when it is not an implied nutrient content claim. In addition, some comments stated that it is appropriate to determine on a case-by-case basis whether the term, when not used in a nutritional context, violates the requirements of section 403(a) of the act and thus misbrands the product.

The agency has concluded that the comments have not supported adoption of regulations under section 403(a) of the act on "healthy" when this term is not used in a nutritional context in labeling. Thus, FDA is not establishing additional regulations but will make a determination as to whether the use of the term is false or misleading under section 403(a) of the act on a case-by-case basis.

C. Terms Subject to Definition

7. Several comments requested that FDA extend the definition of "healthy" to terms like "health," "healthful," and other derivatives of "healthy" to be consistent with the use of the term proposed by USDA. A few of these comments asserted that unless the definition of "healthy" applies to the derivatives of this term, consumers will be confused by the use of the derivatives on the labels of products that do not qualify for the "healthy" definition.

The agency finds merit in these comments and concludes that the definition of "healthy" should also apply to the use of any of its derivatives in a nutritional context. The agency believes that derivatives of "healthy" have the same general meaning and connotation as this term and, thus, when used in food labeling may be construed by consumers to imply that the products on which they appear will be helpful in maintaining healthy dietary practices. Therefore, the agency concludes that it is appropriate to require that when any of the derivatives of "healthy" are used in a nutritional context in food labeling, their use be in accordance with the definition of "healthy" in § 101.65.

FDA finds that providing for the use of derivatives of "healthy" in the definition of that term is the logical outgrowth of the proposal. As stated above, USDA proposed this action, and FDA asked in its proposal whether its regulations should be consistent with USDA's. These comments urged that the coverage of the two agency's definitions should be consistent. FDA has concluded that it is appropriate to include the derivative terms in its definition because doing so will promote consistent use of these terms in the marketplace on both FDA and USDA regulated products.

Accordingly, the agency is revising proposed § 101.65(d)(2) to include derivatives of "healthy" in the definition of that term when they are used to characterize the level of a nutrient in a food. The derivatives of "healthy" include, but are not limited to, the terms "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness."

8. A few comments urged FDA to extend the definition of "healthy" to terms like "wholesome," "nutritious," "good for you," and "food for today's diet." One of these comments further stated that if FDA adopts a stringent definition for "healthy," and fails to apply it to synonymous terms, the food industry might simply replace "healthy" with these other terms.

While the agency recognizes that terms such as "nutritious," "wholesome," and "good for you" can be implied nutrient content claims when they appear in a nutritional context on a label or in labeling, the agency does not believe that they are necessarily synonymous with "healthy." FDA has concluded, as stated in the general principles final rule (58 FR 2302 at 2375), that it does not have sufficient information to determine whether definitions for the terms mentioned in these comments are needed, and what those definitions should be. The comments to the "healthy" proposal have not provided the agency with the information that it would need to develop definitions or to establish these terms as synonyms for the term "healthy." Thus, the agency is not extending the definition of "healthy" to these terms.

However, the agency advises that when these terms appear in association with an explicit or implicit nutrient content claim or statement about a nutrient, they will be implied nutrient content claims and subject to the provisions of section 403(r) of the act. Thus, the use of such claims, if they are not defined by the agency, or if they are not exempted through the "grandfather" provision, would cause the product to be misbranded and subject to regulatory action. Furthermore, when these terms appear on the label other than in association with an explicit or implicit nutrient content claim or statement about a nutrient, they are subject to regulation under the general misbranding provisions of section 403(a) of the act. Therefore, if a firm is considering using such terms on its label or in its labeling in a nutritional context, it should petition FDA to define the term under section 403(r)(2)(A)(i) of the act.

D. Covered Products

9. Some comments opposed FDA's proposal to define "healthy" on the grounds that this term is more appropriately applied to overall diets that include fresh fruits, vegetables, low fat dairy products, and grains than to an individual food, main dish, or meal product. These comments urged FDA to prohibit the use of the term on food labels because it describes the total diet, is misleading to consumers, reinforces the "good food-bad food" concept, and could easily lead a consumer to overconsume those products labeled as "healthy" rather than consuming a variety of foods. These comments further stated that consumers may rely on the claim rather than on specific information on the food label to determine the place of the food in the total diet. Finally, the comments contended that a "healthy" claim would undermine terms like "low" and "reduced," and that selecting foods labeled "healthy" does not necessarily lead to a healthy diet.

Other comments supported the use of "healthy" on individual foods and meal-type products. These comments asserted that there is no sound reason to limit the use of the term to meals or main dishes. These comments contended that if properly defined and regulated, the claim can be useful in assisting consumers in achieving current dietary recommendations.

A few comments recommended the use of "healthy" only on meal-type products. One comment further stated that the 1990 amendments do not contain language indicating that nutrient content claims may be limited to meals or main dishes.

FDA rejects the comments that argued that "healthy" is more appropriately applied to overall diets than to individual foods, main dishes, or meal products (main dishes and meal products may be referred to collectively as "meal-type products"). As stated in the "healthy" proposal, FDA believes that foods labeled with the term "healthy," whether they are individual foods, main dishes, or meals, can be used with a variety of foods to assist consumers in maintaining healthy dietary practices (58 FR 2944 at 2946). The comments have not provided convincing information to the contrary. In fact, polls and surveys that are discussed in other comments have shown that depending on the context in which the term is used, many consumers perceive "healthy" in food labeling as describing some aspect of the nutrient content of the product. Because consumers perceive the term as describing the nutrient content of the food, the agency concludes that, if accurately defined, the term can be useful in helping consumers select those foods that will promote a diet consistent with dietary guidelines. Thus, the agency concludes that it is appropriate to establish regulations governing use of "healthy" as an implied nutrient content claim when it is used in such a context.

As stated above, the polls and surveys discussed by the comments show that, in a nutritional context, "healthy" conveys a strong message about the nutrient content of a food. One of the goals of the 1990 amendments was to encourage manufacturers to provide a wider selection of foods with improved nutrient content to facilitate diets that conform to guidelines. The agency believes that defining "healthy," particularly in the manner that FDA has done in this final rule, will encourage such innovation. The term will be reserved for those products that, based on their nutrient profile, will be useful in assisting consumers in structuring diets that conform to current dietary recommendations.

The agency recognizes, as stated in one comment, that consumers may tend to rely on the "healthy" claim rather than reading specific information on the label. Thus, the agency accepts that it must define "healthy" in a way that ensures that, even if consumers do not read the full label, foods that bear the term will be useful in structuring a healthy diet. FDA believes that such a definition can be crafted, and that it has in fact done so in § 101.65(d).

The agency further concludes that "healthy" should be permitted on both individual foods and meal-type products. Given the fact that both types of foods make significant contributions to the overall diet, FDA is aware of no reason why consumers should not be appropriately advised about the usefulness of individual foods, as well as of meal-type products, in achieving a healthy diet. If the agency permitted the claim only on foods packaged as meal-type products, those consumers who chose to construct their diet primarily from foods packaged as individual foods would not have the same benefit of assistance in selecting foods that are useful in achieving a total diet that is consistent with current dietary recommendations. FDA finds, in deciding to define "healthy," that such assistance can be appropriately given. Therefore, the agency is rejecting the comments that the use of "healthy" should be limited to meal products.

10. One comment suggested that if the term "healthy" is allowed on meal-type products, FDA should require label statements that state that additional foods such as lowfat milk, fruit, or whole grain bread or rolls be served with the meal, so that at least one serving of all five food groups suggested by the Food Guide Pyramid are included in the meal.

The agency rejects this suggestion. The comment did not provide any information on which FDA could make a finding that the type of label statement suggested by the comment is necessary to ensure that consumers understand the proper place in the diet of a product labeled "healthy" or how the food's use conforms to the recommendations of the Food Guide Pyramid. Consumers who follow the Food Guide Pyramid will have on the label, through the product's statement of identity, the Nutrition Facts declaration, and the ingredient statement, the information necessary to determine the components and nutritional profile of the product, and where the product fits into the Food Guide Pyramid. The agency believes that by using the information available on the label, consumers will be able to determine the basic food groups that are represented among the product's ingredients and the number of servings of each of these food groups that the product contributes. Consequently, the agency believes that consumers will be able to determine the types of food that should be used to supplement the "healthy" product in order to meet the recommendations of the Food Guide Pyramid without any additional information in the labeling.

Thus, FDA is not granting the request that additional label statements be required on products that meet the "healthy" definition. However, the agency will not object if manufacturers choose to offer guidance as to how their product may be used to achieve a diet that conforms with the Food Guide Pyramid, as long as the guidance is not false or misleading.

11. One comment argued that the proposed definition for "healthy" was not appropriate for foods for babies, toddlers, and children. It stated that the nutrients included in the proposed definition (fat, saturated fat, sodium, and cholesterol) may not necessarily be undesirable for infants and young children. This comment urged FDA to establish separate criteria for the use of "healthy" on foods for babies, toddlers, and children. However, the comment did not offer any suggestions on how the claim should be defined.

FDA recognizes that the definition for "healthy" that it is adopting in this final rule is not appropriate for foods for infants and children less than 2 years of age, in part because it is inconsistent with the guidance provided by various health authorities that fat and cholesterol should not be restricted in the diets of infants (Ref. 1). The regulation on general provisions for nutrient content claims provides in § 101.13(b)(3) that nutrient content claims may not be made on foods intended specifically for use by infants and children less than 2 years of age unless a regulation specifically provides for such a claim on such foods. The agency finds that there is nothing in the record of this rulemaking that would support a conclusion that a "healthy" claim should be defined for foods intended for infants and children less than 2 years of age, nor would anything in the record allow the agency to decide what such a definition should be. Accordingly, the agency is not establishing separate criteria for the use of "healthy" on foods for infants and children less than 2 years of age. The agency notes, however, that interested persons may submit a petition under § 101.69 (21 CFR 101.69) with appropriate information that would provide a basis on which the agency could determine that a "healthy" claim would be appropriate on foods for infants and children less than 2 years of age.

12. One comment stated that the proposed regulation governing the use of the "healthy" claim would be inappropriate for restaurant foods because restaurant foods differ markedly from foods sold at retail. The comment asserted that because the portion size of a restaurant food may be adjusted to meet the criteria for the claim, the definition of "healthy" should be on a per ounce basis. If the definition is not established on a per ounce basis, the comment continued, 10 ounces of food in a meal may not be able to bear the term, whereas a 5 ounce portion of the same food would qualify to bear the term. The comment recommended that different criteria be established for restaurant foods so that the larger portions of food served in restaurants would be able to qualify. It suggested that to bear a "healthy" claim, one composite ounce of the main food in the meal should not contain more than 30 percent of its calories from fat and not more than 10 percent of calories from saturated fat. The comment stated that, thus, the overall meal would meet the proposed requirement for "healthy."

The agency advises that there is no basis for the concern expressed in this comment. While FDA recognizes that restaurant foods differ from packaged foods in the manner in which they are prepared and sold, it has determined that the differences between restaurant foods and packaged foods are not so great as to preclude restaurants from making claims based on the same criteria that apply to other foods (58 FR 2302 at 2387). A restaurant food may bear a "healthy" claim if the restaurateur has a reasonable basis on which to believe that the food that bears the claim meets the definition of "healthy" established in this final rule. (Claims made on menus are currently exempt from the requirements of this final rule and are being addressed in an ongoing rulemaking (58 FR 33055, June 15, 1993).)

The reasonable basis can be provided in a number of ways. The restaurateur could show, for example, that he or she relied on a trustworthy cookbook that gave values for the specified nutrients in the finished food, and that such levels comply with the requirements for the "healthy" claim. A restaurateur could also use recognized data bases for raw and processed foods to compute nutrient levels in the foods or meals and then not use methods of preparation that violate the appropriate use of those data bases (e.g., uncontrolled addition of ingredients or inappropriate substitutions of ingredients). Thus, the agency is not providing a different basis for the definition of "healthy" for restaurant foods.

Claims on restaurant foods that are individual foods must be based on the reference amount customarily consumed regardless of the portion size. For restaurant foods that are main dishes or meals, the claims are made on a per 100 g basis for the entire amount of food offered as a portion or a meal. These requirements should preclude the kind of misleading adjustments in serving size described in the comment.

E. The Definition

The agency proposed in the **Federal Register** of January 6, 1993 (58 FR 2944 at 2949), that the term "healthy" be permitted on products that meet the definitions for "low fat" and "low saturated fat" and that do not exceed the disclosure levels for sodium and cholesterol. The agency specifically solicited comment on whether the proposed definition of "healthy" was appropriate, or whether the definition should include a requirement that the food be "low" in a third nutrient i.e., sodium or cholesterol, or if the food should also be "low calorie." In addition, FDA asked for comment on whether a definition that may not permit lean meat and poultry to bear the claim would help consumers to achieve a total diet that is consistent with current dietary recommendations. Finally, the agency solicited comment on whether a product labeled "healthy" should supply a certain amount of specified essential vitamins, minerals, or other nutrients (e.g., protein).

1. Fat and Saturated Fat

13. Many of the comments supported the "low fat" and "low saturated fat" requirements in the proposed definition of "healthy." These comments agreed with the agency's position that a product labeled "healthy" should have restricted amounts of fat and saturated fat, so that the product will be helpful to consumers in structuring a diet that conforms to dietary guidelines.

Other comments argued that the proposed fat and saturated fat criteria are too stringent. A few of these comments contended that a food may be healthy if it has a moderate amount of fat or saturated fat and is low in other nutrients that also are of public health significance, such as cholesterol or sodium.

A few comments suggested that the definition of "healthy" should be revised so that a product would be allowed to bear the term "healthy" if the amounts of fat and saturated fat do not exceed the disclosure levels for these nutrients. A similar comment suggested that in addition to the disclosure levels as limits for fat and saturated fat, one of these nutrients should meet the "low" criterion. The comment contended that such a definition would provide greater flexibility for manufacturers to educate and assist consumers in maintaining healthy dietary practices.

Another comment recommended that a food should be able to qualify to bear the term "healthy" if it contains one half the disclosure levels for fat and saturated fat. According to the comment, the definition would then be 10 percent daily value (DV) for individual foods, 15 percent DV for main dishes, and 20 percent DV for meals.

The agency disagrees with the latter group of comments and concludes that the "low fat" and "low saturated fat" requirements in the proposal are appropriate for the definition of "healthy." The agency rejects the comment that recommended using one half the disclosure levels as limits for fat and saturated fat. Aside from the fact that the comment did not provide a rationale for why such a definition would assist consumers in achieving diets consistent with dietary guidelines, the agency concludes that such a level would not sufficiently limit the amount of fat and saturated fat in a product labeled "healthy" to assist consumers in achieving dietary recommendations while giving them the flexibility of selecting a variety of other foods. Thus, such a level would defeat the purpose of the "healthy" claim.

As for the use of disclosure levels, FDA finds that such levels cannot be used to limit or lower the daily intake of these nutrients. The disclosure levels established for fat and saturated fat, as well as other nutrients, were not intended to be used to limit or lower the daily intake of these nutrients but rather to ensure that a food that bears a nutrient content claim does not contain a nutrient at a level that may increase the risk of a diet-related disease (56 FR 60537 at 60543). The agency's intent in defining the term "healthy" is to identify those foods that are particularly helpful in constructing a total diet that is consistent with dietary recommendations. FDA considers it likely that individuals will make an array of food choices, and tying the term "healthy" to the disclosure levels would mean allowing this term to appear on foods that will not contribute to achievement of the recommended levels. Such a result would not be consistent with the agency's purposes in defining this term.

The agency finds that the requirements that fat and saturated fat levels meet the "low" definition are appropriate because these restrictions recognize the need to reduce dietary intake of fat and saturated fat as recommended by the Surgeon General and the Food and Nutrition Board (Refs. 2 and 3). Therefore, they will assist consumers in constructing a total diet that is consistent with dietary recommendations. Accordingly, the agency is not revising the criteria that it proposed with respect to the levels for fat and saturated fat in the definition of "healthy."

14. One comment recommended that in addition to the requirement that fat and saturated fat meet the "low" definition, FDA should further limit the amount of these nutrients in main dishes and meal products that qualify to bear the term "healthy." The comment proposed caps of 10 g of total fat and 4 g of saturated fat. In support of the suggested criteria, the comment stated that these caps would serve two purposes:

(1) They would be consistent with USDA's proposed definition of "healthy," thereby avoiding confusion over the different levels of fat and saturated fat that may be in FDA-regulated products labeled "healthy" and USDA-regulated products labeled "healthy"; and

(2) They would assure consumers that "healthy" foods are among the lowest in fat and saturated fat in the marketplace.

The agency has not been persuaded by this comment that further limitations are necessary or appropriate for meal-type products labeled "healthy." As stated in response to the previous comment, FDA believes that the "low" criteria for fat and saturated fat recognize the need to reduce dietary intake of fat and saturated fat. FDA further believes that the "low" criteria are sufficient to assist consumers in restricting their fat and saturated fat intake, without being so restrictive that it would preclude a sufficient number and variety of foods from bearing the claim.

Furthermore, FDA believes that the underlying intent of the comment in recommending caps was really to urge FDA and USDA to establish consistent and uniform definitions to minimize consumer confusion. In fact, the two agencies have consistent definitions of "healthy." Elsewhere in this issue of the **Federal Register**, USDA is establishing a definition of the term "healthy" and its derivatives, as applied to meat and poultry products, that is consistent with the definition that FDA is establishing in this document.

15. Another comment, which also recommended additional criteria for meal-type products, stated that in addition to the "low fat" and "low saturated fat" requirements, foods labeled with the term "healthy" should contain no more than 30 percent of calories from fat and less than 10 percent of calories from saturated fat.

The agency advises that, as discussed in the "healthy" proposal (58 FR 2944 at 2947), the definitions for "low fat" and "low saturated fat" for meal and main dish products, include a second criterion that requires that the food bearing the claim contain no more than 30 percent of calories from fat and less than 10 percent of calories from saturated fat respectively. Consequently, no changes in § 101.65(d) are necessary in response to the comment.

2. Sodium

16. Several comments that supported the proposed requirement that a food bearing the term "healthy" be "low fat" and "low saturated fat" urged the agency to also require that the product meet the definition for "low sodium." One comment cited the results of a national survey conducted by the National Consumers League (NCL) that showed that 81 percent of the respondents thought that a food labeled as "healthy" was low in fat and sodium. The comment contended that, thus, a

definition for "healthy" that does not require the food to be low in sodium is inconsistent with consumer perception. Other comments also cited the NCL survey as well as other surveys that showed that consumers view the term "healthy" as a claim for sodium. Some comments stated that levels for sodium proposed by FDA are not consistent with the Dietary Guidelines' recommendation of limiting sodium intake to 2,400 mg a day. The comments argued that at the proposed levels for sodium, a packaged meal-type product, which typically provides 250 to 450 calories, could provide up to 40 percent of the DV for sodium. This amount of sodium from one meal could easily cause a consumer to exceed 2,400 mg of sodium per day.

Other comments recommended that FDA adopt USDA's proposed limit of 480 mg sodium. Several comments expressed the belief that sodium is a nutrient that is as closely associated with diet-related disease as either fat or saturated fat. They argued, therefore, that "healthy" should represent a substantially reduced level of sodium. Other comments stated that individual foods should meet the "low" definition for sodium (140 mg or less per reference amount), and that meal-type products should contain no more than 480 mg of sodium. One of these comments asserted that a level of sodium above 480 mg may not be helpful to consumers who will consume meal-type products labeled "healthy" frequently as a way of achieving recommended DV's.

Other comments on this issue supported the agency's proposal to permit the term "healthy" on products that did not exceed disclosure levels for sodium. These comments stated that a "low sodium" requirement would disqualify many products that are helpful in assisting consumers to meet recommended dietary goals.

One comment argued that the proposed levels for sodium were too low, and that the agency should not regulate the amount of sodium in products permitted to bear the term "healthy." The comment asserted that sodium is used in food as a necessary processing agent and preservative (e.g., for binding protein, for developing flavor profiles, and for retarding spoilage). This comment argued that there is not yet sufficient research to determine a precise "minimum" or necessary sodium content to guarantee safety against microbiological contamination. In addition, the comment asserted that sodium is used not only to assist in preservation but also for taste. It added that, if the sodium in a product is so low as to render the product tasteless or even bad tasting, consumers will not eat the product or will add salt at the table, which could result in greater sodium intake. The comment asserted that the goal should be to reduce the current overall dietary intake of sodium and not to set a specific sodium requirement that must be met before a product could bear the claim. During the comment review period, this respondent submitted a supplemental comment, restating the concern that the proposed sodium levels were inappropriate. However, the supplemental comment recommended that FDA revise its proposal to permit any product that contained 600 mg or less of sodium and that otherwise met the requirements to bear the claim "healthy." The comment stated that this recommendation was based in part on information that food with lower salt levels may not behave the same as foods with at least 600 mg of sodium with regard to moisture retention, flavor profile, and shelf life. However, the comment did not provide data to support its position.

The agency has considered all of the comments and is persuaded that it is not appropriate to allow individual foods or main dish or meal products that contain amounts of sodium equal to the disclosure level to bear the term "healthy." Based on information received in the comments, FDA finds that consumers expect "healthy" to be a claim for sodium in addition to other nutrients. FDA's proposal to use the disclosure levels as the limit for sodium and cholesterol was premised on its tentative view that to help consumers to comply with dietary recommendations, it was most important to highlight foods with low fat and saturated fat levels, and that it would be adequate to ensure that the amounts of sodium and cholesterol in foods that bore a "healthy" claim did not exceed disclosure levels. Having been persuaded that consumers will be using foods labeled as "healthy" to limit their sodium intake to achieve current dietary recommendations, the agency finds it appropriate to restrict the amount of sodium in a product that qualifies to bear the term. Foods that contain sodium at the disclosure level will not be useful for this purpose. (FDA will discuss cholesterol in the next section of this document.)

While FDA agrees with the comments that argue that "healthy" should only be permitted on products that help the consumer in reducing sodium intake to meet dietary recommendations, FDA has not been persuaded that the best approach in achieving this goal is to incorporate a "low sodium" requirement in the definition of "healthy." FDA concludes that a definition that requires "low" sodium would be too restrictive because such a requirement would disqualify many products that would be useful in maintaining a diet that conforms to current dietary guidelines. Foods such as raw beet greens, canned white corn, canned carrots, many breakfast cereals, legumes, low fat dairy products, and other foods that are useful in following dietary guidelines would be disqualified with a "low sodium" requirement. While FDA recognizes that manufacturers will have to reformulate many of their processed products to meet the definition of "healthy" that it is adopting, the agency is concerned that many processed foods, as well as certain fresh foods, that would otherwise meet the definition would be disqualified with a "low sodium" requirement. The agency believes that for the claim to be useful, foods that are able to bear the term should be of a sufficient number and variety to help consumers achieve a total diet that is consistent with current dietary recommendations.

Further, as stated in the comments, sodium plays an important role in consumer acceptance of a product. FDA believes that if, in addition to the "low fat" and "low saturated fat" requirements, it were to define "healthy" to include a "low sodium" requirement, the appeal of many products would be diminished because of an unacceptable flavor profile, especially in foods where sodium has been added as a flavoring agent to compensate for the removal of fat. Thus, if consumers abandon the product or add salt to taste at the table, the food would lose its usefulness in assisting consumers in achieving dietary recommendations with respect to sodium intake. Thus, the agency has concluded that while the disclosure level is too high for sodium in a food bearing a "healthy" claim, a "low sodium" criterion is not a viable option.

The agency considered the recommendation by one of the comments that the sodium criterion for "healthy" be no more than 600 mg of sodium. It concluded that such a level for individual foods would be inappropriate because it exceeds the disclosure level and would not assist consumers in maintaining healthy dietary practices. Furthermore, such a criterion could cause frequent use of foods labeled "healthy" to result in an overall diet inconsistent with current dietary guidelines. If, for example, an individual at one of four eating occasions were to consume at least four individual foods that were labeled "healthy," and each contained 600 mg of sodium, he or she would have reached the Reference Daily Intake (RDI) for sodium (i.e., 2,400 mg) in that one eating occasion. Because of the ubiquity of sodium in the food supply, it is unlikely that at the remaining eating occasions all of the foods consumed would be free of sodium. Thus, in the course of a day, the person's overall sodium intake would exceed the RDI and result in an overall diet inconsistent with recommendations.

With regard to meal-type products, a requirement that the food contain no more than 600 mg would be more helpful in meeting dietary guidelines than the disclosure levels of 720 mg and 960 mg for main dishes and meals, respectively. However, 600 mg of sodium in meals and main dishes would not provide consumers with the flexibility of eating other foods that do not restrict the amount of sodium but that can help in other ways to achieve current dietary recommendations. Although the comment that suggested a level of 600 mg raised a concern that lower sodium levels could affect the viability of some products, the agency is not aware of data that establish a threshold level of sodium needed for a wide variety of foods, and the comment did not provide any data to support its claim. While 600 mg sodium may be necessary to produce and distribute certain foods, FDA believes that there is a wide variety of foods for which such a level is not needed. There are currently many individual foods and meal-type products on the market that contain less than 600 mg sodium (Ref. 4).

Based on the comments, the agency is persuaded that a mealtype product bearing the term "healthy" should contain no more than 480 mg of sodium per labeled serving. This level is the level for sodium that USDA is adopting in its definition of "healthy" for meal-type products. Such a requirement is appropriate because it is low enough to ensure that foods that comply with it will be helpful in assisting consumers in achieving current dietary goals and will also give consumers who eat such foods the flexibility to consume foods whose sodium content is not restricted, such as breakfast cereals and some dairy products. At the same time, the agency believes that, based on the sodium levels of products currently available, this level is not so low that it would significantly affect the appeal of meals or main dishes that contain this level of sodium. Thus, the agency is revising its definition of "healthy" in § 101.65(d)(4)(ii)(B) to provide that if the food is a main dish or meal product the level of sodium in the product cannot exceed 480 mg.

With regard to individual foods, the agency has scrutinized the comments in seeking an appropriate level for sodium. As previously discussed, the agency considers it inappropriate to include a "low sodium" criterion in the definition of "healthy." It is not the agency's desire to so narrowly define the term "healthy" that it would disqualify many foods that are recommended to be included in the diet and that could assist consumers in meeting dietary goals. Nor is it the agency's desire to have a definition that permits nutrients at levels that would not be helpful in assisting consumers in achieving current dietary goals. While FDA has been persuaded that the definition of "healthy" should restrict the level of sodium so that foods bearing the claim will be helpful in reaching dietary goals, the agency does not believe that the levels suggested in comments represent appropriate sodium levels for individual foods.

To fulfill the purposes of a "healthy" claim, FDA has concluded that the sodium criterion for "healthy" must be significantly less than the disclosure level that it proposed in the January 6, 1993, issue of the **Federal Register** (58 FR 2944 at 2949) and yet higher than "low sodium." In trying to arrive at such a level, FDA decided to examine the dietary effects of 25 percent and 50 percent reductions from the disclosure level. The agency has determined, as stated in the general principles final rule (58 FR 2302 at 2346), that a reduction of at least 25 percent in the level of the nutrient from the level of the same nutrient in an appropriate reference food is a significant reduction. Applying a 25 percent reduction to the disclosure level for sodium in individual foods, the agency arrived at a level of 360 mg (i.e., 480 mg × .25 = 120; 480 − 120 = 360). Likewise, applying a 50 percent reduction to the disclosure level for sodium in individual foods, the agency arrived at a level of 240 mg.

In evaluating the appropriateness of these levels as a sodium criterion for the term "healthy," the agency found that a level of 240 mg of sodium would, like "low" sodium, disqualify many foods that are recommended to be included in a healthy diet. Thus, the agency rejected this level. However, in evaluating a level of 360 mg of sodium the agency found:

(1) That this level will assist consumers in constructing a diet consistent with dietary guidelines;

(2) That it is an amount of sodium that could be reasonable for a wide variety of foods to use the "healthy" definition without compromising the appeal of the food (Ref. 4);

(3) That the level is not so restrictive that it is likely to disqualify many foods that are recommended to be included in a healthy diet; and

(4) That this level is consistent with the requirement that is being adopted by USDA elsewhere in this issue of the **Federal Register**. Because this level satisfies the criteria for an appropriate sodium level, FDA decided to adopt it.

The agency notes that these factors distinguish the use of a percent reduction from the disclosure level for sodium from the use of a similarly derived level for fat, which the agency refused to do. As stated above, use of a level for fat that is derived from a percent reduction of the disclosure level would not adequately serve the purposes that are to be achieved by a "healthy" claim. However, for sodium, such reduction provides an appropriate level.

Thus, the agency is revising its proposed definition of the term "healthy" in § 101.62 (d)(2)(ii) and (d)(3)(ii) to require that individual foods bearing the claim "healthy" contain no more than 360 mg of sodium per reference amount customarily consumed (reference amount) and per labeled serving.

The agency is concerned, however, that this approach will not effectively control misleading claims on nutrient-dense foods with small serving sizes. The agency has addressed a similar concern in the definition of "low." As fully discussed in the general principles final rule (58 FR 2302 at 2317), the agency concluded that in order to prevent misleading "low" claims on nutrient-dense foods with small serving sizes, a weight-based criterion should be applied to these foods. Thus, the agency adopted a per 50 g requirement for foods with a reference amount of 30 g or less or 2 tablespoons or less. The agency believes that a similar approach is warranted in the definition of "healthy." Without a weight-based criterion for foods with small serving sizes, foods such as rye wafers would be able to bear the "healthy" term, even though they may contain as much as 880 mg of sodium per 100 g of food. The agency would consider a "healthy" claim on such a product to be misleading. Thus, to prevent misleading claims on nutrient dense foods with small serving sizes, FDA is adopting the per 50 g criterion for foods with small serving sizes, consistent with the approach used for "low" claims.

Specifically, foods that have reference amounts of 30 g or less or 2 tablespoons or less may bear the "healthy" claim provided they contain no more than 360 mg of sodium per 50 g and meet all other requirements of the definition.

Because section 403(r)(1)(A) of the act, which prohibits undefined nutrient content claims, is applicable May 8, 1994, and would preclude most "healthy" claims if that term is not defined, FDA has determined that it is essential that it provide a definition for that term by May 8, 1994. However, the agency recognizes that the revisions in the sodium requirements for individual foods and main dishes and meal products, while the logical outgrowth of the proposal, will significantly limit the amount of sodium a food may contain for it to bear a "healthy" claim as compared to the proposal. Further, results of an informal survey in Washington, DC of products currently available in the marketplace (Ref. 4) show that many individual foods, main dishes, and meal products that are labeled as "healthy," and that otherwise meet the definition of "healthy" established in this final rule, would not qualify for use of the term because the sodium level in such foods exceeds 360 mg in individual foods and 480 mg in main dish and meal products. The agency does not wish to severely disrupt the marketplace by establishing a definition or effective date for "healthy" that would cause the majority of products that are currently labeled "healthy," and that otherwise meet the definition, to be removed from the market. The agency, therefore, is providing time to give industry the opportunity to reformulate their products to meet the requirement that sodium not exceed 360 mg per reference amount and per labeled serving for individual foods and 480 mg per serving for main dish and meal products. While the effective date of the "healthy" definition is May 8, 1994, products currently on the market that otherwise meet the definition of "healthy" will not have to conform to the criteria of 360 mg sodium for individual foods and 480 mg sodium for meal-type products until January 1, 1998.

However, while the agency believes that these requirements are appropriate, it is concerned that if, during this transitional period, FDA were to permit products currently on the market that contain uncontrolled levels of sodium to continue to bear the term "healthy" until January 1, 1998, such products would not be helpful in assisting consumers in reducing their sodium intake and would be inconsistent with current dietary recommendations. Therefore, the agency is establishing a requirement that will limit the amount of sodium allowed in individual foods, main dish products and meal products bearing the term "healthy." In attempting to arrive at an appropriate level for sodium, the agency evaluated products that are currently available in the marketplace and that, with the exception of the sodium requirement, meet the definition for "healthy." The agency also considered how these products are likely to be used in constructing overall diets that conform to current dietary guidelines.

The agency determined that levels of 480 mg of sodium in individual foods and 600 mg of sodium in main dishes and meal products are appropriate levels during this transitional period. Such levels will assist consumers in reaching dietary goals by at least limiting their sodium intake, and they will not preclude products currently available and that otherwise meet the definition of "healthy" from continuing to bear the term while firms reformulate their products.

Thus, individual foods that do not exceed 480 mg sodium per reference amount and per labeled serving and meet the other requirements of the "healthy" definition provided in § 101.65(d) may bear the term until January 1, 1998. Likewise, main dishes and meal products that do not exceed 600 mg sodium per labeled serving and otherwise meet the "healthy" definition may bear the term until January 1, 1998.

3. Cholesterol

17. Some comments supported the proposal that foods that contain less than the disclosure level for cholesterol would be eligible to bear the claim. A few comments, however, urged the agency to require that a product bearing the term "healthy" meet the "low cholesterol" criteria. One comment cited the results of the survey by NCI, cited in section II.D.2. of this document that showed that 79 percent of the respondents thought that a food labeled as "healthy" was low in cholesterol. Thus, the comment contended that a definition for "healthy" that does not require the food to be "low" in cholesterol is inconsistent with consumer perception.

Another comment stated that foods labeled with the term "healthy" should contain no more than 60 mg or a significantly reduced amount of cholesterol.

FDA has not been persuaded by the comments that the definition of "healthy" should include a "low" cholesterol criterion. FDA finds that a definition that requires that a food be "low" in cholesterol would be too restrictive because such a requirement would disqualify products, including some seafood and game meat containing products, that otherwise meet the "healthy" definition and that would be useful in structuring diets that conform to current dietary guidelines. Although the agency recognizes that consumers may perceive "healthy" to mean "low cholesterol" (as shown by the NCL survey) and, thus, select foods labeled "healthy" to restrict their cholesterol intake, the agency has not been convinced by the comments that a product labeled "healthy" must meet a "low cholesterol" requirement to assist consumers in achieving current dietary recommendations. Unlike sodium, cholesterol is not ubiquitous in the food supply. Dietary cholesterol is found mainly in egg yolks, certain shellfish, organ meats, and, to a lesser extent, other meats and dairy products (Ref. 5). Consequently, cholesterol is not likely to be present in significant amounts in many of the foods that are included in a healthy diet (e.g., fruits, vegetables, legumes, cereal grains).

Furthermore, while the agency acknowledges that most dietary guidance recommends that serum cholesterol be lowered because of its relationship to cardiovascular disease, saturated fat is the major dietary determinant of total serum cholesterol levels in populations (Ref. 6). The definition for "healthy" that FDA is adopting in this final rule requires that the total amount of saturated fat in a product be low for it to qualify to bear the claim. Thus, the need to restrict the amount of dietary cholesterol is diminished in the presence of the "low saturated fat" criterion. The agency finds that this criterion will adequately assist consumers in structuring a healthy diet with respect to dietary factors that could affect serum cholesterol levels. Therefore, for single ingredient products that are not raw seafood or game meat, FDA is requiring in § 101.65(d)(2)(iii) that the level of cholesterol not exceed the disclosure level.

Although it believes that the proposed criterion for cholesterol is appropriate for meal-type products as well, FDA is concerned that by adopting the proposed criterion, it would be establishing a requirement that is not totally consistent with the criterion established for cholesterol by USDA. In its final rule on the definition of "healthy," published elsewhere in this issue of the **Federal Register**, USDA is adopting a criterion that limits the amount of cholesterol in meal-type products to the disclosure level defined in § 101.13(h)(3) permitted for main dishes, i.e., 90 mg per labeled serving. FDA examined the impact that such a requirement would have on meal products subject to its jurisdiction. (The disclosure level for meal products is 120 mg per labeled serving.) A survey of the local marketplace as well as a review of product composition data submitted to the agency (Refs. 4 and 7) has shown that meal products currently labeled "healthy" contain levels of cholesterol at or below 90 mg per labeled serving. Therefore, a requirement restricting the amount of cholesterol to 90 mg per labeled serving would not significantly affect FDA-regulated meals that currently bear the term "healthy." Further, such a requirement would ensure that the meal products labeled "healthy" are among those most likely to assist consumers in achieving dietary recommendations.

Thus, the agency does not consider it unreasonable to apply the cholesterol limitation for main dishes to its meal products as well. Accordingly, the agency is revising proposed § 101.62(d) to require that main dish and meal products that contain less than 90 mg cholesterol per labeled serving, and that otherwise meet the definition of "healthy," may bear the claim.

18. One comment suggested that, in the absence of requiring "low" for all nutrients, the agency should require a disclosure statement, as it has done for terms such as "light/lite," that states "See ______ panel for information on cholesterol and sodium," as appropriate. This statement would appear immediately adjacent to the most prominent appearance of the term on the principal display panel of the label.

In response to this comment, the agency points out that it has established requirements for label statements about nutrients that are present in amounts that exceed the disclosure levels in a product that makes a claim about another nutrient (§ 101.13(h)). In order for consumers to use such information effectively, it should be used with consistent meaning. The agency is reluctant to require use of disclosure statements on a different basis unless there is a well justified need. The comment did not provide justification for why it should, and the agency is therefore not adopting the suggestion. Thus, for "light" claims, "healthy" claims, and all other nutrient content claims, a statement in accordance with § 101.13(h) immediately adjacent to the claim is required if the food contains fat, saturated fat, cholesterol, or sodium in an amount that exceeds the disclosure level.

F. Need for Additional Criteria

In its January 6, 1993, proposal (58 FR 2944), FDA solicited comment on whether it should include additional requirements in the definition of "healthy" such as a "low calorie" criterion or a requirement that a food that bears a "healthy" claim supply a certain amount of specified essential vitamins, minerals, or other nutrients.

19. The majority of comments supported a requirement that a food must contribute certain essential nutrients to bear a "healthy" claim. They asserted that the definition of "healthy" is unbalanced without the requirement for a prescribed amount of these nutrients because a food labeled "healthy" should not only limit the amount of fat, saturated fat, cholesterol, and sodium but should also contribute certain essential nutrients. Thus, according to the comments, a claim that is to be used to assist consumers in achieving a healthy diet should include a requirement that the food provide certain essential nutrients.

The comments further asserted that the proposed definition is a one dimensional approach because it fails to adequately account for current dietary recommendations as they relate to intake of certain nutrients, such as vitamins, minerals, and other essential nutrients. The comments contended that dietary guidelines stress the importance of essential nutrients, and that foods that fail to contribute essential nutrients, but that are permitted to be labeled as "healthy," would likely mislead consumers. The comments supported their statements by submitting results from a recent poll in which 63 percent of respondents expected a product labeled "healthy" to be a good source of some important vitamins and minerals.

One comment stated that without the requirement for inclusion of some nutrients, the definition would be trivialized or compromised by its use on products of little or no nutritional value, because foods like jelly beans, soda, and certain candies could qualify to bear the term. Another comment stated that such a requirement could assist consumers in identifying foods that are nutrient dense and at the same time contain a minimum of components that according to current dietary recommendations should be limited for healthy eating.

Other comments opposed inclusion of any requirement that a product labeled with the term "healthy" provide certain nutrients in addition to limiting the amount of fat, saturated fat, sodium, and cholesterol in the product. These comments contended that the addition of a nutrient contribution requirement would limit a manufacturer's ability to formulate processed foods that have an increased nutritional quality, and such a requirement would take away an incentive to produce foods of this type.

Another comment that was opposed to a requirement that a food supply certain nutrients to qualify to bear a "healthy" claim stated that foods that are widely viewed as healthy and that contribute needed variety to a healthy diet, such as apple juice, grape juice, and whole wheat bread, would not meet this requirement and therefore would not be able to bear the "healthy" claim.

Although the agency recognizes that certain varieties of apple juice and grape juice may not be able to bear the claim, the agency disagrees that whole wheat bread will not be able to bear a "healthy" claim. Nutrient profile data analyses (Ref. 4) show that whole wheat bread will meet the 10 percent nutrient contribution requirement set forth in this final rule. The agency believes that the "healthy" claim should be reserved for those foods that are particularly helpful to consumers in achieving dietary recommendations. Conceptually, a healthy diet not only restricts nutrients that have been shown to be related to disease but also includes those nutrients that are important in sustaining body function and reducing the risk of disease. The agency would be concerned that without a requirement that a food that bears a "healthy" claim contribute at least one essential nutrient to the diet, consumers using "healthy" foods frequently might not consume enough of these nutrients. Thus, the agency agrees with those comments that stated that a product bearing the claim "healthy" should also contribute essential vitamins, minerals, or other nutrients to the diet. Accordingly, FDA is revising the definition of "healthy" to include a nutrient contribution criterion.

20. One comment suggested that the agency use the Index of Nutritional Quality (INQ) system as a mechanism to facilitate the definition of "healthy." The INQ is a ratio that compares the percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) of the nutrient in the food to the percent of the reference caloric intake that is contributed by the food. In other words, the INQ relates a food's contribution to nutrient allowances to its contribution to energy requirements. The comment stated that a positive nutrient contribution could be determined using this criterion. The comment proposed that a "healthy" food should have an INQ above 1 for at least four nutrients

or an INQ above 2 for at least two nutrients.

While the agency finds some merit to this comment, it believes that a less complex requirement would be more useful to consumers in understanding how to construct a total diet consistent with dietary guidelines. The use of the INQ system would also not be consistent with the approach used in defining other nutrient content claims and would likely confuse and mislead consumers regarding the nutrient profile of the food. Moreover, the RDI's of several of the essential nutrients that the comment recommended be included in the definition of "healthy" are not based on caloric density. Thus, the agency believes that it would be inappropriate to base a nutrient contribution requirement on the caloric contribution of the food. Therefore, FDA rejects the suggestion that it base a nutrient contribution requirement on the INQ system.

21. Many comments urged FDA to require that foods labeled "healthy" provide at least 10 percent of the RDI or DRV of the essential nutrients that are of sufficient public health significance to warrant their inclusion in the nutrition label. Specifically, the comments requested requirements for vitamin A, vitamin C, protein, calcium, iron, or fiber. These comments asserted that the number of these nutrients required should increase with the food's contribution to the total daily intake. Under this suggested approach, an individual food would have to contain at least 10 percent of the DV of one of the six nutrients mentioned above per reference amount and per labeled serving, a main dish would have to contain at least 10 percent of the DV of at least two of the six per serving, and a meal would have to contain at least 10 percent of the RDI or DRV of three of the six per serving.

The agency agrees with the suggestion that the required nutrients should be those that are of sufficient public health significance to warrant their inclusion in the nutrition label. Thus, the agency is revising its definition of "healthy" in § 101.65(d) to include a requirement that to bear the term, a product must provide a specified amount of vitamin A, vitamin C, protein, calcium, iron, or fiber, all of which have been highlighted by leading health authorities as being important to the public health (Refs. 2, 3, 5, and 8).

In addition, the agency believes that it is reasonable to expect main dish and meal products to contribute more than one specified nutrient to the food because the contribution of a main dish and meal product to the total daily diet is greater than that of an individual food. The approach taken by the agency in defining nutrient content claims on main dish and meal products is generally that main dishes approximate two individual foods and meals approximate three individual foods. The suggestion in the comments that main dishes provide two nutrients, and that meals provide three is consistent with this approach. Thus, the agency is revising its definition of "healthy" to include a requirement that to bear the term, a product must provide a specified amount of one, two, or three (depending on the food, i.e., individual food, main dish, or meal) of the six nutrients mentioned above.

The agency also finds merit in those comments that suggested that the definition of "healthy" include a requirement that a food bearing the claim contribute at least 10 percent of the DV of the nutrients it provides. The agency has long held that a food is not a significant source of a nutrient unless that nutrient is present in the food at a level equal to, or in excess of, 10 percent of the U.S. Recommended Daily Allowances (U.S. RDA) in a serving. In the general principles final rule (58 FR 2302 at 2414), FDA adopted regulations requiring that to bear a "good source" claim for a nutrient, the food must contain at least 10 percent of the RDI or DRV of the nutrient. Thus, FDA finds that it is appropriate to require that a food labeled "healthy" be at least a "good source" of the specified nutrients that it provides.

Therefore, FDA is providing in § 101.65(d) that for a food to bear the claim "healthy," an individual food must contain 10 percent of the RDI or DRV of one of the following per reference amount—vitamin A, vitamin C, calcium, iron, protein or fiber; a main dish must contain 10 percent of the RDI or DRV of two of the six nutrients per serving; and a meal must contain at least 10 percent of the RDI or DRV of three of the six per serving.

The agency points out that while the amount of the nutrient is the same as that required for a "good source" claim (i.e., 10 percent), the nutrient contribution provision for "healthy" for main dish and meal products does not require that the 10 percent of the RDI or DRV be contributed by a single food in the main dish or meal. (The provisions governing a "good source" claim require that a single food in the main dish or meal product contribute at least 10 percent of the RDI or DRV of the nutrient in question before the product can bear the claim.) The requirement for "healthy" would not be met, however, if the main dish or the meal contributed only a single nutrient at a level that is 20 percent or 30 percent of the RDI or DRV. The nutrient contribution requirement is met when the entire serving of the food provides at least 10 percent of the RDI or DRV of each of the number of nutrients required.

22. While many comments supported the addition of a nutrient contribution requirement in the definition of "healthy," they were divided on the question of whether products could be fortified to meet the claim. Some comments argued that fortification should not be permitted because products like jelly beans, soda, or salad dressing could qualify if fortification were permitted. Other comments argued that products that have otherwise met the definition but do not contain the essential nutrients should be permitted to be fortified.

The agency has carefully considered these comments. In the general principles proposal (56 FR 60421) and final rule (58 FR 2302), the agency considered the appropriateness of fortifying a food to meet the requirements for bearing the nutrient content claim "more." Although the agency stated its concern that random fortification could lead to deceptive and misleading claims, it concluded that fortification in accordance with the policy on fortification of foods in § 104.20 (21 CFR 104.20) would ensure that the fortification was rational, and that a "more" claim based on rational fortification would not be misleading.

The agency believes that it is reasonable to take a similar approach in the definition of "healthy." The agency is not persuaded by the comments opposing fortification that it should prohibit fortification of foods to meet the nutrient contribution requirement of the "healthy" claim. Such action would be inconsistent with the goal of encouraging manufacturers to improve the nutritional quality of foods to assist consumers in structuring a diet that conforms with current dietary recommendations. Thus, the agency is not prohibiting fortification of foods in the definition of "healthy."

However, the agency is concerned that random fortification of foods could result in deceptive or misleading "healthy" claims. Thus, consistent with the provisions governing the "more" claim, the agency believes that following the principles stated in its fortification policy as provided in § 104.20, in fortifying a food to qualify to bear the term "healthy" will ensure that those foods are not indiscriminately fortified for the sole purpose of making the claim. The fundamental objective of the fortification policy is to establish a uniform set of principles that serve as a model for the rational addition of nutrients to foods. Accordingly, the agency is providing in § 101.65(d)(2)(v), (d)(3)(iv) and (d)(4)(v) that a food may be fortified to meet the positive nutrient requirement in the definition of "healthy," provided that the fortification is in accordance with the policy on fortification of foods in § 104.20.

Although, as fully discussed in the technical amendments document to the general principles final rule, (58 FR 44021 at 44026, August 18, 1993), the agency believes that the principles established in the fortification policy are appropriate in determining conditions for rational fortification, the agency notes that § 104.20 was developed at a time when less technology was available for food formulation, and when food consumption behaviors and recommendations varied from those considered appropriate today. Thus, FDA is concerned that limiting fortification only to the nutrients that are explicitly mentioned in § 104.20 would preclude beneficial nutrients from being used in food fortification. However, the agency does not consider it appropriate to establish a fortification policy for "healthy" that is different than the fortification policy established for "more" claims. As discussed in the technical amendments document (58 FR 44021 at 44026), the agency's intention is to initiate rulemaking to permit rational fortifications other than those described in § 101.40 to qualify for "more" claims. At the time of such rulemaking, the agency will reconsider the provisions on fortification established in this final rule.

23. One comment stated that requiring a fruit or vegetable to meet the definition of "good source" for any of the six nutrients mentioned above would eliminate cucumbers, grapes, green beans, and iceberg lettuce from bearing a "healthy" claim. The comment argued that all fruits and vegetables that meet the proposed definition for "healthy" should be allowed to use the term without having to meet any nutrient contribution requirement. The comment contended that fruits and vegetables are inherently healthy and are the only food group for which such a general statement can be made.

After considering this comment, the agency is providing one narrow exception to the requirement that foods be a good source of one of the six nutrients of public health significance to qualify to bear a "healthy" claim. Current dietary guidance emphasizes consumption of fruits and vegetables, and diets high in fruits and vegetables have been associated with various specific health benefits, including lower occurrence of coronary heart disease and some cancers (Refs. 2 and 5). Consistent with this guidance, FDA believes that increased consumption of raw fruits and vegetables can contribute significantly to a healthy diet and to achieving compliance with dietary guidelines, even if particular items, such as celery and cucumbers, do not contain 10 percent of the daily value of one of the six nutrients of public health significance. Precluding such foods from being termed "healthy" could confuse consumers and undermine an important element of current dietary guidance. FDA will therefore allow use of the term "healthy" in connection with raw fruits and vegetables that do not meet the nutrient content requirement, if the other elements of the "healthy" definition are met.

FDA is not prepared at this time to extend this exemption to processed fruits and vegetables, however. When processed, these foods are exposed to substances and conditions, such as sodium, heat, and liquid packing media, that commonly affect their nutritional profile and may alter their inherent beneficial qualities. They are also subject to a range of processing techniques, including canning, cooking, and freezing, that may have various effects. FDA does not currently have an adequate basis to evaluate these effects and thus is not prepared at this time to extend this exemption to all fruit and vegetable products. Processed fruits and vegetables will be subject to the requirement that they be a good source of one of the six nutrients of public health significance specified above. FDA welcomes information on whether to propose changes in the nutrient content requirement for fruits, vegetables, or other food categories, in order to allow the use of the term "healthy" on other foods that would not otherwise meet this aspect of the "healthy" definition that may be useful in helping achieve compliance with dietary guidelines.

24. A few comments urged the agency to include an additional criterion that a product bearing the term "healthy" must be "low" in calories. Another comment suggested that such a product meet the "low" definition for sugars. However, these comments did not offer any information that was not considered by the agency at the time it issued the "healthy" proposal.

The agency has not been persuaded by the comments that it is necessary to include a "low calorie" or "low sugar" criterion in the definition of "healthy" for the claim to be useful and not misleading to consumers. The information provided in the comments did not show that consumers expect "healthy" to be a claim about the caloric content of the food. Furthermore, the purpose of defining the term would be defeated if the term were defined so narrowly that it is appropriate only for people on weight-loss diets. Thus, the agency is not requiring that a food be "low calorie" or "low" in sugar to bear the term "healthy."

G. Treatment of Flesh Foods

25. Virtually all of the comments requested that FDA and USDA harmonize their definitions of "healthy." One comment contended that if the agencies cannot agree on a single consistent definition of the word "healthy" for any category of products, they should simply prohibit use of the term on those products. Some comments recommended that FDA adopt USDA's definition. Those comments supporting the USDA definition argued that such a definition would permit certain fish, poultry, and lean meats to bear the term "healthy," which is consistent with the current dietary recommendations of the Surgeon General and the Food and Nutrition Board (Refs. 2 and 3), which recommend consumption of fish, skinless poultry, and lean meats. The comments contended that FDA's proposed definition would permit very few, if any, fresh cut meats to bear the term. These comments urged that the two agencies coordinate their definitions so that consumers receive the assistance that they need to implement dietary recommendations.

The agency agrees with the comments that requested consistency in the FDA and USDA definitions of "healthy." Both FDA and USDA recognize that having different definitions for the same nutrient content claim could lead to consumer confusion and undermine the usefulness and credibility of the claim. FDA and USDA have jointly reached a decision to consistently define "healthy" as it applies to the foods regulated by the two agencies. Thus, elsewhere in this issue of the **Federal Register**, USDA is establishing a definition of the term "healthy" as it applies to meat and poultry products that is consistent with the relevant aspects of the definition set forth in this final rule.

In their efforts to achieve a consistent definition, USDA and FDA are adopting regulations that:

(1) Provide for the use of the term "healthy" on "extra lean" raw, single

ingredient meats, poultry, fish, and game meats,

(2) Require that all other products that bear the term be "low" in total fat and saturated fat and contain limited amounts of sodium and cholesterol, and

(3) Require that there be minimum levels of certain essential nutrients in the product. In addition, consistent with USDA's approach, FDA has, as stated above, extended the definition of "healthy" to include any of the derivatives of the term, such as "healthful" and "healthier."

The agency believes that such an approach is appropriate because establishment of a consistent definition with USDA will ensure that the term is used in a credible, consistent, useful, and nonmisleading manner. Moreover, a consistent definition will help consumers identify products in all food categories that will be helpful to them in constructing a diet that is consistent with dietary recommendations.

26. In the "healthy" proposal, as stated above, FDA solicited comment on whether the proposed definition of "healthy" would assist consumers in achieving a total diet consistent with dietary recommendations given that under the proposed definition, lean meat and seafood would not be able to bear the claim. Many comments requested that FDA revise its proposed definition so that lean meats and seafood would be able to bear the claim or, in the alternative, to establish additional criteria for those foods. The comments stated that such action was consistent with current dietary recommendations to include fish and lean meats as part of a healthy diet. The comments further stated that to not provide a definition for "healthy" that would permit seafood and game meats to bear the term would create an inequitable situation in the marketplace between comparable FDA-regulated and USDA-regulated products because access to the term would depend on whether the product is under FDA or USDA jurisdiction.

The agency agrees with the comments. As previously discussed, the agency believes that the fundamental purpose of the "healthy" claim is to highlight those foods that are particularly useful in constructing a diet that conforms to current dietary guidelines. The agency would consider it inappropriate if the requirements in the definition of "healthy" precluded use of the claim for an entire category of foods that play an important role in the diet and that dietary guidelines recommend be included in a healthy diet. Thus, FDA concludes that the definition of "healthy" should permit use of the term on those seafood and game meats that can be used to assist consumers in constructing a diet consistent with dietary recommendations but that do not meet the "low" fat and "low" saturated fat criteria. Therefore, FDA is making provision in the definition of "healthy" for certain seafood and game meat products (§ 101.65(d)(3)).

In arriving at a definition for "healthy" on seafood and game meats, the agency considered whether to limit the definition to raw, single ingredient seafood and game meats or to extend it to foods such as processed seafood and game meat products and multiple ingredient products. The agency took the latter approach in establishing definitions for the nutrient content claims "lean" and "extra lean" and provided for claims about the fat and saturated fat content of a product that could not meet the "low fat" and "low saturated fat" criteria. In the nutrient content claims final rule (58 FR 2302 at 2423), FDA adopted provisions permitting the "lean" and "extra lean" claim on nonflesh foods as well as flesh foods. (The agency notes, however, as fully discussed in the August 18, 1993, issue of the **Federal Register** (58 FR 44028) pursuant to that rulemaking, the agency has reconsidered both definitions and is now less certain than before that the definition for "lean," and possibly "extra lean," that it developed from data on flesh foods is appropriate for food products that do not contain flesh foods as ingredients. The agency will consider additional rulemaking to reexamine how the term "lean" and "extra lean" should apply to nonflesh foods.)

With respect to "healthy," however, because FDA believes that seafood and game meat products, whether individual foods, main dishes, or meals composed of more than one ingredient, can be formulated to be low in fat and low in saturated fat, it is not making special provision for formulated products. FDA finds that special provision is warranted only for raw, single ingredient seafood and game meats. The latter products do not have the advantage of being subject to reformulation to reduce the fat, saturated fat, and cholesterol levels inherently in these foods, yet they are recommended by the Surgeon General and the Food and Nutrition Board as foods to include in a healthy diet. Use of the "healthy" claim will highlight the foods in this category that are particularly useful in constructing a diet that is consistent with dietary recommendations. Finally, the agency agrees that precluding the use of "healthy" on raw, single ingredient seafood and game meats would likely confuse consumers, who would see the claim on USDA regulated products but not on comparable FDA regulated products that could be used interchangeably in a healthy diet.

Thus, the agency has concluded that providing for use of the term "healthy" on the labels of raw, single ingredient seafood and game meat products would be of value to consumers in maintaining healthy dietary practices. Accordingly, FDA is revising its definition of "healthy" so that certain raw, single ingredient seafood and game meats may bear the claim.

27. Several comments recommended that FDA use USDA's proposed definition of "healthy" (i.e., the product contains less than 10 g of fat, less than 4 g saturated fat, less than 95 mg of cholesterol, and less than 480 mg sodium per 100 g and per reference amount to define when the term may be used on seafood and game meat products. One comment suggested that the fat limitation should be 5 g per 100 g. A similar comment suggested that products meeting the "extra lean" definition should be allowed to use the term "healthy."

These comments asserted that establishing criteria in the definition of "healthy" that would permit its use on lean seafood and game meats would provide uniformity among regulations governing competitive products (i.e., comparable products that are regulated by USDA and FDA). The comments argued that such a provision would avoid unfair competition in the marketplace, as well as provide alternative choices for foods that are recommended to be included in a healthy diet.

In deciding to establish a definition for "healthy" on raw, single ingredient seafood and game meats, the agency carefully considered these comments. The agency recognizes that, because foods in this category inherently contain relatively high levels of fat, saturated fat, and cholesterol, and cannot meet the "low fat" and "low saturated fat" criteria, the definition of "healthy" for raw, single ingredient seafood and game meats will necessarily permit higher levels of fat and saturated fat in these foods than in other foods. However, the agency is not persuaded that the most appropriate approach is to adopt the definition proposed by USDA.

The agency concludes that a more appropriate approach is to adopt criteria that will permit raw, single ingredient seafood and game meat products that meet the "extra lean" definition for fat, saturated fat, and cholesterol, and otherwise meet the definition of "healthy" that is established in this final rule for other individual foods, to bear the "healthy" claim. Such action is consistent with FDA's basic conclusion that foods labeled as "healthy" should be useful in assisting consumers in achieving a total diet consistent with dietary recommendations. Products meeting the "extra lean" criteria will better meet the goal of minimizing fat and saturated fat intake than products that meet the "lean" criteria. Accordingly, the agency is including the definition of "healthy" for raw, single ingredient seafood and game meats in § 101.65(d)(3). Under this provision, raw, single ingredient fish and game meat that contain, per reference amount and per 100 g, less than 5 g of fat, less than 2 g of saturated fat, less than 95 mg of cholesterol, and otherwise meet the requirements established in this final rule, may bear the term "healthy."

FDA recognizes that the definition of "healthy" for raw, single ingredient seafood and game meats allows the claim to be used when the level of cholesterol in the food exceeds its disclosure level (i.e., 60 mg cholesterol per reference amount and per labeled serving). The agency considered whether to prohibit the claim when the product contained more than 60 mg cholesterol. However, the agency concluded that it would be of benefit to consumers to permit the claim on raw, single ingredient seafood and game meat products that have a cholesterol content exceeding the disclosure level because the claim identifies the foods in this category that are particularly useful to consumers in structuring diets consistent with dietary guidelines. When the cholesterol level in a food labeled "healthy" exceeds FDA's disclosure level, the food is subject to the requirement in § 101.13(h) that requires a disclosure statement referring the consumer to the nutrition information panel for additional information about cholesterol content.

III. Effective Date

As discussed above, in response to comment 16, FDA is adopting May 8, 1994, as the effective date of this regulation to establish the definition of the term "healthy." Section 403(r)(1)(A) of the act, which prohibits undefined nutrient content claims, is applicable May 8, 1994. Thus, FDA has determined that it is essential that the agency provide a definition for the term "healthy" that is effective on that date. If "healthy" were not defined by May 8, 1994, products currently on the market that bear the term and that are not "grandfathered" would be misbranded and subject to regulatory action. The agency also recognizes, however, that many of the products that are marketed with a "healthy" claim do not meet all of the requirements established in this final rule, and that because of the timeframes in which this final rule is being issued, will not have sufficient time to reformulate their products.

The agency has no desire to cause the significant market disruption that would result from either not defining "healthy" or vigorous enforcement of the definition that FDA is adopting. Accordingly, the agency intends to exercise its enforcement discretion judiciously with respect to products that bear this term. Over the next 18 months, the agency is unlikely to object to products that currently bear "healthy" in their labeling, so long as their manufacturers are making good faith efforts to bring their products into compliance with § 101.65(d) and their labeling is otherwise in full compliance with the law. The agency advises, however, that it expects that new products that come onto the market during this period will fully comply with the definition of "healthy."

The agency expects that by January 1, 1996, all products that bear the term "healthy" will comply fully with § 101.65(d). The agency notes that the period between publication of this final rule and January 1, 1996, is comparable to the amount of time that manufacturers were given to comply with the requirement of the general principles final rule (58 FR 2302). The agency notes, however, that § 101.65(d)(2), (d)(3), and (d)(4) will be in effect, and that it retains the right to take action on a "healthy" claim before January 1, 1996, if it concludes that the facts of the particular case warrant such action.

With regard to the two-tier sodium requirement, before January 1, 1998, individual foods that contain more than 480 mg sodium per reference amount and per labeled serving, and main dish and meal products that contain more than 600 mg sodium per labeled serving, may not bear the "healthy" claim. After January 1, 1998, products bearing a "healthy" claim must comply with the 360 mg sodium per reference amount and per serving and 480 mg sodium per labeled serving requirement for individual foods and main dish and meal products, respectively.

IV. Economic Impact

FDA has examined the economic implications of the final rule on the definition of "healthy" as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. FDA finds that this final rule is not an economically significant rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

A. Regulatory Options

1. No Definition

FDA could choose not to define the term "healthy." However, in the general principles final rule, FDA determined that the term "healthy" is an implied nutrient content claim. If FDA does not define the term, its use in labeling except on those products using the claim in their brand name prior to October 29, 1989 or in a nonnutritional context, would misbrand the food. This option would result in large costs, including labeling costs, and a valuable signal used by consumers to alert them to foods that may assist them in meeting dietary goals would be lost.

FDA could alternatively decide to propose to reverse its previous determination that the term "healthy" is an implied nutrient content claim. However, FDA could only make such an amendment if the agency was persuaded that its original determination was in error. FDA has received no information that would support such a conclusion. Further, such an action would require separate rulemaking and could not take effect until well after the May 8, 1994 deadline. Thus, until FDA published a final rule, this alternative would have the same impact as not defining the term "healthy."

2. Different Definition of "Healthy"

FDA could determine that an alternative definition of the term "healthy" would be appropriate. The major difference between the proposed rule and the final rule in the definition of "healthy" is in the prescribed levels of sodium. FDA originally proposed to set the allowable sodium levels at the disclosure levels for individual foods and meal-type products. However, as described earlier in this document, comments stated that the disclosure levels are too high and would result in "healthy" claims that are of little help to consumers trying to meet dietary goals.

Alternatively, FDA could determine that "healthy" products must meet FDA's definition for "low sodium", and some comments suggested that approach. However, this option would result in significant costs because very few products now labeled as "healthy" would be able to make the claim. Also, comments indicated that the technology to reduce sodium levels to "low sodium" levels does not currently exist for many products because sodium functions as a protein binder, a preservative, and as flavoring. Such a reduction in sodium would cause most products to be unpalatable to consumers.

B. Costs of the Final Regulation

FDA believes that the costs of the final "healthy" regulation will not be substantial, as many products currently using the term already meet the definition, are very close to doing so, or can satisfactorily reformulate their product over the time period the agency is permitting for implementation of this regulation.

There are at least 35 brands that include the term "healthy" in the brand name. FDA does not know how many products or labels are sold under these brands. Nor is FDA able to estimate the number of products with labels using the term "healthy" other than in the brand name. FDA has specific information, including nutrition information, on the products of four brands. Two of these brands do not include products regulated by FDA (i.e. all of the brands' products are regulated by USDA). The remaining two brands have approximately 44 FDA regulated products sold with "healthy" in the brand name. After examining the nutrient content of these foods, FDA has determined that at least 12 products will not meet FDA's interim definition of "healthy," and that an additional 5 products will not meet the final definition of "healthy." The primary disqualifier is the sodium content of the products. In addition, a few products do not meet the "low fat" requirement.

The manufacturers of products not meeting the definition of "healthy" have three options for bringing their products into compliance: Reformulate the products to meet the definition, cease marketing the products, or relabel the product.

1. Reformulation

Whether or not a firm will choose to reformulate their products will depend on the relative cost of reformulation compared to dropping the product, and on whether the product will continue to be palatable to consumers. FDA has very little information on the cost of reformulation, which will depend on the extent of reformulation that is necessary. Of the 17 products identified as not meeting the definition of "healthy," FDA estimates that four have sodium contents so close to the defined level that these products can be easily modified. The cost of reformulating these products is expected to be small. However, the cost of reformulating several other products are expected to be higher because the current sodium or fat content significantly exceeds the defined amount, or because modifications are required in more than one nutrient (i.e. reductions in both fat and sodium content). The longer compliance period will allow firms extra time to develop the technology to reduce the sodium content of their foods and will provide consumers with time to adjust their tastes to lower sodium levels.

2. Loss of Brand Names/Products

Some manufacturers might not be able to reformulate their products or may determine that the costs of reformulation are prohibitive. The manufacturers may choose to market their products under a different brand name. New resources must also be expended in marketing the product and in informing consumers that the product has a new name. A brand name is an intangible asset representing capital just as a tangible asset is capital. Brand names act as signals that help consumers identify quality differences and shop more efficiently. Manufacturers invest real resources in developing and maintaining their brand identities. One comment to the proposal stated that one particular firm had "hundreds of millions of dollars invested in the [brand] name."

In order to calculate the value of a brand name lost to certain products, FDA compared average selling prices for 44 products sold under a "healthy" brand with prices of other non-"healthy" branded products within the same product class. The average premium earned by products with the word "healthy" in the brand name is $0.57 per 16 oz. equivalent unit (all products regardless of package size are converted to 16 oz. units). Multiplying by the average sales volume of the "healthy" brands leads to an annual cost per discontinued product of approximately $800,000.

FDA acknowledges that it could be a cost to the individual manufacturers of products currently branded "healthy" if the brand names were, in fact, removed from the market. The loss of a brand name to the extent that it does not convey false or misleading information is a societal loss, as is the loss of any productive asset. FDA is unable to calculate how much of the consumer surplus (the difference in the market price and the price consumers are willing to pay for the product) is due to consumer misinformation about the nutritional profile of products that have borne the term "healthy." Although most of these products are nutritionally labeled on the nutrition panel, some consumers use the term "healthy" as a signal to buy the product and do not read the information on the nutrition panel on the back of the product. For those individuals, existing consumer surplus would be reduced with the better information that will be provided under the consistent science-based definition, established by this final rule.

3. Relabeling

Manufacturers of those products that make "healthy" claims on products that are not sold under "healthy" brand names may choose to relabel products without the claim when reformulation is either too costly or not technologically feasible. In its regulatory impact analysis of the final rules to amend the food labeling regulations (58 FR 2927, January 6, 1993), FDA determined an average printing and redesign cost per product of $2,200 for an 18-month compliance period, the compliance period applicable to those products not meeting the interim definition of "healthy." Those products that meet the interim definition but not the final definition will have approximately 3½ years to comply. The relabeling cost applicable to the longer compliance period is significantly less per product, approaching zero, because more products will be able to incorporate mandated label changes with regularly scheduled changes. As stated previously, FDA has no information regarding the number of products that make "healthy" claims but do not use the term in the brand name. Therefore, FDA cannot determine how many products would be relabeled as a result of this regulation.

C. Benefits of the Final Regulation

In its cost-benefit for the food labeling regulations in January 1993, FDA noted many significant benefits of improved nutrition labeling—including decreased rates of cancer, coronary heart disease, obesity, hypertension, and allergic reactions to food. The agency concluded that, as consumers are given more informative labeling, uncertainty and ignorance concerning the nutritional values of the foods they eat will decrease, and many consumers will select more nutritious, healthier foods. The improved health status of Americans expected to result from those rules was estimated to range from $4.4 billion to $26.5 billion over the next 20 years.

FDA believes that the use of the term "healthy" will contribute substantially to those benefits. "Healthy" is a powerful term for consumers who are trying to construct diets that fit within the dietary guidelines and is also important for food manufacturers who wish to market foods to those consumers interested in improving their diets. The agency believes that this definition of "healthy" will ensure that consumers wishing to meet the dietary guidelines with respect to fat, saturated fat, cholesterol, and sodium will be greatly helped in doing so, and it will provide food processors anxious to produce products that can be labeled "healthy" with established nutrient levels that they can formulate their products to achieve. As products labeled as being "healthy" in compliance with this final rule appear on the market, they will substantially contribute to the overall goal of improving the diet and health of Americans.

Thus FDA believes that the primary benefit of this definition will accrue to consumers who select these products based on a desire to meet the dietary guidelines, particularly with respect to fat, saturated fat, cholesterol, and sodium. It is possible that some products that are currently marketed as "healthy" but that do not fit the definition, and thus are not useful in achieving dietary goals, will be removed from the market, thus increasing benefits. It is also possible that a small number of products that could assist some consumers in reducing their consumption of fat, saturated fat, sodium, or cholesterol will be unable to bear the claim "healthy," thus potentially reducing benefits. Some products may be reformulated to meet the requirements for the claim but may lose sales from lack of consumer taste satisfaction. It is likely, however, given the selling power of the term "healthy," that this rule will increase the number of products bearing the term "healthy."

With a set definition for the term "healthy," firms will see the advantage of making products that can bear the "healthy" claim without the potential for either federal challenge or competition from products that are less helpful in meeting dietary goals but are also marketed as "healthy." Currently, products marketed as "healthy" have dramatically different nutritional profiles. For example, two very similar frozen entrees produced by two "healthy" brands have sodium contents per serving of 400 mg and 770 mg. Under FDA's new definition, the lower sodium product will not have to compete with higher sodium products that claim to be "healthy."

In addition, in defining the term "healthy," FDA is reducing information costs to consumers. With a set definition, consumers will be assured that the claim signals reliable information about the nutritional content of the product.

FDA is unsure of the size of the benefit derived from the specific levels of sodium required in the definition of "healthy." All consumers have some probability of a benefit from reducing sodium levels. FDA's definition of "healthy" is intended to assist in meeting dietary goals that are based on the Surgeon General's recommendation that all Americans reduce their sodium intake. The 1988 Surgeon General's Report on Nutrition and Health states:

> Although not all individuals are equally susceptible to the effects of sodium, several observations suggest that it would be prudent for most Americans to reduce sodium intake. These include the lack of a practical biological marker for individual sodium sensitivity, the benefit to persons whose blood pressures do rise with sodium intake, and the lack of harm from moderate sodium restriction.
>
> (Ref. 2, p. 13).

D. Regulatory Flexibility

FDA is unaware of small firms marketing their products as "healthy." It is unlikely that this definition will have a significant effect on small firms.

E. Summary

FDA has examined the costs and the benefits of the final rule and has determined that it is not an economically significant rule as defined by Executive Order 12866. Although many products currently marketed as "healthy" will not meet the definition, many will require only minor reformulation. The remaining products requiring more significant modifications of nutrient content will either undergo more costly reformulation, be relabeled, or will no longer be sold. In addition FDA has determined that the benefits of the regulation derive from an incentive to food manufacturers to produce more "healthy" products and from improved information to consumers that facilitates selection of foods that help consumers meet dietary goals.

V. Environmental Impact

The agency has previously considered the environmental effects of the action being taken in this final rule. As announced in its nutrition labeling proposed rules published in the **Federal Register** of November 27, 1991 (56 FR 60366 et al.), the agency determined under 21 CFR 25.24(a)(8) and (a)(11) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Heart, Lung, and Blood Institute, NCEP, "Report of the Expert Panel on Blood Cholesterol Levels in Children and Adolescents," DHHS, Public Health Service, National Institutes of Health, April 7, 1991.

2. "The Surgeon General's Report on Nutrition and Health," DHHS, Public Health Service Publication No. 88–50210 (Government Printing Office Stock No. 017–001–00465–1), U.S. Government Printing Office, Washington DC, 1988.

3. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, IOM, NAS, "Nutrition Labeling, Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

4. Satchell, F.B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file; (a) "Nutrient Profiles of Individual Foods, Main Dishes and Meal Products that Currently Bear the Term 'Healthy,'" August 30, 1993; (b) Modification of USDA's Nutrient Data Base for Standard Reference Release 9, "Effects of Disclosure, 'Low,' and Essential Nutrient Requirements on Individual Foods," August 2, 1993.

5. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, NAS, "Diet and Health: Implications for Reducing Chronic Disease Risk," National Academy Press, Washington DC, 1989.

6. DHHS, PHS, "Healthy People 2000: National Health Promotion and Disease Prevention Objectives," DHHS (PHS) Publication No. 91–50213, DHHS, Washington, DC. pp. 112, 113, 117, 118, 120–125, 1991.

7. Satchell, F.B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file, "Nutritional Data of Products with 'Healthy' in the Brand Name," August 30, 1993.

8. Life Sciences Research Office, Federation of American Societies for

Experimental Biology. "Nutrition Monitoring in the United States. An Update Report on Nutrition Monitoring," chs. 3 and 4, prepared for DHHS, Government Printing Office, Washington, DC, 1989.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.65 is amended by adding new paragraphs (d)(2) through (d)(4) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

* * * * *

(d) * * *

(2) The term "healthy" or any derivative of the term "healthy," such as "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness" may be used on the label or in labeling of a food, other than raw, single ingredient seafood or game meat products, main dish products as defined in § 101.13(m), and meal products as defined in § 101.13(l), as an implied nutrient content claim to denote foods that are useful in constructing a diet that is consistent with dietary recommendations provided that:

(i) The food meets the definition of "low" for fat and saturated fat;

(ii)(A) The food has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons and, before January 1, 1998, contains 480 milligrams (mg) sodium or less per reference amount customarily consumed, per labeled serving; or

(B) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, before January 1, 1998, contains 480 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(C)(*1*) The food has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons and, after January 1, 1998, contains 360 mg sodium or less per reference amount customarily consumed, per labeled serving; or

(*2*) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, after January 1, 1998, contains 360 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(iii) Cholesterol is not present at a level exceeding the disclosure level as described in § 101.13(h);

(iv) The food, other than a raw fruit or vegetable, contains at least 10 percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) per reference amount customarily consumed, per labeled serving of vitamin A, vitamin C, calcium, iron protein, or fiber;

(v) Where compliance with paragraph (d)(2)(iv) of this section is based on a nutrient that has been added to the food, that fortification is in accordance with the policy on fortification of foods in § 104.20 of this chapter; and

(vi) The food complies with definitions and declaration requirements established in part 101 of this chapter for any specific nutrient content claim on the label or in labeling.

(3) The term "healthy" or its derivatives may be used on the label or in labeling of raw, single ingredient seafood or game meat as an implied nutrient content claim provided that:

(i) The food contains less than 5 g total fat, less than 2 g saturated fat, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g;

(ii)(A) The food has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons and, before January 1, 1998, contains 480 mg sodium or less per reference amount customarily consumed, per labeled serving; or

(B) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, before January 1, 1998, contains 480 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(C)(*1*) The food has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons and, after January 1, 1998, contains 360 mg sodium or less per reference amount customarily consumed, per labeled serving; or

(*2*) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, after January 1, 1998, contains 360 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(iii) The food contains at least 10 percent of the RDI or DRV per reference amount customarily consumed, per labeled serving of vitamin A, vitamin C, calcium, iron, protein, or fiber;

(iv) Where compliance with paragraph (d)(3)(iii) of this section is based on a nutrient that has been added to the food, that fortification is in accordance with the policy on fortification of foods in § 104.20 of this chapter; and

(v) The food complies with definitions and declaration requirements established in this part for any specific nutrient content claim on the label or in labeling.

(4) The term "healthy" or its derivatives may be used on the label or in labeling of main dish products, as defined in § 101.13(m), and meal products, as defined in § 101.13(l) as an implied nutrient content claim provided that:

(i) The food meets the definition of "low" for fat and saturated fat;

(ii)(A) Before January 1, 1998, sodium is not present at a level exceeding 600 mg per labeled serving, or

(B) After January 1, 1998, sodium is not present at a level exceeding 480 mg per labeled serving;

(iii) Cholesterol is not present at a level exceeding 90 mg per labeled serving;

(iv) The food contains at least 10 percent of the RDI or DRV per labeled serving of two (for main dish products) or three (for meal products) of the following nutrients—vitamin A, vitamin C, calcium, iron, protein, or fiber;

(v) Where compliance with paragraph (d)(4)(iv) of this section is based on a nutrient that has been added to the food, that fortification is in accordance with the policy on fortification of foods in § 104.20 of this chapter; and

(vi) The food complies with definitions and declaration requirements established in this part for any specific nutrient content claim on the label or in labeling.

Dated: April 29, 1994.

David A. Kessler,

Commissioner of Food and Drugs

Donna E. Shalala,

Secretary of Health and Human Services

[FR Doc. 94–11145 Filed 5–5–94; 10:27 am]

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federal register

Tuesday
May 10, 1994

Part IV

Department of Housing and Urban Development

Office of the Secretary

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 582 et al.

Single Room Occupancy Program for Homeless Individuals; Final Rule

Homeless Assistance; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 582, 583, and 882

[Docket No. R–94–1722; FR–3691–I–01]

RIN 2501 AB75

Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation; Single Room Occupancy Program for Homeless Individuals

AGENCY: Office of the Secretary.

ACTION: Interim rule.

SUMMARY: This interim rule for the Supportive Housing Program, Shelter Plus Care, and section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals amends the programs' regulations to remove the detail in those regulations regarding the application and grant award processes and indicates that a full description of the application and grant award processes will be published in the **Federal Register** in a notice of fund availability. It also amends these regulations to clarify when Comprehensive Housing Affordability Strategy (CHAS) certifications must be made under those programs.

DATES: Effective Date: June 9, 1994. Comments due date: July 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments sent by FAX are not acceptable.

FOR FURTHER INFORMATION CONTACT: Office of Special Needs Assistance Programs; Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410; (202) 708–1234; TDD for the hearing and speech-impaired, (202) 708–2565. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control numbers 2506–0112, 2506–0118, 2506–0131.

II. Background

This interim rule makes the following revisions to the Shelter Plus Care Program, Supportive Housing Program, and section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals:

Sections 582.200 and 583.200, both entitled "notice of fund availability", are revised as described below. Sections 582.205 and 583.205, Grant award process, §§ 582.210 and 583.210, Application requirements, §§ 582.215 and 583.215, Rating criteria for applications, §§ 582.220 and 583.220, Selecting applications, and §§ 582.225 and 583.225, Obtaining additional information and awarding grants, are all deleted. In § 882.805, paragraphs (a), (b), (c), and (d) are revised. The current § 882.805(b)(2), Comprehensive housing affordability strategy (CHAS), becomes § 882.805(c). A conforming change is made in § 882.805 to paragraph (f)(10).

The revisions to sections 582.200, 583.200 and 882.805 (a) and (b), indicate that all information previously contained in these sections will now be described in detail in the notice of fund availability published in the **Federal Register** for each program funding round. The rating criteria which are required by statute are also listed in the new sections. The Shelter Plus Care statute allows additional criteria as determined appropriate by HUD, but states that these additional criteria must be listed in the interim rule. Accordingly, they are included in § 582.200. Although the non-statutory criteria that were previously listed in the Supportive Housing Program rule in § 583.215(b)(7) and (8) and in the section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals in § 882.805(b)(3)(ii)(C) to (G) are removed, these criteria are included in the notice of fund availability published elsewhere in today's **Federal Register**.

One of the selection criteria in the Shelter Plus Care statute is geographic diversity. Section 582.220(b), which is now being deleted, indicated that HUD will determine geographic diversity based on whether each of the four Census Regions contains at least three fundable applications. In practice, this definition of geographic diversity was so broad that it had little effect. Considering that the universe of applications can vary dramatically from one competition to another, the application of geographic diversity will be determined for each competition.

Two types of need are included in the Shelter Plus Care selection criteria in new § 582.200. The jurisdiction's need for homeless assistance will be calculated by HUD from generally available data to help ensure that Shelter Plus Care funds are used in areas with significant homeless needs. The need within a jurisdiction for the particular project will also be considered in the selection process.

The interim rule also amends §§ 582.120 and 583.155 on the Comprehensive Housing Affordability Strategy, or CHAS, and moves § 882.805(b)(2) on the same subject to become § 882.805(c) and amends that section. The language now makes clear that a funded jurisdiction must certify that it is following the HUD-approved CHAS by the time of grant execution, rather than by the application submission deadline, as is now implied. Also, applicants that are not states or units of general local government must only submit a certification by the jurisdiction that the application is consistent with the jurisdiction's HUD-approved CHAS.

III. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 (k) and (l) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and, therefore, are exempt from further environmental reviews under the National Environmental Policy Act of 1969.

Regulatory Planning and Review

This interim rule has been reviewed and approved in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities, because this interim rule only addresses the procedures of the Department regarding the issuance of notices of funding availability.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule do not have federalism implications and, thus, are not subject to review under the Order. This interim rule addresses the procedures of the Department regarding the issuance of notices of funding availability. It will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this interim rule will have only an indirect, though beneficial, impact on family formation, maintenance, and general well-being, since it should simplify the procedure for the development of notices of funding availability, and thus, is not subject to review under the Order.

Justification for Interim Rulemaking

Section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3545, requires the Secretary to publish in the **Federal Register** a notice of funding availability as well as a description of application procedures and the selection criteria for each program administered by the Secretary. Section 102 further specifies that the selection criteria are to be published in the **Federal Register** not less than 30 days before the application deadline. HUD has elected pursuant to this authority to publish the description of application procedures and the selection criteria in the notice of fund availability. The Department has determined that the changes made by this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. These changes simply constitute a statutorily permissible change in the Department's solicitation procedures. As such, prior notice and comment are unnecessary under 24 CFR part 10.

List of Subjects

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424) under Executive Order 12866 and the Regulatory Flexibility Act.

Accordingly, for the reasons stated in the preamble, parts 582, 583, and 882 of title 24 of the Code of Federal Regulations are amended as follows:

PART 582—SHELTER PLUS CARE

1. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 11403 note; 42 U.S.C. 3535(d).

2. Section 582.120 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 582.120 Comprehensive housing affordability strategy (CHAS).

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated CHAS pursuant to the requirements of the CHAS regulations (24 CFR part 91), and must submit a certification that the application for funding is consistent with the HUD-approved CHAS. If the applicant is a State, and the project will be located in a unit of general local government that is required to have, or has, a complete CHAS, or that is applying for Shelter Plus Care assistance under the same notice of fund availability (NOFA) and will have an abbreviated CHAS with respect to that application, the State must also submit a certification by the unit of general local government that the State's application is consistent with the unit of general local government's HUD-approved CHAS. Funded applicants must certify in a grant agreement that they are following the HUD-approved CHAS.

(b) *Applicants that are public housing agencies.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii).

* * * * *

(d) *Timing of CHAS certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved CHAS must be submitted by the funding application deadline announced in the NOFA.

3. Section 582.200 is revised to read as follows:

§ 582.200 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the following criteria:

(1) Ability of the applicant to develop and operate the proposed assisted housing and supportive services program, taking into account the quality of any ongoing program of the applicant;

(2) Geographic diversity among the projects to be assisted;

(3) The need for a program providing housing assistance and supportive services for eligible persons in the area to be served;

(4) The quality of the proposed program for providing supportive services and housing assistance;

(5) The extent to which the proposed funding for the supportive services is or will be available;

(6) The extent to which the project would meet the needs of the homeless persons proposed to be served by the program;

(7) The extent to which the program integrates program recipients into the community served by the program;

(8) The cost-effectiveness of the proposed program;

(9) The extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable;

(10) Extent to which the project targets homeless persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(11) Quality of the project; and

(12) Extent to which the program will serve homeless persons who are seriously mentally ill, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases.

(Approved by the Office of Management and Budget under control number 2506–0118)

§§ 582.205, 582.210, 582.215, 582.220, and 582.225 [Removed]

4. Sections 582.205, 582.210, 582.215, 582.220, and 582.225 are removed.

PART 583—SUPPORTIVE HOUSING PROGRAM

5. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389; 42 U.S.C. 3535(d).

6. Section 583.155 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 583.155 Comprehensive housing affordability strategy (CHAS).

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated CHAS pursuant to the requirements of the CHAS regulations (24 CFR part 91), and must submit a certification that the application for funding is consistent with the HUD-approved CHAS. Funded applicants must certify in a grant agreement that they are following the HUD-approved CHAS.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii).

* * * * *

(d) *Timing of CHAS certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved CHAS must be submitted by the funding application deadline announced in the NOFA.

7. Section 583.200 is revised to read as follows:

§ 583.200 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the following criteria:

(1) The ability of the applicant to develop and operate a project;

(2) The innovative quality of the proposal in providing a project;

(3) The need for the type of project proposed by the applicant in the area to be served;

(4) The extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources;

(5) The cost effectiveness of the proposed project;

(6) The extent to which the applicant has demonstrated coordination with other Federal, state, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable; and

(7) Such other factors as the Secretary determines to be appropriate to carry out this part in an effective and efficient manner.

(Approved by the Office of Management and Budget under control number 2506–0112)

§§ 583.205, 583.210, 583.215, 583.220, and 583.225 [Removed]

8. Sections 583.205, 583.210, 583.215, 583.220, and 583.225 are removed.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

9. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). In addition, subpart H is issued under the authority of 42 U.S.C. 11401.

10. Section 882.805 is amended by revising paragraphs (a), (b), (c), (d), and (f)(10) to read as follows:

§ 882.805 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the following criteria:

(1) Ability of the applicant to develop and operate a project;

(2) Need for assistance; and

(3) Other criteria as determined appropriate by the Secretary.

(c) *Comprehensive housing affordability strategy (CHAS)—*

(1) *Certifications of consistency.* Except as provided in paragraph (c)(2) of this section, the applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii).

(2) *Exception.* The CHAS certification is not required where the proposed project will be located on a reservation of an Indian tribe or the Insular Area of Guam, the U.S. Virgin Islands, American Samoa or the Northern Mariana Islands.

(3) *Timing of CHAS certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved CHAS must be submitted by the funding application submission deadline announced in the NOFA.

(d) *Receipt of information for environmental review.* Information must be submitted to allow completion of environmental reviews required under 24 CFR Part 50. HUD may eliminate an application from consideration where the application would require an Environmental Impact Statement.

* * * * *

(f) * * *

(10) In the event that the PHA determines that any structure proposed in its application is infeasible, or the PHA proposes to select a different structure for any other reason, the PHA must submit information for the proposed alternative structure to HUD for review and approval. HUD will rate the proposed structure in accordance with procedures in the applicable notice of fund availability. The PHA may not proceed with processing for the proposed structure or execute an Agreement until HUD notifies the PHA that HUD has approved the proposed alternative structure and that all requirements have been met.

* * * * *

Dated: May 5, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–11213 Filed 5–5–94; 4:16 pm]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-3750; FR-3700-N-01]

Notice of Funding Availability for Homeless Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This Notice announces the availability of approximately $545 million for applications for assistance designed to help communities move toward continuum of care systems to assist homeless persons. These funds are available under three programs to fill gaps within the context of developing seamless systems for combating homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. Funds will be awarded competitively. This notice of funding availability (NOFA) contains information concerning the continuum of care approach, eligible applicants, eligible activities, application requirements, and application processing.

DATES: An original completed application for the applicable program must be received by 6 p.m. Eastern Time on the applicable date shown in the chart below, following **ADDRESSES.** The application must be received in the Office of Special Needs Assistance Programs in Washington. Applications may not be sent by facsimile (FAX). These deadlines are firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the applicable deadline.

ADDRESSES: For a copy of application packages contact: Please contact a HUD Field Office listed in the appendix to this NOFA.

An original completed application must be submitted to the following address: Department of Housing and Urban Development, Office of Special Needs Assistance Programs, 451 Seventh Street, SW., room 7262, Washington, DC 20410, Attention: Homeless Assistance Funding. Two copies of the application, as indicated in the chart below, must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of Field Offices appears in the appendix to this NOFA. Field Office copies must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at the Office of Special Needs Assistance Programs in Washington.

SCHEDULE OF COMPETITIONS FOR FISCAL YEAR 1994

Element	Shelter plus care	Section 8 SRO	Supportive housing
Approximate funding for FY 1994 .	$115 million	$140 million	$290 million.
Applications due to HUD headquarters in Washington.	July 5, 1994, 6:00 pm eastern time.	July 5, 1994, 6:00 pm eastern time.	August 5, 1994, 6:00 pm eastern time.
Applications to be sent to	Original copy to headquarters in Washington, two copies to local field office.	Original copy to headquarters in Washington, two copies to local field office.	Original copy to headquarters in Washington, two copies to local field office.

FOR FURTHER INFORMATION CONTACT: Please contact the HUD Field Office for the area in which the proposed project is located for additional information. Telephone numbers are included in the list of Field Offices set forth in the appendix to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB approval numbers 2506-0131, 2506-0112, and 2506-0118.

I. Substantive Description

(a) Authority

The Supportive Housing program is authorized by title IV, subtitle C, of the Stewart B. McKinney Homeless Assistance Act (McKinney Act), as amended, 42 U.S.C. 11381. Regulations for this program are contained in 24 CFR part 583, as amended by an interim rule published elsewhere in today's **Federal Register**. Funds made available under this NOFA for the Supportive Housing program are subject to the requirements of the amended regulations.

The Shelter Plus Care program is authorized by title IV, subtitle F, of the McKinney Act, as amended, 42 U.S.C. 11403. Regulations for this program are contained in 24 CFR part 582, as amended by an interim rule published elsewhere in today's **Federal Register**. Funds made available under this NOFA for the Shelter Plus Care program are subject to the requirements of the amended regulations.

The Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is authorized by section 441 of the McKinney Act, as amended, 42 U.S.C. 11401. Regulations for this program are contained in 24 CFR part 882, subpart H, as amended by an interim rule published elsewhere in today's **Federal Register**. Funds made available under this NOFA for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals are subject to the requirements of the amended regulations.

(b) Funding Availability

Approximately $545 million is available under this NOFA. This amount consists of $290 million appropriated for the Supportive Housing program, $115 million appropriated for the Shelter Plus Care program, and $140 million appropriated for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. All of these funds were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Public Law 103-124) (94 App. Act). Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards may also be used to fund applications for the same program submitted in response to this NOFA.

HUD reserves the right to fund less than the full amount requested in any application.

(c) Purpose

The purpose of this NOFA is to fund projects and activities which will fill gaps within the context of moving toward seamless continuum of care systems to assist homeless persons and prevent homelessness. A continuum of care system consists of three fundamental components:

(1) First, there must be an outreach/emergency shelter/assessment effort which provides immediate shelter and can identify an individual's or family's needs.

(2) The second component offers transitional housing and necessary social services. Such services include substance abuse treatment, short-term mental health services, independent living skills, day care, job training, etc. for those who need them to transition from homelessness to the highest level of independent living that the individual or family is capable of achieving.

(3) The third and final component, and one which every homeless individual and family needs, is permanent housing or permanent supportive housing arrangements.

While not all homeless individuals and families in a community will need to access all three components, unless all three components are coordinated within a community, none will be successful. A strong homeless prevention strategy is also key to the success of the continuum of care.

(d) Background

The Department recognizes that the separate appropriations and differing statutory requirements of the three programs covered by this NOFA are barriers to creating continuum of care systems that are truly responsive to community needs. The Department is pursuing legislative changes necessary to provide localities and providers with the flexibility they need to create comprehensive systems that completely address the many dimensions of the problem in a coordinated fashion. And, under this NOFA, the Department will move in that direction by using its funding resources to help increase the level of coordination among nonprofit organizations, government agencies and other entities that is necessary to develop systematic approaches for successfully addressing homelessness.

To further the purpose of this NOFA, heavy emphasis is placed upon coordination in the application selection criteria. In preparing its application, the applicant should, to the extent possible, coordinate its efforts with other providers of services and housing to homeless persons, such as nonprofit organizations, government agencies, and housing developers, and consult with homeless or formerly homeless persons. At a minimum, applicants need to be familiar with currently available services and housing for homeless families and individuals in their communities, including services and housing available under mainstream programs such as those providing mental health services and substance abuse treatment. This knowledge will allow the applicant to identify the gaps in currently available services and housing, and develop its application to fill one or more of the gaps.

Ideally, this process should involve organizations working together to: create, maintain and build upon a community-wide inventory of current services and housing for homeless families and individuals; identify the full spectrum of needs of homeless families and individuals; and coordinate efforts to obtain resources to fill gaps between the current inventory and needs.

(e) Use of NOFA Funds and Matching Funds To Fill Gaps

Funds available under this NOFA and matching funds may be used in the following ways to fill gaps within the context of moving toward continuum of care systems:

(1) *Emergency Shelter/Assessment.* The Supportive Housing program may provide funding for outreach to homeless persons and assessment of their needs. The Shelter Plus Care program requires a supportive services match; outreach and assessment activities count toward that match. The SRO program applicants receive rating points for the extent to which supportive services, including outreach and assessment, are provided.

(2) *Transitional housing and necessary social services.* The Supportive Housing program may be used to provide transitional housing with services, including both facility-based transitional housing and scattered-site transitional services. The Supportive Housing program may also be used to provide a safe haven, as described in section I.(g) of this NOFA.

(3) *Permanent housing or permanent supportive housing.* The Supportive Housing program may be used to provide permanent supportive housing *for persons with disabilities*, including both facility-based and scattered-site permanent supportive housing. The Shelter Plus Care program may be used to provide permanent supportive housing *for persons with disabilities* in a variety of housing rental situations. This program requires a supportive services match; all supportive service activities count toward that match. The SRO program provides permanent housing for homeless individuals with incomes that do not exceed the low-income standard of the Section 8 housing program. The SRO program applicants receive rating points for the extent to which supportive services are provided. Providing permanent housing for homeless families is not available under the SRO program or the SRO component of the Shelter Plus Care (S+C) program because an SRO unit is designed for a single individual. Permanent housing for homeless families is only eligible under the other components of the S+C program and under the Supportive Housing program if an adult member has a disability.

(4) *Homeless prevention.* The Supportive Housing program under the Rural Homelessness Initiative component may be for homeless prevention activities in rural areas, as described in section I.(g) of this NOFA.

(f) Program Summaries

The chart below summarizes key aspects of the Supportive Housing Program, the Shelter Plus Care Program, and the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. Descriptions are contained in the applicable program regulations. Descriptions of Rural Homelessness Initiative projects and Safe Havens projects, which may be carried out under the Supportive Housing program, are included in section I.(g) of this NOFA.

Element	Supportive housing	Shelter plus care	Section 8 SRO
Authorizing legislation	Subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.	Subtitle F of title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.	Section 441 of the Stewart B. McKinney Homeless Assistance Act, as amended.

Element	Supportive housing	Shelter plus care	Section 8 SRO
Implementing regulations	24 CFR part 583, as amended May 10, 1994.	24 CFR part 582, as amended May 10, 1994.	24 CFR part 882, subpart H, as amended May 10, 1994.
Eligible applicant(s)	• States • Units of general local government. • Public housing agencies (PHAs) • Tribes • Private nonprofit organizations • CMHCs that are public nonprofit organizations.	• States • Units of general local government. • Tribes • PHAs	• PHAs. • Private nonprofit organizations.
Components	• Transitional housing • Permanent housing for disabled persons. • Innovative supportive housing • Supportive services not in conjunction with supportive housing. • Rural Homelessness Initiatives • Safe Havens	• Tenant-based • Sponsor-based • Project-based • SRO-based	• SRO housing.
Eligible activities*	• Acquisition • Rehabilitation • New construction • Leasing • Operating costs • Supportive services	• Rental assistance	• Rental assistance.
Eligible populations*	• Homeless persons	• Homeless disabled individuals • Homeless disabled individuals and their families.	• Homeless individuals. • Section 8 eligible current occupants.
Populations given special consideration.	• Homeless persons with disabilities. • Homeless families with children.	• Homeless persons who: • are seriously mentally ill • have chronic problems with alcohol and/or drugs. • have AIDS and related diseases.	N/A.
Initial term of assistance	3 years	5 years: TRA, SRA, and PRA if no rehab 10 years: SRO and PRA if rehab.	10 years.

*Additional activities and persons are eligible under the Rural Homeless Initiatives projects, as described in section I.(g) below.

(g) Program Allocations

(1) *Supportive Housing Program Allocations.* A total of $334 million was appropriated for Fiscal Year 1994 for the Supportive Housing Program. However, approximately $44 million is expected to be awarded to those current grantees who have been notified that they qualify for renewal grants in 1994. The balance of approximately $290 million is available for competitive grants under this NOFA, and the Department expects to award SHP grants generally ranging in size up to $2,000,000, with the average grant amount for supportive services being approximately $1,000,000. Rural homelessness initiative projects, safe havens, and minimum percentage allocations for SHP funds are described below.

Rural homelessness initiative projects. In accordance with the 94 App. Act, $20 million of the Supportive Housing Program appropriation is available for rural homelessness initiative projects. Applications for grants for such projects will compete against each other rather than against all other SHP applications. If there is an insufficient number of approvable applications for this rural initiatives competition, the unused balance will be added to the amount available for other SHP grants.

Eligible applicants under the Supportive Housing Program may carry out rural homelessness initiative projects in non-urbanized areas. Such areas include all counties located outside of Metropolitan Statistical Areas (MSAs) and nonurbanized areas inside of MSAs. Applicants will be required to provide evidence in their applications that the area to be served is non-urbanized.

A rural homelessness initiative project may include any activity that is eligible under the Supportive Housing Program. In addition, such projects may include homeless prevention activities and capacity building activities, as prescribed by the 94 App. Act, which cross-references the eligible activities described in subtitle G of the McKinney Act. Accordingly, the following homeless prevention activities may be carried out in rural areas as part of a rural homelessness initiative project:

—Rent, mortgage, or utility assistance after 2 months of nonpayment in order to prevent eviction, foreclosure, or loss of utility service;

—Security deposits, rent for the first month of residence at a new location, and relocation assistance;

—Short-term emergency lodging in motels or shelters, either directly or through vouchers;

—Rehabilitation and repairs to prevent homelessness, such as insulation, window repair, door repair, roof repair, and repairs that are necessary to make premises habitable;

—Development of comprehensive and coordinated support services to prevent homelessness that use and supplement, as needed, community networks of services, including outreach services to reach eligible individuals and families; case management; housing counseling; budgeting; job training and placement; primary health care; mental health services; substance abuse treatment; child care; transportation; emergency food and clothing; family violence services; education services; moving services; entitlement assistance; and referrals to veterans services and legal services.

Activities designed to build the capacity of organizations to address homelessness in the community.

including payment of operating costs and staff, may also be carried out as part of a rural homelessness initiative project, provided that no more than 20 percent of the amount awarded for any rural homelessness initiative project may be used for such capacity building activities.

All rules applicable to the Supportive Housing Program, as described at 24 CFR part 583, apply to rural homelessness initiative projects, except the eligible activity provisions in subpart B of part 583 are expanded for these projects to include the listed homeless prevention activities and capacity building activities.

Applicants for rural projects proposing to carry out homeless prevention activities or capacity building activities must apply under the category of rural homelessness initiative projects. In total, no more than $20 million will be awarded for such projects. Applicants for rural projects proposing only activities that are normally eligible under the Supportive Housing Program may either apply for assistance under the $20 million rural homelessness initiatives category or compete with all other SHP applicants for the balance of the available SHP funds (approximately $270 million).

Safe havens. In accordance with the 94 App. Act, up to $50 million of the Supportive Housing Program appropriation is available for safe havens projects. Although safe havens projects would have been eligible in the past for Supportive Housing Program grants, these projects would not have been competitive under the "Quality of Project Plan" rating criteria. It has become clear that safe havens can play an important role in a continuum of care system, particularly with respect to the hard-to-serve homeless population. To ensure that safe havens projects are competitive this year, application selection criteria have been modified to reflect the special characteristics of safe havens.

Safe havens, as that term is used in this NOFA, is a form of supportive housing designed specifically to provide a safe residence for homeless persons with serious mental illness who are currently residing primarily in public or private places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, and who have been unwilling or unable to participate in mental health or substance abuse treatment programs or to receive other supportive services.

For many persons with mental illness who have been living on the street, the transition to permanent housing is best made in stages, starting with a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to relatively few immediate service demands. Traditional supportive housing settings often assume a readiness by the clientele to accept a degree of structure and service participation that would overwhelm and defeat a person with mental illness who has come fresh from the street.

Safe havens are designed to provide persons with serious mental illness who have been living on the streets with a secure, non-threatening, non-institutional, supportive environment. These facilities can serve as a "portal of entry" to the service system and provide access to basic services such as food, clothing, bathing facilities, telephones, storage space, and a mailing address.

Safe havens do not require participation in services and referrals as a condition of occupancy. Rather, it is hoped that after a period of stabilization in a safe haven, residents will be more willing to participate in services and referrals, and will eventually be ready to move to a more traditional form of housing.

Specifically, the term "safe haven" means a structure or a clearly identifiable portion of a structure: (1) That proposes to serve hard-to-reach homeless persons with severe mental illness; (2) that provides 24-hour residence for eligible persons who may reside for an unspecified duration; (3) that provides private or semi-private accommodations; (4) that may provide for the common use of kitchen facilities, dining rooms, and bathrooms; and, (5) in which overnight occupancy is limited to no more than 25 persons. A "safe haven" may also provide supportive services to eligible persons who are not residents on a drop-in basis. To be considered for funding under the Safe Havens component of the Supportive Housing Program, a proposed project must be consistent with the five features listed above.

All rules applicable to the Supportive Housing Program, as described at 24 CFR part 583, apply to safe havens.

Minimum percentages. In accordance with section 429 of the McKinney Act, as amended, HUD will allocate not less than 25 percent of the total available funds to projects that primarily serve homeless families with children, not less than 25 percent to projects that primarily serve homeless persons with disabilities and not less than 10 percent for supportive services not provided in conjunction with supportive housing. After applications are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If not, HUD will skip higher-ranked applications in a category for which the minimum percent has been achieved in order to achieve the minimum percent for another category. If there is an insufficient number of conditionally selected applications in a category to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable application in the competition.

(2) *Shelter Plus Care Program Allocations.* Approximately $115 million is available for assistance under the Shelter Plus Care program. In accordance with section 463(a) of the McKinney Act, as amended by the 1992 Act, HUD will allocate at least 10 percent of the available funds for each of the four components of the program: Tenant-based Rental Assistance; Sponsor-based Rental Assistance; Project-based Rental Assistance; and Section 8 Moderate Rehabilitation of Single Room Occupancy Dwellings for Homeless Individuals.

After applications are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If necessary, HUD will skip higher-ranked applications for a component for which the minimum percent has been achieved in order to achieve the minimum percent for another component. If there is an insufficient number of approvable applications in a component to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable application in the competition.

No Shelter Plus Care application may be approved for more than $3 million. Any applicant that is a unit of general local government, a local public housing authority, or an Indian tribe may submit only one Shelter Plus Care application. Any applicant that is a State or a State public housing authority may submit applications for more than one jurisdiction but must submit a separate application for each and may only submit one application for each jurisdiction.

With regard to the Shelter Plus Care/Section 8 SRO component, applicant States, units of general local government and Indian tribes must subcontract with a Public Housing Authority to administer the Shelter Plus Care assistance. Also with regard to this component, no single project may contain more than 100 units.

(3) *Allocations for Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.* Approximately $140

million is available for assistance under the Section 8 SRO program. HUD estimates that this $140 million will assist approximately 4,000 units over the 10-year funding period. Applicants need to be aware of the following limitations on the allocation of Section 8 SRO funds:

- A separate application must be submitted for each site for which assistance is requested and, under section 8(e)(2) of the United States Housing Act of 1937, no single project may contain more than 100 units;
- Under section 441(c) of the McKinney Act, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program;
- Applicants that are private nonprofit organizations must subcontract with a Public Housing Authority to administer the SRO assistance; and
- Under section 441(e) of the McKinney Act and 24 CFR 882.805(g)(1), HUD publishes the SRO per unit rehabilitation cost limit each year to take into account changes in construction costs. For purposes of Fiscal Year 1994 funding, the cost limitation is raised from $15,700 to $15,900 per unit to take into account increases in construction costs during the past 12-month period.

II. Application Requirements

An application for Supportive Housing, Shelter Plus Care, or Section 8 SRO assistance consists of narrative, numerical, and financial information. The application requires a description of: The need for assistance; coordination by the applicant in planning the proposed project, including how the proposed project will help the community move toward a continuum of care system by filling a gap in the community's response to homelessness; the proposed project, including the plan for housing and services to be provided to participants; resources expected for the project and the amount of assistance requested; the experience of all organizations who will be involved in the project; and the sources and number of proposed participants. An application also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (in most cases) that the proposed activities are consistent with the HUD-approved Comprehensive Housing Affordability Strategy of the applicable State or unit of general local government.

The specific application requirements will be specified in the application package for each program. This package includes all required forms and certifications, and may be obtained from a HUD Field Office listed in the appendix to this NOFA.

Care should be taken in the selection of projects and in the preparation of applications to ensure that environmental and historic preservation impediments do not cause an application to be denied or approval severely delayed. In general, any application HUD receives from a state or local government will require that the environmental assessment be prepared by the local or state government before the grant application can be approved. The environmental assessments for non-governmental applicants will be conducted by HUD. Questions about which environmental and historic preservation laws may apply should be addressed to the HUD Field Office.

III. Application Selection Process

The Department will use the following review, rating, and conditional selection process for each of the four competitions (S+C, SRO, SHP, and SHP Rural Initiative) to be conducted under this NOFA:

(a) *Review.*

Applications will be reviewed to ensure that they meet the following requirements:

(1) *Applicant eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(2) *Eligible population to be served.* The population to be served must meet the eligibility requirements of the specific program.

(3) *Eligible activities.* The activities for which assistance is requested must be eligible under the specific program.

(4) *Fair housing and equal opportunity.* Organizations that receive assistance through the application must be in compliance with applicable civil rights laws and Executive Orders.

(5) *Vacancy rate.* For the Section 8 SRO program, at least 25 percent of the units to be assisted at any one site must be vacant at the time of application.

(b) *Rating and Conditional Selection.*

Applications for each competition (S+C, SRO, SHP, SHP Rural Initiative) will be rated in two steps based on the criteria listed below, with a maximum of 75 points awarded at the first step and a maximum of 50 points awarded at the second step. To rate applications, the Department may establish a panel including persons not currently employed by HUD to obtain outside points of view, including views from other Federal agencies.

After points have been awarded during the first step, applications will be ranked from highest point score to lowest. A line will then be drawn at that point in the ranking at which program funds would be exhausted plus an additional percentage. Applications above the line will then move to the second step of the selection process, except that HUD reserves the right to include other applications in the second step review if necessary to help achieve geographic diversity or to meet the minimum percentages required by statute.

After points have been awarded during the second step, the points from each step will be added together. A bonus of 5 points will be added in determining the final score of any SHP applicant that agrees to enter into a partnership agreement with a potential AmeriCorps program sponsor, as described in section V of this NOFA. Using the final scores, the applications will again be placed in rank order. Whether an application is conditionally selected will depend on its overall ranking compared to other applications, except that HUD reserves the right to select lower rated applications if necessary to achieve geographic diversity or to meet the minimum percentages required by statute.

For all programs, in the event of a tie between applicants, the applicant with the highest total points for the coordination criterion will be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round under this NOFA, HUD may select that applicant when sufficient funds become available.

For Shelter Plus Care and Supportive Housing, in cases where the applicant requests assistance for more than one of the components of the program within one application, the components will not be rated separately. Rather, the application will be rated as a whole. (For Section 8 SRO, only one project is allowed per application.)

(c) *Core Selection Criteria.*

The following five core selection criteria apply to each of the programs covered by this NOFA and account for 65 of the 75 points available for award at the first step of the process.

(1) *Need.* HUD will award up to *20 points* based on the jurisdiction's need for homeless assistance. HUD will calculate need from generally available data.

(2) *Capacity.* HUD will award up to *15 points* based on extent to which all the organizations involved in the project demonstrate:

- Timeliness in the speed with which the project will become operational, taking into account differences in the types of projects proposed for funding.
- Experience in carrying out similar activities to those proposed either as an ongoing provider of housing and/or services to homeless people, or as an ongoing provider of housing and/or services who is in some way tangibly connected to an ongoing homeless delivery system.
- As applicable, the rating under this criterion will also consider prior performance with any HUD McKinney Act grants or other HUD-administered programs, including any serious, outstanding audit or monitoring findings that directly affect the proposed project.

(3) *Quality of project.* HUD will award up to *15 points* based on the extent to which the applicant demonstrates:

- Homeless individuals and/or families will obtain and/or remain in permanent housing.
- Homeless individuals and/or families will increase skills and/or income.
- Homeless individuals and/or families will achieve greater self-determination including being involved in project decision-making and operation.
- The appropriateness of the proposed housing and supportive services given the needs of the population proposed to be served.
- For the permanent housing projects, integration of homeless individuals and/or families into the surrounding community.
- For transitional housing projects, how persons completing a transitional housing program will be assisted in locating and remaining in permanent affordable housing and how the applicant will assure that necessary follow-up services will be provided to such persons.
- For projects serving families, the project serves the family together, and works to strengthen the family structure. Projects that mix families with singles populations in the same structure will be viewed unfavorably.
- For Safe Haven projects, in place of the above factors, up to *15 points* will be awarded based on the extent to which the applicant demonstrates how the project will link persons to other housing and supportive services after stabilization in a safe haven, the availability of basic services in the safe haven, and how the security of participants will be assured by the applicant.

(4) *Targeting.* HUD will award up to *10 points* based on the percentage of persons to be served by the project who are sleeping in emergency shelters (including hotels or motels used as shelter for homeless families), other facilities for homeless persons, or places not meant for human habitation, such as cars, parks, sidewalks, or abandoned buildings. This includes persons who ordinarily live in such places but are in a hospital or other institution on a short-term basis (short-term is considered to be 30 consecutive days or less). The applicant's description of its strategy for reaching these populations will be a factor in rating this criterion.

(5) *Leveraging.* HUD will award up to *5 points* based on the extent to which the amount of assistance to be provided under this grant is supplemented with properly documented cash or in-kind resources from public and private sources that will be used for the project. For S+C and SRO applications, leveraging will be based on properly documented resources for supportive services. For SHP applications, leveraging will be based on properly documented resources for any project activity.

(d) *Supportive Housing additional selection criteria.*

The following two selection criteria account for the remaining 10 points available for award at the first step of selection process for SHP grants.

(1) *Cost effectiveness.* HUD will award up to *5 points* based on the extent to which supportive services are provided from resources other than the Supportive Housing Program grant.

(2) *Innovation.* HUD will award up to *5 points* if the proposed project represents an innovative approach when viewed nationally, and that promises to be successful and replicable. Applications submitted under the "innovative supportive housing" component of the Supportive Housing Program must achieve points under this "Innovation" criterion.

(e) *Shelter Plus Care additional selection criterion.*

The following selection criterion accounts for the remaining *10 points* available for award at the first step of the selection process for S+C grants.

(1) *Serving targeted disabilities.* Within the eligible population to be served, HUD will award up to *10 points* based on the number of individuals to be served who experience serious mental illness, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases in relation to the total number of people proposed to be served. In awarding these points, HUD will also consider the availability of case management in determining the likely effectiveness of the expenditures for housing and services to be provided to the targeted population.

(f) *Section 8 SRO additional selection criterion.*

The following selection criterion accounts for the remaining *10 points* available for award at the first step of the selection process for Section 8 SRO grants.

(1) *Availability of vacant units.* HUD will award up to *10 points* based on the percentage of units (beyond the required 25 percent) proposed for assistance which are vacant at the time of application.

(g) *Final selection criterion: Coordination and Planning.*

For each application that reaches the second step of the selection process, up to *50 points* will be awarded based on the extent to which the application demonstrates:

- Need for the type of project proposed in the area to be served, and that the proposed project will be coordinated with other service and housing providers in the community, and will effectively and appropriately fill a gap in the community's response to homelessness.
- Participation in a community process which is moving toward a continuum of care strategy, which could include nonprofit organizations, State and local governmental agencies, other homeless providers, housing developers and service providers, private foundations, local businesses and the investment banking community, neighborhood groups, and homeless or formerly homeless persons.
- Coordination with other applicants, if any, applying for assistance under this NOFA for projects in the same local jurisdiction. (If more than one organization within a local jurisdiction is submitting an application under this NOFA, the same description of the coordination process may be submitted by these organizations. HUD is encouraging coordination and expects such collaboration among providers.)
- Quality of planning, including how the project uses or will use mainstream services, such as income supports, mental health services, and substance abuse treatment, and how the project uses or will use mainstream housing programs, such as Section 8 rental assistance, HOME, and State programs, and other permanent housing resources to complete the continuum of care. The scale of the project will also be considered, with plans to concentrate large numbers of homeless persons at one location viewed unfavorably.

(h) *Clarification of application information.*

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(i) Technical Assistance.

Prior to the application deadline, HUD field office staff will be available to provide advice and guidance to potential applicants on application requirements and program policies. Following conditional selection, HUD field office staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

IV. Grant Award Process

HUD will notify conditionally selected applicants in writing. As necessary, HUD will subsequently request them to submit additional project information, which may include documentation to show the project is feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for HUD to perform an environmental review, where applicable; and such other documentation as specified by HUD in writing to the applicant, that confirms or clarifies information provided in the application. Applicants will also be notified of the date of the two month deadline for submission of such information. If an applicant is unable to meet any conditions for grant award within the specified timeframe, HUD reserves the right not to award funds and to use the funds available in the next competition for the applicable program.

V. Linking Supportive Housing Programs and AmeriCorps

On September 21, 1993, President Clinton signed national service legislation into law, creating the Corporation for National and Community Service. Through the new Corporation, Americans of all ages and backgrounds will work to meet urgent challenges in their communities in the areas of education, public safety, human needs and the environment. Helping people who are homeless is a key objective under the Corporation's human needs priority.

AmeriCorps's Fiscal Year 1994 budget will support up to 20,000 full-time equivalent positions for service participants. Full-time service participants (those working 1700 hours over a 9 to 12 month period) are eligible to receive approximately $7600 as a living allowance and a post-service award of $4725 to be used for past or present educational expenses. AmeriCorps will be able to support a greater number of service participants if other organizations can pay the living allowances and related costs, with AmeriCorps providing the post-service educational awards.

Accordingly, $3,400,000 of Supportive Housing Program funds is being set-aside under the 1994 SHP competition as a special fund to pay costs incurred by SHP grantees to procure the services of AmeriCorps service participants for SHP projects, where SHP grantees enter into partnerships with local AmeriCorps program sponsors. The local AmeriCorps program sponsor will be responsible for recruiting, selecting, and training the service participants, who will then join the staff of the SHP project.

After a partnership agreement with the local AmeriCorps program sponsor is executed, bonus SHP funds from the $3,400,000 set-aside would be added to the regular SHP grant. The bonus may include payment for living allowances or stipends, benefit packages and the reasonable overhead costs of the AmeriCorp program sponsor, but may not exceed the cost which would be paid by the SHP grantee for the same services when procured from a contractor. Also, if the service participants are employed in operating the project, the SHP AmeriCorps bonus is subject to the SHP requirement that operating costs be shared. Examples of employment often covered in the operating budget include maintenance, security, and facility management. Supportive services are not subject to local cost-sharing, so if service participants are employed in delivering supportive services, such as substance abuse counseling, case management, or recreational programs, no local share is required.

Supportive Housing Program applicants that wish to be considered for a bonus award under this set-aside will need to complete a special exhibit in the SHP application. Five points will be added to the rating score for any application containing this special exhibit, provided it is properly completed. More information about linking Supportive Housing programs with AmeriCorps will be provided in the instructions to this special exhibit.

VI. Special Incentive for Purchase of HUD Properties Under the Single Family Property Disposition Initiative

Supportive Housing funds may be used to purchase HUD properties under the Single Family Property Disposition (SFPD) Initiative for use by homeless persons. This includes both the acquisition of SFPD properties in the HUD inventory and SFPD properties currently being leased from HUD.

Current lessees of HUD-owned single-family properties and others interested in purchasing such properties for use by homeless persons now have an opportunity to purchase the properties at a 30 percent discount off the sale price. The Department is offering a special incentive for the purchase of HUD properties located in zip code areas designated by HUD as "revitalization" areas. There are 70 such zip code areas and more than 1800 HUD-owned properties are currently leased in such areas. HUD Field Offices can assist in identifying these zip code areas.

Properties located outside these areas can be sold at the standard 10 percent discount generally offered to nonprofit organizations and government agencies. However, if five or more properties located outside of revitalization areas are purchased at the same time, a 15 percent discount will be applied. The sales price, to which any discount would be applied, is the current fair market value or the value established at the time of the lease, whichever is less, provided that the lessee agrees to use the property either to house homeless persons for 10 years or to resell only to a lower income buyer.

The incentives described above should be especially attractive for organizations currently operating transitional housing for homeless persons in leased HUD-owned properties. They will have the opportunity to purchase at a discount up to 30 percent, properties for which they had a maximum five-year lease, thus sparing the necessity to either move their projects or close down completely. Current lessees who have been operating satisfactory transitional housing and who purchase properties will also have a competitive advantage under the rating criterion, "Capacity", since they may claim previous experience with HUD homeless programs.

VII. Employment Opportunities for Homeless Persons

A key goal of the continuum of care approach is to assist homeless persons to achieve independent living whenever possible. Each of the three programs under this NOFA has as a goal increasing the skill level and/or income of program participants. Employment opportunities not only help achieve these goals but are also important in rebuilding self-esteem.

The McKinney Act recognizes the importance of employment opportunities in requiring that, to the maximum extent practicable, recipients involve homeless persons through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services. Under the Supportive Housing Program, employment assistance activities are eligible, and grant recipients can use these funds for such activities as job training, wages, and educational awards for homeless persons. While Shelter Plus Care Program and SRO Program funds may only be used for rental assistance, employment assistance activities paid from other sources count towards the match requirement of the Shelter Plus Care Program and can also count for purposes of the "leveraging" rating criterion.

Inclusion in the application of employment assistance activities for homeless persons may improve the rating score under the "Quality of Project" criterion, making the application more competitive.

VIII. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would have a significant impact on the formation, maintenance, and general well-being of families, but since this impact would be beneficial, no further analysis under the Order is necessary.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of activities and policies to end homelessness is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures—HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts, those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: 42 U.S.C. 11403 note; 42 U.S.C. 11389; 42 U.S.C. 1437a, 1437c, and 1437f; 42 U.S.C. 3535(d); 24 CFR parts 582, 583, and 882.

Dated: May 3, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix: Listing of HUD Field Offices

Appendix: List OF HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

Alabama—Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 672–1230; TDD (205) 290–7624.

Alaska—Colleen Craig, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–4684; TDD (907) 271–4328.

Arizona—Diane LeVan, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

Arkansas—Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.

(Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

Colorado—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Connecticut—Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

Delaware—John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

District of Columbia (and MD and VA suburbs)—James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275–0994; TDD (202) 275–0772.

Florida—James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–5121; (904) 232–3587; TDD (904) 791–1241.

Georgia—Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Hawaii (and Pacific)—Patti A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327; TDD (808) 541–1356.

Idaho—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Illinois—Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696; TDD (312) 353–7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TDD * via 1–800–877–8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Kansas—Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TDD (913) 551–6972.

Kentucky—Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394; TDD (502) 582–5139.

Louisiana—Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237.

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Maryland—Harold Young, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520x3026; TDD (410) 962–0106.

Massachusetts—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

Michigan—Richard Wears, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–7186; TDD * via 1–800–877–8339.

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TDD (612) 370–3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TDD (601) 965–4171.

Missouri—(Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524; TDD (314) 539–6331.

(Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TDD (913) 551–6972.

Montana—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Nevada—(Las Vegas, Clark Cnty) Diane LeVan, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

(Remainder of State) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622–7900 x3300; TDD (201) 645–3298.

New Mexico—R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768; TDD * via 1–800–877–8339.

(Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4006; TDD (910) 547–4055.

North Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Ohio—Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Oklahoma—Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973; TDD (405) 231–4181.

Oregon—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

(Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

South Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4393; TDD (615) 545–4559.

Texas—(Northern) R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

(Southern) John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

West Virginia—Bruce Crawford, Old Post Office & Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

Wisconsin—Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD * via 1–800–877–8339.

Wyoming—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

[FR Doc. 94–11214 Filed 5–5–94; 4:16 pm]

BILLING CODE 4210–29–P

federal register

Tuesday
May 10, 1994

Part V

Federal Emergency Management Agency

Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: June 9, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: May 4, 1994.

Michael B. Hirsch,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
		Additions			
AK					
AK0040	Prudhoe Bay Hotel	Pouch 340004 Main St	Prudhoe Bay	AK 99734–	(907) 659–2449
AR					
AR0053	Comfort Inn	115 Barrow Hill Rd	Forrest City	AR 72335–	(501) 633–0042
AR0054	Comfort Inn	1210 Hwy. 62–65 N	Harrison	AR 72601–	(501) 741–7676
AR0055	Best Western Governors Inn.	1501 Merrill Dr	Little Rock	AR 72211–	(501) 224–8051
AZ					
AZ0173	Econo Lodge East	3601 E. Lockett Rd	Flagstaff	AZ 86004–	(602) 527–1477
AZ0175	Comfort Inn	1770 N. Dysart Rd	Goodyear	AZ 85338–	(602) 932–9191
AZ0180	Best Western at Lake Powell.	208 N. Lake Powell Blvd	Page	AZ 86040–	(602) 645–2578
AZ0177	Comfort Inn	1578 W. Thatcher	Safford	AZ 85546–	(602) 428–5851
AZ0178	Willcox Econo Lodge	724 N. Bisbee Ave	Willcox	AZ 85643–	(602) 384–4222
AZ0181	Best Western Adobe Inn	1701 N. Park Drive	Winslow	AZ 86047–	(602) 289–4638
AZ0179	Econolodge	1706 N. Park Dr	Winslow	AZ 86047	(502) 289–4687
CA					
CA1106	Comfort Inn Maingate	2200 S. Harbor Blvd	Anaheim	CA 92802–	(714) 750–5211
CA1105	Econolodge Maingate	1570 S. Harbor Blvd	Anaheim	CA 92802–	(714) 772–5721
CA1104	Friendship Inn Sunrise Motel.	705 South Beach Blvd	Anaheim	CA 92804–	(714) 761–4200
CA1107	Quality Inn Airport	4500 Pierce Rd	Bakersfield	CA 93308–	(805) 324–5555
CA1108	Sleep Inn, Barstow	1861 W. Main	Barstow	CA 92311	(619) 256–1300
CA1109	Quality Inn	7330 Eastern Ave	Bell Gardens	CA 90201–	(310) 928–3452
CA1110	Rodeway Inn	150 E. Elm St	Bishop	CA 93514–	(619) 873–3564
CA1111	Comfort Inn Camarillo	984 Ventura Blvd	Camarillo	CA 93010–	(805) 987–4188
CA1112	Carion Suites Inn	34734 Pacific Coast Hwy	Capistrano Beach	CA 92824–	(714) 248–1316

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
CA1113	Comfort Inn Castaic	31558 Castaic Road	Castaic	CA 91384–	(805) 295–1100
CA1114	Econo Lodge	3978 E. Castro Valley Blvd	Castro Valley	CA 94546–	(510) 537–8833
CA1100	Patriot Inn & Suites	2830 Iowa Ave	Colton	CA 92324–	(909) 788–9900
CA1115	Rodeway Inn, Duarte	1533 E. Huntington Dr	Duarte	CA 91010–	(818) 303–3544
CA1102	Best Western Cordelia Inn	4373 Central Pl	Fairfield	CA 94585–	(707) 864–2029
CA1116	Fremont Quality Inn	47031 Kato Road	Fremont	CA 94538–7321	(510) 490–2900
CA1140	Chateau By Picadilly Inn	5113 E. McKinley Ave	Fresno	CA 93727–	(209) 456–1418
CA1139	Piccadilly Inn Hotel—Airport.	5115 E. McKinly Ave	Fresno	CA 93727–	(209) 251–6000
CA1138	Piccadilly Inn Hotels, Shaw	2305 W. Shaw Ave	Fresno	CA 93711–	(209) 266–3850
CA1117	Econo Lodge, Glendale	1437 E. Colorado St	Glendale	CA 91205–	(818) 246–8367
CA1118	Econo Lodge	439 W. Manchester Blvd	Inglewood	CA 90301–	(310) 674–8596
CA1119	Comfort Inn Long Beach	3201 E. Pacific Coast Hwy	Long Beach	CA 90804–	(310) 597–3374
CA1122	Comfort Inn Towne	4122 S. Western Ave	Los Angeles	CA 90062–	(213) 294–5200
CA1121	Econo Lodge	11933 Washington Blvd	Los Angeles	CA 90066–	(310) 398–1651
CA1120	Hilgard House Hotel	927 Hilgard Ave	Los Angeles, CA 904	CA 90024–	(310) 208–3945
CA1123	Milpitas Comfort Inn	66 S. Main Street	Milpitas	CA 95035–	( )—
CA1124	Comfort Inn Del Monte Beach.	2401 Del Monte Ave	Monterey	CA 93940–	(408) 373–7100
CA1125	Rodeway Inn	55 Fairchild Drive	Mountain View	CA 94043–	(415) 967–6856
CA1126	Comfort Inn Airport S	2301 S. Euclid Ave	Ontario	CA 91762–	(909) 986–3556
CA1127	Comfort Inn	3240 Mather Field Road	Rancho Cordova	CA 95670–	(916) 363–3344
CA1128	Comfort Inn	1818 El Camino Real	Redwood City	CA 94063–	(415) 599–9636
CA1129	Econo Lodge	9878 Magnolia Ave	Riverside	CA 92503–	(909) 687–3090
CA1137	Best Western Inn	6500 Redwood Dr	Rohnert Park	CA 94928–	(707) 584–7435
CA1103	Hotel Nikko San Francisco	222 Mason St	San Francisco	CA 94102–	(415) 394–1111
CA1101	Pacific Heights Inn	1555 Union St	San Francisco	CA 94070–	(415) 776–3310
CA1130	Rodeway Inn	1450 Lombard St	San Francisco	CA 94123–	(415) 673–0691
CA1131	Quality Hotel San Francisco Airport S.	4000 S. El Camino Real	San Mateo	CA 94403–	(415) 341–0966
CA1132	Econo Lodge, Thousand Oaks.	1425 Thousand Oaks Blvd	Thousand Oaks	CA 91362–	(805) 496–0102
CA1133	Comfort Inn of Turlock	200 W. Glenwood	Turlock	CA 95380–	(209) 668–3400
CA1134	Comfort Inn	1282 W. 7th St	Upland	CA 91786–	(909) 985–8115
CA1136	Thunderbird Lodge	526 E. Main St	Yreka	CA 96098–	(916) 842–4404
CT					
CT0244	Ramada Hotel	100 East River Drive	East Hartford	CT 06108–	(203) 528–9703
CT0243	Quality INn Waterbury	88 Union St	Waterbury	CT 06702–	(203) 575–1500
GA					
GA0268	Quality Inn Acworth	4980 Cowan Rd	Acworth	GA 30101–	(404) 976–1922
GA0269	Holiday Inn ALbany	2701 Dawson Rd	Albany	GA 31707–	(912) 883–8100
GA0288	Courtyard by Marriott Athens.	166 Finley St	Athens	GA 30601–	(706) 369–7000
GA0261	Holiday Inn Athens	Broad & Hull & Lumpkin St	Athens	GA 30603–	(706) 549–4433
GA0300	Atlanta Hilton Northwest	2055 S. Park Pl	Atlanta	GA 30339–	(404) 953–9300
GA0270	Days Inn Atlanta	300 Spring Street	Atlanta	GA 30308–	(404) 523–1144
GA0271	Swiss 'O' Tell Atlanta	3391 Peachtree Rd NE	Atlanta	GA 30326–	(404) 265–6431
GA0264	Westin Peachtree Plaza Hotel.	210 Peachtree St. NE	Atlanta	GA 30303–	(404) 659–1400
GA0272	Holiday Inn Augusta	2155 Gordon Hwy	Augusta	GA 30909–	(706) 737–2300
GA0273	Sheraton Augusta	2651 Perimeter Pkwy	Augusta	GA 30909–	(706) 855–8100
GA0297	Quality Inn Brunswick	125 Venture Dr	Brunswick	GA 31525–	(912) 265–4600
GA0299	Best Western Calhoun	2261 Hwy. 41 NE	Calhoun	GA 30701–	(706) 629–4521
GA0296	Quality Inn Cartersville	235 Dixie Avenue	Cartersville	GA 30120–	(404) 386–0510
GA0274	Holiday Inn College Park	5010 Old National Hwy	College Park	GA 30349–	(404) 761–4000
GA0298	Ramada Inn COllege Park	1419 Virginia Ave	College Park	GA 30337-	(404) 768–7800
GA0290	Comfort Inn Columbus	3443 Macon Rd	Columbus	GA 31407	(706) 568–3300
GA0294	Econo Lodge Covington	10101 Alcovy Rd	Covington	GA 30209–	(404) 786–4133
GA0265	Days Inn Forsyth	I–75 & Lee Rd	Forsyth	GA 31029	(912) 994–2800
GA0263	Ramada Inn Jekyll Island	150 S. Beachview Dr	Jekyll Island	GA 31527–	(912) 635–2111
GA0292	Comfort Inn Kennesaw	3375 George Busbee Pkwy.	Kennesaw	GA 30144–	(404) 424–7666
GA0275	Travel Lodge Lake Park	4912 Timber Dr	Lake Park	GA 31636–	(912) 559–0110
GA0267	Welcome Inn McDonough	688 Hwy. 155 S	McDonough	GA 30253–	(404) 957–5858
GA0276	Comfort Inn Newnan	1455 Hwy. 29 S	Newnan	GA 30263–	(404) 254–0089
GA0289	Fairfield Inn by Marriott Perry.	110 Perimeter Rd	Perry	GA 31069–	(912) 987–4454
GA0277	Davis Inn	State Park Rd	Pine Mountain	GA 31822–	(706) 663–2522
GA0278	Holiday Inn Richmond Hill	I–95 & US 17 Exit 14	Richmond Hill	GA 31324–	(912) 756–3351
GA0279	Holiday Inn Rome	#20 US 411 E	Rome	GA 30161–6600	(706) 295–1100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
GA0281	Villa South Motor Inn	P.O. Box 857, 725 S. Harris St.	Sandersville	GA 31082–	(912) 552–1234
GA0282	Comfort Inn Savannah	1016 E. Hwy. 80	Savannah	GA 31408–	(912) 748–5242
GA0283	Holiday Inn Savannah Midtown.	7100 Abercorn St	Savannah	GA 31406–	(912) 352–7100
GA0284	Radisson Savannah	100 General McIntosh Blvd	Savannah	GA 31401–	(912) 233–7722
GA0285	Seventeen Hundred Inn	307 E. President St	Savannah	GA 31401–	(912) 236–7122
GA0280	Days Inn St. Simon's Island.	1701 Frederico Rd	St. Simon's Island	GA 31522–	(912) 634–0660
GA0291	Comfort Inn Statesboro	316 S. Main St	Statesboro	GA 30458–	(912) 489–2626
GA0287	Holiday Inn Tifton	US 82 & I–75	Tifton	GA 31794	(912) 382–6887
GA0286	Holiday Inn Valdosta	1309 Saint Augustine Rd	Valdosta	GA 31601–	(912) 224–2381
GA0295	Comfort Inn Warner Robins.	95 S. Hwy. 247	Warner Robins	GA 31088	(912) 922–7555
HI					
HI0167	Kuhio Village Resort	2463 Kuhio Ave	Honolulu	HI 96822–	(808) 926–0641
IA					
IA0119	Comfort In of Ames	1605 S. Dayton Rd	Ames	IA 50010–	(515) 232–0689
IA0120	Econo Lodge—Atlantic	I80 & 71 Exit 60	Atlantic	IA 50022–	(712) 243–4067
IA0121	Comfort Inn Cedar Rapids North.	5055 Rockweil Dr. NE	Cedar Rapids	IA 52402–	(319) 395–8247
IA0114	Residence Inn—Desmoines.	11428 Forest Ave	Clive	IA 50325–	(515) 223–7700
IA0122	Comfort Inn Coralville	209 W. 9th	Coralville	IA 52241–	(319) 351–8144
IA0115	Fairfield Inn By Marriott Coralville.	214 9th Street	Coralville	IA 52241–	(319) 337–8882
IA0116	Fairfield Inn by Marriott Dubuque.	3400 Dodge Street/Hwy 20W.	Dubuque	IA 52003–4213	(319) 588–2349
IA0123	Comfort Inn Fort Dodge	2928 E. 5th Ave	Fort Dodge	IA 50501–	(515) 573–3731
IA0118	Fairfield Inn by Marriott Muscatine.	305 Cleve; Amd St	Muscatine	IA 52761–	(319) 264–5566
IA0124	Comfort Inn Sioux City	4202 S. Lakeport	Sioux City	IA 51106–	(712) 274–1300
IA0105	Comfort Suites	11167 Hickman Rd	Urbandale	IA 50322–	(515) 276–1126
IA0125	Comfort Suites Urbandale	11167 Hickman	Urbandale	IA 50322–	(515) 276–1126
IA0117	Fairfield Inn by Marriott Waterloo.	2011 LA Porte Rd	Waterloo	IA 50702–	(319) 234–5452
IA0126	Best Western Quite House Suites.	1708 North Highland Street.	Williamsburg	IA 52361–	(319) 668–9777
IL					
IL0497	Best Western Inn	1150 Roosevelt Rd	Broadview	Il 60153–	(708) 681–2550
IL0490	Quality Inn	475 North Bluff Road	Collinsville	IL 62234–	(618) 344–7171
IL0496	Bestern Western Country View Inn.	P.O. Box 163, I–70 and Rte. 127.	Greenville	IL 62246–	(618) 664–3030
IL0491	Comfort Inn, Hospitality Inc	510 E. Etna Rd	Ottawa	IL61350–	(815) 433–9600
IL0492	Comfort Inn	1821 W. Reynolds St	Pontiac	IL 61764–	(815) 842–2777
IL0493	Clarion International at O'Hare.	6810 N. Mannheim Rd	Rosemont	IL 60018–	(708) 297–8464
IL0489	Summerfield Suites—Schaumburg.	901 E. Woodfield Office Ct	Schaumburg	IL 60173–	(708) 619–6677
IL0494	Quality Inn	10 W. Roosevelt Rd	Villa Park	IL 60181–	(708) 941–9100
IL0495	Waukegan Comfort Inn	3031 Belvidere	Waukegan	IL 60085–	(708) 623–1400
KY					
KY0394	Quality Hotel Riverview	666 W. 5th St	Covington	KY 41011–	(606) 491–1200
KY0395	Comfort Inn/Erlanger	630 Donaldson Rd	Erlanger	KY 41018–	(606) 727–3400
LA					
LA0102	Econo Lodge	58512 Tyler Dr	Slidell	LA 70459–	(504) 641–2153
MA					
MA0243	Best Western Terrace Motor Lodge.	1650 Commonwealth Ave	Boston	MA 02135–	(617) 566–6260
MA0240	Residence Inn Boston/North Shore.	51 Newbury St. Route 1	Danvers	MA 01923–	( ) —
MA0239	Econo Lodge	321 Broadway	Malden	MA 02148–	(617) 324–8500
MA0241	Best Western Chateau	P.O. Box 155, 105 Bradford St. Ext.	Provincetown	MA 02657–	(508) 487–1286
MA0242	Best Western Tides Beachfront.	P.O. Box 617, 837 Commercial St.	Provincetown	MA 02657–	(508) 487–1045
MA0238	Comfort Inn Airport North	100 Morris St	Revere	MA 02151–	(617) 324–1900
MA0237	Quality Inn Fall River/Somerset.	1878 Wilbur Ave	Somerset	MA 02725–	(508) 678–4545

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
MA0236	Frienship Inn	99 Main St	West Dennis	MA 02670–	(508) 394–6603
MA0235	Comfort Inn Woburn	315 Mishawum Rd	Wobum	MA 01801–	(617) 935–7666
MI					
MI0273	Comfort Inn—Benton Harbor.	1598 Mall Dr	Benton Harbor	MI 49022–	(616) 925–1860
MI0272	Comfort Inn of Cedarville	P.O. Box 189, 210 W. SR–134.	Cedarville	MI 49719–	(906) 484–2266
MI0275	Quality Inn & Convention Center.	1000 Orleans Blvd	Coldwater	MI 49036–	(517) 278–2017
MI0271	Comfort Inn of Davison	10082 Lapeer Rd	Davison	MI 48423–	(313) 658–2700
MI0270	Comfort Inn	621 Tecumseh Rd	Dundee	MI 48131–	(313) 529–5505
MI0276	Quality Inn	1 West 9 Mile Rd	Hazel Park	MI 48030–	(810) 399–5800
MI0274	Comfort Inn	P.O. Box 807, 1555 N. Stephenson Ave.	Iron Mountain	MI 49801–	(906) 774–5505
MI0277	Quality Inn	5300 S. Westnedge	Kalamazoo	MI 49008–	(616) 382–1000
MI0278	Quality Suites Hotel	901 Delta Commerce Dr	Lansing	MI 48917–	(517) 886–0600
MI0268	Comfort Inn	29235 Budkingham Dr	Livonia	MI 48154–	(313) 458–7111
MI0279	Quality Inn	16999 S. Laural Park	Livonia	MI 48154–	(313) 464–0050
MI0283	Best Western—Troy/Madison Hts.	1331 W. 14 Mile Rd	Madison Heights	MI 48071–	(810) 583–7000
MI0284	Best Western—Mt. Pleasant Inn.	5770 E. Pickard St	Mt. Pleasant	MI 48858–	(517) 772–1101
MI0269	Comfort Inn	11539 O'Brian Ct	New Buffalo	MI49117–	(616) 469–4440
MI0267	Comfort Inn	1314 U.S. 31	Petoskey	MI 49770–	(616) 347–3220
MI0266	Comfort Inn	1700 Yeager	Port Huron	MI 48060–	(810) 982–5500
MI0281	Clarion Inn—Metro Airport	31200 Industrial Expressway.	Romulus	MI 48174–	(313) 728–2800
MI0282	Econo Lodge	23300 Telegraph Rd	Southfield	MI 48034–	(313) 358–1800
MI0264	Comfort Inn	11401	Utica	MI 48317–	(313) 739–7111
MI0280	Quality Inn	32035 Vandyke	Warren	MI 48093–	(313) 264–0100
MI0265	Comfort Inn Oakland/Pontiac Airport.	7076 Highland Rd	Waterford	MI 48327–	(313) 666–8555
MN					
MN0235	Best Western American Inn.	3924 Axcelsion Blvd	Minneapolis	MN 55416–	(612) 927–0133
MN0237	Best Western University Inn.	2600 University Ave. SE	Minneapolis	MN 55414–	(612) 379–2313
MN0234	Best Western Quiet House Suites.	725 Withers Harbor Dr	Red Wing	MN 55066–	(612) 388–1577
MN0236	Best Western Soldiers Field.	401 SW 6th St	Rochester	MN 55902–	(507) 288–2677
NC					
NC0288	Comfort Suites	809 Brevard Road	Asheville	NC 28806–	(704) 665–4000
NC0284	Fairfield Inn by Marriott Asheville.	31 Airport Park Drive	Asheville	NC 28732–	(704) 684–1144
NC0291	Econo Lodge Canton	55 Buckeye Cove Rd	Canton	NC 28786–	(704) 648–0200
NC0293	Comfort Inn Coliseum	4416 S. Tryon	Charlotte	NC 28217–	(704) 525–0456
NC0286	Doubletree Club Hotel	895 West Trade Street	Charlotte	NC 28202–	(704) 347–0070
NC0292	Quality Inn & Suites "Crownpoint".	2501 Sardis Road North	Charlotte	NC 28227–	(704) 845–2810
NC0287	Holiday Inn Baordeaux	1707 Owen Drive	Fayetteville	NC –	(910) 323–0111
NC0294	Comfort Inn South	1602 Mechanical Blvd	Garner	NC 27529–	(919) 779–7888
MC0295	Comfort Inn	2001 Veasley Street	Greensboro	NC 27262–	(910) 294–6220
NC0296	Comfort Inn	301 SE Greenville	Greenville	NC 27858–	(919) 756–2792
NC0297	Comfort Inn	200 W. Newber Road	Kinston	NC 28501–	(919) 527–3200
NC0298	Econo Lodge—Lenoir	206 Blowing Rock Blvd	Lenoir	NC 28645–	(704) 754–0731
NC0299	Comfort Suites	215 Wintergreen Drive	Lumberton	NC 28358–	(919) 739–8800
MC0285	Fairfield Inn by Marriott Lumberton.	3361 Lackey Street	Lumberton	NC 28258–	(910) 739–8444
NC0300	Econo Lodge	Rt 1, Box 68A	Marion	NC 28752–	(704) 659–7940
NC0301	Comfort Inn East	US 74E & SR 51	Matthews	NC 28105–	(704) 847–5252
NC0302	Quality Inn/Sea Oatel	7123 South Virginia Dare Trail.	Nags Head	NC 27959–	(919) 441–7191
NC0303	Comfort Suites	218 E. Front Street	New Bern	NC 28560–	(919) 636–0022
NC0305	Comfort Suites Crabtree Hotel.	3908 Arrow Drive	Raleigh	NC 27612–	(919) 782–6868
NC0304	Quality Suites Hotel	4400 Capital Blvd	Raleigh	NC 27604–	(919) 876–2211
MC0306	Mid Pines Resort	1010 Midland Road	Southern Pines	NC 28387–	(910) 692–2114
NC0308	Comfort Inn Statesville	1214 Greenland Street	Statesville	NC 28677–	(704) 873–2044
NC0309	Econo Lodge	1220 W. 15th Street	Washington	NC 27889–	(919) 946–7781

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
NC0311	Quality Inn	US 421 & 268 Bypass	Wilkesboro	NC 28697–	(910) 667–2176
NC0310	Comfort Inn	1636 Carolina Avenue	Wilmington	NC 27889–	(919) 946–4444
NC0312	Sleep Inn of Yadkinville	Sharon Drive	Yadkinville	NC 27055–	(910) 679–5000
NJ					
NJ0164	Comfort Inn North	405 E Absecon Blvd	Absecon	NJ 08201–	(609) 646–5000
NJ0165	Econo Lodge	328 WHP Route 30	Absecon	NJ 08201–	(609) 652–3300
NJ0163	Friendship Inn	316 E Route 30	Absecon	NJ 08201–	(609) 652–0904
NJ0166	Econo Lodge	146 Old Tuckahoe Rd	Buena	NJ 08310–	(609) 697–9000
NJ0167	Econo Lodge Cardiff	6641 Black Horse Pike	Cardiff	NJ 08232–	(609) 484–8500
NJ0168	Econo Lodge	395 Washington Ave	Carlstadt	NJ 07072–	(201) 935–4600
NJ0162	Holiday Inn Livingston	550 W MT Pleasant Ave	Livingston	NJ 07039–	(201) 994–3500
NJ0161	Howard Johnson Lodge	750 Highway 35	Middletown	NJ 07748–	(908) 671–3400
NJ0169	Clarion Hotel At Mt Laurel	915 Route 73 N	Mt Laurel	NJ 08054–	(609) 234–7300
NJ0175	Econo Lodge—Mt Laurel	611 Fellowship Rd	Mt Laurel	NJ 08054–	(609) 722–1919
NJ0170	Comfort Inn Victorian	6817 Black Horse Pike	Pleasantville	NJ 08232–	(609) 646–8880
NJ0171	Comfort Inn	101 E 9th Ave	Runnemede	NJ 08078–	(609) 939–6700
NJ0176	Comfort Inn	I–287 & Stelton Rd	So Plainfield	NJ 07080–	(908) 561–4488
NJ0174	Comfort Inn West	7095 Black Horse Pike	W Atlantic City	NJ 08232–	(609) 645–1818
NJ0172	Econo Lodge	5309 Hwy 33 & 34	Wall	NJ 07727–	(908) 938–3110
NJ0173	Spring Lake Comfort Inn	1909 Hwy 35	Wall	NJ 07719–	(908) 449–6146
NY					
NY0559	Comfort Inn—Albany	1606 Central Avenue	Albany	NY 12205–	(518) 869–5327
NY0560	Econo Lodge	Rt. 11, Upper Court Street	Binghamton	NY 13904–	(607) 775–3443
NY0561	Clifton Park Comfort Inn	41 Fire Rd, Old Rt. 146	Clifton Park	NY 12065–	(518) 373–0222
NY0562	Darien Lakes Econo Lodge	8493 Rt. 77	Corfu	NY 14036–	(716) 599–4681
NY0563	Econo Lodge—Hicksville	429 Duffy Ave	Hicksville	NY 11801–	(516) 433–3900
NY0564	Econo Lodge Lake George Motel.	431 Canada St	Lake George	NY 12845–	(518) 668–2689
NY0565	Comfort Inn Lockport	551 S. Transit St	Lockport	NY14094–	(716) 434–4411
NY0557	Ramada Plaza Hotel	One Ramada Plaza	New Rochelle	NY 10801–	(914) 576–3700
NY0566	Quality Hotal by Journey's End.	3 East 40th Street	New York	NY 10016–	(212) 447–1500
NY0558	The Drake Swissotel	44 Park Ave. at 56th St	New York	NY 10022–	(212) 421–0900
NY0567	Econo Lodge—Oswego	20 Hickory Park Rd	Oswego	NY 13827–	(607) 687–9000
NY0568	Comfort Inn Plainview	333 S. Service Rd	Plainview	NY 11803–	(516) 694–6500
NY0569	Comfort Inn	411 Route 3	Plattsburgh	NY 12901–	(518) 562–2730
NY0571	Comfort Inn Airport	395 Buell Rd	Rochester	NY 14624–	(716) 436–4400
NY0570	Econo Lodge Rochester South.	940 Jefferson Street	Rochester	NY 14623–	(716) 427–2700
OH					
OH0524	Embassy Suites	3775 Park East Dr	Beachwood	OH 44122–	(216) 765–8066
OH0525	Best Western Bellevue Resort Inn.	1120 Main St	Bellevue	OH 44811–	(419) 483–5740
OH0526	Best Western Mariemont Inn.	5880 Wooster Pike	Cincinnati	OH 45227–	(513) 271–2100
OH0527	Holiday Inn Cincinnati North.	2235 Sharon Rd	Cincinnati	OH 45241–	(513) 771–0700
OH0513	Quality Inn	1717 Glendale Milford Rd	Cincinnati	OH 45215–	(513) 771–5252
OH0529	Glidden House	1901 Ford Dr	Cleveland	OH 44106–	(216) 231–8900
OH0530	Residence Inn by Marriott Columbus East.	2084 S. Hamilton Rd	Columbus	OH 43232–	(614) 864–8844
OH0531	Sheraton Suites	201 Hutchinson Ave	Columbus	OH 43235–	(614) 436–0004
OH0514	Comfort Inn Dayton	7125 Miller Ln	Dayton	OH 45414–	(513) 890–9995
OH0515	Comfort Inn	1900 N. Clinton St	Defiance	OH 43512–	(419) 784–4900
OH0516	Econo Lodge	5151 Rt. 127 N	Eaton	OH 45320–	(513) 456–5959
OH0517	Fairfield Inn Fairborn	2500 Paramount Pl	Fairborn	OH 45324–	(513) 427–0800
OH0518	Hampton Inn Fairborn	2550 Paramount Pl	Fairborn	OH 45324–	(513) 429–5505
OH0511	Clanon Carriage House Inn.	301 Broadway Ave	Lorain	OH 44052–	(216) 246–5767
OH0519	Comfort Inn Marion	256 Jamesway	Marion	OH 43302–	(614) 389–5521
OH0520	Comfort Inn Cedar Point South.	11020 Milan Rd	Milan	OH 44846–	(419) 499–4681
OH0533	Howard Johnson	775 Hebron Rd	Newark	OH 43055–	(614) 522–3191
OH0521	Comfort Inn	7525 US 23	Piketon	OH 45661–	(614) 289–3000
OH0522	Rodeway Inn Cedar Point	2905 Milan Rd	Sandusky	OH 44870–	(419) 625–1291
OH0532	Comfort Inn	4949 Park Ave. W	Seville	OH 44273–	(216) 769–4949
OH0523	Quality Inn East	28600 Ridgehills Dr	Wickliffe	OH 44092–	(216) 585–0600
SC					
SC0194	Econo Lodge	1153 S. Main St	Bishopville	SC 29010–	(803) 428–3200
SC0193	Econo Lodge South	I–95 and US 76	Florence	SC 29501–	(803) 662–7712

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Index	Property name	PO box/rt # street address	City	State/zip	Telephone
SC0201	Econo Lodge	401 Goose Creek Blvd	Goose Creek	SC 29445–	(803) 797–8200
SC0200	Comfort Inn Executive Center.	540 Pleasantburg Dr	Greenville	SC 29607–	(803) 271–0060
SC0195	Quality Inn Hayward	50 Orchard Park Dr	Greenville	SC 29615–	(803) 297–9000
SC0191	Comfort Inn	2 Tanglewood Dr	Hilton Head Island	SC 29928–	(803) 842–6662
SC0202	Comfort Inn	PO Box 57, I–95 and Hwy. 261, Exit 119.	Manning	SC 29102–	(803) 473–7550
SC0190	Comfort Inn	1147 Wilson Rd	Newberry	SC 29108–	(803) 276–1600
SC0199	Comfort Inn	3671 St. Matthews Rd	Orangeburg	SC 29115–	(803) 531–9200
SC0189	Econo Lodge	Rt. 1 Box 1820, I–77 Exit 65 and Hwy. 9.	Richbury	SC 29729–	(803) 789–3000
SC0196	Ridgeland Comfort Inn	Hwy. 278 and I–95 Exit 21	Ridgeland	SC 29936–	(803) 726–2121
SC0197	Econo Lodge Summerville	110 Holiday Dr	Summerville	SC 29483–	(803) 875–3022
TX					
TX0445	Arlington Marriott	1500 Convention Center Dr.	Arlington	TX 76011–	(817) 261–8200
TX0447	Fairfield Inn by Marriott Arlington.	2500 E. Lamar	Arlington	TX 76006–	(817) 649–5800
TX0449	Residence Inn Fort Worth River Plaza.	1701 S. University Dr	Fort Worth	TX 76107–6535	(817) 870–1011
TX0450	Best Western Midlothian Inn.	220 N. Hwy. 67	Midlothian	TX76065–	(214) 775–1891
TX0448	Best Western Continental Inn Motel.	9735 IH–35 N	San Antonio	TX 78233–	(210) 655–3510
VA					
VA0532	Best Western Manassas	8640 Mathis Avenue	Manassas	VA 22110–0000	(703) 368–7070
VA0533	Best Western Center Inn	One Best Square (US 13)	Norfolk	VA 23502–0000	(804) 461–6600
WA					
WA0236	Econo Lodge of Sequim	801 E. Washington	Sequim	WA 98382–1570	(206) 683–8790
WA0238	Comfort Inn Broadway	6309 E. Broadway	Spokane	WA 99212–	(509) 535–7185
WA0239	Best Western Tacoma Inn Copperfields.	8726 S. Hosmer St	Tacoma	WA 98444–	(206) 535–2880
WA0235	Comfort Inn	13207 NE 20th Ave	Vancouver	WA 98686–	(206) 574–6000
WI					
WI0200	Residence Inn Appleton	310 Metro Dr	Appleton	WI 54915–	(414) 954–0570
WI0199	Pfister Hotel	424 East Wisconsin Avenue.	Milwaukee	WI 53202–	(414) 273–8222
WI0198	Skyline Motel	804 North Lake Avenue	Phillips	WI 54555–	(715) 339–3086
WY					
WY0084	Comfort Inn Buffalo	65 Hwy. 16 E	Buffalo	WY 82834–	(307) 684–9564
		Corrections/Changes			
AR					
AR0023	Econo Lodge W. Memphis	2315 S. Service Rd	West Memphis	AR 72301–	(501) 732–2830
AZ					
AZ0176	Quality Inn	1400 E. Andy Devine Ave	Kingman	AZ 86401–	(602) 753–4747
AZ0079	Rodeway Inn of Scottsdale	7110 E. Hubbell	Scottsdale	AZ 85251–	(602) 946–3456
CA					
CA0980	The Kawada Hotel	200 S. Hill St	Los Angeles	CA 90012–	(213) 621–4455
CA0711	Quality Suites	651 Five Cities Dr	Pismo Beach	CA 93449–	(805) 773–3773
CA0874	Comfort Suites Mission Valley.	631 Camino Del Rio, S	San Diego	CA 92108–	(619) 294–3444
CA0532	Econo Lodge	3880 Greenwood	San Diego	CA 92110–	(619) 543–9944
CA0659	Quality Suites San Diego North.	9880 Mira Mesa Blvd	San Diego	CA 92131–	(619) 530–2000
CA0913	Quality Hotel and Conference Center.	1101 Van Ness Ave	San Francisco	CA 94109–	(415) 776–8200
CA0895	Quality Suites Santa Ana	2620 Hotel Terrace Dr	Santa Ana	CA 92705–	(714) 966–5200
CA0447	Quality Suites Orange County Airport.	2701 Hotel Terrace Dr	Santa Ana	CA 92705–	(714) 957–9200
CA0213	Ramada Grand Avenue Hotel.	2726 S. Grand Ave	Santa Ana	CA 92705–	(714) 966–1955
CA0973	Quality Suites Silicon Valley.	3100 Lakeside Dr	Santa Clara	CA 95054–	(408) 748–9800
CA0883	Comfort Suites	121 E. Grand Ave	South San Francisco	CA 94080–	(415) 509–7766
CA1135	Comfort Inn	1185 Admiral Callaghan Lane.	Vallejo	CA 94591–	(707) 648–1400

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CT					
CT0211	Quality Inn	Newton Rd	Danbury	CT 06810–	(203) 748–6677
CT0072	Quality Inn	404 Bridge St	Groton	CT 06340–	(203) 445–8141
GA					
GA0001	Super 8 Motel Albany	2444 N. Slappey Blvd	Albany	GA 31702–	(912) 888–8388
GA0260	Holiday Inn Athens Courtyard.	Hull & Wray Sts	Athens	GA 30603–	(706) 549–4433
GA0008	Atlanta Marriott Marquis	265 Peachtree Ctr. Ave. NE.	Atlanta	GA 30303–	(404) 521–0000
GA0301	B.W. Bradbury Suites	4500 Cir. 75 Pkwy	Atlanta	GA 30339–	(404) 956–9919
GA0302	B.W. Bradbury Suites	1062 Claussen Rd	Augusta	GA 30907–	(706) 733–4656
GA0124	Ramada Inn Cordele	2016 16th Ave. E	Cordele	GA 31015–	(912) 273–5000
GA0256	Glennville Inn	812 N. Main St	Glennville	GA 30427–	(912) 654–3407
GA0020	Courtyard by Marriott Atlanta Airport North.	3399 International Blvd	Hapeville	GA 30354–	(404) 559–1043
GA0266	Welcome Inn Macon	4709 Chambers Road	Macon	GA 31206–	(912) 781–6680
GA0304	B.W. Bradbury Inn	5985 Oakbrook Pkwy	Norcross	GA 30093–	(404) 662–8175
GA0121	Peachtree Executive Conference Center.	2443 Hwy 54 W	Peachtree City	GA 30269–	(404) 487–2000
GA0293	Econo Lodge Richmond Hill.	I–95 & US 17	Richmond Hill	GA 31324–	(912) 756–3312
GA0017	Charter House Inn	2710 Osborne Rd	Saint Mary's	GA 31558–	(912) 882–6250
GA0224	Kings Bay Lodges	603 San Bar Dr	Saint Mary's	GA 31558–	(912) 882–8900
GA0089	King & Prince Beach Resort.	201 Arnold Rd	Saint Simon's Island	GA 31522–	(912) 638–3631
GA0088	Hyatt Regency Savannah	Two W. Bay St	Savannah	GA 31401–	(912) 238–1234
GA0303	B.W. Bradbury Suites	2060 Crescent Centre Blvd	Tucker	GA 30084–	(404) 496–1070
GA0176	Shoney's Inn Valdosta	1828 W. Hill Ave	Valdosta	GA 31601–	(912) 244–7711
IA					
IA0055	Best Western Metro Omaha.	3537 W. Broadway	Council Bluffs	IA 51501–	(712) 328–3171
IA0007	Best Western Denison's Inn.	502 Boyer Valley Road	Denison	IA 51442–	(712) 263–5081
IA0076	Best Western Des Moines West Exect. Cntr.	11040 Hickman Rd	Des Moines	IA 50325–	(515) 278–5575
IA0020	Days Inn Ottumwa	206 Church St	Ottumwa	IA 52502–	(515) 682–8131
IA0003	Best Western Norseman Inn.	3086 220th St	Williams	IA 50271–	(515) 854–2281
IL					
IL0009	Econo Lodge	810 W. Lincoln	Charleston	IL 61920–	(217) 345–7689
IL0099	Econo Lodge Motel	1205 N. Keller Dr	Effingham	IL 62401–	(217) 347–7132
IL0459	Comfort Suites Marion	2608 W. Main	Marion	IL 62959–	(618) 997–9133
IL0439	Peoria Comfort Suites	4021 War Memorial Dr	Peoria	IL 61614–	(309) 688–3800
IL0482	Residence Inn—Peoria	4201 N. War Memorial Dr	Peoria	IL 61614–	(309) 681–9000
IL0481	Residence Inn—Rockford	7542 Colosseum Dr	Rockford	IL 61107–	(815) 227–0013
KY					
KY0042	Comfort Inn—Elizabethtown.	122 N. Main St	Elizabethtown	KY 42701–	(502) 769–3030
KY0064	Best Western Parkside	80 Chenault Road	Frankfort	KY 40601–	(502) 695–6111
KY0077	Econo Lodge of Georgetown.	3075 Paris Pike	Georgetown	KY 40324–	(502) 863–2240
KY0112	Econo Lodge	2916 Ft. Campbell Blvd	Hopkinsville	KY 42240–	(502) 886–5242
KY0120	Best Western Luxbury Hotel.	1005 New Moody Ln	La Grange	KY 40031–	(502) 222–5500
KY0236	Best Western Kastle Inn	Hwy 25 S	Mt. Vernon	KY 40456–	(606) 256–5156
KY0291	Quality Inn	438 S. Dixie Blvd	Radcliff	KY 40160–	(502) 351–8211
KY0313	Best Western Motel	Lakeview Drive	Shepherdsville	KY 40165–	(502) 543–7097
MI					
MI0244	The Friendship Inn	09817 M–140 Hwy	South Haven	MI 49090–	(616) 637–5141
MN					
MN0014	The Thunderbird Hotel and Convention Center.	2201 E. 78th St	Bloomington	MN 55425–1228	(612) 854–3411
NC					
NC0126	Econo Lodge—Crystal Coastal.	3410 Bridges St	Morehead City	NC 28557–	(919) 247–2940
NE					
NE0045	Best Western White House Inn.	305 N. Fort Crook Rd	Bellevue	NE 68005–	(402) 293–1600

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
NE0003	Best Western—Central Executive Center.	3650 S. 72nd St. at I–80	Omaha	NE 68124–3586	(402) 397–37
NJ					
NJ0134	Econo Lodge	187 Route 130 N	Bordentown	NJ 08505–	(609) 298–5000
NJ0144	Best Western/Fairfield Executive Inn.	216–234 Rt 46 E	Fairfield	NJ 07004–	(201) 575–7700
NJ0100	Radisson Hotel & Suites Fairfield.	690 Rt 46 E	Fairfield	NJ 07004–	(201) 227–9200
NJ0020	Quality Inn	10 Polito Ave	Lyndhurst	NJ 07071–	(201) 933–9800
NJ0042	Quality Inn	815 Rt 37 W	Toms River	NJ 08755–	(908) 341–2400
NY					
NY0163	Econo Lodge	2303 N. Triphammer Rd	Ithaca	NY 14850–	(607) 257–1400
NY0097	Comfort Inn	PO Box 3296 2800 N. Main St. Ext.	Jamestown	NY 14701–	(716) 664–5920
NY0533	Econo Lodge Syracuse Liverpool.	401–407 7th N. St	Liverpool	NY 13088–	(315) 451–6000
NY0162	Econo Lodge	200 Robert Dann Dr	Painted Post	NY 14870–	(607) 962–4444
NY0270	Inn at Saratoga	231 Broadway	Saratoga Springs	NY 12866–	(518) 583–1890
NY0159	Econo Lodge	Rt 59	Spring Valley	NY 10977–	(914) 623–3838
NY0212	Hotel Syracuse	500 S. Warren St	Syracuse	NY 13202–	(315) 471–7300
NY0513	Westchester Marriott	670 White Plains Rd	Tarrytown	NY 10591–	(914) 631–2200
OH					
OH0011	Ohio University Inn	PO Box 713 331 Richland Ave.	Athens	OH 45701–	(614) 593–6449
OH0172	Aurora Inn Operating Prtn LP.	PO Box 197 Rt 82 & 306	Aurora	OH 44202–	(216) 562–6121
OH0212	Angel Motel	1024 N. Main St	Bowling Green	OH 43402–	(419) 352–3170
OH0512	Comfort Inn	5345 Broodmoor Cir. NW	Canton	OH 44709–	(216) 492–1331
OH0263	Cincinnatian Hotel	601 Vine St	Cincinnati	OH 45202–	(513) 381–3000
OH0352	Garfield House	2 Garfield Pl	Cincinnati	OH 45202–	(513) 421–3355
OH0255	Westin Hotel Cincinnati	Fountainview Square S	Cincinnati	OH 45202–	(513) 621–7700
OH0528	Courtyard by Marriott Cleveland.	3695 Orange Pl	Cleveland	OH 44122–	(219) 765–1900
OH0132	Jay Hotel	2515 Jay Ave	Cleveland	OH 44113–	(216) 621–1675
OH0169	Ritz Carlton Hotel	1515 W. 3rd St	Cleveland	OH 44113–	(216) 623–1300
OH0355	Comfort Inn	1221 E. Dublin Granville Rd.	Columbus	OH 43279–	(614) 885–4084
OH0328	Courtyard by Marriott Columbus Downtown.	35 W. Spring St	Columbus	OH 43215–	(614) 228–3200
OH0294	German Village Inn Motel Inc.	920 S. High St	Columbus	OH 43206–	(614) 443–6506
OH0339	Holiday Inn Worthinton	175 Hutchinson Ave	Columbus	OH 43235–	(614) 885–3334
OH0305	Trueman Club Hotel	900 E. Dublin Granville	Columbus	OH 43229–	(614) 888–7440
OH0379	Daytonian Hilton	11 S. Ludlow St	Dayton	OH 45402–	(513) 461–4700
OH0489	Wright Motel	18 S. Broad St	Fairborn	OH 45324–	(513) 878–9395
OH0091	Fountain Inn Motel	225 Maple Ave	Lakeside	OH 43440–	(419) 798–4461
OH0050	Golden Lamb	27 Broadway	Lebanon	OH 45036–	(513) 932–5065
OH0014	Inn at Cedar Falls	21190 SR 374	Logan	OH 43138–	(614) 985–7489
OH0445	Comfort Inn	855 Comfort Plaza Dr	Mansfield	OH 44904–	(419) 886–4000
OH0018	Lafayette Hotel Inc	101 Front St	Marietta	OH 45750–	(614) 373–5522
OH0437	Inn at Honey Run	6920 CR 203	Millersburg	OH 44654–	(216) 567–4011
OH0109	Bryan Montpelier Holiday Inn.	RR 3	Montpelier	OH 43543–	(419) 485–5555
OH0421	Comfort Inn Cedar Point Maingate.	1711 Cleveland Rd	Sandusky	OH 44870–	(419) 625–4700
OH0413	Sandusky Cedar Point Travelodge.	5906 Milan Rd	Sandusky	OH 44870–	(419) 627–8971
OH0131	Residence Inn by Marriott Cleveland Westlake.	30100 Clemens Rd	Westlake	OH 44145–	(216) 892–2254
OH0479	Wooster Inn	810 E. Wayne Ave	Wooster	OH 44691–	(216) 264–2341
OH0321	Worthington Inn	649 High St	Worthington	OH 43085–	(614) 885–2600
SC					
SC0192	Comfort Inn	Rt1. Bx 1058 I–26 Hwy 56 Exit 52.	Clinton	SC 29325–	(803) 833–5558
SC0198	Econo Lodge	1057 Sniders Hwy	Walterboro	SC 29488–	(803) 538–3830
TX					
TX00446	Courtyard by Marriott Houston/North Loop.	2504 North Loop West	Houston	TX 77092–	(713) 335–1300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
VA					
VA0503	Best Western Old Colony Inn.	625 First Street	Alexandria	VA 22314–	(703) 548–6300
VA0460	Howard Johnson National Airport.	2650 Jefferson Davis Highway.	Arlington	VA 22202–0000	(703) 684–7200
VA0510	Hampton Inn	7295 Williamson Blvd	Manassas	VA 22110–	(703) 369–1100
WA					
WA0237	Quality Inn Lewis and Clark.	700 Port Dr	Clarisston	WA 99403–	(509) 758–9500
WA0240	Best Western Choice Lodge.	24415 Russell Rd	Kent	WA 98032–	(206) 854–8767
WA0045	Best Western Icicle Inn	505 Hwy. 2	Leavenworth	WA 98226–	(509) 548–7000
WI					
WI0092	Best Western Welcome Inn Lancaster.	420 W. Maple St	Lancaster	WI 53813–	(608) 723–4162
WI0125	Best Western Woods View Inn.	5501 W. National Ave	Milwaukee	WI 53214–	(414) 671–6400
WY					
WY0078	Comfort Inn at Buffalo Bill Village Cody.	1601 Sheridan Ave	Cody	WY 82414–	(307) 587–5556
WY0040	Antler Motel Friendship Inn Jackson.	43 W. Pearl	Jackson	WY 83001–	(307) 733–2535
		Deletions			
AZ					
AZ0174	Quality Inn	2000 S. Milton Rd	Flagstaff	AZ 85001–	(602) 774–8771
GA					
GA0175	Omni Hotel Cnn Center	100 Cnn Ctr	Atlanta	GA 30335–	(404) 659–0000
IA					
IA0105	Comfort Inn	410 5th St. SW	Mason City	IA 50401–	(515) 423–4444
MI					
MI0075	Best Western Inn Troy Madison Heights.	1331 W. 14 Mile	Madison Heights	MI 48071–	(313) 583–7000
NC					
NC0289	Econo Lodge	190 Tunnel Road	Asheville	NC 28805–	(704) 254–9521
NC0290	Comfort Inn—Hatteras Island.	PO Box 1089,. Old Lighthouse Road.	Buxton	NC 27920–	(919) 995–6100
NC0244	Comfort Suites	215 Wintergreen Dr	Lumberton	NC 28358–	(919) 739–8800
NC0257	Comfort Inn	1214 Greenland Dr	Statesville	NC 28677–	(704) 873–2044
NC0307	Comfort Inn Statesville	1214 Greenland Street	Statesville	NC 28677–	(704) 873–2044
OH					
OH0238	Comfort Suites	11349 Reed Hartman Rd	Blus Ash	OH 45242–	(513) 530–5999
OH0076	Sheraton Westgate	3536 Secor Rd	Toledo	OH 43606–	(419) 535–7070
VA					
VA0278	Quality Inn	7295 Williamson Blvd	Manassas	VA 22110–	(703) 369–1100
WI					
WI0133	Hampton Inn Madison West.	516 Grand Canyon Dr	Madison	WI 53719–	(608) 833–3511

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federal register

Tuesday
May 10, 1994

Part VI

Office of Management and Budget

Report on Executive Order No. 12866, Regulatory Planning and Review; Notice

OFFICE OF MANAGEMENT AND BUDGET

Report on Executive Order No. 12866, Regulatory Planning and Review

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Publication of report to the president.

SUMMARY: On September 30, 1993, the President signed Executive Order No. 12866, "Regulatory Planning and Review." On the same day, the President directed the Administrator of the Office of Information and Regulatory Affairs to monitor OIRA's review activities during the first six months of the Executive Order and submit a report on these activities to the President and the Vice President by May 1, 1994. The President also directed that the report be published in the **Federal Register**.

Pursuant to the President's directive, this document contains the text of the report and an executive summary of the report, transmitted to the President on May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, (202) 395–7340.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

May 1, 1994.

Report on Executive Order No. 12866

Executive Summary

On September 30, 1993, President Clinton signed Executive Order No. 12866, "Regulatory Planning and Review." On that same day, he issued a memorandum directing the Administrator of OMB's Office of Information and Regulatory Affairs to "monitor [her] review activities over the next six months and, at the end of this period, to prepare a report on [her] activities." OIRA's Report covers the implementation of Executive Order No. 12866 from October 1, 1993, through March 31, 1994.

As set forth in greater detail in the report, implementation of the new Executive Order is well underway. At this point, we are beginning to see some of the changes that were envisioned in the Order. We have, however, encountered greater delays than anticipated in implementing some aspects of the Order. And some of the processes established by the Order, while initiated on schedule, are still in the formative stages. As a result, it is too early to arrive at a final judgment regarding the success of the new system; however, the early indications are that there is substantial improvement in the rulemaking process.

Executive Order No. 12866 clearly articulates President Clinton's regulatory philosophy and his view of how the nation's regulatory system should work. Most fundamentally, as the Order states in its opening lines:

> The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

A number of themes run through the Order. Within the Executive Branch, it encourages cooperation and coordination among OMB and the agencies. With respect to the public, it emphasizes openness and early involvement by all of the interested entities, including particularly State, local, and tribal participation in the rulemaking process.

The Order reaffirms the primacy of the agencies in the regulatory decision-making process and sets forth principles to which they are to adhere, to the extent permitted by law, when developing rules. At the same time, the Order reaffirms the legitimacy of centralized review. The process established for centralized review distinguishes between significant and non-significant regulatory actions so as to focus OIRA's review activities on where there will likely be the most benefit. It also emphasizes sound and timely analysis, early and frequent consultation, and it reduces delay and removes secrecy in the review process by establishing time limits and disclosure requirements.

Many of the objectives of the Order have begun to be realized. Regarding cooperation and public involvement, one of the major changes during the six-month period is the improved relationships that have been developed between OIRA and the agencies. While remnants of the mistrust and hostility that often characterized relationships between the career staffs over much of the past decade still exist, for the most part this has been replaced with a spirit of cooperation.

Much of the credit for the improved environment goes to the newly created Regulatory Policy Officers (RPO), high level agency officials who represent the agency head in efforts to implement the Order and improve the regulatory process. The RPOs work together in the Regulatory Working Group (RWG) chaired by the OIRA Administrator and attended by the White House Regulatory Policy Advisors—which meets regularly to discuss regulatory issues. The RWG has proven to be a useful forum not only for discussion of ideas and the exchange of best practices, but also for coordinating regulatory activities that affect more than one agency.

Regarding public participation, agencies appear to be making efforts to engage the public earlier and more fully in the regulatory process. For its part, OIRA has held two conferences (and is planning a third) with representatives of State, local, and tribal governments to improve the consultation process between them and Federal regulators. OIRA has also taken steps to improve the participation of the small business community in the rulemaking process. OIRA joined the Small Business Administration (SBA) to sponsor a Small Business Forum on Regulatory Reform in March 1994 to discuss how the regulatory process can better address the special needs of small businesses.

With respect to the objectives of selectivity and timeliness, OIRA received and reviewed 578 regulatory actions from October 1, 1993, through March 31, 1994. (See Table 1.) The 578 rules received and reviewed by OIRA for the six-month period is approximately half what it was for comparable periods in previous years. The number of rules under review at any given time has also shown a significant decline. For example, on July 1, 1993 (three months before the Executive Order was signed), 254 regulations were under review; on March 31, 1994 (six months after the Executive Order was signed), 68 rules were under review.

These figures reflect a longer than anticipated start-up period during which many non-significant rules continued to be sent to OIRA for review. This is a result of difficulties some agencies have had in instituting internal systems to manage the listing process that is to distinguish between significant and non-significant regulatory actions. Where the process has been implemented it has been helpful.

In total, OIRA has received lists designating 1,624 regulatory actions as significant or non-significant. (These rules would not all be rules reviewed during the six-month period—and hence they all do not appear on Appendix A—because, if they are non-significant, they would not have been submitted for review, and even if they are significant, they may not have been ready to be submitted for review and reviewed during the period covered by the report.) Of the 1,624 regulatory actions, almost two-thirds were designated non-significant, one-third significant; specifically, agencies designated (and OMB agreed) that 1,047 (or 64%) were non-significant; 316 (or 19%) were designated by the agency as (and OIRA agreed that they were), significant; and the remaining 261 (or 16%), were designated significant by OMB. Stated another way, the agency and OMB agreed with the initial designation for 83% of the regulatory actions; in only 16% was there a difference of view.

The definition of "significant" regulatory action has been the source of much discussion both within agencies and departments and between OIRA and the agencies (and it has been at least a partial source of the start-up delays we have experienced). Some of the differences may be attributable to the difference in the natural inclinations of rule writers, who might prefer not to have another review layer to go through, and the natural inclinations of reviewers, who might prefer to see more, rather than fewer rules, to ensure that everything that should be reviewed is reviewed. In any event, we have found that the number of instances where there is an initial difference of opinion as to significance decreases (sometimes substantially) with the agencies' increased experience with the process. In some cases, it is simply a function of the agencies' not knowing how much information to provide to enable OIRA to agree that the regulation is non-significant. In other cases, the agencies and OMB discuss the reasons for their different judgments so that the staffs come to an understanding and agreement on the definition of significance.

With respect to timeliness, the Executive Order establishes strict time limits on OIRA review in most cases 90 days to balance the need for adequate time to conduct review with the need to streamline the regulatory process and prevent unwarranted delay. OIRA has made a concerted effort to meet not only the letter of this requirement, but its spirit as well, and this goal of the Order is clearly being accomplished. Of the 578 rules received and reviewed between October and March, only three were extended beyond the 90-day limit. Each of these rules was extended at the request of the regulating agency to permit completion of interagency reviews that were in fact concluded in less than three weeks after the extension was requested.

In addition, the Order establishes disclosure requirements for both OIRA and the agencies to increase openness, accessibility, and accountability. On July 1, 1993, as one of her first actions, the OIRA Administrator began making available a daily list of draft agency regulations under review at OIRA. This was done in order to remove the stigma of secrecy that had previously characterized regulatory review, and to make the review process more transparent. In addition, lists and statistics related to regulatory review for each month are compiled and made available by early the following month. Meetings and telephone calls with persons outside the Executive Branch on regulations under review are now logged, and these logs are made publicly available. And other material related to regulatory review is kept in a public file, forwarded to the agencies, or made available upon request, in accordance with the Order. These various disclosure procedures are working well and have helped restore the integrity of the regulatory review process.

Two aspects of the Executive Order—the regulatory planning mechanism and review of existing regulations—are not covered in detail in the report, because although both are underway and on schedule, it is too early to judge their success. The regulatory planning process began with an agencies policy meeting held in early April and guidance on the process issued by the OIRA Administrator immediately after the meeting. This began the planning cycle that will result in the publication of the Regulatory Plan in October 1994. Regarding review of existing regulations, agencies submitted to OIRA in late December their plans for review of existing regulations. Several of the agencies have published notices requesting the public to suggest candidates for review. These and other approaches to reviewing existing regulations are being discussed within the RWG, and further action is planned.

In the memorandum from the President, we were asked to identify any provisions of the Executive Order that should be changed. As noted above, it is premature to make specific recommendations. We have, however, identified a number of issues that warrant further consideration and that ultimately may require changes to the Executive Order, its implementation by OIRA, or both.

The importance of regulations in our society makes it imperative that the process by which they are developed and reviewed be characterized by integrity and accountability. During the first six months of Executive Order No. 12866, we have made major strides toward these goals. We have moved the regulatory process from one criticized for delay, favoritism, and secrecy to one that is principled, professional, and productive. Much remains to be done, but we have made a strong beginning.

Report on Executive Order No. 12866

May 1, 1994.

On September 30, 1993, President Clinton signed Executive Order No. 12866, "Regulatory Planning and Review" (attached). On that same day, he issued a memorandum directing the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) to "monitor [her] review activities over the next six months and, at the end of this period, to prepare a report on [her] activities" (attached). The President also directed that "[t]he report . . . identify any provisions of the order that, based on [her] experience or on comments from interested persons, warrant reconsideration so that the purposes and objectives of this order can be better achieved." He directed that this report be submitted to the Vice President and the President by May 1, 1994, and be published in the **Federal Register**.

This report will describe and comment on what has occurred during the first six months of implementation of Executive Order No. 12866 (from October 1, 1993, through March 31, 1994), and will identify issues that could lead to suggested changes in the future. Although six months is a short time to bring about the fundamental changes in the Government's regulatory process envisioned by the Executive Order, the outlines of the new system have clearly begun to emerge. In some cases, we can point to unqualified successes; in others, we have encountered unexpected difficulties in implementing the system. To a large degree, it is too early to assess the success of the new system.

This report consists of four chapters. The first section introduces the subject with a brief history of the major regulatory programs of the U.S. Government and a general discussion of the nature of regulation. The second chapter describes the Clinton Administration's regulatory philosophy and the objectives of Executive Order No. 12866. The third section describes the implementation of the Executive Order during the first six months. The fourth section comments generally on issues raised as a result of our experience or from comments received from agencies and members of the public.

I. History of the Regulatory Programs of the U.S. Government

The Federal Government affects the lives of its citizens in a variety of ways through taxation, spending, grants and loans, and through regulation. Over time, regulation has become increasingly prevalent in our society, and the importance of our regulatory activities cannot now be overstated.

The History of Major Regulatory Programs

Federal regulation as we know it began in the late 19th century with the creation of the Interstate Commerce Commission, which was charged with protecting the public against excessive and discriminatory railroad rates. The regulation was economic in nature, setting rates and regulating the provision of railroad services. Having achieved some success, this administrative model of an independent, bipartisan commission, reaching decisions through an adjudicatory approach, was used for the Federal Trade Commission (1914), the Water Power Commission (1920) (later the Federal Power Commission), and the Federal Radio Commission (1927) (later the Federal Communications Commission). In addition, during the early 20th century, Congress created several other agencies to regulate commercial and financial systems—including the Federal Reserve Board (1913), the Tariff Commission (1916), the Packers and Stockyards Administration (1916), and the Commodities Exchange Authority (1922)—and to ensure the purity of certain foods and drugs, the Food and Drug Administration (1931).

Federal regulation began in earnest in the 1930s with the implementation of wide-ranging New Deal regulatory programs.

Some of the New Deal economic regulatory programs were implemented by the Federal Home Loan Bank Board (1932), the Federal Deposit Insurance Corporation (1933), the Commodity Credit Corporation (1933), the Farm Credit Administration (1933), the Securities and Exchange Commission (1934), and the National Labor Relations Board (1935). In addition, the jurisdiction of both the Federal Communications Commission and the Interstate Commerce Commission were expanded to regulate other forms of communications (e.g., telephone and telegraph) and other forms of transport (e.g., trucking). In 1938, the role of the Food and Drug Administration was expanded to include prevention of harm to consumers in addition to corrective action. The New Deal also called for the establishment of the Employment Standards Administration (1933), and of Social Security (1933) and related programs.

A second burst of regulation began in the late 1960s with the enactment of comprehensive, detailed legislation intended to protect the consumer, improve environmental quality, enhance work place safety, and assure adequate energy supplies. In contrast to the pattern of economic regulation adopted before and during the New Deal, the new social regulatory programs tended to cross many sectors of the economy (rather than individual industries) and affect industrial processes, product designs, and by-products (rather than entry, investment, and pricing decisions).

The consumer protection movement led to creation in the newly formed Department of Transportation of several agencies designed to improve transportation safety. They included the Federal Highway Administration (1966), which sets highway and heavy truck safety standards; the Federal Railroad Administration (1966), which sets rail safety standards; and the National Highway Traffic Safety Administration (1970), which sets safety standards for automobiles and light trucks. Regulations were also authorized pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Consumer Leasing Act, and the Fair Debt Collection Practices Act. The National Credit Union Administration (1970) and the Consumer Product Safety Commission (1972) were also created to protect consumer interests.

In 1970, the Environmental Protection Agency was created to consolidate and expand environmental protection programs. Its regulatory authority was expanded through the Clean Air Act (1970), the Clean Water Act (1972), the Safe Drinking Water Act (1974), the Toxic Substances Control Act (1976), and the Resource Conservation and Recovery Act (1976). This effort to improve environmental protection also led to the creation of the Materials Transportation Board (1975) (now part of the Research and Special Programs Administration in the Department of Transportation) and the Office of Surface Mining Reclamation and Enforcement (1977) in the Department of the Interior.

The Occupational Safety and Health Administration (1970) was established in the Department of Labor to enhance work place safety. It was followed by the Mining Enforcement and Safety Administration (1973), now the Mine Safety and Health Administration, also in the Department of Labor. The Pension Benefit Guaranty Corporation was directed to administer pension plan insurance systems in 1974.

Also in the 1970s, the Federal Government attempted to address the problems of the dwindling supply and the rising costs of energy. In 1973, the Federal Energy Administration (FEA) was directed to manage short-term fuel shortage. Less than a year later, the Atomic Energy Commission was divided into the Energy Research and Development Administration (ERDA) and an independent Nuclear Regulatory Commission. In 1977, the FEA, ERDA, the Federal Power Commission, and a number of other energy program responsibilities were merged into the Department of Energy and the independent Federal Energy Regulatory Commission.

Another significant regulatory agency, the Department of Agriculture (1862), has grown over time so that it now regulates the price, production, import, and export of agricultural crops; the safety of meat, poultry, and certain other food products; a wide variety of other agricultural and farm-related activities; and broad-reaching welfare programs. Agriculture regulatory authorities have changed over time, but now include the U.S. Forest Service (1905), the Farmers Home Administration (1921), the Soil Conservation Service (1935), the Agricultural Stabilization and Conservation Service (1961), the Food and Nutrition Service (1969), the Agricultural Marketing Service (1972), the Federal Grain Inspection Service (1976), the Animal and Plant Health Inspection Service (1977), the Foreign Agricultural Service (1974), The Food Safety and Inspection Service (1981), and the Rural Development Administration (1990).

The consequence of the long history of regulatory activities is that Federal regulations now affect virtually all individuals, businesses, State, local, and tribal governments, and other organizations in virtually every aspect of their lives or operations. Some rules are based on old statutes; others on relatively new ones. Some regulations are critically important (such as the safety criteria for airlines or nuclear power plants); some are relatively trivial (such as setting the times that a draw bridge may be raised or lowered). But each has the force and effect of law and each must be taken seriously.

The Nature of Regulation

It is conventional wisdom that competition in the marketplace is the most effective regulator of economic activity. Why then is there so much regulation? The answer is that markets are not always perfect and when that occurs, society's resources may be imperfectly or inefficiently used. The advantage of regulation is that it can improve resource allocation or help obtain other societal benefits. For example, consider the following situations:

—Certain markets may not be sufficiently competitive, thus potentially subjecting consumers to the harmful exercise of market power (such as higher prices or artificially limited supplies). Regulation can be used to promote competition (for example, removing barriers to entry) and to ensure that firms engage in fair trade practices such as the sale of dangerous substances.

—In an unregulated market, firms and individuals may impose costs on others—including future generations that are not reflected in the prices of the products they buy and sell. They may pollute streams, cause health hazards, or endanger the safety of their workers or customers. Regulation can be used to reduce these harmful effects by prohibiting certain activities or imposing the societal costs of the activity in question on those causing harm. One goal of regulation is to induce private parties to act as they would if they had to bear the full costs that they impose on others.

—Similarly, in an unregulated market, firms and individuals may not have incentives to provide individuals with accurate or sufficient information needed to make intelligent choices. Firms may mislead consumers or take advantage of consumer ignorance to market unsafe or risky products. Regulation may be needed to require disclosure of information, such as the possible side effects of a drug, the contents of a food or packaged good, the energy efficiency of an appliance, or the full cost of a home mortgage.

—Even when consumers have full information, the Government may wish to protect individuals, especially children, from their own actions. Regulation may thus be used to restrict certain unacceptable or harmful practices.

—Regulation can also be beneficial in achieving goals that reflect our national values, such as equal opportunity and universal education, or a respect for individual privacy.

There are also many potential disadvantages of regulating, to the Government, to those regulated, and to society at large.

—The direct costs of administering, enforcing, and complying with regulations may be substantial. Some of these costs may be borne by the Government, while others are paid for by firms and individuals, eventually being reflected in the form of higher prices, lower wages, reduced output, and investment, research, and expansion foregone.

—There are also disadvantages of regulation that are difficult to measure, such as adverse effects on flexibility and innovation, which may impair productivity and competitiveness in the global marketplace, and counterproductive private incentives, which may distort investment or reduce needed supporting activities.

In short, regulations (like other instruments of government policy) have enormous potential for both good and harm. Well-chosen and carefully crafted regulations can protect consumers from dangerous products and ensure they have information to make informed choices. Such regulations can limit pollution, increase worker safety, discourage unfair business practices, and contribute in many other ways to a safer, healthier, more productive, and more equitable society. Excessive or poorly designed regulations, by contrast, can cause confusion and delay, give rise to unreasonable compliance costs in the form of capital investments and on-going paperwork, retard innovation, reduce productivity, and accidentally distort private incentives.

The challenge for regulators is to approach their task with an appreciation and respect for the complexity of the problems they must solve and the diversity of the individuals and institutions their work affects. In doing this, they need to balance a number of conflicting objectives, to apply sensitivity and judgment to the best available information, and ultimately to achieve the most effective means to the desired ends. The efforts to do this, especially in the recent past, have not been particularly successful, and the American people have indicated their irritation, if not anger, at the maze of inconsistent, duplicative, and excessive rules that can cause more harm than good.

Executive Order No. 12866 was developed to bring the Government back to the task at hand—to design sensible regulations that improve the quality of our life without imposing unnecessary costs and to do so in a way that is efficient, fair, and accountable to the American people.

II. The Objectives of Executive Order No. 12866

Executive Order No. 12866 clearly articulates President Clinton's regulatory philosophy and his view of how the nation's regulatory system should work. Most fundamentally, as the Order states in its opening lines:

> The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

The Order sets out specific goals:

> The objectives of this Executive Order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.

In its first section, Executive Order No. 12866 sets forth the specific philosophy and principles that are to govern regulatory development. This is worth quoting at this point because it so succinctly describes the philosophy that the Order is established to implement:

> Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including

potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

Regulatory Principles

The Order then lists 12 principles of regulation (Section 1(b)) that, to the extent permitted by law, agencies are to follow when considering and developing regulating. These principles can be viewed as a series of questions to be raised by the agency, begins with identifying the problem the agency is trying to solve or the situation it is trying to change. How serious is it, compared with other problems the agency faces? What will this proposed regulation do? How sure is the agency that it will do it? Will the proposed regulation have any unintended benefits? Any unintended costs? Create any counterproductive private incentives? Is there any other approach that would achieve the same objective better? Is there a way of modifying the proposed regulation to achieve greater benefits for the same costs or to achieve the same benefits for fewer costs?

Two themes emerge from these principles: the need for data and for analysis, particularly of alternative ways to solve the problem. It is the responsibility of regulators to obtain and rely on the best reasonably obtainable scientific, technical, or economic data, as may be called for in a particular instance. The data should be assembled and analyzed objectively, without preconceived notions of the outcome. At the same time, it is clear that as the state of scientific knowledge advances, technology develops and changes, and economic forecasts are revised, there may be legitimate disputes about what constitutes the best available data. That being the case, the quest for the best should not be the enemy of the practicable.

It is also the responsibility of regulators to be disciplined in analyzing the benefits and costs of proposed regulations and alternative ways of solving the problem, so that they can attest not only that the benefits of their regulations outweigh their costs, but also that their regulations are designed in the most cost-effective manner possible. Such a statement of principle would not seem to be controversial, yet the use of benefit-cost analysis has been one of the most contentious issues in the regulatory arena during the last twelve years.

Those who criticize benefit-cost analyses believe that it is often difficult (or even impossible or morally improper) to quantify or place a dollar value on such benefits as lives saved, improved air quality, or reduced discrimination. Others believe that while it may be difficult to quantify or place a dollar value on certain costs—such as reduced flexibility, the loss of innovation, or counterproductive incentives to cheat—generally costs are easier to measure than benefits, so that undertaking a benefit-cost analysis will, they believe, skew the decision-making process against the adoption of needed regulations.

While there is no easy response to these concerns, the Executive Order stresses not only that the anticipated effects of a regulation should be quantified to the extent possible, but also that those that cannot be quantified—whether they be benefits or costs—should nevertheless be considered. This underscores that the decision-maker should consider all of the anticipated effects in deciding whether, on balance, society as a whole will benefit from the proposed regulatory action.

Responsibilities of the Various Participants

How these objectives are to be incorporated into a regulatory system is the subject of the rest of the Executive Order. It begins by affirming the primacy of the regulatory agencies, the legitimacy of centralized review, and the areas of responsibilities for each.

The process of developing regulations must begin with the agencies to which Congress has assigned statutory regulatory authority and responsibilities. These agencies are the repositories of significant substantive expertise and experience in a particular field. An agency's activities are sometimes driven by statutory mandates; there is also frequently a substantial amount of discretion involved. In either event, it is the agency itself that must be responsible for carefully identifying the problem to be addressed, analyzing the source of the problem (including whether existing regulations or other laws have created, or contributed to, the problem and whether those regulations or other laws can be modified to achieve the regulatory goals more effectively), assessing the importance of that problem, and determining the proper solution to it.

The Order assigns the task of centralized review to OMB's OIRA, which in the words of the Executive Order, is the "repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive Order, and the President's regulatory policies." With such expertise, OIRA's role is to "ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive Order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency." (Section 2(b).)

The Vice President is designated as "the principal advisor to the President on . . . regulatory policy, planning, and review." The Order also names 12 White House regulatory policy "Advisors" who are to assist the President and Vice President in specified tasks. These include: (1) The Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisors (CEA); (3) the Assistant to the President for Economic Policy (NEC); (4) the Assistant to the President for Domestic Policy (DPC); (5) the Assistant to the President for National Security Affairs (NSA); (6) the Assistant to the President for Science and Technology (OSTP); (7) the Assistant to the President for Intergovernmental Affairs (IGA); (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President (OVP); (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy (OEP); and (12) the Administrator of OIRA, who is to "coordinate communications relating to this Executive Order among the agencies, OMB, the other Advisors, and the Office of the Vice President." (Section 2(c).)

Scope of the Executive Order

The scope of the Order is set forth in several different sections. "Regulation" and "regulatory action," the subject of the planning and review provisions of the Order, are defined, as are exemptions from the definitions, such as formal rulemaking, rules pertaining to military or foreign affairs, and rules limited to agency organization, management, and personnel matters. (Section 3(d).) In addition, the OIRA Administrator is given the authority to exempt any other category of regulations. (Section 3(d)(4).) "Regulation" and "regulatory action" are the operative terms used throughout the Order. They are defined to include any regulatory pronouncement, regardless of form, that has, or is expected to lead to a promulgation that has the force and effect of law. Thus, certain guidance documents, directives, notices of inquiry, policy statements, and the like may be included under the

Order depending on the extent to which the agency intends to enforce their terms and conditions.

In general, the Order focusses on "significant regulatory actions," rather than all regulations or regulatory actions. This is an important distinction between this Order and its predecessor, Executive Order No. 12291. This Order makes clear, among other things, that centralized review is to be focussed on the most important regulatory actions, where OIRA's limited resources can be expected to have maximum beneficial effect. Consistent with the spirit of the primacy of agencies for regulatory decisions and the streamlining of the regulatory process, the agencies themselves are solely responsible for review of non-significant regulatory actions.

A significant regulatory action is defined to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. (Section 3(f).)

The Order applies as a whole to all Federal agencies, with the exception of the independent regulatory agencies. However, the independent regulatory agencies are requested on a voluntary basis to adhere to the statement of regulatory philosophy and the regulatory principles that may be pertinent to their activities. Moreover, these independent agencies are included within the provisions relating to the planning process. (Section 4(b) and Section 4(c).)

Planning and Coordination

The objective of the planning process is to identify significant issues early in the course of regulatory development so that appropriate coordination can be conducted at the beginning of the process rather than at the end. Specifically, the purpose of the planning and coordinating mechanisms set up by the Order is:

> [T]o provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive Order. (Section 4.)

First, the Order establishes a planning cycle that begins with a meeting, convened by the Vice President, with the regulatory policy advisors and the heads of agencies to discuss priorities and to coordinate regulatory efforts to be accomplished in the upcoming year (Section 4(a)). The Order recognizes the continued utility of the "Unified Regulatory Agenda," a compilation of "all regulations under development or review," to be published as specified by the Administrator. (Section 4(b).) The Order also calls for agencies to develop a "Regulatory Plan" (Section 4(c)), a description of the "most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter." Agencies' plans are to be submitted to OIRA by June 1st of each year, and are then to be coordinated with various affected agencies and the regulatory policy advisors. After appropriate consultation and coordination, the Plan is to be published annually in the October publication of the Unified Regulatory Agenda.

Another vehicle for increased coordination and cooperation regarding regulatory affairs among agencies and between the Executive Office of the President and the agencies is the Regulatory Working Group (RWG). (Section 4(d).) The RWG—which is to meet at least quarterly—is to be chaired by the OIRA Administrator, and consist of representatives of the regulatory policy advisors and the heads of agencies determined to have significant domestic regulatory responsibility. The Order sets forth specific tasks for the RWG:

> To assist agencies in identifying and analyzing important regulatory issues (including among others (1) The development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities.)

In order for agencies to implement the Order's philosophy regarding accountability, planning, and coordination, it is necessary for a very senior official with sufficient authority to be given responsibility for these functions. The Order thus requires each agency to appoint a Regulatory Policy Officer (RPO) (Section 6(a)(2)). The RPO is to report to the agency head and is to oversee in the agency "the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive Order." In most cases, the RPO also serves as the agency's representative on the RWG.

To ensure improved coordination between the Government and the public, the Order also requires the OIRA Administrator to meet quarterly with representatives of State, local, and tribal governments, and to convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern. (Section 4(e).)

Centralized Review Process

A large part of the Order is devoted to the processes for implementing centralized regulatory review (Section 6), including a mechanism for resolving disputes that may result from such review (Section 7). In the most recent Administration, centralized review was highly controversial and vigorously attacked by critics who believed that it had been misused. Yet, few really challenge the notion that it is appropriate for the President to provide an opportunity for an appraisal—detached from the originating agency's legitimate focus on its programmatic goals—as to whether the agency's regulatory activities are consistent with and further the President's overall objectives and regulatory philosophy. Centralized review also provides an effective vehicle for ensuring that decisions made by one agency do not conflict with policies or actions taken or planned by other agencies—an increasingly important function as the decentralized government takes on increasingly complex responsibilities. And centralized review can be helpful in identifying a particular success story, or a particular mistake, by an agency that can provide important information for other agencies facing the same or similar problems.

Some of the problems with the way centralized review has been implemented in the past can be reduced if the agency rule-writers and the reviewer become engaged sooner rather than later in the regulatory process. After an agency has spent years, and substantial intellectual resources in producing a proposed regulation, it is difficult for it to be receptive and responsive to comments questioning the fundamental premises on which the regulation is based regardless of the merits of those comments. Recognizing the benefits of advance planning and coordination in identifying and more importantly resolving major issues early in the process, Section 6 establishes a process that focusses on selectivity and early determination of what is important, or "significant."

The process begins with the agency submitting to OIRA a list of planned regulatory actions (Section 6(a)(3)(A)), indicating those the agency believes to be "significant regulatory actions", as defined in Section 3(f). OIRA then has ten working days to notify the agency that it has determined that a listed regulation is a "significant regulatory action." Those regulatory actions that both OIRA and the agency agree are not significant are not subject to review. Also, the OIRA Administrator may waive review of any regulatory action designated by the agency as significant.

For regulatory actions designated as significant, the agency is to send the draft rule and an assessment of its costs and benefits to OIRA for review. Additional and more extensive analysis is necessary if the rule is "economically significant." (A regulatory action is economically significant within the meaning of the Executive Order if it appears that it will "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." (Section 3(f)(1).) For an economically significant rule, the agency, unless it is prohibited by law, is to submit with the rule an assessment, including the underlying analysis, of the anticipated benefits, the anticipated costs, and of the costs and benefits of "potentially effective and reasonable feasible alternatives." (Section 6(a)(3)(C).)

Section 6 also seeks to eliminate unwarranted delays in the regulatory review process by establishing deadlines within which OIRA must complete its review. (Section 6(b)(2).) For preliminary regulatory actions prior to a Notice of Proposed Rulemaking, such as a notice of inquiry or advance notice of proposed rulemaking, OIRA must conclude review within 10 working days. For most submissions, OIRA must conclude review within 90 calendar days, except that if OIRA has previously reviewed a submission and there is no material change at its next stage, OIRA must complete its review within 45 days. In some cases extensions of review may be needed. The Order allows the review period to be extended upon written approval of the Director of OMB or at the request of the agency head. Finally, if the OIRA Administrator returns a regulatory action to the agency for further consideration, this action is to be done in writing and is to include an explanation for the return, including the pertinent provision of the Order that is the basis for the return.

Openness: Public Involvement and Disclosure

The Order speaks not only to the relationship between the centralized reviewer and the agencies, but also to the relationship between both of them and the public. It is essential that the public be involved in the rulemaking process those benefitting from, those incidentally affected by, as well as those who might be burdened by, the proposed regulations. The public will often be able to corroborate the information that the agency already has in its possession, or provide additional relevant information to the agency. The public can also provide a useful reality check on the agency's proposal.

While the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, the agency's organic statute, and the agency's internal rules provide for public input, the Order reflects the fact that more can be done to involve the public in the rulemaking process, particularly in the early stages (before a formal notice of proposed rulemaking is issued). Specifically, the Order requires each agency to "provide the public with meaningful participation in the regulatory process," including "a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." (Section 6(a)(1).) The Order also encourages agencies "to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." (Section 6(a)(1).) An open and easily accessible process generally improves the basis for decision-making, increases accountability on the part of the agency, and generally enhances the prospect for acceptance of the final product by the regulated industry.

To increase the openness and accountability of the regulatory review process itself, the Order sets forth certain disclosure responsibilities for both the agencies and OIRA. After a regulatory action has been issued, the agency is to make available to the public the material that the Order requires to have been submitted to OIRA for review. The agency is also to identify for the public the "substantive changes between the draft submitted to OIRA for review and the action subsequently announced," as well as identifying those changes that were made at the suggestion or recommendation of OIRA. (Section 6(a)(3)(E).)

OIRA too is subject to a variety of disclosure procedures. (Section 6(b)(4).) Regarding regulatory actions under review at OIRA, only the OIRA Administrator or a particular designee is to receive oral communications from persons not employed by the Executive Branch. If meetings are held with such persons, OIRA is to invite a representative from the appropriate agency to be present. Within 10 working days OIRA will forward to the agency a copy of all written communications received from persons outside the Executive Branch, as well as the names and dates of individuals involved in substantive oral communications. OIRA is also to maintain a publicly available log that includes a notation of all written communications forwarded to an agency and the dates, names of individuals, and subject matter discussed in substantive oral communications between OIRA and persons outside the Executive Branch. In addition, OIRA will make available the status of all regulatory actions under review. Finally, after publication or issuance of a regulatory action, OIRA will make available all documents exchanged between OIRA and the agency during the review.

The Order also provides a dispute resolution mechanism, in the event that the Administrator of OIRA cannot resolve a disagreement between or among agency heads or between OMB and an agency. (Section 7). In that event, the issue will be decided by the President or the Vice President acting at his behest. Resolution of an issue under this section may be requested only by the Director of OMB, the head of the issuing agency, or the head of an agency with a significant interest in the outcome. Such review will specifically not be undertaken at the request of any other persons.

Review of Existing Regulations

The Order establishes an ongoing process whereby agencies will review existing regulations (Section 5). Agencies were required to submit to OIRA by December 31, 1993, a plan under which the agency will periodically review its existing significant regulations to determine whether any such rules should be modified or eliminated. The Administrator of OIRA is directed to work with the RWG and others, State, local and tribal governments in particular, to help pursue the review of existing regulations. The general purpose of such review is as follows:

> [T]o reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations. * * * (Section 5).

III. The Implementation of Executive Order No. 12866

We would prefer to report that all the regulatory problems of the nation have either been resolved or are on their way to being resolved by the 6-month mark of the Executive Order. It should be no surprise, however, that this is not the case. Improving the regulatory system of the nation is tied to reforms that are being undertaken throughout the government, many initiated through the Vice President's National Performance Review. While changes are underway, most are not yet completed; this is true also for implementation of the Executive Order.

Many of the themes that run through the Order, careful planning, cooperation and team work within the Executive Branch, sound and timely analysis, focusing of resources, openness and accountability, are also being instituted across other programs of the Federal Government. In some cases, the ability of agencies to implement changes in the regulatory system depends on changes being made in other areas. For example, planning and priority setting depend on the existence within departments of offices that possess the authority to resist the natural tendency of large agencies to seek autonomy within departments. In other cases, there may be a tension between reform in one area and reform in another. Sound analysis, for example, requires highly skilled personnel and budget resources, at a time when the Federal Government is reducing personnel and constraining budgets.

To some extent, our ability to reform the regulatory process is not wholly within our control. Regulations are often mandated by statutes, most of which attack a single problem without recognition that other problems, possibly more important problems, may be implicated by the proposed solution. Many statutes also create lengthy, often highly detailed regulatory requirements, leaving agencies with little discretion to establish reasonable tradeoffs between requirements, and in some cases driving agencies to scramble in response to the statutory (or, if they miss it, the judicially imposed) deadline of the day.

Nevertheless, we believe that we have made a very good start in implementing Executive Order No. 12866 during its first six months in operation, with many measurable improvements. The OMB Director and OIRA Administrator issued guidance to the heads of agencies regarding implementation of the Order on October 12, 1993, less than two weeks after the Order was signed. Since then, as detailed below, both OIRA and the agencies have been energetic in implementing the Order.

We must point out, however, that the start-up time for various provisions of the Order has taken longer (and in some cases a lot longer) than we anticipated. Many agencies have had to establish new oversight mechanisms to enable them to implement provisions in the Order. For example, the listing of significant and non-significant rules has proven particularly troublesome for some decentralized departments, both in terms of the internal decision-making to determine the "significance" of particular rules, and in terms of clearing those determinations with sister agencies or the Office of the Secretary (or its equivalent).

In addition, several provisions of the Order establish processes that will take time to implement or simply have not been used yet. The regulatory planning process set forth in Section 4 of the Order is on schedule, but only just now beginning. The Vice President convened the Agencies' Policy Meeting (Section 4(a)) on April 5, 1994, and guidance to the agencies on implementation of the Regulatory Plan (Section 4(c)) was issued by the OIRA Administrator immediately after the meeting. Draft Regulatory Plans are not due to OIRA until June 1st, and the first Plan will not be published until October 1994, when it will appear with the semi-annual Regulatory Agenda.

Similarly, the review of existing regulations established by Section 5 contemplated that agencies would submit programs under which they would periodically review their existing significant regulations by December 31, 1993. Several agencies, including DOT, HHS, DOE, and DOI, included as part of their plans public notices soliciting suggestions for regulations to be reviewed. Other approaches to reviewing existing regulations have been discussed within the Regulatory Working Group, and next steps are being developed.

Finally, the provision of the Order that has not yet been implemented because it has not been used is Section 7, Resolution of Conflicts. To date, there have been no disagreements regarding implementation of the Order that have been raised to the President or Vice President for resolution.

To a large extent, the first three months of the Order, October through December 1993 were almost exclusively devoted to start-up, by both OIRA and the agencies. During January through March 1994, the changes created by the Order began to emerge, and now some are clearly visible and measurable. Start-up still goes on, however, and, as will be discussed below, it may simply be too early to tell whether the Order is working as intended.

Cooperation and Coordination

There are a number of ways to analyze and measure the implementation of Executive Order No. 12866. Some of the most important changes that have been made, which nourish the spirit of the Order as much as carrying out its letter, are intangible and difficult to quantify. One of these is the vastly improved relationship that has developed between OIRA and the agencies.

While remnants of the mistrust and hostility that often characterized relationships between the career staffs over much of the past decade still exist, for the most part this has been replaced with a spirit of cooperation. Rule writers and rule reviewers are learning to work together as partners rather than as adversaries. Particularly good working relationships have evolved between OIRA and DOT, DOI, and Education. Substantial changes are evident with DOL and EPA. In all cases, working relationships have improved.

Differences between OMB and the agencies, including significant disagreement on issues, continue as one would expect and as is contemplated by the Order. But these differences, which are largely the product of different perspectives, are functioning for the most part as a constructive, professional tension that leads to improved regulations.

The change toward a spirit of cooperation and teamwork has occurred largely because it has been fostered by strong leadership within the Administration, including that of the President and Vice President themselves, as well as by agency heads and managers at OMB. The Administrator of OIRA and her staff have visited many of the agencies to meet with the senior regulatory officials and entertain comments or answer questions about the Executive Order. More work needs to be done, however, so the message reaches throughout the agencies. In the end, perhaps the best antidote for any residual hostility will be several working experiences where the career staffs work together through a problem to produce a product that all agree is better for the effort.

Other serious efforts to improve communications, cooperation, and coordination have now been institutionalized.

As required by the Executive Order, each agency has designated a high level Regulatory Policy Officer (RPO) to represent directly the agency head in efforts to implement the Order and improve the regulatory process. (Section 6(a)(2).) Although departments have selected different positions to perform this role, many have designated the general counsel as the RPO. This has ensured high level agency attention to the regulatory process and efforts to reform it.

One of the primary forums for the RPOs to work together to improve the regulatory process is the Regulatory Working Group (RWG). The RWG has met three times, in November, January, and March. These meetings have been well attended by the White House advisors and the RPOs and have served as a convenient forum for discussion of issues related to the implementation of the Order in an organized and collegial manner. The meetings have allowed agencies to share techniques and solutions to common problems, and have allowed White House and agency officials to exchange views as a group on a regular basis.

The RWG has created four sub-groups to consider specific cross-cutting issues that affect all or many regulatory agencies: these include benefit-cost analysis, risk assessment, streamlining the regulatory system, and use of information technology to improve rulemaking. The sub-groups are inclusive and any agency that is interested has been invited to designate staff to participate. These sub-groups have discussed informal work plans and several are in the process of developing materials for consideration by the RWG.

An additional effort to improve working relationships between agencies and OIRA is the Regulatory Training and Exchange Program instituted by OIRA. Agencies have been encouraged to designate career staff who would come to OIRA on a training detail to learn how regulatory review is conducted and to work on RWG matters. The purpose of the program is to provide expertise among the agency career staff in how regulatory review is conducted so that it can be incorporated into the working practices of the agency, as the Executive Order envisions. This program is still in its start-up phase, but OIRA has hosted two trainees, from USDA and DOT. Other exchange program candidates are being sought, and are expected to undergo this training during the summer and fall.

Openness: Public Involvement and Disclosure

Executive Order No. 12866 places special emphasis on increased openness in the rulemaking process, particularly increased public involvement earlier in the regulatory process. Agencies are instructed to "provide the public with meaningful participation in the regulatory process * * * which in most cases should include a comment period of not less than 60 days." In addition, agencies are to "explore, and where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." (Section 6(a)(1).) Agencies are also encouraged, prior to issuing notices of proposed rulemaking, to seek the involvement of those affected by it, especially State, local, and tribal officials.

It is difficult to know how much advance consultation is taking place. However, with all but a few well justified exceptions, agencies are allowing 60 days for public comment. Regarding regulatory negotiation, on the same day that the President signed the Executive Order, he also signed a memorandum to agency heads further encouraging the use of consensual mechanisms and directing each agency, by December 31, 1993, to identify to OIRA at least one candidate for a regulatory negotiation during the upcoming year, or explain why the use of such a process would not be feasible. Agencies provided these candidates to OIRA on time, or very shortly after the deadline, and many agencies are currently undertaking regulatory negotiations. To assist with the learning process, OIRA joined with the Administrative Conference of the U.S. (ACUS) to sponsor a program for agency officials, which was held on November 29, 1993, on how to do regulatory negotiation, using expertise and materials that ACUS staff have assembled over the past decade.

As noted above, OIRA has its own responsibilities to meet with various affected entities. OIRA has held two conferences with representatives of State, local, and tribal governments one in December 1993, the second in March 1994. The first conference, chaired by the OIRA Administrator and attended by about 100 persons, consisted of three panel discussions: an overview of the regulatory partnership; regulatory burdens and how they may be reduced; and involving all affected entities in regulatory development. The panels and audience consisted of representatives from State, county, town, and tribal governments; academics; association representatives, for example from the National Association of Counties, the National Governors' Association, the National Association of Towns and Townships, the National Association of American Indians, and the Advisory Commission on Intergovernmental Relations; and agency intergovernmental affairs office representatives.

The second conference, also chaired by the OIRA Administrator, was a working session devoted to discussion of consultations between the Federal government and State, local, and tribal officials regarding unfunded nonstatutory mandates. This session brought together at one table general counsels from several major regulatory agencies and various State, local, and tribal governmental officials to discuss how to improve the consultative process called for in Executive Order No. 12875, "Enhancing the Intergovernmental Partnership".

These conferences are the beginning of a significant and continuing effort by this Administration to ensure that more effective working relationships among the Federal, State, local, and tribal governments are institutionalized. A third conference is tentatively scheduled for early June. We have asked representatives of the major State, local, and tribal associations for suggested topics or formats for this and other conferences to be scheduled on a regular basis.

OIRA has also taken steps to improve the participation of the small business community in the rulemaking process. OIRA joined the Small Business Administration (SBA) to sponsor a Small Business Forum on Regulatory Reform in March 1994 to discuss how the regulatory process can better address the special needs of small businesses. The Forum, chaired by the OIRA Administrator and the Administrator of the SBA, brought together high level officials from regulatory agencies that significantly affect small businesses—EPA, DOT, IRS, DOL, DOJ, and FDA—to listen to small business owners discuss their concerns regarding Federal regulations. This Forum was followed by work session meetings focussed on five industry sectors—chemical and metals; food processing; transportation and trucking; restaurants; and environmental, recycling, and waste disposal—that have been attended by both relevant agency officials and small business representatives. A second conference, to discuss the results of these work sessions, will be scheduled later this summer.

While the regulatory review process conducted by OIRA cannot displace the agencies' responsibilities to seek and accommodate public input in rulemaking, OIRA is charged with conducting its work so as to "ensure greater openness, accessibility, and accountability in the regulatory review process." (Section 6(b)(4).) On July 1, 1993, as one of her first actions, the OIRA Administrator began making available a daily list of draft agency regulations under review at OIRA. This was done in order to remove the stigma of secrecy that had previously characterized regulatory review, and to make the review process more transparent. Now, the fact that a rule is under review at OIRA, or "pending," is public information available to anyone who seeks it.

The completion of review is also made public. On the pending list, the date of completion of review for any regulation pending that month is indicated. Lists and statistics for each month are compiled and made available by the tenth day of the following month. This information includes a list of all rules on which review was concluded the previous month, showing agency, title, an identification number, date received, date review completed, type of rule (e.g., proposal, final, etc.), and OIRA action taken (e.g. found consistent with the Order without change, with change; withdrawn; returned to agency; etc.). In addition, there is a list of all economically significant rules reviewed. Finally, this monthly compilation includes aggregate statistics on reviews for the month and for the calendar year, including the number of reviews by agency, OIRA action taken, and average review time.

As provided for in the Executive Order, meetings and telephone calls with persons outside the Executive Branch on regulations under review are now logged, and these logs are made publicly available. Entries for meetings include the date, the attendees, and the subject matter discussed. An agency representative is invited and almost always attends such meetings. Any written materials provided by the outside person(s) are made publicly available, and, if an agency representative is not in attendance, are provided to the agency.

The OIRA meetings log contains 36 entries, for meetings that occurred between July 19, 1993, and March 31, 1994. In all but two, the OIRA Administrator chaired the meetings; in these two, other officials in the Executive Office of the President acted as chair. An agency representative attended all but four meetings. Usually the meetings were with persons outside the Federal Government, but in several instances the attendees included Congressional representatives. Most of the meetings were devoted to EPA regulations, 30 of the 36. The other meetings concerned a DOC/NOAA rule and several FDA and USDA food safety regulatory actions.

Any material sent to OIRA on rules being reviewed from anyone outside the Executive Branch is kept in a public file. In addition, if the material is not merely a copy of documents already sent to the agency, a copy is forwarded to the agency. Finally, documents exchanged between OIRA and the agency during the review, including the draft rule submitted for review and changed pages, are made available to anyone requesting them after the rule has been issued (or, if it is not issued, after the agency has announced its decision not to issue the rule).

These various disclosure procedures are working well and have helped restore the integrity of the regulatory review process. Communications with outsiders are controlled and disclosed, but apparently this has not had the result of discouraging such communications. Also, the results of the review process itself are disclosed, making OIRA clearly accountable for its actions.

Regulatory Review Statistics

The statistics maintained by OIRA of the regulatory review process provide another means of measuring the implementation of the Executive Order. Indeed, these statistics respond directly to most of the questions raised in the President's September 30, 1993, memorandum to the OIRA Administrator. In this memorandum, he directed the Administrator:

> To monitor your review activities over the next six months and, at the end of this period, to prepare a report on your activities. This report shall include a list of the regulatory actions reviewed by OIRA, specifying the issuing agency; the nature of the regulatory action * * *; whether the agency or OIRA identified the reviewed regulatory action as "significant," within the meaning of the order; and the time dedicated to the review, including whether there were any extensions of the time periods set forth in the order, and if so, the reason for such extensions.

OIRA received and reviewed 578 regulatory actions from October 1, 1993, through March 31, 1994. Appendix A lists these rules, indicating the originating department and/or agency, the review time in days, the nature of the regulatory action (e.g., Proposed Rule, Final Rule, etc.), the rules designated significant by the agency and those designated by OIRA, the rules for which review was extended, and the title of the rule. Table 1 summarizes information about these rules by agency, including the number of rules and average review time for rules in the "economically significant" and "other than economically significant" categories. It also indicates the OIRA action taken by agency.[1]

Table 1 indicates that of the 578 rules reviewed, 63 (11%) were economically significant (or "major," a term from Executive Order 12291 that continued to be used until about the beginning of January). The average review time for all the rules was 26 days, well below the 90-day limit established by Executive Order No. 12866. The 10 agencies with the highest volume of submissions were, in order: HHS (126), USDA (94), EPA (52), DOT (44), DOC (42), DOI (34), Education (25), HUD (25), VA (21), and OPM (17). For about 60% of the submissions, review was completed without change to the rule. In 30% of the cases, review was completed with change. 4.5% of the rules were withdrawn by the agency; 2% were returned because they were sent improperly; in about 3% of the cases, mostly EPA rules, review was not concluded but was ended because of a statutory or judicial deadline.

These statistics are affected by the fact (discussed later) that during the start-up period, during which many non-significant rules continued to be sent to OIRA for review. Once the process is fully implemented and agencies submit only significant rules to OIRA for review, the total number of rules is likely to decrease, as will the percentage of rules for which review is concluded without change. At the same time, as only the more important rules become the focus of OIRA's review, average review time is likely to increase. We will be watching these indicators closely during the coming year.

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[1] On October 1, 1993, OIRA also had 175 rules under review that had been submitted under Executive Order 12291. Table 2 summarizes the data on these rules. On average, these rules were reviewed in 76 days. Review was concluded on the last of these pre-Executive Order No. 12866 rules on 1/13/94.

Also, on March 31st, 68 rules that had been submitted between October 1st and March 31st were still under review. Table 3 summarizes the pertinent data on these rules. 45 rules (or 66%), had been under review for under 30 days; 66 (or 97%, had been under review less than 90 days. Three (or 3%), had been under review over 90 days, and had been extended.

Of the 578 individual rules listed in Appendix A, three rules were extended beyond the 90-day limit, all at the request of the agency to permit interagency coordination to be completed. Regarding the designation of rules as "significant," the list indicates which rules were designated significant by the agency, and which were designated significant by OMB. Of the 578 rules reviewed, a total of 238 or 41% were designated significant in accordance with Section 6(a)(3)(A). Of those designated significant, 166 or 70% were so designated by the agency, while 72 or 30% were designated significant by OMB.

Listing Process

As Appendix A indicates, many of the rules reviewed were not designated either "significant" or "not significant." This is because virtually all agencies needed the first two to three months of the Order for start-up activities, and did not have in place their listing processes until the second half of the six-month period under review. The process was smoother for agencies that either already had or created offices to perform the central management function necessary for the listing process to succeed. DOT, for example, has had in place for many years a central regulatory review office in its Office of the General Counsel, whose function is to coordinate and review the DOT sub-agencies' rulemaking on behalf of the Secretary. In other instances, offices have been established to perform these functions by Clinton appointees. The Secretary of the Department of the Interior, for example, created an Office of Regulatory Affairs whose director reports to the Secretary and Chief of Staff and whose job it is to organize, monitor, and manage the Department's rulemaking activities. The Department of Education also addressed the need for centralized responsibility, assigning this function to its General Counsel, who brought on board a Deputy specifically charged with regulatory responsibilities. These agencies have done an excellent job instituting the listing procedures.

In other instances, however, it has proven difficult to create a centralized, departmental function capable of: collecting information from agencies within the department on the status of regulations; coordinating a departmental decision on significance; and managing the submission of the result to OMB and the discussion with OMB to reach agreement on the proper designation. Even now, after six months of experience, some agencies have still been unable to submit a single list to OIRA designating rules as significant or non-significant. These agencies generally continue to submit all rules to OMB for review, telling us that it is easier and quicker for them to do so than to go through the process of designating rules as significant or non-significant even though they know that the majority of their rules are non-significant and would therefore not need to be reviewed.

These agencies are examples where internal agency coordination needs to be improved. OIRA does not want to review non-significant rules; more importantly, it is only when agencies are able to designate rules as non-significant well in advance that the benefits of this system in streamlining the regulatory processes will be realized. In the meantime, OIRA is working with agencies to process all the rules that are submitted, accommodating as much as possible the difficulties agencies are experiencing starting up their systems.

OIRA initially envisioned that agencies would send lists designating rules significant or non-significant every 30 or 60 days. It is now clear that for some agencies, lists may be needed more often; for others, less often; and for some, at irregular intervals. The process should remain informal and flexible to respond to differences among the agencies and to changing circumstances within some agencies. For example, DOC's National Marine Fisheries Service must sometimes modify Federal fishery management plans on only several weeks, and indeed sometimes on several days, notice. Speed in the listing process is therefore critical. Also, in some instances, agencies have preferred to submit informal drafts of lists to OMB so that discussions can take place and additional information be exchanged before the lists are finalized. We do not want to discourage any opportunities for early exchanges of information, and therefore it has worked with the agencies to sort through the various informal lists they are able to provide.

In total, OIRA has received lists designating 1,624 rules as significant or non-significant. (These rules would not all be listed in Appendix A because, if non-significant, they would not have been submitted for review, and if significant, they may or may not have been ready to be submitted for review within the six-month period covered by this report.) Of the 1,624 regulatory actions, agencies designated, and OIRA agreed, that 1047, or 64% were non-significant; 316, or 19% were designated by the agency as, and OIRA agreed they were, significant; and the remaining 261, or 16%, were designated significant by OIRA. Stated another way, the agency and OIRA agreed with the initial designation for 83% of the cases; in only 16% was there a difference of view.

These aggregate data mask the fact that for most agencies the number of instances where there is an initial difference of opinion between the agency and OIRA as to significance decreases as the agency gains experience with the process. In some cases it is simply a function of the agencies not knowing how much information to provide to enable OIRA to agree with the agency designation. In all cases, differences have diminished with time as the agencies and OMB discuss the reasons for the different perspectives and develop an understanding and agreement on the definition of significance.

OIRA's experience implementing this listing provision of the Executive Order has provided some valuable lessons. In some cases, the difficulties described above are symptomatic of agency processes that are broken and need to be fixed. But it is also true that the Executive Branch is characterized by great variety in agency structures, cultures, statutory mandates, and missions. As a consequence, the Executive Order must be flexible enough to accommodate such variety and not seek to impose rigid constraints that may be counterproductive.

We believe that so far, the listing system that has been implemented contains both discipline and flexibility. Both OIRA staff and agency staff have worked to accommodate each other's needs. The listing process is serving to focus OIRA efforts on significant rules, promote streamlining in the rulemaking process, and establish accountability in agencies, without creating unnecessary and burdensome additional structures.

Selectivity

One of the purposes of the Executive Order was to reduce the number of rules submitted to OIRA for review, thereby streamlining the rulemaking process for the agencies and allowing OIRA to focus its limited resources on the more important rules. The start-up issues discussed above have clouded to some extent a clear measure of the changes that have occurred in regulatory review since the Executive Order was signed.

Nevertheless, the intended reduction in the number of rules reviewed under the Order is clearly demonstrated in the statistics.

Part of the reduction is attributable to the implementation of OIRA's authority to exempt both specific agencies and categories of regulations from centralized review. In guidance issued to agencies on October 12, 1993, the OIRA Administrator exempted 31 smaller agencies and 35 categories of regulation so that OIRA review could be more usefully focussed. (Lists of these exemptions are included with the October 12, 1993, guidance from the OMB Director and OIRA Administrator on implementation of the Order, attached. These lists have been updated to exempt four additional agencies and approximately 30 additional categories of regulations.)

Overall, the 578 rules received and reviewed by OIRA for the six-month period is approximately half what it was in previous years. Figure A indicates the clear decline in the number of rules OIRA received for review, compared to the average monthly receipts for the preceding nine months of 1993 (which is comparable to that of previous years). The number of rules received for OIRA review decreased from an average of about 180 per month from January through September 1993 (the monthly average for the years 1989 through 1992 was 192), to well under 100 for January through March 1994. (Monthly figures will vary depending on regulatory activity at agencies. Figure A shows a steady decline from October 1993 through February 1994 and an increase for March. April's figures are between those of February and March.)

The number of rules under review at any given time has also shown a significant decline. On July 1, 1993, when OIRA began its disclosure of rules under review, 254 regulations were listed as pending. On September 30, when the President signed Executive Order No. 12866, 175 regulatory actions were pending review at OIRA. On March 31, 1993, 68 regulatory actions were pending. All these figures re-emphasize the obvious, that OIRA is reviewing far fewer rules than in the past, exactly as envisioned by the Executive Order.

Time Limits

The Executive Order establishes strict time limits on OIRA review, in most cases 90 days. The purpose of such limits is to balance the need for adequate time to conduct review with the need to streamline the regulatory process and prevent unwarranted delay. OIRA has made a concerted effort to meet not only the letter of this requirement, but its spirit as well, and this goal of the Order is clearly being accomplished.

As can be seen from both Table I and Appendix A, the average review times for the rules submitted during the first six months of the Order is only 26 days. This is a reduction in the average annual review time for the past five years: 1989—29 days; 1990—28 days; 1991—29 days; 1992—39 days; 1993—44 days. (The average times were particularly high during 1992 and 1993 because of, respectively, the Regulatory Moratorium instituted by President Bush and the effect of the transition to the Clinton Administration, when many agencies were without political appointees for a significant portion of 1993.)

Notwithstanding OIRA's commitment to speed up the review process, it is likely that the average review time will go up in the future. As non-significant rules, which in the past had generally been reviewed quickly and thus helped keep average review times down, are removed from the review process, and only significant rules submitted and reviewed by OIRA, the time necessary to complete such review may increase. To some extent, however, average review time is no longer as useful a measure as it was when there were no meaningful limits on review. Since all rules, except the small percentage specifically extended, must be reviewed within 90 days, it is compliance with that deadline that is most important and is therefore discussed in detail below. Nevertheless, average review time will continue to be a measure carefully watched by OIRA in the coming year.

A quick look at Appendix A reveals that most reviews were completed in under 30 days. This may be as a result of OIRA's still receiving non-significant rules, or its receiving some rules on the eve of statutory or judicial deadlines, or because OIRA and agency staffs have consulted earlier in the process and few issues remain by the time for formal submission. Of the 578, 408 or 71% were reviewed in under 30 days. 512 or 89% were reviewed in under 60 days. Review took greater than 60 days for only 66 or 11% of the 578. The OIRA Administrator has instituted an internal management system that flags for her attention all rules still under review at their 60th day. This has ensured that submissions do not languish on staff desks, but are raised to the appropriate level well before the 90th day.

Appendix A and Table I also show how review times compare across different agencies. For some agencies, the review time is skewed because of lengthy reviews of only a small number of rules. For example, the average time for review for OMB of 108 days was for a single rule, which was extended. NSF's average of 84 days was for three rules; FFIEC's average of 70 days was for a single rule. For the higher volume regulatory agencies, review time averages ranged from 15 days for DOT's 44 rules to 40 days for VA's 21 rules. Others fall in between: HHS—27 days (for 126 rules); USDA—19 days (for 94 rules); EPA—35 days (for 52 rules); DOC—16 days (for 42 rules); DOI—23 days (for 34 rules); Ed—29 days (for 25 rules); HUD—33 days (for 25 rules); OPM—19 days (for 17 rules).

The Order permits the time for review to be extended at the request of the agency head, or by the Director of OMB for 30 days. Appendix A indicates that of the 578 rules received and reviewed between October and March, only three were extended. These were: DOI's Wild Bird Conservation Act rule, which was under review for 107 days; OMB's Cost Accounting Standards Board Regulations, under review for 108 days; and DOD's Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) rule, under review for 99 days. Each of these rules was extended at the request of the originating agency. Wild Birds was extended to permit the completion of interagency coordination between DOI, DOJ, State and USTR. Cost Accounting Standards was extended to allow OIRA staff to meet with the Cost Accounting Standards Board at the Board's request. DOD's CHAMPUS rule was extended to ensure coordination of the rule with the regulatory programs of other health care agencies. In all these cases, extension was used to permit completion of reviews that were in fact concluded in less than three weeks after the extension was requested.

As of March 31st, two additional rules had been extended and were still under review: USDA's Revisions of Farmland Protection Policy Act (received November 9, 1993), and EPA's Lender Liability for Underground Storage Tanks (received December 20, 1993). Also, nine rules that were submitted before the Executive Order was signed, but for which review was concluded after October 1, 1993, were extended after they had been under review for 90 days in an effort to comply with the spirit of the new Order.[2]

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[2] These rules were: USDA's Export Bonus Program (review concluded 12/7/93); DOD's Prompt Payment Act (review concluded 12/16/93); DOC's Natural Resource Damage Assessment rule (review concluded 12/23/93); HHS's Payment of Preadmission Service, Medicare Program (review

Continued

Overall, OIRA's experience during the first six months with the review time limits show them to be working well.

IV. Issues for Further Consideration

In his September 30, 1993, memorandum, the President requested that the Administrator of OIRA "identify any provisions of the order that, based on your experience or on comments from interested persons, warrant reconsideration . . . ." There are a number of provisions that qualify, although it is too early to say whether the problems lie with the terms of the Executive Order, with its implementation, or some combination of the two. As discussed above, in many cases start-up activities implementing certain provisions of the Order are still in progress. The process of listing rules as significant or non-significant, for example, while well underway at most agencies is nevertheless still in its formative stages at many other agencies. As a result, we are not now able to judge the effectiveness of this approach in achieving the objectives of the Order.

By the same token, we do not know if agencies are giving to non-significant regulatory actions the review and care that they deserve. It was anticipated that, because there would be no OIRA review, agencies themselves would have to ensure that non-significant rules, as well as significant regulations, meet the principles of the Order. Some agencies have told OIRA that they are fulfilling this responsibility. OIRA has no independent basis for confirming or denying these reports. With time, however, there should be sufficient information to enable informed judgment on the issue. With time, OIRA should also be able to better evaluate the effects of earlier communication between OIRA and agency staffs and more selective review to ensure that significant regulations adhere to the principles of the Order. And, as noted above, additional time is needed to evaluate the planning process and the process for review of existing regulations.

While it is premature to recommend specific revisions to the Executive Order, we have enough experience to suggest some areas that are likely to require further consideration.

Review Time Limits

One such issue is the 90-day review time limit (Section 6(b)(2)(B).) In general, we have found the discipline of this limit useful and fair. Along with the disclosure procedures, the time limits have helped remove the stigma of secrecy and delay that have characterized regulatory review in the past. As shown in Appendix A, only a small percentage of the rules submitted for review are extended.

There are two types of situations, however, where the balance between adequate review and the limits on review time is problematic. First, OIRA's experience is that interagency coordination can sometimes be unexpectedly lengthy. In the case of the USDA Farmland Protection rule, for example, coordination among multiple agencies, in this case USDA, DOT, HUD, Treasury, and GSA, has required the resolution of significant issues at the highest levels in major regulatory departments. As a practical matter, it takes time to arrange meetings, define and analyze issues, circulate and coordinate exchanges between the agencies, and negotiate solutions. It has proven extremely difficult to keep this process moving to resolution.

The second situation is where the agency and OIRA agree that additional analysis is necessary to meet the requirements of the Order. In some instances, where issues are highly technical—legally, mechanically, or economically—such analysis can take months to complete. If this is the case, the rule is technically still under review at OIRA, although in fact no review can be conducted—either by OIRA or the agency—until the further data and analysis are generated. In such cases, the time limits on review serve to discourage rather than encourage efforts to develop the most effective, minimally burdensome regulation.

The current mechanism to deal with such circumstances is the provision for extension of review by either the Director or the agency head. (Section 6(b)(2)(C).) While this provision has functioned to keep some rules under review that might otherwise have been returned to the agency, it gives the misleading impression that OIRA is reviewing the rule when in fact the originating agency, or an affected agency, is engaged in further analysis or coordination or even in some cases simply making changes that have already been agreed to in principle by policymakers.

There is another area where the 90-day limit may not be appropriate—namely, an economically significant regulatory action, which may have taken several years to develop to the proposed stage and which arrives at OIRA with several hundred pages of detailed analysis. Even if the OIRA and agency staffs have conferred during the developmental stages, it is very difficult to review all of the materials presented, and particularly to consider not only what is presented, but also what is not (which often is equally, if not more, important), within the 90-day limit under the best of circumstances (e.g., no intervening statutory or judicial deadlines or agency requests for expedited consideration of high priority agency initiatives).

At the other extreme are those instances where review is triggered by section 3(f)(4)—that is, a rule raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order. Here, if there has been advance consultation as there should be, and other agencies are not affected, OIRA may need very little, if any, time to conclude review.

By contrast, OIRA is often given a few days for review—even though substantially more time is necessary—because there is an imminent statutory and/or judicial deadline. Some agencies, notably EPA, but also HHS, DOL, DOI and others, often must develop regulations under severe time constraints set in statutes or arising from litigation resulting from missed statutory deadlines. In such cases, the discretion of the agency is often severely limited, both in terms of time to conduct adequate analysis and discretion to devise flexible, innovative, and cost-effective solutions to difficult problems. In some of these cases, OIRA has received rules for review only days before a deadline; in fact, in some cases, the agency managers themselves have only a few days to deal with deadline cases.

While this is a serious problem, it may be beyond our ability to remedy through the Executive Order. It is our view that highly prescriptive legislation, including dictating time lines for promulgating regulations, has contributed to a regulatory system that is sometimes unmanageable or is driven by plaintiffs rather than by a rational planning process that directs the government's limited resources to the most important problems and the most cost-effective solutions. However, the solution, if there is one, clearly invites the Legislative Branch and extends beyond the issues covered in this report.

A different problem, but one related to review time limits, is the question of when the clock should start. OIRA has

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concluded 12/23/93); HHS's Revisions to Freedom of Information Regulations, Medicare and Medicaid (withdrawn 12/09/93); HHS's Medicare Coverage and Payment of Clinical Psychologists (review concluded 12/15/93); HHS's Medicare Secondary Payment (review concluded 1/13/94); DOE's Amendment to Workplace Substance Abuse Programs (review concluded 12/3/93); and DOE's Workplace Substance Abuse Programs at DOE Sites (review concluded 12/3/93).

encouraged agencies to consult early in the development of a regulatory action. This brings the perspectives of both the reviewer and the agency to bear on the rule early in the process, informing the regulatory development and permitting early identification and resolution of any major policy differences. Adequate front-end involvement is especially important when statutory or judicial deadlines dictate a rapid pace in the development of the rule. The starting of the clock with the submission of a relatively complete formal draft does not encourage such advance consultation. On the other hand, some have expressed concern that with such advance consultation, the measurement of review time beginning with the submission of a relatively formal draft does not accurately state (indeed, may substantially understate) the time that OIRA has in fact spent reviewing (in some sense) the regulatory action.

Definition of "Significant"

Another area where further monitoring and additional thought is warranted involves the term "significant," which is the trigger for determining whether or not there will be OIRA review. The definition of "significant" is not, apparently, self-executing, and argument over its meaning has been at least partly responsible for the long start-up time in implementing the listing process. In some cases, debate takes place within the agency as to whether or not a rule is significant. In some of those same cases, and in others, the debate takes place between OMB and the agency, typically with OMB thinking that a regulatory action which the agency initially thinks is non-significant is, in OMB's view, significant.

To some extent these debates are part of the initial adjustment period as the Order is implemented; some reflect residual mistrust from the previous regulatory review system; and, some reflect the natural tension between the agency responsible for the regulation and a reviewing entity. But some may reflect the lack of precision (deliberate at the time of drafting) in the definition set forth in the Executive Order.

The uncertainty centers in particular around two of the four criteria that define "significant regulatory action"—the first and the fourth. The first criterion defines what has become known as an "economically significant" rule. (Section 3(f)(1).) Although the initial clause of the criterion—a $100 million annual effect on the economy—is clear, the remainder is not as easily understood. What does it mean to "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities"? Similarly, looking at the fourth criterion, what are "novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order"? Some have read it very narrowly; others have read it to include everything. While it is too early to suggest specific changes to the definition, we will be monitoring it to see if further clarification is required.

Identification of Changes Made During Review

Another area that may warrant further consideration are sections 6(a)(3)(E) (ii) and (iii), which require the agency to identify the substantive changes made in a regulatory action during OIRA review, and to identify those changes made at the suggestion or recommendation of OIRA. These provisions are intended to make the results of OIRA review transparent to the public. Some agencies have told us they are identifying such changes, and while we have not conducted a survey, we have no reason to think that all are not complying with the terms of the Order.

From our perspective, however, changes that result from regulatory review are the product of collegial discussions, involving not only OIRA and the agency, but frequently other White House Offices—such as OVP, DPC, NEC, CEA, OEP, OSTP—and other agencies as well (including at times, other sister agencies in the same department as the originating agency). After an extended process, it is not clear that identifying changes made at the suggestion of OIRA is accurate (if the only choice is OIRA suggestions or agency proposals) or meaningful (if OIRA suggestions are only those suggestions originating at OIRA rather than at another agency). We expect to explore this subject with the agencies and see if any further guidance is necessary or desirable.

Intergovernmental Relations

There are two areas that are touched on in the Executive Order where perhaps more should be done. The first involves Executive Order No. 12875. It provides, among other things, that Federal agencies that impose nonstatutory, unfunded mandates on State, local, or tribal government either: (1) assure that funds necessary to pay the costs of compliance are provided by the Federal Government, or (2) describe the extent of the agency's prior consultations with affected units of government, the nature of their concerns, any written submissions from them, and the agency's position supporting the need to issue the regulation containing the mandate. The purpose of this provision is, in part, to improve communications between the agencies and State, local, and tribal officials, particularly those responsible for funding the programs, and to establish a meaningful working relationship between them where none may now exist. This is very much a part of the philosophy of Executive Order No. 12866, and OMB has provided guidance to the agencies that regulatory actions that contain an unfunded mandate should be submitted to OIRA for review under Executive Order No. 12866. Further clarification of OIRA's role in this regard could be considered.

Small Business Concerns

The second area involves the burdens of regulation on small businesses. Concerns voiced by the small business community have led to a variety of proposals to increase the focus of regulators on the unique problems of small businesses, and in particular the agencies' compliance (or lack of compliance) with the Regulatory Flexibility Act. 5 U.S.C. 601. One suggestion is to have OIRA and the Small Business Administration (SBA) coordinate review of agency rules to assure that the agencies prepare and use high quality regulatory flexibility analyses when it would be appropriate to do so. SBA could notify OIRA of any concerns it has with an agency's regulatory flexibility analysis within a certain time after publication (e.g., 20 days) of a notice of proposed rulemaking, and OIRA could be authorized to direct the agency to issue a supplemental notice raising regulatory flexibility analysis concerns or announcing the intent to prepare a regulatory flexibility analysis by a date certain. Other forms of collaboration are also possible to encourage better interagency coordination and compliance with existing law.

Post Hoc Evaluation of Rules

Finally, regulations are developed based on estimates of behavior and events in the future. Even the best of such predictions can turn out to be wrong. After a regulation has been issued, however, there is little, if any, effort made to review estimates and analyses to see what was right and what was wrong, both to change the current rule to make it more effective and to learn how to do better analyses for future rules. Agencies with increasingly limited staffs and new mandates to meet have little incentive for such exercises, although they could be critical to an efficient and effective rulemaking program.

It is possible that the appropriate incentives could be provided by requiring, at least in selected cases, that agencies manage their regulations toward results. That is, a rule could be written with specific goals, initial baselines against which to measure achievement of these goals, and an evaluation plan, including comment by affected parties with an expectation that based on such input and analysis the rule would be modified to improve its effectiveness and efficiency. If so, review of an existing regulation would become part of its development rather than an after-the-fact exercise.

Conclusion

The importance of regulations in our society makes it imperative that the process by which they are developed and reviewed be characterized by integrity and accountability. Regrettably, this Administration did not inherit such a process from the prior Administration. On the contrary, that process was severely criticized for delay, uncertainty, favoritism, and secrecy. Significant improvements have been made with the implementation of Executive Order No. 12866. While it is still too early to judge the effects of the new Order, the regulatory process has been made more principled, professional, and productive. The Executive Office of the President is working in concert with the agencies and listening to the public in order to solve problems, not pretending they do not exist.

The American people deserve a regulatory system that improves their health, safety, and economic well-being without imposing unacceptable or unreasonable costs on society. The regulatory system being established by Executive Order No. 12866 demands quality, efficiency, and accountability, and is well on its way to improving the functioning of government, the economy and, most importantly, the quality of life for the American people.

List of Attachments

1. Executive Order No. 12866 (This Executive Order does not appear in this document. See 58 FR 51735; October 4, 1993).
2. Presidential Memorandum for the Administrator of OIRA dated September 30, 1993. (This Presidential memorandum does not appear in this document. Copies are available from the EOP Publications Office at 202–395–7332.)
3. Guidance from the Administrator of OIRA for Implementing E.O. 12866.
4. Appendix A—Executive Order 12866 Reviews October 1, 1993–March 31, 1994; Received Since October 1, 1993
5. Table 1—Executive Order Reviews October 1, 1993–March 31, 1994; Received After October 1, 1993
6. Table 2—Executive Order Reviews October 1, 1993–March 31, 1994; Received Prior to October 1, 1993
7. Table 3—Executive Order Reviews Pending on April 1, 1994
8. Figure A—Executive Order 12866 Receipts From Agencies

October 12, 1993.

Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies

From: Sally Katzen, Administrator, Office of Information and Regulatory Affairs

Subject: Guidance for Implementing E.O. 12866

The President issued Executive Order No. 12866, "Regulatory Planning and Review," on September 30, 1993 (58 Fed. Reg. 51735 (October 4, 1993)).[1] It calls upon Federal agencies and the Office of Information and Regulatory Affairs (OIRA) to carry out specific actions designed to streamline and make more efficient the regulatory process. This memorandum provides guidance on a number of the provisions of the new Order. Undoubtedly, with experience, additional questions will be raised, and we will attempt to respond promptly as they arise.

1. Coverage

The Order as a whole applies to all Federal agencies, with the exception of the independent regulatory agencies (Sec. 3(b)). The independent regulatory agencies are included in provisions concerning the "Unified Regulatory Agenda" (Sec. 4(b)) and "The Regulatory Plan" (Sec. 4(c)). However, while the President's "Statement of Regulatory Philosophy and Principles" (Sec. 1) applies by its terms only to those agencies that are not independent, the independent regulatory agencies are requested on a voluntary basis to adhere to the provisions that may be pertinent to their activities.

In addition, the Order states that the OIRA Administrator may exempt agencies otherwise covered by the Order. Appendix A is a first cut of those agencies that have few, if any, significant rulemaking proceedings each year; effective immediately, these agencies are exempt from the scope of the Order.[2] Like the independent agencies, those agencies listed in Appendix A are requested to adhere voluntarily to the relevant provisions of the Order, particularly the President's "Statement of Regulatory Philosophy and Principles" (Sec. 1).

2. Designation of Regulatory Policy Officer

The Order directs each agency head to designate a Regulatory Policy Officer "who shall report to the agency head" (Sec. 6(a)(2)). This Regulatory Policy Officer is to be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations. Because the Regulatory Policy Officer will in most circumstances serve as the agency representative to the Regulatory Working Group (see below), please provide us with the name, mailing address, and telephone and fax numbers of your designee as soon as possible.

3. Regulatory Working Group

The Order directs the OIRA Administrator to convene a Regulatory Working Group consisting, in part, of the representatives of the heads of each agency having significant domestic regulatory responsibility (Sec. 4(d)).

Again, we have made a first cut of a list of those agencies which should be members of the Regulatory Working Group, which is attached as Appendix B. Some of the Departments that have separate regulatory components may qualify for multiple representatives. Please notify us if you believe that your Department should have more than one representative. In suggesting additional representatives, please identify these persons and provide us with their mailing addresses, and telephone and fax numbers.

The Administrator is to convene the first meeting of the Regulatory Working Group within 30 days. It is therefore essential that we have your response as soon as possible.

4. Regulatory Planning Mechanism

The Order emphasizes planning as a way of identifying significant issues early in the process so that whatever coordination or collaboration is appropriate can be achieved at the beginning of the regulatory development process rather than at the end (Sec. 4).

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[1] This Order replaces E.O. 12291 and E.O. 12498.

[2] To assure that the purposes of the Executive Order are carried out, we may ask these agencies to review particular significant regulatory actions of which we become aware. These Agencies should advise OIRA if they believe that a particular rule warrants centralized review.

There are two specific planning documents discussed in the Order. The first, the semiannual Unified Regulatory Agenda (Sec. 4(b)), is on schedule and will be published before the end of October. Traditionally, all agencies participate, describing briefly the regulations under development. The Order does not call for any change in either the scope or format of this document.

The second planning document is the annual Regulatory Plan (Sec. 4(c)), which is to be published in October as part of the Unified Regulatory Agenda. The Regulatory Plan seeks to capture the most important significant regulations. In advance of agencies drafting their Regulatory Plans, the Vice President will meet with agency heads to seek a common understanding of regulatory priorities and to coordinate regulatory efforts to be accomplished in the upcoming year (Sec. 4(a)). The Vice President will convene the first meeting in early 1994. Following that meeting, we will provide appropriate guidance on the scope and structure of the submissions for the 1994 Regulatory Plan.

As you may recall, OMB had asked in OMB Bulletin No. 93–13 (May 13, 1993) that certain agencies prepare a draft 1993 Regulatory Program under the then applicable Executive Order No. 12498. Many agencies sent in some or all of their proposed programs. Other agencies informed us that they wanted to wait for the confirmation of political appointees or the issuance of the new Executive Order. While there is now insufficient time for all of the steps necessary to prepare a formal regulatory plan for this year, the materials we have received will be useful in preparing for the meeting with the Vice President and our other coordination efforts. Those agencies that have already drafted but not submitted materials, as well as those who wish to augment what we have already received, are encouraged to send these materials to OIRA.

5. *Review of Existing Regulations*

The Order directs each agency to create a program under which it will periodically review its existing significant regulations to determine whether any should be modified or eliminated to make the agency's regulatory program more effective, less burdensome, and in greater alignment with the President's priorities and regulatory principles (Sec. 5). Specifically, within 90 days, agencies are to submit to the OIRA Administrator a program establishing, consistent with the agency's resources and regulatory priorities, the procedures for carrying out a periodic review of existing significant regulations and identifying any legislative mandates that may merit enactment, amendment, or rescission (Sec. 5(a)).

We are aware that past Administrations have required agencies to undertake similar review efforts. Some of these have been so broad in scope that necessary analytic focus has been diffused, or needed follow-up has not occurred. This current effort should be more productive because it focuses only on significant regulations and the legislation that mandates them, and because we will be looking at groups of regulations across agencies with the help of the Vice President and the White House Regulatory Advisers, as well as the public.

Pursuant to the Order, we are asking each agency to send to the OIRA Administrator within 90 days a work-plan which identifies who and which office within the agency will be responsible for assuring that periodic reviews take place; the criteria to be used for selecting targets of review; the kinds of public involvement, data collection, economic and other analysis, and follow-up evaluation that are planned; the timetables to be applied; and, to the extent then known, the targets selected. As the program is implemented and an agency selects specific targets for review, please identify the specific programs, regulations, and legislation involved. To the extent they are relevant, we will share with you the review efforts of other agencies.

6. *Centralized Review of Regulations*

One of the themes in the Order is greater selectivity in the regulations reviewed by OIRA, so that we can free up our resources to focus on the important regulatory actions and expedite the issuance of those that are less important. Another theme is that we are to determine early in the process which regulations are important (the term in the Order is—"significant"). Among other things, this will permit agencies to conduct the needed analyses for these regulations as part of the development process, not as an after-the-fact exercise (Sec. 6(a)(3)(B)).

The Order defines "significant" regulatory actions" as those likely to lead to a rule (1) having an annual effect on the economy of $100 million or more or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues (Sec. 3(f)).[3] This definition is not wholly susceptible to mechanical application; rather, in many instances, it will require the exercise of judgment. We will work with the agencies to come to a consensus on the meaning of this term in the context of the specific programs and characteristics of each agency.

To begin, we ask the appropriate personnel at each agency to work with the OIRA desk officer(s) to develop an appropriate list of rulemakings that are under development for submission to OIRA. For each rulemaking, please use the format below:

DEPARTMENT/REGULATORY COMPONENT. Title: ([Indicate significance[4]]; Upcoming Action: [Identify][5]) Planned Submission/Publication: [date]; RIN: [number[6]]. Statutory/Judicial Deadline: [date, if any].

[Describe briefly what the agency is intending to do and why, including whether the program is new or continuing and, if continuing, the significant changes in program operations or award criteria. Briefly describe issues associated with the rulemaking, as appropriate, e.g., impacts (both benefits and costs), interagency and intergovernmental (State and local) effects, budgetary effects (e.g., outlays, number of years and awards, administrative overhead), time pressures, and why the regulatory action is important, sensitive, controversial or precedential. For final regulatory actions, include a brief statement of the nature and extent of public comment, and the nature and extent of changes made in response to the public comments.) ([Name and telephone number of program official who can answer detailed questions])

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[3] The Order is intended to cover any policy document of general applicability and future effect, which the agency intends to have the force and effect of law, such as guidances, funding notices, manuals, implementation strategies, or other public announcements, designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. Such documents are normally published in the **Federal Register**, but can also be made available to the affected public directly.

[4] State one of the following: "Not Significant", "Significant", or "Economically Significant". A designation as "Economically Significant" means that the regulatory action is likely to result in the effects listed in the first subsection—namely, i.e., "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." A regulatory action that is considered "Economically Significant" must ultimately be supported by the analyses set forth in Section 6(a)(3)(C).

[5] Indicate whether the upcoming regulatory action is a "Notice of Inquiry", "Funding Notice", "ANPRM", "NPRM", "Interim Final Rule", "Final Rule", or what other action it may be.

[6] "RIN" is the Regulation Identifier Number published in the Unified Regulatory Agenda. If a RIN has not been assigned, the agency should obtain one through the normal process by contacting the Regulatory Information Service Center.

We are not looking for a lengthy or detailed description of the issues listed above. All we need is information sufficient to confirm the characterization of "significant" or "not significant". Similarly, for final regulatory actions, the description of the public comments and changes is simply to enable us to decide whether we can expedite or waive our review of the final rule where, for example, there are few or no public comments and little or no substantive change from the previously reviewed NPRM.

Under the Executive Order, within 10 working days after OIRA receives this list, we will meet with or call your office to discuss whether or not listed regulatory actions should be submitted for centralized review (Sec. 6(a)(3)(A)). The purpose of this meeting is to confirm the characterization of the proposal as "significant" or "not significant," the characterization is important because, absent a material change in the development of the rule, those characterized as "not significant" need *not* be submitted for OIRA review before publication.

OIRA will also want to discuss the timing for updates that would identify any new regulatory actions under development. OIRA implemented this procedure with several agencies on a pilot basis while the Order was being drafted. We are most pleased by the results. It has in some instances taken one or two tries to develop a process that works for a particular agency. In most instances, submission of a list once a month has proven sufficient for our purposes.

Once it is clear that a rulemaking warrants review by OIRA, the process will be facilitated by your advising the OIRA staff as soon as possible on the basic concept, direction, and scope of the rulemaking. This will enable us to identify early the issues that we are concerned about and to inform agency personnel of the type of analyses that OIRA will look for when it reviews the regulatory action. All of this is designed to make the review process more efficient and avoid last minute problems.

When an agency submits a significant regulatory action for review, the Order sets forth certain information that each agency should provide a description of the need for the regulatory action, how the regulation will meet that need, and an assessment of the potential costs and benefits of the regulatory action, together with an explanation of how it is consistent with a statutory mandate, promotes the President's priorities, and avoids undue interference with State, local, and tribal governments. This should not impose additional burden on the agency. All of the information should have been prepared as part of the agency's deliberative process; and much, if not all, of this information should already be set forth in the preamble of the proposal so as to allow more informed public comment.

If the regulatory action is economically significant (as defined in Sec. 3(f)(1)),[7] the Order sets forth additional information that an agency must provide—an assessment of benefits, costs, and of potentially effective and reasonably feasible alternatives to the planned regulatory action (Sec. 6(a)(3(C)). We recognize that this material may take different forms for different agencies. We are reviewing our current guidance to see what changes, if any, are appropriate. Pending the conclusion of this review, agencies should continue to adhere to the existing OMB guidance on how to estimate benefits and costs.

In order to assure that the public is aware of our review under the Order and the possible effects that this review may have had, agencies should indicate in the preamble to the regulatory action whether or not the regulatory action was subject to review under E.O. 12866. On the other hand, there is no requirement that an agency document (in the preamble or in its submissions to OIRA) compliance with each principle of regulation set forth in the beginning of the Executive Order (Sec. 1(b)); we do, however, expect agencies to adhere to these principles and to respond to any questions that may be raised about how a regulatory action is consistent with these provisions of the Order.

The OIRA Administrator was given the authority to exempt any category of agency regulations from centralized review (Sec. 3(d)(4)). To begin with, we have decided that the previously granted exemptions should be kept in effect, except as the Order specifically includes them.[8] Several additional exemptions have been added as a result of our ongoing discussions with agencies. A list of current exemptions is set forth in Appendix C. We will add to this list as experience warrants. We urge you to contact the Administrator, or have your staff contact your OIRA desk officer, to discuss those categories you believe may be suitable for exemption.

7. Openness and Public Accountability

To assure greater openness and accountability in the regulatory review process, the Order sets forth certain responsibilities for OIRA (Sec. 6(b)(4)). Among other things, OIRA is placing in its public reading room a list of all agency regulatory actions currently undergoing review. This list is updated daily, and identifies each regulatory action by agency, title, date received, and date review is completed.

The reading room also contains a list of all meetings and telephone conversations with the public and Congress to discuss the substance of draft regulations that OIRA is reviewing. Within OIRA, only the Administrator (or an individual specifically designated by the Administrator—generally the Deputy Administrator) may receive such oral communications.

When these meetings are scheduled, we are asking those outside the Executive branch to have communicated their concerns and supporting facts to the issuing agency before the meeting with OIRA. To assure that the matters discussed are known to the agency, we are inviting policy-level officials from the issuing agency to each such meeting.

In addition, written materials received from those outside the Executive branch will be logged in the reading room and forwarded to the issuing agency within 10 working days. It will be up to each agency to put these in its rulemaking docket.

After the regulation is published, OIRA is making available to the public the documents exchanged between OIRA and the issuing agency. These materials will also be made public even if the agency decides not to publish the regulatory action in the **Federal Register**. In addition, the Order directs that, after a regulatory action has been published in the **Federal Register** or otherwise released, each agency is to make available to the public the text submitted for review, and the required assessments and analyses (Sec. 6(a)(3)(E)). In addition, after the regulatory action has been published in the **Federal Register** or otherwise issued to the public, each agency is to identify for the public, in a complete, clear, and simple manner, the substantive changes that it made to the regulatory action between the time the draft was submitted to OIRA for review and the action was subsequently publicly announced, indicating those changes that were made at the suggestion or recommendation of OIRA (Sec. 6(a)(3)(E) (ii) and (iii)). Should you have any questions about these matters, please call the Administrator or one of your OIRA Desk Officers.

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[7] See footnote 4.

[8] Section 3(c)(2) includes within the definition of "regulation" or "rule" those pertaining to "procurement" and the "import or export of non-defense articles and services." The OIRA Administrator interprets the latter to include within the scope of the Order the regulations of the Bureau of Export Administration, and to exclude State Department regulations involving the Munitions List.

8. Time Limits for OIRA Review

The Order sets forth strict time limits for OIRA review of regulatory actions. For any notices of inquiry, advance notice of proposed rulemaking, or other preliminary regulatory action, OIRA is to complete review within 10 working days (Sec. 6(b)(2)(A)). For all other regulatory actions, OIRA has 90 calendar days, unless OIRA has previously reviewed it and there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case there is a limit of 45 days (Sec. 6(b)(2)(B)). Because of these tight time limits, we must work closely together to ensure that requests for clarification or information are responded to promptly. Upon receipt of a regulatory action, we plan to take a quick look and make certain that whatever analyses should be included are included, and to get back promptly to the agency to ask for whatever is missing.

In some instances, a reason for OIRA review will be the potential effect of a regulation on other agencies. In these circumstances, OIRA will attempt to provide the affected agencies with copies of the draft regulatory action as soon as possible. If you are aware that another an agency has an interest in the draft regulatory action, please let us know quickly.

We also want to stress the provision in the Order that calls upon each agency, in emergency situations or when the agency is obligated by law to act more quickly than normal review procedures allow, to notify OIRA as soon as possible and to schedule the rulemaking proceedings so as to permit sufficient time for OIRA to conduct an adequate review (Sec. 6(a)(3)(D)).

9. Regulation Identifier Number (RIN)

We ask that each agency include a Regulation Identifier Number in the heading of each regulatory action published in the **Federal Register**.[9] This will make it easier for the public and agency officials to track the publication history of regulatory actions throughout their life cycles and to link documents in the **Federal Register** with corresponding entries in the Unified Agenda of Federal Regulations (Sec. 4(b)) and the Regulatory Plan (Sec. 4(c)).

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We look forward to working with you to implement this Executive Order. If you have any questions, please let us know. We will, of course, provide additional guidance as experience and need dictate.

Appendix A—Agencies Exempt From E.O. 12866

Advisory Council on Historic Preservation
African Development Foundation
Alaska Natural Gas Transportation System, Office of the Federal Inspector
American Battle Monuments Commission
Arms Control and Disarmament Agency
Board for International Broadcasting
Central Intelligence Agency
Commission of Fine Arts
Committee for Purchase from the Blind and Severely Handicapped
Export-Import Bank of the United States
Farm Credit System Assistance Board
Federal Financial Institutions Examination Council
Federal Mediation and Conciliation Service
Harry S. Truman Scholarship Foundation
Institute of Museum Services
Inter-American Foundation
International Development Corporation Agency
James Madison Memorial Fellowship Foundation
Merit Systems Protection Board
Navajo Hopi Indian Relocation Commission
National Capital Planning Commission
Office of Special Counsel
Overseas Private Investment Corporation
Panama Canal Commission
Pennsylvania Avenue Development Corporation
Peace Corps
Selective Service System
Tennessee Valley Authority
United States Metric Board
United States Information Agency
United States International Development Cooperation Agency

Appendix B—Members of the Regulatory Working Group

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Environmental Protection Agency
Small Business Administration
General Services Administration
Equal Employment Opportunity Commission

Appendix C—Regulatory Actions Exempted From Centralized Regulatory Review

Department of Agriculture

Food and Nutrition Service—Special Nutrition program notices that revise reimbursement rates and eligibility criteria for the School Lunch, Child Care Food, and other nutrition programs.

Food and Nutrition Service—Food Stamp program notices that set eligibility criteria and deduction policies.

Agricultural Marketing Service—Regulations that establish voluntary standards for grading the quality of food.

Animal and Plant Health Inspection Service—Rules and notices concerning quarantine actions and related measures to prevent the spread of animal and plant pests and diseases.

Animal and Plant Health Inspection Service—Rules affirming actions taken on an emergency basis if no adverse comments were received.

Rural Electrification Administration—Rules concerning standards and specifications for construction and materials.

Department of Commerce

National Oceanic and Atmospheric Administration—Certain time-sensitive preseason and in season Fishery Management Plan regulatory actions that set restrictions on fishing seasons, catch size, and fishing gear.

Department of Education

Certain Final Rules Based on Proposed Rules—Final regulations based on proposed regulations that OMB previously reviewed where: (1) OMB had not previously identified issues for review in a final regulation stage; (2) Education received no substantive public comment; and (3) the proposed regulation is not substantively revised in the final regulation.

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[9] The Office of the **Federal Register** has issued guidance to agencies on the placement of the RIN number in their documents. See Document Drafting Handbook, 1991 ed., p. 9.

Rules Directly Implementing Statute—Final regulations that only incorporate statutory language with no interpretation.

Notices of Final Funding Priorities—Notices of final funding priorities for which OMB has previously reviewed the proposed priority.

Department of Energy

Power Marketing Administrations—Regulations issued by various power administrations relating to the sale of electrical power that they produce or market.

Department of Health and Human Services

Food and Drug Administration—Agency notices of funds availability.

Food and Drug Administration—Medical device reclassifications to less stringent categories.

Food and Drug Administration—OTC monographs, unless they may be precedent-setting or have large adverse impacts on consumers.

Food and Drug Administration—Final rules for which no comments were received and which do not differ from the NPRM.

Department of the Interior

Office of Surface Mining—Actions to approve, or conditionally approve, State regulatory mining actions or amendments to such actions.

Office of Surface Mining—Approval of State mining reclamation plans or amendments.

Office of Surface Mining—Cooperative agreements between OSM and States.

United States Fish and Wildlife Service—Certain parts of the annual migratory bird hunting regulations.

Department of Transportation

All Office of DOT—Amendments that postpone the compliance dates of regulations already in effect.

Coast Guard—Regatta regulations, safety zone regulations, and security zone regulations.

Coast Guard—Anchorage, drawbridge operations, and inland waterways navigation regulations.

Coast Guard—Regulations specifying amount of separation required between cargoes containing incompatible chemicals.

Federal Aviation Administration—Standard instrument approach procedure regulations, en route altitude regulations, routine air space actions, and airworthiness directives.

National Highway Traffic Safety Administration—Federal Motor Vehicle Safety Standard 109 table of tire sizes.

Department of the Treasury

Internal Revenue Service, Bureau of Alcohol, Tobacco, and Firearms, and Customs Service—Revenue rulings and procedures, Customs decisions, legal determinations, and other similar ruling documents. Major legislative regulations are covered fully.

Environmental Protection Agency

Office of Pesticides and Toxic Substances—Actions regarding pesticide tolerances, temporary tolerances, tolerance exemptions, and food additives regulations, except those that make an existing tolerance more stringent.

Office of Pesticides and Toxic Substances—Unconditional approvals of TSCA section 5 test marketing exemptions, and of experimental use permits under FIFRA.

Office of Pesticides and Toxic Substances—Decision documents defining and establishing registration standards; decision documents and termination decisions for the RPAR process; and data call-in requests made under section 3(c)(2)(B) of FIFRA.

Office of Air, Noise, and Radiation—Rules that unconditionally approve revisions to State Implementation Plans.

Office of Air, Noise, and Radiation—Unconditional approvals of equivalent methods for ambient air quality monitoring and of NSPS, NESHAPS, and PSD delegations to States; approvals of carbon monoxide and nitrogen oxide waivers; area designations of air quality planning purposes; and deletions from the NSPS source categories list.

Office of Water—Unconditional approvals of State Water Standards.

Office of Water—Unconditional approval of State underground injection control programs, delegations of NPDES authority to States; deletions from the 307(a) list of toxic pollutants; and suspension of Toxic Testing Requirements under NPDES.

Office of Solid Water and Emergency Response—Unconditional approvals of State authorization under RCRA of State solid waste management plans and of hazardous waste delisting petitions under RCRA.

Pension Benefit Guaranty Corporation

Interest Rates—Changes in interest rates on later premium payments and delinquent employer liability payments under sections 6601 and 6621 of the Internal Revenue Code as amended by the Tax Equity and Fiscal Responsibility Act of 1982.

BILLING CODE 3110–01–P

Appendix A

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
UNITED STATES DEPARTMENT OF AGRICULTURE				
USDA–AgSEC	10	Final Rule	1	Rural empowerment zones and enterprise community regulations -- 7 CFR part 25
USDA–AgGC	7	Proposed Rule		Rules of practice governing formal adjudicatory proceedings -- 7 CFR parts 0, 1, 47, 50, 51, 52, 53, 54 and 180 and 9 CFR part 202
USDA–CSRS	5	Final Rule		Biotechnology risk assessment research grants program administrative provisions
USDA–FAS	32	Final Rule		Cooperative agreements for the development of foreign markets for agricultural commodities -- 7 CFR part 1485
USDA–FAS	38	Proposed Rule		Tobacco exports requirements (advance notice of proposed rulemaking)
USDA–ASCS	11	Final Rule		Poundage quota regulations and marketing assessments for the 1994 and 1995 crops of peanuts
USDA–ASCS	11	Final Rule		Oilseed prevailing world price calculations, loan origination fees, and final loan maturity date -- 7 CFR parts 1421 and 1474, Workplan No. 93–005
USDA–ASCS	24	Final Rule	1	Price support loan requirements, farmer– owned reserve program eligibility requirements -- Workplan No. 93– 004
USDA–ASCS	64	Proposed Rule	2	Conservation and environmental programs regulation regarding the water quality incentives program, cost–share provisions of the emergency conservation program
USDA–ASCS	1	Final Rule		Amendments to the regulations governing reductions in the price of milk received by producers required by the Omnibus Budget Reconciliation Act of 1993
USDA–ASCS	11	Proposed Rule		1994 crop peanut national poundage quota and the minimum CCC export edible sales price for additional peanuts
USDA–ASCS	28	Final Rule		Selection and functions of agricultural stabilization and conservation state and county community committees
USDA–ASCS	11	Proposed Rule		Cotton marketing system, notice requesting comments
USDA–ASCS	5	Final Rule		1993 specifications for cotton bale packaging materials -- Workplan No. 93–019
USDA–ASCS	11	Proposed Rule		Non– emergency haying and grazing on conservation reserve program grasslands -- Workplan No. ASCS 93–029
USDA–ASCS	87	Final Rule	2	Malting barley assessment
USDA–ASCS	3	Proposed Rule		1994– crop national marketing quotas for six kinds of tobacco -- Workplan No. 92–045
USDA–ASCS	31	Proposed Rule	1	Wetlands reserve program -- 7 CFR part 703, Workplan No. ASCS 93–032
USDA–ASCS	14	Proposed Rule	1	Domestic marketing assessment -- Workplan No. 93–033
USDA–ASCS	8	Final Rule	1	Support prices for shorn wool, wool on unshorn lambs, and mohair for the 1993 marketing year
USDA–ASCS	70	Final Rule	2	Debt settlement policies and procedures -- 7 CFR part 792, Workplan No. 92–030
USDA–ASCS	15	Interim Final Rule		1994– crop national peanut poundage quota -- Workplan No. 92–041
USDA–ASCS	13	Final Rule	2	Emergency livestock assistance -- 7 CFR part 1475
USDA–ASCS	8	Proposed Rule		Revisions to the upland cotton user marketing certificate program -- Workplan No. 94–014
USDA–ASCS	21	Final Rule (N/C)		Using electronic cotton warehouse receipts, amendment to the U.S. Warehouse Act -- Workplan No. 92–048
USDA–FCIC	6	Final Rule		Late planting option and the prevented planting endorsement, general crop insurance regulations -- 7 CFR part 401
USDA–FCIC	43	Final Rule		Sugar beets -- 7 CFR part 430
USDA–FCIC	43	Final Rule		Mutual consent cancellation, general administrative regulation -- 7 CFR part 400
USDA–FCIC	3	Final Rule		Late and prevented planting for various crop endorsements, general crop insurance regulations
USDA–FCIC	3	Final Rule		Late and prevented planting for hybrid seed, general crop insurance regulations
USDA–REA	38	Proposed Rule		Pre–loan policies and procedures for electric loans
USDA–REA	11	Final Rule		Rural telephone bank and telephone program loan policies, design criteria, construction policies, and standards and specifications for materials, equipment ...
USDA–REA	11	Final Rule		Pre– loan policies and procedures for electric loans
USDA–FmHA	8	Final Rule		Housing application packaging grants -- 7 CFR part 1944– b
USDA–FmHA	36	Final Rule	2*	Receiving and processing applications for farmer programs loans
USDA–FmHA	24	Proposed Rule		Revisions to the direct emergency loan instructions to implement administrative decisions pertaining to the applicant loan eligibility calculation and appraisal.
USDA–FmHA	10	Proposed Rule		Removal of the prohibition against charging interest on interest on FmHA guaranteed loans
USDA–FmHA	3	Final Rule (N/C)		Revisions to the direct emergency loan instructions to implement administrative decisions pertaining to the applicant loan eligibility calculation, appraisals,
USDA–SCS	10	Final Rule		Emergency wetlands reserve program
USDA–APHIS	13	Proposed Rule		Importation of restricted articles, Port Everglades, FL -- APHIS Docket No. 93–029– 1, OBP&A Workplan No. 93–010
USDA–APHIS	58	Proposed Rule		Garbage, inspection at airports -- APHIS Docket No 93–038– 1
USDA–APHIS	7	Final Rule		Ports designated for the exportation of animals, Kentucky and New Jersey -- APHIS Docket No. 93–016–3, OBP&A Workplan No. 93–011
USDA–APHIS	7	Proposed Rule		Ruminants and horses imported from Canada, importation of wild ruminants and swine -- APHIS Docket No. 92–129– 1, OBP&A Workplan No. 92– 057

* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA
Ext -- Extended at request of the agency

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
USDA-APHIS	7	Final Rule		Imported fire ant -- APHIS Docket No. 93-082-1
USDA-APHIS	12	Proposed Rule		Rules of practice
USDA-APHIS	3	Proposed Rule		Importation of pork and pork products from countries where swine vesicular disease is known to exist -- APHIS Docket No. 93-102-1
USDA-APHIS	4	Proposed Rule		Ports designated for the exportation of animals -- APHIS Docket No. 93-106-1, OBP&A Workplan No. 93-051
USDA-APHIS	4	Proposed Rule		Scrapie: sheep and goats less than 1 year of age moved to slaughter -- APHIS Docket No. 93-050-1, OBP&A Workplan No. 93-029
USDA-APHIS	38	Final Rule		Garbage, compliance agreements -- APHIS Docket No. 91-017-2, OBP&A Workplan No 91-005
USDA-APHIS	2	Final Rule		Importation of monterey pine logs and douglas-fir logs from New Zealand -- APHIS Docket No 91-074-5, OBP&A Workplan No. 92-032
USDA-APHIS	2	Final Rule	1	User fees, agricultural quarantine and inspection services -- APHIS Docket No. 92-148-2, OBP&A Workplan No. 92-069
USDA-APHIS	2	Final Rule		Commuted traveltime periods -- APHIS Docket No. 93-123-1
USDA-APHIS	4	Final Rule		Mediterranean fruit fly, addition to the quarantined areas, treatments
USDA-APHIS	5	Final Rule		User fees, import- and export-related veterinary services -- APHIS Docket No 92-042-2, OBP&A Workplan No. 92-023
USDA-APHIS	27	Proposed Rule	1	Importation of logs, lumber, and other unmanufactured wood products -- APHIS Docket No 91-074-3, OBP&A Workplan No 92-032
USDA-FGIS	9	Proposed Rule		United States standards for flax seed, mixed grain, oats, rye, sunflower seed, and triticale
USDA-FGIS	14	Final Rule		United States standards for rice
USDA-FGIS	10	Proposed Rule	2	Fees for offical pesticide residue testing
USDA-AMS	14	Final Rule		Egg products inspection, increase in fees and charges -- PY-93-003
USDA-AMS	13	Proposed Rule	2	Grading and inspection, general specifications for approved plants and standards for grades of dairy products, proposed fee increase
USDA-AMS	10	Final Rule		Soybean promotion and research program, procedures for conduct of referenda
USDA-AMS	12	Final Rule	2	Increase testing fees for inspection and certification of quality of agricultural and vegetable seeds under the Agricultural Marketing Act of 1946
USDA-AMS	12	Final Rule		Soybean promotion and research, rules and regulations -- 7 CFR part 1220
USDA-AMS	5	Final Rule	2	Changes in fees for Federal meat grading and certification services
USDA-AMS	2	Proposed Rule		Amendment to egg research and promotion rules and regulations -- PY-93-004
USDA-AMS	36	Final Rule	2	Revision of user fees, grading and inspection, general specifications for approved plants and standards for grades of dairy products
USDA-AMS	6	Proposed Rule		Realignment of districts, watermelon research and promotion plan, rules and regulations
USDA-AMS	5	Proposed Rule		Dairy promotion program, amendments to the order
USDA-AMS	6	Proposed Rule		Revision of fees for fresh fruit and vegetable destination market grading services
USDA-FSIS	0	Final Rule	1	Mandatory safe handling statements on labeling of raw meat and poultry products
USDA-FSIS	1	Final Rule	1	Mandatory safe handling statements on labeling of raw meat and poultry products -- 9 CFR parts 317 and 381, Docket No 93-012f-1
USDA-FSIS	1	Proposed Rule	1	Mandatory safe handling statements on labeling of raw meat and poultry products -- 9 CFR parts 317 and 381, Docket No. 93-026p
USDA-FSIS	28	Final Rule		Accreditation fees, standards, and procedures for FSIS accredited laboratories
USDA-FSIS	5	Proposed Rule		Sodium Citrate as a tripe denuding agent
USDA-FSIS	5	Proposed Rule		Use of Trisodium Phosphate on raw, chilled poultry carcasses
USDA-FSIS	39	Final Rule	1	Nutrition labeling of meat and poultry products, technical amendments -- 9 CFR parts 317 and 381, Docket No 91-006f-ta
USDA-FSIS	39	Proposed Rule	1	Nutrition labeling of meat and poultry products, technical amendments -- 9 CFR parts 317 and 381, Docket No 93-022p
USDA-FSIS	39	Proposed Rule	1	Placement of nutrition labeling and other mandatory labeling on meat and poultry products
USDA-FSIS	1	Prerule	1	Poultry products produced by mechanical deboning and products in which such poultry products are used
USDA-FSIS	1	Proposed Rule	1	Meat produced by advanced meat/bone separation machinery and meat recovery systems
USDA-FSIS	19	Final Rule	1	Mandatory safe handling statements on labeling of raw and partially cooked meat and poultry products
USDA-FNS	68	Final Rule	2	Special supplemental food program for women, infants, and children (WIC), coordination rule
USDA-FNS	56	Final Rule	2	Maximum allotments for Alaska, Hawaii, Guam, and the Virgin Islands
USDA-FNS	56	Final Rule		Administrative improvement and simplification provisions from the Hunger Prevention Act of 1988
USDA-FNS	34	Final Rule		Definition of food and nutrition service -- 7 CFR parts 253 and 254
USDA-FNS	59	Final Rule	2	Maximum allotments for the 48 states and D C. and income eligibility standards and deductions for the 48 states, D C., Alaska, Hawaii, Guam, and the Virgin Islands
USDA-FNS	57	Final Rule		Recommendations for improvements to Food Stamp/SSI joint processing
USDA-FNS	6	Proposed Rule		Consideration of an alternate protein source, whey protein concentrate, as a meat alternate for use in the child nutrition programs
USDA-FNS	65	Final Rule	2	Performance standards for the employment and training program, Food Stamp Program

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AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
USDA-FS	21	Final Rule		National forest system notice, comment, and appeal procedures
USDA-FS	34	Proposed Rule		Hells Canyon private land use regulations -- 36 CFR 292, subpart e
USDA-FS	1	Proposed Rule		Grazing fees on national forest system lands
USDA-FS	2	Proposed Rule		Grazing fees on national forest system lands
USDA-FS	24	Proposed Rule	2	Prohibition -- 36 CFR part 261, law enforcement support activities -- 36 CFR part 262
DEPARTMENT OF COMMERCE				
DOC-EDA	67	Final Rule		Property managment standards
DOC-ITA	26	Proposed Rule		Watch duty-exemption program
DOC-USTTA	8	Final Rule		Notice of availability of financial assistance for projects to support tourism trade development in midwest states affected by the widespread flooding of 1993
DOC-NOAA	4	Proposed Rule		Reef fishery resources of the Gulf of Mexico, amendment 5, management measures including 3 SMZs
DOC-NOAA	0	Proposed Rule		The taking of marine mammals incidental to underwater detonation of explosives in the outer sea test range, Pt. Mugu, California
DOC-NOAA	9	Final Rule		Groundfish of the Gulf of Alaska, Groundfish fishery of the Bering Sea and Aleutian Islands
DOC-NOAA	9	Proposed Rule		Groundfish of the Gulf of Alaska, Groundfish fishery of the Bering Sea and Aleutian Islands area
DOC-NOAA	23	Proposed Rule		Observer coverage of the Groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area
DOC-NOAA	1	Final Rule		Fishery management plan for the Shrimp fishery for the South Atlantic region
DOC-NOAA	5	Proposed Rule		Reef fish resources of the Gulf of Mexico, management measures to enhance enforcement and data collection -- amendment 7
DOC-NOAA	1	Final Rule		Coastal Migratory Pelagic resources of the Gulf of Mexico and South Atlantic, trip limits for gulf group King Mackerel in each of two sub-zones
DOC-NOAA	1	Proposed Rule		Defining the term as it pertains to fish import regulations under the Marine Mammal Protection Act
DOC-NOAA	7	Proposed Rule		Improve finfish excluder device requirement in the Northern Shrimp fishery under the fishery management plan for the northeast multispecies fishery
DOC-NOAA	3	Proposed Rule		Allow importers or brokers to file using the U.S. customer service's automated broker interface system
DOC-NOAA	20	Final Rule		Establish procedures for the National Weather Service to follow in certifying when NSW field offices are closed, relocated, or automated
DOC-NOAA	8	Final Rule		Prohibition of explosive devices and establishment of a procedure for permitting fishing operations to experiment with new equipment
DOC-NOAA	22	Proposed Rule		Groundfish of the Bering Sea and Aleutian Islands area require increased observer coverage and improved equipment for measuring groundfish total catches
DOC-NOAA	22	Final Rule		Notice of availability of financial assistance, FY 94 Marfin projects
DOC-NOAA	27	Proposed Rule	1	Northeast multispecies fishery plan -- amendment 5
DOC-NOAA	18	Proposed Rule		Atlantic swordfish fishery: voluntary pilot program to allow retention of undersized swordfish for donation to charity
DOC-NOAA	18	Final Rule		Pelagic fisheries of the Western Pacific -- the Hawaii-based longline fishery mandatory observer program
DOC-NOAA	16	Final Rule	1	Designating critical habitat for listed Snake River Salmon
DOC-NOAA	6	Final Rule		Summer flounder fishery -- amendment 5
DOC-PTO	3	Final Rule	2	Revision of trademark fees
DOC-NTIA	25	Notice	1	Notice of availability, TIIAP of funds
DOC-NIST	12	Proposed Rule		Fips 71: advanced data communication control procedures (ADCCP)
DOC-NIST	7	Final Rule		Standard reference data grants and cooperative agreements, program announcement
DOC-NIST	11	Final Rule		Precision measurement grants
DOC-NIST	8	Final Rule		Materials science and engineering grants program
DOC-NIST	22	Proposed Rule		Fips: open document architecture (ODA) raster document application profile (dap) -- solicitation of comments
DOC-NIST	4	Proposed Rule		Fips: for portable operating system interface (POSIX), part 2 - shell and utilities
DOC-NIST	13	Proposed Rule	2	Fips: security label for the Government open systems interconnection profile -- second solicitation of comments
DOC-NIST	20	Proposed Rule	2	Fips 140-1. security requirements, notice of proposed validation requirements for products
DOC-NIST	8	Final Rule	2	Fips: approval of the escrowed encryption standard

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DOC-BXA	6	Final Rule		Country group Q: addition of Bulgaria, Latvia, and Mongolia, expansion of favorable consideration treatment and implementation of import certificate/delivery...
DOC-BXA	34	Final Rule		Revisions to the export administration regulations, clarifications
DOC-BXA	0	Final Rule		Foreign availability and general license GFW eligibility for certain oil well perforators controlled by ECCN 1c18a.o
DOC-BXA	60	Final Rule		Elimination of the certification requirements for general license GLR and transfers of technology to foreign nationals in the U.S., revisions to the export administration
DOC-BXA	1	Final Rule		Digital computers: removal of national security-based validated license requirements for
DOC-BXA	50	Final Rule		Computers: increase in supercomputer threshold level to a CTP of 1,500 mtops, expansion of general license GFW eligibility for
DOC-BXA	0	Final Rule		Foreign availability assessment determination of synchronous digital hierarchy (SDH) telecommunications transmission equipment
DOC-BXA	1	Interim Final Rule		Commerce control list, items controlled for nuclear nonproliferation reasons
DEPARTMENT OF DEFENSE				
DOD-DODOAS	26	Final Rule		CHAMPUS: specialized treatment services, non-availability statements, peer review organization program
DOD-DODOAS	90	Final Rule	Ext	CHAMPUS: screening mammography and papanicolaou (PAP) tests, certified marriage and family counselors coverage, etc.
DOD-DODOAS	57	Proposed Rule		CHAMPUS: hospital payments for ambulatory care
DOD-DODOAS	21	Final Rule		CHAMPUS: uniform HMO benefit
DOD-DODOAS	64	Proposed Rule		CHAMPUS: tricare enrollment program, special health care program
DOD-OS	22	Proposed Rule		Defense Logistics Agency privacy program -- Defense Logistics Agency regulation 5400.2
DOD-OS	58	Final Rule		National Security Agency security protective force
DOD-OS	5	Interim Final Rule	1	Revitalizing base closure communities and community assistance
EDUCATION DEPARTMENT				
ED-EDOGC	11	Final Rule	1	Final policy statement under Administrative Dispute Resolution Act
ED-OESE	55	Proposed Rule	2	Priorities for training program in early childhood education and violence counseling
ED-OESE	8	Proposed Rule	1	Chapter 1 program in local educational agencies, Chapter 1 Migrant Education Program
ED-OSERS	21	Notice	2	Notice of proposed priorities for fiscal years 1994-1995 for the Knowledge Dissemination and Utilization Program
ED-OVAE	27	Final Rule	2	State-administered Workplace Literacy Program, National Workplace Literacy Program
ED-OPE	41	Final Rule	2	Graduate assistance in areas of national need
ED-OPE	84	Proposed Rule	1	Federal Pell Grant Program and Presidential Access Scholarship Program
ED-OPE	34	Proposed Rule	1	State postsecondary review program
ED-OPE	81	Proposed Rule	2	Federal Family Education Loan Program, Federal Stafford Loan Forgiveness Demonstration Program
ED-OPE	87	Proposed Rule	1	Federal Family Education Loan Program
ED-OPE	57	Proposed Rule	1	The National Early Intervention Scholarship and Partnership Program
ED-OPE	21	Proposed Rule	1	Federal Family Education Loan Program loan cancellation and wage garnishment
ED-OPE	0	Final Rule	1	Reporting and recordkeeping requirements for the direct loans program, final standards, criteria, and procedures
ED-OPE	1	Proposed Rule	1	Secretary's procedures and criteria for recognition of accrediting agencies
ED-OPE	1	Proposed Rule	1	State Postsecondary Review Program
ED-OPE	17	Proposed Rule	1	Institutional eligibility under the Higher Education Act of 1965, as amended
ED-OPE	62	Proposed Rule	1	Federal Family Education Loan Program repayment schedules, deferments, and forbearances
ED-OPE	5	Proposed Rule	2	Federal Family Education Loan Program, loan forgiveness demonstration program
ED-OPE	1	Proposed Rule	1	Federal Pell Grant Program and Presidential Access Scholarship Program
ED-OPE	34	Final Rule	2	Student assistance general provisions, student eligibility amendments
ED-OPE	6	Proposed Rule	1	Student assistance general provisions, Federal Pell Grant Program -- subparts a and b
ED-OPE	1	Notice	1	Notice of standards for participation and solicitation of applications

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ED-OERI	0	Notice	2	Notice of proposed priorities for model projects in encouraging female & minority students in mathematics & science & for model science-based professional ...
ED-EDMAN	8	Proposed Rule	1	State-administered programs and Federal, state, and local partnership for educational improvement
ED-EDMAN	1	Proposed Rule	2	Education Department general administrative regulations (EDGAR) -- 34 CFR parts 75 and 76
DEPARTMENT OF ENERGY				
DOE-ENDEP	88	Final Rule		Nuclear safety management
DOE-ENDEP	78	Proposed Rule	1	Energy conservation standards for eight types of appliances
DOE-EE	85	Proposed Rule		Calculation of equivalent petroleum-based fuel economy of electric vehicles -- 10 CFR part 474
DOE-PR	18	Proposed Rule	2	Acquisition of Federal information resources by contracting, provide procedures governing the acquisition of Federal information
DOE-PR	18	Proposed Rule	2	Acquisition regulation, updated coverage
DOE-PR	48	Proposed Rule	2	Acquisition regulation, updating of patent regulations
DEPARTMENT OF HEALTH AND HUMAN SERVICES				
HHS-PHS	32	Final Rule		Notice regarding section 602 of the Veterans Health Care Act of 1992, entity guidelines
HHS-PHS	23	Final Rule		Health Education Assistance Loan (HEAL) Program: school collection assistance
HHS-PHS	10	Final Rule		Notice of competitive grant applications for tribal management grants for American Indians/Alaska natives, Indian Health Service
HHS-PHS	28	Proposed Rule		Grants for faculty training projects in geriatric medicine and dentistry
HHS-PHS	15	Notice		Health professions preparatory, pregraduate, and indian health professions scholarship grant programs
HHS-PHS	14	Notice		Notice of availability of funds for loan repayment for health professions educational loans
HHS-PHS	6	Proposed Rule		Food labeling, nutrition labeling, small business exemption
HHS-PHS	7	Notice		Indian Health Service research program, grants application announcement
HHS-PHS	14	Notice		Mental health care provider education in HIV/AIDS
HHS-PHS	11	Notice		HIV/AIDS mental health services demonstration program
HHS-PHS	14	Proposed Rule		Medical facility construction and modernization, requirements for provision of services to persons unable to pay
HHS-PHS	4	Notice		Healthy Start initiative, special project grants
HHS-PHS	12	Notice		Community support program: mental health systems improvement demonstration grants for consumer and family networks
HHS-PHS	5	Notice		Cooperative agreements for studies to evaluate the effectiveness of interventions to prevent or reduce childhood lead poisoning, notice of availability of funds
HHS-PHS	5	Notice		Cooperative agreements for studies to determine sources and predictors of lead poisoning in young children, notice of availability of funds for FY 1994
HHS-FDA	2	Proposed Rule	2	Food labeling: health claims and label statements, folate and neural tube defects
HHS-FDA	2	Proposed Rule		Food labeling: health claims for dietary supplements
HHS-FDA	15	Proposed Rule		Medical devices, hearing aid requirements
HHS-FDA	13	Final Rule		Human tissue intended for transplantation
HHS-FDA	1	Final Rule		Quality standards and certification requirements for mammography facilities
HHS-FDA	1	Final Rule		Requirements for accrediting bodies of mammography facilities
HHS-FDA	0	Final Rule	1	Requirements for nutrient content claims for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances, food labeling
HHS-FDA	0	Final Rule		Health claims and label statements, folate and neural tube defects, food labeling
HHS-FDA	0	Final Rule		Reference daily intake, food labeling
HHS-FDA	0	Final Rule		Establishment of date of application, dietary supplements
HHS-FDA	0	Final Rule		General requirements for health claims for dietary supplements, food labeling
HHS-FDA	58	Proposed Rule	2	Laxative drug products for over-the-counter human use, proposed amendment to the tentative final monograph
HHS-HSA	22	Proposed Rule		Charitable facility compliance alternative -- 42 CFR subpart f
HHS-HSA	14	Final Rule		Program announcement for grants for geriatric education centers for FY 1994
HHS-HSA	14	Final Rule		Program announcement for nursing special project grants for FY 1994
HHS-HSA	7	Proposed Rule		General statutory funding preference for nurse anesthetist traineeships for FY 1994, program announcement and proposed minimum percentages

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HHS-HSA	7	Proposed Rule		Grants for professional nurse traineeships for FY 1994, program announcement and proposed minimum percentages
HHS-HSA	12	Proposed Rule		Announcement of availability of funds for family planning research grant
HHS-HSA	8	Proposed Rule		Program announcement for AIDS regional education and training centers
HHS-HSA	8	Proposed Rule		Program announcement for implementation of the statutory funding preference for allied health project grants for FY 1994, proposed minimum percentages
HHS-HSA	18	Final Rule		Rural health outreach program
HHS-HSA	9	Final Rule		Grants for health professions projects in geriatrics
HHS-HSA	19	Final Rule		Grants for interdisciplinary training for health care for rural areas for FY 1994 -- program announcement no. 2148
HHS-HSA	15	Proposed Rule		Program announcement for grants for establishment of departments of family medicine
HHS-HSA	7	Proposed Rule		Implementation of the general statutory funding preference for grants for nurse anesthetist education programs for FY 1994 -- PN 2154
HHS-HSA	14	Final Rule		Disadvantaged health professions faculty loan repayment program -- PN 2160
HHS-HSA	14	Final Rule		Ryan White title iv, HIV demonstration program for children, adolescents, and families (no. 2165), notice of availability of funds
HHS-HSA	16	Proposed Rule		Program announcement and proposed funding priorities for special project grants to schools of public health for FY 1994
HHS-HSA	16	Proposed Rule		Proposed funding preference and priority for grants for programs for physicians' assistants for FY 1994, program announcement and proposed minimum percent
HHS-HSA	16	Final Rule		Special project grants, maternal and child health services, federal set-aside program, collaborative health, education, and human services systems
HHS-HSA	13	Final Rule		Emergency medical services for children demonstration grants, notice of availability of funds
HHS-HSA	13	Proposed Rule		Cooperative agreements for area health education centers programs, program announcement
HHS-HSA	14	Notice		Availability of funds for the community scholarship programs
HHS-HSA	14	Notice		Special project grants and cooperative agreements, maternal and child health services, federal set-aside program
HHS-HSA	14	Notice		Rural telemedicine grant program
HHS-HSA	6	Notice		Availability of funds for community and migrant health center activities
HHS-HSA	8	Notice		Rural health outreach grant program
HHS-HSA	13	Notice		Junior National Health Service Corps, junior health careers opportunity program
HHS-HSA	10	Notice		Grants to improve emergency medical services and trauma care in rural areas
HHS-HSA	14	Notice		Availability of funds for grants to provide comprehensive health promotion, disease prevention, and primary health care services to native Hawaiians
HHS-HSA	14	Notice		Special projects of national significance
HHS-HSA	8	Notice		Model state-supported AHEC program
HHS-HSA	12	Notice		Notice of availability of funds for general family planning training grants
HHS-HSA	12	Notice		Notice of availability of funds for family planning nurse practitioner training grants
HHS-CDC	7	Final Rule		Grants for injury control research centers, notice of availability of funds for FY 1994 -- Announcement No. 405
HHS-CDC	23	Proposed Rule		Evaluation of a community intervention in China of the use of Periconceptional Folic Acid supplements to prevent Spina Bifida and Anencephaly
HHS-CDC	18	Proposed Rule		FY 1994 preventive health services addendum to announcement 401, standard accelerated prevention campaign project grants -- Announcement 401a
HHS-CDC	7	Proposed Rule		Cooperative agreements to conduct research, treatment, and education programs on lyme disease in the United States -- Announcement No. 400
HHS-CDC	16	Proposed Rule		Grants for injury prevention research for violence against women, notice of availability of funds for FY 1994 -- Announcement 409
HHS-CDC	8	Notice		Announcement of a cooperative agreement to the association of state and territorial public health laboratory directors -- Announcement No. 413
HHS-CDC	9	Notice		Grants for education programs in occupational safety and health, notice of availability of funds for FY 1995 -- Announcement No. 123
HHS-CDC	19	Notice		Announcement of a cooperative agreement to the ambulatory sentinel practice network -- Announcement No. 416
HHS-CDC	5	Notice		State-based programs to reduce the burden of diabetes: a health systems approach -- Announcement No. 424
HHS-NIH	4	Final Rule		National Heart, Lung, and Blood Institute grants for prevention and control projects
HHS-NIH	17	Final Rule		Minority biomedical research support program
HHS-NIH	35	Final Rule		NIH guidelines on the inclusion of women and minorities as subjects in clinical research
HHS-NIH	21	Final Rule		Availability of training fellowships under the NIH Intramural Research Training Award (IRTA) Program
HHS-SAMHSA	17	Notice		Substance abuse prevention demonstration grants for high risk youth populations
HHS-HCFA	56	Proposed Rule	1	Extended Medicaid for certain families who lose AFDC eligibility because of increased earned income or loss of earned income disregards, work supplementation ....
HHS-HCFA	34	Final Rule		Carrier jurisdiction for claims for durable equipment, prosthetics, orthotics, and supplies (DMEPOS), Medicare program -- 42 CFR part 421
HHS-HCFA	43	Final Rule		Required laboratory procedures for rural health clinics -- BPD-783-fc
HHS-HCFA	47	Final Rule		Intermediary and carrier checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements -- 42 CFR part 424, BPO-114-fc
HHS-HCFA	75	Proposed Rule	1	Special payment limits for home blood glucose monitors -- 42 CFR part 414, PBD-778-pn
HHS-HCFA	72	Final Rule	1	Deduction of incurred medical expenses (spenddown), Medicaid -- MB 020-fc
HHS-HCFA	71	Proposed Rule	2	Revisions to the definition of end-stage renal disease and resumption of entitlement
HHS-HCFA	70	Final Rule		Health care financing research and demonstration cooperative agreements and grants for FY 1993 and 1994

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HHS-HCFA	61	Final Rule		Coverage of Eopoetin (EPO) used by competent home dialysis patients -- BPD-737-f
HHS-HCFA	5	Final Rule		Part A premium for 1994 for the uninsured aged and for certain disabled individuals who have exhausted other entitlement -- OACT-043-n
HHS-HCFA	38	Proposed Rule	1	Proposed additions to and deletions from the current list of covered procedures for ambulatory surgical centers, Medicare program -- BPD-776-pn
HHS-HCFA	90	Proposed Rule	2	Standards for quality of water used in dialysis and revised guidelines on reuse of hemodialyzer filters for end-stage renal disease patients
HHS-HCFA	87	Final Rule	2	Partial hospitalization services in Community Mental Health Centers
HHS-HCFA	1	Final Rule		Monthly actuarial rates and monthly supplementary medical insurance premium rates beginning January 1, 1994, Medicare program -- OACT-044-n
HHS-HCFA	12	Final Rule	1	Medicare program: physician performance standard rates of increase for federal FY 1994 and physician fee schedule update for calendar year 1994 -- BPD-774-
HHS-HCFA	90	Proposed Rule	1	Limit on payments to HMOs, CMPs, and HCPPs -- OCC-018-p
HHS-HCFA	86	Proposed Rule	2	Health Maintenance Organization and Competitive Medical Plan national coverage decisions, Medicare -- BPD-732-p
HHS-HCFA	8	Final Rule	1	Revisions to payment policies and adjustments to the relative value units under the physician fee schedule, Medicare program -- BPD-770-fc
HHS-HCFA	58	Final Rule	1	Limitations on aggregate payments to disproportionate share hospitals, FY 1994
HHS-HCFA	54	Proposed Rule	1	Third party liability cost-effectiveness waivers
HHS-HCFA	89	Proposed Rule	1	Low-income eligibility groups and coverage of services legislative changes, Medicare program -- MB-13-p
HHS-HCFA	13	Proposed Rule		Withdrawal of coverage of diagnostic nocturnal penile tumescence testing (impotence testing), Medicare program -- BPD-780-pn
HHS-HCFA	9	Final Rule		Schedule of limits for skilled nursing facility inpatient routine service costs, effective October 1, 1993 -- BPD-795-nc
HHS-HCFA	63	Final Rule	1	Changes to the requirement for annual physician acknowledgement of physician attestation -- BPD-769-fc
HHS-HCFA	64	Proposed Rule		Change in provider agreement regulations related to federal employee health benefits, BPD-748-p
HHS-HCFA	45	Final Rule	2	Freedom of choice waiver granted under section 1915(b) of the Social Security Act, conforming changes to amendments made to the act by sections 4604 and 4742
HHS-HCFA	37	Final Rule	2	Computer matching and privacy protection for Medicaid eligibility
HHS-HCFA	56	Proposed Rule	2	Intermediary and carrier functions, Medicare program
HHS-HCFA	52	Final Rule		Data, standards, and methodology used to establish budgets for fiscal intermediaries and carriers, Medicare program
HHS-HCFA	7	Proposed Rule		Post-contract protections and other coordinated care issues -- OCC-011-p
HHS-HCFA	37	Final Rule		Aggregation of Medicare claims for administrative appeals -- BPD-694-f
HHS-HCFA	28	Final Rule		Diagnosis codes on physician bills, Medicare -- BPD-610-f
HHS-SSA	56	Final Rule		Suspension of benefits where individual is deported, exemption from social security because of religious beliefs -- 20 CFR part 404, subparts d, e, and k
HHS-SSA	56	Final Rule		Suspension of dependent's benefits when a worker is in an extended period of eligibility -- 20 CFR parts 404 401a and 404.1592a
HHS-SSA	56	Final Rule	1	Representation of claimants for benefits under title II and/or title XVI
HHS-SSA	31	Final Rule		Considering an application filed under the Railroad Retirement Act as an application for social security benefits -- 20 CFR part 404
HHS-SSA	56	Final Rule		Continued entitlement of deemed spouse -- 20 CFR part 404, subparts d and e
HHS-SSA	54	Final Rule	2	Redetermination of supplemental security income eligibility -- 20 CFR part 416, regulation No. 16, subpart b, SSA-161
HHS-SSA	58	Proposed Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-SSA	58	Final Rule	1	Revised medical criteria for determination of disability, cardiovascular system
HHS-SSA	10	Final Rule	1	Extension of expiration dates for various body system listings
HHS-SSA	89	Final Rule	1	Payments for vocational rehabilitation (VR) services
HHS-SSA	0	Final Rule	1	Determining disability and blindness, extension of expiration date for cardiovascular system listings -- 20 CFR part 404, Regulation No. 4, subpart p, insurance
HHS-ACF	14	Proposed Rule		Availability of financial assistance for native american social and economic development projects to promote self-sufficiency
HHS-ACF	28	Proposed Rule		Notice of proposed program instruction requiring all head start programs to provide smoke-free environments
HHS-ACF	26	Final Rule	1	Statewide automated child welfare information systems
HHS-ACF	26	Final Rule	1	Adoption and foster care analysis and reporting system
HHS-ACF	13	Notice		The administration on developmental disabilities announcing the request for public comments on proposed developmental disabilities funding
HHS-ACF	20	Notice		Availability of financial assistance for improving the capability of Indian tribal governments to regulate environmental quality
HHS-HDSO	28	Final Rule		Head Start Public and Indian Housing Child Care Demonstration Project, grants availability, FY 1993 program announcement
HHS-HDSO	51	Proposed Rule		Grants for state and community programs on aging
HHS-OS	64	Proposed Rule		Revisions to the peer review organization sanctions process
HHS-OFA	17	Proposed Rule	2	Child support enforcement, paternity establishment

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AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT				
HUD-HUDSEC	90	Proposed Rule		Lead-based paint hazard elimination
HUD-HUDSEC	5	Final Rule		Prohibition of advance disclosure of funding decisions, amendments -- part 4
HUD-HUDSEC	6	Final Rule		Implementation of OMB Circular A-133
HUD-HUDSEC	36	Final Rule		Home Investment Partnerships Program (FR-3411)
HUD-HUDSEC	7	Interim Final Rule		Home Investment Partnerships Program
HUD-OH	19	Final Rule		Electronic transmission of required data for certification and recertification and subsidy billing procedures for multifamily subsidized projects
HUD-OH	15	Final Rule		GNMA requests for full insurance on coinsurance loans
HUD-OH	63	Proposed Rule		Single-family property disposition program, closing agent escrow accounts
HUD-OH	17	Final Rule		Expedited procedures for RTC multifamily properties
HUD-OH	20	Final Rule		Flexible subsidy program for troubled projects -- 24 CFR part 219
HUD-OH	43	Final Rule	1	Manufactured home construction and safety standards on wind standards
HUD-OH	60	Proposed Rule	2	Assisted living facilities under section 232
HUD-OH	12	Proposed Rule		Termination of tenancy for criminal activity
HUD-OH	28	Proposed Rule	1	Contract rent annual adjustment factors, revision to part 888 HAPP
HUD-OH	54	Final Rule	1	Amendments to regulation X, the Real Estate Settlement Procedures Act regulation (subordinate liens) -- FR-3382
HUD-OH	21	Final Rule		Multifamily property disposition, state housing finance agency demonstration program
HUD-OH	14	Proposed Rule	1	Sale of HUD-held multifamily mortgages
HUD-GNMA	86	Proposed Rule	2	Real estate mortgage investment conduit, notice of GNMA REMIC (FR-3555)
HUD-CPD	82	Proposed Rule	2	Miscellaneous amendments to correct identified deficiencies in the Community Development Block Grant Program -- part 570
HUD-CPD	8	Final Rule	2	Designation of empowerment zones and enterprise communities -- part 597
HUD-CPD	11	Notice		Notice of request for consideration for community development corporation designation
HUD-FHEO	1	Final Rule	1	Administrative proceedings under section 812 of the Fair Housing Act (FR-3485)
HUD-PIH	40	Proposed Rule	1	Designated housing, public housing designated for occupancy by disabled, elderly, or disabled and elderly families, proposed new part 945 and proposed amendments
HUD-PIH	46	Proposed Rule		Amendments to the Comprehensive Grant Program
HUD-PIH	35	Proposed Rule		Tenant participation and tenant opportunities in public housing (FR-3568)
DEPARTMENT OF THE INTERIOR				
DOI-BLM	14	Final Rule		Onshore oil and gas unit agreements: unproven areas
DOI-BLM	11	Final Rule		Land exchanges, general
DOI-BLM	3	Final Rule		Protection, management, and control of wild free-roaming horses and burros
DOI-BLM	5	Proposed Rule	1	Department hearings and appeals procedures, cooperative relations gazing administration, exclusive of Alaska
DOI-BLM	33	Proposed Rule		Onshore oil and gas operations, Federal and Indian oil and gas leases, onshore oil and gas order no. 5, measurement of gas
DOI-BLM	4	Proposed Rule	1	Department hearings and appeals procedures, cooperative relations gazing administration, exclusive of Alaska
DOI-RB	15	Proposed Rule		Mitigate losses and damages resulting from drought -- proposed rescission of 43 CFR part 423
DOI-RB	15	Proposed Rule		Payment of claims for actual damages -- proposed rescission of 43 CFR part 419
DOI-RB	15	Proposed Rule		Exchange of certain unpatented farm units -- proposed rescission of 43 CFR part 406
DOI-RB	15	Proposed Rule		Management of water rights for individuals receiving benefits -- proposed rescission of 43 CFR part 230
DOI-MMS	10	Final Rule		Administrative amendments of regulations governing royalty oil surety requirements, information collection requirements and addresses
DOI-FWS	9	Final Rule		Injurious wildlife: importation of fish or fish eggs
DOI-FWS	14	Final Rule		Incidental, but not intentional, take of small numbers of Polar Bears and Walruses during oil and gas industry operations (exploration, development, and production)
DOI-FWS	15	Final Rule		Wild Bird Conservation Act of 1992
DOI-FWS	7	Proposed Rule	1	Endangered and threatened wildlife and plants, proposed revision of the special rule for nonessential experimental population of Red Wolves in North Carolina

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DOI-FWS	107	Proposed Rule	Ext	Wild Bird Conservation Act of 1992
DOI-FWS	23	Final Rule		Captive-bred wildlife regulation
DOI-FWS	4	Final Rule		Endangered and threatened wildlife and plants, special rule concerning take of the threatened Coastal California Gnatcatcher
DOI-FWS	56	Final Rule		Endangered and threatened wildlife and plants, designation of critical habitat for the Least Bell's Vireo
DOI-FWS	52	Proposed Rule		Regulations prohibiting taking of free ranging Wolves and Wolvertines on Alaska national wildlife refuges on the same day the trapper or hunter is airborne
DOI-FWS	2	Proposed Rule	1	Endangered and threatened wildlife and plants, revised proposed critical habitat designation for the Delta Smelt
DOI-FWS	36	Final Rule		Endangered and threatened wildlife and plants, determination of critical habitat for the Mojave population of the Desert Tortoise
DOI-FWS	2	Proposed Rule	1	Endangered and threatened wildlife and plants, proposed designation of critical habitat for the Marbled Murrelet
DOI-FWS	16	Final Rule		Designation of critical habitat for the threatened Loach Minnow, endangered and threatened wildlife and plants
DOI-FWS	16	Final Rule		Designation of critical habitat for the threatened Spikedace, endangered and threatened wildlife and plants
DOI-FWS	4	Final Rule	1	Designate critical habitat for four endangered Colorado River fishes
DOI-NPS	23	Proposed Rule	2	National Capital Region parks, sale and distribution of newspapers, leaflets, and pamphlets
DOI-OSMRE	19	Proposed Rule		Coal formation fire control
DOI-BIA	62	Proposed Rule	1	Indian Self-determination and Education Assistance Act regulations
DOI-BIA	24	Final Rule		Protection of archaeological resource
DOI-BIA	45	Proposed Rule		General forest regulations
DOI-BIA	32	Final Rule		Peparation of rolls of Indians, roll of independent Seminole Indians of Florida
DOI-BIA	14	Interim Final Rule	1	Procedures for establishing that an American Indian group exists as an Indian tribe -- 25 CFR 83
DOI-ASPMB	43	Final Rule	1	Natural Resources Damage Assessments
DEPARTMENT OF JUSTICE				
DOJ-PARCOM	24	Proposed Rule		Category eight policy for murder -- 28 CFR 2.20
DOJ-PARCOM	24	Final Rule		Prisoners transferred pursuant to treaty -- 28 CFR 2.62
DOJ-PARCOM	24	Proposed Rule		Ammunition as a weapon -- 28 CFR 2.20
DOJ-INS	5	Final Rule		Approval process for school to admit nonimmigrant students
DOJ-INS	4	Final Rule		Temporary protected status, exception to registration deadlines
DOJ-INS	4	Proposed Rule		Petitioning for foreign-born orphans by United States citizens
DOJ-INS	4	Proposed Rule		Control of employment of aliens
DOJ-INS	4	Proposed Rule		Nonimmigrant classes, B visitor for business or pleasure
DOJ-INS	29	Proposed Rule		Expiration of the replenishment agricultural worker program
DOJ-INS	41	Proposed Rule		Rules and procedures for adjudication of applications for asylum of withholding of deportation and for employment authorization
DOJ-DEA	5	Proposed Rule		Reporting on psychotropic substances
DOJ-BOP	25	Proposed Rule		Drug abuse treatment programs
DOJ-BOP	25	Final Rule		Mandatory English as a second language program
DOJ-BOP	11	Final Rule		Compassionate release
DOJ-BOP	23	Final Rule		Use of force and application of restraints
DEPARTMENT OF LABOR				
DOL-ETA	20	Final Rule	1	Job Training Partnership Act (Job Corps) -- title IV-b
DOL-OSHA	9	Proposed Rule	1	Indoor air quality

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DEPARTMENT OF STATE				
STATE	28	Final Rule		Amendments to the international traffic in arms regulations (ITAR), the U.S. munitions list, category V -- 22 CFR part 121.1
STATE	28	Final Rule		Amendments to the international traffic in arms regulations (ITAR), the U.S. munitions list, category VI -- 22 CFR part 121
STATE	15	Proposed Rule		Grants and cooperative agreements with institutions of higher education, hospitals, and other nonprofit organizations
STATE-AFA	20	Final Rule		Foreign prohibitions on longshore work by U.S. nationals
STATE-AFA	4	Proposed Rule		Diversity of immigrants -- 22 CFR 42.33, implementation of sections 201(a)(3), 201(e), 203(c), and 204(a)(1)(g) of the Immigration and Nationality Act as amended
STATE-AFA	6	Proposed Rule		Implementation of chapter 16 of NAFTA and sections 341 and 342 of the North American Free Trade Implementation Act
DEPARTMENT OF TRANSPORTATION				
DOT-OST	0	Final Rule	1	Transportation for individuals with disabilities
DOT-OST	0	Final Rule	1	Management information system (MIS) for workplace drug testing programs (common rule)
DOT-OST	13	Final Rule	1	Prevention of alcohol misuse in the aviation, transit, motor carrier, railroad, and pipeline industries, common preamble
DOT-OST	7	Proposed Rule	1	Procedures for workplace drug and alcohol testing programs, blood testing programs
DOT-OST	7	Proposed Rule	1	Random drug testing program
DOT-OST	3	Final Rule	1	Procedures for transportation workplace drug and alcohol testing programs
DOT-USCG	12	Final Rule	1	Documentation of vessels, recording of instruments, fees
DOT-USCG	28	Final Rule	1	Discharge removal equipment for vessels carrying oil
DOT-USCG	35	Final Rule	1	Licensing of pilots, manning of vessels by pilots -- 84-060
DOT-USCG	80	Proposed Rule	1	Security for passenger vessels and passenger terminals
DOT-USCG	0	Final Rule	1	Collection of drug test information (MIS), programs for chemical drug testing of commercial vessel personnel
DOT-USCG	12	Proposed Rule	1	Collection of commercial vessel and personnel accident (marine casualty) information & programs for chemical drug & alcohol testing of commercial vessel personnel
DOT-USCG	17	Proposed Rule	1	Great lakes pilotage rate methodology -- 92-072
DOT-FAA	0	Final Rule	1	Antidrug program for personnel engaged in specific aviation activities, management information system
DOT-FAA	2	Final Rule	1	Training and checking in ground icing conditions
DOT-FAA	6	Proposed Rule	1	Antidrug program and alcohol misuse prevention program for employees of foreign air carriers engaged in specified aviation activities
DOT-FAA	1	Final Rule	1	Antidrug program for personnel engaged in specified aviation activities
DOT-FAA	1	Proposed Rule	1	Alcohol misuse prevention program for personnel engaged in specified aviation activities
DOT-FHWA	2	Final Rule	1	Qualification of drivers, medical examination
DOT-FHWA	62	Final Rule	1	Radar detectors in commercial motor vehicles
DOT-FHWA	34	Final Rule	1	Management and monitoring systems
DOT-FHWA	3	Final Rule	1	Statewide planning, metropolitan planning
DOT-FHWA	42	Final Rule	1	Private motor carriers of passengers
DOT-FHWA	0	Final Rule	1	Controlled substances testing, recordkeeping and reporting requirements
DOT-FHWA	6	Proposed Rule	1	Foreign-based motor carriers and drivers, controlled substances and alcohol use and testing
DOT-FHWA	1	Final Rule	1	Controlled substances and alcohol use and testing
DOT-NHTSA	35	Proposed Rule	1	Motor vehicle content labeling -- 49 CFR part 583
DOT-NHTSA	11	Proposed Rule	1	Determination of effectiveness, highway safety programs
DOT-NHTSA	1	Proposed Rule	1	Compressed natural gas fuel containers, federal motor vehicle safety standards
DOT-NHTSA	1	Proposed Rule	1	Antilock brake systems for light vehicles (anprm)
DOT-NHTSA	14	Prerule	1	Light Truck Fuel Economy Standards, model years 1998-2006
DOT-NHTSA	14	Final Rule	1	Light Truck Fuel Economy Standards, model years 1996-1997

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DOT-FRA	0	Final Rule	1	Amendments to alcohol/drug regulations, annual reporting requirements
DOT-FRA	15	Proposed Rule	1	Grade crossing signal system safety
DOT-FRA	13	Final Rule	1	Railroad police officers -- 49 CFR part 207
DOT-FRA	1	Final Rule	1	Amendments to alcohol/drug regulations, alcohol testing
DOT-FRA	11	Proposed Rule	1	Maintenance-of-way equipment, freight car safety standards
DOT-FTA	29	Proposed Rule	1	Rail fixed guideway systems, state safety oversight
DOT-FTA	1	Final Rule	1	Prevention of prohibited drug use in transit operations
DOT-FTA	1	Final Rule	1	Prevention of alcohol misuse in transit operations
DOT-MarAd	16	Interim Final Rule	1	Obligation guarantees
DOT-RSPA	0	Final Rule	1	Management information system (MIS) standardized data collection and reporting of drug testing results
DOT-RSPA	35	Final Rule	1	Operation and maintenance procedures for pipelines
DOT-RSPA	1	Final Rule	1	Alcohol misuse prevention program
DEPARTMENT OF THE TREASURY				
TREAS-OTS	0	Proposed Rule		Community Reinvestment Act regulations
TREAS-OCC	35	Proposed Rule		Lending limits
TREAS-OCC	1	Proposed Rule		Community Reinvestment Act
DEPARTMENT OF VETERANS AFFAIRS				
VA	87	Proposed Rule		Examinations
VA	17	Final Rule		Standards of ethical conduct and related responsibilities
VA	15	Final Rule		Loan guaranty: limited denial of participation in the loan guaranty program
VA	72	Proposed Rule		Claims based on chronic effects of exposure to vesicant agents
VA	72	Proposed Rule		Full disclosure of beneficary's income
VA	27	Proposed Rule		Veterans education, implementation of the Veterans' Benefits Act of 1992 and the National Defense Authorization Act for FY 1993 in the post-vietnam era veteran
VA	18	Final Rule		Veterans education, standardization of programs
VA	88	Proposed Rule		Claims based on exposure to ionizing radiation
VA	17	Final Rule		Reservists education, the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 and the Montgomery GI bill, selected reserve
VA	13	Final Rule		Veterans education: Veterans Job Training Act
VA	88	Proposed Rule	2	Loan guaranty: acceptance of partial payments, indemnification of default
VA	78	Final Rule	2	To amend the travel authority for beneficiaries who are in receipt of pension
VA	51	Proposed Rule	1	Disease associated with exposure to certain herbicide agents, multiple mayeloma and respiratory cancers
VA	63	Proposed Rule		Loan guaranty: implementation of Public Law 102-547
VA	49	Proposed Rule		Line of duty
VA	23	Proposed Rule		Loan guaranty and vocational rehabilitation and counseling programs -- VA Acquisition Regulation (VAAR) part 871
VA	14	Final Rule	1	Disease associated with exposure to certain herbicide agents
VA	14	Final Rule		Procedural due process and appellate rights
VA	14	Final Rule		Procedural due process and appellate rights
VA	2	Proposed Rule		Reservists education: the Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI bill
VA	15	Proposed Rule		Schedule for rating disabilities: diseases of the ear and other sense organs

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ENVIRONMENTAL PROTECTION AGENCY				
EPA-GCEC	17	Final Rule		Simplification of EPA's process for treating indian tribes as states, amendments to interim final rule -- 40 CFR parts 35 and 130
EFA-GCEC	17	Proposed Rule		Simplification of EPA's process for treating indian tribes as states, proposed amendments -- 40 CFR parts 124, 131, 142, 144, 145, and 233
EPA-WATER	4	Proposed Rule		Analytical methods for regulated drinking water contaminants, national primary drinking water regulations
EPA-WATER	37	Proposed Rule	1	Water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and delta of the State of California
EPA-WATER	14	Proposed Rule	2	Drinking water information collection rule
EPA-WATER	91	Final Rule	1	Combined sewer overflow (CSO) control policy
EPA-WATER	51	Proposed Rule	1	Pesticide chemicals point source category, formulating, packaging, and repackaging sub-categories, effluent limitations guidelines and NSPS
EPA-SWER	49	Final Rule	1	List of regulated substances and thresholds for accidental release prevention, requirements for petitions under section 112(r) of the Clean Air Act as amended
EPA-SWER	36	Proposed Rule	1	National priorities list for uncontrolled hazardous waste sites -- Proposal No. 16
EPA-SWER	34	Proposed Rule	2	Hazardous waste management system, Carbamate production identification and listing of hazardous waste and CERCLA hazardous substance designation & reportable
EPA-SWER	17	Final Rule	2	Underground storage tank financial responsibility requirements, 1998 compliance deadline for tribally-owned underground storage tanks (UST) on indian lands that..
EPA-SWER	20	Proposed Rule	2	Standards for the management of specific hazardous wastes, amendment to subpart c, recyclable materials used in a manner constituting disposal
EPA-SWER	11	Final Rule	2	National priorities list for uncontrolled hazardous waste sites
EPA-AR	7	Final Rule		Protection of stratospheric ozone, Federal procurement regulation -- 40 CFR part 82, SAN 2899
EPA-AR	36	Proposed Rule		Labeling supplemental proposal -- 40 CFR part 82, SAN 3348
EPA-AR	46	Final Rule		Ohio miscellaneous VOC RACT I and II regulations -- SAN 3376, CH-10-5677
EPA-AR	28	Final Rule	1	Criteria and procedures for determining conformity to State or Federal implementation plans of transportation plans, programs, and projects funded or approved
EPA-AR	60	Proposed Rule	1	National emission standards for hazardous air pollutants for source category: gasoline distribution (stage I) -- SAN 2926
EPA-AR	36	Proposed Rule	2	Surface coating of plastic parts control techniques guideline -- title I, Clean Air Act amendments
EPA-AR	18	Final Rule	2	Approval of State programs and delegation of Federal authorities -- 42 CFR part 63, subpart e, SAN 3142
EPA-AR	14	Proposed Rule	1	National emission standards for hazardous air pollutants for alogenated solvent cleaners -- SAN 2839
EPA-AR	87	Proposed Rule	1	Field citation program -- 40 CFR part 59, SAN 2937
EPA-AR	28	Final Rule	1	Accelerated phaseout of ozone depleting chemicals and listing and phaseout of Methyl Bromide
EPA-AR	26	Proposed Rule	1	National emissions standard for hazardous air pollutants for Chromium electroplating and anodizing operations -- SAN 2841
EPA-AR	91	Proposed Rule	1	Requirements for constructed, reconstructed, or modified major sources under Clean Air Act section 112(g) -- SAN 2932
EPA-AR	71	Proposed Rule	1	Regulations governing awards under section 113(f) of the Clean Air Act, the Clean Air Act awards rule -- SAN 2939
EPA-AR	3	Final Rule	2	Schedule for the promulgation of emission standards under section 112(e) of the Clean Air Act amendments of 1990
EPA-AR	0	Final Rule	1	Determining conformity of general Federal actions to State or Federal implementation plans
EPA-AR	27	Proposed Rule		Sip: West Virginia pm-10 revision, approval and limited disapproval -- SAN 3387, SIP-WV-5-1-5149
EPA-AR	13	Final Rule		Clean fuel fleet program definitions and general provisions -- SAN 3070
EPA-AR	90	Final Rule	2	Preemption of state regulations for nonroad engine and vehicle standards
EPA-AR	1	Proposed Rule	1	Regulation of fuels and fuel additives renewable oxygenate requirement for reformulated gasoline
EPA-AR	1	Final Rule	1	Fuel and fuel additives: standards for reformulated gasoline
EPA-AR	67	Final Rule	1	Acid rain NOX regulations under title IV of the Clean Air Act amendments of 1990
EPA-AR	12	Proposed Rule		Disapproval of Service Plastic's request for operating restrictions -- IL44-1-5481, SAN-3396
EPA-AR	14	Final Rule	2	Model standards and techniques for control of Radon in new buildings, proposed guidance document, not a rulemaking -- SAN 2975
EPA-AR	18	Final Rule		Reconsideration for GM Electromotive Division -- IL-1226-5785, SAN 3399
EPA-AR	63	Proposed Rule	2	National emission standards for hazardous air pollutants for Ethylene Oxide commercial sterilization and fumigation operations -- SAN 2484
EPA-AR	72	Final Rule	2	Standards for emissions from natural gas-fueled and liquefied petroleum gas-fueled motor vehicles and motor vehicle engines and certification procedures for...
EPA-AR	62	Final Rule	1	Hazardous organic NESHAP (HON) for the synthetic organic chemical manufacturing industry (SOCMI) and other processes subject to the negotiated regulation for equ
EPA-AR	56	Final Rule	2	National ambient air quality primary standards for Carbon Monoxide, final decision -- SAN 2762
EPA-AR	85	Proposed Rule	1	Emission standards for new nonroad spark-ignition engines at and below 19 kilowatts, control of air pollution
EPA-AR	15	Final Rule	1	Control of air pollution from new motor vehicles and new motor vehicle engines, refueling emission regulations for light-duty vehicles & trucks & heavy-duty vehicles
EPA-AR	27	Final Rule		Significant new alternatives policy (SNAP) program -- SAN 2991 -- title VI of the Clean Air Act amendments of 1990
EPA-AR	28	Proposed Rule	2	National emissions standard for hazardous air pollutants for magnetic tape manufacturing operations -- SAN 2946
EPA-AR	18	Final Rule	1	General provisions for national emission standards for hazardous air pollutants for source categories -- 40 CFR part 63, subpart a, SAN 2918
EPA-AR	0	Proposed Rule	1	California Federal implementation plans for Sacramento, Ventura, and the South Coast under the Clean Air Act -- section 110(c)
EPA-AR	5	Final Rule	1	Economic incentive program rules -- SAN 2964

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EPA-OPPTS	91	Proposed Rule	1	Emergency Planning and Community Right-to-Know Act, section 313 proposed addition of chemicals -- 40 CFR 372.65
EPA-OPPTS	17	Final Rule	1	Addition of 21 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act
EPA-OPPTS	17	Final Rule	1	Petition to add Hydrochlorofluorocarbons (HCFCs) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right
EPA-OPPTS	61	Proposed Rule	1	Provision of lead hazard information pamphlet before renovation of target housing
EPA-OPPTS	70	Proposed Rule	2	Fishing sinker -- TSCA section 6
OFFICE OF MANAGEMENT AND BUDGET				
OMB	108	Final Rule	Ext	Application of cost accounting standards board regulations to educational institutions -- 48 CFR parts 9903, 9905
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION				
NASA	1	Final Rule	1	NASA far supplement synopsizing requirements to implement FAC 90-20, expedited implementation of NAFTA
NASA	18	Final Rule	2	Streamline the major system acquisition process
NASA	22	Proposed Rule	2	Increasing contractor liability on research and development contracts
NASA	20	Final Rule	2	Performance-based contracting
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE				
CNCS	1	Proposed Rule		Corporation grant programs and support and investment activities
CNCS	12	Final Rule		Corporation for National and Community Service: requirements for State commissions on national and community service
CNCS	22	Proposed Rule		Corporation for National and Community Service
CNCS	56	Proposed Rule		Uniform administrative requirements for grants and cooperative agreements to State and local governments, governmentwide debarment and suspension requirements
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION				
EEOC	27	Final Rule		Collection of debts by Federal tax refund offset
FEDERAL EMERGENCY MANAGEMENT AGENCY				
FEMA	44	Proposed Rule		National flood insurance program. insurance coverage and rates, criteria for land management, use, identification, and mapping of flood control restoration zones
FEMA	5	Proposed Rule		National flood insurance program, insurance rates
GENERAL SERVICES ADMINISTRATION				
GSA	55	Final Rule		Aviation, transportation, and motor vehicles -- FPMR subchapter g amendment
GSA	66	Final Rule		Interim admendment to FIRMR to implement provisions of Executive Order 12845 requiring agencies to purchase energy efficient computer equipment
GSA	0	Final Rule		Maximum per diem rates -- Federal Travel Regulation (FTR), amendment 33
GSA	28	Final Rule	2	Rules of procedure of the General Services Administration Bboard of Contract Appeals
GSA	57	Final Rule	1	Identification of energy-efficient office equipment and supplies containing recovered materials or other environmental attributes
GSA	15	Proposed Rule	2	Placement of orders -- 48 CFR 552.216-73, ordering information -- 48 CFR 552.216-74
GSA	4	Final Rule	1	Changes to the FTR maximum per diem rates -- Federal Travel Regulations (FTR), amendment 34
GSA	40	Final Rule	2	Aviation, transportation, and motor vehicles -- Federal Property Management Regulations, subchapter g, control no. 93-43
GSA	25	Proposed Rule	2	1) reinventing MAS ordering procedures (notice), 2) removing FSS ordering instructions -- FPMR amendment e (proposed rule), 3) amendment to FIRMR to remove ...

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION				
NARA	0	Proposed Rule	1	Electronic mail systems
UNITED STATES INFORMATION AGENCY				
USIA	7	Interim Final Rule		Educational, scientific, and cultural material; world-wide free flow (export-import) of audio visual materials -- rulemaking 200
USIA	1	Interim Final Rule		Camp counselor exchanges -- rulemaking no. 102
INSTITUTE OF MUSEUM SERVICES				
IMS	10	Final Rule		Institute of Museum Services, technical assistance grants
APPRAISAL SUBCOMMITTEE OF THE FFEIC				
FFIEC	70	Proposed Rule		Freedom of Information Act, requests for confidential treatment of information subject to FOIA and petitions for the issuance, amendment, and repeal of a rule
NATIONAL SCIENCE FOUNDATION				
NSF	84	Final Rule		Investigator financial disclosure policy
NSF	0	Final Rule		Salary offset
NSF	0	Final Rule		Claims collection and administrative offset
OFFICE OF PERSONNEL MANAGEMENT				
OPM	70	Proposed Rule		Temporary, term, and excepted service employment
OPM	27	Proposed Rule		Recomputation of congressional annuities after reemployment
OPM	19	Final Rule		Prevailing rate systems, Champaign, Illinois, NAF wage area
OPM	31	Final Rule		Civil service retirement system, law enforcement officers and firefighters
OPM	8	Final Rule		Prevailing rate systems: Oscoda-Alpena, Michigan, wage area
OPM	10	Final Rule		Termination of the performance management recognition system
OPM	15	Final Rule		Prevailing rate systems, Clark-Hardin-Jefferson, Kentucky, NAF wage area
OPM	13	Final Rule		Prevailing rate systems: redefinition of Santa Clara, California, NAF wage area
OPM	50	Proposed Rule		Interim relief -- 5 CFR part 772
OPM	0	Final Rule		Locality-based comparability payments
OPM	36	Final Rule		Political activity of Federal employees
OPM	8	Proposed Rule		Temporary and excepted service employment
OPM	8	Final Rule		Absence and leave
OPM	1	Proposed Rule		Notification requirements relating to the statutory prohibition on political recommendations under the Hatch Act Reform amendments of 1993
OPM	5	Final Rule		Special pay entitlements for law enforcement officers
OPM	2	Interim Final Rule		Commercial garnishment of Federal employees' pay
OPM	1	Final Rule		Federal employees health benefits acquisition regulation, miscellaneous changes

Ext -- Extended at request of the agency
** Extended at request of the agency

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
OFFICE OF GOVERNMENT ETHICS				
OGE	2	Final Rule		Executive branch financial disclosure, qualified trusts, and certificates of divestiture, amendement
RAILROAD RETIREMENT BOARD				
RRB	50	Proposed Rule		Availability of information to the public
RRB	45	Final Rule	1	Railroad employers' reports and responsibilities
RRB	34	Final Rule	1	Duration of normal extended benefits
RRB	34	Proposed Rule	1	Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts
RRB	31	Final Rule	1	Representative payment
SMALL BUSINESS ADMINISTRATION				
SBA	59	Proposed Rule		Amendments to the amount of flood insurance coverage required of recipients of certain SBA assistance
SBA	21	Final Rule		Physical disaster and economic injury loans, redefining
SBA	54	Proposed Rule		Leverage, regulatory exemptions for non-leveraged licensees, Small Business Investment Companies
SBA	74	Final Rule		Defense economic assistance, business loans
SBA	76	Proposed Rule		Business loans, alter ego - development companies, alter ego
SBA	85	Proposed Rule		Business loan policy, media policy rule
SBA	23	Final Rule		Minority small business and capital ownership development, miscellaneous amendments
SBA	0	Interim Final Rule		Disaster physical disaster and economic injury loans
SBA	30	Proposed Rule		Loans to State and local development companies, seller financing by regulated lenders
SBA	7	Interim Final Rule		Disaster: physical disaster and economic injury loans, landlord exceptions
SBA	7	Interim Final Rule		Disaster: physical disaster and economic injury loans, definition of major source of employment
SBA	18	Interim Final Rule		Small Business Investment Companies, leverage, participating securities, conditions affecting good standing of licensees
SBA	18	Interim Final Rule		Small Business Investment Companies, small business size standards
SBA	18	Interim Final Rule		Small Business Investment Companies, implementation of P.L. 102-366 and other matters
SBA	13	Proposed Rule		Business loan policy, media policy rule
SBA	0	Interim Final Rule		Small business size standards, inflation adjusted size standards
FEDERAL ACQUISITION REGULATIONS				
FAR	36	Proposed Rule	1	Electronic contracting
FAR	71	Final Rule	1	Exemptions from cost or pricing data
FAR	11	Proposed Rule	1	Electronic contracting
FAR	6	Final Rule	1	Expedited implementation of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993
FAR	40	Proposed Rule	2	Past performance information
FAR	21	Proposed Rule	2	Subcontracting plans -- FAR Case 92-19

* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA
Ext -- Extended at request of the agency

TABLE 1

EXECUTIVE ORDER REVIEWS
OCTOBER 1, 1993 – MARCH 31, 1994
RECEIVED AFTER OCTOBER 1, 1993

	NUMBER OF REVIEWS			*ACTIONS TAKEN*						*AVERAGE REVIEW TIME*		
AGENCY	*ECON SIG*	*NOT ECON SIG*	*TOTAL*	*1*	*2*	*3*	*5*	*9*	*12*	*ECON SIG*	*NOT ECON SIG*	*ALL*
TOTAL	**63**	**515**	**578**	**348**	**177**	**26**	**11**	**0**	**16**	**24**	**26**	**26**
%	**10.9%**	**89.1%**		**60.2%**	**30.6%**	**4.5%**	**1.9%**	**0.0%**	**2.8%**			
USDA	11	83	94	65	20	5	2	0	2	17	20	19
DOC	0	42	42	29	11	2	0	0	0	NA	16	16
DOD	0	8	8	1	5	2	0	0	0	NA	44	44
ED	2	23	25	3	19	3	0	0	0	7	31	29
DOE	1	5	6	3	3	0	0	0	0	78	51	56
HHS	7	119	126	93	24	5	4	0	0	37	27	27
HUD	3	22	25	15	8	2	0	0	0	55	30	33
DOI	1	33	34	25	9	0	0	0	0	4	23	23
DOJ	0	15	15	15	0	0	0	0	0	NA	17	17
DOL	1	1	2	0	2	0	0	0	0	9	20	15
STATE	0	6	6	5	1	0	0	0	0	NA	17	17
DOT	14	30	44	21	23	0	0	0	0	6	21	15
TREAS	2	1	3	1	2	0	0	0	0	1	35	12
VA	0	21	21	15	4	2	0	0	0	NA	40	40
EPA	14	39	53	14	25	0	0	0	14	36	36	36
CNCS	1	3	4	0	4	0	0	0	0	22	23	23
EEOC	0	1	1	1	0	0	0	0	0	NA	27	27
FAR	3	3	6	3	1	2	0	0	0	39	23	31
FEMA	0	2	2	0	2	0	0	0	0	NA	25	25
FFIEC	0	1	1	0	1	0	0	0	0	NA	70	70
GSA	0	9	9	6	3	0	0	0	0	NA	36	36
IMS	0	1	1	1	0	0	0	0	0	NA	10	10
NARA	0	1	1	1	0	0	0	0	0	NA	116	116
NASA	0	4	4	4	0	0	0	0	0	NA	15	15
NSF	0	3	3	2	1	0	0	0	0	NA	84	84
OGE	0	1	1	1	0	0	0	0	0	NA	2	2
OMB	0	1	1	0	1	0	0	0	0	NA	108	108
OPM	0	17	17	13	2	2	0	0	0	NA	19	19
RRB	0	5	5	0	0	0	5	0	0	NA	39	39
SBA	3	13	16	9	6	1	0	0	0	15	42	36
USIA	0	2	2	2	0	0	0	0	0	NA	4	4

TABLE 2

EXECUTIVE ORDER REVIEWS
OCTOBER 1, 1993 – MARCH 31, 1994
RECEIVED PRIOR TO OCTOBER 1, 1993

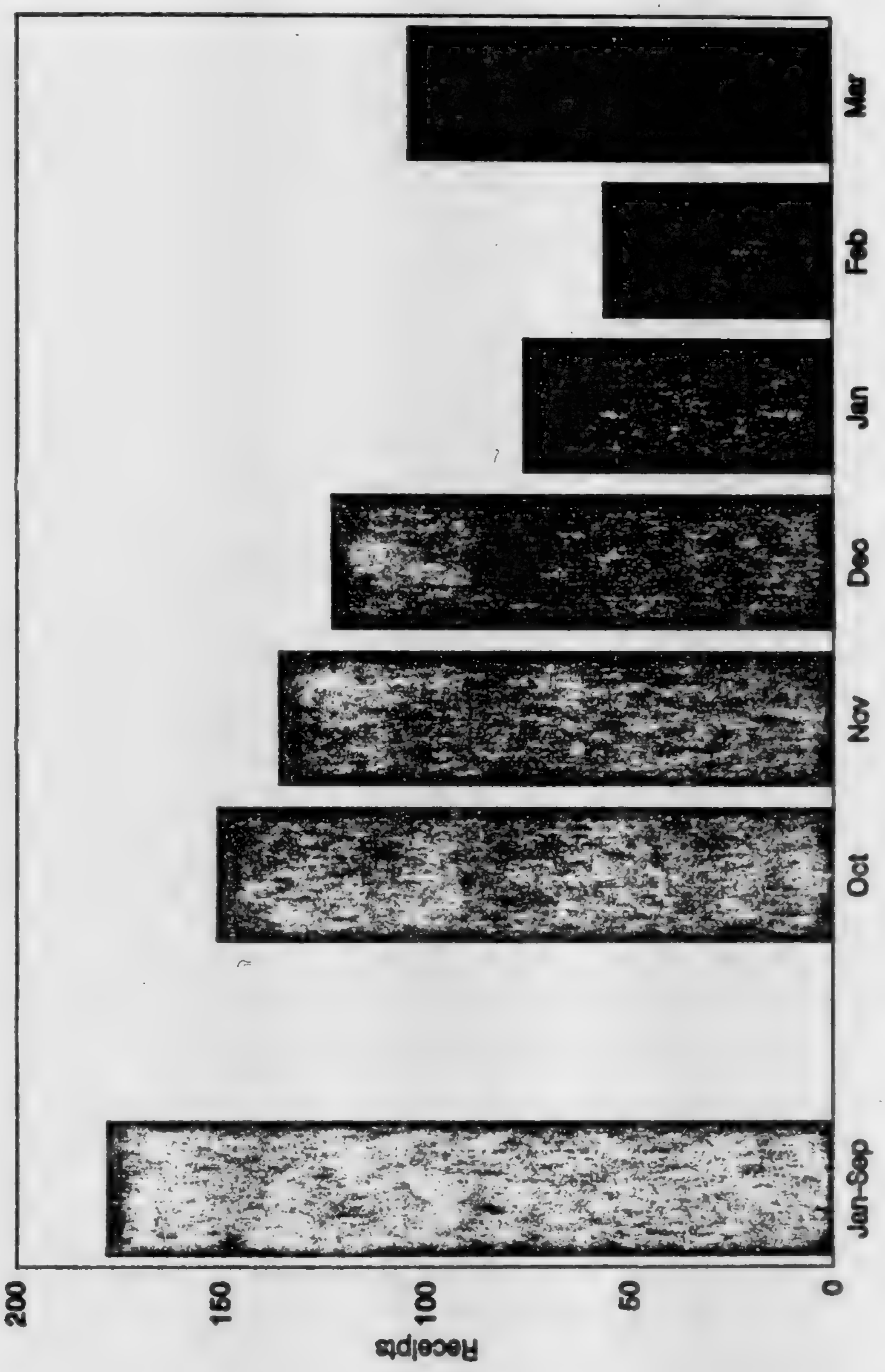
	NUMBER OF REVIEWS			*ACTIONS TAKEN*						*AVERAGE REVIEW TIME*		
AGENCY	*ECON SIG*	*NOT ECON SIG*	*TOTAL*	*1*	*2*	*3*	*5*	*9*	*17*	*ECON SIG*	*NOT ECON SIG*	*ALL*
TOTAL	**8**	**167**	**175**	**86**	**60**	**24**	**1**	**2**	**2**	**108**	**74**	**76**
%	**4.6%**	**95.4%**		**49.1%**	**34.3%**	**13.7%**	**0.6%**	**1.1%**	**1.1%**			
USDA	2	26	28	20	6	2	0	0	0	148	55	62
DOC	1	13	14	9	4	1	0	0	0	128	44	50
DOD	0	2	2	0	0	2	0	0	0	NA	99	99
ED	0	9	9	0	6	3	0	0	0	NA	86	86
DOE	0	4	4	2	2	0	0	0	0	NA	121	121
HHS	1	39	40	25	6	6	1	2	0	104	72	73
HUD	1	9	10	4	4	2	0	0	0	42	84	80
DOI	0	7	7	4	2	1	0	0	0	NA	82	82
DOJ	0	0	0	0	0	0	0	0	0	NA	NA	NA
DOL	0	0	0	0	0	0	0	0	0	NA	NA	NA
STATE	0	0	0	0	0	0	0	0	0	NA	NA	NA
DOT	1	6	7	1	4	2	0	0	0	160	149	151
TREAS	0	3	3	1	2	0	0	0	0	NA	81	81
VA	0	8	8	6	0	2	0	0	0	NA	119	119
EPA	2	14	16	1	13	0	0	0	2	67	98	94
AID	0	1	1	0	1	0	0	0	0	NA	36	36
EEOC	0	1	1	0	0	1	0	0	0	NA	205	205
FEMA	0	2	2	0	2	0	0	0	0	NA	51	51
GSA	0	9	9	5	4	0	0	0	0	NA	36	36
NARA	0	1	1	0	1	0	0	0	0	NA	116	116
NASA	0	4	4	2	1	1	0	0	0	NA	47	47
NSF	0	2	2	1	0	1	0	0	0	NA	68	68
OPM	0	5	5	4	1	0	0	0	0	NA	32	32
USIA	0	1	1	1	0	0	0	0	0	NA	11	11
ALL OTHER	0	1	1	0	1	0	0	0	0	NA	74	74

TABLE 3

EXECUTIVE ORDER REVIEWS
REVIEWS PENDING ON APRIL 1, 1994

AGENCY	1 -- 30	31 -- 60	61 -- 90	OVER 90	TOTAL
TOTAL	**45**	**13**	**8**	**2**	**68**
USDA	10	0	0	1	11
DOC	2	0	0	0	2
DOD	2	0	0	0	2
ED	2	1	4	0	7
DOE	0	0	0	0	0
HHS	6	4	1	0	11
HUD	8	1	0	0	9
DOI	0	0	1	0	1
DOJ	1	0	0	0	1
DOL	0	0	0	0	0
STATE	0	0	0	0	0
DOT	2	0	0	0	2
TREAS	0	0	0	0	0
VA	2	0	0	0	2
EPA	7	3	1	1	12
ACTION	1	0	0	0	1
ATBCB	0	0	1	0	1
FAR	0	1	0	0	1
JMMFF	0	1	0	0	1
OPM	2	2	0	0	4

EXECUTIVE ORDER 12866
RECEIPTS FROM AGENCIES



Note: Pre EO 12866 period is January - September 1993 average
Note: EO 12866 period begins October 1993

[FR Doc. 94-11203 Filed 5-5-94; 4:10 pm]

BILLING CODE 3110-01-C

federal register

Tuesday
May 10, 1997

Part VII

Department of Agriculture

Cooperative State Research Service

Small Business Innovation Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1995; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1995 is approximately $3,500,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1994. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403, as amended. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR part 3017), New Restrictions on Lobbying (7 CFR part 3018), and Managing Federal Credit Programs (7 CFR part 3) apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1994 or who have recently requested placement on the list for fiscal year 1995 will automatically receive a copy of the fiscal year 1995 solicitation.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, telephone: (202) 401–5048.

Done at Washington, DC, this 4th day of May 1994.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 94–11166 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
May 10, 1994

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 58, et al.

Agency Reorganization of Analytical Testing Services; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 58, 91, 93, 94, 95, 98

[SD-94-002]

RIN 0581-AB24

Agency Reorganization of Analytical Testing Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) commodity laboratory testing programs under the AMS Science Division was established by a final rule effective August 1993. In order to implement the new and revised regulations, AMS codified the Agency reorganization of analytical testing services under a separate rule by consolidating and transferring functions from other Title 7 CFR parts related to analytical testing services to the AMS Science Division. This interim final rule reduces laboratory testing fees for certain dairy products based on various factors such as a decrease in minimum test times for certain products from one-half hour to one-quarter hour, a decrease in expenditures for making some test preparations, and a decreased number of procedural steps required for performing certain laboratory analyses. This rule also establishes additional tests for dairy products for incorporation into existing schedules with a $34.20 hourly rate. In addition, this interim final rule makes several technical corrections and revisions.

DATES: This interim final rule is effective May 10, 1994; comments must be received on or before June 9, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to William J. Franks, Jr., Acting Director, Science Division, Agricultural Marketing Service, U. S. Department of Agriculture, P.O. Box 96456, room 3507 South Agriculture Building, Washington, DC 20090-6456. Facsimile (202) 720-6496.

Comments should reference the docket number and date and page numbers of this issue of the **Federal Register**. All written submissions pursuant to this rule will be made available for public inspection in the above office, between the hours of 9 a.m., and 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jon E. McNeal, Chief, Technical Services Branch, Science Division, Agricultural Marketing Service, U. S. Department of Agriculture, P.O. Box 96456, room 3517 South Agriculture Building, Washington, DC 20090-6456, Telephone (202) 720-2216.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866 and Executive Order 12778

The Department has determined that this rule is not significant for purposes of Executive Order 12866 and it therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (U.S.C. 601-612). The fees provided for in this rule reflect a minimal change in the costs currently borne by those entities which utilize certain laboratory services. The rule is designed to provide usual and reasonable fees for laboratory testing that are consistent with costs in time and resources to ensure adequate funding of the laboratory operations of the Science Division.

III. Background

On August 9, 1993, the agency reorganization of analytical testing under the Science Division and schedules of laboratory fees were published as a final rule in the **Federal Register** (58 FR 42408-42448) after receiving only one comment on the proposal. The fee schedules became effective immediately and were devised to have a single fee for the same test rather than assessing separate laboratory fees for different commodities and their products.

The dairy product laboratory fees for 35 tests or combination of tests that were listed in former regulations at 7 CFR 58.44 were increased by large percentages in the final rule. As a consequence, the dairy industry has complained that it is burdened with testing fees that cannot be assimilated into current purchasing contracts.

The single test laboratory fees for other commodity products did not change as significantly as test fees for dairy products. Prior to the final rule implementation, the dairy testing fees had been revised only slightly since the Dairy Division's rule in November 2, 1977 (42 FR 57301). The heavy volume of laboratory testing of dairy products in the early 1980's associated with Commodity Credit Corporation purchases diminished the need for periodic fee increases. However, the workload for laboratory testing of dairy products was reduced greatly beginning in 1986. In addition, the dairy testing fees were carried over and not revised from 1988 to 1993 while the Agency prepared a consolidated regulation for laboratory services within the Science Division and updated fees. Consequently, when the new fees were placed in effect, the dairy industry faced very substantial increases in testing fees. In response to the various objections generated among dairy processors and after further consideration of the matter, the agency temporarily restored the dairy testing fees to the applicable charges and hourly rate in effect on April 17, 1989.

In order to address the fee situation in a more coherent fashion, and to reduce costs to the industry, this interim rule readjusts fees, makes substitutions for certain tests, and contains other changes. Laboratory fees are established in a variety of ways in private and government laboratories. The readjustment of fees or substitutions for some analyses contained in the original fee schedules concerning 18 laboratory tests for dairy products were developed by reviewing and considering comparable available commercial laboratory fees. Most commercial laboratory lists of available laboratory analyses and corresponding fees for the tests are not designated with a specific commodity or product in mind.

IV. Change in Minimum Laboratory Fee

The minimum laboratory testing fee is being reduced from $17.10 to $8.55. The original minimum fee published on August 9, 1993, is based on current commodity product grading and inspection fees which specify a minimum one-half hour charge. However, some laboratory analyses applying to dairy product grading can be performed within a one-quarter hour and therefore would incur a corresponding $8.55 fee. The laboratory tests with a revised one-quarter hour charge are listed as follows: (1) titratable acidity, (2) density or specific gravity,

(3) scorched particles, and (4) net weight per can. Analysis time includes the allotted periods for sample tracking, reagent and standard solution preparation, sample preparation and laboratory bench analysis, cleanup, analytical result determination and interpretation with supervisory review, and the time for issuing a test report. The individual laboratory test fee determinations in this rule must necessarily include the length of time spent on tests performed for quality control, quality assurance, and proficiency testing.

V. Reduction in Dairy Testing Fees Based on Varying Complexity of Standard Analytical Methods for Different Commodities

The schedules of consolidated fees and charges for the single analyte testings were established in the rule published on August 9, 1993, based on the reasoning that there is, in general, comparable complexity of procedures and similar methodology for different commodities and their products. However, some standard methods or tests for the examination of dairy products have a dissimilar process for testing a given analyte, shorter procedures, decreased complexity of reagent and materials preparation, reduced analyst manipulations with samples and their derivatives, fewer measurements, and/or a lower degree of interpretation required. Consequently, these dairy tests are less complex and would justify a reduction of the fee. The laboratory fees for dairy products that are lowered in this interim final rule because the tests are less complex are as follows: (1) fat (dairy products), (2) salt titration, (3) peroxide value, (4) free fatty acid, (5) solubility index, (6) whey protein nitrogen, (7) vitamin A (dry milk products), (8) alkalinity of ash, (9) antibiotic, (10) complete Kohman, (11) direct microscopic clump count, (12) proteolytic count, (13) coliform, and (14) *Salmonella* Step 1.

The fee schedule in Table 1 of this rule has a fee of $17.10 or a one-half hour charge for fat in dairy products (except cheese) added to the schedule since the fat analysis requires only two extractions. Fat analysis of cheese requires three or more extractions and therefore is set at $25.65. Table 1 also has a one-half hour charge for the salt or chloride titration of dairy products, such as butter and cheese. This is a reduction from the three-quarter hour charge for other commodities. The salt analysis for cheese by the potentiometric method and the analysis for butter does not require a digestion step.

The fee for the peroxide value determination in Table 2 has been reduced from a one and one-half hour charge to a three-quarter hour charge. The fee for free fatty acid analysis has been reduced from a three-quarter hour to a one-half hour charge. The peroxide value and free fatty acid test fee revisions are based on time and motion studies of the average times required to perform the individual dairy tests that the fees prior to 1993 were based on, that is, 1 hour for the peroxide value test and 27 minutes for the free fatty acid test. The revised peroxide value and free fatty acid test fees would be applicable to all commodities. However, the more complex AOAC gas chromatographic (gc) method for the determination of fatty acid profile in Table 2 would require an increase in analyst time to 4 hours to perform.

The fee for the solubility index determination for dry milk products in Table 3 has been reduced from a three-quarter hour to a one-half hour charge. The method has relatively few manual procedures to follow with no reagents or standard solutions to prepare.

The fee for the determination of whey protein nitrogen (WPN) in milk products in Table 3 has been reduced from a two and one-half hour charge to a three-quarter hour charge. The fee of $85.50 for WPN was based on a different method and more elaborate manual procedures than are actually employed for official dairy testing. The original two and one-half hour charge was based on the consideration that undenatured whey protein could be determined from the Kjeldahl analysis of noncasein filtrate and of filtrate obtained by treating milk with trichloroacetic acid solution. However, the whey protein nitrogen content is determined routinely in a different manner by comparing the optical density of a properly prepared sample against a standard curve of low and high heat reference powders from the American Dairy Products Institute (Chicago, Illinois) with known WPN contents.

The fee for the determination of vitamin A in Table 3 has been reduced from a five hour charge to a two and one-half hour charge. The original 5 hour analyst time frame was based on the consideration that the vitamin A test has both unstable reagents and standard solutions. Examination of Science Division records has revealed that 1,262 vitamin A tests had been conducted during Fiscal Year 1993, which is a relatively frequent occurrence of testing for one analyte. Hence, considerable analyst time could be saved on an average test time per sample basis since identical reagents and the same vitamin A standard and carotene standard curves could be used for a batch run of samples. The fee for the vitamin A determination for nonfat and instant dry milks in Table 3 has been reduced further to a one and one-quarter hour charge since the Carr-Price method is used and this analysis does not require eliminating carotenoids by alumina column chromatography, as the vitamin A procedures for other commodities require.

The fee for the determination of alkalinity of ash of dairy products in Table 3 has been reduced from a four hour charge to a one and one-half hour charge. This test fee of $136.80 was set by considering the time spend to monitor the sample ashing process by muffle furnace. The alkalinity of ash test fee is lowered since the ignition of sample to constant weight at 550 °C in the furnace does not normally require continuous observation by the analyst. Hence the analyst is usually free to perform other laboratory analyses during the interim time.

The antibiotic test for dairy products, that is newly inserted in Table 3, is a qualitative test where a positive or a negative response indicates the presence or absence, respectively, of antibiotics and other inhibitory substances. When the original time of four hours was estimated for the antibiotic test, it was based on a quantitative type of analysis which involves extensive procedures to derive the identity of a specific antibiotic including subsequent steps to determine its exact concentration in a commodity product. Therefore, Table 3 has a half-hour charge for the qualitative test for antibiotics, which is now applicable to dairy products. Table 3 continues to have a four hour charge for the quantitative determination of antibiotics, which is now applicable to other commodity products.

The fee for the complete Kohman testing of dairy products in Table 4 has been reduced from a three hour charge to a one hour charge. The complete Kohman analysis involves determining fat, moisture, salt and curd components of the dairy product usually designated at a one hour, a one-half hour, a three-quarter hour and a three-quarter hour charge respectively. The original charge for the Kohman analysis was set as if the four tests were performed separately to determine the full composition of the dairy product and the analysis charge was established on a combination fee basis. However, the complete composition of the dairy product by Kohman testing is actually determined by a series of interrelated analyses. Furthermore, the percentage of curd does not involve a laboratory test with dairy products and it is obtained by the difference of 100 and the percentage sum total of moisture, fat, and salt.

The new three-quarter hour fee for direct microscopic clump count (DMCC) for dairy products in Table 5 covers the preparation of stained films of sample portions on a slide and the counting of bacterial organisms and clumps in six microscopic fields across the slide. Bacterial types in clusters or clumps, that is *Staphylococcus* spp. and *Micrococcus* spp., are counted as one bacterium. The bacterial direct microscopic count for other commodities is set at a slightly higher charge of one hour because the bacterial counting of stained sample films is done in an up and down fashion and a minimum of 20 microscopic fields are counted with up to 100 fields when a high quality product is tested.

The fee for the proteolytic count in Table 5 has been reduced from a one hour charge to a one-half hour charge. The proteolytic bacteria count analysis in cream or butter samples is rarely conducted. The fee in the rule published on August 9, 1993, was established by considering the extra time spent first to determine the specific identity of the proteolytic bacteria, such as *Pseudomonas* spp. However, the proteolytic bacteria count analysis requires making only a general differentiation and an enumeration based on the organism's ability to grow and to bring about the liquefaction of the milk curd. The proteolytic count is essentially an aerobic standard plate count, that has a one-half hour charge, with just one additional procedural step where the agar surface is flooded with an acid solution before counting.

The new one-half hour fee for coliform plate count analysis of dairy products in Table 5 is established separately from the three-quarter hour fee for coliform plate count analysis in other commodities. The dry rehydratable film method is used for the coliform analysis of dairy products. This method involves a considerable reduction in procedural steps and analyst time compared to the coliform plate count analysis associated with other commodities and their products. First, the violet red bile coliform count film plates come completely prepared from the manufacturer. For this reason, there is a time savings over the other coliform methods that involve the preparation and the tempering of Violet Red Bile (VRB) agar. In addition, the dry rehydratable film method for coliform bacteria does not require a media cover layer to be placed over the solidified VRB agar. Furthermore, the coliform organisms of dairy products are identifiable and confirmed on petrifilm coliform count plates with red colonies having gas bubbles trapped in the VRB agar. Accordingly, the additional use of brilliant green lactose bile broth is not needed to confirm the presence of coliforms with the dairy product coliform determination, as it is needed with the method for other products.

The new one hour fee for *Salmonella* step 1 analysis of dairy products in Table 5 is established separately from the one and one-half hour fee for *Salmonella* step 1 analysis in other commodities. The time savings for the *Salmonella* determination of dairy products results from the reduction of handling by the analyst and the decrease number of stages required for the sample pre-enrichment procedures. The dairy product serves as its own source of nutrients during the pre-enrichment process, so the dairy sample is weighed directly into a container of a sterile diluent. In contrast, other commodities need the preparation of sterile lactose broth or other nutrient broth for the *Salmonella* pre-enrichment process. Furthermore, other commodity product samples require a pH measurement and a pH adjustment of a sample with non-selective media mixture before incubation.

The revised schedule of fees has been tailored to more precisely reflect the costs of some of the laboratory services provided. The reduced costs and additional tests for dairy products are based on a re-evaluation of the dairy testing program and on an effort by the agency to charge fees which are lower but still attempt as nearly as practicable to cover the cost of the services provided.

VI. Additional Changes to the Final Rule

Since publication of the final rule, some other areas requiring correction or clarification have arisen. The August 9, 1993 final rule document 93–18212 beginning on page 42408 inadvertently had the wrong regulation identifier number (RIN) that was assigned by OMB. The document RIN 0581–AA51 is amended to RIN 0581–AA85.

Section 58.101 of 7 CFR part 58 should not have been amended in the final rule. In addition, the rule removed paragraph e(5)(ii) of § 58.126 of part 58 that should have been retained and revised. The corrections are needed in this interim final rule to return the authority for the supervision of the existing dairy plant laboratories to the Dairy Resident Graders. The AMS Science Division provides independent auditing of laboratory analysis function for the AMS Dairy Division.

Sections of 7 CFR parts 91, 93, 94 and 98 are corrected to provide an updated listing of Science Division addresses for offices and laboratories.

The definition of "complete Kohman analysis" is amended in § 95.2 to indicate that the full composition analysis of butter and margarine also includes the curd determination. Furthermore, the complete Kohman analysis determines the fat, moisture, salt and curd of the butter and margarine with a series of interrelated analyses.

VII. Interim Final Rule Justification

Pursuant to 5 U.S.C. 553, it is found and determined, upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The AMS Science Division needs to have sufficient funds to pay its dairy product laboratory operating expenses which are incurred on a continuous basis.

(2) The dairy industry is aware of this action. Furthermore, the dairy producers desire an expeditious answer concerning the extent of the reduction of the Division's dairy testing fees. They need to formulate their budgets early during the start of the 1994 calendar year and make decisions where their laboratory testing service needs could best be met.

(3) The dairy processors need laboratory cost information in order to offer their bids to the Kansas City Commodity Office of the Agricultural Stabilization and Conservation Service prior to receiving consideration to process Commodity Credit Corporation-owned bulk dairy goods before the next shipping cycle, July 1, through December 31, 1994.

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

Lists of Subjects

7 CFR Part 58

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Fees and charges, Laboratories.

7 CFR Part 93

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetable.

7 CFR Part 94

Eggs and egg products, Laboratories, Poultry and poultry products.

7 CFR Part 95

Dairy products, Laboratories, Milk.

7 CFR Part 98

Meat and meat products, Laboratories.

For the reasons set forth in the preamble, AMS amends 7 CFR parts 58, 91, 93, 94, 95 and 98 as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

§ 58.101 [Amended]

2. In section 58.101, paragraph (c) is amended by removing "the AMS Science Division Director" (the first time it appears) and adding in its place "the Administrator".

3. Section 58.126 is amended by redesignating paragraph (e)(5)(ii) as paragraph (e)(5)(iii) and adding a new paragraph (e)(5)(ii) to read as follows:

§ 58.126 Buildings.

* * * * *

(e) * * *

(5) * * *

(ii) Approved laboratories shall be supervised by the USDA resident inspector in all aspects of official testing and reporting results. Plant laboratory personnel in such plants may be licensed by the USDA to perform official duties. The AMS Science Division will provide independent auditing of laboratory analysis functions.

* * * * *

PART 91—SERVICES AND GENERAL INFORMATION

1. The authority citation for part 91 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. In § 91.5, paragraph (a)(1)(ii) is revised to read as set forth below.

3. In § 91.5, paragraph (a)(2)(i) is revised to read as set forth below.

4. In § 91.5, paragraph (a)(2)(iii) is revised to read as set forth below.

5. In section 91.5, paragraph (a)(3) is amended by removing "Science Division Citrus Laboratory, 111 Third Street, SW., suite 211, Winter Haven, FL 33880" and adding in its place "Science Division Citrus Laboratory, 98 Third Street, SW, Winter Haven, FL 33880".

6. In section 91.5, paragraph (b) is amended by removing "Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC 20090–6456" and adding in its place "Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC 20090–6456".

§ 91.5 Where Services are offered.

(a) * * *

(1) * * *

(ii) USDA, AMS, SD, Eastern Laboratory, 2311–B Aberdeen Boulevard, Gastonia, NC 28054.

(2) * * *

(i) USDA, AMS, SD, 3119 Wesley Way, suite 6, Dothan, AL 36301, Mail: P.O. Box 1368, Dothan, AL 36302.

* * * * *

(iii) USDA, AMS, SD, 1211 Schley Avenue, Albany, GA 31707.

* * * * *

7. In section 91.37, paragraph (a) introductory text is amended by removing "one-half hour" in the sixth sentence and adding in its place "one-quarter hour".

8. In § 91.37, paragraph (a), Tables 1, 2, 3, 4 and 5 are revised to read as follows:

§ 91.37 Fees for laboratory testing, analysis, and other services.

(a) * * *

General Schedules of Fees for Official Laboratory Test Services Performed at the AMS Science Division Laboratories for Processed Commodity Products

TABLE 1.—SINGLE TEST TIMES AND LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	Hours for single test	List fee
Ammonia, Ion Selective Electrode	2.25	$76.95
Ash, Total	1	34.20
Ash, Acid Insoluble	1.5	51.30
Chloride, Salt Titration (Dairy)	0.5	17.10
Fat, Acid Hydrolysis	1	34.20
Fat (Cheese and Related Products)	0.75	25.65
Fat (Dairy Products except Cheese)	0.5	17.10
Fat, Ether Extraction	1	34.20
Fat, Microwave—Solvent Extraction	1	34.20
Fat, Specific Gravity	1	34.20
Fiber, Crude	2	68.40
Moisture, Distillation	1	34.20
Moisture, Karl Fischer	1.5	51.30
Moisture, Oven	0.5	17.10
Protein, Kjeldahl	2	68.40
Salt, Back Titration	0.75	25.65
Salt, Potentiometric	0.5	17.10

TABLE 2.—SINGLE TEST TIMES AND LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of Analysis	Hours for single test	List fee
Acid Degree Value (Dairy)	1	$34.20
Acidity, Titratable	0.25	8.55
Carotene, Spectrophotometric	2.5	85.50
Catalase Test	0.5	17.10
Cholesterol[1]	5	171.00
Color (Honey)	0.5	17.10
Color, NEPA (Eggs)	1	34.20
Consistency, Bostwick (Cooked)	0.5	17.10
Consistency, Bostwick (Uncooked)	0.5	17.10
Density (Specific Gravity)	0.25	8.55
Dispersibility (Moates-Dabbah Method)	0.5	17.10
Fat Stability,[2] AOM	1	34.20
Fatty Acid Profile (AOAC–GC method)	4	136.80
Flash Point Test only	2	68.40
Free fatty acids	0.5	17.10
Meltability (Process Cheese)	0.5	17.10
Peroxidase Test	0.5	17.10
Peroxide Value	0.75	25.65
Smoke Point Test only	2	68.40
Smoke Point and Flash Point	3.5	119.70
Solids, Total (Oven Drying)	0.5	17.10
Soluble Solids, Refractometer	0.5	17.10

[1] Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test.

[2] Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

Type of analysis	Hours for single test	List fee
Aflatoxin, (Dairy, Eggs)	3.5	$119.70
Alar or Daminozide Residue	6	205.20
Amitraz Residue, GLC	6	205.20
Alcohol (Qualitative)	2	68.40
Alkalinity of Ash	1.5	51.30
Antibiotic, Qualitative[1] (Dairy)	0.5	17.10
Antibiotic, Quantitative	4	136.80
Ascorbates (Qualitative—Meats)	0.5	17.10
Ascorbic Acid, Titration	1	34.20
Ascorbic Acid, Spectrophotometric	1	34.20
Benzene, Residual	2	68.40
Brix, Direct Percent Sucrose	0.5	17.10
Brix, Dilution	0.5	17.10
Butylated Hydroxyanisole (BHA)	1.5	51.30
Butylated Hydroxytoluene (BHT)	1.5	51.30
Caffeine, Micro Bailey-Andrew	1.5	51.30
Caffeine, Spectrophotometric	1	34.20
Calcium	1.5	51.30
Citric Acid, GLC or HPLC	1.5	51.30
Chlorinated Hydrocarbons:		
Pesticides and Industrial Chemicals—		
Initial Screen	4	136.80
Second Column Confirmation of Analyte	1	34.20
Confirmation on Mass Spectrometer	2	68.40
Dextrin (Qualitative)	0.5	17.10
Dextrin (Quantitative)	3	102.60
Filth, Heavy (Dairy)	2.5	85.50
Filth, Heavy (Eggs)	4	136.80
Filth, Light (Eggs)	2.5	85.50
Filth, Light and Heavy (Eggs Extraneous)	6	205.20
Flavor	0.75	25.65
Fumigants:		
Initial Screen—		
Dibromochloropropane (DBCP)	1	34.20
Ethylene Dibromide	1	34.20
Methyl Bromide	1	34.20
Confirmation on Mass Spectrometer—Each individual fumigant residue	2	68.40
Glucose (Qualitative)	0.75	25.65
Glucose (Quantitative)	1.75	59.85
Glycerol (Quantitative)	3	102.60

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	Hours for single test	List fee
Gums	3	102.60
High Sucrose Content or Avasucrol—Percent Sucrose (Holland Eggs)	4	136.80
Hydrogen Ion Activity, pH	0.5	17.10
Mercury, Cold Vapor AA	2.5	85.50
Metals—Other Than Mercury, Each Metal	2	68.40
Monosodium Dihydrogen Phosphate	4	136.80
Monosodium Glutamate	4	136.80
Nitrites (Qualitative)	0.5	17.10
Nitrites (Quantitative)	3	102.60
Oxygen	0.5	17.10
Palatability and Odor:		
First Sample	0.75	25.65
Each Additional Sample	0.5	17.10
Phosphatase, Residual	1	34.20
Phosphorus	2	68.40
Propylene Glycol, Codistillation: (Qualitative)	2	68.40
Pyrethrin Residue (Dairy)	4	136.80
Scorched Particles	0.25	8.55
Sodium, Potentiometric	1	34.20
Sodium Benzoate, HPLC	1.5	51.30
Sodium Lauryl Sulfate (SLS)	8	273.60
Sodium Silicoaluminate (Zeolex)	2	68.40
Solubility Index	0.5	17.10
Starch, Direct Acid Hydrolysis	3	102.60
Sugar, Polarimetric Methods	1	34.20
Sugar Profile, HPLC—This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose:		
One type sugar from HPLC profile	3	102.60
Each additional type sugar	0.5	17.10
Sugars, Non-Reducing	3	102.60
Sugars, Total as Invert	2	68.40
Sulfites (Qualitative)	0.75	25.65
Sulfur Dioxide, Direct Titration	1	34.20
Sulfur Dioxide, Monier-Williams	1.5	51.30
Toluene, Residual	2	68.40
Triethyl Citrate, GC (Quantitative)	1	34.20
Vitamin A	2.5	85.50
Vitamin A, Carr-Price (Dry Milk)	1.25	42.75
Vitamin D, HPLC (Vitamins D_2 and D_3)	8.5	290.70
Whey Protein Nitrogen	0.75	25.65
Xanthydrol Test For Urea	1.5	51.30

This is an optional test to the extraneous materials isolation test.

[1] Disc Assay Method.

TABLE 4.—SINGLE TEST TIMES AND LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	Hours for single test	List fee
Available Carbon Dioxide (Baking Powders)	[illegible]	$136.80
Complete Kohman Analysis (Dairy)	1	34.20
Jelly Strength (Bloom)	2.5	85.50
Methyl Anthranilate	1	34.20
Grape Juice Absorbency Ratio	0.5	17.10
Net Weight (Per Can)	0.25	8.55
Non-Volatile Methylene Chloride Extract	2.5	85.50
Particle Size (Ether Wash)	0.5	17.10
Potassium Iodide (Table Salt)	1.5	51.30
Quinic Acid (Cranberry Juice)	1.75	59.85
Sieve or Particle Size	0.5	17.10
Water Activity	4	136.80
Water Insoluble Inorganic Residues (WIIR)	2	68.40
Yellow Onion Test	0.75	25.65

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	Hours for single test	List fee
Aerobic (Standard) Plate Count	0.5	$17.10

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

Type of analysis	Hours for single test	List fee
Anaerobic Bacterial Plate Count	0.75	25.65
Bacterial Direct Microscopic Count	1	34.20
Campylobacter jejuni	4	136.80
Coliform Plate Count (Dairy Products)	0.5	17.10
Coliform Plate Count, Violet Red Bile Agar: (Presumptive Coliform Plate Count)	0.75	25.65
Coliforms, Most Probable Number (MPN):[1]		
Step 1	0.75	25.65
Step 2	0.75	25.65
Direct Microscopic Clump Count, DMCC	0.75	25.65
E. coli, Presumptive MPN (Additional Fee)[2]	1.5	51.30
Enterococci Count	3	102.60
Listeria monocytogenes confirmation analysis:[3]		
Step 1	1.5	51.30
Step 2	1.5	51.30
Step 3 (Confirmation)	2.5	85.50
Proteolytic Count (Dairy)	0.5	17.10
Psychrotrophic Bacterial Plate Count	0.75	25.65
Salmonella (USDA Culture Method):[4]		
Step 1 (Dairy Products)	1	34.20
Step 1	1.5	51.30
Step 2	0.75	25.65
Step 3 (Confirmation)	1.5	51.30
Serological Typing (Optional)	2.5	85.50
Salmonella (Rapid Methods):[5]		
Step 1	2	68.40
Step 2	0.75	25.65
Step 3 (Confirmation)	1.5	51.30
Staphylococcus aureus, MPN: With Coagulase Positive Confirmation	1.75	59.85
Thermoduric Bacterial Plate Count	0.75	25.65
Yeast and Mold Count	0.5	17.10
Yeast and Mold Differential Plate Count	0.75	25.65

[1] Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E.* coli test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E.* coli from inoculated and incubated EC broth (*Escherichia* coli broth). The *E.* coli test is performed through growth on eosin methylene blue agar. The fee stated for *E.* coli analysis is a supplementary charge to step 1 of coliform test.

[3] *Listeria* monocytogenes test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical medias, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

Listeria monocytogenes test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical medias, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.

[4] *Salmonella* test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums. The serological typing of *Salmonella* is requested on occasion.

[5] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and Elisa test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums.

* * * * *

PART 93—PROCESSED FRUITS AND VEGETABLES

1. The authority citation for part 93 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

§ 93.3 [Amended]

2. In § 93.3, paragraph (a) is amended by removing "Science Division Citrus Laboratory, 111 Third Street, SW, suite 211, Winter Haven, FL 33880" and adding in its place "Science Division Citrus Laboratory, 98 Third Street, SW, Winter Haven, FL 33880".

3. In § 93.102, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 93.102 Analyses available and locations of laboratories.

(a) * * *

(1) USDA, AMS, SD, 3119 Wesley Way, suite 6, Dothan, AL 36301, Mail: P.O. Box 1368, Dothan, AL 36302.

(2) USDA, AMS, SD, 1211 Schley Avenue, Albany, GA 31707.

* * * * *

PART 94—POULTRY AND EGG PRODUCTS

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056), Agricultural Marketing Act of 1946, secs. 202–208 as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

§ 94.3 [Amended]

2. In section 94.3, paragraph (e) is amended by removing "USDA, AMS, Science Division, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054" and adding in its place "USDA, AMS, Science Division, Eastern Laboratory, 2311–B Aberdeen Boulevard, Gastonia, NC 28054".

PART 95—PROCESSED DAIRY PRODUCTS

1. The authority citation for part 95 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

§ 95.2 [Amended]

2. In section 95.2, the definition for "Complete Kohman analysis" is revised to read as follows:

§ 95.2 Definitions.

* * * * *

Complete Kohman analysis. Full composition analysis used for moisture, fat, salt, and curd determinations in butter and margarine. A weighed portion is heated to drive off the moisture and then reweighed to determine the moisture content. The fat is extracted using ether, and the remaining solids are weighed to determine fat content. The solids are then dissolved, and the salt content is determined by titration with standard silver nitrate solution. The percentage of curd is obtained by the difference of 100 and the percentage sum total of moisture, fat, and salt.

* * * * *

PART 98—MEALS, READY-TO-EAT (MRE's), MEATS, AND MEAT PRODUCTS

1. The authority citation for part 98 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. In § 98.3, paragraph (b)(3) is revised to read as follows:

§ 98.3 Analyses performed and locations of laboratories.

* * * * *

(b) * * *

(3) USDA, AMS, SD, Eastern Laboratory, 2311–B Aberdeen Boulevard, Gastonia, NC 28054.

Dated: May 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–11167 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–02–U

Tuesday
May 10, 1994

Part IX

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research, Technology-Related Assistance to Individuals With Disabilities Program for Fiscal Year 1994 and 1995, Applications for New Awards; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.224]

National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards for State Grants Under the Technology-Related Assistance to Individuals With Disabilities Program for Fiscal Year 1994

Purpose: The purpose of the State grants for technology-related assistance program is to assist States to develop and implement comprehensive statewide systems of consumer-responsive technology-related services for individuals With disabilities. NIDRR has conducted prior competitions under this program and 51 States and one territory have received grants. NIDRR is now inviting applications from the remaining State and territories. In preparing their applications, applicants are advised to respond to the statutory provisions of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended by Public Law 103–218, and the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994.

Eligible Applicants: Entities or individuals designated by the Governor as the lead agency under section 102(d)(1) of the Act are eligible to apply, provided they have not previously received a grant under this program. This applies to the State of Arizona and to four territories: Guam, Virgin Islands, Republic of Palau, and the Commonwealth of Northern Mariana Islands.

Deadline for Transmittal of Applications: June 24, 1994.

Deadline for Intergovernmental Review: August 24, 1994.

Applications Available: May 16, 1994.

Available Funds: $1,100,000.

Estimated Average Size of Awards: $500,000 per State; $150,000 per territory.

Estimated Number of Awards: 5.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Development awards are made for a period of three years; at the end of the three years, grantees that can demonstrate significant progress may apply for an initial extension grant of two years and a second extension grant of up to five years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75 (except § 75.618), 77, 79, 80 (except §§ 80.32(a) and 80.33(a)), 81, 82, 85, and 86. In addition, statutory provisions of Pub. L. 100–407, the Technology-Related Assistance for Individuals With Disabilities Act of 1988 as amended by Pub. L. 103–218, and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994, apply to this program.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen additional points are added to this criterion for a possible total of 30 points.

For Further Information Contact: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–5666. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5479.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED BOARD), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

For Applications Contact: Dianne Villines, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–9141.

Program Authority: 29 U.S.C. 2211–2271.

Dated: May 4, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–11287 Filed 5–9–94; 8:45 am]

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federal register

Tuesday
May 10, 1994

Part X

Environmental Protection Agency

40 CFR Parts 52 and 81
Air Quality Implementation Plans, CA;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL–4884–1]

Approval and Promulgation of Federal Implementation Plans; California—Sacramento and Ventura Ozone; South Coast Ozone and Carbon Monoxide; Sacramento Ozone Area Reclassification

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rulemaking; notice of hearing.

SUMMARY: EPA is making technical corrections to proposed federal implementation plans (FIPs) to attain the national ambient air quality standards (NAAQS) for ozone in the Sacramento and Ventura nonattainment areas, and for ozone and carbon monoxide in the South Coast nonattainment area. The corrections relate to the proposed "cap rules" for stationary and area sources and the Parking Cash Out program. EPA is also establishing FIP public hearing dates and locations in the three affected areas.

DATES: The deadline for written comments is August 31, 1994.

Public hearings will be held on July 18, July 20, and July 25, 1994, at 10 a.m. The Supplementary Information portion of this notice provides additional information on the public hearing.

ADDRESSES: Public hearings will be held in the South Coast, Ventura, and Sacramento, CA. See Supplementary Information.

Written comments on the proposed FIP and SIP promulgations must be received by EPA at the address below on or before the close of the public comment period. Comments should be submitted (in duplicate, if possible) to: EPA Air Docket Section, Attn: Docket No. A–94–09, Environmental Protection Agency (Mail Code—6102), Waterside Mall, Room M–1500, 401 M Street, S.W., Washington, DC 20460, (phone 202–260–7549).

Docket No. A–94–09, containing material relevant to this NPRM, is located at the above address. The docket is available for public inspection between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m. EPA may charge a reasonable fee for copying.

A copy of the docket is also available for review at: Regional Administrator, Attention: Office of Federal Planning (A–1–2), Air and Toxics Division, Environmental Protection Agency, Region, IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Interested persons may make an appointment with Ms. Virginia Petersen at (415) 774–1265, to inspect the docket of EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Copies of this NPRM, the technical support document, and the regulatory impact analysis, are also available for review at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California
Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, California
Sacramento Area Council of Governments, 3000 S Street, Suite 300, Sacramento, California
El Dorado County Air Pollution Control District, 2850 Fair Lane Court, Bldg. C, Placerville, California
Feather River Air Quality Management District, 463 Palora Avenue, Yuba City, California
Placer County Air Pollution Control District, 11464 B Avenue, Auburn, California
Yolo-Solano County Air Pollution Control District, 1947 Galileo Court, Suite 103, Davis, California
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California
South Coast Air Quality Management District, Colton Office, 851 S. Mt. Vernon Avenue, Colton, California
Southern California Association of Governments, 818 W. 7th Street, Los Angeles, California
Southern California Association of Governments, Inland Empire Office, 3600 Lime Street, Riverside, California
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, California

Electronic Availability

This document is available May 10, 1994 as an electronic file on EPA's Technology Transfer Network (TTN). For 1200 bps or 2400 bps modems, use 919–541–5742; for 9600 bps use 919–541–1447. The FIP NPRM is under the Clean Air Act Amendments (CAAA) board, in a section for "Recently Signed Rules." users should check the initial CAAA announcement screen for updates on file availability. Because of its size, the FIP NPRM is divided into several pieces, and stored in the compressed "ZIP" archive format. The file name for this notice is "CALFIP12.ZIP". If you need help in accessing the system, call the systems operator by phone at (919) 541–5384 in Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT:

For information on the California FIPs generally, the public hearing, and the "cap rules," call EPA's FIP Hotline (415) 744–1151, or Julia Barrow (415) 744–2434, at the Office of Federal Planning (A–1–2), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105–3901

For information on the Parking Cash Out program, call Jon Kessler, (202 260–3761, at the Office of Policy, Planning and Evaluation, U.S. EPA, 401 M Street, SW, Washington, DC 20460, EPA's FIP Hotline (313) 668–4361, or Jane Armstrong (313) 668–4471, at the EPA Office of Mobile Sources, Motor Vehicle and Fuels Emissions Laboratory 2565 Plymouth Road, Ann Arbor, Michigan, 48105

SUPPLEMENTARY INFORMATION:

I. Public Meetings

EPA will hold a public hearing in the South Coast at 10 a.m. on July 18, 1994, at the auditorium of the South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California; in Ventura at 10:00 a.m. on July 20, 1994, at the Ventura County Hall of Administration Building, Lower Plaza Assembly Room, 800 S. Victoria Avenue, Ventura, California; and in Sacramento at 10 a.m. on July 25, 1994, at the PERS Building, 400 P Street, Sacramento, California. In order to be considered for the final promulgation, public comments must be submitted orally at the public hearing or in writing to the Agency on or before August 31, 1994. Commenters may provide testimony on any part of the FIPs at any one of the hearing locations. Commenters need only testify at one of the hearing locations (e.g., it is sufficient to testify on the Sacramento FIP at the South Coast location).

Each of the three public hearing days will be conducted in three sessions beginning at 10:00 a.m., 2:00 p.m., and 7:00 p.m., with a lunch recess before the 2:00 p.m. and a dinner recess before the 7:00 p.m. sessions. Depending on the number of requests to testify, the hearing officer may impose a time limit of 5 to 10 minutes per commenter. Commenters are urged to bring a copy (multiple copies, if possible) of their full testimony for the hearing officer.

II. "Cap Rules"

EPA's proposed ozone FIPs for the Sacramento, Ventura, and South Coast areas of California include "cap rules" for certain stationary and area source categories. Cap rules to achieve reductions in volatile organic compounds (VOCs) are proposed for each area, and a cap rule for nitrogen oxides (NO_x) is proposed for Ventura.

See proposed rules 40 CFR 52.2952 (Sacramento VOC cap rule), 40 CFR 52.2953 (Ventura VOC cap rule), 40 CFR 52.2954 (South Coast VOC cap rule), and 40 CFR 52.2955 (Ventura NO_x cap rule).

The preamble discussion of these rules, in section III.C.5. of the NPRM, indicates that facilities with emissions equal to or greater than 2 tons per year will be subject to the exemption verification reporting requirements of the proposed rule, while facilities with emissions equal to or greater than 4 tons per year would be subject to the annual emission reduction requirements.

The proposed rules, however, mistakenly indicate that the reporting requirements apply to facilities with emissions greater than or equal to 4.5 kg (10 lbs) per day, and that the reduction requirements apply to facilities with emissions greater than or equal to 6.8 kg (15 lbs) per day.

Accordingly, in this notice EPA proposes to correct the applicability levels throughout the proposed VOC and NO_x cap rules, to make the rules consistent with EPA's intention, as reflected in the preamble to the NPRM. EPA proposes the following emendations to proposed 40 CFR 52.2952, 40 CFR 52.2953, 40 CFR 52.2954, and 40 CFR 52.2955:

The phrase "greater than or equal to 6.8 kg (15 lbs) during any one day" is revised to read as follows: "greater than or equal to 4 tons during any one year."

The phrase "less than 6.8 kg (15 lbs) during any one day, but greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read as follows: "less than 4 tons during any one year, but greater than or equal to 2 tons during any one year."

The phrase "greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read as follows: "greater than or equal to 2 tons during any one year."

In addition, the proposed NO_x cap rule for Ventura includes an incorrect reference to applicable quality assurance and quality control requirements for continuous emissions monitoring systems (CEMS). The first sentence of § 52.2955(a)(4)(i) is revised to read as follows: "Major sources as defined under the Clean Air Act shall install CEMS that meet the quality assurance and quality control requirements of appendix B of part 75 of this chapter."

III. Parking Cash Out

The proposed California FIPs also include a Parking Cash Out program, which is discussed in section III.D.2.g. of the preamble to the proposed rulemaking. The discussion below provides a corrected description of, and supplementary information on, the proposed Parking Cash Out program.

Parking Cash Out aims to reduce the incentive to drive to work via single-occupant mode that results when employers offer their employees free parking without other commute benefit options. A Parking Cash Out program gives employees the power to choose the form of their commute benefits. Under such a program, an employer who offers parking benefits would also offer the option of a cash allowance equal in value to the cost of the parking. Employers who offer Parking Cash Out give employees who rideshire or leave the car at home a powerful financial reward. By shifting dollars from parking to paychecks, a well designed Parking Cash Out program can produce emissions reductions without significant employer costs or new administrative burdens. And Parking Cash Out will assist employers in complying with the Employee Commute Option (ECO) programs in each of the FIP areas.

As part of his Climate Change Action Plan, President Clinton is proposing a change in the tax law to encourage employers who offer tax-exempt parking subsidies to their employees to offer a Parking Cash Out alternative. The goal of the FIP language is to incorporate Parking Cash Out for the FIP areas in a manner consistent with EPA authority. The FIP does not include a modification of the tax code, but merely aims to take credit for expected implementation of the President's proposal. It is expected that the President's Parking Cash Out legislative proposal will be acted on in the current session of Congress, that implementation will begin with the 1995 tax year.

Under the President's proposal, employers will for the first time be allowed to offer compensation and financial incentives such as cash and transit passes (Cash Out programs) as an option to tax-exempt parking benefits. Current law does not allow employers to offer Cash Out programs in lieu of tax-exempt parking benefits. This new flexibility will apply to all employers, regardless of the type of value of parking benefits offered.

Also, under the President's proposal, employers in certain circumstances will be required to offer a Cash Out program as an option to tax-exempt parking subsidies. As described in the Climate Change Action Plan, this Cash Out requirement will apply to employers who offer tax-exempt parking subsidies to their employees in the following circumstances.

It will apply to parking spaces currently leased by employers from a third party for which the lease allows a reduction in the number of spaces without penalty. It will also apply to all parking subject to new lease agreements made after the date of implementation.

The program will not apply to employer-owned parking, parking provided by firms with fewer than 25 employees, or parking spaces valued below a *de minimis* threshold. These exemptions ensure that the Cash Out requirement apples only where employers can easily shift expenditures from parking to paychecks. However, all employers will for the first time be allowed to offer Parking Cash Out options to tax-exempt parking benefits without incurring tax penalties. EPA will actively encourage employers in the FIP areas, even those exempt from the Cash Out requirement, to begin offering Cash Out programs.

The President's proposal also clarifies the tax status of parking and other commute benefits under a Cash Out program. Employees who opt for parking spaces will be unaffected by the change. Their parking will remain tax-exempt. Those employees who opt for cash may receive it as additional income, which is taxable, or as a transit pass, which is tax-free up to $60 per month.[1] Employers may withhold from the Cash Out offer a percentage sufficient to cover payroll taxes on cash taken and may deduct from corporate taxes the cost of parking and of a Cash Out program.

In the FIP areas, the President's proposal builds on and in many ways enhances the State of California's Cash Out program (referred to as AB 2109), which is administered by the California Air Resources Board. Begun in 1992, the California program requires a limited number of employers to offer a Parking Cash Out alternative to subsidized employee parking. AB 2109 also encourages local agencies to remove zoning requirements that force developers to build more parking than is necessary. The President's proposal eliminates a major impediment to the timely implementation of AB 2109—the federal tax penalties incurred by employers who implement Parking Cash Out programs under current tax law. Current law does not allow employers to offer Cash Out programs in lieu of tax-exempt parking benefits. As such, parking accompanied by Cash Out is disqualified from the existing income tax exemption for employer-provided parking. California employers surveyed by EPA and by other organizations cite this as a barrier to low cost implementation of Parking Cash Out. The President's proposal would eliminate the tax penalties incurred by employers who offer Cash Out by allowing Cash Out as an option to tax-exempt parking subsidies.

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[1] Cash taken as part of a Parking Cash Out program is subject to federal taxes calculated on the basis of gross income, such as FICA. However, California state law exempts Cash Out payments from State income tax.

Questions on the President's Parking Cash Out proposal should be directed to Jon Kessler of EPA's Office of Policy, Planning and Evaluation at (202) 260–3761.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: May 4, 1994.

Carol M. Browner,

Administrator.

Accordingly, part 52 of title 40 of the Code of Federal Regulations as proposed in the **Federal Register** ext 59 FR 23264 is proposed to be further amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—California Federal Implementation Plans

2. In §§ 52.2952, 52.2953, 52.2954, and 52.2955, the phrase "greater than or equal to 6.8 kg (15 lbs) during any one day" is revised to read "greater than or equal to 4 tons during any one year" everywhere it appears.

3. In §§ 52.2952, 52.2953, 52.2954, and 52.2955, the phrase "less than 6.8 kg (15 lbs) during any one day, but greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read "less than 4 tons during any one year, but greater than or equal to 2 tons during any one year" everywhere it appears.

4. In §§ 52.2952, 52.2953, 52.2954, and 52.2955, the phrase "greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read "greater than or equal to 2 tons during any one year" everywhere it appears.

5. The first sentence of paragraph 52.2955(a)(4)(i) is revised to read "Major sources as defined under the Clean Air Act shall install CEMS that meet the quality assurance and quality control requirements of appendix B of part 75 of this chapter."

[FR Doc. 94–11399 Filed 5–9–94; 8:45 am]

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federal register

Tuesday
May 10, 1994

Part XI

The President

Proclamation 6684—National Walking Week, 1994

Proclamation 6685—Suspension of Entry of Haitians Barred From U.S. by U.N. Security Council Resolution 917 or Who Seek To Impede the Return of Democracy in Haiti

Executive Order 12914—Prohibiting Certain Transactions With Respect to Haiti

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

Presidential Documents

Title 3—

The President

Proclamation 6684 of May 6, 1994

National Walking Week, 1994

By the President of the United States of America

A Proclamation

We should all be aware of the benefits of regular physical activity; it can improve our energy levels while we expend calories. It can be as simple to incorporate into our daily lives as taking the stairs instead of the elevator, walking an extra block instead of riding, or taking a walk after a meal instead of taking a nap. Regular physical exercise can help to prevent and manage coronary heart disease, hypertension, noninsulin-dependent diabetes, osteoporosis, and mental health problems, such as depression and anxiety. And regular physical activity has been associated with lower rates of colon cancer and incidence of stroke.

Walking is an excellent form of light to moderate physical activity for most people. Walking for at least 30 minutes each day is a simple and inexpensive, yet very healthful, thing to do. It is a key element in Healthy People 2000, the Nation's prevention agenda, which envisions a healthier America by the year 2000. An increase in this important, positive health-related exercise can have a significant effect on the enhanced quality and life span of those who practice it. It is an invigorating form of self-care that can contribute to the reduction of preventable death, disease, and disability and to the containment of health care costs. It also provides a time for reflection and stress reduction.

Efforts to communicate with the American people about the health benefits of regular walking and to improve environments that make walking pleasurable and safe deserve the support of policy makers, legislators, and citizens throughout the country.

The Congress, by Senate Joint Resolution 146, has designated May 1, 1994, through May 7, 1994, as "National Walking Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1994, through May 7, 1994, as National Walking Week. I invite the Governors of the 50 States and the appropriate officials of all other areas under the jurisdiction of the United States to issue similar proclamations. I also encourage the American people to join with health and recreation professionals, private voluntary associations, and other concerned organizations in observing this occasion with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-11544
Filed 5-9-94; 12:08 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6685 of May 7, 1994

Suspension of Entry of Aliens Whose Entry is Barred Under United Nations Security Council Resolution 917 or Who Formulate, Implement, or Benefit from Policies that are Impeding the Negotiations Seeking the Return to Constitutional Rule in Haiti

By the President of the United States of America

A Proclamation

In light of the political crisis in Haiti resulting from the expulsion from Haiti of President Aristide and the constitutional government, United Nations Security Council Resolution 917, and the overriding interest of the United States in the restoration of democracy to Haiti, I have determined that it is in the interests of the United States to restrict the entry to the United States of: (1) all aliens described in paragraph 3 of United Nations Security Council Resolution 917; and (2) all other aliens who formulate, implement, or benefit from policies that impede the progress of the negotiations designed to restore constitutional government to Haiti and their immediate families.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the powers vested in me as President by the Constitution and laws of the United States of America, including sections 212(f) and 215 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f) and 1185), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens described in sections 1 and 2 of this proclamation would, except as provided for in sections 3 and 4 of this proclamation, be detrimental to the interests of the United States. I do therefore proclaim that:

Section 1. The immigrant and nonimmigrant entry into the United States of aliens described in paragraph 3 of United Nations Security Council Resolution 917 is hereby suspended. These aliens are:

(a) all officers of the Haitian military, including the police, and their immediate families;

(b) the major participants in the coup d'état of 1991 and in the illegal governments since the coup d'état, and their immediate families; and

(c) those employed by or acting on behalf of the Haitian military, and their immediate families.

Sec. 2. The immigrant and nonimmigrant entry into the United States of aliens who are not covered by section 1, but who nonetheless formulate, implement, or benefit from policies that impede the progress of the negotiations designed to restore constitutional government to Haiti, and their immediate families, is hereby suspended.

Sec. 3. Section 1 shall not apply with respect to any alien otherwise covered by section 1 where the entry of such alien has been approved as prescribed by paragraph 3 of United Nations Security Council Resolution 917.

Sec. 4. Section 2 shall not apply with respect to any alien otherwise covered by section 2 where the entry of such alien would not be contrary to the interests of the United States.

Sec. 5. Aliens covered by sections 1 through 4 shall be identified pursuant to procedures established by the Secretary of State, as authorized in section 8 below.

Sec. 6. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 7. This proclamation shall take effect at 11:59 p.m., eastern daylight time on May 8, 1994, and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

Sec. 8. The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures the Secretary may establish.

Sec. 9. Proclamation No. 6569 of June 3, 1993, is hereby revoked.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–11545
Filed 5–9–94; 12:09 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 12914 of May 7, 1994

Prohibiting Certain Transactions With Respect to Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 917 of May 6, 1994, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775, it is hereby ordered as follows:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses, which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all funds and financial resources of:

(a) all officers of the Haitian military, including the police, and their immediate families;

(b) the major participants in the coup d'état in Haiti of 1991 and in the illegal governments since the coup d'état, and their immediate families; and

(c) those employed by or acting on behalf of the Haitian military, and their immediate families; that are or hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, authorizations, or licenses that may hereafter be issued pursuant to this order: (a) the granting of permission to any aircraft to take off from, land in, or overfly the territory of the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from the territory of Haiti, with the exception of regularly scheduled commercial passenger flights; (b) any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. The definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the effective date of this order.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6.

(a) This order shall take effect at 11:59 p.m., eastern daylight time on May 8, 1994.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
May 7, 1994.

[FR Doc. 94-11547
Filed 5-9-94; 12:21 pm]
Billing code 3195-01-P

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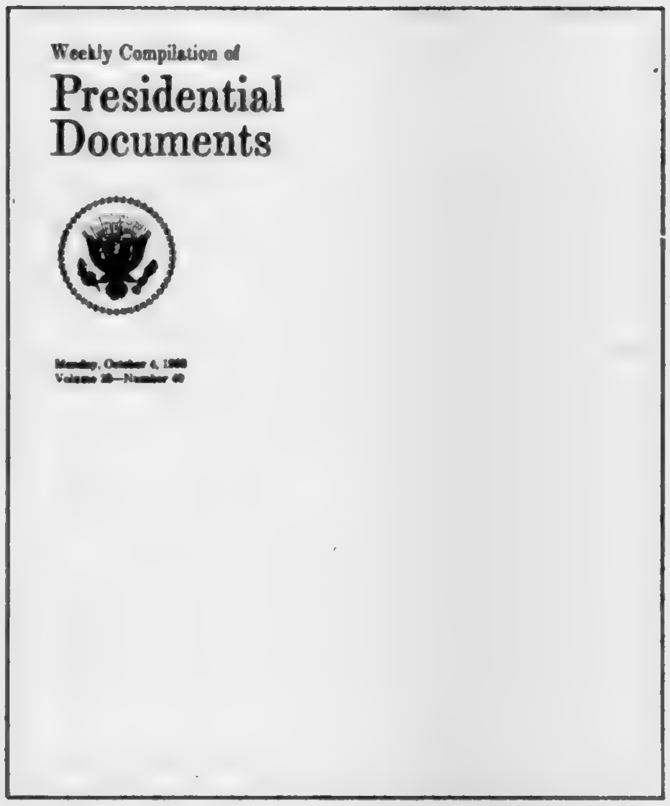

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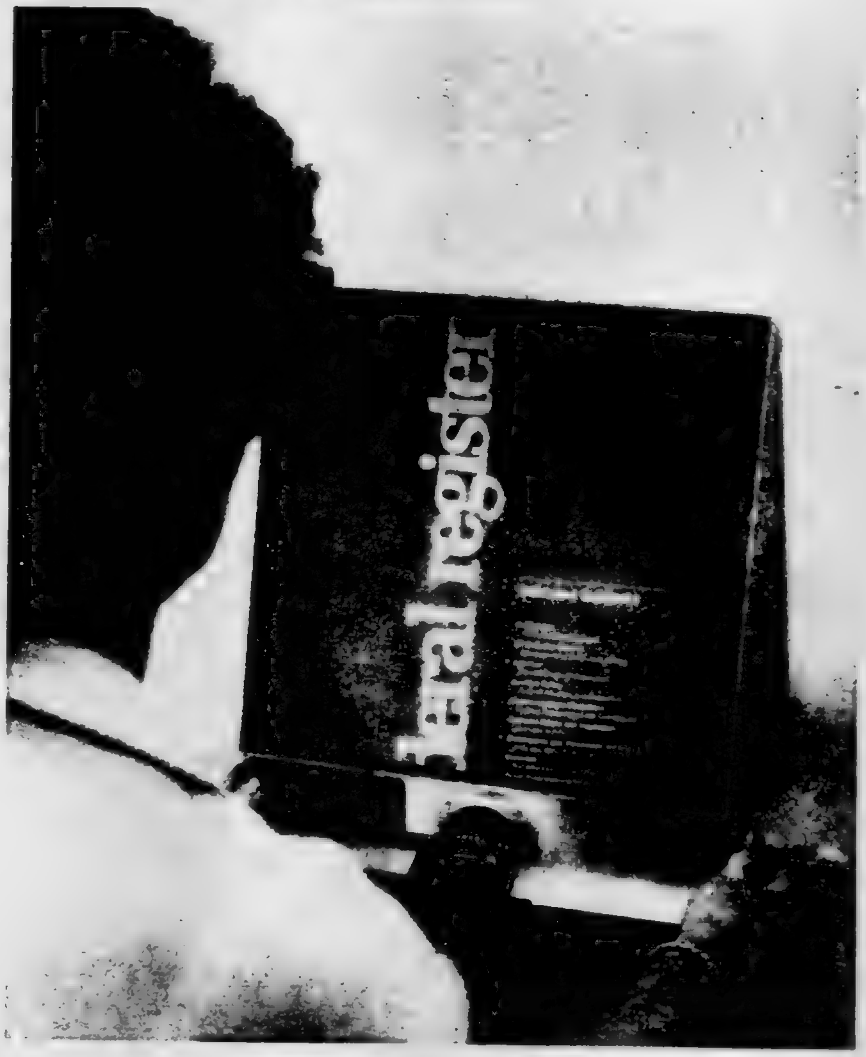

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Vol. 59, No. 90
Wednesday, May 11, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–39]

Revision of Class E Airspace: DeRidder, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Federal rule.

SUMMARY: This action revises the Class E airspace at Beauregard Parish Airport, DeRidder, LA. The establishment of an airport surveillance approach (ASR) standard instrument approach procedure (SIAP) has made this action necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the approach. This action provides adequate Class E airspace to contain IFR operations for aircraft executing the SIAP's at Beauregard Parish Airport, DeRidder, LA.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1993, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E Airspace at Beauregard Parish Airport, DeRidder, LA, was published in the **Federal Register** (58 FR 62059). An ASR approach, a SIAP, was developed for the Beauregard Parish Airport, DeRidder, LA. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transitioning between the en route and terminal environments.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Therefore the proposal is adopted with only editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR 71) revises the Class E airspace located at DeRidder, LA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the SIAP's at Beauregard Parish Airport, DeRidder LA.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1345(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW LA E5 DeRidder, LA [Revised]

Beauregard Parish Airport, LA
(lat. 30°50′02″ N., long. 93°20′22″ W.)
Runway 36
(lat. 30°49′22″ N., long. 93°20′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of Beauregard Parish Airport and within 3.1-miles each side of the 179 bearing from the approach end of Runway 36 extending from the 6.7-mile radius to 6.9-miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on May 4, 1994

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11405 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–05]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Roswell, NM; Enid, OK; and Lawton, OK. Presently, these areas are designated as Class D airspace when the associated control tower is in

operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 u.t.c., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–05, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at Roswell, NM; Enid, OK; and Lawton, OK. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Roswell, NM; Enid, OK; and Lawton, OK, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991 (56 FR 65645), airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW NM E2 Roswell, NM [New]

Roswell Industrial Air Center, NM
(lat. 33°18′05″ N., long. 104°31′50″ W.)

Within a 5-mile radius of Roswell Industrial Air Center. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW OK E2 Enid, OK [New]

Enid, Vance AFB, OK
(lat. 36°20′23″ N., long. 97°54′58″ W.)
Enid, Woodring Municipal Airport, OK
(lat. 36°22′45″ N., long. 97°47′28″ W.)

Within a 5.1-mile radius of Vance AFB and within a 4.1-mile radius of Woodring Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW OK E2 Lawton, OK [New]

Lawton Municipal Airport, OK
(lat. 34°34′04″ N., long. 98°25′00″ W.)
Fort Sill, Henry Post AAF, OK
(lat. 34°39′00″ N., long. 98°24′07″ W.)

Within a 4.3-mile radius of Lawton Municipal Airport and within a 4-mile radius of Henry Post AAF excluding that airspace within Restricted Areas R–5601A and R–5601B when these restricted areas are activated. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11406 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–07]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Baton Rouge, LA; Lafayette, LA; Amarillo, TX; and Midland, TX. Presently, these areas are designated as Class C airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective Date:* 0901 u.t.c., June 23, 1994.

Comment Date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–07, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at Baton Rouge, LA; Lafayette, LA; Armarillo, TX; and Midland, TX. Currently, this airspace is designated as Class C when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Baton Rouge, LA; Lafayette, LA; Amarillo, TX; and Midland, TX, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW LA E2 Baton Rouge Metro, Ryan Field, LA [New]

Baton Rouge Metro, Ryan Field, LA
(lat. 30°32′00″ N., long. 91°08′58″ W.)

Within a 5-mile radius of the Baton Rouge Metro, Ryan Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 Lafayette Regional Airport, LA [New]

Lafayette Regional Airport, LA
(lat. 30°12′19″ N., long. 91°59′15″ W.)

Within a 5-mile radius of the Lafayette Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Amarillo, TX [New]

Amarillo International Airport, TX
(lat. 35°13′10″ N., long. 101°42′22″ W.)

Within a 5–miles radius of Amarillo International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Midland International Airport, TX [New]

Midland International Airport, TX
(lat. 31°56′33″ N., long. 102°12′07″ W.)

Within a 5–miles radius of Midland International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Forth Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11404 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–10]

Amendment to Class D Airspace; Aurora, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Aurora, Buckley ANG Base Airport, Colorado, Class D airspace. It amends the Class D airspace effective hours to conform with the control tower's hours of operation at the Buckley ANG Base, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "control zone" and "air traffic area," replacing them with the designation "Class D airspace." This amendment would bring publications up to date.

EFFECTIVE DATE: 0901 VTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–10, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On March 23, 1994, the FAA proposed to amend part 11 of the Federal Aviation Regulations to amend the Buckley ANG Base Class D airspace to incorporate "part-time" information into the rule (59 FR 13663; March 23, 1994). The information would provide pilots with notice that the Class D airspace would not be effective during certain periods of the day. No comments were received. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "control zone" and "air traffic area," replacing them with the designation "Class D airspace."

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 8, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order. The coordinates are in North American Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at the Buckley ANG Base, Aurora, Colorado, by adding information regarding the times the Class D airspace is effective. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Aurora, CO [Revised]

Aurora, Buckley ANG Base, CO
(lat. 39°42′36″ N, long. 104°45′29″ W)

That airspace extending upward from the surface to, but not including 7,500 feet MSL within a 4.4-mile radius of the Buckley ANG Base, excluding that airspace within the Denver, CO, Class B airspace subarea A and that airspace extending upward from the surface to and including the Denver Class B airspace, subarea C. This Class D airspace shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective dates and times thereafter, will be continuously published in the airport/facility directory.

* * * * *

Issued in Seattle, Washington, on April 21, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–11401 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–04]

Modification of Class D Airspace and Establishment of Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at Fayetteville, AR; Fort Smith, AR; Lake Charles, LA; Monroe, LA; New Orleans, LA; Clovis, NM; Farmington, NM; Oklahoma City, OK; Beaumont, TX; Brownsville, TX; College Station, TX; Corpus Christi, TX; Laredo, TX; McAllen, TX; San Angelo, TX; San Antonio, TX; Waco, TX; and Wichita Falls, TX, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes

Class E airspace at these areas when the associated control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

DATES: *Effective Date:*—0901 UTC, June 23, 1994.

Comment Date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–04, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the DATES section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Fayetteville, AR; Fort Smith, AR; Lake Charles, LA; Monroe, LA; New Orleans, LA; Clovis, NM; Farmington, NM; Oklahoma City, OK; Beaumont, TX; Brownsville, TX; College Station, TX; Corpus Christi, TX; Laredo, TX; McAllen, TX; San Angelo, TX; San Antonio, TX; Waco, TX; and Wichita Falls, TX, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ASW AR D Fayetteville, AR [Revised]

Fayetteville, Drake Field, AR
(lat. 36°00′18″ N., long. 96°10′13″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of Drake Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW AR D Fort Smith, AR [Revised]

Fort Smith Municipal Airport, AR
(lat. 35°20′11″ N., long. 94°22′03″ W.)
Fort Smith VORTAC
(lat. 35°23′18″ N., long. 94°16′17″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 5-mile radius of Fort Smith Municipal Airport and within 1.3 miles each side of the 240° radial of the Fort Smith VORTAC extending from the 5-mile radius to 5.6 miles southwest of the airport excluding that airspace within Restricted Area R–2401B. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW LA D Lake Charles, LA [Revised]

Lake Charles Regional Airport, LA
(lat. 30°07'33" N., long. 93°13'23" W.)
Lake Charles VORTAC
(lat. 30°08'29" N., long. 93°06'20" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of Lake Charles Airport and within 1.[illegible] miles each side of the 256° radial of Lake Charles VORTAC extending from the 5-mile radius of 5.5 miles east of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA D Monroe, LA [Revised]

Monroe Regional Airport, LA
(lat. 32°30'40" N., long. 92°02'15" W.)
Monroe VORTAC
(lat. 32°31'01" N., long. 92°02'10" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Monroe Regional Airport and within 1.8 miles each side of the 063° radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles northeast of the airport and within 1.8 miles each side of the 217° radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW LA D New Orleans Lakefront Airport, LA [Revised]

New Orleans Lakefront Airport, LA
(lat. 30°02'33" N., long. 90°01'41" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.4-mile radius of Lakefront Airport excluding that portion west of long. 90°04'04" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW LA D New Orleans NAS Alvin Callender Field, LA [Revised]

New Orleans NAS Alvin Callender Field, LA
(lat. 29°49'31" N., long. 90°02'06" W.)
Harvey VORTAC
(lat. 29°51'01" N., long. 90°00'10" W.)
New Orleans NAS RBN
(lat. 29°49'05" N., long. 90°02'12" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the 4.7-mile radius to 5.6 miles southwest of the airport and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7-mile radius to 6 miles northeast of the airport and within 2 miles each side of the 198° bearing of the New Orleans NAS RBN extending from the 4.7-mile radius to 6.5 miles south of the airport excluding that airspace within the New Orleans, LA, Class B Airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW NM D Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(lat. 34°22'58" N., long. 103°19'20" W.)
Cannon ILS Localizer
(lat. 34°22'24" N., long. 103°20'09" W.)
Cannon TACAN
(lat. 34°22'51" N., long. 103°19'21" W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 4.6-mile radius of Cannon AFB and within 1 mile each side of the Cannon ILS localizer northeast course extending from the 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 038° radial of the Cannon TACAN extending from the 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW NM D Farmington, NM [Revised]

Farmington, Four Corners Regional Airport, NM
(lat. 36°44'31" N., long. 108°13'47" W.)
Four Corners Regional ILS Localizer
(lat. 36°44'28" N., long. 108°14'27" W.)

That airspace extending upward from the surface to and including 8,000 feet MSL within a 4.7-mile radius of Four Corners Regional Airport and within 1 mile each side of the Four Corners Regional ILS Localizer east course extending from the 4.7-mile radius to 5.4 miles east of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW OK D Oklahoma City Wiley Post Airport, OK [Revised]

Oklahoma City Wiley Post Airport, OK
(lat. 35°32'03" N., long. 97°38'50" W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.3-mile radius of Wiley Post Airport excluding that airspace within the Oklahoma City, Will Rogers Airport, OK, Class C airspace area. This Class D airspace area is effective during the specific dates and and times established in advance by a Notice to Airmen The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D [Revised]

Beaumont-Port Arthur, Jefferson County Airport, TX
(lat. 29°57'03" N., long. 94°01'15" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of Jefferson County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D Brownsville, TX [Revised]

Brownsville/South Padre Island International Airport, TX
(lat. 25°54'25" N., long. 97°25'34" W.)
Brownsville VORTAC
(lat. 25°55'27" N., long. 97°22'32" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Brownsville/South Padre Island International Airport and within 1.3 miles each side of the 071° radial of the Brownsville VORTAC extending from the 4.3-mile radius to 4.9 miles east of the airport excluding that airspace in Mexico. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D College Station, TX [Revised]

College Station, Easterwood Field, TX
(lat. 30°35'19" N., long. 96°21'50" W.)
College Station VORTAC
(lat. 30°36'18" N., long. 96°25'14" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Easterwood Field and within 2.1 miles each side of the 103° radial of the College Station VORTAC extending from the 4.2-mile radius to 5.9 miles east of the airport and within 1.3 miles each side of the 288° radial of the College Station VORTAC extending from the 4.2-mile radius to 5.3 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D Corpus Christi NAS, TX [Revised]

Corpus Christi NAS, TX
(lat. 27°42′01″ N., long. 97°17′01″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Corpus Christi NAS excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Director.

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ASW TX D Laredo, TX [Revised]

Laredo International Airport, TX
(lat. 27°32′41″ N., long. 99°27′41″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.3-mile radius of Laredo International Airport excluding that airspace in Mexico. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D McAllen, TX [Revised]

McAllen, Miller International Airport, TX
(lat. 26°10′32″ N., long. 98°14′19″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.1-mile radius of Miller International Airport excluding that airspace in Mexico. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D San Angelo, TX [Revised]

San Angelo, Mathis Field, TX
(lat. 31°21′31″ N., long. 100°29′45″ W.)
San Angelo ILS Localizer
(lat. 31°21′49″ N., long. 100°29′05″ W.)
San Angelo VORTAC
(lat. 31°22′30″ N., long. 100°27′18″ W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 4.1-mile radius of Mathis Field and within 1 mile each side of the San Angelo ILS localizer northeast course extending from the 4.1-mile radius to 5.3 miles northeast of the airport and within 1.3 miles each side of the 065° radial of the San Angelo VORTAC extending from the 4.1-mile radius to 6 miles northeast of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D San Antonio Randolph AFB, TX [Revised]

San Antonio, Randolph AFB, TX
(lat. 29°31′47″ N., long. 98°16′44″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.4-mile radius of Randolph AFB excluding that airspace within the San Antonio International Airport, TX, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D Waco, TX [Revised]

Waco Regional Airport, TX
(lat. 31°36′42″ N.,long. 97°13′44″ W.)
Waco, TSTI–Waco Airport, TX
(lat. 31°38′17″ N.,long. 97°04′27″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of Waco Regional Airport and within a 4.4-mile radius of TSTI–Waco Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX D Wichita Falls, TX [Revised]

Wichita Falls, Sheppard AFB/Wichita Falls Municipal Airport, TX
(lat. 33°59′06″ N.,long. 98°29′32″ W.)
Wichita Falls ILS Localizer
(lat. 34°00′32″ N.,long. 98°30′07″ W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.9-mile radius of Sheppard AFB/Wichita Fall Municipal Airport and within 1 mile each side of the Wichita Falls ILS Localizer northwest course extending from the 4.9-mile radius to 5.7 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter by continuously published in the Airport/Facility Directory.

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Paragraph 6002 Class E airspace areas designated as a surface area for an airport

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ASW AR E2 Fayetteville, AR [New]

Fayetteville, Drake Field, AR
(lat. 36°00′18″ N.,long. 94°10′13″ W.)

Within a 4.1-mile radius of Drake Field. This Class E airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW AR E2 Forth Smith, AR [New]

Fort Smith Municipal Airport, AR
(lat. 35°20′11″ N.,long. 94°22′03″ W.)
Fort Smith VORTAC
(lat. 35°23′18″ N.,long. 94°16′17″ W.)

Within a 5-mile radius of Fort Smith Municipal Airport and within 1.3 miles each side of the 240° radial of the Fort Smith VORTAC extending from the 5-mile radius to 5.6 miles southwest of the airport excluding that airspace within Restricted Area R–2401B. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 Lake Charles, LA [New]

Lake Charles Regional Airport, LA
(lat. 30°07′33″ N.,long. 93°13′23″ W.)
Lake Charles VORTAC
(lat. 30°08′29″ N.,long. 93°06′20″ W.)

Within a 5-mile radius of Lake Charles Airport and within 1.3 miles each side of the 256° radial of the Lake Charles VORTAC extending from the 5-mile radius to 5.5 miles east of the airport. This Class E airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW LA E2 Monroe, LA [New]

Monroe Regional Airport, LA
(lat. 32°30′40″ N.,long. 92°02′15″ W.)
Monroe VORTAC
(lat. 32°31′01″ N.,long. 92°02′10″ W.)

Within a 4.2-mile radius of Monroe Regional Airport and within 1.8 miles each side of the 063° radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles northeast of the airport and within 1.8 miles each side of the 217°radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW LA E2 New Orleans Lakefront Airport, LA [New]

New Orleans Lakefront Airport, LA
(lat. 30°02′33″ N.,long. 90°01′41″ W.)

Within a 4.4-mile radius of Lakefront Airport excluding that portion west of long. 90°04′03″W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 New Orleans NAS Alvin Callender Field, LA [NEW]

New Orleans NAS Alvin Callender Field, LA
(lat. 29°49′31″ N., long. 90°02′06″ W.)
Harvey VORTAC

(lat 29°51'01" N., long. 90°00'10" W.)
New Orleans NAS RBN
(lat. 29°49'05" N., long. 90°02'12" W.)

Within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the 4.7-mile radius to 5.6 miles southwest of the airport and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7-mile radius to 6 miles northeast of the airport and within 2 miles each side of the 198° bearing of the New Orleans NAS RBN extending from the 4.7-mile radius to 6.5 miles south of the airport excluding that airspace within the New Orleans, LA, Class B Airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW NM E2 Clovis, NM [New]

Clovis, Cannon AFB, NM
(lat. 34°22'58" N., long. 103°19'20" W.)
Cannon ILS Localizer
(lat. 34°22'24" N., long. 103°20'09" W.)
Cannon TACAN
(lat. 34°22'51" N., long. 103°19'21" W.)

Within a 4.6-mile radius of Cannon AFB and within 1 mile each side of the Cannon ILS localizer northeast course extending from the 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 038° radial of the Cannon TACAN extending from 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW NM E2 Farmington, NM [New]

Farmington, Four Corners Regional Airport, NM
(lat. 36°44'31" N., long. 108°13'47" W.)
Four Corners Regional ILS Localizer
(lat. 36°44'28" N., long. 108°14'27" W.)

Within a 4.7-mile radius of Four Corners Regional Airport and within 1 mile each side of the Four Corners Regional ILS Localizer east course extending from the 4.7-mile radius to 5.4 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW OK E2 Oklahoma City Wiley Post Airport, OK [New]

Oklahoma City Wiley Post Airport, OK
(lat. 35°32'03" N., long. 97°38'50" W.)

Within a 4.3-mile radius of Wiley Post Airport excluding that airspace within the Oklahoma City, Will Rogers Airport, OK, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX E2 Beaumont, TX [New]

Beaumont-Port Arthur, Jefferson County Airport, TX
(lat. 29°57'03" N., long. 94°01'15" W.)

Within a 5-mile radius of Jefferson County Airport. this Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX E2 Brownsville, TX [New]

Brownsville/South Padre Island International Airport, TX
(lat. 25°54'25" N., long. 97°25'34" W.)
Brownsville VORTAC
(lat. 25°55'27" N., long. 97°22'32" W.)

Within a 4.3-mile radius of Brownsville/South Padre Island International Airport and within 1.3 miles each side of the 071° radial of the Brownsville VORTAC extending from the 4.3-mile radius to 4.9 miles east of the airport excluding that airspace in Mexico. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 College Station, TX [New]

College Station, Easterwood Field, TX
(lat. 30°35'19" N., long. 96°21'50" W.)
College Station VORTAC
(lat. 30°36'18" N., long. 96°25'14" W.)

Within a 4.2-mile radius of Easterwood Field and within 2.1 miles each side of the 108° radial of the College Station VORTAC extending from the 4.2 mile radius to 5.9 miles east of the airport and within 1.3 miles each side of the 288° radial of the College Station VORTAC extending from the 4.2-mile radius to 5.3 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Corpus Christi NAS, TX [New]

Corpus Christi NAS, TX
(lat. 27°42'01" N., long. 97°17'01" W.)

Within a 4.3-mile radius of Corpus Christi NAS excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Laredo, TX [New]

Laredo International Airport, TX
(lat. 27°32'41" N., long. 99°27'41" W.)

Within a 4.3-mile radius of Laredo International Airport excluding that airspace in Mexico. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 McAllen, TX [New]

McAllen, Miller International Airport, TX
(lat. 26°10'32" N., long. 98°14'19" W.)

Within a 4.1-mile radius of Miller International Airport excluding that airspace in Mexico. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 San Angelo, TX [New]

San Angelo, Mathis Field, TX
(lat. 31°21'31" N., long. 100°29'45" W.)
San Angelo ILS Localizer
(lat. 31°21'49" N., long. 100°29'05" W.)
San Angelo VORTAC
(lat. 31°22'30" N., long. 100°27'18" W.)

Within a 4.1-mile radius of Mathis Field and within 1 mile each side of the San Angelo ILS localizer northeast course extending from the 4.1-mile radius to 5.3 miles northeast of the airport and within 1.3 miles each side of the 065° radial of the San Angelo VORTAC extending from the 4.1-mile radius to 6 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 San Antonio, Randolph AFB, TX [New]

San Antonio, Randolph AFB, TX
(lat. 29°31'47" N., long. 98°16'44" W.)

Within a 4.4-mile radius of Randolph AFB excluding that airspace within the San Antonio International Airport, TX, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Waco, TX [New]

Waco Regional Airport, TX
(lat. 31°36'42" N., long. 97°13'44" W.)
Waco, TSTI-Waco Airport, TX
(lat. 31°38'17" N., long. 97°04'27" W.)

Within a 4.5-mile radius of Waco Regional Airport and within a 4.4-mile radius of TSTI-Waco Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Wichita Falls, TX [New]

Wichita Falls, Sheppard AFB/Wichita Falls Municipal Airport, TX
(lat. 33°59′06″ N., long. 98°29′32″ W.)
Wichita Falls, ILS Localizer
(lat. 34°00′32″ N., long. 98°30′07″ W.)

Within a 4.9-mile radius of Sheppard AFB/Wichita Falls Municipal Airport and within 1 mile each side of the Wichita Falls ILS Localizer northwest course extending from the 4.9-mile radius to 5.7 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11403 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–06]

Modification of Class D Airspace: Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Austin, TX, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–06, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings, extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Austin, TX by amending the areas' effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraphs 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify this Class D airspace area in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 94–24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ASW TX D Austin Bergstrom AFB, TX [Revised]

Austin, Bergstrom AFB, TX
(lat. 30°11′42″ N., long. 97°40′37″ W.)
Bergstrom ILS Localizer
(lat. 30°13′01″ N., long. 97°40′48″ W.)
Bergstrom TACAN
(lat. 30°11′51″ N., long. 97°40′59″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.6-mile radius of Bergstrom AFB and within 1 mile each side of the Bergstrom ILS localizer south course extending from the 4.6-mile radius to 5 miles south of the airport and within 1.3 miles each side of the 170° radial of the Bergstrom TACAN extending from the 4.6-mile radius to 5 miles south of the airport excluding that airspace within the Austin, Robert Mueller Municipal Airport, TX, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11402 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8476; TD 8425]

RIN 1545–AR05; 1545–AP09; 1545–AJ63

Arbitrage Restrictions on Tax-Exempt Bonds; Information Reporting for Tax-Exempt Bond Issues; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (TD 8476, and TD 8425), which were published in the **Federal Register** for Friday, June 18, 1993 (58 FR 33510) and Wednesday, August 12, 1992 (57 FR 36001), respectively. The final regulations relate to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments; and information reporting requirements for tax-exempt bonds.

EFFECTIVE DATES: Sections 1.148–3 and 1.148–10 are effective on July 1, 1993. Section 1.149(e)–1 is effective on August 12, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these correcting amendments are under sections 148 and 149 of the Internal Revenue Code.

Need for Correction

As published, TD 8476 and TD 8425 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

PART 1—[AMENDED]

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.148–3 is amended as follows:

1. Revise *Example 1* of paragraph (j).
2. Add paragraph (iii)(D) to *Example 2* of paragraph (j).

§ 1.148–3 General arbitrage rebate rules.

* * * * *

(j) * * *

Example 1. Calculation and payment of rebate for a fixed yield issue. (i) *Facts.* On January 1, 1994, City *A* issues a fixed yield issue and invests all the sale proceeds of the issue ($49 million). There are no other gross proceeds. The issue has a yield of 7.0000 percent per year compounded semiannually (computed on a 30 day month/360 day year basis). City *A* receives amounts from the investment and immediately expends them for the governmental purpose of the issue as follows:

Date	Amount
2/1/94	$3,000,000
5/1/94	5,000,000
1/1/95	5,000,000
9/1/95	20,000,000
3/1/96	22,000,000

(ii) *First computation date.* (A) City *A* chooses January 1, 1999, as its first computation date. This date is the latest date that may be used to compute the first required rebate installment payment. The rebate amount as of this date is computed by determining the future value of the receipts and the payments for the investment. The compounding interval is each 6-month (or shorter) period and the 30 day month/360 day year basis is used because these conventions were used to compute yield on the issue. The future value of these amounts, plus the computation credit, as of January 1, 1999, is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/94	($49,000,000)	($69,119,339)
2/1/94	3,000,000	4,207,602
5/1/94	5,000,000	6,893,079
1/1/95	5,000,000	6,584,045
1/1/95	(1,000)	(1,317)
9/1/95	20,000,000	25,155,464
1/1/96	(1,000)	1,229)
3/1/96	22,000,000	26,735,275
1/1/97	(1,000)	(1,148)
Rebate amount (1/01/99)	....	452,432

(B) City *A* pays 90 percent of the rebate amount ($407,189) to the United States within 60 days of January 1, 1999.

(iii) *Second computation date.* (A) On the next required computation date, January 1, 2004, the future value of the payments and receipts is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/99	$452,432	$638,200
Rebate amount (1/01/04)	....	638,200

(B) As of this computation date, the future value of the payment treated as made on January 1, 1999, is $574,380, which equals at least 90 percent of the rebate amount as of this computation date ($638,200 × 0.9), and thus no additional rebate payment is due as of this date.

(iv) *Final computation date.* (A) On January 1, 2009, City *A* redeems all the bonds, and thus this date is the final computation date. The future value of the receipts and payments as of this date is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/04	$638,200	$900,244
1/1/09	(1,000)	(1,000)
Rebate amount (1/01/09)	....	899,244

(B) As of this computation date, the future value of the payment made on January 1, 1999, is $810,220 and thus an additional rebate payment of $89,024 is due. This payment reflects the future value of the 10 percent unpaid portion, and thus would not be owed had the issuer paid the full rebate amount as of any prior computation date.

Example 2. Calculation and payment of rebate for a variable yield issue. * * *

(iii) * * *

(D) If the yield during the second computation period were, instead, 7.0000 percent, the rebate amount computed as of July 1, 1999, would be $1,320,891. The future value of the payment made on July 1, 1999, would be $1,471,007, and, therefore, City B would have overpaid the rebate amount by $150,116.

* * * * *

Par. 3. Section 1.148–10(d) is amended by revising the ninth and tenth sentence of *Example 1* as follows:

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

* * * * *

(d) * * *

Example 1. * * * The Bank note and the 1994 issue have different prepayment terms. The City does not reasonably expect to treat prepayments of the Bank note as gross proceeds of the 1994 issue. * * *

* * * * *

Par. 4. Section 1.149(e)–1 is amended by revising paragraphs (e)(3)(i) and (e)(4) as follows:

§ 1.149(e)–1 Information reporting requirement for tax-exempt bonds.

* * * * *

(e) * * *

(3) * * *

(i) *Bond.* The date of issue of a bond is determined under § 1.150–1.

* * * * *

(4) *Issue price.* The term "issue price" has the same meaning given the term under § 1.148–1(b).

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–11219 Filed 5–6–94; 9:52 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4883–9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its decision not to change the corresponding onshore area ("COA") designations for outer continental shelf ("OCS") platforms Habitat, Henry, Hillhouse, Houchin, Hogan, and Union A, B, and C (collectively, the "OCS platforms"). This decision on the reconsideration proceeding was proposed in the **Federal Register** on November 19, 1993. Pursuant to petitions filed by Unocal and Ventura, the reconsideration proceeding was convened on March 16, 1993 to determine whether the COA for the OCS platforms should be changed to the Ventura County Air Pollution Control District ("Ventura County APCD" or "VCAPCD"). The COA for these platforms is currently the Santa Barbara County Air Pollution Control District ("Santa Barbara County APCD" or "SBCAPCD") as established in the final OCS rule promulgated September 4, 1992. The intended effect of this document is to finalize the designation of the Santa Barbara County APCD as the COA for the OCS platforms so that the sources can comply with the OCS air regulations (40 CFR part 55) by the September 4, 1994 compliance date.

EFFECTIVE DATE: This action is effective on June 10, 1994.

ADDRESSES: Material relevant to the COA designations for the OCS platforms listed above can be found in EPA docket A–91–76. This docket is available for public inspection and copying at the following locations:

U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

These locations are open to the public Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated the OCS rule (40 CFR part 55) in the **Federal Register** pursuant to section 328 of the Clean Air Act (the "Act"). (57 FR 40792). The OCS rule established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. The rule applies to all OCS sources located offshore of the United States except for those located in the Gulf of Mexico west of 87.5 degrees longitude. The Act requires new OCS sources (as defined in section 111(a)) to comply with the OCS rule immediately upon promulgation, and existing sources to comply 24 months thereafter, or by September 4, 1994.

Pursuant to section 328, the requirements for sources located within 25 miles of a state's seaward boundary must be the same as would be applicable if the sources were located in the COA. The Administrator designated the nearest onshore area ("NOA") as the COA for all existing and proposed sources offshore of California in the preamble to the final rule.[1] If an area other than the NOA desires to become the COA, that area must submit a request and make a demonstration pursuant to 40 CFR 55.5.

On November 2 and 3, 1992, Union Oil Company of California, Pacific Operators, Inc. d.b.a. Pacific Operators Offshore, Inc., and Texaco Exploration and Production Inc. (collectively, "Unocal") and the Ventura County APCD filed petitions for reconsideration with EPA, asking EPA to reconsider the COA designations for the OCS platforms Habitat, Henry, Hillhouse, Houchin, Hogan, and Union A, B, and C. The Ventura County APCD and Unocal also filed petitions for review in the Courts of Appeal for the District of Columbia and the Ninth Circuits, but these cases have been stayed pending EPA's review of their petitions for reconsideration.[2]

EPA granted the parties' requests for reconsideration on March 16, 1993. The parties agreed to a June 15, 1993 deadline for the submittal of a stringency analysis and any other relevant data by the Ventura County APCD and the Santa Barbara County APCD. Rules applicable to OCS sources that were already adopted by both the Ventura and Santa Barbara County APCDs as of September 4, 1992, the date of the OCS rule promulgation and the version of the rule to which the petition pertains, were to be used for the stringency comparison. EPA encouraged the parties to work together to reach consensus on as many issues as possible. The Santa Barbara County APCD agreed to submit any issues and information to EPA by June 15, as opposed to after EPA's proposal, to facilitate a timely resolution. On June 15, 1993, both the Ventura County APCD and the Santa Barbara APCD submitted the relevant information to EPA.

Pursuant to § 55.5 (b), the chief executive officer of an APCD, such as the Ventura County APCD, who believes that the District has more stringent air pollution control requirements than the NOA for a proposed OCS source, may submit a request to EPA for the APCD to be designated as the COA. The Ventura County APCD submitted such a request for the OCS platforms at issue. In order to substantiate its request, the Ventura County APCD, not being the NOA, must make a demonstration that: (1) The Ventura County APCD has more stringent requirements with respect to the control and abatement of air pollution than the Santa Barbara County APCD; (2) the emissions from the OCS platforms are or would be transported to the Ventura County APCD; and (3) the transported emissions would affect the Ventura County APCD's effort to attain or maintain a Federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the Santa Barbara County APCD were designated as the COA. § 55.5(b)(2).

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[1] The COA designations were codified on March 16, 1993. 58 FR 14157.

[2] *Ventura County Air Pollution Control District v. U.S. EPA*, No. 92–1572 (D.C. Cir. Nov. 3, 1992); *Ventura County Air Pollution Control District v U.S. EPA, No. 92–70730 (9th Cir. Nov. 3, 1992); Union Oil Co. v. U.S. EPA*, No. 92–1570 (D.C. Cir Nov. 21, 1992); *Union Oil Co. v. U.S. EPA*, No. 70727 (9th Cir. Nov. 3, 1992). In addition, the Santa Barbara County APCD filed a petition for review of the OCS rule in the Court of Appeals for the District of Columbia, *Santa Barbara County Air Pollution Control District v. EPA*, No. 92–1569 (D.C. Cir Nov. 2, 1992), and intervened in the four Unocal and Ventura County APCD actions.

EPA examined the material submitted by the Ventura County APCD and the Santa Barbara County APCD regarding EPA's COA designation for the OCS platforms at issue. The submittal was evaluated on a rule by rule basis comparing the rules' requirements, standards, and exemptions. A copy of this evaluation is contained in the Technical Support Document (TSD) dated September 24, 1993. In response to comments, EPA has prepared a supplement to the TSD dated February 23, 1994. After review of the submitted analyses, EPA determined that Ventura County did not demonstrate that the Ventura County APCD's requirements are more stringent with respect to the control of air pollutants than those of the Santa Barbara County APCD. For this reason, EPA is finalizing the decision not to change the OCS platform COA designations.

Response to Public Comments

A 30-day public comment period was provided in the proposed action to deny Ventura APCD's request to be designated the COA. 58 FR 61041. EPA received comments from the Ventura County APCD, the Santa Barbara County APCD, Pacific Operators Offshore, Inc. and Unocal. These comments and the responses are summarized below:

1. Ground Rules To Be Used for the Stringency Analysis

1–1. *Comment:* EPA violated and ignored its own established ground rules for the stringency determination by relying on Santa Barbara's interpretation of Rule 331. EPA established ground rules for the stringency analysis that among other things established the requirement that actual rule language must be used to determine which agencies' rules would result in greater emission reductions, and that innovative interpretations would not be allowed.

Response: EPA disagrees that it violated established ground rules for the analysis. EPA established the following requirements for the reconsideration proceedings: (1) The criteria outlined in 40 CFR 55.5 must be used; and (2) the date of September 4, 1992 should be used for rule comparisons.

Section 55.5 states that the area requesting to be designated the COA in place of the NOA must demonstrate that:

a. The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

b. The emissions from the source are or would be transported to the requesting area; and

c. The transported emissions would affect the requesting area's efforts to attain or maintain a Federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

At the request of the Ventura County APCD, EPA Region 9 hosted a meeting of interested parties on March 4, 1993. EPA reiterated at that time the 3 regulatory criteria of § 55.5 that Ventura County must meet to have the Ventura County APCD designated the COA for the eight (8) platforms in question. Other issues discussed included:

(1) The rules to be evaluated in the stringency comparison would be those adopted by the Districts as of September 4, 1992 (the rules actually on the books at the time of promulgation). EPA did not impose any requirements that limited the stringency analysis to a rule's "actual language" and the issue of regulatory interpretation was not discussed.

(2) The inclusion/exclusion of modifications, proposed modifications, and future/hypothesized modifications was discussed.

(3) Ventura County and Santa Barbara County APCDs were to reach an agreement on workable emission factors.

(4) A schedule was discussed for gathering and submitting the necessary information for the reconsideration.

In conclusion, EPA set only 2 "ground rules": the criteria of 40 CFR 55.5 must be used, and rules adopted by the Districts as of September 4, 1992 should be compared. There was no requirement limiting the stringency analysis to a rule's actual language.

1–2. *Comment:* EPA selected a cut off date for rule comparison which coincided with the promulgation of the final rule, September 4, 1992. By fixing this date instead of the December 5, 1991 promulgation of the proposed rule additional Santa Barbara County rules qualified for inclusion in the stringency analysis.

Response: The parties asked EPA which date should be used for the stringency analysis. EPA set September 4, 1992. This date was not chosen to include or exclude specific rules but rather was chosen because it was the date of promulgation of the final OCS rule. Neither party objected to that date at the time it was selected. If the December 5, 1991 date had been chosen, the following rule revisions from both districts would not have been included:

SBCAPCD:

Rule 331, Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)

Rule 333, Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)

VCAPCD:

Rule 71.1, Crude Oil Production and Separation (Adopted 6/16/92)

Rule 74.10, Components at Crude Oil and Natural Gas Production Processing Facilities (Adopted 6/16/92)

2. Quantification of Emissions

2–1. *Comment:* EPA failed to quantify emissions reductions. The basis of EPA's analysis is simply a rule by rule comparison between the Santa Barbara and Ventura County rules, versus an analysis on a platform by platform basis that shows actual emission reductions.

Response: Neither section 328 of the Act nor 40 CFR 55.5 requires EPA to specifically quantify emission reductions. Pursuant to 40 CFR 55.5, VCAPCD had to demonstrate that: (1) It had more stringent air pollution requirements than SBCAPCD; (2) the emissions from the source are or would be transported to VCAPCD; and (3) the transported emissions would affect the VCAPCD's effort to attain or maintain a Federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

EPA received a stringency analysis from VCAPCD and SBCAPCD, and reviewed both of the submittals in detail. After review of the Districts' submittals, EPA conducted an independent rule analysis that compared the rules' standards, requirements, and exemptions to determine if VCAPCD's requirements were more stringent than SBCAPCD.

EPA also requested SBCAPCD to submit additional information on its Rule 331, and provided VCAPCD an opportunity to also submit additional information on SBCAPCD Rule 331. Based on its independent rule analysis, EPA concluded that for all the requirements found to be applicable by VCAPCD, none were more stringent than the SBCAPCD. As a result of EPA's conclusion that VCAPCD's requirements were not more stringent, it was not necessary in this case for EPA to quantify emission reductions at each platform.

2–2. *Comment:* EPA did not quantify emission differences in real terms between the districts' fugitive emissions and architectural coatings rules.

Response: As stated above, because EPA found the VCAPCD's rules were not more stringent than SBCAPCD's rules when comparing each element of the rules, a further quantitative analysis was not required. A detailed analysis of both Districts' fugitive emissions rules is included in the TSD. In response to comments, EPA again reviewed the exemption provisions of the Districts' fugitive emissions rules and concluded that VCAPCD's inspection requirements, leak thresholds, and exemptions are not more stringent than SBCAPCD's fugitive emission rule. Therefore, VCAPCD's rule would not have resulted in greater reductions.

VCAPCD's analysis found that there is no difference in the Districts' architectural coatings rules. Although EPA's rule comparison showed the rules are substantiallly similar, SBCAPCD has lower limits for some coatings. Based on this analysis, EPA properly determined that the VCAPCD rules are not more stringent. EPA did not need to quantify the difference in reductions to make that determination.

3. Santa Barbara County APCD Rule 331—Fugitive Emissions Inspection and Maintenance

3–1. *Comment:* EPA erred in adopting Santa Barbara's administrative interpretation of the scope of the application of Rule 331, Fugitive Emissions Inspection and Maintenance.

Response: EPA received opposing interpretations of SBCAPCD's rule 331 in the initial analyses submitted by the Districts. First, VCAPCD contended that SBCAPCD's Rule 331 does not cover venting of emissions; and second, SBCAPCD interpreted its rule to cover venting. EPA requested that SBCAPCD support its interpretation, and on August 30, 1993, the Santa Barbara County Counsel submitted an interpretation of Rule 331 on behalf of the SBCAPCD. On September 9, 1993, the Ventura County Counsel submitted a different interpretation of the rule on behalf of the VCAPCD. After careful consideration of the two positions, EPA determined that SBCAPCD's interpretation of its own rule was reasonable and consistent with the Act, and therefore, concluded that deference to Santa Barbara's reasonable interpretation of its own rule was appropriate.

3–2. *Comment:* The TSD failed to mention the letter from Ventura County Counsel on behalf of the Ventura County APCD, explaining why EPA should not and need not follow Santa Barbara's interpretation.

Response: Failure to mention Ventura County Counsel's letter in the TSD was simply an oversight. It was, however, included in the docket upon its receipt. Moreover, as stated above, EPA carefully reviewed the letter from Ventura County Counsel. EPA decided to defer to SBCAPCD's interpretation of Rule 331 because it was consistent with the language of the rule and the Act, and was a reasonable interpretation.

3–3. *Comment:* If Rule 331 has the ability to regulate venting as claimed by Santa Barbara County Counsel, why is the SBCAPCD currently seeking the adoption of Rule 325 (which states "emissions of produced gas shall be controlled at all times")?

Response: EPA does not know the District's intentions. However, Federal, state, and local agencies often revise existing rules and adopt new provisions to clarify the intent of the existing rules. In any event, the critical issue is whether VCAPCD has shown that its rules are more stringent than SBCAPCD's rules. Based on EPA's analysis, as reflected in the response to comments, VCAPCD did not make such a showing.

3–4. *Comment:* In EPA's TSD, EPA concludes that VCAPCD's exemption provisions in its fugitive emissions rule appear to be more stringent than SBCAPCD's rule exemption requirements (i.e. the VCAPCD provision would result in greater emission reductions). This is not the case. SBCAPCD's fugitive emissions rule allows fewer components to be exempt than Ventura's rule. In addition, exempted components are still subject to other control requirements of SBCAPCD Rule 331 (e.g., capping of open-ended lines, repair of leakers, leak threshold requirements) while components exempted under Ventura Rule 74.10 are exempted from all rule requirements.

Response: The commenter is correct. The TSD should have read that VCAPCD's rule's exemption requirements do not appear to be more stringent than the provisions in SBCAPCD's rule. The supplemental TSD has been revised to reflect this correction. VCAPCD's rule's exemption requirements do not control as many components and thus are not more stringent than the provisions in SBCAPCD's rule.

VCAPCD's Rule 74.10 exempts:

(1) Components, not at natural gas processing plants, with gaseous streams with ROC concentrations of 12% by weight or less.

(2) Any component at a natural gas processing plant with gaseous streams with ROC concentrations, less the ethane concentration, equal to or less than 1% by weight.

(3) Components, except for components at natural gas processing plants, in liquid service, with ROC concentrations of 12% by weight or less.

SBCAPCD's Rule 331 exempts:

(1) Components exclusively handling natural gas. (Natural gas by the District's rule definition is a mixture of gaseous hydrocarbons, with at least 80 percent methane, and less than one percent of ROC, on a weight basis, excluding ethane, determined according to specified test methods.)

(2) Components buried below ground.

(3) One-half inch and smaller stainless steel tube fittings which have been determined to be leak-free by the Control Officer based on an initial inspection in accordance with the test method section.

3–5. *Comment:* The exemption element of the fugitive emission rules may be the most significant element of the rule since that determines whether the rules apply at all.

Response: As stated and outlined above, the exemptions in both Districts' fugitive emissions rules were thoroughly evaluated.

3.6. *Comment:* EPA seemingly gives the edge to Santa Barbara's fugitive hydrocarbon emission rule even though Ventura's rule results in a greater reduction of approx. 67 tons per year (t/y) ROC (reactive organic compounds).

Response: The commenter misstates the conclusion of VCAPCD's stringency submittal. The 67 t/y difference was not based on this one rule; rather the VCAPCD stringency submittal contained a comparative analysis of all VCAPCD and SBCAPCD requirements and stated that application of all of VCAPCD's rules would result in a reduction of 67 t/y more than application of the SBCAPCD rules. However, when evaluating individual rules such as VCAPCD's fugitive emissions rule against SBCAPCD's fugitive emissions rule, EPA concluded that SBCAPCD's rule has more stringent requirements for inspection practices, leak thresholds, and exemptions, and would not result in less emission reductions than VCAPCD's rule.

4. Marine Loading Rule

4–1. Comment: EPA neglected to recognize that the difference in VOC emission reductions caused by the difference between Ventura and Santa Barbara marine vessel loading requirements is insignificant (0.07 tons per year) when compared to the overall difference in VOC emissions found when all Ventura and Santa Barbara requirements are compared (67.4 tons per year).

4–2. Comment: A simplistic comparison of rule language will bias the results if equal weight is given to both insignificant and significant rules. EPA apparently gives Santa Barbara full credit for having a marine loading rule in place, yet the rule only results in a reduction of 0.07 t/y ROC.

Response: EPA evaluated the marine vessel loading requirements because VCAPCD included a review of those requirements in the stringency analysis. EPA analyzed all rules submitted to it by VCAPCD and SBCAPCD. If this requirement and the reductions from this requirement are not significant, VCAPCD could have omitted it from its stringency analysis.

According to VCAPCD's analysis, a marine loading rule would apply to OCS sources. Moreover, SBCAPCD has a marine loading rule but VCAPCD does not. EPA's evaluation showed that SBCAPCD's marine loading rule did apply to OCS sources and VCAPCD did not have a marine loading rule. Therefore, for sources subject to the marine loading rule, VCAPCD's requirements are not more stringent.

As stated in response to comment 2–1, EPA did not attach "credit" or "weight" to the rules. The analyses submitted by both VCAPCD and SBCAPCD were reviewed in detail by comparing the rules' standards, requirements, and exemptions, which allowed EPA to determine which District's requirements are more stringent. Since EPA determined that none of Ventura's rules evaluated were more stringent, there was no need to assign credit or weight to the rules.

5. Oil Drilling Operations

5–1. Comment: EPA disregarded Ventura's application of its oilfield drilling requirements to drilling engines while they are being used for operations that are not specifically listed in the rule's definition of "Drilling Operations."

Response: EPA has re-evaluated this issue by consulting with VCAPCD, Texaco, and Pacific Operators Offshore, Inc. on the type of drilling rigs on platforms Habitat, Hogan, and Houchin. After consultation and review of the types of drilling rigs on the platforms, EPA concluded that the drilling rigs in question were defined as vehicular rigs and would not be subject to VCAPCD Rule 74.16 by definition.

5–2. EPA gives Santa Barbara full credit for a stricter architectural coating rule without investigating if such coatings are actually used, yet denies Ventura credit for a more restrictive diesel internal combustion (I.C.) engine rule because, in EPA's opinion, there are currently no drilling activities offshore which could be regulated under Ventura's rule. In our opinion, this biased mistreatment demonstrates the need to return to a quantification method of comparing rules.

Response: There was no "biased mistreatment." EPA evaluated all the information contained in VCAPCD's stringency analysis. First, the architectural coatings rule was listed in VCAPCD's analysis as an applicable requirement. EPA reviewed that requirement and determined that although VCAPCD's stringency analysis stated VCAPCD and SBCAPCD rules are equivalent, SBCAPCD's rule has lower limits for some coatings.

Second, the Stationary Internal Combustion Engines rule and Oilfield Drilling Operations rule were listed in VCAPCD's analysis as applicable requirements. EPA reviewed the requirements and determined that the Stationary I.C. Engines rule does apply but the Oilfield Drilling Operations rule did not apply. VCAPCD's analysis listed two rules applicable to diesel I.C. engines: a) 74.9, Stationary Internal Combustion Engines and b) 74.16, Oilfield Drilling Operations.

According to VCAPCD's analysis, Rule 74.9 does not set emission limits for diesel engines (non-drilling), while SBCAPCD's Rule 333 (Control of Emissions from Reciprocating Internal Combustion Engines) limits NOx emissions from diesel engines (non-drilling) to 797 ppmV (corrected to 15% oxygen). All other requirements in the rules are equivalent.

VCAPCD's analysis also states that if Rule 74.16 (Oilfield Drilling Operations) was applied, greater reductions would be achieved when compared to SBCAPCD's Rule 333. VCAPCD's analysis asserted that two engines on platform Habitat (Texaco), one engine on Hogan (Pacific Operators Offshore, Inc.), and one engine on Houchin (Pacific Operators Offshore, Inc.) would be subject to the rule. Again, after consultation with VCAPCD, Texaco, and Pacific Operators, Inc., EPA determined that by definition these engines on Habitat, Hogan, and Houchin would not be subject to Rule 74.16.

In conclusion, VCAPCD does not have a more restrictive diesel I.C. engine rule because:

(1) For Oilfield Drilling Operations, VCAPCD's Rule 74.16 does not apply to the drilling engines on the three platforms; and

(2) For stationary I.C. engines, VCAPCD's Rule 74.9 does not set limits for non-drilling diesel engines and the other requirements of the rule are equivalent to SBCAPCD's Rule 333.

6. Other

6–1. Comment: EPA disregarded Ventura's submittal regarding the relative stringency of the districts' New Source Review (NSR) rules–rules that could generate significant emission reductions.

Response: EPA did not disregard VCAPCD's submittal. In fact, VCAPCD stated in its submittal that no major projects are budgeted at this time on the platforms, and the future difference in emissions caused by the difference between the NSR requirements of VCAPCD and SBCAPCD cannot be quantified. In addition to the fact that these rules do not appear to be applicable in the near future, it would be very difficult to determine the relative stringency of NSR rules. NSR rules do not involve specific limitations or standards, but are applied on a case by case basis. Based on this information, EPA did not review the requirements of the NSR rules.

6–2. Comment: The decision proposed in the November 19, 1993 notice of proposed rulemaking seems not to be based on sound scientific or technical analysis.

Response: EPA's decision was based on a detailed technical analysis of the VCAPCD and SBCAPCD rule requirements, which is set forth in the TSD, and additional analysis in response to comments to the proposed action to deny VCAPCD's request to be designated the COA for the OCS platforms.

6–3. Comment: EPA's decision will cause a dual agency jurisdiction for Pacific Operators Offshore, Inc. facilities, with the onshore plant being regulated by Ventura County, and the offshore platforms being regulated by Santa Barbara County. EPA should not financially damage a small business operator, further weaken the local and

California economies, and further increase U.S. dependency on foreign oil, regarding an issue that has little or no air quality impact on the county EPA is currently designating as the COA.

Response: In determining the COA for the OCS platforms, EPA followed the requirements of section 328 of the Act and 40 CFR 55.5. The Act addressed only air quality concerns with regard to redesignation of a COA for an OCS source, and not the relationship to onshore facilities. Many companies onshore also have facilities in multiple locations, thereby having to comply with different local requirements.

6-4. *Comment:* Santa Barbara's overall enforcement capabilities have recently been questioned by David Howekamp, Director, Air & Toxics Div. of EPA in a letter dated June 11, 1993.

Response: This issue has no bearing on the stringency analysis. The reference correspondence was in response to the District's proposed reorganization plans. EPA expressed concern that the reorganization might jeopardize the District's ability to comply with the Federal law due to a possible reduction in staff and resources. The letter did not reflect any specific allegations of current failure to enforce in Santa Barbara County. However, if a District fails to enforce the requirements of the Act, EPA has the authority to take independent enforcement action.

EPA Action

EPA has evaluated the comments received and is reaffirming the following OCS platform COA designations as provided in the final rule. The designated COA shall remain the COA for the lifetime of each source:

Platform A: Santa Barbara County Air Pollution Control District
Platform B: Santa Barbara County Air Pollution Control District
Platform C: Santa Barbara County Air Pollution Control District
Platform Habitat: Santa Barbara County Air Pollution Control District
Platform Henry: Santa Barbara County Air Pollution Control District
Platform Hillhouse: Santa Barbara County Air Pollution Control District
Platform Hogan: Santa Barbara County Air Pollution Control District
Platform Houchin: Santa Barbara County Air Pollution Control District

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7627).

Dated: May 4, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-11468 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC23

Disaster Assistance; Hazard Mitigation and Relocation Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule increases the Federal share for eligible hazard mitigation and relocation assistance projects from a maximum of 50 percent to 75 percent, increases the total amount of grant assistance available for each disaster, and places restrictions on property acquisition and relocation projects. The intent of the changes is to carry out the Hazard Mitigation and Relocation Assistance Act of 1993, which provides new flexibility in hazard mitigation and relocation assistance to States.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Chief, Program Implementation Division, room 417, 500 C Street SW., Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The President signed the Hazard Mitigation and Relocation Assistance Act (the Act), Pub. L. 103-181, on December 3, 1993. The Act amends Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170c, to increase the Federal contribution to 75 percent, to increase the limit on Federal expenditures, and to place restrictions on property acquisition and relocation project grants. This interim rule amends 44 CFR part 206 to implement the Act.

We amend the definition of grant to include the newly established limit on the total grant award. The Act states that the grant award for hazard mitigation shall not exceed 15 percent of the total estimated Federal grant assistance (excluding administrative costs) provided under the Stafford Act. Grant assistance is available under Sections 403, 406, 407, 408, 410, 411, 416, and 601 of the Stafford Act. FEMA will estimate the amount of assistance provided under these sections based on available data summarized in the damage survey reports and the Disaster Management and Projections report. FEMA will include in this total the cost of mission assignments to other agencies that provide functions that would normally be funded as grant assistance.

The Act increases from 50 percent to 75 percent the maximum Federal contribution of the cost of hazard mitigation measures, and increases total grant awards from 10 percent of Section 406 to 15 percent of the total estimated Federal assistance under the Stafford Act.

Under the Act, FEMA must restrict the eligibility of projects involving property acquisition and relocation assistance for property owners and structures. An eligible applicant must enter an agreement with the Director of FEMA that provides assurances that the property will be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices, and no future Federal disaster assistance in any form will be sought or given with respect to the property. No structures can be built on these properties unless they are public facilities and functionally related to open space usage and are open on all sides, or are rest rooms.

The Director may approve other structures, in writing and before construction begins. The Director's approval will be granted rarely, and when granted, buildings must be compatible with open space, recreational, or wetlands management practices and be in accordance with sound floodplain management.

The Act makes the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 inapplicable to properties damaged by flooding during the 1993 Midwest Floods when certain conditions are met. We define the conditions under which acquisition of certain properties in nine midwestern States is not subject to the Uniform Relocation Act. The intent and effect of this provision is to simplify and speed the acquisition and relocation process in the nine States severely affected by the Midwest Floods of 1993.

National Environmental Policy Act

This rule is excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim rule is required by statute, 42 U.S.C. 5170(c), which also specifies the regulatory approach taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 5170(c), this proposed rule adheres to the principles of regulation as set forth in this Executive Order.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures under 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs-housing and community development, Housing, Natural resources.

Accordingly, 44 CFR part 206 is amended as follows:

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 5 U.S.C. App.1; E.O. 12148, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 3 CFR, 1989 Comp., p. 214.

2. Section 206.430 is revised to read as follows:

§ 206.430 General.

This subpart provides guidance on the administration of hazard mitigation grants made under the provisions of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, hereafter Stafford Act, or the Act.

3. Paragraph (c) of Section 206.431 is revised to read as follows:

§ 206.431 Definitions.

* * * * *

(c) *Grant* means an award of financial assistance. The total grant award shall not exceed ten percent of the estimated Federal assistance provided under section 406 of the Stafford Act for major disasters declared before June 10, 1993. For major disasters declared on or after June 10, 1993, the total grant award shall not exceed 15 percent of the total estimated Federal assistance (excluding any associated administrative costs) provided under sections 403, 406, 407, 408, 410, 411, 416, and 601 of the Stafford Act.

* * * * *

4. Paragraphs (b) and (c) of section 206.432 are revised to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Limitations on Federal expenditures.* The total of Federal assistance under section 404 shall not exceed 15 percent of the total estimated Federal assistance (excluding any associated administrative costs) provided under sections 403, 406, 407, 408, 410, 411, 416, and 601 of the Stafford Act. The estimate of Federal assistance under these sections shall be based on the Regional Director's estimate of all Damage Survey Reports, actual grants, mission assignments, and associated expenses.

(c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. FEMA may contribute up to 50 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared before June 10, 1993. The nonfederal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

5. Section 206.434 is amended by revising paragraph (c)(4), redesignating paragraphs (d) and (e) as paragraphs (f) and (g) respectively, and adding new paragraphs (d) and (e) to read as follows:

§ 206.434 Eligibility.

* * * * *

(c) * * *

(4) Property acquisition or relocation, as defined in § 206.434(d);

* * * * *

(d) *Property acquisition and relocation requirements.* A project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters an agreement with the FEMA Regional Director that provides assurances that:

(1) The following restrictive covenants shall be conveyed in the deed to any property acquired, accepted, or from which structures are removed (hereafter called in section (d) the property):

(i) The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(ii) No new structure(s) will be built on the property except as indicated below:

(A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(B) A rest room; or

(C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.

(iii) After completion of the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, previous parking lots, and buffer zones.

(3) Any structures built on the property according to paragraph (d)(1) of this section, shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

(e) *Inapplicability of the Uniform Relocation Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to real property acquisition projects which meet the criteria identified below:

(1) The project provides for the purchase of property damaged by the major, widespread flooding in the States of Illinois, Iowa, Kansas, Minnesota,

Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin during 1993;

(2) It provides for such purchase solely as a result of such flooding;

(3) It is carried out by or through a State or unit of general local government;

(4) The purchasing agency (grantee or subgrantee) notifies all potential property owners in writing that it will not use its power of eminent domain to acquire the properties if a voluntary agreement is not reached;

(5) The project is being assisted with amounts made available for:

(i) Disaster relief by the Federal Emergency Management Agency; or

(ii) By other Federal financial assistance programs.

* * * * *

(Catalogue of Federal Domestic Assistance No. 83–516, "Disaster Assistance")

Dated: May 4, 1994.

James L. Witt,

Director.

[FR Doc. 94–11422 Filed 5–10–94; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 905, 914, 915, 917, 919, 936, 943, 952, and 970

Acquisition Regulation; Updated Coverage

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department today issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR). This rule represents the Department's initial effort in meeting the intent of Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, as applied to its acquisition regulation. The rule deletes obsolete coverage, updates existing coverage, and clarifies existing coverage in the areas of sensitive foreign nation controls, special research contracting, rental of construction equipment, use of Standard Form 30, Amendment of Solicitation Modification of Contract, incorporation of contract clauses by reference, subcontractor representations and certifications, and conduct of contractor employees. These changes are summarized in the "Section-by-Section Analysis" appearing later in this document.

EFFECTIVE DATE: This final rule will be effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, Procurement Policy Division (HR–521.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Section-by-Section Analysis
II. Public Comments
III. Procedural Requirements
  A. Regulatory Review
  B. Review Under Executive Order 12778
  C. Review Under the Regulatory Flexibility Act
  D. Review Under the Paperwork Reduction Act
  E. Review Under Executive Order 12612
  F. Review Under the National Environmental Policy Act

I. Section-by-Section Analysis

A detailed list of changes follows:

1. Section 904.404 is amended to reference the updated version of Department of Energy Order 1240.2, Unclassified Visits and Assignments by Foreign Nationals.

2. Subsection 904.601–71, paragraph (b) is revised to delete two references to special research contracts, which are no longer used by the Department.

3. Subsection 905.403–70, paragraph (c) is deleted to remove a reference to special research contracts, which are no longer used by the Department.

4. Subsection 914.201–5, paragraph (b) is deleted to remove the requirement to include the solicitation provision at 952.215–70, Required subcontractor representations and certifications. This solicitation provision is being deleted as noted below.

5. Subsection 915.406–5, paragraph (d) is deleted to remove the requirement to include the solicitation provision at 952.215–70, Required subcontractor representations and certifications.

6. Subpart 917.71 is deleted to remove obsolete coverage addressing Special Research Contracts with Educational Institutions. This type of contract has not been used by DOE for several years, and, pursuant to FAR 1.302, continued DEAR coverage is neither appropriate nor necessary to satisfy the specific needs of the agency.

7. Subsection 919.705–2, paragraph (a), fourth sentence is revised to remove the reference to special research contracts, which are no longer used by the Department.

8. Subparts 936.70 and 936.73 are deleted to remove obsolete coverage addressing Rental of Construction Equipment and the Outline for Equipment Rental Agreement. These procedures have not been used by DOE for several years, and, pursuant to FAR 1.302, continued DEAR coverage is neither appropriate nor necessary to satisfy the specific needs of the agency.

9. Section 943.301 is amended to remove language that is duplicative of FAR coverage addressing the use of Standard Form 30 for the deobligation of contract funds.

10. Subpart 952.1 is deleted to remove language addressing the incorporation of provisions and clauses by reference. The appropriate guidance is contained in the FAR.

11. Subsection 952.212–72 is revised to delete a reference to special research contracts, which are no longer used by the Department.

12. Subsection 952.215–70 is deleted to remove language addressing subcontractor representations and certifications. The appropriate guidance is contained in the FAR.

13. Subsection 970.0404–4(a)(3) is deleted to remove the requirement to include clause 970.5204–34, Sensitive Foreign Nations Control, in management and operating contracts. This clause applies solely to unclassified research contracts that may involve making unclassified information about nuclear technology available to certain sensitive foreign nations, and not to management and operating contracts which encompass broader missions than those contained in unclassified research contracts.

14. Section 970.2272 is amended to remove obsolete language addressing conflict of interest policies for management and operating contracts with colleges and universities. The referenced "Policy of the Federal Council for Science and Technology Relating to Conflicts of Interest by Staff Members of Colleges and Universities" is no longer utilized by DOE, and, pursuant to FAR 1.302, continued DEAR coverage is neither appropriate nor necessary to satisfy the specific needs of the agency.

15. Subsection 970.5204–12 is amended to clarify the prescription for use of alternate language in the clause which addresses the responsibility of management and operating contractors for the conduct of their employees.

16. Subsection 970.5204–34 is deleted to remove the requirement to include clause 970.5204–34, Sensitive Foreign Nations Control, in Management and Operating contracts. The clause does not apply to these contracts, as identified in the change to Subsection 970.0404–4(a)(3) above.

17. Subsection 970.5204–35 is amended to include a reference to Department of Energy Order 1240.2, Unclassified Visits and Assignments by Foreign Nationals, which had been omitted from the clause language.

II. Public Comments

These amendments were announced in a notice of proposed rulemaking in the December 2, 1993, **Federal Register** (58 FR 63553). DOE invited interested persons to participate in this rulemaking by submitting data, views or arguments with respect to the DEAR amendments set forth in the notice of proposed rulemaking. The public comment period closed on January 31, 1994, a period of 60 days. During that period, no comments were received; however, comments were received from one interested party after the closing date and were subsequently considered by DOE prior to issuing this final rule.

The comments addressed DEAR 952.215–70, Required subcontractor representations and certifications, stating that the DEAR coverage did not recognize the dollar thresholds identified in the FAR for applicability of the representations and certifications to subcontractors. After review of these comments and the guidance contained in DEAR 952.215–70, it was determined that the requirements contained in FAR do not need supplementary coverage in the DEAR. Therefore, DEAR 952.215–70 will be deleted. Additionally, subsections 914.201–5(b) and 915.406–5(d) are deleted to remove the prescriptions for including this solicitation provision.

III. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will apply to States that contract with DOE; however, none of the revisions is substantive in nature.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.) (1976) or the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 904, 905, 914, 915, 917, 919, 936, 943, 952, and 970

Government procurement.

Issued in Washington, DC, on May 4, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 904, 917, 936, 943, and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 904—ADMINISTRATIVE MATTERS

904.404 [Amended]

2. Section 904.404 is amended by revising the second sentence of paragraph (d)(3) to read as follows:

904.404 Contract clause.

(d) * * *

(3) * * * The contractor shall be provided at the time of award the listing of nations included in DOE 1240.2 (see current version.), Attachment 3, and any subsequent changes. * * *

* * * * *

904.601–71 [Amended]

3. Subsection 904.601–71 is amended in paragraph (b) by removing the words "special research contracts and" in the second sentence, and by removing the third sentence.

PART 905—PUBLICIZING CONTRACT ACTIONS

905.403–70 [Amended]

4. Subsection 905.403–70 is amended by removing paragraph (c).

PART 914—SEALED BIDDING

914.201–5 [Amended]

5. Subsection 914.201–5 is amended by removing paragraph (b).

PART 915—CONTRACTING BY NEGOTIATION

915.406–5 [Amended]

6. Subsection 915.406–5 is amended by removing paragraph (d).

PART 917—SPECIAL CONTRACTING METHODS

917.71 [Removed]

7. Subpart 917.71 is removed.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

919.705–2 [Amended]

8. Subsection 919.705–2 is amended in paragraph (a), by removing the words "including special research contracts awarded pursuant to Subpart 917.71," in the fourth sentence.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.70 and 936.73 [Removed]

9. Subparts 936.70 and 936.73 are removed.

PART 943—CONTRACT MODIFICATIONS

943.301 [Amended]

10. Section 943.301 is amended by removing the first sentence in paragraph (c).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.1 [Removed]

11. Subpart 952.1 is removed.

952.212–72 [Amended]

12. Subsection 952.212–72 is amended by removing the words "special research contracts and" in the first sentence.

952.215–70 [Removed]

13. Subsection 952.215–70 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

14. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

970.0404–4 [Amended]

15. Subsection 970.0404–4 is amended by removing paragraph (a)(3).

970.2272 [Amended]

16. Section 970.2272 is amended by removing the second sentence of paragraph (a).

970.5204–12 [Amended]

17. Subsection 970.5204–12 is amended by removing "NOTE: In contracts identified in 970.2272, the following paragraph shall be substituted for (c) above:" following the first paragraph (c) and adding "NOTE: The contracting officer may substitute the following paragraph for (c) above:" in its place.

970.5204–34 [Removed]

18. Subsection 970.5204–34 is removed.

970.5204–35 [Amended]

19. Subsection 970.5204–35 is amended by removing the phrase "specified in Attachment _______ to this contract," and adding the phrase "1240.2 (see current version.), Unclassified Visits and Assignments by Foreign Nationals," in its place.

[FR Doc. 94–11263 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 050294B]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of in-season action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this in-season action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, telephone 907–586–7221; Gary Smith, Acting Regional Director, telephone 206–526–6140; or Donald McCaughran, Executive Director, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this in-season action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (59 FR 22522, May 2, 1994). On behalf of the IPHC, this in-season action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the in-season action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 1

Northwest Treaty Tribes Fishery in Area 2A

Northwest treaty Indian tribes were allocated a total allowable catch of 192,500 pounds (lbs) (87.3 metric tons (mt)) in subarea 2A–1 (northern Washington coast) in 1994. Of this total, 16,000 lbs (7.3 mt) are reserved for ceremonial and subsistence purposes, leaving 176,500 lbs (80 mt) for the commercial fishery. Poor weather on the March 1 opening date resulted in canceling the fishery until March 5. Three fishing periods of 84 hours, 96 hours, and 30 hours respectively between March 5 and March 26 resulted in a total catch of 187,700 lbs (85.1 mt), exceeding the commercial catch limit by 11,200 lbs (5.1 mt).

Non-Treaty Commercial Fishing Period Limits in Area 2A

The Commission has determined that fishing period limits will be required during the 10-hour, July 6 non-treaty commercial fishing period in Area 2A to avoid exceeding the 178,750 lbs (81 mt) catch limit.

The following table of fishing period limits reflects the average catch by vessel class from openings without trip limits in Area 2A, adjusted by anticipated fleet size to avoid exceeding the catch limit:

Vessel class		Fishing period limit			
		Dressed, head-on		Dressed, head-off[1]	
Length	Letter	Pounds	Metric tons	Pounds	Metric tons
0–25	A	195	0.09	170	0.08
26–30	B	240	0.11	210	0.10
31–35	C	380	0.17	335	0.15
36–40	D	1,050	0.48	925	0.42
41–45	E	1,130	0.51	995	0.45
46–50	F	1,350	0.61	1,190	0.54
51–55	G	1,510	0.68	1,330	0.60
56+	H	2,275	1.03	2,000	0.91

[1] Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length and letter are printed on each halibut license. Decals showing the letter have been supplied with the license and should be displayed on the vessel.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight although fishermen are reminded that regulations require that all halibut from Area 2A be landed with their heads on.

The July 6 fishing period will begin at 8 a.m. and end at 6 p.m. The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Canadian Commercial Fishery in Area 2B

Canadian halibut landings from Area 2B have totaled 2.4 million lbs (907.2 mt) between March 1 and March 31. This fishery will continue until all Individual Vessel Quota's have been filled or November 15, whichever is earlier.

Annette Islands Reserve Fishery in Area 2C

The Metlakatla Indian Community has been authorized by the United States Government to conduct a commercial halibut fishery within the 3,000 foot (914.4 meters) Annette Islands Reserve waters. Fishing is restricted to 96 hours per month, and all catches are deducted from the Area 2C catch limit. Four 48-hour fishing periods in April and March produced a catch of just under 500 lbs (0.2 mt).

June Fishing Period Limits in Area 3B and 4A

The Commission has determined that fishing period limits will be required during the June 6 opening in Area 3B to avoid exceeding the catch limit. Last year, 5.2 million lbs (2,358.7 mt) were landed from Area 3B during the June fishing period, and this year's catch limit is 4.0 million lbs (1,814 mt). With fishing period limits in Area 3B, the Commission is concerned that some Area 3B fishermen might shift to Area 4A, thereby increasing the Area 4A catch. A shift of effort to Area 4A could jeopardize the August 15 fishing period, and possibly even result in exceeding the Area 4A catch limit. The Commission approved the June opening in Area 4A with the understanding that the catch would be minimal and that the August fishery would not be effected. Therefore, the fishing period limits in Area 3B will also be in effect in Area 4A. The fishing period in both areas will open at 12 noon on June 6 and close at 12 noon on June 7 with the following fishing period limits:

Vessel class		Fishing period limit (dressed, heads off)	
		Area 3B–4A	
Length	Letter	Pounds	Metric tons
0–25	A	900	0.4
26–30	B	1,300	0.6
31–35	C	4,000	1.8
36–40	D	5,200	2.4
41–45	E	8,400	3.8
46–50	F	11,800	5.4
51–55	G	17,400	7.9
56+	H	30,000	13.6

Dated: May 5, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11296 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 050694A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in bycatch limitation zone 2 (Zone 2) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowance of *C. bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 prohibited species bycatch allowance of *C. bairdi* Tanner crab in Zone 2 for the trawl rock sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established as 260,000 crabs by the final

1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(ii), that the prohibited species bycatch allowance of *C. bairdi* Tanner crab for the trawl rock sole/"other flatfish" fishery in Zone 2 has been reached. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in Zone 2 of the BSAI from 12 noon, A.l.t., May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11397 Filed 5–6–94; 1:16 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 050694B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the 1994 prohibited species bycatch mortality allowance of Pacific halibut specified for the trawl Pacific cod fishery in the BSAI has been reached.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675

The 1994 Pacific halibut bycatch mortality allowance for the trawl Pacific cod fishery, which is defined at § 675.21(b)(1)(iii)(E), is 1,200 metric tons (59 FR 7656, February 16, 1994).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that the Pacific halibut bycatch mortality allowance for the trawl Pacific cod fishery has been reached. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using trawl gear in the BSAI from 12 noon, A.l.t., May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq*

Dated: May 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11398 Filed 5–6–94; 1:16 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 90
Wednesday, May 11, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1927

RIN 0575–AB52

Real Estate Title Clearance and Loan Closing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Real Estate Title Clearance and Loan Closing regulation. This action is necessary to make the FmHA loan closing procedure consistent with the private sector for commercial loans and to make loan closing requirements consistent with local laws and procedures that are typical in the area. The effect will be to provide the public with easy access to FmHA programs.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, SW, Washington, DC 20250. All written comments will be available for public inspection at the above address during regular working hours.

FOR FURTHER INFORMATION CONTACT: Walter B. Patton, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334, South Agriculture Building, 14th and Independence Ave. SW., Washington, DC 20250, Telephone (202) 720–0099.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action."

Regulatory Flexibility Act

The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing, real estate title clearance, and loan closing.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Public reporting for the collection of information is estimated to vary from five minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag Box 0743, Washington, DC 20250.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

Programs listed in the Catalog of Federal Domestic Assistance are as follows: Catalog Nos. 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; and 10.416, Soil and Water Loans, are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983), and FmHA Instruction 1940–J. Catalog Nos. 10.404, Emergency Loans; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.410, Low Income Housing Loans, and nonprogram loans are excluded from the scope of Executive Order 12372.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in Section 2 of the EO.

Discussion

FmHA recognizes the need to make Real Estate Title Clearance and Loan Closing procedures more consistent with the laws and generally accepted loan closing practices of individual States. Some proposed changes in this rule will allow FmHA State Directors the authority to establish loan closing procedures that are applicable to the laws and customs of that particular State.

The significant proposed changes are listed below in general order of appearance in the regulation.

Several new definitions are added to help clarify certain issues. They include Closing Protection Letter, General Warranty Deed, Indemnification Agreement, Issuing Agent and Special Warranty Deed.

Due to differences in State laws regarding the use of title insurance and in the standard insurance coverage for errors and omission insurance and fidelity bond coverage, this proposed rule will allow FmHA State Directors to decide (with OGC approval) on the loan closing procedures and level of insurance coverage.

The requirement that Title Insurance Companies will provide an Indemnification Agreement (Closing Protection Letter) is added because it will greatly increase the insurance protection provided to the United States Government. This is a practice that Title Insurance Companies are familiar with and they understand our needs. An Indemnification Agreement can be provided for approved attorneys so the need for errors and omissions insurance and a fidelity bond can be eliminated. The agreement will provide loss coverage for the entire amount of the transaction with no deductible. The Indemnification Agreement will give FmHA protection from losses resulting from negligence or fraud caused by the closing agent or their employees. Indemnification Agreements give FmHA greater protection against malpractice and fiduciary risks than the insurance policies required by our current regulations. There is no additional cost incurred by requiring an Indemnification Agreement.

This instruction suggests the use of Title Insurance for all loan closings. Approved attorneys can provide title insurance coverage as an agent for a Title Insurance Company and therefore not be excluded from being a closing agent. The advantages of Title Insurance are the Indemnification Agreement can be issued by the Title Insurance Company, addressed to FmHA, to protect FmHA against losses caused by the negligence of closing agents or employees. It will eliminate the need for errors and omissions insurance and a fidelity bond. The Indemnification Agreement will protect FmHA for 100 percent of the loan transaction, not a limited insured amount.

An attorney's opinion would provide limited coverage because the statute of limitations on an attorney's liability runs from 2 years to 8 years, depending on the State, from the date of the opinion. If the attorney's practice is interrupted, the means for correcting problems or collecting damages may become an issue.

List of Subjects for 7 CFR Part 1927

Loan programs—agriculture, Loan programs—housing and community development, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

1. The authority citation for part 1927 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart B of part 1927 is revised to read as follows:

Subpart B—Real Estate Title Clearance and Loan Closing

Sec.

1927.51 General.
1927.52 Definitions.
1927.53 Costs of title clearance and closings of transactions.
1927.54 Requirements for closing agents.
1927.55 Title clearance services.
1927.56 Scheduling loan closing.
1927.57 Preparation of closing documents.
1927.58 Closing the transaction.
1927.59 Subsequent loans and/or transfers with assumptions.
1927.60 1927.61 [Reserved]
1927.62 Voluntary conveyances.
1927.63 1927.64 [Reserved]
1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.
1927.66 Cancellation of loan, assumption, or credit sale.
1927.67–1927.89 [Reserved]
1927.90 State supplements.
1927.91 Exception authority.
1927.92–1927.99 [Reserved]
1927.100 OMB control number.

Subpart B—Real Estate Title Clearance and Loan Closing

§ 1927.51 General.

(a) *Types of loans covered by this subpart.* This subpart sets forth the authorities, policies, and procedures for real estate title clearance and closing of loans, assumptions, voluntary conveyances and credit sales in connection with the following types of Farmers Home Administration (FmHA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO–NFE), Emergency (EM), Operating (OL), Rural Housing (RH), Farm Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Soil and Water (SW), Indian Land acquisition loans involving nontrust property, and NonProgram (NP) loans. This subpart does not apply to guaranteed loans.

(b) *Programs not covered by this subpart.* Title clearance and closing for all other types of FmHA loans and assumptions will be handled as provided in the applicable program instructions or as provided in special authorizations from the National Office.

(c) *Review by the Office of the General Counsel (OGC).* When required by applicable program regulations, such as for multi-family housing (MFH) organizations or other complex cases as determined by the State Director, the State Director will request OGC to review the docket and issue closing instructions.

§ 1927.52 Definitions.

Approval official. The FmHA employee who has been delegated the authority to approve, close, and service the particular kind of loan will approve an attorney or title company as closing agent to close these loans. If a loan must be approved at a higher level because of the dollar amount or for other reasons, the initiating office may approve the closing agent.

Approved attorney. A duly licensed attorney who provides title opinions directly to FmHA and the borrower or upon whose certification of title an approved title insurance company issues a policy of title insurance. Approved attorneys also close loans, assumptions, credit sales, and voluntary conveyances, and disburse funds in connection with FmHA loans.

Approved title insurance company. A title insurance company (including its local representatives, employees, agents, and attorneys) that issues a policy of title insurance. Depending on the local practice, an approved title insurance company may also close loans, assumptions, credit sales, and voluntary conveyances, and disburse funds in connection with FmHA loans. If the approved title insurance company does not close the loan itself, the loan closing functions may be performed by approved attorneys or closing agents authorized by the approved title insurance company.

Borrower. The party(ies) indebted after the loan, assumption, or credit sale is closed.

Certificate of Title. A certified statement as to land ownership, based upon examination of record title.

Closed loan. A loan is considered to be closed when the mortgage is filed for record.

Closing agent. The approved attorney or title company selected by the applicant and approved by FmHA to provide closing services for the proposed loan. Unless a title insurance company also provides loan closing services, the term "title company" does not include "title insurance company."

Closing protection letter. An agreement issued by an approved title insurance company which is an American Land Title Association (ALTA) form Closing Protection Letter (Rev. 3/27/87) or is otherwise acceptable to FmHA and which protects FmHA against damage, loss, or injury as a result or negligence by the issuing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance. Depending on the area, Closing Protection Letters may also be known as "Insured Closing Letters," "Indemnification Agreements," "Insured Closing Service Agreements," or "Statements of Settlement Service Responsibilities."

Cosigner. A party who joins in the execution of a promissory note or assumption agreement to guarantee repayment of the debt.

Credit sale. A sale in which FmHA provides credit to the purchaser(s) of FmHA inventory property. Title clearance and closing of a credit sale are the same as for an initial loan except the property is conveyed by quitclaim deed.

Exceptions. Exceptions include but are not limited to recorded covenants, conditions, restrictions, reservations, liens, encumbrances, easements, rights-of-way, leases, mineral, oil, gas and geothermal rights (with or without the right of surface entry), timber and water rights, judgments, pending court proceedings, probate proceedings and agreements which limit or affect the title to the property.

Fee simple. An estate in land of which the owner has unqualified ownership and power of disposition.

FmHA. The United States of America acting through the Farmers Home Administration of the Department of Agriculture.

General warranty deed. A deed in which the grantor or seller warrants or guarantees as a whole that a good quality title is being conveyed.

Indemnification agreement. An agreement that protects FmHA against damage, loss, or injury as a result of negligence on behalf of the issuing agent, approved attorney, or Title Company. May also be known as: (1) Insured closing letter, (2) Closing protection letter, (3) Insured closing service agreement, (4) Statement of settlement service responsibilities, or letters which provide similar protection.

Issuing agent. An agent who performs loan closing services and who is authorized to issue title insurance for an approved title insurance company. This term includes "title company."

Land contract (Contract for Deed). This is a contract between the buyer and seller of land in which the buyer has the right to possession and use of the land and over a period of time (usually in excess of one year) makes periodic payments of a portion of the purchase price to the seller. The seller retains legal title to the property until the final payment is made, at which time the buyer will receive a deed to the land vesting fee title in the buyer. This is a security device whereby the seller finances a portion of the purchase price for the buyer.

Mortgage. Real estate security instrument, includes deed of trust and deed to secure debt. Forms FmHA 1927–7 "Real Estate Mortgage or Deed of Trust For ______" (state), FmHA 1927–11 "Warranty Deed (______)" (state), and FmHA 1927–12 "Warranty Deed" (state) will be used to secure a mortgage to FmHA.

OGC. Refers to the United States Department of Agriculture (USDA) Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney, who provides legal counsel to FmHA for loan making and loan servicing actions.

Program regulations. Refers to the FmHA regulations for the particular loan program involved (e.g., subpart A of part 1944 for rural housing loans).

Quitclaim deed. A transfer of the grantors' interest in the title, without warranties or covenants. This type of deed is used by FmHA to convey title to purchasers of inventory property.

Seller. Individual(s) or other entity(ies) which are conveying ownership in real property to an FmHA applicant/buyer.

Special warranty deed. A deed containing a covenant whereby the grantor agrees to protect the grantee against any claims arising during the grantor's period of ownership.

Title clearance. Examination of a title and its exceptions to assure FmHA that the loan is legally secured and has the required priority.

Title defects. Any exception or legal claim of ownership (through deed, lien, judgement, or other recorded document), on behalf of a third party, which would prevent the seller from conveying a clear title to the entire property.

Vendee. The buyer.

Vendor. The seller.

Voluntary conveyance. A method of liquidation by which title to FmHA security is transferred by a borrower to FmHA by deed in lieu of foreclosure.

Warranty deed. A deed in which the grantor warrants that he/she has the right to convey the property, the title is free from encumbrances, and the grantor shall take further action necessary to perfect or defend the title.

§ 1927.53 Costs of title clearance and closings of transactions.

The borrower or the seller, or both, will be responsible for payment of all costs of title clearance and closing of the transaction and will arrange for payment before the transaction is closed. In voluntary conveyance cases to FmHA, these costs will be paid as provided in § 955.10(g) of subpart A of part 1955 of this chapter. In a case involving the purchase or sale of real estate, the option or sales contract must state who will pay the title clearance and closing costs. These costs will include any costs of abstracts of title, land surveys, attorney's fees, owner's and lender's policies of title insurance, obtaining curative material, notary fees, documentary stamps, recordation costs, tax monitoring service, and other expenses necessary to complete the transaction.

§ 1927.54 Requirements for closing agents.

(a) *Form of Title Certification.* The State Director will, with OGC approval, issue a state instruction specifying whether title insurance will be required at loan closing for some or all loans in the state or if, in some or all cases, a title opinion from an approved attorney will be sufficient. Title insurance is the recommended method for protecting FmHA interests. State Directors are authorized to require title insurance for all loan closings or some loan closings based on the type of loan and/or the geographical area of the state. If title insurance is used, State Directors are authorized to require a closing protection letter issued by an approved title insurance company to cover the closing agent, if such closing protection letters are customarily provided by title insurance companies in the state. The State Director's determination to require the use of title insurance will be based on the commercial and residential loan closing practices of the state and the economic and legal feasibility of obtaining title insurance.

(b) *General.* An attorney or title company may act as a closing agent and close FmHA real estate loans, provide necessary title clearance, and perform such other duties as are set forth in this subpart. A closing agent will be responsible for closing FmHA loans and disbursing both FmHA loan funds and funds provided by the borrower in connection with the FmHA loan. The borrower will select his or her closing agent. FmHA employees will not recommend the use of any particular closing agent or title insurance company, although as provided in § 927.54(a) the borrower may be required by a state instruction to provide title clearance with either a title insurance policy or an attorney's opinion. If title clearance is by an attorney's opinion, the approval official will approve the attorney who will perform the closing on a case-by-case basis in accordance with § 927.54(c) prior to loan closing. In such cases the attorney will be approved after submitting Form FmHA 1927–19, "Certification of Attorney." If title certification will be by means of a policy of title insurance, the title company which will issue the policy must have been approved in accordance with § 927.54(d).

(c) *Approval of attorneys.* Any attorney selected by an FmHA applicant, who will be providing title clearance where the certification of title is based on an attorney's opinion, must submit a completed Form FmHA 1927–19 certifying to professional liability insurance coverage and fidelity coverage of the attorney and the attorney's employees. The approval official will approve on a case-by-case basis any attorney who is duly licensed to practice law in the state where the real estate security is located and who complies with the bonding and insurance requirements in this section. If the certification of title will be by means of title insurance, any attorney or closing agent designated as an approved attorney or closing agent by the approved title insurance company which will issue the policy of title insurance will be acceptable, and when covered by a closing protection letter, will not be required to obtain professional liability insurance or a fidelity bond, if the closing protection letter is the ALTA form Closing Protection Letter or provides at least equivalent protection to FmHA as the professional liability and fidelity insurance required in paragraphs (c) (1) and (2) of this section. Each approved title insurance company may provide a master list of their approved attorneys and closing agents, addressed to the FmHA State Director, that are covered by its closing protection letters.

(1) An attorney issuing an attorney's title opinion must have in full force and effect an acceptable professional liability insurance policy for errors and omissions. The State Director will determine the appropriate level of such insurance and what level of deductible is permissible according to what is customary in the area and necessary for the protection of FmHA. The State Director will issue a State Instruction specifying this coverage. Required insurance will, as a minimum, cover the amount of the loan to be closed.

(2) An attorney that is issuing an attorney's title opinion or, if title insurance is being obtained, an attorney or closing agent that is not covered by a closing protection letter must have in full force and effect a fidelity type bond. If partners, associates, or members of the staff of the attorney or closing agent have access to the funds in the escrow account, each such individual must either have a separate fidelity type bond to cover any fraudulent or dishonest act or such person(s) may be covered by a blanket fidelity bond. While it is recommended that $50,000 of protection be maintained for each individual person, the State Director will determine the appropriate level of insurance according to what is customary in the area and necessary for the protection of FmHA. The State Director will approve the form of the bond although Form FmHA 1927–18, "Fidelity Bond for Loan Closing Attorneys," is an optional form that is acceptable to FmHA and may be used.

(d) *Approval of title companies.* FmHA will approve any title insurance company which issues policies of title insurance in the state where the security property is located if the:

(1) Form of the owner's and lender's policies of title insurance to be used in closing FmHA loans are acceptable to the State Director, and will contain only standard types of exceptions and exclusions approved in advance by the approval official with the advice of OGC.

(2) Title insurance company is licensed to do business in the state (if a license is required) and is not Federally debarred or suspended.

(3) Title insurance company submits copies of audited financial statements, Form 9 financial statements, or other approved financial statements satisfactory to the State Director, which indicate that the company has financial ability to cover losses arising out of its activities as a title insurance company and under any closing protection letters issued by the title insurance company. The financial statements must also demonstrate that the title insurance company has sufficient resources to reimburse FmHA for any losses caused by fraud or dishonesty by the company and its authorized agents, or failure of the company or its authorized agents to follow or comply with FmHA's written closing instructions.

(4) Title insurance company agrees that the title insurance company employee or closing agent who supervises the closing of the transaction will be authorized to receive funds and give receipts for the company's charges.

(5) Above listed approval process will be repeated at least every 5 years, or more often if adverse information becomes available, to insure continued compliance by the title insurance company.

(e) *Responsibility of approval official.* In addition to approving closing agents, the approval official will inform all closing agents used in connection with FmHA closing of their duties and responsibilities under this subpart, applicable state supplements, and any changes or additional requirements which may be imposed. A package containing a copy of this subpart, applicable forms, state supplements, and other pertinent material will be provided to the closing agent as needed.

(f) *Conflict of interest.* A closing agent who has, or whose spouse, children, or business associates have, a financial interest in the real estate which will secure the FmHA debt cannot be involved in the title clearance or loan closing process. Financial interest includes having either an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate which will secure the FmHA debt.

(g) *Debarment or suspension.* No attorney, title company, title insurance company, or closing agent, which has been debarred or suspended from participating in Federal programs, may participate in any aspect of the FmHA loan closing and title clearance process, in accordance with FmHA Instruction 1940–M.

(h) *Special provisions.* Closing agents are responsible for having current knowledge of the requirements of state laws in connection with loan closing and title clearance and should advise the State Director of any changes in state laws which necessitate changes in state mortgage forms and/or state supplements.

(i) *Rejecting closing agents or title insurance companies.* If the approval official (or the State Director for title insurance companies) cannot approve the closing agent selected by the applicant in accordance with paragraphs (c) or (d) of this section, the following actions will be taken:

(1) The attorney or closing agent will be notified within 5 business days of the specific reasons for rejection. No appeal rights will be given as the closing agent/attorney is not the direct recipient of program benefits.

(2) The applicant will be notified within 5 business days of the rejection. It is the applicant's responsibility to decide whether to continue with the rejected closing agent/attorney, if the reasons for rejection can be removed before any legal costs are incurred, or if another closing agent/attorney will be selected.

(3) If a title insurance company has requested approval, the title insurance company will be notified within 30 days after all relevant information requested by the State Director in connection with the approval decision has been received. If the title insurance company is rejected, it will be notified at that time of the specific reasons for rejection. No appeal rights will be given as the title insurance company is not the direct recipient of program benefits.

§ 1927.55 Title clearance services.

(a) *Responsibilities of closing agents.* Services to be provided to FmHA and the borrower by a closing agent in connection with the transaction vary depending whether a title insurance policy, or title opinion are being furnished. The closing agent is expected to perform these services without unnecessary delay. Delay in providing services without justification may be grounds for not approving the closing agent in future cases.

(b) *Initial responsibility of approval official.* The approval official will furnish the closing agent with Form FmHA 1927–4, "Transmittal of Title Information," all the information and documents called for therein (including waivers, easements, and FmHA forms), and any information not contained in this subpart regarding FmHA policies and procedures applicable to the type of transaction involved.

(c) *Ordering title services.* The approval official will notify the borrower and seller, if applicable, that an attorney or title company must be employed to examine the title and perform other services in connection with the closing of the transaction. Application for title examination or insurance will be made by the borrower to an attorney or title company. Application for mortgage title insurance will be on a form which has been approved by the approval official. The mortgagee policy will be for at least the amount of the loan. The United States of America will be named as the mortgagee insured. Attorney services may be requested in the form of FmHA Guide Letter No. 1927–B–1 (available in any FmHA office).

(d) *Use of title opinion.* If a title opinion will be issued, a title examination will include searches of the records, or certificates from the clerks of the appropriate State courts, Federal Bankruptcy courts and United States district courts, for the period determined necessary by local custom, to issue a title opinion. A Form FmHA 1927–9, "Preliminary Title Opinion," Form FmHA 1927–10, "Final Title Opinion," or a certificate of title will be issued to the approval official. If either form is not legally sufficient in a particular state, an OGC approved state form will be used. The closing agent will determine:

(1) The legal description and all owner(s) of record of the real property,

(2) Whether there are any outstanding mortgages, liens, judgments or pending suits in Federal or State courts (as disclosed by a lis pendens or other similar notice of a pending lawsuit), and advise the approval official and borrower of the nature and legal effect of outstanding interests or exceptions such as liens, encumbrances, leases, easements, covenants, conditions, restrictuions, reservations, and rights relating to mineral, oil, gas, geothermal, timber and water rights (including the presence or absence of the right of entry by holder of such rights), prior sales of part of the property judgments, probate proceedings or pending court actions affecting the real property or other outstanding exceptions or interests to assist in determining:

(i) Whether the outstanding interests or exceptions affect the value of the property or its operation, and

(ii) Which exceptions must be corrected in order for the borrower(s) to obtain good and marketable title of record in accordance with prevailing title examination standards, and for FmHA to obtain a valid lien of the required priority.

(3) Whether there are outstanding Federal or State tax claims (including taxes which under state law may become a lien superior to a previously attaching mortgage lien),

(4) Whether outstanding judgments of record, bankruptcy, insolvency, or probate proceedings involving any part of the property, whether already owned by the borrower, or to be acquired by assumption or with loan funds, or involving the borrower or the seller exist,

(5) If a water right is to be included in the security for the loan. The closing agent must attach a full legal description of the water right,

(6) If wetlands easements or other conservation easements have been placed on the property,

(7) If there are any liens or recorded claims which would prevent FmHA from obtaining an enforceable mortgage lien of the required priority on the security property, and

(8) If there are any exceptions of record.

(9) What measures are required for preparing, obtaining, or approving curative material, conveyances, and security instruments,

(10) Provide copies of these interests and exceptions as requested by the approval official.

(e) *Use of title insurance.* When title insurance is to be obtained, the approval official will be furnished with a title insurance binder disclosing any defects in, and encumbrances against, the title, the conditions to be met to make the title insurable, and the curative or other actions to be taken before closing of the transaction. The binder must include a commitment to issue a mortgagee and owner's title policy in an amount at least equal the amount of the loan. In the case of an assumption without a subsequent loan, the existing policy may be continued if the coverage meets or exceeds the assumption balance and the title company agrees in writing to extend coverage in full force and effect.

(f) *Approval official's responsibilities after receipt of preliminary title opinion or title insurance binder.* Upon receipt of the preliminary title opinion or title insurance binder, the approval official will:

(1) Check the opinion or binder carefully. If any required information is omitted, or if the standard form of opinion or binder is amended, the approval official will return it for completion or correction. If the closing agent is unable or unwilling to comply, the approval official will send the opinion or binder with a full explanation to OGC through the State Director for advice.

(2) Check the legal description of the land, water rights, rights-of-way, easements, and other security involved, to determine that the description covers all of the property rights intended to be taken as security.

(3) Review all exceptions to title shown in the preliminary title opinion or title insurance binder. The approval official will determine which exceptions must be modified, eliminated or waived, or whether an agreement with prior lienholders is necessary or advisable to protect FmHA's interests. If prior encumbrance(s) will remain, the approval official should obtain and review a copy of each to insure that its terms are acceptable to FmHA. If an option or sales contract which lists acceptable exceptions is involved, the approval official will determine whether the exceptions in the preliminary title opinion or title insurance binder are the same as those in the option or sales contract and inform the applicant of discrepancies. If the approval official has any doubt as to the acceptability or effect of any exception, the applicant will be requested to obtain a clarification. The approval official will consult with the closing agent and/or the State Director when necessary to determine the acceptability of any exception. If the approval official determines that any defects cannot be corrected, or the effect of certain exceptions on the title, suitability, security value, or successful operation of the property is not clear, and they cannot be corrected or eliminated without undue expense, the approval official will forward the preliminary title opinion or title insurance binder to the State Director together with comments regarding the objectionable features and copies of the exceptions when needed.

(i) If, with the advice of OGC, the State Director determines that the exceptions will not adversely affect the title to the property or its suitability, security value, or successful operation, the State Director will advise the approval official. The approval official will then arrange for closing.

(ii) If the State Director, with the advice of OGC, finds that these exceptions will adversely affect the title to the property, its suitability, security value, or successful operation, the State Director may waive them conditionally and instruct the approval official as to how the conditions may be met, or instruct the approval official that the loan cannot be closed because of the defect.

§ 1927.56 Scheduling loan closing.

The approval official may arrange a closing when he/she determines that exceptions shown in the preliminary title opinion or title insurance binder (if any) will not adversely affect the suitability, security value, or successful operation of the property.

(a) The approval official will make sure that all requirements of subpart I of part 1940 of this chapter have been met before the loan is closed.

(b) In arranging for loan closing, the approval official will send Form FmHA 1927–15, "Loan Closing Instructions/Loan Closing Statement For," to the the closing agent. When a title insurance commitment is involved, the "loan closing instructions" will include any corrections required by the commitment. Therefore, the title insurance commitment must be received before the final closing instructions are transmitted. At the same time, send written notification of loan closing to the applicant. For single family housing loans Form FmHA 1927–16, "Notification of Loan Closing," will be used to notify the applicant.

§ 1927.57 Preparation of closing documents.

(a) *Preparation of deeds.* The closing agent will prepare, complete, or approve deeds necessary for title clearance and closing of the transaction. FmHA forms will be used whenever possible.

(1) *Types of estates for married borrowers.* If the borrowers are married, FmHA prefers, but will not require, that title to the real estate will be held in such a way that, upon the death of a borrower, it will pass to the surviving spouse by law to prevent the real estate from being tied up in probate proceedings. Title may be held in any manner that permits obtaining the required mortgage.

(2) *Deeds will be prepared as follows:*

(i) Conveyances of title to borrowers by parties other than FmHA will be by general warranty deed. If a general warranty deed cannot be obtained, a special warranty deed, quitclaim deed, or grant deed may be used if the entity providing title clearance (closing agent) determines that the deed used will vest in the borrower a good and marketable title of record. All conveyances by FmHA will be by quitclaim deed.

(ii) The deed to the security property will show the exceptions to which the title is subject and should, where customary, contain a tie-in description showing that it covers the same land or part of the same land as that designated or described in another deed or mortgage described specifically by date, parties, and recording data.

(iii) Each deed should recite legal consideration.

(b) *Preparation of mortgages.* The closing agent will insure that all mortgages are properly prepared, completed, executed, and filed for record. Where applicable, the mortgages should recite that it is a purchase money mortgage. The following requirements will be observed in preparing FmHA mortgages:

(1) *Real estate mortgage forms.* FmHA mortgage forms will be used in all cases and other FmHA forms will be used whenever possible. Form FmHA 1927–1, "Real Estate Mortgage or Deed of Trust For ______," (state) will be used for all insured and direct loans except where Form FmHA 1927–7 (State), is used for all rural housing loans. These forms will be prepared and distributed in accordance with state supplements. When a loan is made to a homestead entryman or to a contract purchaser of a farm unit from the Bureau of Reclamation, a rider to Form FmHA 1927–1 will be used per state supplement.

(2) *Number of copies.*

(i) The original recorded mortgage is to be retained in the borrower's case file unless the original mortgage is retained by the recorder, and a conformed copy will be provided to the borrower.

(ii) When the original is to be retained by the recorder, an original and two conformed copies will be prepared. One conformed copy will be retained in the borrower's case file and one conformed copy will be provided to the borrower.

(iii) Extra copies of mortgages may be needed in individual cases in some participation loans, loans on reclamation projects, when security is taken on trust or restricted property involving loans to Native American, and other similar situations.

(iv) The closing agent will distribute copies to appropriate parties at loan closing or as soon as possible thereafter.

(3) *Persons required to execute mortgage.* The mortgage will be executed by the borrower and all other persons having an interest in the real property being mortgaged whose execution is necessary for FmHA to have the required lien priority, (for example, a spouse's right of dower or curtesy) so that, in the event of default, the mortgage will be enforceable against all such interests. Persons signing the promissory note and the mortgage will use exactly the same names which appear on the title.

(i) When the applicant is a corporation or cooperative, the mortgage will be executed by the authorized officers on behalf of the corporation or cooperative. Authorization must be granted to the officers by either:

(A) The Articles of Incorporation and Bylaws, or

(B) A duly adopted resolution of the board of directors authorizing such execution and indicating which officers are authorized to execute the loan documents on behalf of the corporation/cooperative, unless applicable FmHA instruction or state law prohibits. The resolution must bear the certification of the corporate/cooperative secretary that it was duly adopted and not revoked and have the corporate seal affixed, if applicable, to be acceptable. When shareholder approval is necessary the resolution must recite that shareholder approval has been obtained.

(ii) When the applicant is a partnership, the mortgage must be executed by the partners required by the partnership agreement to execute loan documents on its behalf.

(iii) When the applicant is a trust, the requirements of the trust agreement and state law shall control as to who is authorized to execute the loan documents.

(4) *Date of Execution.* The mortgage will be dated and executed on the same date as the promissory note. If necessary, the mortgage may be done on a different date provided it is not executed before the date of the note or after the date of closing.

(5) *Title exceptions.* The mortgage will specifically describe all exceptions it will be subject to, if customary under local practice or required by state law or state supplement. The exceptions will normally be shown as part of or immediately following the legal description of the land and must be the same as shown on the final title opinion or mortgagee policy of title insurance. In cases where specific description of each exception to title is not customary or required, these exceptions may be described by use of a general statement similar to the following (unless inconsistent with applicable State law): "Subject, however, to all outstanding covenants, conditions, restrictions, reservations, liens, encumbrances, easements, rights of way, leases, mineral, oil, gas and geothermal rights (with or without the right of surface entry), timber rights, water rights, judgements, pending court proceedings,

probate proceedings and agreements which limit the title to the property."

(6) *Releasing or retaining existing mortgages in refinancing cases.* When there is an outstanding FmHA real estate mortgage against the property and the loan secured by the mortgage is being refinanced with the current loan, the mortgage for the outstanding loan will be superseded and will be released at the time of loan closing, unless it is necessary under state law to keep the existing mortgage in effect to retain a valid lien of the same priority for the obligation being refinanced.

(7) *Describing notes in mortgages.* In most cases, only the note(s) for the new loan(s) needs to be described when a subsequent loan is made and a subsequent mortgage is taken. The note(s) for any unpaid loan(s) secured by real estate will not be described in the mortgage unless the approval official determines:

(i) It is necessary to do so to protect the government's interest,

(ii) The description of the unpaid prior secured note(s) in the mortgage being taken would not result in a higher title insurance premium for the new mortgage, or

(iii) State law requires that all original notes be presented when filing a security instrument. A State supplement should reflect this exception when applicable.

(8) *Determining due date of final installments.* The "Due Date of Final Installment," as shown in the mortgage, is determined by adding the number of years over which the loan is payable to the date of the promissory note: for example, if the note is dated March 30, 1987, and the final payment is due and payable 20 years from that date, the "Due Date of Final Installment" is March 30, 2007.

(9) *Alteration of mortgage form.* A mortgage form may be altered pursuant to a state supplement having prior approval of the National Office, or in a special case, to comply with the terms of loan approval prescribed in accordance with program instructions. No other alterations in the printed mortgage forms will be made without prior approval of the National Office. Any changes made by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage.

(10) *Special requirements imposed by program instructions.* Some program instructions require that the mortgage forms be modified. In such cases, either OGC or the approval official will modify the FmHA mortgage form as specified. The closing agent will make sure that the modification has been made prior to execution of the mortgage.

(11) *Mortgages on leasehold estates.* When the FmHA security interest is a leasehold estate, unless state law or state supplement otherwise provides, the Forms FmHA 1927–1 or FmHA 1927–7 will be modified as follows:

(i) In the space provided on the mortgage for the description of the real property security, the leasehold estate and the land covered by the lease must be described. The following language must be used: "All of borrower's right, title and interest in and to a leasehold estate for an original term of ______ years, commencing on ______, 19 ______, created and established by and between ______ as lessor and owner and ______ as lessee, including any extensions and renewals thereof, a copy of which lease was recorded/filed in book ______, page ______, as instrument number ______, in the Office of the (e.g., County Clerk), for the aforesaid county and state and covering the following real property: ______."

(ii) Immediately preceding the covenant starting with the words "should default," the following covenant will be added: "( ) Borrower covenants and agrees to pay when due all rents and any and all other charges required by said lease, to comply with all other requirements of said lease, and not to surrender or relinquish, without the government's prior written consent, any of borrower's right, title or interest in or to said leasehold estate or under said lease while this mortgage remains of record."

(12) *Mortgages on land purchase contract.* When the FmHA security interest is on a borrower's interest in a land purchase contract, OGC will provide language to be used to modify the Form FmHA 1927–1 or FmHA 1927–7.

(13) *Legal description.* The legal description on the mortgage should be taken directly from the title insurance commitment or the title abstract to insure accuracy of the legal description

(c) *Preparation of the promissory note.* The closing agent will make sure that the promissory note (or assumption agreement) is completed in accordance with the forms manual insert (FMI), and executed. The approval official will determine who is to execute the promissory note, including cosigners, if necessary, in accordance with program instructions and provide the closing agent with the names of these individuals. If the applicant is a corporation, partnership, or trust, the approval official will provide the name(s) and title(s) of the individual(s) executing the promissory note on behalf of the entity. Any other signatures on the note (or assumption agreement) needed to insure the required security, as provided in state supplements, will be obtained. Persons having a disability of minority or mental incompetency, or persons who have not been legally admitted for residency in the U.S., its territories, or possessions, are not to execute the promissory note. The date shown on the note will be the date it is executed by the borrower which may not be later than the date of the mortgage.

(d) *Preparation of protective instruments.* The closing agent will properly prepare, complete, and/or approve releases and curative documents necessary for title clearance and closing, in recordable form and record them if required.

(1) *Prior lienholder's agreement.* If any liens (other than FmHA liens or tax liens to local governmental authorities) or security agreements (hereafter called "liens"), with priority over FmHA's mortgage will remain against the real property securing the loan(s), the lienholders must execute, in recordable form, agreements containing all of the following provisions:

(i) The prior lienholder shall agree not to declare the lien in default or accelerate the indebtedness secured by the prior lien for a specific period of time after notice to FmHA. The agreement must:

(A) Provide that the specified period of time will not commence until the lienholder gives written notice of the borrower's default and the prior lienholder's intention to accelerate the indebtedness to the FmHA office servicing the loan,

(B) Include the address of the FmHA servicing office,

(C) Give FmHA the option to cure any monetary default by paying the amount of the borrower's delinquent payments to the prior lienholder, or pay the obligation in full and have the lien assigned to FmHA, and

(D) Provide that the prior lienholder will not declare the lien in default for any nonmonetary reason if FmHA commences liquidation proceedings against the property and thereafter acquires the property.

(ii) When the prior lien secures future advances, including the lienholder's costs for borrower liquidation or bankruptcy, which under state law have priority over the mortgage being taken (or a FmHA mortgage already held), the prior lienholder shall agree not to make advances for purposes other than taxes, insurance or payments on other prior liens without written consent of the State Director.

(iii) The prior lienholder shall consent to FmHA making (or transferring) the loan and taking (or retaining) the related mortgage if the prior lien instrument prohibits a loan or mortgage (or transfer) without the prior lienholder's consent.

(iv) The prior lienholder shall consent to FmHA transferring the property subject to the prior lien after FmHA has obtained title to the property either by foreclosure or voluntary conveyance if the prior lien instrument prohibits such transfer without the prior lienholder's consent.

(2) *Notice of foreclosure agreements.* These agreements will be obtained only when required by a state supplement. As a precautionary measure, the state supplement will require notice agreements when OGC determines that state law permits junior liens of private parties to be extinguished by foreclosure of a prior lien without the junior lienholder being made parties or being given actual notice. The state supplement will specify the number of days within which notice of foreclosure is required by the agreement.

(3) *Leaseholds.* When the FmHA security interest is on a leasehold, the approval official must review the lease to make sure that it meets the security and duration requirements of the program instructions. If not, it will be necessary for the landlord and tenant to amend the lease to meet these requirements at closing.

(4) *Agreement by holder of vendor's interest under land contract.* If the buyer's interest in the security property is that of a buyer under a land contract, it will be necessary for the seller (vendor) to execute, in recordable form, an agreement containing all of the following provisions:

(i) The vendor shall agree not to sell or voluntarily transfer the vendor's interest under the land contract without the prior written consent of the FmHA State Director.

(ii) The vendor shall agree not to encumber or cause any liens to be levied against the property.

(iii) The vendor shall agree not to commence or take any action to accelerate, forfeit or foreclose the buyer's interest in the security property until a specified period of time after notifying the State Director of intent to do so. This period of time will be ninety (90) days unless a state supplement otherwise provides. The agreement shall give FmHA the option to cure any monetary default by paying the amount of the buyer's delinquent payments to the vendor, or paying the vendor in full and having the contract assigned to FmHA.

(iv) The vendor shall consent to FmHA making the loan and taking a security interest in the borrower's interest under the land contract as security for the FmHA loan.

(v) The vendor shall agree not to take any actions to foreclose or forfeit the interest of the buyer under the land contract because FmHA has acquired the buyer's interest under the land contract by foreclosure or voluntary conveyance, or because FmHA has subsequently sold or assigned the buyer's interest to a third party who will assume the buyer's obligations under the land contract.

(vi) When FmHA acquires a buyer's interest under a land contract by voluntary conveyance or foreclosure, FmHA will not be deemed to have assumed any of the buyer's obligations under the contract, provided that the failure of FmHA to perform any such obligations while it holds the buyer's interest is a ground to commence an action to terminate the land contract.

(5) *Form of agreement.* The form of prior lienholder's agreement, forbearance agreement, notice of foreclosure or assignment, and agreement by holder of vendor's interest under land contract will be prescribed in a state supplement with the concurrence of OGC. When only forbearance agreements are needed, they will be obtained on Form FmHA 1927–8, "Agreement with Prior Lienholder," or, if that form is not legally satisfactory, on a state form having the same title. When only notice of foreclosure or assignment are required, a separate form for this purpose will be used. When both forbearance agreements and notices of foreclosure or assignment are required, Form FmHA 1927–8 may be amended in order to serve both purposes, a substitute state form may be used for both purposes, or Form FmHA 1927–8 may be used and the notice agreement obtained on a separate state form.

(6) *Executing, acknowledging, and recording.* When an agreement is required by paragraphs (d)(1), (d)(2), (d)(3), or (d)(4) of this section, the closing agent will determine at the time of closing that the agreement is properly completed, executed, sealed, witnessed, acknowledged, and recorded as required by state law or state supplement.

(e) *Correction of errors in recorded security instruments.* A state supplement, subject to OGC's review and approval, will be issued to provide guidance in correcting error(s) in recorded security instruments.

§ 1927.58 Closing the transaction.

The closing agent will cooperate with the approval official, the borrower and the seller, and other necessary parties to arrange the time and place of closing. The closing agent will make sure that FmHA obtains a valid mortgage lien on the property of the priority required by FmHA, subject only to any defects and exceptions approved by the approval official or State Director. The "Date of Closing" will be considered to be the date that the note and mortgage are signed, and the loan closing process takes place.

(a) *Disbursement of loan funds.* When the closing agent indicates that the conditions necessary to close the loan have been met, loan funds will be forwarded to the closing agent. Loan funds will not be disbursed prior to filing of the mortgage for record; however, when necessary, loan funds may be placed in escrow before the mortgage is filed for record and disbursed after it is filed. No development funds will be kept in escrow by the closing agent after loan closing. Loan funds for the payment of a lien may be disbursed only upon receipt of a discharge, satisfaction, or release (or assignment where necessary to protect the interests of FmHA).

(b) *Title examination and liens or claims against borrowers.* The closing agent will examine the title for liens against the property and claims against the borrower from the terminal date of the preliminary title examination up to and including the time of recording the current mortgage. If there are no entries of record during the period, except the documents required in connection with title clearance and any partial release(s) or subordination(s) previously approved by FmHA, the transaction may be closed. If there are other entries of record during this period, the transaction will not be closed until these entries have been cleared of record or administratively approved. The closing agent will advise the approval official of the nature of such intervening instruments and the effect they may have on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

(c) *Taxes and assessments.* The closing agent will determine if all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. If the seller and the borrower have agreed to prorate any taxes or assessment which are not yet due and payable for the year in which the closing of the transaction takes place, the seller's proportionate share of the taxes and assessments will be deducted from the proceeds to be paid to seller at closing and will be credited to the amount required to be paid by borrower at closing. Certificates or receipts should be produced from the taxing authorities to show that taxes or assessments which are due and payable have been paid and, if possible, the certificates or receipts, or copies, will be kept in the borrower's County Office or District Office case file. Appropriate prorations as agreed upon between the borrower and seller may also be made for taxes paid by the seller which are applicable to a period after the closing date, common area maintenance fees, prepaid rentals, insurance (unless the borrower is to obtain a new policy of insurance) and growing crops.

(d) *Affidavit regarding work of improvement—(1) Execution by borrower.* The closing agent will require that a Form FmHA 1927–5, "Affidavit Regarding Work of Improvement," be completed and executed (including acknowledgment) when a loan is being made to a borrower who already owns the real estate to be mortgaged. This affidavit will be executed by the borrower at closing.

(2) *Execution by seller.* The closing agent will require that Form FmHA 1927–5 be completed and executed (including acknowledgment) by the seller when the FmHA is making a loan to a borrower to enable the borrower to acquire the property (including transfers). This affidavit will be executed by the seller at closing.

(3) *Legal insufficiency of affidavit form.* If Form FmHA 1927–5 is not legally sufficient in a particular state, a state form approved by OGC will be used. A similar form that may be required by a title insurance company may be substituted for Form FmHA 1927–5.

(4) *Recording.* The affidavit will not be recorded unless the closing agent deems it necessary and state law permits.

(5) *Delay in closing.* The loan will not be closed if, at the loan closing, the seller (in a sale transaction) or the borrower (in a nonpurchase money loan situation) indicates that construction, repair or remodeling has been commenced or completed on the property, or related materials or services have been delivered to or performed on the property within the time limit specified in the affidavit, unless a state supplement otherwise provides. The closing agent will notify the approval official, who will determine if the work of improvement will result in a lien prior to the FmHA lien. The State Director will, with the advice and concurrence of OGC, provide in a state supplement the period of time to be used in completing the affidavit.

(e) *Completion of closing documents.* The closing agent will determine that deeds, promissory notes, mortgages, releases, and other curative instruments are completed in accordance with the FMI (sealed and witnessed if required by state law) and, if necessary, acknowledged and filed for record at the proper time.

(f) *Assignment of future income.* If Form FmHA 443–16, "Assignment of Income from Real Estate Security," is required in a particular case, the approval official will prepare the form and have it available for execution by the borrower when the transaction closes. The closing agent will see that the form is properly completed, executed (sealed and witnessed if required by state law), and acknowledged by the borrower.

(g) *Return of loan documents to approval official after loan closing.* Within one day after loan closing, the closing agent will return completed and executed copies of Form FmHA 1927–15, the promissory note, all other documents required for loan closing (except the mortgage), and the final title opinion or policy of title insurance to the approval official. If the recorded mortgage is customarily returned to the borrower or closing agent after recording, then it must be forwarded to the approval official immediately.

(h) *Final opinion or mortgage title policy.* As soon as possible after the transaction has been closed:

(1) *Final opinion.* The attorney will issue a final opinion to FmHA and the borrower on Form FmHA 1927–10, "Final Title Opinion." If that form is not legally sufficient in a particular state, a state form approved by OGC may be used. Issuance of the final opinion should not be held up pending the return of recorded instruments. If it is not possible for the final title opinion to show the book and page of recordation of the FmHA security instrument, the words "and is recorded" in paragraph II B of Form FmHA 1927–10 may be deleted and the following blank space completed to show the filing office and the filing instrument number if available. Attached to the final opinion will be required documents then available, including any which the approval official has furnished to the attorney which were not previously returned. The attorney will ensure that all recorded instruments are forwarded or delivered, to the proper parties after recording. The certification of title will be forwarded for a voluntary conveyance.

(2) *Mortgagee title policy.* The closing agent will send or deliver the mortgagee title policy, with the United States listed as mortgage holder, to the approval official. The policy will be subject only to standard exceptions and those outstanding encumbrances, exceptions, reservations, and other defects approved by the approval official. If an owner's policy of title insurance is requested, the closing agent will send or deliver it to the borrower. The closing agent will ensure that all recorded instruments are delivered or sent to the proper parties after recording.

(3) *Responsibilities of the approval official.* The approval official will check the final title opinion or mortgagee title policy to make sure that the lien priority required in the loan approval has been obtained. Form FmHA 1927–15 will be checked to see that funds were disbursed as authorized. If these conditions have not been met, the approval official will report it to the State Director for advice.

(i) *Other services of the closing agent.* (1) The closing agent will assist the approval official in preparing, completing, obtaining execution, acknowledgment, and recording the required documents when necessary. Standard FmHA forms will be used whenever possible. The closing agent will keep the approval official advised as to the progress of title clearance and preparation of material for closing the transaction.

(2) The closing agent will provide services for voluntary conveyances as set forth in § 1927.62 of this subpart, and § 1955.10 of subpart A of part 1955 of this chapter.

§ 1927.59 Subsequent loans and/or transfers with assumptions.

Title services and closing for subsequent loans to an existing borrower will be done in accordance with previous instructions in this subpart, except that:

(a) *Loans closed using title insurance.* (1) Title insurance will only be obtained if:

(i) Additional land is being acquired,

(ii) An initial loan is being refinanced with a subsequent loan,

(iii) An additional loan is being made where the prior secured loan was not subject to title clearance (e.g. where the prior loan was secured by the best mortgage obtainable), or

(iv) An additional section 504 loan is being made where the previous loan was unsecured, or secured for less than $7,500 and the outstanding debt amount plus the new loan exceeds $7,500.

(2) When a new mortgagee title policy is required,:

(i) It will cover the entire real property which is to secure the loan, including the real property already owned and any additional real property being acquired by the borrower with the loan proceeds.

(ii) Title insurance coverage will be obtained for the entire amount of any subsequent loan plus the amount of any existing loan being refinanced. If the existing loan is not being refinanced, the new mortgagee policy will insure only the amount of the subsequent loan.

(b) *Loans closed using title opinions.* Unless the approval official is aware of problems with or discrepancies in the original title opinion, the title will be researched back to the date of the last FmHA mortgage, except when the conditions of paragraph (a)(1) (i), (ii), or (iii) of this section exist. In these cases, the title will be examined in accordance with § 1927.55 of this subpart.

(c) *Title services required in connection with assumptions.* This is set forth in subparts A, B, and C of part 1965 of this chapter as appropriate for the loan type.

§§ 1927.60–1927.61 [Reserved]

§ 1927.62 Voluntary conveyances.

When a borrower offers to convey security, the approval official will process and close the transaction according to § 1955.10 of subpart A of part 1955 of this chapter. The closing agent will issue a certification of title stating that title is vested in the United States of America subject only to FmHA liens or prior liens previously approved by FmHA in accordance with § 1955.10 of subpart A of part 1955 of this chapter.

§§ 1927.63–1927.64 [Reserved]

§ 1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.

Whenever loans or assumptions are subject to agreements with other agencies (e.g. loans to or assumptions by homestead entrymen, American Indians, or contract purchasers from the Bureau of Reclamation), the title clearance and closing of the transaction will be handled in accordance with special instructions issued by FmHA and/or other parties involved applicable to the type of transaction, as well as those of this subpart. The special instructions may be in form of a Memorandum of Understanding with the advice and approval of OGC.

§ 1927.66 Cancellation of loan, assumption, or credit sale.

If it is determined that the transaction will not be closed, the approval official will promptly notify the borrower and the following parties who are involved in the case at the time the determination is made: the seller, attorney(s), OGC, and the title company.

§§ 1927.67–1927.89 [Reserved]

§ 1927.90 State supplements.

The state supplement issued pursuant to this subpart will have prior National Office approval and will be the minimum necessary to comply with state laws.

§ 1927.91 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with applicable law or opinion of the Comptroller General. The Administrator may exercise this authority upon written request from the State Director or an Assistant Administrator provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Request for exception must be supported with documentation to explain adverse effect on the Government's interest, proposed alternative courses of actions, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1927.92–1927.99 [Reserved]

§ 1927.100 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0147. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0575–0147), Washington, D.C. 20503.

Dated: March 1, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–11311 Filed 5–10–94; 8:45 am]

BILLING CODE 3410–07–U

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RIN 3150–AE85

Summary Report on the Status of Petitions for Rulemaking; Frequency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its regulations that would reduce the frequency of the summary report on the status of petitions for rulemaking, which is included in the NRC Regulatory Agenda, from quarterly to semiannually. The proposed action is necessary because the NRC intends to reduce the publication of the NRC Regulatory Agenda from quarterly to semiannually as the status of rulemaking actions and petitions for rulemaking is not subject to frequent change. The proposed rule is intended to reduce the level of NRC staff effort, paperwork, and distribution costs.

DATES: Comment period expires June 10, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Telephone (301) 492–7086 or Toll Free 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

In a letter dated December 30, 1976, Ms. Karen J. Husemeyer submitted a petition for rulemaking with the NRC. The petition was docketed as PRM–2–4, and a notice of receipt was published in the **Federal Register** of February 24, 1977 (42 FR 10911). The petitioner requested that the NRC annually review each petition having a docket number. The petitioner also requested that the status of proposed rule changes be made part of an administrative report that would be subject to public review.

In response to this petition for rulemaking, the NRC amended its rules of practice governing the receipt and processing of petitions for rulemaking on October 31, 1977 (42 FR 56950). In the final rule, the NRC stated that it would prepare a summary report on the status of petitions for rulemaking on a quarterly basis and make this report available for public inspection and copying in the Public Document Room. The provision concerning the preparation and availability of the summary report on petitions for rulemaking is codified at 10 CFR 2.802(g). This report was published under the heading "NRC Petitions for Rulemaking" until April 29, 1982, when it was incorporated into the NRC Regulatory Agenda and published in the **Federal Register** (47 FR 18508).

On November 9, 1979, the Commission also requested that a quarterly summary be prepared for rulemaking efforts not associated with petitions for rulemaking. The NRC staff prepared a report that indicated the status of proposed rules and advance notices of proposed rulemaking for the period of January through March 1980. Although this was a one-time report, the Commission later recommended that the report be updated each quarter. This report was published under the heading "Status of Proposed Rules." It was subsequently replaced by the NRC Regulatory Agenda, first published in the **Federal Register** on October 29, 1981 (46 FR 53594).

The NRC Regulatory Agenda is a compilation of all rules on which the NRC has recently completed action, has proposed action, or is considering action, and all petitions for rulemaking that have been received by the Commission and are pending disposition. The NRC Regulatory Agenda provides the public with basic information regarding currently active NRC rulemaking activities and petitions for rulemaking. Since 1982, the NRC Regulatory Agenda has been updated and issued each quarter as NUREG–0936.

The NRC also prepares and submits an agenda of its rulemaking activity for inclusion in the Unified Agenda of Federal Regulations, which is updated semiannually and published in the **Federal Register**. The Regulatory Flexibility Act (5 U.S.C. 602) requires that agencies publish semiannual regulatory agendas describing the regulatory actions they are developing that could have an impact on small entities. Executive Order 12866 establishes minimum standards for an agency's agenda, including specific types of information for each entry and publication in a uniform format. The NRC meets these public information requirements through its participation in the Unified Agenda of Federal Regulations. The Unified Agenda of Federal Regulations contains the same information concerning the NRC rulemaking activity that is published in the NRC Regulatory Agenda.

Proposed Action

The Commission believes that the continued publication of the NRC Regulatory Agenda on a quarterly basis is unnecessary. The content and the status of the rulemaking actions and petitions for rulemaking do not change frequently enough to justify a quarterly publication. The NRC believes that a semiannual publication schedule is sufficient to inform the public of the NRC's rulemaking activity and of the current status of NRC's active rulemakings and petitions for rulemaking. The NRC Regulatory Agenda would continue to be published in January and July of each year. Section 2.802(g), which concerns the frequency of the status of petitions for rulemaking, would be revised to reflect this change. The NRC would continue to publish an updated agenda of its rulemaking actions in the Unified Agenda of Federal Regulations each April and October.

To better inform the public of the status of NRC rulemakings, the NRC is exploring alternatives to make the information in the Regulatory Agenda available through electronic communications, such as via an electronic bulletin board. The NRC will make its next issuance of the Regulatory Agenda available in an electronic format on an electronic board that is accessible to the public.

Also the NRC has established a computer bulletin board whereby the public can obtain a copy of the proposed rule entitled, "Radiological Criteria for Decommissioning of Nuclear Facilities," and submit comments on this proposed rule via electronic communication. The NRC is exploring mechanisms to make this type of public access to rulemakings available for additional rulemakings in the future. In addition, the NRC routinely invites the public to submit comments on proposed rules in an electronic format.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The NRC has not prepared a regulatory impact analysis for this proposed rule because it is an administrative action that would reduce the frequency of the summary report on the status of petitions for rulemaking, as included in the NRC Regulatory Agenda, from quarterly to semiannually.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This is an administrative action that would reduce the frequency of the summary report on the status of petitions for rulemaking, as included in the NRC Regulatory Agenda, from quarterly to semiannually. This proposed action would have no economic impact on any NRC license, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.802, paragraph (g) is revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(g) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare a summary of petitions for rulemaking before the Commission. The report will be prepared semiannually and include the status of each petition. A copy of the report will be available for public inspection, and copying for a fee, in the Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 2nd day of May 1994.

For the Nuclear Regulatory Commission

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–11437 Filed 5–10–94; 8:45 am]

BILLING CODE 1590–01–P–M

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10 CFR Part 26

Consideration of Changes to Fitness-For-Duty (FFD) Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for Information and Comments.

SUMMARY: In response to a Federal court decision, the Nuclear Regulatory Commission (NRC) is evaluating its approaches for designation of persons who should be subject to the random drug testing at nuclear power plants, in particular whether employees without direct safety-related duties (e.g., clerical staff) must be subject to random testing. In the evaluation, the NRC staff identified several issues that have a significant bearing on whether the current approach should be revised. Public comments are requested on these issues to aid the NRC staff in completing their evaluation. If any changes are developed to current regulations as a consequence of this evaluation, these proposed changes will again be published in the **Federal Register** for public comments. If a revised rule is later adopted, these changes would apply to all licensees authorized to construct or operate nuclear power reactors and to all licensees authorized to possess, use, or transport Category I nuclear material.

DATES: The comment period expires August 9, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: *Mail written comments to:* U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of the NRC staff's report, "Evaluation of Scope of Persons Subject to Random Drug Testing" (Enclosure 1 to SECY–94–016), and comments received may be examined (and/or copied for a fee) at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Copies of NUREG/CR–1879, NUREG/CR–5227, and Supplement 1 to NUREG/CR–5227 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082 or from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 21161. A copy may be examined (and/or copied for a fee) in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles H. Hendren, Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, (301) 504–3209.

SUPPLEMENTARY INFORMATION:

Background

In *International Brotherhood of Electrical Workers (IBEW)* v. *NRC*, 966 F.2d 521 (9th Cir. 1992), the United States Court of Appeals for the Ninth Circuit upheld the NRC's denial of a request by the IBEW on behalf of Diablo Canyon's nuclear workers for an exemption from NRC's random drug-testing requirements. The labor union requested the exemption for bargaining unit members in clerical, maintenance, and warehouse positions. While declining to upset the exemption denial on the record before the court, the three-judge panel questioned the NRC's justification for imposing random drug tests on workers (particularly routine clerical workers) with no direct safety functions and no authorized unescorted access to the vital areas of the plant. (The Diablo Canyon administrative building is in the protected area, and administrative workers are subject to random drug testing because they have unescorted access to the protected area. A number of other plants also have administrative buildings inside their protected areas.)

Because the Court of Appeals affirmed the exemption denial, the NRC is under no immediate legal obligation to take any action. However, the NRC believes that a careful study of the issue raised by the court is in order. Therefore, the NRC staff conducted an initial study, "Evaluation of Scope of Persons Subject to Random Drug Testing" (Enclosure 1 to SECY–94–016), which is available in the Public Document Room as specified in the ADDRESSES portion of this Notice. This study evaluated issues relative to random drug-testing of clerks, secretaries, or other employees who have unescorted access to a nuclear plant's protected area, but whose own jobs are not directly safety-related and provide no opportunity for precipitating or escalating a safety-related incident at a nuclear power plant.

Before the effective implementation date of the Fitness-For-Duty (FFD) Rule (January 3, 1990), licensees had various programs to control substance abuse. However, these programs were not uniform in their procedures, testing methods, standards, or sanctions for substance abuse. Most of the programs did include (1) preemployment drug testing, (2) for-cause drug testing, (3) employee assistance programs, (4) behavioral observation, and (5) some type of training on the problems associated with substance abuse. Not all licensees had random drug testing as an element of their program; in some cases, random testing was precluded because of union intervention or prohibition by State laws.

In developing the FFD Rule, the scope of random drug testing was one issue that received considerable attention. In the **Federal Register** notice for the proposed rule published on September 22, 1988 (53 FR 36795), the Commission solicited comments on the appropriateness of the worker categories identified for testing. At 53 FR 36817, the Commission indicated that it was proposing that the rule apply to all persons who have been granted unescorted access to protected areas because (1) current programs are implemented in accordance with the Commission's Policy Statement on Fitness-for-Duty of Nuclear Power Plant Personnel published on August 4, 1986 (51 FR 27921), which applies to all persons within protected areas at nuclear power plants; (2) these persons could introduce and sell/distribute drugs in the workplace; and (3) any person under the influence of these substances could cause a safety hazard, if not to the general public, to the user and to fellow workers.

Many of the public comments on the proposed rule addressed the scope of random testing. Most comments supported random testing for all persons granted unescorted access to protected areas. However, a considerable number of comments objected to random testing provisions of the rule. A number of the comments asserted that random testing was unnecessary and that many of the individuals granted unescorted access to protected areas have no potential for precipitating or escalating a safety-related incident. Some comments recommended that only those workers who may potentially affect the health and safety of the public be covered. For the final rule, the NRC chose not to reduce the scope of persons subject to random testing.

Currently, the FFD Rule requires licensees authorized to operate or construct a nuclear power reactor to implement an FFD program that applies to "all persons granted unescorted access to protected areas, and to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with the licensee's emergency plans and procedures." Licensees authorized to possess, use, or transport formula quantities of nuclear material were recently required to initiate FFD programs and are not included in this analysis. Persons who come under the FFD program are subject to the drug testing provisions, which include random drug tests.

Discussion

Random drug testing involves two distinct functions: (1) Random selection of persons to be tested, and (2) collection and analysis of test specimens. The random selection process is used to ensure that all persons subject to drug testing will have an equal probability of selection for testing at any time. Random drug testing is also a very strong deterrent to substance abuse.

In developing the FFD Rule, the NRC decided to specify random drug testing because of a concern about the threat that substance-impaired workers posed to the public health and safety. Based upon comments received during rulemaking, the Commission concluded that all workers with unescorted access to protected areas of operating nuclear power plants should be included within the scope of the rule. However, some workers have argued that they do not perform safety-related functions and have now questioned whether random testing is an undue encroachment on individual expectations of privacy. See *International Brotherhood of Electrical Workers, Local 1245* v. *NRC*, 966 F. 2d 521 (9th Cir. 1992). Other viewpoints contend that expectations of privacy are diminished when workers apply for and accept jobs in the nuclear industry because job applicants willingly agree to significant privacy encroachments including preemployment urinalysis tests, detailed background investigations, security and fingerprint checks with the Federal Bureau of Investigation, credit checks, and psychological assessments. Accordingly, the Commission is now reassessing the scope of random urinalysis testing as applied to workers without safety-related duties to ensure a proper balance between safeguarding individual rights and the Commission's responsibility to protect public health and safety.

At nuclear power reactors, the safety risks from someone using illegal drugs or abusing alcohol arise from the potential for that person to inadvertently or deliberately take actions that could affect plant safety. The safety risks from inadvertent acts primarily involve impairment caused by substance abuse and the effect of that impairment on the person's ability to perform safety-related functions. Although the Commission has no information that would indicate that a person is more susceptible to coercion or blackmail due to drug abuse than from any other activity, there is a perception that the safety risks from deliberate acts come from the susceptibility of a substance abuser to be coerced or influenced into deliberately damaging a nuclear power plant, whether or not that person has safety-related duties. For example, the person could lose their inhibitions while under the influence or could be blackmailed into some act against the plant by someone aware of that person's substance abuse.

Objective data establishes a relationship between substance abuse, impairment, and inadvertent acts [NUREG/CR–5227, "Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues"], but the staff's review of the relevant literature suggests that insufficient scientific data exist to directly link substance abuse to the performance of deliberate (or malicious) acts. However, it has been clearly shown that, as human error rates increase, the risks to plant safety will increase significantly. [See NUREG/CR–1879, "Sensitivity of Risk Parameters to Human Errors in Reactor Safety Studies for a PWR."] It has also been shown that substance abuse can sufficiently impair a worker's motor skills and judgment that accidents attributable to neglect and human error become significantly more probable. [See NUREG/CR–5227 and Supplement 1 to NUREG/CR–5227.]

Information reported to the Commission indicates that arrests for sale and distribution of illegal substances inside nuclear power plant protected areas have decreased markedly since January 1990 when the FFD Rule was implemented. Prior to the FFD Rule, a number of cases involving the sale and distribution of illegal substances at nuclear power plants were reported, as described in the staff's report cited previously. The persons arrested for on-site sale and distribution of drugs included both safety-related and non-safety-related workers. The job categories included clerks, custodial workers, craftpersons, and engineers. Since implementation of the FFD Rule, however, only one case of this type has been reported to the Commission by a nuclear power plant licensee. Two of the more significant deterrents added by the FFD Rule were: (1) The requirement for random drug testing, and (2) the five-year minimum revocation of unescorted access for persons determined to have been involved in the sale, use, or possession of illegal drugs within a protected area.

The threat of someone either inadvertently or deliberately damaging or manipulating equipment that affects plant operations or could result in radiological consequences arises from that person having access to the equipment. Persons whose tasks involve design, operation, or maintenance of that equipment represent a greater potential threat because of their familiarity and more direct access to that equipment. Safeguard measures that protect against someone from inside the organization are intended to counter this threat by ensuring that persons who have an opportunity to operate or manipulate any equipment affecting plant functions are not impaired and are trustworthy and reliable. To achieve these goals, the Commission believes that although there are substantial unknowns currently associated with the true detection and deterrence effectiveness of random testing, the use of random drug testing provides an effective means for both detecting and deterring the use of illegal drugs or abuse of alcohol.

The fundamental approaches for selecting those to be included in a random testing program are to either test everyone (the "universal" approach) or to test only those in "safety-sensitive" positions. Proponents of the universal approach contend that the safety-sensitive approach tends to be discriminatory in that blue-collar workers are tested but management is not. Proponents of the safety-sensitive approach contend that random testing should be limited to only workers in positions where a direct link to safety exists. The NRC's current approach is a combination of these two fundamental approaches. The NRC's approach tests everyone who has unescorted access to a protected area and, therefore, tests everyone who has an opportunity to operate or manipulate important systems and equipment that could challenge the safe operation or emergency shutdown capability of a nuclear power plant.

To satisfy the intended objective of random drug testing, one approach would be to base the decision on who should be randomly tested on a person's access to equipment that could, if manipulated, cause a safety problem. This is a conservative approach and does not take into account the abilities and skills of persons who may have access. For someone who has access and whose tasks do not include safety-related activities, the approach assumes they present some risk of either inadvertently or deliberately causing safety problems.

Nuclear power plant security requirements provide distinct security boundaries where personnel access is controlled. The nuclear power plant protected area is one of these boundaries and is defined as an area encompassed by physical barriers to which access is controlled (10 CFR 73.2). Protected areas contain components and systems that are important to plant operations and whose failure could result in challenges to more critical plant systems and components. The NRC staff's evaluation study cites numerous cases where reactors have been tripped and safety systems challenged as a result of accidents that occurred in protected areas. Since 1987, there have been over two thousand "events" that caused reactors to be scrammed.

Within protected areas are vital areas. Vital areas contain equipment, systems, devices, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Unescorted access from protected areas into vital areas is controlled and limited to persons who require access to perform their duties.

An approach based on unescorted access to protected areas results in a large variation among sites in the number of people subject to random testing. Many power reactor sites have few administrative or technical work stations inside their protected areas. At these sites, most workers who have unescorted access also have job functions directly related to plant operations and require access to one or more vital areas. However, a number of power reactor sites have administrative and technical support buildings located inside protected areas. At these sites, many workers who have unescorted access only to protected areas (and not to vital areas) do not have tasks directly related to plant operations or maintenance.

Another approach to designating who would be subject to random testing would be to base the decision on tasks the person performs. This approach recognizes that people whose tasks directly involve plant safety have the access, the opportunity, and the knowledge to cause a safety problem. This approach addresses more directly the safety problems that might be caused by a person who is impaired due to substance abuse. Many positions and tasks are fairly well defined at nuclear facilities. A core of individuals such as plant operators, maintenance personnel, and quality control inspectors have tasks that are clearly subject to NRC regulations and directly involve safety-related activities. However, the relationship of some positions to plant safety is more difficult to establish.

One ongoing NRC activity that could affect considerations for changes in regulatory requirements for persons subject to random testing is a study of security requirements associated with the insider threat. There have been some indications that access control safeguards could, in some circumstances, make it much harder for reactor operators to maintain control of a plant. The NRC staff is considering whether reductions are possible in the safeguards that control access into vital areas from protected areas. Substantial reductions in the access control safeguards for vital areas could alter the safety impact assessments for optional approaches to random drug testing. These safety assessments are based to some degree on the use of access controls to segregate persons having access to vital areas from persons whose access is limited to protected areas (i.e., persons who do not have access to vital areas). Depending on how much importance is given to concerns about deliberate acts based on influence from illegal drug or alcohol abuse, future relaxation of the safeguards to control access into vital areas from protected areas could significantly affect any considerations for narrowing the scope of persons subject to random testing.

To assist in the ongoing evaluation of the scope of random testing, the Commission seeks comments on the proposed alternative approaches to the scope of random testing and other related issues. Further information on these alternative approaches is contained in the NRC staff's report cited previously. This study addressed five options for the scope of random testing. The first option is maintaining the existing random drug testing scope, which is based on personnel access to a particular location. Option 2, which would exclude certain groups of workers from the random testing pool, and Option 3, which would apply random testing to persons who have access only to vital areas, represent relatively simple variations of the current program. Options 2 and 3 would narrow the pool of individuals subject to random testing. Option 4 would base the scope of random testing on the tasks the person performs. Option 5 would allow alternative testing (in lieu of urinalysis) for workers in certain defined positions. For all five options, it is assumed that the other elements of the FFD program (such as suitable inquiries, preaccess testing, and for-cause testing) will remain applicable to all workers who are given unescorted access to protected areas. Specifically, comments are requested on the following:

1. Should the Commission retain the current scope of the random drug testing requirements in 10 CFR part 26, which requires that all persons granted unescorted access to protected areas at nuclear power plants be subject to random drug testing? (Option 1)

2. Should the Commission revise the scope of the 10 CFR part 26 random drug testing requirements to adopt one or more of the following approaches?

a. Exclude from random drug testing certain groups of workers (e.g., clerical, administrative) who have unescorted access to protected areas but not to vital areas. (Option 2)

b. Limit random drug testing to only those workers who have unescorted access to vital areas of nuclear power plants. (Option 3)

c. Limit random drug testing to workers whose jobs involve safety- or security-related functions regardless of whether these workers have unescorted access to protected areas. (Option 4)

d. Allow use of alternative testing methods in lieu of urinalysis for certain groups of workers who have unescorted access to protected areas (but not to vital areas) only because their normal workstations are within a protected area of the nuclear power plant. These methods could include performance-based testing, even though there are current technical limitations, primarily varying degrees of detectability, reliability, sensitivity, and accuracy. (See also question 7, below.) (Option 5)

3. For each of the four approaches above (2.a–2.d), what are the potential effects on risk to public health and safety or on vulnerability of nuclear power plants resulting from accidental acts and deliberate acts such as sabotage or vandalism? Will vulnerability or risk increase or decrease to any significant degree, or will they remain unchanged?

4. What would be the expected effect on the need for random drug testing under each of the four approaches above (2.a–2.d) if vital area access controls are reduced (e.g., allowing certain vital area doors to normally be unlocked, but be capable of (i) being remotely locked on demand in the event of a security contingency, and (ii) generating an alarm if a vital area door is opened without an authorized keycard)?

5. Does substance abuse increase the probability of a person committing a deliberate act such as sabotage or vandalism? These acts might be caused by indirect influences of drugs on a person's attitude or susceptibility to being influenced by others. What data exist to show a relationship between substance abuse and deliberate acts? Is random drug testing an appropriate means to control the risk of deliberate acts associated with substance abuse and. at the same time, not encroach unreasonably into individual privacy expectations?

6. Does the Commission's policy in 10 CFR part 26 deter the introduction of illegal substances into protected areas of nuclear power plants? If so, what aspect(s) of the FFD program creates this deterrent effect? If not, should the Commission require licensees to implement measures to cause this deterrent effect, and what type of measures should be required? (Information describing the measures and their effectiveness in sufficient detail to show the cause and effect relationship between the deterrent measure and the resulting reduction/elimination of illegal substances being brought into the workplace would be useful.)

7. Should the Commission continue to investigate new testing methods that could be used for all workers who have unescorted access to protected areas? What are some methods that might be acceptable and effective alternatives to the existing approach? For proposed methods, please provide data that establishes accuracy (i.e., test's error rate), specificity (i.e., degree to which the test can measure what it's supposed to measure), reliability (i.e., the precision with which the test can be repeated and the consistency of test results), and similar supporting parameters. The Commission is specifically interested in data on the validity of performance testing measures.

Dated at Rockville, Maryland, this 4th day of May 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–11294 Filed 5–10–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0812]

Truth in Savings; Proposed Regulatory Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Board is withdrawing proposed amendments to Regulation DD (Truth in Savings) to provide for an additional formula to calculate the annual percentage yield (APY), based on considerations of cost and regulatory burden at this time.

DATES: This proposed rule is withdrawn May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, Kyung Cho, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for questions associated with the regulatory flexibility analysis, Gregory Elliehausen, Economist, Office of the Secretary, at (202) 452–2504; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (12 U.S.C. 4301 et seq.) requires depository institutions to provide disclosures to consumers about their deposit accounts, including an APY on interest-bearing accounts. The law also contains rules about advertising deposit accounts, including accounts at depository institutions offered to consumers by deposit brokers. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective June 21, 1993. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 5, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).

In its initial rulemaking, the Board was guided by several general principles, such as establishing simple rules that minimize the possibility of errors and compliance costs and providing institutions with flexibility to promote a variety of product choices for consumers. This included designing a simple, easy-to-use formula for calculating the APY. As deposit brokers and institutions began complying with the new formula, the Board was asked by the Securities Industry Association (SIA) and others to reconsider how the APY is calculated. Proposed amendments that would provide for an additional APY formula were published on December 6, 1993 (58 FR 64190).

The difficulties associated with the current APY formula stem from the formula's assumption that interest paid on an account remains on deposit until maturity. For some accounts, the formula produces an APY that reflects the time value of interest received.[1] For others the APY fails to reflect the time value of interest received. This happens in cases where institutions offer long-term certificates of deposit (CDs) that are noncompounding but pay interest periodically. In this case, the formula produces an APY that is less than the contract interest rate.[2]

In considering whether to propose amendments to the APY formula, the Board focused on two issues: a desire for an APY that reflects the time value of money, and a concern about the compliance costs and impact on depository institutions if changes were made. The Board published a proposal that would factor into the APY calculation the specific time intervals for interest paid on the account—that is, the time value of money (Approach A). However, the Board also requested comment on a narrower approach that would affect only noncompounding multi-year CDs that pay interest at least annually. For these accounts, the APY would never be lower than the interest rate (Approach B). The Board also solicited comment on leaving the regulation unchanged (Approach C).

The Board received about 500 comments on its proposal. Nearly 90% of the comments were from financial institutions. Considering all comments received, approximately 5% supported Approach A; 15% supported Approach B; and 75% supported Approach C. The remainder presented other alternatives or expressed no opinion on the specific approaches.

(2) Discussion

Approach A: Proposal of an Additional Formula

Based on the comments received and upon further analysis, the Board is withdrawing the proposed amendments to the APY formula. Overall, the Board believes that the proposed formula (Approach A) would be complex and costly to implement, and the costs would outweigh the benefits derived from the proposed changes. (See Docket R–0836 elsewhere in today's **Federal Register** for proposed amendments which the Board believes might better capture the intent of the act's purposes in a less complex way.)

The Board believes the formula proposed in December would correct the APY anomalies produced by the current formula, and has considered the view of some commenters that the short-term costs of correcting the formula might be worthwhile over time. However, the Board is more persuaded by the commenters—including both consumer groups and industry associations—that believed the costs of compliance outweigh the benefits from implementing the proposed APY formula. Commenters reported that substantial costs recently had been incurred to implement the regulation, and they believed the distinctions in the APY produced by the complex formula proposed by Approach A did not warrant the substantial costs of implementing changes to the regulation—perhaps as much as 50% of the initial costs to implement the regulation.

The Board concurs with the commenters that voiced concern about the complexity of the proposed formula. These commenters noted that the formula was complex for both consumers and institutions. Many commenters stated that although an internal rate of return formula is a standard mathematical tool in the financial markets, its introduction in APY calculations would eliminate, as a practical matter, the use of many handheld calculators for preparing disclosures or quoting APYs to consumers. Commenters also noted due to the complexity of the APY calculation there would be an increased risk of error and potential civil liability in making this calculation for a wide variety of accounts.

The Board also notes the views of commenters that believed that in adopting Approach A, the Board would merely be trading one set of assumptions for another set of assumptions. Many commenters concurred with the Board that the current APY does not always reflect the value of periodic interest distributions, for example. But they also believed that the proposed APY also would not be factually accurate in all circumstances. For example, commenters remarked that the proposed APY would fail to reflect the fact that interest payments cannot always be immediately reinvested at the same rate as the account from which the interest was paid. They also believed it would be inappropriate to assume such a reinvestment rate for small monthly interest checks, for example, since rates typically rise based on the length of maturity and amount of principal. They noted that elderly consumers who hold multi-year CDs and who rely on periodic interest payments for living expenses would be particularly affected by the assumption.

Commenters noted that returns on deposit accounts traditionally have been based on the rate of interest paid and any compounding frequency. Higher yields historically have been equated with higher dollar interest payments—not more frequent interest payments—and commenters believed that consumers expect an APY to reflect those factors. Many commenters believed that the underlying premise of Approach A—the time value of money—is inappropriate for deposit account disclosures. Many believed an assumption based on potential earnings outside the account relationship was misleading for the APY calculation. They believed the purposes of Truth in Savings are not best served by an APY disclosure based on the timing of interest payments that is higher for consumers who receive less interest overall.

Due to concerns about costs and questions about the benefits provided, the Board believes this approach would not be the best solution.

Approach B: Noncompounding Multi-Year CDs

The Board also is not adopting Approach B, based on the combination of the limited scope of the problem Approach B seeks to address, the creation of new anomalies, and the cost to the industry of reviewing and implementing new calculation and disclosure requirements.

On the one hand, the Board believes Approach B is a simple, direct approach to correct one anomaly produced by the current APY formula. The Board also recognizes that the disclosure of an APY that is lower than the interest rate on a noncompounding multi-year CD that pays interest at least annually may be confusing to some consumers.[3]

Overall, however, the Board is more persuaded by commenters that voiced concern about the accuracy of the APY disclosed under Approach B. For example, commenters echoed concerns expressed about the proposed formula in Approach A. They remarked that the APY permitted under Approach B assumed the interest payments received during the term would be reinvested at the same rate as the account from which the interest was paid. Others believed it would be anomalous to disclose the same APY is disclosed for two multi-year accounts, one compounding annually and the other not compounding at all.

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[1] For example, assume $1,000 is deposited in a one-year CD with a 6% interest rate that compounds quarterly. Consumers have the option to receive quarterly interest checks instead. In both cases, the APY is 6.14%, even though the consumer who compounds interest receives $61.40, and the consumer who takes quarterly interest checks receives $60.00.

[2] For example, assume $1,000 is deposited in a two-year noncompounding CD with a 6.00% interest rate. Some institutions may offer the consumer the choice of receiving all interest ($120) at maturity, or receiving two interest payments ($60) each year. The APY in either case is 5.83%—lower than the 6.00% interest rate—because the formula looks at the total amount of interest paid, not when it is paid out. The SIA states the maturities of CDs purchased through deposit brokers range from three months to 10 years but average about two years (based on dollar-weighted maturities).

[3] The Board notes, however, that even if Approach B were adopted, institutions would still disclose an APY lower than the interest rate, such as for a multi-year CD that does not compound and pays interest only at maturity.

The Board also notes the commenters' concerns about the cost to the industry of reviewing and implementing new calculation and disclosure requirements. They noted the costs of implementing Approach B would be less significant, compared to Approach A. Although the change would affect a single class of accounts, commenters reported that some computer programming changes would be required and additional disclosures would be appropriate. Commenters stated that since consumers would see the same APY for compounding and noncompounding CDs, a statement might be necessary in advertisements and account disclosures to help consumers understand the terms of the account. (For example, assume two institutions offer a two-year CD with a 6.00% interest rate. One compounds annually, the other offers annual interest payments. Both could advertise a 6.00% APY, even though a consumer depositing $1,000 receives $120 if interest checks are paid and $123.60 if interest is compounded.) Finally, the Board notes some commenters remarked that institutions could easily remedy the current anomaly with a simple change to their product. They noted institutions could advertise and disclose an APY equal to the contract interest rate under the current formula by offering CDs that have annual compounding, regardless of any payment options.

Due to the limited problem Approach B seeks to address, the limited resolution of anomalies produced by the current APY formula, and the costs associated with adopting the approach, the Board has determined not to adopt Approach B.

(3) Regulatory flexibility analysis and Paperwork Reduction Act

The Board solicited comment on the potential cost of implementing the proposed APY formula, such as the proportion of existing accounts would require the new formula for computing APYs, the changes institutions would have to make to implement the new formula, the cost to make these changes, and the likelihood of changes in the number of different account terms and types of accounts offered would result if the new formula were adopted.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions were reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period. The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation DD, a copy of which may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

Board of Governors of the Federal Reserve System, May 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–11153 Filed 5–10–94; 8:45 am]

BILLING CODE 6210–01–P

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12 CFR Part 230

[Regulation DD; Docket No. R–0836]

Truth in Savings; Proposed Regulatory Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation DD (Truth in Savings) which clarify that once interest is credited to an account, it becomes part of the principal. By defining terms such as "crediting," and "compounding," the amendments will provide certainty to institutions, better fulfill the purposes of the act, and eliminate anomalies that currently occur in the APY calculation. The amendments provide that for institutions that pay interest (that is, credit interest) to the consumer by check or transfer or permit interest to remain in the account, an institution must pay interest on funds that remain in the account at the same frequency as the institution credits interest by check or transfer. Accounts that credit interest solely by posting to the account would not be required to send out interest checks or to transfer the interest to other accounts. Similarly, institutions offering accounts that "credit" interest solely by paying it out to the consumer by check or transfer would not be required to permit credited interest to remain in the account for compounding.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should refer to Docket No. R–0836, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, Kyung Cho, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for questions associated with the regulatory flexibility analysis, Gregory Elliehausen, Economist, Office of the Secretary, at (202) 452–2504; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (12 U.S.C. 4301 *et seq.*) requires depository institutions to provide disclosures to consumers about their deposit accounts, including an annual percentage yield (APY) on interest-bearing accounts. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective June 21, 1993 (See 57 FR 43337 and 58 FR 15077).

Because the current formula for calculating the APY assumes that interest remains on deposit until maturity, the resulting APY may—but does not always—reflect the time value of money. On December 6, 1993, the Board published a proposal that would have factored into the APY calculation the specific time intervals for interest paid on the account—that is, the time value of money (58 FR 64190). It called for adding an additional APY formula. Based on the comments received and upon further analysis, the Board has withdrawn the proposed amendments. (See Docket R–0812 elsewhere in today's **Federal Register**.) Compounding and crediting issues.

In the context of deliberations about the APY proposal, the Board has considered two related issues regarding depository institutions' compounding and crediting practices. This relationship between crediting and compounding has not previously been addressed in the regulation or in supplementary information. (The resolution of these issues, as discussed below, could provide an alternative basis for eliminating the anomaly produced by the current formula while requiring few changes to the current APY formula.)[1]

The act requires institutions to pay interest on the full amount of the principal in the account each day, and provides that this requirement shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest. Regulation DD states that the requirement to pay interest on the full amount of principal does not require institutions to compound or credit interest at any particular frequency. Neither the act nor the regulation defines "compounding," "crediting," or "principal."

One issue that has arisen is whether interest can be posted to a consumer's account and not be treated as part of the principal. Another is whether institutions that offer to credit interest to the consumer by check or transfer and permit interest to remain in the account must credit and compound interest on the same or a more frequent basis for those consumers that leave interest in the account. For example, if an institution offers a two-year certificate of deposit (CD) and permits consumers to receive accrued interest in monthly interest checks, does the institution that also permits interest to remain in the account have to credit and compound interest in the account on the same or more frequent basis (monthly or more often).

The Board recognizes that institutions may have read the act and regulation as permitting practices which compound and credit at different intervals. The Board is proposing to amend the regulation to clarify that interest cannot be credited to a consumer's account without becoming part of the principal. For example, assume a consumer earns $5 in interest on a $1,000 balance for the month of January. If an institution chooses to credit interest to the account monthly, then the institution must accrue interest on that sum. For example, if $5 is credited in January to an account with a balance of $1,000, the institution must accrue interest on $1,005 for the month of February. Simply put, if consumers are given access to earned interest in an account, the Board believes the act requires that consumers earn interest on those funds at that time.

The Board also proposes an amendment clarifying that although institutions may choose any compounding or crediting frequency for an account, institutions that provide for crediting interest either by check (or transfer of accrued interest to another account) or by posting interest to the account must do so on the same periodic basis. That is, if interest can be "credited" by check or transfer, an institution must credit interest to all such accounts at least as often a frequency. For example, an institution offering a one-year CD with the option to receive monthly or quarterly interest checks would have to credit interest to the account for compounding on at least a monthly frequency.

Of course, an institution need not permit consumers to receive interest payments by check or transfer. Similarly, the Board believes that if an institution requires consumers to receive interest solely by check (or transfer to another account), the institution need not also permit consumers to leave interest in the account for compounding.

The Board notes that this proposed interpretation could require a change in the compounding and crediting practices of some depository institutions, since institutions that do not currently compound on the same basis as they offer interest payments would have to change compounding frequencies or reduce payment options. The impact of the proposed amendments may be greater for those institutions offering consumers many options in crediting frequencies. For example, an institution permitting quarterly interest payments must also credit and compound at least quarterly for those consumers who choose to leave interest in the account. If an institution allows consumers to receive monthly interest checks (and can leave interest in the account), the institution could not offer this option without offering monthly crediting and compounding to other holders of the same account as well. The Board requests comment on these matters.

The Board also solicits comments on whether consumers who use APYs to comparison shop may be confused by an APY that reflects monthly compounding but pays less interest than if interest had compounded in the account. For example, assume two institutions offer a one-year CD with a 6.00% interest rate. One mandates monthly interest checks, the other permits monthly interest checks or monthly compounding. Both could advertise a 6.17% APY, even though a consumer depositing $1,000 receives $60 if interest checks are paid and $61.70 if money is left in the account.

(2) Proposed Regulatory Revisions: Section-by-Section Analysis

A section-by-section description of proposed amendments follows.

§ 230.2 Definitions.

Paragraph (c)—Annual Percentage Yield

The act and regulation define the APY as the total amount of interest that would be received based on the interest rate and the frequency of compounding for a 365-day year. The proposed amendment broadens the definition to treat crediting to the consumer's account—which includes the distribution of interest through interest checks or transfer—as the equivalent of compounding. For example, if an institution pays a 6.00% interest rate on an account, the same APY would result whether an institution compounds monthly or solely sends out monthly interest payments and does not permit interest to remain in the account.

The Board solicits comments on whether an exception should be made to the definition of APY, and whether the purpose of the regulation—enabling consumers to make informed decisions about deposit accounts—is better met if the APY captures the time value of interest received as an interest payment during the term of the account, as well as by compounding.

Paragraph (h)—Compounding

The act and regulation require institutions to disclose compounding policies for interest-bearing accounts. The Board proposes to define the term "compounding" as the frequency that earned interest is added to the principal in the consumer's account, on which interest then accrues. To illustrate, a CD offering monthly compounding adds interest to principal each month, and interest then accrues on the new month's principal—including the prior month's accrued interest.

Paragraph (j)—Crediting

The act and regulation also require institutions to disclose crediting policies for interest-bearing accounts. The Board proposes to define the term "crediting" to include the frequency that earned interest is paid to the account, or provided to the consumer by check or transfer to another account. Thus, for example, an institution that sends a consumer a monthly check of accrued interest would be crediting interest monthly, even if interest were not permitted to remain in the account to earn additional interest.

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[1] If an institution offers a multi-year noncompounding CD, the APY produced by the current formula is less than the interest rate, even if the institution pays out interest annually or more often.

§ 230.4 Account Disclosures.

Paragraph (b)(6)(iii)—Withdrawal of Interest Prior to Maturity

The regulation requires a disclosure for institutions offering time accounts that compound interest and permit a consumer to withdraw accrued interest during the account term. The disclosure states that the APY assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings. The Board requests comment on whether the disclosure would continue to be helpful to consumers in the current form if the proposed amendments are adopted.

§ 230.7 Payment of Interest.

Paragraph (b)—Compounding and Crediting Policies

The act requires institutions to pay interest on the full amount of the principal in the account each day, and provides that this requirement shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest. Regulation DD states that the requirement to pay interest on the full amount of principal does not require institutions to compound or credit interest at any particular frequency.

As discussed above, the Board believes institutions may choose any compounding or crediting frequency. However, once interest is credited to an account it becomes part of the principal, and if interest remains in the account, interest must be paid on those funds. The Board believes institutions may choose to offer accounts that credit interest solely by posting interest to the account, or by sending interest checks or transferring the interest to another account. But the Board also believes institutions offering accounts that provide consumers with the option to have interest credited by check (or transfer to another account) or by posting interest to the account provide at least as frequent a crediting frequency to all holders of the same account. That is, institutions must compound interest on funds remaining in the account at a frequency no less often than interest is offered to be credited—by check or transfer—to other consumers holding such accounts. For example, institutions may offer a one-year CD with monthly compounding and the option to receive monthly or quarterly interest checks, but they may not combine quarterly compounding with the option to receive monthly interest checks. The Board requests comment on the proposal.

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. General Rules

The proposed amendments to Appendix A only affect institutions that credit interest solely by check or transfer to another account (and that do not permit the consumer to leave interest in the account). The Board proposes two amendments to Appendix A to address the calculation of the APY for these accounts. First, the Board proposes to delete footnote 3 as unnecessary. Second, the definition of "Interest" in the APY formula would be amended to provide that for such accounts, institutions would factor in the timing of interest payments as if interest were being compounded. For example, if an institution offers a two-year CD with a 6.00% interest rate and credits interest semi-annually to the consumer by check or transfer to another account, the "Interest" figure used in the APY formula would be $125.51 on a $1,000 deposit. This would be the dollar amount of interest earned for a two-year CD with a 6.00% interest rate that compounds semi-annually. The APY would be 6.09%.

Finally, the Board also provides guidance on two assumptions for calculating the APY that provide greater flexibility and ease compliance with the APY formula. First, institutions could calculate the APY by assuming an initial deposit amount of $1,000. Second, if interest is paid out monthly, quarterly, or semi-annually, institutions could base the number of days either on the actual number of days for those intervals or on an assumed number of days (30 days for monthly distributions, 91 days for quarterly distributions, and 182 days for semiannual distributions).

Appendix B—Model Clauses and Sample Forms

The Board solicits comments on model clauses or additional sample forms that may be appropriate if the amendments are adopted.

(4) Proposed Additional Guidance

The proposed regulatory amendments associated with a new APY formula raise other interpretive issues. The Board solicits comments on the issues addressed below:

1. *Comparing accounts that disclose the same APY but earn different dollar amounts of interest.* Under the proposal, consumers may receive the same APY disclosure but different dollar amounts of interest.[2] The Board solicits comment on whether consumers who are comparison shopping would be better served if the specific manner in which interest is credited (such as, "An annual percentage yield of 6.17% with monthly interest checks") should be stated along with the APY. (See §§ 230.3(e), 4(a)(ii), 4(b)(1)(i), 5(b), 8(b).)

2. *Compounding and crediting frequencies.* The regulation requires institutions to disclose the frequency with which interest is compounded and credited. This standard would require institutions also to specify the crediting frequency for interest payments sent directly to the consumer or to another account, whether by check or other means, as well as when interest is credited to the account. The Board solicits comment on the proposed disclosure and on whether stating the frequency of crediting by interest payments or transfers to other accounts is likely to help consumers compare and understand differences in account terms. (See § 230.4(b)(2).)

(5) Form of Comment Letters

Comment letters should refer to Docket No. R–0836, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

(6) Regulatory Flexibility Analysis and Paperwork Reduction Act

The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation DD. The analysis expresses concern about the desirability of amending the regulation regarding the linkage of compounding and crediting frequencies at this time. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

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[2] For example, assume a one-year CD that pays an interest rate of 6.00%. Consumers would receive an APY of 6.17% if the institution requires monthly interest payments. Or, if the institution permits interest to be withdrawn monthly instead, the proposed amendments would also require institutions to permit interest to remain in the account for monthly compounding. Consumers holding this account would also receive an APY of 6.17% whether the consumer chooses to take monthly interest checks or to have interest remain in the account. However, based on a $1,000 deposit consumers who receive interest checks will earn $60.00, while those who compound interest will earn $61.70.

The Board solicits information regarding the likely costs for complying with the proposed changes to the regulation. In particular, the Board solicits comments on the following:

- What proportion of existing accounts would be affected by the proposed new rule requiring institutions to offer compounding on the same frequency as they permit interest payouts?
- What changes would institutions have to make to implement the proposed new compounding and crediting rule, and what would it cost institutions to make these changes?
- What changes in the number of different account terms and types of accounts offered would result if the proposal were adopted? For example, would institutions reduce the number of products offered? What effect would the amendments have on "private banking" relationships? Would institutions change from compounding to distributing the interest paid on accounts without compounding?

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Part 230.2 would be amended by revising paragraph (c), by redesignating paragraph (h) and paragraphs (i) through (v) as paragraph (i) and paragraphs (k) through (w), respectively, and by adding new paragraphs (h) and (j) to read as follows:

§ 230.2 Definitions.

* * * * *

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of ▸crediting or◂ compounding, for a 365-day period and calculated according to the rules in Appendix A of this part.

* * * * *

▸(h) *Compounding* means the frequency that earned interest is added to the principal in the account on which interest then accrues.◂

* * * * *

▸(j) *Crediting* means the frequency that earned interest is paid to the account, or provided to the consumer by check or transfer to another account.◂

* * * * *

3. Section 230.7 would be amended by redesignating paragraph (b) as paragraph (b)(1) and by adding a new paragraph (b)(2) to read as follows:

§ 230.7 Payment of interest.

* * * * *

(b) * * *

▸(2) *Equivalent compounding and crediting frequencies.* Institutions offering accounts that permit consumers to receive interest by check or transfer to another account and that permit consumers to leave interest in the account, must compound interest on funds left in the account at a frequency no less often than interest is offered to be credited to any consumer holding such an account.◂

* * * * *

4. Appendix A of part 230 would be amended by revising the first sentence in the introductory paragraph, the introductory text to Part I, and amending paragraph A, and by removing footnote 3 in Part I of Appendix A to read as follows:

Appendix A to Part 230—Annual Percentage Yield Calculation

The annual percentage yield measures the total amount of interest [paid] ▸earned◂ on an account based on the interest rate, and the frequency of compounding[.] ▸or crediting◂.[1] * * *

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 230.4 and 230.5 of this part and for advertising under § 230.8 of this part is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account ▸(and taking into account the frequency of crediting)◂ and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered and stepped interest rates.

A. General Rules

* * * In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term and that no other transactions (deposits *or* withdrawals) occur during the term.[[3]] * * *

The annual percentage yield is calculated by use of the following general formula ("APY" is used for convenience in the formulas):

$$APY=100\,[(1+(\text{Interest}/\text{Principal}))^{(365/\text{Days in term})}-1]$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Interest" is the total dollar amount of interest earned on the Principal for the term of the account ▸in which credited interest remains in the account. If interest is required to be credited solely by check or transfer, the total dollar amount of interest earned on the Principal for the term of the account is the amount of interest that would result if it were compounded at the same frequency interest is credited.◂

"Days in term" is the actual number of days in the term of the account.

* * * * *

Examples:

* * * * *

▸(3) If an institution offers a $1,000 two-year certificate of deposit that credits interest semi-annually solely by check or transfer, and there is no compounding at a 6.00% interest rate, using the general formula above, the annual percentage yield is 6.09%:

$$APY=100\,[(1+(125.51/1{,}000))^{(365/730)}-1]$$

$$APY=6.09\%$$ ◂

* * * * *

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[1] The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.

[3] [This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement.]

Board of Governors of the Federal Reserve System, May 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11154 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-41-AD]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes. This proposal would require modification of the power supply for the communications system. This proposal is prompted by reports of loss of power to the communications system due to an electrical fault in the ground crew jack box or the handset of the public address (PA) system. The actions specified by the proposed AD are intended to prevent the inability of the flight crew to communicate with passengers via the PA system and with air traffic control due to loss of power to the communication system, which may lead to unsafe operation of the airplane.

DATES: Comments must be received by July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-41-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-41-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-41-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP airplanes. The CAA advises that it has received reports of loss of power to both essential and emergency power supplies for the communications systems due to a ground fault in the communications jack box of the ground crew-to-flight crew communications system in the bay of the nose landing gear or the handset of the public address (PA) system. This condition, if not corrected, could result in the inability of the flight crew to communicate with passengers via the PA system and with air traffic control, which may lead to unsafe operation of the airplane.

Jetstream has issued Service Bulletin ATP-23-21-35288A, Revision 2, dated February 15, 1994, that describes procedures for modification of the power supply for the communications system. This modification (Modification 35288A) entails installing two diodes on the terminal block and the associated wiring to ensure that, in the event of an electrical fault in the jack box for the ground crew-to-flight crew communications system or the handset of the PA system, the communications circuits will continue to operate. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the power supply for the communications system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,500, or $1,650 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 94–NM–41–AD.

Applicability: Model ATP airplanes having constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flight crew to communicate with passengers via the public address system and with air traffic control due to loss of power to the communication system, which may lead to unsafe operation of the airplane, accomplish the following:

(a) Within 675 hours time-in-service after the effective date of this AD, modify the power supply of the communications system (Modification 35288A) in accordance with Jetstream Service Bulletin ATP–23–21–35288A, Revision 2, dated February 15, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 5, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11352 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–38–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the autopilot disconnect switches with modified units. This proposal is prompted by several incidents in which the flight crew did not depress both halves of the autopilot disconnect switch during the LAND 2 or LAND 3 approach and, as a result, one autopilot remained engaged. This condition resulted in unanticipated movements of the stabilizer trim and higher than anticipated control forces of the flight controls. The actions specified by the proposed AD are intended to prevent the flight crew from inadvertently disconnecting only one autopilot when both autopilots are engaged, which could result in unanticipated control surface movements.

DATES: Comments must be received by June 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–38–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.

94–NM–38–AD, 1601 Lind Avenue,
SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that operators have reported several incidents in which the flight crew did not depress both halves of the autopilot disconnect switch during the LAND 2 or LAND 3 approach and, as a result, one autopilot remained engaged. Although certain aural warnings sounded and visual indicators illuminated in these situations, the flight crew still believed that both autopilots had been disconnected. Consequently, unanticipated movements of the stabilizer trim and higher than anticipated control forces of the flight controls occurred. Inadvertent disconnection of only one autopilot when both autopilots are engaged could result in unanticipated control surface movements.

Fokker has issued Service Bulletin SBF100–22–020, dated September 25, 1990, that describes procedures for replacement of the autopilot disconnect switches with modified units. Installation of the modified units will ensure that if one-half of the autopilot disconnect switch is depressed, both autopilots will disengage; in addition, the system will remain separated. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive 90–112(A), dated October 15, 1990, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the autopilot disconnect switches with modified units. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55,860, or $2,940 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 94–NM–38–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11286 inclusive, 11289 through 11293 inclusive, 11295 through 11297 inclusive, 11300, 11303, 11306, 11308, 11310, 11312, and 11313; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from inadvertently disconnecting only one autopilot when both autopilots are engaged, which could result in unanticipated control surface movements, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the autopilot disconnect switches with modified units, in accordance with Fokker Service Bulletin SBF100–22–020, dated September 25, 1990.

(b) As of 6 months after the effective date of this AD, no person shall install an autopilot disconnect switch, part number A47007–401 or A47007–403, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) § 21.197 and § 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 5, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 94–11353 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWP–8]

Proposed Establishment of Class D and Class E Airspace; Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D and Class E airspace at Bullhead City, AZ. An airport control tower has been commissioned at Laughlin/Bullhead Municipal Airport. This proposal would provide adequate Class D airspace for instrument flight rules (IFR) operations and require two-way communications at Laughlin/Bullhead Municipal Airport, and would establish Class E airspace for instrument approach procedures in areas outside the Class D surface area.

DATES: Comments must be received on or before June 15, 1994.

ADDRESSES: Send comments on proposal in triplicate to Manager, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 94–AWP–8, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0697.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace with Class E arrival extensions at Bullhead City, AZ. An airport traffic control tower was commissioned at Laughlin/Bullhead Municipal Airport. This proposal would provide adequate Class D and E airspace for IFR operations and require two-way radio communications at Laughlin/Bullhead Municipal Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace areas designated as extensions to Class D surface areas are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AWP CA D Bullhead City, AZ [New]

Laughlin/Bullhead Municipal Airport, AZ
(lat. 35°08′50″ N., long. 114°33′32″ W.)

* * * * *

That airspace extending upward from the surface to and including 2,500 feet AGL within a 4.2 mile radius of the Laughlin/Bullhead Municipal Airport; excluding that airspace west of a line 1.8 miles west of and parallel to the north-south runway. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace as Designated as an Extension to a Class D Surface Area

* * * * *

AWP CA E4 Bullhead City, AZ [New]

(lat. 35°08′50″ N., long. 114°33′32″ W.)

That airspace extending upward from the surface bounded by a line beginning at lat. 34°57′00″ N., long. 114°33′00″ W.; to lat. 35°28′00″ N., long. 114°39′00″ W.; to lat. 35°29′00″ N., long. 114°20′28″ W.; to lat. 34°57′30″ N., long. 114°26′30″ W.; to the point of beginning.

This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on April 22, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–11407 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Proposed Rule; Requirements for Child-Resistant Packaging; Mouthwash Packages Containing 3 Grams or More of Ethanol

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing a rule to require child-resistant packaging for mouthwashes with 3 grams or more of absolute ethanol per package. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting mouthwash.

DATES: Comments on the proposal should be submitted no later than July 25, 1994.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301)504–0800.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504–0477 ext. 1199.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.)

Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (16 CFR 1700.20). Regulations have been issued requiring special packaging for a number of household products (16 CFR 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section D of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that triggers the requirement to place the product in CR packaging refers to the total amount in a single retail unit of the substance.

The PPPA allows the Commission to require CR packaging for household substances, which include foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). Mouthwashes are either drugs, if they make medical claims, or cosmetics.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

2. The Mouthwash Petition

On March 2, 1993, the Commission was petitioned to require child resistant packaging for mouthwashes containing more than 5 percent ethanol. The term "mouthwash" includes liquid products that are variously called mouthwashes, mouthrinses, antiseptics, gargles, fluoride rinses, anti-plaque rinses, and breath fresheners. It does not include throat sprays or aerosol breath fresheners. The petition was submitted by the American Academy of Pediatrics, the American Association of Poison Control Centers, the Center for Science in the Public Interest, and 28 states, Guam, and the Northern Mariana Islands.

The petitioners stated several reasons for their request: (1) Many mouthwashes contain high percentages of ethanol, an extremely toxic substance, in a package large enough to cause children serious injury or death; (2) these mouthwashes are accessible to children because they are generally considered innocuous and do not have CR packages; (3) they are attractive to children because of their appealing taste, color, and smell; and (4) data show that children have been seriously injured or died from accidental ingestion of ethanol-containing mouthwashes.

On November 17, 1993, the Commission granted the petition. Although the Nonprescription Drug Manufacturers Association ("NDMA") and the Cosmetic, Toiletry, and

Fragrance Association ("CTFA") had announced plans to implement a voluntary program to place mouthwashes with more than 5 percent ethanol in CR containers, the Commission found that mandatory action still may be necessary. In April 1994, the NDMA and CTFA notified the Commission that the products subject to their voluntary program had been changed from mouthwashes with more than 5 percent ethanol to mouthwashes with 3 grams or more in a single container.

B. Toxicity

The Commission's toxicity review indicates that mouthwashes with ethanol can present a serious ingestion hazard to children. Most of the popular adult mouthwashes contain between 14 percent and 27 percent ethanol. By comparison, beer contains between 5 percent and 7 percent ethanol and wine contains 12 to 14 percent ethanol.

Ethanol depresses the central nervous system. Symptoms of acute ethanol poisoning in children include irritability, lethargy, and unconsciousness which can lead to coma and death at high doses. Lethal blood levels of ethanol in children are reported to range between 250 and 500 mg/dl, and the lethal dose of ethanol is 3 g/kg. Deaths or serious injury could occur at lower doses due to other ethanol-induced effects. Ethanol poisoning in children can produce certain metabolic complications such as hypoglycemia, metabolic acidosis, and hypokalemia.

A review of the relevant literature shows that three deaths of children under 5 years of age have been reported. The most recent death reported occurred in 1992 and involved a 3-year-old girl who ingested an unknown amount of mouthwash that contained 18 percent ethanol. Several other cases of ethanol-induced hypoglycemia or toxicity following mouthwash ingestion are reported in the literature.

The National Electronic Injury Surveillance System ("NEISS") reported 36 cases of ethanol-containing mouthwash from January 1987 through November 1993. Based on these ingestions, it was estimated that a total of 1,670 mouthwash poisoning cases were treated in hospital emergency rooms in the United States during that time. An estimated 81 percent of these children were 1 or 2 years old, and about 5 percent of the children were hospitalized.

In addition to these sources, the American Association of Poison Control Centers' National Data Collection System ("AAPCC") includes cases reported by participating poison control centers. The AAPCC received 10,193 reports of ingestions of ethanol-containing mouthwash by children under 6 years of age during the 5-year period from 1987 through 1991. The AAPCC reported 1,847 ingestions of mouthwash with ethanol by children under 5 years old in 1991. Of these ingestions, 181 resulted in minor or moderate outcomes (symptoms were not life-threatening) and 1 resulted in a major, or life-threatening, outcome. Most cases reported to poison control centers are managed in a non-health-care facility, usually the patient's home.

C. Proposed Regulation

The mouthwash petition requested that the Commission require CR packaging for mouthwash that contains more than 5 percent ethanol. The Commission decided to propose that mouthwash products with 3 grams (g) or more of absolute ethanol per package or retail-sale unit should be subject to the regulation. This level is obtained by dividing the lethal dose of ethanol (3 g/kg of body weight) for a 10-kg child (30 g) by a safety factor of 10. This safety factor is needed because less than the "lethal" dose can produce serious toxic effects, or even death from hypoglycemia or other secondary effects. Three grams of absolute ethanol are present in approximately 2.6 ounces of mouthwash with 5 percent ethanol.

Regulating at the level requested by the petitioners (more than 5 percent ethanol) may not sufficiently protect children. This is because relatively small amounts of mouthwash at a level of 5 percent or somewhat below would exceed the 3 g limit that the Commission has preliminarily determined is needed to protect children.

D. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of ethanol-containing mouthwash demonstrate that the amount of ethanol in available mouthwash preparations is sufficient to cause serious illness and injury to children. These mouthwash preparations are readily available to children. Even if the manufacturers of these mouthwashes that are members of the NDMA and CFTA will voluntarily use CR packaging for their products, the Commission concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by all mouthwash packagers. In addition, the regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds preliminarily that the degree and nature of the hazard to children from ingesting ethanol-containing mouthwashes is such that special packaging is required to protect children from serious illness. The Commission bases this preliminary finding on the toxic nature of such mouthwashes, described above, and the accessibility of such preparations to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

CR packages are mass produced for products that contain ethanol and have similar properties to mouthwashes. Two industry groups have indicated that their members can have CR packages for one size of their mouthwashes by August 31, 1994, with their entire lines converted by May 1, 1995. In addition, one major manufacturer of mouthwash has introduced a popular size of its product in packaging that is not only child resistant, but is easier for adult consumers (and especially older adults) to open. Therefore, the Commission preliminarily concludes that CR packaging for mouthwashes is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard, section 3(b) of the PPPA, 15 U.S.C. 1472(b), requires the Commission to consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice.

E. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Because of their voluntary program, members of the NDMA and the CFTA are already implementing assembly line and mass production techniques to package ethanol-containing mouthwashes with CR packages. These groups have indicated that their program will be fully implemented by May 1, 1995, and will involve at least 95 percent of the industry's sales. Furthermore, these groups have indicated that each of their members will have at least one size of product in CR packaging by August 31, 1994. Thus, it appears that the manufacturers will be phasing in CR packaging over various product sizes.

Therefore, it appears that as the end of the industry's phase-in period approaches, there will be a relatively small portion of production that would not be in CR packaging. At least one major manufacturer has already started using CR packaging on what reportedly is a major portion of its production. The Commission concludes that even the few packagers of mouthwash products containing 3 grams or more of ethanol that are not participating in the voluntary program should be able to implement CR packaging for their products by 6 months after the issuance of a final rule, or by May 1, 1995, whichever is sooner, without serious adverse economic effects. Any packagers that did not have their assembly lines for CR packaging fully operational by that time could obtain appropriate packaging on an interim basis from contract packers.

Accordingly, the final rule is proposed to become effective 180 days after issuance of a final rule, or May 1, 1995, whichever is sooner, as to all products subject to the rule that are packaged on or after that date. It is possible, therefore, that the effective date will be less than 180 days after issuance of the final rule. The Commission finds that there is good cause for preliminarily determining that an effective date of less than 180 days is in the public interest. This determination is based on (1) the desirability of having CR packaging for this product on the market as soon as practicable in order to reduce the risk of ethanol poisonings to children from a widely distributed product and (2) the fact that, under the industry's voluntary program, at least 95 percent of the industry will be in compliance by May 1, 1995.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a preliminary economic assessment of a rule to require special packaging for mouthwash preparations with 3 g or more of ethanol in a single package. Based on this assessment, the Commission concludes that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because of the widespread acceptance of the voluntary CR packaging program. CR packaging for mouthwash preparations is readily available at an incremental cost of one-half to two cents per closure, and the PPPA permits manufacturers to market preparations in one non-CR size. The relatively low costs of CR packages should not be a burden to current small business manufacturers or an entry burden for future marketers. Manufacturers would be given enough time to use up existing supplies of non-CR packages and to obtain suitable CR packaging and incorporate its use into their packaging lines.

Accordingly, for the reasons given above, the Commission preliminarily concludes that the rule to require special packaging for mouthwashes containing 3 g or more of ethanol would not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed Poison Prevention Packaging Act (PPPA) packaging requirements for ethanol-containing products.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Preliminary analysis of the potential impact of this proposed rule indicates that CR packages for certain mouthwash preparations would have no significant effects on the environment. This is because the rule will not significantly increase the number of CR packages in use and, in any event, the manufacture, use, and potential disposal of the CR packages present the same potential environmental effects as do the currently used packages.

Therefore, because the proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a)

2. Section 1700.14 is amended by adding new paragraph (a)(22) and republishing the introductory text of paragraph (a) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(22) *Mouthwash*. Mouthwash preparations for human use and containing 3 g or more of ethanol in a single package (*i.e.*, retail unit) shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

Dated: May 5, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(**Note.** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Briefing Memorandum with attached briefing package, September 30, 1993.
2. Memorandum from Jacqueline Ferrante, Ph.D., HSPS, to James F. Hoebel, Acting Associate Executive Director for Health Sciences, "Recommendation for the level of regulation of mouthwash with ethanol", January 10, 1994.
3. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, "Injury Data Related to the Toxicity of Ethanol-containing Mouthwash", January 31, 1994.
4. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, "Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require CR Packaging for Mouthwash Containing Ethanol", February 24, 1994.
5. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, "Technical Feasibility, Practicability, and Appropriateness Determination for the Proposal to Require CR Packaging for Mouthwash Preparations Containing Ethanol", February 24, 1994.
6. Memorandum from Marcia P. Robins, ECSS, to Ronald L. Medford, EXHR, "Economic Effects of an Earlier Effective Date for CR Packaging of Mouthwash Preparations Containing Ethanol," April 6, 1994.
7. Briefing memorandum from Jacqueline N. Ferrante, Ph.D., HSPS, to the Commission, "Proposed Special Packaging Standard for Mouthwash Products with Ethanol," with Tabs A–E, April 11, 1994.
8. NDMA/CTFA Joint Voluntary Program on Child Resistant Packaging for Alcohol Containing Mouthwashes (Revised).
9. Memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, "Revised industry voluntary program for child-resistant packaging of mouthwashes with ethanol," April 20, 1994.
10. Memorandum from Harleigh Ewell, GCRA, to the Commission, transmitting a revised **Federal Register** notice, April 20, 1994.

[FR Doc. 94–11306 Filed 5–10–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–775]

RIN No. 1218–AA65

Safety Standards for Steel Erection

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of establishment of Negotiated Rulemaking Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing its decision to establish a Steel Erection Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA).

DATES: The Charter will be filed on May 27, 1994.

ADDRESSES: Any written comments in response to this notice should be sent, in quadruplicate, to the following address: Docket Office, Docket S–775, room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (Title 5 U.S.C. App. I), section 3 of the Negotiated Rulemaking Act of 1990, Title 5 U.S.C. 561 *et seq.* and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the establishment of the Steel Erection Negotiated Rulemaking Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*).

The Committee will function as an integral part of the Department's rulemaking on revising safety standards for steel erection. It will attempt, via face-to-face negotiations, to reach consensus on the coverage and the substance of these rules, which can be used as the basis of a Notice of Proposed Rulemaking. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and submitting to the Secretary of Labor the proposed regulatory text and supporting rationale and documentation for an occupational safety standard governing worker safety during steel erection.

Meetings shall be held, as necessary, at the discretion of the Chairperson, however, no fewer than six meetings shall be held. The Committee will terminate two years from the date of this Charter or until the promulgation of the final standard, whichever is later.

The Committee is composed of no more than 25 members including a facilitator, appointed by the Secretary of Labor, unless the Secretary of Labor determines that a greater number of members is necessary for the functioning of the Committee or to achieve balanced membership. Members may represent the following interests in appropriate balance: Architectural, design, and engineering firms; developers, property owners and general contractors; erection contractors using steel; fabricators of structural steel products; insurance organizations and public interest groups; labor organizations representing employees who perform erection work; manufacturers and suppliers of fall protection safety equipment; manufacturers and suppliers of structural members and pre-engineered components; and government entities.

The Committee will report to the Assistant Secretary for Occupational Safety and Health. It will function solely as an advisory body and in compliance with the provisions of the FACA and the NRA. Its Charter will be filed under the FACA fifteen (15) days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Steel Erection Negotiated Rulemaking Advisory Committee. Any written comments in response to this notice should be sent, in quadruplicate, to the following address: Docket Office, Docket S–775, room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 219–7894.

Signed at Washington, DC, this 5th day of May 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–11391 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. R–153]

RIN 2133–AB13

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed amendment to the cargo preference regulations of the Maritime Administration (MARAD) states that the requirement for the carriage of preference cargoes on privately-owned "available" U.S.-flag commercial vessels would be satisfied, during a one-season trial period, by U.S.-flag commercial vessels calling at a Canadian transshipment terminal outside the St. Lawrence Seaway, to load bulk agricultural commodity cargoes subject to the cargo preference laws that are transshipped from U.S. ports on the Great Lakes by U.S.-flag or foreign-flag vessels; and determinations of "fair and reasonable rates for United States commercial vessels" would include through bills of lading for such available U.S.-flag commercial vessels. This amendment would allow Great Lakes ports to compete for agricultural commodity preference cargoes.

DATES: Comments on the one-season trial period for this rule must be received on or before May 31, 1994, while comments on a permanent rule or a rule of greater duration than the one-season trial period must be received July 11, 1994.

ADDRESSES: Send an original and two copies of comments to the Secretary, Maritime Administration, room 7300, 400 7th St., SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC, 20590, Telephone (202) 366–1718.

SUPPLEMENTARY INFORMATION: United States law requires that at least 50 percent of cargo "impelled" by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. See sections 901(b) (the "Cargo Preference Act") and 901b, Merchant Marine Act, 1936, as amended ("the Act"), 46 App. U.S.C. 1241(b) and 1241f. The Secretary of Transportation is desirous of administering that program so that all ports and port ranges may participate. As discussed below, to achieve these objectives, MARAD is proposing to amend its cargo preference regulations to allow Great Lakes ports to compete for agricultural commodity preference cargoes for a one-season trial period, corresponding to the Great Lakes shipping season when the St. Lawrence Seaway system is in use.

For a number of reasons, United States-flag commercial vessels in foreign commerce do not serve the Great Lakes. Consequently, cargoes subject to cargo preference are not loaded at Great Lakes ports, resulting in significantly less cargo for these ports in comparison with ports on other United States coasts. MARAD proposes to permit cargoes to be counted toward the preference requirements if they are loaded at Great Lakes ports for the trip along the St. Lawrence Seaway and then transferred to United States-flag vessels for the ocean portion of their carriage. The registry ("flag") of the vessel loading the cargo on the Great Lakes and carrying it through the Seaway would not be relevant. This rule would be in effect during a trial period corresponding to the current Great Lakes shipping season.

MARAD has issued a regulation governing compliance with cargo preference requirements by shipper agencies, which is published at 46 CFR 381.8. This proposed rule would add a new section 381.9 to MARAD's cargo preference regulations. It would state that: (1) For a one-season trial period, the requirement for "available" U.S.-flag commercial vessels under the Act would be satisfied by U.S.-flag commercial vessels calling at a Canadian transshipment terminal outside the St. Lawrence Seaway to carry bulk agricultural commodity cargoes subject to the cargo preference laws, transshipped from U.S. ports on the Great Lakes by U.S.-flag or foreign-flag vessels; and (2) determinations of "fair and reasonable rates for United States commercial vessels" under section 901(b) would include through bills of lading for such available U.S.-flag vessels. Such combination foreign/U.S.-flag voyages would not be allowed if, in the future, all-U.S.-flag carriage, at fair and reasonable rates for U.S.-flag commercial vessel service, becomes available to load bulk agricultural commodities at U.S. Great Lakes ports.

Based on experience during the trial period, and after reviewing comments on this rulemaking, MARAD will consider whether to make this rule permanent, or extend it for a period of time longer than the one-season trial period.

The need for this rulemaking arises due to changing shipping conditions affecting U.S.-flag vessels operating in the Great Lakes, resulting in the absence of all-U.S.-flag vessel availability for the carriage of cargo between U.S. Great Lakes ports and foreign countries.

We do not believe that this proposal is precluded by any rulings of the Comptroller General. Specifically, in 1960, the Comptroller General examined a practice involving shipment of preference cargoes from U.S. Great Lakes ports to Canadian St. Lawrence River ports on foreign-flag vessels for "topping off" U.S.-flag ocean-going vessels which had partially loaded at U.S. Great Lakes ports. No. B–140872, 39 Comp. Gen. 758 (1960). The Comptroller General's opinion found no basis to criticize a regulation of the Department of Agriculture holding that 50 percent of the cargo[1] moving between the U.S. Great Lakes ports and Canadian St. Lawrence River ports must move on U.S.-flag vessels. It should be noted that at that time there was some all-U.S.-flag service to U.S. Great Lakes ports.

Dramatic changes in shipping conditions have occurred since 1960, including the disappearance of any all-U.S.-flag commercial ocean-going service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels is one significant shipping change. In 1960, the average U.S.-flag general cargo vessel had a deadweight tonnage of 10,976; while in 1993, the average U.S.-flag general cargo vessel had a deadweight tonnage of 17,464.[2] In addition, the average size of U.S.-flag vessels used for the carriage of bulk agricultural product cargoes has increased greatly during the past ten years.

The following table shows the total amounts of bulk agricultural product preference cargo moving out of the Great Lakes, and the amounts moving on U.S.-flag vessels out of the Great Lakes, during the years 1986–1993.

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[1] The Comptroller General's 1960 decision predated the 75 percent requirement instituted by the Food Security Act of 1985.

[2] Source: Maritime Administration, Office of Trade Analysis and insurance.

USDA EXPORT PROGRAM CARGOES EMANATING FROM THE GREAT LAKES SUBJECT TO CARGO PREFERENCE

[In metric tons]

Calendar year	American	Foreign	Total	Percent U.S.
1986	10,518	225,708	236,226	4.5
1987	6,989	251,252	258,246	2.7
1988	97,581	124,360	221,941	44.0
1989	119,271	79,766	199,037	59.9
1990				
1991		26,405	26,405	
1992		14,505	14,505	
1993	36,000	10,004	46,004	73.3

Source: Department of Agriculture, Kansas City Commodity Office, Export Operations Division.

For the period 1986 through 1993, total USDA controlled agricultural export tonnage from the Great Lakes was 1,002,364 metric tons. The total tonnage carried by U.S.-flag vessels was 270,359 metric tons, or 27 percent. However, little preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of the MORMACSKY trial in 1993, discussed below. At present, the Great Lakes simply do not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. In contrast, the total non-liner export nationwide of USDA and AID agricultural assistance program cargo subject to cargo preference in the 1992–3 cargo preference year (the latest program year for which figures are available) amounted to 6,297,015 metric tons, of which 4,923,244 mt. or 78.2 percent was transported on U.S.-flag vessels. (Source: Maritime Administration data base.)

The disappearance of government-impelled cargo flowing from the Great Lakes coincides with the expiration of the Great Lakes "set aside." Under the Food Security Act of 1985, Public Law 99–198, codified at 46 App. U.S.C. 1241f(c)(2), a certain minimum amount of government-impelled cargo was required to be allocated to Great Lakes ports during calendar years 1986, 1987, 1988 and 1989. That "set-aside" expired in 1989, and was not renewed by the Congress.

The 1993 results reflect a unique movement out of the Great Lakes involving a U.S.-flag mother ship and two U.S.-flag feeder vessels. Two U.S.-flag lake bulk carriers, the J. L. MAUTHE and the AMERICAN MARINER, served as feeders bringing wheat from a U.S. Great Lakes port to a Canadian transshipment point where the MORMACSKY, a U.S.-flag ocean going vessel, loaded the cargo destined to Russia. All the vessels were under the control of U.S.-flag carriers. Reportedly, the demonstration was possible as a result of commodity prices in the Midwest which favored the Great Lakes over other U.S. ports. However, the MORMACSKY experiment has not been duplicated. The high cost of U.S.-flag feeder carriage involved in such transshipment would normally allow future transshipment only if foreign-flag vessels brought the cargo to the Canadian transshipment point and resulted in the lowest landed cost.

This rule would not establish a preference or set aside for the Great Lakes. Availability of U.S.-flag service would continue to be determined on a national basis. The amount of cargo reserved for U.S.-flag vessels overall would not decrease because the cargo to be moved on foreign-flag feeder vessels to Canadian transshipment points would not be "subtracted out" from the 75 percent of cargoes reserved for U.S.-flag carriage.

This proposed rule recognizes the operational limitations of the St. Lawrence Seaway and makes it possible for U.S. ports situated on the Great Lakes to compete with ports located on the other coastal ranges of the United States for the shipment of bulk agricultural product cargoes. It would not guarantee that cargoes will move through Great Lakes ports, but would only allow the Great Lakes ports an opportunity to compete for such cargoes. Movements out of the Great Lakes would still be required to be cost competitive with U.S.-flag service from the other coastal ranges in order to attract cargoes.

This proposed rule would not interfere with the concept of "lowest landed cost" contained in the regulations of the Commodity Credit Corporation (CCC), a unit of the Department of Agriculture responsible for obtaining agricultural products for shipment under various foreign aid programs. The CCC regulations, at 7 CFR 1496.5, provide that the lowest combined total cost of the commodity, plus transportation charges to the port of destination calculated on the basis of U.S.-flag rates and availability, will prevail with regard to awarding contracts. The proposed combined transportation originating at Great Lakes ports would compete on the basis of lowest landed cost with U.S.-flag vessel availability from the other port ranges.

As for determining a "fair and reasonable" rate for this mixed carriage, the U.S.-flag component would be considered under the existing regulations at 46 CFR part 382 or part 383, as appropriate, with the cost for the foreign-flag component incorporated into the U.S.-flag component in the same way as the cost of foreign-flag vessels used in lightening operations in the recipient country's territorial waters.

Rulemaking Analyses and Notices

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Since this rule would affect other Federal agencies, is of great interest to the maritime industry, and has been determined to be a significant rule under the Department's Regulatory Policies and Procedures, it is considered to be a significant regulatory action under E.O. 12866. The abbreviated time for comment on the one-season trial period is necessitated by the opening of the St. Lawrence Seaway System on April 5, 1994.

MARAD projects that this rule would allow the movement of up to 250,000 to

300,000 metric tons of agricultural commodities from Great Lakes ports, with a reduction in the shipping cost to the sponsoring Federal agencies of up to $2 to $3 per metric ton ($500,000 to $900,000).

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers.

Accordingly, MARAD proposes to amend 46 CFR part 381 as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 would be revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1122(d), and 1241; 49 CFR 1.66.

2. A new § 381.9 would be added to read as follows:

§ 381.9 Available U.S.-flag service for 1994.

For purposes of shipping bulk agricultural commodities from U.S. Great Lakes ports during the 1994 shipping season, if direct U.S.-flag service, at fair and reasonable rates, is not available at U.S. ports in the Great Lakes, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately owned commercial vessel to the ultimate destination, will be deemed to comply with the requirement of "available" commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates incorporating a foreign-flag leg from U.S. Great Lakes ports to a Canadian port on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The "fair and reasonable" rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR part [illegible] or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag "fair and reasonable" rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters.

Dated: May 4, 1994.

By order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 94-11133 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-81-P

Notices

Federal Register
Vol. 59, No. 90
Wednesday, May 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Prichard Project Area, Idaho Panhandle National Forests, Shoshone County, ID

ACTION: Notice of Availability of the Final Environmental Impact Statement and Record of Decision for proposed activities in the Prichard Project Area.

DATES: The appeal period on this decision ends June 20, 1994.

ADDRESSES: Appeals should be addressed to Appeals Deciding Officer, Regional Forester, David F. Jolly, USDA Forest Service, Northern Region, 200 East Broadway, P.O. Box 7669, Missoula, MT 59867.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action, environmental impact statement and the Record of Decision should be directed to Don Garringer, Planning Staff Officer, Wallace Ranger District, Idaho Panhandle National Forests, P.O. Box 14, Silverton, ID 83867. Phone: (208) 752–1221.

SUMMARY: Notice is hereby given that the Forest Service has prepared a Final Environmental Impact Statement (FEIS) and signed a Record of Decision documenting a landscape-level approach to ecosystem management in the Prichard Project Area. The area is located approximately 12 air miles northeast of Wallace, Idaho, and is approximately 29,700 acres in size.

Public participation has been on going throughout the project. Comments received during the comment period have been addressed by appropriate specialists in an appendix located in the FEIS. During the 45 day appeal period comments and concerns should still be addressed to the planning officer for clarification.

The District Ranger is the responsible official for this EIS, and has made the decision to implement alternative 7, a modification of the preferred alternative in the DEIS. Rationale for this decision can be found in the Record of Decision. His decision was based upon several factors: Comments and responses from the public, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies.

SUPPLEMENTARY INFORMATION: A very specific proposed action was developed for the area, and included timber harvest, reforestation activities and watershed/fisheries rehabilitation as well as wildlife improvements, through implementation of timber sales. The scope of the proposed action is limited to timber harvesting, reforestation, precommercial thinning, related road construction, road removal, reconstruction activities and stream channel restoration and stabilization. During development of the proposed action and alternatives to the proposed action, emphasis has been placed on the water resource needs and visual concerns of local residents.

Eight alternatives were developed, including a No-Action Alternative. Alternative 7 is the alternative preferred by the Forest Service. Under Alternative 7, the harvest of green, dead and dying timber is scheduled for implementation in three separate but related projects. The projects would produce an estimated 10.5 million board feet of timber and treat 25 timber harvest units. Harvest methods include, commercial thin, salvage, group selection and group shelterwood using helicopter and cable yarding. In this proposal 1 mile of road will be constructed, 2.39 miles will be reconstructed and 13.08 will be reconditioned. Road removal projects will involve the treatment of new road construction and existing roads identified in the road management plan as not being needed for future management needs. With the removal of roads various miles of stream course will also undergo restoration.

Management activities would be administered by the Wallace Ranger District of the Idaho Panhandle National Forests in Shoshone County, Idaho. This FEIS will tie to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Dated: April 29, 1994.

Steve Williams,

District Ranger, Wallace Ranger District, Idaho Panhandle National Forests.

[FR Doc. 94–11318 Filed 5–10–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

LA–146 Cattleman's Stockyard, Inc., Clarence, Louisiana.

NC–167 Foothills Livestock Auction, Inc., Spindale, North Carolina.

OH–160 Michigan Livestock Exchange, Columbus Grove, Ohio.

TX–343 Clifton Livestock Commission Co., Inc., Clifton, Texas.

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408–South Building, US. Department of Agriculture, Washington, DC 20250 by May 20, 1994. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 5th day of May 1994.

Tommy Morris,

Acting Director, Livestock Marketing Division.

[FR Doc. 94–11420 Filed 5–10–94; 8 45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will hold a community forum on Wednesday, June 1, 1994, from 9 a.m. until 5 p.m. at the Clarion Hotel, 4345 North Lincoln Boulevard in Oklahoma City and Thursday, June 2, 1994, from 9 a.m. until 5 p.m. at the Doubletree Hotel at Warren Place, 6110 South Yale in Tulsa. The purpose of the community forum is to obtain information on selected education and employment issues in Oklahoma as they affect minorities, women, and persons with disabilities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–11463 Filed 5–10–94; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Public Hearings on Section 232 National Security Investigation of Imports of Crude Oil and Petroleum Products

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Bureau of Export Administration (BXA) is holding public hearings on the investigation that the Department of Commerce initiated, on April 5, 1994, to determine the effects on the national security of imports of crude oil and refined petroleum products under section 232 of the Trade Expansion Act of 1962, as amended. This notice identifies the issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held in New York, New York, on Monday, June 6, 1994; in Dallas, Texas, on Monday, June 13, 1994; and in Santa Clara, California, on Thursday, June 16, 1994. Requests to speak are due by Monday, May 23, 1994. The hearing in New York will be held in the Ceremonial Courtroom of the U.S. Court of International Trade, One Federal Plaza. The hearing in Dallas will be held at the Joe C. Thompson Amphitheatre, Cityplace Center East, 2711 N. Haskill. The hearing in Santa Clara will be held at the City of Santa Clara Council Chambers, 1500 Wurburton Avenue.

ADDRESSES: Send requests to speak and written copies of the oral presentation to Steven C. Goldman, Deputy Director, Office of Industrial Resource Administration, room 3878, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Industry Analyst, Office of Foreign Availability, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

I. Background and Specific Comments Requested

On March 11, 1994, the Independent Petroleum Association of America petitioned the Department of Commerce to initiate an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of crude oil and petroleum products.

On April 5, 1994, the Department of Commerce formally accepted the petition and initiated an investigation. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President no later than December 31, 1994 (i.e., within 270 days). For further details on this investigation, see the **Federal Register** of April 12, 1994 (59 FR 17335).

Consistent with the interest of the U.S. Department of Commerce in soliciting public comments on issues affecting U.S. industry and national security, the Bureau of Export Administration (BXA) is holding public hearings as part of the investigation. The presentations at the hearings will assist the Department in determining whether imports of crude oil and petroleum products constitute a threat to the national security and in formulating remedies if such a threat is found to exist.

The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (the "regulations") as they affect national security, including the following:

(a) Quantity of the articles subject to the investigation and other circumstances related to the importation of such articles;

(b) Domestic production and productive capacity needed for these articles to meet projected national defense requirements;

(c) Existing and anticipated availability of human resources, products, raw materials, production equipment, facilities, and other supplies and services needed to produce these articles;

(d) Growth requirements of domestic industries needed to meet national defense requirements and the supplies and services (including investment, exploration and development) necessary to assure such growth;

(e) The impact of foreign competition on the economic welfare of the domestic industry;

(f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

(g) Any other factors that are causing, or will cause, a weakening of our national economy.

II. Public Hearings and Comment Procedures

The public hearings are scheduled to be held in New York, New York on Monday, June 6, 1994; in Dallas, Texas, on Monday, June 13, 1994; and in Santa Clara, California, on Thursday, June 16, 1994. The hearings will commence at 8:30 a.m. and end at 5 p.m. The New York hearing will be held in the ceremonial courtroom of the U.S. Court of International Trade, One Federal Plaza. The Dallas hearing will be held at the Joe C. Thompson Amphitheatre, Cityplace Center East, 2711 N. Haskill. The Santa Clara hearing will be held at the City of Santa Clara Council Chambers, 1500 Wurburton Avenue.

A. Procedure for Requesting Participation

The Department encourages interested public participants to present their views orally at the hearings. Any person wishing to make an oral presentation at the hearings must submit a written request to the Department of Commerce at the address indicated in the ADDRESS section of this notice. The request to participate in the hearings must be accompanied by 10 copies of a summary of the oral presentation. The written request and summary must be received by the Department no later than Monday, May 23, 1994. In addition, the request to speak should contain a daytime phone number where the person who will be making the oral presentation may be contacted before the hearing. Please note that the submission of comments for presentation at the public hearings is separate from the request for written comments contained in the April 12, 1994, **Federal Register** notice.

Since it may be necessary to limit the number of persons making presentations, the written request to participate in the public hearings should describe the individual's interest in the hearings and, where appropriate, explain why the individual is a proper representative of a group or class of persons that has such an interest. If all interested parties cannot be accommodated at the hearings, the summaries of the oral presentations will be used to allocate speaking time and to ensure that a full range of comments are heard.

Each person selected to make a presentation will be notified by the Department of Commerce no later than 5 p.m. on Thursday, May 26, 1994. The Department will arrange the presentation times for the speakers. Attendees will be seated on a first-come, first-served basis. On the day of the hearing, persons selected to be heard should bring 100 copies of the summary of their oral presentation to the hearing address indicated in the DATES section of this notice.

Copies of the requests to participate in the public hearings and the summaries of the oral presentations will be maintained at the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*) Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

B. Conduct of the Hearing

The Department reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each speaker will be limited to 10 minutes, and comments must be directly related to the criteria listed in § 705.4 of the "regulations".

A Commerce official will be designated to preside at the hearings. Representatives from the Departments of Energy and Interior will also participate in the hearings. This will not be a judicial or evidentiary-type hearing. Only those conducting the hearing may ask questions, and there will be no cross-examination of persons presenting statements.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Dated: May 6, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–11410 Filed 5–6–94; 3:08 pm]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket 79–91]

Foreign-Trade Zone 72, Indianapolis, IN; Withdrawal of Application for Subzone Status for Hurco Machine Tool Plant

Notice is hereby given of the withdrawal of the application submitted by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the machine tool manufacturing facility of Hurco Companies, Inc., located in Indianapolis, Indiana. The application was filed on November 6, 1991 (56 FR 65040, 12/13/91).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: May 3, 1994

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–11447 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 4–94]

Foreign-Trade Subzone 59A, Lincoln, NE; Request for Expanded Manufacturing Authority; Kawasaki Motors Manufacturing Corporation U.S.A. Plant (Utility Work Trucks); Extension of Public Comment Period

The comment period for the above case, requesting authority to manufacture utility work trucks under zone procedures within Subzone 59A (59 FR 2592, 1/18/94; 59 FR 14607, 3/29/94), is further extended to June 2, 1994, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 3, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–11448 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether an amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Secretary of Commerce should issue an amended Certificate to the applicant. An original and five (5) copies of such comments should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–A0015."

The California Dried Fruit Export Trading Company's original Certificate was issued on January 27, 1986 (51 3996, **Federal Register**, January 31, 1986). A summary of the application for an amendment follows:

Summary of the Application

Applicant: California Dried Fruit Export Trading Company, 64 North Fulton Street, Fresno, California 93776.

Contact: Kermit W. Almstedt, Telephone: (202) 383–5300.

Application No.: 85–3A015.

Date Deemed Submitted: April 28, 1994.

Proposed Amendment: California Dried Fruit Export Trading Company seeks to amend its Certificate to add one company, Mariani Raisin Co., Inc. as a new "Member" of the Certificate within the meaning of 15 C.F.R. 325.2(1).

Dated: May 5, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–11347 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DR–P

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 1, 1994. The meeting will be from 2 p.m. to 4 p.m. in the Conference Center on the Lexington Level at the office of KPMG Peat Marwick, 345 Park Avenue, New York, New York 10154.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: The Economic Outlook for the Textile and Apparel Industry, the "Big Emerging Markets" Program, review and critique of the Office of Textiles and Apparel export expansion program, the effect on the textile industry of the implementation of recent changes in the General Agreement on Tariffs and Trade (GATT), and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/482–5155).

Dated: May 5, 1994.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–11446 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DR–F

Minority Business Development Agency

Business Development Center Applications: Riverside, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995, is estimated at $333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Riverside, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to preforming the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is June 21, 1994. Applications must be postmarked on or before June 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development

Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105; June 1, 1994 at 10 a.m

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," with the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 2, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–11310 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–2V–M

Business Development Center Applications: Columbus, Georgia

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal amount includes $4,125 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Columbus, Georgia geographic service area.

The award number for this MBDC will be 04–10–94010–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is June 17, 1994. Applications must be postmarked on or before June 17, 1994.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION CONTACT: Wilfredo J. Gonzalez, Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on June 1, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1715, Atlanta, Georgia 30308–3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Wilfredo J. Gonzalez,
Regional Director, Atlanta Regional Office.

[FR Doc. 94-11349 Filed 5-10-94; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Augusta, GA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal amount includes $4,124 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Augusta, Georgia geographic service area.

DATES: The award number for this MBDC will be 04-10-94009-01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is June 17, 1994. Applications must be postmarked on or before June 17, 1994.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW, suite 1715, Atlanta, Georgia 30308-3516, (404) 730-3300.

FOR FURTHER INFORMATION CONTACT: Wilfredo J. Gonzalez, Regional Director, Atlanta Regional Office, telephone (404) 730-3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. A pre-application conference to assist all interested applicants will be held on June 1, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308-3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure Form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)

Dated: May 4, 1994.

Wilfredo J. Gonzalez

Regional Director, Atlanta Regional Office.

[FR Doc. 94–11350 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Las Vegas, Nevada

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Las Vegas, Nevada Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsible. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is June 21, 1994. Applications must be postmarked on or before June 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105; June 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal assurance that an applicant may have received , there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at is CFR Part 26, Section 605) are subject to 15 CFR Part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 2, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–11309 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Nashville, TN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal amount includes $4,125 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions for combinations thereof. The MBDC will operate in the Nashville, Tennessee geographic service area.

The award number for this MBDC will be 04–10–94011–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority business, individuals and organizations (50 points); the resources available to the firm in providing business development

services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points scored will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is June 17, 1994. Applications must be postmarked on or before June 17, 1994.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION, CONTACT: Wilfredo J. Gonzalez, Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on June 1, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., room 1715, Atlanta, Georgia 30308–3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts of more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 4, 1994.

Wilfredo J. Gonzalez,

Regional Director, Atlanta Regional Office.

[FR Doc. 94-11351 Filed 5-10-94; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No: 931111-3311]

Continuation of Fire Research Grants Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice announcing NIST continuation of fire research grants program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the **Federal Register** on November 19, 1984 (49 FR 45636), May 6, 1986 (51 FR 16730), June 5, 1987 (52 FR 21342), June 6, 1988 (53 FR 20675), May 31, 1989 (54 FR 23243), July 23, 1990 (FR 90-17041), February 20, 1991 (46 FR 13250), May 7, 1991 (FR 91-10717), April 22, 1992 (FR 57-14695), and March 17, 1993 (FR 58-14379) (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.").

DATES: There is no closing date for receipt of applications. Applications will be accepted at any time.

ADDRESSES: Applicants must submit an original and two copies of the application. The following standard forms must be used in applying for assistance under this program: Standard Form 424, Application for Federal Assistance (Rev. 4-88); Standard Form 424A, Budget Information—Non-Construction Programs (Rev. 4-88); and Standard Form 424B (4-88), Assurances—Non-Construction Programs (Rev. 4-88). Building an Fire Research Laboratory, Attention: Sonya Cherry, Building 226, Room B206, National Institute of Standards and Technology, Gaithersburg, Maryland 20899-0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Building and Fire Research Laboratory may be directed to the above address or call Sonya Cherry at (301) 975-6854.

Administrative questions concerning the NIST Fires Research Grants Program may be directed to the Grants Office at (301) 975-6329. Written inquiries should be forwarded to the following address: Grants Office, Acquisition and Assistance Division, Building 301/Rm. B129, National Institute of Standards and Technology, Gaithersburg, MD 20899-0001.

SUPPLEMENTARY INFORMATION: As authorized by Section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreement, a basic and applied fire research program. Academic institutions, non-Federal agencies, independent and industrial laboratories are considered eligible for this program. This program has been in existence for several years at approximately $1.5 million per fiscal year. No increase in funds has taken place. The Fire Research Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Grants awarded under the Fire Research program will generally provide financial assistance to the recipient without substantial NIST involvement in the projects. Cooperative agreements awarded for Fire Research projects will generally involve a close working relationship between a group of NIST experts and the recipient. No matching funds are required. Proposals will be considered for research projects from one to three years. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

a. *Fire Protection Applications:* Researcges, develops and demonstrates the application to building fire problems of fire protection analytical (computerized) tools and methods of assessing the ignition and burning rate of contents of buildings. This includes: developing a performance based fire code and methods of assessing fire risk; developing methods of evaluating and predicting the performance of and interactions between building fire safety design features; developing an understanding of the burning rate of furniture and other building contents; developing a data base that provides the necessary input to users of the analytical tools; and operating the Fire Research Information Services which supports the entire laboratory staff and the fire community and has an on-line bibliographic data base.

b. *Fire Modeling:* Performs research on and develops analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: Creating advanced, usable models for the calculation of the effluent from building fires; modeling the spread of fire over furniture and building elements such as walls; developing field and zone modeling techniques to predict the movement of fire effluent in buildings and the effectiveness of fire sensors; and developing a protocol for determining the accuracy of both the algorithms used in the fire models as well as the comprehensive models themselves.

c. *Large Fire Research:* Performs research on and develops techniques to measure, predict the behavior of, and mitigate large fire events. This includes: understanding the mechanisms of large fires that control the gas phase combustion, burning rate, thermal and chemical emissions, transport processes; developing techniques for computer simulation; developing field measurement techniques to assess the near and far field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; developing and operating the Fire Research Program large scale experiment facility.

d. *Smoke Dynamics Research:* Produces scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and predicting general fire phenomena. This includes: Research on the effects of within-flame and post-flame fluid mechanics on the formation and emission of smoke, including particulates, aerosols, and combustion gases; understanding the mechanistic pathway for soot from chemical inception to post-flame agglomerates; developing calculation methods for the prediction of the yields of CO (and eventually other toxicant) as a function of fuel type, availability of air, and fire scale.

e. *Materials Fire Research:* Performs research to understand fundamentally the mechanisms that control the ignition, flame spread, and burning rate of materials and the chemical and physical characteristics that affect these aspects of flammability; develops methods of measuring and predicting the response of a material to a fire. This includes: characterizing the burning rates of charring and non-charring polymers and composites; delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion; and developing computational molecular dynamics and other mechanistic approaches to understand the relationships between polymer structure and flammability.

f. *Fire Sensing and Extinguishment:* Develops understanding, metrology, and predictive methods to enable high-performance fire sensing and extinguishment systems; devises new approaches to minimizing the impact of unwanted fires and the suppression process. This includes: research for the identification and *in-situ* measurements of the symptoms of pending and nascent fires or explosions, and the consequences of suppression; devising or adapting monitors for these variables and creating the intelligence for timely interpretation of the data; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; modeling the extinguishment process; and developing performance measures for the effectiveness of suppression system design.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the eight programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Deputy Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NIST, the Building and Fire Research Laboratory, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

a. Rationality	0–20
b. Qualification of Technical Personnel	0–20
c. Resources Availability	0–20
d. Technical Merit of contribution	0–40

Selection Procedures

The results of these evaluations are transmitted to the group leader of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments and makes a recommendation. The recommendation is forwarded to the Deputy Director of the Building and Fire Research Laboratory who will also consider compatibility with programmatic goals and financial feasibility before making the final decision.

Paperwork Reduction Act

The SF–424, SF424A and SF424B mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–00343, 0348–0044 and 0348–0040.

Additonal Requirements

Applicants that incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Applicants are also hereby notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants are reminded that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by fire or imprisonment as provided in 18 U.S.C. 1001.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,
2. A negotiated repayment schedule is established and at least one payment is received, or
3. Other arrangements satisfactory to DoC are made;

Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, "Certification Regarding Dabarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirement and Lobbying." Applicants are also hereby notified on the following:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;
2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;
3. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more the $100,000, and loans and loan guarantees for more the $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and
4. *Anti-Lobbying Disclosure.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B .

Lower Tier Certification. Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Dated: May 5, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–11396 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–13–M

[Docket No.: 920521-4095]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of establishment of a Laboratory Accreditation Program (LAP)—NVLAP Calibration Laboratories Accreditation Program.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), will accept applications from laboratories seeking accreditation under the Calibration Laboratories Accreditation Program. The program is in accord with the intent of the original request by the National Conference of Standards Laboratories as announced previously in the Federal Register.

Due to the large number of anticipated responses to this program, applications will be processed in order of the date received.

Accreditation will be offered to all applicant laboratories that fulfill the requirements of the National Voluntary Laboratory Accreditation Program (NVLAP).

FOR FURTHER INFORMATION CONTACT: Persons desiring to obtain an application package or further information concerning the Calibration Laboratories Accreditation Program should contact the National Voluntary Laboratory Accreditation Program by mail at the National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899; or by telephone (301–975–4016) or FAX (301–926–2884).

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with NVLAP Procedures (15 CFR part 7). In a **Federal Register** Notice dated May 18, 1992, (57 FR 21073), the National Institute of Standards and Technology (NIST) announced the decision to develop the program, "Accreditation for Calibration Laboratories," requested from the National Conference of Standards Laboratories in a letter dated June 13, 1991, announced in the Federal Register of August 21, 1991, (56 FR 41526).

Administrative and general technical criteria have been developed and incorporated into a Procedure and General Requirements Handbook (NIST Handbook 150). A companion draft Calibration Laboratories Technical Guide (NIST Handbook 150–2) contains amplifying technical information for each of the eight fields of calibration. Technical experts, selected and trained by NVLAP, will use the NIST Handbook 150 and the Technical Handbook to conduct the on-site assessment. They will present their findings to the applicant calibration laboratory at the time of assessment; however, the final evaluation will be made by NVLAP-selected panels.

Proficiency testing will be used, along with an on-site assessment, to determine the competence of the applicant calibration laboratories to perform calibrations at the claimed levels of uncertainty. Proficiency testing will be conducted annually in at least one parameter for each field of calibration for which a laboratory applies.

An application package consisting of the NIST Handbook 150, Technical Guide, application forms (OMB Control No. 0693–003) and fee schedule will be provided on request. Fees are charged to laboratories seeking accreditation in two stages. The Stage I fee is standard and is charged to all applicant laboratories. It covers the cost of initial review of the application, quality manual, and related documentation. The Stage II fee is variable, based on the scope of accreditation desired by the applicant laboratory.

After the laboratory has successfully fulfilled Stage I, the fees for Stage II will be established to include administrative/technical support, on-site assessment, and proficiency testing costs.

NVLAP will publish a directory of all accredited calibration laboratories and the accreditation will be renewable annually.

Dated: May 5, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–11395 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 050494E]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Oversight Committee (Committee) will hold a meeting on May 26–27, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Seattle, WA. The meeting will begin at 9 a.m. on May 26, in room 2079, Building 4, and will continue into May 27, if necessary.

The Committee will receive reports from NMFS and the Alaska Department of Fish and Game on implementation of the North Pacific Fisheries Research Plan, including estimates of first-year fee percentages. The Committee will review proposed budgets and develop recommendations for the Council when it meets in Anchorage the week of June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 7 working days prior to the meeting date.

Dated: May 5, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation, and Management, National Marine Fisheries Service.

[FR Doc. 94–11338 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D.041994A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of Application to Modify Permit No. 836 (P79F).

SUMMARY: Notice is hereby given that Institute of Marine Science, University of California, Santa Cruz, CA 95064 (Principal Investigators: Drs. Daniel P. Costa, Burney J. LeBoeuf, and Charles L. Ortiz), has requested a modification to Permit No. 836.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of

Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 836, issued on May 12, 1993 (58 FR 29199) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 836 authorizes the Permit Holder to conduct various research activities on Northern elephant seals (*Mirounga angustirostris*) over a 5-year period. These activities include, among other things, capture, tagging and marking, handling, temporary captivity and translocation upon release. Activities are authorized to be conducted on Año Nuevo.

The Permit Holder requests authorization to: Translocate and release up to 40 animals each year to a location 5 miles south of the Sur Ridge or from a point south of Pt. Sur (site of the sound source for the proposed Acoustic Thermography of the Ocean Climate (ATOC) experiment); attach an acoustic data logger (sound recorder) to the dorsal midline on the back; play killer whale sounds in the track of homing seals (when the ATOC sound source is off); and extend the area of take to include Gorda and Piedras Blancas in Central California.

Dated: May 3, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–11355 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042994A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (P317B and P317C).

SUMMARY: Notice is hereby given that Mr. Jeffery D. Goodyear, 1533 Gladstone Avenue, Victoria, BC V8R 1S4, Canada has applied in due form for two permits (P317B and P317C) to take (harass) cetaceans. Ms. Janice Straley, P.O. Box 273, 4501 Halibut Point Road, Sitka, AK 99835 is co-applicant on application P317C.

DATES: Written comments must be received by June 10, 1994.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9328); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7235).

Written data or views, or requests for a public hearing on these requests, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit application P317B requests authorization for the harassment of up to 150 humpback whales (*Megaptera novaeangliae*), 150 fin whales (*Balaenoptera physalus*), and 150 northern right whales (*Eubalaena glacialis*) annually, over a 5-year period, during repeated approaches for purposes of: (1) Tagging with VHF radio, sonic, or satellite-linked tags; and/or (2) photographing and filming for purposes of identification, behavioral documentation, and assessing tag status. The proposed activities will be conducted in the western North Atlantic.

Permit application P317C requests authorization for the harassment of up to 150 humpback whales annually, over a 5-year period, during repeated approaches for purposes of: (1) Tagging with VHF radio, sonic, or satellite-linked tags, and skin sampling; and (2) photographing and filming for purposes of identification and assessing tag status. The proposed activities will be conducted in Alaskan waters.

Dated: May 3, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–11356 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of a Collection of Information About Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through May 31, 1997, to collect information about product-related injuries.

Section 5(a) of the Consumer Product Safety Act 915 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses resulting from accidents involving consumer products. The Commission uses this information to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved in or who have witnessed accidents associated with consumer products are an important source of information about deaths, injuries, and illnesses resulting from such accidents. From consumer complaints, newspapers accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face interviews with accident victims or witnesses, or telephone interviews with those persons.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Follow-Up Activities for Product-Related Injuries.

Type of request: Extension of approval.

Frequency of collection: One time for each respondent.

General description of respondents: Persons who have been involved in, or who have witnessed, accidents.

Estimated number of respondents: 2,200 to be interviewed by telephone; 700 to be interviewed at the accident site.

Estimated average number of hours per respondent: 0.34 for each telephone interview; 5.0 for each on-site interview.

Estimated number of hours for all respondents: 4,248.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 4, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94-11307 Filed 5-10-94; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Cruise Missile Defense

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Cruise Missile Defense will meet in closed session on May 11-12, 1994 at Science Applications International Corporation, McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on the land attack Cruise Missile threat, and should be comprehensive enough to address operational issues, (offensive as well as defensive), organizational matters, connections to other programs and investment strategy as well as technical issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 6, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc 94-11392 Filed 5-10-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

[FE Docket No. ES-98]

Application for Authorization to Export Electricity; Western Systems Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Western Systems Power Pool (WSPP) has requested authorization to export electric energy to Canada. The application has been filed on behalf of most jurisdictional members of WSPP.

DATES: Comments, protests or requests to intervene must be submitted on or before July 11, 1994.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Officer) 202-586-9624 or Mike Skinker (Program Attorney) 202-586-6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On December 3, 1993, as amended March 17, 1994, the Western Systems Power Pool (WSPP or the Pool) filed an application with the Office of Fossil Energy (FE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, WSPP was applied for authorization to transmit electric energy to a foreign member of the Pool, British Columbia Hydro and Power Authority (BC Hydro), and other future Canadian members. The Pool's public utility members participating in this application are:

Arizona Public Service Company
Central and South West Services, Inc.
Central Louisiana Electric Company
Idaho Power Company
Kansas City Power and Light Company
Montana Power Company
Nevada Power Company
Oklahoma Electric Company
Pacific Gas & Electric Company
PacificCorp
Public Service Company of Colorado
Public Service Company of New Mexico
Public Service Company of Oklahoma
Pudget Sound Power & Light Company
Sierra Pacific Power Company
Southern California Edison Company
Southwestern Public Service Company
Tuscon Electric Power Company
UtiliCorp United Inc. (West Plains Energy)
Washington Water Power Company
Western Resources, Inc

(San Diego Gas & Electric and Portland General Electric Company were among the applicant companies when WSPP applied to Fe. Both companies, by letter to FE, subsequently withdrew from the WSPP application and were individually issued electricity export authorizations in Docket Numbers EA-100 and EA-97.)

By this joint application, each of the participating Pool members seek an export authorization allowing them to enter into transactions with BC Hydro which involve the exportation of electricity from the United States. All such transactions would be pursuant to the terms and conditions of the WSPP's pooling Agreement and service schedules approved by the Federal Energy Regulatory Commission (FERC).

The WSPP Agreement effects a marketing arrangement pursuant to which the members provide among themselves prescheduled and realtime coordinated short-term power and energy transactions. The Agreement also sets forth the limitations and parameters affecting all WSPP transactions.

The WSPP Agreement contains four service schedules approved by and on file with FERC. All WSPP transactions are conducted voluntarily among members pursuant to the terms of the service schedules. The transactions are wholesale in nature, involving no retail sales. Specifically, the schedules provide for (1) Economy Energy Service, (2) Unit Commitment Service, (3) Firm System Capacity/Energy Sales or Exchanges, and (4) Transmission Service. Significantly, all transactions among WSPP members must be no more than one year in duration. Also, all transmission services are voluntary.

The WSPP Agreement is not intended to relegate the members to a "traditional power pool" arrangement. The Agreement does not work to supersede any of the contractual relationships of any of the members, and its does not preclude any of the members from entering into future contractual relationships. In the WSPP application, WSPP asserts that, in essence, the WSPP is intended to be superimposed on top of its members' other contractual relationships and thereby serve to capture economic benefits which are not already realized under those existing agreements. Because of its purpose as a supplemental agreement to facilitate the sale of short-term excess capacity and energy, transactions under the WSPP agreement involve the use of only existing facilities and do not require the construction of new facilities.

The electric energy to be exported will be delivered by BC Hydro over the international transmission facilities owned and operated by the Bonneville Power Administration (BPA). The construction, connection, operation, and maintenance of these facilities has been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended by Executive Order 12038. These facilities consist of three electric transmission lines that interconnect with facilities of BC Hydro: Two 500-kilovolt (kV) lines located at Blaine, Washington, (Presidential Permit PP–10) and one 230-kV line at Nelway, British Columbia (Presidential Permit PP–46). In addition, BPA's 230-kV transmission line that connects to West Kootenay Power and Light Company, Limited, also at Nelway, British Columbia, will be used (Presidential Permit PP–36).

Procedural Matters: Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Michael E. Small, Wright & Talisman, suite 600, 1200 G Street, NW., Washington, DC 20005–3802.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act. The final decision would be issued to the individual members of WSPP and not to the Power Pool itself.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on May 2, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11429 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Pennsylvania State University

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01–94CE15581 to Pennsylvania State University. The proposed grant will provide funding in the estimated amount of $92,131 by the Department of Energy for the purpose of saving energy through the construction and testing of a lightweight, solid polymer, lithium battery to be used in electric automobiles. This high energy density, highly efficient, rechargeable light weight battery will significantly reduce the weight of electric cars and increase the energy efficiency of the cars.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by Pennsylvania State University, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Dr. Harry Allcock will be the principal investigator. He is the inventor of this patentable polymerization method for lightweight lithium batteries and has spent over thirty years in the field of polymers and materials. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

Issued in Washington, DC, on May 4, 1994.

Scott Sheffield, Director.

Headquarter Operations Division B, Office of Placement and Administration.

[FR Doc. 94–11432 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: F.H. Blake and Associates

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01–94CE15606 to F.H. Blake and Associates. The proposed grant will provide funding in the estimated amount of $99,760 by the Department of Energy for the purpose of saving energy through the development and construction of the invention, "Fiber-Optic Anti-Cycling Device for Street Lamps" to control high pressure sodium street lamps so that the lamps come on at dusk and go off at dawn. In addition, the device senses when the lamp fails to operate satisfactorily within a reasonable time and removes power from the lamp. The proposed technology has a strong possibility of adding to the Nation's Energy Resources by enabling the millions of street lamps in the United States to be more energy efficient and to lower their maintenance costs through more effective failure detection.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by F.H. Blake and Associates, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. Frederick H. Blake will be the principal investigator. He holds the patent on this technology and has spent twenty-five years in the field of energy management and photo-sensed lighting control. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

Issued in Washington, DC, on May 4, 1994.

Scott Sheffield,

Director, Headquarter, Operations Division B, Office of Placement and Administration.

[FR Doc. 94–11431 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award; American Sun Company

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–94CE15601 to American Sun Company. The proposed grant will provide funding in the estimated amount of $99,824 by the Department of Energy for the purpose of saving energy through the development and construction of an extra-focal, convective suppressing solar collector to use in such applications as water heating, space heating, industrial process heating, absorption cooling, and desiccant cooling. The proposed technology has a strong possibility of adding to the Nation's Energy Resources by enabling solar energy to be used in household and industrial processes that now can only be served cost effectively by fossil fuels and electricity.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by American Sun Company, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. Miles Maiden will be the principal investigator. He has pursued the development, refinement, manufacture, and marketing of this invention since 1990. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

Issued in Washington, DC, on May 4, 1994.

Scott Sheffield,

Director, Headquarter Operations Division B, Office of Placement and Administration.

[FR Doc. 94–11430 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Non-Competitive Financial Assistance Award To The American Council For An Energy Efficient Economy

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Denver Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(B) it intends to award a Cooperative Agreement to the American Council for An Energy Efficient Economy (ACEEE). The amount to ACEEE will be used to assist states and utilities in stimulating the adoption of energy efficiency technologies in the industrial sector.

SUPPLEMENTARY INFORMATION: The proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(i)(B) in that the activities are being or would be conducted by the applicant using its own resources or those donated or provided by third parties. However, the Department of Energy's support of these activities would enhance the public benefits to be derived by assisting the American Council for An Energy Efficient Economy stimulate the transfer of industrial energy efficiency technologies to states and utilities. The Department of Energy knows of no other entity which is conducting or is planning to conduct such an activity.

The activities and goals of the American Council for An Energy Efficient Economy are designed to provide states and utilities technical information on successful industrial energy efficiency programs including an analysis of the co-benefits and secondary impacts of specific technologies now entering the marketplace and critical analysis of exemplary state industrial programs.

PROJECT PERIOD: The project period for the grant award is two years and it expected to begin May 1994. DOE plans to provide funding for year one in the amount of approximately $99,962.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Golden Field Office, Denver Support Office, Dennis D. Maez, 2801 Youngfield Street, suite 380, Golden, Colorado 80401, (303) 231-5750 Extension 140.

Issued in Golden, Colorado, on April 29, 1994.

John W. Meeker,

Chief, Procurement Team.

[FR Doc. 94-11428 Filed 5-10-94; 8:45 am]

BILLING CODE 6450-01-M

Nevada Operations Office; Award of a Grant, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of Noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance grant to the state of Nevada, Division of Emergency Management (NDEM), for providing emergency management initiatives which will ensure the DOE Nevada Operations Office compliance with applicable federal, state, and local environmental requirements.

This grant will implement an agreement with the NDEM to improve the accountability of the DOE in the areas of environmental protection, public health and safety, and emergency management.

SUPPLEMENTARY INFORMATION: The state of Nevada, NDEM, will provide emergency management initiatives to ensure compliance with applicable federal, state, and local regulations at DOE locations in the state of Nevada.

The state of Nevada will assume a more substantive role in overseeing DOE's compliance with state environmental laws, and to help assure the citizens of Nevada that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Nevada because the applicant is a unit of government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provisions of support to another entity.

The term of this grant is for five years and will commence July 1, 1994, and end June 30, 1999. The total estimated cost of this award is $1.4 million.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Donald R. Elle, PO Box 98518, Las Vegas, NV 89193-8518.

Issued in Las Vegas, Nevada, on April 25, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94-11427 Filed 5-11-94; 8:45 am]

BILLING CODE 6450-01-M

Nevada Operations Office; Award of a Grant, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance grant to the state of Nevada, Department of Conservation and Natural Resources (NDCNR), for providing environmental oversight and monitoring initiatives, which will ensure the DOE Nevada Operations Office compliance with applicable federal, state, and local environmental requirements.

This grant will implement an agreement with the NDCNR to improve the accountability of DOE in the area of environmental protection.

SUPPLEMENTARY INFORMATION: The state of Nevada, NDCNR, will provide independent validation of environmental compliance data, establish environmental cleanup schedules, and provide a mechanism for assisting DOE to prioritize its cleanup activities.

The state of Nevada will assume a more substantive role in overseeing DOE's compliance with state environmental laws, and to help assure the citizens of Nevada that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Nevada because the applicant is a unit of government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provision of support to another entity.

The term of this grant is five years and will commence July 1, 1994, and end June 30, 1999. The total estimated cost of this award is $4 million.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Donald R. Elle, P.O. Box 98518, Las Vegas, NV 89193-8518.

Issued in Las Vegas, Nevada, on April 25, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94-11424 Filed 5-10-94; 8:45 am]

BILLING CODE 6450-01-M

Nevada Operations Office; Award of a Grant, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a nomcompetitive financial assistance grant to the state of Nevada, Department of Human Resources (NDHR), for providing environmental oversight and monitoring initiatives, which will ensure the DOE Nevada Operations Office compliance with applicable federal, state, and local environmental requirements.

This grant will implement an agreement with the NDHR to improve the accountability of DOE in the areas of environmental protection and public health and safety.

SUPPLEMENTARY INFORMATION: The state of Nevada, NDHR, will develop programs for oversight to ensure compliance with applicable federal, state, and local regulations at DOE locations in the state of Nevada.

The state of Nevada will assume a more substantive role in overseeing DOE's compliance with state environmental laws, and to help assure the citizens of Nevada that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Nevada because the application is a unit of government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provisions of support to another entity.

The term of this grant is for five years and will commence July 1, 1994, and end June 30, 1999. The total estimated cost of this award is $1.2 million.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Donald R. Elle, PO Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada on April 25, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–11425 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

Metal Casting Industrial Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the Metal Casting Industrial Advisory Board meeting.

DATES: Thursday, June 2, 1994, 8:30 a.m.–5:30 p.m.; Friday, June 3, 1994, 8 a.m.–2:30 p.m.

ADDRESSES: Sheraton National, Cavalier Rooms B&C, 900 South Orme St., Columbia Pike & Washington, Blvd., Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Program Manager, Department of Energy, Office of Industrial Technologies (EE–23), 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–5264, Fax: (202) 586–3180.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Metal Casting Industrial Advisory Board serves to provide guidance and oversight of research programs provided under the Metal Casting Competitiveness Research Program and to recommend to the Secretary of Energy new or revised program activities and Metal Casting Research Priorities.

Tentative Agenda

Thursday, June 2, 1994

8:30 Welcome and Introductions—D. Kaempf
8:45 Summary of OIT Metal Casting Program Funding, focus areas, status, future plans—R. Trimberger

Update on Presently Funded Research

9 University of Alabama-Tuscaloosa—T. Piwonka
9:30 University of Northern Iowa—D. Quick
10 Break
10:15 University of Alabama-Birmingham—C. Bates
10:45 Pennsylvania State University—R. Voight
11:15 University of Wisconsin-Milwaukee—P. Rohatgi
11:45 Michigan Technological University—D. Tieder
12:15 Lunch
1 EG&G Idaho—D. Kunerth
1:30 Ohio State College—A. Miller
1:45 Worchester Polytechnic Institute—D. Apelian or M. Makhlouf

Reports On Other Federally Funded Metal Casting Research Programs

2 National Institute of Standards and Technology—R. Schaefer
2:30 National Science Foundation—TBD
3 Break
3:15 DOD/Air Force—T. Broderick
3:45 DOD/Army—W. Donnelly
4:15 DOD/Navy—TBD
4:45 Panel Discussion—National Laboratories Technology Advances & Opportunities
Argonne Los Alamos—TBD
Oak Ridge—TBD
Sandia—TBD
Lawrence Livermore—TBD
Idaho National Engineering—TBD
5:30 Adjournment

Friday June 3, 1994

Industry Presentations on the Current Status and Future Technology Needs of the Metal Casting Industry

8 North American Die Casting Association—B. Walkington
8:30 Steel Founders' Society of America—R. Monroe
9 Non-Ferrous Society—J. Mallory
9:30 American Foundrymen's Society—D. Twarog
10 Break
10:15 Public Participation (5 minute rule per person)
11:30 Lunch
12:30 Continue Advisory Board Discussion
2:15 Summary and wrap-up—D. Kaempf
2:30 Adjournment

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to the agenda items should contact Douglas E. Kaempf at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Written statements may be filed with the Committee either before or after the meeting.

TRANSCRIPT: Available for public review and copying at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 5, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–11433 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL94–62–000, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 3, 1994

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Co. v. Stone Container Corp.

[Docket Nos. EL94–62–000 and QF85–102–005]

Take notice that on April 20, 1994, Carolina Power & Light Company (CP&L) filed a complaint asking the Federal Energy Regulatory Commission to revoke the qualifying facility ("QF") certification of Stone Container Corporation's cogeneration facility which was certified as a QF in *Stone Container Corp.*, 31 FERC ¶ 62,036 (1985) and recertified in *Stone Container Corp.*, 55 FERC ¶ 62,205 (1991). CP&L's complaint further requests that the Commission: (1) Assert jurisdiction (a) over Stone Container as a public utility and (b) over the contract for Stone Container's sales to CP&L of electric energy at wholesale in interstate commerce pursuant to the Federal Power Act, (2) determine the just and reasonable rate for Stone Container's sales to CP&L, and (3) order the payment of appropriate refunds, plus interest.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Rochester Gas and Electric Co.

[Docket No. ES94–23–000]

Take notice that on April 28, 1994, Rochester Gas and Electric Company (RG&E) filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $200 million of notes and other short-term indebtedness from time to time as required, but in any event, not later than December 31, 1996. Also, RG&E requests expedited treatment and action by May 19, 1994.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Great Bay Power Corp.

[Docket No. ER94–1176–000]

Take notice that on April 21, 1994, Great Bay Power Corporation (Great Bay) tendered for filing executed copies of service agreements for a number of customers and Great Bay under the Tariff submitted on September 1, 1993, as amended October 14, 1993, in Docket No. ER93–924–000. Unexecuted copies of these service agreements were included as part of the original filing.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Georgia Power Co.

[Docket No. ER94–1175–000]

Take notice that on April 22, 1994, Georgia Power Company filed a letter agreement dated April 11, 1994 revising the contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Georgia Power Company. The letter agreement extends the term of the existing contract for six months to allow the parties to continue negotiations of a new arrangement.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Co.

[Docket No. ER94–1186–000]

Take notice that PacifiCorp, on April 26, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing, both for itself and on behalf of Southern California Edison (SCE) and San Diego Gas & Electric Company (SDG&E), an agreement (Determination No. 3) which establishes the test Rated System Transfer Capability (RSTC) as RSTC. The Determination tendered for filing was agreed upon by the Administrative Representatives who administer the Coordinated Operations Agreement (COA), which coordinated operation of a portion of the 500 Kv Pacific Intertie with the 500 Kv California-Oregon Transmission Project. The COA has been filed with the Commission and is the subject of Docket ER92–626–000.

Copies of this filing have been served upon the parties on the service list, including the CPUC.

SCE and SDG&E both provided certificates of concurrence to this filing.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Power Asia Ltd.

[Docket No. EG94–56–000]

On April 28, 1994, Entergy Power Asia Ltd. ("Entergy Asia"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Entergy Asia will directly own or operate, or both own and operate, the Datong No. 2 Power Plant ("Datong Facility"). The Datong Facility will consist of the Datong No. 2 Power Plant Phase(1), which consists of an existing operating coal fired power plant, the Datong No. 2 Power Plant Phase(2), consisting of two 600 MW pulverized coal units, which will be added to the Datong Facility, and the Datong No. 2 Power Plant Phase(3), which will also be added to the Datong Facility, increasing the plant size through two additional 600 MW generating units. Entergy Asia and its co-owners of the Datong Facility will provide step-up, auxiliary, and other transformers, and switchyard equipment necessary to interconnect the Datong Facility with the transmission grid. Entergy Asia states that it also may engage in project development activities associated with its acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in section 32 of the Public Utility Holding Company Act.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Co.

[Docket No. ER94–1177–000]

Take notice that on April 21, 1994, Central Power and Light Company (CPL) tendered for filing an amended agreement for Transmission Wheeling Service between CPL and Southwestern Electric Service Company (SESCO). Copies of the filing were served on SESCO and the Public Utility Commission of Texas.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power Development Corp.

[Docket No. EG94–57–000]

On April 28, 1994, Entergy Power Development Corporation ("Entergy Power"), 900 S. Shackleford Road, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Entergy Power, indirectly through an affiliate, Entergy Richmond Power Corporation, owns and operates the Richmond Cogeneration Facility, a 250 MW electric generating facility, which is an eligible facility within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"). In Richmond Power Enterprise, L.P., et al., 62 FERC ¶61,157 (1993), the Commission determined that Entergy Power is an exempt wholesale generator ("EWG") as defined in section 32(a)(1) of PUHCA. In its application, Entergy Power states that it intends to: (i) Engage directly in activities that relate to the development and potential acquisition of ownership interests in as-yet unidentified eligible facilities and/or EWGs and (ii) engage, indirectly through an affiliate—Entergy Power Asia Ltd. ("Entergy Asia")—in the business of owning or operating, or both owning and operating, an additional eligible facility as defined under section 32(a)(2) of PUHCA—the Datong No. 2 Power Plant located in the People's Republic of China ("Datong Facility")—and selling electric energy at wholesale and/or retail, and conducting project development and acquisition activities.

The Datong Facility will consist of the Datong No. 2 Power Plant Phase(1), which consists of an existing operating coal fired power plant, the Datong No. 2 Power Plant Phase(2), consisting of two 600 MW pulverized coal units, which will be added to the Datong Facility, and the Datong No. 2 Power Plant Phase(3), which will also be added to the Datong Facility, increasing the plant size through two additional 600 MW generating units. Entergy Asia and its co-owners of the Datong Facility will provide step-up, auxiliary, and other transformers, and switchyard equipment necessary to interconnect the Datong Facility with the transmission grid.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. LG&E Power Marketing Inc.

[Docket No. ER94–1188–000]

Take notice that on April 26, 1994, LG&E Power Marketing Inc. (LPM) tendered for filing, pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207 (1993), its Rate Schedule No. 1, an initial rate schedule for sales of energy and capacity at market-based rates. LPM is a fourth-tier subsidiary of LG&E Energy Corp., an exempt public utility holding company.

LPM intends to purchase and sell electric energy and capacity as a marketer. Rate Schedule No. 1 provides for the sale of non-firm energy and firm energy and capacity at rates established by agreement between the parties. No sales may be made under the schedule to any entity controlled by, under common control with, or controlling LPM. LPM and its affiliated utility, Louisville Gas and Electric Company (LG&E), intend to offer nonaffiliated power marketers and brokers access to the same information to be provided by LG&E to LPM and access to the services to be provided by LPM by LG&E under the same terms and conditions applicable to LPM. LPM requests an order accepting its rate schedule, effective as of the date of filing, and also requests waivers and preapprovals under various regulations of the Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER94-1189-000]

Take notice that on April 28, 1994, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR § 35.13, a Form of Service Agreements with Enron Power Marketing, Inc. (Enron) and Lassen Municipal Utility District (Lassen) under FERC Electric Tariff, Second Revised Volume No. 1 (M-1 Tariff), as well as a revised Index of Purchasers under said Tariff.

A copy of the filing was served upon Enron and Lassen.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota)

[Docket No. ER94-1190-000]

Take notice that on April 28, 1994, Northern States Power Company (Minnesota) tenders a Blue Lake Emergency Connection Agreement between NSP and City of Shakopee.

NSP requests this Agreement be effective upon the date of execution, April 4, 1994. NSP requests waiver of the Commission's Notice Requirements under Part 35 so the Agreement may be effective as of the date of execution.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER94-1191-000]

Take notice that on April 28, 1994, PacifiCorp, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations the April 11, 1994 Letter Agreement between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

PacifiCorp respectfully requests, pursuant to 18 CFR § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of May 1, 1994 be assigned to the Letter Agreement.

Copies of this filing were supplied to the Wyoming Public Service Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER94-1192-000]

Take notice that on April 28, 1994, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Termination of the 1991-1994 Power Sale Agreement between Arizona Electric Power Cooperative, Inc. (AEPCO) and PNM (PNM Rate Schedule FERC No. 91). Termination of that agreement is to be effective as of May 31, 1994. PNM requests waiver of the applicable notice requirements.

Copies of the filing have been served upon AEPCO and the New Mexico Public Utility Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. PSI Energy, Inc.

[Docket No. ER94-1193-000]

Take notice that on April 28, 1994, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated February 1, 1994, between PSI and Big Rivers Electric Corporation (Big Rivers).

The Interchange Agreement provides for the following service between PSI and Big Rivers.

1. Service Schedule A—Emergency Service
2. Service Schedule B—Short-Term Power and Energy
3. Service Schedule C—Economy Energy
4. Service Schedule D—Non-Displacement Energy
5. Service Schedule E—Limited-Term Capacity and Energy

PSI and Big Rivers have requested an effective date of June 27, 1994.

Copies of the filing were served on Big Rivers Electric Corporation, the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice

15. Duke Power Co.

[Docket No. ER94-1194-000]

Take notice that on April 28, 1994, Duke Power Company (Duke) tendered for filing with the Commission Supplement No. 7 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). Supplement No. 7 changes Duke"s monthly transmission capacity rate under the Interchange Agreement from $1.1521 per kW per month to $1.1409 per kW per month. Duke has proposed an effective date of July 1, 1994, for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Sierra Pacific Power Co.

[Docket No. ER94-1195-000]

Take notice that on April 28, 1994, Sierra Pacific Power Company (Sierra) tendered for filing: (1) Transmission Service Agreement between Sierra and Mt. Wheeler Power, Inc. (Mt. Wheeler) and (2) Amendment No. 1 to Operating Agreement No. 2 between Sierra and Mt. Wheeler. Sierra proposes that both such contractual documents be accepted and permitted to become effective as of June 27, 1994 or such earlier date as the Commission may provide.

Sierra states that the aforesaid transmission agreement is in substance merely an amendment and restatement of an existing agreement with the same expiration date and essentially the same pricing provisions. The basic purposes of the amendment and restatement are: (1) To put together a basic contract and several subsequent amendments and supplements in a single location and (2) somewhat to increase the stipulated level of service in order to meet the expanded needs of the customer. The basic purpose of the operating agreement amendment is to conform with the transmission agreement.

Sierra asserts that the filing has been served on Mt. Wheeler and on the regulatory commissions of Nevada and California.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Tampa Electric Co.

[Docket No. ER94–1196–000]

Take notice that on April 28, 1994, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing recalculation of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale). Tampa Electric states that the recalculated transmission service rates are based on 1993 Form No. 1 data.

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1994, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Co.

[Docket No. ER94–1197–000]

Take notice that on April 28, 1994, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Oglethorpe Power Corporation, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric also tendered for filing revised caps on the charges for emergency and scheduled short-term firm interchange transactions under the same contracts.

Tampa Electric requests that the revised daily capacity charge and revised caps on charges be made effective as of May 1, 1994, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Power Co.

[Docket No. ER94–1198–000]

Take notice that on April 29, 1994, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1994 using year-end 1993 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were increased from $16,917.00 to $17,020.00. Consumers requests an effective date of May 1, 1994, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94–11367 Filed 5–10–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. ER94–1204–000, et al.]

Wisconsin Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Co.

[Docket No. ER94–1204–000]

Take notice that on April 29, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing a Bulk Power Sales Tariff. The Tariff provides for sales of Negotiated Capacity and/or Energy, Emergency Energy, and Maintenance Energy. WP&L states that sales under the Tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity plus 110% of incremental energy costs.

WP&L has included with the filing a list of prospective customers under the Tariff in lieu of filing Service Agreements with those thirty (30) customers, and states that service will be provided under the Tariff only to customers who sign Service Agreements. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of June 1, 1994.

WP&L states that copies of this filing have been served on each potential customer whose name is included on the list attached to the filing and on the Public Service Commission of Wisconsin, the Minnesota Public Utilities Commission, the Illinois Commerce Commission, the North Dakota Public Service Commission, the Missouri Public Service Commission, the Michigan Public Service Commission, the Iowa State Utilities Board, the Indiana Utility Regulatory Commission, and the Ohio Public Utilities Commission.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Direct Electric Inc.

[Docket No. ER94–1161–000]

Take notice that Direct Electric Inc., (DIRECT) on April 15, 1994, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207 (1993) a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of June 15, 1994 or the date of a Commission granting approval of this Rate Schedule.

DIRECT intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where DIRECT purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, DIRECT will be functioning as a marketer. In DIRECT's marketing transactions, DIRECT proposes to charge rates mutually agreed upon by the parties. In transactions where DIRECT does not take title to the electric power and/or energy, DIRECT will be limited to the role of a broker and will charge a fee for its services. DIRECT is not in the business of producing or contemplate acquiring title any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Montana Power Co.

[Docket No. ER94–1178–000]

Take notice that on April 22, 1994, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement between Bonneville Power Administration and the Montana Power Company, dated March 15, 1994. Montana requests that the Commission grant a waiver of the 60-days prior notice requirement.

Montana states that the Agreement relates to special storage service provided by Bonneville to the various Northwest utilities under provisions of the Pacific Northwest Coordination Agreement. Copies of the filing were served upon the Bonneville Power Administration.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Les Developpements Hydroelectrique CHI International, Inc.

[Docket No. EG94–54–000]

On April 22, 1994, Les Developpements Hydroelectrique CHI International, Inc., 4269 St. Catherine St., W, suite 600, Westmount, Quebec Canada H3Z 1P7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Quebec corporation, will be operating hydroelectric facilities owned by Abitibi-Price, Inc. located on the Iroquois River in Iroquois Falls, Ontario, and having a total capacity of 80,135 Kw.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Consolidated Hydro, Inc.

[Docket No. EG94–55–000]

On April 22, 1994, Consolidated Hydro, Inc., 4269 St. Catherine St., W, Suite 600, Westmount, Quebec Canada H3Z 1P7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Delaware corporation, will be operating hydroelectric facilities owned by Abitibi-Price, Inc. located on the Iroquois River in Iroquois Falls, Ontario, and having a total capacity of 80,135 Kw.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Consolidated Company of New York, Inc.

[Docket No. ER94–939–000]

Take notice that on April 20, 1994, Consolidated Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Nantahala Power and Light Co.

[Docket No. ER94–1139–000]

Take notice that on April 5, 1994, Nantahala Power and Light Company tendered for filing revised Schedule "PL" rate tariff showing development of charges for the period ending December 31, 1993.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Canal Electric Co.

[Docket No. ER94–1172–000]

Take notice that on April 14, 1994, Canal Electric Company (Canal) tendered for filing an informational filing containing Canal's revised schedule of payments to the Decommissioning Fund.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Co.

[Docket No. ER94–1179–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 25, 1994, tendered for filing a Coordination Sales Tariff. The Tariff provides for sales of Negotiated Capacity, General Purpose Energy, and Emergency Energy. Wisconsin Electric states that sales under the tariff will be made at no higher than the Company's fully allocated cost of capacity plus 110% of incremental energy costs. Wisconsin Electric has included with the filing a list of prospective customers under the Tariff in lieu of filing service agreements with those customers, and states that service will be provided under the Tariff only to customers who sign service agreements. Wisconsin Electric requests that the Commission make the Tariff effective sixty days after filing.

Wisconsin Electric states that copies of the filing have been served on each potential customer whose name is included on the list attached to the filing. Additional copies have been served on the Minnesota Public Utilities Commission, the Illinois Commerce Commission, the North Dakota Public Service Commission, the Missouri Public Service Commission, the Montana Public Service Commission, the Michigan Public Service Commission, the Indiana Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Anheuser-Busch, Inc.

[Docket No. QF94–91–000]

On April 25, 1994, Anheuser-Busch, Inc. of One Busch Place, St. Louis, Missouri 63118, submitted for filing an application for certification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, which will be located in Newark, New Jersey, will consist of two combustion turbine generators, and a supplementary fired heat recovery boiler. Steam recovered from the facility will be used for various process requirements in the brewery. The net electric power production capacity of the facility will be approximately 124.4 MW. The primary energy source will be natural gas. Installation of the facility is expected to commence in September of 1994.

Comment date: Thirty days from the date published in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11368 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 11058-001—Massachusetts]

A.L.L. Natural Resources, Inc.; Availability of Draft Environmental Assessment

May 5, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the proposed Fitchburg Paper Mill Dam #4 Hydroelectric project, located on the North Nashua River, in the City of Fitchburg, Worcester County, Massachusetts and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental effects of the proposed project and has concluded that approval of the project, with appropriate protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 11058 to all comments. For further information, please contact Rich McGuire, Environmental Coordinator, at (202) 219-3084.

Lois D. Cashell,

Secretary

[FR Doc. 94-11369 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-377-000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

May 3, 1994

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP94-377-000]

Take notice that on April 26, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP94-377-000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon certain natural gas facilities by transfer to Chevron U.S.A., Inc. (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon (1) a 75% interest in two 1,100 horsepower compressor units located on an offshore platform owned by Chevron; (2) a 40% interest in two 1,100 horsepower compressor units located on another offshore platform owned by Chevron; and (3) approximately 1.96 miles of 8-inch pipeline that connect Chevron's West Cameron Block 564 "CA" platform to its West Cameron Block 564 "A" platform, offshore Louisiana. Natural further states that Chevron currently owns the other percentage interests in the subject compressors. Natural indicates that in consideration for this transfer of facilities to Chevron, Chevron will agree to indemnify Natural and hold it harmless with respect to any and all future liabilities that may arise associated with said facilities, commencing on the date of the facilities transfer. Natural further indicates that it will reimburse Chevron for 50% of the retirement costs prudently incurred by Chevron when the facilities are retired but in no event shall Natural pay more than $100,000 in total. Natural states that the facilities are no longer useful to it, nor are Natural's customers served by the facilities.

Comment date: May 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. K N Gas Gathering, Inc.

[Docket No. CP94-397-000]

Take notice that on April 29, 1994, K N Gas Gathering, Inc. (KNGG), P.O. Box 281304, Lakewood, Colorado 80228-8304, filed a petition for declaratory order in Docket No. CP94-397-000, requesting that the Commission declare that facilities to be acquired from its affiliate, K N Interstate Gas Transmission Co. (KNI), are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

KNGG states that it has agreed to purchase from KNI the Bowdoin Gathering System located in Phillips and Valley Counties, Montana. KNGG states that the Bowdoin facilities are separated into four distinct segments delivering gas into the facilities of Williston Basin Interstate Pipeline Co. (Williston). It is indicated that none of the facilities is attached to the rest of KNI's system. It is also indicated that KNI has sought authorization to abandon these facilities in Docket No. CP94-430-000.

KNGG states that, by applying the modified primary function test as set forth in *Amerada Hess*, 52 FERC ¶ 61,268 (1990), the facilities to be acquired from KNI qualify as gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act. In support of its claim that the facilities are gathering, KNGG indicates that the subject facilities are short in length, small in diameter, web-like in configuration, and located entirely within the production area. It is also indicated that the facilities operate at a range of between 100 and 180 psig and are attached to approximately 700 wells throughout the system. KNGG also states that the gas gathered in the system is delivered into four small field compressors which boost the pressure of the gas sufficiently to enter Williston's facilities. In addition, KNGG states that the dehydration plants located in the system perform dehydration required to meet Williston's quality requirements.

Comment date: May 24, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. K N Interstate Gas Transmission Co.

[Docket No. CP94–430–000]

Take notice that on April 29, 1994, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228, filed an application in Docket No. CP94–430–000 pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of facilities constituting its Bowdoin Gathering System located in Phillips and Valley Counties, Montana by transfer to its affiliate K N Gas Gathering, Inc., (KNGG), its all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KNI requests the Commission to authorize the abandonment, by transfer to KNGG, the Bowdoin Gathering System, consisting of the following facilities:

- 76.23 miles of 2-inch pipeline;
- 0.25 miles of 3-inch pipeline;
- 286.71 miles of 4-inch pipeline;
- 69.12 miles of 6-inch pipeline;
- 11.45 miles of 8-inch pipeline;
- 26.16 miles of 10-inch pipeline;
- 25.58 miles of 12-inch pipeline;
- 3.60 miles of 14-inch pipeline;
- compression facilities consisting of one 115 horsepower unit, two 140 horsepower units, and one 60 horsepower unit and;
- various valves, regulators, dehydrators, meters and miscellaneous appurtenant facilities.

KNI indicates that the Bowdoin System constitutes its sole remaining gathering facility and is isolated and distant from its other facilities. Also, KNI states it currently uses the facility only to gather third party gas. KNI states that it would transfer the facility to KNGG at the net book value (estimated at $10,209,655). It is indicated that KNGG has filed concurrently a petition that the Commission declare the Bowdoin Gathering System to be gathering facilities exempt from jurisdiction pursuant to Section 1(b) of the Natural Gas Act.

Comment date: May 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11370 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–362–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

May 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corp. and Tennessee Gas Pipeline Co.

[Docket No. CP94–362–000]

Take notice that on April 15, 1994, as supplemented on April 28, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251–1396, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed, in Docket No. CP94–362–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of the exchange of natural gas under TGPL's Rate Schedule X–62 and Tennessee's Rate Schedule X–37, all as more fully set forth in the application.

TGPL and Tennessee state that by order issued March 26, 1973, in Docket No. CP73–193–000, they were authorized to exchange up to 1,500 Mcf of gas per day, plus additional volumes which were available and which could be accommodated in the pipeline facilities, for an initial term of one year and month to month thereafter. TGPL and Tennessee maintain that the exchange arrangement was terminated pursuant to its terms by Tennessee providing to TGPL on or about September 28, 1977, written notice of Tennessee's election to terminate such arrangement. TGPL and Tennessee assert that no exchange services have been provided under the exchange arrangement since prior to November 25, 1978. Therefore, TGPL and Tennessee state that they are requesting authorization to abandon the exchange service.

TGPL and Tennessee state that they do not propose to abandon any facilities pursuant to the instant application. They further state that no service to any of their other customers will be affected by the abandonment authorization requested herein.

Comment date: May 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co.

[Docket No. CP94–394–000]

Take notice that on April 29, 1994, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP94–394–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a sales tap located in Calcasieu Parish, Louisiana, under Tennessee's blanket certificate issued in Docket No. CP82–

413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee requests authorization to abandon and remove the sales tap, the related valve assembly and above ground appurtenances. The sales tap was used for a direct sale of natural gas for irrigation purposes. Tennessee states that the tap has been inactive for some time and that the customer previously serviced by the tap has consented in writing to the abandonment and removal of the tap.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP94–396–000]

Take notice that on April 29, 1994, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP94–396–000 a request pursuant to §§ 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct and operate a delivery point for Mississippi Valley Gas Company (MVG), under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that MVG proposed that Tennessee construct the delivery point to enable MVG to source its gas under one or more of Tennessee's existing contracts under Rate Schedule IT. Such gas would be transported pursuant to authority granted Tennessee in Docket No. CP87–115 on June 18, 1987, and § 284.223 of the regulations, and under Tennessee's Rate Schedule IT.

Tennessee proposes to install, own, operate and maintain one four-inch hot tap assembly and DAC, at M.P. 541–1+0.02 in Lauderdale County, Mississippi. It is indicated that the gas quantity that Tennessee proposes to deliver to MVG at the delivery point is: up to 40,000 Dth per day; and up to 14,600,000 Dth per year. It is stated that Tennessee's cost associated with this new delivery point is $31,700, 100% reimbursable by MVG.

Tennessee states that the total quantities to be delivered from MVG will not exceed the total quantities authorized. Tennessee asserts that the establishment of the proposed delivery point is not prohibited by Tennessee's tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources Co.

[Docket No. CP94–401–000]

Take notice that on April 29, 1994, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–401–000 a request pursuant to §§ 157.205, 157.211 and 157.112 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) for authorization to upgrade two existing meter stations for increased deliveries to Arkansas Louisiana Gas Company (ALG) and to operate one existing tap for an initial delivery of gas to ALG for resale to a consumer other than the right-of-way grantor for which the tap was originally installed under AER's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER proposes to (1) upgrade an existing 2-inch tap and 1-inch U-Shape meter station currently serving ALG to a 2-inch L-Shape meter station on AER's Line LM–1, Section 10, Township 2 South, Range 14 West, Saline County, Arkansas, for increased service to ALG's Rural Extension No. 1233, (2) upgrade an existing 1-inch tap and 1-inch meter station currently serving an ALG domestic customer to a 2-inch U-Shape meter station on AER's Line B, Section 16, Township 8 North, Range 22 West, Johnson County, Arkansas to service ALG's new Rural Extension No. 1333, and (3) to operate an existing 1-inch domestic tap to AER's Line AM–47, Obadiah Hendricks Survey A–57, Camp County, Texas for initial service to ALG's new domestic customer, Mack Carpenter. The total estimated increased sales is 29,085 Mcf annually and 316 Mcf on a peak day. AER estimates the total cost of construction to be $26,051 which will be reimbursed by ALG.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11371 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11320–001 Montana]

Hydrogroup, Inc.; Surrender of Preliminary Permit

May 5, 1994.

Take notice that Hydrogroup, Inc., Permittee for the Moose Creek Project No. 11320, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11320 was issued February 8, 1993, and would have expired January 31, 1996. The project would have been located within Gallatin National Forest, on Moose Creek, in Gallatin County, Montana.

The Permittee filed the request on April 25, 1994, and the preliminary permit for Project No. 11320 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11372 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–41–022]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective April 18, 1994:

Substitute First Revised Sheet No. 64
Substitute First Revised Sheet No. 65

Columbia states that it proposes to modify and supplement its March 18, 1994 filing in Docket No. RP91–41, *et al.*, to reflect the elimination of netting the Over/Under amounts applicable to Texas Gas Transmission Corporation's (Texas Gas) Docket No. RP91–61, as these amounts were netted against the refunds made by Columbia on April 21, 1994. Columbia states that the tariff sheets filed herein reflect only the additional billing approved by the Commission's April 14, 1994, order in this docket.

Columbia states that copies of the filing were served upon Columbia's firm customers, interested state commissions, and to each of the parties set forth in the official service list in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11373 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–158–002]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1994:

Substitute Original Sheet No. 96
Substitute Original Sheet No. 97
First Revised Sheet No. 460

Columbia states that it tendered this filing in compliance with the Federal Energy Regulatory Commission's (Commission) order issued March 31, 1994 (order) in Docket No. RP94–158, which required, inter alia, that Columbia file (i) tariff sheets which provide an opportunity to elect extended amortization periods of up to three years for the Account 191 direct billing; (ii) an explanation for exceeding the three percent level in the third test interval of the assessment test; (iii) a Schedule A in the same format as prescribed in FERC Form No. 542-PGA (Revised); and (iv) an explanation of the $11 million adjustment booked in November 1993. The order also required Columbia to remove the T&E adjustments from the instant direct billing. Columbia has filed a petition for rehearing of this issue. The order also provided for a customer review process. Columbia believes it has provided all data needed to make an assessment of the filing.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11374 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–395–000]

Columbia Gulf Transmission Co.; Application

May 5, 1994.

Take notice that on April 29, 1994, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–395–000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a natural gas transportation service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia Gulf states that it proposes to abandon, effective November 1, 1994, a natural gas transmission service provided by Columbia Gulf to Columbia Gas Transmission Corporation (Columbia Gas) under Columbia Gulf's Rate Schedule T–1. Columbia Gulf further states that Columbia Gas will no longer need this transportation service from Columbia Gulf and therefore advised Columbia Gulf by notice dated April 27, 1993, of the cancellation of the agreement effective November 1, 1994.

Columbia Gulf says that it does not propose to abandon any facilities as a result of the authorization requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 26, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11375 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-4-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet, to become effective June 1, 1994:

Third Revised Sheet No. 8A

FGT states that the tariff sheet referenced above is being filed pursuant to Section 25 (Flowthrough Billing Mechanism) of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1. Section 25 sets forth the mechanism by which FGT is permitted to flow through fixed charge allocations of buy-out and buy-down costs billed to FGT by Southern Natural Gas Company (Southern). This mechanism was approved by Commission Order dated June 16, 1989, in Docket No. RP89-44-001.

FGT further states that it is suspending its Annual Unit Take-or-Pay Surcharge effective June 1, 1994, because of the cessation of Southern's fixed charge allocations to FGT after May, 1994. Because of the suspension by the FERC of procedural schedules in the proceedings affecting Southern's allocations of fixed charges and the absence of actual information regarding April and May, 1994, throughput and recoveries, FGT states that it will make a supplemental filing within ninety (90) days of the end of the Annual Recovery Period ending May 31, 1994 and make any related tariff changes at that time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11376 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

Iroquois Gas Transmission System, L.P.; Motion To Make Tariff Sheets Effective

[Docket No. RP94-72-003]

May 5, 1994.

Take notice that on April 29, 1994, Iroquois Gas Transmission System, L.P., (Iroquois), filed a motion requesting that the revised tariff sheets listed in appendix A of the motion be made effective on June 1, 1994.

Iroquois states that all of the tariff sheets listed on appendix A of the motion have been previously filed in this proceeding, with the exception of the three substitute tariff sheets attached to the filing, which update tariff sheets originally filed on December 1, 1993.

Iroquois states that it has served the filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11377 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-454-005]

Midwest Gas Storage Inc.; Filing

May 5, 1994

Take notice that on April 29, 1994, Midwest Gas Storage Inc. (Midwest), 13100 Southwest Highway, Palos Park, Illinois 60464, filed in Docket No. CP90-454-005 as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 3 with a proposed effective date of May 15, 1994.

Midwest states that a scaled map of Midwest's system is being filed in substitution of the version filed on April 8, 1994 in Docket No. CP90-454-004, *et al.*

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11378 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-58-000]

SEI Holdings VIII, Inc.; Application for Commission Determination of Exempt Wholesale Generator Status

May 5, 1994.

On April 29, 1994, SEI Holdings VIII, Inc. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale operator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant intends to indirectly own and operate an eligible facility, as defined in Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"), to be located in Monterrey, in the State of Nuevo León, Mexico through its affiliate Energia de Nuevo León, S.A. de C.V. The facility is scheduled to be completed by September 1, 1996. The Facility will be an approximately 220 MW combined-cycle cogeneration facility that will be gas fired, with fuel oil as a back-up.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of PUHCA.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214.). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 27, 1994 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11327 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-60-000]

SEI Beteiligungs GmbH, Application for Commission Determination of Exempt Wholesale Generator Status

May 5, 1994.

On April 29, 1994, SEI Beteiligungs GmbH ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant intends to indirectly own and operate an eligible facility, as defined in section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"), to be located in Monterrey, in the State of Nuevo León, Mexico through its affiliate Energía de Nuevo León, S.A. de C.V. The facility is scheduled to be completed by September 1, 1996. The Facility will be an approximately 220 MW combined-cycle cogeneration facility that will be gas fired, with fuel oil as a back-up.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of PUHCA.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 27, 1994, and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on the file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11326 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-225-001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Substitute Fifth Revised Sheet No. 10

Texas Gas states that the revised tariff sheet is being filed to correct an error on Fifth Revised Sheet No. 10 which was a part of Texas Gas' April 29, 1994, filing to recover ninety percent (90%) of its Gas Supply Realignment Costs from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its interruptible transportation customers, and is being designated as Substitute Fifth Revised Sheet No. 10.

Texas Gas requests an effective date of June 1, 1994, for the proposed tariff sheet.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' affected jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11379 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Policy, Planning and Program Evaluation

DOE Headquarters Washington DC Chicago Operations Office

AGENCY: Department of Energy.

ACTION: Acceptance of unsolicited application.

SUMMARY: The Department of Energy (DOE), Office of Policy, Planning and Program Evaluation, through the Chicago Operations Office, announces that it intends to award a grant to the Western Interstate Energy Board (WINB) of Denver, Colorado. The proposed award meets the criteria in 10 CFR 600.14 (d) and 10 CFR 600.14 (e). The financial assistance is for support of the Western Interstate Energy Board workshop on the Linkage Between Western Utility Integrated Resource Planning (IRP) and Regional Transmission Planning in a Competitive Environment. The workshop will be hosted at WINB facilities, and is scheduled for the May 30, 1994 thru December 31, 1994 timeframe.

SUPPLEMENTARY INFORMATION: The workshop will be attended by Western State representatives, and 2 Canadian provinces from western public utility commissions. The workshop will consist of state facility siting agencies, governors' energy agencies; and will address important issues relating to the Energy Policy Act of 1992, particularly Title VII. The objectives of the conference are:

a. Improve the understanding of the types of linkages (or lack of linkages) between utility-specific IRP, state facility siting, and regional transmission planning given (1) the current level of competition, (2) increased wholesale competition and (3) retail competition.

b. Identifying opportunities to enhance coordination of utility-specific IRP and state facility siting with regional transmission planning.

c. Improving the understanding of the influence of competition on utility-specific IRP in terms of planning objectives, planning processes, plan outputs and plan implementations, and identify potential changes to utility-specific IRP to allow IRP to meet planning objectives in a competitive environment.

Results of this workshop will assist the western utilities and consumers in the area by fostering utility cooperation. The proposed project will improve the understanding of the types of linkages between utility and specific IRP, state facility siting, and regional transmission planning, identify the opportunities to better coordinate utility specific IRP and improve the understanding of the effect of competition on utility-specific IRP and the changes in IRP required by a more competitive environment. Results will favorably impact the cost for producing and transmission of electricity, and the general public should gain with lower costs to electric utilities.

The DOE will provide funds in the amount of $25,000.00, and the Western Interstate Energy Board will provide $25,636.00 for the 7 months project period.

FOR FURTHER INFORMATION CONTACT: Charlotte Shedrick, PO–30, U.S. Department of Energy, 1000 Independence SW., Washington, DC 20585, (202) 586–3195.

Issued in Chicago, Illinois, on April 22, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–11426 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4883–3]

Campo Band of Mission Indians; Tentative Adequacy Determination of Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of the Campo Band of Mission Indians for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs. EPA believes that adequate authority exists under RCRA to allow Tribes to seek an adequacy determination for purposes of sections 4005 and 4010.

Under separate authority of the Clean Air Act, EPA is reviewing an application for a non-attainment area permit to construct a proposed MSWLF on the Campo Reservation. There will be a separate public comment period and decision on that application.

The Campo Band of Mission Indians ("Campo Band") applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed the Campo Band's MSWLF application and has made a tentative determination of adequacy for those portions of the Campo Band's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The Campo Band has drafted revisions to the remainder of its permit program to assure complete compliance with the revised MSWLF Criteria and gain full approval. EPA has determined that the Campo Band's revised requirements and emergency regulations, if fully adopted and affirmed before EPA makes a final determination, would be adequate to ensure compliance with the Federal Criteria.

Although RCRA does not require EPA to hold a public hearing on any determination to approve a Tribe's MSWLF program, the Region has scheduled a public hearing on this tentative determination. Details appear below in the DATES section. The Campo Band's application for program adequacy determination is available for public review and comment.

DATES: All comments on the Campo Band's application for a determination of adequacy must be received by the close of business on July 14, 1994. A public hearing is scheduled for 7 p.m. to 9 p.m. June 30, 1994 in Alpine, California. An open house is scheduled for 3 p.m. to 6 p.m. on June 30, 1994 in Alpine to give the public an opportunity to discuss the tentative approval before the hearing. At the hearing, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing at the hearing on June 30, 1994. The hearing may adjourn earlier than 9 p.m. if all of the speakers deliver their comments before that hour. Representatives of the Campo Band of Mission Indians will be present at the open house and the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Ms. Christiane Camp, Mail Code H–3–1, US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The public hearing will be held at the Alpine Elementary School Auditorium, 1850 Alpine Blvd., Alpine, California 91901. The open house will be held at the Alpine Elementary School Auditorium. Copies of the Campo Band's application for adequacy determination are available at the following addresses for inspection and copying: Campo Environmental Protection Agency, Campo Tribal Hall, BIA Route 10, Highway 94, Campo, California, 91906, telephone (619) 478–9369, from 9 a.m. to 4 p.m. Mondays through Fridays; Campo Public Library, 31466 Highway 94, Campo, California, 91906, telephone (619) 478–5945, from 9 a.m. to 1 p.m. and 1:30 to 4 Wednesdays, and 9 a.m. to 1 p.m. Fridays and Saturdays; US EPA Region 9 Library, 75 Hawthorne Street, 13th Floor, San Francisco, California, 94105, telephone (415) 744–1510, from 9 a.m. to 5 p.m. Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Christiane Camp, Mail Code H–3–1, telephone (415) 744–2097.

SUPPLEMENTARY INFORMATION:

A. Background

1. Solid Waste Permit Program Criteria

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6941–6949(a), requires States (and, as discussed below, allows Indian Tribes) to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b)(1) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA is further requesting Tribes to provide a statement of legal authority from the Tribal Attorney General or its equivalent demonstrating that the Tribe has adequate jurisdiction to regulate the MSWLFs on the reservation. In addition, EPA is requesting a Tribe seeking program approval to demonstrate that it: (1) Is federally recognized; (2) has a government exercising substantial duties and powers; and (3) is capable of administering a permit program. If the Tribe has already demonstrated to EPA that it meets the first two of these criteria in the context of the approval to operate another EPA program, it need not do so again.

EPA is also requesting Tribes to provide an explanation of the jurisdiction and responsibilities of all Tribal program implementing agencies (including any State agency acting pursuant to an agreement with the Tribe) and designation of a lead agency to facilitate communications between EPA and the Tribe. These requests reflect the criteria used in other environmental statutes to assess whether Tribes may apply for program approval. If a Tribe has already provided information and/or a legal statement on the Tribe's jurisdiction and capability to operate another EPA program, EPA requests the Tribe to provide only those additional material necessary to support its application for MSWLF permit program approval.

EPA Regions will determine whether a Tribe has submitted an adequate program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule.

2. Tribal Programs

EPA is extending to Tribes the same opportunity to apply for permit program approval as is available to States. Providing Tribes with the opportunity to apply for adequacy for purposes of adopting and implementing MSWLF permit programs is consistent with EPA's Indian Policy. This Policy, formally adopted in 1984, recognizes Tribes as the primary sovereign entities for regulating the reservation environment and commits the Agency to working with Tribes on a "government-to-government" basis to effectuate that recognition. A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal assumption of Federal environmental programs. Today's tentative determination to approve a Tribal MSWLF permit program represents another facet of the Agency's continuing commitment to the implementation of this long-standing policy.

EPA's interpretation of RCRA is governed by the principles of *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. Interpreting RCRA to allow Tribes to apply for an adequacy determination satisfies the Chevron test.

States generally are precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement to do so. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 216 and n.18 (1987). Yet, under the current statutory scheme, EPA generally is precluded from enforcing the MSWLF criteria as well. Furthermore, Congress has not yet created an explicit role for Tribes to implement the Subtitle D program, as it has done under most other major environmental statutes amended since 1986 (Safe Drinking Water Act, Comprehensive Environmental Response Compensation and Liability Act, Clean Water Act, Clean Air Act).

RCRA does not explicitly define a role for Tribes under sections 4005 and 4010 and reflects an undeniable ambiguity in Congressional intent. Indeed, the only mention of Tribes anywhere in RCRA is in section 1004(13), a part of the definitions of key terms in RCRA. Section 1004(13) defines the term "municipality" to mean;

> a city, town, borough, county, parish, district or other public body created by or pursuant to State law, with responsibility for the planning or administration or solid waste management, *or any Indian tribe or authorized tribal organization or Alaska Native village or organization[.]*

Id. (emphasis added). The term "municipality", in turn, is used in sections 4008(a)(2) and 4009(a) of RCRA with reference to the availability of certain Federal funds and technical assistance for solid waste planning and management activities by municipalities. Thus, Congress apparently intended to make explicit that Tribes could receive funds and assistance when available in the same manner as municipal governments. However, Congress did not explicitly recognize any other role for Tribes under other provisions. There is no accompanying legislative history which explains why Tribes were included in section 1004(13) and nowhere else.

EPA does not believe that Congress, by including Tribes in section 1004(13), intended to prohibit EPA from allowing Tribes to apply for an adequacy determination under subtitle D. First of all, it is clear that Tribes are not "municipalities" in the traditional sense. Tribes are not "public bodies created by or pursuant to State law." Indeed, Tribes are not subject to State law except in very limited circumstances. *Cabazon, supra.* Indian Tribes are sovereign governments whose authority is subject only to Congressional approval. *Worcester* v. *Georgia,* 31 U.S. (10 Pet.) 515 (1832). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by defining them as "municipalities" under RCRA, i.e., that Congress intended section 1004(13) to subject Tribes to State law for RCRA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which might arguably abridge Tribal powers of self-government must be construed narrowly in favor of retaining Tribal rights. F. Cohen, Handbook of Federal Indian Law, 224 (1981); See, *e.g., Ramah Navajo School Board* v. *Bureau of Revenue,* 458 U.S. 832, 846 (1982).

EPA believes that inclusion of Indian Tribes in section 1004(13) was a definitional expedient, to avoid having to include the phrase "and Indian tribes or tribal organizations or Alaska Native villages or organizations" wherever the term "municipality" appeared, not to change the sovereign status of Tribes for RCRA purposes. Second, given the limited number of times the term "municipality" appears in RCRA, it does not appear that Congress intended to define an all-inclusive role for Tribes for all potential statutory purposes.

The ambiguity in RCRA regarding Indian Tribes also is evident from the structure of the 1984 Amendments. As mentioned earlier, Congress expressed a strong preference for a State lead in ensuring compliance with 40 CFR part 258, in that Section 4005(c) allows EPA to enforce the criteria only after a finding of inadequacy of the State permit program. Yet, the legislative history of the 1984 Amendments does not suggest that Congress intended to authorize States to implement such programs on Tribal lands or that Congress intended to override the general legal principle that States generally are precluded from such implementation. *Cf. Washington Dept. of Ecology* v. *EPA,* 752 F.2d 1465 (9th Cir. 1985) (RCRA Subtitle C does not constitute an explicit delegation of authority to States to implement hazardous waste programs on Indian lands); *accord, Nance* v. *EPA*[1], 645 F.2d 701 (9th Cir. 1981). Thus, Congress has otherwise put States in a primary role for the MSWLF program, yet on Indian lands has failed to define how Tribes participate where States lack authority. EPA believes it necessary to harmonize the conflicts and resolve the ambiguities created by these provisions.

EPA concludes that interpreting Sections 4005, 4008, and 4010 to allow Indian Tribes to seek an adequacy determination is reasonable. Several factors enter into this determination. First, as discussed in the previous paragraph, this approach is consistent with subtitle D because it preserves Congressional intent to limit the Federal government's role in MSWLF programs. Absent the opportunity to seek a determination of adequacy, there would be few or no adequate permit programs in place on Indian lands (because the State lacked the authority and the Tribe could not apply for program approval), potentially resulting in the Federal government assuming a substantial role in MSWLF programs by having EPA enforce 40 CFR part 258 directly.

In addition to expanding the Federal role, failure to approve Tribal programs would deny Tribes the option available to approved States of granting their MSWLF owners and operators flexibility in meeting the requirements of 40 CFR part 258. The revised Federal criteria (40 CFR part 258) would be implemented without benefit of an EPA approved permit process. All MSWLFs on Indian Lands, whether Tribal or private, would be in a disadvantaged position relative to other MSWLFs, being unable to take advantage of the flexibility that Congress built into Sections 4005 and 4010 and that EPA has incorporated into 40 CFR part 258. By approving Tribal permit programs, however, MSWLFs on Indian Lands would be under the jurisdiction of the closest sovereign with sufficient permitting authority, *i.e.* the Tribe.

EPA, in accordance with its Indian Policy, has worked to ensure that Congress revises other environmental statutes (*e.g.*, the Clean Water Act), at the earliest opportunity to define explicitly the role for Tribes under these programs. Yet, EPA also has stepped in on at least two occasions to allow Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA. 55 FR 30632 (1990). EPA reasoned that since EPCRA has no federal role to backup State planning activities, failure to recognize Tribes as the authority under EPCRA would leave gaps in emergency planning on Indian lands. 54 FR 13000–130001 (1989).

EPA filled such a statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian lands under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. See *Nance* v. *EPA,* 645 F.2d 701 (9th Cir. 1981) (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time made no reference whatsoever to Indian Tribes or their status under the Act.[2]

One Court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps on Indian lands. In *Nance, supra,* the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian lands from the redesignation process. *Id.* at 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities on Indian lands. *Id.* at 714.

Today's tentative determination to approve a tribal MSWLF permit program is analogous to the rule upheld in *Nance.* EPA is proposing to fill a gap in jurisdiction on Indian lands. As with the redesignation program, without recognition of Tribal MSWLF programs, there would be no acceptable way to implement at the Federal level a key statutory provision, i.e., the MSWLF permitting process.

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[1] By today's action EPA does not intend to prohibit a State from applying for approval of its MSWLF program extending to Indian lands. However, the State would either have to enter into an agreement with a Tribe or show the existence of specific Congressional authorization or independent civil regulatory authority to regulate these landfills. See, e.g., 53 FR 43080 (1988) (Washington application to regulate UIC wells on Indian lands).

[2] Congress ratified EPA's regulation in 1977 by explicitly authorizing Tribes to make PSD redesignations; the 1990 Amendments to the Clean Air Act authorize EPA to allow Tribes to apply for approval to implement any programs EPA deems appropriate.

Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra.* Second, the Supreme Court has emphasized since *Nance* that Indian Tribes may regulate activities on land belonging to the Tribe or held by the United States in trust for the Tribe. *Montana* v. *United States,* 450 U.S. 544, 557 (1981). All land within the Campo Reservation is tribal trust land.

In the case of MSWLFs, EPA believes that improperly maintained MSWLFs would not be protective of human health (including that of Tribal members) and the environment (including Indian lands). Tribes are likely to be able to assert regulatory authority over landfills on tribal lands to protect these interests. Allowing Tribes to seek adequacy would reflect general principles of Federal Indian law. Thus, as in *Nance,* EPA believes that allowing Tribes to apply for program approval reflects the sovereign authority of Tribes under Federal law.

To have its MSWLF permit program deemed adequate by EPA, a tribe must have adequate authority over the regulated activities. Indian reservations include lands owned in fee by non-Indians. The extent of Tribal authority to regulate activities by non-Indians on such land has been the subject of considerable recent discussion. The test for civil regulatory authority over nonmember lands within Indian reservations was stated in *Montana* v. *U.S.,* 450 U.S. 544, 565–66 (1981) (citations omitted):

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. * * * A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

In *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation,* 492 U.S. 408 (1989), the Court applied this test. Both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

Specifically, the Court recognized Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); *id.* at 449–450 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * * health and welfare." *Id.* at 432 (White, J., writing for the Court). Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v. *United States.*

In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by nonmembers but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale* and applicable Federal law. The extent of such Tribal authority depends on the effect of that activity on the Tribe. As discussed above, in the absence of a contrary statutory policy, a Tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. *Montana,* 450 U.S. at 565–66. For further discussion of this issue see 56 FR 64876.

However, in *Brendale* several justices argued that for a Tribe to have "a protectable interest" in an activity, the activity's effect should be "demonstrably serious * * *." *Brendale,* 492 U.S. at 431 (White, J.). In addition, in a more recent case involving Tribal criminal jurisdiction, a majority of the Court indicated in *dicta* that a Tribe may exercise civil authority "where the exercise of tribal authority is vital to the maintenance of tribal integrity and self-determination." *Duro* v. *Reina,* 110 S.Ct. 2053, 2061 (1990). *See also Brendale,* 492 U.S. at 450 (Blackmun, J.) (test for inherent Tribal authority whether activities "implicate a significant tribal interest"); *id.* at 462 (Blackmun, J.) (test for inherent Tribal authority whether exercise of authority "fundamental to the political and economic security of the tribe * * *").

As discussed above, the Supreme Court, in recent cases, has explored several options to assure that the impacts upon Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis,* although to date the Court has not agreed, in a case on point, on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an interim operating principle, a formulation of the standard that will require a showing that the potential impacts of regulated activities of non-members on the Tribe are serious and substantial.

The choice of an Agency operating principle containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se.* Moreover, as discussed below, the Agency believes that the activities regulated under the various environmental statutes generally have serious and substantial impacts on human health and welfare. As a result, the Agency believes that Tribes usually will be able to meet the Agency's operating principle, and that use of such a test by the Agency should not create an improper burden of proof on Tribes or create the administratively undesirable result of checkerboarding reservations.

Whether a Tribe has jurisdiction over activities by nonmembers will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances. Nonetheless, the Agency also may take into account the provisions of environmental statutes and any legislative findings that the effects of the activity are serious in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control reservation environmental quality. See, *e.g., Keystone Bituminous Coal Ass'n* v. *DeBenedictis,* 480 U.S. 470, 476–77 and nn.6, 7 (1987). As a result, in making the required factual findings as to the impact of a solid waste activity on a particular Tribe, it may not be necessary to develop an extensive and detailed record in each case. The Agency also may rely on its special expertise and practical experience regarding the importance of solid waste management.

The Agency believes that Congressional enactment of RCRA establishes a strong Federal interest in effective management of solid waste. EPA also notes that, where solid waste affects ground water which has pathways that allow it to migrate readily, it would be practically very difficult to separate out the effects of solid waste disposal on non-Indian fee land within a reservation from those on Tribal portions. In other words, any environmental impairment that occurs on, or as a result of, activities on non-Indian fee lands is very likely to impair Tribal lands. This also suggests that the serious and substantial effects of solid waste within the non-Indian portions of a reservation are very likely to affect Tribal health and welfare. EPA believes that a "checkerboard" system of regulation, whereby the Tribe and State split up regulation of solid waste on the Indian Lands, would exacerbate the difficulties of assuring compliance with RCRA requirements.

The Agency also believes that the effects on Tribal health and welfare necessary to support Tribal regulation of non-Indian activities on Indian Lands may be easier to establish in the context of environmental regulation than with regard to zoning, which was at issue in *Brendale*. There is a significant distinction between land use planning and environmental regulation of solid waste under RCRA. The Supreme Court has explicitly recognized such a distinction: "Land use planning in essence chooses particular uses for the land; environmental regulation does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Comm'n* v. *Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that States retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by federal law. *Id.* at 587–89.

Further, management of solid waste serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well established.[3] By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. See, e.g., *Brendale*, 492 U.S. at 420 n.5 (White, J.) (listing broad range of consequences of state zoning decision). Moreover, solid waste may affect ground water, which is mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

Operationally, EPA's generalized findings regarding the relationship of solid waste management to Tribal health and welfare will affect the legal analysis of a Tribal submission by, in effect, supplementing the factual showing a Tribe makes in applying for program approval. Thus, a Tribal submission regarding jurisdiction on fee lands will need to make a relatively simple showing of facts that there is or may be solid waste within the meaning of Subtitle D on the reservation and that the Tribe or Tribal members could be subject to exposure to that waste. The Tribe also must explicitly assert that activities of non-Indians regarding that waste would have a serious and substantial effect on the health and welfare of the Tribe. Once the Tribe meets this initial burden, EPA will, in light of the facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of solid waste discussed above, presume that there has been an adequate showing of Tribal jurisdiction on fee lands, unless an appropriate governmental entity (e.g., an adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between Tribes and States can be complex and difficult However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

For purposes of this determination, Tribe is defined to mean any Indian tribe, band, nation, or other organized group or community which is recognized by the Secretary of the Interior or Congress and which exercises substantial governmental duties and powers over any area. While the definition of Tribes in today's determination does not explicitly include Alaska Native Villages, EPA has not determined that such entities are ineligible to apply for permit program approval. Alaska Native entities (e.g., villages) may apply for permit program approval. Alaska Native Villages that demonstrate that their permit programs meet the requirements of today's proposal will be deemed adequate.

B. Campo Band of Mission Indians

On February 15, 1994, the Campo Band submitted an application for adequacy determination. EPA reviewed the Campo Band's application and tentatively determined that the following portions of the Tribe's Subtitle D program will ensure compliance with the revised Federal Criteria:

1. General criteria governing scope and applicability, definitions, and consideration of other federal laws (40 CFR 258.1, 258.2, 258.3);
2. Location restrictions for airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas, and closure of existing units (40 CFR 258.10, 258.11, 258.12, 258.13, 258.14, 258.15, and 258.16);
3. Operating criteria for exclusion of hazardous waste, cover material requirements, disease vector control, explosive gases control, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and recordkeeping requirements (40 CFR 258.20, 258.21, 258.22, 258.23, 258.24, 258.25, 258.26, 258.27, 258.28, and 258.29);
4. Design criteria (40 CFR 258.40);
5. Groundwater monitoring and corrective action criteria governing applicability (40 CFR 258.50);
6. Closure and post-closure care requirements (40 CFR 258.60 and 258.61);
7. Financial assurance criteria governing applicability and effective date, and allowable mechanisms (40 CFR 258.70 and 258.74).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes, codes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribes would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

The Campo Band needs to revise aspects of its permit program to ensure compliance with the following provisions of the Federal Criteria:

1. Groundwater monitoring and corrective action criteria for

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[3] This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. *See Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 491 n. 20 (1987); *id.* at 512 (Rehnquist, C.J., dissenting).

groundwater monitoring systems, sampling and analysis requirements, detection monitoring program, assessment monitoring program, and corrective action implementation (40 CFR 258.51, 258.53, 258.54, 258.55, and 258.58). Although existing CEPA regulations ensure compliance with the federal assessment of corrective measures and selection of remedy requirements (40 CFR 258.56 and 258.57) in and of themselves, it would be impossible to separate compliance with these portions of CEPA's regulations from the rest of CEPA's groundwater monitoring program. Therefore, if CEPA does not fully adopt draft regulatory changes to the groundwater monitoring systems, sampling and analysis requirements, detection monitoring program, assessment monitoring program, and corrective action implementation requirements, EPA cannot approve CEPA for the assessment of corrective measures and selection of remedy portions of its program.

2. Financial assurance criteria for closure, post-closure and corrective action (40 CFR 258.71, 258.72, and 258.73).

The Campo Band submitted an amendment to its application for program adequacy determination on April 18, 1994. The Campo Band's amendment included draft revised requirements for those parts of the Campo Band's existing program that are not adequate to ensure compliance with the federal criteria. EPA Region 9 reviewed the Campo Band's amendment to its application and determined that these draft regulatory requirements would be adequate to ensure compliance with the Federal Criteria.

If the draft regulatory requirements submitted to EPA on April 18, 1994 are fully adopted before EPA makes a final determination, then EPA proposes to fully approve the Campo Band's MSWLF program. If all the necessary draft regulatory requirements are not adopted with the relevant effective dates or are adopted with altered language that would not clearly assure compliance with the Federal Criteria, then EPA proposes to partially approve the Campo Band's program. Partial approval would only be for those portions of the Campo Band program that assure compliance with the Federal Criteria.

In addition, before EPA grants partial or full program approval, the Campo Band must reaffirm the February 13, 1994 promulgation of the emergency regulations submitted with the Campo Band's February 15, 1994 final application. Although the Campo Band's emergency regulations are currently in effect, they remain in effect only 180 days after February 13, 1994 unless the original promulgation is affirmed. The emergency regulations must be affirmed without altered language that would not clearly assure compliance with the Federal Criteria in order for EPA to approve those portions of the Campo Band program governed by the emergency regulations.

The Campo Band has demonstrated that the Campo Band of Mission Indians is a Federally recognized Tribe. See 53 FR 52830 (December 29, 1988). The Constitution (the "Constitution") of the Campo Band of Mission Indians establishes a General Council that serves as the Campo Band's governing body and enumerates the Council's powers and responsibilities. Among the enumerated powers, the Constitution authorizes the General Council to establish subordinate entities for the Band and, by appropriate ordinances and resolutions, to delegate to such subordinate entities any of the powers and duties of the General Council. Pursuant to this power under the Constitution and by Resolution No. 88-005, the General Council established the Campo Environmental Protection Agency (CEPA) for the purpose of protecting public health and safety and the environment. CEPA is charged with the administration and enforcement of the solid waste management permitting and regulatory compliance programs.

All land within the Campo Reservation is tribal trust land. The Campo Band has established that the Campo Band of Mission Indians has adequate jurisdiction over the land of the Campo Reservation based on general principles of Tribal sovereignty, the Band's status as a "federally recognized Indian Tribe," the Tribal Constitution, a map and narrative description which established the boundaries of the Reservation and copies of Tribal codes and regulations.

In making today's tentative determination that the Campo Band's MSWLF permit program is adequate, the Agency has tentatively determined that the Tribe has adequate authority over the activities regulated by such a program. In its application, the Campo Band has also demonstrated that it has adequate resources to manage a MSWLF permit program and adequate authority to issue permits, ensure compliance monitoring and enforcement, and to provide for intervention in civil enforcement proceedings.

Region 9 will hold a public hearing on this determination from 7 p.m. to 9 p.m. June 30, 1994 at the Alpine Elementary School Auditorium, 1850 Alpine Blvd., Alpine, California, 91901. An open house is scheduled for 3 p.m. to 6 p.m. on June 30, 1994 at the Alpine Elementary School Auditorium to give the public an opportunity to discuss the tentative approval before the hearing. The public may submit written comments on EPA's tentative determination until the close of the public comment period July 14, 1994. Copies of the Campo Band's application and supporting documents are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and public hearing. Issues raised by those comments may be the basis for a determination of adequacy or inadequacy for the Campo Band's program. EPA will make a final determination on whether or not to approve the Campo Band's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that approval of the Tribal MSWLF permit program will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: April 29, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-11085 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-P

[PP 2G4157/T658; FRL 4777-4]

Entomopathogen; Extension of an Exemption from Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the temporary exemption from the requirement of a tolerance for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain, and has broadened the tolerance to include residues in or on all raw agricultural commodities.

DATES: This temporary exemption from the requirement of a tolerance expires January 18, 1995.

FOR FURTHER INFORMATION CONTACT: By mail, Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-7690.

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of August 4, 1993 (58 FR 41473) that a temporary exemption from the requirement of a tolerance had been amended for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain in or on the following raw agricultural commodities: cotton seed; peanuts; peanut forage; peanut hay; tomatoes; lettuce; cantaloupe; cabbage and peppers for the control of boll weevil, whiteflies and leafhoppers. This exemption from the requirement of a tolerance has been extended in response to pesticide petition (PP) 2G4157, submitted by Fermone Corporation, Incorporated, 2620 No. 37th Drive, Phoenix, AZ 85009.

The company has requested an expansion to include all raw agricultural crops and a 1-year extension of the temporary tolerance to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 53871-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been extended and expanded on the condition that the pesticides be used in accordance with approved experimental use permits and with the following provisions:

1. The total amount of the active ingredients to be used must not exceed the quantity authorized by approved experimental use permits.
2. Fermone Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires January 18, 1995. Residues remaining in or on all the raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemption from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-11273 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-F

[PF-596; FRL-4775-1]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis H. Edwards, Jr. (PM-19).	Rm. 207, CM #2, 703-305-6386.	1921 Jefferson Davis Hwy., Arlington, VA
Steve Robbins (PM-21).	Rm. 233, CM #2, 703-305-6900.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food/feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 3E4218*. Makhteshim-Agan of North America, Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176, proposes to amend 40 CFR 185.410 to permit residues of 1,1-*bis*(*p*-chlorophenyl)-2,2,2-trichloroethanol in or on the commodities tea (plucked) and tea (dried) at 45 parts per million. (PM-19)

2. *PP 3F4242*. Ecogen, Inc., 2005 Cabot Blvd., West, Langhorne, PA 19047, requests amendments to 40 CFR 180.1001(c) and (d) to establish exemptions from the requirement of a tolerance for *Ampelomyces quisqualis* (AQ-10) in/on all raw agricultural commodities. (PM-21)

3. *PP 4F4284*. Gustafson, Inc., P.O. Box 660065, Dallas, TX, 75266-0065, requests amending 40 CFR part 180 to establish an exemption from the requirement of a tolerance for *Bacillus subtilis* MBI 600 (ATCC No. SD-1414) in/on raw agricultural commodities when used as a seed treatment. (PM-21)

4. *PP 4F4328*. EcoScience Corp., One Innovation Drive, Worcester, MA 01545, requests amending 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Bio-Save 10 containing active ingredient (*Pseudomonas syringae*) in/on pears, apples, lemons, oranges, and grapefruit for postharvest applications. (PM-21)

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs

[FR Doc. 94-11272 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-F

[PF-597; FRL-4777-7]

Monsanto Co.; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of pesticide petition (PP) 4E4301 by Monsanto Co. to amend 40 CFR 180.1001(d) by adding Neomycin Phosphotransferase II (NPTII) as an inert ingredient byproduct of the nptII gene when used as a plant pesticide formulation inert ingredient.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. In person, contact Phil Hutton (PM-18), rm. 313, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: EPA has received the initial filing of PP 4E4301 from the Monsanto Co., 700 Chesterfield Parkway North, St. Louis, MO 63193, proposing that 40 CFR part 180 be amended to establish a tolerance exemption for residues of the plant pesticide inert ingredient Neomycin Phosphotransferase II when used as a plant pesticide formulation inert ingredient, as expressed in plant cells. The inert ingredient is the byproduct of the nptII gene which has been genetically engineered to produce the enzyme neomycin phosphotransferase.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-11271 Filed 5-10-94, 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1025-DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-1025-DR), dated April 26, 1994, and related determinations.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 4, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate

[FR Doc. 94-11423 Filed 5-10-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; APL-TMM Space Charter Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011435–001.

Title: APL–TMM Space Charter Agreement.

Parties:

American President Lines, Ltd. ("APL")

Transportacion Maritima Mexicana, S.A. DE C.V. ("TMM")

Synopsis: The proposed amendment extends the scope of the Agreement to include (1) the carriage of U.S. commerce by APL aboard TMM vessels; and (2) adds a new Article 15—Undertaking with Respect to Stock Transactions.

Dated: May 5, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–11328 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2635	Hydra Management, Inc., 10500 Richmond, Suite 228, Houston, TX 77042	April 14, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–11361 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3674
Name: Kelly's Freight Forwarders, Inc.
Address: 1416 N.W. 82nd Ave., Miami, FL 33126
Date Revoked: March 17, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3376
Name: J.B. Daman (U.S.A.) Ltd.
Address: 2500 A Broening Highway, Ste. 203, Baltimore, MD 21224
Date Revoked: March 29, 1994
Reason: Surrendered license voluntarily.

License Number: 3192
Name: Dale M.A. Zerda
Address: 529 Commercial St., 4th Fl., San Francisco, CA 94111
Date Revoked: April 1, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 956
Name: Jay International, Inc.
Address: 1331 Rt. 130 South, Gloucester City, NJ 08030
Date Revoked: April 6, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1959
Name: Superior Service Freight Forwarding, Inc.
Address: 7812 N.W. 72nd Ave., Miami, FL 33152
Date Revoked: April 6, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3706
Name: Chesapeake Bay Shipping and Warehousing, Inc.
Address: 6715 Santa Barbara Court, Baltimore, MD 21227
Date Revoked: April 7, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3467
Name: Total Air & Ocean Services, Inc.
Address: 5086 N.W. 74th Ave., Miami, FL 33166
Date Revoked: April 14, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–11360 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 93–25]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements (European Trade)

By Order published in the **Federal Register** (58 FR 69,365) on December 30, 1993 ("December Order"), the Commission directed 35 carriers with tariffs on file in the European trade areas to show cause why their paper tariffs should not be cancelled for failure to register and file a tariff in ATFI by the required data (*i.e.*, August 27, 1993). This action was taken pursuant to section 8 of the Shipping Act of 1984 (46 U.S.C. app. 1707), the Commission's regulations implementing ATFI at 46 CFR Part 514 and Supplemental Report Nos. 2, 3 and 4 issued in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce (Automated Tariff Filing and Information System).[1]

Formal responses were filed on behalf of CarAmerica S.R.L. ("CarAmerica"), Hermann Ludwig GMBH & Co. ("Hermann Ludwig"), and Compania Trasatlantica Espanola, S.A. ("CTE"). CarAmerica requested that the Commission refrain from cancelling its paper tariff until its ATFI tariff becomes effective. Hermann Ludwig stated it was not serving the United States trade and was reorganizing the company. It requested the Commission to refrain from cancelling its paper tariff since it intended to register and file a tariff in ATFI under its new name. CTE requested that the Commission cancel its tariffs since it no longer serves the United States.

CarAmerica's ATFI Tariff No. 001 was filed and became effective on March 12, 1994, so this firm will be dismissed from the proceeding.

The Commission believes that Hermann Ludwig was given adequate notice of the AFTI filing time frames and therefore should not be granted any further extension. Moreover, as noted above, it is no longer serving the United States trades nor has it evidenced its intent to do so by registering to file an ATFI tariff under its new corporate name. Accordingly, its tariff will be cancelled.

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[1] Supplemental Report No. 2, served August 4, 1992, Supplemental Report No. 3 issued on December 17, 1992 (57 FR 59,999) and Supplemental Report No. 4 issued on June 3, 1993 (58 FR 31,522) advised the public that failure to convert tariffs to ATFI format by scheduled filing dates would subject the carrier's tariff to possible cancellation through a show cause proceeding.

Sec. 502(b)(1) of Public Law 102–582 ("Pub. L. 102–582") requires all tariffs and essential terms of service contracts filed with the Commission to be in electronic format.

CTE has not filed an ATFI tariff and moreover has asked that its tariff be cancelled. The Commission will grant CTE's request.

The Commission did not receive responses from 17 of the respondents None of these respondents have registered in ATFI or filed an ATFI tariff. They will have their tariffs or portions of tariffs applicable to the European trade cancelled

The 15 remaining carriers have filed their tariffs in ATFI or cancelled their paper tariffs, and will be dismissed from the proceeding, along with CarAmerica.

Therefore, *It is Ordered* that the tariffs or portions of tariffs currently on file with the Commission with European scope of the carriers identified in Appendix A to this Order be cancelled effective five days from publication of this Order in the **Federal Register**.

It is **Further Ordered**, That the parties listed in Appendix B to this order are dismissed from this proceeding.

By the Commission.

Joseph C. Polking,

Secretary

Appendix A

Air-Mar Shipping, Inc
American Contract Freight Line, Ltd
Arrow-Service
Cargo America Corp.
Cargo Overseas Limited
CMB Transport NV
Compania Transatlantica Espanola, S.A.
Euro-Gulf International, Inc.
Hermann Ludwig GMBH & Co
Intersped Systems Inc.
Irano Misr Shipping Co.
Maritime Consolidators Holland (MCH) B.V
Mineral Shipping (PTE.) Ltd.
Multimodal Shipping, Ltd.
Nordisk Transport and Spedition AB
Rotterdam Waterway
Sagatrans S.A[1]
Surinam Navigation Co.
Unsworth International Container Line

Appendix B

Bangladesh Shipping Corporation
Caramerica S.R.L.
Combimar & Agemar S.R.L.
DFDS Cheimer, Inc.
EOL (UK) Ltd

Harbour-Link International Inc
Henry Johnson Sons & Co , Ltd
Lane Shipping Company
Maritima Euroship, S.A.
Marpmar Inc.
Nichiro Corp.
Ralex International Corp.
Rokuchu Marine Corporation

Shenk, David W.
Van Ommeren Bulk Shipping BV
Webster Miller Freight Services Ltd

[FR Doc. 94–11329 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Alliance Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alliance Bancorp, Inc., Marietta, Georgia; to acquire 80 percent of Interim Alliance Corporation D/B/A Alliance Finance, Smyrna, Georgia and thereby engage in consumer finance activities, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, May 5, 1994

William W. Wiles,

Secretary of the Board

[FR Doc. 94-11387 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-F

Signet Banking Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

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[1] Sagatrans S.A. is changing the name on its tariffs to Saga (USA) Inc. Saga (USA) Inc. has registered for the ATFI system but at the time of this Order has not filed a tariff. The paper tariff remains in the name Sagatrans S.A.

1. Signet Banking Corporation, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Credit Card Bank, Richmond, Virginia in making, acquiring, or servicing loans or other extensions of credit for the company's account or the account of others, such as would be made by a credit card company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Northwest Bancorporation, Inc., Houston, Texas; to engage *de novo* in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11388 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-F

Trans Financial Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to merge with FGC Holding Company, Martin, Kentucky, and thereby indirectly acquire First Guaranty National Bank, Martin, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Delaware Financial Bancorp, Inc., Dover, Delaware; to acquire 59.44 percent of the voting shares of Bank of Troy, Troy, Texas.

2. Central Financial Bancorp, Inc., Lorena, Texas; to acquire 59.44 percent of the voting shares of Bank of Troy, Troy, Texas.

Board of Governors of the Federal Reserve System, May 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11386 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

White House Conference on Aging; Program Announcement No. WHCoA 94–2; Availability of Funds and Request for Applications for Mini-conferences

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Announcement of availability of funds and request for applications to conduct mini-conferences in preparation for the 1995 White House Conference on Aging.

SUMMARY: the White House Conference on Aging (WHCoA) announces that it will hold a competition for the funding of mini-conferences in preparation for the 1995 White House Conference on Aging. Funding for WHCoA grants is authorized by the Older Americans Act, Public Law 102–375 and Public Law 103–171.

This program announcement consists of two parts. Part I provides background information and describes the program under which the WHCoA is inviting applications to be considered for funding. Part II describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are included following Part II. They complete the application kit that an applicant needs for preparing and for submitting an application under this announcement.

Grants will be made under this announcement subject to the availability of funds for the support of the program described herein.

DATES: The deadline date for the submission of applications is June 6, 1994.

ADDRESSES: Application receipt point: Department of Health and Human Services; Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: WHCoA–94–2.

FOR FURTHER INFORMATION CONTACT: For programmatic information, contact Judy Satine, Department of Health and Human Services, White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024, telephone (202) 245–7826. For grant technical information, contact Margaret Tolson, AoA, see address above, telephone (202) 401–0838.

SUPPLEMENTARY INFORMATION:

Part I. Background Information and Program Description

A. Statutory Authority

The statutory authority for awards made under this Announcement is contained in the Older Americans Act as amended, Public Law 102–375 and Public Law 103–171.

B. Eligible Applicants

In general, any eligible public or nonprofit private organization, agency or institution is eligible to apply under this program announcement. Any applicant that is not now a DHHS grantee should include, with its application, Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without proof of its status.

C. Program Description

President Clinton announced in February that he has formally called for a White House Conference on Aging to be convened in May 1995.

Previous White House Conferences in 1961, 1971 and 1981 adopted recommendations that resulted in local, state and Federal initiatives which improved the security and well being of older Americans. The 1995 Conference will produce recommendations that will meet the needs of Older Americans in the twenty-first century.

A White House Conference on Aging in intended to produce policy recommendations to guide national aging policy over the next decade. In Public Law 102–375, the Older Americans Act amendments of 1992, Congress specifically identified six primary purposes for the Conference. They are:

(1) To increase public awareness of the interdependence of generations and the essential contributions of older individuals to society for the well-being of all generations;

(2) To identify the problems facing older individuals and the commonalities of the problems with problems of younger generations;

(3) To examine the well-being of older individuals including the impact the wellness of older individuals has on our aging society;

(4) To develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and improving the well-being of the aging;

(5) To develop recommendations for the coordination of Federal policy with State and local needs and the implementation of such recommendations; and

(6) To review the status and multigenerational value of recommendations adopted at previous White House Conferences on Aging.

Of major significance to the 1995 White House Conference on Aging in direct participation by individuals and organizations in the pre-conference stages. As part of this grass roots effort, the WHCoA has adopted a four pronged approach that includes local forums, mini-conferences as well as State and Regional conferences. The purpose of these events is to identify those issues of mutual concern to the aging population and to develop recommendations that warrant specific attention by the White House Conference of Aging. An integral part of this strategy is the conduct of mini-conferences which are topic or constituency specific. The recommendations from these conferences will play an integral role in the development of the agenda for the 1995 Conference.

In order for a mini-conference to be considered for funding, the proposed event must:

(1) Be a policy oriented event. The focus of the event must be either:

(a) On one of the following specific Federal policy issues:

Interdependence of generations;
Older persons as community resources;
Employment and continued productivity opportunities for middle-aged and older persons including training;
Home and community based long-term care services including caregivers assistance and health promotion;
Housing and coordinated services;
Income security with particular emphasis on alleviating poverty;
National retirement policy including pre-retirement;
Crime;
Nutrition;
Disability and aging services;
Mental health and substance abuse;
Future of aging services to be reflected in the Older Americans Act;
Combatting false stereotypes;
Minority aging;
Biomedical and other appropriate research; and
Related topics to promote the independence, well-being and security of older persons.

or

(b) On one of the following specific constituencies:

Older Women;
One of the following groups of minority elderly:
  Native American
  African American
  Asian/Pacific Islanders
  Hispanic
Elderly persons with disabilities.

(2) Should have substantial and significant input and participation by older persons. It should involve older persons and organizations representing older persons in the development and implementation of the event. Efforts should be made to seek out an appropriately diverse representation of interested parties.

(3) Provide at a maximum five recommendations that can be utilized by the WHCoA. These recommendations must be:

(a) Well articulated;

(b) Based on demonstrated information, knowledge and consensus reached at event;

(c) Have a reasonable prospect of being attainable within the current political, economic, and fiscal environment;

(d) Received within 30 days after the mini-conference.

The report should devote no more than 3 pages double spaced per recommendation for up to 5 recommendations (total maximum of 15 double spaced pages).

(4) Provide an implementation plan to demonstrate:

(a) How they will plan, design, and carry out the mini-conference including proposed date and location, proposed participants (audience discussants and speakers) and cooperating organizations;

(b) How they will seek additional sources of support;

(c) What they will do as an advocacy group to ensure that their recommendations, if adopted by the WHCoA, are implemented into public policy.

(5) Be held by March 31, 1995.

(6) Be held in a location accessible to persons with disabilities.

(7) Not be a profit-making or fund-raising event although it is permissible to charge a fee to recover the costs of the event.

Project Costs: It is expected that 12–15 projects at $6,000 each will be funded by the WHCoA. Applicants are expected to obtain additional funding from other sources and are encouraged to include with their applications letters of commitment from other funding sources.

Part II. Information and Guidelines for the Application Process and Review

Part II of this Announcement contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal to the White House Conference on Aging. Specific eligibility guidelines were provided in the program description above.

A. General Information

1. Review Process and Considerations for Funding

The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in section D, below. This independent review of applications is performed by panels consisting of qualified persons. The scores and judgments of these expert reviewers are a major factor in making award decisions.

c. *Decision-Making Process:* After the panel review session, applicants may be contacted by WHCoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

d. *Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be several weeks in duration. This length of time is required to review and process grant applications.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications is June 6, 1994. Applications must be either sent or hand-delivered to the address specified in Section C, below. Hand-delivered applications are accepted during the normal working hours of 9 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will meet the deadline if it is either:

1. Received at the mailing address on or before the applicable deadline date; or

2. Sent before midnight of the applicable deadline date as evidenced by either: (1) A U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the applicable deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the applicable deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadlines are considered late applications and will not be considered for funding.

C. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will not be reviewed and will receive no further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must not exceed 10 pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage. The following documents are excluded from the 10 page limitation: (1) Standard Forms (SF) 424, 424A (including up to a four page budget justification) and 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; and (3) proof of non-profit status.

2. Applications submitted under this announcement must be either postmarked by midnight, June 6, 1994, or hand-delivered by 5:30 p.m., Eastern Time, on June 6, 1994 to the address provided below: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–94–2.

3. Applicants must meet the specific eligibility requirements set forth above in the program description.

Under No Circumstances Will Applications That Do Not Meet These Screening Requirements Be Assigned To Reviewers

D. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from within the Federal government. Based on the specific programmatic considerations set forth in the announcement, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Purpose and Need for Assistance: 20 points

a. Does the proposed project clearly and adequately respond to the stated requirements for a mini-conference?

b. Does the proposed project address one of the listed topics/constituency groups in a relevant and thorough manner?

2. Approach/Method—Implementation and Activities: 30 points

a. Does the application clearly express and organize an implementation plan which systematically includes specific objectives and tasks which will result in an effective mini-conference?

b. Does the implementation plan include timelines for accomplishment of tasks and objectives? Is the sequence and timing of events logical and realistic?

c. Do the proposed presenters have demonstrated qualifications which are appropriate for their roles?

3. Anticipated Outcomes: 30 points

a. Does the proposal include a plan for advocacy which is likely to increase public awareness of the recommendations from the mini-conference? Is this advocacy plan adequate for communicating recommendations to all appropriate audiences? Does it provide a realistic plan to achieve implementation of the recommendations should they be adopted by the 1995 White Conference on Aging?

4. Level of Effort: 20 points

a. Are the qualifications of the key organizers of the mini-conference appropriate for their roles?

b. Does the organization have a track record which demonstrates its capability and knowledge to conduct the mini-conference?

E. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements.

Note: The original copy of the application *must* have an original signature in item 18d on the SF 424.

- Proof of nonprofit status, as necessary:
- Project summary description;
- Program narrative.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be numbered sequentially. In order to facilitate the handling and reproduction of the application for purposes of the review, please do not use covers, binders or tabs.

F. Communications With WHCoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified by mail of the receipt of their application and informed of the identification number assigned to it. This number should be referred to in all subsequent communication with WHCoA concerning the application.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for WHCoA staff to provide a timely response to inquiries about a specific application unless the identification number is given.

Applicants are advised that, prior to reaching a decision, the WHCoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

G. Completing the Application

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of completed forms have been provided as part of this announcement. These samples are to be used as a guide only. Be sure to submit your application on the blank copies. Please prepare your application consistent with the following guidance:

1. *SF 424, Cover Page:* Complete only the items specified in the following instructions:

Item 1. Enter an "X" in the block marked Application—Non-construction.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Provide the legal name of applicant; the name of the primary organizational unit which will undertake the assistance activity; the applicant address; and the name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the box provided.

Item 8. Place an "X" in the box marked New.

Item 9. Enter the White House Conference on Aging.

Item 10. Leave blank.

Item 11. The title should describe concisely the nature of the project. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

Item 12. Not applicable.

Item 13. Enter the desired start date for the project and the desired end date for the project. The project must be completed by March 31, 1995.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. Enter the funding request to the WHCoA under Item 15a, Federal. Enter the applicant's share of the project costs under 15b, Applicant. If there are third party contributions, enter those under Item 15e, Other. Enter the sum of these amounts under Item 15g, Total.

Item 16. Enter "No" under Item b.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form (SF424A) is designed to apply for funding under more than one grant program; thus, for purposes of this WHCoA program, most of the budget item columns/blocks are superfluous and should be regarded as not applicable. The applicant should consider and respond to only the budget items for which guidance is provided below. Section A—Budget Summary and Section B—Budget Categories should include both Federal and non-Federal funding for the proposed project.

Section A—Budget Summary

On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Use only the last column under Section B, namely the column headed Total (5), to enter the total requirements for funds (combining both the Federal and non-Federal shares) by object class category.

A brief budget justification should be appended to this Section which shows the breakdown of budget cost items by Federal and non-Federal shares and justifies each of the major items, personnel, travel, other, etc.

Line 6a—Personnel: Enter total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Line 6d—Equipment: Enter the total cost of all equipment to be acquired by the project. The threshold for equipment is $500 or more per unit.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter of total costs of all contracts, if applicable. Do not include payments to individuals on this line.

Line 6g—Construction: Not applicable.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training cost, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Not applicable.

Line 6k—Total: Enter the total amounts from Line 6i.

Section C—Non-Federal Resources

Line 12—Totals: As applicable, enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs:

Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the

Project

Line 20—Totals: Not applicable.

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Not applicable

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding: (1) Lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Project Summary Description

On a separate page, provide a project summary description headed by the name of the applicant organization as shown in SF 424, item 5. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the mini-conference, the approaches to be used and the outcomes expected.

6. Program Narrative

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the program under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in Section D above. The format of the narrative should, in fact, parallel the criteria.

Please have the narrative typed on one side of 8½″×11″ plain white paper with 1″ margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Purpose and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should also identify the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

This narrative guidance is in accordance with that provided in OMB Circular A–102. The checklist reporting form (Section H, below) is consistent with that approved under OMB control number 0937–0189.

H. Points to Remember

1. There is a 10 double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section C.

2. You are required to send an original and two copies of an application.

3. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

4. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

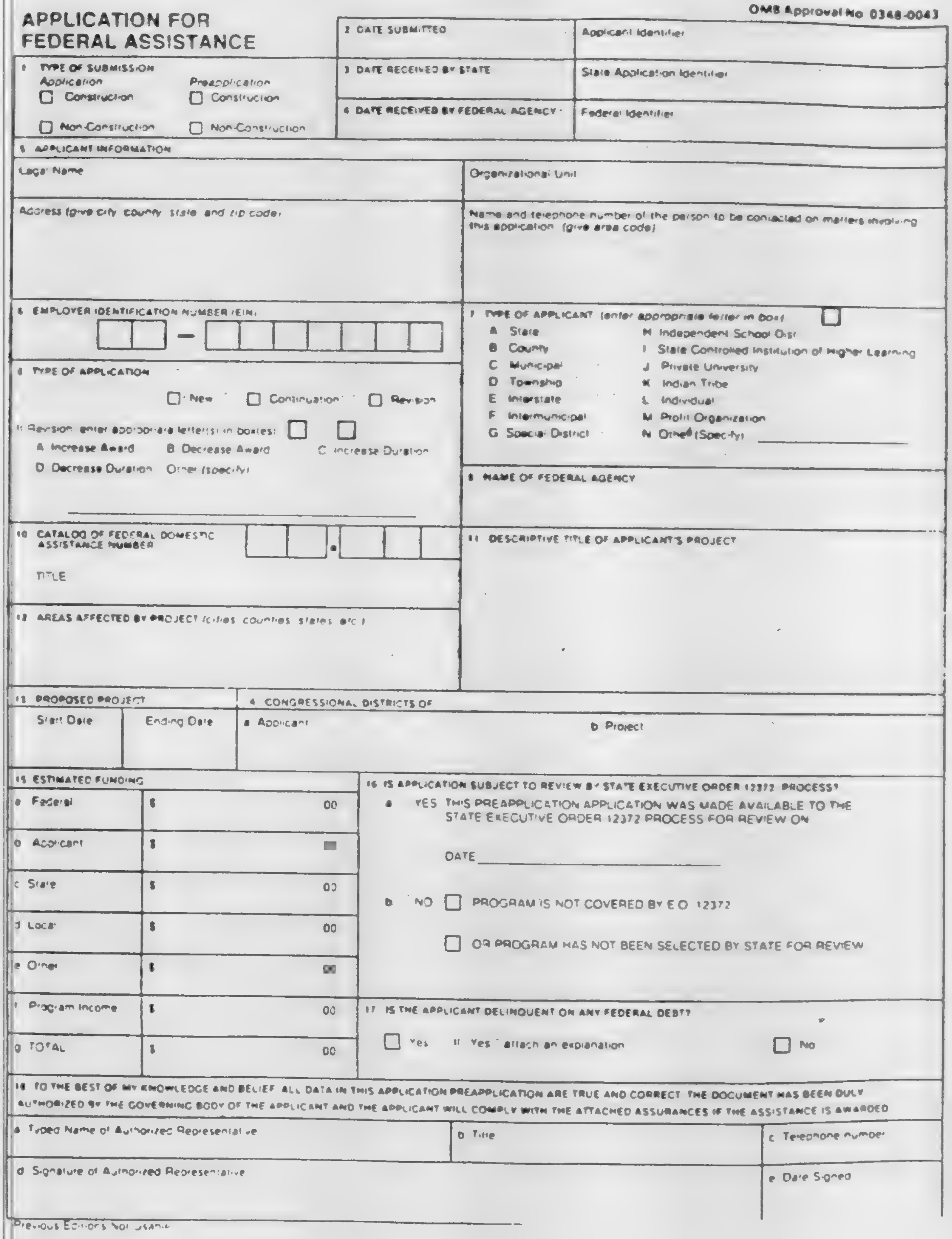
5. Before submitting the application, have someone other than the author(s): (1) apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

6. Applications must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on June 6, 1994 to the address below. Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., Room 4644, Washington, D.C. 20201, Attn: WHCoA–94–2.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

BILLING CODE 4130-02-M



OMB Approval No 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2 DATE SUBMITTED

Applicant Identifier

3 DATE RECEIVED BY STATE

State Application Identifier

4 DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

1 TYPE OF SUBMISSION

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5 APPLICANT INFORMATION

Legal Name

Organizational Unit

Address (give city county state and zip code)

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6 EMPLOYER IDENTIFICATION NUMBER (EIN)

☐☐ – ☐☐☐☐☐☐☐

7 TYPE OF APPLICANT (enter appropriate letter in box) ☐

A State	H Independent School Dist
B County	I State Controlled Institution of Higher Learning
C Municipal	J Private University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Profit Organization
G Special District	N Other (Specify) ____________

8 TYPE OF APPLICATION

☐ New ☐ Continuation ☐ Revision

If Revision enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration

D Decrease Duration Other (specify)

____

9 NAME OF FEDERAL AGENCY

10 CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER ☐☐-☐☐☐

TITLE

11 DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12 AREAS AFFECTED BY PROJECT (cities counties states etc)

13 PROPOSED PROJECT

Start Date	Ending Date

14 CONGRESSIONAL DISTRICTS OF

a Applicant

b Project

15 ESTIMATED FUNDING

a Federal	$	00
b Applicant	$	[illegible]
c State	$	00
d Local	$	00
e Other	$	[illegible]
f Program Income	$	00
g TOTAL	$	00

16 IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES THIS PREAPPLICATION APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____________________

b NO ☐ PROGRAM IS NOT COVERED BY E O 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17 IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation ☐ No

18 TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION PREAPPLICATION ARE TRUE AND CORRECT THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative

b Title

c Telephone number

d Signature of Authorized Representative

e Date Signed

Previous Editions Not Usable

BILLING CODE 4130-02-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).

13 Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include deliquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130–02–M

OMB Approval No 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
		$	$	$	$	$
TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a Personnel	$	$	$	$	$
b Fringe Benefits					
c. Travel					
d Equipment					
e. Supplies					
f. Contractual					
g Construction					
h Other					
i Total Direct Charges (sum of 6a - 6h)					
j Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
	$	$	$	$
TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Federal	$	$	$	$	$
NonFederal					
TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
	$	$	$	$
TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

Direct Charges:	22. Indirect Charges:
Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the total of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Column (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amoun ts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplemental) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–19) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988, (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–

544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § § 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Program Narrative Statement

A. New Applications

1. *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. *Results or Benefits Expected.* Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and/or research should be indicated.

3. *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. *Geographic Location.* Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

5. If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: Name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

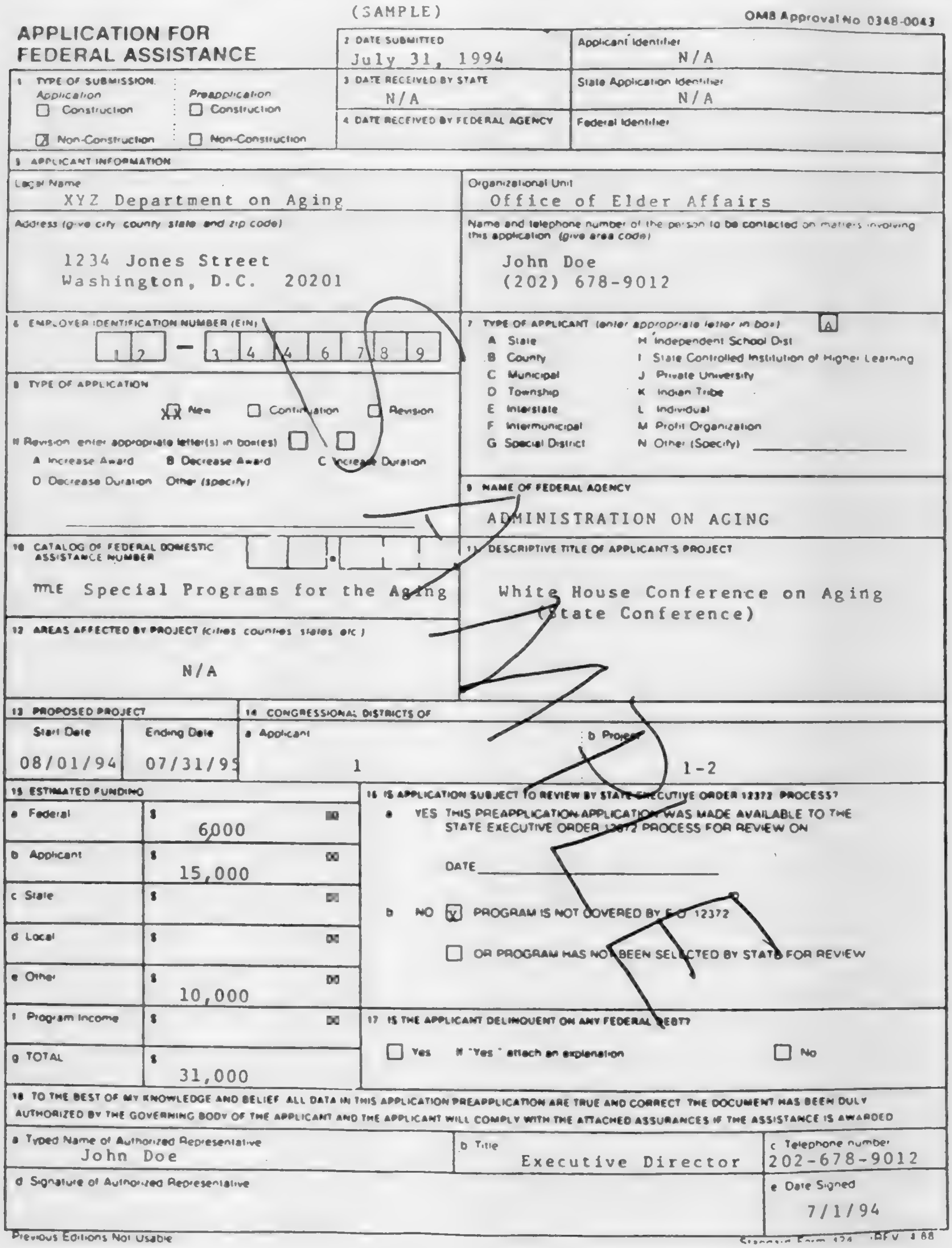
B. Supplemental Applications

Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the changes(s). If the total budget has been exceeded or if the individual budget items have changed more than the prescribed limits, explain and justify the change and its effect on the project.

C. Continuation Applications

Continuation applications need only provide information explaining significant changes to the original Program Narrative Statement and a description of accomplishments from the prior budget period.

BILLING CODE 4130-02-M



(SAMPLE)

OMB Approval No 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2 DATE SUBMITTED July 31, 1994

Applicant Identifier N/A

1 TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☒ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

3 DATE RECEIVED BY STATE N/A

State Application Identifier N/A

4 DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5 APPLICANT INFORMATION

Legal Name: XYZ Department on Aging

Organizational Unit: Office of Elder Affairs

Address (give city, county, state, and zip code):
1234 Jones Street
Washington, D.C. 20201

Name and telephone number of the person to be contacted on matters involving this application (give area code):
John Doe
(202) 678-9012

6 EMPLOYER IDENTIFICATION NUMBER (EIN): 12 – 3446789

7 TYPE OF APPLICANT (enter appropriate letter in box) A

A State	H Independent School Dist
B County	I State Controlled Institution of Higher Learning
C Municipal	J Private University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Profit Organization
G Special District	N Other (Specify) ________

8 TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

9 NAME OF FEDERAL AGENCY: ADMINISTRATION ON AGING

10 CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE Special Programs for the Aging

11 DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
White House Conference on Aging
(State Conference)

12 AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): N/A

13 PROPOSED PROJECT: Start Date 08/01/94 Ending Date 07/31/95

14 CONGRESSIONAL DISTRICTS OF: a Applicant 1 b Project 1-2

15 ESTIMATED FUNDING

a Federal	$ 6000	.00
b Applicant	$ 15,000	.00
c State	$	.00
d Local	$	.00
e Other	$ 10,000	.00
f Program Income	$	.00
g TOTAL	$ 31,000	

16 IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE ________

b NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17 IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18 TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative: John Doe

b Title: Executive Director

c Telephone number: 202-678-9012

d Signature of Authorized Representative

e Date Signed: 7/1/94

Previous Editions Not Usable

Standard Form 424 (REV 4-88)

SAMPLE

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds: Federal (c)	Estimated Unobligated Funds: Non-Federal (d)	New or Revised Budget: Federal (e)	New or Revised Budget: Non-Federal (f)	New or Revised Budget: Total (g)
1		$	$	$	$	$
2						
3						
4						
5 TOTALS		$ N/A	$ N/A	$ 6,000	$ 25,000	$ 31,000

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	Grant Program, Function or Activity (1)	Grant Program, Function or Activity (2)	Grant Program, Function or Activity (3)	Grant Program, Function or Activity (4)	Total (5)
a Personnel	$	$	$	$	$
b Fringe Benefits					
c Travel					
d Equipment					
e Supplies					
f Contractual					
g Construction	N/A	N/A	N/A	N/A	N/A
h Other					
i Total Direct Charges (sum of 6a - 6h)					31,000
j Indirect Charges	N/A	N/A	N/A	N/A	N/A
k TOTALS (sum of 6i and 6j)	$ N/A	$ N/A	$ N/A	$ N/A	$ 31,000
7 Program Income	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8	$	$	$	$
9				
10				
11				
12 TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13 Federal	$	$	$	$	$
14 Nonfederal					
15 TOTAL (sum of lines 13 and 14)	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16	$	$	$	$
17				
18				
19 N/A				
20 TOTALS (sum of lines 16 19)	$ N/A	$ N/A	$ N/A	$ N/A

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21 Direct Charges N/A	22 Indirect Charges N/A
23 Remarks	

SF 424A (4-88) Page 2
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BILLING CODE 4130-02-C

U.S. Department of Health and Human Services—Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal Appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, S.W., Room 4256-COHEN; Washington, D.C. 20201-0001.

[FR Doc. 94-11383 Filed 5-10-94; 8:45 am]

BILLING CODE 4130-02-M

Food and Drug Administration

[Docket No. 94N-0166]

Drug Export; ^{Pr}Verapamil Injection, U.S.P. 2.5 mg/mL, 2 mL Vial, and 4 mL Vial

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ben Venue Laboratories, Inc., has filed an application requesting approval for the export of the human drug ^{Pr}Verapamil Injection, U.S.P. 2.5 milligrams/milliliter (mg/mL), 2 mL vial, and 4 mL vial to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ben

Venue Laboratories, Inc., 270 Northfield Rd., P.O. Box 46568, Bedford, OH 44146, has filed an application requesting approval for the export of the human drug ^{Pr}Verapamil Injection, U.S.P. 2.5 mg/mL, 2 mL vial, and 4 mL vial to Canada. ^{Pr}Verapamil Injection, U.S.P. 2.5 mg/mL, 2 mL vial, and 4 mL vial is indicated for the rapid conversion to sinus rhythm of paroxysmal supraventricular tachycardias. When clinically advisable, appropriate vagal maneuvers should be attempted prior to ^{Pr}Verapamil Injection administration. The application was received and filed in the Center for Drug Evaluation and Research on April 22, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 23, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 3, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–11440 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0268]

Determination of Regulatory Review Period for Purposes of Patent Extension; Reality™ Female Condom

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Reality™ Female Condom and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved the Reality™ Female Condom for marketing. The Reality™ Female Condom is a medical device that is indicated for use to help prevent pregnancy and sexually transmitted diseases, including the human immunodeficiency virus (HIV) infection, during vaginal intercourse. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Reality™ Female Condom (U.S. Patent No. 4,976,273) from Chartex International Plc; the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 28, 1993, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period, and the approval of the Reality™ Female Condom represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Reality™ Female Condom is 2,017 days. Of this time, 1,460 days occurred during the testing phase of the regulatory review period, while 557 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date the first clinical trial on this device was begun*: October 31, 1987. The clinical trial cited by the applicant was conducted outside the United States and was not subject to FDA's requirement for an investigational device exemption (IDE) under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) nor FDA's requirement for an institutional review board (IRB) approval under section 520(g)(3) of the act. Therefore, the testing phase begins on the date the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device (21 CFR 60.22(c)(1)(iii)). The applicant has stated that the date on which the device was first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device was October 31, 1987. Because of the circumstances previously described for the clinical trial cited by the applicant, FDA has no record in which to review this date (21 CFR 60.20(c)(6). Although FDA cannot, therefore, confirm that testing began as stated by the applicant, FDA is using this date as the start of the testing phase.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act*: October 29, 1991. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Reality™ Female Condom (PMA P910064) was initially submitted on October 29, 1991.

3. *The date the application was approved*: May 7, 1993. FDA has

verified the applicant's claim that PMA P910064 was approved on May 7, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 717 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 11, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–11439 Filed 5–10–94; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1994:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 3–5, 1994.

Place: Radisson Hotel Newark Airport, 128 Frontage Road, Newark, New Jersey 07114, (201) 690–5500. The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin on Friday, June 3, at 8:30 a.m. with site visits to health care facilities in New Jersey and New York City. The agenda for the business meetings on Saturday and Sunday, June 4–5, will include updates on the Bureau of Primary Health Care, the National Health Service Corps, presentations by New York public health officials, universal service, and mental and dental health issues.

The meeting is open to the public, however, no transportation will be provided for the site visits.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4136.

Agenda items are subject to change as priorities dictate.

Dated: May 6, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–11363 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1994:

Name: National Advisory Committee on Rural Health.

Date and Time: June 13–15, 1994; 1:30 p.m.

Place: The Des Moines Marriott, 700 Grand Avenue, Des Moines, IA 50309, (515) 235–5500. The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: Plenary session on Monday, June 13, will be devoted to "The Health Care Reform in Rural Areas and Telemedicine." Other plenary topics will include discussions and presentations on the changes on farm safety, rural physician recruitment and placement, and a rural community empowerment project, "Hometown Health." In addition, a presentation regarding the application of the field of telemedicine in Health Care Reform will be provided at the Iowa Methodist Medical Center. A trip to the Farm Bureau has been planned for Monday evening. The presentation will cover the Bureau's Farm Safety Program.

The Education and Health Services Work Group and the Health Care Financing Work Group will meet between plenary sessions on developing recommendations and strategies for improving health services delivery in rural areas.

The meeting will adjourn on Wednesday, June 15, at noon. (Transportation on field trips will not be provided. All sessions are open to the public.)

Anyone requiring information regarding the subject Council should contact Jeffery Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Name: National Commission on Allied Health

Date and Time: June 20–21, 1994, 8:30 a.m.

Place: Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting is open to the public.

Purpose: The National Commission on Allied Health shall: (1) Make recommendations to the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to: (A) The supply and distribution of allied health personnel throughout the United States; (B) current and future shortages or excesses of allied health personnel, particularly in medically underserved and rural communities; (C) priority research needs within the allied health professions; (D) appropriate Federal policies relating to the matters described in subparagraphs (A) through (C), including policies concerning changes in the financing of undergraduate and graduate allied health programs, changes in the types of allied health education, and the appropriate Federal role in the development of a research base in the allied health professions; (E) appropriate efforts to be carried out by health care facilities, schools and programs of allied health, and professional associations with respect to the matter referred to in subparagraph (A), including efforts for changes in undergraduate and graduate allied health education programs, and private support for research initiatives; (F) deficiencies and needs for improvements in existing data bases concerning the supply and distribution of training programs for allied health in the United States and steps that should be taken to eliminate such deficiencies; and (G) problems, and recommendations for the resolution of such problems, relating to the roles and functions of professionals within the allied health fields and other fields such as medicine and dentistry; and (2) encourage entities providing allied health education to conduct activities to voluntarily achieve the recommendations of the Commission.

Agenda: The agenda includes Opening and Welcome remarks; Introduction of members; Congressional perspective of the Commission; Public Advisory Committee Overview; Election of the Chairperson; development of subcommittees; presentations on supply and distribution, shortages and excess and current research activities.

Anyone requiring information regarding the Committee should contact Mr. Neil H.

Sampson, Director, Division of Associated, Dental, and Public Health, Bureau of Health Professions, Health Resources and Services Administration, room 8–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6853.

Agenda Items are subject to change as priorities dictate.

Dated: May 5, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–11362 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on June 2, 1994, at the National Institutes of Health, Bethesda, Maryland 20892, from 8:30 a.m. to 4:30 p.m., in Building 31, Conference Room 10, C Wing. The meeting will be open to the public. Attendance by the public will be limited to space available.

The topics proposed for discussion include: (1) Review of the NIH Intramural Research Program; (2) Review of the FIAU Studies; (3) Academia/Industry Sponsored Research Agreements; (4) Report of the NIH Human Embryo Research Panel; and (5) Report of the Panel on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences.

The Executive Secretary, Sandy Chamblee, J.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, (301) 496–2122, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carol Chism on (301) 496–3154 in advance of the meeting.

Dated: May 4, 1994.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 94–11465 Filed 5–10–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Centers for Disease Control and Prevention: Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HC (Centers for Disease Control and Prevention), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 59 FR 4720–4721, February 1, 1994) is amended to reflect the revision of the functional statements for the Division of Surveillance and Epidemiology (DSE), and the Office of the Director, DSE, Epidemiology Program Office (EPO).

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete the functional statements for the *Division of Surveillance and Epidemiology (HCB5)* and the *Office of the Director (HCB51)* and insert the following:

(1) Collects, analyzes, and disseminates public health surveillance information;

(2) Develops, implements, and evaluates innovative statistical and data management methods for application to public health surveillance and epidemiology;

(3) Coordinates activities of the CDC Surveillance Coordination Group;

(4) Manages and operates the National Notifiable Disease Surveillance System and the 121 Cities Mortality Reporting System and produces statistical tables and graphics for the Morbidity and Mortality Weekly Report (MMWR) and associated publications;

(5) Develops, manages, and supports effective national telecommunications systems for surveillance and epidemiology;

(7) Provides consultation, technical assistance, and training on surveillance to CDC and to other agencies and domestic and international organizations;

(8) Develops, coordinates, and conducts special epidemiologic and statistical studies;

(9) Provides consultation on analytic methods and data management on surveillance and epidemiologic issues throughout CDC;

(10) Maintains, manages, and coordinates selected data bases for use in collaborative research.

Office of the Director (HCB51). (1) Provides leadership and direction for all activities of the Division of Surveillance and Epidemiology; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) establishes Division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) provides management, administrative, and support services, and coordinates with appropriate EPO offices on program and administrative matters; (6) provides liaison with other CDC organizations, other governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other outside groups; (7) plans, allocates, and monitors resources; (8) provides scientific leadership and guidance to the Division to assure highest scientific quality and ethical standards; (9) plans and activities of the CDC Surveillance Coordination Group.

Effective Date: May 2, 1994.

Claire V. Broome,

Acting Director.

[FR Doc. 94–11418 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–94–1061; FR–3722–D–01]

Delegations and Redelegations of Authority; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Correction of effective dates.

SUMMARY: This notice corrects two notices of delegation of authority and five notices of redelegation of authority published in the **Federal Register** on Friday, April 15, 1994 as part IV, at 59 FR 18276, to change the effective date from April 8, 1994 or April 12, 1994 to April 15, 1994.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: John B. Shumway, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–9988.

SUPPLEMENTARY INFORMATION: On Friday, April 15, 1994, the Department of Housing and Urban Development published two notices of delegation of authority and five notices of redelegation of authority in the **Federal Register** as part IV, at 59 FR 18276, to implement the reorganization of the HUD field structure. It was intended that the effective date for these notices would all be April 15, 1994. In error, the effective dates for these notices reflected the date of signature for each document and consequently, ranged from April 8, 1994 to April 12, 1994. Therefore, in this notice, the effective date for each of these notices is changed to April 15, 1994.

Accordingly, the effective dates for the Delegations and Redelegations of Authority published in the Federal Register on April 15, 1994, at 59 FR 18276, are corrected to read as follows:

1. On page 18276, in FR Doc. 94–9230, the effective date of the Delegation of Authority concerning Limited Denial of Participation sanctions [Docket No. D–94–1057; FR–3701–D–01] is corrected from April 8, 1994 to read April 15, 1994.

2. On page 18276, in FR Doc. 94–9233, the effective date of the Delegation of Procurement Authority [Docket No. D–94–1059; FR–3697–D–01] is corrected from April 12, 1994 to read April 15, 1994.

3. On page 18277, in FR Doc. 94–9235, the effective date of the Amendment of Redelegations of Authority under the Fair Housing Act [Docket No. D–94–1058; FR–3704–D–01] is corrected from April 12, 1994 to read April 15, 1994.

4. On page 18277, in FR Doc. 94–9234, the effective date of the Redelegation of Procurement Authority [Docket No. D–94–1059; FR–3697–D–02] is corrected from April 12, 1994 to read April 15, 1994.

5. On page 18279, in FR Doc. 94–9231, the effective date of the Revocation and Redelegation of Authority for the Office of Public and Indian Housing [Docket No. D–94–1055; FR–3696–D–01] is corrected from April 12, 1994 to read April 15, 1994.

6. On page 18280, in FR Doc. 94–9232, the effective date of the Revocation and Redelegation of Authority for the Office of Community Planning and Development [Docket No. D–94–1060; FR–3674–D–01] is corrected from April 12, 1994 to read April 15, 1994.

7. On page 18282, in FR Doc. 94–9236, the effective date of the Revocation and Redelegation of Authority for the Office of Housing [Docket No. D–94–1056; FR–3668–D–02] is corrected from April 8, 1994 to read April 15, 1994.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42, U.S.C. 3535(d).

Dated: April 29, 1994.

Sally Warner Watts,

Acting Assistant General Counsel for Regulations.

[FR Doc. 94–11332 Filed 5–10–94; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-94-3760]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use, (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 20, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development (FR–0770).

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. This rule implements Section 504 of the Rehabilitation Act of 1973, as amended.

Form Number: None.

Respondents: Individuals or households, State or Local Governments, businesses or other for-profit, Federal Agencies or employees, non-profit institutions, and small businesses or organizations.

Fequency of Submission: On occasion

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Transition Plan	218,731	..	1	..	6.46		1,413,470

Total Estimated Burden Hours: 1,413,470.

Status: Extension, no changes.

Contact: Elizabeth Ryan, HUD, (202) 708-2333 and Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: April 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mandatory Meals Program in Multifamily and Cooperative Projects for the Elderly.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Housing project owners may require tenants of elderly assisted housing to participate in and pay for a mandatory meals program as a condition of occupancy in projects equipped with a central kitchen and dining facilities.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, Federal agencies or employees, and non-profit institutions.

Frequency of Submission: On occasion and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	400		1		3		1,200
Recordkeeping	400		1		2		800

Total Estimated Burden Hours: 2,000.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Service Coordinators in Sections 8, 202, 221, and 236 Housing Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This reporting requirement will enable HUD to evaluate and review applications on an on-going basis for the Sections 8, 202, 221, and 236 housing projects' approval to hire Service Coordinators. This information will assist the Department in monitoring its responsibilities to assure adherence and compliance to statutory and regulatory requirement of the program.

Form Number: HUD–92453–B and 52670.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: On occasion, monthly, annually, and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	27,500		64		4.21		8,887

Total Estimated Burden Hours: 8,887.

Status: Revision.

Contact: Jerold S. Nachison, HUD, (202) 708–3291 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 28, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Pre-Foreclosure Sale Demonstration Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Defaulting mortgagors with stagnant or declining property values can qualify to sell their homes at current fair market value to third-party buyers. HUD pays the shortfall between sales proceeds and mortgage indebtedness to the mortgagee via the claims process. Mortgagor avoids foreclosure; HUD saves foreclosure, maintenance and marketing costs.

Form Number: HUD–90036, 90037, 90038, 90039, 90041, 90042, 90042A, 90044, 90045, 90046, 90047, 90048, 90049, 90050, 90051, 90052 and 90054.

Respondents: Individuals or households, business or other for-profit and non-profit institutions.

Frequency of Submission: Monthly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,149		Varies		5.67		17,854

Total Estimated Burden Hours: 17,854.

Status: Extension, no changes.

Contact: Gilbert N. Longo, HUD, (202) 708–1719 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 21, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Prepayment of a HUD-Insured Mortgage by an Owner of Low-Income Housing (FR–2978).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This rule gives regulatory effect to legislative provisions governing prepayment to HUD-Insured mortgages. These provisions are intended to preserve affordable multifamily housing units for lower-income families while fairly compensating the owners of those units and providing homeownership opportunities for project residents.

Form Number: HUD–9608 and 9609.

Respondents: Non-profiting institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	1,288		1		42.55		54,762

Total Estimated Burden Hours: 54,762.

Status: Reinstatement with changes.

Contact: Besty Keeler, HUD (202) 708–1142 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 21, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey of New Mobile Home Placements.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This survey is used to collect data on the placement of new mobile homes. The data are collected from mobile home dealers. The principal user, HUD, uses the statistics to monitor trends in this type of low-cost housing, to formulate policy, draft legislation, and evaluate programs.

Form Number: C–MH–9A and C–MH–9B.

Respondents: Businesses or other for-profit and small businesses or organizations.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	4,000		2		.5		4,000

Total Estimated Burden Hours: 4,000.

Status: Extension, no changes.

Contact: Connie, Casey, HUD (202) 708–1060, David Fondelier, Census, (301) 763–5731, and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 31, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Default Monitoring System.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form is needed for reporting default information to HUD. The data is compiled for various reports used to monitor mortgagee's default and foreclosure performance. Additionally, HUD uses the data to monitor and evaluate mortgagee's servicing practices and to measure potential risk to HUD's Insurance Fund.

Form Number: HUD–92068–A.

Respondents: Individuals or households, businesses or other for-profit, and small businesses or organizations.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92068–A	4,000		12		.5		24,000

Total Estimated Burden Hours: 24,000.

Status: Reinstatement with changes.

Contact: Leslie Bromer, HUD (202) 708–1719 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 31, 1994.

[FR Doc. 94–11324 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3720; FR–3617–N–02]

Submission of Proposed Information Collection to OMB, Application Requirements for Indian HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due date: May 23, 1994.

ADDRESSES: Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; or,

Joan Campion, Rules Docket Clerk, Department of Housing and Urban Development (HUD), 451 7th Street, SW., room 10276, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street, SW., room 4178, Washington, DC

20410, telephone number (202) 708–0050. This is not a toll-free number. Copies of the document submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to the information required for application for grant funding for the Indian HOME Program. It also is requested that OMB complete its review by May 23, 1994. The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) *Title of the information collection proposal:* Application requirements for Indian HOME Program.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *Description of the need for the information and its proposed use:* The data that will be collected are required by the HOME Investment Partnerships Act and supports eligible applicant's request to apply for grant funding under the Indian HOME Program.

(4) *Agency form numbers:* HUD–4121–I, HUD–4122–I, HUD–4123–I, HUD–4125–I, HUD–4126–I.

(5) *Members of the public who will be affected by the proposal:* Indian Tribes; Individuals or Households.

(6) *How frequently information submissions will be required:* One-time a Fiscal Year.

(7) *An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response and hours of response:* See attached chart with a total of 5.325 burden hours.

(8) *Type of request:* New.

(9) *The names and telephone number of an agency official familiar with the proposal:* Dominic Nessi, Director, Office of Native American Programs.

Authority: Public Law 101–625, dated 11/28/90.

Dated: April 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application Requirements for Indian HOME Program.

Office: Office of Native American Programs, PIH.

Description of the Need From the Information and Its Proposed Use: This information collection is required by the HOME Investment Partnership Act. Indian Tribe, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of U.S. (eligible applicants) will submit an application which includes HUD-approved and OMB forms, certifications, narrative and supporting documentation that are responsive to selection criteria including how HOME funds will be used. The information provided to HUD will be reviewed and evaluated against rating criteria for possible grant funding.

Form Numbers: HUD–4121–I, Indian HOME Program Grants Comprehensive Approach, HUD–4122–I, Indian HOME Program Grants Project Summary, HUD–4123–I, Indian HOME Program Grants, Cost Summary, HUD–4125–I, Indian HOME Program Grants, Implementation Schedule, HUD–4126–I, Indian HOME Program Grant Certifications.

Respondents: Indian Tribes.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Application Requirements	75		1		71 aver.		5.325

Total Burden: 5,325.

Status: New Collection.

Contact: Dominic Nessi, (202) 708–1015.

Dated: April 6, 1994.

Supporting Statement for Information Collection—Notice of Fund-Availability—FY 1994—Indian Applicants Under the Home Program

A. Justification

1. This information collection is required in connection with the publication in the **Federal Register** of a Notice of Fund Availability (NOFA) which announced the availability of $12.750 million for the HOME Program for Indian tribes. The NOFA is authorized by the HOME Investment Partnerships Act (Pub. L. 101–625, dated 11/28/90). The HOME Program provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. HUD regulations 24 CFR part 92, subpart M apply specifically to the Indian HOME Program. The HOME Act was amended 10/28/92 by the Housing and Community Development (HCDA) Act of 1992 (Pub. L. 102–550). Some provisions of the HCDA 1992 directly affect the enactment. Copies of the 1994 HOME NOFA and applicable HUD regulations are attached.

The information collection requirements imposed by the NOFA are as follows:

Section III (entirety)—Application requirements: Standard Form–424, Form HUD–4121.1, Indian HOME Program Grants Comprehensive Approach, Form HUD–4122.1, Indian HOME Program Grants Project Summary, Form HUD–4123–I, Indian HOME Program Grants, Cost Summary, Form HUD–4125–I, Indian HOME Program Grants, Implementation Schedule, Form HUD–4126–I, Indian HOME Program Grant Certifications, narrative and supporting documentation that are responsive to the selection criteria including a description of how the HOME funds will be used, and the various kinds of information that are necessary in order to apply the selection criteria and rating factors.

2. The information is necessary so that the applicants can apply and compete for funding opportunities under this NOFA. The information provided by the applicants will be reviewed by HUD and evaluated against rating criteria for possible funding. The applicants will be notified of their selection/rejection.

3. We have not considered the use of improved technology since there is no other way to obtain the information except directly from the entities.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for this purpose.

6. We attempted to minimize the burden on the applicants by developing an application which limits the number of pages (not to exceed five).

7. The information will be collected on a one-time basis.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collection.

10. No assurances of confidentiality is provided.

11. No sensitive questions are asked.

12. We do not estimate that there will be any additional cost to the Federal Government. The applicants will be reviewed in accordance with HUD's existing review and monitoring requirements. Annual cost to the respondent is estimated to be minimal since the application submission may be prepared by the Indian Housing Authorities.

13. We estimate that the information requirements of the proposed NOFA will have the following reporting burden:

Section of NOFA affected	Number of respondents	No. respdts. per response	Total annual resps.	Hours per resps.	Total No. hrs.
III.B. (HUD–4121–I)	75	1	75	17	1,275
III.C. (HUD–4122–I)	75	1	75	20	1,500
III.E. (HUD–4123–I)	75	1	75	15	1,125
III.F. (HUD–4125–I)	75	1	75	18	1,350
III.I. (HUD–4126.1)	75	1	75	1	75
Total annual burden	....	....	....	....	5,325

14. The information collection requirements are new.

15. The collection of this information will not be published for statistical use.

BILLING CODE 4210–33–M

Application for Indian HOME Program Grant

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

DRAFT

Comprehensive Approach

OMB Approval No 2577-XXXX (exp XX/XX/XX)

Public reporting burden for this collection of information is estimated to average 17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-XXXX), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

General Instructions: All applicants for funds from the Indian HOME Program must submit this form accompanied by Standard Form 424, form HUD 4122-I (Project Summary), form HUD-4123-I (Cost Summary), form HUD-4125-I (Implementation Schedule), form HUD-2880 (Applicant Recipient Disclosure/Update Report), maps and components that address the relevant selection criteria. Information submitted on these forms will be used to rate and rank applicant's projects to determine funding. For instructions in filling out SF-424, refer to the form itself.

1. Name of Applicant	2. Application/Grant Number (To be assigned by HUD upon submission)	
3. Name of Project	4. ☐ Original (check here if this is the first submission to HUD)	Date
	☐ Amendment (check here if submitted after grant award)	Date

5. **Comprehensive Approach.** Component that addresses the Comprehensive Approach for Expanding the Supply of Affordable Housing threshold. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

Previous Edition Obsolete

form **HUD-4121-I** (11/29/93)

Application for Indian HOME Program Grant

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Project Summary

DRAFT

OMB Approval No. 2577-XXXX (exp. XX/XX/XX)

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-XXXX), Washington, D.C. 20503. **Do not send this completed form to either of the above addresses.**

Note: Items 1 through 4 on this form should be the same as form HUD-4121-I

1. Name of Applicant	2. Application/Grant Number (To be assigned by HUD upon submission)	
3. Name of Project	4. ☐ Original (check here if this is the first submission to HUD)	Date
	☐ Amendment (check here if submitted after grant award)	Date

5. **Summary Description of Project.** Component that addresses the summary description of the proposed project threshold

Previous Edition Obsolete

form HUD-4122-I (12/14/93)

Application for Indian HOME Program Grant (IHPG) Cost Summary

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

DRAFT

OMB Approval No. 2577-xxxx (exp)

Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (25XX-XXXX) Washington, D.C. 20503. Do not send this completed form to either of the above addressees

1. Name of Applicant

2. Application Grant Number (To be assigned by HUD)

3. ☐ **Original** Check here if first Submission to HUD
☐ **Revision** Check here if submitted with Implementation Schedule as part of pre-award requirements
☐ **Amendment** Check here if submitted after HUD approval of grant
Date

4. **Project Name/Project Type** (See instructions on back)	**Program Funds** (in thousands of $)		
	IHPG	Other	
	Enter amount requested	Enter other source amount	Enter source of other funds
a	b	c	d
	$	$	

6. **Administration Total.** Enter amount of Indian HOME Program funds to be used for administration * $

7. **Sub Total.** Enter totals of columns b. and c $ $

8. **Grant Total.** Enter sum of columns b. and c $

* The total cannot exceed 15% of the total Indian HOME Program funds requested.

Previous Edition Obsolete

form HUD-4123-I (12/14/93)

Definitions for Selected Items in form HUD-4123-I

Item 4. Project Name/Project Type

Enter project name and the name of one of the following four Indian HOME Program project types: Acquisition, Rehabilitation, New Construction, Tenant-based Rental Assistance.

DRAFT

Application for Indian HOME Program Grant

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Implementation Schedule

OMB Approval No 2577-XXXX (exp XX/XX/XX)

DRAFT

Public reporting burden for this collection of information is estimated to average 18 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Reports Management Officer, Office of Information Policies and Systems, U.S Department of Housing and Urban Development, Washington, D C 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (25XX-XXXX), Washington, D C 20503. Do not send this competed form to either of the above addresses

1 Name of Applicant	2. Application/Grant Number (to be assigned by HUD)	3. ☐ Original (First submission to HUD) ☐ **Pre-Award** Submission ☐ Amendment (submitted after grant approval)	Date
4. Name of Project	5. Effective Date (Mo./Yr.)	Expected Completion Date (Mo./Yr.)	Expected Closeout Date (Mo./Yr.)

6 Environmental Review Status

☐ **Exempt** (As described in 24 CFR 58.34)

☐ **Under Review** (Review underway, findings not yet made)

☐ **Finding of No Significant Impact** (Finding made that request for release of funds for project is not an action which may significantly effect the environment.)

☐ **Categorically Excluded** (As described in 24 CFR 58.35)

☐ **EIS Required** (Finding that project may significantly affect environment or EIS automatically required by 24 CFR 58.37)

☐ **Not Started** (Review not yet begun)

☐ **Certification** (Environmental review completed, certification and request for release of funds being prepared for submission.)

7 Task List: (List tasks such as environmental assessment, etc.)

8. Schedule: Use Calendar quarters. If project begins in May (for example), enter under "1st Qtr.", A(April) M(May), J(June). Indicate time period acquisition required to complete each activity by entering "X" under the months it will begin and end. Draw a horizontal line from the first to the second "X". If completion date will extend beyond the 8th quarter, enter date in the far right column and attach an explanation

7 Task List	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	5th Qtr.	6th Qtr.	7th Qtr.	8th Qtr.	Date (If exceeds 8th Quarter)
9. Planned Drawdowns by Quarter (Enter Amounts Non-cumulatively)	$	$	$	$	$	$	$	$	$ Total
10. Cumulative Drawdown (If more than one page, enter total on last page only)	$	$	$	$	$	$	$	$	$ Total

Previous Edition Obsolete

Page of pages

form HUD-4125-I (12/14/93)

Application for Indian HOME Program Grant **Certifications**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-XXXX (exp. XX/XX/XX)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-XXXX), Washington, D.C. 20503. Do not send this completed form to either of the above addresses.

DRAFT

General Instructions: All applicants shall submit this form as part of the application.

The certifying representative of the grantee shall sign and date the certifications below.

The applicant hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program. Also, the applicant gives assurances and certifies with respect to the grant that:

A. It possesses the legal authority to apply for the grant and execute the proposed program.

B. The governing body has duly authorized the filing of the application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

C. The chief executive officer or other official of the applicant approved by HUD:

   1. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 when the provisions of the Act apply to the applicant's proposed program under 24 CFR Part 58, instead of Part 50; and

   2. Is authorized and consents on behalf of the applicant and him/her self to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.

Note: Applicants for whom HUD has approved a claim of incapacity to accept the responsibilities of the Federal government for purposes of complying with the environmental review requirements of 24 CFR Part 58 need not include the provision of paragraph C, above in their assurance.

D. It will comply with the HUD general administration requirements in 24 CFR Part 85.

E. It will use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

F. It will comply with the requirements of Title II of Public Law 90-284 (25 USC 1301) (the Indian Civil Rights Act).

G. It will comply with the Indian preference provisions required in 24 CFR 92.631 and 92.632.

H. It will establish written safeguards to prevent employees from using positions funded under the Indian HOME Grant Program for a purpose that is, or gives the appearance of being, motivated by private gain for themselves, their close family or business associates. Nothing in this certification should be construed as to limit employees from benefiting from program activities for which they would otherwise be eligible.

I. It will give HUD and the Comptroller General access and right to examine all books, records, papers, or documents related to the grant for a period of not less than three years after program completion or until resolution of any final audit findings.

J. It will provide the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

K. Neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

L. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of section 92.634.

Signature

Name (Type or print)

Title

Date

Previous Edition Obsolete

form HUD-4126-I (3/23/94)

[FR Doc. 94-11325 Filed 5-10-94; 8:45 am]

BILLING CODE 4210-33-C

[Docket No. N-94-3565; FR-3400-N-02]

Announcement of Funding Awards for Fiscal Year 1993 Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1993 Indian Applicants under the HOME Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to expand the supply of affordable housing.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, U.S. Department of Housing and Urban Development, room 4140, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1015.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The HOME Investment Partnerships Act (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101-625). The HOME Act creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600-92.652) apply specifically to the Indian HOME program.

On February 23, 1993, HUD published a Notice of Funding Availability announcing the availability of $10 million in FY 1993 funds for Indian Applicants under the HOME program (58 FR 11102). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance under the FY 93 Indian HOME Program Funding Competition, by Name, Address, and Grant Amount

1. Manley Village Council, President: Elizabeth M. Woods, P.O. Box 23, Manley Hot Springs, Alaska 99756, Grant amount: $270,108.
2. Evansville Traditional Council, Chief: Rhoda Musser, P.O. Box 25, Bettles, Alaska 99726, Grant amount: $324,670.
3. Eastern Band of Cherokee Indians, Jonathan Taylor, Principal Chief, P.O. Box 455, Cherokee, North Carolina 28719, (704) 497-4771, Grant amount: $1,512,561.
4. Forest County Potawatomi Community, Al Milham, Chairman, P.O. Box 340, Crandon, Wisconsin 54520, (715) 478-2903, Grant amount: $183,000.
5. Mississippi Band of Choctaw Indians, Phillip Martin, Chairman, P.O. Box 6010, Philadelphia, Mississippi 39350, (601) 656-5251, Grant amount: $772,504.
6. White Earth Reservation Tribal Council, Darrell Wadena, Chairman, P.O. Box 418, White Earth, Minnesota 56591, (218) 983-3285, Grant amount: $689,748.
7. Pasqua Yaqui Indian Tribe, Tribal Chairperson: Albert Garcia, 7474 South Camino Deoste, Tuscan, AZ 85746, Grant amount: $1,700,000.
8. Navajo Indian Tribe, Tribal Chairperson: Peterson Zah, P.O. Box 1896, Window Rock, AZ 86515, Grant Amount: $2,017,787.
9. Blackfeet Tribe, Indian Reservation, Montana, Tribal Chairperson: Honorable Earl Old Person, P.O. Box 850, Browning, Montana 59417, Total amount of grant awarded: PR #1—§ 808,874; PR #2—808,884; PR #3—911,864; Total $2,529,622.

Dated: April 28, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-11330 Filed 5-10-94; 8:45 am]

BILLING CODE 4210-33-P

Office of Native American Programs

[Docket No. D-94-1063; FR-3708-D-01]

Redelegation of Authority for Indian Programs

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice of redelegation of authority, the Director of the Office of Native American Programs is redelegating to Field Office of Native American Programs (FONAP) Administrators all power and authority, subject to certain specified exceptions, within their respective jurisdictions for The management, development and acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families; the development and acquisition of public housing under the Mutual Help Homeownership Opportunity Program; the HOME Investment Partnerships Program; and the Indian Community Development Block Grant (CDBG) Program.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 7th Street, SW., telephone (202) 708-1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on March 1, 1994, at 59 FR 9764, the Assistant Secretary for Public and Indian Housing redelegated all power and authority previously redelegated to HUD Regional Administrators with respect to Indian and Alaska Native programs, as well as any further redelegation of that authority, to the Director, the Deputy Director for Headquarters Operation, and the Deputy Director for Field Operations, Office of Native American Programs, subject to certain exceptions. In this notice, the Director of the Office of Native American Programs is redelegating to Field Office of Native American Programs (FONAP) Administrators all power and authority, subject to certain specified exceptions, within their respective jurisdictions for: The management, development and acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families, pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); the development and acquisition of public housing under the Mutual Help Homeownership Opportunity Program under section 202 of the United States Housing Act of 1937 (42 U.S.C. 1437bb); the HOME Investment Partnerships (HOME) Program for Indian tribes under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*); and the Indian Community Development Block Grant (CDBG) Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301).

Accordingly, the Director of the Office of Native American Programs redelegates as follows:

Section A. Authority Redelegated

Each Field Office of Native American Programs (FONAP) Administrator is authorized by the Director of the Office of Native American Programs to exercise all power and authority, within their respective jurisdictions, required to administer the following programs, for Indian families:

(1) The management, development and acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families, pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(2) The development and acquisition of housing under the Mutual Help Homeownership Opportunity Program under Title II of the United States Housing Act of 1937 (42 U.S.C. 1437bb);

(3) The HOME Investment Partnerships (HOME) Program for Indian tribes under Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*); and

(4) The Indian Community Development Block Grant (CDBG) Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301).

Section B. Authority Excepted

The authority delegated under section A does not include the power to sue and be sued or to issue or waiver rules and statutes.

(1) With respect to section A, paragraphs (1) and (2) above, the authority redelegated does not include the authority to:

(a) Assign operating funds to the FONAPs for subassignment to the Indian housing Authorities (IHAs);

(b) Allocate or reallocate funds pursuant to section 213 of the Housing and Community Development Act of 1974;

(c) Issue a notice of default under Article V, Low-rent Housing Annual Contributions Contract (ACC) or Article XIII, Mutual Help Housing ACC; and

(d) Respond to an appeal by an IHA regarding a determination of high risk in a case which involves actions related to a determination of ineligibility for funding.

(2) With respect to section A, paragraph (3) above, the authority redelegated does not include the authority to:

(a) effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing;

(b) Provide for distribution of amounts under section 217(a)(2) of the National Affordable Housing Act (42 U.S.C. 12747(a)(2));

(c) Make determinations of the eligibility of Indian Tribes and Alaska Native Villages to participate in the HOME for Indians Program except that those officials designated in Section A may make those determinations of eligibility that can be made from lists provided to them each fiscal year by the Assistant Secretary for Public and Indian Housing; and

(d) Determine that an applicant lacks the legal capacity to assume or carry out environmental review responsibilities pursuant to section 288 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12838).

(3) With respect to section A, paragraph (4) above, the authority redelegated does not include the authority to:

(a) Effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing;

(b) Grant waivers of the general terms and conditions of the community development block grant agreement;

(c) Determine that an applicant lacks the legal capacity to assume or carry out environmental review responsibilities pursuant to section 104(g) of the Housing and community development Act of 1974 (42 U.S.C. 5304); and

(d) Make determinations of the eligibility of Indian Tribes and Alaska Native Villages (as defined in 24 CFR 571.3(o)) to participate in the Indian CDBG Program except that those officials designated in section A may make those determinations of eligibility that can be made from lists provided to them each fiscal year by the Assistant Secretary for Public and Indian Housing.

Section C. Authority To Redelegate

FONAP Administrators may redelegate the power and authority redelegated herein under section A.

Authority: the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); HOME Investment Partnerships Act (42 U.S.C. 12701 *et seq.*); Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301); and section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated, April 8, 1994.

Elaine M. Dudley,

Deputy Director for Headquarters Operations, ONAP.

[FR Doc. 94–11323 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–33–M

Office of Public and Indian Housing

[Docket No. D–94–1062; FR–3663–D–01]

Order of Succession, Acting Assistant Secretary for Public and Indian Housing

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Order of succession.

SUMMARY: The Assistant Secretary for Public and Indian Housing for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting Assistant Secretary for Public and Indian Housing when, by reason of absence, disability or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4244, 451 7th Street, SW., Washington, DC 20410, (202) 708–0846. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Public and Indian Housing for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting Assistant Secretary for Public and Indian Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. The authorization to act under this Order is subject to the 120-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 120 days.

Accordingly, the Assistant Secretary for Public and Indian Housing designates the following order of succession:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public and Indian Housing is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary, the following are hereby designated to serve as Acting Assistant Secretary for Public and Indian Housing:

(1) General Deputy Assistant Secretary for Public and Indian Housing.

(2) Deputy Assistant Secretary for the Office of Distressed and Troubled Housing.

(3) Director, Office of Construction, Rehabilitation and Maintenance.

(4) Director, Office of Assisted Housing.

(5) Director, Office of Native American Programs.

(6) Director, Office of Management and Policy.

(7) Comptroller, Office of Public and Indian Housing Comptroller.

(8) Director, Office of Resident Initiatives.

(9) Director, Rental Assistance Division.

These officials shall serve as Acting Assistant Secretary for Public and Indian Housing under this order of succession in the order specified herein and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. If all the officials designated in this order of succession are unable to serve as Acting Assistant Secretary for Public and Indian Housing by reason of absence, disability or vacancy in office, officials designated to serve as acting officials for these designated officials (designees) will serve in the same order of succession as their principals.

Authorization to serve as Acting Assistant Secretary for Public and Indian Housing shall not exceed 120 days pursuant to the Vacancies Act, 5 U.S.C. 3348.

Section B. Revocation of Order of Succession

The Order of Succession published in the **Federal Register** on April 2, 1990 at 55 FR 12291 is hereby revoked.

Authority: Sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: April 15, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-11322 Filed 5-10-94; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-660-04-4120-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below and or by writing the Office of Management and Budget, Paperwork Reduction Projects (1004-34), Washington, DC 20503.

Title: Coal Management, 43 CFR Group 3400.

OMB Approval Number: 1004-0073.

Abstract: The Federal Coal Management Program regulations are located at 43 CFR Group 3400 and require applicants, lessees, licensees, and/or operators involved in operations for the discovery, testing, development, mining or processing of Federal coal to submit information to the Bureau of Land Management. The information required is needed to allow the authorized officer, on behalf of the Federal Government, to: gather data relevant to the extent and qualities of the public coal resource and to the environmental impacts of coal leasing and development; manage the leasing and development of coal in the public interest; determine the qualifications of prospective lessees and licensees to mine; properly administer the statutes applicable to coal mining, production, resource recovery and protection, operations, and exploration on Federal leases and licenses; ensure that lessees comply with applicable statutes, regulations, and policies; and ensure that accurate records are kept of all Federal coal produced.

No revisions to the regulations are being proposed at this time. Information requirements are located in several sections of the regulations. All requirements are consistent with the Secretary of the Interior's authority to: Manage federally owned coal through leasing or exchange; oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, and certain abandonment operations on Federal coal lands; and require that coal mining operations are conducted in an environmentally sound manner. In many cases, a specific form is not required to collect information as that information is generated as part of routine industry practice. In these cases, information requirements in the regulations are acceptable in any form which meets the regulatory specifications. The obligation to respond is generally required to obtain a benefit, although it is mandatory for some requirements once the lease or license is obtained.

Failure to collect the information covered by this information collection would result in violations of statute and in lack of knowledge about Federal coal resources and would reduce the effectiveness of the program in meeting policy and statutory objectives.

Frequency: On occasion, quarterly, semiannually, and annually.

Description of Respondents: Coal lessees, licensees, operators, applicants, and members of the general public.

Estimated completion time: On average, 19 hours.

Annual Responses: 1,299.

Annual Burden Hours: 24,737.

Bureau Clearance Officer: Dorothy Chambers, Bureau of Land Management (873), Washington, DC 20240, (202) 452-5012.

Dated: March 22, 1994.

Adam A. Sokoloski,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 94-11461 Filed 5-10-94; 8:45 am]

BILLING CODE 4310-84-M

[CA-060-04-7122-09-6514]

American Girl Project, Oro Cruz Operation, CA;

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a draft Environmental Impact Statement for the Oro Cruz Operation of the American Girl Project, a proposed gold mining operation on public lands in Imperial County, California.

DATES: Comments on the Draft Environmental Impact Statement must be postmarked no later than Tuesday, June 28, 1994.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, El Centro Resource Area, 1661 South Fourth Street, El Centro, California 92243, ATTN: Thomas Zale.

FOR FURTHER INFORMATION CONTACT: Thomas Zale, Multi-Resource Staff Chief, telephone (619) 353-1060.

PUBLIC HEARINGS: No hearings are presently planned. However, should public demand warrant, a hearing would be held by the BLM.

SUPPLEMENTARY INFORMATION: The proposed action is a surface and underground mining project on unpatented lode and placer claims on public lands in Imperial County, California. About 2.5 million tons of ore and 8.5 million tons of waste rock would be mined from two open pits, the Cross Pit and the Queen Pit, during an estimated two year period. The Queen Pit would be backfilled upon completion of mining. Underground mining would begin in the Cross Pit and be conducted concurrently with surface mining. One-half million tons of ore and 65,000 tons of waste rock would be produced during a three year period. Ore produced by both surface and underground mining would be transported 2.5 miles by haul trucks to existing mill and heap leach facilities in American Girl Canyon via a proposed haul road. Waste rock would be disposed of in the Queen Pit, and on one large and three smaller waste rock dumps. Aggregate for use in stabilizing underground mine workings would be hauled from a quarry near the existing American Girl Canyon facilities to the Cross Pit along the same haul road. Surface disturbance resulting from the proposed action would total 191 acres.

Dated: April 4, 1994.

G. Ben Koski,

Area Manager.

[FR Doc. 94-11266 Filed 5-10-94; 8:45 am]

BILLING CODE 4310-40-M

[NV-040-4191-03; 4-00154]

Intent To Prepare an Environmental Impact Statement for the Bald Mountain/Alligator Ridge Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Bureau of Land Management (BLM) will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed Bald Mountain/Alligator Ridge Project in White Pine County, Nevada. This EIS will be prepared by contract and funded by the proponent, Placer Dome U.S. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Meetings to brief the public on the scope of the proposed project and to receive comments are scheduled for May 31 and June 1 and 2, 1994. All meetings will be held from 7 to 9 p.m. each evening.

Written comments on the Plan of Operations (proposed action) and the scope of the EIS will be accepted until June 17, 1994.

ADDRESSES: Scoping comments are to be sent to: District Manager, HC 33 Box 33500, Ely, NV 89301 Attn: Dan Netcher, EIS Team Leader.

Scoping meetings will be held at the following locations: May 31—Ely BLM District Office, 702 Industrial Way, Ely, NV; June 1—Elko BLM District Office, 3900 E. Idaho St., Elko, NV; June 2—Holiday Inn, 6th Street, Reno, NV.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, EIS Team Leader, at the above Ely BLM District Office address or telephone (702) 289-4865.

SUPPLEMENTARY INFORMATION: Placer Domer U.S. has submitted to the Ely BLM District Office a Plan of Operations (POO). The POO describes proposed mining operations, including required access, for an area in White Pine County approximately 60 miles northwest of Ely, Nevada. The Buck and Bald Mining District has been active since 1984 with mineral exploration of the area and open pit/heap leach gold mining. There are currently six separate mining operations and five are operated by Placer Domer U.S. The other is Western State's White Pine Gold Mine at the northern end of the mining district. Placer Dome U.S. is proposing to expand their operation at Bald Mountain Mine by opening the Sage flats area and by establishing a new processing plant and heap/tailings facility. The Sage Flat area would be mined and ore transported to Placer Dome's current heap leach facility at the Bald Mountain Mine. The new heap/tailing facility operation would process 2.5 million tons per year and would consist of a new crushing facilities and tailing disposal area. The company also proposes to open a new open pit mine and heap leach facility in the Mooney Basin. This operation would consist of seven pits and would mine ore at a rate of 1.5 million tons per year. These modifications to the mine plan and new mine operations would allow Placer Dome U.S. to operate for seven more years.

The issues expected to be analyzed in the EIS are impacts to: Surface and groundwater, threatened and endangered species, cultural resources, wildlife, wild horses and mine reclamation. Cumulative impacts for the mining district will be analyzed in detail and will cover the complete mining district.

Dated: May 4, 1994.

Thomas V. Leshendok,

Acting Associate State Director, Nevada.

[FR Doc. 94-11348 Filed 5-10-94; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-41-5700; WYW126771]

Proposed Reinstatement of Terminated Oil and Gas Lease

April 28, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126771 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW126771 effective May 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94-11317 Filed 5-10-94; 8:45 am]

BILLING CODE 4310-22-M

[ES-030-3-4210-05]

Realty Action: Sale of Public Land in Stone County, MO

ACTION: Realty Action Color-of-Title Sale MOES-044198.

SUMMARY: The following land has been found suitable for sale under authority of the Color-of-Title Act of December 22. 1928, as amended July 28, 1953, 43 U.S.C. 1068, 1068a (1982), as a claim of Class I at the estimated fair market value less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fifth Principal Meridian

T. 21 N., R. 22 W.,
 Sec. 8, SENW.
 Containing 40 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Michael Ussery. The mineral interest will not be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land

Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203.

DATES: For a period of 45 days from the date of publication of this notice, in the **Federal Register**, interested parties may submit comments to the District Manager, Milwaukee District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203 or by calling Larry Johnson at 414–297–4413.

Dated: April 29, 1994.

Chris Hanson,

Acting District Manager.

[FR Doc. 94–11477 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–GJ–M

[OR 50607, 50608, 50609; OR–080–04–4210–05: GP4–158]

Real Action; Proposed Direct Sale

May 2, 1994.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon

T. 11 S., R. 7 W.,
 Sec. 14, Lot 5, (Parcel A).
 Sec. 23, Lot 1, (Parcel B).
 Sec. 23, Lot 2, (Parcel C).

The above-described parcels aggregate 1.53 acre in Benton County.

The parcels will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcels have not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described lands are hereby segregated from appropriation under the public laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcels' relatively small size and lack of physical or legal access, their best use is to merge them with the adjoining ownerships. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering these parcels for sale.

The parcels are being offered only to the following individuals: Parcel A to Daniel L. Marshall, contract purchaser, and Judith A. Heintz, aka Judith A. Fullen, fee owner of Tax Lot 1100, Map 11 7 14; Parcel B to Beverly Clair, fee owner of Tax Lot 201, Pam 11 7 23; and Parcel C to Jerry L. and Patsy M. Boyd, fee owners of Tax Lot 603, Map 11 7 23. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid inappropriate land ownership patterns and would recognize equities of the individuals involved.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The above-named individuals will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value of the parcel to be sold.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. The above-named individuals must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The conveyance documents will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Alsea Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

John H. Mears,

Alsea Area Manager.

[FR Doc. 94–11457 Filed 5–10–94; 8:45 am]

BILING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 5, PRT–697823.

The applicant requests an amendment to their current permit to include take activities for small whorled pogonia (*Isotria medeoloides*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 2, PRT–676811.

The applicant requests an amendment to their current permit to include take activities for Louisiana black bear (*Ursus americanus luteolus*) and Harperella (*Ptilimnium nodosum*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Applicant: John Beers, Ft. Lauderdale, FL, PRT–788447.

The applicant requests a permit to purchase in interstate commerce three Indian monitors (*Varanus bengalensis*) from Danny Gorman, Levittown, NY, for the purpose of enhancement of propagation and survival of the species through breeding.

Applicant: University of Florida, College of Veterinary Medicine, Gainesville, FL, PRT–789854.

The applicant requests a permit to reexport a Galapagos tortoise (*Geochelone elephantopus*) to the Galapagos Islands, Ecuador, for the purpose of enhancement of propagation or survival of the species. This animal had been imported for emergency medical treatment and is being returned to the wild following treatment and rehabilitation.

Applicant: George B. Hubbard, Jr., Columbus, GA, PRT–789661.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by the Ciskei Government, the Tsolwana Game Reserve, Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Oakhill Center for Rare and Endangered, Species, Oklahoma City, OK, PRT–789591.

The applicant requests a permit to import one captive-bred female Amur leopard (*Panthera pardus orientalis*) from the Moskovskii Zoologicheskii Park, Moscow, Russia, for the purpose of enhancement of propagation and survival of the species through breeding.

Applicant: Levi Britton, Emigrant, MT, PRT–786031.

The applicant requests a permit to import one surplus captive-bred male woods bison (*Bison bison athabascae*) from the Willow Hollow Game Ranch, Turtleford, Saskatuawan, Canada, to be culled during a sport-hunt and to then sell the hide and horns in interstate commerce, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Emergency Exemption; Issuance

On May 2, 1994, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–789799) to the University of Florida, College of Veterinary Medicine to import one Galapagos tortoise (*Geochelone elephantopus*) from the Galapagos Islands, Ecuador. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of this tortoise existed and that no reasonable alternative was available to the applicant. The tortoise required life-saving emergency surgery which could not be performed on the Galapagos Islands nor in Ecuador

Dated: May 5, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–11315 Filed 5–10–94; 8:45 am]

BILLING CODE 4310-55-P

Notice of Availability of a Draft Revised Recovery Plan for the Green Pitcher Plant for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the green pitcher plant (*Sarracenia oreophila*). Populations are known to occur in northeast Alabama (Cherokee, DeKalb, Etowah, Jackson, and Marshall Counties), north Georgia (Towns County), and southwest North Carolina (Clay County). A historical record exists for Tennessee. Habitat for the green pitcher plant varies somewhat with populations located in moist upland areas and others along boggy, sandy stream edges. With the exception of a few sites on State park land, populations occur on privately owned lands. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 1, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review a draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carry Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment to provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the green pitcher plant (*Sarracenia oreophila*). This carnivorous plant occurs in moist upland areas and along boggy, sandy stream edges of northeastern Alabama, north Georgia, and southwest North Carolina. The green pitcher plant was listed as endangered in 1979 due to its limited distribution, and loss or decline in populations due to agricultural conversion, increased rural residential development, encroachment by woody plants due to hydrological alterations and fire suppression, and commercial and amateur collecting.

The objective of this proposed plan is to delist the green pitcher plant. Delisting will be considered when a minimum of 18 viable populations, representing the diversity of habitats and the geographic range of the species, are protected and managed as necessary to ensure their continued existence. Actions needed to reach this goal include: (1) Protecting, managing, and monitoring populations, (2) surveying for new populations, (3) gathering additional baseline and hydrological information, (4) studying pollination biology and conducting genetic analyses of populations, (5) monitoring transplant and reestablishment experiments, (6) preserving genetic stock, and (7) continuing public education efforts.

This Plan is the second revision of the original and is being submitted for technical and agency reviews. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 28, 1994.

Robert Bowker,

Field Supervisor.

[FR Doc. 94–11462 Filed 5–10–94; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–645 (Final)]

Calcium Aluminate Cement and Cement Clinker From France

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from France of calcium aluminate cement and cement clinker, provided for in subheadings 2523.30.00 and 2523.10.00, respectively, of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 1, 1993, following a preliminary determination by the Department of Commerce that imports of calcium aluminate cement and cement clinker from France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing notices in the **Federal Register** of December 22, 1993 (58 FR 67809) and the **Federal Register** of March 9, 1994 (59 FR 11086). The hearing was held in Washington, DC, on March 31, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 2, 1994. The views of the Commission are contained in USITC Publication 2772 (May 1994), entitled "Certain Calcium Aluminate Cement and Cement Clinker from France: Investigation No. 2772 (Final)."

Issued: May 6, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11478 Filed 5–10–94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–362]

Certain Methods of Assembling Plastic Ball Valves and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Two Respondents on the Basis of Settlement Agreements and Granting Complainants' motion To Withdraw the Complaint as to the Only Remaining Respondents; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the joint motion of complainants Nordstrom Valves, Inc. ("Nordstrom") and Measurement and Flow Control Holding Co., Inc. (MF&C) to terminate respondents Natural Gas Products Co. ("NGPC") and Friatec AG Keramik und Kunststoffwerke ("Friatec") on the basis of a settlement agreement. The ALJ also granted the motion of Nordstrom and MF&C to withdraw their complaint against the only remaining respondents, MT Deason, Inc. ("MTD") and Power and Process, Inc. ("P&P")

ADDRESSES: Copies of the nonconfidential ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104 Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 8, 1993, complainants Nordstrom and MF&C filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain plastic ball valves and components thereof which are allegedly covered by four claims of U.S. Letters Patent 4,047,275, which is owned by MF&C and licensed to Nordstrom. The Commission instituted an investigation of the complaint on December 16, 1993. 58 F.R. 65731.

On January 28, 1994, complainants and respondents NGPC and Friatec filed a joint motion to terminate the investigation based on a settlement agreement. On the same date, complainants filed a motion to withdraw the complaint as to the final respondents, MTD and P&P. Both motions were supported by the Commission investigative attorney. On April 4, 1994, the ALJ issued an ID granting both motions. No petitions for review, or agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53)

Issued: May 5, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11476 Filed 5–10–94; 8:45 am]

BILLING CODE 7020-02-P

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn Bragg did not participate

[Investigation No. 337–TA–354]

Certain Tape Dispensers; Issuance of General Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3094.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

Minnesota Mining and Manufacturing Corporation ("3M") filed an amended complaint on June 30, 1993, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging that three respondents: (1) Acurite Industries Corp.; (2) Fancy International (HK) Ltd.; and (3) Charles Leonard, Inc., had violated section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tape dispensers. The tape dispensers are alleged to infringe a design patent, U.S. Letters Patent Des. 289,180 (the '180 patent). The Commission instituted this investigation by notice published in the **Federal Register** on July 21, 1993, at 58 FR 39036. The Commission terminated Fancy International as a respondent and added Hoi Fung Industrial Company, Safina Office Products, and Shiang Shin Trading Company as respondents by notice published on November 10, 1993, at 58 FR 59735. The notice of investigation was further amended on January 12, 1994, after a request by 3M to terminate respondent Shiang Shin Trading Company and to change the name of respondent Safina Office Products to Shiang Shin International Inc. d/b/a Safina Office Products. 59 FR 1762–1763.

On December 23, 1993, the presiding administrative law judge (ALJ) issued a final initial determination ("ID") finding that there was a violation of section 337. The ALJ found that U.S. Letters Patent Des. 289,180 is infringed and that a domestic industry exists with respect to the patent claim in issue. On January 21, 1994, the Commission determined not to review the ID, which thereby became the determination of the Commission. The Commission also requested written submissions concerning the issues of remedy, the public interest, and bonding. 59 FR 3868–3869 (January 27, 1994).

On April 5, 1994, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a general exclusion order prohibiting the importation of infringing tape dispensers. Finally, the Commission determined that the public interest factors enumerated in 19 U.S.C. 1337 (d), (f), and (g) do not preclude the issuance of the aforementioned relief, and that the bond during the Presidential review period shall be in the amount of 220 percent of the entered value of the infringing tape dispensers.

Copies of the Commission order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: May 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11475 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–650 (Final)]

Nitromethane From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China (China) of nitromethane, provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 4, 1993, following a preliminary determination by the Department of Commerce that imports of nitromethane from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 1, 1993 (58 FR 63392). The hearing was held in Washington, DC, on March 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 6, 1994. The views of the Commission are contained in USITC Publication 2773 (May 1994), entitled "Nitromethane from the People's Republic of China: Investigation No. 731–TA–650 (Final)."

Issued: May 5, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11474 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting and Commissioner Bragg not participating.

[Investigation 337–TA–360]

In the Matter of Certain Devices for Connecting Computers via Telephone Lines; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Good Way Industrial Co. Ltd., Caltechnology International Ltd., and Shiunn Yang

Enterprises Co., Ltd., Tremon Enterprises Co., Ltd., and Taiwan Techtron Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on May 5, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: May 5, 1994

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11473 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–315]

Certain Plastic Encapsulated Integrated Circuits; Designation of Additional Commission Investigative Attorney; Enforcement Proceeding

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq. and Mary Jane Boswell, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Thomas L. Jarvis, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: April 29, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 94–11472 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Certain Devices for Connecting Computers via Telephone Lines; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Focus Enhancements, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on May 3, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: May 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11471 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (SUB-NO. 133X), VIRGINIA & SOUTHWESTERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN BRISTOL, TENNESSEE AND BRISTOL, VIRGINIA. EA available 5/6/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–1 (SUB-NO. 252X), CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY—ABANDONMENT EXEMPTION—BETWEEN CEDAR LAKE IN WESTERN MINNEAPOLIS AND HOPKINS, HENNEPIN COUNTY, MINNESOTA. EA available 5/2/94.

AB–55 (SUB-NO. 481X), CSX TRANSPORTATION, INC.—ABANDONMENT IN PIKE COUNTY, KY. EA available 5/6/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11445 Filed 5–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposal consent decree in *United States* v. *Association of Apartment Owners of Harbor Lights*, Civil Action No. 94–00304–DAE, was lodged on April 25, 1994, with the United States District Court for the District of Hawaii. The Complaint in this Act, brought under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleged that the defendant committed violations of the asbestos NESHAP notification and work practice requirements of 40 CFR part 61, subpart M, during the removal of asbestos—containing acoustical ceiling material at its condominium complex.

The proposed consent decree requires the defendant to pay a civil penalty of $40,000; to inspect and sample facilities to identify asbestos before commencing a renovation or demolition operation; and, when hiring workers for asbestos-related projects, to employ only persons who have successfully completed an EPA–approved training course.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent degree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Association of Apartment Owners of Harbor Lights*, DOJ Ref. #90–5–2–1–1662.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Hawaii, Room C–242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–11458 Filed 5–10–94; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 86–94]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service, Department of Justice, proposes to modify the following system of records:

"Alien Status Verification Index, Justice/INS–009."

Routine uses disclosures A. and B. have been rewritten as one routine use. The revised routine use, designated as routine use A., clarifies (1) that access/verification for any of the purposes identified may be accomplished either manually or via automated means by any of the recipients identified and (2) that the information may be disclosed—for the same purposes—to a contractor acting on behalf of the agency.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on any new use or intended use of information in the system. The Office of Management and Budget (OMB) requires a 40-day period in which to conclude its review of the proposed changes.

Therefore, please submit any comments by June 10, 1994. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (room 850, WCTR Building).

Dated: May 5, 1994.

Michael J. Roper,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–009

SYSTEM NAME:

Alien Status Verification Index.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), 425 I Street NW., Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records include index and file locator data such as last and first name, alien registration number (or "A-file" number), date and place of birth, social security account number, date coded status transaction data and immigration status classification, verification number, and an employment eligibility statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 101 and 121 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1360, 8 U.S.C. 1324a, 20 U.S.C. 1091, 42 U.S.C. 1436a, 42 U.S.C. 1320b–7, and Executive Order 12781.

PURPOSE:

This system of records is used to verify the alien's immigrant, nonimmigrant, and/or eligibility status for any purpose consistent with INS statutory responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. *To a Federal, State, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies/contractors to make decisions concerning the (1) hiring or retention of an employee; (2) issuance of a security clearance; (3) reporting of an investigation of an employee; (4) letting of a contract; (5) issuance of a license or grant; or (6) determination of eligibility for a Federal program or other benefit. Such access may be via a system in which the recipient performs its own automated verification of the requisite information for deciding any of the above. INS will assign appropriate access codes for remote access through secured terminals to agencies which are to perform their own automated verification. Records may also be disclosed to these agencies, or contractors operating on their behalf, for* *use in computer matching programs for the purpose of verifying an alien's immigrant status or non-immigrant status and/or eligibility for the purpose of making Federal program benefit eligibility determinations.*

B. *To employers for verifying the employment eligibility of aliens to work in the United States in compliance with employer sanctions of the 1986 Immigration Reform and Control Act. Employers are assigned secure access codes and will have access through touch-tone telephone and/or point of sale equipment.*

C. *To the private contractor for maintenance and for other administrative support operations (e.g., preparing for INS management reimbursable cost reports etc. based on user access), to the extent necessary to perform such contract duties.*

D. To other Federal, State, or local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation or for criminal or civil law enforcement purposes.

E. To the news media and the public pursuant to 23 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member of staff request the information on behalf of and at the request of the individual who is the subject of the record.

G. To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice *Orders governing security of automated records and Privacy Act systems of records.* Access. is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

A request for disposition authority is pending the approval of NARA.

SYSTEM MANAGER AND ADDRESS:

The *Assistant Commissioner, Records Systems Division,* Immigration and Naturalization Service, 425 I Street NW., Washington, DC., is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy Act Request." The requester shall include the name, date and place of birth of the person whose record is sought and if known the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct *his or her* request to the System Manager or to the INS office that maintains the *file.* The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and reports on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–11300 Filed 5–10–94; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated December 21, 1993, and published in the **Federal Register** on December 28, 1993, (58 FR 68664), Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application to the Drug Enforcment Administration to be registered as a bulk manufacturer of Methadone (9250), a basic class of controlled substance listed in Schedule II.

Comments were received, however, no written request for a hearing exists if the DEA can determine that Orpharm will manufacture methadone to process LAAM. The DEA has determined that this is the case. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is approved.

Dated: May 4, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11331 Filed 5–10–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 23, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 23, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment

Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
International Paper Co. (UPIU)	Presque Isle, ME	4/25/94	3/30/94	29,789	Corrugated Containers (Cardboard Boxes).
Hunt Wesson, Inc. (UF&CW)	Perrysburg, OH	4/25/94	4/15/94	29,790	Tomato Sauce, BBQ Sauce and Ketchup.
T.K. Valve & Manufacturing (WKRS)	Hammond, LA	4/25/94	4/12/94	29,791	Ball Valves & Components.
Allied Cementing Co. (WKRS)	Russell, KS	4/25/94	4/06/94	29,792	Cementing of Oil Wells.
Dosimeter Corp of America (CO)	Cincinnati, OH	4/25/94	3/12/94	29,793	Radiation Detectors.
Endicott Forging & Mfg. (CO)	Endicott, NY	4/25/94	3/23/94	29,794	Forgings.
Freeport Sulphur Co. (WKRS)	New Orleans, LA	4/25/94	4/11/94	29,795	Exploration and Drilling Sulphur.
Kinston Shirt Co. (WKRS)	Kinston, NC	4/25/94	4/13/94	29,796	Men's & Boy's Shirts.
Lyons Falls Pulp & Paper (UPIU)	Lyons Falls, NY	4/25/94	4/13/94	29,797	Printing Paper.
Permian Tank & Manufacturing, Inc. (CO).	Odessa, TX	4/25/94	3/28/94	29,798	Steel Oil Storage Tanks.
M–I Drilling Fluids Co. (CO)	Anchorage, AK	4/25/94	4/11/94	29,799	Install Drilling Fluids.
Allied Signal Corp. (IAMAW)	South Montrose, PA	4/25/94	3/01/94	29,800	Defense Products.
Auburntown Industries, Inc. (WKRS)	Auburntown, TN	4/25/94	4/13/94	29,801	Ladies' Blouses & Men's Shirts.
Western Geophysical Co. (WKRS)	Houston, TX	4/25/94	4/08/94	29,802	Seismic Exploration For Oil & Gas.
Adcor Drilling, Inc. (WKRS)	Williston, ND	4/25/94	4/10/94	29,803	Drilling of Oil Wells.
Brown Shoe Co. (CO)	Pocahontas, AR	4/25/94	4/05/94	29,804	Ladies Shoes.
Radform Tool Co. (WKRS)	East McKeesport, PA	4/25/94	4/07/94	29,805	Nuclear Power Components.
Miller Redwood (WKRS)	Crescent City, CA	4/25/94	4/12/94	29,806	Redwood, Lumber and Chips.
Pennant/Signal Well Service (WKRS)	Sidney, MT	4/25/94	4/11/94	29,807	Oil Wells Services.
Smith System Mfg. (IAMAW)	Princeton, MN	4/25/94	1/14/94	29,808	Office Accessories.

[FR Doc. 94–11454 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,255]

Lamb-Grays Harbor Company Hoquiam, WA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lamb-Grays Harbor Company, Hoquiam, Washington. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,255; Lamb-Grays Harbor Company Hoquiam, Washington (April 25, 1994)

Signed at Washington, DC this 3rd day of May, 1994.

Violet L. Thompson,

Deputy Director, Office of Adjustment Assistance.

[FR Doc. 94–11453 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–30–M

[SGA No. DAA 94–007]

Job Training Partnership Act: Business Partnership Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), under Title IV of the Job Training Partnership Act (JTPA), is announcing the availability of demonstration funds under the Business Partnership Grants program.

Grants will be awarded to eligile non-profit organizations to support the participation and involvement of the private sector in specific new initiatives involving national employment and training programs. These initiatives are (1) School-to-Work Programs which are sponsored jointly by the Departments of Labor and Education; (2) Skill Standards Initiatives and (3) Reemployment Program Strategy, which includes both Worker Adjustment Services and One-Stop Career Centers.

Multiple grant awards may be made in each category. The estimated total amount of funds available under this solicitation is $1.8 million for all categories. Awards will be for a twelve month period with up to two option years.

Applicants must identify which of the above categories they are applying for on the face sheet of their application. All information and forms needed to apply for funding under this solicitation are included in this announcement.

DATES: Applications for grant awards will be accepted commencing May 11, 1994. The closing date for receipt of applications shall be June 15, 1994, at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Reda Harrison, Reference: SGA No. DAA 94–007, 200 Constitution Avenue, NW., room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Reda Harrison, Division of Acquisition and Assistance, Telephone:

(202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of four parts: Part I—Background, Part II—Application Process, Part III—Statement of Work, and Part IV—Evaluation Criteria.

Part I—Background

The Department of Labor's Employment and Training Administration (ETA), in collaboration with other Federal agencies, has undertaken a series of initiatives: (1) To enhance the effectiveness of and to better coordinate the services provided through a variety of programs and (2) to enhance the competitiveness of the American worker. An important aspect of these initiatives is to elicit the participation and involvement of private sector firms both by a direct approach to major firms and by developing strategies and materials that will provide assistance to State and local officials in dealing with small and medium-size employers.

A key tenet of this effort is that the delivery of programs should be customer-focused. To accomplish this, there is a need to elicit direct input from a broad range of employers on the services available through various ETA programs and to obtain detailed views of these private sector "customers" on ways to ultimately improve services to employment and training clients.

It is important for potential grantees to recognize that the support requested depends to a substantial degree on the enactment of legislation proposed or to be proposed to the Congress. While the Department favors the enactment of such legislation, there is no assurance that such bills will be enacted or that there will not be substantial revisions in the bills enacted into law.

Part II—Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to non-profit organizations.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts.

Part I shall contain the cost proposal, consisting of the following items: Standard Form (SF) 424, "Application for Federal Assistance" (Appendix No. 1) and SF 424A, "Budget" (Appendix No. 2). Also, the budget shall include on a separate page(s) a detailed cost analysis of each line item in the budget.

Part II shall contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this announcement. Applicants are strongly encouraged to submit a technical proposal of less than one hundred fifty (150) pages in length (exclusive of appendices) which sets forth the applicant's explanation of how it proposes to accomplish the elements described in the Statement of Work.

No cost data or reference to price shall be included in the technical proposal. In order to assist applicants in preparing their proposals and to facilitate the expeditious evaluation by the review panel, proposals should be organized and presented in the same sequential order as the Evaluation Criteria in Part IV of this announcement.

C. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they must be received at the designate place by 2 p.m., Eastern Time by June 15, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working day prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal, shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

F. Period of Performance

The period of performance will be 12 months from the date of execution.

G. Funding

DOL has set aside up to $1.8 million to be disbursed for all categories.

H. Option to Extend

Based on the availability of funds, effective program operation, and the needs of the Department, the grants may be extended for up to two option years.

Part III—Statement of Work

Each of the following initiatives has a specific set of parameters, activities, and tasks:

A. School-to-Work

The United States is the only industrialized nation that lacks a comprehensive system to help its youth acquire the knowledge, skills and information about the labor market necessary to make an effective transition from school to career-oriented work. Three-fourths of America's high school students enter the workforce without college degrees.

Many do not possess the basic academic and occupational skills necessary for the workplace or to pursue further education.

The Departments of Labor and Education have made the development of a school-to-work system a high priority. The "School-to-Work Opportunities Initiative" builds on earlier work of the two Departments as well as exemplary programs at the State and local levels. The "School-to-Work Opportunities Act of 1994" was developed by the Departments of Labor and Education and was signed into law by the President on May 4, 1994.

This legislation provides a broad framework for effective school-to-work strategies and seed money for statewide and local implementation of school-to-work systems. During Fiscal Year 1994, the Departments are using pre-existing legislative authority to begin developmental activities.

As envisioned, States and localities will have considerable flexibility to design and implement programs which fit their individual circumstances and unique needs. However all programs will share some basic components:

1. *Work-based learning* that provides a planned program of job training and experience, paid work experience, workplace mentoring and instruction in workplace competencies and in a broad variety of elements of an industry.
2. *School-based learning* that provides career exploration and career counseling, instruction in a career major (selected no later than the 11th grade), a program of study that is based on high academic and skill standards and typically involves at least one year of post secondary education, and periodic evaluations to identify students' academic strengths and weaknesses.
3. *Connecting Activities* that coordinate involvement of employers, schools and students, matching students and work-based learning opportunities, and training teachers, mentors, and counselors.

Students, upon successful completion, will receive a high school diplomas, or its equivalent; a certificate or diploma from a post-secondary institution, if appropriate; and a skill certificate.

At the State level, the Governor, the chief state school officials and state agency officials responsible for job training and employment, economic development, post secondary education and other appropriate offices will collaborate in the planning and development of the state school to work system. At the local level, partnerships that consist of employers, secondary and post secondary education institutions, labor organizations and other local community and business leaders will design and administer school-to-work programs.

The Departments of Labor and Education are supporting State and local developmental and implementation activities by providing grants and through research, evaluation, technical assistance and other support activities. For those States who are ready to move beyond developmental activities, the two Departments are making available a limited number of larger, multi-year implementation grants. States will be selected to receive these grants through a competitive process with an anticipated award date of July 1994.

Employers must play a critical role in designing and implementing school to work strategies. Successful programs will require the active involvement of the business community. Employers, in partnership with labor, must define the skill requirements for jobs, participate equally in the governance of the program, offer quality learning experiences for the students at the worksite, and provide jobs for students and graduates.

Thus, development of an effective school-to-work "system" requires the active involvement of a substantial portion of this nation's business community. Accomplishing this objective is a daunting and challenging task. Employers must be convinced that it is in their best interest to participate in such arrangements.

Employers who agree to participate may need assistance in developing the capacity to transform their workplaces into quality learning environments a well as assuming other partnership roles. Experience to date suggests that a multitude of approaches are needed to effectively mobilize this nation's business community.

State Officials involved in school-to-work transition have indicated that this is an area where federal assistance is needed. Accordingly, applicants interested in this portion of the solicitation shall explain how they intend to accomplish the following objectives:

1. Create awareness among the business community about the "School-to-Work Opportunities Initiative" in general and, more specifically the business role in developing and administering the system;
2. Build demand among the business community to participate in local partnerships;
3. Develop capacity of business to participate as an active partner in local school-to-work opportunities program;
4. Broker the formation of coalitions of business and of local partnerships among business, education, labor (where appropriate) and community organizations to develop and administer local school-to-work opportunities programs.

Provide direct assistance to State and local programs in achieving employer involvement and assistance in developing effective local programs. This may entail training of State and local staff, on-site involvement to obtain major employer representation and participation in the local School-to-Work Program and other assistance as requested by local or state programs.

States and localities will be organizing their implementation of school-to-work systems around broad industry/occupational clusters. Accordingly, the Department is seeking to complement State and local effort by providing business related assistance focused around broad industry clusters.

Thus, the Department is seeking applicants that can organize their efforts around broad industry groups that would at least include: Manufacturing, service, retail and wholesale trade, and finance, insurance and real estate. Within each sector, applicants must be able to demonstrate their ability to enlist the support of both leading edge companies and small and mid-size firms.

In addition, applicants must indicate the major occupational clusters within each industry sector that the organization believes offers the greatest potential for inclusion in school-to-work transition opportunities programs. The Department is seeking to work closely with the applicant(s) that is selected for these partnership activities, but not to prescribe the methods the applicant will employ to accomplish the objectives laid out above. The Department recognizes that those applicants which have demonstrated the capability to deliver services have established methods and processes for reaching and supporting the employer community.

Each applicant proposal for this section of the Statement of Work must include:

1. A comprehensive implementation plan for providing targeted assistance to States as they move forward to implement their school-to-work transition systems. Such plan must have specific actions what will be accomplished within the grant period.
2. A brief description of all proposed technical assistance guides, videos, promotional materials, newsletters and other materials and publications developed under this grant. Complete drafts of these materials are to be submitted for review and, as necessary revision prior to publication/release.
3. A listing of significant events sponsored by the organization that relates to the objectives of this grant, regardless of whether this is the primary purpose of the event.
4. A plan for assessment of the incentives, both financial and nonfinancial, that will be required to recruit their members participation in local school-to-work opportunities programs, on a large-scale basis.

B. Skill Standards

The Department wants to promote the active involvement of business organizations in the development of national voluntary skill standards. Once established these standards are designed to meet the needs of the current and potential workforce, from high school dropouts to graduates of school-to-work programs, from dislocated workers to workers progressing along a career path. Business participation and leadership in these activities is critical to achieving our major objectives of a common language of skill classification and a portable credential.

Therefore, proposals submitted in response to this section of the Statement of Work should include a strategy, implementation plan and timetable for the following elements:

1. *Marketing.* To include information sharing, promotion and generate interest among the business community, broadly defined, of activities in this area and informing workers of the benefits of the system for enhancing their ability to enter or reenter the workforce or move up in a career progression;

2. *Coalition Building.* To prepare the business community for participation in voluntary partnerships encourage by the National Skill Standards Board to be established under the GOALS 2000: Educate American Act (this would include stimulating business participation as well as courting business partnerships with representatives from the education and training community, State and local governments, community-based organizations and organized labor);

3. *Research.* To draw the linkage between high performance work organization, skill standards and competitiveness gains, and to examine the connection between the human resource requirements of ISO 9000 and the Malcolm Baldrige Award using skill standards as a tool.

C. Reemployment Program Activities

Each year more than one-fourth of the workforce move to new jobs either to advance careers or to rebound from a job loss. The Administration plans a major investment to help experienced workers move from one job to the next to equip workers with skills needed for the new jobs of the future.

Currently, over 60 Federal programs deliver job training and employment services to Americans—each with its own funding mechanisms, eligibility criteria and range of services. DOL/ETA presently administers six separate programs focused on dislocated workers: Economic Dislocation and Worker Adjustment Assistance, Defense Conversion Program, Defense Diversification Program, Clean Air Employment Transition Assistance, Trade Adjustment Assistance and North Atlantic Free Trade Act-Bridge.

Applicants seeking to submit a proposal for this portion of the solicitation shall include the following:

1. *One-Stop Career Centers.* Grantees will propose a strategy for developing effective local support for one-stop career centers and the local level governance approach to such centers. This will require the development of an approach to building business support for Workforce Investment Boards, where they are created and for training of both members of such boards and staff.

(a) The grantees will develop and introduce a strategic planning model to assist local areas on implementing effective governance of one stop career centers and the relationship of such centers to the needed services. This will include the dissemination of workforce investment principles and presentations to major employer organizations and their membership of these principles to obtain support and participation.

(b) Develop and disseminate, in consultation with ETA, models (or best practices) for implementing workforce Investment Boards, with specific emphasis on the relationship with existing structures such as Private Industry Councils or other existing local boards;

(c) Develop and provide methods to build capacity and/or orient board members to ensure success; and,

(d) Provide recommendations on staffing needs for such local bodies.

(2) *Worker Adjustment.* The Worker Adjustment initiative will require grantees, in consultation with ETA, to undertake research efforts and disseminate technical assistance and training materials to support worker adjustment services for experienced workers. Proposals shall include:

(a) Review of the delivery structure for delivery of rapid response assistance, how it is controlled, what role substate grantees play and "best practices" of effective Dislocated Worker Units.

(b) Examination of effective layoff aversion through rapid response and dissemination of what has been tried, what has worked, who does it and how much it costs.

(c) Technical assistance material on relocation opportunities for discrete groups of dislocated technical, professional and managerial workers. To what extent have organizations developed systems to match clusters of dislocated professionals with job openings in other areas and what can be undertaken to expand or enhance these efforts.

(d) Examination of various approaches and development of a specific approach for obtaining customer feedback (including participants, hiring employers and discharging employers) concerning their services offered and the timing of such services.

(e) Examination of the delivery structure for dislocated worker services—What organizations are substate grantees under Title III? How many are Title II administrative entities? How many use essentially the same process for dislocated workers as disadvantaged workers? What is the delivery structure for workers receiving services under TAA? What recommendations can be made for improving or restructuring the delivery of these services, especially under a comprehensive program approach?

PART IV—EVALUATION CRITERIA

Prospective offerors are advised that the selection of grantees for awards is to be made after careful evaluation of proposals by an evaluation panel within DOL. Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The panel results are advisory in nature and not binding on the Grant Officer. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. Panelists will evaluate the proposals on the basis of the following factors:

A. Design and Approach of Project (40 points)

Applicant's planned approach for accomplishing the objectives set forth in the Statement of Work. This includes a basic understanding of the initiatives as reflected in the planning, development and implementation of the program(s): The soundness of the plan to accomplish the goals and the objectives and the establishment of measurable outcomes.

B. Content, Scope and Quality of Proposed Project (40 points)

Consideration will be given to such factors as: organizational structure, program components and activities, staffing and resources and the ability of offer to accomplish the goals and objectives of the Initiatives.

C. Demonstrated Capacity to Establish Linkages and Leverage Resources (20 points)

The ability of the offerer to complete the objectives set forth in the Statement of Work, to provide necessary linkages with complementary programs, the business community, schools, State and local training agencies and other organizations providing employment and training services. Also evaluated will be the soundness of plans for linking community resources and their active participation in program objectives.

D. Costs

Costs shall be rated separately. Costs will be analyzed to determine reasonableness. Available resources should be adequate for the services proposed in the application.

Please indicate costs separately for each major activity area (School-to-Work, skill standards or Reemployment program). The cost in each areas must be reasonable in view of the anticipated results. Applicants should document their expected costs and justify why they consider these costs reasonable.

Applicants must indicate for each major area the principle personnel to be assigned. If the work or most of the work would be performed by a subgrantee, include information on the proposed subgrantee organization and its principle personnel to be assigned to the planned work.

Applicants are advised that awards may be made to more than one organization for a given cluster, i.e. Skill Standards, and that awards may be made in all or selected clusters. Awards may not be made in a cluster area in which proposals are rated technically unacceptable.

Signed at Washington, DC this 5th day of May.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. SF–424, Application for Federal Assistance
B. SF–424A, Budget

BILLING CODE 4510–30–M

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): ______________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date

Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ______________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative

b. Title

c. Telephone number

d. Signature of Authorized Representative

e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

APPENDIX B

BUDGET INFORMATION - Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1.__________	$__________	$__________	$__________	$__________
2.__________	$__________	$__________	$__________	$__________

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 94-11456 Filed 5-10-94; 8:45 am]

BILLING CODE 4510-30-C

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the first or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,480; Metacomet Manufacturing Co., Inc., Fall River, MA

TA–W–29,579; GEM Industries North East, Gardner, MA

TA–W–29,460; Elgin Electronics, Erie, PA

TA–W–29,418; RHOR, Inc., Chula Vista, CA

TA–W–29,487; Middleton Aerospace Corp., Middleton, MA

TA–W–29,439; American Central Gas Companies, Inc., West Texas Div., Odessa, TX

TA–W–29,482; BASF Corp., Lowland, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,475, TA–W–29,476; Mewbourne Oil Co., Oklahoma City, OK and Midland, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,360; Flint Ink Corp., Lodi, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,634; Consolidated Services, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,458; The Pillsbury Co., East Greenville, PA

U.S. imports of prepared flour mixes and doughs are negligible relative to total U.S. shipments in the relevant time period.

TA–W–29,528; The Breyers Co., Charlotte, NC

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–29,465; Northrop Corp., 100 Morse St., (Bld #3), Norwood, MA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–29,549; Atlantic Design Co., Vestal, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–29,512; Johnson & Sons, Inc., (Formerly The Drackett Co., Inc., Urbana, OH)

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,462; Intermet Foundries, Lower Basin Foundry, Lynchburg, VA

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,506; B.C. Manufacturing, Plains, PA

A certification was issued covering all workers separated on or after February 2, 1993.

TA–W–29,612; P.B. Apparel, Inc., Poplar Bluff, MO

A certification was issued covering all workers separated on or after February 21, 1993.

TA–W–29,585; Hylton Drilling Co., Bakersfield, CA

A certification was issued covering all workers separated on or after February 23, 1993.

TA–W–29,591; Movie Star No. 2, Poplarville, MS

A certification was issued covering all workers separated on or after March 3, 1993.

TA–W–29,502, TA–W–29,503; Tococo, Inc., Wilmore, KY and Midway, KY

A certification was issued covering all workers separated on or after January 31, 1993.

TA–W–29,456; Stoltze-Conner Lumber Co., Darby, MT

A certification was issued covering all workers separated on or after January 10, 1993.

TA–W–29,545; Andrea Manufacturing, Decatur, IL

A certification was issued covering all workers separated on or after February 17, 1993.

TA–W–29,507; Maura Manufacturing, Wilkes Barre, PA

A certification was issued covering all workers separated on or after February 2, 1993.

TA–W–29,604 Durango Apparel, Inc., El Paso, TX

A certification was issued covering all workers separated on or after February 24, 1993.

TA–W–29,523; Scanti Lingerie Co., Inc., Battleboro, NC

A certification was issued covering all workers separated on or after February 4, 1993.

TA–W–29,647; Bonis Sportswear, Inc., Tampa, FL

A certification was issued covering all workers separated on or after March 18, 1003.

TA–W–29,484; Landmark Oil Exploration, Wichita, KS

A certification was issued covering all workers separated on or after February 2, 1993

TA–W–29,707; GTI Corp., Diode Seal Dept., Hadley, PA

A certification was issued covering all workers separated on or after March 9, 1993.

TA–W–29,491; Shieldalloy Metallurgical Corp., Cambridge, OH

A certification was issued covering all workers separated on or after January 2, 1993.

TA–W–29,616, TA–Q–29,617; Denise Barry Fashions, Inc., Nazareth, PA and Sportette Industries, Inc., Bath, PA

A certification was issued covering all workers separated on or after March 1, 1998

TA–W–29,618, TA–W–29,619; Sportette Industries, Inc., Nazareth, PA and Ironhead, Inc., Coplay, PA

A certification was issued covering all workers separated on or after March 1, 1998.

Arco Oil & Gas Co

TA–W–29,431; Atlantic Richfield Co., Dallas, TX

TA–W–29,432; Arco Permian, Midland, TX

TA–W–29,433; Atlantic Richfield, Bakersfield, CA

TA–W–29,434; Arco Exploration & Production Technology, Plano, TX

A certification was issued covering all worker separated on or after February 21, 1994.

Also, pursuant to Title V of the North American Free Trade Aggrement Implementation Act (Pub. Law. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a) subchapter D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, or such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA–TAA–00060; B and B Garment Works, Inc., Parsons, TN

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. The investigation further revealed that the contractors from who B and B Garment Works received production orders did not contract work with firms in Mexico or Canada. The contractors are experiencing increased production orders.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00053; Simpkins Industries, Westfield River Paper Co., Inc., Russell, MA

A certification was issued covering all workers of Simpkins Industries, Westfield River Paper Co., Inc., Russell, MA separated on or after December 8, 1993.

NAFTA–TAA–00068; Innotech, Inc., Roanoke, VA

A certification was issued covering all workers related to the finishing of semi-finished plastic lenses at Innotech, Inc., Roanoke, VA separated on or after December 8, 1993.

NAFTA–TAA–00059; Boss Manufacturing Co., El Paso, TX

A certification was issued covering all workers of Boss Manufacturing Co., El Paso, TX separated on or after December 8, 1993.

NAFTA–TAA–00061; Wotco, Inc., Casper, WY

A certification was issued covering all workers engaged in employment related to the production of 240 ton truck bodies at Wotco, Inc., Casper, WY separated on or after December 8, 1993.

NAFTA–TAA–00058; Frigidaire Co., Athens Range Productions, Athens, TN

A certification was issued covering all workers related to fabricated parts production at Frigidaire Co., Athens Range Products, Athens, TN separated on or after December 8, 1993.

I further determine that all workers engaged in employment related to assembly operations at Frigidaire Co., Athens Range Products, Athens, TN are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

NAFTA–TAA–00062; Reliance COMM/TEC, Reliable Electric Div., St. Stephen, SC

A certification was issued covering all workers engaged in employment related to the production of the RLS–50 self strip terminal block, the BT 25 binding post terminal block, & the CQF 50 binding post terminal block at the St. Stephen, SC plant of the Reliable Electric Div of Reliance COMM/TEC separated on or after December 8, 1993.

I further determine that all workers engaged in employment related to the production of articles other than the RLS–50 self-strip terminal block, the BT 25 binding post terminal block, and the CQF 50 binding post terminal block at the St. Stephen, SC plant are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

I hereby certify that the aforementioned determinations were issued during the month of April, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 3, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–11452 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration
Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Rate Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. GA940063 and MI940033, dated Feb. 11, 1994. Arenac, Gladwin and Ogemaw Counties, previously in MI940033, are now added to MI940003 for building construction.

Agencies with construction projects pending, to which Wage Determination GA940063 would have been applicable, should utilize the project determination procedure by submitting an SF-308. (See Regulations, 29 CFR part 1, section 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume IV

Missouri
  MO940070 (May 13, 1994)
  MO940071 (May 13, 1994)
  MO940072 (May 13, 1994)
  MO940073 (May 13, 1994)
  MO940074 (May 13, 1994)
  MO940075 (May 13, 1994)
  MO940076 (May 13, 1994)
Texas
  TX940112 (May 13, 1994)
  TX940113 (May 13, 1994)
  TX940114 (May 13, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
  NJ940004 (Feb. 11, 1994)
New York
  NY940003 (Feb. 11, 1994)
  NY940004 (Feb. 11, 1994)
  NY940013 (Feb. 11, 1994)
  NY940018 (Feb. 11, 1994)
  NY940022 (Feb. 11, 1994)

Volume II

District of Columbia
  DC940001 (Feb. 11, 1994)
Maryland
  MD940016 (Feb. 11, 1994)
  MD940017 (Feb. 11, 1994)
  MD940034 (Feb. 11, 1994)
  MD940048 (Feb. 11, 1994)
Virginia
  VA940025 (Feb. 11, 1994)
  VA940048 (Feb. 11, 1994)
  VA940052 (Feb. 11, 1994)
  VA940104 (Feb. 11, 1994)
  VA940105 (Feb. 11, 1994)
  VA940108 (Apr. 15, 1994)

Volume III

Alabama
  AL940034 (Mar. 25, 1994)
  AL940036 (Mar. 25, 1994)
Georgia
  GA940031 (Feb. 11, 1994)
  GA940053 (Feb. 11, 1994)
  GA940065 (Feb. 11, 1994)

Volume IV

Illinois
  IL940001 (Feb. 11, 1994)
  IL940007 (Feb. 11, 1994)
  IL940015 (Feb. 11, 1994)
  IL940060 (Feb. 11, 1994)
Indiana
  IN940004 (Feb. 11, 1994)
Michigan
  MI940001 (Feb. 11, 1994)
  MI940002 (Feb. 11, 1994)
  MI940003 (Feb. 11, 1994)
  MI940004 (Feb. 11, 1994)
  MI940005 (Feb. 11, 1994)
  MI940007 (Feb. 11, 1994)
  MI940012 (Feb. 11, 1994)
  MI940017 (Feb. 11, 1994)
  MI940031 (Feb. 11, 1994)
  MI940046 (Feb. 11, 1994)
  MI940047 (Feb. 11, 1994)

Volume V

Arkansas
  AR940001 (Feb. 11, 1994)
  AR940008 (Feb. 11, 1994)
Iowa
  IA940006 (Feb. 11, 1994)
  IA940018 (Feb. 11, 1994)
Kansas
  KS940008 (Feb. 11, 1994)
  KS940012 (Feb. 11, 1994)
Missouri
  MO940053 (Apr. 22, 1994)
  MO940054 (Apr. 22, 1994)
Oklahoma
  OK940022 (Feb. 22, 1994)
Texas
  TX940023 (Feb. 11, 1994)
  TX940073 (Feb. 11, 1994)
  TX940097 (Feb. 11, 1994)

Volume VI

Alaska
  AK940001 (Apr. 11, 1994)
Colorado
  CO940001 (Feb. 11, 1994)
  CO940002 (Feb. 11, 1994)
  CO940003 (Feb. 11, 1994)
  CO940004 (Feb. 11, 1994)

CO940005 (Feb. 11, 1994)
CO940006 (Feb. 11, 1994)
CO940007 (Feb. 11, 1994)
CO940009 (Feb. 11, 1994)
CO940010 (Feb. 11, 1994)
CO940025 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)
Washington
WA940001 (Feb. 11, 1994)
WA940003 (Feb. 11, 1994)
WA940005 (Feb. 11, 1994)
WA940007 (Feb. 11, 1994)
WA940008 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th day of May 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94-11450 Filed 5-10-94; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than May 23, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than May 23, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Pope & Talbot; Wood Products (Co.)	Port Gamble, WA	04/14/94	NAFTA-00086	Dimension lumber for domestic markets.
Howes Leather Company, Inc.; Ashland Hide Company (Wkrs.).	Asland, KY	04/26/94	NAFTA-00087	Sole leather used in manufacturing of footwear.
Andrea Mfg.; Joyce Mfg. (ILGWU)	Decatur, IL	04/18/94	NAFTA-00088	Womens sportswear—jacket, skirt, pants, vest, short, blouse.
Lyons Falls Pulp & Paper (UPIU)	Lyons Falls, NY	04/19/94	NAFTA-00089	Chlorine free paper.
Kraft General Foods; Desserts (frozen), Snacks (Wkrs.).	Avon, NY	04/26/94	NAFTA-00090	Frozen novelties (pudding pops, jello pops, etc.).
L. Grief Co. (Wkrs.)	Shippensburg, PA	04/26/94	NAFTA-00091	Mens suit pants, slacks, and vests
Inda Limited; Season All Industries (Wkrs.).	Indiana, PA	04/26/94	NAFTA-00092	Windows (glass) for commercial, public buildings (schools, office buildings, etc.).
Mallinckrodt Anesthesiology; Mallinckrodt Medical, Inc. (Co.).	New Athens, IL	04/22/94	NAFTA-00093	Temperature sensor products (disposable temperature probe, a medical device used primarily on patients while in surgery).

[FR Doc. 94–11455 Filed 5–10–94; 8:45 am]
BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–1B]

Copyright Arbitration Royalty Panels; List of Arbitrator Names

AGENCY: Copyright Office, Library of Congress.

ACTION: Determination of CARP arbitrator list.

SUMMARY: The Copyright Office of the Library of Congress is publishing the list of arbitrators eligible for selection to a Copyright Arbitration Royalty Panel (CARP) during 1994. This CARP arbitrator list will be used to select all arbitrators required for any royalty fee distribution proceeding initiated under 17 U.S.C. 802 and beginning during calendar year 1994.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Acting General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540, (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Public Law No. 103–198, 107 Stat. 2304 (1993), creates a system of Copyright Arbitration Royalty Panels (CARPs), administered by the Librarian of Congress and the Copyright Office, for the distribution of copyright royalty fees collected by the Copyright Office under the various compulsory licenses of the Copyright Code, 17 U.S.C., and for adjustment of compulsory license royalty rates. For royalty rate adjustments and distributions that are in controversy, section 802(b) of the Copyright Code requires the selection of a CARP consisting of three arbitrators from "lists provided by professional arbitration associations." The Librarian selects two arbitrators, who in turn select the third to serve as their chairperson. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

List of Nominated Arbitrators

To implement the CARP selection process of section 802(b), the Copyright Office recently issued a set of interim regulations. 59 FR 23964 (1994). Subpart A of part 251 of these regulations describes the selection and organization of the CARPs. 37 CFR part 251. For 1994, arbitration associations were asked to submit a list of persons qualified to serve on a CARP, as described in § 251.5, by May 6. The regulation required that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

37 CFR 251.3(a).

Section 251.3(b) directs:

> After May 6, 1994 * * * the Librarian of Congress shall publish in the **Federal Register** a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter.

The publication of today's list satisfies the requirements of § 251.3. Although § 251.3(b) sets an upper limit of 75 names, the Copyright Office is publishing an arbitrator list containing 107 names. The short period of time between receipt of the names from the arbitrator associations and the need to publish the arbitrator list precluded the possibility of prescreening the list to stay within the 75 person maximum. The Office is therefore waiving the maximum limitation for this year and is publishing all the names submitted by the arbitration associations that met the eligibility criteria of § 251.5. Arbitration associations submitted names of people that they found to satisfy the CARP eligibility requirements described in § 251.5 including ability to serve on a CARP at any time during 1994.[1]

As noted above in the quotation from § 251.3(b), today's list constitutes the CARP "arbitrator list" for purposes of subchapter B. The information submitted by an arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. See § 251.3(b) of the new regulations. Thus, for example, if the Librarian is required to convene a CARP this year for a royalty fee distribution, parties to that proceeding may contact the Licensing Division of the Copyright Office, LM–458, to review that information as a means of formulating objections to listed arbitrators under § 251.4.

Deadline for Filing Financial Disclosure Statement

Publication of today's list also triggers a requirement imposed by the new regulation on the individuals named in the list. Section 251.32(a) of the CARP rules provides that, within one month of date of publication in **Federal Register**, each listed person must "file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress." The Copyright Office is sending a financial disclosure statement, with specific instructions for completing and filing the statement, to every arbitrator on the CARP arbitrator list. The disclosure statement will be used by the Librarian for purposes of determining what conflicts of interest, if any, may preclude the person from serving as an arbitrator in a CARP proceeding. Unlike the information submitted by arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding.

The arbitrators identified on the arbitrator list published today have until June 13, 1994, to file their financial disclosure statement with the Librarian. Failure to file the statement on time may preclude consideration of the person to serve on a CARP.

The CARP arbitrator list for 1994 includes:

Name and Affiliation

Mark Aarons, Esq.—*American Arbitration Association*
Eugene N. Aleinikoff, Esq.—*American Arbitration Association*
Allen H. Arrow, Esq.—*American Arbitration Association*

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[1] This also includes any "spill over" into 1995 that may occur as a result of a CARP proceeding beginning late this year.

John S. Barr, Esq.—*American Arbitration Association*

Professor Hadley Batchelder—*"Judge-Net"*

Gerald E. Battist, Esq.—*American Intellectual Property Law Association*

William W. Becker, Esq.—*American Arbitration Association*

Rosalyn B. Bell, Esq.—*American Arbitration Association*

Richard Bennett, Esq.—*American Arbitration Association*

Richard M. Berman, Esq.—*American Arbitration Association*

Terrell C. Birch, Esq.—*American Arbitration Association*

Bruce Brickman, Esq.—*American Arbitration Association*

Stuart N. Brotman, Esq.—*American Arbitration Association*

The Honorable J. Robert Brown—*Judicate, Inc.*

E. Fulton Brylawski, Esq.—*American Film Martketing Association*

The Honorable Charles Clark—*Center for Public Resources, Inc.*

Herbert B. Cohn, Esq.—*American Arbitration Association*

Edward T. Colbert, Esq.—*American Arbitration Association*

Joel Davidow, Esq.—*American Arbitration Association*

James F. Davis, Esq.—*Center for Public Resources, Inc.*

Robert E. Donnelly, Esq.—*American Arbitration Association*

The Honorable Michael Dontzin—*Endispute, Inc.*

Edward Dreyfus, Esq.—*American Arbitration Association*

Corydon B. Dunham, Esq.—*American Arbitration Association*

Katheryn M. Dutenhaver, Esq.—*Endispute, Inc.*

Stuart D. Dwork, Esq.—*American Arbitration Association*

The Honorable Lenore G. Ehrig—*Judicate, Inc. and American Arbitration Association*

The Honorable Jesse Etelson—*Judicate, Inc.*

John B. Farmakides, Esq.—*American Arbitration Association*

Paul W. Fish, Esq.—*American Intellectual Property Law Association*

The Honorable Marvin E. Frankel—*Endispute, Inc.*

The Honorable Donald W. Frenzen—*American Arbitration Association*

The Honorable George R. Gallagher—*Judicate, Inc.*

David A. Gauntlett, Esq.—*"Judge-Net"*

Charles L. Gholz, Esq.—*American Intellectual Property Law Association*

Eric D. Green, Esq.—*Endispute, Inc.*

Joseph A. Greenwald, Esq.—*American Arbitration Association*

The Honorable Philip A. Gruccio—*Endispute, Inc.*

The Honorable Jeffery S. Gulin—*Judicate, Inc.*

Michael R. Hafitz, Esq.—*American Arbitration Association*

William E. Hartgering, Esq.—*Endispute, Inc.*

Joseph S. Hellman, Esq.—*Endispute, Inc.*

David C. Hilliard, Esq.—*Center for Public Resources, Inc.*

Lawrence K. Harris, Esq.—*American Arbitration Association*

James R. Hobson, Esq.—*American Arbitration Association*

David H. Horowitz, Esq.—*American Arbitration Association*

George A. Hovanec, Esq.—*American Intellectual Property Law Association*

Scott Hunter, Esq.—*"Judge-Net"*

The Honorable Laurance M. Hyde, Jr., (Retired)—*"Judge-Net"*

The Honorable Bernard H. Jackson—*Endispute, Inc.*

The Honorable Mel R. Jiganti—*Endispute, Inc.*

James H. Johnston, Esq.—*American Arbitration Association*

John J. Jordan, Esq.—*American Arbitration Association*

Judy A. Julian, Esq.—*Endispute, Inc.*

The Honorable Catherine B. Kelly—*Judicate, Inc.*

Robin Rae, Kravitz, Esq.—*American Arbitration Association*

Robert M. Landis, Esq.—*Center for Public Resources, Inc.*

The Honorable William B. Lawless, (Retired)—*"Judge-Net"*

Allen Lenchek, Esq.—*Judicate, Inc.*

Arthur J. Levine, Esq.—*Center for Public Resources, Inc.*

Michael K. Lewis, Esq.—*Center for Public Resources, Inc.*

Burton L. Litwin, Esq.—*American Arbitration Association*

Lee Loevinger, Esq.—*American Arbitration Association*

The Honorable Reuben Lozner—*Judicate, Inc.*

The Honorable James P. Lynch, Jr.—*Endispute, Inc.*

Thomas J. Macpeak, Esq.—*American Intellectual Property Law Association*

Jonathan A. Marks, Esq.—*Endispute, Inc.*

The Honorable Frank J. McGarr—*Center for Public Resources, Inc. and Endispute, Inc.*

The Honorable H. Curtis Meanor—*Center for Public Resources, Inc.*

Bernard A. Meany, Esq.—*American Intellectual Property Law Association and American Arbitration Association*

Barry William Messinger, Esq.—*American Arbitration Association*

The Honorable Andrew Gill Meyer—*Endispute, Inc.*

Frederick G. Michaud, Esq.—*American Intellectual Property Law Association*

Kenneth E. Milan, Esq.—*Center for Public Resources, Inc.*

Charles B. Molineaux, Esq.—*American Arbitration Association*

Albert I. Moon, Jr., Esq.—*"Judge-Net"*

The Honorable Sharon T. Nelson—*Judicate, Inc. and American Arbitration Association*

Larry S. Nixon, Esq.—*American Intellectual Property Law Association*

Harry R. Olsson, Jr., Esq.—*American Arbitration Association*

The Honorable Paul N. Pfeiffer—*Judicate, Inc.*

Robert R. Priddy, Esq.—*American Intellectual Property Law Association*

G. Franklin Rothwell, Esq.—*American Intellectual Property Law Association*

E. Leonard Rubin, Esq.—*Center for Public Resources, Inc.*

Joseph B. Russell, Esq.—*American Arbitration Association*

The Honorable James V. Ryan—*Endispute, Inc.*

Perry J. Saidman, Esq.—*American Intellectual Property Law Association*

Jeffrey M. Samuels, Esq.—*American Intellectual Property Law Association*

The Honorable Alex H. Sands, Jr.—*Judicate, Inc.*

The Honorable Herbert Silberman—*Judicate, Inc.*

Linda R. Singer, Esq.—*Center for Public Resources, Inc.*

Michael R. Slobasky, Esq.—*American Intellectual Property Law Association*

The Honorable Harvey Smith—*Endispute, Inc.*

The Honorable Louis Spector—*Judicate, Inc.*

Jeffrey L. Squires, Esq.—*American Arbitration Association*

The Honorable Alfred T. Sulmonetti, (Retired)—*"Judge-Net"*

Patricia A. Szervo, Esq.—*American Arbitration Association*

The Honorable Robert E. Tarleton—*Endispute, Inc.*

The Honorable J. Owen Todd—*Endispute, Inc.*

John M. Townsend, Esq.—*American Arbitration Association*

Paul C. Van Slyke, Esq.—*Center for Public Resources, Inc.*

James C. Wray, Esq.—*American Intellectual Property Law Association*

The Honorable Ronald P. Wertheim—*Judicate, Inc.*

Mary L. Wilson, Esq.—*American Arbitration Association*

James C. Wray, Esq.—*American Intellectual Property Law Association*

Michael D. Young, Esq.—*Endispute, Inc.*

Bruce Zagaris, Esq.—*American Arbitration Association*

Dated: May 6, 1996.

Barbara Ringer,

Acting Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-11542 Filed 5-10-94; 8:45 am]

BILLING CODE 1410-09-P

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting of National Commission on Manufactured Housing

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In announces with the Federal Advisory Committee Act, Public Law 101-625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES: May 24, 1994, 8:30 a.m. 5 p.m., Full Commission Meeting; May 25, 1994, 8:30 a.m. 5 p.m., Full Commission Meeting; May 26, 1994, 8:30 3 p.m., Full Commission Meeting.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 94–11384 Filed 5–10–94; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by June 6, 1994, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 1, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:.

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 95 & 96 Arts Education Partnership Grants Application Guidelines.

Frequency of collection: Annually.

Respondents: State arts agencies.

Use: Guideline instructions and applications elicit relevant information from state arts agencies that apply in the Arts in Education Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated number of respondents: 28.

Average burden hours per response: 28.

Total estimated burden: 784.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–11993 Filed 5–10–94; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by June 6, 1994, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 1, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, Nation Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to U.S.C. 3504(h).

Title: U.S./Canada/Mexico Creative Artists' Residencies: Host Organizations Application Guidelines FY 1995.

Frequency of Collection: Annually.

Respondents: Non profit arts organizations.

Use: Guideline instructions and applications elicit relevant information from non profit arts organizations apply in the International Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated number of respondents: 110.

Average burden hours per response: 24

Total estimated burden: 2,640.

Judith E. O'Brien

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–11394 Filed 5–10–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Capstone Project Section) to the National Council on the Arts will be held on May 26, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the pblic from 9 a.m. to 9:45 a.m., for Opening Remarks and a General Program Overview and from 4:30 p.m. to 5:30 p.m. for a Policy Discussion.

The remaining portion of this meeting from 9:45 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundantion on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public purusant to subsection (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodaions due to a disability, please contact the Office of Special Constituencies, National Endowment of the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obatined from Ms. Yvonne Sabine, Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439,

Dated: May 4, 1994.

Yvonne M. Sabine,

Director Office of Panel Operations National Endowment for the Arts.

[FR Doc. 94-11333 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Folk and Traditional Arts Advisory Panel (Folk Arts Organizations Section) to the National Council on the Arts will meet on June 7–10, 1994. The panel will meet from 8:30 a.m. to 6:30 p.m. on June 7–9, 1994 nd from 8:30 a.m. to 4 p.m. on June 10, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC. 20506, or call (202) 682–5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director Panel Operations National Endowment for the Arts.

[FR Doc. 94–11334 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographer's Fellowships Section) to the National Council on the Arts will be held on June 6–10, 1994. The panel will meet from 9 a.m. to 8:30 p.m. on June 6–9 and from 9 a.m. to 6 p.m. on June 10 in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m. to 6 p.m. on June 10 for a Policy Discussion.

The remaining portions of this meeting from 9 a.m. to 8:30 p.m. on June 6–9 and from 9 a.m. to 2 p.m. on June 10, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11335 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographer's Fellowship Prescreening Section) to the National Council on the Arts will be held on June 1–3, 1994. The panel will meet from 3 p.m. to 8 p.m. on June 1 and from 9 a.m. to 8 p.m. on June 2–3. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applications. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington DC 20506, or call 202/682–5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11336 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Master Teachers/ Mentors Section) to the National Council on the Arts will be held on June 1, 1994. The panel will meet from 9 a.m. to 2 p.m. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and

Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439

Dated: May 4, 1994

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11337 Filed 5–10–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 04003453]

Atlas Corp.; Receipt of Application From Atlas Corp. To Amend Condition 55 of Source Material License No. SUA–917

Notice is hereby given that the U.S Nuclear Regulatory Commission (the Commission) has received, by letter dated April 22, 1994, an application from Atlas Corporation (Atlas) to amend Condition 55 of Source Material license No. SUA–917.

The license amendment application proposes:

1. to modify License Condition 55 to change the completion dates for several site reclamation milestones. The new dates proposed by Atlas would be an extension of one year and would read as follows:

A. (1) Windblown tailings retrieval and placement on the pile—December 31, 1996.

(2) Placement of the interim cover—April 30, 1995.

(3) Placement of final radon barrier—December 31, 1997.

B. (1) Placement of erosion protection—December 31, 2000

(2) Projected completion of groundwater corrective actions—December 31, 1999.

FOR FURTHER INFORMATION, CONTACT: Allan T. Mullins, High Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6693.

Atlas Corporation's application to amend Condition 55 of Source Material License SUA–917, which describes the proposed changes to the license condition and the reason for the request is being made available for public inspection at the Commission's Public Document room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

The licensee and any person whose interest may be affected by the issuance of this license amendment may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); be served on the licensee (Atlas Corporation, Republic Plaza, 370 Seventeenth Street, suite 3150, Denver, Colorado 80202); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the request should be granted, with particular reference to the following factors:

1. The nature of the petitioner's right, under the Atomic Energy Act, to be made a party to the proceeding;
2. The nature and extent of the petitioner's property, financial or other interest in the proceeding; and
3. The possible effect, on the petitioner's interest, of any order which may be entered in the proceeding.

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing

Dated at Rockville, Maryland, this 3rd day of May 1994

For the Nuclear Regulatory Commission.

Kenneth R. Hooks,

Acting Chief, High Level Waste and Uranium, Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards

[FR Doc. 94–11436 Filed 5–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. IA–94–003; ASLBP No. 94–691–04–EA]

In the Matter of Robert C. Dailey; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

This Board is being established pursuant to the request of Robert C. Dailey in response to an immediately effective order. On March 29, 1994, the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research issued IA 94–003 to Mr. Dailey, entitled "Robert C. Dailey; Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately)." 59 FR 14688, March 29, 1994. The Order prohibits Mr. Dailey from participation in any respect in any NRC-licensed activities.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 4th day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel

[FR Doc. 94–11435 Filed 5–10–94, 8:45 am]

BILLING CODE 7590–01–M

[Docket No. EA–93–236; ASLBP No. 94–692–05–EA]

In the Matter of Nuclear Support Services, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

This Board is being established pursuant to the request of Nuclear Support Services, Inc. ("NSSI") in response to an immediately effective order. On March 28, 1994, the Deputy

Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research issued to NSSI EA 93-236, entitled "Order Requiring the Removal of An Individual from NRC-licensed or Regulated Activities and Order Directing Review of Personnel Security Files (Effective Immediately)." 59 FR 14429, March 28, 1994. The Order directs NSSI to take certain actions related to another order directed to an NSSI employee on March 29, 1994, entitled "Robert C. Dailey; Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately)." 59 FR 14688, March 29, 1994.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 4th day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94-11434 Filed 5-10-94; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33984; File No. SR-GSCC-94-1]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving Proposed Rule Change Relating to the Comparison and Netting of Members' Treasury Auction Purchases

May 2, 1994.

On January 26, 1994, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On February 18, 1994, GSCC filed Amendment No. 1 to the proposed rule change.[2] The Commission published notice of the proposed rule change in the **Federal Register** on March 10, 1994.[3] The Commission received one comment letter in response to this notice.[4] As discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies GSCC's rules to allow GSCC to accept and report data on proprietary purchases of Treasury notes, bills, and bonds made at auction by members of GSCC's netting system; to net the purchases with when-issued trades of such members in the member securities; and to deliver purchased securities through GSCC's clearing mechanism (the "auction takedown system"). GSCC has established links with the Federal Reserve Banks of New York, Chicago, and San Francisco in order to provide the auction takedown system, and will establish links with other Federal Reserve Banks as needed. GSCC intends to implement the auction takedown system in the Spring of 1994.

The proposed rule change also authorizes GSCC to establish a mechanism for accepting data on members' trades in eligible securities from sources such as exchanges and other clearing corporations on a "locked-in" basis. This means that GSCC members would be obligated to accept trades as reported by such sources and GSCC would treat such data, under its rules, as if they were the successful results of GSCC's comparison of trade data submissions from buying and selling members.

1. The Auction Takedown Service

a. Eligible Securities

Only auction purchases meeting two conditions are eligible for inclusion in GSCC's auction takedown system. First, the purchase must be of a security with an issue date one or more business days after the auction date. Second, only proprietary purchases are eligible. The auction bid submitted to the Federal Reserve Ban must not include a customer's or client's name on the tender form or on an attachment to the tender form.[5]

b. Necessary Authorizations

Prior to its first eligible auction purchase, a GSCC member must authorize GSCC to receive data on the member's auction purchase from the applicable Federal Reserve Bank.[6] If a GSCC netting member does not provide the authorization, GSCC would not allow the participant to remain a netting member. The GSCC member also must provide to the applicable Federal Reserve Bank an authorization to provide to the applicable Federal Reserve Bank an authorization to provide GSCC with the data on the member's auction purchase and an authorization to deliver the auction purchase to GSCC's agent bank.[7]

C. Receipt of Data by GSCC

In the afternoon or evening of the day of a U.S. Department of Treasury ("Treasury") auction, the Federal Reserve Banks will transmit to GSCC information, on a per-CUSIP basis, regarding which netting members received auction awards of eligible securities and the amount and value of those awards at each yield. The auction award data will be deemed to be a compared trade; the contra-party will not submit any data on the trade. GSCC will report the auction trade to the purchasing member as part of the daily comparison output, and the trade will be binding on the member at that time.[8]

d. Netting

After the auction award is reported to the GSCC member, the position will go directly into GSCC's netting system. GSCC will treat the award, for settlement purposes, in the same manner as a compared trade which will be netted with a member's compared secondary market trades in the same CUSIP to establish net settlement positions. GSCC will then report to the member the net position (deliver, receive, or take no action) and net payment obligation. Once netted, GSCC will be obligated to accept from the applicable Federal Reserve Bank delivery of each member's auction purchase and pay for such purchase, through its agent banks. Pending delivery on issue date, GSCC will collect clearing fund margin and forward mark allocation payment[9] amounts based on the net settlement position taking into account auction purchases. In addition, GSCC will collect clearance difference amounts on an intra-day basis for any money differences that arise as a result of the pairing off of auction purchases with fail obligations.[10]

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[1] 15 U.S.C. 78s(b) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel, GSCC to Jack Drogin, Branch Chief, Division of Market Regulation, Commission (February 15, 1994).

[3] Securities Exchange Act Release No. 33703 (March 2, 1994), 59 FR 11345.

[4] Letter from Gerald Murphy, Fiscal Assistant Secretary, U.S. Department of the Treasury to Jonathan G. Katz, Secretary, Commission (April 5, 1994).

[5] Even if the client or customer is a GSCC netting member, the trade will still be ineligible.

[6] The applicable Federal Reserve Bank would be the bank to which the GSCC member intends to submit its bid.

[7] Currently, The Bank of New York has been designated as agent bank for Treasury notes; Chemical Bank has been designated as agent bank for all other products.

[8] Procedures will be established that will provide the Federal Reserve Banks with a unilateral capability to cancel incorrect data and to provide new, correct data, as necessary. A member can generate a cancellation and correction request to the Federal Reserve Banks if it believes an error had been made. The requested adjustment will be made only if it is acted upon by a Federal Reserve Bank.

e. Delivery

Each Federal Reserve Bank will deliver the auction purchases to the clearing bank designated by GSCC for such purpose. Early in the day on issue date, GSCC will provide its agent banks with instructions for receipt and delivery so that the auction purchases can be received against payment from the Federal Reserve Banks and redelivered to GSCC members against payment automatically and virtually instantaneously.

GSCC will pay the Federal Reserve Banks for the auction awards at the award price. GSCC will redeliver the auction awards to GSCC members against payment of the settlement value,[11] equal to the greater of the system (market) value for the position or the average auction price for such auction purchase. This adjustment is necessary to permit GSCC to net auction awards with when-issued and forward settling trades in the same security.

The normal GSCC delivery process should provide members with timely delivery of their auction awards to the extent that members have net long positions consisting of auction securities. Because members could be flat or short with respect to other GSCC members and long with respect to non-GSCC dealers or their customers, GSCC will provide a mechanism for ensuring timely delivery of needed auction purchases to a member who, as a result of its secondary market trading, will have on issue date a net short or flat position, or a long position that is smaller than the amount of auction purchases that it requires.[12] Under this procedure, no later than the evening of the second business day prior to issue date,[13] each such member can request that GSCC deliver to it auction purchases made by such member on a CUSIP-by-CUSIP basis ("Priority Delivery Request"). GSCC will split such member's existing net settlement position into a long position equal to the level of the requested delivery, and an offsetting short position. For purposes of calculating a member's required clearing fund deposit, a priority delivery request will be treated as if it were a net long position if it is greater than the member's actual net long position.

GSCC will establish the following auction award delivery priorities: first to members to fulfill Priority Delivery Requests; next to members with net long positions to the extent comprised of auction purchases; and then to members with net long positions that remain unfilled, on an equal basis, in $50 million increments.[14]

f. Participant Failure

In the event that a member with an auction award fails, on or prior to issue date, GSCC could incur a loss above the amount of collateral it holds from that member in liquidating the member's positions. The Treasury will not be liable for assessment for any loss that occurs as a result of the auction purchase. Instead, pursuant to its arrangement with the Treasury, GSCC will have the right to refuse delivery from a Federal Reserve Bank on issue date of all or a portion of the auction purchases of a GSCC member if certain conditions exist.

A netting member who made the auction purchase in a CUSIP must remain in a long position in that CUSIP. GSCC must have reasonable cause to believe, based on the information it has received, that the member cannot or will not timely take delivery of and fully pay for auction purchase amounts due it from GSCC. GSCC must have determined from its analysis and prevailing market conditions that there is reasonable cause to believe that, if it were to liquidate the member's position, GSCC would incur a loss that would not be covered by the margin deposited by the member with GSCC and/or profits from the liquidation of other positions of the member. GSCC can specify the amount of auction purchases on which it will not take delivery, which amount may not exceed the member's net long position in that CUSIP.

GSCC must notify the appropriate Federal Reserve Bank, in a mutually acceptable manner, of its exercise of this right by no later than 8:30 a.m. New York time on the relevant issue date. The failing member will remain responsible for the payment of such securities pursuant to the terms established by the Treasury.

If GSCC incurs a residual loss as the result of the liquidation of a member's auction purchase, the loss will be allocated in the same manner as any other allocation of loss. The loss will be spread among all of the netting members that the failed member did business with on or prior to the day of default.

2. Locked-In Trades

The proposed rule change establishes a facility permitting GSCC to treat trade data received from designated sources other than a Federal Reserve Bank, such as exchanges or clearing corporations, as locked-in trades.[15]

a. Reporting of Locked-In Trade Data

GSCC will accept trade data from a locked-in trade source without matching it with data provided by a member. GSCC will report these locked-in trades to members as part of its daily comparison output. For purposes of GSCC's rules, locked-in trades will be considered as compared trades and will be as valid, binding, and enforceable as comparisons issued based on a match of corresponding data submitted to GSCC by two members.

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[9] In connection with this filing, GSCC is changing it's formula for calculating the forward mark allocation ("FMA") payment obligation. Except for category 1 inter-dealer broker netting members, who do not have an FMA payment obligation, all netting members will have their FMA payment obligation calculated based on the entire debit mark.

[10] This money difference will arise if the average auction price is higher than the market value, with the result that the settlement value will be set at the average auction price. In such a case, if the net long position for the auction securities is paired off with a fail net short position in the same CUSIP (which would have a settlement value equal to the lower market value), there will be a money difference reflecting an amount owed to GSCC by the member

[11] The settlement value, a new concept, is the system (market) value plus a delivery differential adjustment amount. In most instances, the delivery differential adjustment amount will be zero. GSCC will establish a higher delivery differential adjustment amount only under two circumstances. If the system (market) value is less than the average auction price, the delivery differential adjustment amount will be increased so that the settlement value equals the average auction price. In addition, GSCC may adjust the delivery differential adjustment amount if the member is subject to higher than normal surveillance status and if, in the opinion of senior GSCC management, the potential for such member to fail to meet its settlement obligations to GSCC is higher than normal. *See* Letter from Jeffrey F. Ingber, General Counsel, GSCC to Jack Drogin, Branch Chief, Commission (February 15, 1994). GSCC agrees that, to the extent practicable, it will consult with the Commission prior to adjusting the delivery differential adjustment amount for a member who is on surveillance status. GSCC will follow up any oral notification with a written notification and will continue to consult with the Commission during the time that GSCC exercises this authority. Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

[12] GSCC will monitor the use of this mechanism to ensure that only members who need immediate delivery of auction securities are requesting the priority delivery.

[13] For auctions that are held on the business day immediately prior to issue date, the request must be made by no later than on the auction date.

[14] The maximum par amount of securities that can be delivered over FedWire is $50 million. GSCC delivers the securities at the maximum amount for operational ease, to provide a more efficient method to distribute securities.

[15] Proposals to extend this facility to organizations other than Federal Reserve Banks should be submitted for Commission review under section 19(b) of the Act prior to establishing links with other locked-in trade sources.

Each member that makes an eligible locked-in trade will be obligated to provide GSCC with authorization for GSCC to receive data on the locked-in trade from the locked-in trade source. A locked-in trade source can correct or delete a previously submitted trade by providing appropriate instructions to GSCC. If the locked-in trade source is not a party to the trade, GSCC may delete or correct the data upon receipt of matching instructions from each member that is a party to the trade.

b. Netting

Subject to the terms and conditions that GSCC agrees to with the locked-in trade source, GSCC may exclude any locked-in trade from its netting system. Each netting member that makes a locked-in trade that is eligible for netting and settlement by GSCC must provide GSCC and the locked-in trade source with authorization for GSCC to receive and the locked-in trade source to transmit data on the locked-in trade.

3. Other Revisions

Under GSCC's rules, a forward settling trade is eligible for GSCC's netting system only if the trade settles within less than a certain number of days after comparison by GSCC. For example, only trades that settle fifteen days or less after comparison currently are eligible for GSCC's netting system. The proposed rule change amends GSCC Rule 11, section 2 to permit GSCC to establish the maximum number of business days between comparison and settlement by a separately published schedule. GSCC will file with the Commission, pursuant to section 19(b)(3)(A) of the Act, any proposals to change this time period.[16] GSCC's rules also have been amended to allow GSCC to net fail deliver obligations and fail receive obligations with any other receive obligations and deliver obligations.

II. Comments

As noted above, in response to the notice published in the Federal Register, the Treasury provided the Commission with comments in support of the proposal. The Treasury believes that including Treasury auction purchases in a multilateral netting system could be beneficial to the efficiency of the government securities market. In addition, the Treasury believes that the proposal would enable GSCC to improve its risk management by providing a more complete picture of its members' positions.

III. Discussion

The Commission believes the proposed rule change is consistent with section 17A of the Act, and, therefore, is approving the proposal. Specifically, the Commission believes the proposal is consistent with section 17A(b)(3)(F)[17] of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in clearance and settlement of securities transactions, and removes impediments to the national system for the prompt and accurate clearance and settlement of securities transactions.

In the 1992 Joint Report on the Government Securities Market ("Joint Report"), the Commission, the Treasury, and the Board of Governors of the Federal Reserve System recommended several enhancements to GSCC's system.[18] One such enhancement was the inclusion of auction take-down activity in GSCC's netting system, since the benefits of netting would increase as more trades are included in the net. The Joint Report concluded that if the auction takedown proposal were implemented, "additional information on the overall distribution process required to settle Treasury auction purchases and on the true net settlement positions of members during a when-issued period would be available at GSCC. GSCC's proposal is especially significant in light of the risk to the Treasury resulting from the auction settlement process and the use of autocharge agreements. GSCC's proposal would reduce the risk to the Treasury to the extent that GSCC assumes responsibility for auction purchases that are netted against when-issued sales."[19]

The proposal provides a more efficient method of clearing and settling auction securities. GSCC members will be able to access information on the securities awarded to them through GSCC's reporting system, and will have the securities delivered and paid for through GSCC's clearance system. The processing required will be reduced since the Federal Reserve Banks will provide information and securities to, and receive payment from, one source, GSCC, for all GSCC members. By channeling the payment and delivery obligations through one source (and reducing those obligations through netting), the clearance process will be made more efficient.

Currently, the proposal only covers purchases of Treasury securities that settle one or more business days after the auction date. This limitation is needed because of the limitations in GSCC's system. However, the number of Treasury securities that settle on the same day as auction date is so small that this limitation should not have a significant effect on the national clearance system.[20]

In addition, the proposal only covers proprietary purchases. If a GSCC member were to fail, GSCC would still accept auction awards to the extent covered by the GSCC member's short position. If a GSCC member's customer purchases were included in the proposal, there is a possibility that a customer's purchase would be used to satisfy the failed member's short position rather than delivered to the customer. Once the auction takedown proposal has been implemented, there will be opportunities to study means of including customer trades without undue risk to the customer. Until such time, the Commission believes that it is reasonable to exclude customer trades.[21]

The proposal would change GSCC's settlement pricing to accommodate introduction of auction positions. These changes will serve two functions. First, it will ensure that GSCC never delivers auction purchases for less than the amount it paid for the securities. Second, it will provide GSCC with a risk control measure when a member is subject to higher than normal surveillance status. This should help GSCC address the risk of liquidity problems, and enhance GSCC's ability to safeguard funds and securities.

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[16] Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

[17] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[18] U.S. Department of Treasury, Board of Governors of the Federal Reserve System, and Securities and Exchange Commission, Joint Report on the Government Securities Marketplace (January 1992). The recommendations are (1) automated comparison of repurchase agreements; (2) inclusion of auction take down activity and yield-based trades in GSCC's netting system; (3) increase in categories of GSCC membership; and (4) confirmation systems for non-dealer, institutionalized customers.

[19] Joint Report at 30. With this approval, all but two of the recommended enhancements to GSCC's system will have been implemented. Only the first recommendation, automated comparison of repurchase agreements, and the last recommendation, confirmation systems for institutionalized customers, have not been implemented.

[20] During all of 1993 and 1994, no Treasury securities have settled on the same day as the auction date. Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

[21] Approximately 15% of the securities awarded to GSCC members are customer purchases. Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

The proposal also provides a general mechanism for GSCC to accept locked-in trade data from sources other than a Federal Reserve Bank. By accepting the trades directly from a locked-in trade source (such as an exchange), the process of clearing and settling the locked-in trade is made more efficient. The GSCC member does not have to duplicate input of the data, submitting the data once to the locked-in trade source and once to GSCC. Instead, the information flows directly to GSCC, thereby lessening the risk of incorrect or incomplete submissions, or unconfirmed trades.

The proposal extends the benefits of GSCC's centralized, automated netting system to netting members' auction securities purchases. By including auction securities in GSCC's netting system, the level of potential netting is increased and the number of required movements of securities are reduced.[22] Netting of auction securities also may have the effect of increasing a member's liquidity. Previously, a GSCC member with a short position would have its required margin payments calculated based on its short position, even if it had an offsetting long position in auction purchases. Once the positions are netted, the member's margin payments will be calculated based on the position after taking into account the auction purchases, perhaps creating a lower margin payment. The additional liquidity may assist in the prompt and accurate clearance and settlement of securities transactions. In this manner, the proposal removes impediments to the national system for the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation and coordination with persons engaged in clearance and settlement of securities transactions.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–94–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11339 Filed 5–10–94; 8:45 am]

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[22] In March 1994, GSCC's netting system received $289 billion in daily average buy/sell dollars. This amount was netted to result in $65 billion in average daily receive and deliver obligations. In effect, GSCC netted out approximately 77% of the dollar obligations of members.

[Release No. 34–34016; International Series Release No. 663; File No. SR–Amex–94–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Warrants Based on Foreign Government Bonds

May 5, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 2, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under Section 106 of the Amex Company Guide warrants tied to changes in the prices of foreign government bonds.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list and trade under Section 106 of the Amex Company Guide warrants that can be expected to fluctuate in value based on changes in prices of foreign government bonds.[1] Such issues may relate to a single bond issue or several bond issues of one or more foreign countries.[2]

Warrants based on prices of foreign government bonds will conform to the listing guidelines under Section 106 of the Amex Company Guide which currently provide that:

(1) The issuer shall have assets in excess of U.S. $100,000,000 and otherwise substantially exceed the size and earnings requirements of Section 101(A) of the Amex Company Guide;

(2) The term of the warrants shall be for a period ranging from one to five years from date of issuance; and

(3) The minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of U.S. $4,000,000.

Such warrants shall be direct obligations of their issuer subject to cash settlement in U.S. dollars, and exercisable throughout their life (*i.e.* American style) or exercisable only at expiration (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant will be entitled to a cash settlement value computed in accordance with a formula specified in the issuer's prospectus. If "out of the money" at the time of expiration, the warrants will expire worthless.

Warrants may be structured either to increase or decrease in value based on the increase or decrease in the price or yield of the government bond or bonds. Because all payments will be required to be in U.S. dollars, there would be no currency risk except to the extent that fluctuations in the value of the relevant currency affect the price or yield of the government bond(s).

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[1] The size required for an individual government bond issue relating to a warrant based thereon shall not be less than the equivalent of U.S. $100,000,000. In addition, such warrant issues shall be based on only those government bonds for which prices are readily available from independent vendors of financial information.

[2] For purposes of this rule change, the Exchange intends to limit such issues to warrants based on government bonds of the following countries: Australia, Austria, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Spain, Sweden, Switzerland, and the United Kingdom. The Exchange will consult with Commission staff prior to listing warrants based on bonds issued by governments other than those specified above.

The Amex will require that member firms only sell such warrants to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. The Exchange also will distribute a circular to its membership prior to the commencement of trading calling attention to the risks associated with the purchase and trading of such warrants.

At this time, the Exchange anticipates the listing of a warrant issue based on the prices of between three and five foreign government issues. Holders of such warrants would be entitled to receive from the issuer in U.S. dollars a cash settlement value, if any, based on changes in the arithmetic average yield to maturity of the bonds as calculated by the designated Calculation Agent based on prices obtained from three dealers in the bonds.[3]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principals of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission , 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-94-05 and should be submitted by June 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 94-11340 Filed 5-10-94; 8:45 am]

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[3] The Exchange represents that it will consult with Commission staff prior to listing warrant issues tied to government bond(s) with respect to (1) the specific calculation methodology to be used by individual warrant issuers, and (2) the adequacy of available bond pricing information.

[4] 17 CFR 200.30-3(a)(12)(1993).

[Release No. 34-34017; File No. SR-PTC-92-16]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on a Temporary Basis a Proposed Rule Change Relating to Margin Levels for Collateralized Mortgage Obligations

May 5, 1994.

On December 28, 1992, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-92-16) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to the establishment of margin levels on Collateralized Mortgage Obligations ("CMO security" or "CMO") currently eligible for deposit or which may become eligible for deposit at PTC. Notice of the proposal appeared in the **Federal Register** on February 7, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change on a temporary basis, until April 30, 1995

I. Description

PTC's proposal establishes a method of computing the percentages to be deducted from the market value of certain securities ("haircut") to determine how those securities should be valued for purposes of participants' Net Free Equity.[3] The securities in question are CMO securities[4] which are eligible for deposit or which may become eligible for deposit at PTC. Currently, the only such securities are Real Estate Mortgage Investment Conduits ("REMIC") issued by the U.S. Department of Veterans Affairs ("VA REMIC").[5]

Under PTC's rules, the Applicable Percentage[6] of the market value of

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[1] U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 33546 (January 31, 1994), 59 FR 5646.

[3] Net Free Equity is calculated as the sum of: (1) The cash balance in the account; (2) the market value of securities in the account, less the appropriate haircut for such securities ("Applicable Percentage"); and (3) the value of all Supplemental Processing Collateral; minus (4) Reserve on Gain on transfers made that day. Supplemental Processing Collateral includes the following: (1) The value of optional deposits to the participants fund allocated to that account (optional deposits to the participants fund are deposits that exceed the minimum deposit required pursuant to PTC's rules and procedures); and (2) 20% of the mandatory deposits to the participants fund for the Master Account (mandatory deposits to the participants fund are minimum deposits required to be deposited into such fund pursuant to PTC's rules and procedures). Reserve on Gain means: (1) The contract value credited to the cash balance of a delivering participant or limited purpose participant over the market value of securities credited to the transfer account associated with the account of the receiving participant; or (2) the market value of securities credited to the transfer account associated with the account of a receiving participant over the contract value credited to the cash balance of the delivering participant or limited purpose participant. PTC Rules, Article I, Rule I.

[4] A CMO is a multiple-class mortgage cash flow security. As such, a CMO redirects the cash flow from an underlying standard mortgage-backed security ("MBS"), such as a Government National Mortgage Association ("GNMA") security, and allows the CMO issuer to create classes, or tranches, with many different interest rates, average lives, prepayment sensitivities, final maturities, and payment priorities.

[5] VA REMICs are securities for which the full and timely payment of principal and interest is guaranteed by the United States Department of Veterans Affairs and backed up the full faith and credit of the United States government. The Commission approved VA REMICs as eligible for deposit at PTC in Securities Exchange Act Release Nos. 30792 (June 10, 1992), 57 FR 27495, and 31914 (February 24, 1993) 58 FR 12295.

[6] "Applicable Percentage" means that percentage of the market value of securities that is included in the computation of Net Free Equity. The Applicable Percentage is determined by deducting certain

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securities is used in computing a participant's Net Free Equity. PTC's rules require participants to maintain Net Free Equity of zero or greater in each of their agency, pledgee transfer, and proprietary accounts in order for transactions to be processed.[7] PTC has the right to borrow against or liquidate those assets that comprise the Net Free Equity computations in those accounts in the event that the participant responsible for one or more of those accounts fails to pay the account debit balance at the end of the day. By including only a portion of the market value of securities in Net Free Equity, *i.e.*, the Applicable Percentage, PTC attempts to limit the risk caused by fluctuations in the market value of securities in those accounts. In computing Net Free Equity, PTC deducts 5% from the market value of GNMA Single-Family securities, and higher levels for GNMA Project, Construction, and Mobile Home Securities to reflect their reduced liquidity.[8]

Unlike GNMAs, CMOs are structured as a series of tranches or classes, each of which represents a separate security with unique characteristics, such as differing payment schedules and price volatility. In addition, there is a lack of historical price data for CMOs, in contrast to GNMA securities. Consequently, PTC has chosen to rely on a model developed by the Asset Backed Securities Group/Trepp ("Trepp") that uses the yield on an underlying Treasury security to predict the potential movement and prepayment risk of a corresponding CMO tranche when subjected to a rise or fall in interest rates. Currently, PTC's model assumes a 50 basis point upward movement in the underlying Treasury securities for CMO tranches which exhibit positive effective duration (*i.e.*, rise in value with falling interest rates). For CMO tranches which exhibit negative effective duration (*i.e.*, decline in value with falling interest rate), the model assumes a 50 basis point downward move in the underlying Treasury security.[9]

Rather than assigning a uniform Applicable Percentage for all CMO securities, PTC takes into account the unique characteristics of each CMO tranche.[10] Each CMO tranche is subjected to a stress test to determine its response to yield changes, thereby allowing PTC to assign each tranche an appropriate margin. PTC's management will establish the margin based on the stated analysis as each CMO tranche is deposited at PTC. Nevertheless, PTC has represented that the minimum margin level for any CMO product will be 5%.[11]

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with section 17A of the Act, and, specifically, with sections 17A(b)(3) (A) and (F).[12] Those sections require a clearing agency to be organized, and its rules be designed, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission is approving PTC's proposal until April 30, 1995, to allow PTC to gain more experience with CMO securities.

In 1992, the Commission approved a PTC proposal to make certain VA REMIC securities, guaranteed by the U.S. government, eligible for deposit at PTC pursuant to PTC Article I, Rule 2.[13] The approval ran through December 31, 1992, to coincide with the expiration of the legislation authorizing the issuance of VA REMICs.[14] In 1993, legislation extending the VA's authority to issue REMICs through December 31, 1995 was enacted.[15] In light of the extension, the Commission approved a PTC proposal allowing it on a permanent basis to designate VA REMICs depository eligible, as long as they continue to be guaranteed by the U.S. government.[16]

PTC has relied on Trepp as its vendor for VA REMIC prices and has used Trepp's model to determine margin for such securities. Trepp was established in 1979 and created the first independent CMO pricing service in 1988. Currently, Trepp provides pricing and analytical services to more than 500 institutions, including 23 of the 25 largest bank trust departments.[17]

Because each CMO tranche has unique characteristics, Trepp models each security to determine its value. The information required to model each tranche of a CMO is derived from that CMO's prospectus, including the characteristics and principal payment priorities of each tranche, initial price and interest rate, and remaining principal balances and prepayment assumptions used to derive the cash flows and initial spread.[18]

Initially, PTC gauges the accuracy of these models by comparing the cash flows and other data calculated by the model to the information provided by the underwriter in the issuer summary report and the prospectus. In addition, the accuracy of the model is tested on an ongoing basis by comparing its valuations to those of the underwriter, and by using available factor information to verify the remaining principal balance of each security with those calculated by its corresponding model.[19]

PTC's model is an example of a static cash flow yield model, as distinguished from an option-adjusted spread ("OAS") model. Static cash flow and OAS models differ primarily in their handling of future interest rate and prepayment scenarios. A static cash flow yield analysis uses an interest rate/prepayment scenario which relies on current market conditions. This reliance creates two limitations. First, it might not measure accurately reinvestment

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percentages (*i.e.*, margin) from the market value of securities. See also definition of Net Free Equity, *supra* note 3.

[7] PTC Article II, Rule 13.

[8] Securities Exchange Act Release No. 33840 (March 31, 1994), 59 FR 16672.

[9] See letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5. When first proposed, PTC's methodology calculated margins by assuming a change in prepayment speeds based on a sustained change in interest rates, applying the largest historic two-day movement in the yield of the underlying Treasury security as the applicable interest rate change. Thus, a 35 basis point upward move in the underlying Treasury securities for CMO tranches which exhibit positive effective duration; and a 50 basis point downward move in the underlying Treasury securities for CMO tranches which exhibit negative effective duration. See letter from Michael D. Frieband, dated August 17, 1993, *supra* note 5. PTC has since modified its methodology, which will now rely on a 50 basis point upward move in underlying Treasury securities for tranches exhibiting positive effective duration for purposes of calculating margin. Given the dearth of historical prices for CMOs, using a 50 basis point upward move in Treasury securities should generate more conservative margins. See letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5.

[10] This represents a departure from PTC's past practice of assigning a specific percentage margin for each type of security that is eligible for deposit at PTC. For example, for GNMA Project Loan, Project Note, Construction Loan, and Mobile Home Securities, PTC established margin levels of 10%, 10%, 12%, and 20%, respectively. Securities Exchange Act Release No. 33840, *supra* note 8.

[11] See letter from Leopold S. Rassnick, dated March 17, 1994, *supra* note 5. Margins on CMO securities which cannot be modeled by an independent pricing source will be set at 100%. See letter from Leopold S. Rassnick, dated January 12, 1993, *supra* note 5.

[12] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[13] See Securities Exchange Act Release No. 30792, *supra* note 5.

[14] 38 U.S.C. 3720h(1) and (2), as amended by P.L. 102–291, enacted on May 20, 1992.

[15] 38 U.S.C. 3720h(1) and (2), as amended by P.L 102–547, enacted on October 28, 1992.

[16] See Securities Exchange Act Release No. 31914, *supra* note 5. Should the VA's authority to issue securities with a U.S. government guarantee cease, any VA securities in PTC at that time shall remain depository eligible. *Id.*

[17] Letter from Michael D. Frieband, dated March 4, 1994, *supra* note 5.

[18] *Id.*

[19] *Id.*

risk caused by an investor's inability to reinvest periodic payments at a rate equal to the yield on the security. Second, such a model does not value the embedded option representing a mortgagee's ability to prepay, which can be a factor in determining the value of a particular CMO tranche.[20] It is the option to prepay which causes OAS models generally to be considered more accurate than static cash flow models. However, the enhanced accuracy of OAS models comes at a cost; such models are more complex and computer intensive than those relying on a static cash flow analysis. According to PTC, there are no daily price vendors that provide bulk prices for CMOs using an OAS model.[21]

Each CMO tranche is subjected to a stress test, the purpose of which is to observe the effect of an upward and downward movement of 50 basis points in the underlying Treasury yield of each CMO tranche.[22] Because the volatility of a CMO tranche is primarily a function of the level of interest rates, PTC has stated it will recalculate margins whenever the Treasury yield curve has changed by 100 basis points from the time of original issue or last margin recalculation. PTC has also stated that securities whose attributes warrant it shall have their margins reevaluated quarterly.[23]

In order to facilitate daily pricing and margin evaluations, PTC intends to acquire Trepp's CMO pricing model. Currently, PTC receives a price tape from Trepp daily no later than 5 p.m. and meets regularly with representatives from Trepp regarding its pricing service. Nevertheless, as the volume of CMOs deposited at PTC increases, the on-site availability of the Trepp model should provide PTC with additional safeguards.[24]

PTC's proposed methodology requires its model to predict accurately the market price of CMOs. Thus far, PTC's experience has been limited to comparing the predicted versus actual transation price of VA REMICs.[25] The data indicate that PTC's model has been reasonably accurate in predicting actual prices.[26] However, VA REMICs represent the most stable of CMOs given that VA mortgages are assumable, and therefore less subject to prepayment risk. Moreover, the structures of the VA REMICs so far issued and on deposit at PTC have not been particularly complicated.

Another concern raised by the proposed methodology relates to the prepayment projections on which it relies. The prepayment projections volunteered by twelve firms are averaged, but whether such quotes are executable is not considered. This may affect the accuracy of the prepayment speeds used to arrive at a market price for CMOs. Without accurate prepayment data, the predicted price might lag behind the market's true price by up to 30–45 days, when each agency issuing mortgage pass-through securities releases the actual prepayment factors [27] and settlement occurs. The interest rate volatilities of the underlying Treasuries from which the CMOs are priced can change 50–75 basis points over the course of 30–45 days. In part to address this concern, PTC has determined to use fifty basis points for purposes of running the stress test to establish margin.[28]

The Commission believes that in granting PTC temporary approval of its CMO pricing methodology until April 30, 1995, PTC will be afforded an opportunity to gain experience with its methodology. In addition, the temporary approval period will allow PTC to take steps to address any concerns which exist with respect to its methodology.[29]

The Commission believes that granting PTC temporary approval of its proposal for one year should allow it sufficient time to address the issues raised above. PTC's current CMO margining methodology should help ensure that CMO margins will be established that take into account the unique characteristics of each CMO tranche, and that PTC's reliance on a daily pricing source will provide it with timely price information. The resulting margins will afford PTC protection should it be necessary for PTC to borrow against or liquidate these assets.

III. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[30] that PTC's proposed rule change (SR–PTC–92–16) be, and hereby is, approved on a temporary basis until April 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaet H. McFarland,

Deputy Secretary.

[FR Doc. 94–11341 Filed 5–10–94; 8:45 am]

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[20] *Id.*

[21] *Id.*

[22] *Id*; letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5.

[23] Letter from Michael D. Frieband, dated March 4, 1994, *supra* note 5. PTC has yet to delineate the CMO attributes that would warrant quarterly reevaluation. See *infra* note 29.

[24] Letter from Michael D. Frieband, dated March 4, 1994, *supra* note 5.

[25] VA REMICs are the only CMOs currently depository eligible at PTC.

[26] See letter from Michael D. Frieband, dated August 17, 1993, *supra* note 5.

[27] A factor represents the fractional share of the original principal that remains in a given pool of mortgages comprising a mortgage pass-through security (*e.g.*, a factor of .7 indicates that 70% of a pool's principal remains).

[28] See letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5.

[29] PTC has represented that it will provide the following information to the Commission prior to the expiration of the temporary approval period:

(1) PTC will explain what criteria it uses in identifying certain CMO tranches as more volatile and/or risky than other tranches. PTC will recalculate margin for any tranche whenever the Treasury yield curve has changed by 100 basis points from the time of original issue or last recalculation; however, until it establishes clear standards, PTC will reevaluate margins for all tranches at least twice a year, in addition to reevaluating selected tranches quarterly;

(2) PTC will consider using a model other than its present modelling vendor to conduct the stress test (or serve as the present vendor's back up), as opposed to relying on a single vendor both for the stress test and as a source of daily pricing;

(3) PTC will address the treatment of non-par issuances, which tend to be more sensitive to changes in interest rates than other CMOs;

(4) PTC will explain the method by which its present modelling source aligns a CMO with a referenced Treasury maturity; and

(5) PTC has stated its intention to modify its systems software to make automated price comparisons possible, and PTC will expedite the automation of its comparison of predicted versus actual CMO transation price data.

See letter from Leopold S. Rassnick, Vice President, General Counsel, and Secretary, PTC, to Francois Mazur, Staff Attorney, Division, Commission, dated May 3, 1994.

[30] 15 U.S.C. 78s(b)(2).

[Release No. IC–20280; 812–8640]

Merrill Lynch KECALP Growth Investments L.P. 1983, et al.; Application

May 5, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemptive Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch KECALP Growth Investments L.P. 1983, Merrill Lynch KECALP L.P. 1984, Merrill Lynch KECALP L.P. 1986, Merrill Lynch KECALP L.P. 1987, Merrill Lynch KECALP L.P. 1989, Merrill Lynch KECALP L.P. 1991 (The "Partnerships"), KECALP Inc. (the "General Partner"), Merrill Lynch & Co., Inc. ("ML & Co.").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(b) of the Act and rule 17d–1 thereunder to permit certain transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1. The requested order would amend a prior order.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Partnerships to make certain joint investments with ML & Co. or an affiliate of ML & Co. and to co-invest with certain limited partnerships in which ML & Co. is an investor.

FILING DATE: The application was filed on October 9, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service for applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Partnerships is a closed-end management investment company. Each Partnership also is an "employees' securities company," as defined in section 2(a)(13) of the Act, and is exempt from certain provisions of the Act pursuant to a prior order of the SEC (the "KECALP Order").[1] Partnership interests in the Partnerships were offered exclusively to certain employees of ML & Co. and its subsidiaries and to non-employee directors of ML & Co. Applicants request that any relief relating to the present application be extended to partnerships commencing operations in the future that operate under the terms of the KECALP Order. These partnerships are also referred to as the "Partnerships."

2. ML & Co. is a diversified financial services holding company. The General Partner, a registered investment adviser, is an indirect, wholly-owned subsidiary of ML & Co. and acts as the general partner of the Partnerships. All investments and dispositions of investments by each Partnership are approved by the board of directors of the General Partner.

3. Applicants request an amendment to the KECALP Order to permit the Partnerships to co-invest with "Affiliated Co-investors," defined as: Limited partnerships or other investment vehicles that (a) are not sponsored or managed by ML & Co. or one of its affiliates; (b) are an "affiliated person" of ML & Co. or one of its affiliates by virtue of the ownership by ML & Co. or its affiliate of 5% or more of the voting securities or partnership interests in such entity; and (c) are not controlled by ML & Co. or one of its affiliates (within the meaning of section 2(a)(9) of the Act).

4. The requested amendment also would permit ML & Co. or its affiliates to participate in co-investments with a Partnership and an Affiliated Co-investor may make additional investment opportunities available to its security holders, which would include ML & Co. or an affiliate.

5. The Kecalp Order approves certain transactions in accordance with rule 17d–1. Specifically, the Partnerships may invest in (a) any other partnerships or investment vehicles which are sponsored or managed by ML & Co. or its affiliates or (b) investments in which a partnership described in clause (a) is a participant or plans to become a participant and which would not be prohibited investments except that ML & Co. or any of its subsidiaries, or one or more officers, directors, or employees of the General Partner, have a partnership interest in or compensation arrangement with such partnership. Since the Affiliated Co-investors are not, by definition, sponsored or managed by ML & Co. or its affiliates, co-investments by the Partnerships with the Affiliated Co-investors are not permitted under the terms of the Kecalp Order.

6. Employees of ML & Co. and its subsidiaries must meet the suitability standards of a Partnership in order to be eligible to purchase units in a Partnership. In addition, the Partnerships' prospectuses have stated prominently that the units are speculative and are not a suitable investment for all qualified investors. Partnership interests in Partnerships formed after 1991 will not be offered to employees who earned, or whose annualized salary was, less than $75,000 with respect to the calendar year preceding the offering of such Partnership. In addition, no employee meeting the salary requirement will be permitted to invest more than 15% of his or her cash compensation from ML & Co. or its subsidiaries in any Partnership unless such employee is an "accredited investor," as defined in rule 501(a) promulgated under the Securities Act of 1933, as amended.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(b) and 17(d) of the Act and rule 17d–1 thereunder to permit the Partnerships to co-invest with the Affiliated Co-investors. Section 6(b) provides that the SEC shall, upon application, exempt any employees' securities company from the provisions of the Act if and to the extent that the exemption is consistent with the protection of investors. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates.

2. ML & Co. and its affiliates (as such term is defined in the Act) may be deemed to be affiliated persons of the General Partner under the Act. The General Partner is an affiliated person of the Partnerships within the meaning of the Act. As a result, joint investments by any Partnership with ML & Co. or an affiliate of ML & Co. may be subject to section 17(d). In addition, a co-investment by a Partnership with an Affiliated Co-investor may be subject to section 17(d) to the extent the Affiliated Co-investors is an affiliated person of ML & Co.

3. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). Applicants represent that the General Partner and its affiliates are concerned with the relationship among themselves and the key employees and directors who invest in the Partnerships and that the Partnerships were organized by ML & Co. to generate and maintain goodwill. In addition, the limited partners of the Partnerships have been informed of the possible Partnerships' dealing with ML & Co. and its affiliates

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[1] Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order).

and as professionals employed in financial services businesses, the limited partners are able to evaluate the risks associated with those dealings. Applicants submit that the composition and operation of the board of directors of the General Partner also will mitigate any potential for disadvantageous treatment of the Partnerships. The board is comprised principally of individuals representing senior management of a diverse group of subsidiaries of ML & Co. who are selected on the basis of their substantive area of expertise. Accordingly, applicants believe that the terms of the relief requested are consistent with the standards in section 6(b) of the Act and rule 17d–1.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. (a) To the extent that a Partnership has funds available for investment, the board of directors of the General Partner will review, among other investments, co-investments with Affiliated Co-investors that may be brought to the attention of the General Partner. The board of directors of the General Partner will make a determination as to whether each particular investment meets applicable investment criteria and is consistent with the existing composition of the Partnership's portfolio in terms of diversification of investments.

(b) The General Partner will commit to a co-investment with an Affiliated Co-investor only if the board of directors of the General Partner, by a majority vote at a properly called and held meeting of the board of directors prior to making the investment, concludes, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the Partnership's investment objectives and policies as recited in filings made by the Partnership under the Securities Act of 1933, as amended, its registration statement, and reports to its limited partners; and

(iii) The investment by an Affiliated Co-Investor, or, as permitted by these terms, ML & Co. or an affiliate thereof, in such transaction would not disadvantage the Partnership in the making of its investment, maintaining its investment position, or disposing of the investment and will be made on the same basis as the Affiliated Co-investors and ML & Co. or any of its affiliates.

2. Purchases of an investment pursuant to these conditions in a transaction in which ML & Co. or an affiliate is a participant shall consist of a class of securities also acquired by ML & Co. and/or its affiliate on the same terms (excluding terms as to aggregate purchase price, but including terms as to registration rights, if any, and other rights provided to the purchasers of such investments). Investments made pursuant to the order by a Partnership with an Affiliated Co-investor or with ML & Co. or one of its affiliates will be acquired by the partnership on the same settlement date as acquired by the Affiliated Co-investor and ML & Co. or its affiliates.

3. No investment will be made by a Partnership in any entity in which any other Partnership, ML & Co., or any subsidiary thereof (such three categories being referred to as "Affiliates" for this condition) has previously acquired an interest, provided that this prohibition shall not be applicable to (a) any investment specifically permitted by any other order of the SEC, (b) any investment in a publicly-traded security that is permissible under the Act or the rules thereunder, (c) any investment in an entity in which one or more Affiliates have a prior investment if the securities offered are of the same or senior class of securities held by each such Affiliate and each such Affiliate invests in the subsequent offering on the same terms as a Partnership which does not have a prior investment in that entity, or (d) any investment by a Partnership in an entity in which an Affiliate has made a prior investment, if an institutional investor with total assets of at least $100 million that is not an affiliated person of the Partnership makes an initial investment with the Partnership on the same terms as the Partnership making its initial investment in that entity.

4. If ML & Co. or one of its affiliates[2] elects to sell, exchange, or otherwise dispose of an investment acquired pursuant to these terms that also is held by one or more of the Partnerships, notice of the proposed disposition will be given to the Partnership at the earliest practical time and the Partnership will be given the opportunity to participate in such disposition on a proportionate basis on the same terms as those applicable to ML & Co. or such affiliate. Each Partnership will participate in such disposition if such action is determined by a majority vote at a properly called and held meeting of the board of directors of the General Partner to be in the best interests of the Partnership. Each Partnership will bear its own expenses associated with the disposition of such an investment.

5. If the board of directors of the General Partner, with respect to a Partnership, or ML & Co. or one of its affiliates determines to make a "follow-on" investment (*i.e.*, an additional investment in the same entity) in a particular portfolio company whose securities are held by an Affiliated Co-investor or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to each Partnership owning securities of such issuer at the earliest practical time. Each Partnership owning securities in an issuer in which the opportunity to make follow-on investments becomes available will participate in such a follow-on investment if the board of directors of the General Partner determines, in the manner required by these conditions, that such action is in the best interests of such Partnership. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The board of directors of the General Partner will review quarterly all information concerning co-investment transactions by the Partnerships with Affiliated Co-investors to determine whether all such investments made during the preceding quarter complied with the conditions set forth above.

7. At least annually, the General Partner will provide to the Partnerships' limited partners a written list of co-investment transactions by the Partnerships with Affiliated Co-investors.

8. The General Partner will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act, as if each Partnership were a business development company, all of which will be available for inspection by the limited partners of each respective Partnership. All records referred to or required under these conditions will be available for inspection by the SEC. All such records, as they relate to a particular Partnership, will be available

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[2] For purposes of conditions 4 and 5, the term "affiliate" of ML & Co. refers to direct and indirect wholly owned subsidiaries of ML & Co. and to other entities with respect to which ML & Co. or any such subsidiary is authorized to cause such entity to provide the opportunity for a Partnership to participate in the sale of an investment with such entity as contemplated by condition 4 or a purchase of a follow-on investment as contemplated by condition 5.

for review by limited partners of that Partnership.

9. In any case where co-investments are made with an Affiliated Co-investor, any individual involved in the management of both the Partnerships and the Affiliated Co-investor will not participate in the Partnerships' determination of whether to effect any co-investment transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11342 Filed 5-10-94; 8:45am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2716]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 26, 1994, I find that the Counties of Cass, Champaign, De Witt, Douglas, Iroquois, Menard, Sangamon and Vermilion in the State of Illinois constitute a disaster area as a result of damages caused by severe storms and flooding on April 9, 1994 and continuing. Applications for loans for physical damage may be filed until the close of business on June 24, 1994, and for loans for economic injury until the close of business on January 26, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308,

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous Counties may be filed until the specified date at the above location: Brown, Christian, Coles, Edgar, Ford, Kankakee, Logan, Macon, Macoupin, Mason, McLean, Montgomery, Morgan, Moultrie, Piatt, and Schuyler Counties in Illinois and Benton, Newton, Vermillion and Warren Counties in the State of Indiana.

The interest rates are:

For Physical Damage: Homeowners With Credit Available Elsewhere—7.125; Homeowners Without Credit Available Elsewhere—3.625; Businesses With Credit Available Elsewhere—7.125; Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125.

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000.

The number assigned to this disaster for physical damage is 271606 and for economic injury the numbers are 825400 for Illinois and 825500 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 49002 and 59008).

Dated: May 4, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94-11298 Filed 5-10-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2717]

North Carolina; (with contiguous counties in South Carolina) Declaration of Disaster Loan Area

Cleveland County and the contiguous countries of Burke, Catawba, Gaston, Lincoln, and Rutherford in the State of North Carolina and Cherokee and York Counties in the State of South Carolina constitute a disaster area as a result of damages caused by flooding and tornadoes which occurred March 27 through 29, 1994. Applications for loans for physical damage may be filed until the close of business on July 5, 1994 and for economic injury until the close of business on February 3, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

For Physical Damages: Homeowners With Credit Available Elsewhere—7.250 percent; Homeowners Without Credit Available Elsewhere—3,625 percent; Business With Credit Available Elsewhere—7.700 percent; Business and Non-Profit Organizations Without Credit Available Elsewhere—4.000 percent; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125 percent;

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000 percent.

The number assigned to this disaster for the State of North Carolina are 271706 for physical damage and 825600 for economic injury, and in South Carolina the numbers are 271806 and 825700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008

Dated: May 3, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94-11297 Filed 5-10-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2714]

Oklahoma; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 21, 1994, I find that Ottawa County constitutes a disaster area as a result of damages caused by severe storms and flooding beginning April 14, 1994 and continuing. Applications for loans for physical damage may be filed until the close of business on June 21, 1994, and for loans for economic injury until the close of business on January 23, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, suite 102, Fort Worth, Texas 76155.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Craig and Delaware Counties in the State of Oklahoma; Cherokee County in the State of Kansas; and McDonald and Newton Counties in the State of Missouri.

The interest rates are:

For Physical Damage: Homeowners With Credit Available Elsewhere—7.125%; Homeowners Without Credit Available Elsewhere—3.625%; Businesses With Credit Available Elsewhere—7.125%; Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125%.

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%.

The number assigned to this disaster for physical damage is 271406 and for economic injury the numbers are 825000 for Oklahoma, 825100 for Kansas, and 825200 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 4, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94-11299 Filed 5-10-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2712]

Tennessee; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 14, 1994 and an amendment on April 21, I find that the Counties of Blount, Bradley, Hamblen, Hamilton, Jefferson, Monroe, Polk, Sevier and Unicoi in the State of Tennessee constitute a disaster area as a result of damages caused by extensive rainfall and flash flooding which occurred March 25 through April 3, 1994. Applications for loans for physical damage may be filed until the close of business on June 13, 1994, and for loans for economic injury until the close of business on January 17, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bledsoe, Bradley, Carter, Cocke, Grainger, Greene, Hawkins, Jefferson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Rhea, Sequatchie and Washington in the State of Tennessee; Catoosa, Fannin, Murray, Walker and Whitfield in the State of Georgia; and Cherokee, Graham, Haywood, Madison, Mitchell, Swain and Yancey in the State of North Carolina.

The interest rates are:

For Physical Damage: Homeowners With Credit Available Elsewhere—7.250 percent; Homeowners Without Credit Available Elsewhere—3.625 percent; Business With Credit Available Elsewhere—7.900 percent; Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000 percent; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125 percent.

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000 percent.

The number assigned to this disaster for physical damage is 271206 and for economic injury the numbers are 824600 for Tennessee, 822100 for Georgia, and 824700 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 3, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance

[FR Doc. 94-11301 Filed 5-10-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 2000]

Finding of No Significant Impact: MG Industries, Inc., pipeline at Otay Mesa, CA

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to amend MG Industries permit to authorize installation of a third pipeline in the existing right of way across the U.S.-Mexico border in San Diego County, California.

SUMMARY: The Department of State has conducted an environmental assessment of the proposal to amend MG Industries permit authorizing installation of a third pipeline to transport liquid argon alongside two existing pipelines across the U.S.-Mexico international boundary. Based on the environmental assessment and after reviewing all comments, the Department of State has concluded that amendment of the existing Presidential Permit will not have a significant effect on the human environment. Consequently, no environmental impact statement was prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT AMENDMENT, CONTACT: Donald E. Grabenstetter, Office of Global Energy, room 3535, Department of State, Washington, DC, 20520, (202) 647-4557.

FOR FURTHER INFORMATION ON THE ENVIRONMENTAL ASSESSMENT, CONTACT: Evelyn Wheeler, Office of Ecology, Health and Conservation, room 4325, Department of State, Washington, DC, 20520, (202) 647-3367.

SUPPLEMENTARY INFORMATION: MG Industries, Inc., has applied for an amendment to a Presidential Permit issued September 4, 1991 authorizing installation of a third pipeline carrying liquid argon alongside two existing pipelines carrying oxygen and nitrogen across the U.S.-Mexico border at Otay Mesa, California. Argon is an inert, colorless, odorless gas that is a natural component of the earth's atmosphere. The liquid argon has been transported by tank truck. The U.S. Customs Service requested installation of a pipeline to facilitate border inspection and control.

The Department of State has concluded that amendment of the permit will not have a significant effect on the human environment. This finding is based on an environmental assessment conducted by the Department of State.

The proposed installation of a new pipeline will require no new construction. The lid of the existing concrete duct containing two existing pipelines will be lifted and the third (two inch) pipeline installed. The material to be conveyed in the new pipeline, liquid argon, is an inert, colorless, odorless gas that is a naturally occurring component of the atmosphere. Thus, any release of the argon would have no environmental consequence.

Dated: April 27, 1994.

Joan E. Spero,

Under Secretary of State for Economic and Agricultural Affairs.

[FR Doc. 94-11460 Filed 5-10-94; 8:45 am]

BILLING CODE 4710-07-M

Office of Defense Trade Controls

[Public Notice 2001]

Reinstatement of Export/Retransfer Privileges Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice

SUMMARY: Notice is hereby given of persons who had export/retransfer privileges reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and section 127.11(b) (formerly section 127.10(b)) of the International Traffic in Arms Regulations, (the ITAR), (22 CFR parts 120-130) during the period from 1987 through 1993.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703-875-6650)

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the AECA and section 127.11(a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported.

The statute permits export/retransfer privileges to be reinstated on a case-by-case basis after consultation with the Departments of Treasury and Justice, after a thorough review of the circumstances surrounding the conviction or ineligibility to export, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns and ensure future compliance.

In accordance with these authorities the following persons had export/retransfer privileges reinstated pursuant to section 38(g)(4) of the AECA and section 127.11(b) of the ITAR. The reinstatements occurred between December 22, 1987 and April 15, 1993:

1. American Aviation Parts and Service Corporation, Arlington, Virginia, effective September 26, 1988;
2. Napco Inc., Terryville, Connecticut, subsidiary of Thermo Electron Corp., effective October 11, 1988;
3. Environmental Tectonics Corp., Southhampton, Pennsylvania, effective April 21, 1989;
4. Napco International Inc., Hopkins, Minnesota, Venturian Corp. parent company, effective August 1, 1989;
5. Olin Corp., East Alton, Illinois, effective January 4, 1990;
6. Elder Industries, Inc., Newport Beach, California, effective October 1, 1990;
7. Charlotte Aircraft Corp., Charlotte, North Carolina, effective January 4, 1992;
8. Technical Service International, Miami, Florida, effective January 9, 1992;
9. Mr. Clifford Kapel, Technical Service International, Miami, Florida, effective January 9, 1992;
10. Mr. George McArthur Posey, Newport Aeronautical Sales, Costa Mesa, California, effective April 3, 1992; and
11. Forway Industries, Woodbury, New York, effective June 15, 1993.

The effect of this notice is to inform the public that these persons are eligible once again to participate in the export or transfer of defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: April 28, 1994.

William B. Robinson,

Director, Office of Defense Trade Controls, Department of State.

[FR Doc. 94–11459 Filed 5–10–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Central Florida Regional Airport Sanford, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised future noise exposure map submitted by the Sanford Airport Authority, Sanford, Florida for The Central Florida Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for The Central Florida Regional Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before October 16, 1994. This program was submitted subsequent to a determination by FAA that the associated existing noise exposure map submitted under 14 CFR part 150 for The Central Florida Regional Airport was in compliance with applicable requirements effective September 16, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised future noise exposure map and of the start of its review of the associated noise compatibility program is April 19, 1994. The public comment period ends June 18, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: The notice announces that the FAA finds that the revised future noise exposure map submitted for The Central Florida Regional Airport is in compliance with applicable requirements of part 150, effective April 19, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 16, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Sanford Airport Authority, Sanford, Florida, submitted to the FAA on March 8, 1994, a revised future noise exposure map, descriptions and other documentation which were produced during the Central Florida Regional Airport FAR part 150 Study conducted between September, 1992 and February, 1994. It was requested that the FAA review this material as the future noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the revised future noise exposure map and related descriptions submitted by the Sanford Airport Authority, Sanford, Florida. The specific map under consideration is "Future (1998) DNL Noise Contours With Recommended Controls" in the submission. The FAA has determined that this map for The Central Florida Regional Airport is in compliance with applicable requirements. This determination is effective on April 19, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a funding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150 that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for The Central Florida Regional Airport, also effective on April 19, 1994. Preliminary review of the submitted material indicated that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 16, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonable consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the program with specific reference to these factors. All Comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130 Orlando, Florida 32827–5397.

Sanford Airport Authority, Central Florida Regional Airport, 2735 Mellonville Avenue, Sanford, FL 32772-0818

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, April 19, 1994

W. Dean Stringer,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 94–11408 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Davidson County, TN

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Nashville Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr Wright B. Aldridge, Jr., Planning, Environment and Research Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Nashville, TN 37228; Telephone (615) 736–7106

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation and the City of Nashville will prepare an environmental impact statement (EIS) on a proposal to improve access through the Nashville Central Business District, extending from Interstate Route (I–40) and Demonbreun Street to Interstate Routes 24/65 (I–24/65) and Shelby Avenue in Nashville, Tennessee. The proposed improvement would primarily use existing streets and would include the reconstruction of existing or construction of new structures over both the CSX Railroad and the Cumberland River, replacing the existing Demonbreun Street Viaduct and the Shelby Avenue Bridge, depending upon the choice of proposed alternatives. Improvements to the corridor are considered necessary to provide for both present and projected traffic needs.

Options under consideration include (1) widening the existing corridor which includes the Demonbreun Street Viaduct, Demonbreun Street and the Shelby Avenue Bridge, and (2) utilizing other corridors south of the existing alignment and constructing new structures over the River and Rialroad. A total of four build alternatives are being considered.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state and local agencies on April 12, 1994. A public meeting soliciting comments on the included alternatives was held on March 3, 1994. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The Draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To ensure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued on: April 25, 1994.

Wright B. Aldridge, Jr.,

Planning, Environment and Research Engineer, Tennessee Division, Nashville, Tennessee.

[FR Doc. 94–11316 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with title 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and petitioner's arguments in favor of relief.

Canadian National Railway Company (CN)

Since the turn of the century, CN and its predecessor has operated trains over its Sprague Subdivision between

Winnipeg, Manitoba and Thunder Bay, Ontario, a distance of 433 miles. Approximately 44 miles of this trackage traverses the State of Minnesota between International Boundary and Rainy River. A minimum of 12 CN trains per day operate between Winnipeg and Thunder Bay over this line with mainly traffic originating and terminating in Canada. CN has always considered this bridge traffic to be a Canadian operation and has operated all such trains in compliance with all Canadian regulations. Certain regulations of the FRA differ from Canadian regulations. Canadian locomotives and cars which are to be interchanged in the United States are built or modified to be in compliance with FRA standards and are designated for "International Service". In addition to the above "bridge trains", a minimum of six daily "International Service" trains are operated on the Sprague Subdivision between Winnipeg and Duluth, Minnesota. The waivers are requested for the "bridge trains" only. Following are the individual petitions involved.

FRA Docket Number RSGM–93–30

Canadian requirements for locomotive and caboose glazing are similar to those of the FRA except Canada does not mandate retrofit of equipment built prior to November 19, 1982, whereas FRA requires that basically all equipment be retrofitted. The area of operation is remote and there have been no incidents or injuries related to glazing. Locomotives and cabooses designated for International Service do meet FRA requirements. CN seeks a waiver for "bridge trains" on the Sprague Subdivision from the requirements of §§ 223.11(c) and 223.13(c) that locomotives and cabooses be equipped with FRA certified glazing by June 30, 1984.

FRA Docket Number RSRM–93–1

Canadian rules for rear end markers allow retroreflective markers as opposed to the highly visible marker light required by 49 CFR part 221. CN has approximately 720 rear end-of-train telemetry devices with the reflective material and 113 with FRA flashing red markers. The latter are designated for International Service. CN estimates that at least 100 additional devices with lights would be required on the Sprague Subdivision at an overall cost of $1,800 each. CN states that all trains operated on the Sprague Subdivision are governed by centralized traffic control (CTC) and train separation is ensured by two separate mechanisms. A Rail Traffic Controller supervises the movement of all trains, controlling signals at junctions, sidings, etc. An automatic intermediate signal system is actuated automatically by the train within a particular block. In the 15 years of operation with CTC on this subdivision, no rear end collision has occurred. CN seeks a waiver of compliance from the requirements part 221 for all "bridge trains" on the Sprague Subdivision.

FRA Docket Number LI–93–16

Title 49 CFR § 229.123 requires that "each lead locomotive be equipped with an end plate that extends across both rails, a pilot, or a snowplow." Presently, 95 percent of CN's locomotives meet this requirement. To equip the remaining 50 locomotives would cost approximately $1,000 each. Only rarely would one of these locomotives be in the lead on a train on the Sprague Subdivision. There has never been an accident or injury attributable to these locomotives on this subdivision. CN seeks a waiver of compliance from the provisions of 49 CFR 229.123 for all "bridge trains" on the Sprague Subdivision.

CN tests and inspects its locomotives at least once every 3 months as required by Canadian Transport Board Order O–21 and the results are documented on a form, one copy of which is displayed in the cab of the locomotive. FRA has similar inspection, test and documentation requirements each 92 days. FRA also requires that each locomotive be inspected at least once during each calendar day and that the record of the inspection be maintained. Canadian daily inspection requirements differ in that only the lead locomotive safety control devices are certified as operating. In addition, engineers are required to report and record locomotive defects found enroute. CN feels all safety requirements are satisfied by their system. CN seeks a waiver of compliance with 49 CFR § 229.23 and § 229.21 for all "bridge trains" on the Sprague Subdivision.

FRA Docket Number SA–93–10

Road locomotives with corner stairways operated in the United States must be equipped with an uncoupling lever that is operable from both the ground and the bottom stairway opening. Many through train locomotives operating over the Sprague Subdivision do not comply with this requirement and uncoupling cannot be achieved from the side steps. CN has 131 locomotives which cannot be operated from the side steps and it would cost approximately $500 per locomotive to bring them into compliance. CN seeks a waiver of compliance with 49 CFR 231.29 on all "bridge trains" on the Sprague Subdivision.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–93–30, etc. and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 10, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590.

Issued in Washington, DC, on May 6, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–11412 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–06–P

Petition for Exemption or Waiver of Compliance

In accordance with title 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–94–4), and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before June 10, 1994, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Cape May Seashore Lines (CMSX); Waiver Petition Docket Number RSGM–94–4

The CMSX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three self-propelled passenger cars. CMSX has exclusive rights to operate rail passenger service on the 27-mile long rail line between Tuckahoe and Cape May, New Jersey. Initially, two services will be provided; a tourist train ride between Cape May and Cape May Court House, New Jersey, a total distance of 12 miles and a shuttle service between Cape May and Rio Grande, New Jersey, a distance of 6 miles. Self-propelled Rail Diesel Cars built in 1950 and 1951, will be used in both operations. The cars are presently equipped with laminated safety glass.

Adrian and Blissfield Railroad Company (ABRX); Waiver Petition Docket Number RSGM–94–5

The ABRX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one passenger car. The car, which was built in 1949, is used in excursion service between Adrian and Blissfield, Michigan, a distance of approximately 10 miles. The railroad operates in a rural area and there have been no incidents of vandalism in three years.

Wisconsin Central LTD. (WC); Waiver Petition Docket Number RSGM–94–6

The WC on behalf of their customer Flambeau Papers, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The locomotive, an EMD Model SW–1 built in 1950, is used primarily in the Flambeau plant but is used approximately 30 minutes each day in picking up and setting out cars in the WC Yard at Park Falls, Wisconsin. The distance traveled on the WC is approximately 1 mile.

Newburgh and South Shore Railroad Company (NSR); Waiver Petition Docket Number RSGM 94–7

The NSR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives are used in switching service to the NSR within the Cleveland, Ohio, switching district. The locomotives were formerly owned by the Newburgh and Southern Railway and were covered by waiver RSGM–80–38.

Dubois County Railroad (DCRR); Waiver Petition Docket Number RSGM–94–8

The DCRR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The DCRR operates over 16 miles of track between Dubois and Huntingburg, Indiana. The railroad states there has been no problem with vandalism in this rural area. The locomotive, a 1000 hP ALCO switcher built in 1953, is now equipped with safety glass.

Issued in Washington, DC on May 6, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–11413 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Annual List of Nonconforming Vehicles Determined To Be Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to annual list of nonconforming vehicles determined to be eligible for importation.

SUMMARY: This document corrects a notice published on February 23, 1994 (59 FR 8671) listing all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that NHTSA has determined, as of December 31, 1993, to be eligible for importation into the United States under section 108(c)(3)(C)(1) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1397(c)(3)(C)(i). As published, the list contained several typographical errors that are corrected as follows:

1. The model type identified for the Mercedes-Benz vehicle listed under VSP No. 23 was "500SEL." This is corrected to read "500SL."

2. The import eligibility number identified for the 1986 Volkswagen Scirocco was "VSA No. 42." This is corrected to read "VSP No. 42."

3. The model number identified for the Volkswagen vehicle listed under VSP No. 49 was "911." This is corrected to read "119."

Authority: 15 U.S.C. 1397(c)(3)(C)(iv); 49 CAR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–11415 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–74; Notice 2]

Withdrawal of Petition for Import Eligibility Determination

The National Highway Traffic Safety Administration ("NHTSA") published notice in the **Federal Register** on October 26, 1993 (58 FR 57666) that it had received from Champagne Imports, Inc. of Lansdale, Pennsylvania, a Registered Importer of motor vehicles, a petition for a determination that a 1993 Jaguar XJ6 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States. Such a petition may be granted under section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act and 49 CFR part 593 if the Registered Importer demonstrates (1) that the vehicle is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) that it is capable of being readily modified to conform to the standards. Following publication of the notice, Champagne Imports informed NHTSA that it was unable to demonstrate such compliance for the 1993 Jaguar XJ6 and that, accordingly, its petition was being withdrawn.

NHTSA possesses insufficient information to determine independently whether the 1993 Jaguar XJ6 is capable of being readily modified to conform to the standards, and therefore will make no decision regarding that vehicle at this time.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–11414 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATON

Research and Special Programs Administration

[Notice No. 94-5]

Carbon Fiber Composite Cylinder Technology Symposium

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public symposium.

SUMMARY: RSPA will host a public symposium on carbon fiber composite technology and its application to the design of overwapped metallic cylinders for transportation of compressed gases.

DATES: The symposium will be held May 26, 1994 at 8:30 a.m. to 4 p.m., but may conclude prior to 4 p.m.

ADDRESSES: The symposium will be held at the Department of Transportation, Nassif Building, room 4236, 400 Seventh Street, S.W., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Gopala Vinjamuri, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590-0001.

SUPPLEMENTARY INFORMATION: RSPA will host a public symposium on carbon fiber composite technology and its application to the design of over-wrapped metallic cylinders for transportation of compressed gases in commerce. The purpose of this symposium is to obtain information on state-of-the art carbon fiber composite technology, experience in prolonged use under normal and extreme temperatures, and applications to pressurized cylinders. The symposium is structured toward the presentation of technical papers from industry and government experts and follow-up discussions. RSPA anticipates hearing from representatives of the Compressed Gas Association and composite cylinder manufacturers. Other persons interested in presenting technical papers should contact RSPA in advance.

Carbon fiber composite pressure vessel technology is being used in aerospace applications, such as in pressure vessels and rocket motor casings. Application of this advanced technology to the commercial transportation of compressed gases in high pressure cylinders may offer a significant weight and efficiency advantage over current packaging systems without compromising safety. However, safety considerations differ between the design of aerospace vehicles and support systems and the design of cylinders that transport compressed gases in commerce. Issues of most concern to RSPA include materials technology, cylinder design and fabrication, and quality assurance. There also will be a presentation and discussion on the performance of a failure mode and effects analysis when considering the use of of advanced technologies in the design of compressed gas cylinders. This symposium will not address issues relating to compressed natural gas fuel systems for vehicles.

Issued in Washington, DC, on May 6, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–11416 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–60–M

Pipeline Safety Advisory Bulletin ADB–94–04 Offshore Operators, Emergency Planning Coordination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory to offshore pipeline operators on coordinating emergency planning with offshore producers.

SUMMARY: This advisory calls the attention of offshore pipeline facility operators to a safety recommendation by the National Transportation Safety Board (NTSB) regarding the need for emergency planning and coordination between themselves and offshore producers.

Advisory

As a result of NTSB accident report NTSB/PAR–90/02 and NTSB Safety Recommendation P–90–31, on an incident on October 3, 1989, involving a Natural Gas Pipeline Company of America (NGPL) underwater transmission line in the Gulf of Mexico, this advisory bulletin informs offshore pipeline operators of the following report findings:

(a) The accident report records the following shortcomings in the transmission line operator's emergency plan for offshore emergencies (NTSB's rationale is in parenthesis):

(1) Inadequate guidance for Gas Control personnel on notification procedures (when NGPL Gas Control personnel were first notified of the accident, they failed to contact the district superintendent directly).

(2) Inadequate guidance on the duties and responsibilities of the emergency coordinator (the district superintendent failed to properly fulfill his duties as emergency coordinator because of a lack of guidance in the NGPL emergency plan).

(3) Inadequate guidance for liaison and coordination with public officials (although the NGPL emergency plan listed a telephone number for the Coast Guard, NGPL took no action to establish liaison with local Coast Guard officials).

(4) Inadequate guidance for liaison and coordination with offshore producers (neither the NGPL emergency plan nor the district superintendent had an emergency telephone number with which to contact personnel responsible for the unmanned offshore production platform where automatic shutdown equipment was located and which failed to shut off gas flow into the failed pipeline).

(b) With respect to item (a)(3) above, the requirements for emergency plans in 49 CFR 192.615 for gas pipelines, and similar requirements in 49 CFR 195.402(e) for hazardous liquids pipelines, require operators to establish and maintain adequate communication and liaison with appropriate fire, police and other public officials. As noted in (a)(3) above, the operator failed to establish adequate means of communication and liaison with the local Coast Guard (public officials) as required by 49 CFR 192.615.

Background

This advisory bulletin is based on two offshore pipeline failures and an NTSB safety recommendation.

In March 1989, an ARCO production platform in the Gulf of Mexico was engulfed in flames and destroyed when a sudden release of gas ignited during repairs to a Southern Natural Gas Company (SONAT) 18″ offshore pipeline. There were seven fatalities. In preparing for the repair work, SONAT began venting the pipeline to atmosphere through piping at the ARCO platform. Unfortunately, and unbeknown to SONAT, venting came to a halt when ARCO personnel isolated the platform by closing valves on all pipelines entering the platform, including SONAT's 18″ pipeline (ARCO did this in preparation for some platform maintenance work). As a result, the 18″ pipeline which the SONAT crew began to repair, and which they thought had been safely vented free of flammables, still contained some gas and liquids. A cutting machine was being used on the pipeline's 18″ riser at the platform, and as cutting neared completion, the pipe separated unexpectedly, releasing gas and liquids which ignited. In the judgment of Federal accident investigators, a lack of adequate coordination between both the producer's (ARCO) and the pipeline operator's (SONAT) field personnel was a significant contributing factor.

In October 1989, another pipeline failure involving fatalities occurred in the Gulf of Mexico. A fishing vessel, the Northumberland (crew of 14), punctured an NGPL 16″ underwater transmission line carrying natural gas at 835 psig pressure. The escaping gas ignited almost immediately, creating a fireball which completely destroyed the vessel. Eleven (11) crew members perished. The incident happened at approximately 6:00 PM. However, gas flow feeding the fire was not fully shut off for over three hours, until shortly after 9:15 PM.

According to the NTSB report, a major contributing factor in this long delay was the lack of a telephone number for contacting the operators of an unmanned production platform [refer to (a)(4) above]. As a result, NTSB Safety Recommendation P–90–31 was issued to RSPA, as follows:

> Evaluate, with the assistance of the Minerals Management Service, the need for emergency planning and coordination between offshore pipeline operators and producers, and then implement, if necessary, appropriate safety regulations.

The NTSB report also noted an inadequacy involving communications with local Coast Guard officials [refer to (b) above] and shortcomings [refer to (a)(1) through (a)(5) above].

Issued in Washington, DC, on May 5, 1994.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety

[FR Doc. 94–11359 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974: Deletion of Systems of Records Notices

AGENCY: Departmental Offices, Treasury.

ACTION: Notice to delete Privacy Act systems of records.

SUMMARY: The Department of the Treasury is deleting the following systems from its inventory of Privacy Act systems of records notices.

Treasury/DO .003—Personnel Working Files;
Treasury/United States Mint .006—Examination Reports of Coins Forwarded to the Mint from U.S. Secret Service;
Treasury/United States Mint .010—Purchases and Sales of Precious Metals; and
Treasury/United States Mint .001—Redemption of Uncurrent or Mutilated Coins.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Disclosure Services, Department of the Treasury, Washington, DC 20220, Telephone: (202) 622–0930.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of the Treasury conducted a review of several of its Privacy Act systems of records. The records covered by Treasury/DO .003—Personnel Working Files, are used by office directors within the Departmental Offices for basic factual data about an individual's employment while at the Department of the Treasury. Records in this system are used in various ways by office directors or other supervisory personnel, including screening qualifications of employees; determining status, eligibility, recommendations for promotions and/or suspensions, performance appraisals, and other information needed to conduct day-to-day personnel administration.

It has been determined that Treasury/DO .003—Personnel Working Files, duplicates the government-wide system of records covered by OPM/GOVT–1—General Personnel Records, established by the Office of Personnel Management. Treasury/DO .003 also contains records covered by OPM/GOVT–2—Employee Performance File System Records, and OPM/GOVT–3 Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers. Therefore, Treasury/DO .003—Personnel Working Files, is being deleted from Treasury's inventory of Privacy Act systems of records. The system notice was last published in its entirety in the **Federal Register**, Vol. 57, page 13905, April 17, 1992.

There systems of records maintained by the United States Mint were reviewed and it was determined the records were no longer subject to the Privacy Act. System of records Treasury/United States Mint .006—Examination Reports of Coins Forwarded to Mint from U.S. Secret Service, no long maintains the records on individuals and the information is not retrievable by name or other personal identifier. Treasury/United States Mint .010—Purchases and Sales of Precious Metals, is being deleted because the U.S. Mint no longer purchases precious metals from individuals. The system of records titled Treasury/United States Mint .011—Redemption of Uncurrent or Mutilated Coins, is being deleted because the records are not retrievable by name or other personal identifier. The system notices were last published in their entirely in the **Federal Register**, Vol. 57, pages 14117, 14119 and 14120 respectively, on April 17, 1992.

Dated: May 4, 1994.

G. Dale Seward,

Acting Deputy Assistant Secretary (Administration).

[FR Doc. 94–11320 Filed 5–10–94; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 90
Wednesday, May 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 23094, May 4, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) Tuesday, May 10, 1994.

CHANGE IN THE MEETING:

Open Session

The item listed below has been removed from the agenda:

4. Extension of Comment Period on the Proposed Consolidated Guidelines on Harassment.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 9, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued May 9, 1994.

[FR Doc. 94–11576 Filed 5–9–94; 2:16 pm]

BILLING CODE 6750–06–M

UNITED STATES INSTITUTE OF PEACE

BILLING CODE: BAC 6820–AR.

TIME AND DATE: Thursday, 7:00 p.m., May 19, 1994–Saturday, 1:00 p.m., May 21, 1994.

LOCATION: Airlie Conference Center, Airlie, Virginia.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-fourth Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of 1994 National Peace Essay Contest Winners; Annual Program Review.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information. Telephone: (202) 457–1700.

Dated: May 9, 1994.

Richard H. Solomon,

President, United States Institute of Peace.

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Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 98, et al.

Child Care and Development Block Grants and Aid to Families With Dependent Children and Child Care Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 98

Administration for Children and Families

45 CFR Parts 255, 256 and 257

RIN 0970–AB33

Aid to Families With Dependent Children Child Care Program, Transitional Child Care and At-Risk Child Care; Child Care and Development Block Grant

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the regulations for the Child Care and Development Block Grant (CCDBG), child care serving Aid to Families with Dependent Children (AFDC) families, the Transitional Child Care program (TCC), and At-Risk Child Care program.

The purpose of this proposal is to support States, Territories and Tribes in their efforts to increase the availability and quality of federally-subsidized child care, develop more coordinated delivery systems, and improve child care opportunities for families, providers and communities.

The proposed rule is presented in a single package because of our intent to remove regulatory barriers to program coordination, to increase flexibility across the four programs, and to promote common goals. The proposed rule addresses certain key areas of mutual concern for operation of these programs: Accessibility to higher quality care through amended payment rates; adaptation of payment policies for children with special needs as a result of the Americans with Disabilities Act; impact of the Fair Labor Standards Act and other Federal and State statutes on in-home care; and deletion of provisions, known as the effects test, which may be construed as minimizing regulatory protection for children in care concerning State implementation of health and safety standards.

The proposed amendments to the CCDBG regulations additionally include technical amendments required by the Juvenile Justice and Delinquency Prevention Amendments of 1992 and the Older Americans Act Technical Amendments. Other proposals respond to general concerns about payment differentials for quality care, children's immunizations, eligibility of children in foster care, availability of certificates as a payment mechanism, and cost limitations for administration and certain other activities.

The proposed amendments to the regulations for child care for AFDC families, TCC, and At-Risk Child Care promote coordination among these programs and also with CCDBG to: provide State flexibility in determining a child's physical or mental incapacity; modify and codify policy regarding child care during gaps in employment; require States to define how child care is reasonably related to the parent's work or other activity; and allow States flexibility to conform family fee requirements. Additionally, proposed amendments to TCC would give States the option to provide TCC to families who voluntarily terminate their AFDC benefit, and address the process of requesting TCC.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than July 11, 1994.

ADDRESSES: Comments should be mailed (facsimile transmissions will not be accepted) to the Assistant Secretary for Children and Families, Attention: Child Care Comments, OFA/DJP, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Administration for Children and Families, Office of Family Assistance, Aerospace Building, Fifth Floor East, 901 D Street, SW., Washington, DC between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact persons shown below.

FOR FURTHER INFORMATION CONTACT: For questions concerning the title IV–A child care programs, please contact Mary Ann Higgins, Director, Division of JOBS Program, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–9294. For questions concerning the Child Care and Development Block Grant, please contact Helen Morgan Smith, Acting Director, Division of Child Care, Hubert Humphrey Building, room 352G, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 690–6241. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Administration for Children and Families (ACF) administers a number of programs that address the child care needs of low-income families. In recent years, the scope of ACF-administered child care programs was broadened to address the child care needs of increasingly larger segments of the population. ACF's child care programs reflect a growing awareness of the needs of the family for safe child care that also attends to the developmental needs of children. They offer the Nation's low income families an important support in their efforts to achieve and maintain economic independence.

Child care needs for working families who receive Aid to Families with Dependent Children (AFDC) benefits were first addressed through the dependent care disregard. The family's child care expense (up to $200 a month for a child under age 2 and up to $175 for a child who is at least age 2) is deducted from the family's earnings when determining the amount of the family's countable income for the purpose of the family's eligibility for and amount of AFDC assistance. The dependent care disregard is used by most States as one method for providing child care to working AFDC families.

The Social Services Block Grant (title XX of the Social Security Act) enables States to provide social services which are best suited to the needs of its residents. These services can include child care, and most States have used title XX funds to provide child care through contracts with providers.

The regulatory changes proposed in this rule concern four child care programs created through two statutes: the Family Support Act of 1988 (Pub. L. 100–485) and the Omnibus Budget Reconciliation Act of 1990 (OBRA 90). A brief description of each program and of the overall goals of this proposed rule follows.

The Family Support Act of 1988 amended title IV–A of the Social Security Act at section 402(g), providing a very significant extension of ACF's ability to fund child care services. The amendment created two new child care programs. First, it guaranteed necessary child care for working AFDC recipients, and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). This program is often called AFDC child care. The regulations for AFDC child care are located at 45 CFR part 255. An amendment concerning applicable child care standards under 45 CFR 255.4 (Allowable Costs and Matching Rates) became effective on August 4, 1992.

Second, the Family Support Act addressed the need for Transitional Child Care (TCC) during the 12 months after a family becomes ineligible for AFDC due to work. The regulations specific to TCC are located at 45 CFR part 256. However, many of the regulations for AFDC child care (part 255) also apply to TCC.

With OBRA 90, Congress established two additional child care programs that further extended child care services to the Nation's low-income families: an optional At-Risk Child Care program (child care for low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC) and the Child Care and Development Block Grant (CCDBG).

Currently, 49 States and the District of Columbia have approval to operate the At-Risk program. That program, like the other title IV–A child care programs, requires the State to match Federal funds, but, unlike the other programs, it is capped and the funds are distributed according to a formula. The At-Risk Child Care program is located at section 402(i) of title IV–A of the Social Security Act. The At-Risk regulations are located at 45 CFR part 257.

In this preamble, we refer to AFDC child care, TCC, and At-Risk Child Care as the title IV–A programs.

The CCDBG is intended to provide child care services for low-income families and to increase the availability, affordability, and quality of child care and development services. That program does not require a State match. Regulations for the CCDBG program are located at 45 CFR parts 98 and 99.

The Juvenile Justice and Delinquency Prevention Amendments of 1992, Public Law 102–586, made various technical changes to the CCDBG. For example, section 8(a)(1) and (2) of the amendments made changes to section 658J(c) of the Block Grant Act by replacing "obligation period" with "expenditure period." Other minor technical corrections to the Block Grant Act are included in the Older Americans Act Technical Amendments, Public Law 103–171.

Purpose of Proposed Rule

This proposed rule incorporates lessons ACF has learned from our initial experience with the title IV-A and CCDBG programs. Our purpose is to remove barriers, promote coordination, foster higher quality care, and champion the health of our neediest children. We have evaluated State and Tribal child care program plans, conducted many child care program field reviews, sponsored two national child care conferences, held symposia for States and Tribes, and participated in many other conferences and meetings. We have listened as State representatives and others voiced desire for remedies of regulatory barriers to the operation of seamless child care delivery systems and for the ability to deliver higher quality care. This section of the preamble gives an overview of our findings and considerations. These ideas for change are developed in greater detail later in the preamble.

There are four main purposes of this proposed rule. First, it is a vehicle for responding to changes needed to existing regulations to achieve consistency with recently enacted law. We thus propose changes to the CCDBG regulations required by the Juvenile Justice and Delinquency Prevention Amendments of 1992 and the Older Americans Act Technical Amendments. We also propose amendments and provide guidance in the preamble on how payments for special needs children can be made under both title IV-A child care and CCDBG in light of the Americans with Disabilities Act (ADA), Public Law 101–336, enacted on July 26, 1990.

Second, these proposals reflect ACF's desire to help States facilitate operation of the title IV-A and CCDBG programs based on the experiences of both States and families with existing program policy. The changes will give States some immediate relief to certain regulatory barriers. Many of these proposals will permit States to coordinate the four programs better, making services more seamless for child care providers and families. Allowing for greater conformity among the sliding fee scales for title IV-A child care and CCDBG is an example of this kind of effort. Allowing States to determine physical or mental incapacity of children to be served under title IV-A consistent with CCDBG rules is another example.

Third, our objective in proposing these changes is to strengthen States' capacity to ensure the quality of federally-subsidized child care services by removing regulatory barriers. We believe the quality of federally-subsidized child care is important and want to promote safe and healthy environments for children that foster their development and overall well-being. We wish to further foster quality in partnership with the States. Our proposals to foster quality include eliminating the regulation in the CCDBG that limits payment differentials within categories of care to no more than 10 percent. We also propose to allow States to pay the actual charge for higher quality child care for children in title IV-A programs, without regard to the 75th percentile of the local cost of care, for child care that meets State-designated objective standards of quality that exceed the normal licensing or certification requirements.

Finally, the health of children plays an overwhelmingly important role in their well-being and their ability to grow and develop into productive citizens. We therefore propose to amend the CCDBG health and safety standards to require that children receiving CCDBG services receive immunizations.

In sum, this proposed rule goes beyond adoption of technical refinements to ACF-administered child care programs. It represents ACF's efforts to think more broadly about helping States better serve low-income families through subsidized child care.

Statutory Authority

Regulations for the title IV-A child care programs are published under the general authority of 1102 of the Social Security Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act. Section 658E of the Child Care and Development Block Grant Act requires that the Secretary shall by rule establish the information needed in the Block Grant plan.

Regulatory Impact Analysis

This proposed rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

It was difficult for us to determine the actual cost implications of the regulation because most of the changes are optional with States. We did not know how many States would adopt these options, or whether States would make other programmatic changes which would counteract any potential increases in costs. Therefore, we are explicitly seeking comments on the cost implications of the proposed changes.

We are proposing a new requirement that children be immunized in order to receive services under the Child Care and Development Block Grant. The CCDBG health and safety regulations currently require States and Tribes to include provisions about immunizations in their CCDBG plans and to provide assurances that requirements with respect to immunizations are in place. In addition, most States already include immunizations in their child care standards. We do not anticipate that our proposal will have a significant negative impact on either grantees or families, since grantees will not be required to provide immunizations directly and families who receive subsidized child care are by law eligible for free immunizations under such federally supported programs as Medicaid, the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program, and the new Vaccines for Children program. The immunization provision was considered the most cost-effective and least burdensome approach because: (1) It helps ensure that vulnerable young children are immunized; (2) immunization of such children is highly cost-effective; and (3) it provides flexibility to grantees in determining how to implement the provision.

Furthermore, it directly supports the President's national immunization initiative, Vaccines for Children, which calls for greater mobilization and expansion of immunization resources to protect the health of our youngest and most vulnerable children.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. The primary impact of these final rules is on State, Tribal and Territorial governments. To a lesser extent the regulation could affect individuals and small businesses. However, the number of small businesses affected should be limited, and the expected economic impact on these businesses would not be so significant that a full regulatory flexibility analysis is indicated.

- First, the regulations retain many provisions designed to ensure broad participation by small businesses in the program. For example, the IV–A entitlement programs provide that individuals must be able to choose among available providers, including family day care providers. The At-Risk program regulations still require that any registration requirements States impose on unlicensed and unregulated providers be simple and timely, and facilitate prompt payment. In the CCDBG program, the regulations still require that parents have a choice among a variety of providers including family day care providers. These and other provisions in the current rules will help ensure that States exercise restraint in imposing any additional requirements on small entities providing child care.
- The proposed rule contains a number of provisions which could result in some decreases in the regulatory and economic burdens on providers who are small businesses. Most importantly, because States will be able to operate their programs under a more consistent set of program rules, participating providers should face a simpler and more streamlined set of regulatory requirements.
- Many of the providers who would potentially be affected are in-home providers. These providers are generally not operating as small businesses, but as domestic employees; thus, any impact on them need not be specifically addressed under this Act.
- The regulation could ultimately result in some additional regulatory requirements or health and safety standards for other providers, such as family day care providers, who are small businesses. However, the impacts on small businesses, if any, would not be directly attributable to this regulation. With the possible exception of the immunization provision, the regulation does not directly propose any expansion of regulatory requirements or health and safety standards on providers; thus, any impacts on providers should only arise as the result of independent State and/or local decisions to impose additional requirements.

The effects tests may have discouraged States from imposing additional requirements—beyond those which were generally applicable—on providers who specifically wanted to participate in these federally supported child care programs. However, we do not believe States have much interest in imposing additional requirements on these providers. First, States and localities know that parents often have difficulty locating child care providers which meet their needs, and that low-income parents frequently have more serious access problems. They do not want to make it appreciably more difficult for providers to participate in the programs which serve low-income families. Secondly, States have limited resources for enforcing and monitoring child care regulations; thus, they are motivated to be selective about imposing requirements. Thirdly, States have an interest in establishing a consistent set of requirements for providers, regardless of their payment sources; differential rules make it more difficult to ensure regulatory compliance and provide a seamless system of services which help families make the transition from welfare to self-sufficiency. Finally, under current rules, State and local governments have full flexibility to set general regulatory requirements and health and safety standards for child care providers. If States (or other grantees) have felt that there was a substantial need for additional requirements (presumably to protect the well-being of children in care), we would have expected them to act under this general authority.

While States generally have immunization requirements for children in child care, the proposed immunization provision might result in some additional children being subject to immunization requirements or stronger requirements for some children. However, States have flexibility in deciding how immunization requirements are to be implemented. Requirements would not necessarily be imposed on providers; rather, States can choose to impose them on eligible families. Thus, the immunization provision in this proposed rule does not directly affect small businesses. Further, where States do choose to impose additional requirements on providers related to the immunization provision, such requirements would be basically administrative in nature (e.g., documentation); we expect the costs of immunization to be covered through other funding sources. Thus, this provision would not have a significant economic impact on affected providers.

Thus, the number of entities affected, and the net economic impact on them, should not be significant.

Paperwork Reduction Act

Certain sections of these proposed regulations contain information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The proposed revisions for the title IV–A child care programs will produce only minor changes and additions to the State Supportive Services Plan (ACF–106).

Specifically, State plans would be required to include: (1) Policies on "reasonably related" (see § 255.1(e)(4) and § 257.21(a)(6)); (2) definitions of "mentally or physically incapable" (see §§ 255.1(m) and 256.1(a)(5)); and (3) decisions on whether States have opted to provide TCC without formal requests, during gaps, and in voluntary closure situations (§ 256.1(a)(6)). If States take advantage of the other new options available to them, they would also have to report on their criteria for determining "higher quality" care (§ 255.1(i)(2)) and conditions and limitations for in-home care (§ 255.1(n) and § 257.21(o)). The proposed rule would reduce reporting burden at § 255.1(i) through its elimination of the requirement for surveys of special needs rates.

These amendments to the IV–A State plans are being submitted to OMB.

Similarly, the proposed revisions for the CCDBG program will produce minor changes and additions in the CCDBG plan. Grantee plans will have to include additional information about immunization policies pursuant to the amendments at § 98.41(a)(1) (see § 98.16(a)(10)). Depending on their response to the proposed amendments and clarifications, Grantees may also be revising plan sections on in-home policies (§ 98.16(a)(7)(ii)), the definition of protective services (§ 98.16(a)(6)(vii)), and payment rate differentials (§§ 98.16(a)(12) and 98.43(e)).

Amendments to the CCDBG plans will also be submitted to OMB.

ACF has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding the information collection requirements should direct them to the Administration for Children and Families (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Order of Preamble and Regulations

The preamble begins with a discussion of four areas where the proposed regulations for the title IV–A child care programs and CCDBG address similar issues—payments for higher quality child care, payments for children with special needs, providing in-home care, and the effects test. We first discuss these four issues from a common perspective. But, where needed because the respective statutes for the programs differ, the general discussion on these topics is followed by a discussion of the proposed regulatory change in the context of the specific program, either the Block Grant or the applicable title IV–A program(s). It is our intent that where these proposals address a common issue, the proposed changes result in policies that better enable States to coordinate these programs into a more cohesive child care system. Comments which identify the potential for conflicting policy between programs as a result of these proposals are especially encouraged.

Following the discussion of these four issues, we discuss additional changes specific to the CCDBG (part 98) followed by proposed changes specific to the title IV–A child care programs (parts 255, 256, and 257). The proposed regulations follow the order of the Code of Federal Regulations (CFR) and are presented after the preamble, beginning with the CCDBG followed by the title IV–A child care programs.

PROPOSED CHILD CARE RULE AMENDMENTS, 45 CFR PARTS 98, 255, 256, AND 257

Topic	45 CFR section
Joint Issues	
Payment Rates for Higher Quality Care:	
CCDBG	98.16, 98.43
Title IV–A	255.1, 255.3, 255.4
Payment Rates for Special Needs Care:	
CCDBG	98.16, 98.43
Title IV–A	255.4
In-Home Care:	
CCDBG	98.16
Title IV–A	255.1, 255.3, 255.4, 257.21, 257.40
Effects Test:	
CCDBG	98.30, 98.40, 98.41, 98.43, 98.45
Title IV–A	255.4, 257.41
Child Care and Development Block Grant	
Immunizations	98.41
Foster Care	Preamble clarification
Certificate Availability	98.30
Other Authorized Activities.	98.13, 98.50, 98.52
Availability of Funds and Reporting.	98.2, 98.60, 98.63, 98.70
Title IV–A Child Care	
Reasonably Related	255.1, 257.21
Determining Incapacity.	255.1, 255.2, 256.1, 256.2
Gaps in Employment and Continuity of Title IV–A Child Care.	255.2, 256.1, 256.2, 257.30
Transitional Child Care.	256.1, 256.2, 256.3, 256.4

Payments for Higher Quality Child Care

Both the Federal government and the States have an interest in assuring that the increasing number of the Nation's children who receive child care services benefit from high quality care. This interest applies to all children, whether or not in subsidized care. High quality care provides parents a necessary support service to enable them to participate in work, education, or training. High quality care also provides sound developmental support for the children who comprise our future work force.

Balancing the Federal government's interest in an adequate supply of child care to meet the needs of family self-sufficiency programs with the States' responsibility for regulating the quality of that care is a delicate exercise. We have learned from administering the title IV–A and CCDBG programs that States wish to have more opportunities to recognize higher quality care by compensating providers appropriately. As a result, ACF proposes to amend the payment regulations for both title IV–A and CCDBG child care programs. Along with other amendments described in this proposed rule, these payment amendments will enable States to provide recipients of child care under these programs greater access to higher quality care.

As described more fully below, we propose to eliminate the regulation for the CCDBG that limits payment differentials within categories of care to no more than 10 percent. We also propose to amend the title IV–A child care regulations to allow States to pay the actual cost of care, subject only to the statewide limit, for care that meets the State's definition of higher quality care.

Payments Under CCDBG

We propose to revise §§ 98.16(a)(12)(ii) and 98.43(e) to remove the 10 percent cap on payment differentials within a category of care. In addition, we propose to revise § 98.43(b) (1) and (2) to clarify that the cost of subsidized child care services must be no more than the actual amount billed or charged for non-subsidized care.

The Block Grant Act requires that payment rates take into account the variations in cost of providing child care in different categories, as defined in § 98.2(h), and to children of different age groups, as well as the additional costs of providing child care for children with special needs. Grantees have been required to differentiate among center-based, group home, family, and in-home child care providers. The existing regulations permit grantees to differentiate payment rates within categories of care, if certain conditions are met.

As noted in the preamble to the existing regulations, the limit on payment rate differentials within a category of care was one of the more controversial issues of the regulation. That controversy continues today. In writing the existing regulations, we were persuaded by grantees and child care advocates that grantees should be permitted to differentiate within categories of care to account for licensing status and considerations of quality, as well as coordination with other child care programs. As a consequence, grantees were permitted to set differential payment rates, with a 10 percent cap, within categories of care. However, in the preamble, we indicated that we would consider amending the regulation if it became apparent that the 10 percent limit was inappropriate or served no useful purpose.

Since publication of the existing regulations, we have conducted program reviews in States and non-exempt Tribes, held a number of meetings attended by States, Territories and Tribes, consulted with many child care advocacy groups and received numerous letters from the Congress and other interested parties. In these contacts, we were told that child care providers meet varying licensing requirements and provide care at varying levels of quality. Grantees have asked for the additional flexibility to set payment rates which provide incentives for becoming licensed and which reflect differences in program quality. A number of grantees have stated that, in setting payment differentials within categories of care, they want to recognize and compensate those child care facilities which have obtained nationally recognized accreditation along with those child care providers who have earned Child Development Associates (CDA) credentials. Additionally, grantees want to take into consideration the differing costs of providing care in licensed, unlicensed, and license-exempt (e.g., relative) settings, and of providing care during non-traditional hours (e.g., evenings and nights).

It has also been pointed out that other child care subsidy programs allow grantees to differentiate within categories of care without imposing any limitation on the amount of the payment differential. As a consequence, some grantees have experienced difficulty in creating a seamless child care system.

Eliminating the 10 percent limitation will give grantees the flexibility to address these areas of concern. As a consequence, we propose to remove the reference to limits on payment differentials in §§ 98.16(a)(12) and 98.43(e). We propose to revise § 98.43(e) and add § 98.16(a)(12)(iii) to require grantees that provide for variations in the payment rate within a category to include a description of how the differential rates within categories of care are determined and to identify the distinctions within categories. Grantees would still be required to ensure that payment rates are sufficient to provide access to child care services comparable to those in the non-subsidized sector.

We are clarifying the regulations at § 98.43(b) (1) and (2) to read "amount charged" instead of costs. We believe this terminology more clearly reflects Federal policy which prohibit the use of Federal dollars to pay more for a service than the provider would charge a non-subsidized family. Oftentimes, the provider may not bill the actual costs, believing that the parent(s) could not afford them. However, providers may well provide those "costs" when responding to market surveys or other "payment rate" questions concerning costs, resulting in receipt of payments which exceed those actually charged. We believe that this revision will eliminate such occurrences. This clarification does not represent a change in policy.

Payments for Higher Quality Care Under Title IV–A Child Care Programs

Currently, Federal Financial Participation (FFP) for title IV–A child care is available for the lowest of the actual charge for care, the local market rate for that category of care or the applicable statewide limit. The local market rate is based on the 75th percentile cost of care in the local area. We continue to believe that the 75th percentile is a reasonable definition of local market rate. This level represents a balance between concerns about fiscal accountability and accessibility to most services. In addition, we believe that requiring local market rates to be set at the 75th percentile has raised the general level of reimbursement to providers. We recognize, however, that the 75th percentile may not be sufficient to purchase some higher quality care. Therefore, to permit States to recognize and reward higher quality care, we propose amending § 255.4(a) to define the actual charge for care that meets the State's objective criteria for higher quality care as the local market rate for such care. We will provide FFP for the actual charge for such care, subject to the statewide limit.

While we recognize that State licensing or regulatory certification contributes to high quality care, we do not believe that licensing or regulation is the sole criterion or indicator of a higher quality of care. The proposed amendment to § 255.4(a) requires that the State-defined higher quality criteria will be in addition to existing State licensing or regulatory requirements. For example, the State's objective criteria for higher quality care might be that providers have a Child Development Associate (CDA) credential coupled with lower than regulatory staff/child ratios, or the State could choose the Head Start Program Performance Standards or other nationally or State-recognized criteria as its criteria for higher quality. We do not propose a national standard or definition for higher quality care.

Similarly, it is not the intention that this regulation be used to circumvent the regulation at § 255.4(a)(2)(iii) which establishes local market rates at the 75th percentile based on a survey of providers in an area. We expect that, because the State's criteria for higher quality care will be above the licensing and regulatory standards generally in effect, the State will make payments at the actual cost (subject only to the statewide limit) under this provision less frequently than payments are made at the 75th percentile. Payments for higher quality care would apply, then, to only a few providers in an area, not the majority of providers. These providers still would be included in local market rate surveys. We are also proposing to amend § 255.1(i) to require States to specify in the Supportive Services Plan their objective criteria for higher quality care.

To be consistent in our terminology, we propose to amend § 255.4(a)(2)(iii) to replace "type" with "category" when referring to various kinds of providers. We propose the same revision for §§ 255.1(i) and 255.3(c).

Payments for Child Care for Children With Special Needs

For the purposes of this section only, in discussing payments for child care, we use the term "special needs" to mean children with mental or physical impairments that substantially limit one or more of the major life activities, i.e., "disabilities" as the term is used in the Americans with Disabilities Act (ADA). Special needs in this preamble discussion does not mean foster care, protective services, bilingual/cultural needs or other broader considerations sometimes attached to the term, for example, for the purpose of targeting as required by the CCDBG regulations at § 98.44(b).

Americans With Disabilities Act

The Americans with Disabilities Act, enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The ADA is administered by the U.S. Department of Justice (DOJ). However, most States have established a central contact, usually in the office of the Governor or Attorney General, and questions about the ADA should be referred to that contact first. In addition, DOJ has established a technical assistance Information Line for public inquiries. The Information Line is available 24 hours daily at (202) 514–0301 (voice) or (202) 514–0381 (TDD). (This number will be replaced with a toll free 800 number in the future.) Lastly, written inquiries about the ADA may be directed to: U.S. Department of Justice, Civil Rights Division, Public Access Section, P.O. Box 66738, Washington, DC 20035–6738.

Of particular consequence in the context of paying for child care is title III of the ADA which prohibits discrimination on the basis of disability by private entities in places of public accommodation. The ADA defined public accommodations as facilities whose operations affect commerce and fall within twelve specified categories, including social service center establishments. The implementing regulations for the ADA, issued on July 26, 1991, specifically include "day care centers" as public accommodations and clarified that places of public accommodation located in a private residence are covered by the ADA.

The ADA uses the term "day care center" as a generic term for all categories of out-of-home child care providers. In contrast to many other Federal non-discrimination laws, a public accommodation does not have to receive Federal funding to be covered by the requirements of the ADA. Thus, with a few very limited exceptions specified in the ADA, all child care providers who provide services to the public are covered by the ADA. While most provisions of the ADA have been well understood, there has been considerable confusion about its impact on payments for child care, particularly when such payment is subsidized. In light of the ADA, we believe it is important to discuss the payments for child care for children with special needs under ACF-administered child care programs. We are therefore proposing clarifications to the regulations which address payments for child care for children with special needs.

The ADA regulation at 28 CFR 36.301(c) states: "A public accommodation may not impose a surcharge on a particular individual with a disability * * * to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modification in policies, practices or procedures, that are required to provide that individual * * * with the non-discriminatory treatment required by the Act * * *."

In response to "whether day care centers may charge for extra services provided to individuals with disabilities," the preamble noted that § 36.301(c) "is intended only to prohibit charges for measures necessary to achieve compliance with the ADA." (56 FR 35564, July 26, 1991.) Thus, the ADA and its implementing regulations do allow caregivers to charge higher rates for special needs, provided those higher charges are for services beyond those required by the ADA and are not for the purpose of recouping the cost of measures required by the ADA.

States need the flexibility to determine on an individual basis how best to meet the needs of children with special needs. It is our intent that such children receive quality child care in developmentally appropriate settings so that they may reach their maximum potential and grow into responsive and responsible adults. Providers should be compensated, within the ADA regulations, for those developmentally appropriate child care services provided to children with special needs in order to ensure that these children do not go unserved and the quality of care is not affected. (At the same time, such compensation must be consistent with the cost principles applicable to expenditures under the program.)

Payments for Child Care for Children With Special Needs Under CCDBG

The CCDBG program uses the term "special needs" in two different contexts. But as stated earlier for the purpose of payment rate discussion, the term "children with special needs" will be used to refer to children with mental or physical impairments that substantially limit one or more of the major life activities.

Because the ADA stresses the need for making decisions on accommodations on an individual basis, it is inconsistent to require grantees to set a single or overall payment rate for children with special needs. We believe that grantees must have the flexibility to set payment amounts on a case-by-case basis. As a consequence, we propose to revise § 98.16(a)(12)(ii) by removing the requirement that grantees justify a decision not to have different rates based on the additional amount charged for child care services provided to a child with special needs. We also propose revising § 98.43(b)(2) to reflect that additional charges for providing child care for a child with special needs must be for services not required as an accommodation under the ADA.

Payments for Child Care for Children With Special Needs Under Title IV–A

The existing regulations governing payments for title IV–A child care require States to conduct local market surveys to establish rates for such care, including care for children with special needs, where applicable. Further, although the regulations for the CCDBG do not require that grantees conduct such market surveys, many grantees have adopted the title IV–A local market rates established by these surveys. The ADA does not explicitly prevent States and grantees from continuing to conduct and use such surveys as a method of establishing rates for payment of special needs child care. However, given the emphasis of the ADA on accommodating persons with disabilities on an individualized basis, ACF strongly believes that local market surveys, for the purpose of establishing rates for special needs care, are no longer useful or accurate.

Because the ADA stresses that decisions on accommodations for a person's disability must be made on an individual, case-by-case basis, we propose at § 255.4(a)(2) that in lieu of a local market survey to establish rates for special needs care, States must use the following method for determining payments to providers of care to special needs children: when a provider charges a special needs child, on an individual basis, a rate that exceeds the local market rate for a child of the same age and category of care, that charge would be the local market rate for that special needs child. The State would pay that charge, subject to the statewide limit and applicable cost principles, if it is for services which are not required as an accommodation under the ADA.

Other than the statewide limit, our regulations do not provide for or authorize additional limitations on charges for children whose needs go beyond those accommodated under ADA. We had concerns that such limitations could violate the ADA principle of individual accommodation, and we did not want to entangle welfare agencies in decisions about what are appropriate accommodations under ADA. Further, it is our belief that the general cost principles applicable in these programs protect both Federal and State governments against provider charges that are unreasonable. Nevertheless, we are interested in comments in this area.

It should be noted that States may continue to establish higher statewide limits for children with special needs.

As discussed above, we believe that States cannot establish valid local market rates for children with special needs because, under the ADA, any higher charges must be based on the individual child's and provider's circumstances; these would not be known or taken into account by a survey. Accordingly, we also propose to remove the reference to differentiating local market rates for children with special needs from § 255.4(a)(3)(ii).

In-Home Care

The CCDBG and title IV–A child care regulations currently mandate that States and other grantees offer in-home care as an option to parents whose child care is subsidized by these programs. However, the provisions for in-home care in the two sets of regulations lack compatibility and impede seamless program administration. CCDBG grantees are allowed to limit the availability of in-home care to those situations in which the payment is reasonably similar to payments for other categories of care. The title IV–A regulations contain no such provision for limiting the availability of in-home care and, unlike the CCDBG, require that States establish local market rates for this category.

To increase the compatibility between CCDBG and IV–A regulations we are proposing to: (1) Allow States and other grantees the same degree of flexibility under both programs; (2) give both programs greater latitude in setting the terms and conditions under which in-home care will be offered; and (3) allow States to establish the minimum wage as the in-home payment rate for care subsidized under title IV–A without conducting a market survey. We believe that these proposals will give States and other grantees greater control and flexibility over the use of in-home care while protecting parental choice and ensuring that specific family needs can be met.

Because this category of care occurs in the child's own home, it has unique characteristics. First, it is affected by the interaction with other laws and regulations. For example, in-home providers are classified as domestic service workers under the Fair Labor Standards Act (FLSA) (29 U.S.C. 206(a)) and are therefore covered under minimum wage and tax requirements. Second, child care administrators have faced greater challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. These unique characteristics and the experience of States, Territories and Tribes over the past several years indicate a need for greater flexibility as well as consistent policies across funding streams.

The mandatory inclusion of in-home care in current CCDBG and IV–A regulations is intended to ensure a full range of options to meet families' needs and to accurately reflect the child care market. However, because in-home care is not required by statute and because States and other grantees have requested greater flexibility and consistency across policies, we considered proposing that in-home care be made optional in both programs. However, we were concerned that, because in-home care presents a number of administrative challenges, some States would unduly restrict the availability of care for families who particularly need this type of setting or who lack other options. We therefore decided not to make in-home care optional but to give States and other grantees greater flexibility.

We are mindful that in-home care plays a valid and important role in the child care market place and that many participants in subsidized care programs rely on care in their own homes to meet their family needs. Access to care which meets the needs of individual families is critically important to parents and children, to schools and the workplace, and to other community institutions which interface with the family. While in-home care represents only a small proportion of all available care in most communities, it may be the best or only option for some families and may prove valuable, necessary and cost-effective when compared to other options. Despite the challenges cited above, in-home care is being successfully offered and has proven to be an important resource. For these reasons, we expect States and Tribes to consider family and community circumstances carefully in establishing any conditions which will limit the availability of in-home care. We are thus proposing that grantees include in their CCDBG plans a discussion of their policies for in-home care and a rationale for their policy decisions.

There are a number of conditions under which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. Part-time employees often find it more difficult to make child care arrangements than do those who work full-time. Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes. Given the general paucity of school-age child care in many communities, in-home supervision may enable some families to avoid latchkey situations before school, after school, and when school is not in session. For many families, in-home care by relatives also represents an important cultural value and may promote stability, cohesion and self-sufficiency in nuclear and extended families.

We also urge child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may play in the ability of parents to manage work and family life. Although in-home care does not represent a large share of the national supply, it plays an important role in the structure and functioning of local child care markets by extending the ability of parents to care for children within their own families, closing gaps in the supply of community facilities, and creating a bridge between adult care and self- or sibling-care as children near adolescence.

Some States may choose to limit in-home care because of cost factors governed by minimum wage provisions of the FLSA and other Federal and State requirements. For example, a State might determine that minimum wage requirements result in payments for in-home care serving only one or two children that are much higher than the local market rate for other categories. Therefore, the State could elect to limit in-home care to families in which three or more children require care. The payment to the in-home provider would then be similar to the payment for care of the three children in other settings. This ability to limit in-home care allows States to recognize the same cost restraints that families whose care is unsubsidized must face.

ACF recognizes that giving the States greater latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory arrangements and thus their ability to participate in work, education or training. We also recognize the challenges of implementing health and safety requirements in the child's own home, of monitoring in-home providers, and of complying with federal wage and tax laws governing domestic workers. Therefore, we are seeking focused comments on our regulatory proposals for in-home care and would especially appreciate suggestions on how to balance parental choice, cost effectiveness, and adherence to other Federal and State provisions, such as the FLSA, that are unique to in-home settings.

In-Home Care and the CCDBG

We propose to revise § 98.16(a)(7)(ii) to require that grantees include in their CCDBG plans a specification of their policies for in-home care and the rationale for those policies.

In-Home Care and Title IV–A Child Care

We propose to amend §§ 255.3(c) and 257.40(b) to give States the flexibility to specify the conditions and limitations under which the State will make in-home care available. Therefore, we propose to add State plan requirements at §§ 255.1(n) and 257.21(o) to ascertain any conditions and limitations the State has placed on in-home care.

Establishing the Local Market Rate for In-Home Providers

ACF proposes to amend § 255.4(a)(3) (i) and (v) to give States the flexibility to eliminate the local market survey, required by § 255.4(a)(2), as the basis for establishing local market rates for in-home care providers. The proposed amendment provides that the local market rate for in-home providers must be at a level no lower than the level required by Federal and State provisions which govern domestic service workers. The State may choose to establish the local market rate at such a level without conducting the survey specified under § 255.4(a)(2). As an alternative, the State has the option to conduct a local market rate survey for in-home care if the State believes that the local market rate for such care is higher than that required by the FLSA and other Federal and State statutes.

The Effects Test and CCDBG

Section 658E(c)(2)(A) of the Block Grant Act requires States to provide assurances that parents are given the option of (1) enrolling their children with a provider who has a grant or contract to provide services, or (2) receiving a child care certificate with which to pay the provider of their choice. The Act also requires that children who are to be enrolled in contracted slots must be placed with the provider of their parents' choice whenever possible. For the CCDBG program, Congress clearly expected that parents would be able to choose from a wide variety of child care arrangements, including care in private homes by relatives or family providers; in churches, synagogues or temples; in community centers and schools; and in employer-provided facilities.

In addition to the expectation that parents would be offered child care options, Congress clearly intended that CCDBG grantees ensure the safety of children in care. Therefore, grantees are also required by statute to promulgate health and safety regulations which adequately protect children.

We believe that Congress intended grantees to balance these provisions. In issuing the CCDBG regulations, ACF attempted to regulate how grantees would implement this balance. In order to protect children, grantees were mandated to ensure that health and safety requirements were in effect for all providers receiving funds under the CCDBG. Simultaneously, ACF promulgated additional provisions, known as the "effects test," which withheld CCDBG funds if the grantees adopted requirements or procedures which had the effect of significantly limiting parental access to a category of care or type of provider.

Many grantees and advocates in the field of child care have pointed out the potential tension between these regulatory provisions. In addition, many questions have been raised regarding the practical implementation of the effects test and the criteria by which to judge that health and safety standards have actually limited parental choice. Most compelling among such arguments has been the noted absence of statutory references to the effects test.

We are now proposing to eliminate the effects test. We do not intend and do not believe this proposal will weaken parental choice. In subpart D of the CCDBG regulations, §§ 98.30–98.34 delineate parental rights and responsibilities. We are not proposing to change anything in these sections that would in any way minimize the importance of parental choice. Parental choice remains a requirement for CCDBG at § 98.30.

Based on two years of experience in the implementation of these programs, we do not believe that the effects test is necessary to protect parental choice. We have substantial evidence that grantees are indeed offering parents a choice of eligible providers through the design and operation of their certificate programs. In addition to information gathered from administrative staff during 33 on-site program reviews, we heard from parents and providers in focus group settings. Parents as well as providers spoke favorably about the choices that parents exercise in making arrangements for their children. The findings of these program reviews, along with our ongoing review of child care plans, reveal that grantees are operating certificate programs which fulfill the statutory parental choice directives. However, based on the experience of grantees attempting to balance these provisions, we are seeking focused comments on the potential impact of this proposal.

We propose that the CCDBG rule be amended by removing § 98.30(g) which sets forth the effects test and by removing related references at §§ 98.40(b)(2) (State and local regulatory requirements), 98.41(b) (health and safety requirements), 98.43(c) (payment rates), and 98.45(d) (registration).

The Effects Test and Title IV–A

There is no specific statutory commitment to the principle of parental choice of providers in the title IV–A child care programs as there is for the CCDBG program. Parental choice, however, is addressed in the current title IV–A regulations. If more than one category of care is available, the regulations require the State to provide the parent or caretaker relative with an opportunity to choose the arrangement. Also, the State IV–A agency is required to establish at least one method by which self-arranged care may be paid.

To be compatible with the current CCDBG regulations, the existing title IV–A child care regulations include an effects test concerning the regulatory provisions that allow States to adopt the health and safety requirements of other Federal or State child care programs. Additionally, they contain an effects test concerning the At-Risk provider registration provisions which States must adopt. The title IV–A child care effects test is the same as the effects test contained in the CCDBG regulations, i.e., that a State's requirements and procedures in those areas may not have the effect of excluding any categories of child care providers. For the same reasons given for removing the CCDBG effects test provisions, however, ACF proposes to remove the title IV–A effects tests requirements at §§ 255.4(c)(2)(iii), 257.41(a)(3), and 257.41(b)(2)(v). We do not propose to, and do not believe this action will, delete or weaken the current title IV–A parental choice provisions.

Part 98—Child Care and Development Block Grant

Immunizations

We are proposing to amend the CCDBG health and safety regulations to require that grantees establish rules requiring children receiving CCDBG services to be immunized. While this change affects only the CCDBG regulations, grantees may apply the immunization requirement to title IV–A child care programs for a more seamless child care system.

The CCDBG statute currently includes references to immunizations. Section 658E(c)(2)(F) requires grantees to provide assurances that provider requirements are in effect to protect the health and safety of children receiving services under §§ 98.50 and 98.51, including "the prevention and control of infectious diseases (including immunizations)."

Section 658E(c)(2)(G) of the Block Grant Act also requires grantees to assure that procedures are in effect which ensure that child care providers comply with all applicable health and safety requirements described in paragraph (F) of section 658E. However, section 658P(5)(B) allows grantees to exclude grandparents, aunts or uncles from provider health and safety requirements. The current CCDBG regulations reiterate these statutory requirements.

Surveys of licensed child care facilities indicate that the majority of States require some proof of immunizations for children enrolled in licensed or regulated child care centers and family day care homes. However, individual States differ in their specific requirements and regulatory approaches. In addition, requirements for the immunization of children in legally unlicensed care vary widely. Consequently, there is concern that current immunization policies and practices may be inadequate to protect large numbers of young children.

Preventable diseases that were practically eliminated years ago are again infecting our youngest and most vulnerable children. More than 55,000 measles cases were reported to the Centers for Disease Control and Prevention (CDC) between 1989 and 1991. In 1990, 64 deaths from measles were reported, the highest number in two decades. A survey conducted by the CDC in 1991 found that only 37–56% of two-year-old children were fully vaccinated. ("Childhood Immunizations Fact Sheet," Department of Health and Human Services, Washington, DC, February 12, 1993.) Since a large percentage of children receiving assistance under the Block Grant program are under 5 years of age, we believe that the proposed requirements will assist in reducing the incidence of infectious diseases among preschool age children.

For these reasons, we propose amending § 98.41(a)(1) to require that grantees' health and safety plans include specific provisions requiring children to be immunized in order to receive services under the CCDBG. State and Territorial health and safety plans must incorporate (by reference or otherwise) the latest recommendations for childhood immunizations of the respective State or Territorial Department of Public Health. Since there may not be a similar public health authority for Tribes to follow regarding immunization standards, we are proposing to allow Tribes the option to determine the immunization standards to be followed for children to receive CCDBG services. Tribes may choose standards set forth by the State Public Health Department or the Indian Health Service. Tribes will be required to identify the source of these standards in their CCDBG plans. In addition, we propose that all grantees consider requirements which include provisions for documenting regular updates of the child's immunizations.

Grantees have flexibility in the method of implementing this requirement. For example, grantees may require parents to provide proof of immunization as part of the initial eligibility determination and again at redetermination, or grantees may require child care providers to maintain proof of immunization for children enrolled in their care. However, the requirements established by the grantee must apply to all children receiving CCDBG assistance and in all child care settings, unless the child is in one of the exempt groups cited below.

While we propose to require children to be immunized in order to receive services, grantees may continue to exempt:

(1) Children who are cared for by relatives (defined as grandparents, aunts and uncles);

(2) Children who receive care in their own homes;

(3) Children whose parents object for religious reasons; and

(4) Children whose medical condition contraindicates immunization.

In proposing that children be immunized, we considered that parents may not always have had access to immunizations. However, we believe that the increasing national focus on immunization will ease this difficulty. The President has made vaccine delivery a national priority and has signed into law the Vaccine for Children program which provides free vaccines to States for the inoculation of uninsured children, children eligible for Medicaid, and Native American children. Underinsured children whose health insurance does not cover immunizations are also eligible to be served by Federally Qualified Health Centers and Rural Health Clinics. The new program will also allow federally purchased vaccine to be distributed to private physicians to vaccinate eligible children.

Where grantees impose burdens on providers to check on the immunization status of children in their care and to ensure that necessary immunizations are received, we would expect grantees to assist providers in meeting these requirements. At a minimum, the assistance should include: (1) Provision of updated immunization schedules; (2) information on the availability of free vaccines; and (3) information on locations where parents of eligible children can be referred for immunizations. These expectations are consistent with section 658E(c)(2)(G) of the CCDBG statute which requires that procedures be in place to ensure that providers comply with applicable health and safety requirements.

We also expect that some children may not have all of the required immunizations at the time eligibility is determined. In order to ensure that children eligible to receive services under the Block Grant are not denied services, we recommend that grantees establish a grace period in which children can receive services while taking the necessary actions to comply with the requirements. Grantees will be required to describe the grace period allowed to these families in their CCDBG plan.

The health of all children is important, and we therefore strongly encourage immunizations for children receiving title IV–A child care. However, we believe that there is no authority under the Social Security Act to require immunizations for children receiving title IV–A child care and therefore we cannot propose a parallel regulation for title IV–A child care. Unlike the CCDBG statutory mandate for State requirements for the prevention and control of infectious diseases, including immunization, for all providers, the Social Security Act is silent. Nevertheless, we wish to emphasize that States already have the necessary flexibility to choose to require immunizations for children receiving title IV–A care under the existing title IV–A applicable standards regulations. The application to title IV–A child care of the proposed immunization requirement would facilitate the seamless delivery of child care services across programs.

The applicable standards regulations at §§ 255.4 and 257.41 require title IV–A child care providers to meet any generally applicable standard of State, local or Tribal law. Additionally, the applicable standards regulations allow States to deny payment for care that does not meet the additional standards used in other Federal (e.g., CCDBG) or State child care programs in the area of prevention and control of infectious diseases, including immunizations. Thus additional Federal regulations are not necessary for title IV–A child care for States to have the ability to require consistent health and safety standards, including the proposed immunization requirement.

Foster Care

We are clarifying that CCDBG grantees have the flexibility to include foster care in their definition of protective services. The preamble to the existing regulations distinguishes between protective services cases and children placed in foster care by allowing child care subsidies for foster care cases only if the foster parent is working, in education or in training. The distinction made in the preamble was an interpretation of the regulatory language. The regulation discusses child protective services only; it is silent on foster care. This change in interpretation does not require a regulatory change.

In many States, foster care is an integral part of the protective services system. It is one of the many services provided to children and families who, for a variety of reasons, may need protective intervention. A child is placed in foster care when remaining in the home places him or her at risk. States, acting in loco parentis, may provide on-going supportive services to meet the developmental needs and redress developmental delays which may exist as a result of neglect or abuse. These services are available both for a child who remains in his or her own home and for a child in a foster placement. For purposes of protective services benefits, some grantees do not differentiate between the protective services for families who remain intact and for those children who are in a foster placement.

In the preamble to the existing regulations, a child in a family that is receiving, or needs to receive, some type of protective, interventive services can be eligible for child care subsidies under CCDBG if he or she remains in his or her own home even if the parent is not working, in education or in training. However, such therapeutic child care outside of the home may be a necessary part of the individual child's supportive services plan regardless of the child's living situation. In these cases, child care is needed to carry out the social services plan for the child and the family—not necessarily because the parent is working, in education or in training. Therefore we are changing our interpretation of the regulation to allow States the option of including children in foster care in the State's definition of protective services cases.

Allowing CCDBG grantees to include foster care in their definition of protective services not only gives grantees the flexibility to work within existing child protective services systems, it is also consistent with the goals of the recently enacted Family Support and Preservation Act. This Act promotes integrated and comprehensive services for families already receiving supportive and/or interventive assistance from social services agencies.

Grantees electing to include foster care in their definition of protective services will be required to state this in their Block Grant Plan. Those grantees choosing to exclude foster care from their definition of protective services must define eligibility for participation in CCDBG child care subsidies in terms of the foster parent working, in education or in training.

Certificate Availability

Section 658E(c)(2)(A) of the CCDBG Act requires States to provide assurances that parents are given the option of (1) Enrolling their children with a provider who has a grant or contract to provide services, or (2) receiving a child care certificate with which to pay the provider of their choice. The Act also requires that children who are to be enrolled in contracted slots must be placed with the provider of their parents' choice whenever possible.

The CCDBG regulation elaborates on the choice between grant/contract child care and a child care certificate by requiring that a certificate must be offered when child care services under § 98.50 are made available to a parent. We do not propose any changes to this requirement which is stated both at § 98.30(a) and § 98.30(e). However, we do propose removing § 98.30(e) because it is redundant to a clearer and more expanded presentation of parental choice set forth in § 98.30(a) (1) and (2).

We are also using the opportunity provided by this proposed rule to clarify the certificate requirement and to offer examples of grantee systems which have successfully met this requirement.

Our restatement of the regulatory position that certificates must be available whenever services under § 98.50 are offered does not preclude grantees from entering into grants or contracts for child care services. Depending upon the child care needs of the eligible population in discrete geographic areas of service, grants and contracts may be necessary to provide stable child care for participating populations or specific communities. In essence, the provision requires a good faith effort by the grantee to balance the allocation of funds between grants/contracts and certificates to ensure that parents have optimum choice among quality child care options as stipulated in the legislation and reinforced in the existing regulation.

In conducting on-site program reviews over the past two years, we have found that grantees are operating certificate programs which offer parental choice. Some grantees are offering only certificates. Others are committing funds on a proportional basis between certificates and contracts based on the particular needs of individual areas or populations. Some grantees, however, have experienced that stable child care is more difficult to find in rural or inner-city areas, for infants, or for children with special needs and have therefore contracted with competent providers to specifically address these shortages.

In planning the distribution of funds for grants/contracts and certificates, grantees should establish sufficient fiscal flexibility to ensure that parents who choose certificates are not placed on a waiting list while substantial numbers of contracted slots in the same area remain un-utilized.

However, most grantees are reporting that the need for subsidized low-income child care far exceeds the available funding. Thus, if certificate funds are fully reserved for children who are already enrolled, and no subsidized slots are available (either filled or not part of the grantee's program), it may be necessary to begin a waiting list for certificates. Similarly, because many grantees are allocating funds on a locality by locality basis, waiting lists may result in some parts of the State while services are still available in other areas.

We want to clarify that although certificates must be an option for parents whenever § 98.50 services are offered, it is not necessary to offer certificates whenever § 98.50 services are being used. For example, if all CCDBG funds available in a community are "reserved" for specific children in contracted and certificate-funded slots, the grantee is not actually offering services and need not offer additional certificates. Thus, a local program might not offer new child care services during some portion of the program year because all available funds have been assigned to specific children and are being used or "reserved" for those specific children.

Other Authorized Activities

Currently, CCDBG grantees may spend up to 10 percent of CCDBG funds authorized under § 98.50 (the 75 percent monies) for program administration and activities to improve the availability and quality of child care services. If expenditures for operating the certificate program and related consumer education equal or exceed 10 percent, grantees may petition for an additional five percent for other authorized activities, for a total of 15 percent.

Based on information provided by grantees in their annual reports and during on-site program reviews, we now propose to allow grantees to use up to 15 percent of funds authorized under § 98.50 for ongoing activities related to program administration, quality and availability without further justification.

In proposing this change, we acknowledge the cost implications of complex interrelationships among program administration, quality services and availability of child care options in the context of rapidly increasing family and community needs. Many States and localities want to develop more cohesive, integrated and sophisticated child care management, delivery and payment systems. Activities undertaken under § 98.50(d) can contribute to the development of child care systems which more effectively support informed consumer choice and the delivery of quality care through community-based providers. This change will provide grantees with the flexibility to balance priorities and develop more responsive child care programs.

Accordingly, we propose that the CCDBG rules be amended to specify that the amount generally allowed for activities related to administration, quality and availability is 15 percent at § 98.50(d)(2)(ii). Therefore, the amount specified for direct services is at least 85 percent at § 98.50(d)(2)(i). The change will also remove § 98.50(d)(3) which requires grantees to petition for the additional five percent and remove a reference to § 98.50(d)(3) which occurs in § 98.52(c). It will also remove a related reference at § 98.13(a)(6)(ii).

Availability of Funds

In the Juvenile Justice and Delinquency Prevention Amendments of 1992, section 658J(c) of the CCDBG Act was amended to eliminate the time restrictions on obligation and to extend the length of time grantees have to expend funds received each fiscal year. Block Grant funds awarded to States and Territories had previously been available for obligation by the grantee in the fiscal year in which the grant funds were awarded and in the succeeding fiscal year (year 2). Unliquidated obligations at the end of year 2 were to be liquidated during the next fiscal year (year 3).

The statutory amendments eliminate the restrictions on obligation of funds by States and Territories by providing that CCDBG funds are expendable in the fiscal year in which they are awarded and in the three (3) succeeding fiscal years. For Tribal grantees, the amendments also extend the expenditure period from three (3) fiscal years to four (4) fiscal years. Thus, the expenditure period for all grantees (States, Territories, exempt Tribes and non-exempt Tribes) now extends to four (4) fiscal years.

The amendments were not effective in time to remove the September 30, 1992, obligation restriction on FY 1991 grant funds awarded to States and Territories. However, the amendments do provide an additional year to expend funds for obligations made with FY 1991 funds, so that States and Territories now have until September 30, 1994 (rather than September 30, 1993), to expend FY 1991 funds which were obligated by September 30, 1992.

Tribal grantees who received FY 1991 funds were required to expend their funds by September 30, 1993. Because the amendments provide an additional year during which FY 1991 funds may be expended, Tribal grantees have until September 30, 1994, to expend their FY 1991 grants.

In summary, for all grantees (States, Territories and Tribes), FY 1992 and subsequent fiscal years' funds must be expended by the end of the expenditure period (the fiscal year in which the funds are awarded plus the three succeeding fiscal years). To reflect these changes, we propose amending § 98.2 by removing and reserving paragraph (z) and revising paragraphs (y) and (cc) and § 98.60 by revising paragraphs (d)(1), (d)(4), (h)(1), and (h)(3) and removing paragraphs (d)(2), (d)(3), (e), and (h)(2).

Financial Reporting

We propose revising § 98.63(a)(1) and (b) to change the dates by which States must report funds for reallotment to other State grantees. Reallotment rules do not affect Territories or Tribal grantees since those grantees may not receive reallotted funds.

Each fiscal year, States must specify the amount of any CCDBG funds which will be available for reallocation or else report that all funds will be expended. The deadline for submission of this information was previously April 1 of the second fiscal year of the obligation period. As a result of the extension of the expenditure deadline by section 8 of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the date by which States must report CCDBG funds for reallotment has been extended to April 1 of the fourth (and last) fiscal year of the expenditure period.

Since the amendments did not remove the September 30, 1992 obligation deadline for FY 1991 grant funds, this change in reporting did not affect FY 1991 awards. For FY 1992 funds, States must report on the availability of funds for reallotment by April 1, 1995. Funds reallotted from one fiscal year's grant are subject to the same period of availability as the grant year from which the funds were awarded. Thus, FY 1992 funds, if any, reallotted in May of 1995 must be expended by September 30, 1995.

Annual Report Requirement

In § 98.70, the CCDBG rule requires grantees to submit annual reports to the Secretary by December 31. This provision is not affected by the extension of the expenditure period by section 8 of the Juvenile Justice and Delinquency Prevention Amendments of 1992. Each report must specify expenditures made by September 30 of the year in which the report is submitted to the Secretary, with each fiscal year's funds accounted for separately. However, we are proposing to revise § 98.70 to more clearly state the requirement and to delete those requirements no longer applicable.

PART 255—CHILD CARE AND OTHER WORK RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION AND TRAINING

Child Care That Is "Reasonably Related" To Parent's Activities

Under the regulations for title IV–A child care, a State must assure in the State Supportive Services Plan that child care provided or claimed for reimbursement is reasonably related to the hours of participation in JOBS or in other State-approved education and training (for care under part 255) or employment (for care under parts 255, 256 and 257). ACF recognized that many individuals would participate in education, training and employment on less than a full-time basis, but decided not to regulate a definition of what constitutes child care that is reasonably related to the parent's hours of participation or employment. Rather, we gave States the flexibility and, we believed, the authority to develop their own policies.

During our discussions with States, however, we learned that there is some misunderstanding or disagreement about who has the responsibility for establishing policies on what constitutes an amount of child care that is reasonably related to the parent's training or employment. For example, internal or external reviews or audits have questioned how a State determined that the child care under review was reasonably related to the parent's activity.

ACF continues to maintain that State IV–A agencies should establish their own policies for what constitutes a "reasonably related" amount of child care. Therefore, we propose to have the State include in its Supportive Services Plan a description of its policy on what constitutes child care that is reasonably related to the parent's hours of participation in education, training or employment by revising §§ 255.1(e)(4) and 257.21(a)(6).

Including the State's "reasonably related" child care policy in the federally approved Supportive Services Plan will clarify the IV–A agency's role in developing and articulating the State's policy in this area. By having written policy on "reasonably related," States should avoid such disputes with potential reviewers.

In proposing this regulation, we wish to clarify the difference between a policy which addresses paying for child care when a child is absent from regularly scheduled care (e.g. due to illness) and a policy which describes what is reasonably related child care.

A "reasonably related" child care policy correlates the parent's activities with the amount of child care that the IV–A agency views as necessary based on the parent's activities and in consideration of other factors that the agency regards as significant. For example, States may wish to include such factors as the individual needs of the recipient family, the availability or lack of care alternatives in a local market area, need for continuity of care by a specific caregiver, or the needs of a Head Start Agency to meet operating expenses for wrap-around child care.

In contrast to the "reasonably related" policy which relates the parent's activity to an amount of child care, an absence policy addresses the fact that children will occasionally miss child care especially due to illness. A State's absence policy would establish when a State would pay for child care even when the child is absent. FFP is available for payments made in accordance with a State's absence policy.

The "reasonably related" policy the State describes in its approved Supportive Services Plan will become the standard against which actual payments will be judged, for example, for audit purposes. We therefore advise the State to articulate its policy clearly to all individuals responsible for approving the payment or reimbursement of child care services.

Determination of Physical or Mental Incapacity

Under the regulations for AFDC child care at part 255 and Transitional Child Care (TCC) at part 256, the determination of mental or physical incapacity for a child over age 13 can only be made by a "physician or a licensed or certified psychologist."

The existing policy was adopted to be consistent with the regulations concerning exemption from participation in the Job Opportunities and Basic Skills Training (JOBS) program found in part 250. Exemptions from participation in JOBS are available for a number of reasons, including physical or mental incapacity. Since incapacity would provide a long and perhaps permanent period of exemption from activities that would prepare an individual for entry into the work force, a high standard of professional verification by a physician or licensed or certified psychologist was adopted. After experience with the child care programs, we do not believe that receiving child care services under parts 255 and 256 requires such rigorous verification.

In addition, when the CCDBG program and the At-Risk Child Care program were implemented after JOBS, both programs, by regulation, provided for care of a child over age 13 who is physically or mentally incapable of caring for himself or herself. The regulations for those programs at parts 98 and 257, respectively, permit the State to make the determination of physical or mental incapacity. Those regulations also require States to include a definition of the term "physically or mentally incapable of caring for himself or herself" in the applicable State Plan.

We propose to amend the child care regulations at parts 255 and 256 to be compatible with the regulations of the other child care programs. These proposed changes will ease State administration of child care programs while continuing to ensure that eligibility is properly documented. We therefore propose to amend §§ 255.2(a) and 256.2(a) to provide State flexibility in determining physical or mental incapacity. We also propose to add §§ 255.1(m) and 256.1(a)(5) to require the State to provide its definitions of physical or mental incapacity in the applicable State Plan.

Gaps in Employment and Child Care Under Title IV–A

We propose to modify the regulatory language at § 255.2(d)(2) to allow States the additional option to continue child care for families that lose a job but are searching for another job. Under the proposed regulation at § 255.2(d)(2)(ii) care can be continued for up to one month of job search if the care arrangements would otherwise be lost. This is an expansion of the existing regulation which provides for a continuation of care for up to one month only if an activity is scheduled to begin within that month and the arrangements would otherwise be lost.

We believe that giving States this additional option to continue child care for a limited period of job search is supportive of families who may have to change employment and recognizes that it is not always possible to secure another job immediately following a job loss. Under the existing regulations, States have had the option to extend child care services that would otherwise be lost for a limited period both when another activity is already scheduled to begin within that period and when there is a short period of absence from an on-going job. The proposed regulation broadens the State's ability to serve families for whom continuity of care would assist their movement towards self-sufficiency.

We also propose to amend the At-Risk regulations at § 257.30(c) to be consistent with the proposed change at § 255.2(d)(2)(ii) to allow States the option to continue child care for up to one month for families that lose a job but are searching for another job. Additionally, we propose to amend § 257.30(c) to delete the requirement that child care for the two-week period prior to the start of a job may be provided only if "the child care arrangements would otherwise be lost." We believe that the two-week period may be needed to provide child care in order to prepare for employment. We propose that at State option child care may be available for up to two weeks before employment without restriction.

In making these changes to the regulations at §§ 255.2(d) and 257.30(c), we recognized that the existing regulations for care under part 256 (TCC) are silent on the provision of child care during gaps between jobs. In

JOBS–FSA–AT–90–8, dated June 29, 1990, we clarified that families are eligible for TCC during gaps in employment. This proposed rule at § 256.2(f) thus codifies existing policy and mirrors the amended policy concerning gaps in employment in parts 255 and 257. Care provided during a break in employment, that is, when the family is not working, does not extend the family's 12-month eligibility period.

We propose to make a corresponding amendment to the regulations at § 256.1(a) for the State Supportive Services Plan which addresses Transitional Child Care. We propose that the plan reflect whether the State has elected to allow child care during gaps in employment under TCC pursuant to the proposed § 256.2(f).

PART 256—TRANSITIONAL CHILD CARE

Determination of Physical or Mental Incapacity

We propose to amend the regulations of the TCC program at § 256.2(a) to allow the State to determine "physical or mental incapacity" and at § 256.1(a) to allow the State to define the term in the State's Supportive Services Plan. Our reasons are further explained in the preamble to the proposed changes for part 255.

Voluntary Cessation of AFDC and Eligibility for TCC

We propose to amend § 256.2(b)(1) by adding a new subparagraph (ii) to allow States the option of making families who voluntarily terminate receipt of an AFDC benefit eligible for TCC. Under this option, working families that receive AFDC could request that their AFDC be terminated and still become eligible for TCC, provided that they meet all other TCC eligibility requirements.

The existing regulation, which we propose to redesignate as § 256.2(b)(1)(i), requires that a family's eligibility for TCC is based on a loss of eligibility for AFDC due to the increased hours of employment, increased income from employment or loss of the income disregards due to time limits. In our consultations we have heard concerns that some working families find themselves ineligible for TCC because they voluntarily leave AFDC when they are still entitled to a grant. Therefore, we propose to allow the State the option to provide TCC to those working families who voluntarily request that their AFDC be terminated because their hours or income from employment have increased or they have lost the income disregards due to time limits, but are still eligible for AFDC. This policy, coupled with our proposal to give States the option to eliminate the need for a request for TCC, should allow States to provide TCC to more families, while easing the administrative burden on them to provide that service.

We are not proposing to require States to provide TCC in voluntary closure cases because we are unsure of the administrative and fiscal impacts on States. At the same time, we want our regulations to support families who take the initiative to get jobs and move off AFDC. Therefore, we are interested in receiving comments as to whether it would be more appropriate to allow or to require States to provide TCC in voluntary closure cases.

We propose to revise the regulations concerning the State Supportive Services Plan at § 256.1(a)(6) to include information on whether the State elects to provide TCC to working families who voluntarily cease to receive AFDC.

Requesting TCC

The existing regulations require States to provide information to families about their potential eligibility for TCC, the steps they need to take to request TCC services, and their rights and responsibilities under the program. States must provide this information during initial application for AFDC, during orientation to the JOBS program, at redetermination of eligibility for AFDC benefits and at termination of AFDC benefits. ACF issued an Action Transmittal (CC–ACF–AT–92–3), dated June 16, 1992, that reiterated the necessity for all families to be informed about TCC "in writing, and orally as appropriate, at the time they become ineligible for AFDC."

The existing regulations also require that all families request TCC before services are provided. ACF did not regulate the nature of the request or application process. Rather we encouraged States to make the process simple, citing the example of a current recipient for whom the State might approve TCC through a recertification process if the necessary information was on file.

We have, however, heard concerns that the requirement for the family to request services may have discouraged some families from seeking TCC or caused disruption in child care arrangements. This requirement is especially frustrating for families when necessary information is already on file with the State agency.

Therefore, we propose at § 256.2(b)(3) to give States the option to provide TCC, without requiring a request, to eligible families. We believe that such a policy would be most applicable to families who were approved for child care services under part 255. For example, an AFDC recipient reports her newly-begun job to her AFDC case manager. At that time, the case manager determines that the family will remain eligible for AFDC until the time limitations on the income disregard at § 233.20(a)(11) cause the family to lose AFDC eligibility. Because the case manager recognizes that the family will be eligible for TCC in four months, if circumstances remain the same, she obtains the necessary information with which to determine eligibility and establish the level of the family's fee for TCC, if any. Continuing child care services in this instance would be possible because all the appropriate information is available to determine TCC eligibility, including fees, when the family loses eligibility for AFDC and transitions to TCC. Adopting this option can make the delivery of title IV–A child care services more seamless for the family. Additionally, the transition from child care services provided under part 255 to TCC services may well be "transparent" to the family if the State also adopts the proposed option to waive TCC fees for those families who are at or below the poverty level.

However, in adopting the option to continue child care services without a request for TCC, the State must still provide all of the required notifications, including appeals rights, regarding the termination of AFDC benefits and child care services pursuant to §§ 205.10 or 250.36 as appropriate. The family must also be notified of the requirements for their continued eligibility for TCC, including the payment of fees if applicable, pursuant to the requirements at §§ 256.2, 256.3 and 256.4.

We propose amending § 256.1(a)(6)(i) to have States specify in their Supportive Services Plan whether they have adopted this option.

In proposing this option we recognize that, in some cases (e.g., where a State does not have current or complete information on a family), a State may find it difficult to provide TCC in the absence of a request. Therefore, the State will still need a mechanism in place to collect the information necessary to determine eligibility and payments. For many families, the need for child care will not arise until they get a job which terminates their AFDC eligibility. Other families who leave AFDC due to employment may not need child care at that time (e.g., because their child is enrolled in Head Start), but may need care subsequently. Whenever the need for child care arises, the State must make a prompt determination of eligibility for TCC in order to assist the family. ACF remains concerned that States have not established such timely, efficient procedures. The request or application process should be simple so as not to hinder the applicant's ability to accept work or continue working.

Because we continue to hear concerns that the requirement for a request for TCC is problematic and that TCC utilization is low, we are requesting comments on whether: (1) This provision to make requests optional is a sufficient response; (2) the request requirement constitutes a serious barrier to the receipt of TCC; and (3) other changes should be made to make TCC more accessible to eligible families.

Retroactive Requests for TCC

The existing rule at § 256.2(c) specifically provides for families to receive TCC "notwithstanding when the family requests assistance under this Part * * *." States have asked whether they may establish a cut-off date for TCC requests as they have received requests after the family's 12-month period of TCC eligibility has expired. There is no existing Federal policy which addresses a cut-off date for TCC requests following the 12-month eligibility period. We believe a cut-off date should be a State decision. We propose to revise § 256.2(c) and add a new paragraph § 256.2(g) to provide States the authority to establish a reasonable time limit for accepting TCC requests following the close of the eligibility period.

We also propose to amend § 256.4(c) to require States which have elected to establish a time limit for accepting requests for TCC, pursuant to § 256.2(g), to notify families of the time limit.

Fee Requirement

In order to be compatible with the At-Risk Child Care Program at § 257.31(c) and CCDBG at § 98.42(c), we propose to amend the TCC regulation that requires some level of contribution to the cost of TCC by all recipients. Section 402(g)(1)(A)(vii) of the Act requires a family to contribute to the cost of TCC according to its ability to pay. The existing regulations at § 256.3(b) require that a sliding fee be established that provides for some level of contribution by all recipients.

As is the case with At-Risk families, families eligible for TCC are only one step away from actual receipt of AFDC. We believe it is appropriate to give States the option to treat TCC families the same as other similarly-situated families in the State. Therefore, we propose to revise § 256.3(b) to give States the option to waive the contribution from a family whose income is at or below the poverty level for a family of the same size.

Gaps in Employment During TCC

As discussed in the preamble to part 255 we propose to amend § 256.1(a) and add § 256.2(f) to allow States the option to continue child care that would otherwise be lost, for a limited period of time for families waiting to enter employment or who have a gap in employment. Section 256.2(f) codifies into part 256 the existing and proposed title IV–A child care gaps policy.

PART 257—AT-RISK CHILD CARE PROGRAM

Child Care That Is "Reasonably Related" to Parent's Employment

As discussed in the preamble at parts 255 and 256, we propose to amend § 257.21(a)(6) to have the State include in its At-Risk Child Care plan a description of its policy on what constitutes child care that is reasonably related to the parent's hours of employment.

Gaps in Employment During At-Risk Child Care

As discussed in the preamble at parts 255 and 256, we propose to amend § 257.30(c) to allow States the additional option to continue child care for a limited period of time for families that lose a job but are searching for another and whose child care arrangements would otherwise be lost. We also propose to conform the At-Risk regulations regarding the provision of child care during the two weeks prior to start of employment with the corresponding regulations in part 255 and the proposed amendment to part 256. With these proposed amendments, States will have the flexibility to create a consistent gaps policy across the three title IV–A child care programs.

Other Proposed At-Risk Child Care Amendments

We propose amending the At-Risk regulations concerning in-home care and the effects test, as discussed earlier in the preamble.

List of Subjects

45 CFR Part 98

Child care, Grant program—social programs, Parental choice, Reporting and recordkeeping requirements.

45 CFR Part 255

Aid to families with dependent children, Grant programs—social programs, Employment, Education and training, Day care.

45 CFR Part 256

Aid to families with dependent children, Grant programs—social programs, Employment, Education and training, Day care.

45 CFR Part 257

Day care, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs: 93.037, Child Care and Development Block Grant; 93.560, Aid to Families with Dependent Children; 93.561, Job Opportunities and Basic Skills Training (JOBS) Program; 93.574, At-Risk Child Care)

Dated: March 31, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: April 20, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, parts 98, 255, 256, and 257 of title 45 of the Code of Federal Regulations are revised to read as follows:

45 CFR Subtitle A

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 9858.

Subpart A—Purposes and Definitions

2. Section 98.2 is amended by removing and reserving paragraph (z); and revising paragraphs (y) and (cc) to read as follows:

§ 98.2 Definitions.

* * * * *

(y) *Expenditure period* is the time period during which one fiscal year's grant funds must be expended which includes the relevant fiscal year in which the funds were awarded and the succeeding three fiscal years. This provision pertains to all grantees, including State, Territorial and Tribal grantees;

* * * * *

(cc) *Program period* is the time period during which one fiscal year's grant funds may be used to support program activities. The time frame for the program period is the same as that for the expenditure period;

* * * * *

Subpart B—General Application Procedures

§ 98.13 [Amended]

3. Section 98.13 is amended by removing and reserving paragraph (a)(6)(ii).

4. Section 98.16 is amended by revising paragraphs (a)(7)(ii) and (a)(12)(ii); and adding paragraph (a)(12)(iii) to read as follows:

§ 98.16 Plan provisions.

(a) * * *

(7) * * *

(ii) Specification of the grantee's policy for the availability of in-home care and the rationale for that policy;

* * * * *

(12) * * *

(ii) Based on a methodologically sound system for determining payment rates, a justification of the grantee's decision not to provide for differences in payment based on the setting (categories of care), or the age of the child; and

(iii) A description of how differential rates within categories of care, if any, are determined and identification of within-category distinctions;

* * * * *

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 [Amended]

5. In § 98.30, paragraphs (e) and (g) are removed and reserved.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

§ 98.40 [Amended]

6. In § 98.40, paragraph (b)(2) is removed and reserved.

7. Section 98.41 is amended by removing and reserving paragraph (b); and revising paragraph (a)(1) to read as follows:

§ 98.41 Health and safety requirements.

(a) * * *

(1) The prevention and control of infectious diseases (including immunizations):

(i) Grantees must establish immunization requirements as part of their health and safety plans which assure that children receiving services under the Block Grant are immunized. Immunization requirements must be established in accordance with the following guidelines:

(A) State and Territorial health and safety plans must incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or Territorial Department of Public Health;

(B) Tribes have the option to determine the immunization standards to be incorporated in their health and safety plans, but must identify the source of standards. Tribes may choose from:

(*1*) State Department of Public Health immunization standards; or

(*2*) Indian Health Service immunization standards.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, States may exempt:

(A) Children who are cared for by relatives (defined as grandparents, aunts and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object for religious reasons; and

(D) Children whose medical condition contraindicates immunization;

* * * * *

8. Section 98.43 is amended by removing and reserving paragraph (c); and revising paragraphs (b)(1) introductory text, (b)(2) and (e) to read as follows:

§ 98.43 Payment rates.

* * * * *

(b) * * *

(1) Variations in the amount charged for providing child care:

* * * * *

(2) The additional amount charged for providing child care for a child with special needs for services which are not required as an accommodation under the Americans with Disabilities Act.

* * * * *

(e) If a grantee sets a payment rate schedule which includes variation in the payment rate within a category, pursuant to § 98.16(a)(12)(iii), the grantee must describe how the payment differential was determined and what the distinctions within categories are.

* * * * *

§ 98.45 [Amended]

9. In § 98.45, paragraph (d) is removed and reserved.

Subpart F—Use of Block Grant Funds

10. Section 98.50 is amended by removing and reserving paragraph (d)(3); and revising paragraph (d)(2) to read as follows:

§ 98.50 Child care services.

* * * * *

(d) * * *

(2) To meet the requirements of paragraph (d)(1) of this section:

(i) At least 85 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section; and

(ii) Not more than 15 percent of the funds may be expended for activities as described in paragraphs (a)(2) and (a)(3) of this section.

11. Section 98.52 is amended by revising paragraph (c) to read as follows:

§ 98.52 Administrative activities.

* * * * *

(c) Expenditures on any administrative activities related to the services under § 98.50 are subject to the requirements and limitation under § 98.50(d), and together with expenditures for quality and availability, must not exceed the limitation under § 98.50(d)(2).

Subpart G—Financial Management

12. Section 98.60 is amended by removing and reserving paragraphs (d)(2), (d)(3), (e), (h)(2); revising the word "obligation" in paragraph (h)(1) to read "expenditure" and revising the word "obligated" in paragraph (h)(1) to read "expended"; and revising paragraphs (d)(1), (d)(4), and (h)(3) to read as follows:

§ 98.60 Availability of funds.

* * * * *

(d)(1) State, Territorial, and Tribal Grantees must expend their allotment in the fiscal year in which funds are awarded or in the succeeding three fiscal years.

* * * * *

(4) Any funds not expended during the expenditure period specified in paragraph (d)(1) of this section will revert to the Federal government.

* * * * *

(h) * * *

(3) If received by the grantee or subgrantee after the expenditure period specified in paragraph (d)(1) of this section, be returned to the Federal government.

* * * * *

13. Section 98.63 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 98.63 Reallotment.

(a) * * *

(1) In the fourth (and last) fiscal year of each expenditure period, the State shall report to the Secretary the dollar amount of funds available for reallotment from the award given in the first fiscal year of that expenditure period. Such report must be postmarked by April 1st.

* * * * *

(b) States receiving reallotted funds must expend these funds in accordance with § 98.60. The reallotment of funds does not extend the program period for expenditure of such funds.

Subpart H—Program Reporting Requirements

14. Section 98.70 is amended by removing and reserving paragraph (b); and revising paragraph (a) to read as follows:

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted in the manner specified by the Secretary by December 31 and will cover expenditures made by September 30 of that year. Unless otherwise specified by the Secretary, each fiscal year's grant shall be accounted for separately.

* * * * *

45 CFR Chapter II

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. The authority citation for part 255 is revised to read as follows:

Authority: 42 U.S.C. 602, 603 and 1302.

2. Section 255.1 is amended by revising paragraphs (e)(4) and (i) and adding paragraphs (m) and (n) to read as follows:

§ 255.1 State plan requirements.

* * * * *

(e) * * *

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment as described in the State Supportive Services plan.

* * * * *

(i)(1) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each category of care (i.e., center, group family day care, and family day care) provided. The description must address variations in the costs of care for infants, toddlers, pre-school and school-age children, whether care is full- or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. If the State chooses to survey in-home care, the methodology used must be included in the description. The rates determined by using the methodologies described must be submitted as part of the State's Supportive Services plan and must be updated periodically, but no less than biennially.

(2) A description of the State's criteria for higher quality care, if any, in accordance with § 255.4(a).

* * * * *

(m) The State's definition of physically or mentally incapable of caring for himself or herself, pursuant to § 255.2(a).

(n) Any conditions and limitations the State IV–A agency has established for providing in-home care, pursuant to § 255.3(c)(2).

3. Section 255.2 is amended by revising paragraphs (a) introductory text and (d)(2) to read as follows:

§ 255.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself or herself, as determined by the State and defined in the State's Supportive Services plan; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

* * * * *

(d) * * *

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost, and:

(i) The subsequent activity is scheduled to begin within that period; or

(ii) The eligible family member is searching for another job.

* * * * *

4. Section 255.3 is amended by revising paragraph (c) to read as follows:

§ 255.3 Methods of providing child care and other supportive services.

* * * * *

(c)(1) If more than one category of child care is available, e.g., center, group family care, family day care, or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV–A agency may establish conditions and limitations under which it will provide in-home care in the State Supportive Services plan.

* * * * *

5. Section 255.4 is amended by removing paragraph (c)(2)(iii); revising paragraphs (a)(2) introductory text, (a)(2) (ii) and (iii); adding new paragraphs (a)(2) (iv) and (v); revising paragraphs (a)(3) (i), (ii), (iii), and (iv); and adding a new paragraph (a)(3)(v) to read as follows:

§ 255.4 Allowable costs and matching rates.

(a) * * *

(2) Except as specified in paragraphs (a)(2) (iv) and (v) of this section, the applicable local market rate must be established:

* * * * *

(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics;

(iii) Based on the 75th percentile cost of such categories of care in the local areas (however, where there are only one or two providers of a category of care in a local market area, the rate may be set at the 100th percentile.);

(iv) At State option, at the provider's actual charge for that care which meets the State's objective criteria for higher quality care. For purposes of this paragraph, the States's criteria for higher quality care must be in addition to State licensing or regulatory requirements; and

(v) At the provider's actual charge for care for children with special needs if that actual charge exceeds the local market rate for a child of the same age and in the same category of care who does not have special needs, and provided the additional charge is for services which are not required as an accommodation under the Americans with Disabilities Act.

(3) * * *

(i) Be established for center care, group family care, and family day care;

(ii) Differentiate among care for infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable;

(iv) Consider reductions in the cost of care for additional children in the same family; and

(v) Be established for in-home care:

(A) At the level required by Federal and State provisions that govern domestic service employees, without reference to the requirements in paragraph (a)(2) of this section; or

(B) In accordance with paragraph (a)(2) of this section only when such a local market rate would exceed the level required by Federal and State provisions that govern domestic services employees.

* * * * *

PART 256—TRANSITIONAL CHILD CARE

1. The authority citation for part 256 is revised to read as follows:

Authority: 42 U.S.C. 602, 603 and 1302.

2. Section 256.1 is amended by revising paragraphs (a)(3) and (a)(4) and by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 256.1 State plan requirements.

(a) * * *

(3) The methods and procedures the State IV–A agency shall use to ensure tha fees are collected;

(4) The application requirements established by the State for families requesting TCC;

(5) The State's definition of physically or mentally incapable of caring for himself or herself, pursuant to § 256.2(a); and

(6) Whether the State has elected to provide care under this part:

(i) To families without a request from the family pursuant to § 256.2(b)(3);

(ii) Before employment begins or during breaks in employment pursuant to § 256.2(f); and

(iii) To families who voluntarily cease to receive AFDC pursuant to § 256.2(b)(1)(ii).

* * * * *

3. Section 256.2 is amended by revising paragraphs (a), (b)(1), (b)(3) and (c) and by adding paragraphs (f) and (g) to read as follows:

§ 256.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a child who is: Under age 13; physically or mentally incapable of caring for himself or herself, as determined by the State and defined in the State's Supportive Services plan; or under court supervision, and who would be a dependent child, if needy (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) * * *

(1)(i) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11); or

(ii) At State option, the family voluntarily ceases to receive an AFDC benefit as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

* * * * *

(3) The family requests transitional child care benefits, if required by the State, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

* * * * *

(c)(1) Eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1) of this section, and continues for a period of 12 consecutive months.

(2) Families may begin to receive child care in any month during the 12-month eligibility period.

* * * * *

(f) The State IV–A agency may provide child care under this part for an eligible family member who is waiting to enter employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care arrangements would otherwise be lost, and:

(i) Employment is scheduled to begin within that period; or

(ii) The eligible family member is searching for another job.

(g) The State IV–A agency may establish a reasonable time limit for accepting TCC requests following the close of the TCC eligibility period.

4. Section 256.3 is amended by revising paragraph (b) to read as follows:

§ 256.3 Fee requirement.

* * * * *

(b)(1) Each State IV–A agency shall establish a sliding fee formula based on the family's ability to pay that provides for contributions from each family toward the cost of care provided under this part.

(2) The State IV–A agency may waive the contribution from a family whose income level is at or below the poverty level for a family of the same size.

* * * * *

5. Section 256.4 is amended by revising paragraph (c) to read as follows:

§ 256.4 Other provisions.

* * * * *

(c) The State IV–A agency must notify all families of:

(1) Their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC;

(2) The time limit the State has established for requesting TCC following the close of the TCC eligibility period; and

(3) Their rights and responsibilities under the program.

* * * * *

PART 257—AT-RISK CHILD CARE PROGRAM

1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 602, 603, and 1302.

2. Section 257.21 is amended by revising paragraphs (a)(6), (m) and (n) and adding paragraph (o) to read as follows:

§ 257.21 State plan content.

(a) * * *

(6) Child care provided or claimed for reimbursement is reasonably related to the hours of employment as described in the State's At-Risk Child Care plan;

* * * * *

(m) A description of the coordination of the At-Risk Child Care program with existing IV–A child care programs, with other Federally-funded child care programs, and with other child care provided through other State, public, and private agencies;

(n) A description of the health and safety requirements, if any, for the prevention and control of infectious diseases (including immunization), building and physical premises safety, and minimum health and safety training appropriate to the provider setting, in accordance with § 255.4(c)(2)(ii) of this chapter and § 257.41(a)(2); and

(o) Any conditions and limitations the State IV–A agency has established for providing in-home care, pursuant to § 257.40(b)(2).

3. Section 257.30 is amended by revising paragraph (c) to read as follows:

§ 257.30 Eligibility.

* * * * *

(c) The State IV–A agency may provide child care under this Part for an eligible family member who is waiting to enter employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care arrangements would otherwise be lost, and:

(i) Employment is scheduled to begin within that period; or

(ii) The eligible family member is searching for another job.

4. Section 257.40 is amended by revising paragraph (b) to read as follows:

§ 257.40 Methods of providing child care.

* * * * *

(b)(1) If more than one category of child care is available, e.g., center, group family care, family day care, and in-home care, the family must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV–A agency may establish the conditions and limitations under which it will offer in-home care in the State Supportive Services plan.

* * * * *

5. In § 257.41, paragraphs (a)(3) and (b)(2)(v) are removed and paragraphs (b)(2)(iii) and (iv) are revised to read as follows:

§ 257.41 Child care standards.

* * * * *

(b) * * *

(2) * * *

(iii) Allow providers to register with the State or locality after selection by the parent(s); and

(iv) Be simple and timely.

* * * * *

[FR Doc. 94–11087 Filed 5–10–94; 8:45 am]

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May 11, 1994

Part III

Environmental Protection Agency

40 CFR Part 261, et al.
Hazardous Waste Management System; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4881 [illegible]]

40 CFR Parts 261, 271, and 302

RIN 2050–AD79

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Organobromine Production Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous waste solids and filter cartridges from the production of 2,4,6-tribromophenol. The Agency is also proposing to add 2,4,6-tribromophenol to the list of commercial chemical products that are hazardous wastes when discarded. As a necessary part of this hazardous waste listing EPA is proposing to add 2,4,6-tribromophenol to the RCRA list of hazardous constituents.

This proposed regulation, if promulgated, will subject the listed 2,4,6-tribromophenol wastes to regulation as hazardous wastes under Subtitle C of RCRA. In addition, 2,4,6-tribromophenol and the listed wastes will automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is proposing for purposes of immediate release reporting under CERCLA section 103 a reportable quantity (RQ) of 100 pounds for 2,4,6-tribromophenol and the listed wastes.

Also, EPA is proposing not to list as hazardous nine waste streams from the production of bromochloromethane, ethyl bromide, tribromophenol, octabromodiphenyl oxide, decabromodiphenyl oxide, and to defer action on one waste stream from the production of tetrabromobisphenol-A.

DATES: EPA will accept public comments on this proposed listing determination until July 11, 1994. Comments postmarked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by May 26, 1994.

ADDRESSES: Comments should be submitted to Ed Rissmann at EPA, OSWER, 401 M Street, SW., Washington, DC 20460. The official record of this action is identified by Docket number F–94–OBLP–FFFFF and is located at the following address: EPA Docket Clerk, room 2616 (5305), U.S. EPA, 401 M Street, SW, Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

To request a public hearing on this proposed listing determination, file a request with Mr. David Bussard (5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll-free) or (703) 412–9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553–7672, or (703) 486–3323, locally. For technical information on the proposed listing determination, contact Ed Rissmann at (202) 260–4785.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Statutory and Regulatory Background

These regulations are proposed under the Solid Waste Disposal Act (SWDA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes are commonly referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992k (42 U.S.C. 6901–6992k).

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of the Act.

Hazardous waste is defined at section 1004(5) of RCRA, 42 U.S.C. 6903(5). There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. In addition, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

EPA's regulations establishing criteria for listing hazardous wastes are codified at volume 40 of the Code of Federal Regulations (CFR) § 261.11 (40 CFR 261.11). Section 261.11 states three criteria for identifying characteristics and for listing wastes as hazardous.

First, wastes may be classified as "characteristic" wastes if they have the properties described at 40 CFR 261.20 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity and toxicity.

Second, wastes may be classified as acute hazardous wastes if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, wastes may be listed as hazardous if they contain hazardous constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in § 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in appendix VIII if it has been shown in scientific studies to have toxic effects on life forms.

Wastes listed as hazardous are subject to federal requirements under RCRA for persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazard waste management requirements, including the need to obtain permits to operate, are commonly referred to as Subtitle C facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes as may be necessary to protect human health or the environment. Thus, facilities like incinerators or landfills that are required to comply with RCRA requirements for hazardous waste are referred to as Subtitle C incinerators or landfills.

Subtitle C is codified as Subchapter III of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code, 42 U.S.C. 6921 thru 6939e. EPA standards and procedural regulations implementing subtitle C are found generally at 40 CFR parts 260 through 272.

Solid wastes which are not hazardous wastes may be disposed of at facilities which are overseen by state and local governments. These are the so-called subtitle D facilities. Subtitle D is Congress' original statutory designation for that part of RCRA which deals with federal assistance to state and regional planning efforts for disposal of solid waste.

Subtitle D is codified as Subchapter IV of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code (42 U.S.C. 6941 thru 6949a). EPA regulations affecting subtitle D facilities are found generally at 40 CFR parts 240 thru 247, and 255 thru 258.

Section 3001(e)(2) of RCRA (42 U.S.C. 6921 (e)(2) requires EPA to determine whether to list, as hazardous, wastes generated by various chemical production processes, including the production of organobromines. In response to this mandate, the Agency undertook a two-year study of the industry and, eventually, listed several wastes from the production of ethylene dibromide (EDB) and methyl bromide.

The final rule listing wastes from the production of EDB was published in the **Federal Register** on February 13, 1986 (51 FR 5327). These wastes are listed in Title 40 of the Code of Federal Regulations section 261.32 (40 CFR 261.32) and are designated by EPA hazardous waste numbers K117, K118, and K136. The final rule listing wastes from methyl bromide production was published on October 6, 1989 (54 FR 41402). These wastes are listed at 40 CFR 261.32 and are designated by hazardous waste codes K131 and K132. Methyl bromide and ethylene dibromide are also on the Appendix VIII list of hazardous constituents.

In June of 1991, EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund, *et al.* (*EDF* v. *Reilly*, Civ. No. 89-0598 (D.D.C.)), in which the Agency agreed to publish a proposed determination as to whether or not to list as hazardous wastes from the production of five other organobromine chemicals by April 30, 1994 and to promulgate a final decision on whether to list on or before April 30, 1995. The Agency reserves the right to evaluate wastes from the production of other organobromine compounds in the future, if and when such an evaluation is deemed necessary.

To provide a sound technical basis for this listing determination, EPA conducted another study of the organobromine chemicals industry in 1991 and 1992. Six firms were identified as currently manufacturing organobromine chemicals at eight facilities in the United States. Under the authority of RCRA Section 3007 (42 U.S.C. 6927), EPA sent questionnaires to these firms and four of them were selected for engineering site visits. These four facilities account for over 99 percent of total production. Samples of process residuals were collected during the site visits to familiarize the Agency with the types of materials generated by the industry. Later in the study, record samples were collected at facilities of the two largest domestic producers. The next section summarizes today's proposal and describes the basis for EPA's decision to list one waste from this industry. The Listing Background Document for this listing determination contains a detailed description of the Agency's basis for proposing to list one waste, and to not list ten other waste streams. The public version of this document, which does not contain Confidential Business Information can be copied at the RCRA public docket. See **ADDRESSES** section.

The third criteria described above for listing hazardous wastes in 40 CFR 261.11, is applicable to this proposal on organobromine wastes. That is, wastes may be listed if they contain hazardous constituents identified in Appendix VIII of 40 CFR Part 261 and the Agency concludes the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

With respect to the other two criteria, the wastes under consideration here are not acutely hazardous and "characteristic" wastes are not listed separately, since their classification depends upon whether they qualify as wastes based on various tests described in the regulations. EPA notes that any of the organobromine wastes could be classified as "characteristic" wastes if they "fail" the applicable tests.

Consistent with its regulations, EPA determined whether there were present any Appendix VIII constituents and whether there was information on any other constituents of the waste that could lead to health or environmental concerns. The health effects data, along with other factors (generally related to exposure) required to be considered under 40 CFR 261.11(a)(3), were then evaluated to decide whether the wastes should be listed as hazardous wastes. These factors include the plausible types of mismanagement scenarios to which the wastes could be subjected and the potential of the constituent or any toxic degradation product to migrate from waste into the environment under the improper management scenarios (40 CFR 261.11(a)(3) (iii) and (vii)).

After consideration of data on health effects and exposure to the wastestreams, EPA decided that certain wastes from 2,4,6-tribromophenol production warrant listing. None of the constituents have previously been listed in Appendix VIII, however. Accordingly, EPA is proposing to list 2,4,6-tribromophenol as an Appendix VIII constituent.

II. Summary of Today's Proposal

A. Organobromine Chemicals Industry Overview

The organobromine chemical-producing industry in the U.S. is geographically limited by the location of underground bromide-bearing brine deposits. The only major deposits of this type in the United States are located in Michigan and Arkansas. Organobromine chemicals are no longer produced on a large scale in Michigan. EPA identified two firms in southern Arkansas that produce the organobromine chemicals listed in the EDF consent decree. These two firms account for 95% of all organobromine chemical production in the U.S.

The source of all bromine produced currently in the U.S. is the brine deposit in the Smackover Formation in Union, Lafayette, and Columbia Counties, Arkansas. Total demand for bromine has fallen 25% since 1979 and domestic bromine production fell by four thousand metric tons between 1991 and 1992, so there is little incentive for the construction of new bromine extraction plants. In addition, all of the mining rights for bromine-bearing brines in these counties are controlled by two corporations. According to the U.S. Bureau of Mines, these deposits are likely to satisfy domestic demand for sixty years. For these reasons, EPA believes that it is very improbable that any new producers using substantially different technologies will enter the organobromine chemicals industry during the next several decades.

At the time of the first industry study in 1984, ethylene dibromide (EDB) was the most important product of the organobromines industry. EDB was used together with tetraethyl lead in additives designed to increase the octane rating of gasoline. Other industry products included methyl bromide, used as a soil fumigant, and brominated fluorocarbons, which are sold mainly as fire-extinguishing agents.

During the decade that has elapsed since the original industry study, the product mix has changed, due primarily to the advent of several environmental regulatory programs. Vehicles requiring unleaded gasoline were introduced to the U.S. market in 1971, and the phase-out of leaded gasoline is now almost complete. Other nations have instituted similar programs, though on different timetables, which has reduced demand for EDB. The use of methyl bromide as a soil fumigant has been restricted because of the toxicity of this material. Two of the important brominated fluorocarbons, Halon 1211 and Halon 1301, are being phased out of production under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the United States is a signatory.

The majority of organobromine chemicals manufactured currently are sold as flame retardants. Most of these are solid compounds that are incorporated into polymer mixes. The polymers then are used to manufacture a variety of household and industrial products, including electronic circuit boards, television and computer cases, and packaging and insulating foam. Smaller volume organobromine chemicals are produced by four smaller firms. The principal uses for these products are as reagent chemicals and pharmaceutical intermediates. These low volume chemicals are produced on a batch basis with annual production often being a few batches per year.

B. Description of Processes Used, Wastes Generated, and Waste Management Practices Employed

1. Processes Used and Wastes Generated

As discussed above, EPA conducted engineering site visits at four organobromine-producing firms, based on the information received from RCRA Section 3007 questionnaires. Two of these four firms have direct access to sources of elemental bromine (*i.e.*, the underground brine deposits) and use it to produce substantial volumes of organobromine flame retardants. All other firms in the industry purchase elemental bromine and use it to produce smaller volumes of special-purpose pharmaceutical and chemical intermediates. Frequently, these items are produced under contract for the pharmaceutical firms.

The processes at the two major sites also differ from those at the smaller producers with respect to waste management practices. The smaller producers manage all of their solid wastes as hazardous and ship them off site to incinerators or landfills operating in accordance with the standards promulgated under authority of RCRA Subtitle C. Generally, their production contracts call for the wastes to be sent to the firms ordering these chemicals. The pharmaceutical firms then incinerate these wastes from the organochemical production process.

Because bromine is an element and cannot be destroyed by chemical transformations, the production processes at the major facilities are designed to make the most effective use of all bromine extracted from the brine. As a result, there are many bromine/bromide recovery processes built into the operation. A generalized description of the wastes and management practices at the major sites follows.

Bromide-bearing brine from the Smackover Formation is pumped to the surface and routed to the bromine plant, where it is acidified, and chlorinated to convert the bromide to bromine. The reaction generates a sodium chloride by-product which remains in the brine. The bromine then is volatilized with steam and condensed, dried, and used on site as a feedstock. Most organobromine chemicals are produced by simple one- or two-step reactions of bromine with an organic feedstock. Many of these reactions liberate hydrogen bromide gas, which is normally scrubbed in sodium hydroxide solution, forming a sodium bromide stream that often is recycled to the bromine plant. Alternatively, the gas is scrubbed with a lime suspension to produce calcium bromide, a saleable by-product.

Concentrated sulfuric acid is used as a drying agent for elemental bromine. The spent acid is sold back to the sulfuric acid producer, who uses it to produce virgin sulfuric acid.

At major production sites, process wastewaters containing recoverable amounts of bromine are recycled to the bromine plant for bromine recovery. The volume of these wastewater streams exceeds that of all other waste streams combined. Additionally, over 200,000 metric tons per year of unrecycled process wastewaters are generated at the two major sites from production of the five organobromine chemicals listed in the consent decree. An additional 450,000 tons of wastewaters are generated from tribromophenol manufacture. Less than 800 tons of process wastes solids are generated. These include spent filters, floor sweepings and chemical product that does not meet commercial specifications for quality—so-called "off-spec" product. By comparison, the amount of waste generated by the minor producers is cumulatively less than 100 tons and is divided among several dozen processes, most of which are operated only a few days per year. Due to the very low volumes and periodic generation of these wastes by the minor producers, the analysis for this listing determination focused only on the major production plants. The minor producers do not manufacture any of the products listed in the EDF consent decree. Table I summarizes the wastes and their constituents of potential concern generated from production of organobromine products studied.

TABLE I.—SUMMARY OF ORGANOBROMINE PRODUCTION WASTES

Product	Waste stream	Constituents of potential concern
Dibromomethane/bromochloromethane	Filters	Methylene chloride.[2]
	Wastewaters	Bromochloromethane Dibromomethane.
Ethyl bromide	Filters	Ethyl bromide.
	Wastewaters	Ethanol.
Tetrabromobisphenol-A	Off Spec Product	Tetrabromobisphenol-A Tribromophenol.
	Wastewaters [1]	
Octabromodiphenyl oxide	Wastewaters	Octabromodiphenyl oxide Toluene.[2]
	Off Spec Product & Filters	Brominated dibenzofurans.
Decabromodiphenyl oxide	Off Spec Product & Filters	Decabromodiphenyl oxide.
	Wastewaters	
Tribromophenol	Wastewaters	Tribromophenol.
	Filters & Filter cake & Off Spec Product	

[1] Methyl bromide and tetrabromobisphenol A are generated by the same process. The process wastewaters are the listed waste K131.
[2] Appendix VIII constituents.

2. Waste Management Practices

The largest volume wastes generated by the organobromines industry are wastewaters disposed by injection into underground deep wells regulated under the Safe Drinking Water Act Underground Injection Control (UIC) program (40 CFR parts 144–148). Some of the combined waste streams being deep well-injected are classified as hazardous wastes under 40 CFR part 261. As a result, the industry must comply with applicable regulations under the Land Disposal Restrictions (LDR) program in 40 CFR part 268, which require that hazardous wastes may not be land-disposed without treatment to specified levels or by specified methods. Disposal by underground injection is included in the definition of "land disposal" in 40 CFR 268.2. Specific restrictions on the underground injection of hazardous wastes are codified in 40 CFR part 148.

One of the two major production plants submitted a petition under 40 CFR 148.20 for an exemption from these LDR requirements for the disposal of wastes in wells located at its plant. They provided site-specific information to demonstrate that there would be no migration of the injected wastes to an underground source of drinking water for as long as the wastes remain hazardous (40 CFR 148.20). Their demonstration showed that the geological and geochemical conditions at the site and the physicochemical nature of the wastestreams were such that the hazardous constituents in the fluids will not migrate within 10,000 years vertically or laterally. The petition was approved by the Agency and the exemption was granted. EPA expects the facility to continue this form of disposal at the same level in the future regardless of this listing determination because of economic considerations. As a result, EPA believes that wastes being disposed by underground injection at this plant will not pose a risk to human health and the environment.

The situation with respect to the second major facility is different. This facility consists of several plants located a few miles apart. Each plant has its own set of injection wells. One plant, which according to the Agency's information generates listed hazardous wastewater, has two wells into which listed hazardous waste is currently injected. Another, which according to the Agency's information does not produce a listed wastewater, has at least three wells which do not accept hazardous waste.

None of the wells at this facility have an approved no-migration petition. Therefore, for currently listed wastewaters, the facility will have to consider waste treatment prior to disposal. An option under consideration by the plant is the construction of a wastewater treatment plant to treat the wastewaters prior to either release to surface waters or deep well injection. The facility is not likely to want to abandon the use of deep well injection for economic reasons. Shipment of wastewaters off site would be economically prohibitive given the large wastewaters volumes involved. For unlisted wastewaters, the most plausible management scenario would be continued deep well injection.

The Agency believes that it would be unlikely that the facility would attempt to store wastewater in lagoons. The area has a moist climate, so evaporation is not a viable option. The plant is currently under several consent agreements to remove contamination resulting from the previous use of unlined lagoons for temporary wastewater storage.

Therefore, the Agency selected the plausible mismanagement scenario for modeling purposes for unlisted wastewaters to be the current practice of underground injection for this plant's wastewaters. EPA has no information or reason to believe that, if not listed, the wastewaters would be managed in a different manner.

In addition to underground injection, certain other waste management practices commonly used in the organobromine chemicals industry are regulated by specific RCRA regulations. Both major plants use Bromine Recovery Units (BRUs) to recover bromine values from organic liquid and vapor waste streams. In these units, the organics are burned and the combustion products are removed by a wet scrubber. The BRUs are halogen acid furnaces (HAFs), which meet the regulatory definition of industrial furnace in 40 CFR 260.10.

The combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H which regulate air emissions from these units and require monitoring and analyses. These regulations impose emissions standards and air quality limits for the BRUs, which are designed to control and reduce the level of risk posed by this management practice (*e.g.*, 40 CFR 266.104(e) establishes controls for dioxin- and furan-containing wastes). Both major plants burn listed spent solvents and still bottoms in these units; therefore, they are already subject to the performance standards of part 266, subpart H. EPA believes that residuals managed in this manner and in compliance with applicable regulations do not pose any additional risk to human health and the environment because the facilities are currently in compliance with their permits to operate these units. EPA has not found any compelling evidence indicating that the major plants would manage these wastes in any other way. These recovery units are integrated into the major plants and abandoning their use would require considerable plant modifications to be made with no economic benefit to the facilities.

The solid residuals generated in organobromine chemicals production are currently being shipped off site to commercial Subtitle D landfills and to Subtitle C disposal facilities, even though some of these residuals are not regulated as hazardous wastes. Other wastes (*e.g.*, spent adsorbents, filter cakes, and floor sweepings) are being incinerated. At the smaller firms production contracts specify that wastes be shipped to incinerators operated by the pharmaceutical industry in order to minimize future potential liability. The most plausible mismanagement scenario for solids is placement in unlined Subtitle D landfills. The plants currently are not required to send unregulated wastes to Subtitle C facilities. Because of the lower cost and wider availability of Subtitle D facilities, the Agency feels that this is the most reasonable mismanagement scenario.

C. Description of Health and Risk Assessments

The Agency realizes that it has incomplete toxicological data on several constituents identified in individual waste streams. Nevertheless, sufficient information does exist to reach the reasoned decisions shown in Tables 2a & b. The rationale for these decisions follows.

TABLE 2a.—BASIS FOR LISTING DETERMINATION

Product	Wastestream	Analysis	Decision
Dibromomethane	Filters	De minimis stream (less than 1 kkg/yr) One producer	No list.
	Wastewaters	Deep well injected at site with approved-no migration petition (only one producer).	No list.
Ethyl bromide	Filters	De minimis stream (less than 1.5 kkg/yr)	No list.
	Wastewaters	Only constituent identified is ethanol at low concentration	No list.
Tetrabromobisphenol A	Wastewaters	Stream is already listed as K131 for methyl bromide. Also contains 15,000 ppm tribromophenol.	Already listed waste.
Octabromodiphenyl oxide.	Filter cake	Toluene and brominated dibenzofurans present at levels below concern. Assuming worst case for leachate, risk estimated to be below 10^{-6} for octabromodiphenyl oxide.	No list.
	Wastewaters	Major constituent of concern, brominated dibenzofurans, shows minimal risk; solubility of octabromodiphenyl oxide is very low; modelling of worst case for wastewaters showed risk below 10^{-6} for octabromodiphenyl oxide.	No list
Decabromodiphenyl oxide.	Filter cake	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10^{-6} level because of very low solubility for this chemical.	No list.
	Wastewaters	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10^{-6} level because of very low solubility.	No list.

TABLE 2b.—BASIS FOR LISTING DETERMINATION

Product	Wastestream	Analysis	Decision
Tetrabromobisphenol A	Off-specification product.	Inadequate toxicology data for major constituent of concern, tetrabromobisphenol A; not amenable to surrogate analysis. Waste also expected to contain tribromophenol, potentially of concern, but unquantified in waste. None found in leachate from landfill where waste was deposited.	Defer action.
Tribromophenol	Wastewaters	Inadequate toxicology data on major constituents in waste, tribromophenol and dibromophenol. Used surrogate analysis for tribromophenol. Risk analysis shows only low risks; tribromophenol not detected in groundwater at site. (Also, level of tribromophenol in this waste is 2000 times less than the listed hazardous waste, K131.).	No list.
	Filter cake	Used surrogate analysis for tribromophenol. Leachate analysis estimates risk of 10^{-3} to 10^{-5} if waste disposed in unlined Subtitle D landfills.	List as hazardous waste.

1. Toxicological Information—Use of Structural Activity Relationships

While many chlorinated organic compounds are used widely and have been studied in great detail, their brominated analogs are more specialized and have not been investigated in the same detail. EPA has found that no reliable health effects data directly showing significant subchronic toxicity are available for a few of the compounds identified in the record samples from this industry. For the constituents of concern, validated health effects data, directly showing subchronic toxicity, are not available for four compounds: ethyl bromide, tetrabromobisphenol-A, tribromophenol, and the brominated dibenzofurans. Because of the lack of data on these compounds, the Agency explored the use of structure activity relationships to develop toxicological values for these compounds. Structure activity relationships involve the use of health effects information for a compound with a very similar chemical structure and properties to that of the chemical of concern. The Agency determined that this technique could be used for 2,4,6-tribromophenol and for brominated dibenzofurans because the chemical behavior and mechanism of action for these compounds is expected to be similar to their chlorinated analogues.

For ethyl bromide and tetrabromobisphenol-A, this technique could not be used because suitable surrogate compounds, for which data exist, could not be found. No toxicological data exist for other halogenated derivatives of bisphenol A, and ethyl bromide differs from its chlorinated congeners with respect to its ability to undergo hydrolysis and other important reactions. The basis for the listing determinations for the wastes with these two compounds is discussed later in this preamble.

At the present time, inadequate toxicity data have prevented EPA from establishing a verified or unverified human health reference value for 2,4,6-tribromophenol (TBP). The structures of TBP and 2,4,6-trichlorophenol (TCP) are sufficiently similar to be considered halogenated congeners of phenol, and their toxicities are explainable in terms of identified molecular mechanisms. The relative quantitative activities of halogenated phenol congeners such as TBP and TCP are derived from the ease of formation and reaction of these compounds and their metabolites. Both halogenated phenols contain three symmetrically placed bromine or chlorine substituents which are difficult to remove by chemical substitution. The presence of difficult-to-remove substituents at the ortho and para positions inhibits oxidative decomposition of these moieties via formation of cyclic ketone intermediates. EPA has used this information to develop a quantitative structure-activity relationship (QSAR) analysis for TBP. The critical endpoint of concern for TCP and TBP is carcinogenicity. The Agency has determined that, based on QSAR analysis, the long-term toxicity of TBP and TCP are essentially the same. For today's proposal, the Agency has estimated the cancer slope factor for TBP to be the same as TCP, or 1.1 x 10^{-2} (mg/kg per day)$^{-1}$. In addition, data on TBP analyzed by EPA's Office of Pollution Prevention and Toxics indicated a "low to moderate" concern for oncogenicity, mutagenicity, liver and kidney toxicity, developmental, and reproductive toxicity. The Agency's QSAR analysis reports for TBP are available in the docket of today's proposal. See **ADDRESSES** section.

With regard to dibenzofurans, quantitative data comparing the potency of brominated dioxins and furans to their chlorinated counterparts are also relatively sparse. Consensus among most of the studies supports the view that brominated analogs are less potent than the chlorinated dioxins and furans, although several studies suggest that the groups are equipotent when considered on a molar basis. EPA estimated a potency factor of 0.3 for 2,3,7,8-tetrabromodibenzo-p-dioxin (TBDD) relative to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). This report is available in the docket. See **ADDRESSES** section. However, application of the toxicity equivalency factor (TEF) methodology to all of the BDFs is not currently possible because of the lack of research data. EPA conducted an analysis assuming 30–100% toxicity for the brominated furans as compared to the chlorinated ones and used the 100 percent value for making risk-based decisions. EPA believes this is a conservative approach that will ensure protection of human health and the environment. The Agency requests comment on this approach.

For all other compounds, the Agency is basing its determination of whether to list on constituents for which adequate health effects data exist. (For a complete listing of the constituents identified in the samples of wastes from the production of chemicals listed in the EDF consent decree and their concentrations, see the Background Document for this proposed listing determination, available in the RCRA public docket.)

In summary, published health-based data exist for all but four of the waste constituents of concern. Inadequate data exist for tetrabromobisphenol-A, ethyl bromide, the brominated dibenzofurans and tribromophenol. Structure activity-derived health-based information is available and was used for the brominated dibenzofurans and tribromophenol.

Quantitative Structure Activity Relationships (QSARs) have been used in other ways in other EPA programs. For example, EPA uses QSARs in evaluating premanufacturing notice data submitted by industry under TSCA. The Agency may require additional testing of the chemical being reviewed based on a QSAR analysis.

However, this is the first time the Agency is basing a listing determination for a wastestream on QSAR analysis. The prospect of using QSARs to identify wastes for regulation holds significant promise for the Agency. It is one way to evaluate some potentially hazardous constituents without requiring expensive and time-consuming toxicity testing. However, the Agency recognizes that the approach could result in additional regulatory effects on some waste generators, local governments, or other federal agencies. In addition, the use of QSARs in listing determinations could have broad policy implications for EPA. Therefore, the Agency solicits comment on the following:

1. Under what conditions is the use of QSAR valid in making hazardous waste listing determinations?
2. Is there another way to characterize the risk potential of wastestreams for which there is a lack of toxicity data on the sole or the primary constituent in the wastestream? (Note that limited resources may restrict the ability of the Agency to conduct testing of the compounds involved).
3. What type of data would help to either support or refute the predictions made by QSAR?

2. Plausible Mismanagement Scenario

The Agency developed baseline risk estimates by selecting plausible mismanagement practices based on information collected in the RCRA Section 3007 survey for current management operations. For wastewaters, the Agency selected the plausible mismanagement practice to be the current practice of deep well injection. The Agency has no information or reason to believe that, if not listed, the wastewaters are likely to be managed in a different manner, except if pretreatment of wastewaters is required prior to injection. For sludges and waste solids, the Agency selected the plausible mismanagement to be an unlined landfill. Currently, a portion of the waste goes to a lined Subtitle D landfill. In addition, the Agency has information that a portion of these wastes, while not regulated as hazardous, are managed as hazardous with disposal in Subtitle C landfills. However, the Agency lacks adequate information showing that, if not listed as hazardous, the wastes would continue to be disposed in lined landfills and result in significantly lower estimates of potential risk. The Agency requests comment on this approach to modelling plausible mismanagement practices.

3. Risk Analysis

Risk characterization approach. The risk characterization approach follows the recent EPA Guidance on Risk Characterization (Habicht, 1992) and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991). The guidance specifies that EPA risk assessments will be expected to address or provide descriptions of: (1) Individual risk to include the central tendency and high-end portions of the risk distribution, (2) important subgroups of the population such as highly exposed or highly susceptible groups or individuals, if known, and (3) population risk. In addition to the presentation of results, the guidance also specifies that the results portray a reasonable picture of the actual or projected exposures with an open discussion of uncertainties.

Individual risk. Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population, the risk levels of various groups within the population, and the average risk for individuals within a population of interest. The approach used in this analysis for characterizing baseline individual risk included: (1) Identifying and describing the population of concern for an exposure route; (2) determining the sensitivity of the model parameters used in the risk estimation; (3) estimating central tendency and high-end values for the most sensitive parameters in the risk estimation procedures; and (4) calculating risk for an exposure pathway that provides a characterization of the central tendency and high-end risk descriptor.

Population risk. Descriptors of population risk are intended to convey information about the risk borne by the population or population segment being studied. These risk descriptors are used to answer questions concerning the number of cases of a particular health effect that probabilistically could occur within the population during a given time period, the number of persons or percent of the population above a certain risk level or health benchmark (e.g., RfD or RfC), and risk for a particular population segment.

Risk assessment. The analysis of risks was developed using both the input of derived or measured toxicological information and the modelling of waste mismanagement scenarios. Specifically, for disposal of solids in unlined landfills, the concentration of the constituents of concern in the landfill leachate first was determined using the Toxicity Characteristics Leaching Procedure (TCLP) on selected record samples, or when TCLP data were lacking, by assuming a leachate concentration based on the aqueous solubility of the constituent. It then was assumed that the leachate would be diluted by a factor of 100 (as described in the Toxicity Characteristic Rule 55 FR 11798, March 29, 1990) before reaching the nearest drinking water well. The resulting diluted concentrations can be then compared with the health-based values. In the case of this analysis, a one-in-a-million (10^{-6}) risk level or hazard quotient of 1 was used.

For wastewaters, the situation was more complicated. One facility has been granted a no-migration variance from the land disposal restrictions. The second facility, which consists of several separate plants, has not obtained such a variance. The plants at the second facility currently dispose of process wastewaters by deep well injection. Modelling for specific wastewater streams was based on the possibilities of leakage of injected wastewaters from the injection zone upward to a drinking water aquifer through the abandoned oil and gas wells in the area. Details of this modelling are given in the Risk Modelling Background Document and summarized in the individual wastewater risk assessment to be discussed in the following sections.

D. Basis for Listing Determinations Decisions

1. Waste Specific Risk Analyses

Risk analyses were performed on eleven individual waste streams. The models selected for individual mismanagement scenarios are described in the individual sections which follow.

a. *Wastes From Production of Bromochloromethane/Dibromomethane*—i. Solids. Dibromomethane is a low-volume product with limited commercial applications; therefore, it is unlikely that other firms will enter the marketplace. The only solid wastes generated from the production of dibromomethane are spent filters used to remove rust and other particulate matter from the product. About two drums of the material are generated per year. As a result, the Agency feels the quantity is de minimis. The filters are changed yearly and the spent filter material is sent to a Subtitle C incinerator. The waste is generated in small quantities and is mixed with other halogenated solids prior to incineration at the Subtitle C facility. As a result, the Agency believes that although the waste generated from the production of dibromomethane contains toxic constituents, it does not pose a threat to human health and the environment because of the small quantities generated and current management practices. The Agency is proposing a no-list decision.

ii. Wastewaters. Dibromomethane and bromochloromethane are manufactured as co-products at only one facility in the U.S., which has an approved no-migration petition for its deep well injection unit. The approved petition means that the waste will not migrate from the formation into which it is being injected and will therefore not pose risk sufficient to warrant listing.

b. *Wastes From the Production of Ethyl Bromide*—i. Solids. Ethyl bromide is manufactured in low volumes at only one facility. The only solid waste stream consists of spent filter materials used to remove impurities from the product. This waste contains about 90,000 parts per million ethyl bromide and is generated in quantities of 6 drums per year which is sent to Subtitle C facilities for treatment and disposal. High dilution with other wastes placed in the landfill would reduce leachate concentration levels to below those for reasonable concern. The Agency feels that although the waste does contain toxic constituents, based on the production history of this chemical, it is unlikely that other firms will enter the market and that, because of the minimal waste quantities generated and the current waste management practice, there is no need for a specific listing of the filters.

ii. Wastewaters. The wastewater stream is condensate water containing only small amounts of ethanol as a contaminant. This wastestream contains no other contaminants of concern and is managed by deepwell injection. Prior to injection, the ethanol-containing stream is mixed with wastewaters from other processes and the resulting mixed stream thus is diluted by a factor of over 1,000. As a result, the Agency believes that the ethanol content of the combined stream poses little to no risk to human health or the environment, and proposes not to list this wastestream.

c. *Wastes From the Production of Tetrabromobisphenol-A*—i. Solids. The solid wastes generated from the tetrabromobisphenol A process consist of spilled product and floor sweepings from the production area. This material currently is managed in Subtitle C facilities. About 150 tons of this waste are generated annually. Bisphenol-A is manufactured by condensation of phenol and acetone. As a result, commercial grade bisphenol-A may contain variable low levels of phenol and, therefore, the brominated material is expected to contain some brominated phenols. Some of these will co-precipitate with the product during the process and be incorporated into the solid product.

At present, the Agency has insufficient information to characterize the amount of the brominated phenols (including tetrabromobisphenol-A) in the product or their leachability from the product matrix. EPA requests any information on the amount of brominated phenols in the product and their leachability from the product matrix. At this time, the Agency also does not have information on the toxicity of tetrabromobisphenol A, and requests any information commenters may have on its toxicology, including the existence of any toxicological analogues for tetrabromobisphenol A.

Record sampling of an on-site landfill at one plant where these solids were formerly disposed for a number of years showed the absence of any brominated materials in the landfill leachate. Given the lack of adequate information to perform a risk analysis at this time, the Agency is concerned about being conclusive about the potential hazard of this waste stream and its potential to migrate to ground water if managed in an unlined landfill. The Agency proposes to defer for this waste stream a listing determination and requests submission of both characterization and toxicological data, if available. EPA will evaluate carefully all public comments and information received in response to this notice. Particular attention will be paid to any data submitted which tend to either support or refute a finding of risk to human health and the environment from wastes from the production of tetrabromobisphenol A. Based on comments received, including any data, EPA may choose, rather than deferring, to promulgate a final determination to either list or not list tetrabromobisphenol A waste as a hazardous waste under RCRA.

ii. Wastewaters. Wastewaters from the manufacture of tetrabromobisphenol A are already listed and carry the hazardous waste code of K131. Methyl bromide and tetrabromobisphenol A are produced in the same process. Process wastewater originates from the distillation step where methyl bromide is recovered. The Agency feels that no further action is needed for the waste stream.

d. *Wastes From the Production of Octabromodiphenyl Oxide.*—i. Solids. Solid wastes such as filter cakes typically are disposed of in landfills. This has been the practice of the major organobromine chemicals manufacturers for many years. Currently, these wastes are being shipped to Subtitle C hazardous waste facilities. However, it would be possible for the generators to change their disposal practices and direct these materials to Subtitle D landfills. The quantities of these wastes generated are not de minimis as was the case for dibromomethane solid wastes. Toluene is present in filter cakes from the production of octabromodiphenyl oxide. To evaluate the potential risks associated with filter cake containing toluene, EPA applied the Agency's Organic Leachate Model (51 FR 27062, April 29, 1986) to estimate the maximum amounts of toluene that would be expected to leach from the filter cake in an open landfill environment. The Agency also sampled the on-site landfill at one production site where some of this waste was disposed. The sampling of the landfill leachate did not detect any toluene present. The toluene concentrations in the filter cake were used as input to the Agency's Composite Model for Landfills (56 FR 32993, July 18, 1991) to estimate high-end (95th percentile) concentrations of toluene in a hypothetical receptor well. The hypothetical well concentrations derived from this analysis are about one order of magnitude below the Maximum Concentration Level (MCL) for toluene promulgated by regulation under the Safe Drinking Water Act. The formulae used and a more detailed discussion of the application of these models to the waste samples can be found in the Background Document, available in the RCRA public docket. See **ADDRESSES** section. Because the modelled leachate levels are below acceptable drinking water levels, EPA does not believe that toluene-containing filter cake wastes generated in the production of octabromodiphenyl oxide pose a threat to human health and the environment; thus, the Agency proposes not to list this wastestream. The waste solids also contained about 4.4 ppb of brominated dibenzofurans (most of which were the hepta isomer), which the Agency believes are among the least toxic of the brominated dibenzofurans. The toxicities of these materials were evaluated in terms of equivalence to that for tetrachlorodibenzo-dioxin (TCDD). The Agency has concluded that the risk posed by this constituent is below the 10^{-6} level.

Also, the health-based for a one-in-a-million risk level for octabromodiphenyl oxide using standard intake and exposure assumptions is 0.1 mg/L. No leachate data are available for this waste. However, the Agency assumed an upper-bound leachate concentration of 0.2 mg/L based on the solubility of octabromodiphenyl oxide. Assuming a dilution factor of 100 is achievable during migration to the nearest drinking water well, the concentration in potable water would be below that of concern. As a result, EPA is proposing not to list this waste stream based on low estimated exposure to toxic constituents.

ii. Wastewaters. While the Agency has no quantifiable concentration data on octabromodiphenyl oxide found in the wastewaters, adequate data exist on brominated dibenzofurans found in the generated wastes.

Brominated dibenzofurans were detected in some of the record samples from octa- and decabromodiphenyl oxide processes. Studies conducted for EPA's Office of Pollution Prevention and Toxics and by research groups in Germany and the Netherlands show that brominated furans can be formed during the manufacture of brominated diphenyl ethers, as well as during their fabrication into polymers. The evidence currently available to the Agency indicates that brominated dioxins and furans may range from 30–100% as toxic as their chlorinated counterparts. Using this approach, a record sample of wastewater from the octabromodiphenyl oxide unit showed a maximum toxicity equivalent of 3.7×10^{-7} mg/L of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) equivalent. Assuming a 100-fold dilution of the waste prior to reaching a drinking water well, the level would be below the MCL for 2,3,7,8–TCDD, which is 3×10^{-8} mg/L. The Agency selected the highest toxicity value in making this analysis.

Based on this evaluation, the Agency is proposing not to list this waste stream for brominated dibenzofurans, because EPA believes that estimated exposure levels to toxic constituents are sufficiently low so as to not pose a threat to human health and the environment.

The Agency was unable to quantify levels of octabromodiphenyl oxide present in wastewaters. However, the solubility of the chemical is only 0.2 mg/L. The flow of wastewaters from this process represents less than one percent of the total amount of process wastewater injected. The health-based level for a one-in-a-million risk level for octabromodiphenyl is 0.1 mg/L. Due to the high level of dilution occurring prior to injection, the resulting concentration of the toxic chemical expected to reach drinking water aquifers is well below levels of concern.

e. *Wastes From the Production of Decabromodiphenyl Oxide*—i. Solids. The production of decabromodiphenyl oxide generates solid wastes consisting of collected spilled product. Only limited analytical results were obtained from the record sampling of this waste and no TCLP leachate data were obtained for this compound. However, the Agency assumed an upper-bound leachate concentration of 0.2 mg/L based on the aqueous solubility of the constituent. The health-based level for a one-in-a-million risk level for this compound is 0.35 mg/L, (assuming exposure of drinking 2.0 L/day for a 70 year exposure period) so the concentration in the leachate is already below the level of concern before any further dilution. Therefore, the Agency is proposing not to list this wastestream.

ii. Wastewaters. The manufacture of decabromodiphenyl oxide also generates a wastewater stream. The Agency was unable to quantify the amount of the product in the wastewater stream. Based on the process chemistry, however, a small amount of product would appear in the stream. The solubility of decabromodiphenyl oxide is less than 0.2 mg/L. This chemical has a health-based level of 0.35 mg/L so the leachate concentration is already below the level of concern even before the subsequent significant dilution occurs. Therefore, the Agency is proposing to not list this wastestream.

f. *Wastes From the Production of Tribromophenol*—i. Solids. Solids from the production of tribromophenol (TBP) consist of spilled materials, off-specification product and spent filter cartridges which were used to remove entrained TBP particulates from the gaseous hydrogen bromide coproduct. The one plant manufacturing this chemical mixes the three wastes together prior to shipment off site for land disposal. Most of this waste is sent to a Subtitle C hazardous waste facility. However, some is being sent to a Subtitle D landfill.

Inadequate toxicity data for tribromophenol (TBP) have prevented the Agency from establishing a human health reference value for tribromophenol (TBP). Therefore, as previously discussed, the Agency performed a structure activity relationship (SAR) analysis in order to provide a provisional human health reference value for this compound.

Based on the structure activity relationship, the health-based level for a one-in-a-million risk level for TBP should be the same as that for 2,4,6-trichlorophenol (*i.e.*, 0.003 mg/L assuming exposure of drinking 2.0 liters per day for a 70-year exposure period). The health-based level of 0.003 mg/L can be considered a bounding estimate which could overestimate the exposure in an actual population. TCLP leaching data presented in the Industry Study Background Document show concentrations of 760 and 16 mg/L of TBP in leachate extracts from the off-specification product and the filter cartridges, respectively.

Since the leachate levels exceed the health-based levels for this wastestream, the Agency conducted an analysis of the potential risk from unlined landfill disposal. For this analysis, the Agency selected what are perhaps conservative dilution factors and exposure assumptions. Using a dilution and attenuation factor of 100 from the Toxicity Characteristic rule (55 FR 11798, March 29, 1990) to simulate the subsurface dilution of the leachate concentration between an unlined landfill and a hypothetical receptor well, the estimated TBP concentrations in groundwater are 7.6 and 0.16 mg/L, respectively. Assuming that people drinking from this hypothetical well are exposed to the contaminant by drinking 1.4 L/day of contaminated water every day over a 30-year interval, the health-based limit of a one-in-a-million increased lifetime risk of cancer is 0.01 mg/L. Thus, the levels of estimated individual risk from exposure to TBP in groundwater are 7×10^{-4} and 2×10^{-5}, respectively.

For this proposed rule, the Agency did not conduct a more sophisticated risk analysis. A more sophisticated risk assessment may suggest different estimated risks than the analysis described above. For example, the dilution factor of 100 was derived assuming that the chemical does not adsorb or degrade in the subsurface environment. The Agency is aware that the fate and transport of TBP in the environment is dependent on the environment in which the waste is disposed. If disposal is to a neutral or slightly acidic environment, the octanol-water coefficient (a constant often related to the soil-water adsorption coefficient) for TBP is relatively high, exceeding 16,000. This value suggests that TBP in landfill leachate may bind to subsurface soils and may migrate at low concentrations over a very long period of time in some environments. On the other hand, disposal under alkaline conditions, which are present in areas where organobromines are produced, would likely result in less sorption to subsurface soils. This suggests that TBP could become more mobile under these conditions. In addition, the dilution factor of 100 in the analysis used corresponds to the dilution factor expected at a drinking water well 500 feet downgradient from the disposal location. The Agency does not know the distance between landfills or disposal areas that could receive TBP wastes and the nearby downgradient drinking water wells or intercept surface waters. Depending on the distance to the nearest well or environmental receptor, the actual human health and environmental risks could be substantially greater than or less than those estimated in the analysis employed in this proposal.

A more sophisticated analysis would also consider other potential exposure pathways in addition to consumption of contaminated groundwater. For example, since TBP under some soil pH's is likely to bind strongly to particulates such as soil, the Agency is concerned that disposal of these wastes could result in soil contamination around the disposal site and human health and environmental risks. The concentration of 2,4,6 TBP in the floor sweepings was very high (up to 400,000 ppm) in the two samples the Agency measured. Since the wastes are in dry, powdery form, they could be dispersed around the disposal facility. Depending on the disposal rate and the likelihood of exposure, exposure to particulates at the disposal site could pose human health and environmental risks at levels of concern.

The Agency requests comment on the risk analysis used in this proposal and plausible mismanagement practices of TBP wastes. EPA requests comment on the issues raised above and on all aspects of the risk analysis employed. In particular, the Agency requests comment on the use of the DAF of 100 for this specific analysis.

Disposal in a Subtitle D landfill is the most plausible mismanagement scenario, given the lower cost for disposal at such sites. The model previously discussed assumes that the Subtitle D facility is unlined. Because the concentrations of TBP at a receptor well could exceed health-based levels, the Agency is proposing to list the solids from the production of tribromophenol as hazardous wastes.

The Agency is seeking comment on the risk levels used in this risk assessment. In the Superfund program, EPA makes clean up decisions using concentration levels that represent excess upper bound lifetime cancer risk to an individual of between 10^{-4} to 10^{-6}. However, the 10^{-6} risk level is the point of departure for determining remediation goals.

Based on the analysis used, EPA is proposing to add tribromophenol to the list of 40 CFR Part 261 Appendix VIII toxic hazardous constituents based on its structural activity relationship with 2,4,6-trichlorophenol and the potential exposure as described above. The Agency also is proposing to add tribromophenol to the list of commercial chemical products (40 CFR 261.33) that are hazardous wastes if discarded or spilled. The wastes specifically proposed for listing are:

K140—Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.

U408—2,4,6-Tribromophenol.

EPA will evaluate carefully all public comments and information received in response to this notice, particularly data which tend to support or refute a finding of risk to human health and the environment from TBP wastes. Based on the comments received, the Agency may finalize or re-evaluate today's proposed listing.

ii. Wastewaters. Data available to the Agency suggests that tribromophenol is produced only at the part of the one major facility in which the wastewaters are injected into non-hazardous deep wells. As off-site management of these wastewaters is probably economically prohibitive, the Agency assumed for the plausible mismanagement scenario that the plant would continue the use of underground injection. In order to estimate risk, EPA had to estimate the length of time injection would continue. The Agency assumed that the plant would inject these wastewaters for up to 60 years, at which point the production of tribromophenol could end because the supply of raw material could run out. Because of the large volume of wastewater generated by this process, the Agency used more sophisticated modelling than for the lower volume wastes. Modelling of the risk due to the management of the wastewaters from TBP production in underground injection was based on the use of three linked submodels. The overall model included:

(1) A submodel which simulates the subsurface lateral migration of TBP from the injection wells to nearby abandoned oil wells penetrating the injection horizons.

(2) A second submodel which simulates the vertical migration of TBP from the injection horizon upward to the drinking water aquifer; and

(3) Finally, a submodel which predicts the lateral spreading of the chemical from the abandoned oil well in the drinking water aquifer and exposure to vertically averaged concentrations present in drinking water wells within the aquifer.

It was assumed that the abandoned wells are filled with compacted sand. Results of the simulated runs are presented in the background document in terms of concentrations as a function of time for various exposure distances. The initial concentration of tribromophenol in the injected wastewater was measured in record sampling to be 7 mg/L and the health-based level (based on a 10^{-6} risk level) was assumed to be 0.01 mg/L (using the same high end exposure assumptions described above for tribromophenol solids). The modeling results showed that the health-based level (based on a 10^{-6} risk) would be exceeded in the upper aquifer after 60 years (the amount of time the injection is expected to continue) at very short distances (less than 10 feet) from a leaking, abandoned, and plugged (i.e., filled with sand) oil well. The results also indicated that the plume of contamination would migrate through the aquifer, away from the plugged oil well, and slowly dissipate over time. Therefore, this plume of contamination could result in exposure to TBP over the health-based level beyond a short distance from the abandoned oil well, if a drinking water well is drilled downgradient from that abandoned oil well. However, this exposure would probably be limited because of the relatively small size of the area in the migrating contaminated plume where TBP is above 0.01 mg/L.

The Agency has also sampled drinking water wells at the plant site and at a private facility 1.3 miles distant. No tribromophenol was found at a detection level of 0.001 mg/L. The plant has been producing TBP since 1976. The absence of TBP in groundwater at present, however, does not completely preclude its presence at a future date. Considering that TBP was not detected in the aquifer and that the model predicted only limited exposure to TBP above the health-based number, the Agency is proposing not to list this wastestream because of relatively low risk to human health.

However, the Agency recognizes that the modeling results described above are dependent on numerous assumptions, including the injection timeframe (i.e., 60 years) and the number and characteristics of the abandoned oil wells. Modifying certain of these assumptions could significantly change the results of this analysis. For example, if the Agency assumes that the abandoned oil well is unfilled, underground injection of this wastewater could result in a contamination plume (with TBP levels above the health-based level) of up to 4000 feet from the well over 60 years and even further away as the plume continues to migrate after 60 years. Also, depending on the exact location of the drinking water well relative to the plume centerline, a person drinking from that well could be exposed to a high concentration of TBP (up to around 5 mg/L) for many years as the contaminated plume moves by.

Therefore, the Agency solicits comment on the assumptions used in this modeling, particularly whether or not some of them should be changed to more accurately predict the risk resulting from the undergound injection of these wastewaters. The Agency specifically requests comment on the following assumptions that are particularly important in this analysis:

(1) Should the timeframe for injection of the tribromophenol wastewaters be extended beyond 60 years?

(2) The model assumed that only one abandoned well would be open to flow. Should the Agency consider the potential for more abandoned wells coming in contact with the spreading plume?

(3) Should the Agency assume the abandoned well(s) are plugged or unplugged?

Several other assumptions (used in the modelling employed by the Agency), individually or in combination, could lead to an overestimation of actual risk and the Agency is requesting comment on them. They are:

(1) The Agency assumed that a break occurs in an abandoned well shaft inside the Sparta aquifer. What are the chances that no breaks have occurred or will occur in the aquifer in any of the many abandoned wells in the area?

(2) The drinking water well was assumed to be drilled in the proximity of an abandoned oil well. Is this a valid assumption?

(3) The model assumed an average concentration of tribromophenol in the Sparta aquifer. If the well tapping the drinking water is nearer to the top of the aquifer, as it most likely would be, would this make a significant difference in the risk level calculated?

(4) The Agency assumed that injection of wastewaters and pumping from Sparta at the site occurs during the same time frame. Should the Agency consider the pumping from Sparta will continue to occur after injection of wastewater ceases, which could affect the modelling calculation?

Finally, the Agency requests comment on whether or not these tribromophenol wastewaters should be listed as hazardous waste based on modifications to EPA's analysis or on any additional data indicating groundwater contamination from the underground injection of these wastes.

Although today's proposed listing determination models potential contamination to a drinking water source, it is not a finding under Section 144.12 of the UIC regulations. Those regulations prohibit endangerment of underground sources of drinking water (USDWs) as defined under the UIC program. A well which fails to meet this requirement must be denied a permit or placed under an enforcement action. The threshold for a determination of compliance with Section 144.12 is different from the threshold for listing a waste as hazardous under RCRA. The test for compliance under the UIC program is whether the well may cause the movement of any contaminant into a USDW in a manner that may cause a violation of a primary drinking water regulation, or may otherwise adversely affect the health of persons.

2. Conclusions

The Agency is proposing to list as hazardous waste solids and spent filters from the production of 2,4,6-tribromophenol (K140) and the off-specification and discarded product (U408) based on their projected toxicities from structural activity studies, and potential exposure to these chemicals. EPA's decision to propose these additional hazardous waste listings represents a determination by the Agency that the wastes identified meet the criteria for listing as hazardous wastes presented in 40 CFR 261.11. Specifically, based on available evidence, the Agency concludes that 2,4,6-tribromophenol is similar in toxicity to its chlorinated analogue. EPA is proposing that these wastes from organobromines production be listed as hazardous and subject to the requirements of 40 CFR parts 124, 262–266, 268, 270, and 271 since they are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise handled.

Based on the data collected by the Agency during the recent organobromines industry study and the unique conditions of the industry regarding limitations to future expansion, EPA believes there is justification for a no-list determination for wastes generated from the production of most of the other organobromine chemicals identified in the consent decree (*i.e.*, bromochloromethane, ethyl bromide, octabromodiphenyl oxide and decabromodiphenyl oxide) and for the wastewaters from tribromophenol production. After considering the collected information and data from toxicological, chemical, hydrogeological, and engineering viewpoints, EPA has concluded that the disposal of any wastes from these processes that are not currently listed in 40 CFR part 261, subpart D do not pose a substantial present or future risk to human health and the environment. Therefore, at this time, EPA is proposing not to list as hazardous wastes any additional wastes generated from the production of these chemicals. The Agency reserves the right to revisit these listing determinations if additional relevant data become available. In addition, the Agency is deferring action on the solids waste stream from the production of tetrabromobisphenol-A.

III. Waste Minimization Opportunities in the Industry

During the industry study, the Agency identified two potential opportunities for waste minimization. The first involves the recovery of tribromophenol in the tetrabromobisphenol-A and tribromophenol process. Commercial bisphenol A is made by condensation of phenol and acetone and, hence, the feedstock contains some unreacted phenol. Record sampling of one wastewater stream that leaves the process hot revealed that it contained up to 15,000 mg/L of tribromophenol. A second unrelated wastewater stream from the production of tribromophenol also contains about 70 ppm. This chemical has a solubility of 70 parts per million at 25°C. From the volumes of wastewater generated, the Agency believes that enough material potentially could be recovered to increase annual production of tribromophenol by up to 70%. Cooling and filtering of this wastewater prior to deep well disposal might recover phenolics, limit the quantity of brominated chemicals being disposed, and reduce the plant's overall requirements for purchased phenol. Brominated phenol recovery also could make recycling some process wastewater viable, particularly in the tribromophenol process where the wastewater containing chiefly this material is disposed of by deep well injection.

The second area where savings could be achieved is in product packaging. Materials spilled in the packaging areas are drummed and shipped to Subtitle C facilities. Presently, the two major manufacturers of organobromine chemicals generate over 300 tons per year of various spilled solid products. Recovery of this material could result in significant savings and benefit the environment. The Agency invites comment on both waste minimization options.

IV. Regulatory Impact Analysis and Compliance Costs

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires that a regulatory agency determine whether a new regulation will have "significant regulatory action" and, if so, that a cost-benefit analysis be conducted. This analysis is a quantification of the potential benefits, costs, and economic impacts of a rule. A significant regulatory action is defined as a regulation that has an annual cost to the economy of $100 million or more that adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; creates a serious inconsistency with actions taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by Executive Order 12866. Today's proposed rule is estimated to have an annualized incremental cost of less than $100,000. Based on this compliance cost estimate, today's proposed rule is not considered to be a significant regulatory action. This section of the preamble discusses the results of the analyses of the proposed rule.

Approach

To estimate the costs, economic impacts, and benefits of today's proposed rule, the Agency compared post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. Benefits are addressed in the risk assessment section of this preamble. The baseline management practices for this waste is disposal in a Subtitle D landfill.

Results

Due to the extremely small universe of facilities potentially affected by this rule, the number of facilities actually affected is insignificant. The requirements promulgated by this proposed rule are estimated to cost industry less than $100,000 per year assuming disposal in a Subtitle C landfill.

The economic impact analysis estimates that none of the affected facilities would be significantly affected by the proposed rule. Compliance with this proposed rule is estimated to increase operating expenses at affected facilities by significantly less than one percent. None of the affected facilities is expected to close as a result of the rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the rule is estimated not to have a significant economic effect on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small entities is likely to experience financial distress based on the costs of the rule, then the Agency considers that the rule will have a significant impact on a substantial number of small entities, and must perform an RFA. EPA evaluated the economic effect of the proposed rule, as required by the Regulatory Flexibility Act, and determined that no facilities would be significantly affected. The Administrator certifies that part 268 and part 148 will not have significant economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

C. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements in this proposal were promulgated in previous land disposal restriction rulemakings and have been approved by the Office of Management and Budget. Since there are no new information collection requirements being proposed today, an Information Collection Request has not been prepared. However, facilities will have to comply with existing Subtitle C recordkeeping and reporting requirements for newly listed wastestreams if today's proposals are finalized.

VI. State Program Implementation

A. Applicability of Rules in States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce RCRA programs within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more-stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under Section 3006(g) of RCRA (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards, and applies for and is granted authorization. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's proposal for listing EPA Hazardous Waste Nos. K140 and U408 is being proposed pursuant to Section 3001(e)(2) of RCRA, a provision added by HSWA. When the final rules are promulgated, EPA will consider its HSWA obligation to make a determination regarding listing organobromine wastes to be fulfilled. Therefore, the Agency is proposing to add these requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for final authorization for the HSWA provisions identified in 40 CFR 271.1(j) Table 1, as discussed in the following section of the preamble.

B. Effect on State Authorizations

As noted previously, today's rule is being proposed pursuant to provisions added by HSWA. The addition of K140 to the list of hazardous wastes from specific sources and the addition of U408 to the list of commercial chemical products that are hazardous when discarded is proposed pursuant to Section 3001(e)(2) of RCRA, a provision added by the HSWA.

As noted above, EPA will implement the HSWA portions of today's rule (*i.e.*, the addition of K140 to the list of hazardous wastes from specific sources and the addition of U408 to the list of commercial chemical products that are hazardous when discarded) in authorized States until they modify their programs to adopt these rules and such modifications are approved by EPA. Because this rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final RCRA authorization under Section 3006 (b) and (g) on the basis that State regulations are substantially equivalent or fully equivalent to EPA's regulations. The procedures and schedule for State programs modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire on January 1, 2003 (see 40 CFR 271.24(c)), 52 FR 60129, December 18, 1992.

It should be noted that 40 CFR 271.21(e) requires that States having final RCRA authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which States must modify their programs to adopt today's proposed rule will be determined by the date of promulgation of the final rule in accordance with 40 CFR 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those proposed in today's rule. Such State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, these State regulations will not be deemed as RCRA requirements until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce those regulations as a matter of State law. In addition, in implementing the Federal program, EPA will work with the States under cooperative agreements to minimize duplication of efforts; in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of EPA's regulations are not required to include regulations equivalent to the EPA regulations in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The requirements States must meet when submitting final authorization applications are set forth in 40 CFR 271.3.

VII. CERCLA Designation and RQ Adjustment

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), pursuant to CERCLA Section 101(14) 42 U.S.C. 9601 (14)(c). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Therefore, in addition to the K140 listing being proposed today for 40 CFR 261.32 and the U408 listing being proposed for 40 CFR 261.33, entries for K140 and U408 also are being proposed for Table 302.4 of 40 CFR 302.4.

Reporting Requirements. Under CERCLA Section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release (see 40 CFR part 302).[1] In addition to this reporting requirement under CERCLA, Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11004, requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA Section 304 notification must be given immediately after the release of an RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency planning commission of any State likely to be affected by the release.

Adjustment of RQs. Under Section 102(b) of CERCLA, all hazardous wastes newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by regulation. The Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.[2] The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1000, or 5000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria) is generally raised one level.[3] This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An additional process applies to RCRA listed wastes, which contain individual hazardous substances as constituents. As the Agency has stated (54 FR 33440, August 14, 1989), to assign an RQ to a RCRA waste, the Agency determines the RQ for each constituent of the waste and then assigns the lowest of these constituent RQs to the waste itself.

Proposed Adjusted RQs for U408 and K140. Waste U408 is 2,4,6-tribromophenol, an individual hazardous substance. It has been evaluated for four of the six primary RQ adjustment criteria—aquatic toxicity, mammalian toxicity, ignitability, and reactivity—and the secondary adjustment criteria (BHP). Based on this evaluation, the Agency today is proposing an adjusted RQ of 100 pounds for 2,4,6-tribromophenol.

The Agency's evaluations of 2,4,6-tribromophenol for the other two primary RQ adjustment criteria (chronic toxicity and potential carcinogenicity) are not yet complete. If, when completed, these evaluations result in an RQ lower than the 100-pound RQ proposed today, the Agency will repropose the RQ for 2,4,6-tribromophenol at the lower level.

The other waste, K140, is a waste stream with only one hazardous constituent—2,4,6-tribromophenol. Therefore, in accordance with the RQ adjustment methodology described above, an adjusted RQ of 100 pounds is being proposed today for K140. Because the RQ for K140 is based on the RQ for 2,4,6-tribromophenol, any reproposal of the 2,4,6-tribromophenol RQ required by further evaluation will be accompanied by a corresponding reproposal of the RQ for K140.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601–612), whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations and small governmental jurisdictions). No RFA is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

Since EPA has determined the hazardous wastes proposed for listing here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency believes that small entities will not generate them in significant quantities, this regulation, therefore, does not require a RFA. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

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[1] The toll free telephone number of the National Response Center is 800–424–8802; in the Washington, DC metropolitan area, the number is 202–267–2675.

[2] For more detailed information on this methodology, see the preamble to an RQ adjustment final rule published on August 14, 1989 (54 FR 33426). A different methodology is used to assign adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

[3] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

IX. Compliance and Implementation

A. Section 3010 Notification

Generally, when new hazardous wastes are listed, all persons who generate, transport, treat, store, or dispose the newly listed wastes(s) are required to notify either EPA, or a State authorized by EPA to operate the hazardous waste program, of their activities pursuant to Section 3010 of RCRA. However, under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–482), EPA was given the option of waiving the notification requirement for persons who handle wastes that are covered by today's proposed listing and already have notified EPA that they manage other hazardous wastes and have received an EPA identification number. This waiver is being proposed because of the likelihood that persons managing today's proposed wastes already are managing one or more hazardous wastes that generally are associated with the generation of proposed EPA Hazardous Waste Nos. K140 and U408 and, therefore, have previously notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes these wastes and has not previously notified and received an identification number, that person must obtain an identification number pursuant to 40 CFR 262.12 before that person can generate, transport, treat, store, or dispose of these wastes.

B. Compliance Dates for Facilities

Today's proposed listings will be promulgated pursuant to HSWA. HSWA requirements are applicable in authorized States at the same time as in unauthorized States. Therefore, EPA will regulate the wastes being proposed today until States are authorized to regulate these wastes. Once these regulations are promulgated in a final rule by EPA, the Agency will apply these Federal regulations to these wastes and to their management in both authorized and unauthorized States.

Newly-regulated facilities (*i.e.*, facilities at which the only hazardous wastes that are managed are today's proposed wastes in units subject to permit requirements when these listings are finalized) must qualify for interim status within six months of publication of the rule in order to continue managing these wastes in such units. To retain interim status, a newly-regulated land disposal facility must submit a part B permit application within eighteen months after publication of the rule and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements (see RCRA Section 3005(e)(3)).

Interim status facilities that manage today's proposed wastes after these listings are promulgated, must file an amended Part A permit application within six months of publication of the final rule if they are to continue managing these wastes in units that require a permit. The facilities must file the necessary amendments by the effective date of the rule, or they will not retain interim status with respect to today's proposed wastes.

Currently permitted facilities that manage today's proposed wastes after their listings are finalized by EPA must request permit modifications if they are to continue management of these wastes in units that require a permit. Since EPA initially will be responsible for processing these permit modifications, the new Federal procedures for permit modifications will be followed (see 53 FR 37934, September 28, 1988). These new procedures contain a specific provision for newly listed or identified wastes (see 40 CFR 270.42(g)). This provision generally requires that a permitted facility that is "in existence" for the newly listed or identified waste on the effective date of the waste listing must submit a Class 1 modification by that date. Essentially, this modification notifies the Agency and the public that the facility is handling the waste and identifies the units involved. By submitting this notice, the facility temporarily is allowed to continue management of the newly-listed wastes until the Agency can make a final change to the permit. Next, within 180 days of the effective date the permittee must submit a more detailed permit modification request (*i.e.*, a Class 2 or 3 modification). This information will be used by the Agency to develop a final permit change. For more information on permit modifications see the September 28, 1988 preamble discussion referenced above.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous wastes, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-To-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.32 the table is amended by adding in numerical order the waste stream entry "K140" under the subgroup heading "Organic chemicals:" to read as follows:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * *	*
K140	Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.	(T)
*	* * *	*

3. In § 261.33(f) the table is amended by adding in numerical order the entry "U408" to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	* * *
U408	118–79–6	2,4,6-Tribromophenol.
*	*	* * *

4. Appendix VII to part 261 is amended by adding the following waste stream in alphanumeric order to read as follows:

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
* * *	* *
K140	2,4,6-Tribromophenol.

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE—Continued

EPA hazardous waste No.	Hazardous constituents for which listed
* * *	* *

5. Appendix VIII to part 261 is amended by adding the following hazardous constituent in alphabetical order:

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
2,4,6-Tribromophenol	Tribromophenol, 2,4,6	118–79–6	U408
* * *	* * *		*

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

7. Section 271.1(j) is amended by adding the following entry to table 1 in chronological order by date of publication to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Title of regulation	FEDERAL REGISTER reference	Effective date
* *	* *	*	* *
[Insert date of publication of final rule in FEDERAL REGISTER].	Listing of Organobromine Production Wastes.	[Insert FEDERAL REGISTER reference to final rule].	[Insert date 180 days after date of publication of final rule in the FEDERAL REGISTER.]
* *	* *	*	* *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

6. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

7. Section 302.4 is proposed to be amended by adding entries for "K140" and "U408" to table 302.4 to read as follows. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
* *	*	*	*			*	*
K140 Waste solids and filter cartridges from the production of 2, 4, 6-tribromophenol.		....	1*	4	K140	B	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*	*	*	*
U408 2, 4, 6,-Tribromophenol	118796		1*	4	U408	B	100 (45.4)

†—Indicates the statutory source as defined by 1, 2, 3, and 4 below.

* * * * *

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.
‡—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies

8. Appendix A to § 302.4 is amended by adding an entry in numerical order to read as follows:

Appendix A to § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
* * *	* *
118796	2,4,6–Tribromophenol.

Appendix A to § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
* * *	* *

[FR Doc. 94–11189 Filed 5–10–94; 8:45 am]

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federal register

Wednesday
May 11, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing Youth Sports Program; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3749; FR–3660–N–01]

Public and Indian Housing Youth Sports Program; Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces HUD's FY 1994 funding of $13,125,000 for the Youth Sports Program (YSP) to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing developments. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made

DATES: Application is due by June 20, 1994, at 4:30 pm local time, at the local HUD field office or, in the case of IHAs, in the local HUD Office of Native American Programs, with jurisdiction over the PHA or IHA.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING YOUTH SPORTS PROGRAM, PUBLIC HOUSING, CONTACT: Robin Prichard, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 or 708–3502. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708–0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING YOUTH SPORTS PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1015. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0140.

I. Purpose and Substantive Description

(a) Authority

This program is authorized by section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101–625), as amended by section 126 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(b) Allocation Amounts

Section 126(a) of HCDA (1992) provides that five percent of any amount made available in any fiscal year for the Drug Elimination Program shall be available for Youth Sports Program grants. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program in FY 1994. This appropriation results in $13,250,000 as the amount set aside for the Youth Sports Program. Of this amount, $125,000 is being used to fund the FY 1993 application of the Greenville Housing Authority, which was not funded in FY 1993 because of a computational error, leaving $13,125,000 as the available amount under this NOFA. Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing developments.

Because of the limited amount of funding appropriated for this program, and to ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application. The maximum annual Youth Sports grant amount per applicant is $125,000. As more fully explained below, applicants must supplement grant funds with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

(c) Eligibility

(1) Eligible Applicants

Funding for this program in FY 1994 is limited to PHAs and IHAs. Although section 520 of NAHA lists seven categories of entities qualified to receive grants (States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs)), and HCDA 1992 section 126(b) added institutions of higher learning that have never participated in a Youth Sports program as eligible applicants, the 94 App. Act limited the funding for the Drug Elimination Program to PHAs and IHAs only. Since the funding of the Youth Sports Program is dependent on the appropriation for the Drug Elimination Program, the limitations that apply to Drug Elimination affect Youth Sports as well. Therefore, for FY 1994 only PHAs and IHAs are eligible applicants for Youth Sports Program Funding.

In designing an activity for funding, PHA and IHA applicants shall consult with RMCs/RCs where they exist, and with other entities that would be eligible for funding under this program, as listed above, with at least two years of experience in designing or operating sports, cultural, recreational, educational or other activities for youth. Eligible local entities that are affiliates of national organizations may rely on the experience of the national organization for this purpose. These consultations will provide applicants with valuable resident input and will involve entities with experience in designing and implementing the eligible types of activities under this program with PHA and IHA applicants that may not have this type of experience. These experienced entities may establish a sub-contracting relationship, in accordance with 24 CFR part 85, with the PHA/IHA if deemed appropriate by the grantee to further their public/private partnership. This consultation process will also provide entities that are not PHAs or IHAs with a greater appreciation and understanding of the operations and problems of public and Indian housing developments. The end result will be more effective program activities that make more efficient use of program funds. This result is expected because it draws upon and combines the expertise of PHA and IHA applicants with respect to the operations and problems of public and Indian housing developments, and the expertise of other entities with respect to designing and implementing youth activities.

(2) Eligible Activities

Youth Sports Program funds may be used to assist in carrying out sports, cultural, recreational, educational or other activities for youth in any of the following manners:

(i) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(A) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant (section III.(a)(3) of this NOFA).

(B) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing developments in which the funded facility is operated (section III.(a)(2)(ii) and III.(a)(10)(iii) of this NOFA).

(C) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or adjacent to the premises of the public housing development identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA developments will have access to the facility, since IHAs often cover large areas (section III.(a)(9) of this NOFA).

(D) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities (section III.(a)(2)(iii) of this NOFA).

(E) Facilities receiving Youth Sports funding must be used for Youth Sports activities commensurate with the extent of the Youth Sports funding. For example, if a facility's operation is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities.

(F) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, make them made readily accessible to and usable by individuals with handicaps.

(G) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(ii) Redesigning or modifying public spaces in public or Indian housing developments to provide increased utilization of the areas by Youth Sports activities is an eligible activity under this program.

(A) The construction of sports facilities on public or Indian housing property to implement Youth Sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(iii) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, transportation costs, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(A) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(B) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(C) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(D) Cultural and recreational activities, such as ethnic heritage classes, and art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(E) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(F) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(G) The purchase of vehicles under this program is prohibited.

(H) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

(3) Threshold Requirements for Funding

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements or it will not be considered for funding:

(i) The activity must be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-related problems in the public or Indian housing development or developments for which the activity is proposed. (See, section III.(a)(7), below, of this NOFA.)

(ii) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(A) The determination required in paragraph (ii) will be made on the basis of information submitted in the applicant's plan as described below in "Checklist of Application Submission Requirements," section III.(a)(7).

(iii) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or Indian housing developments for which the activities or facilities are operated. (See, section III.(a)(10), below.)

(iv) Applicants must provide a workplan detailing a timeline for the implementation of activities and a budget for the activity or activities for which funding is sought, as required by sections III.(a) (4) and (5), below.

(v) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant. (See section III.(a)(2)(ii), below.) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(A) States;

(B) Units of general local government or agencies of such governments;

(C) Indian tribes;

(D) Private contributions;

(E) Any salary paid to staff to carry out the Youth Sports activities of the applicant, computed as follows:

(1) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources;

(2) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program;

(F) The value of the time and services contributed by volunteers to carry out the program of the grant recipient to be determined as follows:

(1) Except as set out in paragraph (2), below, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(2) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located;

(G) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item(s) at the time of the donation;

(1) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items;

(H) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(1) The applicant must document the fair market value of a lease by referencing an existing, or no more than one year old, lease from the building involved; or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(vi) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously used, or designated for use, for the purpose of this program. (See, section III.(a)(2)(vi).

(d) Selection Criteria

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Native American Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 75 points out of the maximum of 120 points that may be awarded under this competition to be eligible for funding. Grants will be awarded to the three highest-ranked, eligible PHA applications within each of the following 10 groupings of Area and State Offices:

New England, New York, New Jersey, Mid-Atlantic, Southeast, Midwest, Great Plains, Rocky Mountain, Southwest, Northwest/Alaska, Pacific/Hawaii.

In addition, grants will be awarded to the three highest-ranked, eligible IHA applications on a nation-wide basis, subject to the following condition: Of the total grants awarded to IHAs, the Director of ONAP retains the authority to insure that each Field Office of Native American programs receives a minimum of one eligible grant. This means that before an award is made to an IHA from the jurisdiction of a Field ONAP in which an IHA has already received an award, that award may be made to the next highest scoring IHA from the jurisdiction of a Field ONAP in which no IHA has yet received an award.

All of the remaining eligible applications, both PHAs and IHAs, will then be placed in overall nation-wide ranking order, with the remaining funds granted in order of rank, except as discussed above for IHAs, until all funds are awarded. The following criteria will be used to evaluate eligible applications:

(1) The extent to which the Youth Sports activities to be assisted with the grant address the particular needs of the area to be served by the activities and employs methods, approaches, or ideas in the design or implementation of the activities particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative). (Maximum points: 25). In assessing this criterion, HUD will consider the following factors:

(i) The appropriateness of the applicant's methods, approaches, or ideas in addressing the particular needs of the area to be served by the program, as reflected in the description of the services to be provided by the applicant's proposed Youth Sports Program (section III.(a)(3) of this NOFA); (10 points)

(ii) The resources committed to each activity and service (section III.(a)(5) of this NOFA) proposed for funding in the application; (5 points)

(iii) An estimate of the number of youth from public or Indian housing developments that will be involved in the applicant's proposed activities, in accordance with section III.(a)(8) of this NOFA. (5 points)

(iv) The applicant's explanation of the procedures that will be followed to ensure that the Youth Sports activities will serve primarily youth from the public or Indian housing development in which the program to be assisted by a grant is operated, as required by section III.(a)(10)(iii). (5 points)

(2) The technical merit of the application of the qualified applicant. (Maximum points: 10). In assessing this criterion HUD will consider the following factor:

(i) The quality and thoroughness of the statement required in the application (section III.(a)(6) of this NOFA) regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria for this program. (10 points)

(3) The qualifications, capabilities, and experience of the personnel and staff of the sports program who are critical to achieving the objectives of the program as described in the application. (Maximum points: 15). In assessing this criterion HUD will consider the following factors:

(i) The position descriptions, or if the identity of persons who will fill positions is known, the resumes, of staff critical to achieving the objectives of the applicant's program, required under section III.(a)(10)(ii) of this NOFA; (10 points)

(ii) The nature of the duties volunteers will perform, required under section III.(a)(10)(ii) of this NOFA. (5 points)

(4) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its youth sports program and achieving the objectives of its program as described in the application, and the potential of the applicant for continuing the youth sports program. (Maximum points: 30) In assessing this criterion HUD will consider the following factors:

(i) The related experience of the applicant, as evidenced by its staff, and of the entity consulted by the applicant in preparing its application, in conducting the type of activities, in public or Indian housing, for which funding is requested (section III.(a)(10)(i) and (ii) of this NOFA); (10 points)

(ii) The appropriateness, in terms of need, size, location, and suitability, of the facilities to be used for youth activities (section III.(a)(9) of this NOFA); (5 points)

(iii) The applicant's workplan and implementation schedule for the Youth Sports activities for which funding is sought (section III.(a)(4) of this NOFA); (10 points)

(iv) The extent of the resources committed to continue the operation of Youth Sports activities and facilities beyond the grant term included in the applicant's description of plans to continue the Youth Sports activities in the future, as required in section III.(a)(12) of this NOFA. (5 points)

(5) The severity of the drug problem at the local public or Indian housing site for the youth sports program and the extent of any planned or actual efforts to rid the site of the problem. (Maximum points: 10) In assessing this criterion HUD will consider the following factors:

(i) The extent of the drug-related problems at the housing developments to be assisted, as established in the applicant's plan required by section III.(a)(7) of this NOFA; (5 points)

(ii) The extent of any planned or actual efforts to rid the housing developments to be assisted of their drug-related problem, as described in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(6) The extent to which local sports organizations or sports figures are involved. (Maximum points: 5 points) In assessing this criterion, HUD will consider the following factor:

(i) The documentation provided in the application of the level of on-site or other participation by local sports, cultural, recreational, educational, or other community organizations or figures that is focused on the specific youth activities for which the application is prepared (section III.(a)(11) of this NOFA). (5 points)

(7) The extent of the coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports program. (Maximum points: 15) In assessing this criterion, HUD will consider the following factors:

(i) The applicant's description of its consultations with resident management groups or resident associations, where they exist, and residents, as required by section III.(a)(7) of this NOFA; (10 points)

(ii) The extent to which the applicant demonstrates the relationship of the Youth Sports activities with other existing anti-drug activities, if any, in the housing developments to be assisted as reflected in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(8) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's budget describing the share of the costs of the applicant's Youth Sports Program provided by a grant under this program and the share of the costs provided from funds from non-federal sources and other resources, such as the number of volunteers and volunteer hours committed, submitted in accordance with section III.(a)(5) of this NOFA. (5 points)

(9) The extent to which the applicant demonstrates local government or tribal support for the program. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's description of local or tribal government support as evidenced by contributions from these entities listed under section III.(a)(5) of this NOFA. (5 points)

(e) Environmental Review

Before making an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

II. Application Process

(a) An application package may be obtained from the local HUD field office or by calling HUD's Drug Information and Strategy Clearinghouse at 1–800–578–3472. The application package contains information on all exhibits and certifications required under this NOFA.

(b) The deadline for the submission of grant applications under this NOFA is June 20, 1994. In order to be eligible, the original and two copies of the application must be physically received by 4:30 p.m., local time, on the deadline date at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA, Attention: Public Housing Division Director, or Office of Indian Programs Director. A list of these offices is included as Appendix 1 to this NOFA. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A Fax is not acceptable.

III. Checklist of Application Submission Requirements

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50 percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing developments in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in 24 CFR part 87 (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program will not be used to replace other public funds previously used, or designated for use, for the purpose of this program.

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program.

(viii) *Civil Rights.* A certification from the applicant that:

(A) It will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and with HUD regulations at 24 CFR part 1, which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structures which are provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits;

(B) It will comply with the Fair Housing Act (42 U.S.C. 3601–3620) and with implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and will administer its programs and activities relating to housing in a manner affirmatively to further fair housing;

(C) It will comply with Executive order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR part 107, which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with federal financial assistance;

(D) It will comply with Executive order 11246 and its implementing regulations at 42 CFR chapter 60–1, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal contracts, and that affected persons shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in 24 CFR 130.5, the equal opportunity clause required by § 130.15(b);

(E) It will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701a), and with implementing regulations at 24 CFR part 135, which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the development and contracts for work in connection with the project be awarded in substantial part to persons residing in the area of the development;

(F) It will comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and with implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in federally assisted and conducted programs and activities;

(G) It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, which prohibit discrimination against persons because of age in projects and activities receiving federal financial assistance;

(H) It will comply with Executive orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and by women;

(I) It will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and with implementing regulations at 28 CFR part 35, which prohibit discrimination on the basis of disability by public entities.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with an 18 months maximum task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and provide a narrative describing how the share of the costs provided from other sources of funds (e.g. local or tribal government, corporations, individuals), including funds from non-Federal sources, will be obtained.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria in section I.(d), above.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing developments proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing developments in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the § 961.15 plan. The other choice is that an applicant may submit an abbreviated plan prepared for this NOFA as follows:

(i) The plan must describe the drug-related problems in the developments that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the developments proposed for assistance. If crime statistics are not available at the development or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which has a direct bearing on drug-related problems in the developments proposed for assistance. Examples of these data are: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted developments. Any efforts being undertaken by community and governmental entities, residents of the development, Resident Management Corporations (RMCs), Resident Corporations (RCs), other resident associations, or any other entities to address the drug-related problems in the developments proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(i) The applicant must provide the total estimated number of youth involved for each proposed activity and participating in youth leadership assignments (for example, team managers, assistant managers, team captains) computed on an annual and, if applicable, a session or seasonal basis (for example, classes or league sports may be organized in sessions or seasons that run for a certain number of weeks or months, or more activities may take place and more youth may be involved on weekends than on weekdays).

(ii) The total estimated number given for each activity must be further broken down by categories of age (e.g., 5–8 years old, 9–12 years old, etc.), sex (male, female, co-ed), and residency in public or Indian housing.

(9) A description of the facilities used.

(i) Facilities to be used for Youth Sports activities must be described in the application with regard to their dimensions, location, accessibility to the disabled, and the number of youth that can be accommodated at one time.

(A) In the case of an Indian housing development, if a facility to be acquired, constructed, or rehabilitated is not located on or adjacent to the premises of the development to be assisted, the application must specify how youth from the Indian housing development will have access to the facility (e.g., transportation will be provided, transportation service is readily available).

(ii) Where applicable, the application must provide a detailed explanation of all facility acquisition, construction, rehabilitation, operation, redesign or modification proposed for funding under this program.

(A) The application must specify what percent of the facility will be used for youth activities (as opposed to, for example, senior citizen or adult activities). This percentage may not be less than the percentage of Youth Sports funding provided for the facility.

(iii) The application must identify the entity that will be responsible for the operation of any facility funded by a Youth Sports grant.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with RMCs/RCs, where they exist, and other entities experienced in the design and implementation of the type of proposed youth sports activities;

(ii) The position descriptions, or if the identity of persons who will fill positions is known, the resumes, of the staff that will be responsible for managing and operating the Youth Sports activities must be included in the application; if volunteers are involved, their number, job descriptions, and hours per week of involvement must be included;

(iii) The procedures that will be followed to ensure that the Youth Sports activities or facilities will serve primarily youth from the public or Indian housing development in which the program to be assisted by a grant is operated must be explained in the application.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(i) The applicant must provide documentation of the level of on-site or other participation by local and nationally affiliated sports organizations, except as provided in section (ii) below, with at least two years of organizational and operational experience. These may include, but are not limited to, strictly sports organizations, such as, Little Leagues, Midnight Basketball, or professional teams. Participation by cultural, recreational, or educational organizations is also permissible. The participation of these groups must be focused on the youth activities for which the application is prepared.

(ii) The applicant may demonstrate the involvement of local or national sports, cultural, recreational or educational figures, such as athletes, coaches, artists, entertainers and teachers in place of, or in addition to, the participation of organizations. The participation of these figures must be focused on the youth activities for which the application is prepared.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

(13) HUD Form 2880.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Cannot be submitted after the application due date has expired, to improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The FONSI is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401. HUD will review all applications and their proposed activities in accordance with the environmental requirements of 24 CFR part 50.

(b) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program is intended to improve the quality of life of public and Indian housing development residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) Section 102 HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Section 103 HUD Reform Act.

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Section 112 HUD Reform Act.

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix:

Listing of HUD Category A and B Field Offices, and other Field Offices with delegated public housing responsibilities, and Offices of Native American Programs.

Note: The below information was confirmed by local Field Offices January 30, 1994.

New England

Jurisdictions: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Office

HUD—Boston Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, room 375, Boston, MA 02222–1092, (617) 565–5234, *TDD Number:* (617) 565–5453, *Office Hours:* 8:30am–5 pm local time.

Hartford, Connecticut Office—Category A Office

Office of the Manager, HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4522, *TDD Number:* (203) 240–4665, *Office Hours:* 8:00am–4:30pm local time.

Manchester, New Hampshire Office—Category B Office

Office of the Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, *TDD Number:* (603) 666–7518, *Office Hours:* 8:00am–4:30pm local time.

Providence, Rhode Island Office—Category B Office

Office of the Manager, HUD—Providence Office, 330 John O. Pastore Federal Building, U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785,

(401) 528–5351, *TDD Number:* (401) 528–5364, *Office Hours:* 8:00 am–4:30 pm local time

New York, New Jersey

Jurisdictions: New York, New Jersey

New York Office

HUD—New York Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, *TDD Number:* (212) 264–0927, *Office Hours:* 8:30 am–5 pm local time.

Buffalo, New York Office—Category A Office

Office of the Manager, HUD—Buffalo Office, Lafayette Court, 5th floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, *TDD Number:* Number not available, *Office Hours:* 8 am–4:30 pm local time.

Newark, New Jersey Office—Category A Office

Office of the Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662, *TDD Number:* (201) 645–6649, *Office Hours: 8:30 am–5 pm local time.*

Mid-Atlantic

Jurisdictions: Pennsylvania, Washington DC, Maryland, Delaware, Virginia, West Virginia.

Philadelphia, Pennsylvania Office

Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, *TDD Number:* (215) 597–5564, *Office Hours:* 8 am–4:30 pm local time.

Washington, DC Office—Category A Office

Office of the Manager, HUD—Washington Office, 820 First Street NE., Washington, DC 20002–4502, (202) 275–9200, *TDD Number:* (202) 275–0967, *Office Hours: 8 am–4:30 pm local time.*

Baltimore, Maryland Office—Category A Office

Office the Manager, HUD—Baltimore Office,10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (401) 962–2520, *TDD Number:* (410) 962–0106, *Office Hours:* 8 am–4:30 pm local time.

Pittsburgh, Pennsylvania Office—Category A Office

Office of the Manager, HUD—Pittsburgh Office, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428, *TDD Number:* (412) 644–5747, *Office Hours:* 8 am–4:30 pm local time.

Richmond, Virginia Office—Category A Office

Office of the Manager, HUD—Richmond Office, The 3600 Center, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507, *TDD Number:* (804) 278–4501, *Office Hours:* 8 am–4:30 pm local time.

Charleston, West Virginia Office—Category B Office

Office of the Manager, HUD—Charleston Office, 405 Capitol Street, suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, *TDD Number:* (304) 347–5332, *Office hours: 8 am–4:30 pm local time.*

Southeast

Jurisdictions: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee

Atlanta, Georgia Regional Office

HUD—Atlanta Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, (404) 331–5136, *TDD Number:* (404) 730–2654, *Office Hours:* 8 am–4:30 pm local time.

Birmingham, Alabama Office—Category A Office

Office of the Manager, HUD—Birmingham Office, 600 Beacon Parkway West, suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617, *TDD Number:* (205) 290–7624, *Office Hours:* 7:45am–4:30 pm local time.

Louisville, Kentucky Office—Category A Office

Office of the Manager, HUD—Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, *TDD Number:* Number not available.

Jackson, Mississippi Office—Category A Office

Office of the Manager, HUD—Jackson Office, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, room 910, Jackson, Mississippi 39269–1096, (601) 965–4773, *TDD Number:* (901) 601–4171, *Office Hours:* 8 am–4:45 pm local time.

Greensboro, North Carolina Office—Category A Office

Office of the Manager, HUD—Greensboro Office, 2306 West Meadowview Road, Greensboro, North Carolina 27407, (919) 547–4000, *TDD Number:* 919–547–4055, *Office Hours:* 8 am–4:45 pm local time.

Puerto Rico Office—Category A Office

Office of the Manager, HUD—Caribbean Office, New San Office Building, 159 Carlos East Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, *TDD Number:* Number not available, *Office Hours:* 8 am–4:30 pm local time.

Columbia, South Carolina Office—Category A Office

Office of the Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, *TDD Number:* Number not available, *Office Hours:* 8 am–4:45 pm local time.

Knoxville, Tennessee Office—Category A Office

Office of the Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust Street, SW., Knoxville, Tennessee 37902–2526, (615) 549–4384, *TDD Number:* (615) 545–4379, *Office Hours:* 7:30 am–4:15 pm.local time.

Nashville, Tennessee Office—Category B Office

Office of the Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, *TDD Number:* (615) 736–2886, *Office Hours:* 7:45 am–4:15 pm local time.

Jacksonville, Florida Office—Category A Office

Office of the Manager, HUD—Jacksonville Office, 301 West Bay Street, suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, *TDD Number:* (904) 232–1241, *Office Hours:* 7:45 am–4:30 pm local time.

Midwest

Jurisdictions: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Chicago, Illinois Office

Ralph H. Metcalfe Federal Building, HUD—Chicago Office, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5680, *TTD Number:* (312) 353–7143, *Office Hours:* 8:15 am–4:45 pm local time.

Chicago, Illinois—Office of Native American Programs

HUD—Chicago Office of Native American Programs, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–4532, *TDD Number:* (312) 353–7143, *Office Hours:* 8:15 am–4:45 pm local time.

Detroit, Michigan Office—Category A Office

Office of the Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900,*TDD Number* Number not available, *Office Hours:* 8 am–4:30 pm local time.

Indianapolis, Indiana Office—Category A Office

Office of the Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, *TDD Number:* Number not available, *Office Hours:* 8 am–4:45 pm local time

Grand Rapids, Michigan Office—Category B Office

Office of the Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue, NE., Grand Rapids, Michigan 49505–3499, (616) 456–2100, *TDD Number:* Number not available. *Office Hours:* 8 am–4:45 pm local time.

Minneapolis—St. Paul, Minnesota Office—Category A Office

Office of the Manager, HUD—Minneapolis-St. Paul Office, 220 2nd Street South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000, *TTD Number:* (612) 370–3186, *Office Hours:* 8 am–4:30 pm local time.

Cincinnati, Ohio Office—Category B Office

Office of the Manager, HUD—Cincinnati Office, Federal Office Building, room 9002 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884, *TDD Number:* (513) 684–6180, *Office Hours:* 8 am–4:45 pm local time.

Cleveland, Ohio Office—Category B Office

Office of the Manager, HUD—Cleveland Office, Renaissance Building, 1375 Euclid Avenue, Fifth floor, Cleveland, Ohio 44115–1815, (216) 522–4065, *TTD*

Number: Number not available, *Office Hours:* 8 am–4:40 pm local time.

Columbus, Ohio Office—Category A Office

Office of the Manager,
HUD—Columbus Office,
200 North High Street,
Columbus, Ohio 43215–2499,
(614) 469–5737,
TDD Number: Number not available,
Office Hours: 8:30 am–4:45 pm local time.

Milwaukee, Wisconsin Office—Category A Office

Office of the Manager,
HUD—Milwaukee Office,
Henry S. Reuss Federal Plaza,
310 West Wisconsin Avenue,
suite 1380,
Milwaukee, Wisconsin 53203–2289,
(414) 291–3214,
TDD Number: Number not available,
Office Hours: 8 am–4:30 pm local time.

Southwest

Jurisdictions: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Fort Worth, Texas Office

HUD—Fort Worth Office,
1600 Throckmorton,
P.O. Box 2905,
Fort Worth, Texas 76113–2905,
(817) 885–5401,
TDD Number: (817) 885–5447,
Office Hours: 8 am–4:30 pm local time.

Houston, Texas Office—Category B Office

Office of the Manager,
HUD—Houston Office,
Norfolk Tower,
2211 Norfolk,
suite 200,
Houston, Texas 77098–4096,
(713) 653–3274,
TDD Number: Number not available,
Office Hours: 7:45 am–4:30 pm local time.

San Antonio, Texas Office—Category A Office

Office of the Manager,
HUD—San Antonio Office,
Washington Square,
800 Dolorosa Street,
San Antonio, Texas 78207–4563,
(512) 229–6800,
TDD Number: (512) 229–6885,
Office Hours: 8 am–4:30 pm local time.

Little Rock, Arkansas—Category A Office

Office of the Manager,
HUD—Little Rock Office,
TCBY Tower,
425 West Capitol Avenue,
Little Rock, Arkansas 72201–3488,
(501) 324–5931,
TDD Number: (501) 324–5931,
Office Hours: 8 am–4:30 pm local time.

New Orleans, Louisiana Office—Category A Office

Office of the Manager,
HUD—New Orleans Office,
Fisk Federal Building,
suite 3100,
1661 Canal Street,
New Orleans, Louisiana 70112–2887,
(504) 589–7200,
TDD Number: Number not available,
Office Hours: 8 am–4:30 pm local time.

Oklahoma City, Oklahoma Office—Category A Office

Office of the Manager,
HUD—Oklahoma City Office,
Alfred P. Murrah Federal Building,
200 NW. 5th Street,
Oklahoma City, Oklahoma 73102–3202,
(405) 231–4181,
TDD Number: (405) 231–4891,
Office Hours: 8 am–4:30 pm local time.

Oklahoma City, Oklahoma—Office of Native American Programs

HUD—Oklahoma City Office of Native American Programs,
Alfred. P Murrah Federal Building,
200 NW. 5th Street,
Oklahoma City, OK 73102–3201,
(405) 231–4102,
TDD Number: (405) 231–4891,
Office Hours: 8 am–4:30 pm local time.

Albuquerque, New Mexico Office—Category C Office

Office of the Manager,
HUD—Albuquerque Office,
625 Truman Street NE.,
Albuquerque, NM 87110–6472,
(505) 262–6463,
TDD Number: (505) 262–6463,
Office Hours: 7:45 am–4:30 pm local time.

Great Plains

Jurisdictions: Iowa, Kansas, Missouri, Nebraska.

Kansas City, Kansas Office

Kansas City Office,
Gateway Tower II,
400 State Avenue,
Kansas City, Kansas 66101–2406,
(913) 551–5462,
TDD Number: (913) 551–6972,
Office Hours: 8 am–4:30 pm local time.

Omaha, Nebraska Office—Category A Office

Office of the Manager,
HUD—Omaha Office,
10909 Mill Valley Road,
Omaha, Nebraska 68154–3955,
(402) 492–3100,
TDD Number: (402) 492–3183,
Office Hours: 8 am–4:30 pm local time.

St. Louis, Missouri Office—Category A Office

Office of the Manager,
HUD—St. Louis Office,
1222 Spruce Street,
St. Louis, Missouri 63103–2836,
(314) 539–6583,
TDD Number: (314) 539–6331,
Office Hours: 8 am–4:30 pm local time.

Des Moines, Iowa Office—Category B Office

Office of the Manager,
HUD—Des Moines Office,
Federal Building,
210 Walnut Street,
room 239,
Des Moines, Iowa 50309–2155,
(515) 284–4512,
TDD Number: (515) 284–4728,
Office Hours: 8 am–4:30 pm local time.

Rocky Mountain

Jurisdictions: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Denver, Colorado Office

HUD—Denver Office,
First Interstate Tower North,
633 17th Street,
Denver, CO 80202–3607,
(303) 672–5467,
TDD Number: (303) 672–5248,
Office Hours: 8 am–4:30 pm local time.

Denver, Colorado—Office of Native American Programs

HUD—Denver Office of Native American Programs,
First Interstate Tower North,
633 17th Street,
Denver, CO 80202–3607,
(303) 672–5248,
TDD Number: (303) 672–5248,
Office Hours: 8 am–4:30 pm local time.

Pacific/Hawaii

Jurisdictions: Arizona, California, Hawaii, Nevada.

San Francisco, California Office

HUD—San Francisco Office,
Phillip Burton Federal Building and U.S. Courthouse,
450 Golden Gate Avenue,
P.O. Box 36003,
San Francisco, California 94102–3448,
(415) 556–4752,
TDD Number: (415) 556–8357,
Office Hours: 8:15 am–4:45 pm local time.

Honolulu, Hawaii Office—Category A Office

Office of the Manager,
HUD—Honolulu Office,
7 Waterfront Plaza,
500 Ala Moana Boulevard,
room 500,
Honolulu, Hawaii 96813–4918,
(808) 541–1323,
TDD Number: (808) 541–1356,
Office Hours: 8 am–4 pm local time.

Los Angeles, California Office—Category A Office

Office of the Manager,
HUD—Los Angeles Office,
1615 West Olympic Boulevard,
Los Angeles, California 90015–3801,
(213) 251–7122,
TDD Number: (213) 251–7038,
Office Hours: 8 am–4:30 pm local time.

Sacramento, California Office—Category B Office

Office of the Manager,
HUD—Sacramento Office,
777 12th Avenue,
suite 200,
P.O. Box 1978,
Sacramento, California 96814–1997,
(916) 551–1351,
TDD Number: (916) 561–1367,
Office Hours: 8 am–4:30 pm local time.

Phoenix, Arizona Office—Category B Office

Office of the Manager,
HUD—Phoenix Office,
Two Arizona Center,
suite 1600,
400 North 5th Street,
Phoenix, Arizona 85004–2361,
(602) 261–4434,
TDD Number: (602) 379–4461,
Office Hours: 8 am–4:30 pm local time.

Phoenix, Arizona—Office of Native American Programs

HUD—Phoenix Office of Native American Programs,
Two Arizona Center,
suite 1650,
Phoenix, Arizona 85004–2361,
(602) 379–4156,
TDD Number: (602) 379–4461,
Office Hours: 8:15 am–4:45 pm local time.

Northwest/Alaska

Jurisdictions: Alaska, Idaho, Oregon, Washington.

Seattle, Washington Office

HUD—Seattle Regional Office,
Seattle Federal Office Building,
909 First Avenue,
suite 200,
Seattle, WA 98104–1000,
(206) 220–5101,
TDD Number: (206) 220–5185,
Office Hours: 8 am–4:30 pm local time.

Seattle, Washington—Office of Native American Programs

HUD—Seattle Office of Native American Programs,
Seattle Federal Office Building,
909 First Avenue,
suite 200,
Seattle, WA 98104–1000,
(206) 220–5270,
TDD Number: (206) 220–5185,
Office Hours: 8 am–4:30 pm local time.

Portland, Oregon Office—Category A Office

Office of the Manager,
HUD—Portland Office,
520 SW. 6th Avenue,
Portland, Oregon 97203–1596,
(503) 326–2561,
TDD Number: (503) 326–3656,
Office Hours: 8 am–4:30 pm local time.

Anchorage, Alaska Office—Category A Office

Office of the Manager,
HUD—Anchorage Office,
University Plaza Building,
949 East 36th Avenue,
suite 401,
Anchorage, Alaska 99508–4399,
(907) 271–4170,
TDD Number: (907) 271–4328.

[FR Doc. 94–11319 Filed 5–10–94; 8:45 am]

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Wednesday
May 11, 1994

Part V

Office of Personnel Management

5 CFR Part 630

Absence and Leave; Sick Leave; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AE95

Absence and Leave; Sick Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations on the use and recredit of sick leave for Federal employees. The proposed regulations would expand the use of sick leave by permitting employees to use up to a total of 5 workdays of sick leave each leave year (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's scheduled tour of duty each week) to provide care for a child, spouse, or parent as a result of sickness, injury, pregnancy, or childbirth; make arrangements necessitated by the death of a child, spouse, or parent; or attend the funeral of a child, spouse, or parent. In addition.the proposed regulations would remove the 3-year break-in-service limitation on the recredit of sick leave.

DATES: Comments must be submitted on or before July 11, 1994.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 606–2880.

SUPPLEMENTARY INFORMATION: OPM proposes to amend 5 CFR 630.401 to provide that agencies must grant a limited amount of sick leave to employees who provide care for a child, spouse, or parent as a result of sickness, injury, pregnancy, or childbirth; to make arrangements necessitated by the death of a child, spouse, or parent; or to attend the funeral of a child, spouse, or parent. The proposed regulations would limit the use of sick leave for these purposes to a total of 5 workdays in a leave year (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's scheduled tour of duty each week).

In addition, OPM proposes to amend 5 CFR 630.502 and 504 to remove the 3-year break-in-service limitation on the recredit of sick leave and permit employees who separate from Federal service to have their unused and accrued sick leave recredited in full to their sick leave accounts upon return to Federal service. Under the proposed regulations, sick leave would be recredited to the employee regardless of the duration of the break in Federal service.

These proposed changes in the Federal leave system were recommended in the Report of the National Performance Review on September 7, 1993, and are part of OPM's continuing effort to develop human resource policies that are sensitive to the needs of employees and thereby enhance the Federal Government's ability to recruit and retain a well-qualified workforce. The purpose of the proposed changes in the circumstances under which employees may use sick leave is to recognize the needs of Federal employees who struggle to maintain an often precarious balance between work and family and to assist the Federal Government in recruiting and retaining the employees it needs to accomplish its mission. We have also proposed additional changes in § 630.401 to clarify our intent with regard to situations involving exposure to a severe contagious/communicable disease. We describe a severe communicable disease as one that requires isolation for a specified period, as prescribed by the health authorities having jurisdiction or as determined by a health care provider.

Because of the similarity of purpose, OPM proposes to use the same definitions of "child," "spouse," and "parent" as those used for "son or daughter," "spouse," and "parent" in the interim regulations implementing the Family and Medical Leave Act of 1993. (See 5 CFR 630.1202.)

The change in rules on the recredit of sick leave would ensure that, in the future, employees who have conscientiously maintained a substantial sick leave balance could leave Federal employment for any purpose (including the need to care for a child, spouse, or parent) without the risk of forfeiting all accrued sick leave upon returning to Federal employment thereafter. We believe this change would help to foster the conscientious use of sick leave by all employees.

Finally, the proposed regulations also include conforming changes in § 630.402 (Application for sick leave), § 630.403 (Supporting evidence), and § 630.405 (Use of sick leave during annual leave).

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM proposes to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; section 630.303 also issued under 5 U.S.C. 6133(a); section 630.501 and subpart F also issued under E.O 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Law 100–566; subpart J also issued under 5 U.S.C. 6362 and Public Law 100–566; subpart K also issued under Public Law 102–25.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201, paragraphs (b)(3), (4), (5), (6), and (7) are redesignated as (b)(4), (5), (7), (8), and (11), respectively, and new paragraphs (b)(3), (6), (9), and (10) are added to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

(3) *Child* means a biological, adopted, or foster child; a stepchild, a legal ward; or a child of a person standing *in loco parentis* who is—

(i) Under 18 years of age; or

(ii) 18 years of age or older and incapable of self-care because of a mental or physical disability. A child incapable of self-care requires active assistance or supervision to provide daily self-care in several of the "activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office. A mental or physical disability refers to a "disability," as defined in 29 CFR 1630.2(g).

* * * * *

(6) *In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

* * * * *

(9) *Parent* means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include parents "in law."

(10) *Spouse* means a husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

* * * * *

Subpart D—Sick Leave

3. In subpart D, § 630.401, is revised to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to the limitation described in paragraph (b) of this section, an agency shall grant sick leave to an employee when the employee—

(1) Receives medical, dental, or optical examination or treatment;

(2) Is incapacitated for the performance of duties by sickness, injury, pregnancy, or childbirth;

(3) Provides care for a child, spouse, or parent as a result of sickness, injury, pregnancy, or childbirth;

(4) Makes arrangements necessitated by the death of a child, spouse, or parent or attends the funeral of a child, spouse, or parent; or

(5) Would jeopardize the health of others by his or her presence on the job because of exposure to a severe communicable disease that requires isolation for a specified period, as prescribed by the health authorities having jurisdiction or as determined by a health care provider.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3) and (4) of this section shall not exceed a total of 5 workdays (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's scheduled tour of duty each week).

4. Section 630.402 is revised to read as follows:

§ 630.402 Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may require. An employee shall request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in § 630.401(a)(3) and (4) of this part.

5. Section 630.403 is revised to read as follows:

§ 630.403 Supporting evidence.

An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) of this part.

6. Section 630.405 is revised to read as follows:

§ 630.405 Use of sick leave during annual leave.

Subject to the limitation described in § 630.401(b) of this part, an agency may grant sick leave during a period of annual leave for any of the purposes described in § 630.401(a) of this part.

Subpart E—Recredit of Leave

7. In subpart E, § 630.502 is revised to read as follows:

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which the employee transfers shall certify his or her sick leave account to the employing agency for credit or charge.

(b) Except as provided in paragraph (c) of this section, an employee who is separated from the Federal Government is entitled to a recredit of sick leave if reemployed in the Federal Government on or after the effective date of these regulations, unless such sick leave was used in the computation of an annuity.

(c) An employee who is separated from the government of the District of Columbia and who was first employed by the government of the District of Columbia before October 1, 1987, is entitled to a recredit of sick leave if reemployed in the Federal Government on or after the effective date of these regulations, unless such sick leave was used in the computation of an annuity.

(d) When sick leave is transferred between different leave systems under section 6308 of title 5, United States Code, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave.

(e) An employee who transfers to a position under a different leave system to which he or she can transfer only a part of his or her sick leave is entitled to a recredit of the untransferred sick leave if the employee returns to the leave system under which it was earned on or after the effective date of these regulations.

(f) An employee who transfers to a position to which he or she cannot transfer his or her sick leave is entitled to a recredit of the untransferred sick leave if the employee returns to the leave system under which it was earned on or after the effective date of these regulations.

8. In § 630.504, paragraph (b) is revised to read as follows:

§ 630.504 Reestablishment of leave account after military service.

* * * * *

(b) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, on or after the effective date of these regulations;

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Wednesday
May 11, 1994

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Seasonal Closure of the O'Malley River Area in the Kodiak National Wildlife Refuge; Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC49

Seasonal Closure of the O'Malley River Area in the Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) issues this interim regulation to limit public access, occupancy and use of a portion of the O'Malley River drainage and adjacent lands bordering Karluk Lake and O'Malley Lake within the Kodiak National Wildlife Refuge (Refuge). Public use of a parcel of land and water consisting of approximately 3,955 acres will be restricted from June 25, 1994, through September 30, 1994, to individuals participating in a refuge-sponsored bear viewing program.

This closure is necessary to prevent incompatible conflicts between people and brown bears at an important bear concentration area, during the season when conflicts and impacts on bears are most prevalent. It is intended to control increasing human use of a very important bear concentration area so that human uses in the area remain compatible with refuge purposes. Research and experience have clearly demonstrated that control of human activity in major bear concentration areas is necessary to avoid conflicts between people and bears. Organized bear viewing programs elsewhere in Alaska have proven highly successful in reducing conflict to an acceptable level while maintaining quality public use opportunities. This action will allow quality public viewing and photography opportunities through the O'Malley Bear Viewing Program without adversely affecting bear use of this important feeding area. After a thorough evaluation of the bear viewing program conducted during 1994, the Service will decide whether to continue the program.

A proposed rule that would provide a permanent seasonal restriction on public access is being published elsewhere in this separate part of the **Federal Register** with this interim rule.

DATES: This interim rule is effective from June 25, 1994, through September 30, 1994. Comments may be submitted by July 11, 1994.

ADDRESSES: Comments should be addressed to Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Attention: Tony Booth, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jay Bellinger, Refuge Manager, Kodiak National Wildlife Refuge, 1390 Buskin River Road, Kodiak, Alaska 99615, Telephone: (907) 487–2600, or Tony Booth, Anchorage, AK, Telephone: (907) 786–3384.

SUPPLEMENTARY INFORMATION:

Background

President Franklin D. Roosevelt established the Kodiak National Wildlife Refuge by Executive Order 8857 on August 14, 1941, to "preserve the natural feeding and breeding ground of the brown bear and other wildlife." This action withdrew about 1.9 million acres from unreserved public domain on Kodiak and Uganik Islands. Congress redesignated the Kodiak National Wildlife Refuge in 1980 when it enacted the Alaska National Interest Lands Conservation Act (ANILCA). All the lands, water, interests, and submerged lands retained in federal ownership at the time of statehood were included in the refuge. This legislation also added about 50,000 acres of public lands on Afognak and Ban Islands to Kodiak National Wildlife Refuge. Section 303(5)(b) of ANILCA states generally that the purposes for which Kodiak National Wildlife Refuge is established and shall be managed include: (i) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonoids, sea otters, sea lions, and other marine mammals and migratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence use by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in subparagraph (i), water quality and necessary water quantity within the refuge.

The Kodiak Refuge Comprehensive Conservation Plan (U.S. Fish and Wildlife Service, 1987) provides primary guidance for management of the Kodiak National Wildlife Refuge. According to its approved alternative, "the Service will undertake detailed management planning to guide implementation of the plan and operation of the refuge." In support of that mandate, utilizing a full spectrum of public involvement, the final draft of the Kodiak Refuge Public Use Management Plan has been written. This interim rule and the proposed rule which is being published elsewhere in this separate part of the **Federal Register** are a result of direction provided by both these planning processes.

During 1990–91 the Service tested a trial bear viewing program, staffed by Refuge personnel, at the Dog Salmon Creek Fish Pass on Kodiak Refuge. No closure was utilized for unguided use, but guided use was restricted through the special use permit process. This trial bear viewing program was successful except that the presence of artificial fish passage structures significantly impaired the quality of viewing opportunities available to the public.

Public use is increasing about ten percent annually on the Kodiak National Wildlife Refuge and available information indicates the rate of increase is even greater in the O'Malley River area. Also, a trend of increasing adverse interactions between people and bears has occurred in the O'Malley River area in recent years. Generally, brown bears are negatively impacted by expanding human use. Bears are often killed "in defense of life or property" as a consequence of increased levels of human activity in areas that are used heavily by bears. In addition to mortality, interaction between bears and people can impose stress on bears that ultimately affect survival and/or productivity of bears as well as jeopardize human safety.

In 1991, a research camp was established on the O'Malley River to study bear use of the area and potential impacts of public use on bears. Research data document human impacts on bears in the O'Malley River area and confirm the need to control or restrict human uses in this area. The O'Malley River area supports approximately 33% of the entire brown bear population in the Karluk Lake basin. At least 110 different bears used the O'Malley River area during July–September 1991, with peak use occurring during the second and third weeks of July. More importantly, refuge research data suggest that frequently sighted bears represent only a small portion of the total population utilizing the O'Malley River area.

During approximately 250 hours of intensive observation of bear groups in the O'Malley River area in 1991, 66 interactions between bears and people were recorded. One-third of the interactions disturbed and/or displaced the bears by causing them to run or walk away from people. In one instance, people caused the separation of a female from one of her first-year cubs; while trying to locate its mother, the cub was subsequently killed by another bear.

Alternatives considered in response to the public use/bear problems in the O'Malley River area include closing the area to all public use, which would satisfy the need to conserve bears, but would eliminate all opportunity for public use during the period of closure. The area could be left open to provide ample public use opportunity, but this use would have incompatible impacts on refuge bear populations. Seasonal closure in support of a bear viewing program not only would satisfy the need to conserve bears, but would also make possible continued public use. No other alternative could provide both benefits.

The refuge's trial bear viewing program initiated at Dog Salmon Creek was moved to the O'Malley River area in 1992 because of the documented problems and incompatibility between high and unregulated public use and bears in the O'Malley area. A temporary closure, pursuant to 50 CFR 36.42, was utilized to avoid conflicts between people and bears at this important seasonal bear concentration area. Goals of the trial O'Malley bear viewing program were:

1. To replace an incompatible level of unrestricted use of the O'Malley River area during key bear use periods, with a compatible recreational opportunity which would protect and conserve brown bear populations.

2. To develop and maintain a program that provides the general public a safe and professional guided bear viewing opportunity, that is consistent with Refuge management objectives and policies established in the Comprehensive Conservation Plan.

The program proved popular with the public; in 1992, 88 persons participated. The Service was satisfied that both program goals were adequately met.

The O'Malley Bear Viewing Program is designed to increase wildlife viewing opportunities for the public. The brown bears of Kodiak National Wildlife Refuge offer unique and highly desirable opportunities for viewing; opportunities that are most safely and effectively provided by a structured viewing program.

Structured wildlife viewing programs have been used successfully as a conservation management tool and to enhance public use opportunities elsewhere in Alaska. The best known program is conducted at the McNeil River State Game Sanctuary by the Alaska Department of Fish and Game. The McNeil River program has gained a worldwide reputation for quality bear viewing, and competition for permits is so intense that applicants have less than an 8 percent chance of obtaining a permit. Another popular bear viewing program is conducted at Brooks Camp in Katmai National Park. The number of visitors at Brooks Camp is not limited except by availability of lodge and campground facilities. Use of these facilities during peak visitation periods is presently at or beyond capacity and the National Park Service may limit the number of visitors in the future. A third bear viewing program is located at Pack Creek on Admiralty Island and is cooperatively managed by the U.S. Forest Service and Alaska Department of Fish and Game. Permits are required to visit Pack Creek; during 1993 the Forest Service announced that the number of visits to Pack Creek will be limited.

Experience at McNeil River State Game Sanctuary has demonstrated that brown bears are least disturbed by human activity that is consistent and predictable. Studies at the Brooks Camp and Pack Creek bear viewing programs have confirmed that unpredictable human activity causes some bears to avoid important habitat. Inconsistent human activity has also been shown to cause conflicts between people and bears. At the McNeil River Sanctuary, implementation of a structured bear viewing program increased bear use and at the same time reduced the incidence of bear/human conflicts.

Successful reduction of conflict, through implementation of a structured brown bear viewing program at O'Malley River, will require control of public use and access. Restriction of public use and access to anyone not participating in the viewing program will promote a quality wildlife experience for participants and reduce the potential for serious and incompatible conflicts between refuge visitors and bears. In this interim rule, public use and access would be restricted from June 25, 1994, to September 30, 1994. These dates were selected because it is the time period when the greatest number of bears are concentrated in the O'Malley River area to feed on the seasonal salmon runs that provide a critical component of their diet. Consequently, this is the period bears are most vulnerable to adverse impacts from excessive and unpredictable human use.

The Service has issued a permit, under which a private operator will conduct the O'Malley Program, for the period 1994–1998. The program will be thoroughly evaluated during 1994 and, if successful, will be continued.

This interim rule would remain in effect only through September 30, 1994. A proposed rule is being submitted concurrently with this interim rule to permanently restrict public entry and use of the O'Malley area annually to bear viewing program participants during the June 25 through September 30 period of heavy bear use.

Statutory Authority

In accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the National Wildlife Refuge System for any purpose whenever he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established.

Section 304 of ANILCA requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska under any permit or easement granted under any authority are compatible with the purposes of that refuge.

Section 1306 of ANILCA permits the Service to provide visitor facilities in the refuge if compatible with the unit's purpose.

This rule is being generated to help structure public use. Adequately regulated public use is consistent with and will not interfere with the refuge purposes delineated above, and is thus compatible with the purposes for which Kodiak National Wildlife Refuge was established according to 16 U.S.C. 668(dd).

Request for Comments

Department of Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60 day comment period is specified in order to both facilitate public input and move forward to protect important refuge resources. Accordingly, interested persons may submit written comments concerning this interim rule to the persons listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Environmental Considerations

This rulemaking is categorically excluded under 40 CFR 1508.4 from the requirements of the National Environmental Protection Act of 1969 (42 U.S.C. 4321–4347) as an administrative action that will have no potential for causing substantial environmental impact.

Economic Effect

Implementation of this interim rule will seasonally close two tenths of one percent (.02%) of Kodiak Refuge lands, to commercial operators and public use not connected with the organized bear viewing program. Observations by refuge personnel indicate that commercial use of the closure area has historically been steady. All use (commercial and non-commercial) was estimated to have averaged 266 user days during 1989 and 1990, and 353 user days during 1991. These levels of use will clearly be exceeded by the amount of commercial use (minimum of 480 user days) that will be allowed under terms of a permit authorizing the bear viewing program. Thus, a net gain of commercial use is expected to occur. Also, at least a portion of the commercial use previously occurring in the closure area will simply be displaced to another location and therefore not lost to the local economy.

Changes in use of the resource will have no significant effect on national income. Private income will be enhanced, but dollar amounts will be small and have insignificant impact on the local economy. Agency costs for monitoring the closure and the bear viewing commercial operation will be approximately $40,000 less than that expended during fiscal year 1992 for program operation by the government.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This interim rule would have minimal effect on such entities.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, and Wildlife refuges.

Accordingly, part 36 of chapter I of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

Part 36—[AMENDED]

1. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. § 36.39 is amended by adding a new paragraph (j) effective from June 25, 1994, through September 30, 1994, to read as follows:

§ 36.39 Public use

* * * * *

(j) *Kodiak National Wildlife Refuge.—*(1) *Seasonal public use closure of the O'Malley River Area.* Certain areas within the Kodiak National Wildlife Refuge are closed to all public access, occupancy and use from June 25, 1994, through September 30, 1994, except for individuals participating in the O'Malley Bear Viewing Program. These areas subject to seasonal closure consist of lands and waters located within Townships 33 and 34 South, Range 30 West, Seward Meridian, Alaska, consisting of approximately 3,955 acres, and more specifically described as follows: Township 33 South, Range 30 West, Seward Meridian, Alaska, all of section 25; all of section 26, excluding U.S. Survey 10875 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; all of section 27; the NE ¼ of section 34; and all of sections 35 and 36, excluding U.S. Survey 10876 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; Township 34 South, Range 30 West, Seward Meridian, Alaska, the N ½ of section 1 and the N ½ of section 2. The refuge will provide a map of the closure area to all interested parties.

(2) *Access easement provision.* Notwithstanding any other provision of this paragraph (j), there exists a twenty-five foot wide access easement on an existing trail within the Koniag Inc. Regional Native Corporation lands within the properties described in paragraph (j)(1) of this section in favor of the United States of America.

Dated: April 13, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–11121 Filed 5–10–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC49

Seasonal Closure of the O'Malley River Area in the Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to limit public access, occupancy and use of a portion of the O'Malley River drainage and adjacent lands bordering Karluk Lake and O'Malley Lake within the Kodiak National Wildlife Refuge (Refuge). Public use of a parcel of land and water consisting of approximately 3,955 acres will be restricted from June 25 through September 30 annually to individuals participating in a refuge-sponsored bear viewing program.

This seasonal closure is necessary to prevent incompatible conflicts between people and brown bears at an important bear concentration area, during the season when conflicts and impacts on bears are most prevalent. It is intended to control increasing human use of a very important bear concentration area so that human uses in the area remain compatible with refuge purposes. Research and experience have clearly demonstrated that control of human activity in major bear concentration areas is necessary to avoid conflicts between people and bears. Organized bear viewing programs elsewhere in Alaska have proven highly successful in reducing conflict to an acceptable level while maintaining quality public use opportunities. This action will allow quality public viewing and photography opportunities through the O'Malley Bear Viewing Program without adversely affecting bear use of this important feeding area.

An interim rule that would provide a restriction on public access from June 25, 1994, to September 30, 1994, is being published elsewhere in this separate part of the **Federal Register** with this proposed rule.

DATES: Comments may be submitted by July 11, 1994.

ADDRESSES: Comments should be addressed to Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Attention: Tony Booth, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jay Bellinger, Refuge Manager, Kodiak National Wildlife Refuge, 1390 Buskin River Road, Kodiak, Alaska 99615, Telephone: (907) 487–2600, or Tony Booth, Anchorage, AK, Telephone: (907)786–3384.

SUPPLEMENTARY INFORMATION:

Background

President Franklin D. Roosevelt established the Kodiak National Wildlife Refuge by Executive Order 8857 on August 14, 1941, to "preserve the natural feeding and breeding ground of the brown bear and other wildlife." This action withdrew about 1.9 million acres from unreserved public domain on Kodiak and Uganik Islands. Congress redesignated the Kodiak National Wildlife Refuge in 1980 when it enacted the Alaska National Interest Lands Conservation Act (ANILCA). All the lands, water, interests, and submerged lands retained in federal ownership at the time of statehood were included in the refuge. This legislation also added about 50,000 acres of public lands on Afognak and Ban Islands to Kodiak National Wildlife Refuge. Section 303 (5) (b) of ANILCA states generally that "[t]he purposes for which Kodiak National Wildlife Refuge is established and shall be managed include (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonoids, sea otters, sea lions, and other marine mammals and migratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence use by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in subparagraph (i), water quality and necessary water quantity within the refuge.

The Kodiak Refuge Comprehensive Conservation Plan (U.S. Fish and Wildlife Service, 1987) provides primary guidance for management of the Kodiak National Wildlife Refuge. According to its approved alternative, "the Service will undertake detailed management planning to guide implementation of the plan and operation of the refuge." In support of that mandate, utilizing a full spectrum of public involvement, the final draft of the Kodiak Refuge Public Use Management Plan has been written. This proposed rule and the interim rule which is being published elsewhere in this separate part of the **Federal Register** are a result of direction provided by both these planning processes.

During 1990–91 the Service tested a trial bear viewing program, staffed by Refuge personnel, at the Dog Salmon Creek Fish Pass on Kodiak Refuge. No closure was utilized for unguided use, but guided use was restricted through the special use permit process. This trial bear viewing program was successful except that the presence of artificial fish passage structures significantly impaired the quality of viewing opportunities available to the public.

Public use is increasing about ten percent annually on the Kodiak National Wildlife Refuge and available information indicates the rate of increase is even greater in the O'Malley River area. Also, a trend of increasing adverse interactions between people and bears has occurred in the O'Malley River area in recent years. Generally, brown bears are negatively impacted by expanding human use. Bears are often killed "in defense of life or property" as a consequence of increased levels of human activity in areas that are used heavily by bears. In addition to mortality, interaction between bears and people can impose stress on bears that ultimately affect survival and/or productivity of bears as well as jeopardize human safety.

In 1991, a research camp was established on the O'Malley River to study bear use of the area and potential impacts of public use on bears. Research data document human impacts on bears in the O'Malley River area and confirm the need to control or restrict human uses in this area. The O'Malley River area supports approximately 33% of the entire brown bear population in the Karluk Lake basin. At least 110 different bears used the O'Malley River area during July–September 1991, with peak use occurring during the second and third weeks of July. More importantly, refuge research data suggest that frequently sighted bears represent only a small portion of the total population utilizing the O'Malley River area.

During approximately 250 hours of intensive observation of bear groups in the O'Malley River area in 1991, 66 interactions between bears and people were recorded. One-third of the interactions disturbed and/or displaced the bears by causing them to run or walk away from people. In one instance, people caused the separation of a female from one of her first-year cubs; while trying to locate its mother, the cub was subsequently killed by another bear.

Alternatives considered in response to the public use/bear problems in the O'Malley River area include closing the area to all public use, which would satisfy the need to conserve bears, but would eliminate all opportunity for public use during the period of closure. The area could be left open to provide ample public use opportunity, but this use would have incompatible impacts on refuge bear populations. Seasonal closure in support of a bear viewing program not only would satisfy the need to conserve bears, but would also make possible continued public use. No other alternative could provide both benefits.

The refuge's trial bear viewing program initiated at Dog Salmon Creek was moved to the O'Malley River area in 1992 because of the documented problems and incompatibility between high and unregulated public use and bears in the O'Malley area. A temporary closure, pursuant to 50 CFR 36.42, was utilized to avoid conflicts between people and bears at this important seasonal bear concentration area. Goals of the trial O'Malley bear viewing program were:

1. To replace an incompatible level of unrestricted use of the O'Malley River area during key bear use periods, with a compatible recreational opportunity which would protect and conserve brown bear populations.

2. To develop and maintain a program that provides the general public a safe and professional guided bear viewing opportunity, that is consistent with Refuge management objectives and policies established in the Comprehensive Conservation Plan.

The program proved popular with the public; in 1992, 88 persons participated. The Service was satisfied that both program goals were adequately met.

The O'Malley Bear Viewing Program is designed to increase wildlife viewing opportunities for the public. The brown bears of Kodiak National Wildlife Refuge offer unique and highly desirable opportunities for viewing; opportunities that are most safely and effectively provided by a structured viewing program.

Structured wildlife viewing programs have been used successfully as a conservation management tool and to enhance public use opportunities elsewhere in Alaska. The best known program is conducted at the McNeil River State Game Sanctuary by the Alaska Department of Fish and Game. The McNeil River program has gained a worldwide reputation for quality bear viewing, and competition for permits is so intense that applicants have less than an 8 percent chance of obtaining a permit. Another popular bear viewing program is conducted at Brooks Camp in Katmai National Park. The number of visitors at Brooks Camp is not limited except by availability of lodge and campground facilities. Use of these facilities during peak visitation periods is presently at or beyond capacity and the National Park Service may limit the number of visitors in the future. A third bear viewing program is located at Pack Creek on Admiralty Island and is cooperatively managed by the U.S. Forest Service and Alaska Department of Fish and Game. Permits are required to visit Pack Creek; during 1993 the Forest Service announced that the number of visits to Pack Creek will be limited.

Experience at McNeil River State Game Sanctuary has demonstrated that brown bears are least disturbed by human activity that is consistent and predictable. Studies at the Brooks Camp and Pack Creek bear viewing programs have confirmed that unpredictable human activity causes some bears to avoid important habitat. Inconsistent human activity has also been shown to cause conflicts between people and bears. At the McNeil River Sanctuary, implementation of a structured bear viewing program increased bear use and at the same time reduced the incidence of bear/human conflicts.

Successful reduction of conflict through implementation of a structured brown bear viewing program at O'Malley River, will require control of public use and access. Restriction of public use and access to anyone not participating in the viewing program will promote a quality wildlife experience for participants and reduce the potential for serious and incompatible conflicts between refuge visitors and bears. Public use and access would be restricted only seasonally, from June 25 to September 30. These dates were selected because it is the time period when the greatest number of bears are concentrated in the O'Malley River area to feed on the seasonal salmon runs that provide a critical component of their diet. Consequently, this is the period bears are most vulnerable to adverse impacts from excessive and unpredictable human use.

The Service has issued a permit, under which a private operator will conduct the O'Malley Program, for the period 1994–1998. The program will be thoroughly evaluated during 1994 and, if successful, will be continued. If unsuccessful, the program will be discontinued but the public use closure would be retained to protect feeding bears from incompatible disturbance.

Statutory Authority

In accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the National Wildlife Refuge System for any purpose whenever he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established.

Section 304 of ANILCA requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska under any permit or easement granted under any authority are compatible with the purposes of that refuge.

Section 1306 of ANILCA permits the Service to provide visitor facilities in the refuge if compatible with the unit's purpose.

This rule is being generated to help structure public use. Adequately regulated public use is consistent with and will not interfere with the refuge purposes delineated above, and is thus compatible with the purposes for which Kodiak National Wildlife Refuge was established according to 16 U.S.C. 668(dd).

Request for Comments

A public hearing on this proposed rule was advertised in Alaska and held on April 26, 1994, at Kodiak High School, Kodiak, Alaska. Department of Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60 day comment period is specified in order to both facilitate public input and move forward to protect important refuge resources. Accordingly, interested persons may submit written comments concerning this proposed rule to the persons listed above under the heading ADDRESSES. All substantive comments will be reviewed and considered.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

This rulemaking is categorically excluded under 40 CFR 1508.4 from the requirements of the National Environmental Protection Act of 1969

(42 U.S.C. 4321–4347) as an administrative action that will have no potential for causing substantial environmental impact.

Economic Effect

Implementation of the proposed rule will seasonally close two tenths of one percent (.02%) of Kodiak Refuge lands, to commercial operators and public use not connected with the organized bear viewing program. Observations by refuge personnel indicate that commercial use of the closure area has historically been steady. All use (commercial and non-commercial) was estimated to have averaged 266 user days during 1989 and 1990, and 353 user days during 1991. These levels of use will clearly be exceeded by the amount of commercial use (minimum of 480 user days) that will be allowed under terms of a permit authorizing the bear viewing program. Thus, a net gain of commercial use is expected to occur. Also, at least a portion of the commercial use previously occurring in the closure area will simply be displaced to another location and therefore not lost to the local economy.

Changes in use of the resource will have no significant effect on national income. Private income will be enhanced, but dollar amounts will be small and have insignificant impact on the local economy. Agency costs for monitoring the closure and the bear viewing commercial operation will be approximately $40,000 less than that expended during fiscal year 1992 for program operation by the government.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, and Wildlife refuges.

Accordingly, part 36 of chapter I of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) et seq., 668dd et seq., 742(a) et seq., 3101 et seq., and 44 U.S.C. 3501 et seq.

2. § 36.39 (j) is revised to read as follows:

§ 36.39 Public use.

* * * * *

(j) *Kodiak National Wildlife Refuge.*—(1) *Seasonal public use closure of the O'Malley River Area.* Certain areas within the Kodiak National Wildlife Refuge are closed from June 25 through September 30 annually to all public access, occupancy and use, except for individuals participating in the O'Malley Bear Viewing Program. These areas subject to seasonal closure consist of lands and waters located within Townships 33 and 34 South, Range 30 West, Seward Meridian, Alaska, consisting of approximately 3,955 acres, and more specifically described as follows: Township 33 South, Range 30 West, Seward Meridian, Alaska, all of section 25; all of section 26, excluding U.S. Survey 10875 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; all of section 27; the NE 1/4 of section 34; and all of sections 35 and 36, excluding U.S. Survey 10876 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; Township 34 South, Range 30 West, Seward Meridian, Alaska, the N 1/2 of section 1 and the N 1/2 of section 2. The refuge will provide a map of the closure area to all interested parties.

(2) *Access easement provision.* Notwithstanding any other provision of this paragraph (j), there exists a twenty-five foot wide access easement on an existing trail within the Koniag Inc. Regional Native Corporation lands within the properties described in (j)(1) of this section in favor of the United States of America.

Dated: April 13, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–11120 Filed 5–10–94; 8:45 am]

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federal register

Wednesday
May 11, 1994

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Part 3720, et al.
Mining Claims; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850.

[WO-660-4191-02-24 1A]

RIN 1004-AC17

Mining Claims; Rental, Maintenance, and Location Fees; Lands Open to Location, National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This document has two objectives. The rule would implement Title X, Subtitle B, sections 10101 through 10106 of the Omnibus Budget Reconciliation Act of August 10, 1993 (Pub. L. 103-66, 107 Stat. 312) (the Act), which are entitled "Hardrock Mining Claim Maintenance Fee." Section 10106 of the Act requires the Secretary to issue regulations implementing the Act as soon as practicable after enactment. The Act extends, in effect, with certain modifications, the mining claim fee provisions of the Act of October 5, 1992, until September 30, 1998. These Acts require, unless the claimant qualifies for an exemption (or waiver), payment of an annual fee of $100 per mining claim or site located and held on the public lands pursuant to the General Mining Law of 1872. The Act also establishes a new location fee of $25 for each new mining claim or site located on public lands on or after August 11, 1993, and before September 30, 1998, which is required to be paid at the time of recording of the mining claim or site with the Bureau of Land Management (BLM) under section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) and the regulations in 43 CFR 3833. It also implements the new location and recording requirements for mining claims located on Stockraising Homestead Act lands required by the Act of April 16, 1993 (107 Stat. 60).

It removes obsolete or expired provisions, and consolidates provisions that are still in force and effect, in the regulations concerning location and entry of mining claims and sites on coal bearing lands, on the National Park System units, the King Range Conservation Area, and Indian reservations.

DATES: Comments should be submitted by June 10, 1994. Comments received or postmarked after this date may not be considered in the decision making process on the issuance of the final rule.

ADDRESSES: Comments should be submitted to: Director (140), Bureau of Land Management, room 5555 MIB, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Bruno, (202) 452-0350, or Roger Haskins, (702) 785-6576.

SUPPLEMENTARY INFORMATION:

1. Maintenance and Location Fees

Most of this rule is devoted to amending the regulations (43 CFR parts 3730, 3820, 3830, and 3850) previously published in the **Federal Register** on July 15, 1993 (58 FR 38186), and corrected on August 3, 1993 (58 FR 41184). That rule implemented the Act of October 5, 1992 (106 Stat. 1374), which required a $100 rental fee per mining claim or site for the 1993 and 1994 assessment years, with payment due for both assessment years by August 31, 1993. The law exempted claimants who owned 10 or fewer mining claims and sites and met other criteria. The 1993 Act extended the $100 per claim or site fee to September 30, 1998, making it an annual payment of $100 due on each August 31st, to hold the claim or site for the upcoming assessment year. The name of the fee was changed in the Act from "rental fee" to "maintenance fee." A new fee of $25, called a location fee, is required under section 10102 of the Act. It is a one-time fee to be paid to BLM at the time the new mining claim or site is recorded. The Act allows a waiver from the maintenance fee for claimants who own 10 or fewer mining claims and sites, for certain mining claims and sites undergoing reclamation, and for several other situations. Numerous specific provisions in the regulations on mining would be amended to reflect the new terminology and the requirements of the 1993 Act. These include provisions relating to filing claims on O. and C. (revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant) Lands in subpart 3821.

On April 16, 1993, Public Law 103-23 (107 Stat. 60) was enacted, requiring new procedures and filings for claimants locating and operating mining claims on lands patented under the Stockraising Homestead Act of 1916 (SRHA, 43 U.S.C. 299). Effective October 13, 1993, prior to locating a mining claim on such lands, a claimant is required to file with the Secretary of the Interior a notice of intent to locate a mining claim and to notify the surface owner of such notice of intent. SRHA lands may not be entered for the location of a mining claim until 30 days after the surface owner has received notice of the filing of such notice of intent to locate. Filing of the notice of intent with BLM also has the effect of segregating the land sought for 90 days from all other land and mineral entry by anyone else. Filing of a Plan of Operations (now required by the SRHA) extends the segregation until the Plan is approved or denied by the BLM District Office.

A section-by-section discussion of the amendments to implement these statutory changes follows. Other changes would be made in certain sections for purposes of updating and clarifying the regulations.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General. The sections on authorities (§ 3730.0-3) and information collection (§ 3730.0-9) would be amended to add references to the Act of August 10, 1993 (107 Stat. 312). The section on Purpose (§ 3730.0-1) would also be amended to refer to lands included under the O. and C. Act, and would be subdivided for clarity.

Subpart 3734—Location and Assessment Work. Section 3734.1 of this subpart, which requires the owner of a claim to file notice of location and assessment work, would be amended at paragraphs (a) and (c) to provide for the maintenance fee required by the Act.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites; Payment of Service Charges, Rental, Maintenance, and Location Fees. This subpart, including its title, would be amended to reflect the addition of maintenance and location fees required by the Act. Various sections would be amended as follows:

Section 3833.0-1 Purpose. Paragraph (c) of this section would be amended to add as a purpose the implementation of the annual maintenance fee established by the Act.

Section 3833.0-3 Authority. Paragraphs (e) and (f) of this section would be amended by adding the Act to the rental fee authority. A new paragraph (g) would be added to implement the mining claim entry and location amendments to the Stockraising Homestead Act of 1916 enacted by Public Law 103-23, 107 Stat. 60. The new paragraph cross-references part 3814, which has not yet been amended to reflect the Act of April 16, 1993, as of this publication. However, BLM is preparing a proposed rule that would amend part 3814 for this purpose. A new paragraph (h) would be added to refer to the Soldier's and Sailor's Relief Act of 1940 (50 U.S.C. Appendix 565), which excuses active duty military personnel from performance of assessment work.

Section 3833.0–5 Definitions. The definitions section would be amended by revising the definitions of "owner," "proper BLM office," "file or filed," "filing year," "rental fee," and "small miner," and adding definitions of "maintenance fee," "location fee," "related party," and "control," new terms introduced in the Act. Also added are definitions of "forfeiture," "returnable," and "refundable." The rule would define "forfeiture" as it pertains to mining claims or sites under section 314 of FLPMA, and the acts of October 5, 1992, and August 10, 1993. The U.S. Supreme Court, in *United States* v. *Locke,* 471 U.S. 84 (1985), determined that the term "abandonment" as used in FLPMA was equivalent to "forfeiture."

The definition of "owner" would be amended to make it clear that ownership of a mining claim is determined by State and Federal law, and that the owner's current address of record is required to be stated on all instruments recorded or filed with the BLM under this subpart.

The definition of "proper BLM office" would be amended to add the Northern District Offices Records and Public Information Unit in Fairbanks, Alaska, as a proper recording office for mining claim instruments in Alaska, in addition to the office in Anchorage.

The definition of "file or filed" would be amended to apply the postmark rule to rental and maintenance fees, to the filing of waiver statements by qualified small miners, and new locations or certificates of location.

The definition of "filing year" would be amended by substituting the term "filing period," and divided to define the filing dates for fees or exemptions under the Act.

The definition of "rental fee" would be amended to remove language pertaining to the rental fee required by the Act of October 5, 1992, which is no longer necessary.

The definition of "nonrefundable" would be removed, and a new section 3833.1–8 would be added to the regulations providing for the refund of maintenance and location fees as well as rental fees under certain circumstances, in order to conform to the Act, and further clarifying under what conditions a refund may be obtained.

Section 3833.0–9 Information collection. This section would be amended to add the Acts of April 16, 1993, and August 10, 1993, to the authorities.

Section 3833.1–2 Recordation of mining claims, mill sites, and tunnel sites located after October 21, 1976. This section would be amended by adding a new paragraph (c) to explain the requirements of the Act of April 16, 1993 (107 Stat. 60), which amended the SRHA as it pertains to the location of mining claims. The Act of April 16, 1993, places additional requirements for approval of mineral operations on Stockraising Homestead lands and for additional bonding to protect the surface owner from the effects of mining operations. These additional requirements will be covered by another proposed rule to amend 43 CFR subpart 3814.

Section 3833.1–3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance. This section is amended to add the maintenance and location fees, and restructured to clarify the payment-for-services policy with respect to mining claim documents, filings, and fees.

Section 3833.1–4 Service charges and location fees. This section is amended to add the maintenance and location fees into the appropriate paragraphs, and is reorganized for clarity.

Section 3833.1–5 Rental fees and maintenance fees. This section is amended to add the maintenance fees to the existing rental fees, and to state when and under what circumstances each is due and payable. A new paragraph (g) is added to allow an exempted mining claim, if transferred to a party not entitled to a waiver, to have the rental or maintenance fee otherwise owed on the mining claim paid by the transferee at the time of recording the transfer pursuant to 3833.3 of this title. A new paragraph (h) is added to implement section 10105(c) of the Act of August 10, 1993. This section of the Act requires that the maintenance fee and location fee be adjusted every five years, or allows adjustments to be made sooner if the Secretary deems it reasonable, based upon any changes in the Consumer Price Index. Notice of any change is required to be given by July 1st of any year, with the new fee due by August 31st of that same year. A new paragraph (i) is added to state that the $100 annual maintenance fee applies to all mill and tunnel sites, and that a waiver of payment of the fee for mill and tunnel sites may be obtained under special circumstances.

Section 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993—Applicable from 12 O'clock noon on September 1, 1993, until 12 O'clock noon September 1, 1998. This section would be retitled and revised to identify the conditions under which a waiver of payment of the maintenance fees under the Act may be obtained.

Section 3833.1–7 Filing requirements for maintenance fee exemptions (waivers). This section would be revised to identify the documents required and deadlines for applying for a waiver of payment of the maintenance fees under the Act. This provision operates in advance of each upcoming assessment year. The assessment work performed during a given assessment year, certified to under this section, holds the mining claim for the next assessment year without payment of the maintenance fee. For those claimants who do not pay the required claim maintenance fee and who instead seek a waiver from such payment requirement, the failure to file a certified statement by each August 31 certifying that the assessment work was done for the assessment year just ending will cause the mining claim to be forfeited under the Act. In addition, failure to file affidavits of annual assessment work on or before December 30 of the year in which the small miner certification was made will cause the mining claim to be forfeited under the Federal Land Policy and Management Act. (For example, a certification filed by a qualified claimant on August 31, 1994, certifies performance of assessment work for the assessment year that began at noon on September 1, 1993. This allows a waiver of payment of the maintenance fee due on August 31, 1994, to hold the claim for the assessment year beginning at noon on September 1, 1994. However, if the affidavit of labor is not filed by December 30, 1994, for the work done for the assessment year beginning at noon September 1, 1993, the claims are deemed abandoned and void and are forfeited. This process begins again with the next certification deadline of August 31, 1995).

Section 3833.1–8 Refundability of service charges, location fees, rental and maintenance fees. This section, which would be moved from § 3833.0–5(v) in the current regulations, would be amended to reference location and maintenance fees, allow refunds of service fees in certain circumstances, allow for refunds of duplicate payments, and allow for refunds in any other situation in which a payment is made for a mining claim that was void by operation of law at the time the payment was made. Also added is a provision that voluntary actions are not considered a reason for a refund.

Section 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, the Act of October 5, 1992, and the Act of August 10, 1993. The section title would be revised to add the Act of August 10, 1993, and paragraphs (d) and (e) would be amended to reflect the new dates in 1999 when assessment work is required to be resumed when the Act expires.

Section 3833.2–6 When evidence or notice is not required. This section would be amended to add the conditions contained in the Act.

Section 3833.3 Notice of transfer of interest. Paragraph (c) would be amended to state clearly when a transfer of interest becomes effective on the title records of BLM.

Section 3833.4 Failure to file, or to pay rental, maintenance fees, or location fees. The section title would be revised by adding maintenance and location fees. Paragraph (a) would be amended by adding the conditions of the Act. The amendment in this paragraph would not allow claimants who do not qualify for a small miner waiver to claim a waiver on only ten or fewer claims. This provision does not cause an automatic relinquishment of a claimant's mining claims or sites that are over the ten-claim limit for small miner waivers. Paragraph (b) would be amended by correcting cross-references. A new paragraph (c) would be added to explain the Bureau's policy on the effect of failure by a purchaser or transferee of a mining claim or site to record the new ownership interest with the BLM.

Subpart 3851—Assessment Work: General. This subpart also would be amended to implement the statutory changes contained in the Act. A discussion of the sections to be affected and the changes to be made follows:

Section 3851.3 Effect of failure to perform assessment work. Paragraph (c) of this section would be amended to state that the Act suspends and supersedes the requirements to perform assessment work.

Section 3851.4 Failure of a co-owner to contribute to annual assessment work or to the payment of rental or maintenance fees. The section title would be amended by adding maintenance fees. The existing section is divided into new paragraphs (a) and (b) and the failure to pay the maintenance fee is added as another ground for action against a delinquent co-owner. A new paragraph (c) would be added to identify the action required of co-owners who have met the publication requirements of § 3851.4 to terminate the interest of a delinquent co-owner, and would like the BLM record title to the mining claim corrected. A new paragraph (d) would be added to refer to the Soldier's and Sailor's Relief Act and the fact that pursuant to that Act, an active duty military person may not be so "published out" for failure to contribute as long as he or she is on active duty and has complied with § 3851.6.

Section 3851.5 Assessment work not required after allowance of mineral entry. This section would be amended to reflect the effects of the Act on claims for which mineral patent applications have been filed. After the first half of the mineral entry final certificate has been issued by the Secretary of the Interior confirming the mineral entry, there is no longer a requirement to perform assessment work, and no requirement to pay the rental or maintenance fees.

New § 3851.6 Assessment work not required for active duty military personnel. This new section would be added to explain how an active duty military person may apply for and receive an exemption from the performance of assessment work and payment of maintenance fees under the Soldier's and Sailor's Relief Act.

Subpart 3852—Deferment of Assessment Work. This subpart would be amended for purposes of updating and clarification. Amendments would occur in the following sections.

Section 3852.0–3 Authority.

Section 3852.2 Filing of Petition for deferment, contents. The first two sentences of paragraph (a) would be revised to state clearly the filing requirements for a deferment of assessment work.

Section 3852.3 Notice of action on petition to be recorded. This section would be amended to state more clearly the recording requirements for a petitioner, once the BLM authorized officer has ruled on the merits of the petition for deferment of assessment work.

2. Removal of Obsolete Provisions and General Streamlining of Mining Law Regulations

Parts 3720, 3800, 3810 and 3820 of title 43, Code of Federal Regulations have subparts and sections that are no longer in effect or no longer operative due to the repeal of the statutes upon which they are based or the transfer of the regulatory authority to another Interior agency that has promulgated new rules to replace the current rules. The proposed rule would reflect these changes. Subpart 3827 is consolidated into subpart 3809, as the two sets of surface management regulations are duplicative.

Part 3720—Public Law 357; Entry and Location of Source Materials upon Public Lands Valuable for Coal; Subpart 3722—Report to Geological Survey. Existing part 3720 and subpart 3722 of this title are based upon Section 1 of the Act of August 11, 1955 (30 U.S.C. 541), concerning payment by mining claimants to the United States for the value of lignite coal mined and removed in the development of mines for source materials (uranium, thorium, and other radioactive minerals). As further provided by section 10 of the Act of August 11, 1955 (30 U.S.C. 541i), this provision expired on August 11, 1975, and all mining claims located upon coal-bearing lands under this Act terminated by operation of law unless patent had been applied for prior to August 11, 1975. All coal lands were removed from mineral location and entry as of August 11, 1975. Therefore, part 3720, including subpart 3722, would be removed in its entirety and the part number reserved for future use.

Subpart 3809—Surface Management. This subpart would be amended to add the statute designating the King Range Conservation Area to the authorities section, to define the term in the definitions section, and to include the King Range in § 3809.1–4(b) as an area requiring a mandatory plan of operations for all activities exceeding casual use. The authorities section will also be amended to include the Act of April 16, 1993, for Stockraising Homestead Act lands.

Subpart 3811—Lands Subject to Location and Purchase. Three sections in this subpart are no longer necessary and would be revised or removed. Section 3811.2–2 relates to lands in National Parks and National Monuments. The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively closed all National Parks and Monuments to any further mining claim location or mineral entry. After September 28, 1976, no mining claims could be located in any unit of the National Park System. The existing language of § 3811.2–2, which provides that certain National Parks and Monuments are open to mining claim location, no longer serves any purpose. Regulations governing access to existing mining claims on National Parks and Monuments, and operations thereon, were published by the National Park Service in 1977, and are now codified at 36 CFR part 9. Section 3811.2–2 would be revised to state simply that no units of the National Park System are open to the location of mining claims under the General Mining Law of 1872, as amended.

Section 3811.2–3 Lands in Indian reservations. This section would be revised to state that all Indian reservations are closed to the location of mining claims and to entry under the General Mining Law of 1872, as amended. The Papago Indian Reservation in Arizona (now called the To Ho No O'odham Reservation) was open to mining claim location and entry from June 18, 1934, until May 27, 1955, pursuant to the Act of June 18, 1934 (25 U.S.C. 461–479, as amended). Since May 27, 1955, this reservation has been closed to mining claim location, pursuant to the Act of May 27, 1955 (25 U.S.C. 463). All minerals on lands in Indian reservations may be acquired only by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982, 25 U.S.C. 2101 *et seq*. The regulations governing such mineral leasing is found in subchapter I, title 25, Code of Federal Regulations.

Section 3811.2–8 Lands under Alaska Public Sale Act. The Alaska Public Sale Act (48 U.S.C. 364a-364e) was repealed effective October 21, 1986, by Section 703(a) of FLPMA (43 U.S.C. 1701). Accordingly, § 3811.2–8 would be removed in this proposed rule.

Section 3821.0–3 Authority. This section is amended to add the Act of August 10, 1993, as one of the authorities for the regulations in part 3820.

Section 3821.2 Requirements for filing notices of locations of claims; descriptions. This section is amended to add maintenance, location, and service fees as fees payable under part 3820 when locating a claim. A further change states that the location notice or amendment is required to indicate the applicable acts under which the claim is filed.

Section 3821.3 Requirement for filing statements of assessment work. This section is amended to add the maintenance fee as a fee payable when complying with annual requirements under part 3820.

Subpart 3826—National Park Service Areas. This subpart was also rendered inoperative by the Act of September 28, 1976 (16 U.S.C. 1901 *et seq*.), which closed and withdrew from all forms of mineral entry and appropriation all lands and units of the National Park System. The authority for administering the mining claims and sites located within the units prior to September 28, 1976, has been transferred to the National Park Service. Access to and operations upon mining claims and sites located within the units of the National Park System are now governed by 36 CFR part 9, and subpart 3826 would be removed in this rule.

Subpart 3827—King Range National Conservation Area. This subpart will be removed because it is duplicated in subpart 3809. It became effective in April 1976 to implement the surface management requirements of the Act of October 21, 1970 (84 Stat. 1070), which established the King Range National Conservation Area. Section 5 of that Act required that all activities occurring pursuant to the General Mining Law of 1872 (30 U.S.C. 22 *et seq.*) be managed to prevent environmental damage and provide for reclamation. Subsequent to the April 1976 rule, on October 21, 1976, FLPMA was enacted. Section 302(b) of that Act required that all public lands be managed to prevent undue or unnecessary degradation from activities on them, including activities under the General Mining Law of 1872. Section 602 of FLPMA expanded the boundaries of the King Range Conservation Area. Subsequently, regulations were promulgated at 43 CFR subpart 3809 in November 1980 regulating all mining activities on public lands under the administration of the Bureau. These regulations in subpart 3809 duplicate subpart 3827 in form, content, and requirements. Therefore, the regulations in subpart 3827 would be merged with subpart 3809, and subpart 3809 would be amended to include the King Range Conservation Area, under the same criteria as currently apply to the California Desert Conservation Area. Since enactment of FLPMA, the BLM has received no Plans of Operations for mining in the King Range Conservation Area lands.

It has been determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The fee may represent an economic consideration for a small, marginal operation that does not qualify for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption. Most marginal claims were already abandoned in 1993 upon promulgation of the regulations implementing the Act of October 5, 1992.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The requirement that a modest fee be paid to hold or maintain an existing unpatented mining claim, mill or tunnel site constitutes a reasonable regulatory burden, and it will have no effect on a claimant's possessory interest in or enjoyment of his or her claim or site as long as he or she complies with the requirement.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR parts 3730, 3820, 3830, and 3850, and subpart 3809 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0104, 1004–0110, and 1004–0114. Information collections for parts 3730, 3820, 3830, and 3850 were consolidated under clearance number 1004–0114 in the July 15, 1993 rulemaking (58 FR 38186). As this rulemaking removes obsolete or inoperative sections of title 43, Code of Federal Regulations, and extends the previously enacted Act of October 5, 1992, and implementing regulations published on July 15, 1993, this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 3720

Coal, Mineral royalties, Mines, Public lands—mineral resources.

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3810

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR 3830

Mineral royalties, Fees, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of sections 441 and 2478 of the Revised Statutes, as amended, (43 U.S.C. 1457 and 1201); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 703(a) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 and 1740); and the acts October 5, 1992 (106 Stat. 1374), April 16, 1993 (107 Stat. 60), and August 10, 1993 (107 Stat. 312); parts 1820, 3730, 3820, 3830, and 3850, and subpart 3809, Groups 1800, 3700 and 3800, subchapters A and C, chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIALS UPON PUBLIC LANDS VALUABLE FOR COAL

1. Part 3720 is removed and reserved.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

2. The authority citation for part 3730 is revised to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 106 Stat. 1374, 1378–1379; Public Law 103–66, title X, subtitle B, secs. 10101–10106, of the Act of August 10, 1993 (107 Stat. 312).

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

3. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

(a) The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 (Act), is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(1) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or

(2) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit which has not been renewed more than once.

(b) Locations made under the Act on lands withdrawn or reserved for power development within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant are also subject to the provisions of the Act of April 8, 1948 (62 Stat. 162). See subpart 3821 of this title.

4. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authorities for the regulations in this part are the Act of August 11, 1955 (30 U.S.C. 621–625); section 314 of the Act of October 21, 1976 (43 U.S.C. 1744); Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–79); and Public Law 103–66 (sections 10101–10106), August 10, 1993 (107 Stat. 312).

5. Section 3730.0–9 is amended by revising paragraph (a) to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will enable the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (30 U.S.C. 621–625), Section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

* * * * *

Subpart 3734—Location and Assessment Work

6. Section 3734.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file all notices or certificates of location, amended notices or certificates, and transfers of interest, with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the applicable rental, maintenance, location, and service fees required by subpart 3833 of this title. The notice, certificate, transfer, or amendment thereto shall be marked by the owner to indicate that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as required by § 3833.5(c). Failure to so mark the location certificate will delay the procedures to authorize mining under subpart 3736.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work if he or she qualifies as a small miner under § 3833.0–5(u) of this title or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or Notice of Intent to Hold, pursuant to subpart 3833 of this title.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

7. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 447; 16 U.S.C. 347–354; 16 U.S.C. 460y *et seq.*; 16 U.S.C. 473, 478–482; 16 U.S.C. 1901, 1907; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 122, 161, 162; 30 U.S.C.

242; 31 U.S.C. 9701; 43 U.S.C. 2; 43 U.S.C. 154; 43 U.S.C. 299, 300; 43 U.S.C. 1201; 43 U.S.C. 1474; 43 U.S.C. 1701 *et seq.*; 50 U.S.C. Appendix 565; 62 Stat. 162; 100 Stat. 3457–3468; 106 Stat. 1374, 1378–1379; 107 Stat. 60; and 107 Stat. 312.

Subpart 3809—Surface Management

8. Section 3809.0–3 is amended by adding new paragraph (e) to read as follows:

§ 3809.0–3 Authority.

* * * * *

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

9. Section 3809.5 is amended by adding new paragraph (l) to read as follows:

§ 3809.0–5 Definitions.

* * * * *

(l) *King Range Conservation Area* means the area designated pursuant to the Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8).

10. Section 3809.1–4 is amended by adding new paragraph (b)(6) to read as follows:

§ 3809.1–4 Plan of operations: When required.

* * * * *

(b) * * *

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

* * * * *

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

11. Section 3811.2–2 is revised to read as follows:

§ 3811.2–2 Lands in national parks and monuments.

The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively withdrew all National Parks and Monuments from location and entry under the General Mining Law of 1872, as amended. Since September 28, 1976, all National Parks and Monuments and other units of the National Park System have been closed to the location of mining claims and sites under the General Mining Law of 1872, as amended. Valid existing rights are recognized, but access and permission to operate mining claims and sites within units of the National Park System are now governed by 36 CFR part 9.

12. Section 3811.2–3 is revised to read as follows:

§ 3811.2–3 Lands in Indian reservations.

All lands contained within the boundaries of an established Indian Reservation are withdrawn from all location, entry, and appropriation under the General Mining Law of 1872, as amended. All minerals on Indian Reservations may only be acquired by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). The regulations governing the mineral leasing of Indian lands are found in 25 CFR Subchapter I.

13. Section 3811.2–8 is removed.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3821—O. and C. Lands

14. Section 3821.0–3 is revised to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162); section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–79); and sections 10101–10106 of Public Law 103–66, August 10, 1993 (107 Stat. 312).

15. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file all notices or certificates of location, amended notices or certificates, and transfers of interest in the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and shall pay the applicable rental, maintenance, location, and service fees required by subpart 3833 of this title. The notice or certificate of location, or amendment thereto, shall be marked by the owner as being filed under the Act of April 8, 1948, and, if located on powersite lands, also the Act of August 11, 1955, as prescribed by §§ 3734.1 and 3833.5 of this title.

16. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O. and C. lands shall perform and record proof of annual assessment work, or pay an annual rental or maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

Subpart 3826—National Park Service Areas

Subpart 3826—[Removed & Reserved]

17. Subpart 3826 is removed and reserved.

Subpart 3827—King Range National Conservation Area.

Subpart 3827—[Removed & Reserved]

18. Subpart 3827 is removed and reserved.

PART 3830—LOCATION OF MINING CLAIMS

19. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22; 43 U.S.C. 1201; 31 U.S.C. 9701; 16 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C appendix 565; 106 Stat. 1374, 1378–79, 107 Stat. 60; 107 Stat. 312.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites; Payment of Service Charges, Rental, Maintenance, and Location Fees

20. Section 3833.0–1 is amended by revising paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual rental or maintenance fee, if required, for each mining claim, mill site, or tunnel site held by the claimant.

* * * * *

21. Section 3833.0–3 is amended by revising the first sentence of paragraph (a), revising paragraphs (e) and (f), and adding new paragraphs (g) and (h) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of the Federal Land Policy and Management

Act (43 U.S.C. 1744) require the recordation of unpatented mining claims, mill sites, and tunnel sites, and the filing of information concerning annual assessment work performed or a notice of intention to hold mining claims in the proper BLM office within specified time periods.* * *

* * * * *

(e) The Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), and sections 10101–10106 of the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312), require an annual rental or maintenance fee of $100 to be paid to the proper State Office of the Bureau of Land Management for each non-exempt mining claim, mill site, or tunnel site located or held under section 314(b) of FLPMA for the assessment years beginning on September 1, 1992, and ending on September 1, 1998. With certain exceptions provided in § 3833.1–6, this fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a)(1) of FLPMA. Failure to pay the fee within the time limits prescribed by the Acts of October 5, 1992, and August 10, 1993, constitutes a statutory abandonment and forfeiture of the non-exempt mining claim, mill site, or tunnel site. Provisions relating to rental and maintenance fees and exemptions are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242) requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law, including the Act of October 5, 1992. In addition, the Act of August 10, 1993, specifically states that the maintenance fee provision shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992. The $550 fee requirement for oil shale claims remains in effect. The $550 fee is first payable on or before December 31, 1993, and each December 31st thereafter.

(g) The Stockraising Homestead Act of December 29, 1916 (SRHA) (43 U.S.C. 299), as amended by the Act of April 16, 1993 (107 Stat. 60), provides that no person other than the surface owner may locate a mining claim on SRHA lands after October 13, 1993, until a notice of intent to locate has been filed with the proper BLM State office and the surface owner is notified of the filing.

(1)(i) When a notice of intent to locate a mining claim has been properly filed, no other person may, until 90 days after the date the notice of intent is filed:

(A) File such a notice with respect to any portions of the lands covered by the first notice;

(B) Explore for minerals or locate a mining claim on any portion of such lands; or

(C) File an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(ii) The 90-day exclusive right may be extended by filing a Plan of Operations pursuant to subpart 3809 of this title. The extension runs until the BLM has approved or denied the Plan of Operations.

(2) The mining claimant may not enter the lands encompassed by a notice under the Act of April 16, 1993, until at least 30 days after he or she has properly notified the surface owner by registered or certified mail, return receipt requested.

(3) The Act of April 16, 1993, contains numerous other requirements prerequisite to a claimant engaging in mineral exploration and development activities on SRHA lands. These requirements are administered pursuant to subpart 3814 of this title.

(h) The Soldier's and Sailor's Relief Act of 1940 (50 U.S.C. appendix 565) excuses performance of assessment work by military personnel while they are on active duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries. The procedures for obtaining a waiver from the performance of assessment work may be found in subpart 3851 of this title.

22. Section 3833.0–5 is amended by revising paragraphs (e), (g), (m), (o), and (t), removing paragraph (v), redesignating existing paragraph (w) as paragraph (v), and adding paragraphs (w), (x), (y), (z), (aa), (bb), and (cc) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(e) *Owner or claimant* means the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim, mill site, or tunnel site. The name of the owner and his or her current address shall be identified on all instruments required to be recorded or filed by the regulations in this subpart.

* * * * *

(g) *Proper BLM office* means the Bureau of Land Management State office listed in § 1821.2–1(d) of this title having jurisdiction over the land in which the claims or sites are located. In Alaska, the Northern District offices Records and Public Information Unit located in Fairbanks may also receive and record documents, filings, and fees for all mining claims, mill sites, and tunnel sites located in the State of Alaska.

* * * * *

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1–2, 3833.1–3, 3833.1–5, 3833.1–6, 3833.1–7, or § 3833.2, a filing or fee is timely if the required affidavit of assessment work or notice of intention to hold, or rental fee or maintenance fee, or maintenance fee waiver, is received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by the United States Postal Service within the period prescribed by law and received by the proper BLM State office within 15 calendar days subsequent to such period. (See § 1821.2–2(e) of this title if the last day falls on a day the office is closed).

* * * * *

(o) *Filing period* means the time period during which documents and fees are required to be provided to the proper BLM office. The time periods set forth in each statute are as follows:

(1) Except for filings and recordings required of a small miner qualifying for a waiver under § 3833.1–7 of this title, filings under FLPMA that would have been due on or before December 30, 1993, and each December 30 thereafter, are waived effective January 1, 1993, and so long thereafter as the Acts of October 5, 1992, and August 10, 1993, are in effect.

(2) Waivers from payment of maintenance fees and filings under sections 10101–10106 of the Act of August 10, 1993, shall be submitted by August 31, 1994, and each August 31 thereafter through and including August 31, 1998, under the conditions of that Act. See §§ 3833.1–6 and 3833.1–7.

(3) Rental and maintenance fees required by § 3833.1–5 are to be submitted to the proper BLM office by August 31, 1994, and each August 31 thereafter through and including August 31, 1998.

* * * * *

(t) *Rental fee* means the fee required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), to hold a mining claim, mill site, or tunnel site for the 1993 and 1994 assessment years or that was newly located in either of those years.

* * * * *

(w) *Maintenance fee* means the annual $100 payment required by section 10101 of the Act of August 10, 1993 (Pub.L. 103–66, 107 Stat. 312), to hold and maintain a mining claim, mill site, or tunnel site. The maintenance fee is in lieu of the requirements for performing assessment work under 30 U.S.C. 28–28e and for filing an annual affidavit of labor or notice of intention to hold with the proper office of the Bureau of Land Management under 43 U.S.C. 1744(a) and (c) and § 3833.2. Under certain conditions provided in § 3833.1–6, a waiver of the payment of the $100 annual fee may be obtained. The requirement to pay a maintenance fee does not apply to any claim located after September 29, 1998. The maintenance fee requirements are governed by §§ 3833.1–5, 3833.1–6 and 3833.1–7.

(x) *Location fee* means the one time $25 payment required by section 10102 of the Act of August 10, 1993, for all new mining claims and sites located upon the public lands on or after August 11, 1993, and before September 30, 1998. The location fee shall be paid at the time the mining claim or site is recorded with the proper BLM office.

(y) *Related party* means, as defined in section 10101(d)(2) of the Act of August 10, 1993:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

(z) *Control* means, as defined in section 10101(d)(2) of the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(aa) *Forfeiture* means an act or failure to act that results in an unpatented mining claim, mill, or tunnel site being deemed to be either abandoned and void or null and void by operation of applicable law.

(bb) *Returnable* means that a check or negotiable instrument, including a valid credit card order, is received by the authorized officer but not yet processed through the accounting system of the Bureau of Land Management, and can be returned to the originator without processing of a refund check through the United States Treasury pursuant to § 3833.1–8.

(cc) *Refundable* means that a check or negotiable instrument, including a valid credit card order, has been processed through the accounting system of the Bureau of Land Management, and cannot be returned to the originator without the processing of a refund check through the United States Treasury pursuant to § 3833.1–8.

23. Section 3833.0–9 is amended by revising paragraph (a) to read as follows:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to enable BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites their owner(s) wish to continue to hold under applicable Federal statute. A response is required to obtain a benefit in accordance with section 314 of FLPMA, as amended, the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), the Act of April 16, 1993 (Pub. L. 103–23, 107 Stat. 60), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

* * * * *

24. Section 3833.1–2 is amended by adding paragraph (c) to read as follows:

§ 3833.1–2 Recordation of mining claims, mill sites, and tunnel sites located after October 21, 1976.

* * * * *

(c)(1) Beginning on October 13, 1993, mining claims cannot be located on lands patented under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993 (1707 Stat 60); until the claimant has first filed a notice of intent to locate with the proper BLM State Office and has served a copy of the notice upon the surface owner(s) of record, by registered or certified mail, return receipt requested.

(2) The claimant shall wait 30 days after such service before entering the lands to locate any mining claims on the Stockraising Homestead Act lands.

(3) The authorized officer will refuse to record any mining claim located on lands patented under the Stockraising Homestead Act, as amended, unless the claimant has complied with the requirements of this section, and such refused recording will be returned to the claimant without further action.

(4) The surface owner of land patented under the Stock-raising Homestead Act, as amended, is exempt from the requirements of this section.

(5) All mining claimants who have located mining claims on Stockraising Homestead lands are subject to the requirements of the Act of April 16, 1993. These additional requirements are found in subpart 3814 of this title.

25. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges, rental fees, maintenance fess, and location fees: form of remittance and acceptance.

(a) *Payment and acceptance policy.* All service charges, rental fees, maintenance fees, and location fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior—Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management. A check or negotiable instrument, including credit cards submitted for payment of charges and/or fees, for which payment is not honored by the issuing authority, and such refusal is not an error of the issuing authority, shall be deemed to be a nonpayment of the charges or fees for which the check or negotiable instrument, including a credit card order, was tendered. See § 3833.1–4(f) and (g) for payments made by credit cards or from Declining Deposit Accounts.

(b) *Recordation of new mining claims, mill sites, or tunnel sites with the Bureau of Land Management.* (1) New location notices or certificates submitted for recording pursuant to § 3833.1–2 that are not accompanied by full payment of the maintenance and location fees required by § 3833.1–4 or 3833.1–5 shall not be accepted and the submittal will be returned without further action by the authorized officer. The claimant may resubmit the filings with the proper payment of service charges and fees within the same 90 day filing period referred to in § 3833.1–2(a).

(2) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for new location notices or certificates submitted for recording pursuant to § 3833.1–2 when the proper maintenance and location fees have been submitted. Such documents shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice that will be sent by the authorized officer. The claimant may resubmit the notices or certificates of location with the proper payment of service charges and fees within the same

90-day filing period referred to in § 3833.1–2(a). Failure to submit the proper service charge as provided in this paragraph will cause the new location notices or certificates to be rejected and returned to the claimant/owner.

(c) *Mining claims, mill sites, and tunnel sites recorded and serialized by the Bureau of Land Management.* (1) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for documents and filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1. Such documents and filings will be noted as being recorded on the date initially received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge as required by this paragraph will cause filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1 to be rejected and returned to the claimant/owner. If a payment is received that partially covers the claims submitted, the payment shall be applied to claims in ascending numerical order of serialization.

(2) If a claimant fails to submit the proper rental or maintenance fees on or before each August 31, the authorized officer will apply the rental or maintenance fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant. The authorized officer will note the deficient fees as being paid on the original date received, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer, if that much time remains before August 31. If there are less than 30 days before August 31, the correct fees shall be filed (see § 3833.0–5(m)) by such claimant on or before the August 31 deadline. Failure to submit the proper fees will cause the remaining claims or sites to be forfeited by the claimant/owner.

(3) After each August 31 payment deadline, if a claimant failed to file full payment of the proper rental or maintenance fees on time, the authorized officer will apply any rental or maintenance fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization. Existing mining claims and sites to which no rental fee or maintenance fee can be applied because of the insufficiency of the funds paid to the authorized officer will be deemed null and void by operation of law, and therefore forfeited by the owner.

26. Section 3833.1–4 is amended by revising the section title; redesignating existing paragraphs (b) through (f) as (c) through (g), respectively; revising redesignated paragraphs (f) and (g); and adding a new paragraph (b), to read as follows:

§ 3833.1–4 Service charges and location fees.

* * * * *

(b) Each notice or certificate of location of a mining claim, mill site, or tunnel site that is located on or after August 11, 1993, and before September 30, 1998, shall, when submitted for recordation, be accompanied by a one time nonrefundable location fee of $25.00.

* * * * *

(f) The claimant/owner may authorize the BLM to charge payment of service charges, rental fees, maintenance fees, and location fees to his or her credit card under § 3833.1–3(a) by transmitting a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization by telephone if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(g) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges, rental fees, maintenance fees, and location fees. The authorized officer may deduct the necessary service charges and fees from such account only at the direction of the claimant/owner.

27. Section 3833.1–5 is revised to read as follows:

§ 3833.1–5 Rental fees and maintenance fees.

Except as provided in §§ 3833.0–3(f), 3833.1–6, and 3833.1–8, each claimant shall pay a nonrefundable rental or maintenance fee of $100.00 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Acts of October 5, 1992, and August 10, 1993, begin at 12 o'clock noon on September 1, 1992, and end at 12 o'clock noon on September 1, 1999. The $100 rental or maintenance fee requirement does not apply to oil shale placer claims. Oil shale placer claim holders shall pay an annual $550 fee for each oil shale claim as described in section 2511 of the Energy Policy Act of 1992 (30 U.S.C. 242). Payment of the rental fee for 1993 and/or 1994 shall satisfy any maintenance fee requirements that might otherwise apply for these years. The rental fee requirements for mining claims expire on September 30, 1994.

(a)(1) The initial $100.00 nonrefundable rental or maintenance fee for the assessment year in which the mining claim or site was located shall be paid for each mining claim, mill site, or tunnel site at the time of recording the mining claim, mill site, or tunnel site pursuant to section 314(b) of FLPMA and § 3833.1–2. In addition, the location fee required in § 3833.1–4(b) shall be paid at the time of recordation for all claims and sites located on or after August 11, 1993, and before September 30, 1998.

(2) The initial rental or maintenance fee described in paragraph (1) is not subject to the waiver provisions contained in §§ 3833.1–6 and 3833.1–7.

(b) Under the Act of August 10, 1993, a nonrefundable maintenance fee of $100.00 for each mining claim, mill site, or tunnel site shall be paid annually on or before August 31 for the subsequent assessment year beginning at 12 o'clock noon on September 1 of that year. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the maintenance fee is being paid.

(c) There will be no proration of rental or maintenance fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under the exemption provisions of §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental or maintenance fee.

(e) The owner of an oil shale placer claim shall pay the required $550 annual rental fee to the proper BLM State Office on or before each December 31.

(f) The payment of the required rental or maintenance fee for a mining claim, mill site, or tunnel site satisfies the requirement to file an affidavit of assessment work or a notice of intention to hold pursuant to § 3833.2.

(g) If an exempted mining claim or site is transferred in total to a party not entitled to an exemption, the exemption is forfeited for the mining claim or site transferred. The rental or maintenance fee for the exempted assessment year shall be paid for the mining claim or site transferred at the time of filing the transfer of interest under § 3833.3. If the proper fees are not submitted at the time of such filing, the authorized officer shall note the fees as being paid as of the date of the filing, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper fees will cause the claims or sites to be forfeited by the claimant/owner.

(h) The Secretary will adjust the location and maintenance fees every five years, based upon the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics, Department of Labor. The Secretary may adjust the location and maintenance fees sooner, if he deems it reasonable, based upon changes in the CPI.

(1) Public notice of any adjustment of maintenance or location fees will be provided by July 1 of any year an adjustment is made.

(2) Any such adjustment of maintenance or location fees will apply to the first assessment year following the July 1 by which the notice was given. The new fee is due on August 31 of the same year in which the notice was given.

(i) The $100 annual maintenance fee applies to all mill sites and tunnel sites. A waiver of the maintenance fee may be obtained under special circumstances as provided in § 3833.1–6(a), (b), (c), and (d).

28. Section 3833.1–6 is revised to read as follows:

§ 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993, and other exceptions—applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the maintenance fee. Assessment work shall conform to the requirements contained in subpart 3851 of this title.

(a) In order to qualify for a waiver of the maintenance fee requirements, a small miner shall meet all of the following conditions:

(1) The claimant and all related parties shall hold no more than 10 mining claims, mill sites, and tunnel sites, or any combination thereof, on Federal lands in the United States. For purposes of determining the small miner waiver, oil shale claims shall not be counted toward the 10 claim limitation for the small miner waiver to the $100 maintenance fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the maintenance fee in addition to filing for a small miner waiver.

(2) All mining claims and sites held by a claimant and all related parties shall be counted toward the 10 claim and site limit.

(3) Mill and tunnel sites of a qualified small miner, if listed upon the exemption certificate along with the affected lode and placer mining claims, are waived from payment of the $100 maintenance.

(b) Mining claims and sites that are undergoing final reclamation as approved by the authorized officer with no intent by the owner thereof to continue mining, milling, or processing operations upon or under the mining claims or sites, are excused from payment of the maintenance fees. The owner shall file a certified statement by August 31 in the proper BLM office attesting to the reclamation status of the affected mining claims and/or sites, with reference to a reclamation plan approved by the authorized officer, and to his or her intent to place them into permanent closure. A certified statement of such intent and reclamation shall be filed pursuant to § 3833.1–7. The number of mining claims or sites that may properly qualify for a reclamation waiver pursuant to this paragraph is not restricted to a 10-claim limit.

(c) Pursuant to the Soldier's and Sailor's Relief Act (50 U.S.C. appendix 565), military personnel on active duty status may, under certain conditions, qualify for an exemption from the performance of assessment work and the payment of maintenance fees. See §§ 3833.1–7(e)(2) and 3851.6 of this title.

(d) Under the following circumstances, a waiver may be obtained from the payment of the maintenance fee for mining claims and sites located upon National Park System lands:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906) or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites on National Park Service lands.

(2) The claimant shall file proof of the above conditions for exemption, attested to as a certified statement, pursuant to § 3833.1–7, with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought.

(e) Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28(b)–(e) and subpart 3852 of this title may be deferred during the period for which the deferment is granted. Deferments are governed by the following conditions:

(1) If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

(i) If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment, all deferred fees shall be paid within 30 days of the end of the deferment, unless the claimant/owner qualifies as a small miner. If the claimant/owner qualifies as a small miner, all deferred assessment work shall be done as provided in § 3852.5 of this title prior to filing for a small miner waiver.

(ii) If the petition for deferment is denied by the authorized officer, the maintenance fees shall be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the maintenance fees owed will result in the claims contained within the petition being forfeited.

(f) On mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title. However, no refund of previously deposited maintenance fees will be made to the mineral patent applicant.

29. Section 3833.1–7 is revised to read as follows:

§ 3833.1–7 Filing requirements for maintenance fee waivers.

(a) A small miner exemption certification previously filed for the assessment year ending at noon on September 1, 1994, under the Act of October 5, 1992, and the pertinent regulations in effect on August 31, 1993 will be considered proper certification for a waiver of payment of the maintenance fee due on August 31, 1994.

(b) The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to § 3833.2 and shall meet the requirements of § 3833.2–4.

(c) To obtain the small miner's waiver for the assessment year ending at noon on September 1, 1994, the affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper BLM office. The certified statement required by paragraph (d) for those who are not covered by a waiver under paragraph (a) of this section shall be filed in the proper BLM office on or before August 31, 1994, and shall contain all of the information required in paragraph (d). For mining claims and sites covered by a waiver, the filing of a certified statement pursuant to any of paragraph (d), (e), or (f) of this section will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2–5, when such notice of intention to hold is otherwise required.

(d) In order to hold mining claims or sites for the assessment year beginning at 12 o'clock noon on September 1, 1994, each small miner shall file a certified statement on or before August 31, 1994. Each small miner shall file a certified statement on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through August 31, 1998. The small miner shall support the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001. The certified statement shall contain:

(1) The mining claim and site names and BLM serial numbers assigned to the mining claims and sites held by the small miner;

(2) A declaration by the claimant and all related parties that they own no more than 10 mining claims and sites in total nationwide on the date the waiver is due;

(3) A declaration that specifies that the assessment work requirements have been completed for the assessment year just ending;

(4) The names and addresses of all owners maintaining an interest in the mining claims and sites; and

(5) The signatures of all the owners of the mining claims and sites for which a waiver is claimed.

(e) Pursuant to the Soldier's and Sailor's Relief Act, and § 3851.6 of this title, a military person entering active service may file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service.

(1) The notice shall be filed in the assessment year that the person entered active duty status.

(2) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(3) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year next following the assessment year in which the person was released from active duty or a military hospital.

(4) The notice shall be filed as a certified statement pursuant to paragraph (d) of this section, and shall list all mining claims and sites affected by claim/site name and BLM serial number.

(f) Claimants holding claims that are excused from performance of assessment work by other statutes are also excused from payment of maintenance fees as part of their waivers. The claimant/owner shall file a certified statement pursuant to paragraph (d) of this section on or before each August 31 in the proper BLM office, identifying the statute that exempts the claims from assessment work.

30. Section 3833.1–8 is added to read as follows:

§ 3833.1–8 Refundability of service charges, location fees, rental and maintenance fees.

(a) Service charges submitted for new recordings under § 3833.1–2 are not returnable or refundable after the document received has been docketed and/or serialized.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 and 3833.3 are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned and void by operation of law.

(c) Rental fees, maintenance fees, and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were paid, to be null and void, abandoned and void by operation of law, or otherwise forfeited.

(d) Rental fees, maintenance fees, location fees, or service charges made in duplicate for the same claim or site are returnable or refundable. When the authorized officer receives a request for a return or refund of such fees or charges, and unless otherwise jointly instructed in writing by the paying parties, the authorized officer will refund the duplicate payment to the party submitting such duplicate payment.

(e) Voluntary actions such as relinquishment of claims or sites, or payment of rental or maintenance fees by a qualified small miner, shall not be a qualifying reason for obtaining a refund of such fees previously paid.

31. Section 3833.2–3 is amended by revising the section heading and paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, the Act of October 5, 1992, and the Act of August 10, 1993.

* * * * *

(d) The Acts of October 5, 1992 and August 10, 1993, do not affect the requirements to do assessment work in the assessment year beginning at 12 o'clock noon on September 1, 1999, and ending at 12 o'clock noon on September 1, 2000, or to make annual filings on or before December 30, 2000, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1998, and on or before September 30, 1998, and for which the required $100 maintenance fee was paid at the time of recording pursuant to section 314(b) of FLPMA and § 3833.1–2, payment of the maintenance fee satisfies the requirements of § 3833.2 for the 1999 calendar year.

32. Section 3833.2–6 is revised to read as follows:

§ 3833.2–6 When evidence or notice is not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim or mill site need not be filed on unpatented mining claims or mill sites if mineral entry under a mineral patent application has been allowed. The owner of that mining claim or mill site is exempt from the filing requirements of § 3833.2 and the payment of rental or maintenance fees under § 3833.1–5 as of the date mineral entry is allowed.

33. Section 3833.3 is amended by adding paragraph (c) to read as follows:

§ 3833.3 Notice of transfer of interest.

* * * * *

(c) The filing of a transfer of interest, when properly executed and recorded under State law, is effective when recorded with the proper BLM office. For BLM record title purposes, the transfer will be deemed to have taken place on its effective date under State law.

34. Section 3833.4 is amended by revising the heading and paragraphs (a) and (b), redesignating paragraphs (c)

through (e) as (d) through (f), respectively, and adding paragraph (c), to read as follows:

§ 3833.4 Failure to file, or to pay rental, maintenance, or location fees.

(a)(1)(i) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before the December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the rental or maintenance fees, shall conclusively constitute a forfeiture of the lode or placer mining claim.

(ii) Except for the filings required on or before December 30, 1992, beginning on October 5, 1992, the requirements of §§ 3833.2–1 through 3833.2–5 are modified by the requirements of the Acts of October 5, 1992, and August 10, 1993, and the Energy Policy Act of 1992, and these statutory provisions are now implemented in §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(2) Failure to record the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or failure to pay the rental, maintenance, or location fees required by §§ 3833.1–4, 3833.1–5, and 3833.1–7, or failure to file the documents required by § 3833.1–7(b) through (d) within the time periods prescribed therein for claimants who also fail to pay the maintenance fee, shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site.

(3) For claimants who also fail to pay the maintenance fee, failure by a claimant who has filed a waiver certification under § 3833.1–7 to perform the assessment work required by subpart 3851 of this title at the time of filing the waiver certification, if the work was required under § 3833.1–7(a) through (d), will result in the affected mining claims being conclusively deemed forfeited by the owner or owners thereof.

(4) Failure to list the 10 or fewer mining claims and/or sites for which the fee is waived on the applicable certification document filed pursuant to § 3833.1–6 or § 3833.1–7 or to pay the required amount of maintenance fees by the prescribed August 31 will result in the affected mining claims and/or sites being conclusively deemed forfeited by the owner or owners thereof.

(b) Failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7(d) through (f), 3833.2–4(a), 3833.2–4(b), and 3833.2–5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner and therefore forfeited.

(c) Failure to record a transfer of interest under § 3833.3 will result in the Bureau of Land Management refusing to recognize the interest acquired by the transferee or to serve notice of any action, decision, or contest on the unrecorded owner.

* * * * *

PART 3850—ASSESSMENT WORK

35. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28(e); 50 U.S.C. Appendix 565; 106 Stat. 1374, 1378–79; 107 Stat. 312.

Subpart 3851—Assessment Work: General

36. Section 3851.3 is amended by revising paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(c) The Acts of October 5, 1992, and August 10, 1993, with certain exceptions for small miners, temporarily suspend and supersede the requirement to perform assessment work under § 3851.1, and require the payment of an annual $100 rental or maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The rental and maintenance fee requirements and exemptions from payment of the rental fee or waivers from the maintenance fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

37. Section 3851.4 is revised to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of rental or maintenance fees.

(a) Upon the failure of any co-owner of a mining claim to contribute a proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the rental or maintenance fee required under §§ 3833.1–5 and 3833.1–6 of this title, may, at the expiration of the year, give such delinquent co-owner personal notice of this failure. This notice must be given in writing, or such notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) above who requests the authorized officer to change the ownership records of the affected mining claims shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute, or

(2) Evidence of personal service of the notice of delinquency upon the delinquent party. If personal service is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If service was made in person, an affidavit of service signed and dated on the date of service will suffice as evidence of such service; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the record title of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1–4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

38. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work and payment of rental or maintenance fees is not required after the date that the mineral entry has been allowed.

(a) The assessment year in which the mineral entry is allowed by the issuance of the first half of the mineral entry final certificate is the first assessment year for which the assessment work and payment of rental or maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of rental or maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

39. Section 3851.6 is added to read as follows:

§ 3851.6 Assessment work not required for active duty military personnel.

Pursuant to the Soldier's and Sailor's Relief Act (50 U.S.C. appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital.

(d) The notice shall be filed as a certified statement pursuant to § 3833.1–7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

Subpart 3852—Deferment of Assessment Work

40. Section 3852.2 is amended by revising the first and second sentences in paragraph (a) to read as follows:

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded.

* * * * *

40. Section 3852.3 is revised to read as follows:

§ 3852.3 Notice of action on petition to be recorded.

The claimant shall file or record in the local recording office in which he filed or recorded his notice of petition for deferment a copy of the order or decision of the BLM authorized officer disposing of the petition.

Dated: April 8, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11346 Filed 5–10–94; 8:45 am]

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Wednesday
May 11, 1994

Part VIII

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 925

Olympic Coast National Marine Sanctuary Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

[901064–0264]

RIN 0648–AC63

Olympic Coast National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of National Marine Sanctuary Designation; final rule; and summary of final Management Plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), by the Designation Document contained in this document, and as required by section 205(a)(4) of Public Law No. 100–627, designates an approximately 2,500 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, off the Olympic Peninsula of Washington State, including the waters of the Strait of Juan de Fuca eastward to Koitlah Point, as the Olympic Coast National Marine Sanctuary (Sanctuary). This document publishes the final Management Plan detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary.

Further, NOAA, by this document, issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservational, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Sanctuary.

EFFECTIVE DATES: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), the Governor of the State of Washington has 45 days of continuous session of Congress beginning on the day on which this notice is published to review the designation and regulations before they take effect. After 45 days, the designation and regulations automatically become final and take effect. However, if the Governor of the State of Washington certifies within the 45-day period to the Secretary of Commerce that the designation or any of its terms are unacceptable, the designation or the unacceptable terms cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State. If the Secretary considers that such disapproval will affect the designation in a manner that the goals and objectives of the Sanctuary cannot be fulfilled, the Secretary may withdraw the designation. A document announcing the effective date will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Environmental Impact Statement and Management Plan (FEIS/MP) prepared for the designation are available upon request from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, Silver Spring, MD 20910, (301) 713–3125.

FOR FURTHER INFORMATION CONTACT: Nina Garfield, (301) 713–3141.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303 of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1433), provides that the Secretary may designate any discrete area of the marine environment as a National Marine Sanctuary if the Secretary determines that such designation will fulfill the purposes and policies of the Act as set forth in section 301(b) (16 U.S.C. 1431(b)) and finds that:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing state and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(3) Designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10–15, section 3.01(z), January 11, 1988. The authority to administer the other provisions of the Act has been re-delegated to the Assistant Administrator of NOAA for Ocean Services and Coastal Zone Management by NOAA Circular 83–38, Directive 05–50, September 21, 1983, as amended.

The coastal and ocean waters off the Olympic Coast were recognized for their high natural resource and human use values and placed on the National Marine Sanctuary Program Site Evaluation List (SEL) in August of 1983 (48 FR 35568). In 1988, Congress reauthorized and amended the Act and directed the Secretary to designate the Olympic Coast National Marine Sanctuary (Pub. L. 100–627, section 205(a)). In report language accompanying this legislation, Congress noted that the Olympic Coast possesses a unique and nationally significant collection of flora and fauna, and that adjacency of the area to the Olympic National Park merits the designation of this area as a national marine sanctuary (H. Rep. No. 4210, 100th Cong., 1st. Sess., 1988).

NOAA held four scoping meetings in Washington State April 10–13, 1989, to solicit public comments on the designation: Aberdeen on April 10, Port Angeles on April 11, Forks on April 12, and Seattle on April 13 (45 FR 10398, March 13, 1989).

On September 20, 1991, NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) (56 FR 47836). Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held on November 6th in Port Angeles, November 7th in Seattle, November 12th in Olympia, November 13th in Aberdeen, November 14th in Seaview, and November 20th in Washington DC. On November 14th, 1991, the period for submitting public comments was extended from November 27th, 1991 to December 13th, 1991 pursuant to requests from the State of Washington and the coastal counties (56 FR 57869). All comments received by NOAA in response to the **Federal Register** notice and at the public hearings were considered and, where appropriate, incorporated in the final regulations and FEIS/MP. A summary of the comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow.

II. Comments and Responses

Issue: Boundaries

Boundary Alternative 1

Comment: NOAA should choose boundary alternative 1 because: (1) it contains most of the unique ecological features off the Washington Coast; (2) NOAA can offer greater protection to the coastal features than the resources further offshore in the event of a spill of hazardous materials; and (3) vessel traffic would be least affected, thereby ensuring safer seas.

Response: NOAA disagrees. Boundary alternative 1 contains most of the ecological features visible above the sea surface. However, a marine sanctuary should encompass a discrete ecological unit with definable boundaries (16 U.S.C. 1433 (b)(1)(F)). The marine mammals and seabirds that transit the waters off the Olympic Peninsula and colonize the offshore rocks and islands forage in the rich waters and benthic communities over and on the continental shelf. The shelf is broad off the Strait of Juan de Fuca. The seaward extent of the shelf coupled with the upwelling produced from the Juan de Fuca Canyon are the physical parameters that support the food chain from the plankton to the marine mammals and seabirds. The offshore rocks and intertidal communities are only one habitat within the marine ecosystem off the Olympic Coast. Therefore, the marine sanctuary should encompass the ecologically significant offshore waters.

With respect to NOAA's ability to protect the offshore waters in the event of a spill, NOAA agrees that there is little that can be done once a spill has occurred. The high seas would most likely render response capabilities ineffective. However, NOAA will coordinate with the U.S. Coast Guard, the Washington State Office of Marine Safety, and the coastal tribes to ensure that there is an adequate response capability for the coastal waters, intertidal regions, and beaches along the sanctuary including seabird and marine mammal rescue capabilities.

Extension of the Sanctuary boundary to the shelf edge provides a buffer area for protecting the coastal resources. NOAA is working with the U.S. Coast Guard to develop a proposal for an Area to be Avoided (ATBA) from the shoreward boundary to 25 nautical miles offshore of the Olympic Peninsula. This ATBA is designed to provide sufficient time to respond to a vessel that loses power off the Olympic Peninsula. The ATBA is compatible with many of the existing voluntarily adhered to traffic patterns along the coast and thus adds only minimal time and distance to transits between the Strait of Juan de Fuca and destinations to the south.

Boundary Alternative 2

Comment: NOAA should choose boundary alternative 2 as the preferred alternative.

Response: NOAA disagrees for the same reasons stated in response to the previous comment. The seaward extent of boundary alternative 2, which approximates the 50 fathom isobath, has no relation to the seaward extent of the coastal ecosystem.

Boundary Alternative 3

Comment: NOAA should choose boundary alternative 3 as the preferred alternative.

Response: Boundary Alternative 3 excludes the Juan de Fuca Canyon, which is one of the richest regions of the offshore oceanic ecosystem. It also excludes some of the highest concentrations of human uses which threaten the health of the marine ecosystem off the Olympic Peninsula.

Comment: NOAA should not choose boundary alternative 3 as the preferred alternative because it will be too restrictive for vessel traffic.

Response: NOAA is proposing no regulations that will unduly restrict vessel traffic. (See response to comment on boundary alternative 1).

Boundary Alternative 4

Comment: NOAA should select boundary alternative 4 as the preferred alternative because:

(1) Many of the unique unspoiled ecological resources that might be significantly impacted by oil are located in the physically complex area north of Pt. Grenville including areas of submarine canyons, productive fishing grounds, and coastal features that are critical habitat;

(2) Sanctuary status in the southern portion of the study area would conflict with state managed activities such as dredged material disposal, while most of the shoreline in the north has little commercial activity; and

(3) NOAA can enlarge the boundary in the future.

Response: NOAA agrees. One of the most valuable qualities of the Olympic Peninsula is that it is undeveloped and relatively pristine. NOAA recognizes that the southern portion of the boundary is much more developed, especially with respect to the harbor maintenance activities in Grays Harbor. Further, the rocky intertidal habitats in the north are much more sensitive to pollution from oil and gas compared to the sandy beach environments in the southern portion of the study area. In the event of a spill of hazardous materials, experts predict that it would take years for intertidal communities of rocky intertidal environments to become reestablished, whereas it would take an order of months for the sandy intertidal communities to recolonize. Lastly, NOAA can expand Sanctuary boundary 4 in the future, in accordance with the requirements of the Marine Protection, Research, and Sanctuaries Act (MPRSA), the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA), if deemed necessary.

Comment: NOAA should not choose boundary alternative 4 because:

(1) It is not scientifically defensible for it fails to protect the important and environmentally delicate estuaries along the southern coast;

(2) It would render ineffective NOAA's resource monitoring and sanctuary enforcement mandates; and

(3) It will be too restrictive for vessel traffic.

Response: The boundary of a marine sanctuary should approximate the most identifiable boundaries of a marine ecosystem. The Site Evaluation List (SEL), from which sites are selected for consideration as marine sanctuaries, identified the coastal offshore islands as the core of the proposed Olympic Coast National Marine Sanctuary (originally identified as the Western Washington Outer Coast). With this focus, NOAA has determined that the boundaries of the ecosystem are encompassed by boundary alternative 4. NOAA recognizes that the coastal estuaries are ecologically valuable and that many organisms that exist within, or transit through boundary alternative 4, depend on the estuaries. However, while the estuaries and outer coast are ecologically linked, the productivity of the two environments is a function of very distinct environmental processes.

NOAA believes that protection of the estuaries could be best achieved through possible inclusion of these areas in programs targeting estuarine management such as, the National Estuarine Research Reserve System, the National Estuary Program, or the Coastal Zone Management Program.

NOAA believes that the size of the sanctuary encompassed by boundary alternative 4 is manageable with respect to research and monitoring initiatives.

As discussed above, NOAA is working with the U.S. Coast Guard to develop a proposal for an ATBA off the northern Olympic Peninsula. It is designed to be as compatible with existing customary practices among mariners as possible. NOAA is not promulgating vessel traffic regulations with designation.

Boundary Alternative 5

Comment: NOAA should choose boundary alternative 5 because:

(1) Activities that are, or could occur, in the southern portion of the study area can affect the resources in the north;
(2) The entire study area is ecologically connected;
(3) The management needs are greatest in the south;
(4) The sanctuary management regime would complement existing management initiatives (Willapa Bay watershed planning processes, Columbia and Snake River Salmon Recovery Planning, State National Heritage Plans); and
(5) Expansion of the Sanctuary boundary in the future will be too time-consuming.

Response: NOAA's preferred boundary alternative is based on an ecologically identifiable boundary. The northern and southern portions of the study area are distinct with respect to their coastal and offshore ecology. NOAA can protect Sanctuary resources from outside activities through the prohibition on discharges outside the Sanctuary boundary that enter and injure Sanctuary resources. NOAA will be involved in planning activities that could potentially threaten Sanctuary resources outside its boundary. The boundary can be expanded in the future if needed.

Comment: NOAA should not choose boundary alternative 5 because it is not necessary to encompass the entire Washington coastline as a marine sanctuary, and it would eliminate any future development of the coastal areas.

Response: NOAA agrees. See response to previous comment.

Comment: A more detailed analysis of the impacts of sanctuary designation must be undertaken before seriously considering boundary alternative 5.

Response: NOAA has undertaken an extensive analysis of the uses and ecology of the southern portion of the study area and believes that the ecologically sensitive estuarine environments are adequately protected.

Alternative Boundary Suggestions

Comment: NOAA should establish a series of smaller site-specific areas surrounding unique marine resources, such as ocean waters immediately adjacent to already protected terrestrial ecosystems such as wildlife refuges and the Olympic National Park. This alternative would afford sanctuary status to marine resources while maintaining provisions for compatible ocean uses.

Response: NOAA disagrees. Smaller site-specific areas would not encompass an ecosystem for the reasons stated above. Further, designation of the marine sanctuary would allow for the continuation of pre-existing and compatible uses.

Comment: NOAA's analysis of the resources within the study area identified the southern portion as highly important in terms of wildlife and fishery values, particularly the areas in and surrounding Willapa Bay. NOAA should consider modifying boundary alternative 4 by adding a satellite site encompassing the estuarine environment and the offshore waters of Willapa Bay.

Response: NOAA's analysis confirmed that the estuarine areas in the southern portion of the study area are significant natural resources and that many of the resources utilize the waters off the northern coast as well. However, NOAA has determined that the estuarine ecosystems are distinct from the higher energy marine environment of the northern portion of the study area. In addition, the activities in, and adjacent to Grays Harbor are managed pursuant to an existing estuarine management plan promulgated pursuant to the Washington State Shorelands Management Act. The residents living in the watersheds of Willapa Bay are currently preparing an estuarine management plan.

Comment: NOAA should consider the creation of a north and south Olympic Coast National Marine Sanctuary with separate but coordinated management regimes.

Response: The Act requires the designation of one sanctuary on the Western Washington Outer Coast with the offshore Islands and coastal areas of the northern Olympic Peninsula as the core area of the sanctuary. In carrying out this mandate, NOAA examined the seaward, northerly, southerly, and easterly extent of the ecosystem that has as its core the intertidal communities of the outer coast.

Comment: The boundary of the Sanctuary should be modified as further cetacean information is available.

Response: NOAA can modify the boundary in the future, in accordance with the requirements of the MPRSA, the NEPA and the APA, as more information becomes available.

Modification of the Western Boundary

Comment: The outer boundary of the sanctuary should extend westward to a point that minimizes restrictions and needless re-routing of vessel traffic and harbor maintenance activities at the opening of Grays Harbor. To accomplish this objective, the outer limit of the sanctuary should be set at a distance between 2 and 10 miles from shore.

Response: Sanctuary boundaries are not established based on vessel traffic routes, particularly because routes are subject to change. NOAA will work with existing regulatory agencies to minimize impacts. While vessel traffic is in the scope of sanctuary regulations, NOAA is not promulgating vessel traffic regulations at this time.

Comment: The outer boundary should be established at either the 100 or 500 fathom isobath.

Response: NOAA has established the boundary at the 100 fathom isobath because it is generally recognized to be the seaward extent of the continental shelf, the area where photosynthetic activity is greatest.

Comment: Clarify the rationale for establishing the western boundary of alternatives 4 and 5.

Response: See response to previous comment.

Modification of the Shoreline Boundary

Comment: The shoreline boundary should be established at the lower low water mark to preclude interference with carefully crafted beach management plans regulating beach traffic, razor clam harvests and emergency aircraft landings.

Response: The shoreline boundary of the Sanctuary is located at the higher high water line where adjacent to Federally-owned land (including the Olympic National Park and the U.S. Fish and Wildlife refuges) and the lower low line mark when adjacent to State-owned land. Thus, the boundary does not interfere with beach management plans. Razor clam harvests within the intertidal zone of the Sanctuary will be managed by existing authorities such as the Washington State Department of Natural Resources, the Quinault Indian Tribe, and the National Park Service. Emergency aircraft landings are permissible in the Sanctuary.

Comment: The shoreline boundary should cut across the mouths of all rivers, streams and estuaries because there are sufficient management plans in place providing protection of inland environments such as the Washington State Coastal Zone Management Program and the Grays Harbor Estuary Management Plan.

Response: The shoreline boundary of the Sanctuary has been modified to cut across the mouths of all rivers, streams and estuaries.

Comment: Clarify why the shoreward boundary distinguishes between adjacency to tribal and non-tribal lands.

Response: The Tribes have jurisdiction to the mean lower low water line. Both the Tribes and the State have requested that the Sanctuary boundary not overlap with tribal and State lands. Therefore, the coastal boundary has been modified so that it is at mean lower low water when adjacent to tribal and State owned lands and at mean higher high water when adjacent to Federally owned lands.

Comment: Existing National Park Service standards, regulations, and policies must not be diminished as a result of dual designation as a National Park and National Marine Sanctuary. The majority of the intertidal areas of the Olympic National Park are Federally designated Wilderness Area and must be managed accordingly.

Response: The Sanctuary boundary overlaps with the boundary of the Olympic National Park. NOAA will not diminish the standards, regulations and policies currently applying to the intertidal areas of the Olympic National Park. The existing standards, regulations and policies of the intertidal areas will remain. NOAA will enhance the protection of these intertidal areas by working with the Coast Guard to ensure a safer vessel traffic environment, and the upland users of the watershed to monitor and minimize the impacts of non-point source pollution. Additionally, NOAA will support research and resource monitoring initiatives in the intertidal areas and may seek compensation for damages if an accident were to occur that injures Sanctuary resources.

Inclusion of the Strait of Juan de Fuca

Comment: The northeastern boundary of the sanctuary should extend further into the Strait of Juan de Fuca to either: (1) The Lyre River; (2) the Clallam County Marine Sanctuary at Salt Creek; (3) Low Point; (4) Crescent Bay/Agate Beach; or (5) Pillar Point. Omission of the Strait of Juan de Fuca from the Sanctuary excludes the head of the Juan de Fuca Canyon from the boundary of the Sanctuary, and thus represents a boundary not based upon an ecological rationale.

Response: NOAA has examined the resources of the Strait of Juan de Fuca and the FEIS/MP has been revised accordingly. Sections III and IV (Alternatives, and Environmental Consequences) examine the benefits and consequences of various alternatives in the Strait of Juan de Fuca. NOAA believes that the existence of a functional biotic community characteristic of the marine environment extends into the Strait of Juan de Fuca to Observatory Point. Eastward of Observatory Point, the ecosystem is more characteristic of an estuarine environment.

Despite the ecological arguments that support inclusion of the Strait of Juan de Fuca in the Sanctuary boundary, NOAA does not believe that the public has had ample opportunity to analyze and comment on the proposal to add the Strait. Since the Strait of Juan de Fuca lies entirely in state waters, the Strait of Juan de Fuca cannot be included without the approval of the Governor of Washington State. However, NOAA will pursue expanding the boundary if supported by the State of Washington.

Comment: The boundary of the Sanctuary should be contiguous with that of the proposed Northwest Straits Sanctuary. A gap between these two proposed sanctuaries would cause confusion for commercial shipping and fishing interests and government managing agencies.

Response: At this time, the future and nature of the proposed Northwest Straits National Marine Sanctuary is uncertain and cannot serve as a deciding factor in the determination of the eastern boundary of the Olympic Coast National Marine Sanctuary. The boundary of the Olympic Coast National Marine Sanctuary must be determined based on ecological and human use factors. NOAA can modify the boundary in the future if it is deemed appropriate. NOAA will coordinate with existing managing agencies to ensure that the Olympic Coast National Marine Sanctuary and the proposed Northwest Straits National Marine Sanctuary do not unduly disrupt the management of vessel traffic and fishing.

Comment: The boundary of the Sanctuary should not encompass the waters of the Strait of Juan de Fuca because closely-monitored vessel traffic lanes already exist.

Response: The MPRSA encourages multiple uses of the Sanctuary as long as they are compatible with the resource protection goals of the Sanctuary. Clearly, the Coordinated Vessel Traffic System in the Strait of Juan de Fuca is in the best interest of the vessel traffic industry and the environment. NOAA would not interfere with the vessel traffic management regime in the Strait of Juan de Fuca if the Governor of the State of Washington supported inclusion of the Strait of Juan de Fuca in the Sanctuary boundary.

Northern Boundary

Comment: The northern boundary of the Sanctuary should be adjacent to the international border and include vessel traffic lanes to facilitate the establishment of a cooperative international sanctuary and coordinated vessel traffic management regime.

Response: The northern boundary is adjacent to the international boundary.

Inclusion of the Estuaries

Comment: NOAA recognized both the high resource values of the estuaries and the high level of point source discharges. By including the estuaries in the boundary NOAA would be in a position to work with the Washington Department of Ecology (WDOE) to correct the sources of pollution.

Response: NOAA has been working with the Washington Department of Ecology to address pollution problems in the coastal estuaries. The Grays Harbor Estuary Management Plan was supported by funding provided pursuant to the Washington Shorelands Management Act. NOAA agrees that the estuaries are extremely valuable environments with high levels of point source discharges. However, NOAA believes that the estuaries are ecologically distinct from the offshore waters of the Olympic Peninsula, which is the core area of the Sanctuary. Inclusion in the National Estuarine Research Reserve System (NERRS) is a more appropriate management framework for NOAA involvement in estuarine management.

Comment: The estuaries should be excluded from the Sanctuary boundary because the Washington State Coastal Zone Management Program and the Grays Harbor Management Plan offer sufficient protection to the estuaries.

Response: NOAA agrees. The estuaries are excluded from the preferred boundary of the Sanctuary.

Consideration of Other National Marine Sanctuaries and National Estuarine Research Reserves (NERRS)

Comment: Some commenters believed that NOAA should designate the estuaries as NERR's if they are not included in the boundary of the Sanctuary because of their natural resource values. Other commenters believed that NERR status is inadequate since it does not include the marine environment. Clarification is needed on the specific elements of the NERRS:

(1) The degree of protection that the NERRS would provide to Grays Harbor and Willapa Bay;

(2) The process of designation;

(3) Timetable for designation;

(4) Assurances that designation would occur; and

(5) The degree of protection to the estuaries that would be provided in comparison to sanctuary status.

Response: The terms of designation as a NERR are determined between the State and NOAA. The process begins with the nomination of an estuary, or portion thereof, to NOAA for inclusion in the NERRS by the Governor of the State. The State holds scoping meetings in the region nominated for inclusion to solicit public input. The State then prepares a draft environmental impact statement and management plan (DEIS/MP) where boundary, management, and regulatory alternatives are assessed and a preferred alternative is decided upon. The DEIS/MP must demonstrate that the key core land and water areas are adequately protected by the state. Once the DEIS/MP is completed, public hearings are held in the region. After a comment period of one month, the State must produce a Final Environmental Impact Statement/Management Plan (FEIS/MP) incorporating the public comments. Once NOAA approves the FEIS/MP the Reserve is officially designated. The entire process requires approximately three years. Designation is contingent upon available funding.

Comment: NOAA should encourage sanctuary designations in Northern Puget Sound, Hood Canal, Southern Oregon and Northern California.

Response: NOAA is working with the State of Washington to study the feasibility of a sanctuary in Northern Puget Sound. New candidates for sanctuary status are selected from NOAA's SEL. Sites in southern Oregon and Northern California are presently on the SEL.

Harbor Exclusion/Inclusion

Comment: How will sanctuary designation influence the disposal of dredge material from harbor maintenance and development activities that occur in the Port of La Push, the mouth of the Quilleute River, and Neah Bay?

Response: No dredge spoil disposal will be permitted within the Sanctuary, except when used in connection with beach nourishment projects related to harbor maintenance activities. Harbors are excluded from the Sanctuary boundary. Therefore, maintenance and development activities can occur, but disposal of dredge material must be either on land or outside the boundary of the Sanctuary.

Growth Management

Comment: The Sanctuary should help to limit population growth.

Response: The sanctuary program has no control over population growth adjacent to the Sanctuary boundary. Rather, the program exists to ensure that human uses resulting from growth do not have a negative impact on Sanctuary resources.

Comment: Private land owners should not lose development rights to their land, nor should they have the value of their land significantly decreased by regulation without due compensation for that loss.

Response: NOAA is issuing no regulations that will diminish the development rights of private property owners.

Opposition to Sanctuary Designation

Comment: The marine sanctuary should not be designated because: (1) It would shut down the fishing industry; (2) existing legislation and management regimes offer adequate protection; (3) potential industrial interests would be stifled because the sanctuary would over-regulate the local economy and its growth; (4) the ecological/aesthetic values of Washington's coastline are not permanently threatened; (5) local airports in Aberdeen and Ocean Shores would close due to insurance problems; and (6) the Olympic National Park has too much control over the Olympic Peninsula already.

Response: The Sanctuary will not shut down the fishing industry. Fishing is not within the scope of Sanctuary regulation; the regulation of fishing would remain with existing management regimes. Further, the Sanctuary will ensure greater protection from risks due to oil, gas and mineral development and vessel traffic accidents.

NOAA disagrees that existing legislation offers adequate protection of the offshore resources. The threats from such things as vessel traffic, oil and gas development, sand and gravel mining and Navy practice bombing of Sea Lion Rock have not been addressed through a comprehensive management regime that recognizes the value and fragility of the marine ecosystem off the Olympic Peninsula. NOAA does not believe that the Sanctuary will over-regulate the local economy since the main source of income in the region is from tourism, fishing and timber production-none of which will be negatively affected by the Sanctuary. Tourism and fishing will likely benefit from Sanctuary status due to the increased protection of the marine environment.

Issue: Alteration of/or Construction on the Seabed

Comment: The regulation pertaining to alteration or construction of the seabed may be interpreted as prohibiting such activities as geologic research, the placement of current meters, sediment traps and similar research equipment, all of which might be necessary if environmental studies were to be conducted in the Mineral Management Service (MMS) Washington-Oregon planning area. To clarify the intent of this prohibition, "Government sponsored environmental studies" should be added in the second sentence of this section as one of the activities for which this prohibition does not apply.

Response: NOAA supports research within the Sanctuary. However, the prohibition on alteration of, or construction on the seabed applies to all research activities, including those conducted by governmental agencies. All research activities conducted within the Sanctuary that violate a Sanctuary regulation must be undertaken pursuant to a Sanctuary research permit to ensure that the impacts from the research are minimal and temporary.

Comment: The prohibition on the alteration of, or construction on the seabed should not interfere with current or future harbor maintenance or fishing activities including: (1) Jetty and groin construction; (2) permitted dredging of channels and harbors; (3) the use of dredge spoils for underwater berm construction; (4) construction and improvement of boat launching and marine facilities adjacent to reservations; (5) the retrieval of fishing gear (including crab pots) and sunken vessels; (6) bottom trawling and scallop dredging; and (7) tribal fin and shellfish operations. NOAA needs to clarify the exemption of activities incidental to routine fishing and vessel operations. The exemptions for harbor maintenance and fishing activities should read: "attempting to alter the seabed for any purpose other than anchoring vessels, normal fishing operations to include commercial bottom trawling and crab pot recovery, and routine harbor maintenance."

Response: Ports and harbors are not included within the boundary of the Sanctuary. The boundary of the Sanctuary adjacent to the Port of La Push is congruent with the Colreg lines at the mouth of the harbors. Further, there is the following exception to the alteration-of-the-seabed regulation: "Harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties." The noted activities incidental to fishing have been exempted from the Sanctuary regulations.

Comment: NOAA should prohibit all dredging and removal of sand and gravel within the Sanctuary boundary.

Response: NOAA has prohibited all dredging and removal of sand and gravel within the Sanctuary boundary except as an incidental result of harbor maintenance activities. These activities threaten the integrity of the benthic community and the food source of many fish, marine mammals and seabirds.

Comment: NOAA should not subject the exploration and development of offshore mineral activities to the same restrictions proposed for the exploration and development of Outer Continental Shelf (OCS) oil and gas.

Response: All of these activities injure the benthic communities in the Sanctuary and NOAA does not believe that there is cause for exceptions.

Comment: Clarify NOAA's policy on establishing artificial reefs within the Sanctuary.

Response: There are no artificial reefs in the Sanctuary as of the date of designation. The creation of new artificial reefs would be prohibited pursuant to the prohibition on alteration of, or construction on, the seabed.

Comment: NOAA should prohibit the construction of pipelines on the sea floor.

Response: The regulation prohibiting the alteration of, or construction on, the seabed would prohibit the construction of pipelines on the sea floor.

Issue: Cultural and Historic Resources

Comment: NOAA should prohibit moving, injuring, or possessing historic resources within the Sanctuary.

Response: NOAA agrees that it is necessary to protect and manage historical and cultural resources within the Sanctuary boundary. NOAA has included a prohibition on moving, removing, possessing, injuring, or attempting to move, remove, or injure these resources, except as resulting incidentally from traditional fishing operations. If NOAA determines that fishing activities are resulting in injury to Sanctuary historic and cultural resources, NOAA may amend the Sanctuary regulations to abolish the exemption for these activities.

Comment: The proposed regulations dealing with cultural resources fail to preserve the tribes' ability to control access to, and removal of, their cultural heritage. Therefore, NOAA should add a new § 925.5(a)(8) prohibiting: "removal or attempted removal of any Indian cultural resource or artifact, or entry onto a significant cultural site designated by a tribal governing body with the concurrence of the Director, except with the express written consent of the governing body of the tribe or tribes to which such resource, artifact, or cultural site pertains." NOAA should pursue a cooperative agreement with the tribes to coordinate management of cultural artifacts of tribal significance.

Response: The MPRSA provides NOAA with the authority to control access to cultural artifacts within the Sanctuary thereby helping to ensure their preservation. Accordingly, anyone proposing to remove a cultural or historic resource must apply for and obtain a sanctuary permit from NOAA. NOAA acknowledges the interest of the coastal tribes in preserving their cultural heritage and, in particular, those cultural artifacts of tribal significance found within the Sanctuary. NOAA considers its objective of preserving the historical and cultural resources of the Sanctuary to be compatible with the coastal tribes' desire to preserve their cultural heritage. Therefore, NOAA has modified § 925.9(j) to state: "The Director or designee shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe." NOAA has also added § 925.9(k) which states: "removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry into a significant cultural site designated by a tribal governing body, the Director shall acquire the express written consent of the governing body of the tribe or tribes to which such cultural site pertains." NOAA will enter into a cooperative agreement with the tribes and the State of Washington that clarifies the process by which permits will be granted to conduct research or salvage operations on historical and cultural resources of tribal significance.

Comment: Current management of cultural resources is agreed upon between the Bureau of Indian Affairs (BIA) and the tribes. The BIA supports the tribes in the management of their cultural resources.

Response: See response to previous comment.

Comment: The regulation as proposed in the DEIS/MP is duplicative of State law. There already exists state and Federal antiquities acts to protect coastal archeological and historical sites that occur on or near the median high tide boundary. The State archeologist already coordinates archeological matters.

Response: The MPRSA is not duplicative of existing laws protecting historical and cultural resources. The MPRSA is more comprehensive in that it provides enforcement authority, including civil penalties, for the destruction or injury of historical and cultural resources.

The Abandoned Shipwreck Act of 1987 gives states the title to certain abandoned shipwrecks in state waters. Under the MPRSA, NOAA has trustee responsibilities for abandoned shipwrecks and other historical and cultural resources within national marine sanctuaries, including those located in state waters, for the purpose of protecting them. NOAA will coordinate with State agencies to ensure that historical and cultural resources within the Sanctuary are protected, and that the policies affecting historical and cultural resources in State waters are consonant with the policies in the Federal waters of the Sanctuary.

Issue: Discharges

Ocean Dumping

Comment: NOAA should not prohibit the use of dredged material disposal sites off Grays Harbor, Willapa Bay, the Columbia River, or on the north jetty and breakwater of the Port of La Push.

Response: The Sanctuary boundary does not extend south of Copalis Beach and excludes ports and harbors. Therefore, the maintenance activities at La Push and the use of the dredge disposal sites south of the boundary is not prohibited. In addition, the use of dredged spoil within the Sanctuary for beach nourishment in connection with harbor maintenance activities is exempt from the regulatory prohibition.

Comment: No ocean dumping should be allowed in proximity to the major submarine canyons.

Response: The regulations prohibit ocean dumping within the Sanctuary, and outside the Sanctuary if the material enters and injures Sanctuary resources or qualities.

Point Source Discharges

Comment: Prohibit discharges of toxics, plastic, and municipal garbage and sewage into the marine environment.

Response: The dumping of municipal garbage, toxics and plastics is prohibited within the Sanctuary by Sanctuary regulations and by regulations promulgated pursuant to the Act to

Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) and the Marine Plastic Pollution Research and Control Act of 1987, which implements Annex V of MARPOL 73/78 in the U.S. Point source discharges are allowed provided such discharge is certified by NOAA in accordance with § 925.10 or approved by NOAA in accordance with § 925.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 925.11. At a minimum, secondary treatment will be required.

Comment: Current regulations are adequate. NOAA has not proven that the proposed regulations will enhance the recreational or aesthetic appeal, and water quality.

Response: Current regulations do not protect the area from the cumulative impacts of various types of discharges, including: (1) Some ocean dumping; (2) sewage receiving only primary treatment; and (3) non-point source discharges. NOAA's ocean disposal regulation offers protection to the offshore environment that does not otherwise exist. NOAA will work with existing tribal, State and Federal authorities to ensure that the quality of the water and Sanctuary resources are maintained.

Comment: Clarify how discharges from drilling and production rigs may be addressed if oil and gas leasing were to occur in the future.

Response: The regulations prohibit oil and gas exploration, development, and production activities within the Sanctuary. NOAA will work with the Environmental Protection Agency (EPA) to ensure that best available technology is implemented on any drilling rigs located outside of the Sanctuary to ensure that no discharges enter and injure Sanctuary resources and qualities.

Comment: Depositing or discharging from any location within the Sanctuary or from beyond the Sanctuary should be prohibited.

Response: The mandate of the National Marine Sanctuary Program is to facilitate multiple uses that are compatible with resource protection. Depositing or discharging most materials within the boundary of the Sanctuary, or from beyond the boundary of the Sanctuary if such material subsequently enters the Sanctuary and injures Sanctuary resources or qualities is prohibited. NOAA will work with EPA, the tribes and the State of Washington to maintain water quality. NOAA may require special terms and conditions, including (but not limited to) improved effluent quality, on EPA permits to ensure Sanctuary resources and qualities are protected.

Non-Point Source Discharges

Comment: NOAA should not require at a minimum secondary treatment and sometimes tertiary or more for non-point source pollution. It is virtually impossible to subject runoff to these levels of treatment.

Response: NOAA does not require such treatment for non-point source pollution. NOAA will monitor non-point source pollution and work with those living and working in the coastal watersheds to minimize runoff into the Sanctuary.

Comment: It should be stated that there is no intent to regulate forest practices by Sanctuary administrators. There is no research or evidence which would justify the statement made in the proposed DEIS that the "greatest source of non-point discharge is the forest." This statement needs clarification and tree farmers must be assured that they can continue to grow and harvest trees pursuant to Washington's Forest Practices Act, one of the most stringent in the country.

Response: NOAA's Strategic Assessment Branch has analyzed existing watershed data from the National Coastal Pollutant Discharge Inventory to determine sources of runoff. Summaries of pollution discharges for total volumes of nitrogen, lead, and all suspended solids combined indicate that with the exception of suspended solids discharged by paper mills, the greatest source of sediments discharged into sanctuary waters is from natural forest runoff.

Despite this evidence, NOAA will not be directly regulating upland uses. However, NOAA will coordinate with the upland user groups, and managing agencies to minimize non-point source impacts on Sanctuary resources.

Comment: The suggestion that excessive erosion from clear cutting practices is the source of most non-point source pollution from forests supports the need for further study of this common practice and the issuance of more stringent controls due to the steep and unstable slopes and amount of rainfall.

Response: NOAA agrees and will conduct monitoring and research initiatives in coordination with those living and working in the watersheds to minimize the impacts from timbering activities.

Discharges Outside the Sanctuary

Comment: Clarify to what extent the "sphere of influence" of the discharge regulation extends, to what degree it may affect coastal communities including the tribes, and who determines if injury to a Sanctuary resource has occurred. Would a community such as Ocean Shores or an Indian tribe face increased water quality regulations or enforcement? Further, does the discharge prohibition apply to particulates that are discharged into the air from pulp mills and subsequently enter the Sanctuary and harm Sanctuary resources and qualities.

NOAA should not impose additional restrictions, beyond the existing requirements of the Federal Water Pollution Control Act (FWPA), on the discharge of effluent and dredge spoils into marine waters. There is no evidence that additional restrictions on these activities are required to protect water quality in the proposed sanctuary.

Response: The MPRSA protects Sanctuary resources and qualities (including water quality) from the impacts of discharges from within and outside the boundary of a Sanctuary whether airborne or waterborne. NOAA is responsible for determining injury to Sanctuary resources. Discharges pursuant to existing permits may be continued subject to the certification requirements of § 925.10. New permits are subject to the review process of § 925.11. At a minimum, secondary treatment will be required for any treatment plants discharging directly into the Sanctuary. With respect to airborne or waterborne discharges outside the Sanctuary, NOAA may condition such permits only if it is established that the discharges are entering the Sanctuary and injuring Sanctuary resources or qualities. NOAA will work closely with all to ensure that none is unduly burdened by permitting requirements related to discharges. NOAA will coordinate with the State's Air Quality Board and Department of Ecology to monitor air and water quality over and in the Sanctuary.

Application of Discharge Regulations to Vessel Traffic

Comment: The application of this regulation should prohibit organic and inorganic discharges from fishing vessels and submarines (including bilge), aircraft. The prohibition should apply to all naval operations.

Response: The Sanctuary regulations specify the fishing and vessel related activities exempted from the discharge prohibition (§ 925.5(a)(2)(i)–(iv)). Discharges and deposits from vessels are prohibited except for specific discharges intended to provide for traditional fishing activities, such as fish wastes resulting from traditional fishing operations in the Sanctuary, and for allowed vessel operations in the Sanctuary, namely biodegradable effluent incidental to vessel use and generated by approved marine sanitation devices, water generated by routine vessel operations, and engine exhaust. Such discharges are determined to be of minimal threat to the Sanctuary and are important for the safe and effective functioning of fishing and other vessels. Other discharges from vessel operations are prohibited. If in the future NOAA determines that increased protection for Sanctuary resources and qualities from these exempted activities is warranted, the Sanctuary regulations could be revised.

Comment: Clarify acceptable and unacceptable discharges from fishing vessels.

Response: See response to previous comment.

Economic Impacts of Discharge Regulations

Comment: Banning the use of approved dredge disposal sites would impose severe economic impacts on marine navigation and commerce, and ultimately to the coastal communities.

Response: The boundary of the Sanctuary does not encompass the approved dredge disposal sites off of Grays Harbor, Willapa Bay, and the Columbia River. However, no new dredge disposal sites may be located within the Sanctuary boundary.

Comment: NOAA must examine the economic impacts of the discharge regulations on existing industries. There are currently 72 identified dischargers in the study area. It is unclear if the proposed Sanctuary would impact the continued operation of the pulp mill's NPDES permitted discharge near Grays Harbor.

Response: The Sanctuary's boundary does not extend south of Copalis Beach. Therefore, the only discharge regulation that would apply to dischargers in Grays Harbor would be the prohibition on discharges from outside the boundary that subsequently enter and injure Sanctuary resources or qualities. NOAA will need to establish that effluents from pulp mills are injuring Sanctuary resources or qualities before it would impose terms and conditions on the pulp mill's NPDES permit. If this situation were to occur, NOAA would work with the discharger, the State of Washington, and EPA to minimize the economic impacts of reducing the impacts.

Issue: Oil and Gas Development

Comment: NOAA's failure to offer as an alternative an outright, no conditions ban on hydrocarbon development within the Sanctuary is contrary to NEPA regulations, 40 CFR 1502.14 which states that the alternatives section is the heart of the environmental impact statement. NOAA should permanently ban oil and gas exploration, development, and production activities.

Response: Section 2207 of the Oceans Act of 1992 prohibits oil and gas exploration, development and production within the Sanctuary. The Sanctuary regulations repeat this prohibition.

Comment: NOAA should designate a buffer zone based on ocean currents and local seabed geography to prevent damage from external mineral operations.

Response: NOAA believes that the Sanctuary is large enough to buffer the sensitive canyon and coastal ecosystems from negative impacts of mineral development. Further, NOAA's authority to regulate discharges from outside the Sanctuary boundary that subsequently enter and injure Sanctuary resources or qualities provides additional protection over mineral activities.

Comment: NOAA should commit in the FEIS/MP and Record of Decision to the preparation of an EIS before lifting the prohibition.

Response: As previously discussed, the Oceans Act of 1992 prohibits oil and gas explorations, development and production within the Sanctuary. This prohibition may only be lifted by an Act of Congress.

Comment: The oil companies should be excluded from voicing an opinion regarding the Sanctuary because this privilege should be extended only to those who have spent time enjoying the State of Washington coastline.

Response: The Sanctuary program does not and cannot discriminate against any individual, agency, or interest group. All individuals have the right to voice an opinion.

Comment: Has NOAA come across any proposal for offshore wind generated power?

Response: NOAA is not aware of any proposal for offshore wind generated power.

Comment: The President's decision to postpone OCS activities off the coasts of Washington and Oregon until after the year 2,000 should expire at that time unless affirmatively extended.

Response: Section 2207 of the Oceans Act of 1992 indefinitely bans oil and gas exploration, development and production within the boundary of the Sanctuary. These prohibitions could only be lifted by an Act of Congress.

Contingency Plans

Comment: The Sanctuary should establish a contingency plan in coordination with existing state and Federal contingency plans. Efforts should be made to coordinate with the State of Washington Departments of Wildlife, Fisheries, Ecology, and Natural Resources and pursue data sharing opportunities.

Response: The FEIS/MP identifies existing oil spill contingency plans and efforts in the State of Washington to cover the Strait of Juan de Fuca and Outer Coast. NOAA will coordinate closely with the existing agencies involved in contingency and emergency response planning, particularly the U.S. and Canadian Coast Guard and the State of Washington Office of Marine Safety (OMS). However, NOAA agrees that the Sanctuary requires its own contingency plan to ensure that resources are protected during events that threaten the environment. A prototype Sanctuary Contingency Plan is being tested at the Channel Islands National Marine Sanctuary. Once implementation experience has been gained, the plan will be adapted to other sites, including the Olympic Coast National Marine Sanctuary. To implement successfully an organized emergency response, NOAA will incorporate state and Federal legislation as well as local efforts into the Sanctuary Contingency Plan.

Comment: NOAA needs to provide for better oil spill response planning.

Response: NOAA is coordinating with the regional response committees of the OMS to ensure that the equipment is available to address an emergency that would threaten Sanctuary resources.

Comment: An Oil Spill Response Center should be sited in close proximity to the Sanctuary to address small spills north of Grays Harbor where there is currently a lack of oil spill response capability.

Response: NOAA is promoting this idea in its participation on the regional response subcommittee whose jurisdiction is the Strait of Juan de Fuca and the Outer Coast. However, priority will be placed on the stationing of tugs and barges dedicated to emergency response.

Comment: The tribes should be properly funded to handle resource damage assessment as well as other activities where an oil spill could impact their subsistence and ceremonial harvest and cultural values.

Response: The reservations are not within the Sanctuary boundary. Therefore, the Sanctuary cannot dedicate funds to the Tribes for the purpose of damage assessment pursuant to a spill of hazardous materials.

Comment: NOAA should request that the oil industry's Marine Spill Response Corporation station a tractor/tug response vessel at Neah Bay.

Response: NOAA has made the recommendation to the subcommittee on emergency response for the Strait of Juan de Fuca and the Outer Coast. NOAA is actively participating in formulating the recommendation to the State, and will coordinate with the Makah Tribe in their planning initiative to expand their marina to plan to accommodate a tug or emergency response vessel that is of appropriate size to service the Outer Coast and the Strait of Juan de Fuca.

Comment: NOAA should ensure that drills are conducted for the Clean Sound Cooperative with outside evaluation.

Response: NOAA intends to hire an operations manager immediately after designation to address issues related to vessel traffic and contingency planning. One of the priorities of this position will be to encourage the Coast Guard to focus on the Sanctuary during its emergency response drills.

Comment: NOAA should propose the examination of extending unlimited liability for spills to the shipping companies and the original firms providing the original source materials involved in the polluting activities.

Response: The MPRSA only provides NOAA with the authority to collect $100,000 per day for each violation pursuant to 16 U.S.C. 1437(c)(1), and damages to Sanctuary natural resources pursuant to 16 U.S.C. 1443.

Issue: Sealion Rock

Comment: NOAA should prohibit, or at least condition, the Navy's practice bombing activities over Sealion Rock due to the impact on seabirds, depositing of metal objects in the Sanctuary, and because the military environment does not require such a sensitive area to be used for such purposes. At the very least, NOAA should prohibit the practice bombing during the breeding season. Section 7 consultations with the Department of Commerce and the Department of the Interior should not be construed as sufficient mitigation because these processes do not address impacts to non-endangered species.

Response: NOAA agrees that the Navy practice bombing of Sealion Rock is inconsistent with the goals of the Sanctuary program. Because the permit under which the Navy conducted its activities over Sealion Rock was rescinded by the Secretary of the Interior in August, 1993, NOAA may prohibit outright all bombing activities within the Sanctuary and has determined to do so. The regulation adopted by NOAA prohibits all practice bombing and provides that no exemption from the prohibition will be granted.

Comment: NOAA does not have the authority to prohibit or condition the Navy's activities.

Response: Because the Navy's authorization from the Secretary of Interior was rescinded, NOAA now has the authority to not only condition but also prohibit the Navy's practice bombing activities.

Comment: NOAA should place the Navy's bombing activities within the scope of regulation to allow future regulation if necessary. To not list military activities is in conflict with the primary goal of resource protection.

Response: NOAA has addressed Navy activities in § 925.5(d) of the regulations.

Comment: NOAA should investigate the history of the Navy's activities over Sealion Rock to determine if a grandfather clause is warranted.

Response: The history of the Navy's activities and the permit that authorized its activities has been outlined in the FEIS/MP. The Navy's authority to conduct practice bombing activities has been rescinded and thus consideration of a grandfather clause is irrelevant.

Comment: Clarify how Navy bombing of Sealion Rock at 200 feet is less disruptive than commercial overflights.

Response: NOAA does not assert that the Navy's low flying activities are less disruptive than commercial or non-commercial overflights. NOAA's differing regulations in the DEIS/MP applying to Navy and non-military overflights resulted from limitations placed on NOAA by the MPRSA with respect to terminating pre-existing leases and permits.

Issue: Protection of Treaty Rights

Comment: NOAA's regulations do not formally recognize the Federal Government's trust responsibility to the coastal Tribes. The regulations contain no provision which formally requires the Director to consider and protect tribal interests when ruling on permit applications to conduct development activities within the Sanctuary. To address this issue, the following modifications to the § 925.8 should be made:

> The Director * * * may issue a permit * * * to conduct an activity otherwise prohibited by § 925.5(a)(2)–(7), if the Director finds that the activity will: further research related to Sanctuary resources: * * * *or promote the welfare of any Indian Tribe adjacent to the Sanctuary.* In deciding whether to issue a permit, the Director shall consider such factors as * * * *the impacts of the activity on adjacent Indian Tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian Tribe, the Director shall consider and protect the interests of the Tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the Tribe* * * *

Response: NOAA agrees that the designation of the Olympic Coast National Marine Sanctuary is subject to the Federal government's general fiduciary responsibility to the coastal tribes. Accordingly, NOAA has modified § 925.9(d) of the regulations to incorporate the recommended language.

Comment: NOAA's regulation prohibiting the taking of marine mammals and seabirds conflicts with treaty rights to fish and hunt marine mammals in tribal usual and accustomed fishing grounds.

Response: NOAA recognizes that, given the standard for abrogating treaty rights enunciated by the Supreme Court in *United States* v. *Dion,* 476 U.S. 734 (1985), the provisions of the MPRSA do not abrogate the coastal Tribes' treaty fishing and hunting rights. However, it is unclear whether Congress intended the MMPA and the Endangered Species Act (ESA) to abrogate these rights. Recently, the Makah Tribe has pursued clarification regarding the applicability of the Marine Mammal Protection Act (MMPA) and ESA to its treaty rights to hunt whales and seals. The issue is currently being examined by the tribes and the National Marine Fisheries Service (NMFS). Given the concerns raised by the coastal tribes, § 925.5(a)(6) has been revised to read as follows:

> Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except as authorized by the National Marine Fisheries Service or the United States Fish and Wildlife Service under the authority of the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any treaty with an Indian Tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply.

In addition, § 925.5(a)(8) has been modified similarly. The revised language recognizes the coastal Tribe's treaty right to hunt whales and seals. However, the regulation also requires that the right be exercised in accordance with the provisions of the MMPA, ESA, and MBTA. If the MMPA, ESA or MBTA is determined to abrogate or otherwise restrict the Tribe's exercise of its right to hunt whales and seals, then that determination shall apply to the Tribe's exercise of those rights within the boundary of the Sanctuary.

Comment: The regulations fail to preserve tribal control of their cultural heritage. NOAA should amend § 925.5(a)(8) to read as follows:

> Removal or attempted removal of any Indian cultural resource or artifact, or entry onto a significant cultural site designated by a Tribal governing body with the concurrence of the Director, except with the express written consent of the governing body of the Tribe or Tribes to which such resource, artifact, or cultural site pertains.

Response: The MPRSA provides NOAA with the authority to control access to cultural or historical artifacts within the Sanctuary thereby helping to ensure their preservation. Accordingly, anyone proposing to remove a cultural or historical resource must apply for and obtain a Sanctuary permit from NOAA. NOAA also acknowledges the coastal Tribes' desire to preserve their cultural heritage and, in particular, those cultural artifacts of tribal significance found within the Sanctuary. NOAA considers its objective of preserving the historical and cultural resources of the Sanctuary to be compatible with the coastal Tribes' desire to preserve their cultural heritage. Accordingly, § 925.9(j) has been modified and § 925.9(k) has been added to address the coastal tribe's concerns.

Comment: The regulation prohibiting overflights under 1,000 ft. except for valid law enforcement purposes conflicts with the treaty secured rights to access certain reservation lands such as Tatoosh Island and Ozette, which are only accessible by helicopter in the winter months, and to conduct aerial timber cruises and engage in helicopter logging on portions of the reservation abutting the Sanctuary. Therefore the following amendment to § 925.5(7) is proposed:

> Flying motorized aircraft at less than 1,000 feet above the Sanctuary within one nautical mile of the coastal boundary of the Sanctuary and the Flattery Rocks, Quilleute Needles, and Copalis National Wildlife Refuges, except for valid law enforcement purposes *or where authorized by a governing body of an Indian Tribe to provide access to reservation lands*.

Response: NOAA acknowledges the Tribes' concerns and does not intend to interfere with tribal rights to access reservation lands. Also, for the reasons discussed below, the minimum altitude has been changed to 2000 ft. In order not to interfere with Tribal access to reservation lands, the prohibition on flying has been changed to read:

> Flying motorized aircraft at less than 2,000 feet above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, and within one nautical mile seaward from the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian Tribe.

Comment: NOAA should apply the management plan equally to tribal and non-tribal governmental entities within the adopted boundary equally.

Response: NOAA is legally bound to recognize treaty secured rights and has no intention to interfere with these rights. As such, there will be circumstances in which Sanctuary regulations will apply to tribal and non-tribal members differently.

Issue: Vessel Traffic

Comment: Route tankers and barges as far away from near-shore reefs and islands as possible. Clarify what types of vessels can transit close to shore.

Response: There exists a Cooperative Vessel Traffic Management System (CVTMS) established and jointly managed by the United States and Canada. The CVTMS is a mandatory regime and consists of all navigable waters of the Strait of Juan de Fuca and its offshore approaches, southern Georgia Strait, the Gulf and San Juan Archipelagos, Rosario Strait, Boundary Pass, Haro Strait, and Puget Sound, bounded on the west by longitude 147 °W. latitude 48 °N., and on the northeast by a line along 49 °N. from Vancouver Island to Semiamoo Bay.

The rules of the CVTMS are intended to enhance safe and expeditious vessel traffic movement, to prevent groundings and collisions, and to minimize the risk of property damage and pollution to the marine environment. The rules apply to:

a. Each vessel of 30 meters or more in length; and

b. Each vessel that is engaged in towing alongside or astern, or in pushing ahead, one or more objects, other than fishing gear, where:

(1) The combined length of the vessel towing, the towing apparatus, and the vessel or object towed is 45 meters or more; or

(2) The vessel or object towed is 20 meters or more in overall length.

Both the Canadian and the United States Coast Guards are studying methods to improve the CVTMS in the area. Items being studied include replacement of outdated equipment, elimination of gaps in coverage, and increasing operator training and assignment length.

The Oil Pollution Act of 1990 (OPA 90) requires the U.S. Coast Guard to conduct a national Tanker Free Zone Study. This study is nearing completion and will recommend regulations requiring tank vessels to remain offshore during coastal transits.

Further, NOAA has recommended to the U.S. Coast Guard that an International Maritime Organization (IMO) approved ATBA be established within the proposed Sanctuary boundary. This would request that vessels transporting hazardous materials remain at least 25 nautical miles offshore while in the vicinity of Sanctuary waters or until making their approach to the Strait of Juan de Fuca using the established CVTMS traffic separation scheme. Although ATBA's are not compulsory for foreign flag vessels, a maritime state may make such an area compulsory for domestic vessels transiting the waters under its jurisdiction.

Comment: Clarify "commercial vessel" and distinguish between various sizes, uses, and types of vessels.

Response: "Commercial vessel" means any vessel operating in return for payment or other type of compensation. Clarification between sizes, uses, and types of vessels would require more space than is available in this document. Rather than attempt to hold to a general definition of "commercial vessel", reference will be made to specific types of vessels, i.e., tank vessels, bulk carriers, fishing vessels, pleasure craft, etc., wherever required.

Comment: The Sanctuary boundary should be published on navigational charts.

Response: NOAA agrees and will submit the Sanctuary boundary to the Nautical Charting Division of the National Ocean Service. The boundary will be delineated on the next update of the appropriate navigational chart.

Comment: Spill containment and cleanup measures should be part of appropriate mitigation requirements for vessels operating within the Sanctuary.

Response: OPA 90 mandates that tank vessel contingency plans be prepared for a worst-case discharge, and that vessel plans be reviewed and approved by the U.S. Coast Guard. OPA 90 also stipulates that each responsible party for a vessel from which oil is discharged, or which poses the substantial threat of a discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, is liable for the removal costs and damages resulting from such an incident.

Further, Washington State law (title 88 section 46 Revised Code of Washington) requires the owner or operator of a tank vessel to prepare and submit an oil spill prevention plan prior to the vessel's entry into a Washington port. The law also requires that each tank vessel, cargo vessel of greater than three hundred or more gross tons, or passenger vessel of greater than three hundred or more gross tons have a contingency plan for the containment and cleanup of oil spills from such vessel into the waters of the State.

Comment: NOAA should provide a more complete explanation of how implementation of each of the regulations would put U.S. shipping companies at an economic disadvantage in relation to foreign vessels. Precisely what would be the estimated cost in dollars, time, inconvenience, and ultimate impact upon U.S. shipping companies.

Response: NOAA is promulgating no regulations that will adversely affect domestic vessels.

Comment: NOAA should put forth a vessel traffic management plan, spearheaded by the U.S. Coast Guard, that addresses research needs, vessel traffic monitoring and communication systems, and future regulatory alternatives. The management plan should be proactive, and establish a timetable for considering new vessel traffic regulations in the future.

Response: NOAA is working with the U.S. Coast Guard, which has the primary authority for vessel traffic regulation, to determine the need for additional measures to ensure protection of Sanctuary resources and qualities. In addition, NOAA will work with the U.S. Army Corps of Engineers (COE) and the EPA regarding vessel traffic activities resulting from the transport of dredged material through the Sanctuary for disposal outside the Sanctuary. These consultations will aim to determine which resources are most at risk, which vessel traffic practices are most threatening, and which regulations or restrictions would be most appropriate to alleviate such risk.

NOAA agrees that an improved vessel traffic monitoring and communication system along the coast is desirable. OPA 90 requires the Secretary of Transportation to complete a comprehensive study on the impact of installation, expansion, or improvement of vessel traffic servicing systems. NOAA will work with the State of Washington's OMS, the U.S. Coast Guard, and appropriate public agencies during the development of these monitoring studies to determine an appropriate system for the Sanctuary and the need for any additional site-specific protective measures.

Vessel traffic monitoring and research and coordination on this subject have been incorporated into the Sanctuary management plan.

Comment: Allow only double-hulled vessels in the Sanctuary.

Response: OPA 90 establishes double hull requirements for tank vessels. Most tank vessels over 5,000 gross tons will be required to have double hulls by 2010. Vessels under 5,000 gross tons will be required to have a double hull or a double containment system by 2015. All newly constructed tankers must have a double hull (or double containment system if under 5,000 gross tons), while existing vessels are phased out over a period of years.

As previously stated, the U.S. Coast Guard is completing a study of a tanker free zone where tank vessels would be required to remain offshore during coastal transits. Further, a proposal to establish an ATBA within the Sanctuary boundary has been developed and will be submitted to the International Maritime Organization (IMO) for approval at the earliest possible date which, in accordance with IMO's procedures, is June, 1994. Both actions will serve to ensure that hazardous material laden vessels will remain an appropriate distance offshore.

Comment: Require vessels to have a pilot aboard.

Response: Requirements for pilots are set forth in both Federal and state regulations. NOAA will monitor and review vessel traffic in the Sanctuary and make recommendations to the appropriate regulatory agencies, state and Federal, regarding the need for additional pilotage requirements. Pilotage is currently compulsory for all vessels except those under enrollment or engaged exclusively in the coasting trade on the West Coast of the continental United States (including Alaska) and/or British Columbia. Port Angeles has been designated as the pilotage station for all vessels enroute to or from the sea.

OPA 90 requires the U.S. Coast Guard to designate U.S. waters where a second licensed officer must be on the bridge of a coastwise seagoing tanker over 1,600 gross tons. Under the Ports and Waterways Safety Act, the U.S. Coast Guard also is proposing to require a second officer on foreign flag tankers over 1,600 gross tons and on U.S. registered tankers over 1,600 gross tons.

Comment: Establish a tonnage limit within three nautical miles of shore except for those making a port call.

Response: All types of vessels and traffic patterns will be reviewed by NOAA, the U.S. Coast Guard, and the State of Washington OMS to determine any appropriate action to be taken. In conducting this review, attention will be paid to vessel type, cargo carried, and vessel size.

Comment: Require all vessels to have English speaking bridge personnel.

Response: All vessels required to participate in the Juan de Fuca region CVTMS are required to make all reports in English.

Comment: Curtail traffic during poor weather conditions.

Response: NOAA will work with the state, U.S. Coast Guard, and appropriate public agencies to determine the need for further vessel traffic regulations to specifically address vessel traffic during adverse weather conditions.

During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in the area of the Juan de Fuca Region CVTMS, the Cooperative Vessel Traffic Management Center may issue directions to control and supervise traffic. They may also specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters of the CVTMS Zone.

Further, the U.S. Coast Guard's Navigation Rules, International and Inland, speak specifically to the conduct of vessels while at sea. Rule 6 of the International and Inland Steering and Sailing Rules states that "Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions."

Comment: Prohibit engine powered water craft of any type.

Response: A fundamental objective of the sanctuary program is "to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities" (16 U.S.C. 1431(b)(5)). NOAA will consider the threats from all types of vessels—power driven, sailing, or paddle propelled—as a continuing analysis of vessel traffic within the sanctuary boundaries.

Comment: Manage the off-loading or exchange of cargo or oil.

Response: No offloading or exchange of oil occurs within the boundary of the Sanctuary. This activity generally occurs in ports which are located outside of the Sanctuary boundary. Further, this type of activity is addressed by both OPA 90 and programs being established by the recently created Washington State OMS.

Comment: Prohibit shipment of reclaimed spent nuclear fuel from foreign reactors through the Sanctuary.

Response: As previously noted, NOAA has recommended to the U.S. Coast Guard that an IMO approved ATBA be established within the Sanctuary boundary. This would require vessels transporting hazardous materials to remain at least 25 nautical miles offshore while in the vicinity of Sanctuary waters or until making their approach to the Strait of Juan de Fuca using the established CVTMS traffic separation scheme.

NOAA will also work with the State of Washington's OMS and both the U.S. and Canadian Coast Guards to be informed of, and alerted to, in a timely and regular manner, all hazardous cargo carriers transiting near Sanctuary waters. Further, through participation in regular meetings of the Washington State Regional Marine Safety Committees and discussions with the U. S. Coast Guard, NOAA will ensure that contingency plans adequately address such transport issues.

Comment: Prohibit commercial vessel anchorages within the Sanctuary, particularly off Makah Bay, except in emergencies.

Response: The use of the Makah Bay anchorage by vessels waiting either for an available pilot at Port Angeles or instructions from their home office, has been examined. Currently, its use as a temporary anchorage has been agreed upon by both the U.S. and Canadian Coast Guards. This is viewed as a more favorable alternative than having such vessels continuously underway within, and off the entrances to, the Strait. Vessels at anchor are subject to MARPOL, U.S. Federal law, and Sanctuary regulations regarding discharges. The use of this anchorage is monitored by Tofino Vessel Traffic Service which can also educate such vessels regarding the Sanctuary and its regulations.

Comment: Clarify NOAA's authority to regulate vessel traffic within State of Washington waters.

Response: Section 303 of the MPRSA gives NOAA the authority to promulgate regulations to implement the designation, including regulations necessary to achieve resource protection.

Comment: The State and Federal government have appropriated $75 million to expand and enhance maritime activity at Grays Harbor through waterway dredging and port terminal development programs. If vessel traffic is restricted, one branch of the government would be defeating the purpose of other parts of the government.

Response: NOAA has studied vessel traffic along the Washington coast. The result of the analysis was the recommendation for the previously mentioned ATBA. This proposal, if adopted, would add approximately 17 nautical miles on a transit from Grays Harbor to the entrance of the Straits of Juan de Fuca and approximately 21 nautical miles on a transit from the entrance of the Straits to Grays Harbor. In comparison to the costs of cleanup, legal fees, liability, fines, loss of cargo, and vessel and environmental damages, the proposals to establish the ATBA seem reasonable.

Comment: Double-hulled proposals are not economically sensible in the foreseeable future.

Response: Congress has mandated (OPA 90) national double hull requirements for tank vessels.

Issue: Overflights

Comment: Establish the boundary for overflights at the beach rather than one (1) mile inland.

Response: The boundary for overflights is at the shoreline and not one (1) mile inland.

Comment: Establish a 2,500 foot minimum flight altitude over the sanctuary.

Response: To be consonant with current regulations regarding flights over charted National Park Service Areas, U.S. Fish and Wildlife Service Areas, and U.S. Forest Service Areas, NOAA is prohibiting the flying of motorized aircraft at less than 2,000 feet above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, and at less than 2,000 feet above the Sanctuary within one nautical mile seaward from the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian Tribe. NOAA will work with the Federal Aviation Administration (FAA) on how best to reflect this limitation on aeronautical charts.

Comment: Permit search and rescue at all times by whatever aircraft is needed to accomplish the task.

Response: The prohibitions set forth in the Sanctuary regulations do not apply to activities necessary to respond to emergencies threatening life, property, or the environment pursuant to § 925.5(c) of the regulations. Thus, in any emergency, search and rescue aircraft are allowed to perform whatever tasks are required within the Sanctuary boundary.

Comment: When necessary to bring a research flight into the area below the Sanctuary prescribed ceiling, regulations should require the plane's engine be kept at or below a reasonable decibel level as heard from the ground.

Response: FAA regulations (14 CFR part 36) codify noise standards for aircraft operating within U.S. airspace. Adherence to these standards is already required. When research is to be conducted within the Sanctuary boundary, aircraft operators will be required to obtain a permit and conduct such research in such a manner so as to minimize disturbance yet remain within safe aircraft operating parameters.

Issue: Living Resource Extraction

Fishing

Comment: NOAA should not restrict access to fishing grounds or catchability. Crab fishing and razor clam digging must be allowed.

Response: The regulation of fishing is not authorized by the Designation Document. NOAA has determined that existing fishery management authorities are adequate to address fishery resource issues. As with all other fisheries that occur within the Sanctuary, crab fishing and razor clam digging remain under the regulatory authority of existing Federal, state, tribal and regional fishery authorities. NOAA does not view fishing as contrary to the goals of the Sanctuary. The sanctuary program is by law mandated "to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources * * *." (including fishing) (16 U.S.C. 1431(b)(5)).

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the National Marine Sanctuary Program has a different and broader mandate under the MPRSA to protect all Sanctuary resources on an ecosystem-wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution, the Marine Sanctuary Program is also concerned about the potential incidental impacts of specific fishery techniques on all Sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of the Olympic Coast, fish resources are already extensively managed by existing authorities and

NOAA does not envision a fishery management role for the Sanctuary Program. Accordingly, fishing activities have not been included in the list of activities in the Designation Document subject to regulation as part of the Sanctuary regime. However, the Sanctuary Program will provide research results and recommendations to existing fishery management agencies in order to enhance the protection of fishery and other resources within the Sanctuary.

Comment: No additional fisheries management or regulation is needed in the Sanctuary. Commercial, recreation, and subsistence fishing can be compatible with sanctuary designation, and the existing regulatory framework is adequate at this time.

Response: See response to previous comment. The Designation Document places kelp harvesting within the scope of future regulation since there is no existing management plan for kelp harvesting.

Comment: Clarify the language associated with commercial fishing practices near sunken vessels, rocks and reefs in the proposed sanctuary to insure continuance of historical and customary fishing practices. Existing Federal and state regulations adequately protect archeological treasures, man-made reefs, and natural rock and reef formations. The FEIS should acknowledge and permit prevailing practices.

Response: Commercial fishing vis-a-vis historical resources is an exempted activity under the prohibition against disturbance of historical resources. However, the exemption is only for incidental disturbance and therefore does not allow deliberate disturbance.

Comment: Fishing should either be regulated, or placed in the scope of regulation, because there may be a time in the future when fishing needs to be regulated by the Sanctuary.

Response: NOAA believes that existing authorities are adequate to regulate fishing. Should the need arise to regulate fishing as part of the Sanctuary management regime, the Designation Document could be amended.

Comment: Proposed regulations should result in the gradual reduction of fishing, aquaculture, kelp harvesting and waterfowl hunting to insure that no commercial activity threatens the integrity of any resources in the proposed Sanctuary. Some commenters believed that the Sanctuary should ban all commercial fishing activities except Native American fishing activities.

Response: A blanket reduction of resource-use activities across the Sanctuary could not be imposed without credible evidence that each resource affected is threatened by a population decrease or stock failure. Absent such evidence, the Act requires that existing uses be facilitated to the extent compatible with the primary objective of resource protection.

Comment: True refugia should be established where all consumptive uses are prohibited for a period of time.

Response: The determination of whether refugia are established in the Sanctuary will be done in coordination with the NMFS, PFMC, Washington Department of Fisheries (WDF), the tribes, environmental groups, and industry. The Sanctuary Advisory Committee (SAC) will be an important forum to address this issue. If, in coordination with other governmental agencies, it is determined that establishment of refugia is a desirable alternative, NOAA will analyze the alternative through the preparation of an environmental impact statement/management plan and solicitation of public input pursuant to the NEPA and the APA.

Comment: Driftnets, trawling, and all dragnet fisheries should be banned from the proposed Sanctuary as inconsistent with the regulation prohibiting alteration of, or construction on, the seabed.

Response: The only net gear used in fisheries in the Sanctuary are trolling gear (for salmon) and trawling gear (for groundfish). The regulatory prohibition on altering the seabed includes an exception for incidental disturbance resulting from traditional fishing operations. NMFS has conducted a limited study of the impact of trawl gear on the benthos and has not identified any resulting systematic destruction. However, the regulations could be modified to regulate any activity that is shown to cause significant disturbance of the seabed. This reflects adherence to the MPRSA's goals of preserving natural and human-use qualities of a marine area.

High-seas driftnets, defined as nets greater than 1.5 miles long, have been banned pursuant to United Nations resolution 46/215. While gillnets and setnets are currently used in the inland waters of the State of Washington, they are not used in Sanctuary waters.

Comment: NOAA should facilitate the regulation of resource extraction within the Sanctuary under a regulatory framework that is controlled by a single agency.

Response: Regulatory authority over resources and resource extraction industries is expressly granted by state and Federal statute. NOAA does not have the primary regulatory authority over resource extraction. NOAA can act to coordinate the various regulators and can impose additional regulations, but cannot reassign itself or other agencies regulatory authority.

Comment: NOAA must clarify and acknowledge all tribal treaty fishing rights in the FEIS/MP, and the interaction of Sanctuary regulations with the right of tribes to fish in their Usual and Accustomed fishing areas.

Response: This issue is clarified in the Designation Document and in Part II (under Socio-Demographic profile and Land Use). In addition, the coastal tribe's treaty rights are acknowledged in several sections of the regulations.

Comment: The entire study area must be considered as a "fishing area" since fish migrate along the entire Washington coast.

Response: NOAA recognizes that fish "know no boundaries in the sea." The fishing areas identified in the FEIS/MP only represent known locations where certain fishery activity is concentrated. The fishing areas displayed in the FEIS/MP are not related to regulatory jurisdiction in any way. They are simplified visual aids to complement the discussion of resources off the coast of Washington.

Aquaculture

Comment: Clarify NOAA's intention to regulate, condition, or prohibit aquaculture activities throughout the Sanctuary and adjacent to Indian reservations.

Response: The Sanctuary regulations do not directly prohibit aquaculture operations within the Sanctuary boundary. However, discharge of matter into the Sanctuary, or alteration of or construction on the seabed in connection with aquaculture activities are prohibited. It is unlikely that permits would be granted for aquaculture activities in the Sanctuary that violate these prohibitions. This determination is based upon U.S. Army Corps of Engineers (COE) guidance related to permits for fish pen mariculture operations, which prohibits fish farms in Federal natural resource areas, such as national seashores, wilderness areas, wildlife refuges, parks or other areas designated for similar purposes (e.g., national marine sanctuaries).

Comment: NOAA should change the proposed regulation governing alteration of or construction on the seabed to "maintenance and development of approved aquaculture operations", and strike "existing prior to the effective date of these regulations." Eliminating future aquaculture development off the Olympic Coast would preclude opportunities for both private shellfish and finfish production and for public enhancement. Technology is being developed which would result in minimal environmental imbalance, and would afford employment for regional communities.

Response: See response to previous comment.

Comment: The Sanctuary should not regulate aquaculture activities because there are sufficient regulations in place.

Response: See response to previous comment.

Comment: The Sanctuary should provide mutually agreed upon requirements for aquaculture activities among the oyster growers of Willapa Bay.

Response: The boundary of the Sanctuary does not include Willapa Bay.

Comment: The discussion in the FEIS/MP on the impacts of aquaculture needs to be expanded and the proposal to not regulate aquaculture in the Sanctuary should be re-assessed. The FEIS/MP needs to address the use of drugs in farm-raised fish.

Response: The discussion of aquaculture within the Sanctuary is intended only to evaluate the current status of the industry in the study area—it is not intended to measure aggregate impacts. The request for expanded discussion of resources does not identify specific issues of discussion. A reassessment of aquaculture vis-a-vis the Sanctuary reveals that the industry is adequately regulated by existing state and Federal requirements. However, any discharges from such operations into the Sanctuary would be prohibited. The Sanctuary has no jurisdiction over the use of drugs in aquaculture—such determinations are under the purview of the Washington State Department of Health (WDH) and the Federal Food and Drug Administration (FDA).

Comment: All aquaculture should be banned from within the Sanctuary.

Response: See responses to previous comments regarding aquaculture.

Comment: Kelp harvesting should be banned or regulated within the Sanctuary.

Response: At present there is no kelp harvesting within the Sanctuary. While kelp harvesting was proposed to be included within the scope of activities listed in the Designation Document as subject to potential regulation under the Sanctuary Program, the final Designation Document does not list kelp harvesting. Kelp is only found within the state waters of the Sanctuary. Because the Washington Department of Natural Resources (DNR) has promulgated regulations for the management of kelp which should adequately protect the kelp, NOAA does not believe it necessary to list kelp as being subject to potential Sanctuary Program regulation. If the state regulations do not adequately protect the kelp within the Sanctuary, the Sanctuary Designation Document could be amended following the same procedures used to promulgate this Designation Document to authorize the regulation of kelp.

Issue: Marine Mammals, Sea Turtles and Seabirds

Comment: Clarify "takings". The prohibition on the taking of marine mammals and seabirds within the Sanctuary is redundant with the ESA, the MMPA and the MBTA, and what further impact it will have on the fishing community.

Response: "Taking" is defined in section 925.3 of the regulations to mean: (1) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the ESA to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct and, (2) for any other marine mammal, sea turtle, or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. While marine mammals, seabirds and endangered and threatened species are protected under the MMPA, ESA and MBTA, NOAA believes that the higher penalties afforded under the MPRSA will provide a stronger deterrent.

The MBTA sets maximum criminal fines at either $500 or $2,000 per violation, depending on the violation. The MMPA sets maximum civil penalties at $10,000 and maximum criminal fines at $20,000. The ESA sets maximum civil penalties at $500, $12,000 or $25,000 per violation, depending on the violation; maximum criminal fines are set at $50,000. (All three statutes also provide for imprisonment for criminal violations.)

Section 307 of the MPRSA allows NOAA to assess civil penalties as high as $100,000 for each violation. In addition, monies collected under the MPRSA are available for use by the National Marine Sanctuary Program.

Comment: The MBTA would not allow any taking of migratory birds in the sanctuary, thus providing even stronger prohibition than sanctuary status can provide.

Response: See above response. Section 925.5(a)(6) of the Sanctuary regulations prohibits the taking of migratory birds within the Sanctuary. Including a prohibition on "taking" marine birds in the Sanctuary regulations allows such violations to be subject to the civil penalties authorized by the MPRSA which far exceed those authorized by the MBTA.

Comment: Prohibit all takings of marine mammals and seabirds, regardless of military or fishing exemptions.

Response: Section 925.5(a)(6) of the Sanctuary regulations prohibits the taking of marine mammals and seabirds in or above the Sanctuary except as authorized by the NMFS or the United States Fish and Wildlife Service under the authority of the MMPA, as amended, 16 U.S.C. 1361 *et seq.*, the ESA, as amended, 16 U.S.C. 1531 *et seq.*, and the MBTA, as amended, 16 U.S.C. 703 *et seq.*, or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply. Exemptions include a limited five-year incidental take of marine mammals provided by interim regulations promulgated pursuant to the MMPA, which are in effect until October, 1993. The ESA also has a limited incidental take exemption. See 16 U.S.C. section 1539(a)(2)B(i). NMFS, in conjunction with environmental groups and the fishing industry, is developing a permanent management regime to be implemented upon expiration of the MMPA interim regulations.

If in the future NOAA determines that the existing regulations promulgated under MMPA, ESA, MBTA or any other state or Federal statute are not adequate to ensure the coordinated and comprehensive management of marine mammals and seabirds, changes to the Sanctuary regulations would be undertaken in accordance with the requirements of the MPRSA, NEPA and APA.

Comment: Exclude from [takings] prohibition birds considered game.

Response: The only birds § 925.5(a)(6) prohibits the taking of are seabirds—seabirds are not considered game species.

Comment: Section 925.5(a)(6) of the proposed regulations would prohibit the taking of marine mammals or seabirds unless affirmatively permitted by regulations promulgated under authority of the ESA, MMPA, or MBTA. Because these regulations do not expressly permit any takings by treaty Indians, the proposed sanctuary regulations would effectively prohibit the Makah Tribe from exercising their treaty rights to take marine mammals. The proposed regulations would also hinder the tribe's ability to exercise its fishing rights by precluding fisheries which result in the incidental taking of marine mammals and seabirds.

The DEIS/MP offers no conservation justification for imposing restrictions on the taking of marine mammals and seabirds which go beyond the restrictions imposed by the ESA and MMPA. The DEIS/MP concedes that the purpose of the proposed sanctuary regulations is *not* to protect particular species from extinction. According to the DEIS, the purpose of these additional prohibitions in the proposed regulations is to "extend protection for sanctuary resources on an environmentally holistic basis." This goal does not permit infringement of treaty rights. Therefore, the regulations should be amended by adding "or in accordance with any treaty to which the United States is a party."

Response: The regulatory prohibitions do not abrogate or obstruct any rights under an existing treaty. The regulations have been changed by adding "or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply." The treaty between the Makah Tribe and the United States explicitly assures the "right of taking fish and of whaling or sealing at usual accustomed grounds and stations." (Article 4, Treaty of Neah Bay, 1855).

Incidental takes of marine mammals can legally occur under permit and exemption provisions of the MMPA. Currently, Washington coastal tribes apply for and receive exemption certificates from NMFS for the incidental taking of marine mammals during fishing. Fees for this exemption are waived for tribes.

Further, tribes cannot be denied entry into any fishery based on the likelihood or occurrence of seabird or marine mammal takings.

Comment: Change the wording of the regulation to read "as authorized or permitted by NMFS or [the U.S. Fish and Wildlife Service] USFWS under the authority of the MMPA and ESA." NMFS suggests that the preamble and/or regulations clarify that Sanctuary permits will not be required for activities authorized or permitted by NMFS or USFWS under MMPA or ESA. Such clarification would relieve many concerns over the possibility of overlapping and potentially duplicative permitting requirements.

Response: NOAA has amended the regulation by adding "as authorized by the National Marine Fisheries Service or the United States Fish and Wildlife Service under the authority of the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.* * * *." The inclusion of "as authorized or permitted" is viewed by NOAA as redundant.

Issue: Sanctuary Administration

Regulations/Permits

Comment: NOAA should use economic incentives rather than regulations to ensure that activities do not impact resources.

Response: NOAA does not have sufficient authority to provide economic incentives to ensure that activities do not impact Sanctuary resources. Even regulations, which include economic disincentives such as monetary penalties, are not sufficient to ensure that any activity does not impact resources.

Comment: Clarify the statement: "When a conflict with a sanctuary regulation related to specific [non-sanctuary] regulations occurs, the one more protective of sanctuary resources will prevail." NOAA regulations should not override those of the local jurisdictions. NOAA needs to clarify:

(1) The application of this policy to fishing;

(2) Types of conflicts the statement applies to;

(3) Who determines whether a conflict exists; and

(4) The process for resolving a conflict.

Response: NOAA agrees that the statement as written in the DEIS/MP is unclear. Accordingly, the statement has been deleted in the FEIS/MP. Essentially, the statement meant that if two regulations exist covering an activity in the Sanctuary, one promulgated by NOAA under the MPRSA authority and the other by another agency under a different statute, compliance with the less restrictive regulation will not relieve the obligation to comply with the other more restrictive one.

Comment: NOAA should follow the guidelines of NEPA when proposing any change in regulations that are listed in the scope of regulations. This is especially applicable to vessel traffic and discharge regulations. Also, clarification is needed on the rulemaking and amendment processes.

Response: Listing activities in the scope of regulation reflects that the issues and alternatives were addressed in the FEIS/MP, public hearings were held, and public comments were solicited regarding the activities. If NOAA later proposes the regulation of an activity listed in the scope of regulations in the Designation Document but not regulated at the time of Sanctuary designation, NOAA will request public comments on the proposal. When NOAA plans to amend a rule that has been promulgated, an analysis of the issues, affected environment, alternatives and consequences will be completed and public comments solicited. NOAA will then modify the proposal if necessary and respond to public comments when taking the final action.

Comment: A procedure must be established to disagree with management and issue an appeal if permits to conduct research are denied.

Response: Section 925.12 of the Sanctuary regulations set forth the procedures for appealing denials of Sanctuary permits. The appeal process involves a written statement by the appellant to the Assistant Administrator of NOAA. The Assistant Administrator may conduct a hearing on the appeal.

Comment: Clarify the procedure for obtaining permits for low-flying aircraft engaged in ongoing species monitoring studies and damage assessment studies in response to an incident such as an oil spill. Activities authorized by the NMFS and USFWS should not require a Sanctuary permit because the requirements for permits would be duplicative.

Response: All flights engaged in monitoring or research activities that fly below 2,000 feet are required to obtain a Sanctuary permit, or, if the activity is already pursuant to a permit, to have that permit certified. Permits are not required for overflights necessary to respond to emergencies threatening life, property or the environment.

Comment: NOAA should not grandfather existing uses if otherwise prohibited by sanctuary regulations.

Response: Section 304(c)(1)(B) of the MPRSA specifies that NOAA may not terminate any valid lease, permit, license, or right of subsistence use or of access, if the lease, permit, license, or right "is in existence on the date of designation of any national marine sanctuary * * *."

Comment: Treaty secured rights should not require sanctuary certification. Further, NOAA should obligate federal regulators to consider and protect tribal interests when issuing permits which may affect those interests.

Response: Treaty secured rights do not require certification by the Sanctuary program pursuant to

§ 925.5(g). NOAA agrees that pursuant to its trust responsibility to the tribes, it should consider and protect tribal interests when issuing permits. Therefore, §§ 925.9 and 925.11 have been modified accordingly. While NOAA as a trustee urges all other Federal agencies to consider and protect tribal interests, it does not have the legal authority to require other Federal agencies to consider and protect tribal interests when issuing permits pursuant to other regulatory authorities.

Comment: The regulations, exemptions and authority to place conditions on existing permitted activities are unclear.

Response: Section 304(c)(2) of the MPRSA provides NOAA with the right to regulate the exercise of a lease, permit, license, or right of subsistence use or of access existing on the effective date of Sanctuary designation.

Comment: Sanctuary management should be formally coordinated with tribal regulatory and law enforcement authorities through cooperative agreements.

Response: Cooperative agreements will be developed as necessary between NOAA and the tribes regarding regulatory and law enforcement activities.

Comment: The Sanctuary should offer increased enforcement which should be conducted by Sanctuary personnel rather than the U.S. Coast Guard. Clarify the enforcement procedures.

Response: There will be enforcement of Sanctuary regulations through cooperative agreements with the U.S. Coast Guard, NMFS, WDF, the coastal tribes, USFWS, and the National Park Service (NPS). Considering fiscal constraints, level of use, and availability of enforcement personnel working in the field already, NOAA has determined that it is not a high immediate priority to hire Sanctuary enforcement personnel. The Sanctuary must first become fully staffed and operational, and a determination must be made whether additional enforcement personnel are needed. The enforcement procedures will be determined pursuant to the cooperative agreements that are established.

Comment: The broad scope of the discharge prohibition will require a well-coordinated enforcement operation to monitor all discharge and disposal activities from sources on land as well as in offshore, coastal and inland waters over large areas outside of the Sanctuary boundary. It may be impossible to determine the origin of discharges or deposits found in the Sanctuary after the dumping activity has occurred.

Response: The prohibition on discharges from outside the boundary relates to discharges that enter and injure Sanctuary resources. NOAA must establish that discharges not only enter, but injure the resources before enforcement actions will be taken. It will, therefore be desirable for NOAA to undertake a comprehensive monitoring program by which it can determine ecosystem health and use impacts.

Comment: NOAA should impose unlimited liability for spills extended to shipping companies and firms providing original source materials involved in polluting activities.

Response: NOAA is permitted to seek penalties of up to $100,000 per day for a violation pursuant to section 307(c)(1) of the MPRSA (16 U.S.C. 1437(c)(1)), and for natural resource damages pursuant to section 312 of the MPRSA (16 U.S.C. 1443).

Transboundary Coordination

Comment: NOAA should coordinate with other Federal and Canadian authorities to regulate vessel traffic, reduce the risk of oil spills, and eliminate oil and gas drilling in Canadian waters adjacent to the proposed sanctuary. NOAA should encourage an adjacent sanctuary along the west coast of Vancouver Island.

Response: NOAA agrees and is working with the Canadian Coast Guard, the U.S. Coast Guard and the Washington OMS to reduce the risk of oil spills. The regulation of vessel traffic will currently remain with the U.S. and Canadian Coast Guards and the OMS. NOAA will support any Canadian initiative to designate a marine protected area in Canadian waters on the Pacific Coast.

Beach Management Policies

Comment: NOAA should grandfather in the existing beach management policies including allowable beach driving activities.

Response: The boundary of the Sanctuary does not encompass beaches where beach driving is permitted.

Advisory Committee/Decision Making

Comment: NOAA and the State of Washington should work together to determine the composition of the Sanctuary Advisory Committee (SAC). The SAC should include representatives from private landowners, local industry, the county and tribes. The SAC should be based at the local level to oversee operations and help maintain strong local input.

Response: NOAA will work with local user and interest groups and state and local governments to obtain broad representation on the SAC. The law limits the SAC to no more than 15 members.

Comment: The SAC should have the power to direct the Sanctuary manger and set priorities for funding. The SAC decisions should be binding. If the decisions are not binding, then the manager should at least provide a rationale for any actions taken which are directly contrary to the recommendations of the SAC.

Response: The SAC recommendations to the manager will be instrumental in guiding the manager with respect to prioritizing actions. If the manager chooses not to pursue the recommendations of the SAC, a rationale will be provided to the members of the SAC.

Comment: One of the first tasks of the SAC should be to review and update the State of Washington's coastal zone management program to ensure consistency with the Sanctuary management plan. The Sanctuary management plan goals and objectives should also be reviewed.

Response: Prior to designation, the State of Washington will review the FEIS/MP as part of its consistency determination as it relates to Washington's approved coastal zone management program. The WDOE has jurisdiction for the Shoreline Management Act. The SAC will not share that jurisdiction, rather, the SAC will be responsible for reviewing the Sanctuary management plan goals and objectives. The SAC's first priority will be to help determine the five-year Sanctuary operating plan establishing priorities for education, research, monitoring, facilities siting and administration.

Miscellaneous

Comment: Firearms should be controlled or banned within the Sanctuary.

Response: Possession and use of firearms is regulated by State law for public safety purposes. The primary purpose of Sanctuary designation is resource protection.

Management Alternatives/Strategies

Comment: The administrative models being discussed in the Northwest Straits proposal should be considered.

Response: The administrative model identifying NOAA as the lead agency in managing the sanctuary with guidance and assistance from the SAC (which will represent State and local interests) will be implemented in the Olympic Coast National Marine Sanctuary. The administrative model which involves joint administration between NOAA and the State of Washington was not considered for the Olympic Coast National Marine Sanctuary because the Sanctuary is predominately in Federal waters. One model suggested for the proposed Northwest Straits National Marine Sanctuary focuses on joint administration because the Sanctuary would be located entirely within State waters. NOAA will work closely with the state and counties and other Federal agencies in the administration of the Olympic Coast National Marine Sanctuary.

Comment: The management plan needs to account for tribal sovereignty and jurisdiction with respect to cultural resources, law enforcement and research practices. NOAA needs to recognize the need to coordinate with each tribal entity in the same manner as with the state and its management agencies.

Response: NOAA acknowledges the importance of tribal sovereignty. Nothing in the designation will impact the treaty rights of the coastal tribes. NOAA will consult closely with the tribes on any action that may potentially impact tribal rights or interests.

Comment: NOAA should choose management plan alternative 1 which proposes to gradually phase in program activities and staffing. Staff could be co-located with another Federal agency in Port Angeles, with satellite sites in Klaloch or La Push. National concerns with fiscal restraint support this choice.

Some commenters supported management plan alternative 2 which proposes to set up the sanctuary headquarters and immediately provide full-staffing. Sanctuary headquarters should be located on the coast. The former Makah Air Force Station is one possible location.

Response: NOAA is experiencing the fiscal constraints that all Federal programs are experiencing. NOAA proposes to balance the needs for resource protection and fiscal restraint by phasing in staffing and maximizing cooperative relationships with other agencies and jurisdictions working in the area (e.g., NPS, U.S. Coast Guard, the tribes, and the USFWS) to implement the management plan. The Sanctuary manager will have an office on the Olympic Coast with administrative support facilities in Seattle.

Comment: Implementation of the final management plan must be adequately funded in order to prevent pollution and resource damage.

Response: The level of funding for the first year after Sanctuary designation will depend upon the Sanctuary Program's funding which is authorized and appropriated by Act of Congress. However, the reality of the program's funding situation will require the manager and SAC to identify alternative sources of funding for Sanctuary programs.

Comment: A volunteer program, coordinated by a full-time volunteer coordinator, should be established to assist in implementation of the management plan.

Response: NOAA agrees that the establishment of a volunteer program can assist in implementation of the management plan. The SAC will be influential in determining the priority of hiring a volunteer coordinator.

Comment: The management alternatives should more accurately describe NOAA's comprehensive planning as implemented through a combination of legal management authority over certain specific Sanctuary activities and advisory coordination with other entities managing the remaining essential components.

Response: NOAA agrees. The FEIS/MP outlines the regulations which NOAA is promulgating. The FEIS/MP also outlines the role of the SAC, whose composition is aimed at enhancing the coordination with other entities with management jurisdiction in the Sanctuary.

Comment: The Sanctuary manager should have a great deal of responsibility for setting the Sanctuary budget, as well as assigning funds to local governments for assistance in implementing management plans.

Response: The Sanctuary manager will have primary responsibility for recommending the Sanctuary budget to headquarters. The Sanctuaries and Reserves Division has responsibility for the entire National Marine Sanctuary Program budget, and will work with the site manager to develop the annual program budget. The manager has the discretion to earmark funds to local governments or groups to implement Sanctuary programs.

Comment: Zoning plans should be implemented which accommodate the varying resource management needs within the Sanctuary. Some zoning examples include allowing for the needs of ports to the south, designating areas which would be closed to all consumptive uses on a rotating basis, and zoning specific areas within the sanctuary for the sole purposes of research, recreational use, commercial use and no use.

Response: Zoning is not anticipated as part of the FEIS/MP for the Sanctuary. If NOAA, in consultation with the SAC, believes that zoning would better meet the needs of the program, the management plan and regulations can be amended in accordance with the requirements of the MPRSA, the NEPA and the APA.

Research/Education Protocol

Comment: Research results and data should be shared through existing databases with Federal and state agencies and tribes. The sharing of data should be formalized through cooperative agreements.

Response: NOAA agrees that research results and data should be shared and will pursue appropriate cooperative agreements to ensure this coordination.

Comment: It is unnecessary to severely restrict or eliminate activities such as fishing, commercial vessel activity, dredging and aircraft operation in order to carry out the Sanctuary goals of promoting research and public education.

Response: The primary goal of sanctuary designation is the comprehensive long-term protection of marine resources. Some restrictions are necessary to accomplish this goal. Of the above activities, only dredging is being eliminated within the Sanctuary boundary. Research and education provide additional means to promote the goal of marine resource protection.

Comment: Geophysical exploration should not be prohibited, as the information gathered from this research can benefit coastal communities and academic institutions.

Response: NOAA's emphasis on research within the Sanctuary allows for research which may involve an otherwise prohibited activity (such as alteration of or construction on the seabed) as long as researchers obtain a research permit pursuant to § 925.9 of the Sanctuary regulations. NOAA will determine the environmental consequences of the proposed research, including short and long term effects on marine biota (such as noise which may interfere with cetacean communication) in deciding whether to issue a permit.

Comment: The research program should stress applied research such as research which can facilitate fisheries management, provide information on long-term environmental trends, and provide links between the marine systems and the adjacent terrestrial systems. Providing research results to decision makers at the various governmental levels would be an important link in addressing marine resource problems.

Response: NOAA agrees and has clarified this point in the research section of the management plan.

Comment: Criteria for acceptable research within the Sanctuary should be established prior to formal designation of the Sanctuary. The criteria should be used in review of research permit applications, and an appeal process should be established in the case of research permit application denial.

Response: Research permit applications will be reviewed on a case-by-case basis and evaluated to determine the potential short and long term impacts of the proposed activities. In addition, § 925.12 of the regulations sets forth the procedures for appealing to the Assistant Administrator the denial of a research permit.

Comment: NOAA should conduct research into the effects of fishing activities on the entire marine system. Fish stocks, species abundance, and monitoring information should be presented to the PFMC.

Response: The National Ocean Service (which includes the Sanctuaries and Reserves Division) and the NMFS have entered into a Memorandum of Understanding outlining the working relationship between the Sanctuary Program and the NMFS. The PFMC will be involved in this agreement, through its relationship with the NMFS. Research which benefits the overall goal of resource protection is addressed within this agreement by highlighting the need for interagency coordination, research and monitoring.

Comment: The benefits of sanctuary designation to the fishing community and others should be clearly articulated. Additionally, connections between the regulations and resource protection should be integrated in the education plan (e.g., establishing warning signs at popular access sites to alert boaters and hikers to the effect of disturbance of pelagic birds and marine mammals.)

Response: NOAA agrees and has clarified the education goals in the Sanctuary management plan. NOAA has articulated the benefits of the Sanctuary program for the fishing community. NOAA will coordinate with the USFWS and the NPS to post warning signs around critical marine bird and mammal habitat.

Comment: NOAA should provide for increased education and interpretation of the shoreline through a variety of media. Educational materials and outreach programs should be developed by pre-existing facilities and organizations on the Olympic Peninsula.

Response: Sanctuary designation will provide for increased education and interpretation of the entire Sanctuary ecosystem. Education materials and outreach programs will be developed in cooperation with existing Federal, tribal, state and local entities.

Issue: Informational Amendments of the DEIS/MP

Biological Amendments

Comment: The discussion of the neretic and shelf edge environments in the DEIS/MP needs to be expanded. The resource assessment must stress the biological richness of the area.

Response: The resource assessment describing the ecosystem of the Sanctuary study area has been expanded in the FEIS/MP.

Comment: Biological resources need to be discussed in terms of ecosystem interactions and not single species descriptions.

Response: NOAA has expanded the discussion to include a description of the study area from an ecosystem perspective.

Socioeconomic

Comment: The FEIS/MP must contain a socioeconomic impact study of the regulations on the affected coastal communities and Tribes. Failure to consider and mitigate these impacts violates the NEPA and Federal Trust responsibility to Indians.

Response: An economic analysis has been included within the FEIS/MP. NOAA is not promulgating regulations that will unduly burden the tribes. The regulations have provisions that recognize treaty secured rights. In addition, NOAA will consult with the Tribes when considering permits affecting proposed development activities in the Sanctuary. NOAA believes that the regulations do not conflict with the economic interests of the Tribes since the regulations offer increased protection for those natural resources critical to the tribal economy.

Comment: The Federal government should investigate the possibility of tax breaks to offset economic impacts of the management plan.

Response: NOAA's actions do not add economic burdens to the area. The issue of tax breaks should be addressed to an individual's representatives in Congress. NOAA does not have the legislative authority to address tax laws.

Supplemental Draft Environmental Impact Statement

Comment: NOAA should submit a supplemental Draft Environmental Impact Statement for the following reasons: (1) The DEIS/MP lacks a satisfactory examination of the socioeconomic impacts of the regulations on the coastal communities; (2) the DEIS/MP contains erroneous information related to port activities in Grays Harbor; (3) some information is missing, outdated, or inaccurate; (4) inadequate definition of the unique environment deserving protection that is identified by the SEL.

Response: NOAA has determined that the matters for which an SEIS has been requested can be addressed in the FEIS/MP. The FEIS/MP addresses the socioeconomic impacts of regulations that could potentially affect the coastal communities in the alternatives and consequences section. Further, the vessel traffic section has been amended substantially to provide a detailed description of the significance of vessel traffic to the coastal communities. Additionally, the description of the marine environment under consideration has been expanded greatly.

Management

Comment: NOAA needs to address or recognize a number of current local and state regulatory controls in place within the shoreline areas.

Response: NOAA has addressed local and state regulatory controls within the shoreline areas. These controls are listed in appendix J.

The following sets forth the text of the Designation Document for the Olympic Coast National Marine Sanctuary.

Designation Document for the Olympic Coast National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, the waters off the Olympic Coast of Washington State including the U.S. portion of the Strait of Juan de Fuca west of Koitlah Point, and the submerged lands thereunder, as described in Article II, are hereby designated as the Olympic Coast National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Olympic Coast National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities that either will be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if an activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Sanctuary Area

The Olympic Coast National Marine Sanctuary boundary encompasses approximately 2500 square nautical miles (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington. The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the Copalis River, cutting across the heads of Nitnat, Juan de Fuca, and Quinault Canyons.

The shoreward boundary of the Sanctuary is the mean lower low water line when adjacent to Indian reservations and State and county lands. When adjacent to Federally managed lands, the coastal boundary extends to the mean higher high water line. The coastal boundary cuts across the mouths of all rivers and streams. The precise boundary of the Sanctuary is set forth in Appendix A of this Designation Document.

Article III. Characteristics of the Sanctuary Area That Give It Particular Value

The Sanctuary is a highly productive, nearly pristine ocean and coastal environment that is important to the continued survival of several ecologically and commercially important species of fish, seabirds, and marine mammals. Its rugged and undeveloped coastline makes the region one of the more dramatic natural wonders of the coastal United States, paralleling the majestic splendor of such terrestrial counterparts as Yosemite National Park and the Grand Tetons. The region's high biological productivity is fueled by seasonal enhanced upwelling along the edge of the continental shelf, especially at submarine canyons, during periods of high solar radiation.

The diversity of habitats that make up the Sanctuary support a great variety of biological communities. This unusually large range of habitat types include: Offshore islands and rocks; some of the most diverse kelp beds in the world; intertidal pools; erosional features such as rocky headlands, seastacks, and arches; interspersed exposed beaches and protected bays; submarine canyons and ridges; the continental shelf, including a broad shallow plateau extending from the mouth of the Juan de Fuca canyon; and continental slope environments. The numerous seastacks and rocky outcrops along the Sanctuary shoreline, coupled with a large tidal range and wave splash zone, support some of the most diverse and complex intertidal zones in the United States.

The Sanctuary provides an essential habitat for a wide variety of marine mammals and birds, and is of particular interest due to the presence of endangered and threatened species that live or migrate through the region. Twenty seven species of marine mammals are reported to breed, rest within, or migrate offshore of the Olympic Peninsula. Of particular interest is the migration route of the endangered California gray whale, the threatened northern sea lion, the occasional presence of the endangered right, fin, sei, blue, humpback, and sperm whales, and the reintroduced resident population of sea otters.

In addition, the seabird colonies of Washington's outer coast are among the largest in the continental United States and include a number of species listed as endangered or threatened including the short-tailed albatross, peregrine falcon, brown pelican, Aleutian Canada goose, marbled murrelet, and one of the largest populations of bald eagles in the continental United States.

The high biological productivity of the coastal and offshore waters in the Sanctuary support valuable fisheries that contribute significantly to the State and tribal economies. The commercially important species of fish include five species of salmon, groundfish, and shellfish.

In addition to the Sanctuary's value with respect to its biological resources, the region encompasses significant historical resources including Indian village sites, ancient canoe runs, petroglyphs, Indian artifacts, and numerous shipwrecks.

The diversity and richness of marine resources suggests that the marine sanctuary designations will provide exceptional opportunities for scientific research in the areas of species interactions, population dynamics, physiological ecology, linkages between terrestrial and aquatic ecosystems, and marine anthropology. The scientific research encouraged by the Sanctuary management plan will, in turn, help support an intensive public education and awareness program that will address the diverse, complex, and sensitive ecosystems in Washington's coastal and oceanic environments.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area:

a. Exploring for, developing, or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other solid matter of commercial value) within the Sanctuary;

b. Discharging or depositing from within the boundary of the Sanctuary, any material or other matter;

c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;

e. Drilling into, dredging, or otherwise altering the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material or other matter on the seabed of the Sanctuary;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

g. Flying a motorized aircraft above the Sanctuary;

h. Operating a vessel (i.e., watercraft of any description in the Sanctuary;

i. Interfacing with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use of access, may be terminated by the Secretary of Commerce or designee as a result of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) Exploration for, development or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary treated sewage (except for regulation, pursuant to section 304(c)(2) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); (3) the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or (4) bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of This Designation

The terms of designation, as defined under Section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and the Governor of the State of Washington, and approval by the Secretary of Commerce or designee.

APPENDIX A.—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES.

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′50″	125°00′00″
4	47°40′05″	125°04′44″
5	47°50′01″	125°05′42″
6	47°57′13″	125°29′13″
7	48°07′33″	125°38′20″
8	48°14′46″	125°40′59″
9	48°20′12″	125°22′59″
10	48°27′49″	125°06′04″
11	48°29′59″	124°59′13″
12	48°30′19″	124°50′42″
13	48°29′38″	124°43′41″
14	48°27′50″	124°38′13″
15	48°23′17″	124°38′13″

III. Summary of Final Management Plan

The FEIS/MP for the Olympic Coast National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The FEIS/MP describes the resources and uses of the Sanctuary. The FEIS/MP describes the resource protection, research, education and interpretive programs, and establishes goals and objectives to be accomplished by each program. The FEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities.

The goals and objectives for the Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of protection efforts are to:

(1) Coordinate policies and procedures among agencies sharing responsibility for protection and management of resources;

(2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs);

(3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;

(4) Enforce Sanctuary regulations in addition to other regulations already in place;

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;

(6) Ensure that the water quality of the coastal and ocean waters off the Olympic Peninsula is maintained at a level consonant with Sanctuary designation;

(7) Establish mechanisms for coordination among all the agencies participating in Sanctuary management;

(8) Ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and

(9) Reduce threats to Sanctuary resources and qualities.

Research Program

Effective management of the Sanctuary requires the implementation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the marine environment off the Olympic peninsula, its resources and qualities, and to resolve specific management problems, some of which may involve resources common to both the marine and upland freshwater environments. Research results will be used in interpretive programs for visitors, for those living on the Peninsula, and working adjacent to or in the Sanctuary, others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives of the research program are to:

(1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improve management of the Sanctuary;

(2) Incorporate research results into the interpretive/education program in a format useful for the general public;

(3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;

(4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;

(5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;

(6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and

(7) Encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education Program

The goal for the education program is to improve public awareness and understanding of the significance of the Sanctuary resources and qualities to foster a heightened sense of stewardship for Sanctuary resources and qualities.

The management objectives designed to meet this goal are to:

(1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;

(2) Broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests;

(3) Foster public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

(4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to:

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and

(4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

The Sanctuary headquarters will be located in Port Angeles, WA with an initial satellite office near Forks, WA.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; set forth procedures for applying for national marine sanctuary permits to conduct prohibited activities; set forth certification procedures for existing leases, licenses, permits, other authorizations or rights authorizing the conduct of a prohibited activity; set forth notification and review procedures for applications for licenses, permits, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and set forth procedures for administrative appeals.

The regulations are codified in part 925 of title 15, Code of Federal Regulations.

Section 925.1 sets forth as the purpose of the regulations to implement the designation of the Olympic Coast National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Section 925.2 and Appendix A following § 925.12 set forth the boundary of the Sanctuary.

Section 925.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 925.4 allows all activities except those prohibited by § 925.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 925.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by Section 312 of the Act.

Section 925.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for:

(1) The exploration for, development or production of oil, gas or minerals in the Sanctuary;

(2) The discharge of primary-treated sewage within the Sanctuary (except pursuant to certification under § 925.10, of a valid authorization in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction);

(3) The disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; and

(4) Bombing activities within the Sanctuary could be conducted lawfully if:

(1) The activity is necessary to respond to an emergency threatening life, property, or the environment (not applicable to the prohibitions against takings and interference with law enforcement); necessary for valid law enforcement purposes; authorized by a National Marine Sanctuary permit issued under § 925.9 (not applicable to the prohibition against interference with law enforcement); or authorized by a Special Use Permit issued under Section 310 of the Act (not applicable to the prohibition against interference with law enforcement);

(2) With regard to Department of Defense activities: (A) the activity is an existing military activity including hull integrity tests and other deep water tests; live firing of guns, missiles, torpedoes, and chaff; activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and anti-submarine warfare operations, or (B) the activity is a new activity and exempted by the Director of the Office of Ocean and Coastal Resource Management or designee after consultation between the Director or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by prohibiting all bombing activities within the Sanctuary;

(3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management or designee under § 924.10 of a valid lease, permit, license or other authorization issued by any Federal, State or local authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated, except that treaty rights of a Federally recognized Indian tribe may be exercised by the tribe without certification by the Director or designee;

(4) The activity is authorized by a valid lease, permit, license, or other authorization issued by any Federal, State or local authority of competent

jurisdiction after the effective date of Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management or designee was notified of the application in accordance with the requirements of § 925.11, the applicant complies with the requirements of § 925.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

The first activity prohibited is exploring for, developing or producing oil, gas or minerals within the Sanctuary. With regard to oil and gas, this regulation implements the requirements of Section 2207 of the Oceans Act of 1992 which prohibits "oil or gas leasing or pre-leasing activity [from being] conducted within the area designated as the Olympic Coast National Marine Sanctuary * * *." The resources and qualities of the coastal and offshore waters of the Olympic Peninsula, particularly the sea birds and pinnipeds that use the haul-out sites, kelp forests and rocks along the Olympic Coast, and the high water quality of the area, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas exploration, development and production activities within the Sanctuary boundary partially protects Sanctuary resources and qualities from oil and gas activities. Only partial protection will be provided due to the remaining threat from oil and gas from vessel traffic transiting through and near the Sanctuary, particularly oil tankers not operating in accordance with the voluntary agreement of the Western States Petroleum Association to remain 50 nautical miles from shore. A prohibition on mineral activities within the Sanctuary is consistent with the prohibition on alteration of or construction on the seabed as discussed below. "Mineral" is defined to mean clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore, or any other solid material or other solid matter of commercial value. The prohibition on oil, gas and mineral activities additionally will prevent the negative effects of physical and possible chemical disturbances associated with extraction activities, e.g., destruction of benthic biota; resuspension of fine sediments; interference with filtering, feeding and respiratory functions of marine organisms; loss of food sources and habitats; and lowered photosynthesis and oxygen levels.

The second activity prohibited is depositing or discharging from within the boundary of the Sanctuary any material or other matter except:

(1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(2) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322 *et seq.*;

(3) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by Section 312 of the FWPCA) excluding oily-wastes from bilge pumping;

(4) Engine exhaust; and

(5) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

This prohibition is necessary to protect Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 925.11. At a minimum, secondary treatment will be required. Depending on the risk to Sanctuary resources and qualities, greater treatment may be required. The intent of this prohibition is to protect Sanctuary resources and qualities from the effects of land and sea originating pollutants.

The third activity prohibited is depositing or discharging, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the five exclusions discussed above for the second prohibited activity.

The fourth activity prohibited is moving, removing or injuring or attempting to move, remove or injure a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

Historical resources located within the Sanctuary that are of significance to an Indian tribe(s) (e.g., submerged Indian villages) will be managed so as to protect other Sanctuary resources and the interests of the governing body of an Indian tribe(s) in such historical resources. If an Indian tribe determines that a historical resource of tribal significance may be researched, excavated or salvaged, the Sanctuary manager may issue a Sanctuary permit if the criteria for issuance have been met (See § 925.9). Removal or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains.

The fifth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except if any of the above results incidentally from: (1) Anchoring vessels; (2) traditional fishing operations; (3) installation of navigation aids; (4) harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and harbors, and repair, replacement or rehabilitation of breakwaters and jetties; (5) construction, repair, replacement, enhancement or rehabilitation of boat launches, docks or piers and associated breakwaters and jetties; or (6) beach nourishment projects related to harbor maintenance activities. Federal projects are any water resources development projects conducted by the U.S. Army Corps of Engineers or operating under a permit or authorization issued by the Corps of Engineers and authorized by Federal law.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine benthic habitats, such as kelp beds, invertebrate populations, fish habitats and estuaries.

The sixth activity prohibited is taking marine mammals, sea turtles or seabirds in or above the Sanctuary, except as authorized by NMFS or USFWS under the authority of the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to a treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and

MBTA, to the extent that they apply. The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those acts. The prohibition overlaps with the MMPA, ESA and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to $100,000 per taking. The prohibition covers all marine mammals, sea turtles and seabirds in or above the Sanctuary. The prohibition recognizes existing treaty rights to hunt marine mammals, sea turtles and seabirds to the extent that the treaty rights have not been abrogated by provisions of the MMPA, ESA or MBTA.

The seventh activity prohibited is flying motorized aircraft at less than 2,000 feet (610m) both above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles or Copalis National Wildlife Refuge, or within one nautical mile seaward of the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe. This prohibition is designed to limit potential noise impacts, particularly those that might startle hauled-out seals and sea lions, and colonial seabirds along the shoreline margins of the Sanctuary.

Both the eighth and ninth prohibitions serve to facilitate enforcement actions for violations of Sanctuary regulations. The eighth prohibition is the possession within the Sanctuary of any historical resource or marine mammal, sea turtle or seabird, regardless of where the resource was taken, except in compliance with the MMPA, ESA and MBTA and the ninth prohibition is interfering with, obstructing, delaying or preventing investigations, searches, seizures or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 925.6 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 925.7 sets for the maximum statutory civil penalty for violating a regulation—$100,000. Each day of a continuing violation constitutes a separate violation. Section 925.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of these sections is to draw the public's attention to the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear in 15 CFR part 904.

Section 925.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will not substantially injure Sanctuary resources and qualities and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe. In deciding whether to issue a permit, the Director or designee may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, the end value of the activity, and the impacts of the activity on adjacent Indian tribes. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 925.10 sets forth procedures for requesting certification of leases, licenses, permits, other authorizations, or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a)(2)–(8) of § 925.5. Pursuant to paragraph (f) of § 925.5, the prohibitions in paragraphs (a)(2)–(8) of § 925.5 do not apply to any activity authorized by a valid lease, permit, license, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 925.10 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 925.10 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of the prohibitions in paragraphs (a)(2)–(8) of § 925.5 with regard to which the holder is requesting certification pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 925.10.

Section 925.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, other authorization or right as she or he deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act. The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 925.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, other authorization or right is subject to the provisions of § 925.11.

Section 925.11 states that consistent with paragraph (g) of § 925.5, the prohibitions of paragraphs (a)(2)–(8) of § 925.5 do not apply to any activity authorized by any valid lease, permit, license, or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 925.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Where the applicant is the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and the U.S. trust responsibility to the affected tribes.

Section 925.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 925.11.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 925.12.

Section 925.12 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to:

(1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 925.9 or a Special Use permit under Section 310 of the Act;

(2) The granting, denial, conditioning, amendment, suspension or revocation of a certification under § 925.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 925.11.

Prior to conditioning the exercise of existing leases, permits, licenses, other authorizations or rights or conditioning or objecting to proposed authorizations, NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants.

NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and, for municipal sewage discharge, to require, at a minimum, secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and qualities.

Section 925.13 has been added which requires the Director to consult with state, local and tribal governments regarding areas of mutual concern, including Sanctuary programs, permitting activities, development and threats to Sanctuary resources. This section also requires the Director to enter into memorandums of understanding with such governments when requested regarding such consultations.

V. Miscellaneous Rulemaking Requirements

Regulatory Flexibility Act

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, other authorizations or rights authorizing the conduct of a prohibited activity and for notifying NOAA of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648–0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (06480141) Washington, DC 20503 (Attn: Desk Officer for NOAA) and to Richard A. Roberts, room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS/MP was prepared for the designation and proposed regulations. As required by Section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on September 20, 1991, with comments due on December 13, 1991. Public hearings were held in Port Angeles, Seattle, Olympia, Aberdeen, Seaview and Washington, DC from November 7 to 20, 1991. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. It would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion or deprivation. While the prohibition on the exploration, development and production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

(Federal Domestic Assistance Catalog Number 11.429
Marine Sanctuary Program

List of Subjects in 15 CFR Part 925

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 5, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is amended as follows:

Part 925 is added to subchapter B to read as follows:

PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY

Sec.
925.1 Purpose.
925.2 Boundary.
925.3 Definitions.
925.4 Allowed activities.
925.5 Prohibited activities.
925.6 Emergency regulations.
925.7 Penalties for violations or regulations.
925.8 Response costs and damages.
925.9 National Marine Sanctuary permits—application procedures and issuance criteria
925.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
925.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
925.12 Appeals of administrative action.
925.13 Consultations with the state, affected Indian tribes and other affected local authorities.

Appendix A to Part 925—Olympic Coast National Marine Sanctuary Boundary Coordinates

Authority: Sections 302, 303, 304, 305, 306, 307, 310 and 312 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

§ 925.1 Purpose.

The purpose of the regulations in this Part is to implement the designation of the Olympic Coast National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

§ 925.2 Boundary.

(a) The Olympic Coast National Marine Sanctuary consists of an area of approximately 2500 square nautical miles (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, state and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The precise boundary of the Sanctuary is set forth in appendix A to this part.

§ 925.3 Definitions.

(a) The following terms are defined for the purposes of this part:

Act means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 et seq.).

Administrator or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

Effective date of Sanctuary designation means the date the regulations implementing the designation of the Sanctuary (the regulations in this part) become effective.

Federal project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or authorization issued by the Corps of Engineers and authorized by Federal law.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources include historical properties as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Indian reservation means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

Indian tribe means any American Indian tribe, band, group, or community recognized by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of, and includes, but is not limited to, to cause the loss of or to destroy.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other solid matter of commercial value.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Sanctuary means the Olympic Coast National Marine Sanctuary.

Sanctuary quality means any particular and essential characteristic of the Sanctuary, including, but not limited to, water, sediment and air quality.

Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the substratum of the waters off the Olympic Peninsula, bottom formations, marine plants and algae, invertebrates, plankton, fish, birds, turtles, marine mammals and historical resources.

Take or *taking* means: (1) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(2) For any other marine mammal, sea turtle or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(3) For the purpose of both paragraphs (1) and (2) of this definition, the term includes, but is not limited to, collecting any dead or injured marine mammal, sea turtle or seabird, or any part thereof; restraining or detaining any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine mammal, sea turtle or seabird.

Traditional fishing means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation, including the retrieval of fishing gear.

Treaty means a formal agreement between the United States Government and an Indian tribe.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 925.4 Allowed activities.

All activities except those prohibited by § 925.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 925.6, subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 925.8).

§ 925.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this § 925.5, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA) 33 U.S.C. 1322 *et seq.*;

(iii) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by Section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(iv) Engine exhaust; or

(v) dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(3) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2) (i) through (v) of this § 925.5, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 703 *et seq.*, or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

(7) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one nautical mile seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The regulations in this part apply to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a) (2) through (5), (7) and (8) of this § 925.5 do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(d) The prohibitions in paragraphs (a) (2) through (5), (7) and (8) of this § 925.5 do not apply to activities necessary for valid law enforcement purposes.

(e)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. Except as provided in paragraph (e)(2) of this § 925.5, the prohibitions in paragraphs (a) (2) through (8) of this § 925.5 do not apply to the following military activities performed by the Department of Defense in W–237A, W237–B, and Military Operating Areas Olympic A and B in the Sanctuary:

(i) Hull integrity tests and other deep water tests;

(ii) Live firing of guns, missiles, torpedoes, and chaff;

(iii) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(iv) Anti-submarine warfare operations.

New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this § 945.5 by the Director or designee after consultation between the Director or designee and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (e)(1).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a) (2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 925.9 or a Special Use permit issued pursuant to Section 310 of the Act.

(g)(1) The prohibitions in paragraphs (a) (2) through (8) of this § 925.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 925.10 and with any terms and conditions on the exercise of such lease, permit, license, other authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(2) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this Part. The Director may consult with the governing body of a Tribe regarding ways the Tribe may exercise such rights consistent with the purposes of the Sanctuary.

(h) The prohibitions in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by any lease, permit, license, or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 925.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(i) Notwithstanding paragraphs (f) and (h) of this § 925.5, in no event may the Director or designee issue a National Marine Sanctuary permit under § 925.9 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 925.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

§ 925.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 925.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this Part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear in 15 CFR part 904.

§ 925.8 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 925.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by paragraphs (a) (2) through (8) of § 925.5 if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this § 925.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (8) of § 925.5, if the Director or designee finds that the activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe adjacent to the Sanctuary. In deciding whether to issue a permit, the Director or designee may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; the end value of the activity; and the impacts of the activity on adjacent Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director or designee may also deny a permit application pursuant to this § 925.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations. (Procedures governing permit denials for enforcement reasons are set forth in subpart D of 15 CFR part 904). In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 925.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this section for good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) The Director or designee may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(i) The Director or designee may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(j) The Director or designee shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(k) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall acquire the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

(l) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 925.12.

§ 925.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations—or rights to conduct a prohibited activity.

(a) The prohibitions set forth in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 925.10; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, or other authorization in existence on the effective date of sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by paragraphs (a) (2) through (8) of § 925.5 may conduct the activity without being in violation of § 925.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 925.10.

(c) Any holder of a valid lease, permit, license, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by (a) (1) through (8) of § 925.5.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910. A copy of the lease, permit, license, or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he or she deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 925.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 925.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 925.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 925.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of permit, license, approval, other authorization or right is subject to the provisions of § 925.11.

§ 925.11 Notification and review of applications for leases, licenses, permits, or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by any valid lease, permit, license, or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(2) The applicant complies with the other provisions of this § 925.11;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by paragraphs (a) (2) through (8) of § 925.5.

(c) Notifications of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, Building 4, Silver Spring, MD 20910. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities. Where the applicant is the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and the United States' trust responsibility to the affected tribes.

(f) The Director or designee may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 925.12.

§ 925.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 925.9 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 925.10 certification requester or a § 925.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 925.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 925.11.

(b) An appeal under paragraph (a) of this § 925.12 must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910.

(c) While the appeal is pending, appellants requesting certification pursuant to § 925.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in paragraphs (a) (2) through (8) of § 925.5 with regard to which they are requesting certification. All other appellants may not conduct their activities without being subject to the prohibitions in paragraphs (a) (1) through (9) of § 925.5.

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 925.12 other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

§ 925.13 Consultation with the state, affected Indian tribes and other affected local authorities.

The Director shall regularly consult with the State of Washington, the governing bodies of tribes with reservations adjacent to the Sanctuary, and adjacent county governments regarding areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources. The Director shall, when requested by such governments, enter into a memorandum of understanding regarding such consultations.

APPENDIX A TO PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′05″	125°00′00″
4	47°40′05″	125°04′44″
5	47°50′01″	125°05′42″
6	47°57′13″	125°29′13″
7	48°07′33″	125°38′20″
8	48°14′46″	125°40′59″
9	48°20′12″	125°22′59″
10	48°27′49″	125°06′04″
11	48°29′59″	124°59′13″
12	48°30′19″	124°50′42″
13	48°29′38″	124°43′41″
14	48°27′50″	124°38′13″
15	48°23′17″	124°38′13″

[FR Doc. 94–11389 Filed 5–10–94; 8:45 am]

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Wednesday
May 11, 1994

Part IX

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of proposed actions under the NIH guidelines for research involving recombinant DNA molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on June 9–10, 1994. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by May 26, 1994, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its June 9–10, 1994, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Sobol and Royston

In a letter dated October 6, 1993, Drs. Robert Sobol and Ivor Royston of the San Diego Regional Cancer Center, San Diego, California, submitted the human gene transfer protocol entitled: Injection of Glioblastoma Patients with Tumor Cells Genetically Modified to Secrete Interleukin-2 (IL–2): A Phase I Study to the Recombinant DNA Advisory Committee for formal review and approval. At the December 2–3, 1993, meeting, the Recombinant DNA Advisory Committee disapproved the original protocol. The majority of the Recombinant DNA Advisory Committee members concluded that the preclinical data derived from a previous single patient protocol was inadequate to justify the experiment. The motion to disapprove the protocol passed by a vote of 10 in favor, 5 opposed, and 1 abstention.

In a letter dated April 8, 1994, Drs. Sobol and Royston submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Curiel

In a letter dated April 13, 1994, Dr. David Curiel of the University of Alabama, Birmingham, Alabama, submitted the human gene transfer protocol entitled: Phase I Trial of a Polynucleotide Vaccine to Human Carcinoembryonic Antigen in Patients with Metastatic Colorectal Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Evans and Robbins

In a letter dated April 13, 1994, Drs. C. H. Evans and Paul Robbins of the University of Pittsburgh, Pittsburgh, Pennsylvania, submitted the human gene transfer protocol entitled: Clinical Trial to Assess the Safety, Feasibility, and Efficacy of Transferring a Potentially Anti-arthritic Cytokine Gene to Human Joints with Rheumatoid Arthritis to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Heslop, Brenner, and Krance

In a letter dated April 6, 1994, Drs. Helen Heslop, Malcolm Brenner, and Robert Krance of the St. Jude Children's Research Hospital, Memphis, Tennessee, submitted the human gene transfer protocol entitled: Use of Double Marking with Retroviral Vectors to Determine Rate of Reconstitution of Untreated and Cytokine Expanded CD34(+) Selected Marrow Cells in Patients Undergoing Autologous Bone Marrow Transplantation to the Recombinant DNA Advisory Committee for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Lyerly

In a letter dated April 12, 1994, Dr. H. Kim Lyerly of Duke University Medical Center, Durham, North Carolina, submitted the human gene transfer protocol entitled: A Pilot Study of Autologous Human Interleukin-2 Gene Modified Tumor Cells in Patients with Refractory or Recurrent Metastatic Breast Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Economou, Glaspy, and McBride

In a letter dated April 11, 1994, Drs. James Economou, John Glaspy, and William McBride of the University of California, Los Angeles, California, submitted a human gene transfer protocol entitled: A Phase I Testing of Genetically Engineered Interleukin-7 Melanoma Vaccines to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Freedman

In a letter dated March 22, 1993, Dr. Ralph Freedman of M.D. Anderson Cancer Center, Houston, Texas, submitted the human gene transfer protocol entitled: Use of a Retroviral Vector to Study the Trafficking Patterns of Purified Ovarian Tumor Infiltrating Lymphocyte (TIL) Populations Used in Intraperitoneal Adoptive Immunotherapy of Ovarian Cancer Patients: A Pilot Study to the Recombinant DNA Advisory Committee for formal review and approval. At its June 7–8, 1993, meeting the Recombinant DNA Advisory Committee deferred the protocol until the investigators return to the full Recombinant DNA Advisory Committee with the following:

(1) Data demonstrating efficient transduction of TIL,

(2) Sufficient information regarding demonstration of selectivity, i.e., specific trafficking of TIL to tumor,

(3) Complete statistical analysis,

(4) Revised Informed Consent document in simplified language, and

(5) Address concerns about patient responsibility for research-related costs. The motion to defer the protocol

pending full Recombinant DNA Advisory Committee review of additional information passed by a vote of 18 in favor, 0 opposed, and no abstentions.

In a letter dated January 5, 1994, Dr. Freedman submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval. At its March 3–4, 1994, meeting, the Recombinant DNA Advisory Committee deferred the protocol until the investigator returns to the full Recombinant DNA Advisory Committee with:

(1) A modified protocol, which includes a revised treatment schema that will provide statistically significant information, and

(2) A revised Informed Consent document that adequately describes the procedures that will be performed in language understandable to lay persons. The motion to defer the protocol pending full Recombinant DNA Advisory Committee review of the additional information passed by a vote of 12 in favor, 1 opposed, and no abstentions.

In a letter dated April 13, 1994, Dr. Freedman submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval.

VIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Deisseroth, Hortobagyi, and Champlin

In a letter dated April 12, 1994, Drs. Albert Deisseroth, Gabriel Hortobagyi, and Richard Champlin of the M.D. Anderson Cancer Center, Houston, Texas, submitted the human gene transfer protocol entitled: Use of Safety-Modified Retroviruses to Introduce Chemotherapy Resistance Sequences into Normal Hematopoietic Cells for Chemoprotection During the Therapy of Breast Cancer: A Pilot Trial to the Recombinant DNA Advisory Committee for formal review and approval.

IX. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Roth

In a letter dated April 12, 1994, Dr. Jack Roth of M.D. Anderson Cancer Center, Houston, Texas, submitted the human gene transfer protocol entitled: Clinical Protocol for Modification of Tumor Suppressor Gene Expression and Induction of Apoptosis in Non-Small Cell Lung Cancer (NSCLC) with an Adenovirus Vector Expressing Wildtype p53 and Cisplatin to the Recombinant DNA Advisory Committee for formal review and approval.

X. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated April 13, 1994, Dr. Michael Lotze of the University of Pittsburgh, Pittsburgh, Pennsylvania submitted the human gene transfer protocol entitled: IL–12 Gene Therapy Using Direct Injection of Tumor with Genetically Engineered Autologous Fibroblasts to the Recombinant DNA Advisory Committee for formal review and approval.

XI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Liu and Young

In a letter dated October 7, 1993, Drs. Johnson M. Liu and Neal S. Young of the National Institutes of Health, Bethesda, Maryland, submitted the human gene transfer protocol entitled: Retroviral Mediated Gene Transfer of the Fanconi Anemia Complementation Group C Gene to Hematopoietic Progenitors of Group C Patients to the Recombinant DNA Advisory Committee for formal review and approval. At the December 2–3, 1993, meeting, the Recombinant DNA Advisory Committee deferred the protocol until the investigators return to the full Recombinant DNA Advisory Committee with the following:

(1) Murine data demonstrating *in vivo* expression of the FACC gene and safety data accumulated over a period of ≥ 4 months demonstrating that the FACC-transduced cells do not produce any untoward effects, i.e., malignant transformation:

(2) Data (cited in Dr. Cynthia Dunbar's December 1993 data management report, Protocol #9206–025) regarding the possibility that "stem cell factor could favor the growth of leukemic versus normal progenitors during *ex vivo* culture periods;" and

(3) Revised eligibility criteria sections for both the protocol and Informed Consent document that describe the necessity for bone marrow examination following each infusion.

The consensus of the Recombinant DNA Advisory Committee was that the investigators were not required to submit this additional data until 4 weeks prior to the Recombinant DNA Advisory Committee meeting at which the information is reviewed. Submission of previously reviewed information is not required. The motion to defer the protocol pending full Recombinant DNA Advisory Committee review of additional information passed by a vote of 14 in favor, 0 opposed, and 3 abstentions.

On May 2, 1994, Drs. Liu and Young submitted additional materials relating to the human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval.

XII. Amendment to Part I–D of the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Into the Genome of Human Subjects, NIH Guidelines, Regarding Informed Consent/Dr. Zallen

During the December 2–3, 1993, Recombinant DNA Advisory Committee meeting, Dr. Gary Ellis, Director of the Office for Protection from Research Risks (OPRR), NIH, Bethesda, Maryland, responded to the written comments submitted by Dr. Zallen, Chair of the Working Group on Informed Consent Issues. Dr. Ellis noted the Recombinant DNA Advisory Committee's concern regarding specific issues that should be addressed in human gene transfer protocol Informed Consent documents, i.e., request for autopsy, recommendations for male/female contraception, separate Informed Consent documents when gene therapy is separate from a clinical protocol, commitment to long-term patient follow-up, and financial responsibility of the institution for all research-related costs. During his presentation, Dr. Ellis provided the Recombinant DNA Advisory Committee with background information regarding the roles of both OPRR and local Institutional Review Boards (IRB) in the review of research proposals involving human subjects. Dr. Ellis recommended that the Recombinant DNA Advisory Committee draft a letter outlining its specific recommendations to OPRR for distribution and consideration by the local IRBs.

In a memorandum dated December 23, 1993, Dr. Ellis further clarified the avenues that should be pursued by the Recombinant DNA Advisory Committee with regard to the "quality and content of informed consent documents into constructive changes in the informed consent process," specifically in relation to human gene transfer. Dr. Ellis recommended that the Points to Consider should be amended to introduce consistency in the Informed Consent document language.

During the March 3–4, 1994, Recombinant DNA Advisory Committee meeting, Dr. Doris Zallen, Chair of the Working Group on Informed Consent, provided a summary of the proposed amendments to Part I–D, Informed Consent of the Points to Consider. Two versions of revised Part I–D were presented:

(1) The version drafted by the working group, and

(2) A modified version incorporating the modifications suggested by Mr. Alex Capron. The Recombinant DNA Advisory Committee recommended that the working group should develop a consolidated version of part I–D which includes language from both proposed documents. The Recombinant DNA Advisory Committee suggested that questions should be prefaced with an explanation as to the necessity for the requested information.

On April 27, 1994, Dr. Zallen submitted revised amendments to part I–D, Informed Consent, of the Points to Consider in response to the specific comments posed by the Recombinant DNA Advisory Committee at its March 3–4, 1994, meeting. The proposed amendments read:

Part I-D Informed Consent

"In accordance with the requirements of DHHS regulations for the protection of human subjects (45 CFR part 46), investigators shall indicate how subjects will be informed about the proposed study, the manner in which their consent will be solicited, and that the informed consent form makes clear the special requirements of gene transfer research.

Part 1–D–1. Communication of the Study to Potential Participants

Part I–D–1–a. Which members of the research group and/or institution will be responsible for contacting potential participants and for describing the study to them? What procedures will be used to avoid potential conflicts of interest if the investigator is also providing medical care to potential subjects?

Part I–D–1–b. Where will discussions or other means of informing individuals about the proposed study take place?

Part I–D–1–c. How will the major points covered in Parts I–A through I–C of the Points to Consider be disclosed to potential participants and/or their parents or guardians in language that is understandable to them?

Part I–D–1–d. What is the length of time that the potential participants will have to make a decision about their participation in the study?

Part I–D–1–e. If the study involves pediatric or mentally handicapped subjects, how will the assent of each person be obtained?

Part I–D–2. Informed Consent Document

"Investigators submitting human gene transfer proposals for Recombinant DNA Advisory Committee review must include the Informed Consent document as approved by the local Institutional Review Board. A separate consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, such as when the gene is used as a 'marker' or when it is used to enhance the power of immunotherapy for cancer.

"Because of the relative novelty of the procedures that are used, the potentially irreversible consequences of the procedures performed, and the possibility that many of the potential risks remain undefined, the Informed Consent document shall include the following specific information in addition to any requirements of the DHHS regulations for the protection of human subjects (45 CFR part 46). Indicate if each of the specified items appears in the consent form or, if not in the consent form, how those items will be presented to potential subjects. Include an explanation if any of the following items is omitted from the consent process or document.

Part I–D–2–a. General Requirements of Human Subjects Research

Part I–D–2–a–(1). Description/purpose of study. "The subjects should be provided a detailed explanation in non-technical language of the purpose of the study and the procedures associated with the conduct of the proposed study, including a description of the gene-transfer component.

Part I–D–2–a–(2). Alternatives. "The consent form should indicate the availability of other therapies, including the possibility of other investigational therapies and approaches.

Part I–D–2–a–(3). Voluntary participation. "The subjects should be informed that participation in the study is voluntary and that failure to participate in the study, or withdrawal of consent, will not result in any penalty or loss of benefits to which the subjects are otherwise entitled.

Part I–D–2–a–(4). Benefits. "The subjects should be provided with an accurate description of the possible benefits, if any, of participating in the proposed study. For experiments which are not reasonably expected to provide a therapeutic benefit to subjects, the consent form shall clearly state that no direct clinical benefit to subjects is expected to occur as a result of participation in the study, although knowledge may be gained that may benefit others.

Part I–D–2–a–(5). Possible risks, discomforts, and side effects. "There should be a clear itemization in the consent form of types of adverse experiences, the relative severities, and the expected frequencies. For consistency of definition, side effects that are listed as mild should be ones which do not require a therapeutic intervention. Moderate side effects require an intervention. Severe side effects are potentially fatal or life-threatening, disabling, or require prolonged hospitalization. Rare side effects occur in less than one in one thousand subjects, uncommon side effects in less than 1% of subjects, common side effects in one to 10% of subjects, and frequent side effects are those which occur in more than 10% of subjects.

"The consent form should provide information regarding the approximate number of people who have received the genetic material under study. It is also necessary to warn potential subjects that for genetic materials previously used in relatively few or no humans, unforeseen risks are possible, including ones that could be severe.

"Any possible adverse medical consequences that may occur if the subjects withdraw from the study once the experiment has started should be indicated.

"*Part I–D–2–a–(6). Costs.* "The subjects should be provided with information about any financial costs associated with their participation in the experiment and in the long-term follow-up to the experiment that are not covered by the investigators or the institutions involved. Comparable financial information for other available alternatives, including other investigational therapies, should also be provided.

"In the consent form, subjects should be informed about the extent to which they will be responsible for any costs for medical treatment required as a direct result of research-related injury.

Part I–D–2–b. Specific Requirements of Gene Transfer Research

Part I–D–2–b–(1). Use of barrier contraception. "To avoid the possibility that any of the reagents employed in gene transfer research could cause harm to a developing fetus, female subjects should be informed that they should not be pregnant during the course of their participation in the study. Both male and female subjects should be informed when barrier contraception is required during the active phase of their participation in the study.

Part I–D–2–b–(2). Long-term follow-up. "To permit evaluation of long-term safety and efficacy of gene transfer, the prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. A list should be provided in the consent form of persons who can be contacted in the event that questions arise during the follow-up period. The principal investigator should request that subjects always keep the laboratory informed of a current address and telephone number.

"The subjects should also be informed that any significant findings resulting from the study will be made known to them and/or their parent or guardian including new information about the experimental procedure, the physical reactions experienced by other individuals involved in the study, and any long-term effects that have been noted.

"*Part I–D–2–b–(3). Request for autopsy.* "To obtain vital information about the safety and efficacy of gene transfer, subjects should be informed that at the time of death, whenever that may occur, an autopsy will be requested and that they should advise their families of this request and of its scientific and medical importance.

Part I–D–2–b–(4). Interest of media and others in the research. To alert the subjects that others may have an interest in the innovative character of the experiment and the status of treated subjects:

"The subjects should be informed that the institution and investigators will make every effort to provide protection from the media in an effort to protect participants' privacy;

"The subjects should be informed that representatives of applicable Federal agencies (e.g., NIH, Food and Drug Administration), representatives of collaborating institutions, vector suppliers, etc., will have access to medical records of the participants."

XIII. Deletion of Appendix L of the NIH Guidelines Regarding Release Into the Environment/Dr. Wivel

On April 29, 1994, Dr. Nelson Wivel of the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested that Appendix L, Release into the Environment of Certain Plants, be deleted from the NIH Guidelines.

The Office of Recombinant DNA Activities (ORDA) requests that Appendix L, Release into the Environment of Certain Plants, be deleted from the NIH Guidelines based on the following:

(1) Section I of the NIH Guidelines allows experiments to proceed that are reviewed and approved by another Federal agency that has jurisdiction for review and approval without the necessity for NIH review or approval (52 FR 31849);

(2) The Recombinant DNA Advisory Committee has not reviewed any deliberate release experiment involving recombinant DNA since 1984;

(3) At its May 30–31, 1991, meeting, the Recombinant DNA Advisory Committee recommended that Section III–A–2 be deleted from the NIH Guidelines; and

(4) Experiments involving deliberate release into the environment are currently reviewed within the framework of existing Federal regulations, i.e., the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA).

Section I of the NIH Guidelines was amended on August 24, 1987, such that any recombinant DNA experiment (other than human gene transfer) may proceed without Recombinant DNA Advisory Committee and NIH approval if it has been reviewed and approved by another Federal agency that has jurisdiction over such a proposal. The amended version (52 FR 31849) of Section I reads as follows:

Section I–A. Purpose

"* * * Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval * * *."

On December 6, 1990, the Recombinant DNA Advisory Committee Planning Subcommittee recommended that the requirement for Recombinant DNA Advisory Committee review of experiments involving deliberate environmental release of organisms containing recombinant DNA be eliminated from the NIH Guidelines. This recommendation reflected the fact that the Federal regulatory agencies, the USDA and EPA, are responsible for the review and approval of environmental release experiments. The Recombinant DNA Advisory Committee reviewed the request and recommended that the following sections be deleted from the NIH Guidelines:

Section III–A–2

Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

Section III–A–2–a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in appendix L.

Section III–A–2–b. Deletion derivatives and single base changes not otherwise covered by the NIH Guidelines.

Section III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption.

Based on these amendments to the NIH Guidelines, that have previously been recommended by the Recombinant DNA Advisory Committee, and the fact that the principals of planned introduction are now in place which provide a risk-assessment method by other Federal regulatory agencies, the Office of Recombinant DNA Activities requests that Appendix L be deleted from the NIH Guidelines.

Appendix L will be deleted as follows:

Appendix L. Release Into the Environment of Certain Plants

Appendix L–I. General Information

"Appendix L specifies conditions under which certain plants as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Working Group, and specific approval by the NIH Director. Such experiments also require the approval of the IBC before initiation. Information on specific experiments which have been approved will be available in ORDA and will be listed in appendix L–III when the Guidelines are republished.

"Experiments which do not meet the specifications of appendix L–II fall under section III–A and require RAC review and NIH and IBC approval before initiation.

Appendix L–II. Criteria Allowing Review by the RAC Plant Working Group Without the Requirement for Full RAC Review

"Approval may be granted by ORDA in consultation with the Plant Working Group without the requirement for full RAC review (IBC review is also necessary) for growing plants containing recombinant DNA in the field under the following conditions:

Appendix L–II–A. The plant species is a cultivated crop of a genus that has no species known to be a noxious weed.

Appendix L–II–B. The introduced DNA consists of well/characterized genes containing no sequences harmful to humans, animals, or plants.

Appendix L–II–C. The vector consists of DNA:

(i) From exempt host-vector systems (see Appendix C);

(ii) From plants of the same or closely related species;

(iii) From nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants;

(iv) From plant pathogens only if sequences resulting in production of disease symptoms have been deleted; or

(v) Chimeric vectors constructed from sequences defined in (i) or (iv) above. The DNA may be introduced by any suitable method. If sequences resulting in production of disease symptoms are retained for purposes of introducing the DNA into the plant, greenhouse-grown plants must be shown to be free of such sequences before such plants, their derivatives, or seed can be used in field tests.

Appendix L–II–D. Plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and the prevention of plants containing recombinant DNA from becoming established in the environment. Review by the IBC should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review by the IBC. Copies must also be submitted to the Plant Working Group of the RAC.

XIV. Amendment to Part VI of the Points To Consider, NIH Guidelines, Regarding Expedite Review/Dr. Wivel

On April 29, 1994, Dr. Nelson Wivel of the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested that part VI, Procedures to be Followed for Expedited Review, of the Points to Consider be amended to clarify submission requirements for Expedited Review.

The Procedures to be Followed for Expedited Review currently reads:

"4. Regardless of the method of review, the Points to Consider must be the standard review for all gene transfer protocols."

The proposed amendment reads:

"4. Regardless of the method of review, the Points to Consider must be the standard review for all gene transfer protocols; therefore, submission of the Points to Consider is required."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 4, 1994.

Suzanne Medgyesi-Mitschang,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 94–11466 Filed 5–10–94; 8:45 am]

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federal register

Wednesday
May 11, 1994

Part X

The President

Presidential Determination No. 94-23—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Proclamation 6686—Asian/Pacific American Heritage Month, 1994

Proclamation 6687—Older American Month, 1994

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94-23 of May 3, 1994

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $5,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of Rwandan and Burundi refugees, returnees, displaced persons, and conflict victims. These funds may be contributed to international, governmental, and non-governmental organizations, as appropriate.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 3, 1994.

[FR Doc. 94-11623
Filed 5-9-94; 9:33 am]
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Presidential Documents

Proclamation 6686 of May 9, 1994

Asian/Pacific American Heritage Month, 1994

By the President of the United States of America

A Proclamation

The Pacific Ocean is ringed by some of the most populous, dynamic, and promising countries the world has ever known. So rapid has the progress been in this region that the new Pacific community has come to exemplify the ideals of growth and prosperity. America is well-placed to play a major role in that thriving community, not only because of geography and history, but also because of the leading role that countless Americans of Asian/Pacific descent play in our diverse society.

Americans of Asian and Pacific ancestry share twin heritages—the stimulating cultural legacy of the lands of their ancestors and the liberty that is the birthright of every American. Drawing on the values and customs of their homelands and their expectations of America's promise, Asian/Pacific Americans have long helped to advance and enrich our Nation. We can all be profoundly grateful for their contributions to every field of human endeavor, from science, law, and literature to agriculture, commerce, government, and the arts.

Many of these achievements have been the work of brave and tireless immigrants who, through determination, creativity, intelligence, and dedication to American ideals of freedom and fairness, have added strong threads to the fabric of America's multicultural society. As they have built a community of tremendous talent and breadth, they have helped our country to usher in this new era of great opportunity and unlimited hope.

To honor the achievements of Asian/Pacific Americans and to recognize their contributions to our Nation, the Congress, by Public Law 102–450, has designated the month of May of each year as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of May 1994, as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–11657
Filed 5–10–94; 11:02 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6687 of May 9, 1994

Older Americans Month, 1994

By the President of the United States of America

A Proclamation

Each year over 2 million of us become older Americans—entering a time of life that can bring new freedom, new choices, and new beginnings. Retirement years offer the freedom to strengthen family bonds and to share knowledge and talents with friends and family members. It can be a time to engage in cultural, intellectual, and recreational activities with others and to provide them with the guidance that comes from a lifetime of experience. It can be a time of new beginnings—used to pursue a second career, to gain more education, or to engage in volunteer work that makes our neighborhoods, communities, and the world a better place in which to live.

To enjoy these opportunities, we must take greater responsibility in planning for a long life. Maintaining a healthy lifestyle and staying physically fit can help us to make the most of these new freedoms, choices, and beginnings. While we in Government work to promote universal health care coverage for all Americans, all of us can encourage friends and families to pursue daily practices that promote physical and mental well-being.

This year's Older Americans Month celebration centers around the theme of long life and good health with the slogan—"Aging: An Experience of a Lifetime." I am asking all Americans to help make this theme a reality by striving to achieve healthy and productive lifestyles.

Each year, we are learning new ways to promote longer, healthier, and more rewarding lives. We can do this by learning to eat nutritiously, by giving up smoking, by moderating our consumption of alcoholic beverages, and by entering into a personal or group fitness program. New studies show that regardless of age, it's never too late to improve health and vitality.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1994, as Older Americans Month. I call upon individual Americans, representatives of government at all levels, businesses, and community, volunteer, and educational groups to work to increase opportunities for older Americans and to adopt healthier lifestyles.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J Clinton

[FR Doc. 94-11658
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Wednesday, May 11, 1994

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S. 2005/P.L. 103–247

To make certain technical corrections, and for other purposes. (May 6, 1994; 108 Stat. 618; 1 page)

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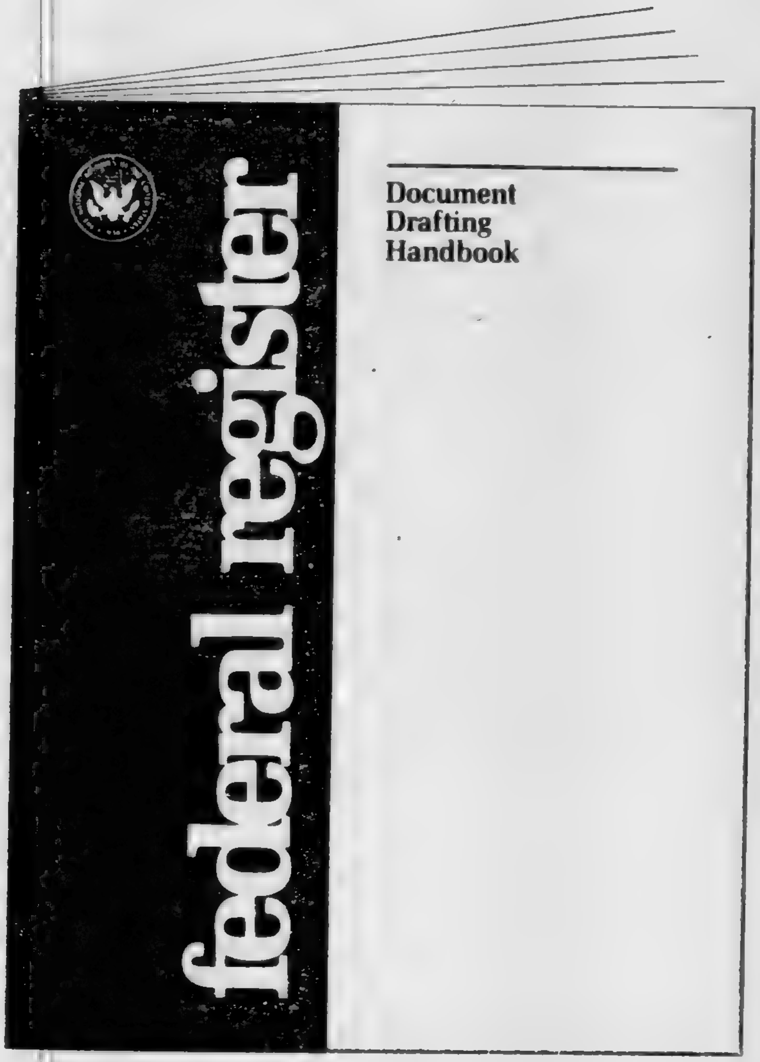

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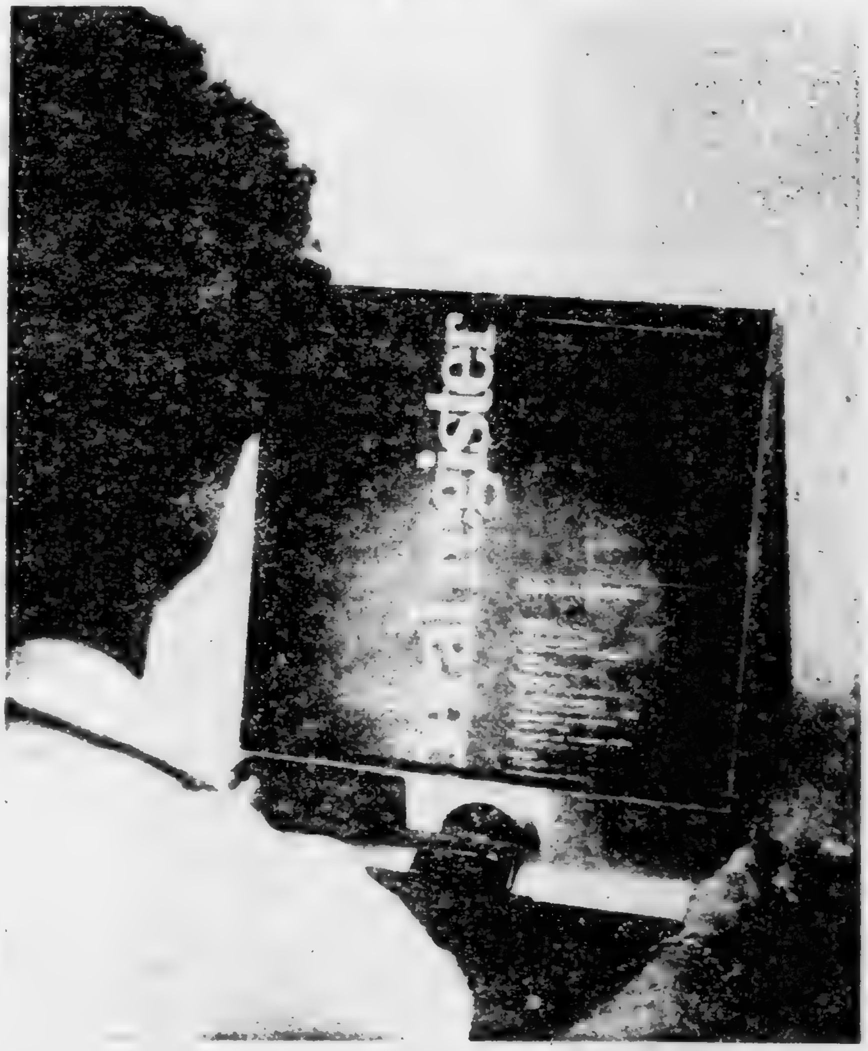

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Thursday
May 12, 1994

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For information on briefings in Washington, DC and Chicago, IL, see announcement on the inside cover of this issue.

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV94–958–1IFR]

Idaho-Eastern Oregon Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $1,020,039 and establishes an assessment rate of $0.10 per hundredweight of onions under Marketing Order No. 958 for the 1994–95 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1994, through June 30, 1995. Comments received by June 13, 1994 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918, or Robert J. Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone number 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Idaho-Eastern Oregon onions are subject to assessments. Funds to administer the Idaho-Eastern Oregon onion marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions during the 1994–95 fiscal period which begins July 1, 1994, and ends June 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of Idaho-Eastern Oregon onions under the marketing order and approximately 35 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Idaho-Eastern Oregon Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 22, 1994, and unanimously recommended a 1994–95 budget of $1,020,039, $10.161

less than the previous year. Increases in expenditures, which include $154 for research and $18,500 for promotion and advertising, will be offset by decreases of $18,495 for salary expenses and $10,320 for travel and office expenses. Major expense items include $113,785 for salary expenses, $57,600 for travel and office expenses, $60,154 for research, $668,500 for promotion and advertising, $60,000 for export, and $50,000 for contingencies.

The Committee also unanimously recommended an assessment rate of $0.10 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 8,000,000 hundredweight, will yield $800,000 in assessment income. This, along with $30,000 in interest income and $190,039 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 fiscal period, estimated at $898,928, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 958.238 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 958.238 Expenses and assessment rate.

Expenses of $1,020,039 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.10 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: May 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–11490 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 982

[Docket No. FV94–982–2IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1994–95 marketing year. Authorization of this budget enables the Filbert/Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1994, through June 30, 1995. Comments received by June 13, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington filbert/hazelnuts are subject to assessments. Funds to administer the Oregon-Washington filbert/hazelnut order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable filberts/hazelnuts during the 1994–95 marketing year which begins July 1, 1994, and ends June 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 950 producers of Oregon and Washington filberts/hazelnuts under this marketing order, and approximately 21 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon and Washington filbert/hazelnut producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 marketing year was prepared by the Filbert/Hazelnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the expected quantity of assessable filberts/hazelnuts handled. Because that rate will be applied to the actual quantity of filberts/hazelnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

In a mail vote conducted the week of March 28, 1994, the Board unanimously recommended a 1993–94 budget of $507,010, $97,215 more than the previous year. The major budget item is $250,000 for the Board's promotion program to maintain and expand markets for filberts/hazelnuts. This is $30,000 more than budgeted last year for promotion. Other increases include $2,865 for general and administrative expenses, $1,350 for furniture, $1,000 for a crop survey, $20,000 for research, and $42,000 for the emergency reserve fund.

The Board also unanimously recommended an assessment rate of $0.007 per pound, the same as last year. This rate, when applied to anticipated shipments of 56,000,000 pounds, will yield $392,000 in assessment income. This, along with $28,000 from previously unassessed 1993 crop filberts, $6,000 in interest income, and $81,010 from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 marketing year, estimated at $453,673, will be within the maximum permitted by the order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the marketing year begins on July 1, 1994, and the marketing order requires that the rate of assessment for the marketing year apply to all assessable filberts/hazelnuts handled during the marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 982.338 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 982.338 Expenses and assessment rate.

Expenses of $507,010 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate of $0.007 per pound of assessable filberts/hazelnuts is established for the marketing year ending June 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: May 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–11488 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 998

[Docket No. FV94–998–1IFR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and

authorizes continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1994–95 crop year. This rule also increases the administrative assessment rate for the 1993–94 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1994–95 crop year. Authorization of the increase in the administrative assessment rate for the 1993–94 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

DATES: Section 998.407 is effective July 1, 1994, through June 30, 1995. Section 998.406 is effective July 1, 1993, through June 30, 1994. Comments received by June 13, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12887, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1994–95 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year beginning July 1, 1994, and increases the administrative assessment rate for the crop year which began July 1, 1993. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee for the 1994–95 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1994. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 16, 1994, and unanimously recommended 1994–95 crop year administrative expenses of $1,056,000 and an administrative assessment rate of $0.60 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1993–94 crop year budgeted administrative expenditures were $1,020,000, and the administrative assessment rate was initially recommended and fixed at $0.60 per ton.

Administrative budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Executive salaries, $140,146 ($134,304), clerical salaries, $132,500 ($127,479), field representatives salaries, $290,420 ($278,778), field representatives travel, $110,000 ($107,000), insurance and bonds, $8,500 ($7,500), and furniture and equipment, $9,500 ($4,000). Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Payroll taxes, $43,000 ($45,000), office rent and parking, $50,000 ($52,500), postage and mailing, $12,000 ($13,000), and audit fees, $9,200 ($9,500). All other items are budgeted at last year's amounts. The administrative budget includes $14,234 for contingencies ($4,439 last year).

The Committee also unanimously recommended 1994 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The 1993–94 crop year indemnification assessment was $1.00 per net ton. Because of the high number of claims being processed during the 1993–94 crop year, the Committee recommended a higher assessment rate so that sufficient reserve funds will be available. The $9,000,000 of indemnification claims coverage to be provided on 1994 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee—the same as last year.

The cost of the indemnification insurance premium and the costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200 (c), are additional indemnification costs which must be authorized and paid from available indemnification funds. Such costs are not expected to exceed $2,000,000.

The total assessment rate is $2.60 per ton of assessable peanuts ($0.60 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,760,000 will yield $1,056,000 for program administration and $3,520,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1993–94 indemnification operations of $12,609,100, will provide $16,129,100, which should be adequate for the 1994 fund, and to maintain an adequate reserve.

The 1993–94 budget was published in the **Federal Register** as an interim final rule on June 11, 1993 (58 FR 32600), and finalized on August 13, 1993 (58 FR 43066). The administrative expenses and assessment rate for the 1993–94 crop year were based on an estimated assessable tonnage of 1,700,000. Due to an unexpected short crop, the assessable tonnage is estimated to be only 1,476,377. In order to have sufficient revenue to cover budgeted expenses of $1,020,000, the Committee unanimously recommended that the 1993–94 crop year administrative assessment be increased from $0.60 to $0.70 per net ton of assessable farmers' stock peanuts.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1993–94 crop year began on July 1, 1993, and the 1994–95 crop year begins on July 1, 1994, and the marketing agreement requires that the rate of assessment for the fiscal period apply to all assessable peanuts handled during the fiscal period; (3) handlers are aware of these actions which were unanimously recommended by the Committee at a public meeting and are similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: *These sections will not appear in the Annual Code of Federal Regulations.*

2. A new section § 998.407 is added to read as follows:

§ 998.407 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1994, shall be in the amount of $1,056,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $9,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1994 crop effective July 1, 1994, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $2,000,000, which are incurred by the Committee for excess loss insurance, sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $2.60 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31(c) and (d). A total of $0.60 shall be for administrative expenses and a total of $2.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate not expended on indemnification claims payments on 1994 crop peanuts and related expenses shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

§ 998.406 [Amended]

3. In § 998.406, paragraph (c) is amended by removing "$1.60" and adding in its place "$1.70" and by removing "$0.60" and adding in its place "$0.70."

Dated: May 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–11489 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1948

RIN 0575–AB83

Intermediary Relending Program Loan Limit

AGENCIES: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Interim final rule.

SUMMARY: The Farmers Home Administration (FmHA) and Rural

Development Administration (RDA) are amending the regulations for the Intermediary Relending Program (IRP) to raise the loan limit. This action is needed to allow intermediaries that have received and successfully used the maximum amount of IRP loans allowed by the current regulations, and have need for additional funds, to be eligible to apply for such additional funds. The amendment is intended to raise the maximum outstanding IRP indebtedness of an intermediary to $4 million, from the current limit of $2 million.

DATES: Effective May 12, 1994.

Comments must be received on or before July 11, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, Ag. Box 0743, Washington, DC 20250–0743. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above office, located in room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, Ag. Box 3221, Washington, DC 20250–3221, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this interim rule in conformance with Executive Order 12866, and have determined that it is a "significant regulatory action."

Program Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.767, Intermediary Relending Program.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, this program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0130 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This interim rule does not revise or impose any new information collection or recordkeeping requirements from those approved by OMB. Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag. Box 0743, Washington, DC 20250.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

This regulatory package is an agency initiative to make the IRP more effective at stimulating rural community economic development. The current regulation prohibits approval of any IRP loan that would result in any one intermediary having an outstanding IRP indebtedness exceeding $2,000,000. RDA is still not encouraging initial loans of more that $2,000,000. However, some intermediaries have received and reloaned $2,000,000 and have demand for additional funding to meet the needs of the communities they serve. The primary reason for this action is to allow subsequent loans to those successful intermediaries that have reached the current limit.

Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA/RDA is making this action effective upon publication in the **Federal Register** without securing prior public comment. It would be contrary to the public interest to wait for public comments before implementing an increase in loan ceiling. There is an immediate need to provide funds to the public to help alleviate severe economic hardship which exists in many rural areas as the result of high unemployment and poverty level wages. Numerous intermediaries now exist that have received the maximum of $2 million, have successfully used all of the funds to assist rural businesses, and have urgent need for additional loan funds. These intermediaries have proven their ability to play a major and successful role in stimulating the economy and developing jobs in rural areas with high unemployment and depressed economies. Increasing the IRP loan ceiling quickly will allow them to receive additional IRP funds and continue to provide urgently needed assistance to businesses in their service areas. Delaying action will deprive them of needed funding. Comments will be accepted for 60 days after publication and, if appropriate, adjustments will be made in the regulation based on the comments.

List of Subjects in 7 CFR Part 1948

Business and industry, Credit, Economic development, Rural areas.

Accordihgly, part 1948, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 continues to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.103 [Amended]

2. Section 1948.103 is amended in paragraph (c)(4) by revising the number "$2,000,000" to read "$4 million ($2 million for loans approved after September 30, 1995)."

Dated: April 12, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–11419 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–07–U

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93-149-2]

Importation of Animal Products and Byproducts From Countries Where BSE Exists; Removal of Portugal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations by removing Portugal from the list of countries where bovine spongiform encephalopathy exists. Portugal had been added to the list in December 1993 after the disease was diagnosed in cattle in that country. We are now removing Portugal from the list of countries where bovine spongiform encephalopathy exists because epidemiological investigations have revealed that the cattle in which the disease was detected had been imported into Portugal from Great Britain, and that all suspect animals were destroyed. This action will relieve certain prohibitions or restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts derived from ruminants that have been in Portugal.

EFFECTIVE DATE: May 27, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Cougill, Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants. The disease is not known to be contagious. The major means of spread of BSE appears to be through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, or animal byproducts derived from ruminants in countries in which BSE exists, were imported into the United States and fed to ruminants.

Sections 94.18 and 95.4 of the regulations prohibit or restrict the importation of certain meat, animal products, and animal byproducts derived from ruminants that have been in countries in which BSE exists, and § 96.2(b) prohibits the importation of ruminant casings from countries in which BSE exists. Those countries are listed in § 94.18 of the regulations.

In an interim rule published in the **Federal Register** on December 13, 1993 (58 FR 65103-65104, Docket No. 93-149-1) and effective on December 7, 1993, we amended the regulations by adding Portugal to the list of countries where BSE exists after the disease was detected in cattle in Portugal.

We solicited comments concerning the interim rule for a 60-day comment period ending February 11, 1994. We received three comments by that date, all of which opposed the interim rule. The comments were sent by a representative of a U.S. trade association, a U.S. manufacturer, and a representative of the Commission of the European Communities. Two of the commenters opposed the interim rule because of its effect on the importation of certain animal products from Portugal; the third commenter urged us to consider updated information regarding Portugal's epidemiological investigation of the situation.

A report from the Portuguese Ministry of Agriculture to the Office of International Epizootics and the European Economic Union stated that BSE had been detected in one cow and suspected in three other cows, all of which had been imported into Portugal from Great Britain, where BSE is known to exist. This report led to our December 1993 interim rule adding Portugal to the list of countries where BSE is known to exist.

Subsequent epidemiological investigations conducted by Portuguese veterinary officials revealed that the infected animal, an 8-year-old Holstein-Friesian cow, was born in Great Britain in 1984 and imported into Portugal from Great Britain in 1987. The affected cow and the three suspect cows were destroyed and the premises placed under quarantine and official control throughout the epidemiological investigation. There have been no reports of any additional animals in Portugal being affected with BSE.

In the course of their investigation, Portuguese veterinary officials established that no rendered products of animal origin were ever imported for animal feed. In February 1990, the Portuguese Government prohibited the importation of live cattle and all raw materials and byproducts of animal origin from Great Britain, Northern Ireland, and the Republic of Ireland. Additionally, all livestock in Portugal, both domestic and imported, are subject to official supervision and veterinary controls established at the national level. These veterinary controls include an official registry system, animal identification, and monitoring of all animal movement. Diagnostic capabilities for BSE are available at national veterinary laboratories in Lisbon and Porto.

Therefore, based on the comments received, on the epidemiological information provided by Portuguese veterinary officials, and on the results of our continuing study of the situation described in the December 1993 interim rule, we are removing Portugal from the list of countries where BSE is known to exist.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Prompt implementation is needed to relieve unnecessary restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts derived from ruminants that have been in Portugal. With these restrictions lifted, U.S. importers will be able to resume their importation of the animal products and animal byproducts described above. Portuguese producers and exporters that had been denied these U.S. markets by our December 1993 interim rule will be able to resume their business with the United States.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The provisions of this rule will not have a significant economic impact. The December 1993 interim rule that placed Portugal on the list of countries in which BSE exists had the effect of restricting the importation of some animal products and prohibiting the importation of others. Natural sausage casings were the only affected commodity that had been imported from Portugal in quantities sufficient to cause any economic impact.

This rule will remove the prohibition on the importation of natural sausage casings of ruminant origin from Portugal. About 20 small U.S. entities had been importing natural sausage casings from Portugal prior to the December 1993 interim rule. None of the companies had been totally dependent on Portugal for sausage casings, as Portugal supplied only 2.5 percent of natural sausage casings imported into the United States. This rule will have a negligible economic impact on these small entities. Additionally, price and competition in the United States will not be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.18, paragraph (a) is revised to read as follows:

§ 94.18 Ruminant meat and edible products from ruminants that have been in countries where bovine spongiform encephalopathy exists.

(a) Bovine spongiform encephalopathy exists in the following countries: France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

* * * * *

Done in Washington, DC, this 5th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11486 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1402

Releasing Information

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) adopts final regulations relating to the public availability of Corporation records. The final regulations implement requirements of the Freedom of Information Act relating to receipt and processing of requests for Corporation records, fees to be charged and procedures to be followed in processing requests for records, and requests for waiver or reduction in fees under the Freedom of Information Act. The final regulations will assist the public in requesting records from the Corporation. The final regulations also implement provisions of Executive Order 12600 by providing predisclosure notification procedures for confidential or financial information.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Ronald H. Erickson, Freedom of Information Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, (703) 883–4113, or

Jane M. Virga, Senior Attorney, Office of General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102–0826, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On November 8, 1993, the Corporation proposed regulations setting forth procedures to be used in requesting access to and responding to requests for Corporation records. See 58 FR 59210. Essentially, the Corporation proposed regulations that provided that all requests for access to Corporation records must be in writing, adequately describe the material sought, and be sent to the Corporation in McLean, Virginia. The proposed regulations delegated to the Freedom of Information Officer authority to make initial determinations concerning requests for access to records, and provided procedures for final Corporation decisions on administrative appeals. The proposed regulations also recited the statutory bases for exemption from disclosure and provided that any reasonably segregable portion of a record shall be produced as provided by the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The proposed regulations provided a fee structure consistent with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012). The proposed regulations also set forth factors to be considered in determining whether to waive or reduce fees. Consistent with Executive Order 12600 published on June 23, 1987, pertaining to access to certain information submitted to an agency, the proposed regulations provided that, upon receipt of a request for possibly confidential commercial or financial information which may be protected from disclosure under FOIA exemption (b)(4), the Corporation shall notify the submitter and provide an opportunity to comment on possible disclosure. The Corporation did not receive any comments in response to the proposed regulations. The Corporation now adopts 12 CFR part 1402 as a final regulation without any revision.

List of Subjects in 12 CFR Part 1402

Archives and records, Freedom of Information Act, Information, Records, Bonds, Insurance.

For the reasons set out in the preamble, part 1402 of chapter XIV, title 12 of the Code of Federal Regulations is added to read as follows:

PART 1402—RELEASING INFORMATION

Sec.

Subpart A—[Reserved]

Subpart B—Availability of Records of the Farm Credit System Insurance Corporation

1402.10 Official records of the Farm Credit System Insurance Corporation.
1402.11 Current index.
1402.12 Identification of records requested.
1402.13 Request for records.
1402.14 Response to requests for records.
1402.15 Business information.

Subpart C—Fees for Provision of Information

1402.20 Definitions.
1402.21 Categories of requesters—fees.
1402.22 Fees to be charged.
1402.23 Waiver or reduction of fees.
1402.24 Advance payments—notice.
1402.25 Interest.
1402.26 Charges for unsuccessful searches or reviews.
1402.27 Aggregating requests.

Authority: Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a–7, 2277a–8); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—[Reserved]

Subpart B—Availability of Records of the Farm Credit System Insurance Corporation

§ 1402.10 Official records of the Farm Credit System Insurance Corporation.

(a) The Farm Credit System Insurance Corporation shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Farm Credit System Insurance Corporation, including matters which are for the guidance of agency personnel;

(3) Records which are specifically exempted from disclosure by statute;

(4) Trade secret, commercial, proprietary, or financial information obtained from any person or organization and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Farm Credit System Insurance Corporation or in litigation in which the United States, as a real party in interest on behalf of the Farm Credit System Insurance Corporation, is a party;

(6) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual; and

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit System institutions and that are prepared by, on behalf of, or for the use of the Farm Credit System Insurance Corporation.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

§ 1402.11 Current index.

The Farm Credit System Insurance Corporation will make available for public inspection and copying a current index to provide identifying information as to any matter required by 5 U.S.C. 552(a)(2)(C) to be made available or published in the **Federal Register**. Because of the anticipated infrequency of requests for material required to be indexed, it is determined that the publication of the index in the **Federal Register** is unnecessary and impracticable. However, the Farm Credit System Insurance Corporation will provide a copy of such index to a member of the public upon request therefor at a cost not in excess of the direct cost of duplication.

§ 1402.12 Identification of records requested.

A member of the public who requests records from the Farm Credit System Insurance Corporation shall provide a reasonable description of the records sought including, where possible, specific information as to dates, titles, and subject matter, so that such records may be located without undue search or inquiry. If a record is not identified by a reasonable description, the request therefor may be denied.

§ 1402.13 Request for records.

Requests for records shall be in writing, in an envelope clearly marked "FOIA Request," and addressed to the Freedom of Information Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. A request improperly addressed will be deemed not to have been received for purposes of the 10-day time period set forth in § 1402.14(a) until it is received, or would have been received with the exercise of due diligence by the Freedom of Information Officer. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in the offices of the Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

§ 1402.14 Response to requests for records.

(a) Within 10 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of a request, the Freedom of Information Officer shall determine whether to comply with or to deny such request and place a notice thereof in writing in the mail addressed to the requester.

(b) Within 30 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Chief Financial Officer, Farm Credit System Insurance Corporation, and both the letter and envelope shall be clearly marked "FOIA Appeal." An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by Farm Credit System Insurance Corporation personnel.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal, the Farm Credit System Insurance Corporation shall act upon the appeal and place a notice of the determination thereof in writing in the mail addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In unusual circumstances as specified in this paragraph the 10-day time limit prescribed in paragraph (a) of this section or the 20-day time limit prescribed in paragraph (c) of this section, or both, may be extended provided that the total of all extensions shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be mailed. As used in this paragraph, *unusual circumstances* means, but only to the extent necessary to the proper processing of the request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Farm Credit System Insurance Corporation having substantial subject-matter interest therein.

§ 1402.15 Business information.

(a) Business information provided to the Farm Credit System Insurance Corporation by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit System Insurance Corporation determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit System Insurance Corporation has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) The Farm Credit System Insurance Corporation shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit System Insurance Corporation has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(2) Notice of a request for business information falling within paragraph (d)(1)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(3) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit System Insurance Corporation shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit System Insurance Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit System Insurance Corporation shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit System Insurance Corporation decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the

same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit System Insurance Corporation shall promptly notify the business submitter of such action.

Subpart C—Fees for Provision of Information

§ 1402.20 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit System Insurance Corporation shall determine the purpose for which the documents requested will be used. If the Farm Credit System Insurance Corporation has reasonable cause to doubt the purpose specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit System Insurance Corporation shall seek additional clarification before assigning the request to a specified category.

(b) *Direct costs* means those expenditures the Farm Credit System Insurance Corporation actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit System Insurance Corporation actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial, trade, or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit System Insurance Corporation may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) *Reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) *Review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. The Farm Credit System Insurance Corporation shall only charge fees for reviewing documents in response to a commercial use request.

(h) *Search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit System Insurance Corporation and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A "search" for material that is responsive to a request should be distinguished from a "review" of material to determine whether the material is exempt from disclosure.

§ 1402.21 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit System Insurance Corporation shall charge fees for records requested by or on behalf of educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(b) The Farm Credit System Insurance Corporation shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 1402.26, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b), or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1402.26, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of "8½ × 11" or "11 × 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meets the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit System Insurance Corporation will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent of that rate. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit System Insurance Corporation will begin assessing charges for computer search.

§ 1402.22 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing, and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent of that rate) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit System Insurance Corporation for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as a right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit System Insurance Corporation analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit System Insurance Corporation will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit System Insurance Corporation.

(h) A receipt for fees paid will be given upon request.

§ 1402.23 Waiver or reduction of fees.

(a) The Farm Credit System Insurance Corporation may grant a waiver or reduction of fees if the Farm Credit System Insurance Corporation determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit System Insurance Corporation will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance and processing the fee.

§ 1402.24 Advance payments—notice.

(a) Where it is anticipated that the fees chargeable will amount to more than $25 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed $250 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit System Insurance Corporation personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 1402.25 Interest.

The Farm Credit System Insurance Corporation may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit System Insurance Corporation, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 1402.26 Charges for unsuccessful searches or reviews.

The Farm Credit System Insurance Corporation may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 1402.21 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit System Insurance Corporation may assess charges for time spent reviewing records for requesters in the category provided for in § 1402.21(c) even if the records located are determined to be exempt from disclosure.

§ 1402.27 Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit System Insurance Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit System Insurance Corporation may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

Dated: May 3, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94-11443 Filed 5-11-94; 8:45 am]

BILLING CODE 6710-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C-0292]

Listing of Color Additives Subject to Certification; FD&C Red No. 40; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 19, 1994, of the final rule that appeared in the Federal Register of February 16, 1994 (59 FR 7635; corrected February 22, 1994 (59 FR 8507)), and amended the color additive regulations to provide for the safe use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

DATES: Effective date confirmed: March 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0001, 202-254-9519.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 16, 1994 (59 FR 7635; corrected February 22, 1994 (59 FR 8507)), FDA amended 21 CFR 74.1340 and 21 CFR 74.2340 to provide for the use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

FDA gave interested persons until March 18, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA concludes that the final rule published in the **Federal Register** of February 16, 1994, should be confirmed as corrected on February 22, 1994.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the February 16, 1994, final rule. Accordingly, the amendments promulgated thereby became effective March 19, 1994.

Dated: May 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-11593 Filed 5-11-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Resolution of Claims from Blocked Government of Panama Assets

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Panamanian Transactions Regulations to include a statement of licensing policy indicating that specific licenses may be issued authorizing the release of blocked Government of Panama funds at the request of that government to satisfy settlements, final judgments and arbitral awards with respect to claims of U.S. persons arising prior to April 5, 1990. The Office of Foreign Assets Control will also accept license applications with respect to such claims from U.S. persons seeking judicial orders of attachment against blocked Government of Panama assets in satisfaction of final judgments entered against the Government of Panama provided such applications are submitted no later than June 15, 1994.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the

Federal Register. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

Executive Order 12710 of April 5, 1990, 3 CFR, 1990 Comp., p. 282, terminated the national emergency declared on April 8, 1988, with respect to Panama, and lifted sanctions imposed against the Noriega regime. Pursuant to section 207(a)(2) of the International Emergency Economic Powers Act, 50 U.S.C. 1706(a)(2), however, the order continued the blocking of certain Government of Panama assets in the United States, with the understanding of the Government of Panama, to facilitate resolution of claims of U.S. persons.

To foster the resolution of U.S. persons' claims against the Government of Panama arising prior to the April 5, 1990 lifting date, the Office of Foreign Assets Control, Department of the Treasury ("FAC"), is amending the Panamanian Transactions Regulations, 31 CFR part 565 (the "Regulations") to include a statement of licensing policy announcing that the release of blocked Government of Panama assets may be licensed at the request of that government to satisfy settlements, final judgments and arbitral awards in favor of U.S. persons, where the claims arose prior to April 5, 1990. In addition, FAC will accept license applications from U.S. persons seeking judicial orders of attachment against blocked Government of Panama assets in satisfaction of final judgments entered in favor of the applicants with respect to such claims against the Government of Panama, provided such applications are submitted no later that June 15, 1994. The term "Government of Panama" for these purposes is defined in § 565.303 of the Regulations, including appendix A to part 565.

Note: Procedures for specific license applications are set forth in § 565.801 of the Regulations. Unlicensed transfers of blocked Government of Panama assets, including transfers pursuant to judicial order, are prohibited and are null and void as provided in §§ 565.201 and 565.204. Violations of this part are punishable by criminal and civil penalties as provided in §§ 565.701 through 565.705.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 565

Panama, Blocking of assets, Foreign claims, Penalties, Reporting and recordkeeping requirements, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 565 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706, E.O. 12635, 3 CFR, 1988 Comp., p. 563; E.O. 12710, 3 CFR, 1990 Comp., p. 282.

Subpart E——Licenses, Authorizations and Statements of Licensing Policy

2. Section 565.512 is added to subpart E to read as follows:

§ 565.512 Licensing policy with respect to blocked Government of Panama Assets.

(a) Licenses may be issued on a case-by-case basis authorizing the release of blocked Government of Panama assets at the request of that government to satisfy settlements, final judgments and arbitral awards with respect to claims of U.S. persons arising prior to April 5, 1990.

(b) Licenses may be issued on a case-by-case basis authorizing U.S. persons to seek judicial orders of attachment against blocked Government of Panama assets in satisfaction of final judgments entered in favor of the applicants with respect to claims arising prior to April 5, 1990 against the Government of Panama. The term "Government of Panama" for these purposes is defined in § 565.303, including appendix A to this part.

(1) Applications pursuant to paragraph (b) of this section must be submitted to the Licensing Division of the Office of Foreign Assets Control not later than June 15, 1994, and must include a certified copy of the final judgment and evidence that the claim on which the judgment was entered arose against the Government of Panama prior to April 5, 1990.

(2) If the licensed proceedings result in a final judicial order of attachment against the blocked assets, a certified copy of that order must be submitted to the Licensing Division of the Office of Foreign Assets Control. Specific licenses may be issued on the basis of such orders authorizing release of blocked Government of Panama funds deemed in the attachment order to be subject to attachment to satisfy the applicant's final judgment.

Dated: April 22, 1994.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 28, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–11577 Filed 5–9–94; 3:55 pm]

BILLING CODE 4810-25-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS–3–1–6332; FRL–4882–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP). The revision was submitted by the state to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

DATES: This final rule will be effective July 11, 1994 unless notice is received by June 13, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Kansas Department of Health and Environment (KDHE), Bureau of Air and Radiation, Forbes Field, Building 283, Topeka, Kansas 66620–0001.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP), and submit this program as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing an SBAP are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions, and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

The state of Kansas has submitted an SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following program elements: (1) The establishment of an SBAP to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements (a seventh requirement, establishment of an Ombudsman office, is discussed in the next section) that the state must meet to have an approvable SBAP. Specifically, these elements are: (1) Developing, collecting, and coordinating information exchange on compliance methods and control technologies; (2) providing assistance to small business stationary sources with pollution prevention and accidental release prevention and detection; (3) providing assistance for determining applicable requirements under the Act and permit issuance; (4) determining adequate mechanisms for notifying small business stationary sources of their right under the Act on a timely basis; (5) determining adequate mechanisms for informing small business stationary sources of their obligations under the Act, including a program for referring sources to qualified auditors, or for the state to provide for such audits to determine compliance with this Act; and (6) procedures for considering requests from small business stationary sources for modifications of work practices, or technological methods of compliance or compliance procedures. The SBAP services will be provided by a consortium of three state universities: the University of Kansas' Center for Environmental Education and Training within the Division of Continuing Education; Kansas State University's Industrial Extension Service, a program of the College of Engineering and the Cooperative Extension Service; and Wichita State University's Center for Technology Application. The SBAP will provide information and/or compliance and technical assistance relevant to each of the six elements above. Additional information concerning individual responsibilities of the consortium members is contained in the technical support document, which is part of the docket for this rulemaking and which is available from the EPA office listed above. The SBAP has been operational since October 1, 1993. The SBAP consortium's contract with KDHE will be renewed yearly.

2. Ombudsman

Section 507(a)(3) requires the designation of a state office to serve as the Ombudsman for small business stationary sources. The Ombudsman position has been designated in the Office of Science and Support of the KDHE. This position was filled on November 18, 1993. The Ombudsman will have direct access to the Secretary (program manager) of the KDHE, to the director of the Division of the Environment of the KDHE, the manager of the air pollution control program, and other state agencies as necessary to perform the functions of its office independently of the air pollution regulatory and enforcement programs.

3. Compliance Advisory Panel (CAP)

Section 507(e) requires the state to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The state has met this requirement. All members of the CAP have been appointed in accordance with the provisions of section 507(e). The CAP held its initial meeting on December 9, 1993.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The state has met these requirements by committing the CAP to perform these functions.

Legislative authority for the SBAP, CAP, and ombudsman was obtained during the 1993 legislative session and is contained in the Kansas Air Quality Act, Section 15. All three programs are funded by air emissions fees, authority for which is contained in section 8 of the Kansas Air Quality Act.

4. Two Additional Provisions Which the State Submittal Must Address Include Source Eligibility and Fee Reduction Authority

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(a) Is owned or operated by a person who employs 100 or fewer individuals,

(b) Is a small business concern as defined in the Small Business Act;

(c) Is not a major stationary source;

(d) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(e) Emits less than 75 tpy of all regulated pollutants.

Section 507(c) allows states, after notice and opportunity for public comment, to extend the definition of eligible source to include small business stationary sources which do not meet the criteria of subparagraphs (3), (4), or (5) of section 507(c), but do not emit more than 100 tpy of all regulated pollutants.

The state submittal specifies that upon petition by a source, the Secretary, after notice and opportunity for public comment, may include as a small business stationary source, any source which does not meet the criteria of subparagraphs (3), (4), or (5) of section 507(c), but which does not emit more than 100 tpy of all regulated pollutants. This conforms to the requirements of section 507(c) and is acceptable.

Also, the state submittal provides that the Secretary may exclude from the small business stationary source definition any category or subcategory of sources that the Administrator of EPA determines to have sufficient technical and financial capabilities to meet the requirements of the Act without the application of this program, as provided by section 507 (c)(3)(A) of the Act.

The Secretary, in consultation with the Administrator of EPA and the Small Business Administration, and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section, any category or subcategory of sources that the Secretary determines to have sufficient technical and financial capabilities to meet the requirements of the Act without the application of this subsection.

Section 507(b) allows states flexibility to reduce permit fees to take into account the financial resources of small business.

Under state statute, the Secretary may reduce any fee required by the Act for any classification of small business source to take into account the financial resources of such classification.

Summary

The state has submitted an SIP revision implementing or committing to implement each of the required SBAP elements required by section 507 of the CAA. The KDHE has contracted with a consortium of state universities to implement the small business stationary source technical and environmental compliance assistance program. The Ombudsman position has been established within the KDHE and the position has been filled. The CAP has been appointed and has met. The state submittal meets in full the requirements of section 507 of the Act.

EPA Action

EPA is approving the SIP revision submitted by the state of Kansas. The state has submitted an SIP revision implementing each of the required program elements required by section 507 of the Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 11, 1994 unless, by June 13, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 11, 1994.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* vs. *U.S. E.P.A.*, 427 U.S. 246, 255–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air Pollution Control, Incorporation by reference, Small business assistance program.

Dated: April 28, 1994.

William Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart R—Kansas

2. Section 52.870 is amended by adding paragraph (c)(28) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(28) A plan for implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program was submitted by the Kansas Department of Health and Environment as a revision to the Kansas State Implementation Plan (SIP) on January 25, 1994.

(i) Incorporation by reference.

(A) Kansas SIP, Small Business Stationary Source Technical and Environmental Compliance Assistance Program, dated November 15, 1993.

[FR Doc. 94–11469 Filed 5–11–94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MO 15-1-6333; FRL-4883-2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this revision to the Missouri State Implementation Plan (SIP) is to include the lead nonattainment areas into the existing new source review (NSR) program. This revision changes the applicability requirements by changing the definition of nonattainment area in the state regulations to include lead nonattainment areas, and to delete the Kansas City area as a nonattainment area in light of its attainment of the ozone standard.

In this document EPA takes final action on a limited approval, because Missouri has not yet submitted to EPA augmented new source permit rules which meet the amended requirements of part D of title I of the Clean Air Act.

EFFECTIVE DATE: This final rule will become effective on June 13, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; and the EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrechts at (913) 551-7846.

SUPPLEMENTARY INFORMATION: On February 4, 1994, EPA proposed a rulemaking to approve the three Missouri lead nonattainment areas into the existing Missouri NSR program. The objective of this final rulemaking is to approve the three Missouri lead nonattainment areas into the existing NSR program in Missouri. This SIP revision contains the amendments to the SIP defining three areas in Missouri as nonattainment for lead. This SIP revision is also being accorded limited approval because it does not meet all of the applicable requirements of the Act.[1] As of April 6, 1994, Missouri submitted NSR provisions intended to address the limited approval, and EPA is currently reviewing this latest submittal. The limited approval strengthens the existing SIP as representing an improvement over what is currently in the SIP, and as meeting some of the applicable requirements of the Act. In particular, the amendment means that Missouri's NSR requirements, which meet all of the provisions of the preamended Act, apply to new and modified sources of lead in the nonattainment areas.

In 1978, when EPA promulgated the lead National Ambient Air Quality Standard, it was not authorized to designate areas nonattainment, attainment, or unclassifiable for lead. Under the Clean Air Act Amendments of 1990, EPA was authorized to require states to designate areas as nonattainment, attainment, or unclassifiable for lead. On November 6, 1991, at 56 FR 56694, EPA designated the following areas as nonattainment for lead: the city of Herculaneum in Jefferson County; and the Dent, Liberty and Arcadia townships in Iron County. No comments were received in response to the proposal. For a complete discussion of the state submittal, the reader is directed to the proposed **Federal Register** document at 59 FR 5370.

EPA Action

In this document, EPA takes final action on the rulemaking to provide limited approval of the incorporation of three Missouri lead nonattainment areas into the existing NSR program in Missouri.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead.

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[1] EPA may grant such a limited approval under section 110(k)(3) of the Act, in light of the general authority delegated to EPA under section 301(a) of the Act to take actions necessary to carry out the purposes of the Act.

Dated: April 25, 1994.

Willaim A. Spratlin,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(83) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(83) A revision to the Missouri State Implementation Plan (SIP) to incorporate the lead nonattainment areas into the existing new source review (NSR) program was submitted by the state on March 15, 1993. This revision changes the applicability requirements by changing the definition of nonattainment area in the state regulations to include lead nonattainment areas, and to delete the Kansas City area as a nonattainment area in light of its attainment of the ozone standard.

(i) Incorporation by reference.

(A) Revision to rule 10 C.S.R. 10–6.020, definitions, effective February 26, 1993.

[FR Doc. 94–11470 Filed 5–11–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7046

[AK–932–4210–06; AA–66429]

Partial Revocation of Executive Order No. 1919½, Dated February 14, 1921, as Amended, and Revocation of Public Land Order No. 219, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes and Executive Order and a public land order, both as amended, insofar as they affect approximately 5,728 acres of National Forest System and public land withdrawn for townsite purposes at Passage Canal (Portage Bay), Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available, Any land described herein that is not conveyed to, or selected by the State, will be subject to the terms and conditions of the National Forest reservation on any other withdrawal of record.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 1919½ (Alaska Townsite Withdrawal No. 1), dated February 14, 1921, and Public Land Order No. 219, both as amended, which withdrew land at Passage Canal (Portage Bay) for townsite purposes, are hereby revoked insofar as they affect the following described land:

Seward Meridian

A parcel of land located within secs. 10 to 15, inclusive, and secs. 22 to 27, inclusive, of T. 8 N., R. 4 E., and secs. 19, 20, 29, and 30, of T. 8 N., R. 5 E., more particularly described as:

Beginning at a point from which the highest point of the most northerly knob, about 50 feet high, on the well-defined glaciated spur between Passage Canal and Portage Glacier, about 1¼ miles southwest of Passage Canal, bears west one-quarter mile.

From the point of beginning, South, 40 chains, to a point approximate latitude 60°45′45″ N., and longitude 148°45′ W.; East, 300 chains; North, 140 chains; West, 80 chains; North, 100 chains; West, 220 chains; South, 200 chains, to the place of beginning.

The area described aggregates 6,400 acres, including land and water surface.

Portions of the area described above have been conveyed out of Federal ownership; therefore, the area affected by this order contains approximately 5,728 acres of National Forest System lands and public land.

2. Subject to valid and existing rights, the land described above, if such land is otherwise available, is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. The State of Alaska applications for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1988), become effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Any of that land not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation or any other withdrawal of record.

4. At 10 a.m. on June 13, 1994, that land not selected by the State under the provisions of the Statehood Act will be opened to such forms of disposition as may be law be made of National Forest System land, including location and entry under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right to possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. A portion of the area affected by this order is public land, and has been and will remain subject to overlapping Public Land Order Nos. 396, 587, 2667, or 2791, and the terms and conditions of those Public Land Orders remain otherwise unchanged by this order.

Dated: April 22, 1994.

Bob Armstrong,

Secretary of the Interior.

[FR Doc. 94–11563 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–M

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43 CFR Public Land Order 7047

[AK–932–4210–06; AA–3393]

Partial Revocation of Public Land Order No. 4825; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Public Land Order insofar as it affects approximately 126 acres of National Forest System lands withdrawn for use by the Forest Service, Department of Agriculture, for the Harriet Hunt and White River Recreation Areas. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT:

Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 4825, which withdrew National Forest System lands for public recreation areas, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

Tongass National Forest

Harriet Hunt Recreation Area

Beginning at the witness corner to the meander corner of Secs. 3 and 34, Tps. 73 and 74 S., R. 91 E. (partially surveyed), proceed East 13.5 chains to corner No. 1, the true point of beginning;

Thence North 20 chains to corner No. 2;
Thence West 40 chains to corner No. 3;
Thence North 13 chains to corner No. 4;
Thence East 55 chains to corner No. 5;
Thence South 33 chains to corner No. 6;
Thence West 15 chains to corner No. 1, the true point of beginning.

The area described contains approximately 121 acres.

White River Recreation Area

Beginning at the quarter section corner of Secs. 15 and 16, Tp. 74 S., R. 91 E. (partially surveyed), proceed North 28 chains to corner No. 1, the true point of beginning;

Thence North 11 chains to corner No. 2, a point common to Secs. 9, 10, 15, and 16;
Thence East 11 chains along the section line common to Secs. 10 and 15 to corner No. 3;
Thence S. 46°3′ W. 15.56 chains more or less back to corner No. 1, the true point of beginning.

The area described contains approximately 5 acres.

The total areas affected by this order aggregate approximately 126 acres.

2. At 10 a.m. on June 13, 1994, the lands will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11564 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–M

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43 CFR Public Land Order 7048

[AK–932–4210–06; AA–17986]

Partial Revocation of Executive Order No. 3406 Dated February 13, 1921; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects approximately 48.85 acres of National Forest System land withdrawn for use by the Coast Guard, Department of Transportation, for the Gravina Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 3406 dated February 13, 1921, which withdrew National Forest System land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Chugach National Forest

Land within T. 24 S., R. 6 W., described as Track A of U.S. Survey No. 1618, excluding the following parcel:

All that part of the point lying within a radius of 300 feet from the light. (Approximate latitude 60° 37.4′ north, longitude 146° 15.1′ west.) This parcel contains approximately 3 acres.

The area described, less exclusion, contains approximately 48.85 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of the Chugach National Forest reservation, and any other withdrawal of record.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11565 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7596]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program:			
Iowa: Mahaska County, unincorporated areas	190888	Mar. 5, 1994	6–7–77
North Carolina: Clay County, unincorporated areas	370063	Mar. 9, 1994	7–17–81
Washington: Burien, city of, King County	530321	do	
Texas: Wilbarger County, unincorporated areas	481190	Mar. 14, 1994	
Iowa: Somers, city of, Calhoun County	190344	Mar. 11, 1994	10–29–76
Michigan: Robinson, township of, Ottawa County	260913	Mar. 18, 1994	
Missouri: Galena, city of, Stone County	290431	Mar. 22, 1994	10–31–75
Iowa:			
Linn Grove, city of, Buena Vista County	190032	Apr. 20, 1994	3–5–76
Martensdale, city of, Warren County	190524	Apr. 28, 1994	4–16–76
Florida: Micanopy, town of, Alachua County	120344	Apr. 27, 1994	4–16–76
Michigan: Hersey, township of, Osceola County	260914	do	
New Eligible—Regular Program:			
Texas: Socorro,[1] city of, El Paso County	481658	Mar. 14, 1994	
Arkansas: Lonoke County, unincorporated areas	050448	do	11–17–82
Florida: High Springs,[2] city of, Alachua County	120669	Mar. 24, 1994	
Indiana: North Webster, town of, Kosciusko County	180465	do	2–4–87
Arizona: Guadalupe, town of, Maricopa County	040111	Apr. 1, 1994	12–3–93
Minnesota: Brownton, city of, McLeod County	270262	Apr. 5, 1994	8–18–92
North Carolina: Stallings,[3] town of, Union County	370472	do	
South Dakota:			
Columbia, city of, Brown County	460008	Apr. 7, 1994	8–15–94
Day County, unincorporated areas	460261	Apr. 15, 1994	
Reinstatements—Regular Program:			
Pennsylvania: Springfield, township of, Delaware County	420434	Nov. 26, 1971 Emerg. Jan. 19, 1978 Reg Dec. 3, 1993 Susp Mar. 4, 1994 Reg	9–30–93

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Hampshire: Goshen, town of, Sullivan	330157	Aug. 20, 1975 Emerg. Apr. 2, 1986 Reg Apr. 2, 1986 Susp Mar. 7, 1994 Rein	4–2–86
West Virginia:			
Ranson, city of, Jefferson County	540068	Apr. 2, 1975 Emerg Jun. 15, 1979 Reg Jan. 20, 1993 Susp Mar. 15, 1994 Rein	1–20–93
Leon, town of, Mason County	540113	Jul. 16, 1975 Emerg Sep. 15, 1978 Reg Nov. 18, 1992 Susp Mar. 16, 1994 Rein	8–15–78
Pennsylvania:			
Chester, city of, Delaware County	420404	December 10, 1971 Emerg. Aug. 1, 1979 Reg Dec. 3, 1993 Susp Mar. 16, 1994 Rein	9–30–93
Upper Oxford, township of, Chester County	422278	August 6, 1975 Emerg. Feb. 25, 1983 Reg Jul. 5, 1993 Susp Mar. 18, 1994 Rein	2–25–83
Ohio: Rome, village of, Adams County	390003	February 16, 1977 Emerg. Oct. 18, 1983 Reg Mar. 15, 1993 Susp Mar. 18, 1994 Rein	10–18–83
Virginia: Spotsylvania County, unincorporated areas	510308	February 25, 1977 Emerg. Dec. 1, 1987 Reg Dec. 1, 1987 Susp Mar. 24, 1994 Rein	12–1–87
Wisconsin: Wisconsin Rapids, city of, Wood County	555587	April 30, 1971 Emerg. Sep. 14, 1973 Reg Feb. 17, 1993 Susp Mar. 24, 1994 Rein	12–17–93
Maine: Minot, town of, Androscoggin County	230008	June 16, 1976 Emerg. May 17, 1990 Reg May 17, 1990 Susp Mar. 28, 1994 Rein	5–17–90
West Virginia: Nicholas County, unincorporated areas	540146	June 30, 1976 Emerg. Feb. 15, 1991 Susp Apr. 5, 1991[4] Rein	11–6–91
New York:			
Morristown, town of, St. Lawrence County	360706	July 30, 1980 Emerg Aug. 6, 1982 Reg Jan. 20, 1993 Susp Apr. 6, 1994 Rein	8–6–82
Clayville, village of, Oneida County	360524	June 12, 1984 Emerg. Jun. 12, 1984 Reg Nov. 4, 1992 Susp Apr. 15, 1994 Rein	7–5–83
Schagticoke, village of, Rensselaer County	361058	December 27, 1979 Emerg. Jun. 11, 1982 Reg Nov. 4, 1992 Susp Apr. 15, 1994 Rein	6–5–85
Willet, town of, Cortland County	361331	January 21, 1977 Emerg. Jul. 20, 1984 Reg Nov. 4, 1994 Susp Apr. 15, 1994 Rein	

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I:			
New Jersey: Linden, city of, Union County	340467	March 2, 1994 Suspension Withdrawn.	3–2–94
Region III:			
Virginia: Williamsburg, city of	510294	......do	3–2–94
Region VI:			
Texas: San Angelo, city of, Tom Green County	480623	......do	3–2–94
Region IX:			
California: Kern County, unincorporated areas	060075	......do	3–2–94
Region IV:			
Mississippi: Richland, city of, Rankin County	280299	March 15, 1994 Suspension Withdrawn.	3–15–94
Region VI:			
Louisiana:.			
Monroe, City of, Ouachita Parish	220136	......do	3–15–94
Ouachita Parish, unincorporated areas	220135	......do	3–15–94
Richwood, town, Ouachita Parish	220378	......do	3–15–94

[1] The City of Socorro has adopted El Paso County's (480212) Flood Insurance Rate Map for floodplain management and insurance purposes (Panel 236 through 277).

[2] The City of High Springs has adopted Alachua County's Flood Insurance Rate Map for floodplain management and insurance purposes (Panel 80).

[3] The Town of Stallings has adopted Union County's Flood Insurance Map for flood insurance purposes.

[4] Initial Regular Program entry date.

Code for reading third column:
Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–11553 Filed 5–11–94; 8:45 am]

BILLING CODE 6718–21–P

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44 CFR Part 64

[Docket No. FEMA–7595]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: New Providence, borough of, Union County.	345306	July 16, 1971 Emerg.; November 23, 1973, Reg.; May 16, 1994, Susp.	5–16–94	May 16, 1994.
Region III				
Pennsylvania: Wind Gap, borough of, Northampton County.	420734	November 14, 1975, Emerg.; May 19, 1981, Reg.; May 16, 1994, Susp.	5–16–94	Do.
Region V				
Ohio:				
Munroe Falls, city of, Summit County	390843	October 26, 1988, Emerg.; May 16, 1994, Reg.; May 16, 1994, Susp.	5–16–94	Do.
Rock Creek, village of, Ashtabula County	390665	August 7, 1975, Emerg.; July 7,1978, Reg.; May 16, 1994, Emerg.	5–16–94	Do.
Region VI				
Texas: Granbury, city of, Hood County	480357	May 16, 1979, Emerg.; January 15, 1988, Reg.; May 16, 1994, Susp.	5–16–94	Do.
Region I				
Massachusetts: Topsfield, town of, Essex County.	250106	September 26, 1975, Emerg.; June 4, 1980, Reg.; June 2, 1994, Susp.	6–2–94	June 2, 1994.
Region III				
Maryland: Princess Anne, town of, Somerset County.	240063	January 28, 1974, Emerg.; April 20, 1979, Reg.; June 2, 1994, Susp.	6–2–94	Do.
Pennsylvania: Texas, township of, Wayne County.	422176	July 24, 1976, Emerg.; September 30, 1987, Reg.; September 30, 1987, Susp.; November 6, 1987, Rein.; June 2, 1994, Susp.	6–2–94	June 2, 1994.
Region V				
Indiana: Hendricks County, unincorporated areas.	180415	March 17, 1975, Emerg.; March 16, 1981, Reg.; March 16, 1981, Susp.	3–16–81	Do.
Illinois: Jacksonville, city of, Morgan County	170516	September 4, 1973, Emerg.; June 15, 1979, Reg.; June 2, 1994, Susp.	6–2–94	Do.
Michigan:				
Baldwin, township of, Iosco County	260099	April 9, 1973, Emerg.; February 1, 1988, Reg.; June 2, 1994, Susp.	6–2–94	Do.
East Tawas, city of, Iosco County	260100	May 1, 1973, Emerg.; September 30, 1977, Reg.; June 2, 1994, Susp.	6–2–94	Do.

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Tawas City, city of, Iosco County	260102	July 23, 1973, Emerg.; February 15, 1978, Reg.; June 2, 1994, Susp.	6–2–94	Do.
Minnesota:				
Afton, city of, Washington County	275226	March 19, 1971, Emerg.; April 21, 1972, Reg.; June 2, 1994, Susp.	1–2–76	Do.
Belle Plaine, city of, Scott County	270429	September 25, 1974, Emerg.; December 18, 1986, Reg.; June 2, 1994, Susp.	12–18–86	Do.
Browns Valley, city of, Traverse County	270480	April 30, 1974, Emerg.; June 17, 1986, Reg.; June 2, 1994, Susp.	6–17–88	Do.
Freeborn County, unincorporated areas	270134	April 16, 1974, Emerg.; May 3, 1982, Reg.; June 2, 1994, Susp.	5–3–82	Do.
Red Lake County, unincorporated areas	270387	April 5, 1974, Emerg.; July 2, 1987, Reg.; June 2, 1994, Susp.	7–2–87	Do.
St. Vincent, city of, Kittson County	270232	December 17, 1974, Emerg.; September 2, 1982, Reg.; June 2, 1994, Susp.	9–2–82	Do.
Region VI				
Arkansas: Hardy, city of, Sharp County	050330	November 11, 1977, Emerg.; September 4, 1985, Reg.; June 2, 1994, Susp.	6–2–94	Do.
Louisiana: Concordia Parish, unincorporated areas.	220053	April 30, 1973, Emerg.; April 3, 1978, Reg.; June 2, 1994, Susp.	6–2–94	Do.
Texas: Denton County, unincorporated areas	480774	July 22, 1975, Emerg.; May 4, 1987, Reg.; June 2, 1994, Susp.	6–2–94	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension; Rein.-Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: April 2, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–11552 Filed 5–11–94; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB74

Endangered and Threatened Wildlife and Plants; Final Rule To Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes three additional permanent manatee (*Trichechus manatus*) sanctuaries and expands an existing sanctuary in Kings Bay, Crystal River, Florida. All waterborne activities will be prohibited in these sanctuaries from November 15 through March 31 of each year. This final action will prevent the taking of manatees by harassment resulting from waterborne activities during the winter months. The total number of sanctuaries in Kings Bay is increased from three (10.7 acres) to six (39.0 acres) to accommodate the growing number of manatees using the area each winter, and to offset the harassment from increasing public use. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

EFFECTIVE DATE: June 13, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at the above address, 904/232–2580; or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., Suite 206, St. Petersburg, Florida 33702, 813/893–3651.

SUPPLEMENTARY INFORMATION:

Background

Crystal River is a short tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74° F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay congregate in an area known as the main spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is especially heavy during the cold winter months when diving is impractical through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

Concern for the welfare of the manatees in Kings Bay increased, culminating in 1980 when the first manatee sanctuaries were established. The authority to establish manatee protection areas, either refuges or sanctuaries, is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act, and is codified at 50 CFR 17, Subpart J. Under Subpart J, the Director may establish, by regulation, manatee protection areas whenever he or she determines there is substantial evidence that there is imminent danger of a taking (including harassment) of one or more manatees, and that such establishment is necessary to prevent such a taking. This regulation allows the U.S. Fish and Wildlife Service to regulate activities in state waters to protect an endangered species.

In 1983 the Crystal River National Wildlife Refuge was created to protect manatees from any potential negative impacts of human activities. The refuge owns Banana Island, Warden Key and Buzzard Island in Kings Bay, a house on the eastern shore currently being used as the headquarters, and some other properties in the area.

Manatee use of Kings Bay during winter months now exceeds 240 animals (FWS unpublished data). A majority of manatees currently using the spring do not tolerate close human contact and leave the warmer spring waters when humans approach too closely. Research conducted during the 1988–89 winters indicated manatees spend a disproportionate amount of their time in sanctuaries, in direct relationship to the number of boats present, regardless of weather conditions (Buckingham 1990).

Efforts have been made to make divers, snorklers, and boaters aware of the manatee harassment problem. Visitors have been instructed through posters, brochures, and by dive shop personnel that they should not aggressively pursue manatees or drive them from the springs. Most visitors to King's Bay have been very cooperative in this regard. While most visitors conscientiously avoid outright harassment, many seek the manatees out, approaching them to observe and even pet them. Although a few manatees tolerate and occasionally invite attention, most appear to find these interactions intolerable and alter their behavior accordingly. At times, the large number of humans concentrated in this relatively confined area forces all the manatees to seek less disturbing conditions.

The largest manatee aggregations on Florida's west coast are found during winter months on the ledges surrounding the refuge's main spring. Manatees often collect there in the evenings and remain throughout the early morning hours. When few divers are present and those few are quiet, manatees usually linger around the main boil, particularly in colder weather. However, on days when divers arrive in force soon after sunrise, those manatees least able to tolerate human crowding begin leaving the spring and move into the sanctuaries. As greater numbers of divers arrive, more manatees leave (FWS unpublished data). On days when the temperatures of the surrounding waters are not excessively cold, this may not be critical, although it still alters the manatee's natural behavior. On days when surrounding water temperatures are below 68° F it presents a potentially serious problem.

Although some manatees can tolerate limited exposure to waters as cold as 56.3° F (13.5° C) (Hartman, 1979) others become lethargic and cease feeding at temperatures less than in 68° F (20° C) water (Campbell and Irvine 1981). Carcasses recovered following major cold events showed atrophy of fat, emaciation, and an absence of food in the gastrointestinal tract with no sign of disease; characteristics consistent with death from hypothermia. Manatees appear unable to increase heat production through metabolic activity sufficient to counter losses to the environment. Manatees are tropical warm-water mammals. They feed on low-energy forage and have high thermal conductance and exceptionally low metabolic rates (only 15 to 22 percent of predicted values based on body size) (Irvine 1983). Florida is at the northern limit of their winter range.

Subadult manatees appear to be especially susceptible to death from hypothermia. This is probably a combination of their larger surface to volume ratio and their lack of experience in finding thermal refuges. The length of time a manatee can tolerate cold water before its health is compromised depends on its condition—a factor which cannot easily be measured on free-ranging manatees. Experiments on Amazonian manatees (*T. inunguis*) showed that underweight, nutritionally stressed, and fasting mammals have a drastically lowered capacity for heat production (Scrimshaw et al. 1968, Chandra and Newberne 1977:127–176).

During an extreme cold event in 1990, several manatees died in Brevard County, Florida. These manatees sought thermal refuge at the warm-water discharge from an electrical power generating plant on the Banana River. Although the discharge raised the temperature of the water approximately 10° F, under those extreme conditions, it was insufficient to keep them alive. There is probably no thermal refuge in Florida warm enough to guarantee the health of all resident manatees during an extremely cold winter.

Crystal River National Wildlife Refuge is probably the best of the thermal refuges and undoubtedly the only one capable of supplying all the needs for over 200 manatees through the winter. The springs are fed by underwater artesian springs deep under the insulating surface of the earth, holding the temperature constant. Unlike industrial discharges, this natural water source is not subject to mechanical breakdowns or power failures. Unlike most artificial refuges, a readily available food source is available close by and in abundant supply. Bengtson (1981) observed manatees remaining in thermal refuges for up to a week without feeding during cold spells. It appears it was more energy efficient for them to fast rather than risk feeding in colder waters. In Crystal River, fasting is probably rarely necessary for long periods, and the enormous outflow from the springs can moderate the temperature of much of the bay, depending on tidal and wind factors.

If left alone, manatees would use the resources of Kings Bay according to their individual needs. However, research has shown that the presence of boaters and divers causes manatees to leave the spring heads in favor of the sanctuaries regardless of weather conditions. On days when there is low diver turnout, a greater proportion of manatees remain in the springs (Buckingham 1990). Observations of other wintering areas, such as Blue Spring State Park, show that, left to their own devices, most manatees will remain in warm water throughout the day during cold weather periods. Activities that cause manatees to leave a natural thermal refuge can, therefore, be considered "harassment" because those activities interfere with normal "sheltering" habits of the animal. Harassment of manatees is a violation of both the Endangered Species Act and the Marine Mammal Protection Act.

Currently, manatees are able to move away from divers by going into three sanctuaries, Banana Island, Sunset Shores, and Magnolia Springs, established in 1980. The Banana Island sanctuary is located near the main spring, Kings Spring, and is relatively warm in relation to surrounding waters. Sunset Shores sanctuary is still within the southern part of the bay and provides a feeding and resting area in fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. Since 1980, the number of manatees using Kings Bay has increased from 100 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. As manatee habitat is lost elsewhere on the Florida peninsula, Kings Bay is becoming more important. Kings Bay is one of the last *natural* warm-water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay and especially the refuge's main spring to Crystal River and Citrus County centers around recreational SCUBA diving, snorkeling and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a place where one can "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep). Due in part to national and international publicity manatees have received in recent years, the number of divers visiting Kings Bay has increased to about 60,000–80,000 in the winter of 1990–91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River's economy. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm-water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman *et al.* 1985, Buckingham 1990). It is important to note that, although a few local business people feared losses of revenue following the implementation of the sanctuary additions, no evidence of any losses have been observed during the 2 years the sanctuaries were in effect under emergency rules.

Therefore, the Service, by this rule, is expanding the sanctuary area in Kings Bay to provide manatees additional undisturbed habitat during the cold weather months. These sanctuaries will exclude all waterborne activities by humans from November 15 through March 31 each year. The total sanctuary area, consisting of less than 10 percent of the area of Kings Bay, allows the remaining 90 percent of the bay to remain open to recreational and commercial waterborne activities. The sanctuary areas were carefully selected to provide maximum protection for manatees and minimum impact on divers. Public input into the selection of sanctuary areas was obtained during a workshop held in Crystal River on March 21, 1991. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

The sanctuary addition at Magnolia Springs adds 1.5 acres to the previous Magnolia Springs Sanctuary. This short, horseshoe-shaped section of canal joins a canal that feeds directly into Kings Bay. The addition extends the protected area around a significant artesian spring within the original sanctuary, providing additional protection for the small but consistent number of manatees, most notably cows and calves, that use the area for giving birth, resting, and as a warm-water refuge.

The sanctuary on the north and east sides of Buzzard Island contains 18.0 acres of shallow grassbeds along the northwestern edge and down the length of the east side of Buzzard Island. This area is primarily used by manatees as a feeding area. It has limited value as a warm-water sanctuary but contains abundant vegetation within a short distance from the warm waters in the southern part of Kings Bay.

The sanctuary at Tarpon Springs contains 4.6 acres along the northwestern side of Banana Island. This sanctuary contains a small spring and is used by manatees as a thermal refuge, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key provides a protected feeding area close to the warm-water sanctuaries in the south bay.

A standard survey of the sanctuary areas has been performed. The new areas will be delineated with buoys, as are existing sanctuaries.

Summary of Comments and Recommendations

A public workshop, advertised in the Citrus County Chronicle, was held on March 21, 1991 to allow local citizens and other interested parties the opportunity to discuss the pros and cons of different sanctuary locations. A number of the alternatives discussed at the workshop were described in the Service's draft Environmental Assessment supporting the Finding of No Significant Impact that was approved by the Regional Director on August 23, 1991. The sanctuaries as they appear in this rule were selected on the basis of known use by manatees, availability of resources, and minimal impact on recreational use patterns and homeowners. These sanctuaries were implemented for two successive winters, 1991–2 and 1992–3, by two separate emergency rules (57 FR 5988 and 58 FR 5643) when completion of the rulemaking process was delayed. Legal notices were published in the "Citrus County Chronicle" prior to the implementation of the emergency rules, and each emergency rule offered the Environmental Assessment for review by members of the public. The proposed rule, published in the **Federal Register** of May 13, 1993 (58 FR 28381), offered a public hearing, if requested, and announced a public comment period to end July 12, 1993. Following several requests for a public hearing, a notice was published in the **Federal Register** of June 28, 1993 (58 FR 34556) to announce a hearing and extension of the comment period. The hearing was held July 15, 1993, at the Coastal Region Library in Crystal River and the comment period was extended until July 30, 1993, to allow time for written comments to be received following the hearing.

At the July 15, 1993, hearing, a clear majority of the verbal comments and small minority of the written comments consisted of statements opposing either Federal regulations on recreational use of Kings Bay and the Crystal River National Wildlife Refuge in general, and/or the procedures used to implement the sanctuaries. Few people at the hearing addressed the sanctuary issue directly and there were several misconceptions as to what the rule would include. Many expressed a fear that future regulations would either eliminate or so discourage recreational boating that the local economy would be negatively impacted. Many speakers believed the preferences of local citizens and local political representatives should have been given more weight. Others feared that future regulations would include closing of the refuge, including the main spring. Although nearly every speaker expressed affection for, or at least acceptance of, manatees in Kings Bay, many believed manatee protection areas should not be implemented in Kings Bay if they interfered with their "right" to use public waterways. A few people questioned the soundness of the decision to increase manatee protection, although most also indicated they were not aware of or had not read the research study reports. Many were not aware that a public workshop had been held early in the process and believed the final rule was already in effect. Although one person suggested redrawing one corner of the Buzzard Island Sanctuary to avoid funnelling boats into a narrow channel, none of the negative commenters offered any alternative methods to protect manatees from harassment and a few questioned whether there was any need.

Copies of the proposed rule were provided at the hearing to clear up some commonly held misconceptions. For example, a petition of 230 legible signatures protested against "the closing down of Kings Bay for the Manatees for a period of 8 months per year."Because the rule would prohibit boats from only a small percentage of the bay (the total sanctuary area comprises less than 10 percent of the bay and leaves all the boating channels and the main spring open), and because the period they would be in effect is only 4½ months each year, it is likely these people had confused the dates of the seasonal county speed zone regulations with the shorter sanctuary season. Others may have had the same misconception.

Supportive comments were in the minority at the hearing but constituted a large majority of written comments received. Unlike the hearing, which mostly represented only Citrus County residents, two-thirds of the written comments came from Florida residents outside Citrus County. Five letters were received from people who spoke at the hearing and wished to reiterate or clarify their point of view. One comment came from out-of-state. Of all the comments received, 74 individuals and 12 state and national organizations, including national and local chapters of the Audubon Society, Sierra Club, and the Humane Society, specifically stated they support the sanctuaries. Many supporters suggested additional manatee protection was needed. One-third recommended a ban on night diving. Others recommended allowing only passive observation of manatees. Some people favored expanding the sanctuaries system further either by adding a sanctuary south of Warden Key, extending the season to an earlier date, or creating corridors between sanctuaries. Emphasis centered on the southern and eastern parts of the bay where manatee aggregations are largest and most consistent. Save the Manatee Club and the Citrus County-based Friends of the Manatee proposed a time-sharing plan that prohibited public use of the refuge (including the main spring) during extended cold periods based on air and/or water temperatures. Friends of the Manatee also recommended enlarging the Banana Island Sanctuary, implementing a boat-free, swimming and diving area, and a diver-free manatee corridor between sanctuaries. Both organizations also recommended a ban on night diving and allowing only passive observation of manatees. There were two recommendations for a permit system similar to that used in other refuges to limit the number of divers using the refuge's main spring.

Many people on both sides of the sanctuary issue, expressed the need for additional law enforcement effort to monitor not only the sanctuaries, but the speed zones, and to prevent manatee harassment by divers and snorklers. There was also a clear consensus that an intensive public education campaign would play a key role in preventing intentional and unintentional harassment of manatees. The Crystal River Chamber of Commerce appealed to the audience that regardless of the outcome of the sanctuary issue, government, conservation groups, and citizens should work together to educate and inform the tens of thousands of visitors who visit the area each year of how to interact with manatees in a safe and appropriate manner.

Although, there were a number of general comments opposing Federal regulation of recreational use of Kings Bay and the Crystal River National Wildlife Refuge and procedures used to implement the sanctuaries, very few people expressed specific concerns about the sanctuaries.

After considering all the comments received, the Service concludes that the additional sanctuaries are needed to accommodate the increase in the number of manatees using the area each winter, and to offset harassment from increasing public use and that no changes to the proposed rule are necessary or warranted. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees meet their needs, including warm water, food and areas for resting and socializing. The sanctuaries were carefully selected to provide maximum benefits for manatees and minimum impact on human recreational activities in Kings Bay.

The Crystal River National Wildlife Refuge in its 1993 Public Use Management Plan addressed many of the concerns of those recommending additional manatee protection around the main spring by (1) expanding the Banana Island sanctuary to coincide with the refuge boundary while establishing a "swim only" access corridor to the spring itself from November 15 to March 31, (2) prohibiting accessing to the spring during night hours from 7 p.m. to 7 a.m. during the winter, and (3) coordinating commercial establishments catering to refuge visitors through a special use permit system to ensure the consistency of visitor educational and resource interpretation.

References Cited

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Regulatory Flexibility Act and Executive Order 12866

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. These changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this final rulemaking, it is not expected that significant economic impacts would result. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this final rulemaking. Further, the final rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990.

National Environmental Policy Act

The Environmental Assessment prepared in conjunction with this rule is on file in the Service's Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. It may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

The primary author of this final rule is Robert O. Turner, Manatee Coordinator (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Subpart J of part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as follows:

1. The authority citation of Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108, List of designated manatee protection areas, by revising paragraphs (a)(3), (a)(4), (a)(5), and (a)(6), removing paragraph (a)(7), and revising the map at the end of this section to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision; Containing 3.4 acres, more or less.

(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°01′23″ W for 4466.90 feet to a 10-inch diameter concrete monument marking the Point of Beginning; Then go N 10°05′38″ W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37°34′41″ E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73°26′46″ E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17°50′16″ E for 1691.53 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 71°48′58″ W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71°48′58″ W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water line northerly and westerly to a point lying S 10°05′38″ E of the point of beginning; Then go N 10°05′38″ W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28°55′06″ E for 2546.59 feet to a 4-inch diameter iron pipe marking the Point of Beginning; Then go N 44°23′41″ W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33°53′16″ E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31°51′55″ E for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31°51′55″ E for 5 feet more or less to the mean high water line of Banana Island; Then go westerly along said main high water line to a point lying S 44°23′41″ E from the point of beginning; Then go N 44°23′41″ W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°43′00″ E for 1477.54 feet to a 10-inch diameter concrete monument marking the Point of Beginning; Then go N 06°24′59″ W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65°41′12″ E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55°40′52″ E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65°15′06″ W for 857.22 feet to the point of beginning; Containing 4.0 acres, more or less.

* * * * *

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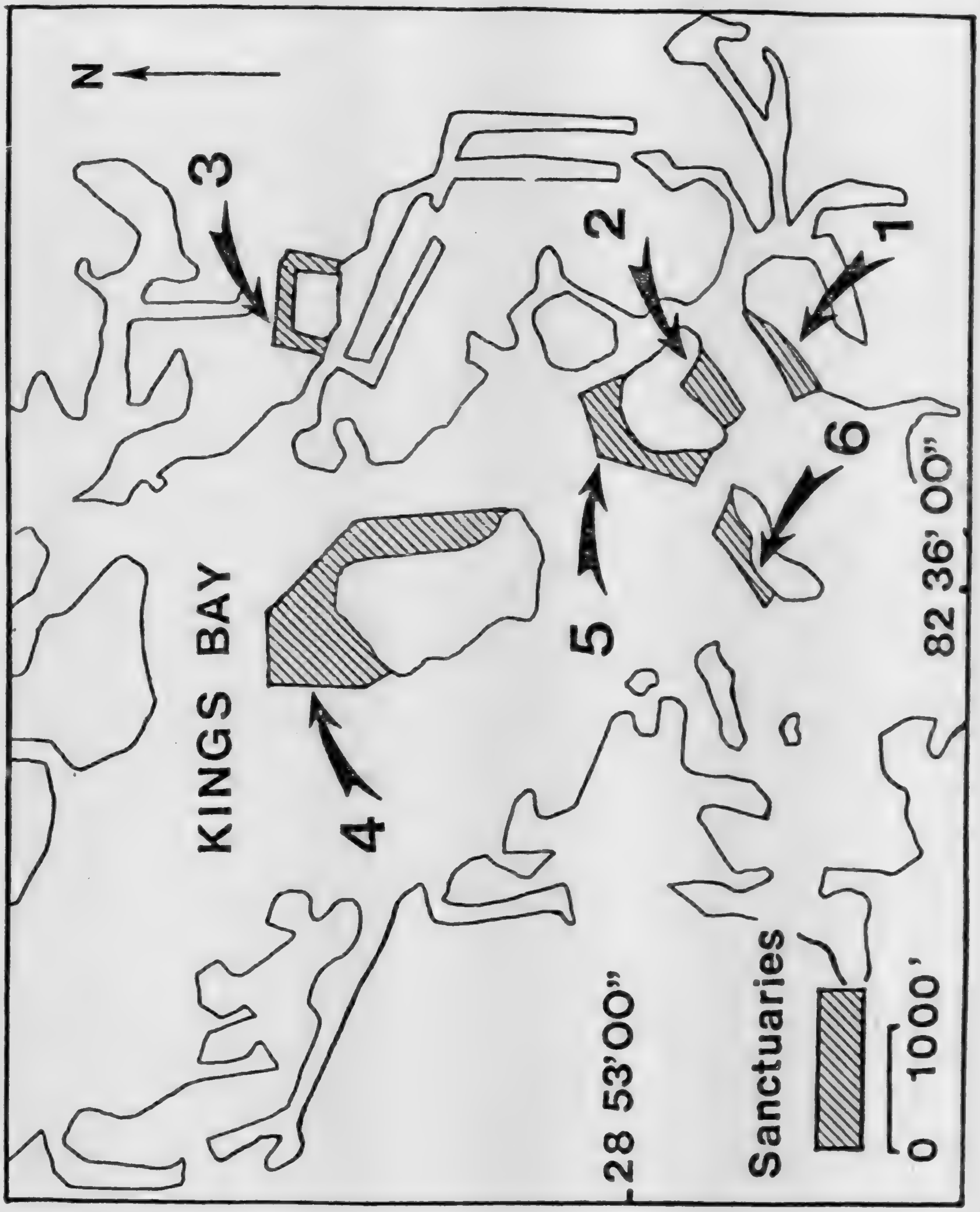
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Dated: March 28, 1994.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-11343 Filed 5-11-94; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[I.D. 050594A]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of the beginning date of the Texas closure.

SUMMARY: NMFS announces an adjustment of the beginning date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. This year the closure will begin on May 13, 1994, because biological data indicate that brown shrimp will be leaving the Texas estuaries earlier than normal. The Texas closure is intended to prohibit the harvest of brown shrimp during their major period of emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 13, 1994, until 30 minutes after sunset, July 15, 1994, unless otherwise announced through notification in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The FMP implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that a closure date earlier than May 15 is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate that beginning the closure on May 13, 1994, is necessary to provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for beginning the Texas closure is changed from 30 minutes after sunset, May 15, 1994, to 30 minutes after sunset on May 13, 1994. During the closure, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom (183-m) depth contour. The waters of Texas are also closed commencing 30 minutes after sunset on May 13, 1994.

The termination date of the Texas closure will be adjusted in accordance with the criteria specified at 50 CFR 658.25(b) and to conform to the termination date of the closure in the waters of Texas. The adjusted termination date will be published in the **Federal Register**.

Classification

This action is authorized by 50 CFR 658.25 and has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 6, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-11494 Filed 5-9-94; 2:26 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206–AF77

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to issue regulations to implement the Program Fraud Civil Remedies Act (PFCRA) which Congress enacted on October 21, 1986. The PFCRA provides a statutory right for the Federal Government to take administrative action against fraud. The PFCRA also outlines the procedures that must be followed in administrative actions brought in accordance with the act. These regulations will implement these procedural requirements.

DATES: Comments must be submitted on or before July 11, 1994.

ADDRESSES: Send or deliver comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

SUPPLEMENTARY INFORMATION: Public Law 99–509 provides a means by which Federal agencies may institute administrative proceedings against persons who have presented false claims or statements and provides further that Federal agencies who institute such administrative proceedings may recover double damages as well as penalties of up to $5,000 per violation.

The Program Fraud Civil Remedies Act requires agencies to issue regulations. This rule establishes the procedures that OPM will follow under this Act. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to federal employees and other entities who do business with OPM.

List of Subjects in 5 CFR Part 185

Claims.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is adding part 185 of title 5, Code of Federal Regulations as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES

Sec.

185.101 Purpose.
185.102 Definitions.
185.103 Basis for civil penalties and assessments.
185.104 Investigation.
185.105 Review by the reviewing official.
185.106 Prerequisites for issuing a complaint.
185.107 Complaint.
185.108 Service of complaint.
185.109 Answer.
185.110 Default upon failure to file an answer.
185.111 Referral of complaint and answer to the ALJ.
185.112 Notice of hearing.
185.113 Location of hearing.
185.114 Parties to the hearing.
185.115 Separation of functions.
185.116 Ex parte contacts.
185.117 Disqualification of reviewing official or ALJ.
185.118 Rights of parties.
185.119 Authority of the ALJ.
185.120 Prehearing conferences.
185.121 Disclosure of documents.
185.122 Discovery.
185.123 Exchange of witness lists, statements, and exhibits.
185.124 Subpoenas for attendance at hearing.
185.125 Protective order.
185.126 Evidence.
185.127 Fees.
185.128 Form, filing, and service of papers.
185.129 Computation of time.
185.130 Motions.
185.131 Sanctions.
185.132 The hearing and burden of proof.
185.133 Determining the amount of penalties and assessments.
185.134 Witnesses.
185.135 The record.
185.136 Post-hearing briefs.
185.137 Initial decision.
185.138 Reconsideration of initial decision.
185.139 Appeals to authority head.
185.140 Stays ordered by the Department of Justice.
185.141 Stay pending appeal.
185.142 Judicial review.
185.143 Collection of civil penalties and assessments.
185.144 Right to administrative offset.
185.145 Deposit in Treasury of the United States.
185.146 Compromise or settlement.
185.147 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 185.101 Purpose.

The purpose of this part is to implement the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. Section 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute. This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.

§ 185.102 Definitions.

For the purposes of this part—

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Office of Personnel Management (OPM).

Authority head means the Director of the Office of Personnel Management or the Director's designee.

Benefit is very broad, and is intended to cover anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status or loan guarantee.

Claim means any request, demand, or submission—

(1) Made to the authority for property, services, or money (including money representing benefits, grants, loans or insurance);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority:

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services.

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand.

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 185.107.

Defendant means any person alleged in a complaint under § 185.107 to be liable for a civil penalty or assessment under § 185.103.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 185.110 or § 185.137, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating Official means the Inspector General or the Inspector General's designee.

Knows or has reason to know means that a person, with respect to a claim or statement:

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico or other individual designated in writing by the defendant.

Reviewing Official means the General Counsel of OPM or the General Counsel's designee. For the purposes of § 185.105 of these rules, the General Counsel personally, or the General Counsel's designee, shall perform the functions of the reviewing official provided that such person serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay payable under section 5376 of title 5, U.S. Code. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed on behalf of the reviewing official by the staff of the Office of the General Counsel.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 185.103 Basis for civil penalties and assessments.

(a) In addition to any other remedy that may be prescribed by law, any person shall be subject to a civil penalty of not more than $5,000, where the person makes a claim and knows or has reason to know that the claim:

(1) Is false, fictitious, or fraudulent;

(2) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(3) Includes, or is supported by, any written statement that—

(i) Omits a material fact;

(ii) Is false, fictitious, or fraudulent as a result of such omission; and

(iii) Is a statement in which the person making such statement has a duty to include such material fact; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(c) a claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(d) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(e) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section may also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(f) Any person who makes a written statement that:

(1) The person knows or has reason to know:

(i) Asserts a material fact which is false, fictitious, or fraudulent; or

(ii) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement.

(2) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement may be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(g) Each written representation, certification, or affirmation constitutes a separate statement.

(h) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(i) No proof of specific intent to defraud is required to establish liability under this section.

(j) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(k) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 185.104 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, he or she may issue a subpoena:

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that:

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 185.105 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 185.104(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 185.103, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to have a complaint issued under § 185.107. Such notice shall include:

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 185.103.

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 185.106 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 185.107 only if:

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 185.103(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 185.103(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 185.107 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 185.108.

(b) The complaint shall state the following:

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly rises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer, including a specific statement of the defendant's right to request a hearing and to be represented by a representative; and

(4) The fact that failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 185.110.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 185.108 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 185.109 Answer.

(a) The defendant may request a hearing in the answer filed with the reviewing official within 30 days of service of the complaint.

(b) In the answer, the defendant:

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 185.110. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. The ALJ shall decide expeditiously whether the defendant shall be granted an additional period of time to file such answer.

§ 185.110 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 185.109(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 185.108, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 185.103, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 185.138.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 185.111 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 185.112 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 185.108. At the same time, the ALJ shall send a copy of such notice to the reviewing official or his or her designee.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 185.113 Location of hearing.

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the parties and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 185.114 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and OPM.

(b) Except where the authority head designates another representative, OPM shall be represented by the staff of the Office of the General Counsel.

(c) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 185.115 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the review of the initial decision by the authority head; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

§ 185.116 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 185.117 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section:

(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 185.118 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery as provided under § 185.122;

(d) Agree to stipulations of fact of law, which shall be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 185.119 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 185.120 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 185.121 Disclosure of documents.

(a) Upon written request to the reviewing official, generally prior to the filing of an answer, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 185.104(b) are based, unless such documents are subject to the privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant, may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 185.105 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 185.109.

§ 185.122 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 185.122 and 185.123, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery are to be handled according to the following procedures:

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 185.125.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 185.125.

(e) Depositions are to be handled in the following manner:

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 185.108.

(3) The deponent may file with the ALJ within 10 days of service a motion to quash the subpoena or a motion for a protective order.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 185.123 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 185.133(b). At the time the documents listed in this paragraph are exchanged, any party that intends to rely on the transcript or deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ may not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 185.124 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ upon a showing of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 185.108. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 185.125 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a sealed disposition be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ;

§ 185.126 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g. to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 185.125.

§ 185.127 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 185.128 Form, filing, and service of papers.

(a) *Form.* Documents filed with the ALJ shall include an original and two copies. Every pleasing and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena). Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(b) *Filing.* Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served a prescribed in § 185.108 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 185.129 Computation of time.

(a) In computing any period of time under this pat or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 185.130 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 185.131 Sanctions.

(a) The ALJ may sanction a person including any party or representative for the following reasons:

(1) Failure to comply with an order, rule, or procedure governing the proceeding;

(2) Failure to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the proceeding.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 185.132 The hearing and burden of proof.

(a) Where requested in accordance with § 185.109 the ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 185.103 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise closed by the ALJ for good cause shown.

§ 185.133 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the defendant and others from engaging in the same or similar misconduct; and

(17) The potential impact of the misconduct on the rights of others.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 185.134 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 185.123(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceedings without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 185.135 The record.

(a) The hearing shall be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 185.125.

§ 185.136 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 185.137 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 185.103.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 185.133.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 185.138 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on all parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 185.139.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 185.139.

§ 185.139 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section:

(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 185.138, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal shall be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(b) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 185.138 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(c) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(d) The representative for OPM may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(e) There is no right to appear personally before the authority head.

(f) There is no right to appeal an interlocutory ruling by the ALJ.

(g) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless the objecting party can demonstrate extraordinary circumstances causing the failure to raise the objection.

(h) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(i) The authority head may affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the ALJ in any initial decision.

(j) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(k) Unless a petition for review is filled as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 185.103 is final and not subject to judicial review.

§ 185.140 Stays ordered by the Department of Justice.

If at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General or of the Assistant Attorney General who ordered the stay.

§ 185.141 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 185.142 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties and/or assessments under this part and specifies the procedures for such review.

§ 185.143 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 185.144 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 185.142 or § 185.143, or any amount agreed upon in a compromise or settlement under § 185.146, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 185.145 Deposit in Treasury of the United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 185.146 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 185.142 or during the pendency of any action to collect penalties and assessments under § 185.143.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 185.142 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 185.147 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 185.108 within 6 years after the date on which such a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 185.110(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by written agreement of the parties.

[FR Doc. 94–11365 Filed 5–11–94; 8:45 am]

BILLING CODE 8325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–42–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that currently requires replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. This action would revise the applicability of the existing AD. This proposal is prompted by the identification of additional airplanes that are subject to the addressed unsafe condition. The actions specified by the proposed AD are intended to prevent hydraulic fluid leakage from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

DATES: Comments must be received by June 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–42–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW. , Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–42–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 29, 1993, the FAA issued AD 93–24–05, Amendment 39–8754 (58 FR 67310), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, to require replacement of the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. That action was prompted by a fire resistance test of the hydraulic EDP, associated hoses, and couplings installed on the number 2 and number 3 engines, which revealed that the pump case drain line quick release couplings leaked hydraulic fluid. The requirements of that AD are intended to prevent hydraulic fluid leakage from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

Since issuance of that AD, British Aerospace has issued Service Bulletin SB.29–31–01339A, Revision 1, dated July 8, 1993, which revises the effectivity listing of the original issue of the service bulletin by adding the serial numbers of affected Model BAe 146–100A and –200A series airplanes. In addition, one Model BAe 146–300A series airplane, serial number E3220, is removed from the service bulletin effectivity. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–24–05 to continue to require replacement of the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves. The proposed AD would revise the applicability of the existing AD, and would reflect the latest revision of the service bulletin as the appropriate source of service information.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,590, or $165 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8754 (58 FR 67310), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 94–NM–42–AD. Supersedes AD 93–24–05, Amendment 39–8754.

Applicability: Model BAe 146–100A series airplanes, serial numbers E1002 through E1199 inclusive; Model BAe 146–200A series airplanes, serial numbers E2008 through E2204 inclusive, E2210 through E2220 inclusive; and Model BAe 146–300A series airplanes, serial numbers E3001 through E3219 inclusive, and E3222; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (a) of this AD merely restates the requirement of paragraph (a) of AD 93–24–05, Amendment 39–8754. As allowed by the phrase, "unless accomplished previously," if that requirement of AD 93–24–05 has already been accomplished, this AD does not require that the action be repeated.

To prevent hydraulic fluid leakage from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire, accomplish the following:

(a) For airplane serial numbers E3001 through E3207 inclusive, E3209 through E3219 inclusive, and E3222: Within 6 months after January 20, 1994 (the effective date of AD 93–24–05, Amendment 39–8754), replace the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29–31–01339A, dated May 24, 1993, or SB.29–31–01339A, Revision 1, dated July 8, 1993.

(b) For airplane serial numbers E1002 through E1199 inclusive, E2008 through E2204 inclusive, E2210 through E2220 inclusive, and E3208: Within 6 months after the effective date of this AD, replace the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29–31–01339A, Revision 1, dated July 8, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) § 21.197 and § 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 5, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11358 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–61–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require a revision to the Flap Control Unit input wiring. This proposal is prompted by reports of disconnection of the Landing Gear Module electrical connectors, which can result in the loss of the primary, secondary, and alternate control of the flaps. The actions specified by the proposed AD are intended to prevent the possibility of an

all-flaps-up landing due to the loss of control of all flap operations.

DATES: Comments must be received by June 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems & Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Boeing Commercial Airplanes has advised the FAA of an unsafe condition that may exist in certain Boeing Model 747–400 series airplanes. Boeing advises that, if the Landing Gear Module connectors become disconnected, all Flap Control Unit (FCU) modes of flap operation (primary, secondary, and alternate control of flaps) could be lost. There has been one occurrence of a partial disconnection of these connectors during a flight test of one airplane, which resulted in some of the flaps failing to extend. In another incident, there was a partial disconnection of these connectors on one in-service airplane that occurred while the airplane was on the ground; this situation prevented the airplane from being dispatched.

Disconnection of the subject connectors could result in the loss of all three modes of flap operation. If this were to occur, the pilot would be unable to change the position of the leading and trailing edge flaps. This condition, if not corrected, could result in an all-flaps-up (flaps retracted) landing and consequent high landing speeds that could cause the airplane to run off the runway before being able to stop.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2346, dated April 28, 1994, that describes procedures for revising the FCU input wiring by moving two of the three FCU inputs from the "Alt-Arm" switch to the Alternate Flap relays. This will keep the FCU's in the Primary Hydraulic/Pneumatic operation mode if the Landing Gear Module connectors become disconnected, and would allow the pilot to maintain primary and secondary control of the flaps.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the FCU input wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 300 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $25,500, or $750 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–61–AD.

Applicability: Model 747–400 airplanes having line numbers 696 through 1019, inclusive, and 1021 through 1026, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Flap Control Unit (FCU) input wiring in accordance with Boeing Alert Service Bulletin 747–27A2346, dated April 28, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 6, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11526 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 92–AWA–6]

RIN 2120–AF02

Proposed Alteration of the Charlotte, NC, Class B Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); correction and extension of comment period.

SUMMARY: This document contains corrections to the NPRM published on March 2, 1994. That action proposed to alter the Charlotte, NC, Class B airspace area. However, the NPRM was inadvertently published without the associated graphic and with errors to the geographical references for the Charlotte/Douglas International and Gastonia Municipal Airports. This action also extends the period for public comments.

DATES: Comments must be received on or before June 2, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 92–AWA–6, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

On March 2, 1994, the FAA published an NPRM that proposed to alter the Charlotte, NC, Class B airspace area (59 FR 10040). However, the NPRM was inadvertently published without the associated graphic and with errors to the geographical references for the Charlotte/Douglas International and Gastonia Municipal Airports. This action will correct these errors by adding the associated graphic and correcting the geographical references of the airports. This action will also extend the period for public comments by 30 days.

Correction to NPRM

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on March 2, 1994 (59 FR 10040; **Federal Register** Document 94–4714) is corrected as follows:

§ 71.1 [Corrected]

ASO NC B Charlotte, NC [Corrected]

1. On page 10045, in the first column, under Charlotte/Douglas International Airport (Primary Airport) "(lat. 35°12′52″ N., long. 80°56′37″ W.)" should read "(lat. 35°12′52″ N., long. 80°56′36″ W.) and under Gastonia Airport "(lat. 35°12′00″ N., long. 81°09′00″ W.)" should read "(lat. 35°12′01″ N., long. 81°09′00″ W.)."

2. On page 10045, in the third column, after the signature block, add a note and appendix as set forth below.

Issued in Washington, DC, on April 28, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix—Charlotte, North Carolina, Class B Airspace Area

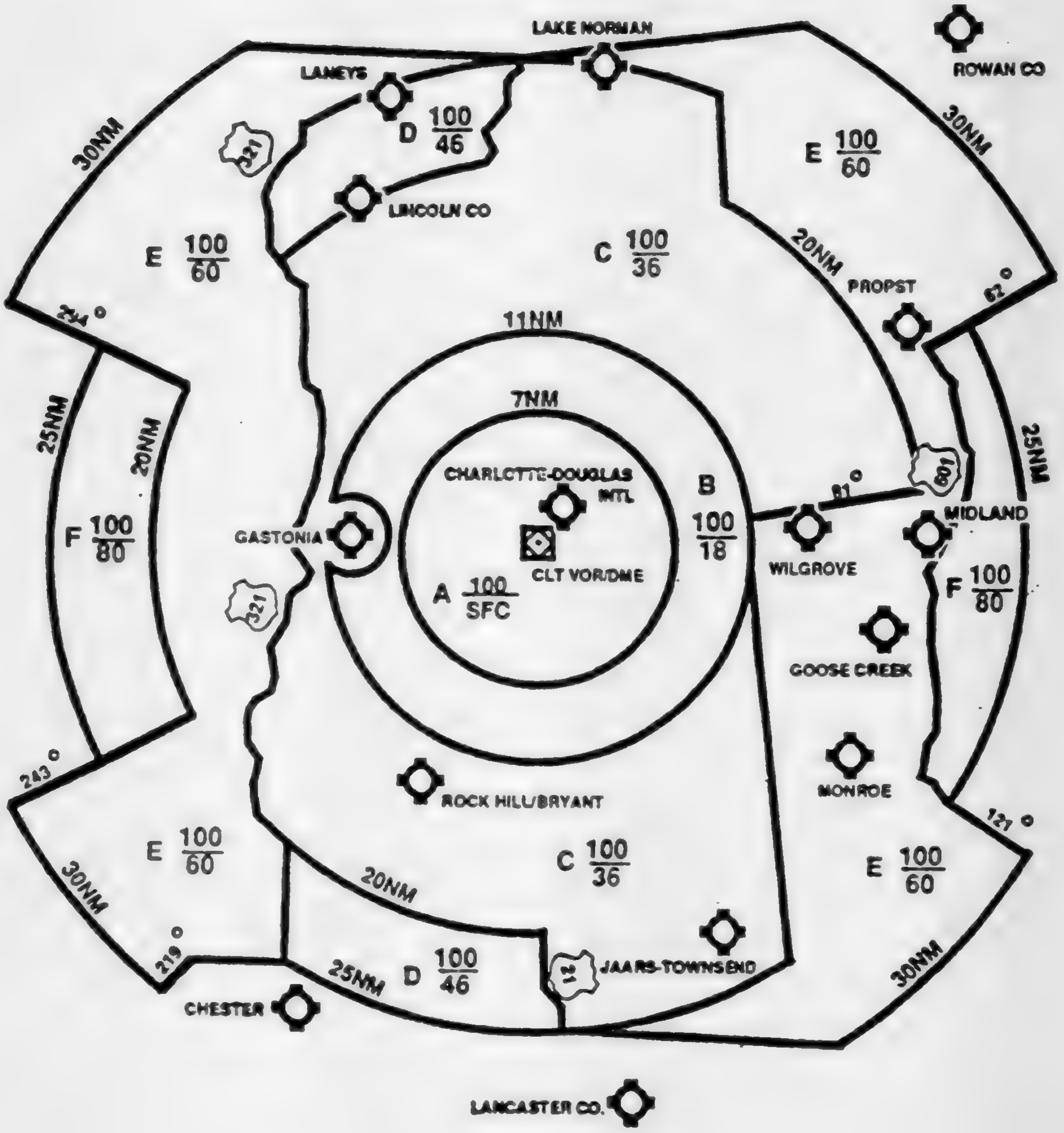
BILLING CODE 4910–13–P

CHARLOTTE, NORTH CAROLINA
CLASS B AIRSPACE AREA

CHARLOTTE/DOUGLAS INTERNATIONAL AIRPORT

FIELD ELEVATION - 749 FEET

(Not to be used for navigation)


LAKE NORMAN
ROWAN CO
LANEYS
321
D 100/46
30NM
E 100/60
LINCOLN CO
C 100/36
E 100/60
20NM
PROPST
30NM
234°
62°
11NM
7NM
25NM
20NM
25NM
F 100/80
CHARLOTTE-DOUGLAS INTL
B 100/18
81°
601
MIDLAND
GASTONIA
CLT VOR/DME
A 100/SFC
WILGROVE
F 100/80
321
GOOSE CREEK
243°
MONROE
ROCK HILL/BRYANT
121°
E 100/60
C 100/36
E 100/60
30NM
20NM
219°
D 100/46
25NM
521
JAARS-TOWNSEND
30NM
CHESTER
LANCASTER CO.

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-230

[FR Doc. 94–11409 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program and Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah regulatory program and abandoned mine plan (hereinafter, the "Utah program" and "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. The Utah program revisions pertain to purpose; definitions of new terms; rulemaking authority and procedure; administrative procedures; financial interests; permit applications; informal conferences; appeals and further review; performance bonds; revegetation standards on lands eligible for remining; operator requirements for underground coal mining; information provided by permittees; contest of violation or amount of penalty; civil actions to compel compliance with Utah's program; violations of Utah's program or permit conditions; lands unsuitable determination; judicial review of rules and orders; repeal of specific sections of the Utah Code Annotated 1953 (UCA); and a repeal date of certain provisions. The Utah plan revisions pertain to lands and water eligible for reclamation, recovery of reclamation costs, and liens. The amendment is intended to revise Utah's program and plan to be consistent with SMCRA and the Utah Administrative Procedures Act, and to improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t. on June 13, 1994. If requested, a public hearing on the proposed amendment will be held on June 6, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on May 27, 1994. Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program and Utah plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico 87102.

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 3 Triad Center, suite 350, 355 West North Temple, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and Utah Plan

On January 21, 1981, and June 3, 1983, the Secretary of the Interior conditionally approved the Utah program and approved the Utah plan. General background information on the Utah program and Utah plan, including the Secretary's findings, the disposition of comments, the conditions of approval of the Utah program, and approval of the Utah plan, can be found in the January 21, 1981, and June 3, 1983, publications of the **Federal Register** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

II. Proposed Amendment

By letter dated April 14, 1994, Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (administrative record No. UT–917). The proposed amendment consists of revisions to the Utah Coal Mining and Reclamation Act of 1979. Utah submitted the proposed amendment with the intent of making its program and plan consistent with SMCRA and the Utah Administrative Procedures Act, and improving operational efficiency.

The program provisions of the Utah Coal Mining and Reclamation Act that Utah proposes to revise are (1) Utah Code Annotated (UCA) 40–10–2, purpose [of Chapter 10]; (2) UCA 40–10–3, definitions of new terms "adjudicative proceeding," "lands eligible for remining," and "unanticipated event or condition;" (3) UCA 40–10–6.5, rulemaking authority and procedure; (4) UCA 40–10–6.7, administrative procedures; (5) UCA 40–10–7, prohibition of financial interest in any coal mining operation; (6) UCA 40–10–8, coal exploration rules issued by the Division of Oil, Gas and Mining (Division) and penalty for violation; (7) UCA 40–10–10, permit applications; (8) UCA 40–10–11, Division action on the permit application; (9) UCA 40–10–12, revision or modification of permit provisions; (10) UCA 40–10–13, informal conferences; (11) UCA 40–10–14, permit approval or disapproval, appeals, and further review; (12) UCA 40–10–15, performance bonds; (13) UCA 40–10–16, release of performance bond, surety, or deposit; (14) UCA 40–10–17, revegetation standards on lands eligible for remining; (15) UCA 40–10–18, operator requirements for underground coal mining; (16) UCA 40–10–19, information provided by the permittee to the Division and right of entry; (17) UCA 40–10–20, contest of violation or amount of penalty; (18) UCA 40–10–21, civil action to compel compliance with Utah's program and other rights not affected; (19) UCA 40–10–22, violations of Utah's program or permit conditions; (20) UCA 40–10–24, determination of unsuitability of lands for surface coal mining; and (21) UCA 40–10–30, judicial review of rules or orders. Utah also proposes to repeal UCA 40–10–4, "Mined land reclamation provisions applied," and UCA 40–10–31, "Chapter's procedures supersede Title 63, Chapter 46b," and add the requirement that UCA 40–10–11(5), modification of permit issuance prohibition, and UCA 40–10–17(2)(t)(ii), revegetation standards on lands eligible for remining, are repealed effective September 30, 2004.

The plan provisions of the Utah Coal Mining and Reclamation Act that Utah proposes to revise are (1) UCA 40–10–25, lands and water eligible for reclamation; (2) UCA 40–10–27, entry upon land adversely affected by past coal mining practices, State acquisition of land and public sale, and water pollution control and treatment plants; and (3) UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land.

Following are more specific descriptions of the revisions that Utah proposes to make to the above-listed sections of its statute. These descriptions do not address several editorial revisions including changes in punctuation and capitalization;

recodification; replacement of the word "regulations" and the term "rules and regulations" with the synonymous word "rules;" the joining with the conjunction "and" of the last two provisions in a series of three or more provisions joined by semicolons; the use of Arabic numbers instead of spelling out the numbers; and the deletion of the word "this" prior to the word "Subsection" when it is followed by a specific statute citation.

Utah proposes the following revisions to its program provisions.

Utah proposes to add new definitions for the terms (1) "adjudicative proceeding" at UCA 40–10–3(1) to mean "a division or board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license;" (2) "lands eligible for remining" at UCA 40–10–3(8) to mean "those lands that would otherwise be eligible for expenditures under Section 40–10–25 or 40–10–25.1;" and (3) "unanticipated event or condition" at UCA 40–10–3(21) to mean "an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit."

Utah proposes to revise its rulemaking authority and procedure provisions at UCA 40–10–6.5 by adding new language at UCA 40–10–6.5(1) to require the Board of Oil, Gas and Mining (Board) to promulgate rules in accordance with Title 63, Chapter 46a of the Utah Administrative Rulemaking Act and deleting the provisions of UCA 40–10–6.5(3), which set forth the requirements for conducting hearings under Chapter 10.

Utah proposes to add new language at UCA 40–10–6.7, administrative procedures, to require that the Division shall conduct informal adjudicative proceedings, which are referred to as conferences or informal conferences. Utah also proposes to require that the Board or Division shall conduct formal adjudicative proceedings, which are referred to as hearings or public hearings. The conduct of these conferences and hearings will be governed by rules adopted by the Board which are in accordance with Title 63, Chapter 46b of the Utah Administrative Procedures Act (UAPA). In addition, Utah proposes that such hearings, will be conducted in a manner which guarantees the parties' due process rights, includes provisions to ensure this protection, and requires a verbatim record of each public hearing required by Chapter 10 will be made and a transcript will be available on the motion of any party or by order of the Board.

Utah proposes an editorial revision at UCA 40–10–10, permit applications, by changing the word "implementing" to "the" before the word "rules."

Utah proposes to revise UCA 40–10–11 by requiring that the schedule listing any and all notices of violations submitted as part of the permit application include violations of any State or Federal program or law approved under SMCRA. Utah also proposes to add new UCA 40–10–11(5) to require that (1) the prohibition of UCA 40–10–11(3), concerning issuance of a permit to persons with outstanding violations or with a history of willful violations, does not apply after October 14, 1992, if the violation resulted from an unanticipated event or condition that occurred on lands eligible for remaining, (2) the term "violation" as used here as the same meaning as the term "violation" under UCA 40–10–11(3) prohibiting permit issuance, and (3) UCA 40–10–11(5) is repealed effective September 30, 2004.

Utah proposes to add new langauge to its provisions pertaining to informal conferences at UCA 40–10–13(2)(b) to specify that, if written objections to a proposed initial or revised application for a surface coal mining and reclamation operations permit are filed, the Division will hold an informal conference and conduct it in accordance with subsection (b) irrespective of the requirements of section 63–46b–5 of UAPA and that such conference may be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or a request for an informal conference are received by the Division.

Utah proposes to revise its provisions at UCA 40–10–14, pertaining to permit approval or disapproval, appeals, and further review, by adding new language at subsection (6) to provide that an applicant or aggrieved person may appeal the Board's decision granting or denying the permit in whole or in part directly to the Utah Supreme Court, that if the Board fails to act, the applicant or aggrieved person may bring an action in the appropriate district court, and that time frames for appeals under this subsection shall be consistent with UAPA.

Utah proposes to revise its statutory provisions at UCA 40–10–16(6) for release of performance bonds, sureties, or deposits by deleting the requirements that provide for advertisement of a public hearing, govern the manner in which hearings are conducted, and allow the Division to establish an informal conference to resolve written objections. Utah also proposes new language there requiring that:

> If written objections are filed and a conference is requested, the division shall inform all interested parties of the time and place of the conference and hold an informal conference within 30 days after the request is filed with the division. The conference officer may convert the conference to a formal proceeding under the standards set forth in section 63–46b–4 [of the UAPA]. The matter shall be scheduled for hearing before the board and a hearing shall be held in accordance with the rules of practice and procedure of the board. A decision from the informal conference may be appealed to the board. The board shall hold a hearing pursuant to the rules of practice and procedure of the board.

Utah proposes to revise its performance standards provisions at UCA 40–10–17(2) by adding new subsection (t)(ii) to require that on lands eligible for remining, the operations shall assume the responsibility for successful revegetation for a period of 2 full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with performance standards. Utah also proposes to add new UCA 40–10–17(6) to specify that UCA 40–10–17(2)(t)(ii) is repealed effective September 30, 2004.

Utah proposes to revise UCA 40–10–18, operator requirements for underground coal mining, by adding new subsection (4) to require the permittee of an underground coal mining operation after October 24, 1992, to promptly repair or compensate for material damage resulting from subsidence to occupied residential dwellings and related structures or noncommercial buildings. Utah further proposes that repair of damage includes rehabilitation, restoration, or replacement of such damaged dwellings, structures, or buildings; and compensation is to be in the full amount of the diminution in value resulting from the subsidence. Lastly, Utah proposes that the requirement to repair or compensate for material damage resulting from subsidence will not prohibit or interrupt underground coal mining operations, and the Board will adopt final rules to implement these provisions within 1 year after enactment of UCA 40–10–18(4).

Utah proposes to revise UCA 40–10–20, contest of violation or amount of penalty, by adding new subsection (2)(e)(ii) to provide that if the operator fails to submit the amount of the civil penalty within 30 days of receipt of the results of an informal conference, the operator waives any opportunity for further review of the violation or to contest the violation.

Utah proposes to revise UCA 40–10–22 pertaining to violations of Utah's program or permit conditions by (1) requiring at subsection (1)(d) that, where a determination is made that a pattern of violations exists has existed and the violations were caused by the permittee's unwarranted failure to comply with Utah's program or the conditions of the permit, the Division will request the Board to issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and provide an opportunity for a public hearing; if the permittee requests a hearing, the Board will give notice in accordance with its rules of practice and procedure; and if the permittee fails to show cause as to why the permit should not be suspended or revoked, the Board will immediately enter an order to suspend or revoke the permit; (2) adding the word "district" before "court" at subsection (2)(a) and clarifying that any relief granted by the district court will continue in effect unless the Utah Supreme Court on review grants a stay of enforcement or sets aside or modifies the Board's order which is being appealed; (3) providing at subsection (3)(a) that a permittee or aggrieved person may initiate Board action by requesting a hearing and requiring at subsections (3)(b) and (d) that the Board will act in accordance with its rules of practice and procedure; (4) changing terms at subsection (3)(e) from "issued" to "entered" when describing the outcome of the Board's order and from "administrative" to "adjudicative" when describing "proceeding;" and (5) at subsection (3)(f), providing that the Board's action is subject to judicial review by the Utah Supreme Court as prescribed in subsection 78–2–2(3)(e)(iv), rather than by the appropriate district court.

Utah proposes to add new language to its judicial review of rules and orders provisions at UCA 40–10–30 by adding new language to require that (1) judicial review of adjudicative proceedings is governed by Title 63, Chapter 46b, of UAPA and provisions of Chapter 10 consistent with UAPA and (2) judicial review of the Board's rulemaking procedures and rules adopted under Chapter 10 is governed by Title 63, Chapter 46a, Utah Administrative Rulemaking Act. Utah also proposes to revise recodified subsection (3) to require that an appeal from the Board's order will be directly to the Utah Supreme Court and to revise recodified subsection (4) to require that an action or appeal involving the Board's order will be determined as expeditiously as feasible by the Utah Supreme Court in accordance with subsection 78–2–2(3)(e)(iv). Finally, Utah proposes to delete existing subsection (3) pertaining to review of the adjudication of the district court and add new language at subsection (5) to specify that, if the Board fails to perform any act or duty that is not discretionary, the aggrieved person may bring an action in the appropriate district court.

Utah proposes to repeal UCA 40–10–4, "Mined land reclamation provisions applied," Utah Code Annotated 1953, as enacted by Chapter 145, Laws of Utah 1979. Utah also proposes to repeal UCA 40–10–31, "Chapter's procedures supersede Title 63, Chapter 46b," Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987.

Utah proposes to add new language requiring that UCA 40–10–11(5) and UCA 40–10–17(2)(t)(ii) are repealed effective September 30, 2004.

Utah proposes the following revisions to its plan provisions.

Utah proposes to revise UCA 40–10–25 pertaining to lands and water eligible for reclamation by deleting, as a priority for the expenditure of AMLR funds, existing subsection (2)(d), which pertains to research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques, and adding new requirements for eligible lands and water to include lands and water left in an inadequate reclamation status and which meet the criteria of subsection (4) (a) or (b). Utah proposes to allow AMLR funds to be used for reclamation or drainage abatement at sites (1) where operations occurred during the period beginning August 4, 1977, and ending before January 21, 1981, and where funds pursuant to a loan or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site and (2) where operations occurred during the period beginning on August 4,1977, and ending on or before November 5, 1990, and where the surety of the mining operator became insolvent during that period, and as of November 5,1990, funds immediately available from proceedings relating to the insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site. Utah proposes to require that, in determining which sites to reclaim, priority be given to those sites in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

Finally, Utah proposes to provide that (1) surface coal mining operations on lands eligible for remining do not affect eligibility for reclamation and restoration after the release of the bond or deposit for the operation, (2) when the bond or deposit for a coal surface mining operation on lands eligible for remining is forfeited and the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement, AMLR funds may be used for reclamation, and (3) regardless of the provisions above that pertain to operations on lands eligible for remining, the Director of the Division can expend monies from the abandoned mine reclamation trust fund for any emergency requiring immediate reclamation.

Utah proposes to revise UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land, by adding new language at subsection (1)(a)(ii) to require that the sale price for land reclaimed using reclamation funds that is sold to a State or local government for public purposes, may not be less than the actual cost of purchase of the property by the State plus the costs of reclamation. At subsection (2)(a), Utah proposes that a lien shall not be placed against reclaimed land where the surface owner owned the land prior to May 2, 1977, and neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation work.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h) and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program and plan approval criteria of 30 CFR 732.15 and 884.14. If the amendment is deemed adequate, it will become part of the Utah program and plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on May 27, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listing under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal Actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 6, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–11531 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–05–M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for the Hine's Emerald Dragonfly (Somatochlora hineana)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed determination of endangered status for the Hine's emerald dragonfly (*Somatochlora hineana*) and that the comment period on the proposal will be reopened. The Hine's emerald dragonfly now persists in populations in Cook, DuPage, and Will Counties in Illinois, and in Door County, Wisconsin. It occupies calcareous, marshy streams associated with cattail marshes on dolomite bedrock. The public hearing and reopened comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The public hearing will be held from 7 to 9 p.m. on Wednesday, May 25, 1994, in Sturgeon Bay, Wisconsin. The comment period on the proposal originally closed on December 3, 1993, was extended to January 3, 1994, and now closes June 6, 1994.

ADDRESSES: The public hearing will be held at the Door County Courthouse, General Meeting Room (A150), 421 Nebraska Street, Sturgeon Bay, Wisconsin. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing contact Janet Smith, Supervisor, U.S. Fish and Wildlife Service Ecological Services Field Office, 1015 Challenger Court, Green Bay, Wisconsin 54311 (phone 414/433–3803; fax 414/433–3882).

SUPPLEMENTARY INFORMATION:

Background

The Hine's emerald dragonfly is known to occur in three counties in the Chicago, Illinois, metropolitan area and in Door County, Wisconsin. It was proposed for listing as an endangered species on the basis of evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of its habitat, and that the threats to the habitat are continuing.

On October 4, 1993, the Service published a proposed rule to list the Hine's emerald dragonfly as endangered under the Endangered Species Act, as amended. The original comment period ended on December 3, and the deadline for receipt of public hearing requests was November 18. On December 10, 1993, a notice was published reopening the comment period until January 3, 1994. The Service believes a number of parties interested in the proposed listing did not receive notice of the proposal in sufficient time to submit comments or request a public hearing during the original comment period.

On December 20, 1993, the Service received requests for public hearings on this proposal from Mr. Jerome M. Viste, representing the Door County Environmental Council, Inc., Fish Creek, Wisconsin, and Mr. George M. Reynolds, representing Reynolds & Co., Milwaukee, Wisconsin. The Service has scheduled a hearing on May 25, 1994, from 7:00 to 9:00 p.m. C.S.T., at the Door County Courthouse, Sturgeon Bay, Wisconsin. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present that evening necessitates some limitation. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may be submitted until June 6, 1994, to the Service office in the **ADDRESSES** section or at the public hearing.

Author

The primary author of this notice is Carlita Shumate, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056 (phone 612/725-3276; fax 612/725-3526).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 9, 1994.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94-11659 Filed 5-10-94; 11:58 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[I.D. 050394C]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene two public hearings on draft Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic including a Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Amendment 2 would provide for management of live rock, a hard substrate material containing an assemblage of living marine organisms used in marine aquaria.

DATES: Written comments on draft Amendment 2 will be accepted until June 24, 1994. The hearings are scheduled from 6 p.m. to 9 p.m. as follows:

1. Wednesday, June 1, 1994, in Shalimar, FL.
2. Thursday, June 2, 1994, in Tampa, FL.

ADDRESSES: Comments should be addressed to Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; FAX: 813-225-7015. The hearings will be held at the following locations:

1. Shalimar, FL—Okaloosa County Courthouse Annex, 1250 Eglin Parkway, Shalimar, FL 32579.
2. Tampa, FL—Ramada Airport Hotel, 5303 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, 813-228-2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) by May 24, 1994.

Dated: May 6, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-11504 Filed 5-11-94; 8:45 am]

BILLING CODE 3510-22-P

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50 CFR Parts 671, 672, 675, and 676

[I.D. 050494B]

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; King and Tanner Crab of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 23 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI for review by the Secretary of Commerce (Secretary). The amendments would establish a moratorium on the entry of new vessels into these fisheries. Comments are requested from the public. Copies of the amendments may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendments must be submitted by July 8, 1994.

ADDRESSES: Comments on the FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

Copies of the amendments and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis prepared for the amendments are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, immediately publish a notice in the **Federal Register** that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve these amendments.

The three FMPs and a companion regulatory amendment for the halibut fishery would establish a 3-year moratorium on the entry of new vessels into the groundfish fishery of the GOA and BSAI, the king and Tanner crab fishery of the BSAI, and halibut fishery in and off of Alaska. The purpose of the moratorium is to curtail increases in harvesting capacity and provide industry stability, while the Council assesses long-term management alternatives for its comprehensive management plan.

The moratorium would be implemented through the issuance of Federal vessel permits for groundfish in the GOA and BSAI, Federal vessel permits for crab in the BSAI, and International Pacific Halibut Commission (IPHC) vessel permits for halibut in the Convention waters in and off of Alaska. Vessel permits for these fisheries would be issued only to vessels that had a historical landing in a moratorium fishery from January 1, 1980, to February 9, 1992.

The companion regulatory amendment would effect changes to rules governing the harvest of Pacific halibut by U.S. fishermen in and off of Alaska. The Council does not have an FMP for halibut. The domestic fishery for halibut in and off Alaska is managed by the IPHC, as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), and the Northern Pacific Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary, limited access policies for the Pacific halibut fishery in Convention waters in and off of Alaska. "Convention waters" means the maritime areas off the west coast of the United States and Canada as described in Article I of the Convention (see 16 U.S.C. 773(d)). The Council acted under this authority in recommending its proposed moratorium for the halibut fishery. Regulations governing the harvesting of Pacific halibut are set forth at 50 CFR parts 301 and 676.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 15 days of this document.

Dated: May 9, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11549 Filed 5–9–94; 2:26 pm]

BILLING CODE 3510–22–P

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50 CFR Part 676

[I.D. 050494A]

Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to fishery management plans and request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 30 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 34 to the FMP for Groundfish of the Gulf of Alaska (GOA) for Secretarial review; comments are requested from the public. Amendment 30 would raise the sablefish Community Development Quota (CDQ) reserve allocation limit from 12 percent to 33 percent. This action is intended to allow total allocation of the sablefish CDQ reserve.

DATES: Comments on the FMP amendments must be submitted by July 8, 1994.

ADDRESSES: Comments on the FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the amendments and the regulatory impact review prepared for the amendments are available from the Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, Fisheries Regulations Specialist, Alaska Region, NMFS, at 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the amendment for implementation.

Amendment 30 to the FMP for the Groundfish Fishery of the BSAI would raise the allocation limit of sablefish community development quota reserve for qualified applicants from 12 percent to 33 percent. The 33 percent limit would ensure that NMFS would be able to allocate 100 percent of the sablefish CDQ reserves to qualified CDQ applicants. Implementation of Amendment 30 would not change the amount of sablefish available for harvest by fishermen participating in the Pacific halibut and sablefish individual fishing quota program. The sablefish CDQ reserve, 20 percent of the annual fixed gear total allowable catch of sablefish for each management area in the BSAI, would be the same under the proposed action as it is under the current FMP text. Amendment 34 to the FMP for Groundfish of the GOA would correct the inadvertent inclusion of the CDQ program in that FMP by removing and reserving Section 4.4.1.1.8 *Community Development Quotas*. Copies of the amendments may be obtained from the Council (see **ADDRESSES**).

Dated: May 6, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-11495 Filed 5-9-94; 2:26 pm]

BILLING CODE 3510-22-P

Notices

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 6, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Stabilization and Conservation Service.

7 CFR 723.501–508 Tobacco: Domestic Marketing Assessment—Addendum.
MQ–25, 32, 38, 38 Burley, 53, 71, 72, –2, 76, 77 (ALL), 76–1, 78, 79 (ALL), 79 Suppl., 79–2A, 80 (ALL), 82, 92, 99, 108, 108–1, 117, ASCS–364, 375 (ALL), 378, 807.
Recordkeeping; Annually.
Businesses or other for-profit; 1,403,233 responses; 231,024 hours.
Mike Thompson (202) 720–4281.

Extension

- Food and Nutrition Service.

Food Stamp Program Regulations, Part 275—Quality Control.
Recordkeeping; On occasion.
State or local governments; 53 responses; 266 hours.
Retha Oliver (703) 305–2472.

- Agricultural Marketing Service.

Tomatoes Grown in Florida, Marketing Order No. 966; FV–68, FV–69.
Recordkeeping; On occasion; Weekly; Monthly; Annually; Daily.
Farms; Businesses or other for-profit; Small businesses or organizations; 311 responses; 35 hours.
Shoshana Avrishon (202) 720–3610.

New Collection

- Rural Development Administration

7 CFR 4285–A, Federal-State Research on Cooperatives Program m).
Recordkeeping; On occasion; Quarterly.
State or local governments; 285 responses; 1,712 hours.
Jack Holston (202) 720–9736.

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 94–11484 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 94–037–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:40 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94-076-01	Rutgers University	03-17-94	*Agrostis palustris* plants genetically engineered to express tolerance to the phosphinothricin class of herbicides.	New Jersey.
94-081-01	R.J. Reynolds Tobacco Company.	03-22-94	Tobacco mosaic virus genetically engineered to express a carotenoid biosynthetic gene.	North Carolina.

Done in Washington, DC, this 5th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-11487 Filed 5-11-94; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

Bronco Beauty Resource Area; Idaho Panhandle National Forests, Kootenai County, Idaho

ACTION: Cancellation of the notice of intent to prepare an environmental impact statement.

SUMMARY: The Notice of Intent to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber in a portion of the Bronco Beauty Resource Area, published in the **Federal Register** on June 17, 1993 (58 FR 33431) is hereby rescinded. The area is located approximately 8 miles southeast of Coeur d'Alene, Idaho, and is approximately 8,000 acres in size. Preparation of an Environmental Assessment was initiated in February, 1992, to examine potential timber harvest in this area. The level of concern expressed by the public indicated a high sensitivity level concerning water and wildlife resources, existing road density, and recreation opportunities.

Based on public concerns and field verification, the proposal to examine timber harvest in the Bronco Beauty Resource Area has been withdrawn.

DATES: This action is effective May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Questions about the cancellation should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 664-2318.

Dated: May 2, 1994.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 94-11559 Filed 5-11-94; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—New York City; Postponement

Notice was previously given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Public Law 98-183, 97 Stat. 1301, as amended, of a public hearing of the U.S. Commission on Civil Rights, to commence on May 16, 1994, beginning at 9 a.m. in the Ceremonial Court of the U.S. Court of International Trade, located at One Federal Plaza, New York, New York 10007, in the March 21, 1994, issue of the **Federal Register** at page 13304.

This is to advise the public that the aforementioned public hearing has been postponed, and will be held at a later date. A future notice will be published in the **Federal Register** by the U.S. Commission on Civil Rights apprising the public of the new hearing date, time, and location.

The Commission on Civil Rights is an independent, bipartisan, factfinding agency authorized by Congress to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

For additional information, please contact Barbara Brooks, Press and Communications at (202) 376-8312 or Rosalind D. Gray, Acting General Counsel at (202) 376-8351.

Dated at Washington, DC, May 9, 1994.

Rosalind D. Gray,

Acting General Counsel.

[FR Doc. 94-11604 Filed 5-10-94; 9:08 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with April anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1993), for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with April anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than April 30, 1995.

	Period to be reviewed
Antidumping Duty Proceedings:	
Finland: Rayon Staple Fiber[1], A–405–071, Kemira Oy Sateri	03/01/93–02/28/94
France: Sorbitol, A–427–001, Roquette Freres	04/01/93–3/31/94
Japan:.	
3.5" Microdisks and Coated Media Thereof, A–588–802, Fuji Photo Film Co., Ltd.	04/01/93–01/31/94
Roller Chain, Other than Bicycle, A–588–028, Daido Kogyo/Daido Corp., Enuma Chain/Daido Corp., Hitachi Metals/Hitachi Maxco, Izumi, Pulton Chain, RK Excel (Takasago)	04/01/93–03/31/94
Mexico: Certain Fresh Cut Flowers, A–201–601, Visaflor, Tzitzic Tareta, Rancho Daisy, Rancho Alisitos, Rancho Mision el Descanso, Rancho Las Dos Palmas, Las Flores de Mexico, Rancho del Pacifico, Rancho el Aguaje, Rancho el Toro, Rancho Guacatay, Mexipel, S.A. de CV	04/01/93–03/31/94
Norway: Fresh and Chilled Atlantic Salmon, A–403–801, A.B.A. A/S, Arctic Group, Arctic Products Norway, Brodene Sirevag A/S, Cocoon Ltd. A/S, Delfa Norge A/S, Delimar A/S, Deli-Nor A/S, Fjord Trading Ltd. A/S, Fresh Marine Company, Grieg Norwegian Salmon, Hallvard Leroy AS, Harald Mowinckel A/S, Imperator de Norvegia, More Codfish Company, Mowi AS, Nils Williksen A/S, North Cape Fish A/S, Norwegian Salmon A/S, Norwegian Taste Company A/S, Olsen & Kvalheim A/S, Sekkingstad A/S, Skaarfish—Mowi A/S, TiMar Seafood A/S, Victoria Seafood A/S, West Fish Ltd., A/S.	
The Republic of Korea: Color Television Receivers, A–580–008, Samsung Electronics Co., Ltd., Daewoo Electronics Co., Ltd., Goldstar Co., Ltd., Cosmos Electronics Manufacturing, Ltd., Quantronics Manufacturing, Ltd., Samwon Electronics, Ltd., Tongkook General Electronics, Inc.	
The Republic of Korea: Steel Wire Rope, A–580–811, Korea Sangsa Co., Ltd.[2]	09/30/92–02/28/94
Countervailing Duty Proceedings:	
Argentina: Cold Rolled Carbon Steel Flat-Rolled Products, C–357–005	01/01/93–12/31/93
Suspension Agreements:	
None.	

[1] This administrative review was inadvertently omitted from the April 15, 1994 initiation notice.

[2] This firm was inadvertently omitted from the April 15, 1994 initiation notice.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353(c)(1) and 355.22(c)(1).

Dated: May 6, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–11589 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review: Industrial Nitrocellulose from the United Kingdom.

SUMMARY: In response to a request by one manufacturer/exporter, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1992 through June 30, 1993. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor, Breck Richardson or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 36391) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom. On July 29, 1993, the respondent, Imperial Chemical Industries PLC (ICI), requested to be reviewed in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act), and § 353.22(a) of the Department's regulations (19 CFR 353.22(a)). We published the notice of initiation of the antidumping duty administrative review on August 24, 1993 (58 FR 44653), covering the period July 1, 1992 through June 30, 1993. We have now conducted the review in accordance with section 751 of the Tariff Act.

Scope of the Review

This review covers shipments of INC from the United Kingdom. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. It is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3912.20.00. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive. The scope of the antidumping order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

This review covers sales by ICI of INC from the United Kingdom entered into the United States during the period July 1, 1992 through June 30, 1993.

Verification

We verified the questionnaire responses of ICI's affiliate, Nobel's Explosives Company Ltd. (Nobel's) from February 7, 1994 to February 11, 1994, at Nobel's manufacturing facility in Stevenston, Scotland. We verified the responses of ICI's U.S. affiliate, ICI Americas Inc. (ICIA) from February 21, 1994 to February 25, 1994 at ICIA's offices in Valley Forge, Pennsylvania.

United States Price

The Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating U.S. price (USP) when the merchandise was purchased, or agreed to be purchased, prior to the date of importation, from the producer of the merchandise through a related sales agent in the United States by unrelated U.S. purchasers. We determined that PP was the most appropriate determinant of USP for these sales based on the following factors:

(1) The merchandise was shipped directly from the manufacturer to the unrelated buyer without being introduced into the inventory of the respondent's related U.S. selling agent;

(2) This was the customary commercial channel for sales of this merchandise between the parties involved; and

(3) The respondent's related sales agent acted mainly as a processor of sales-related documentation and communication links with the unrelated U.S. customer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the functions themselves. See *Outokumpu Copper Rolled Products* v. *United States,* 829 F.Supp. 1371, 1378 (CIT 1993).

We calculated purchase price based on packed delivered prices. We made deductions for ocean freight, marine insurance, brokerage and handling, and U.S. Customs duties and fees, in accordance with section 772(d)(2) of the Tariff Act. We adjusted ICI's reported U.S. interest rate to correct a minor error in the interest calculation found at verification.

We used the best information available (BIA) for marine insurance. At verification we discovered that ICI had failed to report that it obtains marine insurance from a related company. Further, company officials did not demonstrate that marine insurance rates were at arm's length. In the absence of a second company involved in either this review or the less-than-fair-value (LTFV) investigation from which, as BIA, marine insurance rates might be selected, we calculated a percentage of unit price based on publicly-available data as reported in the administrative review of INC from Brazil. See Industrial Nitrocellulose from Brazil: Preliminary Results of Antidumping Duty Administrative Review, (58 FR 27537) May 10, 1993.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp. and the Torrington Co.* v. *United States,* 834 F.Supp. 1391 (CIT 1993). The Department added to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

The Department also adjusted the tax amount calculated for USP and the amount of tax included in foreign market value (FMV). We deducted the portions of the foreign market tax and the USP tax that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and in the USP used to calculate the USP tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales.

We disagree with ICI's claim that certain sales, that were sold to a related party and further processed in the United States before sale to the first unrelated party, were PP sales.

We used BIA for these exporter's sales price (ESP) sales, because ICI failed to answer the Department's further manufacturing questionnaire for these sales and to provide prices to the first unrelated purchaser. ICI stated that it was either impossible or extremely difficult to answer the questionnaire, and, instead, provided a small amount of financial and manufacturing information for the related company responsible for the ESP sales.

At verification, we explored with ICI the reasons it provided for not responding to the further manufacturing questionnaire. We were told that providing the specific further processing information requested by the Department would take an excessive amount of time. We reviewed documentation that demonstrated that the production of the further processed product involves a series of steps. At each intermediary step, chemicals and compounds are combined to produce new compounds that will be mixed with other compounds in the next step. As a result, to determine the amount of INC used in the final product, and to determine which products use INC, would require a complicated trace back through multiple intermediary steps. (See Report on Verification of Imperial Chemical Industries PLC and ICI Americas Inc., March 24, 1994, 26–27.) However, our verification established that ICI had the documentation needed to fulfill the Department's request for further processing information. ICI's claim appears to be based solely on the time and resources that would be required to provide the requested information. We, therefore, conclude that it would not have been impossible for ICI to have answered the further manufacturing questionnaire, and that doing so would have been no less burdensome for ICI than for respondents in other cases who are asked to answer further manufacturing questionnaires. (See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, (59 FR 39729) July 26, 1993.)

Since ICI could have, but did not, provide the data, we have used non-cooperative BIA for these sales. There were no other firms involved in the LTFV investigation or in this first review. We have therefore used ICI's rate from the final determination in the LTFV investigation as BIA for these particular sales.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated FMV based on home market sales. We did not include sales to related parties in calculating FMV. Under 19 CFR 353.45, the Department may disregard transactions between related parties if the price does not fairly reflect the usual price at which sales are made to unrelated parties. We performed an analysis of related party prices and found that they were not at arm's length. (See Memorandum to the File, April 15, 1994.)

As in the LTFV investigation, product comparisons were made on the basis of the following criteria: nitrogen percentage, viscosity rating, wetting agent type, cellulose source, physical form, and wetting agent percentage. (See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from the United Kingdom, 55 FR 21055 (May 22, 1990). Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. In those instances, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Tariff Act.

We calculated FMV based on packed and either delivered or ex-works prices to unrelated customers in the United Kingdom. We made deductions for home market packing, inland freight, and rebates, and added U.S. packing costs in accordance with section 773(a)(1) of the Tariff Act.

When a commission was paid on a PP sale but not on the home market sale, we added the amount of the commission to the FMV and then deducted from FMV the lesser of either total home market indirect selling expenses or the U.S. commission amount, in accordance with 19 CFR 353.56(b)(1).

As a result of verification, we adjusted home market indirect selling expenses, packing, and credit costs which had been incorrectly or inappropriately quantified. Although we were able to verify ICI's home market packing expenses for the period December 1, 1992–June 30, 1993, we were unable to verify ICI's claimed home market packing costs for the July 1, 1992–November 30, 1992 portion of the period of review (POR). (See Report on Verification of Imperial Chemical Industries PLC and ICI Americas Inc., March 24, 1994, 9–12, and Memorandum from Case Analyst to the File, April 15, 1994.) We used BIA for all home market packing expenses for sales made between July 1, 1992 and November 30, 1992. Because respondents claimed that drums were reused once during this five-month period, as BIA we have used the verified packing costs for the latter part of the POR (adjusted as described below) and divided that amount by two, to account for the reuse of packing drums during the first half of the POR.

During the verification of ICI, the Department discovered that the costs of at least some of the drums purchased in May 1993 were overstated. A number of purchases of steel drums were made during that month. At one point during the month, the price of the drums increased. Rather than determining an average price, ICI selected the higher price as representative for the entire month of May. From the information provided at verification, we could not determine how many drums were purchased at the lower price and how many were purchased at the higher price.

Therefore, as BIA for all May 1993 home market sales, we have used the lower price for packing cost.

In comparing home market sales to PP sales, we made a circumstance-of-sale adjustment for differences in credit terms by deducting home market credit expenses and adding U.S. credit expenses, in accordance with 19 CFR 353.56(a)(2). We have used BIA for the home market interest rate for the purposes of calculating credit and inventory carrying expenses. ICI does not incur short-term credit costs associated with INC in either the U.S. or the home market. ICI was unable to satisfactorily support at verification its reported claim of what its home market credit costs would have been if short-term debt had existed during the POR. In the U.S. market, ICI established that, if short-term debt existed, it would have been financed using a particular United Kingdom-based interest rate. For the purposes of calculating home market credit and inventory carrying costs, we have therefore used the same United Kingdom-based interest rate as used for U.S. credit.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period July 1, 1992 through June 30, 1993:

Manufacturer/exporter	Margin (percent)
Imperial Chemical Industries PLC	5.79

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. See 19 CFR 353.38. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the CIT's decisions in *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *United States,* 839 F.Supp. 864 (CIT 1993). The all others rate is 11.13 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–11587 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–805]

Sodium Thiosulfate From the United Kingdom; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from William Blythe & Co., Ltd., the Department of Commerce (the Department) initiated an administrative review of this merchandise on March 14, 1994, for the period February 1, 1993 through January 31, 1994. Based on William Blythe and Co.'s withdrawal of this request, we are not terminating this review.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5325/4477.

SUPPLEMENTARY INFORMATION:

Background

In response to a request from William Blythe and Co., Ltd., a producer/exporter of sodium thiosulfate from the United Kingdom, the Department published in the **Federal Register** on March 14, 1994, (59 FR 11768) a notice of initiation of administrative review of the antidumping duty order on sodium thiosulfate from the United Kingdom. The review covers one manufacturer/exporter of this merchandise to the United States, William Blythe Co., Ltd., for the period February 1, 1993 through January 31, 1994.

On March 29, 1994, William Blythe Co., Ltd., requested that the Department terminate this review. Since no other interested party has requested an administrative review for this period, we are terminating this review.

This notice of termination, is in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22.

Dated: May 2, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–11588 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–223–601]

Fresh Cut Flowers From Costa Rica; Final Results of Countervailing Duty Administrative Review and Termination of Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review and termination of suspended investigation; fresh cut flowers from Costa Rica.

SUMMARY: On February 10, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 6236) the preliminary results of its administrative review of the Suspension of Countervailing Duty Investigation; Certain Fresh Cut Flowers From Costa Rica (52 FR 1356; January 13, 1987) (Agreement). We have now completed that review and have upheld the results of the preliminary results. We have determined for the final results that the signatories have complied with the terms of the agreement during the period January 1, 1991 through December 31, 1991. In addition, we have determined that the signatories of the agreement on fresh cut flowers have met the requirements for termination of the suspended investigation.

EFFECTIVE DATE: May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street, NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1994, the Department published in the **Federal Register** (59 FR 6236) the preliminary results of its administrative review of the agreement. We have now completed that review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), 19 USC 1675(a) (1988).

Scope of Review

Imports covered by this review are shipments of miniature (spray) carnations, standard carnations, and pompon chrysanthemums from Costa Rica. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 0603.10.30 and 0603.10.70. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991 and six programs: (1) Tax Credit Certificates; (2) Certificates for Increasing Exports; (3) Income Tax Exemptions for Export Earnings; (4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases; (5) Exporter Exemptions for Taxes and Duties on Imports; and (6) Accelerated Depreciation.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioner and rebuttal comments from respondents (ACOFLOR, the trade association representing the signatories in these proceedings and the Government of Costa Rica (GOCR)).

Comment 1: Petitioner argues that all Coast Rican flower producers and exporters covered by the agreement have not established non-use of countervailable programs for a period of at least five years. Since the first administrative review, nine companies have signed on to the agreement. Petitioner notes that § 355.25(a)(2)(i) of the Department's regulations states that a suspended investigation may be terminated if "[a]ll producers and exporters covered at the time of revocation by the order or suspension agreement have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years." As not all current signatories were covered by the first review, petitioner argues that they have not been found to comply with the terms of the agreement for five consecutive years. Petitioner contends that it is not Department practice to deviate from its regulations without a demonstration that the unusual facts or circumstances of a particular case require special consideration. Petitioner points out that in Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review and Revocation in Part of the Countervailing Duty Order (59 FR 2823, 2824, January 19, 1994) ("Tile from Mexico") the Department found that a company had fulfilled the five-year requirement, even though it had not been reviewed during one review period because it did not ship during that period. The Department based this determination on the "unusual facts and circumstances" of the case and the lack of a clearly articulated Department policy detailing the requirements of 19 CFR 355.25(a)(3). The Department did revoke the order for this company. Petitioner also notes a Department decision to require that separate administrative reviews be conducted for each of the review periods. (See Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review (58 FR 45,097, August 26, 1993), and the Department's Memorandum in that review Re: Basis for Revocation of Orders and Terminations of Suspension Agreements Under 19 CFR 355.25(a)(1) at 4 (12/14/92) (on file in room B–099, Department of Commerce, Washington, DC).

Respondents argue that the changes to the list of signatories demonstrate the effectiveness and inclusiveness of compliance measures established by respondents to assure fulfillment of their obligations under the agreement. Respondents contend that requiring all those who happen to appear on the list of signatories as of the period of review to demonstrate their compliance with the terms of the agreement for a period of five consecutive years imposes an impossible standard, especially in the case where a company was newly established during the five-year review period. Furthermore, respondents state that the 15 original signatories have accounted for at least 85 percent of Costa Rican exports of subject merchandise to the United States throughout the life of the agreement. Respondents argue that the *Tile from Mexico* case, referred to by petitioner, dealt with partial revocation of a countervailing duty order and is therefore irrelevant to the current case. Respondents contend that the language of § 355.25(a)(2), "at the time of revocation," refers to the current period of review upon which the determination to terminate is based. Respondents argue that following petitioner's interpretation would involve the parties in an endless cycle of ongoing review that the termination provisions are intended to avoid.

Department's Position: We disagree with petitioner. We recognize that § 355.25(a)(2)(i) appears to require that, in order for the Department to terminate a suspended investigation, "[a]ll producers or exporters covered at the time of revocation" must not have "applied for or received any net subsidy on the merchandise for a period of at least five consecutive years." As explained below, however, the Department has determined that the strict reading advocated by the petitioner is not required by either the statute or the Department's regulations, and would not be in accordance with the terms of the agreement suspending the investigation in the present proceeding.

Specifically, section 704(b) of the Tariff Act provides that the Department may suspend a countervailing duty investigation "if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for *substantially all of the imports*" of the subject merchandise agree, "to eliminate the subsidy completely or to offset completely the amount of the net subsidy" within the appropriate period of time. 19 U.S.C. 1671c(b) (emphasis added). The statutory language has not been changed since 1987, when the suspension agreement in this case was entered into. By regulation, the Department has defined "substantially all" of the merchandise in this context as meaning "exporters that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or such other period that the [Department] considers representative." 9 CFR 355.18(c).

The regulations only require the addition of new exporters in the event that the existing signatory exporters no longer account for substantially all of the merchandise. 19 CFR 355.19(c). Consequently, for purposes of terminating a suspended investigation under 355.25(a)(2)(i), all that is required is that the same exporters who have accounted for 85 percent of the merchandise for a period of five consecutive years have not applied for or received any net subsidy on the merchandise during that period.

Although not required by the statute, the Department may require new or additional producers or exporters to become signatories to an agreement, thus raising the coverage above the 85 percent level, in order to permit more effective monitoring of the agreement. In this case, pursuant to the agreement, the GOCR was required to notify the Department whenever new producers or exporters exported subject merchandise to the United States, and whether those producers or exporters had agreed to comply with the terms of the agreement. Agreement, 52 FR at 1361. To ensure that it met this requirement, the GOCR required any new or different producer or exporter which exported a certain volume or value of the subject merchandise to the United States to become a signatory. These new signatories were required to comply with the terms of the agreement during each year they were covered. The new signatories which have been reviewed by the Department provided a further track record of compliance with the suspension agreement. This provided the Department with evidence above and beyond that required under the statute and the Department's regulations for both coverage and termination.

Finally, we agree with respondents that the Tile from Mexico case dealt with partial revocation, *i.e.*, a company-specific revocation, of a countervailing duty order under § 355.25(a)(3) of the Department's regulations. The regulations contain no similar provision permitting partial termination of a suspension agreement. Therefore, the Tile from Mexico determination does not bear on the outcome of this proceeding.

Accordingly, we have determined that section 355.25(a)(2) permits termination of a suspended investigation whenever the Department determines that the exporters or producers that originally signed the suspension agreement have consistently accounted for at least 85 percent of the imports of the subject merchandise for a period of at least five consecutive years, during which time they did not apply for or receive any net subsidy on the subject merchandise. In addition, any new signatories must be found to have complied with the terms of the agreement during the time they are covered.

The Department has determined that throughout the life of the present agreement, including during the current review, the producers and exporters that originally signed the agreement have continued to account for at least 85 percent of the imports, despite the fact that new producers or exporters were added to the agreement. See Memo to the File, dated March 30, 1994, public version on file in room B–099, Department of Commerce, Washington, DC. In addition, we have determined that no producer or exporter covered by the agreement has applied for or received any net subsidy on the subject merchandise during this review or during any of the previous four reviews. Hence, for a period of at least five consecutive years after entry into the agreement, the Department has determined that the producers and exporters that signed the agreement and that consistently have accounted for substantially all of the imports of the subject merchandise into the United States have not applied for or received any net subsidy on the subject merchandise. Also, the signatories that were later added to the agreement have complied with the terms of the agreement during each review period in which they were covered. Therefore, we determine that the requirements for termination under § 355.25(a)(2)(i) have been met. *Comment 2:* Petitioner argues that the Department should decline to terminate the suspended investigation because all the programs are still in existence and used by the flower producers and exporters for non-subject merchandise. Petitioner asserts that after termination, the former signatories will continue to be eligible to receive benefits for most of the programs, absent active ACOFLOR intervention and monitoring. Moreover, petitioner contends that termination would be inappropriate without updated information covering the 1992 and 1993 review periods.

Petitioner argues that it is not unlikely that the flower producers and exporters will use the six programs covered by the agreement. Specifically, petitioner makes the following arguments regarding the six programs:

(1) Exporter Credit for Sales Tax on Certain Domestic Purchases: Petitioner argues that there will be no incentive for ACOFLOR or the GOCR to continue monitoring receipt of benefits under this program. Petitioner also asserts that there will be incentives for flower producers and exporters to switch equipment used for the production on non-subject merchandise, for which exemptions are allowed, to the production of subject merchandise, for which exemptions are monitored under the agreement.

(2) Exporter Exemptions for Taxes and Duties on Imports: Petitioner makes the same arguments as stated above for the Exporter Credit for Sales Tax on Certain Domestic Purchases.

(3) Accelerated Depreciation: Petitioner argues that, although the Department has found that no signatories have used accelerated depreciation, there is no formal or informal mechanism to stop flower producers and exporters from claiming accelerated depreciation on their tax forms.

(4) Certificates for Increasing Exports (CIEX): Petitioner argues that the CIEX program has not been terminated because some Costa Rican exporters received CIEX benefits in 1991 through a special commission established in 1984 to pay benefits accrued in earlier years. Additionally, petitioner contends that there are no formal or informal measures to render exports of the subject merchandise ineligible for the benefit.

(5) Tax Credit Certificates (Certificados Abono Tributario CATs)): Petitioner contends that it is not clear that the CAT program was terminated as it continues to undergo fundamental changes. Petitioner also urges that although the Central Bank is not granting CATs in new export contracts, it is unclear whether the same or different benefits could be granted without using export contracts which are currently required to obtain CAT benefits.

(6) Income Tax Exemption for Export Earnings: The agreement requires exporters to maintain separate accounting records for subject and non-subject merchandise. Petitioner argues that as only one company, American Flower, maintains separate records of duty and tax exemption benefits received for exports of non-subject merchandise, the Department cannot confirm whether flower producers and exporters have received countervailable benefits on exports of subject merchandise. Petitioner contends that flower producers and exporters were eligible to apply for the income tax exemption if they had tax-exempt export profits and if they segregated domestic and export sales income in calculating income tax. Consequently, petitioner asserts, it is unlikely that new flower producers and exporters not previously subject to the agreement will maintain separate records for the subject merchandise.

Respondents argue that the GOCR and ACOFLOR have pledged to maintain controls to monitor receipt of benefits and that the GOCR is committed to eliminating incentives that distort trade. Respondents argue that it is unlikely that the flower producers and exporters will use the following six programs after termination:

(1) Exporter Credit for Sales Tax on Certain Domestic Purchases: Respondents argue that, in most cases, it will not always be feasible for flower producers and exporters to switch equipment from the production of a product which is non-subject merchandise to subject merchandise product.

(2) Exporter Exemptions for Taxes and Duties on Imports: Respondents made the same arguments as above for the Exporter Credit for Sales Tax on Certain Domestic Purchases.

(3) Accelerated Depreciation: Respondents assert that there are two separate government agencies, Ministry of Finance and CENPRO, which have established government controls to block access to the use of accelerated depreciation.

(4) CIEX: Respondents argue that this program was terminated in 1988. Respondents argue that even if some of the funds authorized for this program in 1988 were not actually distributed until 1991, the GOCR made no CIEX distributions to flower producers and exporters. The respondents also argue that the fact that such funds may have actually been distributed in 1991 does not alter that fact that the CIEX program was effectively terminated in 1984 for lack of funding and officially closed in 1988.

(5) CATs: Respondents argue that the only verified fundamental changes to the CAT program are those reducing or restricting its benefits.

(6) Income Tax Exemption for Export Earnings: Respondents contend that with the continuation of GOCR controls, the GOCR will not grant exemptions unless the claimant can demonstrate that the income for which an exemption is sought is not derived from exports of the subject merchandise. Respondents also note that this program is being phased out.

Department's Position: Section 355.25(a)(2) of the Department's regulations provides that the Department may terminate a suspension agreement despite the fact that the subsidy programs have not been abolished, provided the Department concludes that the requirements of this provision are met. As explained in Comment 1, the Department determines that the original signatories have complied with the terms of the agreement and the requirements of § 355.25(a)(2)(i). Regarding § 355.25(a)(2)(ii), ACOFLOR has certified that the signatories are not likely to apply for or receive any countervailable subsidies in the future. The GOCR and ACOFLOR have certified that the control mechanisms to ensure compliance with the agreement will remain in place if the agreement is terminated. Furthermore, government officials stated during verification that Costa Rican subsidies in general were being phased out. In sum, as the Department determined in the preliminary results of review, the record contains no evidence indicating that the signatories will apply for or receive any net subsidy on the subject merchandise in the future. 59 FR at 6238. Petitioner has offered no arguments which would reasonably contradict this determination.

In addition, we disagree with each of the petitioner's program-specific arguments for the following reasons:

(1) Exporter Credit for Sales Tax on Certain Domestic Purchases and (2) Exporter Exemptions for Taxes and Duties on Imports: The GOCR and ACOFLOR have certified that the control mechanisms currently in place

to monitor compliance with the agreement will remain in place so that equipment on which duties or taxes were exempted will not be switched to the production of subject merchandise after termination.

(3) Accelerated Depreciation: We agree with respondents that there are formal mechanisms in place at the Ministry of Finance and CENPRO to prevent flower producers and exporters from claiming accelerated depreciation. At verification, we found that the signatories have not used the accelerated depreciation program.

(4) CIEX: We agree with respondents that this program was terminated in 1988 and that no flower producers or exporters have received benefits from this program during the five years required for termination.

(5) CAT: We agree with respondents that all changes during the period of review to this program have reduced and/or restricted the receipt of benefits.

(6) Income Tax Exemption for Export Earnings: The agreement requires signatories to maintain separate accounting records of exports to receive income tax exemptions for export earnings. Contrary to the argument of petitioner, the Department has verified that the signatories maintained these records. A company must maintain separate accounting records in order to receive an exemption from duties on non-physically incorporated inputs. Only one company, American Flower, maintained these separate accounting records for the exemption from duties on non-physically incorporated inputs, and only American Flower received this exemption on duties. All companies maintained separate records of imports eligible for tax and duty exemptions and domestic purchases eligible for tax credits on inputs physically incorporated into exports of the subject merchandise.

Further, under § 355.25(b)(2) of the Department's regulations, the government of the affected country may request termination of a suspension agreement during the fifth and subsequent annual anniversary months of the suspension of the investigation. In the current proceedings, the fifth anniversary month was January 1992 and the review period for termination is January 1, 1991 through December 31, 1991. Therefore, contrary to petitioner's argument, the fifth anniversary month, January 1992, and the 1991 review period is the "time of revocation" within the meaning of § 355.25(a)(2), and the Department may terminate the agreement without information regarding the 1992 and 1993 review periods.

Based upon the foregoing, in accordance with section § 355.25(a)(2)(ii) of the Department's regulations, we determine that it is not likely that the producers or exporters will in the future apply for or receive a net subsidy on the subject merchandise.

Comment 3: Petitioner argues that the ability to export to the U.S. market is essential for Costa Rican flower producers and exporters to remain viable. Petitioner asserts that because Costa Rican flower producers and exporters must compete with hundreds of Colombian flower producers who dominate the U.S. market, the Costa Rican flower producers and exporters continue to have a need for flower subsidies.

Respondents counter that throughout the life of the agreement, Costa Rican flower producers and exporters of the subject merchandise have been able to compete in the U.S. market without receiving subsidies. They also argue that the GOCR is committed to eliminating incentives that distort trade because they are no longer needed to maintain competitiveness, and because they cost too much.

Department's Position: We disagree with petitioner. As stated in Comment 1, the original signatories still accounted for substantially all of the exports of the subject merchandise to the United States in 1991, the period of review. The Department has determined that the original signatories have not received subsidies on exports of the subject merchandise to the United States during at least five consecutive years. Hence, there is no evidence that Costa Rican flower producers and exporters continue to need subsidies to compete.

Final Results of Review

After considering all of the comments received, we determine that the signatories have complied with the terms of the agreement for the period January 1, 1991 through December 31, 1991. In addition, we determine that the signatories have met the requirements for termination of the agreement. The original signatories have not applied for or received any net subsidy on the subject merchandise for five consecutive years and they have filed the certifications required by 19 CFR § 355.25(b)(2). Based on the foregoing, we determine that there is no likelihood that the signatories will apply for or receive any net subsidy in the future. Therefore, we determine to terminate the Suspension of the Countervailing Duty Investigation on Fresh Cut Flowers from Costa Rica. As a result, we will also terminate the reviews in progress for the agreement covering the 1992 and 1993 periods.

The administrative review and notice are in accordance with section 751(a)(1)(C) and 751(c) of the Tariff Act (19 U.S.C. 1675(a)(1)(C) and 1675(c)) and 19 CFR 355.22 and 355.25.

Dated: May 5, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–11590 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

Docket Number: 94–044. *Applicant:* Carnegie Institution of Washington, Department of Plant Biology, 290 Panama Street, Stanford, CA 94305. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* The instrument will be used for studies of variations in the abundance of the stable isotopes of carbon, nitrogen and oxygen that occur in association with biological and physical transformations. These measurements will be used to understand the mechanisms of isotope fractionation in biological processes, particularly photosynthesis and respiration. In addition, the instrument will be used in studies of the natural variation of isotope ratio and relative abundance gases in the atmosphere and dissolved in the ocean. Taken together these studies will address scientific questions concerning the operation of the biosphere and the interaction of these with the atmosphere and oceans. *Application Accepted by Commissioner of Customs:* April 6, 1994.

Docket Number: 94–054. *Applicant:* University of South Florida, Department of Marine Science, 140–7th Avenue South, St. Petersburg, FL 33701. *Instrument:* Electron Microscope, Model H–7100. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used in marine ultrastructural research in the disciplines of biology, chemistry and geology. Specific research objectives will include the following:

(1) the enumeration of viruses in seawater and taxonomic studies on viral isolates,
(2) determination of the significance of viral encapsulated genomes in the dissolved DNA of the oceans,
(3) examination of the effects of anthropogenic activities on reef environments as indicated by viral abundances,
(4) a comparison of the variation of fish mitochondrial DNA among different fish groups,
(5) pinpointing locations and numbers of ion pumps in fish and crustacean specimens,
(6) examination of algal symbiosis in foraminifera including documentation of cytological changes associated with shell bleaching,
(7) studies of the toxicologies in marine mammals to identify heavy metals in manatee tissue,
(8) characterization of the mineralogy and microtextures of diagenetic marine minerals to obtain detailed elemental x-ray sample maps,
(9) characterization of experimentally produced deformation microstructures and
(10) examination of organic/crystal interfaces during picoplankton biomineralization.

In addition the instrument will be used in the course Theory and Techniques of Transmission Electron Microscopy to give students a basic understanding of its operation. *Application Accepted by Commissioner of Customs:* April 19, 1994.

Docket Number: 94–055. *Applicant:* Virginia Commonwealth University, Medical College of Virginia Hospitals, MCV Box 980017, Richmond, VA 23298–0024. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for the examination of tissue from Surgical Pathology for diagnostic purposes. In addition, the instrument will be used for training Pathology Residents. *Application Accepted by Commissioner of Customs:* April 21, 1994.

Docket Number: 94–056. *Applicant:* Department of the Interior, U.S. Geological Survey WRD, 450 Main Street, room 525, Hartford, CT 06103. *Instrument:* Borehole Radar System. *Manufacturer:* ABEM AB, Sweden. *Intended Use:* The instrument will be used to study bedrock and unconsolidated overburden conditions in situ, from air- and water-filled boreholes as small as two and one-half inches in diameter in order to conduct research into groundwater flow and contaminant transport in fractured rock. The research objectives include development of methods to detect and quantify the effects of bedrock fractures and lithologic changes on groundwater flow and development of methods to directly detect, quantify, and monitor groundwater contaminants in order to increase the efficiency of future remediation efforts to reduce the hazards of contamination to the public. *Application Accepted by Commissioner of Customs:* April 21, 1994.

Docket Number: 94–057. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Optical Floating Zone System. *Manufacturer:* Vacuum Metallurgical Co., Ltd., Japan. *Intended Use:* The instrument will be used to grow single crystals of high melting point materials, so that the fundamental mechanical properties of these single crystals can then be investigated. *Application Accepted by Commissioner of Customs:* April 21, 1994.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–11591 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–F–M

Minority Business Development Agency

Business Development Center Applications: State of Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation of notice.

SUMMARY: This notice cancels the advertisement as it appeared in the February 2, 1994, issue for the Minority Business Development Agency (MBDA) announcement that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC in the Alaska Geographic Service Area.

CLOSING DATE: The closing date for submitting an application was March 21, 1994.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, suite 1280, San Francisco, California 94105, 415/744–3001.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information can be obtained by contacting the San Francisco Regional Office

11.800 Minority Business Development.

(Catalog of Federal Domestic Assistance).

Dated: May 5, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–11498 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council notice of cancellation of open meeting.

SUMMARY: The meeting scheduled for May 18, 1994 as published in the **Federal Register** (59 FR 22150) on April 29, 1994, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743–2437 or Ben Haskell at (301) 713–3137.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: May 5, 1994.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–11530 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–08–M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel meeting in the areas of management and organization, budget status, strategic and tactical issues, law

and policy, new technology and research, economic development, outreach for enhancement of Department of Commerce goals, and new business.

DATES: The announced meeting is scheduled during 2 days: Tuesday, May 24, 1994, 8 a.m. to 5:30 p.m. and Wednesday, May 25, 1994, 8 a.m. to 4:45 p.m.

ADDRESSES: Quality Inn—Silver Spring, 8727 Colesville Road, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane, Director, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1315 East-West Highway, room 11618, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Tuesday, May 24, 1994, 8 a.m.–5:30 p.m.

8 a.m.—Welcome and Introduction of New Members Appreciation of Retiring Member Introduction of Guests
8:15—Logistics
8:30—Approval of Minutes of Last Meeting Overview of Current Meeting
- Objectives and Priority Issues

9—Executive Committee briefings for D. James Baker, Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, and David Barram, Deputy Secretary of Commerce
9:30—Reauthorization Status
10—Break
10:15—National Research Council Report
11—Reauthorization of Sea Grant Program—Position Paper
11:30—Conflict of Interest—National Office of Sea Grant Ad Hoc Committee Report
12 p.m.—Working Lunch
1—Council of Sea Grant Directors Report
- Challenges and Accomplishments
- Folly Beach Retreat

1:45—National Sea Grant College Program Director's Report
- Status: Strategic Planning, Annapolis Retreat, Modified Procedures, Reauthorization, Recertification

2:45—Break
3—Biennium Reports (Fall '93, Spring '94)
4:15—Site Review Reporting—Position Paper
4:30—Evaluation of Grants & Proposals Committee Report—Position Paper
- Status—New process for Review of Omnibus Proposals

5:30—Adjourn

Wednesday, May 25, 8 a.m. to 4:45 p.m.

8 a.m.—Long Range Planning Committee Report—Position Paper—Strategic Planning
8:45—Management Evaluation Criteria—Position Paper
9:15—Management—Position Paper
10—Break
10:15—Business & Economic Development Committee Report
10:45—Multiple Entity—Position Paper
11:45—Working Lunch—Individual Assignment Reports
- Marine Advisory Service
- Communications
- Research, Science & Technology
- Legal

1 p.m.—University of Michigan Sea Grant Strategic Planning
1:30—The Potential Benefits of Large Scale Macro-Algal Farming—Status Report
2:30—Break
2:45—Strategic Planning Initiative
- Aquaculture in the Future

3:45—Panel Discussion, Motions, and Recommendations
- Action Items

4:45—Adjourn.

The meeting will be open to the public.

Dated: May 9, 1994.

David B. Duane,

Deputy Assistant Administrator for Extramural Research.

[FR Doc. 94–11551 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF DEFENSE

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of patent application cited should be directed to the Office of Naval Research (Code 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application 08/186,058: Acoustic Attenuation and Vibration Damping Materials; filed 25 January 1994.

Dated: May 6, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 94–11521 Filed 5–11–94; 8:45 am]

BILLING CODE 3810–AE–M

Department of the Army

Deadline for Receipt of Federal Agency Requests for Excess Personal Property at Fort Ord, CA

AGENCY: Fort Ord, Directorate of Base Realignment and Closure, DOD.

ACTION: Notice.

SUMMARY: Fort Ord, California is an installation scheduled for closure by the Department of Defense under provision of Base Realignment and Closure (BRAC) 1991 action. Federal agencies/activities are reminded that they may submit requests for excess personal property at Fort Ord. Personal property is defined as all property other than land, fixed-in-place buildings, ships and Federal records. Federal agency/activity requests must be in accordance with paragraph 91.7(h)(5) guidance in Interim Final Rule, Revitalizing Base Closure Communities and Community Assistance (59 FR 16133), April 6, 1994.

DATES: The deadline for receipt of requests at Fort Ord is June 1, 1994.

ADDRESSES: Commander, Presidio of Monterey and Fort Ord, ATTN: AFZW–BRAC, Fort Ord, California 93941.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gomon, Personal Property Coordinator, Directorate of Base Realignment and Closure, Fort Ord, California 93941, telephone: (408) 242–

7092 or DSN 929–7092. FAX number (408) 242–7091.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–11644 Filed 5–11–94; 8:45 am]

BILLING CODE 3710–08–M

Change of Address

AGENCY: U.S. Army Information Systems Command-Pentagon, DOD.

ACTION: Notice.

1. U.S. Army Information Systems Command-Pentagon, ASQR–OP–F, is officially notifying the general public and other government agencies of a change of address for the Army Freedom of Information/Privacy Act Division.

Old Address: U.S. Army Information Systems Command-Pentagon, USAISC–P (ASQR–OP–F), Room 1146, Hoffman Building I, Alexandria, VA 22331–0301

New Address: USAISC–P (ASQR–OP–F), Crystal Square #2 Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202

DATE: This change is effective May 12, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Marie Christensen, (703) 670–3452 FAX (703) 607–3450.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–11645 Filed 5–11–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on May 25-26, 1994, in Herrman Hall (Bldg 220) at the School. All sessions will be open to the public.

The purpose of the meeting is to elicit the advice of the Board on the Navy's Postgraduate Education Program. The Board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the Board will inquire into the curricula, instruction, physical equipment, administration, state of morale of the student body, faculty, and staff, fiscal affairs, and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting, contact: CDR Wayne A. Wagner, USN (Code 007), Naval Postgraduate School, Monterey, California, 93943-5000, Telephone: (408) 646-2513.

Dated: April 29, 1994

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11560 Filed 5–11–94; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Bonneville Power Administration

Floodplain and Wetlands Involvement for BPA's Operational Fiber Optics Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to upgrade the existing operational telecommunications equipment throughout their service area (within the states of Oregon, Washington, Idaho, and Montana). This upgrade will involve replacing existing analog radios with digital radios and fiber optic equipment. Fiber optic cable will be strung on existing structures or a new parallel line within BPA's existing transmission line rights-of-way.

A site specific project has been identified for the first segment of this proposed telecommunication upgrade. It includes installing fiber optic cable and related equipment from BPA's Ross Substation near Vancouver, Washington, to Franklin Substation near Pasco, Washington. This distance is approximately 340 kilometers (217 miles). Most of the cable will be installed on existing structures, however, in certain areas additional poles will be needed to carry the cable when existing towers cannot carry the additional load. The line will span both floodplains and wetlands located in the counties of Clark, Skamania, Klickitat, Benton, and Franklin in Washington; and Sherman, Gilliam, Morrow, Wasco, and Umatilla counties in Oregon.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The floodplains and wetlands assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act (NEPA). A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than May 31, 1994.

FOR FURTHER INFORMATION, CONTACT: John M. Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–4995, fax number 503–230–3984.

SUPPLEMENTARY INFORMATION: This EA covers two different levels of environmental analysis: One is the programmatic approach that would describe future telecommunication upgrades throughout BPA's service area and the other is a site specific analysis covering the first segment of a proposed upgrade from BPA's Ross Substation near Vancouver, Washington, to Franklin Substation located near Pasco, Washington. The programmatic EA would cover a discussion of the affected environment and a general overview of potential impacts and possible mitigation. For each segment of BPA's system proposed for telecommunication upgrading, a site-specific analysis would be completed within a separate NEPA process.

The site specific portion of the EA will involve crossing the 100-year floodplain of several major rivers and tributaries. At major river crossings, the fiber optic cable would be placed on existing structures so no new towers would be located in floodplains. The smaller rivers and tributaries would be spanned using either existing towers or new poles. The poles would not be located within a floodplain. Potential impacts to floodplains could occur due to clearing of riparian vegetation and improvement of access roads. However, with mitigation, impacts would be eliminated or minimized to the fullest extent possible. The first segment of this proposed upgrade, from Ross Substation to Franklin Substation, will cross 100-year floodplains associated with the following rivers/creeks (moving west to east): Burnt Bridge Creek, Lacamas Creek, Matney Creek, Little Washougal River, Washougal River, Rock Creek, Wind River, Little White Salmon River, White Salmon River, Klickitat River, Fivemile Creek, Columbia River (crossed three times), Fifteenmile Creek, Deschutes River, Fulton Canyon Creek, Spanish Hollow Creek, John Day River, Quinton Canyon Creek, Jones Canyon Creek, China Creek, Willow Creek, Sixmile Creek, Umatilla River.

Permanently-flooded wetlands and small seasonal and riparian wetlands occur in the 100-year floodplains of some of the rivers and creeks mentioned above. Several of the larger wetlands occur in sections 3, 9, 10, 16, & 17 in Township 2 North, Range 7 East, in section 31 in Township 5 North, Range 27 East, and in section 15, Township 4 North and Range 25 East. The greatest potential to affect wetlands comes from the installation of new parallel structures or access road improvements. Affects to wetlands could include filling wetlands, alteration of plant communities, alteration of the hydrology, or water quality degradation. These effects can be minimized or eliminated by avoiding disturbance to wetlands through careful planning and construction methods. For more specific information on floodplains and wetlands in the project area contact Ms. Kevin Ward, Environmental Coordinator—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, (503) 230–5511.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on May 4, 1994.

John M. Taves,

NEPA Compliance Officer, Engineering Services.

[FR Doc. 94–11557 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2306]

Citizens Utilities Companies; Intention To Prepare an Environmental Impact Statement

May 6, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for a new license for the Clyde River hydropower project, FERC No. 2306. The hydropower project is located on the Clyde River in Vermont.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping

The FERC staff prepared a scoping document (Scoping Document 1) and held a scoping meeting on March 9, 1994, in Newport, Vermont, to assist the staff in identifying the scope of environmental issues that should be analyzed. The results of scoping indicated that an EIS should be prepared for this project rather than an Environmental Assessment as staff had initially anticipated.

A revised scoping document (Scoping Document 2) will be prepared and distributed by mail to parties on the FERC service list and mailing list. Scoping document 2 will reflect input received at the scoping meeting and comments on Scoping Document 1, and explain why staff determined that an EIS should be prepared.

For further information please contact Kathleen Sherman at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11505 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11467–000, et al.]

Hydroelectric Applications [Fox River Paper Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11467–000.

c. *Date Filed:* April 1, 1994.

d. *Applicant:* Fox River Paper Company.

e. *Name of Project:* Risingdale.

f. *Location:* On the Housatonic River, Town of Great Barrington, Berkshire County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mathew Rubin, Spruce Mtn Design, 26 State Street, Montpelier, VT 05602, (802) 223–7141.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* June 30, 1994.

k. *Description of Project:* The proposed project would consist of: (1) An existing 22-foot-high, 130-foot-long concrete and timber crib dam; (2) a reservoir having a surface area of 40 acres at normal water surface elevation 717 feet NGVD; (3) a gated intake structure having a trash rack; (4) a short 14-foot-diameter penstock; (5) a new powerhouse containing a 1,000-Kw generating unit operated at a 20-foot net head; (6) a tailrace; (7) a transformer; and (8) appurtenant facilities. Applicant estimates that the average annual generation would be 4.000 Kwh and that the cost of the studies under the permit would be $125,000. Power produced from the project would be sold to one or more electric utilities located in Massachusetts. The dam is owned by the applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

2a. *Type of Application:* Amending Exemption.

b. *Project No.:* 10610–004.

c. *Dated filed:* August 19, 1993.

d. *Applicant:* Trout Creek, Inc.

e. *Name of Project:* Trout Creek.

f. *Location:* On Trout Creek near the town of Thatcher, in Caribou County, Idaho.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dick Graves, Director, Trout Creek, Inc., 2082 South 2000 East, Gooding, ID 83330, (208) 934–5180.

i. *FERC Contact:* Buu T. Nguyen, (202) 219–2913.

j. *Comment Date:* June 20, 1994.

k. *Description of Application:* The applicant is proposing to relocate the powerhouse looking downstream, from the left side to the right side of the stream.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

3a. *Type of Application:* Minor License.

b. *Project No.:* 11072–001.

c. *Date filed:* April 13, 1994.

d. *Applicant:* Trenton Falls Hydroelectric Company Inc.

e. *Name of Project:* Boyd Dam Hydroelectric Project.

f. *Location:* On the East Branch of Fish Creek, in Lewis County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steve C. Samel, P.O. Box 169, Prospect, NY 13435, 315–896–6351.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Comment Date:* 60 days from the filing date in paragraph c.

k. *Description of Project:* The project consists of the following features: (1) An existing dam and 210 acre reservoir; (2) a proposed powerhouse housing a hydropower unit with a capacity of 795 Kw, and (3) appurtenant facilities.

l. With this notice, we are initiating consultation with the *Wisconsin State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

4a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–41–000.

c. *Date Filed:* March 7, 1994.

d. *Applicant:* Cedarburg Hydroelectric Corporation.

e. *Name of Project:* Cedarburg Milldam Hydroelectric Project (WI).

f. *Location:* Cedar Creek, Tributary to Wisconsin River, in Cedarburg, Wisconsin.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Cedarburg Hydroelectric Corporation c/o Renner Architects, 626 N. Water Street, Milwaukee, WI 53202, (414) 273–6637.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* June 20, 1994.

k. *Description of Project:* The proposed Cedarburg Milldam Hydroelectric Project will consist of: (1) A mill pond with a surface area of 3.0 acres; (2) a 28-foot-high, 90-foot-long, timber-crib earth-filled dam, with a concrete face; (3) a 90-foot-long, 8-foot-wide headrace, with a steel trashrack and a steel slidegate; (4) a 3-story stone and mortar powerhouse that will contain a vertical Francis turbine and a vertical Electric Machinery Company generator having a capacity of 125 kilowatts; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy produced to off-set purchases from the local utility for an adjacent office building. Project will be connected to the interstate grid.

m. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Dated: May 6, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11506 Filed 5-11-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. GT94-36-000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 6, 1994.

Take notice that on May 2, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed tariff sheets to be effective June 1, 1994:

First Revised Sheet Nos. 600 and 601
Second Revised Sheet Nos. 602 through 606
Second Revised Sheet No. 611

Natural states that the purpose of the filing is to update the Index of Purchasers contained in Natural's Tariff in accordance with § 154.41(a) of the Commission's Regulations.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective June 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11507 Filed 5-11-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-232-000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 6, 1994.

Take notice that on May 4, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 147 through 149 and Original Sheet No. 149A, to be effective June 3, 1994.

Natural states that the purpose of the filing is to replace Section 7.2 of Rate Schedule S-1 to provide for interruptible no-notice injection rights in connection with the actual takes from Natural at delivery points.

Natural requested whatever waivers may be necessary to permit the tariff sheets to become effective June 3, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before May 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11508 Filed 5-11-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG88-35-005]

Northern Border Pipeline Co.; Filing

May 6, 1994.

Take notice that on April 19, 1994, Northern Border Pipeline Company (Northern Border) filed revised procedures under Order Nos. 497 *et seq.*[1] *Northern Border's revisions reflect changes instituted in Order No. 497-E and an increase in the number of employees it shares with Northern Plains Natural Gas Company (Northern Plains), its operator. Northern Border's revisions also reflect organizational changes at the company, including the shift of its gas control function to Northern Plains.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11509 Filed 5-11-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG88-7-005]

Northern Natural Gas Co.; Filing

May 6, 1994.

Take notice that on April 25, 1994, Northern Natural Gas Company (Northern Natural) filed revised procedures under Order Nos. 497 *et seq.*[1] Northern Natural's filing is in response to Order No. 497–F which, among other things, required Northern Natural to show cause why it should not be required to remove the operating employee restrictions from its Standards E and F, 18 CFR 161.3 (e) and (f) (1993).[2] Northern Natural filed, under protest, revised standards of conduct procedures that remove the reference to "operating" from its Standards E and F. Northern Natural's filing also reflects its current organizational structure.

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988); Order No. 497-A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 1989); Order No. 497-B (*order extending sunset date*), 55 FR 53291 December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497-C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D (*order on remand and extending sunset date*), 651 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); (*Order No 497-E (order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30.987 (December 23, 1993); Order No. 497-F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994;

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11510 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC States. & Regs. ¶ 30,920 (1988); Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard E provides that a pipeline may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

Standard F provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

[Docket No. ES94–23–001]

Rochester Gas and Electric Co.; Amended Application

May 6, 1994.

Take notice that on May 3, 1994, Rochester Gas and Electric Company (RG&E) filed an amendment to its April 28, 1994, application under § 204 of the Federal Power Act seeking authorization to issue not more than $200 million of notes and other short-term indebtedness from time to time as required, but in any event, not later than December 31, 1996. By its amendment, RG&E requests that the issuance period be revised from not later than December 31, 1996 to not later than May 31, 1996, with a maturity of one year or less.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11511 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–9–007]

Transwestern Pipeline Co.; Filing

May 6, 1994.

Take notice that on April 25, 1994, Transwestern Pipeline Company (Transwestern) filed revised procedures under Order Nos. 497 *et seq.* [1] Transwestern's filing is in response to Order No. 497–F which, among other things, required Transwestern to show cause why it should not be required to remove the operating employee restrictions from its Standards E and F, 18 CFR 161.3 (e) and (f) (1993).[2] Transwestern filed, under protest, revised standards of conduct procedures that remove the reference to "operating" from its Standards E and F. Transwestern's filing also reflects that although it occupies office space in the same building as its marketing affiliate, Transwestern personnel are no longer located on the same floor.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11572 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988(; Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (DC Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard E provides that a pipeline may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

Standard F provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

Office of Fossil Energy

[FE Docket No. 94–24–NG]

Chevron U.S.A. Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Chevron U.S.A. Inc. (Chevron) authorization to import up to a

maximum of 100 billion cubic feet (Bcf) and export up to a maximum of 100 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 25, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11554 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–23–NG]

Cmex Energy, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CMEX Energy, Inc. (CMEX) authorization to import and export from and to Canada and Mexico, a combined total of up to 200 Bcf of natural gas, including liquefied natural gas, over a two-year term, beginning on the date of first delivery after April 30, 1994.

CMEX's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 29, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11555 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–28–NG]

Universal Resources Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Universal Resources Corporation authorization to import up to a maximum of 50 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery after June 26, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 4, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11556 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59337; FRL–4780–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–94–11. The test marketing conditions are described below.

EFFECTIVE DATES: May 2, 1994. Written comments will be received until May 27, 1994.

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–94–11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm. NEB–607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–94–11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T–94–11

Date of Receipt: March 29, 1994. The extended comment period will close May 27, 1994.

Applicant: Confidential.

Chemical: (G) Styrene-acrylic resin.

Use: (G) Electrophotographic copier toners.

Production Volume: Confidential

Number of Customers: Confidential.

Test Marketing Period: One year. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: May 2, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94-11548 Filed 5-11-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0463.

Title: Telecommunications Service for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90-571).

Action: Extension of existing collection.

Respondents: Individuals or households, state or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 72 responses; 112.64 hours per response; 8,110 hours total annual burden.

Needs and Uses: Section 64.605 of FCC's rules establishes the certification procedures by which states may apply to assert jurisdiction over the provisions of Intrastate telecommunication relay services (TRS). Section 64.604 establishes procedures for filing complaints. The information will be used to determine whether the state's program is certifiable according to federal requirements, to determine the merits of complaints filed and to attempt resolution.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-11537 Filed 5-11-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Royal Cruise Line Limited and Kloster Cruise Limited, One Maritime Plaza, Suite 1400, San Francisco, California 94111. Vessel: STAR ODYSSEY.

Dated: May 9, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94-11538 Filed 5-11-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Russell Breeden III, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Russell Breeden, III,* Indianapolis, Indiana; to retain 4.00 percent, for a total of 27.73 percent of the voting shares of Community First Financial Group, Inc., English, Indiana, and thereby indirectly acquire English State Bank, English, Indiana, and Peoples Trust Bank Company, Corydon, Indiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dirk L. Gasterland, Jan P. Gasterland, Hans W. Gasterland, and Gretchen K. Gilbertson,* all of LaCrosse, Wisconsin; each to acquire an additional 6.25 percent, for a total of 21.84 percent of the voting shares of Coulee Bancshares, Inc., LaCrosse, Wisconsin, and thereby indirectly acquire The Coulee State Bank, LaCrosse, Wisconsin.

Board of Governors of the Federal Reserve System, May 6, 1994.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 94-11501 Filed 5-11-94; 8:45 am]

BILLING CODE 6210-01-F

Kingston Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Kingston Bancshares, Inc.*, Kingston, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Kingston National Bank, Kingston, Ohio.

2. *McCreary Bancshares, Inc.*, Whitley City, Kentucky; to acquire up to 100 percent, but not less than 80 percent of the voting shares of First Trust and Savings Bank, Onieda, Tennessee.

3. *Peoples Bancorporation of Northern Kentucky, Inc.*, Crestview Hills, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Northern Kentucky, Inc., Crestview Hills, Kentucky.

4. *Sewickley Savings Financial Corp., M.H.C.*, Sewickley, Pennsylvania; to become a bank holding company by acquiring 50.100 percent of the voting shares of Sewickley Savings Bank, Sewickley, Pennsylvania.

5. *Williamsburg Bancorp, Inc.*, Corbin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Williamsburg National Bank, Williamsburg, Kentucky.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *EverFinancial Corp.*, South Pasadena, California; to become a bank holding company by acquiring 100 percent of the voting shares of EverTrust Bank, City of Industry, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 6, 1994.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 94-11502 Filed 5-11-94; 8:45 am]

BILLING CODE 6210-01-F

National Penn Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to engage *de novo* through its subsidiary Investors Trust Company, Wyomissing, Pennsylvania in performing the functions and activities of a trust company (including those of a fiduciary, agency or custodial nature), pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1994.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 94-11503 Filed 5-11-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Administration for Children and Families (ACF) is requesting clearance for instruments to implement Executive Order 12862 within the Administration for children and Families (ACF). The purpose of the data collection is to obtain customer satisfaction information from those entities who are funded to be our partners in the delivery of services to the American public. ACF partners are those entities that receive funding to deliver services or assistance from ACF programs. Examples of partners are States and local governments, the territories, service providers, Indian Tribes and tribal organizations, grantees, researchers, or other intermediaries serving target populations identified by and funded directly or indirectly by ACF. The surveys will obtain information about how well ACF is meeting the needs of our partners in operating the ACF programs.

ADDRESSES: Copies of the information collection may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205-7921.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Voluntary Surveys of ACF Program Partners to Implement Executive Order 12862.

OMB No.: New Request.

Description: Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. This request is for the generic clearance for the Administration for Children and Families to implement Executive Order 12864 within the agency in relation to the satisfaction of those entities who are funded to be our partners in the delivery of services to the American public. ACF's partners are those entities that receive services or assistance directly from ACF programs such as State and local governments, the territories, the District of Columbia, Indian Tribes and tribal organizations, grantees, service providers, researchers, and significant other intermediaries serving target populations identified by and funded directly or indirectly by ACF.

ACF will conduct voluntary confidential surveys of our partners to identify strengths and weakness in the administrative management of ACF programs and to determine how we can better serve our partners so together we can better serve the American public.

The generic surveys of our partners will provide descriptive and statistical information on ACF programs across at-least twelve (12) major domains: Welfare, child support enforcement, vulnerable youth, day care, employment training, Head Start, emergency assistance, family violence, foster care, adoption assistance, services to special populations, and refugee resettlement. For each domain, ACF intends to use information provided by out partners to determine the kind and quality of services they want and expect, their level of satisfaction with existing services an to implement improvements where feasible and practical.

The voluntary partnership surveys will focus only on issues of direct concern to our partners regarding their relationship and opinions on the level of efficiency and quality of services provided by ACF. These concerns may include: Partnership arrangements in policy formulation and implantation of program strategies, considerations of Federal, State and local administrative management practices in policy formulation, appropriateness and timeliness of decisionsmaking, timeliness of funding allocations and grant awards, utility of information collection, efficacy of information sharing, the elimination of inoperable internal rules and guidelines, courtesy and cooperation of federal staffs with out partners, assessing the effectiveness of technical assistance provided and the need for additional technical assistance, adequacy of problem resolutions, multi-cultural sensitivity in the decision-making process, and the attainment of goals and outcomes that can be used to measure the efficiency and cost effectiveness of ACF programs in meeting the needs of children, youth and families at the ACF level.

Estimate of the Burden of Collection of Information

Estimates of response burden are outlined in the following tables:

	Annual number respondents	Average an-nual frequency	Average burden per response	Annual burden hours
States gov'ts	51	10	1 hour	510

The above figures are based on an estimate of approximately one (1) hour per response to respond and submit the information. The 51 respondents include the 50 States and the District of Columbia. The figure in the annual burden hours column takes into account State supervised, county administered (State supervised), and State administered programs where the county must submit data to the State prior to its aggregation and submission to the Administration for Children and Families.

We propose to select approximately 10 States per year. The ten (10) States will represent both large and small States and county and State administered units.

	Annual number respondents	Average annual frequency	Average burden per response	Annual burden hours
Head Start grantees and delegates	200	1	.5 hours	100

The above annual figure is based on a sample of 200 Head Start grantees and delegate agencies per year multiplied by .5 hour to respond to a check list of open-ended and closed-ended questions.

	Annual number respondents	Average annual frequency	Average burden per response	Annual burden hours
Other discretionary grant programs	200	10	.5 hours	100

The above annual figure is based on a representative sample of discretionary grantees by program type, by size and by region per year multiplied by .5 hours to respond to a check list of open-ended and closed-ended questions multiplied by 10 responses per year.

Indian tribes and tribal organ	25	10	.5 hours	50
Total reporting burden				1,660

The above annual figure is based on a representative sample of Indian grantees including tribal organizations per year multiplied by .5 hours to respond to a check list of open-ended and closed-ended questions multiplied by 10 responses per year.

Dated: May 5, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–11562 Filed 5–11–94; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for clearance data collection instruments and procedures to be used by the Children's Bureau of the Administration for Children and Families (ACF), to conduct the National Study of Protective, Preventive, and Reunification Services Delivered to Children and Families. A pilot study was conducted under OMB clearance number 0980–0233, to develop these data collection instruments. This request for clearance by OMB contains the results of the pilot study and addresses all the concerns raised by OMB as part of the pilot study clearance.

ADDRESSES: Copies of the information collection request may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921. Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: National Study of Protective, Preventive, and Reunification Services Delivered to Children and Their Families.

OMB No. 0980–0233.

Description: The data collection instrument will be used by the Children's Bureau within the Administration for Children, Youth and Families (ACYF) of the Administration for Children and Families (ACF) to conduct the National Study of Protective, Preventive and Reunification of Services to Children and their Families.

The purposes of the study are to: (1) Determine the number and percentage of children and families receiving protective, preventive, reunification/out-of-home services, and after-care services; and (2) obtain national data on the number, types, and dynamics of the services provided to children and their families.

The findings of the study will provide a basis upon which child welfare policy can be developed and refined throughout the next decade. Other benefits derived from the pilot study will provide standardized services definitions for protective, preventive, reunification services and for the target populations eligible to receive them. The study will identify services provided by child welfare agencies across the country and develop standardized service definitions across agencies.

Annual Number of Respondents: 625.

Annual Frequency: 4.

Average Burden Hours Per response: 75.

Total Burden Hours: 1,750.

Dated: May 5, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–11561 Filed 5–11–94; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Public Meeting on the Update of Clinical Practice Guideline on Cataract in Adults: Management of Functional Impairment

The Agency for Health Care Policy and Research (AHCPR) announces a public meeting to receive comments and information pertaining to the update of the clinical practice guideline Cataract in Adults: Management of Functional Impairment (AHCPR Publication No. 93–0542). The AHCPR-supported guideline was developed by a private sector panel of health care experts and consumers, and released in February, 1993.

On August 9, 1993, AHCPR announced that it was inviting the nominations of qualified individuals to serve on a panel as the co-chairpersons and as panel members to update a clinical practice guideline on Cataract in Adults: Management of Functional Impairment. The update panel's tasks will be to assess new research in selected areas previously reviewed, review current literature on new treatments, and assess new research published on the management of functional impairment due to cataract in adults.

A public meeting to address the update and timing of the update of the guideline, Cataract in Adults: Management of Functional Impairment, and to provide an opportunity for interested parties to contribute relevant information and comments, including research in areas relevant to the guideline that was not available at the time the guideline was written, will be held as follows:

Meeting: Update of Cataract in Adults: Management of Functional Impairment.

Date: June 16, 1994.

From: 9 a.m.–12 p.m., Conference Room G, The Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

Phone: 301–443–2585.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410), enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines.

In keeping with its legislative mandate, AHCPR is arranging for the development, periodic review, and update of clinically relevant guidelines that may be used by physicians, nurses, other health care providers, educators, and consumers to assist in determining how diseases, disorders, and other health care conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development, periodic review, and update of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, nurses, other health care providers, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and

management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Arrangements for the June 16, 1994 Public Meeting on Update of Cataract in Adults: Management of Functional Impairment

Representatives of organizations and other individuals are invited to provide relevant written comments and information, and make a brief (5 minutes or less) oral statement. Individuals and representatives who would like to attend must register with Lynn McQueen, Program Officer, the Office of the Forum for Quality and Effectiveness in Health Care (Forum), at the address set out below by June 1, 1994, and indicate whether they plan to make an oral statement. A written copy of the oral statement should be submitted to the Forum by June 1, 1994. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 p.m. on June 16, 1994, time will be allocated in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers are presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered when making a decision regarding the update for this guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Forum by June 1, 1994, at the address below.

Registration should be made with, and written materials submitted to: Ms. Lynn McQueen, Program Officer, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd, suite 310, Rockville, Maryland, 20852. Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note. "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, MD 20852, Phone 301–594–4015. Fax: 301–594–4027.

Dated: May 5, 1994.

Linda K. Demlo,

Acting Administrator.

[FR Doc. 94–11532 Filed 5–11–94; 8:45 am]

BILLING CODE 4160–90–P

Food and Drug Administration

Cooperative Agreement to Support a National Center for Food Safety and Technology; Notice of Intent to Renew a Cooperative Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement to the Illinois Institute of Technology (IIT) to support the National Center for Food Safety and Technology (NCFST), which is located on IIT's Moffett Campus in Summit-Argo, IL 60501. Competition is limited to IIT because IIT has: the unique capability of bringing together diverse perspectives on food safety; access to the exceptional combination of scientific expertise, pilot plants, and research facilities necessary to focus those perspectives on cooperative food safety programs; and a cooperative food safety research program and an academic degree program in food safety underway.

ADDRESSES:

An application is available from and should be submitted to: Maura Stephanos, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Applications hand-carried or commercially delivered should be addressed to the Park Bldg., rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Maura Stephanos (address above).

Regarding the programmatic aspects: Karen Carson, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5140.

SUPPLEMENTARY INFORMATION: FDA is announcing its intention to accept and consider a single source application from IIT for a cooperative agreement to support NCFST. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits that such agreements will provide to the public.

IIT's application will undergo dual peer review. An external review committee of experts in food science research will review and evaluate the application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

I. Background

In the **Federal Register** of May 3, 1988 (53 FR 15736), FDA published a request for applications for a cooperative agreement to establish a National Center for Food Safety which joins the resources of government, academia, and industry in a consortium to study questions of food safety. FDA awarded the cooperative agreement to IIT in September, 1988. Applications received were competitively reviewed by a panel of non-FDA food scientists, and the award was approved by the National Advisory Environmental Health Science Council in September, 1988.

In the **Federal Register** of September 10, 1991 (56 FR 46189), FDA published a notice of its intention to limit consideration for the award of a cooperative agreement to IIT to support NCFST. FDA awarded the cooperative agreement to IIT on September 30, 1991, following competitive review of the application by a panel of non-FDA food scientists. The award was approved by the National Advisory Environmental Health Science Council in September, 1991.

Under the cooperative agreement, IIT has established and staffed the NCFST at IIT's Moffett Campus in Summit-Argo, IL. Other participants in this effort are the IIT Research Institute, the Food Science Department of the University of Illinois, Urbana-Champaign, FDA, and industry. NCFST is structured so that representatives of participating organizations play a role in establishing policy and administrative procedures, as well as identifying long- and short-term research needs. With this organizational structure, NCFST is able to build cooperative programs focused on food safety on a foundation of knowledge about current industrial trends in food processing and packaging technologies, regulatory perspectives from public health organizations, and fundamental scientific expertise from academia.

II. Mechanism of Support

A. Award Instrument

Support for this program, if granted, will be in the form of a cooperative agreement. In 1994, FDA is providing $2,000,000 for this award. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR part 74, and PHS grants policy statement.

B. Length of Support

The length of support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

III. Reasons for Single Source Selection

FDA believes that there is compelling evidence that IIT is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. IIT's Moffett Campus, where NCFST is located, is a unique research facility which includes an industrial-size pilot plant and smaller pilot plants for food processing and packaging equipment, a biotechnology laboratory, a packaging laboratory, analytical laboratories, offices, containment facilities, classrooms, and support facilities which permit research from benchtop to industrial-scale. The industrial-size pilot plant is built to accommodate routine food processing and packaging research in a commercial atmosphere. The physical layout of the plant provides maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to simultaneously operate several different pieces of equipment without interference with each other. In addition to facilities to conduct routine processing research, there are facilities suitable for more complex research, notably a biotechnology research facility, funded by the State of Illinois, for scale-up and downstream processing and purification research. Other facilities include containment facilities in which research involving use of components that may be potentially hazardous, such as pathogens in pasteurization or modified atmosphere packaging research, may be conducted.

Since 1988, IIT has provided an environment in which scientists from diverse backgrounds, such as academia, government, and industry, have brought their unique perspectives to focus on contemporary issues of food safety. NCFST functions as a neutral ground where scientific exchange about generic food safety issues occurs freely and is channeled into the design of cooperative food safety programs. NCFST recently convened a meeting of its members to identify and discuss the mechanisms and safety aspects of new food processing and packaging technologies that are either now moving into the food manufacturing industry or are expected to be introduced soon, including laser heating, high voltage pulse processing and high pressure processing, and cold sterilization techniques. Ongoing research on recycling plastics for food contact use was initiated from a planning meeting that brought together NCFST participants with expertise and knowledge about plastics recycling, including representatives of government, academia, and industry, to discuss the status of recycling research in the U.S. industry and regulatory perspectives. The cooperative research that was generated by this meeting has recently been expanded to include recycling of paperboard for fatty and aqueous foods, which is a use that is not currently provided for by Federal regulations. This type of research fills existing gaps in knowledge and expertise associated with recycled packaging materials in a time when many States are mandating the recycling of packaging materials, and answers questions about safety and use of these materials.

In addition to research on recycled materials for food container use, the cooperative research program in progress investigates safety aspects of biotechnological and fermentation techniques, validation of critical controls in computerized and automated processing lines, and formation of potentially detrimental compounds during high-temperature processing. This cooperative research will provide fundamental food safety information in the public domain for use by all segments of the food science community in product and process development, regulatory activities, academic programs, and consumer programs. A particular use of this type of data by both industry and public health agencies is in Hazard Analysis Critical Control Point (HACCP) programs. Food manufacturers can use the information in the design of HACCP programs, which prevent food safety hazards before they occur and enhance the safety of the final product, for use in their plants.

An academic degree program in food safety science, which is not part of the cooperative agreement, has been underway for 3 years at IIT. The program will produce graduates with a foundation in food science and technology with specialization in food safety. Graduates from this program will manage quality control, safety assurance, and HACCP programs in industry. They will design equipment and processes for use in the production and packaging of safe food products. In the public sector, these graduates will evaluate the adequacy of processing and packaging parameters to produce safe endproducts, as well as manage regulatory and information programs designed to enhance the safety of the food supply and consumer knowledge about the food supply. Graduate students from IIT and the University of Illinois can gain hands-on experience in food safety by participating in the cooperative food safety research program. Several masters of science degrees, which included research conducted on cooperative projects, have been granted in disciplines such as engineering by IIT since the inception of NCFST.

Collaboration between the public and the private sector is an efficient means for both to remain current with scientific and technical accomplishments from a food safety perspective. These collaborative programs will produce generic knowledge and expertise that can be used by all segments of the food processing and packaging industry, as well as by public health organizations, regulatory agencies, and academic institutions in the performance of their roles in the food science community. The trend toward use of HACCP in both the domestic and international food industry, as a means of assuring safety of products and as a basis for harmonizing regulatory activities, is but one example of the effects that food safety knowledge and expertise are having. Technology transfer mechanisms, which are developing out of the cooperative food safety programs, will facilitate the movement of advanced food processing and packaging technologies into the marketplace, while ensuring the safety of those products.

IV. Reporting Requirements

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 30 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

V. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or coproject officers who will actively monitor the FDA-supported program under this award.
2. FDA will have prior approval on the appointment of all key administrative and scientific personnel proposed by the grantee.
3. FDA will be directly involved in the guidance and development of the program and of the personnel management structure for the program.
4. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and where appropriate, coauthorship of publications.

VI. Use of the Metric System

In order to be eligible for this FDA grant program, applications must be in compliance with the Metric Conversion Act of 1975 (as amended by the Omnibus Trade and Competitiveness Act of 1988) which requires that the metric system be used in all Federal procurements, grants, and business-related activities. Therefore, all applications submitted under this notice which contain measurement-sensitive information and/or data, must reflect such data using the metric system. During this period of transition, both metric and inch-pound units will be used simultaneously to express measurements. Examples of measurements that should now be reflected in metrics include: (1) Travel (if applicable) in kilometers (km); (2) office or laboratory space (if applicable) in square meters (m^2); (3) audio/visual (film) (if applicable) in millimeters (mm); and (4) publications (if applicable) in centimeters (cm). Applications found not to be in compliance will be returned to the applicant without consideration. Written requests for exemption from the requirement will be considered on a case-by-case basis. If additional costs are incurred due to implementation of this requirement, such costs may be considered as allowable if bonafide supporting justification is presented. The grants management officer will determine the allowability of such costs.

VII. Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: May 4, 1994

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–11595 Filed 5–11–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner at (301) 443–4376.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) of title 5, U.S.C. of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Willco Building, suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: (301) 443–4376. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Ronald Suddendorf, Ph.D.

Dates of Meeting: June 6–8, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: June 6, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: June 6, 10 a.m. to recess; June 7, 9 a.m. to recess; June 8, 9 a.m. to adjournment.

Name of Committee: Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Antonio Noronha, Ph.D.

Dates of Meeting: June 6–8, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: June 6, 9 a.m. to 11 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: June 6, 11 a.m. to recess; June 7, 8 a.m. to recess; June 8, 8 a.m. to adjournment.

Name of Committee: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Thomas D. Sevy, M.S.W.

Dates of Meeting: June 9–10, 1994.

Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: June 9, 8:30 a.m. to 9:30 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: June 9, 9:30 a.m. to recess; June 10, 9:30 a.m. to adjournment.

Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Lenore S. Radloff.

Dates of Meeting: June 14–16, 1994.

Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: June 14, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: June 14, 10 a.m. to recess; June 15, 9 a.m. to recess; June 16, 9 a.m. to adjournment.

Name of Committee: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Barbara Smothers, Ph.D.

Dates of Meeting: July 14–15, 1994.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Open: July 14, 8:30 a.m. to 9:30 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: July 14, 9:30 a.m. to recess; July 15, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93.272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health.)

Dated: May 5, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11517 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Etiology

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 9–10, 1994. The meeting will be held in Building 1, 3rd floor, Wilson Hall, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on June 9 and from 9 a.m. to adjournment on June 10 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately noon on June 9, 1994 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, National Institute of Health, Executive Plaza North, Room 630, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Building 31, room 11A06, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. David McB. Howell, (301) 496–6927, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 5, 1994.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 94–11515 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on June 15–17, 1994, The Wyndham-Bristol Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

This meeting will be open to the public on June 15, 1994 from 7:30 pm to 8:30 pm, to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 15 from 8:30 pm to recess, on June 16 from 8 am to recess, and on June 17 from 8 am to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, and disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Executive Plaza North, room 611A, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mary Bell at (301) 496–7978 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 5, 1994.

Susan Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11514 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute on Drug Abuse for June 1994.

These meetings will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicated below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.

Meeting Date: June 13–15, 1994.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Open: June 13, 8:30 a.m. to 9 a.m.

Closed: 9 a.m., June 13, to adjournment on June 15.

Contact: Syed Husain, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.

Meeting Date: June 13–15, 1994.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Open: June 13, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., June 13, to adjournment on June 15.

Contact: Gamil Debbas, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.

Meeting Date: June 13–16, 1994.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Open: June 13, 8:30 a.m. to 9 a.m.

Closed: 9 a.m., June 13, to adjournment on June 16.

Contact: Rita Liu, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee.

Meeting Date: June 14–17, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: June 14, 8:30 a.m. to 9 a.m.

Closed: 9 a.m., June 14, to adjournment on June 17.

Contact: Raquel Crider, Ph.D., room 10–22, Parklawn Building, telephone (301) 443–9042.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: May 5, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11518 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for June 1994.

The entire meeting of the Extramural Science Advisory Board, NIMH, will be open to the public for discussion of the NIMH grant portfolio.

The meetings of the Board of Scientific Counselors, NIMH, and the review committees will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities.

The review committee meetings and the meeting of the Board of Scientific Counselors, NIMH, will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463. The review committees will meet for the review, discussion and evaluation of individual grant applications. The Board of Scientific Counselors, NIMH, will meet for the review, discussion, and evaluation of staff scientists and individual programs and projects of the National Institute of Mental Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Attendance by the public to all open sessions will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named below in advance of the meeting.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: Epidemiology and Genetics Review Committee

Contact: Tammye M. Cross, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.

Meeting Date: June 1–3, 1994.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Open: June 1, 1994, 9 a.m.–10 a.m

Closed: June 1, 1994, 10 a.m.–5 p.m., June 2, 1994, 9 a.m.–5 p.m., June 3, 1994, 9 a.m.–adjournment.

Committee Name: Social and Group Processes Review Committee.

Contact: Bernice R. Cherry, Parklawn Building, Room 9C–26, Telephone: 301, 443–6470.

Meeting Date: June 2–4, 1994.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Open: June 2, 1994, 9 a.m.–10 a.m.

Closed: June 2, 1994, 10 a.m.–5 p.m., June 3, 1994, 9 a.m.–5 p.m., June 4, 1994, 9 a.m.–adjournment.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.

Contact: Katie O'Donnell, Parklawn Building, Room 9–101, Telephone: 301, 443–3857.

Meeting Date: June 5–7, 1994

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: June 6, 1994, 8 a.m.–9 a.m.

Closed: June 5, 1994, 6 p.m.–9 p.m., June 6, 1994, 9 a.m.–5 p.m., June 7, 1994, 8 a.m.–adjournment.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.

Contact: Wm. Gregory Zimmerman, Parklawn Building, Room 9–101, Telephone: 301, 443–3857.

Meeting Date: June 6–8, 1994.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815

Open: June 6, 1994, 8:30 a.m.–9:30 a.m.

Closed: June 6, 1994, 9:30 a.m.–5 p.m., June 7, 1994, 8:30 a.m.–5 p.m., June 8, 1994, 8:30 a.m.–adjournment.

Committee Name: Extramural Science Advisory Board, NIMH

Contact: Andrea Baruchin, Ph.D., Parklawn Building, Room 17C–26, Telephone: 301, 443–4335.

Meeting Date: June 7–8, 1994.

Place: Potomac Room, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: June 7, 1994, 8:30 a.m.–5 p.m., June 8, 1994, 8:30 a.m.–adjournment.

Committee Name: Clinical Psychopathology Review Committee

Contact: Frances H. Smith, Parklawn Building, Room 9C–18, Telephone: 301, 443–4868.

Meeting Date: June 8–10, 1994.

Place: Barcelo Washington Hotel, 2121 P Street, NW., Washington, DC 20037.

Open: June 8, 1994, 9 a.m.–10 a.m.

Closed: June 8, 1994, 10 a.m.–5 p.m., June 9, 1994, 9 a.m.–5 p.m., June 10, 1994, 9 a.m.–adjournment.

Committee Name: Services Research Review Committee.

Contact: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.

Meeting Date: June 8–10, 1994.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, D.C. 20036.

Open: June 8, 1994, 9 a.m.–9:30 a.m.

Closed: June 8, 1994, 9:30 a.m.–5 p.m., June 9, 1994, 9 a.m.–5 p.m., June 10, 1994, 9 a.m.–adjournment.

Committee Name: Violence and Traumatic Stress Review Committee.

Contact: Sheri L. Schwartzback, Parklawn Building, Room 9C–26, Telephone: 301, 443–4843.

Meeting Date: June 8–10, 1994.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815

Open: June 8, 1994, 8:30 a.m.–9 a.m.

Closed: June 8, 1994, 9 a.m.–5 p.m., June 9, 1994, 8:30 a.m.–5 p.m., June 10, 1994, 8:30 a.m.–adjournment.

Committee Name: Psychobiology, Behavior, and Neuroscience Review Committee.

Contact: William H. Radcliffe, Parklawn Building, Room 9–101, Telephone: 301, 443–3657.

Meeting Date: June 9–10, 1994.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

Open: June 9, 1994, 9 a.m.–10 a.m.

Closed: June 9, 1994, 10 a.m.–5 p.m., June 10, 1994, 9 a.m.–adjournment.

Committee Name: Child Psychopathology and Treatment Review Committee.

Contact: Tammye M. Cross, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.

Meeting Date: June 15–17, 1994.

Place: Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, NW., Washington, D.C. 20037.

Open: June 15, 1994, 9 a.m.–10 a.m.

Closed: June 15, 1994, 10 a.m.–5 p.m., June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 9 a.m.–adjournment.

Committee Name: Health Behavior and Prevention Review Committee.

Contact: Monica F. Woodfork, Parklawn Building, Room 9C–26, Telephone: 301, 443–4843.

Meeting Date: June 15–17, 1994.

Place: Marriott Suites Bethesda, 6711 Democracy Boulevard, Bethesda, MD 20817.

Open: June 15, 1994, 9 a.m.–10 a.m.

Closed: June 15, 1994, 10 a.m.–5 p.m., June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 9 a.m.–adjournment.

Committee Name: Mental Disorders of Aging Review Committee.

Contact: Phyllis L. Zusman, Parklawn Building, Room 9C–18, Telephone: 301, 443–1340.

Meeting Date: June 15–17, 1994.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: June 15, 1994, 9 a.m.–10 a.m.

Closed: June 15, 1994, 10 a.m.–5 p.m., June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 9 a.m.–adjournment.

Committee Name: Treatment Assessment Review Committee.

Contact: Frances H. Smith, Parklawn Building, Room 9C–18, Telephone: 301, 443–4868.

Meeting Date: June 16–17, 1994.

Place: Barcelo Washington Hotel, 2121 P Street, NW., Washington, D.C. 20037.

Open: June 16, 1994, 8:30 a.m.–9 a.m.

Closed: June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 8:30 a.m.–adjournment.

Committee Name: Child/Adolescent Development, Risk, and Prevention Review Committee.

Contact: Phyllis D. Artis, Parklawn Building, Room 9C–26, Telephone: 301, 443–1177.

Meeting Date: June 16–18, 1994.

Place: Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Open: June 16, 1994, 9 a.m.–10 a.m.

Closed: June 16, 1994, 10 a.m.–5 p.m., June 17, 1994, 9 a.m.–5 p.m., June 18, 1994, 9 a.m.–adjournment.

Committee Name: Perception and Cognition Review Committee.

Contact: Regina M. Thomas, Parklawn Building, Room 9C–26, Telephone: 301, 443–6470.

Meeting Date: June 16–18, 1994

Place: Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Open: June 16, 1994, 9 a.m.–10 a.m.

Closed: June 16, 1994, 10 a.m.–5 p.m., June 17, 1994, 9 a.m.–5 p.m., June 18, 1994, 9 a.m.–adjournment.

Committee Name: Cognitive Functional Neuroscience Review Committee.

Contact: Shirley H. Maltz, Parklawn Building, Room 9–101, Telephone: 301, 433–3936.

Meeting Date: June 20–21, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814

Open: June 20, 1994, 9 a.m.–10 a.m.

Closed: June 20, 1994, 10 a.m.–5 p.m., June 21, 1994, 9 a.m.–adjournment.

Committee Name: Board of Scientific Counselors, NIMH.

Contact: Jack D. Maser, Ph.D., Building 10, Room 4N224, Telephone: 301, 496–4183.

Meeting Date: June 21–22, 1994.

Place: Building 36, Room 1B07, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: June 21, 8:30 a.m. to 9 a.m.

Closed: June 21, 9 a.m. to 5 p.m., June 22, 8:30 a.m. to adjournment.

Committee Name: Clinical Neuroscience and Biological Psychopathology Review Committee.

Contact: Maurine L. Eister, Parklawn Building, Room 9–101, Telephone: 301, 443–3936.

Meeting Date: June 22–24, 1994.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.

Open: June 22, 1994, 9 a.m.–10 a.m.

Closed: June 22, 1994, 10 a.m.–5 p.m., June 23, 1994, 9 a.m.–5 p.m., June 24, 1994, 9 a.m.–adjournment.

Committee Name: Mental Health Small Business Research Review Committee.

Contact: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.

Meeting Date: June 27–29, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: June 27, 1994, 9 a.m.–10 a.m.

Closed: June 27, 1994, 10 a.m.–5 p.m., June 28, 1994, 9 a.m.–5 p.m., June 29, 1994, 9 a.m.–adjournment.

Committee Name: Behavioral, Clinical, and Psychosocial Subcommittee, Mental Health AIDS and Immunology Review Committee.

Contact: Regina M. Thomas, Parklawn Building, Room 9C–26, Telephone: 301, 443–6470.

Meeting Date: June 30–July 1, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: June 30, 1994, 8:30 a.m.–9 a.m.

Closed: June 30, 1994, 9 a.m.–5 p.m., July 1, 1994, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 5, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11516 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–4230–05; 4–00163; Notice for Publication AA–8482–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), and Section 1427(e) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Public Law 96–487, 94 Stat. 2371, 2525, 2526, will be issued to Ayakulik, Inc., for approximately 147 acres. The lands involved are in the vicinity of Ayakulik, Alaska.

U.S. Survey No. 4655, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 13, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 94–11566 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–P

[NM–940–4110; NMNM 77023]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 77023, Eddy County, New Mexico was timely filed and was accompanied by all required rentals and royalties accruing from October 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the Lease effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, BLM, New Mexico State Office, (505) 438–7580.

Dated: May 4, 1994

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 94–11567 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–FB–M

[WY–920–41–5700; WYW130421]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 4, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW130421 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130421 effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–11568 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–22–M

[UT–942–04–5700–11; UTU–71889]

Realty Action, Disposal by Public Land Sale, Land Exchange, or Recreation and Public Purposes Patent of Public Land in Grand County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action. UTU–71889, Proposed Disposal by Public Land Sale, Land Exchange, or Recreation and Public Purposes Patent of Public Land in Grand County, Utah; segregation of land from appropriation and operation under the public land laws, including the mining laws; excepting the mineral leasing laws.

SUMMARY: The following described land is being evaluated for Disposal by Public Land Sale, Land Exchange, under the authority of Sections 203 and 206 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (90 Stat. 2750 and 2756; 43 U.S.C. 1713 and 1716) and under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.):

Salt Lake Meridian, Utah

T. 23 S., R. 19 E.,
  Sec. 14. All.
  Sec. 15. All.
  Sec. 22. All.
  Sec. 23. All.

The above described land aggregates 2560.00 acres more or less.

The land described above is hereby segregated from appropriation and operation of the public land laws and the mining laws, excepting the mineral leasing laws, pending disposition of this action, or two (2) years from the date of publication of this notice in the **Federal Register**, whichever occurs first.

This notice will cancel and replace the segregative effects of all previously published notices on the public lands described herein.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Area Realty Specialist, Grand Resource Area, 885 South Sand Flats Road, Moab, Utah 84532, (801) 259–8193, or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: April 29, 1994.

Roger Zortman,

District Manager.

[FR Doc. 94–11569 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–DQ–P

[CO–930–4210–06; COC 56609]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 1.57 acres of National Forest System land for 20 years. This withdrawal would allow the Forest Service to maintain administrative alternatives to management of the land while completing the reports necessary for final determination on land use. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing and to Forest Service management.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before August 10, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Alexa Watson, 303–239–3796.

SUPPLEMENTARY INFORMATION: On April 25, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

White River National Forest

Sixth Principal Meridian

T. 10 S., R. 84 W.,
Sec. 7, lot 33.

The area described contains approximately 1.57 acres of National Forest System land in Pitkin County.

The purpose of this withdrawal is to allow the Forest Service to maintain administrative alternatives to management of the land while completing various reports relative to the resources on the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal or to request a public meeting may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage the lands.

May 3, 1994.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 94–11570 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JB–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32453 [1]]

CBEC Railway, Inc.—Acquisition and Operation Exemption—Great Western Railway Company of Iowa, Inc.

CBEC Railway, Inc.[2] (CBEC), a non-carrier, has filed a notice of exemption to acquire and operate approximately 5 miles of rail line from Great Western Railway Company of Iowa, Inc. (Great Western), extending from the eastern terminus of the line and yards of the Union Pacific Railroad Company, Inc., in Council Bluffs, IA, to a point at or near milepost 407.7.[3] The parties expected to consummate the transaction on or after January 28, 1994. Any comments must be filed with the Commission and served on Nicholas J. DiMichael, Donelan, Cleary, Wood & Maser, P.C., suite 850, 1275 K Street, NW., Washington, DC 20005–4078.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11578 Filed 5–11–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32433]

Chicago and North Western Transportation Company—Construction and Operation Exemption—City of Superior, Douglas County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 Chicago and North Western Transportation Company's (CNW) construction and operation of a 2,900-foot line of railroad, subject to the results of the Commission's environmental review and further

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[1] This transaction is related to a number of proceedings that involved Iowa Power, Inc. (Iowa Power), formerly Iowa Power and Light Company. Iowa Power was authorized to construct a new, alternative rail line to serve its Council Bluffs Energy Center (Energy Center). The proposal to develop this alternative rail line grew out of the complaint proceeding filed and subsequently dismissed in Iowa Power and Light Company v. Burlington Northern Railroad Company, No. 40224 (ICC served Nov. 1, 1991). Iowa Power has since merged with the Iowa Public Service Company to form Midwest Power Systems, Inc. (Systems). Systems' electric division is now known as Midwest Power.

[2] CBEC was originally created as a rail subsidiary of Iowa Power. It is now a wholly owned subsidiary of Systems.

[3] One component of the original construction plan called for Iowa Power to acquire and CBEC to operate the line segment at issue here, plus an additional 0.7-mile segment between mileposts 407.7 and 407.0. Iowa Power, Inc. and CBEC Railway Inc.—Acquisition and Operation Exemption—Iowa Southern Railroad Company Line near Council Bluffs, IA, Finance Docket No. 31718 (ICC served Aug. 17, 1990). In a related proceeding, Iowa Power was granted an exemption to construct a connecting 1.8-mile rail line extending from milepost 407.0 to the Energy Center, subject to further consideration of the anticipated environmental impacts. Iowa Power—Const Exempt.—Council Bluffs, IA, 8 I.C.C.2d 858 (1990) (Iowa Power).

The acquisition transaction in Finance Docket No. 31718 was never consummated. Instead, the line segment, less the 0.7-mile segment between mileposts 407.7 and 407.0, was subsequently acquired by Great Western in Great Western Railway Company of Iowa, Inc.—Acquisition and Operation Exemption—Council Bluffs and Ottumwa Railway, Inc., Finance Docket No. 31873 (ICC served May 24, 1991).

By acquiring this line segment from Great Western, CBEC will be able to finalize its plans to construct the alternative rail line. A draft environmental assessment of the construction proposal, modified to reflect that the new line will connect with the line being acquired here at milepost 407.7, instead of at milepost 407.0 as originally authorized, is being considered by the Commission in Iowa Power. There the parties also requested that CBEC be substituted for Iowa Power as the party authorized to construct and operate the new line.

decision. The proposed line, located in the City of Superior, Douglas County, WI, will serve a transloading coal dock owned by Midwest Energy Resources Company (MERC). The track will extend from CNW's Superior rail yard, crossing Lake Superior Terminal and Transfer Railway Company (LST&T) property, Burlington Northern Transportation Company (BN) property, LST&T property again, BN property leased to Union Oil Co. of California, BN rail property, BN-leased (to Union Oil) property, BN rail property, and then the MERC coal dock.

DATES: This exemption will not be effective until completion of the Commission's environmental review and further decision. Petitions to reopen must be filed by June 1, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32433 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Chicago and North Western Transportation Company, Stuart F. Gassner, Associate General Counsel, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. *Telephone:* (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: April 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Vice Chairman Phillips commented with a separate expression. Commissioner Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11579 Filed 5–11–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. hapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, DOJ Clearance Officer, SPS/JMD, WCTR Suite 850, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget. This collection is entitled Nondiscrimination on the Basis of Disability in State and Local Government Services. In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments concerning this collection should be sent to the Acting Director, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington DC 20035–6118, within 15 days after the date of publication (May 15, 1994) of this notice in the **Federal Register.**

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

An expedited review has been requested for this entry.

(1) Nondiscrimination on the Basis of Disability in State and Local Government Services.

(2) Civil Rights Division.

(3) Recordkeeping.

(4) State and local governments. Under the Americans with Disabilities Act, State and local governments cannot discriminate against individuals with disabilities in operating services, programs, and activities. If physical changes are required, certain of such entities must prepare a transition plan and make it available for public inspection.

(5) 6,000 recordkeepers will use on average eight hours each to develop a transition plan, therefore the total recordkeeping will result in 48,000 hours per year.

(6) 48,000 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: May 5, 1994.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–11390 Filed 5–11–94; 8:45 am]

BILLING CODE 4410–13–M

Antitrust Division

United States v. Electronic Payment Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Stipulation, Final Judgment, and a Competitive Impact Statement have been filed in the United States District Court for the District of Delaware in *United States of America* v. *Electronic Payment Services, Inc.*, Civ. No. 94–208.

The Complaint alleges that the defendant, Electronic Payment Services, Inc. ("EPS"), the owner of the MAC automatic teller machine network, has forced MAC member institutions to purchase ATM processing from EPS and that this is a per se unlawful tying arrangement between regional ATM network access and ATM processing. The Complaint also alleges that the tying arrangement is a means by which EPS has maintained a monopoly in regional ATM network access in Pennsylvania, New Jersey, Delaware, West Virginia and New Hampshire, and in substantial portions of Ohio.

The proposed Final Judgment enjoins EPS from requiring MAC members to purchase ATM processing from EPS, requires EPS to ensure that independent providers of ATM processing can obtain communication links to the MAC network, and enjoins EPS from forbidding MAC members to join other regional ATM networks.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard Rosen, Chief, Communications and Finance Section, room 8104, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Complaint

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

Nature of This Action

1. The United States brings this civil antitrust action to obtain permanent injunctive relief against an anticompetitive practice of defendant Electronic Payment Services, Inc. ("EPS") that constitutes a tying arrangement that is *per se* unlawful under Sherman Act section 1, 15 U.S.C. 1, and that constitutes a means whereby EPS unlawfully has maintained a monopoly in access to regional automatic teller machine ("ATM") networks in the Commonwealth of Pennsylvania and the States of New Jersey, Delaware, West Virginia and New Hampshire, and in substantial portions of the State of Ohio (collectively the "affected states"), all in violation of Sherman Act section 2, 15 U.S.C. 2.

2. EPS owns and operates the Money Access Service ("MAC") ATM network, which has market power or monopoly power in the market for regional ATM network access in the affected states. EPS generally prohibits its customers—banks, savings and loan associations and credit unions (collectively "banks") that seek to make ATM network services available to their depositors—from obtaining ATM processing services (described at paragraph 6 below) from independent data processing firms who seek to compete for that business. Instead EPS requires MAC customers either to obtain those services from EPS or to provide them in-house, at a cost that is prohibitive for many smaller banks.

3. As more fully described below, EPS's tying practice not only serves to raise the cost to banks of processing services, but also prevents banks from participating in more than one regional ATM network. Defendant thereby has maintained its monopoly in the affected states.

4. The United States seeks a permanent injunction, pursuant to Sherman Act section 4, 15 U.S.C. 4, prohibiting EPS from refusing to allow its customers to obtain ATM processing from third party processors; requiring EPS to connect to those third party processors on nondiscriminatory terms; and other and further relief appropriate to remedy these violations.

Definitions

5. "ATM network" means an arrangement whereby more than one ATM and more than one depository institution (or the deposit records of such depository institutions) are interconnected by electronic or telecommunications means, to one or more computers, processors or switches for the purpose of providing ATM services to the retail customers of depository institutions.

6. "ATM processing" means providing the data processing services and telecommunications facilities and services used:

1. To operate, monitor and support the operation of ATMs deployed by a depository institution;
2. To connect the ATMs deployed by a depository institution to that institution's deposit authorization records, for authorization and confirmation of "on-us transactions," and the record-keeping and other functions related to such transactions; and
3. To connect the ATMs deployed by a depository institution to one or more branded ATM networks for authorization and confirmation of "on-others transactions," and the record-keeping and other functions related to such transactions.

ATM processing can be provided as a service distinct from branded ATM network access, and can be performed in the facilities of the ATM switch, a depository institution's own facilities, or in the facilities of a data processing service organization.

7. "ATM switch" means a telecommunications and data processing facility used to receive and route transactions from ATMs or ATM processors to data processing facilities used by depository institutions to authorize ATM transactions. A "MAC switch" is an ATM switch operated by or on behalf of, or providing such functionality for branded ATM network access to, MAC or any successor branded ATM network controlled by defendant.

8. "Interceptor processor" means a depository institution that provides ATM processing for itself.

9. "MAC" means Money Access Service, the branded ATM network owned, controlled and operated by EPS, or any successor brand to "MAC."

10. "Third party processor" means any person that currently or in the future offers ATM processing services to depository institutions. Third party processors may include both depository institutions providing ATM processing for other depository institutions and firms unaffiliated with depository institutions that provide such services.

Party Defendant, Jurisdiction and Venue

11. EPS is made a defendant in this action. EPS has its principal place of business at 1100 Carr Road, Wilmington, Delaware 19809. EPS is owned by four bank holding companies: CoreStates Financial Corp., Philadelphia, Pa.; PNC Financial Corp., Pittsburgh, Pa; Banc One Corp., Columbus, Ohio; and KeyCorp, Albany, New York. EPS owns and operates MAC, a regional ATM network, and other businesses. "EPS" and "MAC" are used interchangeably in this Complaint.

12. This Court has jurisdiction over the subject matter of this civil antitrust action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4. This Court has jurisdiction over EPS pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22.

13. EPS is a Delaware corporation, and is found and transacts business in the District of Delaware. Venue is proper in the District of Delaware pursuant to 15 U.S.C. 12 and 28 U.S.C. 1491.

Interstate Commerce

14. Defendant's MAC ATM network is the largest ATM network in the United States by transaction volume. In 1992, the MAC network handled 92 million transactions monthly for 1,455 depository institutions deploying 13 thousand ATMs.

15. The MAC network operates in interstate commerce, and defendant's practices affect interstate commerce.

The MAC ATM Network and Its Practices

16. ATMs permit a depositor, using an ATM card and personal identification number, to obtain cash, monitor account balances, and transfer money or make payments. Some ATMs also permit customers to make deposits, and some dispense items of value other than cash (such as travelers checks, railroad tickets, etc.) ATMs usually are owned and maintained by individual banks, and are deployed by banks on premises and at other public locations convenient to their customers.

17. ATMs typically are connected by telephone wires to a computer that provides processing, also known as driving, for several ATMs. That computer often is connected to a network switch, such as the MAC switch, for interchange of transactions among otherwise unaffiliated banks. An ATM network typically charges a switch fee per transaction, and may also charge various monthly or annual membership fees. The processor charges a separate fee for its services. Outside the MAC network, the driving computer might be operated by the bank, by a network, or by an independent data processing firm, and driving computer might connect those ATMs to several different networks. MAC's rules and practices, however, constrain interconnection of different ATM networks.

18. Banks seek to participate in shared ATM networks, such as MAC, in order to give their depositors ubiquitous access to their accounts. While a bank can deploy its own ATMs, the advantage to a shared ATM network is that a bank's depositors will be able to use ATMs at many more locations than one bank alone could practicably support. The areas a bank seeks to serve through a shared ATM network include the areas in which its depositors live, work and ship, and the broader areas in which they move regularly. A bank's ability to offer its depositors access to other bank's ATMs, and thereby to offer its depositors convenient access to their accounts, is in most bankers' view necessary to attract and retain deposits. A bank—particularly a small bank, thrift or credit union with one or only a few offices—would be at a competitive disadvantage if it could not offer its depositors access to many conveniently located ATMs. Because no other service constitutes a reasonably close substitute for regional ATM network access, regional ATM networks constitutes a product market and a line of commerce within the meaning of the antitrust laws.

19. The MAC network is the dominant ATM network in the affected states. In Pennsylvania, New Jersey and Delaware, more than 90% of the ATMs are connected to MAC; in New Hampshire, approximately 80% of the ATMs are connected to MAC. No other regional network has a significant presence in Pennsylvania, Delaware, West Virginia or New Hampshire. Although the New York Cash Exchange ("NYCE") ATM network has a presence in New Jersey, for reasons set forth below, EPS's MAC network nonetheless has monopoly or market power in New Jersey.

20. Nearly all banks in the affected states believe they have no choice but to participate in the MAC network. Banks in the affected states affiliate with MAC because MAC is the only ATM network that provides ubiquitous ATM network access throughout all or most of the contiguous affected states. Banks that do not seek to provide regional ATM network access in areas smaller than these States do not have significantly greater alternatives than do statewide banks.

21. Banks in the affected states often obtain ATM network access from MAC even though defendant's switching and processing fees, and other costs of doing business with MAC, are higher than those charged by other networks and by independent processors. Defendant has market power in the market for regional ATM network access in the affected states. That market power is of sufficient size and durability to constitute monopoly power.

22. Until 1992, MAC generally did not permit its customers to participate in rival ATM networks while also participating in MAC. While the rule against multiple affiliations was formally dropped in 1992, MAC engages in practices that make it impractical for many participating banks—particularly smaller banks—to belong to a rival network while belonging to MAC. In particular, MAC requires banks either to obtain ATM driving from defendant or to provide ATM driving in-house as intercept processors, which is prohibitively expensive for many smaller banks, thrifts and credit unions. MAC generally forbids its network customers from obtaining ATM driving from any of the several data processing firms that provide that service in a national market.

23. There are several regional and national firms in the business of ATM processing that could and would seek to compete to provide ATM driving services to MAC network members. Absent MAC's prohibition, many MAC customers would seek to obtain ATM processing from these or other firms. Defendant's rules and practices thus prevent willing buyers and sellers from conducting business at competitively determined prices and terms.

24. Once defendant drives a bank's ATM, defendant can prevent that bank from connecting its ATM to another network. To connect to a network other than MAC, *MAC* must establish the connection. MAC generally has not provided connections to the ATM networks that would be its strongest competitors.

25. The anticompetitive effects of MAC's "no-third-party-processing" rule are twofold.

a. First, it excludes competitors from the market for ATM processing in areas where MAC has market power in the market for ATM network access, extending the exercise of that market power into the processing market and permitting MAC to charge higher prices—which it does both directly and indirectly; and

b. Second, by preventing many banks from participating in networks other than MAC, the rule makes it substantially more difficult for other networks to enter into MAC's areas of dominance to compete with MAC. The rule therefore serves to exclude competitors and maintain MAC's monopoly power.

26. The rule against third party processing is not necessary to obtain any efficiencies or quality control assurances that could not reasonably be obtained through less anticompetitive means. MAC allows some of its largest members to use third party processors, and permits those third party processors to connect to MAC, but will not allow those same third party processors to prove ATM driving services to other smaller MAC customers.

First Violation Alleged

27. The United States repeats and realleges the allegations of paragraphs 1 to 26 herein.

28. The provision by defendant of ATM network access and processing services pursuant to MAC's rules, constitute an agreement or agreements within the meaning of Section 1 of the Sherman Act.

29. Regional ATM network access and ATM processing are separate products.

30. Defendant has market power in the market for regional ATM network access in the affected states.

31. The amount of commerce affected in the market for ATM processing in the affected states is substantial.

32. Defendant's rules and practices act to force many of its ATM network access customers to purchase ATM processing from defendant, rather than

from other firms of the customer's choosing.

33. Defendant's tying arrangement unreasonably restrains trade and is unlawful *per se* under Section 1 of the Sherman Act.

Second Violation Alleged

34. The United States repeats and realleges the allegations of paragraphs 1 to 33 herein.

35. Defendant possesses substantial monopoly power in the market for regional ATM network access in the affected states.

36. Defendant willfully has maintained its monopoly power in the market for regional ATM network access in the affected states through exclusionary practices.

37. Defendant's actions and practices constitute unlawful monopolization under Section 2 of the Sherman Act.

Prayer for Relief

Wherefore, plaintiff the United States prays that:

a. Defendant be enjoined from requiring any depository institution that obtains ATM network access from defendant to obtain any ATM processing from defendant; from selling or contracting to see access to, membership in, or switching of transactions by the MAC network, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase ATM processing services from any other person; or from restricting in any manner, directly or indirectly, the ability of a depository institution to obtain ATM processing for access to the MAC ATM network from any person other than defendant;

b. Defendant be enjoined to provide third party processors with nondiscriminatory access to the MAC switch that is at least equal in type and quality to the access MAC provides to intercept processors;

c. Defendant be enjoined from discriminating in the pricing of access to the MAC network;

d. The United States be granted such other structural, injunctive or further relief as this Court may deem just and proper; and

e. The United States recover the costs in this action.

Dated: April 21, 1994.

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

Mark C. Schechter,

Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.

Richard L. Rosen,

Chief, Communications and Finance Section, Antitrust Division, 555 Fourth Street, NW., Washington, DC.

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Richard G. Andrews,

United States Attorney.

Nina A. Pala,

Assistant United States Attorney, Delaware Bar No. 2622, District of Delaware, 1201 Market Street, Wilmington, Delaware 19801, (302) 573–6277.

Stipulation

It is hereby stipulated and agreed, by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with paragraphs IV.J.4 and IV.J.5 of the proposed Final Judgment pending entry of the Final Judgment. The parties likewise shall abide by and comply with all other paragraphs of Section IV of the proposed Final Judgment pending its entry, provided that, not later than September 1, 1994, the public comment period provided for in 15 U.S.C. 16 shall have expired and the Department of Justice shall have filed with the district court its motion for entry of the proposed Final Judgment in its entirety and without modification.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

4. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendant in this or any other proceedings that Section 1 or 2 of the Sherman Act, 15 U.S.C. 1, 2, or any other provision of law, has been violated.

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Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

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Brett D. Fallon,

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Dated: April 21, 1994.

Final Judgment

Whereas Plaintiff, United States of America, having filed its Complaint in this action on April 21, 1994, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the person of the defendant. The Complaint states a claim upon which relief may be granted against the defendant under Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1, 2.

II

Definitions

As used in this Final Judgment:

A. "Defendant" and "EPS" means defendant Electronic Payment Services, Inc., its divisions, subsidiaries, affiliates, agents, officers, employees, successors and assigns, and without restriction means the business currently known as "Money Access Service" or "MAC," its employees, agents, officers, and any successor or assign of that business or any significant portion of the assets of that business. "Defendant" also includes all persons made subject to this Final Judgment pursuant to Section III hereof.

B. "ATM" means automatic teller machine, a machine typically owned and deployed by a depository institution, and used by depositors of that institution and others to withdraw cash and, in certain configurations, to perform one or more of the following additional functions: account inquiry, payment authorization, transfer or deposit.

C. "ATM network" means an arrangement whereby more than one ATM and more than one depository institution (or the deposit records of such depository institutions) are interconnected by electronic or telecommunications means, to one or more computers, processors or switches for the purpose of providing ATM services to the retail customers of depository institutions.

D. "ATM processing" means providing the data processing services and telecommunications facilities and services used:

1. To operate, monitor and support the operation of ATMs deployed by a depository institution;
2. To connect the ATMs deployed by a depository institution to that institution's deposit authorization records, for authorization and confirmation of "on-us transactions," and the recordkeeping and other functions related to such transactions; and
3. To connect the ATMs deployed by a depository institution to one or more branded ATM networks for authorization and confirmation of "on-others transactions," and the recordkeeping and other functions related to such transactions.

ATM processing can be provided as a service distinct from branded ATM network access, and can be performed in the facilities of the ATM switch, a depository institution's own facilities, or in the facilities of a data processing service organization.

E. "ATM switch" means a telecommunications and data processing facility used to receive and route transactions from ATMs or ATM processors to data processing facilities used by depository institutions to authorize ATM transactions. A "MAC switch" is an ATM switch operated by or on behalf of, or providing such functionality for branded ATM network access to, the MAC or any successor branded ATM network controlled by defendant.

F. "Authorization processing" means providing the data processing services and telecommunications facilities and services used to connect a branded ATM network to a depository institution's deposit authorization records, for authorization and confirmation of ATM transactions, and the recordkeeping and other functions related to such transactions.

G. "Branded ATM network access" means access to an ATM network identified by a common trademark or logo displayed on ATMs and ATM cards, and includes the offering for sale of the ability for an ATM card holder with an account at one member depository institution to request withdrawal, deposit, payment authorization, transfer or account inquiry transactions at an ATM identified by a network's trademark or logo owned by another member depository institution; transaction switching by an ATM switch; and the right to brand ATMs or ATM cards with the trademark or logo of an ATM network.

H. "Depository institution" means a bank, savings bank, savings and loan association, credit union or other institution authorized by federal or state law to take deposits. For the purpose of this Final Judgment, "depository institution" also includes any other member of a branded ATM network operated by defendant that also deploys ATMs within that network.

I. "Intercept processor" means a depository institution that provides ATM processing for itself.

J. "MAC" means Money Access Service, the branded ATM network owned, controlled and operated by EPS, or any successor brand to "MAC."

K. "MAC Midwest Platform" means MAC's data facility (or facilities) that on October 1, 1994, provides branded ATM network access to depository institutions located in the States of Illinois, Indiana, Kentucky, Michigan, Ohio and Tennessee, and at least the greater number of the depository institutions in the State of West Virginia that are branded ATM network customers of defendant.

L. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institute, governmental unit, or other legal entity.

M. "Third party processor" means any person that currently or in the future offers ATM processing services to depository institutions. Third party processors may include both depository institutions providing ATM processing for other depository institutions and firms unaffiliated with depository institutions that provide such services. A third party processor is "qualified" within the meaning of this Final Judgment if it is qualified within the meaning of Section IV.E below.

III

Applicability

The Final Judgment shall apply to defendant and each of its affiliates, subsidiaries, officers, directors, employees, agents, successors, and assigns; to any successor to any substantial part of the MAC business; to any entity that controls defendant as control currently is defined under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and its implementing regulations (see 16 CFR 801.1(b)); and to all persons acting in concert with defendant and having actual notice of this Final Judgment.

IV

Prohibited Conduct

Defendant is permanently enjoined and restrained as follows:

A. Defendant shall not require any depository institution that obtains branded ATM network access from defendant to obtain any ATM processing or authorization processing from defendant. Defendant shall not maintain or enforce any rule, policy, contract, agreement or arrangement pursuant to which defendant requires any depository institution to obtain ATM processing or authorization processing from defendant; that prohibits or purports to prohibit a depository institution from obtaining ATM processing or authorization processing from any third party processor; or that conditions MAC membership or availability of MAC or any successor branded ATM network access on any depository institution's obtaining ATM processing or authorization processing from defendant or not obtaining ATM processing or authorization processing from a qualified third party processor.

B. Defendant shall not sell or contract to sell access to, membership in, or switching of transactions by the MAC or any successor branded ATM network controlled by defendant, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase ATM processing or authorization processing services from any other person.

C. Defendant shall not establish as any condition, agreement, or understanding with respect to access to, membership in, or switching of transactions by the MAC or any successor branded ATM network controlled by defendant, or the price or terms of such access, membership, or switching, that the purchaser thereof shall not use or purchase ATM processing or authorization processing services from any other person. Defendant shall not impose any additional fees on any depository institution based on its obtaining ATM processing or authorization processing from any person other than defendant, except that defendant may impose additional fees for set-up and establishment of the network. Defendant will not require an unreasonable amount of set-up and establishment testing and certification. The aggregate of set-up and/or establishment fees charged to a depository institution, as allowed by this paragraph, and/or its third party processor, as allowed by paragraph IV.E.2 of this Final Judgment, shall not exceed $100 per person hour expended by Defendant up to a maximum of $1,000 unless significant difficulties that require additional work are caused by the third party processor or the depository institution. In such case, Defendant will charge $100 per hour for the next 40 person hours and $250 per hour for each additional hour that it expends. The hourly rates and maximum fees set forth in this paragraph may be adjusted over the term of this Final Judgment in accordance with the Consumer Price Index.

D. Defendant shall not restrict in any manner, directly or indirectly, the ability of a depository institution to obtain ATM processing or authorization processing for access to the MAC or any successor branded ATM network controlled by defendant from any qualified third party processor. Defendant shall not require any depository institution that obtains ATM processing or authorization processing from a third party processor to obtain any other service that is not required to provide such ATM or authorization processing from that processor or from any other person.

E. Defendant shall provide qualified third party processors with nondiscriminatory branded ATM network access to the MAC or any successor branded ATM network controlled by defendant that is at least equal in type and quality to the access defendant: (a) Provides to intercept processors, and (b) provided to intercept processors as of the date of the commencement of this action. Defendant shall not deny any qualified third party processor access to telecommunications ports or links necessary for the third party processor to provide ATM processing or authorization processing for depository institutions obtaining ATM network access from defendant. Defendant shall permit qualified third party processors to aggregate transactions of multiple banks over one or several telecommunications links and ports as technically reasonable, and defendant shall not require third party processors to obtain a separate link or port for each of its depository institution customers. A third party processor is qualified, within the meaning of this Final Judgment, if it completes defendant's certification process and meets:

1. The technical, financial and operating criteria for intercept processors and third party processors that provide services to only one depository institution established by defendant and in effect as of the date of commencement of this action, or such other reasonable and nondiscriminatory technical, financial and operating criteria for intercept processors and third party processors hereafter established by defendant; and

2. Such additional technical criteria regarding transaction information transmitted and the format for transmission of such information as is reasonably appropriate for third party ATM processing for unaffiliated multiple banks. No such criteria shall distinguish or discriminate between intercept processors and third party processors, except that volume discounts may be offered in a nondiscriminatory manner as provided in paragraph IV.G of this Final Judgment. Defendant shall not require any third party processor to satisfy additional certification requirements, or pay additional certification fees (other than reasonable set-up fees), by reason of its seeking or obtaining the business of additional customers as long as the processor elects to employ for these additional customers a message format/communications protocol combination for which defendant already has certified the processor.

Notwithstanding the foregoing, Defendant is not required to certify as a qualified processor any branded ATM network that is dominant on a state-wide basis or a subsidiary of such network that seeks to become a qualified processor in the MAC or any successor branded ATM network controlled by Defendant unless reciprocal access to become a processor in that network is available on a substantially similar basis as to pricing and terms to all qualified third party processors including other branded ATM networks that offer third party ATM or authorization processing to depository institutions.

F. Defendant shall not terminate any third party processor's access to the MAC or any successor branded ATM network controlled by defendant except on written notice to the processor thirty (30) days before such termination, except that Defendant can terminate any processor immediately if that processor: (1) Fails to pay at any time specified fees, charges or other amounts due and owed to defendant or any participant in defendant's branded ATM network; (2) violates any law or government regulation applicable to it that has adverse effect upon the MAC or any successor branded ATM network controlled by defendant; (3) has a bankruptcy or insolvency proceeding filed against it; or (4) appoints or has appointed by court order a trustee or receiver for any substantial part of its property. Defendant shall provide a copy of any notice of termination to the

Antitrust Division of the Department of Justice, to the attention of counsel of record or their named successors. Any termination in violation of this Final Judgment shall constitute a contempt of this Court and be punishable thereby.

G. Defendant shall not discriminate in the pricing of branded ATM network access to the MAC or any successor branded ATM network controlled by defendant on the basis of a customer's choice of ATM processor, but shall offer branded ATM network access on a nondiscriminatory basis, except that:

1. Defendant may offer volume discounts on branded ATM network access fees on a nondiscriminatory basis, provided that defendant shall permit any depository institution or third party processor for a depository institution to aggregate that institution's transaction volume delivered to a MAC switch, and any such depository institution shall be entitled to any such nondiscriminatory volume discount. Defendant shall not offer volume discounts to a depository institution operating as an intercept processor that are more favorable than those offer to a depository institution that obtains ATM or authorization processing from a qualified third party processor.

2. Defendant shall be permitted to offer depository institutions the option of obtaining transaction switching between member depository institutions by third party processors at nondiscriminatory royalties that shall not be greater than the price for switched transactions.

3. Defendant shall provide branded ATM network access pursuant to a nondiscriminatory price schedule applicable at least to depository institutions located in the States of Pennsylvania, New Jersey, and Delaware. Defendant's provision of branded ATM network access in States other than Pennsylvania, New Jersey, and Delaware, pursuant to a nondiscriminatory price schedule in one State, shall not be deemed to be discriminatory by reason of the use of a different price schedule in another State.

H. Defendant shall not restrict in any manner the ability of a depository institution to obtain branded ATM network access through qualified third party processors or through their own intercept processor facilities to multiple providers of branded ATM network access. Defendant shall not condition its provision of branded ATM network access on a depository institution's not obtaining branded ATM network access from any other person. Defendant shall not sell or contract to sell access to, membership in, or switching of transactions by any branded ATM network controlled by defendant, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase branded ATM network access from any other person, or establish a price for, discount from, or rebate upon access to, membership in, or switching of transactions by the MAC or any successor branded ATM network controlled by defendant, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase branded ATM network access from any other person. Defendant shall in no manner restrict any depository institution ATM deployer that chooses to be affiliated with multiple ATM networks from displaying multiple ATM network logos on its ATMs. Defendant shall not prohibit any depository institution ATM card issuer located in the States of Pennsylvania, New Jersey, Delaware, Indiana or Ohio that chooses to be affiliated with multiple ATM networks from issuing cards that display multiple ATM network logos. Notwithstanding the preceding, Defendant may require that its ATM network logo be displayed on ATMs and ATM cards in equal frequency and prominence as the logos of any other ATM networks and may restrict the branding of access cards that contain an integrated circuit computer chip with a stored value function. Defendant shall in no manner restrict any depository institution ATM deployer from enabling ATMs to function in multiple ATM networks.

I. Notwithstanding the preceding, defendant is not enjoined from entering into an agreement, not inconsistent with the terms of this Final Judgment, for the provision of ATM processing or authorization processing to any depository institution to which defendant has provided actual notice of, and a true copy of, this Final Judgment. Any such agreement shall be severable from any agreement to provide branded ATM network access to the MAC or any successor branded ATM network controlled by defendant.

J. The injunctions specified in Sections IV.A through IV.E of this Final Judgment shall become effective as provided by the terms of this paragraph:

1. Defendant shall commence certification of third party processors not later than January 1, 1995, except that defendant shall commence certification of processors in the MAC Midwest Platform not later than October 1, 1994.

2. Each third party processor who seeks certification shall be allowed to complete certification in a reasonably prompt manner and within the range of time common in the industry, and shall not be denied such resources under the control of defendant (e.g., test time) as are necessary for certification. Upon a third party processor's completion of certification, such processor shall be permitted to act as a qualified third party processor in the MAC network, except that defendant is not required by this paragraph IV.J.2, prior to January 1, 1995, to permit a third party processor that completes certification in the MAC Midwest Platform to act as a qualified third party processor for depository institutions not located in the States of Illinois, Indiana, Kentucky, Michigan, West Virginia or Ohio, or depository institutions located in the State of West Virginia but not served by defendant through the MAC Midwest Platform as of the date of commencement of this action.

3. Sections IV.A through IV.E of this Final Judgment shall be effective and in force, as to any third party processor and the depository institution customers of such processor, as of the date upon which such third party processor becomes a qualified third part processor.

4. Sections IV.A through IV.E of this Final Judgment shall be effective and in force as of the date of entry of this Final Judgment in any portion of the MAC or any successor ATM network controlled by defendant in which depository institutions had the option of using third party multi-bank ATM processors as of January 1, 1993. Defendant shall not renounce or deny any right that it previously granted to depository institutions to obtain ATM processing or authorization processing from third party processors.

5. Defendant shall not take steps to prevent or discontinue any existing arrangements whereby third party processors provide ATM processing or authorization processing in connection with branded ATM network access as of January 1, 1993.

V

Sanctions

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or person any relief available under any applicable provision of law.

VI

Plaintiff Access

A. To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the

Antitrust Division, and on reasonable notice to the defendant, be permitted:

1. access during the defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

2. to interview the defendant's officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from defendant.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this Section VI shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the court of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Further Elements of Decree

A. Defendant shall provide actual notice and a true copy of this Final Judgment to each depository institution to which it provides branded ATM network access as of the date of this Final Judgment.

B. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

C. This Final Judgment shall terminate ten years from the date of entry.

D. Entry of this Final Judgment is in the public interest.

Dated: Wilmington, Delaware

U.S.D.J.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On April 21, 1994, the United States filed a civil antitrust complaint pursuant to Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against defendant Electronic Payment Services, Inc. ("EPS"), owner of the Money Access Service ("MAC") regional automatic teller machine ("ATM") network.[1] The complaint alleges that EPS's refusal to allow the MAC network's bank customers[2] to obtain ATM processing services from providers other than EPS violates the antitrust laws.

The complaint's two counts allege: (1) That a business practice of EPS is a tying arrangement that is *per se* unlawful under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1, and (2) that this typing arrangement is a means by which EPS has maintained a monopoly in regional ATM network access in the States of Pennsylvania, New Jersey, Delaware, West Virginia and New Hampshire, and in substantial portions of the State of Ohio (the "affected states"), in violation of Section 2 of the Sherman Act, as amended, 15 U.S.C. 2.

The effect of this practice is to foreclose competition from competing data processing companies in the affected states. Furthermore, because those competing data processing companies would otherwise provide means by which MAC member banks could access competing regional ATM networks, this practice has the effect of excluding those networks and maintaining EPS's monopoly in regional ATM network access in the affected states. The complaint seeks an injunction prohibiting EPS from continuing the tying arrangement, and other relief.

On April 21, 1994, the United States and EPS filed a Stipulation by which the parties consented to entry of the attached proposed Final Judgment. This Final Judgment, as explained more fully below, enjoins EPS from requiring any of its regional ATM network customers to purchase ATM processing from EPS.

The United States and EPS have stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II

Facts Giving Rise to the Alleged Violation

The Antitrust Division of the United States Department of Justice has conducted an extensive investigation of EPS's business practices. That investigation shows the following:

A. Background

1. *ATMs and ATM Networks.* ATMs are machines typically owned and deployed by banks and used by their depositors with ATM cards most frequently to withdraw cash, but also to accomplish balance inquiries, deposits, payment authorizations, and transfers. An ATM network is an electronic telecommunications systems connecting various banks, their ATMs, and data processing companies, which allows an account holder of one bank to accomplish transactions at ATMs not owned by that bank.[3]

Most ATM networks are "regional," operating in areas encompassing a state or several contiguous states. ATMs and ATM cards within the regional ATM network display a mark or brand identifying the network, so that depositors can identify the ATMs from which they may access their accounts. National ATM networks exist, but these are by design networks of last resort, used only where the two banks involved in a transaction do not both belong to any one regional ATM network. National ATM network transactions are typically more expensive, and those networks provide only a subset of the transactions available through regional ATM networks.

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[1] EPS is a Delaware corporation owned by four bank holding companies: CoreStates Financial Corporation, Philadelphia, Pennsylvania; PNC Financial Corporation, Pittsburgh, Pennsylvania; Banc One Corporation, Columbus, Ohio; and KeyCorp, Albany, New York (successor to Society Corporation, Cleveland, Ohio). These four bank holding companies consolidated their various ATM networks (MAC, Owl, Jubilee and Green Machine) into EPS. MAC had previously been owned entirely by CoreStates. EPS plans to add two other equity owners: Mellon Bank Corporation and National City Corporation.

[2] The customers of an ATM network are the depository institutions (banks, savings banks, savings and loan associations and credit unions) that seek to give their depositors access to an ATM network. These depository institutions are referred to collectively as "banks" in this Competitive Impact Statement.

[3] Some banks and bank holding companies operate switches connecting only the ATMs deployed by branches of their own bank or their subsidiary banks, rather than connecting to non-affiliated banks. These networks are also generally referred to as ATM networks. However, in this Competitive Impact Statement, the term "network" is used to refer to what is sometimes called a "shared network," in that it connects multiple non-affiliated banks.

An ATM network allows banks to provide their depositors with ubiquitous, 24-hour access to their accounts. A bank that becomes a member of a regional ATM network can offer its depositors access to their accounts not just at the bank's own ATMs, but also at other banks' ATMs. Bankers believe that the ability to offer depositors the convenience of access to their accounts at other banks' ATMs is necessary to attract and retain deposits. A bank—especially a small bank, thrift or credit union with one or only a few offices, and that deploys few, if any, ATMs—would be at a significant competitive disadvantage without the ability to offer its depositors access to many conveniently located ATMs. No other service is a close substitute for regional ATM network access, and regional ATM network access constitutes a product market within the meaning of the antitrust laws.

2. *ATM processing.* "ATM processing" consists of the data processing services and telecommunications facilities and services used to operate, monitor and support the operation of ATMs deployed by a bank. ATM processing also involves the connection of the ATMs deployed by a bank to that bank's deposit records, for authorization and confirmation of that bank's depositors' transactions, and the connection of the ATMs deployed by a bank to one or more ATM networks for authorization and confirmation of other banks' depositors' transactions. Finally, ATM processing connects ATMs to an ATM network or to several ATM networks.

A bank can purchase this ATM processing service from a regional ATM network or from an independent data processing company ("third party processor"), or can provide this processing service to itself (as an "intercept processor"). However, a bank must deploy a large number of ATMs before it becomes economical to provide ATM processing internally. Accordingly, small banks, thrifts, and credit unions very rarely act as intercept processors.

3. *Competitive effects of third party processors.* Third party processors provide banks, especially smaller ones, with a competitive source for ATM processing. Equally important, third party processors offer a channel for the entry of competing regional ATM networks. Third party processors typically maintain connections to several regional ATM networks, and those networks therefore can reach all of the banks connected to a third party processor. Accordingly, the cost of and barriers to entry of regional ATM networks fall dramatically.

In addition, third party processors themselves are potential entrants. Because a third party processor could switch transactions among its customer banks itself (a process known as "subswitching") rather than passing those transactions to the network switch, it is a potential "unbranded" ATM network. To become a competitor to the existing branded regional ATM networks, the third party processor need only put its brand on the ATMs and ATM cards of its customer banks and begin switching transactions.

B. EPS and Its Actions

The complaint alleges that EPS has monopoly power in ATM network access in the affected states, and that EPS has illegally tied the sale of access to its MAC regional ATM network to the sale of the ATM processing for many of EPS's bank customers. The complaint also alleges that this illegal tying arrangement has worked to maintain EPS's monopoly power in the market for regional ATM network access in the affected states. This section, discusses EPS's actions and their anticompetitive effects in more detail.

1. *Elimination of ATM processing competition.* EPS requires its member banks to purchase ATM processing services from EPS or provide it themselves as intercept processors.[4] The effect of this rule is that small banks, thrifts, and credit unions—banks that cannot economically become intercept processors—are forced to purchase ATM processing from EPS. This rule has foreclosed third party processors from competing for banks' ATM processing business within the MAC regional ATM network.

EPS's exclusion of third party processor competition from the MAC network has allowed EPS to exact very high profits from small banks, thrifts and credit unions. EPS has done so via two sorts of fees. *First*, and most directly, EPS charges much more per ATM for ATM processing than third party processors typically charge. *Second*, EPS increases its own switching volume and revenues by prohibiting third party processing. Where EPS drives a bank's ATMs, every transaction at those ATMs passes through the MAC switch and is charged to the bank as a switched transaction, including those transactions by the bank's own depositors (its "on-us" transactions). In contrast, intercept processors and banks that use third party processors do not send on-us transactions to a network switch. If banks could use third party processors, MAC would not process, or collect switch fees, for those on-us transactions. Without third party processors, EPS's switch volume and switch fee revenues are commensurately higher.

EPS's switch fees hit hardest those MAC banks with the fewest ATM processing options. EPS banks large enough to be intercept processors escape the EPS charge for "on-us" transactions, and only pay MAC switch fees when their depositors use other banks' ATMs. The smaller banks that cannot afford to be intercept processors pay switch fees for a much higher proportion of their depositors' transactions. EPS takes advantage of this by imposing on its membership the steepest switch fee schedule in the industry.[5] The result is that the small banks that are forced—by EPS's third party processing restriction—to send all their ATM transactions to the MAC switch must also pay very high fees for the switching of those transactions.

2. *Deterrence of entry by competitor regional ATM networks.* The complaint alleges that a further anticompetitive effect of the illegal tying arrangement is to maintain EPS's market power in the market for regional ATM network access in the affected states. EPS's third party processor prohibition has insulated the MAC regional ATM network from the competitive influences of third party processors. This subsection gives a history of the MAC network's largely successful efforts to keep competitors out of its core areas, and explains how EPS's current practice of excluding third party processors from the MAC network deters entry today.

a. *A History of anticompetitive practices.* For most of its existence and until 1992, the MAC network explicitly prohibited its bank customers from belonging to other regional ATM networks. MAC combined this practice with a number of strategic purchases of adjacent regional ATM networks. These acquisitions, the prohibition on multiple regional ATM network affiliation, and the third party processor prohibition together proved to be a formidable force for keeping the affected states free from competition.

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[4] Under MAC's rules, only those banks which have previously been intercept processors can obtain ATM processing from third party processors.

[5] MAC switch fees range from a low of 5¢ (what large member banks with a large number of ATMs and transactions pay) to a high of 25¢ (what the smaller banks with fewer ATMs and transactions—the ones effected by EPS's third party processing restriction—usually must pay). No other major regional ATM network excludes third party processors, and all have much flatter switch fee schedules: e.g. Star, 3.5¢ to 8¢; NYCE, 6¢ to 13¢; Honor, 2¢ to 10¢. Most, 3.5¢ to 14¢; Pulse 6¢; Accel/Exchange, 12¢; Yankee 24, 12¢; and Magic Line, 12¢. "EFT Switch Fee Slide May Be Nearing Its End," *Bank Network News* (Jan. 27, 1993).

b. *Effect of the third party processor prohibition.* EPS's third party processing prohibition forces small banks that cannot economically provide their own ATM processing to purchase the service from EPS. Because EPS effectively controls the communications links of their ATMs, these banks cannot connect their ATMs to other regional ATM networks without the assistance—and approval—of EPS. EPS therefore exercises an effective veto over these banks' access to other networks in the affected states, and conversely, other networks' access to these banks. Third party processors, on the other hand, often offer access to several regional ATM networks. If these banks were able to utilize third party processors, other regional networks would be much more likely to seek and obtain their business. EPS's control over access to other regional ATM networks prevents these networks from entering the affected states.[6]

EPS's exclusion of third party processors also prevents the establishment of new networks. As discussed above, if third party processing were allowed in the affected states, a third party processor could almost instantly form a new network simply by placing a new "brand" on the ATMs and cards of its customer banks. The third party processor would then switch these banks' transactions itself. The MAC network would switch transactions in only two cases: (1) When a depositor of a bank connected to the third party processor used an ATM owned by a bank not connected to the third party processor; or (2) when a depositor of a bank not connected to the third party processor used an ATM owned by a bank connected to the third party processor.

While EPS excludes third party processors from the MAC network, would-be entrant regional ATM networks are substantially unable to enter. The small banks that wish to join another network (which might offer ATM network access at lower prices) will not be able to do so unless the other network has enough of a presence to provide small banks' depositors with sufficient ubiquity and convenience. The entrant network, of course, cannot achieve the critical mass necessary to attract banks. Accordingly, EPS's third party processing restriction creates what economists call a "collective action problem," and EPS's monopoly persists.

C. The Alleged Violations

1. *First claim for relief—tying.* The actions and policies of EPS described above constitute a tying arrangement that is per se unlawful under Section 1 of the Sherman Act. An unlawful tying arrangement is one in which two separate products are sold together, the seller forces buyers to purchase these products together, the seller has market power in the tying product, and the tying arrangement prevents what would otherwise be a substantial amount of commerce in the tied product. *Eastman Kodak Co. v. Image Technical Services, Inc.*, 112 S.Ct. 2072 (1992); *Jefferson Parish Hospital District No. 2* v. *Hyde*, *466 U.S. 2 (1984).*

The two products in this case are regional ATM network access and ATM processing, which outside of MAC can be, and often are, purchased separately. As described above, however, EPS's practices force banks wishing to obtain membership in MAC, and thereby access to its regional ATM network, to also purchase ATM processing from MAC. Because MAC is the only ubiquitous regional ATM network in the affected states and banks will not forego access to such a network, EPS has market power in this tying product. Evidence gathered in the investigation indicates that there is substantial commerce in the tied product.

2. *Second claim for relief-monopolization.* EPS's actions and practices also constitute monopolization in violation of Section 2 of the Sherman Act. An unlawful monopoly involves both the possession of monopoly power in the relevant market and the willful acquisition or maintenance of that power. Willful acquisition or maintenance of a monopoly is shown by conduct that excludes rivals on some basis other than efficiency, superior skill, foresight or industry. *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *United States* v. *Grinnell Corp.*, 384 U.S. 563 (1966).

As described above, EPS's MAC network is the only ubiquitous regional ATM network available to banks in the affected states, and banks cannot forego access to such a network. EPS's prohibition of third party processing and other practices prevents many banks from using competing regional ATM networks, and results in the exclusion of those networks. EPS's conduct therefore constitutes unlawful monopolization.

III

Explanation of the Proposed Final Judgments

The proposed Final Judgment will end unlawful practices that substantially reduce competition in the markets for regional ATM network access and ATM processing. The injunctions of the proposed Final Judgment do so by removing substantial barriers to the entry of competition in the affected states. Removal of these barriers is the most effective means of providing current and future MAC member banks with additional options for the purchase of these services.

These practices are enjoined, and these barriers are removed, by the injunctions of Section IV of the proposed Final Judgment, which require EPS to terminate its restrictions on the use of third party processors by MAC members, to ensure that qualified third party processors can obtain access to the MAC network, and to enable MAC members to join other regional ATM networks.

Paragraphs A through D of Section IV require EPS to terminate its restrictions on the use of third party processors by MAC members. EPS is enjoined from requiring its members to purchase ATM processing from MAC, from forbidding the use of third party processors, from conditioning the price or other terms of MAC membership on the use or non-use of third party processors, and from restricting the ability of MAC members to obtain third party processing. EPA is also enjoined from charging any additional fees to MAC members for the use of third party processors.[7]

Paragrahs E and F of Section IV ensure that qualified third party processors will be able to access the MAC network in order to forward network transactions of their MAC member customers. To ensure that qualified third party processors will obtain adequate communications links to MAC, the links provided to third party processors must be provided on the same terms as the links MAC provides to its intercept processor customers.[8] So that qualified third party processors can operate in the most efficient manner, EPS must, to the extent feasible, permit transactions from multiple banks to pass over a single communications link rather than requiring a separate link for each bank. Except under specified circumstances where immediate termination would be appropriate, EPS may not terminate a third party processor without providing 30 days notice, and it must provide a copy of the notice to the United States. This will give the United States an opportunity to examine the competitive consequences of any such termination.

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[6] EPS offers its members "gateways"—through MAC to a few regional ATM networks, but controls the price and terms of this route of access. EPS does not offer gateways to most regional ATM networks operating in areas adjacent to the affected states, which would offer the greatest competition to MAC Gateways therefore do not remove the entry barrier to regional ATM networks created by EPS's restrictions on third party processing

[7] The proposed Final Judgment permits EPS to charge an hourly fee for reasonably necessary work performed by its personnel in connection with a bank becoming the customer of a third party processor. The total charge may not exceed $1000 unless significant difficulties arise at the processor's or bank customer's end.

[8] As explained in Section II.A.2 of this Competitive Impact Statement, intercept processors are generally the larger banks and therefore those

To allow EPS to ensure the quality of the MAC network, the proposed Final Judgment requires EPS to provide MAC network access only to qualified third party processors. As with the quality of communications links, the standards for qualification of third party processors are tied to MAC's qualification standards for intercept processors. A third party processor is qualified if it meets MAC's technical, financial and operating criteria for intercept processors and third party processors providing services to only one bank, and whatever additional technical criteria concerning the format and content of transmissions are appropriate for third party processors processing for multiple banks. These criteria may not discriminate between intercept and third party processors, nor may EPS charge additional fees to third party processors for certification.[9]

Paragraph G of Section IV prevents EPS from discriminating in the price of ATM network access against MAC members that choose to utilize third party processors. The volume discounts available to members using third party processors must be the same as the volume discounts available to intercept processors. Also, EPS must use a single price schedule for banks in Pennsylvania, New Jersey and Delaware, the areas in which the MAC network has historically had the greatest monopoly power, and in which two of its principal owners (CoreStates and PNC) are located. By drawing this larger area, EPS may not favor its own stockholders in Pennsylvania without giving similar volume discounts to large banks in New Jersey and Delaware. EPS may use different price schedules in other states.

The preceding injunctions will remove the restrictions EPS has imposed on MAC member banks in their choice of ATM processors, and thereby break the unlawful tie EPS has established between purchase of MAC ATM network services and purchase of ATM processing. The direct consequence will be to make the purchase of third party processing a realistic option for MAC members. This should bring about the entry of competitors to MAC for ATM processing. As discussed in Section II.A.3 of this Competitive Impact Statement, third party processors often have links to many regional ATM networks, and so use of a third party processor by a bank can facilitate its joining of multiple ATM networks. Therefore, an indirect consequence of breaking the unlawful tie between MAC ATM network services and processing services will likely be an increase in competition in the markets for regional ATM network access in the affected states.

To ensure that competition for ATM network services is in fact enhanced, Paragraph H of Section IV of the proposed Final Judgment enjoins EPS from restricting the ability of MAC members to access other networks through their own facilities or those of third party processors. While MAC itself is not required to establish gateways to competing networks, it may not hinder its members form joining other networks. EPS also may not condition the price or terms of MAC membership upon not joining another network. EPS must permit MAC members to display multiple network marks on ATMs and ATM cards, except for electronic stored value cards.[10] The injunction against prohibiting multiple branding of ATMs applies in all areas where MAC operates; the injunction against prohibiting multiple branding of ATM cards applies only in the States of Pennsylvania, New Jersey, Delaware, Ohio and Indiana, areas in which MAC historically had monopoly power, or in which there is a dangerous probability that MAC might soon gain monopoly power.[11]

Portions of the proposed Final Judgment, including the section lifting EPS restrictions on the participation of MAC members in competing ATM networks, will take effect immediately upon entry. Paragraphs A through E of Section IV, which lift EPS restrictions concerning the use of third party processors, will take effect in two stages. On October 1, 1994, EPS must begin the certification process for third party processors in the MAC Midwest Platform. It must allow third party processors to complete certification in a reasonably prompt manner, after which these processors will be able to act as third party processors for banks in MAC's midwest region. On January 1, 1995, EPS must allow certified third party processors to act as third party processors for all banks in the MAC network, and it must begin the process of certifying third party processors in any remaining region. The delay between entry of the proposed Final Judgment and the effective dates of the injunctions provides EPS sufficient time to undertake the technical steps necessary to ensure that all regions of the MAC network will be able to accommodate third party processors.

These provisions take effect immediately in any area where banks were permitted to use third party processors as of January 1, 1993. This prevents EPS from banning third party processing in recently acquired or soon to be acquired networks where third party processing has not been restricted. Also, EPS may not discontinue existing arrangements whereby MAC members use third party processors.

The United States and EPS have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

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that have the largest ATM transaction volumes. Accordingly, they provide the most revenue per bank to EPS, giving EPS a strong incentive to provide them adequate services, including communications links. Because EPS has an incentive to deal fairly with its intercept processor customers, several provisions of the decree concerning treatment by EPS of third party processors (and MAC members that use third party processors) are tied to EPS's treatment of intercept processors in similar circumstances. By using the treatment of intercept processors as a benchmark, the proposed Final Judgment avoids a detailed regulatory approach to these issues.

[9] As discussed in footnote 7, EPS may charge a one-time fee for reasonably necessary work it performs when a third party processor adds another bank. This charge, whether directed to the bank or the third party processor, may not exceed $1000.

[10] Permitting EPS to restrict the multiple branding of electronic stored value cards will not lessen the procompetitive impact of the proposed Final Judgment, because the branding of ordinary ATM cards, which are by far more common, is not restricted. EPS maintains that allowing restrictive branding of electronic stored value cards will encourage innovation and competition in services among firms marketing such cards.

[11] The United States believes that MAC also has monopoly power in New Hampshire and West Virginia. However, the United States believes that the proposed Final Judgment contains sufficient guarantees to open up those States to competition since there is substantial commerce between those States (or portions of them) and other regions in which MAC is not a significant competitor.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgments within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and response(s) of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to Richard Liebeskind, Assistant Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., room 8104, Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered litigation seeking structural relief, including division of the MAC network. The United States rejected that alternative because the termination of MAC's restrictive practices concerning use of third party processors and membership in multiple regional ATM networks will effectively break the unlawful tie established by EPS between ATM network access and ATM processing. Breaking this tie will encourage the entry of competitors in the affected states in the markets for ATM network services and ATM processing more efficiently than division of the MAC network. In addition, division of the MAC network was likely to involve the Court and the parties in a complex and time-consuming process of reorganizing the network, delaying the desired improvement in competition.

The United States also recognized that such litigation would require determination of several disputed issues of law and fact, and that there could be no assurance that the position of the United States would prevail.

VII

Standard of Review Under the Tunney Act for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed final judgment "is in the public interest." In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). The courts have recognized that the term "public interest" "take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserv[e] free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[12] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[13]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

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[12] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[13] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted); *see United States* v. *BNS, Inc* 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[14]

VIII

Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgments. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

Dated: April 21, 1994.

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

Mark C. Schechter,

Deputy Director of Operations.

Antitrust Division,

U.S. Department of Justice, Washington, DC 20530.

Richard L. Rosen,

Chief, Communications & Finance Section, U.S. Department of Justice, Antitrust Division, Communications and Finance Section, 555 Fourth Street, NY., Washington, DC 20001.

Richard Liebeskind,

Assistant Chief.

John J. Sciortino,

Don Allen Resnikoff, Kevin C. Quin, Attorneys.

U.S. Department of Justice,

Antitrust Division, Communications and Finance Section, 555 Fourth Street, NW., Washington, DC 20001, (202) 514–5628.

Richard G. Andrews,

United States Attorney, District of Delaware.

Nina A. Pala,

Assistant United States Attorney, Delaware Bar No. 2622, District of Delaware, 1201 Market Street, Wilmington, Delaware 19801, (302) 573–6277.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Competitive Impact Statement was served upon counsel for defendant Electronic Payment Services, Inc. by enclosing same in a postage pre-paid envelope addressed to:

Stephen Paul Mahinka, Morgan, Lewis & Bockius, 1800 M St., NW., Washington, DC 20036

Brett D. Fallon, Smith, Katzenstein & Furlow, 1220 Market Street, 5th Floor, Wilmington, Delaware 19801.

and mailed this 20th day of April, 1994.

Kevin C. Quin.

[FR Doc. 94–11571 Filed 5–11–94; 8:45 am]

BILLING CODE 4410–01–M

U.S. v. Tele-Communications, Inc. and Liberty Media Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16 (b) through (h), that a proposed Final Judgment, a Stipulation and a Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Tele-Communications, Inc. and Liberty Media Corporation*, Civil No. 94–0948.

The Complaint in the case alleges that the effect of the proposed merger between the two defendants, Tele-Communications, Inc. and Liberty Media Corporation, may be substantially to lessen competition among multichannel subscription television providers and video programming providers.

The proposed Final Judgment enjoins the defendants from (A) discriminating against unaffiliated video programming offered by such providers, where the effect of such discrimination is unreasonably to restrain competition; and (B) discriminating against unaffiliated multichannel subscription television providers in the sale or license of video programming, where the effect of such discrimination is unreasonably to restrain competition. These injunctions apply with respect to the conduct of organizations under the defendants' control. With interest not amounting to control, the proposed Final Judgment enjoins defendants from seeking or supporting conduct that would violate (A) or (B) above is engaged in directly by defendants.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, Department of Justice, 555 4th Street NW., room 8104, Washington, DC 20001 (telephone: 202/514–5621).

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation

United States of America, Plaintiff, v. Tele-Communications, Inc. and Liberty Media Corporation, Defendants.

Civil Action No. 94–0948, Judge Richey, Filed: 4/28/94.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed

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[14] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C.), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1982) quoting *United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

Final Judgment by serving notice on the defendants and by filing that notice with the Court;

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding;

3. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendants in this or any other proceeding that section 7 of the Clayton Act, 15 U.S.C. 18, or any other provision of law, has been violated.

Dated: April 26, 1994.

Anne K. Bingaman,
Assistant Attorney General.

Steven C. Sunshine,
Deputy Assistant Attorney General.

Constance K. Robinson,
Director of Operations.

Richard L. Rosen,
Chief, Communications and Finance Section.

Joe Sims,
Counsel for Defendants, Jones, Day, Reavis & Pogue, Metropolitan Square Building.

N. Scott Sacks, Patricia A. Shapiro, Kevin C. Quin, Nancy Dickinson, Susannah M. Zwerling,
Counsel for Plaintiff, Antitrust Division, U.S. Department of Justice.

Final Judgment

Plaintiff, United States of America, filed its Complaint on April 26, 1994. Plaintiff and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed:

I

Jurisdiction

This Court had jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against Defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

II

Definitions

As used in this Final Judgment:

A. *Affiliated* means an ownership interest (other than a de minimis interest) in, or the right to direct the management decisions of, an entity.

B. *Control* means (i) the right, contractual or otherwise, to direct the management decisions of an entity, or (ii) an ownership interest of 50% or greater, unless Defendants do not have the right to direct the management decisions of such entity.

C. *Financial interest* means any economic interest, including, but not limited to, any ownership interest or right to any portion of current or future revenues.

D. *Multichannel subscription television distributor* means a person providing multiple channels of video programming to consumers fro which a fee is charged, by any of various methods including, but not limited to, cable, satellite master antenna television, multichannel multipoint distribution, direct-to-home satellite (C-band, Ku-band, or broadcast satellite), or the facilities of common carrier telephone companies or their affiliates.

E. *Video programming provider* means a person engaged in the wholesale distribution for sale of video programming.

III

Applicability

This Final Judgment shall apply to Defendants and each of their affiliates, subsidiaries, officers, directors, employees, agents, successors, and assigns:

IV

Prohibited Conduct

A. Defendants are restrained and enjointed, with respect to each multichannel subscription television distributor they control, from discriminating against any video programming provider not affiliated with Defendants in the selection, terms or conditions of carriage of video programming offered by such distributors, where the effect of such discrimination is to unreasonably restrain competition. Nothing in this paragraph is intended to create any automatic right of access for any individual video programming provider to any individual multichannel subscription television distributor controlled by Defendants.

B. Defendants are restrained and enjoined, with respect to any video programming provider they control, from refusing to sell or license, or from selling or licensing only on a discriminatory basis, any video programming service for distribution by any competing multichannel subscription television distributor, where the effect of such conduct is to unreasonably restrain competition. Differences in price or terms reasonably based on ordinary commercial factors, including but not limited to those factors currently set forth in 47 CFR 76.1002 (b), shall not constitute discrimination.

C. Defendants are restrained and enjoined, with respect to any multichannel subscription television distributor or video programming provider in which they have any financial interest but do not control, from seeking or supporting any conduct that would be prohibited by (A) and (B), above, if engaged in by Defendants.

V

Sanctions

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against Defendants or any person any relief available under any applicable provision of law.

VI

Plaintiff Access

A. To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

2. To interview Defendants' officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to Defendants' reasonable convenience and without restraint or interference from Defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit such written reports, under oath if requested, relating to any or the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this section VI shall be divulged by the Plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceeding to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Further Elements of Decree

A. This Final Judgment shall expire five years from the date of entry.

B. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provision. Any party to this Final Judgment may seek modification of its substantive terms and obligations, and neither the absence of specific reference to a particular event in the Final Judgment, nor the foreseeability of such an event at the time this Final Judgment was entered, shall preclude this Court's consideration of any modification request. The common law applicable to modification of final judgments is not otherwise altered.

C. Entry of this Final Judgment is in the public interest.

United States District Judge.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA or "Tunney Act"), 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Tele-Communications, Inc. and Liberty Media Corp. in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On April 26, 1994, the United States filed a civil antitrust complaint, under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, against Tele-Communications, Inc. ("TCI"), and Liberty Media Corporation ("Liberty") (collectively "Defendants"), alleging that the proposed merger of Defendants violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

TCI is the largest cable multiple systems operator ("MSO") in the United States in terms of subscribers, and Liberty is one of the largest MSOs. Pursuant to an agreement dated January 27, 1994, TCI and Liberty agreed to merge. Combined, TCI and Liberty would have financial interests in cable systems accounting for more than 13 million subscribers, or approximately one-fourth of the nation's cable subscribers. The combined firms would also have substantial financial interests in a large number of providers of video programming to multichannel subscription television distributors. The Complaint alleges that the effect of such combination may be substantially to lessen competition in violation of section 7 of the Clayton Act, 15 U.S.C. 18, by:

1. Decreasing actual and potential competition among video programming providers, because the combined TCI-Liberty may have the increased ability and incentive to discriminate with respect to access to its cable systems, or the terms and conditions of such access, in favor of its affiliated video programming providers and against unaffiliated video programming providers.

2. Decreasing actual and potential competition among multichannel subscription television distributors, because the combined TCI-Liberty may have the increased ability and incentive to deny to competing multichannel subscription television distributors access to its affiliated video programming services, or to provide such access only on unreasonable terms.

On April 26, 1994, the United States and Defendants filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the proposed merger. The proposed Final Judgment, as explained more fully below, would enjoin Defendants from discriminating against unaffiliated video programmers with respect to access to its cable systems and other multichannel subscription television distributors ("MSTDs"), and from discriminating against other MSTDs with respect to its programming providers, where such discrimination results in an unreasonable restraint on competition.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

A. *Description of the parties and the proposed transaction.* TCI is the largest cable multiple systems operator ("MSO") in the United States, with financial and management interests in cable systems serving more than 10.2 million subscribers. TCI also has substantial interests in direct-to-home satellite delivery of multichannel subscription television service, with both a substantial C-band satellite business and a partnership interest in Primestar Partners, L.P., a Ku-band satellite multichannel subscription television service. TCI also has financial and management interests in programming services such as The Discovery Channel, The Learning Channel, E! Entertainment Television, Request Television (pay-per-view), Home Shopping Network Inc., QVC Network Inc., Starz, Rocky Mountain Prime Sports Network, and Turner Broadcasting Systems, Inc. (which provides Cable News Network (CNN), Headline News, The Cartoon Network, TBS and Turner Network Television (TNT)).

Liberty is a large cable MSO, with financial and management interests in cable systems serving 2.9 million subscribers. Liberty also has financial and management interests in a wide range of programming services, including Black Entertainment Television (BET), The Box, Courtroom Television Network, Encore, Starz, Family Channel, Home Shopping Network Inc., QVC Network Inc., Prime Sports Network and more than a dozen regional sports channels.

TCI and Liberty intend to merge pursuant to an agreement dated January 27, 1994. Together TCI and Liberty will serve more than 13 million subscribers, or about a quarter of the nation's cable subscribers, and have financial interests in a wide range of programming services, including a number of the most popular and widely-carried services.

B. *Historical relationship between TCI and Liberty.* In 1990, TCI created Liberty, a new public company, through a rights offering to TCI shareholders and moved certain TCI assets into Liberty. According to TCI, the new company was created for two reasons. First, the company anticipated that possible federal legislation or regulation might force such divestiture later under unfavorable circumstances; a voluntary separation allowed TCI to retain ties to the new company. Second, in a smaller company, management would be able to devote greater attention to maximizing the value of Liberty assets and have greater freedom to pursue growth opportunities in the cable industry. TCI management also felt that capital and financial markets had not given appropriate recognition to certain TCI interests and assets, particularly in the cable programming area, because they were difficult for security analysts and others to identify, value and track; TCI hoped that, in a smaller company, the actual and potential value of those interests and assets would be appropriately recognized.

Although Liberty was organized as a separate company, it shared stockholders and directors with TCI. Five shareholders maintained voting control of both firms, and Bob Magness has simultaneously served as Chairman of the Board of TCI and a director of Liberty, and John Malone has simultaneously served as President, Chief Executive Officer, and a director of TCI and Chairman of the Board of Liberty. TCI acknowledges that the two companies have cooperated closely since Liberty was formed, and are partners in a number of ventures.

In 1992, Congress passed the Cable Television Consumer Protection and Competition Act, Public Law No. 102–385, 106 Stat. 106 (1992) ("1992 Cable Act"), which, combined with implementing FCC regulation, established a legal framework regarding, among other things, the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest, and delineating the extent to which multichannel video programming distributors may engage in the creation or production of video programming. TCI claims that the cable system and programming assets of TCI and Liberty can be recombined under this regulatory framework, and that appropriate market valuation for Liberty's assets has been achieved, thus obviating the principal reasons for separating the companies. According to TCI the recombination will eliminate certain inefficiencies and costs of separation, as well as eliminate confusion and conflicts that may have resulted from the separation.

While not indifferent to the cooperative relationship between the firms and the commonality of control in five shareholders and common managers and directors, the Department has analyzed the proposed merger as a transaction involving two separate entities, since separate legal and fiduciary obligations exist for each of the firms that require each firm to operate in its distinct interest.

C. *Effects on competition.* A multichannel subscription television distributor ("MSTD") is an entity that provides multiple channels of video programming to consumers on a subscription or fee basis, as differentiated from local broadcast television stations which individually provide a single channel at no charge within their broadcast areas. MSTDs deliver programming to consumers utilizing various methods, including cable, multichannel multipoint distribution ("MMDS"), satellite master antenna television ("SMATV"), direct-to-home satellite, or the facilities of common carrier telephone companies or their affiliates.

The United States filed its complaint because the effects of the proposed merger may be substantially to lessen competition (i) among providers of video programming to MSTDs in the United States, and (ii) among MSTDs in the areas in the United States in which TCI and Liberty control cable system.[1] The merger of TCI and Liberty would result in a vertically integrated firm with (1) substantial interests in widely distributed and popular video programming and (2) control of approximately one-quarter of the nation's cable subscribers. Accordingly, the merged firm may have both the ability and incentive to lessen competition by discriminating against non-affiliated programmers in terms of access to its MSTDs and by denying to competing MSTDs access to its video programming on reasonable terms.

The market for multichannel subscription television distribution today is overwhelmingly dominated by local cable systems. Cable television service is available in nearly all urban ad suburban areas in the United States as well as many rural areas, passing more than 95% of the nation's estimated 92 million television households. Cable television systems currently serve more than 55 million subscribers in more than 11,300 cable systems located in all 50 states, or about 60% of households passed. Nearly all communities are served by a single cable system; fewer than 0.5% of the more than 10,000 cable franchise areas have more than one cable system available to local cable subscribers. Today, cable television systems face very limited competition from other types of distribution systems, including MMDS, SMATV, and direct-to-home satellite, and may face competition in the future from video dialtone services.

MMDS delivers programming over microwave channels received by subscribers with special antennae. There are currently fewer than 150 MMDS systems in operation, serving an estimated 600,000 subscribers. MMDS has recently obtained regulatory approval to deploy systems that are considered technologically superior, which may increase its availability and attractiveness as an alternative to cable television service.

SMATV is essentially a private cable system, typically used in apartment buildings or other high-density housing. SMATV is estimated to have fewer than 1 million subscribers.

Home satellite dishes are used to receive programming from communications satellites. More than two and one-half million satellite dishes have been sold in the United States. C-band satellite service, which is provided by low-power satellites, requires consumers to install satellite receiving dishes eight to twelve feet in diameter at an installed cost of $1,500 or more. Because of its high installed cost and the size of the receiving dish required, C-band satellite is a poor alternative to cable television service for most current or potential cable subscribers. Medium-power Ku-band satellite service, provided by TCI and its partners in a joint venture called Primestar Partners, L.P., uses dishes three feet in diameter and has approximately 70,000 subscribers. High-power DBS is expected to become operational and available within a few months using a dish 18 inches in diameter, and may by virtue of its smaller dish size be more attractive to consumers so that it ultimately may offer greater competition to cable service than the other satellite services.

Video dialtone is a multichannel subscription television service recently authorized by Federal Communications Commission regulation and being developed by common carrier telephone companies. Using the telephone network, telephone companies plan to offer distribution of programming provided by third parties. As the telephone companies improve the capabilities and capacity of their networks, they are expected to be able to offer greatly expanded channel capacity and services such as "video-on-demand." At present, there are a small number of pilot projects demonstrating the service. Widespread development of video dialtone services in the future may present a substantial competitor to cable systems. Common carrier telephone companies also have announced their interest in providing cable service directly to subscribers in the event that legal restrictions on their offering such services within their operating regions are removed.

As discussed above, both TCI and Liberty, in addition to operating cable systems, each have substantial financial interests in video programming services provided to cable systems and other MSTDs. The merger of TCI and Liberty creates a vertically integrated firm with substantial power both as a MSTD and as a video programming provider. TCI and Liberty together will effectively control access to about one-fourth of cable subscribers and will be affiliated with eight of the twenty most widely distributed cable programming services. This substantial integration is likely to increase abilities and incentives to restrain competition in two ways. First, the merged firm could discriminate against competitive video programmers in favor of its affiliated programmers by refusing to carry programs or by denying similar terms or conditions thereby making it significantly more difficult for such competitive programmers to operate profitably or to compete effectively against the merged firm's programming services. Second, the merged firm could deny access to or discriminate in terms of access to its programming to competing MSTDs, making it more difficult for competitive distribution systems to obtain programming necessary to compete effectively against the merged firm's MSTDs.

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[1] These product and geographic markets are appropriate markets in which to assess the possible competitive effects of this proposed merger. Whether or not these markets will be appropriate markets in which to analyze other transactions or conduct within the industry will, of course, depend on the particular circumstances presented in each individual case.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. The stipulation provides that entry of the Final Judgment does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of the APPA, the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. The Department believes that the proposed Final Judgment provides an adequate remedy for the alleged violation and is in the public interest. The term of the proposed Final Judgment is five (5) years. The length of this term reflects the Department's recognition that this industry is one that has experienced major changes in MSTD technologies that are on-going, and the effects of the 1992 Cable Act and its implementing FCC regulations.

Section IV(A) of the proposed Final Judgment enjoins Defendants' cable systems and other MSTDs from discriminating against non-affiliated video programmers in the selection, terms, or conditions, where the effect of such conduct is unreasonably to restrain competition. This provision does not create an automatic right of access for any individual video programmer to any of Defendants' individual MSTDs, nor is it intended to inhibit good faith negotiations between Defendants and unaffiliated programmers regarding the terms and conditions of carriage. However, where the effect of discrimination by Defendants is to restrain competition, such conduct is prohibited. Discriminatory conduct can take a variety of forms depending on individual circumstances, and may include, but is not limited to, discrimination in: (i) Pricing; (ii) channel assignment; (iii) tiering or packaging of programming services; (iv) promotional activities; and (v) signal quality.

By section IV(B), Defendants are enjoined from refusing to sell or license, or from selling or licensing only on a discriminatory basis, video programming in which they have an interest to any competing MSTD, where the effect of such conduct is unreasonably to restrain competition. Differences in price or terms that are reasonably based on ordinary commercial factors, including but not limited to the factors currently set forth in 47 CFR 76.1002(b), will not constitute prohibited discrimination. This section therefore does not prevent defendants from engaging in good faith business negotiations or from imposing reasonable requirements for the creditworthiness or service quality of a distributor, or from establishing prices, terms, and conditions that reasonably reflect actual differences in the distributor's costs of providing such video programming or economies of scale or other economic benefits reasonably attributable to the number of subscribers served by such distributor. This provision does assure that Defendants may not refuse to license their video programming to competing MSTDs where the effect would be to inhibit the ability of such MSTDs to compete against Defendants.

Section IV(C) extends the prohibitions set forth in sections IV (A) and (B) to prevent Defendants from seeking or supporting, with respect to any MSTD or video programming provider in which Defendants have any financial interest but do not control, conduct that would violate sections IV (A) or (B) if engaged in by Defendants. For example, should Defendants urge Turner Broadcasting, Inc. to deny programming to a competing MSTD under circumstances that would result in an unreasonable restraint on competition, such conduct by Defendants would violate this section.

By prohibiting conduct by Defendants that might restrain competition in the provision of video programming or multichannel subscription television distribution, the Department believes that the anticompetitive effects of the proposed merger alleged in the Complaint will be fully remedied. In addition, by expressly including common carrier telephone companies and their video dialtone customers in the definition of MSTDs, the proposed Final Judgment will make clear the defendants' obligation to refrain from anticompetitive discrimination against these potential competitors. The Department's view as to the sufficiency of this relief also rests on the existence of sections 12 and 19 of the 1992 Cable Act, and their implementing FCC regulations, as well as the judgments recently entered in *U.S.* v. *Primestar Partners, L.P., et al.*[2] and *State of New York, et al.* v. *Primestar Partners, L.P., et al.*[3] ("Primestar cases").

IV

Remedies Available to Potential Litigants

Section 4 of the Clayton Act, U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of section 5(a) of the Clayton act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person believing that the proposed Final Judgment should be modified may submit written comments within the sixty (60) day period from the date of publication in the **Federal Register** to Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., room 8104, Washington, DC 20001. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over these actions, and any party may apply to the Court for any order necessary or appropriate for their modification, interpretation or enforcement.

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[2] No. 93 Civ. 3913 (S.D.N.Y. April 4, 1994).

[3] 1993–2 Trade Cas. (CCH) ¶¶ 70 403–4 (S.D.N.Y. Sept. 14, 1993).

VI

Alternatives To the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation to enjoin the merger. The United States rejected that alternative because the relief in the proposed Final Judgment should prevent the possible occurrence of conduct the effect of which may be substantially to lessen competition in the provision of video programming to MSTDs in the United States or competition among MSTDs in the geographic areas in which Defendants have cable systems. Moreover, the terms of the proposed Final Judgment are supplemented by the provisions of the 1992 Cable Act and its implementing FCC regulations, as well as the judgments in the Primestar cases. Under these circumstances, seeking to enjoin the merger would only prevent the two firms from achieving the economic efficiencies that may result from vertical integration and, given their history and present circumstances, eliminating the cost imposed by their legal separation into separate firms.

VII

Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such document to the proposed Final Judgment.

N. Scott Sacks, Patricia A. Shapiro, Kevin C. Quin, Nancy Dickinson, Susanna M. Zwerling,

Trial Attorneys, Antitrust Division, U.S. Department of Justice.

[FR Doc. 94–11572 Filed 5–11–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Little Rock Coal Company

[Docket No. M–94–43–C]

Little Rock Coal Company, RD #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4) and (5) (weekly examination) to its Lykens Valley #1 Vein Slope (I.D. No. 36–08320) located in Schuylkill County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. K & L Coal Company

[Docket No. M–94–44–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. K & L Coal Company

[Docket No. M–94–45–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. K & L Coal Company

[Docket No. M–94–46–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. K & L Coal Company

[Docket No. M–94–47–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the pre-shift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. K & L Coal Company

[Docket No. M–94–48–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4) and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Harman Mining Corporation

[Docket No. M–94–49–C]

Harman Mining Corporation, P.O. Box 60, Harman, Virginia 24628 has filed a petition to modify the application of 30 CFR 77.215(j) (refuse piles; construction requirements) to its Coal Preparation Plant (I.D. No. 44–02714) located in Buchanan County, Virginia. The petitioner proposes to continue monitoring the refuse pile, I.D. No. 1211–VA5–0005.05 by subsurface investigation and thermal monitoring instead of extinguishing the refuse pile fire. The petitioner states that application of the standard would result in a diminution of safety for the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Consolidation Coal Company

[Docket No. M–94–50–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1)(weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. Due to deteriorating roof and rib conditions, the Shaft Circle air course located near the intersection of 94 block, Main North to Oakdale Shaft, cannot be traveled safely. The petitioner proposes to establish check points CP #1, CP #2, and CP #3 to monitor the quantity of air ventilating the affected area; and to have a certified person test for methane and the quantity of air on a weekly basis and record the results in a record book kept on the surface and made available to all interested persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Consolidation Coal Company

[Docket No. M–94–51–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. Due to deteriorating roof and rib conditions in the air course along the West Side of the Main North entries that flow south from 1 North (adjacent to 3 North Crossover Seals) to the junction with the 1 West entries, the entire area cannot be traveled safely. The petitioner proposes to establish check points to monitor the quantity of air; and to have a certified person test for methane and the quantity of air on a weekly basis and record the results in a record book kept on the surface and made available to all interested persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Consolidation Coal Company

[Docket No. M–94–52–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b) (2), (4) and (c)(3) (weekly examination) to its Ireland Mine (I.D. No. 46–01438) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions in the 4 South seals and certain air courses from the 4 South seals to the No. 2 Fan, the area cannot be traveled safely. The petitioner proposes to change the location of air measuring stations "C" and "D" and to continue evaluating daily air measuring stations "A" and "B" that were established in Decision and Order dated July 17, 1989, Docket No. M–88–252–C; to post a sign in the adjacent travel entry designating the location of these measuring stations in the adjacent travel entry; to establish an air measuring station "F" on the surface at Ireland Mine No. 2 Fan in lieu of air measuring stations "C" and "D"; and to have a certified person monitor each air measuring station daily and record the results in a book that would be provided at each air measuring station and on the surface and made available to all interested persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Kerr-McGee Coal Corporation

[Docket No. M–94–53–C]

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Galatia Mine (I.D. No. 11–02752) located in Saline County, Illinois. The petitioner proposes to use electric motor-driven mine equipment in a longwall recovery room. This equipment would serve as a power center (transformer) in intake air to furnish power to roofbolters with a 1200 foot long, Number 2, G–GC, 2KV trail cable, protected for a short circuit fault with an instantaneous circuit breaker set at not more than 600 amperes at all points of the recovery room. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Buck Mountain Coal Company No. 2

[Docket No. M–94–54–C]

Buck Mountain Coal Company No. 2, R.D. #2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Buck Mountain Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Eighty-Four Mining Company

[Docket No. M–94–55–C]

Eighty-Four Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1101–8(a) (water sprinkler systems; arrangement of sprinklers) to its Mine 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to install a thermostat device on the electrical control side of the belt so that when it is activated it would de-energize the belt control side of the Combination Box and trigger an audible and visual alarm to miner's working in the immediate area; to have a qualified person examine, test, and properly maintain on a weekly basis each Combination Box to assure safe operating conditions; and to record the results of each examination in a book. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. Soldier Creek Coal Company

[Docket No. M–94–56–C]

Soldier Creek Coal Company, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Soldier Canyon Mine (I.D. No. 42–00077) located in Carbon County, Utah. The petitioner requests a modification of the standard to allow the 4 foot wide stairway at overcasts installed prior to November 16, 1992 to be used as an underground escapeway instead of using a 6 foot wide escapeway. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Cyprus Sierrita Corporation

[Docket No. M–94–01–M]

Cyprus Sierrita Corporation, 9100 E. Mineral Circle, Englewood, California 80112 has filed a petition to modify the application of 30 CFR 56.6309 (fuel oil requirements for ANFO) to its Sierrita Mine (I.D. No. 02–00144) located in Pima County, Arizona. The petitioner proposes to blend recycled oil with fuel oil to create a blasting agent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 13, 1994. Copies of these petitions are available for inspection at that address.

Dated: May 5, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–11573 Filed 5–11–94; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

[Application No. L–9412, et al.]

Proposed Exemptions; Beaumont Area Pipefitters Joint Apprenticeship Committee, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Beaumont Area Pipefitters Joint Apprenticeship Committee (the Plan) Located in Beaumont, Texas; Proposed Exemption

[Application No. L–9412]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act shall not apply to the purchase of certain real property (the Property) by the Plan from Pipefitters Local 195 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (the Union), a party in interest with respect to the Plan, provided that the following conditions are met:

1. An independent fiduciary determines that the proposed transaction is in the best interests of the Plan;
2. The fair market value of the Property is established by an appraiser unrelated to the Plan or the Union;
3. The Plan pays no more than the lesser of $462,800 or the fair market value of the Property as determined at the time of purchase;
4. The purchase is a one-time transaction for cash; and
5. The Plan pays no fees or commissions in regard to the transaction.

Summary of Facts and Representations

1. The Plan is an apprenticeship training plan established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. As of January 31, 1994, the Plan had 580 participants and total assets of $1,248,499. On the same date, the number of employers contributing to the Plan totaled 21.

2. The Property consists of 2.74 acres of land and improvements located adjacent to property of the Union. The improvements include three one and

two-story buildings, constructed by the Union in 1968 and 1978, designed for use as classroom and apprenticeship training facilities for the Plan and its participants. From 1968 to 1988 the Plan operated an apprenticeship program on the Property pursuant to a lease of the Property by the Union to the Plan.[1] In August 1988 the Union sold the Property to the Plan. The Plan partially financed this purchase by obtaining a loan from the Sabine Area Pipefitters Local 195 Pension Trust Fund (Local 195 Pension Plan). The Local 195 Pension Plan, which was later merged into the Plumbers and Pipefitters National Pension Fund, had interlocking trustees with the Plan and the Plan made some contributions to the Local 195 Pension Plan on behalf of its participants. The loan was repaid in June 1991.

In September 1990 the Department commenced an investigation of the Plan regarding the sale of the Property by the Union to the Plan and the loan between the Plan and the Local 195 Pension Plan.[2] Also, an application for exemption for retroactive relief from the prohibited transaction provisions of the Act was submitted to the Department for these transactions. In a letter in January 1992, the Department cited as reasons for denying the exemption application, among other factors, the lack of the review and prior approval of the transactions by an independent fiduciary. Following this exemption denial, an agreement was reached with the Department which required that the Property be sold back by the Plan to the Union. Such sale occurred in December 1992. Since that date, the Plan has utilized the Property as a training facility without charge from the Union. However, the applicant represents that because of an economic downturn in the area, the Union considers it a hardship to continue this arrangement.

3. The applicant obtained an appraisal on the Property on January 14, 1994, from Donnie M. Jones, MAI (Jones), a real estate appraiser located in Port Arthur, Texas. Jones represents that he is not related in any way to the Plan or the Union. Utilizing the income, cost and sales comparison approaches to value, Jones estimated that the Property had a fair market value of $462,800 as of the date of the appraisal. By letter dated March 1, 1994, Jones stated that he was aware, in preparing the appraisal, that the Plan was the prospective buyer of the Property and that this knowledge had no influence on his calculation of value.

4. The Plan now proposes to purchase the Property from the Union so that the Plan itself will own the training and educational facilities used to train journeymen and apprentices. Plan fiduciaries note that ownership of the Property will give the Plan full control of the buildings, grounds and parking lots and will enable the Plan to make improvements to the Property as needed. The Plan will pay no more than current fair market value for the Property, as established by an updated independent appraisal. The purchase will be a one-time transaction for cash and the Plan will pay no fees or commissions in regard to the purchase. The applicant represents that, after the purchase of the Property, the Plan will have more than enough funds for operational purposes of the training program.

5. The Plan and the Union have selected Joseph P. Connors, Sr. (Connors), an attorney with the firm of Connors Associates, Inc. in Washington, DC to serve as independent fiduciary in regard to the proposed transaction. The applicant represents that Connors is independent of the Plan and the Union. Connors states that he has had extensive experience working with Taft-Hartley plans, including serving as chairman of funds of the United Mine Workers. Connors further states that he is well aware that while acting as independent fiduciary he assumes personal liability and he must act solely in the interest of the Plan and its participants.

Connors maintains that the proposed transaction is definitely in the best interests of the Plan. In this regard, Connors has met with officers of the Union and trustees of the Plan and has made an inspection of the Property with Russell Allen, the training director for the Plan. The Plan has operated an apprenticeship program utilizing the Property since the initial time of construction in 1968. As independent fiduciary, Connors will make certain that the Plan pays no more than fair market value for the Property and will enforce all rights of the Plan in regard to the proposed transaction.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The purchase of the Property will give the Plan ownership of the facilities it uses for its apprenticeship training program; (2) an independent fiduciary has determined that the proposed transaction is in the best interests of the Plan and its participants; (3) the Plan will pay no more than fair market value for the Property, based on an updated independent appraisal; (4) the purchase will be a one-time transaction for cash; and (5) the Plan will pay no fees or commissions in regard to the transaction.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Hartford Life Insurance Company (Hartford Life) and Hartford Investment Management Company (HIMCO) Located in Hartford, Connecticut; Proposed Exemption

[Application Nos. D–9458 and D–9459]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to sales and transfers of assets of employee benefit plans (the Plans) to Hartford Life pursuant to the terms of a synthetic guaranteed investment contract (Synthetic GIC) entered into by the Plan with Hartford Life and HIMCO, provided the following conditions have been met: (a) Prior to the execution of such Synthetic GIC, an independent fiduciary of such Plan receives a full and detailed written disclosure of all material features of the Synthetic GIC, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves in writing the execution of the Synthetic GIC on behalf of the Plan; (c) all fees and charges imposed under such Synthetic GIC are reasonable; (d) each Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Synthetic GIC; (e) Hartford Life will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by and responsible solely to the Plan; and (f) the Synthetic GIC will be offered only in principal amounts of $50 million or more.

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[1] Prohibited transaction exemption (PTE) 78–5 (43 FR 23024, May 30, 1978) permits, under certain conditions, the leasing of real property by an apprenticeship plan from a sponsoring employee organization. The Department expresses no opinion as to whether the above lease satisfied the conditions of PTE 78–5 nor is any relief provided herein.

[2] The above described transactions may have constituted prohibited transactions under section 406 of the Act. Such section prohibits, in part, a sale or exchange of property between a plan and a party in interest, a use of plan assets for the benefit of a party in interest, and the acting of a fiduciary in a plan transaction on behalf of a party whose interests are adverse to those of the plan or its participants.

Summary of Facts and Representations

1. Hartford Life is a stock life insurance company organized under the laws of the State of Connecticut. As of December 31, 1992, Hartford Life had assets of approximately $20.8 billion and insurance in force of approximately $93.5 billion. Hartford Life is currently rated as follows: A.M. Best—A++; Standard & Poor's—AAA; Duff & Phelps—AAA; and Moody's—Aa2. Hartford Life is a wholly owned subsidiary of Hartford Life and Accident Company, which is in turn a subsidiary of Hartford Fire Insurance Company. Hartford Fire Insurance Company is owned by the ITT Corporation. A significant portion of Hartford Life's business consists of writing insurance and annuity contracts, guaranteed investment contracts, and other types of funding agreements for numerous pension plans, most of which are subject to title I of the Act.

2. HIMCO, a wholly owned subsidiary of Hartford Life, is an investment management company registered as an investment adviser under the Investment Advisers Act of 1940. As of March 31, 1993, HIMCO had $3.06 billion in assets under management. HIMCO manages assets in various Hartford Life separate accounts and other portfolios.

3. For many years, Hartford Life has offered various guaranteed investment contracts (GICs) for sale in the qualified plan market. A GIC is a type of contract under which an insurance company, in exchange for a sum of money, guarantees that it will return that sum to the contractholder on a specified maturity date, with interest at the specified rate. In anticipation of its obligation, the insurance company invests the funds received from the contractholder primarily in fixed-income instruments, in order to achieve a return that will enable the company to meet its guarantee at maturity. Typically, these fixed-income investments are held in the company's general asset account, although under some type of GIC products, the investments are held in a separate account.

4. Recently, many pension fund investment managers have expressed interest in achieving an even higher degree of security for plan investments than that afforded by conventional GICs. In response, some insurance companies have begun to offer Synthetic GICs. Under some Synthetic GICs, instead of paying a premium to the insurance company on the effective date of the contract, the plan places assets in a custodial bank account owned by the plan. The assets are held in that account by the bank custodian and are managed exclusively by the insurance company or an affiliate until the contract's maturity. If the market value of the assets in the custodial account at maturity is less than the amount initially placed in the account plus guaranteed interest, the insurer must make the plan whole for the difference. The assets in the account are never owned by the insurance company, however, and the plan's investment is therefore not affected by risks to which the insurer's own assets may be subject.

5. Hartford Life now intends to offer a Synthetic GIC product to Plans. Hartford Life's Synthetic GIC will be offered in principal amounts of $50 million or more. Thus, Hartford Life intends to offer its Synthetic GICs only to large Plans.

6. Essentially, the Synthetic GIC will consist of an investment management agreement under which HIMCO, acting in a fiduciary capacity, will manage assets of a Plan placed in the custody of a bank (the Bank) selected by the Plan (with the approval of Hartford Life). The Synthetic GICs offered by Hartford Life will differ from conventional management agreements, however, in that Hartford Life will guarantee that the amounts placed in the bank custodial account for management by HIMCO will be released to the Plan, with interest at a specified rate, on certain specified dates. The Synthetic GIC will be benefit responsive in that it may be tailored to meet the Plan's predictable benefit obligations by establishing Scheduled Account Distribution Dates (see rep. 10, below) at appropriate times. In addition, unscheduled interim distributions, referred to as Benefit Sensitivity Advances (see rep. 22, below), will also be available under certain circumstances. At all times, the Plan, not Hartford Life, will remain the legal owner of the account.

7. The decision to enter into a Synthetic GIC will be made on behalf of a Plan by a Plan fiduciary who is independent of Hartford Life and HIMCO. The applicants represent that due to the large size of the Plans involved, the independent fiduciaries authorizing Plans to enter into the Synthetic GICs can be expected to be (or to retain) sophisticated professional asset managers with specialized expertise in the area of GICs and similar investments. Prior to the Plan's investment, Hartford Life will furnish the Plan's independent fiduciary full and detailed disclosure of all features of the Synthetic GIC, including all applicable fees (see rep. 24, below) and charges (see reps. 16 and 23, below). There is no additional fee or charge for the guarantee.

8. When a Plan enters into a Synthetic GIC with Hartford Life, an account (the Account) will be established for the Plan. Contributions made by the Plan to the Account on the "Account Commencement Date" and on any subsequent dates specified in the Synthetic GIC will be delivered to the Bank and credited to the Account. The assets in the Account will be held in the Bank's custody and subject to management by HIMCO. Contributions placed into the Account will be invested immediately; there will be no time lag between the time the contributions are put in the Account and the time they are invested.

9. The Synthetic GICs will not be offered on a pooled basis; in other words, a separate custodial Account will be established for each Plan that enters into a Synthetic GIC with Hartford Life and the assets in that Account will be managed separately from any assets subject to a Synthetic GIC with another Plan.

10. Hartford Life's guarantee as to principal and interest under a Synthetic GIC will come into play on certain specified dates, namely, the "Scheduled Account Termination Date" and any "Scheduled Account Distribution Date(s)" provided for prior to the Scheduled Account Termination Date. On those dates, as described in greater detail below (see reps. 15 and 16, below), the Plan will be entitled to distributions from the Account of the "Adjusted Book Value" of contributions previously made to the Account. (Specific amounts will be distributed on the Scheduled Account Distribution Date(s), if any, and the balance of the Account's Adjusted Book Value will be distributed on the Scheduled Account Termination Date, at which time the Synthetic GIC will terminate.) Adjusted Book Value is defined as the net asset balance of the Account derived from contributions plus interest at a specified "Guaranteed Rate of Interest" determined by mutual agreement between Hartford Life and the Plan, less prior withdrawals. (The Guaranteed Rate of Interest that Hartford Life will be willing to offer under a particular Synthetic GIC will be based on yields on securities of various durations currently available in the marketplace at the time the Synthetic GIC is executed.) In other words, Hartford Life will guarantee that on the Scheduled Account Distribution Date(s) (if any) and on the Scheduled

Account Termination Date, distributions will be made to the Plan in amounts at least equal to contributions previously made to the Account, plus interest at the Guaranteed Rate of Interest, with appropriate adjustments for withdrawals (i.e., Scheduled Account Distributions, and Benefit Sensitivity Advances as described in rep. 22, below).

11. The applicants represent that the Guaranteed Rate of Interest for a particular Synthetic GIC will be established by arm's-length negotiation between the Plan and Hartford Life in advance of entering into the contract, and will be set forth in writing in the Synthetic GIC instrument. Once established, the Guaranteed Rate of Interest will not be modified for the term of the agreement. The considerations that will be taken into account in the negotiation process will be essentially the same as those that affect guaranteed interest rates offered under conventional GICs. Under its Synthetic GIC, Hartford Life will be willing to offer a Guaranteed Rate of Interest that takes into account the rate of return it believes it will be able to achieve in managing the assets in the Account, based on currently available investments that are consistent with the investment guidelines imposed by the Plan, and with allowance for Hartford Life's quarterly management fees (see rep. 24, below). The applicants further represent that they and the Plans will be aware of the rates that other companies are offering for similar products. Hartford Life represents that this, together with the Plans' ability to negotiate the investment guidelines (and thus the level of risk) applicable to the Account, will avoid any realistic potential for abuse.

12. HIMCO will acknowledge in writing that it will be a fiduciary of each Plan and will be subject to the Act's fiduciary standards in managing the assets in each such Plan's Account. The general investment objectives of the Account will be current income with stability of principal. The agreement governing each Synthetic GIC will instruct HIMCO to manage the Account to achieve a total return over the holding period to maturity which is sufficient to produce the Synthetic GIC's Guaranteed Rate of Interest.

13. Each Synthetic GIC will provide investment guidelines for achieving these investment objectives. While there will be some flexibility in the investment guidelines to allow each Synthetic GIC portfolio to be customized to meet the unique needs of the particular Plan, the guidelines will essentially call for HIMCO to apply the same investment techniques that Hartford Life and other life insurance companies use in investing their own general account assets so as to meet guaranteed benefit obligations under life insurance and annuity contracts. A central feature of these techniques is the selection of a portfolio of securities matching contractual obligations as to timing and amount.

14. Under the guidelines, the Account will be required to be primarily invested in fixed income securities, while maintaining a level of liquidity sufficient to provide for anticipated benefit payments by investing partly in traditional money market securities. As a means of achieving a higher guaranteed return than would be possible by investing exclusively in fixed income and money market securities, the guidelines will allow limited and properly hedged investment in riskier securities such as common stocks, but they will not permit direct investment in real estate. The applicants represent that limited investment in riskier securities will benefit the Plan by allowing Hartford Life to offer a slightly higher Guaranteed Rate of Return than would be possible if the Account supporting the Synthetic GIC were invested exclusively in fixed income and money market investments. Any investment in employer securities (within the meaning of section 407(d) of the Act) will be subject to guidelines established by the Plan.

15. Distributions prior to the Scheduled Account Termination Date which are subject to Hartford Life's guarantee as to principal and interest (Scheduled Account Distributions) will occur on Scheduled Account Distribution Dates (see rep. 10, above) and in amounts which will be agreed upon between a Plan and Hartford Life prior to the execution of a Synthetic GIC and will be specified in writing. On each Scheduled Account Distribution date, HIMCO will be required to liquidate securities sufficient to meet the Scheduled Account Distribution. In most instances, the assets will be liquidated by a sale in the open market. However, Hartford Life reserves the right to purchase the assets to be liquidated. When it elects to do so, Hartford Life must pay the fair market value of the asset as of the close of business on the date of the sale, determined as set forth in rep. 21, below. Hartford Life will then distribute to the Plan an amount equal to the Adjusted Book Value of the Scheduled Account Distribution. The Adjusted Book Value of the Account will then be reduced by the amount of the Scheduled Account Distribution. To the extent that the market value of the assets liquidated on a Scheduled Account Distribution Date exceeds the amount of the Scheduled Account Distribution, the excess will be retained in the Account and reinvested.

16. On the Scheduled Account Termination Date, the Bank will distribute to Hartford Life all of the assets in the Account, and Hartford Life will simultaneously distribute to the Plan an amount which will not be less than the aggregate Adjusted Book Value of the Account. As noted above, (see rep. 10, above), the Adjusted Book Value will generally be equal to contributions plus the applicable Guaranteed Rate of Interest, with adjustments for previous withdrawals. If the aggregate market value of the assets in the Account (determined as described in rep. 21, below) exceeds their Adjusted Book Value on the Scheduled Account Termination Date, Hartford Life will be entitled to a portion of such excess, the amount of which will be determined as a specified percentage of the Adjusted Book Value of the Account determined by agreement between the Plan and Hartford Life and specified in the Synthetic GIC (the Book Value Assurance Charge), and will be required to pay the remaining balance to the Plan. The Book Value Assurance Charge will be equal to a specified percentage of the Adjusted Book Value of the Account, but will not exceed the market value of the Account less the Adjusted Book Value of the Account, or be less than zero. To summarize, if the proceeds of the liquidated assets exceed the sum of the Adjusted Book Value of the Account on that date and the Book Value Assurance Charge, such remainder will be distributed to the Plan, thus allowing the Plan to receive a rate of return which is in excess of the Guaranteed Rate of Interest.

17. Hartford Life's guarantee will be implemented on Scheduled Account Distribution Dates and on Scheduled Account Termination Dates in the following manner: (1) On Scheduled Account Distribution Dates, HIMCO will liquidate assets in the Account with a fair market value equal to the Scheduled Account Distribution. The assets liquidated will be sold either on the securities market or to Hartford Life (the asset liquidation procedure is described in detail in rep. 18, below). The proceeds will then be distributed to the Plan; and (2) On the Scheduled Account Termination Date, HIMCO will liquidate the remaining assets in the Account. The assets liquidated will again be sold either on the securities market or to Hartford Life. The Adjusted Book Value of the Account will be distributed from

the Account to the Plan. To the extent that the proceeds of the assets in the Account exceed the Adjusted Book Value of the Account, Hartford Life will be entitled to the Book Value Assurance Charge (see rep. 16, above). The balance, if any, of the proceeds of the asset liquidation will be paid to the Plan. HIMCO will select the assets that are sold to Hartford Life (instead of being sold on the open market) on those dates (see reps 18 and 19, below).

As a result, some of the investments in the Account may end up in Hartford Life's hands. The applicants represent that this is an essential feature of the Synthetic GICs that will materially (and favorably) affect the Guaranteed Rate of Interest that Hartford Life will be able to offer to a Plan. If assets trading at a discount from their face amount on the Scheduled Account Termination Date had to be disposed of or simply distributed to the Plan from the Account on that date, Hartford Life would be compelled to realize an immediate loss with respect to those assets in meeting its contractual guarantee. By allowing these assets to be transferred to Hartford Life on the Scheduled Account Distribution Dates and the Scheduled Account Termination Date, the foregoing procedures for implementing the contractual guarantees will make it possible for Hartford Life to hold such assets to maturity or until market conditions warrant disposing of them. This in turn will enable Hartford Life to guarantee a higher rate of return than it would otherwise be able to guarantee.

18. The applicants have made the following representations with respect to how securities to be sold to Hartford Life on Scheduled Account Distribution Dates and the Scheduled Account Termination Date will be selected by HIMCO. The applicants state that the management of assets pursuant to an agreement to provide a guaranteed return calls for the use of complex and sophisticated management techniques to make certain that cash flows will be available when needed. In particular, fixed-income assets must be selected with maturities and yields that will enable the insurer to match the maturity and yield of the guaranteed return agreement. To this end, securities are purchased in the expectation that they will be liquidated on a particular date in order to provide the cash necessary to satisfy the insurer's obligation to the contractholder on that date.

Under the terms of Hartford Life's Synthetic GIC, the assets of the Account will be managed in accordance with these risk management techniques. There will be a specific, identifiable pool of assets that will be internally designated from the establishment of the Account for liquidation on each Scheduled Account Distribution Date (as well as on the Scheduled Account Termination Date, when all of the remaining assets will be liquidated). In general, the securities designated to be disposed of on a particular date will have maturities on or relatively soon after that date. From time to time, depending on prevailing market conditions, the assets in an Account may be "rebalanced"—i.e., reallocated among the Scheduled Account Distribution Dates and the Scheduled Account Termination Date. (The applicants represent that the flexibility to reallocate the assets among the Synthetic GIC's maturity dates in the face of changing market conditions is essential to the effective management of investment risks under a guaranteed return contract.) At all times, however, all the assets in the Account will be designated for liquidation on a particular Scheduled Account Distribution Date or the Scheduled Account Termination Date. The assets that will be disposed of on each Scheduled Account Distribution Date and the Scheduled Account Termination Date will thus be those assets designated to be disposed of on the relevant date, and in most cases, this designation will have been made at the time of acquisition.

Regardless of whether they are sold to Hartford Life or on the open market, the assets designated for disposition on each Scheduled Account Distribution Date and the Scheduled Account Termination Date will be disposed of on the relevant date at fair market value. The securities that will be sold to Hartford Life on the Scheduled Account Distribution Dates and the Scheduled Account Termination Date will be selected by HIMCO from among the securities designated to be disposed of on those dates, based on Hartford Life's needs for securities with specific cash-flow patterns and maturities for its general account portfolio.

19. The applicants represent that they recognize that HIMCO's "rebalancing" of Account securities could be viewed as involving a conflict of interest, in that HIMCO would be in a position to deprive the Plan of any return in excess of the Guaranteed Rate of Interest by targeting assets expected to appreciate for sale to Hartford Life on Scheduled Account Distribution Dates.[3] However, the applicants represent that there will be no realistic opportunity for abuse in the subject transactions for the following reasons:

(a) The likelihood that the fair market value of the assets in the Account on the Scheduled Account Termination Date will exceed the sum of the Adjusted Book Value of the Account and the Book Value Assurance Charge will be negligible. The securities that will be purchased for the Account will consist primarily of fixed-income securities with limited potential for capital appreciation, and will generally be targeted to mature on or near the Scheduled Account Distribution Dates and the Scheduled Account Termination Date. Plans will not purchase the Synthetic GIC in the expectation of a return in excess of the Guaranteed Rate of Interest; instead, they will purchase it in order to receive a guaranteed return with the additional security that direct ownership of the underlying assets will afford.

(b) Any potential for abuse will be offset by a countervailing interest on the part of Hartford Life in making certain that the value of the Account is adequate to meet its contractual guarantee on the Scheduled Account Termination Date. As noted above, any excess return to the Plan will be unanticipated and unlikely. Hartford Life, on the other hand, will bear the risk that the assets in the Account will be inadequate to provide the amount guaranteed on the Scheduled Account Termination Date. This risk will be minimized if the Account retains assets which are expected to appreciate.

(c) As a practical matter, abuses on a scale sufficient to materially benefit Hartford Life and adversely affect a Plan will simply not be feasible. The need to manage the assets in the Account to achieve the Guaranteed Rate of Interest will severely constrict HIMCO's flexibility to manipulate the assets disposed of on Scheduled Account Distribution Dates. To systematically pick and choose those assets with a view to selling desirable assets to Hartford Life would seriously upset the predictability of cash flows available to meet subsequent guarantees, imposing unacceptable risks on Hartford Life that would far outweigh any potential benefit of such a scheme.

(d) The Plan will have complete records of all transactions of the Account (see rep. 25, below) and will be able to discontinue the Synthetic GIC (see rep. 23, below) if it discovers that HIMCO has engaged in abusive conduct.

20. The applicants represent that no brokerage costs will be imposed with respect to the sale of the assets in an

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[3] The applicants represent that this concern will not be present in connection with sales of assets to Hartford Life on the Scheduled Account Termination Date because on that date all of the assets in the Account will be disposed of in any event.

Account to Hartford Life or an affiliate pursuant to these provisions. With brokerage costs eliminated, the only transaction costs that will be incurred in selling the assets in question will be the costs of recording the change in ownership of these assets. The ability to minimize transaction costs will run to the benefit of the Plan by enabling Hartford Life to provide a higher Guaranteed Rate of Interest to the Plan.

21. The applicants represent that the assets in which the Account has invested (which are expected to be primarily fixed-income securities, and to a lesser extent common stocks and other assets) will be valued as follows:

(a) In the case of a security traded on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, Hartford Life will pay the closing price on the exchange on the date of the transaction; and

(b) In the case of a security other than one traded on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, HIMCO will obtain quotations in U.S. dollars (regardless of whether the security in question is denominated in a foreign currency) from at least three unaffiliated financial institutions that serve as market makers for the security, and Hartford Life will pay a price equal to the highest of the three quotations. The three quotations will be obtained on the date of the transaction (i.e., a Scheduled Account Distribution Date or the Scheduled Account Termination Date). Each quotation will represent the bid price offered by the financial institution in question as of the time of the quotation, which will be simultaneous with the processing of the distribution to the Plan.

In no event will Hartford Life or HIMCO make valuations themselves. The role of Hartford Life and HIMCO in the valuation process will be limited to ministerial functions and the selection of the independent financial institutions from which valuations will be obtained.

22. The Synthetic GICs will be designed to provide adequate liquidity to enable Plans to meet their benefit obligations. Thus, a Synthetic GIC will allow for unscheduled withdrawals from the Account (Benefit Sensitivity Advances) prior to the Scheduled Account Termination Date under certain circumstances. A Plan will be able to make Benefit Sensitivity Advances on ten days' notice for the purpose of providing the necessary funds to meet the Plan's benefit obligations as they fall due. A Plan fiduciary may be required by Hartford Life to furnish documentation demonstrating that the benefit payment is in fact required under the terms of the Plan. There is no charge or fee for Benefit Sensitivity Advances. Benefit Sensitivity Advances will consist of cash distributions from the Account. When a Benefit Sensitivity Advance is requested, HIMCO will be required to liquidate securities in the Account on the open securities market with an aggregate fair market value equal to the amount necessary to meet the Plan's request. The proceeds will then be distributed to the Plan, and the amount distributed will be subtracted from the Adjusted Book Value of the Account.

23. A Plan will be allowed to discontinue its Account on 15 days' notice at any time, effective as of the last trading day of the month, except on the Scheduled Account Termination Date or a Scheduled Account Distribution Date.[4] On discontinuance, the market value of the Account will be distributed to the Plan, subject to a "Discontinuance Charge". Like the Book Value Assurance Charge (see rep. 16, above), the Discontinuance Charge will be equal to a specified percentage of the Adjusted Book Value of the Account determined by agreement between Hartford Life and the Plan and specified in the Synthetic GIC, but will not be greater than the excess of the market value of the Account over the Adjusted Book Value on the date of discontinuance nor less than zero.

Accordingly, a Plan will be free to give notice of discontinuance of the arrangement and realize its investment return from its Account (subject to the Discontinuance Charge) at any time up to 45 days before the Scheduled Account Termination Date. For example, if the Plan determines that the return generated by HIMCO's investment management net of the Discontinuance Charge is more valuable than Hartford Life's guarantee, the Plan will be able to realize that return through the discontinuance provision.

24. Under its Synthetic GICs, Hartford Life will be entitled to a quarterly fee based on a percentage of the average Adjusted Book Value of the assets in the Account for the current quarter. This percentage will be established by agreement with each Plan and will be specified in writing. Out of its quarterly fee, Hartford Life will pay HIMCO a quarterly management fee which will also be specified in writing. No separate fee will be paid directly to HIMCO. HIMCO will have the right to withdraw from the Account certain expenses incurred directly in the investment management of the Account. Any such expenses withdrawn directly from the Account by HIMCO are not subtracted from the adjusted book value of the Account.

25. Hartford Life will keep full and complete records and books of account reflecting all transactions of each Plan's Account and will make them available on an annual basis for audit by independent certified public accountants selected by and responsible to the Plan. Hartford Life will also furnish annual reports of the operations of the Account containing a list of the investments of the Account to an independent fiduciary of the Plan.

26. To summarize, the applicants represent that the Synthetic GIC is fundamentally a guaranteed investment contract. A Plan will place specified assets in the Account, and on the Scheduled Account Distribution Dates and the Scheduled Account Termination Date, Hartford Life will repay the Plan its principal plus interest at a guaranteed rate, in exchange for the asset value of the Account (in cash or in kind). Thus, the fundamental nature of the Synthetic GIC is equivalent to that of the conventional GICs which have funded employee benefit plans for many years. With the Synthetic GIC, the Plan is afforded a higher degree of security because the assets underlying the Synthetic GIC will be held in a custodial bank account owned by the Plan and will not become part of the insurance company's assets. In addition, the Synthetic GIC will offer the Plan a limited opportunity to realize a return in excess of the Guaranteed Rate of Interest. This will occur if the market value of the Account on the Scheduled Account Termination Date exceeds the sum of the Adjusted Book Value of the Account and the Book Value Assurance Charge. The Plan will also have the option of discontinuing the arrangement if it believes that the market value of the assets in the Account (less the Discontinuance Charge) is more valuable than Hartford Life's guarantee. The applicants represent that it is not very likely that such an excess return will occur, because the assets in the

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[4] Hartford Life determined not to provide for discontinuance of its Synthetic GIC as of a Scheduled Account Distribution Date for administrative reasons. If discontinuance were permitted as of Scheduled Account Distribution Dates, it would be necessary to allocate the assets liquidated on that date between the assets supporting the Scheduled Account Distribution, with respect to which the Plan would be entitled to Adjusted Book Value, and other assets, as to which the Plan would be entitled to fair market value. Hartford Life concluded that this would be unduly burdensome. Allowing the Plan to discontinue the Synthetic GIC on Scheduled Account Distribution Dates seems unnecessary, since the Synthetic GIC can be discontinued at the end of the previous month or at the end of the following month if appropriate.

Account will be managed with the intention of achieving the guaranteed return. In this regard, the applicants represent that on the Scheduled Account Termination Date, the assets will consist primarily of fixed-income securities at or near maturity with predictable values. Nevertheless, the Plan enjoys downside protection through Hartford Life's guarantee, and also has an opportunity to realize a return in excess of the Guaranteed Rate of Return.

27. In summary, the applicants represent that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) the decision to enter into a Synthetic GIC will be made on behalf of a Plan by a fiduciary of the Plan who is independent of Hartford Life and HIMCO, after receipt of full and detailed disclosure of all material features of the contract, including all applicable fees and charges; (b) the guaranteed return to the Plan cannot be modified by the proposed transactions; (c) all fees and charges imposed under the Synthetic GIC will be reasonable; (d) each Synthetic GIC will specifically provide for determinations of the market value of the securities by an objective means of valuation; (e) Hartford Life will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by and responsible solely to the Plan; and (f) the Synthetic GIC will be offered only in principal amounts of $50 million or more, so that the Plan fiduciaries can be expected to be knowledgeable, sophisticated professional asset managers.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Radiation Medical Group Inc. Profit Sharing—401(k) Salary Savings Plan (the Original Plan), and Radiology Medical Group, Inc. 401(k) Salary Savings Plan (the New Plan; Together, the Plans) Located in San Diego, California; Proposed Exemption

[Application Nos. D–9343 & D–9344]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed transfer by the Original Plan of a 57 percent interest (the Interest) in certain real property (the Property), including a 57 percent lessor's interest, to the New Plan; and (2) the proposed leases of the Property (the New Leases) by the Original Plan and the New Plan to Radiology Medical Group, Inc., and Radiation Medical Group, Inc. (together, the Employers), the sponsors of the Plans; provided the following conditions are satisfied:

(A) All terms of the transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) The interests of the Plans under the New Leases are represented by an independent fiduciary, the Union Bank of San Diego, California (the Fiduciary), which will monitor the Employers' performance of obligations under the New Leases and compliance with the conditions of this exemption, including all actions necessary to enforce such obligations and conditions;

(C) At all times under the New Leases, the Plans receive rent which is no less than the fair market rental value of the Property and which is net of all real estate taxes and costs of repair, maintenance and insurance;

(D) At all times under the New Leases, each Plan's interest in the Property constitutes less than twenty-five percent of the total value of all assets held by the Plan; and

(E) Any extension or renewal of the New Leases beyond the initial terms is expressly approved by the Fiduciary.

Summary of Facts and Representations

1. The Original Plan is a 401(k) profit sharing plan formerly named "Radiology Medical Group Profit Sharing Plan", which was established by Radiology Medical Group, Inc. (the Original Employer), a California professional corporation engaged in the general practice of radiological medicine in San Diego, California. Effective January 1, 1990, the Original Employer underwent a corporate reorganization, resulting in the creation of an additional professional corporation, Radiation Medical Group, Inc. (the New Employer), to assume the radiation therapy portion of the medical practice previously performed by the Original Employer. The employees performing the radiation therapy services were transferred to the New Employer. The Employers are separate entities, with no common shareholders or employees. The Original Plan was amended to change its name to its current name and to enable the New Employer to adopt the Original Plan for its employees.

Effective January 1, 1992, the boards of directors of the Original Employer and the New Employer (together, the Employers) determined that the Employers should maintain separate retirement plans. The New Employer continued as the sponsor of the Original Plan, and the Original Employer adopted the New Plan as a 401(k) profit sharing plan for its employees. The assets of both Plans are maintained under one trust, the trustee of which is the Union Bank in San Diego, California (the Trustee), which was formerly named California First Bank.

2. Among the assets in the Original Plan is the Property, a parcel of real property located at 2466 First Avenue in San Diego, California. The Original Employer owns a medical office building and other improvements on the Property which are maintained as the Employers' principal place of business. The Original Employer leases the Property from the Original Plan (the Original Lease) pursuant to an individual administrative exemption granted by the Department, Prohibited Transaction Exemption 84–175 (PTE 84–175, 49 FR 48834, December 14, 1984). Pursuant to PTE 84–175, the interests of the Original Plan under the Original Lease are represented by the Trustee. Since the corporate reorganization, the Employers share the use of the Property, and the Original Employer continues as lessee under the Original Lease. The Original Plan, sponsored by the New Employer, continues to hold title to the Property. The participant accounts of employees of the Original Employer, now participating in the New Plan, constitute 57 percent of the assets of the Original Plan. The participant accounts of employees of the New Employer, now participating in the Original Plan, constitute 43 percent of the assets of the Original Plan.

The Employers have determined that each Plan should own a proportionate interest in the Property, in direct relation to each Plan's proportionate interests in the assets of the Original Plan. Accordingly, the Employers propose to direct the Trustee to transfer a 57 percent interest in the Property (the Interest) from the Original Plan to the New Plan, representing the ownership interest of the New Plan participants in the Property. Additionally, the Employers propose that the Plans lease their respective interests in the Property to the Employers pursuant to a modification and continuation of the Original Lease in the form of two separate leases. The Employers are requesting an exemption for such transactions under the terms and conditions described herein.

3. To effect the transfer of the Interest from the Original Plan to the New Plan, the Employers will direct the Trustee to establish separate trusts for each of the Plans, and to transfer from the existing Original Plan trust a 57 percent ownership interest in the Property to a new trust established exclusively for assets of the New Plan. The Original Plan will retain the remaining 43 percent interest in the Property. The Interest will be transferred subject to the Original Lease, and the Employers will direct the Trustee to transfer to the New Plan a 57 percent lessor's interest in the Original Lease, while the Original Plan will continue to own a 43 percent lessor's interest in the Original Lease. The Property had a fair market value of $1,030,000 as of December 16, 1992, according to Steven L. Bowen, MAI (Bowen), an independent professional real estate appraiser in San Diego, California. The Employers represent that total assets in the Original Plan were valued at $13,177,499.29 as of December 31, 1992, including account balances of all participants in both Plans.

4. It is proposed that each Employer, as lessee, will execute a separate lease with both Plans, as lessors (the New Leases), to enable the Employers' lease of the Property from the Plans under the same terms and conditions as the Original Lease (except for provisions relating to rental review, described below). Under each New Lease, the Plans will be co-lessors of the Property, and each Employer will be a lessee. Based upon their proportionate uses of the Property and the improvements thereon, the Employers have determined that the Original Employer will execute a New Lease with respect to 58 percent of the Property, while the New Employer will execute a New Lease with respect to the remaining 42 percent, and each Employer will be responsible for the corresponding percentage of the Property's total rent and all other expenses relating to taxes, insurance, maintenance, and repair of the Property.

The Trustee will continue to act as an independent fiduciary and will represent the interests of the Plans under the New Leases by overseeing and enforcing the Employers' performance of lease obligations and by securing compliance with the conditions of this exemption, if granted. The Trustee represents that at all times under the Original Lease, the Original Employer has been in compliance with all lease terms and all conditions of PTE 84–175.

5. The proposed New Leases are triple net leases with initial terms ending April 30, 2004, the same termination date of the Original Lease initial term. Rent is payable monthly under the New Leases, which provide for a review of the annual rent every two years on February 1, commencing as soon after February 1, 1994 as the Department publishes the exemption proposed herein, if granted. Such review will be conducted by an independent, unrelated professional real estate appraiser selected by the Trustee. Any adjustment of rent resulting from such review shall be upward only, and any decrease in the fair market rental value of the Property shall not result in any decrease in the rent under the New Leases. In accordance with this procedure, initial rent under the New Leases will be no less than the greater of (a) $13,750 per month, which is the current rent under the Original Lease, or (b) the fair market rental value of the Property as determined as of the initial date of the New Leases by the appraiser selected by the Trustee.

The New Leases require the Employers to pay all repair and maintenance costs of the Property, to pay all real estate taxes on the Property, and to carry fire, extended coverage and public liability insurance on the Property to the full extent of the insurable value of the Property, with the Plans as the named insured. Under the New Leases, the Employers agree to indemnify the Plans and hold the Plans harmless from all claims, demands, liens, losses and liabilities of any nature arising from the Employers' use of the Property.

Each New Lease will provide that upon the expiration of its initial term, with the approval of the Trustee, the Employers may extend the New Lease for up to two additional terms of five years each upon written notice to the Trustee at least six months prior to the expiration of the initial term or the expiration of the first five-year renewal term, whichever is applicable. Rental under such extended five-year term(s) will be payable pursuant to the same procedures required by the New Leases during the initial term, including rental review every two years.

6. The Trustee represents that after a review and analysis, it has approved the proposed transactions on behalf of the participants and beneficiaries of the Plans. In this regard, the Trustee engaged the services of two independent advisers (the Advisers) to serve in fiduciary capacities on behalf of the Plans in determining whether the retention of a 43 percent interest in the Property by the Original Plan and the receipt of a 57 percent interest in the Property by the New Plan are prudent investments for the Plans and in the best interests of their participants and beneficiaries. The Advisers were also engaged to determine whether the New Leases constitute prudent investments for the Plans and whether their terms and conditions are protective of the Plans' participants and beneficiaries.

7. One of the Advisers is Moody, Nation and Smith (Moody), a financial consulting firm located in San Diego, which was retained by the Trustee to make determinations as a fiduciary on behalf of the Original Plan with respect to the proposed transactions. Moody, which represents that it is independent of and unrelated to the Employers, represents that it undertook a complete analysis of the real estate market in which the Property is situated as part of its evaluation of the Property and the New Leases as an investment for the Original Plan. In a written report to the Trustee, Moody concluded that the Original Plan's 43 percent interest in the Property, and its lease to the Employers under the New Leases, will constitute a prudent investment which features adequate protections and safeguards for the participants and beneficiaries of the Original Plan. Moody states that it has determined that the Property provides a favorable and secure rate of return and will remain a stable real estate investment well into the future. Moody represents that its research reveals that the Property is located in a stable and well-established market area which fared better than other areas in San Diego during the protracted city-wide real estate market declines between 1980 and 1990. Moody represents that other factors involved in and supporting its recommendation included the following findings:

(A) The Original Plan's assets will remain adequately diversified, in that its interest in the Property constitutes approximately 10.6 percent of all assets of the Original Plan's participants as of February 1994; (B) The Original Plan's return on its investment in the Property, the rental under the New Leases, is net of real estate taxes and all expenses related to repair, maintenance and insurance of the Property; (C) Any extension of the New Leases after the expiration of the initial term on April 30, 2004 will require the approval of the Trustee and will be limited to no more than two terms of five years each; (D) Rental under the New Leases will always be at least the fair market value of the Property, due to provisions requiring periodic rental review, and rent is adjustable only upward, never reduced, in the event of changes in the

Property's fair market value as the New Leases proceed. Moody states that it determined that the fair market rental for comparable land leases in the same market as the Property is a 10 percent annual return on the fair market value of the subject land, and the current rental under the Original Lease, which can not be reduced under the New Lease, provides an annual return of approximately 15 percent; (E) The provisions of the New Leases further protect the Original Plan's investment in the Property by requiring the Employers to indemnify and hold harmless the Plans, including costs and attorneys fees, with respect to all claims, demands, liens, losses and liabilities arising from the lessees' use and occupancy of the Property; and (F) The interests of the Original Plan under the New Leases will continue to be represented and protected by the Trustee, an independent fiduciary which will monitor and enforce the Employers' performance of obligations under the New Leases.

Moody also represents that it has analyzed the proposed transactions in the context of other alternatives available to the Original Plan with respect to its interest in the Property. Moody states that alternative investments returning a comparable rate are not available to the Original Plan in the marketplace without a material attendant risk or large losses of principal. Moody represents that market conditions are unfavorable for any attempt to sell the Property, and additionally, that it would be disadvantageous for the Original Plan to accept cash in lieu of its undivided 43 percent ownership interest in the Property, because the alternative investments available will provide significantly lower returns than those provided by the Property and the New Leases. Moody states that its market research demonstrates that the area in which the Property is situated will continue to experience stability and attractiveness to both tenants and owners, due to the proximity to major medical and commercial centers and the lack of vacant land for new developments. Moody contends that these conditions present a realistic potential for increases in the rent under the New Leases over the next ten years.

8. The other Adviser is Ernst & Young (E&Y) a financial consulting firm located in San Diego, which was retained by the Trustee to make determinations as a fiduciary on behalf of the New Plan with respect to the proposed transactions. E&Y represents that it is independent of and unrelated to the Employers, and that it undertook a thorough evaluation of the proposed transactions which included an investigation of the decline in commercial real property values in San Diego over the past several years, an overview of current and historical market conditions specific to medical office properties, an overview of the currently local economy and real estate market conditions, and an evaluation of the Property's rate of return and long term potential. In a written report to the Trustee, E&Y concluded that the New Plan's receipt of a 57 percent interest in the Property, and its lease to the Employers under the New Leases, will constitute a prudent investment which features adequate protections and safeguards for the participants and beneficiaries of the New Plan. E&Y states that it determined that the Property offers the Plan a secure rate of return above market rates, with a likelihood of continuing stability well into the future. E&Y represents that through market research it has determined that the Property is located in a market area which has achieved stability after the declines in San Diego real estate markets during the 1980's. E&Y states that the Property has good long-term potential as a plan investment and that the New Leases provide a protected, favorable rate of return on the investment in the Property. E&Y represents that factors involved in and supporting its recommendation included the following findings:

(A) Rental under the New Leases will always be no less than the Property's fair market rental value, as determined every two years, and may not be decreased, so that the rate of return of approximately 15 percent is assured and is substantially higher than the prevailing market rate of approximately 10 percent; (B) The New Plan is protected by the Employers' indemnification of the Plans for all claims, demands, and liabilities arising from the Employers' occupancy of the Property; (C) The triple net provisions of the New Leases will protect the New Plan's return on the Property from all costs and expenses associated with the Property; and (D) The interests of the New Plan under the New Leases will continue to be represented and protected by the Trustee, an independent fiduciary which will monitor and enforce the Employers' performance of obligations under the New Leases.

E&Y also represents that it determined that the New Plan's 57 percent interest in the Property constituted approximately 6.25 percent of the value of all assets held by the New Plan as of February 1994, and that this low composition of real estate investments minimizes risk to the Plan's investment portfolio. E&Y represents that its evaluation of the proposed transactions also included consideration of alternatives available to the New Plan with respect to its interest in the Property. E&Y states that the investments that would be available for the New Plan's investment of cash, in the amount of and in lieu of its interest in the Property, would provide returns significantly reduced from the return offered by the Property. E&Y also states that any prospective sale of the Property would be unlikely to generate cash equal to the fair market value of the Property, due to the costs involved and the lengthy, aggressive marketing required by current economic conditions. E&Y concludes its report with its finding that its "de novo" analysis of the proposed transactions indicates that it is in the best interests and protective of the New Plan's participants and beneficiaries to accept the interest in the Property and proceed with the New Leases of the Property to the Employers.

9. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transactions enable the participants of both Plans to continue to share interests in the Property and its lease to the Employers pursuant to the New Leases, under the same material terms and conditions of the Original Lease; (2) The interests of the Plans will be represented under the New Leases by the Trustee, an independent fiduciary which has represented the Original Plan under the Original Lease and which will continue to monitor performance of the terms and conditions of the New Leases on behalf of the Plans; (3) The New Leases, under which rent may not be reduced, will provide a favorable return, net of all costs and expenses, of no less than the Property's fair market rental value; (4) The New Leases, with initial terms expiring April 30, 2004, may be renewed only with the approval of the Trustee and for no more than two terms of five years each; and (5) The Trustee has approved the proposed transactions on the basis of the evaluations and analyses performed by the Advisers.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Knoxville Surgical Group Profit Sharing Plan (the Plan) Located in Knoxville, Tennessee, Proposed Exemption

[Application No. D-9486]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the: (1) The proposed lease (the Lease) of certain real property (the Condominium) by the Plan to Knoxville Surgical Group, P.C. (the Employer), the Plan sponsor and a party in interest with respect to the Plan, following the exchange (the Swap) of real property owned by the Plan for the Condominium owned by Fort Sanders Medical Center, an unrelated party; and (2) a future exercise of (a) a certain indemnity agreement (the Indemnity Agreement) between the Employer and the Plan; and (b) a certain guarantee (the Guarantee) of Lease payments to the Plan by the principals of the Employer; provided that the following conditions are satisfied:

(1) All terms and conditions of the Swap, the Lease, the Indemnity Agreement, and the Guarantee are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The fair market value of the Condominium will be determined by an independent qualified appraiser at the time the Swap transaction is consummated;

(3) With respect to the Lease, the fair market rental amount (the Rental Amount) has been determined by an independent qualified appraiser, and will never be below the initial fair market annual rental amount of $75,000;

(4) The Condominium will be appraised by an independent qualified appraiser each time that the Renewal option (the Renewal) on the Lease is exercised.

(5) The fair market value of the Condominium will at no time exceed 25% of the Plan's total assets;

(6) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, insurance, utilities and condominium fees related to the Condominium;

(7) The fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein;

(8) The independent fiduciary evaluated the proposed transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) The independent fiduciary will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the two Renewal terms and will take whatever action is necessary to protect the Plan's rights;

(10) The Plan will bear no costs or expenses with respect to the proposed transactions described herein; and

(11) The Employer will file form 5330 and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date this proposed exemption, if granted, is published in the **Federal Register**, within ninety (90) days of the publication date.

Summary of Facts and Representations

1. In 1991, a pension plan (the Pension Plan) sponsored by the Employer was terminated, and a form 5310 (Application for Determination upon Termination) was filed with the Internal Revenue Service (IRS), and a favorable IRS determination was received. At that time the assets of the Pension Plan were merged into the Plan, including the ½ interest in the property located at 1831 West Clinch Avenue, Knoxville, Tennessee (the Clinch Property). The Plan is a profit sharing plan, currently with 16 participants. As of February 18, 1994, the Plan had total assets of $3,716,331. The Employer is a Tennessee subchapter "C" corporation engaged in the practice of medicine. The owners and officers of the Employer are the following doctors: Dr. Richard A. Brinner, Dr. Randal O. Graham, Dr. Hugh C. Hyatt, Dr. Michael D. Kropilak and Dr. P. Kevin Zirkle. The Trust Company of Knoxville is the trustee and the named fiduciary for the Plan.

2. The Employer was granted an individual exemption by the Department in 1982 (PTE 82-162), for the Plan and the Pension Plan to purchase (the Past Purchase) the Clinch Property from a certain partnership which was a party in interest with respect to the Plans, and for a subsequent lease (the Past Lease) of the Clinch Property by the Plans to the Employer. The Past Lease was for a term of five years with an option to renew for an additional five years. PTE 82-162 also required an annual appraisal of the Clinch Property, and for the rentals to be adjusted to reflect the fair market rental value of the Clinch Property. Valley Fidelity Bank and Trust Company (Valley Bank) of Knoxville, Tennessee was the independent fiduciary which monitored the Past Purchase and the Past Lease for the Plans. PTE 82-162 also provided for an Employer guarantee that if the Clinch Property was ever sold during the initial five year term of the Lease and the five year renewal of the Lease for below the original purchase price, the Employer would indemnify the Plans for the difference between the original purchase price of the Property and the selling price.

3. In 1988 Valley Bank was replaced by a new independent fiduciary, the Trust Company of Knoxville (the Trust Company). Also, in July, 1988, significant improvements of a capital nature were made to the Clinch Property. The applicant represented that these improvements cost approximately $102,685.76, and were paid for by the Plan.[5] The applicant also represented that immediately after the improvements were installed, the Clinch Property was appraised. The appraisal did not result in an increase in value of the Clinch Property, and therefore, in accordance with the Past Lease, no rental increase was made. Nevertheless, it is represented that the Trust Company demanded an increase in rent from the Employer, in order to amortize the expenses sustained by the Plan. A rental increase of $2,000 per month was agreed to in May, 1989, and by letter of agreement dated June 9, 1989, between the Trust Company and the Employer, a new rental rate was set for the next five years until May, 1994.[6] This modification of the Past Lease by the applicant caused the Past Lease to extend beyond the original ten (10) year term specified under PTE 82-162. Under PTE 82-162, the Past Lease was to expire October 15, 1992.[7]

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[5] In addition to these improvements, the Employer has made additional improvements to the Building at their own expense.

[6] The applicant represents that as of September [illegible], 1993, the expenses sustained by the Plan for the improvements made to the Clinch Property have been fully amortized.

[7] The above-referenced changes to the Past Lease were outside the scope of exemptive relief provided by PTE 82-162, and, as a result, as of June 9, 1989, that exemption was no longer effective. In this regard, the applicant has agreed to file forms 5330 with the Internal Revenue Service and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date when this proposed exemption, if granted, is published in the Federal Register.

4. The applicant now proposes the following transactions. Initially, the Plan desires to swap (the Swap) the Clinch Property, currently appraised at $425,000, for a certain condominium (the Condominium), projected to have a fair market value of $750,000, once it is completed.[8] The Condominium is Unit 501 in the Professional Office Building III located at 501 Nineteenth Street, Knoxville, Tennessee. Neither the Clinch Property nor the Condominium are encumbered by debt. The Swap will be an even exchange and will not involve any cash payments or other consideration by the involved parties. The Condominium will represent approximately 20% of the Plan's total assets.

5. The Plan will be acquiring the Condominium from Fort Sanders Medical Center (the Center), formerly known as Fort Sanders Presbyterian Hospital (the Hospital). The applicant represented that the Center is not a related party with respect to the Plan and the Employer.[9] It is represented that the Center is desirous of proceeding with the Swap primarily because it owns all the properties surrounding it with the exception of the Clinch Property. It is further represented that the Clinch Property is more valuable to the Center for its raw land than to another party as a free standing building.

6. The Clinch Property and the Condominium were appraised by Richard E. Wallace, MAI, SRA (Mr. Wallace), an independent qualified appraiser. The Clinch Property was appraised by Mr. Wallace (the Appraisal) on November 4, 1991, at a fair market value of $425,000. The Clinch Property is located at the northeast corner of Clinch Avenue and 19th Street in Knoxville, Tennessee. The Clinch Property is a one story masonry office building with a finished basement. Mr. Wallace maintains that properties similar to the Clinch Property are most often bought and sold based on their income producing ability, and, as such, he gives the income approach the most emphasis. The income approach as it is utilized herein is based on market derived income and expense estimates as well as general investor demands for this type of an investment. On June 30, 1993, in an update to the Appraisal, Mr. Wallace restated his opinion that the Clinch Property has a fair market value of $425,000.

7. On July 2, 1992, Mr. Wallace also determined the fair market value of the Condominium. Because the Condominium office space was unfinished, Mr. Wallace prepared a consultation report (the Report), rather than an appraisal. Mr. Wallace represents that a fully documented appraisal would yield the same value as a consultation report that was prepared. In determining the fair market value of the Condominium, Mr. Wallace considered sales of other medical condominiums in Knoxville. In the Report, Mr. Wallace determined that as of July 2, 1992, the fair market value of the Condominium, which consists of 6,000 square feet, was $125 per square foot for finished space. On June 30, 1993, in an update to the Report, Mr. Wallace estimated the fair market value of the Condominium to be $750,000. In establishing the fair rental value of the Condominium, Mr. Wallace examined rentals of medical facilities in the Knoxville area, and determined that as of July 2, 1992, the fair market rental rate for the Condominium is estimated at $12.50 per square foot for a triple net lease, increasing at 3% annually.

8. Once the Plan acquires the Condominium from the Center, it is proposed that the Plan lease (the Lease) the Condominium to the Employer. The Lease will be a triple net lease and will be net of maintenance, repairs, insurance, taxes, utilities and condominium fees. The Lease will have a term of three years, with two renewal options (Renewal) of three years each. Renewals will occur upon the Employer, as the Lessee, notifying the Plan, as the Lessor, in writing at least 60 days before the end of the expiring term. The rental rate will be determined by an independent qualified appraiser at each Renewal. In this regard, Mr. Wallace determined the rental rate for the Condominium as of July 2, 1992, to be $12.50 per square foot. The rental rate will be $75,000 per year for the first year, payable in equal monthly installments of $6,250 per month. For the second year, the rental rate will be $77,250 per year payable at the rate of $6,437.50 per month, and for the third year the rental rate will be $79,567.50 per year, payable at the rate of $6,630.63 per month. The Employer will obtain a fire and hazard/casualty insurance policy for the Condominium. The Plan as the Lessee will be the beneficiary and loss payee with respect to the hazard and liability insurance on the Condominium.

9. The Employer has also represented that if the Condominium is sold during the initial term of the Lease plus the two Renewal terms for less than $425,000 (the fair market value of the Clinch Property), the Employer will indemnify the Plan for the difference between the price received by the Plan and $425,000 (the Indemnity Agreement), in cash within six months after notice and verification of sale. It is represented that if it is contemplated that the Condominium be sold to a party in interest with respect to the Plan, as defined by section 3(14) of the Act, the applicant will seek exemptive relief from the Department prior to the consummation of the sale.

In addition to the Indemnity Agreement, in the event the Employer defaults on the Lease, the principals of the Employer (the Principals) have guaranteed (the Guarantee) the rental payments to the Plan for the duration of the Lease, including the Renewals. It is represented that as of September 2, 1993, the Principals had minimum net worth of approximately $2,600,000.

10. The independent fiduciary for the Swap, the Lease, the Indemnity Agreement and the Guarantee will be Earl W. Johnson (Mr. Johnson), a certified public accountant and an executive vice president over tax and financial planning with Lawhorn Johnson and Company, P.C. Mr. Johnson represents that he is independent of all parties to these transactions, and that he had no prior professional or personal association with any of the parties. Mr. Johnson also maintains that the fees received by him for serving in the independent fiduciary capacity in these transactions, combined with any other fees derived from the Employer or related parties will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein.

11. Mr. Johnson states that he is qualified to serve in the independent fiduciary capacity for the Plan because of his professional experience which includes providing administrative services to qualified retirement plans, and handling real estate transactions. Specifically, with respect to his clients, Mr. Johnson has prepared retirement plan calculations, made investment projections and reviewed investment alternatives. Mr. Johnson has also reviewed audits of retirement plans.

Register, within ninety (90) days of the publication date.

[8] In this regard, it is represented that all interior construction and remodeling of the Condominium will be done by the Employer as the lessee, and will be in accordance with the Lease and the Condominium documents. The applicant further represents that the Condominium documents provide a certain allowance for this purpose, and that any overhead will be paid for by the Employer

[9] In this regard, the applicant stated that Dr. Hugh C. Hyatt, one of the owners of the Employer, was Chief of Staff at the Hospital in 1990, and that the doctors of the Employer also have staff privileges at the Center. Otherwise, there is no relationship between the Employer and the Center, which is the developer of the Condominium

12. Mr. Johnson represents that he has consulted with legal counsel regarding his ERISA fiduciary responsibilities and accepts and acknowledges these responsibilities as they relate to the proposed Plan transactions. Mr. Johnson also maintains that he has knowledge of ERISA and understands the fiduciary responsibilities under the law associated with qualified retirement plans. In his capacity as the independent fiduciary, he reviewed the Plan's assets with respect to the Swap and the Lease, and concluded that the Swap offers a significant premium to the Plan, and is in the best interest of the Plan participants. Mr. Johnson also states that the Lease offers a fair rental value to the Plan. According to Mr. Johnson, under the Lease terms, the Plan has the option to renew the Lease pursuant to the two Renewal options. As required by the Lease, the Condominium will be appraised every time that the Lease is renewed. Mr. Johnson represents that the Condominium will be appraised at the time it is finished and the Swap is completed. He further represents that as an additional safeguard the Condominium will also be appraised annually by an independent qualified appraiser. With respect to the Indemnity Agreement, Mr. Johnson represents that the Principals of the Employer have sufficient financial net worth to indemnify the Plan. Also, Mr. Johnson states that the Guarantee by the Principals of the Lease payments to the Plan during the initial Lease and the Renewal periods, is additional security for the Plan. As such, Mr. Johnson represents that the Swap and the Lease are also protective of the Plan and administratively feasible. The Condominium will be considered part of the fixed income portion of the Plan's portfolio, and when the value of the Condominium increases, there will be an offsetting reduction in existing fixed assets to maintain the proper asset allocation. The remaining Plan assets are represented by stocks and bonds. There are participant loans in the Plan, but these loans represent a very small percentage of the Plan's assets.

13. Mr. Johnson represents that the proposed transactions are administratively feasible, in the interest and protective of the Plan. Mr. Johnson states that the Swap is in the best interest and protective of the Plan because the Condominium has been appraised by an independent qualified appraiser at $750,000, and the acquisition of the Condominium will result in a significant premium to the Plan. Subsequently, the Plan will lease the Condominium to the Employer. The fair market value of the Condominium represents approximately 20% of the Plan's total assets. Mr. Johnson will monitor the Lease throughout its initial term of three years and during the two year Renewal terms. The Condominium will be appraised annually and at every Renewal, and the fair market rental will be determined by an independent qualified appraiser at each Renewal. The annual rental amounts will never be below $75,000, which is the annual rental amount for the initial year of the Lease. Furthermore, the rental payments have been personally guaranteed by the Principals for the initial term of the Lease plus the two Renewal terms. The Principals have also indemnified the Plan in the event that the Condominium is sold for an amount less than $425,000 during the initial term of the Lease and during the two Renewal terms. The Plan will incur no expenses as a result of the proposed transactions described herein.

14. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) All terms and conditions of the Swap, the Lease, the Indemnity Agreement and the Guarantee are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The fair market value of the Condominium will be determined by an independent qualified appraiser at the time the Swap transaction is consummated;

(3) With respect to the Lease, the Rental Amount has been determined by an independent qualified appraiser, and will never be below $75,000, which is the fair market rental amount for the initial year of the Lease;

(4) The Condominium will be appraised by an independent qualified appraiser each time that the Renewal option on the Lease is exercised;

(5) The fair market value of the Condominium will at no time exceed 25% of the Plan's total assets;

(6) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, insurance, utilities and condominium fees related to the Condominium;

(7) The fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein;

(8) The independent fiduciary evaluated the proposed transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) The independent fiduciary will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the two Renewal terms and will take whatever action is necessary to protect the Plan's rights;

(10) The Plan will bear no costs or expenses with respect to the proposed transactions; and

(11) The Employer will file form 5330 and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date this proposed exemption, if granted, is published in the **Federal Register**, within ninety (90) days of the publication date.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules.

Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 6th day of May, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–11528 Filed 5–11–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–38; Exemption Application No. D–9601, et al.]

Grant of Individual Exemptions; Genelabs Technologies, Inc. Section 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Genelabs Technologies, Inc. Section 401(k) Plan (the Plan) Located in Redwood City, CA; Exemption

[Prohibited Transaction Exemption 94–38; Exemption Application No. D–9601]

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of Group Annuity Contract Number 7410 (GA–7410) issued by Mutual Benefit Life Insurance Company, located in Newark, New Jersey to Genelabs Technologies, Inc., located in Redwood City, California, the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses from the transaction; (3) the Plan receives no less than the fair market value of GA–7410 as determined at the time of the Sale; and (4) the independent trustee for the Plan determines the fair market value of GA–7410 and also determines that the Sale is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and represents supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 16, 1994, at 59 FR 12349.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Potter Law Firm Retirement Plan (the Plan) Located in Tyler, Texas; Exemption

[Proposed Transaction Exemption 94–39; Exemption Application No. D–9617]

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain one-half undivided interest in real property (the Property) by the Plan to Potter, Minton, Roberts, Davis & Jones, P.C. (the Employer), a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the transaction; (3) the Plan receives as consideration the greater of either the fair market value of the Property as determined by an independent appraiser on the date of the Sale, or receives all the funds expended by the Plan in acquiring and maintaining the Property; and (4) the trustee of the Plan has determined that the Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1994, at 59 FR 10839.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Southern Union Company Southern Union Savings Plan (the Plan) Located in Austin, Texas; Exemption

[Prohibited Transaction Exemption 94–40; Application No. D–9594]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the past acquisition by the Plan of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Southern Union Company (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) The Plan's acquisition and holding of the Rights resulted from an independent act of the Employer as a corporate entity, and all holders of the common stock of the Employer, including the Plan, were treated in the same manner with respect to the Offering; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 16, 1994 at 59 FR 12351.

EFFECTIVE DATE: This exemption is effective November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 6th day of May, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–11529 Filed 5–11–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including disucssion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 1, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

2. *Date:* June 2, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 History, Politics, and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

3. *Date:* June 3, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for School Teachers applications for directing Literature in 1995 British and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

4. *Date:* June 6, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

5. *Date:* June 7, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in Foreign Literature and Culture, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

6. *Date:* June 8, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

7. *Date:* June 13, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1994.

8. *Date:* June 17, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1994.

9. *Date:* June 20, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after September 1994.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94-11485 Filed 5-11-94; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems Division: Meeting

Name: Special Emphasis Panel, Biological and Critical Systems.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: May 23, 1994 8:30 a.m.—5 p.m.

Place: Conference Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, BES, room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1319.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for RIA and Equipment in Bioengineering and Environmental Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in obtaining a suitable meeting date for all members.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-11580 Filed 5-11-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Electrical and Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communication Systems.

Date and Time: May 31, 1994, 8 a.m.-5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 310, Arlington, Virginia 22230.

Contact Person: Dr. Deborah Crawford, Program Director, Neuroengineering, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306-1340.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary and confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-11581 Filed 5-11-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Electrical and Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communication Systems.

Date and Time: June 1, 1994, 8 a.m.-5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 530, Arlington, Virginia 22230.

Contact Person: Dr. Deborah Crawford, Program Director, Neuroengineering, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.,

Telephone: 703/306-1340.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary and confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-11582 Filed 5-11-94; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name of Committee: Special Emphasis Panel in Elementary, Secondary and Informal Education.

Date and Time: June 2, 1994, 8 a.m. to 5 p.m.; June 3, 1994, 8 a.m. to 5 p.m.; June 4, 1994, 8 a.m. to 5 p.m.

Place: Arlington Renaissance, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Joyce Evans, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1613.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–11583 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research (#1207).

Date and Time: June 1–3, 1994; 8:30 a.m. to 5 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Darleen Fisher, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1950).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for Networking and Communications Research Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–11584 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: May 31, 1994 to June 2, 1994; 8:30 a.m. to 9:00 p.m., May 31, 1994; 8:30 a.m. to 9:00 p.m., June 1, 1994; 8:30 a.m. to noon, June 2, 1994.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–11585 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: June 2 to June 4, 1994; 1:30 p.m. to 9 p.m., June 2, 1994; 8:30 a.m. to 9 p.m., June 3, 1994; 8:30 a.m. to 4:30 p.m., June 4, 1994.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: May 9, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–11586 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 18, 1994, through April 29, 1994. The last biweekly notice was published on April 28, 1994 (59 FR 22000).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: March 30, 1994.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.4.9, Pressure/Temperature Limits, and its associated Bases, by changing the Unit 1 heatup and cooldown curves to incorporate a newly determined reactor vessel reference nil-ductility temperature, RT_{NDT}, and by updating the removal schedule of vessel surveillance capsules for both units in accordance with ASTM E185–82. Changes would also be made to the Unit 1 Low Temperature Overpressure Protection System (LTOPS) setpoint curve in TS 3.4.9.3 to reflect the new pressure/temperature limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of new pressure-temperature limit curves and low temperature overpressure protection curves will not change any postulated accident scenarios. The revised curves were developed using industry standards and regulations which are recognized as being inherently conservative. The pressure-temperature low temperature overpressure curves provide reactor coolant system (RCS) limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown limits are designed to ensure that the 10 CFR 50 Appendix G Pressure Temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences.

General Design Criterion 32 of 10 CFR 50 Appendix A requires that the reactor coolant boundary shall be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident condition[s], (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

10 CFR 50 Appendix G, "Fracture Toughness Requirements," requires that the effects of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of [a] nuclear reactor be considered in the pressure-temperature limits. The change is used in conjunction with the material initial reference temperature (RT_{NDT}) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99, Rev. 2, contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Using the Regulatory Guide 1.99, Revision 2, Braidwood Unit 1 Surveillance Capsule U results, and Appendix G to 10 CFR 50, new Pressure-Temperature curves [were] prepared for the projected reactor vessel exposure at 32 EFPY of operation. These new curves, in conjunction with the heatup and cooldown ranges and the revised Low-Temperature Overpressure Protection System setpoints, provide the required assurance that the reactor pressure vessel is protected from brittle fracture up 32 EFPY of operation. No changes to the design of the facility have been made and no new equipment has been added or removed. The revised analysis and resultant adjustment of the operating limitations provide assurance that the Reactor Coolant System is protected from brittle fracture.

Revising the Reactor Vessel Material Surveillance Program Withdrawal Schedule does not result in the addition or removal of any equipment, or any design changes to the facility. Capsule lead times are revised and, for Braidwood Unit 2, Capsule X will be removed next vice Capsule W. The proposed removal schedules remain consistent with ASTM 185–82.

Therefore, the proposed amendment to the pressure temperature limitations does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the new pressure-temperature operating limits and the new low temperature overpressure protection curve does not change any postulated accident scenarios. The new curves do not represent any appreciable change in the current methodologies: they merely provide assurance that the Reactor Coolant System is protected from brittle fracture. No new accident or malfunction mechanism is introduced by the amendment and no physical plant changes will result from this amendment.

Revision of the Reactor Vessel Material Surveillance Program Withdrawal Schedule does not introduce a new accident or malfunction mechanism. Capsule lead times are revised, and, other than changing the order of specimen removal, consistent with ASME 185–82, no physical plant changes will result from this revised schedule.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed change does not involve a significant reduction in a margin of safety.

The new pressure-temperature operating limits low temperature overpressure protection curves were generated with the currently accepted conservative methodology using capsule surveillance data. The new pressure-temperature curves were developed using industry standards and regulations (ASME Code Section III, and NRC Regulatory Guide 1.99, Revision 2) which are recognized as being inherently conservative. The use of the new pressure- temperature operating limits and low temperature overpressure protection limits would not change postulated accident scenarios.

The proposed revision to the Reactor Vessel Material Surveillance Program Withdrawal Schedule would not change postulated accident scenarios. Capsule lead times are revised, and, other than changing the order of specimen removal, consistent with ASTM 185- 82, no physical plant changes will result from this revised schedule. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: James E. Dyer.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: March 31, 1994.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to provide allowable outage times for automatic actuation channel surveillance testing and restoration time for an inoperable engineered safety feature actuation system automatic actuation channel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the three categories of the significant hazards consideration standards:

a. Proposed changes to allow 8 hours for master relay and logic testing, 12 hours for slave relay testing and 6 hours to restore an inoperable ESFAS Automatic Actuation Channel prior to entering the shutdown action clock.

(1) The determination that these changes are within all acceptable criteria was established in the NRC's SER prepared for WCAP–10271, Supplement 2, Revision 1. The Technical Specification changes proposed by this license amendment request conform to NRC guidance contained in the SER. The NRC found that implementation of the proposed changes is expected to result in a small and acceptable increase in ESFAS unavailability. This increase in probability results in a small increase in calculated core damage frequency and public risk. The calculated increase in core damage frequency was judged to be acceptable since the increase was small and well within the range of uncertainty associated with the analysis. The values presented in WCAP–10271 Supplement 2 Revision 1 for increase in core damage frequency were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses performed for the NRC Staff.

Based on the small increase in core damage frequency as compared with the range of uncertainty in the analysis, the NRC agreed that the calculated increase is acceptable. This conclusion was documented in the NRC's SER dated February 22, 1989. The applicability of these conclusions has been verified through a plant specific review of the generic analysis in WCAP–10271, Supplement 2, Revision 1. The ESFAS Automatic Actuation Channel allowed outage and restoration times included in this license amendment request are consistent with the generic analysis. In addition, the NRC stated that the majority of the increase in unavailability was due to the decrease in frequency of surveillance testing vice the changes in allowed outage and restoration times. Therefore, considering the above information, the proposed allowed outage and restoration time changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) The proposed changes do not involve the physical alteration of any plant system and do not result in a change in the manner in which the ESFAS system performs its function. The increases in allowed outage and restoration times only affects the probability of the ESFAS Automatic Actuation Channel functioning properly as described above. Therefore, the allowed outage and restoration time changes proposed in this license amendment request do not create a new or different type of accident from any previously evaluated.

(3) The proposed allowed outage time and restoration time changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of the revised ESFAS Automatic Actuation Channel allowed outage and restoration times is addressed above. Implementation of the proposed changes is expected to result in an overall improvement in safety by allowing adequate time for required ESFAS testing and quality repairs leading to improved equipment reliability due to a more appropriate restoration time. Therefore, it may be concluded that the proposed allowed outage and restoration time changes do not involve a significant reduction in margin of safety.

b. Proposed change to the minimum required degree of redundancy for the High-High Containment Pressure channels in Table 3.4–1.

(1) Changing the minimum required degree of redundancy in Table 3.4–1 for the High-High Containment Pressure Channels (Table 3.4–1 items II.3, III.B.3, and IV.3) provides consistency with Technical Specification 3.4.2.c which allows an inoperable High-High Containment Pressure channel to be placed in bypass. Placement of an inoperable High-High Containment Pressure Channel in bypass is preferred to reduce the probability of an inadvertent containment spray event. Also, these channels are designed with a two out of four logic so that the failed channel may be bypassed rather than tripped. With the failed channel bypassed, single failure criterion is still met because the logic is now a two out of three. Furthermore, with the one channel bypassed, a single channel failure will not inadvertently initiate a containment spray. Therefore, this change can be considered an administrative change to correct Table 3.4–1 to agree with the Action requirements of Technical Specification 3.4.2.c. As such this proposed change does not involve an increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Correcting the minimum required degree of redundancy in Table 3.4–1 for the High-High Containment Pressure channels is an administrative change which does not involve the physical alteration of any plant system and does not result in a change in the manner in which the ESFAS system performs its function. Therefore, the proposed correction to Table 3.4–1 does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Correcting the minimum required degree of redundancy in Table 3.4–1 to be consistent with the Actions of Technical Specification 3.4.2.c is an administrative change and as such does not involve any reduction in a margin of safety.

c. Proposed change to the delete footnote +++ from Table 3.4–1.

(1) Deleting footnote +++ from Table 3.4–1 removes the inconsistency between it and Technical Specification 3.4.2.c which states that channels other than the High-High Containment Pressure channels shall be placed in trip during testing. The change does not affect the manner in which ESFAS provides plant protection. In addition the change does not affect the functioning of ESFAS or the way Zion

Station conducts channel testing. Instrument channel testing will continue to be conducted in the tripped mode with the exception of the High-High Containment Pressure channels, which can be tested in bypass because of the risk of a spurious Containment Spray event. Automatic Actuation Channel testing will be performed in accordance with the allowed outage times of new Specification 3.4.2.d. As such this proposed change does not involve any significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Deleting footnote +++ from Table 3.4–1 does not involve the physical alteration of any plant system and does not result in a change in the manner in which ESFAS performs its function. Therefore this change does not involve the physical alteration of any plant system and does not result in a change in the manner in which the ESFAS system performs its function. Therefore, the proposed correction to Table 3.4–1 does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Deleting footnote +++ from Table 3.4–1 does not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. Implementation of this change will not alter ESFAS testing. Therefore implementation of this change does not involve any reduction in a margin of safety.

d. Proposed editorial change to Technical Specification 3.4.2.c.

The editorial change to Technical Specification 3.4.2.c to change "Containment Hi-Hi pressure channels" to "High-High Containment Pressure channels" is purely an administrative change which has no affect on plant safety.

e. Summary.

The foregoing analyses demonstrate that the proposed License Amendment to the Zion Station Technical Specifications does not involve a significant increase in the probability of occurrence or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: James E. Dyer.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: April 22, 1994.

Description of amendment request: The proposed change revises the reactor vessel pressure-temperature limits in the Technical Specifications. The change insures that the vessel fracture toughness requirements of Section V of 10 CFR Part 50, Appendix G, are satisfied through the end of life.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The margin above Nil Ductility Transition Temperature (NDTT) is governed by 10 CFR 50 Appendix G and remains unchanged. The proposed change will not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Will the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The predicted shifts in NDTT are based on a revised reference temperature consistent with Regulatory Guide 1.99, Revision 2, dated May 1988. This method of revising temperature-pressure limits is the same as in the past (ASME Code Section III, Appendix G).

3. Will the proposed change involve a significant reduction in the margin of safety?

The proposed curves were generated for an End of Licensed Life (May 31, 2000) Effective Full Power Year exposure and are conservative in nature until that time. The margin of safety [is] unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: April 18, 1994.

Description of amendment request: License Amendment No. 81, issued on July 15, 1993, changed the numbering of surveillance requirements for Technical Specifications 3/4.3.1, "Control Rod Operability," 3/4.3.2, "Control Rod Maximum Scram," and 3/4.10.2, "Rod Pattern Control System." However, Action Statements referencing these surveillance requirements were overlooked and were not appropriately renumbered. The purpose of the proposed technical specification change would be to renumber the overlooked references.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) These changes do not affect the intent or implementation of the applicable Technical Specifications. The changes simply make the affected Technical Specifications consistent. Since these are only editorial changes which do not impact the plant design or operations, they cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes are editorial only and do not affect the plant design or operation. No new failure modes are introduced by such changes and, therefore, the request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes merely correct an editorial oversight. These changes do not alter or delete any technical requirements and, therefore, do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: John N. Hannon.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: April 18, 1994.

Description of amendment request: Test methods for carbon adsorber filters specified in Technical Specification Sections 3/4.6.6.3, "Standby Gas Treatment System," and 3/4.7.2, "Control Room Ventilation System," specify the 1979 version of ASTM D3803. The proposed change would delete the year of the standard so that more recent versions of the standard could be used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes to the Technical Specification surveillance requirements for determining the methyl iodide penetration of carbon samples would not involve a significant increase in the probability or the consequences of any accident previously evaluated because the proposed change merely allows Illinois Power (IP) to utilize a more up-to-date version of the same test method currently specified. More recent versions of the test method are more effective at detecting unsatisfactory charcoal performance because they include equilibration periods to ensure that all samples have a common starting point before being challenged with radioactive gas. The proposed change would not affect the quality of the charcoal or the reliability of the filter subsystems as it only relates to testing and involves no changes to the design or operation of the ventilation subsystems themselves. The updated standards provide more accurate and repeatable test results and do not change the properties or acceptance criteria for these properties. As a result, the performance capabilities of the associated filter subsystems would not be adversely impacted by the proposed change.

(2) The proposed change would not involve a change in the design or operation of any plant system or component. In addition, the proposed change would not reduce the level of filter train subsystem reliability nor would it create an initiating event for any accident. Because the performance, function, and redundancy of the original design remain unchanged, the proposed change would not create the potential for a new event. Furthermore, since no new types of equipment would be introduced into the plant design and the proposed change would not adversely impact existing equipment, no potential for a different type of malfunction is created by the proposed change. Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The margin of safety for the charcoal filter subsystems as defined in the Bases to the Technical Specifications associated with the proposed change refers to the ability of the filters to remove radioiodines. The proposed change would allow IP to upgrade the currently specified test for determining charcoal adsorber performance with one which utilizes the same type of methodology, but provides greater accuracy and repeatability. The newer versions of the test method are more effective at detecting unsatisfactory charcoal performance because they include equilibration periods to ensure that all samples have a common starting point before being challenged with radioactive gas. Thus, the proposed change would not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: John N. Hannon.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: March 28, 1994.

Description of amendment request: The proposed amendment would revise technical specifications Tables 3.2.4 and 4.2.1, to change one of the initiating parameters of the reactor building ventilation isolation system and standby gas treatment system (SGTS) from Low Reactor Water Level to Low Low Reactor Water Level. This revision is being made in order to improve plant performance by reducing the potential for unnecessary secondary containment isolation and SGTS initiations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the Standby Gas Treatment System and secondary containment is to mitigate the consequences of a loss of coolant accident and fuel handling accidents. The proposed changes maintain this capability. The revised Standby Gas Treatment System initiation and secondary containment isolation parameter of low low reactor water level provides the required detection of loss of coolant accidents and is consistent [with] ECCS actuation to mitigate the consequences of this accident. The low low reactor water level instrumentation is set to trip when reactor water level is 6'6" above the top of the active fuel. This trip currently initiates closure of the Group 1 Primary containment isolation valves, activates the Emergency Core Cooling systems and starts the emergency diesel generator. This trip setting level was chosen to be low enough to prevent spurious operation but high enough to initiate Emergency Core Cooling system operation and primary system isolation so that no melting of the fuel cladding will occur, post accident cooling can be accomplished, and the guidelines of the 10 CFR 100 will not be violated. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed changes to Technical Specifications for the standby gas treatment system and secondary containment do not alter the function 8 of the systems or its interrelationships with other systems. An adverse interaction which could be postulated to occur is the initiation of the Standby Gas Treatment System without a coordinated trip of the Mechanical Vacuum Pump. The Mechanical Vacuum Pump is operated during plant startups to draw a vacuum on the main condenser prior to admission of steam. The Mechanical vacuum discharges to the offgas stack and thus can create a back pressure on the Standby Gas Treatment System, reducing initiation of Standby Gas Treatment System flow below required values. The proposed initiation of Standby Gas Treatment System on low low reactor water level maintains the necessary coordination by having the Standby Gas Treatment System initiate subsequent to isolation or tripping of the Mechanical Vacuum Pump on a low reactor water level signal from the primary containment isolation logic. Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment changes the initiation of the Standby Gas Treatment System and secondary containment isolation from being concurrent with the low reactor water signal (which is indicative that the reactor core is in danger of being inadequately cooled) to being concurrent with reactor low low water level (which is also an indicator that the capability to cool the core is threatened and assures that no melting of the fuel cladding will occur, post accident cooling can be accomplished, and the guidelines of 10 CFR 100 will not be violated). A review of the accident analyses provided in Section 14 of the USAR has determined that these analyses did not specifically credit initiation of the Standby Gas Treatment Systems and secondary containment isolation at the accident precursor reactor water level of low level. Furthermore, this review determined that the low low reactor water level setpoint has no adverse impact on the ability of the Standby Gas treatment System and secondary containment to perform its design basis function as credited in the accident analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Ledyard B. Marsh.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: March 24, 1994.

Description of amendment request: The proposed modification to Technical Specification (TS) Sections 3.11.1.4, 6.9.1.8, and 6.14.1 would change the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative in nature. The proposed changes simply involve revising the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually in order to implement the amended reporting requirements of 10 CFR 50.36a as promulgated in Final Rule 57 FR 39353. Since the information contained in this report is reviewed and evaluated after the effluents are released, no accidents previously evaluated are impacted by the proposed TS changes. Radiological effluent releases from the station will continue to be controlled as required by the TS, including those requirements specified in the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP). The proposed TS changes do not involve any changes to the operation or physical configuration of any plant systems or equipment. The proposed changes do not impact any initial or final accident conditions or assumptions previously evaluated. The radiological consequences of these previously evaluated accidents are not affected by the proposed changes.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are administrative in nature. The proposed changes simply involve revising the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually in order to implement the amended reporting requirements of 10 CFR 50.36a as promulgated in Final Rule 57 FR 39353. Radiological effluent releases from the station will continue to be controlled as required by the TS, including those requirements specified in the ODCM and PCP. The proposed TS changes do not involve any modifications to plant systems or equipment.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative in nature, and will only involve revising the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually as currently stipulated in 10 CFR 50.36a. The specific radiological effluent release information contained in this report will continue to be provided as required. The station radiological effluent releases will continue to be controlled as required by TS, including those requirements specified in the ODCM and PCP.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 25, 1994.

Description of amendment request: The proposed Technical Specification (TS) changes would permit the submittal of the Radioactive Effluents Release Report on an annual rather than a semiannual basis; allow changes to the Offsite Dose Calculation Manual (ODCM) to be submitted in the Radioactive Effluent Release Report rather than in the monthly operating report; remove the title of Executive Vice President—Operations from the TS; remove the list of audit frequencies from the TS and place them under Quality Systems management; change the title of Associate Manager, Health Physics to Radiation Protection Manager; remove references to specific letters; remove TS 6.4 on training; and correct various typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the administrative change does not affect plant operations in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed license amendment does not involve a significant reduction in a margin of safety. The change is only administrative.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: William H. Bateman.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 11, 1994.

Description of amendment request: The proposed Technical Specification (TS) changes would delete surveillance requirement 4.8.1.4.a.3, which requires periodic testing of penetration protection fuses, and its associated Basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

Fuses are simple protection devices and can only degrade by being more resistive which is in the conservative direction. The proper type and size fuse is assured as part of design, procurement, and initial installation. The testing provides no additional assurance of operability. Therefore, the deletion of periodic retesting of these fuses will not increase the probability or consequences of an accident previously evaluated.

2. [The proposed amendment will not] [c]reate the possibility of a new or different kind of accident from any previously analyzed.

The design of the penetration protection and the installation of the fuses has not changed in any way. Any undetected failure of a fuse would fall under single failure criteria. A current limiting fuse must have high electrical current in order to perform its intended function. Any fuse which has opened the circuit through the penetration would be detected. (This is not a concern of the Technical Specifications.) Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. Deletion of this surveillance requirement will not minimize the intent of this Technical Specification. This TS is to assure continued operability of the containment penetration conductor overcurrent protection which helps to ensure containment integrity. Testing, however, may introduce the potential for damage to the fuses and fuse clips. Therefore, the deletion of this TS requirement will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: William H. Bateman.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 22, 1993.

Description of amendment request: The proposed amendment would result in the replacement of most of the analog Riley temperature instrumentation associated with leak detection with digital equipment from the General Electric Company NUMAC product line. Technical Specification changes would be made to instrumentation surveillance requirements for temperature instruments associated with main steam line isolation, reactor water cleanup system isolation, reactor core isolation cooling system isolation, and residual heat removal system isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical specifications are proposed to be revised to perform a Channel Functional Test on a semiannual frequency versus the current monthly frequency for both ambient and differential temperature and for the MSL tunnel temperature timer functions, for the above listed piping lines. Additionally, this evaluation addresses the potential for, and implications of, common mode failures due to software, hardware and/

or electromagnetic and radio-frequency interference (EMI/RFI).

The NUMAC instrumentation has certain design features which contribute to its reliability. The replacement NUMAC LDMs are digital instruments that use a microcomputer to monitor the ambient and differential temperatures (also the MSL tunnel temperature timer) and provide outputs and automatic self-testing and calibration. A description of the major design features include: a) isolation of the essential microcomputer by a serial data link from the front panel display (and display microcomputer), b) a self-test system feature that provides automatic testing of internal circuits and reports failures, c) thermocouple failure detection, d) provisions to test the output relays without the use of jumpers (reducing the threat of spurious isolation), and e) two independent built-in instrument power supplies (that automatically switchover to the other supply in the event of failure). Also, several features have been included, among these, a) a hardware "watchdog" timer to monitor against software cycling in continuous loops, and b) software structured with the safety-related essential tasks running at the highest priority in the system. These capabilities increase the reliability of the collected data, reduce the possibility of inadvertent isolation and plant shutdowns, reduce the need for frequent calibrations, and reduce the likelihood of common mode failures.

The NUMAC Leak Detection Monitors will maintain the same environmental and electrical physical independence criteria (qualifications) as the existing Leak Detection System components. The LDMs, the associated thermocouple input units (TCIUs), and relay output units (ROUs) will be mounted seismically such that qualification of these components and the Control Room panels will be maintained. The LDMs are qualified for the PNPP Control Room environment. The LDMs (one per division) will be physically and electrically independent of each other and do not share power supplies, thermocouple inputs, output relays, microcomputer logic units, display units or enclosures and mounting locations. A postulated gross failure of any one NUMAC LDM, such as gross malfunction of the input unit, microcomputer logic unit or the relay output unit, will not propagate to the other NUMAC LDM, such as gross malfunction of the input unit, microcomputer logic unit or the relay output unit, will not propagate to the other NUMAC LDM. Thus, a failure within one NUMAC LDM will not prevent or disable the function of the other NUMAC LDM. A failure within one NUMAC LDM may cause the loss of one division of the isolation trip logic. However, since the other redundant division (the MSLs have three other divisions) will not be affected by this failure, the Leak Detection System will still be able to perform its designed safety-related function and provide the necessary system isolation. This is the same as the current Leak Detection System design basis.

The possibility of a common mode failure of both NUMAC LDM divisions is minimized by the design of the NUMAC hardware and software, the verification and validation (V&V) of the software to reduce the likelihood of errors, the testing of the software (to discover and eliminate errors), and the design of and testing of the hardware to demonstrate its resistance to EMI/RFI. The NUMAC instrument design features, by effectively eliminating the potential for common mode failures, maintain the Leak Detection System within its current licensing basis. (A discussion of common mode failure protection is presented in more detail in the answer to question two.) Therefore, the design, isolation and separation criteria remain the same.

Additionally, as described within Chapter 7 of the Updated Safety Analysis Report (USAR), diversity is provided to the ambient and differential temperature monitoring trip functions for the various systems by alternative leak detection methods (such as measuring steam line flow or pressure) that provide backup in the event of the loss of both divisions of the NUMAC Leak Detection Monitors. These alternative leak detection methods are physically separate from those being performed by the NUMAC LDM and constitute a diverse, redundant, safety related backup capable of responding to a design basis line break for the various systems. Therefore, a common mode failure of both LDM divisions would not prevent any of the necessary system isolation from occurring.

No changes are being made to the isolation logic of the Leak Detection System. No accident initiators or precursors are affected by the proposed changes to the Channel Functional Test surveillance intervals for the various trip functions. One purpose of a Channel Functional Test is to check the instrument setpoints. The NUMAC instrument setpoints are set digitally and do not drift. An engineering evaluation has established that the Channel Functional Test surveillance interval can be extended from one to six months. The potential for common mode failures has been accounted for in the design and measures have been taken to lower the probability of this to an acceptable level (see the answer to question two). Also, alternative leak detection methods exist for this eventuality. Since the NUMAC Leak Detection Monitoring equipment meets or exceeds the design and licensing criteria specified for the Leak Detection System, the proposed upgrade cannot increase the probability of occurrence of any accident previously evaluated.

A portion of the Leak Detection System logic causes a closure of the Main Steam Isolation Valves on a steam leak signal. This transient, described in Chapter 15 of the USAR, may also occur due to a LDS equipment malfunction. Since this modification replaces some of the existing Riley temperature monitoring instrumentation with more reliable instrumentation the probability of this transient is reduced (no radiological consequences are associated with this event). The LDS is also used to mitigate the consequences of a pipe break outside primary containment by isolating the affected system connected to the Reactor Coolant Pressure Boundary (RCPB). The replacement of the Riley instrumentation with NUMAC LDMs will not change, degrade, or prevent the Leak Detection System response to mitigate the radiological consequences of an accident. Therefore, replacement of the Riley temperature modules with NUMAC Leak Detection Monitors will not significantly increase the consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The single failure criterion requires that any single failure within a safety-related system not prevent proper protective action of the overall system when the system is required to function. The Leak Detection System design is such that a failure of one division will not prevent the system from performing its safety function. Common mode failure protection provisions have been addressed in the NUMAC LDM design.

The comprehensive General Electric software V&V and configuration management control programs minimize, although they cannot entirely eliminate, the likelihood of a common mode NUMAC instrument failure due to software problems. The hardware (firmware) and software for the PNPP NUMAC Leak Detection Monitors will undergo a formal software verification and validation (V&V) process by General Electric, that is to be completed by the end of the year, equivalent to the one reviewed and approved by the NRC for the safety-related Wide Range Neutron Monitor.

The NUMAC instruments are designed to minimize both their susceptibility to, and generation of, electromagnetic and radio-frequency interference (EMI/RFI) to prevent spurious operations and allow their use in safety-related systems. As part of a broader plan by GE to improve the testing has been performed by GE on the Leak Detection Monitor configuration in order to both expand the overall qualification region, and to obtain test data specific to this application. This testing ensures the qualification of the Thermocouple Input Unit (TCIU), a NUMAC circuit board which is unique to the LDM application, and also extends the NUMAC EMI/RFI qualification region to include both higher and lower frequencies than previously tested.

The NUMAC instrument design concept has undergone review by the NRC, and the initial instruments of the NUMAC product line (the Logarithmic Radiation Monitor and Wide Range Neutron Monitoring System) have received NRC approval via Safety Evaluation of the associated GE Licensing Topical Reports. The various types of NUMAC equipment in operation at other nuclear power plants have components and software modules which are similar to and in some instance identical to the NUMAC LDMs. Therefore, based on the NRC reviewed and approved NUMAC software and hardware control programs instituted by GE, the design features to minimize software/hardware (or their interface) problems, design features to minimize susceptibility to EMI/RFI, and testing to demonstrate resistance to EMI/RFI, installation of NUMAC Leak Detection Monitors at the PNPP does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The replacement of the analog Riley temperature modules with the microcomputer based NUMAC Leak Detection Monitors will not affect any design conditions or impact the margins of safety for the various Leak Detection System monitored parameters in the Technical Specification Table 3.3.2–2 will not be changed or affected by this modification. Only the CHANNEL FUNCTIONAL test interval is being extended.

The NUMAC Leak Detection Monitor design, with the attention paid towards minimizing the potential for, and the effect of, software/hardware and/or EMI/RFI related problem or common mode failures and resulting operational experience has demonstrated that replacement of the existing Riley temperature modules with NUMAC Leak Detection Monitors would not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: February 8, 1994, as supplemented March 25, 1994.

Description of amendment request: The amendment would revise the WNP–2 Technical Specifications. Specifically, the amendment would increase the stroke time, as specified in Table 3.6.3–1, for reactor core isolation cooling (RCIC) valve RCIC–V–8, from 13 seconds to 26 seconds and the note (j) reference would be deleted from RCIC–V–8 and RCIC–V–63. The note (j) indicates that the stroke time specified in the Table reflects the requirement for containment isolation only.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated. RCIC–V–8 and V–63 are containment isolation valves and are normally open. Failure of the valves to open or close cannot cause an accident. The mitigating capability of RCIC–V–8 and V–63 is not changed in that the valves will continue to be closed within the established time limits. This ensures protection of the safety related equipment necessary for continued compliance with the requirements of General Design Criterion 4. In those accidents which involve a source term and potential adverse dose release consequences, no credit is taken for the closing of the valves; therefore the increase in the allowable time for closing does not increase the consequences of those accidents.

2. This proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requested Technical Specifications change does not represent a change in modes of operation. It does not, in itself, require physical modification to the plant, although it will be used to allow a gear change in RCIC–MO–8. The new gears represent a standard configuration for Limitorque motor operators and will require a routine design change. The required Technical Specification change maintains the licensing basis for the plant as discussed in response to question 1. Hence, no new or different kind of accident is possible as a result of implementing this change.

3. This proposed action does not involve a significant reduction in a margin of safety. The increase in stroke time will increase the peak temperature in the HELB profiles and thereby decrease the margin available from the equipment qualification limits. However, sufficient margin remains to assure the equipment operability is maintained and there is no reduction in the margin of safety. Additionally, there is no reduction in the margin of safety because increasing the stroke time will not change the postulated radiological releases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Attorney for licensee: M.H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Project Director: Theodore R. Quay.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 14, 1994.

Description of amendments request: The proposed change would relocate the instrument response time tables 3.3.1–2, Reactor Protection System (RPS) Response Times; 3.3.2–3, Isolation System Instrumentation (ISI) Response Time; and 3.3.3–3, Emergency Core Cooling System (ECCS) Response Times, from the Technical Specifications to the Updated Final Safety Analysis Report. The RPS, ISI, and ECCS instrument limiting conditions for operation (LCO) will be revised to read that the instruments "shall be operable" without a reference to a specific response time table in these LCOs. The references to the response time tables will also be deleted from the Surveillance Requirements.

Date of publication of individual notice in **Federal Register**: April 26, 1994 (59 FR 21785).

Expiration date of individual notice: May 26, 1994.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: January 14, 1994.

Brief description of amendment request: The proposed amendment would revise various instrumentation technical specifications by extending the allowable outage times (AOTs) of the instruments, and by increasing their channel functional surveillance test intervals (STIs) to quarterly. The amendment also revises certain technical specification actions to address loss-of-function concerns associated with the AOT and STI changes.

Date of individual notice in **Federal Register**: April 26, 1994(59 FR 21787).

Expiration date of individual notice: May 26, 1994.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: February 22, 1994.

Brief description of amendment request: The proposed amendment would revise the technical specifications (TS) for the main steam-positive leakage control system (MS–PLCS) and the penetration valve leakage control system (PVLCS) to be consistent with the requirements contained in NUREG–1434, "Standard Technical Specifications, General Electric Plants (BWR/6)."

Date of individual notice in **Federal Register**: March 10, 1994 (59 FR 11331).

Expiration date of individual notice: April 11, 1994.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: March 3, 1994.

Brief description of amendment request: The amendment would revise the technical specifications in accordance with the guidance provided by Generic Letter 93–08, "Relocation of Technical Specification Tables of Instrument Response Time Limits." Generic Letter 93–08 recommends the removal and subsequent relocation of various technical specification tables which denote instrument and system response time limits.

Date of individual notice in **Federal Register**: March 16, 1994 (59 FR 12380).

Expiration date of individual notice: April 15, 1994.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: October 26, 1993, as supplemented March 28, 1994.

Brief description of amendments: The licensee is requesting a revision to TS 5.3.1 for Palo Verde Nuclear Generating Station Units 1, 2, and 3 that will increase the maximum allowable fuel enrichment from 4.05 weight percent U–235 to 4.30 weight percent U–235. There was no change requested to the current

52,000 MWD/MTU burnup. The licensee provided a supplemental letter dated March 28, 1994, at the request of the NRC to bring TS 5.3.1 into conformance with Generic Letter 90–02, Supplement 1 and to clarify assumptions used in the Fuel Handling Accident Analysis.

Date of issuance: April 19, 1994.

Effective date: April 19, 1994, to be implemented within 45 days of issuance.

Amendment Nos.: 74, 60 and 46.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 19, 1994 (59 FR 2860) The additional information contained in the supplemental letter dated March 28, 1994, was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 1, 1992.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.4.3, "Relief Valves," to improve the reliability of the reactor coolant system's power-operated relief valves (PORVs) and their associated block valves for overpressure protection during normal operation and anticipated transients. The amendments also revise TS 3/4.4.9, "Pressure/Temperature Limits," to improve the availability of the PORVs for low temperature overpressure protection. Accompanying changes are also made to the associated TS Bases. These revisions were made in response to Generic Letter 90–06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' pursuant to 10 CFR 50.54 (f)."

Date of issuance: April 20, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 188 and 165.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 30, 1992 (57 FR 45076).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 4, 1994.

Brief description of amendment: The amendment revises TS Surveillance Requirement 4.6.4.1 to delete the 12-hour channel check, thereby eliminating the need for continuous operation of the hydrogen monitors.

Date of issuance: April 26, 1994.

Effective date: April 26, 1994.

Amendment No. 47.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10001) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 21, 1994, as supplemented March 24, 1994.

Brief description of amendments: The amendments add a one-time revision to Technical Specification (TS) 3/4.7.1.1 to permit continued activities at all four units with main steam Code safety valve lift setpoint tolerances of ±3%. The duration of this amendment is until May 9, 1994, at which time the tolerances will be reset to ±1%. A statement has also been added to TS 4.7.1.1 for Braidwood stating that the provisions of TS 4.0.4 are not applicable to Braidwood, Unit 1, Cycle 5 until initial entry into Mode 2 from its refueling outage.

Date of issuance: April 18, 1994.

Effective date: April 18, 1994.

Amendment Nos.: 61, 61, 49, and 49.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 14685 dated March 29, 1994). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination within 15 days. No comments have been received. The notice also provided an opportunity to request a hearing by April 29, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated April 18, 1994.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 29, 1993, as supplemented by letter dated April 8, 1994.

Brief description of amendment: The amendment revises Technical Specification Section 3.9.A.5 and Tables 3.9–1 and 4.10–2 to delete controls for the 21, 22, and 23 Boron Monitor Tanks, which are no longer in service.

Date of issuance: April 28, 1994.

Effective date: As of the date of issuance to be implemented after the inlet and outlet lines of the 21, 22, and 23 Boron Monitor Tanks have been cut and capped.

Amendment No.: 169.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 24, 1993 (58 FR 62154)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 23, 1993.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.4.3.2.d and related Table 3.4.3.2-1 by changing the allowable leakage for certain low pressure coolant injection (LPCI) line pressure isolation valves and revises Table 3.6.3-1 to remove the designation as containment isolation valves from the LPCI injection reverse flow check and bypass valves. The related Bases are also changed. Concurrently, the Commission granted an exemption from the requirements of 10 CFR Part 50, Appendix J, III.C. for performing Type C containment integrated leak rate tests of the containment isolation valves in the low pressure coolant injection lines of the residual heat removal system and to perform alternative testing.

Date of issuance: April 22, 1994.

Effective date: April 22, 1994, with full implementation within 45 days.

Amendment No.: 98.

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register**: September 1, 1993 (58 FR 46227) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: February 24, 1993.

Brief description of amendment: The amendment corrected typographical errors in the plant technical specifications (TSs). These errors were introduced in the original ANO-1 TS, and in subsequent amendments. These changes are administrative in nature and are intended to improve the readability of the plant technical specifications without changing the meaning or intent of any specifications.

Date of issuance: April 26, 1994.

Effective date: April 26, 1994.

Amendment No.: 171.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 22, 1993 (58 FR 67843)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 16, 1993, as supplemented by letter dated April 5, 1994.

Brief description of amendment: The amendment revised the Technical Specifications to provide acceptable conditions for operation when the core operating limit supervisory system (COLSS) is out of service and either or both control element assembly calculators (CEACs) are operable.

Date of issuance: April 22, 1994.

Effective date: April 22, 1994.

Amendment No.: 93.

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 5, 1994 (59 FR 620) The additional information contained in the supplemental letter dated April 5, 1994, withdrew a portion of the original application and thus, was within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 14, 1994.

Brief description of amendment: The amendment revised the Technical Specifications in response to Generic Letter 93-08 issued by the NRC and dated December 29, 1993, by relocating the reactor trip system and engineered safety features actuation system response time limits to the updated final safety analysis report.

Date of issuance: April 22, 1994.

Effective date: April 22, 1994.

Amendment No.: 94.

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 16, 1994 (59 FR 12360) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront New Orleans, Louisiana 70122.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: February 25, 1992.

Brief description of amendments: The amendments relate to your application dated February 25, 1992, which requested a 40-year operating license commencing from the date of issuance of the operating license and, accordingly, would extend the operating license expiration date for Turkey Point Units 3 and 4 to July 19, 2012 and April 10, 2013, respectively.

Date of issuance: April 20, 1994.

Effective date: April 20, 1994.

Amendment Nos. 162 and 156.

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 15, 1992 (57 FR 13130) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: December 28, 1993.

Brief description of amendments: These amendments include steam generator overfill protection in the Technical Specifications in response to Generic Letter 89-19, Request for Action Related to Resolution of Unresolved Safety Issue A-47 "Safety Implications of Control Systems in LWR Nuclear Power Plants."

Date of issuance: April 28, 1994.

Effective date: April 28, 1994.

Amendment Nos. 163 and 157.

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10007) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 14, 1994.

Brief description of amendment: The amendment changes the Millstone Unit 2 Technical Specifications (TS) to provide a one-time extension of the surveillance frequency from the required 18-month to the next refueling outage but no later than September 30, 1994, of the power operated valves in the service water system (TS 4.7.4.1.b) and in the boron injection flowpath (TS 4.1.2.2.c). This extends the surveillance for these valves approximately 5 months.

Date of issuance: April 22, 1994.

Effective date: April 22, 1994.

Amendment No.: 173.

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 23, 1994 (59 FR 13751). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Units 1, 2 and 3, New London County, Connecticut

Date of application for amendment: December 22, 1993.

Brief description of amendment: The amendments revise the Technical Specifications (TS) as follows:

1. Change the title of the Nuclear Station Director to Senior Vice President—Millstone Station.
2. Remove the requirement to provide a copy of Plant Operations Review Committee (PORC) and Site Operations Review Committee (SORC) meeting minutes to the Executive Vice President—Nuclear. The Senior Vice President—Millstone Station replaces the Executive Vice President—Nuclear for receipt of PORC and SORC meeting minutes.
3. Make editorial changes to the Millstone Unit No. 1 TS Index.
4. Correct a typographical error in Section 6.2.1.d of the Millstone Unit No. 1 TS.
5. Correct a typographical error in Section 6.5.3.1.a of the Millstone Unit No. 3 TS.

Date of issuance: April 26, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 74, 174, and 90.

Facility Operating License No. DPR-21, DPR-65, AND NPF-49. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 16, 1994 (59 FR 7693) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 19, 1993, as supplemented by letter dated April 18, 1994.

Brief description of amendments: These amendments extend surveillance test interval and allowed outage times for the containment isolation actuation instrumentation.

Date of issuance: April 26, 1994.

Effective date: April 26, 1994.

Amendment Nos. 69 and 32.

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 23, 1993 (58 FR 34086) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 6, 1993, as supplemented by letter dated April 18, 1994.

Brief description of amendments: These amendments extend surveillance test interval and allowed outage times for selected actuation instrumentation and makes editorial changes.

Date of issuance: April 26, 1994.

Effective date: April 26, 1994.

Amendment Nos. 70 and 33.

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 23, 1993 (58 FR 34087) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 19, 1993.

Brief description of amendments: These amendments eliminate the listing of specific position titles for the Plant Operations Review Committee (PORC) composition in favor of allowing the Plant Manager to appoint PORC members. This revision eliminates the need to change the TS in the future whenever a position title is changed.

Date of issuance: April 26, 1994.

Effective date: April 26, 1994.

Amendments Nos.: 190 and 195.

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 5, 1994 (59 FR 628) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 31, 1994.

Brief description of amendment: This amendment to the Appendix B Technical Specifications (TSs), the Radiological Effluent TSs, revised Section 3.5, and the associated Bases, to establish a threshold level below which there will be no requirement to perform grab samples and isotopic analyses of steam jet-air ejector (SJAE) effluent and revised TS Table 3.10–1 to change the actions required when entering an SJAE limiting condition for operation. Additionally, the amendment revised the TSs to clarify instructions and make editorial corrections which are administrative in nature.

Date of issuance: April 25, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 211.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10014).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 12, 1993.

Brief description of amendment: The amendment revised the Technical Specifications (TS) to incorporate the changes listed below:

(1) The frequency of high pressure water fire protection system testing (specified in TS Section 4.12.A.1) was changed to accommodate operation on a 24-month cycle.

(2) The frequency of fire pump diesel engine testing (specified in TS Section 4.12.A.2) was changed to accommodate operation on a 24-month cycle.

(3) The frequency of electrical tunnel, diesel generator building, and containment fan cooler fire protection spray and/or sprinkler system testing (specified in TS Section 4.12.B.1) was changed to accommodate operation on a 24-month cycle.

(4) The frequency of fire barrier penetration seal inspection (specified in TS Section 4.12.C.1) was changed to accommodate operation on a 24- month cycle.

(5) The frequency of fire detection system testing (specified in TS Section 4.12.D.1) was changed to accommodate operation on a 24-month cycle.

(6) The frequency of fire hose station testing (specified in TS Section 4.12.E.1) was changed to accommodate operation on a 24-month cycle.

(7) The frequency of CO_2 fire protection system testing (specified in TS Section 4.12.G.1) was changed to accommodate operation on a 24-month cycle. A new requirement was also added to exercise the fire dampers on an annual basis.

These changes followed the guidance provided in Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle," as applicable.

In addition, TS Section 4.12 was reformatted, in its entirety, and several administrative changes were made to improve clarity.

Date of issuance: April 20, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 146.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1993 (58 FR 25862) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 4, 1994.

Brief description of amendment: This amendment adds a new TS 3/4.10.8, "Inservice Leak and Hydrostatic Testing," to the Hope Creek Generating Station TSs. The amendment also includes corresponding changes to the TS Index, Table 1.2, "OPERATIONAL CONDITIONS," and provides Bases for TS 3/4.10.8. The added TS 3/4.10.8 permits the unit to remain in OPERATIONAL CONDITION 4 with the average reactor coolant temperature being increased above 200°F, but not to exceed 212°F, and certain OPERATIONAL CONDITION 3 Limiting Conditions for Operation for secondary containment isolation, secondary containment integrity and filtration, recirculation and ventilation system (FRVS) operability being met.

Date of issuance: April 18, 1994.

Effective date: April 18, 1994.

Amendment No.: 69.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 16, 1994 (59 FR 12384).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: December 23, 1992, as supplemented August 12, 1993 and January 21, 1994 (TS 328).

Brief description of amendments: The amendments modify the operability requirements for the low pressure coolant injection (LPCI) mode of the residual heat removal (RHR) system while the reactor is shut down. The amendments permit the RHR system to be considered operable for LPCI when aligned for shutdown cooling if it can be manually realigned and is not otherwise inoperable.

Date of issuance: April 19, 1994.

Effective date: April 19, 1994.

Amendment Nos.: 204, 223, and 177.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68:

Date of initial notice in **Federal Register**: March 31, 1993 (58 FR 16873).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 7, 1994 (TS 93–11).

Brief description of amendments: The amendments replace the wording in Surveillance Requirement 4.7.9.i, "Snubber Service Life Program," with that from the Westinghouse Electric Corporation Standard TS, Revision 4a. In addition, the amendments delete the wording in SR 4.7.9.c, "Snubber Visual Inspection Performance and Evaluation," that is inconsistent with Generic Letter 90–09.

Date of issuance: April 18, 1994.

Effective date: April 18, 1994.

Amendment Nos.: 179—Unit 1 171—Unit 2.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: February 7, 1994.

The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated April 18, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 7, 1994 (TS 93–19).

Brief description of amendments: The amendments revise Technical Specification 5.3.1 to allow the substitution of filler rods for fuel rods in fuel assemblies by incorporating the guidance in Generic Letter 90–02, Supplement 1.

Date of issuance: April 18, 1994.

Effective date: April 18, 1994.

Amendment Nos.: 180—Unit 1 172—Unit 2.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: March 16, 1994 (59 FR 12367) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated April 18, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: September 28, 1992.

Brief description of amendment: The amendment revised Technical Specification (TS) 2.2, Limiting Safety System Settings, TS 3.3.1, Reactor Protection System Instrumentation, and TS 3.3.2, Isolation Actuation Instrumentation by removing the functions associated with the main steam line radiation monitors.

Date of issuance: April 22, 1994.

Effective date: April 22, 1994.

Amendment No. 58.

Facility Operating License No. NPF–58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 6, 1993 (58 FR 598) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 28, 1992, as supplemented on February 17, 1993.

Brief description of amendment: The proposed amendment would delete Technical Specification (TS) 3/4.9.9, "Refueling Operations—Containment Purge and Exhaust Isolation System," and its bases, because of its redundancy to other TSs that address the operability requirements of the containment purge and exhaust isolation system. Also, the proposed amendment would revise TS 3/4.3.2, "Safety System Instrumentation—Safety Features Actuation System Instrumentation," and TS 3.4.9.4, "Refueling Operations—Containment Penetrations," and its bases. The effect of this proposed change would be to allow the bypass of the safety features actuation system in Mode 6, "Refueling," by the use of the containment purge and exhaust system noble gas monitor in conjunction with manual closure of the containment purge and exhaust isolation valves instead of automatic closure.

Date of issuance: April 15, 1994.

Effective date: April 15, 1994.

Amendment No. 186.

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 6, 1993 (58 FR 599) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 8, 1993.

Brief description of amendments: The amendments revise the technical specifications (TS) by deleting tables listing certain components from the TS and relocating the lists to plant procedures in accordance with the guidance provided in NRC Generic Letter 91–08, "Removal of Component Lists from Technical Specifications."

Date of issuance: April 22, 1994.

Effective date: April 22, 1994.

Amendment Nos.: 181 and 162.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 27, 1993 (58 FR 57860) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: July 29, 1993, as supplemented by letters dated March 11 and 17, 1994.

Brief description of amendment: The amendment modifies the Technical Specifications (TS) to reflect a new refueling mast. Specifically, the amendment adds new values for protective features in the TS to reflect the new refueling mast. Values for the old refueling mast are retained in the TS.

Date of issuance: April 29, 1994.

Effective date: April 29, 1994.

Amendment No.: 121.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 30, 1994 (59 FR 14900) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1994.

Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks Manitowoc County, Wisconsin

Date of application for amendments: February 26, 1993.

Brief description of amendments: The amendments adding operating conditions and limiting conditions for operation for the atmospheric steam dump valves, the crossover steam dump system, the turbine stop and governor valves, and the various turbine overspeed protection features installed at the Point Beach Nuclear Plant. Additionally, the amendments revised the surveillance requirements for the auxiliary feedwater system, and added explanatory text to the bases for Sections 15.3.4 and 15.4.8.

Date of issuance: April 20, 1994.

Effective date: April 20, 1994.

Amendment Nos.: 147 and 151.

Facility Operating License Nos. DPR–24 and DPR–27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 18, 1993 (58 FR 43939) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1993, as supplemented by letters dated March 14, 1994, and April 18, 1994.

Brief description of amendment: The amendment revises Technical Specification Sections 6.5.1, Plant Safety Review Committee (PSRC) and 6.8, Procedures and Programs, in order to allow implementation of a Qualified Reviewer Program for the review and approval of new procedures and procedure changes. Technical Specification 6.5.1.6, PSRC Responsibilities, has also been revised in accordance with Generic Letter 93–07, "Modification of Technical Specification Administrative Control Requirements for Emergency and Security Plans," to delete requirements for PSRC review of the Emergency Plan and Security Plan and related implementing procedures.

Date of Issuance: April 28, 1994.

Effective date: April 28, 1994, to be implemented within 120 days of issuance.

Amendment No.: Amendment No. 73.

Facility Operating License No. NPF–42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 24, 1993 (58 FR 62159) The March 14, 1994, and April 18, 1994, supplemental letters provided additional clarifying information and revised the implementation period and did not change the initial no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 4th day of May 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 94–11226 Filed 5–11–94; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 030–05260, 070–00314, 040–08188, License Nos. 29–01442–01, SMC–1181, SNM–296; EA 94–043]

Ledoux and Co., Teaneck, NJ; Order Suspending Licenses

I

Ledoux and Company (Licensee) is the holder of Byproduct, Source Material, and Special Nuclear Material Licenses Nos. 29–01442–01, SMC–1181, and SNM–296 (Licenses), respectively, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30, 40, and 70.

Byproduct material License No. 29–01442–01 authorizes the Licensee to possess byproduct material for use in the analysis of fission products and neutron-induced radionuclides in various materials, and to possess byproduct material to be used in the calibration of radioassay equipment, including the development of analytical chemical procedures. Byproduct material License No. 29–01442–01 was originally issued on November 20, 1956, was most recently renewed on March 8, 1989, and was due to expire on March 31, 1994, but has remained in effect pursuant to 10 CFR 30.37 and a timely request for renewal by the Licensee in accordance with a Licensee letter dated February 24, 1994.

Source Material License No. SMC–1181 authorizes the Licensee to possess source material for analysis of samples and preparation and use of working standards.

Source Material License No. SMC–1181 was originally issued on December 14, 1973, was most recently renewed on January 10, 1991, and is due to expire on January 31, 1996.

Special Nuclear Material License No. SNM–296 authorizes the Licensee to possess plutonium and uranium-235 for use in laboratory sample analysis and calibration of instruments. Special Nuclear Material License SNM–296 was originally issued on April 1, 1959. This license was most recently renewed on March 13, 1989, and was due to expire on March 31, 1994, but has remained in effect pursuant to 10 CFR 303.37 and a timely request for renewal by the Licensee in accordance with a Licensee letter dated February 24, 1994.

II

As of July 27, 1990, the Licensee was required to comply with the regulations set forth in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25. These regulations require that licensees authorized to possess licensed material in the amounts listed in the above-listed Licenses, must submit a certification of financial assurance or a decommissioning funding plan to the NRC. These regulations have been established to assure that licensees demonstrate adequate financial responsibility that funds necessary for a safe decommissioning are available and planned, thus providing adequate assurance that the facility will be decommissioned prior to terminating licensed activities.

On August 18, 1992, the NRC issued a Demand for Information to the Licensee since the NRC had not, as of that date, received financial assurance from the Licensee. The Demand for Information was issued to determine whether the Licenses should be modified, suspended or revoked. NRC sent letters dated October 21, 1992, and November 16, 1993 to the Licensee, and telephone conversations were held with the Licensee on September 28, 1990, January 13, 1992, December 14, 1993, and January 5, 1994, emphasizing the importance of providing the NRC the required financial assurance. Furthermore, an NRC inspection was conducted on October 18–19, 1993 (during which the Licensee committed to provide the required financial assurance by the end of 1993), and an enforcement conference was held with the Licensee on March 15, 1994, to emphasize the significance with which the NRC viewed the failure to provide financial assurance.

In response to the NRC Demand for Information, dated August 18, 1992, Ledoux and Company provided, by letter dated September 10, 1992, a decommissioning cost estimate of $113,013. However, a financial assurance mechanism to cover the estimated amount was not provided. On November 5, 1993, the Licensee informed the NRC by letter that it intended to establish an escrow account in the amount of $125,000 as its financial assurance mechanism by January 1, 1994. On December 28, 1993, the Licensee informed the NRC by letter that it needed more time to provide a suitable financial assurance mechanism due to unforeseen circumstances. During the enforcement conference on March 15, 1994, Ledoux and Company representatives indicated that a financial assurance mechanism would not be provided in the next month. On April 5, 1994, the Licensee stated in a letter that it was planning to provide 2 "letters of credit * * *" and that it would need some time. However, to date no financial assurance mechanism has been provided to the NRC.

III

As described in Section I, the Licensee is authorized to receive, possess, use, and transfer a wide range of byproduct material, special nuclear material, and source material in quantities set forth in its Licenses. The regulations specified in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25 require licensees to provide financial assurance such that licensed facilities will be decommissioned in a safe and timely manner, and that adequate funds will be available for decommissioning to ensure that the health and safety of the public is protected. The Licensee has continually failed to provide to the NRC the required financial assurance contrary to the requirements in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25, yet continues to perform NRC-licensed activities. The Licensee is either unwilling or unable to comply with the financial assurance requirements. The public health and safety require the Licensee to have adequate funds and financial assurance for decommissioning to ensure that decommissioning of the Licensee's facilities can be completed in a safe and timely manner.

Consequently, I lack the requisite reasonable assurance that sufficient funding will be available for decommissioning of the facility in compliance with Commission requirements, and that the health and safety of the public, including the Licensee's employees, will be protected in connection with the decommissioning of the Licensee's facilities. This is significant should the Licensee discontinue operations without appropriate financial assurance for the decommissioning. Therefore, the public health, safety, and interest require that License Nos. 29–01442–01, SMC–1181, and SNM–296 be suspended.

IV

Accordingly, pursuant to sections 51, 62, 63, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30, 40, and 70, it is hereby ordered that License Nos. 29–01442–01, SMC–1181, and SWM–296, are suspended pending the submittal to NRC by the licensee of appropriate financial assurance in the amount of $125,000.00 for its licensees in accordance with 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25, and the NRC's written acceptance of the licensee's submittal(s) to satisfy these regulatory requirements. While the Licenses are suspended, the Licensee shall not receive, use, manufacture, distribute, or transfer radioactice material and shall place all licensed material in locked storage.

The Regional Administrator, Region I, may, in writing, relax or rescind this Order upon demonstrator by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents of this Order, the answer shall, in writing and under oath or affirmiation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue on Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland, this 4th day of May 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–1153 Filed 5–11–94; 8:45am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee) for operation of its Nuclear Project No. 2 (WNP–2) plant, located in Benton County, Washington.

The proposed amendment changes the plant operating license to rename three primary containment isolation check valves listed in the technical specifications. The licensee is making an administrative change to rename valve PI–EFC–X29d to make its number consistent with other similar valves in the technical specifications. The license is renaming excess flow check valves PI–EFCX–72f and PI–EFCX–73e because they are replacing them with swing check valves that have a different numbering nomenclature.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the license has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and concluded that the change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Revising the equipment piece number (EPN) for PI–EFC–X29d to PI–EFC–X29b in Technical Specification Table 3.6.3–1 is an administrative change and provides consistency between the Technical Specifications and approved design bases. PI–EFC–X29d provides instrument line break (ILB) mitigation as analyzed in FSAR Section 15.6.2. Renaming PI–EFC–X29d has no impact on FSAR accident analyses.

Replacing existing excess flow check valves PI–EFCX–72f and PI–EFCX–73e with swing check valves and changing the EPNs has no impact on the containment isolation design basis described in FSAR Section 6.2.4.3.2.2.3.3. This plant modification will conform the plant to the FSAR design basis. The FSAR describes the drywell and suppression chamber air sampling lines and indicates that "the return lines are equipped with * * * a reverse-oriented excess flow check valve used as a simple check valve inside of containment." Replacement of the spring loaded excess flow check valve with a simple check valve (without a spring) meets plant design bases and 10CFR50 Appendix A, General Design Criterion (GDC) 56 criteria for containment isolation. The valve change and resulting EPN change do not impact the FSAR design analyses.

Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

No new mode of operation of any equipment results from the valve design change or EPN change for the three excess flow check valves. Renaming valve PI–EFC–X29d is an administrative change.

The replacement, and subsequent EPN change, of inboard containment isolation excess flow check valves PI–EFCX–72f and PI–EFCX–73e with swing check valves brings the plant into conformance with the analyzed design bases. Operation and maintenance of these valves in accordance with design and Technical Specification requirements provide assurance that primary containment will be maintained for the design basis LOCA event. The EPN change is required to conform to standard nomenclature for identification of penetration isolation valves.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The administrative name change for PI–EFC–X29d is made to ensure consistency between Technical Specification Table 3.6.3–1 and existing plant design documentation. Renaming this excess flow check valve provides consistency to the nomenclature of other excess flow check valves which use a dual tube method of draining condensate.

The replacement and subsequent EPN change of inboard containment isolation valves PI–EFCX–72f and PI–EFCX–73e brings the plant into conformance with the analyzed design bases. Maintenance and operation requirements are not modified in any manner. Adherence to the analyzed design bases will not affect the margin of safety for the design bases analysis.

Therefore, this change does not involve a significant reduction in a margin of safety.

In preparing this request the Technical Specification Bases were reviewed for impact. No changes are necessary to address the EPN changes or the replacement of two excess flow check valves with swing check valves.

Based on this review, the Supply System has determined that the three standards of 50.92(c) are satisfied. Accordingly, the Supply System has determined that this amendment request involves no significant hazards consideration.

The NRC reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the 30-day notice period expires. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplemental to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay, Director, Project Directorate IV–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street NW., Washington, D.C. 20005–3502, the licensee's attorney.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 5, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 9th day of May 1994.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Acting Project Manager Project Directorate IV–3 Division of Reactor Projects III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 94–11647 Filed 5–11–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Investigation of Claim for Possible Days of Employment or State Benefits Received.

(2) *Form(s) submitted*: ID–5I, ID–5R (SUP), ID–49R, ID–49S and UI–48.

(3) *OMB Number*: 3220–0049.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the

substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Individuals or households, State or local governments, Businesses or other for-profit, Small businesses or organizations.

(8) *Estimated annual number of respondents*: 10,500.

(9) *Total annual responses*: 10,600.

(10) *Average time per response*: .13254 hours.

(11) *Total annual reporting hours*: 1,405.

(12) *Collection description*: Under the RUIA, unemployment or sickness benefits are not payable for any day in which renumeration is payable or accrues to the claimant. The collection obtains information from the claimant, railroad and non-railroad employers and state agencies about work performed and/or benefits received during the same period as benefits are claimed.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–11574 Filed 5–11–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34019; File No. SR–NYSE–93–49]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Bond Listing Standards

May 5, 1994.

I. Introduction

On December 22, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its standards for the listing and delisting of debt securities. On April 1, 1994, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify its interpretation of certain provisions of the original filing.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33531 (January 27, 1994), 59 FR 4960 (February 2, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

Paragraphs 102.03 and 103.05 of the NYSE's Listed Company Manual set forth the current standards for listing debt securities of domestic and foreign issuers, respectively, on that Exchange. Under either paragraph, the NYSE uses the following minimum criteria to determine whether a debt security is eligible to be listed: The bond issue must have an aggregate market value or principal amount of $5 million; the anticipated distribution must be "sufficient for trading on the Exchange"; and the company must be in a position to cover interest charges on all debts issued by it for a subsidiary. In this regard, the NYSE deems interest coverage to be inadequate if the interest charges on all debt issued by the company, its parent or a subsidiary exceed earnings, before or after taxes, as reported in a filing to the Commission.[3] Finally, Paragraphs 102.03 and 103.05 allow the Exchange to list convertible debt only if the underlying common stock also is listed on the NYSE.

The delisting standards for debt securities are set forth in paragraphs 801.00 and 802.00 of the Listed Company Manual. The NYSE normally gives consideration to delisting a bond issue if the aggregate market value or principal amount falls below $1 million, or if the company's interest coverage is deemed to be inadequate.[4] The NYSE also can review the continued listing of a debt security pursuant to certain other criteria in paragraph 802.00 (*e.g.*, "authoritative advice received that security is without value," "inability to meet current debt obligations or to adequately finance operations"). In terms of convertible bonds, paragraph 801.00 states that it is the NYSE's customary policy to delist a convertible security if the related common stock is delisted.

The NYSE proposes to simplify and relax its standards for the listing and delisting of debt securities, in order to make the Exchange's trading and disclosure systems more accessible to bond issuers. Specifically, the proposed amendments to paragraphs 102.03 and 103.05 will eliminate the requirement that the Exchange evaluate the anticipated distribution of a bond issue,[5] and will replace the current definition of adequate interest coverage with a new standard based on issuer or bond rating status.[6] In addition, the NYSE proposal will permit the Exchange to list convertible debt whenever the underlying equity security is subject to real-time sale reporting in the United States.[7] Only the requirement that the bond issues have an aggregate market value or principal amount of no less than $5 million will remain unchanged.

As noted above, the NYSE proposal contains a new standard for evaluating whether a debt issuer has the ability to meet its interest obligations. Rather than using an earnings deficit, or the lack thereof, as the basis for making that determination,[8] the Exchange will rely instead on either (1) its own initial and continued listing standards for equity securities or (2) the analysis of a nationally recognized securities rating organization ("NRSRO").

Specifically, if an issuer of NYSE listed equity is in "good standing" with the Exchange,[9] the NYSE normally will list that company's debt securities so long as they have an aggregate market value or principal amount of at least $5 million. This standard also will apply to an issuer owned by, or under common control with, an issuer of NYSE listed equity; and to an issuer whose debt securities are guaranteed by an issuer of NYSE listed equity. According to the NYSE, because debt enjoys seniority over equity, the "good standing" test warrants listing an "affiliated" issuer's bonds.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Paragraph 802.00 of the Listed Company Manual.

[4] See *supra*, note 4 and accompanying text.

[5] The proposed rule change also will delete a reference to the distribution requirement from paragraph 703.06 of the Listed Company Manual, which governs the procedures an issuer must follow to list its debt securities on the NYSE.

[6] See *infra*, notes 9–13 and accompanying text.

[7] Amendment No. 1, *supra* note 3, clarifies that, for both domestic and foreign issuers, the underlying equity security must be subject to real-time reporting in the United States.

[8] See *supra*, note 4 and accompanying text.

[9] See *infra*, note 24.

In contrast, debt securities of an "unaffiliated" issuer[10] will not be eligible for initial listing on the NYSE unless an NRSRO has assigned a certain minimum rating to the bonds (or to other bonds issued by the same company). Thus, the NYSE will be able to list such a debt issue only if it has received a rating no lower than a Standard and Poor's ("S&P") Corporation "B" rating (or another NRSRO's equivalent thereof). If the issue proposed to be listed has not been rated, those bonds must be either senior to, or *pari passu* with,[11] an issue that has received at least an S&P Corporation "B" rating (or another NRSRO's equivalent thereof). Alternatively, the proposed rule change will allow the NYSE to list unrated bonds that are junior to an investment grade issue.[12]

As under current Paragraph 802.00, the NYSE will give consideration to delisting a bond issue if its aggregate market value or principal amount falls below $1 million, or if the issuer is unable to meet its obligations on the listed debt securities.[13] The NYSE also will retain the discretion to remove a bond from listing if, among other things, "authoritative advice [is] received that [the] security is without value." As a practical matter, the NYSE has indicated that it normally will not delist debt where there is value in the security and continued exchange trading is in the best interests of investors.[14] The Exchange, however, has committed to give serious consideration to delisting a bond issue if the debt security has minimal or no value and the issuer is unable to meet its financial obligations.[15]

In addition, the NYSE will amend Paragraph 801.00 to specify that convertible bonds will be reviewed for continued listing when the underlying equity security is delisted,[16] and will be delisted when the related security is no longer subject to real-time last sale reporting in the United States. Further, if the common stock is delisted due to a violation of the NYSE's "corporate responsibility" criteria (including, but not limited to, the outside director, audit committee and shareholder voting requirements),[17] then the Exchange will delist all debt securities convertible into that common stock.

Finally, the NYSE has indicated that the listing and delisting standards for "unaffiliated" corporate issuers[18] also will apply to certain non-corporate issuers. In particular, the proposed rule change specifies that sovereign issues will be evaluated on a case-by-case basis. The NYSE proposal also will codify the Exchange's current policy that only term/dollar municipal bonds may be listed.[19]

The Exchange states that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[20] Specifically, the Commission believes the proposal is consistent with section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the NYSE with greater flexibility in determining which debt securities warrant inclusion in its bond trading and disclosure systems, without compromising the benefits that the Exchange's listing standards offer to investors.

After careful review, the Commission has concluded that the initial listing standards in paragraphs 102.03 (for domestic issuers) and 103.05 (for foreign issuers), as amended, should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their bonds listed on the NYSE. As before, the proposed rule change will require that the NYSE evaluate an issuer's ability to cover the interest charges on its debt securities. Although the Exchange currently makes this interest coverage determination itself,[21] the amended standards will rely instead on either the issuer's relationship with the NYSE or the bonds' NRSRO rating.

The Commission agrees that, to the extent the NYSE has adequate listing standards for common stock, the Exchange reasonably may assume that NYSE listed companies (and certain affiliates thereof)[22] in "good standing" with the Exchange[23] are in solid financial condition and do not pose a significant risk of defaulting on their obligations. Moreover, as the NYSE correctly notes, debt securities enjoy seniority over equity securities. Because the NYSE presumably would not have listed the junior equity issue unless it was satisfied with the quality of the company, the Commission is unable to conclude that the NYSE has no basis for its assumption that the senior debt issue also warrants listed status.

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[10] As defined in the NYSE proposal, "an 'unaffiliated' issuer is one that has no equity securities listed on the Exchange: is not, directly or indirectly, majority-owned by, nor under common control with, an issuer of Exchange-listed equity securities; and is not issuing a debt security that an issuer of Exchange-listed equity securities is guaranteeing."

[11] A *pari passu* issue has equal standing with the debt issue proposed to be listed.

[12] To be investment grade, an issue must be assigned a rating no lower than an S&P Corporation rating of "BBB" (or another NRSRO's equivalent thereof). The NYSE has indicated that it will apply this standard only to unrated bonds which are immediately junior to another rated class of securities issued by the same company. Telephone conversation between Michael J. Simon, Milbank, Tweed, Hadley & McCloy; Fred Siesel, Director, Fixed Income Markets, NYSE; Sharon Lawson, Assistant Director, Division of Market Regulation, SEC; and Beth Stekler, Attorney, Division of Market Regulation, SEC, on February 4, 1994.

[13] See Amendment No. 1, *supra*, note 3. The standard will replace the current definition of inadequate interest coverage. See *supra*, note 4 and accompanying text.

[14] See Amendment No. 1, *supra*, note 3.

[15] *Id.* Amendment No. 1 provides the following example of a situation where the continued exchange trading of a debt security normally would not be considered to be in the best interests of investors: the issuer is in bankruptcy and files a plan of reorganization with no recovery for bond holders.

[16] Under Paragraph 801.00, other convertible securities will continue to be delisted when the related common stock is delisted.

[17] See Section 3 of the Listed Company Manual

On a related matter, Amendment No. 1, see *supra* note 3, clarifies that, if the NYSE delists the equity securities of a company which is the majority owner of an issuer of NYSE listed debt or the guarantor thereof, the Exchange will review the listing of the formerly "affiliated" issuer's bonds, convertible or otherwise.

[18] See *supra*, notes 11–13 and accompanying text.

[19] A term/dollar municipal bond is issued with a single maturity date (as opposed to a serial bond), and is quoted in dollars or as a percentage of its par value (rather than by yield). As such, it resembles a corporate bond. Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, Division of Marketing Regulation, SEC, on January 7, 1994.

[20] 15 U.S.C. 78f(b) (1988).

[21] *See supra*, note 4 and accompanying text.

[22] *See supra*, text accompanying note 10.

[23] According to the NYSE, a company is in "good standing" if it is above the relevant continued

For "unaffiliated" issuers, the Commission finds that it is not unreasonable for the Exchange to defer to the expertise of an NRSRO, rather than conducting its own analysis of the company's financial condition, as is presently the case.[24] Although the Commission would be concerned by any potential misuse of NRSRO ratings, the Commission notes that the NRSROs routinely evaluate interest coverage, among other things, when they rate bonds. In addition, their methodology, unlike the NYSE's, incorporates even more extrinsic factors, such as characteristics of the issuer's industry group.[25] The Commission therefore agrees with the Exchange that, under these circumstances, NRSRO ratings can be relied upon for determinations about the creditworthiness of the issuer.

Moreover, the Commission is satisfied that the distinctions in NRSRO ratings drawn by the NYSE are valid. According to the S&P Corporation's debt rating definitions,[26] bonds rated "B" (or higher) currently have the capacity to meet interest payments and principal repayments, whereas bonds rated "CCC" (or lower) are dependent upon favorable business, financial or economic conditions to meet timely payments of interest and repayment of principal. The Commission also believes that it is logical for the NYSE to assume that an unrated debt issue which is *pari passu* with (or senior to) an issue with at least a "B" rating would, if rated, receive an equal (or higher) rating. Finally, to permit the NYSE to list unrated bonds that are immediately junior to an investment grade issue is appropriate because those bonds generally would be rated no more than one rating category lower (*i.e.*, a S&P Corporation "BB" rating).[27]

As for the other provisions in Paragraphs 102.03 and 103.05, the Commission finds that they strike an appropriate balance between protecting investors and enhancing the flexibility of the debt listing process. For instance, the proposed rule change retains the current requirement that, to be eligible for listing, a bond issue must have an aggregate market value or principal amount of at least $5 million. This should enable the NYSE to deny listed status to companies whose securities do not have sufficient liquidity for a fair and orderly market, without infringing upon *bona fide* issuers' access to the Exchange's bond trading and disclosure systems.

Conversely, the Commission does not believe that eliminating the distribution requirement will have a significant adverse effect on investors in the bond market. The NYSE currently evaluates distribution of debt securities in an ad hoc fashion. The NYSE does not specify a mandatory minimum threshold for the number of bonds outstanding and/or the number of holders thereof but only requires a distribution "sufficient for trading on the Exchange." In the past, the Commission has recognized that such information may be difficult to estimate accurately and may be relatively less pertinent than other factors.[28] From the Commission's perspective, the benefits of streamlining the Exchange's substantive review is appropriate, especially since the NYSE has discretion not to list an otherwise eligible debt issue if such status would be unwarranted.

In terms of the delisting criteria in Paragraph 802.00, the Commission has concluded that the revised standards should enable the NYSE to identify listed companies that may have insufficient resources to meet their financial obligations or whose debt securities may lack adequate trading depth and liquidity. This, in turn, will allow the Exchange to take appropriate action to protect bondholders. In this regard, the NYSE has indicated that it normally will not delist a debt security if it has value and if continued exchange trading is in the best interests of investors; however, the NYSE has pledged to give serious consideration to delisting bonds which, based on their market price,[29] have minimal or no value. In applying this standard, the Commission expects the NYSE to consider carefully the propriety of continued exchange trading of the securities of bankrupt or distressed companies,[30] and expects bonds with minimal value to be delisted.

The Commission also is satisfied with the NYSE's framework for the listing and delisting of convertible debt securities. By authorizing the Exchange to list and trade bonds that are convertible into any equity security subject to real-time last sale reporting in the United States (rather than merely NYSE listed common stock), the proposed rule change should help the NYSE adapt to today's rapidly changing market environment.[31] The Commission notes that, like the NYSE, the other national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") make quote and trade information publicly available on a "real-time" basis. As a result, the Commission believes that the NYSE proposal should ensure that investors have information necessary to price convertible bonds.

In the Commission's opinion, the above goals also will be furthered by the requirement that convertible bonds be delisted whenever the underlying equity security is no longer subject to a reporting obligation. If the related equity merely moves from the NYSE to another market, it is not inconsistent with the Act for the Exchange to have discretion to continue listing the convertible debt, unless the underlying security is delisted because the issuer has violated one of the NYSE's corporate responsibility criteria. As a general matter, the Commission would have serious concerns about any proposal that does not provide for the delisting of convertible bonds where a company acts to disadvantage its shareholders. The NYSE addresses this concern by committing to delist convertible bonds when the issuer has violated corporate governance listing standards.

Finally, at this time, the Commission believes that it is reasonable for the

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listing criteria. See, *e.g.*, Paragraph 703.19 of the Listed Company Manual. Telephone conversation between Michael J. Simon, Milbank, Tweed, Hadley & McCloy; Fred Siesel, Director, Fixed Income Markets, NYSE; and Beth Stekler, Attorney, Division of Market Regulation, SEC, on April 11, 1994.

[24] See supra, note 4 and accompanying text. The NYSE's definition of the term "unaffiliated issuer" is set forth above, see supra note 11.

[25] Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC.

[26] See Standard & Poor's High Yield Directions, January 1994.

[27] *Id.*

[28] *See* Securities Exchange Act Release No. 32909 (September 15, 1993), 58 FR 49537 (September 23, 1993) (File No. SR–NYSE–93–21) (approving amendments to Paragraph 703.06 of the Listed Company Manual to eliminate requirement that distribution information be submitted as supporting document to debt listing application).

[29] Telephone conversation between Michael J. Simon, Milbank, Tweed, Hadley & McCloy; Fred Siesel, Director, Fixed Income Markets, NYSE; Sharon Lawson, Assistant Director, Division of Market Regulation, SEC; and Beth Stekler, Attorney, Division of Market Regulation, SEC.

[30] For example, debt of companies in bankruptcy that file a plan of reorganization that provides no recovery for debt holders should be delisted.

[31] In addition, the proposed rule change will conform the NYSE's listing standards with the framework used by other markets, including the American Stock Exchange.

NYSE to treat the debt of certain noncorporate issuers (*i.e.*, foreign governments, American states and localities, government agencies) like the debt of "unaffiliated" corporate issuers. As such, non-corporate debt would have to meet certain rating requirements before listing.[32] Nevertheless, as the NYSE gains experience with listing and trading sovereign and municipal bonds, the Commission expects the Exchange to monitor the adequacy of its existing standards and to develop more narrowly tailored ones where appropriate.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 clarifies and codifies the intent of certain language used in the original filing. Finally, the Commission did not receive any comments on the original proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–49 and should be submitted by June 2, 1994.

IV. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NYSE–93–49), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11558 Filed 5–11–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2706; Amdt. No. 1]

Alabama; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective April 11, 1994 to close the incident period for this disaster effective April 10, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 28, 1994 and for economic injury the deadline is December 30, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 5, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11534 Filed 5–11–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2706; Amdt. No. 1]

Georgia; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective April 25, 1994 to close the incident period for this disaster effective April 10, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 28, 1994 and for economic injury the deadline is December 30, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 5, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11535 Filed 5–11–94; 8:45 am]

BILLING CODE 8025–01–M

Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting at 9:30 a.m. on Thursday, May 26, 1994, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii 96850 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2314, (808) 541–2965.

Dated: April 26, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–11536 Filed 5–11–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Southeast Express Airlines, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation

ACTION: Notice of order to show cause (Order 94–5–9) docket 48877.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Southeast Express Airlines, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than May 23, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 48877 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9721.

Dated: May 6, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–11539 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–62–P

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[32] See *supra*, notes 11–13 and accompanying text. In addition, such debt would have to comply with the applicable registration requirements of Section 12 of the Act.

[33] 15 U.S.C. 78s(b)(2) (1988).

[34] 17 CFR 200.30–3(a)(12) (1991).

Federal Highway Administration

Environmental Impact Statement: Utah County, Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the proposed highway project in Utah County. Utah.

FOR FURTHER INFORMATION CONTACT: Bill Gedris, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Salt Lake City, Utah 84118, Telephone (801) 963–0183; or David W. Berg, Utah Department of Transportation, 4501 S. 2700 W., Salt Lake City, Utah 84119, Telephone (801) 965–4327; or Alan Mecham, Utah Department of Transportation, District Six Office, 825 N. 900 W., Orem, Utah 84057, Telephone (801) 227–8001.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, have determined that an EIS will not be prepared for the proposed project located in Provo, Utah which includes: (a) The widening of I–15 from the State Highway 75 interchange to north of the Center Street interchange (approximately 4.5 miles), (b) reconstruction of the I–15/University Avenue interchange, (c) the addition of a new connector road which will connect 1860 South to U.S. Highway 89 (approximately 0.9 miles), (d) any needed modifications to 1860 South, from University Avenue to U.S. Highway 89, and University Avenue, from I–15 to East Bay Boulevard, to accommodate present and future traffic needs.

Improvements being considered will have no significant impact on the environment. An environmental assessment is being prepared to evaluate the project impacts.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction is used. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Donald P. Steinke,

Division Administrator, FHWA, Salt Lake City, Utah.

[FR Doc. 94–11527 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 22216, April 29, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, May 10, 1994.

CHANGE IN THE MEETING:

Open Session

The Open Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 10, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–11705 Filed 5–10–94; 2:29 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 94–10991.

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, May 11, 1994, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Advisory Opinion 1994–6: Frances Morgan on behalf of Political Action Coors Employees ("PACE") (continued from meeting of May 5, 1994)
Advisory Opinion 1994–7: Woodrow W. Ban on behalf of GEON PAC (continued from meeting of May 5, 1994)
Advisory Opinion 1994–8: Liz Herring on behalf of Friends of Mike Parker for Congress Committee (continued from meeting of May 5, 1994)
Convention Regulations (continued from meeting of May 5, 1994)

DATE AND TIME: Tuesday, May 17, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, May 19, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Conversion of Campaign Funds to Personal Use; Draft Final Rules
Advisory Opinion 1994–9: Grant S. Cowan for Armo
Advisory Opinion 1994–10: Robert F. Bauer on behalf of Franklin National Bank
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–11734 Filed 5–10–94; 2:42 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 23928, May 9, 1994].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: May 9, 1994.

CHANGE IN THE MEETING: Change of Time—Additional Item.

The time of the closed meeting scheduled for Monday, May 9, 1994, at 10 a.m. was changed from 10 a.m. to 11 a.m. The following additional item was considered at a closed meeting held on Monday, May 9, 1994, at 11 a.m.

Regulatory matter bearing enforcement implications.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Walsh at (202) 942–0100.

Dated: May 9, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11691 Filed 5–10–94; 2:28 pm]

BILLING CODE 8010–01–M

federal register

Thursday
May 12, 1994

Part II

Department of Health and Human Services

Administration for Children and Families

Runaway and Homeless Youth Program; FY 1994 Final Program Priorities, Availability of Financial Assistance for FY 1994, and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/RHYP 94–1]

Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1994 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1994, and Request for Applications

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Fiscal Year 1994 Final Runaway and Homeless Youth (RHY) Program Priorities, announcement of availability of financial assistance, and request for applications for the following programs and activities: Basic Center Program for Runaway and Homeless Youth (BCP), Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP), Transitional Living Program for Homeless Youth (TLP), and Training and Technical Assistance (T&TA) Grants.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families is publishing final program priorities and announcing the availability of funds for the following:

1. Basic Center Program for Runaway and Homeless Youth (BCP): The purpose of the BCP is to provide financial assistance to establish or strengthen locally-controlled centers that address the immediate needs (e.g., outreach, temporary shelter, food, clothing, counseling, and aftercare services) of runaway and homeless youth and their families.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP): The purpose of the DAPP is to improve and expand drug abuse prevention, education and information services to runaway and homeless youth and their families.

3. Transitional Living Program for Homeless Youth (TLP): The purpose of the TLP is to support projects in local communities that provide long term shelter, skill training and support services to homeless youth; to assist homeless youth in making smooth transitions to self-sufficiency; and to prevent long-term dependency on social services.

4. Training and Technical Assistance (T&TA) Grants: The purpose of this T&TA is to improve the programmatic and administrative capacities of public and private agencies serving runaway and homeless youth.

This single announcement for all runaway and homeless youth programs has been developed in order to save both the field and the Federal government significant resources. Also, the single announcement provides the field with the application due dates for all the programs, providing interested agencies the means to forecast the workload and resources needed to apply for these grants.

This announcement contains all the necessary information and application materials to apply for funds under these grant programs. The estimated funds available by fiscal year and the approximate number of new grants to be awarded under this program announcement are as follows:

Program	Fiscal year	Funds available	New grants
BCP	FY 1994	$14,000,000	145
DAPP	FY 1994	2,000,000	20
T&TA	FY 1994	1,500,000	10
TLP	FY 1995	5,000,000	25

New BCP, DAPP, and T&TA grants will be awarded out of FY 1994 funds. New TLP grants will be awarded out of FY 1995 funds, subject to the appropriation of funds by the Congress.

In addition to new grants, the Family and Youth Services Bureau of the Administration on Children, Youth and Families anticipates providing FY 1994 continuation funds to current grantees, including Demonstration Projects (DEMOS), as follows:

Program	Funds available	Number of continuation grants
BCP	$23,231,452	205
DAPP	9,780,702	105
TLP	5,095,648	41
DEMOS	1,288,000	8

Grantees eligible for these continuation grants will receive a letter to that effect from the appropriate Regional grants management office and should not submit their continuation applications in response to this announcement. Only applications for new grants are solicited through this announcement.

DATES: The deadlines or closing dates for receipt of applications for new grants under this announcement are as follows:

Programs	Closing dates
BCP	June 15, 1994
TLP	June 28, 1994.
DAPP	July 12, 1994.
T&TA	July 12, 1994.

ADDRESSES: Application receipt point: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20447. Attn: Maiso Bryant, ACF–94–ACYF/RHYP.

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP), Drug Abuse Prevention Program (DAPP), Transitional Living Program (TLP), or Training and Technical Assistance Grants (T&TA).

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Family and Youth Services Bureau, PO Box 1182, Washington, DC 20013; Telephone: 1–800–351–2293.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I provides general information for potential applicants who wish to operate programs serving runaway and homeless youth. Part II contains the evaluation criteria against which all applications will be competitively reviewed, evaluated and rated. Part III contains specific information necessary to apply for funds under each of the three service programs and the Training and Technical Assistance grants. Part IV describes the application process. Part V provides instructions on the assembly and submission of applications. Part VI contains appendices to be consulted in preparation of applications. All forms needed to prepare applications for any of the programs are found in Part VI, Appendix I, of this announcement.

The following outline is provided to assist in the review of this Federal Register announcement:

Part I: General Information
  A. Background on Runaway and Homeless Youth
  B. Legislative Authority
  C. Program Purpose, Goals, and Objectives of the Federal Runaway and Homeless Youth Grant Programs
    1. Basic Center Program for Runaway and Homeless Youth
    2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
    3. Transitional Living Program for Homeless Youth
    4. Training and Technical Assistance Grants
  D. Definitions

E. Final Priorities
1. Public Comments in Response to the Proposed Priorities
2. Final Program Priorities for Fiscal Year 1994
a. Direct Service Grants for Runaway and Homeless Youth
(1) Basic Center Program Grants
(2) Transitional Living Program Grants
b. National Communications System
c. Program Support
(1) Training and Technical Assistance Grants
(2) National Clearinghouse on Runaway and Homeless Youth
(3) Management Information System (MIS)
(4) Monitoring Support for FYSB Programs
d. Research and Demonstration Initiatives
e. Evaluation Studies
(1) Evaluation of the Transitional Living Program for Homeless Youth
(2) Development of Evaluation Manuals for Use in ACYF Programs
F. Eligible Applicants
G. Availability of Funds
1. Basic Center Program for Runaway and Homeless Youth
2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
3. Transitional Living Program for Homeless Youth
4 Training and Technical Assistance Grants
H. Duration of Projects
I. Maximum Federal Share and Grantee Share of the Project
Part II: Evaluation Criteria
Part III: Priority Areas
A. Basic Center Program for Runaway and Homeless Youth
B. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
C. Transitional Living Program for Homeless Youth
D. Training and Technical Assistance Grants
Part IV: Application Process
A. Assistance to Prospective Grantees
B. Application Requirements
C. Paperwork Reduction Act of 1980
D. Notification Under Executive Order 12372
E. Availability of Forms and Other Materials
F. Application Consideration
Part V: Application Assembly and Submission
Part VI: Appendices
A. Basic Center Program Performance Standards
B. National Runaway Switchboard
C. National Clearinghouse on Runaway and Homeless Youth
D. Runaway and Homeless Youth Continuation Grantees
1. Basic Center Program for Runaway and Homeless Youth
2. Transitional Living Program for Homeless Youth
3. Drug Abuse Prevention Program for Runaway and Homeless Youth
E. Basic Center Program Allocations by State
F. Administration for Children and Families Regional Office Youth Contacts
G. Training and Technical Assistance Providers
H. State Single Points of Contact
I. Forms and Instructions

Part I. General Information

A. Background on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB), within the Administration on Children, Youth and Families (ACYF), administers programs that support services to an adolescent population of approximately 1.3 million runaway and homeless youth. Many of these youth have left home to escape abusive situations, or because their parents could not provide them with the basic needs of food, shelter and a safe supportive environment. Many live on the streets.

While living on the streets or away from home without parental supervision, these youth are highly vulnerable. They may become victims of street violence, or may be exploited by dealers of illegal drugs. Usually lacking marketable skills, they may be drawn into shoplifting, prostitution, and dealing drugs in order to earn money for food, clothing, and other daily expenses. Without a fixed address or regular place to sleep, they often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society. As street people, they may try to survive with little or no contact with medical professionals, the result being that their health problems may go untreated and may worsen. Without the support of family, schools, and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work at other than the most minimal levels. Finally, as street people, they may create substantial law enforcement problems, endangering both themselves and the communities in which they are located. All these problems, real and potential, call for a nationwide, community-based program to address the needs of runaway and homeless youth.

B. Legislative Authority

Grants for the Basic Center Program for Runaway and Homeless Youth are authorized by Part A of the Runaway and Homeless Youth Act (RHY Act), 42 U.S.C. 5701 *et seq.* The RHY Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95–115), the Juvenile Justice Amendments of 1980 (Pub. L. 96–509), the Juvenile Justice Amendments of 1984 (Pub. L. 98–473), the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), and the Juvenile Justice and Delinquency Prevention Act Amendments of 1992 (Pub. L. 102–586).

Grants for the Transitional Living Program for Homeless Youth are authorized under Part B of the Runaway and Homeless Youth Act. Part B was established in 1988 as part of Public Law 100–690.

Grants for the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth are authorized under section 3511 of Public Law 100–690, the Anti-Drug Abuse Act of 1988 (Anti-Drug Abuse Act), which established the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth, as amended by Public Law 102–132.

Grants for Training and Technical Assistance are authorized under section 342 of the Runaway and Homeless Youth Act, as amended, and section 3511 of the Anti-Drug Abuse Act of 1988, as amended.

C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs

1. Basic Center Programs for Runaway and Homeless Youth

The overall purpose of the BCP is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (e.g., outreach, temporary shelter, food, clothing, counseling, and aftercare services) of runaway and homeless youth and their families. Services supported by this program are to be outside the law enforcement, the child welfare, the mental health, and the juvenile justice systems. The program goals and objectives of Part A of the RHY Act are to:

a. Alleviate problems of runaway and homeless youth,

b. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services,

c. Strengthen family relationships and encourage stable living conditions for youth, and

d. Help youth decide upon constructive courses of action.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth

The overall purpose of the DAPP is to help communities address the problem of drug abuse among runaway and homeless youth through the prevention, early intervention, and reduction of drug dependency. The specific goals and objectives of the program, as set forth in section 3511 of the Act, are to:

a. Provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth;

b. Develop and support peer counseling programs related to the illicit use of drugs by runaway and homeless youth;

c. Develop and support community education activities related to the illicit use of drugs by runaway and homeless youth, including outreach to individual youth;

d. Provide runaway and homeless youth in rural areas with assistance (including the development of community support groups) related to the illicit use of drugs;

e. Provide information and training regarding issues related to the illicit use of drugs by runaway and homeless youth to individuals providing services to these youth;

f. Support research on illicit drug use by runaway and homeless youth, the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide; and

g. Improve the availability and coordination of local services related to drug abuse for runaway and homeless youth.

3. Transitional Living Program for Homeless Youth

The overall purpose of the TLP is to support programs which assist older homeless youth in making a successful transition to self-sufficient living and to prevent long-term dependency on social services. The specific goals and objectives of the program, as set forth in Part B of the Act, are to:

a. Provide stable, safe living accommodations while a homeless youth is a program participant;

b. Provide the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;

c. Provide education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;

d. Provide homeless youth with appropriate referrals and access to medical and mental health treatment; and

e. Provide the services and referrals necessary to assist youth in preparing for and obtaining employment.

The Administration on Children, Youth and Families will award grants for these programs to support direct services to runaway and homeless youth. Specifics regarding each of these grant programs are found in Part III, Sections A–C, of this announcement.

4. Training and Technical Assistance Grants

The overall purpose of the T&TA grants is to improve the programmatic and administrative capacities of public and private agencies to serve runaway and homeless youth. Specifics regarding these grants are found in Part III, Section D, of this announcement.

D. Definitions

1. The term homeless youth is defined differently for different programs.

Under Part A of the RHY Act, which authorizes the BCP, the term homeless youth means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care. This definition applies to all Basic Center projects and can be found in 45 CFR 1351.1(f).

Under Part B of the RHY Act, which authorizes the TLP, homeless youth means an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement. This definition applies to all TLP projects and can be found in section 321(b)(1) of the RHY Act.

2. The term public agency means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing This definition applies to all runaway and homeless youth programs and can be found in section 3601(8) of the Anti-Drug Abuse Act, incorporating by reference section 103(11) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

3. The term runaway youth means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian. This definition applies to all Basic Center programs and can be found in 45 CFR 1351.1(k).

4. The term shelter includes host homes, group homes and supervised apartments. This definition applies to all TLP programs and is referenced in section 322(1) of the RHY Act. As currently understood in the field:

Host homes are facilities providing shelter, usually in the home of a family, under contract to accept runaway and/or homeless youth assigned by the TLP service provider, and are licensed according to State or local laws.

Group home are single-site residential facilities designed to house TLP clients who may be new to the program and/or require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

Supervised apartments are single-unit dwellings or multiple-unit apartment houses operated under the auspices of the TLP service provider for the purpose of housing program participants.

5. The term State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands (Palau). This definition applies to all runaway and homeless youth programs and can be found in section 3601(10) of the Anti-Drug Abuse Act, incorporating by reference section 103(7) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

6. The term temporary shelter means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services on a 24 hour basis. This definition applies to all Basic Center Program grantees and can be found in 45 CFR 1351.1(o).

7. The term transitional living youth project means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services. This definition applies to all TLP program grantees and is found in section 321(b)(2) of the RHY Act.

E. Final Priorities

Section 364 of the Runaway and Homeless Youth Act (RHY Act) requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the RHY Act. The proposed plan for FY 1994 was published in the **Federal Register** on January 28, 1994 and requested comments and recommendations from the field.

1. Public Comments in Response to the Proposed Priorities

The Family and Youth Services Bureau (FYSB) received 13 written responses from a number of sources, including Runaway and Homeless Youth Program grantees in seven different States. The responses were generally supportive and the following summarizes the major issues raised:

a. A number of respondents suggested that applicants with demonstrated experience in providing quality direct services to runaway and homeless youth be awarded extra points in the evaluation and ranking of their grant applications. The Administration for Children, Youth and Families agrees with this suggestion. Accordingly, applicants documenting such experience may receive up to five (5) extra points beginning with the current (FY 1994) reviews.

b. A number of respondents supported the proposal to increase the project periods of the new Training and Technical Assistance (T&TA) awards from three to five years. The five-year project period will be adopted.

c. A number of respondents suggested that the proposed focus of T&TA activities on findings resulting from the monitoring of runaway and homeless youth grantees might be too narrow. They suggested that T&TA activities should also address the perceived needs of local grantees, such as services to special populations and adherence to local and State licensing requirements. The Administration on Children, Youth and Families recognizes that T&TA providers may take into account such justified training needs, so long as a major emphasis is placed on assisting grantees in program improvement efforts, especially those efforts related to the findings from program monitoring activities.

d. A number of respondents expressed concern that budget limitations on travel for Federal staff might lead to peer reviewers making site visits unaccompanied by Federal staff, and that negative evaluations by the peers might undercut Federal support for the affected grantees. The Administration on Children, Youth and Families recognizes that peer reviewers can assess program operations from a professional point of view, identifying areas of strength and areas for improvement, but that only Federal staff can be responsible for identifying and evaluating compliance issues that may affect funding.

e. Several respondents expressed concern about the potential for consolidation of the three current, categorical programs for runaway and homeless youth (BCP, DAPP, and TLP) into a single program. Specific concerns included the negative effects of limited funding, the possible neglect of RHY services in rural areas, and the difficulties of a single grantee being required to address the entire range of youth problems. The Administration on Children, Youth and Families is aware of these and a number of other concerns and issues regarding consolidation, and any effort to consolidate these programs would include consultation with the field regarding implementation.

f. A number of respondents requested that they be sent information about applying for runaway and homeless youth grants. All respondents will be entered into the mailing list to receive announcements of grant solicitations.

To the extent feasible, ACYF addressed these and all other public comments in preparing the final priorities. The final program priorities below reflect the changes made in the proposed priorities in light of the comments received.

2. Final Program Priorities for Fiscal Year 1994

a. Direct Service Grants for Runaway and Homeless Youth.

(1) Basic Center Program Grants.

Part A, section 311 of the Runaway and Homeless Youth Act, as amended, authorizes grants to public and private entities, (State, Territorial, county, and local governments; agencies and subagencies of these governments; private for-profit and private non-profit organizations; American Indian Tribes) and to combinations of such entities, to establish and operate Basic Centers for Runaway and Homeless Youth.

Approximately 350 new and continuation Basic Center Program grants will be funded in FY 1994 to support organizations which provide emergency services to runaway and homeless youth that include temporary shelter, food, clothing, counseling, aftercare, and related services which are provided outside the law enforcement, child welfare, mental health and juvenile justice systems.

Part III, section A of this publication announces the availability of funds for these grants, and includes the minimum requirements that applicants must address in their applications for Basic Center Program funds.

In FY 1994, approximately two-thirds of the current Basic Center grantees (those whose grant periods expire in FY 1995 or FY 1996) will be awarded noncompetitive continuation funds. The remaining grantees (those whose grant periods expire in FY 1994) will have the opportunity to compete for new grant awards by submitting new competitive applications. All other eligible youth-serving agencies not holding current awards may also apply for these new competitive funds.

(2) Transitional Living Program Grants.

Part B, section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

A competition for new-start TLP awards was held in the summer of 1993 (in the last quarter of FY 1993) and successful applicants were awarded a total of $5,966,650 in FY 1994 funds, beginning on October 1, 1993 (the first quarter of FY 1994). The remaining FY 1994 program funds will be awarded in the form of continuations to ongoing grants.

This announcement solicits applications for new Transitional Living Program grant awards to be supported with FY 1995 funds, subject to the appropriation of these funds by Congress. Project periods for these new awards will begin when FY 1995 funds are appropriated and made available to ACYF, but in no case will they begin prior to October 1, 1994. By soliciting applications and making funding decisions during 1994, we will enable current grantees not eligible for FY 1994 continuation funds to compete for new grants to be funded early in FY 1995 and to continue their existing projects with a minimal disruption of services, if successful in the competition.

Part III, section C of this publication announces the anticipated availability of funds for these FY 1995 grants, and includes the minimum requirements that applicants must address in their grant proposals.

b. National Communications System.

Part C, section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a national communications system to assist runaway and homeless youth in communicating with their families and with service providers.

In FY 1991, a three-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. This grant expired in FY 1994.

An announcement soliciting grant applications to operate the system for five years was published in the **Federal Register** on December 27, 1993.

c. *Program Support.*

(1) Training and Technical Assistance Grants.

Part D, section 342 of the RHY Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance

(T&TA) to organizations that are eligible to receive service grants under the Act. Organizations eligible to receive this T&TA include the Basic Centers authorized under Part A of the Act and the Transitional Living grantees authorized under Part B. In addition, section 3511 of the Anti-Drug Abuse Act of 1988, which authorized the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP), authorizes support for T&TA to runaway and homeless youth service providers. The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

In FY 1991, the Family and Youth Services Bureau awarded ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded under the three Federal programs for runaway and homeless youth (the Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program). Each Cooperative Agreement was unique, being based on the characteristics and different T&TA needs in the respective Regions. Each of the Cooperative Agreements has a three-year project period that will expire in FY 1994.

This announcement solicits applications for new five-year Cooperative Agreements to be supported with FY 1994 funds. Specific application information and evaluation criteria are addressed in Part III, Section D.

(2) National Clearinghouse on Runaway and Homeless Youth.

In June 1992, a five-year contract was awarded to establish and operate the National Clearinghouse on Runaway and Homeless Youth to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth.

The Clearinghouse is in full operation and is currently collecting materials and responding to requests for information. Non-competitive continuation funding will be awarded to sustain the Clearinghouse in FY 1994.

(3) Management Information System (MIS).

In FY 1992, a three-year contract was awarded to implement the Runaway and Homeless Youth Management Information System (MIS) across three FYSB programs: The Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. The MIS, now a mandatory data collection system, is designed to be used as a management tool for individual programs. In addition, FYSB uses the data generated by the system to produce reports, to conduct analyses regarding the programs, and to provide information for required reports to Congress on efforts to serve runaway and homeless youth.

Non-competitive continuation funding will be awarded to sustain the MIS in FY 1994.

(4) Monitoring Support for FYSB Programs.

In FY 1993, FYSB developed a comprehensive monitoring instrument and set of site visit protocols, including a peer-monitoring component, for the Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. Additionally in FY 1993, a contract to provide logistical support for the peer monitoring system was awarded.

The new peer monitoring system will improve Federal oversight of the RHY programs and will identify program innovations along with program strengths and weaknesses. The findings will be used to direct the provision of technical assistance and to inform policy development.

Continuation funding for the logistical contractor will be provided in FY 1994.

d. Research and Demonstration Initiatives.

Section 343 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

In FY 1993, first-year funding was awarded to eight grantees to develop models of services to youth in rural areas. These grants are expected to produce written descriptions of the proposed service models, to identify issues related to model implementation, and to generate information on youth and program outcomes. The models will also incorporate formal collaboration with other major youth-serving agencies in the rural areas.

Continuation funding of these eight grants will be provided in FY 1994.

e. Evaluation Study.

Continuation funding will be awarded to an ongoing evaluation study entitled "Development of Manuals for ACYF to Use in Evaluating Demonstration Projects" (FY 1993–present). This project is developing general and specific manuals to assist ACYF grantees in the design and implementation of their internal program evaluations. One of the specific manuals will be designed for FYSB grantees.

F. Eligible Applicants

The legislation authorizing the runaway and homeless youth programs addressed in this **Federal Register** announcement identifies "eligible applicants" differently. Accordingly, the definition appropriate to each individual program is found in Part III of this announcement as a part of each priority area description.

Organizations that have current Basic Center and/or Drug Abuse Prevention Program grants with project periods ending in FY 1994 and all remaining eligible applicants may apply for new grants for either or both of these two programs. Basic Center and DAPP grantees with one or two years remaining on their current awards and the expectation of continuation funding in FY 1994 may not apply for new grants under that particular grant program.

Organizations that have current Transitional Living Program grants with project periods ending in FY 1994 and all remaining eligible applicants may apply for new Transitional Living Program grants. Transitional Living Program grantees with one or two years remaining on their current awards and the expectation of continuation funding in FY 1994 may not apply for new grants under that particular grant program.

Statewide and Regional nonprofit organizations, and/or combinations of such organizations, with demonstrated experience in providing services to runaway and homeless youth service providers are eligible to apply for T&TA grants.

Applicants may refer to Part VI, Appendix D for a listing of current grantees that are ineligible to apply for one or more of these grant programs.

Non-profit applicants which have not previously received financial support from the Administration on Children, Youth and Families must submit proof of their non-profit status with their grant application. This can be done either by making reference to the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS (IRS Code, sections 501(c)(3) and 501(c)(6)). Non-profit applicants cannot be funded without acceptable proof of this status. Failure to provide proof of nonprofit status will result in rejection of the application. Such applications will receive no further consideration from ACF. For-profit entities may participate as grantees under Priority Area A, Runaway and Homeless Youth Basic Center Programs, but may participate only as sub-grantees for any other priority areas in this announcement.

G. Availability of Funds

The Administration on Children, Youth and Families expects to award approximately 600 new and continuation grants to serve runaway and homeless youth in FY 1994. Dollar amounts to be awarded by fiscal year and program are as follows:

1. Basic Center Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award $32,499,000 in Basic Center Program grants in FY 1994. Of this total, $18,377,159 will be awarded in the form of non-competitive continuations to current grantees, and the remaining $14,121,841 will be available for competitive, new-start awards. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18. We recognize that the RHY Act also conditionally requires that the amounts allotted to each State (including the District of Columbia and Puerto Rico) be at least $100,000, and the amounts allotted to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands be at least $45,000 each. However, to apply these minimum allocations in FY 1994 would result in 23 of the remaining States receiving less than they received in FY 1992. Under these conditions, section 311(b)(3) of the Act becomes operable, which directs that the ongoing State minimum of $75,000 and the ongoing Territorial minimum of $30,000 continue as the basic award levels in FY 1994. The amount of funds available for both continuations and new starts in each of the States and Territories is listed in the Table of Allocations by State (Part VI, Appendix E) which reflects the FY 1994 allocations for each State. In this Table, the amounts shown in the column labeled New Starts are the amounts available for competition in the respective States.

Current Basic Center Program grantees having one or two years remaining in their project periods will receive instructions from their respective ACF Regional Offices on the procedures for applying for these continuation grants and should not respond to this announcement. These grantees are listed in Part VI, Appendix D.1, have project expiration dates in FY 1995 and 1996, and are not eligible to apply for new Basic Center grants.

Current Basic Center Program grantees with project periods ending by September 30, 1994, and all other eligible applicants not currently receiving Basic Center funds may apply for the new competitive grants under this announcement.

The number of new awards made within each State will depend upon the funds available (i.e., the State's total allotment less the amount required for non-competing continuations), as well as on the number of acceptable applications. Therefore, where the amount required for non-competing continuations in any State equals the State's total allotment, no new awards will be made.

All applicants under this announcement will compete with other applicants in the State in which their services would be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction, the Commissioner, ACYF, will reallocate the unused funds.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth

In FY 1994, the Administration on Children, Youth and Families expects to award $2,000,000 in new competitive Drug Abuse Prevention Program grants and $9,780,702 in non-competing continuation DAPP awards.

3. Transitional Living Program for Homeless Youth

The Administration on Children, Youth and Families awarded $6,117,067 for 33 new Transitional Living Program grants in the first quarter of FY 1994 (October-December 1993). An additional $5,095,648 will be awarded in FY 1994 for TLP continuation grants.

No additional new TLP awards will be made in FY 1994. However, applications for new awards will be solicited in FY 1994 for funds to be provided in FY 1995 (beginning on October 1, 1994), subject to appropriation of funds by the Congress. It is anticipated that approximately $5,000,000 will be available for these new grants.

4. Training and Technical Assistance Grants

In FY 1994, the Administration on Children, Youth and Families estimates the award of $1,500,000 in new cooperative agreements for the provision of training and technical assistance to RHY grantees.

H. Duration of Projects

This announcement solicits applications for projects of up to three years duration (36-month project periods), with the exception of the T&TA cooperative agreements which will be awarded for five-year project periods. Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

I. Maximum Federal Share and Grantee Share of the Project

The maximum amount of Federal funds for which an applicant can apply is specified in each program description found in Part III of this announcement.

The legislation authorizing runaway and homeless youth programs requires that grantees provide a non-Federal match for Federal funds. In some cases, this non-Federal share is a percent of the total cost of the project and, in some cases, it is a percent of the Federal share. Specific non-Federal share requirements for each Priority Area are found in Part III of this announcement.

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded. For-profit applicants for Basic Center Program grants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

Part II. Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application under each of the three RHY programs and the training and technical assistance grants, and should be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. Note that the highest possible value an application can receive is 105 points. See Criterion 4 for specific information.

Criterion 1. bjectives and Need for Assistance (15 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant should refer to Part I, Section C, of this announcement for a description of each program's purpose.)

Criterion 2. Results or Benefits Expected (20 Points)

Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types and quantities of services to be provided. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project.

Criterion 3. Approach (35 Points)

Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, and how the project will be maintained after termination of Federal support. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4. Staff Background and Organizational Experience (20–25 Points)

List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants having three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act are eligible to receive an additional five (5) points in this criterion. Applicants are encouraged to discuss staff and organizational experience in working with this population and may include information regarding their past performance under RHYP grants. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.)

Criterion 5. Budget Appropriateness (10 Points)

Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

The Program Narrative information provided by the applicant in response to the priority area description identified in Part III of this announcement should be organized and presented according to these five evaluation criteria.

Part III. Priority Areas

A. Runaway and Homeless Youth Basic Center Program

Eligible applicants: Any State, unit of local government, combination of units of local government, public or private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current Basic Center grants who are eligible to apply for continuation funding in FY 1994 may not apply for a new Basic Center grant under this announcement. Applicants may refer to Part VI, Appendix D.1 for a listing of current grantees which are ineligible for grants under this priority area.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience establishing and operating centers that provide direct services to runaway and homeless youth in a manner that is outside the law enforcement system, the child welfare system, the mental health system and the juvenile justice system Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act. Applications claiming credit for this preference must include a statement of no more than one page documenting the relevant experience.

Program purpose, goals, and objectives: The Administration on Children Youth and Families will award approximately 150 new service grants to establish or strengthen existing or proposed runaway and homeless youth Basic Centers. These programs must be locally controlled efforts that provide temporary shelter, counseling and other services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

Applications are solicited under this priority area to carry out direct service projects designed to carry out the program purpose, goals and objectives set forth in the legislation and as specified in Part I, section C.1 of this announcement. These goals and objectives are:

1. To alleviate the problems of runaway and homeless youth,
2. To reunite youth with their families and to encourage the resolution of intrafamily problems through counseling and other services,
3. To strengthen family relationships and to encourage stable relationships for youth, and
4. To help youth decide upon constructive courses of action.

Background: The Runaway Youth and Homeless Youth Act was enacted in response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines, and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center funded under the authorizing legislation is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen days; food; clothing; individual, group, and family counseling; and related services. Many Basic Centers provide their services in residential settings with a capacity for no more than 20 youth. Some centers also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location.

Currently, approximately 60,000 youth annually receive shelter for an average of 12 nights and other ongoing services through ACYF-funded Basic Centers. The primary presenting problems of these youth include conflict with parents or other adults, including physical and sexual abuse (63 percent); other family crises such as divorce, death, or sudden loss of income (9 percent); and personal problems such as drug use, or problems with peers, school attendance and truancy, bad grades, inability to get along with teachers, and learning disabilities (28 percent).

Low self-esteem is a major problem among this population. Half (49 percent) have a poor self image; somewhat less than half (43 percent) are depressed; and 12 percent are possibly suicidal.

After receiving ongoing services from shelter programs, 50 percent of the youth return to their families. One-third (33 percent) are provided alternative, but safe, long-term living arrangements. Five percent return to the streets, and 12 percent leave the centers with no known destination.

Minimum requirements for project design: As part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of the proposal.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.1. of this announcement.

2. Applicant must describe the conditions of youth and families in the area to be served, with an emphasis on the incidence and characteristics of runaway and homeless youth and their families. The discussion must consider matters of family functioning, along with the health, education, employment, and social conditions of the youth, including at-risk conditions or behaviors such as drug use, school failure, and delinquency.

3. Applicant must discuss the existing support systems for at-risk youth and families in the area, with specific references to law enforcement, health and mental health care, social services, school systems, and child welfare. In addition, other agencies providing shelter and services to runaway and homeless youth in the area must be identified.

4. Within the context of the existing support systems, applicant must demonstrate the need for the center and indicate the objectives that the program would work toward fulfilling.

5. Applicant must describe the area to be served by the proposed center, and must demonstrate that the center is or will be located in an area which is frequented by and/or easily accessible by runaway and homeless youth.

Results and Benefits Expected

1. Applicant must specify the numbers of runaway and homeless youth and their families to be served, the number of beds available for runaway and homeless youth and the types and quantities of services to be provided.

2. Applicant must describe the anticipated changes in attitudes, values and behavior, and improvements in individual and family functioning that will occur as a consequence of the services provided by the center.

3. Applicant must discuss the expected impact of the project on the availability of services to runaway and homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services that address the needs of runaway and homeless youth in the community.

Approach

1. Applicant must describe how runaway and homeless youth and their families will be reached, and how services will be provided in compliance with the Program Performance Standards listed in Part VI, Appendix A.

2. Applicant must describe the center's philosophy regarding the provision of services to runaway and homeless youth and the involvement of the youth's parents or legal guardians in these services.

3. Applicant must include detailed plans for implementing direct services based upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented, including innovative approaches to securing appropriate center services for the runaway and homeless youth to be served, for involving family members as an integral part of the services provided, for periodic review and assessment of individual cases, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or are street youth.

4. Applicant must describe the center's plans for conducting an outreach program that, where applicable, will attract members of ethnic and racial minorities and/or persons with limited ability to speak English.

5. Applicant must describe the center's plans and procedures for intake and assessment of the youth upon arrival at the center.

6. Applicant must describe the center's plans for contacting the parents or other relatives of the youth they serve, for ensuring the safe return of the youth to their parents, relatives or legal guardians if it is in their best interests, for contacting local governments pursuant to formal or informal arrangements established with such officials, and for providing alternative living arrangements when it is not safe or appropriate for the youth to return home.

7. Applicant must describe the type of shelter that will be available, the shelter capacity of the center and the system of staff supervision to be implemented in the shelter.

8. Applicant must describe the center's plans for ensuring proper coordination with law enforcement personnel, health and mental health care personnel, social service personnel, and welfare personnel.

9. Applicant must describe the center's plans for ensuring coordination with the schools to which runaway and homeless youth will return, and for assisting the youth to stay current with the curricula of these schools.

10. Applicant must describe the center's procedures for dealing with youth who have run from foster care placements.

11. Applicant must describe procedures for dealing with youth who have run from correctional institutions, and must show that procedures are in accordance with Federal, State and local laws.

12. Applicant must describe the center's plans and procedures for providing aftercare services and for ensuring, whenever possible, that aftercare services will also be provided to those youth who are returned beyond the State in which the center is located.

13. Applicant must agree to gather and submit program and client data required by FYSB's Management Information System (MIS). While the computer software and training for the implementation of the MIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the MIS.

14. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

15. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing

program phase-out for the last two quarters of the 36-month project period in the event the applicant does not receive a new award.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in establishing and operating centers that provide direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

4. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients when needed.

5. Applicant must describe how community and other support will be secured to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

Duration of project: This announcement solicits applications for Basic Center projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal share of project costs: Priority will be given to applicants which apply for less than $200,000 per year. The maximum Federal share for a 3-year project period is $600,000.

Applicant share of project costs: The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds awarded. For example, a project requesting $300,000 in Federal funds over a three-year project period (based on an award of $100,000 per twelve-month budget period) must include a match of at least $30,000 (10 % of the Federal share).

B. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP)

Eligible applicants: Any State, unit of local government (or combination of units of local government), public or non-profit private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for DAPP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current DAPP grants with 12 or more months remaining in their project periods may not apply for new DAPP grants under this announcement. Applicants may refer to Part VI, Appendix D.3 for a listing of current grantees which are ineligible to apply for grants under this priority area. No more than one grant per legal entity (organization) will be awarded under this priority area. Organizations submitting more than one application for DAPP funds must understand that only one application will be considered for funding.

Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act are eligible to receive an additional five (5) points in this criterion. Applications claiming credit for this preference must include a statement of no more than one page documenting the relevant experience. Empirical or applied research experience is not considered direct service.

Program purpose, goals and objectives: The Administration on Children, Youth and Families will award approximately 20 new grants to support services within a community to maintain, improve and/or expand drug abuse prevention, early intervention, and reduction of drug dependency services to runaway and homeless youth and their families. Applications are solicited under this priority area to carry out direct service projects designed to address the issue of drug abuse among runaway and homeless youth in the applicant's community as required by the goals and objectives set forth in the legislation and specified in Part I, section C.2 of this announcement.

Activities that may be maintained, improved and/or expanded through a DAPP grant include but are not necessarily limited to:

1. Improving networking and service coordination to increase the availability of services to runaway and homeless youth;

2. Expanding outreach activities, particularly street-based outreach programs;

3. Providing individual, family, group, and/or peer prevention and intervention counseling related to alcohol and other drug use;

4. Strengthening intake and assessment procedures for substance abuse at runaway and homeless youth shelters;

5. Coordinating services with drug treatment facilities and making referrals to treatment that are geared to the runaway and homeless youth population;

6. Providing aftercare and follow-up services to runaway and homeless youth with substance abuse problems who have received shelter and/or non-residential services;

7. Increasing staff knowledge and skills related to working with runaway and homeless youth with substance abuse problems by improving or accessing training opportunities;

8. Improving programming to address the unique cultural needs and concerns

of minority runaway and homeless youth;

9. Involving and educating parents, siblings and peers of runaway and homeless youth receiving drug abuse prevention services;

10. Developing and implementing programs designed to reduce drug involvement among the target population by improving coping skills and reducing stress factors arising from such problems as homelessness, family dysfunction, and peer pressure; and

11. Establishing linkages with community mental health programs that will provide comprehensive substance abuse counseling and/or treatment to runaway and homeless youth.

Efforts that will not be funded under this priority area include research and demonstration projects on illicit drug use by runaway and homeless youth, and the direct provision of drug treatment services such as those services provided in a medical setting or by medical personnel.

This priority area is specifically targeted to runaway and homeless youth. Potential applicants interested in providing drug abuse prevention services to high-risk youth other than those who are runaways or homeless are encouraged to contact the Center for Substance Abuse Prevention (CSAP). For information on CSAP grant programs and other drug abuse prevention resources, applicants should contact the National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345; telephone: 1–800–729–6686.

Background: The abuse of drugs has had an increasingly severe impact on runaway and homeless youth. Reports from shelters which serve this client population indicate a growing drug abuse problem. In 1988, 15.4 percent of the youth entering shelters indicated a personal drug abuse problem. In addition, 16.6 percent of the youth entering shelters reported that their reason for running away was parental drug and/or alcohol abuse.

A 1990 survey, conducted by the National Network of Runaway and Youth Services, of 185 community-based agencies that serve runaway and homeless youth found substance abuse to be the leading health problem among the youth served. Several other studies reveal that the incidence of substance abuse among runaway and homeless youth in large urban areas is significantly greater than the rate of abuse among other adolescents. The prevalence of the problem is underscored by the fact that not only are youth-serving agencies in major urban areas reporting an increase in drug use among their client population, but that providers in small towns and rural communities also are finding that more than half of their clients are reporting drug abuse as a primary problem.

While several studies provide some evidence of alcohol and drug abuse decline in the general youth population, recent locally based studies indicate that this is not the trend among the runaway and homeless youth population. There is a marked increase in the use of alcohol and other dangerous and addictive drugs such as cocaine and its derivative, crack. Alcohol use among the younger adolescent population is also on the increase.

This population's circumstances require more detailed and focused approaches to prevention and drug reduction services than those provided by traditional approaches. Many runaway and homeless youth have already experimented with, or become frequent users of, one or more drugs and need effective programs which help them understand drug use problems and teach them the decision-making skills they need to maintain a drug-free lifestyle.

The Drug Abuse Education and Prevention Program (DAPP) provides Federal assistance to comprehensively address the problem of drug involvement among runaway and homeless youth. Since the program's inception in 1989, ACYF has awarded approximately $82 million in discretionary grants to approximately 450 agencies and organizations located throughout the United States, including Puerto Rico and the Virgin Islands. These awards were made to support a wide variety of locally determined project designs which address the problem of drug involvement among runaway and homeless youth.

While varying degrees of success have been reported by DAPP grantees, many of the most promising programs have implemented one or more of the following components:

1. Candid discussions between youth and street-wise peer counselors and/or recovering youth substance abusers who can discuss addiction and recovery from their personal experience;

2. Sessions in which youth obtain accurate facts on any and all aspects of substance abuse and treatment;

3. Presentation of decision-making and self-assertiveness skills and techniques that assist youth in making independent choices and avoiding drug-involved friends and environments;

4. Counseling and/or other strategies for helping youth to understand both the underlying causes of drug use and the effect of drugs on them, their families, their peers and their communities;

5. Educational information that portrays the consequences of overdosing, the effects of drug withdrawal, and the increased chances of contracting the HIV virus and AIDS; and

6. The provision of specific and realistic information on various treatment options that are available, assistance in enrolling in such programs, and appropriate follow-up by the service provider.

Minimum Requirements for project design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, applicants must address the following items in the program narrative sections of their applications.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the program and how implementation will fulfill the requirements of the legislation identified in Part I, Section C.2. of this announcement.

2. Applicant must discuss the rate of illicit drug use by juveniles, specifically addressing the issue and incidence related to runaway and homeless youth in the community(ies) to be served and the availability (or lack) of services for runaway and homeless youth in those communities.

3. Applicant must identify the extent to which the proposed projects or activities will provide services in geographic areas where similar services are unavailable or in short supply.

4. Applicant must demonstrate an understanding of the issues related to alcohol and other drug abuse among runaway and homeless youth and the provision of services to that population.

Results and Benefits Expected

1. Applicant must identify the number of runaway and homeless youth and their families to be served, the types and quantities of services to be provided and how units of service will be defined and measured.

2. Applicant must discuss how the project will enhance or increase the capacity of the applicant to provide services to address the illicit use of alcohol and other drugs by runaway and homeless youth.

3. Applicant must describe the extent to which the project will maintain, increase or improve the community's level of services and/or the coordination of services for runaway and homeless youth.

4. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

Approach

1. Applicant must describe how the program will maintain, improve, and/or expand direct alcohol and other drug abuse prevention, intervention and reduction services in their community.

2. Applicant must include detailed plans for implementing direct services based upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented. These should include innovative approaches to securing appropriate drug treatment services for the runaway and homeless youth to be served, for involving family members as an integral part of services provided, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or who are street youth.

3. Applicant must identify, when appropriate, the short-term prevention and intervention strategies to be used with runaway and homeless youth in temporary emergency shelters and explain the follow-up efforts to be implemented with the youth once they leave the shelters.

4. Applicant must discuss how the proposed project will be integrated with other services to runaway and homeless youth that are provided by the applicant or that are available in the community. In addition, applicant is encouraged to show evidence of collaboration with other agencies in the development of a comprehensive approach to service delivery for runaway and homeless youth. Applicant must identify the organizations with which they will work and describe the contributions of these organizations to the project. A letter of commitment that indicates the level of responsibility and involvement must be included for each participating agency.

5. Applicant must identify and explain how the program will provide alcohol and other drug abuse prevention services to address the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups, persons with limited ability to speak English and/or who are street youth.

6. Applicant must discuss the extent, if any, to which the project will incorporate new or innovative techniques.

7. Applicant must discuss plans for evaluating the project, including assessing the outcomes and accomplishments of the program and the service delivery models being implemented.

8. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of program project period in the event the applicant does not receive a new award.

9. Applicant must agree to gather and submit program and client data required by FYSB's Management Information System (MIS). While the computer software and training for the implementation of the MIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the MIS.

10. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a brief description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

Duration of project: This announcement solicits applications for Drug Abuse Prevention Projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget period, but within the 36 month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Federal share of project costs: Up to $100,000 per year, which equals a maximum Federal share of $300,000 for a 3-year project period.

Applicant share of project costs: Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. For example, a project requesting $300,000 in Federal funds over a three-year project period (based on an award of $100,000 per twelve-month budget period) must include a match of at least $100,000 (25% of the total approved cost of the project).

C. Transitional Living Program for Homeless Youth (TLP)

Eligible Applicants: Eligible applicants for a TLP grant under this announcement include States, units of local government (or a combination of units of local government), public or non-profit, private agency organizations, institutions or other non-profit entities. Federally recognized Indian Tribes are eligible to apply for TLP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current project periods extending into

FY 1995 may not apply for new TLP grants under this announcement. Applicants may refer to Part VI, Appendix D.2, for a listing of current grantees which are ineligible for grants under this priority area.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points in this criterion.

Program purpose, goals and objectives: The Administration on Children, Youth and Families will award approximately 25 new service grants to provide shelter, skill training and support services to assist homeless youth in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services. Applications are solicited under this priority area to carry out direct service projects designed to carry out the program purpose, goals and objectives set forth in the legislation and as specified in Part I, section C.3 of this announcement.

Funds available under Part B of the Runaway and Homeless Youth Act are to be used to enhance the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless older adolescents and young adults. Activities that may be maintained, improved and/or expanded through a TLP grant must include, but are not necessarily limited to:

1. Providing stable, safe living accommodations while a homeless youth is a program participant;
2. Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
3. Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;
4. Providing homeless youth with appropriate referrals and access to medical and mental health treatment; and
5. Providing the services and referrals necessary to assist youth in preparing for and obtaining employment.

Background: It is estimated that about one-fourth of the youth served by all runaway and homeless youth programs are homeless. This means that many of the youth served cannot return home or to another safe living arrangement with a relative. Other homeless youth have aged out of the child welfare system and are no longer eligible for foster care.

These young people are often homeless through no fault of their own. The families they can no longer live with are often physically and sexually abusive and involved in drug and alcohol abuse. They cannot provide the youth with their basic human needs such as shelter, food, clothing, let alone the supportive and safe environment needed for development of healthy self-images and the skills and personal characteristics which would enable them to mature into self-sufficient adults.

Homeless youth, lacking a stable family environment and without social and economic supports, are at high risk of being involved in dangerous lifestyles and problematic or delinquent behaviors. More than two-thirds of homeless youth served by ACYF-funded programs report using drugs or alcohol and many participate in survival sex and prostitution to meet their basic needs.

Homeless youth need a support system that will assist them in making the transition to adulthood and independent living. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk.

Homeless youth have been a population eligible to receive services under the Runaway and Homeless Youth Act since 1978, but the service goals for homeless youth are different from those of runaways. For example, family reunification, though desirable, is typically not feasible for homeless youth. In many instances, programs serving the homeless populations are able to provide only limited assistance to homeless youth, whose needs are more complex and longer-term than those of runaway youth.

The Transitional Living Program for Homeless Youth specifically targets services to homeless youth and affords youth service agencies an opportunity to serve homeless youth in a manner which is comprehensive and geared towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive, integrated services for homeless youth, which reduces the risks of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

Minimum requirements for project design: As a part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of their application.

Objectives and Need for Assistance

1. Applicant must specify the goals and objectives of the program and how the implementation of the objectives will fulfill the requirements of the legislation identified in Part I, Section C.3, of this announcement.

2. Applicant must discuss the issue of youth homelessness in the community to be served, the present availability of services for homeless youth and provide documentation of the incidence of homeless youth.

3. Applicant must describe the system that will be used to ensure that individual clients will meet the eligibility criteria of need for service as established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client prior to acceptance into the TLP project. The applicant is encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

Results and Benefits Expected

1. Applicant must describe how homeless youth will be reached and identify the number who will be served annually on both a residential and non-residential basis.

2. Applicant must provide information on the expected results and benefits of the program in terms of the number of youth who will successfully complete the program as well as potential problems or barriers to program implementation that might be possible reason(s) for non-success. Applicant must also discuss the organization's policy on termination from and reentry into the program.

3. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

Approach

1. Applicant must discuss how they will implement the statutory requirements of the Act. Specifically, the applicant must describe plans for the provision of shelter and services and for program administration.

a. Shelter

(1) Applicant must assure that shelter is provided through one or a combination of the following:

(a) A group home facility;

(b) Family host homes; or

(c) Supervised apartments.

Applicant must indicate if the shelter will be provided directly or indirectly. When shelter will be provided indirectly, applicant must submit copies of formal written agreements with service providers regarding the terms under which shelter is provided.

(2) Applicant must assure that the facility used for housing, whether a shelter, host family home and/or supervised apartment, shall accommodate no more than 20 youth at any given time; shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home including periodic, unannounced visits from project staff; and is in compliance with State and local licensing requirements.

(3) Applicant must assure, if applicable, that the applicant meets the requirements of the RHY Act for the lease of surplus Federal facilities for use as transitional living shelter facilities. Each surplus Federal facility used for this purpose must be made available for a period not less than two years, and no rent or fee shall be charged to the applicant in connection with use of such a facility. Any structural modifications or additions to surplus Federal facilities become the property of the government of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official.

b. Services

(1) Applicant must include a description of the core services to be provided. The description must include the purpose and concept of the service, its role in both the overall program design and the individual client TLP plan. The services to be provided must include, but are not necessarily limited to, the following:

(a) Basic life skills information and counseling, including budgeting, money management, use of credit, housekeeping, menu planning and food preparation, consumer education, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).

(b) Interpersonal skill building, such as developing positive relationships with peers and adults, effective communication, decision making, and stress management.

(c) Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical school, military, etc.), and vocational education.

(d) Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.

(e) Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.

(f) Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.

(g) The substantive participation of youth in the assessment and implementation of their needs, including the development and implementation of the individual transitional living plan and in decisions about the services to be received.

The applicant must specifically describe programmatic efforts planned and/or implemented to encourage awareness of and sensitivity to the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups and/or who are street youth.

c. Administration

(1) Applicant must describe the procedures to be employed in the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the provision of services, and is appropriate to the individual needs of the client.

(2) Applicant must assure that the clients will substantively participate in the assessment of their needs and in decisions about the services to be received.

(3) Applicant must assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project.

(4) Applicant must provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months).

(5) Applicant must describe the methods to be employed in collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services.

(6) Applicant must describe how the applicant will ensure the confidentiality of client records.

(7) Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of program project period in the event that the applicant would not receive a new award.

(8) Applicant must agree to gather and submit program and client data required by ACYF's Management Information System (MIS). While the computer software and training for the implementation of the MIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the MIS.

(9) Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to homeless youth, applicant must include a brief description of the organization and its experience in providing services to this specific client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed.

4. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

Budget Appropriateness

1. Applicant must discuss and justify the costs of the proposed project in

terms of numbers of youth to be served, the types and quantities of services to be provided, and the anticipated outcomes for the youth.

2. Applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

3. Applicant must describe how cost-effective use of TLP funds will be ensured by taking maximum advantage of existing resources within the State which would help in the operation or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, applicant must describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP.

Duration of project: Because successful applicants will receive grants with funds appropriated by Congress for FY 1995, project periods for these new awards will begin when FY 1995 funds are appropriated and made available to ACYF, but in no case will they begin prior to October 1, 1994.

This announcement solicits TLP applications for projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for a one-year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the 36-month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Federal share of project costs: Up to $200,000 per year, which equals a maximum of $600,000 for a 3-year project period.

Applicant share of the project: The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds. For example, a project requesting $600,000 in Federal funds over a three-year project period (based on an award of $200,000 per twelve-month budget period) must include a match of at least $60,000 (10% of the Federal share).

D. Training and Technical Assistance Grants (T&TA)

Eligible applicants: Statewide and regional nonprofit organizations, and combinations of such organizations, with demonstrated experience in providing services to runaway and homeless youth service providers.

Program purpose, goals and objectives: The Administration on Children, Youth and Families expects to fund up to ten cooperative agreements to improve the programmatic and administrative capacities of public and private agencies to provide services to runaway and homeless youth by the provision of technical assistance and short-term training. Applications to provide such assistance may cover one or more Federal Regions or may be restricted to a smaller geographic area (e.g., one or more States).

Background information: Over the years, many State and local agencies and programs have been established to provide needed short- and long-term services to runaway and homeless youth. These agencies are both public and private, profit-making and nonprofit. Some focus on a single concern, such as drug abuse or dropout prevention, while others are multi- or even all-purpose agencies, with specific components that deal with the physical health, mental health, family reunification and functioning, employment, education and transitional living of these young people.

Notwithstanding the significant numbers of effective agencies and competent professional staff dedicated to assisting runaway and homeless youth across the country, services in some areas are inadequate or non-existent. In other cases, existing programs lack staff members with the full range of skills required to carry out the responsibilities with which the individual programs are charged. Also, many of the developed and tested curricula and models are little known or understood, even among the programs and staff where they could be of greatest use. Further, as new issues and problems emerge (for example, the glamorization of the youth drug culture by the news and entertainment media, and the placement of troublesome youth in private mental institutions to remove them from the streets), even experienced staff need to enhance their existing skills and to develop new ones.

To address these issues, the Runaway and Homeless Youth Act, section 342, and the Drug Abuse Prevention Program for Runaway and Homeless Youth, section 3511 of the Anti-Drug Abuse Act of 1988, both administered by the Family and Youth Services Bureau, authorize support to nonprofit organizations for the purpose of providing training and technical assistance (T&TA) to runaway and homeless youth service providers.

To effectively provide such assistance, extensive interaction with grantees, integration and sharing of knowledge, coordination with components supporting the runaway and homeless youth system, and a cooperative relationship among training and technical assistance providers is needed.

Projects in this priority area are intended to result in a process which encompasses the following types of activities:

1. The provision of assistance to grantees for the purpose of assessment of grantee and staff training needs and the development, management and implementation of training plans that ensure staff have the skills to carry out their responsibilities. Training and technical assistance designed and/or provided to grantees for this purpose must be accessible and individualized, must provide concrete information and skill building and must include follow-up efforts.

2. The provision of quality staff training which focuses on skill development that (a) provides opportunities for hands-on participation, direct observation, practice and expert feedback; (b) analyzes, integrates and transmits knowledge obtained from research findings, curricula, and models of greatest interest to grantees; and (c) recognizes new and emerging youth issues and provides intensive skills training in these areas.

3. The collaborative exchange of monitoring and MIS information with runaway and homeless youth programs for the purpose of planning training and technical assistance for the geographic area being served, and for the purpose of providing follow-up training and technical assistance responsive to the findings resulting from monitoring individual grantees;

4. The promotion of a cooperative relationship among training and technical assistance providers for the exchange of information regarding identified training needs, emerging youth issues, research findings, curricula and models.

The award of these cooperative agreements will include a delineation of the responsibilities of the successful applicants and the Administration on Children, Youth and Families. The responsibilities contained in each cooperative agreement may be geared toward the unique needs of the RHY programs in the geographic areas to be served. At a minimum, responsibilities of the successful applicants will include development and implementation of a workplan, provision of training and technical assistance to grantees and coordination with other grantee support efforts and T&TA providers. Responsibilities of ACYF will include, at a minimum, review and approval of workplans, coordination and sharing of monitoring data, as appropriate, and sponsorship of a national meeting of T&TA providers.

Minimum requirements for project design: As a part of addressing the generic evaluation criteria in Part II of this Announcement, each applicant must address the following items in the program narrative section of their proposal.

Objectives and Need for Assistance

1. Identify the exact geographic area(s) to be served in terms of its distinctive features.
2. Discuss youth homelessness in the geographic area(s) to be served. Provide documentation of the incidence of homeless youth.
3. Demonstrate an understanding of the incidence and conditions of runaway and homeless youth in the geographic area(s) to be served; and current issues, special problems and needs associated with runaway and homeless youth such as substance abuse, learning disabilities, lack of independent living skills.
4. Discuss services in the geographic area(s) for runaway and homeless youth (Basic Centers, Transitional Living Programs, Drug Abuse Prevention Programs, Demonstration grants).
5. Indicate an understanding of the capacities and management systems necessary to establish and operate runaway and homeless youth agencies. Discuss the knowledge, skills, abilities and experience required by individual youth service professionals at both the administrative and direct service levels.
6. Discuss and justify the need for training and technical assistance in the geographic area to be served.
7. Discuss barriers to services in the geographic area and greatest training and technical assistance needs of runaway and homeless youth service providers.
8. Demonstrate an understanding of relevant research and development findings and products, and knowledge of available curricula, models and experts.

Results and Benefits Expected

1. Discuss the goals and objectives of the proposed training and technical assistance effort and how it builds and improves upon past efforts.
2. Project the number of agencies and individuals that would receive training and technical assistance services.
3. Describe how the training and technical assistance effort will increase the capacity of RHY grantees to deliver effective and quality services to runaway and homeless youth.
4. Describe how training and technical assistance will build on current program strengths and assist grantees in program improvement.

Approach

1. Describe the approach, philosophy, strategies, methodologies and models that would be used to assess and address the unique training and technical assistance needs of runaway and homeless youth service providers in the geographic area(s) to be served. Describe the proposed effort and activities in detail.
2. Describe interaction with grantees to support assessment of training needs, development of training plans and design of training and technical assistance strategies.
3. Discuss the approach that will be used to provide quality staff training which focuses on skill development that provides opportunities for hands-on participation, direct observation, practice and expert feedback; which analyzes, integrates and transmits knowledge obtained from research findings, curricula, and models of greatest interest to grantees; and recognizes new and emerging youth issues and provides intensive skills training in these areas.
4. Describe the approach that will be used for the collaborative exchange of monitoring and MIS information for runaway and homeless youth programs for the purpose of planning, training, and technical assistance for the geographic area to be served. Include a discussion of training and technical assistance that is a follow-up to monitoring and responsive to the needs of individual grantees.
5. Describe the approach that would be used to promote the transmittal of knowledge and skills from highly skilled youth service providers to less experienced staff.
6. Describe the approach for establishing a cooperative relationship with other training and technical assistance providers.
7. Provide a detailed description of the efforts that will be carried out by the applicant directly and those efforts to be carried out in conjunction with other agencies or consultants. Discuss how these efforts will enhance training and technical assistance provision.
8. Describe the methodology that will be used to evaluate the effectiveness of the training and technical assistance provided to runaway and homeless youth service providers in the geographic area(s).
9. Discuss the approach that would be used to encourage cultural competency of runaway and homeless youth service providers in areas such as outreach, program design, staffing and board development.
10. Include proposed time frames for accomplishing major milestones, levels of effort, letters of commitment and support.

Staff Background and Organizational Experience

1. Describe the organizational history, structure, and experience providing training and technical assistance. Discuss operating principles with respect to the development and implementation of training and technical assistance.
2. Clearly define roles and provide job descriptions of key project positions.
3. Provide resumes of current and proposed staff. Include skills, experience, and qualifications working with runaway and homeless youth, and developing and designing training and technical assistance for youth service providers.
4. Describe facilities, equipment, and other resources that would be available to the project.
5. Describe the administrative and organizational structure and linkages established with other relevant organizations (e.g. subcontractors, other projects). Provide charts summarizing these structures and linkages and written agreements defining them (include in appendices).

Budget Appropriateness

1. Discuss and justify the cost of the proposed project in terms of types and quantities of services to be provided.
2. Describe the fiscal control and accounting procedures that will be used to ensure the prudent use, proper disbursement, and accurate accounting of funds received.
3. Describe how additional resources necessary to carry out this project would be obtained and integrated into the work of the project.
4. Provide assurance that one key person from the project would attend an annual 2–3 day FYSB sponsored meeting in Washington, DC.

Duration of Project: This announcement solicits applications for Training and Technical Assistance cooperative agreements of up to five years in duration (60-month project periods). Initial awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation cooperative agreements beyond the one-year budget period, but within the 60-month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 per Federal Region for the first 12-month budget period, or a maximum of $750,000 per Federal Region for the 5-year project period. (For example, a project covering two Regions may receive up to $300,000 for the first 12-month budget period. Conversely, a project serving less than a Federal Region (e.g., a Statewide system) would receive less than $150,000 for the first 12-month budget period.)

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $75,000 for a 5-year project period. This constitutes 10 percent of the total Federal share.

Anticipated number of projects to be funded: It is anticipated that up to ten projects will be funded.

Part IV. Application Process

A. Assistance to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACF Regional Youth Contacts listed in Part VI, Appendix F or from the Administration on Children, Youth and Families in Washington, DC (see address at the beginning of this announcement). Organizations may also receive information and technical assistance in preparing applications from the appropriate Training and Technical Assistance Provider grantee listed in Part VI, Appendix G.

B. Application Requirements

To be considered for a Runaway and Homeless Youth grant, each application must be submitted on the forms provided at the end of this announcement (see Part VI, section I of this announcement) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Applicants applying for grants under more than one program (Basic Center Program, Drug Abuse Prevention Program, Transitional Living Program, and/or Training and Technical Assistance grants) must submit a separate and complete application for each program and must identify the relevant Priority Area on Form 424, Item #11. Although coordination among program components is encouraged, applications that combine an application for more than one grant program in a single proposal will not be reviewed.

All applicants must indicate in their applications their willingness to fully cooperate in any data collection and research efforts mandated by the Administration for Children and Families.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications by OMB.

D. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seventeen jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they must be addressed to: Runaway and Homeless Youth Programs, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20047. Attn: Maiso Bryant.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix H of this announcement.

Availability of Forms and Other Materials

A copy of the forms required to be submitted as part of each application for a runaway and homeless youth grant, and instructions for completing the application, are provided in Part VI, Appendix I. The Basic Center Program Performance Standards as well as descriptions of the National Runaway Switchboard and the National Clearinghouse on Runaway and Homeless Youth are presented in Part VI, Appendices A, B and C. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix H.

Legislation referenced in Part I, section B of this announcement may be found in major public libraries and at the ACF Regional Offices listed in Part VI, Appendix F at the end of this announcement.

Additional copies of this announcement may be obtained from the ACF Regional Offices or by calling the telephone number listed at the beginning of this announcement. Further general information may be obtained from the Training and

Technical Assistance Providers listed in Part VI, Appendix G.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. Applications for a Basic Center Program grant will be reviewed competitively only with other applications from the same State. Applications for Drug Abuse Prevention Program, Transitional Living Program and Training and Technical Assistance grants will be reviewed as a part of a national competition.

The non-Federal experts will review the applications based on the Evaluation Criteria listed in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement and will assign a score to each application. The results of the competitive review will be analyzed by Federal staff who, in consultation with ACF Regional officials, will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. However, current grantees ending a three-year funding period, and applying as a new applicant for funds under this program announcement, are reminded that when the current project period ends so does the funding agency's obligation for future awards. Criterion 3, Approach, requires applicants to specifically discuss how their project will be maintained after termination of Federal support.

In addition to scores assigned by non-Federal reviewers, consideration also will be given to adequate geographic distribution of services and the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect to consider an applicant's past performance in providing services to runaway and homeless youth and also may elect not to fund any applicants having known management, fiscal or other problems which make it unlikely that they would be able to provide effective services.

Grant awards for Basic Center Program, Drug Abuse Prevention Program and Training and Technical Assistance grants will be made by September 30, 1994. Grant awards for Transitional Living Program grants will be made after October 1, 1994. Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made, including grantees whose three-year project periods end in FY 1994.

Part V. Application Assembly and Submission

Applicants applying for more than one runaway and homeless youth grant (Basic Center Program, Drug Abuse Prevention Program, Transitional Living Program and/or Training and Technical Assistance) must submit a separate and complete application for each program. Applications that combine more than one program in a single proposal will not be reviewed.

A. *Contents of application.* Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–88) (page i).
2. Budget Information (Standard Form 424A, REV 4–88) (pages ii–iii).
3. Budget Justification (Type on standard size plain white paper) (pages iv–v).
4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88) (pages vi–vii).
5. Certification Regarding Lobbying (page viii).
6. Program Narrative Statement (pages 1 and following; 40 pages maximum, double-spaced).

Special Note: APPLICANTS ARE STRONGLY ENCOURAGED TO LIMIT THE PROGRAM NARRATIVE STATEMENT PORTION OF THE APPLICATION TO 40 DOUBLE-SPACED PAGES.

7. Organizational Capability Statement (pages OCS–1 and following; 3 pages maximum).
8. Supporting Documents (pages SD–1 and following; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Application Components

1. Standard Forms 424 and 424A: Follow the instructions in Part VI, Appendix I. In Item 8 of Form 424, check New. In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* Program Number and Title for the program for which funds are being requested (93.623, Basic Center Program for Runaway and Homeless Youth; 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth; or 93.550, Transitional Living Program for Homeless Youth. Applicants applying for Training and Technical Assistance cooperative agreements must use the number and title for the Basic Center Program for Runaway and Homeless Youth, 93.623 and indicate T&TA in parentheses in the box.

In Item 11 of the 424, identify the Priority Area (IV, A, B, C, D) and the program name (Basic Center Program (BCP), Drug Abuse Prevention Program (DAPP), Transitional Living Program (TLP), or Training and Technical Assistance (T&TA)) which the application is addressing.

2. Budget Justification: Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

3. Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and Certification Regarding Lobbying. Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. By signing and submitting its application each applicant is certifying its compliance with the Drug-Free Workplace and Debarment certification requirements included in this announcement.

4. Program Narrative Statement: Use the Evaluation Criteria in Part II as a way to organize the Narrative. Be sure to address all the specifics contained in the appropriate Priority Area Description in Part III, especially the information described under Minimum Requirements for Project Design.

5. Organizational Capability Statement: Applicants must provide a description (no more than three pages,

double-spaced) of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from juvenile justice, probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites, *including addresses, phone numbers and staff contact names, if different than the SF 424*. If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to runaway and homeless youth for programs other than that applied for in this application, show how the services supported by these funds are or will be integrated with the existing services. Discuss the experience of the applicant organization in providing services to runaway and homeless youth.

6. Supporting Documentation: The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include resumes, newsclippings, evidence of the program's efforts to coordinate youth services at the local level, etc. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

C. Application Submission

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, fasten or in any way separate subsections of the application, including supporting documentation.

1. Closing Date for the Receipt of Applications

The closing dates for receipt of applications for the grant programs contained in this announcement are:

Program	Closing date
BCP	June 15, 1994.
TLP	June 28, 1994.
DAPP	July 12, 1994.
T&TA	July 12, 1994.

Applications may be submitted to the following address: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20447. Attn: Maiso Bryant, ACF–94–ACYF/RHYP. Hand delivered applications will be accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP); Drug Abuse Prevention Program (DAPP), Transitional Living Program (TLP), or Training and Technical Assistance (T&TA).

2. Deadline for Submission of Applications

a. *Deadline.* Applications will be considered as meeting the deadline if they are either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the ACF in time for the independent review under DHHS GAM I–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria stated above are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The ACF may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application

_______ One original application signed in black ink and dated plus two copies.

_______ A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424, if applicable.

_______ SF 424 (The original application must have the word ORIGINAL hand printed in bold block letters at the top margin of its SF 424.

_______ SF 424A.

_______ Budget Justification.

_______ SF 424B.

_______ Certification Regarding Lobbying.

_______ Program Narrative Statement (maximum of 40 pages, double-spaced).

_______ Organizational Capability Statement (maximum of three pages, double-spaced).

_______ Supporting Documents (maximum of 10 pages double-spaced).

(*Catalog of Federal Domestic Assistance* Number 93.623, Basic Center Program for Runaway and Homeless Youth; Number 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth; and Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: April 27, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Part VI. Appendices

Appendix A—Basic Center Program Performance Standards

Program Performance Standards

I. Purpose

The Program Performance Standards established by the Bureau for its funded centers relate to the basic program components enumerated in section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act. They address the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served.

The terms program performance standard, criterion, and indicators are used throughout both the instrument and the instructions. These terms are defined as follows:

Program performance standard: The general principle against which a judgment can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the Regional ACF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards are designed to serve as a developmental tool, and are to be employed by both the project staff and the Regional ACF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

II. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach.

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process.

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter.

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling.

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling.

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages.

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services.

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program.

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition.

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development.

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation.

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files.

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth should, at a minimum, include an intake form which minimally contains the basic background information needed by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth

13. Ongoing Center Planning.

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional).

It is strongly recommended that the centers have a Board of Directors or Advisory Body

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under standard 13.

Appendix B—The National Runaway Switchboard

- Facilitates communication among youth, their families and youth and community-based resources through conference calling services.
- Provides crisis intervention counseling and message delivery services to at-risk youth and their families.
- Provides information and referral services to at-risk youth and their families on youth serving agencies using a computerized national resource directory.
- Conducts an annual conference for local switchboard service providers.

The Switchboard distributes information brochures, posters, a newsletter, and public service announcements. For more information, contact the National Runaway Switchboard, 3080 North Lincoln, Chicago, IL 60657; telephone 1–800–621–4000.

Appendix C—National Clearinghouse on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB) established NCRHY in June 1992 in response to the need for a central source of information on runaway and homeless youth and the provision of services to that client population. As a national resource for youth service professionals, policymakers and the general public, NCRHY offers the following specific services:

Through its information line, bibliographic and FYSB program databases and special mailings, NCRHY distributes information about successful program approaches, available resources and current activities relevant to runaway and homeless youth organizations.

NCRHY develops semi-annual briefing packages to inform the field about new developments, ideas and issues related to services to runaway and homeless youth. It also produces informational packets on FYSB programs and reports on critical issues, best practices and model programs.

NCRHY facilitates FYSB-sponsored forums, bringing together experts in the field to discuss critical issues and develop strategies for addressing the causes and consequences of runaway episodes and homelessness.

NCRHY will assist FYSB in collaborating with national, State and local organizations on youth-related policy and program initiatives.

For more information, please contact the National Clearinghouse on Runaway and Homeless Youth, P.O. Box 13505, Silver Spring, Maryland 20911–3505, telephone (301) 608–8098.

Appendix D—Runaway and Homeless Youth Continuation Grantees

The following grantees are expected to receive continuation grants in FY 1994 and are NOT eligible to apply for funds under this announcement.

D.1: Basic Center Programs for Runaway and Homeless Youth Grantees Ineligible for New FY 1994 Funding

Region I

Connecticut

Council of Churches, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334–1121

Quinebaug Valley Youth Services Bureau, P.O. Box 812, North Grosvenordale, CT 06255, Pamela Brown, (203) 923–9526

Educational Resources, 90 North Main Street, West Hartford, CT 06107, Wayne Starkey, (203) 521–8035

Maine

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ronald Herbert (207) 474–8311

Youth Alternatives, 175 Lancaster Street, Portland, Maine 04101, Mike Tarpinian, (207) 874–1175

Massachusetts

Riverside Community, Mental Health, 450 Washington Street, Dedham, MA 02026, Susan Sawyer, (617) 244–4802

The Phaneuf Center, 104 Market Street, Brockton, MA 02401, David Kaufer, (508) 584–0500

Concord-Assabet Adolescent Services, Inc., 56 Winthrop Street, Concord, MA 01742, Stephen A. Joffe, (508) 371–3005

L.U.K. Crisis Center, Inc., 99 Day Street, Fitchburg, MA 01420, Ernest M. Pletan-Cross, (508) 345–0658

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Gail Starr, (603) 668–1920

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743, Rodney Minkler, (603) 543–0427

Vermont

Washington County Youth Service Bureau, P.O. Box 627, Montpelier; VT 05601, Tom Howard, (802) 229–9151

Region II

New Jersey

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

Crossroads, 770 Woodlane Road, Suite 57, Mt. Holly, NJ 08060, Delores G. Martell, (609) 261–5400

Group Homes of Camden County, 35 S. 29th Street, Camden, NJ 08105, Sandra Mengestu, (609) 541–9283

Atlantic County Department of Social Services, 101 So. Shore Road, Northfield, NJ 08225 Don Leeds, (609) 645–5862

New York

Equinox, 214 Lark Street, Albany, NY 12210, Judith Watson, (518)465–9524

Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886–1351

Town of Huntington Youth Bureau, 100 Main Street, Huntington, NY 11743, Paul Lowery, (516) 351–3061

YWCA of Binghamton/Broome County, 80 Hawley Street, Binghamton, NY 13901, Saraanne Delafield, (607) 772–0340

Family of Woodstock, U.P.0. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679–9240

Chautauqua Opportunities, 188 South Erie Street, Mayville, NY 14757, Douglas Fricke, (716) 753–2117

Emergency Housing Group, 141 Monhagen Avenue, Middletown, NY 10940, John Harper, (914) 343–7115

Oswego County Opportunities, Inc., 223 Oneida Street, Fulton, NY 13069, Janette Reshick, (315) 598–4717

Family and Community Services, 41 West Main Street, Cobleskill, NY 12043, Tom Meyer, (518) 234–3581

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640
Cortland County Community Action Program (Time Out Program), 23 Main Street, Cortland, NY 13045, Lenn Ann Underwood, (607) 753–6781
The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323
Westchester County Youth Bureau, 150 Grand Street, 6th Flr., White Plains, NY 10601, Toni Collarini, (914) 285–2745
County of Nassau, One West Street, Mineola, NY 11501, Ann M. Irvin, (516) 571–5893

Puerto Rico

Centros Sor Isolina Ferre, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843–1919

Region III

Delaware

Child, Inc., 507 Philadelphia Pike, Wilmington, DE 19809, Joseph Dell'Olio, (302) 762–8989

District of Columbia

Latin American Youth Center, 3045—15th Street, NW., Washington, D.C. 20009, Lori Kaplan, (202) 483–1140

Maryland

St. Mary's County Board of County Commissioners, P.O. Box 653, Leonardtown, MD 20650, Carl Loffler, (301) 475–4464

Pennsylvania

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Susan Pursch, (215) 545–2910
Catholic Charities, P.O. Box 3551, Union Deposit Road, Harrisburg, PA 17105, MSG. Francis Kumontis, M.S.W., (717) 657–4804
Catholic Social Services, 33 E. Northhampton, Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766
Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215
Alternatives Family Resources, 1035 High Street, Pottstown, PA 19464, Ronald Harris, (215) 327–1601
Council of Three Rivers, American Indian Center, 200 Charles Street, Pittsburgh, PA 15238, Russell Simms, (412) 782–4457
Youth Services of Bucks County, Neshaminy Manor Center, Almshouse Building, Doylestown, PA 18901, Roger Dawson, (215) 752–7050

Virginia

Volunteer Emergency Families for Children, P.O. Box 15416, Richmond, VA 23227, William Christian, (804) 261–0607
City of Roanoke, 4350 Coyner Spring Road, Roanoke, VA 24012, Andrea Krochalis, (703) 977–3324
Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Michael Inman, (804) 498–4673
Children, Youth and Family Services, 116 West Jefferson Street, Charlottesville, VA 22902, Betty Ann Hopke, (804) 977–4260
Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard J. Lung, (804) 282–4255

West Virginia

Daymark (Patchwork), 1598–C Washington East, Charleston, WV 25311, Dennis Pease, (304) 340–3675
Time Out Youth Services, 1431 - 7th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

Region IV

Alabama

American Red Cross, 405 South First Street, Gadsden, AL 35901, Dorothy West, (205) 547–8667
Group Homes, Inc., 1426 S. Court Street, Montgomery, AL 36104, George Hoyt/ Martha Nachman, (205) 834–5512

Florida

Family Resources, Inc. (Residential South), P.0. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 341–2200
Youth Crisis Center, P.O. Box 16567, Jacksonville, FL 32245, Tom Patania, (904) 720–0002
Youth & Family Alternatives (RAP), 7524 Plathe Road, New Port Richey, FL 34653, George Magrill, (813) 841–4184
Florida Keys Children's Center, 73 High Point Road, Tavernier, FL 33070, Dale Wolgast, (305) 852–4246
Crosswinds Youth Services, Inc., P.O. Box 540625, Merritt Island, FL 32954–0625, Jan Lokay, (305) 452–8988
Family Resources, Inc. (Residential South), P.0. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 341–2200
Lutheran Ministries (Gulf Coast Youth and Family Services), 4610 W. Fairfield Drive, Pensacola, FL 32506, Neil Pape, (904) 453–2772

Georgia

The Bridge, 1559 Johnson Road, NW., Atlanta, GA 30318, Ann Starr, (404) 792–0070
Marshlands, Inc., 311 East Hall Street, Savannah, GA 31401, James McLaughlin, (912) 234–0103
Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Sharon Smith, (404) 548–5893
The Alcove, 507 East Church Street, Monroe, GA 30655, Gail Bayes, (404) 267–9156
Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313, Rita Campbell, (912) 368–9200
Safe Harbor Children's Shelter, P.O. Box 1313, Beunswick, GA 31521, Chuck Ballance, (912) 267–6000

Kentucky

Brighton Center, Inc., P.O. Box 325, Newport, KY 41072, Robert Brewster, (606) 491–8303 (606) 491–8303

Mississippi

Catholic Charities, P.O. Box 2248, Jackson, MS 39225–2248, Rev. Elvin Sunds, (601) 355–8634
Mississippi Children's Home, P.O. Box 1078, Jackson, MS 39215–9911, Christopher Cherney, (601) 352–7784

North Carolina

The Relatives, 1100 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 377–0602
Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723–2847, Elizabeth Chambers, (704) 586–8958
Tuscarora Tribe, P.O. Box 8, Pembroke, NC 28372, Robert Locklear, (919) 521–1861
Youth Focus, Inc., 301 E. Washington Street, Greensboro, NC 27401, Charles Hodierne, (919) 333–6858
Lee County Youth Services, P.O. Box 57, Sanford, NC 27331–0057, Todd Edwards, (919) 774–8404

South Carolina

Dept. of Youth Services (Crossroads), 4360 Headquarters Road, N. Charleston, SC 29405, Greg Leighton, (803) 744–3381
Dept. of Youth Services (Hope House), 1940 Shivers Road, Columbia, SC 29210, Marilyn McEachern, (803) 731–1694
Dept. of Youth Services (Greenhouse), 529 N Wise Drive, Sumter, SC 29150 Howard McFadden, (803) 775–3311

Tennessee

Oasis Center, P.O. Box 121648, Nashville, TN 37212, Mary Jane Dewey, (615) 327–4455
Link House, Inc., P.O. Box 7022, Kingsport, TN 37664, Connie Steere, (615) 378–4163
Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37917, Charlie Gentry, (615) 524–7483
Gardner House, 317 Oak Street, Chattanooga, TN 37403, Tom Edwards, (615) 755–2725
The Family Link, P.O. Box 40437, Memphis, TN 38174, Marian Carruth, (901) 725–6911

Region V

Illinois

McHenry County Youth Service, 101 South Jefferson Street, Woodstock, IL 60098, Susan Krause, (815) 338–7360
Hoyleton Youth and Family Services, 36 Loisel Village, East St. Louis, IL 62203, Shelly Byndom, (618) 398–0900
Youth Service Bureau, 1111 South Eighth Street, Springfield, IL 62703, Kaywin Davis, (217) 753–8300
Mental Health Services of Franklin and Williamson Counties, Inc., 902 West Main, P.O. Box 530, West Frankfort, IL 62896, Connie Baker, (618) 997–5336
The Night Ministry, 1218 West Addison, Chicago, IL 60613, David Roth, (312) 935–8300
Omni Youth Services, 1111 Lake Cook Road, Buffalo Grove, IL 60089, Dennis Depcik, (708) 537–6878
Children's Home and Aid Society, 1819 South Neal Street, Ste. D, Champaign, IL 61820, Tom Butero, (217) 359–8815
Youth Attention Center, 527 South Main Street, P.O. Box 606, Jacksonville, IL 62651–0606, Jerome Noble, (217) 245–6000
Youth Outreach Services, 6417 W Irving Park Road, Chicago, IL 60634, William Southwick, (312) 777–7112

Indiana

Indiana Juvenile Justice Task Force, 1800 N. Meridian, Suite 402, Indianapolis, IN 46202, James Miller, (317) 926–6100
Crisis Shelter, 1575 Dr. Martin Luther King, Jr. Street, Indianapolis, IN 46202, Ron Carpenter, (317) 634–5050
Youth Service Bureau of St. Joseph County, 2222 Lincoln Way West, South Bend, IN 46628, Bonnie Strycker, (219) 235–9231

Stopover, Inc., 2236 E. 10th Street, Indianapolis, IN 46201–2099, Elizabeth Malone, (317) 635–9301

Clark County Youth Shelter, 118 East Chestnut Street, P.O. Box 886, Jeffersonville, IN 47131, Candice Chaney, (812) 284–5229

Michigan

Comprehensive Youth Services (Macomb Co. Youth Interim Care Facility), 422 Bart Street, Warren, MI 48091, Joanne Smyth, (313) 463–7079

Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Nancy Berendsen, (616) 983–6351

Youth Living Centers, 715 S. Inkster Road, Inkster, MI 48141, Linda Connelly, (313) 563–5005

Listening Ear Crisis Center, 107 E. Illinois Avenue, P.O. Box 65, Mt. Pleasant, MI 48804–0085, Donald Schuster, (517) 772–2918

Comprehensive Youth Services (The Harbor), 3061 Commerce Drive, Suite 2, Port Huron, MI 48060, Sally Currie, (313) 385–7010

Cory Place, 1218 Washington Avenue, Bay City, MI 48708, Raul Gonzales, (517) 895–5563

Saginaw County Youth Council, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175

Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, John Swise, (517) 356–3474

League of Catholic Women (Off The Streets), 10612 E. Jefferson, Detroit, MI 48201, David Suttner, (313) 831–1000

Advisory Centers (The Bridge), 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001

Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Paul Wood, (313) 662–2265

Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493

Bethany Christian Services, 6995 W. 48th Street, Fremont, MI 49412, Dale A Painter, (616) 924–3390

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800

St. Paul Youth Service Bureau, Inc., 1667 Arcade Street, St. Paul, MN 55108–2615, Nancy Letoumeau, (612) 771–1301

Crossroads of Owantonna, 565 Dunnell Drive, Owatonna, MN 55060, Roy Harley, (612) 388–1041

Evergreen House, 622 Mississippi Avenue, Bemidji, MN 56601, Cheryl Byers, (218) 751–4332

Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, John Whitecloud, (612) 227–4184

Lutheran Social Services (Bethany Crisis Center), 9239 Odaho Street, Duluth, MN 55808, John Moline, (218) 626–2726

Ohio

Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201, Douglas McCoard, (614) 294–8097

Shelter Care, Inc. (Safe Landing Youth Shelter), 680 E. Market St., Suite 306, Akron, OH 44304, David Fair, (216) 376–4200

Southern Consortium for Children, 7990 Dairy Lane, P.O. Box 956, Athens, OH 45701–0956, Steven Trout, (614) 593–8293

Children's and Family Service, 535 Marmion Avenue, Youngstown, OH 44502, Gerald Janosik, (216) 782–5664

Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548–8002

Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, John Ollerton, (216) 323–3400

Wisconsin

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–6211

Counseling Center of Milwaukee (Pathfinders), 2038 N. Bartlett, Milwaukee, WI 53202, Ted Seaver (414) 271–2565

Region VI

Arkansas

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Scott Limbaugh, (501) 521–1532

Comprehensive Juvenile Services, 1606 South J, Fort Smith, AR 72901, Jerry Robertson, (501) 785–4031

Louisiana

Johnny Gray Jones Regional Youth Shelter, 4815 Shed Road, Bossier City, LA 71111, Gerry Gardner, (318) 747–1459

Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345–1171

ETC Harbour House P.O. Box 864, Lake Charles, LA 70602, Martha Parnell, (318) 433–1062

New Mexico

A New Day, 2720–A Carlislen NE., Albuquerque, NM 87110, Jeffrey Burrows, (505) 881–5228

Youth Development, 1710 Centro Familiar SW., Albuquerque, NM 87105, Augustine C. Baca, (505) 873–1604

Oklahoma

Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK 74465, Linda Vann, (918) 456–0671

Youth Services of Tulsa, 302 South Cheyenne, Room 114, Tulsa, OK 74103, Sharon Wiggins, (918) 582–0061

Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036, Les Sparks, (405) 262–6556

Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800

Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jane Webber, (405) 233–7220

Youth Services of Oklahoma County, 201 NE. 50th Street, Oklahoma City, OK 73105, Ken Young, (405) 235–7537

Payne County Youth Services 2224 W. 12th, Stillwater, OK 74076, James E. Lunsford, (405) 377–3380

Texas

Teen Connection, 1414 W. San Antonio Street, New Braunfels, TX 78130, Conley Thompson, (210) 629–6571

Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Anita Johnston, (210) 340–8077

Catholic Family Services, 123 North Avenue, N., Lubbock, TX 79401, Stephen Hay, (806) 765–8475

Institute for Child and Family Services, 100 Sandman, Houston, TX 77007, Jane Harding, (713) 863–7850

Children's Aid Society, 1101–30th Street, Wichita Falls, TX 76302, Patricia King, (817) 322–3141

SCAN Emergency Youth Shelter, 6202 McPherson, Suite #11 Laredo, TX 78041, Iseld Dabdoub, (210) 724–3177

El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565–8361

YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Kathy Rod, (214) 954–0655

The Bridge Association, 115 West Broadway, Forth Worth, TX 76104, Cindy Honey, (817) 332–8317

Central Texas Youth Services Bureau, 703 Parmer Street, P.O. Box 185, Killeen, TX 76540, Keith Wallace, (817) 634–2085

The Children's Center, 2127 Avenue M, Galveston, TX 77550, Lori Del Buono, (409) 765–5212

Harris County Children's Protective Services (Chimney Rock Center), 6425 Chimney Rock Road, Houston, TX 77081, Ann Hibbert, (713) 664–5701

Region VII

Iowa

Youth and Shelter Services 232–½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518

Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170

Kansas

Wyandotte House, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294

United Methodist Youthville, 900 W. Broadway, Newton, KS 67114, Stacy Pfeiffer, (316) 823–5529

Temporary Lodging for Children, 333 E. Poplar, Olathe, KS 66061, Sherrie Love, (913) 764–2887

Missouri

Marian Hall Emergency Shelter, 325 N. Newstead Avenue, St. Louis, MO 63108, Patty Johnson, (314) 653–0080

Synergy House, P.O. Box 12181, Parkville, MO 64152, Carol Kuhns, (816) 741–1477

Nebraska

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, James Blue, (402) 475–3040

Youth Emergency Services, 3001 Douglas Twin Towers, Omaha, NE 68131, Robert Sparby, (402) 345–5187

Panhandle Community Services, 3350 North 10th Street, Gering, NE 69341, Ruth Vance, (308) 635–3089

Region VIII

Colorado

Human Services, Inc., 899 Logan Street, Denver, CO 80203, Ben Leonard, (303) 830–2714
Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Jon Schwartz, (303) 863–7325
Pueblo Youth Service Bureau, 425 West Third Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161
CHINS UP Youth and Family Services, 17 North Farragut Avenue, Colorado Springs, CO 80909, Gerar H. Veneman, (719) 475–0562
Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Montana

Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255–7229
Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–5871

North Dakota

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, Linda Wood, (701) 255–7229

South Dakota

Mountain Plains Youth Services (Threshold), 1401 W. 51st, Sioux Falls, SD 57102, Linda Wood, (605) 334–1414
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Marilyn Gangone, (605) 747–2381.

Utah

Department of Social Services, 120 North 200 West, Salt Lake City, UT 84110, Jean Nielson, (801) 538–4100

Wyoming

Mountain Plains Youth Services, P.O. Box 6291, Sheridan, WY 82801, Howard Thomas, (701) 255–7220
Attention Home, P.O. Box 687, Cheyenne, WY 82003, James Cosgrove, (307) 778–7832

Region IX

Arizona

Our Town Family Center, P.O. Box 26665, Tucson, AZ 85726, Dennis Noonan, (602) 323–1708.
Children's Village of Yuma, 257 South Third Avenue, Yuma, AZ 85364, Judy Smith, (602) 783–2427

California

Ocean Park Community Center, (Stepping Stone), 245 Hill Street, Santa Monica, CA 90404, Vivian Rothstein, (310) 399–9232
Santa Cruz Community Center, 298 Harvey West Boulevard, Santa Cruz, CA 95060, Terry Moriarty, (408) 425–1830
Diogenes Youth Services, 8912 Volunteer Lane, Ste. 130, Sacramento, CA 95826, James Bueto, (916) 368–3350
YMCA Youth Development Service,
4715 Viewridge Avenue, San Diego, CA 92123, Beverly DiGregorio, (619) 292–4034
Bill Wilson Counseling Center 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984–5955
South Bay Community Services, 315 Fourth Avenue, Chula Vista, CA 91910, Kathryn Lembo, (619) 420–3620
Mendocino County Youth Project, 202 S. State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915
Casa Youth Shelter, 10911 Reagan Street, Los Alamitos, CA 90720, Luciann Maulhardt, (310) 594–6825
Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Roxane White, (415) 673–0911
Xanthos, 1355 Park Avenue, Alameda, CA 94501, Jon Schiller, (510) 522–8363,
Chinatown Youth Center, 1693 Polk Street, San Francisco, CA 94109, Joseph Lam, (415) 775–2636
Center for Positive Prevention, 729 N. California Street, #18, Stockton, CA 95202, Linda Mascarenas, (209) 948–4357
Boys Town of Southern California, 303 West Lincoln Avenue, Anaheim, CA 92805, Michael Riley, (714) 491–7777
Tahoe Youth and Family Services, P.O. Box 848, S. Lake Tahoe, CA 95705, Teri Mundt, (916) 541–2445
Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526–1440
Community Human Services, P.O. Box 3076, Monterey, CA 93942, Allison Olsen, (408) 373–3641
Youth and Family Assistance, 609 Price Avenue, #205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401,
Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830
1736 Family Crisis Center, 103 W. Torrance Boulevard, Redondo Beach, CA 90277, Carol A. Adelkoff, (310) 372–4674,
Butte County Department of Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Ron Erickson, (916) 891–2850
Fred Finch Youth Center, 3800 Coolidge Avenue, Oakland, CA 94602, John F. Steinfirst, (510) 482–2244

Palau

Palau Community Action Agency, P.O. Box 3000, Koror, Republic of Palau 96940, Doroteo Nagata, Phone: 4882–469 (Operator Assistance Needed)

Guam

Sanctuary, P.O. Box 21030, Guam Main Facility, Guam, CM 96921, Tony Champaco, (671) 734–2661

CNMI

Commonwealth of the Marianàs, Department of Community Cultural Affairs, Saipan, CM 96950, Margarita Olopai-Taitano, (670) 322–9366

Region X

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541
Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452–6201

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–2244
Hays Shelter Home, 5440 Franklin Road, Boise, ID 83705, Jonathan Wunrow (208) 336–1066

Oregon

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779–2393
Northwest Human Services, 681 Center, NE., Salem, OR 97301, Karen Hill, (503) 588–5828
J Bar J Ranch, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409

Washington

YouthCare, 333 First Avenue West, Seattle, WA 98119, Victoria Wagner, (206) 282–1288
Youth Help Association, 522 West Riverside, Suite 610, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226
Community Youth Services, 924 Fifth Avenue, SE., Olympia, WA 98501, Barbara Branstetter, (206) 943–0780
Auburn Youth Resources, 816 F Street, SE., Auburn, WA 98002, Richard Brugger, (206) 939–2202

D.2: Transitional Living Program for Homeless Youth Grantees Ineligible for New FY 1995 Funding

Region I

Connecticut

Hall Neighborhood House, 52 Green Street, Bridgeport, CT 06608, Pearl Dowell, (203) 334–3900

Maine

New Beginnings, 491 Main Street, Lewiston, ME 04240, Barbara Kawliche, (207) 946–7272

Massachusetts

Franklin County DIAL/SELF, Inc., 196 Federal Street, Greenfield, MA 01301 Melanie Goodman, (413) 774–7054

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Gail Starr, (603) 668–1920

Vermont

Washington-County Youth Service Bureau, P.O. Box 627, Montpelier, VT 05601, Tom Howard, (802) 229–9151

Region II

New Jersey

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fetzko, (201) 526–6605
Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329
Covenant House, 14 William Street, Newark, NJ 07102, Catherine Ashman, (201) 621–8705

New York

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640
The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323
Center for Children and Families, 161–20 89th Avenue, Jamaica, NY 11432 Merrith Hockmeyer, (718) 526–0722

Region III

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002 Deborah Shore, (202) 675–9340

Latin American Youth Center, 3045—15th Street, NW., Washington, DC 20009, Lori Kaplan, (202) 483–1140

Virginia

Residential Youth Services, 2701 Cameron Mills Road, Alexandria, VA 22302, Bert Hawkins, (703) 548–8334

West Virginia

Time Out Youth Services, 1431—7th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

Region IV

Florida

Sarasota Family YMCA, 1075 S. Euclid Avenue, Sarasota, FL 34237, Carl Weinrich, (813) 955–8194

Daniel Memorial, Inc., 134 E. Church Street, Jacksonville, FL 32202, Kirk Swenson, (904) 353–5077

Tennessee

Oasis Center, P0 Box 121648, Nashville, TN 37212, Mary Jane Dewey, (615) 327–4455

Region V

Illinois

Teen Living Programs (Foundation House), 3179 N. Broadway, Chicago, IL 60657, Deborah Hinde, (312) 883–0025

The Harbour 1480 Renaissance Drive, Park Ridge, IL 60068, Mary Eichling (708) 297–8540

Jackson County Community Mental Health Center, 604 E. College, Suite 101, Carbondale, IL 62901, Art Zaitz, (618) 457–6703

Michigan

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493

Alternatives for Girls, 1950 Trumbull, Detroit, MI 48216, Amanda Good, (313) 496–0938

Region VI

New Mexico

Youth Shelters and Family Services, PO. Box 8135, Santa Fe, NM 87504 Cynthia Gonzales, (505) 983–0586

Oklahoma

Youth Services of Tulsa, 302 South Cheyenne, Room 114, Tulsa, OK 74103, Sharon Wiggins, (918) 582–0061

Texas

Middle Earth Unlimited, 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639

Sand Dollar, 527 Spring Drive, Pasadena, TX 77504, Happy Spillar, (713) 946–3030

Region VII

Iowa

Youth and Shelter Services, 232–1/2 Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Youth Homes, Inc., P.O. Box 324, Iowa City, IA 52244, William McCarty, (319) 337–4523

Wyandotte House, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294

Missouri

Youth in Need, 516 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

Region VIII

Colorado

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Region IX

Arizona

Our Town Family Center, P.0. Box 26665, Tucson, AZ 85726, Dennis Noonan, (602) 323–1708

California

San Diego Youth and Community Services, 3255 Wing Street, Ste. 550, San Diego, CA 92110, Liz Shear, (619) 221–8600

Catholic Charities of San Francisco, 1049 Market Street, San Francisco, CA 94103, Rebecca Robertson, (415) 558–7072

Region X

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541

Oregon

Janus Youth Programs, 738 NE. Davis, Portland, OR 97232, Dennis Morrow, (503) 233–6090

Looking Glass, 72–B Centennial Loop, Ste. 2, Eugene, OR 97401, Galen Phipps, (503) 689–3111

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779–2393

Washington

Friends of Youth, 2500 Lake Washington Blvd. N., Renton, WA 98056, J. Howard Finck, (206) 228–5775

Pierce County Alliance, 710 S. Fawcett, Tacoma, WA 90402, Terree Schmidt-Whelan, (206) 572–4750

D.3: Drug Abuse Education and Prevention Program for Homeless Youth Grantees Ineligible for New FY 1994 Funding

Region I

Connecticut

Youth Continuum, Inc., 54 Meadow Street, New Haven, CT 06519 David Sorensen, (203) 562–3396

Council of Churches of Greater Bridgeport, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334–1121

Educational Resources, Inc., 90 North Main Street, West Hartford, CT 06107, Wayne Starkey, (203) 521–8035

Maine

New Beginnings, 436 Main Street, Lewiston, ME 04240, Barbara Kawliche, (207) 474-8311

Massachusetts

The Bridge, 47 West Street, Boston, MA 02111, Sister Barbara Whelan, (617) 423–9575

Brookline Community Mental Health Center, 43 Garrison Road, Brookline, MA 02146, Cynthia Price, (617) 277–8107

Franklin County DIAL/SELF, 196 Federal Street, Greenfield, MA 01301, Melanie Goodman, (413) 774–7054

YMCA of Western Massachusetts, 120 Maple Street, Springfield, MA 01103, Mary Johnson, (413) 732–3121

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Reed Carver, (603) 668–1920

Rhode Island

Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683–1824

Marathon of Rhode Island, 131 Wayland Avenue, Providence, RI 02906, Denise Roberge, (508) 660–0144

Tides Family Services, 1599 Main Street, West Warwick, RI 02893, Michael Reis, (401) 822–1360

Vermont

Washington County Youth, Service Bureau, P.O. Box 627, Montpelier, VT 05601, Tom Howard, (802) 229–9151 Counseling Service of Addison County, 89 Main Street, Middlebury, VT 05753, Barbara Rachelson, (802) 388–6751

Region II

New Jersey

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881–6100

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

New York

Dutchess County, 22 Market Street, Poughkeepsie, NY 12601, Patrice Kellett, (914) 454–3600

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Educational Alliance, 197 East Broadway, New York, NY 10002, Marion Lazer, (315) 479–1323

The Hetrick-Martin Institute, 401 West Street, New York, NY 10014, Judith Verdino, (212) 633–8920

Metropolitan Assistance (Streetwork Project), 2 Lafayette Street, New York, NY 10007, Helene Lauffer, (212) 577–3806 71Virgin Islands

Caribbean Institute for Psychology, P.O. Box 1547 Kingshill, St. Croix, VI 00851, Chester Copemann, (809) 773–5113

Region III

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002, Deborah Shore, (202) 675–9340

Maryland

Youth Resources Center, 4320 Hamilton Street, Hyattsville, MD 20781, Holger Kjeldsen, (301) 864–9735

Diakonia, Inc., 12747 Old Bridge Road, Ocean City, MD 21842, Fredericka Danielus, (410) 213–0923

Pennsylvania

Centre County Youth, Services Bureau, 410 South Fraser Street, State College, PA 16801, Norma Keller, (814) 237–5731

Valley Youth House Committee, 539 Eighth Avenue, Bethlehem, PA 18018, David Gilgoff, (215) 691–1200

Whale's Tale, 250 Shady Avenue, Pittsburgh, PA 15206, Christopher Smith, (412) 661–1800

Catholic Social Services, 33 E. Northhampton Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215

Virginia

Alternative House, 2136–G Gallows Road, Dunn Loring, VA 22027, Jim Warwick, (703) 771–5300

Loudoun County Youth Shelter, 16450 Meadowview Court, Leesburg, VA 22075, Jerry Tracy (703) 771–5300

West Virginia

Daymark, Inc., (Patchwork), 1598–C Washington St. East, Charleston, WV 25311, Dennis Pease, (304) 340–3675

Time Out Youth Services, 1431 - 7th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

Region IV

Florida

Family Resources, Inc., P.O. Box 13087, St. Petersburg, FL 33733, Jane L. Harper, (813) 341–2200

Crosswinds Youth Services, Inc., P.O. Box 540625, Merritt Island, FL 32954, Jan Lokay, (305) 452–8988

Project III of Central Florida, 1412 West Colonial Drive, Orlando, FL 32804, David Congdon, (407) 423–2273

Georgia

The Bridge, 1559 Johnson Road, NW., Atlanta, GA 30318, Ann Starr, (404) 792–0070

Kentucky

YMCA Center for Youth Alternatives, 1410 South First Street, Louisville, KY 40208, Kevin Connelly, (502) 635–5233

Brighton Center, P.O. Box 325, Newport, KY 41072, Robert Brewster, (606) 491–8303

Mississippi

Catholic Charities, PO Box 2248, Jackson, MS 39225, Rev. Elvin Sunds, (601) 355–8634

North Carolina

North Carolina Department of Human Resources, 101 N. Salisbury Street, Raleigh, NC 27603, Arthur Jones, Jr., (919) 733–4555

Tennessee

Oasis Center, PO. Box 121648, Nashville, TN 37212, May Jane Dewey, (615) 327–4455

Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37917, Charlie Gentry, (615) 524–7483

Region V

Illinois

Project OZ, 502 Morris Avenue, Bloomington, IL 61701, Peter Rankaitis, (309) 827–0377

Hoyleton Youth and Family Services, 36 Loisel Village, East St. Louis, IL 62203, Shelly Byndom, (618) 398–0900

Youth Services Project, 3942 W. North Avenue, Chicago, IL 60647, Nancy Abbate, (312) 772–6270

Indiana

Youth Service Bureau of St. Joseph County, 2222 Lincolnway West, South Bend, IN 46628, Bonnie Strycker, (219) 235–9231

Park Center, Inc., 2722 Fairfield Avenue, Fort Wayne, IN 46807, Kim Butcher, (219) 481–2700

Michigan

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Gateway Community Services, 910 Abbott Road, East Lansing, MI 48823, David Glerum, (517) 351–4000

Youth Living Centers, 715 S. Inkster Road, Inkster, MI 48141, Linda Connelly, (313) 563–5005

Comprehensive Youth Services (Harbor), 3061 Commerce Drive, Port Huron, MI 48060, Sally Currie, (313) 385–7010

Advisory Centers (The Bridge), 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001

Alternatives for Girls, 1950 Trumbull, Detroit, MI 48216, Amanda Good, (313) 496–0938

Juvenile Diversion Program, 301 Francis Street, Jackson, MI 49201, Gene Hubbard, (517) 788–4240

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800

Ohio

Lutheran Metropolitan, Ministries, Inc., 1468 West 25th Street, Cleveland, OH 44123, Thomas Sutton, (216) 241–4791

Wisconsin

Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, Wisconsin 53704, Patricia Balke, (608) 241–2649

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–6211

Counseling Center of Milwaukee, 2038 N. Bartlett, Milwaukee, WI 53202, Ted Seaver, (414) 271–2565

Region VI

New Mexico

Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504, Cynthia Gonzales, (505) 983–0586

Oklahoma

Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800

Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jane Webber, (405) 233–7220

Texas

Middle Earth Unlimited, 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639

Promise House, 236 W. Page Street, Dallas, TX 75208, Lee Schimmel, (214) 941–8578

Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Anita Johnston, (210) 340–8077

Montgomery County Youth Services, PO Box 1316, Conroe, TX 77305, Gretchen Faulkner, (409) 756–8682

Region VII

Iowa

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518

Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170

Youth Emergency Services, 921 Pleasant Street, Des Moines, IA 50309, Susan Gehring-Liker, (515) 243–7825

Kansas

Wichita Children's Home, 810 N. Holyoke, Wichita, KS 67208, Sarah Robinson, (316) 684–6581

Missouri

Youth in Need, 516 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

Marian Hall Emergency Shelter, 325 North Newstead Avenue, St. Louis, MO 63108, Patty Johnson, (314) 653–0080

Nebraska

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, James Blue, (402) 475–3040

Region VIII

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Jon Schwartz, (303) 863–7325

Pueblo Youth Service Bureau, 425 West Third Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161

Ute Mountain Ute Nation (Sunrise Youth Shelter), General Delivery, Towaoc, CO 81334, Rita Arnett, (303) 565–3751, Ext. 213

Montana

Blackfeet Tribal Council, PO Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–5871

South Dakota

Crow Creek Sioux Tribe (Red Horse Lodge), PO Box 49, Ft. Thompson, SD 57339, Tamara Schmidt, (605) 245–2213

Utah

Salt Lake City Division of Youth Services, 3975 South Main, Suite A, Murray, UT 84107, Lamar Eyre, (801) 264–2254

Region IX

Arizona

Open-Inn, 4810 E. Broadway, Tucson, AZ 85711, Darlene Dankowski, (602) 323–02

California

Santa Clara Social Advocates for Youth, 1072 Saratoga-Sunnyvale Rd., San Jose, CA 95129, Kathleen Lynch, (408) 253–3540

Central City Hospitality House, 146 Leavenworth Street, San Francisco, CA 94102, Kate Durham, (415) 776–2102

San Diego Youth and Community Services, 3255 Wing Street, Suite 550, San Diego, CA 92110, Liz Shear, (619) 221–8600

Diogenes Youth Services, 8912 Volunteer Lane, Suite 130, Sacramento, CA 95826, James Bueto, (916) 368–3350

Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984–5955

South Bay Community Services, 315 Fourth Avenue, Chula Vista, CA 91910, Kathryn Lembo, (619) 420–3620

Mendocino County Schools, 202 S. State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915

Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Roxane White, (415) 673–0911

Tahoe Youth and Family Services, PO Box 848, South Lake Tahoe, CA 95705, Teri Mundt, (916) 541–2445

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526–1440

Youth and Family Assistance, 609 Price Avenue, Suite 205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401

Community Service Programs, 17200 Jamboree, Suite D, Irvine, CA 92714, Margot Carlson, (714) 250–0488

Los Angeles Free Clinic, 8489 W. 3rd St., Suite 1080, Los Angeles, CA 90048, Andrea Sobbe/May Rainwater, (213) 462–7400

Los Angeles Gay and Lesbian, 1213 North Highland Avenue, Los Angeles, CA 90038, Jackie Gelfand, (213) 464–7400

Region X

Alaska

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452–6201

Oregon

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779–2393

J Bar J Youth Services, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409

Washington

Friends of Youth, 2500 Lake Washington Blvd. N., Renton, WA 98052, Jo. Howard Finck, (206) 228–5775

United Indians, PO Box 99100, Seattle, WA 98199, Bernie Whitebear, (206) 285–4425

Youth Help Association, 522 W. Riverside Avenue, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226

Pierce County Alliance, 710 S. Fawcett, Tacoma, WA 98402, Terree Schmidt-Whelan, (206) 572–4750

South Puget Intertribal Planning, SE 1750 Old Olympic Highway, Shelton, WA 98584, Amadeo Tiam, (206) 426–3990

Tacoma Housing Authority, 1728 East 44th Street, Tacoma, WA 98404, Patricia Harrington, (206) 473–2331

APPENDIX E.—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH, TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdicitons—Fiscal Year 1994]

Regions and states	Continuations	New starts	Totals
Region I:			
Connecticut	$227,131	$148,724	$375,855
Maine	93,977	55,195	149,172
Massachusetts	337,653	332,159	669,812
New Hampshire	132,680	3,817	136,497
Rhode Island	0	112,123	112,123
Vermont	75,000	0	75,000
Region II:			
New Jersey	315,319	582,639	897,958
New York	1,417,254	711,130	2,128,384
Puerto Rico	103,758	458,806	562,564
Virgin Islands	0	30,000	30,000
Region III:			
Delaware	45,547	36,426	81,973
District of Columbia	28,800	46,200	75,000
Maryland	82,040	503,436	585,476
Pennsylvania	750,573	628,538	1,379,111
Virginia	412,533	337,228	749,761
West Virginia	207,075	5,958	213,033
Region IV:			
Alabama	243,315	278,787	522,102
Florida	671,401	789,608	1,461,009
Georgia	539,190	326,106	865,296
Kentucky	144,599	322,904	467,503
Mississippi	295,669	70,436	366,105
North Carolina	460,712	340,235	800,947
South Carolina	362,187	95,079	457,266
Tennessee	582,844	16,769	599,613
Region V:			
Illinois	821,865	639,144	1,461,009
Indiana	405,665	308,509	714,174
Michigan	911,928	298,999	1,210,927
Minnesota	489,912	89,714	579,626
Ohio	706,441	667,795	1,374,236
Wisconsin	245,184	393,916	639,100
Region VI:			
Arkansas	112,985	192,184	305,169
Louisiana	323,698	277,378	601,076
New Mexico	133,452	89,819	223,271
Oklahoma	374,266	37,664	411,930
Texas	1,305,103	1,117,238	2,422,341
Region VII:			
Iowa	227,579	126,339	353,918
Kansas	250,912	76,682	327,594

APPENDIX E.—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH, TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdicitons—Fiscal Year 1994]

Regions and states	Continuations	New starts	Totals
Missouri	267,560	385,677	653,237
Nebraska	148,056	64,002	212,058
Region VIII:			
Colorado	197,182	233,272	430,454
Montana	105,671	3,039	108,710
North Dakota	81,977	2,435	84,412
South Dakota	76,790	21,285	98,075
Utah	304,690	8,766	313,456
Wyoming	75,000	0	75,000
Region IX:			
American Samoa	0	30,000	30,000
Arizona	109,579	382,787	492,366
California	2,216,474	1,762,424	3,978,898
Guam	30,000	0	30,000
Hawaii	0	140,885	140,885
Northern Marianas	30,000	0	30,000
Nevada	0	156,972	156,972
Palau	30,000	0	30,000
Region X:			
Alaska	52,859	34,969	87,828
Idaho	151,161	4,349	155,510
Oregon	171,171	193,472	364,643
Washington	342,910	297,653	640,563
Totals	18,229,327	14,269,673	32,499,000

Appendix F—Administration for Children and Families Regional Office Youth Contacts

Region I: Sue Rosen, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT) (617) 565–2480

Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI) (212) 264–1329

Region III: Dave Lyon, Administration for Children and Families, 3535 Market Street, P.O. Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV) (215) 596–4139

Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN) (404) 331–7210

Region V: Kathleen Penak, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, MI, MN, OH, WI) (312) 886–3380

Region VI: Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX) (214) 767–4542

Region VII: Lynda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401

Region VIII: Vicki Wright, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3100, Ext. 361

Region IX: Al Brown, Administration for Children and Families, 50 United States Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau) (415) 556–6153

Region X: Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, RX 32, Seattle, WA 98121 (AK, ID, OR, WA) (206) 615–2558, Ext. 3075

Appendix G—Training and Technical Assistance Providers

FYSB funds ten regionally based organizations to provide training and technical assistance to programs funded under the Basic Center, Transitional Living and Drug Abuse Prevention Programs, and to other agencies serving runaway and homeless youth.

Each of the training and technical assistance providers offers on-site consultations; regional, State and local conferences; information sharing and skill-based training.

For more information, contact the training and technical assistance provider in your region.

The New England Consortium for Families and Youth, 25 Stow Road, Roxbury, MA 01719, (508) 266–1998, Contact: Nancy Jackson

Empire State Coalition, 121 Avenue of the Americas, Room 507, New York, NY 10013, (212) 966–6477, Contact: Margo Hirsch

Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Suite 106, Pittsburgh, PA 15237, (412) 366–6562, Contact: Nancy Johnson

Southeastern Network of Youth and Family Services, 337 South Milledge Avenue, Suite 209, Athens, GA 354–4568, Contact: Gail Kurtz

Michigan Network of Runaway and Youth Services, 115 West Allegan, Suite 310, Lansing, MI 48933, (517) 484–5262, Contact: Bruce Haas

Southwest Network of Youth Services, 2525 Wallingwood Drive, Austin, TX 78746, (512) 328–6860, Contact: Theresa Andreas-Tod

M.I.N.K., A Network of Runaway and Youth Serving Agencies, PO Box 14403, Parkville, MO 64152, (314) 946–0101, Contact: Laura Harrison

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, (701) 255–7229, Contact: Linda Wood

Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, (707) 763–2213, Contact: Nancy Fastenau

Northwest Network of Runaway and Youth Services, 603 Stewart Street, Seattle, WA 98101, (206) 628–3760, Contact: Carmen Ray

Appendix H—Executive Order 12373—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearninghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs, Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Statton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, PO Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montepelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

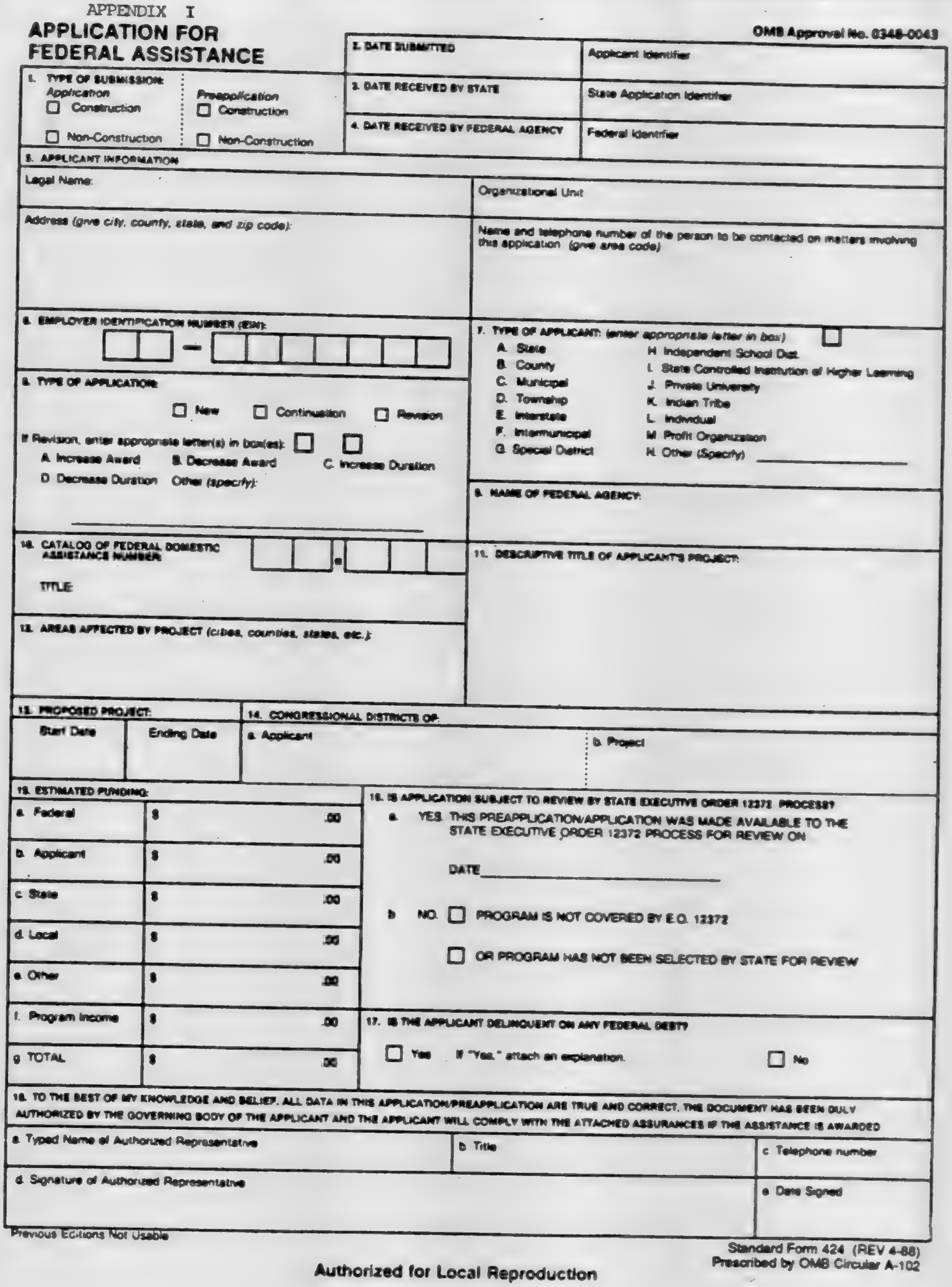
Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

APPENDIX I



APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (*specify*):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

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Instructions for the SF-424A

General Instructions

This form is designated so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, sections A, B, C, and D should provide the budget for the first budget period (usually a year) and section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant *program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agencies. State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Lines 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OMP's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age:

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) section 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records: (h) Title VIII of the Civil Right Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistanced and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purpose regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7, the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Offical

Applicant Organization

Title

Date Submitted

BILLING CODE 4184-01-P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)____________________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certifiction Regarding Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submision of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty or not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year ________ quarter ____
date of last report ________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____ , *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* ____________

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ ________________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature ________________
value ________________

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ________________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ________________________
Print Name: ________________________
Title: ________________________
Telephone No.: ______________ **Date:** ____________

Federal Use Only:

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Standard Form - LLL

[FR Doc. 94–11441 Filed 5–11–94; 8:45 am]

BILLING CODE 4184–10–C

federal register

Thursday
May 12, 1994

Part III

Department of Education

34 CFR Part 364, et al.

Independent Living Services Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 364, 365, 366, and 367

RIN 1820–AB18

Independent Living Services Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue new regulations and to amend existing regulations governing the State Independent Living Services (SILS), Centers for Independent Living (CIL), and Independent Living Services for Older Individuals Who Are Blind (OIB) programs. These proposed regulations are needed to implement chapters 1 and 2 of title VII of the Rehabilitation Act of 1973 (Act), as amended.

DATES: Comments must be received on or before June 13, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202–2575.

A copy of any comments that concern information collection requirements also should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Mary E. Switzer Building, Washington, DC 20202–2741. Telephone or TDD: (202) 205–9362.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement chapters 1 and 2 of title VII of the Act by adding a new part 364 and revising parts 365, 366, and 367 of the regulations governing the SILS, CIL, and OIB programs.

The SILS, CIL, and OIB programs are an important part of the National Education Goals. These programs support National Education Goal 6 of the Goals 2000: Educate America Act: Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866 encourages Federal agencies to solicit earlier and greater public participation in the development of regulations. In response, the Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS) and the Acting Commissioner of the Rehabilitation Services Administration (RSA) sent, on December 20, 1993, over 400 letters, along with computer diskettes that included the most up-to-date draft of the proposed regulations, to State vocational rehabilitation (VR) agencies, Statewide Independent Living Councils, centers for independent living (centers), constituent organizations, and other interested parties and individuals, inviting their participation in a series of public meetings and teleconferences on the proposed regulations. On that same date, the Assistant Secretary of OSERS and the Acting Commissioner of RSA also made available the draft of the proposed regulations on the "DIMENET" and "RSA BBS" electronic bulletin boards. Public meetings were held on January 10 and 13 and February 1, 1994. The teleconferences were conducted on January 24, 25, and 26, 1994. A cross section of individuals representing a wide variety of independent living (IL) organizations and viewpoints on IL participated. In general, most commenters were pleased with the draft regulations. The Secretary carefully considered all comments received during the public meetings and teleconferences.

Because of the time needed to make competitive awards under part C of chapter 1 and under chapter 2 of title VII of the Act, the Secretary proposes a 30-day comment period for these proposed regulations. As described in the "Summary of Major Provisions," the Secretary already has revised the proposed regulations in response to the extensive comments received on the draft of these proposed regulations that was distributed to the public on December 20, 1993. In addition, the Secretary will make this notice of proposed rulemaking (NPRM) available through electronic bulletin boards on the date of publication of the NPRM in the **Federal Register**. The access numbers for the electronic bulletin boards are as follows:

DIMENET Access Number: (508) 880–5412
RSA BBS Access Number: (202) 205–5574

Distribution through the electronic bulletin boards will ensure timely availability of the NPRM. Therefore, the Secretary believes that the public interest will be served best by allowing the public 30 days to comment on the proposed regulations.

Summary of Major Provisions

The following is a summary of the major provisions in these proposed regulations. The summary identifies changes in the regulations that are mandated by changes in the statute. Other changes described in the summary are regulations proposed by the Secretary. In addition, significant changes made to the proposed regulations as a result of public comments received during the public meetings and teleconferences are discussed in this preamble.

In addition, the Secretary proposes to change all references to "individual with a severe disability" to "individual with a significant disability." The Secretary proposes to define an individual with a significant disability to mean an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively. This definition is derived from the definition of an "individual with a severe disability" in section 7(15)(B) of the Act. The Secretary is concerned that the term "severe" has largely negative connotations and associations in common usage and believes that the term "significant" may be preferred by persons with disabilities. Consequently, the Secretary proposes to use the term "significant disability" as a synonym for the term "severe disability" in referring to an individual's disability. No change in meaning is intended by this change in nomenclature.

On October 27, 1993, the Secretary published a separate NPRM in the **Federal Register** (58 FR 57938) soliciting comments on this proposed change. The comment period on the "Nomenclature NPRM" expired on December 13, 1993. The Secretary received only 37 comments on the change proposed in the "Nomenclature NPRM," with no clear majority in favor or against. These commenters expressed a wide range of views on the proposed change. Commenters favoring the proposed change generally expressed the view that the term "significant" is less pejorative than the term "severe" in referring to an individual's disability and, thus, would support a more positive philosophy. These comments were generally received from commenters with an interest in the IL services and CIL programs authorized by title VII of the Act. Commenters opposing the change raised several issues. Some suggested that the proposed change is not technically accurate and that a change in meaning would result despite departmental assurances to the contrary. Others suggested that the proposed change would be confusing and burdensome to implement and that the proposed change should be made through legislation rather than through rulemaking. These comments were generally received from commenters with an interest in the VR services programs authorized by title I of the Act.

Also on October 27, 1993, the Secretary published a separate NPRM (58 FR 57942) on the indicators of minimum compliance with the evaluation standards in section 725(b) of the Act. The "Indicators NPRM" notified the public of the "Nomenclature NPRM" and advised the public to limit comments on the proposed nomenclature change to the "Nomenclature NPRM." However, many of the comments received on the "Indicators NPRM" also included comments on the proposed change in terms from "severe" to "significant." Of the 102 comments on the "Indicators NPRM," only 4 expressed concern with the proposed change of the term "severe" to "significant." Approximately 28 commenters specifically approved of the proposed change and 24 commenters used the new terminology in their own comments, implicitly indicating their approval of the proposed change. That is, these 24 commenters used the term "significant" instead of the term "severe" in their comments, even though they did not specifically approve of the proposed change. The remaining 50 commenters expressed no views on the proposed change and did not use either of the terms "severe" or "significant" in their comments. Based on the number of comments received from the IL community supporting the proposed change from "severe" to "significant" in the "Indicators NPRM," the Secretary proposes to substitute the term "significant" for the term "severe" in this NPRM.

Further support for changing the term "severe" to "significant" in this NPRM is based on the fact that Congress totally revised title VII of the Act when it passed the 1992 and 1993 Amendments. The argument that it would be burdensome to implement the proposed change (e.g., because of the need to revise existing forms and reporting formats) is inapplicable to implementation of the changes made to the IL programs by the 1992 and 1993 Amendments because the major changes to title VII of the Act have necessitated major revisions to the regulations implementing title VII. Thus, States and other recipients of funds under title VII will have to make extensive revisions (e.g., in existing regulations, forms, and reporting formats) to be consistent with these changes and substituting the term "significant" for "severe" as part of these revisions would not add any significant additional burden.

Part 364

Proposed part 364 contains general provisions that would be applicable to the SILS and CIL programs, authorized by parts B and C, respectively, of chapter 1 of title VII of the Act. In addition, some provisions in proposed part 364 also are made specifically applicable to the OIB program authorized by chapter 2 of title VII of the Act.

Proposed § 364.4 lists the definitions that apply to these programs, including "administrative support services," "advocacy," "attendant care," "cross-disability," "individual with a significant disability," "minority group," "nonresidential," "peer relationships," "peer role models," "service provider," "significant disability," "transportation," and "unserved and underserved."

The definition of "administrative support services" is based on the State plan requirement in section 704(c) of the Act regarding the State's role if the CIL program is administered by the State pursuant to section 723 of the Act. The definition of "cross-disability" is based on section 725(b)(2) of the Act. The definition of an "individual with a significant disability" is the definition of "individual with a severe disability" used in section 7(15)(B) of the Act. The definition of "service provider" is derived from the manner in which this term is used in section 704(e) of the Act. The definition of "significant disability" is derived from section 7(15)(B) of the Act. The definition of "unserved and underserved" is derived from sections 704(l), 713(7), and 725(c)(10) and (11) of the Act and the legislative history of these statutory provisions.

The definitions of "attendant care" and "transportation" are based on the definitions of these terms found in §365.1(c)(3) of the existing regulations for the SILS. The definition of "advocacy" is the same definition used in the Client Assistance Program (CAP) authorized under section 112 of the Act. The definition of "minority group" is based on the general definition of this term used by the U.S. Department of Education (ED). Finally, the definitions of "nonresidential," "peer relationships," and "peer role models" are derived from the generally accepted understanding of these terms in the IL community.

Proposed § 364.5 would not allow the use of expenditures made with non-Federal funds in a particular fiscal year as an allowable cost to offset any costs disallowed in a notice of disallowance decision or preliminary departmental decision unless the expenditures were reported as costs charged to the program on the final financial status reports for that program prior to the commencement of the audit or compliance review that formed the basis for the disallowance. This provision is designed to lessen the confusion surrounding the use of unreported costs as an offset against disallowed costs and to lessen the litigation costs associated with this practice. This provision also incorporates the Department's current practice with respect to programs under the Act.

Proposed § 364.6 would define and address the use of "program income" for grantees under the IL programs authorized under title VII of the Act. Program income could be used for additional program expenditures or as a deduction from total allowable costs, but not to meet the non-Federal share requirement under 34 CFR 365.12(b).

Proposed § 364.7 would incorporate section 19 of the Act that permits the carryover of unobligated Federal funds from one fiscal year to the next. However, pursuant to the 1993 Amendments, proposed § 364.7(b) would not permit recipients of discretionary grants under sections 722 and 752 of the Act to carry over Federal funds.

Proposed § 364.13 would implement section 706(a) of the Act concerning when the Secretary may withhold, reduce, limit, or terminate payments to a State under chapter 1 of title VII of the Act. The Secretary has revised proposed § 364.13 to make it more consistent with section 107(c), which is incorporated into title VII of the Act through section 706(a)(2)(A).

Proposed § 364.20 would implement the State plan requirements in section 704 of the Act. These requirements relate to the State plan's form and content, duration (three years), development, and periodic review and revision (at least once every three years), and to public hearings on the State plan.

Proposed § 364.20(c) would incorporate the requirement in section 704(a)(2) of the Act that the designated State unit (DSU) and the Statewide Independent Living Council (SILC) must jointly develop the State's IL plan and that the Director of the DSU and the chairperson of the SILC must jointly sign the State's IL plan.

Proposed §§ 364.20(d) and 364.22(c) would incorporate the statutory requirement in section 704(a) as it applies to the development and submission of a State's IL plan under section 704 of the Act and part 364. Section 704 of the Act requires a single State IL plan to be developed and signed by the DSU and the SILC. Nothing in the language of section 704 permits a DSU for individuals who are blind to submit a separate State IL plan for serving individuals who are blind. However, § 364.20(d) of the proposed regulations would require that, in a State where there is a separate State agency that is the sole State agency authorized by law to provide IL services to individuals who are blind, that separate agency for individuals who are blind also must be included in the development of, and sign, the State IL plan.

Proposed § 364.20(e) would require an assurance in the State plan that the DSU actively consults with the Director of the CAP authorized by section 112 of the Act during the development of the State plan.

Proposed § 364.20(g) would require an assurance in the State plan that the DSU conducts public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The Secretary revised proposed § 364.20(g) to explain more comprehensively what a State is expected to do to comply with section 704 (a) and (m)(6) of the Act.

Finally, proposed § 364.20(h) would require an assurance in the State plan that, at the public meetings to develop the State plan, the DSU identifies those provisions in the State plan that are State-imposed requirements (i.e., requirements imposed by State rule or policy that are beyond what would be required to comply with the regulations in proposed 34 CFR parts 364, 365, 366, and 367).

In response to public comment on the draft regulations, the Secretary has added language to proposed § 364.21 that establishes the SILC's responsibility for funds it receives under section 705(e) of the Act and protects the SILC's independence. In addition, the Secretary has added language to this section that requires the State plan to include a description of the resource plan for the SILC that is required by section 705(e) of the Act.

Proposed §§ 364.23 and 364.24 would revise the staffing and staff development requirements in existing 34 CFR 365.6 and 365.7 to reflect the changes made by the 1992 Amendments (Pub. L. 102–569) and the 1993 Amendments (Pub. L. 103–73). These requirements would apply to all service providers.

Proposed § 364.23(a) would require the State plan to include an assurance that service providers have personnel who are specialists in the development and provision of IL services to individuals with significant disabilities and in the development of and support to centers for independent living (centers). Proposed § 364.23(b) would require the State plan to include an assurance that service providers have personnel available who are able to communicate with applicants for and recipients of IL services under title VII of the Act who need special modes of communication or whose English proficiency is limited. In response to public comment on the draft regulations, the Secretary added language to this section to include specific examples of special modes of communication that should be available for individuals who need special modes of communication. Finally, proposed § 364.24 would require the State plan to include an assurance that the service provider has adequate staff development programs to ensure that staff are able to provide quality services to meet the needs of individuals with significant disabilities.

These proposed staffing requirements, which are in §§ 365.6 and 365.7 of the existing regulations for the SILS program, are consistent with section 504 of the Act, the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 42 U.S.C. 12101–12213), and title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 42 U.S.C. 2000d–2000d–6). These proposed staffing requirements have proven useful in the past, and centers have identified staff development as a significant area of need.

Proposed § 364.28 would implement the statutory requirement that a State must incorporate into the State plan required by section 704 of the Act any new methods or approaches for the provision of IL services to older individuals who are blind that are developed under a project funded under chapter 2 of title VII of the Act. A DSU would be required to incorporate into and describe in the State plan any new methods or approaches that are developed under a project funded under chapter 2 of title VII of the Act that the DSU determines to be effective.

In response to public comment on the draft regulations, the Secretary has added language to proposed § 364.30 that would require service providers to provide information about the CAP in formats that are accessible to individuals who seek or receive IL services.

Proposed § 364.40(a) would incorporate the statutory provision that makes any individual with a significant disability eligible for IL services under the SILS and CIL programs. In addition, proposed § 364.40(b) would make it clear that any individual could seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate.

Proposed § 364.41 would require the State to provide an assurance that eligibility requirements are applied in a nondiscriminatory manner and that no State or local residence requirement will be imposed for IL services. The purpose of the prohibition on a residency requirement is to ensure continuity of services if an individual moves from one State to another during the time he or she is receiving IL services. Proposed § 364.41 is consistent with section 101(a)(14) of the Act regarding the prohibition on residency requirements for VR services.

In response to public comment on the draft regulations, the Secretary has specified additional information that would have to be included in the statement of the objectives that would be required by proposed § 364.42. The Secretary believes that the statement of objectives required by section 704(d) of the Act should reflect the importance of this part of the State plan to the State IL services programs and address the overall goals and mission of the State's IL programs and services, the various priorities for services and populations to be served (including the priorities established by centers pursuant to section 725(c)(4) of the Act), the types of services to be provided, the financial plan for the use of Federal and non-Federal funds to meet the objectives in the State plan, and how funds received under sections 711, 721, and 752 of the Act will further the objectives in the State plan.

Proposed § 364.43(b) would incorporate the statutory requirements in section 704(e) and (f) of the Act. Section 704(e) of the Act requires that the State must provide IL services to individuals with a significant disability with Federal, State, or other funds. Proposed § 364.43(b) would permit a State to meet its statutory mandate under section 704(e) with Federal, State, or other funds.

Proposed § 364.43(e) would incorporate the statutory requirement in section 725(b)(2) of the Act that, in the determination of eligibility, if a State contracts with or awards a grant for the general operation of a center, it must delegate to the center all functions related to the determination of eligibility for services. If a State contracts with or awards a grant for the provision of specific IL services to individuals, the State may choose either to delegate to the IL service provider all authority for the determination of eligibility for these services and for the development of an IL plan for individuals receiving these services or to retain this authority.

Proposed §§ 364.50 through 364.56 would impose post-award conditions on the State and its subgrantees or contractors regarding the processing of referrals and applications (§ 364.50), determinations of eligibility and ineligibility (§ 364.51), initiation and development of an IL plan (§ 364.52), maintenance of consumer service records (§ 364.53), prohibition on durational limitations for IL services (§ 364.54), compliance with standards for service providers (§ 364.55), and procedures for the protection, use, and release of personal information (§ 364.56).

Proposed §§ 364.51, 364.52, and 364.53 would incorporate sections 704(e) and 725(b)(2) of the Act. In addition, proposed § 364.53 would be consistent with the proposed indicators of what constitutes compliance with the evaluation standards in section 725(b) of the Act.

Proposed §§ 364.54, 364.55, and 364.56 would keep important protections for consumers of IL services that exist in the current SILS regulations. In particular, the Secretary revised proposed § 364.56 to make it more consistent with the current SILS regulations.

Proposed § 364.57 also would permit the DSU to delegate its functions and responsibilities under proposed §§ 364.50, 364.51 (subject to proposed § 364.43(d)), 364.52, 364.53, and 364.56 to the service provider to which the DSU awards a grant or with which the DSU contracts to provide IL services in the State. Allowing the DSUs to delegate these functions and responsibilities permits the States greater flexibility in the operation of the SILS program.

In response to public comment on the draft regulations, the Secretary has added a new proposed § 364.58 that would require each service provider to establish appeals procedures and policies that an individual could use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual. Proposed § 364.58 also would require the service provider to inform each individual who seeks or receives IL services about those appeals procedures and policies in formats that are accessible to individuals who seek or receive IL services.

Proposed § 364.59 would require a State to include in its State plan any financial needs test that would be used by a service provider to determine whether an individual with a significant disability could obtain IL services at no cost to the individual. Proposed § 364.59(d)(1) would require a service provider to maintain written policies covering the specific types of IL services for which a financial needs test could be applied and to maintain documentation of an individual's participation in the costs of any IL services.

Part 365

Proposed part 365 contains regulations for the SILS program authorized by part B of chapter 1 of title VII of the Act. Pursuant to proposed § 365.11(c), if a State has designated a DSU to provide IL services for the general population of individuals with disabilities and a separate DSU to provide IL services for individuals who are blind, the State would have total discretion, without any interference from ED, to determine how it would divide the funds allotted to the State under part 365 between these two DSUs. The division of funds is a matter internal to the States, and the regulations would not exclude or mandate the involvement of the SILC in this decision.

Proposed § 365.13 would impose requirements that a State would have to meet to satisfy its non-Federal share matching requirement under section 712(b) of the Act and proposed § 365.12. Proposed § 365.13(b) would prohibit a State from using cash contributions to satisfy its non-Federal share matching requirement if the contribution is for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. Pursuant to proposed § 365.13(c), the receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU would not be considered a benefit to the donor if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

Conversely, proposed § 365.14(a) would prohibit a State from conditioning the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on a cash or in-kind contribution from an applicant. Proposed § 365.14(b) also would prohibit an individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, from conditioning the award of a subgrant or subcontract on a cash or in-kind contribution to the State or to the grantee or contractor of the State.

Proposed § 365.15 would impose the restrictions in § 365.14 on a State's use of in-kind contributions to meet the matching requirement in section 712(b) of the Act. The Secretary has not proposed to impose on in-kind contributions the restrictions in § 365.13 because fewer problems have arisen in the past as a result of the use of this type of contribution for matching purposes.

The proposed limitations on the use of restricted contributions to meet a State's matching requirement would clarify the limitations in existing 34 CFR part 365. (See existing 34 CFR 361.76, which is incorporated by reference into the existing SILS program regulations by existing 34 CFR 365.15.) The proposed limitations would prevent States from making awards based on an applicant's ability to contribute the matching funds rather than on the programmatic merit of the applicant's proposal. The proposed limitations would not prohibit a State from accepting restricted contributions for providing services or benefits to a particular individual or group of individuals. The proposed limitations would prohibit a State only from using these restricted contributions to meet its matching share requirement if the donor of the cash contributions has restricted their use to expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

The proposed limitations on the use of restricted contributions to meet a State's matching requirement would ensure that the services and benefits that are provided under a program funded with 90 percent Federal money would be available to an eligible individual without regard to the individual's relationship to the donor. The proposed limitations also would ensure that an eligible applicant that is unable to contribute the State's share of expenditures for the program would not be disqualified from receiving a grant, subgrant, or contract under the program. To allow a State to condition the award of a grant, subgrant, or contract on the recipient's contribution of the State's matching requirement would be tantamount to allowing the State to impose additional eligibility requirements to participate in the program. This action would contradict 34 CFR 76.770(g), which prohibits a State from acting in any manner that prevents eligible applicants from applying under the program.

Finally, the proposed limitations on the use of restricted contributions to meet a State's matching requirement also are intended to prevent the sale of grants, subgrants, or contracts by the States to the highest bidder. ED has always required, unless directed by law to do otherwise, that the award of grants, subgrants, or contracts by States be made under a fair competitive process that is free from favoritism on the assumption that fair competition will result in the best qualified applicant receiving the grant, subgrant, or contract. To allow a State to award a grant, subgrant, or contract on the basis of the amount that the eligible applicant can contribute to the State's matching requirement would be inconsistent with the advantages that ED has always presumed result from fair competition.

Proposed § 365.16 would implement the requirements in Office of Management and Budget (OMB) Circulars A–87 and A–122 that the following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under part 365 and may not be used for meeting the State's matching requirement: Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services; and premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

Proposed §§ 365.20 and 365.21 would incorporate the requirements in sections 704(e) and (f) and 713 of the Act. As stated previously, section 704(e) of the Act requires that the State must provide IL services to individuals with a significant disability. Section 704(f) of the Act permits the State to provide these IL services through grants or contracts with third parties. Section 713 of the Act permits the State to use funds received under part B of chapter 1 of title VII of the Act to provide the resources described in section 705(e) of the Act relating to the SILC and to fund various activities related to IL services and centers. Proposed § 365.20(a) would permit the State to use funds received under part B of chapter 1 of title VII of the Act to provide the IL services required pursuant to section 704(e) of the Act.

Proposed § 365.21(b) would allow a State to provide information and referral services independent of other IL services. Frequently, individuals without a disability seek information from centers on behalf of an individual with a significant disability. Allowing States to provide information and referral services furthers the dissemination of information and the provision of IL services to individuals with significant disabilities. Proposed § 365.21(b) also would allow a State to provide information and referral services without regard to subpart G of part 366. (Subpart G includes the indicators of what constitutes minimum compliance with the evaluation standards in section 725(b) of the Act and was published separately in the October 27, 1993 "Indicators NPRM" referred to previously. When these regulations are published in final, subpart G will be included in 34 CFR part 366, along with any changes made to Subpart G as a result of the public comment received on the "Indicators NPRM.")

Proposed § 365.23 identifies the Education Department General Administrative Regulations and requirements that would apply if a State makes a subgrant or enters into a contract.

Proposed § 365.30 would require the DSU to develop, establish, and maintain written standards and procedures to be applied by the service provider to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

Proposed § 365.31 would require the DSU to develop, establish, and maintain written standards for the provision of IL services to be met by service providers that do not meet the standards and assurances in section 725 of the Act and Subparts F and G of 34 CFR part 366 and that are used by the DSU to provide IL services to individuals with significant disabilities. Proposed § 365.31 also would require the DSU to assure that participating service providers meet all applicable State licensure or certification requirements. Providers used by the DSU to provide IL services that meet the requirements of section 725 of the Act and proposed subparts F and G of part 366 would not have to meet the standards developed by the DSU if the standards developed by the DSU are different than the Federal requirements. The requirements for written standards in §§ 365.30 and 365.31, which existed in the former regulations for the SILS program, provide important protections for consumers of IL services.

Part 366

Proposed part 366 contains regulations regarding the CIL program authorized by part C of chapter 1 of title VII of the Act.

Under proposed § 366.2(b), the expansion of an existing center through the establishment of a physically separate and complete facility at a different geographical location would be considered the same as establishing a new center for purposes of section 722(d) of the Act and proposed §§ 366.24 and 366.25, which would establish the procedures for making an award to a new center. This proposed provision would facilitate the expansion of the CIL program and the establishment of statewide networks of centers through the use of the expertise of currently existing centers. However, pursuant to proposed § 366.22(a)(1), any funds received by an existing center to establish a new center at a different geographical location pursuant to proposed § 366.2(b)(2) would not be included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

Proposed § 366.3 lists the various activities that the Secretary is authorized by statute to fund under the CIL program. Pursuant to proposed § 366.3(a), an eligible agency may use funds awarded under subpart B of this part to carry out training and technical assistance activities described in proposed § 366.11(b). Pursuant to proposed § 366.3(b), an eligible agency may use funds under Subparts C and D of Part 366 to plan, conduct, administer, and evaluate centers, and to carry out activities that would further a center's compliance with the evaluation standards in section 725(b) of the Act and with the assurances in section 725(c) of the Act.

Pursuant to proposed § 366.14, the Secretary would use the selection criteria in proposed § 366.15 to evaluate applications from entities with experience in the operation of centers for awards to provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers. The selection criteria are based on section 721(b) of the Act and § 75.210 of the Education Department General Administrative Regulations (EDGAR).

Proposed §§ 366.20 through 366.28 would incorporate the statutory requirements that apply if the amount of Federal funds allotted to the State under section 721(c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to proposed §§ 366.30 and 366.31, or that apply even if this condition is met but the Director of the DSU (Director) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and proposed § 366.32.

Pursuant to proposed § 366.22(b) if, after meeting the priorities in proposed § 366.22(a)(1) and (2), there are insufficient funds under the State's allotment to fund a new center under proposed § 366.22(a)(3), the Secretary may use the excess funds in the State to assist existing centers or may reallot these funds in accordance with section 721(d) of the Act. This proposed provision is designed to give the Secretary added flexibility to respond to the local needs within a State.

Pursuant to proposed § 366.26, the Secretary would use the statutory selection criteria from section 722(d)(2)(B) of the Act, as incorporated in proposed § 366.27, to evaluate applications for awards to centers under section 722 of the Act. In response to public comment on the draft regulations, the Secretary has increased the value of the "Extent of the need for the project" from 15 to 20 points and decreased the value of the "Plan of operation" from 25 to 20 points in proposed § 366.27 (a) and (g), respectively. The Secretary also has added language to the selection criterion on the "Extent of the need for the project" that would encourage an applicant to provide information on whether the applicant proposes to serve an area that has been identified in the State plan as a priority service area.

Proposed § 366.28 would clarify existing authority implicit in the Act permitting the Secretary to use funds from the allotment of one State to award a grant to a center located in another State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the other State is consistent with the State plan of the State in which these individuals reside. Nothing in the Act limits the award of funds allotted to a State under section 721 of the Act to eligible agencies only in that State. This proposed provision would allow the Secretary to fund the most qualified applicant and would facilitate the provision of services to unserved and underserved areas in a State in the most efficient and economical manner.

Proposed §§ 366.29 through 366.38 would incorporate the statutory requirements applicable if the Director submits to the Secretary and obtains approval of an application to award grants under section 723 of the Act and proposed § 366.32 and the amount of State funds earmarked to support the general operation of centers is equal to or greater than the amount of Federal funds allotted to the State for the same purpose, as determined pursuant to proposed §§ 366.29 and 366.31.

Proposed § 366.29(a)(2) would incorporate section 723(a)(1)(A)(i) of the Act. Pursuant to proposed § 366.29(a)(2), if a State submits an application for a fiscal year to award grants under section 723 of the Act and subpart D of 34 CFR part 366, the Secretary would determine whether the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of part C of chapter 1 of title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the State under section 721 (c) and (d) of the Act (or part B of title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

Pursuant to proposed § 366.29(c), the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program under section 723 of the Act and subpart D of 34 CFR part 366 would be considered the "preceding fiscal year" for purposes of section 723(a)(1)(A)(iii) of the Act. For example, if fiscal year (FY) 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 would be the "preceding fiscal year." The Secretary chose the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program as the "preceding fiscal year" because that year would be the most recent year for which complete financial data would be available to the Secretary to make his determination. The Secretary would make any adjustments necessary to accommodate a State's multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

Pursuant to proposed § 366.30(a), the amount of State funds that are earmarked by a State to support the general operation of centers would not include: (1) Federal funds used for the general operation of centers; (2) State funds used to purchase services from a center, including State funds used for grants or contracts for personal assistance or skills training; (3) State attendant care funds; or (4) Social Security Administration reimbursement funds. Proposed § 366.30(c) implements congressional intent as expressed in S. Rep. No. 102–357, 102d Cong., 2d Sess. 92 (1992).

Pursuant to proposed § 366.30(b), "earmarked funds" would mean funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers. "Earmarked funds" would be described in this manner for purposes of this proposed provision to ensure consistency among the States for what should be included as "earmarked funds."

Pursuant to proposed § 366.31, if the State submits an application to administer the CIL program under section 723 of the Act and subpart D of 34 CFR part 366 for a fiscal year, but did not earmark the amount of State funds required by proposed § 366.29(a)(2) in the preceding fiscal year, the State would be ineligible to make grants under section 723 of the Act and subpart D of 34 CFR part 366 after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

Example: A State meets the earmarking requirement in FY 1995. However, in reviewing the State's application to administer the CIL program in FY 1998, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State could continue to award grants in FY 1997 but could not do so in FY 1998 and succeeding fiscal years.

Once the Secretary determines that a State failed to earmark the required amount of funds in the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program, the State would be precluded from administering the CIL program in succeeding fiscal years. The Secretary believes that this proposed result most clearly reflects the intent of Congress. The Secretary also believes that allowing States to re-qualify would be disruptive to the consistent administration of the CIL program within a State.

In those States in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, proposed § 366.32(d) would provide that the word "Director," as used in subparts D and E of part 366, would mean "the Director of the general DSU."

This provision is proposed because only the general agency in a State has authority under State law to provide IL services on a cross-disability basis. However, both State units would be required to consult with each other with respect to the provision of services for individuals who are blind.

Because the Department distinguishes between procurement contracts and assistance contracts at the State level, proposed § 366.32(e) would permit the Director to enter into assistance contracts with centers to carry out section 723 of the Act. The Department considers assistance contracts awarded by a State as equivalent to subgrants. Proposed § 366.32(e) would define an assistance contract awarded by a State as an instrument whose principal purpose is merely to transfer funds allotted to the State under section 721 (c) and (d) of the Act and 34 CFR part 366 to an eligible agency to carry out section 723 of the Act rather than as an instrument to procure services under specific terms and conditions determined by the Director. If the DSU were to use an assistance contract to award funds under section 723 of the Act, the DSU would not be permitted to add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a subgrant. Under an assistance contract, the DSU would assume a role consistent with that of the Secretary under section 722 of the Act; i.e., the role of the DSU would be to ensure that the terms of the assistance contract (which are established by chapter 1 of title VII of the Act and the implementing regulations in 34 CFR parts 364, 365, and 366) are satisfied.

Conversely, proposed § 366.32(f) would implement congressional intent to prohibit the Director from entering into procurement contracts with centers to carry out section 723 of the Act. See H.R. Rep. No. 102–822, 102d Cong., 2d Sess. 137 (1992) and S. Rep. No. 102–357, 92. Proposed § 366.32(f) would define a procurement contract as an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

Pursuant to proposed § 366.32(g), in the enforcement of any breach of the terms and conditions of an assistance contract, the DSU would be required to follow the procedures established in proposed §§ 366.40 through 366.45.

Pursuant to proposed § 366.34(b), if the order of priorities in proposed § 366.22 is followed and, after meeting the priorities in proposed § 366.22(a) (1) and (2), there are insufficient funds under the State's allotment under section 721 (c) and (d) of the Act to fund a new center under proposed § 366.22(a)(3), the Director would be permitted to use any excess funds in the State to assist existing centers or to return these funds to the Secretary for reallotment in accordance with section 721(d) of the Act. Proposed § 366.34(b) would give the Director of a DSU the same discretion that the Secretary would have under proposed § 366.22(b).

Proposed §§ 366.39 through 366.45 would establish the enforcement and appeals procedures if the Secretary or the Director determines that a center receiving funds under section 722 or 723, respectively, of the Act is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of part 366. Pursuant to section 722(g)(1) of the Act, if the Secretary determines that a center receiving funds under section 722(a) of the Act is not in compliance with the standards and assurances in section 725(b) of the Act, the Secretary is required to notify the center of the center's noncompliance. Pursuant to section 722(g)(2) of the Act, the Secretary is required to terminate funds 90 days after notifying a center that it is not in compliance with the standards and assurances in section 725(b) of the Act unless the center submits a corrective action plan to achieve compliance within 90 days after the Secretary's notification and the plan is approved by the Secretary. Proposed § 366.39 (a) and (b) would implement section 722(g) (1) and (2) of the Act.

Pursuant to proposed § 366.39(a), the Secretary would notify the center that the Secretary will offer technical assistance to a center to develop a corrective action plan to comply with the standards and assurance. Pursuant to proposed § 366.39(b)(2), the Secretary would notify the center that termination of funds would occur within 90 days after the center received notice of its noncompliance unless the center requests a hearing pursuant to proposed § 366.39 (c) or (d).

Proposed § 366.39(c) would give a center 30 days from the date it receives the Secretary's written notice disapproving its corrective action plan to file a formal written appeal with the Secretary.

Pursuant to proposed § 366.39(f), the Secretary would issue a written decision to terminate funds after a hearing if the center is found out of compliance with the standards and assurances in section 725(b) of the Act and subparts F and G of 34 CFR part 366 or the center's corrective action plan cannot be approved.

Proposed §§ 366.40 through 366.43 would incorporate similar statutory requirements related to enforcement and appeals procedures that the Director shall use before terminating a center's funds or taking other significant adverse action against a center. The due process procedures in proposed §§ 366.40 through 366.43 are designed to provide every opportunity for a dispute between a Director and a center to be resolved at the State level before the dispute is appealed to the Secretary.

Pursuant to proposed § 366.40(b), unless a center submits and obtains approval of a corrective action plan, the Director would terminate all funds to a center under section 723 of the Act 90 days after the date that the center receives the initial written notice of its noncompliance from the Director or 90 days after the date that the center receives the Secretary's final decision pursuant to proposed § 366.46(c), whichever is later.

Proposed § 366.41 describes the minimum amount of information that the Secretary believes the initial written notice sent from the Director to the center would have to contain to meet the statutory requirement of providing notice to the center of the center's noncompliance, including notice to the center that it would have 90 days from the date of receipt of the Director's initial written notice to submit a corrective action plan to the Director and 120 days from the date of receipt of the Director's initial written notice to appeal to the Secretary the decision described in a Director's initial written notice.

Pursuant to proposed § 366.42, if the center submits a corrective action plan, the Director would have to provide the center with a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of funds or other proposed significant adverse action against the center. Pursuant to proposed § 366.42(c), a Director's final written decision would not take effect until 30 days after the center receives it or, if appealed to the Secretary, until the Secretary issues a final decision.

Proposed § 366.43 describes the minimum amount of information that the Secretary believes the final written decision from the Director would have to contain to meet the statutory requirement of providing notice to the center of the center's noncompliance with statutory requirements, including the reasons why the Director could not approve the center's corrective action plan, if such a plan was submitted by the center, and notice to the center that it has the right to appeal the Director's final written decision to the Secretary.

Proposed § 366.44 describes the procedures that a center would have to follow to appeal to the Secretary a final written decision from the Director. Pursuant to proposed § 366.44(a), if a Director did not approve a center's corrective action plan, the center would be given 30 days following receipt of the Director's final written decision to appeal to the Secretary. Pursuant to proposed § 366.44(b), if a center does not submit a corrective action plan, the center would be given 120 days following receipt of the Director's initial written notice to appeal to the Secretary.

Proposed § 366.44(c) through (f) describe how a center would file an appeal to the Secretary. Proposed § 366.44(g) would allow the center to request an informal hearing with the Secretary, to which the Director also would be invited to attend.

Proposed § 366.44(h) would stay a Director's decision to terminate funds as of the date that the center files a formal written appeal with the Secretary.

Proposed § 366.45 describes the procedures that a Director would have to follow upon receipt of a copy of the formal written appeal that the center files with the Secretary.

Proposed § 366.46 describes the review procedures the Secretary would follow upon receipt of a formal written appeal from a center.

All of the proposed provisions in proposed subpart E regarding the enforcement of statutory requirements that centers must meet are designed to ensure due process and fairness.

In response to public comment on the draft regulations, the Secretary has added language to clarify the intent of proposed § 366.50. Section 725(c)(2) of the Act requires that the governing board of a center must be composed of a majority of individuals with a significant disability. The statutory definition of an individual with a significant disability is limited to individuals who are receiving or who could benefit from receiving IL services. If the statutory definition is used to determine membership on the governing board, those individuals with a significant disability who already have gained their independence, either through the receipt of IL services or on their own, could not be part of the majority of the governing board. Therefore, the Secretary has added language at the end of proposed § 366.50(b) that would modify the definition of an individual with a significant disability for purposes of this proposed section only. The proposed definition would permit those individuals with a significant disability who already have gained their independence, either through the receipt of IL services or on their own, to be part of the majority of the governing board.

Part 367

Proposed part 367 contains regulations regarding the OIB program, authorized by chapter 2 of title VII of the Act.

In addition to incorporating the definitions in proposed § 364.4, proposed § 367.5 includes the statutory definitions for "older individual who is blind" and "independent living services for older individuals who are blind."

Pursuant to proposed § 367.21, the Secretary would use the selection criteria in proposed § 367.22, which are based on § 75.210 of EDGAR, to evaluate applications for discretionary grants under section 752(b)(1) of the Act.

In response to public comment on the draft regulations, the Secretary has increased the value of "Plan of operation" from 20 to 25 points and decreased the value of "Likelihood of sustaining the program" from 15 to 10 points in proposed § 367.22(b) and (h), respectively.

Pursuant to proposed § 367.23, the Secretary also would consider the geographic distribution of projects in awarding these discretionary grants. The Secretary believes that it is important to have this program operate in as many States as possible, and this proposed provision would give the Secretary the flexibility to accomplish this purpose.

Finally, proposed § 367.41(a)(1) would incorporate section 752(g) of the Act that gives the designated State agency discretion to operate or administer the OIB program or projects under Part 367 through grants to public or private nonprofit agencies or organizations. In addition, proposed § 367.41(a)(2) would incorporate section 752(i)(2)(A) of the Act that gives the designated State agency discretion to operate or administer the program or projects under Part 367 either directly or through grants, as permitted by section 752(g) of the Act and § 367.41(a), or contracts. The general authority to operate or administer the OIB through grants or contracts given to States in section 752(i)(2)(A) of the Act is overridden by the specific language in section 752(g) of the Act limiting a State's authority to award grants only to public or private nonprofit agencies or organizations. Because Congress could have added contracts to section 752(g) or deleted the very specific reference to public or private nonprofit agencies or organizations in section 752(g), proposed § 367.41(a)(2) permits a State to contract only with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations. However, proposed § 367.41(b) would permit States to use assistance contracts awarded by a State (which are similar to subgrants), but not procurement contracts, in a manner consistent with 34 CFR 366.32(e) through 366.32(g).

Executive Order 12866

Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Do the regulations contain technical terms or other wording that interferes with their clarity?

(3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 364.10.)

(4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand?

(5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue SW. (room 5125, FOB–6), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are centers receiving Federal funds under these programs. However, the regulations would not have a significant economic impact on the centers affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 364.10, 364.11, 364.12, 364.13, 364.20, 364.21, 364.22, 364.23, 364.24, 364.25, 364.26, 364.27, 364.28, 364.29, 364.30, 364.31, 364.32, 364.33, 364.34, 364.35, 364.36, 364.37, 364.38, 364.39, 364.40, 364.41, 364.42, 364.43, 364.51, 364.52, 364.53, 365.2, 365.10, 365.30, 365.31, 366.2, 366.12, 366.15, 366.21, 366.22, 366.23, 366.24, 366.25, 366.27, 366.28, 366.29, 366.32, 366.33, 366.37, 366.38, 366.39, 366.40, 366.41, 366.42, 366.43, 366.44, 366.45, 366.50, 367.10, 367.11, 367.22, 367.31, 367.32, and 367.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h).)

State agencies and centers are eligible to apply for grants under these proposed regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 240 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 364, 365, 366, and 367

Centers for independent living, Independent living services for older individuals who are blind, Reporting and recordkeeping requirements, State independent living services.

(Catalog of Federal Domestic Assistance Numbers: 84.132 Centers for Independent Living; 84.169 State Independent Living Services; and 84.177 Independent Living Services for Older Individuals Who Are Blind)

Dated: May 9, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 364 and by revising parts 365, 366, and 367 to read as follows:

PART 364—STATE INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS

Subpart A—General

Sec.

364.1 What programs are covered?

364.2 What is the purpose of the programs authorized by Chapter 1 of Title VII?

364.3 What regulations apply?

364.4 What definitions apply?

364.5 What are the limitations on allowable costs?

364.6 What is program income and how may it be used?

364.7 What requirements apply to the obligation of Federal funds and program income?

Subpart B—What Are the Application Requirements?

364.10 What are the application requirements?

364.11 When must the State plan be submitted for approval?

364.12 How does the Secretary approve State plans?

364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

Subpart C—What Are the State Plan Requirements?

364.20 What are the general requirements for a State plan?

364.21 What are the requirements for the statewide Independent Living Council (SILC)?

364.22 What is the State's responsibility for administration of the programs authorized by Chapter 1 of Title VII?

364.23 What are the staffing requirements?

364.24 What assurances are required for staff development?

364.25 What are the requirements for a statewide network of centers for independent living?

364.26 What are the requirements for cooperation, coordination, and working relationships?

364.27 What are the requirements for coordinating independent living (IL) services?
364.28 What requirements relate to IL services for older individuals who are blind?
364.29 What are the requirements for coordinating Federal and State sources of funding?
364.30 What notice must be given about the Client Assistance Program (CAP)?
364.31 What are the affirmative action requirements?
364.32 What are the requirements for outreach?
364.33 What is required to meet minority needs?
364.34 What are the fiscal and accounting requirements?
364.35 What records must be maintained?
364.36 What are the reporting requirements?
364.37 What access to records must be provided?
364.38 What methods of evaluation must the State plan include?
364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?
364.40 Who is eligible to receive IL services?
364.41 What assurances must be included regarding eligibility?
364.42 What objectives and information must be included in the State plan?
364.43 What requirements apply to the provision of State IL services?

Subpart D—What Conditions Must Be Met After an Award?

364.50 What requirements apply to the processing of referrals and applications?
364.51 What requirements apply to determinations of eligibility or ineligibility?
364.52 What are the requirements for an IL plan?
364.53 What records must be maintained for the individual?
364.54 What are the durational limitations on IL services?
364.55 What standards shall service providers meet?
364.56 What are the special requirements pertaining to the protection, use, and release of personal information?
364.57 What functions and responsibilities may the State delegate?
364.58 What appeal procedures must be available to consumers?
364.59 May the financial need of an individual be considered to determine his or her participation in the costs of IL services?

Authority: 29 U.S.C. 796–796f–5, unless otherwise noted.

Subpart A—General

§ 364.1 What programs are covered?

(a) This part includes general requirements applicable to the conduct of the following programs authorized under title VII of the Rehabilitation Act of 1973, as amended:

(1) The State Independent Living Services (SILS) program (34 CFR part 365).

(2) The Centers for Independent Living (CIL) program (34 CFR part 366).

(b) Some provisions in this part also are made specifically applicable to the Independent Living Services for Older Individuals Who Are Blind (OIB) program (34 CFR part 367).

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.2 What is the purpose of the programs authorized by chapter 1 of title VII?

The purpose of the SILS and CIL programs authorized by chapter 1 of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society by providing financial assistance to States—

(a) For providing, expanding, and improving the provision of IL services;

(b) To develop and support statewide networks of centers for independent living (centers); and

(c) For improving working relationships among—

(1) SILS programs;

(2) Centers;

(3) Statewide Independent Living Councils (SILCs) established under section 705 of the Act;

(4) State vocational rehabilitation (VR) programs receiving assistance under title I and under part C of title VI of the Act;

(5) Client assistance programs receiving assistance under section 112 of the Act;

(6) Programs funded under other titles of the Act;

(7) Programs funded under other Federal law; and

(8) Programs funded through non-Federal sources.

(Authority: 29 U.S.C. 796)

§ 364.3 What regulations apply?

The following regulations apply to the SILS and CIL programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to grants or subgrants to an eligible agency that is not a State or local government or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subparts B and C of 34 CFR part 366.

(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under 34 CFR part 365 and subpart D of 34 CFR part 366.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), with respect to grants to an eligible agency that is a State or local government or Indian tribal organization.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 364.

(c) The regulations in 34 CFR parts 365 and 366 as applicable.

(Authority: 29 U.S.C. 711(c))

§ 364.4 What definitions apply?

(a) *Definitions in EDGAR*. The following terms used in this part and in 34 CFR parts 365, 366, and 367 are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Nonprofit
Private
Project
Public
Secretary

(b) *Other definitions*. The following definitions also apply to this part and to 34 CFR parts 365, 366, and 367:

Act means the Rehabilitation Act of 1973, as amended.

Administrative support services mean assistance to support IL programs and the activities of centers and may include financial and technical assistance in planning, budget development, and evaluation of center activities, and support for financial management (including audits), personnel development, and recordkeeping activities.

(Authority: 29 U.S.C. 796c(c)(2))

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is *individual advocacy;*

(ii) A group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy*; or

(iii) Oneself, in which case it is *self advocacy.*

Attendant care means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(Authority: 20 U.S.C. 706(30)(B)(vi))

Center for independent living means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that—

(1) Is designed and operated within a local community by individuals with disabilities; and

(2) Provides an array of IL services.

(Authority: 29 U.S.C. 796a(1))

Consumer control means, with respect to a center or eligible agency, that the center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services.

(Authority: 29 U.S.C. 796a(2))

Cross-disability means, with respect to a center, that a center provides IL services to individuals representing a range of significant disabilities and does not require the presence of one or more specific significant disabilities before determining that an individual is eligible for IL services.

(Authority: 29 U.S.C. 796a(1))

Designated State agency or *State agency* means the sole State agency designated to administer (or supervise local administration of) the State plan for VR services. The term includes the State agency for individuals who are blind, if that agency has been designated as the sole State agency with respect to that part of the State VR plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: 29 U.S.C. 706(3) and 721(a)(1)(A))

Designated State unit means either—

(1) The State agency VR bureau, division, or other organizational unit that is primarily concerned with the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities and that is responsible for the administration of the VR program of the State agency; or

(2) The independent State commission, board, or other agency that has the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a)(2)(A))

Eligible agency means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

(Authority: 29 U.S.C. 796f–5)

Independent living core services mean, for purposes of services that are supported under the SILS or CIL programs—

(1) Information and referral services;

(2) IL skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

(Authority: 29 U.S.C. 706(29))

Independent living services includes the independent living core services and—

(1) Counseling services, including psychological, psychotherapeutic, and related services;

(2) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;

(3) Rehabilitation technology;

(4) Mobility training;

(5) Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;

(6) Personal assistance services, including attendant care and the training of personnel providing these services;

(7) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(8) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other individuals with significant disabilities who have traditionally been unserved or underserved by programs under the Act;

(9) Education and training necessary for living in a community and participating in community activities;

(10) Supported living;

(11) Transportation, including referral and assistance for transportation;

(12) Physical rehabilitation;

(13) Therapeutic treatment;

(14) Provision of needed prostheses and other appliances and devices;

(15) Individual and group social and recreational services;

(16) Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(17) Services for children;

(18) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities;

(19) Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Act for similar services in the future;

(20) Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and

(21) Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(Authority: 29 U.S.C. 796e–2(1))

Individual with a disability means an individual who—

(1) Has a physical, mental, cognitive, or sensory impairment that substantially limits one or more of the individual's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(Authority: 29 U.S.C. 706(8)(B))

Individual with a significant disability means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

(Authority: 29 U.S.C. 706(15)(B))

Minority group means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

Nonresidential means, with respect to a center, that the center, as of October 1, 1994, does not operate or manage housing or shelter to individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—

(1) Incidental to the overall operation of the center;

(2) Necessary so that the individual may receive an IL service; and

(3) Limited to a period not to exceed eight weeks during any six-month period.

(Authority: 29 U.S.C. 796a, 796f–1(f) and 706f–2(f))

Peer relationships mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

Peer role models mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

Personal assistance services mean a range of IL services, provided by one or more persons, designed to assist an individual with a significant disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: 29 U.S.C. 706(11))

Service provider means—

(1) A DSU that directly provides IL services to individuals with significant disabilities;

(2) A center that receives financial assistance under parts B and C of Chapter 1 of Title VII of the Act; or

(3) Any other entity or individual that meets the requirements of § 364.43(e) and provides IL services under a grant or contract from the DSU pursuant to § 364.43(b).

(Authority: 29 U.S.C. 711(c) and 796(e))

Significant disability means a severe physical or mental impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

State means, except for sections 711(a)(2)(A) and 721(c)(2)(A) and where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(Authority: 29 U.S.C. 706(16))

State plan means the State IL plan required under section 704 of Title VII of the Act.

Transportation means travel and related expenses that are necessary to enable an individual with a significant disability to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that IL service.

(Authority: 29 U.S.C. 706(30)(B)(xi) and 711(c))

Unserved and underserved groups or populations, with respect to groups or populations of individuals with significant disabilities in a State, include, but are not limited to, groups or populations of individuals with significant disabilities who—

(1) Have cognitive and sensory impairments;

(2) Are members of racial and ethnic minority groups;

(3) Live in rural areas; or

(4) Have been identified by the eligible agency as unserved or underserved within a center's project area.

(Authority: 29 U.S.C. 706, 711(c), and 796f—796f–5)

§ 364.5 What are the limitations on allowable costs?

Expenditures made with non-Federal funds in a particular fiscal year that are not reported as costs charged to the program on the final financial status reports for that program prior to the commencement of an audit or compliance review for that year may not be used as an allowable cost to offset any costs disallowed in a notice of disallowance decision or preliminary departmental decision based on that audit or compliance review.

(Authority: 29 U.S.C. 711(c))

§ 364.6 What is program income and how may it be used?

(a) *Definition.* Program income means gross income received by a grantee under Title VII of the Act that is directly generated by an activity supported under 34 CFR part 365, 366, or 367.

(b) *Sources.* Sources of program income include, but are not limited to, payments received from workers' compensation funds or fees for services to defray part or all of the costs of services provided to particular clients.

(c) *Use of program income.* (1) Program income, whenever earned, must be used for the provision of IL services or the administration of the State plan, as appropriate.

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 34 CFR 80.25(g)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2).

(3) Program income may not be used to meet the non-Federal share requirement under 34 CFR 365.12(b).

(Authority: 29 U.S.C. 711(c); 34 CFR 80.25)

§ 364.7 What requirements apply to the obligation of Federal funds and program income?

(a) Except as provided in paragraphs (b) and (c) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under 34 CFR part 365, 366, or 367 that are not obligated by the DSU or center prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated by the DSU or center prior to the beginning of the succeeding fiscal year, must remain available for obligation by the DSU or center during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under part B of chapter 1 and under chapter 2 of title VII of the Act remain available for obligation in the succeeding fiscal year only to the extent that the DSU complied with any matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(c) The provisions of paragraphs (a) and (b) of this section do not apply to discretionary grants awarded by the

Secretary under sections 722 and 752 of the Act.

(Authority: 29 U.S.C. 718)

Subpart B—What Are the Application Requirements?

§ 364.10 What are the application requirements?

To receive a grant from a State's allotment of funds under parts B and C of chapter 1 of title VII of the Act and 34 CFR parts 365 and 366, a State shall submit to the Secretary, and obtain approval of, a three-year State plan meeting the requirements in subpart C of this part.

(Authority: 29 U.S.C. 796c(a)(1))

§ 364.11 When must the State plan be submitted for approval?

The designated State unit (DSU) shall submit to the Secretary for approval the three-year State plan no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Authority: 29 U.S.C. 796c(a)(4))

§ 364.12 How does the Secretary approve State plans?

(a) *General.* The Secretary approves a State plan that the Secretary determines meets the requirements of section 704 of the Act and subparts B through D of this part and disapproves a plan that does not meet these requirements.

(b) *Informal resolution.* If the Secretary intends to disapprove the State plan, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU of the intention to disapprove the State plan and of the opportunity for a hearing.

(d) *Hearing.* (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department's administration of the programs authorized by Title VII of the Act, to conduct a hearing.

(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(e) *Judicial review.* A State may appeal the Secretary's decision to disapprove its State plan by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796d–1(a))

§ 364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

(a) *When withheld, reduced, limited, or terminated.* Payments to a State under chapter 1 of title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that—

(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.

(b) *Informal resolution.* If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under Title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU of the intention to withhold, reduce, limit, or terminate payment of funds under Title VII of the Act and of the opportunity for a hearing.

(d) *Hearing.* If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The ALJ issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The DSU may seek the Secretary's review of an ALJ's initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews an ALJ's initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The ALJ's initial decision becomes the final decision of the Department in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's final decision to withhold, reduce, limit, or terminate payment of funds to a State under Title VII of the Act by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: 29 U.S.C. 727(c)-(d) and 796d-1(a)) Subpart C—What Are the State Plan Requirements?

§ 364.20 What are the general requirements for a State plan?

(a) *Form and content.* The State plan must contain, in the form prescribed by the Secretary, the information required by this part and any other information requested by the Secretary.

(b) *Duration.* (1) The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(2) The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the effective date of final regulations.

(c) *Joint development-single agency.* The State plan must be jointly—

(1) Developed by the DSU and the SILC; and

(2) Signed by the—

(i) Director of the DSU (Director); and

(ii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(d) *Joint development-separate agency for individuals who are blind.* If a separate State agency is authorized by State law as the sole State agency with authority to administer or supervise the administration of that part of the State plan relating to the vocational rehabilitation of individuals who are blind, the State plan must be jointly—

(1) Developed by the DSU, the SILC, and the separate State agency authorized to provide VR services for individuals who are blind; and

(2) Signed by the—

(i) Director;

(ii) Director of the separate State agency authorized to provide VR services for individuals who are blind; and

(iii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(Cross-reference: See § 364.22(c).)

(e) The State plan must assure that, as appropriate, the DSU actively consults in the development of the State plan with the Director of the client assistance program authorized under section 112 of the Act.

(f) Periodic review and revision. The State plan must provide for the review and revision of the plan, at least once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, the needs in the State for—

(1) Providing State IL services;

(2) Developing and supporting a statewide network of centers; and

(3) Working relationships between—

(i) Programs providing IL services and supporting or establishing centers; and

(ii) The VR program established under title I of the Act, and other programs providing services for individuals with disabilities.

(g) Public hearings. (1) The State plan must assure that the DSU conducts public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The DSU may meet the public participation requirement by holding the public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings.

(2) The State plan must assure that the DSU establishes and maintains a written description of procedures for conducting public meetings in accordance with the following requirements:

(i) The DSU shall provide appropriate and sufficient notice of the public meetings. Appropriate and sufficient notice means notice provided at least 30 days prior to the public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the DSU and SILC.

(ii) The DSU shall make reasonable accommodation to individuals with disabilities who rely on special modes of communication in the conduct of the public meetings, including providing sign language interpreters and audio-loops.

(iii) The DSU shall provide the notices of the public meetings, any written material provided prior to or at the public meetings, and the approved State plan in accessible formats for individuals who rely on special modes of communication.

(h) The State plan must assure that, at the public meetings to develop the State plan, the DSU identifies those provisions in the State plan that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State rule or policy relating to the DSU's administration or operation of IL programs under title VII of the Act, including any rule or policy based on State interpretation of any Federal law, regulation, or guideline, that is beyond what would be required to comply with the regulations in 34 CFR parts 364, 365, 366, and 367.

(Authority: 29 U.S.C. 711(c) and 796c (a) and (m)(6))

§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

(a) *Establishment.* (1) To be eligible to receive assistance under chapter 1 of title VII of the Act, each State shall establish a SILC that meets the requirements of section 705 of the Act.

(2) The SILC may not be established as an entity within a State agency, including the designated State agency or DSU. The SILC shall be independent of the DSU and all other State agencies.

(b) *Appointment and composition*—(1) *Appointment.* Members of the SILC must be appointed by the Governor or the appropriate entity within the State responsible, in accordance with State law, for making appointments.

(2) *Composition.* (i) The SILC must include—

(A) At least one director of a center chosen by the directors of centers within the State; and

(B) As ex officio, nonvoting members, a representative from the DSU and representatives from other State agencies that provide services to individuals with disabilities.

(ii) The SILC may include—

(A) Other representatives from centers;

(B) Parents and legal guardians of individuals with disabilities;

(C) Advocates of and for individuals with disabilities;

(D) Representatives from private businesses;

(E) Representatives from organizations that provide services for individuals with disabilities; and

(F) Other appropriate individuals.

(iii) A majority of the members of the SILC must be individuals with disabilities, as defined in § 364.4(b), and not employed by any State agency or center.

(c) *Qualifications.* The SILC must be composed of members—

(1) Who provide statewide representation;

(2) Who represent a broad range of individuals with disabilities; and

(3) Who are knowledgeable about centers and IL services.

(d) *Voting members.* A majority of the voting members of the SILC must be individuals with disabilities, as defined in § 364.4(b), and not employed by any State agency or center.

(e) *Chairperson*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the SILC shall select a chairperson from among the voting membership of the SILC.

(2) *Designation by Governor.* In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a voting member of the SILC to serve as the chairperson of the SILC or shall require the SILC to so designate a voting member.

(f) *Terms of appointment.* Each member of the SILC shall serve for a term of three years, except that—

(1) A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed must be appointed for the remainder of that term;

(2) The terms of service of the members initially appointed must be (as specified by the appointing authority) for the fewer number of years as will provide for the expiration of terms on a staggered basis; and

(3) No member of the SILC may serve for more than two consecutive full terms.

(g) *Duties.* The SILC shall—

(1) Jointly develop and sign (in conjunction with the DSU) the State plan required by section 704 of the Act and § 364.20;

(2) Monitor, review, and evaluate the implementation of the State plan;

(3) Coordinate activities with the State Rehabilitation Advisory Council established under section 105 of the Act and councils that address the needs of specific disability populations and issues under other Federal law;

(4) Ensure that all regularly scheduled meetings of the SILC are open to the public and sufficient advance notice is provided; and

(5) Submit to the Secretary all periodic reports as the Secretary may reasonably request and keep all records, and afford access to all records, as the Secretary finds necessary to verify the periodic reports.

(h) *Hearings.* The SILC is authorized to hold any hearings and forums that the SILC determines to be necessary to carry out its duties.

(i) *Resource plan.* (1) The SILC shall prepare, in conjunction with the DSU, a resource plan for the provision of resources, including staff and personnel, made available under parts B and C of chapter 1 of title VII of the Act, part C of title I of the Act, and from other public and private sources that may be necessary to carry out the functions of the SILC under this part.

(2) The SILC's resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the State plan.

(3) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(4) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(5) A description of the SILC's resource plan required by paragraph (i)(1) of this section must be included in the State plan.

(j) *Staff.* (1) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

(2) While assisting the SILC in carrying out its duties, staff and other personnel made available to the SILC by the DSU may not be assigned duties by the designated State agency or DSU, or any other agency or office of the State, that would create a conflict of interest.

(k) *Reimbursement and compensation.* The SILC may use the resources described in paragraph (i) of this section to reimburse members of the SILC for reasonable and necessary expenses of attending SILC meetings and performing SILC duties (including child care and personal assistance services) and to pay compensation to a member of the SILC, if the member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing SILC duties.

(l) *Conflict of interest.* No member of the SILC is permitted to cast a vote on any matter that may provide direct financial benefit to the member or the member's organization, that creates some other conflict of interest, or that otherwise gives the appearance of a conflict of interest under State law, unless that member announces publicly to all members of the SILC and to the public prior to his or her vote of the possible financial benefit, conflict of interest, or appearance of a conflict of interest.

(Authority: 29 U.S.C. 796d)

§ 364.22 What is the State's responsibility for administration of the programs authorized by Chapter 1 of Title VII?

(a) *General.* The State plan must identify the DSU as the entity that, on behalf of the State, shall—

(1) Receive, account for, and disburse funds received by the State under part B of chapter 1 and section 723 of title VII of the Act (and 34 CFR parts 365 and 366, as applicable) based on the plan;

(2) Provide, as applicable, administrative support services for the SILS and CIL programs under part B of chapter 1 and section 723 of title VII of the Act, respectively, and 34 CFR parts 365 and 366, respectively;

(3) Keep records and afford access to these records as the Secretary finds to be necessary with respect to the SILS and CIL programs; and

(4) Submit additional information or provide assurances as the Secretary may require with respect to the SILS and CIL programs.

(b) *Provision of administrative support services.* The State plan must describe the administrative support services to be provided by the DSU under paragraph (a)(2) of this section.

(c) *Designation of State unit for individuals who are blind.* The State plan may designate a State agency or the organizational unit of a State agency that is authorized under State law to provide VR services to individuals who are blind under a State VR plan as the DSU to administer that part of the State IL plan under which IL services are provided to individuals who are blind.

(Authority: 29 U.S.C. 796c(c))

§ 364.23 What are the staffing requirements?

(a) *General staffing requirement.* The State plan must assure that the staff of the service provider includes personnel who are specialists in the development and provision of IL services and in the development and support of centers.

(b) *Special communication needs staffing.* The State plan must also assure that, to the maximum extent feasible, the service provider makes available personnel able to communicate—

(1) With individuals with significant disabilities who rely on special modes of communication, such as manual communication, nonverbal communication devices, Braille, or audio tapes, and who apply for or receive IL services under title VII of the Act; and

(2) In the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under title VII of the Act.

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.24 What assurances are required for staff development?

The State plan must assure that the service provider establishes and maintains a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of the IL philosophy.

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.25 What are the requirements for a statewide network of centers for independent living?

(a) The State plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366.

(b) The design required by paragraph (a) of this section must identify unserved and underserved areas and must provide an order of priority for serving these areas.

(Authority: 29 U.S.C. 711(c) and 796c(g))

§ 364.26 What are the requirements for cooperation, coordination, and working relationships?

(a) The State plan must include steps that will be taken to maximize the cooperation, coordination, and working relationships among—

(1) The SILS program, the SILC, and centers; and

(2) The DSU, other State agencies represented on the SILC, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the SILC.

(b) The State plan must identify the entities to which the DSU and the SILC will relate in carrying out the requirements of paragraph (a) of this section.

(Authority: 29 U.S.C. 796c(i))

§ 364.27 What are the requirements for coordinating independent living (IL) services?

The State plan must describe how IL services funded under chapter 1 of title VII of the Act will be coordinated with, and complement, other services, to avoid unnecessary duplication with other Federal, State, and local programs, including the OIB program authorized by chapter 2 of title VII of the Act, that provide IL- or VR-related services. This description must include those services provided by State and local agencies administering the special education, vocational education, developmental disabilities services, public health, mental health, housing, transportation, and veterans' programs, and the programs authorized under titles XVIII through XX of the Social Security Act within the State.

(Authority: 29 U.S.C. 796c(j) and 752(i)(2)(C))

§ 364.28 What requirements relate to IL services for older individuals who are blind?

The State plan must include an assurance that the DSU will seek to incorporate into and describe in the State plan any new methods or approaches for the provision to older individuals who are blind of IL services that are developed under a project funded under chapter 2 of title VII of the Act and that the DSU determines to be effective.

(Authority: 29 U.S.C. 711(c), 796c(j), and 796k(h))

§ 364.29 What are the requirements for coordinating Federal and State sources of funding?

(a) The State plan must describe efforts to coordinate Federal and State funding for centers and IL services.

(b) The State plan must identify the amounts, sources, and purposes of the funding to be coordinated under paragraph (a) of this section, including the amount of State funds earmarked for the general operation of centers.

(Authority: 29 U.S.C. 796c(k))

Cross-reference: See 34 CFR 366.30(a).

§ 364.30 What notice must be given about the Client Assistance Program (CAP)?

The State plan must include satisfactory assurances that all service providers will use formats that are accessible to notify individuals seeking or receiving IL services under Chapter 1 of title VII about—

(a) The availability of the CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Authority: 29 U.S.C. 718a and 796c(m)(1))

§ 364.31 What are the affirmative action requirements?

The State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will take affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act.

(Authority: 29 U.S.C. 796c(m)(2))

§ 364.32 What are the requirements for outreach?

(a) With respect to IL services and centers funded under chapter 1 of title VII of the Act, the plan must include steps to be taken regarding outreach to populations in the State that are unserved or underserved by programs under title VII, including minority groups and urban and rural populations.

(b) The State plan must identify the populations to be designated for special outreach efforts under paragraph (a) of this section and the geographic areas in which they reside.

(Authority: 29 U.S.C. 796c(l))

§ 364.33 What is required to meet minority needs?

The State plan must demonstrate how the State will address the needs of individuals with significant disabilities from minority group backgrounds.

(Authority: 29 U.S.C. 711(c), 718b(b), and 796c(l))

§ 364.34 What are the fiscal and accounting requirements?

In addition to complying with applicable EDGAR fiscal and accounting requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will adopt those fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for those funds.

(Authority: 29 U.S.C. 796c(m)(3))

§ 364.35 What records must be maintained?

In addition to complying with applicable EDGAR recordkeeping requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of chapter 1 of title VII of the Act and this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Authority: 29 U.S.C. 796c(m)(4))

§ 364.36 What are the reporting requirements?

With respect to the records that are required by § 364.35, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of Chapter 1 and under chapter 2 of title VII of the Act will submit reports that the Secretary determines to be appropriate.

(Authority: 29 U.S.C. 796c(m)(4)(D))

§ 364.37 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 and Chapter 2 of title VII of the Act will provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under § 364.35;

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under chapter 1 of title VII of the Act; and

(c) All individual case records or files or consumer service records of individuals served under 34 CFR parts 365, 366, or 367, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Authority: 29 U.S.C. 711(c) and 796c(m)(4)(c) and (5))

§ 364.38 What methods of evaluation must the State plan include?

The State plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established in § 364.42, including evaluation of satisfaction by individuals with significant disabilities who have participated in the program.

(Authority: 29 U.S.C. 796c(n))

§ 364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?

In States in which State funding for centers equals or exceeds the amount of funds allotted to the State under part C of title VII of the Act, as determined pursuant to 34 CFR 366.29 and 366.31, and in which the State elects to administer the CIL program as provided in section 723 of the Act, the State plan must include policies, practices, and procedures that are consistent with section 723 of the Act to govern the awarding of grants to centers and the oversight of these centers.

(Authority: 29 U.S.C. 796c(g) and (h), 796f–1(d), and 796f–2(d)).

§ 364.40 Who is eligible to receive IL services?

The State plan must assure that—

(a) Any individual with a significant disability, as defined in § 364.4(b), is eligible for IL services under the SILS and CIL programs authorized under chapter 1 of title VII of the Act;

(b) Any individual may seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate; and

(c) The determination of an individual's eligibility for IL services under the SILS and CIL programs meets the requirements of § 364.51.

(Authority: 29 U.S.C. 706(15)(B) and 796b)

§ 364.41 What assurances must be included regarding eligibility?

(a) The State plan must assure that the service provider applies eligibility requirements without regard to age, gender, race, creed, color, national origin, or type of significant disability of the individual applying for IL services.

(b) The State plan must assure that the service provider does not impose any State or local residence requirement that excludes from IL services under the plan any individual who is present in the State and who is otherwise eligible for IL services.

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

§ 364.42 What objectives and information must be included in the State plan?

(a) The State plan must specifically describe—

(1) The objectives to be achieved;

(2) The financial plan for the use of Federal and non-Federal funds to meet these objectives; and

(3) How funds received under sections 711, 721, and 752 of the Act will further these objectives.

(b) The objectives required by paragraph (a) of this section must address—

(1) The overall goals and mission of the State's IL programs and services;

(2) The various priorities for the types of services and populations to be served; and

(3) The types of services to be provided.

(c) In developing the objectives required by paragraph (a) of this section, the DSU and the SILC shall consider, and incorporate if appropriate, the priorities and objectives established by centers pursuant to section 725(c)(4) of the Act.

(d) The State plan must establish timeframes for the achievement of the objectives required by paragraph (a) of this section.

(e) The State plan must explain how the objectives required by paragraph (a) of this section are consistent with and further the purpose of chapter 1 of title VII of the Act, as stated in section 701 of the Act and § 364.2.

(Authority: 29 U.S.C. 796c(d))

§ 364.43 What requirements apply to the provision of State IL services?

(a) The State plan must describe the extent and scope of IL services to be provided under title VII of the Act to meet the objectives stated in § 364.42.

(b) The State plan must provide that the State directly, or through grants or contracts, will provide IL services with Federal, State, or other funds.

(c) IL services provided to individuals with significant disabilities must be in accordance with an IL plan that meets the requirements of § 364.52 and that is mutually agreed upon by—

(1) An appropriate staff member of the service provider; and

(2) The individual, unless the individual signs a waiver stating that an IL plan is unnecessary.

(d) If the State provides the IL services that it is required to provide by paragraph (b) of this section through grants or contracts with third parties, the State plan must describe these arrangements.

(e) If the State contracts with or awards a grant to a center for the general operation of the center, the State shall delegate to the center the determination of an individual's eligibility for services from that center. If the State contracts with or awards a grant to a third party to provide specific IL services, the State may choose to delegate to the IL service provider the determination of eligibility for these services and the development of an IL plan for individuals who receive these services.

(Authority: 29 U.S.C. 711(c), 796c(e)–(f), and 796f–4(b)(2))

Cross-reference: See 34 CFR Part 365.

Subpart D—What Conditions Must Be Met After an Award?

§ 364.50 What requirements apply to the processing of referrals and applications?

The service provider shall apply the standards and procedures established by the DSU pursuant to 34 CFR 365.30 to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.51 What requirements apply to determinations of eligibility or ineligibility?

(a) *Eligibility.* (1) Before or at the same time as an applicant for IL services may begin receiving IL services funded under this part, the service provider shall determine the applicant's eligibility and maintain documentation that the applicant has met the basic requirements specified in § 364.40.

(2) The documentation must be dated and signed by an appropriate staff member of the service provider.

(b) *Ineligibility.* (1) If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by an appropriate staff member.

(2)(i) The service provider may determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

(ii) The service provider shall notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken.

(Cross-reference: See § 364.58(a).)

(iii) The service provider shall provide a detailed explanation of the availability and purposes of the client assistance program established within the State under section 112 of the Act, including information on how to contact the program.

(iv) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the State's VR program under 34 CFR part 361.

(c) *Review of ineligibility determination.* (1) If an applicant for IL services has been found ineligible, the service provider shall review the applicant's current status no later than 12 months after the determination has been made.

(2) The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in the State, or the applicant's whereabouts are unknown.

(Authority: 29 U.S.C. 711(c) and 796c(e))

§ 364.52 What are the requirements for an IL plan?

(a) *General.* (1) Unless the individual who is to be provided IL services under this part signs a waiver in accordance with paragraph (a)(2) of this section, the service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in § 364.43(c) and paragraphs (b) through (e) of this section.

(2) The requirements of this section with respect to an IL plan do not apply if the individual signs a waiver stating that an IL plan is unnecessary.

(3) Subject to paragraph (a)(2) of this section, the service provider shall provide each IL service in accordance with the IL plan.

(b) *Initiation and development of an IL plan.* (1) Development of an individual's IL plan must be initiated after documentation of eligibility under § 364.51(a) and must indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

(2) The IL plan must be developed jointly and signed by the appropriate staff member of the service provider and the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(3) A copy of the IL plan, and any amendments, must be provided to the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(c) *Review.* (1) The IL plan must be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of VR services under 34 CFR part 361 or to any other program of assistance.

(2) Each individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative, must be given an opportunity to review the IL plan and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Coordination with vocational rehabilitation, developmental disabilities, and special education programs.* The development of the IL plan and the provision of IL services must be coordinated to the maximum extent possible with any individualized—

(1) Written rehabilitation program for VR services for that individual;

(2) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act; and

(3) Education program for the individual prepared under part B of the Individuals with Disabilities Education Act.

(e) *Termination of services.* If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in § 364.51(b)(2)(ii) through (iv) and (c).

(Authority: 29 U.S.C. 711(c) and 796c(e))

§ 364.53 What records must be maintained for the individual?

For each applicant for IL services and for each individual receiving IL services, the service provider shall maintain a consumer service record that includes—

(a) Documentation concerning eligibility or ineligibility for services;

(b) The services requested by the consumer;

(c) Either the IL plan developed with the consumer or a waiver signed by the consumer stating that an IL plan is unnecessary;

(d) The services actually provided to the consumer; and

(e) The IL goals or objectives—

(1) Established with the consumer, whether or not in the consumer's IL plan; and

(2) Achieved by the consumer.

(Authority: 29 U.S.C. 711(c), 712 and 796c(m)(4)(B))

§ 364.54 What are the durational limitations on IL services?

The service provider may not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by Federal law or regulation.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.55 What standards shall service providers meet?

In providing IL services to individuals with significant disabilities, service providers shall comply with—

(a) The written standards for IL service providers established by the DSU pursuant to 34 CFR 365.31; and

(b) All applicable State or Federal licensure or certification requirements.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

§ 364.56 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) *General provisions.* The State plan must assure that each service provider will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(1) Specific safeguards protect current and stored personal information;

(2) All applicants for, or recipients of, IL services and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;

(3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including—

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

(v) Identification of other agencies to which information is routinely released;

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) At least the same protections are provided to individuals with significant disabilities as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) *Service provider use.* All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of IL services and the administration of the IL program under which IL services are provided. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services or the administration of the IL program under which IL services are provided. In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to recipients of IL services.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of an IL program, or for purposes that would significantly improve the quality of life for individuals with significant disabilities and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(2) Medical or psychological information that the service provider determines may be harmful to the individual may be released if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.

(5) The service provider also may release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: 29 U.S.C. 711(c))

§ 364.57 What functions and responsibilities may the State delegate?

A DSU may carry out the functions and responsibilities described in §§ 364.50, 364.51 (subject to § 364.43(d)), 364.52, 364.53, and 364.56 or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with which the DSU subgrants or contracts to provide IL services.

(Authority: 29 U.S.C. 711(c), 796c(f) and 796e–2)

§ 364.58 What appeal procedures must be available to consumers?

Each service provider shall—

(a) Establish policies and procedures that an individual may use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual; and

(b) Use formats that are accessible to inform each individual who seeks or is receiving IL services from the service provider about the procedures required by paragraph (a) of this section.

(Authority: 29 U.S.C. 711(c))

§ 364.59 May the financial need of an individual be considered to determine his or her participation in the costs of IL services?

(a) *No Federal requirement.* There is no Federal requirement that the financial need of an individual eligible for IL services be considered in the provision of IL services.

(b) *State plan requirements.* The State plan must—

(1) Specify the types of IL services for which a financial need test may be applied; and

(2) Assure that any consideration of financial need is applied uniformly so that all individuals who are eligible for IL services are treated equally.

(c) *Financial need.* Consistent with paragraph (b) of this section, a service provider may choose to consider the financial need of an individual who is eligible for IL services.

(d) *Written policies and documentation.* If the service provider chooses to consider financial need—

(1) It shall maintain written policies covering the specific types of IL services for which a financial need test will be applied; and

(2) It shall document the individual's participation in the cost of any IL services, including financial need information.

(Authority: 29 U.S.C. 711(c))

PART 365—STATE INDEPENDENT LIVING SERVICES

Subpart A—General

Sec.

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365.30 What are the standards for processing referrals and applications?

365.31 What are the standards for service providers?

Authority: 29 U.S.C. 796e–796e–2, unless otherwise noted.

Subpart A—General

§ 365.1 What is the State Independent Living Services (SILS) program?

The Secretary provides financial assistance to States under the SILS program authorized by part B of chapter 1 of title VII of the Act to—

(a) Provide the resources described in the resource plan required by section 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide IL Council (SILC);

(b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;

(c) Demonstrate ways to expand and improve IL services;

(d) Support the operation of centers for independent living (centers) that are in compliance with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(e) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(f) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(g) Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

(h) Provide outreach to populations that are unserved or underserved by programs under Title VII of the Act, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796e)

§ 365.2 Who is eligible for an award?

Any designated State unit (DSU) identified by the State pursuant to 34 CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

(Authority: 29 U.S.C. 796c(a) (1) and (c) and 796e(a))

§ 365.3 What regulations apply?

The following regulations apply to this part:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 365.

(Authority: 29 U.S.C. 711(c) and 796e)

Subpart B—How Does the Secretary Make a Grant to a State?

§ 365.10 How does a State apply for a grant?

To receive a grant under this part, a State shall submit to the Secretary and obtain approval of a State plan that meets the requirements of part A of title VII of the Act and subparts B and C of 34 CFR part 364.

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

§ 365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) The allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau is computed in accordance with section 711(a)(2) of the Act.

(c) If the State plan designates, pursuant to § 364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State's allotment between these two units is a matter for State determination.

(Authority: 29 U.S.C. 711(c) and 796e(a))

§ 365.12 How are payments from allotments for IL services made?

(a) From the allotment of a State for a fiscal year under § 365.11, the Secretary pays to the State the Federal share of the expenditures incurred by the State during the year in accordance with the State plan approved under section 706 of the Act. After any necessary adjustments resulting from previously made overpayments or underpayments, the payments may be made in advance or by reimbursement, in installments, and on conditions that the Secretary may determine.

(b)(1) The Federal share with respect to any State for any fiscal year is 90 percent of the expenditures incurred by the State during that fiscal year under its State plan approved under section 706 of the Act.

(2) The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: U.S.C. 796e–1)

§ 365.13 What requirements apply if the State's non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 34 CFR 80.24(a) through (b)(6) may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if—

(1) The expenditures are made with funds made available by appropriation directly to the designated State agency or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the designated State agency in accordance with State law for expenditure by, and at the sole discretion of, the DSU for activities identified or described in the State plan and authorized by § 365.20; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for—

(i) Providing particular services (e.g., personal assistance services);

(ii) Serving individuals with certain types of disabilities (e.g., older individuals who are blind);

(iii) Providing services to special groups that State or Federal law permits to be targeted for services (e.g., children of migrant laborers); or

(iv) Carrying out particular types of administrative activities permissible under State law.

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?

(a) A State may not condition the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on the requirement that the applicant for the grant or subgrant make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 365.15 What requirements apply if the State's non-Federal share is in kind?

Subject to § 365.14, in-kind contributions may be—

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 34 CFR 80.24(b)(7) through (g) and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles made applicable by either subpart Q of 34 CFR part 74 or 34 CFR 80.22, as appropriate; and

(b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a grantee, subgrantee, or contractor that is receiving or will receive assistance under sections 713 or 723 of the Act.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

§ 365.16 What requirements apply to refunds and rebates?

The following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under this part and may not be used for meeting the State's matching requirement under section 712(b) of the Act:

(a) Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services.

(b) Premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

(Authority: 29 U.S.C. 711(c), 796e–1(b), and OMB Circulars A–87 and A–122)

Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

§ 365.20 What are the authorized uses of funds?

The State may use funds received under this part to support the activities listed in § 365.1 and to meet its obligation under section 704(e) of the Act and 34 CFR 364.43(b).

(Authority: 29 U.S.C. 796e–2)

§ 365.21 What funds may the State use to provide the IL core services?

(a) In providing IL services as required under section 704(e) of the Act and 34 CFR 364.43(b), a State may use funds provided under this part to provide directly, or through grants or contracts, the following IL core services:

(1) Information and referral services.

(2) IL skills training.

(3) Peer counseling, including cross-disability peer counseling.

(4) Individual and systems advocacy.

(b) Information and referral services may be provided independently of the other services described in paragraph (a) of this section and without regard to subpart G of 34 CFR part 366.

(Authority: 29 U.S.C. 711(c) and 796c(e))

§ 365.22 What additional IL services may the State provide?

In addition to IL core services that the State is required to provide under section 704(e) of the Act and 34 CFR 364.43(b), the State may use funds received under part B of Chapter 1 of title VII of the Act to provide the IL services defined in 34 CFR 364.4 (Independent living services).

(Authority: 29 U.S.C. 796e–2(1))

§ 365.23 How does a State make a subgrant or enter into a contract?

If a State makes a subgrant or enters into a contract to provide IL services to meet its obligation under section 704(e) of the Act—

(a) The provisions of this part apply to both the State and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 80 apply to the State.

(Authority: 29 U.S.C. 711(c), 796c(f), and 796e–2)

Cross-reference: See 34 CFR parts 74, 76, and 80.

Subpart D—What Conditions Must Be Met After an Award?

§ 365.30 What are the standards for processing referrals and applications?

The DSU shall develop, establish, and maintain written standards and procedures to be applied by the service provider to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796e)

§ 365.31 What are the standards for service providers?

(a) The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of IL services to be met by providers that do not meet the standards and assurances in section 725 of the Act and subparts F and G of 34 CFR part 366 and that are used by the DSU to provide IL services to individuals with significant disabilities.

(b) The DSU shall assure that participating service providers meet all applicable State licensure or certification requirements.

(Authority: 29 U.S.C. 711(c))

PART 366—CENTERS FOR INDEPENDENT LIVING

Subpart A—General

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Authority: 29 U.S.C. 796f through 796f–5, unless otherwise noted.

Subpart A—General

§ 366.1 What is the Centers for Independent Living (CIL) program?

The CIL program provides financial assistance for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 (b) and (c) of the Act, consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(Authority: 29 U.S.C. 796f, 796f–1(a)(2), and 796f–2(a)(1)(A)(ii))

§ 366.2 What agencies are eligible for assistance under the CIL program?

(a) In any State in which the Secretary has approved the State plan required by section 704 of the Act, an applicant may receive a grant under subparts C or D of this part, as applicable, if the applicant demonstrates in its application submitted pursuant to § 366.21, 366.24, 366.33, 366.35, or 366.36 that it—

(1) Has the power and authority to—

(i) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725 (b) and (c) of the Act and subparts F and G of this part within a community; and

(ii) Receive and administer—

(A) Funds under this part;

(B) Funds and contributions from private or public sources that may be used in support of a center; and

(C) Funds from other public and private programs; and

(2) Is able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) An applicant is eligible to apply as a new center if it—

(1) Has never received funds under part C of chapter 1 of title VII of the Act;

(2) Proposes the expansion of an existing center through the establishment of a separate and complete facility at a different geographical location; or

(3) Receives assistance under part B of chapter 1 of title VII of the Act (or received assistance under part A of title VII of the Act as in effect on October 28, 1992) for a fiscal year for the general operation of a center; and

(4) Meets the requirements of § 366.24;

(c) A State that received assistance in fiscal year (FY) 1993 to directly operate a center in accordance with section 724(a) of the Act is eligible to continue to receive assistance under this part to directly operate that center for FY 1994 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under sections 722 or 723 of the Act or § 366.21 or § 366.24 to operate a center for that fiscal year before a date specified by the Secretary; or

(2) After funding all applications so submitted and approved, the Secretary determines that funds remain available to provide that assistance.

(d) Except for the requirement that the center be a private nonprofit agency, a center that is operated by a State that receives assistance under paragraph (a), (b), or (c) of this section shall comply with all of the requirements of Part C of title VII of the Act and the requirements in subparts C or D, as applicable, and F of this part.

(e) Eligibility requirements for assistance under Subpart B of this part are described in § 366.10.

(Authority: 29 U.S.C. 711(c), 796f–1(b) and (d)(3), 796f–2(b), and 796f–3(a)(2) and (b))

§ 366.3 What activities may the Secretary fund?

(a) An eligible agency may use funds awarded under subpart B of this part to carry out activities described in § 366.11(b).

(b) An eligible agency may use funds awarded under subparts C and D of this part to—

(1) Plan, conduct, administer, and evaluate centers that comply with the standards and assurances in section 725(b) and (c) of the Act;

(2) Promote and practice the independent living (IL) philosophy in accordance with Evaluation Standard 1 ("Philosophy");

(3) Provide IL services (including IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act) to individuals with a range of significant disabilities in accordance with Evaluation Standards 2 and 5 ("Provision of services" and "Independent living core services," respectively);

(4) Facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance from the center in accordance with Evaluation Standard 3 ("Independent living goals");

(5) Increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of IL goals by individuals with significant disabilities in accordance with Evaluation Standard 4 ("Community options");

(6) Increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities in accordance with Evaluation Standard 6 ("Activities to increase community capacity");

(7) Conduct resource development activities to obtain funding from sources other than chapter 1 of title VII of the Act in accordance with Evaluation Standard 7 (Resource development activities); and

(8) Conduct activities necessary to comply with the assurances in section 725(c) of the Act, including, but not limited to the following:

(i) Aggressive outreach regarding services provided through the center in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act, especially minority groups and urban and rural populations.

(ii) Training for center staff on how to serve unserved and underserved populations, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796f through 796f–4)

(Cross-reference: See § 366.71 in Subpart G.)

§ 366.4 What regulations apply?

The following regulations apply to the CIL program:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 366.

(Authority: 29 U.S.C. 711(c) and 796f–796f–5)

§ 366.5 How are program funds allotted?

(a) The Secretary allots Federal funds appropriated for FY 1994 and subsequent fiscal years for the CIL program to each State in accordance with the requirements of section 721 of the Act.

(b)(1) After the Secretary makes the reservation required by section 721(b) of the Act, the Secretary makes an allotment, from the remainder of the amount appropriated for a fiscal year to carry out Part C of Title VII of the Act, to each State whose State plan has been approved under section 706 of the Act and 34 CFR part 364.

(2) The Secretary makes the allotment under paragraph (b)(1) of this section subject to sections 721(c)(1)(B) and (C), 721(c)(2) and (3), and 721(d) of the Act.

(Authority: 29 U.S.C. 796f)

Subpart B—Training and Technical Assistance

§ 366.10 What agencies are eligible for assistance to provide training and technical assistance?

Entities that have experience in the operation of centers are eligible to apply for grants to provide training and technical assistance under section 721(b) of the Act to eligible agencies, centers, and Statewide Independent Living Councils (SILCs).

(Authority: 29 U.S.C. 796f(b)(1))

§ 366.11 What financial assistance does the Secretary provide for training and technical assistance?

(a) From funds, if any, reserved under section 721(b)(1) of the Act to carry out the purposes of this subpart, the Secretary makes grants to, and enters into contracts, cooperative agreements, and other arrangements with, entities that have experience in the operation of centers.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers.

(Authority: 29 U.S.C. 796f(b)(1)–(3))

§ 366.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or other arrangement under section 721(b) of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to eligible agencies, centers, and SILCs and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary provides for peer review of grant applications by panels that include persons who are not Federal government employees and who have experience in the operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f(b))

§ 366.13 How does the Secretary determine funding priorities?

In making awards under this section, the Secretary determines funding priorities in accordance with the training and technical assistance needs identified by the survey of SILCs and centers required by section 721(b)(3) of the Act.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in § 366.15.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.15 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications for new awards for training and technical assistance:

(a) *Meeting the purposes of the program* (30 points).

The Secretary reviews each application to determine how well the project will be able to meet the purpose of the program of providing training and technical assistance to eligible agencies, centers, and SILCs with respect to planning, developing, conducting, administering, and evaluating centers, including consideration of—

(1) The objectives of the project; and

(2) How the objectives further training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers.

(b) *Extent of need for the project* (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title VII of the Act, including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs will be met by the project; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation* (15 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Quality of key personnel* (7 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups, women, persons with disabilities, and elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application for information that shows the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590.)

(g) *Adequacy of resources* (3 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Extent of prior experience* (15 points). The Secretary reviews each application to determine the extent of experience the applicant has in the operation of centers and with providing training and technical assistance to centers, including—

(1) Training and technical assistance with planning, developing, and administering centers;

(2) The scope of training and technical assistance provided, including methods used to conduct training and technical assistance for centers;

(3) Knowledge of techniques and approaches for evaluating centers; and

(4) The capacity for providing training and technical assistance as demonstrated by previous experience in these areas.

(Authority: 29 U.S.C. 711(c) and 796f(b))

Subpart C—Grants to Centers for Independent Living (Centers) in States in Which Federal Funding Exceeds State Funding

§ 366.20 When does the Secretary award grants to centers?

The Secretary awards grants to centers in a State in a fiscal year if—

(a) The amount of Federal funds allotted to the State under section 721 (c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to §§ 366.29 and 366.31; or

(b) The Director of a designated State unit (DSU) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and § 366.32 (a) and (b).

(Authority: 29 U.S.C. 796f–1 and 796f–2(a)(2))

§ 366.21 What are the application requirements for existing eligible agencies?

To be eligible for assistance, an eligible agency shall submit—

(a) An application at the time, in the manner, and containing the information that is required;

(b) An assurance that the eligible agency meets the requirements of § 366.2; and

(c) The assurances required by section 725(c) of the Act and subpart F of this part.

(Authority: 29 U.S.C. 796f–1(b))

§ 366.22 What is the order of priorities?

(a) In accordance with a State's allotment and to the extent funds are available, the order of priorities for allocating funds among centers within a State is as follows:

(1) Existing centers, as described in § 366.23, that comply with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part first receive the level of funding each center received in the previous year. However, any funds received by an existing center to establish a new center at a different geographical location pursuant to proposed § 366.2(b)(2) are not included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

(2) Existing centers that meet the requirements of paragraph (a)(1) of this section then receive a cost-of-living increase in accordance with procedures consistent with section 721(c)(3) of the Act.

(3) New centers, as described in § 366.2(b), that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(b) If, after meeting the priorities in paragraphs (a) (1) and (2) of this section, there are insufficient funds under the State's allotment under section 721 (c) and (d) of the Act to fund a new center under paragraph (a)(3) of this section, the Secretary may—

(1) Use the excess funds in the State to assist existing centers; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f–1(e))

§ 366.23 What grants must be made to existing eligible agencies?

(a) In accordance with the order of priorities established in § 366.22, an eligible agency may receive a grant if the eligible agency demonstrates in its application that it—

(1) Meets the requirements in § 366.21 or § 366.24;

(2) Is receiving funds under Part C of Title VII of the Act on September 30, 1993; and

(3) Is in compliance with the program and fiscal standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part. (The indicators of minimum compliance in subpart G of this part are used to determine compliance with the evaluation standards in section 725(b) of the Act.)

(b) For purposes of this section, an eligible agency is receiving funds under Part C of Title VII of the Act on

September 30, 1993, if it was awarded a grant on or before that date, i.e., during FY 1993.

(Authority: 29 U.S.C. 796f–1(c))

§ 366.24 How is an award made to a new center?

(a) To apply for a grant as a new center, an eligible agency shall—

(1) Meet the requirements of § 366.2(b);

(2) Submit an application that meets the requirements of § 366.21; and

(3) Meet the requirements of this section.

(b) Subject to the order of priorities established in § 366.22, a grant for a new center may be awarded to the most qualified eligible agency that applies for funds under this section, if—

(1) (i) No center serves a geographic area of a State; or

(ii) A geographic area of a State is underserved by centers serving other areas of the State;

(2) The eligible agency proposes to serve the geographic area that is unserved or underserved in the State; and

(3) The increase in the allotment of the State under section 721 of the Act for a fiscal year, as compared with the immediately preceding fiscal year, is sufficient to support an additional center in the State.

(c) The establishment of a new center under this subpart must be consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(d) An applicant may satisfy the requirements of paragraph (c) of this section by submitting appropriate documentation demonstrating that the establishment of a new center is consistent with the design in the State plan required by 34 CFR 364.25.

(Authority: 29 U.S.C. 796f–1(d))

§ 366.25 What additional factor does the Secretary use in making a grant for a new center under § 366.24?

In selecting from among applicants for a grant under § 366.24 for a new center, the Secretary considers comments regarding the application, if any, by the SILC in the State in which the applicant is located.

(Authority: 29 U.S.C. 796f–1(d)(1))

§ 366.26 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in § 366.27.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

§ 366.27 What selection criteria does the Secretary use?

In evaluating each application for a new center under this part, the Secretary uses the following selection criteria:

(a) *Extent of the need for the project* (20 points).

(1) The Secretary reviews each application for persuasive evidence that shows the extent to which the project meets the specific needs for the program, including considerations of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs (e.g., whether from the 1990 census data or other current sources);

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary looks for information that shows that the need for the center has been established based on an assessment of the ability of existing programs and facilities to meet the need for IL services of individuals with significant disabilities in the geographic area to be served.

(3) The Secretary looks for information that shows—

(i) That the applicant proposes to establish a new center to serve a priority service area that is identified in the current State plan; and

(ii) The priority that the State has placed on establishing a new center in this proposed service area.

(b) *Past performance* (5 points). The Secretary reviews each application for information that shows the past performance of the applicant in successfully providing services comparable to the IL core services and other IL services listed in section 7 (29) and (30) of the Act and 34 CFR 365.21 and 365.22 and other services that empower individuals with significant disabilities.

(c) *Meeting the standards and the assurances* (25 points). The Secretary reviews each application for information that shows—

(1) Evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the standards in section 725(b) of the Act and subpart G of this part; and

(2) Convincing evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the assurances in section 725(c) of the Act and subpart F of this part.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application for information that shows the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (5 points).

The Secretary reviews each application for information that shows the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590)

(g) *Plan of operation* (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability; and

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Elderly individuals; and

(iv) Children and youth.

(h) *Involvement of individuals with significant disabilities* (5 points).

(1) The Secretary reviews each application for information that shows that individuals with significant disabilities are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that individuals with significant disabilities or their parents, guardians, or other legally authorized representatives or advocates, as appropriate, will be substantially involved in planning, policy direction, and management of the center, and, to the greatest extent possible, that individuals with significant disabilities will be employed by the center.

(Authority: 29 U.S.C. 796f–1(d)(2)(B))

§ 366.28 Under what circumstances may the Secretary award a grant to a center in one State to serve individuals in another State?

(a) The Secretary may use funds from the allotment of one State to award a grant to a center located in another State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the other State is consistent with the State plan of the State in which these individuals reside.

(b) An applicant shall submit documentation demonstrating that the arrangements described in paragraph (a) of this section are consistent with the State plan of the State in which the individuals reside.

(Authority: 29 U.S.C. 711(c) and 796f(c) and (d))

Subpart D—Grants to Centers in States in Which State Funding Equals or Exceeds Federal Funding

Determining Whether State Funding Equals or Exceeds Federal Funding

§ 366.29 When may the Director of the designated State unit (DSU) award grants to centers?

(a) The Director of the DSU (Director) may award grants under section 723 of the Act and this subpart to centers in a State in a fiscal year if—

(1) The Director submits to the Secretary and obtains approval of an application to award grants for that fiscal year under section 723 of the Act and § 366.32 (a) and (b); and

(2) The Secretary determines that the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of Part C of Chapter 1 of Title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the State under section 721 (c) and (d) of the Act (or Part B of Title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

(b) For purposes of section 723(a)(1)(A)(iii) of the Act and this subpart, the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program is considered the "preceding fiscal year." *Example*: If FY 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 is the "preceding fiscal year." In determining the "preceding fiscal year" under this subpart, the Secretary makes any adjustments necessary to accommodate a State's multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

(Authority: 29 U.S.C. 796f–2(a)(3))

§ 366.30 What are earmarked funds?

(a) For purposes of this subpart, the amount of State funds that were earmarked by a State to support the general operation of centers does not include—

(1) Federal funds used for the general operation of centers;

(2) State funds used to purchase services from a center, including State funds used for grants or contracts for personal assistance or skills training;

(3) State attendant care funds; or

(4) Social Security Administration reimbursement funds.

(b) For purposes of this subpart, "earmarked funds" means funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(1)(A))

§ 366.31 What happens if the amount of earmarked funds does not equal or exceed the amount of Federal funds for a preceding fiscal year?

If the State submits an application to administer the CIL program under section 723 of the Act and this subpart for a fiscal year, but did not earmark the amount of State funds required by § 366.29(a)(2) in the preceding fiscal year, the State shall be ineligible to make grants under section 723 of the Act and this subpart after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

Example: A State meets the earmarking requirement in FY 1994.

It also meets this requirement in FY 1995. However, in reviewing the State's application to administer the CIL program in FY 1998, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State may continue to award grants in FY 1997 but may not do so in FY 1998 and succeeding fiscal years.

(Authority: 29 U.S.C. 796f–2(a)(1)(B))

Awarding Grants

§ 366.32 Under what circumstances may the DSU make grants?

(a) To be eligible to award grants under this subpart and to carry out section 723 of the Act for a fiscal year, the Director must submit to the Secretary for approval an application at the time and in the manner that the Secretary may require and that includes, at a minimum—

(1) Information demonstrating that the amount of funds earmarked by the State for the general operation of centers meets the requirements in § 366.29(a)(1); and

(2) A summary of the annual reports submitted to the Director from centers in accordance with § 366.50(n).

(b) If the amount of funds earmarked by the State for the general operation of centers meets the requirements in § 366.29(a)(1), the Secretary approves the application and designates the Director to award the grants and carry out section 723 of the Act.

(c) If the Secretary designates the Director to award grants and carry out section 723 of the Act under paragraph (b) of this section, the Director makes grants to eligible agencies in a State, as described in § 366.2, for a fiscal year from the amount of funds allotted to the State under section 721 (c) and (d) of the Act.

(d) (1) In the case of a State in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, for purposes of subparts D and E of this part, the "Director" shall be the Director of the general DSU.

(2) The State units described in paragraph (d)(1) of this section shall periodically consult with each other with respect to the provision of services for individuals who are blind.

(e) The Director may enter into assistance contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, an assistance contract is an instrument whose principal purpose is to transfer funds allotted to the State under section 721(c) and (d) of the Act and this part to an eligible agency to carry out section 723 of the Act. Under an assistance contract, the DSU shall assume a role consistent with that of the Secretary under section 722 of the Act. If the DSU uses an assistance contract to award funds under section 723 of the Act, the DSU may not add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a grant rather than an assistance contract. Under an assistance contract, as defined in this paragraph, the role of the DSU is to ensure that the terms of the assistance contract, which are established by Chapter 1 of Title VII of the Act and the implementing regulations in this part and 34 CFR part 364, are satisfied.

(f) The Director may not enter into procurement contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, a procurement contract is an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

(g) In the enforcement of any breach of the terms and conditions of an assistance contract, the DSU shall follow the procedures established in §§ 366.40 through 366.45.

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(2))

§ 366.33 What are the application requirements for existing eligible agencies?

To be eligible for assistance under this subpart, an eligible agency shall comply with the requirements in § 366.21.

(Authority: 29 U.S.C. 796f–2(b))

§ 366.34 What is the order of priorities?

(a) Unless the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, jointly agree on another order of priorities, the Director shall follow the order of priorities in § 366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in § 366.22 is followed and, after meeting the priorities in § 366.22(a)(1) and (2), there are insufficient funds under the State's allotment under section 721 (c) and (d) of the Act to fund a new center under § 366.22(a)(3), the Director may—

(1) Use the excess funds in the State to assist existing centers; or

(2) Return these funds to the Secretary for reallotment in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f–2(e))

§ 366.35 What grants must be made to existing eligible agencies?

In accordance with the order of priorities established in § 366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in §§ 366.2, 366.21, and 366.23.

(Authority: 29 U.S.C. 796f–2(c))

§ 366.36 How is an award made to a new center?

To be eligible for a grant as a new center under this subpart, an eligible agency shall meet the requirements for a new center in §§ 366.2(b) and 366.24, except that the award of a grant to a new center under this section is subject to the order of priorities in § 366.34(a).

(Authority: 29 U.S.C. 796f–2(d))

§ 366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?

(a) In selecting from among applicants for a grant for a new center under § 366.24 of this subpart—

(1) The Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part and any criteria jointly established by the Director and the chairperson or other designated individual;

(2) The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant under this subpart, based on either the selection criteria in § 366.27 or the following:

(i) Evidence of the need for a center, consistent with the State plan.

(ii) Any past performance of the applicant in providing services comparable to IL services.

(iii) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(iv) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.

(v) The budget and cost-effectiveness of the applicant.

(vi) The evaluation plan of the applicant.

(vii) The ability of the applicant to carry out the plans identified in paragraphs (a)(2) (iii) and (vi) of this section.

(b) The Director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with Federal and State law.

(Authority: 29 U.S.C. 796f–2(d)(2))

§ 366.38 What are the procedures for review of centers?

(a) The Director shall, in accordance with section 723 (g)(1) and (h) of the Act, periodically review each center receiving funds under section 723 of the Act to determine whether the center is in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) The periodic reviews of centers required by paragraph (a) of this section must include annual on-site compliance reviews of at least 15 percent of the centers assisted under section 723 of the Act in that State in each year.

(c) Each team that conducts an on-site compliance review of a center shall include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers, and who is jointly selected by the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(d) A copy of each review under this section shall be provided to the Secretary and the SILC.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(1) and (b))

Subpart E—Enforcement and Appeals Procedures

§ 366.39 What procedures does the Secretary use for enforcement?

(a) If the Secretary determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Secretary immediately notifies the center, by certified mail, return receipt requested, or other means that provide proof of receipt, that the center is out of compliance. The Secretary also offers technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) The Secretary terminates all funds under section 721 of the Act to that center 90 days after the date of the notification required by paragraph (a) of this section unless—

(1) The center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Secretary; or

(2) The center requests a hearing pursuant to paragraph (c) or (d) of this section.

(c) If the Secretary does not approve a center's corrective action plan submitted pursuant to paragraph (b)(1) of this section, the center has 30 days from receipt of the Secretary's written notice of disapproval of the center's corrective action plan to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have approved the center's corrective action plan.

(d) If the center does not submit a corrective action plan to the Secretary, the center has 90 days after receiving the notification required by paragraph (a) of this section to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(e) The date of filing a formal written request for a hearing to the Secretary under paragraph (c) or (d) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(f) The Secretary issues a written decision to terminate funds to the center if, after providing reasonable notice and an opportunity for a hearing, the Secretary finds that—

(1) The center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part; or

(2) The center's corrective action plan submitted under paragraph (b)(1) of this section cannot be approved.

(g) The Secretary's decision to terminate funds to a center pursuant to paragraph (f) of this section takes effect upon issuance.

(Authority: 29 U.S.C. 711(c) and 796f–1(g))

§ 366.40 How does the Director initiate enforcement procedures?

(a) If the Director determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Director shall immediately provide the center, by certified mail, return receipt requested, or other means that provide proof of receipt, with an initial written notice that the center is out of compliance with the standards and assurances and that the Director will terminate the center's funds or take other proposed significant adverse action against the center 90 days after the center's receipt of this initial written notice. The Director shall provide technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) Unless the center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Director or, if appealed, by the Secretary, the Director shall terminate all funds under section 723 of the Act to a center 90 days after the later of—

(1) The date that the center receives the initial written notice required by paragraph (a) of this section; or

(2) The date that the center receives the Secretary's final decision issued pursuant to § 366.46(c) if—

(i) The center files a formal written appeal of the Director's final written decision pursuant to § 366.44(a); or

(ii) The center files a formal written appeal of the decision described in the Director's initial written notice pursuant to § 366.44(b).

(Authority: 29 U.S.C. 711(c) and 796f–2(g) and (i))

§ 366.41 What must be included in an initial written notice from the Director?

The initial written notice required by § 366.40(a) must—

(a) Include, at a minimum, the following:

(1) The name of the center.

(2) The reason or reasons for proposing the termination of funds or other significant adverse action against the center, including any evidence that the center has failed to comply with any of the evaluation standards or assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(3) The effective date of the proposed termination of funds or other significant adverse action against the center;

(b) Be given 90 days in advance of the date the Director intends to terminate a center's funds or take any other significant adverse action against the center;

(c) Inform the center that it has 90 days from the date the center receives the notice to submit a corrective action plan;

(d) Inform the center that it may seek mediation and conciliation in accordance with § 366.40(a) to resolve any dispute with the Director within the 90 days before the proposed termination of funds or other significant adverse action against the center; and

(e) Inform the center that, if mediation and conciliation are not successful and the Director does not issue a final written decision pursuant to § 366.42, the center may appeal to the Secretary the decision described in the Director's initial written notice on or after the 90th day, but not later than the 120th day, after the center receives the Director's initial decision.

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

§ 366.42 When does a Director issue a final written decision?

(a) If the center submits a corrective action plan in accordance with § 366.40(b), the Director shall provide to the center, not later than the 120th day after the center receives the Director's initial written notice, a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of the center's funds or any other proposed significant adverse action against the center.

(b) The Director shall send the final written decision to the center by registered or certified mail, return receipt requested, or other means that provide a record that the center received the Director's final written decision.

(c) A Director's final written decision to terminate funds or take any other adverse action against a center may not take effect until 30 days after the date that the center receives it.

(d) If a center appeals pursuant to § 366.44(a), the Director's final written decision to terminate funds or take any other adverse action against a center does not take effect until the Secretary issues a final decision.

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

§ 366.43 What must be included in the Director's final written decision?

The Director's final written decision to disapprove a center's corrective action plan required by § 366.42 must—

(a) Address any response from the center to the Director's initial written notice to terminate funds or take other significant adverse action against the center;

(b) Include a statement of the reasons why the Director could not approve the corrective action plan; and

(c) Inform the center of its right to appeal to the Secretary the Director's final written decision to terminate funds or take any other significant adverse action against the center.

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

§ 366.44 How does a center appeal a decision included in a Director's initial written notice or a Director's final written decision?

(a) To obtain the Secretary's review of a Director's final written decision to disapprove a center's corrective action plan submitted pursuant to § 366.40(b), the center shall file, within 30 days from receipt of the Director's final written decision, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have approved the center's corrective action plan.

(Cross-reference: See § 366.42)

(b) To obtain the Secretary's review of a decision described in a Director's initial written notice, a center that does not submit a corrective action plan to a Director shall file, in accordance with paragraph (c)(1)(i) of this section, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(c) To appeal to the Secretary a decision described in a Director's initial written notice or a Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action, a center shall file with the Secretary—

(1) A formal written appeal—

(i) On or after the 90th day but not later than the 120th day following a center's receipt of a Director's initial written notice; or

(ii) On or before the 30th day after a center's receipt of the Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action;

(2) A copy of the corrective action plan, if any, submitted to the Director; and

(3) One copy each of any other written submissions sent to the Director in response to the Director's initial written notice to terminate funds or take other significant adverse action against the center.

(d) The date of filing a formal written appeal to the Secretary under paragraph (c) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(e) If the center files a formal written appeal with the Secretary, the center shall send a separate copy of this appeal to the Director by registered or certified mail, return receipt requested, or other means that provide a record that the Director received a separate copy of the center's written appeal.

(f) The center's formal written appeal to the Secretary must state why—

(1) The Director has not met the burden of showing that the center is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and in subparts F and G of this part;

(2) The corrective action plan, if any, should have been approved; or

(3) The Director has not met the procedural requirements of §§ 366.40 through 366.45.

(g) As part of its submissions under this section, the center may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(h) A Director's decision to terminate funds that is described in an initial written notice or final written decision is stayed as of the date (determined pursuant to paragraph (d) of this section) that the center files a formal written appeal with the Secretary.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

§ 366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?

(a) If the center files a formal written appeal in accordance with § 366.44(c), the Director shall, within 15 days of receipt of the center's appeal, submit to the Secretary one copy each of the following:

(1) The Director's initial written notice to terminate funds or take any other significant adverse action against the center sent to the center.

(2) The Director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

(3) Any other written documentation or submissions the Director wishes the Secretary to consider.

(4) Any other information requested by the Secretary.

(b) As part of its submissions under this section, the Director may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

§ 366.46 How does the Secretary review a center's appeal of a decision included in a Director's initial written notice or a Director's final written decision?

(a) If either party requests a meeting under §§ 366.44(g) or 366.45(b), the meeting is to be held within 30 days of the date of the Secretary's receipt of the submissions from the Director that are required by § 366.45(a). The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the date of receipt of the submissions required from the Director by § 366.45(a), the Secretary issues to the parties the Secretary's decision.

(c) The Secretary reviews a decision included in a Director's initial written notice or a Director's final written decision to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center based on the record submitted under §§ 366.44 and 366.45 and may affirm or, if the Secretary finds that the decision included in a Director's initial written notice or a Director's final written decision is not supported by the evidence or is not in accordance with the law, may—

(1) Remand the appeal for further findings; or

(2) Reverse the decision described in the Director's initial written notice or the Director's final written decision to disapprove the center's corrective action plan and to terminate funds or take any other significant adverse action against the center.

(d) The Secretary sends copies of his or her decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(e) If the Secretary affirms the decision described in a Director's initial written notice or the Director's final written decision, the Director's decision takes effect on the date of the Secretary's final decision to affirm.

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (i))

Subpart F—Assurances for Centers

§ 366.50 What assurances shall a center provide and comply with?

To be eligible for assistance under this part, an eligible agency shall provide satisfactory assurances that—

(a) The applicant is an eligible agency;

(b) The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principal governing body of the center and a majority of which must be composed of individuals with significant disabilities. (For purposes of this paragraph, an individual with a significant disability means an individual with a significant physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited.);

(c) The applicant will comply with the standards in subpart G;

(d) The applicant will establish clear priorities through—

(1) Annual and three-year program and financial planning objectives for the center, including overall goals or a mission for the center;

(2) A work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided; and

(3) A description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year State plan under section 704 of the Act;

(e) The applicant will use sound organizational and personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act;

(f) The applicant will ensure that the majority of the staff, and individuals in decision-making positions, of the applicant are individuals with disabilities;

(g) The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit;

(h) The applicant will conduct an annual self-evaluation, prepare an annual report, and maintain records adequate to measure performance with respect to the standards in Subpart G;

(i) The annual report and the records of the center's performance required by paragraph (h) of this section must each contain information regarding, at a minimum—

(1) The extent to which the center is in compliance with the standards in section 725(b) of the Act and subpart G of this part;

(2) The number and types of individuals with significant disabilities receiving services through the center;

(3) The types of services provided through the center and the number of individuals with significant disabilities receiving each type of service;

(4) The sources and amounts of funding for the operation of the center;

(5) The number of individuals with significant disabilities who are employed by, and the number who are in management and decision-making positions in, the center;

(6) The number of individuals from minority populations who are employed by, and the number who are in management and decision-making positions in, the center; and

(7) A comparison, if appropriate, of the activities of the center in prior years with the activities of the center in most recent years;

(j) Individuals with significant disabilities who are seeking or receiving services at the center will be notified by the center of the existence of, the availability of, and how to contact the client assistance program;

(k) Aggressive outreach regarding services provided through the center will be conducted in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act, especially minority groups and urban and rural populations;

(l) Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations;

(m) The center will submit to the SILC a copy of its approved grant application and the annual report required under paragraph (h) of this section;

(n) The center will prepare and submit to the DSU, if the center received a grant from the Director, or to the Secretary, if the center received a grant from the Secretary, at the end of each fiscal year, the annual report that is required to be prepared pursuant to paragraph (h) of this section and that contains the information described in paragraph (i) of this section; and

(o) An IL plan as described in section 704(e) of the Act will be developed for each individual who will receive services under this part unless the individual signs a waiver stating that an IL plan is unnecessary.

(Authority: 29 U.S.C. 796f–4)

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Subpart A—General

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Authority: 29 U.S.C. 796k, unless otherwise noted.

Subpart A—General

§ 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that—

(a) Provide independent living (IL) services to older individuals who are blind as these services are described in § 367.3(b);

(b) Conduct activities that will improve or expand services for these individuals; and

(c) Conduct activities to help improve public understanding of the problems of these individuals.

(Authority: 29 U.S.C. 796k (a) and (b))

§ 367.2 Who is eligible for an award?

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

(a) Is authorized to provide rehabilitation services to individuals who are blind; and

(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(i) of the Act and §§ 367.10 and 367.11.

(Authority: 29 U.S.C. 796k(a)(2))

Cross-reference: See 34 CFR 364.4(b).

§ 367.3 What activities may the Secretary fund?

(a) The DSA may use funds awarded under this part for the activities described in § 367.1 and paragraph (b) of this section.

(b) For purposes of § 367.1(a), IL services for older individuals who are blind include—

(1) Services to help correct blindness, such as—

(i) Outreach services;

(ii) Visual screening;

(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(iv) Hospitalization related to these services;

(2) The provision of eyeglasses and other visual aids;

(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;

(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(5) Guide services, reader services, and transportation;

(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(7) IL skills training, information and referral services, peer counseling, and individual advocacy training; and

(8) Other IL services, as defined in section 7(30) of the Act and as listed in 34 CFR 365.22.

(Authority: 29 U.S.C. 796k (d) and (e))

§ 367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to an entity that is not a State or local government or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart C.

(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart D.

(4) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 367.

(c) The following provisions in 34 CFR part 364:

(1) Section 364.4 (What definitions apply?).

(2) Section 364.5 (What are the limitations on allowable costs?).

(3) Section 364.6 (What is program income and how may it be used?)

(4) Section 364.7 (What requirements apply to the obligation of Federal funds and program income?)

(5) Section 364.30 (What notice must be given about the Client Assistance Program (CAP)?).

(6) Section 364.37 (What access to records must be provided?).

(7) Section 364.56 (What are the special requirements pertaining to the protection, use, and release of personal information?).

(d) The following provisions in 34 CFR part 365:

(1) Section 365.13 (What requirements apply if the State's non-Federal share is in cash?).

(2) Section 365.14 (What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?).

(3) Section 365.15 (What requirements apply if the State's non-Federal share is in kind?).

(4) Section 365.16 (What requirements apply to refunds and rebates?).

(Authority: 29 U.S.C. 711(c) and 796k)

§ 367.5 What definitions apply?

In addition to the definitions in 34 CFR 364.4, the following definitions also apply to this part:

Independent living services for older individuals who are blind means those services listed in § 367.3(b).

Older individual who is blind means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

(Authority: 29 U.S.C. 711(c) and 796j)

Subpart B—What Are the Application Requirements?

§ 367.10 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(i) or a reallotment grant under section 752(j)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Authority: 29 U.S.C. 796k (c)(2) and (i)(1))

§ 367.11 What assurances must a DSA include in its application?

An application for a grant under section 752(i) or a reallotment grant under section 752(j)(4) of the Act must contain an assurance that—

(a) Grant funds will be expended only for the purposes described in § 367.1;

(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than $1 for each $9 of Federal funds provided in the grant;

(c) In carrying out § 367.1 (a) and (b), and consistent with 34 CFR 364.28, the DSA will seek to incorporate into and describe in the State plan under section 704 of the Act any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part and that the DSA determines to be effective;

(d) At the end of each fiscal year, the DSA will prepare and submit to the

Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains, at a minimum, information on—

(1) The number and types of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified—

(i) Individuals with significant disabilities;

(ii) Older individuals with significant disabilities who are blind;

(iii) Individuals who are members of racial or ethnic minority groups;

(iv) Women; and

(v) Elderly individuals;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(e) The DSA will—

(1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and—

(2) Engage in—(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts;

(f) The application is consistent with the State plan for providing IL services required by section 704 of the Act and subpart C of 34 CFR part 364; and

(g) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Authority: 29 U.S.C. 711(c) and 796k (d), (f), (h), and (i))

Subpart C—How Does the Secretary Award Discretionary Grants on a Competitive Basis?

§ 367.20 Under what circumstances does the Secretary award discretionary grants on a competitive basis to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States.

(b) Subparts A, B, C, and E of this part govern the award of competitive grants under this part.

(Authority: 29 U.S.C. 796k (b)(1))

§ 367.21 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant on the basis of the criteria in § 367.22.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

§ 367.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a discretionary grant:

(a) *Extent of need for the project* (20 points).

(1) The Secretary reviews each application to determine the extent to which the project meets the specific needs of the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine)—

(i) The extent that the need for IL services for older individuals who are blind is justified, in terms of complementing or expanding existing IL and aging programs and facilities; and

(ii) The potential of the project to support the overall mission of the IL program, as stated in section 701 of the Act.

(b) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups; and

(7) The extent to which the plan of operation and management includes involvement by older individuals who are blind in planning and conducting program activities.

(c) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older individuals who are blind.

(e) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project;

(2) Are objective and produce data that are quantifiable; and

(3) Will determine how successful the project is in meeting its goals and objectives.

(**Cross-reference**: See 34 CFR 75.590)

(f) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.

(g) *Service comprehensiveness* (20 points).

(1) The Secretary reviews each application to determine the extent to which the proposed outreach activities promote maximum participation of the target population within the geographic area served by the project.

(2) The Secretary reviews each application to determine the extent to which the availability of the following services that will meet the IL needs of older individuals with varying degrees of significant visual impairment are included:

(i) Orientation and mobility skills training that will enable older individuals who are blind to travel independently, safely, and confidently in familiar and unfamiliar environments.

(ii) Skills training in Braille, handwriting, typewriting, or other means of communication.

(iii) Communication aids, such as large print, cassette tape recorders, and readers.

(iv) Training to perform daily living activities, such as meal preparation, identifying coins and currency, selection of clothing, telling time, and maintaining a household.

(v) Provision of low-vision services and aids, such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist older individuals who are blind adjust emotionally to the loss of vision as well as to assist in their integration into the community and its resources.

(vii) Any other needed services, such as transportation or guide services, provided to individuals with significant disabilities under the State IL program authorized by 34 CFR Part 365.

(h) *Likelihood of sustaining the program* (10 points). The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal arrangements; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits that are available under other programs for which project participants may be eligible.

(Authority: 29 U.S.C. 711(c) and 796k (b)(1) and (i)(1))

§ 367.23 What additional factor does the Secretary consider?

In addition to the criteria in § 367.22, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

Subpart D—How Does the Secretary Award Contingent Formula Grants?

§ 367.30 Under what circumstances does the Secretary award contingent formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than $13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, B, D, and E of this part govern the award of formula grants under this part.

(Authority: 29 U.S.C. 796k(c))

§ 367.31 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(j) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(j) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(i) of the Act and §§ 367.10 and 367.11.

(Authority: 29 U.S.C. 796k(c)(2))

§ 367.32 How does the Secretary reallot funds under section 752(j)(4) of the Act?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallotment grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and § 367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and § 367.31 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(i) of the Act and in accordance with §§ 367.10 and 367.11; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.

(c) A reallotment grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under § 367.31 for that fiscal year only.

(Authority: 29 U.S.C. 796k(j)(4))

Subpart E—What Conditions Must Be Met After an Award?

§ 367.40 What matching requirements apply?

(a) Non-Federal contributions required by § 367.11(b) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) For purposes of non-Federal contributions required by § 367.11(b), amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions.

(Authority: 29 U.S.C. 796k(f))

§ 367.41 When may a DSA award grants or contracts?

(a) A DSA may operate or administer the program or projects under this part to carry out the purposes specified in § 367.1, either directly or through—

(1) Grants to public or private nonprofit agencies or organizations; or

(2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding paragraph (a) of this section, a DSA may enter into assistance contracts, but not procurement contracts, with public or private nonprofit agencies or organizations in a manner consistent with 34 CFR 366.32(e).

(Authority: 29 U.S.C. 796k(g) and (i)(2)(A))

§ 367.42 When does the Secretary award noncompetitive continuation grants?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded—

(1) Under chapter 2 of title VII of the Act; or

(2) Under part C of title VII of the Act, as in effect on October 28, 1992.

(b) To be eligible to receive a noncompetitive continuation grant under this part, a grantee must satisfy the applicable requirements in this part and in 34 CFR 75.253.

(Authority: 29 U.S.C. 796k(b)(2))

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May 12, 1994

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 35, et al.
Lead-Based Paint Hazard Elimination; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

24 CFR Parts 35, 200, 280, 291, 510, 511, 570, 577, 578, 579, 882, 885, 886, 887, 890, 905, 941, 961, 965, and 968

[Docket No. R-94-1692; FR-3061-P-01]

RIN 2501-AB23

Lead-Based Paint Hazard Elimination

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to amend its regulations regarding the elimination of hazards due to lead-based paint and inviting public comments on the amendments. The amendments would remedy inaccuracies and respond to advancements in the state of knowledge in the field of lead-based paint testing and hazard reduction. This proposed rule would amend both the Department's basic regulation concerning lead-based paint poisoning prevention in residential structures and additional regulations pertaining to specific programs of the Department. The changes would include revising the definitions of an elevated blood-lead level, defective paint and chewable paint; redefining the age of concern for children subject to lead hazards; providing definitions of hazard reduction methods; adding the option to test defective paint surfaces and permitting the use of laboratory analysis such as atomic absorption spectrometry (AAS); modifying approved abatement practices to control lead-based paint dust; revising requirements pertaining to the number of dwelling units to be sampled under the random sampling provision.

DATES: Comments due date: July 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Arthur S. Newburg, Director, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B-133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410, telephone (202) 755-1785 or (202) 708-9300 (TDD) or 1-800-877-8339 (Federal Information Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The existing lead-based paint regulations pertaining to the Department's programs were written pursuant to the passage of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801-4846) in the early 1970s. This legislation required the Secretary to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." HUD implemented that requirement by promulgating 24 CFR part 35 in 1976 (41 FR 28878, July 13, 1976). Part 35 includes the general procedures for the testing and abatement of lead-based paint hazards in HUD-associated housing and applies to all programs. Section 35.5(c), however, allows each Assistant Secretary to develop regulations pertaining to specific HUD programs. It is the Department's intent that program-specific regulations define the conditions that require action, but reference part 35 for specification of how the action should be conducted.

Since part 35 was first written, amendments to it and to the program-specific regulations have been issued from time to time in response to changes in the law and increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987, and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991. However, new legislation—specifically the Residential Lead-Based Paint Hazard Reduction Act of 1992 (title X, Pub. L. 102-550; approved October 28, 1992) (Title X)—and recent advances in knowledge have again made some of the information in the existing regulations obsolete. Therefore, the Department is undertaking a comprehensive revision of its lead-based paint regulations.

The changes in this proposed rule would represent the first phase in the revision process. In the first phase, HUD would correct certain provisions in the regulations that are clearly out of date and should be corrected as soon as possible. Subsequent revisions will implement Title X, which establishes new requirements effective January 1, 1995. The Department intends to issue proposed regulations implementing the new Act as soon as possible, to allow the maximum amount of time for comment and for preparation by State and local agencies and the private sector.

HUD welcomes comments on the regulatory revisions that are described in this proposed rule.

Revising the Definition of an Elevated Blood-Lead Level

Current regulations require special procedures if a child has an "elevated blood-lead level." This proposed rule would change the definition of an elevated blood-lead level (EBL) to conform to the new recommendations of the Department of Health and Human Services, Centers for Disease Control (CDC), regarding blood lead levels that require environmental intervention. Existing regulations define an EBL as equal to or exceeding 25 micrograms per deciliter (μg/dl). The Department's new standard for environmental intervention would be equal to or exceeding 20 μg/dl for a single test or 15-19 μg/dl in two consecutive tests several months apart.

Many people are under the impression that the CDC, in its Statement, Preventing Lead Poisoning in Young Children (October 1991), effectively lowered the definition of an EBL to 10 μg/dl. It is true that the Statement indicates that "the overall goal is to reduce children's blood lead levels below 10 μg/dl. However, the Statement does not recommend medical or environmental intervention at levels of 10-14 μg/dl. Three reasons are given:

> First, particularly at low blood lead levels, laboratory measurements may have some inaccuracy and imprecision, so a blood lead level in this range (10-14 μg/dl) may, in fact, be below 10 μg/dl. Second, effective environmental and medical interventions for children with blood lead levels in this range have not yet been identified and evaluated. Finally, the sheer numbers of children in this range would preclude effective case management and would detract from individualized follow-up required by children who have higher blood lead levels.

(See, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Preventing

Lead Poisoning in Young Children, A Statement by the Centers for Disease Control—October 1991, page 2.)

The definition currently used by HUD of an EBL first appears in 24 CFR 200.805. The revised definition would be included in 24 CFR 35.3, because the definition affects all residential HUD programs. Specific program regulations could then reference the definition in part 35 as appropriate, although some program regulations might continue to repeat the definition.

Definitions To Be Revised

Title X amends the Lead-Based Paint Poisoning Act to change the childhood age of concern from less than 7 years of age to less than 6 years. This change, which also reflects the advice of the CDC in its Statement, cited above, requires revisions to HUD's lead-based paint regulations in several locations. For example, the current definition of residential structure (24 CFR 35.3), includes a reference to nondwelling facilities "commonly used by children under seven years of age." A similar reference currently is found in 24 CFR 200.815(c), which requires that, in the case of a sale of a HUD-owned single-family property, if the purchaser is an owner-occupant and the occupant family contains one or more children under the age of seven years, the sale of a HUD-owned single-family property must be deferred to allow time to check for elevated blood lead levels and test for and abate lead-based paint. A similar requirement pertains to multifamily properties (see 24 CFR 200.820(c)(ii) and 24 CFR 200.825(c)(1)).

HUD also would revise or add definitions of the following terms in 24 CFR 35.22: defective paint, HEPA, HUD-associated housing, misted scraping, paint removal, replacement, and residential structure.

Options To Test Defective Surfaces and Use Laboratory Analysis

The proposed rule would provide an option for testing of defective paint surfaces to determine if, in fact, lead-based paint is present; if the test results are below 1.0 mg/cm², abatement is not required. For structures built prior to 1978, the existing regulations require visual inspection for defective paint surfaces and treatment of those surfaces found to be defective. Therefore, under the existing regulations, surfaces that are defective but do not contain lead and are not hazardous may be unnecessarily treated. Testing the surface is the only way to determine if it is hazardous and thus requires treatment. The revision would permit a cost review between testing and treatment without testing.

The proposed rule also specifically would permit laboratory analysis as an approved alternative to XRF testing. Current program regulations require the Federal Housing Commissioner's permission to use laboratory analysis on a case-by-case basis. This has led to a burdensome and growing number of individual concurrence actions. XRF readings are given in milligrams per square centimeter (mg/cm²), but laboratories frequently report test results as a percent of lead by weight. Therefore, an alternative standard of 0.5 percent by weight or 5000 parts per million (ppm) would be permitted as an alternative to the more widely used standard of 1.0 mg/cm².

Approved Abatement and Dust-Control Practices

At the time the existing regulation was written, abatement techniques were not refined and the danger of lead dust was relatively unknown. Research and experience in both the public and private sectors have advanced the state of knowledge on these subjects. The proposed rule would reference various abatement methods (defined in 24 CFR 35.22) that are consistent with the HUD Interim Guidelines and In-Place Management Recommendations. The proposed rule also would warn about the danger of lead dust. Sections 35.56(a) (1) and (2), concerning requirements applicable to the sale of federally owned property that will be used for residential purposes, also would be amended in this proposed rule.

Including Up-to-Date Sampling and Testing Information

Given the high cost of testing for lead-based paint, it is desirable to follow a statistically sound random sampling technique that provides satisfactory assurance of detecting lead-based paint, while not requiring the testing of all units in a multifamily property. Existing regulations for the multifamily mortgage insurance and multifamily property disposition programs require the testing of chewable surfaces in a random sample of ten housing units in properties of 20 units or more. For properties with fewer than 20 units, six units must be tested. These requirements do not have statistical validity and consequently do not provide the desired degree of assurance. Using the sample sizes and random sampling procedures in this proposed rule, if no unacceptable hazards are observed in the sample units tested, then there would be at least 95 percent confidence that no more than 5 percent of all units or 50 units, whichever is smaller, would have an unacceptable lead-based paint hazard. The table included in § 200.820(e) of the proposed rule was developed to achieve the 95 percent confidence level.

As an example, the table would require that 56 units must be tested in a 600-unit development. If lead (above the standard of 1.0 mg/cm²) is not found in any of the 56 tested units, the Department can be 95 percent confident that no more than 30 units (the lesser of 50 or 5 percent of 600) have lead levels above the standard. As a second example, 236 units (5.9 percent of 4,000) must be tested in a 4,000-unit development. If all are below the standard, there is 95 percent confidence that no more than 50 of the 4,000 units (the lesser of 50 or 5 percent of 4000) have lead levels above the standard.

The size of the sample (number of units to be tested) is determined by three factors:

N = Total number of units in the project;
k = Maximum number of leaded units (a unit with one or more components with lead-based paint at or above the standard of 1.0 mg/cm²) that can be tolerated to be missed completely;
n = Smallest number of units that must be tested to provide 95 percent confidence that the total number of leaded units is less than "k", based on finding no leaded units in the sample tested.

For example, to be 95 percent confident that no more than 5 percent of 300 units have lead, then k=15; if no more than 50 out of 4,000 with lead, then k=50.

In the usual statistical convention, "n" is defined as the smallest integer for which the probability of obtaining no positives in a simple random sample of size "n" from a population of size "N", of which "k" are positive, is less than 0.05. When "k" of "N" total are positive, the probability of observing no positives in a simple random sample of size "n" is given by the formula:

$$[(N-k)(N-k-1)\ldots(N-k-n+1)]/[(N)(N-1)\ldots(N-n+1)].$$

The required value of "n" is obtained by successively evaluating this expression for n = 1, 2, 3, . . ., until the value of the formula first drops below 0.05. The table in § 200.820(e) of the proposed rule was generated using this method.

Several points need to be made about the revised table. First, for less than 20 units total, all units would have to be tested to get the desired confidence level. Second, the percentage of units to be tested would decrease with increasing size of the project. Third, it is apparent from the table that for values of "N" above 1,006, 5.9 percent of the units would need to be tested.

Lower sample sizes may be attractive because of lower testing costs, but that reduces the assurance that units are not lead-contaminated. The existing procedure does not provide any identifiable level of assurance. Of course, 100 percent assurance can only be achieved by requiring the testing of all the units in a project, at much higher cost.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. This Finding relies in substantial part on an Environmental Assessment prepared for the Lead-Based Paint Interim Guidelines. The subject Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "Addresses."

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to implementation of statutory changes to the Lead-Based Paint Poisoning Prevention Act; there are no anticompetitive discriminatory aspects of the proposed rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12506, the Family, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The function of this proposed rule is to remedy inaccuracies in existing program regulations and respond to advancements in the field of lead-based paint testing and hazard reduction.

Executive Order 12512, Federalism

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have federalism implications and, thus are not subject to review under the Order. The function of this proposed rule would be to remedy inaccuracies in existing program regulations and respond to advancements in the field of lead-based paint testing and hazard reduction. Issuance of this proposed rule in no way changes or affects the existing relationships among Federal, State, and local governments.

Semiannual Agenda of Regulations

This proposed rule was listed as Item No. 1533 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20435) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects

24 CFR Part 35

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

24 CFR Part 510

Lead poisoning, Loan programs—housing and community development, Relocation assistance, Reporting and recordkeeping requirements, Social security, Urban renewal.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 577

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 579

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 885

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 35, 200, 280, 291, 510, 511, 570, 577, 578, 579, 882, 885, 886, 887, 890, 905, 941, 961, 965, and 968 are proposed to be amended as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for part 35 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 4821–1846.

2.Section 35.3 would be amended by:

a. Adding in alphabetical order a new definition "Elevated blood lead level or EBL";

b. Amending the definition of "HUD-associated housing" by removing the word "or" at the end of paragraph (2), replacing the period with a comma at the end of paragraph (3), and adding new paragraphs (4) and (5) in that definition; and

c. Revising the definition of "residential structure", to read as follows:

§ 35.3 Definitions.

* * * * *

Elevated blood lead level or EBL. Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms of lead per deciliter of whole blood) for a single test or of 15–19 μg/dl in two consecutive tests several months apart.

HUD-associated housing. * * *

(4) That is currently covered by a mortgage held by the Secretary; or

(5) That was purchased by a third party at a foreclosure by the Secretary of a Secretary-held mortgage and is subject to any requirements regarding its use or operation under an agreement, or condition imposed by the Secretary.

Residential structure. Any house, apartment, or structure intended for human habitation, including any nondwelling facility operated by the owner and commonly used by children less than six years of age, such as a child care center.

* * * * *

3. Section 35.10 would be revised to read as follows:

§ 35.10 Purpose and scope.

This subpart implements the provisions of 42 CFR part 90, issued by the Secretary of Health and Human Services pursuant to section 401 of the Act, which are applicable to Federal agencies and prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal government or with Federal assistance. This subpart also establishes procedures to prohibit the use of lead-based paint in all HUD-associated housing.

4. Section 35.14 would be revised to read as follows:

§ 35.14 Requirements.

(a) No office of the Department shall use or permit the use of lead-based paint in HUD-associated housing.

(b) Each Assistant Secretary shall implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Implementation shall include:

(1) The establishment of procedures to require the inclusion of appropriate provisions in contracts and subcontracts involving HUD-associated housing prohibiting the use of lead-based paint in the HUD-associated housing; and

(2) Provisions necessary for enforcement of the prohibition.

5. Section 35.22 would be amended by removing the definition of "applicable surface"; by revising the definition of "defective paint surface"; and by adding in alphabetical order definitions of "HEPA", "misted scraping", "paint removal", and "replacement", to read as follows:

§ 35.22 Definitions.

* * * * *

Defective paint surface means a surface on which the paint is nonintact, i.e. the paint is cracking, scaling, chipping, peeling, or loose.

HEPA means a high efficiency particle air filter, as used in lead-abatement vacuum cleaners.

* * * * *

Misted scraping means both the surface to be scraped and the scraping tool are kept wet with water during the removal process to minimize the dispersal of paint chips and air-borne dust.

Paint removal means stripping paint from the surfaces of building components.

Replacement means the removal of building components, such as windows, doors, and trim, that have lead-based painted surfaces and the installation of new components free of lead-based paint.

* * * * *

6. Section 35.24 would be amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2); by redesignating paragraph (b)(3) and (b)(4) as paragraphs (b)(5) and (b)(6), respectively; and by adding new paragraphs (b)(3) and (b)(4), to read as follows:

§ 35.24 Requirements.

* * * * *

(b) Subject to the provisions of separate regulations promulgated with respect to any program by the Assistant Secretary having jurisdiction over that program, the following minimum requirements shall apply to all programs:

(1) All painted surfaces of HUD-associated housing constructed before 1978 shall be inspected to determine whether defective paint surfaces exist.

(2) Defective paint surfaces must either:

(i) Be tested for lead content and, if found to contain lead at concentrations equal to or exceeding levels specified in paragraph (b)(3) of this section, abated as described in paragraph (b)(4) of this section. Defective paint surfaces that do not contain lead-based paint do not require treatment; or

(ii) Be abated, if defective paint surfaces are not tested. If not tested, the presence of lead-based paint shall be assumed.

(3) If defective paint surfaces are tested, testing shall be accomplished by using a portable X-ray fluorescence (XRF) analyzer or by laboratory analysis of paint samples, whichever is more cost effective. Abatement as described in paragraph (b)(4) of this section is required of all defective paint surfaces for which the test results equal or exceed 1.0 milligram of lead per square centimeter of paint surface. If the laboratory reports the test results in percent by weight, the standard shall be 0.5 percent or 5000 parts per million (ppm). A qualified inspector or laboratory shall certify in writing the precise results of the testing.

(4)(i) Lead-based paint abatement can create lead dust that is dangerous to workers and occupants, especially small children. Abatement should be performed only by workers who are trained in managing lead hazards and are properly protected. Abatement should not be undertaken by home craftsmen, even very skilled ones, or untrained construction professionals. The generation and control of dust must be carefully considered when selecting the abatement method. Dust caused by abatement shall be contained within the work area and shall not be allowed to spread to adjacent spaces or the soil.

(ii) Abatement shall be by covering lead-based paint surfaces, removal of paint, or replacement of painted building components. Acceptable methods of covering lead-based paint surfaces require the use of durable materials, sealed and caulked to prevent the escape of lead-contaminated dust. Acceptable methods of paint removal are misted scraping, scraping with an infrared or coil-type heat gun, and chemical stripping on- or off-site. Unacceptable methods of abatement include dry unassisted scraping; machine sanding and use of propane or gasoline torches (open flame methods); and washing and repainting without first thoroughly removing the paint by one of the approved methods.

(iii) Appropriate action shall be taken to protect occupants, especially young children and pregnant women, from lead hazards associated with abatement. Occupants may not enter spaces undergoing abatement. In most circumstances, occupants must be temporarily relocated during abatement, in accordance with § 35.28.

(iv) All abatement procedures must be concluded with a thorough cleaning of all surfaces in the affected dwelling units and common areas in order to remove lead dust. Cleanup shall be accomplished by vacuuming with a HEPA vacuum and washing surfaces with a trisodium phosphate detergent, followed by another high efficiency vacuuming. The waste generated by abatement shall be safely disposed of in accordance with Federal, State, and local laws.

(v) In the case of defective paint spots of one square foot or less, misted scraping and repainting of the defective spot is considered adequate treatment. However, treatment of defective paint spots shall include proper containment and cleanup. If the total area of defective paint spots on any one surface exceeds one square foot, or if there are defective paint spots on more than two surfaces in any one room or space (hallways, pantry, etc.), misted scraping and repainting of the defective spots is not acceptable treatment. In such circumstances, the entire defective paint surface must be abated in accordance with paragraph (b)(4)(ii) of this section.

* * * * *

A new § 35.28 would be added to subpart C, to read as follows:

§ 35.28 Temporary relocation.

(a) *Protection of occupants.* Appropriate action shall be taken to protect occupants, especially young children and pregnant women, from lead hazards associated with abatement. Occupants may not enter spaces undergoing abatement. Except as provided in paragraphs (b) and (c) of this section, occupants must be temporarily relocated during abatement.

(b) *Exterior abatement.* Relocation of occupants is not required if abatement is only on the exterior of a structure and the interior is sealed and safe entry and egress can be assured.

(c) *Interior abatement.* Relocation of occupants is not required if abatement is on the interior and either:

(1) Abatement and cleanup can be completed in one 8-hour working day, and the following conditions are met:

(i) Dust caused by abatement is contained within the work area; and

(ii) Occupants have safe access to bathrooms and kitchens; or

(2) If all of the following conditions are met, even though abatement and cleanup cannot be completed in one 8-hour working day:

(i) Abatement is of limited scope (e.g. limited to no more than one or two rooms at a time);

(ii) The work area is secured against entry during nonworking hours;

(iii) Dust caused by abatement is contained within the work area; and

(iv) Occupants have safe access to bathrooms, kitchens and sleeping areas.

(d) *Personal belongings.* Personal belongings that are in work areas must be relocated or sealed to protect the belongings from contamination from lead dust.

8. Section 35.56 would be amended by revising the first sentence in paragraph (a)(1) and by revising paragraph (a)(2), to read as follows:

§ 35.56 Requirements.

(a) * * *

(1) All painted surfaces of residential structures constructed before 1978 shall be inspected to determine whether defective paint surfaces exist. * * *

(2) Treatment necessary to eliminate hazards of lead-based paint shall conform to the procedures described in § 35.24(b)(4).

* * * * *

9. Section 35.62 would be revised to read as follows:

§ 35.62 Federal construction; prohibition against use of lead-based paint.

1. No Federal agency shall, in any residential structure constructed or rehabilitated by such agency, use or permit the use of lead-based paint.

10. Section 35.63 would be amended by revising paragraph (a) and adding a heading to paragraph (b), to read as follows:

§ 35.63 Federally assisted construction; prohibition against use of lead-based paint.

(a) *Regulations required.* Each agency head shall issue regulations and take such other steps as in his or her judgment are necessary to prohibit the use of lead-based paint on or in any residential structure constructed or rehabilitated by such agency under any federally assisted program.

(b) *Contents of regulations.* * * *

PART 200—INTRODUCTION

11. The authority citation for part 200 would be revised to read as follows:

Authority: 12 U.S.C. 1701–1715z 18; 42 U.S.C. 3535(d)).

12. Section 200.805 would be amended by removing the definition of "Applicable surface"; and by revising the definitions of "Chewable surface", "Defective paint surface", and "Elevated blood lead level or EBL", to read as follows:

§ 200.805 Definitions.

Chewable surface means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age.

Defective paint surface has the same meaning as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL has the same meaning as the term is defined in § 35.3 of this title.

* * * * *

13. Section 200.815 would be amended by revising paragraphs (b), (c), and (d), to read as follows:

§ 200.815 HUD-owned single family property disposition.

* * * * *

(b) For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before the closing of the sale of the property. In the case of a sale to a non-owner-occupant purchaser, treatment may be made a condition of sale, with sufficient sale funds escrowed to assure treatment. Defective paint surfaces either:

(1) Must be tested for lead content and, if found to contain lead at concentrations equal to or exceeding levels specified in § 35.24(b)(3) of this title, abated as described in § 35.24(b) of this title; or

(2) If not tested, the presence of lead-based paint shall be assumed and the surfaces abated as described in paragraph (d) of this section.

(c) *Chewable surfaces.* This subsection applies to dwellings constructed before 1978, except as provided in paragraph (d) of this section. If the purchaser is an owner-occupant and the occupant family contains one or more children less than six years of age, closing of the sale shall be deferred until completion of the following procedures. Where a blood lead level screening program is determined by HUD to be reasonably available, screening of each occupant child less than six years of age will be required. If an EBL condition is identified, HUD will cause the dwelling to be tested for lead-based paint on chewable surfaces or follow treatment procedures. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, a qualified HUD inspector or an organization recognized by HUD. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight, 0.5 percent or 5000 parts per million shall be considered positive. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title.

(d) *Abatement without testing.* In the case of a residential structure constructed before 1978, in lieu of the procedures set forth in paragraph (c) of this section, HUD, at its option, may forgo testing and abate all chewable and defective paint surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

14. Section 200.820 would be amended by redesignating paragraphs (d) and (e) as paragraphs (f) and (g), respectively; by revising the third sentence in paragraph (a) and paragraphs (b), (c)(1), (c)(2), the second sentence in paragraph (c)(3), and (c)(4); and by adding new paragraphs (d) and (e), to read as follows:

§ 200.820 Multifamily insurance and coinsurance.

(a) * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age) or projects subject to an application for insurance under sections 231, 232, 241, or 242 of the National Housing Act.

* * *

(b) *Defective paint surfaces.* In the case of a residential structure constructed before 1978, the HUD or coinsurer's architect and the sponsor's architect shall inspect the property for defective paint surfaces before the issuance of a commitment. If defective paint surfaces are found, testing and abatement as required by § 35.24(b) of this title shall be completed before final endorsement as a condition of the firm commitment. If defective paint surfaces are tested, a random sample of dwelling units shall be tested as required by paragraph (e) of this section.

(c) *Chewable surfaces*—(1) *Random sample.* In the case of a residential structure constructed before 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces as required by paragraph (e) of this section, including a sample of common areas and exterior chewable surfaces. Common areas included in the sample should include nondwelling facilities commonly used by children less than six years of age, such as child care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior chewable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any unit in the sample, all units in the project are required to be tested. If lead-based paint is found in any common area, all common areas in the project are required to be tested. If lead-based paint is found in any exterior chewable surface, all exterior chewable surfaces in the project are required to be tested.

(2) *Testing requirements.* Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead based paint. If the laboratory reports the test results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). Testing of chewable surfaces shall be performed by a State or local health or housing agency or by an inspector certified or regulated by the State or local health or housing agency. The testing entity shall certify to the results of the test. The mortgagor shall be responsible for obtaining these testing services.

(3) * * * Treatment shall consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) in this title. * * *

(4) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (c)(1), (2) and (3) of this section, in the case of a residential structure constructed before 1978, the developer

may forego testing and abatement and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title before final endorsement. HUD or the coinsuring lender will reinspect all units after repair and before final endorsement.

(d) *EBL child.* In the case of a residential structure constructed before 1978, if the developer is presented with test results that indicate a child less than six years of age living in a unit has an EBL, the developer must test defective paint surfaces and chewable surfaces in the unit occupied by the child. If such test is positive for lead-based paint, the developer either:

(1) Must abate the unit surfaces in accordance with the methods set out at § 35.24(b) of this title; or

(2) If the developer chooses not to test, the developer must abate all unit surfaces.

(e) *Random sampling of units.* Random sampling of housing units for testing of chewable and defective paint surfaces shall be based on the following table:

NUMBER OF UNITS TO BE TESTED AS A FUNCTION OF PROJECT SIZE

No. of units in building or group of buildings uniformly painted at the time of construction and with subsequent random painting history	No. of units to be tested
<20	All
20–26	20
27	21
28	22
29–30	23
31	24
32	25
33–34	26
35	27
36	28
37	29
38–39	30
40–50	31
51	32
52–53	33
54	34
55–56	35
57–58	36
59	37
60–73	38
74–75	39
76–77	40
78–79	41
80–95	42
96–97	43
98–99	44
100–117	45
118–119	46
120–138	47
139–157	48
158–177	49
178–197	50
198–218	51
219–258	52
259–299	53
300–379	54
380–499	55
500–638	56
639–799	57
800–1003	58
1004–1005	59
1006 or more	(5.9 percent of the number of units, rounded to the nearest unit.)[1]

[1] For buildings or groups of similar buildings with 1,006 units or more, test 5.9 percent of the units and round the result to the nearest number. E.g., if there are 2,170 units, 5.9 percent equals 128.03, so 128 units should be tested.

* * * * *

15. Section 200.825 would be amended by:

a. Revising the second sentence of paragraph (a);

b. Revising paragraph (b);

c. Revising paragraph (c) introductory text by:

(1) Revising the third and fourth sentences, and adding a new sentence after the fourth sentence, as revised; and,

(2) Revising the last two sentences of the introductory text; and

d. Revising paragraphs (c)(1) and (c)(2), to read as follows:

§ 200.825 HUD-owned multifamily property disposition.

(a) * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age).

* * *

(b) *Defective paint surfaces.* For residential structures constructed before 1978, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. Defective paint surfaces either must be tested for lead content and abated as described in § 35.24(b) of this title, if found to contain lead at concentrations equal to or exceeding levels specified in § 35.24(b)(3) of this title, or, if not tested, the presence of lead-based paint shall be assumed and the defective paint surfaces abated as described in § 35.24(b)(4) of this title. Abatement must be completed before delivery of the property to the purchaser or, if the disposition program under part 290 of this title provides for repairs to be performed by the purchaser, such treatment may be included in the required reports. Residential structures assisted under section 223(f) of the National Housing Act are to be inspected and treated as set forth in this paragraph.

(c) * * * Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. * * * Treatment shall consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title. Treatment shall be completed before delivery of the property to the purchaser, or, if the disposition program under part 290 of this title provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs.

(1) *EBL child.* In the case of a residential structure constructed before 1978, if HUD is presented with test results that indicate a child less than six years of age living in a unit has an elevated blood lead level or EBL, HUD must either:

(i) Test or cause to be tested the unit occupied by the child, and, if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out in § 35.24(b)(4) of this title; or

(ii) If HUD chooses not to test the unit, HUD must abate all of the unit surfaces.

(2) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section, in the case of a residential structure constructed before 1978, HUD, at its option, may forego testing and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

16. The authority citation for part 280 would continue to read as follows:

Authority: 12 U.S.C. 1715*l* note; 42 U.S.C. 3535(d).

17. Section 280.207 would be amended by:

a. Revising the second and third sentences in paragraph (e)(2)(i);

b. Revising the introductory text of paragraph (e)(2)(ii);

c. Removing the definitions for "Applicable surface" and "Defective paint surfaces" in paragraph (e)(2)(ii);

d. Revising the definitions for "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (e)(2)(ii);

e. Adding the definition "Defective paint surface" in alphabetical order in paragraph (e)(2)(ii);

f. Revising the second sentence in paragraph (e)(2)(iii); and

g. Revising paragraphs (e)(2)(iv) and (v), to read as follows:

§ 280.207 Other Federal requirements.

* * * * *

(e) * * *

(2) (i) * * * This paragraph is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to assistance under this part, the requirements prescribed in part 35, subpart C, of this title. The requirements of this paragraph apply to structures that are occupied or are expected to be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (e) of this section:

Chewable surface means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e. the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * If defective paint surfaces are found, treatment in accordance with § 35.24(b)(4) of this title is required.

* * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that the family purchasing a home under the program includes a child less than six years of age who has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an association recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1.0 mg/cm^2 or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight, the standard shall be 0.5 percent or 5000 parts per million (ppm). Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) In lieu of the procedures set forth in paragraph (e)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

18. The authority citation for part 291 would be revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1551a, and 3535(d).

19. Section 291.430 would be amended by revising the second and third sentences in paragraph (a); by removing the definitions of "Applicable surfaces" and "Defective paint surfaces" in paragraph (b); by adding the definition of "Defective paint surface" in alphabetical order in paragraph (b); by revising the second sentence in paragraph (c); and by revising paragraph (d), to read as follows:

§ 291.430 Elimination of lead-based paint hazards.

(a) * * * This section established procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children less than six years of age. This section is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to this program, the requirements prescribed in subpart C of part 35 of this title.

(b) * * *

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

* * * * *

(c) * * * If defective paint surfaces are found, treatment as required by § 35.24(b)(4) of this title shall be completed by HUD before the sale or lease of the property.

(d) *Testing and treatment of painted surfaces.* (1) If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children less than six years of age, the lessee or purchaser must cause the unit to be tested for lead-based paint on all painted surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the test results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. Where lead-based paint is identified, the lessee or purchaser must cause all painted surfaces to be treated. Treatment must consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title. If the lessee or purchaser certifies to HUD that the property will not be occupied by children less than six years of age, testing or treatment will not be required.

(2) If a lessee or purchaser has reason to believe that a property contains lead-based paint on painted surfaces, the lessee or purchaser may, at its option, dispense with the testing procedure and proceed directly to treatment.

(3) The lessee or purchaser may not allow the property to be occupied by children less than six years of age until proof of testing and, if necessary, treatment has been submitted to and reviewed by HUD.

* * * * *

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

20. The authority citation for part 510 would be revised to read as follows:

Authority: 42 U.S.C. 1452b and 3535(d). Sec. 510.106 is also issued under 42 U.S.C. 3543.

Section 510.410 would be amended by:

a. Revising paragraph (b)(2)(v);

b. Revising the first and third sentences of the introductory text in paragraph (c);

c. Removing the definition of "applicable surface" and revising the definitions of "chewable surface", "defective paint surface", and "elevated blood lead level or EBL" in paragraph (c)(1);

d. Revising the first sentence in paragraph (c)(2)(i); and

e. Revising paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(4), to read as follows:

§ 510.410 Lead-based paint.

* * * * *

(b) * * *

(2) * * *

(v) Of the advisability and availability of blood lead level screening for children less than six years of age; and

* * * * *

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint that may contain lead and to which children less than six years of age may be exposed in existing housing that is rehabilitated with assistance provided under this part. * * * This paragraph is promulgated pursuant to the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements of part 35, subpart C, of this title. * * *

(1) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age.

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(2) *Inspection and testing*—(i) *Defective paint surfaces.* The local agency shall inspect for defective paint surfaces in all units constructed before 1978 that are occupied by children less than six years of age and are proposed for rehabilitation assistance. * * *

(ii) *Chewable surfaces.* The local agency shall be required to test the lead content of chewable surfaces if a child under six years of age with an identified EBL condition is part of the family residing in a unit that was constructed before 1978 and receives rehabilitation assistance. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight, the standard shall be 0.5 percent or 5000 parts per million (ppm).

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(2)(ii) of this section, in the case of a residential structure constructed before 1978, the owner may forego testing and abate all chewable surfaces in accordance with the method set out in § 35.24(b)(4) of this title.

* * * * *

(4) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surfaces as described in § 35.24(b)(4) of this title.

* * * * *

PART 511—RENTAL REHABILITATION GRANT PROGRAM

22. The authority citation for part 511 would be revised to read as follows:

Authority: 42 U.S.C. 1437(o) and 3535(d).

23. Section 511.15 would be amended by revising paragraph (b)(2)(v), the introductory text of paragraph (c), paragraphs (c)(1), (c)(2), (c)(3)(i), and (c)(4), to read as follows:

§ 511.15 Lead-based paint.

* * * * *

(b) * * *

(2) * * *

(v) Of the advisability and availability of blood lead level screening for children less than six years of age; and

* * * * *

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing as far as practicable the hazards due to the presence of paint that might contain lead and to which children less than six years of age may be exposed in projects assisted under this part. The Secretary has promulgated requirements at part 35, subpart C of this title, regarding the elimination of lead-based paint hazards in HUD-associated housing.

(1) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL. Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms per deciliter of whole blood) for single test or 15–19 µg/dl in two consecutive tests several months apart.

Lead-based paint surface means a paint surface, whether or not defective, that is identified as having a lead content of greater than or equal to 1 mg/cm^2 or 0.5 percent by weight or 5000 parts per million.

(2) *Inspection and testing*—(i) *Defective paint surfaces.* The grantee or State recipient shall inspect for defective paint surfaces in all units constructed before 1978 that are occupied by families with children less than six years of age and that are proposed for rehabilitation assistance. Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces shall be abated.

(ii) *Chewable surfaces.* The grantee or State recipient shall be required to test the lead content of chewable surfaces if a child less than six years of age with an identified EBL condition is part of the family residing in a unit that was constructed before 1978 and receives rehabilitation assistance. Lead content shall be tested by using a portable X-ray fluorescence (XRF) analyzer or by laboratory analysis of paint samples.

(iii) *Abatement without testing.* In lieu of the procedures set forth in § 511.15(c)(2)(ii), in the case of a residential structure constructed before 1978, the grantee or State recipient may forego testing and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

(3) *Abatement actions.* (i) When surfaces inspected under § 511.15(c)(2)(i) are found to contain lead-based paint and when defective paint surfaces are found but not tested for lead content, all such surfaces shall be abated. If defective paint surfaces are tested for lead content, surfaces found to equal or exceed 1.0 milligrams of lead per square centimeter or 0.5 percent by weight or 5000 parts per million (ppm), shall be abated. A qualified inspector or laboratory shall certify in writing the precise results of the testing. Abatement shall be performed before final inspection and approval of the work.

* * * * *

(4) *Abatement methods.* At a minimum, treatment of the defective area and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in § 35.24(b)(4) of this title.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

24. The authority citation for part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

25. Section 570.608 would be amended by:

a. Revising paragraph (b)(2)(v);

b. Revising the last sentence of the introductory text of paragraph (c), the first sentence in paragraph (c)(1), paragraphs (c)(1) (vi) and (vii), and (c)(2);

c. Revising the first and third sentences in paragraph (c)(3) (i); and

d. Revising paragraphs (c)(3) (ii) and (iii), (c)(4)(i), and (c)(5), to read as follows:

§ 570.608 Lead-based paint.

* * * * *

(b) * * *

(2) * * *

(v) Of the advisability and availability of blood lead level screening for children less than six years of age; and

* * * * *

(c) * * * This paragraph (c) is promulgated pursuant to the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title.

(1) *Applicability.* This paragraph (c)(1) applies to the rehabilitation of all painted surfaces in existing housing that is assisted under this part. * * *

* * * * *

(vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of any painted surfaces of residential structures; and

(vii) Any non-single purpose rehabilitation that does not involve any painted surface and does not exceed $3000 per unit.

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL. Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 μg/dl in two consecutive tests several months apart.

Lead-based paint surface means a paint surface, whether or not defective, that is identified as having a lead content greater than or equal to 1 mg/cm².

(3) *Inspection and testing.* (i) The grantee shall inspect for defective paint surfaces in all units constructed before 1978 that are occupied by families with children less than six years of age and that are proposed for rehabilitation. * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces shall be abated.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if a child less than six years of age with an identified EBL condition is part of the family residing in a unit that was constructed before 1978 and receives rehabilitation assistance. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm).

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed before 1978, the grantee may forego testing and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

(4) *Abatement actions.* (i) When surfaces inspected under § 570.608(c)(3)(i) are found to contain lead-based paint and when defective paint surfaces are found but not tested for lead content, all such surfaces shall be abated. If defective paint surfaces are tested for lead content, surfaces found to equal or exceed 1.0 milligrams of lead per square centimeter or 0.5 percent by weight or 5000 parts per million (ppm) shall be abated. A qualified inspector or laboratory shall certify in writing the precise results of the testing. Abatement shall be performed before final inspection and approval of the work.

* * * * *

(5) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in § 35.24(b)(4) of this title.

* * * * *

PART 577—TRANSITIONAL HOUSING

26. The authority citation for part 577 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 11386.

27. Section 577.335 would be amended by:

a. Revising the last two sentences of paragraph (d)(2)(i);

b. Revising paragraph (d)(2)(ii);

c. Revising the third sentence of paragraph (d)(2)(iii); and

d. Revising paragraphs (d)(2)(iv) and (v), to read as follows:

§ 577.335 Applicability of other Federal requirements.

* * * * *

(d) * * *

(2)(i) * * * This paragraph is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title. The requirements of this paragraph apply to structures that will be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (d) of this section:

Chewable surface means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL. Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 μg/dl in two consecutive tests several months apart.

Lead-based paint surface means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(iii) * * * If defective paint surfaces are found, treatment in accordance with § 35.24(b)(4) of this title is required.

* * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with § 35.24(b)(4) of this title.

* * * * *

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

28. The authority citation for part 578 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 11386.

29. Section 578.335(d)(2) would be amended by:

a. Revising the last two sentences of paragraph (d)(2)(i);

b. Removing the definitions for "Applicable surface" and "Defective paint surfaces" in paragraph (d)(2)(ii);

c. Revising the introductory text and the definitions for "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (d)(2)(ii), and adding a definition for "Defective paint surface" in alphabetical order;

d. Revising the third sentence of paragraph (d)(2)(iii); and

e. Revising paragraphs (d)(2)(iv) and (d)(2)(v), to read as follows:

§ 578.335 Applicability of other Federal requirements.

* * * * *

(d) * * *

(2)(i) * * * This paragraph is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title. The requirements of this paragraph apply to structures that will be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (d) of this section:

Chewable surface means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL. Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 µg/dl in two consecutive tests several months apart.

* * * * *

(iii) * * * If defective paint surfaces are found, treatment in accordance with § 35.24(b)(4) of this title is required. * * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for the presence of lead based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with § 35.24(b)(4) of this title.

* * * * *

PART 579—SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

30. The authority citation for part 579 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 11301 note.

31. Section 579.325 would be amended by:

a. Revising the second and third sentences in paragraph (d)(2)(i);

b. Removing the definitions of "Applicable surface" and "Defective paint surfaces" in paragraph (d)(2)(ii);

c. Revising the introductory text and the definitions of "Chewable surface" and "Elevated blood level or EBL", and adding a definition for "Defective paint surface" in alphabetical order in paragraph (d)(2)(ii);

d. Revising the third sentence in paragraph (d)(2)(iii); and

e. Revising paragraphs (d)(2)(iv) and (v), to read as follows:

§ 579.325 Applicability of other Federal requirements.

* * * * *

(d) * * *

(2)(i) * * * This paragraph is promulgated under 24 CFR 35.24(b)(6) and supersedes, with respect to the program, the requirements prescribed in 24 CFR part 35, subpart C. The requirements of this paragraph apply only to structures that will be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (d) of this section:

Chewable surface means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or *EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(4) is required. * * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight, the standard shall be 0.5 percent or 5,000 parts per million (ppm). Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(4) is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(4).

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

32. The authority citation for part 882 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). Subpart H is also issued under 42 U.S.C. 11361 and 11401.

33. Section 882.109 would be amended by:

a. Revising the second sentence of paragraph (i)(1);

b. Removing the definition of "Applicable surface" in paragraph (i)(2);

c. Revising the definitions of "Chewable surface", "Defective paint surface" and "Elevated blood lead level or EBL" in paragraph (i)(2);

d. Revising the first two sentences of paragraph (i)(3); and

e. Revising paragraphs (i)(4) and (i)(5), to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(i) * * *

(1) * * * This paragraph is promulgated under the authorization granted in § 35.24(b)(6) of this title, and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C, of this title. * * *

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(3) *Defective paint.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age, the initial inspection under § 882.209(h)(1), and each periodic inspection under § 882.211(b), shall include an inspection for defective paint surfaces. Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated as required by § 35.24(b) of this title, in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate. * * *

(4) *Chewable surfaces.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). When lead based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be required, in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (i)(4) of this section, at its discretion the PHA may forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out in § 35.24(b)(4) of this title.

* * * * *

34. Section 882.404 would be amended by:

a. Revising the second and last sentences of paragraph (c)(1);

b. Removing the definition of "applicable surface" and revising the definitions of "chewable surface", "defective paint surface", and "elevated blood lead level or EBL" in paragraph (c)(2);

c. Revising the first two sentences of paragraph (c)(3); and

d. Revising paragraphs (c) (4) and (5), to read as follows:

§ 882.404 Housing quality standards.

* * * * *

(c) *Lead-based paint.* (1) * * * This paragraph (c)(1) is promulgated under the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title. * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age).

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(3) *Defective paint.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age, the initial inspection under § 882.504(a), and each periodic inspection under § 882.516(b), shall include an inspection for defective paint surfaces. Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and abatement of the surfaces as required by § 35.24(b) of this title shall be included in the specific work items referred to in § 882.504(a) or required as corrective action pursuant to § 882.516(c), as appropriate. * * *

(4) *Chewable surfaces.* If a proposal is submitted with respect to a unit constructed before 1978 that is occupied by a family that includes a child less than six years of age with an identified EBL condition, the PHA shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight 0.5 percent or 5000 parts per million (ppm) is the standard. When lead-based paint on chewable surfaces is identified at initial inspection, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be included in the specific work items referred to in § 882.504(a). When lead-based paint on chewable surfaces is discovered at periodic inspection, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be completed within the time

limits set forth in paragraph (c)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(4) of this section, at its discretion the PHA may forego testing and require the abatement of all interior and exterior chewable surfaces in accordance with § 35.24(b)(4) of this title.

* * * * *

35. Section 882.514 would be amended by:

a. Removing the word "and" at the end of paragraph (d)(1)(iv), changing the period to a semicolon and adding the word "and" at the end of paragraph (d)(1)(v);

b. Adding a new paragraph (d)(1)(vi); and

c. Removing paragraph (d)(2)(vi), to read as follows:

§ 882.514 Family participation.

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children less than six years of age and HUD's requirements for inspecting, testing, and, in certain circumstances, abating lead-based paint.

* * * * *

36. Section 882.753(d)(6) would be revised to read as follows:

§ 882.753 Family participation.

* * * * *

(d) * * *

(6) The advisability and availability of blood lead level screening for children less than six years of age, and HUD's requirements for inspecting, testing, and, in certain circumstances, abating lead-based paint; and

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

37. The authority citation for part 885 would continue to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

38. Section 885.740 would be amended by:

a. Revising paragraph (f)(1) and the second sentence of paragraph (f)(2)(i);

b. Removing the definitions of "Applicable surface" and "Defective paint surfaces" and revising the introductory text and the definitions of "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (f)(2)(ii);

c. Adding the definition of "Defective paint surface" in alphabetical order in paragraph (f)(2)(ii);

d. Revising the second sentence of paragraph (f)(2)(iii); and

e. Revising paragraphs (f)(iv), (f)(v) and (f)(vi), to read as follows:

§ 885.740 Other Federal requirements.

* * * * *

(f) * * *

(1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at part 35 of this title (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this subpart that was constructed or substantially rehabilitated before 1978 and in which any child less than six years of age resides or is expected to reside.

(2)(i) * * * This paragraph (f)(2)(i) is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title.

(ii) The following definitions apply to paragraph (f) of this section: *Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b) of this title. * * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the Borrower is presented with test results that indicate that a child under the age of six years occupies the structure and has an elevated blood lead level (EBL), the Borrower must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight 0.5 percent or 5000 parts per million (ppm) is the standard. When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) When abatement will result from rehabilitation activities planned (i.e., when all defective paint or chewable surfaces will be replaced, covered, or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in paragraph (f)(2)(v) of this section, at its discretion the Borrower may abate all interior and exterior chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

39. The authority citation for part 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

40. Section 886.113 would be amended by:

a. Revising the second and sixth sentences in paragraph (i)(1);

b. Removing the definition of "Applicable surface" and revising the definitions for "Chewable surface", "Defective paint surface", and "Elevated blood lead level or EBL" in paragraph (i)(2);

c. Revising the second sentence in paragraph (i)(3); and

d. Revising paragraph (i)(4), to read as follows:

§ 886.113 Housing quality standards.

* * * * *

(i) * * *

(1) * * * This paragraph (i)(1) is promulgated under the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title. * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age).

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(3) * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b) of this title as a condition of satisfaction of the requirements of § 886.107(c).

(4)(i) *Chewable surfaces.* In the case of a residential structure constructed before 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces in accordance with § 200.820(c)(1) of this title. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive. If the laboratory reports the results in percent by weight, 0.5 percent or 5000 parts per million shall be considered positive. Testing of chewable surfaces shall be performed by a State or local health or housing agency, or by an organization recognized by HUD. The testing entity shall certify to the results of the test. The owner shall be responsible for obtaining these testing services. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(ii) *EBL child.* In the case of a residential structure constructed before 1978, if the owner is presented with test results that indicate a child less than six years of age living in a unit has an elevated blood lead level or EBL, the owner must either test the unit occupied by the child and, if the test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out in § 35.24(b)(4), or choose not to test, but then abate all the unit surfaces.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (i)(3) and (4) of this section, in the case of a residential structure constructed before 1978, the owner may forego testing and abate all defective and chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

PART 887—HOUSING VOUCHERS

The authority citation for part 887 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437(f), and 3535(d).

42. Section 887.251 would be amended by:

a. Revising the second sentence in paragraph (i)(1);

b. Removing the definition of "Applicable surface" and revising the definitions of "Chewable surface", "Defective paint surface", and "Elevated blood level of EBL" in paragraph (i)(2);

c. Revising the first and second sentences in paragraph (i)(3); and

d. Revising paragraphs (i)(4) and (i)(5), to read as follows:

§ 887.251 Housing quality standards (HQS).

* * * * *

(i) * * *

(1) * * * This paragraph is promulgated under the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title. * * *

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 34.3 of this title.

* * * * *

(3) *Defective paint.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age, the initial inspection under § 887.207(c), and each periodic inspection under § 887.257, shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by § 35.24(b)(4) of this title shall be required, in accordance with §§ 887.207(c) or 887.257, as appropriate. * * *

(4) *Chewable surfaces.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age with an identified EBL condition, the initial inspection under § 887.207(c), or a periodic inspection under § 887.257, shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the test results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be required in accordance with §§ 887.207(c) or 887.257, as appropriate, and correction shall be completed within the time limits in paragraph (i)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (i)(4) of this section, at its discretion the PHA may forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out in § 35.24(b)(4) of this title.

* * * * *

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

43. The authority citation for part 890 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

44. Section 890.260 would be amended by:

a. Revising paragraph (f)(1)(ii);

b. Revising the second sentences of paragraphs (f)(2)(i) and (iii);

c. Removing the definitions of "Applicable surface" and "Defective paint surfaces" and revising the introductory text and the definitions of "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (f)(2)(ii);

d. Adding the definition "Defective paint surface" in alphabetical order in paragraph (f)(2)(ii); and

e. Revising paragraphs (f)(2)(iv), (v) and (vi), to read as follows:

§ 890.260 Other Federal requirements.

* * * * *

(f) * * *

(1) * * *

(ii) In which any child less than six years of age resides or is expected to reside.

(2)(i) * * * This paragraph is promulgated under § 35.24(b)(6) and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title.

(ii) The following definitions apply to paragraph (f) of this section:

Chewable surface means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b)(4) of this title. * * *

(iv) In the case of a structure constructed or substantially rehabilitated prior to 1978, if the Owner is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the Owner must cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the test results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) When abatement will result from rehabilitation activities planned (i.e., when all defective or chewable surfaces will be replaced, covered, or otherwise abated as described in this part), these surfaces do not have to be tested.

(vi) In lieu of the procedures set forth in the preceding clause, at its discretion the Owner may abate all interior and exterior chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

45. The authority citation for part 905 would be revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a-1, 1437aa, 1437bb, 1437c, 1437cc, 1437ee, and 3535(d).

46. Section 905.102 would be amended by removing the definition of "Applicable surface" and revising the definitions of "Chewable surface", "Defective lead-based paint surface", "Defective paint surface", and "Elevated blood lead level or EBL", to read as follows:

§ 905.102 Definitions.

* * * * *

Chewable surface. Any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

* * * * *

Defective lead-based paint surface. A surface having paint that has a lead content of at least 1 mg/cm^2 and that is cracking, scaling, chipping, peeling, or loose.

Defective paint surface. A surface on which the paint is nonintact, i.e. the paint is cracking, scaling, chipping, peeling, or loose.

* * * * *

Elevated blood lead level or EBL. Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 µg/dl in two consecutive tests several months apart.

* * * * *

47. The last sentence in § 905.551 would be revised to read as follows:

§ 905.551 Purpose and applicability.

* * * This subpart is promulgated in accordance with the authorization granted in § 35.24(b)(4) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C, of this title.

48. Section 905.553(a) would be revised to read as follows:

§ 905.553 Testing and abatement applicable to development.

(a) *Pre-acquisition testing.* With respect to development, all existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on all interior and exterior painted surfaces.

* * * * *

49. Section 905.555 would be amended by revising the first sentence in paragraph (a)(2) and the second sentence in paragraph (d), to read as follows:

§ 905.555 Testing and abatement applicable to modernization.

(a) * * *

(2) *Special Purpose.* The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child less than six years of age resides or is expected to reside); and cost-effective energy efficiency measures. * * *

* * * * *

(d) * * * Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children less than six years of age.

* * * * *

50. Section 905.560 would be amended by revising the first sentence of paragraph (a)(6) and the heading and first sentence of paragraph (b), to read as follows:

§ 905.560 Notification.

(a) * * *

(6) Of the advisability and availability of blood lead level screening for children less than six years of age. * * *

(b) *Lead-based paint hazard notification for applicants and prospective purchasers.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children less than six years of age shall be provided to every applicant family at the time of application. * * *

* * * * *

51. The second sentence of § 905.565 would be revised to read as follows:

§ 905.565 Maintenance obligation; defective paint surfaces.

* * * If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(4) of this title shall be required. * * *

52. Section 905.570 would be amended by revising paragraphs (a)(1), (b), and (d)(1)(ii); the heading in paragraph (d)(1)(iii); and the second sentence in paragraph (d)(2), to read as follows:

§ 905.570 Procedures involving EBLs.

(a) * * *

(1) Test for lead-based paint all surfaces in the unit and all interior and exterior painted surfaces of any IHA-owned and operated child care facility, if used by the EBL child, and abate the surfaces found to contain lead-based paint. Testing of exterior and interior common areas (including nondwelling IHA facilities that are commonly used by the EBL child less than six years of age) will be done as considered necessary and appropriate by the IHA and HUD; or

* * * * *

(b) *Procedures when a nonresident child using an IHA-owned or operated child care facility has an EBL.* When a nonresident child using an IHA-owned or operated child care facility has been identified as having an EBL, the IHA shall test all interior and exterior painted surfaces of the IHA-owned or operated facility and abate the surfaces found to contain lead-based paint.

* * * * *

(d) * * *

(1) * * *

(ii) *IHA-owned or operated child care facility used by a child with an EBL.* Any interior or exterior painted surface found to contain lead-based paint shall be treated.

(iii) *Interior common areas (including nondwelling IHA facilities that are commonly used by EBL children less than six years of age) and exterior surfaces of projects in which children with EBLs reside.* * * *

(2) * * * Certain prohibited abatement methods are set forth in § 35.24(b)(4) of this title. * * *

* * * * *

PART 491—PUBLIC HOUSING DEVELOPMENT

53. The authority citation for part 941 would be revised to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437(g), and 3535(d).

54. The first sentence in § 941.208(h) would be revised to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(h) *Lead-based paint.* All existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they need rehabilitation) under this part, including those proposed for Major Reconstruction of Obsolete Projects (MROP) grants, shall be tested for lead-based paint on all interior or exterior painted surfaces.

* * * * *

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

55. The authority citation for part 961 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

56. Section 961.29 would be amended by:

a. Revising the second sentence of the introductory text of paragraph (e);

b. Removing paragraph (e)(2) and redesignating paragraph (e)(3) as paragraph (e)(2);

c. Revising paragraphs (e)(2)(ii) and (iii), as redesignated, to read as follows:

§ 961.29 Other Federal requirements.

* * * * *

(e) * * * This section is promulgated pursuant to the authority granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by part 35, subpart C of this title.

* * * * *

(2) * * *

(ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of painted surfaces of residential structures; or

(iii) Any non-single purpose rehabilitation that does not involve painted surfaces and that does not exceed $3,000 per unit.

* * * * *

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

57. The authority citation for part 965 would be revised to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

58. The last sentence in § 965.701 would be revised to read as follows:

§ 965.701 Purpose and applicability.

* * * This subpart is promulgated pursuant to the authorization granted in § 35.24(b)(6) in this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title.

59. Section 965.702 would be amended by removing the definition of "Applicable surface" and revising the definitions of "Defective lead-based paint surface", "Defective paint surface", and "Elevated blood lead level or EBL", to read as follows:

§ 965.702 Definitions.

Defective lead-based paint surface. A surface having paint that has a lead content of at least 1 mg/cm² and is cracking, scaling, chipping, peeling, or loose.

Defective paint surface means the same as the term is defined in § 35.22 of this title.

Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.

* * * * *

60. Section 965.703 would be amended by:

a. Designating paragraph (a) introductory text as paragraph (a)(1) and redesignating paragraphs (1) through (6) as paragraphs (a)(1) (i) through (vi);

b. Revising newly designated paragraph (a)(1)(vi);

c. Designating the concluding paragraph in paragraph (a) as paragraph (a)(2); and

d. Revising the heading and first sentence of paragraph (b), to read as follows:

§ 965.703 Notification.

(a) * * *

(vi) Of the advisability and availability of blood lead level screening for children less than six years of age.

* * * * *

(b) *Lead-based paint hazard notification for applicants and prospective purchasers.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children less than six years of age shall be provided to every applicant family at the time of the application. * * *

* * * * *

61. The second sentence of § 965.704 would be revised to read as follows:

§ 965.704 Maintenance obligation.

* * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b)(4) of this title. * * *

62. Section 965.706 would be amended by:

a. Revising paragraphs (a) and (b);

b. Revising the fifth sentence in paragraph (c);

c. Revising the second sentence in paragraph (d)(1)(ii);

d. Revising the first sentence in paragraph (d)(1)(iii); and

e. Revising the second sentence in paragraph (d)(2), to read as follows:

§ 965.706 Procedures involving EBLs.

(a) *Procedures when a current resident child has an EBL.* When a child residing in a PHA-owned low income family project has been identified as having an EBL, the PHA shall: (1) Test for lead-based paint all painted surfaces in the unit and at the PHA-owned or operated child care facility, if used by the EBL child, and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including nondwelling PHA facilities that are commonly used by the EBL child less than six years of age) will be done as considered necessary and appropriate by the PHA and HUD; or

(2) Assign the family to a post-1978 or previously tested unit that was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures when a nonresident child using a PHA-owned or operated child care facility has an EBL.* When a nonresident child using a PHA-owned or operated child care facility has been identified as having an EBL, the PHA shall test all painted surfaces of the PHA-owned or operated child care facility and abate the surfaces found to contain lead-based paint.

(c) * * * If the results equal or exceed a level of 1 mg/cm^2 or 0.5 percent by weight or 5,000 parts per million (ppm), the results shall be provided to the tenant or the family of the EBL child using PHA-owned or operated child care facilities. * * *

(d) * * *

(1) * * *

(ii) * * * Any painted surface found to contain lead-based paint shall be treated.

(iii) Interior common areas (including nondwelling PHA facilities that are commonly used by EBL children less than six years of age) and exterior surfaces of developments in which children with EBLs reside. * * *

(2) * * * Certain prohibited abatement methods are set forth in § 35.24(b)(4) of this title. * * *

PART 968—PUBLIC HOUSING MODERNIZATION

63. The authority citation for part 968 would continue to read as follows:

Authority: 42 U.S.C. 1437d, 1437l and 3535(d).

64. Section 968.110 would be amended by revising the first sentence in paragraph (k)(1)(ii) and the second sentence of paragraph (k)(4), to read as follows:

§ 968.110 Other program requirements.

* * * * *

(k) * * *

(1) * * *

(ii) The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (and any dwelling in such housing in which any child who is less than six years of age resides or is expected to reside); and cost-effective energy efficiency measures. * * *

* * * * *

(4) * * * Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children less than six years of age.

* * * * *

Dated: April 26, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94-11400 Filed 5-11-94; 8:45 am]

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federal register

Thursday
May 12, 1994

Part V

Department of Education

34 CFR Parts 75 and 693

National Early Intervention Scholarship and Partnership Program; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 693

RIN 1840–AB79

Direct Grant Programs; National Early Intervention Scholarship and Partnership Program

AGENCY: Department of Education

ACTION: Final Regulations

SUMMARY: The Secretary provides final regulations to implement the new National Early Intervention Scholarship and Partnership (NEISP) Program in accordance with the provisions in chapter 2, subpart 2, part A, title IV, of the Higher Education Amendments of 1992, (1992 amendments), which amended the Higher Education Act of 1965 (HEA). These final regulations for the NEISP Program specify the role of the Secretary and the responsibilities of the States in the administration of the program. The final regulations also specify the State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's application to participate in the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniel Sullivan or Priscilla Zink Mulford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary provides final regulations to implement the National Early Intervention Scholarship and Partnership (NEISP) Program, a new program authorized under the amended HEA, (Pub. L. 102–325). The Secretary also amends a reference to the NEISP Program in 34 CFR 75.60 of the regulations for the Direct Grant Programs. The Secretary also is making technical amendments in separate final regulations to insert references to the NEISP Program into the appropriate sections of 34 CFR part 668, the Student Assistance General Provisions regulations.

The NEISP Program provides States with Federal financial incentives to establish or maintain a program with matching State-originated funds. It provides for (1) a scholarship component that, to the extent possible, guarantees the financial assistance necessary for eligible low-income students who graduate from high school to attend an institution of higher education, and (2) an early intervention component that uses Statewide resources, both government and private, to provide additional counseling, financial aid counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school.

The NEISP Program's early intervention component supports National Education Goals 2 (High School Completion), 3 (Student Achievement and Citizenship), and 4 (Science and Mathematics). The NEISP Program's scholarship component also supports National Education Goal 5 (Adult Literacy and Lifelong Learning).

On March 8, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (59 FR 10926–10937). The major issues addressed by the proposed regulations are discussed in the preamble to the NPRM. Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations. One of the technical revisions is that the Secretary is including in § 693.40(d) the requirement under section 404D(d)(2) of the HEA that, to be eligible for a NEISP Program scholarship, a student must have received a high school diploma or a certificate of high school equivalence on or after January 1, 1993.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Comment: One commenter applauded the Department's efforts to date, and another commenter noted the many good aspects of the proposed regulations, including their overall clarity and sensitivity to State issues.

Discussion: The Secretary agrees with the commenters and thanks them for their support.

Changes: None.

Section 693.10 What must a State do to obtain a grant under this program?

Comment: One commenter recommended § 693.10(b)(1) be modified to have the State agency that administers the State Student Incentive Grant (SSIG) Program be the only designated agency for administering the NEISP Program. The commenter believed that, since the SSIG agency was already involved with the administration of grant and loan programs as well as early intervention programs, the agency would be able to ensure that the Statewide efforts would be well-coordinated.

Discussion: While the circumstances described by the commenter may be true in some States, the States vary with respect to how they distribute various responsibilities among State agencies. The Secretary, therefore, continues to believe that requiring the Governor of a State to designate the agency responsible for the NEISP Program provides necessary flexibility for the States. In addition, it ensures that program funds are allocated to an appropriate and responsible State agency and is consistent with other Federal and State-administered student financial aid programs, such as the SSIG Program.

Changes: None.

Section 693.10 What must a State do to obtain a grant under this program? And Section 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

Comment: One commenter believed that a State would have to identify private funds expended within the State under § 693.10(b)(5)(i) and § 693.13(a)(4) to ensure that the funds provided under the NEISP Program will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs. The commenter believed that it would be sufficient to document the amount of State funds expended on need-based student financial aid alone or the amount expended for State-matching funds for the NEISP Program. One commenter was also concerned that, in the Supplementary Information section of the preamble to the NPRM (59 FR 10927), the discussion of this requirement can be interpreted to mean that a State's matching expenditures under the NEISP Program should be an amount that exceeds, as opposed to being an amount that is in addition to, the amount of funds the State previously expended. Another commenter questioned whether State funds appropriated to postsecondary institutions and used for student assistance in the State could be used as matching funds under § 693.10(b)(5).

Discussion: The Secretary notes that the texts of § 693.10(b)(5)(i) and § 693.13(a)(4) refer only to "State and local," *i.e.*, public, expenditures as does the applicable statutory provision (section 404B(b)(3) of the HEA). Under § 693.10(b)(5)(i) and § 693.13(a)(4), a State's matching funds under the NEISP Program represent expenditures that are in addition to the level of funds previously expended instead of a matching amount that exceeds the previous level of expenditures, and these funds may include State funds appropriated to postsecondary educational institutions and used for student grant aid including tuition waivers at public institutions.

Changes: None.

Section 693.11 What requirements must be met by the State under the program's early intervention component?

Comment: Two commenters requested clarification concerning whether under § 693.11(a) the States were required to provide all of the early intervention services listed or whether the activities cited are examples that States may choose to incorporate into their NEISP Program.

Discussion: Under section 404C(b)(3) of the NEISP Program statute, the early intervention activities listed are given as examples of permissible activities. Section 693.11(a) therefore provides States with examples of acceptable early intervention activities.

Changes: The Secretary is amending § 693.11(a) to clarify that the activities listed in § 693.11(a) are examples of appropriate activities.

Section 693.12 What requirements must be met by the State under the program's scholarship component?

Comment: One commenter recommended modifying § 693.12(c) (1) and (2) to include an option for a State to award scholarships based on the State's definition and prioritization of low-income students as an alternative to the expected family contribution (EFC) as calculated under part F of title IV of the HEA. Another commenter recommended the Secretary adopt as a standard for defining low-income students the standard used for the Federal TRIO programs.

Discussion: The Secretary agrees with the commenter that there are additional standards for identifying low-income students and agrees that a State should be able to use the State's criteria for identifying low-income students in prioritizing eligible students as an alternative to using the EFC. However, the Secretary believes that using the EFC represents a proven methodology for identifying low-income students and that it is in the Federal interest for any departures from using the EFC to be subject to approval by the Secretary.

Changes: The Secretary is amending § 693.12(c) (1) and (2) to provide a State the option of developing and using its own criteria for identifying a low-income student if approved by the Secretary.

Comment: One commenter recommended changing the wording under § 693.12(f) to clarify that the assumption should not be made that NEISP recipients must receive other student financial assistance in order to be eligible to receive an NEISP Program scholarship.

Discussion: The Secretary agrees that an NEISP recipient need not be receiving other student financial assistance in order to be eligible to receive an NEISP Program scholarship.

Changes: The Secretary is amending § 693.12(f) to clarify that this provision applies to a NEISP Program scholarship recipient who also is eligible for and receiving other student assistance.

Section 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?

Comment: One commenter believed that the extensive data requested under § 693.20(e)(2) should be collected for the targeted area in which the State plans to operate its program rather than providing data covering the entire State.

Discussion: The Secretary believes that, in order to be able to target the areas in which the NEISP Program will be most beneficial, it is necessary for States to collect and analyze Statewide data as required under § 693.20(e)(2). The Secretary notes that this requirement is not intended to be overly prescriptive and that a State is expected to have sufficient information available to make a reasonable determination of Statewide needs for early intervention activities.

Changes: None.

Section 693.22 How does the Secretary allot funds to States on a competitive basis?

Comment: One commenter believed that the "tie-breaker" to be used in the selection of similarly rated applications under § 693.22(c)(4) should not give preference to Statewide programs. Due to the limited Federal funding, the commenter proposed that priority be given to programs that will serve a targeted population well, rather than serving students Statewide but in a less effective way.

Discussion: The Secretary believes that the emphasis placed on selecting applicants with Statewide, coordinated programs is appropriate. Since this provision is a "tie-breaker" for otherwise similarly rated applications, the Secretary does not believe that the State providing services to more areas will be less effective.

Changes: None.

Comment: One commenter believed that early intervention programs should be provided as early in a student's schooling as necessary to be effective and, therefore, believed that there should be a stronger preference for long-term early intervention programs in the selection criteria.

Discussion: During the development of the NPRM, the Secretary gave careful consideration to the need to emphasize long-term mentoring and advising and believes that adequate emphasis on long-term mentoring and advising has been incorporated into § 693.22 after taking into consideration the overall objectives of the early intervention program.

Changes: None.

Section 693.40 What are the requirements for a student to receive a scholarship under this program?

Comment: One commenter recommended adding to the scholarship requirements under § 693.40 that a student (1) must meet or exceed the academic milestones listed in the student agreement and (2) be determined at the time of application to be a low-income student.

Discussion: If a State, as part of its early intervention program under § 693.11, requires a student to sign an agreement that includes academic milestones, the Secretary agrees that the State should be able to require that a student meet these milestones as one of the student eligibility requirements for a scholarship. However, if a student has participated in the early intervention program, the student should be eligible for scholarship consideration since income level is not necessarily the basis for determining scholarship eligibility in the NEISP Program under section 404D(d) of the HEA.

Changes: The Secretary is amending § 693.40 to provide that if a State includes academic milestones in a written agreement signed by a student under § 693.11(a)(3), it may include meeting these milestones as a scholarship eligibility requirement.

Comment: One commenter believed that under proposed § 693.40(e) (1) and (2) the Secretary should not limit scholarship eligibility to those students who participated in the NEISP Program or a Federal Upward Bound Program. The commenter believed that accepting early intervention programs comparable to those described in section 404C of the program statute as meeting the requirement would allow States the flexibility to identify additional students as eligible to receive scholarships.

Discussion: The Secretary agrees with the commenter and further notes that section 404D(d)(4) of the HEA clearly provides for such an option since it does not require that the early intervention program establishing student eligibility for a scholarship be funded under the NEISP Program as is required in the case of the Federal Upward Bound Program in section 404D(e)(2) of the HEA.

Changes: The Secretary is amending § 693.40 to add § 693.40(g)(3) which provides the option to a State to consider other comparable early intervention programs as also meeting this student eligibility requirement.

Section 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

Comment: One commenter believed that, due to the comprehensive nature of the biennial evaluation report under § 693.50(b), it would not be reasonable to estimate one hour to complete the report. In the commenter's opinion, the report could not be designed and implemented in less than two staff months.

Discussion: The Secretary agrees and is amending the burden hour estimate to reflect two staff months. The Secretary encourages each State to work with the Departmental program staff to streamline its evaluation study while still providing relevant policy information.

Changes: None.

Comment: One commenter recommended that under § 693.52(b) the Secretary should not require that a State's biennial evaluation report include all the listed items and, instead, should require only that a State address the listed items to the extent possible.

Discussion: The Secretary believes that, in order to have a comprehensive evaluation of the early intervention program, States must include at a minimum the types of information listed in § 693.53(b). The Secretary recognizes a State's evaluation report may place varying emphasis on the different items listed.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, Grant administration.

34 CFR Part 693

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

Dated: May 2, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.272, National Early Intervention Scholarship and Partnership Program)

The Secretary amends title 34 of the Code of Federal Regulations by amending part 75 and by adding a new part 693 as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

§ 75.60 [Amended]

2. In § 75.60, paragraph (b)(1) is amended by adding the term "National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21, *et seq.*)," after "(20 U.S.C. 1070a, *et seq.*),".

3. A new part 693 is added to read as follows:

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Subpart A—General

Sec.
693.1 What is the National Early Intervention Scholarship and Partnership Program?
693.2 Who is eligible to participate under this program?
693.3 What kinds of activities may be assisted under this program?
693.4 What regulations apply to this program?
693.5 What definitions apply to this program?

Subpart B—How Does a State Obtain a Grant?

693.10 What must a State do to obtain a grant under this program?
693.11 What requirements must be met by the State under the program's early intervention component?
693.12 What requirements must be met by the State under the program's scholarship component?
693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

Subpart C—How Does the Secretary Make a Grant to a State?

693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?
693.21 How does the Secretary allot funds to a State?
693.22 How does the Secretary allot funds to States on a competitive basis?

Subpart D—How Does a Student Participate in the Early Intervention Component under the NEISP Program?

693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

Subpart E—How Does a State Award a Scholarship to a Student?

693.40 What are the requirements for a student to receive a scholarship under this program?

Subpart F—What Postaward Conditions Must Be Met by a State?

693.50 What are allowable costs attributable to administration of the early intervention component?
693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?
693.52 What requirements must a State meet in preparing and submitting an evaluation report?

Authority: 20 U.S.C. 1070a–21 through 1070a–27, unless otherwise noted.

Subpart A—General

§ 693.1 What is the National Early Intervention Scholarship and Partnership Program?

Under the National Early Intervention Scholarship and Partnership (NEISP) Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

(Authority: 20 U.S.C. 1070a–21)

§ 693.2 Who is eligible to participate under this program?

(a) States that meet the requirements of §§ 693.10, 693.11, 693.12, 693.13, 693.20 (formula grant program), 693.21, and 693.22 (discretionary grant program) are eligible to receive grants under this program.

(b) Under the early intervention component, students who meet the requirements of § 693.30 are eligible to participate in the State-administered programs under this part.

(c) Under the scholarship component, students who meet the requirements of § 693.40 are eligible to receive scholarships from States under this program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.3 What kinds of activities may be assisted under this program?

Under the NEISP Program, a State may use its allotment under § 693.21 or § 693.22 to—

(a) Provide a variety of early intervention services such as comprehensive mentoring, counseling, outreach, and other supportive services to eligible students enrolled in preschool through grade 12, including prefreshman summer programs; and

(b) Award scholarships to eligible low-income students for attendance at any institution of higher education participating in the Federal Pell Grant Program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.4 What regulations apply to this program?

The following regulations apply to the NEISP Program:

(a) The regulations in this part 693.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) If the amount appropriated for the program is less than $50,000,000, 34 CFR part 75 (Direct Grant Programs).

(2) If the amount appropriated for the program is $50,000,000 or more, 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) Institutional Eligibility Under the Higher Education Act of 1965, as Amended in 34 CFR part 600.

(d) The Student Assistance General Provisions in 34 CFR part 668.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

§ 693.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
Elementary school
Fiscal Year
Grant
Grantee
Local educational agency (LEA)
Private
Project
Project Period
EDGAR
Secretary
State

(b) *Definitions in subpart A of the Institutional Eligibility regulations, 34 CFR part 600.* The following terms used in this part are defined in 34 CFR part 600:

Award year
Institution of higher education
Recognized equivalent of a high school diploma

(c) *Definition in the Student Assistance General Provisions regulations, 34 CFR part 668.* The following term used in this part is defined in 34 CFR part 668:

Academic year

(d) *Other definitions that apply to this part.* The following definitions also apply to this part:

At-risk student means a preschool through grade 12 student whom a State identifies as being a potential dropout from secondary or postsecondary school.

Disadvantaged student means a student who is either (1) a low-income individual who is also a first-generation college student; or (2) a student with disabilities.

Early intervention program means a program that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary student financial aid, to students enrolled in preschool through grade 12.

First-generation college student means—

(1) A student neither of whose parents completed a baccalaureate degree; or

(2) A student who regularly resides with and receives support from only one parent who did not complete a baccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Limited proficiency in English with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied on for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in English; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which instruction is in English because he or she cannot adequately understand, speak, read, or write English.

Low-income individual means an individual whose taxable family income for the year before the year in which he or she is scheduled to receive assistance under this part did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the U.S. Bureau of the Census or a resident who is considered to be a low-income resident by the State in which he or she lives.

Postsecondary education means a program of education beyond the secondary school level.

Priority student means any student within a State in preschool through grade 12 who is eligible—

(1) To be counted as attending an institution receiving Federal funds under chapter 1 of the Elementary and Secondary Education Act of 1965;

(2) To receive free or reduced-price meals under the National School Lunch Act; or

(3) To receive assistance under the Aid to Families with Dependent Children Act.

Scholarship means an award made to an individual under this part.

Secondary school, as defined under section 1471(21) of the Elementary and Secondary Education Act of 1965, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

State educational agency (SEA), as defined under section 1471(23) of the Elementary and Secondary Education Act of 1965, means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

Student with a disability, as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), means a student with a physical or mental impairment that substantially limits one or more of the major life activities of the student and thus requires special education and related services.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

Subpart B—How Does a State Obtain a Grant?

§ 693.10 What must a State do to obtain a grant under this program?

(a) To obtain a grant, a State shall submit to the Secretary for review and approval an initial plan and annual application for carrying out the activities under the NEISP Program.

(b) The Secretary approves a State plan that—

(1) By direction of the State's Governor, designates as the State agency for administering the program under this part, either—

(i) The State agency that administers the State Student Incentive Grant Program under title IV, part A, subpart 4 of the HEA;

(ii) The State educational agency; or

(iii) Another appropriate State agency approved by the Secretary;

(2) Provides that the State program under this part shall be known as the "[insert name of the State] National Early Intervention Scholarship and Partnership Program" which may be referred to as the "[State name] NEISP Program.";

(3) Demonstrates to the satisfaction of the Secretary that the State will provide for the conduct under the State's NEISP Program of both—

(i) An early intervention component meeting the requirements under § 693.11 as evaluated by the Secretary under the criteria in § 693.20 (formula grant program) and § 693.22 (discretionary grant program); and

(ii) A scholarship component meeting the requirements under § 693.12;

(4) Describes the administrative plan for implementing the State's NEISP Program, including those functions that will be carried out by public and private organizations; and

(5) Provides assurances that the State will—

(i) Ensure that the funds provided under this part supplement and do not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program;

(ii) Expend, from State, local, or private funds or other acceptable funding methods, not less than one-half of the cost of the program under this part;

(iii) Specify the methods by which such share of the costs will be paid;

(iv) Not use less than 25 percent or more than 50 percent of its total NEISP Program funds for the early intervention component, unless the State can satisfactorily demonstrate in its plan submitted to the Secretary that the State has additional means to provide scholarships to students, in accordance with the waiver provision in § 693.13(b);

(v) Expend all of the NEISP Program funds under the scholarship component only to provide scholarships to eligible students; and

(vi) Conduct and submit to the Secretary a biennial evaluation of the early intervention program assisted under this part in accordance with the requirements in § 693.52.

(c) With the exception of its initial year of participation when each State also must submit the application required under § 693.13 at the same time as the State plan under paragraph (b) of this section, the State shall submit annually an application to participate in the NEISP Program in accordance with the requirements in § 693.13.

(Authority: 20 U.S.C. 1070a–22 and 1070a–26)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.11 What requirements must be met by the State under the program's early intervention component?

(a) A State shall demonstrate to the Secretary in its plan submitted according to § 693.10(b) how its early intervention component provides services designed to meet the unique needs of the State's eligible students enrolled in preschool through grade 12. These services may include, but are not limited to, the following kinds of activities:

(1) A continuing system of mentoring and advising that—

(i) Is coordinated with the Federal and State community service initiatives; and

(ii) Includes such support services as—

(A) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond secondary school;

(B) After-school and summer tutoring;

(C) Assistance in obtaining summer jobs;

(D) Career mentoring;

(E) Academic counseling and assistance in secondary school course selection;

(F) Financial aid counseling that provides information on the opportunities for postsecondary student financial assistance;

(G) Instruction designed to prepare students participating in the program for careers in which students from disadvantaged backgrounds are particularly underrepresented, as determined by the State; and

(H) Programs and activities specifically designed for students with limited proficiency in English.

(2) Activities designed to ensure high school completion and college enrollment of at-risk students by providing, in addition to the activities specified under paragraph (a) of this section, the following:

(i) Assessment to identify at-risk students.

(ii) Skills assessment.

(iii) Activities to encourage volunteer and parent involvement in the activities planned under this section.

(iv) Programs that involve the participation of former or current scholarship recipients as mentors or peer counselors.

(v) Personal and family counseling, including home visits.

(vi) Staff development to provide the services under this part.

(3) Activities that encourage students to complete secondary school and pursue postsecondary education by requiring each student to enter into an agreement under which the State will provide postsecondary tuition assistance to a student, during a period of time to be established by the State, if the student agrees to achieve certain academic milestones, such as—

(i) Completing the prescribed set of secondary courses required for an individual to be eligible for a Presidential Access Scholarship under chapter 3, subpart 2, part A, title IV of the HEA; and

(ii) Maintaining satisfactory academic progress according to the requirements in 34 CFR 668.7 in a postsecondary education program.

(4) Prefreshman summer programs that—

(i) Are at institutions of higher education that also have academic support services for disadvantaged students through projects regulated by 34 CFR part 646, Student Support Services, or through comparable projects as certified by the SEA or other appropriate State agency funded by the State or other sources;

(ii) Assure the participation of students who qualify as disadvantaged students or who are eligible for comparable programs funded by the State and certified under paragraph (a)(4)(i) of this section;

(iii) Provide summer services, including—

(A) Instruction in remedial, developmental, or supportive courses;

(B) Counseling, tutoring, or orientation; and

(C) Grant aid to students to cover prefreshman summer costs for books, supplies, living costs, and personal expenses; and

(iv) Assure that participating students will receive financial aid during each academic year they are enrolled at the participating institution after the prefreshman summer.

(5) Other activities as the State proposes and the Secretary approves as supportive of the purposes of the NEISP Program.

(b) The State shall indicate to the Secretary which of the following permissible service providers will conduct the early intervention component activities:

(1) Community-based organizations.

(2) Elementary or secondary schools.

(3) Institutions of higher education.

(4) Public and private agencies.

(5) Nonprofit and philanthropic organizations.

(6) Businesses.

(7) Institutions and agencies sponsoring programs authorized under the State Student Incentive Grant Program, subpart 4, part A, title IV of the HEA.

(8) Institutions and agencies sponsoring programs authorized under the Federal TRIO Programs, chapter 1, subpart 2, part A, title IV of the HEA.

(9) Religious organizations.

(10) Other organizations proposed by the State that are subsequently deemed appropriate by the Secretary.

(c) The State shall describe how the service providers listed in paragraph (b) of this section will administer the early intervention component activities.

(d) The State shall propose for review by and approval of the Secretary the methods by which it will target its early intervention services on priority students.

(Authority: 20 U.S.C. 1070a–23)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.12 What requirements must be met by the State under the program's scholarship component?

A State shall provide for a scholarship component that—

(a) As described in the State's plan approved by the Secretary under 693.10, is closely coordinated with other Federal, State, local, and private scholarship programs within the State;

(b) Awards scholarships only to students who meet the eligibility requirements in 693.40;

(c) Places a priority on awarding scholarships to students who will receive Federal Pell Grant awards for the academic year in which the award is being made under this part by—

(1) Selecting those eligible students who will receive Federal Pell Grants and who—

(i) Have the lowest expected family contributions as calculated under part F of title IV of the HEA; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary; and

(2) If the State has NEISP Program scholarship funds remaining after making NEISP awards to all of the eligible Federal Pell Grant recipients, awarding the remaining NEISP Program scholarship funds to those eligible students who will not receive Federal Pell Grant awards and who—

(i) Have the lowest expected family contributions; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary;

(d) Awards continuation scholarships in successive award years to each student who received an initial scholarship and who continues to meet the student eligibility requirements under § 693.40;

(e) Establishes the maximum amount of a scholarship that each eligible student is to receive and ensures that no scholarship is less than the lesser of—

(1) 75 percent of the average cost of attendance, as determined under section 472, part F of the HEA, for an in-State student in a 4-year program of instruction at public institutions of higher education in the State; or

(2) The maximum Federal Pell Grant award funded for that fiscal year;

(f) Ensures that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant be awarded first, other public and private grant and scholarship assistance be awarded second, a scholarship under this part be awarded third, and then other financial assistance be awarded;

(g) Ensures that no scholarship awarded under this part, combined with other title IV, HEA financial assistance and any other grant or scholarship assistance exceeds the student's total cost of attendance, as determined under section 472, part F of the HEA;

(h) Expends all NEISP Program funds under the scholarship component, as determined according to § 693.10(b)(5)(iv), on scholarships to students;

(i) Notifies recipients of scholarships under this part that they are to be known as "[insert name of the State] National Partnership Scholars"; and

(j) Describes to the satisfaction of the Secretary the procedures the State will use to award scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(Authority: 20 U.S.C. 1070a–24)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

(a) Each State desiring to participate in the program under this part shall submit an application annually through the State agency designated to administer the NEISP Program under § 693.10(b) that contains information required by the Secretary to demonstrate that the State meets its fund-matching assurances provided for in its plan, including—

(1) The total amount of non-Federal funds, listed by each source, that the State expects to expend during the next award year that will total one-half or more of the cost of the NEISP Program such as—

(i) The amount of the scholarships paid to students from State, local, or private funds under the NEISP Program;

(ii) The amount of tuition, fees, room, or board waived or reduced for recipients of grants under the NEISP Program; and

(iii) The amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of nonschool organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit or philanthropic organizations, and other organizations proposed by the State and approved by the Secretary;

(2) A description of the specific methods by which the State's share of the costs under the NEISP Program will be paid;

(3) The percentage of the State's Federal allotment that it plans to expend for the early intervention component of its NEISP Program and, if the State requests a waiver from the Secretary under paragraph (b) of this section, the State shall submit supporting documentation, including the amount and source of its additional assistance;

(4) The documentation that assures the Secretary that the amount of funds provided in paragraph (a)(1) of this section will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant and scholarship assistance expended during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program; and

(5)(i) Proposed changes to the initial State plan that was approved by the Secretary, according to § 693.10(b), for the review and approval of the Secretary; or

(ii) If no changes to its initial plan are proposed, an assurance that the State will continue to operate its NEISP Program according to the existing State plan approved by the Secretary under § 693.10(b).

(b) The Secretary waives the requirement in § 693.10(b)(5)(iv) and allows the State to exceed the 50 percent limit on expenditure of its Federal allotment for the early intervention component if the State can demonstrate to the satisfaction of the Secretary that the State has another adequate means to provide scholarships to eligible students under the NEISP Program.

(Authority: 20 U.S.C. 1070a–22)

(Approved by the Office of Management and Budget under control number 1840–0677)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?

The Secretary uses the following criteria to determine whether a State's early intervention component proposed under § 693.10(b)(3)(i) meets the requirements of § 693.11:

(a) *Plan of operation.* (1) The Secretary reviews each State's plan for information that shows the quality of the operating plan of the early intervention component.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the component;

(ii) An effective plan of management that ensures proper and efficient administration of the component;

(iii) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) The extent to which other State grant funds are available to eligible NEISP students for postsecondary educational scholarships if the Federal scholarship component of the program is unfunded or reduced.

(b) *Quality of key personnel.* (1) The Secretary reviews each State plan for information that shows the qualifications of the key personnel the State plans to use to administer its early intervention component.

(2) The Secretary looks for information that shows—

(i) The qualifications of the director of the early intervention component;

(ii) The qualifications of each of the other key personnel to be used in the component; and

(iii) The amount of time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will spend working in the activities under this component.

(3) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each State's plan for information that shows that the early intervention component has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(3) The Secretary reviews the State's budget for the early intervention

component to verify that not more than 50 percent of the State's allotment is projected to be spent on its early intervention component unless the State requests and is granted a waiver under § 693.13(b).

(d) *Adequacy of resources.* (1) The Secretary reviews each State's plan for information that shows that the State plans to devote adequate resources to its early intervention component.

(2) The Secretary looks for information that shows—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(e) *Need for the program.* (1) The Secretary reviews each State's plan for information that shows the need for the early intervention component and the methods for targeting its early intervention component activities on eligible students.

(2) The Secretary looks for information that shows—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the 3 preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the 3 preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component.

(f) *Likelihood for success.* (1) The Secretary reviews each State plan for information that shows the likelihood of success of its early intervention component.

(2) The Secretary looks for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions; and

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education.

(3) The Secretary also looks for information that shows how comprehensively the State's proposed early intervention component—

(i) Identifies and selects eligible participants;

(ii) Diagnoses each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Develops a plan of program support to improve each participant's skills; and

(iv) Provides the services and activities listed in § 693.11(a) that relate to the goals of the NEISP Program.

(g) *Public and private support.* (1) The Secretary reviews each State's plan for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program under this part.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services under § 693.11(b); and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(h) *Coordination with other early intervention activities.* (1) The Secretary reviews each State's plan for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers under § 693.11(b) or as support organizations for those service providers.

(i) *Evaluation report plan.* (1) The Secretary reviews each State's plan to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program.

(2) The Secretary looks for information that shows—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable;

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(Authority: 20 U.S.C. 1070a–23)

(Approved by the Office of Management and Budget under control number 1840–0677)

§ 693.21 How does the Secretary allot funds to a State?

(a) If the amount appropriated for the program under this part for a fiscal year is $50,000,000 or more, the Secretary allots to each State that has submitted an approved plan under § 693.10 and an approved application under § 693.13, an amount that bears the same ratio to the total appropriation as the amount allocated to the LEAs in the State under 34 CFR part 200 bears to the total amount allocated to all LEAs in all States using the most recently available data.

(b) If the amount appropriated for the program under this part for a fiscal year is less than $50,000,000, the Secretary allots funds to each State in accordance with the provisions in § 693.22.

(c) From the allotment calculated in this section, the Secretary disburses to a State an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a).

(d) A State may expend from its Federal allotment no more than one-half of the total amount of funds the State expends under its NEISP Program for that fiscal year.

(Authority: 20 U.S.C. 1070a–25)

§ 693.22 How does the Secretary allot funds to States on a competitive basis?

(a) The Secretary allots funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000.

(b) The Secretary conducts a grant competition for the States by means of a notice published in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, and 693.13, and the selection criteria in this section.

(c)(1) The Secretary uses the selection criteria in paragraph (d) of this section to evaluate applications for grants under this program.

(2) The maximum score, not including prior grant recipient priority points in paragraph (d)(12) of this section, for all of these criteria is 140 points.

(3) The maximum score for each criterion is indicated in parentheses in paragraph (d) of this section.

(4) In the final selection of similarly rated applications, the Secretary considers the extent to which a State provides—

(i) A comprehensive State-wide early intervention and postsecondary educational scholarship program;

(ii) Eligible students with comprehensive long-term mentoring and advising; and

(iii) Eligible students with State grant funds for their postsecondary education as compared to the other States who apply for grant funds.

(d)(1) *Need for the program.* (20 points) The Secretary reviews each State's application for information that shows the need for the State-wide early intervention component and the methods for targeting its early intervention component activities on eligible students including consideration of—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the three preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the three preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component; and

(vi) Describes the procedures the State will use to award postsecondary education scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(2) *Plan of operation.* (30 points) The Secretary reviews each State's application for information that shows the quality of the operating plan of the State-wide early intervention component, including—

(i) (3 points) The quality of the design of the component;

(ii) (3 points) An effective plan of management that ensures proper and efficient administration of the component;

(iii) (3 points) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) (3 points) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) (3 points) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) (7 points) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) (8 points) The extent to which other State grant funds are available to eligible NEISP students for their postsecondary education if the Federal scholarship component of the program is unfunded or reduced.

(3) *Quality of key personnel.* (10 points) (i) The Secretary reviews each State application for information that shows the qualifications of the key personnel the State plans to use to administer its State-wide early intervention component including—

(A) The qualifications of the director of the early intervention component;

(B) The qualifications of each of the other key personnel to be used in the component; and

(C) The amount of time each person referred to in paragraphs (d)(3)(i) (A) and (B) of this section will spend working in the activities under this component.

(ii) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(4) *Budget and cost effectiveness.* (5 points) The Secretary reviews each State's application for information that shows that the early intervention component has an adequate budget and is cost-effective including—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(5) *Adequacy of resources.* (5 points) The Secretary reviews each State's application for information that shows that the State plans to devote adequate resources to its early intervention component including—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(6) *Likelihood for success.* (20 points) The Secretary reviews each State application for information that shows

the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education;

(iv) Identify and select eligible participants;

(v) Diagnose each participant's need for academic support in order to successfully pursue a program of postsecondary education; and

(vi) Develop a plan of program support to improve each participant's skills.

(7) *Public and private support.* (15 points) The Secretary reviews each State's application for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program including—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services; and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(8) *Coordination with other early intervention activities.* (15 points) The Secretary reviews each State's application for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State including—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers or as support organizations for those service providers.

(9) *Willingness to overmatch.* (10 points) The Secretary reviews each State's application to determine whether the State is willing to contribute more than one-half the cost of the program and the extent to which the State will overmatch its Federal allotment.

(10) *Evaluation report plan.* (10 points) The Secretary reviews each State's application to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program including—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable; and

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(11) *Prior experience.* (20 points) In any award year subsequent to the 1994–95 award year, the initial year for which Federal funds were appropriated for this program, the Secretary gives priority to each State applicant that has conducted a NEISP Program within the fiscal year prior to the fiscal year for which the State applicant is applying in accordance with the following procedures:

(i) To determine the number of priority points to be awarded each eligible State applicant, the Secretary considers the State's prior experience of program participation in accordance with paragraphs (d)(11) (ii) and (iii) of this section.

(ii) The Secretary may add from one to twenty points to the point score obtained on the basis of the selection criteria, based on the State applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (d)(11)(iii) of this section.

(iii) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, program evaluation reports, the previously funded application, the negotiated program plan or plans, previous State matching funds, and the application under consideration—considers information that shows—

(A) (5 points) The extent to which the State's program has served the number of student participants it was funded to serve;

(B) (5 points) The extent to which the State's program has achieved the goals and objectives as stated in the previously funded application or negotiated program plan;

(C) (5 points) The extent to which the State has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award; and

(D) (5 points) The extent to which the State has provided funds to match its Federal allotment.

(e) The Secretary disburses to each State selected in the competition conducted under paragraph (b) of this section an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a)(1).

(Authority: 20 U.S.C. 1070a–25)

(Approved by the Office of Management and Budget under control number 1840–0677)

Subpart D—How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

§ 693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

The State agency administering the NEISP Program, as approved by the Secretary under § 693.10(b)(1), shall select students in preschool through grade 12 to participate in the State's early intervention component, each of whom—

(a)(1) Is a citizen or a national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for

other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is, at the time of initial selection, a priority student, an at-risk student, a disadvantaged student, or a student with a limited proficiency in English;

(c) Has a need for academic support, as determined by the State, to pursue his or her education successfully;

(d) Resides within the State;

(e) Is not currently enrolled in a program of postsecondary education;

(f) Meets such other criteria as the State includes in its plan in order to meet the unique needs of the State and that are approved by the Secretary; and

(g) For an otherwise eligible student who is attending secondary school, is a student whom the State determines can reasonably be expected to meet the student eligibility requirements of 34 CFR 668.7 for Federal student financial assistance and such other requirements as necessary to qualify for State, local, or private student financial assistance, at such time as the student enrolls in postsecondary education.

(Authority: 20 U.S.C. 1070a-23)

Subpart E—How Does a State Award a Scholarship to a Student?

§ 693.40 What are the requirements for a student to receive a scholarship under this program?

To be eligible for a scholarship under the scholarship component of this program, a student must—

(a) Apply for the scholarship by following the application procedures and deadlines established by the State agency approved by the Secretary under § 693.10(b)(1) to administer the NEISP Program in the State in which the individual resides;

(b) Meet the relevant eligibility requirements contained in 34 CFR 668.7;

(c) Be less than 22 years old at the time his or her first scholarship is awarded;

(d) Have a high school diploma or a certificate of high school equivalence received on or after January 1, 1993;

(e) Be enrolled or accepted for enrollment in a program of instruction at an institution of higher education that is located within the State's boundaries, except that a State, at its option, may offer such a scholarship to a student who attends an eligible institution of higher education outside of the State;

(f) If a State includes academic milestones in a student agreement under § 693.11(a)(3) and requires the student to meet the milestones to be eligible for a scholarship, have met or exceeded the academic milestones to receive a scholarship; and

(g)(1) Have participated in the early intervention component of the program under this part;

(2) At the State's option, be a student whom the State documents as having successfully participated in a Federal Upward Bound Program funded under section 402C, chapter 1, subpart 2, part A of title IV of the HEA as determined by an administrator of the Federal Upward Bound program in which the student participated; or

(3) At the State's option, be a student whom the State determines as having successfully participated in an early intervention program comparable to the early intervention component of the program under this part.

(Authority: 20 U.S.C. 1070a-24)

Subpart F—What Postaward Conditions Must Be Met by a State?

§ 693.50 What are allowable costs attributable to administration of the early intervention component?

A State may use its NEISP Program funds for the following allowable costs not specifically covered by 34 CFR parts 76 or 80 that are reasonably related to carrying out the early intervention component of the NEISP Program:

(a) In-service training of project staff.

(b) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" and "College Fair" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields and who can act as role models for early intervention participants.

(c) Purchasing testing materials.

(d) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of early intervention participants.

(e) Courses in English language instruction for participants with limited proficiency in English, if these classes are limited to early intervention component participants and if these classes are not otherwise available to those participants.

(f) For participants in an early intervention residential summer activity, room and board—computed on a weekly basis—not to exceed the weekly rate a host institution charges regularly enrolled students at the institution.

(g) Room and board for those people responsible for dormitory supervision of early intervention component participants during a residential summer activity.

(h) Transportation costs of early intervention component participants for regularly scheduled component activities.

(i) Transportation, meals, and overnight accommodations for staff members if they are required to accompany participants in program activities such as field trips.

(j) Costs of remedial and special classes if—

(1) These classes are limited to early intervention component participants; and

(2) Identical instruction is not readily available through another Federal program or a State, local, or privately funded program.

(Authority: 20 U.S.C. 1070a–22)

§ 693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

A State may not use its NEISP Program funds for costs incurred for the early intervention component of the NEISP Program such as—

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources not included in the State plan under § 693.11; or

(2) Other Federal programs, such as projects under the Federal TRIO programs;

(b) Research not directly related to the evaluation or improvement of the program;

(c) Purchase of any equipment, unless the State demonstrates to the Secretary's satisfaction that purchase is less expensive than renting or leasing;

(d) Meals for program staff except as provided in § 693.50.

(e) Clothing;

(f) Construction, renovation, or remodeling of any facilities; or

(g) Tuition, stipends, or any other form of student financial support for program staff.

(Authority: 20 U.S.C. 1070a–22)

§ 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

(a) Each State receiving an allotment under this part shall prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The report must summarize and evaluate a State's activities under the program and the performance of the student participants. Each State's evaluation report design must include measures that permit the State to track all participating students progress throughout each student's participation in the program.

(b) The biennial evaluation report of the early intervention component of the program must include, but is not limited to—

(1) Quantifiable information on the extent to which the State's program is fulfilling the program objectives;

(2) The effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary education enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education;

(3) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program;

(4) The cost-effectiveness of the program;

(5) The extent to which the student recipients comply with the requirements of the program;

(6) Key program information listed on an annual and biennial basis;

(7) Other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and

(8) Any other information required by the Secretary in order to carry out the evaluation report function.

(Authority: 20 U.S.C. 1070a–26)

(Approved by the Office of Management and Budget under control number 1840–0677)

[FR Doc. 94–11499 Filed 5–11–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.272]

National Early Intervention Scholarship and Partnership (NEISP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of Program: Under the NEISP Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

Eligible Applicants: The Secretary is authorized to accept applications from the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Republic of Palau, and the Virgin Islands.

Deadline for Transmittal of Applications: June 27, 1994.

Deadline for Intergovernmental Review: August 26, 1994.

Applications Available: May 12, 1994.

Avaliable Funds: The Administration's budget request for fiscal year 1994 did not include funds for this program. However, the Congress has appropriated $1,875,000 in fiscal year 1994 for the early intervention component of the NEISP Program to be allocated to States on a competitive basis. Please note that for fiscal year 1994 no Federal funds are provided for the postsecondary educational scholarship component of the program.

Estimated Range of Awards: $50,000 to $375,000.

Estimated Average Size of Awards: $187,500.

Estimated Number of Awards: 5–10.

Note: The Department is not bound by any estimates in this notice.

Product Period: Up to 60 months.

Budget Period: 12 months.

Applicable Regualtions: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77 79, 80, 82, 85 and 86; (b) the regulations in 34 CFR part 600; (c) the regulations in 34 CFR part 668; and (d) the regulations for this program in 34 CFR part 693, as published in this issue of the **Federal Register**.

Supplementary Information: The Secretary strongly requests the applicant to limit the application narrative to no more than 50 double-spaced, typed pages (on one side only) although the Secretary will consider applications of greater length. The Department anticipates that successful applications under this program generally will meet this page limit.

Priority: None.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 693.22 (d)(1) through (d)(10) of the program regulations.

For Further Information Contact: Daniel Sullivan or Priscilla Zink Mulford, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–21 to 1070a–27.

Dated: May 6, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–11500 Filed 5–11–94; 8:45 am]

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federal register

Thursday
May 12, 1994

Part VI

The President

Proclamation 6688—Labor History Month, 1994

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

Presidential Documents

Title 3—

The President

Proclamation 6688 of May 10, 1994

Labor History Month, 1994

By the President of the United States of America

A Proclamation

For more than a century, the labor movement in the United States has served as a major force for our economic and social progress as a Nation.

American trade unionists have fought for and achieved benefits for all citizens. At the turn of the century, the average worker made about ten dollars for a 60-hour week, and more than 2 million children similarly worked long hours for even less pay. Prior to the formation of a national labor movement in 1881, safe working conditions, regular hours, decent living wages, paid holidays, and vacations were often mere dreams. Emergency and family leave were almost unimaginable.

The struggle of American workers against these appalling circumstances transformed our Nation. Disasters, like the 1911 Triangle Shirtwaist Fire and the 1991 Hamlet Poultry Fire, and triumphs, like the Sanitation Workers struggle for dignity and union representation in 1968, have played a significant role in shaping American life. By studying labor history, we find the foundations of work life in America—the 8-hour day, the 40-hour week, security in unemployment and old age, protection for the sick and injured, equal employment opportunity, protection for children, and health and safety standards. In addition, labor history shows that American workers were in the forefront of the effort to make public education available for every child.

As an American, I am proud of the accomplishments of our labor movement, through which we all enjoy better lives. In issuing this proclamation to observe Labor History Month, I recognize that our work for economic and social progress in America is not over. As we approach the 21st century, the next chapter of labor history must be characterized by a strong voice for America's workers. This will include establishing partnerships of employers and workers, cooperating to achieve safe, high-performance work environments, improving the skills of American workers and the competitiveness of American businesses, and enhancing human dignity in the American workplace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the month of May 1994, as "Labor History Month." I call upon the people of the United States to observe this period with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-11794
Filed 5-11-94; 10:53 am]
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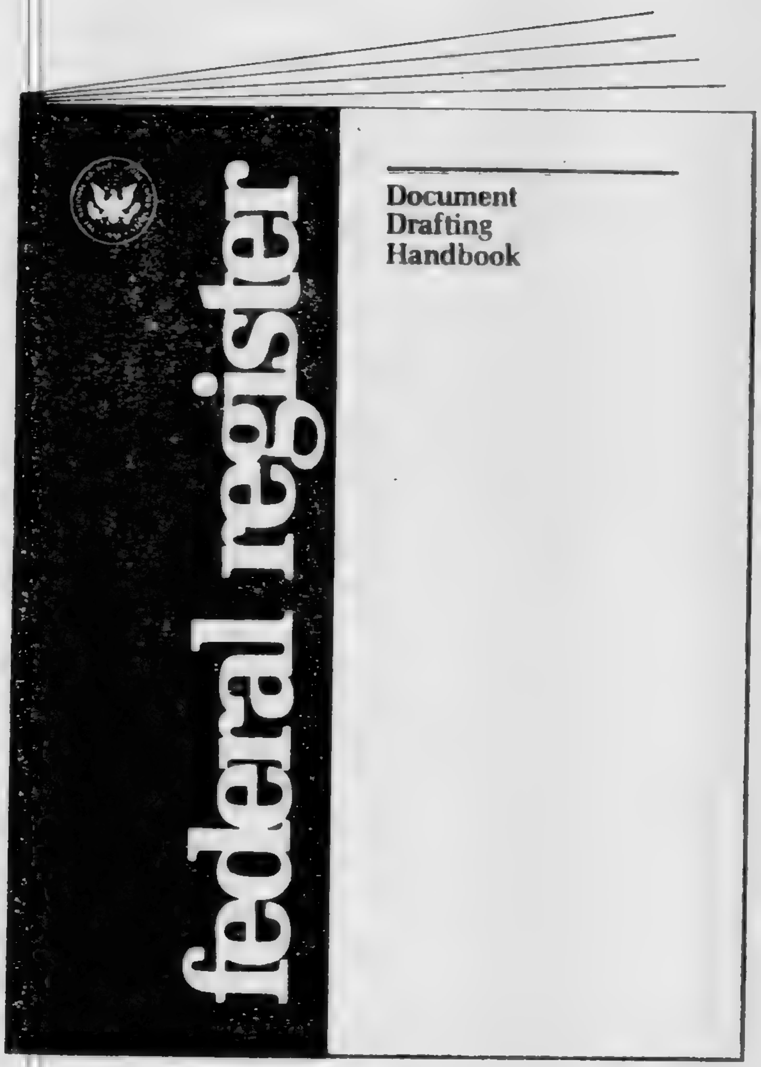

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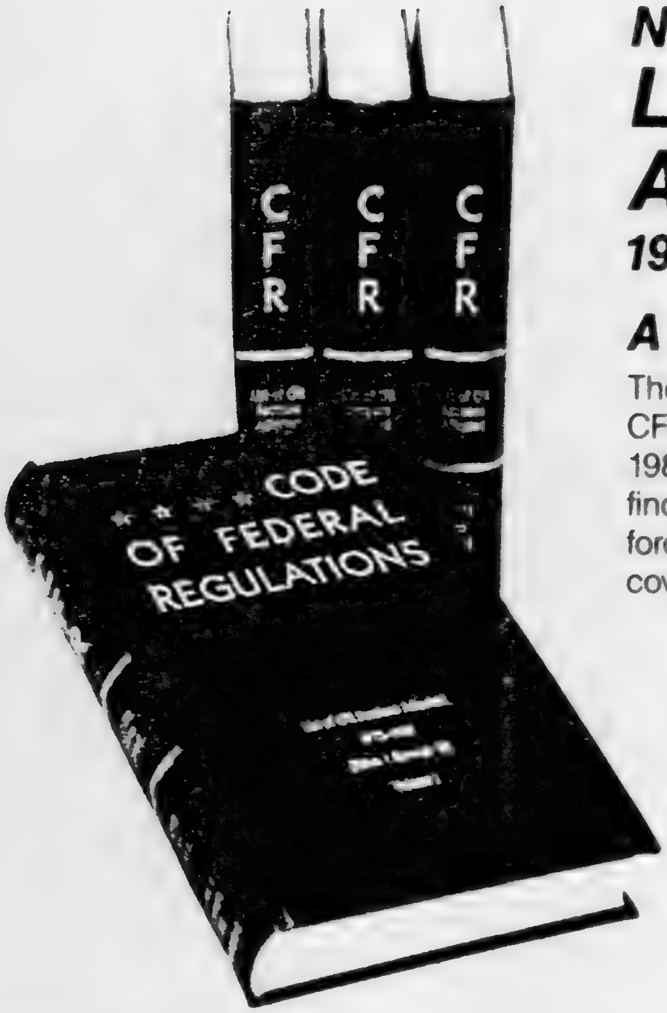

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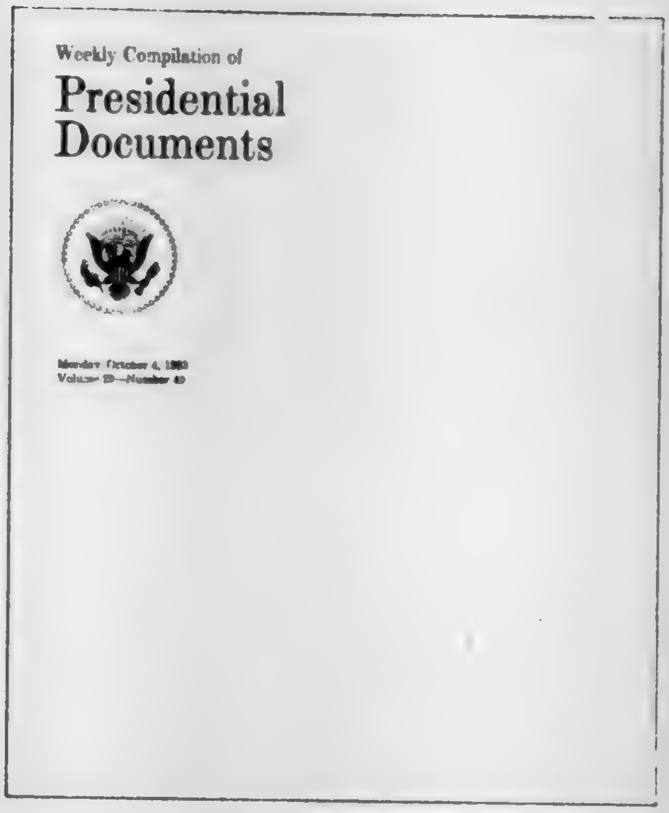
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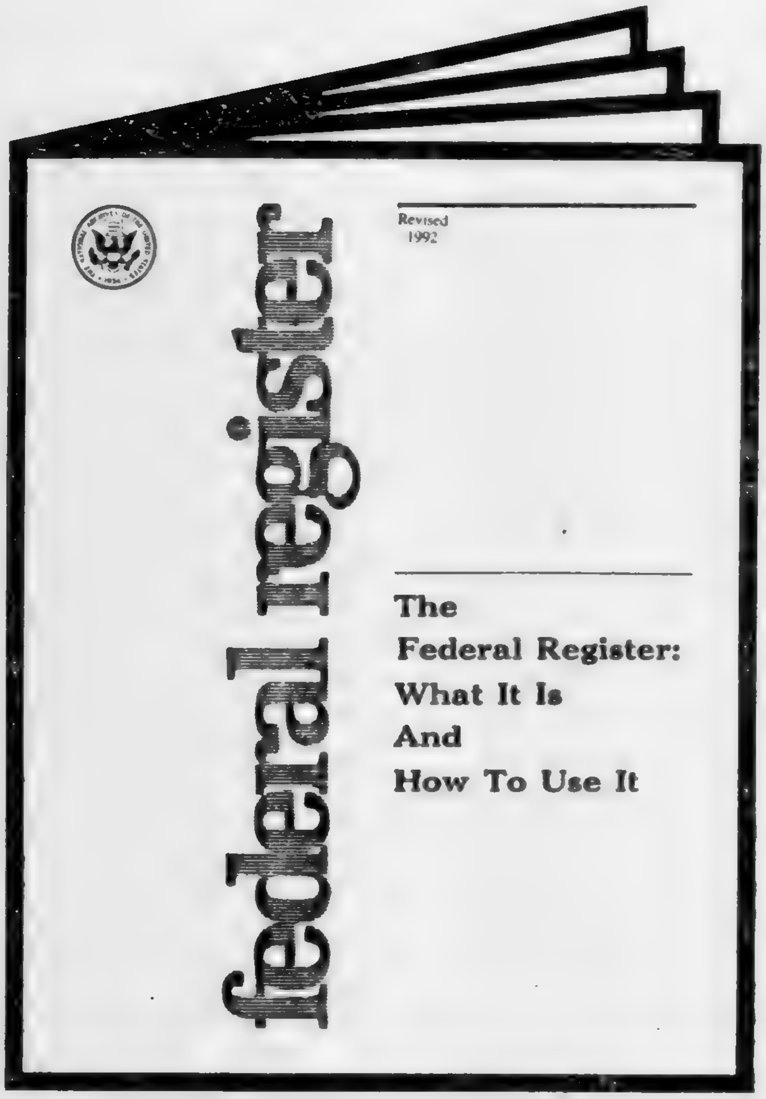
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Friday
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Friday
May 13, 1994

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–086–2]

Cattle from Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are prohibiting the importation of Holstein steers and Holstein spayed heifers from Mexico into the United States. The incidence of tuberculosis in these cattle is significantly higher than in other breeds. Since 1991, Holstein steers and Holstein spayed heifers traced back to Mexico have accounted for more than half of the tuberculosis-infected Mexican-origin cattle identified at slaughter in the United States. This action will prevent tuberculosis-exposed Holstein steers and Holstein spayed heifers from Mexico from spreading the disease to U.S. cattle.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals, including cattle from Mexico, to prevent the introduction into the United States of bovine tuberculosis (referred to below as tuberculosis) and other communicable diseases of livestock.

On December 22, 1993, we published in the **Federal Register** (58 FR 67709–67710, Docket No. 93–086–1) a proposal to amend the regulations by prohibiting the importation of Holstein and Holstein cross-bred steers and Holstein and Holstein cross-bred spayed heifers from Mexico into the United States. We proposed this action because of the disproportionately high incidence of tuberculosis in these cattle.

We solicited comments concerning our proposal for a 60-day comment period ending February 22, 1994. We received 7 comments by that date. They were from two dairies, a ranch, a veterinary medical association, a State animal health agency, a dairy industry association, and the Mexican government. Four commenters supported our proposal and one commenter suggested changes to the wording of the proposed amendment. That suggestion, plus the remarks of the two commenters who opposed the proposed rule, are discussed below.

Comment: The wording of the proposed amendment should be changed so that the amendment prohibits not only Holsteins from Mexico, but any cattle or breeds of cattle normally held in close confinement, such as Holstein dairy cattle, from any country that does not have a tuberculosis control program equivalent to that of the United States, or that has a higher incidence of tuberculosis than the United States. By singling out Mexico, the Animal and Plant Health Inspection Service (APHIS) is leaving the regulation open to being struck down as a "trade barrier" under the North American Free Trade Agreement (NAFTA).

Response: NAFTA Article 712 requires that all sanitary and phytosanitary measures be based on scientific principles and a risk assessment; our proposed rule was based on data gathered during APHIS' epidemiological investigation of the 1,090 cases of tuberculosis-infected cattle detected at slaughter in the United States during the 18-month period ending March 31, 1993. Consequently, we believe that our prohibition on the importation of certain cattle from Mexico is allowable under NAFTA. Conversely, the wide-ranging and ambiguously worded prohibition suggested by the commenter is not supported by available data and could not be justified under NAFTA. Therefore, we are making no changes in response to this comment.

Comment: The proposal supports the importation of tuberculosis from Mexico by allowing infected and exposed cattle to be imported from Mexico. The U.S. Department of Agriculture's current regulations and the proposed rule defy rational thinking if one is truly concerned about protecting American cattle, wildlife, and humans from tuberculosis imported from Mexico.

Response: It appears that the commenter is seeking an outright prohibition on the importation of all cattle from Mexico, although he did not offer any justification for such a ban. As we stated in the proposed rule, 713 tuberculosis-infected cattle were identified as being of Mexican origin during the 18-month period ending March 31, 1993; of those infected cattle, 67 percent were identified as Holstein or Holstein cross-bred steers or Holstein or Holstein cross-bred spayed heifers. Based on that information, we proposed to ban the importation of what appears to be the largest single source of tuberculosis-infected cattle among cattle imported into the United States from Mexico. Any actions of the type suggested by the commenter would have to be based on verifiable data and would have to be proposed as part of a separate rulemaking proceeding.

Comment: In its Fiscal Year (FY) 1993 report on the State-Federal Bovine Tuberculosis Eradication Program, APHIS stated that epidemiologic investigations involving Mexican steers have shown that approximately 67 percent of the infected imports are of the Holstein breed. APHIS has not, however, produced data indicating a similarly high incidence of tuberculosis in Holstein cross-bred cattle. In the absence of data showing that the incidence of tuberculosis in Holstein cross-bred steers and spayed heifers is at an unacceptably high level, it would not be appropriate to impose further restrictions on their importation.

Response: The breed identification information used by APHIS in preparing the FY 1993 report mentioned by the commenter placed Holstein and Holstein cross-bred cattle together in one category. Because such a high percentage of tuberculosis-infected Mexican cattle had been identified as Holstein or Holstein cross-bred cattle, our proposal included both categories. However, animal health officials of the Mexican Government have informed APHIS that Holstein cross-bred cattle are raised under different conditions than Holstein cattle, and thus are much less likely to have a comparable rate of tuberculosis infection. According to those animal health officials, Holstein cross-bred cattle in Mexico are not raised in dairies, as are Holstein cattle, but are usually raised in pastures, often in states where no dairies are located. Given those significant environmental differences, it appears that Holstein cross-bred cattle present less of a risk than had been thought. Additionally, APHIS animal health personnel involved in conducting tracebacks of tuberculosis-infected cattle from Mexico have confirmed that Holstein cross-bred cattle do not appear to present the high level of risk presented by Holstein cattle. Therefore, in response to the comment, we have removed Holstein cross-bred steers and spayed heifers from this final rule.

Comment: In the proposed rule, APHIS stated that the importation of Holstein and Holstein cross-bred breeding cattle would not be prohibited because the tuberculosis testing required of breeding cattle appears adequate to detect infection in breeding cattle. If the testing procedure is adequate to allow the importation of breeding cattle, it seems that the procedure should also be adequate to allow the importation of steers and spayed heifers.

Response: The testing requirements for breeding cattle are different from the testing requirements for steers and spayed heifers. Under the regulations in § 92.427(c), breeding cattle offered for entry into the United States must be accompanied by a certificate stating that they have been tuberculin tested within the last 3 to 12 months. The breeding cattle are then detained at the port of entry under the supervision of the port veterinarian until tested for tuberculosis with negative results. The testing requirements for steers and spayed heifers, on the other hand, call for only one test, performed either in Mexico no more than 60 days prior to entry, or, if the importer so elects, at the port of entry. Given the large number of steers and spayed heifers imported into the United States—approximately 1 million in an average year—we cannot, as the commenter suggested, apply the same testing requirements to breeding cattle and steers and spayed heifers; APHIS simply does not have the resources to test every steer and spayed heifer offered for entry from Mexico. Consequently, we are making no changes in response to the comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Of the approximately 1 million Mexican cattle imported from Mexico into the United States during 1991, the most recent year for which complete data are available, we estimate that nearly 12 percent were Holstein steers (in the 1991 data, spayed heifers were counted as steers). During the same year, the U.S. cattle population totaled 99.4 million head. Thus, imported Mexican Holstein steers accounted for less than 1 percent of the total U.S. bovine population.

The total value of imported Mexican Holstein and Holstein cross-bred steers was close to $45 million in 1991, less than one-tenth of 1 percent of the 1991 value of the U.S. live cattle inventory, which was estimated at more than $64 billion.

Approximately 48,000 cattle feedlots were operating in the United States during 1991. Of those, 620 feedlots concentrated in western States regularly handle Mexican cattle. Approximately 67 of the feedlots handling Mexican cattle have a capacity of 1,000 head or fewer; such lots can be considered small entities. They account for less than 1 percent of all domestic feedlots. We do not expect this action to significantly affect U.S. importers because they can replace the Holstein steers and Holstein spayed heifers that they may currently import from Mexico with other breeds of feeder cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.427, a new paragraph (c)(5) is added to read as follows:

§ 92.427 Cattle from Mexico

* * * * *

(c) * * *

(5) The importation of Holstein steers and Holstein spayed heifers from Mexico is prohibited.

* * * * *

Done in Washington, DC, this 9th day of May 1994

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11675 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 93–110–1]

Importation of Horses; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of horses by adding Bosnia and Herzegovina, Croatia, Finland, Guinea-Bissau, the Member States of the European Union, Slovenia, The Former Yugoslav Republic of Macedonia, and

the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia) to the list of countries where contagious equine metritis (CEM) exists. We are also adding Oman, Qatar, and the United Arab Emirates to the list of countries considered to be affected with African horse sickness (AHS). Outbreaks of CEM, a highly transmissible venereal disease, have been reported in Bosnia and Herzegovina, Croatia, Finland, Guinea-Bissau, Slovenia, The Former Yugoslav Republic of Macedonia, and the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia). The Member States of the European Union either are affected with CEM or trade horses freely with other Member States that are affected with CEM, without testing the horses for the disease. Oman, Qatar, and the United Arab Emirates trade horses freely with other countries where AHS, a fatal viral disease, exists. This action will prohibit or restrict the importation into the United States of horses that have been in these countries. This action is necessary to protect horses in the United States from CEM and AHS. Neither disease is known to exist in the United States.

DATES: Interim rule effective May 13, 1994. Consideration will be given only to comments received on or before July 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning the importation of horses (contained in 9 CFR 92.300 through 92.326 and referred to below as the regulations) are designed to protect against the introduction into the United States of various equine diseases such as contagious equine metritis (CEM) and African horse sickness (AHS). Neither CEM, a highly transmissible venereal disease, nor AHS, a fatal viral disease, is known to exist in the United States.

Contagious Equine Metritis

Section 92.301(c)(1) of the regulations prohibits or restricts the importation into the United States of all horses from Austria, Belgium, Czechoslovakia, Denmark, Ireland, Italy, Japan, Federal Republic of Germany, France, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom (England, Northern Ireland, Scotland, Wales, and the Isle of Man) because of the existence of CEM in those countries. This section also prohibits or restricts the importation into the United States of all horses that have been in these countries within the 12 months immediately preceding their export to the United States.

We have received information from the Governments of Bosnia and Herzegovina, Croatia, Finland, Guinea-Bissau, Slovenia, The Former Yugoslav Republic of Macedonia, and the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia) that there have been outbreaks of CEM in these countries. In response, we are amending § 92.301(c)(1) to add these countries to the list of countries where CEM exists. We are also adding a note to this section to explain the status of Montenegro and Serbia. The note states that Montenegro and Serbia have asserted the formation of a joint independent State entitled "The Federal Republic of Yugoslavia," but this entity has not been formally recognized as a State by the United States.

Currently, 12 European countries comprise the Member States of the European Union (EU). These countries include Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. Belgium, Denmark, Ireland, Italy, Federal Republic of Germany, France, the Netherlands, and the United Kingdom are already listed in § 92.301(c)(1) as countries where CEM exists.

However, Greece, Luxembourg, Portugal, and Spain, which are considered to be free of CEM, trade freely within the EU. The Member States of the EU move horses freely without testing for CEM. Further, many countries that are affected with CEM have applied for membership in the EU. Therefore, horses imported from Member States of the EU that have been considered to be free of CEM present an unacceptable risk that CEM could be introduced into the United States.

Therefore, we are also amending § 92.301(c)(1) to include the Member States of the EU in the list of countries where CEM exists. At the same time, we are not removing from the list individual Member States of the EU that are affected with CEM. These steps will ensure that the Member States of the EU that are affected with CEM will remain on the list whether or not they retain their EU membership. Conversely, adding the phrase "the Member States of the European Union" will ensure that new countries that join the EU will be covered immediately by these provisions.

Also, we are making two miscellaneous changes to § 92.301(c)(1) to facilitate the use of the list of countries where CEM exists. We are alphabetizing the list of countries to make them easier to read. Further, we are changing the entry for "Czechoslovakia" to the two Republics now recognized by the United States: "Czech Republic" and "Slovakia."

African Horse Sickness

Section 92.308(a)(2) of the regulations requires all horses intended for importation from Saudi Arabia, Spain, The Yemen Arab Republic, and all countries on the continent of Africa, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days because those countries are considered to be affected with AHS.

We have received information that during the Persian-Gulf War, the Governments of Oman, Qatar, and the United Arab Emirates allowed movement of horses from other countries considered to be affected with AHS, without testing the horses for AHS. Therefore, horses imported into the United States from Oman, Qatar, and the United Arab Emirates present an unacceptable risk of introducing AHS into the United States. As a result of this increased disease risk, special efforts are necessary to determine the health of these animals.

To establish the health of horses intended for importation from Oman, Qatar, and the United Arab Emirates, we are amending § 92.308(a)(2) to add these countries to the list of countries considered to be affected with AHS. This means that horses intended for importation from Oman, Qatar, and the United Arab Emirates may enter the United States only at the port of New York and must be quarantined at the

New York Animal Import Center in Newburgh, New York, for at least 60 days. This 60-day quarantine will provide the necessary time to test or examine horses intended for importation from these countries for AHS and other communicable diseases. Only if the horses test negative and are free from clinical evidence of communicable disease, as certified by the port veterinarian, will horses from Oman, Qatar, and the United Arab Emirates be released from quarantine. This action will help ensure that AHS is not introduced into the United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of CEM and AHS into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule will help protect horses in the United States from CEM and AHS. There are probably between 5.2 and 6.6 million horses in the United States. The total value of U.S. horses is about $8 billion ($1,430 each). A very small fraction (between 0.2 and 0.3 percent, based upon 1991 to 1992 figures) of those horses were imported into the United States.

Except for the Member States of the EU, the affected countries export very few horses to the United States. Horses imported into the United States from the Member States of the EU accounted for under 10 percent of the total U.S. horse imports in 1991 and 1992. From 1991 to 1992, the United States imported about 32 horses (less than 0.2 percent of the total U.S. horse imports) from countries whose horses will be prohibited or restricted for the first time.

The horses imported from the affected countries tend to be higher-valued, purebred horses. These horses, worth 10 to 20 times more than the average price per horse from the rest of the world, are likely to continue to be imported despite any additional costs related to quarantine and testing. Quarantine and testing of horses has been estimated at $4,700 for the 60-day AHS quarantine and between $1,200 and $1,500 for the quarantine and testing that is required for CEM.

The U.S. trade in horses is expected to be minimally changed by this rule, since some restrictions already apply to the importation of horses into the United States from most of the affected countries. All but four of the Member States of the EU are already included in the list of countries where CEM exists. Two of those four are affected with AHS and are already subject to restrictions on the importation of their horses into the United States.

We are not aware of any importers that are classified as small businesses; however, we expect the effect of the rule change to be minimal for any U.S. business, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.301, paragraph (c)(1) is revised to read as follows:

§ 92.301 General prohibitions; exceptions.

* * * * *

(c) (1) Except as provided in paragraph (c)(2) of this section, notwithstanding the other provisions of this part concerning the importation of horses into the United States, the importation of all horses from the following listed countries and the importation of all horses that have been in the listed countries within the 12 months immediately preceding their export to the United States is prohibited because either contagious equine metritis (CEM) exists in the listed countries or CEM exists in countries that trade horses freely with the listed countries, without testing for CEM: Austria, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Federal Republic of Germany, Finland, France, Guinea-Bissau, Ireland, Italy, Japan, the Member States of the European Union, The Netherlands, Norway, Slovakia, Slovenia, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, the United Kingdom (England, Northern Ireland, Scotland, Wales, and the Isle of Man), and the nonrecognized areas of the former Yugoslavia (Montenegro and Serbia).

Note: Montenegro and Serbia have asserted the formation of a joint independent State entitled "The Federal Republic of Yugoslavia," but this entity has not been formally recognized as a State by the United States.

* * * * *

§ 92.308 [Amended]

3. In § 92.308, paragraph (a)(2), the first sentence is amended by adding to the list of countries, in alphabetical order, the following countries: "Oman," "Qatar," and "the United Arab Emirates."

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11676 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052–AB47

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final amendments to the regulations relating to standards of conduct for directors and employees of Farm Credit System (FCS or System) institutions, excluding the Federal Agricultural Mortgage Corporation. This action results from a reassessment of the regulations in light of the amendments to the Farm Credit Act of 1971 (1971 Act) made by the Agricultural Credit Act of 1987 (1987 Act) and the findings of a review required by section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The final rule updates the regulations to reflect statutory changes and the change in focus of the FCA's regulatory oversight of personnel matters. In addition, the final rule enhances and clarifies the regulations to ensure that they fulfill the purposes of section 514 of the 1992 Act relative to the reporting of financial information and potential conflicts of interest.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session or December 31, 1994, whichever is later. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Dorothy J. Acosta, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On August 19, 1993, the FCA proposed amendments to its regulations relating to standards of conduct for directors and employees of System institutions. See 58 FR 44139. The final regulations retain much of the content of the existing and proposed regulations, but strengthen and clarify them, expanding some of the provisions and relaxing others.

The final regulations also address the concerns and suggestions received on the proposed regulations during the comment period, which expired on September 30, 1993. The FCA received seven comment letters on the proposed regulations during the comment period. Three letters were submitted by System banks, three by System associations, and one by the Farm Credit Council (FCC) on behalf of its member banks and the Federal Farm Credit Banks Funding Corporation. These comments and the FCA responses are summarized below.

In addition to comments received during the comment period, three letters were received concerning the proposed amendments that have also been considered by the FCA Board. Two comment letters pertaining to the proposed standards-of-conduct regulations were received pursuant to the FCA's request for comments on regulatory burden, published in the **Federal Register** on June 23, 1993. See 58 FR 34003. These comments related to reporting requirements and are similar to the comments received during the comment period for the proposed regulations. They are summarized and addressed in the Board's response to comments relating to reporting that were received during the comment period for the proposed regulations. One letter was received from an association as a followup to a meeting held in Dallas, Texas, between FCA's Board and senior management and directors and officers of FCS associations. The association expressed a concern regarding the ability to attract and retain qualified directors if they are prohibited from purchasing acquired property as proposed. The FCA received numerous comments on this prohibition and the Board's response appears later in the preamble.

General Comments

Two comments were received concerning the effective date of the amendments. The FCC urged the FCA to allow sufficient lead time between publication of the final regulations and the effective date to permit boards of directors the opportunity to consider carefully the many policy judgments that are left to their discretion by the regulations. Another comment recommended an effective date no earlier than January 1, 1995, suggesting that existing regulations and policies would continue to provide adequate direction and control in the interim.

The Board agrees that there should be sufficient lead time to revise policies, especially in view of changes made in the final regulations in response to comments. Although the final regulations are substantially changed from the proposed regulations in response to the comments, the Board believes that with the delayed effective date the public will have ample opportunity to further review the regulations and bring any observations to the Board's attention prior to the effective date of the regulations. As always, the Board will consider requests for further clarification of or amendments to the regulations prior to or after their effective date. Consequently, the Board adopts final regulations with a delayed effective date not earlier than December 31, 1994.

One commenter stated that the proposed regulations would result in a regulatory burden and that while some improvement in clarity and flexibility is offered, the benefits do not appear commensurate with the time and cost of implementing the changes. The commenter also stated that conflicts of interest have not been improperly or inadequately handled and that there is no reason to believe the proposed changes will provide any significant improvement in avoiding, handling, or reporting conflict-of-interest situations where an institution has been complying with the present regulations. According to the commenter, the proposed regulations would require substantial effort to revamp policies and procedures.

The FCA Board has not undertaken this revision of the standards-of-conduct regulations because of improper or inadequate handling or reporting of conflicts of interest. Rather, as noted earlier, the revision is intended to update the regulations to reflect statutory changes and a change in the focus of the FCA's regulatory oversight of personnel matters, as well as to respond to section 514 of the 1992 Act. While the FCA recognizes that the revamping of policies and procedures requires substantial effort, the final regulations attempt to minimize any burden by providing a delayed effective date. Also, the FCA has adjusted the proposed regulations in response to comments where it was possible to achieve its objectives by less burdensome means. The final regulations place more responsibility on the institutions and their officers and directors for identifying possible sources of conflict and developing adequate controls, but also offer more flexibility for developing procedures that effectively address significant conflicts without imposing burdensome requirements that are ineffective in preventing conflicts of interest. While this will initially require more work, the FCA believes that it is a more effective approach to conflicts of interest and that it more appropriately reflects the focus of the responsibility for preventing conflicts of interest and the role of the FCA as regulator.

Another commenter supported four of the primary FCA policy objectives, namely: (1) Enhancing each association's accountability for sound standards-of-conduct programs; (2) maintaining high standards of conduct to ensure the proper performance of System business; (3) holding directors and employees to the same standard where the potential for conflict is the same; and (4) establishing that the internal corporate matters of devotion of time to official duties, political activity, nepotism, exchange of gifts, and improper use of official property are best left to each institution's board of directors to oversee through the implementation of a standards-of-conduct policy. However, the commenter disagreed with the proposed strict prohibition of a director purchasing property acquired by the institution through foreclosure. The Board's response to this comment is addressed in detail later in the preamble.

Section-by-Section Analysis of Comments Received

The following narrative summarizes the comments received on the various sections of the regulations during the comment period, in response to the Regulatory Burden Notice, and as a followup to the Dallas meeting, and provides the Board's response to those comments.

Section 612.2130—Definitions

While no comments were received regarding the proposed changes to this section, the FCC provided comments on the definitions in the existing regulations for "controlled entity" and "officer" and requested the FCA to define the terms "financially obligated" and "business proprietor" to clarify how the prohibitions in proposed §§ 612.2140(g) and 612.2150(h) are intended to interface.

The FCC recommended changing the definition of "controlled entity" to one similar to that used in the attribution rules of the lending limit regulations. See 12 CFR 614.4358(a)(3). Specifically, this would increase the 5-percent threshold for control in existing regulations to a 50-percent threshold. The FCC believes that 5-percent ownership is a very stringent and perhaps unrealistic test of control, and that the term "controlling influence," without a higher threshold is perhaps too vague to be meaningful.

The Board does not believe that the definition of control in the lending limit regulations is an appropriate definition for standards-of-conduct regulations. The purpose of the definition of control in the lending limit regulations is to identify when borrowers are so related that they should be regarded as a single credit risk. The purpose of the definition of control in the standards-of-conduct regulations is to identify when an interest is so significant that if an individual were to act on a matter concerning the related party, there would be an appearance of a conflict of interest. Consequently, the FCA believes that the control threshold for standards of conduct should be much lower than the control threshold for the purposes of lending limits. Control thresholds used in regulations directed at conflicts of interest are typically much lower. For example, the Securities and Exchange Commission requires disclosure of certain transactions with the institution of individuals owning 5 percent or more of a class of the institution's stock. The Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision have similar requirements for institutions they regulate that are public companies required to register under the Securities Exchange Act of 1934. The Comptroller imposes similar disclosure requirements on all national banks when they sell their securities, whether or not they are public companies. The phrase "exercises a controlling influence" is intended as a catch-all to capture those situations in which a person does not meet the objective control tests, but for some other reason has the power to control the management of the entity's policies. This term is a common component of control definitions and has long been a component of the part 612 definition of control without causing a particular problem. The definition is used to determine when a director or officer must recuse him or herself and in the reporting provisions, both of which are direct responsibilities of directors and employees. Such persons are likely to know when they are in a position to control management of the entity's policies, and, if in doubt, should err on the side of recusal and reporting. For the reasons stated above, no change has been made to the definition of "controlled entity."

The FCC suggested that the position of chief executive officer be added to the definition of "officer" since a number of System institutions have both a president and a chief executive officer, or a chief executive officer rather than a president. The Board adopts this suggestion and also adds specific references to chief operating officers, chief financial officers, and chief credit officers.

On a related issue, the FCC questioned whether an association's contracting with its supervising bank for a Standards of Conduct Officer would violate the joint employee provisions of § 612.2157. To clarify that it would not, unless the person otherwise satisfies the definition in § 612.2130(m), the term "Standards of Conduct Officer" is changed to the "Standards of Conduct Official" in the final regulations.

The FCC recommended that the term "financially obligated" be defined, and that prohibited "financially obligated" transactions be more clearly distinguished from business relationships that are permissible.

The final regulations define "financially obligated with" to mean having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by a property owned by another, or owning property that secures an enforceable legal obligation of another. The Board's revision to §§ 612.2140(g) and 612.2150(h) responds to the request to distinguish permissible business relationships from prohibited "financially obligated with" relationships and is discussed below under those sections.

As a result of this revision, the term "business proprietor" is no longer used in the regulations and its definition has been deleted. In addition, to avoid any possible confusion relative to reporting requirements, the definition for the term "business relationship" or "transacts business" has been deleted in the final rule.

The definition of "ordinary course of business" in the final regulations has been added as described in the discussion of § 612.2140.

The definition of "family" has been clarified to spell out more specifically those persons included under the phrase "and each person having such relationships by marriage."

Section 612.2135—Director and Employee Responsibilities and Conduct—Generally

No comments were received on this section and it is adopted as proposed.

Section 612.2140—Directors—Prohibited Conduct

The Board proposed to adopt some of the specific prohibitions applicable to employees and specifically requested comments on whether these prohibitions would operate too restrictively on directors. A number of comments were received. The majority of commenters opposed the proposed prohibition in paragraph (f) of this section concerning a director's purchasing property owned by the director's institution or an institution it supervises or is supervised by during the preceding 12 months when such property was acquired through foreclosure or similar action. The FCC asserted that a strict prohibition would make it more difficult to attract or retain qualified directors and suggested that such purchases be permitted on an institution-by-institution basis depending on whether the institution has adequate controls in place to ensure that directors do not receive an advantage or favoritism over other prospective purchasers. Other commenters suggested that there are less restrictive alternatives available to avoid real or apparent conflicts of interest and ensure continued public confidence in the System. One alternative offered was a general prohibition on acquired property purchases by directors except by public auction or open competitive bidding. The commenters also disagreed that the potential for conflicts of interest is as great for directors as it is for employees.

After additional consideration of the issues in light of the public comments, the Board has concluded that a total prohibition of director purchases of acquired property may be overly restrictive. Directors of Farm Credit Banks, associations, and certain directors of agricultural credit banks, except outside directors, are required to be farmers, ranchers, or producers or harvesters of aquatic products, and as such may want to acquire additional land that becomes available in their communities. Restrictions on their ability to acquire land that becomes available for sale from the institution while they are serving as director could be a serious disincentive for a successful individual to serve as a director. On the other hand, the potential for conflict is especially serious where there is strong motivation for acquiring property owned by the institution. Therefore, it is important that there be adequate controls in place to ensure that the director's impartiality is not impaired and that the director does not use his or her position to gain some advantage in acquiring property. The final regulations do not prohibit such acquisitions, but require that the property be purchased at public auctions or in open competitive bidding. In addition, to avoid the appearance of conflict, it is important that a director interested in acquiring such property not participate in deliberations or decisions concerning foreclosure or disposition of that property. Therefore, the final regulations prohibit a director from acquiring such property, even through public auction or competitive bidding, if he or she has participated in the decision to foreclose or dispose of the property or in establishing the terms of the sale.

The FCC recommended that there be an additional exception in paragraph (g) of this section under which an otherwise prohibited transaction would be permissible if approved by the Standards of Conduct Official. Paragraph (g) of the proposed regulations prohibited lending transactions between directors and other directors, employees or borrowers, but excepts loans between family members, loans made in an official capacity, and transactions in the ordinary course of business, as defined. The commenter recommended that the suggested approval be based upon a determination that the transaction does not present any significant risk of impairing the director's (or employee's) ability to perform his or her duties with impartiality and in compliance with regulations.

After considering the comment and the likelihood that the institutions themselves are in the best position to know what is in the ordinary course of business in the local business environment, the Board concluded that the suggestion had merit as a substitution for the ordinary course of business exception. However, the Board believes that there should be a regulatory standard against which such determinations can be evaluated that will provide a measure of uniformity among FCS institutions. The Board concluded that some relief from the prohibition is appropriate when the transaction is so insignificant in amount as not to create the appearance of a conflict in the eyes of a reasonable person or is an ordinary course of business transaction that is not on preferential terms.

Therefore, in the final regulations the proposed ordinary course of business exception has been replaced by a provision that essentially allows the Standards of Conduct Officer to grant a waiver where: (1) The amount of the transaction is so immaterial that it would not cause a reasonable person with knowledge of the relevant facts to question the impartiality or objectivity of the director in performing his or her official duties; or (2) where the transaction is in the ordinary course of business; provided the director recuses him or herself from any matter affecting the financial interest of the other party to the transaction. "Ordinary course of business" is defined to mean a transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential or a transaction between two persons who are in business together that is incident to the business they conduct together. A "preferential" transaction is one that is not on the same terms as those available for comparable transactions with other persons who are not officers and directors of System institutions. The Standard of Conduct Official's determination that either of the circumstances warranting an exception exists must be documented and is subject to the recordkeeping requirements, unless the transaction falls within any materiality thresholds for various types of transactions or specific ordinary course of business guidelines established by the Board's standards-of-conduct policy. While not applicable, the Uniform Standards of Ethical Conduct for Executive Branch Employees may be useful as a resource in determining such policy guidelines.

The Board believes that this change responds to the FCC's concern that a deferral of payment may be construed as a loan and the concern that the exclusion in the proposed regulation may fail to reach transactions between an elected director (or employee) who is a borrower and an institution's outside director.

The FCC recommended that the FCA explain its rationale for prohibiting employees from being financially obligated with directors, other employees, and borrowers, but having no similar prohibition for directors.

The FCA believes there is a greater potential for conflict for employees in having these types of relationships with borrowers because employees are in a position to have a more direct influence on the institution's dealings with the borrower. Also, since directors (except outside directors) are statutorily required to be borrower/stockholders, such a restriction could constitute an inappropriate restraint on the ability of directors to pursue their primary occupation. However, in light of the greater flexibility granted in the final regulation to define an exception to the prohibition on lending transactions, the Board believes that the institution can make appropriate distinctions in its policies to reflect the greater potential for conflict among employees and the impact of the prohibition on the ability of the director to pursue his or her primary occupation. Therefore, the final regulations make the prohibition for directors congruent with the employee prohibition by including "financially obligated with" transactions within the scope of the prohibition. See § 612.2150 for discussion of the comments on this prohibition for employees. In addition, the final regulation expands the family loan transaction exception to include any person residing in the director's household and relies on recusal to prevent conflicts of interest. Accordingly, the recusal provision in § 612.2140(a) is expanded to include any person residing in the director's household and to include a specific reference to business partners.

Section 612.2145—Director Reporting

The FCC believes the requirement to disclose the name of any relative or entity controlled by a relative that transacts business with the institution or an institution supervised by the institution is overly broad. The FCC suggested that the definition of "relative," for purposes of disclosure under §§ 612.2145(b)(1) and 612.2155(b)(1), be limited to immediate family members as defined in part 620 of this chapter. Section 620.1(e) of this chapter defines "immediate family member" to mean spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law. In addition, the FCC commented that it is extremely difficult for a director to disclose a list of borrowers with whom the director or the director's entity transacts business, since if the director is not involved in the day-to-day operations of the business, he or she will have little or no knowledge of the people who conduct business with the director's entity. Also, a director may not know that the individual or entity is a borrower. The FCC assumed that this was not the intention of § 612.2145 and that the requirement to disclose "to the best of his or her knowledge after reasonable inquiry" was designed to address this problem. However, the FCC recommended that the requirement of "reasonable inquiry" be deleted, noting that it is difficult to know what reasonable inquiry is in any particular case. The FCC also suggested that directors be required to disclose only those business relationships with borrowers that are other than ordinary course of business relationships, unusually large transactions, ongoing contractual relationships, or transactions with nonstandard terms and conditions, or terms other than those arrived at through arm's-length negotiations. The FCC argued that any appearance of conflict would be eliminated by the knowledge that neither the director nor the borrower received special terms. The FCC also recommended that each institution be allowed the opportunity to define transactions other than in the ordinary course of business within the above parameters. The FCC also commented that it is difficult to understand how a director's position can be compromised by the mere fact that a borrower does business with the director or an entity owned by the director.

Some of the FCC's comments appear to reflect a misunderstanding of the requirements of both proposed and existing regulations. Neither the proposed regulations nor existing regulations require the reporting of transactions with borrowers. The proposed regulations merely require the disclosure of the name of any relative or any entity in which the director has a financial interest if the relative or entity transacts business with borrowers. Transacting business with borrowers is the standard that narrows the class of persons or entities a director must report. An institution could, for instance, require instead the reporting of the names of all entities in which a director or employee has a financial interest, irrespective of whether such entities transact business with borrowers. Such a requirement would require more reporting, but might be easier for the individuals required to report. The regulatory requirement is a minimum requirement. The FCA encourages boards to require sufficient reporting to permit adequate monitoring of potential conflicts.

After considering the comments on the reporting requirements, the final regulations have been modified in several ways in response to revisions to the prohibited conduct sections and in an effort to ease any unnecessary burden the proposed regulations might have entailed. The final regulations permit the institution greater flexibility to determine the applicability of the prohibition on lending transactions among directors, employees, and borrowers and relies more heavily on recusal as a means of resolving conflicts of interest than the existing regulations or the proposed regulations. Since the FCA believes that the reporting requirements should provide the institution sufficient information for the institution to determine when recusal rather than prohibition is appropriate, an effort has been made to make the reporting requirements parallel the recusal provisions.

The final regulations do not narrow the definition of "relative" as suggested. To do so would narrow the scope of the exception from the lending and borrowing prohibition and the reach of the recusal provision. The suggested narrowing would have deleted "aunts, uncles, nephews, nieces, and grandchildren," and these relationships are often close enough that it would be unreasonable to restrict borrowing and lending between family members when such family members are borrowers. Similarly, these relationships are often close enough that it is not unreasonable to require recusal from matters affecting their interests. However, the standard for reporting the names of relatives in the final regulations is whether the individual "knows or has reason to know" that a relative or entity transacts business with the institution or a supervised institution or a borrower of such institutions. The "knows or has reason to know" standard is adopted to address concerns that "to the best of his or her knowledge after reasonable inquiry" imposes a duty to inquire, the reasonableness of which could lead to disputes. The "knows or has reason to know" standard is a common legal standard that is used to ensure that a person's assertion about the state of his or her knowledge can be challenged in circumstances in which any reasonable person would be deemed to have knowledge. The "actual knowledge" standard suggested by the FCC is not adopted because it does not allow any basis for the FCA to question a director's assertion regarding his or her subjective state of mind even in the most obvious circumstances.

The reporting requirements supporting the disclosure requirements of part 620 of this chapter have been more narrowly focused in the final regulations on information needed by the institution to make appropriate disclosures under part 620 of this chapter, and more clearly specify the information required to be reported. In addition, the final regulations also permit greater flexibility in determining the frequency of reporting for matters required to be reported, other than matters that are required to be reported for part 620 of this chapter.

The FCC also recommended that the reporting requirement for a director or employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported or could constitute a conflict of interest be expanded to require the Standards of Conduct Official to determine whether such involvement is, in fact, a conflict of interest. The Board has adopted the FCC's suggestion in the final regulations and has also added a requirement that the determination specify what controls, such as recusal, are necessary to ensure that the appearance of conflict is minimized.

A commenter noted that the proposed requirement that all new directors report all matters listed in the director reporting section within 1 month after election or appointment perpetuates the present reporting redundancy involving a director candidate's disclosure. In response to this concern, the final regulations require reporting only if no disclosure was made as a director candidate under part 620 of this chapter within the preceding 180 days, as this would be considered sufficient disclosure.

Section 612.2150—Employees—Prohibited Conduct

Comments were received from the FCC regarding the prohibition against employees borrowing from, lending to, or becoming financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution. The FCA also considered the appropriateness of the FCC's comments on the parallel director prohibition for the employee prohibition. The FCC recommended that there be an additional exception under which an otherwise prohibited transaction would be permissible if approved by the Standards of Conduct Official after a determination that the transaction does not present any significant risk of impairing the director's or employee's ability to perform his or her duties with impartiality and in compliance with the regulations.

The FCA concluded that the same modification that was made to § 612.2140(g) should be made to the employee prohibition. See discussion above.

Both banks that commented objected to the relaxation of the prohibition in § 612.2150(j) against employees acting as real estate agents or brokers because of a strong potential for creating conflicts of interest, especially for staff appraisers. In addition, one commenter observed that such a relaxation would be inconsistent with the functional independence required by FCA appraisal regulations. Another commenter asserted that the phrase "for the employee's own account" is unclear and suggested substituting "intended for the employee's own or immediate family use."

In view of the commenters' concerns and assurance that the prohibition is not a particularly burdensome requirement for staff appraisers, the FCA has decided not to adopt the appraiser exception at this time. In addition, the final regulations substitute "intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household" for "for the employee's own account," to clarify that the latter term was not intended to permit an employee to act as an agent or broker for commercial purposes.

Section 612.2155—Employee Reporting

The FCC commented that the scope and frequency of reports required by § 612.2155 are unwarranted, unduly burdensome, and unduly costly below the senior officer level. The FCC recommended that the FCA distinguish between senior officers and other employees in the reporting requirements. The FCC stated that, in its judgment, reports by non-senior officers when hired and biennially thereafter are fully adequate, especially since employees are required to report covered activities as they occur in the interim. They also recommended that the FCA remove the specific reporting requirements and require institutions to establish reporting procedures to ensure that relationships and activities subject to the regulations are properly disclosed and acted upon.

The FCC commented on proposed paragraph (b)(1) of this section, which requires employees to file an annual statement disclosing the name of any relative or entity controlled by relatives that transact business with the institution or any institution supervised by the institution. The concern raised was that the disclosure is to be based not only on actual knowledge, but also upon reasonable inquiry. This was considered to be unreasonably broad in view of the definition of "relative," because many such relatives may be virtual strangers to the employee in question and it is difficult to know what reasonable inquiry is in any particular case. The FCC also suggested that "relative" for purposes of disclosure be limited to immediate family members, as defined in § 620.1(e) of this chapter.

The same modifications that were made to the director reporting sections have been made to the employee reporting sections in the final regulations. Part 620 reporting requirements are focused on matters not already within the institution's knowledge and specifically restricted to employees who are subject to disclosure requirements, namely senior officers, as defined in part 620 of this chapter. The final regulations allow the institution to determine employee reporting frequency for matters not required for part 620 disclosures, but the institution must establish reporting requirements sufficient to permit the effective enforcement of the regulations and the standards-of-conduct policy. This will allow institutions to exclude certain individuals or classes of individuals from the reporting requirement based on the functions the employee performs. For instance, positions where there is a substantial degree of supervision and a low level of responsibility may make the reporting requirement unnecessary.

The FCC commented that it appears § 612.2150(d) prohibits an employee from serving as a director of an entity that transacts business with the employing or supervised institution, while § 612.2155(b)(2) requires an employee to report the name and nature of any entity in which the employee has a financial interest or on whose board the employee sits, if the entity transacts business with the employing institution. The final regulations delete the reference to entities on whose board the employee serves in the reporting requirement.

In response to an FCC recommendation on director reporting requirements, § 612.2155 is expanded to require the Standards of Conduct Official to determine whether any reported transaction or activity is, in fact, a conflict of interest and what controls are necessary to ensure that there is no appearance of a conflict of interest.

A commenter noted that for new employee reporting requirements it is unclear whether 1 month refers to the time an employment offer is extended and accepted or 1 month after the employee commences work. The final regulations have been revised to make it clear that a newly hired employee must report the required matters within 30 days after accepting an offer for employment. However, under the final regulations, the institution may establish a reasonable period for such new employees to terminate such transactions, activities, or relationships not to exceed the period provided for existing employees to terminate conduct prohibited under the institution's policies.

The FCA believes that these changes, together with the greater flexibility in defining exceptions to prohibited lending and borrowing relationships, will enable institutions to fashion standards-of-conduct programs that are more focused on areas in which the potential for conflict is most significant without imposing ineffective, burdensome, and costly reporting requirements.

Although enhancing the disclosure of financial information and reporting of conflicts of interest was the purpose of section 514 of the 1992 Act, the experience of the FCA in implementing Uniform Standards of Ethical Conduct for Executive Branch Employees is that training employees to recognize situations that present conflicts of interest is also an effective use of resources to prevent conflicts of interest. The FCA strongly encourages each System institution to conduct effective periodic training programs to ensure that employees are informed of the requirements of the regulations and the institution's policies and are sensitive to circumstances that give the appearance of a conflict of interest. Although the FCA believes that the responsibility to avoid actual or apparent conflicts of interest rests primarily with the individual director or employee, the institution has a responsibility to develop policies and procedures that monitor compliance with the regulation and avoid the appearance of conflict. Providing guidance and training concerning appropriate and inappropriate behavior is an effective way of achieving that end.

Section 612.2157—Joint Employees

The FCC questioned the advisability of having the supervising bank's Standards of Conduct Officer contract with an association in the district to comply with these requirements on behalf of the association and be accountable to the association's board. The FCC stated that it is not clear whether this arrangement is possible since the Standards of Conduct Officer is an officer of the bank as defined in § 612.2130(m).

The Standards of Conduct Officer does not come within the definition of "officer" in § 612.2130(m), unless the individual designated to perform the duties of the Standards of Conduct Officer satisfies the definition because of other duties. Therefore, for clarity, the position is referred to in the final regulations as the "Standards of Conduct Official" rather than "Standard of Conduct Officer," but in no way is this action intended to diminish the importance of the position. In addition, the final regulations do not require an association to contract with the bank's Standards of Conduct Official. An association may contract with the bank for these services to be performed by an individual whom the bank has designated as the bank's Standards of Conduct Official. The final regulations also include reference to an agricultural credit bank in addition to a Farm Credit Bank to provide for the situation in which an association is supervised by such a bank.

Section 612.2160—Institution Responsibilities

No comments were received on this new section and it is adopted as proposed.

Section 612.2165—Policies and Procedures

The FCC suggested that the regulations require an institution to provide a reasonable period of time for new directors and new employees to terminate transactions, relationships, and activities that are prohibited by the regulations and the institution's standards-of-conduct policies. The Board agrees with this suggestion and adds a new paragraph (b)(9) requiring a System institution to provide a reasonable period of time for new directors and new employees to terminate transactions, relationships, and activities that are prohibited. The purpose of this revision is to clarify that a new director or employee involved in a prohibited transaction prior to election or hiring is not prohibited from accepting the position. However, such persons are required to terminate any transactions subject to prohibitions within such time period as established by institution policy, beginning with the commencement of official duties, except that such period may not exceed the period established for existing directors and employees to terminate transactions, relationships, or activities prohibited by the institution's policies.

Section 612.2170—Standards of Conduct Official

In addition to changing "Officer" to "Official," as discussed above, the final regulations add a requirement that records be maintained for all determinations made by the Standards of Conduct Official and for resolution of each case reported pursuant to this part. Also, the office within the FCA designated to receive reports under part 612 is changed to the Office of General Counsel, which also receives reports relative to part 617 of this chapter.

Section 612.2180—Enforcement

No comments were received on the proposed amendments and these actions are adopted as proposed.

Sections 612.2190 Through 612.2250

The sections regarding devotion of time to official duties, political activity, nepotism, gifts or favors, and improper use of official property are removed as proposed and the topics are required to be addressed in the institution's policy established pursuant to § 612.2165. No comments were received regarding the removal of these sections.

Section 612.2260—Standards of Conduct for Agents

No comments were received regarding this section and it is adopted as proposed.

Section 612.2270—Prohibited Purchase of System Obligations

One commenter questioned the prohibition in existing regulations on bank presidents' purchasing obligations of the Farm Credit banks and the proposed extension of this prohibition to all employees who may participate in any manner in funding activities of their institution. The Board concurs that the potential for conflict in a director's or employee's purchase of System obligations that are available for purchase by the general public through members of the selling group or in the secondary market is small. Therefore, the final regulations permit such purchases under the conditions listed in § 612.2270.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 612—STANDARDS OF CONDUCT

Sec.

612.2130 Definitions.
612.2135 Director and employee responsibilities and conduct—generally.
612.2140 Directors—prohibited conduct.
612.2145 Director reporting.
612.2150 Employees—prohibited conduct.
612.2155 Employee reporting.
612.2157 Joint employees.
612.2160 Institution responsibilities.
612.2165 Policies and procedures.
612.2170 Standards of Conduct Official.
612.2260 Standards of conduct for agents.
612.2270 Purchase of System obligations.

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

§ 612.2130 Definitions.

For purposes of this part, the following terms are defined:

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) A *conflict of interest* or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Controlled entity* and *entity controlled by* mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(d) *Director* means a member of a board of directors.

(e) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(f) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution, except System institutions.

(g) *Family* means an individual and spouse and anyone having the following relationship to either: parents, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

(h) *Financial interest* means an interest in an activity, transaction, property, or relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

(i) *Financially obligated with* means having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by property owned by another, or owning property that secures an enforceable legal obligation of another.

(j) *Material*, when applied to a financial interest or transaction or series of transactions, means that the interest or transaction or series of transactions is of such magnitude that a reasonable person with knowledge of the relevant facts would question the ability of the person who has the interest or is party to such transaction(s) to perform his or her official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

(k) *Mineral interest* means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

(l) *OFI* means other financing institutions that have established an access relationship with a Farm Credit Bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

(m) *Officer* means the chief executive officer, president, chief operating officer, vice president, secretary, treasurer, general counsel, chief financial officer, and chief credit officer of each System institution, and any person not so designated who holds a similar position of authority.

(n) *Ordinary course of business*, when applied to a transaction, means: (1) A transaction that is usual and customary between two persons who are in business together; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential. Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors or employees of a System institution.

(o) *Person* means individual or entity.

(p) *Relative* means any member of the family as defined in paragraph (g) of this section.

(q) *Service organization* means each service organization authorized by section 4.25 of the Act, and each unincorporated service organization formed by one or more System institutions.

(r) *Standards of Conduct Official* means the official designated under § 612.2170 of these regulations.

(s) *Supervised institution* is a term which only applies within the context of a System bank or an employee of a System bank and refers to each association supervised by that bank.

(t) *Supervising institution* is a term that only applies within the context of an association or an employee of an association and refers to the bank that supervises that association.

(u) *System institution* and *institution* mean any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service organizations.

§ 612.2135 Director and employee responsibilities and conduct—generally.

(a) Directors and employees of all System institutions shall maintain high standards of industry, honesty, integrity, impartiality, and conduct in order to ensure the proper performance of System business and continued public confidence in the System and each of its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) To achieve these high standards of conduct, directors and employees shall observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws and regulations and policy statements, instructions, and procedures of the Farm Credit Administration and System institutions and shall exercise diligence and good judgment in carrying out their duties, obligations, and responsibilities.

§ 612.2140 Directors—prohibited conduct.

A director of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, any person residing in the director's household, any business partner of the director, or any entity controlled by the director or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminatory way, e.g., a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution.

(c) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Use the director's position or information acquired in connection with the director's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(e) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution.

(f) Knowingly acquire, directly or indirectly, except by inheritance or through public auction or open competitive bidding available to the general public, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action; provided, however, a director shall not acquire any such interest in real or personal property if he or she participated in the deliberations or decision to foreclose or to dispose of the property or in establishing the terms of the sale.

(g) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the director's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the director does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(h) Violate an institution's policies and procedures governing standards of conduct.

§ 612.2145 Director reporting.

(a) Annually, as of the institution's fiscal year end, and at such other times as may be required to comply with paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each director shall, at such intervals as the institution's board shall determine is necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulations and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the director's household, business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution; and

(2) The name and the nature of the business of any entity in which the director has a material financial interest or on whose board the director sits if the director knows or has reason to know that such entity transacts business with:

(i) The director's institution or any institution supervised by the director's institution; or

(ii) A borrower of the director's institution or any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) Unless a disclosure as a director candidate under part 620 of this chapter has been made within the preceding 180 days, a newly elected or appointed director shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after the election or appointment and thereafter shall comply with the requirements of this section.

§ 612.2150 Employees—prohibited conduct.

An employee of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, or any entity controlled by the employee or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminating way, e.g. a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of employment with a System institution.

(c) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage

Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative that borrows from a bank for cooperatives. Prior to approving an employee request, the board shall determine whether the employee's proposed service as a director is likely to cause the employee to violate any regulations in this part or the institution's policies, e.g., the requirements relating to devotion of time to official duties.

(e) Use the employee's position or information acquired in connection with the employee's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(f) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information the employee has access to by reason of employment with a System institution.

(g) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action.

(h) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless: (1) The transaction is with a relative or any person residing in the employee's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the employee does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(i) Violate an institution's policies and procedures governing standards of conduct.

(j) Act as a real estate agent or broker; provided that this paragraph shall not apply to transactions involving the purchase or sale of real estate intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household.

(k) Act as an agent or broker in connection with the sale and placement of insurance; provided that this paragraph shall not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2155 Employee reporting.

(a) Annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer, as defined in § 620.1(o) of this chapter, shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members, as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each employee shall, at such intervals as the Board shall determine necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulation and such policy. At a minimum, these requirements shall include: (1) The name of any relative or any person residing in the employee's household, any business partner, or any entity controlled by the employee or such persons (alone or in concert) if the employee knows or has reason to know that such individual or entity transacts business with the employing institution or any institution supervised by the employing institution; and

(2) The name and the nature of the business of any entity in which the employee has a material financial interest or on whose board the employee sits if the employee knows or has reason to know that such entity transacts business with: (i) The employing institution or any institution supervised by the employing institution; or

(ii) A borrower of the employing institution or any institution supervised by the employing institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

§ 612.2157 Joint employees.

No officer of a Farm Credit Bank or an agricultural credit bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank or an agricultural credit bank may serve as an officer of an association in its district. Farm Credit Bank or agricultural credit bank employees other than officers may serve as employees other than officers of an association in its district provided each institution appropriately reflects the expense of such employees in its financial statements.

§ 612.2160 Institution responsibilities.

Each institution shall: (a) Ensure compliance with this part by its directors and employees and act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest, whether or not specifically addressed by this part or the policies and procedures adopted pursuant to § 612.2165;

(b) Take appropriate measures to ensure that all directors and employees are informed of the requirements of this regulation and policies and procedures adopted pursuant to § 612.2165;

(c) Adopt and implement policies and procedures that will preserve the integrity of and public confidence in the institution and the System pursuant to § 612.2165;

(d) Designate a Standards of Conduct Official pursuant to § 612.2170; and

(e) Maintain all standards-of-conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for a minimum of 6 years.

§ 612.2165 Policies and procedures.

(a) Each institution's board of directors shall issue, consistent with this part, policies and procedures governing standards of conduct for directors and employees.

(b) Board policies and procedures issued pursuant to paragraph (a) of this section shall reflect due consideration of the potential adverse impact of any activities permitted under the policies and shall at a minimum: (1) Establish such requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution shall address such issues as the hiring of relatives, political activity, devotion of time to duty, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Official;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees or directors and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that was mortgaged to a System institution at any time within the preceding 12 months;

(7) Establish conditions under which employees may purchase any real or personal property of a System institution acquired by such institution for its operations;

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships, or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies.

(9) Require new directors and new employees involved at the time of election or hiring in transactions, relationships, and activities prohibited by these regulations or internal policies to terminate such transactions within the same time period established for existing directors or employees pursuant to paragraph (b)(8) of this section, beginning with the commencement of official duties, or such shorter time period as the institution may establish.

(10) Establish procedures providing for a director's or employee's recusal from official action on any matter in which he or she is prohibited from participating under these regulations or the institution's policies.

(11) Establish documentation requirements demonstrating compliance with standards-of-conduct decisions and board policy;

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.5 of this chapter, monitor conflicts of interest, and monitor recusal compliance; and

(13) Establish appeal procedures available to any employee to whom any required approval has been denied.

§ 612.2170 Standards of Conduct Official.

(a) Each institution's board shall designate a Standards of Conduct Official who shall: (1) Advise directors, director candidates, and employees concerning the provisions of this part;

(2) Receive reports required by this part;

(3) Make such determinations as are required by this part;

(4) Maintain records of actions taken to resolve and/or make determinations upon each case reported relative to provisions of this part;

(5) Make appropriate investigations, as directed by the institution's board; and

(6) Report promptly, pursuant to part 617 of this chapter, to the institution's board and the Office of General Counsel, Farm Credit Administration, all cases where: (i) A preliminary investigation indicates that a Federal criminal statute may have been violated;

(ii) An investigation results in the removal of a director or discharge of an employee; or

(iii) A violation may have an adverse impact on continued public confidence in the System or any of its institutions.

(b) The Standards of Conduct Official shall investigate or cause to be investigated all cases involving: (1) Possible violations of criminal statutes;

(2) Possible violations of §§ 612.2140 and 612.2150, and applicable policies and procedures approved under § 612.2165;

(3) Complaints received against the directors and employees of such institution; and

(4) Possible violations of other provisions of this part or when the activities or suspected activities are of a sensitive nature and could affect continued public confidence in the Farm Credit System.

(c) An association board may comply with this section by contracting with the Farm Credit Bank or agricultural credit bank in its district to provide a Standards of Conduct Official.

§ 612.2260 Standards of conduct for agents.

(a) Agents of System institutions shall maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and all its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law.

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

§ 612.2270 Purchase of System obligations.

(a) Employees and directors of System institutions, other than the Federal Farm

Credit Banks Funding Corporation, may only purchase joint, consolidated, or Systemwide obligations that are:

(1) Part of an offering available to the general public; and

(2) Purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(b) No director or employee of the Federal Farm Credit Banks Funding Corporation may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–11496 Filed 5–12–94; 8:45 am]

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FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1408

Collection of Claims Owed the United States

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation), by the Farm Credit System Insurance Corporation Board, adopts final regulations implementing the Debt Collection Act of 1982. This action provides procedures for the Corporation to administer claims owed to the United States arising from activities under Corporation jurisdiction. The Corporation is required by law to issue these regulations.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Philip J. Shebest, Senior Attorney, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: These regulations implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) (31 U.S.C. 3701–3719 and 5 U.S.C. 5114). In addition, these regulations supplement the regulations published jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101–105).

The proposed regulations were published on November 8, 1993, 58 FR 59215. The Corporation received no public comments. In addition, the Office of Personnel Management, on April 1, 1994, approved the proposed regulations for publication as final regulations in accordance with section 8 (1) of Executive Order 11609, as redesignated by Executive Order 12107, and 5 CFR 550.1105. As a result, the proposed regulations are being adopted in final form without any changes in the regulatory text.

List of Subjects in 12 CFR Part 1408

Government, Claims, Collection.

For the reasons stated in the preamble, part 1408 of chapter XIV, title 12 of the Code of Federal Regulations is added to read as follows:

PART 1408—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.
1408.1 Authority.
1408.2 Applicability.
1408.3 Definitions.
1408.4 Delegation of authority.
1408.5 Responsibility for collection.
1408.6 Demand for payment.
1408.7 Right to inspect and copy records.
1408.8 Right to offer to repay claim.
1408.9 Right to agency review.
1408.10 Review procedures.
1408.11 Special review.
1408.12 Charges for interest, administrative costs, and penalties.
1408.13 Contracting for collection services.
1408.14 Reporting of credit information.
1408.15 Credit report.

Subpart B—Administrative Offset

1408.20 Applicability.
1408.21 Collection by offset.
1408.22 Notice requirements before offset.
1408.23 Right to review of claim.
1408.24 Waiver of procedural requirements.
1408.25 Coordinating offset with other Federal agencies.
1408.26 Stay of offset.
1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart C—Offset Against Salary

1408.35 Purpose.
1408.36 Applicability of regulations.
1408.37 Definitions.
1408.38 Waiver requests and claims to the General Accounting Office.
1408.39 Procedures for salary offset.
1408.40 Refunds.
1408.41 Requesting current paying agency to offset salary.
1408.42 Responsibility of the Corporation as the paying agency.
1408.43 Nonwaiver of rights by payments.

Authority: Sec. 5.58 of the Farm Credit Act (12 U.S.C. 2277a-7); 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550.

Subpart A—Administrative Collection of Claims

§ 1408.1 Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701–3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101–105).

§ 1408.2 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit System Insurance Corporation, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101 through 105. Additionally, this part does not apply to Farm Credit System Insurance Corporation's premiums regulations under part 1410 of this chapter.

§ 1408.3 Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a) *Administrative offset* or *offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Agency* means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(c) *Claim* or *debt* means money or property owed by a person or entity to an agency of the Federal Government. A "claim" or "debt" includes amounts due the Government from loans insured by or guaranteed by the United States and all other amounts due from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, and fines.

(d) *Claim certification* means a creditor agency's written request to a paying agency to effect an administrative offset.

(e) *Corporation* means the Farm Credit System Insurance Corporation.

(f) *Creditor agency* means an agency to which a claim or debt is owed.

(g) *Debtor* means the person or entity owing money to the Federal Government.

(h) *Hearing official* means an individual who is responsible for reviewing a claim under § 1408.10.

(i) *Paying agency* means an agency of the Federal Government owing money to a debtor against which an administrative or salary offset can be effected.

(j) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor.

§ 1408.4 Delegation of authority.

The Corporation official(s) designated by the Chairman of the Farm Credit System Insurance Corporation are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 1408.5 Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations. Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the Corporation, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the Corporation shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the Corporation, where the claim (exclusive of charges for interest, penalties, and administrative costs) does not exceed $100,000. When the claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed $100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The Corporation shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the Corporation in accordance with 4 CFR part 105.

§ 1408.6 Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with § 1408.7;

(4) The right of the debtor to obtain a review of the Corporation's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt by the payment due date, the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset;

(8) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the Corporation determines to collect the debt by either administrative or salary offset, the Corporation shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 1408.22.

(d) If no response to the initial demand for payment is received by the payment due date, the Corporation shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101–105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 1408.7 Right to inspect and copy records.

The debtor may inspect and copy the Corporation records related to the claim. The debtor shall give the Corporation reasonable advanced notice that he/she intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the Corporation. Copying costs shall be assessed pursuant to § 1402.22 of this chapter.

§ 1408.8 Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the Corporation to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the Corporation.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the Corporation shall analyze the debtor's financial condition. The Corporation may enter into a written agreement with the debtor permitting the debtor to repay the debt in installments if the Corporation determines, in its sole discretion, that payment of the amount due would create an undue financial hardship for the debtor. The written agreement shall set forth the amount and frequency of installment payments and shall, in accordance with § 1408.12, provide for the imposition of charges for interest, penalties, and administrative costs unless waived by the Corporation.

(c) The written agreement may require the debtor to execute a confess-judgment note when the total amount of the deferred installments will exceed $750. The Corporation shall provide the debtor with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the Corporation's file on the debtor.

§ 1408.9 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§ 1408.10 Review procedures.

(a) Unless an oral hearing is required by § 1408.23(d), the Corporation's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under § 1408.23(d) the Corporation shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit System Insurance Corporation.

(d) The Corporation may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the Corporation, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant the delay. If a delay is granted, the 60-day decision period shall be extended by the number of days by which the review was postponed.

(f) Upon issuance of the written opinion, the Corporation shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§ 1408.11 Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the Corporation of the amount of the salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Corporation shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The Corporation shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 1408.12 Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the Corporation shall:

(1) Assess interest on unpaid claims;

(2) Assess administrative costs incurred in processing and handling overdue claims; and

(3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due.

The imposition of charges for interest, administrative costs, and penalties shall be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the Corporation reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the Corporation reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Corporation may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The Corporation may waive charges for interest, administrative costs, and/or penalties if it determines that: (1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 1408.13 Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 1408.14 Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the Corporation and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled. The Corporation shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 1408.15 Credit report.

In order to aid the Corporation in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Corporation may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.), a credit investigation of the debtor immediately following a determination that the claim exists.

Subpart B—Administrative Offset

§ 1408.20 Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to: (1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31 U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§ 1408.21 Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following: (1) The degree to which the offset can be accomplished in accordance with law. This determination should take into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the Corporation is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the Corporation determines under § 1408.24 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§ 1408.22 Notice requirements before offset.

(a) Except as provided in § 1408.24, the Corporation will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the Corporation imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset:

(i) The Corporation's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the Corporation related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that he/she shall be assessed for the cost of copying the documents in accordance with § 1408.7 of this part;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the Corporation's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the Corporation official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the Corporation who shall be a hearing official not under the control of the Chairman of the Farm Credit System Insurance Corporation, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the Corporation to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the Corporation;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the Corporation intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the Corporation reserves the right to impose an offset prior to this date if the Corporation determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or any other applicable statutory authority;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under 5 U.S.C. chapter 75; 5 CFR part 752, or any other applicable statute or regulation;

(14) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.23 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written record of the claim. If an oral hearing is requested, the debtor shall explain in the request why the matter cannot be resolved by a review of the documentary evidence alone.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) The Corporation's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the Corporation to consider

waiver of the indebtedness, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the Corporation determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the Corporation determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to § 1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.24 Waiver of procedural requirements.

(a) The Corporation may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 1408.25 Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the Corporation to impose an offset against amounts owed to the debtor shall submit to the Corporation a claim certification which meets the requirements of this paragraph. The Corporation shall submit the same certification to any agency that the Corporation requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt was due. A certification that the requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Administrative Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent. A certification that the requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Salary Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent.

(b)(1) The Corporation shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the Corporation receives an incomplete claim certification, the Corporation shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be submitted to the Corporation before the Corporation will consider effecting an offset.

(2) The Corporation may rely on the information contained in the claim certification provided by a requesting creditor agency. The Corporation is not authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may agree to compromise, suspend, or terminate collection of the claim.

(d) The Corporation may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential Corporation operations. The refusal and the reasons shall be sent in writing to the creditor agency.

§ 1408.26 Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the Corporation is the creditor agency and the offset is stayed, the Corporation will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§ 1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

The Corporation may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the Corporation by the debtor. The Corporation must certify that the debtor owes the debt, the amount of the debt, and that the Corporation has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart C—Offset Against Salary

§ 1408.35 Purpose.

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365 (5 U.S.C. 5514)), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the imposition of a salary offset against amounts payable to a Federal employee as salary. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management, codified in 5 CFR part 550, subpart K. Since salary offset is a type of administrative offset, the requirements of subpart B also apply to salary offsets.

§ 1408.36 Applicability of regulations.

(a) These regulations apply to the following cases: (1) Where the Corporation is owed a debt by an individual currently employed by another agency;

(2) Where the Corporation is owed a debt by an individual who is currently employed by the Corporation; or

(3) Where the Corporation currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Corporation will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following: (1) Debts or claims arising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§ 1408.37 Definitions.

In this subpart, the following definitions shall apply:

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b) *Disposable pay* means, for an officially established pay interval, that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Corporation shall allow the deductions described in 5 CFR 581.105 (b) through (f).

(c) *Employee* means a current employee of the Corporation or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(d) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to the Corporation or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1408.38 Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office.

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 1408.39 Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the Corporation may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the Corporation or where two or more debts are owed to a single creditor agency, the Corporation, at its discretion, may determine whether one or more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the Corporation should generally take precedence over debts owed to other agencies.

§ 1408.40 Refunds.

(a) In instances where the Corporation is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section shall not bear interest.

§ 1408.41 Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the Corporation shall provide the paying agency with a claim certification which meets the requirements set forth in § 1408.25(a) of this part. The Corporation shall also provide the paying agency with a repayment schedule determined under the provisions of § 1408.39 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the Corporation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) When an employee transfers to another paying agency, the Corporation is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The Corporation shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to § 1408.11 and results in a revised offset or repayment schedule, the Corporation shall provide a new claim certification to the paying agency.

§ 1408.42 Responsibility of the Corporation as the paying agency.

(a) When the Corporation receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Corporation shall send the debtor written notice which provides: (1) That the Corporation has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the Corporation, the employee transfers to a different agency before the debt is collected in full, the Corporation must certify the total amount collected on the debt. The Corporation shall send a copy of this certification to the creditor agency and a copy to the employee. If the Corporation is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§ 1408.43 Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Dated May 3, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94-11442 Filed 5-12-94; 8:45 am]
BILLING CODE 6710-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AGL-16]

Modification of Class D Airspace; and Establishment of Class E Airspace; Rockford, IL, Cincinnati, OH, Jackson, MI, Saginaw, MI, Traverse City, MI, Sioux Falls, SD, and Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class D airspace areas at Greater Rockford Airport, Rockford, IL, Cincinnati Municipal Airport Lunken Field, Cincinnati, OH, Jackson County-Reynolds Field, Jackson, MI, Tri City International Airport, Saginaw, MI, Cherry Capital Airport, Traverse City, MI, Joe Foss Field, Sioux Falls, SD, and Rochester Municipal Airport, Rochester, MN, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

DATES: *Effective date:* 0901 u.t.c., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to:

Manager, Air Traffic Division, System Management Branch, AGL-530, Docket No. 94-AGL-16, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7571.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Greater Rockford Airport, Rockford, IL, Cincinnati Municipal

Airport Lunken Field, Cincinnati, OH, Jackson County-Reynolds Field, Jackson, MI, Tri City International Airport, Saginaw, MI, Cherry Capital Airport, Traverse City, MI, Joe Foss Field, Sioux Falls, SD, and Rochester Municipal Airport, Rochester, MN, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AGL IL D Rockford, IL [Revised]

Rockford, Greater Rockford Airport, IL
(lat. 42°11′46″N., long. 89°05′38″W.)
Greater Rockford ILS Localizer
(lat. 42°12′36″N., long. 89°05′17″W.)
GILMY LOM
(lat. 42°06′52″N., long. 89°05′55″W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH D Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH
(lat. 39°06′12″N., long. 84°25′07″W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-mile radius of Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Jackson, MI [Revised]

Jackson County-Reynolds Field, MI
(lat. 42°15′35″N., long. 84°27′34″W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County-Reynolds Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Saginaw, MI [Revised]

Saginaw, Tri City International Airport, MI
(lat. 43°31′58″N., long. 84°04′47″W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.8-mile radius of Tri-City International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Traverse City, MI [Revised]

Traverse City, Cherry Capital Airport, MI
(lat. 44°44′27″N., long. 85°34′57″W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.4-mile radius of Cherry Capital Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL SD D Sioux Falls, SD [Revised]

Sioux Falls, Joe Foss Field, SD
(lat. 43°34′53″N., long. 96°44′30″W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.4-mile radius of Joe Foss Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MN D Rochester, MN [Revised]

Rochester Municipal Airport, MN
(lat. 43°54′32″N., long. 92°29′53″W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.2-mile radius of Rochester Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL IL E2 Rockford, IL [New]

Rockford, Greater Rockford Airport, IL
(lat. 42°11′46″N., long. 89°05′38″W.)
Greater Rockford ILS Localizer
(lat. 42°12′36″N., long. 89°05′17″W.)
GILMY LOM
(lat. 42°06′52″N., long. 89°05′55″W.)

Within a 4.4-mile radius of the Greater Rockford Airport and within 1.8 miles each side of the Greater Rockford Runway 36 ILS localizer course, extending south from the 4.4-mile radius to the GILMY LOM. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH E2 Cincinnati, OH [New]

Cincinnati Municipal Airport Lunken Field, OH
(lat. 39°06′12″N., long. 84°25′07″W.)

Within a 4.1-mile radius of Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Jackson, MI [New]

Jackson County-Reynolds Field, MI
(lat. 42°15′35″N., long. 84°27′34″W.)

Within a 4-mile radius of Jackson County Reynolds Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Saginaw, MI [New]

Saginaw, Tri City, International Airport, MI
(lat. 43°31′58″N., long. 84°04′47″W.)

Within a 4.8-mile radius of Tri-City International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Traverse City, MI [New]

Traverse City, Cherry Capital Airport, MI
(lat. 44°44′27″N., long. 85°34′57″W.)

Within a 4.4-mile radius of Cherry Capital Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL SD E2 Sioux Falls, SD [New]

Sioux Falls, Joe Foss Field, SD
(lat. 43°34′53″N., long. 96°44′30″W.)

Within a 4.4-mile radius of Joe Foss Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MN E2 Rochester, MN [New]

Rochester Municipal Airport, MN
(lat. 43°54′32″N., long. 92°29′53″W.)

Within a 4.2-mile radius of Rochester Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–11718 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–11]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action establishes Class E airspace areas at the Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994. *Comment date:* Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, ACE–500, Docket No. 94–ACE–11, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not proceeded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County

Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Dubuque Regional Airport, Iowa; Sioux City, Sioux Gateway Airport, Iowa; Waterloo Municipal Airport, Iowa; Fort Leavenworth, Sherman Army Air Field, Kansas; Fort Riley, Marshall Army Air Field, Kansas; Hutchinson Municipal Airport, Kansas; Manhattan Municipal Airport, Kansas; Olathe, Johnson County Executive Airport, Kansas; Olathe, Johnson County Industrial Airport, Kansas; Salina Municipal Airport, Kansas; Topeka, Forbes Field, Kansas; and Topeka, Philip Billard Airport, Kansas, when the towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE IA E2 Dubuque, IA [New]

Dubuque Regional Airport, IA
(lat. 42°24′11″ N, long. 90°42′33″ W)

Within a 4.2-mile radius of Dubuque Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE IA E2 Sioux City, IA [New]

Sioux City, Sioux Gateway Airport, IA
(lat. 42°24′10″ N, long. 96°23′04″ W)
South Sioux City, Martin Field, NE
(lat. 42°27′15″ N, long. 96°28′21″ W)

Within a 4.3-mile radius of Sioux Gateway Airport, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE IA E2 Waterloo, IA [New]

Waterloo Municipal Airport, IA
(lat. 42°33′25″ N, long. 92°24′01″ W)

Within a 4.3-mile radius of Waterloo Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Fort Leavenworth, KS [New]

Fort Leavenworth, Sherman Army Air Field, KS
(lat. 39°22′06″ N, long. 94°54′53″ W)

Within a 4-mile radius of Sherman Army Air Field, excluding that airspace within the Kansas City, MO, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Fort Riley, KS [New]

Fort Riley, Marshall Army Air Field, KS
(lat. 39°03′19″ N, long. 96°45′52″ W)
Junction City, Freeman Field, KS
(lat. 39°02′36″ N, long. 96°50′36″ W)

Within a 3.7-mile radius of Marshall Army Airfield; excluding that airspace within R–3602B and excluding that airspace within a 1-mile radius of the Junction City, Freeman Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Hutchinson, KS [New]

Hutchinson Municipal Airport, KS
(lat. 38°03′56″ N, long. 97°51′38″ W)

Within a 4.3-mile radius of Hutchinson Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Manhattan, KS [New]

Manhattan Municipal Airport, KS
(lat. 39°08′27″ N, long. 96°40′15″ W)

Within a 4.2-mile radius of Manhattan Municipal Airport, excluding that airspace within the Fort Riley, Marshall Army Airfield, KS, Class D and E airspace area and excluding that airspace within Restricted Area R–3602B. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Olathe, Johnson County Executive Airport, KS [New]

Olathe, Johnson County Executive Airport, KS
(lat. 38°50′51″ N, long. 94°44′15″ W)

Within a 3.9-mile radius of Johnson County Executive Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Olathe, Johnson County Industrial Airport, KS [New]

Olathe, Johnson County Industrial Airport, KS
(lat. 38°49'54" N, long. 94°53'24" W)
Olathe, Johnson County Executive Airport, KS
(lat. 38°50'51" N, long. 94°44'15" W)

Within a 4.3-mile radius of Johnson County Industrial Airport; excluding that airspace within the Johnson County Executive Airport, KS, Class D and E airspace area and excluding that airspace bounded on the north by lat. 38°49'30" N and on the east by long. 94°56'30" W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Salina, KS [New]

Salina Municipal Airport, KS
(lat. 38°47'30" N, long. 97°39'03" W)

Within a 4.9-mile radius of Salina Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

ACE KS E2 Topeka, Forbes Field, KS [New]

Topeka, Forbes Field, KS
(lat. 38°57'01" N, long. 95°39'51" W)

Within a 4.6-mile radius of Forbes Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE KS E2 Topeka, Philip Billard Airport, KS [New]

Topeka, Philip Billard Municipal Airport, KS
(lat. 39°04'08" N, long. 95°37'21" W)

Within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Forbes Field, KS, Class D and E airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

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Issued in Kansas City, Missouri, on April 28, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region

[FR Doc. 94-11723 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-AGL-18]

Modification of Class D Airspace; Bismarck, ND, Grissom AFB, IN, Muskegon, MI, and Mansfield, OH.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class D airspace areas at Bismarck Municipal Airport, Bismarck, ND, Grissom Air Force Base (AFB), IN, Muskegon County Airport, Muskegon, MI, and Mansfield Lahm Municipal Airport, Mansfield, OH; by amending the areas' effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, System Management Branch, AGL-530, Docket No. 94-AGL-18, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7571

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and as not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Bismarck Municipal Airport, Bismarck, ND, Grissom AFB, IN, Muskegon County Airport, Muskegon, MI, and Mansfield Lahm Municipal Airport, Mansfield, OH, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers, is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraphs 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AGL ND D Bismarck, ND [Revised]

Bismarck Municipal Airport, ND

(lat. 46°46′26″ N., long. 100°44′52″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 4.8-mile radius of Bismarck Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL IN D Grissom AFB, IN [Revised]

Grissom AFB, IN

(lat. 40°38′53″ N., long. 86°09′08″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.5-mile radius of Grissom AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI D Muskegon, MI [Revised]

Muskegon County Airport, MI

(lat. 43°10′10″ N., long. 86°14′18″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.2-mile radius of Muskegon County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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AGL OH D Mansfield, OH [Revised]

Mansfield Lahm Municipal Airport, OH

(lat. 40°49′17″ N., long. 82°31′00″ W.)

Mansfield VORTAC

(lat. 40°52′07″ N., long. 82°35′27″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.4-mile radius of the Mansfield Lahm Airport, and within 1.7 miles each side of the Mansfield VORTAC 307° radial extending from the 4.4-mile radius to 4.8 miles northwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–11721 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–17]

Establishment of Class E Airspace Areas; Waukegan, IL, Lafayette, IN, Willoughby, OH, Mosinee, WI, and La Crosse, WI.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Waukegan Regional Airport, Chicago/Waukegan, IL, Purdue University Airport, Lafayette, IN, Lost Nation Airport, Willoughby, OH, Central Wisconsin Airport, Mosinee, WI, and La Crosse Municipal Airport, La Crosse, WI. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date*: 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, System Management Branch, AGL–530, Docket No. 94–AGL–17, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at Chicago/Waukegan, IL, Lafayette, IN, Willoughby, OH, Mosinee, WI, and La Crosse, WI. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Waukegan Regional Airport, Chicago/Waukegan, IL, Purdue University Airport, Lafayette, IN, Lost Nation Municipal Airport, Willoughby, OH, Central Wisconsin Airport, Mosinee, WI, and La Crosse Municipal

Airport, La Crosse, WI, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AGL IL E2 Chicago/Waukegan, IL [NEW]

Chicago, Waukegan Regional Airport, IL

(lat. 42°25′20″ N., long. 87°52′04″ W.)

Within a 4-mile radius of the Waukegan Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL IL E2 Lafayette, IN [NEW]

Lafayette, Purdue University Airport, IN

(lat. 40°24′44″ N., long. 86°56′13″ W.)

Within a 4.2-mile radius of Purdue University Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL OH E2 Willoughby, OH [NEW]

Willoughby, Lost Nation Airport, OH

(lat. 41°41′02″ N., long. 81°23′25″ W.)

Within a 4-mile radius of the Lost Nation Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL WI E2 Mosinee, WI [NEW]

Mosinee, Central Wisconsin Airport, WI

(lat. 44°46′42″ N., long. 89°39′59″ W.)

Within a 4.4-mile radius of Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL WI E2 La Crosse, WI [NEW]

La Crosse Municipal Airport, WI

(lat. 43°52′45″ N., long. 91°15′23″ W.)

Within a 4.4-mile radius of La Crosse Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 5, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–11720 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–12]

Establishment of Class E Airspace Areas.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at the Cape Girardeau Municipal Airport, Missouri; Columbia Regional Airport, Missouri; Fort Leonard Wood, Forney Army Airfield, Missouri; Jefferson City Memorial Airport, Missouri; Joplin Regional Airport, Missouri; Kansas City, Richards-Gebaur Airport, Missouri; Knob Noster, Whiteman Air Force Base (AFB), Missouri; Springfield Regional Airport, Missouri; St. Joseph, Rosecrans Memorial Airport, Missouri; St. Louis, Spirit of St. Louis Airport, Missouri; and Grand Island, Central Nebraska Regional Airport, Nebraska. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, ACE–500, Docket No. 94–ACE–12, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Central Regional Office at the address shown above between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "**DATES**" section. However, after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace areas at the Cape Girardeau Municipal Airport, Missouri; Columbia Regional Airport, Missouri; Fort Leonard Wood, Forney Army Airfield, Missouri; Jefferson City Memorial Airport, Missouri; Joplin Regional Airport, Missouri; Kansas City, Richards-Gebaur Airport, Missouri; Knob Noster, Whiteman Air Force Base (AFB), Missouri; Springfield Regional Airport, Missouri; St. Joseph, Rosecrans Memorial Airport, Missouri; St. Louis, Spirit of St. Louis Airport, Missouri; and Grand Island, Central Nebraska Regional Airport, Nebraska. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at the Cape Girardeau Municipal Airport, Missouri; Columbia Regional Airport, Missouri; Fort Leonard Wood, Forney Army Airfield, Missouri; Jefferson City Memorial Airport, Missouri; Joplin Regional Airport, Missouri; Kansas City, Richards-Gebaur Airport, Missouri; Knob Noster, Whiteman Air Force Base (AFB), Missouri; Springfield Regional Airport, Missouri; St. Joseph, Rosecrans Memorial Airport, Missouri; St. Louis, Spirit of St. Louis Airport, Missouri; and Grand Island, Central Nebraska Regional Airport, Nebraska, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE MO E2 Cape Girardeau, MO [New]

Cape Girardeau Municipal Airport, MO
(lat. 37°13'31" N, long. 89°34'14" W)

Within a 4.1-mile radius of the Cape Girardeau Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Columbia, MO [New]

Columbia Regional Airport, MO
(lat. 38°49'05" N, long. 92°13'11" W)

Within a 4.3-mile radius of Columbia Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Fort Leonard Wood, MO [New]

Fort Leonard Wood, Forney Army Airfield, MO
(lat. 37°44'31" N, long. 92°08'25" W)

Within a 4-mile radius of Forney Army Airfield. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Jefferson City, MO [New]

Jefferson City Memorial Airport, MO
(lat. 38°35'28" N, long. 92°09'22" W)

Within a 4.1-mile radius of Jefferson City Memorial Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Joplin, MO [New]

Joplin Regional Airport, MO
(lat. 37°09'02" N, long. 94°29'54" W)

Within a 4.2-mile radius of Joplin Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Kansas City, Richards-Gebaur Airport, MO [New]

Kansas City, Richards-Gebaur Airport, MO
(lat. 38°50′39″ N, long. 94°33′38″ W)

Within a 4.3-mile radius of Richards-Gebaur Airport, excluding that airspace from the surface to 1,700 feet MSL bounded on the north by lat. 38°50′00″ N. and on the east by long. 94°36′00″ W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Knob Noster, MO [New]

Knob Noster, Whiteman AFB, MO
(lat. 38°43′49″ N, long. 93°32′53″ W)
Whiteman TACAN
(lat. 38°44′09″ N, long. 93°33′02″ W)

Within a 4.6-mile radius of Whiteman AFB and within 1.8 miles each side of the Whiteman TACAN 185° radial extending from the 4.6-mile radius to 6.1 miles south of the TACAN. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 Springfield, MO [New]

Springfield Regional Airport, MO
(lat. 37°14′39″ N, long. 93°23′13″ W)

Within a 4.2-mile radius of Springfield Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 St. Joseph, MO [New]

St. Joseph, Rosecrans Memorial Airport, Mo
(lat. 39°46′25″ N, long. 94°54′25″ W)

Within a 4.2-mile radius of Rosecrans Memorial Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE MO E2 St. Louis, Spirit of St. Louis Airport, MO [New]

Spirit of St. Louis Airport, MO
(lat. 38°39′43″ N, long. 90°39′00″ W)

Within a 4.3-mile radius of Spirit of St. Louis Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ACE NE E2 Grand Island, NE [New]

Grand Island, Central Nebraska Regional Airport, NE
(lat. 40°58′03″ N, long. 98°18′31″ W)

Within a 4.4-mile radius of the Central Nebraska Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on April 28, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–11728 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AWA–3]

RIN 2120–AE46

Alteration of the Denver Class B Airspace Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. On January 20, 1994, a correction to the final rule was published to correct certain airport reference point and navigational aid (NAVAID) coordinates for the new airport, and to reflect that the Denver Very High Frequency Omnidirectional Range (VOR) has been upgraded to a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. In view of further delay in the opening date of the new Denver International Airport, this action delays the rule's effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the Final Rules at 58 FR 48722, as postponed at 58 FR 60552, as corrected at 59 FR 2953, and as postponed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. Subsequently, on November 17, 1993, a delay of effective date was published and on January 20, 1994, a correction to the final rule was published to correct an error in the coordinates for the airport reference point and the supporting NAVAID for the new Denver International Airport, and to reflect that the Denver VOR has been upgraded to a VOR/DME facility. Most recently, the FAA had delayed this rule until May 15, 1994. The official opening of the Denver International Airport has now been delayed indefinitely due to the automatic baggage system difficulties.

Accordingly, the effective date of the alteration and correction of the related Class B airspace area should be delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of this rule.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of the final rule altering the Denver, CO, Class B airspace area (58 FR 48722; September 17, 1993), as delayed at 58 FR 60552 (November 17, 1993), as corrected at 59 FR 2953 (January 20, 1994), and as delayed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–11689 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket Nos. 91–ANM–14, 91–ANM–16, 91–ANM–17, 93–ANM–1, 93–ANM–2, 93–ANM–3, and 93–ANM–5]

Establishment of Class E Airspace and Alteration of Class D and Class E Airspace Areas, VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 7, 9, and 10, 1993, the Federal Aviation Administration (FAA) published final rules altering the Class D airspace area in Broomfield, CO; altering the Class D airspace and establishing Class E airspace in Aurora, CO; altering Class D and Class E airspace areas in Englewood, CO; altering the Class E airspace area in Denver, CO; altering

VOR Federal airways in Colorado, Nebraska, and Wyoming; and altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming. These actions support the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rules' effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the final rules at 58 FR 47041, 58 FR 47371, 58 FR 47372, 58 FR 47373, 58 FR 47631, 58 FR 47633, 58 FR 47635, as postponed at 58 FR 60552, corrected at 59 FR 1472, 59 FR 5080, 59 FR 6217, and as postponed at 59 FR 10743 (March 8, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 7, September 9, and September 10, 1993, the Federal Aviation Administration (FAA) published final rules altering and establishing Class D and Class E airspace areas, VOR Federal airways, and jet routes to support the new Denver International Airport airspace reconfiguration. On January 11, 1994, a correction was published on Airspace Docket No. 91–ANM–14 to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO. Additionally, on February 3 and 10, 1994, corrections were published on J–54 in Airspace Docket No. 91–ANM–16 to reinstate a segment from Cherokee, WY, to Laramie, WY. Most recently, the FAA had delayed these rules until May 15, 1994. The official opening of the Denver International Airport has been delayed indefinitely due to the automatic baggage system difficulties. Accordingly, the effective date of the related final rules should be delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of these rules.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of Airspace Docket No. 93–ANM–1 modifying the Class D airspace area in Broomfield, CO (58 FR 47041; September 7, 1993); Airspace Docket No. 93–ANM–2 modifying the Class D airspace area and establishing a Class E airspace area in Aurora, CO (58 FR 47371; September 9, 1993); Airspace Docket No. 93–ANM–3 modifying the Class D and Class E airspace areas in Englewood, CO (58 FR 47372; September 9, 1993); Airspace Docket No. 93–ANM–5 modifying the Class E airspace areas at the Denver Centennial Airport, CO, Denver, CO, and Erie, CO (58 FR 47373; September 9, 1993); Airspace Docket No. 91–ANM–14 altering VOR Federal airways in Colorado, Nebraska, and Wyoming (58 FR 47631; September 10, 1993) as corrected at 59 FR 1472 (January 11, 1994); Airspace Docket No. 91–ANM–16 altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming (58 FR 47633; September 10, 1993) as corrected at 59 FR 5080 (February 3, 1994) and 59 FR 6217 (February 10, 1994); Airspace Docket No. 91–ANM–17 altering VOR Federal airways in Colorado and Wyoming (58 FR 47635; September 10, 1993), and as postponed at (59 FR 10743; March 8, 1994); are delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–11687 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ANM–20]

Alteration of Jet Route J–171; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J–171 from Tobe, CO, to Hugo, CO. This action accommodated the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rule's effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the Final Rule at 59 FR 1619, and as postponed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J–171 from Tobe, CO, to Hugo, CO, to accommodate the new Denver International Airport airspace reconfiguration. Most recently, the FAA had delayed this rule until May 15, 1994. The official opening of the Denver International Airport has been delayed indefinitely due to the automatic baggage system difficulties. Accordingly, the effective date of this jet route alteration should be delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of this rule.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of the final rule altering the Jet Route J–171, (59 FR 1619; January 12, 1994) as delayed at 59 FR 10744 (March 8, 1994), is delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–11688 Filed 5–12–94, 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 91

[Docket No. 27583; Amendment No. 91–239]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 19, 1994, the Federal Aviation Administration (FAA) published a final rule to amend appendix D, part 91 of the Federal Aviation Regulations to accurately reflect the name of the new Denver, Colorado airport. In view of the delay in the opening date of the Denver International Airport, this action delays the rule's effective date indefinitely.

EFFECTIVE DATE: Effective May 13, 1994, the effective date of the Final Rule at 59 FR 2918, as corrected at 59 FR 6547, as postponed at 59 FR 10958 (March 9, 1994), is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On January 19, 1994, the Federal Aviation Administration (FAA) published a final rule intending to indicate in sections 1 and 3 of appendix D, 14 CFR part 91 that on March 9, 1994 the new Denver International Airport will open, replacing the Stapleton International Airport (Amendment No. 91–236; 59 FR 2918). In the amendment, however, the FAA inadvertently indicated that the word "Stapleton" should be replaced with the word "International." The FAA issued a correcting amendment on February 11, 1994 (59 FR 6547). Most recently, the FAA had delayed this rule until May 15, 1994. The official opening of the Denver International Airport has been delayed indefinitely due to the automatic baggage system difficulties. Accordingly, the effective date of this name change is delayed indefinitely. Once the opening date of the new airport is determined, the FAA will publish another rule indicating the effective date of this rule.

Because the public needs to be made aware of this delay immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, effective May 13, 1994, the effective date of the final rule amending the name of the new Denver, Colorado, airport in appendix D of 14 CFR part 91 (59 FR 2918; January 19, 1994) and the final rule correction (59 CFR 6547, February 11, 1994) as postponed at 59 FR 10958 (March 19, 1994), is delayed indefinitely.

Issued in Washington, DC, on May 10, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–11690 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27713; Amdt. No. 1597]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on April 22, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective July 21, 1994*

Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 4, Amdt 3
Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 17R, Amdt 3
Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 22, Amdt 2, Cancelled
Houston, TX, Ellington Field, VOR OR TACAN RWY 22, Amdt 2
Houston, TX, Ellington Field, VOR/DME OR TACAN RWY 35L, Amdt 3
Houston, TX, Ellington Field, ILS RWY 17R, Amdt 3
Houston, TX, Ellington Field, ILS RWY 22, Amdt 1
Houston, TX, Ellington Field, ILS RWY 35L, Amdt 3

* * * *Effective June 23, 1994*

Cross City, FL, Cross City, VOR RWY 31, Amdt 17
Fernandina Beach, FL, Fernandina Beach Muni, RADAR–1, Amdt 4
New Port Richie, FL, Tampa Bay Executive, VOR–A, Amdt 1A, Cancelled
West Palm Beach, FL, Palm Beach County Park, VOR RWY 15, Amdt 2
Perry, GA, Perry-Fort Valley, VOR–A, Amdt 4
Perry, GA, Perry-Fort Valley, LOC RWY 36, Orig
Perry, GA, Perry-Fort Valley, NDB RWY 36, Amdt 2
Kamuela, HI, Kamuela/Waimea-Kohala, VOR–A, Amdt 10, Cancelled
Kamuela, HI, Kamuela/Waimea-Kohala, VOR RWY 4, Amdt 11, Cancelled
Junction City, KS, Freeman Field, NDB–B, Amdt 3
Louisville, KY, Standiford Field, VOR OR TACAN RWY 29, Amdt 22
Louisville, KY, Standiford Field, NDB RWY 1, Amdt 8
Louisville, KY, Standiford Field, NDB RWY 29, Amdt 19
Louisville, KY, Standiford Field, NDB RWY 32, Amdt 15
Louisville, KY, Standiford Field, ILS RWY 1, Amdt 11
Louisville, KY, Standiford Field, ILS RWY 19, Amdt 9
Louisville, KY, Standiford Field, ILS RWY 29, Amdt 22
Louisville, KY, Standiford Field, RADAR–1, Amdt 25
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 3L, Amdt 14
Manistee, MI, Manistee Co.—Blacker, VOR OR GPS RWY 9, Amdt 11
Manistee, MI, Manistee Co.—Blacker, VOR OR GPS RWY 27, Amdt 11
Manistique, MI, Schoolcraft County, VOR OR GPS RWY 28, Amdt 8
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME RWY 35, Orig
Laconia, NH, Laconia Muni, LOC RWY 8, Amdt 9
Laconia, NH, Laconia Muni, NDB OR GPS RWY 8, Amdt 8
Portland, OR, Portland Intl, VOR/DME RWY 20, Orig
The Dalles, OR, The Dalles Muni, VOR/DME–A, Amdt 4
Amarillo, TX, Amarillo Intl, VOR RWY 22, Amdt 25
Amarillo, TX, Amarillo Intl, LOC BC RWY 22, Amdt 17
Amarillo, TX, Amarillo Intl, NDB RWY 4, Amdt 16
Amarillo, TX, Amarillo Intl, ILS RWY 4, Amdt 21
Amarillo, TX, Amarillo Intl, RADAR–1, Amdt 15
Amarillo, TX, Tradewind, NDB–A, Amdt 13
Amarillo, TX, Tradewind, VOR/DME RNAV RWY 35, Amdt 8
Moses Lake, WA, Grant County, VOR RWY 4, Amdt 5
Moses Lake, WA, Grant County, VOR RWY 14L, Amdt 10A, Cancelled
Moses Lake, WA, Grant County, VOR 1 RWY 14L, Orig
Moses Lake, WA, Grant County, VOR 3 RWY 14L, Orig
Moses Lake, WA, Grant County, VOR RWY 22, Amdt 4
Moses Lake, WA, Grant County, VOR RWY 32R, Amdt 19
Moses Lake, WA, Grant County, NDB RWY 32R, Amdt 16
Moses Lake, WA, Grant County, ILS RWY 32R, Amdt 18
Moses Lake, WA, Grant County, RNAV RWY 21, Amdt 6A, Cancelled
Moses Lake, WA, Grant County, VOR/DME RNAV RWY 22, Orig
Wenatchee, WA, Pangborn Memorial, VOR–A, Amdt 7

* * * *Effective May 26, 1994*

Mapleton, IA, Mapleton Muni, NDB RWY 20, Amdt 4
Baldwin, MI, Baldwin Muni, VOR/DME–A, Amdt 1
Newark, NJ, Newark Intl, VOR RWY 11, Orig
Montgomery, NY, Orange County, VOR RWY 8, Amdt 7
Montgomery, NY, Orange County, LOC RWY 3, Amdt 4
Montgomery, NY, Orange County, NDB RWY 3, Amdt 2
Red Hook, NY, Sky Park, VOR RWY 1, Amdt 5
Columbus, OH, Rickenbacker, VOR RWY 23L, Amdt 6, Cancelled
Norwalk, OH, Norwalk-Huron County, VOR–A, Amdt 5
Ravenna, OH, Portage County, VOR–A, Amdt 5
Ravenna, OH, Portage County, VOR/DME RNAV RWY 27, Amdt 2
Ashland, VA, Hanover County Muni, VOR RWY 16, Amdt 2, Cancelled
Ashland, VA, Hanover County Muni, LOC RWY 16, Orig, Cancelled
Ashland, VA, Hanover County Muni, NDB RWY 16, Amdt 1, Cancelled
Richmond/Ashland, VA, Hanover County Muni, VOR RWY 16, Orig
Richmond/Ashland, VA, Hanover County Muni, LOC RWY 16, Orig
Richmond/Ashland, VA, Hanover County Muni, NDB RWY 16, Orig
Appleton, WI, Outagamie County, VOR/DME RWY 3, Amdt 8
Appleton, WI, Outagamie County, LOC BC RWY 11, Amdt 1
Appleton, WI, Outagamie County, NDB RWY 3, Amdt 14
Appleton, WI, Outagamie County, NDB RWY 29, Orig
Appleton, WI, Outagamie County, ILS RWY 3, Amdt 16

Appleton, WI, Outagamie County, ILS RWY 29, Amdt 1
Eagle River, WI, Eagle River Union, VOR/DME RWY 4, Amdt 1
Eagle River, WI, Eagle River Union, NDB RWY 22, Amdt 5

[FR Doc. 94-11722 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 27741; Amdt. No. 1600]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such a the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identified the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on May 6, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective June 23, 1994*

Sitka, AK, Sitka, LDA/DME RWY 11, Amdt. 13
Arcata-Eureka, CA, Arcata, ILS/DME RWY 32, Orig.
Burbank, CA, Burbank-Glendale-Pasadena, LOC RWY 8, Amdt. 2, Cancelled
Burbank, CA, Burbank-Glendale-Pasadena, ILS RWY 8, Amdt. 36
Monterey, CA, Monterey Peninsula, NDB RWY 10R, Amdt. 11
Monterey, CA, Monterey Peninsula, ILS RWY 10R, Amdt. 25
Oxnard, CA, Oxnard, VOR RWY 7, Amdt. 12 Cancelled
Oxnard, CA, Oxnard, VOR/DME RWY 7, Orig.
Oxnard, CA, Oxnard, VOR RWY 25, Amdt. 8
Oxnard, CA, Oxnard, ILS RWY 25, Amdt. 8
Longmont, CO, Vance Brand, VOR/DME–A, Orig.
Lafayette, IN, Purdue University, VOR–A, Amdt. 25
Lafayette, IN, Purdue University, NDB RWY 10, Amdt. 12
Lafayette, IN, Purdue University, ILS RWY 10, Amdt. 10
Lafayette, IN, Purdue University, VOR/DME RNAV RWY 28, Amdt. 5
Sibley, IA, Sibley Muni, NDB RWY 17, Amdt. 1
Sibley, IA, Sibley Muni, NDB RWY 35, Amdt. 1
Burlington, KS, Coffey County, NDB OR GPS RWY 36, Amdt. 1
Chanute, KS, Chanute Martin Johnson, VOR OR GPS–A, Amdt. 9
Chanute, KS, Chanute Martin Johnson, VOR/DME RNAV OR GPS RWY 36, Amdt. 3
Larned, KS, Larned-Pawnee County, NDB RWY 17, Amdt. 2
Manhattan, KS, Manhattan Muni, VOR–F, Amdt. 4A, Cancelled
Manhattan, KS, Manhattan Muni, VOR/DME OR GPS–F, Orig.
Manhattan, KS, Manhattan Muni, VOR–H, Amdt. 14
Manhattan, KS, Manhattan Muni, VOR OR GPS RWY 3, Amdt. 17
Manhattan, KS, Manhattan Muni, NDB OR GPS–A, Amdt. 19
Manhattan, KS, Manhattan Muni, ILS RWY 3, Amdt. 6
Neodesha, KS, Neodesha Muni, VOR RWY 2, Amdt. 2
Parsons, KS, Tri-City, VOR RWY 13, Amdt. 4
Parsons, KS, Tri-City, NDB RWY 17, Amdt. 8
Parsons, KS, Tri-City, NDB RWY 35, Amdt. 5
Parsons, KS, Tri-City, VOR/DME RNAV RWY 17, Amdt. 5
Parsons, KS, Tri-City, VOR/DME RNAV RWY 35, Amdt. 5
Louisville, KY, Bowman Field, NDB OR GPS RWY 32, Amdt. 15
Leesville, LA, Leesville, NDB RWY 35, Orig.
Chillicothe, MO, Chillicothe Muni, NDB RWY 14, Amdt. 7
Warrenburg, MO, Skyhaven, VOR/DME–A, Orig.
Portsmouth, NH, Pease International Tradeport, VOR OR TACAN OR GPS RWY 16, Amdt. 2
Albuquerque, NM, Albuquerque Intl, VOR OR TACAN RWY 8, Amdt. 19
Albuquerque, NM, Albuquerque Intl, NDB RWY 17, Orig. Cancelled
Albuquerque, NM, Albuquerque Intl, NDB RWY 35, Amdt. 7
Albuquerque, NM, Albuquerque Intl, ILS RWY 8, Amdt. 5
Newburgh, NY, Stewart Intl, NDB RWY 9, Amdt. 8
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt. 7
New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt. 8
Bradford, PA, Bradford Regional, VOR/DME RWY 14, Amdt. 8
Newport, RI, Newport State, VOR/DME OR GPS RWY 16, Amdt. 4 Cancelled
Newport, RI, Newport State, VOR/DME OR GPS RWY 16, Orig.
Newport, RI, Newport State, LOC RWY 22, Amdt. 7
North Kingstown, RI, Quonset State, VOR RWY 34, Orig.
Paris, TN, Henry County, SDF RWY 2, Amdt. 2A, Cancelled
Paris, TN, Henry County, ILS RWY 2, Orig.
Canadian, TX, Hemphill County, NDB RWY 4, Amdt. 3
Canadian, TX, Hemphill County, NDB RWY 22, Amdt. 3
Childress, TX, Childress Muni, VOR RWY 35, Amdt. 9
Everett, WA, Snohomish County (Paine Fld), VOR–B, Orig.
Everett, WA, Snohomish County (Paine Fld), VOR–C, Orig., Cancelled
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 17, Amdt. 14
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 35, Amdt. 13
Manitowoc, WI, Manitowoc County, ILS RWY 17, Amdt. 3
Cheyenne, WY, Cheyenne, VOR OR TACAN–A, Amdt. 9

* * * *Effective May 26, 1994*

Baltimore, MD, Baltimore-Washington Intl, LOC RWY 10, Orig.
Appleton, MN, Appleton Muni, NDB RWY 13, Orig.

* * * *Effective May 04, 1994*

Kingston, NY, Kingston-Ulster, VOR OR GPS–A, Amdt. 1

* * * *Effective April 21, 1994*

San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Amdt. 4

Note: The FAA Published an Original GPS Procedure in TL 94–09 Dated April 8, 1994, Page 7, Under the Effective Date of May 26, 1994. The GPS RWY 35 Original Procedure is Hereby Rescinded.

Mount Sterling, KY-Mount Sterling-Montgomery County, NDB RWY 21, Amdt. 1 and NDB RWY 3, Amdt. 1, are Hereby Rescinded Published in TL94–8. The Procs will be Readvertised Proposed Eff 18 Aug 94.

[FR Doc. 94–11726 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27742; Amdt. No. 1601]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US

Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC on May 6, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

Effective	State	City	Airport	FDC No.	SIAP
02/01/94	FL	Tampa	Tampa Intl	4/0591	ILS RWY 18L AMDT 38A...
02/01/94	FL	Tampa	Tampa Intl	4/0593	LOC BC RWY 36R, AMDT 19A...
03/17/94	AK	Ketchikan	Ketchikan Intl	4/1335	NDB/DME–A AMDT 6A...
03/17/94	AK	Ketchikan	Ketchikan Intl	4/1336	ILS/DME–1 RWY 11 AMDT 5B...
04/21/94	OH	Akron	Akron-Canton Regional	4/1805	ILS RWY 19 AMDT 5...
04/28/94	FL	Jacksonville	Craig Muni	4/1915	ILS RWY 32, AMDT 2B...
04/28/94	LA	New Orleans	New Orleans Intl/Moisant Fld	4/1928	NDB RWY 10 AMDT 25...
04/28/94	LA	New Orleans	New Orleans Intl/Moisant Fld	4/1991	ILS RWY 10/CAT II, III AMDT 1A...
04/28/94	MI	Escanaba	Delta County	4/1916	ILS /DME RWY 9 AMDT 4...
04/28/94	MI	Escanaba	Delta County	4/1917	LOC/DME BC RWY 27 AMDT 3...
04/28/94	PA	Hazleton	Hazleton Muni	4/1877	VOR RWY 28 AMDT 8A...
04/28/94	PA	Hazleton	Hazleton Muni	4/1879	VOR RWY 10 AMDT 10A...
04/28/94	PA	Hazleton	Hazleton Muni	4/1906	LOC RWY 28 AMDT 5...

Effective	State	City	Airport	FDC No.	SIAP
04/28/94	SC	Moncks Corner	Berkely County	4/1883	NDB RWY 5 AMDT2...
04/28/94	SC	Orangeburg	Orangeburg Muni	4/1884	NDB RWY 5 ORIG...
04/28/94	SC	Summerville	Dorchester County	4/1885	NDB RWY 5 ORIG...
04/29/94	TX	Cotulla	Cotulla-La Salle County	4/1952	VOR–A AMDT 11...
05/04/94	LA	Houma	Houma-Terrebonne	4/2000	COPTER VOR/DME 117 AMDT 3...
05/04/94	LA	Houma	Houma-Terrebonne	4/2003	VOR/DME RNAV RWY 36 AMDT 4...
05/04/94	LA	Houma	Houma-Terrebonne	4/2004	NDB RWY 18 AMDT 4...
05/04/94	LA	Houma	Houma-Terrebonne	4/2005	VOR/DME RWY 30 AMDT 11...
05/04/94	LA	Houma	Houma-Terrebonne	4/2008	ILS RWY 18 AMDT 3...
05/04/94	LA	Houma	Houma-Terrebonne	4/2026	VOR RWY 12 AMDT 4...
05/04/94	LA	Thibodaux	Thibodaux Muni	2001	4/VOR–A AMDT 1...
05/04/94	NC	Rutherfordton	Rutherford County	4/2006	NDB RWY 36 AMDT 4...
05/05/94	NC	Louisburg	Franklin Co,	4/2034	VOR/DME–A ORIG...
05/05/94	SC	Orangeburg	Orangeburg Muni	4/2024	VOR RWY 5 AMDT 4...

Ketchikan

Ketchikan Intl
Alaska
NDB/DME–A AMDT 6A . . .
Effective: 03/17/94

FDC 4/1335/KTN/ FI/P Ketchikan Intl, Ketchikan, AK. NDB/DME–A AMDT 6A . . . CHG TRML RTE to read . . . ANN R–296 (IAF) to ANN R–300 VIA 30 DME ARC ALT 6000; ANN R–300 to CMJ BRG 289 DEG (NOPT) VIA 30 DME ARC ALT 4300. This becomes NDB/DME–A AMDT 6B.

Ketchikan

Ketchikan Intl
Alaska
ILS/DME–1 RWY 11 AMDT 5B . . .
Effective: 03/17/94

FDC 4/1336/KTN/ FI/P Ketchikan Intl, Ketchikan, AK. ILS/DME–1 RWY 11 Amdt 5B . . . CHG TRML Rte to Read . . . ANN to 30 DME ARC VIA ANN–R–296/30NM ALT 7000; ANN R–296 (IAF) to ANN R–300 VIA 30 DME ARC ALT 6000; ANN R–300 TO I–ECH LOC (NOPT) VIA 30 DME ARC ALT 4300. This Becomes ILS/DME–1 RWY 11 AMDT 5C.

Tampa

Tampa Intl
Florida
ILS RWY 18L AMDT 38A . . .
Effective: 02/01/94

FDC 4/0591/TPA/ FI/P Tampa Intl, Tampa, FL. ILS RWY 18L AMDT 38A . . . S–ILS 18L DH 330 HAT 304 all CATS. S–LOC 18L FAF to map distances 5.1 NM. Change notes to read . . . ILS UNUSBL DH/MAP inbound. S–ILS VIS increased to RVR 5000 FOR INOP SSALR. CAT E S–LOC VIS increased to 1½ miles for INOP SSALR. This becomes ILS RWY 18L, AMDT 38B.

Tampa

Tampa Intl
Florida
LOC BC RWY 36R, AMDT 19A . . .
Effective: 02/01/94

FDC 4/0593/TPA/ FI/P Tampa Intl, Tampa, FL. LOC BC RWY 36R, AMDT 19A . . . Delete Hold-in Lieu of Procedure Turn IAF AT SOBAY INT. Profile starts at Sobay Int. Change note to read . . . Radar and ADF Required. This becomes LOC BC RWY 36R, AMDT 19B.

Jacksonville

Craig Muni
Florida
ILS RWY 32, AMDT 2B . . .
Effective: 04/28/94

FDC 4/1915/CRG/ FI/P Craig Muni, Jacksonville, FL. ILS RWY 32, AMDT 2B . . . Middle marker commissioned. GS ALT AT MM 235. Distance to THLD From MM 0.43. This becomes ILS RWY 32 AMDT 2C.

New Orleans

New Orleans Intl/Moisant FLD
Louisiana
NDB RWY 10 AMDT 25 . . .
Effective: 04/28/94

FDC 4/1928/MSY/ FI/P New Orleans Intl/Moisant FLD, New Orleans, LA. NDB RWY 10 AMDT 25 . . . CHG TRML RTE RADIAL/CRS From /TBD/ VORTAC to Turtl Int from 027 to 031. This is NDB RWY 10 AMDT 25A.

New Orleans

New Orleans Intl/Moisant Fld
Louisiana
ILS RWY 10 /CAT II, III AMDT 1A . . .
Effective: 04/28/94

FDC 4/1991/MSY/ FI/P New Orleans Intl/Moisant Fld, New Orleans, LA, ILS RWY 10/CAT II, III AMDT 1A . . . CHG TRML RTE RADIAL/CRS from /TBD/ VORTAC to Turtl Int from 027 to 031. This is ILS RWY 10 /CAT II, III Amdt 1B.

Houma

Houma-Terrebonne
Louisiana
COPTER VOR/DME 117 AMDT 3 . . .
Effective: 05/04/94

FDC 4/2000/HUM/ FI/P Houma-Terrerbonne, Houma, LA. Copter VOR/DME 117 AMDT 3 . . . CHG TRML RTES . . . /TBD/ VORTAC /IAF/ TO /TBD/ VORTAC R–121.31/5.00 DME; R–268/5.00 DME /TBD/ VORTAC CCW /IAF/ TO /TBD/ VORTAC R–121.31/5.00 DME; AND /TBD/ VORTAC R–121.31/5.00 DME TO /TBD/ VORTAC R–121.31/8.00 DME. Chg final Approach CRS to 121.31. FAF to TBD R–121.31/8.00 DME. MIN ALT AT TBD R–121.31/5.00 DMC 1800 and TBD R–121.31/8.00 DME 1200. Map to TBD R–121.31/10.15 DME. CHG Name of PROC TO Copter VOR/DME 121 AMDT 3. CHG missed Approach Instructions To Read . . . Climb To 1800 VIA /TBD/ VORTAC R–121.50 to Bourg Int/16.3 DME and hold. CHG missed Approach Holding . . . Hold SE, RT, 302 IBND. This is copter VOR/DME 121 AMDT 3A.

Thibodaux

Thibodaux Muni
Louisiana
VOR–A AMDT 1...
Effective: 05/04/94

FDC 4/2001/LA37/ FI/P Thibodaux Muni, Thibodaux, LA. VOR–A AMDT 1...CHG /TBD/ VORTAC PROC turn outbound radial to 175.72. CHG /TBD/ VORTAC PROC turn IBND radial to 355.72. CHG Final Approach CRS to 355.72 CHG MSA sector radial to 324 and 054. This is VOR–A AMDT 1A.

Houma

Houma-Terrebonne
Louisiana
VOR/DME RNAV RWY 36 AMDT 4...
Effective: 05/04/94

FDC 4/2003/HUM/ FI/P Houma-Terrebonne, Houma, LA. VOR/DME RNAV RWY 36 AMDT 4...CHG missed approach holding to... Hold SE, RT, 302 IBND. CHG /TBD/ VORTAC radial to

Caboo WP to 122.92. CHG/TBD/ VORTAC radial to Bourg WP R–121.50. This is VOR/DME RNAV RWY 36 AMDT 4A.

Houma

Houma-Terrebonne
Louisiana
NDB RWY 18 AMDT 4...
Effective: 05/04/94

FDC 4/2004/HUM/ FI/P Houma-Terrebonne, Houma, LA. NDB RWY 18 AMDT 4...CHG TRML RTE from /TBD/ VORTAC to HU LOM to 088.35. CHG missed approach instructions to read... Climb to 1100 then climbing left turn to 1800 VIA TBD R–122 to Bourg Int/16.3 DME and hold. CHG missed approach holding to... Hold SE, RT, 302 IBND. CHG /TBD/ VORTAC radial to Bourg Int to R–121.50. This is NDB RWY 18 AMDT 4A.

Houma

Houma-Terrebonne
Louisiana
VOR/DME RWY 30 AMDT 11...
Effective: 05/04/94

FDC 4/2005/HUM/ FI/P Houma-Terrebonne, Houma, LA. VOR/DME RWY 30 AMDT 11...CHG TRML RTE /TBD/ VORTAC to Bourg Int to 121.50. CHG missed approach instructions to read... Climb to 1100 then climbing right turn to 1800 VIA /TBD/ VORTAC R–122 to Bourg INT/TBD 16.3 DME and hold; or when directed by ATC, climb to 1800 direct /TBD/ VORTAC. CHG missed approach holding to... Hold SE, RT, 302 IBND. CHG /TBD/ VORTAC PROC turn, outbound radial to R–121.50. CHG map to TBD R–122/10.97 DME. CHG final approach CRS to 301.50 IBND. CHG /TBD/ VORTAC PROC turn, IBND radial to 301.50. This is VOR/DME RWY 30, AMDT 11A.

Houma

Houma-Terrebonne
Louisiana
ILS RWY 18 AMDT 3...
Effective: 05/04/94

FDC 4/2008/HUM/ FI/P Houma-Terrebonne, Houma, LA. ILS RWY 18 AMDT 3...CHG TRML RTE /TBD/ VORTAC to HU LOM to CRS 088.35. CHG missed approach instructions to read... Climb to 1100 then climbing left turn to 1800 VIA TBD R–122 to Bourg INT/ 16.3 DME and hold. CHG missed approach holding to hold SE, RT, 302 IBND. CHG /TBD/ VORTAC radial to Bourg Int to R–121.50. This is ILS RWY 18 AMDT 3A.

Houma

Houma-Terrebonne
Louisiana
VOR RWY 12 AMDT 4...
Effective: 05/04/94

FDC 4/2026/HUM/ FI/P Houma-Terrebonne, Houma, LA, VOR RWY 12 AMDT 4...CHG final approach CRS TO 121.31. CHG holding at /TBD/ VORTAC to... Hold NW /TBD/ VORTAC, RT, 114 IBND, 1800 FT in lieu of PT /IAF/. Chg missed approach instructions to read... Climb to 1800 VIA TBD R–121.50 to Bourg INT/TBD 16.3 DME and hold. CHG NOPT note to read... NOPT for arrivals on /TBD/VORTAC Airway R–294. CHG missed approach holding to hold SE, RT, 301.50 IBND. CHG /TBD/ VORTAC RADIAL to Bourg INT to R–121.50. CHG MIN ALT AT TBD R–121.50/5.00 DME 920". This is VOR RWY 12 AMDT 4A.

Escanaba

Delta County
Michigan
ILS/DME RWY 9 AMDT 4...
Effective: 04/28/94

FDC 4/1916/ESC/ FI/P Delta County, Escanaba, MI. ILS/DME RWY 9 AMDT 4...Circling MDA 1100/HAA 491 CAT B. This is ILS/DME RWY 9 AMDT 4A.

Escanaba

Delta County
Michigan
LOC/DME BC RWY 27 AMDT 3...
Effective: 04/28/94

FDC 4/1917/ESC/ FI/P Delta County, Escanaba, MI. LOC/DME BC RWY 27 AMDT 3...Circling MDA 1100/HAA 491 CAT B. This is LOC/DME BC RWY 27 AMDT 3A.

Rutherfordton

Rutherford County
N.C.
NDB RWY 36 AMDT 4. . .
Effective: 05/04/94

FDC 4/2006/57A/ FI/P Rutherford County, Rutherfordton, N.C. NDB RWY 36 AMDT 4. . .Missed Approach. . . Climb to 2000 then climbing right turn to 3000 direct RFE NDB and hold. This becomes NDB RWY 36 AMDT 4A.

Louisburg

Franklin Co.
North Carolina
VOR/DME–A ORIG. . .
Effective: 05/05/94

FDC 4/2034/2N9/ FI/P Franklin Co., Louisburg, NC. VOR/DME–A ORIG. . .Change Terminal Route altitudes. . . From RDU VORTAC /IAF/ to 13 DME /NOPT/ 2500; from R–041 RDU VORTAC CW /IAF/ to R–072 RDU VORTAC /NOPT/ 2500; from R–120 RDU VORTAC CCW /IAF/ to R–072 RDU VORTAC /NOPT/ 2500; from 13 DME ARC to OGOSH/RDU 18.5 DME 2000. Change minimum altitudes. . . RDU R–072/13 2500, OGOSH 2000, RDU R–072/21.3 1080. Change missed approach altitude. . . Climb to 1100 then climbing right turn to 2500 VIA RDU R–072 to OGOSH/RDU 18.5 DME and hold. This becomes VOR/DME–A, Orig A.

Akron

Akron-Canton Regional
Ohio
ILS RWY 19 AMDT 5. .
Effective: 04/21/94

FDC 4/1805/CAK/ FI/P Akron-Canton Regional, Akron, OH. ILS RWY 19 AMDT 5. . .Caution. . . OM for Akron Fulton Intl may be received approximately 5.0 miles north of Derby INT/OM. Chart Akron Fulton Intl OM subdued. This is ILS RWY 19 AMDT 5A.

Hazleton

Hazleton Muni
Pennsylvania
VOR RWY 28 AMDT 8A. . .
Effective: 04/28/94

FDC 4/1877/HZL/ FI/P Hazleton Muni, Hazleton, PA. VOR RWY 28 AMDT 8A. . .CHG note obtain LCL ALT on CTAF to read. . . if LCL ALT not RCVD. Use Wilkes-Barre ALSTG & Increase all MDAS 300'. DLT. . . Activate MALS RWY 28–123.0; Word Caution FM Planview. This is VOR RWY 28 AMDT 8B.

Hazleton

Hazleton Muni
Pennsylvania
VOR RWY 10 AMDT 10A. . .
Effective: 04/28/94

FDC 4/1879/HZL/ FI/P Hazleton Muni, Hazleton, PA. VOR RWY 10 AMDT 10A. . .CHG note obtain LCL ALT on CTAF to read. . . if LCL ALT not' RCVD. Use Wilkes-Barre ALSTG & Increase all MDAS 300'. DLT. . . Activate MALS RWY 28–123.0; word caution FM Planview. This is VOR RWY 10 AMDT 10A.

Hazleton

Hazleton Muni
Pennsylvania
LOC RWY 28 AMDT 5. . .
Effective: 04/28/94

FDC 4/1906/H2L/ FI/P Hazleton Muni, Hazleton, PA. LOC RWY 28 AMDT 5. . .DLT. . . Wilkes-Barre ALSTG MINS;CHG note obtain LCL ALT on CTAF to read. . . if LCL ALT not RCVD. Use Wilkes-Barre ALSTG & Increase all MDAS 300'. This is LOC RWY 28 AMDT 5A.

Moncks Corner

Berkely County

South Carolina

NDB RWY 5 AMDT 2. .

Effective: 04/28/94

FDC 4/1883/5OJ/ FI/P Berkely County, Moncks Corner, SC. NDB RWY 5 AMDT 2. . . Terminal Route. . . VAN VORTAC to MKS NDB 135.04/26.92. This becomes NDB RWY 5 AMDT 2A.

Orangeburg

Orangeburg Muni

South Carolina

NDB RWY 5 ORIG. . .

Effective: 04/28/94

FDC 4/1884/OGB/ FI/P Orangeburg Muni, Orangeburg, SC. NDB RWY 5 Orig. . .Terminal Route. . . VAN VORTAC to OYI NDB 267.71/23.20. This becomes NDB RWY 5 Orig A.

Summerville

Dorchester County

South Carolina

NDB RWY 5 ORIG. .

Effective: 04/28/94

FDC 4/1885/DYB/ FI/P Dorchester County, Summerville, SC. NDB RWY 5 ORIG. . . terminal route. . . VAN VORTAC to DYB NDB 166.76/26.22. This becomes NDB RWY 5 Orig A.

Orangeburg

Orangeburg Muni

South Carolina

VOR RWY 5 Amdt 4.

Effective: 05/05/94

FDC 4/2024/OGB/ FI/P Orangeburg Muni, Orangeburg, SC. VOR RWY 5 AMDT 4. . .terminal route. . . VAN VORTAC to EDS NDB 272.93/20,60. This becomes VOR RWY 5 AMDT 4A.

Cotulla

Cotulla-La Salle County

Texas

VOR–A AMDT 11. . .

Effective: 04/29/94

FDC 4/1952/COT/ FI/P Cotulla-La Salle County, Cotulla, TX. VOR–A AMDT 11. . .CHG ALSTG note to read. . . when LCL ALSTG not received, use Laredo Intl ALSTG. This is VOR–A Amdt 11A.

[FR Doc. 94–11727 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 93F–0404]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Glyceryl Tristearate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to broaden certain specifications for the safe use of glyceryl tristearate. This action is in response to a petition filed by Hüls America, Inc.

DATES: Effective May 13, 1994.; written objections and requests for a hearing by June 13, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. 202–254–9515.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 3, 1993 (58 FR 63995), FDA announced that a food additive petition (FAP 3A4403) had been filed by Hüls America, Inc., Turner Pl., P.O. Box 365, Piscataway, NJ 08855–0365. The petition proposed that the food additive regulations in § 172.811 *Glyceryl tristearate* (21 CFR 172.811) be amended to broaden the specifications for the acid number, saponification number, and melting point for glyceryl tristearate.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that glyceryl tristearate conforming to the specifications requested by the petitioner is safe, and that the food additive regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before June 13, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.811 is amended by revising paragraph (b) to read as follows:

§ 172.811 Glyceryl tristearate

* * * * *

(b) The food additive meets the following specifications:

Acid number	Not to exceed 1.0.
Iodine number	Not to exceed 1.0.
Saponification number	186–192.
Hydroxyl number	Not to exceed 5.0.
Free glycerol content	Not to exceed 0.5 percent.
Unsaponifiable matter	Not to exceed 0.5 percent.
Melting point (Class II)	69 °C–73 °C.

* * * * *

Dated: May 6, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–11745 Filed 5–12–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8539]

RIN 1545–A078

Application of Section 514(c)(9)(E) of the Internal Revenue Code to Partnerships in Which One or More (but not all) of the Partners Are Qualified Organizations Within the Meaning of Section 514(c)(9)(C)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of section 514(c)(9)(E) of the Internal Revenue Code to partnerships in which one or more (but not all) of the partners are qualified tax-exempt organizations within the meaning of section 514(c)(9)(C). These organizations include educational organizations described in section 170(b)(1)(A)(ii) and their affiliated support organizations, and qualified trusts described in section 401. The final regulations provide rules governing the application of section 514(c)(9)(E) of the Internal Revenue Code (Code). Section 514(c)(9)(E) was added to the Code by the Omnibus Budget Reconciliation Act of 1987, and was amended by the Technical and Miscellaneous Revenue Act of 1988. The final regulations are necessary to provide affected partnerships and their partners with the guidance they need to comply with the applicable tax law.

EFFECTIVE DATE: May 13, 1994.

For dates of applicability of these regulations, see *"Effective dates"* under **SUPPLEMENTARY INFORMATION** in the preamble.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke at (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1, which provides rules governing the application of section 514(c)(9)(E) of the Internal Revenue Code of 1986 (Code), as amended. Section 514(c)(9)(E) was added to the Code by section 10214 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, and was amended by section 2004(h) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647.

On June 25, 1990, Notice 90–41, 1990–1 C.B. 350, was published in the Internal Revenue Bulletin to provide interim guidance regarding the application of section 514(c)(9)(E) of the Code and to request comments. On December 30, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 62266) (the proposed regulations) regarding section 514(c)(9)(E). The preamble to that notice contains an explanation to the proposed rules.

The IRS received written comments on the proposed regulations, but cancelled a public hearing scheduled for March 31, 1993, because no one requested to testify. After consideration of all the public comments on the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. Statutory Provisions

Section 511 of the Code provides that tax-exempt organizations are generally taxable on their unrelated business taxable income. Section 514(a) provides that unrelated business taxable income includes a specified percentage of the gross income derived from debt-financed property described in section 514(b). Section 514(c)(9) provides an exception for income derived from certain debt-financed investments in real property by qualified organizations. Under section 514(c)(9)(C), qualified organizations include educational organizations described in section 170(b)(1)(A)(ii) and their affiliated support organizations, and qualified trusts described in section 401.

If a qualified organization (QO) invests in debt-financed real property through a partnership in which one or more (but not all) of the partners are qualified organizations, the QO is eligible for the exception provided in section 514(c)(9) only if the partnership satisfies an additional requirement. Either each allocation to a partner that is a qualified organization must be a qualified allocation within the meaning of section 168(h)(6), or the partnership must satisfy the requirements of section 514(c)(9)(E). These regulations provide rules governing the application of section 514(c)(9)(E).

II. Overview of the Regulations

To satisfy the requirements of section 514(c)(9)(E), a partnership must establish that the allocation of items to any partner that is a QO cannot result in that partner having a percentage share of overall partnership income for any taxable year greater than that partner's percentage share of overall partnership loss for the taxable year for which that partner's percentage loss share will be the smallest (that partner's fractions rule percentage). This requirement, commonly referred to as the fractions rule, must be satisfied both on a prospective basis and on an actual basis for each taxable year of the partnership.

The fractions rule is applied on an overall partnership basis. Therefore, if partnership allocations to one QO partner fail to satisfy the requirements of the fractions rule, that partner, and other QO partners in the partnership, are subject to the debt-financed property rules, even if the allocations to those other QO partners would otherwise have complied with the requirements of the fractions rule.

A second requirement under section 514(c)(9)(E) is that each partnership allocation must either have substantial economic effect or (in the case of certain allocations that cannot have economic effect) otherwise appropriately comply with the requirements of the regulations under section 704(b).

For purposes of the fractions rule, overall partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year. In general, all items of partnership income, gain, loss, and deduction that increase or decrease the partners' capital accounts under § 1.704–1(b)(2)(iv) are taken into account in computing overall partnership income or loss.

The proposed regulations exclude allocations of certain items—generally by disregarding those items in computing overall partnership income or loss and the partners' allocable shares of overall partnership income or loss. In some situations, however, items are disregarded only until an allocation is actually made. The purpose of the exclusions is to allow ordinary economic business allocations (such as preferred returns), to avoid technical violations arising due to the requirements of section 704(b), and to avoid foot-faults.

III. Public Comments and Clarifying Changes

A. Manner in Which the Fractions Rule Is Applied

One commentator requested clarification regarding the prospective application of the fractions rule, especially with respect to allocations that are taken into account only when an allocation is made. The final regulations clarify that a partnership generally does not qualify for the fractions rule exception for any taxable year of its existence unless it satisfies the fractions rule—both on a prospective and actual basis—for every year. The regulations also clarify that if the partnership violates the fractions rule by reason of an allocation that the regulations provide is "disregarded" or "not taken into account" until an actual allocation is made, the partnership is treated (subject to the anti-abuse rule) as violating the fractions rule only for the taxable year of that actual allocation and subsequent taxable years. The final regulations also add an example illustrating this wait-and-see approach

B. Section 704(c) Allocations

The proposed regulations provide that tax items allocable under section 704(c) (or § 1.704–1(b)(2)(iv)(*f*)(*4*)), are not included in computing overall partnership income or loss. The final regulations clarify that those types of tax allocations may nonetheless be relevant in determining if the partnership violates the anti-abuse rule.

C. Exclusion of Reasonable Preferred Returns and Guaranteed Payments

Under the exception for reasonable preferred returns, items of income and gain allocated with respect to a reasonable preferred return for capital are disregarded in computing overall partnership income or loss for purposes of the fractions rule. Reasonable guaranteed payments for capital or services also are disregarded. However, to qualify for the exception, the income allocation (or the deduction of the guaranteed payment) generally must not precede the making of the related cash payment.

The final regulations adopt a commentator's recommendation that the exception for reasonable preferred returns should apply not only to allocations effected with items of income or gain, but also to allocations effected with overall partnership income. In implementing this change, the regulations refer to "an allocation of what would otherwise be overall partnership income." (This technical refinement also was made to several parts of the regulation that previously referred to allocations of overall partnership income.) This is necessary because the exclusion of an allocated item from the computation of overall partnership income or loss for purposes of the fractions rule means that the item is not overall partnership income or overall partnership loss.

Although the exception for reasonable preferred returns contained in the proposed regulations applies only to those allocations made to a QO, the final regulations apply the exception to all partners. Without this change, a partnership that paid a reasonable preferred return to both its QO and taxable partners arguably could disregard the allocations to its QO partners in computing overall partnership income or loss, but at the same time, take the corresponding allocations to its taxable partners into account in computing overall partnership income or loss. Although the anti-abuse rule of the proposed regulations does not permit the excessive allocation of income or gain to the QO partners that would result if this argument were accepted, the final regulations clarify this issue. A similar change was not called for with respect to guaranteed payments because guaranteed payments to taxable partners automatically are excluded from overall partnership income or loss.

The proposed regulations generally provide that a material distribution is a return of capital if it is not attributable to the partnership's cash flow from its business operations. Concern was expressed that under this rule certain returns on capital might inappropriately be characterized as a return of capital. There also was a separate concern that this rule inappropriately implied that distributions of operating cash flow would generally not be respected as a return of capital.

To address these concerns and to reflect that capital may be returned from a number of different sources, the final regulations provide that a designation of distributions in a written partnership agreement generally will be respected in determining a partner's unreturned capital so long as the designation is economically reasonable. Although the regulations do not specify when the designation must be made, timing may be relevant in determining whether the designation is reasonable.

Some commentators characterized the cash payment requirement as a significant limitation on the exception for preferred returns and guaranteed payments. The principal objection voiced on this point is that requiring a cash payment may prevent partners from achieving their economic deal. Since real estate partnerships often lack free cash in their early years, the money partners are forced to rely on the partnership having sufficient income in subsequent years to ultimately provide them with their preferred return.

The IRS and Treasury Department are concerned that if the requirement were eliminated, partnerships might attempt to optimize their overall economics by allocating significant amounts of partnership income and gain to QOs in the form of preferred returns and guaranteed payments. It is believed that in many instances this would be a departure from the normal commercial practice followed by partnerships in which the money partners are generally subject to income tax. Taxable partners generally are not willing to bear the tax burden attributable to income allocations that precede the corresponding distribution of cash by many years. A suggestion that partnerships be required to compound allocated but unpaid amounts could exacerbate the problem. Compounding would increase the amount of undistributed income or gain allocated to the tax-exempt partners.

The final regulations retain the cash payment requirement. However, the regulations also provide more explicitly that the normal rules of accrual accounting are overridden with respect to the deduction of reasonable guaranteed payments. The deduction is delayed until the partnership taxable year in which the payment is made in cash. (Similarly, the inclusion of the guaranteed payment in the QO's income is delayed because the regulation does not change the existing rule under § 1.707–1(c) that a guaranteed payment is included in income in the same taxable year it is deducted by the partnership.) For partnerships that are concerned about the availability of sufficient future income to ensure the payment of a preferred return, this clarification may help them use guaranteed payments to achieve greater assurance that the partnership ultimately will pay a return on capital.

D. Chargebacks and Offsets

The final regulations continue to provide exceptions for four types of chargebacks and offsets: (1) Allocations that charge back prior disproportionately large allocations (i.e., in excess of a qualified organization's fractions rule percentage) of overall partnership loss to a qualified organization, or prior disproportionately small allocations of overall partnership income to a qualified organization; (2) minimum gain chargebacks of nonrecourse deductions; (3) chargebacks of partner nonrecourse deductions (and of compensating allocations of recourse deductions to another partner); and (4) qualified income offsets. The final regulations also continue to provide that allocations of minimum gain that may be made with respect to distributions of proceeds of nonrecourse liabilities are taken into account only to the extent an allocation is actually made (to avoid technical violations of the fractions rule that would otherwise arise from including a minimum gain chargeback provision in a partnership agreement). In addition, a limited new chargeback exception (described in greater detail below) applies to allocations of minimum gain attributable to certain distributions of proceeds of nonrecourse liabilities.

A suggestion that all chargebacks be permitted without regard to whether the initial allocation was "disproportionate" was carefully considered and rejected. A principal consideration in rejecting the proposal was that it would represent a significant departure from the mechanical approach contained in the proposed regulations, which, overall, is relatively simple for taxpayers to apply and for the IRS to administer and enforce. Accordingly, the final regulations retain the basic approach of the proposed regulations, but add a number of technical and clarifying changes. In addition, two examples have been added to further clarify the operation of these provisions.

The final regulations clarify that disproportionate allocations need not be reversed in full, but may also be reversed in part. In addition, the provision requiring that an initial allocation of less than the entire overall partnership income or loss consist of a pro rata portion of each item of partnership income, gain, loss, or deduction now excepts from the pro rata requirement nonrecourse deductions and certain other allocations relating to nonrecourse debt. Absent this change, the disproportionate chargeback provisions might have overly limited applicability, because real estate partnerships typically have borrowed on a nonrecourse basis.

One commentator accurately noted that the exception for allocations of overall partnership loss (or, more precisely, what would otherwise be overall partnership loss) that charge back disproportionately small allocations of overall partnership income to a QO partner is somewhat confusing and counterintuitive. Part of the confusion arises because the Code refers to chargebacks of disproportionately large income allocations to taxable partners. However, the equivalent approach taken in the regulations is desirable because it avoids the need to determine the analog of a fractions rule percentage for taxable partners and because it is simpler to apply to partnerships with more than one QO partner. Accordingly, an example has been added to the final regulations, as requested by the commentator, to illustrate a qualifying allocation of overall partnership loss that charges back a disproportionately small allocation of overall partnership income to a QO partner.

The final regulations revise the formula approach in the proposed regulations for determining the extent to which a minimum gain chargeback is attributable to nonrecourse deductions (or partner nonrecourse deductions) to properly interact with the § 1.704–2 regulations governing partnership minimum gain and partner nonrecourse debt minimum gain. The § 1.704–2 regulations effect minimum gain chargebacks on the basis of the partners' percentage shares of minimum gain. Accordingly, the final regulations require partnerships to determine—in a reasonable and consistent manner—the extent to which a partner's percentage share of the partnership minimum gain is attributable to nonrecourse deductions. The final regulations also provide, by way of example, a formula for determining in certain circumstances the extent to which a partner's percentage share of minimum gain is attributable to nonrecourse deductions. Although the final regulations do not explicitly so provide, a partnership that computes the extent to which minimum gain is attributable to nonrecourse deductions, also computes, by default, the extent to which minimum gain is attributable to prior distributions of proceeds of nonrecourse liabilities.

There is a limited new chargeback exception that applies if QO partners initially contribute capital used to purchase depreciable real property and are allocated the resulting depreciation deductions. If the partnership later borrows money on a nonrecourse basis (using that depreciable real property as security) and distributes the proceeds to the QO partners as a return of capital, the resulting minimum gain chargeback is permanently disregarded in computing overall partnership income or loss for purposes of the fractions rule. Without a special rule, the distribution of nonrecourse proceeds and the resulting minimum gain chargeback might cause a violation of the fractions rule in the year the minimum gain is triggered. In effect, the new exception allows the partnership to apply the general chargeback rule for nonrecourse deductions (rather than the general chargeback rule for nonrecourse distributions) even though the initial depreciation deductions allocated to the QO partners were not nonrecourse.

This new rule is narrow. It provides complete relief to partnerships only to the extent the amount of the partnership depreciation deduction for the property for the year does not exceed the overall partnership loss for the year. The reason for making this rule narrow is that chargebacks attributable to distributions of proceeds of nonrecourse liabilities may provide greater potential for manipulation than other chargebacks. Nonetheless, the new provision should provide significant relief from a problem that may be fairly common.

E. Exclusion of Partner-Specific Items of Deduction

The final regulations continue to exclude from the computation of overall partnership income or loss, certain expenditures allocated to the partners to whom they are attributable. Furthermore, in partial response to a commentator's request that certain other exceptions be added, the final regulations expand the exception for expenditures incurred in computing section 743(b) basis adjustments to generally encompass additional record-keeping and accounting expenditures incurred in connection with transfers of partnership interests. To allow proper consideration of other items that might be excepted, the final regulations also permit the list of qualifying expenditures to be expanded in the future by revenue ruling, revenue procedure, or private letter ruling.

F. Unlikely Losses and Deductions

The requirement that a loss or expenditure not be reasonably foreseeable to qualify as unlikely has been revised in response to concerns that were voiced. To qualify as "unlikely" under the final regulations, a loss or deduction must have a low likelihood of occurring, taking into account the relevant facts and circumstances.

In addition, the final regulations clarify that the types of events described in the regulations are not per se unlikely. They merely illustrate possible situations giving rise to allocations to which the exception for unlikely losses and deductions applies (if they have a low likelihood of occurring taking into account the relevant facts and circumstances). In response to a comment, the discovery of environmental conditions that require remediation has been added to the illustrative list of potential relevant events.

Contrary to a commentator's request, the final regulations do not sanction pre-funding of a loss or deduction. Generally, pre-funding is incompatible with a conclusion that a loss or deduction is unlikely.

G. Changes in Partnership Allocations

The final regulations retain the rule that changes in partnership allocations resulting from transfers or shifts in partnership interests will be closely scrutinized, but generally will be relevant only on a prospective basis. However, the final regulations provide taxpayers with more specific guidance. The scope of the scrutiny relates to the determination of whether the transfers or shifts stem from a prior agreement, understanding, or plan, or could otherwise be expected given the structure of the transaction (e.g., a situation where the structure and economics is such that it could well be anticipated that a sale of an interest would occur at some particular phase of the partnership's (or transaction's) life). This approach bears some similarity to the approach of § 1.704–1(b)(4)(vi) (relating to the scrutiny given to amendments to partnership agreements).

H. De Minimis Exceptions

In response to comments, changes were also made to the two *de minimis* rules. One commentator asked for clarification on the exception for *de minimis* interests. In response, the rule has been slightly clarified and an example has been added to illustrate the rule's application.

The nature of the comments received with respect to the *de minimis* allocation exception indicated that the exception was viewed differently than had been intended. The intent of this exception was to provide relief for what would otherwise be minor inadvertent violations of the fractions rule. One example would be a plumber's bill that is paid directly by a taxable partner, or that is paid by the partnership but is overlooked until after the partnership's allocations have been computed and then is allocated entirely to the taxable partner. It was not intended that this provision be used routinely by partnerships to allocate some of the partnership's losses and deductions. Consistent with the intent underlying this provision, the final regulations limit the total amount (rather than the amount allocated to the QO partner) to which the exception applies to the lesser of $50,000 and one percent of the partnership's total losses and deductions.

I. Anti-Abuse Rule

At least one commentator suggested that the anti-abuse rule in the proposed regulations was vague. To address this concern, the final regulations provide a more complete statement of the purpose of the fractions rule, which largely tracks the wording of the Conference Committee Report accompanying the enactment of the Revenue Act of 1987. See H.R. Conf. Rep. No. 495, 100th Cong., 1st Sess. 957 (1987).

J. Tiered Partnerships

The rules regarding tiered partnerships were well received and remain largely the same as in the proposed regulations. However, some changes were made. First, the final regulations clarify that the relevant partnerships (as opposed to individual QOs) must demonstrate that the relevant chains satisfy the requirements of the regulations under any reasonable method. Also, although the same three basic examples contained in the proposed regulations continue to illustrate the application of this rule, a number of changes were made to those examples. Most of the changes to the examples are stylistic or clarifying.

One clarification is that tiered partnerships may not simply be used to achieve results that could not be achieved in the absence of a tiered-partnership structure. For example, the facts in the second tiered-partnership example (relating to the entity-by-entity approach) now state that each of the upper-tier partnerships has been established for the purpose of investing in numerous real estate properties independently of the other upper-tier partnership and its partners. Thus, the tiered-partnership rules may not be used simply to apply the fractions rule on a QO-by-QO basis instead of the regulation's generally applicable overall partnership basis.

The facts in the second example also now contain a statement that neither of the upper-tier partnerships have outstanding debt. The reason for that statement is that in some cases, debt might be used to attempt to achieve allocations that would not satisfy the fractions rule if, for example, the lower-tier partnership had incurred the debt. The inclusion of this added fact should not be viewed as flatly precluding the existence of debt at any level other than the lower-tier partnership. The absence of debt was added as a fact to obviate the need to complicate the example by addressing the precise effect of debt, in what likely would have been a fact pattern that would have been of limited value in analyzing other debt arrangements. Accordingly, the existence of debt at a level other than the lower-tier partnership should be viewed as something to be taken into consideration in determining whether a partnership can demonstrate that the requirements of the regulations have been satisfied. It should also be noted that the existence of debt at the partner level might also be relevant in situations where tiered partnerships are not used.

One clarifying change and one technical change were made with respect to the third example in the tiered-partnership rules (relating to the independent chain approach). The clarifying change was to state that the upper-tier partnership separately allocates to its upper-tier partners the items allocated to the upper-tier partnership by the lower-tier partnerships. This change emphasizes that, as a practical matter, partnerships would not otherwise be able to demonstrate that the requirements of the fractions rule are complied with.

The technical change, which is related, is to provide that for purposes of applying § 1.704–2(k) under the independent chain approach, minimum gain chargebacks are taken into account on an if-and-when basis. Absent this change, no tiered-partnership structure in which a lower-tier partnership incurred nonrecourse debt would be able to comply with the fractions rule. This is because § 1.704–2(k) would be treated on a prospective basis as giving rise to: (1) an allocation of a decrease in minimum gain to the upper-tier partnership (and, in turn, an upper-tier QO partner) from one lower-tier partnership lacking sufficient income and gain to effect a minimum gain chargeback; and (2) a corresponding minimum gain chargeback by the upper-tier partnership using income and gain allocated to the upper-tier partnership by the other lower-tier partnership.

K. Effective Date

The final regulations retain December 30, 1992, as their general effective date, i.e., the date the proposed regulations were published in the **Federal Register**. However, the final regulations also permit reliance on the proposed regulations during the window period beginning December 30, 1992, and ending on May 13, 1994. The regulations provide transition rules for partnerships commencing after October 13, 1987, property acquired by partnerships after October 13, 1987, and partnership interests acquired by qualified organizations after October 13, 1987.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Deane M. Burke, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.514(c)–2 also issued under 26 U.S.C. 514(c)(9)(E)(iii). * * *

Par. 2. Section 1.514(c)–2 is added to read as follows:

§ 1.514(c)–2 Permitted allocations under section 514(c)(9)(E).

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 1.514(c)–2.

(a) Table of contents.
(b) Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships.
  (1) In general.
  (i) The fractions rule.
  (ii) Substantial economic effect.
  (2) Manner in which fractions rule is applied.
  (i) In general.
  (ii) Subsequent changes.
(c) General definitions.
  (1) Overall partnership income and loss.
  (i) Items taken into account in determining overall partnership income and loss.
  (ii) Guaranteed payments to qualified organizations.
  (2) Fractions rule percentage.
  (3) Definitions of certain terms by cross reference to partnership regulations.
  (4) Example.
(d) Exclusion of reasonable preferred returns and guaranteed payments.
  (1) Overview.
  (2) Preferred returns.
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  (4) Reasonable amount.
  (i) In general.
  (ii) Safe harbor.
  (5) Unreturned capital.
  (i) In general.
  (ii) Return of capital.
  (6) Timing rules.
  (i) Limitation on allocations of income with respect to reasonable preferred returns for capital.
  (ii) Reasonable guaranteed payments may be deducted only when paid in cash.
  (7) Examples.
(e) Chargebacks and offsets.
  (1) In general.
  (2) Disproportionate allocations.
  (i) In general.
  (ii) Limitation on chargebacks of partial allocations.
  (3) Minimum gain chargebacks attributable to nonrecourse deductions.
  (4) Minimum gain chargebacks attributable to distribution of nonrecourse debt proceeds.
  (i) Chargebacks disregarded until allocations made.
  (ii) Certain minimum gain chargebacks related to returns of capital.
  (5) Examples.
(f) Exclusion of reasonable partner-specific items of deduction or loss.
(g) Exclusion of unlikely losses and deductions.
(h) Provisions preventing deficit capital account balances.
(i) [Reserved].
(j) Exception for partner nonrecourse deductions.
  (1) Partner nonrecourse deductions disregarded until actually allocated.
  (2) Disproportionate allocation of partner nonrecourse deductions to a qualified organization.
(k) Special rules.
  (1) Changes in partnership allocations arising from a change in the partners' interests.
  (2) De minimis interest rule.
  (i) In general.
  (ii) Example.
  (3) De minimis allocations disregarded.
  (4) Anti-abuse rule.
(l) [Reserved].
(m) Tiered partnerships.
  (1) In general.
  (2) Examples.
(n) Effective date.
  (1) In general.
  (2) General effective date of the regulations.
  (3) Periods after June 24, 1990, and prior to December 30, 1992.
  (4) Periods prior to the issuance of Notice 90–41.
  (5) Material modifications to partnership agreements.

(b) *Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships*—(1) *In general.* This § 1.514(c)–2 provides rules governing the application of section 514(c)(9)(E). To comply with section 514(c)(9)(E), the following two requirements must be met:

(i) *The fractions rule.* The allocation of items to a partner that is a qualified organization cannot result in that partner having a percentage share of overall partnership income for any partnership taxable year greater than that partner's fractions rule percentage (as defined in paragraph (c)(2) of this section).

(ii) *Substantial economic effect.* Each partnership allocation must have substantial economic effect. However, allocations that cannot have economic effect must be deemed to be in accordance with the partners' interests in the partnership pursuant to § 1.704–1(b)(4), or (if § 1.704–1(b)(4) does not provide a method for deeming the allocations to be in accordance with the partners' interests in the partnership) must otherwise comply with the requirements of § 1.704–1(b)(4). Allocations attributable to nonrecourse liabilities or partner nonrecourse debt must comply with the requirements of § 1.704–2(e) or § 1.704–2(i).

(2) *Manner in which fractions rule is applied*—(i) *In general.* A partnership must satisfy the fractions rule both on a prospective basis and on an actual basis for each taxable year of the partnership, commencing with the first taxable year of the partnership in which the partnership holds debt-financed real property and has a qualified organization as a partner. Generally, a partnership does not qualify for the unrelated business income tax exception provided by section 514(c)(9)(A) for any taxable year of its existence unless it satisfies the fractions

rule for every year the fractions rule applies. However, if an actual allocation described in paragraph (e)(4), (h), (j)(2), or (m)(1)(ii) of this section (regarding certain allocations that are disregarded or not taken into account for purposes of the fractions rule until an actual allocation is made) causes the partnership to violate the fractions rule, the partnership ordinarily is treated as violating the fractions rule only for the taxable year of the actual allocation and subsequent taxable years. For purposes of applying the fractions rule, the term *partnership agreement* is defined in accordance with § 1.704–1(b)(2)(ii)(*h*), and informal understandings are considered part of the partnership agreement in appropriate circumstances. See paragraph (k) of this section for rules relating to changes in the partners' interests and *de minimis* exceptions to the fractions rule.

(ii) *Subsequent changes.* A subsequent change to a partnership agreement that causes the partnership to violate the fractions rule ordinarily causes the partnership's income to fail the exception provided by section 514(c)(9)(A) only for the taxable year of the change and subsequent taxable years.

(c) *General definitions*—(1) *Overall partnership income and loss.* Overall partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year.

(i) *Items taken into account in determining overall partnership income and loss.* Except as otherwise provided in this section, the partnership items that are included in computing overall partnership income or loss are those items of income, gain, loss, and deduction (including expenditures described in section 705(a)(2)(B)) that increase or decrease the partners' capital accounts under § 1.704–1(b)(2)(iv). Tax items allocable pursuant to section 704(c) or § 1.704–1(b)(2)(iv)(*f*)(*4*) are not included in computing overall partnership income or loss. Nonetheless, allocations pursuant to section 704(c) or § 1.704–1(b)(2)(iv)(*f*)(*4*) may be relevant in determining that this section is being applied in a manner that is inconsistent with the fractions rule. See paragraph (k)(4) of this section.

(ii) *Guaranteed payments to qualified organizations.* Except to the extent otherwise provided in paragraph (d) of this section—

(A) A guaranteed payment to a qualified organization is not treated as an item of partnership loss or deduction in computing overall partnership income or loss; and

(B) Income that a qualified organization may receive or accrue with respect to a guaranteed payment is treated as an allocable share of overall partnership income or loss for purposes of the fractions rule.

(2) *Fractions rule percentage.* A qualified organization's fractions rule percentage is that partner's percentage share of overall partnership loss for the partnership taxable year for which that partner's percentage share of overall partnership loss will be the smallest.

(3) *Definitions of certain terms by cross reference to partnership regulations. Minimum gain chargeback, nonrecourse deduction, nonrecourse liability, partner nonrecourse debt, partner nonrecourse debt minimum gain, partner nonrecourse debt minimum gain chargeback, partner nonrecourse deduction,* and *partnership minimum gain* have the meanings provided in § 1.704–2.

(4) *Example.* The following example illustrates the provisions of this paragraph (c).

Example. Computation of overall partnership income and loss for a taxable year. (i) Taxable corporation TP and qualified organization QO form a partnership to own and operate encumbered real property. Under the partnership agreement, all items of income, gain, loss, deduction, and credit are allocated 50 percent to TP and 50 percent to QO. Neither partner is entitled to a preferred return. However, the partnership agreement provides for a $900 guaranteed payment for services to QO in each of the partnership's first two taxable years. No part of the guaranteed payments qualify as a reasonable guaranteed payment under paragraph (d) of this section.

(ii) The partnership violates the fractions rule. Due to the existence of the guaranteed payment, QO's percentage share of any overall partnership income in the first two years will exceed QO's fractions rule percentage. For example, the partnership might have bottom-line net income of $5,100 in its first taxable year that is comprised of $10,000 of rental income, $4,000 of salary expense, and the $900 guaranteed payment to QO. The guaranteed payment would not be treated as an item of deduction in computing overall partnership income or loss because it does not qualify as a reasonable guaranteed payment. See paragraph (c)(1)(ii)(A) of this section. Accordingly, overall partnership income for the year would be $6,000, which would consist of $10,000 of rental income less $4,000 of salary expense. See paragraph (c)(1)(i) of this section. The $900 QO would include in income with respect to the guaranteed payment would be treated as an allocable share of the $6,000 of overall partnership income. See paragraph (c)(1)(ii)(B) of this section. Therefore, QO's allocable share of the overall partnership income for the year would be $3,450, which would be comprised of the $900 of income pertaining to QO's guaranteed payment, plus QO's $2,550 allocable share of the partnership's net income for the year (50 percent of $5,100). QO's $3,450 allocable share of overall partnership income would equal 58 percent of the $6,000 of overall partnership income and would exceed QO's fractions rule percentage, which is less than 50 percent. (If there were no guaranteed payment, QO's fractions rule percentage would be 50 percent. However, the existence of the guaranteed payment to QO that is not disregarded for purposes of the fractions rule pursuant to paragraph (d) of this section means that QO's fractions rule percentage is less than 50 percent.)

(d) *Exclusion of reasonable preferred returns and guaranteed payments*—(1) *Overview.* This paragraph (d) sets forth requirements for disregarding reasonable preferred returns for capital and reasonable guaranteed payments for capital or services for purposes of the fractions rule. To qualify, the preferred return or guaranteed payment must be set forth in a binding, written partnership agreement.

(2) *Preferred returns.* Items of income (including gross income) and gain that may be allocated to a partner with respect to a current or cumulative reasonable preferred return for capital (including allocations of minimum gain attributable to nonrecourse liability (or partner nonrecourse debt) proceeds distributed to the partner as a reasonable preferred return) are disregarded in computing overall partnership income or loss for purposes of the fractions rule. Similarly, if a partnership agreement effects a reasonable preferred return with an allocation of what would otherwise be overall partnership income, those items comprising that allocation are disregarded in computing overall partnership income for purposes of the fractions rule.

(3) *Guaranteed payments.* A current or cumulative reasonable guaranteed payment to a qualified organization for capital or services is treated as an item of deduction in computing overall partnership income or loss, and the income that the qualified organization may receive or accrue from the current or cumulative reasonable guaranteed payment is not treated as an allocable share of overall partnership income or loss. The treatment of a guaranteed payment as reasonable for purposes of section 514(c)(9)(E) does not affect its possible characterization as unrelated business taxable income under other

provisions of the Internal Revenue Code.

(4) *Reasonable amount*—(i) *In general.* A guaranteed payment for services is reasonable only to the extent the amount of the payment is reasonable under § 1.162–7 (relating to the deduction of compensation for personal services). A preferred return or guaranteed payment for capital is reasonable only to the extent it is computed, with respect to unreturned capital, at a rate that is commercially reasonable based on the relevant facts and circumstances.

(ii) *Safe harbor.* For purposes of this paragraph (d)(4), a rate is deemed to be commercially reasonable if it is no greater than four percentage points more than, or if it is no greater than 150 percent of, the highest long-term applicable federal rate (AFR) within the meaning of section 1274(d), for the month the partner's right to a preferred return or guaranteed payment is first established or for any month in the partnership taxable year for which the return or payment on capital is computed. A rate in excess of the rates described in the preceding sentence may be commercially reasonable, based on the relevant facts and circumstances.

(5) *Unreturned capital*—(i) *In general.* Unreturned capital is computed on a weighted-average basis and equals the excess of—

(A) The amount of money and the fair market value of property contributed by the partner to the partnership (net of liabilities assumed, or taken subject to, by the partnership); over

(B) The amount of money and the fair market value of property (net of liabilities assumed, or taken subject to, by the partner) distributed by the partnership to the partner as a return of capital.

(ii) *Return of capital.* In determining whether a distribution constitutes a return of capital, all relevant facts and circumstances are taken into account. However, the designation of distributions in a written partnership agreement generally will be respected in determining whether a distribution constitutes a return of capital, so long as the designation is economically reasonable.

(6) *Timing rules*—(i) *Limitation on allocations of income with respect to reasonable preferred returns for capital.* Items of income and gain (or part of what would otherwise be overall partnership income) that may be allocated to a partner in a taxable year with respect to a reasonable preferred return for capital are disregarded for purposes of the fractions rule only to the extent the allocable amount will not exceed—

(A) The aggregate of the amount that has been distributed to the partner as a reasonable preferred return for the taxable year of the allocation and prior taxable years, on or before the due date (not including extensions) for filing the partnership's return for the taxable year of the allocation; minus

(B) The aggregate amount of corresponding income and gain (and what would otherwise be overall partnership income) allocated to the partner in all prior years.

(ii) *Reasonable guaranteed payments may be deducted only when paid in cash.* If a partnership that avails itself of paragraph (d)(3) of this section would otherwise be required (by virtue of its method of accounting) to deduct a reasonable guaranteed payment to a qualified organization earlier than the taxable year in which it is paid in cash, the partnership must delay the deduction of the guaranteed payment until the taxable year it is paid in cash. For purposes of this paragraph (d)(6)(ii), a guaranteed payment that is paid in cash on or before the due date (not including extensions) for filing the partnership's return for a taxable year may be treated as paid in that prior taxable year.

(7) *Examples.* The following examples illustrate the provisions of this paragraph (d).

Facts. Qualified organization QO and taxable corporation TP form a partnership. QO contributes $9,000 to the partnership and TP contributes $1,000. The partnership borrows $50,000 from a third party lender and purchases an office building for $55,000. At all relevant times the safe harbor rate described in paragraph (d)(4)(ii) of this section equals 10 percent.

Example 1. Allocations made with respect to preferred returns. (i) The partnership agreement provides that in each taxable year the partnership's *distributable cash* is first to be distributed to QO as a 10 percent preferred return on its unreturned capital. To the extent the partnership has insufficient cash to pay QO its preferred return in any taxable year, the preferred return is compounded (at 10 percent) and is to be paid in future years to the extent the partnership has distributable cash. The partnership agreement first allocates gross income and gain 100 percent to QO, to the extent cash has been distributed to QO as a preferred return. All remaining profit or loss is allocated 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. Items of income and gain that may be specially allocated to QO with respect to its preferred return are disregarded in computing overall partnership income or loss for purposes of the fractions rule because the requirements of paragraph (d) of this section are satisfied. After disregarding those allocations, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(iii) The facts are the same as in paragraph (i) of this *Example 1,* except that QO's preferred return is computed on unreturned capital at a rate that exceeds a commercially reasonable rate. The partnership violates the fractions rule. The income and gain that may be specially allocated to QO with respect to the preferred return is not disregarded in computing overall partnership income or loss to the extent it exceeds a commercially reasonable rate. See paragraph (d) of this section. As a result, QO's fractions rule percentage is less than 50 percent (see paragraph (c)(2) of this section), and allocations of income and gain to QO with respect to its preferred return could result in QO being allocated more than 50 percent of the overall partnership income in a taxable year.

Example 2. Guaranteed payments and the computation of overall partnership income or loss. (i) The partnership agreement allocates all bottom-line partnership income and loss 50 percent to QO and 50 percent to TP throughout the life of the partnership. The partnership agreement provides that QO is entitled each year to a 10 percent guaranteed payment on unreturned capital. To the extent the partnership is unable to make a guaranteed payment in any taxable year, the unpaid amount is compounded at 10 percent and is to be paid in future years.

(ii) Assuming the requirements of paragraph (d)(6)(ii) of this section are met, the partnership satisfies the fractions rule. The guaranteed payment is disregarded for purposes of the fractions rule because it is computed with respect to unreturned capital at the safe harbor rate described in paragraph (d)(4)(ii) of this section. Therefore, the guaranteed payment is treated as an item of deduction in computing overall partnership income or loss, and the corresponding income that QO may receive or accrue with respect to the guaranteed payment is not treated as an allocable share of overall partnership income or loss. See paragraph (d)(3) of this section. Accordingly, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(e) *Chargebacks and offsets*—(1) *In general.* The following allocations are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(i) Allocations of what would otherwise be overall partnership income that may be made to chargeback (i.e., reverse) prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization, and allocations of what would otherwise be overall partnership loss that may be made to chargeback prior disproportionately small allocations of overall partnership income (or part of the overall partnership income) to a qualified organization;

(ii) Allocations of income or gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of nonrecourse deductions to the partner;

(iii) Allocations of income or gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of partner nonrecourse deductions to the partner and allocations of income or gain that may be made to other partners to chargeback compensating allocations of other losses, deductions, or section 705(a)(2)(B) expenditures to the other partners; and

(iv) Allocations of items of income or gain that may be made to a partner pursuant to a qualified income offset, within the meaning of § 1.704-1(b)(2)(ii)(*d*).

(2) *Disproportionate allocations*—(i) *In general.* To qualify under paragraph (e)(1)(i) of this section, prior disproportionate allocations may be reversed in full or in part, and in any order, but must be reversed in the same ratio as originally made. A prior allocation is disproportionately large if the qualified organization's percentage share of that allocation exceeds its fractions rule percentage. A prior allocation is disproportionately small if the qualified organization's percentage share of that allocation is less than its fractions rule percentage. However, a prior allocation (or allocations) is not considered disproportionate unless the balance of the overall partnership income or loss for the taxable year of the allocation is allocated in a manner that would independently satisfy the fractions rule.

(ii) *Limitation on chargebacks of partial allocations.* Except in the case of a chargeback allocation pursuant to paragraph (e)(4) of this section, and except as otherwise provided by the Internal Revenue Service by revenue ruling, revenue procedure, or, on a case-by-case basis, by letter ruling, paragraph (e)(1)(i) of this section applies to a chargeback of an allocation of part of the overall partnership income or loss only if that part consists of a pro rata portion of each item of partnership income, gain, loss, and deduction (other than nonrecourse deductions, as well as partner nonrecourse deductions and compensating allocations) that is included in computing overall partnership income or loss.

(3) *Minimum gain chargebacks attributable to nonrecourse deductions.* Commencing with the first taxable year of the partnership in which a minimum gain chargeback (or partner nonrecourse debt minimum gain chargeback) occurs, a chargeback to a partner is attributable to nonrecourse deductions (or separately, on a debt-by-debt basis, to partner nonrecourse deductions) in the same proportion that the partner's percentage share of the partnership minimum gain (or separately, on a debt-by-debt basis, the partner nonrecourse debt minimum gain) at the end of the immediately preceding taxable year is attributable to nonrecourse deductions (or partner nonrecourse deductions). The partnership must determine the extent to which a partner's percentage share of the partnership minimum gain (or partner nonrecourse debt minimum gain) is attributable to deductions in a reasonable and consistent manner. For example, in those cases in which none of the exceptions contained in § 1.704-2(f) (2) through (5) are relevant, a partner's percentage share of the partnership minimum gain generally is attributable to nonrecourse deductions in the same ratio that—

(i) The aggregate amount of the nonrecourse deductions previously allocated to the partner but not charged back in prior taxable years; bears to

(ii) The sum of the amount described in paragraph (e)(3)(i) of this section, plus the aggregate amount of distributions previously made to the partner of proceeds of a nonrecourse liability allocable to an increase in partnership minimum gain but not charged back in prior taxable years.

(4) *Minimum gain chargebacks attributable to distribution of nonrecourse debt proceeds*—(i) *Chargebacks disregarded until allocations made.* Allocations of items of income and gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain attributable to the distribution of proceeds of a nonrecourse liability (or a partner nonrecourse debt) are taken into account for purposes of the fractions rule only to the extent an allocation is made. (See paragraph (d)(2) of this section, pursuant to which there is permanently excluded chargeback allocations of minimum gain that are attributable to proceeds distributed as a reasonable preferred return.)

(ii) *Certain minimum gain chargebacks related to returns of capital.* Allocations of items of income or gain that (in accordance with § 1.704-2(f)(1)) may be made to a partner pursuant to a minimum gain chargeback attributable to the distribution of proceeds of a nonrecourse liability are disregarded in computing overall partnership income or loss for purposes of the fractions rule to the extent that the allocations (subject to the requirements of paragraph (e)(2) of this section) also charge back prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization. This exception applies only to the extent the disproportionately large allocation consisted of depreciation from real property (other than items of nonrecourse deduction or partner nonrecourse deduction) that subsequently was used to secure the nonrecourse liability providing the distributed proceeds, and only if those proceeds were distributed as a return of capital and in the same proportion as the disproportionately large allocation.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (e).

Example 1. Chargebacks of disproportionately large allocations of overall partnership loss. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes $900 to the partnership and TP contributes $100. The partnership agreement allocates overall partnership loss 50 percent to QO and 50 percent to TP until TP's capital account is reduced to zero; then 100 percent to QO until QO's capital account is reduced to zero; and thereafter 50 percent to QO and 50 percent to TP. *Overall partnership income* is allocated first 100 percent to QO to chargeback overall partnership loss allocated 100 percent to QO, and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent. See paragraph (c)(2) of this section. Therefore, the 100 percent allocation of overall partnership loss to QO is disproportionately large. See paragraph (e)(2)(i) of this section. Accordingly, the 100 percent allocation to QO of what would otherwise be overall partnership income (if it were not disregarded), which charges back the disproportionately large allocation of overall partnership loss, is disregarded in computing overall partnership income and loss for purposes of the fractions rule. The 100 percent allocation is in the same ratio as the disproportionately large loss allocation, and the rest of the allocations for the taxable year of the disproportionately large loss allocation will independently satisfy the fractions rule. See paragraph (e)(2)(i) of this section. After disregarding the chargeback allocation of 100 percent of what would otherwise be overall partnership income, QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

Example 2. Chargebacks of disproportionately small allocations of overall partnership income. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes $900 to the partnership and TP contributes $100. The partnership purchases real property with money contributed by its partners and with money borrowed by the partnership on a recourse basis. In any year, the partnership agreement allocates the first $500 of overall partnership income 50 percent to QO and 50 percent to TP; the next $100 of overall partnership income 100 percent to TP (as an incentive for TP to achieve significant profitability in managing the partnership's operations); and all remaining overall partnership income 50 percent to QO and 50 percent to TP. *Overall partnership loss* is allocated first 100 percent to TP to chargeback overall partnership income allocated 100 percent to TP at any time in the prior three years and not reversed; and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent because qualifying chargebacks are disregarded pursuant to paragraph (e)(1)(i) in computing overall partnership income or loss. See paragraph (c)(2) of this section. The zero percent allocation to QO of what would otherwise be overall partnership loss is a qualifying chargeback that is disregarded because it is in the same ratio as the income allocation it charges back, because the rest of the allocations for the taxable year of that income allocation will independently satisfy the fractions rule (see paragraph (e)(2)(i) of this section), and because it charges back an allocation of zero overall partnership income to QO, which is proportionately smaller (i.e., disproportionately small) than QO's 50 percent fractions rule percentage. After disregarding the chargeback allocation of 100 percent of what would otherwise be overall partnership loss, QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

Example 3. Chargebacks of partner nonrecourse deductions and compensating allocations of other items. (i) Qualified organization QO and taxable corporation TP form a partnership to own and operate encumbered real property. QO and TP each contribute $500 to the partnership. In addition, QO makes a $300 nonrecourse loan to the partnership. The partnership agreement contains a partner nonrecourse debt minimum gain chargeback provision and a provision that allocates partner nonrecourse deductions to the partner who bears the economic burden of the deductions in accordance with § 1.704–2. The partnership agreement also provides that to the extent partner nonrecourse deductions are allocated to QO in any taxable year, other compensating items of partnership loss or deduction (and, if appropriate, section 705(a)(2)(B) expenditures) will first be allocated 100 percent to TP. In addition, to the extent items of income or gain are allocated to QO in any taxable year pursuant to a partner nonrecourse debt minimum gain chargeback of deductions, items of partnership income and gain will first be allocated 100 percent to TP. The partnership agreement allocates all other overall partnership income or loss 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule on a prospective basis. The allocations of the partner nonrecourse deductions and the compensating allocation of other items of loss, deduction, and expenditure that may be made to TP (but which will not be made unless there is an allocation of partner nonrecourse deductions to QO) are not taken into account for purposes of the fractions rule until a taxable year in which an allocation is made. See paragraph (j)(1) of this section. In addition, partner nonrecourse debt minimum gain chargebacks of deductions and allocations of income or gain to other partners that chargeback compensating allocations of other deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule. See paragraph (e)(1)(iii) of this section. Since all other overall partnership income and loss is allocated 50 percent to QO and 50 percent to TP, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

(iii) The facts are the same as in paragraph (i) of this *Example 3*, except that the partnership agreement provides that compensating allocations of loss or deduction (and section 705(a)(2)(B) expenditures) to TP will not be charged back until year 10. The partners expect $300 of partner nonrecourse deductions to be allocated to QO in year 1 and $300 of income or gain to be allocated to QO in year 2 pursuant to the partner nonrecourse debt minimum gain chargeback provision.

(iv) The partnership fails to satisfy the fractions rule on a prospective basis under the anti-abuse rule of paragraph (k)(4) of this section. If the partners' expectations prove correct, at the end of year 2, QO will have been allocated $300 of partner nonrecourse deductions and an offsetting $300 of partner nonrecourse debt minimum gain. However, the $300 of compensating deductions and losses that may be allocated to TP will not be charged back until year 10. Thus, during the period beginning at the end of year 2 and ending eight years later, there may be $300 more of unreversed deductions and losses allocated to TP than to QO, which would be inconsistent with the purpose of the fractions rule.

Example 4. Minimum gain chargeback attributable to distributions of nonrecourse debt proceeds. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes $900 to the partnership and TP contributes $100. The partnership agreement generally allocates overall partnership income and loss 90 percent to QO and 10 percent to TP. However, the partnership agreement contains a minimum gain chargeback provision, and also provides that in any partnership taxable year in which there is a chargeback of partnership minimum gain to QO attributable to distributions of proceeds of nonrecourse liabilities, all other items comprising overall partnership income or loss will be allocated in a manner such that QO is not allocated more than 90 percent of the overall partnership income for the year.

(ii) The partnership satisfies the fractions rule on a prospective basis. QO's fractions rule percentage is 90 percent. See paragraph (c)(2) of this section. The chargeback that may be made to QO of minimum gain attributable to distributions of nonrecourse liability proceeds is taken into account for purposes of the fractions rule only to the extent an allocation is made. See paragraph (e)(4) of this section. Accordingly, that potential allocation to QO is disregarded in applying the fractions rule on a prospective basis (see paragraph (b)(2) of this section), and QO is treated as not being allocated a percentage share of overall partnership income in excess of its fractions rule percentage in any taxable year. (Similarly, QO is treated as not being allocated items of income or gain in a taxable year when the partnership has an overall partnership loss.)

(iii) In year 3, the partnership borrows $400 on a nonrecourse basis and distributes it to QO as a return of capital. In year 8, the partnership has $400 of gross income and cash flow and $300 of overall partnership income, and the partnership repays the $400 nonrecourse borrowing.

(iv) The partnership violates the fractions rule for year 8 and all future years. Pursuant to the minimum gain chargeback provision, the entire $400 of partnership gross income is allocated to QO. Accordingly, notwithstanding the curative provision in the partnership agreement that would allocate to TP the next $44 (($400÷.9)×10%) of income and gain included in computing overall partnership income, the partnership has no other items of income and gain to allocate to QO. Because the $400 of gross income actually allocated to QO is taken into account for purposes of the fractions rule in the year an allocation is made (see paragraph (e)(4) of this section), QO's percentage share of overall partnership income in year 8 is greater than 100 percent. Since this exceeds QO's fractions rule percentage (i.e., 90 percent), the partnership violates the fractions rule for year 8 and all subsequent taxable years. See paragraph (b)(2) of this section.

(f) *Exclusion of reasonable partner-specific items of deduction or loss.* Provided that the expenditures are allocated to the partners to whom they are attributable, the following partner-specific expenditures are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(1) Expenditures for additional record-keeping and accounting incurred in connection with the transfer of a partnership interest (including expenditures incurred in computing basis adjustments under section 743(b));

(2) Additional administrative costs that result from having a foreign partner;

(3) State and local taxes or expenditures relating to those taxes; and

(4) Expenditures designated by the Internal Revenue Service by revenue ruling or revenue procedure, or, on a case-by-case basis, by letter ruling. (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(g) *Exclusion of unlikely losses and deductions.* Unlikely losses or deductions (other than items of nonrecourse deduction) that may be specially allocated to partners that bear the economic burden of those losses or deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule, so long as a principal purpose of the allocation is not tax avoidance. To be excluded under this paragraph (g), a loss or deduction must have a low likelihood of occurring, taking into account all relevant facts, circumstances, and information available to the partners (including bona fide financial projections). The types of events that may give rise to unlikely losses or deductions, depending on the facts and circumstances, include tort and other third-party litigation that give rise to unforeseen liabilities in excess of reasonable insurance coverage; unanticipated labor strikes; unusual delays in securing required permits or licenses; abnormal weather conditions (considering the season and the job site); significant delays in leasing property due to an unanticipated severe economic downturn in the geographic area; unanticipated cost overruns; and the discovery of environmental conditions that require remediation. No inference is drawn as to whether a loss or deduction is unlikely from the fact that the partnership agreement includes a provision for allocating that loss or deduction.

(h) *Provisions preventing deficit capital account balances.* A provision in the partnership agreement that allocates items of loss or deduction away from a qualified organization in instances where allocating those items to the qualified organization would cause or increase a deficit balance in its capital account that the qualified organization is not obligated to restore (within the meaning of § 1.704–1(b)(2)(ii) (*b*) or (*d*)), is disregarded for purposes of the fractions rule in taxable years of the partnership in which no such allocations are made pursuant to the provision. However, this exception applies only if, at the time the provision becomes part of the partnership agreement, all relevant facts, circumstances, and information (including bona fide financial projections) available to the partners reasonably indicate that it is unlikely that an allocation will be made pursuant to the provision during the life of the partnership.

(i) [Reserved]

(j) *Exception for partner nonrecourse deductions*—(1) *Partner nonrecourse deductions disregarded until actually allocated.* Items of partner nonrecourse deduction that may be allocated to a partner pursuant to § 1.704–2, and compensating allocations of other items of loss, deduction, and section 705(a)(2)(B) expenditures that may be allocated to other partners, are not taken into account for purposes of the fractions rule until the taxable years in which they are allocated.

(2) *Disproportionate allocation of partner nonrecourse deductions to a qualified organization.* A violation of the fractions rule will be disregarded if it arises because an allocation of partner nonrecourse deductions to a qualified organization that is not motivated by tax avoidance reduces another qualified organization's fractions rule percentage below what it would have been absent the allocation of the partner nonrecourse deductions.

(k) *Special rules*—(1) *Changes in partnership allocations arising from a change in the partners' interests.* A qualified organization that acquires a partnership interest from another qualified organization is treated as a continuation of the prior qualified organization partner (to the extent of that acquired interest) for purposes of applying the fractions rule. Changes in partnership allocations that result from other transfers or shifts of partnership interests will be closely scrutinized (to determine whether the transfer or shift stems from a prior agreement, understanding, or plan or could otherwise be expected given the structure of the transaction), but generally will be taken into account only in determining whether the partnership satisfies the fractions rule in the taxable year of the change and subsequent taxable years.

(2) *De minimis interest rule*—(i) *In general.* Section 514(c)(9)(B)(vi) does not apply to a partnership otherwise subject to that section if—

(A) Qualified organizations do not hold, in the aggregate, interests of greater than five percent in the capital or profits of the partnership; and

(B) Taxable partners own substantial interests in the partnership through which they participate in the partnership on substantially the same terms as the qualified organization partners.

(ii) *Example.* Partnership *PRS* has two types of limited partnership interests that participate in partnership profits and losses on different terms. Qualified organizations (QOs) only own one type of limited partnership interest and own no general partnership interests. In the aggregate, the QOs own less than five percent of the capital and profits of *PRS*. Taxable partners also own the same type of limited partnership interest that the QOs own. These limited partnership interests owned by the taxable partners are 30 percent of the capital and profits of *PRS*. Thirty percent is a substantial interest in the partnership. Therefore, *PRS* satisfies paragraph (k)(2) of this section and section 514(c)(9)(B)(vi) does not apply.

(3) *De minimis allocations disregarded.* A qualified organization's fractions rule percentage of the partnership's items of loss and deduction, other than nonrecourse and partner nonrecourse deductions, that are allocated away from the qualified organization and to other partners in any taxable year are treated as having been allocated to the qualified organization for purposes of the fractions rule if—

(i) The allocation was neither planned nor motivated by tax avoidance; and

(ii) The total amount of those items of partnership loss or deduction is less than both—

(A) One percent of the partnership's aggregate items of gross loss and deduction for the taxable year; and

(B) $50,000.

(4) *Anti-abuse rule.* The purpose of the fractions rule is to prevent tax avoidance by limiting the permanent or temporary transfer of tax benefits from tax-exempt partners to taxable partners, whether by directing income or gain to tax-exempt partners, by directing losses, deductions, or credits to taxable partners, or by some other similar manner. This section may not be applied in a manner that is inconsistent with the purpose of the fractions rule.

(l) [Reserved].

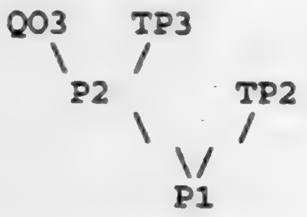
(m) *Tiered partnerships*—(1) *In general.* If a qualified organization holds an indirect interest in real property through one or more tiers of partnerships (a chain), the fractions rule is satisfied only if—

(i) The avoidance of tax is not a principal purpose for using the tiered-ownership structure (investing in separate real properties through separate chains of partnerships so that section 514(c)(9)(E) is, effectively, applied on a property-by-property basis is not, in and of itself, a tax avoidance purpose); and

(ii) The relevant partnerships can demonstrate under any reasonable method that the relevant chains satisfy the requirements of paragraphs (b)(2) through (k) of this section. For purposes of applying § 1.704–2(k) under the independent chain approach described in Example 3 of paragraph (m)(2) of this section, allocations of items of income or gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain are taken into account for purposes of the fractions rule only to the extent an allocation is made.

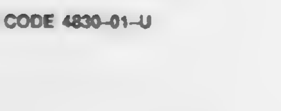
(2) *Examples.* The following examples illustrate the provisions of this paragraph (m).

Example 1. Tiered partnerships—collapsing approach. (i) Qualified organization QO3 and taxable individual TP3 form upper-tier partnership P2. The P2 partnership agreement allocates overall partnership income 20 percent to QO3 and 80 percent to TP3. Overall partnership loss is allocated 30 percent to QO3 and 70 percent to TP3. P2 and taxable individual TP2 form lower-tier partnership P1. The P1 partnership agreement allocates overall partnership income 60 percent to P2 and 40 percent to TP2. Overall partnership loss is allocated 40 percent to P2 and 60 percent to TP2. The only asset of P2 (which has no outstanding debt) is its interest in P1. P1 purchases real property with money contributed by its partners and with borrowed money. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



(ii) P2 can demonstrate that the P2/P1 chain satisfies the requirements of paragraphs (b)(2) through (k) of this section by collapsing the tiered-partnership structure. On a collapsed basis, QO3's fractions rule percentage is 12 percent (30 percent of 40 percent). See paragraph (c)(2) of this section. P2 satisfies the fractions rule because QO3 may not be allocated more than 12 percent (20 percent of 60 percent) of overall partnership income in any taxable year.

Example 2. Tiered partnerships—entity-by-entity approach. (i) Qualified organization QO3A is a partner with taxable individual TP3A in upper-tier partnership P2A. Qualified organization QO3B is a partner with taxable individual TP3B in upper-tier partnership P2B. P2A, P2B, and taxable individual TP2 are partners in lower-tier partnership P1, which owns encumbered real estate. None of QO3A, QO3B, TP3A, TP3B or TP2 has a direct or indirect ownership interest in each other. P2A has been established for the purpose of investing in numerous real estate properties independently of P2B and its partners. P2B has been established for the purpose of investing in numerous real estate properties independently of P2A and its partners. Neither P2A nor P2B has outstanding debt. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



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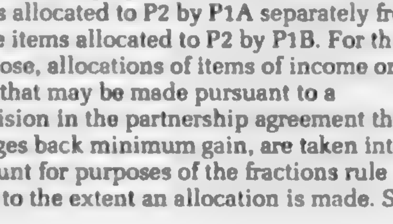
(ii) The P2A/P1 chain (Chain A) will satisfy the fractions rule if P1 and P2A can demonstrate in a reasonable manner that they satisfy the requirements of paragraphs (b)(2) through (k) of this section. The P2B/P1 chain (Chain B) will satisfy the fractions rule if P1 and P2B can demonstrate in a reasonable manner that they satisfy the requirements of paragraphs (b)(2) through (k) of this section. To meet its burden, P1 treats P2A and P2B as qualified organizations. Provided that the allocations that may be made by P1 would satisfy the fractions rule if P2A and P2B were direct qualified organization partners in P1, Chain A will satisfy the fractions rule (for the benefit of QO3A) if the allocations that may be made by P2A satisfy the requirements of paragraphs (b)(2) through (k) of this section. Similarly, Chain B will satisfy the fractions rule (for the benefit of QO3B) if the allocations that may be made by P2B satisfy the requirements of paragraphs (b)(2) through (k) of this section. Under these facts, QO3A does not have to know how income and loss may be allocated by P2B, and QO3B does not have to know how income and loss may be allocated by P2A. QO3A's and QO3B's burden would not change even if TP2 were not a partner in P1.

Example 3. Tiered partnerships—independent chain approach. (i) Qualified organization QO3 and taxable corporation TP3 form upper-tier partnership P2. P2 and taxable corporation TP2 form lower-tier partnership P1A. P2 and qualified organization QO2 form lower-tier partnership P1B. P2 has no outstanding debt. P1A and P1B each purchase real property with money contributed by their respective partners and with borrowed money. Each partnership's real property is completely unrelated to the real property owned by the other partnership. P1B's allocations do not satisfy the requirements of paragraphs (b)(2) through (k) of this section because of allocations that may be made to QO2. However, if P2's interest in P1B were completely disregarded, the P2/P1A chain would satisfy the requirements of paragraphs (b)(2) through (k) of this section. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



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(ii) P2 satisfies the fractions rule with respect to the P2/P1A chain, but only if the P2 partnership agreement allocates those items allocated to P2 by P1A separately from those items allocated to P2 by P1B. For this purpose, allocations of items of income or gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain, are taken into account for purposes of the fractions rule only to the extent an allocation is made. See paragraph (m)(1)(ii) of this section. P2 does not satisfy the fractions rule with respect to the P2/P1B chain.

(n) *Effective date*—(1) *In general.* Section 514(c)(9)(E), as amended by sections 2004(h) (1) and (2) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, applies generally with respect to property acquired by partnerships after October 13, 1987, and to partnership interests acquired after October 13, 1987.

(2) *General effective date of the regulations.* Section 1.514(c)-2 (a) through (m) applies with respect to partnership agreements entered into after December 30, 1992, property acquired by partnerships after December 30, 1992, and partnership interests acquired by qualified organizations after December 30, 1992 (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization). For this purpose, paragraphs (a) through (m) of this section will be treated as satisfied with respect to partnership agreements entered into on or before May 13, 1994, property acquired by partnerships on or before May 13, 1994, and partnership interests acquired by qualified organizations on or before May 13, 1994, if the guidance set forth in (paragraphs (a) through (m) of § 1.514(c)-2 of) PS-56-90, published at 1993-5 I.R.B. 42, February 1, 1993, is satisfied. (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(3) *Periods after June 24, 1990, and prior to December 30, 1992.* To satisfy the requirements of section 514(c)(9)(E) with respect to partnership agreements entered into after June 24, 1990, property acquired by partnerships after June 24, 1990, and partnership interests acquired by qualified organizations after June 24, 1990, (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization) to which paragraph (n)(2) of this section does not apply, paragraphs (a) through (m) of this section must be satisfied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property, or acquired interest. For this purpose, paragraphs (a) through (m) of this section will be treated as satisfied if the guidance in sections I through VI of Notice 90-41, 90-1 C.B. 350, (see § 601.601(d)(2)(ii)(*b*) of this chapter) has been followed.

(4) *Periods prior to the issuance of Notice 90-41.* With respect to partnerships commencing after October 13, 1987, property acquired by partnerships after October 13, 1987, and partnership interests acquired by qualified organizations after October 13,

1987, to which neither paragraph (n)(2) nor (n)(3) of this section applies, the Internal Revenue Service will not challenge an interpretation of section 514(c)(9)(E) that is reasonable in light of the underlying purposes of section 514(c)(9)(E) (as reflected in its legislative history) and that is consistently applied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property, or acquired interest. A reasonable interpretation includes an interpretation that substantially follows the guidance in either sections I through VI of Notice 90–41, (see § 601.601(d)(2)(ii)(*b*) of this chapter) or paragraphs (a) through (m) of this section.

(5) Material modifications to partnership agreements. A material modification will cause a partnership agreement to be treated as a new partnership agreement in appropriate circumstances for purposes of this paragraph (n).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: April 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–11612 Filed 5–11–94; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8537]

RIN 1545–AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of carryover of passive activity losses and credits and at risk losses to the bankruptcy estates of individuals. The final regulations affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

DATES: These regulations are effective May 13, 1994.

These regulations apply to bankruptcy cases commencing on or after November 9, 1992. In addition, the regulations apply, at the election of the affected taxpayers, to cases that commenced before, and end on or after, November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Amy J. Sargent of the Office of Assistant Chief Counsel (Income Tax & Accounting), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or telephone (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1375. The estimated annual burden per respondent varies from .5 hour to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 1398 of the Internal Revenue Code (Code). On November 9, 1992, the IRS published in the **Federal Register** a notice of proposed rulemaking designating passive activity losses and credits under section 469 and unused section 465 losses as attributes that pass from the debtor to the bankruptcy estate under section 1398(g) of the Code and that, upon termination of the estate, pass from the bankruptcy estate to the debtor under section 1398(i). Corrections to the Notice of Proposed Rulemaking were published in the **Federal Register** on December 22, 1992 (57 FR 246). A public hearing was held on January 25, 1993. After consideration of the public comments regarding the proposed regulations, the final regulations adopt the rules contained in the proposed regulations without substantive change. A discussion of the public comments is set forth below.

Public Comments

The comments received by the IRS were generally favorable, welcoming the designation of attributes under section 1398(g)(8). Several commentators suggested that the regulations be modified. These suggestions are discussed below

I. Expansion of the Proposed Regulations to Include Additional Attributes

The proposed regulations designate passive activity losses and credits under section 469 and losses under section 465 as attributes that pass from the debtor to the estate. Several commentators suggested that the scope of the proposed regulations be expanded to include additional attributes of the debtor, either by specifically listing the additional attributes or by providing that attributes of the debtor pass to the estate if they are related to property passing to the estate or are in the nature of a carryforward.

These suggestions were not adopted in the final regulations. The treatment of other unenumerated attributes under section 1398 (g) and (i) is more appropriately provided in a separate regulation project. This would provide taxpayers with an opportunity to comment before additional attributes of the debtor are designated, by final regulation, as attributes that pass to the estate.

II. Taxation of Estate's Transfers of an Interest in a Passive Activity or Former Passive Activity or an Interest in a Section 465 Activity Before Termination of the Estate

The proposed regulations provide that if, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Code assigning tax consequences to a disposition. By way of example, the proposed regulations state that such transfers include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title. The proposed regulations provide similar rules for the transfer of a section 465 activity.

Several commentators objected on the grounds that these provisions are outside the scope of the regulatory authority of the IRS under section 1398(g) and (i). In general, these commentators maintained that the regulatory authority of the IRS is limited to listing attributes that pass from the debtor to the estate and that, upon termination of the estate, pass to the debtor. In addition, one commentator contended that the provisions relating to pre-termination transfers between the estate and the debtor constitute an improper attempt to amend by regulation the express language of section 1398(f)(2). Commentators also questioned the treatment of abandonments as nontaxable dispositions, reiterating many of the arguments set forth in *In re A.J. Lane & Co.*, 133 B.R. 264 (Bankr. D. Mass. 1991), which stated in *dicta* that abandonments are taxable dispositions. *See also In re Rubin*, 154 B.R. 897 (Bankr. D. Md. 1992).

The final regulations retain the rules of the proposed regulations. Although section 1398 does not provide explicit rules relating to pre-termination transfers between the estate and the debtor, the Secretary has authority pursuant to section 7805(a) to issue interpretative regulations under section 1398. The IRS and the Treasury Department believe the rules adopted in the final regulations are consistent with the overall system established by section 1398 and, in the absence of a contrary statutory provision, are a reasonable exercise of the Secretary's authority under section 7805(a). Moreover, the rules adopted in the final regulations are consistent with the only appellate court case on point, which holds that the transfer (other than by sale or exchange) of an asset from the estate to the debtor before the termination of the estate is a nontaxable disposition. See *In re Olson*, 100 B.R. 458 (Bankr. N.D. Iowa 1989), *aff'd*, 121 B.R. 346 (N.D. Iowa 1990), *aff'd*, 930 F.2d 6 (8th Cir. 1991).

III. Debtor's Succession to the Estate's Passive Activity Losses and Credits and Unused Section 465 Losses Before Termination of the Estate

As a corollary to the treatment of the estate's transfer of an interest in a passive activity or former passive activity as a nontaxable disposition, the proposed regulations provide that if, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the debtor succeeds to and takes into account the allocable portion of the estate's unused passive activity loss and credit attributable to the activity (determined as of the first day of the estate's taxable year in which the transfer occurs). The proposed regulations provide similar rules for section 465 losses.

The objections submitted by one commentator generally parallel the previously discussed objections to the treatment of the estate's transfer of an interest in a passive activity or former passive activity before the termination of the estate as a nontaxable disposition. The final regulations retain the rules in the proposed regulations.

IV. Effective Date

The provisions of §§ 1.1398–1 and 1.1398–2 were proposed to be effective for bankruptcy cases commencing on or after November 9, 1992. Several commentators suggested alternative effective dates for the final regulations. One commentator recommended that a more appropriate effective date would be the date the regulations become final. Another commentator contended that, at least in certain situations, the regulations should be effective for bankruptcy cases commencing prior to November 9, 1992.

The IRS and the Treasury Department believe that it is not necessary to delay the effective date because publication of the proposed regulations, which are being finalized without significant change, provided adequate notice of the new rules. In addition, limiting the application of the new rules to cases commenced after publication of the proposed regulations is clearly within the Treasury Department's authority to prescribe the extent to which regulations shall be applied without retroactive effect and conforms to the pattern of section 1398(g), which applies to cases commencing after March 25, 1981. Accordingly, the final regulations retain the effective date of the proposed regulations.

V. Joint Election to Have §§ 1.1398–1 and 1.1398–2 Apply to Cases Commenced Before November 9, 1992

For cases commenced prior to November 9, 1992, and terminating on or after that date, the proposed regulations apply only if a joint election is made by the debtor and the estate. In cases under chapter 7, the election is valid only with the written consent of the bankruptcy trustee. In cases under chapter 11, the election is valid only if it is incorporated (a) into a bankruptcy plan that is confirmed by the bankruptcy court, or (b) into an order of the court. Additionally, the caption "ELECTION PURSUANT TO § 1.1398–1 (or § 1.1398–2)" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns that is affected by the election.

One commentator recommended eliminating the requirement that the debtor join in the election. In general, this commentator felt that this requirement gave the debtor exclusive control over the passive activity losses and credits and unused section 465 losses to the detriment of the creditors.

The final regulations retain the requirement that the debtor join in the election. This requirement permits debtors to rely on the law in effect at the time they entered into bankruptcy.

One commentator suggested that because the consent of the debtor is required, the regulations should clarify that the written consent of the debtor is required in cases under chapter 7, in addition to the written consent of a bankruptcy trustee. The proposed regulations require the debtor to show consent by actually making the election. The debtor's election will be evidenced by the return on which it is made, and it is not clear what purpose would be served by an additional paperwork requirement. Accordingly, this suggestion was not adopted.

A commentator requested clarification as to whether the election could be made on an amended return. In response to this comment, the regulations clarify that the election can be made on an amended return.

Finally, a commentator requested that the regulations clarify whether the election is available for estates that are terminated after November 9, 1992, but before the adoption of final regulations. Because the regulations are sufficiently clear on this point, this comment was not adopted.

VI. Other Comments

One commentator requested that the regulations provide guidance on the determination of basis under section 1398(g)(6), which provides that, in the case of assets acquired by the estate from the debtor, the estate succeeds to the debtor's basis, determined as of the first day of the debtor's taxable year in which the case commenced. The specific guidance requested concerned the effect on basis of events (such as depreciation or distributions received by the debtor as the result of holding an interest in a passthrough entity) that occur after the first day of the debtor's taxable year in which the case commenced, but prior to the commencement date. It was also requested that the regulations provide guidance on the application of the "varying interest" rule of section 706(d)(1) to the estate. This guidance is outside the scope of these regulations. Accordingly, the final regulations do not provide guidance on these issues.

Special Analysis

It has been determined that these final regulations are not significant rules as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the proposed rules was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Amy J. Sargent of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. An undesignated center heading is added immediately following § 1.1388–1 to read as follows:

"Rules Relating to Individuals' Title 11 Cases"

Par. 3. Sections 1.1398–1 and 1.1398–2 are added to read as follows:

§ 1.1398–1 Treatment of passive activity losses and passive activity credits in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definitions and rules of general application.* For purposes of this section—

(1) *Passive activity* and *former passive activity* have the meanings given in section 469(c) and (f)(3);

(2) The unused passive activity loss (determined as of the first day of a taxable year) is the passive activity loss (as defined in section 469(d)(1)) that is disallowed under section 469 for the previous taxable year; and

(3) The unused passive activity credit (determined as of the first day of a taxable year) is the passive activity credit (as defined in section 469(d)(2)) that is disallowed under section 469 for the previous taxable year.

(c) *Estate succeeds to losses and credits upon commencement of case.* The bankruptcy estate (estate) succeeds to and takes into account, beginning with its first taxable year, the debtor's unused passive activity loss and unused passive activity credit (determined as of the first day of the debtor's taxable year in which the case commences).

(d) *Transfers from estate to debtor*—(1) *Transfer not treated as taxable event.* If, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Internal Revenue Code assigning tax consequences to a disposition. The transfers to which this rule applies include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title.

(2) *Treatment of passive activity loss and credit.* If, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange)—

(i) The estate must allocate to the transferred interest, in accordance with § 1.469–1(f)(4), part or all of the estate's unused passive activity loss and unused passive activity credit (determined as of the first day of the estate's taxable year in which the transfer occurs); and

(ii) The debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the transfer occurs, the unused passive activity loss and unused passive activity credit (or part thereof) allocated to the transferred interest.

(e) *Debtor succeeds to loss and credit of the estate upon its termination.* Upon termination of the estate, the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the termination occurs, the passive activity loss and passive activity credit disallowed under section 469 for the estate's last taxable year.

(f) *Effective date*—(1) *Cases commencing on or after November 9, 1992.* This section applies to cases commencing on or after November 9, 1992.

(2) *Cases commencing before November 9, 1992*—(i) *Election required.* This section applies to a case commencing before November 9, 1992, and terminating on or after that date if the debtor and the estate jointly elect its application in the manner prescribed in paragraph (f)(2)(v) of this section (the election). The caption "ELECTION PURSUANT TO § 1.1398–1" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns that is affected by the election. In the case of returns that are amended under paragraph (f)(2)(iii) of this section, this requirement is satisfied by placing the caption on the amended return.

(ii) *Scope of election.* This election applies to the passive and former passive activities and unused passive activity losses and passive activity credits of the taxpayers making the election.

(iii) *Amendment of previously filed returns.* The debtor and the estate making the election must amend all returns (except to the extent they are for a year that is a closed year within the meaning of paragraph (f)(2)(iv)(D) of this section) they filed before the date of the election to the extent necessary to provide that no claim of a deduction or credit is inconsistent with the succession under this section to unused losses and credits. The Commissioner may revoke or limit the effect of the election if either the debtor or the estate fails to satisfy the requirement of this paragraph (f)(2)(iii).

(iv) *Rules relating to closed years*—(A) Estate succeeds to debtor's passive activity loss and credit as of the commencement date. If, by reason of an election under this paragraph (f), this section applies to a case that was commenced in a closed year, the estate, nevertheless, succeeds to and takes into account the unused passive activity loss and unused passive activity credit of the debtor (determined as of the first day of the debtor's taxable year in which the case commenced).

(B) *No reduction of unused passive activity loss and credit for passive activity loss and credit not claimed for a closed year.* In determining a taxpayer's carryover of a passive activity loss or credit to its taxable year following a closed year, a deduction or credit that the taxpayer failed to claim in the closed year, if attributable to an unused passive activity loss or credit to which the taxpayer succeeded under this section, is treated as a deduction or credit that was disallowed under section 469.

(C) *Passive activity loss and credit to which taxpayer succeeds reflects deductions of prior holder in a closed year.* A loss or credit to which a taxpayer would otherwise succeed under this section is reduced to the extent the loss or credit was allowed to its prior holder for a closed year.

(D) *Closed year.* For purposes of this paragraph (f)(2)(iv), a taxable year is closed to the extent the assessment of a deficiency or refund of an overpayment is prevented, on the date of the election and at all times thereafter, by any law or rule of law.

(v) *Manner of making election*—(A) *Chapter 7 cases.* In a case under chapter 7 of title 11 of the United States Code, the election is made by obtaining the written consent of the bankruptcy trustee and filing a copy of the written consent with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is binding and irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

§ 1.1398–2 Treatment of section 465 losses in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules of general application.* For purposes of this section—

(1) *Section 465 activity* means an activity to which section 465 applies; and

(2) For each section 465 activity, the unused section 465 loss from the activity (determined as of the first day of a taxable year) is the loss (as defined in section 465(d)) that is not allowed under section 465(a)(1) for the previous taxable year.

(c) *Estate succeeds to losses upon commencement of case.* The bankruptcy estate (the estate) succeeds to and takes into account, beginning with its first taxable year, the debtor's unused section 465 losses (determined as of the first day of the debtor's taxable year in which the case commences).

(d) *Transfers from estate to debtor*—(1) *Transfer not treated as taxable event.* If, before the termination of the estate, the estate transfers an interest in a section 465 activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Internal Revenue Code assigning tax consequences to a disposition. The transfers to which this rule applies include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title.

(2) *Treatment of section 465 losses.* If, before the termination of the estate, the estate transfers an interest in a section 465 activity to the debtor (other than by sale or exchange) the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the transfer occurs, the transferred interest's share of the estate's unused section 465 loss from the activity (determined as of the first day of the estate's taxable year in which the transfer occurs). For this purpose, the transferred interest's share of such loss is the amount, if any, by which such loss would be reduced if the transfer had occurred as of the close of the preceding taxable year of the estate and been treated as a disposition on which gain or loss is recognized.

(e) *Debtor succeeds to losses of the estate upon its termination.* Upon termination of the estate, the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the termination occurs, the losses not allowed under section 465 for the estate's last taxable year.

(f) *Effective date*—(1) *Cases commencing on or after November 9, 1992.* This section applies to cases commencing on or after November 9, 1992.

(2) *Cases commencing before November 9, 1992*—(i) *Election required.* This section applies to a case commencing before November 9, 1992, and terminating on or after that date if the debtor and the estate jointly elect its application in the manner prescribed in paragraph (f)(2)(v) of this section (the election). The caption "ELECTION PURSUANT TO § 1.1398–2" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns that is affected by the election. In the case of returns that are amended under paragraph (f)(2)(iii) of this section, this requirement is satisfied by placing the caption on the amended return.

(ii) *Scope of election.* This election applies to the section 465 activities and unused losses from section 465 activities of the taxpayers making the election.

(iii) *Amendment of previously filed returns.* The debtor and the estate making the election must amend all returns (except to the extent they are for a year that is a closed year within the meaning of paragraph (f)(2)(iv)(D) of this section) they filed before the date of the election to the extent necessary to provide that no claim of a deduction is inconsistent with the succession under this section to unused losses from section 465 activities. The Commissioner may revoke or limit the effect of the election if either the debtor or the estate fails to satisfy the requirement of this paragraph (f)(2)(iii).

(iv) *Rules relating to closed years*—(A) *Estate succeeds to debtor's section 465 loss as of the commencement date.* If, by reason of an election under this paragraph (f), this section applies to a case that was commenced in a closed year, the estate, nevertheless, succeeds to and takes into account the section 465 losses of the debtor (determined as of the first day of the debtor's taxable year in which the case commenced).

(B) *No reduction of unused section 465 loss for loss not claimed for a closed year.* In determining a taxpayer's carryover of an unused section 465 loss to its taxable year following a closed year, a deduction that the taxpayer failed to claim in the closed year, if attributable to an unused section 465 loss to which the taxpayer succeeds under this section, is treated as a deduction that was not allowed under section 465.

(C) *Loss to which taxpayer succeeds reflects deductions of prior holder in a closed year.* A loss to which a taxpayer would otherwise succeed under this section is reduced to the extent the loss was allowed to its prior holder for a closed year.

(D) *Closed year.* For purposes of this paragraph (f)(2)(iv), a taxable year is closed to the extent the assessment of a deficiency or refund of an overpayment is prevented, on the date of the election and at all times thereafter, by any law or rule of law.

(v) *Manner of making election*—(A) *Chapter 7 cases.* In a case under chapter 7 of title 11 of the United States Code, the election is made by obtaining the written consent of the bankruptcy trustee and filing a copy of the written consent with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is binding and irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101(c), entries are added to the table in numerical order to read as follows:

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1398–1	1545–1375
1.1398–2	1545–1375
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: April 6, 1994.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 94–11493 Filed 05–12–94; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in June 1994, and to multiemployer plans with valuation dates in June 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the June 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in a single-employer plans that have termination dates during June 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during June 1994.

For annuity benefits, the interest rates will be 6.70% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25% for the period during which benefits are in pay status, 4.5% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for May 1994) of .20 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions are unchanged from those in effect for May 1994.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during June 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during June 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 8 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in a pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (Y is an integer and $0<y\leq n_1$), interest rate i^1, shall apply from the valuation date for a period of y years, thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * *								
8	6–1–94	7–1–94	5.25	4.50	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49 (b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * * * * * *						
June 1994	.0670	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b) (3), 1399 (c) (1) (D), 1441(b) (1).

4. In appendix B, Rate Set 8 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $V^{0\ n}$ (as defined in § 2676.13 (b) (1)) for purposes of applying the formulas set forth in § 2677.13(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_4$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_4$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * *								
8	6–1–94	7–1–94	5.25	4.50	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $V^{0\ n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * * * * * *						
June 1994	.0670	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 11th day of May 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–11826 Filed 5–12–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–94–012]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements special local regulations for the Great Chesapeake Bay Swim Event to be held on June 12, 1994. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: This regulation is effective from 6:30 a.m. until 1 p.m., on June 12, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Baltimore (410) 576–8516.

DRAFTING INFORMATION: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Discussion:

Mr. Charles Nabit, a representative of the March of Dimes, submitted an application on November 23, 1993 to hold the Great Chesapeake Bay Swim Event on June 12, 1994. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. This is the type of event contemplated by these regulations and the safety of the participants depends upon control of vessel traffic, therefore the regulations in 33 CFR 100.507 are implemented. During the swim itself, all vessel traffic will have to be stopped. However, vessel traffic will be permitted to transit the regulated area as the swim progresses. As a result, commercial traffic should not be severely disrupted.

Dated: April 9, 1994.

W. T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 94–11710 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–94–013]

Special Local Regulations for Marine Events; The Start of the Cock Island Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements special local regulations for the start of the Cock Island Race from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, VA on July 16, 1994. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

EFFECTIVE DATES: This regulation is effective from 8:30 a.m. to 5 p.m., on July 16, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District 431, Crawford Street, Portsmouth, Virginia 23705 (804) 398–6204, or Commander, Coast Guard Group, Hampton Roads (804) 483–8568.

Drafting Information:

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation:

Ports Events, Inc., of Portsmouth, Virginia, submitted an application to hold the Cock Island Race. The race will consist of over 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into several classes. Each class will start at ten minute intervals from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 16, 1994, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: May 2, 1994.

W. T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 94–11712 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–94–014]

Special Local Regulations for Marine Events; Great American Music Festival Fireworks, Elizabeth River, Town Point, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements special local regulations for the Great American Music Festival Fireworks Display to be held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, VA. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and the expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: This regulation is effective from 8:30 p.m. to 11 p.m., July 3, 1994.

If inclement weather causes the postponement of the July 3, 1994 fireworks display, the regulations will be in effect from 8:30 p.m. to 11 p.m., July 4, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8559.

Drafting Information:

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and

LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation:

Norfolk Festevents, Ltd. has submitted an application to hold the Great American Music Festival July 3, 1994, in the Waterside area of the Elizabeth River. This area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during the Great American Music Festival. The waterway will be closed during the fireworks displays. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Dated: April 20, 1994.

W. T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 94-11711 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 20

International Surface Air Lift Service

AGENCY: Postal Service.

ACTION: Final Rule.

SUMMARY: The Postal Service is adopting amendments to International Mail Manual, section 246, to allow customers to use International Surface Air Lift (ISAL) service to mail small packets, a type of international mail that can be used to send small quantities of merchandise. By allowing small packets to be sent in ISAL shipments, the Postal Service is responding to customer demand to provide a way of sending these items that is more economical than regular airmail service and faster than surface mail.

DATES: Effective on May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 268-5180.

SUPPLEMENTARY INFORMATION: On October 27, 1993, the Postal Service published in the Federal Register (58 FR 57742) an interim rule and request for comment on proposed amendment to section 246 of the International Mail Manual to allow small packets to be included in ISAL shipments to foreign countries where ISAL service is available.

ISAL is a bulk mailing service for international shipment of publications, advertising mail, catalogs, directories, books, and other printed matter. The service is available from designated acceptance cities to approximately 125 countries. To use ISAL, a mailer must send at least 50 pounds of printed matter at one time, sorted and sacked by destination country. ISAL mail is transported by air to the destination country. Once in the foreign country, the mail is entered into that country's surface mail system for delivery. As a result, ISAL rates are lower than those for regular airmail, while service is faster than service for regular surface mail.

Many customers have requested permission to include small packets in ISAL shipments. Frequently, these requests occur because the item being mailed is classified as third-class domestically. Yet, because the item contains something that is not classified internationally as printed matter, the item may not be sent through ISAL. Moreover, since there is no service comparable to ISAL for small packets, these customers are forced to choose between regular airmail service and regular surface mail service.

The Postal Service invited public comment on the interim rule by November 26, 1993, and received one comment.

The commenter asserts that the rates for ISAL will not cover the cost of carrying small packets and that dutiable small packets will cost the Postal Service more than printed matter, which is generally non-dutiable. The Postal Service disagrees. The Universal Postal Convention classifies printed matter and small packets as AO (*Autres Objets*) and considers them together for terminal dues purposes. In addition, all ISAL mail must be sorted and sacked by destination country when it is tendered, and the Postal Service processes ISAL sacks intact. Consequently, the Postal Service's costs to process a given weight of ISAL mail should be the same regardless of whether the sack contains printed matter, small packets, or a combination of both. The fact that a higher percentage of small packets may be dutiable does not affect the Postal Service's costs to provide the service. All U.S. origin mail entering another country is subject to customs examination whether it is subject to duty or not. This cost is absorbed by the country of destination and is not charged back to the Postal Service.

The commenter also asserts that there has been no independent verification that the Postal Service's ISAL rates are adequate to cover the cost of the service and that the Postal Service should submit its international rates for oversight to a body such as the Postal Rate Commission. The Postal Service disagrees. The Postal Service alone is responsible for international mail services, and there is no legal requirement that its determinations be subject to verification by any other agency. The Postal Rate Commission, in particular, has no jurisdiction over international rates or services, so any study conducted by the Commission would have no legal significance.

The Postal Service has concluded that the proposed amendments, as collected, would benefit users of United States mail. No persuasive reason has been put forward why implementation should be deferred. Accordingly, the Postal Service will not defer implementation of the final rule.

The final text contains the correction of a citation which was incorrect in the original regulations. In section 246.941 of the International Mail Manual, the reference to section 244.5 for publishers' periodicals is changed to section 244.4. This reference refers to the makeup of individual pieces, not to sortation requirements for publishers' periodicals.

List of Subjects in 39 CFR Part 20

Foreign relations, incorporation by reference, international postal services.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by revising section 246 to read as follows:

CHAPTER 2—CONDITIONS FOR MAILING

* * * * *

246 International Surface Air Lift (ISAL) Service

246.1 Definition

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of publications, advertising mail, catalogs, directories, books, other printed matters, and small packets. The cost is lower than that of airmail, while the service is much faster than ordinary surface mail. Customers take ISAL shipments to designated U.S. acceptance cities, where the mail is flown to the foreign destinations and entered into that country's surface mail system for delivery.

246.2 Qualifying Mail and Minimum Quantities

Only printed matter as defined in 241 and small packets as defined in 260 that meet all applicable mailing standards may be sent in this service. There is a minimum volume requirement of 50 pounds per shipment except for the direct shipment option, which requires a minimum of 750 pounds to a single country destination. Mailers may present sacks of pound-rate and piece-rate mail to meet minimum quantity requirements. Small packets may not be enclosed in M-Bags and do not qualify for the full service or gateway/direct shipment M-Bag rates.

246.3 General

246.31 Availability. ISAL service is available to the foreign countries listed in Exhibit 246.71, through designated U.S. acceptance cities.

246.32 Designated Acceptance Cities. Exhibit 246.32 shows cities designated to accept ISAL.

246.4 Special Services

Special services provided for in Chapter 3 are not available for items sent by ISAL.

246.5 Customs Documentation

See 244.6 and 264.5 for the requirements for customs forms.

246.6 Permit or Customer Identification Number

Each mailer must have a 10-digit ISAL permit number or customer identification number. The first five digits are the ZIP Code of the post office where the permit or customer identification number is issued. The second five digits are separated from the first five by a hyphen and are either the customer's permit imprint number or a sequential number issued by the post office of account. If the permit imprint number has fewer than five digits, precede the permit number with enough zeros to make a five-digit number. For example, a mailer with a permit imprint number of 29 whose business location is in New York City (10010) is assigned an ISAL permit number of 10010–00029. This number must be used on Form 3650, Statement of Mailing-International Surface Air Lift.

246.7 Postage

246.71 Rates

246.711 Items Weighing Over 2 Ounces. Postage is paid on a per-pound basis by rate group. M-Bags are also paid on a per-pound basis by rate group, even if they contain items weighing 2 ounces or less. Small packets are ineligible for the M-Bag rates and may not be included in M-Bags. Separate reduced rates are provided for mail transported by the mailer to the gateway airport mail facilities at New York (JFK); San Francisco, CA; and Miami, FL; or when direct shipment can be arranged from one of the acceptance cities (see Exhibit 246.32).

Rate group	Full service		Gateway/direct shipment	
	Regular	M-Bag*	Regular	M-Bag*
1	$2.90	$2.32	$2.60	$2.08
2	3.25	2.60	2.95	2.36
3	3.40	2.72	3.10	2.48
4	4.20	3.36	3.90	3.12

See Exhibit 246.71 for network countries and individual postage rates.

*Small packets may not be mailed at these rates.

246.712 Items Weighing 2 Ounces or Less. These items are subject to a charge of 32 cents per piece to all countries where service is available. Pieces sent in M-Bags are subject to the pound rates in 247.11. Small packets are ineligible for the M-Bag rates and may not be included in M-Bags. Mailings presented at one of the three gateway offices or under direct shipment arrangements receive a discount.

246.713 Direct Shipment. Mailers may be authorized direct shipment rates from the designated acceptance cities listed in Exhibit 246.32 (except Miami, FL; San Francisco, CA; and AMF–JFK, NY) when the Postal Service can arrange direct transportation to the destination country. To qualify, mailers must present a minimum of 750 pounds to each destination country. This 750-pound minimum may include piece-rate and pound-rate mail. Mailers should contact the postmaster at the designated acceptance city at least 14 days before the first desired mailing date. Postmasters must contact the distribution network office (DNO) to obtain a contract for transportation. If the DNO cannot arrange direct transportation, the direct shipment rate does not apply. The Postal Service may cancel direct shipment rates and service when direct transportation is no longer available.

246.72 Payment Methods

246.721 Items Weighing 2 Ounces or Less. The following methods apply for the payment of postage for items that weigh 2 ounces or less:

a. Permit Imprint. Mailers may use permit imprints only with mailings that contain identical-weight pieces. Any of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable. The imprint must not denote "Presort Rate," "Bulk Rate," or "Nonprofit Organization." The postage charges are computed on Form 3650, *Statement of Mailing-International Surface Air Lift*, and deducted from the advance deposit account.

b. Postage Meter. If the mailing consists of nonidentical-weight pieces, postage for the mailing must be paid by postage meter stamp on each piece.

c. Permit Imprints. Mailers may use permit imprint with non identical pieces if authorized under the postage mailing systems in DMM P710, P720, or P730.

d. Precanceled Stamps. Mailers authorized to use precanceled stamps may use this payment method.

246.722 Items Weighing Over 2 Ounces. Postage must be paid by a permit imprint subject to the standards in DMM P040. Any of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable. The imprint must not denote "Presort Rate," "Bulk Rate," or "Nonprofit Organization." The postage charges are computed on Form 3650 and deducted from the advance deposit account.

246.723 Direct Sacks (M-Bags). For direct sacks to one addressee, Tag 158, *M-Bag Addressee Tag*, must be endorsed "ISAL U.S. Postage Paid" or show the permit imprint in the space reserved for postage. (If an M-Bag is presented with a mailing when all other postage is paid by meter, the postage on the M-Bag may be paid by a meter strip attached to the M-Bag tag.)

246.73 Form 3650. Form 3650 is required for all ISAL mailings.

246.8 Weight and Size Limits

Any item sent by ISAL must conform to the weight and size limits for the types of printed matter described in 243 or for small packets in 263.

246.9 Preparation

246.91 Addressing. See 122.

246.92 Marking. Items must be endorsed with the appropriate markings as shown in 244.2 for printed matter and in 264.2 for small packets. For publishers' periodicals (second-class publications), the imprint authorized under 244.21d(2) or 244.21d(3) may be used in place of the "PRINTED MATTER–SECOND–CLASS" endorsement.

246.93 Sealing. Printed matter and small packets sent by ISAL may be sealed at the sender's option.

246.94 Makeup

246.941 Sortation. All items must meet the makeup requirements in 244.4 for printed matter and publishers' periodicals and 264 for small packets. Items must be sorted to the destination country. Items weighing 2 ounces or less may not be placed in sacks with items weighing over 2 ounces unless mailings are made under special mailing programs (see 247.213).

246.942 Residue. Mail addressed to different countries may not be commingled. Consequently, no residual mail is allowed in an ISAL dispatch.

246.943 Facing of Pieces and Packaging. All pieces must be faced in the same direction and packaged in bundles that are securely tied or rubber-banded across the length and width. Pieces that cannot be bundled because of their physical characteristics must be placed loose in the sack.

246.944 Sacking. Mail to each country must be sacked in disposable gray plastic sacks and labeled to that particular country with Tag 155, *Surface Airlift Mail.* The three classifications of printed matter, as well as small packets, may be mixed in the same sack. The combined weight of the contents and the sack may not exceed 66 pounds. Tag 155 must show the weight in kilograms. No minimum weight per sack applies.

246.945 Direct Sacks to One Addressee (M-Bags) for ISAL. M-Bags may be sent in the ISAL service to all countries except Ethiopia. Weight, makeup, sacking, and sorting requirements must conform to part 245. Tag 158 must show the complete address of the addressee and the sender and be attached securely to the neck of each sack. M-Bags may not contain small packets.

246.95 Mailer Notification. Mailers wanting to mail shipments that weigh over 750 pounds but not eligible for direct shipment rates, must notify the ISAL coordinator at the acceptance city at least 4 days before the planned date of mailing. Specific country information and weight per country must be provided. No prior notification is required for mailers with 750 pounds or less.

Stanley F. Mires,
Chief Counsel, Legislative.

Exhibit 246.32, Designated ISAL Acceptance Cities

Akron, OH*
Albany, NY
Albuquerque, NM
Anchorage, AK
Atlanta, GA
Austin, TX
Baltimore, MD
Bellmawr, NJ*
Billings, MT
Birmingham, AL
Bismarck, ND
Boise, ID
Boston, MA
Buffalo, NY
Burlington, VT
Charleston, SC
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Colorado Springs, CO*
Columbia, SC
Columbus, OH
Dallas/Ft. Worth, TX
Dayton, OH
Denver, CO
Des Moines, IA
Detroit, MI
Duluth, MN
El Paso, TX
Erie, PA*
Eugene, OR
Florence, SC
Grand Rapids, MI
Greensboro, NC
Greenville, SC
Harrisburg, PA
Hartford, CT
Honolulu, HI
Houston, TX
Huntsville, AL*
Indianapolis, IN
Jackson, MS
Jacksonville, FL
Jersey City, NJ
Kalamazoo, MI*
Kansas City, MO
Knoxville, TN*
Las Vegas, NV
Little Rock, AR
Long Beach, CA*
Los Angeles, CA
Louisville, KY
Memphis, TN
Miami, FL
Midland, TX
Milwaukee, WI
Minneapolis/St. Paul, MN
Mount Vernon, NY*
Myrtle Beach, SC
Nashville, TN
New Haven, CT*
New Orleans, LA
New York, NY
Norfolk, VA
Oklahoma City, OK
Omaha, NE
Orlando, FL
Pittsburgh, PA
Philadelphia, PA
Providence, RI
Phoenix, AZ
Portland, OR
Raleigh, NC
Richmond, VA
Rochester, NY
Sacramento, CA
St. Louis, MO
Salt Lake City, UT
San Antonio, TX
San Diego, CA
San Francisco, CA
San Juan, PR
Santa Ana, CA*
Seattle, WA
Sioux Falls, SD
Spokane, WA*
Syracuse, NY
Tampa, FL
Toledo, OH*
Tucson, AZ
Tulsa, OK
Washington, DC
Wichita, KS

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* Provisional Cities.

[FR Doc. 94-11685 Filed 5-12-94; 8:45 am]
BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-4210-06; AA-40482]

43 CFR Public land order 7042

Opening of Land, Under section 24 of the Federal Power Act, in the Departmental Order Dated May 14, 1929, as Amended, Which Established Powersite Classification No. 221; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, approximately 575 acres of National Forest System land withdrawn by a Departmental order which established Powersite Classification No. 221 at Baranof Lake. This action will permit conveyance of the land to the State of Alaska, if such land is otherwise available, and retain the water power rights to the United States. Any land described herein that is not conveyed to the State will be subject

to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVAK–145, it is ordered as follows:

1. At 10 a.m. on May 13, 1994, the following described land withdrawn by a Departmental Order dated May 14, 1929, which established Powersite Classification No. 221, will be opened to permit conveyance to the State of Alaska subject to the provisions of section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVAK–145, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Copper River Meridian

Tongass National Forest

All lands below an altitude of 210 feet above sea level adjacent to Baranof Lake and the stream which is its outlet and included in the State of Alaska selection application AA–53101 located within:

T. 55 S., R. 66 E., unsurveyed,
  Sec. 24.
T. 55 S., R. 67 E., partly unsurveyed,
  Secs. 17 to 20, inclusive, and sec. 30.

The area described contains approximately 575 acres.

2. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of the Tongass National Forest reservation, Section 24 of the Federal Power Act, and any other withdrawal of record.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11671 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–JA

[OR–943–4210–06; GP4–056; ORE–012693]

43 CFR Public Land Order 7043

Modification of Public Land Order No. 5490, as Amended by Public Land Order No. 5542; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order establishes a 20-year term for a public land order which withdrew approximately 243,000 acres of public lands for multiple use management. This order will also open the lands to surface entry, except to agricultural entry. The lands have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is hereby ordered as follows:

1. The Public Land Order No. 5490 dated February 12, 1975, as amended by Public Land Order No. 5542 dated September 23, 1975, is hereby modified to open the lands to all forms of discretionary appropriation, except the agricultural land laws (43 U.S.C. 321–323 (1988), as amended, and 25 U.S.C. 334 (1988)), and to expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended insofar as it affects the following described lands:

Willamette Meridian

All public lands in and west of Range 8 East and all lands within that area which hereinafter become public lands, except revested Oregon and California Railroad Grant Lands.

The areas described aggregate approximately 243,000 acres in Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

2. At 8:30 a.m. on June 13, 1994, the lands described above will be opened to the operation of the public land laws, except the agricultural land laws (43 U.S.C. 321–323 (1988), as amended, and 25 U.S.C. 334 (1988)), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on June 13, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11670 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–33–M

[CO–932–4210–06; COC–28611, COC 28633]

43 CFR Public Land Order 7044

Revocation of Secretarial Order Dated August 20, 1915, Which Established Powersite Reserve No. 496, and Secretarial Order Dated January 15, 1926, Which Established Powersite Classification No. 127; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders, which established Powersite Reserve No. 496, and Powersite Classification No. 127, in their entireties and opens 1,647.47 acres to such forms of disposition as may by law be made of National Forest System lands. The Forest Service has requested this action to allow for disposal of the lands under the Small Tracts Act. These lands are no longer needed for waterpower purposes. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated August 20, 1915, which established Powersite Reserve No. 496, and Secretarial Order dated January 15, 1926, which established Powersite Classification No. 127, are hereby revoked in their

entireties. This revocation will affect the following described lands:

Arapaho National Forest

6th Principal Meridian

T. 1 S., R 71 W.,
  Sec. 4, lots 5, 6, 10, 11, and 12;
  Sec. 5, lots 90, 91, 94, 96, 101, and 102;
  Sec. 6, lots 40, 44, 45, 46, and 47;
  Sec. 7, lots 28, 29, and 35, and SW¼NE¼;
  Sec. 8, lots 2, 4, and 5;
  Sec. 9, W½NE¼, SE¼NE¼, and NW¼;
  Sec. 10, SW¼NW¼;
  Sec. 11, E½SE¼.
T. 1 S., R. 72 W.,
  Sec. 1, lots 23 to 34, inclusive, and SE¼SE¼;
  Sec. 2, lots 5 to 14, inclusive;
  Sec. 9, lot 1;
  Sec. 12, lots 3, 4, exclusive of patented lands.
T. 1 N., R. 71 W.,
  Sec. 34, lot 9 and SE¼SW¼.

The areas described aggregate approximately 1,647.47 acres of National Forest System lands in Boulder County.

2. At 9:00 a.m. on June 13, 1994 the lands described in paragraph 1 will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1988), and these provisions are no longer required.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-11669 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-930-4210-06; AZA-13401, AZA-13406, AZA-439]

43 CFR Public Land Order 7045

Partial Revocation of Secretarial Orders Dated October 22, 1919, and March 14, 1929, and Executive Order No. 8685; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes the Secretarial orders dated October 22, 1919, and March 14, 1929, and Executive Order No. 8685, insofar as they affect 3.75 acres of public land withdrawn for the Colorado River and Yuma Storage Projects and the Imperial National Wildlife Refuge. The land is no longer serving the purposes for which it was withdrawn, and the revocation is needed to permit disposal of the land to the State of Arizona as partial compensation in a condemnation action under Title V of the Arizona-Idaho Conservation Act of 1988, 16 U.S.C. 460xx (1988), commonly referred to as the Santa Rita Legislation. This action will open the land to mineral leasing and surface entry and mining, unless closed by other withdrawals or segregations of record.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-650-0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and the National Wildlife Refuge System Administration Act of October 15, 1966, 16 U.S.C. 668dd (1988), as amended, it is ordered as follows:

1. The Secretarial Orders dated October 22, 1919, and March 14, 1929, which withdrew land for the Bureau of Reclamation's Colorado River and Yuma Storage Projects and Executive Order No. 8685, which withdrew land for the Fish and Wildlife Service's Imperial National Wildlife Refuge, are hereby revoked insofar as they affect the following described land:

Gila and Salt River Meridian

T. 5 S., R. 22 W.,
  Sec. 13, W½W½NE¼SW¼SW¼SE¼, E½E½NW¼SW¼SW¼SE¼, W½W½E½NW¼SW¼SE¼, and E½E½W½NW¼SW¼SE¼.

The area described contains 3.75 acres in Yuma County.

2. At 10 a.m. on June 13, 1994, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 13, 1994 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 13, 1994 the lands will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 22, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-11668 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-32-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 311

Federal Employee Emergency Identification Card

CFR Correction

In title 44 of the Code of Federal Regulations, revised as of October 1, 1993, the text for part 311 should be removed and the part number reserved.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 95

[FCC 94-99]

Implement Competitive Bidding for Interactive Video and Data Services (IVDS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Fourth Report and Order to authorize procedures for auctioning licenses in the IVDS. This action implements new section 309(j) of the Communications Act of 1934, as amended. This will permit the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for initial license.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, (202) 632-6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order, FCC 94-99, adopted April 20, 1994, and released May 10,

1994. The full text of this Fourth Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, telephone (202) 857–3800.

SUMMARY OF ORDER

I. Introduction

1. On March 8, 1994, the Commission adopted a Second Report and Order in this proceeding (Second Report and Order)[1] establishing general rules and procedures governing competitive bidding for radio spectrum (auctions). The Second Report and Order identified the types of services and licenses that may be subject to auctions, described a menu of competitive bidding methods, and adopted generic auction procedures. The Commission stated that specific competitive bidding rules for licensing individual services would be addressed in subsequent Reports and Orders. This Fourth Report and Order establishes rules and procedures for auctioning licenses in the Interactive Video and Data Service (IVDS).[2]

2. In this Fourth Report and Order, we find that the value of IVDS licenses is not expected to be sufficiently high to justify the use of simultaneous multiple round bidding. We therefore conclude that the auction methods most appropriate to the IVDS are oral bidding (open outcry) and single round sealed bidding. We also establish rules and procedures to deter possible abuses of the bidding and licensing procedures. Last, we establish preferences for small businesses and businesses owned by minorities or women to enhance their participation in the competitive bidding process and in the provision of IVDS system offerings.

II. Background and Auction Eligibility

3. The IVDS is a point-to-multipoint, multipoint-to-point, short distance communications service in which licensees may provide information, products, or services to individual subscribers located at fixed locations in the service area, and subscribers may provide responses.[3] The rules governing IVDS were adopted in 1992 in Gen. Docket No. 91–2.[4] In that proceeding, the Commission decided to define specific service areas and license IVDS channels in these areas on an exclusive basis. As so defined, the IVDS has 734 service areas, with two licenses of 500 kilohertz each (218.0–218.5 and 218.5–219.0 MHz) available in each area.[5] In the event of mutually exclusive applications[6] for license, the Commission decided in that earlier proceeding to use the lottery processes specified in our rules.[7]

4. The Omnibus Budget Reconciliation Act of 1993 (Budget Act)[8] added a new Section 309(j) to the Communications Act of 1934, as amended (Communications Act),[9] to permit the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive accepted applications for initial license. In the Notice of Proposed Rule Making in this proceeding, we stated that "the principal use of IVDS-allocated spectrum is reasonably likely to involve the licensee receiving compensation from subscribers for communications services," and therefore proposed to subject IVDS to competitive bidding.[10] Following our subsequent review of comments and reply comments, we concluded that IVDS should be subject to auctions.[11] In this Fourth Report and Order we have attempted to design IVDS auction rules and procedures that meet Congressional objectives.[12] We believe that these objectives are embodied in two basic Commission policy goals: promoting economic growth, and enhancing access to telecommunications service offerings for consumers, procedures, and new entrants.[13]

III. Competitive Bidding Design

5. As noted, we have determined that mutually exclusive IVDS applications are subject to auctions. We must, therefore, identify the methodology and procedure we will use to auction the licenses. We do so in the paragraphs below, pursuant to Section 309(j)(3) of the Communications Act and based on the record in this proceeding.[14] As described below, some further details about specific competitive bidding procedures will be provided later by Public Notice(s).[15]

A. General Competitive Bidding Designs

6. The Second Report and Order established the criteria to be used in selecting the auction design method for each auctionable service. Generally, we concluded that awarding licenses to those parties that value them most highly will foster Congress' policy objectives. In this regard, we noted that because a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of the license to that bidder, an auction design that awards licenses to those bidders who are willing to pay the highest bid tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum.

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[1] Second Report and Order in PP Docket No. 93–253, FCC 94–61, released April 20, 1994 (Second Report and Order). On February 3, 1994, we adopted the First Report and Order in this proceeding, which, pursuant to 47 U.S.C. 309(i)(4)(C), prescribed transfer disclosure requirements with respect to licenses or permits awarded by random selection. First Report and Order in PP Docket No. 93–253, FCC 94–32 (released February 4, 1994), petitions for reconsideration pending.

[2] Concurrent with this Fourth Report and Order, we are adopting a Third Report and Order, FCC 94–98, in this docket addressing the specific competitive bidding rules and procedures for "narrowband" Personal Communications Services (PCS).

[3] Service offerings might include subscriber opportunities to provide real-time responses to educational and pay-per-view programming, commercial data applications such as home banking, and the downloading of data. See Report and Order in Gen. Docket No. 91–2, 7 FCC Rcd 1630, 1630 ¶ 2, 1637 ¶ 54 (1992).

[4] Report and Order, *supra* note 3; see 47 CFR part 95, Subpart F.

[5] See 47 C.F.R. §§ 95.803, 95.853. IVDS service or market areas are defined in terms of the 734 cellular system service areas. *See* Public Notice, Report No. 92–40, released January 24, 1992; 47 C.F.R. 22.903 (cellular). Many of these service areas cover rural or remote, sparsely populated areas.

[6] The Commission, in general, "considers two or more applications to be 'mutually exclusive' if their conflicts are such that the grant of one application would effectively preclude, by reason of harmful electrical interference, the grant of one or more of the other applications." Second Report and Order at ¶ 12 n. 5.

[7] See 47 CFR 1.972 (1992). On September 15, 1993, a lottery for nine IVDS markets was conducted. This lottery was permitted under the Budget Act described below, the pertinent applications having been accepted for filing by the Commission prior to July 26, 1993. See Budget Act, *infra* note 8, § 6002(e).

[8] Pub. L. No. 103–66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993) (Budget Act); see H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 480–89 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1169–78.

[9] 47 U.S.C. 151–713.

[10] 8 FCC Rcd 7635, 7659 ¶ 143 (1993); see generally 47 U.S.C. § 309(j)(2).

[11] Second Report and Order at ¶¶ 49–53

[12] 47 U.S.C. § 309(j)(3).

[13] Second Report and Order at ¶¶ 3–7.

[14] We received comments or reply comments on auctioning licenses in the IVDS from the following: American Group (American); Quentin L. Breen (Breen); Chase McNulty Group, Inc. (Chase); EON Corporation (EON) (*ex parte* filings); Independent Cellular Consultants (ICC); Andrea L. Johnson (Johnson); Kingswood Associates (Kingswood); NYNEX Corporation (NYNEX); Radio Telecom and Technology, Inc. (RTT); Harry Stevens, Jr. (Stevens); and Richard L. Vega Group (RLV). Of these, five—American (reply comment at 23–25), Kingswood (reply comment at 23–25), NYNEX (comment at 11), Stevens (reply comment at 1), and RLV (comment at 11–14)—commented in this context only on whether IVDS should be subject to auctions, an issue we addressed in the Second Report and Order. See ¶ 3, supra.

[15] The Public Notice(s) will be issued by either the Commission or the Private Radio Bureau.

7. We concluded that where the licenses to be auctioned are interdependent (that is, either substitutes for, or complements to, each other) and their value is expected to be high, "simultaneous multiple round" auctions would best achieve the Commission's goals for competitive bidding.[16] We also noted that simultaneous multiple round bidding is more complex for bidders and may be administratively more expensive than other auction methods we may select, and indicated that we would use this design only in instances where the expected value of the licenses to be auctioned is high relative to the costs of conducting a simultaneous multiple round auction.[17]

8. In the Second Report and Order we stated our intention to tailor the auction design to fit the characteristics of the licenses to be awarded. We noted that simultaneous multiple round auctions may not be appropriate for all licenses.[18] The less the interdependence among licenses, the less the benefit to auctioning them simultaneously. To the extent that simultaneous auctions are more costly and complex to run, we indicated that we may choose a sequential auction design, including sequential oral auctions, when there is little interdependence among individual licenses.

9. We further explained that when the values of particular licenses to be auctioned are low relative to the costs of conducting a simultaneous multiple round auction, we may consider auction designs that are relatively simple, with low administrative costs and minimal costs to the auction participants. We noted that as the value of licenses decreases, and thus the benefits of simultaneous multiple round bidding diminish relative to the cost and complexity of such auctions, a less complex auction method may be more suitable. For example, with large numbers of low value licenses we noted that we may decide that it is preferable to implement a low cost auction method such as single round sealed bidding to minimize cost and expedite the licensing process.

10. Last, in the Second Report and Order we noted that Congress directed us to "design and test multiple alternative methodologies under appropriate circumstances."[19] Thus, where appropriate, we intend to choose bidding methods other than simultaneous multiple round auctions and periodically reevaluate the effectiveness of all methods utilized.

B. IVDS Competitive Bidding Design

11. We find that the generally preferred method of simultaneous multiple round auctions is not the most appropriate for IVDS, and that IVDS also presents a good opportunity to test less complex alternative procedures. As discussed below, of the auction methods described in the Second Report and Order, oral bidding (open outcry) and single round sealed bidding appear best suited to the IVDS. Both are relatively inexpensive for the Commission to administer, and the costs of participation by bidders are fairly low. Moreover, both have the advantage of being relatively simple for bidders to understand and also generally can be completed quickly. Thus, these methods are likely to promote the statutory goal of rapid implementation of service to the public.[20] We therefore adopt these two methods to auction IVDS licenses.[21]

12. The IVDS offers two 500 kilohertz channels (frequency segments A and B) in each of 734 service areas, and the aggregation of both channels in a market is not permitted. While there may be some degree of interdependency among the IVDS licenses for geographically contiguous areas,[22] we do not believe that it is great enough to justify the greater costs and administrative complexities associated with holding a simultaneous multiple round auction.[23] Last, with large numbers of IVDS licenses covering only rural areas,[24] we anticipate that the demand for, and value of, most markets will not be great enough to justify the use of more complex methods such as simultaneous multiple round auctions.[25]

13. For IVDS open outcry auctions, each service area (with two licenses each) will be auctioned individually, and the two highest bidders in each service area will be awarded a license. The highest bidder will get first choice of frequency segment A or segment B at the highest bid price. The second highest bidder will be awarded the remaining segment at the amount it bid.

14. With single round sealed bidding, we will auction the two frequency segments separately. Licenses for frequency segment B will be auctioned first. As soon as practicable thereafter, we will announce the high bidders for licenses on frequency segment B and announce a deadline date for short-form applications for segment A licenses. In the event of a tie in single round sealed bidding, we will hold one additional round between the parties that tied.

15. Having both oral and sealed bidding methods available permits us the flexibility to fit the right auction method to the particular IVDS licenses being auctioned. Further, it is consistent with Congress' directive that we design and test multiple alternative methodologies under different circumstances. ICC comments that, of the two methods, sealed (or electronic) bidding is preferable to oral bidding because some potential bidders perhaps cannot afford to attend an auction in person.[26] As noted in the Second Report and Order, however, such sealed bidding generates no information about license values until after the auction closes, tending to decrease bid levels and reduce the efficiency of the license assignment.[27] We therefore believe that oral bidding should be used in the potentially higher valued markets, where having license value information during the auction is especially important, and that sealed bidding should be used for the remaining markets.[28]

16. We believe that, in general, the greater the population in the service area, the greater will be the perceived value of, and demand for, the license. The 734 service areas for the IVDS are identical to those of cellular radio

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[16] See Second Report and Order at ¶¶ 106–111. With this method, all licenses or classes of licenses are auctioned at once, using multiple rounds, and the bidding continues until bidding activity subsides. Thus, bidders may repeatedly "top" the previously high bids. *See id.* at ¶¶ 82, 86.

[17] *Id.* at ¶ 111.

[18] *Id.* at ¶ 112.

[19] *Id.* at ¶ 115, quoting 47 U.S.C. § 309(j)(3); see also ICC comment at 9 (supporting IVDS as a candidate for testing alternative methodologies).

[20] See 47 U.S.C. § 309(j)(3)(A).

[21] If, as we gain experience, we find that another auction design for the IVDS would better achieve the goals of the Budget Act, we may revisit this issue.

[22] Two commenters, EON and ICC, very briefly address the issue of potential interdependence among IVDS licenses. EON argues that the sequence of IVDS auctions should track "ADIs," a proposal we discuss and adopt *infra*. EON does not state, however, that bidders might perceive the aggregation of licenses to result in additional efficiencies of IVDS operation. EON *ex parte* filing of Jan. 26, 1994, at 4. ICC states that auction procedures favoring license aggregation run counter to policies favoring licensee diversity. ICC Comment at 7.

[23] The interdependencies for IVDS are likely to be less than for services where roaming is important. *See generally* Second Report and Order at ¶ 91. The IVDS rules do not permit "roaming" across service areas.

[24] See note 5, *supra*.

[25] See Second Report and Order at ¶¶ 112–113.

[26] ICC comment at 6–7, reply comment at 7–8. Chase would prefer that we randomly alternate between oral and sealed methodologies. Chase comment at 1–2.

[27] Second Report and Order at ¶ 89 n. 81.

[28] For example, when choosing between the two methods, we do not want to hold the more expensive oral bidding auction in instances where we believe that the operational costs of holding the auction might outweigh the benefits (efficient allocation and revenues generated).

service areas: 306 "Metropolitan Statistical Areas" (MSAs) and 428 "Rural Service Areas" (RSAs).[29] We have concluded that we should conduct oral auctions for the IVDS service areas corresponding to MSAs, and sealed bid auctions for the remaining service areas, or RSAs. We reserve the discretion to reconsider this bidding design if, in light of experience gained with auctions, a change appears warranted.[30]

C. Bidding Procedures

17. *Sequencing.* We must choose the sequence in which IVDS licenses will be auctioned. We believe that, in general, the higher valued IVDS licenses should be auctioned first: the cost to the public from delaying licensing increases with the value of the license, and, to the limited extent that aggregation of license is important, auctioning the higher valued licenses first facilities it.[31] In determining the sequence for auctioning IVDS licenses we are persuaded by EON's argument that the IVDS is a television-driven service and that the licenses should therefore be auctioned in a manner consistent with the geographic areas defined by "Areas of Dominant Influence" (ADIs),[32] rather than by numerical order of service area. EON and ICC also commented generally that licenses for the more densely populated IVDS service areas should be auctioned prior to the other areas.[33] Therefore, we will auction licenses in ADI order, starting with the lowest numbered ADI (having the highest population) and proceeding in numerical order.[34] Prior to starting the auction process, we will issue a Public Notice listing the pertinent ADIs, and the order in which licenses for the corresponding service areas will be auctioned (by open outcry) in each ADI. We anticipate that we will hold sealed bid auctions for licenses in rural areas as soon as practicable after auctioning the more populated areas. For the rural areas, licenses on frequency segment B will be auctioned first, and then a separate sealed bid auction will be held for licenses on frequency segment A.

18. *Bid Increments.* In a multiple round auction, a bid increment is the amount or percentage by which a bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current round of bidding. For IVDS auctions, the Commission, including the auctioneer, retains the discretion to impose bid increments before or during the auction.[35]

IV. Procedural Payment and Penalty Issues

A. Pre-Auction Application Procedures

19. The Second Report and Order established general rules and procedures for participating in auctions. Again, however, we noted that these might be modified on a service-specific basis. As described below, we have determined that we will follow the procedural, payment, and penalty rules established in the Second Report and Order, with certain minor modifications to fit the IVDS. Certain procedural details will be supplied later by Public Notice(s). Our objective has been to design rules and procedures that will reduce administrative burdens and costs on bidders and the Commission, ensure that bidders and licensees are qualified and able to construct their systems, and minimize the potential for delay of service to the public.

20. We will require applicants to follow the application filing and processing rules outlined in the Second Report and Order.[36] Before each scheduled IVDS auction the Commission, or, pursuant to delegated authority, the Private Radio Bureau, will release Public Notices concerning the auction. The Public Notices will specify the license(s) to be auctioned and the time, place, and method of competitive bidding to be used, as well as applicable bid submission and payment procedures. A Public Notice will also specify the filing deadline date for short-form applications.

21. Bidders will be required to submit short-form applications on FCC form 175 by the date specified in the Public Notice.[37] If the Commission receives only one application that is acceptable for filing for a particular frequency segment, and there is thus no mutual exclusivity,[38] the Commission will by Public Notice cancel the auction for this license and established a date for the filing of a long-form application (FCC Form 574). In order to encourage maximum bidder participation, we will provide applicants whose short-form applications are substantially complete, but which contain minor errors or defects, with an opportunity to correct their applications prior to the auction. However, applicants will not be permitted to make any major modifications to their applications, including ownership changes or changes in the identification of parties to bidding consortia.[39] In addition, applications that are not signed or that fail to make the required certifications will be dismissed and may not be resubmitted.

22. The Commission will issue a subsequent Public Notice listing all applications containing minor defects, and applicants will be given an opportunity to cure and resubmit defective applications. After reviewing the corrected applications, the Commission will release another Public Notice announcing the names of all applicants whose applications have been accepted for filing.

B. Upfront Payment

23. In the Second Report and Order, we described three types of payments: upfront payments, down payments, and final payments. Chase favors upfront payments, while ICC believes that such a requirement would constitute a hardship on small entrepreneurs.[40] We believe an upfront payment is needed for oral outcry IVDS auctions. Requiring this payment provides some degree of assurance that only serious, qualified bidders will participate and serves as a deterrent to the filing of speculative applications which tend to slow down the provision of service to the public. It also provides the Commission with a source of funds to satisfy any penalties

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[29] See note 5, *supra.*

[30] For instance, sealed bidding might be appropriate if we re-auction a small number of MSAs, or postpone initially the auctioning of MSAs located near international borders while agreements are negotiated.

[31] Second Report and Order at ¶¶ 117–120. We have noted, "Knowing who has won [the] large markets is likely to be more important for bidding decisions about small markets than the converse." *Id* at ¶ 119.

[32] This standard market definition, developed by Arbitron Ratings Company, places each county in the continental U.S. within one of 210 ADIs.

[33] EON *ex parte* filing of Jan. 26, 1994, at 2, 4; ICC comment

[34] The majority of ADIs comprise a number of MSAs. See generally note 5, *supra.* We will auction the lowest numbered service area in the ADI first, also auction the remaining service areas (MSAs) that make up the ADIs for the 9 markets that were lotteried. *See id*

[35] See generally *id.* at ¶ 126.

[36] Second Report and Order at ¶ 160–188. In its comments, RTT sets forth a waiver request and asks that we rule on it in advance of the IVDS auctions. RTT comment at 1–5. Specifically, RTT requests that the Commission, by declaratory ruling, rule that any IVDS licensee using "T–NET" technology, with a power level greater than that permitted in our rules, will be granted a rule waiver to permit the power level. We will not make the requested ruling at this time. All requests for waiver must be evaluated in the context of a specific system design for avoidance of interference to television reception. This information can be provided when the applicant files a long-form application for license in a particular market. See generally Second Memorandum Opinion and Order in Gen. Docket No. 91–2, 8 FCC Rcd 2787, 2788 ¶ 8 (1993).

[37] Applicants should note whether they intend to bid for one or both frequency segments. Applicants need not submit microfiche originals or copies.

[38] As noted previously, absent mutually exclusive applications, the Commission is prohibited from auctioning the license. 47 U.S.C. § 309(j)(1).

[39] *See* Second Report and Order at ¶ 167

[40] Chase comment at 2; ICC comment at 8, reply comment at 7.

assessed. Therefore, we will require the upfront payment and retain the flexibility to determine the payment amount on an auction-by-auction basis. We will not, however, require an upfront payment for applicants in sealed bid IVDS auctions.

24. A bidder may file applications for every IVDS license being auctioned, but, for open outcry auctions, its upfront payment should reflect the maximum number of licenses it desires to win. Once a bidder is a "winning" bidder for the maximum number of licenses reflected by its upfront payment, it will be precluded from bidding further. We will use the following procedure for collecting this payment for oral bidding IVDS auctions. The applicant or its representative will be required to show the Commission, immediately prior to the auction, a cashier's check for at last $2,500[41] in order to get a bidding number and enter the designated area in the room where the bidding will take place. Bidders will be required to have $2,500 upfront money for every five licenses they win.[42] The $2,500 upfront payment will be collected immediately after the first license is won by an applicant.[43] The highest bidder will be asked to sign a bid confirmation form. The upfront money will later be counted toward the down payment. We believe these procedures will keep the auction process simple, keep costs down for small businesses who wish to bid on only a few licenses, and eliminate Commission expenses due to issuing refunds.

C. Payment for Licenses Awarded by Competitive Bidding

25. To provide further assurance that winning bidders will be able to pay the full amount of their bids, we decided generally in the Second Report and Order that each winning bidder must tender a down payment sufficient to bring the total deposit up to 20 percent of the winning bid. We believe a down payment is appropriate for IVDS. Therefore, winning bidders will be required to supplement their upfront payments to bring their total deposit with the Commission up to at least 20 percent[44] of the final payment due for the license(s) won in that particular auction.[45] The down payment will be due within five business days after the close of bidding.[46] The down payment will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. During the period that deposits are held pending ultimate award of the license, the interest that accrues, if any, will be retained by the Government.

26. Long-form applications (FCC Form 574) will be due from successful bidders within 10 business days after they have been notified of their winning bidder status.[47] Once we have reviewed the application and made a determination that the applicant is qualified, we will grant the license, conditioned on the timely payment of all monies due. In the Second Report and Order, we decided to require auction winners to make full payment of the balance of their winning bids within 5 business days of the grant of their license, except for small businesses using the preference of installment payments.[48] This time frame appears to be appropriate for IVDS, and we will therefore use it.

D. Default and Disqualification

27. In the Second Report and Order, we concluded that strong incentives are needed to ensure that potential bidders are financially and otherwise qualified to participate in auction proceedings, so as to avoid delays in the deployment of new services to the public.[49] We stated that, for open outcry auctions, we will assess a default penalty if a bidder fails to make the down payment on a license, fails to pay for a license, or is disqualified after the close of an auction. In the case of single round bidding, we stated that we will impose a penalty in instances where the default occurs after the high bidder has been notified by the Commission that it has submitted the high bid.[50]

28. In an oral auction, a winning bidder that withdraws its bid after signing a bid confirmation form or fails to remit the required down payment or balance of its winning bid in the time frame specified, will be deemed to have defaulted. In a sealed bid auction, a winning bidder is deemed to have defaulted if it withdraws its bid after publication of the initial public notice notifying auction winners or fails to remit the required down payment or balance of its winning bid in the time frame specified. In such instances, we may re-auction the license or offer it to the next highest bidder(s). In cases where disqualification or default occurs after the full down payment has been made, we will hold a new auction for the license. Further, "if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission also may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it may deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant."[51] Entities who obtain their licenses through the auction process are put on notice that if their licenses are revoked or canceled they will forfeit all monies paid to the Commission regarding those licenses.[52]

29. We believe it is important to adopt default penalties for IVDS auctions. If a bidder in an oral auction defaults or is disqualified, a default penalty will be

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[41] In establishing procedures for auctioning IVDS licenses, we have tried to reduce the complexities of the auction process for both the Commission and potential applicants. To this end, we have established a standard, reasonable upfront payment amount in lieu of an amount based on a formula (e.g., $0.02/pop/MHz). Such a formula, when used in the context of more populated areas, can result in a very substantial upfront payment. In the context of IVDS, we believe $2,500 strikes a good balance between ensuring that only serious, qualified bidders participate and not placing an unreasonable financial burden on small businesses. This amount was established in the Second Report and Order, see id. at ¶ 180, as the general minimum upfront payment, consistent with comments submitted.

[42] For example, if a bidder brings only one check for $2,500 and wins five licenses, he or she will not be allowed to bid on another license. If a bidder brings two $2,500 checks, he or she may bid until 10 licenses are won. Therefore, if a bidder anticipates winning 16 licenses, he or she must bring four $2,500 cashier's checks.

[43] The upfront money will be collected immediately after the first license is won in each group of five licenses (1, 6, 11, etc.). Bidders should bring a $2,500 cashier's check for each five licenses they desire to purchase. The Commission will not refund money to those bringing a single check to cover the total upfront payment required, rather than multiple $2,500 checks, if the single check is for an amount ultimately greater than the upfront payment required. On request we will, however, apply such balance to any further monies owed in the context of IVDS auctions.

[44] Small businesses using the preference of installment payments, see Section VI below, need only bring their deposits up to 10 percent within 5 business days, with the remaining 10 percent due within five days of the license grant. See Second Report and Order at ¶¶ 192 n. 145, 238.

[45] If the upfront payment already tendered amounts to 20 percent or more of the winning bid, no additional deposit will be required.

[46] Second Report and Order at ¶ 192. For single round sealed bidding, we will notify the high bidders soon after the auction. The down payment will then be due within five business days.

[47] If a filing fee is required, the general rules governing the submission of fees will apply. *See* 47 C.F.R. § 1.1101 *et seq.* These rules provide for dismissal of an application if the application fee is not paid, is insufficient, is in improper form, is returned for insufficient funds, or is otherwise not in compliance with our fee rules. See also Second Report and Order at ¶ 167 n. 127.

[48] *Id.* at ¶ 194.

[49] *Id.* at ¶¶ 195–197.

[50] *Id.* at ¶¶ 156–157.

[51] *Id.* at ¶ 198.

[52] This includes licensees who fail to meet the construction benchmarks contained in 47 C.F.R. § 95.833.

impose equal to the difference between the bidder's high "winning" bid and the amount of the winning bid the next time the license is offered by the Commission, if this latter amount is lower. In addition, with open outcry auctions, the defaulting auction winner will be assessed a penalty of three (3) percent of the subsequent winning bid or three percent of its own (the defaulting bidder's) bid, whichever is less.[53] The additional three percent penalty is designed to discourage insincere bidding and to compensate the government for the cost of reauctioning a license. In single round sealed bid auctions, if a high bidder defaults prior to making the required down payment, we will impose a default penalty equal to the difference between the high bid and the next highest bid. If a high bidder defaults after having made the down payment, the additional three percent penalty will be applied.[54]

V. Regulatory Safeguards

A. Unjust Enrichment Provisions

30. Congress directed that we take steps to prevent unjust enrichment due to trafficking in licenses that were obtained through competitive bidding. 47 U.S.C. § 309(j)(4)(E). In Section VI, below, we adopt specific rules governing unjust enrichment by designated entities.[55] The IVDS rules already contain provisions to reduce trafficking,[56] and ICC argues that these rules are sufficient.[57] Consistent with the Second Report and Order, however, the IVDS-specific anti-trafficking provisions will not apply to licenses obtained through competitive bidding, although we will enforce the new transfer disclosure requirements contained in Section 1.2111 of our rules.[58] Generally, applicants seeking to transfer their licenses within five years of the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of the license. We will give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for an assignment or transfer of control of their licenses, in order to determine whether any unforeseen problems relating to unjust enrichment have arisen outside of the designated entity context.

B. Performance Requirements

31. Congress has directed that the Commission, in implementing auction procedures, "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."[59] In the Second Report and Order, we decided that it was unnecessary and undesirable to impose additional performance requirements for auctionable services beyond those already provided in service rules.[60] The IVDS rules already contain specific performance requirements, such as the requirement to build-out the system within a specified period of time. See, e.g., 47 CFR 95.833. Entities that obtain, by transfer or assignment, an IVDS license that was awarded by competitive bidding, take such license subject to the existing performance requirements.

C. Rules Prohibiting Collusion

32. In the Second Report and Order we adopted special rules prohibiting collusive conduct in the context of competitive bidding. See 47 CFR 1.2105(c). We indicated that such rules would serve the objectives of the Budget Act by preventing parties, especially larger firms, from agreeing in advance to bidding strategies that might divide the market according to their strategic interests and to the disadvantage of other bidders. These rules apply to all auctionable services, including the IVDS. Bidders are required to identify on their FCC Form 175 applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders are also required to certify that they have not entered into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. After the short-form applications are filed and prior to the time that the winning bidder has made its required down payment, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

33. Concerning bidding consortia, joint venture, partnership or other such agreements or arrangements, all such arrangements must have been entered into prior to the filing of short-form applications. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount, revocation of their license(s), and may be prohibited from participating in future auctions.

VI. Treatment of Designated Entities

A. Introduction

34. As discussed in the Second Report and Order, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. 309(j)(4)(D). The statute requires the Commission to "consider the use of tax certificates, bidding preferences, and other procedures" in order to achieve this congressional goal. In addition, Section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. 309(j)(3)(B). Finally, Section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules, including lump sums or guaranteed installment payments.

35. In the Second Report and Order we established the eligibility criteria and general rules that would govern the award of preferences for designated

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[53] *Id.* at ¶¶ 154–152.

[54] *See id.* at ¶ 157.

[55] See ¶¶ 47, 52, 54 & n. 90, *infra*. We have amended 47 CFR 95.819 to clarify the procedures for the transfer or assignment of IVDS licenses.

[56] For example, current IVDS licenses must meet the five-year construction benchmark before they may transfer, sell, assign, or give an IVDS license to another entity. See 47 CFR 95.819.

[57] ICC comment at 7.

[58] See 47 CFR 1.2111; Second Report and Order at ¶¶ 263–265.

[59] 47 U.S.C. 309(j)(4)(B).

[60] Second Report and Order at ¶ 219.

entities. We also established a menu of preferences, including installment payments and bidding preferences, that we could choose from in selecting the preferences that will be applicable to a particular service, and specified the circumstances under which a tax certificate program would be established. In addition, we set forth rules to prevent unjust enrichment by designated entities seeking to transfer licenses obtained through use of one of the preferences.

36. In this Fourth Report and Order we adopt specific preferences for the IVDS designed to ensure that designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of the service. In particular, we adopt the following preferences:

(1) A 25 percent bidding credit will be available for one license in each service area (for either frequency segment A or B), for businesses owned by minorities and/or women;

(2) Tax certificates will be available to initial investors in minority and women-owned enterprises upon divestiture of their non-controlling interests, and to licensees who transfer their authorizations to minority or women-owned businesses; and

(3) Installment payments will be made available to small businesses. We also incorporate and adopt the unjust enrichment provisions adopted in the Second Report and Order applicable to each of the preferences we adopt here, and adopt the designated entities eligibility requirements of the Second Report and Order.[61]

37. We received IVDS-specific comments favoring the preferences of spectrum set-asides[62] and royalty payments.[63] As we noted in the Second Report and Order, however, the appropriateness of preferences is best determined in light of the characteristics of the particular service and the nature of its expected pool of bidders, and we find that these preferences are not appropriate for the IVDS. Concerning set-asides, we note that the total spectrum available in the service is small: two 500 kilohertz channels available in each service area. Thus for the IVDS, with its licensing scheme of two licenses per market, the use of set-asides would result in one of every two licenses being reserved for designated entities. We decline to reserve so great a proportion of the service's spectrum. Furthermore, in the Second Report and Order we decided, for all services, not to use the preference of royalty payments.[64] While we will continue to assess the feasibility of these preferences as we gain experience with auctions in the context of this and other services, we are not persuaded to change our decision for the IVDS.

38. We note that the IVDS, with its expected relatively low capital entry requirements, is well suited for ownership by designated entities and other potential bidders that might otherwise lack the financial resources to compete by auction for a license. This, combined with the variety of uses possible with the service, makes it likely that the IVDS will promote economic growth and enhance the access of consumers to new and innovative service offerings. As we gain experience with IVDS auctions, we intend continually to assess the effectiveness of our measures, and will apply any knowledge gained to subsequent auctions for other services.

B. Bidding Credits

39. In the Second Report and Order we stated that we would consider using bidding credits to encourage participation by designated entities in auctions. Upon consideration and review of the record on this subject, we believe that affording businesses owned by minorities and women a substantial bidding credit for certain specified IVDS licenses is the most cost-effective and efficient means of achieving Congress' objective of "ensuring" the opportunity of these designated entities to participate in the provision of IVDS offerings. Bidding credits will provide minority and women-owned firms with a significant advantage, which we believe is necessary to achieve this congressional goal, while preserving the advantages of open bidding competition. In effect, the bidding credit will function as a discount on the bid price a minority- or women-owned firm will actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. We believe that a bidding credit in the amount of twenty-five (25) percent is necessary to provide these designated entities with a significant enough advantage to ensure their ability to compete successfully for some IVDS licenses. Thus, in each market, a single 25 percent bidding credit will be awarded to a business owned by minorities and/or women if it is a winning bidder.[65]

40. As discussed in the Second Report and Order, Congress mandated that the Commission "ensure" the opportunity for participation in spectrum-based services by each category of designated entity, including businesses owned by minorities and women. This plain language leads us to conclude that adequate measures must be taken to assure that minority and women-owned businesses have the ability to participate in the provision of services subject to competitive bidding. Moreover, in enacting this legislation, it is clear that Congress was concerned about disseminating licenses to a wide variety of applicants and wanted the Commission to take meaningful steps to accomplish this goal.[66] Indeed, Congress included a requirement in the statute that the Commission report to it in 1997 about, among other things, whether competitive bidding facilitated the introduction of new companies into the telecommunications market and whether designated entities "were able to participate successfully in the competitive bidding process." 47 U.S.C. 309(j)(12)(iv).

41. Apart from Congress' directive, we think that ensuring opportunities for women and minorities to participate in the IVDS is important for the telecommunications industry. These companies can play a vital role in serving inner city areas and other niche markets that may be overlooked by other companies, thus promoting our goal of universal access to telecommunications services. Not only will the industry become more diverse through the adoption of meaningful preferences, but we believe that a much wider customer base will obtain access to innovative technologies. Moreover, studies show that even when minority-owned firms

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[61] See 47 CFR 1.2111; Second Report and Order at ¶¶ 267–278.

[62] Breen and ICC favor set-asides as a means to encourage applications from small businesses. Comments of Breen 9; ICC at 4–6. ICC also argues that, without set-asides, large telecommunications providers might attempt to stifle IVDS technology or permit it only as an adjunct to existing offerings. ICC comments at 5–6.

[63] Breen and ICC state that this option will encourage participation by designated entities. Breen at 7; ICC comment at 7, reply comment at 8.

[64] *Id.* at ¶¶ 252–253.

[65] Only one bidding credit is available in each market. If it happens that the two highest bidders are both designated entities eligible for a bidding credit, the second highest bidder will be given the option of accepting the remaining license without the credit, or declining the remaining license.

[66] We have decided not to provide bidding credits (or other separate preferences) to rural telephone companies bidding on IVDS spectrum because we conclude that, given the relatively modest build-out costs for systems in this service, such preferences are unnecessary to ensure the participation of rural telephone companies in the provision of IVDS offerings to rural areas. The preferences are also, therefore, unnecessary in this context to meet Congress' intent to ensure that rural consumers receive the benefit of new technologies such as IVDS. Rural telephone companies will, however, be eligible for bidding credits if they are owned by minorities or women. They may also qualify for installment payments if they satisfy the eligibility criteria for small businesses.

do not locate within urban minority communities, they employ more minorities relative to other companies, thereby promoting our goals of equal employment opportunity and economic growth.[67]

42. The general record in this proceeding[68] reflects a severe underrepresentation of minorities and women in telecommunications. Indeed, the Commission's Small Business Advisory Committee (SBAC) found only 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging, or messaging services.[69] Likewise, American Women in Radio and Television (AWRT) found that only 24 percent of small communications businesses are owned by women (when companies without paid employees are excluded, women own less than 15 percent of small communications firms).[70] Many commenters observe that the factors that preclude minorities and women from effective participation concern access to financing. With regard to women, they note that no existing FCC policy provides an incentive for women to enter the communications business, and that access to capital remains the biggest obstacle women business owners must face. Similarly, the SBAC states that minorities frequently do not or cannot use traditional sources of financing. Citing the U.S. Senate amicus brief in *Metro Broadcasting, Inc.* v. *FCC*, 110 S. Ct. 2997 (1990), the SBAC asserts that "spectrum for radio facilities was first allocated at a time when undisguised discrimination in education, employment opportunities, and access to capital excluded minorities from all but token participation." The SBAC concludes that minorities were impeded from successfully competing for licenses when they were first awarded and, due to systematic barriers to technical training and employment opportunities, this situation has continued over time.

43. Given this history of underrepresentation of minorities and women in telecommunications and the inability of these groups to access financing, we find that the best way we can accomplish these statutory mandates is to provide bidding credits exclusively to minority and women-owned businesses. The record demonstrates that women and minorities face barriers to entry not encountered by other firms, including other designated entities, and it is, therefore, appropriate and necessary that we provide them with a substantial bidding advantage.[71] In other contexts, Congress has recognized that the use of preferences in the licensing process can be necessary to remedy underrepresentation by minorities. For example, in 1982, Congress mandated the grant of a "significant preference" to minority applicants participating in lotteries for spectrum-based services. 47 U.S.C. 309(i)(3)(A). And, in 1988, Congress attached a provision to the FCC appropriations legislation that precluded the Commission from spending any appropriated funds to examine or change its minority broadcast preference policies.[72] Absent such measures targeted specifically to women and minorities, it would be virtually impossible to assure that these groups achieve any meaningful measure of opportunity for actual participation in the provision of the services in question.[73]

44. We also agree with Call-Her that even comparatively large businesses owned by women and minorities face discriminatory lending practices and other discriminatory barriers to entry and, therefore, eligibility for bidding credits should not be limited to small firms. The IVDS auctions present a unique licensing opportunity for these historically disadvantaged groups to gain a foot-hold in the communications industry.[74] Our goal is to encourage businesses owned by minorities and women to provide viable, sustained competition to larger businesses. Therefore, we have accorded preferences to minority and women-owned firms regardless of their size. This approach is consistent with our auction rules and will further the statutory mandate to ensure participation by designated entities.[75]

45. Further, Congress clearly intended that businesses owned by minorities and women must be given the opportunity to participate in the provision of spectrum-based services independent of their status as small businesses. The plain language of section 309(j)(4)(D) states that the Commission "shall . . . ensure" the opportunity for participation by "small businesses . . . *and* businesses owned by members of minority groups and women . . ." (emphasis added). If Congress had intended to limit the directive of Section 309(j)(4)(D) only to small businesses, no need would have existed to mention separately minorities and women. Moreover, Section 309(j)(4)(D) was added to Conference, and the Conference Report does not offer any suggestion that, to come within the section's purview, businesses owned by minorities or women must be small businesses. In contrast, and as we discussed more fully in the Second Report and Order, the legislative history of Section 309(j)(4)(A), relating to installment payments, expressly indicates that the provision was intended only to promote financial assistance for small businesses.[76] Accordingly, we shall interpret Section

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[67] See *e.g.*, 47 CFR 21.307, 22.307 (equal employment opportunity rules for common carriers); Implementation of the Commission's Equal Employment Opportunity Rules (Notice of Inquiry), FCC 94–103 (released April 21, 1994) ("[O]ur EEO rules enhance access by minorities and women to increase employment opportunities which are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including participation in ownership. Thus the rules * * * promote the further development of the broader communications infrastructure.") See also Banking on Black Enterprise at 3.

[68] For a list of all commenters in this proceeding, see Appendix A, Second Report and Order. Footnote 14, *supra*, lists those commenters that made IVDS-specific comments.

[69] Report of the FCC Small Business Advisory Committee to the FCC Regarding Gen. Docket No. 90–314 (Sept. 15, 1993), *reprinted at* 8 FCC Rcd 7820, 7827 (1993).

[70] See Comments of AWRT at 5.

[71] See e.g., Comments of AWRT at 4–7; Call-Her at 5; Cook Inlet at 38–39.

[72] Continuing Appropriations Act for Fiscal Year 1988, Public Law No. 100–102, 101 Stat. 1329–31.

[73] In the Second Report and Order, we addressed the constitutionality of race and gender-based preferences and concluded that the proper standard of scrutiny to be employed in this context is the "intermediate scrutiny" standard used in the Metro case. Second Report and Order at ¶¶ 289–297; see 110 S.Ct at 2997. We further concluded that under such a standard, preferences for minority and women-owned businesses are constitutionally permissible. We recognize that Metro's standard of review applies to measures approved by Congress. 110 S. Ct. at 3008–09. As noted above, the bidding credits in question here were expressly approved and, indeed, are required to achieve the statutory goals. See 47 U.S.C. § 309(j)(4)(D) (The Commission must "consider the use of tax certificates, bidding preferences, and other procedures" to ensure the participation of "small businesses, rural telephone companies, and businesses owned by members of minority groups and women."). Moreover, an argument might be made that IVDS licensees will be able to control the content of the transmissions carried on their facilities and that the service can therefore be analogized (at least) to mass communications media. See, *e.g.*, Johnson comment at 1–4, 8 (like other emerging subscription-based services, IVDS will, in practice, increasingly converage with broadcast and cable services). To the extent that this control exists or is later developed with regard to the IVDS, the preferences we adopt for minorities and women would be consistent with the important governmental interest identified in Metro: increasing minority ownership to encourage diversity in the provision of content.

[74] Because of the discrimination suffered by minorities and women as contractors and subcontractors in the telecommunications industry, *see* MBELDEF Study, this unique chance to enter the field as primary telecommunications providers, competing with, rather than dependent upon, other providers, is especially important.

[75] See Banking on Black Enterprise at 13 (government assistance should accrue to more capable black entrepreneurs, who are most likely to contribute to the goal of economic development).

[76] See Second Report and Order at ¶¶ 234–236.

309(j)(4)(D) in accordance with its plain language and will not limit its application to small businesses.[77]

46. In determining the appropriate amount of the bidding credit we considered several factors. First, we agree with those commenters that support a bidding credit of 25 percent or more[78] because we think that a substantial credit is necessary to ensure meaningful participation by minority and women-owned businesses. In the broadcast context, we have noted that licensees can transfer their stations to minorities in distress sales provided that the price is no more than 75 percent of market value.[79] This policy is based upon our finding that 25 percent is an appropriate discount to eliminate financial entry barriers for minority-owned companies seeking to become broadcast licensees. Likewise, we believe that a bidding credit of 25 percent will adequately ensure participation by a wide variety of minority and women-owned firms in IVDS auctions and service provision. The amount is not so substantial, however, as to foster participation by firms that are not otherwise financially capable of building-out an IVDS system. We will monitor carefully the effectiveness of the 25 percent bidding credit in the IVDS context and continually assess whether it is achieving the goal of ensuring that minority and women-owned firms participate successfully in auctions for this services.

47. To prevent any unjust enrichment by minorities or women trafficking in licenses acquired through the use of bidding credits, we will impose a forfeiture requirement on transfers or assignments of such licenses to entities that are not owned by minorities or women.[80] Minority and women-owned businesses seeking to transfer or assign a license to an entity that is not owned by minorities or women will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer or assignment will be permitted. The amount of the penalty will be reduced over time: a transfer or assignment in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; during year three, of 75 percent of the bidding credit; in year four, of 50 percent; in year five, of 25 percent; and thereafter, no penalty.[81] Furthermore, as noted earlier, we will use the eligibility criteria from the Second Report and Order to ensure that only legitimate minority and women-owned firms are able to take advantage of bidding credits. In addition, to further ensure that our rules are as narrowly tailored as possible, while still fulfilling the statutory goal, we are prohibiting publicly-traded companies from taking advantage of the bidding credits and we are providing bidding credits for only one license in each market for businesses owned by minorities or women.

C. Tax Certificates

48. Congress instructed the Commission to consider the use of tax certificates to ensure designated entity participation in a spectrum-based services. See 47 U.S.C. 309(j)(4)(D). In the Second Report and Order we observed that tax certificates could be useful as a means of attracting investors to designated entity enterprises and to encourage licensees to assign or transfer control of licenses to designated entities in post-auction transactions. We stated further that we would examine the feasibility of using this measure in subsequent service-specific auction rules.[82] After further consideration of this matter, we believe that tax certificates would be an appropriate tool to assist minority and women-owned businesses to attract start-up capital from non-controlling investors. In addition, we believe that tax certificates will give licensees the incentive to assign or transfer their authorizations to such entities in post-auction sales, thereby providing added assurance that minority and women-owned entities will have the opportunity to participate in the provision of IVDS offerings. Accordingly, we will issue tax certificates to initial investors in minority and women-owned IVDS applicants upon the sale of their non-controlling interests. We will also issue tax certificates to IVDS licensees who assign or transfer control of their licenses to minority and/or women-owned entities.

49. As stated previously, the record reveals that women and minorities face barriers to entry not encountered by other designated entities.[83] In particular, they have an especially difficult time accessing capital and, as a result, are severely under-represented in the telecommunications industry. Together with the other preferences we adopt today, tax certificates should help to ensure the participation of minority and women-owned businesses in this service. This measure will make it easier for these designated entities to attract start-up capital because investors will know that they can defer taxes on any gains made when their interests are sold. In addition, tax certificates will provide incentives to licensees to seek out minority and female buyers in after-market sales because the licensees will be able to defer taxes on profits made in the sale.

50. We have used tax certificates over the years to encourage broadcast licensees and cable television operators to transfer their stations and systems to minority buyers.[84] We also have granted tax certificates to shareholders in minority-controlled broadcast or cable entities who sell their shares, when such interests were acquired to assist in the financing of the acquisition of the facility.[85] These broadcast and cable tax certificates are issued pursuant to the Internal Revenue Code, 26 U.S.C. 1071. While Congress' goal in authorizing tax certificates under Section 309(j)(4)(D) of the Act is somewhat different, and focuses on ensuring the opportunity for designated entities to participate in auctions and spectrum-based services, we think that it will be an equally valuable program. Issuance of tax certificates to investors and licensees that sell to minorities and women will augment the bidding credits preference, and together the measures should increase the ability of these entities to access financing, thus ensuring their opportunity to participate in IVDS auctions and services.

51. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors meeting the criteria outlined here to defer the gain realized upon a sale either

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[77] Even though small businesses are also mentioned in Section 309(j)(4)(D), we do not believe bidding preferences for small businesses are appropriate for IVDS auctions. We believe the installment payments preference, as outlined below, will be sufficient to ensure their participation.

[78] See comments of AIDE at 7, Devsha at 5, NABOB at 10–11, and *ex parte* filing of Personal Communications Network Services of New York at 2–3, each suggesting a bidding credit of 25 percent. Rocky Mountain Telephone proposes of 50 percent bidding credit. Comments of Rocky Mountain Telephone at 16. And Richard Vega proposes a 100 percent bidding credit for certain designated entities. Comments of Richard Vega at 7.

[79] See Lee Broadcasting Corp., 76 FCC 2d 462 (1980).

[80] See Second Report and Order at ¶ 264.

[81] Interest will also be charged according to the total number of years the license was held.

[82] Second Report and Order at ¶ 251.

[83] See ¶¶ 42–44, *supra*.

[84] See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982) ("1982 Policy Statement"); See also Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

by: (1) Treating it as an involuntary conversion under 26 U.S.C. 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property; or both. Tax certificates will be available to initial investors in minority and women-owned businesses who provide "start-up" financing, which allows these businesses to acquire licenses at auction or in the aftermarket, and those investors who purchase interests within the first year after license issuance, which allows for the stabilization of the designated entities' capital base. Also, in accordance with our existing policy, to be eligible for a tax certificate, such investor transactions must not reduce minority or female ownership or control in the entity below 50.1 percent. The definition of a minority or female-owned entity is set forth in the Second Report and Order and, with regard to our investor tax certificate policy, the entity in which the investment is made must satisfy that definition at the time of the original investment as well as after the investor's shares are sold. For after-market sales, tax certificates will only be issued to licensees who sell to entities that meet that definition. Tax certificates will be granted only upon completion of the sale, although parties can request a declaratory ruling from the Commission regarding the tax consequences of prospective transactions.

52. As with our other tax certificate policies, we wish to deter "sham" arrangements to obtain tax certificates and, pursuant to Section 309(j)(4)(E), therefore adopt measures to prevent unjust enrichment. First, we intend to enforce strictly the definitions adopted in the Second Report and Order and will carefully review investment and purchase arrangements to ensure that 50.1 percent control and equity by minorities and women was, and will be maintained. Second, like our existing tax certificate program,[86] we will impose a one-year holding requirement on the transfer or assignment of IVDS licenses obtained through the benefit of tax certificates. We believe that the rapid resale of such licenses to non-minorities or women at a profit would subvert our goal of ensuring the opportunity to participate by minority and women-owned businesses. The well-established one-year holding period would prevent this type of unjust enrichment. While this restriction will not be applied to assignments or transfers to qualified minority and female-owned businesses, assignees and transferees obtaining licenses pursuant to this exception will be subject to the one-year holding requirement.

D. Installment Payments

53. In this Fourth Report and Order, we adopt the preference of installment payments and limit its use to small businesses. Permitting a winning bidder to pay by installment payments is the equivalent of having the government extend credit to the bidder. Using this option, a prospective licensee may not need to rely as heavily on private financing either before or after an auction. As a result, this method is an effective way to promote the participation of designated entities in the provision of spectrum-based services, and is an effective means to distribute licenses and services among geographics areas.[87] In the Second Report and Order, we decided that the option of installment payments should be extended only to small businesses (including those held by minorities and women), and then only in instances where smaller spectrum blocks are being auctioned and the use of the blocks is very likely to match the business objectives of bona fide small businesses.[88] With the IVDS, the spectrum blocks are relatively small and the potential difficulties associated with permitting this option in the context of larger spectrum blocks (e.g., undercapitalization) are not present. We also find that, because of the expected relatively low capital entry requirements for the IVDS and the potential variety of offerings[89] that might result from the service, the IVDS will offer a bona fide business opportunity to small businesses.

54. Therefore, we will permit the use of installment plans for all IVDS auctions, and follow the general procedures given in the Second Report and Order for the use of this preference.[90]. The installment payment option will enable all small businesses to pay the full amount of their winning bid in installments (less the upfront payment, which must be paid in full, and the down payment, half of which is due five days after the auction closes and the other half five days after the application is granted). Timely payments of all installments will be a condition of the license grant, and failure to make such timely payments on or before the date due may be grounds for revocation.[91].

VII. Conclusion

55. In summary, the rules and procedures we adopt in this Fourth Report and Order for auctioning licenses in the IVDS are designed to minimize the regulatory burdens on both applicants and the Commission, reduce the potential for delay of service to the public, and maintain safeguards to preserve the integrity of the bidding process. The rules also seek to meet Congressional objectives and serve two basic goals: promoting economic growth, and enhancing access to telecommunications service offerings for consumers, producers, and new entrants. We also take account of Congress' desire that designated entities previously underrepresented in the provision of telecommunications services be afforded preferences to encourage their participation. We expect that these procedures will lead to the development and rapid deployment of IVDS offerings across the country.

VIII. Final Regulatory Flexibility Analysis

56. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final analysis is as follows:

A. Need For, and Purpose of, This Action

As a result of the Budget Act referenced above, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, see generally 5 U.S.C. 603, within the Notice of Proposed Rule Making in this proceeding, and published a Final Regulatory Flexibility Analysis within the Second Report and Order (at ¶¶ 299–304). As noted in that previous final analysis, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out Congressional mandates that certain designated entities be afforded an opportunity to participate in the competitive bidding process and the provision of spectrum-based services.

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[86] 1982 Policy Statement, 92 FCC 2d at 855–58.

[87] Second Report and Order at ¶¶ 231–233.

[88] *Id.* at ¶¶ 234–237. We noted that the legislative history of the Budget Act indicates that large entities with established revenue streams are not intended beneficiaries of the installment payments preference. *Id.* at ¶ 236.

[89] See note 3, *supra.*

[90] Under these general procedures, for example, only interest payments will be due for the first two years, with principal and interest both being amortized over the remaining years of the license. Also, interest charges will be fixed at the time of licensing at a rate equal to that of five-year U.S. Treasury notes, to track the IVDS license term of five years. See Second Report and Order at ¶ 239. If a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we will require payment of the remaining principal balance as a condition of the license transfer. *Id.* at ¶ 263.

[91] Limited grace periods for defaulting licensees may be considered on a case-by-case basis. *Id.* at ¶ 240.

B. Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

In regard to the specific IVDS issues addressed by this Fourth Report and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered

Although, as described in (B) above, no comments were received pertaining to IVDS, the Second Report and Order addressed at length the general policy considerations raised as a result of the new legislation.

IX. Ordering Clauses

57. Accordingly, *it is ordered* that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), this Fourth Report and Order is adopted, and Parts 0, 1, and 95 of the Commission's Rules *are amended* as set forth in the attached Appendix.

58. *It is further ordered* that the rule amendments set forth in the Appendix *will become effective* 30 days after their publication in the **Federal Register**.

List of Subjects

47 CFR Part 0

Organization and functions

47 CFR Part 1

Administrative practice and procedure

47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0, 1, and 95 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.131 is amended by adding new paragraph (k) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(j) Develops, in coordination with the Office of Plans and Policy, policies for selection of licensees from mutually exclusive applicants in the Private Radio Services subject to competitive bidding; issues Public Notices announcing auctions of Private Radio Services licenses; specifies the licenses to be auctioned, the time, place and method of competitive bidding, including applicable bid submission procedures, bid withdrawal procedures, stopping rules and activity rules; specifies the filing windows for short-form applications, bidder certifications, and the deadlines for submitting filing fees, upfront payments and down payments.

PART 1—PRACTICE AND PROCEDURE

3. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 C.F.R. 154, 303: Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

4. Section 1.912 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 1.912 Where applications are to be filed.

* * * * *

(e) Applicants submitting long-form applications pursuant to competitive bidding procedures (see § 1.2107(c)) must mail or otherwise deliver their application to: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

* * * * *

5. Section 1.922 is amended by adding two entries at the beginning of the table to read as follows:

§ 1.922 Forms to be used.

FCC Form and Title

175—Application to Participate in an FCC Auction

175–S Supplemental Application to Participate in an FCC Auction.

* * * * *

§ 1.972 [Amended]

6. In § Section 1.972, paragraph (a)(1) is amended by removing the words "Part 95-Subpart F-Personal Radio Services" and paragraph (c) is amended by removing the words "or part 95-subpart F", removing the comma and adding the word "or" after "part 90" in the first sentence.

PART 95—PERSONAL RADIO SERVICES

7. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

8. New § 95.816 is added to read as follows:

§ 95.816 Competitive bidding proceedings.

(a) Mutually exclusive IVDS initial applications are subject to competitive bidding.

(b) The General Procedures set forth in 47 CFR Part 1, Subpart Q are applicable to competitive bidding proceedings used to select among mutually exclusive applicants for initial IVDS licenses.

(c) The specific procedures applicable to auctioning particular IVDS licenses will be set forth by Public Notice. Generally, the following competitive bidding procedures will be used to auction mutually exclusive IVDS licenses. The Commission, however, may design and test alternative procedures.

(1) Competitive bidding design. Sequential oral (oral outcry) auctions will be used to assign licenses in and around large urban areas and single-round sealed bidding will be used for rural areas unless otherwise specified by the Commission. See 47 CFR 1.2103 and 1.2104.

(2) Forms. (i) Applicants must submit short-form applications (FCC Form 175) as specified in Commission Public Notices. Minor deficiencies may be corrected prior to the auction. Major modifications such as changes in ownership, failure to sign an application or failure to submit required certifications will result in the dismissal of the application. See 47 CFR 1.2105(a) and (b).

(ii) Applicants must submit a long-form application (FCC Form 574) within ten (10) business days after being notified that it is the winning bidder for a license. See 47 CFR 1.2107 (c) and (d).

(3) Upfront payments. For oral outcry bidding, applicants will be required to show the Commission or its representative, immediately prior to the auction, a cashiers check for at least $2500 in order to get a bidding number and secure a place in the room where the bidding will take place. Bidders will be required to have $2500 upfront money for every five licenses they win. No upfront payment will be required from applicants in single-round sealed bid auctions. See 47 CFR 1.2106.

(4) Down payments. Within five (5) business days after an oral outcry auction is over, or within five (5)

business days after being notified that it is the high bidder in a single round sealed bid auction, a high bidder on a particular license(s) must submit to the Commission's lockbox bank such additional funds as are necessary to bring total deposits (upfront payment plus down payment) up to twenty (20) percent of the high bid(s). Small businesses eligible and electing to use installment payments pursuant to § 95.816(d)(3) are required to bring their total deposits up to ten (10) percent of their winning bid. The remainder of the twenty (20) percent down payment must be submitted within five (5) business days of the grant of their license(s). See 47 CFR 1.2107(b).

(5) Full payment. Auction winners, except for small businesses eligible for installment payments, must pay the balance of their winning bids in a lump sum within five (5) business days following the grant of their license(s). The grant of a license(s) to an auction winner(s) will be conditioned on the timely payment of all monies due the Commission. See 47 CFR 1.2109(a).

(6) Default or disqualification, see 47 CFR 1.2104(g).

(i) Sequential oral auctions. If a high bidder, after signing a bid confirmation form, fails to make the required down payment, fails to pay for a license, or is otherwise disqualified, it will be assessed a penalty equal to the difference between its winning bid and the winning bid the next time the license is auctioned by the Commission, plus three (3) percent of the lower of these two amounts.

(ii) Single round sealed bid auctions. If a high bidder withdraws its bid prior to making the required down payment, it will be assessed a penalty equal to the difference between its bid and the next highest bid. If a high bidder, after having made the required down payment for a license, fails to pay the remaining amount for the license, or is otherwise disqualified, it will be assessed a penalty equal to the difference between its winning bid and the winning bid the next time the license is auctioned by the Commission plus three (3) percent of the lower of these two amounts.

(d) Designated entities. Designated entities are small businesses, and businesses owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(b).

(1) Bidding credits. A winning bidder that qualifies as a business owned by women and/or minorities may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid. A bidding credit is available for a license for either frequency segment A or frequency segment B in each service area. A bidding credit, however, may be applied to only one of the two licenses available in each service area.

(2) Tax certificates. Any initial investor in a business owned by minorities and/or women and who provides "start-up" financing, which allows such business to acquire a IVDS license(s), and any investor who purchases ownership in an interest in a IVDS license owned by minorities and/or women within the first year after license issuance, which allows for the stabilization of the entity's capital base, may, upon the sale of such investment or interest, request from the Commission a tax certificate, so long as such investor transaction does not reduce minority or female ownership or control in the entity below 50.1 percent. Any IVDS licensee who assigns or transfers control of its license to a business owned by minorities and/or women may request that the Commission issue it a tax certificate.

(3) Installment payments. Small businesses, including small businesses owned by women and/or minorities may elect to pay the full amount of their bid in installments over the term of their licenses. See 47 CFR 1.2110(d).

(e) Unjust enrichment. Any business owned by minorities and/or women that obtains a IVDS license through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and/or women, this paragraph shall not apply; Provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

9. Section 95.819 is revised to read as follows:

§ 95.819 License transferability.

(a) IVDS system licenses acquired through competitive bidding procedures may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in 47 CFR 1.2111.

(b) Except for licenses acquired through competitive bidding procedures, the licensees may not transfer, assign, sell, or give the IVDS system licenses or any component CTS licenses to any other entity until the five year construction benchmark (50 percent coverage) has been met.

(c) Once the five year construction benchmark has been met, licensees of IVDS systems that were not acquired through competitive bidding may transfer, sell, assign, or give the IVDS system licenses together with all of its component CTS licenses to any other entity in accordance with the provisions of § 95.821. If the licensee sells or gives away the apparatus the new owner must obtain a new IVDS system license and CTS licenses before placing it in operation.

[FR Doc. 94–11779 Filed 5–12–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Indian Tribal or Alaska Native Corporation

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement so that a qualified Indian Tribal Corporation, including an Alaska Native Corporation, furnishing the product of a responsible small business concern is not denied the opportunity to compete for and be awarded a contract under small disadvantaged business preference programs.

DATES: *Effective Date:* May 3, 1994. *Comment Date:* Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before July 12, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D309 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8051 of the Fiscal Year 1994 Defense Appropriations Act, Public Law 103–139, provides that notwithstanding any other provision of law, a qualified Indian Tribal Corporation or Alaska Native Corporation furnishing the product of a responsible small business concern shall not be denied the opportunity to compete for and be awarded a contract under the Small

Disadvantaged Business (SDB) preference programs.

The Director, Defense Procurement, issued Departmental Letter 94–009, May 3, 1994, to implement Section 8051 in the Defense Federal Acquisition Regulation Supplement.

B. Regulatory Flexibility Act

The interim rule may have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule makes small disadvantaged businesses owned by Indian tribes, including Alaska Native Corporations, eligible for small disadvantaged business preferences when they furnish the product of a small business concern. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 94–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because Section 8051 became effective upon enactment of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139), on November 11, 1993. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 219 and 252 are amended as follows:

1. The authority for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Part 1.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 219.502–2–70 is amended by revising paragraph (a)(1)(ii) and adding (a)(1)(iii) to read as follows:

219.502–2–70 Total set-asides for small disadvantaged business concerns.

(a) * * *

(1) * * *

(i) * * *

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation, will provide the supplies of a small business for contracts awarded during fiscal year 1994, as provided in Section 8051 of Pub. L. 103–139; or,

(iii) In the case of other SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219–7002, Notice of Small Disadvantaged Business Set-Aside).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.219–7001 is amended by revising the clause date to read "(May 1994)" in lieu of "(Dec 1991)", by adding a definition for *United States* to paragraph (a), and by revising paragraph (f)(2) and Alternate I to read as follows:

252.219–7001 Notice of Partial Small business Set-Aside with Preferential consideration for Small Disadvantaged Business Concerns.

* * * * *

(a) *Definitions.*

* * * * *

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

* * * * *

(f) *Agreements.*

* * * * *

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103–139, for contracts awarded during fiscal year 1994, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

Alternate I (May 1994)

As prescribed in 219.508(d), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) A regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

4. Section 252.219–7002 is amended by revising the clause date to read "(May 1994)" in lieu of "(Dec 1991)", by revising the heading of paragraph (a), and adding a definition for *United States* to paragraph (a), and by revising paragraph (c) and Alternate I to read as follows:

252.219–7002 Notice of small disadvantaged business set-aside.

* * * * *

(a) *Definitions.*

* * * * *

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

* * * * *

(c) *Agreement.*

A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103–139, for contracts awarded during fiscal year 1994, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation; agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

Alternate I (May 1994)

As prescribed in 219.508–70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.*

A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

5. Section 252.219–7006 is amended by revising the clause date to read "(May 1994)" in lieu of "(Apr 1994)", and by adding a definition of *United States* to paragraph (a) and by revising paragraph (d)(2) and Alternate I to read as follows:

252.219–7006 Notice of Evaluation Preference for Small Disadvantaged Business Concerns

* * * * *

(a) *Definitions.*

* * * * *

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

* * * * *

(d) *Agreements.*

* * * * *

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, except, as provided in Section 8051 of Pub. L. 103–139, for contracts awarded during fiscal year 1994, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

* * * * *

Alternate I (May 1994)

As prescribed in 219.7003, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns, historically black colleges or universities, or minority institutions in the United States.

[FR Doc. 94–11421 Filed 5–12–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 6]

RIN 2130–AA80

Locomotive Conspicuity; Minimum Standards for Auxiliary External Lights

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule (referred to as "IR–2") amends FRA's interim rule (referred to as "IR–1") published on February 3, 1993, by relaxing the standards IR–1 contained concerning auxiliary external lights on locomotives. IR–2 contains detailed and specific performance standards regarding color, intensity, operation, mounting location and flash rate for ditch lights, crossing lights, strobe lights and oscillating lights. This action is intended to increase the visibility of locomotives to motorists and thereby reduce the incidence of accidental collisions between motor vehicles and locomotives at highway-rail grade crossings.

DATES: This interim rule is effective May 13, 1994; written comments must be received on or before July 12, 1994. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

ADDRESSES: *Written Comments:* Written comments and petitions for reconsideration should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

Public hearing: Given the limited scope of this interim rule and the statutory exception under 45 U.S.C. 431(u)(2) from public proceedings, FRA does not believe that a public hearing is warranted at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed by the deadline for written comments.

FOR FURTHER INFORMATION CONTACT: Gordon Davids, Bridge Engineer, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202–366–9186); Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202–366–9252); or Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION: On February 3, 1993, FRA published an interim rule (IR–1) (58 FR 6899, to be codified at 49 CFR 229.133), with request for comments, concerning measures to enhance the conspicuity of locomotives. IR–1 implemented requirements mandated by section 14 of the Amtrak Authorization and Development Act (Pub. L. 102–533). This enabling legislation added new subsection (u) to section 202 of the Federal Railroad Safety Act of 1970 (Safety Act) (45 U.S.C. 431), which reads as follows:

> (u) *Locomotive Conspicuity.*
>
> (1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to locomotive conspicuity and shall complete the Department's current locomotive conspicuity research no later than December 31, 1993. As part of this review, the Secretary shall collect relevant data from operational experience by railroads having enhanced conspicuity measures in service.
>
> (2) Not later than December 31, 1992, the Secretary shall issue interim regulations identifying ditch lights, crossing lights, strobe lights, and oscillating lights as interim locomotive conspicuity measures, and authorizing and encouraging installation and use of such measures. The interim regulations and any amendments thereto shall be adopted without regard to subchapter II of chapter 5 of Title 5. Any locomotive equipped with such interim conspicuity measures on the date of issuance of final regulations under paragraph (3) shall be considered in full compliance with such final regulations until 4 years after issuance of such final regulations.
>
> (3) Not later than June 30, 1994, the Secretary shall initiate a rulemaking proceeding to issue final regulations requiring substantially enhanced locomotive conspicuity measures. In such rulemaking proceeding, the Secretary shall consider, at a minimum—
>
> (A) Revisions to the existing locomotive headlight standard, including standards for placement and intensity;
>
> (B) Requiring use of reflective materials to enhance locomotive conspicuity;
>
> (C) Requiring use of additional alerting lights (including ditch, crossing, strobe, and oscillating lights);
>
> (D) Requiring use of auxiliary lights to enhance locomotive conspicuity when viewed from the side;
>
> (E) The effect of any enhanced conspicuity measures on the vision, health, and safety of train crew members;
>
> (F) separate standards for self-propelled, push-pull and multi-unit passenger operations without a dedicated head-end locomotive.
>
> (4) In issuing regulations under paragraph (3), the Secretary may exclude from any specific conspicuity requirement and category of trains or rail operations if the Secretary determines that such an exclusion is in the public interest and is consistent with rail safety (including grade-crossing safety).
>
> (5) The Secretary shall issue final regulations requiring enhanced locomotive conspicuity measures no later than June 30, 1995. The Secretary shall require that all locomotives not excluded from the regulations be equipped with interim conspicuity measures under paragraph (2) or the conspicuity measures mandated by final regulations issued under this paragraph, no later than December 31, 1997.
>
> (6) As used in this subsection, the term "locomotive conspicuity" means the enhancement of day and night visibility of the front-end unit of a train, by means of lighting, reflective materials, or other means, with particular consideration to the visibility and perspective of drivers of motor vehicles at grade crossings.

Under IR–1, ditch lights, crossing lights, strobe lights and oscillating lights were designated as interim locomotive conspicuity measures. Conspicuity measures that comply with IR–1, IR–2 or any amendment thereto, are deemed to comply with the final rule for four years after its issuance. As required by the enabling legislation, the final rule requiring enhanced locomotive conspicuity measures must be issued no later than June 30, 1995. All locomotives not excluded from the final regulations must be equipped with either the interim conspicuity lighting arrangements identified in IR–1 or IR–2 or the conspicuity arrangements mandated by the final regulations, no later than December 31, 1997.

If the final rule is issued prior to the deadline, June 30, 1995, the statute's four-year grace period would begin on that earlier date. Likewise, although IR–1 and IR–2 do not require that any train be equipped with conspicuity measures, the final rule may require such equipping even prior to December 31, 1997, which is the latest date for requiring such measures.

Research on locomotive conspicuity conducted through the Volpe National Transportation Systems Center was completed on schedule in 1993. FRA will continue to gather and analyze data concerning means of enhancing visibility of trains at highway-rail grade crossings.

Public Participation in the Rulemaking

Subsection 202(u)(2) of the Safety Act provides that IR–1 and IR–2 and any amendment to either rule shall be adopted without regard to subchapter II of chapter 5 of title 5, United States Code. This subsection thus allows IR–1 and IR–2 to be issued without regard to the Administrative Procedure Act's (APA) general requirement of providing an opportunity for public participation in the rulemaking process or, by implication, the Safety Act's requirement that an opportunity for oral presentation be provided where notice and comment are necessary. See 45 U.S.C. 431(b). Similarly, the normal APA requirement that a rule be effective no sooner than 30 days after issuance does not apply here. See 5 U.S.C. 553(d).

Although the enabling legislation suspended the requirements for notice and comment, FRA will consider written comments received on or before July 12, 1994. During this period, FRA will also consider petitions for amendment of this rule, provided that such petitions clarify the descriptions of devices addressed in this rule, or identify devices that perform the same function at least as effectively as those devices addressed in this rule.

Discussion of Comments and Section Analysis

In IR–1, FRA solicited comments from railroads, lighting manufacturers, railroad employees and other interested persons regarding (i) the specific performance standards for the different auxiliary lighting arrangements detailed in that rule and (ii) the concept of "locomotive conspicuity" in general.

FRA received comments from the Florida East Coast Railway Company, the Union Pacific Railroad Company (UP), The American Short Line Railroad Association (ASLRA), the Association of American Railroads (AAR), the Northeast Illinois Regional Commuter Railroad Corporation (METRA), the Long Island Rail Road, Canadian Pacific Limited (CP), the Quest Corporation, 3M, Flash Technology Corporation of America, the Norfolk Southern Corporation (NS), and the Canadian National Railway Company (CN).

After review of public comments, FRA determined that changes to IR–1 are warranted. The following discussion is provided in response to these comments and in explanation of these changes.

A. Length of the "Grandfathering" Period (§ 229.133(a))

Several commenters, including AAR, UP and ASLRA, requested that any auxiliary lighting system meeting the specifications in IR–1 that is installed on a locomotive be considered in compliance with the final rule for the entire life of the locomotive, rather than for only the four-year period specified in IR–1 at 49 CFR 229.133(a).

The enabling legislation specifically allowed a four-year period of acceptability for installed auxiliary lighting systems that conform to the specifications outlined in IR–1. FRA does not have the authority to "grandfather" such lighting systems beyond that four-year period. Furthermore, FRA does not want to constrain the content and applicability of the final rule to decisions made at this time without benefit of information from research and rulemaking that will be available and incorporated into the rulemaking process beginning in 1994. FRA will endeavor to apply a "rule of reason" at the final-rule stage to recognize the value of early investments in auxiliary lighting systems that were in service prior to the issuance of the final rule.

B. Activation of Auxiliary Lighting Systems (§§ 229.133 (b)(1)(iii), (b)(2)(iv), (b)(3)(v) and (b)(4)(ii))

ASLRA requested that the interim rule not reference the manner in which the auxiliary lighting systems would be activated on the locomotive. ASLRA is concerned that the language in IR–1 at §§ 229.133(b)(1)(iii), (b)(2)(iv), (b)(3)(v) and (b)(4)(ii) referring to activation parameters of auxiliary lights might be considered a precedent for adoption of similar provisions in the final rule without full consideration of the consequences.

FRA agrees in part. Mention of specific activation parameters without requiring their use may be interpreted to imply that similar parameters would be incorporated in the final rule. That is not the intent of the interim rule. Activation methods or systems will be specified in the final rule as needed. Such activation methods could then be applied to almost any system regardless of whether the lights were installed prior to or after the final rule.

In reality, any system imaginable is capable of actuation by a wide variety of devices and at almost any time. The final rule may require actuation devices to be provided wherever necessary, without rendering existing lighting systems obsolete. Therefore, the specification for capability of automatic operation has been eliminated in IR–2.

C. Dimensional Requirements for Lighting Placement (§§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i))

Several responders commented on the vertical and horizontal dimensional requirements for the various auxiliary lighting arrangements in IR–1.

The dimensional requirements for light placement in IR–1 at §§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i) represented the best information available to FRA at the time of issuance of IR–1. The governing principle was to have the lights far enough apart to be distinguishable, preferably forming a triangle with the headlight, and high enough above the rail that they would be effective in snow as well as over vertical curves in the railroad track.

The comments and photographs submitted in this regard were valid and informative. Several locomotive types in common use present a problem with installation of ditch or crossing lights with horizontal spacing greater than 49 inches. CN, which has had considerable experience and success with ditch lights, has one type of installation with a horizontal spacing of 37 inches, and focused on the track at a point 800 feet in front of the locomotive. Other locomotives have horizontal spacing less than the minimum requirement of 60 inches contained in IR–1 at § 229.133(b)(1)(i). CN also has some locomotives equipped with ditch lights placed 91 inches above the rail, above the 84-inch maximum established in IR–1 at § 229.133(b)(1)(i). METRA, the commuter railroad in the Chicago area, has ditch lights mounted on cab control cars at a height of only 25 inches above the rail, lower than the 36-inch minimum in IR–1 at § 229.133(b)(1)(i). Additionally, the flat section of the cab roof on some EMD locomotives might inhibit the installation of strobe lights spaced 60 inches horizontally.

1. Three-Light Triangle Dimensions: (New §§ 229.133(b)(1)(ii), (iii), (b)(2)(iii) and (b)(3)(ii), (iii))

FRA believes that the purpose of IR–2 would be best served by broadening the limits on acceptable placement dimensions to some degree. However, some minimum horizontal spacing of lights remains necessary to permit recognition of a characteristic pattern by a motorist sufficiently in advance of the approach of a train to permit timely defensive action. FRA concludes that the spacing requirement for ditch and crossing lights can be modified if the vertical dimension of the three-light triangle (headlight and two crossing lights; headlight and two ditch lights; or headlight and two strobe lights) is large enough to afford recognition by a motorist not only of the approaching train, but also of its general location relative to the crossing. If the vertical dimension, or the altitude, of the three-light triangle is at least 60 inches, it would compensate for a shorter horizontal spacing of the lower lights, or base of the triangle. The normal human eye can resolve two objects spaced to form an angle of approximately one-half of one degree. The orientation—horizontal, vertical or diagonal—is immaterial. Spacing of 60 inches subtends, or delimits, one-half of one degree at 573 feet from the observer, beyond which distance the lights are seen as one. This distance corresponds to an approach time of 6.5 seconds at 60 miles per hour.

2. Horizontal Dimensions (New §§ 229.133(b)(1)(ii), (iii), (b)(2)(iii) and (b)(3)(ii), (iii))

FRA concludes that the minimum horizontal interval between adjacent crossing lights and adjacent ditch lights should be reduced from 60 to 36 inches, provided that, if the horizontal interval is less than 60 inches, the vertical distance between the headlight and the plane of the ditch or crossing lights be not less than 60 inches. *See* IR–2 at §§ 229.133(b)(1)(ii), (iii) and (b)(3)(ii), (iii).

Strobe lights derive their effectiveness more from their intensity and characteristic flash pattern than from their relative spacing. The effectiveness of omni-directional strobe lights can be enhanced by mounting them at the highest point on the locomotive cab roof. In order to accommodate such mounting on some cabs with flat top sections narrower than 60 inches, the minimum spacing between adjacent strobe lights is reduced to 48 inches, as set forth in IR–2 at § 229.133(b)(2)(iii).

3. Vertical Dimensions (§§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i))

The most common placement of ditch or crossing lights on a road switcher locomotive is directly above the front platform. The headlight is commonly located on the front cab wall, just below the roof line. The front platform is typically between five and six feet above the rail; the cab roof line, 14 feet above the rail. Allowing a conservative placement of one foot from the surface of the front platform to the centerline of the lower lights, and two feet from the edge of the cab roof to the center of the upper headlight unit, the vertical spacing between the lower lights and the headlight would be five feet, or 60 inches.

Height above the rail is a factor in the visibility of a light for several reasons. Increased height has several advantages. First, the light will be less obstructed by objects or vertical curves on or in the track. Second, the light will be less affected by accumulations of snow or foreign material thrown up by the pilot, plow or wheels. Third, the light is less likely to be damaged should the locomotive strike a foreign object. There is no reason to limit the maximum height above the rail for crossing or ditch lights, provided that they meet the criteria for horizontal or vertical spacing as discussed above.

The minimum height for ditch lights was specified in IR–1 as 36 inches in § 229.133(b)(1)(i), and as 48 inches for crossing lights in § 229.133(b)(3)(i), in order to accommodate mounting below the front platform, if necessary. There is no reason for inconsistency between the dimensions for ditch lights and for crossing lights; ditch lights could become crossing lights after modification of control circuitry. Thus, the minimum height for crossing lights in IR–1 at § 229.133(b)(3)(i) is revised from 48 inches to 36 inches.

The 36-inch minimum height requirement will permit maintenance of the 60-inch vertical dimension on locomotives with the headlight mounted in a low front hood. This height requirement also aids the observer's sight distance. The maximum vertical curve recommended by the American Railway Engineering Association for main track has a rate of change of grade of 0.2 percent per 100 feet. On this vertical curve, a light three feet above the track will be visible to an observer at a distance of 1,095 feet, provided the observer's eyes are three feet above the track. A reduction in height of one foot, of either the observer or the light, reduces the sight distance by approximately 100 feet.

The one comment requesting a lower height above the rail applied only to cab control cars in suburban passenger service. If those cars have suitable conspicuity while operating on their specific routes, the final rule may permit their light configuration in that service. However, the 25-inch height requested is not suitable for general railroad service, owing to the reduced visibility on vertical curves, susceptibility to snow, and damage from foreign objects. FRA therefore concludes that the minimum height of 36 inches for ditch lights, crossing lights and strobe lights will be retained in IR–2. *See* IR–2 at §§ 229.133(b)(1)(i), (b)(2)(iii) and (b)(3)(i).

D. Strobe Lights (§ 229.133(b)(2)(i))

Flash Technology commented that one forward-facing, focused strobe light could be more effective than two omni-directional strobe lights described in IR–1 at § 229.133(b)(2)(i). If any railroads are presently using the former type of system, none commented or requested its inclusion in the interim rule.

The purpose of both IR–1 and IR–2 is to encourage the installation of currently available effective systems. FRA was not provided with any information indicating that one forward-facing, focused strobe light has been in service or proven effective to date. Such technology may be considered in the final rule. The authority for expedited issuance of IR–1 did not contemplate the inclusion of systems not in current use. Therefore, IR–2 will continue the requirement for two strobe lights.

E. Flash Rates (§§ 229.133(b)(2)(ii), (b)(3)(iii) and New §§ 229.133(b)(2)(ii), (b)(3)(v))

Flash Technology commented that the limits of flash rate of strobes should be broadened to incorporate units used by Amtrak which flash at a period of 0.5 seconds. This rate is used by the Federal Aviation Administration (FAA) for runway lead-in lighting, and does not cause problems with flicker vertigo. Research conducted for FRA by the Transportation Systems Center in 1974 and 1975 shows that a flash rate as rapid as three per second effectively improves conspicuity, and does not produce flicker vertigo. In view of this research and comment, the flash rate for both strobe lights and crossing lights is broadened in IR–2 at §§ 229.133(b)(2)(ii) and (b)(3)(v), respectively, to permit rapid flash rates up to three per second, or 180 per minute.

Generally, the original specifications for flash rates were drawn around a time period of one second. The proposed revisions to flash or operating rates range on either side of one per second. IR–2 is clarified by restatement of the flash rates in terms of flashes or cycles per minute.

F. Oscillating Lights (§ 229.133(b)(4))

The Florida East Coast Railway Company commented that its locomotives have been equipped since 1978 with an Oscitrol warning light that performs the functions of an oscillating light. This warning light consists of two lamps co-located in the same fixture, aimed three degrees to either side of the locomotive centerline, which flash alternately at a rate of approximately 50 times per minute. It also uses one red lamp, which is actuated by a heavy application of the train air brake.

The red light is used for purposes other than improved conspicuity at highway-rail crossings. It need be addressed only to the extent that the actuation of a red oscillating light generally extinguishes the white light. Its primary purpose is to alert approaching trains on adjacent tracks that the train displaying the red light has undergone a heavy brake application, and could possibly foul the adjacent track.

FRA believes that the warning lights used by Florida East Coast are effective and within the family of oscillating lights defined in the enabling legislation. They are therefore included in the definition of an acceptable oscillating light.

Display of the red light, overriding the white light, occurs only in specific, critical situations when necessary to avoid potential train collisions. The safety benefit of this type of red light, in the rare circumstances under which it is used, outweighs the consequences of the short-term loss of the oscillating white light. This feature is permitted, but not mandated, in acceptable interim oscillating light systems.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This rule also has been reviewed under Executive Order 12866 and is considered "nonsignificant" under that Order. This interim rule does not require the use of an auxiliary lighting system. Instead, the rule encourages the installation and use of auxiliary lighting arrangements on locomotives.

Although "nonsignificant," FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the rule. This regulatory evaluation estimates that economic costs are negligible because installation of the auxiliary external lights on locomotives by railroads is not mandatory. Anticipated benefits and impacts of the rule will not be known until all relevant data is collected and examined by FRA. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. This interim rule will not have an adverse impact on any entity because it does not place any new requirements or burdens on the public. Therefore, it is certified that the interim rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at a local safety hazard if that provision is consistent with this rule and does not impose an undue burden on interstate commerce.

List of Subjects in 49 CFR Part 229

Railroad safety.

Adoption of the Amendment

In consideration of the foregoing, FRA amends part 229, title 49, Code of Federal Regulations to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34; 45 U.S.C. 431, 438; 49 App. U.S.C. 1655(e); Pub. L. 100–342; Pub. L. 102–365; Pub. L. 102–533; 49 CFR 1.49 (c), (g) and (m).

2. Section 229.133 is amended by revising paragraph (b) to read as follows:

§ 229.133 Interim Locomotive Conspicuity Measures—Auxiliary External Lights

* * * * *

(b) Each qualifying arrangement of auxiliary external lights shall conform to one of the following descriptions:

(1) *Ditch lights.* (i) Ditch lights shall consist of two white lights, each producing a steady beam of at least 200,000 candela, placed at the front of the locomotive, at least 36 inches above the top of the rail.

(ii) Ditch lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is 60 inches or more.

(iii) Ditch lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is less than 60 inches.

(iv) Ditch lights shall be focused horizontally within 45 degrees of the longitudinal centerline of the locomotive.

(2) *Strobe lights.* (i) Strobe lights shall consist of two white stroboscopic lights,

each with "effective intensity," as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights (November 1964), of at least 500 candela.

(ii) The flash rate of strobe lights shall be at least 40 flashes per minute and at most 180 flashes per minute.

(iii) Strobe lights shall be placed at the front of the locomotive, at least 48 inches apart, and at most 36 inches above the top of the rail.

(3) *Crossing lights.* (i) Crossing lights shall consist of two white lights, placed at the front of the locomotive, at least 36 inches above the top of the rail.

(ii) Crossing lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is 60 inches or more.

(iii) Crossing lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the ditch lights is less than 60 inches.

(iv) Each crossing light shall produce at least 200,000 candela, either steadily burning or alternately flashing.

(v) The flash rate of crossing lights shall be at least 40 flashes per minute and at most 180 flashes per minute.

(vi) Crossing lights shall be focused horizontally within 15 degrees of the longitudinal centerline of the locomotive.

(4) *Oscillating light.* (i) An oscillating light shall consist of:

(A) one steadily burning white light producing at least 200,000 candela in a moving beam that depicts a circle or a horizontal figure "8" to the front, about the longitudinal centerline of the locomotive; or

(B) two or more white lights producing at least 200,000 candela each, at one location on the front of the locomotive, that flash alternately with beams within five degrees horizontally to either side of the longitudinal centerline of the locomotive.

(ii) An oscillating light may incorporate a device that automatically extinguishes the white light if display of a light of another color is required to protect the safety of railroad operations.

* * * * *

Issued in Washington, DC, on May 9, 1994.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 94–11733 Filed 5–12–94; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 940425–4125; I.D. 041894A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of control date for charterboat entry into the Pacific halibut sport fishery.

SUMMARY: NMFS announces that any charterboat entering the Pacific halibut sport fishery off Washington, Oregon, and California after March 10, 1994, may not be assured of future access to the fishery if a limited access regime is developed and implemented. The intended effect of announcing this control date is to discourage speculative entry into the Pacific halibut fisheries in this area while discussions by the Pacific Fishery Management Council (Council) on access control continue.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140, or Lawrence D. Six, 503–326–6352.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Halibut Act at 16 U.S.C. 773c(c) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Pursuant to this authority, the Council has recommended allocations between user groups and restrictions on catch and fishing effort in the Pacific halibut fishery off Washington, Oregon, and California (IPHC statistical Area 2A).

Pacific halibut in Area 2A are harvested in treaty Indian fisheries and in non-Indian commercial and sport fisheries. Because the total harvest in any one of these three fisheries can exceed the total allowable catch (TAC) for Area 2A, Catch Sharing Plans (Plan) that allocate the TAC in Area 2A have been implemented by the Secretary each year since 1988. The intended effect of each year's Plan is to ensure the conservation and management of Pacific halibut stocks by limiting the total harvest to a biologically acceptable level while equitably distributing the allowable harvest among user groups in Area 2A. However, because of decreased TACs in recent years and increased user access, additional measures to restrict fishing effort within the non-Indian commercial and recreational fisheries have been necessary. For example, the non-Indian commercial fishery has been limited by the IPHC to a single 10-hour opening with vessel trip limits to prevent this fishery from exceeding its allocation. Also, sport fisheries in some geographic areas have been limited to 1- or 2-day seasons to prevent allocations from being exceeded. In order to maintain viable Pacific halibut fisheries in Area 2A without exceeding the domestic allocations or the conservation goals established by the IPHC, the Council is considering development of additional management measures including limited access regimes to control fishing effort starting in 1995.

Access to the Pacific halibut sport fishery currently is not limited, although charterboat operators must obtain a fishing license from the IPHC. At the March 8–11, 1994, public meeting in Portland, Oregon, the Council met to address concerns about the additional charterboats entering the sport fishery, additional effort restrictions in the sport fisheries and priorities for future participation by charterboats in Area 2A Pacific halibut fishery. The control date of March 10, 1994, was adopted at this meeting and public notice was provided. A charterboat in the Pacific halibut fishery is defined at 50 CFR 301.2 as follows: "*Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator".

For the non-Indian commercial fisheries, during its November 12–15, 1991, public meeting in Millbrae, California, the Council adopted November 13, 1991, as a control date to be used in determining priorities for issuance and shares in a potential individual quota-based limited access system or other access controls for Pacific coast groundfish fisheries, as well as the Area 2A Pacific halibut non-Indian commercial fishery. Notice of this control date and its implications for the non-Indian commercial fishery for Pacific halibut in Area 2A was published in the **Federal Register** on

February 5, 1992 (57 FR 4394). At its March public meeting in Oregon, the Council reaffirmed the November 13, 1991, control date for future access to the non-Indian commercial halibut fishery if a limited access regime is developed and implemented.

This announcement of a control date does not commit the Council or the Secretary to any particular management regime or priority criteria for access to the halibut fisheries. As the Council further develops a halibut limited access program, fishing activity in the halibut fishery in Area 2A, prior to the control date, may be considered in determining eligibility and allocating harvest shares under a future access limitation program. Fishermen are not necessarily guaranteed issuance of permits or access, regardless of their activity prior to the control dates.

The Council may recommend additional criteria for qualifying fishermen or vessels as participants in the halibut fishery. Some additional criteria that were applied to the groundfish fishery in Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan were minimum amounts landed and minimum numbers of landings. The Council also may choose to take no further action to control entry or access to the fisheries. This announcement does not prevent the development or implementation of other eligibility criteria or restrict the type of management regime selected for limited access.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773(k).

Dated: May 6, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–11729 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Parts 672 and 675

[Docket No. 940225–4025; I.D. 050994F]

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency rule is in effect through May 11, 1994, that: Revises regulations applicable to the management and monitoring of the Gulf of Alaska (GOA) halibut bycatch limit established for trawl gear fisheries, revises directed fishing standards, and adjusts the Bering Sea and Aleutian Islands management area (BSAI) flatfish seasons to provide for additional fishing opportunities in the BSAI early in the fishing year. NMFS is extending the portions of the emergency rule addressing the management of the GOA halibut trawl bycatch limit and directed fishing standards for an additional 90-day period (through August 9, 1994) to prevent overfishing of GOA thornyhead rockfish and Pacific ocean perch (POP) and to limit unnecessarily high bycatch amounts of these rockfish species and Pacific halibut in the trawl fisheries in a manner that will reduce the likelihood of premature fishery closures. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

EFFECTIVE DATES: The interim regulations published on February 10, 1994 (59 FR 6222), are extended from May 12, 1994, through August 9, 1994, except for amendments to § 675.23, which are effective through May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: On February 7, 1994, the Secretary of Commerce (Secretary) implemented an emergency interim rule (59 FR 6222, February 10, 1994) under section 305(c) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(c)) (Magnuson Act). The emergency rule implemented the following measures for a 90-day period (through May 11, 1994).

A. Establishment of two GOA trawl fishery categories for purposes of apportioning the GOA halibut bycatch limit established for the trawl gear fisheries (§ 672.20(f)). These two categories are: (1) The shallow water fishery complex (the Alaska pollock, Pacific cod, Atka mackerel, shallow water flatfish, flathead sole, and "other species" trawl fisheries), and (2) the deep water fishery complex (the deepwater flatfish, rex sole, arrowtooth flounder, sablefish, and rockfish trawl fisheries).

B. Revision of the method for calculating retainable amounts of groundfish species under directed fishing standards (§ 672.20 (h) and (i)). Revised methods prohibit using retained amounts of arrowtooth flounder or groundfish species closed to directed fishing as a basis for calculating retainable amounts of other groundfish species that are closed to directed fishing.

C. Adjustment of the opening date for the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 20. As a result of this season adjustment, directed fishing standards governing retainable amounts of flatfish species at § 675.20(h)(2) also were revised.

NMFS has published a proposed rule for public review and comment (59 FR 23044, May 4, 1994) that would implement permanently the management measures implemented under the emergency rule. Pending approval by the Secretary, a final rule implementing these measures likely would not be effective before September 1994. With the exception of the interim adjustment of the BSAI flatfish fisheries, the conditions justifying the emergency action remain unchanged and warrant extension of the emergency rule until Secretarial action is taken on the proposed rule and the measures are implemented through a final rule. Under the emergency rule, regulations set out at § 675.23 were amended to change the opening date of the BSAI yellowfin sole and "other flatfish" fisheries from May 1 to January 20. This interim provision no longer is necessary to allow a BSAI flatfish fishery early in 1994. Therefore, with the exception of the portion of the emergency rule addressing the season change for the BSAI flatfish fisheries (§ 675.23), the Secretary, with the agreement of the North Pacific Fishery Management Council, extends the effectiveness of the emergency rule for an additional 90 days under section 305(c)(3)(B) of the Magnuson Act.

Details concerning the basis for this action and the classification of the rulemaking are contained in the initial emergency rule and are not repeated here.

Dated: May 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–11706 Filed 5–10–94; 4:11 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 92
Friday, May 13, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AG00

Student Educational Employment Program

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing to consolidate existing Federal student employment programs into one streamlined, flexible program that: adapts to changing market conditions and occupational demands, encourages greater participation and partnerships between Federal agencies and educational institutions in developing effective programs, and serves as a critical tool to assist agencies in building a diverse workforce. The program would consist of two components: work-study and temporary student positions.

Over the years, a number of different student employment programs and appointing authorities have often impeded Federal agencies from meeting critical employment challenges with innovative solutions. This new framework will substitute complex regulatory guidance with a flexible approach to developing student educational and employment programs.

DATES: Comments must be received on or before June 13, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Patricia Paige, Director Paige, Director, Staffing Reinvention Office, U.S. Office of Personnel Management, 1900 E. Street, NW., room 6332, Attention: Staffing Reinvention Office, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellie Miller, Staffing Reinvention Office, at (202) 606–0830.

SUPPLEMENTARY INFORMATION: Under this authority, agencies can develop innovative work-study or temporary programs to attract students. For instance, agencies could create internship programs with a tuition assistance option for students attending college (associate, undergraduate, and graduate), and vocational and technical institutions. Students in these agency/academic tailored programs can be employed in professional, scientific, administrative, technical, clerical, and trades/crafts occupations.

Proposed Amendments

Under the proposed regulations, a new authority, the Student Educational Employment Program, would replace the following:

- Schedule A authority § 213.3102(p) graduate students in scientific, professional or analytical positions;
- Schedule A authority § 213.3102(q), students in scientific, professional and technical positions, GS–9 and below;
- Schedule A authority § 213.3102(v), temporary summer aid;
- Schedule A authority § 213.3102(w), stay-in-school program;
- Schedule A authority § 213.3102(y), summer employment;
- Schedule A authority § 213.3102(jj), legal intern positions;
- Schedule B authority § 213.3202(a) through (c), (e) and (g), cooperative education program;
- Schedule B authority § 213.3102(d), Harry S. Truman Foundation Scholarship Program; and
- Schedule B authority § 213.3202(f), Federal Junior Fellowship Program.

Using the new program, agencies would appoint students under § 213.3202(b) (work study) and § 213.3202(c) (temporary). The new schedule B authority would contain both a Work-Study Component, § 213.3202(b) and a Temporary Student Component, § 213.3202(c).

Under the new program, the definition of student is an individual who is enrolled or accepted for enrollment in at least a half-time academic course load in an accredited high school, technical or vocational, associate, baccalaureate, graduate, or professional diploma or certificate program. An individual is still deemed to be a student as long as there are no breaks in course work of more than 5 months and the student shows to the satisfaction of the agency and academic institution that he/she has a bona fide intention of continuing to pursue a course of study or training. An individual who has to complete less than half of an academic course load immediately prior to graduating is still considered a student.

Agencies may appoint students on a full-time, part-time or intermittent basis at any time during the year. The student's work schedule should not interfere with his or her academic studies.

Work-Study Component

The work-study component provides experience that is directly related to the student's educational program. Agencies should appoint students under § 213.3202(b) when the job is related to their academic field of study. Programs developed under this component provide for a schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency. Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that work responsibilities do not interfere with academic performance.

Students appointed under this component will be classified as Student Trainees, to the -99 series of the appropriate occupational group.

Students appointed under § 213.3202(b) (work study) may be noncompetitively converted to a career or career-conditional appointment under Executive Order 12015 when students have: (1) completed within the preceding 120 days an educational program and course requirements at an accredited school; (2) completed at least 640 hours of career-related work, before completion of or concurrently with, the course requirements (agencies have the option of increasing this requirement for some or all of its occupation fields); (3) been recommended by the employing agency in which the career-related work was performed; and (4) met the qualification standards for the targeted position to which the student is appointed. Conversions will be to an occupation related to the student's academic training and work-study experience.

Temporary Student Component

This component provides flexibility to agencies to appoint students on a temporary basis to jobs that may/may not be related to the students' academic field of study. The intent of a temporary student component is to provide maximum flexibility and opportunity to agencies and students that will meet both of their needs on a short-term basis.

Classification for students appointed under this component is based on the occupational series for which they are hired.

Schedule B authority § 213.3202(c) would be used for students employed on a not-to-exceed 1 year appointment. Appointments under this authority may be extended in 1-year increments as long as the employee is enrolled or accepted for enrollment as a student in a diplomat or certificate program at an accredited academic institution and is performing at the fully successful or higher performance summary level. Students would not be eligible for conversion to a career or career-conditional appointment under this authority.

Movement Between Components

Agencies may noncompetitively move students between temporary and work-study components if students meet the requirements for that component. Movement between components will require using the appointing authority for the component that the student is entering.

Work performed in the temporary component can not be credited toward meeting the work period requirements of the work-study component.

Student Volunteers

The student volunteer program will continue to be covered by Title 5, Code of Federal Regulations, part 308, Volunteer Service.

Student Financial Assistance Option

Under both components of this program, agencies have the option of using financial need criteria to hire talented students who demonstrate a need for income from employment to continue their education. OPM will continue to develop and distribute annual economic guidelines for use in determining financial need. State Employment Service Offices and financial aid offices in schools can assist in making these determinations.

Benefit Entitlements

Since it is expected that appointments under the work-study component would be for more than 1 year, students would be eligible for retirement, health benefits, and life insurance. Students under the temporary component are not eligible for retirement or life insurance but would become eligible for health benefits coverage only after they complete 1 year of current, continuous employment. Since under the temporary appointment no Government contribution would be available, the employee would pay the entire premium.

Tuition Assistance

Under both components of this program, agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay for all or part of training expenses. Under the work-study component, an agency may pay other expenses directly related to training, including travel and transportation expenses between duty stations and schools.

Employment of Minors

Participation in this program must be in conformance with Federal, State or local laws and standards governing the employment of minors.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to appointment procedures for certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees, reporting and recordkeeping requirements.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 19 FR 7521, 3 CFR 1954–1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp. p. 185.

§§ 213.3102 [Amended]

2. In § 213.3102, paragraphs (p), (q), (v), (w), (y), and (jj) are removed and reserved.

3. Section 213.3202 is amended by removing the introductory text, removing and reserving paragraphs (d) through (g) and revising paragraph (a) through (c) to read as follows:

§ 213.3202 Entire executive civil service.

(a) Student Educational Employment Program. (1)(i) A student under this program must be enrolled or accepted for enrollment in at least a half-time course load in an accredited high school, technical or vocational school, associate, baccalaureate, undergraduate certificate, graduate, or professional degree program. An individual is still deemed to be a student if there are no breaks in course work of more than 5 months and the student shows to the satisfaction of the agency and academic institution that he/she has a bona fide intention of continuing to pursue a course of study or training. An individual who has to complete less than half of an academic course load immediately prior to graduating is still considered a student. Appointments may be made on a full-time, part-time or intermittent basis.

(ii) This program is year-round and appointments may be made at any time during the year. There are no limitations on the number of hours a student can work, but the student's work schedule should not interfere with the student's academic studies.

(iii) Participation in this program must be in conformance with Federal, State or local laws and standards governing the employment of minors.

(iv) Students under this authority must be:

(A) A U.S. citizen or national resident of American Samoa or Swains Island; or

(B) In the absence of qualified citizens, a non-citizen provided he/she:

(*1*) Is lawfully admitted to the United States as a permanent resident and meets citizenship requirements prior to conversion if applicable; or

(*2*) Is a national of an allied country or otherwise permitted to be paid under an agency's general appropriation act.

(v) Students under the work-study component must meet the educational and work experience requirements of the Qualification Standard for Schedule B Student Trainee positions in OPM's Qualification Standards Handbook or the requirements for wage grade positions in OPM's Job Qualification System for Trades and Labor Occupations (Handbook X–118C). Any OPM test requirements are waived. Students under the temporary student component may be evaluated either by agency developed standards or by the OPM qualification requirements for the position to which appointed.

(vi) Volunteer students are covered by title 5, Code of Federal Regulations, part 308, Volunteer Service, and may not be treated as employees under this section.

(vii) *Student Financial Assistance Option:* Agencies have the option, under paragraphs (b) and (c) of this section, to use financial need criteria to hire talented students who demonstrate a need for employment in order to continue their education. OPM will continue to develop and distribute annual economic guidelines for use in determining financial need. State Employment Service Offices and financial aid offices in schools can assist in making the determinations.

(b) Work-Study Component (1) Students under this appointment may be noncompetitively converted under Executive Order 12015 to a career or career-conditional appointment at any time within a 120-day period after satisfactorily completing career-related any educational requirements at an accredited school.

(2) Students must have completed at least 640 hours of career-related work, prior to or concurrently with completion of academic requirements, in order to be noncompetitively converted to a career or career-conditional appointment. Students must be converted to an occupation related to heir academic training and work-study experience.

(3) Work-study positions should be based on the following educational programs:

(i) Baccalaureate Degree

(ii) Graduate or Professional Degree

(iii) Associate Degree

(iv) High School Diploma

(v) Undergraduate Certificate or Diploma

(c) Temporary Student Component (1) Students are appointed to a position not to exceed 1 year. Appointments under this authority may be extended in 1-year increments as long as the individual meets the definition of a student and is performing at the fully successful or higher level. Students would not be eligible for conversion to a career or career-conditional appointment under this authority.

(2) Students may be noncompetitively converted to the work-study component whenever they meet the requirements of the work-study authority and are placed in a career-related position. Conversions would not be subject to requirements of subparts C and D of part 302.

(3) Temporary student positions should be based on the following educational programs:

(i) Baccalaureate Degree

(ii) Graduate or Professional Degree

(iii)Associate Degree

(iv) High School Diploma

(v) Undergraduate Certificate or Diploma

* * * * *

[FR Doc. 94–11540 Filed 5–12–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93–121–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the cold treatment of imported fruits upon arrival at the port of Wilmington, NC. We have determined that in the Wilmington, NC, area, there are climatic and biological barriers that are adequate to prevent the introduction of certain plant pests into the United States in the event they escape from shipments of fruit before undergoing cold treatment. We are also proposing to delete cold treatments in the regulations and replace them with a reference to cold treatments in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference.

DATES: Consideration will be given only to comments received on or before June 13, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–121–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations"), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and refrigeration period requirements vary according to the type of fruit and the pests involved.

Most imported fruit that requires cold treatment undergoes cold treatment in transit to the United States. However, APHIS allows imported fruit to undergo cold treatment after arrival in the United States at certain ports designated by APHIS.

Currently, cold treatment is limited to ports in the northern United States because APHIS has determined that insect pests escaping from shipments of imported fruit after arrival in the United States would be unable to survive winter weather conditions in the north. The following ports are currently authorized by APHIS to conduct cold treatment on imported fruit: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington DC, at Baltimore-Washington International and Dulles International airports.

Recently, we received petitions from individuals at the ports of Wilmington, NC, and Gulfport, MS, requesting that we amend the regulations to allow cold treatment to be conducted at these ports. On November 12, 1993, in response to these petitions, we published in the **Federal Register** (58 FR 59953, Docket No. 93–121–1) an advance notice of proposed rulemaking requesting public comment on whether we should allow cold treatment at ports in the Southern United States and in California.

We solicited comments concerning this notice for a 45-day period ending on December 27, 1993. During that period, we received four comments, three from State governments and one from a grower organization. Two comments opposed allowing cold treatment at ports in the Southern United States and California, arguing that allowing such treatments would place California and Florida citrus crops at too great a risk of fruit fly infestation. Another comment requested that we perform a detailed pest-risk analysis before deciding whether to allow cold treatment at southern and California ports. Another comment supported allowing cold treatment at the port of Wilmington, NC.

While we are still considering whether to allow cold treatment at other ports in the Southern United States and California, we are now proposing to allow cold treatment of certain fruit, under certain conditions, at the port of Wilmington, NC. We have determined that in the Wilmington, NC, area, there are climatic and biological barriers adequate to prevent introduction of certain plant pests into the United States in the event they escape from shipments of fruit before undergoing cold treatment. Also, we are proposing to impose additional special conditions regarding cold treatment at Wilmington, NC, that would further reduce the risk of fruit fly introduction.

In addition to meeting the requirements in § 319.56–2d of the regulations regarding cold treatment, the port of Wilmington, NC, cold treatment facilities would be required to operate under the following additional special conditions:

1. Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit arriving for cold treatment must be packaged in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

2. Bulk and containerized shipments of fruit arriving at the port of Wilmington, NC, for cold treatment must be cold-treated within the port, that is, the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

3. Advance reservations for cold treatment space at the port of Wilmington, NC, must be made prior to the departure of a shipment from its port of origin.

We believe these requirements would reduce the risk of fruit fly introduction into the United States in the event infested shipments of fruit entered the port of Wilmington, NC.

Draft Risk Assessment Regarding Cold Treatment

This proposal to allow cold treatment of fruit under certain conditions at the port of Wilmington, NC, is based, in part, on a draft document, prepared by APHIS, assessing the pest risks associated with allowing cold treatment of tropical fruit fly host materials at certain United States ports. Some of the risk mitigation measures discussed in the draft are included in this proposal as requirements for the port of Wilmington, NC. Copies of this draft document may be obtained from Mr. Victor Harabin at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Plant Protection and Quarantine (PPQ) Treatment Manual

We would revise the PPQ Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1, to reflect the addition of Wilmington, NC, to the list of ports where cold treatment of imported fruits can be conducted, under certain conditions, upon arrival.

Miscellaneous

We are also proposing to replace the four cold treatment schedules currently listed in § 319.56–2d(a) with a single reference to the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at 7 CFR 300.1. The cold treatments listed in the PPQ treatment manual are applicable for any fruit required to be cold treated under § 319.56–2d of the regulations.

Also as a nonsubstantive editorial change, we are proposing to remove and reserve the regulations under § 319.56–2q, regarding conditions governing the entry into the United States of pummelo from Israel, and to add pummelo from Israel to the list, under § 319.56–2x, of fruits and vegetables requiring treatment as a condition of entry into the United States. This change would simplify the regulations by placing pummelo from Israel on a list of commodities with similar entry requirements, but would not revise current requirements concerning the entry into the United States of pummelo from Israel.

We are also proposing to make other nonsubstantive changes to the regulations for the sake of clarity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow, under certain conditions, cold treatment of imported fruit upon arrival at the port of Wilmington, NC. As a result of this proposal, a number of different fruits could be imported into Wilmington, NC. Specifically, officials of the North Carolina State Ports Authority in Wilmington, NC, anticipate that apples, grapes, and pears from Argentina, Brazil, and South Africa would be imported and cold treated at the port of Wilmington, NC.

Approximately 20 million pounds of each fruit could be imported annually into Wilmington, NC, as a result of this rule, though we anticipate the amount would be much smaller. While some of the fruit arriving at Wilmington, NC, would be imported in addition to the present volume of annual imports into the United States, some merely would be shipments diverted from other ports also approved to conduct cold treatment on arrival. In the following analysis of the potential impact of this action on domestic producers of apples, grapes and pears, in order to demonstrate the greatest possible economic impact, we have assumed that the maximum amount of fruit would be imported into Wilmington, NC, for cold treatment, and further, that those commodities would be imported in addition to the present volume of annual imports into the United States.

Also in the following analysis, we have used published price flexibilities to estimate the potential economic effects of allowing apples, grapes, and pears to be cold treated at Wilmington, NC; flexibilities are used to estimate relationships between changes in supply and subsequent changes in price.

Apples

In 1987, 36,718 farms in the United States, of which 1,186 were in North Carolina, harvested apples. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of $0.5 million or less, according to Small Business Administration (SBA) size standards), it is likely that most would. In 1992, domestic farms produced almost 5.78 billion pounds of apples for the fresh market, with an estimated value of $1.13 billion.

If the volume of apples imported into Wilmington, NC, for cold treatment were to reach 20 million pounds, it would constitute about 7.5 percent of current total imports into the United States, about 0.35 percent of current domestic production and about 0.33 percent of the current total apple supply in the United States (domestic and imports).

Assuming that a 0.33 percent increase in the supply of apples would lead to a decrease of about 0.20 percent in the domestic price of apples (using a price flexibility for apples of −0.590, based on all Eastern States' sales of North Carolina apples), we estimate that this increase in supply would result in a price decrease of about $0.038 per hundredweight (cwt), or $0.00038 per pound, from an original price of $0.195 per pound. As a result of the price decrease, there could be a decrease in total revenue to U.S. apple producers of about $2.20 million, which is roughly 0.20 percent of the original total revenue of $1.13 billion. We anticipate, therefore, that allowing apples to be cold treated at Wilmington, NC, would not have a significant economic impact on domestic producers.

Grapes

In 1987, 23,236 farms in the United States, of which 286 were in North Carolina, harvested apples. In 1992 domestic farms produced about 1.54 billion pounds of grapes for the fresh market, with an estimated value of $327 million. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of $0.5 million or less, according to SBA size standards), it is likely that most would.

If the volume of grapes to be imported were to reach 20 million pounds, it would constitute about 2.9 percent of current total imports to the United States, about 1.3 percent of current domestic production and about 0.89 percent of the current total grape supply in the United States (domestic and imports).

Assuming that a 0.89 percent increase in the supply of grapes would lead to a decrease of about 0.88 percent in the domestic price of grapes (using a price flexibility for California grapes of −0.981), we estimate that this increase in supply would result in a price decrease of about $3.73 per ton, or $0.0019 per pound, from an original price of $425.62 per ton. As a result of the price decrease, there could be a decrease in total revenue to U.S. grape producers of about $2.9 million, which is roughly 0.88 percent of the original total revenue of $327 million. We anticipate, therefore, that allowing grapes to be cold treated at Wilmington, NC, would not have a significant economic impact on domestic producers.

Pears

In 1987, 10,092 farms in the United States, 88 of which were in North Carolina, harvested apples. In 1992, domestic farms produced about 890 million pounds of pears for the fresh market, with an estimated value of $168 million. Although it is not known how many of these farms could be classified as small entities (annual gross receipts of $0.5 million or less, according to SBA size standards), it is likely that most would.

If the volume of pears to be imported were to reach 20 million pounds, it would constitute about 15.4 percent of current total imports to the United States, about 2.2 percent of current domestic production and about 2.0 percent of the current total pear supply in the United States (domestic and imports).

Assuming that a 2.0 percent increase in the supply of pears would lead to a decrease of about 1.2 percent in the domestic price of grapes (using a price flexibility for California pears of −0.609), we estimate that this increase in supply would result in a price decrease of about $4.51 per ton, or $0.0023 per pound, from an original price of $377.61 per ton. As a result of the price decrease, there could be a decrease in total revenue to U.S. pear producers of about $2.0 million, which is roughly 1.19 percent of the original total revenue of $168 million. We anticipate, therefore, that allowing pears to be cold treated at Wilmington, NC, would not have a significant economic impact on domestic producers.

Therefore, in light of the preceding analyses (which estimate greatest possible, and thus highly unlikely, economic effects), as well as our expectation that most imports of fruit to Wilmington, NC, for cold treatment would occur during the off-season for domestic production, we anticipate that this proposal would not have a significant economic impact on domestic producers of apples, grapes, and pears.

Furthermore, we anticipate that allowing cold treatment at the port of Wilmington, NC, could have beneficial economic effects. Importers who routinely transport fruit to the Southeastern United States could benefit from this action due to lower transportation costs. Freight companies and shipping companies in North Carolina, as well as the local economy, might also benefit. Also, consumers are likely to gain from the increased selection of products and any price decreases, albeit small, that occur with increases in supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule would allow cold treatment of certain fruits to be conducted at the port of Wilmington, NC. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits under this rule would be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c). 2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through ________, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 319.56–2d, paragraph (a) would be revised to read as follows:

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

(a) *Treatments authorized.* Fresh fruits imported in accordance with this subpart and required under this subpart to receive cold treatment as a condition of entry must be cold treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The cold treatments listed in the PPQ Treatment Manual are authorized for any fruit required to be cold treated under this subpart.

* * * * *

§ 319.56–2d [Amended]

5. In § 319.56–2d, paragraph (b)(1), the second sentence would be amended by removing the phrase "port of New York or such other northern ports as he may hereafter designate," and adding the phrase "following ports: the port of Wilmington, NC; Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington DC, at Baltimore-Washington International and Dulles International airports." in its place.

6. In § 319.56–2d, headings would be added at the beginning of paragraphs (b)(5)(i) through (b)(5)(iii), and a new paragraph (b)(5)(iv) would be added to read as follows:

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(5) Cold treatment after arrival. (i) Delivery. * * *

(ii) Precooling and refrigeration. * * *

(iii) Customs. * * *

(iv) *Special requirements for the port of Wilmington, NC.* Shipments of fruit arriving at the port of Wilmington, NC, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive packaged in fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruits and vegetables must be cold-treated within the port of Wilmington, NC, that is, the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space at the port of Wilmington, NC, must be made prior to the departure of a shipment from its port of origin.

* * * * *

§ 319.56–2u [Removed and Reserved]

7. Section 319.56–2u is removed and reserved.

§ 319.56–2v [Amended]

8. In § 319.56–2v, paragraph (b), the third sentence would be amended by removing the phrase "North Atlantic ports north of and including Baltimore, MD," and adding the phrase "ports listed in § 319.56–2d(b)(1) of this subpart," in its place.

9. Section 319.56–2x would be amended as follows:

a. In paragraph (a), the table would be amended for the Israel entry by adding a new commodity to read as set forth below.

b. In paragraph (b), the first sentence would be amended by adding the phrase "or the port of Wilmington, NC," immediately before the word "if".

§ 319.56–2x Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
* * *	*	*	* *
Israel			
* * *	*	*	* *
	Pummelo.	Citrus grandis.	Fruit
* * *	*	*	* *

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11678 Filed 05–12–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1230

RIN 0581–AB17

[No. LS–94–002]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Order issued thereunder, this proposed rule would increase the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1993 six market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. This proposed rule also would revise the Harmonized Tariff System (HTS) numbers which identify imported live porcine animals, pork, and pork products to conform with recent changes in these numbers made by the United States Customs Service (USCS). These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products

DATES: Comments must be received by June 13, 1994.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in room 2624 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would increase the amount of assessments on imported pork and pork products subject to assessment by two-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $143,000 over a 12-month period. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would also revise HTS numbers for imported porcine animals, pork, and pork products subject to assessment from 11 digits to 10 digits to conform a change in those HTS numbers made by USCS. The change made in the number of digits in HTS numbers is merely a technical change and will not impose any new requirements on importers.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay USCS, upon importation, the assessment of 0.35 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would increase the assessments on all of the imported pork and pork products subject to assessment listed in 7 CFR 1230.110 (September 8, 1993; 58 FR 47205). This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1993 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.35 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. The annual average price, which was based on price data from seven major markets, is now based on only six markets. One of the seven markets—Kansas City—closed in 1991; and thus the 1992 and 1993 annual average prices are based on price data from only six markets. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.35 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price increased from $42.11 in 1992 to $45.32 in 1993, an increase of about 7 percent. This increase would result in a corresponding increase in assessments for all HTS numbers listed in the table in § 1230.110 of an amount equal to two-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the total dollar value of imported pork and pork products subject to the assessment in 1993 the proposed increase in assessment amounts would result in an estimated $143,000 increase in assessments over a 12-month period.

USCS recently revised HTS numbers to conform with changes in importation procedures. The change is only a minor technical change which revises all HTS numbers for live porcine animals, pork, and pork products listed in the table found at § 1230.110 (58 FR 47205) by changing them from 11 digit numbers to 10 digit numbers by dropping the last digit. The live porcine animals, pork, and pork products subject to assessment and HTS article descriptions listed in a chart contained in the Supplementary Information section on page 15914 of the final rule (54 FR 15914) would not change. A comparison of the 11 digit numbers and the proposed 10 digit numbers are listed in the following chart.

LIVE PORCINE ANIMALS

11-Digit No.	10-Digit No.
0103.10.00004	0103.10.0000
0103.91.00006	0103 91.0000
0103.92.00005	0103.92.0000

PORK AND PORK PRODUCTS

11-Digit No.	10-Digit No
0203.11.00002	0203.11.0000
0203.12.10107	0203.12.1010
0203.12.10205	0203.12.1020
0203.12.90100	0203.12.9010
0203.12.90208	0203.12.9020
0203.19.20108	0203.19.2010
0203.19.20901	0203.19.2090
0203.19.40104	0203.19.4010
0203.19.40907	0203.19.4090
0203.21.00000	0203.21.0000
0203.22.10007	0203.22.1000
0203.22.90000	0203.22.9000
0203.29.20008	0203.29.2000
0203.29.40004	0203.29.4000
0206.30.00006	0206.30.0000
0206.41.00003	0206.41.0000
0206.49.00005	0206.49.0000
0210.11.00101	0210.11.0010
0210.11.00209	0210.11.0020
0210.12.00208	0210.12.0020
0210.12.00404	0210.12.0040
0210.19.00103	0210.19.0010
0210.19.00906	0210.19.0090
1601.00.20105	1601 00.2010
1601.00.20908	1601.00.2090
1602.41.20203	1602.41.2020
1602.41.20409	1602.41.2040
1602.41.90002	1602.41 9000
1602.42.20202	1602.42.2020
1602.42.20408	1602.42 2040
1602.42.40002	1602.42.4000
1602.49.20009	1602.49 2000
1602.49.40005	1602.49.4000

This change would permit USCS to continue to collect assessments due on imported live porcine animals, pork, and pork products in conjunction with its regular importation processing and collection system.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819

Subpart B—[Amended]

2. Subpart B—Rules and Regulations is amended by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.35 percent Customs Entered Value.
0103.91.0000	0.35 percent Customs Entered Value.
0103.92.0000	0.35 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.23	.507058
0203.12.1010	.23	.507058
0203.12.1020	.23	.507028
0203.12.9010	.23	.507028
0203.12.9020	.23	.507028
0203.19.2010	.26	.573196
0203.19.2090	.26	.573196
0203.19.4010	.23	.507028
0203.19.4090	.23	507028
0203.21.0000	.23	.507028
0203 22.1000	.23	507028
0203.22.9000	.23	.507028
0203.29.2000	.26	.573196
0203 29.4000	.23	.507028
0206.30 0000	.22	507028
0206.41.0000	.23	.507028
0206.49.0000	.23	.507028
0210.11.0010	.23	.507028
0210 11.0020	.23	.507028
0210.12.0020	.23	.507028
0210.12.0040	.23	.507028
0210.19.0010	.26	.573196
0210.19.0090	26	.573196
1601.00 2010	.31	.683426
1601.00.2090	.31	683426
1602.41.2020	.34	749564
1602.41.2040	34	.749564
1602.41.9000	.23	.507028
1602.42.2020	.34	.749564
1602.42.2040	.34	.749564
1602.42 4000	.23	.507028
1602.49.2000	31	.683426
1602.49.4000	.26	.573196

Dated: May 5, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–11491 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–02–P

Office of Operations

7 CFR Part 2812

Department of Agriculture Guidelines for the Donation of Excess Research Equipment

AGENCY: Office of Operations, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking sets forth uniform procedures for the donation of excess research equipment to educational institutions and nonprofit organizations for the conduct of technical and scientific education and research activities as authorized by section 11(i) of the Stevenson/Wydler Technology Act.

DATES: Consideration will be given to comments received on or before June 13, 1994.

ADDRESSES: Please send your comments to Division Chief, Personal Property Management Division, USDA–00, room 1522, 14th Street & Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert P. Gililland, Acting Division Chief, Personal Property Management Division on (202) 720–3141.

SUPPLEMENTARY INFORMATION: This document includes not only the Department of Agriculture (USDA) procedures to implement 15 U.S.C. 3710(i) but also draws upon the General Services Administration (GSA) regulations concerning the disposal of excess personal property. However, because of the limited ability at the Office of Operations (00) to change the portions of this Part that reflect GSA policy, comments on those portions are not appropriate for this proposed rulemaking.

Paperwork Reduction

Except for the gift/Acceptance Agreement contained in the appendix to the proposed rulemaking, the forms necessary to implement these procedures have been cleared by the Office of Management and Budget

(OMB) in accordance with the Paperwork Reduction Act, 44 U.S.C. 3500 *et seq*. The Gift/Acceptance Agreement has been submitted to OMB for clearance under the Paperwork Reduction Act.

Classification

This rule will has been reviewed under Executive Order No. 12866, and it has been determined that it is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*.

The following is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with his rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This proposed rule does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq*.

Catalog of Federal Domestic Assistance

Not required for this rulemaking.

List of Subjects in 7 CFR Part 2812

Government property, Government property management, Excess government property.

For the reasons set forth in the preamble, part 2812 is proposed to be added to chapter XXVIII of title 7 of the Code of Federal Regulations to read as follows:

PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3701(I)

Sec.
2812.1 Purpose.
2812.2 Eligibility.
2812.3 Definitions.
2812.4 Procedures.
2812.5 Restrictions.
2812.6 Title.
2812.7 Costs.
2812.8 Accountability and Recordkeeping.
2912.9 Disposal.
2812.10 Liabilities and Losses.
Appendix A to Part 2812—Gift/Acceptance Agreement

Authority: 5 U.S.C. 301.

§ 2812.1 Purpose.

This Part sets forth the procedures to be utilized by USDA agencies and laboratories in the donation of excess research equipment to educational institutions and non-profit organizations for the conduct of technical and scientific education and research activities as authorized by 15 U.S.C. 3710(i). Title to excess research equipment donated pursuant to 15 U.S.C. 3710(i) shall pass the donee.

§ 2812.2 Eligibility.

Eligibility organizations are educational institutions or non-profit organizations involved in the conduct of technical and scientific educational and research activities.

§ 2812.3 Definitions.

(a) *Cannibalization*—The dismantling of equipment for parts to repair or enhance other equipment. The residual is reported for disposal. Cannibalization is only authorized if the property value is greater when cannibalized than retention in the original condition.

(b) *Education-related Federal equipment*—Equipment that is appropriate for educational purposes.

(c) *Excess Personal Property*—Items of personal property no longer required by the controlling Federal agency.

(d) *Research equipment*—Federal property determined to be essential to conduct scientific or technical educational research.

(e) *Technical and Scientific Education and Research Activities*—Non-profit tax exempt public educational institutions or government sponsored research organizations which serve to conduct technical and scientific education and research.

§ 2812.4 Procedures.

(a) Prior to receipt of excess personal property/equipment under this part the donee shall enter into a gift/acceptance agreement with the donor agency. A copy of that agreement is appendix A of this part.

(b) Each agency head will designate in writing an authorized official to approve donations of excess property/equipment under this Part.

(c) Property targeted for donation this Part will first be screened as excess by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the PMIS/PROP system.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this Part, enter "P.L. 102–245" in the note field. The property will remain in the excess system approximately 30–45 days and, if no agency in USDA requests it during the excess cycle, DEPPC will send you a copy of your excess report stamped "DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH P.L. 102–245."

(e) Donations under this Part will be accomplished by preparing a Standard Form (SF) 122, "Transfer Order-Excess Personal Property" and a written justification statement (Submitted by the recipient) explaining why the property is needed.

(f) The SF–122 should be signed by both an authorized official of the agency and the Agency Property Management Officer. The following information should also be provided:

(1) Name and address of Donee Institution (Ship to);

(2) Agency name and address (holding Agency);

(3) Location of property;

(4) Shipping instructions (Donee contact person);

(5) Complete description of property, including acquisition amount, serial number, condition code, quantity and agency order number; and

(6) This statement needs to be added following property descriptions.

> The property requested hereon is certified to be used for the conduct of technical and scientific education and research activities. This donation is pursuant to the provisions of Public Law 102–245.

(g) Once the excess personal property/equipment is physically received, the donee is required to immediately return a copy of the SF–122 to the donating agency indicating receipt of requested items. Cancellations should be reported to DEPPC so the property can be reported to the General Services Administration (GSA).

(h) The USDA agency shall send an informational copy of the transaction to GSA.

§ 2812.5 Restrictions.

(a) The authorized official (see § 2812.4(b)) will approve the donation of excess personal property/equipment in the following groups to educational institutions or nonprofit organizations for the conduct of technical and scientific educational and research activities.

ELIGIBLE GROUPS

FSC group	Name
19	Ships, Small Craft, Pontoons, and Floating Docks.
23	Vehicles, Trailers and Cycles.
24	Tractors.
37	Agricultural Machinery & Equipment.
43	Pumps, Compressors.
48	Valves.
58	Communication, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
70	General Purpose Automatic Data Processing Equipment, Software Supplies, and Support Equipment.
74	Office Machines and Visible Record Equipment.

Note: Requests for items in FSC Groups or Classes other than the above should be referred to the agency head for consideration and approval.

(b) Excess personal/equipment may be donated for cannibalization purposes, provided the donee submits a supporting statement which clearly indicates that cannibalizing the requested property for secondary use has greater potential benefit than utilization of the item in its existing form.

§ 2812.6 Title.

Title to excess personal property/equipment donated under this Part will automatically pass to the donee once the sponsoring agency receives the SF-122 indicating that the donee has received the property.

§ 2812.7 Costs.

Donated excess personal property/equipment is free of charge. However, the donee must pay all costs associated with packaging and transportation, unless the sponsoring agency has made other arrangements. The donee should specify the method of shipment.

§ 2812.8 Accountability and Recordkeeping.

USDA requires that property requested by a donee be placed into use by the donee within a year of receipt and used for at least 1 year thereafter. Donees must maintain accountable records for such property during this time period.

§ 2812.9 Disposal.

When the property is no longer needed by the donee, it may be used in support of other Federal projects or sold and the proceeds used for technical and scientific education and research activities.

§ 2812.10 Liabilities and Losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess personal property/equipment donated under this Part. The donee is advised to insure or otherwise protect itself and others as appropriate.

Appendix A to Part 2812—Gift/Acceptance Agreement; Educational Institution or Non-Profit Organization and The United States Department of Agriculture

Gift/Acceptance Agreement (Agreement) Between (USDA Agency) and (Educational Institution or Non-Profit Organization).

(1) Purpose

The purpose of the Agreement is to establish a relationship between the U.S. Department of Agriculture (USDA Agency) and (Educational Institution or Non-Profit Organization) concerning the transfer of excess research equipment to this educational institution or non-profit organization for the conduct of technical and scientific education and research activities. Title of ownership transfers to the recipient.

(2) Authority

Public Law 102-245, Sec. 303, Research Equipment, Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, subsection (i) Research Equipment, provides that "the Director of a laboratory, or the head of any Federal agency or department, may give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or non-profit organization for the conduct of technical and scientific education and research activities."

(3) Objectives and Program Elements

This Agreement is intended to provide a mechanism for the transfer of excess research equipment from USDA to the (Educational Institution or Non-profit Organization) in accordance with the procedures set out in the regulations implementing Public Law 102-245.

(4) Management

In order to enable close collaboration, it is agreed that the (Educational Institution or Non-Profit Organization) will provide to (USDA Agency) an annual inventory listing of property acquired under Public Law 102-245.

The (USDA Agency) and (Educational Institution or Non-Profit Organization) will each identify a coordinator to implement this Agreement. These coordinators shall meet when necessary to review new Federal property regulations.

The coordinators shall seek to resolve any disputes concerning the Agreement through good faith discussions.

(5) Effective Date and Revision or Termination

The Agreement shall enter into effect upon signature and shall remain in effect for 3 years. It may be extended or amended by written agreement of the parties at any time prior to its expiration or termination. The Agreement may be terminated at any time upon 60 days written notice by either party to the other. The termination of the Agreement shall not affect the validity of any property transactions under the Agreement which were initiated prior to such termination.

Property Coordinators

The property coordinators for this Agreement are:

Name ________________________

(Education Institution/Non-Profit Organization)

____

(Complete Address and Phone Number)

Name ________________________

(USDA Coordinator)

____

(Complete Address and Phone Number)

Approved:

____

(Education Institution/Non-Profit Organization)

____

Date

____

(USDA Agency Head)

____

Date

Certification of Compliance With Executive Order No. 12778

Agency Issuing the Regulation .

Descriptive Title of the Regulation

CFR Title and Parts Affected

Certification: I have reviewed this draft regulation in light of section 2 of Executive Order No. 12778 and certify for USDA that this draft regulation meets the applicable standards in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The recommendations and cost-benefit analyses required under section 2(d) of Executive Order No. 12778 are not applicable to this regulation.

Name: Kenneth E. Cohen.

Title: Assistant General Counsel, Research and Operations Division.

Done at Washington, DC, this 4th day of May 1994.

Mike Espy,

Secretary.

[FR Doc. 94–11417 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[AG Order No. 1873–94]

Executive Office for Immigration Review; Stipulated Requests for Deportation or Exclusion Orders Telephonic, Video Teleconferenced Hearings

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend agency regulations by requiring Immigration Judge to enter an order of deportation or exclusion, without a hearing, if satisfied that the alien voluntarily entered into a plea-negotiated or otherwise stipulated request for an order of deportation or exclusion. It further codifies the practice of Immigration Judges conducting telephone hearings in deportation, exclusion, or rescission cases, and codifies the authority of the Immigration Judge to hold video teleconferenced hearings.

The proposed rule also clarifies regulatory language to conform with *in absentia* hearing provisions under the Immigration and Nationality Act (the "Act").

DATES: Written comments must be received no later than June 13, 1994.

ADDRESSES: Please submit written comments, in triplicate, to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305–0470.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 305–0470; Brian O'Leary, Associate General Counsel, Office of the General Counsel, room 6100, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536 (202) 514–2895.

SUPPLEMENTARY INFORMATION: This proposed rule amends 8 CFR 3.25 by requiring the Immigration Judge, under new subparagraph (b), to enter an order of deportation or exclusion on the written record, without an in-person hearing, based upon the stipulated written request of the respondent/applicant and the government, provided that the Immigration Judge determines that the charging document sets forth a valid basis for deportability or excludability; the stipulated request for an order of deportation or exclusion is voluntarily entered into by the respondent/applicant; and the respondent/applicant specifically waives relief from deportation or exclusion as well as the described hearing rights. The requirements that the Immigration Judge enter the order without a hearing is limited to cases in which the applicant or respondent was represented at the time of the stipulation. The stipulation must be signed on behalf of the government and by both the applicant or respondent and his or her attorney or other representative qualified under part 292 of this chapter.

This procedure codifies the litigation practice in some jurisdictions where, if a party enters into a stipulated request for a deportation or exclusion order with a written waiver of his or her appearance and rights, the Immigration Judge may sign the order of deportation or exclusion based upon the written record. This practice facilitates judicial efficiency in uncontested cases. For example, it has been used to expedite departure shortly after the sentencing of aliens convicted of offenses rendering them immediately deportable or excludable. Whereas this practice currently occurs at the discretion of the Immigration Judge, the proposed rule would make it mandatory.

The procedure also has been used by imprisoned criminal aliens having no apparent avenue of relief from deportation or exclusion who, after consultation with counsel, wish to avoid further detention pending deportation or exclusion proceedings following release from prison. While protecting the rights of the parties, the rule also implements the statutory requirement of expeditious deportation of criminal aliens under 8 U.S.C. 1252(i), 1252a(d). If used more widely by litigants and criminal prosecutors, the procedure could alleviate overcrowded federal, state, and local detention facilities and eliminate the need to calendar such uncontested cases on crowded immigration court dockets. The procedure is not limited to cases arising from the criminal context and can be used in other appropriate settings.

New subparagraph (c) establishes the authority of Immigration Judges to hold telephonic hearings. Although the proposal is meant to be applicable nationwide, *Purba* v. *INS*, 884 F.2d 761 (9th Cir. 1988), holds that telephonic deportation hearings may only be conducted with the consent of the parties. This is in conflict with the proposed regulation, which permits telephonic hearings to be conducted at the discretion of the Immigration Judge. The Immigration Judges in the geographical confines the Ninth Circuit currently follow *Purba* and will continue to follow the law of the circuit if the proposed rule is finally adopted. In all areas outside the Ninth Circuit the regulation would be effective and telephonic hearings would be conducted when an Immigration Judge, in his or her sound discretion, deems it appropriate. Subparagraph (c) also codifies the authority of Immigration Judges to hold video teleconferenced hearings. This practice increases administrative efficiency.

The proposed rule also makes minor technical changes in subparagraph (a) to conform with the *in absentia* provisions of 8 U.S.C. 1252.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order No. 12291 and this rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration and Naturalization Service, Organization and functions (government agencies).

Accordingly, 8 CFR part 3 is proposed to be amended as set forth below:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Section 2, Reorganization Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.25 is revised to read as follows:

§ 3.25 Waiver of presence of the parties.

(a) *Good cause shown.* The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing where the alien is represented or where the alien is a minor child at least one of whose parents or whose legal guardian is present. In addition, *in absentia* hearings may be held pursuant to sections 1252(b) and 1252(c) of Title 8, United States Code with or without representation.

(b) *Stipulated request for order; waiver of hearing.* Notwithstanding any other provision of this chapter, upon the written request of the respondent/applicant and upon concurrence of the government, the Immigration Judge shall not hold a hearing and shall enter an order of deportation or exclusion on the written record if the Immigration Judge determines, upon a review of the charging document, stipulation document, and supporting documents, if any, that a represented respondent/applicant voluntarily entered into a stipulated request for an order of deportation or exclusion. The stipulation document shall include:

(i) An admission of all factual allegations contained in the charging document to be true and correct as written;

(ii) A concession of deportability or excludability as charged;

(iii) A statement that the respondent/applicant makes no application for relief from deportation or exclusion, including, but not limited to, voluntary departure, asylum, adjustment of status, registry, de novo review of a termination of conditional resident status, de novo review of a denial or revocation of temporary protected status, relief under 8 U.S.C. 1182(c), suspension of deportion, or any other possible relief under the Act;

(iv) A designation of a country for deportation under 8 U.S.C. 1253(a);

(v) A concession to the introduction of the written statements of the respondent/applicant as an exhibit to the record or proceedings;

(vi) A statement that the attorney/representative has explained the consequences of the stipulated request to the respondent/applicant and that the respondent/applicant enters the request voluntarily, knowingly and intelligently;

(vii) A statement that the respondent/applicant will accept a written order for his or her deportation or exclusion as a final disposition of the proceedings; and

(viii) A waiver of appeal of the written order of deportation or exclusion.

(2) The stipulated request and required waivers shall be signed on behalf of the government and by both the respondent/applicant and his or her attorney or other representative qualified under part 292 of this chapter. The attorney or other representative shall file a Notice of Appearance in accordance with § 3.16(a) of this part.

(c) *Telephonic or video teleconferenced hearing.* An Immigration Judge may conduct a telephonic or video teleconferenced hearing in any proceeding under 8 U.S.C. 1226, 1252, or 1256.

Dated: May 1, 1994.

Janet Reno,

Attorney General.

FR Doc. 94–11314 Filed 5–12–94; 8:45 am]

BILLING CODE 4410–01–M

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8 CFR Part 3

[Order No. 1872–94]

Executive Office for Immigration Review: Appeal Procedure

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes an alternative procedure for filing proof of fee payment for appeals of Immigration Judge decisions to the Board of Immigration Appeals (Board). It provides added flexibility in the appeal filing procedure by permitting a respondent/applicant to certify that a fee was forwarded to the Immigration and Naturalization Service (Service). It further allows thirty (30) days from the date of filing the appeal for the respondent/applicant to submit a fee receipt. It also provides that failure to present proof of payment of fee will cause the appeal to be deemed improperly filed.

DATES: Written comments must be received on or before July 12, 1994.

ADDRESSES: Please submit written comments in triplicate to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, Telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: This proposed rule provides a flexible alternative to the existing procedure of filing appeals of Immigration Judge decisions before the Board of Immigration Appeals. The current procedure mandates that a timely filed notice of appeal include a copy of a fee receipt or a fee waiver application. The proposed alternative procedure would allow the filing of an appeal of the Immigration Judge's decision to the Board with a certification stating that the fee has been forwarded to the Service. A sample certification follows the proposed rule. The respondent/applicant would then have thirty (30) days from the date of filing the notice of appeal to obtain and file a copy of the fee receipt. This alternate procedure may be particularly useful when the respondent/applicant is located a great distance from a Service office or is in a custodial setting. This alternate procedure provides additional flexibility for such a person by creating a thirty (30) day window of time in which he or she may submit proof of payment of the appropriate fee for an appeal. It also preserves the current appeal filing deadline and fee filing procedures.

This rule does not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866. Nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order No. 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any state or local laws, regulations or policies; (2) have any retroactive effect or require administrative proceedings before parties may file suit challenging the provisions of this rule.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, it is proposed that chapter I of title 8 of the Code of Federal Regulations be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

§ 3.31 [Amended]

2. Section 3.31 is amended by adding the phrase "Except as provided by 8 CFR 3.38," at the beginning of paragraph (b), and revising the word "All" to read "all".

3. Section 3.38 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and by adding a new paragraph (c) and an appendix to the section to read as follows:

§ 3.38 Appeals.

* * * * *

(c) A notice of appeal must be accompanied by a fee receipt from the Service, or by an application for a waiver of fees except that an appeal may be filed within applicable time limits with the appropriate Office of the Immigration Judge, accompanied by certification that the correct fee has been forwarded to a Service office authorized to accept fees pursuant to 8 CFR 103.7(a). The respondent/applicant must subsequently file the fees receipt with the appropriate Office of the Immigration Judge within thirty (30) days of the date of filing the notice of appeal. If a fee receipt is not filed within thirty (30) days of the date of filing the notice of appeal, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

* * * * *

Appendix to § 3.38

Sample Certification

Certification of Fee

I certify that pursuant to 8 CFR 3.38 I have, as of this date, forwarded/paid the fee required at 8 CFR 103.7 to the Immigration and Naturalization Service. Receipt of the payment of this fee will be filed with the Office of the Immigration Judge within thirty (30) days of the date of filing of this appeal. I further acknowledge that my failure to file the fee receipt within thirty (30) days will result in this appeal being deemed improperly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

____

Alien's Name

____

"A" Number

____

Signature of Alien and/or Counsel

____

Date

Dated: May 1, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–11313 Filed 5–12–94; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

8 CFR Part 245a

[INS No. 1321–91; AG Order No. 1870–94]

RIN 1115–AC18

Procedure for Automatic Termination of Temporary Resident Status upon Final Order of Deportation or Exclusion

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend existing regulations by providing, in specified circumstances, for the automatic termination of temporary resident status under provisions of the Immigration and Nationality Act (Act) upon the entry of a final order of deportation or exclusion. This amendment is necessary to avoid possible delays in, or termination of, pending deportation and exclusion proceedings that would result if the Immigration and Naturalization Service (INS or Service) were required to follow the existing procedures for the termination of temporary resident status. This amendment would permit the expeditious deportation and removal of aliens who hold temporary resident status, but who have been convicted of an aggravated felony, or who have been found to be ineligible for admission into the United States for reasons that are not waivable. This rule would also prevent the release of dangerous criminal liens into society during deportation or exclusion proceedings.

DATES: Written comments must be submitted on or before July 12, 1994.

ADDRESSES: Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5307, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, suite 2400, Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470, or David Dixon, Appellate Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone number (703) 756–6257.

SUPPLEMENTARY INFORMATION: This proposed regulation is necessary in order to correct a procedural anomaly that has resulted in the release of aggravated felons who hold temporary resident status and has impaired the ability of the INS to deport those who, after obtaining temporary resident status, commit deportable acts.

The Board of Immigration Appeals (BIA) held in *Matter of Medrano*, Interim Decision #3138 (BIA September 10, 1990), that the status of a lawful temporary resident alien who commits a deportable offense must be terminated pursuant to § 245A(b) (2) of the Act (8 U.S.C. 1255a(b)(2)), and in accordance with 8 CFR 245a.2(u), before commencement of deportation proceedings. By following this precedent, INS is unable to detain deportable aliens, such as those who commit aggravated felonies, who hold temporary resident status, without first stripping the alien of his or her temporary resident status.

Medrano's interpretation of 8 CFR 244a.2(u)(2) confronts the INS with conflicting obligations. On the one hand, § 242(a)(2)(A) of the Act (8 U.S.C. 1252(a)(2)(A)) requires the INS to detain any alien convicted of an aggravated felony and § 242 of the Act generally establishes the procedure for apprehension and deportation of aliens. On the other hand, *Medrano* stands as an obstacle to detaining and deporting such individuals until the alien's temporary residency status is revoked.

Medrano and 8 CFR 245a.2(u)(2) also grant more procedural rights to temporary residents—who must first have their status revoked—than to lawful permanent residents, who may simply be deported upon the commission of an aggravated felony, without first terminating their status.

The proposed amendment harmonizes with other provisions of 8 CFR 245a.2(u)(1), which it will amend. This section currently provides, in part:

> The status of an alien lawfully admitted for temporary residence under section 245(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status.

Accordingly, the existing regulation contemplates that institution of deportation proceedings may precede termination of resident status.

The proposed regulation will correspond to regulations currently in force with respect to Special Agricultural Workers. Special Agricultural Workers' temporary resident status is automatically revoked upon the entry of a final order of deportation or exclusion. 8 CFR 210.4(d) (promulgated pursuant to 8 U.S.C. 1160(a)(3)).

Moreover, in other contexts, courts have recognized that deportation entails loss of lawful resident status. See, *e.g., Marti-Xiques* v. *INS*, 741 F.2d 350 (11th Cir. 1984); *Matter of Diaz-Chambrot*, 19 I. & N. Dec. 674 (BIA 1988) at 675.

Thus, in order to avoid any delay or termination of deportation or exclusion proceedings that may be caused by invoking the termination procedure prescribed in § 245a.2(u)(2)(i), and to permit the expeditious deportation and removal of aggravated felons as required by sections 242A(d) and 242(i) of the Act, the INS proposes to add a new paragraph (ii) to § 245a.2(u)(2), to provide for the institution of deportation or exclusion proceedings and the automatic termination of lawful resident status upon the entry of a final order of deportation or exclusion in cases where: (1) the ground for deportation arises under section 241(a)(2)(A)(iii) of the Act (8 U.S.C. 1251(a)(2)(A)(iii)) (convicted aggravated felons); or (2) the ground of deportability arises after the acquisition of temporary resident status, and that ground may not be waived pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)) (relating to certain crimes, drug offenses, national security, and likelihood of becoming a public charge); or (3) the alien seeks admission, and the ground of inadmissibility may not be waived pursuant to section 245A(d)(2)(B)(ii) of the Act.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. It will affect certain individual aliens, not small entities. This is not a significant rule within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, it is proposed that chapter I of title 8 of the Code of Federal Regulations be amended as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

1. The heading for part 245a is revised to read as set forth above.

2. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a, and 1255a note.

3. Section 245a.2(u)(2) is amended by:

a. Designating the existing text of paragraph (u)(2) as paragraph (u)(2)(i);

b. Adding a new heading and revising the first sentence; and

c. Adding a new paragraph (u)(2)(ii), to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(u) *Termination of temporary residence status.*

* * * * *

(2) *Procedure*—(i) *Termination by the Service.* Except as provided in paragraph (u)(2)(ii) of this section, termination of an alien's temporary resident status under paragraph (u)(i) of this section will be made before instituting deportation proceedings against a temporary resident alien and only on notice sent to the alien by certified mail directed to his or her last known address, and to his or her representative, if any. * * *

(ii) *Termination upon entry of final order of deportation or exclusion.* (A) The Service may institute deportation or exclusion proceedings against a temporary resident alien without regard to the procedures set forth in paragraph (u)(2)(i) of this section:

(*1*) If the ground for deportation arises under section 241(a)(2)(A)(iii) of the Act; or

(*2*) If the ground for deportation arises after the acquisition of temporary resident status, and the basis of such ground of deportation is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act; or

(*3*) If the ground for exclusion arises after the acquisition of temporary resident status and is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act.

(B) In such cases, the entry of a final order of deportation or exclusion automatically will terminate an alien's temporary resident status acquired under section 245A(a)(1) of the Act.

Dated: April 29, 1994.

Janet Reno,

Attorney General.

[FR Doc. 11312 Filed 5–12–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 91

[Docket No. 93–070–1]

Inspection and Handling of Livestock for Exportation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations to provide that United States origin health certificates include all test results, certifications, or other statements required by the foreign country of destination. This action appears necessary to ensure that the origin health certificate contains all of the information required by the foreign country of destination. We are also proposing to amend the requirements concerning scrapie for sheep and goats intended for export. This action would clarify the regulations and make the terminology used in the export regulations consistent with that used in our domestic scrapie regulations. We are also proposing to revise one definition in the domestic scrapie regulations to make the definitions in those regulations consistent with each other.

DATES: Consideration will be given only to comments received on or before July 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–070–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations provide, among other things, that all animals intended for exportation to a foreign country, except animals intended for exportation to Mexico or Canada and cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation to Mexico or Canada, except cattle from Mexico imported into the United States in bond for temporary feeding and return to Mexico, must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate.

The regulations state that the origin health certificate shall certify that the animals were inspected within the 30 days prior to the date of the movement of the animals for export, and were found to be sound, healthy, and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate, issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian, must be endorsed by an authorized APHIS veterinarian in the State of origin. The origin health certificate must also include any test results added by the authorized APHIS veterinarian pursuant to 9 CFR 161.3, which allows test results to be added to an origin health certificate after it is issued or signed by an accredited veterinarian. (Because of a typographical error, the reference in part 91 is to "§ 161.2." As part of this proposed rule, this reference would be corrected.) The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age, and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings.

In addition to the information described in the preceding paragraph, a foreign country of destination may require that its health requirements be added to the origin health certificate. Because these requirements are not imposed by the United States, and may vary from export to export depending on the requirements of the destination country, they are not set out in our regulations. However, unless all information required by a foreign government is included on the origin health certificate, that animal may be refused entry into the foreign country upon export. To help prevent the return of animals to the United States because they were refused entry in another country, we are proposing to amend § 91.3 to require that the origin health certificate include any test results, certifications, or other statements required by the foreign country of destination.

Exportation of Sheep and Goats

The regulations in 9 CFR part 91 also set forth the conditions under which sheep and goats are eligible for exportation with regard to scrapie. Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The signs that become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animal's wool, and itching. Infected animals become debilitated and die.

The regulations in §§ 91.6(a)(3) and 91.8(a) provide that a goat or sheep shall not be exported if it is affected with or exposed to scrapie; if it originated from, or has been on, any premises which then were infected or source flock premises; if it is the progeny, sire or dam, or full or half brother or sister of any animal found to be affected with scrapie; or if it was moved from premises located in an area quarantined for scrapie.

Under the current regulations, infected premises are those on which an animal has been found to be infected with scrapie, and source flock premises are those premises from which an affected animal was moved within 18 months or less prior to showing signs of scrapie.

When the 18-month time period was established for source flocks, existing biological evidence indicated that the incubation period for scrapie was less than 18 months. Therefore, flocks from which an affected animal was moved more than 18 months prior to showing signs of scrapie were not considered to be at risk from the scrapie-affected animal. However, evidence now available indicates that scrapie develops more slowly than previously thought, with an incubation period that could last for years, and that averages more than 18 months. Therefore, a flock from which a sheep or goat was moved more than 18 months prior to showing signs of scrapie could be at risk from the affected animal. We are therefore proposing to amend §§ 91.6 and 91.8 by removing footnote 4, which refers to source flock premises as those premises from which an affected animal was moved within 18 months or less prior to showing signs of scrapie, and to define "source flock" as defined below.

We are proposing to amend §§ 91.6 and 91.8 to prohibit the exportation of scrapie positive animals and all animals from infected flocks, source flocks, and trace flocks, as defined in both 9 CFR part 54 (which describes the Voluntary Scrapie Flock Certification Program in place in the United States) and 9 CFR part 79 (which imposes interstate movement restrictions for sheep and goats). We are also proposing to prohibit the exportation of exposed animals, as defined in part 79, and to amend the definition of *scrapie-exposed animals* in part 54 to update it and make it consistent with the definition of *exposed animal* in part 79. The definitions of *exposed animal, infected flock, scrapie-positive animal, source flock,* and *trace flock,* as set forth in part 79 and part 54 (except for *exposed animal*), are as follows:

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

Infected Flock. Any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with (9 CFR part 79), through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of proteaseresistant protein analysis or other confirmation techniques used in conjunction with histological examination.

Source flock. A flock in which a Veterinary Services representative has determined that at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis. A flock will no longer be considered a source flock after it has completed the requirements of a flock plan.

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

We consider each of the flocks and animals described in these definitions to pose a risk of transmitting scrapie. The proposed changes to the regulations would both ensure that such animals are not exported, and make the terminology used in part 91 consistent with that used in our domestic scrapie regulations.

We are making several other changes to the export provisions in §§ 91.6(a) and 91.8(a). As noted above, those paragraphs prohibit the export of a sheep or goat if it was moved from premises located in an area quarantined for scrapie, or if it is the progeny, sire or dam, or full or half brother or sister of any animal found to be affected with scrapie.

The prohibition of the export of sheep and goats from premises in a quarantined area is outdated. The provisions that formerly were set forth in part 79 for quarantining areas in which scrapie exists have been replaced in part 54 with a program focusing on individual flocks. Therefore, we are proposing to remove the prohibition, in §§ 91.6(a) and 91.8(a), of the export of sheep and goats from premises in an area quarantined for scrapie.

We are also proposing to make nonsubstantive changes to the wording in §§ 91.6(a) and 91.8(a). We would replace the words "sire or dam" with the word "parent," and would replace the words "full or half brother or sister" with the word "sibling."

Definition of *Scrapie-Exposed Animals* in 9 CFR part 54

As noted above, the definition of *scrapie-exposed animals* in part 54 differs from the definition of *exposed animals* in part 79. The definition in part 54 reads as follows:

Scrapie-exposed animals. Animals, other than affected or bloodline animals, in a flock in which an affected animal has been diagnosed by a Veterinary Services representative or state representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by state animal health officials.

This definition is outdated and does not reflect current practice. For instance, we no longer conduct a bloodline program, nor is surveillance conducted under the current voluntary flock certification program. The definition of *exposed animal* in part 79 (set forth above) was published as part of the current program, and does reflect current practice. Therefore, we are proposing to amend § 54.1 to remove the definition of *scrapie-exposed animals* and to add the same definition of *exposed animal* that appears in § 79.1.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. This proposed rule may have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under 21 U.S.C. 105, 113, 120, 121, 612, 613, and 614, the Secretary of Agriculture is authorized to promulgate regulations to require inspection and certification of animals intended for export from the United States, and to take other measures to prevent the exportation of diseased livestock.

Under this proposed rule, we would require that the origin health certificate required for animals exported from the United States include any test results, certifications, or other statements required by the foreign country of destination. Under this proposed rule, we would also revise the export regulations in §§ 91.6(a)(3) and 91.8(a) to make them consistent with the regulations in 9 CFR parts 54 and 79 regarding the Voluntary Scrapie Flock Certification Program.

We anticipate the proposed changes involving certification will have little or no impact on small domestic exporters. In order for exporters to sell their animals abroad, the animals must meet the import requirements of the country of destination. Therefore, it is in the exporter's interest, even under the current regulations, to ensure that those requirements are met. The proposed change would require only that the origin health certificate include all test results, certifications, or other statements required by the country of destination. However, estimates of the number of animals and the number of small entities that would be affected, and the potential costs to exporters, are not available.

The proposed changes concerning sheep and goats with regard to scrapie would affect some producers. Under the current regulations in part 91, sheep and goats from source flock premises may not be exported, and source flock premises are considered those from which an animal affected with scrapie was moved within 18 months or less prior to showing signs of scrapie.

Under the proposed regulations, the export of sheep and goats from source flocks would continue to be prohibited, but the meaning of "source flock" would be revised to mean a flock in which at least two animals were diagnosed as scrapie-positive animals at an age of 54 months or less, provided the second diagnosis was made within 60 months of the first, and provided the requirements of a flock plan have not been completed. This change would make the regulations more restrictive, and could increase the number of animals prohibited exportation because they originated in a source flock. However, as of September 1993, there were only 8 source flocks in the United States.

Although the proposed change would apply to both sheep and goats, at present the number of goats being exported is minimal.

There are approximately 92,500 sheep farms in the United States, with approximately 11 million sheep. The large majority of these are small entities. Ninety-nine percent of the sheep farms in this country each have annual sales totalling less than $500,000, and approximately 77,000 have fewer than 100 sheep. In 1992, there were approximately 830,000 sheep exported from the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0020.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Sheep.

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 54 and 91 would be amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 would be amended by removing the definition of *scrapie-exposed animals* and by adding, in alphabetical order, a definition of *exposed animal* to read as follows:

§ 54.1 Definitions.

* * * * *

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

* * * * *

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

3. The authority citation for part 91 would be revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

4. In § 91.3, paragraph (a) would be amended by removing "§ 161.2" in the fourth sentence and replacing it with "§ 161.3(k) of this chapter", and by adding a new sentence at the end of the paragraph to read as follows: "The origin health certificate shall include all test results, certifications, or other statements required by the foreign country of destination."

5. In § 91.6, paragraph (a)(3) would be revised as set forth below, and footnote 4 would be removed.

§ 91.6 Goats.

(a) * * *

(3) No goat will be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

6. In § 91.8, paragraph (a) would be revised to read as follows:

§ 91.8 Sheep.

(a) No sheep shall be exported if it is a scrapie-positive animal or an exposed animal, as defined in 9 CFR parts 54 and 79, or if it has ever been in an infected flock, source flock, or trace flock, as defined in 9 CFR parts 54 and 79; or if it is the progeny, parent, or sibling of any scrapie-positive animal.

* * * * *

§§ 91.6 and 91.8 [Amended]

7. In § 91.6, paragraph (a)(5), and § 91.8, paragraph (a)(2), footnote 5 and the references to footnote 5 would be redesignated as footnote 4.

Done in Washington, DC, this 9th Day of May, 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11677 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 451

[Docket No. EE-RM-94-301]

Renewable Energy Production Incentives

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing and request for public comment.

SUMMARY: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EE) today proposes a rule to implement a program in response to the requirements of section 1212 of the Energy Policy Act of 1992 to make incentive payments to qualified renewable energy facilities. The proposed rule covers application procedures, qualification requirements, calculation of incentive payments, and administrative remedies.

DATES: Written comments on the proposed rule (12 copies) must be received by the Department on or before July 12, 1994. A public hearing will be held on June 16, 1994, beginning at 9:30 a.m. at the address listed below. Requests to speak must be received by the Department on or before June 9, 1994. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: All written comments (12 copies), as well as requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–10/REPI NOPR, Docket No. EE-RM–94–301, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3012. FAX comments will not be accepted. The public hearing will be held at the U.S. Department of Energy, Forrestal Building, room 1E–245, 1000 Independence Avenue, SW., Washington, DC. 20585. Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. A copy of comments concerning information collection requirements of the proposed rule should also be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the

Department of Energy, 725 17th Street, NW., Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT:

Kurt Klunder, Office of Energy Efficiency and Renewable Energy, Mail Station EE–10, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4564.

Josephine B. Patton, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1212 of the Energy Policy Act of 1992, 42 U.S.C. 13317, requires the Department of Energy to make, subject to the availability of appropriations, incentive payments to the owners or operators of qualified renewable energy facilities for the production and sale of electric energy from certain renewable energy sources. With certain exceptions, qualified renewable energy facilities are renewable energy conversion facilities (solar, wind, geothermal, or biomass) owned by States, subdivisions of States, or nonprofit electrical cooperatives that generate electric energy for sale. The goal of the incentive program is to advance the use of renewable energy conversion systems in the United States, particularly those systems that use emerging technologies.

The payment rate begins at 1.5 cents per kilowatt-hour, adjusted for fiscal year 1994 inflation over fiscal year 1993, for energy produced in fiscal year 1994. For energy produced in subsequent years, payment rates will be similarly adjusted annually to account for inflation. Payments may be made for 10 years only to owners or operators of qualified facilities first put in service during the period beginning on October 1, 1993, and ending on September 30, 2003.

The stated purposes of title XII of the Energy Policy Act of 1992, of which section 1212 is a part, are promotion of: "(1) Increases in the production and utilization of energy from renewable energy resources; (2) further advances of renewable energy technologies; and (3) exports of United States renewable energy technologies." 42 U.S.C. 13311.

Section 1212 appears to be complementary to sections 1914 and 1916 of the Energy Policy Act of 1992. Section 1914 amended the Internal Revenue Code to provide a tax credit of 1.5 cents per kilowatt-hour adjusted for inflation for electricity produced from wind or from biomass derived from organic matter grown exclusively for use in generating electricity. 26 U.S.C. 45. Section 1916 amended the Internal Revenue Code to make permanent the energy investment tax credit for non-utility investors in solar and geothermal property. 26 U.S.C. 48(a)(2). Sections 1914 and 1916 are designed to assist in making certain emerging renewable energy technologies cost competitive. Section 1212 appears to have a similar objective with regard to State instrumentalities and nonprofit electric cooperatives neither of which can benefit from tax credits because they do not pay Federal income taxes.

II. Description of Proposed Rule

Proposed Section 451.1

Proposed § 451.1 defines the purpose and scope of part 451 as setting policies and procedures governing the administration of the renewable energy production incentive program and the process for the payment of incentives. This proposed section states that determinations with regard to incentive payments are not subject to the Department's general financial assistance regulation in 10 CFR part 600. Those regulations deal with grants and cooperative agreements that are awarded to stimulate assistance recipients to undertake certain future activities with Federal funds. In contrast, the incentive payments under section 1212 are a reward for activities that have already taken place and there is no stated restriction with regard to what the recipient does with the Federal funds received.

Proposed Section 451.2

Proposed § 451.2 sets forth the definitions for part 451. The first defined term is "closed-loop biomass" which is based on the definition of the same term in section 1914. For reasons discussed in greater detail below, closed-loop biomass energy facilities, in contrast to other eligible biomass energy facilities, would receive priority payment in the event that Congress has not appropriated enough funds to make all incentive payments in any given fiscal year.

Proposed § 451.2 defines the term "fiscal year" as the standard Federal fiscal year which runs from October 1 of any given year to September 30 of the next year. Section 1212 refers to fiscal years, but does not provide a definition. In the absence of any legislative history to the contrary, Congress is assumed to have intended use of the standard Federal fiscal year.

Proposed § 451.2 defines the term "nonprofit electrical cooperative," which is one category of eligible owners named in section 1212. The proposed definition is based on the provisions of the Internal Revenue Code dealing with tax exempt organizations and on information provided by the National Rural Electric Cooperative Association. The Department invites comments on the adequacy of this definition and related suggestions for editing.

Although section 1212 does not use the term "renewable energy source," or any other term, to characterize the eligible energy sources, the Department has found it useful at various points in the proposed rule. The definition is based on the list of energy sources in paragraph (b) of section 1212 which refers to "solar, wind, biomass, or geothermal energy." 42 U.S.C. 13317(b). It is also based on the list of excepted (and therefore ineligible) energy sources in subparagraphs (b)(1) (municipal solid waste) and (b)(2) (certain dry steam geothermal energy). 42 U.S.C. 13317(b)(1), (2). Wind and biomass are indirect forms of solar energy. The specification of those two indirect forms as well as the word "solar" suggests that Congress meant the word "solar" to include only direct forms of solar energy, namely, solar heat (concentrated solar insulation for a solar thermal electric facility) and solar light (concentrated or unconcentrated solar insulation for a solar photovoltaic electric facility). That reading is supported by the facts with regard to indirect forms of solar energy. Indirect forms of solar energy other than wind and biomass (e.g., hydropower) are either fully competitive with fossil fuels without need of an incentive payment or are at a development stage such that an incentive payment could not make them cost competitive with fossil fuels.

Proposed § 451.2 defines the term "renewable energy facility" which appears in section 1212. The key part of the definition is the reference to "a system or an integrated set of components" which makes it clear that the facility is mostly equipment such as heat exchangers or turbines and that the facility does not include the land on which it is located. In addition, for geothermal facilities it does not include the geothermal field, and for biomass facilities it does not include the biomass farm. The proposed definition also omits any reference to equipment for transmission or use of electricity because the text of paragraph (b) of section 1212 which defines the term "qualified renewable energy facility," does not state that such a facility must include such equipment. It is important to note that the definition refers to electric energy "in whole or in part" from a renewable energy source. That language takes account of the likelihood that some facilities will produce electric energy in part from a non-renewable energy source such as fossil fuel.

Finally, proposed 451.2 defines the term "State" which is not defined in the text of section 1212. However, given the above-quoted stated purpose of title XII of the Energy Policy Act of 1992, it is reasonable to conclude that Congress meant for incentive payments to be available for power generation in any of the 50 States, the District of Columbia, Puerto Rico, and any other territory or possession of the United States. This qualification is explicitedly set forth in proposed § 451.4(g)

Proposed Section 451.3

Proposed § 451.3 deals with who is eligible to apply. Consistent with section 1212, it states that any owner or operator of a qualified renewable energy facility may apply. However, it qualifies the word "operator" to make clear that such a person or entity must have the written consent of the owner. A contractual provision would suffice, but it is not the only written manifestation of owner consent that would be acceptable. This provision will enable the Department to avoid a situation where both the owner and operator of a facility apply.

Proposed Section 451.4

Proposed § 451.4 answers the question: What is a qualified renewable energy facility? Proposed paragraph (a) tracks section 1212 by providing that various State instrumentalities or a nonprofit electric cooperative must be the owner.

Proposed paragraph (b) clarifies an ambiguity in section 1212 with regard to what constitutes ownership. In light of the possibility that the facilities of nonprofit electric cooperative may be financed, the Department worded proposed paragraph (b) to cover situations in which the cooperative has all rights to the beneficial use of the qualified renewable energy facility, but legal title is held by a financing source for the benefit of the cooperative. The Department invites comments on the adequacy of proposed paragraph (b) in light of experience with the title aspects of financing arrangements.

Proposed paragraph (c) tracks the language of section 1212 by requiring that the electricity generated must be "for sale in, or affecting, interstate commerce among the States." The Department is inclined to interpret the word "sale" to mean a transaction between two entities, who may be related, involving the transfer of electric energy for consideration. Thus, electric energy generated by an entity for internal use by that entity would not constitute a "sale."

Proposed paragraph (d) restates that only "renewable energy sources" as defined by proposed § 451.2 are covered.

Proposed paragraph (e) lists the types of biomass and geothermal energy sources specifically excluded by section 1212. This paragraph reflects the provisions of section 1212(b)(1) and (2). 42 U.S.C. 13317(b)(1) and (2).

Proposed paragraph (f) tracks the provision of section 1212 which requires that the facility must first be used during the period beginning with October 1, 1993, and ending on September 30, 2003.

In addition, the Department considered inclusion of a requirement that, to be considered qualified for receipt of incentive payments, a facility must be purchased and installed without financial assistance from other federal programs. The requirement was omitted from this proposed rule because of uncertainty regarding the total breadth and form of federal programs that might be applicable to facility design, construction, installation, and operation. The Department will consider this possibility further and invites comments on the advisability of such a requirement.

Proposed Section 451.5

Proposed § 451.5 deals with where and when to apply. Proposed paragraph (a) permits the filing of an application only in response to an annual notice in the **Federal Register**. Issuance of that notice should closely follow enactment of appropriations. Proposed paragraph (b) concerns the initial application. It provides that such an application may be filed in the first fiscal year following that in which electricity eligible for incentive payments is first generated, and that subsequent applications may be filed in the fiscal years following those in which electricity eligible for incentive payments is generated.

Proposed Section 451.6

Consistent with the requirements of section 1212, proposed § 451.6 provides that the Department may only make incentive payments for a 10-fiscal year period to any particular qualified renewable facility.

Proposed Section 451.7

Proposed § 451.7 describes metering requirements which the Department thinks are desirable to promote the accuracy and veracity of applications for incentive payments. In all cases, the number of kilowatt-hours generated and sold is to be metered. If non-qualifying renewable or non-renewable energy sources as well as qualifying renewable energy sources are used, proposed § 451.7 would not require electrical metering of sources where such is not possible or practical. In such cases, the kilowatt hours attributable to the qualified renewable energy source must usually be calculated from fractions of heat input, or other energy input, from the several sources. Such inputs must be metered, measured, or otherwise quantified from the respective raw energy streams using commonly accepted (and identified) procedures and conversion methodologies.

Proposed Section 451.8

Proposed § 451.8 sets forth application content requirements. Most of the requirements are self-explanatory. However, several of them deserve some discussion to focus them for public comment.

Proposed paragraph (f) would require: "That components and equipment, representing at least 50 percent of the capital cost of the qualified renewable energy facility, were substantially manufactured in a State." This provision is consistent with the purposes of title XII of the Energy Policy Act of 1992. It is modeled on a provision of section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, as amended by title XII of the Energy Policy Act of 1992. 42 U.S.C. § 12005(b)(1)(B). Like section 6, it would not exclude entities merely on the basis of foreign ownership. It would promote domestic jobs and production without discriminating against foreign entities that invest in production facilities in the United States.

Proposed paragraphs (g) and (h) would require independently audited and certified statements of the monthly and annual electric energy generated and sold. The content of the certification should be similar to the type of certification supplied by an accounting firm in a company's annual report to shareholders. Paragraph (h) also describes the calculation necessary when the metered number of kilowatt-hours represents electric energy generated from renewable and non-renewable or excluded-renewable energy sources. The proposed requirement for an independently audited and certified statement will minimize the chance of erroneous claims and the need for DOE audits.

Consistent with applicable regulations under the Paperwork Reduction Act, 5 CFR 1320.6(f), proposed paragraph (k) would require a statement agreeing to retain records for a period of three years to provide for prompt access to, or copies of, such records in response to a written request by DOE. DOE is still considering whether the retention period should be the entire ten year period during which incentive payments may be collected. DOE did not propose a longer retention period because the proposed audit and certification requirements would make fraud or mistake unlikely.

Proposed Section 451.9

Proposed § 451.9 describes DOE's procedures for processing applications for incentive payments including the statutory formula for initially calculating the amount due and the adjustment for inflation. DOE is proposing a procedure to deal with the possibility that there could be a shortage of appropriations to make the full incentive payments. The President's annual budget request and Congressional action on that request will precede receipt of the applications in every year. It is therefore unlikely that Congress will appropriate precisely the amount necessary to make the full incentive payments. In the event that the amount appropriated is less than the amount required to make full payments to all qualified applicants, the proposed procedure involves priority first (and, if necessary, pro rata payments) to all owners or operators of solar, wind, geothermal, and closed-loop biomass facilities, and priority second (and, if necessary, pro rata payments) to owners or operators of all other qualified facilities. This procedure favors emerging technologies which are similarly favored by the tax credit provisions of sections 1914 and 1916. These technologies are close to or in early commercialization stages where the incentive payments can help speed the commercialization process. If payments are reduced as a result of a shortage of appropriations, the kilowatt-hours attributable to the shortfall will accrue for payment in succeeding years to the extent that Congress appropriates funds sufficient to allow payment for these accruals together with other eligible electricity production.

Proposed Section 451.10

DOE is proposing an administrative remedy for those aggrieved by the initial decision of the DOE Deciding Official who will be the Assistant Secretary for Energy Efficiency and Renewable Energy. In order to exhaust administrative remedies, it will be necessary to appeal to DOE's Office of Hearings and Appeals. This procedure has two virtues. It would be less expensive than pursuing a judicial remedy immediately. It would also ensure that DOE has made a record which is appropriate for judicial review in the event a petition for review is filed in a federal court.

III. Regulatory Review

DOE has concluded that this is not a significant regulatory action because it does not meet the criteria which define such actions under Executive Order 12866, 58 FR 51735, and is therefore exempt from regulatory review. Accordingly, no clearance of this proposed rule by the Office of Management and Budget is required.

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has determined that this proposed rule will not have a significant impact on small entities because the rule directly affects only qualified renewable energy facilities owned by state or local governments or non-profit electrical cooperatives, and such facilities are not deemed small entities.

V. Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements. Earlier in this notice, DOE described the application content proposed for use under the rule. The information DOE proposes to collect on the applications for incentive payments is necessary to determine whether the applicant is qualified for payment. The frequency of the information collection is monthly for those entities eligible to apply for incentive payments. It is estimated that less than 40 entities will apply for incentive payments in the first year, growing to less than 200 over a ten year period.

The public reporting burden is estimated to average 25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and retrieving the collection of information. The collection of information contained in this proposed rule is considered the least burdensome for the Department of Energy's functions to comply with the legal requirements and achieve program objectives. However, comments are requested concerning the accuracy of the estimated paperwork reporting burden, in addition to the proposed record retention requirement discussed above.

VI. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action. This proposed rule establishes an incentive program under which state owned renewable energy facilities may qualify for incentive payments based on the amount of electric energy the facility generates using specified renewable sources for sale in, or affecting interstate commerce. The Department has determined that since the generation of electricity is not a primary function of a State, the proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

VII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

VIII. Review Under the National Environmental Policy Act

DOE has determined that promulgation of this proposed rule falls within the procedural rulemaking class, Category A6 of Appendix A to Subpart D, "Categorical Exclusions Applicable to General Agency Actions", of the DOE National Environmental Policy Act (NEPA) regulations, 10 CFR part 1021. It is therefore categorically excluded from preparation of either an Environmental Assessment or an Environmental Impact Statement under the NEPA (42 U.S.C. 4321, et. seq).

IX. Opportunities for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rulemaking.

Twelve copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice and must be received by the date indicated in the DATES section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "REPI NOPR, Docket No. EE–RM–94–301". In the event any person wishing to provide written comments cannot provide twelve copies, alternative arrangements can be made in advance with DOE.

All written comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room at the address provided at the beginning of this notice. If informal meetings or other contacts occur during this rulemaking, DOE may add a memorandum to the record on file summarizing what transpired.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy of the document, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

B. Public Hearing

1. Request to Speak Procedures

A public hearing on the proposed rule will be held at the time and place indicated in the DATES and ADDRESSES Sections of this notice. Any person who has an interest in the proposed rule or who is a representative of a group or class of persons that has an interest in the proposed rule may request an opportunity to make an oral presentation. A request to speak at the public hearing should be addressed to the address or phone number indicated at the beginning of this notice. The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why the person is a proper representative of the group. The person should also provide a phone number where he or she may be reached during the day. Each person selected to be heard will be notified by DOE as to the approximate time they will be speaking. Twelve copies of the speaker's statement should be submitted at the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with DOE.

2. Conduct of the Hearing

DOE reserves the right to select persons to be heard at the hearing, to schedule their respective presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes or based on the number of persons requesting an opportunity to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. It will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191.

Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made by DOE and made available as part of the administrative record for this rulemaking. It will be on file for inspection at the DOE Freedom of Information Reading Room at the address indicated at the beginning of this notice.

If DOE must cancel the public hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Actual notice of cancellation will also be given to all persons scheduled to speak. The hearing date may be canceled in the event no member of the public requests the opportunity to make an oral presentation.

List of Subjects in 10 CFR Part 451

Electric utilities, Grant programs, Solar energy.

Issued in Washington, DC, on May 9, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, title 10, chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new part 451 to read as set forth below:

PART 451—RENEWABLE ENERGY PRODUCTION INCENTIVES

Sec.	
451.1	Purpose and scope.
451.2	Definitions.
451.3	Who may apply.
451.4	What is a qualified renewable energy facility.
451.5	Where and when to apply.
451.6	What is the duration of incentive payments.
451.7	Metering requirements.
451.8	Application content requirements.
451.9	Procedures for processing applications.
451.10	Administrative appeals.

Authority: 42 U.S.C. 7254; 42 U.S.C. 13317.

§ 451.1 Purpose and scope.

(a) The provisions of this part cover the policies and procedures applicable to the determinations by DOE to make incentive payments for electric energy generated in a State and sold by a qualified renewable energy facility, as defined by 42 U.S.C. 13317 and this part.

(b) Determinations to make incentive payments under this part are not subject to the provisions of 10 CFR part 600 and such payments shall not be construed to be financial assistance.

§ 451.2 Definitions.

As used in this part—

Closed-loop biomass means plant matter, other than standing timber, grown for the sole purpose of being used to generate electricity.

Deciding Official means the Assistant Secretary for Energy Efficiency and

Renewable Energy (or any DOE official to whom the authority of the Assistant Secretary may be redelegated by the Secretary of Energy). The duties of the Assistant Secretary may not be subdelegated without the written approval of the Secretary.

DOE means the Department of Energy.

Finance Office means the DOE Office of the Chief Financial Officer (or any office to which that office's authority may be redelegated by the Secretary).

Fiscal year means the Federal fiscal year beginning October 1 and ending on September 30 of the following calendar year.

Nonprofit electrical cooperative means a cooperative association that is treated as tax exempt under section 501(c)(12) of the Internal Revenue Code and that is organized under the laws of any State for the purpose of providing electric service to its members and other customers.

Renewable energy facility means a system or an integrated set of components necessary to generate electric energy in whole or in part from a renewable energy source, including—

(1) Solar photovoltaic cells which convert sunlight to direct current electricity;

(2) Solar thermal electric systems which use a fluid heated by the sun to drive a turbine generator;

(3) Wind energy systems which capture wind energy through aerodynamically shaped blades rotating about a horizontal or vertical axis and drive an alternating current or direct current generator;

(4) Biomass energy systems which use heat derived from combustion of plant matter or from combustion of gases or liquids derived from plant matter or animal waste or from combustion of gases derived from landfills in order to drive an electric generator; and

(5) Geothermal systems which use natural heat stored underground in rocks or underground in an aqueous liquid or vapor, whether or not under pressure, in order to drive an electric generator.

Renewable energy source means solar heat, solar light, wind, geothermal, and biomass energy except for exclusions set forth in section 451.4(e) of this part.

State means the District of Columbia, Puerto Rico, and any of the States, territories, and possessions of the United States.

§ 451.3 Who may apply.

Any owner, or operator with the written consent of the owner, but not both, of a qualified renewable energy facility, may apply for incentive payments for electric energy generated from a renewable energy source and sold.

§ 451.4 What is a qualified renewable energy facility.

In order to be eligible for an incentive payment under this part, a renewable energy facility must meet the following qualifications—

(a) *Ownership.* The owner must be-

(1) A State (or agency, authority, or instrumentality thereof);

(2) Any political subdivision of a State (or agency, authority, or instrumentality thereof);

(3) Any corporation or association wholly owned, directly or indirectly, by a State or a political subdivision of a State; or

(4) A nonprofit electric cooperative.

(b) *What must be owned.* The owner must have all rights to the beneficial use of the renewable energy facility, and legal title must be held by, or for the benefit of, the beneficial owner.

(c) *Sales affecting interstate commerce.* The renewable energy facility must generate electric energy for sale in, or affecting, interstate commerce among the States.

(d) *Type of renewable energy sources.* Except as provided in paragraph (e) of this section, the source of the electric energy for which incentive payments is sought must be solar heat, solar light, wind energy, biomass energy, or geothermal energy.

(e) *Excluded renewable energy sources.* The source of the electric energy for which incentive payments is sought may not be—

(1) Municipal solid waste which is burned to create heat; or

(2) A dry steam geothermal reservoir which has—

(i) No mobile liquid in its natural state;

(ii) Steam quality of 95 percent water, or higher; and

(iii) An enthalpy for the total produced fluid greater than or equal to 1200 British thermal units per pound.

(f) *Time of first use.* The date of the first use of a qualified renewable energy facility must occur during the period beginning with October 1, 1993, and ending on September 30, 2003.

(g) *Location.* The qualified renewable energy facility must be located in a State.

§ 451.5 Where and when to apply.

(a) The owner or operator of a qualified renewable energy facility may file an annual application for incentive payment under this part only in response to an annual notice in the **Federal Register** inviting applications.

(b) An applicant may file the initial application for incentive payments under this part in the first fiscal year following that in which electricity generated from the qualified renewable energy facility is first eligible for such payments. Subsequent applications may be filed in the fiscal years following those in which the electricity eligible for incentive payments is generated.

§ 451.6 What is the duration of incentive payments.

DOE may make incentive payments under this part with respect to a qualified renewable energy facility only for a 10-fiscal year period.

§ 451.7 Metering requirements.

The number of kilowatt-hours generated and sold from a qualified renewable energy facility must be measured by a standard metering device that—

(a) Meets generally accepted industry standards;

(b) Is maintained in proper working order according to the instructions of its manufacturer; and

(c) Is calibrated according to generally accepted industry standards.

§ 451.8 Application content requirements.

Except as provided in paragraph (b) of this section, each application for incentive payments under this part must be signed by an authorized executive official and shall provide information showing to the satisfaction of DOE—

(a) That the applicant is the owner or operator (with the written consent of an authorized executive official of the owner);

(b) The name of the facility or other official designation by the owner;

(c) The location of the qualified renewable energy facility and type of renewable energy source;

(d) The name and telephone number of a point of contact to respond to questions or requests for additional information;

(e) That the renewable energy facility satisfies the eligibility criteria under section 451.4 of this part and other requirements prerequisite to receipt of incentive payments under this part;

(f) That components and equipment, representing at least 50 percent of the capital cost of the qualified renewable energy facility, were substantially manufactured in a State;

(g) An independently audited, certified statement of the annual and monthly metered number of kilowatt-hours generated and sold to another entity during the fiscal year and the entity or class of customer to whom the electric energy was sold;

(h) In the case of a renewable energy facility which generates electric energy using a fossil fuel, nuclear energy, or other non-qualified energy source, in addition to a renewable energy source, an independently audited, certified statement of the number of kilowatt hours attributable to the renewable energy source, calculated by multiplying the monthly and annual total number of metered kilowatt-hours generated and sold to another entity during the fiscal year by a fraction consisting of the heat input, as measured in British thermal units, received by the working fluid from the renewable energy source divided by the heat input, as measured in British thermal units, received by the working fluid from all energy sources;

(i) The amounts of accrued electric energy by year, if any, for which the applicant previously applied and DOE did not make incentive payments as a result of insufficient appropriations;

(j) Wire transfer payment instructions, if available; and

(k) A statement agreeing to retain records of the independent audit for a period of three years and to provide prompt (no later than 10 calendar days) access to, or copies of, such records in response to a written request by DOE.

§ 451.9 Procedures for Processing Applications.

(a) Upon receipt, each application shall be date and time stamped and DOE shall acknowledge receipt thereof.

(b) DOE may request supplementary information.

(c) DOE may conduct an audit to verify the number of kilowatts claimed to have been generated from renewable energy sources.

(d) Upon evaluating the application and any other available information, DOE shall determine whether the application meets the requirements of this part and, if appropriate, the number of kilowatt-hours to be used in calculating the incentive payment.

(e) *Calculating payments.* Subject to adjustments under paragraphs (f) and (g) of this section, incentive payments under this part to the owner or operator of any qualified renewable energy facility shall be calculated by multiplying the number of kilowatt-hours of electricity generated through the use of renewable energy sources and sold to another entity during the payment period by 1.5 cents per kilowatt-hour.

(f) *Adjustments.* The amount of the incentive payment to any owner or operator under this section shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 1993 shall be substituted for calendar year 1979.

(g) If there are insufficient appropriations available to make incentive payments for all approved applications, DOE shall—

(1) On a priority (and if necessary on a pro rata) basis, make incentive payments first with respect to qualified renewable energy facilities using wind, solar, geothermal, and closed-loop biomass technologies;

(2) In the event there are insufficient funds for full incentive payments to applicants other than those specified in paragraph (g)(1) of this section, reduce the amount of incentive payments to these other applicants on a prorated basis by the ratio of appropriated funds remaining after payments under paragraph (g)(1) to the total approved incentive payments for the other applicants; and

(3) Treat the number of kilowatt-hours attributable to the portion of any incentive payment which is reduced under this paragraph as accrued energy that may be combined with energy subsequently produced from the same source for which subsequent application for incentive payment is made.

(h) After calculating the amount of the incentive payment under paragraphs (e) through (g) of this section, the DOE Deciding Official shall then issue a notice of the determination to the applicant—

(1) Approving the application as appropriate for payment and forwarding a copy to the DOE Finance Office with a request to pay;

(2) Setting forth the calculation of the approved amount; and

(3) Stating the amount of accrued kilowatt-hours, if any, and the energy source for same.

(i) If the application does not meet the requirements of this part or some of the kilowatt-hours claimed in the application meriting an incentive payment are disallowed as unqualified, the Deciding Official shall issue a notice denying the application in whole or in part with an explanation of the basis for denial.

§ 451.10 Administrative appeals.

(a) In order to exhaust administrative remedies, an applicant who receives a notice denying an application in whole or in part shall appeal, on or before 30 days from date of the notice issued by the DOE Deciding Official, to the Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with the procedures set forth in subpart H of 10 CFR part 205.

(b) If an applicant does not appeal under paragraph (a) of this section, the determination of the DOE Deciding Official shall become final for DOE and judicially unreviewable.

(c) If an applicant appeals on a timely basis under paragraph (a) of this section, the decision and order of the Office of Hearings and Appeals shall be final for DOE.

(d) If the Office of Hearings and Appeals orders an incentive payment, the DOE Deciding Official shall send a copy of such order to the DOE Finance Office with a request to pay.

[FR Doc. 94–11738 Filed 5–12–94; 8:45 am]
BILLING CODE 6450–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1403

Privacy Act Regulations

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation), by order of the Corporation Board, issues for public comment proposed regulations to implement the requirements of the Privacy Act, 5 U.S.C. 552a, relating to the receipt and processing of requests for Corporation Privacy Act records, requests for amendment of records, fees to be charged, procedures to be followed in processing requests for records, and criminal penalties.

DATES: Comments must be submitted on or before June 13, 1994.

ADDRESSES: Written comments may be mailed (in triplicate) to Mary A. Creedon, Chief Operating Officer, in care of Cindy Nicholson, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT:

Ronald H. Erickson, Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, (703) 883–4113, TDD (703) 883–4444.

or

Jane M. Virga, Senior Attorney, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Pursuant to the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971, the Corporation was created, among other things, to manage the Farm Credit Insurance Fund (Insurance Fund) which was established to ensure the timely payment of principal and interest on insured notes, bonds, debentures, and other obligations issued on behalf of the Farm Credit System (FCS) Banks. The Corporation must be appointed as the conservator or receiver for any FCS institution placed into conservatorship or receivership by the Farm Credit Administration (FCA) after January 5, 1993. The Corporation has the authority to examine, as it deems necessary, FCS banks, direct lender associations, and FCS institutions in receivership.

These proposed regulations set forth procedures to be used in requesting access to and responding to requests for Corporation Privacy Act records. As required by 5 U.S.C. 552a(f), the Corporation is notifying the public of the proposed regulations. They provide that all requests for access to Corporation Privacy Act records must be in writing and signed by the subject of the record, adequately describe the material sought, and be sent to the Corporation in McLean, Virginia. The proposed regulations delegate to the Privacy Act Officer authority to make initial determinations concerning requests for access to records. The proposed regulations provide procedures for requests for amendment of records and the appeal of an initial adverse determination on a request to amend a record. The proposed regulations also recite the statutory bases for exemption from disclosure. Finally, the proposed regulations provide a fee structure.

Comments are sought on all the provisions contained in the regulations.

List of Subjects in 12 CFR Part 1403

Archives and records, Bonds, Information, Insurance, Privacy.

For the reasons set out in the preamble, part 1403 of Chapter XIV, title 12 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 1403—PRIVACY ACT REGULATIONS

Sec.

1403.1 Purpose and scope.
1403.2 Definitions.
1403.3 Procedures for requests pertaining to individual records in a record system.
1403.4 Times, places, and requirements for identification of individuals making requests.
1403.5 Disclosure of requested information to individuals.
1403.6 Special procedures for medical records.
1403.7 Request for amendment to record.
1403.8 Agency review of request for amendment of record.
1403.9 Appeal of an initial adverse determination of a request to amend a record.
1403.10 Fees for providing copies of records.
1403.11 Criminal penalties.

Authority: Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a–7, 2277a–8); 5 U.S.C. app. 3, 5 U.S.C. 552a.

§ 1403.1 Purpose and scope.

(a) This part is published by the Farm Credit System Insurance Corporation pursuant to the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) The records covered by this part include:

(1) Personnel and employment records maintained by the Farm Credit System Insurance Corporation not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108); and

(2) Other records contained in record systems maintained by the Farm Credit System Insurance Corporation.

(c) This part does not apply to any records maintained by the Farm Credit System Insurance Corporation in its capacity as a receiver or conservator.

§ 1403.2 Definitions.

For the purposes of this part:

(a) *Agency* means the Farm Credit System Insurance Corporation. It does not include the Farm Credit System Insurance Corporation when it is acting as a receiver or a conservator;

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, that person's education, financial transactions, medical history, and criminal or employment history, and that contains that person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(g) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1403.3 Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit System Insurance Corporation seeking access to that person's official civil service records maintained by the Farm Credit System Insurance Corporation shall submit a request in such manner as is prescribed by the Office of Personnel Management.

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, when seeking to obtain the following information from the Farm Credit System Insurance Corporation:

(1) Notification of whether the agency maintains a record pertaining to that person in a system of records;

(2) Notification of whether the agency has disclosed a record for which an accounting of disclosure is required to be maintained and made available to that person;

(3) A copy of a record pertaining to that person or the accounting of its disclosure; or

(4) The review of a record pertaining to that person or the accounting of its disclosure. The request shall state the full name and address of the individual, and identify the system or systems of records believed to contain the information or record sought.

§ 1403.4 Times, places, and requirements for identification of individuals making requests.

The individual making written requests for information or records ordinarily will not be required to verify that person's identity. The signature upon such requests shall be deemed to be a certification by the requester that he or she is the individual to whom the record pertains, or the parent of a minor, or the duly appointed legal guardian of the individual to whom the record pertains. The Privacy Act Officer, however, may require such additional verification of identity in any instance in which the Privacy Act Officer deems it advisable.

§ 1403.5 Disclosure of requested information to individuals.

(a) The Privacy Act Officer shall, within a reasonable period of time after the date of receipt of a request for information of records:

(1) Determine whether or not such request shall be granted;

(2) Notify the requester of the determination, and, if the request is denied, of the reasons therefor; and

(3) Notify the requester that fees for reproducing copies of records may be charged as provided in § 1403.10.

(b) If access to a record is denied because the information therein has been compiled by the Farm Credit System Insurance Corporation in reasonable anticipation of a civil or criminal action proceeding, the Privacy Act Officer shall notify the requester of that person's right to judicial appeal under 5 U.S.C. 552a(g).

(c)(1) If access to a record is granted, the requester shall notify the Privacy Act Officer whether the requested record is to be copied and mailed to the requester or whether the record is to be made available for personal inspection.

(2) A requester who is an individual may be accompanied by an individual selected by the requester when the record is disclosed, in which case the requester may be required to furnish a written statement authorizing the discussion of the record in the presence of the accompanying person.

(d) If the record is to be made available for personal inspection, the requester shall arrange with the Privacy Act Officer a mutually agreeable time in the offices of the Farm Credit System Insurance Corporation for inspection of the record.

§ 1403.6 Special procedures for medical records.

Medical records in the custody of the Farm Credit System Insurance Corporation which are not subject to Office of Personnel Management regulations shall be disclosed either to the individual to whom they pertain or that person's authorized or legal representative or to a licensed physician named by the individual.

§ 1403.7 Request for amendment to record.

(a) If, after disclosure of the requested information, an individual believes that the record is not accurate, relevant, timely, or complete, that person may request in writing that the record be amended. Such a request shall be submitted to the Privacy Act Officer and shall identify the system of records and the record or information therein, a brief description of the material requested to be changed, the requested change or changes, and the reason for such change or changes.

(b) The Privacy Act Officer shall acknowledge receipt of the request within 10 days (excluding Saturdays, Sundays, and legal holidays) and, if a determination has not been made, advise the individual when that person may expect to be advised of action taken on the request. The acknowledgment may contain a request for additional information needed to make a determination.

§ 1403.8 Agency review of request for amendment of record.

Upon receipt of a request for amendment of a record, the Privacy Act Officer shall:

(a) Correct any portion of a record which the individual making the request believes is not accurate, relevant, timely, or complete and thereafter inform the individual in writing of such correction, or

(b) Inform the individual in writing of the refusal to amend the record and of the reasons therefor, and advise that the individual may appeal such determination as provided in § 1403.9.

§ 1403.9 Appeal of an initial adverse determination of a request to amend a record.

(a) Not more than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by an individual of an adverse determination on the individual's request to amend a record or otherwise, the individual may appeal to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

(b) The appeal shall be by letter, mailed or delivered to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. The letter shall identify the records involved in the same manner they were identified to the Privacy Act Officer, shall specify the dates of the request and adverse determination, and shall indicate the expressed basis for that determination. Also, the letter shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) The review shall be completed and a final determination made by the Chief Operating Officer not later than 30 days (excluding Saturdays, Sundays, and legal holidays) from receipt of the request for such review, unless the Chief Operating Officer extends such 30-day period for good cause. If the 30-day period is extended, the individual shall be notified of the reasons therefor.

(d) If the Chief Operating Officer refuses to amend the record in accordance with the request, the individual shall be notified of the right to file a concise statement setting forth that person's disagreement with the final determination and that person's right under 5 U.S.C. 552a(g)(1)(A) to a judicial review of the final determination.

(e) If the refusal to amend a record as requested is confirmed, there shall be included in the disputed portion of the record a copy of the concise statement filed by the individual together with a concise statement of the reasons for not amending the record as requested. Such statements will be included when disclosure of the disputed record is made to persons and agencies as authorized under 5 U.S.C. 552a.

§ 1403.10 Fees for providing copies of records.

Fees for providing copies of records shall be charged in accordance with §§ 1402.22 and 1402.24 of this chapter.

§ 1403.11 Criminal penalties.

Section 552a(1)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning any individual from an agency under false pretenses. Sections 552a(i)(1) and (2) of the Act (5 U.S.C. 552a(i)(1), (2)) provide penalties for violation by agency employees of the Act or regulations established thereunder.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94–11464 Filed 5–12–94; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASO–8]

Proposed Establishment of Class E Airspace; Thomaston, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Thomaston, Georgia. A Non-Directional Beacon (NDB) Runway 30 Standard Instrument

Approach Procedure (SIAP) for the Thomaston-Upson County Airport has recently been developed. Controlled airspace extending upward from 700 feet above the surface of the earth is needed for instrument flight rules (IFR) operations when utilizing this SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP. If approved, the operating status of the airport would change from VFR operations to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94-ASO-8, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5200.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Thomaston, Georgia. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB Runway 30 SIAP to serve the Thomaston-Upson County Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993 which is incorporated by reference in CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order. If approved, the operating status of the airport would be changed from VFR operations to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993 and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Thomaston, GA [New]

Thomaston-Upson County Airport, GA
(lat. 32°57′17″N, long. 84°11′14″W)
Yates NDB
(lat. 32°55′09″N, long. 84°11′14″W)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of the Thomaston-Upson County Airport and within 2.0 miles each side of the 124° bearing from the Yates NDB, extending from the 6.5-mile radius to 7 miles southeast of the NDB.

* * * * *

Issued in College Park, Georgia, on May 2, 1994

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-11725 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–23–94]

RIN 1545–AS65

Influencing Legislation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations defining the phrase "influencing legislation" for purposes of the deduction disallowance for certain amounts paid or incurred in connection with influencing legislation. These regulations are necessary because of changes made to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1993. These rules will assist businesses and certain tax-exempt organizations in complying with the Internal Revenue Code. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by July 12, 1994. Outlines of topics to be discussed at the public hearing scheduled for Monday, September 12, 1994, at 10 a.m. must be received by Monday, August 22, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–23–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (IA–23–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, 202–622–7190; concerning the regulations, James M. Guiry, 202–622–1585 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations under section 162(e) of the Internal Revenue Code of 1986 (Code), as amended by section 13222 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (107 Stat. 477). These proposed regulations relate to the definition of "influencing legislation". On December 27, 1993, a notice of proposed rulemaking (IA–57–93) was published in the **Federal Register** (52 FR 68330) concerning the rules for allocating costs to certain activities, including influencing legislation.

Section 13222 of OBRA 1993 amended section 162(e) of the Code, concerning the deductibility of certain lobbying and political expenditures. As amended, section 162(e)(1)(A) denies a deduction for amounts paid or incurred in connection with influencing legislation. However, certain lobbying expenditures relating to local legislation are not subject to section 162(e)(1)(A). In addition, section 162(e)(1)(D) denies a deduction for any amount paid or incurred in connection with influencing certain federal executive branch officials. Section 162(e)(1)(B) and (C) continues the rules disallowing business deductions for amounts paid or incurred in connection with grassroots lobbying and participation in political campaigns.

Section 162(e)(4)(A) defines "influencing legislation" as "any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation." Section 162(e)(5)(C) provides that "[a]ny amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) [including 'influencing legislation'] shall be treated as paid or incurred in connection with such activity." The legislative history of the amendment to section 162(e) indicates that attempts to influence legislation should be distinguished from "mere monitoring" of legislative activities. The legislative history further provides, however, that if a taxpayer monitors legislation and subsequently attempts to influence that or similar legislation, the monitoring activity should generally be treated as "in connection with" the attempt to influence legislation (and, therefore, the costs relating to that monitoring activity would be non-deductible).

Section 4911, relating to the excise tax on certain lobbying activities of certain electing public charities, contains a definition of "influencing legislation" that is essentially identical (as it relates to direct, as opposed to grassroots, lobbying) to the definition of that term in section 162(e)(4)(A). Because of this similarity, these proposed regulations adopt rules that are similar to the rules applicable to direct lobbying communications under § 56.4911–2(b)(1). However, section 162(e) differs from section 4911 in certain material respects. For example, section 4911(d)(2) contains exceptions to the term "influencing legislation," while section 162(e)(4) does not. Moreover, these proposed regulations under section 162(e) and the regulations under section 4911 differ in some respects due to the nature of charitable organizations described in section 501(c)(3) as compared to, for example, organizations described in section 501(c)(6) and for-profit entities. Accordingly, taxpayers should not infer that these proposed regulations reflect an interpretation of section 4911 or the regulations thereunder.

Discussion of Selected Considerations

The proposed regulations define "influencing legislation" in the same terms as the statutory definition in section 162(e)(4)(A), which requires a "communication" with a government official or employee. With respect to that communication, the proposed regulations adopt rules similar to the rules in the section 4911 regulations. Those rules require that the communication refer to specific legislation and reflect a view on that legislation. This approach was believed to be more appropriate than a general facts and circumstances analysis because it provides reasonably objective criteria for determining whether an attempt to influence legislation has been made.

The proposed regulations also provide rules for determining which activities support a lobbying communication and, therefore, are considered part of the attempt to influence legislation. The principal issue in this regard is whether the mere fact that an activity is used in some manner to support a lobbying communication should be sufficient to treat that activity as part of the attempt to influence legislation. This approach has been referred to by some commentators as a "lookback" rule, in that lobbying activities would be identified solely by "looking back" from the lobbying communication to those activities which supported it. While a lookback approach would appear to be consistent with the legislative history, numerous comments suggested that the administrative burdens associated with a lookback rule could be onerous, particularly if the period of the lookback were long or unlimited. Accordingly, these comments recommended that a lookback rule not be adopted, or, if adopted, that it be limited to a brief period of time. Some of the comments suggested that an appropriate period of time may be six months, by analogy to the limited lookback rule applicable to certain grassroots lobbying activities under the section 4911 regulations.

Upon consideration of the statute, its legislative history, and the comments received, it was concluded that a lookback rule would not be appropriate. Instead, the proposed regulations provide that only those activities engaged in for the purpose of making or supporting a lobbying communication will be treated as a lobbying activity. This approach strikes an appropriate balance between taxpayers' need for greater contemporaneous certainty regarding whether a particular activity may be treated as a lobbying activity, and Congress' objective of not allowing a deduction for lobbying activities.

Treasury and the IRS view the legislative history on this point as voicing a concern that taxpayers may attempt to abuse an intent- or purpose-based rule by labelling their lobbying activities as "mere monitoring." To protect against that potential abuse, while also providing greater certainty regarding those activities that are less likely to be lobbying activities, the proposed regulations provide presumptions regarding the purpose for engaging in certain activities.

Because the temporal connection between the lobbying communication and the related activity is an important factor in assessing whether the related activity was engaged in for the purpose of supporting the lobbying communication, the presumptions turn to a considerable extent on whether the activity occurred during the taxable year in which the lobbying communication was made or the immediately preceding year. It was believed that the mere closing of the annual accounting period was insufficient, in some cases, to affect this temporal connection, and, consequently, that the presumption would need to operate in more than one annual accounting period. Thus it was believed that the presumption period was an appropriate period during which to treat this temporal connection as indicating (rebuttably) the purpose for engaging in the activity without creating significant difficulties for taxpayers in determining, at the time they file their returns, whether the presumption is likely to operate with respect to that activity.

The proposed regulations also address those supporting activities that are engaged in for both lobbying and non-lobbying purposes. In this connection, some of the comments have suggested that a principal or primary purpose test be adopted. Under this approach, an activity would be treated as influencing legislation if the principal or primary purpose for engaging in that activity was to make or support a lobbying communication, even if the activity was engaged in for other, non-lobbying purposes as well. Conversely, an activity would be treated as not involving lobbying if the principal or primary purpose for engaging in that activity was a non-lobbying purpose, even though a substantial purpose of the activity was to support lobbying.

After consideration, these suggestions have not been adopted. Instead, the proposed regulations require an activity that is engaged in for both lobbying and non-lobbying purposes to be treated as engaged in partially for a lobbying purpose and partially for a non-lobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation under § 1.162–28. This allocation approach was adopted rather than a principal or primary purpose test because a principal/primary purpose test does not avoid the necessity of determining the various purposes for engaging in an activity and weighing the relative importance of those purposes, and because it has a substantial "cliff" effect that an allocation approach does not. In those situations where the taxpayer has substantial lobbying and non-lobbying purposes, the results under a principal/primary purpose test would differ dramatically depending on one's views as to which of the purposes is dominant. As a result, Treasury and the IRS have serious concerns whether that test could be administered responsibly and fairly. Finally, nothing in section 162(e) or its legislative history indicates that Congress intended to treat activities engaged in for a substantial lobbying purpose as outside the scope of 162(e).

Consideration was also given to treating an activity as influencing legislation if any substantial purpose for the activity is lobbying. Treasury and the IRS believe it generally would be easier to establish a substantial purpose for engaging in an activity, rather than examining all of the purposes to establish a principal/primary purpose. As a result, this approach would be easier to administer than a principal/primary purpose test. Moreover, a substantial purpose test would appear to be more consistent with Congressional intent to treat as influencing legislation those activities that in fact support a lobbying communication than would a principal/primary purpose test. However, Treasury and the IRS are concerned that this approach could be considerably over-inclusive, in that some activities engaged in predominantly for non-lobbying purposes would be treated entirely as non-deductible lobbying activities. The IRS invites comments, however, whether this approach would be more appropriate than the rule in the proposed regulations.

Finally, to provide taxpayers greater certainty and relief from burdensome recordkeeping regarding certain relatively minor, recurring activities, the proposed regulations treat certain activities as engaged in solely for non-lobbying purposes.

Explanation of Provisions

Under the proposed regulations, as under section 162(e)(4)(A), "influencing legislation" means any attempt to influence any legislation through a lobbying communication with any member or employee of a legislative body or any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation that the taxpayer desires to influence. A lobbying communication is a communication that either (i) refers to specific legislation and reflects a view on that legislation, or (ii) clarifies, amplifies, modifies, or provides support for views reflected in a prior lobbying communication. Specific legislation includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the taxpayer either supports or opposes.

An attempt to "influence legislation" means the lobbying communication and all activities, such as research, preparation, and other background activities, engaged in for a purpose of making or supporting the lobbying communication. Whether an activity is engaged in for this purpose is determined based on all the facts and circumstances.

If a taxpayer engages in an activity both for a lobbying purpose and for some non-lobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a non-lobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation under § 1.162–28. A taxpayer's allocation to influencing legislation of only the incremental amount of costs that would not have been incurred but for the lobbying purpose generally is not reasonable. Similarly, an allocation based on the number of purposes for engaging in an activity without regard to their relative importance also generally is not reasonable.

The proposed regulations presume that if an activity relating to a lobbying communication was engaged in for a non-lobbying purpose prior to the first taxable year preceding the taxable year in which the lobbying communication is made, that activity was engaged in for all periods solely for that non-lobbying purpose. The Commissioner can rebut this presumption in part (it cannot be rebutted entirely because the presumption only operates if the taxpayer establishes that the activity has been engaged in for a non-lobbying purpose) by establishing that the activity was also engaged in for the purpose of making or supporting a lobbying communication. Thus, for example, if a taxpayer regularly conducts an activity in the ordinary course of its business operations beginning at least two taxable years before the taxable year in which the lobbying communication is made, it would be presumed that the continuing activity was not engaged in to support the lobbying communication, even during the taxable year in which the lobbying communication is made (and the preceding taxable year). In this regard, it is expected that whether a course of conduct spanning a period of time is a single activity will be determined based on all the facts and circumstances. In particular, it is expected that a substantial change in the way an activity is conducted will result in the revised activity being considered a separate activity from the earlier conduct of the activity.

The proposed regulations also presume that if an activity relating to a lobbying communication was engaged in during the same taxable year as the communication is made or in the immediately preceding taxable year, and is not within the presumption described in the preceding paragraph, that activity was engaged in for the sole purpose of making or supporting that communication. The taxpayer may rebut this presumption (in whole or part) by establishing that the activity was engaged in (entirely or partially) for a non-lobbying purpose. If, during the same taxable year, the taxpayer commences an activity that relates directly to the subject matter of specific legislation (then in existence) and makes a lobbying communication with respect to that legislation, it is expected that the taxpayer generally will be unable to rebut the presumption.

The proposed regulations treat certain activities as engaged in without a purpose of making or supporting a lobbying communication. These activities consist of performing an activity for purposes of complying with the requirements of any law, reading any general circulation publications, or viewing or listening to other mass media communications available to the general public. In addition, if, prior to evidencing a purpose to influence specific legislation (or similar legislation), a taxpayer determines the existence or procedural status of that legislation; determines the time, place, and subject of any hearing to be held by a legislative body with respect to that legislation; or prepares routine, brief summaries of the provisions of that legislation, the taxpayer is treated as engaging in that activity without a purpose of making or supporting a lobbying communication.

The proposed regulations provide a special rule for so-called "paid volunteers." If, for the purpose of making or supporting a lobbying communication, one taxpayer uses the services or facilities of a second taxpayer and does not compensate the second taxpayer for the full cost of the services or facilities, the purpose and actions of the first taxpayer are imputed to the second taxpayer. Thus, for example, if a trade association uses the services of a member's employee, at no cost to the association, to conduct research or similar activities to support the trade association's lobbying communication, the trade association's purpose and actions are imputed to the member. As a result, the member is treated as influencing legislation with respect to the employee's work in support of the trade association's lobbying communication. The proposed regulations also provide a general anti-avoidance rule.

The regulations are proposed to be effective for amounts paid or incurred on or after May 13, 1994. Taxpayers will be required to adopt a reasonable interpretation of section 162(e)(1)(A) for amounts paid or incurred prior to this date.

Modification of 1993 Proposed Regulations

On December 27, 1993, the IRS issued a notice of proposed rulemaking (IA–57–93) concerning the allocation of costs to lobbying activities. Section 1.162–28(g)(3) of those proposed regulations provides a general rule for determining whether a meeting with certain specified government officials or employees constitutes a lobbying activity (a term that includes influencing legislation). Because the proposed regulations contained in this document provide rules for determining whether a taxpayer is engaged in influencing legislation, the IRS will amend § 1.162-28(g)(3), when it is promulgated as a final regulation, to conform that provision to these proposed regulations. As a result, whether sponsoring or attending a meeting constitutes influencing legislation will be determined under the rules which are the subject of these proposed regulations. Thus, for example, if a taxpayer attends a speech by a legislator at which specific legislation is discussed, the taxpayer will not necessarily be considered to be influencing legislation unless the taxpayer makes a communication with the legislator which refers to specific legislation and reflects a view on that legislation. However, if the taxpayer makes a lobbying communication with respect to that legislation (or similar legislation) within the same or the succeeding taxable year, the presumptions provided in these proposed regulations will apply.

Grass Roots Lobbying

The proposed regulations do not address grass roots lobbying. Although the proposed regulations provide a definition of influencing legislation that is similar to the definition of direct lobbying communication under the section 4911 regulations, it should not be inferred that the IRS will adopt the definition of grassroots lobbying communication under the section 4911 regulations for purposes of section 162(e)(1)(C). As noted above, the prior law rules disallowing business deductions for expenses for grassroots lobbying and participation in political campaigns remain in effect under OBRA 1993.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Monday, September 12, 1994, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by July 12, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Monday, August 22, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is James M. Guiry, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.162–29 is added to read as follows:

§ 1.162–29 Influencing legislation.

(a) *Scope.* This section provides rules for determining what is influencing legislation for purposes of section 162(e)(1)(A). Paragraph (b) of this section provides the general rule and necessary definitions for determining whether a taxpayer is influencing legislation. Paragraph (c) of this section provides rules for determining whether a purpose of an activity is to make or support a lobbying communication which constitutes influencing legislation. Paragraph (d) of this section provides a special rule relating to the use by one taxpayer of the services or facilities of another taxpayer in connection with a lobbying communication. Paragraph (e) of this section provides a general anti-avoidance rule. Paragraph (f) of this section provides the effective date. See section 162(e)(2) and § 1.162–20(c) for exceptions relating to certain local legislation. These rules are not intended to be applied for purposes of section 4911 and the regulations thereunder. See section 4911 and §§ 56.4911–1 through 56.4911–10 for rules relating to excise tax on lobbying activities of certain electing public charities.

(b) *Influencing legislation*—(1) *Definitions.* For purposes of section 162(e) and this section—

(i) *Influencing legislation. Influencing legislation* means any attempt to influence any legislation through communication (other than any communication compelled by subpoena, or otherwise compelled by Federal or State law) with—

(A) Any member or employee of a legislative body; or

(B) Any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation which the taxpayer desires to influence.

(ii) *Communication.* For purposes of paragraph (b)(1)(i) of this section, the term *communication* is limited to any communication (referred to as a *lobbying communication*) that—

(A) Refers to specific legislation and reflects a view on that legislation; or

(B) Clarifies, amplifies, modifies, or provides support for views reflected in a prior communication satisfying the requirements of paragraph (b)(1)(ii)(A) of this section.

(iii) *Attempt to influence legislation.* An *attempt to influence legislation* means the lobbying communication and all activities, such as research, preparation, and other background activities, engaged in for a purpose of making or supporting the lobbying communication. See paragraph (c) of this section for rules for determining the purpose or purposes for engaging in an activity.

(iv) *Legislation. Legislation* includes action with respect to Acts, bills, resolutions, or other similar items by the Congress, any state legislature, any local council, or similar governing body. *Legislation* includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaty.

(v) *Specific legislation. Specific legislation* includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the taxpayer either supports or opposes.

(vi) *Action.* For purposes of paragraph (b)(1)(iv) of this section, the term *action* is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

(vii) *Legislative and administrative bodies. Legislative body* does not include executive, judicial, or administrative bodies. *Administrative bodies* include school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive.

(2) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Taxpayer P's employee, A, is assigned to approach members of Congress to gain their support for a pending bill. A drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, A personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are lobbying communications. Therefore, P is influencing legislation.

Example 2. Taxpayer R is invited to provide testimony at a congressional oversight hearing concerning the implementation of The Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Specifically, the hearing concerns a proposed regulation increasing the threshold value of commercial and residential real estate transactions for which an appraisal by a state licensed or certified appraiser is required. In its testimony, R states that it is in favor of the proposed regulation. Because R does not refer to any specific legislation or reflect a view on any such legislation, R has not made a lobbying communication. Therefore, R is not influencing legislation.

Example 3. State X enacts a statute that requires the licensing of all day-care providers. Agency B in State X is charged with writing rules to implement the statute. After the enactment of the statute, Taxpayer S sends a letter to Agency B providing detailed proposed rules that S recommends Agency B adopt to implement the statute on licensing of day-care providers. Because the letter to Agency B neither refers to nor reflects a view on any specific legislation, it is not a lobbying communication. Therefore, S is not influencing legislation.

Example 4. Taxpayer T proposes to a State Park Authority that it purchase a particular tract of land for a new park. Even if T's proposal would necessarily require the State Park Authority eventually to seek appropriations to acquire the land and develop the new park, T has not made a lobbying communication because there has been no reference to, nor any view reflected on, any specific legislation. Therefore, T's proposal is not influencing legislation.

Example 5. (i) Taxpayer U prepares a paper that asserts that lack of new capital is hurting State X's economy. The paper indicates that State X residents either should invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. U forwards a summary of the unpublished paper to legislators in State X with a cover letter that states in part:

> You must take action to improve the availability of new capital in the state.

(ii) Because neither the summary nor the cover letter refers to any specific legislative proposal, forwarding the summary to legislators in State X is not a lobbying communication. Therefore, U is not influencing legislation.

(iii) Q, a member of the legislature of State X, calls taxpayer U to request a copy of the unpublished paper from which the summary was prepared. U forwards the paper with a cover letter that simply refers to the enclosed materials. Because U's letter to Q and the unpublished paper do not refer to any specific legislation or reflect a view on any such legislation, the letter is not a lobbying communication. Therefore, U is not influencing legislation.

Example 6. (i) Taxpayer V prepares a paper that asserts that lack of new capital is hurting the national economy. The paper indicates that lowering the capital gains rate would increase the availability of capital and increase tax receipts from the capital gains tax. V forwards the paper to its representatives in Congress with a cover letter that says, in part:

> I urge you to support a reduction in the capital gains tax rate.

(ii) V's communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal that V supports (i.e., lowering the capital gains rate). Therefore, V is influencing legislation.

Example 7. Taxpayer W, based in State A, notes in a letter to a legislator of State A that State X has passed a bill that accomplishes a stated purpose and then says that State A should pass such a bill. No such bill has been introduced into the State A legislature. The communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal that W supports. Therefore, W is influencing legislation.

Example 8. (i) Taxpayer Y represents citrus fruit growers. Y writes a letter to a Senator discussing how pesticide O has benefited citrus fruit growers and disputing problems linked to its use. The letter discusses a bill pending in Congress and states in part:

> This bill would prohibit the use of pesticide O. If citrus growers are unable to use this pesticide, their crop yields will be severely reduced, leading to higher prices for consumers and lower profits, even bankruptcy, for growers.

(ii) The communication is a lobbying communication because it refers to and reflects a view on specific legislation. Therefore, Y is influencing legislation.

Example 9. (i) B, the president of Taxpayer Z, an insurance company, meets with Q, who chairs the X state legislature's committee with jurisdiction over laws regulating insurance companies, to discuss the possibility of legislation to address current problems with surplus-line companies. B recommends that legislation be introduced that would create minimum capital and surplus requirements for surplus-line companies and create clearer guidelines concerning the risks that surplus-line companies can insure. B's discussion with Q is a lobbying communication because B refers to and reflects a view on a specific legislative proposal that Z supports. Therefore, Z is influencing legislation

(ii) Q is not convinced that the market for surplus-line companies is substantial enough to warrant such legislation and requests that B provide information on the amount and types of risks covered by surplus-line companies. After the meeting, B has employees of Z prepare estimates of the percentage of property and casualty insurance risks handled by surplus-line companies. B sends the estimates with a cover letter that simply refers to the enclosed materials. Although B's follow-up letter to Q does not refer to specific legislation or reflect a view on such legislation, B's letter supports the views reflected in the earlier communication. Therefore, the letter is a lobbying communication and Z is influencing legislation.

(c) *Purpose for engaging in an activity*—(1) *In general.* The purpose or purposes for which a taxpayer engages in an activity are determined based on all the facts and circumstances.

(2) *Multiple purposes.* If a taxpayer engages in an activity both for the purpose of making or supporting a lobbying communication and for some non-lobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a non-lobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation. See § 1.162–28 (allocation rules for certain expenditures to which section 162(e)(1) applies). A taxpayer's treatment will, in general, not result in a reasonable allocation if it allocates to influencing legislation—

(i) Only the incremental amount of costs that would not have been incurred but for the lobbying purpose; or

(ii) An amount based on the number of purposes for engaging in that activity without regard to the relative importance of those purposes.

(3) *Presumption of non-lobbying purpose.* If an activity relating to a lobbying communication is engaged in for a non-lobbying purpose prior to the first taxable year preceding the taxable year in which the communication is made, the activity is presumed to be engaged in for all periods solely for that non-lobbying purpose. The Commissioner can rebut this presumption in part by establishing that the activity was also engaged in for a lobbying purpose. See paragraph (c)(2) of this section relating to an activity engaged in for multiple purposes.

(4) *Presumption of lobbying purpose.* If an activity relating to a lobbying communication is engaged in during the same taxable year as the communication is made or the immediately preceding taxable year, and is not within the presumption in paragraph (c)(3) of this section, the activity is presumed to be engaged in for the sole purpose of making or supporting the lobbying communication. A taxpayer can rebut the presumption (in whole or part) by establishing that the activity was engaged in (entirely or partially) for a non-lobbying purpose. See paragraph (c)(2) of this section relating to an activity engaged in for multiple purposes. If, during the same taxable year, the taxpayer commences an activity that relates directly to the subject matter of specific legislation (then in existence) and makes a lobbying communication with respect to that legislation, it is expected that the taxpayer generally will be unable to rebut the presumption.

(5) *Activities treated as having no purpose to influence legislation.* A taxpayer that engages in any of the following activities is treated as having done so without a purpose of making or supporting a lobbying communication—

(i) Prior to evidencing a purpose to influence any specific legislation referred to in this paragraph (c)(5)(i) (A) or (B) (or similar legislation)—

(A) Determining the existence or procedural status of specific legislation, or the time, place, and subject of any hearing to be held by a legislative body with respect to specific legislation; or

(B) Preparing routine, brief summaries of the provisions of specific legislation.

(ii) Performing an activity for purposes of complying with the requirements of any law.

(iii) Reading any general circulation publications or viewing or listening to other mass media communications available to the general public.

(6) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. In 1995, Agency F issues proposed regulations relating to the business of Taxpayer W, a calendar year taxpayer. There is no specific legislation during 1995 that is similar to the regulatory proposal. W undertakes a study of the impact of the proposed regulations on its business. W incorporates the results of that study in comments sent to Agency F in 1995. In 1996, legislation is introduced in Congress that is similar to the regulatory proposal. W writes a letter to Senator P stating that it opposes the proposed legislation. With the letter, W encloses a copy of the comments it sent to Agency F. W's letter to Senator P refers to and reflects a view on specific legislation and therefore is a lobbying communication. Because W used the results of its study of the impact of the proposed regulations in its letter to Senator P in the taxable year following the taxable year the study was conducted, it is presumed under paragraph (c)(4) of this section that W engaged in the study for the sole purpose of making or supporting that lobbying communication. Based on these facts, however, W can rebut the presumption entirely by showing that its sole purpose for undertaking the study was to comment on the proposed regulations.

Example 2. In the ordinary course of its business, Taxpayer Y, a calendar year manufacturing company, regularly keeps records of electricity consumption in its manufacturing process. Y has kept such records since 1970, the year in which Y began business, in order to track the cost of its manufacturing process. In 1995, the governor of State Q proposes a budget that includes a sales tax on electricity. Using its records of electricity consumption, Y estimates the additional costs that the budget proposal would impose upon its business. In the same year, Y writes to members of the state legislature and explains that it opposes the increased sales tax. In its letter, Y includes its estimate of the costs that the sales tax would impose on its business. The letter is a lobbying communication (because it refers to and reflects a view on specific legislation, the governor's proposed budget). Both the recordkeeping activities and the activity of estimating additional costs under the proposed sales tax relate to the lobbying communication because Y used the records to make the estimates, and Y used the estimates in its opposition to the governor's proposal. However, Y had a non-lobbying purpose for keeping the records and engaged in that activity prior to the first taxable year preceding the taxable year in which it made the lobbying communication. Therefore, under paragraph (c)(3) of this section, it is presumed that Y kept these records solely for a non-lobbying purpose during all periods. Based on these facts, the Commissioner cannot rebut the presumption. In contrast, it is presumed, under paragraph (c)(4) of this section, that Y estimated the additional costs it would incur under the proposal solely to make or support the lobbying communication, because the activity commenced in the same taxable year as the lobbying communication was made. Based on these facts, because Y estimated its additional costs under the budget proposal to support the lobbying communication, Y cannot rebut the presumption as it relates to this activity.

Example 3. In 1995, a Senator in the State Q legislature announces her intention to introduce legislation to require health insurers to cover a particular medical procedure in all policies sold in the state. Taxpayer Y, a calendar year taxpayer, has different policies for two groups of employees, one of which covers the procedure and one of which does not. After the bill is introduced, Y's legislative affairs staff asks Y's human resources staff to track claims for the procedure that are allowed, in order to estimate the additional cost of requiring the coverage under both policies. In 1996, Y's legislative affairs staff prepares a study estimating Y's increased costs based on the results of tracking, in 1995, the claims made. Also in 1996, Y writes to members of the state legislature and explains that it opposes the proposed change in insurance coverage based on the study. The letter is a lobbying communication (because it refers to and reflects a view on specific legislation). Both the activity of tracking the claims and the activity of estimating Y's additional costs under the proposed legislation relate to the lobbying communication because they are used to support that communication. It is presumed, under paragraph (c)(4) of this section, that Y engaged in 1996 in the activity of estimating the additional costs it would incur under the proposal solely to make or support the lobbying communication, because the activity commenced in the same taxable year as the lobbying communication. Based on these facts, Y cannot rebut the presumption as it relates to this activity. Further, because Y did not regularly track these claims before 1995, it is presumed, under paragraph (c)(4) of this section, that Y engaged in 1995 in the activity of tracking these claims solely to make or support the lobbying communication. Based on these facts, because Y tracked these claims to support the lobbying communication, Y cannot rebut the presumption.

Example 4. After several years of developmental work under various contracts, in 1997, Taxpayer A, a calendar year aerospace company, contracts with the Department of Defense (DOD) to produce a prototype of a new generation military aircraft. A is aware that DOD will be able to fund the contract only if Congress appropriates an amount for that purpose in the upcoming appropriations process. In 1998, A conducts simulation tests of the aircraft and revises the specifications of the aircraft's expected performance capabilities, as required under the contract. A submits the results of the tests and the revised specifications to DOD. In 1999, Congress considers legislation to appropriate funds for the contract. In that connection, A summarizes the results of the simulation tests and of the aircraft's expected performance capabilities, and submits the summary to interested members of Congress with a cover letter that encourages them to support appropriations of funds for the contract. The letter is a lobbying communication (because it refers to specific legislation (i.e., appropriations) and requests passage). The described activities in 1998 and 1999 relate to that lobbying communication and, therefore, are presumed, under paragraph (c)(4) of this section, to be for the sole purpose of making or supporting that communication. Based on these facts, A cannot rebut the presumption as it relates to the summary prepared specifically for that communication. However, because A conducted the tests and revised the specifications to comply with its production contract with DOD, A can rebut the presumption as it relates to those activities.

Example 5. C, president of Taxpayer W, travels to the state capital to attend a two-day conference on new manufacturing processes. C plans to spend a third day in the capital meeting with state legislators to explain why W opposes a pending bill unrelated to the subject of the conference. C's staff prepares a briefing book on the pending bill for C's use in meetings with the state legislators. Because the meetings with the legislators will be lobbying communications (because C will refer to and reflect a view on specific legislation), C's travel and the preparation of the briefing book are presumed to be solely for the purpose of making or supporting the lobbying communications. Based on these facts, W cannot rebut the presumption as it relates to the preparation of the briefing book, but can partially rebut the presumption as it relates to C's travel by demonstrating that the travel was engaged in both for lobbying and non-lobbying purposes. As a result, under paragraph (c)(2) of this section, W must reasonably allocate C's travel between attending the conference and meeting with the state legislators.

Example 6. In 1995, Taxpayer F comments on proposed EPA regulations and successfully contests their validity on constitutional grounds in litigation. In 1997, Senator N introduces environmental legislation, which F believes to be unconstitutional on the same grounds as the previously proposed and defeated regulations. F sends some of the documents it prepared in 1995 to Senator N's staff with a cover letter indicating that F opposes the environmental legislation. The letter to Senator N refers to and reflects a view on specific legislation and thus is a lobbying communication. F engaged in the activity of preparing the documents, however, for a non-lobbying purpose prior to the first taxable year preceding the taxable year in which the lobbying communication was made. Therefore, under paragraph (c)(3) of this section, it is presumed that the document preparation was engaged in solely for a non-lobbying purpose. Based on these facts, the Commissioner cannot rebut that presumption.

Example 7 On February 1, 1995, a bill is introduced in Congress that would affect Company E, a calendar year taxpayer. Employees in E's legislative affairs department, as is customary, prepare a brief summary of the bill and periodically confirm the procedural status of the bill through conversations with employees and members of Congress. On March 31, 1995, the head of E's legislative affairs department meets with E's President to request that B, a chemist, temporarily help the legislative affairs department analyze the bill. The President agrees, and suggests that B also be assigned to draft a position letter in opposition to the bill. Employees of the legislative affairs department continue to confirm periodically the procedural status of the bill. On October 31, 1995, B's position letter in opposition to the bill is delivered to members of Congress. B's letter is a lobbying communication because it refers to and reflects a view on specific legislation. Under paragraph (c)(5)(i) of this section, the assignment of B to assist the legislative affairs department in analyzing the bill and in drafting a position letter in opposition to the bill evidences a purpose to influence legislation. Based on these facts, neither the activity of periodically confirming the procedural status of the bill nor the activity of preparing the routine, brief summary of the bill before March 31 constitutes influencing legislation. With respect to periodically confirming the procedural status of the bill on or after March 31, it is presumed, under paragraph (c)(4) of this section, that E engaged in the activity solely to make or support the lobbying communication because the activity commenced in the same taxable year as the lobbying communication. These facts indicate that after March 31, E determined the procedural status of the bill for the purpose of supporting the lobbying communication by B and, accordingly, E cannot rebut the presumption as it relates to this activity.

Example 8. Taxpayer Z prepares a report that it is required by state law to submit to a state corporation commission. Z sends a copy of the report to its delegate in the state legislature along with the taxpayer's letter opposing a bill that would increase the state sales tax. Even though the letter to the delegate is a lobbying communication (because it refers to, and reflects a view on, specific legislation), under paragraph (c)(5)(ii) of this section, the preparation of the report does not constitute influencing legislation.

Example 9. Taxpayer Y purchases an annual subscription to a commercial, general circulation newsletter that provides legislative updates on proposed tax legislation. Employees in Y's legislative affairs department read the newsletter in order to keep abreast of legislative developments. Even if Y attempts to influence legislation that is identified and tracked in the newsletter, under paragraph (c)(5)(iii) of this section, the time spent by employees of Y reading the newsletter does not constitute influencing legislation.

(d) *Special imputation rule*. If one taxpayer, for the purpose of making or supporting a lobbying communication, uses the services or facilities of a second taxpayer and does not compensate the second taxpayer for the full cost of the services or facilities, the purpose and actions of the first taxpayer are imputed to the second taxpayer. Thus, for example, if a trade association uses the services of a member's employee, at no cost to the association, to conduct research or similar activities to support the trade association's lobbying communication, the trade association's purpose and actions are imputed to the member. As a result, the member is treated as influencing legislation with respect to the employee's work in support of the trade association's lobbying communication.

(e) *Anti-avoidance rule*. If a taxpayer, alone or in coordination with one or more other taxpayers, purposely structures its attempts to influence legislation to achieve results that are unreasonable in light of the purposes of section 162(e) and section 6033(e), the Commissioner can take such steps as are appropriate to achieve reasonable results consistent with the purposes of section 162(e), section 6033(e), and this section.

(f) *Effective date*. This section is effective for amounts paid or incurred on or after May 13, 1994. Taxpayers must adopt a reasonable interpretation of section 162(e)(1)(A) for amounts paid or incurred prior to this date.

Par. 3. In § 1.162–20, paragraph (c)(5) is added to read as follows:

§ 1.162–20 Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc., and certain advertising.

* * * * *

(c) * * *

(5) *Expenses paid or incurred after December 31, 1993, in connection with influencing legislation other than certain local legislation*. The provisions of paragraphs (c)(1) through (c)(3) of this section are superseded for expenses paid or incurred after December 31, 1993, in connection with influencing legislation (other than certain local legislation) to the extent inconsistent with section 162(e)(1)(A) (as limited by section 162(e)(2)) and §§ 1.162–20T(d) and 1.162–29.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–11613 Filed 5–10–94; 11:23 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1609

Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age, or Disability

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The period for commenting on the proposed guidelines on harassment based on race, color, religion, national origin, age, or disability (58 FR 51266, October 1, 1993) has been extended to June 13, 1994. After the comment period closed, the Commission received numerous comments and requests by individuals to submit comments. Since the Commission has informally been accepting and reviewing comments and letters received after the comment period officially closed, it has thus decided to formally extend the comment period in order to give all parties an opportunity to express their views.

DATES: Comments must be received by June 13, 1994.

ADDRESSES: Comments should be addressed to the Office of the Executive Secretariat, EEOC, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m. Copies of the notice of proposed rulemaking are available in the following alternative formats: Large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4895 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Acting Legal Counsel, or Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, EEOC 1801 L Street, NW., Washington, DC 20507; telephone (202) 663–4679 (voice) or (202) 663–7026 (TDD).

Tony E. Gallegos,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 94–11707 Filed 5–12–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Colorado rules pertaining to bonding of surface coal mining and reclamation operations and revegetation success criteria for areas to be developed for industrial, commercial, or residential use.

The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t. June 13, 1994. If requested, a public hearing on the proposed amendment will be held on June 7, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on May 31, 1994. Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (46 FR 5899). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated April 18, 1994, Colorado submitted the proposed amendment to its program pursuant to SMCRA (administrative record No. CO–611). Colorado submitted the proposed amendment in response to the May 7, 1986, and March 22, 1990, letters (administrative record Nos. CO–282 and CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c), and at its own initiative. The provisions of 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, that Colorado proposes to amend are: Rule 1.04, definitions; Rule 3.02, performance bond requirements for surface coal mining and reclamation operations; Rule 3.03, release of performance bonds; Rule 3.06, special bonding requirements for construction of mine drainage control facilities; and Rule 4.15.10, revegetation success criteria for areas to be developed for industrial, commercial, or residential use.

Specifically, Colorado proposes the following changes to the previsions of its rules at:

Rule 1.04(25), revising the definition of "collateral bond" to: (1) Require that a deposit of cash, used as support for the bond, be made in a Federally insured or equivalently protected account, (2) require that a negotiable bond of any political subdivision of the State, used as support for the bond, be endorsed to the order of the State, and (3) deleting language allowing the use of a perfected first-lien security interest in real property located in the State as support for the bond;

Rule 1.04(116), deleting the definition of "self-bond" in order to disallow the use of self-bonds;

Rule 3.02.1(4), revising the reference for the term of bond liability from Rule 3.02.3(2) to Rule 3.03.3, and deleting the last sentence, which extends liability to all lands outside the permit area that are disturbed by surface coal mining operations;

Rule 3.02.1(7), deleting the exemption for bond liability of third party actions that are beyond the control of the permittee, and adding language to: (1) Require, when an alternative postmining land use of industrial, commercial, or residential is approved, a bond sufficient to cover reclamation to the premining land use, and (2) exempt the permittee from implementation of an alternative postmining land use approved under Rule 4.16.3 that is beyond the control of the permittee;

Rule 3.02.2(4)(b), revising the requirement for a written proposed decision regarding the bond amount so that it is issued whenever the bond amount is adjusted rather than increased;

Rule 3.02.2(4)(d), revising the reasons for which a permittee may request a reduction in bond amount, adding a requirement that the request and demonstration for a reduction in bond amount must be submitted in the form of an application for either a permit or technical revision, and clarifying that a request for bond reduction under this rule could not be based on reclamation performed and that such requests for bond release must be made under Rule 3.03;

Rule 3.02.3(2)(c), adding a new provision to require that the minimum bond liability period for lands with an approved industrial, commercial, or residential postmining land use continue until compliance with the revegetation requirements of either Rule 4.15.10(2) or Rule 4.15.10(3) has been demonstrated, and recodifying existing subparagraphs (c) and (d) as (d) and (e);

Rule 3.02.4(1)(b), deleting the allowance of a perfected first-lien security interest in real property located in the State to be used as a collateral bond;

Rule 3.02.4(1)(c), deleting the allowance of the use of self-bonds as an acceptable surety, and recodify existing subparagraphs (d) and (e) as (c) and (d);

Rule 3.02.4(2)(b)(i)(A), revising the conditions for surety bonds to: (1) Allow cancellation by the surety of bond coverage for permitted lands that have not been disturbed only after prior consent of the Division of Minerals and Geology (Division), and (2) require that the Division advise the surety company whether the bond may be cancelled within 30 days after receipt of the notice of intent to cancel;

Rule 3.02.4(2)(b)(v)(A), revising the surety's reporting requirements to include any notice received or action filed alleging the insolvency or bankruptcy of the permittee;

Rule 3.03.4(2)(c), deleting the exemption for irrevocable letters of credit from certain conditions applicable to collateral bonds;

Rule 3.02.4(2)(c)(ii), revising the method by which the Division will assess the market value of collateral by clarifying that it will be adjusted for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to complete reclamation;

Rule 3.02.4(2)(c)(ix), deleting the entire rule concerning real property in order to disallow real property to be used as a collateral bond, and recodifying existing subparagraph (x) as (ix);

Rule 3.02.4(2)(d)(i), revising the requirement that an irrevocable letter of credit can only be issued by a bank authorized to do business in the United States to specify that the bank must be located in Colorado;

Rule 3.02.4(2)(d)(vi)(A), revising the bank's reporting requirements to include any notice received or action filed alleging the insolvency or bankruptcy of the permittee;

Rule 3.02.4(2)(e), deleting the rule concerning the allowance for a self-bond, and recodifying existing subparagraph (f) as (e);

Rule 3.03.1(2), revising the requirement concerning the maximum liability of a performance bond that can be released to replace the term "liability" with "amount;"

Rule 3.03.1(2)(b), revising the requirements for release of up to 85 percent of a performance bond;

Rule 3.03.1(3)(d), revising the restriction concerning any release of bond liability, if such release would reduce the total remaining liability to less than that required for the Division to complete the approved reclamation plan, by replacing the term "liability" with "amount;"

Rule 3.03.1(3)(e), revising the requirements for a performance bond for alternative postmining land uses to specify that the rule applies only to the alternative postmining land uses of industrial, commercial, or residential, and to require that a bond shall be maintained throughout the liability period sufficient to allow the Division to reclaim the land to the premining land use in the event that the alternative postmining land use is not developed because of bond forfeiture;

Rule 3.03.2(1)(b), revising the requirements for the content of the public notice which the permittee must advertise when requesting bond release to include the type of bond filed;

Rule 3.03.2(2), revising the requirements concerning the Division's evaluation of a bond release request to: (1) Include a determination regarding the probability of future, rather than continued, pollution of surface or subsurface water, and (2) add a provision specifying that the Division may arrange with the permittee to allow access to the permit area upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding;

Rule 3.03.2(4)(c), revising the requirements concerning an informal conference that is held to resolve written comments or objections to a bond release to specify that the conference must be held by the 60th day following the inspection and evaluation required in Rule 3.03.2(2);

Rule 3.03.2(5)(a), revising the requirement concerning the Division's responsibility to provide written notification of its proposed decision on a bond release request to: (1) Delete the condition that the notification is needed only if no informal conference is held, (2) to require that the notification include the right to request a public hearing within 60, rather than 30, days after the completion of the inspection and evaluation required in Rule 3.03.3.2(2), and (3) to delete requirement that the request for a public hearing be made within 30 days from the close of the public comment period;

Rule 3.03.2(5)(b), deleting in its entirety the rule concerning the Division's responsibility to provide written notification of its proposed decision on a bond release request within 30 days after the conclusion of an informal conference, and recodifying existing subparagraph (c) as (b);

Rule 3.06, deleting in its entirety the rule concerning special bonding requirements for construction of mine drainage control facilities;

Rule 4.15.10(2), revising the requirement concerning the establishment of vegetative cover to control erosion on areas to be developed for industrial or residential use to: (1) Apply also to commercial use, (2) require that the vegetation be established within 2 years after the completion of regrading or within 2 years after approval of such use, whichever is later, and (3) state that final bond release shall not occur prior to satisfactory cover establishment; and

Rule 4.15.10(3), addition of a new rule that allows a waiver from the revegetation requirements of Rule 4.15.10(2) for mine support facilities located within areas where the premining and postmining land uses are industrial or commercial, if the waiver is requested in writing by the landowner and the Division determines that revegetation is not necessary to control erosion.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. May, 31, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 6, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94-11663 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

RIN 1024-AC20

Grand Teton National Park, Wyoming Mountain Climbing and Winter Backcountry Trip Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to eliminate registration and check out requirements for climbing and off trail travel above 7,000 ft., and for winter travel in Grand Teton National Park. Existing regulations requiring climbers, off trail hikers, and winter travel users to register and check out upon completion of their activity were intended primarily to provide information necessary to initiate search and rescue responses. Actual experience over the years has shown that the intended purpose of these regulations has not been achieved. Nearly all search and rescue responses are generated by reports from sources other than the check out system. Instead of aiding rescuers, these regulations burden park rangers with the task of checking on countless cases of climbers and backpackers who failed to check out. These regulations have been enforced selectively for several years, where local climbers and guides have not been forced to register because of an assumed expertise and knowledge of the local area. The deletion of these regulations will not eliminate visitor protection services provided by park personnel.

DATES: Written comments will be accepted through June 13, 1994.

ADDRESSES: Comments should be addressed to: Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, Wy. 83012.

FOR FURTHER INFORMATION CONTACT: Colin W. Campbell, Law Enforcement Specialist, Grand Teton National Park, Telephone: 307-733-2880.

SUPPLEMENTARY INFORMATION:

Background

The existing National Park Service (NPS) special regulations that pertain to mountain climbing, off trail travel, and winter travel trips are codified at 36 CFR 7.22 (f) and (g). They require all technical climbers, off trail travel, and winter travel users to register or check in prior to undertaking these activities and to check out with a ranger upon completion of the activity. The original intent was primarily to provide park search and rescue personnel with the knowledge that a park user was in essence overdue from a potentially dangerous activity. In reality, almost all perceived overdue parties concerned climbers and backcountry users failing to properly check out. In addition, the vast majority of winter travelers either ignore or do not know of the requirement to register, and strict enforcement of this regulation has not been done for several years. The result has been a combination of non-compliance, failure to check out, failure to contact a ranger in a timely manner and wasted time and energy on the part of the park staff administering the system. After working with these restrictions since promulgation it has been determined that they are not achieving their original purpose of saving lives by alerting search and rescue personnel. In reality, almost all park search and rescue efforts are the result of initial reports by climbing partners, other park backcountry users, friends or relatives.

The NPS believes the deletion of these rules will make the management of mountain climbing and winter backcountry trips more consistent with the practices of both state and federal agencies whose lands are contiguous with Grand Teton National Park. Overnight backcountry trips will continue to be regulated by general camping regulations at 36 CFR 2.10.

A voluntary registration system will be available to climbers and backcountry travelers who choose to use it. The exchange of information between climbers, off trail hikers, winter travelers and park rangers will still be available and encouraged without mandating it through regulation. Furthermore the park staff will be educating park users to leave trip information with family or friends, shifting responsibility for trip planning onto the park user.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The Grand Teton National Park staff will also be making public notices in local papers and contacting representatives of the local climbing community.

Drafting Information

The primary authors of this proposed rule are Colin W. Campbell, Law Enforcement Specialist, and Mark L. Magnuson, Jenny Lake Sub-District Ranger.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it deletes an existing requirement and gives more discretion to the park visitor.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.22 [Amended]

2. In § 7.22, paragraphs (f) and (g) are removed, and paragraphs (h) and (i) are redesignated paragraphs (f) and (g) respectively.

Dated: May 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–11626 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO23–1–5688; FRL–4884–2]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy Review of Mandatory Class I Federal Area Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Long- Term Strategy of Colorado's State Implementation Plan (SIP) for Visibility Protection, as submitted by the Governor with a letter dated November 18, 1992. The revisions were made to bring the SIP into compliance with the Federal visibility protection requirements for states containing mandatory Class I Federal Areas, and to fulfill requirements to periodically review and, if necessary, revise the Long-Term Strategy for visibility protection. EPA is also proposing to correct its error in a previous action on the State's Visibility protection provisions.

DATES: Comments on this proposed action must be received in writing by June 13, 1994.

ADDRESSES: Comments should be addressed to Amy Platt, Air Programs Branch, SIP Section (8ART-AP), Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Colorado Department of Health, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air Programs Branch, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act [1] establishes as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas [2] which impairment results from manmade air pollution. Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National goal, section 169A(a)(4), including requiring each State with a mandatory Class I Federal area to revise its State implementation plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. Section 169A(b)(2).

EPA promulgated regulations that, in broad outline, required affected States to: (1) Coordinate development of SIPs with appropriate Federal land managers; (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term strategy to assure reasonable progress toward the National visibility goal. 45 FR 80084 (December 2, 1980) (codified at 40 CFR 51.300–51.307). The regulations provided for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regualtions required that the SIPs provide for periodic review and revisions, as appropriate, of the long-term strategy not less frequent than every three years, that the review process include consultation with the appropriate FLMs and that the State report to the public and EPA a specified assessment of its progress toward the National goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), EPA disapproved SIPs of states that failed to comply with the requirements of, among others, the provisions of 40 CFR 51.302 (visibility general plan requirements),

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[1] The Clean Air Act ("the Act") is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Mandatory class I Federal areas are certain national parks, wildernesses and international parks described in section 162(a). These areas are the responsibility of "Federal land managers" (FLMs), the Secretary of the department with authority over such lands. See section 302(i) of the Act.

51.305 (visibility monitoring), and 51.306 (visibility Long-Term Strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the Act. The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 and consisted of five major sections: existing impairment, new source review, consultation with Federal land managers, monitoring strategy, and the long-term strategy. EPA approved this SIP revision in an August 12, 1988 **Federal Register** document (53 FR 30428), and these revisions replaced the Federal plans and regulations in the Colorado Visibility SIP.

II. Revisions Submitted November 18, 1992

At its public hearing on August 20, 1992, the Colorado Air Quality Control Commission (AQCC) adopted revisions to the Long-Term Strategy of the Class I Visibility SIP and revisions concerning the Long-Term Strategy in Commission Regulation No. 3. These revisions require the Air Pollution Control Division (APCD) to review the Long-Term Strategy and report on visibility progress at regular intervals. In a letter dated November 18, 1992, the Governor of Colorado submitted these revisions to EPA. These revisions were made to bring the plan into compliance with Federal regulation and to fulfill the Federal and Colorado requirements to review and, if necessary, revise the Long-Term Strategy at least every three years. This submittal updates the State's Visibility Long-Term Strategy and makes it consistent with Federal requirements. Pursuant to section 110(k)(1) of the Act, EPA found the submittal to be complete and so notified the Governor in a letter dated January 15, 1993.

Regulation No. 3 previously required a Long-Term Strategy review/revision report from the APCD to the AQCC every three years following the effective date of the regulation (November 1987). The August 1992 Long-Term Strategy report was the first to be completed by APCD and, therefore, was behind schedule in arriving at the AQCC (i.e., it should have been prepared by 1990). The purpose of the regulatory change was to clarify, in light of the delay in submitting the initial report, when subsequent Long-Term Strategy review and revision report cycles would occur. Without this regulatory change, the next Long-Term Strategy review would have been due September 1993—approximately a year from the adoption of the August 1992 report. To adjust the reporting schedule, the regulation was revised. The revision indicates that the Long-Term Strategy report will be made available by September 1 at least every third year following the submittal of the previous report. If the proposed approval of this revision is finalized by EPA, the submittal of the next report by September 1, 1995 will be a federally-enforceable obligation.

Regulation No. 3 was also revised to clear up a discrepancy with EPA requirements regarding the scope of review of the Long-Term Strategy. Among the items indicated for review in the previous version of the regulation was the "progress achieved in developing the components of the Long-Term Strategy." The State revised the language to indicate that the Long-Term Strategy must be reviewed, among other things, to determine "[t]he need for BART [Best Available Retrofit Technology] to remedy existing impairment in an integral vista declared since plan approval." This change brings the State's program into conformance with EPA regulations. See 40 CFR 51.306(c)(7). Declaration of an integral vista allows for protection of visibility resources outside a mandatory Class I area affecting views from within the area. See 40 CFR 51.301(n). The State has not identified any integral vistas at this time, but may do so in the future at its discretion.

Finally, this SIP revision consists of replacing the original Long-Term Strategy with the revised Long-Term Strategy adopted by the State in August, 1992. The SIP revisions address when the Long-Term Strategy review is to be completed, factors to be assessed in periodic Long-Term Strategy reviews, and components of the Long-Term Strategy plan (e.g., existing impairment, prevention of future impairment, smoke management practices, Federal land manager consultation and communication, and annual visibility data reports).

In a February 18, 1993 letter from Doug Skie, EPA, to Paul Frohardt, APCD, EPA requested additional information to determine the approvability of the SIP revisions. From a technical standpoint, EPA found the Long-Term Strategy review and report complete and fully approvable. However, the revision to the timing of the reporting schedule raised some concerns. According to Federal regulation (40 CFR 51.306), "[t]he plan must provide for periodic review and revision, as appropriate, of the long-term strategy not less frequent than every three years." Colorado's reviews should have occurred in 1990, 1993, 1996, and so forth. The August 20, 1992 review and report were nearly two years late. Rather than conducting another review in 1993, the revision changed the schedule to provide for review at least every third year following the submittal of the previous report. Therefore, since the first report was prepared in 1992, the reviews would occur in 1992, 1995, 1998, and so forth. In effect, only two reviews/reports would be submitted to EPA through 1996, when three reports should have been provided.

Therefore, the State committed in a March 5, 1993 letter to Doug Skie, EPA, to prepare and submit a brief informal status report on the Long-Term Strategy by November, 1993. In this way, the State will have provided three reports through the 1996 timeframe (1992, 1993, 1995). The State fulfilled its commitment by submitting to EPA an informal Long-Term Strategy status report dated December 1, 1993.

The State believes that the Long-Term Strategy revisions to the Visibility SIP will provide for continued Class I visibility protection in Colorado, as well as bring the SIP into conformance with Federal requirements for Long- Term Strategy review. This action was requested by the State of Colorado.

EPA is also proposing, under section 110(k)(6) of the Clean Air Act, to correct the provision of 40 CFR 52.344(a) ("Visibility protection"). This provision incorrectly states:

> The requirements of section 169A of the Clean Air Act are not met, because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

When EPA initially approved the general elements of Colorado's visibility protection program on August 12, 1988 (53 FR 30428), the State's visibility new source review (NSR) regulations had not yet been approved. Therefore, the program disapproval of 40 CFR 52.344(a), quoted above, which had been adopted on July 12, 1985 (50 FR 28544), was retained. Colorado's visibility NSR regulations were approved on December 1, 1988 as to industrial source categories for which EPA had approved Colorado's Prevention of Significant Deterioration (PSD) and nonattainment NSR permit requirements (53 FR 48537). For other sources, for which Colorado did not have approved PSD and nonattainment NSR regulations, EPA disapproved the State's visibility NSR regulations and continued to implement Federal regulations in 40 CFR 52.26 and 52.28, as incorporated into the Colorado SIP. This exception to approval is noted in 40 CFR 52.344(b).

At the time of approval of the visibility NSR regulations, the provision of 40 CFR 52.344(a), relating to over-all program disapproval, should have been revised to indicate that Colorado's visibility protection program was approved, with the exception of visibility NSR as it applied to certain industrial source categories. With this notice, EPA proposes to correct section 52.344(a) to accurately reflect the status of program approval in Colorado.

III. Implications of This Action

EPA has reviewed the adequacy of Colorado's Long-term strategy review and revisions relative to its date of adoption in 1992. EPA is proposing to approve Colorado's revision to the Long-Term Strategy of the Class I Visibility Protection SIP, as submitted by the Governor with a letter dated November 18, 1992. EPA is also proposing to approve revisions to Colorado AQCC Regulation No. 3 to bring it into conformance with Federal requirements for the Long-Term Strategy and to revise the reporting schedule. EPA proposes to determine that these revisions are consistent with applicable Federal requirements for Long-Term Strategy review under the Clean Air Act's visibility protection program for mandatory Class I Federal Areas.

EPA is also proposing to correct its error in failing to accurately reflect Colorado's Visibility SIP approval status in a previous action on the State's Visibility protection provisions.

IV. Request for Public Comments

EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments received by June 13, 1994.

V. Executive Order (EO) 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–11692 Filed 5–12–94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 63

[AD-FRL-4881-4]

RIN 2060–AD02

Federal Standards for Marine Tank Vessel Loading and Unloading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading and Unloading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: Standards implementing two provisions of the Clean Air Act (the Act) are being proposed by today's notice. One set of standards is proposed under section 183(f) of the Act and would limit air emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) from new and existing marine tank vessel loading and unloading operations. These standards would require the application of reasonably available control technology (RACT).

An additional set of standards is proposed under section 112(d) of the Act and would limit air emissions of HAP from new and existing marine tank vessel loading and unloading operations. These proposed national emission standards for hazardous air pollutants (NESHAP) would require existing and new major sources to control emissions using the maximum achievable control technology (MACT).

DATES: *Comments:* Comments must be received on or before July 18, 1994.

Public Hearing: A public hearing will be held on June 15, 1994 beginning at 9:30 a.m.

ADDRESSES: *Comments:* Interested parties may submit comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–90–44, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing: The public hearing will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should contact Ms. Lina Hanzely, Chemicals and Petroleum Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673 by the dates specified above.

Technical Support Document: The technical support document (TSD) for the proposed standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "Technical Support Document for the Development of an Emissions Standard for Marine Vessel Loading Operations" (NTIS number PB93–793910, EPA 450/3–92–001a). Electronic versions of the TSD as well as this proposed rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. If more information on TTN is needed contact the systems operator at (919) 541–5384.

Docket: Docket No. A–90–44, containing supporting information used in developing the proposed standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, Ground Floor, 401 M Street, SW., Washington, DC 20460. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Markwordt, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0837.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
  A. History
  B. Legal Authority for Tank Vessel Standards
  C. Process Description and Description of Control Technologies
II. Summary of the Proposed Standards
  A. Source Category to be Regulated
  B. Pollutants to be Regulated
  C. Proposed Standards
  D. Emission Points to be Regulated
  E. Format for the Proposed Standards
  F. Compliance Deadline
  G. Initial Performance Tests
  H. Vessel Tightness Testing
  I. Monitoring
  J. Recordkeeping and Reporting
III. Rationale
  A. Selection of Affected Sources
  B. Selection of Pollutants to be Regulated
  C. Selection of Basis and Level of the RACT Standards
  D. Selection of MACT Regulatory Approach
  E. Selection of Basis and Level of Proposed MACT Standards
  F. Selection of Format of the Standards
  G. Selection of Test Methods
  H. Selection of Monitoring and Compliance and Performance Testing Requirements
  I. Selection of Recordkeeping and Reporting Requirements
  J. Solicitation of Comments
IV. Administrative Requirements
  A. Public Hearing
  B. Docket
  C. Office of Management and Budget Reviews
  D. Regulatory Flexibility Act Compliance

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–90–44 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the EPA's Technology Transfer Network (TTN). See the Docket section of this preamble for more information on accessing TTN.

I. Background

A. History

In 1982, the U.S. Department of Transportation's Maritime Administration (MARAD) began working with the EPA regarding the establishment of Federal regulations under the Clean Air Act pertaining to air pollutants emitted from commercial marine vessels. The MARAD raised concerns regarding the potential disruption of interstate and foreign commerce and safety problems that may result from State regulation of marine vessel emissions. The MARAD believed that the most appropriate method to control these emissions without causing undue disruption of commerce or safety problems would be for the EPA to promulgate national standards regulating air pollutants from these sources.

In 1985, the U.S. Department of Transportation requested that the National Academy of Sciences' National Research Council (NRC) evaluate the feasibility of controlling emissions from marine tank vessel loading operations. At that time, many States were already considering vapor controls for barge and tankship loading and tankship ballasting. The NRC Commission on Engineering and Technical Systems (CETS) then convened a Committee on Control and Recovery of Hydrocarbon Vapors from Ships and Barges. This committee operated under the guidance of the Marine Board of the NRC. The committee and the Marine Board consisted of members of industry and academia and State representatives. The Coast Guard (U.S. Department of Transportation) and the EPA also worked with the committee on the feasibility study. In 1987, the committee issued its report "Controlling Hydrocarbon Emissions From Tank Vessel Loading" (Docket A–90–44, item II–I–4).

The Marine Board's report determined that controls were technically feasible but that there was a need for the Coast Guard to promulgate safety requirements and a need for the EPA to set uniform emissions standards to mitigate some of the safety issues that could arise from varied State regulations. The report recommended that the Coast Guard "lead the development and implementation of a coordinated program to ensure the safety and standardization of maritime hydrocarbon vapor emissions controls." The Coast Guard would be responsible for the safety issues involved (standardized equipment, detonation arrestors, personnel training, etc.), and the EPA would be responsible for the emissions standards. One of the methods suggested to achieve the coordination necessary to develop standards for marine tank vessel loading operations was an amendment to the Act.

Part of the Marine Board's task was to develop cost estimates. The Marine Board contracted United Technical Design (UTD) to develop cost estimates for three different model terminals and four model vessels. These model terminals and costs served as the basis for the EPA costs (Docket A–90–44, item II–I–5).

In response to the NRC recommendation, the Coast Guard's Chemical Transportation Advisory Committee (CTAC) formed a Subcommittee on Vapor Control to develop standards for designing and operating vapor control systems. This CTAC subcommittee presented its final recommendations to the Coast Guard in February 1989. The Coast Guard standards for safe design, installation, and operation of marine vapor recovery equipment were promulgated in June 1990 (55 FR 2596). The Coast Guard regulations are found in 33 CFR part 154 and 46 CFR part 39.

As a result of the NRC recommendation, Clean Air Act Amendments of 1990 (the 1990 amendments) added a new section to the Act, section 183(f), that requires the EPA to promulgate standards applicable to emissions of VOC and other air pollutants resulting from the loading and unloading of tank vessels.

The 1990 amendments also revised section 112 of the Act to require the EPA to publish a list of categories of major sources and area sources of listed HAP and to promulgate emissions standards for each listed category of emission sources. In the Agency's initial list of categories of sources to be regulated under section 112(c) of the Act, the marine vessel loading and unloading source category was not listed because the Agency intended to regulate the emissions of HAP as well as VOC under the authority of section 183(f) of the Act (57 FR 31566, July 16, 1992). After publication of this initial list of source categories, the Agency decided to regulate HAP emissions from major sources of marine vessel loading and unloading facilities under authority of section 112 of the Act (58 FR 60021, November 12, 1993).

B. Legal Authority for Tank Vessel Standards

1. Clean Air Act Section 183(f)

Section 183(f) of the Act requires the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, to

> Promulgate standards applicable to the emissions of VOC and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46 of the United States Code) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any non-air-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques.

The Act further directed the Administrator to limit the application of the standards, to the extent practicable, to loading and unloading facilities and not to tank vessels. The standards were to be promulgated within 2 years after enactment of the amended Act and must be effective within 2 years of promulgation. The Coast Guard was directed to issue regulations "to insure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels * * *."

2. Clean Air Act Section 112

Title III of the 1990 amendments revised section 112 of the Act to reduce the amount of nationwide air toxics emissions. Under title III, section 112 was amended to give the EPA the authority to establish national standards to reduce air toxics from industries that generate these emissions. Section 112(b) contains a list of 189 HAP, the emissions of which are to be regulated. Specific HAP on the list include benzene (including benzene from gasoline), toluene, and hexane. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of all categories of major and area sources of the pollutants on the HAP list. National emissions standards for hazardous air pollutants (NESHAP) will be developed for each of the source categories on that list. The list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and was revised to include marine vessel loading and unloading operations on November 12, 1993 (58 FR 60021).

The NESHAP are to be developed to control HAP emissions from both new and existing major and area sources according to the statutory directives set out in section 112(d) of the Act. (Section 112(a) defines a major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering control, 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP. An area source is any stationary source that is not considered "major".) The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the "maximum achievable control technology (MACT)", the selection of which must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors.

The MACT floor is the minimum stringency level for MACT standards. For new sources, MACT must be no less stringent than the level of emission control already achieved in practice by the best controlled similar source. For existing sources, MACT must be no less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources or the best performing 5 sources in categories or subcategories with fewer than 30 sources.

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards that "shall require the maximum degree of emission reduction of the hazardous air pollutants subject to this section * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources * * *." These standards must be no less stringent than the MACT floor. Such standards must then be met by all sources within the category or subcategory. In establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory.

C. Process Description and Description of Control Technologies

1. Process Description

Marine tank vessel loading operations are facilities that load and unload liquid commodities (e.g., crude oil, gasoline, jet fuel, kerosene, toluene, alcohols, fuel oil Numbers 2 and 6, some chemicals, and groups of solvents or petrochemical products, etc.) in bulk. The cargo is pumped from the terminal's large, above-ground storage tanks through a network of pipes and into a storage compartment (tank) on the vessel. Most marine tank vessel loading operations are associated with petroleum refineries or synthetic organic chemical manufacturers, or are independent terminals.

Gasoline, crude oil, and other VOC- and HAP-emitting commodities are normally delivered from refinery to terminal or terminal to terminal via pipeline, ship, or barge. During marine tank vessel loading operations, emissions result as the liquid that is being loaded into the vessel displaces vapors from the vessel's tank. The vapors emitted fall into two categories: Arrival emissions and generated emissions. Arrival emissions are attributed to any vapors remaining in the otherwise empty cargo tanks prior to loading. Generated emissions refer to vapors resulting from the evaporation of the liquid cargo as it is loaded. The ratio of arrival vapors to generated vapors can vary greatly depending upon the liquid, vapor pressure, loading method, and loading conditions.

The major emission points for marine vessel loading operations include open tank hatches and overhead vent systems. Overhead vent systems collect vapors displaced during loading and route them to a vertical pipe or stack. The vapors are released well above the height of the deck with an upward velocity to help isolate the vapors from the deck. Other possible emission points are hatch covers or domes, pressure-vacuum relief valves, seals, and vents.

Emissions may also occur during ballasting, which is the process of drawing ballast (i.e., water) into a cargo hold. When ballast is loaded into tanks that contain vapors from the preceding cargo, the vapor is displaced and emitted from the vessel. Most tankships carrying crude oil built since 1980 are required by domestic law and international agreement to use segregated ballast tanks, which prevent the possibility of ballast emissions (see also: The Port and Tanker Safety Act (1978), the Act to Prevent Pollution from Ships (1980), the Marine Vapor Control System Standards (55 FR 25396, June 21, 1990); and the Double Hull Standards for Tank Vessels Carrying Oil (57 FR 36221, August 12, 1992). However, some older and smaller tankships may be exempt from these requirements. Inland barges do not carry ballast.

2. Control Technologies

The description of control technologies has two components, the capture of vapors and the destruction or recovery of VOC and HAP. The capture of vapors at the marine vessel requires that the compartments on both tankships and barges be closed to the atmosphere during loading. Most tankships are already equipped for closed loading as a result of having inert gas systems on board because closed loading is necessary to maintain the legally required minimum inert gas pressure in the cargo tanks in accordance with Coast Guard regulations (46 CFR 32.53 and 46 CFR 153.500). Barges generally do not use inert gas and are usually open loaded. Equipment necessary for closed loading includes (1) devices to protect tanks from underpressurization and overpressurization, (2) level-monitoring and alarm systems to prevent overfilling, and (3) devices for cargo gauging and sampling.

The vapor emissions captured from marine tank vessel loading operations can be controlled using one of two primary methods: Combustion or recovery. Combustion devices include flares, enclosed flares, and thermal and catalytic incinerators. The primary recovery methods are carbon adsorption, absorption, vapor balancing, and refrigeration. (For a more complete discussion of the capture and control techniques, consult the technical support document (TSD) previously mentioned in the **ADDRESSES** section.)

II. Summary of the Proposed Standards

The following summarizes the proposed standards. A full discussion of the rationale underlying these proposed regulations is found in part III.

A. Source Category To Be Regulated

The source category to be regulated is major source marine tank vessel loading and unloading operations. Regulations will require those operations exceeding certain gasoline or crude oil throughput cutoffs or certain HAP emissions cutoff at major sources to install vapor control systems. Approximately 300 marine tank vessel loading and unloading operations would be affected by these proposed regulations. Vessels loading at affected sources must meet vapor tightness criteria in order to load product.

The source category includes only emissions that are directly caused by the loading and unloading of bulk liquids at points where marine terminal equipment is connected to marine vessel sources. Thus, this source category does not include storage tanks and leaking equipment associated with terminal transfer operations. Nor does this source category include emissions from offshore vessel-to-vessel bulk liquid transfer operations (i.e., lightering operations). Lightering operations do not take place at onshore terminals. The Agency may consider addressing lightering operations in a separate source category.

B. Pollutants To Be Regulated

The pollutants to be regulated are all VOC and HAP emitted during marine tank vessel loading and unloading operations.

C. Proposed Standards

The proposed standards are developed under sections 183(f) and 112(d) of the Act. As discussed above, section 183(f) requires the promulgation of standards implementing reasonably available control technology (RACT). Section 112(d) requires the promulgation of maximum achievable control technology (MACT), which is selected using different criteria than are used for determining RACT. As a result, RACT standards developed under section 183(f) have somewhat different applicability criteria, as well as a different level of emissions reduction, compared to the section 112(d) MACT standards. However, the majority of requirements (e.g., reporting, recordkeeping, performance tests, monitoring) are identical. In order to simplify the regulatory process, both sets of standards, RACT and MACT, are presented in a single regulation and proposed under 40 CFR part 63.

1. Proposed RACT Standards

Existing and new sources exceeding either of the throughput cutoffs of 790 million liters per year (L/yr) (5 million barrels per year (bbl/yr)) of gasoline or 16 billion L/yr (100 million bbl/yr) of crude oil must meet the RACT requirement of capture and control of vapors from marine vessel loading operations. The EPA believes that approximately 25 terminals will be required to install controls under these proposed standards. The RACT for marine vessel loading operations is a capture system consisting of a vapor tight marine vessel and all of the piping and equipment necessary to route all VOC vapors to a control device connected to either a thermal destruction device or a recovery device. If a thermal destruction device is used to process vapors, 98 percent destruction efficiency must be achieved. If a recovery device is used to process the vapors, 95 percent recovery must be achieved, or as an alternative, for recovery of gasoline vapor emissions, a source must ensure an outlet concentration of 1,000 parts per million by volume (ppmv) or less.

2. Proposed MACT Standards

New marine vessel loading operations exceeding 1 megagram per year (Mg/yr) (1.1 tons per year) of uncontrolled HAP emissions that are located at major sources must meet the MACT requirement of capture and control of vapors from marine vessel loading operations. The MACT for new marine vessel loading operations is a capture system consisting of a vapor tight marine vessel and all of the piping and equipment necessary to route all VOC vapors to a control device that is capable of reducing HAP emissions to the atmosphere by 98 percent.

Existing marine vessel loading operations exceeding approximately 1 Mg/yr of HAP emissions that are located at major sources must meet the same vessel tightness requirements as new sources. The EPA believes that approximately 300 terminals will be affected by these proposed standards. These operations will have a MACT emissions requirement of 93 percent emission reduction. Control devices used to achieve this emission limit are required to operate at 95- and 98 percent removal efficiencies respectively. However, these facilities have the option of exempting emissions of one or more commodities from control provided an overall 93 percent emission reduction is achieved. This overall emission reduction may be demonstrated by controlling all but a few commodities loaded. Partial control of any given commodity would not be allowed under the proposed compliance provisions.

At both new and existing sources, emissions from ballasting operations would be prohibited. Emissions of HAP from steam stripping used to regenerate carbon beds when carbon adsorption is used to control emissions from marine vessel loading operations would also be prohibited under today's proposed standards.

3. Source Reduction and Recycling

The Pollution Prevention Act of 1990 (Pub. L. 101–508; 42 U.S.C. 13101 et seq., ER 71:0501) establishes the following pollution prevention hierarchy as national policy:

a. Pollution should be prevented or reduced at the source wherever feasible;

b. Pollution that cannot be prevented should be recycled in an environmentally safe manner wherever feasible;

c. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner wherever feasible; and

d. Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Pollution prevention means "source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants. Source reduction is any practice that reduces the amount of any hazardous substance entering the waste stream or otherwise released into the environment prior to recycling, treatment, or disposal. Source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service. Under the Pollution Prevention Act, recycling, energy recovery, treatment and disposal are not included within the definition of pollution prevention. Some practices commonly described as "in-process recycling" may qualify as pollution prevention.

Pollution prevention principles have been incorporated into the proposed marine vessel standards. The proposed prohibition of emissions from ballasting and steam stripping operations has the effect of preventing pollution from occurring at the source. Alternative processes (i.e., segregated ballast tanks and vacuum regeneration) are readily available, widely used, and have the benefit of not resulting in HAP or VOC emissions.

Although not considered pollution prevention, vapor recovery and recycling is a common practice in this industry, particularly gasoline recovery (the lower vapor pressure crude oils are less conducive to recovery and are more likely to foul the carbon bed). The proposed standards encourage vapor recovery by allowing the use of well-operated and maintained recovery devices that operate at 95-percent emission reduction. Recovery devices are desirable compared to combustion devices because the recovered compounds can be reused in other processes, which reduces the quantity of virgin materials that must be produced. Recovery devices also tend to generate fewer secondary pollution impacts than do combustion devices.

D. Emission Points To Be Regulated

The emission points to be regulated include all means of venting the tank during loading of product or ballast. These include, but are not limited to, open hatches and/or overhead vent systems. The proposed rulemakings will not directly regulate seals, hatches, or covers associated with the marine tank vessel. However, these items must be in satisfactory condition for the vessel to pass one of the three different marine tank vessel tightness tests, and must remain closed during the loading process.

E. Format for the Proposed Standards

The chosen format for the standards for product loading is a percentage of mass emissions reduction. An alternative format for gasoline vapor recovery, a maximum allowable concentration for the vapor processor exhaust is also proposed. Emissions are prohibited from ballasting operations and from regeneration of carbon adsorber beds.

F. Compliance Deadline

The compliance deadline for existing sources affected by the RACT standards is 2 years after the date of promulgation. The compliance deadline for existing sources affected by the MACT standards is 2 years after the date of promulgation. An existing source that subsequently exceeds a RACT throughput cutoff will have 2 years to comply once the source exceeds a throughput cutoff. Similarly, any source that exists as of the effective date of the standards and subsequently exceeds the MACT applicability thresholds would have 2 years to comply with the existing source MACT standards. All other new or reconstructed facilities will have to comply upon startup, with the exceptions noted in § 63.6 of the part 63 General Provisions.

G. Initial Performance Tests

Owners or operators must perform initial performance tests as required by § 63.7 of the General Provisions for all combustion or recovery devices except devices such as boilers or process heaters where the emissions stream is the primary fuel or boilers and process heaters having a design heat input capacity of 44 megawatts or more. The test method for compliance for combustion devices is the EPA Method 25 of appendix A of 40 CFR part 60. The test method for compliance for recovery devices is the EPA Method 25A of appendix A of 40 CFR part 60. Flares are not subject to the same tests as other control devices, but must pass a visible emissions test according to the requirements of Method 22 of appendix A of 40 CFR part 60. The performance tests must be conducted to include the loading of the last 20 percent of a compartment, and may be spread out over multiple compartments.

H. Vessel Tightness Testing

Three alternatives to ensure vessel tightness are proposed: (1) Pressure test the vessel, (2) perform a leak test on all components using Method 21 of appendix A of 40 CFR part 60, or (3) load the vessel at less than atmospheric pressure.

I. Monitoring

Owners or operators using a vent system that contains valves that could divert a vent stream from a control device must either monitor vent stream flow to ensure that it is not diverted from a control device or secure the bypass line valve in the closed position.

Monitoring criteria have been established for combustion devices (except flares), carbon adsorbers, condensers and adsorbers. In general, facilities would be required to establish operating parameters during the initial performance test and then monitor combustion temperature for combustion devices, VOC concentration in the exhaust stream outlet for carbon adsorbers, exhaust stream temperature for condensers, and VOC outlet concentration for adsorbers. In the case of flares, owners or operators would be required to monitor for the continuous presence of a flame and to monitor vent stream flow. Owners or operators seeking to use other types of control devices may develop enhanced monitoring criteria for these devices and submit the criteria to the Administrator for approval.

J. Recordkeeping and Reporting

Sources required to install controls would have to fulfill the reporting and recordkeeping requirements of the part 63 General Provisions including submittal of the following reports: (1) Compliance notification report, (2) notification of initial performance test, (3) report of initial performance test, (4) quarterly parameter exceedance report, and (5) quarterly emissions estimation report. These sources must also maintain documentation that vessels loaded at the facility are vapor tight. All information will be made readily available to the Administrator or delegated State authority for a minimum of 5 years.

III. Rationale

A. Selection of Affected Sources

The primary release of vapors during the marine tank vessel loading process occurs at the tank vessel through hatches, vents, and vent systems. However, it is impractical for marine tank vessels to carry their own vapor processing systems given the limited space on individual vessels. It is also much more economical for terminals to install and operate control devices that are capable of controlling emissions from multiple vessels than for each vessel to control its own emissions. Furthermore, section 183(f) requires that "to the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels." Therefore, these regulations require that terminals install an air pollution control device and a means of routing the air/vapor mixture from the vessel to the air pollution control device.

Vessels will not be allowed to load or unload product unless they are compatible with terminal air pollution control systems or have a self contained emissions control system on board. Therefore, vessels loading at a controlled terminal will need to have their own vapor collection systems (i.e., pipes which allow for connection to terminal air pollution control system) in order to route vapors to shore. However, vessels are not required to load at controlled terminals. As a result, the affected source is limited to the terminal, which is in turn required to capture and control all loading emissions, with the exception of ballasting and off-shore terminal emissions which are discussed elsewhere in this preamble. Emissions from off shore vessel-to-vessel bulk liquid transfer operations (i.e., lightering operations) are also not included as a source affected by these standards because these operations do not take place at onshore terminals.

B. Selection of Pollutants To Be Regulated

Section 183(f) of the Act states that the Administrator shall "promulgate standards applicable to the emission of VOC and any other pollutant from loading and unloading of tank vessels which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare." Under section 112(d), the EPA is also required to regulate the emissions of HAP from source categories listed pursuant to section 112(c). Marine vessel loading operations were listed on November 12, 1993 (58 FR 60021). In the absence of regulation, the EPA estimates that 75,200 Mg/yr of VOC will be emitted as a result of tank vessel loading operations. Approximately 8,000 Mg/yr of these VOC emissions will be emissions of HAP. Tank vessel loading operations emit approximately 53 different substances listed as HAP under section 112(b) of the Act. Such emissions include unregulated benzene emissions of about 700 Mg/yr. In addition, approximately 6,900 Mg/yr of hexane, toluene, xylene compounds, ethyl benzene, iso-octane, MTBE, naphthalene, and cumene are emitted from tank vessel loading operations. Approximately 44 HAP comprise the remaining four percent of toxic emissions.

Benzene is a known human carcinogen. It has been demonstrated to increase the incidence of nonlymphocytic leukemia in occupationally exposed individuals. It has also been linked to other leukemias, as well as lymphomas and other tumor types in animal studies. Benzene has also been associated with a number of adverse noncancer health effects, including effects on the blood system and the immune system. The other HAP identified above also may induce adverse health effects, including depression of the central nervous system, upper respiratory tract and eye irritation, skeletal abnormalities, anemia, cataracts, kidney damage and liver damage.

As a result of its authority to regulate emission from tank vessel loading operations under both section 183(f) and section 112(d), the EPA shall regulate emissions of VOC and those HAP included on the list under section 112(b) in this rulemaking.

C. Selection of Basis and Level of the RACT Standards

1. Development of Regulatory Alternatives

In deciding how to implement the RACT provisions of section 183(f), the EPA had to determine whether or not all tank vessel loading terminals should be subject to the standards (i.e., whether there should be "cutoffs" below which a terminal would not be subject to the standards) and what level of control would be appropriate. Consistent with the requirements of section 183(f) calling for the consideration of costs and other non-air quality impacts, as well as the general requirements under RACT to review economic feasibility, the EPA believes that section 183(f) gives the EPA the flexibility to determine the level and scope of regulation that is most appropriate for terminal facilities, given all of the factors indicated.

Assuming 100 percent capture of emissions (which can be assumed when vapor tight vessels are loaded), the overall level of control is determined by the efficiency of the control device to which emissions are ducted. Currently, recovery devices (e.g., carbon adsorption, absorption, vapor balancing and refrigeration) are capable of achieving a 95 percent efficiency compared to a 98 percent efficiency achieved by thermal destruction (combustion) devices (e.g., flares, enclosed flares, and thermal and catalytic incinerators). Additional information and descriptions of these control technologies are found in the TSD for this rulemaking (see **ADDRESSES** section). For purposes of the regulatory alternative analysis, the use of a thermal destruction device (i.e., 98 percent efficiency) was assumed. The control technologies selected for this regulation are discussed in part 4 below.

The next step was to identify regulatory alternatives that would allow the EPA to choose among different optimal cutoffs specifying what types of terminals would have to install control devices. The EPA chose commodity and throughput as factors to distinguish among alternatives because commodities with higher vapor pressures have higher emissions and, for a given commodity, terminals with higher throughput loading similar vessels have higher emissions.

Table 1 is a summary of the five regulatory alternatives developed by the EPA. The regulatory alternatives varied in stringency from controlling all emissions at all facilities to controlling only gasoline loadings at terminals with annual throughputs greater than 1,590 million liters (10 million bbl/yr) and crude oil terminals with throughputs greater than 15,900 million liters/yr (100 million bbl/yr). The control levels are all based on the capture of loading emissions from marine vessels and a 98 percent removal efficiency. Each regulatory alternative is structured such that the emissions and resulting cost-effectiveness values from each commodity at the stated throughput are roughly equivalent. For example, the costs of controlling emissions from 10 million barrels of gasoline is treated as being roughly equivalent to the costs of controlling emissions from 100 million barrels of crude oil because the emissions per volume of gasoline is ten times higher than for crude oil. (For a more complete rationale behind the selection of the regulatory alternatives, consult the technical support document (TSD) previously mentioned in the **ADDRESSES** section.)

TABLE 1.—RACT REGULATORY ALTERNATIVES[a]

Alternatives, throughput (MM bbl/yr)	VOC emissions reduction, Mg/yr[b]	Percent VOC emissions reduction[b]	No. of affected terminals	Capital costs, $ million[c]	Annual costs, $ million[c]	Cost effectiveness, $/Mg	Incremental cost effectiveness, $/Mg
I. Gasoline >10 MM bbl/yr Crude oil >100 MM bbl/yr	53,200	66	13	220	41	770	N/A
II. Gasoline >5 MM bbl/yr Crude oil >100 MM bbl/yr	58,100	72	25	280	53	910	2,500
III Gasoline >1 MM bbl/yr Crude oil >10 MM bbl/yr	64,500	80	60	420	85	1,300	5,000
IV. Gasoline >0.5 MM bbl/yr Toluene >0.5 MM bbl/yr Alcohols >1.5 MM bbl/yr Crude oil >5 MM bbl/yr	66,900	83	120	570	120	1,800	15,000
V. All terminals	72,000	98	1,500	2,600	610	8,500	96,000

[a] Terminals affected by State regulations or loading less than 1,000 bbl/yr are not included in the above estimates.
[b] Based on a 98-percent control efficiency and total VOC emissions of 74,000 Mg/yr.
[c] Costs are in 1990 dollars.

Source: Docket A–90–44, items II–A–23 and II–A–32.

The analysis leading to a decision to regulate emissions from ballasting and steam stripping operations is presented in section D, Selection of MACT Regulatory Approach.

2. Impacts of the Regulatory Alternatives

The EPA developed model (i.e., example) vessels and terminals for use in estimating the environmental, cost, and economic impacts associated with the actual terminals represented by the waterborne commerce in the United States (WCUS) data base. The impacts that resulted from this analysis are presented in Tables 1 through 3. The EPA performed an economic impact analysis of the regulatory alternatives considered for these regulations. Potential price, output, and employment impacts for affected products and for the marine transport industry and for small businesses were examined. Estimated maximum price increases for any product loaded in bulk varied but were not large under any of the regulatory alternatives. These price increase estimates reflect the control cost increase for both transporting crude and transporting refined products. Because the price increases are small and because the elasticities of demand for petroleum products are small, estimated percent output (i.e., throughput) reductions were minimal in all but Regulatory Alternative V. Correspondingly, estimated employment reductions were also small (less than 20) in all but Regulatory Alternative V.

TABLE 2.—SECONDARY AIR AND ENERGY IMPACTS OF RACT REGULATORY ALTERNATIVES[a] [b]

Alternatives, throughout (MM bbl/yr)	SO_x emissions, Mg/yr[c]	NO_x emissions, Mg/yr[c]	CO emissions, Mg/yr[c]	Electricity impacts, MWh/yr[d]	Natural gas impacts, 1,000 ft^3/yr[d]
I. Gasoline >10 MM bbl/yr Crude oil >100 MM bbl/yr	61	130	120	3,000	340,000
II. Gasoline >5 MM bbl/yr Crude oil >100 MM bbl/yr	61	150	140	5,400	620,000
III. Gasoline >1 MM bbl/yr Crude oil >10 MM bbl/yr	65	180	170	11,000	1,300,000
IV. Gasoline >0.5 MM bbl/yr Toluene >0.5 MM bbl/yr Alcohols >1.5 MM bbl/yr Crude oil >5 MM bbl/yr	65	190	180	20,000	2,200,000
V. All terminals	69	250	230	170,000	16,000,000

[a] Terminals affected by State regulations or loading less than 1,000 bbl/yr are not included in the above estimates.
[b] Based on use of incineration.
[c] These impacts represent increases in emissions; increases would not be expected if all affected sources used recovery technologies.
[d] These impacts represent increases in energy usage.

Source: Docket A–90–44, item II–A–24.

TABLE 3.—SUMMARY OF RACT ECONOMIC IMPACTS BY REGULATORY ALTERNATIVE

Reg. alt.	Terminals covered/throughout, MM BBL/yr	Total cost, MM	Maximum percent price increases	Percent output reductions	Employment reductions	No. of terminals under competitive pressure	Impact on vessels	Displacement potential by pipeline
I	Gasoline >10.0	41	0.16–0.19	0.02	<50	0	Low level of dedication	Minimal.
	Crude oil >100		0.10–0.18	ND				
II	Gasoline >5.0	53	0.18–0.21	0.02	<50	0–5	Low level of dedication	Minimal.
	Crude oil >100		0.10–0.18	ND				
III	Gasoline >1.0	85	0.25–0.29	0.02			Moderate level of dedication	Minimal.
	Crude oil >10.0		0.18–0.31	ND	119	0–30		
IV	Gasoline >0.5	120	0.32–0.37	0.03			Significant level of dedication	Minimal.
	Crude >5.0		0.18–0.32	ND	165	0–65		
	Alcohols >1.5		0.60	0.04				
	Toluene >10.0		0.41					
V	All	610	0.3–1.8	0.07–0.26	924	>1,000	High level of dedication to regulated products.	Some in long run.

ND=Not determinable, function of other products derived from crude oil.

Reference: Docket A–90–44, items II–A–23 and II–A–32.

Because today's proposed regulation involves the application of both RACT and MACT, impacts for each standard were determined separately. In order to avoid overestimation or double-counting, and because the requirements for RACT are more stringent than MACT, the impacts for facilities affected by RACT (i.e., facilities with gasoline throughputs of greater than 790 million L/yr (5 million bbl/yr) or crude oil throughputs of greater than 16 billion L/yr (100 million bbl/yr)) were calculated first, and were discounted when determining the impacts for facilities affected by MACT (i.e., facilities emitting greater than 1 Mg/yr of HAP).

3. RACT Threshold Determination

The Administrator is proposing Regulatory Alternative II as the regulatory threshold for the RACT standard. Regulatory Alternative II would require controls for crude oil loadings at facilities with an crude oil marine throughput of approximately 15,900 L/yr (100 million bbl/yr) or more, and gasoline loadings at facilities with a gasoline throughput of approximately 795 million L/yr (5 million bbl/yr). Approximately 25 terminals (1.5 percent of all terminals) will be affected if the thresholds for Regulatory Alternative II are implemented. In addition, under this alternative, only a small volume of U.S. marine vessels will need to be retrofitted. It is anticipated that only those vessels that are least costly to retrofit would be retrofitted. Approximately 76 percent of the VOC emissions from all marine terminals would be controlled at an average cost effectiveness of approximately $770/Mg of VOC reduced under Regulatory Alternative II.

The Administrator believes that the incremental cost effectiveness ($5,000/Mg) of going beyond Regulatory Alternative II is inappropriate given this standard.

Regulatory Alternative III was strongly considered. However, the additional 35 terminals controlled under Regulatory Alternative III would produce only an additional eight percent reduction in nationwide emissions. Of those 35 additional terminals, as many as 25 could be under increased competitive pressure, compared to only up to five terminals under Regulatory Alternative II. (Increased competitive pressure refers to the situation where the controlled terminal is in direct competition with a much smaller or larger terminal. The smaller terminal may not be controlled and the larger terminal may be able to control vapors more effectively on a per-barrel basis. The controlled terminal could be forced to absorb some of the control costs, reduce throughput, substitute nonregulated products, or close the facility.)

Additionally, the more stringent regulatory alternatives considered involved control of commodities which have vapor pressures much lower than gasoline and crude oil. Emissions generally correspond to the vapor pressure of the commodity being loaded. Gasoline and crude oil generally have the highest vapor pressures, and therefore present better control alternatives. Because the economic and other environmental impacts of Regulatory Alternative II are reasonable and should not place an undue burden on industry or the environment, the Administrator selected Regulatory Alternative II as representative of RACT.

4. Selection of Emission Control Technologies and Emission Control Standards for RACT

Control of marine vessel loading emissions requires the capture of displaced vapors and efficient control of vapors once captured. Vessels loading at facilities with controls must install a vapor collection system and pass one of three tank vessel tightness alternatives to ensure good capture of vapors. The tightness alternative may be one of the following: (1) A leak check performed during loading on all components using Method 21 of appendix A of 40 CFR part 60; (2) a pressure test, where the internal tanks are pressurized and the pressure drop is monitored over time to determine if the vessel is tight; or (3) for noninerted vessels (i.e., vessels having tanks that are not blanketed with nonreactive gas during loading to ensure that vapors in the tanks are below the explosive range), load the vessel at less than atmospheric pressure. These tightness alternatives are the same as those promulgated in the NESHAP for benzene (40 CFR part 61 subpart BB). The EPA does not have sufficient data necessary to determine at what point vessel leaks affect the operation and efficiency of the control system; however, the Agency believes that the three tightness alternatives proposed are sufficient to provide for the collection of nearly all displaced vapors. The EPA believes that once assured of good capture and collection of the vapors through the tightness tests, facilities can concentrate on the operation and maintenance of the control device as a means of ensuring compliance.

The EPA is proposing that vapor emissions captured from marine tank vessel loading operations can be controlled using one of two primary methods: Combustion or recovery. The primary devices used for combustion of vapors are flares, enclosed flares (often referred to as thermal oxidizers), catalytic incinerators, and thermal incinerators. The primary methods for recovery of vapors include carbon adsorption, absorption, refrigeration, and vapor balancing. In States with marine tank vessel loading standards that allow both combustion and recovery, the control devices are evenly split between enclosed flares and carbon adsorption.

The EPA is proposing that standards for the control of vapors captured during the loading operations be one of the following: (1) A combustion device meeting 98 percent or greater destruction efficiency or (2) A recovery device meeting 95 percent or greater recovery efficiency. The difference in control efficiencies between recovery and combustion is designed to not prohibit recovery systems, which have smaller secondary air emission (sulfur dioxide, nitrous oxides, and carbon monoxide) impacts than combustion systems. The smaller emissions reduction is also warranted because these emissions are recovered as product instead of destroyed. Additionally, the EPA has data supporting the 95- and 98-percent control efficiencies as achievable for recovery and combustion devices, respectively (Docket A–90–44, items II–A–7 and II–B–1). For terminals that use recovery devices for control of gasoline vapor emissions, the EPA is proposing an alternative means of compliance. Such sources can comply by ensuring an outlet concentration of 1,000 ppmv or less for emissions from gasoline loadings. The EPA believes the 1,000 ppmv limit for gasoline vapor is generally more strict than the 95 percent reduction requirement. Data from an existing facility show this limit to be achievable (Docket A–90–44, item II–B–13). The intent of the concentration alternative is to allow those facilities that operate at a higher efficiency than required by the proposed standard to perform a simpler compliance test, as they would only have to test at the outlet of the control device. Because of the lower emission factors associated with crude oil emissions, the fact that hydrogen sulfide present in crude oil may poison the activated carbon, and that there are no known facilities controlling crude oil emissions with carbon adsorbers, the EPA is not proposing a concentration alternative for controlling vapors from crude oil emissions.

5. Impacts of the Proposed RACT Standards

The environmental, costs, energy, and economic impacts of the proposed RACT standards are summarized in Tables 1 through 3, and are represented by Regulatory Alternative II. They are also discussed in parts C.2. and C.3. above. Economic effects of the proposed RACT standards include a maximum price increase of approximately 0.2 percent and nationwide employment reductions of less than fifty. Up to five terminals controlled under the proposed standards could be under increased competitive pressure. Economic effects on oil tankers include an average control cost per barrel of crude oil loaded equal to $0.002.

A primary concern in the implementation of the proposed standards is safety. Section 183(f)(1) dictates that the EPA consult with the Coast Guard and consider safety when promulgating these standards. Section 183(f)(2) states:

> Regulations on Equipment Safety.—Within 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 of the United States Code and section 6 of the Ports and Waterways Safety Act (33 U.S.C. 1225). The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

The Coast Guard regulations (55 FR 25396) were promulgated in June 1990, before the passage of the amended Act. These standards dictate equipment, system, and operational requirements for vapor control systems for benzene, gasoline, and crude oil. The EPA has maintained communication with the Coast Guard throughout the rulemaking process. All control systems installed as a result of this proposed regulation would be subject to the Coast Guard regulations, and nothing in the proposed standard should be construed as to require any act or omission that would be in violation of any regulation or other requirements of the United States Coast Guard or prevent any act or omission necessary to secure the safety of a vessel or for saving life at sea. Representatives from the United States Coast Guard have participated in all phases of the development of these proposed rules. The EPA is confidant that these regulations are consistent with the Coast Guard regulations and that the safety factors have been adequately addressed.

6. Attainment/Nonattainment Status and Site Specific Risk Assessment

At one time, the Agency was considering planning regulating based exclusively under the authority of section 183(f). During this time, the Agency held a public meeting to discuss a possible approach for considering a facility's attainment/non-attainment status with respect to NAAQS ozone program and a facility's site specific risk to the public in developing the standards (see Docket A–90–44, item II–E–42). This approach would have required intensive effort on the part of the Agency and the regulated community to develop acceptable criteria and technological methodologies for demonstrating whether the criteria have been met. However, with regulation under section 112, any facility that might have been exempted from RACT under section 183(f) with the approach discussed at the public meeting would ultimately be regulated under the MACT standards of section 112. Therefore, no further consideration was given to this approach.

D. Selection of MACT Regulatory Approach

1. Area Source Finding

The HAP emitted from this source category include benzene, toluene, hexane, xylene, and ethylbenzene from gasoline and crude oil loading as well as approximately 60 HAP from alcohols and specialty chemicals. Of the approximately 1,800 marine vessel terminals in this source category, at least 60 emit 25 ton/year of HAP or more, and are therefore considered major sources. In addition, under section 112(a)(1), a marine vessel terminal may be a part of a major source if it is part of a "group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." There are approximately 600 refineries and chemical production facilities in the United States; all of these are considered to be major sources. While the Agency does not have the data in its marine vessel data base to estimate how many of these facilities have bulk marine loading terminals that are contiguous to and under the same control as the main facility, there is a high correlation between large refineries and production facilities and large bulk loading terminals. Therefore, at a minimum, for purposes of this analysis, the Agency assumed that approximately 300 terminals are major sources because they are likely to be located at major sources such as refineries or chemical production facilities. This leaves approximately 1,200 facilities that are considered likely area sources. Based on the emissions data contained in the Agency's data base, these 1,200 facilities represent only 2 percent of nationwide HAP emissions.

Section 112(c)(3) states that categories of area sources emitting HAP may be listed and regulated if the Administrator finds the sources, individually or in the aggregate, present a threat of adverse effects to human health or the environment. Based on limited data available to the Agency, the Administrator is unable to determine a threat of adverse effects at this time. Therefore, the Agency is proposing not to regulate such area sources in this rulemaking. This is consistent with the Agency's decision not to include in its initial list of source categories those categories that contained no major sources and for which the Agency had not made a finding of threat of adverse effects (57 FR 31576, July 16, 1992). The Agency may, however, revisit these sources in the future, if additional data become available.

2. Determination of Subcategories

The source category to be regulated is major sources of marine vessel loading and unloading operations. As part of the NESHAP development process, the source category was evaluated to determine if subcategorization of the source category was justified. Although the Act does not specify the criteria from which subcategories can be developed, section 112(d)(1) of the Act states that the "Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory * * *." The Agency believes that these same criteria are acceptable criteria to use in making subcategory determinations.

Size appears to be a likely candidate for a distinguishing feature, and using total estimated HAP emissions as an indicator for size, the EPA evaluated marine tank vessel loading operations to determine whether it was appropriate to subcategorize the source category on the basis of size. The limit for determining subcategories was examined in 0.5 Mg increments of HAP emissions from 0.5

Mg/yr to 2.0 Mg/yr. A subcategory based on 1 Mg of HAP emissions per year was selected for the following reasons. First, facilities that emit less than 1 Mg of emissions are likely to be area sources and therefore not subject to the proposed standards, or are facilities that are represented by relatively minimal, episodic emissions. For example, a typical river barge holds 10,000 barrels or 420,000 gallons of gasoline. An uncontrolled facility below a 1-Mg cutoff could be loading less than 30 barges per year. These facilities also typically emit less frequently than facilities emitting more than 1 Mg/yr and typically only load a single commodity. Additionally, these facilities also tend to load (and therefore emit) commodities having lower vapor pressures than commodities loaded at other, larger, facilities. Also, facilities that emit 1 Mg or more of HAP emissions contribute approximately 98 percent of HAP emissions to the national inventory. (See Docket A-90-44)

3. Determination of the MACT Floor

The MACT floors were determined for the following types of operations: Product loading and ballasting.

a. *Product loading.* The marine vessel data base is based on throughput data for marine vessel loading terminals. The throughput data are divided into crude oil, gasoline, and 11 other commodity categories. Additional information on these data are available in the TSD for this proposed regulation (see ADDRESSES section of this preamble). The EPA estimated the emissions of HAP from each of these terminals using these throughput data and incorporating assumptions about how many of these facilities were controlled, and the extent of their control. These assumptions are based on existing Federal and State regulations. For example, benzene loadings are already controlled by the benzene NESHAP (40 CFR part 61, subpart BB). In addition, four States have regulations requiring control of emissions from marine tank vessel loading operations: New Jersey, Louisiana, Pennsylvania, and California (District regulations). (Additional information on the derivation of the MACT floor is found in Docket A-90-44, item II-A-44.) Additional discussion of the Agency's interpretation of the MACT floor is presented in section J. Solicitation of Comments.

Of the approximately 360 terminals estimated to be affected by the proposed regulation, 43 facilities comprise the best performing 12 percent of facilities used in calculating the MACT floor for terminals emitting over 1 Mg of HAP emissions. These terminals are subject to State regulations in California, New Jersey, and Louisiana. Averaging the required control levels of these facilities results in a MACT floor of 93 percent control for facilities emitting more than 1 Mg of HAP per year. Although this derived average does not precisely match a control technology, for all practical purposes it is equivalent the emission reduction achieved by recovery techniques (i.e., 95 percent). Additional information on the derivation of the MACT floor may be found in the docket for this proposed rulemaking effort.

There are approximately 1,440 facilities that would emit less than 1 Mg of HAP emissions annually if uncontrolled. The average control level of the best performing 12 percent of facilities is 36 percent control. This control level does not represent an existing technology. Therefore using the average of the best performing 12 percent is inappropriate for establishing the MACT floor. Taking the median of the best performing 12 percent of these sources (94th percentile) results in a control level of zero because the median facility is uncontrolled. This is a more appropriate portrayal of the level of control that exists in this subcategory. Therefore, this level of control (i.e., no control) represents the MACT floor for terminals emitting less than 1 Mg/yr.

The MACT floor for new facilities, regardless of size, is a 98-percent overall control of emissions. This control level represents the best performing similar source. The Agency will take comment on whether the MACT floor for new sources could, consistent with the requirements of section 112(d) of the Act, be equal to a control requirement of 95 percent when a recovery device is used. As discussed elsewhere in this preamble, the Agency wishes to encourage the use of recovery devices. However, a 95 percent reduction requirement for recovery devices may be considered inconsistent with the requirement of section 112(d)(3) of the Act that emission standards for new sources shall not be less stringent than the emission control achieved by the best controlled similar source. The EPA requests comments on whether the secondary benefits of recovery devices provide the Administrator with the ability to determine that a 95 percent reduction requirement for those sources using recovery is "not less stringent" than a 98 percent reduction requirement for all other sources.

b. *Ballasting.* According to the Marine Board report, most tankships have segregated or clean ballast tanks due to Coast Guard regulations and international agreements that effectively prohibit ballast emissions from occurring. Since the Marine Board report was issued in 1987, as older vessels have been retired, the proportion of "uncontrolled" vessels has decreased further. However, the Agency does not have any information available to it to evaluate the percentage of vessels that still emit ballasting emissions, particularly those vessels that are not in crude oil service (where the vast majority of ballasting occurs). The Administrator determined that the MACT floor for ballasting at new or existing sources would be a prohibition of ballasting emissions. The Agency is requesting comment on this decision to prohibit ballasting emissions.

E. Selection of Basis and Level of Proposed MACT Standards

1. Development of Regulatory Alternatives

a. *Product loading.* Two regulatory alternatives were developed for the subcategory represented by major source marine tank vessel loading and unloading operations that emit less than or equal to 1 Mg of HAP annually. The regulatory alternatives are summarized in Table 4. The first alternative, Regulatory Alternative A, represents the MACT floor of no control. Regulatory Alternative B represents the control of a facility's total HAP throughput resulting in an overall emission reduction of 95 percent.

Two regulatory alternatives were considered for the subcategory represented by existing facilities emitting more than 1 Mg of HAP per year. Regulatory Alternative A represents the MACT floor level of control (93 percent overall control). Regulatory Alternative B represents the control of a facility's total HAP throughput to an overall control of 95 percent.

There are no regulatory alternatives for new facilities that exceed the MACT floor of 98 percent control because no other alternatives that are more stringent than the floor were considered technically feasible.

TABLE 4.—MACT REGULATORY ALTERNATIVES [a]

Regulatory alternative	HAP emissions reduction, Mg/yr	Percent HAP emissions limit	No. of affected terminals [b]	Capital costs, $ million [c]	Annual costs, $ million [c]	Cost effectiveness, $/Mg	Incremental cost effectiveness, $/Mg
For facilities emitting less than or equal to 1-Mg/yr HAP:							
A. No control (MACT floor)	0	0	0	0	0	0	N/A
B. 95 Percent emission limit	125	95	1,200	1,800	430	3,400,000	3,400,000
For facilities emitting greater than 1-Mg/yr HAF [d]:							
A. 93 Percent emission limit (MACT floor)	1,300	93	240	570	130	99,000	N/A
B. 95 Percent emission limit	1,300	95	240	([e])	([e])	([e])	([e])

[a] Terminals affected by State regulations or the benzene NESHAP are not included in these estimates.

[b] "Affected Terminals" are terminals that would be required to control emissions.

[c] Costs are in 1990 dollars.

[d] Twenty-five facilities have HAP emissions greater than 1 Mg/yr and are affected by RACT. These facilities are not included in these estimates.

[e] Given the structure of the UTD cost estimates, distinctions between the costs at 93 percent and 95 percent emission reduction were not possible. However, costs would be at least as high as those shown at the 93 percent emissions reduction plus additional retrofit costs for vessels. (Retrofit costs for vessels range from $9,000 to $61,000.)

Source: Docket A–90–44, items II–A–23, II–A–32, and II–A–34.

b. *Ballasting*. There are no regulatory alternatives beyond the MACT floor.

2. Impacts of the Regulatory Alternatives

The impacts of the product loading regulatory alternatives are summarized in Tables 4 through 6.

TABLE 5.—SECONDARY AIR AND ENERGY IMPACTS OF MACT REGULATORY ALTERNATIVES [a] [b]

Regulatory alternative	SO_x emissions, Mg/yr [c]	NO_x emissions,Mg/yr [c] [K]	CO emissions, Mg/yr [c] [K]	Electricity impacts, MWh/yr [d]	Natural gas impacts 1,000 ft^3/yr [d]
For facilities emitting less than or equal to 1-Mg/yr HAP:					
A. No control (MACT floor)	0.0	0.0	0.0	0	0
B. 95 Percent emission limit	0.5	28	27	114,000	12,000,000
For facilities emitting greater than 1-Mg/yr HAP:					
A. 93 Percent emission limit (MACT floor)	6.6	64	61	27,000	3,000,000
B. 95 Percent emission limit	6.8	66	62	28,000	3,000,000

[a] Terminals affected by State regulations or the benzene NESHAP are not included in these estimates.

[b] Based on use of incineration.

[c] These impacts represent increases in emissions; increases would not be expected if all sources used recovery technologies.

[d] These impacts represent increases in energy usage.

Source: Docket A–90–44, items II–A–24 and II–A–33.

TABLE 6.—SUMMARY OF ECONOMIC IMPACTS BY MACT REGULATORY ALTERNATIVE [a]

Regulatory alternative	Terminals covered/ throughout, (million bbl/ yr)	Total cost, (SMM)	Maximum percent price increase	Percent output reductions	Employment reductions	No. of terminals under competitive pressure	Impact on vessels	Displacement potential by pipeline
For facilities emitting less than or equal to 1-Mg/yr HAP:								
A. No control (MACT floor).	0	0	0	0	0	0	None	None.
B. 95 Percent emission limit.	1,200 (320)	1,800	([b])	([b])	([b])	([b])	([b])	([b])
For facilities emitting greater than 1-Mgy/r HAP [c]:								
A. 93 Percent emission limit (MACT floor).	240 (750)	570	0.09–0.54	0–0.04	166	230	High level of dedication; retrofitting of vessels.	Minimal.

TABLE 6.—SUMMARY OF ECONOMIC IMPACTS BY MACT REGULATORY ALTERNATIVE[a]—Continued

Regulatory alternative	Terminals covered/ throughout, (million bbl/ yr)	Total cost, ($MM)	Maximum percent price increase	Percent output reductions	Employment reductions	No. of terminals under competitive pressure	Impact on vessels	Displacement potential by pipeline
B. 95 Percent emission limit.	240 (750)	(d)	(e)	(e)	(e)	(e)	(e)	(e)

[a] Terminals affected by State regulations or the benezene NESHAP are not included in these estimates.

[b] Given the structure of the UTD data base, estimation of the impacts that would be anticipated at a control level more stringent than the MACT floor was not possible. However, it is expected that these impacts would be more severe than those expected for facilities emitting more than 1 Mg/yr of HAP.

[c] Twenty-five facilities have HAP emission greater than 1 Mg/yr and are affected by RACT. These facilities are not included in these estimates.

[d] Given the structure of the UTD cost estimates, distinctions between the costs at 93 percent and 95 percent emission reduction were not possible. However, costs would be at least as high as those shown for the MACT floor plus additional vessel retrofit costs. (Vessel retrofit costs range from $9,000 to $61,000.)

[e] Given the structure of the UTD data base, distinctions between the impacts at 93 percent and 95 percent emission reduction were not possible. The impacts for facilities emitting greater than 1 Mg/yr of HAP would be at least as high as the impacts shown for the MACT floor, with higher impacts on vessels.

Source: Docket A-90-44, items II-A-23, II-A-32, and II-A-34.

3. MACT Determination

a. *Product loading.*—(1). *Existing sources emitting 1 Mg/yr or less.* Under Regulatory Alternative B, the average cost effectiveness to control existing facilities emitting less than 1 Mg/yr of HAP is approximately $3.4 million per Mg. The Administrator has determined that these costs are unreasonable and, as a result, that MACT for the subcategory represented by existing facilities with emissions less than or equal to 1 Mg per year of HAP emissions is equivalent to a MACT floor of no control. This determination follows section 112(d) of the Act where the Administrator is required to consider cost of achieving emission reductions beyond the MACT floor (among other criteria) when selecting MACT. These smaller facilities represent only 2 percent of all industry-wide emissions.

(2). *Existing sources emitting greater Than 1 Mg/yr.* The Administrator has determined that MACT for the subcategory represented by existing facilities with HAP emissions exceeding 1 Mg per year is the MACT floor of 93 percent overall control. The incremental benefits of additional control are not justified considering the costs of achieving these reductions.

The bulk of the incremental costs of control beyond the 93 percent emission limit (MACT floor) are the costs to retrofit a sufficient number of vessels to capture emissions beyond those required at the MACT floor and supplemental operating costs. Unfortunately, the Agency's marine vessel data base does not contain the type of data needed to analyze the nationwide cost effectiveness of a more stringent alternative. However, the average cost per facility to retrofit sufficient vessels to allow the facility to comply with the incremental emission reduction required for that facility to meet standards beyond the MACT floor ranges from approximately $9,000 to $60,000 per year. (Additional information on this analysis is found in Docket A-90-44, item II-A-23 and item II-A-32). In addition, there may be substantial additional costs to the facility to equip additional emission points (e.g., berths) with emission control equipment. The Administrator deems that any costs beyond the MACT floor, which itself has a cost effectiveness of over $90,000 per Mg, would not be reasonable. (The statute itself precludes the Administrator from selecting a less costly MACT floor.) Based on this limited analysis, the Administrator has elected to not require control beyond the MACT floor for this subcategory.

The selection of 93 percent emission limit as MACT for existing sources emitting greater than 1 Mg/yr should provide flexibility to terminals that install control equipment that is expected to achieve 95 to 98 percent emissions reduction. This flexibility enables facilities to control HAP emissions in the most efficient manner by not requiring the control of liquids having minimal emissions. The Agency is soliciting comment on the need for this flexibility, and on methods to ensure enforceability of these standards given this flexibility.

It should be noted that the EPA does not believe that the analysis performed above for MACT-regulated facilities is applicable to the determination of RACT discussed in section III-C. The EPA believes that the incremental benefits of controlling the MACT-regulated terminals above 93 percent control is unjustified, given the costs already associated with the MACT standard. On the other hand, the RACT standards apply only to the largest crude oil and gasoline terminals in the United States. The cost effectiveness associated with requiring 95 or 98 percent control at these facilities is considerably more favorable than that associated with requiring 95 or 98 percent control for the MACT-regulated facilities. As shown above, the cost effectiveness associated with the RACT standard is $2,100/Mg, considerably less than that for the MACT standard. Therefore, the Agency believes that it is not appropriate to reduce the percent reduction requirements of the RACT standard to match those of the MACT standard. The EPA recognizes that for some individual facilities regulated under both sections 112 and 183(f), the RACT standard may be more stringent than the MACT standard. The EPA believes that this result is appropriate, but the EPA is taking comment on this issue. The EPA also notes that the control equipment required under both the MACT standard and the RACT standard must meet the 95 or 98 percent control threshold. The MACT standard offers flexibility with regard to the type of liquids controlled, not the manner in which they are controlled.

(3). *New sources.* The Administrator has determined that MACT for new facilities is the MACT floor, which is an overall control requirement of 98 percent. However, as discussed above, the EPA will take comment on whether MACT for new facilities could, consistent with section 112(d) of the Act, be equal to 95 percent reduction for recovery devices and 98 percent reduction for other destruction devices.

b. *Ballasting.* The Administrator believes that the combined impact of fleet turnover and Coast Guard and other regulatory requirements for tankships to use segregated ballast tanks means that there should be no impacts from the control (i.e., prohibition) of ballast emissions. As a result, MACT was determined to be equivalent to a prohibition of emissions from ballasting. However, as discussed in section J.2, Ballasting Emissions, the Administrator is soliciting comments and data on the possibility of significant impacts to currently uncontrolled vessels.

4. Selection of the Proposed MACT Standards

a. *Product loading.* As with the RACT standards, vessels loading at facilities with controls must install a vapor collection system and pass one of three tank vessel tightness alternatives.

The MACT standards for existing facilities are based on a facility demonstrating that 93 percent of HAP emissions are controlled. Facilities would be allowed to demonstrate that the standard is being met in one of two ways. In the first case, a facility may choose to demonstrate that emissions from all vessels being loaded at the facility are being routed to either a 95 percent efficient recovery device or a 98 percent efficient destruction device. In the other case, the facility may opt to exclude the emissions of certain vessels or process lines from control, based on documented emission estimates, so long as at least a 93 percent overall level of control is achieved. The partial control of any commodity loaded or unloaded at the terminal would not be allowed as a means of showing compliance with the 93 percent overall emissions reduction standard. The facility would still be required to demonstrate that all controlled emissions are being routed to either a 95 percent efficient recovery device or a 98 percent efficient destruction device.

The MACT standards for new facilities require an emissions limit of 98 percent control. Additionally, these facilities would be required to maintain tank-tight vessels while loading.

b. *Ballasting.* Owners or operators of existing and new marine tank vessel loading and unloading operations would be required to demonstrate compliance with the ballasting standards by maintaining records showing that the vessels loaded met one of the following criteria: (1) The vessel does not perform ballasting at any time, (2) the vessel meets the Coast Guard standards, or (3) ballasting emissions are ducted to a control device.

5. Impacts of the Proposed MACT Standards

The environmental, costs, energy and economic impacts of the proposed MACT standards are summarized in Tables 4 through 6, and are represented by Regulatory Alternative A for facilities emitting less than or equal to 1 Mg of HAP and Regulatory Alternative A for facilities emitting more than 1 Mg of HAP. There are no projected impacts to controlling emissions from ballasting.

As discussed in section IV.C.5, the EPA believes that the potential safety impacts of the standards have been addressed.

The estimated impacts of the standards are a VOC reduction of 12,400 Mg/yr of which 1,300 Mg are HAP. The capital and annualized costs are estimated to be $570 million and $130 million, respectively.

The EPA performed an economic impact analysis of the MACT determination for this regulation. Potential price, output, and employment impacts for affected producers and for the marine transport industry were examined for each alternative. Potential small business impacts were also isolated. Additional information on these economic impacts is available in the docket for this proposed regulation.

Estimated maximum price increases for the affected products varied but were not large (less than 1 percent) for any of the products under Regulatory Alternative A of the MACT determination for terminals emitting more than 1 Mg/yr. These price increase estimates reflect both the control cost increase for transporting crude oil and the control cost increase for transporting petroleum products. Because these price increases are small and because the elasticity of demand coefficients for petroleum products are small, estimated percent output (i.e., throughput) reductions were minimal. Correspondingly, estimated employment reductions were also small (less than 200).

Under Regulatory Alternative A of the MACT determination for terminals emitting more than 1 Mg/yr, potentially significant economic impacts on the smaller terminal operations that would have to install controls were identified. These significant impacts may have resulted from the high costs overall acting in combination with high per-barrel control cost differentials between the smaller and larger terminal operations that would have to control. It is expected that many of the smaller terminal operations would not be able to pass all of their control costs forward to consumers since they would be under increased competitive pressure from the larger terminal operations. It was estimated that up to 200 of the 264 affected terminal operations will have difficulty either absorbing control costs or passing along these costs to consumers under the proposed standard.

The potential economic impact on marine vessel owners is relatively small. Average control cost per barrel for tankers shipping crude oil or refined products was estimated to be $0.002 per barrel while owners or barges shipping refined products would face control costs of $0.08 per barrel. Because 77 percent of U.S. marine-transported petroleum product volume would be affected by these proposed standards, a significant percentage of U.S. marine vessels will need to be retrofitted. The vessels least costly to modify (most likely the larger, newer, double-skin vessels) will be retrofitted first, leading to a significant degree of dedicated service. It is expected that vessel owners that do retrofit will be able to pass retrofit costs forward to consumers.

As discussed above, a primary concern in the implementation of these proposed regulations is safety. Though section 112 of the Act does not specifically address U.S. Coast Guard regulations on safety, the EPA has endeavored to make sure that safety factors are adequately addressed and that nothing in the proposed regulations, whether proposed under section 183(f) or 112, is inconsistent with current U.S. Coast Guard regulations.

In addition, section 183(f)(2) of the Act requires that any regulations promulgated by any State or political subdivision regarding emissions from the loading and unloading of tank vessels must be consistent with U.S. Coast Guard regulations regarding safety. This consistency requirement is equally applicable to any State or local regulation promulgated under the authority of the Clean Air Act section 112. Moreover, section 112(l) requires that the Administrator disapprove any program submitted by a State if the Administrator determines that the program is not likely to satisfy the objectives of the Act. The EPA believes that any State or local program that is inconsistent with U.S. Coast Guard safety regulations is "not likely to satisfy the objectives of the Act" and would therefore be disapproved by the Administrator.

F. Selection of Format for the Standards

The chosen format for the standards is a percent of mass emissions reduction. The percent of mass reduction format allows a focus on the final control device after good capture has been ensured. This approach is consistent with the benzene NESHAP (40 CFR part 61 subpart BB). Sufficient data to develop a mass per unit loaded standard were not available. Additionally, emission rates can vary between facilities and between vessels based on loading temperature and the arrival condition of the vessel, making it difficult to set an acceptable mass per unit loaded standard while ensuring good capture and control. Developing a mass per unit loaded standard would have required extensive testing and would need to be more stringent than the percent of mass reduction format in order to accommodate the varying terminal and vessel conditions. For this reason, a mass per unit loaded alternative is not being proposed.

The primary format, mass emissions reduction, for the MACT standards is the same as the RACT standards. However, because the MACT standards allow the source the flexibility to control only the portion of total facility emissions needed to meet the 93 percent reduction requirement, facilities may choose to calculate both potential uncontrolled and actual controlled emissions as part of the compliance demonstration.

Emissions from ballasting operations would be prohibited.

G. Selection of Test Methods

The proposed standards require the use of approved test methods to ensure consistent and verifiable results for initial performance tests and compliance demonstrations.

Different test methods are specified for combustion and recovery devices. For combustion devices, Method 25 of 40 CFR part 60, appendix A (Method 25) has been specified. Method 25 is appropriate for measuring the VOC destruction efficiency of combustion devices whose output is greater than 50 ppmv. Given the large inlet concentrations associated with marine loadings, outlet concentrations of less than 50 ppmv are not expected.

For recovery devices, (Method 25A) of 40 CFR part 60, appendix A (Method 25A) has been specified. The (Method 25A) is appropriate for measuring the VOC removal efficiency of a nondestructive control device. Method 25A may be used for testing both removal efficiency and outlet concentration.

Because emissions and control efficiency also vary during the loading cycle, the EPA has determined that performance tests should be conducted to include the loading of the last 20 percent of a compartment, and may be spread out over multiple compartments. Data show that the greatest emissions occur during the last 20 percent of loading of a tank or compartment. The EPA believes that the control equipment should be designed to handle the peak loading emissions, which occur during this period.

The proposed standards also allow the use of any test method or test results validated according to the protocol in Method 301 of 40 CFR part 63, appendix A to allow owners or operators greater flexibility in testing.

Under today's proposed standards, owners or operators not having documentation of vessel vapor tightness would be required to test the vapor tightness of vessels using a pressure test provided in the regulation, or a leak test provided in Method 21 of 40 CFR part 60, appendix A. Methods are also provided for owners or operators loading under negative pressure. These test methods were first proposed for owners or operators of benzene transfer operations on September 14, 1989 (54 FR 38083) and were promulgated on March 7, 1990 (55 FR 8292). In the proposal of the benzene transfer operations NESHAP, comments were specifically requested regarding the suitability of these methods for these sources. Based on the comments received on these methods and the Agency's knowledge of the use of these methods under the benzene transfer NESHAP, the Agency is confident that these methods are suitable for determining vapor tightness for today's proposed regulation.

Regarding the emission estimation procedures to be followed in determining compliance with the proposed standards, the Agency is proposing that facilities use either actual test data or AP–42 emissions factors to identify emissions from the various commodities and streams loaded. The Agency is requesting comment on this approach for estimating emissions.

H. Selection of Monitoring and Compliance and Performance Testing Requirements

The proposed standards list parameters to be monitored for the purpose of determining compliance. Monitoring requirements are proposed for both the vapor collection system and control devices. The vapor collection system monitoring requirements ensure that vent streams will not be diverted from the control device through the use of flow indicators or routine inspection of secured by-pass lines. While many forms of monitoring may qualify as enhanced monitoring, enhanced monitoring for tank vessel loading vapor control systems will generally be limited to a continuous control device parameter monitoring system, a continuous emissions monitoring system (CEMS), portable monitors, or a combination thereof.

The monitoring criterion for carbon adsorption is a CEMS for VOC concentration at the exhaust to atmosphere. The compliance condition will be no exceedance of the average concentration demonstrated during the facility's last compliance test. This monitoring criteria does not correspond precisely to the 95 percent reduction requirement, however it will be less costly to install and maintain than a system monitoring inlet and outlet and calculating removal efficiency.

The monitoring parameter for combustion devices, except flares, is combustion temperature. Combustion temperature is a strong indicator of performance. The temperature to be maintained will be determined from the facility's compliance test. For compliance purposes, temperature variation is limited to ±5.6°C (±10°F) compared to the average temperature during the most recent compliance test.

The monitoring parameter for condensers is the exhaust stream temperature. Exhaust temperature directly correlates to exhaust concentration and is easier to monitor than outlet concentration. Coolant temperature was not chosen because it provides no guarantee of heat transfer efficiency or control efficiency. As with combustion devices, temperature deviations from the operating parameters established during the most recent compliance test are limited to ±5.6°C (±10°F).

The monitoring requirements for flares are established in 40 CFR 60.18, which requires the owner or operator to monitor for the presence of a flame at all times.

The monitoring parameters for absorbers are the temperature and specific gravity of the scrubbing liquid. Deviations from the operating parameters established during the most recent compliance test are limited to 11°C (20°F) above the baseline scrubbing liquid temperature and ±0.1 unit from the baseline scrubbing liquid specific gravity respectively.

Finally, in order to not prohibit the use of other control devices or new technology, a facility not using a control device for which enhanced monitoring criteria have been included may develop its own monitoring criteria and submit them to the Administrator for approval.

The Agency is also proposing alternative means of monitoring compliance with the standards at terminals using recovery devices for control of gasoline vapor emissions. These terminals would monitor the outlet concentration of VOC from the recovery device. Compliance with the standards is indicated provided that the VOC concentration is 1,000 ppmv or less. The EPA believes the 1,000 ppmv limit for gasoline vapor is generally more strict than the 95-percent control device efficiency requirement. Data from an existing facility show this limit to be achievable (Docket A–90–44, item II–B–13). The intent of the concentration alternative is to allow those facilities that operate at a higher efficiency than required by the proposed standard to perform a simpler compliance test, as they would only have to test at the outlet of the control device. The EPA does not have sufficient data to determine a ppmv emission limit for controlling VOC vapors from crude oil emissions. Nor does the EPA have sufficient data to determine a ppmv emission limit for controlling HAP vapors from crude oil emissions or other commodities. The EPA is soliciting data and comments regarding a ppmv limit for controlling non-gasoline VOC and HAP emissions and whether carbon adsorption would be used to control emissions from crude oil and other commodities.

I. *Selection of Recordkeeping and Reporting Requirements*

For enforcement purposes, it is necessary to require records and reports of various parameters at all facilities. Two types of records would be required to ensure compliance of facilities required to install controls: (1) Monitoring results from the most recent performance test and (2) results from periods when the measurement of parameters significantly deviated from measurements of the same parameters during the most recent performance test. Reports of those periods when monitored parameters were significantly outside the specified range would be submitted quarterly. These reports are necessary to ensure that the control equipment is maintained in good operating condition.

Additionally, owners or operators would be required to keep vapor tightness documentation for marine vessels loaded on file in a permanent form available for inspection. The owner or operator would be required to update the vapor tightness documentation at least once per year to ensure that only vapor tight marine vessels are loaded.

Owners or operators of affected facilities seeking to demonstrate compliance with the 93 percent emission reduction standard must maintain records of their determination of HAP control efficiency and must submit quarterly reports of the source's HAP control efficiency calculated from their actual throughputs. The Agency is soliciting comment on these requirements. Specifically, the Agency requests information on the type and method of documentation that should be required to assure compliance with the 93 percent emission reduction standard.

J. *Solicitation of Comments*

The Administrator specifically requests comments on the topics discussed in this section. Commenters should provide available data and rationale to support their comments on each topic.

1. Subcategories

The Agency has proposed to establish a subcategory for terminals emitting less than 1 Mg/yr of HAP. The Agency is also requesting comment on whether off-shore terminals and the Valdez Marine Terminal should be placed in separate subcategories under section 112 of the Act. The Agency requests comment regarding whether subcategories should be established for other types of terminals based on particular characteristics of these types of terminals of which the Agency currently has no information. EPA also requests comments on whether further subcategorization based on size is warranted.

a. *Offshore terminals.* The Agency does not believe that a facility which is at least one-half mile offshore is part of a land-based contiguous site. Offshore terminals (both those with subsea lines and platforms) that are part of a contiguous terminal (i.e., offshore terminals less than 1/2 mile from shore) present unique regulatory challenges such as the cost and environmental impacts of installing additional subsea lines to carry vapors to land-based equipment. Size constraints, permitting difficulties, and other concerns may be issues with an offshore control system. The EPA is proposing that offshore terminals exceeding the throughput cutoffs and emission limits be subject to the proposed regulations and control vapors to the same extent as onshore facilities. The EPA is soliciting information and comments regarding the feasibility and cost of controlling emissions from offshore terminals. Comments are also requested on the grouping of offshore facilities into a separate subcategory with different control requirements under MACT.

b. *Additional subcategory for the valdez marine terminal.* On December 29, 1993, the Alyeska Pipeline Service Company ("Alyeska") sent a letter to the Agency regarding this proposed rule (see Docket A–90–44, item II–D–65). In the letter, Alyeska discussed an alternative regulatory approach that would allow the use of less stringent controls at Alyeska's Alaska Valdez Marine Terminal (VMT). Alyeska "believes that the optimal vapor emission control system for the VMT is a system that captures and recovers vapors from tanker loading, rather than one that incinerates captured vapors." Alyeska believes that it can successfully design a vapor recovery system for the VMT but intuitively believes that the emission reduction that such a system can achieve will be less than the percentage emissions reduction achieved by significantly smaller systems and particularly those which address emissions from refined petroleum products rather than crude oil. Alyeska also believes that a vapor recovery system for the VMT is unlikely to meet today's proposed requirements of a 95-percent emission reduction of VOC and HAP for recovery devices under section 183(f) and section 112, respectively. In addition, Alyeska states that the VMT should be placed in a separate category or subcategory under section 112(d) because Alyeska believes the VMT is unique among U.S. marine terminals.

Alyeska has also suggested separately (see Docket A–90–44, item II–D–71) that a recovery device may be available to VMT that could meet a HAP emission reduction requirement approaching 93 percent but that would likely not meet a VOC reduction requirement above 70 percent. Alyeska suggests that as it is located in an ozone attainment area in an extreme northern climate where formation of ozone is not a practical concern, a lesser VOC reduction requirement may be reasonable under section 183(f). The proposed format for the Section 112 emission limit requires the VMT to reduce all the crude emissions by 95 percent when using a recovery device. The EPA requests comments on whether this format could be changed to allow for a 93-percent reduction of emissions for less efficient control technologies.

The EPA made no changes to the proposed standard in response to Alyeska's letter. However, the EPA is seeking public comment on the issues addressed by Alyeska. In addition, Alyeska intends to provide the EPA with further documentation supporting its position before the end of the public comment period. The EPA will consider this new information in addition to currently available information in deciding the final standard. Currently available information which will be considered is described in the following paragraphs.

Section 183(f) requires the application of RACT considering "costs, any non-air quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques." Section 112(d) requires the application of MACT considering the "cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements." (In addition, as described previously, a minimum control level is specified, referred to as the floor.)

Section 112(c) requires the EPA to establish categories and subcategories of sources for regulation under section 112(d). In the EPA's notice of initial list of categories, the EPA stated that "a category of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule." (57 FR 31578, July 16, 1992). The EPA also noted that "criteria that may need to be considered in defining categories of similar sources include similarities in: process operations (including differences between batch and continuous operations), emissions characteristics, control device applicability and costs, safety and opportunities for pollution prevention" (57 FR 31580). To justify VMT being placed in a separate category or subcategory, it needs to be shown that VMT has distinctions that are relevant from a regulatory standpoint (given the restrictions of section 112), in determining whether the VMT can be regulated in a similar manner as other terminals.

The VMT is the largest crude oil loading facility in the U.S. with hourly crude loading rates more than 15 times that of any other marine terminal. The VMT is one of only a few terminals which are exclusively used for crude oil loading.

Alyeska has acknowledged that it could use a combustion device at VMT to achieve a 98 percent reduction in emissions. However, Alyeska has raised concerns about the feasibility of recovering crude oil vapors with a 95 percent efficiency using conventional recovery devices such as carbon adsorbers.

According to Alyeska the design and construction of a vapor recovery system for the VMT would be technically more complicated than for any other marine terminal. This is because no existing vapor recovery system is currently operating on as large a vapor stream as the VMT terminal, there is great complexity in recovering crude oil vapor (as opposed to petroleum product vapor), and for reasons discussed in the following paragraph, a VMT recovery system would have to be designed to operate efficiently over a broad range of declining input volumes. In addition, the sub-Arctic climate of the region presents unique problems with regard to handling water vapor in terms of both complications on the technical processes by which crude oil vapors can be recovered and in terms of monitoring accuracy. Different and more complex operating parameters must be considered in the design and construction of a vapor recovery system that will operate effectively on the VMT crude oil stream because the number and range of volatility of the hydrocarbon components are greater in a crude oil stream than in a product stream. Alyeska believes that it may not be possible to achieve as high a recovery from a crude oil vapor stream as is achievable from a product vapor stream because of this difference in the number and range of volatility of the hydrocarbon components.

The throughput in the Trans-Alaskan Pipeline (TAP), which supplies the crude for loading at the VMT, is expected to decline such that the volume of vapors that must be handled by the VMT recovery system will decrease with time. In 1988 annual TAP throughput reached a peak of 2.14 million barrels per day. Throughput subsequently has declined to a current level of 1.62 million barrels per day (average year to date for 1993) and estimates indicate that production will continue to decline over the life of the now declining North Slope oil fields. An emission control system designed for the VMT needs to be able to operate efficiently over a broad range of declining input volumes. When considering declining throughput, a recovery system enables more design flexibility than an incineration system because recovery systems require enough contact with either surface area or scrubbing liquid to ensure high recovery; as flow decreases contact increases which marginally increases recovery. Therefore, a facility may design very large control units or smaller parallel units, both of which will function at design efficiency. An incinerator is not as flexible in operation as a recovery system. An incinerator requires proper mixing of the waste stream and the flame and mixing becomes poorer as flow rates decline. Large incinerators cannot be run at flow rates much lower than one half design rates without affecting mixing and corresponding combustion efficiency.

In addition the VMT will require the use of "active" detonation arrestors instead of "passive" detonation arrestors used at other marine terminals, due to the amount of vapors that must be collected and the distance between the vessel loading berths and vapor recovery facilities. Alyeska has developed active detonator arrestors that have been approved by the Coast Guard, because passive detonation arrestors would not protect a VMT type system from explosion.

Alyeska estimated that the additional amount of energy that could be conserved by recovering (instead of incinerating) tanker vapors at the VMT would be as great or greater than the energy that could be saved by recovering tanker vapors at all other U.S. crude oil loading marine terminals combined (about 250,000 barrels at current throughput). Both recovery and incineration result in other air pollutants including particulate matter (PM), sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and carbon dioxide (CO_2). Vapor recovery may be more advantageous when considering the overall contribution of all pollutants to the environment.

The proposed standard does not treat a facility such as the VMT as a separate category or subcategory. However, the EPA is still considering whether these characteristics described above are sufficient to warrant treatment of a facility like the VMT as a separate subcategory, and is requesting additional information and public comments on this issue. Comment is also requested on the extent to which these factors, largely related to recovery devices, should be considered if such a facility can use an incinerator. Additional information is sought on the extent to which factors such as a different detonator device are relevant to the decision. The EPA also invites comment on Alyeska's suggestion that a VOC reduction requirement less stringent than 95 percent is appropriate for a terminal in an ozone attainment area in an extreme northern climate where ozone formation is not a practical concern. The EPA will evaluate all information and comments submitted in making a final determination before promulgation of the standard.

Alyeska states that diminishing throughput could eliminate the need for control equipment at all berths in the future; if throughput continues to decline, the VMT will eventually be able to handle the entire throughput at only two berths instead of the four available berths. Alyeska has raised an issue concerning the need to control the berths normally not in use if they are used for "emergency purposes." The issue is independent of the choice of control systems and would not be considered in a determination of whether it is appropriate to put the VMT in a separate subcategory. However, the EPA may evaluate a regulatory approach which requires full control of emissions at the primary loading berths, but allows occasional use of uncontrolled berths. This type of regulatory scenario assumes that emissions from the uncontrolled berths would be negligible when compared to emissions to the controlled berths. For the EPA to evaluate such an approach requires VMT to provide detailed information on the impacts and tradeoffs for various scenarios of the controlled versus uncontrolled berths. The EPA is requesting comments on this type of approach, including the need to limit frequency of use or mass emissions, and the details that should be in the rule to ensure compliance.

If facilities with characteristics like the VMT were in a separate subcategory, the MACT floor would appear to be no control. The EPA would consider requiring control levels more stringent than the MACT floor. The tradeoffs between incineration and vapor recovery would be considered in this determination, and also in the determination of RACT under section 183(f). The declining throughput and its affect on the number of berths would also be considered in this decision.

Alyeska is still studying the total impacts associated with vapor recovery systems. Currently, Alyeska has not yet provided the EPA with the control efficiency of the recovery process, the energy requirements, costs, or the secondary pollutants associated with recovery; nor has Alyeska provided evidence showing that a 93 or 95 percent reduction in emissions of HAP using a recovery device is infeasible at VMT. Moreover, given that the EPA's definition of VOC does not include methane and ethane, there is some question as to whether a 95 percent reduction in VOC is in fact possible using recovery at the VMT. Additional information is also needed on the declining throughput, its effect on the number of berths controlled, and the tradeoffs involved. The EPA could possibly consider the trade-offs among HAP, VOC, PM, SO_X, NO_X, CO and CO_2 in addition to energy savings when evaluating recovery versus incineration. The EPA invites comment on whether a regulatory approach that would allow the use of a less stringent vapor recovery system at the VMT is permissible and appropriate under the Act. Such comments should include the consideration of tradeoffs between HAP, other pollutants, energy, and whether consideration of such tradeoffs is permissible under sections 112 and 183(f). Before promulgating a final rule, the EPA will evaluate all additional information, data, and comments submitted. Based on this evaluation, the promulgated standards could be set at the proposed RACT and MACT levels, but the EPA will examine all information relevant to including a separate subcategory for large crude terminals and establishing a different MACT level for each subcategory.

2. Ballasting Emissions

In preparing today's proposed rule the Agency has assumed that the prohibition of ballasting emissions does not contain any impacts for industry because of the U.S. Coast Guard regulations requiring segregated ballasting tanks. The Administrator is soliciting comments and data that might indicate that there are potential impacts to certain classes of vessels, particularly those carrying noncrude oil product. In addition, the Administrator encourages comment on how a prohibition of ballasting emissions could be implemented most effectively.

3. Alternative Concentration-Based Compliance Determination

For terminals that use recovery devices for control of gasoline VOC and/or HAP emissions, the EPA is proposing an alternative means of compliance to the proposed standards. The EPA is soliciting data and comments regarding a ppmv limit for controlling non-gasoline VOC and HAP emissions and whether carbon adsorption would be used to control emissions from crude oil and other commodities.

4. Vessel Tightness Testing

The proposed standards require vessels to undergo one of three tightness tests at least every 12 months. The Administrator is soliciting data on the frequency of leaks on marine vessels to determine whether the interval between tests is appropriate. The Administrator is also requesting data on the effectiveness of requiring vessels to undergo one of these three tightness tests.

5. Procedures to Estimate HAP Emissions

The TSD describes the limited data regarding marine vessel loading emission factors available to the Administrator to use in estimating HAP (or VOC) emissions from marine vessel loading operations. While these data are sufficient to estimate emissions as part of regulatory impact analyses, they may not be sufficient for the Administrator to require the use of specific emission factors in the emission estimation alternative allowed under the proposed part 63 standards for existing sources. For this reason, facilities wanting to take advantage of this alternative will develop and submit documentation of emission estimates on a case-by-case basis. The Administrator requests that commenters submit data on possible emission factors and/or alternative emission estimation procedures for consideration in the final rule.

6. RACT Standard of 93 Percent Reduction

As discussed above, for those sources regulated under section 183(f) of the Act, the EPA is requiring that such sources reduce emissions at their facility overall by 95 percent if using a recovery device or by 98 percent if using a destruction device. Nevertheless, the Agency specifically decided not to increase the stringency of its MACT standard, for those existing sources regulated under section 112, beyond a reduction level of 93 percent because the cost effectiveness level of such an increase would not be reasonable.

The Agency believes that it is reasonable, given the associated cost effectiveness values, to require the facilities regulated under section 183(f) (the largest terminals of their kind in the U.S.) to reduce emissions by 95 or 98 percent, despite the fact that the Agency is requiring only 93 percent reduction for the terminals regulated under section 112. However, the EPA understands that it is unusual for a RACT standard for any single source to be more stringent than a MACT standard for that source, as it may be for certain sources regulated under both sections 112 and 183(f).

The Agency requests comment on whether the analysis performed for regulation of sources under the MACT standard of section 112 is equally valid under the RACT standard of section 183(f). That is, given the cost effectiveness values associated with decreasing the stringency of the RACT standard from 95 or 98 percent control to 93 percent control, would it be reasonable, "considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors," for the Agency to promulgate a standard of 93 percent control for those sources regulated under section 183(f), in addition to those sources regulated solely under section 112?

7. Carbon Bed Regeneration Emissions

In the proposed regulation, the Agency is prohibiting HAP emissions from the regeneration of a carbon bed when a carbon bed adsorber is used to control HAP emissions. The Agency is requesting comment on this requirement.

Specifically, the Agency requests comment on the degree to which steam stripping (in which steam is used to regenerate these carbon beds) is used at affected sources.

8. MACT Floor Determination

In a March 9, 1994, **Federal Register** notice reopening the public comment period for determination of "MACT floor" for NESHAP source categories (59 FR 11018), the Agency considered more than one interpretation of the statutory language concerning the MACT floor for existing sources and solicited comment on them. The MACT floor decision that the EPA will make on the basis of this March 9, 1994, notice will have broad precedential effects, and will presumptively be followed by the Agency in any rulemakings subsequently promulgated under Title III of the Act. The MACT floor determinations proposed in today's rulemaking may therefore be affected by the Agency's final interpretation of "MACT floor."

Sections 112(d)(3) (A) and (B) of the Act require that the EPA set standards no less stringent than "the average emission limitation achieved by the best performing 12 percent of the existing sources" if there are at least 30 sources in a category, or "the average emission limitation achieved by the best performing 5 sources" if there are fewer than 30 sources in a category. During the development of this proposed rule, the EPA considered two interpretations of this statutory language. One interpretation groups the words "average emission limitation achieved by" together in a single phrase and asks what is the "average emission limitation achieved by" the best performing 12 percent. This interpretation places the emphasis on "average." It would correspond to first identifying the best performing 12 percent of the existing sources, then determining the average emission limitation achieved by these sources as a group. Another interpretation groups the words "average emission limitation" into a single phrase and asks what "average emission limitation" is "achieved by" all members of the best performing 12 percent. In this case, the "average emission limitation" might be interpreted as the average reduction across the HAP emitted by an emission point over time. Under this interpretation, the EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This interpretation would correspond to the level of control achieved by the source at the 88th percentile if all sources were ranked from the most controlled (100th percentile) to the least controlled (1st percentile). For today's proposed regulation, the Administrator is using the first interpretation described above, which interprets the statutory language to mean that the MACT floor for existing sources should be set at the level of control achieved by the "average" of the best performing 12 percent.

In establishing the MACT floor for today's proposed regulations, the EPA also considered two possible meanings for the word "average" as the term is used in section 112(d)(3) (A) and (B) of the Act. First, the EPA considered interpreting "average" as the arithmetic mean. The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The EPA determined that the arithmetic mean of the emissions limitations achieved by the best performing 12 percent of existing sources in some cases would yield an emission limitation that fails to correspond to the limitation achieved by any particular technology. In cases where this limitation existed, the EPA decided not to select this approach. The EPA also considered interpreting "average" as the median emission limitation value. The median is the value in a set of measurements below and above which there are an equal number of values (when the measurements are arranged in order of magnitude).

For the subcategory of sources emitting 1 Mg/yr or more of HAP, the Agency determined that the derived arithmetic mean, for all practical purposes, is equivalent to recovery technologies and thus the Agency used the mean to determine the MACT floor for this subcategory. The EPA selected the median for the subcategory of sources emitting less than 1 Mg/yr of HAP because the arithmetic mean yields a value that does not correspond to a particular emission control technology.

The EPA solicits comment on its interpretation of "the average emission limitation achieved by the best performing 12 percent of the existing sources" (section 112(d)(3)(A) of the Act) and its methodology for determining the MACT floor.

9. Monitoring Parameters

The proposed standard requires that terminals using a combustion device to comply with the standard monitor the combustion temperature computed every hour as an hourly average, and every third hour as a 3-hour block average. Operation of the affected source in deviation of the baseline temperature developed during the compliance test in excess of 5.6°C (10°F) constitutes noncompliance with the standard. The baseline temperature is averaged over the loading cycle. The Agency believes that it is appropriate to average temperatures measured during the compliance test to establish a baseline temperature to which monitored data can be compared. The Agency is soliciting comments on the effect of the proposed averaging times on the parameter's effectiveness in ensuring compliance with the proposed standards.

IV. Administrative Requirements

A. Public Hearing

The EPA will hold a public hearing to discuss the proposed standard in accordance with section 307(d)(5) of the amended Act. Persons wishing to make oral presentation on the proposed standards for marine tank vessel loading operations should contact the EPA at the address given in the **ADDRESSES** section of this preamble. The EPA will limit oral presentations to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Send written statements to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket A–90–44.

The EPA will make a verbatim transcript of the hearing and written statements available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the amended Act).

C. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed standard have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1679.01), and interested parties may obtain a copy from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 265 hours per respondent per year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final standard will respond to any OMB or public comments on the information collection requirements contained in this proposal.

2. Executive Order (E.O.) 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because an annual effect on the economy of $100 million or more is anticipated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980) requires consideration of the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of this Act is to ensure consideration of regulatory alternatives that might mitigate adverse economic impacts on small entities. If a preliminary analysis indicates that a proposed regulation is likely to have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis must be performed to examine alternatives that might lessen such effects.

The EPA performed an economic impact analysis of the MACT determination considered for this regulation, which included a preliminary assessment of the potential adverse impacts on small entities. Two types of businesses were identified that could incur adverse small business impacts: marine terminal operations and marine vessel operations.

With regard to marine terminal operations, the proposed standards exempt facilities with HAP emissions of less than 1 Mg/yr. This reduces the number of impacted terminals from approximately 1,450 to 264. These exemptions allow the smallest operations to avoid installation of controls. These exemptions greatly reduce per-barrel control cost differentials that, as indicated in the economic impact analysis, would make it difficult for owners of the smallest terminals to pass forward control costs to consumers had no or fewer exemptions been made. With the proposed standards, however, it is expected that a large portion (up to 200) of the 264 regulated terminals will only be able to pass a fraction of the control costs on to consumers in the form of higher prices. This condition is attributable to the EPA's assumption that loading costs will increase by the average cost of control, that terminals are competitive and that higher than average control cost terminals will have to absorb those differences. Thus, the economic impact on these terminal owners is expected to be significant because of the impact of cost absorption on profitability and/or difficulty in raising capital for the control system. On the other hand, of those 200 terminals, it is expected that many are part of large integrated petroleum operations, have easier access to capital and will remain open. Some with higher than average control costs will also be in a position to raise their prices as much as their control costs because of favorable locations or other market conditions. However, the overall number of small business terminal operations significantly affected by this regulation is expected to be substantial.

With regard to marine vessel operations, the economic impact analysis considered all of these operations to be small businesses. The number of vessel operations estimated to be impacted by the proposed standards is expected to be substantial since a significant percentage of the petroleum products transported via marine vessels will be affected by the standards. Excluding volume from the three large crude oil terminals affected (these terminals are served by large oil tankers with insignificant estimated retrofit costs ($0.002/bbl), 77 percent of the U.S. marine transported throughput of controlled products and crude oil will be affected by the standards. That same volume percentage of the fleet marine vessels will need to be retrofitted to service regulated terminals. It is expected, however, that many of these vessel owners will be able to pass forward retrofit costs in the form of higher transport prices.

The Agency has therefore judged that a significant economic impact on a substantial number of small entities (namely terminals) will likely result from the proposed standards and that a regulatory flexibility analysis should be performed.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Tank vessel standards.

Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, 183(f) and 301 Clean Air Act, as amended; 42 U.S.C. 7401, 7411, 7414, 7416, 7511b(f), and 7601.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-10974 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC09

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period for Proposal to List the Lake Erie Water Snake (Nerodia sipedon insularum) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that two public hearings will be held on the proposed determination of threatened status for the Lake Erie water snake (*Nerodia sipedon insularum*) and that the comment period on the proposal is reopened. The hearings and reopened comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The first public hearing will be held from 7 to 9 p.m. on Tuesday, May 31, 1994, in Put-in-Bay, on South Bass Island, Ohio. The second public hearing will be held from 7 to 9 p.m. on Wednesday, June 1, 1994, in Port Clinton, Ohio. The comment period will close on June 16, 1994.

ADDRESSES: The May 31, 1994, public hearing will be held at the Village Hall, Catawba Avenue, Put-in-Bay, Ohio. The June 1, 1994, public hearing will be held at Port Clinton High School, 821 S. Jefferson Street, Port Clinton, Ohio. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111-4056. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing contact Kent Kroonemeyer, Supervisor, U.S. Fish and Wildlife Service Ecological Services Field Office, 6950-H Americana Parkway, Reynoldsburg, Ohio 43068-4415 (614/469-6923; fax 614/469-6919).

SUPPLEMENTARY INFORMATION:

Background

The Lake Erie water snake is found on the islands of western Lake Erie and the adjacent mainland of Ohio and Ontario, Canada. It has been proposed for listing as a threatened species due to strong evidence that its numbers have declined dramatically, primarily as a result of the destruction of its habitat and human persecution, and that the threats to the habitat and to the snakes themselves are continuing.

The **Federal Register** notice announcing the proposing of the Lake Erie water snake for classification as a threatened species was published on August 18, 1993 (58 FR 43857). The original comment period ended on November 16, and the deadline for receipt of public hearing requests was October 4. On October 12, 1993 (58 FR 52740), a second notice was published extending the comment period until November 16, 1993.

On October 5, 1993, the Service received a request for a public hearing on this proposal from Donald J. McTigue, representing Baycliff's Corporation. A second request for a public hearing was received by the Service on October 13, 1993, from H. R. Clagg, President of the Johnson's Island Property Owners' Association. The Service has scheduled two hearings in the area potentially affected by the listing proposal. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service. Oral and written comments receive equal consideration.

In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted until June 16, 1994, to the Service office in the **ADDRESSES** section or at the public hearing.

Author

The primary author of this notice is Ronald L. Refsnider, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111-4056 (phone 612-725-3276; fax 612-725-3526).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et. seq.*).

Dated: May 9, 1994.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94-11660 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 940414-4114; I.D. 032494B]

Marine Mammals; Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and subsistence harvest estimates for the Pribilof Islands.

SUMMARY: NMFS is required to publish an estimate of the number of seals expected to be harvested in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK, pursuant to the regulations governing the subsistence taking of northern fur seals. The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents and to restrict taking by sex, age, and season for herd management purposes. This notice estimates the number of seals to be taken in 1994. This notice also proposes to amend existing fur seal regulations, making the harvest take estimates applicable for 3 years instead of 1 year. This proposed amendment is based on the fact that a relatively consistent number of fur seals has been harvested each year since 1989, and that NMFS does not expect subsistence needs to increase such that takes for subsistence purposes will exceed the established upper limit of the subsistence harvest estimate range first established for the 1992 harvest.

DATES: Written comments must be received by June 13, 1994.

ADDRESSES: Comments should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, (F/PR), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, (907) 586-7235, or Margot Bohan, (301) 713-2322

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, AK, is governed by regulations found in 50 CFR part 215, subpart D—Taking for Subsistence Purposes. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents and to restrict taking by sex, age, and season for herd management purposes. To minimize negative effects on the Pribilof Islands fur seal population, the harvest has been limited to a 47-day season (June 23–August 8) and is restricted to only subadult male fur seals.

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the previous year's fur seal harvest (1993 harvest results were published on November 1, 1993 (58 FR 59297)), and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK.

The projected estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice, and the Assistant Administrator for Fisheries, NOAA (AA), determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied (50 CFR 215.32(e)(3)). Conversely, the harvest can be terminated before the lower end of the range is reached if it is determined that the annual subsistence needs of the Pribilof residents have been met or the harvest has been conducted in a wasteful manner.

Subsistence Estimates and Trends

The number of northern fur seals harvested on St. Paul Island since 1986 has ranged from 1,077 (1990) to 1,710 (1987) (Table 1). The annual subsistence takes on St. George Island since 1986 have ranged from 92 (1987) to 319 (1993) seals (Table 1). Within the past 3 years, however, the number of fur seals harvested annually has been relatively consistent. Since 1991, the average number of seals harvested each year on St. Paul and St. George Islands has been 1,548 (range: 1,482–1,645) and 265 (range: 194–319), respectively (Table 1). Furthermore, the actual number of animals harvested has never reached the upper end of the estimated range. In 1992, for example, only 194 of the 365 fur seals originally estimated for subsistence need during that year were taken on St. George Island. In 1993, only 319 of the 407 seals requested were taken to meet the subsistence needs of St. George residents.

TABLE 1.— Subsistence Harvest Levels for Northern Fur Seals on the Pribilof Islands, 1985–1993

Year	Subsistence estimates		Actual harvest levels	
	St. Paul	St. George	St. Paul	St. George
1985			3,384	329
1986	2,400–8,000	800–1,800	1,299	124
1987	1,600–2,400	533–1,800	1,710	92
1988	1,800–2,200	600–740	1,145	113
1989	1,600–1,800	533–600	1,340	181
1990	1,145–1,800	181–500	1,077	164
1991	1,145–1,800	181–500	1,645	281
1992	1,645–2,000	281–500	1,482	194
1993	1,645–2,000	281–500	1,518	319

Estimate of Subsistence Need for 1994

NMFS has used the previous year's harvest levels as a baseline to estimate need in the current year. Household surveys have also been conducted by the tribal government on each island since 1992 to estimate, in part, the number of seals required to meet the subsistence needs of the Pribilof Islands residents (57 FR 22450, May 25, 1992, and 58 FR 32892, June 14, 1993). However, not all households can be assessed during a survey. Therefore, results of these surveys provide an index of need rather than an absolute estimate.

NMFS requested that the tribal government on each island determine the number of fur seals that each household would need for the coming year on January 13, 1994. This year's results were consistent with past subsistence harvest survey requests and take records. Therefore, NMFS proposes that the same estimate ranges be established for 1994 as were established for 1992 and 1993: 281–500 fur seals for St. George Island and 1,645 to 2,000 for St. Paul Island. NMFS' biologists will continue to monitor the entire harvest on St. George and St. Paul Islands to ensure that the harvest is carried out in a manner that fully complies with the regulations specified at 50 CFR 215.32.

As described earlier in this notice, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George Island and St. Paul Island may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 215.32(e)(1)(iii) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest levels is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs.

Proposed Modification to Fur Seal Regulations

In a notice published on August 1, 1991, NMFS acknowledged the need to develop other methods to monitor the subsistence harvest conducted on the Pribilof Islands (56 FR 36735). In a workshop conducted by NMFS on November 5, 1991, NMFS recognized the need to reevaluate the regulatory issues regarding subsistence, to determine whether changes in the fur seal harvest from a commercial endeavor to one for subsistence may have warranted a revision of the current management regime.

As a first step towards addressing these concerns, NMFS proposes an amendment to § 215.32 of the FSA regulations, allowing subsistence take estimates to be applicable for a 3-year period, beginning in 1994. During this 3-year period, NMFS will examine the current subsistence harvest management regime. The proposed amendment is based on the fact that the actual number of fur seals harvested each year since 1989 has been relatively consistent (Table 1), and the fur seal take has never exceeded the upper limit of the estimated range for subsistence need within any year of the harvest. Due to recent commercial development in the Pribilof Islands, NMFS anticipates that the subsistence needs will increase during the next 3 years, but, based on historical evidence to date, the annual subsistence needs are not expected to increase to levels exceeding the range established in the 1993 final estimate.

Classification

NMFS has determined that the approval and implementation of this proposed rule will not significantly affect the human environment, and that preparation of an Environmental Impact Statement on this is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations. This rule makes only minor changes to the regulations governing the taking of fur seals for subsistence purposes; this action does not entail significant substantive revision. Because this rule does not alter the conclusions of previous environmental impact analyses and environmental assessments, it is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment.

This proposed rule has been determined to be not significant pursuant to E.O. 12866.

The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only impact will be on individual native Alaskan residents of the Pribilof Islands due to revision of the schedule for estimating fur seal harvest levels from an annual estimate to an estimate applicable to a 3-year period. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: May 9, 1994.

Charles Karnella,

Acting Program Management Officer.

For the reasons set out in the preamble, 50 CFR part 215, subpart D, is proposed to be amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.32 is amended by revising paragraph (b) to read as follows:

§ 215.32 Restrictions on taking.

* * * * *

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the **Federal Register** a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next three years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

* * * * *

[FR Doc. 94–11615 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 651

[Docket No. 940532–4132; I.D. 041994D]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a revised part of Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP) for the winter flounder fishery (revised winter flounder exemption) that was initially disapproved on September 30, 1993. The New England Fishery Management Council (Council) has revised a provision that would exempt fishermen from some regulations for the winter flounder fishery, under certain conditions, if they are fishing only in state waters. The intended effect is to ensure adequate protection for winter flounder stocks, while minimizing the regulatory burden on fishermen.

DATES: Comments on this proposed rule must be received by June 4, 1994.

ADDRESSES: Send comments on the revised winter flounder exemption, proposed rule or supporting documents to Allen E. Peterson, Acting Regional Director, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Winter Flounder Exemption."

Copies of the revised winter flounder exemption, including the Environmental Assessment, are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Background

The Council submitted Amendment 5 to the FMP on September 27, 1993. Two measures in the amendment were disapproved on September 30, 1993—a haddock possession limit, and the provisions for winter flounder fishing in state waters. The remainder of Amendment 5 was approved on January 3, 1994. Pursuant to section 304(b)(3)(A) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Council has submitted the revised winter flounder exemption as described in this proposed rule. The Council's submission of a revised haddock possession limit is not contained in this action.

The disapproved measure for winter flounder established an exemption to the minimum mesh size and minimum fish size regulations when fishing for winter flounder in state waters, provided that a given state's regulations conformed with the Atlantic States Marine Fisheries Commission's (ASMFC) Winter Flounder Plan (ASMFC Plan). The original submission for winter flounder was disapproved because this provision was added to Amendment 5 without adequate analysis, was poorly defined, and would likely have increased mortality of winter flounder and other multispecies.

The revised winter flounder exemption, as described in this proposed rule, lists a detailed set of criteria under which a vessel holding a Federal Northeast multispecies permit may fish for winter flounder with mesh smaller than the minimum mesh requirement in the FMP, and retain winter flounder smaller than the minimum fish size for that species in the FMP.

Currently, Federal regulations for winter flounder apply to all federally permitted vessels whether they are fishing in state waters or Federal waters. When a federally permitted vessel is fishing for winter flounder in state waters, the more restrictive of either the state or Federal regulations applies. Thus, even if an overall state management program is more restrictive, an individual Federal regulation, such as a minimum mesh size, applies if it is more restrictive than the individual state regulation.

The regulations implementing Amendment 5 to the FMP (59 FR 9872, March 1, 1994), increased the minimum mesh size for fishing for any of the regulated multispecies finfish, including winter flounder, and applied it throughout the range of the species. Prior to Amendment 5, the minimum mesh size was 5½ inches (13.97 cm) in the Gulf of Maine, on Georges Bank, and a part of Southern New England, while elsewhere there was no minimum net mesh size. Under Amendment 5, the minimum mesh size requirement is 6 inches (15.24 cm) throughout the net in the Gulf of Maine and on Georges Bank, as of May 1, 1994. The minimum mesh size requirement is 5½ inches (13.97 cm) throughout the net in Southern New England in 1994, remaining 5½ inch (13.97 cm) diamond and increasing to 6-inch (15.24 cm) square in 1995, and thereafter. In the mid-Atlantic, the minimum mesh size requirement is 5½ inches (13.97 cm) as described in the summer flounder regulations under 50 CFR 625.24(a). Also under the amendment, the minimum size for winter flounder was increased from 11 inches (27.9 cm) to 12 inches (30.5 cm).

The ASMFC Plan was approved in May, 1992. The fishing mortality objectives of the ASMFC Plan, a maximum spawning potential (MSP) target of 30 percent by January 1, 1995, and an MSP target of 40 percent by January 1, 1999, are more restrictive than in the FMP for federally managed stocks (20 percent MSP). The ASMFC Plan allows individual states to utilize different measures to achieve these objectives. State plans must be reviewed by the ASMFC's Winter Flounder Technical Committee and approved by the ASMFC Winter Flounder Management Board as meeting the management objectives.

The Council proposes the winter flounder exemption on the basis that, while the management objectives of the ASMFC Plan are more conservative for winter flounder than those of Amendment 5, they may be achieved by a different set of measures than those in the FMP. Without the proposed exemption, a vessel would have to comply with the more restrictive elements of both the state and Federal regulations. Under these circumstances, compliance with both state and Federal rules simultaneously might impose an unnecessary regulatory burden on federally permitted vessels fishing in state waters for winter flounder that exceeds that which applies to either state-permitted vessels fishing exclusively in state waters or federally permitted vessels fishing in Federal waters. The purpose of the proposed action is to alleviate the cumulative impact of the regulations on fishermen, while still achieving the FMP's objectives for winter flounder and other regulated species of the FMP.

The proposed rule provides that a vessel holding a Federal multispecies permit may fish for winter flounder with mesh smaller than that specified in the regulations governing the multispecies fishery (50 CFR part 651), may retain winter flounder smaller than the minimum size allowed by those regulations, and may retain more than the possession limit of winter flounder, if certain conditions are met. These conditions are: (1) The fishing is conducted exclusively in the waters of the state from which the exemption certificate was obtained; (2) the vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size and minimum fish size for winter flounder; (3) the state's winter flounder plan has been approved by the ASMFC as being in compliance with the ASMFC Plan; (4) the state elects in writing to the Director, Northeast Region, NMFS (Regional Director), to participate in the exemption program; (5) the amount of regulated species, exclusive of winter flounder, on board a vessel issued a limited access permit that is fishing under the days-at-sea (DAS) program or under a DAS exemption program in §651.22(d), does not exceed the possession limit; (6) the vessel does not enter or transit the Exclusive Economic Zone (EEZ), unless the vessel is in a designated transit zone established by the Regional Director at the request of the coastal state; and (7) the vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

The exemption to Federal fishery regulations being proposed in this action would apply to minimum fish lengths, minimum mesh size, and the regulated species possession limit of winter flounder, in certain cases. A vessel must still comply with all other applicable Federal fisheries regulations while fishing for winter flounder under this exemption.

The intent of this revised version of the winter flounder exemption is to achieve conservation objectives under the FMP and the ASMFC Plan for winter flounder, and to meet conservation objectives under the FMP for other regulated species of groundfish as defined in the FMP, while still providing for the winter flounder exemption in state waters. The Council intends that any vessel holding a Federal multispecies permit under the FMP subject to requirements of the DAS program in the FMP will have its fishing activity in state waters for winter flounder credited towards its individual DAS or fleet DAS. This requirement should minimize the effect of fishing for winter flounder in state waters on other regulated species of groundfish.

Vessels fishing in state waters under the winter flounder exemption program would be subject to possession limits that would vary, depending on the vessel's gear type and the category of the Federal multispecies permit it holds. Vessels fishing with gillnets, vessels less than 45 ft (13.7 m) in length, and vessels under the individual or fleet DAS program may harvest an unlimited amount of winter flounder and not more than 500 lbs (226.8 kg) of the remaining regulated species other than winter flounder. Vessels using hook gear still would not be subject to any possession limits on multispecies. Vessels fishing with a possession limit only permit would be subject to the 500-lb (226.8-kg) possession limit for regulated species.

Classification

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this action will not have a significant impact on a substantial number of small entities. The action proposed by this rule will provide an undetermined amount of regulatory relief to affected fishing vessels, all of which are small entities. It is unknown how many vessels will choose to fish exclusively in state waters on a given trip if this rule is implemented.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 6, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 651.4, the last sentence of paragraph (d) is revised and a new paragraph (t) is added to read as follows:

§ 651.4 Vessel permits.

* * * * *

(d) * * * Except as provided for in §§ 651.20(i) and 651.23(f), if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

* * * * *

(t) *Certificate for winter flounder fishing in state waters.* A vessel permitted under this part and fishing for winter flounder in state waters under the minimum mesh size and minimum fish size exemptions described in §§ 651.20(i) and 651.23(f), respectively, must have on board a certificate issued by the state agency authorizing the vessel's participation in the state waters winter flounder fishing program.

3. In § 651.9, paragraphs (a)(1), (b)(1), (d), (e)(2) introductory text, (e)(14), (e)(16), (e)(17), (e)(23), and (g) are revised to read as follows:

§ 651.9 Prohibitions.

(a) * * *

(1) Possess or land multispecies finfish smaller than the minimum size as specified in § 651.23, unless exempted under § 651.23(f).

* * * * *

(b) * * *

(1) Possess or land more than the possession limit of regulated species per trip as specified under § 651.27, after accruing the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

* * * * *

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession limit only permit under § 651.4(c) to possess or land, per trip, more than 500 lbs (226.8 kg) of regulated species.

* * * * *

(e) * * *

(2) Possess or land regulated species in excess of the possession limit, per trip, as specified in § 651.27, unless:

* * * * *

(14) Fish with or possess within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is exempted under § 651.20(a)(3), (a)(4), or (i), or unless the vessel qualifies for the exemption specified in paragraph (e)(1)(ii) of this section.

* * * * *

(16) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(2), unless the vessel is exempted under § 651.20(i), the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or the vessel qualifies for the exemption specified in paragraph (e)(1)(ii) of this section.

(17) Fish with or possess, within the area described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(2), unless the vessel is exempted under § 651.20(i), possesses no more regulated species than the possession limit specified in § 651.27(a), the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or the vessel qualifies for the exemption specified in paragraph (e)(1)(ii) of this section.

* * * * *

(23) Import, export, transfer, land, or possess regulated species that are smaller than the minimum sizes specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exemption specified in paragraph (e)(1)(ii) of this section or the exemption specified in § 651.23(f).

* * * * *

(g) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 will be *prima facie* evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters or under the exemption specified in § 651.23(f) will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

4. In § 651.20, the first sentences of paragraphs (a)(2), (c)(2)(i), and (c)(2)(ii) are revised; paragraph (d)(2) is revised; and paragraph (i) is added, to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) *Mesh-size restrictions.* Except as provided in paragraphs (a) (3) through (5), (e), (f), and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the entire net. * * *

* * * * *

(c) * * *

(2) *Mesh-size restrictions.* (i) For 1994, except as provided in paragraphs (e), (f) and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. * * *

(ii) For 1995 and thereafter, except as provided in paragraphs (e), (f) and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. * * *

* * * * *

(d) * * *

(2) *Mesh-size restrictions.* Except as provided in paragraphs (e), (f) and (i) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter.

* * * * *

(i) *State waters winter flounder exemption.* Notwithstanding the provisions of paragraphs (a)(2), (c)(2), and (d)(2) of this section, a vessel holding a Federal multispecies permit under this part may fish for winter flounder in state waters with mesh size smaller than the minimum size required under this section, provided that: (1) The fishing is conducted exclusively in the waters of the state from which the exemption certificate was obtained;

(2) The vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size and minimum fish size for winter flounder;

(3) The state's winter flounder plan has been approved by the Atlantic States Marine Fisheries Commission (ASMFC) as being in compliance with the ASMFC Winter Flounder Fishery Management Plan;

(4) The state elects, in writing, to the Regional Director to participate in the exemption program described by this section;

(5) The amount of regulated species on board a vessel issued a limited access permit that is fishing under the days-at-sea (DAS) program or under a DAS exemption program in § 651.22(d), exclusive of winter flounder, does not exceed the possession limit specified in § 651.27(a);

(6) The vessel does not enter or transit the EEZ unless the vessel is in a designated transit zone established by the Regional Director at the request of the coastal state; and

(7) The vessel does not enter or transit the waters of another state unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

5. *In § 651.23, the introductory text of paragraph* (a) is revised, and paragraph (f) is added, to read as follows:

§ 651.23 Minimum fish size.

(a) Except as provided in paragraph (f) of this section, the minimum fish sizes (total length) for the following species are as follows: * * *

* * * * *

(f) *State waters winter flounder exemption.* Notwithstanding the provisions of paragraph (a) of this section, a vessel holding a Federal multispecies permit under this part and fishing in state waters may retain winter flounder smaller than the minimum size allowed under paragraph (a) of this section, provided that:

(1) The fishing is conducted exclusively in the waters of the state from which the exemption certificate was obtained;

(2) The vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size and minimum fish size for winter flounder;

(3) The state's winter flounder plan has been approved by the ASMFC as being in compliance with the ASMFC Winter Flounder Fishery Management Plan;

(4) The state elects, in writing, to the Regional Director to participate in the exemption program described by this section;

(5) The amount of regulated species on board vessels issued a limited access permit that is fishing under the DAS program, or under a DAS exemption program in § 651.22(d), exclusive of winter flounder, does not exceed the possession limit specified in § 651.27(a);

(6) The vessel does not enter or transit the EEZ unless the vessel is in a designated transit zone established by the Regional Director at the request of the coastal state; and

(7) The vessel does not enter or transit the waters of another state unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

6. In § 651.27, paragraph (a)(5) is added to read as follows:

§ 651.27 Possession limits.

(a) * * *

(5) *Exemption.* Notwithstanding paragraph (a)(1) of this section, a vessel issued a limited access permit under this part that is fishing under the DAS program or under a DAS exemption program in § 651.22(d), and under the state waters winter flounder exemption specified in § 651.20(i) and § 651.23(f), is not subject to the possession limit for winter flounder, but is prohibited from possessing on a vessel, or landing per trip, more than 500 lbs (226.8 kg) of regulated species, exclusive of the winter flounder. This exemption does not apply when a limited access vessel's owner or authorized representative declares the vessel out of the multispecies fishery specified in § 651.29(a)(1), or when a vessel fishing under the Individual DAS program has used up its DAS allocation.

* * * * *

[FR Doc. 94-11651 Filed 5-10-94; 4:11 pm]

BILLING CODE 3510-22-P

Notices

Federal Register
Vol. 59, No. 92
Friday, May 13, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Advisory Committee on Microbiological Criteria for Foods; Renewal

Office of the Secretary

[Docket No. 94–]

This notice announces the renewal of the National Advisory Committee on Microbiological Criteria for Foods. The Committee is being renewed in cooperation with the Department of Health and Human Services (HHS), and was recommended by a 1985 report of the National Academy of Sciences (NAS) Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods."

USDA is charged with the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these Acts, USDA is responsible for the wholesomeness and safety of meat, poultry, egg products and products thereof intended for human consumption. Similarly, the Secretary of HHS is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). Under this Act, HHS is responsible for ensuring the safety of human foods and animal feeds.

In order to continue to meet the responsibilities under the FMIA, PPIA, EPIA, and the FFDCA, the National Advisory Committee of Microbiological Criteria for Foods is being renewed. The Committee will be tasked with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing processes.

Renewal of this Committee is necessary and in the public interest because the development of a sound public policy in this area can best be accomplished by a free and open exchange of information and ideas among Federal, State, and local agencies; the industry; the scientific community; and other interested parties. The complexity of the issues to be addressed assures that more than one meeting will be required to accomplish the Committee's tasks.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the microbiological criteria for foods, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Service, and the Department of Defense's U.S. Army Natick Research and Development Center. Nominations for membership are based primarily on expertise in food science, microbiology, and other relevant disciplines.

For additional information, please contact: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2151, South Agriculture Building, 14th and Independence Avenue, S.W., Washington, DC 20250.

Done at Washington, DC, on April 22, 1994.

Wardell Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 94–11640 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–DM–M

Animal and Plant Health Inspection Service

[Docket No. 94–031–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Harbor Room of the Comfort Suites Laurel Lakes, 14402 Laurel Place, Laurel, Maryland 20707, (301) 206–2600. The Committee will meet on June 28–30, 1994. Sessions will be held from 8 a.m. to 5 p.m. on June 28 and 29, and from 8 a.m. to noon on June 30.

FOR FURTHER INFORMATION CONTACT: Dr. John Williams, Senior Staff Veterinarian, Emergency Programs Staff, Veterinary Services, APHIS, USDA, room 745, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8092.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (FAPD) advises the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal or poultry diseases in the event these diseases should enter the United States. FAPD also advises the Secretary of Agriculture on prevention of these diseases.

Tentative topics for discussion include: Trade issues; the world disease situation, including hog cholera in Mexico; screwworm eradication; the import and export of animals and animal products; regionalization and risk assessment in international trade; emergency response for food safety issues involving residues, natural disasters, or other threats; an avian influenza update; and bovine spongiform encephalopathy. FAPD will also develop recommendations and prepare comments on control and eradication guides for foot-and-mouth disease and other foreign animal diseases.

The meeting will be open to the public. Written statements concerning meeting topics may be filed with FAPD before the meeting by sending them to Dr. John Williams at the address listed under **FOR FURTHER INFORMATION CONTACT**. Written comments may also be filed at the time of the meeting. Please refer to Docket No. 94–031–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11679 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–024–1]

General Conference Committee of the National Poultry Improvement Plan (NPIP) and the NPIP Biennial Conference; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan (NPIP) and of the NPIP Biennial Conference.

PLACE, DATES, AND TIMES OF MEETING: The meeting and conference will be held at the Nashville Airport Marriott, 600 Marriott Drive, Nashville, Tennessee, 37214, (615) 889–9300. The General Conference Committee will meet on June 26, from 8 a.m. to 5 p.m. The Biennial Conference will meet on June 27 and June 28, from 8 a.m. to 5 p.m. each day and on June 29, 1994, from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, room 205, Presidential Building, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, this Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Tentative topics for discussion include proposed changes to the NPIP that would:

1. Provide for the culture of cull chicks, meconium and hatcher trays in egg-type flocks that have an environment positive for *Salmonella enteritidis* (SE).
2. Propose a voluntary program for SE-tested started poultry.
3. Provide for a mid-lay serological test of suspect breeding flocks for *S. pullorum* and *S. gallinarum*.
4. Provide for the retesting of pullorum-typhoid plate positive serum specimens with the tube agglutination test or the microagglutination test for pullorum-typhoid.
5. Add the laboratory protocol for the bacteriological examination of baby chicks.
6. Amend the U.S. S. Enteritidis Monitored program for egg-type chickens by disqualifying a breeding flock with an SE positive environment and require the monitoring of rodents.
7. Alter the number of birds monitored for *M. gallisepticum* (MG) in egg-type chickens.
8. Alter the number of birds monitored for *M. synoviae* (MS) in egg-type chickens.
9. Approve fishmeal as an animal protein source for egg-type chickens.
10. Approve fishmeal as an animal protein source for turkeys.
11. Provide for different sample sizes of birds screened for MG using the enzyme-labeled immunosorbent assay test (ELISA).
12. Provide for different sample sizes of birds screened for MS using ELISA.
13. Amend the age at which Exhibition Poultry, Game Birds, and Waterfowl (subpart E) are blood tested for pullorum-typhoid.
14. Create a new SE-free classification for meat-type chickens.
15. Establish a number of serum plate positive samples that will be examined using the hemagglutination inhibition (HI) and/or the serum plate dilution (SPD) test.
16. Establish a new MS clean-state status for turkeys.
17. Reduce the paperwork load on subpart E hatcheries.

The meeting and conference will be open to the public. The sessions will include the delegates to the Biennial NPIP Conference, representing State officials and poultry industry personnel from the 47 cooperating States. However, due to time constraints, the public will not be allowed to participate in the committee's discussions. Persons interested in expressing their views concerning the above topics, or other aspects of the NPIP, should send their written comments to Mr. Andrew Rhorer at the address listed under **FOR FURTHER INFORMATION CONTACT.** Written comments may also be filed at the time of the meeting. Please refer to Docket Number 94–024–1 when submitting your comments.

Written comments received by Mr. Rhorer may be inspected in room 205 of the Presidential Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 9th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11680 Filed 5–12–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, D.C.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 1, and Thursday, June 2, 1994, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 1 and 2, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, MD 21202–9990

AGENDA:

—Welcome and Update
—Overview of Meeting
—National Performance Review Security Issues
—NII Security and Privacy Issues
—NIST Update Briefing
—Considerations of Proposed Resolutions
—Pending Business
—Public Participation
—Discussion of September Meeting Agenda
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by May 27,

1994. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: May 9, 1994.

Samuel Kramer,

Associate Director

[FR Doc. 94–11730 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–CN–M

Announcing a Meeting of Fastener Quality Act Advisory Committee

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of advisory committee meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on June 14 and 15, 1994. The meeting will be for the purpose of discussing: (1) Final implementing regulations for the Fastener Quality Act; (2) plans for accrediting laboratories under the Act; (3) plans for enforcement of the Act, to include training of investigators; and (4) plans for regional workshops to address industry questions relating to the above areas.

DATES: The meeting will be held on June 14 from 8:30 a.m. to 5 p.m. and on June 15 from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at the Gaithersburg Hilton Hotel, Ballroom Salon, 620 Perry Parkway, Gaithersburg, MD.

PUBLIC PARTICIPATION: The meeting is open to the public. Attendance shall be on a first-come, first-serve basis in so far as seating is concerned, up to the reasonable and safe capacity of the meeting. The public may file written statements with the Advisory Committee at any time before or after the meeting. An effort shall be made to set aside a portion of the meeting for public participation. To the extent that the meeting time and agenda permits; interested persons will be allowed to present oral statements or to participate in the discussion.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building 221, Room A363, Gaithersburg, MD 20899, Telephone (301) 975–4500.

Dated: May 9, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–1173 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 940377–4077]

RIN: 0648–AG51

NOAA Climate and Global Change Program, Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Climate and Global Change Program represents a National Oceanic and Atmospheric Administration (NOAA) contribution to evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capability in global change research and prediction. The NOAA Program is a key contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Ressources. NOAA's program is designed to complement other agency contributions to that national effort.

DATES: Strict deadlines for submission to the FY 1995 process are: Letters of intent must be received at the Office of Global Programs (OGP) no later than June 14, 1994. Full proposals must be received at OGP no later than August 8, 1994.

Applicants should receive notification of the suitability of their intended proposals by June 30, 1994. Investigators who have not received notification by that date should contact the program office. The time from target date to grant award varies with program area. We anticipate that review will occur during the fall of 1994 and funding should begin during the early spring of 1995 for most approved projects. April 1, 1995, should be used as the proposed start date on proposals, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within 3 to 6 months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603, Attn.: Irma duPree.

FOR FURTHER INFORMATION CONTACT: Irma duPree, The Office of Global Programs, National Oceanic and Atmospheric Administration, at the address given above, phone: (301) 427–2089 ext. 712; fax: (301) 427–2073; OMNET: I.DUPREE, Internet: dePree@aogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that 30–35% of the total resources available ($84 million) anticipated in FY 1995 will support extramural efforts, particularly those involving the broad academic community. Approximately $20 million will be applied toward extramural grants and cooperative agreements already in progress and those proposals submitted in FY 1994 that were recommended for funding in FY 1995. Remaining funds, approximately, $9 million will be available for new grants and cooperative agreements. This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, primarily over a one, two or three year period. Actual funding levels may be subject to change depending on the final FY 1995 budget appropriation. The funding instrument will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project for which an award is to be made, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Program Authority

Authority: 49 U.S.C. 1463; 15 U.S.C. 313; 33 U.S.C. 883a. *et seq.;* 15 U.S.C. 2901; 15 U.S.C. 2921

(CFDA No. 11.431)—Climate and Atmospheric Research

Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of climate change and associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that these time scales can be studied with an acceptable probability of success and are the most relevant for fundamental social concerns. Predicting the behavior of the coupled ocean-atmosphere-land surface system will characterize NOAA's role in a successful national effort to deal with observed or anticipated changes in the global environment. NOAA has a range of unique facilities and capabilities that can be applied to Climate and Global Change investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged.

Program Priorities

In FY 1995, NOAA will give priority attention to individual proposals in the areas described below. Investigators are asked to specify clearly which of these areas is being pursued. The names, affiliations and phone numbers of relevant Climate and Global Change Program Officers are provided. Prospective applicants are encouraged to contact Program Officers for further information. Proposals should be sent to the NOAA Office of Global Programs rather than to individual Program Officers.

Atmospheric Chemistry—The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of atmospheric trace gases that influence the Earth's chemical and radiative balance. FY 1995 actions in Atmospheric Chemistry will focus on studies associated with the International Global Atmospheric Chemistry (IGAC) program of the IGBP. Proposals are solicited for the following: (i) (highest priority) the North Atlantic Regional Study (NARE), with emphasis on intensive field studies and modeling; (ii) the International Support Activity: intercalibrations/intercomparisons, with emphasis on the Nonmethane Hydrocarbon Intercomparison Experiment; (iii) the East Asian/North Pacific Regional Experiment (APARE), with emphasis on coordination of ground-based chemical measurements and diagnostic analyses and modeling of regional chemical processes. In addition, proposals are solicited for stratospheric/upper tropospheric ozone research, with an emphasis on the development or deployment of instruments capable of measuring key chemical compounds from high-altitude jet aircraft. For an information sheet containing further details, contact: Joel Levy, NOAA/Global Programs, 301/427-2089 ext. 756, OMNET: J.Levy, Internet: Levy@ogp.noaa.gov., or Fred C. Fehsenfeld, NOAA/Aeronomy Laboratory, Boulder, CO; 303/497–5819.

Climate Observations—A new FY 1995 Climate and Global Change program element is under consideration at this time. It will focus on ocean, atmosphere and land surface climate observations, measurement systems, and techniques and is expected to be a blend of former elements including Operational Measurements (OM), Long-Term Ocean Observations (L–TOO), Measurement Technique Development, and Solar Variability. Funding for new starts in this element in FY 1995 will be extremely limited, with no more than one or two new projects anticipated in the OM and L–TOO areas and no new projects in Measurement Technique Development or Solar Variability. OM anticipates a tightly focused program which addresses the development, validation, and implementation of high-quality, climate relevant data products derived from operational meteorological satellite and in-situ observing systems. Activities in the L–TOO focus will continue to be on observations for climate prediction, primarily at seasonal to interannual time scales. In parallel with ongoing data collection efforts, L–TOO will support design studies and observing system simulation experiments aimed at assessing the impact of ocean data on climate prediction. Because of the limited FY 1995 funding expected, investigators considering submitting a proposal are encouraged to contact program officials for preliminary discussion of ideas, and are urged to submit letters of intent prior to proposal submission. For further information on OM related projects, contact Bill Murray, NOAA/Global Programs, Silver Spring, MD; 301/427–2089 ext. 26. OMNET; W.Murray, Internet: murray@ogp.noaa.gov and Arnold Gruber, NOAA/NESDIS, Washington, D.C., 20233, 301/763–8127, and for L–TOO projects, contact Bill Woodward, NOAA, NOS/OES, Silver Spring, MD.; 301/713–2790, OMNET: W.Woodward, Internet: W.Woodward@omnet.com.

Atlantic Climate Change—The goal of this project is to determine the nature and influence of interactions between the meridional circulation of the Atlantic Ocean, sea surface temperature and salinity, and the global atmosphere. Proposals are sought in the following areas: (i) Studies using models or historical data to examine variability in the climate system resulting from interactions between the global atmosphere and the Atlantic Ocean; (ii) modeling of the maintenance and variability of the relatively warm upper layer water in the Grand Banks region and the sea surface temperature field of the tropical Atlantic, and what role these regions may play in the larger scale atmospheric and oceanic climate system; (iii) use of conceptual and numerical models to synthesize near surface data (e.g. surface drifters, XBTs and sea level) and data from the full water column (e.g. hydrographic, tracer and other data sets); (iv) documentation of the general characteristics of decadal/century modes of Atlantic climate variability through synthesis of information from both instrumental and proxy sources. For further information contact: David Goodrich, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 38, OMNET: D.Goodrich, Internet: Goodrich@ogp.noaa.gov.

Tracers and World Ocean Circulation Experiment Hydrography—As part of NOAA's contribution to WOCE, proposals are sought for tracer observations on WOCE hydrographic cruises. Of particular interest are studies employing transient tracers operating on decadal to centennial time scales, including chlorofluorocarbons, helium-3/tritium, and carbon isotopes. WOCE-related proposals will be jointly reviewed by NOAA and the National Science Foundation (NSF) as part of the interagency WOCE Program Announcement. Proposals for this element should be submitted directly to the NSF Ocean Sciences Division, using NSF format. For further information contact: David Goodrich, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 38, OMNET: D.Goodrich, Internet Goodrich@ogp.noaa.gov.

Ocean-Atmosphere Carbon Exchange Study (OCAES)—As part of NOAA's contribution to the Joint Global Ocean Flux Study (JGOFS) and as a continuing effort aimed at improving our understanding of the role of the ocean in sequestering the increasing burden of anthropogenically derived carbon dioxide in the atmosphere, proposals are sought for the planning NOAA research cruises in the Indian Ocean/Arabian Sea (FY 1995) and along 170° West longitude in the South Pacific Ocean (FY 1996). Proposals addressing the measurement of specific chemical variables including alkalinity, pH, nutrients, dissolved organic carbon, dissolved organic nitrogen, primary productivity and carbon isotopes are encouraged. For an information sheet containing further details, contact: James F. Todd, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 32, OMNET:J.Todd, Internet: Todd@ogp.noaa.gov.

Global Ocean—Atmosphere-Land System (GOALS)—The objectives of the GOALS Program are to understand global climate variability on seasonal-to-interannual time scales, to determine the extent to which this variability is predictable, to develop the observational, theoretical, and computational means to predict this variability, and to make experimental predictions within the limits of proven feasibility. GOALS will broaden the scientific scope of the Tropical Ocean-Global Atmosphere (TOGA) Program by extending the region of interest to the global climate system, by investigating the feasibility of predicting regional short-term climate variations throughout the world, and by expanding the observational and data transmission network as appropriate. GOALS will support research in the areas of monitoring, data management, empirical studies, modeling and prediction. In this first year, proposals are particularly sought for modeling and diagnostic studies of the coupled global ocean-atmosphere-land system. A related program, the Pan-American Climate Studies (PACS) Program, is being formulated to advance seasonal-to-interannual climate prediction over the Americas and contiguous waters. Proposals for PACS will be solicited under a separate announcement. For further information contact. Kenneth Mooney, NOAA/Office of Global Programs, Silver Spring MD; 301–427–2089 ext. 14, OMNET: K.Mooney, Internet: Mooney@ogp.noaa.gov.

Information Management—The goals of this project are: (i) to provide the organization and focus through which data producers, data managers and data users actively participate in the design, implementation and review of the NOAA Climate and Global Change (C&GC) information management system, (ii) to assist in construction of data and information (metadata) sets required by C&GC researchers, (iii) to provide users with easy access to C&GC data and information, and (iv) to manage long-term C&GC data and information archives. Proposals are sought which are clearly linked to the specific scientific objectives of the NOAA C&GC Program and which are under the direction of a scientific principal investigator. Proposals to enhance system and infrastructure responsibilities without firm science driven objectives will not be considered. Priorities include construction of long-term climate and global change data sets and information products involving data assembly, digitization, quality control and data rescue, and support of information management applicable to national and international research programs. For further information contact: Bill Murray, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 26, Omnet: W.Murray, Internet:Murray@ogp.noaa.gov., or Christopher Miller, NOAA/NESDIS, Washington, DC 20235, 202–606–5012, Omnet: C.Miller.NOAA, Internet: C.Miller.noaa@omnet.com.

Global Energy and Water Cycle Experiment (GEWEX)—This program element replaces Atmospheric and Land Surface Processes (ALSP) listed in previous announcements. In FY95, NOAA's principal contribution to GEWEX will be directed at improving our understanding of physical processes associated with the transfer of heat, moisture and momentum across the land/atmosphere interface and through the atmospheric boundary layer. Particular emphasis will be placed on issues involving the scale integration of these processes in climate models. The focus for this activity is the GEWEX Continental-scale International Project (GCIP) centered on the Mississippi River Basin. Also to be supported within this program element will be proposals addressing the role of aerosols in forcing climate variability and change, with a focus on the forthcoming series of Aerosol Characterization Experiments (ACE–1 & 2). For further information contact: Michael Coughlan, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 40, OMNET: M.Coughlan, Internet:coughlan@ogp.noaa.gov.

Marine Ecosystem Response—The principal objective of the Marine Ecosystem Response Program is to determine the relationship between ecosystem dynamics and the climatic variability associated with global change. The majority of the resources of this program will be devoted to the USGCRP Global Ocean Ecosystem Dynamics (U.S.GLOBEC) program. A solicitation for proposals, separate from this announcement, will be issued by the jointly supported (NSF/NOAA) U.S. GLOBEC program, and will be directed at the ongoing U.S. GLOBEC Northwest Atlantic Field Study and the planned California Current study. In addition to U.S. GLOBEC activities, some resources will be devoted to the early detection of climate change. Under this activity, modest proposals may be sought for the development of coordinated, scientifically based monitoring of coral reef ecosystems and other innovative pilot projects that might contribute to early detection of climate change. For

further information, contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 710, OMNET: M.Eakin, Internet: Eakin@ogp.noaa.gov; or Bill Peterson, NOAA/National Marine Fisheries Service, Silver Spring, MD; 301–713–2367, OMNET: W.Peterson, Internet: wpeterso@shark.ssp.nmfs.gov.

Paleoclimatology—The Paleoclimatology Program solicits proposals that will make significant advances in our understanding of decade-to-century-scale variability in the climate system. This includes development of new, high-resolution time series from climatically-sensitive areas presently without adequate data coverage (e.g., the tropics and Southern Hemisphere), and datasets that reconstruct large-scale historical patterns of climatic change that can be used to verify climate and ocean models. FY 1995 proposals may be submitted for either research (both field and analytical work) or database development. Further details will be published in the next issue of "The Paleoclimate Data Record" published by the World Data Center—A for Paleoclimatology at NOAA/NGDC. For an information sheet or more information, contact Mark Eakin, NOAA/Global Programs, Silver Spring, MD; 301–427–2089 ext. 710, OMNET: M.Eakin, Internet: Eakin@ogp.noaa.gov or Jonathan Overpeck of NOAA/National Geophysical Data Center, Boulder, CO; 303–497–6172, OMNET:J.Overpeck, Internet: jto@mail.ngdc.noaa.gov.

Economics and Human Dimensions of Climate Fluctuations—A new 1995 program element representing the merging of the Economics and Human Dimensions programs is under consideration at this time. The objective is to promote multidisciplinary research that increases our understanding of the impacts of climate on human forcing functions of environmental change. The Program is also intended to provide opportunities for proposals in economics, anthropology, geography, sociology, and policy sciences to yield insight into this complex relationship. Because funding for new starts may be limited, a more tightly focussed program will reflect an emphasis, where appropriate, on seasonal to interannual time scales. For 1995, proposals on the following topics will be considered: (1) Economics research on the value of scientific and economic information and decision-making frameworks relating to climate fluctuation; (2) historical and archeological perspectives on climate change; and (3) climate-human interactions, including anthropogenic activities affecting climate variability/change, as well as social and economic consequences of and adaptation to climate fluctuation. Within any of the above topics, a focus on coastal issues is welcomed. NOAA's mission includes human adaptations and vulnerabilities, coastal infrastructure, and governance and management. Interdisciplinary teams of researchers that include both physical and social scientists are strongly encouraged. Investigators considering submitting a proposal are strongly encouraged to contact program officials for preliminary discussion of ideas, and are urged to submit letters of intent prior to proposal submission. For an information sheet containing further details, contact: Claudia Nierenberg, NOAA/Office of Global Programs, Silver Spring, MD; 301–427–2089 ext. 46, OMNET: C.Nierenberg, Internet: Nierenberg@ogp.noaa.gov.

Education—The Climate and Global Change Education Program will not seek applications to fund new starts in FY 1995.

Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement. While not a prerequisite for funding, applicants are encouraged to consider conducting their research in one or more of the National Marine Estuarine Research Reserve System or National Marine Sanctuary sites. For further information on these field laboratory sites, contact Captain Francesca Cava, NOAA/NOS, 301–713–3125.

The NOAA Climate and Global Change Program has been approved for multi-year funding up to a three year duration. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one of the Program Priorities listed above and meet the following evaluation criteria:

(1) Scientific Merit (20%): Intrinsic scientific value of the subject and the study proposed.

(2) Relevance (20%): Importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(3) Methodology (20%): Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.

(4) Readiness (20%): Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages (10%): Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(6) Costs (10%): Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments. (Matching funding is encouraged, but is not required.)

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by: (1) Independent peer mail review, and/or (2) independent peer panel review of both NOAA and non-NOAA experts in the field may be used in this process. Their recommendations and evaluations are considered by the program Manager/Officer in final selections. Those ranked by the panel and program as not recommended for funding are not given further consideration and are notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the Program manager will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal. Awards are not necessarily made to the highest-scored proposals.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal Preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Letters of Intent: (1) Letters should be no more than two pages in length and include the name and institution of principal investigator(s); a statement of the problem; brief summary of work to be completed; and approximate cost of project and program element(s) to which the proposal should be directed. (2) Evaluation will be by program management, according to the selection criteria for full proposals described below as well as relevance to Climate and Global Change program elements. (3) It is in the best interest of applicants and their institutions to submit letters of intent, however it is not a requirement. (4) Facsimile and electronic mail are acceptable for letters of intent only. (5) Projects deemed unsuitable during program review should not be submitted as full proposals.

(b) Full Proposals: (1) Applicants are not required to submit more than an original and two copies of applications. Investigators who wish all reviewers to receive color, unusually sized (not 8.5×11"), or otherwise unusual materials submitted as part of the proposal are encouraged to submit sufficient proposal copies for the full review process. (2) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three years duration. (3) Proposals should be sent to the NOAA Office of Global Programs at the above address. (4) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(c) Required Elements: All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of proposed project to the general public and the scientific community should be discussed. Results from related projects supported by NOAA and other agencies should be included. The statement of work, excluding figures and other visual materials, must not exceed 15 pages of text. Appended information may not be used to circumvent the page length limit. Investigators wishing to submit group proposals that may exceed the 15 page limit should discuss this possibility with the appropriate Program Officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 10 pages of overall project description plus up to 5 pages per person of individual project descriptions.

(4) Budget: Applicants must submit a detailed budget using the Standard Form 424a (4–92), Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Unless otherwise directed by the appropriate Program Manager, April 1, 1995, should be used as the target start date for proposals.

(5) Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(6) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(7) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the Program Officer.

(d) Other requirements:

(1) Applicants may obtain a standard NOAA application kit from the Grants Management Division.

(2) Primary applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Applicants are also hereby notified of the following:

1. *Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. *Drug Free Workplace*—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(3) Lower Tier Certifications—Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(4) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(6) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations", and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and

Cooperative Agreements to State and Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(7) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(8) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(9) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(10) Buy American-Made Equipment or Products—Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103-121, Section 606 (a) and (b).

(11) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(e) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(f) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

Dated: April 28, 1994.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic Atmospheric Administration.

[FR Doc. 94–11592 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 050694E]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team will hold a joint public meeting with the Scientific and Statistical Committee Groundfish Subcommittee on June 1–3, 1994, at the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, Room 2079, Seattle, WA. The meeting will begin at 1:00 p.m. on June 1, and 8:00 a.m. on June 2 and will adjourn when the business for each day is completed. The meeting on June 3 will begin at 8:00 a.m. until 3:30 p.m.

The purpose of this meeting is to review draft stock assessment reports on several important groundfish species harvested by West Coast fisheries. Other fishery scientists involved in preparation of the stock assessment documents will also participate in the review. In addition, the participants will review a draft stock assessment report on the Pacific halibut stock off the West Coast.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator, Pacific Fishery Management Council, 2000 SW First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: May 9, 1994.

Richard H. Schaefer

Director, Office of Fisheries. Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11598 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050694D]

South Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Florida Keys National Marine Sanctuary working group (working group) will hold a public meeting on May 24, 1994, from 8:30 a.m. until 5:00 p.m., at the Council office, One Southpark Circle, Suite 306, Charleston, SC; telephone: (803) 571–4366.

The working group will discuss fishing and zoning regulations for the Florida Keys National Marine Sanctuary.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the above address by May 17.

Dated: May 9, 1994

Richard H. Schaefer

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 94–11600 Filed 5–12–94; 8:45a.m.]

BILLING CODE 3510–22–F

[I.D. 050694C]

South Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Executive Committee (Committee) of the South Atlantic Fishery Management Council (Council) will hold a meeting on May 23, 1994, from 1:00 p.m. until 5:00 p.m., at the Council office, One Southpark Circle, Suite 306, Charleston, SC; telephone: (803) 571–4366.

The Committee will develop the Council's activities schedule for Fiscal Year 1995.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the above address by May 16.

Dated: May 9, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–11599 Filed 5–12–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

PROCUREMENT LIST PROPOSED ADDITIONS

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 13, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Towel, Machinery Wiping
7920–01–233–0483
NPA: East Texas Lighthouse for the Blind Tyler, Texas
Suit, Contamination Avoidance
8415–01–364–3320
8415–01–364–3321
8415–01–364–3322
NPA: ORC Industries, Inc. La Crosse, Wisconsin

Services

Janitorial/Custodial, Philadelphia International Airport, Air Mobility Command Terminal D/Concourse D, Philadelphia, Pennsylvania
NPA: A.C.E. Industries, Inc. Exton, Pennsylvania
Janitorial/Custodial
Norfolk Naval Shipyard
Buildings 1SJ, 2SJ, 3SL, 4SJ, 5SJ, 6SJ, 7SJ, 8SJ, 11SJ, 12SJ, 14SJ, 19, 26SJ, 38SJ, 41 & 43SJ, 51, 59, 67, 69SJ, 79SJ, 82SJ, 89SJ, 91SJ, 94SJ, 124SJ, 164SJ, 165SJ, 166SJ, 167SJ, 168SJ, 170SJ, 171SJ, 172SJ, 174SJ, 183SJ, 185SJ, 193 & 194SJ, 201SJ, 202SJ, 203SJ, 213SJ, 217SJ, 252SJ, 277, 277SJ, Trailer 39, 41, 305SJ, 307SJ, 310, 316, 384SG, 400SJ, 491, 492, 1439, 1480, 1500, 1502, 1503, 1510SC, 1555SJ, HSJ, M–1SJ, M–4SJ, IUSSD Trailer 1 & 2, IUSSD Guard Shack, 674SH, Trailer 1700–1
Portsmouth, Virginia
NPA: Diversified Industrial Concepts. Inc. Virginia Beach, Virginia
Toner Cartridge Remanufacturing, Department of Energy, Washington, DC
NPA: Rappahannock Goodwill Industries, Inc. Fredericksburg, Virginia.

G. John Heyer,

General Counsel.

[FR Doc. 94–11661 Filed 5–12–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 13, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 4 and 18, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 10378 and 12895) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Case, Carrying
1005–00–791–5420

Bag, Sand, Cotton
8105–00–965–2509

Drawers, Flyers'
8415–00–467–4075
8415–00–467–4076
8415–00–467–4078
8415–00–467–4100
8415–01–043–4036
Lubricating Oil, General Purpose
9150–00–458–0075

Services

Janitorial/Custodial, R. B. Long Federal Courthouse, 777 Florida Street, Baton Rouge, Louisiana

Toner Cartridge Remanufacturing, Malmstrom Air Force Base, Montana
Toner Cartridge Remanufacturing, Bighorn National Forest, Sheridan, Wyoming.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,
General Counsel.

[FR Doc. 94–11662 Filed 5–12–94; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Merger of the Commodity Exchange, Inc., and the New York Mercantile Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of the proposed merger of the Commodity Exchange, Inc., and the New York Mercantile Exchange and of proposed rules and rule amendments to implement that merger.

SUMMARY: The New York Mercantile Exchange ("NYMEX") has submitted a plan to merge NYMEX and the Commodity Exchange, Inc., ("COMEX") and proposed new rules and rule amendments to implement the merger. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rules and Rule Amendments

By a letter dated May 6, 1994, NYMEX submitted for Commission approval pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") proposed rule amendments designed to implement a Plan of Merger ("Plan") between NYMEX and COMEX.[1] Under the Plan, COMEX would remain a separate corporate entity, but would be restructured as a wholly owned subsidiary of NYMEX (the "COMEX Division"). Current COMEX memberships would be converted to transferable trading rights in the COMEX Division of NYMEX which would allow the holders access to COMEX Division markets. The Plan also would provide for certain cross-access trading rights between members of NYMEX and members of the COMEX Division.

The COMEX Division would be governed by a Board of Directors selected by NYMEX. The COMEX Board would be advised by a COMEX Governors Committee on matters pertinent to specifically identified rights and obligations of the COMEX Division membership. The COMEX Governors Committee would be composed of ten members elected by the COMEX Division membership and also include three appointed members representing NYMEX.

Except for the rules proposed to establish the newly created governance system for the COMEX Division, and to govern the associated rights and obligations of the COMEX Division membership, the proposed rule changes for the COMEX Division are substantively the same as existing NYMEX rules, which have previously received Commission approval.

II. Request for Comments

The Commission requests comments from interested persons concerning any aspect of the proposed merger of COMEX and NYMEX that commenters believe raises issues under the Act or Commission regulations.

Copies of the proposed rules and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed merger or proposed new rules or rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on May 10, 1994.

Alan L. Seifert,
Deputy Director.

[FR Doc. 94–11747 Filed 5–12–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces is being established in consonance with the public interest and in accordance with the provision of Public Law 92–463, the "Federal Advisory Committee Act." The Commission was directed to be established by the National Defense

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[1] The merger plan as set forth has been approved by the governing boards of both exchanges and by a vote of their memberships.

Authorization Act for Fiscal Year 1994, Section 952.

The Commission will provide advice to the Secretary of the Defense, the secretaries of the military departments, the heads of other DoD components and the Committees on Armed Services of the Senate and House of Representatives, by providing an independent review of the roles and missions of the Armed Forces. It will review the efficacy and appropriateness for the post-Cold War Era of the current allocations among the Armed Forces of roles, missions and functions; evaluate and report on alternative allocations of their roles, missions and functions; make recommendations for changes in the current definition and distributions of those roles, missions, and functions.

The Commission will be composed of a Chairman and 6 Commissioners who will be appointed by the Secretary of Defense from among private United States Citizens with appropriate and diverse military, organizational, and management experiences and historical perspective.

The initial meeting of the Commission will be on May 24, 1994, from 1 p.m. until 6 p.m. at Suite 1200 F, 1100 Wilson Avenue, Rosslyn, VA.

For further information contact Larry Barlow, Director of Administration, (703) 795–8750.

Dated: May 10, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–11686 Filed 5–12–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: June 28–30, 1994—8 a.m. until 5 p.m.

LOCATION: The Holiday Inn Hotel, 4610 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Charles I. Griffith, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 400 Maryland Avenue, SW., room 3919–ROB#3, Washington, DC 20202–5151. Telephone: (202) 708–9486. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under section 1205 of the Higher Education Act (HEA) as amended by Public Law 102–325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of a specific accrediting agency or association, the preparation and publication of the list of nationally recognized accrediting agencies and associations, and the functions of the Secretary under subpart 1 of part H of Title IV, HEA relating to State institutional integrity standards. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

AGENDA: The meeting on June 28–30, 1994 is open to the public. The Advisory Committee will begin with a general discussion of its role and responsibilities. In addition, the Committee will discuss the Department's new regulations governing the recognition of accrediting agencies and the State Postsecondary Review Program. The regulations to be discussed during this meeting were published in the **Federal Register** on April 29, 1994.

The Advisory Committee's agenda will also include the review of petitions and interim reports of accrediting agencies and State approval agencies relative to their continued recognition by the Secretary of Education. The Committee will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard. The following petitions and interim reports are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Interim Reports (An interim report is a follow-up report on an agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. Accrediting Association of Bible Colleges, Commission on Accrediting.
2. Accrediting Council on Education in Journalism and Mass Communications, Accrediting Committee.
3. American Board of Funeral Service Education, Committee on Accreditation.
4. American Council for Construction Education.
5. American Dietetic Association, Division of Education Accreditation/Approval.
6. American Society of Landscape Architects, Landscape Architectural Accreditation Board.
7. Association for Clinical Pastoral Education, Inc., Accreditation Commission.
8. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission.
9. Computer Sciences Accreditation Board, Inc., Computer Sciences Accreditation Commission.
10. Council on Chiropractic Education, Commission on Accreditation.
11. Council on Education for Public Health.
12. Council on Naturopathic Medical Education, Commission on Accreditation.
13. Council on Social Work Education, Commission on Education.
14. Foundation for Interior Design Education Research, Committee on Accreditation.
15. Middle States Association of Colleges and Schools, Commission on Higher Education.
16. Middle States Association of Colleges and Schools, Commission on Secondary Schools.
17. National Accrediting Commission of Cosmetology Arts and Sciences.
18. National Architectural Accrediting Board, Inc.
19. National Association of Industrial Technology.
20. National Association of Schools of Art and Design, Commission on Accreditation.
21. National Association of Schools of Dance, Commission on Accreditation.
22. National Association of Schools of Music, Commission on Accreditation.
23. National Association of Schools of Theatre, Commission on Accreditation.

24. National Council for Accreditation of Teacher Education.

25. New England Association of Schools and Colleges.

26. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education.

27. Northwest Association of Schools and Colleges, Commission on Colleges.

28. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Arkansas State Board of Vocational Education.

2. Kansas State Board of Education.

Interim Reports

1. Minnesota State Board of Technical Colleges.

2. Missouri State Board of Vocational and Technical Education.

Request for Withdrawal of Recognition

1. Office of Superintendent of Public Instruction, State of Washington.

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Colorado Board of Nursing.

2. Iowa Board of Nursing.

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed which would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following at this meeting.

Proposed Master's Degree-Granting Authority

1. School of Advanced Airpower Studies of the Air University, Maxwell Air Force Base, Alabama.

A request for comments on all agencies whose petitions, interim reports, and requests for degree-granting authority are being reviewed at this meeting was published in the **Federal Register** on December 8, 1993.

The Higher Education Amendments of 1992, Public Law 102–325, authorize the Secretary to grant recognition only to those accrediting agencies that either accredit institutions of higher education, provided that accreditation by those agencies is a required element in enabling those institutions to establish eligibility to participate in HEA programs, or accredit institutions of higher education or higher education programs, provided that accreditation by those agencies is a required element in enabling those institutions or programs to establish eligibility to participate in other programs administered by the Department or by other Federal agencies. Because of the requirements of the new law, a number of agencies currently recognized by the Secretary are no longer eligible for recognition. At this meeting, the Advisory Committee will consider the withdrawal of recognition of the following agencies, based upon the Department staff's determination that they are no longer eligible for recognition by the Secretary because they do not meet this new requirement:

1. Accreditation Board for Engineering and Technology, Inc.

2. American Assembly of Collegiate Schools of Business, Accreditation Council.

3. American Council for Construction Education.

4. American Library Association, Committee on Accreditation.

5. American Society of Landscape Architects, Landscape Architectural Accreditation Board.

6. American Veterinary Medical Association, Committee on Veterinary Technician Activities and Training.

7. Association of Collegiate Business Schools and Programs.

8. Computing Sciences Accreditation Board, Inc., Computer Sciences Accreditation Commission.

9. Council on Social Work Education, Commission on Accreditation.

10. Middle States Association of Colleges and Schools, Commission on Secondary Schools.

11. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped.

12. National Association of Industrial Technology.

13. Society of American Foresters.

14. United States Catholic Conference, Commission on Certification and Accreditation.

Requests for oral presentation before the Advisory Committee should be submitted in writing to Mr. Griffith at the address above by June 15, 1994. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets, SW, room 3036, ROB–3, Washington, DC between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C.A. Appendix 2.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to the President and Fellows of Harvard College

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(H) to the President and Fellows of Harvard College, Office for Sponsored Research, Harvard University, Harvard School of Public Health, Harvard Air Cleaning Laboratory, Cambridge, Massachusetts, under Grant Number DE-FG01-94EH89439. The DOE intends to make a noncompetitive financial assistance award. The purpose of the proposed grant is to support a conference entitled, "23rd Department of Energy/Nuclear Regulatory Commission Nuclear Air Cleaning and Treatment Conference." This effort will be supported for a total estimated cost of $69,386 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Jeffrey R. Dulberg, HR–531.24, 1000 Independence Avenue, SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to Harvard to organize and conduct the "23rd Department of Energy/Nuclear Regulatory Commission Nuclear Air Cleaning and Treatment Conference," to be held from July 25 through 28, 1994, in Buffalo, New York. It is planned that the conference will be a forum for direct and efficient information transfer, both within the domestic United States and internationally, among nuclear air cleaning experts, to industry, to the general public, and to governmental entities. The focus of this information exchange will be currently available technology and forecasted developments for air and gas cleaning wherever nuclear materials are present. This conference's proceedings will be incorporated with those of the previous conferences into a cumulatively indexed publication to aid information retrieval.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an international forum for the dissemination of nuclear energy process and safety information related to nuclear air cleaning and treatment systems in a manner such that the safety of the public will be enhanced by implementation of operational and design improvements in these systems. The conference is planned to include individual presentations and panel discussions. Such formats have been proven by the previous events to be very conducive to direct and efficient information exchange in the state-of-the-art discipline of nuclear air, gas, and water cleaning and treatment. The conference and its subsequent proceedings may demonstrate once again that research and operating experiences to be reported from abroad can benefit workers in the United States in areas of research and operations not now conducted here. Revisions of Federal nuclear standards and regulations pertaining to air and gas cleaning technology are again expected to receive attention and discussion at the conference. Previous conference proceedings have been cumulatively indexed and published to aid information retrieval. These data represent the world's largest, most important, and most accessible information resource on nuclear air and gas cleaning technology. In addition to previously attained benefits to all sectors of the United States nuclear industry, the planned conference is again expected to expand the previous successes with prompt introduction of new technology from worldwide sources, candid exchanges of ways to handle operational difficulties experienced by many installations, stimulation to research in matters of current regulatory concern, and an international forum for unfettered evaluations of research results, design proposals for safety improvements, and the practical effects of implementing new regulations and standards. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to disseminate to the public information on nuclear air and gas cleaning technology.

Issued in Washington, DC, on May 9, 1994.

Scott Sheffield,

Director Headquarters Operations Division B Office of Placement and Administration.

[FR Doc. 94-11746 Filed 5-12-94; 8:45 am]

BILLING CODE 6450-01-P

Program Interest For Minority Technical Education Program (MTEP)

AGENCY: Department of Energy, Oakland Operations Office.

ACTION: Amendment to notice of program interest.

SUMMARY: In order to encourage the widest possible representation in this program, DOE will accept proposals or amendments to proposals until May 20, 1994. Proposals already submitted to date are considered timely received. This amends the notice published on January 10, 1994, 59 FR 1389, which required proposals to be submitted by March 15, 1994. By this amendment, applications postmarked after May 20, 1994, will be held for one year and may be eligible for awards in FY 1995. Proposers receiving awards in FY 1994 will be notified not later than July 20, 1994. Proposals (three copies) should be submitted to Estela Romo, HRMD, Department of Energy, 1301 Clay Street, room 700N, Oakland, CA 94612-5208.

For complete information regarding this program and instructions concerning application, please refer to the notice published at 59 FR 1389, January 10, 1994.

FOR FURTHER INFORMATION CONTACT: All questions concerning this program should be directed to Arlene Coleman at (510) 637-1870.

Issued in Oakland, CA on April 29, 1994.

Department of Energy.

Martin J. Domagala,

Manager, Oakland Operations Office.

[FR Doc. 94-11739 Filed 5-12-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EC94-14-000, et al.]

The Cleveland Electric Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

May 5, 1994.

Take notice that the following filings have been made with the Commission:

1. The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. EC94-14-000]

Take notice that on May 2, 1994, The Cleveland Electric Illuminating Company ("Cleveland Electric") and The Toledo Edison Company ("Toledo Edison") (together, the "Applicants"), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b, and part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission"), tendered for filing an application for an Order from the Commission authorizing the merger of Toledo Edison into Cleveland Electric.

The Applicants are public utilities organized and existing under the laws of the State of Ohio, and both Applicants are engaged in the business of supplying electric energy to wholesale and retail customers within the State of Ohio. Cleveland Electric generates, transmits, distributes and sells electric energy to approximately 748,000 customers in Northern Ohio. Toledo Edison generates, transmits, distributes and sells electric energy to approximately 285,000 customers in Northwestern Ohio. Cleveland Electric's and Toledo Edison's operations are subject to regulation by The Public Utilities Commission of Ohio. Centerior Energy Corporation ("Centerior"), which is organized and existing under the laws of the State of Ohio, is the 100% owner of the common stock of both Cleveland Electric and Toledo Edison. Each of Cleveland Electric and Toledo Edison has outstanding serial preferred shares that are held by the public.

Under the terms and conditions of a definitive Agreement of Merger entered into by Cleveland Electric and Toledo Edison, 100% of the common shares of Toledo Edison will be converted into newly-issued common shares of Cleveland Electric, the Toledo Edison preferred shares will be exchanged for newly-issued preferred shares of Cleveland Electric, and any dissenting preferred shareholders of Toledo Edison will be paid cash for their shares upon exercise of applicable dissenters' rights.

Upon the occurrence of these events, Toledo Edison will be merged into Cleveland Electric and the separate corporate existence of Toledo Edison will cease. Cleveland Electric will, by operation of law, acquire title to and interest in all facilities of Toledo Edison that are currently under the jurisdiction of the Commission, and Cleveland Electric will operate such facilities without change.

Cleveland Electric and Toledo Edison believe the proposed corporate reorganization is consistent with the public interest, and that it will be in the best interests of the customers, shareowners and employees of both Applicants.

Comment date: May 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Energía de Nuevo León, S.A. de C.V.

[Docket No. EG94–59–000]

On April 29, 1994, Energía de Nuevo León, S.A. de C.V. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant intends to construct, own and operate an eligible facility to be located in Monterrey, in the State of Nuevo León, Mexico. The Facility is scheduled to be completed by September 1, 1996. The Facility will be an approximately 220 MW combined-cycle cogeneration facility that will be gas fired, with fuel oil as a back-up.

Comment date: May 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. CRSS Power Marketing, Inc.

[Docket No. ER94–142–001]

Take notice that CRSS Power Marketing, Inc., on April 13, 1994, tendered its first informational filing pursuant to the above-captioned docket.

4. Northeast Utilities Service Company

[Docket No. ER94–1205–000]

Take notice that on April 29, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the NU System Companies), a System Power Sales Agreement (Agreement) with Hudson Light and Power Department (Hudson) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Short-Term Firm Transmission Service Tariff No. 5. The transaction provides Hudson with economic replacement power during the Seabrook refueling outage over the period April 11–June 11, 1994.

NUSCO requests that the rate schedule become effective on April 11, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreement and the affected state utility commissions.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. UNITIL Power Corp.

[Docket No. ER94–1206–000]

Take notice that on April 29, 1994, UNITIL Power Corp., tendered for filing pursuant to Schedule II section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1993 through December 31, 1993 along with the actual costs incurred by UNITIL Power Corp. by FERC account.
2. UNITIL Power Corp. rates billed from January 1, 1993 to December 31, 1993 and supporting rate development.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER94–1207–000]

Take notice that on May 2, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company and Public Service Company of New Hampshire, three System Power Sales Agreements (Agreements) to provide system capacity and associated energy to the Town of Danvers Electric Division, Littleton Electric Light Department, and Mansfield Electric Department and Service Agreements between NUSCO and the NU System Companies for service under NUSCO's Long-Term Firm Transmission Service Tariff No. 1 for these Sales Agreements.

NUSCO requests that the rate schedule become effective on November 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Agreements and the affected state utility commission.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER94–1208–000]

Take notice that on May 2, 1994, Southern California Edison Company (Edison) tendered for filing Letter Agreements with the City of Anaheim (Anaheim Agreement) and the City of Riverside (Riverside Agreement). The Anaheim Agreement amends the Supplemental Agreement to the 1990 Integrated Operations Agreement (1990 IOA) with Anaheim for the integration of Anaheim's entitlement in San Onofre Nuclear Generating Station (SONGS), Commission Rate Schedule FERC No. 246.12 and the associated Firm Transmission Service (FTS) Agreement, Rate Schedule No. 246.13. The Riverside Agreement amends the Supplemental Agreement to the 1990 Integrated Operations Agreement (1990 IOA) with Riverside for the integration of Riverside's entitlement in SONGS, Commission Rate Schedule FERC No. 250.14 and the associated Firm Transmission Service (FTS) Agreement, Rate Schedule No. 250.15.

The Agreements set forth the methodology for determining the Effective Operating Capacity associated with Anaheim's and Riverside's entitlement in SONGS Units 2 and 3 respectively.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Citizens Utilities Company

[Docket No. ER94–1209–000]

Take notice that on May 2, 1994, Citizens Utilities Company (Citizens), tendered for filing a tariff for transmission service pursuant to its "FPC 10" Agreement ("FPC 10") for the period July 1, 1994, through June 30, 1995. FPC 10 requires an annual rate redetermination and provides a formula for that redetermination. The formula yields a rate for the new period of $3.34 per Kw-month, compared to the present rate of $2.59 per Kw-month.

Citizens states that a copy of its filing was served on each of party taking service under FPC 10 and the Vermont Public Service Board.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Utilities Company

[Docket No. ER94–1210–000]

Take notice that on May 2, 1994, Citizens Utilities Company (Citizens), tendered for filing a tariff for transmission service pursuant to its Block Loading Facilities Transmission Agreement (BLFTA) for the period July 1, 1994, through June 30, 1995. The BLFTA requires an annual rate redetermination and provides a formula for that redetermination. The formula yields a rate for the new period of $3.91 per Kw-month, compared to the present rate of $3.31 per Kw-month.

Citizens states that a copy of its filing was served on each of the BLFTA participants and the Vermont Public Service Board.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER94–1211–000]

Take notice that on May 2, 1994, Northeast Utilities Service Company (NUSCO), on behalf of Public Service Company of New Hampshire (PSNH) tendered for filing an Agreement dated April 28, 1994, to terminate and supersede a sales agreement between PSNH and Citizens Utilities Company (Citizens) dated August 24, 1990.

NUSCO states that a copy of this information has been mailed to Citizens and the Vermont Public Service Board.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER94–1212–000]

Take notice that on May 2, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Fitchburg Gas and Electric Light Company (Fitchburg) under the NU System Companies' Transmission Service Tariff No. 2. NU requests that the Service Agreement become effective 60 days after receipt of the filing by the Commission.

NUSCO states that a copy of this information has been mailed to Fitchburg.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1213–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 60, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.06 to $1.12 per kilowatt per month for transmission of power and energy sold by the Authority to Brookhaven National Laboratory, thus increasing annual revenues under the Rate Schedule by a total of $29,441.52 Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1214–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 78, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.06 to $1.12 per kilowatt per month for transmission of power and energy sold by the Authority to the municipal distribution agencies of Nassau and Suffolk Counties, thus increasing annual revenues under the Rate Schedule by a total of $5,224.86. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1215–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 102, an agreement to provide transmission service for the New York Power Authority (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.06 to $1.12 per kilowatt per month for transmission of power and energy sold by the Authority to its Economic Development Power customers on Long Island, thus increasing annual revenues under the Rate Schedules by a total of $14,615.64. The Supplement also increases the monthly charge for an alternative transmission service from $2.35 to $2.41 per kilowatt per month. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1216–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its pending Rate Schedule in Docket No. ER93–254–000, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule by a total of $181,075.75 for transmission service from $14.53 and $77.21 per MW per day to $36.55 and $79.18 per MW per day. Con Edison has requested that this increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1217–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 51, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from $2.35 to $2.41 per kilowatt per month for transmission of power and energy sold by the Authority to the Long Island Villages of Freeport, Greenport and Rockville Centre (the Villages), thus increasing annual revenues under the Rate Schedule by a total of $48,566.64. Con Edison has requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority and the Villages.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1218–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 105, an agreement to provide transmission service for Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly transmission charge from $0.87 to $1.03 per kilowatt per month thus increasing annual revenues under the Rate Schedule by a total of $192,000. Con Edison requests that this increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1219–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company (LILCO). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for an increase in annual revenues under the Rate Schedule of $55,952.50. Con Edison has requested that this increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1220–000]

Take notice that on May 2, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 66 an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge from $1.06 to $1.12 per kilowatt per month for transmission of power and energy sold by the Authority to Grumman Corporation, thus increasing annual revenues under the Rate Schedule by a total of $7,595.28 requested that the increase take effect on July 1, 1994.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94–11616 Filed 5–12–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1199, et al.]

Oklahoma Gas and Electric Co., et al.; Electric Rate and Corporate Regulation Filings

May 6, 1994.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Co.

[Docket No. ER94–1199–000]

Take notice that on April 29, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing a proposed Letter Agreement with AES Power, Inc. (AESPI) for the sale of capacity and energy.

Copies of this filing have been sent to AESPI, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER94–1200–000]

Take notice that on April 29, 1994, Boston Edison Company (Edison) tendered for filing a Second Extension Agreement between Edison and New England Power Company (NEP) which extends until December 31, 1994, NEP's notice of termination of service under Edison's Rate Schedule No. 46. Edison requests that this Second Extension be allowed to become effective on July 1, 1994.

Edison states that it has served the filing on NEP and the Massachusetts Department of Public Utilities.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER94–1201–000]

Take notice that Northeast Utilities Service Company (NUSCO), on April 29, 1994, tendered for filing an agreement to provide firm transmission service to Long Island Lighting Company (LILCO) under the NU System Companies' FERC Electric Service Tariff No. 1.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Co.

[Docket No. ER94–1202–000]

Take notice that on April 29, 1994, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act (the Act) Eleventh Revised Sheet No. 8. Sierra requests that the Commission make effective the tariff sheet on November 1, 1985 which, Sierra states, is consistent with and required by a June 24, 1992 order in Sierra Pacific Power Company, Docket No. FA89–25–000.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Fitchburg Gas and Electric Light Co.

[Docket No. ER94–1203–000]

Take notice that on April 29, 1994, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Central Vermont Public Service Corporation (Central Vermont) for the sale of up to 13 MW (winter maximum claimed capability) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. The capacity rate to be charged Central Vermont is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that service commence as of May 1, 1994. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on Central Vermont and the Massachusetts Department of Public Utilities.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER94-1224-000]

Take notice that on May 3, 1994, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated April 1, 1994, between PSI and AES Power, Inc. (AES).

The Interchange Agreement provides for the following service between PSI and AES:

1. Exhibit A—Power Sales by AES
2. Exhibit B—Power Sales by PSI
3. PSI Delivery of Third Party Purchases for AES

PSI and AES have requested an effective date of April 1, 1994.

Copies of the filing were served on AES Power, Inc., Public Utilities Commission of Ohio, Virginia State Corporation Commission and the Indiana Utility Regulatory Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-1226-000]

Take notice that on May 3, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with PECO Energy Company (PECO) to provide for the sale of excess energy and capacity. The agreement provides for sales of excess energy and capacity to be made subject to cost based ceiling rates. The ceiling rate for energy that Con Edison sells is 110 percent of the highest incremental energy cost on Con Edison's system and the ceiling rate for capacity that Con Edison sells is $26.00 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon PECO.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11617 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 2561-003, Missouri]

Sho-Me Power Corp.; Availability of Final Environmental Assessment

May 9, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Niangua Hydroelectric Project, located on the Niangua River in Camden County, Missouri near the city of Camdenton, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11618 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL94-1-000]

Interstate Natural Gas Pipeline Gas Supply Realignment Costs; Notice of Change in Time of Public Conference

May 9, 1994.

Take notice that the public conference scheduled for May 26, 1994, will begin at 11 a.m. instead of 10 a.m.[1]

Lois D. Cashell,

Secretary.

[FR Doc. 94-11683 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

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[1] Notice of Public Conference issued March 30, 1994 (59 FR 16198, April 6, 1994).

[Docket No. CP94-389-000, et al.]

Entre Energy Corp., et al.; Natural Gas Certificate Filings

May 6, 1994

Take notice that the following filings have been made with the Commission:

1. Entre Energy Corp.

[Docket No. CP94-389-000]

Take notice that on April 28, 1994, Entre Energy Corporation (Entre), 909 Fannin, suite 1095, Houston, Texas 77010, filed in Docket No. CP94-389-000, an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA) and subparts A and F of part 157 and subparts G and J of part 284 of the Commission's Regulations.

Under subpart A of part 157, Entre seeks a certificate of public convenience and necessity authorizing:

(i) The conversion of an existing natural gas producing field to an interstate natural gas storage field;

(ii) The construction, installation and operation of the necessary facilities to place the natural gas storage field into service;

(iii) The right to provide firm and interruptible storage services at market-based rates; and,

(iv) Pre-granted abandonment authority for the field and the facilities upon termination of the storage contracts.

Under subpart F of part 157 and subparts G and J of part 284, respectively, Entre also seeks the following to carry out its proposal:

(a) A Blanket Certificate under sections 7(c) and 7(b) of the NGA for certain interstate natural gas facilities transactions described in subpart F of part 157;

(b) A Blanket Certificate under sections 7(c) and 7(b) of the NGA for certain interstate natural gas storage and transportation activities described in subpart G of part 284; and,

(c) A Blanket Certificate under sections 7(c) and 7(b) of the NGA, as described in subpart J of part 284, to sell about 7.5 Bcf of natural gas that Entre plans to inject to test the storage reservoir.

Entre states that it is a Delaware corporation and a wholly-owned subsidiary of Entre Holdings Company, an independent producer of natural gas. Entre states that its propose is to develop, construct and operate the first underground natural gas storage facility to be located entirely offshore. The proposed storage reservoir is located in the Chandeleur Area, Block 29 field, of the Federal OCS—Offshore Louisiana. The proposed interstate storage facility would be connected to the interstate pipeline facilities of Texas Eastern Transmission Corporation (Texas Eastern). Specifically, Entre proposes to connect into Texas Eastern's 24-inch pipeline in the Main Pass Area, Block 92.

Entre filed a *pro forma* tariff which contains rate schedules for firm storage service, interruptible storage service, a sales service and general terms and conditions. Entre states that the storage services will be provided on an open access basis and will confirm to Order No. 636, *et al*. Entre further states that it will hold an open season for the storage capacity which is proposed to begin on July 1, 1994 and continue for 45 days. In addition, Entre proposes to make sales of approximately 7.5 Bcf of gas that it anticipates injecting into the storage reservoir during the testing phase.

Entre states that it is currently planning to operate this proposed storage facility with a total working gas capacity of 25.6 Bcf. Entre says that the storage field will be designed to provide first day withdrawal service of 300,000 Mcf per day and 193,000 Mcf per day withdrawal service at the end of the expected 105-day withdrawal period. Entre further says that if enough interest is generated during its open season, it will seek authorization from the Commission to increase the size of the storage project to 41 Bcf of working gas capacity.

Entre states that facilities associated with the proposed 25.6 Bcf storage project will consist of a 6.5-mile, 16-inch diameter pipeline connected to Texas Eastern, 7 injection/withdrawal wells, compression of about 12,000 horsepower and appurtenant facilities. Entre says that if it elects to pursue the 41 Bcf storage project, it will propose to increase the size of 16-inch diameter pipeline to 24 inches and will increase total compression to 21,400 horsepower.

Entre has proposed market-based rates for all of its services. Entre maintains that it lacks market power for the proposed storage services and that granting it the authority to utilize market-based rates would be consistent with Commission action in other cases. However, Entre does propose to retain 2.2 percent of injected volumes as a fuel reimbursement. Entre also proposes to add the Annual Charge Adjustment to the negotiated base rate of its various proposed charges.

Entre says that the construction of storage-related facilities is scheduled to commence later in 1994. Therefore, Entre requests that the Commission expedite the processing of this application and grant the requested authorization by July 29, 1994, to permit the commencement of service during the 1994–1995 heating season.

Comment date: May 27, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Appalachian Gas Sales, Inc. v. Columbia Gulf Transmission Co.

[Docket No. CP94–459–000]

Take notice that on May 2, 1994, Appalachian Gas Sales, Inc. (AGS), 333 N. Fairfax Street, Suite 300, Alexandria, Va. 22314, filed in Docket No. CP94–459–000 a complaint pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure against Columbia Gulf Transmission Company (Columbia Gulf). AGS states that Columbia Gulf has unduly discriminated against them by erroneously allocating their gas to a third party, Centran Corporation, which filed for bankruptcy on 1/2/93. In addition, AGS claims that Columbia Gulf's refusal to remedy the misallocation creates an undue preference in their favor, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

The interruptible transportation service that Columbia Gulf performs for AGS is provided under Columbia Gulf's blanket certificate pursuant to part 284 of the Commission's Regulations. AGS states that the Commission, pursuant to its authority under Sections 4 and 5 of the Natural Gas Act (NGA), should direct Columbia Gulf to remedy the discrimination prejudice, and preference against AGS.

Specifically AGS claims that Columbia Gulf's arbitrary allocation of gas on a pro rata basis between two shippers at a receipt point was not authorized in its tariff. AGS states that Columbia Gulf refused to accept a good faith reallocation request, tendered outside the time period provided under section 6(b)(3) of Rate Schedule ITS–1, while granting out-of-time reallocation requests for other shippers. AGS requests that the Commission order Columbia Gulf to reallocate all volumes of gas delivered for AGS's account during October 1992. AGS claims that Columbia Gulf has provided itself with a preference at AGS's expense by arbitrarily allocating AGS's gas to a third party in order to reduce its exposure as an unsecured creditor in the Centran Corporation bankruptcy.

Comment date: June 6, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Koch Gateway Pipeline Co.

[Docket No. CP94–525–000]

Take notice that on May 4, 1994, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–525–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to seek certificate authority for facilities previously constructed under section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through two six-inch taps and meter station constructed in Harrison County, Texas. Koch Gateway also states that it will operate the proposed facilities in compliance with 18 C.F.R., Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas

Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11619 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1181-000]

C.C. Pace Energy Services; Notice of Filing

May 9, 1994.

Take notice that on April 25, 1994, C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc. ("Pace"), tendered for filing a request to the Commission that the Commission: (1) Accept Pace's F.E.R.C. Electric Rate Schedule No. 1 to be effective as of the date of filing thereof; (2) grant blanket authorization for Pace to make wholesale sales of electric power in interstate commerce at rates to be negotiated with the purchaser; (3) disclaim jurisdiction over transactions wherein Pace serves as a broker; (4) waive the cost of service filing requirements of 18 CFR 35.12; and (5) grant such other waivers and authorizations as have been granted to other power marketers, with the exceptions noted in Pace's application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11620 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1187-000]

Mid-Continent Area Power Pool; Notice of Filing

May 9, 1994.

Take notice that on April 25, 1994, Mid-Continent Area Power Pool (MAPP) tendered for filing an amendment to the Mid-Continent Area Power Pool Agreement. The amendment reflects the transfer of memberships in MAPP from Iowa Electric Light and Power Company and Iowa Southern Utilities Company to IES Utilities Inc., the corporation that resulted from the merger of Iowa Southern Utilities Company into Iowa Electric Light and Power Company utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11621 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-523-000]

Natural Gas Pipeline Company of America, Florida Gas Transmission Company; Application

May 9, 1994.

Take notice that on May 4, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 and Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, Houston, Texas, 77002 filed in Docket No. CP94-523-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon an exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural and Florida Gas state that pursuant to a gas exchange agreement dated May 5, 1976 (Agreement), as amended, that Natural and Florida Gas exchanged up to 2,000 Mcf of natural gas per day in Nueces County, Texas on a thermally equivalent, interruptible basis. Natural and Florida Gas perform the no-fee exchange under their FERC Gas Tariffs, Rate Schedules X-34 and E-15, pursuant to authorization granted in Docket Nos. CP73-1 and CP73-2, respectively (48 FPC 874).

Natural and Florida Gas state that by letter agreement dated August 20, 1993, they have agreed to terminate the Agreement effective December 1, 1993. Natural and Florida Gas state that no facilities are to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 31, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural and Florida Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11622 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Acid Rain Division

[FRL-4884-7]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has prepared guidance to help determine if the Acid Rain Program SO_2 requirements apply to specific steam and electric generating units. This guidance is of particular use to owners and operators of electric generating units who are unsure as to whether their units are affected by the Acid Rain Program SO_2 requirements.

ADDRESSES: Copies of the guidance, entitled "Do the Acid Rain SO_2 Regulations Apply to You?," are available upon request by calling the Acid Rain Hotline at (202) 233-9620 or by writing to:

U.S. Environmental Protection Agency, Acid Rain Division 6204J, Attn: Applicability Guidance, 401 M Street, SW., Washington, DC 20460

The following groups have copies available to their members: American Public Power Association, contact Larry Mansueti; American Forest Products, contact Rob Kaufmann; Council of Industrial Boiler Owners, contact Bill Marx; Chemical Manufacturers Association, contact Nancy Cookson; Edison Electric Institute, contact John Kinsman; Electric Consumers Resource Council, contact John Hughes; Electric Generation Association, contact Julie Blankenship; Large Public Power Council, contact Stephen Fotis; National Coal Association, contact Jerry Karaganis; National Independent Energy Producers, contact Janet Besser; National Rural Electric Cooperative Assoc., contact Ray Cronmiller.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 233-9074.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO_2) emissions from utility units. The SO_2 reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO_2. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO_2 emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocation of allowances may either install pollution control technologies or switch to cleaner fuels to reduce SO_2 emissions, or buy additional allowances.

The Acid Rain Program SO_2 requirements potentially affect any device that combusts fossil fuel and supplies electricity for sale or serves an electrical generating device that supplies electricity for sale. Thus, units owned or operated by industrial or commercial entities may be affected. To ensure adequate notice to all potentially affected units, EPA has chosen to provide this notice of availability of the Acid Rain applicability guidance.

The guidance, "Do the Acid Rain SO_2 Regulations Apply to You?", provides information regarding what makes a unit potentially affected, what types of units may be exempted from Acid Rain Program requirements, and what types of units are not affected by the Acid Rain Program requirements. The document also outlines how the owner or operator of a unit may request a determination of applicability from EPA. If a unit is affected by the Acid Rain Program SO_2 requirements, the document outlines the requirements and compliance dates. The document does not address the Acid Rain Program (Title IV) NO_x requirements or NO_x or SO_2 control requirements under other State or Federal programs.

Dated: May 6, 1994.

Brian J. McLean, Director,

Acid Rain Division.

[FR Doc. 94-11693 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4884-3]

Acid Rain Program: Notice of Final Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year retired unit exemptions, according to the Acid Rain Program regulations (40 CFR part 72), to the following 11 utility units in Ohio: Acme units 9, 11, 13, 14, 15, 91, and 92; Avon Lake unit 11; and Poston units 1, 2, and 3.

FOR FURTHER INFORMATION CONTACT: Allan Batka at (312) 886-9653. EPA Region 5 (A-18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: May 4, 1994.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-11694 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4711-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 25, 1994 through April 29, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the

Federal Register dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–J65215–MT Rating EC2, Elk Creek Land Exchange and Granting an Easement to Plum Creek, Implementation, Flathead National Forest, Swan Lake Ranger District, MT.

Summary: EPA expressed environmental concerns about adverse impacts which may occur on the Forest Service land to be given to the Plum Creek Timber Company (i.e., wildlife habitat, old growth, visual, fisheries impacts). EPA also expressed concerns about the uncertainty of future activities (i.e., subdivision development, oil and gas leasing, and mining) on the exchanged parcels. EPA recommended that the Forest Service require a conservation easement prohibiting future subdivision development on the Forest Service land to be given to Plum Creek Timber Company.

ERP No. D–AFS–J65216–UT Rating LO1, Pacer Timber Harvest and Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA had no objections to the proposed action.

ERP No. D–BIA–J39020–SD Rating EC1, Crow Creek Dam Project, Crow Creek Dam and Reservoir (Lake Bedashosha) Improvements, Crow Creek Indian Reservation, near Fort Thompson, Buffalo County, SD.

Summary: EPA expressed environmental concerns with sediment impacts which should be avoided to fully protect the environment and which may require changes to alternatives or mitigation measures.

ERP No. D–BLM–J02029–WY Rating EC2, Enron Burly Field Oil and Gas Leasing, Permit to Drill, Temporary Use Permits, COE Section 404 Permit and Right-of-Way Grants, Pinedale Resource Area, Sublette County, WY.

Summary: EPA had environmental concerns based on potential impacts to groundwater quality, which should be avoided in order to fully protect its high quality.

ERP No. D–BLM–L60100–ID Rating EC2, Twin Falls County Solid Waste Landfill Facility Construction and Operation, Land Acquisition, Twin Falls County, ID.

Summary: EPA had environmental concerns that BLM had not demonstrated that the land transfer and subsequent solid waste facility will result in no adverse consequences to ground water, surface water, and air quality. EPA requested additional information about how hazardous waste in the waste stream will be handled, how leachate and surface runoff will be disposed, the liner system and how it will be installed, the landfill gas collection and disposal system, and future implementation and operation of the facility.

Final EISs

ERP No. F–AFS–J65205–MT, Upper Sunday Timber Sales, Harvest Timber, Implementation, Kootenai National Forest, Fortine Ranger District, Flathead County, MT.

Summary: EPA had no concerns but recommended that the sediment regime model be tested.

Regulations

ERP No. R–NRC–A09818–00, 10 CFR part 71, Petition for Regulations Governing Packaging and Transportation of Radioactive Materials, Docket No. PRM–71–11, FR 59.8143.

Summary: Review of the Regulation has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: May 9, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–11603 Filed 5–12–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4711–2]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed May 2, 1994 through May 6, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940166, FINAL EIS, SCS, KS, Upper Delaware River and Tributaries Watershed Plan, Flood Prevention and Watershed Protection, Funding, COE Section 404 and NPDES Permits, Atchison, Brown, Jackson and Nemaha Counties, KS, Due: June 13, 1994, Contact: James N. Habiger (913) 823–4565.

EIS No. 940167, FINAL EIS, AFS, AK, Main Bay Salmon Hatchery Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Prince William Sound, Chugach National Forest, Glacier Ranger District, AK, Due: June 13, 1994, Contact: Ken Rice (907) 271–2751.

EIS No. 940168, FINAL EIS, SFW, WY, ID, MT, Gray Wolves (Canis Lupus) Reintroduction into the Yellowstone National Park and Central Idaho, Implementation, MT, WY and ID, Due: June 13, 1994, Contact: Ed Bangs (406) 449–5202.

EIS No. 940169, DRAFT EIS, MMS, TX, AL, LA, MS, 1995 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 152 (April 1995) and 155 (August 1995), Lease Offering, Offshore Marine Environment and coastal counties, AL, MS, LA and TX, Due: June 27, 1994, Contact: Richard H. Miller (703) 787–1665.

EIS No. 940170, FINAL EIS, FHW, WA, WA–522 Transportation Improvements, WA–9 near Woodinville to WA–2 in Monroe, Funding, U.S. CGD Permit and Section 10 and 404 Permits, Snohomish River Bridge, Snohomish County, WA, Due: June 13, 1994, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 940171, FINAL EIS, FHW, WI, WI–TH–29 Improvement, from Chippewa Falls to Abbotsford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit, Clark and Marathon Counties, WI, Due: June 13, 1994, Contact: Thomas J. Fudaly (608) 264–5940.

EIS No. 940172, DRAFT EIS, COE, CO, Central City Water Development Project, Implementation, North Clear Creek Basin, COE Section 404 Permit, Right-of-Way Grant and Special-Use-Permit, CO, Due: June 30, 1994, Contact: Richard Gorton (402) 221–4598.

EIS No. 940173, DRAFT EIS, BLM, Rangeland Reform 1994 Program, Implementation, Land Acquisition and Permits Approval, Due: August 11, 1994, Contact: Jim Fox (202) 452–7740.

Dated: May 9, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–11605 Filed 5–12–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4884–5]

M.A. Norden Company Site, AL; Request for Amendment to June 15, 1984, Clean Water Act section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of request for amendment of Section 404(c) final determination and request for comment.

SUMMARY: Notice is hereby given that M.A. Norden Company has petitioned the Environmental Protection Agency

(EPA) for reconsideration of the total site prohibition identified in EPA's June 15, 1984, Final Determination concerning the Norden site in Mobile, Alabama pursuant to section 404(c) of the Clean Water Act (CWA). M.A. Norden has requested this amendment as a prerequisite to seeking CWA authorization to discharge dredged or fill material into wetlands to construct a road across the restricted section 404(c) area in order to provide access to an adjacent parcel of upland property.

EPA is requesting comments on M.A. Norden's proposal for reconsideration of the Final Determination's total site prohibition. In particular, EPA is interested in determining whether discharges associated with the proposed road construction will result in unacceptable adverse effects under section 404(c).

DATES: Written comments concerning this request for amendment must be submitted to EPA on or before June 13, 1994.

ADDRESSES: Copies of the request and supporting documentation are available for public inspection upon request at the following location: U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds Wetlands Division, 499 South Capitol Street SW., Fairchild Building, room 723, Washington, DC 20009.

Comments must be submitted in writing to: Joseph P. DaVia, Acting Chief, Elevated Cases Section, Mail Code (4502F), U.S. EPA, 401 M Street SW., Washington, DC 20460. Written comments may also be sent by facsimile to Mr. DaVia at (202) 260–7546.

FOR FURTHER INFORMATION CONTACT: Specific details are available from Paul Minkin (EPA) at (202) 260–1901.

SUPPLEMENTARY INFORMATION: Section 404(c) of the Clean Water Act authorizes EPA to restrict or prohibit the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Prior to making such a determination, the Administrator of EPA consults with the Chief of Engineers and the applicant/landowner. In the case of the Norden Company site, such consultations did not resolve EPA's concerns over the originally planned use of the site and on June 15, 1984, EPA issued a Final Determination prohibiting the discharge of dredged or fill materials into the site.

The Final Determination described the then proposed project, the ecological values associated with the site, project alternatives, and the efforts made to reach a mutually agreeable resolution. Based on the record it had compiled, EPA determined that "the discharge of the fill materials into the site proposed by the M.A. Norden Company ('the Norden site') would have an unacceptable adverse effect on shellfish beds and fishery areas and wildlife areas" and prohibited the use of the area for specification as a disposal site. This prohibition prevented the future disposal of any dredged or fill material at the entire 25 acre site.

On October 5, 1992, M.A. Norden Company (Norden Company) formally applied to the U.S. Environmental Protection Agency (EPA) for reconsideration of the June 15, 1984 Final Determination for the Norden Company site in Mobile, Alabama pursuant to section 404(c) of the Clean Water Act to accommodate a scaled down proposal. Additional information supporting this request was received by EPA on August 5, 1993. EPA made visits to the Norden Company site in February 1992 and September 1993. As more fully described below, Norden Company has proposed to discharge 9,300 cubic yards of dredged or fill material into approximately 1.5 acres of wetlands on the section 404(c) restricted site in order to construct a roadway to provide access to an adjacent upland site. This new proposal would reduce the direct impacts of the original proposal from 25 acres of wetlands filled to approximately 1.5 acres filled.

The June 15, 1984 Norden Final Determination restricts the use of the entire 25 acre Norden Company site for any discharges of dredged or fill material. Therefore, implementing this new proposal would require that EPA amend the 1984 Final Determination. If EPA, upon consideration of the original administrative record, the new proposal, supporting documentation, and any public comments, determines that such amendment is appropriate, a section 404 permit issued by the Corps of Engineers would still be necessary before discharges associated with the access road could proceed. Norden Company would have to follow the standard permitting process for that approval. That process provides an additional opportunity for public notice and comment.

Proposed Activities

Norden Company has submitted a detailed description of the proposed project. The project description below is based on these Norden Company submissions and may be further revised in the section 404 permit application review process. The proposal is to extend an existing abandoned railway spur across the site as a vehicular roadway for use by heavy truck (container) traffic from the Port of Mobile facilities to a storage area on the upland. The existing railway spur is 30 feet wide and 900 feet long. It would be widened and extended, at a slight angle, approximately 600 feet across the wetlands and drainage canal to reach an upland area. Approximately 9,300 cubic yards of sand material on geotechtile fabric will be placed in the wetlands for roadbed fill. The typical road section will be 36 feet wide at the top and 60 feet wide at the base with 3:1 side slopes. Silt screens will be erected and the side slopes will be seeded and mulched to prevent erosion and sedimentation of the adjacent waters and wetlands. Four concrete culverts (three 24 inch diameter culverts and one 36 inch diameter culvert) will be placed through the fill, underneath the roadway to allow for exchange of water between the divided portions of the wetland. A box culvert will be placed in the existing drainage canal to allow for unobstructed flow. Mitigation for project impacts is proposed in the form of providing culverting where none previously existed through the railway spur to allow for better water circulation. Norden Company anticipates that the work would be completed in six months.

EPA is soliciting comments on the current proposal by the Norden Company. Specifically, comments should address whether this proposal would have lesser impacts on the aquatic environment than the project which was originally proposed. In addition, EPA is interested in determining whether there are less environmentally damaging practicable alternatives to the proposed discharge which would have less adverse impact on the aquatic ecosystem while fulfilling the basic project purpose.

Dated: May 5, 1994.

Robert H. Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 94–11697 Filed 5–12–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4883–7]

Availability of Report on the Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and opportunity to comment on a report, "The Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993 (H.R. 3434)".

DATES: Written comments on this report must be submitted on or before August 11, 1994.

ADDRESSES: Comments should be mailed to Cost/Benefit Analysis, Indoor Air Division (6607J), Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460.

Copies of the report are available from the EPA Indoor Air Quality Information Clearinghouse, P.O. Box 37133, Washington, DC 20013–7133. 1–800–438–4318.

FOR FURTHER INFORMATION CONTACT: David H. Mudarri, Indoor Air Division, (6607J), Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. 202–233–9030.

SUPPLEMENTARY INFORMATION: In compliance with the "Radon Gas and Indoor Air Quality Research Act of 1986", under which the Environmental Protection Agency is directed to conduct research and disseminate information on all aspects of indoor air quality, this notice announces that the report described below is available for public review.

The Chairman of the House of Representatives Committee on Energy and Commerce Subcommittee on Health and the Environment requested that the U.S. Environmental Protection Agency analyze (quantitatively where possible) the compliance costs and the health and economic benefits of H.R. 3434. Specifically, the Agency was requested to assess the cost of compliance including provisions for smoking lounges; the value of benefits resulting from reduced exposure to environmental tobacco smoke and changes in smoking behavior including the value of lives saved; the value of increased productivity and reduced absenteeism; savings from reduced operation and maintenance costs; and savings in fire related injuries and property damage.

The Smoke-Free Environment Act of 1993 (H.R. 3434) would require that all residential buildings regularly entered by ten or more persons in the course of a week that bans smoking inside the building or restricts smoking to separately ventilated smoking rooms. The proposed legislation provides for enforcement actions in the United States District Courts by an individual, government or other aggrieved entity and allows for fines of up to $5,000 per day.

The report presents EPA's analysis and findings of the costs and benefits of implementing national legislation that would establish policies that would prohibit smoking indoors in specified buildings and/or provide for separately ventilated smoking lounges.

Dated: April 19, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–11695 Filed 5–12–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4884–5]

Massachusetts Marine Sanitation Device Standard for Coastal Waters of Falmouth and Mashpee

Notice of Determination

On March 10, 1994, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Waquoit Bay, that border the Towns of Falmouth and Mashpee, within the State of Massachusetts (56 FR 57891). The petition was filed pursuant to section 312(f)(3) of Pub. L. 92–500 as amended by Pub. L. 95–217 and Pub. L. 100–4.

Section 312(f)(3) states:

> After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are two pump-out facilities available to service vessels in Waquoit Bay that border the coastal waters of Falmouth and Mashpee.

Pump-out facility No. 1 is located at the Edwards Boat Yard, on the Childs River in Falmouth. This facility will provide stationary pump-out service and will be available seven days a week from 8:00 a.m. to 4:30 p.m. Memorial Day through Columbus Day. During the rest of the year, the pumpout facility will operate Monday through Friday from 8:00 a.m. until 4:30 p.m., and half days on Saturdays several weeks before Memorial Day and after Columbus Day. There will be a $5.00 fee per pump-out.

Pump-out facility No. 2 is located at the Little River Boat Yard, on Seconsett Island in Mashpee. This facility will provide stationary/mobile pump-out service seven days a week from 7 a.m. to 7 p.m. Memorial Day through Columbus Day. Business hours at other times of the year will be Monday through Friday from 8 a.m. to 4:30 p.m. During the summer season, the mobile service will make a scheduled round of Waquoit Bay to provide service to moored boats throughout the bay, including transient boats located along the shores of Washburn Island. Mariners will be able to contact the operator by marine radio (Channel 09 VHF–FM) or visible signal to request a pump-out. The remainder of the time, the facility will be docked so that pump-out service will be available for any boats wishing to use it. There will be a $5.00 fee per pump-out.

All pump-out waste will be stored in a 2000 gallon licensed tight tank at the Edward's Boat Yard. A licensed hauler will remove the waste and dispose of it in the Falmouth Sewage Treatment Plant which is approved by the Massachusetts Department of Environmental Protection to receive boat waste.

Marinas are found along the Childs and Little River and docks line the bay's tributaries and salt ponds. Currently, there are an estimated 2610 boats in Waquoit Bay and its tributaries and salt ponds with approximately 570 boats having some type of Marine Sanitation Device (MSD) based on their size classification. Waquoit Bay is 931 acres in size with a watershed of approximately 20 square miles.

There were no comments received by the Agency on the merits of the petition prior to the deadline for receipt of comments as stated in the March 10, 1994 **Federal Register** "Receipt of Petition" notice.

Based on an examination of the petition, and its supporting information which included a site visit by EPA Region I staff, and the fact that the Agency received no comments concerning the petition, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Waquoit Bay and its tributaries and salt ponds that border the Towns of Falmouth and Mashpee, within the State of Massachusetts, to qualify as a "No Discharge Area".

This determination is made pursuant to Section 312(f)(3) of Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 100–4.

Dated: May 2, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–11696 Filed 5–12–94; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Privacy Act of 1974; Establishment of New System of Records

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Advance notice with request for comments; publication of proposed system notice for new systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Insurance Corporation (Corporation) is establishing Privacy Act systems of records and is publishing a complete notice of its inventory of systems. The publication of these proposed systems notices is one of the steps required to establish the new systems. The new systems of records facilitates the Corporation's ability to collect, maintain, use, and disclose information pertaining to individuals.

DATES: Written comments should be received by June 13, 1994. The Corporation filed a New Systems Report with Congress and the Office of Management and Budget (OMB) on May 6, 1994. This notice will be adopted without further publication on July 5, 1994, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments may be mailed (in triplicate) to Mary A. Creedon, Chief Operating Officer, in care of Cindy Nicholson, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT: Ronald H. Erickson, Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, (703) 883–4113, TDD (703) 883–4444, or
Jane Virga, Office of General Counsel, Farm Credit System Insurance Corporation, McLean, Virginia, 22102–0826, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, the Corporation has reviewed all systems of records and identified eight new systems.

The notice reflects designated points of contact for inquiring about the systems, accessing the records, and requesting amendments to the records. As noted below, the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, is the custodian for some of the records pursuant to a delegation of authority from the Corporation.

The categories of new systems are: FCSIC–1, Corporation Internal Automated Personnel System, FCSIC–2, Employee Reports of Financial Interests and Employment, FCSIC–3, Employee Attendance, Leave, Personnel Actions, and Payroll Files, FCSIC–4, Employee Travel Files, FCSIC–5, Financial Management Records, FCSIC–6, Procurement Records, FCSIC–7, Personnel Security Files, and FCSIC–8, Correspondence Files.

Notice is hereby given that the Corporation adopts the Office of Personnel Management's (OPM) OPM/GOVT–1 and the OPM's **Federal Register** notice of OPM/GOVT–1 with respect to those personnel records that are maintained by the Corporation and described in OPM/GOVT–1. Individuals are referred to the OPM's **Federal Register** notice on the existence and character of OPM/GOVT–1. The citation is 57 FR 35705–35709, August 10, 1992, as amended from time to time. OPM's **Federal Register** notice sets out the routine uses of the records in OPM/GOVT–1. Individuals interested in reviewing and commenting on such routine uses are referred to 57 FR 35705–35709, August 10, 1992, as amended from time to time. Employee inquiries about OPM/GOVT–1 and employee requests for access or amendments to records described therein that are maintained by the Corporation may be directed to: Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the Corporation has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Government Operations of the House of Representatives, and the Committee on Governmental Affairs of the Senate. The notices are published in their entirety below.

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FCSIC–1 FCSIC Internal Automated Personnel System.
FCSIC–2 Employee Reports of Financial Interest and Employment.
FCSIC–3 Employee Attendance, Leave, Personnel Actions, and Payroll Records.
FCSIC–4 Employee Travel Files.
FCSIC–5 Financial Management Records.
FCSIC–6 Procurement Records.
FCSIC–7 Personnel Security Files.
FCSIC–8 Correspondence Files.

FCSIC–1

SYSTEM NAME:

FCSIC Internal Automated Personnel System.

SYSTEM LOCATIONS:

These records are located at the Farm Credit Administration with copies at the Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees since March 1988.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information from Personnel Management Information and Telecommunications System of the Department of Treasury, including the employee's occupational series, grade, salary, position title, geographic location, work schedule, date of birth, sex, and similar information. The source for this data is the National Finance Center's United States Department of Agriculture Personnel Payroll System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a–7, 2277a–8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this record system may be used to furnish internal statistical reports and trend analyses for managing human resources.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged

with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information stored electronically.

RETRIEVABILITY:

Electronically retrievable by name, social security number, and other identifiers such as sex, geographic location, occupational series, etc.

SAFEGUARDS:

Records are kept in a secure area with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or comes from information supplied by agency officials.

FCSIC–2

SYSTEM NAME:

Employee Reports of Financial Interests and Employment—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration with copies at the Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

"Public Financial Disclosure Report" and "Confidential Statement of Employment and Financial Interests" required of certain employees. Contains statement of financial interests of the employee and of members of his or her immediate household as well as any other statements or memorandums concerning other employment or financial interests of the Corporation employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12674, as amended by Executive Order 12731, and 5 U.S.C. App. 201, 205.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this record system may be used by authorized personnel for ascertaining conflicts or apparent conflicts of interest, recommending or taking appropriate action, monitoring the agency's ethics program.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the

information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are maintained alphabetically by name.

SAFEGUARDS:

Records are kept in a locked cabinet except when being used by authorized personnel who are instructed as to their confidentiality and permitted use.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for employee reports of financial interests and employment.

SYSTEM MANAGER(S) AND ADDRESSES:

Designated Agency Ethics Official, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the employee to whom it applies or comes from information supplied by agency officials.

FCSIC–3

SYSTEM NAME:

Employee attendance, leave, personnel actions, and payroll records—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration with copies at the Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of paper, electronic, and microfiche files containing payroll-related information for Corporation employees reported on a biweekly, year-to-date, and, in some cases, an annual basis. The records contain payroll and leave data for each employee including rate and amount of pay, personnel actions during payroll periods, hours worked, tax and retirement deductions, life insurance and health insurance deductions, savings allotments, savings bond and charity deductions, other financial deductions, mailing addresses, and home addresses. Records produced electronically utilize software provided by the National Finance Center's United States Department of Agriculture Personnel Payroll System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a–7, 2277a–8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this record system may be used to prepare payroll and to meet Government payroll record keeping and reporting requirements, and for retrieving and supplying payroll and leave information as required for agency needs. In addition, information in this record system is used to furnish certain information (name, permanent or temporary status, most recent position, grade, or salary) to other Government agencies, commercial or credit organizations, or verification of employment to prospective employers.

(1) Information in this record system may be disclosed as a routine use to Federal, State, and local taxing authorities concerning compensation to employees or contractors for personal services; to the Office of Personnel Management, Department of the Treasury, Department of Labor, and other Federal agencies concerning pay, benefits, and retirement of employees; to Federal employees health benefits carriers concerning health insurance of employees; to financial organizations concerning employee savings account allotments and net pay to checking accounts; to State human resource offices administering unemployment compensation programs; to educational and training organizations concerning employee qualifications and identity for specific courses; and to heirs, executors, and legal representatives of beneficiaries.

(2) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(3) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or

other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(4) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(7) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in locked cabinets or electronically.

RETRIEVABILITY:

Paper records are filed alphabetically by name. Electronic records are accessed by social security number. Microfiche records are arranged by social security number within a pay period.

SAFEGUARDS:

Files are kept in areas which are locked after business hours. Access to records is limited to authorized individuals.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for payroll-related records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the employee to whom it applies or comes from information supplied by Corporation employees and other authorized personnel.

FCSIC–4

SYSTEM NAME:

Employee Travel—FCSIC.

SYSTEM LOCATION:

Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper and electronic records relating to travel vouchers and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a–7, 2277a–8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system of records is used to provide records of reimbursement to employees for expenses incurred while in official travel status.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of

Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in cabinets or electronically.

RETRIEVABILITY:

Paper records are filed alphabetically by name.

SAFEGUARDS:

Paper files are kept in areas which are locked after business hours. Access to electronic system is limited to authorized employees.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for financial records.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Specialist, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Corporation employees and other individuals executing records.

FCSIC–5

SYSTEM NAME:

Financial Management Records—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corporation employees and individuals conducting business with the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of paper, electronic, and microfiche files supporting the Corporation financial management system, including employee travel advance records, records of budget formulation and execution, the Corporation administrative expenses, and other financial records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a–7, 2277a–8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records serves as the source for collecting and recapping financial data to provide control over assets and liabilities, collection of revenues and disbursement of expenses and reports necessary for management and for other Government agencies.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in cabinets or electronically.

RETRIEVABILITY:

Paper records are arranged by SF1166a (Voucher and Schedule of Payments) voucher number within each year. Automated system can retrieve by name, vendor number, or social security number as applicable.

SAFEGUARDS:

Paper files are kept in file cabinets in areas which are locked after business hours. Access to electronic system is limited to authorized employees.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for financial records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Corporation employees and other individuals doing business with Corporation.

FCSIC–6

SYSTEM NAME:

Procurement Records—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, corporations, and governmental entities who provide or may provide supplies or services to the Corporation by contract or purchase order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bids, offers, lease agreements, purchase orders, requisitions, and other pertinent written information related to purchase transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a–7, 2277a–8; 40 U.S.C. 471 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information contained in this system of records is used by the Corporation as the basis for maintaining control of purchase transactions and to provide a minimum of opportunity for fraud as well as the maximum feasible opportunity for audit as related to the purchase of supplies and services obtained.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records filed: (1) In numerical order by purchase order or contract number; and (2) alphabetically by the name of the vendor.

SAFEGUARDS:

Maintained in area which is locked after business hours. Access to this record system is limited to employees and persons with contractual authority within the Corporation and the FCA.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements for procurement records.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Individuals, corporations, or governmental entities who make bids or offers to the Corporation or enter into lease or other agreements with the Corporation. Employees who prepare contractual actions.

FCSIC–7

SYSTEM NAME:

Personnel Security Files—FCSIC.

SYSTEM LOCATION:

These records are located at the Farm Credit Administration, McLean, Virginia 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files compiled during background investigations of employees in sensitive positions. The files include:

(a) Security forms (SF 86, "Security Investigation Data for Sensitive Position"; and OPM Form 329–B, "Authority for Release of Information and Redisclosure");

(b) Investigative report which includes credit check, check of police record, and interviews with neighbors, former supervisors, and coworkers;

(c) Determination of suitability for security clearance by agency security officer; and

(d) Issuance of clearance statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records is used to determine suitability for holding a sensitive position within the Corporation and to issue security clearance.

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are arranged alphabetically by name.

SAFEGUARDS:

Records are maintained in a locked safe in an area that is secured after business hours. Access to records is restricted to those employees whose official duties require access.

RETENTION AND DISPOSAL:

Files are transferred to OPM when employee leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, credit bureaus, police, neighbors, former supervisors and coworkers, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subjected to a specific exemption pursuant to 5 U.S.C. 552a(k)(2), to the extent there is included in the system investigatory material compiled for law enforcement purposes.

FCSIC–8

SYSTEM NAME:

Correspondence Files—FCSIC.

SYSTEM LOCATION:

Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Corporation employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memorandums, and other documents pertaining to the operations of the Corporation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2277a–7, 2277a–8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(2) Information in this record system may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

(3) Information in this record system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of and investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are arranged alphabetically by name.

SAFEGUARDS:

Records are maintained in a locked cabinet in an area that is secured after business hours.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records Schedule requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Specialist, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.3.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, as provided in 12 CFR 1403.7.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or comes from information supplied by agency officials.

Dated: May 5, 1994.

Nan P. Mitchem,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 94–11444 Filed 5–12–94; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Interpretation of the Payments System Risk Reduction Policy; Daylight Overdrafts of Government-Sponsored Enterprises

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: As part of its payments system risk reduction program, the Board is adopting an interpretation of its Policy Statement on Payments System Risk. Under the payments system risk reduction program, government-sponsored enterprises that maintain accounts at Reserve Banks should not incur daylight overdrafts in these accounts and are not permitted to adopt a positive daylight overdraft net debit cap. Furthermore, the Board interprets the Policy Statement on Payments System Risk to include government-sponsored enterprises under the policy on daylight overdraft fees. Until October 13, 1994, fees on daylight overdrafts in accounts of government-sponsored enterprises will be waived. A temporary exemption from daylight overdraft fees is granted for daylight overdrafts in principal and interest accounts of government-sponsored enterprises. This interpretation supports the Board's payments system risk reduction program by providing a comprehensive policy towards daylight overdrafts incurred by government-sponsored enterprises while at the same time recognizing the unique nature of the fiscal agency relationship between the Federal Reserve and these entities.

DATES: Effective April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452–3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The term "government-sponsored enterprise" (GSE) is generally used to refer to corporations chartered by Congress to perform certain financial market functions deemed to be in the public interest. These entities include, but are not limited to, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Student Loan Marketing Association (Sallie Mae), and entities of the Federal Home Loan Bank System and the Farm Credit System. These GSEs are owned by private shareholders and their obligations are not guaranteed by the U.S. government.

Congress authorized the Reserve Banks to act as depositaries, custodians, and fiscal agents for these entities. Under agreements with the GSEs, the Reserve Banks issue and redeem the GSEs' debt and asset-backed securities over the Fedwire system, in addition to providing other payment services generally related to these fiscal agency services.

The Board's payments system risk (PSR) policies and guidelines have addressed daylight overdrafts by government-sponsored enterprises that maintain accounts with Federal Reserve Banks only in certain limited instances. In 1985, the Board determined that Federal Home Loan Banks should not be allowed a positive net debit cap and should be discouraged from incurring daylight overdrafts in their accounts with the Reserve Banks. In June 1986, the Board similarly determined that the Farm Credit System Banks should be discouraged from incurring overdrafts.

The Board has never addressed daylight overdrafts of other GSEs, including those for which the Reserve Banks act as fiscal agents in issuing and redeeming their securities. Further, when the Board approved in 1992 the policy of charging fees for daylight overdrafts beginning in April 1994, it did not address the question of whether GSEs would be subject to the fees. However, the policy did not exclude GSEs or any other class of account-holders from the fees.[1] In addition, in 1994, the Board adopted a penalty fee for daylight overdraft incurred by institutions that do not have regular discount window access, although GSEs were not included in this penalty fee policy.

The Federal Reserve is not obligated to provide intraday credit to the GSEs in the form of daylight overdrafts as part of its fiscal agency functions; indeed, the GSEs have generally agreed not to incur overdrafts in their accounts. However, many of the GSEs have nonetheless incurred daylight overdrafts. The Board believes that, with the advent of daylight overdraft fees for depository institutions on April 14, 1994, it is particularly important that the GSEs not be permitted unlimited free access to intraday Federal Reserve credit. Such access would represent a benefit not available to depository institutions and could serve to undermine the Board's payment system risk reduction program.

As a result, the Board interprets the Policy Statement on Payments System Risk to include GSEs under the policy on daylight overdraft fees. In addition, the Board has determined that a capital-based fee deductible, as permitted for depository institutions, will not be permitted for the GSEs. These entities do not have regular access to the discount window and should not be permitted the same access to intraday credit as depository institutions. However, because a number of these entities have not been formally subject to the PSR policy in the past and have not previously been explicitly advised that daylight overdraft fees would apply to their accounts, the Board has determined that they should be afforded some period within which to make the necessary adjustments to their payment systems and practices. As a result, daylight overdraft fees for daylight overdrafts in GSEs' accounts will be waived until October 13, 1994.

Furthermore, the Board recognizes that, in large part, the GSEs' daylight overdrafts are related to regular payments of principal and interest (P&I) on securities that they issue through the Federal Reserve. These payments are initiated by the Reserve Banks, and the Federal Reserve's daylight overdraft posting rules specify that these payments will be made before 9:15 a.m. Eastern time. These posting times were primarily designed to grant depository institutions the benefit of P&I payments prior to debits being made to their accounts from their purchases of new issues of government securities. The GSEs typically do not fund debits to their accounts resulting from P&I payments until they issue new securities later in the day, causing daylight overdrafts in their Federal Reserve accounts.

To eliminate these daylight overdrafts, the Reserve Banks could delay making P&I payments on the GSEs' securities until sufficient funds were available in their accounts. This would likely require that the P&I payments be made later in the day. Delaying the P&I payments might increase the magnitude and duration of daylight overdrafts for the depository institutions that receive the corresponding credits.

For this reason, the Board is permitting a temporary exemption of overdrafts incurred in GSEs' P&I accounts (special accounts which are used only for the payment of principal and interest), until the potential benefits and drawbacks of shifting the timing of P&I payments can be analyzed. This analysis will be performed once the initial impact of daylight overdraft fees on depository institutions has been assessed. In addition, the Board has not ruled out future application of the daylight overdraft penalty fee to GSEs' daylight overdrafts.

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[1] The Board's policy statement on daylight overdraft fees states that "each Reserve Bank will charge a fee for average daily daylight overdrafts in Federal Reserve *accounts* [emphasis added]."

Interpretation of the Policy Statement on Payments System Risk

Under the Board's payments system risk reduction program, government-sponsored enterprises that maintain accounts at Reserve Banks should not incur daylight overdrafts in these accounts and are not permitted to adopt a positive daylight overdraft net debit cap. Furthermore, the Board interprets the Policy Statement on Payments System Risk to include government-sponsored enterprises under the policy on daylight overdraft fees. A capital-based fee deductible is not permitted for government-sponsored enterprises. However, a temporary exemption from daylight overdraft fees is granted for daylight overdrafts in principal and interest accounts of government-sponsored enterprises. Fees on daylight overdrafts in accounts of government-sponsored enterprises will be waived until October 13, 1994.

By order of the Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11646 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-P

Community First Financial Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 6, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community First Financial Group, Inc.*, English, Indiana; to acquire at least 17.50 percent of the voting shares of The New Washington State Bank, New Washington, Indiana.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11648 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

First Bancshares of Texas, Inc.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *First Bancshares of Texas, Inc., Employee Stock Ownership Plan*, Tomball, Texas; to acquire 0.33 percent for a total of 19.57 percent of the voting shares of The First National Bank, Altanta, Texas, and thereby indirectly acquire The Hamilton National Bank, Hamilton, Texas, and Bank of Tyler, Tyler, Texas.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11649 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

First Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire St. Charles Federal Bancshares, Inc., St. Charles, Missouri, and thereby indirectly acquire St. Charles Federal Savings and Loan Association, St. Charles, Missouri, and thereby engage in acquiring and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11650 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 1994.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut National Corporation*, Hartford, Connecticut; to expand the investment advisory activities of its subsidiary, Shawmut Investment Advisers, Inc., Boston, Massachusetts, to include Canada. These activities are conducted pursuant to § 225.25(b)(4)(ii)-(v) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11652 Filed 5-12-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service Federal Telecommunications Standards

ACTION: Notice of adoption of standards.

SUMMARY: The purpose of this notice is to announce the adoption of a family of Federal Telecommunications Standards (FED-STDs). FED-STD 1055, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Conventional Master and Remote Stations," FED-STD 1056, "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications," and FED-STD 1057, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Networks by Conventional Master Stations" are approved and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, telephone (303) 497-3723.

SUPPLEMENTARY INFORMATION: (1) The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for interoperability of U.S. Government communications systems.

(2) On April 7, 1992, a notice was published in the **Federal Register** (57 FR 11731) that proposed FED-STD 1055 entitled "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Conventional Master and Remote Stations"; FED-STD 1056 entitled "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications;" and FED-STD 1057 entitled "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Networks by Conventional Master Stations" were being proposed for Federal use and that comments were requested.

(3) The justification package as approved by the Deputy Assistant Secretary of Defense (Defense-wide C3), Office of the Assistant Secretary of Defense was presented to GSA by NCS with a recommendation for adoption of the standards. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

(4) A copy of each standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Federal Supply Service Bureau (FSSB), Specifications Section, suite 8100, 490 East L'Enfant Plaza, SW., Washington, DC 20407; telephone (202) 755-0325.

Dated: April 13, 1994.

Francis A. McDonough,

Acting Commissioner.

Federal Standards 1055, 1056, and 1057 Telecommunications: Interoperability Requirements for Meteor Burst Communications

1. *Scope.* The terms and accompanying definitions contained in these standards are drawn from authoritative U.S. Government sources such as the Department of Defense and the National Telecommunications and Information Administration and several authoritative U.S. Government publications. The Meteor Burst Communications Subcommittee to the Federal Telecommunications Standards Committee (FTSC) has developed a family of technical specifications for use by systems that use meteor trails as the primary mechanism for communications.

1.2. *Applicability.* All Federal departments and agencies shall use Federal Standards FED-STD 1055, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications Between Conventional Master and Remote Stations," FED-STD 1056, "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications," and FED-STD 1057, "Telecommunications: Interoperability Requirements for meteor Burst Radio Communications Between Networks by Conventional Master Stations" in the design and procurement of all Meteor Burst Communication equipment to be used on Government authorized radio frequencies, except for (1) Equipment used for remote sensing applications; (2) equipment employing spread spectrum modulation; (3) equipment that dynamically changes data rate during meteor trails. The use of these standards by all Federal departments and agencies is mandatory.

1.2. *Purpose.* The purpose of this standard is to improve the Federal acquisition process by providing Federal departments and agencies with a comprehensive, authoritative source for meteor burst communications.

2. *Requirements and Applicable Documents.* The radio characteristics, modulation, data rates, and message broadcast procedures and format defined in these standards are to be applied to the design and procurement of meteor burst communications equipment. These are a family of Federal Telecommunications Standards and each contains a list of other Federal standards that may be applicable to implementation of these standards.

3. *Use.* All Federal departments and agencies shall use these standards in the design and procurement of meteor burst communication equipment. Only after determining that a requirement is not included in these documents may other sources be used.

4. *Effective Date.* The use of these approved standards by U.S. Government departments and agencies is mandatory, effective 180 days following the publication date of this standard.

5. *Changes.* When a Federal department or agency considers that these standards do not provide for its essential needs, a statement citing inadequacies shall be sent in duplicate to the General Services Administration, Regulations Analysis Division (KMR), Washington, DC 20405, in accordance with the provisions of the Federal Information Resources Management Regulation, Subpart 201–20.3. The General Services Administration will determine the appropriate action to be taken and will notify the agency. Federal departments and agencies are encouraged to submit updates and corrections to these standards, which will be considered for the next revision of this standard. The General Services Administration has delegated the compilation of suggested changes to the National Communications System whose address is given below: Office of the Manager, National Communications System, Office of Techonolgy and Standards, Washington, DC 20305–2010.

[FR Doc. 94–11308 Filed 5–12–94; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Teenage Parent Demonstration Evaluation—Second Follow-Up—New—The follow-up surveys of demonstration participants and control group members and assessments of their children will provide data critical to the comprehensive evaluation of the demonstration. The information will be used to document the demonstration's effectiveness in reducing long-term welfare dependency and promoting economic self-sufficiency. Respondents: Individuals or households. Burden Information for the Basic Questionnaire—*Total Number of Respondents:* 3,649; *Frequency of Response:* one time; *Average Burden per Response:* 50 minutes; *Estimated Annual Burden:* 3,029 hours.—Burden Information for Child Assessment and Self-Administered Questionnaire—*Total Number of Respondents:* 2,708; *Annual Frequency of Response:* one time; *Average Burden per Response:* 1.35 hours; *Estimated Annual Burden:* 3,656 hours.—*Total Burden:* 6,685 hours.

OMB Desk Officer: Allison Eydt. Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 4, 1994.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 94–11546 Filed 5–12–94; 8:45 am]

BILLING CODE 4150–04–M

Administration on Aging

[Program Announcement No. AOA–94–2]

Fiscal Year 1994 Program Announcement; Availability of Funds and Request for Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications under the Administration on Aging's Discretionary Funds Program for research, demonstration, training, development, and related capacity-building activities.

SUMMARY: The Administration on Aging (AoA) announces its Fiscal Year (FY) 1994 Discretionary Funds Program (DFP) of knowledge building, program innovation and development, information dissemination, training, technical assistance, and related capacity-building efforts. The FY 1994 DFP is responsive to the major strategic initiatives of the Assistant Secretary for Aging and to specific mandates of the Older Americans Act, which focus on certain aging program areas and on the needs of vulnerable older population groups. Funding for AoA discretionary grants is authorized by Title IV of the Older Americans Act, Public Law 89–73, as amended.

This program announcement consists of three parts. Part I provides background information, discusses the purpose of the AoA Discretionary Funds Program, and documents its statutory funding authority. Part II describes the programmatic priorities under which AoA is inviting applications to be considered for funding. Part III describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are published as part of this announcement following Part III. No separate application kit is necessary for submitting an application. If you have a copy of this entire announcement, you have all the information and forms required to prepare and submit an application.

Grants will be made under this announcement subject to the availability of funds for the support of the priority area project activities described herein.

DATES: This announcement contains different deadline dates for the submission of applications, depending upon the priority area under which an application is submitted for competitive review and funding. For applications responding to one group of designated priority areas, the deadline date is July 12, 1994. For another group of specified priority areas, the deadline for applications is October 7, 1994. One other priority area has multiple deadline dates. The potential applicant should check each priority area carefully to determine the deadline date for the application it intends to submit.

ADDRESSES: Application receipt point: U.S. Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–94–1.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., room 4278, Washington, DC 20201, telephone (202) 619–0441.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. The Challenges of an Aging Society

According to the National Center for Health Statistics, life expectancy at birth for Americans in 1991 rose to a record 75.5 years. The Census Bureau predicts that by the year 2020 the average life expectancy will be 82 years for women and 74.2 years for men. At the turn of the century, only 4 percent of the American population was 65 and over. By 1990, it was 12 percent. Beginning in approximately 15 years, the percentage is projected to increase rapidly to 20 percent and then to increase slowly to about 21% by 2050 and 22% by 2060. By the year 2030, there will be more people age 65 and older than young people under age 15 in the population.

The baby boom generation, which will begin to reach retirement age in little more than a decade, now represents the largest age segment of the U.S. population, numbering approximately 75 million. The current older population, already noted for its heterogeneity, will be significantly more diverse with the aging of the baby boomers in the early decades of the 21st century. The great increase in the numbers and the diversity of the elderly, combined with dramatically different lifestyle changes, such as four-generation households and more women serving in both caregiving roles and the work force, are all important factors to consider in planning for an aging society.

If the Nation is to be well prepared for the burgeoning numbers of older persons at the turn of the century, and to be equally well equipped to take advantage of the opportunities those changes provide—and not be daunted by the hard challenges—then today we must grasp the basic implications of an aging society, and act on the basis of those realizations. Our Nation has many different policies and agencies that impact on what people may or may not do when they retire. Although the Department of Health and Human Services provides the bulk of public financing for programs and benefits that directly or indirectly affect older persons, almost every federal agency is involved in providing services to older persons including the Departments of Housing and Urban Development, Transportation, Justice, Agriculture, Labor, Defense, Energy and Treasury. By creating the position of Assistant Secretary for Aging, the President and the Secretary of the Department Health and Human Services have provided a focal point for aging policy, whereby the disparate program responsibilities of federal government agencies can be linked into a more coherent vision of what is needed for an aging society.

B. Older Americans Act Responsibilities of the Assistant Secretary for Aging and the Administration on Aging

The Older Americans Act of 1965, as amended, is designed to provide assistance in the development of new or improved programs to help older persons, through grants to the States and tribal organizations for community planning and services and for research, demonstration and training projects. Through the Act, the Congress has declared that it is the responsibility of the Federal government, the States and Native American tribal organizations to assist older people as they endeavor to secure an adequate retirement income, the best possible physical or mental health services, suitable housing, long term care services, employment opportunities and participation in a wide range of civic, cultural, eduational and recreational activities.

Title II of the Act declares, further, that it is the responsibility of the Assistant Secretary for Aging to serve as the effective and visible advocate for older individuals within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government. Under Title II, the Assistant Secretary is charged with directly assisting the Secretary of Health and Human Services in all matters pertaining to problems of the aged and aging and with the responsibility to administer the formula and discretionary grant programs authorized by Congress under Titles III, IV, VI and VII of the Act.

1. The AoA Discretionary Funds Program

The Discretionary Funds Program authorized by Title IV of the Act constitutes the major research, demonstration, training and development effort of the Administration on Aging. Through this Title IV Program Announcement, the Assistant Secretary for Aging intends to draw special attention to the Discretionary Funds Program as an essential mechanism for: (a) improving programs and services to the elderly: (b) emphasizing several major initiatives that respond directly to the current and future challenges and opportunities of an aging society, and; (c) carrying out his responsibilities as a chief advocate for older persons.

The Title IV mandate is aimed, generally, at building knowledge, developing innovative model programs, and training personnel for service in the field of aging, and matching these resources to the changing needs of older persons and their families in the coming decades. AoA's research, demonstrations, training and other discretionary projects are focused on:

- Advancing our knowledge and understanding of current program and policy issues, such as community and in-home long-term care service systems and programs, significant to the well-being of the older population;
- Improving the effectiveness of Older Americans Act programs by testing new models, systems, and approaches for better providing and delivering services to older persons; and providing training, technical assistance, and information that will increase our ability to serve older Americans with skill, care, and compassion.

2. Coordination With Other Federal Agencies

In accordance with Title II of the Older Americans Act, the Assistant Secretary for Aging and the Administration on Aging (AoA) function as focal points within the Federal government for aging-related concerns. In that capacity, the Assistant Secretary advises the Secretary of Health and Human Services on matters affecting older Americans and provides consultation and information to units across the Federal government on the characteristics, circumstances, and needs of older persons. AoA has a strong commitment to working with other Federal agencies on policy and program development in issue areas of importance to older Americans. To carry out its national level program and advocacy responsibilities, AoA places major emphasis on developing collaborative relationships with other Federal agencies aimed at coordinating diverse and wide-ranging Federal program resources and linking those resources to the similarly diverse needs of older persons.

Dating back two decades, AoA has worked hard to develop and implement a network of Federal Interagency Agreements to better serve older Americans, combining our resources with those of the Departments of Transportation, Housing and Urban Development, Labor, and Education, the Farmers Home Administration, and the Corporation for National and Community Service (formerly ACTION), as well as with other agencies within the Department of Health and Human Services, such as the Social Security Administration, the Health Care Financing Administration, the Administration for Children and Families, and the Public Health Service, including the National Institute on Aging.

These interagency collaborations represent a strategic coupling of AoA's resources to serve the nation's elderly, especially those at risk of losing their independence. AoA's Federal Interagency Agreements cover a spectrum of program efforts—in housing, transportation, health promotion, elder abuse, etc.—that closely parallel a number of the priority areas in this Discretionary Funds Program Announcement.

3. Dissemination of Title IV Project Results and Products

In keeping with the provisions of the Older Americans Act, all projects funded under Title IV are required to undertake vigorous steps to disseminate the results and products of their projects to appropriate audiences involved in promoting the well-being of older persons. This should include energetic marketing of products and results. Projects are strongly encouraged to utilize appropriate promotional media campaigns in order to insure that their outcomes receive the widest possible attention. Such campaigns should seek to educate consumers, providers (including the Aging Network), the private sector, and policy sector about their results and to promote use of their products. A special priority area in this Program Announcement further emphasizes the importance of dissemination and utilization of Title IV project findings, products, and results.

As described below in Part III, Section I.2, the most effective dissemination begins at the moment a project is conceptualized and includes the involvement of potential user audiences throughout the project, particularly in the design of products. As part of their dissemination plan, applicants are also encouraged to consider the development, as appropriate, of brief products suitable for widespread dissemination to older persons, their families and other caregivers, and practitioners who serve older persons. Advice on ways to maximize the utilization of a proposed project may be obtained by contacting Saadia Greenberg at the AoA Office of Dissemination and Utilization at (202) 619–0441. Applicants may also be interested in obtaining a publication entitled, *Dissemination by Design*, which may be requested by calling the above number.

C. Major Strategic Initiatives

The Secretary of Health and Human Services has charged the Assistant Secretary for Aging with lead responsibility within the Department for four major strategic initiatives—home and community-based long-term care; older women; an aging blueprint for future generations; and nutrition and malnutrition. These initiatives are in concert with the Older Americans Act mandate to develop new and improved programs to help older persons. Through this Program Announcement, the Assistant Secretary is focusing Title IV Discretionary Funds support on each of these initiatives. (Full descriptions of the initiatives are available by contacting the Office of Program Development, Administration on Aging at 202–619–0441).

1. Home and Community Based Long Term Care

The home and community-based long-term care initiative responds to the central concern that persons with chronic illnesses and disabilities have the resources to live independently in their homes and communities as long as possible. One critical issue now being debated is how we can best ensure that government at all levels works in a more efficient and effective manner to help meet that concern. To focus attention on this and other key issues affecting home and community-based long-term care, the Assistant Secretary for Aging and the Administration on Aging convened a Health Care University in January 1994. The Health Care University provided a forum for (1) outlining the Assistant Secretary's home and community-based long-term care initiative; (2) encouraging the participants (including community, state, Tribal, and national organizations, agencies, and officials) to better understand and fully discuss the Health Security Act legislation proposed by the President, and; (3) providing preliminary findings of the AoA home and community-based long-term care survey.

The home and community-based long term care initiative will focus on building a comprehensive policy on long-term care for all persons who need services, with a special emphasis on the elderly. Surveys show that older people overwhelmingly prefer to live in their own homes and communities, rather than in institutional settings, but many need home and community-based services to do so. Approximately 6.1 million older people living in the community experience difficulty with one or more activities of daily living such as eating, bathing, dressing, toileting, or transferring in or out of bed. However, less than half of these individuals receive any personal help. Through this Discretionary Funds Program (DFP) Announcement, AoA will provide leadership for the continued development of consumer-driven home and community-based systems of care.

2. Older Women

Efforts to improve the quality of life for America's older women comprise another of the Assistant Secretary's initiatives upon which this DFP Announcement will focus. Women comprise 60 percent of today's 65 plus population. Today, there are 18.3 million women, as compared to 12.6 older men. By the year 2000, it is expected that there will be five women for every two men over the age of 75. The special circumstances faced by older women are frequently overlooked. Almost three-quarters of all elderly persons living below poverty are women. Poverty is projected to be an even greater problem for women when the baby boom generation reaches retirement.

Although women live longer than men, the quality of their lives often deteriorates substantially in the later years due to illnesses, chronic conditions, falls and other injuries, and stresses of caregiving or of living alone. Some physical conditions which typically affect older women can be prevented if they are encouraged to adopt healthier lifestyles in the late middle years.

The Administration on Aging recognizes the need for a highly visible, well-coordinated effort which, through outreach, education, dissemination, advocacy and partnership-building, will focus on critical issues affecting older women including income security, health, caregiving and housing. The older women's initiative will work to enhance the capacity of the Aging Network to effectively address older women's issues and explore the feasibility of developing intradepartmental and interagency partnerships to address the needs of older women. It will also endeavor to educate older women at the grass roots/local level, as well as the public and private sectors, about issues affecting older women; and reinforce the capacity of women to make significant contributions to society throughout the life cycle.

3. Nutrition and Malnutrition

The nutrition and malnutrition initiative of the Assistant Secretary will address the critical problem of malnutrition among the elderly. Recent surveys show that alarming numbers of older Americans are malnourished. At the same time, because of medical advances and the availability of community-based services, such as home delivered meals, more older persons have been able to remain independent and in their own homes, rather than having to be institutionalized. The Administration on Aging's nutrition and malnutrition initiative will focus attention on educating the public and private sectors to the growing problem of malnutrition, and finding ways to prevent its occurrence. As part of that effort, AoA is now supporting a synthesis of current knowledge concerning the nutritional status of older persons, as well as an analysis of public awareness of the issues of nutrition and malnutrition among the elderly.

The Administration on Aging will also focus its nutrition and malnutrition initiative on the current in-home and congregate meals programs supported under Title III and Title VI of the Older Americans Act. Key goals are: 1) increasing public awareness regarding the issues of adequate nutrition, malnutrition, hunger, and food insecurity and their interrelationships to health, independence, and quality of life of older individuals; 2) providing leadership in promoting a nutrition agenda for the future; 3) developing and promoting direct prevention and intervention strategies to enhance the nutritional status of older people, and; 4) developing integrated public policies to ensure greater access to appropriate food and nutrition services for older individuals. In support of these essential components of the nutrition and malnutrition initiative, the Assistant Secretary for Aging is investing approximately $2.8 million dollars in an evaluation of the National Nutrition Program for the Elderly funded under Title III of the Older Americans Act. A contract to perform the evaluation has been awarded to Mathematica Policy Research, Inc., of Princeton, N.J.

4. Blueprint for an Aging Society

Another major AoA initiative that the Program Announcement will address is development of a blueprint for how the Nation can and should now prepare for the retirement of future generations, particularly the baby-boom generation. As society ages, and the first of the baby boom generation reaches retirement age in the next decade, we must begin to plan for the impact that this aging cohort, and those following, will have on our society. Significant increases in the numbers and diversity of older persons, the complexity of claims on resources being made between generations, dramatically different lifestyle changes such as four generation households and more women serving in both caregiving roles and the work force—these are among the critical factors that must be addressed in planning for an aging society. In addition, society must learn to recognize that active and productive retirement is the norm.

In determining how best to address the needs of our aging society, we must examine not only the economic implications, but the social implications as well. The Blueprint will outline a framework for responding to the issues of future retirees by examining the aging of the baby boom cohort from a wide perspective, including issues such as the role of health and long-term care; the importance of supportive services such as housing and transportation; lifestyle choices and individual responsibility; the impact of demographic changes on family and social structures; diversity issues; and the economic realities of an aging society. This conceptual framework will assist the federal government in sorting out the options available to promote a more coordinated approach to our aging society.

Addressing the aging of society from this broad framework necessitates that we explore ways of working both within and outside of the Department of Health and Human Services to address these critical issues. The role of the Administration on Aging would include mounting an education campaign around savings and thrift issues, as well as physical fitness and health promotion. This education campaign would have as its focus making society aware of the opportunities and choices available to older persons to remain productive and active citizens, as well as the contributions seniors make to this country.

D. Other Older Americans Act Mandates

Other areas of emphasis in this Title IV Discretionary Funds Program Announcement derive from certain specific mandates of the Older Americans Act, which concentrate discretionary funding resources on making specific aging programs more effective and on better serving vulnerable population groups. The priority program areas (in addition to long term care, nutrition, older women, and a future aging society) include multigenerational and intergenerational programs, volunteerism, and minority aging.

E. Technical Assistance Workshops for Prospective Applicants

Workshops will be held in Washington, D.C. and several other cities to provide guidance and technical assistance to prospective applicants. Please call the appropriate AoA contact person for the time and location of the workshop you are interested in attending.

City	AoA Contact Person(s)
Washington, D.C.	Alfred Duncker/Saadia Greenberg, Albert Byrd/Irma Tetzloff, (202) 619–0441.
Boston, Massachusetts.	Thomas Hooker, (617) 565–1158.
New York, New York .	Judith Rackmill, (212) 264–2976.
Philadelphia, Pennsylvania.	Paul E. Ertel, Jr., (215) 596–6891.
Atlanta, Georgia	Franklin Nicholson, (404) 331–5900.
Chicago, Illinois	Eli Lipschultz, (312) 353–3141.
Dallas, Texas	John Diaz, (214) 767–2971.
Kansas City, Missouri	Larry Brewster, (816) 374–6015.
Denver, Colorado	Percy Devine, (303) 844–2951.
San Francisco, California.	Frank Cardenas, (415) 556–6003.
Seattle, Washington ..	Chisato Kawabori, (206) 553–5341.

F. Statutory Authority

The statutory authority for awards made under the AoA Discretionary Funds Program is contained in Title II and Title IV of the Older Americans Act, (42 U.S.C. 3001 et seq.), as amended by the Older American Act Amendments of 1992, Pub.L.102–375, September 30, 1992.

G. Public Comments on this Announcement

AoA invites comments on this Discretionary Funds Program Announcement. In addition, because the field of aging is characterized by rapidly unfolding events, new data, findings and interpretations, and a diversity of issues important to older people, the Administration on Aging is considering the publication of two Discretionary Funds Program Announcements in Fiscal Year 1995, in early Winter and late Spring. We invite comments on that possibility as well. Please direct your comments to: Office of Program Development, Administration on Aging, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Part II—Priority Areas

Part II of the Discretionary Funds Program (DFP) Announcement sets forth the priority areas under which applications will be considered for funding by the Administration on Aging. Part II also provides general guidelines concerning eligible applicants as well as project costs and duration. More specific instructions regarding eligibility, the federal share of project costs, project duration, and deadline dates for the submission of applications may be found under the individual priority areas.

Applications must be directly and explicitly responsive to the expressed concerns of the particular priority area under which they are submitted.

A. Eligible Applicants

As a general rule, any public or nonprofit agency, organization, or institution is eligible to apply under this Discretionary Funds Program Announcement. Where there are exceptions to this rule, they are specified in the appropriate priority area description. The Administration on Aging will not consider grant applications from individuals because they are ineligible to receive a grant award under the provisions of Title IV of the Older Americans Act. For-profit organizations are not eligible applicants, but may participate as subgrantees or subcontractors to eligible public or nonprofit agencies.

Any nonprofit organization applying under this program announcement that is not now a DHHS grantee should include, with its application, Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without proof of its status.

B. Project Costs and Duration

Under each priority area, AoA has estimated the number of projects to be funded and offered guidelines regarding both the duration of those projects and the anticipated federal share of project costs. Because applications are reviewed on a competitive basis within priority areas, they are expected to be comparable in terms of cost and duration. Therefore, applicants are strongly urged to adhere to those guidelines.

C. Projects Funded Under Cooperative Agreement Awards

Under certain priority areas, AoA has indicated it will use the mechanism of the cooperative agreement in making awards. Under the cooperative agreement mechanism, AoA and each project grantee will share responsibility for managing that project.

The grantee organization will have the primary responsibility for developing and implementing the activities of the project. AoA will join with the grantee in deciding the major issues to be addressed by the project; use periodic briefings and ongoing consultation to share with the grantee its knowledge of the issues being addressed by the project as well as information about relevant activities being undertaken by others; provide feedback to the grantee about the usefulness to the field of its written products and information sharing activities; and participate as much as possible in the deliberations of the project advisory committee. The details of this relationship will be set forth in the cooperative agreement to be developed and signed by AoA and the prospective grantee prior to the issuance of the award.

D. List of Priority Areas

(1) Home and Community-Based Long Term Care

1.1 Consumer Participation in Home and Community Based Care
1.2 Capacity Building and Mentoring Program in Home and Community Based Care
1.3 Aging and Disability: Models for Coordinated Service Systems
1.4 Employment of Public Assistance Recipients in Home Care
1.5 National Long Term Care Policy and Resource Center on Housing and Supportive Services
1.6 Eldercare Locator

(2) Older Women

2.1 National Policy and Resource Center on Older Women
2.2 Protecting Older Women Against Domestic Violence

(3) Nutrition and Malnutrition Among the Elderly

3.1 National Policy and Resource Center on Nutrition and Aging

(4) Blueprint for An Aging Society

4.1 National Academy on Aging

(5) Other Older Americans Act Mandates

5.1 Responding to the Needs of Minority Elderly through National Minority Aging Organizations
5.2 National Volunteer Senior Aides/Family Friends Projects
5.3 Volunteer Service Credit Demonstrations
5.4 AoA Dissemination Projects
5.5 Field-Initiated Project Applications

(1) Home and Community-Based Long Term Care

1.1 Consumer Participation in Home and Community Based Care

To develop effective and efficient systems of home and community based care (HCBC), States must promote the informed participation of consumers in the planning, development and delivery of services. For consumers to have meaningful input, they need information and better organization. Consumers need to be informed about the complex issues relating to governance and management of the HCBC system, including linkages with the institutional and acute care systems; resource allocation and cost controls; access to services, including eligibility, assessment, and care planning and coordination; and the scope, organization and quality of services. This information should serve to empower consumers to become partners in the planning and implementation of state and community HCBC systems.

Of critical importance is the mobilization and organization of consumers at state and community levels. Effective input into systems development and implementation can be achieved only through the collaboration of individuals and interest groups at all levels within the State. Collective action by consumers, based on sound information, will result in consumer-driven HCBC which is available, accessible and appropriate in relation to defined needs within allocated resources.

The Administration on Aging is interested in receiving applications for conducting statewide demonstration projects resulting in replicable models of consumer involvement in the design, development, and implementation of home and community based care systems. Such models of consumer-driven HCBC may be targeted to the elderly, or to the elderly in concert with other target populations (e.g. persons with disabilities).

Proposed projects should emphasize empowering individuals and groups at state and community levels to participate in the development of consumer-driven systems of home and community-based care. Applicants must identify the resources and mechanisms for developing and disseminating information, and for the mobilization and organization of individuals and groups to impact on HCBC policy, programs and services. Applicants should also focus on the development and implementation of mechanisms that would allow formal consumer input. Applications should address how proposed strategies will be targeted or modified to reach special populations such as low income and minority individuals and residents of rural areas. Innovative approaches are highly encouraged.

Proposals are invited from public and private non-profit organizations with demonstrated experience in representing and serving consumers of home and community based care. The Administration on Aging plans to make 4–6 awards with an approximate federal share of $125,000 per year for an estimated project period of two (2) years. The *deadline date* for applications under this priority area is *July 12, 1994.*

1.2 Capacity Building and Mentoring Program in Home and Community Based Care

In the absence of a cohesive federal policy on long-term care, States have been in the forefront of developing home and community-based care infrastructures. The staff of certain State Agencies on Aging and Area Agencies on Aging have significant knowledge and experience in the design, promotion, and implementation of home and community based systems. At the same time, the development of state systems has been an uneven process, with some States having achieved comprehensive statewide programs of home and community-based care while others are just now beginning.

As highlighted in Part I of this Announcement, home and community based care is one of the Assistant Secretary for Aging's priorities. In the past, the Administration on Aging has funded substantial demonstration and research projects in this area and continues to do so. However, an understanding of, and experience in, the development of state home and community based care infrastructures constitute a unique body of knowledge. It encompasses creating systems to assure quality of care, maximizing consumer choice and participation, developing financing mechanisms and budgetary systems, and understanding the pertinent policy environment. AoA's 1993 Home and Community Based Care Survey of all fifty States documented a variety of technical assistance and capacity-building needs in these areas.

Although research can identify critical issues and evaluate alternatives, it seldom addresses the practical, hands-on decisions that accompany the design and establishment of a statewide system. The definitive textbook or curriculum on how to build state home and community-based care infrastructures has yet to emerge. This priority area is based on the conviction that AoA can best facilitate the development of state home and community based infrastructures by supporting the exchange of accumulated knowledge, expertise, and hard-earned lessons. Accordingly, AoA is soliciting applications to design and administer a capacity-building/mentoring program in home and community based care.

The goal of the capacity-building/mentoring program is to assist States in the development of home and community-based care infrastructure by: (1) using the expertise and knowledge of State and Area Agency on Aging staff who have demonstrated leadership in creating innovative systems in their States; (2) drawing from other pertinent areas of knowledge and experience (e.g. the establishment of Medicaid waiver programs, Independent Living Centers, etc.) and; (3) providing peer consultation to States whose leadership has a commitment to improving their state system and recognizes the need for technical assistance.

Applicants must present an overall agenda and set of activities/approaches for conducting the project over a three year period, as well as provide a detailed first year plan for how the capacity-building/mentoring program will be developed, organized, and implemented. Applications must specify the mechanisms that the applicant intends to use to promote the hands-on exchange of expertise and peer consultation. These mechanisms could include but are not limited to sabbaticals, conferences, partial placement, on-site job placement, intergovernmental transfers, and other innovative techniques. Applicants should bear in mind that in order to accomodate both the needs of States receiving peer consultation and of those providing peer consultation, multiple approaches or mechanisms will most likely be needed. In justifying their proposed courses of action, applicants should also demonstrate how these activities are designed to maximize the funds available to accomplish the stated goals.

AoA expects to fund one capacity-building/mentoring program in home and community based care with a federal share of approximately $300,000 per year for three years. The *deadline date* for submitting applications under this priority area is *October 7, 1994.* Any public or private non-profit agency or organization is eligible to apply. However, the applicant must have extensive knowledge of home and community-based care systems and the ability to identify key capacity-building needs regarding state infrastructure, to select and recruit exemplary State and Area Agency on Aging staff to provide peer consultation, to match States with the appropriate peer consultants, and to coordinate all arrangements.

The applicant selected will be awarded a Cooperative Agreement for a three-year project period. AoA and the organization/institution selected will work cooperatively to design and implement the capacity-building/mentoring project. Each year AoA and the grantee will negotiate a scope of work with relevant time tables and objectives. The project shall have a director with an appropriate background and qualifications relevant to aging and disability, long term care, systems development, and policy studies who shall devote a minimum of 50% of his/her time to this position.

1.3 Aging and Disability: Models for Coordinated Service Systems

The ongoing debate about health care reform, long term care and disability are clear indicators of the need for the aging, disability and rehabilitation communities to work more closely together. The Administration on Aging seeks proposals from State and Area Agencies on Aging, State agencies serving the disabled, Tribal organizations, and national organizations and providers to examine the issues and establish models relating to the coordination of services for the frail elderly and the disabled, a promising recent development in several state systems.

Over the past few years, the Administration on Aging has established working relationships with organizations such as the Administration on Developmental Disabilities and the National Institute for Disability and Rehabilitation Research of the Department of Education to better serve older adults with disabilities and their families. This priority area will extend these ties to the grass roots, state and local levels.

A recent analysis of information from State Agencies on Aging indicates that at least eighteen State Aging Agencies have some policy or program management responsibility for the disabled. The Administration on Aging wishes to further explore potential opportunities for interaction, coordination and joint partnerships between the aging network and the disability community.

Proposals submitted under this priority area relate to the development of a coordinated service system. Proposals must include evidence of collaboration between the aging community and network of organizations serving the disabled. Joint applications may be submitted.

Coordinated Service Systems

There seems to be a fairly common assumption that specific programs for the disabled and the elderly, which were established under separate legislation, are quite different from each other even though the policy objectives for the two target groups have some similarities. Programs for the elderly promote maximum independence through access to a comprehensive, community based service delivery system. Programs for the disabled place high value on enhancing personal autonomy, promoting consumer choice and supporting independence.

An examination of the similarities between the two programs raises speculation regarding "turf" issues and the legislative mandates regarding advocacy for the two constituent groups. In the interest of making programs more responsive and cost effective, a very different environment exists for strategizing about how to use available resources more effectively. The aging network preference for a "non-medical" model of home and community based long term care may raise some concern as to whether clients of the two programs have comparable needs. Some may view programs for the disabled as too closely tied to the medical or health care system. Another factor in this equation is how will an aging disabled population, which benefitted from rehabilitation programs initiated in the 1970s, affect demand for aging services as the disabled grow older.

Applications funded under this section should result in the development of effective and innovative models which demonstrate linkage of the aging and disability networks. These models can build on existing models that have been successfully implemented by public and private organizations at the national, state and local levels. Projects may focus on various aspects of systems development such as access/care coordination, quality assurance, management of home and community based care, interagency coordination and the financing mechanisms employed by the two different groups.

In developing new models, successful applicants will seek the advice, input and cooperation of experts and practitioners in the aging and disability fields. Program activities may include conferences, work groups for the design of new approaches, and development of issue papers. Applications should include provision for wide dissemination of the new model and a plan for marketing the model to others in a manner which actively encourages and facilitates opportunities for replication.

Under this priority area, AoA expects to make approximately 4–6 awards with a federal share of up to $150,000 each year for a period of approximately three years. The deadline date for submitting applications under this priority area is July 12, 1994.

1.4 Employment of Public Assistance Recipients in Home Care

Home care remains one of the fastest growing workforce areas in today's economy. This growth will only increase as the emphasis on home and community based long term care continues, especially if provisions for such care are included in a health care reform bill approved by the Congress. However, shortages of home care workers affect the access older and disabled persons have to needed care, as well as the continuity and quality of care they receive.

This priority area addresses the need for demonstrating approaches to increasing the size and stability of the home care workforce by employing public assistance recipients, a group of persons typically outside the workforce. It also reflects the Administration's commitment under proposed welfare reform to foster gainful work for those caught in the current welfare system.

Many past efforts to employ persons on welfare in the home care workforce have been unsuccessful. A major deterrent has been the perception—and in some States the reality—that welfare payments and Medicaid benefits exceed the wages and benefits offered by the home care industry. This priority area is intended to demonstrate that this deterrent and others can be overcome by replicating existing, proven approaches or developing new approaches for employing welfare recipients in home care.

Examples of existing approaches that merit consideration for replication are described below. Information on these programs is available by calling the Office of Program Development at 202–619–0441.

- Denver Department of Social Services (DSS) project "Apprenticeships for Health Services Paraprofessionals"—This approach, funded two years ago by AoA, successfully trained, placed, and provided initial career advancement ladders for Aid to Families with Dependent Children (AFDC) recipients in nursing aide/home health aide positions. This was done in collaboration with the Department of Health and Human Services' Job Opportunities and Basic Skills (JOBS) program and the Department of Labor's first successful nurses assistant/home health aide apprenticeship program. One key to the success of the Denver project was creative mixing of Title IV discretionary funding with those of others available in the community, e.g. Job Training Partnership Act (JTPA), JOBS, and adult education, etc. The project also featured careful participant screening, extensive case management, mentoring, and supportive services, one year of training, internships, and apprenticeships resulting in an apprenticeship certification, guaranteed jobs and benefits, and guidance in future career paths.
- Cooperative Home Care Associates (CHCA)—The CHCA program was established in the South Bronx in 1985 as a worker-owned cooperative that allows employees to participate in decision making about all aspects of the organization. They primarily train and employ single mothers who have previously been on welfare. After new employees complete a trial period, they can become worker-owners by pledging a member-equity investment, which can be deducted from weekly pay. The agency's wages are among the highest in the home care industry and the agency provides raises based on seniority. All employees receive health insurance, paid vacation, and sick time. The agency has provided funding for senior paraprofessionals to become LPNs. The annual turnover is less than 20 percent, far below the industry average.

This priority area is designed to replicate and/or adapt the proven experiences of projects like those described above to new settings, or to demonstrate other innovative and promising approaches to employ public assistance recipients in home care programs. It is not intended to support the expansion of existing programs.

Proposals shall contain an evaluation component that effectively measures project outcomes, particularly in terms of employment, wages and benefits received, retention, and reduction in welfare benefits. Project findings should demonstrate a program approach that will be of use to State and Area Agencies on Aging, local employment, social service, and other service agencies around the country. The proposal should contain a nationwide effort to disseminate project results to the aging network and other relevant agencies and organizations.

State and Area Agencies on Aging, Tribal organizations, and other public and private non-profit organizations, institutions and agencies are eligible to submit an application under this priority area. As appropriate, applications should be developed in consultation with State and Area Agencies on Aging. The deadline date for submitting applications under this priority area is October 7, 1994. AoA intends to make approximately 2–3 awards under this priority area with a federal share of approximately $150,000 per year for a project period of two years.

1.5 National Long Term Care Policy and Resource Center for Housing and Supportive Services

As the nation engages in a debate to develop a national long term care strategy, it is important to recognize that a successful strategy must include choices for a wide range of housing options to serve as an alternative to institutionalization. For several reasons, among them the high likelihood that it can and does function as a service delivery point, housing is a significant factor which can affect how long term care home and community based services are delivered and financed. Too frequently, the significance of housing options and living arrangements have not been taken into sufficient consideration in attempts to develop comprehensive, coordinated long term care systems.

Over the past several years AoA has supported a number of initiatives to expand elderly housing options. Our goal has been to increase the capacity of the aging network to work with other networks such as housing, finance, real estate, homebuilders, etc., and provide public education and information to the elderly and their families to make informed decisions about their housing choices. Important programmatic initiatives were launched in home equity conversion, shared housing, consumer housing information services, supportive services in federally assisted housing, accessory apartments, land use and zoning, home modifications and models for State Agency on Aging leadership roles in federally assisted housing. AoA has worked in partnership with other organizations, such as the Robert Wood Johnson Foundation, to implement major initiatives in elderly housing.

Despite these many program efforts elderly housing continues to be a complex subject which requires ongoing attention. It involves numerous levels of government and many public and private agencies. Because of the complexity of the subject it has been difficult for the aging network and others to develop comprehensive and coordinated approaches. Program development has been inhibited by a lack of up-to-date information, knowledge, expertise, and resources.

Because housing and supportive services are vital and integral components of home and community based long term care services, this priority area seeks to establish a National Long Term Care Policy and Resource Center for Housing and Supportive Services. The Center's mission is to provide a focal point for the development of long term care home and community based services specializing in elderly housing and supportive services. In particular, applicants must demonstrate an awareness of the special housing needs of older women, minorities and elderly residents of public housing. Applicants must propose a strategy for addressing these issues and incorporating specific activities into their applications.

In September of 1993, the Administration on Aging, pursuant to Section 407 of the Older Americans Act Amendments of 1992, funded four applications to establish and operate National Resource Centers for Long Term Care. The Centers are responsible for conducting research, disseminating information, and providing training and technical assistance aimed at improving national, state, and local programs for the provision of home and community based long term care. The proposed National Long Term Care Policy and Resource Center for Housing and Supportive Services will complement and coordinate its efforts with the four current Centers, together constituting a broad, multifaceted source of knowledge, information, training, and technical assistance to national, state, and local organizations and agencies working to build a comprehensive, accessible, and effective long term care system.

The Center will support State and Area Agencies on Aging as they promote the development of community based systems of services for older persons throughout their State. The Center will also assist AoA to develop successful strategies and approaches for coordinating program efforts with those programs administered by the Department of Housing and Urban Development that affect housing for the elderly and disabled.

The Center will focus its efforts on analyzing and synthesizing available knowledge; putting it in a format which is useful to planners, practitioners, and others; conducting training based upon it; and promoting the dissemination and utilization of this knowledge in efforts to expand housing options and supportive services for older persons. Special emphasis is to be placed upon those activities which support improved and close coordination between Older Americans Act programs and programs under the jurisdiction of the Department of Housing and Urban Development. This special emphasis should aid State and Area Agencies in gaining timely information about new legislative and policy issues related to federal housing programs. In addition, the following activities should be undertaken on a national scope:

1. Training and technical assistance to help agencies in the Aging Network and other organizations and agencies working in the field of long term care on policy and practice issues through such means as telephone consultation, written products and materials, teleconferencing, workshops, and conference presentations.

2. Public education and information dissemination that will result in effective sharing of the latest thinking, methods and findings with State Agencies on Aging, Area Agencies on Aging, legislative officials, service providers, researchers, educators, and the public. Applicants are encouraged to develop innovative media and marketing approaches to reaching elderly consumers and to targeting special audiences and key decision makers.

3. Knowledge building and policy analysis oriented toward results and products which have practical application and immediate use to those working on housing and supportive services, e.g., the development and/or modeling of a useful instrument or tool; preparation of educational, practice, and technical assistance materials; an analysis of key issues of concern relative to a particular subject. Applicants should have the capacity to meet the need for short-term policy analysis on topics relating to housing, supportive services, and long term care. Based on

a high level of knowledge and information synthesis, applicants should propose possible subjects for policy analysis but also demonstrate that they possess the capacity to respond flexibly and quickly to such needs.

Any public or nonprofit agency, organization, or institution is eligible to apply under this priority area. However, to merit serious consideration, an applicant must demonstrate that it has (1) extensive knowledge and experience in the area of housing and supportive services, (2) a record of relevant achievement in this area, and (3) the requisite organizational capability to carry out the activities of a Resource Center on a nationwide scale. AoA and the organization/institution selected to serve as the National Long Term Care Policy and Resource Center for Housing and Supportive Services will work cooperatively in the development of its scope of work and agenda of major events and activities. (However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient issues). The National Long Term Care Policy and Resource Center for Housing and Supportive Services shall have a Director with an appropriate background and qualifications in aging and policy studies who shall devote a minimum of 50% of her/his time to this position.

AoA expects to fund the National Long Term Care Policy and Resource Center for Housing and Supportive Services through a cooperative agreement award for a period of three years. The federal share of Center project costs will be $300,000 for year one and $400,000 per year for years two and three. The deadline date for submitting applications under this priority is July 12, 1994.

1.6 *Eldercare Locator*

In this fast-paced era where most women work outside the home and adult children of aging parents frequently live far from their aging relatives, it has become more and more imperative that older people and their caregivers have access to information about where to get services necessary to assist older persons in meeting their needs within their own communities. As the number of agencies and organizations providing home and community based services to older persons proliferates, there is a need to assist people in finding the right kind of service for their particular need. Especially useful would be information and assistance for frail elderly and their families on accessing home and community based services. Frequently, people seeking service for their aged loved ones are not aware of where to get information about services that may be available nor are they aware of the existence of the network of aging services at the local level.

Information and assistance or information and referral as it may be more commonly known, is a mandated service under the Older Americans Act. Each Area Agency on Aging must provide this service either itself or through contract to serve the older population in its planning and service area. In a 1988 study of Information and Referral (I&R) systems funded by AoA, two problems were identified. First, significant variation was found in both the quality and quantity of I&R services available throughout the country. Second, people in local communities and particularly long-distance caregivers had difficulty in finding out about available services in the community in which their loved one resided. This feasibility study found strong support among State and Area Agencies on Aging for a national locator service to build on and not duplicate or replace the existing I&R services, a national locator service which would target long distance caregivers.

In response to these concerns, the Administration on Aging in 1990 funded the development and implementation of the Eldercare Locator. This national 800 telephone number is designed to help direct both local and long-distance caregivers to the appropriate source of information about services in every locality in the United States. Callers identify the county, city or zip code in which the older person lives and describe the type of services they are looking for. The operator then directs them to a local Information and Referral number, an Area Agency on Aging or the number of the particular service which has been identified and the caller makes the local contact.

The Eldercare Locator began service in December 1991 on a limited basis in the Northeast States. Over the next year, the Locator service was expanded in stages to other parts of the country, becoming nationwide in December 1992. The Locator serves all 50 States, Puerto Rico, the Virgin Islands, and the American Trust Territories. It is operational from 9 AM EST until 11 PM EST. In January, 1994, additional operators and telephone lines were added to increase the ability of the Locator to serve additional clients with reduced waiting times. Prior to January, 1994, the Locator was able to serve an average of 4000 callers a month. This figure will be significantly increased with the addition of the new operators and lines and expanded times, although no figures were available at the time of publication of this announcement.

The Eldercare Locator is a part of an AoA Initiative begun in 1990 to improve access to and quality of I&R assistance that older people and their caregivers receive. The I&R Initiative focused on heightening recognition of the pivotal role this service plays in a comprehensive and coordinated system of community based long term care services. The AoA Initiative focused on enhancing: the quality of I&R systems; the professionalism of staff operating I&R systems; the visibility of I&R systems for older persons; access to existing I&R services; and the availability of I&R services to those elderly at risk of losing their independence. Under the Initiative, AoA funded both the Locator and a National Information and Referral Support Center which provides training and technical assistance to State and Area Agency on Aging Information and Referral programs and assists them in strengthening and expanding their services.

The Administration on Aging is soliciting proposals, under a new competition, to continue the Eldercare Locator and the National Information and Referral Support Center. Continued support for the Locator is aimed at strengthening and expanding its services, increasing public awareness and understanding of the Locator, and enhancing the access of older people and their caregivers to community based long term care services. In addition to the continuation and expansion of the basic Locator service, the following activities should be undertaken by the grantee:

- Continuous update of the database with a new survey of the Area Agencies on Aging to determine whether the database should be expanded and if so, how. The results of this survey should be reflected in further refinements of the database.
- An evaluation of the Locator service should be conducted within the first year. A previous evaluation of the service conducted prior to implementation of nationwide service indicated that 78% of users were satisfied with the service and would use it again. Since the service will have been operational for over two years by the time a new evaluation is undertaken, it is necessary to look at consumer satisfaction at this point in time as well as how the service could be improved. Other factors that should be examined are the efficiency and

effectiveness of the services compared to the overall cost per average call.

- Either as part of the evaluation or as a separate study, an investigation should be conducted on the impact of changing technology on the future of information-based services particularly as it would impact on the Eldercare Locator. For example, in the future, might it be feasible and what are the cost implications of patching callers directly through to local I&R services.
- A major public relations/publicity campaign should be conducted designed to reach the maximum number of older people and their caregivers informing them about the availability of the Locator. With the increasing number of Baby Boomers being put in the position of having to care for or find care for their aging parents, it is necessary to educate this group not only where to go to find services but what kind of services they should be looking for. One of the results of the evaluation that was conducted after the first six months of operation of the Locator indicated that use of the Locator by minority populations was limited. Special emphasis should be directed toward outreach to minority populations and increasing use of the Locator by these groups.
- In its public relations and outreach activities, the grantee should encourage participation and support by private and voluntary organizations.
- The Locator should consider the possibility of creating a linkage with the Department of Defense and its military family support centers. Frequently, military family support centers get inquiries from members of the military about their aging relatives and where to go to get services for them. This would be a logical area in which the grantee could promote the use of the Locator.
- With the advent of elder rights systems being formalized as a result of the implementation of Title VII of the Older Americans Act, the Locator should examine the possible role of Information and Referral services as a gateway to elder rights systems. As these systems develop, the Locator and the I&R Support Center should examine the potential of structuring relationships between these services.

Since the Locator depends on the maintenance of quality information and referral services at the state and local level, attention must continue to be focused on upgrading these services through training and technical assistance for state and local Information and Referral service programs. AoA proposes to continue and expand the National Information and Referral Support Center. The Support Center should provide training and technical assistance, capacity building, long range development, assistance in system upgrade, implementation of standards for I&R services, and other services related to the maintenance of high quality service among state and local information and referral services. In addition, the Support Center should, in an advisory capacity, support the operation of the Locator and help coordinate the Locator with State Aging Agency and local information and referral networks.

The current Eldercare Locator project has been in operation since the summer of 1990 under the auspices of the National Association of Area Agencies on Aging. The National Information and Referral Support Center has been operated since the summer of 1990 by the National Association of State Units on Aging. Information regarding the Locator and the Information and Referral Support Center is available by calling the Office of Program Development, Administration on Aging at (202) 619–0441.

AoA expects to fund one cooperative agreement under this priority area with a federal share of approximately $750,000 per year for a project duration of approximately three years. The deadline date for submitting applications under this priority is July 12, 1994. Eligibility is limited to public and private non-profit national organizations with experience in conducting national hotlines and dealing with the network of State and Area Agencies on Aging and State and Area Information and Referral Services. Coalitions of organizations are encouraged.

(2) Older Women

2.1 National Policy and Resource Center on Older Women

Because of their longevity and lengthier retirement periods, the health, economic and social problems of the elderly are more often problems of women. As described earlier in this document under the Assistant Secretary's Initiative on Older Women, older women are clearly a population at risk. It is imperative that policy makers at all levels, aging organizations, other national organizations, and service providers begin to recognize and respond to the unique needs and concerns of older women.

Under this priority area, the Administration on Aging is soliciting proposals for the establishment of a National Policy and Resource Center for Older Women. The Center is expected to assist the Administration on Aging in focusing national attention on the contributions and problems of older women, with particular emphasis on the issues of income security, caregiving, health, and housing.

As the population ages, one of the primary challenges facing decision makers will be how to enhance the quality of life for older women, the vast majority of the older population. Without specific interventions and strategies designed to improve the status of current and future generations of older women, they will continue to face higher poverty rates, to bear a disproportionate share of caregiving burdens—frequently without access to caregiving when they need it—and to suffer from more chronic illnesses.

Single elderly women are particularly at risk. A 1991 report of the Advisory Council on Social Security projects that single elderly women in the baby boom generation will have lower levels of income and wealth than single elderly men or elderly couples. In fact, the economic well-being of single elderly women will continue to decline relative to that of elderly couples.

Younger and mid-life women must realize that their decisions and actions now will have a considerable impact on how they live as older women. Society in general needs to reinforce the capacity of older women to contribute and to be less dependent upon public benefits as they age.

AoA believes that a National Policy and Resource Center for Older Women can play a significant role in fostering a nationwide dialogue about how to improve the status of older women. The goals of the National Policy and Resource Center for Older Women are to encourage greater national responsiveness to the concerns of older women through the identification of critical issues; to educate key actors such as older women themselves, policy makers, the Aging Network, and national aging and women's organizations; and to prepare relevant policy analyses.

Applicants under this priority area must discuss the overall agenda and activities of the Center over a three year period and provide a detailed first year plan for how the Center will address caregiving, income security, housing, and health issues as they relate to older women. The program design should clearly demonstrate how individual activities and projects are part of and contribute to the development of a comprehensive approach to improving the quality of life for America's older women.

In addition, applicants must show how they will carry out the following activities:

1. Consumer Education and Dissemination

All consumer education and dissemination activities should focus on transmitting information on caregiving, health, income security, housing and other relevant issues to older women at the grassroots level. Many useful materials and products have been developed but have not reached the older women who would benefit from them. Applicants are encouraged to develop innovative approaches to consumer education and dissemination. Also, proposals should specify how they will work with the Aging Network as well as other networks to disseminate relevant information to women at the local level. In particular, education efforts should recognize the diversity of older women in terms of race, ethnicity, class, and other factors.

2. Education and Technical Assistance

Education and technical assistance activities should target members of the Aging Network and national women's organizations as well as policy makers at all levels. Both aging and women's organizations need to become more responsive to the needs of older women and to recognize their areas of common interest. Policy makers at all levels must realize the necessity of planning not only for an aging society but also for a society that will be predominantly female and old.

3. Knowledge Building and Policy Analysis

Research, development, and policy analysis should be oriented toward results and products which have practical application and immediate use to those working on older women issues, e.g., the development and/or modeling of a useful instrument or tool; preparation of educational, practice, and technical assistance materials; an analysis of key issues of concern relative to a particular subject. Applicants should have the capacity to meet the need for short-term policy analysis on topics relating to older women. Based on a high level of knowledge and information synthesis, applicants should propose possible subjects for policy analysis but also demonstrate that they possess the capacity to respond flexibly and quickly to such needs.

Any public or nonprofit agency, organization, or institution is eligible to apply under this priority area. However, to merit serious consideration, an applicant must demonstrate that it has (1) extensive knowledge of and experience in older women issues, policies, and programs; (2) a record of relevant achievement in this area;, and (3) the requisite organizational capability to carry out the activities of a Resource Center on a nationwide scale.

AoA expects to fund the National Policy and Resource Center for Older Women through a cooperative agreement award for a three year period, with a federal share of approximately $300,000 for the first year; $400,000 for the second year; and $400,000 for the third year. AoA and the organization/institution selected to serve as the National Policy and Resource Center for Older Women will work cooperatively in the development of its scope of work and agenda of major events and activities. (However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient issues). The National Policy and Resource Center for Older Women shall have a Director with an appropriate background and qualifications in aging and policy studies who shall devote a minimum of 50% of her/his time to this position. The deadline for submission of applications under this priority area is October 7, 1994.

2.2 Protecting Older Women Against Domestic Violence

Physical and sexual violence against women is a serious problem. Millions of women are assaulted by their intimate partners each year. Nearly one quarter of women in the United States will be abused by a current or former partner some time during their lives. This violence causes serious physical, psychological, and social consequences for these women.

Domestic violence is an ongoing, debilitating experience with profound dehumanizing consequences: the battering of body and soul; the increased isolation from the outside world; the toll on personal freedom, and; the foreboding sense that countervailing resources are beyond one's grasp. Whenever a woman is placed in physical danger or controlled by threat or use of physical force, she has been abused. The risk is greatest when a woman is separated from supportive networks. Physical/sexual abuse is recurrent and escalates in frequency and severity. It is often accompanied by emotional and psychological abuse.

Older women who experience domestic violence are in a unique situation, compared to younger women. They may have endured a violent relationship for years or the abuse may begin late in the life of a relationship, brought on by age-related changes in either or both partners, such as retirement or declining physical and mental health. In trying to leave a violent relationship, older women face obstacles that are different from those faced by younger battered women, obstacles linked to family relationships, health, employment, finances, and to the psychological costs of starting over late in life.

Although older battered women can turn to the domestic violence/domestic abuse system, few do. With some notable exceptions, most local domestic violence programs do not address the needs or concerns of older women. Efforts focus on younger women and women with children. Staff are not familiar with the aging process. In addition, the majority of shelters have not been accessible to older women with physical disabilities, although the Americans with Disabilities Act (ADA) of 1992 will undoubtedly provide an impetus for change.

Applications are invited from public and non-profit organizations engaged in implementing either local domestic abuse programs or statewide domestic violence programs. Applications should include the following:

(1) A plan for providing services designed to meet the physical, psychological, and economic needs of older women, including physically disabled women;

(2) A plan that demonstrates a coordinated systems approach to gaining the cooperation of community agencies such as aging services providers, domestic violence shelters, religious institutions, health, emergency medical services, mental health, legal services, law enforcement, and criminal justice;

(3) A plan that includes cross training between aging and domestic violence organizations;

(4) An endorsement of the program by the Area Agency on Aging if the program is local, an endorsement by the State Agency on Aging if the program is statewide; and

(5) A plan for measuring the amount of linkages being established between the aging and domestic violence organizations, the numbers of older women being reached through outreach programs, and the number of older women being effectively served.

Among the key elements which should be considered for inclusion in a coordinated system to protect older women against domestic violence are (1) safe housing, advocacy, and support of women, (2) criminal justice system action, (3) effective civil protection, (4) counseling/education groups for the men who batter, (5) systems cooperation, and (6) coordination, participation by, and accountability to battered women.

All public and nonprofit agencies and organizations are eligible to apply under this priority area. Applicants must demonstrate a strong knowledge base and an extensive experience of providing services to women who are victims of domestic violence. Preference will be given to applicants with demonstrated extensive experience in providing services to older women. As appropriate, applicants are encouraged to develop close linkages with State and Area Agencies on Aging in the development of the application and the implementation of the project.

AoA expects to fund approximately 3–5 projects under this priority area with a federal share of approximately $125,000 per year and an estimated project period of two (2) years. The deadline date for submission of applications under this priority area is July 12, 1994.

(3) Nutrition and Malnutrition Among the Elderly

3.1 National Resource and Policy Center on Nutrition and Aging

Optimal nutritional status is essential to the well-being, health, independence, and quality of life for everyone, from well, healthy individuals to frail, vulnerable, functionally impaired individuals. Access to adequate food that provides essential nutrients is a daily issue for all Americans, but becomes a more significant issue if an individual is elderly.

Most experts agree that adequate nutrition is vital to helping older individuals remain independent, avoiding premature nursing home placement or using expensive health care services. Appropriate nutrition promotes health, prevents or delays the onset of disease, aids in recovery from illness and trauma, reduces incidence of hospitalization and rehospitalization, helps delay further declines in already functionally impaired individuals, fosters continued independent living in the community, and even plays a role in helping individuals who are terminally ill.

The Assistant Secretary for Aging and the Administration on Aging have important responsibilities for promoting good nutrition and preventing malnutrition in the nation's older population. This priority area, which calls for the establishment of a National Resource and Policy Center on Nutrition and Aging, underscores the need for better knowledge, better information, and better trained personnel to better serve malnourished older persons. Under the Older Americans Act, AoA and the aging and nutrition service network of 57 State Units on Aging, 670 Area Agencies on Aging, 224 Title VI Grantees, and 15,000 nutrition sites serve approximately 243,150,000 meals to approximately 3.5 million people. Yet a study by the Urban Institute (November-1993) indicates that although community nutrition programs are reaching some of the at-risk older population, only about one-third of those in need are currently being served and that these programs are stretched to their financial limit.

Recognizing both the importance of good nutrition for all older Americans and that nutrition services are an integral component of home and community based long term care services, the Assistant Secretary on Aging has established a Nutrition/Malnutrition Initiative that focuses on the prevention of malnutrition and food insecurity and the promotion of good nutritional practices. The Initiative places responsibility on AoA to undertake four interrelated strategies:

(1) Increasing the awareness of consumers, providers, administrators, and policymakers regarding the importance of good nutrition among the aging population and its role in home and community based long term care services;

(2) Providing leadership among various agencies and organizations including the aging and nutrition networks in promoting a nutrition agenda for the future;

(3) Developing and promoting direct prevention and intervention strategies which will enhance the nutritional status of older individuals and nutrition programs at all levels; and

(4) Developing public policies which will ensure greater access to appropriate food and nutrition services for older individuals, especially low-income, minority, and those at nutritional risk.

The Administration on Aging and the National Resource and Policy Center on Nutrition and Aging, to be established under this priority area, will work through a Cooperative Agreement in implementing the Nutrition/Malnutrition Initiative to promote and improve nutritional and health status for older Americans. The Center will focus on the following three activities:

(1) Information Dissemination: Applications should include effective methods for sharing the latest thinking, methods and findings regarding nutrition/malnutrition and the elderly with the Aging Network, service providers, researchers, educators, private industry and the public. The Center will also be responsible for developing a media campaign to educate consumers, providers, the private sector and policy makers about the issues and interrelationships of adequate nutrition, malnutrition, hunger and food insecurity on health, independence, and quality of life for older individuals. Applications must describe what outcomes and impacts are anticipated as a result of the information dissemination efforts;

(2) Training and Technical Assistance: Applications should describe how the Center will assist agencies in the Aging Network and other organizations and agencies that work in the field of nutrition and aging to develop effective strategies for preventing malnutrition and promoting good nutrition at the community level. Such activities should include encouraging leadership within communities to identify and strengthen community supports; developing strategies to enable these entities to intervene in innovative ways, developing direct prevention and intervention strategies, and; encouraging new partnerships with the private sector. Applications must describe what outcomes and impacts are anticipated as a result of the training and technical assistance efforts;

(3) Knowledge Building and Policy Analysis: Applications should describe how the proposed Center proposes to assist AoA and the Aging Network through the conduct of research for improving the nutritional well being of older adults particularly the vulnerable and at risk populations. Research is to be limited to short term studies with practical and useful products that develop, enhance, or promote knowledge of and solutions to issues surrounding malnutrition and nutrition with respect to older people. Applications must describe what outcomes and impacts are anticipated as a result of the research and policy development efforts. Applicants should have the capacity to meet the need for short-term policy analysis on topics relating to nutrition/malnutrition and the elderly. Based on a high level of knowledge and information synthesis, applicants should propose possible subjects for policy analysis but also demonstrate that they possess the capacity to respond flexibly and quickly to such needs.

AoA and the organization/institution selected to serve as the National Policy and Resource Center on Nutrition and Aging will work cooperatively in the development of its scope of work and agenda of major events and activities. (However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient issues). AoA will share with the Center information on other federally supported projects and activities relevant to malnutrition, nutrition, and the elderly. The Center shall have a Director with an appropriate background and qualifications in aging and policy studies who shall devote a minimum of 50% of her/his time to this position.

AoA expects to fund the National Policy and Resource Center on Nutrition and Aging through a cooperative agreement award for a period of three years. The federal share for the first year will be $300,000 with second and third year federal funding at $400,000 per year. The deadline date for submission of applications under this priority is October 7, 1994. Eligible applicants for the Center are public and private non-profit organizations with knowledge and experience regarding nutrition, malnutrition, nutrition programs and nutritional needs of the elderly.

(4) Blueprint for an Aging Society

4.1 National Academy on Aging

The Administration on Aging is soliciting proposals, under a new competition, for the continuation of the National Academy on Aging, which was established with funding from the Administration on Aging in FY 1991. The Academy has and will continue to serve as a valuable source of knowledge and guidance on the critical future issues shaping a blueprint for an aging society. It has brought together leaders in American society to discuss and debate emerging aging trends and issues, as well as strategies regarding how they and their organizations can better meet the challenges inherent in the graying of America. The Academy has achieved national recognition as an impartial national forum for policy analysis and debate on the major policy issues of our current and future aging society.

Leaders and decision makers are increasingly aware of the challenges in responding knowledgeably and effectively to the growth and change in our nation's older population. Leaders at national, state, and community levels— from public, private, and voluntary sectors alike—must become more cognizant of the transformations now taking place toward an aging society, and be able to provide wise and timely decisions affecting the elderly.

Decision makers will be especially challenged by the growing numbers of two different generational segments of our aging population: (1) Older persons at risk of losing their independence and; (2) the baby-boom generation—a cohort of more than 70 million individuals born between 1946 and 1964, who will begin to reach retirement age in the first decade of the 21st century. These two groups have different substantive expectations as well as different time perspectives regarding such salient issues and challenges of an aging society as income maintenance, health security, caregiving, and housing. The needs of vulnerable at-risk older persons are immediate and tangible, and the challenges to society on their behalf are in many ways those described earlier in this Program Announcement under the Assistant Secretary for Aging's Home and Community Based Long Term Care Initiative.

The challenge to the baby-boom generation, and to the nation as a whole, is to prepare now to meet their not-too-distant future resource needs, to act now in an intelligent and sensible fashion so that their independence is sustained in the future. This challenge is more fully described under the Assistant Secretary for Aging's Initiative to Develop a Blueprint for an Aging Society, also described earlier in this Program Announcement.

The goals of the Academy are to encourage greater national leadership on aging issues through the clarification of critical issues in the field of aging, the thoughtful analysis and informed discussion of those issues in public forums, and the reporting of those policy analyses and debates to key decisionmakers. The Academy should promote discussion of nationwide approaches to these issues and challenges for the use and benefit of the Academy participants and as input to the policy deliberations of federal, state, and local governments. The major outcome of Academy events and activities should be an analytical and educational framework for better informing leaders, policy officials, and the public about the need to plan comprehensively for the growing and diverse numbers of older Americans in the 21st century.

Applications should include the basics of a four-year plan for the Academy with a detailed first year agenda of symposia, seminars, public forums, research, and analysis relative to emerging national aging issues. The applicant should also plan on establishing short term working groups of experts organized around key aging issues whose tasks will be to conduct independent policy analyses resulting in policy papers for the consideration of executive and legislative officials, and others focused on aging issues. The program design for the Academy should encourage the exchange of ideas and information that will stimulate creativity and innovation in programs and methods for meeting the needs of the elderly. Attention should be devoted to bringing together participants with diverse points of view who are cognizant of the most recent policy issues and background materials pertinent to the topic focus of discussion.

Participants in the program activities developed by the Academy should be drawn from aging as well as non-aging organizations, from both the private and public sectors. They should, however, share both an interest in aging issues and a capacity for shaping future aging programs and policies. Participants from the field of aging may include executives of State and Area Agencies on Aging and Tribal organizations, leaders in service provision, executives of national aging organizations, as well as researchers, educators, futurists and others in the field of aging. Participants drawn from outside the field of aging are expected to be composed of individuals with an impact on and interest in aging issues and the needs of older persons at risk. This second group includes subject matter and policy area experts, business leaders, executives from national organizations (non-aging), and leaders of public and voluntary agencies, elected and appointed public officials, labor unions, religious bodies, civic groups, and educational institutions. It is expected that through the programs offered by the Academy, these leaders will gain an enriched, more comprehensive understanding of the elderly and of the challenges of shaping national, state, community, and organizational responses to their needs. It is also expected that, through their involvement, participants will contribute their knowledge, experience and insight on aging issues vital to the formation of enlightened national policy.

Applicants for the National Academy on Aging award must be qualified to provide the high level of knowledge and the expert analysis of issues expected of a prominent national forum for crystallizing our thinking and advancing our agenda regarding the future aging society. The applicant should propose a faculty whose collective expertise spans the broad range of policy and program issues in aging. It should describe how the Academy program is designed to focus attention on the salient issue of preparing the baby boom generation for their coming retirement in an aging society and on such other significant subjects as home and community based long term care, older women, and nutrition/malnutrition. In that regard, the Academy will be assisted by AoA in coordinating its agenda and scope of work, as appropriate, with the efforts of AoA-supported Resource Centers and projects.

One of the major tasks of the Academy will be to stimulate public officials, the business community, and individuals to prepare comprehensively for retirement in the 21st century. The successful applicant must, therefore, set forth a scope of work, and demonstrate the capacity, to analyze and synthesize a diverse set of factors and strategies for the consideration of the public, private, and voluntary sectors in planning for the aging of the baby-boom cohort and beyond.

Other features of the Academy include the following:

- The applicant selected will be awarded a Cooperative Agreement for a four-year project period. Under the Cooperative Agreement award mechanism, the Academy will not conduct its activities on behalf of AoA but rather on a cooperative basis with AoA.
- AoA will advise the organization/institution selected to serve as the National Academy on Aging on the development of the Academy's agenda. However, applicants are expected to propose an agenda for the first and subsequent years based on their assessment of salient contemporary and future aging policy issues.
- The National Academy of Aging shall have its own organizational identification and visibility within the structure of the performing organization.
- The National Academy on Aging shall have a Director with an appropriate background and qualifications in aging and policy studies who will devote at least 50% of her/his time to this position. Appropriately qualified individuals shall be appointed to the Academy's faculty in full, part time, or consultant positions.
- An Advisory Committee will be established to provide overall direction and guidance to the Academy in developing its agenda of major events and substantive activities.

Under the cooperative agreement award instrument, the awardee organization will have the primary responsibility for developing and implementing the activities of the Academy. The Assistant Secretary for Aging and AoA will share with the Academy responsibility for clarifying the specific issues to be addressed by the Academy and for establishing the short term working groups of experts to be organized around key aging policy issues. AoA will, through periodic briefings and ongoing consultation, share with the Academy its knowledge of the issues being addressed by the Academy as well as information about relevant activities being undertaken by others, and provide feedback to the Academy about the usefulness to the field of its programs, forums, and other activities. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

AoA expects to fund the National Academy on Aging through a cooperative agreement under this priority area with a federal share of approximately $500,000 per year for a project duration of approximately four years. The deadline date for submitting applications under this priority area is July 12, 1994.

AoA funds are to be used to support the administration of the Academy, the cost of conducting core research, conference planning and meeting management, evaluation, and dissemination/utilization activities, including educational programs and living expenses of those attending. As the Academy becomes more established, the strong expectation of AoA is that the organizational sponsor of the Academy will develop additional sources of support. A plan for those sources of support and for becoming self-sufficient must be spelled out in the application, as well as an evaluation plan that reflects efforts for continuous improvement of Academy functions and activities and periodic independent examination of the impact of its work.

The current National Academy on Aging has been in operation since late 1991 under the auspices of the Maxwell School of Citizenship and Public Affairs at Syracuse University. The principal aging policy issues addressed by the Academy have been income security, long term care, older women, and the implications of demographic change in an aging society. Information regarding the work of the Academy is available by calling the Office of Program Development, Administration on Aging at (202) 619–1269.

(5) Other Older Americans Act Mandates

5.1 Responding to the Needs of Minority Elderly Through National Minority Aging Organizations

Throughout its history, the Older Americans Act has assigned a high priority to the development and provision of services to those older individuals who are in greatest economic or social need, with particular attention to individuals whose status is low income or minority. Consistent with this legislative mandate, the Assistant Secretary for Aging has established four major initiatives which have special relevance to low income minority older persons. The four initiatives, which are described in detail elsewhere in this Title IV Program Announcement are: (1) Home and Community Based Long Term Care; (2) Special Concerns of Older Women; (3) Nutrition/Malnutrition Among the Elderly; and (4) Developing a Blueprint for Future Aging Generations. This priority area is intended to underscore the stake of minority aging populations in efforts now underway to advance these initiatives and to enlist national minority aging organizations in these efforts to better serve and represent minority elders.

The growth of the older population, the impending acceleration of that growth rate when the baby boom generation reaches retirement age, and the implications of these developments have attracted considerable public attention. What has not been impressed upon us so strongly is the diverse composition of our growing older population. While today, 44 million persons are over the age of 60, 14 percent of these older persons are minority. By the year 2030: older whites are expected to grow by 197 percent; older African Americans will grow by 300 percent; and older Hispanics will grow by 395 percent. Immigration is a primary factor in this projected growth. Combined with projections that older Pacific-Asian and Native American persons will grow by 200 to 300 percent, these numbers will make minority elders total about 25 percent of the older population in 2030.

When we fully realize the potential impact of these numbers and the accompanying diversity they reflect, both among and within future older populations, a number of key minority aging issues take on new dimensions. Minority elders continue to experience a number of *barriers to home and community based long term care;* the gaps in income, health, caregiving, and housing *faced by older minority women* *have reached crisis proportions;* minority elders are more likely to be malnourished and *need better access to nutrition programs and services;* minority older persons are a litmus test of whether we, as a nation, can *plan well for a diverse and equitable aging society* in this decade and well into the 21st century.

National minority aging organizations—representing older persons, professionals, advocates, program planners—that have the capacity, the experience, and the conviction to work for and with minority elders are a vital source of leadership and action in addressing minority aging issues. They have essential roles to play:

(1) In ensuring that home and community based care is accessible and available to at-risk minority elderly;

(2) In meeting the special concerns of minority older women;

(3) In targeting nutrition services to malnourished minority elderly; and

(4) In securing for minority elderly a fair opportunity to serve and be served in a diverse and equitable future aging society.

Applicants under this priority area should demonstrate that their proposed projects will produce specific strategies, with measurable outcomes, for dealing with one or more of the four (4) issue areas outlined above. The applicant should make clear who will undertake what action under the proposed project; what the outcome, results, and intended benefits will be; and what the potential is for the replication and reinforcement of the strategies being proposed. In particular, the applicant must demonstrate that it has concrete plans for continuation of the proposed strategy and project activities after the demonstration period has been completed. Thus, the effort being proposed by the applicant must not only make tangible and significant differences in the lives of minority elderly, these changes must be seen as having a lasting impact.

Eligible applicants under this priority area are national minority aging organizations with extensive knowledge and experience in serving, representing, and working with minority elderly. AoA expects to fund approximately five (5) projects under this priority area for a two-year period with an approximate federal share of $150,000 for the first year and $100,000 for the second year of the project. The deadline date for submitting applications under this priority area is July 12, 1994.

5.2 National Volunteer Senior Aides/Family Friends Projects

An estimated five to seven million children suffer from chronic health conditions/disabilities; approximately one to two million of them need help (because of disability) with activities such as feeding, dressing, or bathing themselves. About 90 percent of these children are cared for at home. Public/formal resources for such care are in scarce supply. Furthermore, the informal, supportive, traditional bonds within extended families and communities are not as available as in the past. Additional resources are needed. Drawing upon the experience and good will of older volunteers is one way to help alleviate some of the overwhelming burden that the families of disabled children so frequently face.

Older volunteers can be a significant resource for the families of severely disabled or chronically ill children. This has been demonstrated in recent years by the *Family Friends* Program of the National Council on Aging (NCOA) and by the *Volunteer Senior Aides* Program of the Administration on Aging (AoA). (The latter was modeled upon the former.) These two intergenerational programs match mature and caring volunteers with children who have special needs because of disability or chronic illness and with children/families who are otherwise in distress.

The Family Friends program for children with disabilities or chronic illnesses was established, in 1986, by NCOA, with funding support from the Robert Wood Johnson Foundation. In 1990, the program diversified by helping another at-risk group, the rural poor (Rural Family Friends Help Families in Distress). That same year, NCOA introduced Family Friends into homeless shelters for families and children. Then, in 1992, Family Friends took on a new challenge—to give social and emotional support to families of babies who are HIV-positive.

In 1991, AoA began implementation of the Volunteer Senior Aides (VSA) Program pursuant to the legislative mandate of Section 10404 of the 1989 Omnibus Budget Reconciliation Act (OBRA). Section 10404 authorized this program for community-based demonstrations to determine to what extent volunteer senior aides, by providing basic medical assistance and support to disabled/chronically ill children and their families, can reduce the cost of care for such children.

Program funds became available with the FY 1991 Appropriation Bill for the Department of Health and Human Services (DHHS), which provided funding under Section 1110 of the Social Security Act. Within DHHS, AoA was then assigned responsibility for program administration and awarded grants supporting six three-year community-based VSA demonstration projects. The six grantees are:

- The Los Angeles County Area Agency on Aging (Los Angeles, CA) in collaboration with Jewish Family Services of Los Angeles and Huntington Memorial Hospital of Pasadena;
- The CrossRoads of Iowa Area Agency on Aging (Des Moines, IA), in collaboration with the Easter Seal Society of Iowa;
- The Region IV Area Agency on Aging (St. Joseph, MI), in collaboration with the local Foster Grandparents Program;
- The Philadelphia Corporation for Aging (Philadelphia, PA), in cooperation with Temple University's Center for Intergenerational Learning and Institute on Disabilities;
- The County of Riverside Office on Aging (Riverside, CA); and
- The Mid-America Regional Council (MARC) Area Agency on Aging (Kansas City, MO) in collaboration with the Children's Mercy Hospital and the University of Missouri's University Affiliated Program for Developmental Disabilities.

The last of these, MARC, is also conducting evaluative research on the VSA Program. The National Council on the Aging, drawing upon its experience with Family Friends, provides technical assistance, training, and capacity-building services to the VSA demonstrations.

Because of the continuing need for and the proven success of the Family Friends/VSA, program, AoA is now soliciting applications to develop and implement VSA projects in additional communities. Proposed projects should demonstrate the use of Volunteer Senior Aides to assist families of disabled/chronically ill children, thereby reducing the cost of care for such children. These projects should effectively employ the unique skills, varied experience, good will, and availability of older volunteers in assisting the Nation's children who are severely disabled or chronically ill.

VSA Project Parameters

Volunteer Senior Aides projects, usually tri-generational, are designed to benefit everyone involved. The children, who have serious, chronic illnesses or disabilities and range in age from infancy to 12 years, receive physical care, self-help instruction, emotional support, and nurturing. Their siblings may receive greater attention or may benefit indirectly as their family is strengthened. The parents (or, in some cases, grandparents) of these children are given encouragement and respite—intangibles that they need to carry on. The volunteers—aged 55 and older—have a mission and are rewarded with a sense of personal pride and accomplishment. They becomes less isolated, more involved in the community, and develop an affectionate relationship with their new "granddaughters" or "grandsons" and/or other family members. The community is strengthened by older citizens voluntarily providing supportive services to younger citizens. Health care costs are reduced. And people learn to rely on each other, connecting with an "extended family" in this era of disconnected families.

Family Friends or VSAs are extensively trained to find the best way to help a family. The type of help depends upon what's needed at the time. They may tutor the child, teach personal care and self-help skills, or take the child to recreational/cultural events. These volunteers often act as advocates, serving as "case coordinator" and speaking on behalf of the family to the various professionals who plan and manage the child's care. They also provide social and emotional support and, in many cases, respite to weary parents. (Respite is provided only when the child is medically stable and by agreement of parents, project director, and volunteer and is limited to half of the time the volunteer spends with the child.)

VSA/Family Friends essential program components include:

- Recruitment, screening, interviewing, and careful selection of volunteers;
- Recruitment, interviewing, and selection of families/children;
- Sixty (60) hours of intensive training for volunteers;
- Careful matching of volunteers with families, based on compatibility, proximity/transportation, personal styles and needs, health of volunteer, schedules, and language barriers;
- Supervision of volunteers;
- Fundraising and promotion of the program; and
- Project evaluation.

Two types of project applications may be submitted for review and funding consideration under this priority area:
5.2A—Demonstration Projects; and
5.2B—Technical Assistance Project.

5.2A Demonstration Projects

AoA plans to fund approximately six (6) demonstration projects under this sub-priority area at a federal share of approximately $70,000 per year for a project period of up to approximately three (3) years. The deadline date for submitting applications under this sub-priority area is July 12, 1994. Eligible applicants are restricted to public or non-profit community-level agencies, organizations, or institutions in communities where Family Friends or VSA projects have not previously been funded. Each proposal should include participation of both a health care facility and a social service agency. Proposals should include participation in the project by a project advisory board or committee.

Proposals should follow the Family Friends/VSA paradigm, briefly outlined above but thoroughly documented in materials available from NCOA's Family Friends Resource Center. Recommended materials include: Bringing Family Friends to Your Community, a manual detailing a step-by-step approach to developing and implementing these projects; and Family Friends—A Program Guide. Prospective applicants may call or write the Family Friends Resource Center at Telephone: (202) 479–6675, Fax: (202) 479–0735, Address: Family Friends Resource Center, National Council on the Aging, 409 Third Street, S.W., Washington, D.C. 20024.

Demonstration projects funded under this priority area will receive technical assistance and guidance in the development and implementation of their projects from the project funded under priority area 5.2B.

5.2B Technical Assistance Project

AoA plans to award one project grant under this sub-priority area to provide technical assistance and training to the new demonstration projects. Applicants for this grant must demonstrate an extensive knowledge base relating to Family Friends and strong experience in providing technical assistance and training to such projects. On the basis of its strong knowledge base and its assessment of the progress of the demonstration projects, the grantee will be expected to assist projects in implementing their demonstrations and to offer recommendations for future program initiatives.

The application must include a plan for assisting approximately six (6) demonstration projects. Plans should include at least one site visit to each project and a "cluster" meeting for the new model projects funded under priority area 5.2A. The successful applicant under this section is responsible for assisting the six (6) funded projects with the following:

(1) Providing timely and relevant background information regarding effective Family Friends programming;

(2) Training and technical assistance in developing Family Friends programs;

(3) Assisting in strategic planning for the long term continuation of the programs; and

(4) Conduct research studies on the VSA Program.

Funding for this award will be for approximately $80,000 per year for a project period of up to three (3) years. The deadline date for submitting applications under this sub-priority area is July 12, 1994.

5.3 Volunteer Service Credit Demonstrations

Under this priority area, the Administration on Aging is soliciting applications from public agencies and nonprofit organizations to test new models and replicate existing models of the volunteer service credits concept. A primary focus should be on home and community based services that help at-risk elders to continue to live in their homes, e.g. shopping, transportation, telephone reassurance and friendly visiting, light housekeeping, and respite care. Preference will be given to model projects which significantly involve low-income, minority, and rural elderly.

The basic service credit concept is to give volunteers a unit of credit for each service hour performed, regardless of the type of service, in the expectation that accrued credits will be redeemed for services by the volunteers at some future time of need. A centralized accounting system must be maintained to keep track of credits and match up volunteers with recipients. As a practical matter, limitations on the number and type of services offered are necessary as are rules that govern accumulation and use of credits. After initial start-up and operation, a steady and continuing source of core financial assistance is needed to (1) administer the system, (2) guarantee redemption of built-up credits in those cases when the type of immediate service need cannot be met by the volunteer services then available, and (3) off-set credit deficits incurred when recipients, because of illness or other circumstances, cannot repay the services provided to them with volunteer effort.

The Administration on Aging has funded several service credit demonstration projects in the past. Most recently five (5) two-year service credit demonstrations were funded along with a technical assistance project. AoA funded projects specifically designed to help volunteers become more involved in helping older people in their communities. Of the demonstration sites funded, several utilized churches as a base for the recruitment of volunteers. One project linked service credits in a business and industry setting. Applicants may wish to contact the AoA funded service credit projects to learn more about the specifics of the grants. Information regarding these demonstrations may be obtained by contacting the Office of Program Development at (202) 619–0441.

The purpose of this priority area is to test the feasibility of implementing the service credit concept in new areas and to replicate existing models in new sites. Among the possible areas for testing and replicating the service credit concept are (1) corporate retirement benefit programs; (2) programs under the sponsorship of fraternal organizations; (3) social and health maintenance insurance programs where volunteer services are credited with partial payment in lieu of fees and premiums under newly-designed community long term care service packages; (4) low income housing programs in which residents provide services to low-income minority elderly; (5) programs in residential retirement communities; (6) programs involving union retirees; (7) employer based service credit projects under which employees assist the elderly in their community and (8) church-based service credit programs involving assistance to low-income minority elderly.

Applicants are encouraged to solicit co-sponsoring community organizations, including youth groups to donate volunteer services to individuals who cannot become full participants of the service credit program or to compensate older volunteers with services not provided by participants in the service credit program. Projects using co-sponsoring organizations must incorporate this support in a manner that does not detract from the central feature of the service credit concept of having older persons earn volunteer credits in exchange for future services when they are needed. Accordingly, enrollment of volunteers eligible to be full participants in the program should be limited to persons age 55 and over (spouses excepted).

AoA plans to fund approximately five (5) model volunteer service credit projects at a federal share of approximately $50,000 per year for a period of approximately 17 months. Projects should be designed as models for testing the effectiveness of innovative approaches to volunteerism through utilization of the service credit concept. Successful applicants must provide a detailed plan for the management and operation of the service credit demonstration, including documentation of approaches to be used in attracting public and/or private sector support for making the project self-sufficient after federal funding has ended. The *deadline date* for submitting applications under this priority area is *July 12, 1994.*

5.4 AoA Dissemination Projects

Each year, AoA invests substantial Older Americans Act Title IV resources in grant and cooperative agreement projects to conduct research, demonstrations, and training to improve the quality and availability of services and programs that are vital to the well-being of at-risk older persons. Dissemination is a basic component of each of these projects. Every Title IV project is required to conduct appropriate dissemination of project results as part of its work plan. For the many projects which are essentially knowledge transfer activities (e.g., technical assistance, public/professional education), dissemination is the key component.

Enhanced dissemination is still needed, however, to maximize the utility of Title IV projects. The urgency to improve the effectiveness and availability of services is especially pronounced as both fiscal constraints and the number of older Americans increase. The ultimate goal of this priority area is to maximize the utilization of Title IV project products and results that can directly benefit older Americans in need of services.

Dissemination projects are expected to be especially energetic in their marketing of products and results. Projects are expected to utilize appropriate promotional, public relations, and media campaigns in order to insure that their outcomes receive the widest possible attention. Such campaigns should seek to educate consumers, providers (including the Aging Network), the private sector, and policy sector about their results and to promote use of their products. These efforts will be considered a key indicator of the scope of the impact of the proposed project.

The AoA Dissemination Projects funded under this priority area are also expected to foster greater awareness of the challenges of an aging society and of the contributions, real and potential, that aging programs make in responding to those challenges. These awareness-building efforts may take several forms, including the development and dissemination of materials keyed to decision-making points on a particular aging issue and the use of appropriate communication mechanisms.

Two types of project applications may be submitted for review and funding consideration under this priority area:

A. Enhanced Dissemination of Product(s) of Significant Value

A major purpose of this priority area is to support more extensive dissemination of Title IV products of significant value. In the course of performing their work, grantees sometimes develop especially valuable products which warrant dissemination beyond that originally contemplated or for which dissemination opportunities are found which were not envisioned earlier. Grantees who are convinced that such products are needed, and of demonstrated value to the aging network and/or others involved in improving the availability, effectiveness, and quality of aging services, may apply under this section for funding. (This opportunity applies to both current and former grantees whose projects were completed within two years of the publication of this announcement).

Applicants may address the dissemination of either a single product or more than one product from a single project. In this context, the term "product" may include the "Final Report" as well as other project products such as manuals, handbooks, curricula, brochures, technical assistance materials, reports, audio-visual materials, etc. Applicants applying for enhanced dissemination projects must submit a copy of the product(s) to be disseminated along with each copy of their application. (For audio visual products, only a single copy of the product need to be submitted). This attachment is in addition to the page limit which applies to all applications; however, the application narrative itself may not exceed the limits described below in Part III.

B. Syntheses of "Cluster" Projects Results and Products

A second purpose of this priority area is to support the development and dissemination of syntheses of project products/results from earlier Title IV project "clusters" (e.g., projects funded under the same priority area of a previous AoA Discretionary Funds Program announcement). Projects in a cluster may vary widely in terms of approach, outcomes, and products, but all deal with the same subject matter or problem area. A synthesis of needed and useful products/results of these projects may well have synergistic value, and a multiplier effect, in generating knowledge and substantiating best practices which can be applied to the benefit of older Americans.

Such a synthesis may take various forms. An applicant may synthesize exemplary products as produced—or change the form of the product to maximize utilization. Creative adaptations may be needed. A compilation of relevant demonstration or research *results* (and/or recommendations) from the cluster may be what is needed. Applicants are encouraged to be innovative in their response to this priority area. The need for the synthesis should be demonstrated. A strategy for promoting utilization must be included as part of the application.

Applicants proposing to synthesize the results of clusters of past projects must submit a general description of the past projects and their outcomes not to exceed five (5) pages in length. This cluster description should be in the form of an *attachment* which is in addition to the page limit which applies to all applications. However, the application narrative itself may not exceed the limits described below in Part III.

Applications of either of the types described above should carefully specify not only what dissemination activities are to be performed but also: (1) Why the product(s) is important, (2) to whom it is important, (3) what would be the results and benefits of dissemination and utilization of the product(s), and (4) what specific actions such as training or technical assistance would the proposed project undertake to assist those who wish to adapt or adopt the products and/or the recommendations contained in the products. Prospective applicants are cautioned that this priority area may not be used simply to finish or extend the basic work of a previously funded project (under the guise of dissemination) or to undertake the *basic* dissemination which is required as part of the work plan of all Title IV grantees.

In preparing applications under this priority area, applicants may find useful the publication *Dissemination by Design* which was produced as part of an AoA Title IV project. Interested applicants who do not already have a copy of this publication may obtain one by contacting AoA's Office of Program Development (OPD) at (202) 619–0441. (There is no requirement to use this particular reference in the development of your application.)

Applicants may also request an information sheet on the AoA-supported National Aging Dissemination Center, which works with AoA to promote dissemination of the products of Title IV grantees. The Center is available to provide technical assistance on dissemination and utilization to prospective applicants under this priority area. Prospective applicants are encouraged to utilize this resource. The Director of the Center is Theresa Lambert. She can be reached at (202) 898–2578. Projects funded under this priority area will be expected to work cooperatively with the Dissemination Center or any similar resource to be established in the future.

Applicants under this priority area are limited to current and former Title IV grantees and cooperative agreement awardees. AoA expects to fund approximately five (5) dissemination projects under this priority area. The federal share of awards will range from approximately $25,000 to $50,000, depending upon the level of activity proposed, for a project period of approximately seventeen (17) months. The *deadline date* for submitting applications under this priority area is *July 12, 1994*.

5.5 Field-Initiated Project Applications

The Older Americans Act, Title IV, Section 401, authorizes the Assistant Secretary for Aging to support projects:

> To expand the Nation's knowledge and understanding of aging and the aging process, to design and test innovative ideas in programs and services for older individuals, and publicly disseminate the results of [such innovative projects], to replicate such programs and services under [the Older Americans Act], and to help meet the needs for trained personnel in the field of aging. . . .

Each of the priority areas that has been presented in this Discretionary Funds Program (DFP) Announcement is focused on a subject of current or emerging significance to our nation's older population. These priority areas describe with some particularity the nature of the activity to be undertaken, the type, scope, duration, and funding amount of the project and, in some instances, the applicants eligible to compete.

Under this priority area for Field-Initiated Project Applications, the focus remains on issues that matter greatly to older people, but not necessarily those issue areas (home and community based long term care, older women, etc.) that have already received considerable emphasis in this DFP. This priority area is intended for proposed project initiatives that reflect a deep-seated interest in any policy, program, or related issue of importance to older Americans. In a similar vein, the Administration on Aging fully recognizes, that there are many creative ideas, innovative approaches, training/technical assistance/dissemination efforts, etc., which do not readily fit the designated Priority Areas of this Discretionary Funds Program Announcement. This priority area is also intended to be responsive to proposals embodying those ideas, approaches, and efforts.

Field-initiated applications for *new grant awards* are invited under the following functional sub-categories: (1) Special event/conference proposals; (2) research and demonstration (R&D) projects, and; (3) education, training, and technical assistance efforts. Current AoA grantees seeking large-scale supplemental awards (supplements that would exceed 25% of their current project award and/or extend their project period beyond three months) must also compete under this priority area to be eligible for funding. To ensure that to the maximum extent possible competition will be between proposals of a comparable scope and nature of activity, applications will be grouped according to the appropriate sub-category and be evaluated, scored, and ranked within each of these subcategories:

(1) special event/conference proposals;

(2) research and demonstration (R&D) projects;

(3) education, training, and technical assistance efforts, and;

(4) large-scale supplements to currently active AoA funded project grants (supplements that would exceed 25% of their current project award and/or extend their project period beyond three months).

Applicants are reminded that they are competing under a national program of gerontological training, research, demonstrations, and centers as authorized by Title IV of the Older Americans Act. Therefore, field-initiated applications will be screened by AoA to assure that they are not local service projects, but rather are responsive to issues of national significance and will result in findings, reports, and products with national implications. In addition, each field-initiated application will be screened to determine that it is not, in essence, the same application that was recently disapproved by AoA for funding. Applicants should wait a minimum of six months before resubmitting an application for consideration under another review and award cycle.

AoA has established deadlines at fixed Fiscal Year quarterly intervals for the submission of field-initiated applications under this Discretionary

Funds Program Announcement. The first deadline is *October 7, 1994*. Subsequent deadlines are *January 13, 1995, April 14, 1995*, and *July 14, 1995*. Applicants will be informed of their funding status within 60 days of the pertinent deadline date.

Although the number of field-initiated proposals approved for funding can not be estimated beforehand, applicants should be advised that only a limited amount of Title IV funds will be reserved for this priority area and only applications of outstanding merit will be considered for funding. The federal share of project costs per year is expected to fall within the following approximate ranges: $20,000 to $40,000 for special events/conferences; $50,000 to $100,000 depending upon the nature of the proposed research, demonstration, training, technical assistance, or related effort; $50,000 and above for *large-scale supplements* to current grants. The duration of new project awards could range from one (1) to two (2) years. Large scale supplements are limited to a maximum period of twelve (12) months.

Part III—Information and Guidelines for the Application Process and Review

Part III of this Announcement contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal to the Administration on Aging (AoA). General guidelines on applicant eligibility were provided in Part I. Specific eligibility guidelines were provided in Part II under certain priority areas.

A. General Information

1. Review Process and Considerations for Funding

Within the limits of available federal funds, AoA makes financial assistance awards consistent with the purposes of the statutory authorities governing the AoA Discretionary Funds Program and this Announcement. The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Screening:* To insure that minimum standards of equity and fairness have been met, applications which do not meet the screening criteria listed in Section D below, *will not* be reviewed and will receive *no* further consideration for funding.

c. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Section F, below. This independent review of applications is performed by panels consisting of qualified persons from outside the federal government and knowledgeable non-AoA federal government officials. The scores and judgments of these expert reviewers are a major factor in making award decisions.

d. *Other Comments:* AoA may solicit views and comments on pending applications from other federal departments and agencies, State and Area Agencies on Aging, interested foundations, national organizations, experts, and others, for the consideration of the Assistant Secretary for Aging in making funding decisions.

e. *Other Considerations:* In making funding award decisions, the Assistant Secretary for Aging will pay particular attention to applications which focus on older persons with the greatest economic and social need, with particular attention to the low-income minority elderly. Final decisions will also reflect the equitable distribution of assistance among geographical areas of the nation, and among rural and urban areas. The Assistant Secretary for Aging also guards against wasteful duplication of effort in making funding decisions.

f. *Other Funding Sources:* AoA reserves the option of discussing applications with, or referring them to, other federal or non-federal funding sources when this is determined to be in the best interest of the federal government or the applicant.

g. *Decision-Making Process:* After the panel review sessions, applicants may be contacted by AoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

h. *Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant is at least two months and often three months or more in duration. This length of time is required to review and process grant applications.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

This Program Announcement contains different deadline dates for the submission of applications, depending upon the priority area under which an application is submitted. Please check each priority area carefully to determine the deadline date for the application you plan to submit. Applications must be either sent or hand-delivered to the address specified in Section D, below. Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will meet the deadline if it is either:

1. Received at the mailing address on or before the applicable deadline date; or

2. Sent before midnight of the applicable deadline date as evidenced by either (1) a U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the applicable deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the applicable deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadlines are considered late applications. The Office of Administration and Management will notify each late applicant that its application will not be considered under the applicable grant review competition.

AoA may extend a deadline date for applications because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mail, or when AoA determines an extension to be in the best interest of the government. Depending upon the precipitating factor(s), the extension will apply to *all* potential applicants in the area affected by the natural disaster, or to *all* potential applicants across the nation. Notice of the extension will be published in the **Federal Register**.

C. Grantee Share of the Project

Under the Discretionary Funds Program, AoA does not make grant awards for the entire project cost. Successful applicants must, at a minimum, contribute one (1) dollar, secured from non-federal sources, for every three (3) dollars received in federal funding. The non-federal share must equal at least 25% of the total project cost. Applicants should note that, among applications of comparable technical merit, the greater the non-federal share the more favorably the application is likely to be considered.

The one exception to this cost sharing formula is for applications from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by Section 501(d) of Public Law 95–134, as amended, which requires the Department to waive "any requirement for local matching funds under $200,000."

The non-federal share of total project costs for each budget period may be in the form of grantee-incurred *direct or indirect* costs, third party in-kind contributions, and/or grant related income. Indirect costs may not exceed those allowed under federal rules established, as appropriate, by OMB Circulars A–21, A–87, and A–122. If the required non-federal share is not met by a funded project, AoA will disallow any unmatched federal dollars. A common error is to match 25% of the federal share rather than 25% of the entire project cost.

D. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet either of the two criteria described below will not be reviewed and will receive no further consideration. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. Applications must be submitted by the deadline date specified in the priority area under which the application is submitted for competitive review and funding consideration. It is incumbent upon the applicant to clearly indicate under what priority area the application is intended for consideration. Applications must be postmarked by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on the deadline date of the relevant priority area, to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., room 4644, Washington, D.C. 20201, Attn: AoA–94–1.

2. Applicants must meet all eligibility requirements specific to the priority area under which they have submitted their application. (It bears repeating that, for everyone's benefit, the applicant should be sure that the priority area has been clearly identified in the application).

Only Those Applications Meeting These Screening Requirements Will Be Assigned to Reviewers

In addition to these screening requirements, the applicant is strongly advised to adhere to the following standards in preparing the application:

(1) The application should not exceed forty (40) pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

The following documents are excluded from the 40 page limitation: (1) Standard Form (SF) 424, SF 424A (including up to a four page budget justification) and SF 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; (3) proof of non-profit status; (4) indirect cost agreements; (5) attachments submitted as directed under priority area 5.4.

The following portions of the application are subject, in the aggregate, to the forty (40) page limitation:

—Summary description (suggested length: one page);

—Narrative (suggested length: twenty-five to thirty pages);

—Applicant's capability statement, including an organization chart, and vitae for key project personnel (suggested length: five to ten pages) and;

—Letters of commitment and cooperation (suggested length: four pages).

All applications will be checked against the aggregate forty (40) page limitation. Any material, of whatever content, in excess of the forty (40) pages will be withheld from the reviewers.

E. Funding Limitations on Indirect Costs

1. Training projects awards to institutions of higher education and other non-profit institutions are limited to a federal reimbursement rate for indirect costs of eight (8) percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. Differences between the applicant's approved rate and the 8% limitation may be used as federal cost sharing. See Section J–2, Item 6j, below.

2. For all other applicants, indirect costs generally may be requested only if the applicant has a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another federal agency. Applicants who do not have a negotiated indirect cost rate may apply for one in accordance with DHHS procedures and in compliance with relevant OMB Circulars.

F. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers, experts in the field, are from academic institutions, non-profit organizations, state and local government, and, upon occasion, federal government agencies other than AoA. Based on the specific programmatic considerations set forth in the priority area under which an application has been submitted, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

Applications are scored by assigning a maximum of 100 points across four criteria:

(1) Purpose and Need for Assistance (20 points),

(2) Approach/Method—Workplan and Activities (30 points)

(3) Anticipated Outcomes, Evaluation and Dissemination (30 points),

(4) Level of Effort (20 points).

1. Purpose and Need for Assistance, Weight: 20 points

a. Does the proposed project clearly and adequately respond to the announcement priority area under which it was submitted?

b. Does the application adequately and appropriately describe and document the key problem(s)/condition(s) relevant to its purpose? Is the proposed project justified in terms of the most recent, relevant, and available information and/or knowledge?

c. Does the applicant adequately and appropriately describe the needs of special population groups—low income, minority, women, disabled, rural—in addressing problem(s)/conditions(s) relevant to its proposal?

2. Approach/Method—Workplan and Activities, Weight: 30 points

a. Does the proposal clearly express and organize a workplan that systematically includes specific objectives, tasks, and activities which are responsive to the statement of needs and purpose?

b. Does the workplan include a detailed timeline for accomplishment of tasks and objectives? Is the sequence and timing of events logical and realistic?

c. Are the roles and contribution of staff, consultants, and collaborative organizations clearly defined and linked to specific objectives and tasks? Does the workplan specify who will be responsible for managing the project; for the preparation and dissemination of project results, products, and reports; and for communications with the Administration on Aging should the project be approved for funding?

3. Anticipated Outcomes, Evaluation and Dissemination Weight: 30 points

a. Are the expected project benefits and/or results clearly identified, realistic, and consistent with the objectives of the project? Are outcomes likely to be achieved and will they significantly benefit older persons through improvement in policy or practice, and/or contribute knowledge to theory and research?

b. Is the plan for project evaluation clear and relevant to the scope of activity proposed? Does this plan identify the type of data to be collected and the method of analysis to be used in measuring project achievement and significance?

c. Does the proposal include a plan for dissemination which is likely to increase the awareness of project activities and events during project performance? Is this plan adequate for communicating project outcomes and products to all appropriate audiences?

4. Level of Effort, Weight: 20 points

a. Are vitae provided for the project director(s), key staff and consultants that document their qualifications to conduct their designated roles?

b. Is the time commitment of the proposed project director sufficient to assure proper direction, management and completion of the project? Is the time commitment of other key staff sufficient to assure completion of the project as proposed?

c. Is the budget justified with respect to the adequacy and reasonableness of resources requested? Are budget line items consistent with workplan objectives?

d. Are letters from outside organizations included and do they express clear commitment and responsibility from the organizations regarding their roles and contributions as described in the workplan?

e. Are the writers of the proposal identified and will they be involved in its oversight and implementation? If not, is there a logical explanation for their non-participation?

G. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements. Note: The original copy of the application *must* have an original signature in item 18d on the SF 424.
- Proof of nonprofit status, as necessary;
- A copy of the applicant's indirect cost agreement, as necessary;
- Project summary description;
- Program narrative;
- Organizational capability statement and vitae;
- Letters of Commitment and Cooperation;
- A copy of the *Check List of Application Requirements* (See Section K, below) with all the completed items checked.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be numbered sequentially. In order to facilitate the handling and reproduction of the application for purposes of the review, *please do not use covers, binders or tabs*. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to include such items in the review process. They will be discarded if submitted as part of the application.

H. Communications with AoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified by mail of the receipt of their application and informed of the identification number assigned to it. This number and the priority area should be referred to in all subsequent communication with AoA concerning the application. If acknowledgment is not received within seven weeks after the deadline date, please notify the Office of Program Development by telephone at (202) 619–0441.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for AoA staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants are advised that, prior to reaching a decision, AoA will not release information to an applicant other than that its application has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the approval or disapproval of the application.

I. Background Information and Guidance for Preparing the Application

1. Current Projects and Previous Project Results

In the Program Narrative of the application (see Section J–6 below), applicants are expected to demonstrate familiarity with recent and ongoing activity related to their project proposal. With respect to AoA-supported discretionary grant projects, information on *current AoA projects* may be obtained by contacting the Office of Program Development at 202/619–0441. Regarding *completed AoA projects*, copies of all AoA discretionary grant final reports and printed materials are sent to: the National Aging Dissemination Center; the National Technical Information Service (NTIS), a clearinghouse and document source for federally sponsored reports; Ageline Database, a bibliographic database service sponsored by the American Association of Retired Persons, available online through BRS and DIALOG; and the U.S. Government Printing Office Library Program, a catalog and microfiche service for 1400 depository libraries located throughout the United States.

Information concerning access to the bibliographic and document referral services provided by these clearinghouses can be obtained through most public and academic libraries. For direct information, use the following contacts:

(1) National Aging Dissemination Center, National Association of State Units on Aging, 1225 I Street NW., suite 725, Washington, DC 20005, (202) 898–2578.

The Dissemination Center maintains a computerized database of descriptions of recent AoA grant products including reports, studies, training materials, technical assistance documents, and audio-visual products. Staff are available to scan the database for products and tailored printouts may be requested. The Center has also established a product repository of over 1000 products generated under Title IV grants. The repository serves as a backup source for original documents from which duplicates can be produced when copies are no longer available from the grantees. Information about products and searches of this database can be requested by telephone (800–989–6537) and by written request. In addition, the database will also be available via modem for on-line searches (800–989–2243).

(2) National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 487–4600.

(3) Ageline Database (a) BRS Customer Service, 8000 Westpark Drive, McLean, VA 22102 (800) 345–4BRS.

(b) DIALOG Customer Service, 3460 Hillview Avenue, Palo Alto, CA 94304 (800) 3DIALOG (415) 858–2700 (in California).

(4) U.S. Government Printing Office, Acquisition Unit, Library Programs Service, North Capitol and H Streets NW., Washington, DC 20401 (202) 275–1070.

2. Dissemination and Utilization

The purposes and expectations associated with Title IV discretionary projects extend well beyond the immediate confines of a particular project's local impact. Projects should have a ripple effect in the field of aging in terms of replicating their design, utilizing their results, and applying their benefits to a widening circle of older persons. This section suggests certain principles of dissemination to be considered in developing your application:

- the most useful projects make dissemination and utilization a central, not peripheral, component of the project;
- dissemination starts at the beginning of a project not when it is completed;
- potential users should be involved in planning the project, if possible, and products developed with the needs of potential users in mind;
- dissemination is a networking process;
- at a minimum, dissemination includes getting your final products into the hands of appropriate users and making presentations at conferences; and
- coordination with other related projects may increase the chances of your products being used.

J. Completing the Application

In completing the application, please recognize that the set of standardized forms and instructions is prescribed by the Office of Management and Budget (approved under OMB control number 0348–0043) and is not perfectly adaptable to the particulars of AoA's Discretionary Funds Program. First-time applicants, in particular, may have some misgivings that they have not crossed the final "t" or dotted the last "i" of their application. Any applicant should, of course, take reasonable care to avoid technical errors in completing the application, but the substantive merits of the project proposal are the determining factors. In these instructions, we offer several pointers aimed at clarifying matters, overcoming difficulties, and preventing the more common technical mistakes made by applicants. If the need arises, please call (202) 619–0441 for assistance.

Forms SF 424, SF 424A, SF 424B, and the certification forms (regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements) have been reprinted as part of this **Federal Register** announcement for your convenience in preparing the application. Single-sided copies of all required forms must be used for submitting your application. You should reproduce single-sided copies from the reprinted form and type your application on the copies. Please do not use forms directly from the **Federal Register** announcement as they are printed on both sides of the page.

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of completed forms have been provided as part of this announcement. These samples are to be used as a guide only. Be sure to submit your application on the blank copies. Please prepare your application consistent with the following guidance:

1. *SF 424, Cover Page:* Complete only the items specified in the following instructions:

Top Left of Page. In the box provided, enter the number of the priority area under which the application is being submitted.

Item 1. Preprinted on the form.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Provide the legal name of applicant: the name of the primary organizational unit which will undertake the assistance activity; the applicant address; and the name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the box provided.

Item 8. Preprinted on form.

Item 9. Preprinted on form.

Item 10. Preprinted on form.

Item 11. The title should describe concisely the nature of the project. Avoid repeating the title of the priority area or the name of the applicant. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

Item 12. Preprinted on form.

Item 13. Enter the desired start date for the project, beginning on or after September 1, 1994 and the desired end date for the project. Projects may be from 17 to 48 months in duration. Check the description of the priority area under which you are applying for the expected project duration.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. All budget information entered under item #15 should cover either: (1) the total project period if that period is 17 months or less; or (2) just the first 12 months if the project period is for 24, 36, or 48 months. The applicant should show the federal grant support requested under sub-item 15a. Sub-items 15b–15e are considered cost-sharing or "matching funds". The value of third party in-kind contributions should be entered in sub-items 15c–15e, as applicable. It is important that the dollar amounts entered in sub-items 15b–15e total at least 25 percent of the total project cost (total project cost is equal to the requested federal funds plus funds from non-federal sources).

Check: Please check item 15 to make sure you have presented budget amounts only for the first year if you are proposing a multi-year project. A common error is to present budget totals for a full project period of 24, or 36, or 48 months in item 15.

Item 16. Preprinted on form.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form (SF424A) is designed to apply for funding under more than one grant program; thus, for purposes of this AoA program, most of the budget item columns/blocks are superfluous and should be regarded as not applicable. The applicant should consider and respond to only the budget items for which guidance is provided below. Section A—Budget Summary and Section B—Budget Categories should include both federal and non-federal funding for the proposed project covering (1) the total project period if that period is 17 months or less or (2) the first 12 months if the project period is for 24, 36, or 48 months.

Section A—Budget Summary

On line 5, enter total federal Costs in column (e) and total non-federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Use only the last column under Section B, namely the column headed Total (5), to enter the total requirements for funds (combining both the federal and non-federal shares) by object class category.

A separate *budget justification* should be included which shows, preferably in the form of a table, the breakdown of budget cost items by federal and non-federal shares and fully explains and justifies each of the major budget items, personnel, travel, other, etc., as outlined below. The budget justification should not exceed four typed pages and should immediately follow SF 424A.

Line 6a—Personnel: Enter total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Justification: Identify the principal investigator or project director, if known. Specify the key staff, their titles, and time commitments in the budget justification.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Justification: Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all equipment to be acquired by the project. For state and local governments, including federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other grantees, the threshold for equipment is $500 or more per unit.

Justification: Equipment to be purchased with federal funds must be justified as necessary for the conduct of the project. The equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. The justification also must contain plans for the use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors indicating the name of the organization, the purpose of the contract, and the estimated dollar amount. If the name of the contractor, scope of work, and estimated costs are not available or have not been negotiated, indicate when this information will be available. Whenever the applicant/grantee intends to delegate a substantial part (one-third, or more) of the project work to another agency, the applicant/grantee must provide a completed copy of Section B, Budget Categories for each contractor, along with supporting information.

Line 6g—Construction: Leave blank since new construction is not allowable and federal funds are rarely used for either renovation or repair.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Enter the total amount of indirect charges (costs), if any. If no indirect costs are requested, enter "none." Indirect charges may be requested if: (1) the applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another federal agency; or (2) the applicant is a State or local government agency. *Applicants other than state and local governments are requested to enclose a copy of this agreement. Local and state governments should enter the amount of indirect costs determined in accordance with HHS requirements.* When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be also charged as direct costs to the grant.

In the case of training grants to other than state or local governments (as defined in 45 CFR Part 74), federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for total project (federal and non-federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, stipends, post-doctoral training allowances, contractual items, and alterations and renovations. As part of the justification, applications subject to this limitation should specify that the federal reimbursement will be limited to 8%.

For training grant applications, the entry for line 6j should be the total indirect costs being charged to the project. The federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (federal and non-federal) direct costs.

(b) Calculate the federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (federal and non-federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, alterations and renovations.

(c) Subtract b* from a*. The remainder is what the applicant can claim as part of its matching cost contribution.

Line 6k—Total: Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Estimate the amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Describe the nature, source, and expected use of income in the Level of Effort section of the Program Narrative.

Section C—Non-Federal Resources

Line 12—Totals: Enter amounts of non-federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs

Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project

This section should be completed only if the total project period exceeds 12 months.

Line 20—Totals: Enter the estimated required *federal* funds (exclude estimates of the amount of cost sharing) for the period covering months 13 through 24 under column "(b) First;" and, if applicable, for months 25 through 36 under "(c) Second," for months 36 through 48 under "(d) Third."

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Enter the type of indirect rate (provisional, predetermined, final or fixed) to be in effect during the funding period, the base to which the rate is applied, and the total indirect costs.

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

SF 424B, Assurances—Non-Construction Programs, contains assurances required of applicants under the Discretionary Funds Program of the Administration on Aging. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Project Summary Description

On a separate page, provide a project summary description headed by two identifiers: (1) the name of the applicant organization as shown in SF 424, item 5 and (2) the priority area as shown in the upper left hand corner of SF 424. Please limit the summary description to *one page* with a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as manuals, data collection instruments, training packages, audio-visuals, software packages). The project summary description, together with the information on the SF 424, becomes the project "abstract" which is entered into AoA's computer data base. The project description provides the reviewer with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal

6. Program Narrative

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the priority area under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in Section F above. The format of the narrative should, in fact, parallel the criteria, beginning with an integrated discussion of (A) the project's purpose(s), relevance, and significance, which answers the questions of why the project should be undertaken and what it intends to accomplish. The next section of the narrative provides a detailed explanation of (B) the approach(es)/methodology the project will follow to achieve its purpose(s), leading to a discussion of (C) the anticipated outcomes/results/benefits of the project, how these will be evaluated, disseminated, and utilized. The narrative concludes with (D) the level of effort needed to carry out the project, in terms of the Project Director and other key staff, funding, and other resources.

Please have the narrative typed on one side of 8½" x 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should also identify the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

This narrative guidance is in accordance with that provided in OMB Circular A–102. The checklist reporting form (Section K, below) is consistent with that approved under OMB control number 0937–0189.

7. Organizational Capability Statement and Vitae for Key Project Personnel

The organizational capability statement should describe how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized, the nature and scope of its work and/or the capabilities it possesses. This description should cover capabilities of the applicant not included in the program narrative. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its record for preparing cogent and useful reports, publications, and other products. An organizational chart showing the relationship of the project to the current organization should be included. Vitae should be included for key project staff only.

K. Checklist for a Complete Application

The checklist below should be typed on 8½" x 11" plain white paper, completed and included in your application package. It will help in properly preparing your application.

Checklist

I have checked my application package to ensure that it includes or is in accord with the following:

____One original application plus two copies, each stapled securely (no folders or binders) with the SF 424 as the first page of each copy of the application;
____SF 424; SF 424A—Budget Information (and accompanying Budget Justification); SF 424B—Assurances; and Certifications;
____SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 18);
____The number of the priority area under which the application is submitted has been identified in the box provided at the top left of the SF 424;
____As necessary, a copy of the current indirect cost rate agreement approved by the Department of Health and Human Services or another federal agency;
____Proof of nonprofit status, as necessary;
____Summary description;
____Program narrative;
____Organizational capability statement and vitae for key personnel;
____Letters of commitment and cooperation, as appropriate.

L. Points to Remember

1. There is a forty (40) double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section D.

2. You are required to send an original and two copies of an application.

3. Indicate the priority area in the box at the top left hand corner of the SF 424.

4. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

5. To meet the cost sharing requirement (see Section C above), you must, at a minimum, match $1 for every $3 requested in federal funding to reach 25% of the *total* project cost. For example, if your request for federal funds is $90,000, then the required minimum match or cost sharing is $30,000. The total project cost is $120,000, of which your $30,000 share is 25%.

6. Indirect costs of training grants may not exceed 8%.

7. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

8. Do *not* include letters which endorse the project in general and perfunctory terms. In contrast, letters which describe and verify tangible commitments to the project, e.g., funds, staff, space, should be included.

9. If duplicate applications are submitted under different priority areas, AoA reserves the right to select the single priority area under which it will be reviewed.

10. If more than one project application is submitted, each should be submitted under separate cover.

11. Before submitting the application, have someone other than the author(s): 1) apply the screening requirements to make sure you are in compliance; and 2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

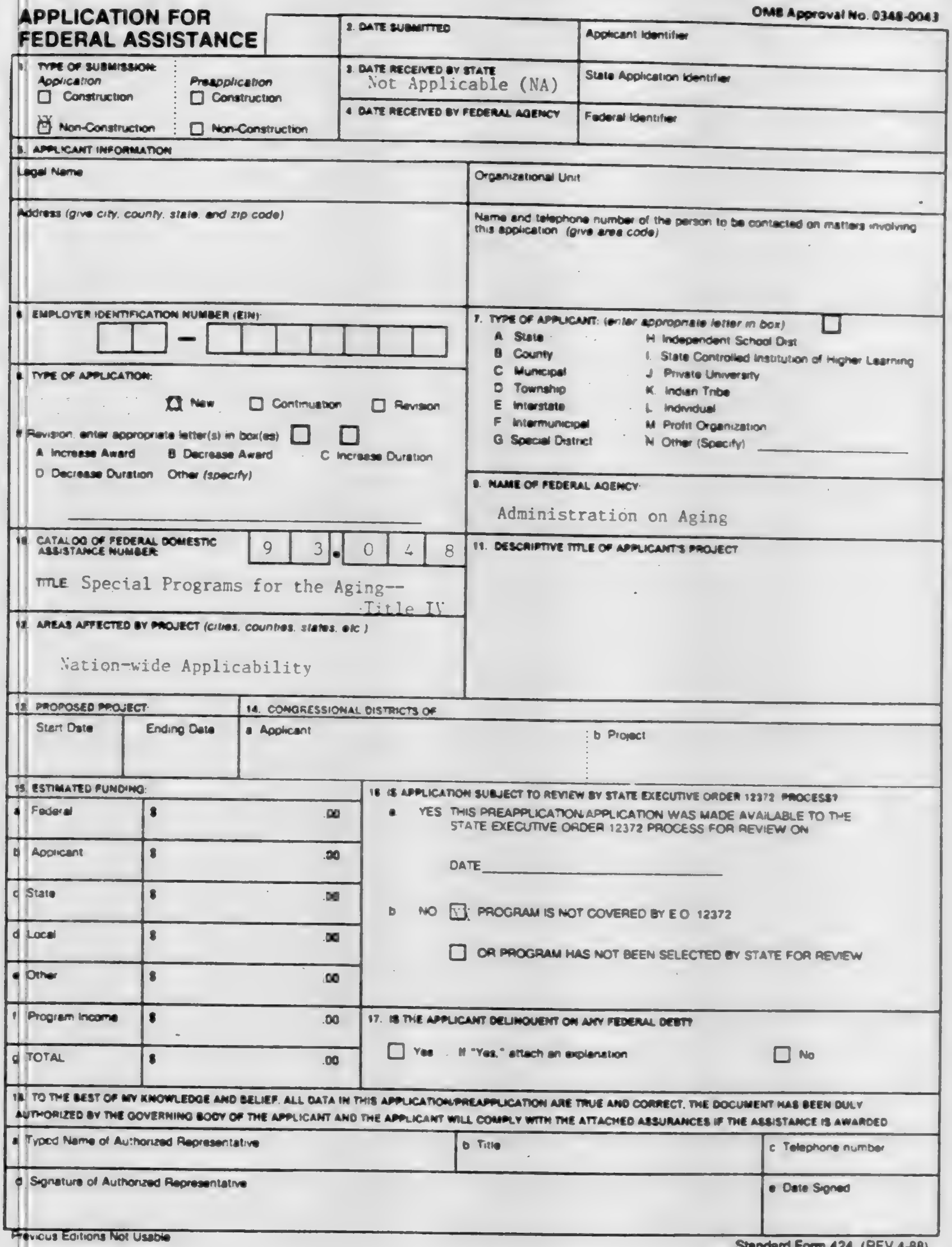
12. Each application must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on the deadline date specified in the priority area under which the application is being submitted for review and funding consideration. Mail or hand-deliver the application to: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, D.C. 20201. Attn: AoA–94–2

Dated: May 9, 1994.

Fernando Torres-Gil,

Assistant Secretary for Aging.

BILLING CODE 4150–04–U



OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☒ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE Not Applicable (NA)

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name

Organizational Unit

Address (give city, county, state, and zip code)

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A	State	H	Independent School Dist
B	County	I	State Controlled Institution of Higher Learning
C	Municipal	J	Private University
D	Township	K	Indian Tribe
E	Interstate	L	Individual
F	Intermunicipal	M	Profit Organization
G	Special District	N	Other (Specify) ______

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

______

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.048

TITLE Special Programs for the Aging—Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

Nation-wide Applicability

13. PROPOSED PROJECT:

Start Date

Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a Applicant

b Project

15. ESTIMATED FUNDING:

a	Federal	$ .00
b	Applicant	$ .00
c	State	$ .00
d	Local	$ .00
e	Other	$ .00
f	Program Income	$ .00
g	TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ______

b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative

b Title

c Telephone number

d Signature of Authorized Representative

e Date Signed

Previous Editions Not Usable

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS	93.048	$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1.8

2. DATE SUBMITTED July 10, 1994

Applicant Identifier

1. TYPE OF SUBMISSION:
   - Application
     - ☐ Construction
     - ☒ Non-Construction
   - Preapplication
     - ☐ Construction
     - ☐ Non-Construction

3. DATE RECEIVED BY STATE Not Applicable (N.A.)

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name XYZ Organization

Organizational Unit Division on Aging

Address (give city, county, state, and zip code)
1234 Fowles Avenue
Great Town, Montana 56789

Name and telephone number of the person to be contacted on matters involving this application (give area code)
Priscilla Smith
(012) 345-6789

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 23 — 6765432

7. TYPE OF APPLICANT (enter appropriate letter in box) N

- A State
- B County
- C Municipal
- D Township
- E Interstate
- F Intermunicipal
- G Special District
- H Independent School Dist.
- I State Controlled Institution of Higher Learning
- J Private University
- K Indian Tribe
- L Individual
- M Profit Organization
- N Other (Specify) Nonprofit Agency

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: Administration on Aging

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 93.04[illegible]

TITLE: Special Programs for the Aging--Title IV

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Better Services for Older Americans

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Nation-wide Applicability

13. PROPOSED PROJECT

Start Date 09/01/94 Ending Date 08/31/96

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant 2

b. Project 1-3

15. ESTIMATED FUNDING:

a. Federal	$ 100,000 .00
b. Applicant	$ 33,333 .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 133,333 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ______

b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative Samuel Jones

b. Title Executive Director

c. Telephone number 765-432-1098

d. Signature of Authorized Representative

e. Date Signed July 7, 1994

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds Federal (c)	Estimated Unobligated Funds Non-Federal (d)	New or Revised Budget Federal (e)	New or Revised Budget Non-Federal (f)	New or Revised Budget Total (g)
1		$	$	$	$	$
2						
3						
4.						
5. TOTALS	93.048	$	$	$ 100,000	$ 33,333	$ 133,333

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 70,000
b. Fringe Benefits					20,000
c. Travel					5,000
d. Equipment					1,000
e. Supplies					2,333
f. Contractual					5,000
g. Construction					N.A.
h. Other					10,000
i. Total Direct Charges (sum of 6a - 6h)					113,333
j. Indirect Charges					20,000
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$ 133,333
7 Program Income	$	$	$	$	$

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SAMPLE

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$ 33,333	$	$	$ 33,333

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 - 19)	$ 100,000	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**

22. **Indirect Charges:**

23. **Remarks**

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal Appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress in connection with the warding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an Federal contract, grant, loan or cooperative agreement, the undersigned shall complete an submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____
Organization

____
Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, S.W., Room 4644-COHEN; Washington, D.C. 20201-0001

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services(HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

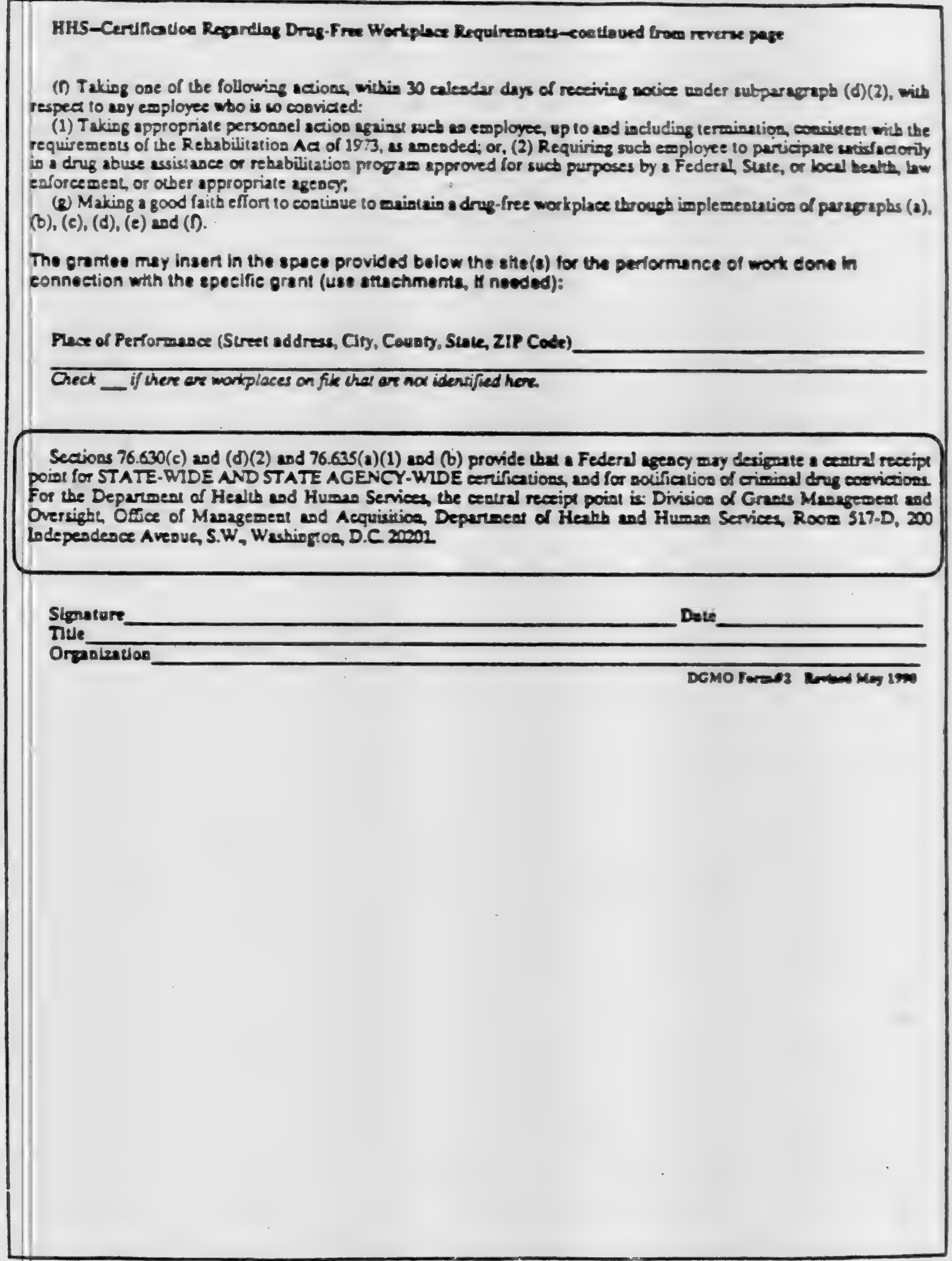
(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title. to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)



HHS—Certification Regarding Drug-Free Workplace Requirements—continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)____________________

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature____________________ **Date**__________

Title____________________

Organization____________________

DGMO Form#2 Revised May 1990

[FR Doc. 94–11637 Filed 5–12–94; 8:45 am]

BILLING CODE 4150-04-C

Centers for Disease Control and Prevention

[Announcement Number 432]

RIN 0905–ZA57

Health Promotion and Disease Prevention Research Centers Cooperative Agreements; Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1994 for Health Promotion and Disease Prevention Research Centers cooperative agreements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all the health priority areas in Health Promotion, Health Protection, and Preventive Services. (For ordering a copy of "Healthy People 2000," see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 1706 (42 U.S.C. 300u–5) and 317(k)(3) (42 U.S.C. 247b(k)(3)), of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are academic health centers; defined as schools of public health, medicine, or osteopathy; that have:

A. Multidisciplinary faculty with expertise in public health and which have working relationships with relevant groups in such fields as public health, medicine, psychology, nursing, social work, education, and business.

B. Graduate training programs relevant to disease prevention.

C. Core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration.

D. Demonstrated curriculum in disease prevention.

E. Capability for graduate training in public health or residency training in preventive medicine.

Eligible applicants may enter into contracts, including consortia agreements (as described in the PHS Grants Policy Statement), as necessary to meet the essential requirements of this program and to strengthen the overall application.

Availability of Funds

Approximately $500,000 (direct and indirect costs) is available in FY 1994 to fund one new prevention center program.

It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

The amount of this award may not be adequate for the support of all Prevention Center activities and other sources of funds may be necessary.

Purpose

The purpose of this program is to support health promotion and disease prevention research focusing on the prevention of the major causes of death and disability and promote health practices that lead to more effective State and local programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. (Recipient Activities), and CDC shall be responsible for conducting activities under B. (CDC Activities).

A. Recipient Activities

1. Conduct and evaluate one or more demonstration projects in health promotion and disease prevention or preventive health services, or both, in defined communities or target populations.
2. Conduct a demonstration project in health promotion and disease prevention with a State or local health or education department.
3. Establish collaborative activities with appropriate organizations, individuals, and State health or education agencies.
4. Establish an advisory committee to provide input on major program activities. The committee should include scientists, health care providers, health officials, voluntary health organizations, and consumers.
5. Coordinate and collaborate with other PHS supported research programs to prevent duplication and enhance overall efforts.

B. CDC Activities

1. Collaborate as appropriate with recipient in all stages of the project.
2. Provide programmatic and technical assistance.
3. Participate in improving program performance through consultation based on information and activities of other projects.
4. Provide scientific collaboration.
5. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum and training, or conducting other specific necessary activities.

Evaluation Criteria

Applications will be evaluated through a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application conducted by the Prevention Centers Grant Review Committee. The second review will be conducted by senior Federal staff, who will consider the results of the first review, national program needs, and relevance to the mission of CDC. Awards will be made based on priority score rankings by the peer review, recommendations based upon program review by senior Federal staff, and the availability of funds.

A. The Prevention Center Grants Program Objective Review Committee may recommend approval or disapproval based on the intent of the application and the following criteria:

1. Prevention Center Theme (5 points)

The extent to which the theme will result in innovative approaches or interventions to meet health priorities, emerging health needs, health needs of an identified demographic group, or combination thereof.

2. Overall Program Plan (15 points)

The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic, and makes effective use of Center resources to advance the Center's theme.

3. Specific Project Plans (55 points)

The technical and scientific merits of the proposed projects, the potential to achieve the stated objectives and the extent to which the applicant's plans are consistent with the purpose of the program.

a. Core activities (10 points)
b. Demonstration projects (20 points)

c. Collaborative project with State/local health or education department (15 points)

d. Prevention Research Training (10 points)

4. Evaluation Plan (5 points)

The extent to which the overall prevention center theme and objectives will be evaluated in regard to progress, efficacy, and cost benefit.

5. Management and Staffing Plan (15 points)

The extent to which the applicant demonstrates the ability and capacity to carry out the overall theme, objectives, and specific project plans.

6. Institutionalization Plan (5 Points)

The Center's plan for institutionalization of the prevention center within the parent organization.

7. Budget (not scored).

The extent to which the budget and justification are consistent with the program objectives and purpose. Centers are strongly urged to include a plan for obtaining additional resources that lead to institutionalization of the Center.

B. Review by senior Federal staff

Further review will be conducted by Senior Federal staff.

Factors to be considered will be:

1. Results of the peer review.
2. Program needs and relevance to national goals.
3. Budgetary considerations.

Funding Priorities

Priority will be given to funding those applicants who will aid in maintaining an equitable geographic distribution of Centers. In addition, a priority will be given to applications focused on the public health needs of rural populations.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contract (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.135.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Human Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Potential applicants should submit a non-binding letter of intent to apply to the Grants Management Officer (whose address is given in this section, Item B). It should be postmarked no later than May 31, 1994. The letter should identify the announcement number being referenced, title and a brief description of the proposed Center, and the names and addresses of the principal investigators. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before June 22, 1994.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

D. Late Applications

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 432. You will receive a complete program description, information on application procedures, and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6814. Programmatic technical assistance may be obtained from Diane H. Jones, Ph.D., Project Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–30, Atlanta, Georgia 30341–3724, telephone (404) 488–5395, or via INTERNET: DHJ1@CCDOD1.EM.CDC.GOV or BITNET: CDCDJ@EUMVM1.

Please refer to Program Announcement Number 432 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock number 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–11632 Filed 5–12–94; 8:45 am]

BILLING CODE 4163–18–P

[CDC–481]

Cooperative Agreement With the Republic of the Marshall Islands

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement with the Republic of the Marshall Islands (RMI) to conduct an epidemiologic evaluation of thyroid disease and exposure to radioactive fallout from United States atomic weapons testing conducted in the South Pacific. Approximately $350,000 is available in FY 1994 to support this cooperative agreement. It is expected that the award will begin on or about July 1, 1994, and will be awarded for a 12-month budget period within a 3-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement is to support an epidemiologic study. This study will be designed to investigate the possible relationships involving thyroid diseases in Marshall Islands residents and past environmental exposures to radioactive fallout from the United States Atomic Weapons Testing Program conducted in the Marshall Islands between 1946 and 1958.

CDC will provide guidance on program management and administrative matters; assist in developing and final approval of the study protocol; assist in assessing historical records for morbidity and mortality; provide on-site assistance in both planning and implementation phases; provide on-site consultation and assistance in monitoring the collection and handling of information; assist in the statistical and epidemiologic analysis of the data; assist in interpreting the study findings; and assemble a peer review committee to review the project protocol.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, section 301(a) [42 U.S.C. 241(a)], as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the RMI for conducting this study. No other applications are solicited. The Program Announcement and application kit have been sent to RMI.

RMI is the most appropriate organization to conduct the work under this cooperative agreement because:

1. The RMI, under previous funding from the United States Government through the Compact of Free Association, is conducting a Nationwide Radiological Study to determine the extent of residual contamination from atomic weapons tests on individual islands in the Republic. These data will be essential for determining historical radiation exposures in Marshall Islands residents participating in this study of thyroid morbidity. The data from this study are the property of the Government of the Marshall Islands and are not available for public use.
2. The RMI has already assembled a consortium of the best qualified health physicists, thyroid disease specialists, and administrators from various institutions to conduct this study. These experts not only represent a high degree of experience in health physics and thyroid disease studies, but they represent the principal participants in past research of the residents of the Republic of the Marshall Islands.
3. The Ministry of the Interior and Outer Island Affairs, RMI, will be able to provide inter-island radio communications, translations to Marshallese language, and logistical support for this study.
4. The RMI has the legal responsibility for disease control in the Marshall Islands under the laws of the Republic.

Executive Order 12372 Review

This application is not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number (CFDA) for this project is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

This project involves research on human subjects; therefore, applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided that demonstrates the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. If required, the RMI could establish the review of this project through its own institutional review committee.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 481 and contact Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, telephone (404) 842–6814, for business management technical assistance.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–11633 Filed 5–12–94; 8:45 am]

BILLING CODE 4163–18–

[Announcement Number 481]

West Virginia Health Promotion and Disease Prevention Research Centers Cooperative Agreements; Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1994 for cooperative agreements with up to two Health Promotion and Disease Prevention Research Centers in the State of West Virginia. One of these centers must address the special health promotion and disease prevention needs of residents of rural communities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to priority areas in Health Promotion, Health Protection, and Preventive Services. (For ordering a copy of "Healthy People 2000," see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority: This program is authorized under Sections 1706 (42 U.S.C. 300u-5) and 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to academic health centers; defined as a school of public health, medicine, or osteopathy; located in the State of West Virginia that have:

A. Multidisciplinary faculty with expertise in disease prevention and health promotion and which has working relationships with relevant groups in such fields as public health, medicine, psychology, nursing, social work, education, and business.
B. Graduate training programs relevant to disease prevention.
C. Core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration.
D. Demonstrated curriculum in disease prevention.
E. Capability for graduate training in public health or residency training in preventive medicine.

Eligible applicants may enter into contracts, including consortia agreements (as described in the PHS Grants Policy Statement), as necessary to meet the essential requirements of this program and to strengthen the overall application.

Congress, through Senate Report 103–143, directed CDC to "fund three or four new Prevention Centers, with at least two concentrating on rural health." The report further recommended that one of those sites be in West Virginia. CDC will announce the availability of funds for the establishment of a remaining center in Program Announcement 432 separately.

Availability of Funds

Approximately $1,000,000 is available in FY 1994 to fund up to two new Health Promotion and Disease Prevention Research Centers in West Virginia. It is expected that the average award will be $500,000 (including both direct and indirect costs), ranging from $300,000 to $600,000.

It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

The amount of this award may not be adequate for the support of all Prevention Center activities and other sources of funding may be necessary.

Purpose

The purpose of this program is to support health promotion and disease prevention research that focuses on the prevention of the major causes of death and disability and promote health practices that lead to more effective State and local programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

1. Conduct and evaluate one or more demonstration projects in health promotion and disease prevention or preventive health services, or both, in defined communities or targeted populations.
2. Conduct a demonstration project in health promotion and disease prevention with a State or local health or education department.
3. Establish collaborative activities with appropriate organizations, individuals, and State health or education agencies.
4. Establish an advisory committee to provide input on major program activities. The committee should include scientists, health-care providers, health officials, voluntary health organizations, and consumers.
5. Coordinate and collaborate with other PHS supported research programs to prevent duplication and enhance overall efforts.

B. CDC Activities

1. Collaborate as appropriate with recipient in all stages of the project.
2. Provide programmatic and technical assistance.

3. Participate in improving program performance through consultation based on information and activities of other projects.

4. Provide scientific collaboration.

5. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum, training, or conducting other specific necessary activities.

Evaluation Criteria

Applications will be evaluated through a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application conducted by the Prevention Centers Grant Review Committee. The second review will be conducted by senior Federal staff, who will consider the results of the first review, national program needs, and relevance to the mission of CDC. Awards will be made on the basis of priority score rankings by the peer review, recommendations based on program review by senior Federal staff, and the availability of funds.

A. The Prevention Center Grants Program Objective Review Committee may recommend approval or disapproval based on the intent of the application and the following criteria:

1. Prevention Center Theme (5 Points)

The extent to which the theme will result in innovative approaches or interventions to meet health priorities, emerging health needs, health needs of an identified demographic group, or combination thereof.

2. Overall Program Plan (15 Points)

The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic, and makes effective use of Prevention Center resources to advance the Center's theme.

3. Specific Project Plans (55 Points)

The technical and scientific merits of the proposed projects, the potential to achieve the stated objectives and the extent to which the applicant's plans are consistent with the purpose of the program.

a. Core activities (10 points)
b. Demonstration projects (20 points)
c. Collaborative project with State and local health or education department (15 points)
d. Prevention Research Training (10 points)

4. Evaluation plan (5 Points)

The extent to which the overall Prevention Center theme and objectives will be evaluated in regard to progress, efficacy, and cost benefit.

5. Management and Staffing Plan (15 Points)

The extent to which the applicant demonstrates the ability and capacity to carry out the overall theme, objectives, and specific project plans.

6. Institutionalization Plan (5 Points)

The Center's plan for institutionalization of the Prevention Center within the parent organization.

7. Budget (Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose. Prevention Centers are strongly urged to include a plan for obtaining additional resources that lead to institutionalization of the Center.

B. Review by senior Federal staff—Further review will be conducted by senior Federal staff. Factors to be considered will be:

1. Results of the peer review.
2. Program needs and relevance to national goals.
3. Budgetary considerations.

Funding Priority

Based on congressional appropriation language, priority will be given to funding applications that focuses on the public health needs of rural populations.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.135.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Human Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadlines

A. Applications

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before June 22, 1994.

B. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

C. Late Applications

Applications that do not meet the criteria in B.1. or B.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6814. Programmatic technical assistance may be obtained from Diane H. Jones, Ph.D., Project Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–41, Atlanta, GA 30341–3724, telephone (404) 488–5395, or via INTERNET: DHJ1@CCDOD1.EM.CDC.GOV or BITNET: CDCDJ@EUMVM1.

Please refer to Program Announcement Number 461 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017- 001–00473–1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management , and Operations Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–11631 Filed 5–12–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94N–0164]

Drug Export; PRActicin (Tretinoin 0.025% Gel USP)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Penederm Inc., has filed an application requesting approval for the export of the human drug PRActicin (Tretinoin 0.025% Gel USP) to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Penederm Inc., 320 Lakeside Dr., suite A, Foster City, CA 94404, has filed an application requesting approval for the export of the human drug PRActicin (Tretinoin 0.025% Gel USP) to Canada. PRActicin (Tretinoin 0.025% Gel USP) is indicated for topical application in the treatment of acne vulgaris, primarily where comedones, papules and pustules predominate. The application was received and filed in the Center for Drug Evaluation and Research on March 7, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 23, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 3, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–11624 Filed 5–12–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0165]

Drug Export; Intraoral Fluoride Releasing Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Southern BioSystems, Inc., has filed an application requesting approval for the export of the human drug Intraoral Fluoride Releasing Device to Italy.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export

Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Southern BioSystems, Inc., 110 40th St. North, Birmingham, AL 35222, has filed an application requesting approval for the export of the human drug Intraoral Fluoride Releasing Device to Italy. Intraoral Fluoride Releasing Device in indicated for long-term controlled release of fluoride to reduce dental caries. The application was received and filed in the Center for Drug Evaluation and Research on March 4, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 23, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 3, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–11625 Filed 5–12–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0167]

Drug Export; Estrapel (Estradiol) Pellets 25 mg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bartor Pharmacal Co., Inc., has filed an application requesting conditional approval for the export of the human drug Estrapel (estradiol) Pellets 25 milligrams (mg) to Great Britain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bartor Pharmacal Co., Inc., 70 High St., Rye, NY 10580, has filed an application requesting conditional approval for the export of the human drug Estrapel (estradiol) Pellets 25 mg to Great Britain. Estrapel (estradiol) Pellets 25 mg is indicated for major post-menopausal symptoms due to estrogen deficiency, including prevention of post-menopausal osteoporosis in hysterectomized patients. The application was received and filed in the Center for Drug Evaluation and Research on April 5, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 23, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 3, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–11642 Filed 5–12–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the notice of a meeting of the Biological Response Modifiers Advisory Committee which is scheduled for May 25 and 26, 1994. This meeting was announced in the **Federal Register** of April 15, 1994 (59 FR 18134 at 18135). The amendment is being made to remove one agenda item and to remove the closed committee deliberations portion from the meeting. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1994, FDA announced that a meeting of the Biological Response Modifiers Advisory Committee would be held on May 25 and 26, 1994. On page 18135, in the third column, under "*Type of meeting and contact person*" and "*Open committee discussion*" portions of the agenda are amended to read as follows:

Type of meeting and contact person. Open public hearing, May 25, 1994, 10:30 a.m. to 11:15 a.m., unless public participation does not last that long; open committee discussion, 11:15 a.m. to 5:30 p.m.; open public hearing, May 26, 1994, 8 a.m. to 8:45 a.m., unless public participation does not last that long; open committee discussion, 8:45 a.m. to 3 p.m.; William Freas or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054.

Open committee discussion. The committee will discuss issues related to the safety and efficacy of hematopoietic support regimens in the setting of myelotoxic chemotherapy.

Dated: May 9, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94-11641 Filed 5-12-94; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service

Final Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Entity Guidelines

AGENCY: Public Health Service, HHS.

ACTION: Final notice.

INFORMATION: Section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must agree to charge a price that will not exceed the amount determined under a statutory formula. The purpose of this notice is to inform interested parties of final program guidelines regarding eligible covered entities.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R.Ph., Director, Drug Pricing Program, Bureau of Primary Health Care, Health Resources and Services Administration, East West Towers rm 10-3A1, Bethesda, Maryland 20814, Phone: (301) 594-4353.

EFFECTIVE DATE: June 13, 1994.

SUPPLEMENTARY INFORMATION:

(A) Background

Proposed entity guidelines were announced in the **Federal Register** at 58 FR 68922 on December 29, 1993. A comment period of 30 days was established to allow interested parties to submit comments. The Office of Drug Pricing received 7 letters with comments concerning confidential drug pricing information, retroactive discounts,drug diversion, audit requirements, entity participation, group purchasing, purchasing agents, manufacturer contracts, and 4 general comments.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered in developing this final notice. Changes were also made to increase clarity and readability.

(B) Comments and Responses

Confidential Drug Pricing Information

Comment: Establish specific sanctions for entities which knowingly make unauthorized disclosures.

Response: No change. The quoted price or the actual price given by the manufacturer to the covered entity is not confidential. Covered entities do not have access to confidential drug pricing information (i.e., average manufacturer price and best price).

Eligibility for Retroactive Discounts

Comment: Do not impose a deadline on requesting retroactive discounts.

Response: No change. It is a reasonable administrative decision to establish a time limit for requesting refunds. Manufacturers were given sufficient time in which to implement the discount program, and entities were given an adequate opportunity to elect whether to participate in the program. An entity may preserve its right to retroactive discounts, after the deadline, by sending each manufacturer a letter requesting such refunds and providing adequate documentation of drug purchases.

Comment: Exclude from eligibility for retroactive discounts any disproportionate share hospital (DSH) which purchased its outpatient drugs through a group purchasing organization (GPO).

Response: No change. The Office of Drug Pricing considers the outpatient drug purchases of DSHs bought through a GPO or any group purchasing arrangement ineligible for retroactive discounts.

Comment: Allow covered entities to request an extension of the deadline for retroactive discounts for good cause (e.g., offsite DSH clinics whose eligibility has not yet been determined).

Response: We have amended part 3 of the notice to permit a DSH outpatient clinic which was not participating in a GPO or any group purchasing arrangement during the period for which it is requesting retroactive discounts to preserve its right by sending manufacturers a letter requesting such refunds and providing adequate documentation of purchases.

Comment: Extend the deadline for those manufacturers which have refused to give PHS pricing to the date on which the manufacturer begins discounting its covered outpatient drugs in accordance with the law.

Response: No change. At every opportunity, the Office of Drug Pricing has communicated its willingness to assist entities with problems of accessing PHS pricing. It has responded to all entity complaints dealing with manufacturer noncompliance. We believe that one year is a reasonable time in which to have resolved any difficulty with pricing access.

Comment: Require manufacturers to respond within 30 days to requests for retroactive discounts, even if the response is just a request for additional information, or face possible termination from the Medicaid program.

Response: No change. Because this issue deals with manufacturer guidelines, it is beyond the scope of this notice. However, should a covered entity have difficulty obtaining retroactive discounts, we encourage the entity to contact the Office of Drug Pricing for assistance.

Comment: Establish that a DSH, which did not submit its Medicaid provider number for the period for which it is requesting retroactive discounts, would be ineligible for the refund.

Response: No change. A DSH which did not submit its Medicaid provider number may still be eligible for retroactive discounts if it (1) did not bill Medicaid for the drugs, (2) billed for covered outpatient drugs using an all-inclusive rate, or (3) has adequate documentation proving that drugs for which retroactive discounts are being requested did not generate Medicaid rebates.

Drug Diversion

Comment: Develop and publish a mechanism whereby manufacturers can report to the Office of Drug Pricing when they suspect an entity of diversion.

Response: No change. The Office of Drug Pricing has currently developed a proposed dispute resolution process which will be published in the **Federal Register** with a public comment period.

Comment: Require PHS preclearance of all safeguard systems developed by entities to deter diversion and require this information to be supplied to the manufacturers upon request.

Response: No change. Guidelines concerning separate purchasing accounts and dispensing records are quite specific, and procedures in these areas need no prior approval. If a manufacturer believes that a covered entity is involved in drug diversion, it has the statutory authority to audit the entity records that directly relate to drugs of that manufacturer purchased at PHS pricing. Proposed audit guidelines have been developed and will be published in the **Federal Register** with a public comment period.

Comment: Issue criteria for measuring the adequacy of the safeguards.

Response: No change. If a manufacturer believes that a covered entity has established inadequate safeguards and is involved in drug diversion, then the manufacturer can either audit the entity or file a complaint with the Office of Drug Pricing.

Comment: Develop a broad definition of "patient" to include all necessary services provided to individuals served by the covered entities.

Response: No change. The notice does not address the definition of patient. The Office of Drug Pricing is in the process of developing a definition of patient, which will be published in the **Federal Register.** Public comment will be invited, and this comment will be considered at that time.

Comment: Do not require separate inventories, as this would place a hardship on most hospitals.

Response: No change. There is no requirement for separate inventories.

Comment: Do not permit entities to develop alternate tracking systems or develop criteria for these systems by March 1, 1994.

Response: No change. It is essential that the Office of Drug pricing maintain some flexibility during this period of implementation. Because these alternate tracking systems require prior approval from the Office of Drug pricing before they can be implemented, sufficient control is maintained. The Office will develop criteria at a later date and welcomes all suggestions.

Audit Requirements

Comment: Specify the statutory basis for the Secretary to authorize manufacturer audit guidelines.

Response: We have amended part 5 of the notice to include a reference to section 340B(a)(5)(C) of the PHS Act, which gives the Secretary the authority to establish procedures relating to the number, duration, and scope of manufacturer audits.

Comment: Move quickly to develop procedures to allow manufacturers to audit records of entities' purchases of covered outpatient drugs and of Medicaid claims for reimbursement for such drugs.

Response: No change. The Office of Drug Pricing is developing proposed audit guidelines which will be published in the **Federal Register** with public comment invited. All comments regarding suggested audit procedures, currently received, will be considered at that time.

Entity Participation

Comment: An entity should be viewed as not participating in the program (and therefore as ineligible to receive its discounts) if it has not given its Medicaid provider number of the Office of Drug Pricing.

Comment: We have amended part 2 of the notice to require entities to provide one of the following: (1) A pharmacy Medicaid number (the number which the entity uses to bill Medicaid for medications), or (2) their all-inclusive Medicaid number (e.g., "FQ" number), or (3) notification that it does not bill Medicaid for all outpatient drugs. These numbers will be posted on the electronic bulletin board (Electronic Data Retrieval System or EDRS), maintained by the Office of Drug Pricing, to indicate which covered entities have elected to participate in the program. For access to the EDRS call (301) 549–4992.

Comment: All covered entities should be required to notify manufacturers 30 days before they wish to access PHS pricing.

Response: We have amended part 6 of the notice to provide that entities will be added to or deleted from the eligibility list on a quarterly basis only. The Office of Drug Pricing will update the list 2 weeks before each calendar quarter, giving lead time for pricing changes and appropriate communications with wholesalers, GPOs, and purchasing agents.

Group Purchasing Arrangements

Comment: Allow eligible DSHs to continue GPO participation for manufacturers who are not offering PHS pricing and prohibit GPO participation with respect to all complying manufacturers.

Response: No change. Generally, we have found that entities are receiving PHS pricing. The Office of Drug Pricing has, at every opportunity, communicated its willingness to assist entities when there are problems with accessing PHS pricing. The Office has investigated all complaints of manufacturer noncompliance immediately and was and is willing to take appropriate enforcement action if necessary. This is the proper course for dealing with any manufacturer non-compliance, rather than attempting to compensate for continued non-compliance by disregarding the statutory GPO provisions.

Purchasing Agents

Comment: Distinguish clearly between a purchasing agent and a GPO for purposes of the DSH/GPO prohibition, only.

Response: We have amended part 8 of the notice to distinguish a purchasing agent from a group purchasing arrangement for purposes of the DSH/GPO prohibition. A purchasing agent would not be considered operating as a group purchasing arrangement if the following conditions are met: (1) the purchasing agent is not associated with a group purchasing organization; (2) no collective bargaining by a group of hospitals occurs; (3) the negotiations of PHS pricing are separate activities for each individual DSH; (4) a separate agreement with each DSH is executed; (5) as part of the agreement, there will be no sharing or pricing information; and (6) all final decisions concerning product and price acceptance will be made by each individual DSH.

Comment: Do not require manufacturers to sell directly to a purchasing agent, a GPO, or a contract pharmacy, but solely to covered entities and their wholesalers.

Response: No change. It is a customary business practice for manufacturers to sell to intermediaries as well as directly to the entity. Entities often use purchasing agents or contract pharmacies, or participate in GPOs. By placing such limitations on sales transactions, manufacturers could be discouraging entities from participating in the program.

Manufacturers may not single out covered entities from their other customers for restrictive conditions that would undermine the statutory objective.

Manufacturer Contracts Which Require Entity Compliance

Comment: Permit a manufacturer to require the covered entities to sign a contract containing only the manufacturer's normal business policies (e.g., routine information necessary to set up and maintain an account) if this is a usual business practice of the manufacturers.

Response: We have amended part 11 of the notice to state that this prohibition against a contract between a manufacturer and a covered entity regarding entity compliance with section 340B provisions or the Office of Drug Pricing program guidelines does not encompass entity/manufacturer contracts that contain provisions relating to normal business activities, requests for standard information, or other appropriate contract provisions.

Comment: Declare null and void provisions in manufacturer contracts signed by entities pursuant to section 340B which deal with assurances of entity compliance with section 340B.

Response: No change. While the Office of Drug Pricing has no legal authority to declare null and void provisions of contracts between covered entities and manufacturers, it is our position that manufacturers may not enforce such provisions.

General

Comment: Post Medicaid provider numbers of all eligible DSH outpatient clinics on the electronic bulletin board.

Response: No change. The Office of Drug Pricing has developed proposed criteria to determine the eligibility of DSH outpatient clinics. These criteria will be published in the **Federal Register**, and the public will be invited to comment.

Comment: Might certain activity generate a new Medicaid Best Price?

Response: No change. Because the Health Care Financing Administration (HCFA) Medicaid Rebate Program deals with Best Price calculations, the Office of the Drug Pricing will refer all Best Price questions to the agency. For further information in this regard, please call Al Beachley, Branch Chief, Medicaid Drug Rebate Operations Branch, HCFA, at (410) 966–3225.

Comment: Establish a procedure whereby manufacturers will be able to determine which purchasing groups are eligible to purchase on behalf of covered entities and receive the PHS pricing.

Response: We have amended part 7 of the notice to require any group which purchases covered outpatient drugs at OHS pricing on behalf of an eligible covered entity to have written authority from the entity to purchase its covered outpatient drugs. The purchasing group must provide documentation of this purchase authority to the manufacturer upon request. This rule does not supersede the statutory limitations regarding DSH participation in GPOs or group purchasing arrangements.

Comment: Establish a prime vendor program designating certain wholesalers to service PHS covered entities similar to programs established with the Department of Veterans Affairs (VA), Department of Defense (DOD), and the Bureau of Prisons (BOP).

Response: No change. The Office of Drug Pricing is in the early stages of developing a pilot prime venter program and has considered, among others, the various programs of VA, DOD, and BOP.

(C) Revised Entity Guidelines

Set forth below are the final entity guidelines, revised based on the analysis of the comments described above.

(1) Confidential Drug Pricing Information

"Confidential drug pricing information" includes both "best price" and "average manufacturer price." The quoted price and the actual price given by the manufacturer to the covered entity are not confidential.

(2) Duplicate Discount/Rebate Potential

First, a covered entity billing on a cost basis for drug purchases must provide the Office of Drug Pricing with a pharmacy Medicaid number (the number which the entity uses to bill Medicaid for medications). Second, a covered entity using an all-inclusive rate (either per encounter or visit) must submit its all-inclusive Medicaid number (e.g., "FQ" number). Third, if a covered entity does not bill Medicaid for outpatient drugs, then the entity must notify the Office of this decision. Fourth, a large facility which houses many different clinics, only several of which are eligible, must obtain a separate Medicaid provider number for the eligible clinics. For those States which cannot generate additional Medicaid provider numbers for entities, covered entities must discuss an alternative arrangement with the States to accomplish this objective.

This information will be posted on the Electronic Data Retrieval System (EDRS), maintained by the Office of Drug Pricing, to indicate which covered entities have elected to participate in the program. For access to the EDRS call (301) 594–4992.

If a drug is purchased by or on behalf of a Medicaid beneficiary, the amount billed may not exceed the entity's actual acquisition cost for the drug, as charged by the manufacturer at a price consistent with the Veterans Health Care Act of 1992, plus a reasonable dispensing fee established by the State Medicaid agency.

(3) Eligibility for Retroactive Discounts

Until 30 days after publication of this notice, eligible covered entities included on the initial eligibility list may request retroactive discounts (discounts, rebates, or account credit) for covered outpatient drugs purchased retroactive to December 1, 1992. Entities added to the eligibility list at a later date may only request discounts retroactive to the date of their inclusion on the list. Of the entities listed on the eligibility list, only the following may request these discounts: The covered entity that—(1) has billed for covered outpatient drugs using an all-inclusive rate (either per visit or per encounter), or (2) has not billed Medicaid for covered outpatient drugs since December 1, 1992, (or since its inclusion on the eligibility list), or (3) has submitted its Medicaid provider number and is requesting refunds for subsequent periods, or (4) has adequate documentation proving that drugs for which a retroactive discount is being requested have not generated Medicaid rebates.

A DSH is not eligible for retroactive discounts for covered outpatient drugs purchased through a group purchasing organization (GPO) or any group purchasing arrangement. Any DSH outpatient clinic which is or will be eligible for retroactive discounts may preserve its rights by sending manufacturers a letter requesting such refunds and providing adequate documentation of purchases.

(4) Entity Guidelines Regarding Drug Diversion

Covered entities are required not to resell or otherwise transfer outpatient drugs purchased at the statutory discount to an individual who is not a patient of the entity. There are several common situations in which this might occur. First, if individuals other than patients of the covered entity obtain covered outpatient drugs from its pharmaceutical dispensing facility, the entity must develop and institute adequate safeguards to prevent the transfer of discounted outpatient drugs to individuals who are not eligible for the discount (e.g., separate purchasing accounts and dispensing records). Second, a larger institution which contains an eligible entity within its structure is required to establish separate purchasing accounts and maintain separate dispensing records for the eligible entity. Third, the covered entity itself may not use the covered outpatient drug in excluded services (e.g., inpatient services). If an entity offers services excluded from the drug discount program, the entity must develop a separate method for purchasing and dispensing drugs for excluded services.

The covered entity may, at its option, develop an alternative system, short of tracking each discounted drug through the purchasing and dispensing process, by which it can prove compliance. If an alternate system of tracking is proposed to be used, this system must be approved by the Drug Pricing Program. The Office will develop criteria for alternative systems at a later date and welcomes all suggestions.

(5) Audit Requirement

All entities receiving statutory prices are required to maintain records of purchases of covered outpatient drugs and of any claims for reimbursement submitted for such drugs under title XIX of the Social Security Act. The entity must permit HHS and the manufacturer to audit any record of a covered drug purchase that was subject to the discount, as provided by section 340B(a)(5)(C) of the PHS Act. Manufacturer audits will be conducted in accordance with procedures developed by the Secretary of HHS. The Office of Drug Pricing is developing proposed audit guidelines which will be published in the **Federal Register** with public comment invited. The notice will address only audits related to purchases as a covered entity; it does not address other audit requirements related to participation in State Medicaid programs or receipt of Federal funding.

(6) Entity Participation

Covered entity participation in the section 340B drug discount program is voluntary. Once an entity has elected to participate in the program, it must wait to enter or withdraw from the program until the next official updating of the eligible entity list. The Office of Drug Pricing will update this list two weeks before each calendar quarter. The entity must comply with all program guidelines until the date it is removed from the eligibility list.

(7) Group Purchasing

A DSH may participate in a group purchasing arrangement for inpatient drug use without affecting its eligibility to purchase section 340B discounted drugs. If a DSH participates in a GPO or other group purchasing arrangement for covered outpatient drugs, the DSH will no longer be an eligible covered entity and cannot purchase covered outpatient drugs at the section 340B discount prices.

States, or other groups, which purchase drugs for covered entities (other than disproportionate share hospitals) are not included on the list of covered entities; however, they are eligible to purchase at the section 340B discount if the following requirements are met: (1) the group purchasing arrangement must be comprised of only covered entities, (2) if group purchasing arrangements contain entities which are not eligible for the discount, separate purchasing accounts and dispensing/distribution must be maintained, and (3) the purchasing group has written authority from the covered entity to purchase covered outpatient drugs on its behalf.

(8) Purchasing Agents

A covered entity is permitted to use a purchasing agent without forfeiting its right to the section 340B drug discounts. If a purchasing agent is used, the arrangement must be in writing and the terms of the agent's relationship with the entity must be clearly defined. The entity and the agent should decide whether the agent simply negotiates the drug purchasing contracts on behalf of the entity or actually receives drug shipments for distribution to the entity. If the latter, the transfer of purchased pharmaceuticals from an agent to the entity would not be viewed as drug diversion.

For purposes of the DSH/GPO prohibition only, a purchasing agent may be distinguished from and would not be considered operating as a GPO or other group purchasing arrangement if the following conditions are met: (1) the purchasing agent is not associated with a GPO or other purchasing arrangement; (2) no collective bargaining by a group of hospitals occurs; (3) the negotiations for PHS pricing are separate activities for each individual DSH; (4) a separate agreement with each DSH is executed; (5) as part of the agreement, there will be no sharing of pricing information; and (6) all final decisions concerning product and price acceptance will be made by each individual DSH.

(9) Definition of Covered Outpatient Drug

Section 1927(k)(2) of the Social Security Act defines "covered outpatient drug" to include most drugs and biologicals which may be dispensed only by prescription and which require approval by the Food and Drug Administration or a license under section 351 of the PHS Act. Section 1927(k)(3) limits the definition of "covered outpatient drug" to exclude certain settings (e.g., such services as emergency room, hospice, dental, physician, nursing facilities, x-ray, lab, and renal dialysis) in some instances. In these settings, if a covered drug is included in the per diem rate (i.e., bundled with other payments in an all-inclusive, per visit, or an encounter rate), it will not be included in the section 340B discount program. However, if a covered drug is billed and paid for instead as a separate line item as an outpatient drug in a cost basis billing system, this drug will be included in the program.

(10) Dealing Direct or Through a Wholesaler

If a manufacturer has customarily dealt directly with a particular covered entity, then requiring the manufacturer to continue this form of purchasing with the covered entity is reasonable. When dealing directly with a covered entity, manufacturers must offer covered outpatient drugs at or below the section 340B discount prices. If a manufacturer customarily uses a wholesaler as a means of distribution, then requiring the manufacturer to continue this form of purchasing with covered entities is also reasonable. If the manufacturer's drugs are available to covered entities through wholesalers, the discount must be made available through that avenue. Manufacturers may not single out covered entities from their other customers for restrictive conditions that would undermine the statutory objective. Manufacturers must not place limitations on the transactions (e.g., minimum purchase amounts) which would have the effect of discouraging entities from participating in the discount program.

(11) Manufacturer's Contracts Requiring Entity Compliance

A manufacturer may not condition the offer of statutory discounts upon an entity's assurance of compliance with section 340B provisions. Covered entity assurances regarding the following activities may not be required: (1) eligibility to participate in the program; (2) utilization of covered outpatient drugs only in authorized services; (3) maintaining the confidentiality of the drug pricing information; (4) permitting the manufacturers to audit purchase, inventory, and related records prior to the publication of approved PHS guidelines; and (5) submitting information related to drug acquisition, purchase, and inventory systems. Entities are not required to sign agreements assuring manufacturers of their compliance with section 340B provisions. (If a manufacturer asks a covered entity whether the entity is in fact participating in the section 340B discount program, the entity must supply the manufacturer with this information). This prohibition does not include provisions that address customary business practice, request standard information, or include other appropriate contract provisions.

Dated: May 9, 1994.

John H. Kelso,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 94–11643 Filed 5–12–94; 8:45 am]

BILLING CODE 4160–15–P–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–83]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to defer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable..

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), and the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S.Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; U.S. Air Force: Bob Menke, Area-MI, Bolling AFB, 172 Luke Avenue, suite 104, Washington, DC 20332–5113; (202) 767–6235; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Corps of Engineers: Pete Digel, Headquarters, Army Corps of Engineers, Attn: CERE–MC, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1753; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept of Interior, 1849 C St. NW., Mail stop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: May 6, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 05/13/94

Suitable/Available Properties

BUILDINGS (by State)

Arkansas

Murray Overlook & Info. Center
McClellan-Kerr Arkansas River Navigation Project
Little Rock Co: Pulaski AR 72203–
Landholding Agency: GSA
Property Number: 549410007
Status: Excess
Comment: 1003 sq. ft.; 1 story with basement; bldg. on 4.80 acres includes paved parking; concrete; needs rehab.; most recent use—info. center/observation area
GSA Number: 7–D–AR–548

California

Bldg. 31447
Naval Air Weapons Station
China Lake Co: Kern CA 93555–6001
Landholding Agency: Navy
Property Number: 779420007
Status: Excess
Comment: 670 sq. ft. trailer, limited utilities, 1 story, off-site use only, most recent use—electronics/communications systems lab.

Idaho

Hilton Dorm "C"
Marsing Job Crop
Marsing Co: Owyhee ID 83639–
Landholding Agency: Interior
Property Number: 619410006
Status: Unutilized
Comment: 13,658 sq. ft.; 2 story brick frame; most recent use—residence, off-site removal only.

Texas

Portion of Fort Wolters
NW corner of Leavenworth & Lee Road
Mineral Wells Co: Parker & Palo P TX 76067–
Landholding Agency: GSA
Property Number: 549410006
Status: Excess
Comment: 2 story, wood frame/painted galvanized sheet siding bldg. on 2.18 acres; needs rehab.; presence of friable asbestos in pipe insulation; most recent use—gymnasium
GSA Number: 7–GR–TX–548BB

LAND (by State)

Arizona

Tract No. APO–SRP–RB–5
Mesa Co: Maricopa AZ 85213–
Location: 2000′ south of Thomas Road at Val Vista Drive
Landholding Agency: Interior
Property Number: 619410005
Status: Unutilized
Comment: 0.57 acre; 20 foot strip of land which is 1.026 ft. long

California

Elder Creek Weather Station Co: Tehama CA
Location: Sec. 21, Twp. 24N, Range 7W
Landholding Agency: Interior
Property Number: 619410003
Status: Unutilized
Comment: 0.54 acres: no known potential utilities; most recent use—weather station site

L–4 Reservoir
La Quinta Co: Riverside CA 92253–
Location: Borders Adams St., ¼ mile north of Calle Tampico
Landholding Agency: Interior
Property Number: 619410004
Status: Excess
Comment: 1.69 acres; concrete reservoir; most recent use—water retention

Suitable/Unavailable Properties

LAND (by State)

Washington

Former Stadium Homes site
1701 28th Avenue, South
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549410005
Status: Excess
Comment: 1.46 acres; most recent use—highway equipment storage; potential for city utility services; land slopes
GSA Number: 10–H–WASH–543

Unsuitable Properties

BUILDINGS (by State)

Arkansas

Bldg. 301/M. Coleman Residence
114 Earhart
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 61942004
Status: Surplus
Reason: Extensive deterioration

Bldg. 302/C. Ridgeway Residence
137 Stonebridge
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619420005
Status: Surplus
Reason: Extensive deterioration

Bldg. 303/D. Stevens Residence
110 Earhart
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619420006
Status: Surplus
Reason: Extensive deterioration

Indiana

Arnold's Creek Access Site #8
Markland Locks and Dam
Rising Sun Co: Ohio IN 47040–
Landholding Agency: COE
Property Number: 319420001
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 255, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: 189420019
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 370, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–20003
Landholding Agency: Air Force
Property Number: 189420020
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 904, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420021
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420022
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420023
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2003
Landholding Agency: Air Force
Property Number: 189420024
Status: Unutilized
Reason: Secured Area. Extensive deterioration

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 879420007
Status: Excess
Reason: Secured Area

[FR Doc. 94–11630 Filed 5–12–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Draft Environmental Assessment and Land Protection Plan Proposed Establishment of Cossatot National Wildlife Refuge, Sevier County, Arkansas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment and land protection plan for the proposed establishment of Cossatot National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Sevier County, Arkansas. The purpose of the proposed refuge is to protect and manage up to 30,000 acres of bottomland hardwoods and their associated fish and wildlife in southwestern Arkansas. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the State of Arkansas, the Sevier County Judge, the U.S. Army Corps of Engineers, the Soil Conservation Service, and The Nature Conservancy. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates four alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment and land protection plan will be available to the public for review and comment on May 16, 1994

Written comments must be received no later than June 17, 1994, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed Cossatot National Wildlife Refuge are to (1) preserve wetland and bottomland hardwood habitat for a natural diversity of wildlife, (2) provide habitat for neotropical migratory birds, (3) provide wintering habitat for migratory waterfowl, (4) provide breeding and nesting habitat for wood ducks, and (5) provide opportunities for compatible public outdoor recreation, such as hunting, fishing, hiking, birdwatching, and environmental education and interpretation.

The proposed refuge area lies in the floodplain between the Cossatot and Little Rivers in Sevier County, Arkansas. Pond Creek and Little Creek meander through the area and several scenic oxbow lakes, lined with cypress trees, are prominent. Beavers have created numerous small ponds and flooded depressions. The habitat is primarily bottomland hardwoods with scattered pines.

About 25,722 acres or 85 percent of the proposed refuge area is owned by the Weyerhaeuser Corporation and has been offered for sale or exchange to the Service. Weyerhaeuser has extensive land holdings in Arkansas and Oklahoma which are being managed for the production of pine timber. The proposed refuge area is primarily a low bottomland hardwood site that Weyerhaeuser has determined to be surplus to its future management needs. The remaining lands (approximately 4,300 acres) within the proposed refuge boundary are owned by about 30 private landowners.

The Service proposes to acquire these lands through fee title purchases and/or land exchanges. Acquisition of these lands would be pursued under the authority of the Emergency Wetland Resources Act of 1986, unless special legislation is provided to facilitate the possible exchange of lands between the Weyerhaeuser Corporation and the Federal government.

Dated: April 26, 1994.

James W. Pulliam, Jr.,

Regional Director.

Harold W. Benson,

Acting Regional Director.

[FR Doc. 94-11639 Filed 5-12-94; 8:45 am]

BILLING CODE 4310-55-M

Notice of Intent (Notice) To Prepare an Environmental Impact Statement for Proposed U.S. Fish and Wildlife Service Habitat Protection Activities in Selected Areas Within the Western Portions of Washington, Oregon, and Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This Notice advises the public the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS); "U.S. Fish and Wildlife Service Habitat Protection in Selected Areas of the Middle-Upper Pacific Coast." This Notice is being furnished pursuant to Council on Environmental Quality Regulations for Implementing National Environmental Policy Act (NEPA) Regulations (40 CFR 1508.022).

WRITTEN COMMENTS INFORMATION: Interested agencies, organizations, and individuals are encouraged to provide written comments to the Service during the scoping period. Written comments should be received within 45 days after publication of this Notice. Address comments to the EIS Team Leader as shown below.

FOR FURTHER INFORMATION CONTACT: Paul Benvenuti, EIS Team Leader, Planning Branch, Division of Realty, U.S. Fish and Wildlife Service, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181, (503) 231-2231.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to identify and implement a strategy for Service habitat protection activities in support of the Pacific Coast Joint Venture (Joint Venture) though the year 2010.

The Joint Venture is a nonfederal coalition of private groups and government agencies that strives to coordinate efforts to protect and maintain important wetlands and related habitats on the Pacific Coast of North America, from northern California to northern British Columbia. Its efforts are directed toward supporting the waterfowl management goals of the North American Plan, maintenance of biological diversity, protection of endangered and otherwise sensitive wildlife, and maintenance and enhancement of anadromous fish and other native fish and shellfish populations.

The Service proposes to support the goals of the Joint Venture by ensuring increased habitat protection at selected target areas identified in the Pacific Coast Joint Venture Strategic Plan (Strategic Plan). Such protection could take the form of easements, leases, cooperative agreements, or fee title purchases from willing sellers.

Loss and degradation of estuarine and freshwater and wetland habitats have contributed significantly to decline in populations of many of the region's wildlife species. In some areas, development has eliminated thousands of hectares of tidal wetlands.

This EIS will explore a range of alternative methods for protecting wildlife habitat within the Joint Venture. Some of the possible alternatives could emphasize cooperative efforts in which most lands remain in private ownership, other alternatives may recommend fee title land acquisition from willing sellers and the establishment of new units of the National Wildlife Refuge System.

The alternatives examined in the EIS will be limited to the habitat protection activities of the Service. The activities of other Joint Venture partners will not be considered, since they are not Federal actions or contain Federal actions (such as grants or permits) that cannot be controlled or adequately foreseen by the Service.

The actions under consideration are limited to those areas identified in the Strategic Plan and do not consider possible actions beyond the year 2010.

This EIS will focus on the methods of habitat protection. The scope and timing of possible future site specific operational planning efforts cannot be predicted at this time since it depends on which protection methods are used, the willingness of landowners to participate, and the availability of funding.

Significant issues identified for review include: natural resource impacts, recreation and public use impacts, agricultural industry impacts, forest industry impacts, fishing industry impacts, and other socioeconomic impacts.

The Service urges all interested parties to provide comments regarding this proposed scope for the EIS, the alternatives to be developed, and the potential significant environmental impacts which may occur from the implementation of alternative actions.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C., et seq.), Council for Environmental Quality Regulations for Implementing NEPA (40 CFR part 1500, et seq.), and other appropriate Federal regulations and Service policies for compliance with those regulations.

Dated: May 6, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11634 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–942–04–4210–06; UTU–036431, UTU–3333, UTU–42513, UTU–48777, and UTU–50082]

Termination of Recreation and Public Purpose Classifications Carbon and Emery Counties, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classifications with the following serial numbers, UTU–036431, UTU–3333, UTU–42513, UTU–48777, and UTU–50082. The lands will be opened to the public land laws generally, including the mining and mineral leasing laws except as noted below.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Mackiewicz, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or Brad Groesbeck, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

SUPPLEMENTARY INFORMATION: The Recreation and Public Purpose classifications on the following described lands are hereby terminated:

[UTU–036431]

Salt Lake Meridian

T. 14 S., R. 10 E.,
  Sec. 23, NW¼NE¼.
  Containing 40.00 acres in Carbon County.

[UTU–3333]

Salt Lake Meridian

T. 13 S., R. 9 E.,
  Sec. 35, NW¼NW¼.
  Containing 40.00 acres in Carbon County.

[UTU–42513]

Salt Lake Meridian

T. 14 S., R. 10 E.,
  Sec. 14, E½SE¼.
  Sec. 23, NE¼NE¼, S½SE¼.
  Containing 200.00 acres in Carbon County.

[UTU–48777]

Salt Lake Meridian, Utah

T. 22 S., R. 6 E.,
  Sec. 4, lot 8, excluding parcels 1–B and 1–C.
  Containing 39.95 acres in Emery County.

[UTU–50082]

Salt Lake Meridian, Utah

T. 16 S., R. 10 E.,
  Sec. 33, NW¼NW¼.
  Containing 40.00 acres in Emery County.

Classifications UTU–036431, UTU–3333 and UTU–50082 segregated the public land from all other forms of appropriation under the public land laws, including location under the mining laws, and leasing under the mining leasing laws.

Classifications UTU–42513 and UTU–48777 segregated the public lands from all other forms of appropriation under the public land laws, including location under the mining laws, but not from mineral leasing.

At 10 a.m. on June 13, 1994, the lands described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 13, 1994, shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on June 13, 1994, the lands will be opened to location and entry under the United States mining laws and where applicable to the operations of the mineral leasing laws (UTU–036431, UTU–3333 and UTU–50082), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 9, 1994.

G. William Lamb,

Acting State Director.

[FR Doc. 94–11672 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–068–94–4191–04]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction of notice of emergency closure of certain public lands.

SUMMARY: This correction changes the notice of Emergency Closure of Public Lands; California published April 22, 1994 (59 FR 78; pp. 19202–19203). In column one, paragraph one, first complete sentence of page 19203, "* * * course materials * * *" is changed to "* * * coarse materials * * *".

Dated: May 6, 1994.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 94–11635 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4350–08]

Notice of Emergency Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure of Cathedral Spires in Douglas County, Colorado to all public use from May 1 through July 31, 1994.

SUMMARY: Notice is hereby given that effective May 1, 1994, public lands described below are closed to all public use. Under the authority and requirement of 43 CFR 8364.1, and in conformance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976. This closure affects 240 acres of public lands in Jefferson County located in T. 7 S., R. 70 W., 6th PM, Sec. 20: W½ E½, SE¼ NW¼, and the NE¼ SW¼. The purpose of this closure is to protect critical nesting habitat for the federally listed endangered peregrine falcon. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure

order may be subject to the penalties provided by 43 CFR 8360.0–7 which includes fines not to exceed $1000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the site and at the Canon City District Office.

DATES: This emergency closure is in effect from May 1 to July 31, 1994 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be directed to the Area Manager, Royal Gorge Resource Area, 3170 East Main, Canon City, CO 81212 or District Manager, Canon City District Office, P.O. Box 2200, Canon City, Co 81215–2200.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager at (719) 275–0631.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 94–11667 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–JB–M

[WO–220–94–4320–01–241A]

Draft Environmental Impact Statement for Rangeland Reform '94 and Request for Public Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management (BLM), with the cooperation of the U.S. Department of Agriculture, Forest Service, has prepared a draft environmental impact statement (EIS) for Rangeland Reform '94. BLM and the Forest Service are proposing to change policies and regulations within their Federal rangeland management programs. These actions are intended to improve and restore a significant portion of rangeland ecosystems and to improve and maintain biodiversity, while providing for sustainable development on lands administered by the two agencies. The two agencies are also proposing to revise the formula used to determine fees charged for grazing livestock on Federal lands in the 17 western states. By this notice, the public is informed that the draft EIS is available and that interested individuals may obtain copies by request.

DATES: Written comments on the draft EIS must be postmarked no later than August 11, 1994. Comments received after this date may not be considered in preparation of the final EIS. Oral and/or written comments may also be presented at public hearings to be held in the West during the public comment period. Dates and locations of public hearings on the draft EIS will be announced separately from this notice of availability.

ADDRESSES: Comments on the draft EIS should be sent to: Rangeland Reform '94, P.O. Box 66300, Washington, DC 20035–6300.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Jim Fox, Bureau of Land Management, (202) 452–7740, or Jerry McCormick, Forest Service, (202) 205–1457. To obtain a copy of the draft EIS, please call or visit your nearest BLM Resource Area office or Forest Service Forest office.

SUPPLEMENTARY INFORMATION: The last major revisions to 43 CFR part 4100, including establishment of the current fee formula in regulations, occurred in 1988. Since then, new information on range practices and conditions has been generated by various studies and General Accounting Office audits. In response, the Departments of the Interior and Agriculture have initiated a proposal for rangeland reform, including specific regulatory language.

The draft EIS addresses several areas of rangeland management reform, including, but not limited to: the Federal formula for calculating grazing fees, subleasing, unauthorized use (trespass), public participation, suspended and extended nonuse, appeals, disqualification, issuing grazing preference and permits, prohibited acts, permit or lease tenure, BLM grazing advisory boards, range improvement ownership, establishment of an ecosystem framework for rangeland management, and the establishment of standards and guidelines for grazing.

The draft EIS is a national-level, programmatic EIS. It documents the ecological, economic, and social impacts that would result from alternative fee formulas and from reforming, or not reforming, other elements of the federal rangeland management program. Five management alternatives are considered in detail: Current Management (No Action), BLM-Forest Service Proposed Action, Livestock Production, Environmental Enhancement, and No Grazing. Seven grazing fee formula alternatives are also analyzed: Current Public Rangeland Improvement Act (PRIA) (No Action), Modified PRIA, BLM-Forest Service Proposed Action, Regional Fees, Federal Forage Fee, PRIA with Surcharges, and Competitive Bidding.

Management Alternative 1, Current Management (No Action) would continue existing policies, regulations, and management practices within both BLM's and the Forest Service's rangeland management programs.

Management Alternative 2, the BLM-Forest Service Proposed Action, would change many elements of the agencies' current rangeland policies, regulations, and management practices. The Proposed Action includes national requirements that provide the basis for developing state or regional standards and guidelines for managing livestock grazing in rangeland ecosystems administered by BLM. The Forest Service would continue to formulate standards and guidelines for rangeland management while it prepares national forest land and resource management plans. BLM would replace grazing advisory boards with resource advisory councils, which would address a broader range of concerns, while still ensuring local participation in rangeland management decisions. Both agencies would implement policies to manage rangeland resources using an ecosystem approach. The Proposed Action would also establish consistent BLM and Forest Service programs to improve ecological conditions while maintaining opportunities for long-term sustainable development.

Management Alternative 3, Livestock Production, would place more control of rangeland management in local communities. Although BLM and the Forest Service would not give up their responsibilities under laws and regulations, local community involvement in grazing advisory boards would play a lead role in making decisions about public rangelands management planning, implementation, and evaluation. Under this alternative, both agencies would have grazing advisory boards. BLM standards and guidelines would be developed at the local level by grazing advisory boards, while the Forest Service would continue to formulate standards and guidelines when it prepares national forest land and resource management plans. Goals and objectives for rangeland ecosystems would be set at the local level through consultation with grazing advisory boards. As under other alternatives, regulation changes would make BLM and Forest Service program administration more efficient and consistent.

Management Alternative 4, Environmental Enhancement, would authorize livestock grazing only in areas where enough data shows resource condition standards and goals are being met. This alternative places greater emphasis on managing all uses, including livestock grazing, to sustain ecosystem biodiversity and ecological processes. Some areas would be closed to grazing: wilderness, designated critical habitat for threatened and endangered species, developed recreation sites, and areas of unacceptable rangeland health. Under this alternative, BLM and the Forest Service would adopt and implement national standards and guidelines aimed at maintaining ecosystem health. Joint BLM-Forest Service advisory councils would be set up on an ecoregion basis. As under other alternatives, regulation changes would make BLM and Forest Service program administration more efficient and consistent.

Management Alternative 5, No Grazing, would eliminate grazing on public lands over a 3-year phase-out period. BLM and the Forest Service would continue developing policies and procedures for promoting ecosystem management. Where needed, the agencies could use livestock to manage vegetation to achieve resource objectives. None of the other livestock grazing management measures considered in the other four alternatives would be needed.

Fee Alternative 1, Current PRIA (No Action), consists of a base value of $1.23 per animal unit month (AUM) that is updated annually using three indexes: change in forage value, change in beef cattle prices, and prices paid for selected items purchased by permittees. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 2, Modified PRIA, would use the same base as PRIA, $1.23, but would differ in using an index for all production costs rather than selected production costs. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 3, BLM-Forest Service Proposed Action, would adopt a fee formula using a base value ($3.96) updated annually by a Forage Value Index. The $3.96 base value represents a midrange between the results obtained through the use of two methods for estimating a fair base value. The proposed fee would be phased in over the years 1995 through 1997. Thereafter, annual increases or decreases in the grazing fee resulting from changes in the forage value index would be limited to 25 percent of the amount charged the previous year to provide for a measure of stability that would facilitate business planning.

This proposal would establish 1996 as the base year for the forage value index. The forage value index would not be used to annually adjust the fee in response to market conditions until the year 1997. This proposed rule would establish the 1995 grazing fee at $2.75, and the 1996 grazing fee at $3.50. Thereafter the fee would be calculated, using the base value of $3.96 multiplied by the revised forage value index. By definition, the forage value index in the year 1997 would equal one; yielding a 1997 grazing fee of $3.96. In subsequent years the calculated fee would depend on the changes in the market rate for private grazing land leases as reflected by the forage value index.

Fee incentive criteria would be developed during the first 2 years of a 3-year fee phase-in period. The third year of the phase-in would not be implemented until the incentive criteria are developed. Instead a base value of $3.50 would be substituted in 1997. Fee Alternative 4, Regional Fees, is the same as the proposed action fee, except that a different base value would be applied to six pricing regions. The regional base values would be derived from the 1983 Federal Land Forage Appraisal (updated in 1992). The regional base values would be annually updated using the Forage Value Index. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 5, Federal Forage Fee Formula, was developed by the Western Livestock Producers Alliance. It is based on a 3-year average of private grazing land lease rates for 16 western states. The formula uses multipliers of private land lease rates and deducts the updated 1966 nonfee costs described in the proposed fee alternative. That amount is multiplied by the percentage difference of cash receipts per cow for federal and nonfederal livestock producers. The annual fee would not differ by more than 25 percent from the fee charged in the previous year.

Fee Alternative 6, PRIA with Surcharges, would use the fee under the PRIA fee alternative ($1.86 for 1993) and add a surcharge to cover the cost of administering the grazing program at the local Forest Service and BLM administrative level. Each year the fee would be limited to twice the fee produced by the PRIA formula. After a 1-year phase-in, the surcharge would not differ by more than 10 percent from the previous year's surcharge.

Fee Alternative 7, Competitive Bidding System, would use competitive bidding to set grazing fees. The successful bidder would be required to adhere to the terms of the permit and perform specific management practices and facilities maintenance. The terms of the permit would be part of the bid process, allowing bidders themselves to estimate the market value of the forage.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** on July 13, 1993. The scoping period was reopened for an additional 60 days through August 13 and September 20, 1993, **Federal Register** notices.

Dated: May 5, 1994.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–11364 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–84–P

Bureau of Mines

Meeting of the Committee on Mining and Mineral Resources Research

The Committee on Mining and Mineral Resources Research will meet from 8:30 a.m. to 5 p.m. (or completion of business) on Monday, June 13, 1994, in the third floor Conference Room, U.S. Bureau of Mines, 810 7th Street NW., Washington, DC 20241. The proposed agenda is:

1. Welcome and introductions.
2. Approval of the minutes of the meeting of October 27, 1993.
3. Status of program to restructure the U.S. Bureau of Mines.
4. Review of congressional actions affecting the Mineral Institute Program.
5. Review and approval of the 1994 Mineral Institute Program grant awards.
6. Discussion of the content of the next Update to the National Plan for Research in Mining and Mineral Resources.
7. New business.

Written statements concerning agenda subjects are welcome. This meeting is open to the public but entrance to the Bureau of Mines requires pre-identification. To ensure entrance to the Bureau of Mines conference room or to provide written statements for the meeting, visitors must contact the Office of Mineral Institutes, U.S. Bureau of Mines, 810 Seventh Street NW., Washington, DC 20241, telephone 202–501–9295, Internet mininsts @gwuvm.gwu.edu, no later than noon, Friday, June 10, 1994.

Dated: May 6, 1994.

Hermann Enzer,

Acting Director.

[FR Doc. 94–11638 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–53–M

National Park Service

Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of jurisdiction changes in Accomack County, Virginia, that affects Federally managed lands and waters within Assateague Island National Seashore, Chincoteague National Wildlife Refuge, and Wallops Island National Wildlife Refuge.

DATES: Concurrent jurisdiction on the above mentioned lands and waters pursuant to the Deed of Cession, as further discussed below, became effective upon acceptance by the National Park Service and the United States Fish and Wildlife Service, and the subsequent recording of the Deed in Accomack County, Virginia on December 17, 1993, at 1:20 p.m.

SUPPLEMENTARY INFORMATION: On December 17, 1993, a Deed of Cession of jurisdiction changes in Accomack County, Virginia was recorded in the Clerk's Office of the Circuit Court of Accomack County, Virginia at 1:20 p.m. The Deed of Cession cedes to the United States concurrent jurisdiction over those portions of Assateague Island National Seashore, managed by the National Park Service, and Chincoteague National Wildlife Refuge and Wallops Island National Wildlife Refuge, managed by the United States Fish and Wildlife Service. Acting upon a request of the National Park Service and the United States Fish and Wildlife Service to convey concurrent jurisdiction over lands and waters situated within the administrative boundaries of the above mentioned Federal reserves, the Deed of Cession was signed on February 24, 1993, by then Governor of Virginia, the Honorable L. Douglas Wilder, and by then attorney General of Virginia, Stephen D. Rosenthal, pursuant to the authority conferred upon them by section 7.1–21 of the Code of Virginia. The jurisdiction cession was accepted on September 15, 1993 by Roger G. Kennedy, Director of the National Park Service, and Richard N. Smith, Deputy Director of the United States Fish and Wildlife Service, Department of the Interior, pursuant to the authority conferred by section 255 of title 40 of the United States Code.

Dated: April 18, 1994.

Michael Finley,

Acting Associate Director, Operations National Park Service.

[FR Doc. 94–11628 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–70–M

Gulf Islands National Seashore Advisory Commission

AGENCY: National Park Service, Gulf Islands National Seashore.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app. *2* Section 10), that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 1:30 p.m. to 4 p.m., at the following location and date.

DATES: June 3, 1994.

LOCATION: Gulf Islands National Seashore, 3500 Park Road, Ocean Springs, Mississippi 39564.

FOR FURTHER INFORMATION, CONTACT: Jerry A. Eubanks, Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561–1801.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 91–660, January 8, 1971. The purpose of the Gulf Islands National Seashore Advisory Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore, and on matters relating to zoning within the Seashore.

The matters to be discussed at this meeting include:

(1) Superintendent's Annual Report.

(2) Status of Natural Resource Management Projects.

(3) Status of Cultural Resource Management Projects.

(4) Other business.

This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and it is expected that not more than 20 persons will be able to attend the meeting in addition to the commission members. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: April 7, 1994.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 94–11629 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–70–M

Petroglyph National Monument Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 2 p.m., Thursday, June 23, 1994, at the Technical-Vocational Institute, Board Room 100, Smith Brasher Hall, 717 University Boulevard, Southeast, at the Technical Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

—Election of Officers
—Superintendent's Report
—Update on General Management Plan
—Public Comment
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whitesell, Superintendent, Petroglyph National Monument, 123 4th Street SW., room 101, Albuquerque, New Mexico 87102, telephone 505/766–8375.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: May 4, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–11627 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Developing the San Joaquin River Comprehensive Plan and Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a comprehensive plan and environmental impact statement and notice of public scoping meetings.

SUMMARY: Pursuant to the Central Valley Project Improvement Act (CVPIA) and the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) working jointly with the Fish and Wildlife Service (Service) proposes to prepare a San Joaquin River Comprehensive Plan (CP) and environmental impact statement (EIS). The EIS will analyze the direct, indirect, and cumulative effects associated with fish, wildlife, and habitat restoration actions to be identified in the CP.

DATES: Comments are requested concerning the scope of analysis in developing the CP and associated EIS. Written comments must be postmarked no later than July 8, 1994. Scoping meetings will be held on dates and at the addresses listed below.

ADDRESSES: Written comments should be addressed to Valerie Curley, at the Bureau of Reclamation, South-Central California Area Office (SCC–411), 2666 North Grove Industrial Drive, suite 106, Fresno, California 93727–1551.

Four public scoping meetings have been scheduled. The meetings are designed to solicit public input to assist Reclamation and the Service in identifying issues, concerns and alternatives, and the overall scope of the CP and the EIA. The scoping meetings will be held at the following locations:

- Monday, June 13, 1994—Scoping session: 7:30 p.m. to 9:30 p.m., Ramada Inn, 3535 Rosedale Highway, Bakersfield, California.
- Tuesday June 14, 1994—Scoping session: 7:30 p.m. to 9:30 p.m., Ramada Inn, 324 East Shaw Avenue, Fresno, California.
- Wednesday June 15, 1994—Scoping session: 2 p.m. to 4 p.m., Sierra Inn, 2600 Auburn Boulevard, Sacramento, California.
- Thursday, June 16, 1994—Scoping session: 7:30 p.m. to 9:30 p.m., Holiday Inn, 1612 Sisk Road, Modesto, California.

An information exhibit will be on display for the public to obtain general information 1 hour prior to each scoping meeting.

FOR FURTHER INFORMATION CONTACT: Valerie Curley, Bureau of Reclamation, South-Central California Area Office, SCC–411, 2666 North Grove Industrial Drive, suite 106, Fresno, California 93727–1551, telephone: (209) 487–5118, faxogram (209) 487–5397, or Meri Moore, Fish and Wildlife Service, 2800 Cottage Way, E–1831, Sacramento, California 95825–1898, telephone: (916) 978–4613, faxogram: (916) 978–5294. The hearing impaired may call (209) 487–5933.

SUPPLEMENTARY INFORMATION: Pursuant to section 3406(c)(1) of the CVPIA, an EIS will be prepared which will evaluate the environmental effects of the alternative ways of implementing the measures developed in the CP. The CP will address fish, wildlife, and habitat concerns on the San Joaquin River including but not limited to the improvements that would be needed to reestablish where necessary and sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. It will be developed in cooperation with the California Department of Fish and Game and in coordination with the San Joaquin River Management Program under development by the State of California. It will incorporate, among other relevant factors, the potential contributions of tributary streams as well as the alternatives being investigated in the course of preparing the Stanislaus River Basin and Calaveras River Water Use Program EIA/Environmental Impact Report, currently underway pursuant to CVPIA section 3406(c)(2).

The alternatives will be developed during the scoping and planning process and will be evaluated in the environmental documentation. The range of alternatives will include No Action. The CP and draft EIS are expected to be completed and available for review and comment early in 1996. The data generated pursuant to other CVPIA activities may be used in the development of the CP and EIS. The data developed and analyzed in the CP and EIS may be used in the Friant Water Contract Renewal process pursuant to CVPIA section 3404(c)(1) at some future date.

Note: Anyone requiring special accommodations should contact Valerie Curley at the above phone number. Please call as far in advance of the meetings as possible, and no later than June 6, 1994, to enable the agencies to meet your needs. If a request cannot be honored, the requester will be notified.

Dated: May 9, 1994.

Terry P. Lynott,

Acting Director, Program Analysis Office.

[FR Doc. 94–11636 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Sec. 5a Application No. 118 (Amendment No. 1), et al.]

EC–MAC Motor Carriers Service Association, Inc., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed amendments to agreements.

SUMMARY: The Commission has received seven separate applications from motor carrier rate bureaus to expand the territorial scope of their collective ratemaking activities.[1] The rate bureaus all seek to expand from their present regional ratemaking authority to nationwide authority. These requests raise common issues, and we will consolidate them. We seek public comments on them, which may be filed on any individual amendment or collectively as to all the amendments. If we receive additional applications, we anticipate consolidating them with this proceeding. By this notice we are vacating the schedules published at 59 FR 18416 (April 18, 1994) and 59 FR 22683 (May 2, 1994) for filing public comments on EC–MAC Motor Carriers Service Association, Inc.'s and Middlewest Motor Freight Bureau, Inc.'s applications, respectively, for approval to amend their ratemaking agreements.

DATES: The due date for filing comments and serving them on the various representatives in this consolidated proceeding is June 13, 1994. The due date for replies is June 28, 1994. This notice is effective on May 13, 1994.

ADDRESSES: An original and 15 copies of comments should be sent to: Sec. 5a Application No. 118 (Amendment No. 1), Et Al., EC-MAC Motor Carriers Service Association, Inc., Et Al., Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC, 20423. Copies should also be sent to applicants' representatives:

EC–MAC Motor Carriers Service Association, Inc., John W. McFadden, Jr., McFadden, Bunce & Flint, Suite 1210, 1600 Wilson Boulevard, Arlington, VA 22209.

Middlewest Motor Freight Bureau, Inc., Bryce Rea, Jr., Rea, Cross & Auchincloss, 1920 N Street, NW., Suite 420, Washington, DC 20036.

S.D. Schwartzberg, General Counsel, Southern Motor Carriers Rate Conference, Inc., 1307 Peachtree Street, NE., Atlanta, GA 30309.

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[1] EC–MAC Motor Carriers Service Association, Inc., Sec. 5a Application No. 118 (Amendment No. 1), Middlewest Motor Freight Bureau, Inc., Sec. 5a Application No. 34 (Amendment No. 8), Southern Motor Carriers Rate Conference, Sec. 5a Application No. 46 (Amendment No. 19), The New England Motor Rate Bureau, Inc., Sec. 5a Application No. 25 (Amendment No. 8), Pacific Inland Tariff Bureau, Inc., Sec. 5a Application No. 22 (Amendment No. 7), Rocky Mountain Carriers, Sec. 5a Application No. 60 (Amendment No. 10), and Niagara Frontier Tariff Bureau, Inc., Sec. 5a Application No. 45 (Amendment No. 13) (collectively, applicants).

Jack W. Fraser, Executive Vice President, The New England Rate Bureau, Inc., 80 Blanchard Road, P.O. Box 3380, Burlington, MA 01803-0880.

Pacific Inland Tariff Bureau, Inc., Bryce Rea, Jr., William E. Kenworthy, Rea, Cross & Auchincloss, 1920 N Street, NW., Suite 420, Washington, DC 20036.

Don R. Devine, Rocky Mountain Tariff Bureau, Inc., P.O. Box 5746 Denver, CO 80217.

Warren D. Gawley, Registered Practitioner, Niagara Frontier Tariff Bureau, Inc., P.O. Box 548, Buffalo, NY 14225.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Copies of the applications and amendments are available for inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, DC 20423, and from applicants' counsels.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: May 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11824 Filed 5-12-94; 8:45 am]

BILLING CODE 7035-01-P

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers,* 5 I.C.C. 2d 786 (9189). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-20528, filed April 12, 1994. OLYMPIA TRAILS BUS COMPANY, INC.—PURCHASE—LIFE LINE TOURS, INC., AND REGENCY CHARTER, INC. Applicant's representative: John R. Sims, Jr., suite 775, 1275 K Street, NW., Washington, DC 20005. (202) 842-1741 Olympia Trails Bus Company, Inc. (Olympia) (MC-138146), seeks approval of its purchase of the interstate operating rights of Life Line Tours, Inc. (Life Line) in Certificate No. MC-166030 Sub 1, issued June 2, 1986, and of Regency Charter, Inc. (Regency) in Certificate No. MC-160839 Sub 2, issued October 29, 1991, authorizing the transportation of passengers, over regular and irregular routes. Temporary authority under 49 U.S.C. 11349 was granted May 2, 1994.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11742 Filed 5-12-94; 8:45 am]

BILLING CODE 7035-01-P

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

May 10, 1994.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP-102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(A)

(1) Northwest Agricultural Cooperative Association, Inc. (N.A.C.A., Inc.).
(2) 920 SE 9th Avenue, Ontario, OR 97914.
(3) 920 SE 9th Avenue, Ontario, OR 97914.
(4) Jerry Ready, P.O. Box 1, Ontario, OR 97914.

(B)

(1) Western Co-op Transport Association.
(2) East Highway 212, Montevideo, MN 56265.
(3) East Highway 212, Montevideo, MN 56265.
(4) Gerald L. Morrow, P.O. Box 794, Montevideo, MN 56265.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11743 Filed 5-12-94; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-213 (Sub-No. 4)]

Canadian Pacific Limited—Abandonment—Between Skinner and Vanceboro, Maine

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final scope of study for environmental impact statement.

SUMMARY: This notice announces the final scope of study prepared in response to written comments, as well as oral comments given at public meetings, for the environmental impact statement to be prepared for the above proceeding. Written comments on the final scope are requested.

DATES: Written comments on the final scope of work are due June 13, 1994.

ADDRESSES: Phillis Johnson-Ball, Interstate Commerce Commission, Section of Environmental Analysis, Room 3221, 12th and Constitution Avenue, NW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 927-6213 or Vicki Dettmar (202) 927-6211.

SUPPLEMENTARY INFORMATION: Canadian Pacific Limited has filed an application with the Commission seeking authority to discontinue and abandon all freight and passenger rail operations over 201.2 miles of rail line between Skinner and Vanceboro (The Skinner-Vanceboro Line) in the Maine counties of Franklin, Somerset, Piscataquis, Penobscot, Aroostook, and Washington. The proposed abandonment activities would include the discontinuance of rail service over the entire line; the diversion of traffic to motor carriers or other railroads; and the salvage of all rails, ties, railroad-related appurtenances, and standing structures.

We believe that if the Commission approves the abandonment, this action would constitute a major Federal action having the potential to significantly affect the quality of the human environment. Therefore, we will prepare an environmental impact statement (EIS). A notice of intent to prepare an EIS and to hold public scoping meetings for this proceeding was published on February 22, 1994. The notice requested comments in writing or orally at public scoping meetings that were held in Woodland, Maine and Bangor, Maine on March 15 and March 16, 1994, respectively. Over 50 parties provided comment and/or attended the scoping meetings. In accordance with the Commission's environmental rules at 49 CFR 1105, the final scope of study is summarized below.

SUMMARY OF THE SCOPE OF STUDY: Abandonment and salvage activities may significantly affect the environment in the project area. Based on the comments and our initial evaluation, the proposed abandonment may result in a number of environmental impacts. These impacts include:

Land Use Impacts
Transportation Impacts
Energy Impacts
Air Quality Impacts
Noise Impacts
Impacts to Public Health and Safety
Impacts to Biological Resources
Impacts to Water Resources
Socioeconomic Impacts from Physical Environmental Changes
Impacts to Historic and Cultural Resources
Impacts to Recreational Resources

We want to make it clear here that the EIS will only analyze the environmental effects that relate to this abandonment proposal. The environmental review process is not the proper forum for analyzing the "need" for or the economic merits of a proposed project. It is through the development of a separate evidentiary record that addresses the merits of the proposed abandonment that the Commission considers issues of economic impact and the impacts to rural and community development as required by 49 U.S.C. 10903 (a) (2).

Copies of the complete scope of study have been served on all the parties to this proceeding. A copy of the scoping document may be obtained by contacting Phillis Johnson-Ball at (202) 927–6213 or Vicki Dettmar at (202) 927–6211.

A notice of availability of the draft EIS will be announced in the **Federal Register** and served on parties to the proceeding.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Sidney L. Strickland, Jr.

Secretary.

Scope of Environmental Impact Statement; Docket No. AB–213 (Sub-No. 4); Canadian Pacific Limited—Abandonment—Between—Skinner and Vanceboro, Maine; Executive Summary; Description of Proposed Action and Alternatives

1. Summary of the existing rail line
2. Description of the proposed action
3. Description of alternatives
   a. Partial abandonment
   b. Discontinuance of service without abandonment
   c. No action (denial of the proposal)

Description of Existing Environment

Specific description including existing land use, transportation, physiography and soil, water resources, biological resources, air quality, noise, socioeconomic setting, historic and cultural resources, and recreational resources in the project area.

Environmental Analysis of Proposed Action and Alternatives

A. Land Use Impacts

1. Analysis of impacts from increased land development following abandonment of the right-of-way (ROW).
2. Evaluation of the change in existing land use of the ROW, railroad yards, and stations.
3. Assessment of disturbances to adjacent properties during salvage activities.
4. Concerns regarding unauthorized recreational vehicle use along the abandoned ROW.
5. Need for disposal requirements for salvaging debris.
6. Possibility of unauthorized waste and debris disposal along the ROW.
7. Native American concerns regarding impacts to land use activities of the Indian Township and Pleasant Point reservations of the Passamaquoddy Tribe, and the Penobscot Nation at Indian Island.

B. Transportation and Safety Impacts

1. Assessment of the transportation and safety impacts associated with the loss of rail service to existing shippers.
2. Assessment of rail and motor carrier transportation alternatives and anticipated impact of rerouted traffic on alternative rail lines and/or roadways.
3. Evaluation of the impact of rerouted passenger traffic.
4. Evaluation of the impact of loss of this rail service on transportation safety, including the occurrence of accidents and release of hazardous materials.

C. Energy Impacts

1. Assessment of impacts on transportation of any energy resources.
2. Anticipated impacts on any recyclable commodities.
3. Impact on overall energy consumption and efficiency that would result from increased use of trucks.

D. Water Resource Impacts

1. Possible water quality impacts from erosion and sedimentation that would be associated with building and bridge removal and other salvage activities.
2. Analysis of the disturbance of soil and vegetation in water bodies, floodplains, and/or wetlands that could result during bridge removal and other salvage activities.
3. Evaluation of the need for continued culvert maintenance to minimize flooding and water quality impacts from beaver and ice dams.
4. Anticipated impacts from the possible failure or collapse of bridge abutments.
5. Possible water quality degradation in recreational lakes that could result from lakeside land development.
6. Water quality degradation that could result from accidental releases of hazardous materials in motor carrier transportation.
7. Impacts from contaminated soil resulting from prior leaks, derailments, and fueling that occurred along the ROW and possible need for soil and groundwater sampling.

E. Impacts on Biological Resources

1. Assessment of the impact of salvage activities on any threatened and endangered species in the vicinity of the ROW.
2. Discussion of concerns regarding disturbance of vegetation in adjacent wetlands and floodplains during bridge removal and other salvage activities.
3. Evaluation of the impact of erosion and sedimentation during building and bridge removal and other salvage activities on aquatic wildlife and habitat.
4. Analysis of changes in beaver populations and activities along the ROW.
5. Concerns regarding the impact of increased traffic on wildlife along Route 9 and at the Moosehorn National Wildlife Refuge.
6. Possibility of the need for continued culvert maintenance to minimize wetland impacts from changes in hydrologic (i.e., water level) conditions.
7. Assessment of the impact to wildlife following abandonment of rail service.
8. Potential impacts to wildlife that could result from the unauthorized uses of abandoned ROW.

F. Air Quality Impacts

1. Analysis of the elimination of current locomotive emissions along the ROW following abandonment.
2. Effects of possible increased emissions due to rail line salvage operations.
3. Explanation of increased air pollutant emissions that could result

from additional truck traffic, especially in current non-attainment areas.

G. Noise Impacts

1. Analysis of the impact from noise that may be generated by salvage equipment and post-abandonment maintenance equipment.

2. Concerns regarding the impact of abandonment on noise quality in the vicinity of road crossings.

3. Impacts from noise that may be generated by increased vehicular traffic on Route 9 and other roads.

H. Impacts on Socioeconomics

Evaluation of social and economic impacts resulting from changes in the physical environment due to salvage activities or the diversion of traffic.

I. Impacts on Historic and Cultural Resources

1. Impacts to structures (buildings and bridges) that may be eligible for listing on the National Register of Historic Places and archaeological resources.

2. Potential need for a Memorandum of Agreement between the Maine Historic Preservation Commission, Interstate Commerce Commission, Advisory Council of Historic Preservation, and Canadian Pacific Limited.

3. Assessment of impact of increased truck traffic on the Calais Historic District.

J. Impacts on Recreational Resources

1. Effects of salvage activities and elimination of train noises and intrusions on wildlife and other recreational resources.

2. Effects of abandonment on opportunities for hunting, fishing, and bird watching.

3. Potential for use of the abandoned ROW as a multi-use recreational trail.

4. Assessment of impact of bridge removal on recreational opportunities along the ROW.

5. Impact of possible unauthorized recreational vehicle use and increased human activity on existing wildlife and habitat conditions.

Proposed Mitigation

1. Necessary and appropriate mitigation.

[FR Doc. 94-11740 Filed 5-12-94; 8:45 am]

BILLING CODE 7035-01-P

[Amendment No. 1 to Directed Service Order No. 1515]

Cedar River Railroad Company—Directed Service Order Charles City Railway Lines, Inc

AGENCY: Interstate Commerce Commission.

ACTION: Amendment to Directed Service Order.

SUMMARY: The Charles City Railway Lines, Inc. (CCRY), was shut down by its management effective with the close of business February 24, 1994, due to a lack of operating funds. There are two principal shippers located on the 3.6-mile CCRY line. On March 4, 1994, the Commission issued Directed Service Order No. 1515, authorizing the Cedar River Railroad Company (CRR) to operate the CCRY lines for 60 days under certain terms and conditions contained in that order. The Commission was notified on May 4, 1994, of CRR's willingness to continue that operation.

In view of the need for continued rail service over CCRY's lines and CRR's willingness to provide directed service without compensation from the Federal government, this decision grants an extension of the interim service authority to CRR for 180 days.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: May 6, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11741 Filed 5-12-94; 8:45 am]

BILLING CODE 7035-01-P

[Supplemental Order No. 1 to Directed Service Order No. 1516]

Dardanelle & Russellville Railroad Co.—Authorized To Operate—Lines of Arkansas Midland Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of directed service order.

SUMMARY: In 1992, the Arkansas Midland Railroad Company (AMR) acquired four unconnected rail lines totalling 131 miles from the Union Pacific Railroad Company (UP). Each of the branch lines acquired by AMR extends from the same North/South UP line in central Arkansas. On one of the branch lines, the Norman Branch, there are five active shippers (International Paper Company, Gifford-Hill & Company, Barksdale Lumber Company, Bean Lumber Company, and G&S Roofing Products Company, Inc.), and one inactive shipper (Cargill). The Norman Branch extends approximately 52.9 miles from its connection with UP at Gurdon, AR, to the end of the line at Birds Mill, AR.

On December 15, 1993, the AMR embargoed 31 miles of the Norman Branch line from Pikes Junction to Birds Mill as a result of storm damage. This embargo affected Barksdale Lumber, Bean Lumber, and G&S Roofing. On February 22, 1994, AMR embargoed approximately 17 additional miles of the line, which affected service to Gifford Hill & Company located at Delight, AR.

On March 28, 1994, the Commission issued Service Order No. 1516 for 30 days pursuant to 49 U.S.C. 11123 (a), authorizing the Dardanelle & Russellville Railroad Company (DRRC) and its newly formed non-carrier subsidiary, the Caddo, Antoine, Little Missouri Railroad Company (CALM) to operate approximately 49 miles of the AMR Norman Branch line currently under embargo. The Order also authorized DRRC/CALM to utilize trackage rights over approximately 3 miles of the remaining portion of the Norman Branch, which AMR continues to operate, in order to reach a connection with the Union Pacific Railroad Company (UP).

DATES: *Effective Date:* Supplemental Order No. 1 to Directed Service Order No. 1516 shall become effective at 11:59 p.m., April 27, 1994.

Expiration Date: Unless otherwise modified by order of the Commission, Directed Service Order No. 1516, as amended, will expire at 11:59 p.m., October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 927-5500 or Melvin F. Clemens, Jr. (202) 927-5538; TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: There continues to be an immediate need for rail service over the AMR's Norman Branch, especially considering the urgency of aggregate shipments to the State of Louisiana for a highway construction project and the service needs of other shippers. AMR has indicated that it is willing to allow continued operations by DRRC/CALM over the Norman Branch line under the Terms and Conditions contained herein. DRRC/CALM has expressed a willingness to rehabilitate the line to the extent necessary and to provide service to shippers and to continue its operations. AMR and DRRC/CALM have agreed amongst themselves as to the terms of the trackage rights arrangement. Based upon these circumstances and the statutory requirements, an emergency service order under 49 U.S.C. 11123 continues to be appropriate, and is responsive to the shippers' service needs.

In view of the need for continued rail service over AMR's Norman Branch, and DRRC/CALM's willingness to provide this service and limited track rehabilitation, this decision grants the requests of interested parties for interim service authority to DRRC/CALM on the Terms and Conditions noted below for a period of 180 days.

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest, and that the modified hearing procedure conducted during the order's initial 30-day term satisfied the statutory hearing requirement at 49 U.S.C. 11123(a)(2). Accordingly, we exercise our authority under 49 U.S.C. 11123(a)(1) to waive further advance public notice in the present circumstances.

We believe this authority to be necessary at least for an additional 180-day period. Any interested party may file comments on this action during this period relating to the necessity and appropriateness of continuing this order in effect. All filings should be addressed to Bernard Gaillard, Director, Office of Compliance and Consumer Assistance, Interstate Commerce Commission, Washington, DC 20423; and in the lower left hand corner of the envelope in large letters should be printed, "OCCA-4412." An original and 10 copies should be filed of all statements.

Supplemental Order No. 1 to Service Order No. 1516 shall be effective at 11:59 p.m., April 27, 1994.

Unless otherwise modified by the Commission, Supplemental Order No. 1 to Service Order No. 1516 will expire at 11:59 p.m., on October 24, 1994.

DRRC/CALM's authority under Service Order No. 1516 is expressly conditioned upon its agreeing to:

(1) Indemnify AMR for any liability that might occur as a result of DRRC/CALM's operation of AMR's northern line segment;
(2) Assume responsibility for maintenance of the northern line segment;
(3) Compensate AMR for the 3-mile overhead trackage rights required to effect interchange with the UP at Gurdon, AR, at a mutually agreed upon and commercially reasonable rate beginning June 1, 1994.

No further compensation during the extended period of this order is contemplated.

In accordance with the above, operations by DRRC/CALM may continue on the terms and conditions described herein and upon notice to the Commission by DRRC/CALM that conditions continue to exist which allow safe operations over pertinent portions of the Norman Branch.

In operating AMR's line, DRRC/CALM shall use its own cars and operating equipment, or cars of other AMR connections as agreed to by those connections.

In providing service under this service order, DRRC/CALM shall comply with the requirements of 49 U.S.C. 11123(a)(3) with respect to AMR employees required for this operation.

Rates and charges shall be those applicable to the line and in effect at the time DRRC/CALM commenced operations. DRRC/CALM shall not seek changes in AMR rates and charges during the initial period of this order. All revenues from such charges shall accrue to the account of DRRC/CALM during the effective period of this order, and shall not constitute assets of AMR.

Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility and liability of DRRC/CALM. Any such costs or expenditures shall not be deemed an obligation or liability of the United States Government. DRRC/CALM shall hold the United States Government harmless from any claim arising out of the authorized operations.

Any operational difficulties associated with the authorized operations shall be resolved by DRRC/CALM and any other affected party through negotiated agreement, or, if the parties cannot reach agreement, by the Commission. Any initiation of operations by any entity other than DRRC/CALM over the AMR lines shall occur only after approval by the Commission and upon 30-days' notice to the Commission and AMR. This 30-day transition period would apply also to operation commenced pursuant to the Commission's approval of Finance Docket No. 32479.

We find:

1. DRRC/CALM has requested the Commission to permit it to provide continued rail service over those portions of the AMR lines included in the Norman Branch which it determines to be operationally safe.

2. To prevent transportation and economic disruptions in this area of Arkansas, and to assure the immediate continued movement of critically needed commodities to adjoining regions of the United States including Louisiana, it is necessary for the Commission to authorize DRRC/CALM to operate over AMR's Norman Branch line including 3 miles of overhead trackage under 49 U.S.C. 11123, conditioned upon a waiver of any compensation from the Federal government and DRRC/CALM's agreement to hold the United States Government and AMR harmless from any claim arising out of the authorized operations.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. Based upon its undertaking to do so upon the terms and conditions noted herein, DRRC/CALM is authorized under 49 U.S.C. 11123 to enter upon and operate AMR's Norman Branch including 3 miles of overhead trackage rights pursuant to the terms of this service order and its agreements with AMR.

(a) Operations by DRRC/CALM on the lines of AMR authorized in this decision may continue provided it gives appropriate notification to the Commission that the lines to be operated remain safe for that operation. Operations by DRRC may continue for 180 days from the effective date of this decision unless it is sooner modified.

2. Operations performed under authority of this order shall conform to the directions and conditions prescribed herein.

3. All submissions filed in this proceeding should refer to Service Order No. 1516 and should be sent to the Commission's headquarters at 12th Street and Constitution Avenue, N.W., Washington, D.C. 20423. Any filings made in this proceeding should include an original and 10 copies.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice to the general public of this decision shall be given by publication in the **Federal Register**. The decision will be served on the Federal Railroad Administration, the Association of American Railroads, American Short Line Railroad Association, DRRC/CALM, AMR, and UP.

7. This decision and order shall become effective at 11:59 p.m., on April 27, 1994.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., on October 24, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin. Commissioner

Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–11744 Filed 5–12–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application; Correction

In the **Federal Register** (FR Doc. 94–7167) Vol. 59, No. 59 at page 14426, March 28, 1994, the listing of controlled substances should have included Tetrahydrocannabinols (7370) and Methylphenidate (1724) for Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147.

Dated: May 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11664 Filed 5–12–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 28, 1994, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 13, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11665 Filed 5–12–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 21, 1994, Sanofi Winthrop L.P., DBA Sanofi Winthrop Pharmaceutical, 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11666 Filed 5–2–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,463]

Geosignal, Incorporated; Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Geosignal, Incorporated, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,463; Geosignal, Incorporated, Denver, Colorado (April 29, 1994)

Signed at Washington, DC this 2nd day of May, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–11451 Filed 5–12–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,776]

Halliburton Geophysical Services, Incorporated, a/k/a Halliburton Company, a/k/a Halliburton Energy Services, Headquartered in Houston, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Halliburton Geophysical Services, Inc., headquartered in Houston, Texas and operating at various other locations. The notice was issued on October 23, 1992 and published in the **Federal Register** on November 17, 1992 (57 FR 54256).

The certification notice was amended on April 18, 1994. The amended notice was published in the **Federal Register** on April 29, 1994 (59 FR 22176).

At the request of the State Agency, the Department reviewed the certification again for workers of the subject firm. Halliburton restructured their organization which caused Halliburton Geophysical Services, Inc. to be known as Halliburton Company as well as Halliburton Energy Services. Claimants had wages reported under all three companies.

Accordingly, the Department is amending the certification to show the correct name of the worker group.

The amended notice applicable to TA–W–27,776 is hereby issued as follows:

> All workers of Halliburton Geophysical Services, Inc., a/k/a/ Halliburton Company, a/k/a Halliburton Energy Services, headquartered in Houston, Texas and operating at various other locations in the below cited states who became totally or partially separated from employment on or after August 17, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA–W–27,776A	Alaska
TA–W–27,776B	California
TA–W–27,776C	Colorado
TA–W–27,776D	Louisiana
TA–W–27,776E	Mississippi
TA–W–27,776F	Nevada
TA–W–27,776G	New Mexico
TA–W–27,776H	Oregon
TA–W–27,776I	Texas
TA–W–27,776J	Washington
TA–W–27,776K	Wyoming

Signed at Washington, DC, this 4th day of May 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–11684 Filed 5–12–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[94–028]

Performance Review Board, Senior Executive Service

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95–454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register**.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board (PRB) and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator, members of the PRB, and executives in the Office of the Inspector General. The following individuals are serving on the Board and the Committee:

Performance Review Board

Wesley L. Harris, Chairperson, Associate Administrator for Aeronautics, NASA Headquarters
Vicki A. Novak, Executive Secretary, Director, Personnel Division, NASA Headquarters
George E. Reese, Deputy General Counsel, NASA Headquarters
Robert W. Brown, Deputy Associate Administrator for Human Resources and Education, NASA Headquarters
Thomas N. Tate, Non-NASA Member
C. Howard Robins, Jr., Deputy Associate Administrator for Space Systems Development, NASA Headquarters
Michael D. Christensen, Deputy Associate Administrator for Management Systems and Facilities, NASA Headquarters
Bryan D. O'Connor, Deputy Associate Administrator (Space Shuttle), NASA Headquarters
Arnauld E. Nicogossian, Deputy Associate Administrator for Life and Microgravity Sciences and Applications, NASA Headquarters
Peter T. Burr, Deputy Director, NASA Goddard Space Flight Center James A. Thomas, Deputy Director, NASA Kennedy Space Center
H. Lee Beach, Jr., Deputy Director, NASA Langley Research Center
Stuart J. Fordyce, Deputy Director, NASA Lewis Research Center
Gerald W. Smith, Deputy Director, NASA Stennis Space Center.

Senior Executive Committee

J.R. Dailey, Chairperson, Associate Deputy administrator, NASA Headquarters
Spence M. Armstrong, Associate Administrator for Human Resources and Education, NASA Headquarters
Wesley L. Harris, Associate Administrator for Aeronautics, NASA Headquarters
Thomas P. Murphy, Non-NASA Member.

Dated: May 4, 1994.

Daniel S. Goldin,

Administrator.

[FR Doc. 94–11682 Filed 5–12–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Presenting and Commissioning Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning

Advisory Panel (Artists' Projects Regional Initiatives Section) to the National Council on the Arts will be held on June 13, 1994. The panel will meet from 9 a.m. to 5:30 p.m. in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. for a Policy and Guidelines Discussion.

The remaining portion of this meeting from 9 a.m. to 4 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5436.

Dated: May 10, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11737 Filed 5–12–94; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement/Special Projects Section) to the National Council on the Arts will be held on June 2, 1994. The panel will meet from 9:30 a.m. to 7 p.m. in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 10 a.m. for Introductory Remarks and Review Criteria and from 5:30 p.m. to 7 p.m. a Policy and Guidelines Discussion.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC, 20506, 202/682–5532, TYY 202/683–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC., 20506, or call 202/682–5439.

Dated: May 10, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11736 Filed 5–12–94; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources/Services to the Field Section) to the National Council on the Arts will be held on June 9, 1994. The panel will meet from 9 a.m. to 5:30 p.m. in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. for a Guidelines and Policy Discussion.

The remaining portion of this meeting from 9:30 a.m. to 4 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 10, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11735 Filed 5–12–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure

AGENCY: National Labor Relations Board.

ACTION: Notice of establishment of National Labor Relations Board Advisory Committee on Agency Procedure.

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 (1972), and 29 CFR 102.136 (1993), and after consulting with and obtaining the approval of the Committee Management Secretariat of the General Services Administration and the Office of Management and Budget, the National Labor Relations Board has determined that the establishment of a National Labor Relations Board Advisory Committee on Agency Procedure is necessary and in the public interest. Except as hereinafter noted and until further notice, the Agency adopts and will follow the Federal Advisory Committee Management Regulations for the operation of this and future advisory committees (41 CFR 101–6.1001—101.61035 (1993).

The purpose of the Committee is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite case processing and improve Agency service to the public. The Committee will function solely as an advisory body and in compliance with the terms of the Federal Advisory Committee Act and its charter will be filed in accordance with the provisions of the Act.

The Committee will consist of 50 members divided into two panels, one composed of 25 Union-side representatives and the other of 25 Management-side representatives. Membership on the panels will be broadly representative of persons who represent labor and management before the Agency, and members will be selected for their expertise in representing labor and management before the Agency. Balance of Committee composition will be ensured through geographical, ethnic minority and women representatives, and through representation by the Co-Chairs of the NLRB Practice and Procedure Committee of the Labor and Employment Law Section of the American Bar Association. Appointments will be for two years unless otherwise directed by the Chairman of the Board. Committee members will be required to bear their own costs for travel and other expenses in connection with their participation on the Committee.

Generally, the two panels of the Committee will meet separately. The date, place and time of the panel meetings will be published in the Federal Register. The notice will also announce whether the meetings are open or closed to public attendance, and if closed, the reasons why. A session of the Committee will consist of one scheduled meeting of each panel. When the panels meet on different dates, the adjournment of the latter of the two panels will constitute an adjournment of that session of the Committee. Within 30 days of that adjournment, any member of the public may present written comments to the Committee on the matters considered during the previous session.

Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel Gonzelez, Executive Assistant to the Chairman, National Labor Relations Board, 1099—14th Street, NW., suite 11104, Washington, DC 20570–0001; Telephone: (202) 273–2864.

William B. Gould IV,

Chairman.

[FR Doc. 94-11606 Filed 5–12–94; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 AND 50–318]

Baltimore Gas and Electric Company; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located at the licensee's site in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise Figure 5.1–1, Site Boundary Map, and Figure 5.1–2, Low Population Zone Map, in the Technical Specifications (TSs). The revisions are needed to correct the discrepancy between the current site property lines and the property lines as shown on TS Figure 5.1–1 and Figure 5.1–2. This discrepancy resulted from the purchase of land subsequent to issuance of the plant operating licenses and the failure to update the TSs to reflect the change in site property lines.

The proposed action is in accordance with the licensee's application for amendment dated September 29, 1992, as supplemented by letters dated October 22, 1993, and November 11, 1993.

Need for the Proposed Action

The proposed changes to the TSs are required to correct the discrepancy between the current site property lines and the property lines as shown on Figure 5.1–1 and Figure 5.1–2 in the TSs. This discrepancy resulted from the purchase of six parcels of land subsequent to issuance of the plant operating licenses and the failure to update the TSs to reflect the change in property lines. The original site covered 1135 acres. With the addition of the six new parcels of land, the site now covers 2108 acres.

Environmental Impacts of the Proposed Action

The 2108 acre Calvert Cliffs site includes forest and farmland which surround the plant. The land's primary purpose is to serve as a natural buffer between the plant and the local community. Over 1500 acres of the site are covered with woodlands. The remaining acreage is made up of various open areas, a 50-acre recreational facility, and a working farm of about 100 acres. The six parcels of land that were acquired by the licensee subsequent to issuance of the plant operating licenses are comprised of shoreline property, woodlands, and farmland.

The proposed revisions to TS Figure 5.1–1 and Figure 5.1–2 are administrative in nature in that they will update the TSs to accurately reflect the current site boundary. The proposed amendments will not change plant equipment, operation or procedures, and do not adversely affect the probability or the consequences of any accident at this facility. The proposed amendments also do not affect radiological effluents from the facility or the radiation levels at the facility. Although the exclusion area as defined in 10 CFR part 100 has been increased, the property addition does not change the licensee's offsite dose calculations. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed amendments.

There are no persons who reside on any of the new parcels and the acquired property does not contain sites of historical, archaeological or scenic significance. The licensee's Land Management Program implements certain forestry and farming practices that are intended to preserve the site's land resources and natural habitats. There are three focal areas of the program; fire prevention, significant laws and regulations, and wildlife considerations. Salient aspects of these focal areas are summarized below.

In the area of fire prevention, the licensee has implemented a program to replace large stands of Virginia Pine trees with better quality trees to reduce the potential for fire. A system of fire roads has also been developed throughout the property and firefighting equipment has been strategically placed along these roads to assist personnel in the event of a fire. A property grid system has been established to determine the location and extent of a fire once discovered.

With respect to significant laws and regulations, environmental laws in the State of Maryland are focused on promoting good soil conservation practices, improving the quality of the Chesapeake Bay, and preserving endangered species and other animals unique to the area. To avoid erosion and keep land productive, the licensee uses practices such as contour plowing, applying pesticides and fertilizer properly, rotating crops, minimizing tilling, and growing a cover crop during the winter for all farming operations.

The Chesapeake Bay Critical Areas Law strictly governs the use of land within 100 feet of, and all tributaries leading into, the Chesapeake Bay. The law was enacted to prevent the continued deterioration of the Bay by controlling future development and water runoff containing harmful quantities of sediment, fertilizers, pesticides, and toxic metals from agricultural fields and other developed land adjacent to the Bay. The licensee complies with Calvert County's Critical Area Plan. Four of the new parcels of land have land which falls in the critical area.

The Calvert Cliffs site is regulated by the Federal "Endangered Species Act," 16 U.S.C. 1531. This act requires landowners to preserve those areas inhabited by species protected by this act. At Calvert Cliffs, the Tiger Beetle and Bald Eagle are protected. Two species of the Tiger Beetle are found along the beach area at Calvert Cliffs; the Northeastern Beach Tiger Beetle and the Puritan Tiger Beetle. A family of Bald Eagles is located in the southern portion of the Calvert Cliffs site.

The Calvert Cliffs site is home for a wide variety of wildlife, including two animal species considered endangered. Their habitat is largely preserved on more than three-fourths of the 2108 acres at Calvert Cliffs. By implementing sound forestry practices the licensee endeavors to ensure that the necessary food, nesting areas, and cover are provided to support the animals that live at Calvert Cliffs. The licensee has several plans in place to ensure that the habitats of the various wildlife species are preserved.

The proposed revisions to the TSs will merely update the TSs to reflect the current site boundary and will not affect the utilization of the six new parcels of land or implementation of the licensee's Land Management Program. The proposed amendments will also not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on October 28, 1992 (57 FR 48813). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendments. Such action would not enhance the protection of the environment.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request to modify the TSs. The NRC staff consulted with the State of Maryland regarding the environmental impact of the proposed action. The State of Maryland had no comments regarding this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 29, 1992 as supplemented by letters dated October 22, 1993, and November 11, 1993. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at the Calvert County Library, Fourth Street, Prince Frederick, Maryland, 20678.

Dated at Rockville, Maryland, this 5th day of May 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-11654 Filed 5-12-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix J, Paragraph III.D.3, Type C tests, to the Consolidated Edison Company of New York, Inc. (the licensee), for the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempt from the requirements of 10 CFR part 50, appendix J, Paragraph III.D.3, to the extent that an extension would be allowed for performing Type C leak rate tests on containment isolation valves. These leak rate tests are currently required to be performed at intervals no greater than 2 years. The exemption would allow Type C leak rate tests to be performed at intervals no greater than 30 months.

By letter dated January 28, 1994, the licensee requested an amendment to the Technical Specifications (TSs) and an exemption from the Code of Federal Regulations (CFR) requirements to allow Type C leak rate tests to be performed at intervals no greater than 30 months.

Need for the Proposed Action

The licensee commenced operating on 24-month fuel cycles, instead of the previous 18-month fuel cycles, starting with fuel cycle 12. Fuel cycle 12 started in April 1993. The requirements of 10 CFR part 50, appendix J, Paragraph III.D.3, indicate the Type C leak rate tests must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). In order to conform with this regulation, the licensee could be required to shutdown Indian Point Nuclear Generating Unit No. 2 and enter a forced outage prior to the next refueling outage.

The NRC staff had previously recognized that certain regulations would not accommodate fuel cycles longer than 18 months. Consequently, the NRC staff issued Generic Letter (GL) 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." This GL provides guidance to licensees on how to prepare requests for TS amendments and regulation exemptions which are needed to accommodate 24-month fuel cycles. The licensee's letter of January 28, 1994, followed the guidance of GL 91–04.

Environmental Impacts of the Proposed Action

The proposed exemption does not increase the probability or consequences of accidents previously analyzed and the proposed exemption does not affect facility radiation levels or facility radiological effluents. The requested exemption is based, in part, on increasing the margin to the allowed combined leakage limit for Type B and C tests by 25 percent. In addition, the licensee has reviewed the results of previous leak rate tests performed at Indian Point Nuclear Generating Unit No. 2, and provided a basis for concluding that containment leakage will be maintained within acceptable limits with a maximum test interval of 30 months. The NRC staff has determined that the licensee's submittal is consistent with the guidance provided in GL 91–04. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves leak rate tests on containment isolation valves. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant nonradiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statements Related to the Operation of Indian Point Nuclear Generating Plant Unit No. 2," dated September 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff consulted with the State of New York regarding the environmental impact of the proposed exemption. The State of New York had no comments regarding this proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the exemption under consideration.

For further details with respect to this action, see the licensee's application for exemption dated January 28, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detailed at Rockville, Maryland, this 6th day of May 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11655 Filed 5–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an amendment to Facility Operating License No. NFP–21 issued to Washington Public Power Supply System (the licensee) for operation of the Nuclear Project No. 2 (WNP–2) plant, located in Benton County, Washington.

The proposed amendment would (1) revise TS 3/4.4.2 and 3/4.5.1 to require main stream system and automatic depressurization system safety/relief valve (SRV) surveillance testing within 12 hours after steam pressure and flow are adequate to do the testing; and (2) revise TS Table 4.3.7.5–1 to require SRV position indicator surveillance testing within 12 hours after steam pressure and flow are adequate to do the testing.

The intent of the change is to clarify when the 12-hour time period begins. The licensee is also making a change to the TS SRV basis to clarify that testing SRVs at low power means testing them when there is adequate steam pressure and flow.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The Supply System has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and concluded that the change does not:
>
> (1) Involve a significant increase in the probability or consequences of any accident previously evaluated.
>
> The potential delay in confirming safety relief valve (SRV), SRV position indication (acoustic monitor, valve stem position indicators, and tailpipe temperature instruments), and ADS operability during plant startup should not result in any change to the expected satisfactory completion of the required surveillance tests. Surveillance testing that is conducted during the plant shutdown sequence, and during shutdown, provides reasonable assurance that the SRVs will function when required. Under the proposed change, plant test conditions would not be different than in the past since testing was not begun until adequate pressure for the duration of the test was achieved.
>
> Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.
>
> (2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a design change nor do they involve changes outside the scope of the existing test requirements. No new failure modes are introduced as a result of the proposed changes. The acoustic monitors merely provide indication that an SRV is open. They do not provide an actuation signal. Alternate mechanisms of SRV position indication exist, i.e., reactor water level changes, reactor pressure changes, main turbine bypass valve position, SRV tail pipe temperature, suppression pool level, and suppression pool temperature. The time delay prior to operability verification will not affect Technical Specification requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes have no impact on the operability or performance requirements of the SRVs, including the ADS function, as they do not change the lift setpoints or minimum number of valves required to be operable. The effect of delaying the starting point of the time clock is not expected to affect completion of the required tests. ADS/SRV position indication availability will not be significantly affected by the proposed change since the additional 48 hours per refueling cycle of not verifying SRV, SRV position indication, and ADS SRV operability occurs at low power with the High Pressure Core Spray and Reactor Core Isolation Cooling systems available. Additionally, there is a high probability that the SRVs would perform their intended function if required even though they have not been declared operable.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Normally, the Commission will not issue the amendment until the 30-day notice period expires. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance in the **Federal Register** and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay, Director, Project Directorate IV–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M. H. Phillips, Jr., Esq., Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502, the licensee's attorney.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 5, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 10th day of May 1994.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Acting Project Manager, Project Directorate IV–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11786 Filed 5–12–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34018; File No. SR–DTC–94–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Implementation of the Interactive Capabilities and of the Electronic Mail Features of the Enhanced Institutional Delivery System

May 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 13, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of procedures for electronic mail features and for the interactive use of DTC's enhanced Institutional Delivery ("ID") system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will enable ID system users to use the ID system interactively with the capability of accomplishing all ID system processing within a single business day. ID system users will have the option to continue to use the ID system in a batch mode.

The proposal also seeks to implement two electronic mail features. These features will enable ID system users to send and receive "notification of order execution" and "institution instruction" messages. A notification of order execution can be sent by a broker-dealer to communicate the details of an order execution to an institution. If the institution accepts the notification of order execution, the institution can send the broker-dealer an institution instruction containing information, such as the allocation of block trades, which is needed by the broker-dealer to enter trade data into the ID system for the preparation of confirmations. Currently, broker-dealers and institutions make telephone calls or send facsimile transmissions to communicate this information.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because the proposed rule change will further automate the process by which securities transactions are cleared and settle and thereby will facilitate the prompt and accurate clearance and settlement of securities transactions. The proposal also is consistent with section 17A in that because the proposed rule change enhances DTC's existing ID system it will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which DTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The enhanced ID system concept was approved in an earlier Commission order. The order specified that each individual feature of the enhanced ID system would be the subject of a separate filing under section 19(b)(1) of the Act. Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving concept of enhanced ID system).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The interactive capability and electronic mail features have been developed through widespread consultations with securities industry members. Written comments from DTC participants or others have not been solicited on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

DTC requests accelerated effectiveness for the proposed rule change pursuant to section 19(b)(2) of the Act so that the proposed rule change can be implemented as soon as possible. Recently, the Commission adopted Rule 15c6–1 under the Act which, effective June 1, 1995, establishes three business days as the standard settlement timeframe for broker-dealers.[3] The proposed rule change, particularly the interactive capability of the ID system, will facilitate three business day settlement. Accelerated effectiveness of the proposed rule change will enable ID system users to become accustomed to the ID system well in advance of conversion to a three business day settlement cycle.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–94–04 and should be submitted by June 3, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11698 Filed 5–12–94; 8:45 am]

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[3] For a detailed description and discussion of the conversion to a three business day settlement cycle, refer to Securities and Exchange Commission Release Nos. 33–7022, 34–33023, and IC–19768 (October 13, 1993), 58 FR 52891 [File No. S7–5–93] (order adopting Commission Rule 15c6–1).

[4] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–34026; File No. SR–PSE–94–3]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Capital Requirements for Equity Specialists

May 9, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 14, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On March 8, 1994, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] On April 1, 1994, the PSE submitted to the Commission Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules relating to the capital requirements for specialists. The proposal states that if an Exchange specialist firm is subject to the Aggregate Indebtedness Requirement Under Rule 15c3–1,[3] such firm must maintain a minimum net capital of not less than $200,000.[4] The proposal establishes a lesser minimum net capital requirement for broker-dealers in specialist posts that are backed by more than one broker-dealer. Finally, the Exchange is proposing to amend its rules in response to recent amendments adopted by the Commission to its net capital rules for Exchange specialists.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Pursuant to recent amendments to Commission Rule 15c3–1,[6] on April 1, 1994, the Exchange's equity specialists became subject to the Commission's net capital rule.[7] Accordingly, the Exchange is proposing to amend its rules to reflect the elimination of exemption from that

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[1] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 4, 1994. Amendment No. 1 made various clarifying amendments to the proposed rule change.

[2] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 28, 1994. Amendment No. 2 made further clarifying amendments to the proposed rule change.

[3] The Aggregate Indebtedness Standard under Rule 15c3–1 states that no broker or dealer, other than one that elects the Alternative Standard, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer). See 17 CFR 240.15c3–1(a)(1)(i) (1993).

[4] The term "net capital", as used in the PSE proposal, means net capital as defined by Commission Rule 15c3–1. Rule 15c3–1 defines net capital as the net worth of a broker or dealer, adjusted by certain adjustments prescribed in Rule 15c3–1. See 17 CFR 240.15c3–1(c)(2) (1993).

[5] According to proposed PSE Rule 2.1, Commentary .03, the proposed amendments to Rules 2.1(b) and (c) will become effective on July 1, 1994. See Amendment No. 1, *supra* note 1.

[6] 17 CFR 240.15c3–1 (1993).

[7] *See* Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

Rule.[8] The Exchange is also proposing to establish an additional requirement that its equity specialist firms that are subject to the Aggregate Indebtedness Requirement under Rule 15c3–1 must maintain a minimum net capital of $200,000. Equity specialist firms subject to the Alternative Net Capital Requirement would be required to comply with subsection (a)(1)(ii) of Rule 15c3–1.[9] The Exchange is also proposing further amendments to clarify these new requirements and to establish related procedures for specialist firms whose net capital falls below certain levels. The Exchange believes that the proposed amendments are appropriate to assure that the customers and creditors of its equity specialists are protected from monetary losses and delays in the event of a specialist's failure.

(a) *Elimination of specialist exemption.* The Exchange is proposing to amend PSE Rule 1.8(a), which currently identifies the following members as exempt from the Exchange's net capital rule: any floor broker, market maker in listed options, or specialist, registered with the Exchange in any such capacity, who is exempt from the minimum net capital requirements prescribed by Rule 2.1 (Capital Requirements). The Exchange is proposing to delete "specialists" from this list and to add "lead market makers in listed options" to the list.[10] This amendment is intended to make the Exchange's rules conform to the recent amendments to the Commission's net capital rule.[11]

(b) *Specialist subject to aggregate indebtedness requirement.* The Exchange is proposing to adopt a rule that, notwithstanding the requirements of the Commission's net capital rule, would require each of its specialist firms that are subject to the Aggregate Indebtedness Requirement of Rule 15c3–1 to maintain a minimum net capital of not less than $200,000. The proposed rule further provides that if at any time a specialist firm's net capital falls below $200,000, such firm shall promptly notify the Financial Compliance Department of the Exchange and, in addition, such firm shall not operate as a specialist with net capital of between $150,000 and $199,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency.[12]

The proposal further provides that if such a specialist firm's net capital falls below $150,000, such firm shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

With regard to joint accounts, the proposal provides that if a specialist post is backed by more than one broker-dealer, then each such broker-dealer subject to the Aggregate Indebtedness Requirement of Rule 15c3–1 must maintain a minimum net capital of $150,000. If at any time such a broker-dealer's net capital falls below $150,000, such broker-dealer shall promptly notify the Financial Compliance Department of the Exchange and, in addition, such broker-dealer shall not operate as a specialist with net capital between $120,000 and $149,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operated as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency. In addition, if such broker-dealer's net capital falls below $120,000, such broker-dealer shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

(c) *Specialists subject to the alternative net capital requirements.* The Exchange is proposing to provide in its rules that specialist firms subject to the Alternative Net Capital Requirement must comply with the requirements of Rule 15c3–1(a)(1)(ii). The Exchange is further proposing to state that if a specialist post is backed by more than one broker-dealer then each such broker-dealer that is subject to the Alternative Net Capital Requirement must comply with the requirements of Rule 15c3–1(a)(1)(ii).

(d) *Other proposed changes.* The Exchange is proposing to make the following additional changes to its rules on capital requirements for specialists: First, the Exchange is proposing to clarify its rules by providing in Rule 2.1 that the new net capital requirements will be in addition to the Specialist Post Capital requirement of Rule 2.2.[13] Second, the proposal provides that the Exchange shall promptly notify the Equity Floor Trading Committee of any specialist firm's net capital deficiency and of any action taken by the Vice President, Regulation, or senior officer of the Exchange in connection therewith. Third, the proposal further provides that each specialist firm shall report its net capital to the Exchange in a form and manner prescribed by the Exchange.[14]

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[8] On August 11, 1993, the Commission amended Rule 15c3–1, in part, to make the Commission's net capital rule applicable to certain specialists that are currently exempt from the rule (the amended Rule makes the Commission's net capital rule applicable to all specialists other than options market makers). *See* Securities Exchange Act Release No. 32737, *supra* note 7.

[9] As of April 1, 1994, the Commission's net capital rule requires the Exchange's equity specialists to maintain net capital, under the aggregate indebtedness method, equal to a minimum of $100,000 ($75,000 until June 30, 1994) and, under the alternative method, equal to a minimum of $250,000 ($200,000 until July 1, 1994). *See* Securities Exchange Act Release No. 32737, *supra* note 7. Rule 15c3–1(a)(1)(ii) contains the Alternative Standard, which states in part, that a broker or dealer shall not permit its net capital to be less than the greater of $250,000 or 2 percent of aggregate debit items computed in accordance with Exhibit A to Rule 15c3–3. See 17 CFR 240.15c3–1(a)(1)(ii) (1993).

[10] In the Commission's release adopting amendments to Rule 15c3–1 (the net capital rule), the Commission stated that it does not believe that it is necessary to apply the net capital rule to options market makers because, on an individual basis, they are not as integral to the proper functioning of the markets in their securities. The release further states that specialists other than options market makers perform several functions that options market makers do not, including the maintenance of a specialist's book containing a listing of all orders away from the current market price and the dissemination of accurate quotations in their speciality securities. Moreover, the exchanges that use options specialists look to a single specialist or specialist unit to handle all trade whereas options market makers compete with other market makers. See Securities Exchange Act Release No. 32737, *supra* note 7. Options lead market makers on the Exchange floor compete with other market makers for orders and do not maintain a specialist book containing a list of all orders away from the current market price. Accordingly, the Exchange believes that options lead market makers should be treated as options market makers that are exempt from Commission Rule 15c3–1 and therefore, have been exempted from the Exchange capital regulations.

[11] The proposal also adds Commentary .04 to Rule 2.1, which states that members exempt from the provisions of subsections (b), (c) and (d) of Rule 2.1 are set forth in Rule 2.8(a).

[12] Pursuant to amendments to the Commission's net capital rule, effective April 1, 1994, Exchange equity specialists became subject to the Commission's net capital rule. See Securities Exchange Act Release No. 32737, *supra* note 7. As a result, Exchange equity specialists are required to comply generally with the provisions of the Commission's early warning notification procedures as codified in Section 17a–11 under the Act.

[13] Rule 2.2 provides, in part, that members registered as specialists shall at all times maintain for each specialist post a minimum of $150,000 in either cash or marketable securities or an amount equal to 25% of the sum of the market value of its securities positions, both long and short, whichever is greater.

[14] The proposal also adds clarifying language to Rule 2.1(a), which states, among other things, that pursuant to the provisions of Rule 17a–11 under the Act, each member organization shall promptly notify the Commission if the member organization's net capital does not equal or exceed the appropriate minimum required by SEC Rule 15c3–1 or if notice is otherwise required by SEC Rule 17a–11.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it promotes just and equitable principles of trade and protects investor and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–3 and should be submitted by June 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11702 Filed 5–12–94; 8:45 am]

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[Release No. 34–34027; File No. SR–MSRB–94–4]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Procedures for Submitting Information on Political Contributions Pursuant to Rule G–37

May 9, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to provide procedures for submitting information on political contributions pursuant to rule G–37. The Board has requested accelerated approval of the proposed rule change in order to allow for the timely submission of, and public access to, information concerning political contributions. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also finds good cause for granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing a proposed rule change to establish procedures relating to the submission of information to the Board pursuant to rule G–37, on political contributions and prohibitions on municipal securities business.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 7, 1994, the Commission approved Board rule G–37 on political contributions and prohibitions on municipal securities business.[1] Rule G–37(e)(ii) provides that reports on contributions made and municipal securities business engaged in during the reporting period must be submitted to the Board on Form G–37, in accordance with Board rule G–37 filing procedures, quarterly, with due dates determined by the Board. In its rule G–37 filing, the Board noted that it was developing appropriate rule G–37 filing procedures to allow for public access to the information to be submitted on Form G–37.[2] The current proposed rule change establishes procedures for brokers, dealers and municipal securities dealers for filing with the Board information relating to political contributions as required by rule G–37.[3] The proposal also establishes procedures for filing voluntary information relating to political contributions.[4]

The proposal requires dealers to file two copies of Form G–37, and to submit such forms within thirty (30) calendar days after the end of each calendar quarter. These dates correspond to January 31, April 30, July 31, and October 31. The Board will maintain one copy of each Form G–37 off-site for back-up purposes, and will maintain the second copy of each Form G–37 at its Public Access Facility ("PAF") in Virginia, where it will be available to the public for review and photocopying.[5] The Board also will maintain a database of reports filed by each dealer (as well as any other party voluntarily submitting information on political contributions), so that any member of the public may telephone the Board's offices to inquire whether a particular dealer (or other party) has submitted a report pursuant to rule G–37.[6] To further enhance public access to this information, the Board will provide a list of companies that offer document retrieval and mailing services. As the Board gains experience with rule G–37 submission procedures, and as the informational needs of the municipal market change with regard to political contributions, the Board will seek to expand the access and services available to the public.

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[1] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). Rule G–37 became effective April 25, 1994.

[2] See Securities Exchange Act Release No. 33482 (January 14, 1994), 59 FR 3389.

[3] In order to assist dealers in complying with rule G–37 filing requirements, the Board intends to develop an informal "Procedures Manual" which will contain the relevant forms and procedures.

[4] Brokers, dealers, municipal securities dealers, or others may voluntarily submit to the Board additional information relating to political contributions provided that such information is submitted in accordance with Board rule G–37 filing procedures.

While the rule G–37 procedures will result in many dealers filing forms at or about the same time, the Board believes that it can adequately process this information in a timely manner. However, if such processing becomes unduly burdensome for the Board, then it may consider staggering dealer submission due dates in the future. In addition, if the number of voluntary submissions substantially increases the Board's costs of processing this information, then it may consider charging a filing fee to cover some of the expenses associated with certain of this voluntarily submitted information. Finally, the Board, in the future, may review the necessity for, and propriety of, charging an access fee for the forms filed, if any, pursuant to rule G–37.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it will apply equally to brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the **Federal Register**. The Board believes that accelerated approval is necessary to facilitate timely submission of, and public access to, information concerning political contributions by allowing dealers to comply with these requirements by the first reporting deadline of July 31, 1994.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, with Section 15B(b)(2)(C) and (G) of the Act.[7] Section 15B(b)(2)(C) authorizes the MSRB to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved.

The proposal establishes appropriate due dates and procedures for filing with the Board information concerning political contributions required by rule G–37(e)(ii). The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. Accelerated approval is appropriate to facilitate the timely submission of, and public access to, information concerning political contributions by allowing dealers to comply with the reporting requirements, pursuant to rule G–37, by the first reporting deadline of July 31, 1994.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relations to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–94–4 and should be submitted by June 3, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11699 Filed 5–12–94; 8:45 am]

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[5] The Board will charge 20 cents per page plus sales tax, if applicable, for photocopying. This is the same pricing structure currently used for photocopying official statements and advance refunding documents at the PAF.

[6] In addition to the dealer's name, the information available through the database will include, among other things, the quarterly period covered by the report and summary information on political contributions. Although rule G–37 requires dealers to report certain summary information concerning contributions, it does not require disclosure of the names of individual municipal finance professionals or executive officer contributors.

[7] Sections 15B(b)(2)(C), (G); [15 U.S.C. §§ 78o–4(b)(2)(C), (G)].

[8] 15 U.S.C. 78s(b)(2).

[Release No. 34–34021; International Series Release No. 664; File No. SR–NASD–94–25]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for Six Months

May 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] ("Act"), notice is hereby given that on April 26, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, for Commission authorization to extend the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES") for six months. The Pilot Program currently consists of an interchange of closing price and volume data on up to 35 Nasdaq securities that also may be traded through the SES's facilities (collectively, "Pilot Securities"). With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. The end-of-day information being exchanged under the Pilot Program may assist in the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD–SES Pilot Program for a two-year term[2] that was extended most recently through May 12, 1994.[3] Commission approval of the instant filing would permit continuation of this Pilot Program through November 12, 1994. During this interval, no more than 35 Nasdaq issues will be included in this Pilot Program. That figure corresponds to the number originally authorized at the inception of the Pilot Program in 1988. As noted in File No. SR–NASD–93–28, the SES information being transmitted to the NASD reflects the SES's use of an order-driven trading system (known as the "CLOB").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD–SES Pilot Program commenced operation with the Commission's approval of File No. SR–NASD–87–40 on March 14, 1988. The principal features of this Program were fully described in Section 1 of that Form 19b–4, which description is hereby incorporated by reference.[4]

The current authorization of the NASD–SES Pilot Program will expire on May 12, 1994. The NASD, on its own as well as on the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for six months, expiring on November 12, 1994.

During the proposed extension, each market will transmit to the other static price/volume information compiled at the end of each trading day on approximately 35 Nasdaq securities which are also traded on the SES. The NASD will transmit for each Pilot Security the closing inside quotes, cumulative volume, last sale price and the closing quote of every Nasdaq market maker in each of the Pilot Securities (collectively referred to as "NASD information"). In recognition of the SES's use of the order-driven CLOB system, the SES will transmit the following data elements for each Pilot security: closing price (*i.e.*, the price of the final transaction in the CLOB on that business day), the highest and lowest prices at which transactions were effected, and the aggregate volume (collectively referred to as "SES information").[5] Because all trading of Pilot Securities on the SES occurs in the CLOB, the price information sent to the NASD will reflect the prices of actual trades consummated by the automated matching of buy and sell orders resident in the CLOB system.

The CLOB is a fully automated trading system that was instituted by the SES in 1989. Prior to that time, the SES employed a quote-driven, market maker system similar to the Nasdaq Stock Market. Orders to buy and sell securities are entered into the CLOB through some 1,800 trading terminals on the premises of approximately 26 SES member firms. The CLOB provides an electronic limit order file with open orders ranked by price and time in each security. When the terms of two orders match, the CLOB generates an automated execution accompanied by confirmations back to the originating brokers.

As noted in File No. SR–NASD–93–28, the SES intends to incorporate the Pilot Securities into "CLOB International." The latter is a separate section of the SES market system for the trading of foreign issues that are not listed on the SES. These securities trade through the CLOB in the same manner as SES-listed securities. CLOB International currently includes the stocks of Malaysian, Hong Kong, and Philippine issuers. The SES regards inclusion of the Pilot Securities in CLOB International as a logical step in the progression of the Pilot Program. Further, the SES believes that this step could stimulate greater trading interest in Nasdaq securities among Singapore investors. Accordingly, both the NASD and the SES desire to continue the Pilot Program.

The incorporation of Pilot Securities into CLOB International will not alter the basic operation of the Pilot Program, namely, the interchange of static, end-of-day information on the Pilot Securities. SES information will continue to be offered only to subscribers of Nasdaq Level 2/3 services.[6] Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the CLOB. The original linkage agreement between the NASD and the SES will remain in effect for the term of the extended Pilot

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See Release No. 34–25457 (Mar. 14, 1988), 53 FR 9156 (Mar. 21, 1988).

[3] See Release No. 34–33061 (Oct. 15, 1993), 58 FR 54617 (Oct. 22, 1993).

[4] See also Release No. 34–25065 (Oct. 28, 1987), 52 FR 42167 (Nov. 3, 1987).

[5] If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if bids or offers had been entered into the CLOB for possible execution.

[6] To retrieve this information, a Nasdaq subscriber must enter a discrete query through a Nasdaq Workstation device.

Program. That agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the requested extension.

The NASD believes that Sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) of the Act provide the statutory basis for this proposed rule change. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Finally, Section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of Nasdaq securities between the NASD and the SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot Securities.

The NASD submits that neither the structure no operation of the present Pilot Program poses any burden on competition.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive written comments on this rule proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find, pursuant to Section 19(b)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing and, in any event, by May 12, 1994. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the commitment not to make any significant operational changes during the requested extension absent Commission approval; (3) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (4) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively, SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsors will be obliged to terminate this experimental program before its potential benefits can be realized in relation to the globalization of securities markets.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to continue to assess the impact of the trading of these securities in the international section of the SES's order-driven market system. Further, the Pilot Program is of a limited nature and no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments.all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File Number SR–NASD–94–25 and should be submitted by June 3, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of six months, through November 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12)

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11700 Filed 5–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20284; 812–7939]

New York Life Institutional Funds, Inc., et al.; Application

May 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: New York Life Institutional Funds, Inc. (the "Company"), The MainStay Funds (the "Trust"), and NYLIFE Distributors, Inc. ("Nylife Distributors").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Company and the Trust to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares. The order will supersede previous orders that permitted the assessment of a CDSC.

FILING DATE: The application was filed on June 9, 1992, and amended on August 6, 1992, November 12, 1992, January 27, 1994, and May 5, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 3, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 51 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company and the Trust are open-end management investment companies consisting of multiple series. Nylife Distributors serves as distributor for the Company and the Trust. New York Life Insurance Company ("New York Life"), MacKay-Shields Financial Corporation, Monitor Capital Advisors, Inc., and Quorum Capital Management Limited serve as investment advisers to individual series of the Company and the Trust. New York Life serves as administrator to the Company, and Nylife Distributors serves as administrator to the Trust. Nylife Distributors, MacKay-Shields Financial Corporation, Monitor Capital Advisors and Quorum Capital Management are wholly owned subsidiaries of New York Life.

2. Applicants request that relief also extend to all series of the Company or the Trust that may be created in the future and to other registered open-end management investment companies for which Nylife Distributors, or any entity that controls, is controlled by or is under common control with Nylife Distributors, may serve as investment adviser or distributor (collectively these investment companies, the Company, and the Trust are the "Funds").

A. The Multiple Class Distribution System

1. Applicants propose to establish a multi-class distribution system to enable each of the Funds to create an unlimited number of classes of shares. Classes could be offered in connection with a 12b–1 plan (a "12b–1 Plan"), a non-rule 12b–1 administrative services arrangement ("Administrative Services Arrangement"), neither a 12b–1 Plan nor an Administrative Services Arrangement, or a combination of these options. These classes also could be subject to different sales loads. Classes offered subject to differing types of sales loads would provide investors the option of purchasing shares that would either be subject to a conventional front-end sales load (the "Front-End Option"), subject to a CDSC (the "Deferred Option"), subject to a combination of a front-end load and a CDSC (the combination option), any of which could be coupled with a 12b–1 Plan or an Administrative Services Arrangement, or not subject to any sales charges.

2. Under Administrative Services Arrangements, Funds may enter into agreements ("Administrative Services Agreements") with organizations to provide services to the clients of the organization, who beneficially own shares of a particular class. Alternatively, a Fund may enter into an Administrative Services Agreement with the Fund's administrator to provide services to class shareholders. With respect to each class of shares, the Fund would pay an organization or the administrator for its services in accordance with its particular Administrative Services Agreement (such payments are "Administrative Services Payments") and the expense of such payments would be borne entirely by the beneficial owners of the class of shares to which each such Administrative Services Agreement relates.

3. Expenses incurred by a Fund may not be attributable to a particular portfolio or to a particular class of share of a portfolio ("Corporate Level Expenses"). Certain expenses may be attributable to a portfolio but not attributable to any particular class of the portfolio's shares ("Fund Expenses"). Corporate Level and Fund Expenses will be allocated among the classes of shares based on the value of their relative net assets at the beginning of the day. In addition to the cost of 12b–1 and/or Administrative Service Payments, each class will bear certain expenses specifically attributable to the particular class ("Class Expenses"), as provided in condition 1 below.

4. Applicants wish to have the ability to convert shares of one class to those of another class, subject to conditions 5 and 16 below. For example, shares of a Deferred Option class could convert after a specified period of time to shares of the Front-End Option class in the same portfolio. For purposes of conversion to Front-End Option shares, all shares in a shareholder's account that had been purchased through the reinvestment of dividends and other distributions paid in respect of Deferred Option shares would be considered to be held in a separate sub-account. Each time any Deferred Option shares in the shareholder's fund account convert to Front-End Option shares, a *pro rata* portion of the Deferred Option shares then in the sub-account also would convert to Front-End Option shares. The portion would be determined by the ratio that the shareholder's Deferred Option shares converting to Front-End Option shares bears to the shareholder's total Deferred Option shares not acquired through dividends and distributions.

5. Applicants propose that each class of shares sold without a front-end sales load or subject to a CDSC be permitted to be exchanged for shares of a class sold without a front-end sales load or subject to a CDSC in the same or another Fund. Each class of shares sold with a front-end sales load or subject to a CDSC would be only exchanged for the same class of shares in a different Fund. The exchange privileges would be operated in accordance with rule 11a–3 under the Act.

B. The CDSC

1. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to permit the Funds to assess a CDSC on redemptions of certain classes of shares, and to permit the Funds to waive the CDSC for certain types of redemptions. The requested exemption will supersede three prior orders.[1] Each Fund's particular CDSC schedule may vary, but the sum of any front-end sales charge, CDSC, and asset based sales charge will not exceed the maximum sales charge provided in article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD").

2. The CDSC will not be imposed on shares that were purchased more than a specified period of years prior to their redemption or on shares derived from the reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares representing capital appreciation, second of shares derived from reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time.

3. Applicants request the ability to waive or reduce the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder; (b) in connection with distributions permitted to be made under the Code without penalty from an individual retirement account or other qualified retirement plan, other than tax-free rollovers or transfers of assets; (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees, partners and employees of the Funds, the distributor or affiliated companies, by members of the immediate families of such persons, by dealers having a sales agreement with the distributor, or any trust, pension, profit sharing plan for the benefit of such persons; (d) on redemptions by New York Life or an affiliate thereof; (e) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) in connection with redemptions by accounts established with an initial purchase order of $1 million or more; (g) in connection with redemptions effected by separate accounts or advisory accounts managed by New York Life or an affiliated company; (h) in connection with redemptions by tax-exempt employee benefit plans resulting from the adoption or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper; (i) in connection with redemptions effected by registered investment companies by virtue of transactions with a Fund; (j) in connection with redemptions by any state, county, or city, or any instrumentality, department, authority or agency thereof and by trust companies and bank trust departments; (k) on redemptions made for the purpose of funding a loan to a participant in a tax-qualified retirement plan permitted to make such loans; (l) on transfers to (i) other funding vehicles sponsored or distributed by New York Life or an affiliated company or (ii) guaranteed investment contracts, regardless of the sponsor, within a retirement plan; (m) on redemptions made to meet required distributions by a charitable remainder trust under section 664 of the Code; and (n) on redemptions by living revocable trusts.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that any implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder permitting applicants to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants submit that their request permits shareholders purchasing a class of shares subject to a CDSC to have the advantage of greater investment dollars working for them from the time of their purchase of shares of the Funds than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Multiple Class Distribution System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund relate solely to: (a) The method of financing certain Class Expenses, which are limited to (i) transfer agency fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors'/trustees' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class resulting from 12b–1 and Administrative Services Payments; (c) voting rights as to matters exclusively affecting one class of shares, except as provided in condition (5) below; (d) exchange features; (e) conversion features; and (f) class designation differences. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of the Company, trustees of the Trust, and the directors/trustees of any subsequently created Funds (collectively, "Directors/Trustees"), including a majority of the independent Directors/Trustees, will approve the offering of multiple classes of shares (the "Multi-Class System").

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[1] *MacKay-Shields MainStay Series Funds,* Investment Company Act Release Nos. 15038 (Apr. 3, 1986) (notice), 15078 (Apr. 30, 1986) (order), 15718 (May 5, 1987) (notice), and 15758 (May 29, 1987) (order) and *The Mainstay Funds,* Investment Company Act Release Nos. 20046 (Jan. 21, 1994) and 20104 (Mar. 1, 1994).

The minutes of the respective meetings of the Directors/Trustees regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Directors/Trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of Directors/Trustees of the Funds including a majority of the Directors/Trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of Directors/Trustees, and the Directors/Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors/Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's adviser and distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Fund's adviser and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. If a Fund implements any amendment to its 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by class of shares (for purposes of the Application, "Class X") under the plan, existing shares of a class of shares that converts into Class X shares after a period of time (for purposes of the application, "Class Y") will stop converting into Class X unless the Class Y shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Class Y shares are exchanged or converted into a new class of shares ("New Class X"), identical in all material respects to Class X as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Class X. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Class Y shares for a new class ("New Class Y"), identical to existing Class Y shares in all material respects except that New Class Y will convert into New Class X. New Class X or New Class Y may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition (4), any additional cost associated with the creation, exchange, or conversion of New Class X or New Class Y shall be borne solely by the adviser and the distributor. Class Y shares sold after the implementation of the proposal may convert into Class X shares subject to the higher maximum payment, provided that the material features of the Class X plan and the relationship of such plan to the Class Y shares are disclosed in an effective registration statement.

6. The Administrative Services Arrangements will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The Directors/Trustees of the Fund will receive quarterly and annual statements concerning distribution and servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors/Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review an approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that plan payments made by a class under its 12b–1 Plan or Administrative Services Arrangement and any Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to applicants that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The workpapers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "request on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends and distributions, and sales loads of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

11. The prospectuses of each class of a Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in that Fund.

12. Each Fund's distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the Directors/Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales charges, deferred sales charges, and exchange privileges (if any) applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent that any advertisement or sales literature describes the expenses and/or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of shares separately.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply SEC approval, authorization of, or acquiescence in any particular level of payments that applicants may make pursuant to any 12b-1 Plan or Administrative Services Arrangement in reliance on the exemptive order.

16. Any conversion of shares from one class to another will be based on the relative net assets of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

B. CDSC

1. Applicants will comply with the representations in the application concerning the CDSC and the provisions of proposed rule 6c-10 under the Act[2] as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11703 Filed 5-12-94; 8:45 am]

BILLING CODE 8010-01-M

[2] Investment Company Act Release No. 16619 (Nov. 2, 1988).

[Release No. 34-34022; File No. SR-NYSE-94-7]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Extension of Rule 103A—Specialist Stock Reallocation—Until May 9, 1995

May 6, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. At the same time, the Commission is granting temporary accelerated approval to the proposal pursuant to Section 19(b)(2) of the Act.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of Rule 103A (Specialist Stock Reallocation) for an additional year until May 9, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance.[2] Based on such determinations, the MPC is authorized to conduct a formal Performance Improvement Action in an appropriate case.

On May 10, 1993, the SEC extended the effectiveness of Rule 103A until May 9, 1994.[3] In this order, the Commission stated its belief that the Exchange should develop objective performance standards to measure specialist performance.[4] In this regard, the Commission recently approved, on a one-year pilot basis, an objective measure of specialist performance dealing with specialist utilization of capital for market-making.[5] This measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks. Tiered rankings based on a unit's capital utilization are provided to the Exchange's Allocation Committee as one of the objective measures it considers in allocating stocks to specialist units under its Allocation Policy and Procedures.

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[1] 15 U.S.C. 78s(b)(2) (1988)

[2] The Commission originally approved the implementation of the Rule 103A pilot program in Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988) (order approving File No. SR-NYSE-87-25) and subsequently extended the effectiveness of Rule 103A in Release Nos. 28215 (July 17, 1990) ("July 1990 Order"), 55 FR 30060 (July 24, 1990) (order approving File No SR-NYSE-90-24); 29180 (May 8, 1991), 56 FR 22498 (order approving File No. SR-NYSE-91-14) and 32285 (May 10, 1993), 58 FR 28905 (May 17, 1993) ("May 10 Order"). The July 1990 Order also approved various substantive revisions to Rule 103A including, among other things, enhancing the performance criteria for administrative messages received through the Designated Order Turnaround ("DOT") system, and, at the same time, extended the effectiveness of the revised Rule 103A until May 9, 1991 [see Securities Exchange Act Release No 28215]. Subsequently, on February 27, 1991 the Commission approved the NYSE's proposal to adopt relative performance standards into the Rule 103A program [see Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (order approving File No. SR-NYSE-90-44)].

[3] See Securities Exchange Act Release No 32285, *supra* note 2.

The Exchange, with the assistance of outside consultants, continues to work to develop additional objective measures of specialist performance. As Rule 103A is working well, the Exchange requests that its effectiveness be extended for an additional year, until May 9, 1995.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the rule on an uninterrupted basis ensuring quality specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–7 and should be submitted by June 3, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The rules of the Exchange, in addition to the rules set forth under the Act, impose certain obligations upon the specialist unit, including, but not limited to, the maintenance of fair and orderly markets.[6] Because specialist units play a crucial role in providing stability, liquidity and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. Critical to this oversight is the specialist performance evualation process embodied in Rule 103A.

In the May 10 Order, the Commission reiterated its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the proposed rule change to extend the Rule 103A pilot.[7] The Commission's request was consistent with its previous orders approving the extension of the Rule 103A pilot program. In fact, the Exchange informed the Commission that it had employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance.[8] To date, however, the Exchange has not finished its development of objective measures of market making performance. Indeed, in the proposed rule change, the Exchange states that it continues to work to develop additional objective performance standards. The Exchange requests that the Commission extend the effectiveness of the rule for an additional year because the rule is working well. However, the proposal herein to extend Rule 103A until May 9, 1995, does not include objective measures of market making performance as the Commission originally and requested.

Even though the proposal lacks objective market marking performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional year in light of the significant enhancements the NYSE has made to the Rule 103A program thus far, and the substantial time and resources the Exchange already has dedicated to the development of objective criteria. The revision to Rule 103A, adopted in July, 1990[9], the subsequent adoption of relative performance standards[10], and the refinement of existing standards[11] have augmented the Exchange's ability to evaluate specialist performance. In this regard, the Commission also notes that the Exchange has developed a new measure of capital utilization by specialists, even though that measure has not yet been incorporated in to the Rule 103A evaluation criteria.[12]

As noted in previous orders,[13] the Commission stated that the mature status of the Intermarket Trading System ("ITS"), as a market structure facility, warrants the incorporation of ITS turnaround and trade-through concerns[14] into the NYSE's Rule 103A performance standards. The NYSE has responded to the Commission's request that it incorporate ITS turnaround and trade-through concerns into Rule 103A.[15] In this regard, the Exchange stated that ITS matters are more appropriately addressed by means of the Exchange's regulatory processes rather than by its performance measurement system. According to the Exchange, it has emphasized to speciality that all ITS commitments to trade are expected to be executed, and will take appropriate regulatory action if specialists are deficient in this matter. Moreover, the Exchange states that trade-throughs are not always the responsibility of the specialist and, therefore, would not appear to be an appropriate measure of specialist performance. In the Exchange's view, the current ITS trade-through resolution process works well, and is the appropriated means for addressing ITS trade-through concerns.[16] Despite the contentions of the Exchange, the Commission believes that evaluating the ITS turnaround and trade-through concerns can be a valid measurement of specialist performance and should be incorporated into the evaluation process. For example, the NYSE should measure how many times NYSE specialists trade-through other markets and how often specialists' ITS commitments expire. Although we agree with the NYSE that these factors should be addressed, where appropriate, by regulatory action, we also believe these factors can be a valid indication of specialist performance in the current trading environment.

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[4] The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire. However, objective market making measures currently are not included in the Rule 103A program.

[5] See Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). This measure of performance has not to date been incorporated into the Rule 103A evaluation program. See note 17, *infra*.

[6] See generally NYSE Rule 104; Rule 11b–1 under the Act, 17 CFR 240.11b–1 (1993).

[7] See Securities Exchange Act Release No. 32285, *supra* note 2.

[8] See Securities Exchange Act Release No. 28215, *supra* note 2 and letter from Robert J. McSweeney, Senior Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, Commission, dated August 31, 1992 ("August 1992 letter").

[9] See Securities Exchange Act Release No. 30676 (May 7, 1992), 57 FR 20544 (May 13, 1992).

[10] *Id.*

[11] See Securities Exchange Act Release No. 32045 (March 24, 1993), 58 FR 16896 (March 31, 1993).

[12] See supra note 5.

[13] See Securities Exchange Act Release Nos. 30676, 29180, 28215, and 25681 *supra* note 2.

The Commission continues to believe that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance, namely, market depth, price continuity and dealer participation and stabilization. The Commission continues to encourage the NYSE to incorporate objective standards into the Rule 103A program prior to or simultaneous with the NYSE's future proposal to extend the effectiveness of Rule 103A or adopt the Rule on a permanent basis.[17]

The Commission has reviewed carefully the NYSE's proposed rule change and, for the above reasons, believes that the proposal is consistent with the requirements of sections 6 and 11 of the Act[18] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act,[19] and Rule 11b–1 thereunder,[20] which allow securities exchanges to promulgate rules relating to specialists consistent with the maintenance of fair and orderly markets.

Specifically, the Commission believes that the NYSE's Rule 103A performance evaluation process provides the Exchange with the means to identify and correct poor specialist performance. Accordingly, the evaluation process is critical to the NYSE's duty to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, as required pursuant to Exchange rules and the Act, and the rules and regulations thereunder. Moreover, the possibility of a performance improvement action as a result of the evaluation process, in addition to the use of the evaluation results in stock allocation decisions, should help motivate and provide incentives for specialists to maintain and improve their market making performance for the benefit of investors. In summary, extension of Rule 103A's effectiveness until May 9, 1995 will provide the Exchange with the ability to continue evaluating specialist performance on an uninterrupted basis, which should enhance market quality and performance in Exchange listed securities. During the pilot, the Exchange should continue to consider and develop objective measures which evaluate both ITS matters and market making performance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted basis, its Rule 103A evaluation process. During the one year extension of the Rule, the Commission expects the NYSE to continue its examination of the efficacy of its current specialist evaluation procedures, as well as determine whether to extend the pilot for a further period or, in the alternative, approve Rule 103A on a permanent basis. Finally, a substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.[21] Further, interested persons were invited to comment on the past proposals to extend the effectiveness of Rule 103A, the most recent of such proposals being the extension of Rule 103A until May 9, 1994. The Commission received no comments on these proposals. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[22]

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) and 11(b) under the Act, and Rule 11b–1 thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[23] that the proposed rule change (SR–NYSE–94–7) is approved for the period ending May 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

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[14] ITS Plan, Section 8(d)(i) and (ii), (as last amended March 9, 1993).

[15] See August 1992 letter *supra* note 9.

[16] *Id.*

[17] In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, by February 28, 1995, a proposed rule change pursuant to Rule 19b–4 under the Act, 17 CFR 240.19b–4, to extend the Rule 103A pilot or make the Rule permanent. As emphasized above, this proposed rule change should include objective measures of market making performance that have been developed by the outside experts retained by the Exchange.

In this regard, as of December 1994, the NYSE should have a full year's experience with the new capital utilization measure. Assuming that the experience with the capital utilization measure is good, the NYSE should incorporate the new measure in the Rule 103A evaluation prior to the Exchange's next request for an extension or permanent approval.

The Commission also expects the Exchange to submit to the Division, by February 28, 1995, a status report on the implementation of Rule 103A. The report should contain data, for each quarter of 1994, on (1) the number of specialists that fell below acceptance levels of performance for each category; (2) the number of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substandard performance under the Rule and the Particular unit involved.

[18] 15 U.S.C. 78f and 78k (1988).

[19] 15 U.S.C. 78k(b) (1988).

[20] 17 CFR 240.11b–1 (1993).

[21] See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (notice of filing of File No. SR–NYSE–87–25); and 25681 (May 9, 1988), 53 FR 17287 (order approving File No. SR–NYSE–87–25).

[22] 15 U.S.C. 78f (1988).

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1993).

[FR Doc. 94–11701 Filed 5–12–94; 8:45 am]
BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20283; 812–8946]

Select Advisors Trust, et al.; Application

May 6, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Select Advisors Trust ("Trust I") and Select Advisors Trust II ("Trust II"), on behalf of themselves and any registered open-end investment companies that are part of the same group of investment companies and: (a) Whose principal underwriter is the Distributor (as defined below), or a principal underwriter that is under common control with the Distributor, and (b) which hold themselves out to investors as being related for purposes of investment and investor services (the "Trusts")[1] and Interactive Financial Solutions, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trusts to assess a CDSC on certain redemptions of shares, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on April 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 318 Broadway, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trusts are diversified, open-end management investment companies. Trust I currently has eight series: Emerging Growth Fund, International Equity Fund, Growth & Income Fund, Balanced Fund, Income Opportunity Fund, Bond Fund, Municipal Bond Fund, and Standby Reserve Fund. Trust II currently has seven series: Emerging Growth Fund, International Equity Fund, Growth & Income Fund, Balanced Fund, Income Opportunity Fund, Bond Fund, and Municipal Bond Fund. The series of Trust I and Trust II are referred to collectively as the "Series."

2. The Trusts invest the assets of each of their Series (with the exception of the Standby Reserve Fund) in a corresponding portfolio that is a series of the Select Advisors Portfolios (the "Portfolio Trust"), an open-end management investment company which currently offers seven series. Investments in the Portfolio Trust are made through the Signature Financial Group, Inc. ("Signature") Hub and Spoke® financial service method. The Portfolio Trust on behalf of each portfolio, and Trust I on behalf of the Standby Reserve Fund, have entered into an investment advisory agreement with Touchstone Investment Advisors, Inc. (the "Adviser") and an administrative services and fund accounting agreement with Signature. The Trusts have entered into an agreement for administrative services and fund accounting services with Signature and a distribution agreement with the Distributor.

3. Shares of Trust I (other than Standby Reserve Fund, which has no sales charge) are offered at net asset value plus a front-end sales charge at a rate of up to 5.75% of the offering price. Each Series of Trust I (other than Standby Reserve Fund) also imposes a rule 12b–1 distribution fee at an annual rate of up to .25% of its average daily net assets. No front-end sales charge is payable with respect to purchases of $1,000,000 or more of shares of Trust I. Shares of Trust II are offered without an initial sales charge, but are subject to rule 12b–1 distribution and shareholder services fees at an annual rate of up to 1% of each Series' average daily net assets. Applicants now propose to allow the Trusts to impose a CDSC on certain redemptions of shares and to waive the CDSC under certain circumstances.

4. Under the proposed CDSC arrangement, applicants generally will impose a CDSC of 1% on redemptions of shares of Trust I which have been acquired without a sales charge through a purchase of $1,000,000 or more and are redeemed within one year of their purchase. Applicants also propose to impose a CDSC of 1% on redemption of shares of Trust II made within one year of their date of purchase. Applicants in the future may decide to increase or reduce the CDSC percentage, shorten the applicable holding period, or create a scheduled range of CDSC percentages. Any future changes or variations will be disclosed in each affected prospectus and will not affect any shares of the Trusts that were issued prior to the disclosure thereof.

5. The CDSC will be equal to a percentage of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. No CDSC will be imposed on amounts derived from capital appreciation, shares purchased through the reinvestment of dividends or capital gains distributions. In determining whether a CDSC is applicable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares are then redeemed in the order purchased.

6. No CDSC will be imposed on exchanges or Trust shares in compliance with rule 11a–3. If, however, the shares acquired in an exchange are redeemed within one year following the original investment, the CDSC will be assessed. No CDSC will be imposed on shares purchased prior to the date the SEC grants the requested order.

7. The Distributor will provide a *pro rata* refund, out of its own assets, of any CDSC paid in connection with a redemption of shares of a Trust (by crediting such refunded CDSC to the shareholder's account) if, within 90 days of such redemption, all or any portion of the redemption proceeds are reinvested in shares of the Trusts. The reinvested amount will be subject to the CDSC applicable prior to the

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[1] A registered open-end investment company of the same group of investment companies as Trust I and Trust II includes companies organized in the future and existing companies whose board of directors or board of trustees in the future determines to establish a contingent deferred sales charge ("CDSC") as described below. Applicants undertake that any such company will be subject to each of the conditions contained in the application.

redemption, and the CDSC time period will run from the original investment date but will be extended by the number of days between the redemption and reinvestment date.

8. The CDSC will be waived or reduced in the following instances: (a) In connection with distributions from qualified retirement plans and other employee benefit plans qualified under section 401(a) of the Internal Revenue Code (the "Code"); (b) distributions from a custodial account under section 403(b)(7) of the Code or an individual retirement account (an "IRA") due to death, disability, or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; (d) for any partial or complete redemptions following death or disability (as defined in section 72(m)(7) of the Code) of a shareholder from an account in which the deceased or disabled is named, provided the redemption is made within one year of death or initial determination of disability; (e) involuntary redemptions as described in each prospectus; and (f) redemptions by (i) current or retired directors, trustees, partners, officers, and employees of Trust I, Trust II, the Portfolio Trust, the Distributor, the Advisor, family members of these persons, and trusts or plans primarily for such persons, (ii) trustees or other fiduciaries purchasing shares for certain retirement plans; and (iii) participants in pension, profit-sharing or employee benefit plans that are sponsored by the Distributor and its affiliates.

Applicants' Legal Conclusion

Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Trust's shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11704 Filed 5–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26047]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 6, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/ or declaration(s) should submit their views in writing by May 31, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests ill be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/ or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Development and Investment Group (70–8173)

The Southern Development and Investment Group, Inc., a non-utility subsidiary of The Southern Company ("Southern"), a registered holding company, and Southern, each of 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 50(a)(5), 81, 87, 90 and 91 thereunder.

Southern proposes to invest up to $275 million in Development from time to time through December 31, 1998 in order to fund the following activities, as discussed in more detail below: (a) To enable Development to develop, construct, and acquire an energy management prototype network ($175 million); (b) to provide Development with necessary working capital in connection with its research and development and technical consulting activities, as well as to pay other general and administrative expenses ($50 million), including—(i) Funding to commercialize POWERcall ($10 million of the total $50 million) and (ii) payment of predevelopment costs associated with potential investments in other energy management facilities and energy recovery facilities ($10 million of the total $50 million); and, (c) to finance the costs of equipment and/or provide customer financing of equipment in connection with energy management and efficiency services provided by Development ($50 million).

Southern proposes to acquire, and Development proposes to issue and sell, common stock and notes up to $275 million from time to time through December 31, 1998, with maturities no later than December 31, 2003. Such loans will bear an interest rate equal to a rate not to exceed the prime rate in effect on the date of the loan at a bank designated by Southern. In addition, Development proposes to convert the notes to capital contributions (through Southern's forgiveness of the debt evidenced thereby). Alternatively, Southern proposes to make up to $275 in cash capital contributions to Development from time to time through December 31, 1998.

Development proposes to issue and sell to third parties, and Southern proposes to guarantee, up to $275 million in notes or other recourse liabilities from time to time through December 31, 1998, the maturities of which will not extend past December 31, 2003. The loans evidenced by such notes will be made with an interest rate not to exceed 3% over the lender bank's prime rate.

Development proposes to acquire promissory notes evidencing the debt of customers in connection with financing energy management and efficiency equipment. Further, Development may assign evidences of customer indebtedness to Southern in consideration of a reduction in the amount of outstanding notes, in which case the aggregate amount of outstanding customer indebtedness held by Southern would be added to the aggregate amount of outstanding notes issued by Development and held by Southern for purposes of the proposed $50 million limit.

Southern proposes to provide performance guarantees and to undertake other contractual obligations with respect to the performance and other obligations of Development under contracts and bids with third parties. Southern proposes to provide guarantees in an aggregate amount outstanding at any one time of $200 million through December 31, 2003; provided, that any guarantees or indemnifications outstanding at December 31, 2003 shall continue until expiration or termination in accordance with their terms. For purposes of computing the above limitation, neither Southern's agreements to provide guarantees or indemnifications of sureties of Development which have not actually been issued, nor Development's joint venture partner's respective shares of any joint venture obligations or indemnification of sureties of the joint venture, shall be counted. In addition, Southern and Development request that they have the flexibility to negotiate specific guarantees and similar provisions and arrangements with third parties, and indemnifications of sureties, as the need to do so arises, without further Commission authorization.

Development proposes to enter into new service agreements with Southern Company Services, Inc. ("Services") and each of the operating electric utility companies (each an "Operating Company", collectively, "Operating Companies") that will be substantially identical to the existing agreements between Development and Services.

Development proposes to undertake activities, including advertising and marketing studies, additional pilot tests, testing of various manufacturers' equipment, and purchases of equipment and software enhancements, among other activities, with a view to commercializing POWERcall and related customer services[1] throughout Alabama and Georgia and in the Gulf region of Mississippi and Florida. Development also requests authority to enter into agreements with utilities that are interconnected with Southern System companies pursuant to which Development would offer POWERcall and related services to the customers of such non-affiliated utilities. Development proposes to invest up to $10 million in connection with these activities.

Development also requests authority to develop, purchase, construct, own and operate a prototype energy management communications network[2] at various locations within the Southern System. Development requests authority to invest up to $175 million in equity investments in such prototype systems, which would cover design and marketing costs and the costs of building, purchasing, or leasing fiber and coaxial cable lines and related equipment, facilities and properties.

Development proposes to make available the balance of the bandwidth capacity to other communications providers of voice, data, and video services, such as cable television companies, local and long distance telephone companies, computer networks, commercial merchants (*e.g.*, home shopping networks), or large private users, such as banks, pursuant to leases, network sharing agreements or licensing transactions negotiated at arms' length for varying terms at market values.

Development proposes to provide the necessary system operations and maintenance services in connection with its energy management communications network and will charge third party communications providers the fair market value of such services based on their level of use of the system.

Development also proposes to offer to utility customers directly, or indirectly through public utility companies, a broader range of energy management services, including demandside management ("DSM") measures, and, in connection therewith, proposes to invest in energy management equipment and/or provide customer financing for the purchase of equipment from third party vendors and suppliers. Specifically, Development proposes to: (1) Engage in energy management services, including—(a) Design of modifications and new equipment, (b) management or direct installation of new equipment, (c) the entry into performance contracts (where Development is paid on the basis of actual energy savings), (d) the arrangement of third-party financing for conservation programs, (e) the training personnel in use of equipment, and (f) the observation of the operation of installed system to insure that it meets design specifications; (2) offer demand-side management services, including—(a) design of energy conservation programs, (b) implementation of energy conservation programs, (a) performance contracts for DSM work, and (d) the monitoring and/or evaluating of DSM programs; (3) invest in energy management equipment; and, (4) provide customer financing for the purchase of energy management equipment from third parties.

Development requests authority to use up to $50 million of the funds provided by Southern to make investments in energy efficiency and conservation assets and/or loans to customers to enable such customers to finance the purchase of such assets.

Development requests authority to provide the following general types of technical consulting services to non-affiliated entities, including utilities, industrial and commercial concerns and governments: management expertise, such as strategic planning, finance, feasibility studies, organization, energy efficiency, safety, environmental and conservation matters, policy matters and management services; technical services and expertise, such as design, engineering, procurement, construction supervision, information systems and services, environmental and conservation planning, auditing, engineering and construction, engineering and construction planning and procedures, data processing, system planning and operational planning; training expertise, including training in the area of operation, equipment repair, and maintenance; and technical and procedural resources and systems, such as are embedded in computer, information, and communications systems, programs or manuals developed or acquired by Southern System companies. In addition, Development seeks authority to render certain services that Southern Electric International, Inc. ("SEI") now provides in accordance with the Commission orders dated July 17 and December 18, 1981 (HCAR Nos. 22132 and 22315A, respectively) to public utility companies and others having need for the procurement of materials, machinery, equipment, services and supplies used in the generation, transmission, and distribution of electric power and the maintenance of inventories of spare parts, such as through joint procurement organizations (e.g., Pooled Inventory Management Services), which may include, as members, participants, or shareholders companies that are subsidiaries of Southern. Development also seeks authority to assume SEI's obligations under existing contracts to the extent that they can be assigned.

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[1] POWERcall is described as a utility customer service involving the installation of a device at a customer's premises which would monitor and automatically report power outages to a utility's operations center. Development states that it is investigating the additional capabilities of the monitoring device and its related software to determine the commercial feasibility of providing certain monitoring services in addition to POWERcall. Such additional services would include both energy-related services, such as automated meter reading and temperature monitoring, and other services, such as fire, intrusion and health alarm services.

[2] Development states that, by utilizing his network, it proposes to offer to customers power usage and outage monitoring services (including POWERcall), two way customer/utility communications, automated billing, energy and conservation information, including "Good Cents" messages and information, and communications-based programs, such as "distance learning," that may be offered in conjunction with a utility's industrial development activities, among other potential utility and utility-related interactive communications services. Development states that the network may also be used for internal system communication of voice and data.

Development also requests authorization to offer to third parties Intellectual property[3] created or acquired by Development or its associate companies within the Southern System.

Development also proposes to undertake preliminary development activities with respect to potential investments in energy and resource recovery facilities and technologies, including but not limited to coal gasification facilities and other synthetic fuels technologies, landfill gas recovery, refuse derived fuels, and other alternative fuels technologies. Development states that it will not make any capital investment in any such facility exceeding $1 million individually or $10 million in the aggregate, except pursuant to separate Commission authorization.

Gulf States Utilities Company (70–8375)

Gulf States Utilities Company ("GSU"), 350 Pine Street, Beaumont, Texas 77701, an electric utility subsidiary company of Energy Corporation, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and Rules 42, 44(b), 50 and 50(a)(5) thereunder. GSU proposes to engage in the transactions described herein from time to time through December 31, 1995.

GSU proposes to issue and sell not more than $700 million aggregate principal amount of: (1) One or more series of its preferred stock, cumulative, $100 par value, and/or its preferred stock, cumulative, without per value ("Preferred"); (2) one or more new series of its first mortgage bonds ("Bonds"); and/or (3) one or more new sub-series of the medium term note series of its first mortgage bonds ("MTNs").

Each series of Bonds or sub-series of MTNs will be sold at such price, will bear interest at such rates and will mature on such date (not more than 40 years from the first day of the month of issuance) as will be determined at the time of sale. No series of Bonds or sub-series of MTNs will be issued at rates in excess of those generally obtained at the time of pricing for sales of first mortgage bonds or medium term notes having the same maturity, issued by companies of comparable credit quality and having similar terms, conditions and features. The price, exclusive of accrued interest, to be paid for each series of Bonds to be sold at competitive bidding will be within a rang of not more than 5 percentage points, but shall not exceed 5 percentage points above or below 100% of the principal amount of such series of Bonds, and the price of each sub-series of MTNs will be within a range of 95–105% of the principal amount. GSU requests an exemption from the Commission's Statement of Policy Regarding First Mortgage Bonds (HCAR No. 13105, February 16, 1956, as modified by HCAR No. 16369, May 8, 1969) ("Bond SOP") to the extent that, among other things, the redemption provisions, the sinking fund provisions (or lack thereof), the covenant limiting common stock dividends and/or the maintenance and replacement provisions (or lack thereof) with respect to any series of Bonds or sub-series of MTNs deviate from the Bond SOP.

The price, exclusive of accumulated dividends, for each series of Preferred will be determined at the tome of sale and will not be less than par or stated value on a per share basis. The price to be paid for any series of Preferred to be sold at competitive bidding will not be less than par or stated value nor more than 102.75% thereof per share, plus accumulated dividends, if any. No series of Preferred would be sold if the dividend rate thereon would exceed those generally obtained at the time of pricing for sales of preferred stock of the same par or stated value, issued by companies of comparable credit quality and having similar terms, conditions and features. GSU requests an exemption from the Commission's Statement of Policy Regarding Preferred Stock (HCAR No. 13106, February, 16, 1956, as modified by HCAR No. 16758, June 22, 1970) ("Stock SOP") to the extent that, among other things, the redemption provisions of any series of Preferred deviate from the Stock SOP.

Depending upon market conditions, GSU may sell one or more series of Preferred having a par value of $100 to underwriters for deposit with a bank or trust company ("Depositary"). The underwriters would then receive from the Depositary and deliver to the repurchasers in the subsequent public offering shares of depositary preferred stock ("Depositary Preferred"), each representing a stated fraction of a share of the Preferred. Depositary Preferred would be evidenced by depositary receipts. Each owner of Depositary Preferred would be entitled proportionally to all the rights and preferences of the series of Preferred (including dividends, redemption and voting). A holder of Depositary Preferred will be entitled to surrender Depositary Preferred to the Depositary and receive the number of whole shares of Preferred represented thereby. A holder of Preferred will be entitled to surrender shares of Preferred to the Depositary and receive a proportional amount of Depositary Preferred.

GSU proposes to use the net proceeds derived from the issuance and sale of the Bonds, MTNs and/or Preferred for general corporate purposes, including, but not limited to, the repayment of outstanding securities when due and/or the possible redemption, acquisition or refunding of certain outstanding securities prior to their stated maturity or due date.

GSU states that it may sell the Bonds, MTNs and Preferred pursuant to the competitive bidding requirements of Rule 50, or, by means of agency arrangements or direct placement with purchasers under an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5), in the event that GSU determines that a negotiated public offering or private placement would be advantageous. GSU requests authorization to undertake negotiations with respect to arrangements for the issuance and sale of the Bonds, MTNs and Preferred. It may do so.

GSU also proposes to enter into arrangements for the issuance and sale of tax-exempt bonds ("Tax-Exempt Bonds"), and in connection therewith, GSU proposes to enter into one or more equipment lease/sublease arrangements ("Equipment Lease"), pursuant to which one or more governmental authorities ("Issuers") may issue one or more series of Tax-Exempt Bonds under one or more indentures ("Indenture") in an aggregate principal amount not to exceed $250 million. The net proceeds from the sale of the Tax-Exempt Bonds will be used to finance certain facilities including but not limited to sewage and/or solid waste disposal or pollution control facilities ("Facilities") that have not heretofore been the subject of such financing, or to refinance outstanding tax-exempt bonds issued for that purpose.

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[3] "Intellectual Property" is defined as "any process, program or technique which is protected by the copyright, patent or trademark laws, or as a trade secret, and which has been specifically and knowingly incorporated into; exhibited in, or reduced to a tangible writing, drawing, manual, computer program, product or similar manifestation or thing." *see* HCAR Nos. 22132 and 22315A (July 17 and December 18, 1981, respectively).

GSU further proposes, under the Equipment Lease, to acquire, construct and install the Facilities, and lease the Facilities to the Issuers and simultaneously sublease such Facilities from the Issuers at subrentals sufficient (together with other monies held by the trustee under the applicable Indenture and available for such purpose) to pay the principal or redemption price of, premium, if any, interest and other amounts owing on the Tax-Exempt Bonds together with related expenses. Under the Equipment Lease, GSU will also be obligated to pay certain fees incurred in connection with the transactions.

The Equipment Lease and the Indenture may provide for either a fixed interest rate or an adjustable interest rate for each series of the Tax-Exempt Bonds. No series of Tax-Exempt Bonds would be sold if the fixed interest rate or initial adjustable interest rate thereon would exceed the lower of 13% or rates generally obtained at the time of pricing for sales of tax-exempt bonds having the same maturity, issued for the benefit of companies of comparable credit quality and having similar terms, conditions and features. The Tax-Exempt Bonds will mature not earlier than five years from the first day of the month of issuance nor later than 40 years from the date of issuance. Each series may be subject to redemption and/or sinking fund provisions.

GSU proposes to arrange for one or more irrevocable letters of credit, in an aggregate amount up to $300 million and for a term not to exceed ten years, from a bank, in favor of the trustee for one or more series of Tax-Exempt Bonds. GSU would enter into a letter of credit and reimbursement agreement ("Reimbursement Agreement") with the bank under which GSU would agree to reimburse the bank for amounts drawn under the letter of credit within 60 months with the interest rate not to exceed the bank's prime commercial loan rate plus 2% and to pay certain fees, including up-front fees not to exceed $100,000 and annual fees not to exceed 1¼% of the face amount of the letter of credit. Provision may be made for extension of the term of such letter of credit or for the replacement thereof, upon its expiration or termination, by another letter of credit.

In addition, or as an alternative to a letter of credit, GSU may: (1) Provide an insurance policy for one or more series of Tax-Exempt Bonds, and/or (2) obtain authentication of and pledge one or more new series of its First Mortgage Bonds ("Collateral Bonds") to be issued under GSU's mortgage and delivered to the trustee or the bank to evidence and secure GSU's obligations under the Equipment Lease or the Reimbursement Agreement. Such Collateral Bonds could be issued: (1) In a principal amount equal to the principal amount of Tax-Exempt Bonds and bearing interest at a rate equal to the rate of interest on such Tax-Exempt Bonds; (2) in a principal amount equivalent to the principal amount of Tax-Exempt Bonds plus an amount equal to interest on those Tax-Exempt Bonds for a specified period and bearing no interest; (3) in a principal amount equivalent to the principal amount of Tax-Exempt Bonds or in such amount plus an amount equal to interest on those Tax-Exempt Bonds for a specified period, but carrying a fixed interest rate that would be lower than the fixed interest rate of the Tax-Exempt Bonds; or (4) in a principal amount of Tax-Exempt Bonds at an adjustable rate of interest, varying with such Tax-Exempt Bonds but having a ceiling rate of 13%. Each series of the Collateral Bonds that would bear interest would do so at a fixed interest rate or initial adjustable interest rate not to exceed 13%. The terms of the Collateral Bonds will correspond to the terms of the related Tax-Exempt Bonds. The maximum amount of the Collateral Bonds would be $300 million, and the Collateral Bonds would be in addition to the aggregate limitation on the Bonds specified above. In connection with the proposed Tax-Exempt Bonds financing, GSU requests a finding of the Commission that competitive bidding of Collateral Bonds pursuant to Rule 50 is inappropriate since the Collateral Bonds would be issued and pledged solely to secure GSU's obligations and no public offering of the Collateral Bonds would be made.

GSU also proposes to use, in addition to or as an alternative for the proceeds from the sale of the Bonds, MTNs, Preferred and/or Tax-Exempt Bonds, other available funds to acquire, through tender offers, open market or negotiated purchases, in whole or in part, prior to their respective maturities, not more than $600 million aggregate principal amount and par value and/or stated value of: (1) One or more series of GSU's outstanding first mortgage bonds or sub-series of MTNs, (2) one or more series of GSU's outstanding preferred stock, (3) one or more series of outstanding tax-exempt bonds heretofore issued for the benefit of GSU, (4) GSU's outstanding series of debentures, and/or (5) GSU's outstanding series of preference stock. GSU states that it will not use the proceeds from the sale of the Bonds, MTNs, Preferred and/or Tax-Exempt Bonds to enter into refinancing transactions unless: (1) the estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all repurchasing, redemption, tendering and issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy Corporation and its subsidiaries, consolidated; or (2) GSU shall have notified the Commission of the proposed refinancing transaction (including the terms thereof) and obtained appropriate authorization to consummate the transaction.

Louisiana Power & Light Co. (70–8391)

Louisiana Power & Light Company ("LP&L"), 639 Loyola Avenue, New Orleans, Louisiana 70113, an electric utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed an declaration, pursuant to Sections 6(a) and 7 of the Act and Rule 50(a)(5).

LP&L proposes to issue and sell up to $326 million in secured lease obligation bonds ("Refunding Bonds"), in one or more series through December 31, 1995, in order to redeem approximately $310 million in previously issued and sold secured lease obligation bonds ("Original Bonds").

By orders dated September 26, 1989 (HCAR No. 24956) and September 27, 1989 (HCAR No. 24958) ("Orders"), LP&L sold to and leased back from three separate trusts "(Lessors"), on a long-term net lease basis pursuant to three separate facility leases ("Leases"), an approximate 9.3% aggregate ownership interest ("Undivided Interests") in Unit No. 3 of the Waterford nuclear power plant ("Waterford 3") in three almost identical but separate transactions. The First National Bank of Commerce ("Owner-Trustee") is the trustee for these trusts. LP&L now has an approximate 9.3% leasehold interest in Waterford 3.

The purchase price of the Undivided Interests was $353.6 million. About $43,603,000 was provided through equity contributions of the owner-participant in each of the three Lessor trusts. About $309,997,000 was provided through issuance of the Original Bonds by the Owner-Trustee in an underwritten public offering. The Original Bonds consist of three separate series of secured lease obligation bonds, with an annual interest rate of 10.30%, to mature on January 2, 2005, issued in an aggregate principal amount of $140,452,000 ("2005 Bonds"), and three separate series of secured lease obligation bonds, with an annual interest rate of 10.67%, to mature on January 2, 2017, issued in an aggregate principal amount of $169,545,000 ("2017 Bonds").

LP&L now proposes to have the Owner-Trustee issue the Refunding Bonds either under three amended and supplemented Indentures of Mortgage and Deeds of Trust dated September 1, 1989 or under comparable instruments ("Indentures"). The Refunding Bonds will be issued to refund the Original Bonds. In the alternative, LP&L proposes to refund all or a portion of the Original Bonds with interim funds obtained from banks or other institutions by the Owner-Trustee ("Interim Funds") and to then issue Refunding Bonds to retire the Interim Funds.

The proceeds from the sale of the Refunding Bonds and possibly the proceeds of the Interim Funds, possibly together with funds provided by LP&L, will be used to redeem the Original Bonds and to meet associated issuance costs. The 2005 Bonds are optionally redeemable on July 2, 1994 for 105.150% of their principal amount. The 2017 Bonds are first optionally redeemable on July 2, 1994 for 108.003% of their principal amount. Should Original Bonds be retired with the Interim Funds, the proceeds of Refunding Bonds will be used to retire the Interim Funds. It is not anticipated that there would be a redemption premium associated with the retirement of the Interim Funds. The Refunding Bonds will be structured and issued under the documents and pursuant to the procedures applicable to the issuance of the Original Bonds, which documents and procedures are described in the Orders, or comparable documents with similar terms and provisions.

The Interim Funds would be provided through one or more domestic or foreign financial institutions ("Interim Lenders"), which would make loans to the Lessors evidenced by notes issued by the Lessors. The term of the Interim Funds would be up to the remainder of the basic lease terms under the Leases. LP&L might assume the Interim Funds upon the occurrence of certain events or if it exercises certain purchase options under the Leases. The Interim Funds would be refunded with the proceeds of the Refunding Bonds. LP&L would use its best efforts to arrange for refunds with desirable interest rates as quickly as possible after the Interim Funds are required.

LP&L is obligated to make payments under the Leases in amounts that will provide for scheduled payments of principal and interest on the Refunding Bonds when due. Upon the refund of the Original Bonds, amounts payable by LP&L under the Leases will be adjusted pursuant to the terms of supplements to the Leases to be entered into. A similar procedure would be used if the Interim Funds are used.

Neither the Refunding Bonds nor the Interim Funds will be direct obligations of or guaranteed by LP&L. However, under certain circumstances, LP&L might assume all or a portion of the Refunding Bonds of the Interim Funds. Each Refunding Bond will be secured by, *inter alia*, (i) A lien on and security interest in the Undivided Interest of the Lessor that issues the Refunding Bond and (ii) certain other amounts payable by LP&L thereunder. The notes of the Lessor in evidence of the Interim Funds would also be secured.

The Refunding Bonds are to be issued in registered form without coupons in denominations of $1,000 or integral multiples thereof. Interest on the Refunding Bonds of each series will be payable January 2 and July 2 of each year to commence with the interest payment date after the initial issuance of the Refunding Bonds. Interest on Interim Funds could be paid on a different basis. The Refunding Bonds might be redeemed if a Lease is to be terminated prior to the end of the basic lease term provided for therein. Similar provisions would be applicable to the Interim Funds.

Instead of Refunding Bonds issued through the Owner-Trustee, LP&L might arrange for a funding corporation to issue the Refunding Bonds, in which case the proceeds from Refunding Bonds would be loaned by the funding corporation to the Lessors, which would issue notes ("Lessor Notes") to the funding corporation to evidence the loans and secure the Refunding Bonds, and the Lessors would use the loans to redeem the Original Bonds.

The terms of the Lessor Notes and the indentures for their issuance would reflect the redemption and other terms of the Refunding Bonds. The rental payments of LP&L would be used for payments on principal and interest on the Lessor Notes, which payments would be used for payments on Refunding Bonds when due. The Refunding Bonds would be secured by the Lessor Notes, which would be secured by a lien on and security interest in the Undivided Interests and by certain rights under the Leases.

An alternative to Refunding Bonds issued by the Owner-Trustee would be for LP&L to use a trust structure in which the Lessors would issue Lessor Notes to one or more passthrough trusts and the trusts would issue certificates in evidence of ownership interests in the trusts. The debt terms of the Refunding Bonds would be comparable to the terms of the Lessor Notes and the indentures for their issuance.

LP&L might have some Refunding Bonds or trust certificates to be sold by competitive bidding, negotiated underwritten public offering, or private placement with institutional investors. LP&L intends to arrange the Interim Funds through commercial banks or similar institutions.

LP&L believes that it would be impossible to sell the Refunding Bonds or the trust certificates, or to arrange the Interim Funds, by competitive bidding in accordance with Rule 50. Thus LP&L requests under Rule 50(a)(5) an exception from the competitive bidding requirements of the rule. LP&L further requests authorization to negotiate for the sale of the Refunding Bonds or the trust certificates or for the Interim Funds. It may do so.

LP&L shall not have the Owner-Trustee sell the Refunding Bonds or the trust certificates, or acquire the Interim Funds, unless: (i) The estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, in excess of the present value of all redemption and issuance costs, based on an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy and its consolidated subsidiaries, or (ii) LP&L shall have obtained Commission authorization.

Under the separate 1989 participation agreements relative to the sale of the Undivided Interests, LP&L issued three separate promissory notes to the owner-participants in an aggregate principal amount equal to the highest of either the maximum net casualty value or the maximum net special casualty value payable under the Leases during the basic lease term.—$208,236,768 on July 2, 1994, which is expected to be the approximate date of the sale. Redemption of the Original Bonds could, in some circumstances, cause an increase in these values and therefore, require an increase in the principal amount of the related promissory notes.

In addition, LP&L is required to collateralize its obligations to the owner-participants five years after the sales either through first mortgage bonds in a principal amount equal to that of the promissory notes or a letter of credit (HCAR No. 24956, September 26, 1989). To the extent the proposed transactions would necessitate the issuance of promissory notes or first mortgage bonds in a principal amount in excess of that previously authorized, LP&L also seeks authorization of such increases.

Metropolitan Edison Company (70–8401)

Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19640, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an amended application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 50(a)(5) and 54 thereunder. A notice of the application-declaration was issued by the Commission on April 22, 1993 (HCAR No. 26034) ("Prior Notice").

As described in the Prior Notice, Met-Ed proposes to organize a special purpose subsidiary ("Met-Ed Capital") as either a limited liability company under the Delaware Limited Liability Company Act ("LLC Act") or a limited partnership under the Pennsylvania or Delaware Revised Uniform Limited Partnership Act. Met-Ed may also organize a second special purpose wholly owned subsidiary under the Delaware General Corporation Law ("Investment Sub") for the sole purpose of either: (i) Acquiring and holding a second class of Met-Ed Capital common interests so as to comply with the requirement under the LLC Act that a limited liability company have at least two members or (ii) acting as the general partner of Met-Ed Capital, assuming a limited partnership structure. Met-Ed Capital will then issue and sell from time to time in one or more series through June 30, 1996 up to $125 million aggregate stated value of preferred limited liability company interests or limited partnership interests, in the form of Monthly Income Preferred Stock, $25 per share stated value ("MIPS").

Met-Ed states that there are certain changes to the transactions as described in the Prior Notice. First, each note or Subordinated Debenture, as described in the Prior Notice, will have a term of up to 50 years, rather than 30 years that may be extended for up to an additional 20 years, subject to certain specified conditions.

In addition, Met-Ed states that there are certain changes to the structure of Met-Ed Capital and Investment Sub. Met-Ed may acquire all of the common stock of Investment Sub for a nominal consideration and may capitalize Investment Sub with a demand promissory note in the principal amount of up to 10% of the total capitalization of Met-Ed Capital from time to time, or up to an initial principal amount of $13 million. If Met-Ed Capital is organized as a limited partnership, Investment Sub may also acquire up to a 3% general partnership interest in Met-Ed Capital. The amount of such capital contribution (up to $4.0 million), together with the gross proceeds received by Met-Ed Capital from the issuance and sale of the MIPS (i.e., a maximum of $125 million), would be applied by Met-Ed Capital to acquire Met-Ed's Subordinated Debentures. The total equity contributions by Met-Ed to Met-Ed Capital would not exceed $35 million.

Finally, Met-Ed may acquire a separate class of limited partnership interest in Met-Ed Capital for a nominal consideration to ensure that Met-Ed Capital will at all times have a limited partner as required by the Delaware Revised Uniform Limited Partnership Act.

Pennsylvania Electric Company (70–8403)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a public-utility subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an amended application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 50(a)(5) and 54 thereunder. A notice of the application-declaration was issued by the Commission on April 22, 1993 (HCAR No. 26034) ("Prior Notice").

As described in the Prior Notice, Penelec proposes to organize a special purpose subsidiary ("Penelec Capital") as either a limited liability company under the Delaware Limited Liability Company Act ("LLC Act") or a limited partnership under the Pennsylvania or Delaware Revised Uniform Limited Partnership Act. Penelec may also organize a second special purpose wholly owned subsidiary under the Delaware General Corporation Law ("Investment Sub") for the sole purpose of either: (1) Acquiring and holding a second class of Penelec Capital common interests so as to comply with the requirement under the LLC Act that a limited liability company have at least two members or (ii) acting as the general partner of Penelec Capital, assuming a limited partnership structure. Penelec Capital will then issue and sell from time to time in one or more series through June 30, 1996 up to $125 million aggregate stated value of preferred limited liability company interests or limited partnership interests, in the form of Monthly Income Preferred Stock, $25 per share stated value ("MIPS").

Penelec states that there are certain changes to the transactions described in the Prior Notice. First, each Note or Subordinated Debenture, as described in the Prior Notice, will have a term of up to 50 years, rather than 30 years that may be extended for up to an additional 20 years, subject to certain specified conditions.

In addition, Penelec states that there are certain changes to the structure of Penelec Capital and Investment Sub. Penelec may acquire all of the common stock of Investment Sub for a nominal consideration and may capitalize Investment Sub with a demand promissory note in the principal amount of up to 10% of the total capitalization of Penelec Capital from time to time, or up to an initial principal amount of $13 million. If Penelec Capital is organized as a limited partnership, Investment Sub may also acquire up to a 3% general partnership interest in Penelec Capital. The amount of such capital contribution (up to $4.0 million), together with the gross proceeds received by Penelec Capital from the issuance and sale of the MIPS (i.e., a maximum of $125 million), would be applied by Penelec Capital to acquire Penelec's Subordinated Debentures. The total equity contributions by Penelec to Penelec Capital would not exceed $35 million.

Finally, Penelec may acquire a separate class of limited partnership interest in Penelec Capital for a nominal consideration to ensure that Penelec Capital will at all times have a limited partner as required by the Delaware Revised Uniform Limited Partnership Act.

Allegheny Power System, Inc., et al. (70–8411)

Allegheny Power System, Inc., ("Allegheny"), 12 East 49th Street, New York, New York, 10017, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 87,90 and 91 promulgated thereunder.

Allegheny requests Commission authorization through December 31, 1996 to organize and finance a new wholly-owned non-utility subsidiary company—AYP Capital, Inc., ("AYP")—that would invest directly or indirectly in (i) companies involved in new technologies that are related to the core business of Allegheny; and (ii) companies for the acquisition and ownership of exempt wholesale generators ("EWGs") within the definition of Section 32 of the Act. Allegheny also proposes through

December 31, 1996 to invest up to $500,000 in AYP.

Allegheny proposes to incorporate AYP in Delaware with initial authorized capital of up to 1,000 shares of common stock (no par value) and to subscribe to 100 shares of AYP common stock for $10.00 per share. Allegheny also proposes to fund AYP from time to time through December 31, 1996 through purchases of additional AYP stock, or capital contributions, in an aggregate amount not to exceed $500,000. AYP will use those funds to pursue appropriate investment opportunities in new technologies or in EWGs. Allegheny proposes to obtain funds for this purpose from: (i) Sales of Allegheny common stock pursuant to its Dividend Reinvestment and Stock Purchase and Employee Stock Ownership and Savings Plans, (ii) regular bank lines of credit, or (iii) internal sources. Allegheny states that it will not guarantee indebtedness of AYP.

Allegheny states that it anticipates that AYP will have no paid employees and that personnel employed by Allegheny Power Service Corporation ("Allegheny Service"), a wholly-owned nonutility subsidiary company of Allegheny, will provide a wide range of services, on an as-needed basis, to AYP pursuant to a service agreement to be entered into between AYP and Allegheny Service. Under this service agreement, AYP will reimburse Allegheny Service for the cost of services provided in accordance with Rules 90 and 91 of the Act. All time spent by Allegheny Service employees on AYP matters will be billed to and paid by AYP on a monthly basis.

Allegheny states that AYP will maintain separate financial records with profit and loss statements. Allegheny Service, it is stated, pursuant to the service agreement with AYP, will be responsible for the financial records and for audit procedures that are in compliance with generally accepted principles.

With respect to EWGs, Allegheny states that if AYP acquires an interest in an EWG, it will use Allegheny Service employees or other Allegheny system employees "within a de minimis limit" for services. It is stated that AYP will not use in excess of 2% of the total employees of all other Allegheny system domestic public utility companies for services to an affiliated EWG.

With respect to new technologies related to its core business, Allegheny states that there are significant opportunities for investment in companies engaged in the development of new technologies that would promote the public interest through efficient and clean electric power generation and utilization. It is stated that the new technologies would be related to: (i) Electric power conversion and storage; (ii) conservation, load management, and demand side management; (iii) environmental and waste treatment; (iv) advanced computer hardware and software; (v) power-related electronic systems, control systems and components; (vi) electronic automation systems and components.

Allegheny states that, to invest in EWGs or in companies engaged in new technologies, AYP might directly invest or seek experienced investment partners and structure investment vehicles with those partners. In either event, each investment, it is stated, will be structured to limit the exposure of AYP to excessive liabilities and to allow AYP a role in the direction of the business.

Allegheny states that it now has no proposed specific investment in mind and that AYP shall make no investment without prior Commission approval. Allegheny also states that neither it nor AYP will, without Commission approval, finance the future acquisition by AYP of an EWG or new technologies company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11607 Filed 5-12-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 94-5-10 Dockets 49166 and 49167]

Application of Express One International, Inc. For Certificate Authority Under Section 401(d)(1)

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Express One International, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate, overseas and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than May 19, 1994.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49166 and 49167 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Air Carrier Fitness Division (P-58, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: May 9, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94-11732 Filed 5-12-94; 8:45 am]

BILLING CODE 4910-62-P

Coast Guard

[CGD 94-046]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Vapor Control Systems of the Chemical Transportation Advisory Committee will meet to continue reviewing tank vessel cleaning facility operations and evaluate the technical and safety aspects of potential control technologies which will allow these facilities to meet air quality emissions standards. The meeting will be open to the public.

DATES: The meeting will be held on June 15, 1994, from 9 a.m. to 4 p.m. Written material should be submitted no later than June 10, 1994.

ADDRESSES: The meeting will be held in Room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Written material should be submitted to LCDR Robert F. Corbin, Commandant (G-MTH-1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: LCDR Robert F. Corbin, Commandant (G-MTH-1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, telephone (202) 267-1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 sec. 1 *et seq.*

One section of the 1990 Amendments to the Federal Clean Air Act (CAA) requires States to achieve and maintain a 15% reduction in their Volatile

Organic Compound (VOC) emissions level below the 1990 base year level by 1996 in non-attainment areas within the individual States. States are presently developing methods to achieve required compliance levels. One State recently passed state regulations that will require vessels that have carried certain VOC cargoes and are being gas-freed and/or cleaned to utilize a marine vapor control system or an alternate means of control approved by the State at the tank vessel cleaning facility. It is anticipated other States will develop similar regulations as a means of complying with the CAA Amendments for their States. The purpose of this meeting is to continue reviewing tank vessel cleaning facility gas-freeing and tank cleaning operations in order to evaluate potential control technologies that will allow these facilities to meet air quality emissions standards while ensuring a high level of safety for facility and vessel personnel is maintained. As a result of this review, the Subcommittee will develop recommendations for revising existing safety guidelines for tank vessel cleaning facilities.

Dated: May 3, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–11708 Filed 5–12–94; 8:45 am]

BILLING CODE 491014–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on June 1, 1994, at 12 Noon.

ADDRESSES: The meeting will be held at the Air Line Pilots Association, Room 804/805, 1625 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to be held on June 1, 1994, at the Air Line Pilots Association, Room 804/805, 1625 Massachusetts Avenue, NW, Washington, DC. The agenda for this meeting will include progress reports from the Air Carrier Working Group, the Cabin Safety Working Group, and the Aircraft Dispatchers Working Group. Each working group Chair will report on the progress of the working group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, a well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on May 9, 1994.

Thomas Toula,

Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–11717 Filed 5–12–94; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–906]

Mormac Marine Transport, Inc.; Application for Written Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as Amended

Mormac Marine Transport, Inc. (Mormac), a subsidiary of Mormac Marine Group, Inc. (Mormac Marine), by application of May 9, 1994, requests, pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act) and Article II–13 of Operating-Differential Subsidy Agreements, Contracts MA/MSB–295 (a), (b), and (c) (ODSAs), written permission for (1) James R. Barker and Paul R. Tregurtha (and members of their immediate families), to own a pecuniary interest in Moran Towing Corporation (Moran) and (2) Messrs. Barker and Tregurtha and members of their immediate families to serve as officers and directors of Moran and any of its subsidiaries.

Moran provides domestic coastwise transportation services and performs harbor ship work with tugboats, more particularly described below. Mormac is of the view that docking and undocking ships within harbors is not subject to section 805(a), noting that that type of service was within section 803 of the Act, which was repealed by the Merchant Marine Act of 1970.

Mormac points out that it currently has approval for common ownership, officers and directors of Mormac Marine and its subsidiaries as well as the Interlake Steamship Company and Lakes Shipping Company, Inc., both of which are involved in the domestic coastwise Great Lakes service. Mormac needs approval for the acquisition of Moran for the brief period of time remaining under the terms of Mormac's ODSAs. Mormac's ODSAs will terminate in December 1995, June 1996, and February 1997, respectively.

Pursuant to the letter of intent, Messrs. Barker and Tregurtha, members of their immediate families, and Lakes Shipping Company, Inc. (which itself is owned in substantial part by the Barker and Tregurtha families) will be purchasing the outstanding stock of Moran.

According to Mormac, Moran and its subsidiaries are currently involved principally in the operation of tug boats from eight ports on the U.S. east and gulf coasts used to dock and undock ships and also tow barges and other vessels. Moran also uses its own tugs and barges to transport cargoes along the east and gulf coasts and dry bulk cargoes both in the coastwise and worldwide trades. The Moran fleet currently consists of 54 tugs and 12 barges. Moran also indirectly owns a 20-percent interest in tankers transporting crude oil from Alaska to the continental U.S.

Mormac states that Moran and Mormac are both U.S. citizens within the definition of section 2 of the Shipping Act, 1916, and section 905(a) of the Act, and will continue to be so after the consummation of the proposed transactions. Following the change in ownership, Mormac claims that Moran will continue to be involved in the same domestic coastwise and worldwide service in which it is currently engaged, with the possibility of future modifications and expansion to these services as circumstances warrant and permit. Mormac feels that it is essential that Moran be permitted freely to move tugboats and barges among the several services in which they are presently employed and into new services if conditions and circumstances so dictate. It is also important that Moran be able to expand services geographically within the regions currently being served.

Mormac maintains that the ownership of Moran by Messrs. Tregurtha and Barker and their involvement in the management of Moran will not result in any change in competitive conditions for U.S.-flag vessels providing domestic coastwise marine transportation and harbor tug services or for U.S.-flag vessels providing tanker services from Alaska to the continental U.S. The only effect of the proposed transaction will be a change in the ownership of Moran. Furthermore, it is expected that the management of Moran will remain with Moran after the acquisition. Messrs. Tregurtha and Barker will serve as Chairman and Vice Chairman thereof, respectively.

Moran and Mormac are, and will remain, according to Mormac, entirely separate corporate entities that will maintain separate and discrete accounts so there will be no issue of a subsidy leakage or diversion of subsidy. Following the consummation of the proposed transaction, Mormac and Moran will consent to examination of their books and records to the extent necessary to establish that there is no diversion of subsidy. Mormac will receive no benefit from the operations of Moran and Moran will receive no benefit from the operations of Mormac.

Moran believes that no U.S.-flag competitor of Moran will be subject to unfair competition nor will the ownership of Moran by Messrs. Barker and Tregurtha and their family members be prejudicial to the purposes and policies of the Act.

Mormac contends that no disputed issue of material fact is anticipated by a transaction that simply changes ownership of a company providing existing services. Any competitive condition that existed before the transaction will exist after the transaction. Mormac believes that no credible argument of leakage can be raised, eliminating the possibility of any argument that a change in ownership and the continuation of current services will result in unfair competition to any U.S.-flag vessel. Under these circumstances, should there be any request to intervene in this application, no issue is expected by Mormac to be raised that could not be addressed on the basis of available information provided to the record or subject to official notice and certainly no issue that would involve the submission of substantial evidence, either written or oral.

In Mormac's view, approval of this application is also entirely consistent with the purposes and policies of the Act. This acquisition will be a significant expansion of Messrs. Barker's and Tregurtha's U.S.-flag fleets and a strong statement of continuing support for the U.S. merchant marine by individuals who have a long history in and are well respected by the maritime industry.

Mormac requests the scope of domestic operations permitted under the ODSAs be modified to allow ownership of Moran by Lakes Shipping Company, Inc., Messrs. Barker and Tregurtha and members of their immediate families, as well as to allow Messrs. Barker and Tregurtha to serve as officers and directors of both Mormac and Moran, with Moran continuing to be involved in its current services (modified and expanded as circumstances warrant and permit).

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 805(a) of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on May 24, 1994. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

Dated: May 11, 1994.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 94–11825 Filed 5–12–94; 8:45 am]

BILLING CODE 4910-81-M

UNITED STATES INFORMATION AGENCY

The Role of Legislative Staff and Information Resources in the Legislative Process (Africa); Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency (USIA) proposes the development of a multi-phased exchange program for legislative staff of four francophone African countries. The participating countries are Benin, Cote d'Ivoire, Mali and Niger The project should introduce participants to the responsibilities of various professional staff in conducting the business of a legislature, emphasizing professional non-partisan roles. The project may address a wide range of administrative, legal, fiscal, and research services or concentrate on a few of notable priority. It also should illustrate the role of information resources in conducting policy analysis and drafting legislation as well as the role of archival materials in establishing the legislature's official legal record. The project should facilitate access to resource materials to promote the the study of the legislative process and should law the foundation for collaboration between U.S. and African legislatures and professional support organizations.

A U.S. not-for-profit institution will design and execute the program and select the American presenters. The institution should demonstrate success in coordinating international exchange programs for senior-level foreign participants. The applicant institution should have substantive working relationships with U.S. public and private sector organizations involved with legislative affairs and the professional development of key staff in Congress or in state assemblies. The program will begin in the fall of 1994.

Interested applicants are urged to read the complete Request for Proposals (RFP) announcement before addressing inquires to the Office. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–94–30. Please refer to this number and the title given above in all correspondence or telephone calls to USIA.

DATES: *Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on July 8, 1994. Faxed documents will not be accepted, nor will documents postmarked July 8, 1994, but received at a later date. It is the responsibility of the grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after October 1, 1994.

ADDRESSES: You must submit the original and 14 copies of the proposal as instructed in the application checklist provided in the Application Package. The original and two copies should contain all applicable TABS. The rest of the copies should contain TABS A through D only. Please submit your proposal and copies by the application deadline to: U.S. Information Agency, REF: Citizen Exchanges: Role of Legislative Staff and Information Resources in the Legislative Process, (Africa), E/P–94–30, Office of Grants Management (E/XE), 301 Fourth Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations should contact the Office of Citizen Exchanges (E/PS), U.S. Information Agency, 301 Fourth Street, SW., room 224, Washington, DC, 20547, telephone: 202–619–5319, fax: 202–619–4350, to request a detailed application package which includes all necessary forms and guidelines for preparing proposals, including specific budget preparation instructions. Agency representatives are able to answer only technical questions about this competition. For technical information, contact Stephen Taylor, Program Specialist, Africa, Near East and South Asia Division, Office of Citizen Exchanges.

Project Overview

Several francophone African countries are strengthening their democratic institutions, having recently completed the transition to a representative system of government. National legislatures in these countries have the opportunity to gain greater independence, develop more effective legislation and take steps to serve more forcefully as a balance to executive power. The viability and institutional independence of these legislative bodies could be enhanced by the services of trained staff prepared to play a support role for lawmakers and the legislative process. Legislative staff also are well paced to provide continuity regardless of the legislature's partisan make-up or the political fortunes of elected representatives.

In the United States, Congress and state legislatures employ professional staff to conduct research, draft legislation, analyze budgets, maintain records, monitor compliance with legislation and perform other duties. In many cases, professional staff provide these services on a non-partisan basis. For example, on Capitol Hill, the Office of the Legislative Counsel assists committees in drafting and amending legislation. The clerk of the House and secretary of the Senate, selected by the majority party, assist in processing legislation and performing various reporting functions. The House Office of the Law Revision Counsel updates and publishes an official classification of U.S. laws. In drafting bills, lawmakers rely on non-partisan support organizations such as the Congressional Research Service, which analyzes public policy issues, and the Congressional Budget Office, which provides analyses of fiscal issues.

While not every one of these services is directly applicable to needs in Africa, they reflect the evolving demands placed upon the U.S. Congress and could help guide efforts to promote professional development of legislative staff in Africa. The legislatures in Mali, Niger and Benin are drafting landmark legislation aimed at implementing political and economic reforms. Legislators and observers have identified the need for assistance in bill drafting, improving legislative procedures and developing strategies to make better use of legislative archives. In most cases specialized training is not available, and staff could benefit from a project aimed at enhancing their capabilities to assist lawmakers fulfill their mandates. Legislators and staff also are seeking reference materials to support their legislative initiatives. In Cote d'Ivoire, where the ruling party has held power for 30 years, parliamentary elections scheduled for 1995 could alter the political landscape. Legislative aides in Cote d'Ivoire, and all these states, could benefit from a program that demonstrates the role of professionalism and nonpartisanship in conducting the business of the legislature.

Objectives

The project should be designed to:

—Provide an overview of the structure and practices of representative government in the United States, including the interrelationship between the three branches of government;

—Introduce participants to the professional support offices and staff employed by the U.S. Congress and appropriate state legislatures;

—Demonstrate the roles and skills of professional staff in the day-to-day operations of a legislature and the nature of their interaction with lawmakers;

—Analyze the relationship between partisan politics and the professional responsibilities of legislative staff;

—Develop workshops and appropriate instructional material designed to address identified needs and enhance the capabilities of professional aides to improve the legislative process;

—Develop strategies for improving management of archives, legislative records and other official documentation;

—Develop appropriate training methods to prepare project participants to train others involved in the legislative process;

—Devise strategies to facilitate access to reference materials and other appropriate information about the structure and functioning of the U.S. Congress, state legislatures and other democratic institutions; and

—Lay the groundwork for collaboration between the professional support services for U.S. legislatures and counterpart services of African legislatures.

Programmatic Considerations

Pursuant to the legislation authorizing the USIA Bureau of Educational and Cultural Affairs, all programs sponsored by that Bureau must be balanced end non-partisan in nature and representative of the diversity of American political, social and cultural life.

USIA will give careful consideration to proposals which demonstrate: (1) In-depth, substantive knowledge of management and policy development issues relative to the legislative process;

(2) First-hand connections with appropriate U.S. public and private sector organizations and institutions involved in legislative affairs;

(3) The capacity to organize and manage international exchange programs, including appropriate orientation for the participants, handling of pre-departure arrangements and monitoring and problem-solving in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and African professionals. Proposals which are overly ambitious and those which are very general will not be competitive. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical matters, or for scholarly research projects, developing publications for dissemination in the United States, individual student exchanges, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register** and may have different application requirements as well as different objectives.

Programming elements might include workshops or seminars overseas led by American experts, a study tour in the U.S. for selected African participants, U.S.-based internships, and specialized American consultancies overseas. A planning visit overseas by the American organizer can also be considered if crucial to successful development and implementation of the program.

Selection of Participants

The U.S.-based phase of the project should be designed for legislative staff from Benin, Cote d'Ivoire, Mali and Niger, probably totalling about 12 persons. Participants should have professional responsibilities related to the operation of the national legislature. USIS personnel overseas will select the African participants, although recommendations from the grantee institution are welcome. USIS offices will facilitate the issuance of visas and can also help with the distribution of program-related materials to African participants. Two U.S. State Department interpreters and one escort officer will be available for a U.S. study tour. For the program phases in Africa, the grantee institution will select the American presenters in consultation with USIA. American presenters conducting in-country activities should be French-fluent.

Programming Suggestions

The proposed project should include at least one phase for African participants in the U.S. and at least one phase for American specialists in Africa. The following ideas should serve not as a blueprint, but as a stimulus for development of an original program design.

The project should include formats which maximize interaction between the delegates and the speakers/presenters. The program design should provide adequate time for delegates to meet individually with American professionals who have similar interests and specializations. It is preferred, though not essential, that presenters be familiar with issues pertaining to the political process in the participating African countries.

U.S. Study Tour Phase

The U.S. study tour (approximately 3–4 weeks) could begin with an introduction to the U.S. Congress and its relationship to the other branches of the national government. However, the program should focus on one or more state legislatures whose scope and structure offer comparisons more relevant to African legislative bodies. Participants would learn about the professional duties of various legislative aides, as well as support staff including legal counsels, researchers, analysts, archivists, clerks and administrators.

Participants might also benefit from observing the activities of lawmakers' personal staff who perform functions such as constituent services and media relations as well as committee staff who assist in setting agendas, organizing hearings and drafting legislation. Activities should stress the importance of professionalism in enhancing the long-term viability of the legislature and consider the impact of partisan politics on the professional staff's pursuit of its responsibilities.

Participants also should study a variety of archival materials and their usage in supporting the legislative process and establishing the official record. Activities should help guide efforts to formulate appropriate strategies for handling archival materials in the participants' home countries.

Phase in Africa

It is recommended that the grantee institution organize a series of workshops to be conducted in the participating African countries. The workshops would bring together legislators and legislative staff to develop strategies aimed at strengthening the institutional capabilities of the legislature. This might include creating new staffing patterns, improving communication techniques, or revising job responsibilities. The U.S. presenters would also examine archives and advise participants on developing appropriate archiving systems. The U.S. presenters would conduct activities in French.

The themes, objectives and design of the activities in Africa would most likely be based on discussions among the grantee institution, E/P, USIS posts and key players in the legislative process in the participating countries. This multi-phased exchange program should promote development of institutional linkages designed to advance the study of the legislative process. E/P encourages applicant institutions to consider strategies to facilitate access to information resources focusing on democratic institution building. This material might include reference books, periodicals, bibliographies, handbooks for elected representatives and lists of organizations that could offer assistance.

Program Responsibilities

The grantee institution's responsibilities include: selecting speakers, themes and topics for discussion; organizing a coherent progression of activities; orienting and debriefing participants; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the African participants, escort interpreters and U.S. presenters who travel to Africa; and overseeing the project on a daily basis to achieve maximum program effectiveness. The grantee institution is responsible for coordinating plans and implementation with P/E, participating USIS posts, and any African co-host institutions.

At the start of each phase, the grantee institution will conduct an orientation session for the delegation. At the conclusion, the institution will conduct participant evaluations and submit to E/P a final program report summarizing the entire project and resulting organizational links. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward to participants a set of preliminary materials outlining the basic principles of representative government, the role of professional legislative staff and other appropriate background information about the project. E/P will ask African participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the African delegates' backgrounds, interests and concerns.

Other Program Considerations

Consultation with the participating USIS posts in the development of the project proposal is encouraged. Letters of commitment from participating U.S. institutions would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. In developing written materials, consideration should be given to their wider use in Africa, beyond the immediate training at hand

USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities and libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms should be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

Funding

Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep overhead costs at a minimum. USIA will consider providing funding up to approximately $160,000, but organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submissions should correspond to this limitation. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs;

2. *Per diem:* For foreign participants during activities in the United States, organizations have the option of using a flat rate of $140/day or the published Federal Travel Regulations (FTR) per diem rates of individual American cities.

Note: U.S. institutional staff must use the published FTR per diem rates, not the flat rate.

For activities overseas, standard Federal Travel Regulations per diem rates must be used.

3. *Escort-interpreters:* Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. Typically, delegations ranging from 8–12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not available for U.S.-based internship activities.

4. *Book and cultural allowances:* Participants are entitled to a one-time book allowance of $50 plus a cultural allowance of $150 per person during programs taking place in the United States. U.S. staff do not receive these benefits. Escort interpreters are reimbursed for actual cultural expenses up to $150.00.

5. *Consultants:* Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally should not exceed $250/day. Subcontracting organizations may also be used, in which case the written contract(s) should be included in the proposal.

6. *Materials development:* Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

7. Room rentals, which generally should not exceed $250/day.

8. One working meal per project, for which per capita costs may not exceed $5–$8 for a lunch or $14–$20 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. *Return travel allowance:* $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal. Because this is a competitive solicitation, representatives of the Office of Citizen Exchanges can only respond to technical questions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of African Affairs. Proposals may also be reviewed by the Office of the General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Institutional Reputation and Ability

Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past

Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. Project Personnel

The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

3. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

4. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

5. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

6. Ability to Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

7. Multiplier Effect

Proposed program should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

8. Cost-Effectiveness

Overhead and direct administrative costs to USIA should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

9. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

10. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USAI-supported programs are not isolated events.

11. Project Evaluations

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, which is less frequent.

Notice

The terms and conditions published in the RFP are binding and may not be mofified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 26, 1994. Award grants will be subject to periodic reporting and evaluaton requirements.

Dated: May 9, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94-11497 Filed 5-12-94; 8:45 am]

BILLING CODE 8230-01-M

University Democratization in South Africa Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs (E/A) requests proposals from post-secondary institutions to develop a program to assist educational reform in South African post-secondary institutions as the country moves towards a nonracial democracy. The purpose of the project is to enable university student leaders and university student affairs officials to undertake a program in management skills and conflict resolution at a U.S. academic institution. The American institution should also plan to coordinate post training follow-up activities in South Africa. The institutional agreement will be for a period of two years. Interested applicants are urged to read the complete Federal Register announcement before requesting application packets from the Office of Academic Programs.

DATES: Deadline for proposals: All copies must be received at the United States Information Agency by 5 p.m. Washington, DC time on June 10, 1994. Proposals received after this deadline will not be eligible for consideration.

Faxed documents will not be accepted nor will documents postmarked on June 10, 1994 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and 9 copies of the completed proposal application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: University Democratization in South Africa Program/RFP, Office of Grants Management (E/XE), room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets which include all necessary forms and guidelines for preparing proposals, including specific budget preparation information, contact Nancy Searles, Branch Chief at (202) 619-5370, or Ellen Berelson, Deputy Branch Chief, Africa Branch at (202) 619-5376, Fax: (202) 619-6137 or write to the following address: Office of Academic Programs, rm. 232, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Overview

The University Democratization in South Africa Program focuses on education reform to enable students, faculty and administrators of selected South African universities to shift from the confrontation of an apartheid culture to the cooperation implicit in a democratic society. This project will provide university student leaders and university facility and administrative staff tasked with student affairs management with training in conflict resolution and in university administration. The South African institutions which will participate are the University of Fort Hare, the University of Zululand, the University of the North and the University of the Western Cape.

Eligibility

In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. In South Africa, participation is limited to the University of the Western Cape, the University of Fort Hare, the University of the North, and the University of Zululand. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium.

Participants representing the U.S. institution traveling under USIA grant support must be U.S. citizens. Participants representing South African institutions must be citizens, nationals, or permanent residents of South Africa.

The Agency invites proposals from eligible Historically Black Colleges and Universities (HBCU's) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also encouraged to apply.

Project Design

The project should begin with a conference in South Africa bringing together American experts and South Africans students, instructors, and staff to provide initial training in student affairs/educational administration and conflict resolution and to develop subsequent programming. Incorporating South African citizens' aspirations and objectives into the overall training plan is crucial to the success of the project.

The second phase of the project would focus on formal training at the U.S. host institution. The administering U.S. institution, in consultation with the United States Information Service offices (USIS) in Pretoria, and the project participants would select a group of South Africans to come to the U.S. institution for courses, workshops, and guided research on student politics in democratic societies, managing change in educational institutions, conflict resolution, and general management skills. Research might focus upon creating a history of the South African student movement, outlining its role in democratizing educational institutions, and devising models for exercising student power in a democratic South Africa. The U.S. academic experience should be from six weeks to one semester in length. Longer stays for the purpose of pursuing an advanced degree will not be sponsored. Participants may enroll in established courses at the administering institution. However, the institution should also be able to organize customized training sessions for the group participants. The final format of the academic program will depend upon consultation among the U.S. and South African participants at the initial conference in South Africa.

The final segment of the grant would be follow-up workshops organized by the South African participants at their home institutions with facilitation and consultation from the U.S. instructors in the program. The U.S. institution may also propose to assist with publication and dissemination of findings developed during the U.S. training program and the final South African workshops.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Budget

Competition for USIA funding is keen. The selection of a grantee institution will depend on program substance, cross-cultural sensitivity and ability to carry out the program successfully. Since USIA cooperative assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness, including in-kind contributions and ability to keep administrative costs low, is a major consideration in the review process.

Funding for this grant is limited to $250,000. Preference will be given to the most competitive budget proposals. Qualified organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

A comprehensive line item budget should be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are available in the application packet.

Application Requirements

Proposals must be submitted within the deadline and conform to the program design. The proposal package should include one original and 14 complete copies and all required documentation. Proposal should be presented as follows:

1. An executive summary (abstract), not to exceed two double-spaced pages.
2. A narrative, not to exceed 20 double-spaced pages, showing the intellectual rationale and goal of the program, how the program will accomplish its goals and how it relates to USIA's mission to increase mutual understanding between people of the United States and of other societies. This section should include a concise description of the project's work plan, spelling out program schedules, thematic agenda and proposed itineraries. Participant selection should be discussed in detail. This section should conclude with a discussion of any follow-up activities planned; how the organization intends to evaluate the project; and what groups, beyond the direct participants, will benefit from the project.
3. A comprehensive line item budget. See application package.
4. Resumes (not to exceed two pages each) for key personnel.
5. Confirmation letters from foreign co-sponsors noting their intention to participate in the program.
6. USIA compliance forms, furnished with the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of Program:* Quality of program plan, including quality and rigor of the training, workshops and other activities as called for in this request, thorough conception of project, and demonstration of how participants' needs will be met.

2. *Institutional Capability:* Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered.

3. *Project Personnel:* Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

5. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity. Agenda and plan should adhere to the program overview described above.

6. *Ability to Achieve Program Objectives:* Objectives should be realistic and attainable. Proposals should clearly demonstrate how the grantee institution will meet the program's objectives.

7. *Cross-Cultural Sensitivity/Area Expertise:* Proposal should demonstrate sensitivity to historical, linguistic and other cross-cultural factors, and relevant knowledge of South Africa.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding and include maximum sharing of information.

9. *Cost-Effectiveness:* The overhead and administrative components should be as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should show cost-sharing through direct funding contributions and in-kind support from the prospective grantee institution.

11. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

12. Evidence of program sustainability after the expiration of USIA funded grant.

Notice

The terms and conditions published in the RFP are binding any may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 5, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: May 6, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–11596 Filed 5–12–94; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 92
Friday, May 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 8–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Wed., May 25, 1994 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
9:00 a.m.	IR–0589—Thomas H. Hancock.
	IR–2463—William R. Clem.
	IR–1140—Gerald Stewart.
10:00 a.m.	IR–2929—Eric Jecubic.
	IR–2930—Philip Jecubic.
10:30 a.m. ..	IR–1768—William L. Jenson.
11:00 a.m. ..	IR–0980—Richard J. Hallwood.
2.00 p.m. ...	IR–2744—Frank Burroughs.
3:00 p.m. ...	IR–2433—Thomas G. Pobanz.
3:30 p.m. ...	IR–1831—Eva J. Tabe.
4:00 p.m. ...	IR–2756—Delta Geotechnical.
Thurs, May 26, 1994 at 10:30 a.m..	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone (202) 616–6988.

Dated at Washington, DC on May 11, 1994.

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–11863 Filed 5–11–94; 3:10 pm]

BILLING CODE 4410–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–16]

TIME AND DATE: May 18, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–699 (Preliminary) (Stainless Steel Angles from Japan)—briefing and vote
5. Inv. Nos. 701–TA–355 and 731–TA–660 (Final) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote
6. Outstanding action jacket: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: May 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11828 Filed 05–11–94; 12:17 pm]

BILLING CODE 7020–02–U

federal register

Friday
May 13, 1994

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 570

Child Labor Regulations, Orders and Statements of Interpretation; Proposed Rules

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

RIN 1215–AA89

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is proposing revisions in subpart C (Child Labor Reg. No. 3) to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports. The proposed exception limits such employment to outside school hours and to duties customarily performed by typical sports attendants (e.g., batboys/girls, ballboys/girls, etc.). Technical modifications are proposed in the procedure for obtaining occupational variations for 14- and 15-year-olds enrolled in Work Experience and Career Exploration Programs. Among other revisions to update these regulations, the Department is also proposing to delete the procedures relating to hazardous occupation determinations in Subpart D (Child Labor Reg. 5), which, for the most part, have been replaced by the notice-and-comment requirements of the Administrative Procedure Act.

DATES: Comments are due on or before July 12, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S3506, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW. Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The proposed rules contain no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The information collection requirements contained in § 570.35a, which are not modified by this proposal, were previously approved by the Office of Management and Budget under OMB control number 1215–0121. The general FLSA information collection requirements (including requirements contained in part 570) were approved by the Office of Management and Budget under the control number 1215–0017.

II. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 14 years for employment in most nonagricultural occupations. The Secretary of Labor is authorized to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining, and during periods and under conditions which will not interfere with their schooling or with their health and well-being. These provisions also permit 16- and 17-year-old minors to be employed in the nonagricultural sector, without hours or time limitations, subject to prohibitions on occupations found and declared by the Secretary of Labor to be particularly hazardous, or detrimental to the health or well-being of minors under age 18. In agriculture, minors 14 and older may be engaged in general employment, subject to prohibitions on occupations declared particularly hazardous by the Secretary of Labor. Additionally, in agriculture 12- and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent is also employed. Under very limited waiver conditions, 10- and 11-year-olds may be employed outside of school hours in agriculture as hand harvesters of short season crops for a maximum annual period of eight weeks.

The regulations for 14-and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR Part 570. Reg. 3, as amended, limits the hours that 14- and 15-year-olds may work to:

(1) Outside school hours;

(2) Not more than 40 hours in any one week when school is not in session;

(3) Not more than 18 hours in any one week when school is in session;

(4) Not more than 8 hours in any day when school is not in session;

(5) Not more than 3 hours in any day when school is in session; and

(6) Between 7 a.m. and 7 p.m.; except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., nonschool weeks. Also, 14- and 15-year-olds enrolled in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours.

Child Labor Reg. 3 permits work by 14- and 15-year-olds in certain occupations in retail, food service, and gasoline service establishments, and prohibits their employment in certain other work, including work prohibited by hazardous occupational orders.

The Department is proposing an exception from the above permissible hours and time standards for 14- and 15-year-olds employed as attendants in professional sports. The Department suspended enforcement of the child labor regulations as applied to batboys/girls employed in professional baseball during the 1993 baseball season, and subsequently extended the policy to attendants in other professional sports while reviewing such employment under the child labor regulations.

During 1986 and 1987, the Department conducted a study at the request of the Congress[1] to determine whether a change in the permissible hours of employment for batboys and batgirls would be detrimental to their well-being and whether any changes to existing standards should be proposed. The Department concluded that changes in permissible hours and time standards for batboy/girl work would not be detrimental to their health and well-being. The Department surveyed 157 professional league baseball teams and conducted selected on-site interviews with parents, teachers, team owners, and batboys/girls and found that youths genuinely enjoyed the experience. The Department could find no evidence that school grades were adversely affected by such work. The Department also advised the Congress that regulatory modifications, rather than legislative change, would be the best vehicle to address the matter of permissible hours for batboys/girls.

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[1] See section 801, Public Law 99–425 (September 30, 1986).

The Department's Child Labor Advisory Committee (CLAC), established in 1987 to provide advice and guidance in the development of possible proposals to change existing standards, recommended that existing hours and time of work standards be retained for 14- and 15-year-olds employed as sports attendants, including batboys/girls; and that the work performed in such activity be limited to traditional duties, i.e., putting out and taking in field equipment, running errands for players, and supplying the umpire with balls. While the Committee's advisory view was taken into consideration, the Department also continued to consider other pertinent information, including inquiries received from interested parties concerning the employment of youth in sports-related activities, such as scorekeepers, concession stand helpers, ball monitors and sideline officials. One inquiry concerned conforming the Federal child labor regulations to a State of Wisconsin provision which permits youths under age 14 to be employed by high schools as ball monitors and sideline officials at football games. Another was received from the Grant County (Kansas) Recreation Commission concerning 14- and 15-year-olds employed as scorekeepers and concession stand helpers in summer softball, baseball, and other sports programs. Also, the National Association of Professional Baseball Leagues, Inc. (NAPBL) petitioned[2] the Department in June 1993 to revise the regulation to permit the employment of 14- and 15-year-olds as batboys for professional baseball clubs. According to the NAPBL, existing hours and time-of-day standards effectively preclude baseball teams from lawfully employing youth under the age of 16. The NAPBL contended further that such employment is not adverse to the health and well-being of youth and that the denial of the batboy/girl experience is inconsistent with the intent of the FLSA's child labor provisions.

Some employers are covered by all of FLSA's provisions, while others are covered by the FLSA but may be exempt from its minimum wage and overtime provisions though not its child labor provisions.[3] Other employers that are not covered by the FLSA are subject to varying State child labor requirements. The practice of providing sport-attendant experiences to America's youth is a longstanding tradition. As a consequence, many professional and semi-professional sports teams, i.e., baseball, basketball, etc., have violated Federal child labor regulations by employing underage youth, particularly 14- and 15-year-olds, as sports-attendants.

The Department believes that a change in the existing Federal hours and times standards to allow employment of 14- and 15-year-olds as batboys/girls, ballboys/girls, or in other sports-attendant capacities would not be inconsistent with FLSA's oppressive child labor provisions and, therefore, proposes a narrow exception from the requirements of Child Labor Reg. 3 for such work. Specifically, the proposed exception is limited to employment by professional sports organizations and would apply only if the duties performed are traditional in nature and the work is outside regular school hours. Thus, the current restrictions when school is in session, i.e, 3-hour daily limit, 18-hour weekly limit, and 7 p.m. end-of-day time restriction, and the current 9 p.m. end-of-day time restriction when school in not in session would not apply to 14- and 15-year-old sports-attendants.

The Department recognizes that a delicate balance exists between the value of jobs that provide positive, formative experiences, and the possible negative effects that excessive employment of youth can have on their academic performance and their health and well-being. The Department believes that the proposed change for 14- and 15-year-olds in sports attending activities will not have an adverse effect on their health, well-being, or educational development. Further, the Department believes that the employment opportunities for 14- and 15-year-olds as provided herein is consistent with the purpose of the FLSA to permit safe and healthy employment opportunities under conditions which protect the health, well-being, and schooling of such young workers. See 29 U.S.C. 203(l).

In addition, the Department proposes to delete the regulations at 29 CFR part 570, subpart D (Child Labor Reg. 5). These regulations provide a procedure for the Secretary to promulgate or amend hazardous occupation orders (HOs), which identify occupations in which employment of minors under 18 years of age is prohibited because the Secretary, pursuant to section 3(l) of the Act, has determined that the occupations are particularly hazardous for such workers or detrimental to their health or well-being. The Department proposes to repeal Child Labor Reg. 5, because its procedural requirements are no longer necessary, and because the continued existence of the regulation poses the potential for confusion regarding the process to be utilized by the Secretary in the review, amendment, and promulgation of HOs.

Child Labor Reg. 5 was promulgated in 1938, immediately after the enactment of the FLSA (3 FR 2640 (1938)). Although neither the FLSA nor other laws required such procedures, the Children's Bureau, which at that time was charged with administration of the FLSA child labor provisions, prescribed the process so that the public would be informed of the Department's intentions regarding the creation or amendment of restrictions on the employment of minors in hazardous occupations. The original Child Labor Reg. 5 identified certain mandatory steps, including public hearings, to be taken in HO promulgation. The Congress, however, imposed a standardized procedure in 1946 for all Federal agencies to follow when issuing or amending regulations. The procedures in this law, the Administrative Procedure Act (APA), 60 Stat. 237, provide greater administrative flexibility than the process in Child Labor Reg. 5, in that, for example, the APA does not mandate a public hearing in every case prior to promulgation of a regulation. There have been no changes to Child Labor Reg. 5 except for a technical amendment in 1961 (26 FR 5005 (1961)) to more align the HO process with APA requirements, i.e., hearings were identified among various optional steps which the Department could utilize.

It is the Department's view that Child Labor Reg. 5 is no longer necessary. The procedures set out in this regulation are not substantively different from the APA requirements which control DOL rulemaking, including promulgation of HOs. While the optional steps identified in the regulation are matters which the Department may choose to undertake in the promulgation of particular HOs, these steps—involving study, drafting, examination, and review of options and standards—are integral parts of the Department's deliberative, policy-making process and, thus, they need not and should not be set out in detail in regulations. Further, it is the Department's view that the regulation potentially creates confusion in that the Child Labor Reg. 5 procedures may be viewed incorrectly as mandatory steps for promulgation of HOs. The proposed repeal of Child Labor Reg. 5 will eliminate the possibility of confusion.

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[2] Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may either schedule hearings or make other provision for affording interested parties an opportunity to be heard.

[3] For example, section 13(a)(3) of the FLSA exempts any employee employed by an amusement or recreational establishment from the minimum wage (section 6) and overtime (section 7) provisions of the Act, but not from the child labor provisions (section 12), if the establishment does not operate for more than seven months in any calendar year, or if during the preceding calendar year the establishment's average receipts for any six months were not more than 33½ percent of its average receipts for the other six months.

The Department is also proposing a technical modification in the regulations that is considered necessary and appropriate in connection with the Work Experience and Career Exploration Program (WECEP) to facilitate applications for certification under this program. Section 570.35a of the regulations provides for the employment of 14- and 15-year-olds in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP).[4] A condition for approval of such programs is that they provide sufficient safeguards to ensure that the employment will not interfere with the schooling of the minors or with their health and well-being. Enrollees in approved WECEPs may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours, in occupations other than:

(1) Those in manufacturing and mining;

(2) Those declared to be hazardous for the employment of minors under 18 years of age (set forth in subpart E of the regulations); or

(3) Those declared to be hazardous for employment of minors below the age of 16 in agriculture (set forth in subpart E–1 of the regulations).

The regulations at § 570.35a(c)(3) allow the Administrator of the Wage and Hour Division to approve a variance from the prohibited occupations in individual cases or classes of cases after notice to interested parties and an opportunity to furnish views. In State Educational Agency applications for WECEP program approval and requests for variances from the Reg. 3 occupations restrictions in those programs pursuant to § 570.35a(c)(3), the Department has consistently approved variances for particular activities which, within the operation of programs that meet all the WECEP criteria, have been determined by the Department not to interfere with the health and well-being of the 14- and 15-year-olds enrolled in the programs. To provide pertinent guidance to the State Educational Agencies and other interested parties, the Department proposes to amend the WECEP regulations to specify that the following activities will be ordinarily considered to be acceptable for participants in approved WECEP programs:

(1) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;

(2) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;

(3) Retrieving and/or placing food in coolers/freezers;

(4) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the minor's weekly hours worked; and

(5) Operating noncommercial dishwashers.

In effect, the revised WECEP regulations would contain a limited exception to the Reg. 3 occupations restrictions for WECEP participants engaged in the specified activities. Further, in order to preserve the Department's discretion to modify the Reg. 3 restrictions in special circumstances where a WECEP program applicant can demonstrate that the program will provide safe and suitable employment, the WECEP regulation will continue to contain a provision for obtaining variances from occupational restrictions similar to variance procedures under other programs administered by the Department's Wage and Hour Division, e.g., see § 5.14 of 29 CFR part 5 (Davis-Bacon and Related Acts) and § 4.123 of 29 CFR part 4 (McNamara-O'Hara Service Contract Act).

In addition, the Department is proposing to delete the exception contained in § 570.35(b) for enrollees in work training programs conducted under the Economic Opportunity Act of 1964. This Act has been repealed and the exception is no longer appropriate.

Executive Order 12866

The Department believes that this proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866. It proposes to change the permissible hours and time standards to permit greater flexibility in the employment of 14- and 15-year-olds as professional sports attendants. While the changes proposed are expected to enhance opportunities for employment, the impact on overall employment levels of 14- and 15-year-olds is modest. Other proposed changes are technical in nature and are expected to have only a minor impact on the employment of 14- and 15-year-olds. Accordingly, these changes are not expected to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed change to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports has narrow application and will affect only a limited number of employers of which some may be considered small entities. Although the other technical changes may affect small entities, the impact is believed to be insignificant. For these reasons, the Department believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Accordingly, 29 CFR part 570 of the Code of Federal Regulations is proposed to be amended as set forth below.

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[4] Twelve States have Departmental approval to operate WECEP programs in the 1992–94 school years.

Signed at Washington, DC., on this 4th day of May 1994.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

1. The authority citation for part 570 continues to read as follows:

Authority: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

2. In § 570.35 of subpart C, paragraph (b) is proposed to be revised to read as follows:

§ 570.35 Periods and conditions of employment.

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(b) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, i.e., baseball, basketball, football, soccer, tennis, *etc.*, the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, *etc.* during play; providing ice, drinks, towels, *etc.*, to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, *etc.*; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

3. Section 570.35a(c)(3) of subpart C is proposed to be revised to read as follows:

§ 570.35a Work experience and career exploration programs.

* * * * *

(c) * * *

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except ordinarily for the following if expressly identified in the program application:

(i) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;

(ii) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;

(iii) Retrieving and/or placing food in coolers/freezers;

(iv) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the weekly hours worked; and (v) Operating noncommercial dishwashers. Employment in other activities may be approved by the Administrator of the Wage and Hour Division in acting on the program application if the Administrator finds that the applicant has demonstrated that the terms and conditions of the proposed employment will not be particularly hazardous or detrimental to the health or well-being of the minor enrolled in an approved program.

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Subpart D—[Removed and Reserved]

4. Subpart D, consisting of §§ 570.41 through 570.49, is proposed to be removed and reserved.

[FR Doc. 94–9946 Filed 5–12–94; 8:45 am]

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

RIN 1215–AA09

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is considering proposing revisions in the child labor regulations issued pursuant to the Fair Labor Standards Act (FLSA), 29 CFR part 570, which set forth the criteria for the permissible employment of minors under 18 years of age. In particular, subparts C and E of these regulations are under review. Subpart C (Child Labor Reg. 3) specifies permissible hours and time standards, as well as occupational limitations, for 14- and 15-year-old employees. Subpart E identifies occupations deemed particularly hazardous for, or detrimental to the health or well-being of, employees under 18 years of age. This advance notice of proposed rulemaking seeks the views of the public on needed changes to these regulations, and also with respect to other aspects of the regulations.

DATES: Comments are due on or before August 11, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S3506, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 14 years for employment in most nonagricultural occupations. The Secretary of Labor is authorized to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining, and during periods and under conditions which will not interfere with their schooling or with their health and well-being. These provisions also permit 16- and 17-year-old minors to be employed in the nonagricultural sector, without hours or time limitations, subject to prohibitions in occupations found and declared by the Secretary of Labor to be particularly hazardous, or detrimental to the health or well-being of minors under age 18. In agriculture, minors 14 and older may be engaged in general employment, subject to prohibitions on occupations declared particularly hazardous by the Secretary of Labor. Additionally, in agriculture 12- and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent is also employed. Under very limited waiver conditions, 10- and 11-year-olds may be employed outside of school hours in agriculture as hand harvesters of short season crops for a maximum annual period of eight weeks.

The regulations for 14- and 15-year olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR part 570. Reg. 3, as amended, limits the hours that 14- and 15-year-olds may work to:

(1) Outside school hours;

(2) Not more than 40 hours in any one week when school is not in session;

(3) Not more than 18 hours in any one week when school is in session;

(4) Not more than 8 hours in any day when school is not in session;

(5) Not more than 3 hours in any day when school is in session; and

(6) between 7 a.m. and 7 p.m., except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., nonschool weeks. Also, 14- and 15-year-olds enrolled in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours.[1]

Child Labor Reg. 3 permits work by 14- and 15-year-olds in certain occupations in retail, food service, and gasoline service establishments, and prohibits their employment in certain other work, including work prohibited by hazardous occupational orders.

Pursuant to the FLSA child labor provisions, the Secretary has issued standards governing employment of minors under 18 years of age in nonagriculture occupations. The 17 nonagricultural hazardous occupations orders (HOs) now in effect are contained in 29 CFR part 570, subpart E. Prohibitions established by these HOs apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis irrespective of the industry in which performed. The current nonagricultural HOs deal with manufacturing and storing explosives (HO 1); motor-vehicle driving and outside helper (HO 2); coal mining (HO 3); logging and sawmilling (HO 4); power-driven woodworking machines (HO 5); exposure to radioactive substances (HO 6); power-driven hoisting apparatus (HO 7); power-driven metal-forming, punching, and shearing machines (HO 8); mining, other than coal mining (HO 9); slaughtering, or meat-packing, processing, or rendering (HO 10); power-driven bakery machines (HO 11); power-driven paper-products machines (HO 12); manufacturing brick, tile, and kindred products (HO 13); power-driven circular saws (HO 14); wrecking, demolition, and ship-breaking operations (HO 15); roofing operations (HO 16); and excavation operations (HO 17).

Occupations in agriculture found particularly hazardous and, consequently, prohibited by the Secretary for children below the age of 16 are contained in subpart E–1 of 29 CFR part 570.

Because of changes in the workplace and the introduction of new processes and technologies since the adoption of current regulatory standards, as well as changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences, the Department is undertaking a comprehensive review of the criteria for child labor employment, and is considering proposing revisions to Regulations, 29 CFR part 570. Accordingly, this advance notice of proposed rulemaking is being published to obtain the views of the public with respect to the matters set out below as well as to any other issues of interest under this regulation.

I. Permissible Hours, Time-of-day, and Occupational Standards Under Child Labor Reg. 3

Since the regulations relating to hours, time and occupations were last amended, the Department has engaged in periodic reviews of the appropriateness of these regulations.

Thus, for example, in 1982, the Department published a proposal in the **Federal Register** to, among other things, modify the permissible periods of work for 14- and 15-year-olds.[2] This proposal would have increased the maximum daily hours from 3 to 4 hours on a school day, and increased the maximum weekly hours of employment when school is in session from 18 to 24 hours. The proposal would have further permitted 14- and 15-year-olds to work up to 36 hours in any week when school was in session for only a portion of the week due to holidays or vacation periods. Finally, this proposal would have generally expanded the end-of-day time restriction from 7 to 9 p.m. on school days, and would have established a 10 p.m. end-of-day limit on any day during the summer months or preceding a nonschool day. The 1982 proposal generated considerable public interest and controversy. The Department subsequently suspended the proposal from further consideration, and it was not implemented as a final rule.[3]

In August 1987, the Department established a Child Labor Advisory Committee (CLAC)[4] to provide advice and guidance in the development of possible proposals to change existing standards. In its review of hours and time of work issues, the Committee recommended that existing hours and time of work standards be retained without modification.

In the U.S. Congress, bills have been introduced in the House and Senate that include, among other things, hours and time restrictions for 14- and 15-year-old employees. Bills to reform the FLSA's child labor provisions, H.R. 1106, introduced February 24, 1993, and S. 86, introduced January 21, 1993, would allow 14- and 15-year-olds to work only for 3 hours a day and 15 hours a week, or between the hours of 7 a.m. and 7 p.m. when school is in session. Under H.R. 1106, 16- and 17-year-old minors could not, for the first time, work more than 4 hours a day or 20 hours a week, or before 6 a.m. or after 10 p.m. when school is in session. These hours and time restrictions for 14- and 15-year-olds are similar to the existing regulations; except that the bills set a 15 hours-per-week limit (rather than the current, regulatory 18).

Under a model State child labor law drafted by the Child Labor Coalition (a child labor advocacy group of 35 organizations interested in updating child labor laws), the maximum hours of employment for 14- and 15-year-olds would be set at 15 hours a week while in school, and 30 hours a week when school is not in session. For 16- and 17-year-olds, the maximum work hours would be 30 when school is in session and 40 hours when it is not.

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[1] Twelve States had Departmental approval to operate WECEP programs in the 1992–94 school-years.

[2] 47 FR 31254, July 16, 1982; 47 FR 34166, August 6, 1982 (extending the comment period to January 13, 1983).

[3] 50 FR 17434, April 29, 1985 (DOL's Semiannual Regulatory Agenda).

[4] The CLAC was composed of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, State officials, and safety groups.

The Department has also continued to receive input from the public suggesting that certain changes be made in the regulations.[5] The National Restaurant Association (NRA), the International Association of Amusement Parks and Attractions (IAAPA), and the Fresno (California) Private Industry Council, among others, have requested that the Department change the regulations. Correspondence has also been received from individual employers, Members of Congress, and members of State legislatures.

In 1992, for example, the NRA noted that nearly 20 percent of employed teens work in food service occupations and that roughly 25 percent of the industry's hourly workers are in their teens. The NRA also pointed to a high overall teen unemployment rate and suggested a number of reforms to the regulations, including:

(1) Allowing 14- and 15-year-olds to work up to 24 hours a week when school is in session for four days or less due to holiday or vacation breaks (currently limited to 18 hours during weeks when school is in session for one or more days);

(2) Expanding the limit to 4 hours on Sundays through Thursdays, i.e., days followed by school days, and to 8 hours on Fridays and Saturdays (currently limited to 3 hours on school days);

(3) Changing the 7 p.m. limitation during the school year to 9 p.m. on Sundays through Thursdays and to 11 p.m on Fridays and Saturdays; and

(4) Changing the 9 p.m. limitation during the summer vacations (from June 1 to Labor Day) to 11 p.m.

Reforms suggested by the International Association of Amusement Parks and Attractions (IAAPA) include:

(1) Allowing 14- and 15-year-olds to work up to 24 hours a week when school is in session for 5 days, and up to 36 hours a week when school is in session for any part of a week due to holidays or vacation (with the actual hours limit determined by subtracting from 40 hours, 4 hours for each day that school is in session during the partial school week);

(2) Changing the current 3-hours-per-day limit when school is in session to 4 hours; and

(3) Changing the 9 p.m. end-of-day limitation during the summer period to 11 p.m.

The Department is also aware of the child labor standards established by State governments. In this regard, nearly all States have employment restrictions applicable to young workers and, although many have adopted standards similar to the Federal standards for 14- and 15-year-olds, the restrictions vary significantly. For example, most States limit the number of hours that may be worked in a day when school is not in session to 8 hours; only three States allow more than 8 hours of work in a day when school is not in session. Most States limit the number of hours that may be worked in a week when school is not in session to 40 hours; fifteen States, however, permit work in excess of 40 hours when school is not in session, with the number of hours allowed ranging from 44 to 56. With respect to the number of hours that may be worked in a week when school is in session, a large number of the States do not have any specific restrictions. Eighteen States restrict work to no more than 18 hours; two States restrict work to 16 and 15 hours, respectively; two States restrict work hours to 18 hours but allow more hours when school is not in session for a full week; and seven other States have provisions that allow work in excess of 20 hours a week when school is in session.

Of the States that restrict daily work hours, 20 provide for a 3-hour limitation on a school day, whether or not the following day is a school day; one State sets a 3-hour limit on days followed by a school day; and one State permits longer hours on Saturdays and Sundays. A daily limit of 4 hours is allowed by seven States, with one of these States permitting additional hours on Fridays and on a school day preceding a day when school is not in session.

Four States have established maximum permissible daily and/or weekly combined school and work hours, i.e., 10 total hours of combined school and work on a daily basis, or 48 total hours of combined school and work on a weekly basis.

In 28 States, work beyond 7 p.m. is prohibited except during the summer, on a holiday, or on a day preceding a day when school is not in session, when work until 9 p.m. is allowed in 26 of these States, and until 10 p.m. in the other two States. Two additional States prohibit work after 7 p.m. at all times. An additional 19 States allow work at least until 8 p.m.; another five States permit work until 10 p.m.

In addition to allowing more working hours during the summer, State standards often distinguish between days preceding a school day from those preceding a non-school day. Several States also make a distinction between full school weeks and weeks when school is in partial session because of holiday and vacation time, permitting more hours to be worked in partial school weeks.

Under the Department's Work Experience and Career Exploration Program (WECEP), which began in 1969, 14- and 15-year-old enrollees were initially permitted to work up to 28 hours per week when school was in session and up to 4 hours on a school day, any portion of which could be during school hours. Studies of WECEP indicated that limited labor market experience in a controlled school setting had a definite positive impact on the scholastic performance and school attendance of participating 14- and 15-year-old students. These studies also established that the optimum hours—at which students attained the greatest educational benefits—were fewer than the maximum hours originally allowed. As a result, in 1975, the permissible hours of employment under WECEP were reduced to 3 hours per day and 23 hours per week, and these revised standards were adopted in final regulations published in the **Federal Register** on September 3, 1975. See 29 CFR 570.35a(d).

The Department is also aware that some employers of young workers have adopted special programs designed to achieve complementary integration of educational and work experiences. Such employers may, for example, ascertain young workers' grade point averages (GPA) at the time of hiring; arrange work schedules, subject to parental consent, to accommodate the scholastic needs of students; allow young workers to study at the workplace; give bonuses for superior academic achievement or school attendance; monitor young workers' academic performance and school attendance during employment; and ensure that students, prior to hiring, know their employment rights and the regulations applicable to minors.

The Department seeks comments on whether there is a need for changes in the requirements of Child Labor Reg. 3 for students participating in programs under statewide School-to-Work Opportunities systems advocated by the School-to-Work initiative jointly sponsored by the Departments of Education and Labor (see 59 FR 5266 (February 3, 1994) and 59 FR 11154 (March 9, 1994)). Programs developed under this initiative are intended to give youth access to education and training opportunities that will prepare them for high-skill, high-wage careers.

The Department, for the reasons discussed above, is particularly interested in obtaining public comment on the appropriateness and feasibility of the following matters:

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[5] Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may either schedule hearings or make other provisions for affording interested parties an opportunity to be heard.

1. Should greater flexibility be allowed in the permissible hours of work for 14- and 15-year-olds whose employers have a formal "employer-parent-school" program that links meaningful work experiences with support for the attainment of the student-employee's educational goals and ongoing academic performance? Commenters are requested to include specific recommendations as to the standards or criteria that should be considered for inclusion in any future rulemaking to define such special programs, and as to the changes in permissible work hours that would be appropriate for 14- and 15-year-olds whose employers maintain such programs. Commenters are also requested to provide information regarding the implications for employer recordkeeping that might be necessary for the Department to monitor compliance with the standards for any such programs, and recommendations for how these recordkeeping requirements should be addressed.

2. The current regulations contain an end-of-day restriction of 7 p.m. on days when school is in session. A less restrictive time of 9 p.m. is permitted during the summer vacation period defined in the regulations as June 1 through the Labor Day holiday. When school is in session, the regulations make no distinction between a day preceding a school day and one preceding a non-school day, i.e., typically Fridays, Saturdays, and days before a school holiday. Should there be different restrictions on times of work on days preceding a non-school day and, if so, why? Would any such changes interfere with the schooling, health, or well-being of young workers? If an end-of-day restriction different from 7 p.m. is appropriate on days preceding a non-school day, what should the time restriction be on such days, and why? Should the Department consider a later end-of-day time for work during the summer months when school is not in session? If so, what should that time be and why?

3. The regulations currently limit the daily hours that may be worked by 14- and 15-year-olds to 3 hours on days when school is in session; 8 hours when school is not in session. Should a distinction be made in the number of hours that may be worked on a day preceding a non-school day (typically Friday, Saturday, and the day before a school holiday) and, if so, how many hours should be permitted and why?

4. Weekly hours for 14- and 15-year-olds are limited by the regulations to 18 hours when school is in session. While some States permit more hours, only two limit permissible weekly hours to less than the 18-hour standard, one to 16 and another to 15. On the other hand, the child labor reform bill pending in the U.S. House of Representatives (H.R. 1106) and the Model state law drafted by the Child Labor Coalition would limit the number of hours that may be worked each week to 15. Should the existing Federal standard be changed and, if so, how many hours should be permitted and why? Should a distinction be made for those weeks when school is in session less than five days?

5. Traditionally, schools were not "in session" during the summer months and the regulations reflected this common schedule by providing less-restrictive hours and time limitations during the summer vacation period between June 1 and the Labor Day holiday. School systems, however, have begun converting to non-traditional attendance schedules and remain open year-round. For example, some public and private schools have implemented academic quarter-year, trimester, or other alternative attendance schedules under which the schools schedule classes year-round, but not all students are attending school at any point in time. For these schools, the traditional concept of the "summer vacation break" between June 1 and Labor Day has become irrelevant. Additionally, home education programs are now more common, not only in school jurisdictions where the public schools operate on uniform attendance calendars applicable to all students, but also in school jurisdictions where the public schools operate year-round or on a platoon system. Should the regulations be changed to accommodate different structures for when school is "in session" and what are the particular changes that should be made to reflect the characteristics of alternative school schedules? If the concept is based on the schedule for school attendance of individual student-employees (rather than the entire school system), how do employers and student-employees determine when different hours restrictions are applicable and what records would have to be maintained to ensure compliance?

The Department is also reviewing the occupational provisions contained in Reg. 3 to determine what changes, modifications, or clarifications, if any, are appropriate for 14- and 15-year-old employees. The Department is interested in obtaining public comment on all aspects of these provisions, including the following matters:

1. Section 570.34(b)(5), promulgated prior to the advent of the fast food industry, prohibits cooking by 14- and 15-year-olds employed by retail and food establishment cooking at soda fountains, lunch counters, snack bars, or cafeteria serving counters. This prohibition has been interpreted by the Department to allow cooking only when the activity is in "plain view" of customers. Thus, the cooking prohibition applies to full service restaurants and certain fast food restaurants where the cooking configuration does not permit customers to plainly view the cooking activity. Should cooking be permitted in retail and food establishments, and, if so, what restrictions, if any, would be appropriate to ensure the safety and health of young workers? Should all cooking be prohibited, and, if so, why?

2. Section 570.33(b) prohibits the employment of 14- and 15-year-olds in any occupation which involves "* * * any power-driven machinery other than office machines." The operation of certain power-driven devices, equipment, and tools in retail, food service, and gasoline service establishments is expressly permitted by § 570.34. In such industries, 14- and 15-year-olds may, for example, operate vacuum cleaners, floor waxers, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders. Fourteen- and 15-year-olds are also permitted to operate office machines in connection with office and clerical work and cash registers in connection with retail sales work. Should any of the machines, *etc.*, expressly permitted in Reg. 3 be reconsidered because their use adversely affects the health and well-being of such workers? If so, why? Are there power-driven machines, *etc.*, in the contemporary workplace not now expressly permitted by Reg. 3 which 14- and 15-year-olds should be allowed to operate? If so, identify the machines and explain why their use should be permitted. Also, questions periodically arise about the meaning of "power-driven" and whether the term includes tools, equipment, *etc.*, that are activated by battery power, i.e., many tools and devices are now power-activated by rechargeable battery units. Should the term "power-driven" include equipment, tools, etc. powered by such sources, and why or why not?

3. In addition, consideration is being given to two clarifying modifications which would incorporate existing Departmental enforcement policy into the regulations. Section 570.34(b)(7) prohibits 14- and 15-year-olds from working in freezers and meat coolers. Such workers are prohibited from working as dairy stock clerks, meat

clerks, deli clerks, produce clerks, or frozen-food stock clerks where their duties would require them to enter and remain in coolers or freezers for prolonged periods. Inventory and cleanup work involving prolonged stays in freezers and coolers also is prohibited. On the other hand, food preparers in fast food restaurants or cashiers in grocery stores whose duties require entry to such refrigeration equipment only momentarily to retrieve items are not considered as working in coolers and freezers for enforcement purposes. Because this traditional interpretation of the "cooler and freezer" prohibition is not specifically contained in the regulations, a regulatory clarification may be appropriate.

Similarly, a regulatory clarification to reflect longstanding policy concerning solicitations for newspaper subscriptions may be appropriate. Section 13(d) of the FLSA exempts from the minimum wage, overtime, and child labor provisions (§§ 6, 7, and 12) "* * * any employee engaged in the delivery of newspapers to the consumer." Accordingly, such work is outside the scope of the child labor regulations. However, the Department has held, on the basis of a legal opinion from the Solicitor, that the "newspaper" exemption does not apply when the minor is performing nonexempt work such as participation in a sales blitz where newspaper subscriptions are solicited outside the assigned paper route for delivery by other delivery persons. Should this enforcement position be incorporated in the provisions of Child Labor Reg. 3?

The Department recognizes the delicate balance between the value of jobs that provide positive, formative experiences, and the negative effects that excessive hours of employment of youth can have on their academic performance, and their health and well-being. Public comments, which should include supporting data whenever available, are specifically invited on such relevant factors as:

(1) The need for safe and healthy employment opportunities for 14- and 15-year-olds;

(2) The biological developmental factors, such as muscle coordination and attention span, present in 14- and 15-year-olds which should be considered with regard to their conditions of employment;

(3) The educational needs of 14- and 15-year-olds and the effect on their academic success of longer and/or later hours of work;

(4) The correlation between longer and/or later hours of work and the safety and health of 14- and 15-year-olds;

(5) The correlation between employment opportunities for 14- and 15-year-olds and their personal and educational development; and

(6) The potential effects of specific changes in the regulations on the employment opportunities of 14- and 15-year-olds.

II. Nonagricultural Hazardous Occupations Orders for the Employment of Youth Under 18 Years of Age

The first seven HOs were developed under the direction of the Children's Bureau between 1939 and 1946. In 1946, authority for the program was transferred from the Children's Bureau to the Department of Labor under Reorganization Plan No. 2. HOs 8 through 17 were issued by the Bureau of Labor Standards between 1950 and 1963. In the intervening years, the Department has made some clarifying modifications to these HOs that largely incorporate Departmental interpretations and enforcement policy, and hazardous occupations in agricultural were promulgated in 1970.

As a result of various recommendations made by the Department's Child Labor Advisory Committee (CLAC), a notice of proposed rulemaking was published to clarify or modify HO 2, HO 10, and HO 12 on October 23, 1990 (55 FR 42812). The final rule, published on November 20, 1991 (56 FR 58626), clarified the existing HOs to:

(1) Eliminate exemption procedures contained in HO 2 which allowed minors under 18 years of age to work as school bus drivers;

(2) Specify that restaurants, fast food establishments, and other retail establishments are subject to HO 10 prohibiting minors under the age of 18 from using power-driven meat processing equipment;

(3) Specifically provide that meat slicers are meat processing equipment within the meaning of the HO 10 prohibitions; and

(4) Amend HO 12 to expressly prohibit minors under the age of 18 from using power-driven paper baling machinery in the processing of waste paper.

The CLAC made a number of additional recommendations which were not included in the HO 2, 10, and 12 rulemaking. For example, the CLAC recommended that HO 10 be amended to also include bacon slicing machines in the list of prohibited machines, and to prohibit the use of such machines without regard to the purpose of their use, i.e., power-driven meat processing machines used primarily for processing products other than meat. The CLAC also was of the view that food processing in industries other than meat processing, such as poultry, fish, and seafood processing, should be studied by the Department to determine the need for protecting young workers from hazardous activity. With respect to HO 2, the CLAC made several recommendations, including defining and delimiting the terms "occasional and incidental" driving and "outside helper," specifically prohibiting the operation of trucks on private property, and specifically excluding motorcycles, mopeds, or similar vehicles from the "occasional and incidental" exception. With respect to HO 11, the CLAC recommended a complete ban on the operation of all power-driven bakery machinery, and also recommended further study of power-driven paper products machines addressed in HO 12.

Of particular concern to the CLAC was the lack of sufficient and relevant data to support comprehensive review of existing HOs or findings that certain contemporary occupations, processes, machinery and worksites are particularly hazardous for employment of youths under age 18, or detrimental to their health or well-being. The lack of comprehensive statistics on minors injured in the workplace has been a longstanding concern of the Department. Historically, some limited information was generated, largely from secondary sources and statistical records from the few States that compiled worker compensation data, to support the case for each of the existing HOs. Fundamental to some of the existing HOs (e.g., HO 15, shipbreaking), however, was the notion that work found to be particularly hazardous or detrimental to the health and well-being of adult workers would be injurious to minor workers.

To address this concern, the Department is continuing its efforts to develop reliable youth injury statistics through enhancements of information reported by the Bureau of Labor Statistics (BLS). BLS is redesigning its Occupational Safety and Health Statistical reporting system to collect more comprehensive work-related injury and illness data on all workers, including young workers. This new system, the Survey of Occupational Injuries and Illnesses, will collect information from about 280,000 establishments from a sampling frame of approximately six million establishments. The new survey will include data by occupation, age, gender, race, and length of service with details on, among other things, the nature of the injury/illness, the part of body affected, the primary and secondary sources of the injury/illness, and the event or exposure leading to the injury/illness.

BLS has developed another major safety and health data reporting system with its Census of Fatal Occupational Injuries program. This data base includes information on fatally injured workers (industry, occupation, age, sex, and race) and the fatal events (nature of the injury and how it happened).

The Department believes that such injury data is essential to support ongoing comprehensive and systematic reviews of occupations, processes, machinery, and worksites which are particularly hazardous for workers under 18 years of age, or detrimental to their health or well-being. While such data will enhance the Department's ability to pinpoint patterns of injuries and illness by various characteristics, i.e., problems areas, specific information about workplaces, processes, and machines causing injuries or illness must still be identified, e.g., data can indicate that a "machine" was the object which produced injuries in a particular industry, but specific information on the type of machine and/or its peculiar characteristics may continue to be a key part of HO determinations.

The Department's review of State child labor laws supports the view of the CLAC that the existing HOs need to be revisited and that contemporary circumstances may warrant new or different protections for minors under the age of 18. The standards in those States that regulate employment under age 18 prohibit employment on certain types of machines, in work involving hazardous substances, in hazardous locations, in dangerous occupations, and in specific industries. While specific prohibitions vary widely among these States, a significant number of States have promulgated work prohibitions in areas of particular interest to the Department: At least nine States (Connecticut, Florida, Iowa, Louisiana, Maryland, Minnesota, New Jersey, New York, and Washington) prohibit exposure to carcinogenic, corrosive or toxic substances; a number of States (Arkansas, Connecticut, Delaware, Florida, Maryland, and Pennsylvania) prohibit work on electric apparatus or wiring; four States (Illinois, North Dakota, Washington and Wisconsin) now prohibit exposure to body fluids and infectious agents; and several States (Colorado, Connecticut, Florida, Minnesota, and Washington) place restrictions on work above specified heights.

Further, the Department is aware of Congressional interest in the updating of workplace protections for minors under the age of 18. The bills referred to above, H.R. 1106 and S. 86, would direct the Secretary of Labor to find and declare HOs prohibiting the employment of minors in poultry processing, fish and seafood processing, and in the handling of pesticides. In addition, H.R. 1106 would, among other things, eliminate any exemption from the motor vehicle operation prohibition in HO 2 except for driving by a 17-year-old that is "secondary and incidental" to the minor's main occupation; and expressly apply HO 10 to restaurants and fast food establishments.

While the Department is interested in obtaining public comment on any modifications, deletions, clarifications, or other changes that may be appropriate in existing HOs, and any areas of work that should be addressed by new HOs, public comment is specifically invited on the appropriateness and feasibility of the following:

1. Food Processing

HO 10 currently prohibits the employment of youth under 18 in certain occupations involving slaughtering, meat-packing or processing, or rendering. There are no comparable restrictions involving poultry processing and fish and seafood processing. Should the Department adopt restrictions in these industries, and, if so, are there particular machines or operations which should be restricted? To what extent are minors under 18 employed in such industries, and what is the nature of the work performed? Should such restrictions encompass all food processing? Do studies, injury and illness data, *etc.*, exist which support prohibiting the employment of minors under the age of 18 in all food processing activity?

2. Hazardous Wastes and Toxic Substances

Existing regulations do not address exposures to hazardous wastes and toxic substances in nonagricultural employment. In agriculture, the handling of or applying toxic agricultural chemicals by youth under the age of 16 is prohibited (see § 570.71(a)(9)). The model State child labor law drafted by the Child Labor Coalition, discussed above, would ban all occupations involving the loading, mixing, applying, handling, or working around or near any fertilizer, herbicides, fungicides, pesticides, insecticides, and/or any other chemical. In addition, this model legislation would prohibit the loading, handling, mixing, or applying of chemicals, including cleaning agents or disinfectants, which could result in allergic reactions, poisonings, or internal or external injuries. The use or handling of heavy metals, including mercury and lead, would also be prohibited by the proposed model legislation.

A number of States have adopted standards along the same lines. Several States, for example, prohibit exposure to carcinogenic, corrosive, or toxic substances. Working with lead, working in the manufacturing of paint, acids or poisons, and exposure to asbestos and related substances are other areas banned by particular States.

Is there a commonly understood definition of toxic or hazardous substances, and what standards or criteria would be appropriate for use in Federal standards for workers under 18 years old? Should different standards apply to 14- and 15-year-olds? Are there data to support such standards or criteria? Should specific substances or materials be identified in an HO, or would a more generic framework be appropriate? Is an occupational and/or industry framework a reasonable alternative, and, if so, which occupations and/or industries create the greatest concerns that such exposure is detrimental to the health and well-being of youth under age 18? What are the compliance difficulties associated with limiting employment in this area, and how can they be minimized?

3. Electric Apparatus and Wiring

Available injury and illness data indicate a high incidence of fatal injuries in the construction industry resulting from electric shock. A significant number of these deaths were suffered by workers between the ages of 16 and 19. Construction industry accidents involving electric shock are attributed to working directly with electricity, using hand held power driven tools, from electric cords, and from ladders, scaffolds and other equipment coming in contact with overhead wires. While the current child labor regulations do not deal with electricity, at least six States prohibit young workers from working with electric apparatus and wiring.

Should consideration be given to establishing a prohibition of such activity in the construction industry? Why? Should a broad-based generic prohibition be considered as opposed to occupational-specific prohibitions, and, if so, how should the prohibition be formulated? Should an exemption be permitted for employment of 16- and 17-year-old apprentices and student learners as in the case of certain other HOs (HOs 5, 8, 10, 12, 14, 16, and 17)?

4. Heights

Under HO 16, all occupations in roofing operations are prohibited. The

HO's prohibition does not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

Several States currently restrict work above certain heights by young workers. These standards either involve work performed at heights above 10 feet or at heights 6 feet above ground, and include elevated surfaces such as scaffolds and ladders.

While work in roofing occupations is specifically prohibited by HO 16, work in other occupations requiring work on a roof are not. Should all occupations involving work on roofs be prohibited? If so, why? As above, should consideration be given to the possible development of a generic restriction with cross-industry application or to particular occupations and/or industries, e.g., the construction industry? Also, should an exemption be permitted for employment of 16- and 17-year-old apprentices and student learners?

5. *Body Fluids and Infectious Agents*

The States of Wisconsin and Washington have prohibited all minors from working in occupations involving exposure to body fluids including blood or infectious agents, and in 1993 the States of North Dakota and Illinois banned such employment for minors under the age of 16. Other States accomplish a similar objective using an industry/occupation approach. In Virginia, for example, minors under the age of 16 cannot work as laboratory helpers, therapists, orderlies, or nurses' aides in any hospital, nursing home, clinic, or other establishment providing care for resident patients. Minors under the age of 18 are prohibited by the State of Washington from employment in the occupation of nurses' aid, except as a student or after training, and by the State of Wisconsin from employment in hospitals and nursing homes. The model State law drafted by the Child Labor Coalition, referred to above, would ban all occupations involving the handling or storage of blood, blood products, body fluids and body tissues, and medical or other dangerous wastes.

What evidence exists to support a finding that such exposures are particularly hazardous, or detrimental to the health or well-being of young workers, or that they are at risk in the absence of work prohibitions? Are other governmental safeguards, i.e., standards established by the Occupational Safety and Health Administration (OSHA), sufficient to protect minors? As above, would an occupation/industry-specific approach, in contrast to a generic formulation, be more feasible, and, if so, why?

6. *Student-Learner Exceptions*

Another area of the regulations under review concerns the student-learner provisions in § 570.50(c). Certain of the HOs (HO 5, 7, 10, 12, 14, 16, and 17) contain an exemption for the employment of student-learners between the ages of 16 and 18. For the exemption to apply, §§ 570.50(c)(2)(i) and (ii) require a written agreement which provides that the work of the student-learner in a vocational training program involving these otherwise prohibited occupations and activities must be "incidental" to the training and that the work is "intermittent and for short periods of time." The Department is seeking comment on whether there is a need for changes to these two requirements for student-learners participating in programs under statewide School-to-Work Opportunities systems advocated by the School-to-Work initiative jointly sponsored by the Departments of Education and Labor (see 59 FR 5266 (February 3, 1994) and 59 FR 11154 (March 9, 1994)). Programs developed under this initiative are intended to give youth access to education and training opportunities that will prepare them for high-skill, high-wage careers. The Department solicits public comment on whether any changes are needed to these two requirements in order to facilitate this objective. The changes being considered would be limited to student-learners under School-to-Work Opportunities programs and would affect only those HOs which have traditionally included a student-learner exception. School-to-Work Opportunities programs would remain subject to the requirements that the activity be performed under the direct and close supervision of a qualified and experienced person, that safety instructions be given by the school and correlated by the employer with on-the-job training, and that a schedule of organized and progressive skill development activities be prepared. Also, work done in prohibited occupations would be an essential and integral part of the student-learner's training program. If there are no changes made to the student-learner exception, would this significantly foreclose school-to-work training opportunities? If this were the case, what other alternatives should the Department consider to facilitate the effectiveness of employment in the School-to-Work Opportunities program?

III. General

In soliciting comments on the above or any other aspects of the child labor regulations considered appropriate by commenters, such as the HO 10 exemption for bacon-slicing machines, the Department is specifically interested in data, reports, cost-benefit analyses, studies and other documentation which support the positions taken or otherwise relate to the Department's objective to develop updated, realistic health and safety standards for today's young workers. Any impact on school-to-work transition programs should also be discussed.

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Signed at Washington, DC, on this 4th day of May, 1994.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 94-9947 Filed 5-12-94; 8:45 am]

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May 13, 1994

Part III

Federal Trade Commission

16 CFR Part 305

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") issues final rules that add general service fluorescent lamps, medium base (integrally ballasted) compact fluorescent lamps, and general service incandescent lamps (both reflector and nonreflector) to the list of products subject to provisions of the above referenced rule, commonly referred to as the Appliance Labeling Rule ("Rule"). Lamps often are referred to as "light bulbs" or "electric lights." This action is taken pursuant to the Energy Policy Act of 1992 ("EPA 92"), which directed the Commission to prescribe, by April 25, 1994, rules requiring such lamp products to be labeled with disclosures that will enable purchasers to select the most energy efficient lamps that meet their requirements. At the same time, the Commission temporarily stays § 305.8(a)(3) of the Rule, which requires manufacturers to file annual reports, until the U.S. Department of Energy adopts test procedures for lamps under EPA 92. The Commission also exempts from the requirements of §§ 305.11(e) and 305.14(d) of the Rule, which require disclosures on labels and in catalogs, those lamp products that will be eliminated from the market as of October 31, 1995, by minimum efficiency standards specified in EPA 92.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, James G. Mills, or Terrence J. Boyle, Attorneys, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, 601 Pennsylvania Ave., NW., Washington, DC 20580, telephone numbers 202–326–3013, 202–326–3035, and 202–326–3016, respectively.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA 92[1] amends in several respects the Energy Policy and Conservation Act of 1975 ("EPCA"), which requires the Commission to prescribe labeling rules for certain major household appliances and other products.[2] The EPA 92 amendments to EPCA direct the Commission, within 18 months of the statute's enactment, to prescribe rules requiring that certain types of lamp products be labeled with "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements."[3] Pursuant to this statutory directive, the Commission published a Notice of Proposed Rulemaking ("NPR") on November 15, 1993, soliciting written public comments on proposed amendments to the Appliance Labeling Rule ("Rule"), 16 CFR part 305 (1993), to include these categories of lamp products.[4] The Commission also conducted a Public Workshop-Conference ("Workshop") on January 19, 1994, to discuss the proposed amendments, and accepted supplemental written comments from the Workshop participants following the completion of the Workshop.

After evaluating the written comments, the transcript of the Workshop, and the supplemental comments, the Commission is amending the rule to impose labeling and other disclosure requirements for the lamp products referenced in EPA 92. The amendments are discussed in detail in part IV, below. The amendments appear in "Text of Amendments," below. The Commission also has determined that the final rules announced today overlap certain provisions of the Commission's pre-existing Light Bulb Rule pertaining to the required disclosure format for wattage, light output, and laboratory life ratings and to the voltage level at which those ratings are to be tested.[5] Following this proceeding, the Commission will consider whether any additional action is necessary concerning the Light Bulb Rule.

II. Background

A. Overview of the Appliance Labeling Rule

EPCA, enacted in 1975, is generally designed to promote improved energy efficiency of consumer products. 42 U.S.C. 6201 (1988). As amended by EPA 92, it establishes energy consumption standards or water use standards for certain categories of major home appliances and other products, 42 U.S.C.A. 6295 (West Supp. 1993), and directs the U.S. Department of Energy ("DOE") to prescribe test procedures to measure the energy consumption or water use of those products. 42 U.S.C.A. 6293 (West Supp. 1993). EPCA also directs the Commission to prescribe, or in some cases to consider prescribing, rules requiring appliances and other products to be labeled with disclosures of estimated annual energy cost, another useful measure of energy usage or efficiency, or of water use rates. 42 U.S.C.A. 6294 (West Supp. 1993).

Following enactment of EPCA in 1975, the Commission adopted the Appliance Labeling Rule.[6] The Rule requires that certain major home appliances, including furnaces, refrigerators and air conditioners, be labeled with EnergyGuides.[7] In addition, the Rule requires fluorescent lamp ballasts to be labeled or marked with the symbol "E" enclosed in a circle, to denote that the ballast meets an energy efficiency standard established under EPCA.[8] The Rule, as recently amended, also requires showerheads, faucets, water closets and urinals to be marked permanently and/or labeled with certain disclosures about their water use.[9]

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[1] Public Law 102–486, 106 Stat. 2776, 2817–2832 (Oct. 24, 1992) (codified in 42 U.S.C. 6201, 6291–6309).

[2] 42 U.S.C. 6291 *et seq*. EPCA also has been amended by the National Energy Conservation Policy Act of 1978 ("NECPA"), Public Law 95–619, 92 Stat. 3258 (1978); the National Appliance Energy Conservation Act of 1987 ("NAECA 87"), Public Law 100–12, 101 Stat. 103 (1987); and the National Appliance Energy Conservation Amendments of 1988 ("NAECA 88"), Public Law 100–357, 102 Stat. 671 (1988).

[3] 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). Pursuant to other EPA 92 amendments to EPCA, the Commission also amended the Rule to require the disclosure of water usage rates for certain plumbing products. 58 FR 54955 (1993).

[4] 58 FR 60147 (1993).

[5] Prior to EPA 92, the Commission issued a rule, known as the "Light Bulb Rule," governing the most common types of incandescent lamps. Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409 (1993); *see* 35 FR 11784 (1970). The labeling rules announced in this notice duplicate certain disclosures required by the Light Bulb Rule.

[6] 44 FR 66466 (1979). The Commission has amended the Rule on several occasions to add labeling requirements for additional product categories. 52 FR 46888 (1987) (adding a new product category of central air conditioners and heat pumps and two additional subcategories of furnaces, pulse combustion furnaces and condensing furnaces); 54 FR 28031 (1989) (adding a new product category of fluorescent lamp ballasts); and 58 FR 54955 (1993) (adding new product categories of showerheads, faucets, water closets and urinals).

[7] For example, labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must disclose the estimated annual operating cost (*e.g.*, "$240.00"). 16 CFR 305.11(a)(5)(i)(E). Labels for room air conditioners, central air conditioners, heat pumps, and fact sheets for furnaces, by contrast, must disclose the energy efficiency rating (*e.g.*, "10.5" for a central air conditioner or "96.5" for a furnace). 16 CFR 305.11(a)(5)(i)(E), 305.11(a)(5)(iii)(C), 305.11(b)(3)(v). In two separate proceedings, the Commission is considering proposals to amend the current disclosure requirements for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters and room air conditioners, 53 FR 22106 (1988) and 58 FR 12818 (1993), and to issue labeling rules for pool heaters, instantaneous water heaters, and heat pump water heaters, 58 FR 7852 (1993).

[8] 16 CFR 305.11(d). A fluorescent lamp ballast is a device that is used to start and operate fluorescent

Except for fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials for products covered by the Rule to contain disclosures of required energy consumption and efficiency information or water use information.[10] Further, the Rule requires, for furnaces, disclosure of energy usage information on fact sheets, 16 CFR 305.11(b), and, for central air conditioners and heat pumps, similar disclosures on fact sheets or in industry directories, 16 CFR 305.11(c). For fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials to contain the same symbol that is required on labels. 16 CFR 305.13(c), 305.14(c).

EPCA authorizes the Commission to assess monetary civil penalties for violations of the Rule. 42 U.S.C. 6303(a), (d) (1988). The Rule provides that manufacturers or private labelers who knowingly distribute products covered by the Rule that are not properly labeled are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(1). Manufacturers, distributors, or retailers who knowingly remove or make illegible a required label similarly are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(2). Manufacturers or private labelers who fail to include required disclosures in their catalog advertising are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(5). Manufacturers or private labelers who fail to keep records or provide reports or product samples as specified by the Rule also are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(2). EPCA also grants to the U.S. District Courts authority to issue injunctions against such violations. 42 U.S.C. 6304 (1988).

B. Lamp Labeling Amendments to Appliance Labeling Rule Required by EPA 92 Amendments to EPCA

The EPA 92 amendments to EPCA require that the Commission issue labeling rules no later than April 25, 1994, for "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps," as those terms are defined in EPCA. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). These are the lamps used in the majority of household and commercial settings. See Part IV.A.1.–3, below. The lamp labeling rules must require conspicuous disclosure on the packaging of the lamp of "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.* The rules must apply to lamp products manufactured after the twelve month period beginning on the date of publication of the rule. *Id.* The Commission also is requiring disclosures in catalogs from which these lamp products can be ordered.

C. Requirements of Light Bulb Rule

The Light Bulb Rule covers, with some exceptions, the category of general service incandescent (nonreflector) lamps.[11] It does not cover general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent reflector lamps. The EPA 92 amendments require the Commission to issue labeling rules for all of these lamps.[12]

The Light Bulb Rule requires that package containers disclose clearly and conspicuously the enclosed bulb's electrical energy consumption expressed in average initial wattage, light output expressed in average initial lumens, and average laboratory life expressed in hours.[13] It specifies placement and size of the disclosures on packages.[14] It also requires that the disclosures of the bulb's wattage, light output, and laboratory life be made in accordance with the requirements of a specific federal purchase specification, and that the disclosures be based upon "generally accepted and approved test methods and procedures."[15] Finally, the Light Bulb Rule prohibits specific claims for these lamp products unless certain conditions are met.[16]

The Light Bulb Rule remains effective notwithstanding the labeling rules for lamp products that the Commission now adopts. The Commission does, however, note two provisions of the Light Bulb Rule that are different from the lamp labeling rules. The first concerns the format requirements for disclosing the design wattage, light output and laboratory life ratings of general service incandescent nonreflector lamps. The second provision concerns the Light Bulb Rule's requirement that the testing for, and required disclosures of, wattage, light output and laboratory life ratings of general service nonreflector lamps be at the lamp's design voltage. The rules announced today also prescribe that these required ratings disclosures must be made in a specified manner and must be based on testing at 120 volts, regardless of the design voltage. Manufacturers are permitted to provide these ratings based on the design voltage. Because these different rule provisions are not contradictory, manufacturers will be able to comply with both without incurring significant additional costs.[17] Following this proceeding, the Commission will decide what further action, if any, it should take concerning the Light Bulb Rule.

D. Procedures Used in Rulemaking Proceeding

In the NPR, the Commission invited interested persons to submit by December 30, 1993, written comments on any issue of fact, law or policy that might have bearing upon the proposed lamp labeling rules. The Commission also announced in the NPR that the Commission's staff would conduct a Workshop, with the assistance of a neutral, third-party facilitator, to afford Commission staff and interested parties an opportunity to discuss issues raised

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lamps by providing a starting voltage and current and limiting the current during normal operations. 16 CFR 305.3(j).

[9] 58 FR at 54965–66; to be codified at 16 CFR 305.11(e).

[10] 58 FR at 54964; to be codified at 16 CFR 305.13(a), .14(a)–(b), (d).

[11] 16 CFR 409.1 n. 3.

[12] Thus, today's amendments apply to: (1) General service incandescent (reflector and nonreflector) lamps; (2) medium base (integrally ballasted) compact fluorescent lamps; and (3) general service fluorescent lamps.

[13] 16 CFR at 409.1(a). If lamps are sold without sleeves or packaging, or are sold in universal or interchangeable sleeves or packaging without the information listed above, then all these disclosures must appear clearly and conspicuously on the lamps themselves. *Id.* at 409.1(a)–(b).

[14] *Id.* at 409.1 n. 4.

[15] *Id.* at 409.1 n. 1. For multiple filament ("three-way") lamps, it requires that wattage and lumen ratings be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Because the federal purchase specification cited in the Light Bulb Rule does not cover multiple filament lamps, that Rule allows industry members to substantiate wattage, light output, and laboratory life ratings using tests that are based upon generally accepted and approved test methods. It requires disclosure of the specific method used to determine the life rating, for example, that the lamp is burned on all three positions equally or that it is based on the life of the major filament (medium light level) of the lamp. *Id.*

[16] *Id.* at 409.1(c)–(d). For example, § 409.1(c) prohibits representations that savings either in lamp cost or cost of light will result from the use of certain lamps because of the lamps' life or light output unless specific factors are taken into account and clearly and conspicuously disclosed.

[17] The requirement to provide disclosures at 120 volts on lamps that have a different design voltage affects a very small segment of the market. Further, those manufacturers who make 125 or 130 volt lamps have a market incentive to provide the ratings at their design voltages whether or not it is required. Furthermore, the various size specifications set by the Light Bulb Rule only prescribe minimum sizes for these rating disclosures, which prevents the disclosures specified by today's rules from becoming too small

in the rulemaking proceeding, particularly areas of significant controversy or divergent opinions that were raised in the written comments. The Commission announced that the discussion during the Workshop would be transcribed and the transcription would be placed on the public record. The NPR directed persons interested in participating in the Workshop to notify the Commission staff by December 15, 1993.[18]

The Workshop was to focus primarily on considering what information might be "necessary to enable purchasers to select the most energy efficient lamps which meet their requirements," where the disclosures should be made, and the manner and layout for making the disclosures. Participants in the Workshop also were to be afforded an opportunity to address additional issues raised in the proceeding. The Workshop, however, was not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. The Workshop instead was intended to elicit information on the basis of which the Commission could determine how to design the lamp labeling rules.

The Workshop took place at the Federal Trade Commission, Pennsylvania Avenue and Sixth Street, NW., Washington, DC, on January 19, 1994. With the following exceptions, the proceeding was conducted as explained in the NPR. First, because of the limited number of parties who requested to participate in the Workshop, all parties who timely submitted requests to participate, and timely filed written comments, were selected. Second, the Commission allowed any interested party who attended the Workshop to make limited oral presentations. Third, in response to a petition from the National Electrical Manufacturers' Association ("NEMA"),[19] the Commission extended the deadline for participants and others who made oral presentations during the Workshop to submit supplemental written comments from 24 hours to one week following the close of the Workshop.[20]

E. Identification of Parties Who Filed Written Comments

The Commission received comments responding to the NPR from industry members, trade associations, energy and environmental interest groups, federal and state agencies, utility companies, testing laboratories, private standards-setting organizations, universities and other interested parties. The following parties filed written comments:[21] (1) Angelo Brothers Company ("Angelo") (G–1); (2) American Council for an Energy-Efficient Economy ("ACEEE") (GG–1); (3) Inchcape Testing Services, ETL Testing Laboratories, Inc. ("ETL") (GG–2); (4) General Electric Company ("GE") (G–2); (5) Henry Gluckstern, Esq. ("Gluckstern") (GG–3); (6) Green Seal ("Green Seal") (GG–4); (7) The Home Depot ("Home Depot") (GG–5); (8) Illuminating Engineering Society of North America ("IES") (GG–6); (9) Lawrence Berkeley Laboratory ("LBL"), University of California (GG–7); (10) Massachusetts Office of the Attorney General ("MA AG") (GG–8); (11) Minnesota Department of Public Service ("MN DPS") (GG–9); (12) Missouri Department of Natural Resources ("MO DNR") (GG–10); (13) Dickstein, Shapiro & Morin, on behalf of National Electrical Manufacturers Association ("NEMA") (G–3); (14) New England Power Service ("NEPS") (GG–11); (15) Northwest Real Group ("NW REAL"), on behalf of Eugene Water and Electric Board, Grays Harbor Public Utility District, Idaho Department of Water Resources (Energy Division), Idaho Power Company, NW Power Planning Council, Oregon Public Utility Commission, PacifiCorp, Public Power Council, Puget Sound Power and Light Company, Salem Electric, Seattle City Light, and Snohomish County Public Utility District # 1 (GG–12); (16) Oregon Department of Energy ("OR DOE") (GG–13); (17) Oregon State University ("ORSU") (GG–14); (18) Osram Sylvania, Inc. ("Osram") (G–4); (19) Philips Lighting Company ("Philips") (G–5); (20) Lighting Research Center ("LRC"), Rensselaer Polytechnic Institute (GG–15); (21) Scientific Certification Systems, Inc. ("SCS") (GG–16); (22) Supreme Corporation ("Supreme") (G–6); (23) U.S. Environmental Protection Agency ("US EPA") (GG–17); (24) Washington State Energy Office ("WA SEO") (GG–18); (25) Hubbell/Lighting Division ("Hubbell") (GG–19); (26) Scientific Certification Systems, Inc. ("SCS") (GG–20) (revised version of GG–16); (27) Matsushita Electric Corporation of America ("Panasonic") (G–7).

Philips (G–14), Osram (G–15), and GE (G–16) also filed written comments in response to the separate notice published by the Commission concerning its request to OMB for approval of the collection of information burden hours imposed by the proposed lamp labeling rules under the Paperwork Reduction Act ("PRA").[22]

F. Identification of Parties Who Participated in Workshop and Those Who Filed Supplemental Written Comments

The following parties were selected as participants and attended the Workshop:

(1) Steven Nadel, Deputy Director, ACEEE. ACEEE is a nonprofit research organization that seeks to promote energy efficiency.

(2) Barton Pasternak, Vice President of Corporate Development, Angelo. Angelo Brothers Company is the largest non-manufacturing seller and distributor of incandescent light bulbs in the United States.

(3) W. Scott Seeley, Counsel, Gail Cohen, Product Manager for incandescent and three-way lamps, Russ Churchill, Manager, GE Lighting Institute, GE. GE is a full-line manufacturer of lamps.

(4) Arthur Weissman, Vice President of Standards and Planning, Green Seal. Green Seal is a nonprofit environmental organization involved in labeling and standards-setting. Green Seal recently issued a standard for compact fluorescent lamps, and has certified several products under that standard.

(5) Mark Eisen, Manager of Environmental Marketing, Home Depot. Home Depot is a home center retailer.

(6) Rita Harrold, Director of Educational and Technical Development, and Ed Robinson,

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[18] 58 FR at 60163.

[19] Petition dated December 15, 1993, from Mark L. Perlis, Dickstein, Shapiro & Morin, counsel for NEMA.

[20] Order dated Dec. 21, 1993, of Lewis R. Parker, Chief Judge, FTC. See 58 FR at 60164.

[21] All public documents are filed in the Commission's File No. R611004. Staff submissions for the public record are filed in category "C. Miscellaneous Staff Materials Assembled After NPR Filed." Industry comments are filed in category "G. Lamp Products Proceeding—Industry Comments." Other comments are filed in category "GG. Lamp Products Proceeding—Comments from Other Sources." Documents are numbered sequentially, such as Document No. G–1, Document No. G–2. In this notice, comments are cited by an identification of the commentor, the comment number and the relevant page number(s), *e.g.*, "Angelo, G–1, 1–3." Supplemental comments are designated in addition as: "(Supp.)." The Workshop transcript is filed in category "L. Transcripts of Public Hearings." Discussion by more than one party in the transcript is cited by a reference to the transcript and the relevant page number(s), *e.g.*, "Tr., 15–20." Discussion by one party in the transcript is cited by an identification of the party, a reference to the transcript and the relevant page number(s), *e.g.*, "Osram (Tr.), 80–81." Although the following comments were submitted shortly after the initial or supplemental written comment due dates, the Commission has placed them on the public record and considered them as part of the rulemaking record of this proceeding: Panasonic, G–7; Hubbell, GG–19; SCI, GG–20; and MA AG (Supp.), GG–23. One supplemental comment, NEMA, G–17, was received on March 4. This comment has been placed on the public record of this proceeding, but is not included as part of the rulemaking record.

[22] 58 FR 60652 (1993).

Regional Vice President, IES. IES disseminates information on the art and science of illumination, through publications and educational programs.

(7) Barbara Atkinson, LBL. LBL operates an energy analysis program that provides assistance to the U.S. Department of Energy about federal policy options and the Energy Policy Act. LBL also conducts research on lighting technologies.

(8) Bill McAvoy, Assistant Attorney General, MA AG. MA AG works with utilities such as New England Power regarding conservation programs.

(9) Mark Perlis, Counsel, *NEMA*. NEMA is a trade association that includes manufacturers of lamp products.

(10) Meredith Miller, *NEPS*. NEPS is a service company for three retail electric power companies in New England, Rhode Island, and Massachusetts, and New Hampshire. NEPS provides incentives to residential customers to encourage compact fluorescent lamp purchases.

(11) Peter Bleasby, Director of Industry Relations and Standards, *Osram*. Osram manufactures most types of lamp products.

(12) Al Rousseau, Manager of Technical Relations, *Philips*. Philips manufactures most types of lamp products.

(13) Bob Davis, Research Assistant Professor, *LRC*. LRC conducts an efficient lighting research and development program.

(14) Bruce Siegal, President, *Supreme*. Supreme is a small family-owned lamp manufacturer, specializing in the manufacture of long-life lamps specifically designed for vibration service and rough surface applications.

(15) William VonNeida, *US EPA*. US EPA conducts a "Green Lights" program as its flagship voluntary pollution prevention program to reduce greenhouse gas emissions. In the program, US EPA encourages businesses, government, and other organizations to use energy-efficient lighting.

In addition to the participants listed above, Larry Galowin, Laboratory Accreditation Program, National Voluntary Laboratory Accreditation Program, *National Institute of Standards and Technology ("NIST")*, U.S. Department of Commerce, also attended and made oral presentations during the Workshop.

The following parties who made oral presentations during the Workshop also filed supplemental written comments after the Workshop: *ACEEE* (GG–21); *Angelo* (G–8); *GE* (G–9); *LBL* (GG–22); *NEMA* (G–10); *Osram* (G–11); *Philips* (G–12); *Supreme* (G–13); *MA AG* (GG–24); and *NIST* (GG–23).

III. Disclosures and Other Requirements Proposed in NPR

In informal communications with the Commission's staff during the period after EPA 92 was enacted and before the Commission published the NPR, representatives of several industry members and environmental interest groups suggested various labeling requirements for lamps. Two of the more specific suggestions were described in the NPR, along with the Commission's proposals.[23]

A. NEMA's Proposals

NEMA suggested that the Commission adopt particularized disclosure requirements for different types of lamp products.[24] For general service fluorescent lamps and incandescent reflector lamps, for which EPCA establishes energy conservation standards, NEMA suggested disclosure only of the encircled capital letter "E," similar to the current requirement for fluorescent lamp ballasts.[25] This symbol would designate that the product meets the established energy conservation standards. In support of this proposal, NEMA stated that the performance of all the interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards established by EPA 92 become effective[26] will vary only slightly.

NEMA suggested that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the product itself, no smaller than the lamp designation information for wattage. NEMA suggested that, if the Commission cannot require etching on the product, it should require that the packing carton containing one or more lamps be marked with the encircled "E," in color contrasting ink and no smaller than the manufacturer's name or logo.

For general service incandescent lamps (other than reflector lamps) and medium base compact fluorescent lamps, NEMA suggested that "light output" (in lumens), watts, life, design volts, and bulb quantity contents (*i.e.*, number of bulbs in the package) be disclosed according to specified format requirements on at least one panel of the outer sleeve of the package. One or more of these items also could be disclosed on the remaining panels. For general service incandescent lamps (other than reflector lamps), the term "lumens," in the specified format, would follow beside or below the numerical value for light output. For medium base compact fluorescent lamps, the term "lumens (base-up)" would be used instead of "lumens."[27]

NEMA also suggested that the labeling rules require an "energy efficiency index" (consisting of "lumens per watt," rounded to the next highest number, and "yearly energy cost" of operating the lamp) on packages of general service incandescent lamps (other than reflector lamps) and medium base compact fluorescent lamps.[28] The energy efficiency index would include the disclosure: "Lumens per watt." The yearly energy cost would include the disclosure: "At 4 hours per day at $.10 per kilowatt-hour."

NEMA further suggested that, if the manufacturer elects to place the energy efficiency label on a panel other than the primary display panel of the package, it should be required to provide an additional "energy flag" on the primary display panel. The energy flag would include only the "energy index" value (*i.e.*, lumens per watt).[29] The designation "Energy Index" would be printed with the energy index value inside the flag, and a reference to "See package back" would be printed immediately below the flag.

NEMA also suggested that the Commission require that manufacturers of all lamp products covered by the labeling rules include on the outer (packing) cases in which the lamps are shipped a label or pre-printed message stating: "Product herein tested and labeled in compliance with the Energy Policy Act of 1992" or, alternatively, with an approved symbol. NEMA suggested that the advisory statement be integrated with or be placed adjacent to the usual case contents label and included format recommendations.

B. ACEEE's Proposals

ACEEE also submitted specific labeling suggestions for discussion purposes.[30] ACEEE stated that because purchase patterns vary for residential and commercial purchasers, different labeling approaches would probably be warranted. It pointed out that commercial purchasers generally have a greater technical understanding about lamp products, whereas residential purchasers generally know very little about lighting and need information that is non-technical and easily understood. It also noted that residential purchases generally are made through grocery, hardware, and other retail outlets, where products in boxes or other packaging are selected by the purchaser off the shelf in small quantities. ACEEE stated that, in contrast, commercial purchasers generally order medium to large quantities of lamps from lighting distributors, using information in catalogs and sales brochures, as well as information provided orally by sales personnel. These commercial purchases often are shipped in case quantities, and printed packages for individual lamps are rare.

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[23] 58 FR at 60152–60.

[24] NEMA, C–41, C–42.

[25] See Part II.A, above.

[26] The effective dates are April 30, 1995, for some lamp products, and October 31, 1995 for other lamp products. 42 U.S.C.A. 6295(i)(1) (West Supp. 1993).

[27] See note 136, below.

[28] The "energy efficiency index" would be a square, at least one inch by one inch, divided in the middle by a horizontal line. The lumens per watt would appear in the top portion of the square, and the yearly energy cost in the bottom. The letters and numbers would be printed in black (or whatever dark color is used in creating the Universal Product Code symbol). See Illustration 1, 58 FR at 60153.

[29] The "energy flag" would be a right triangle one inch in height and resting on a perpendicular side one and one-half inches in length. See Illustration 2, 58 FR at 60154.

ACEEE suggested that two types of information appear on labels for residential purchasers: annual operating cost and relative light output. It proposed that relative light output be measured by comparing the lumen output of a product to a reference lamp, with a reference lamp defined for each common type and wattage of lamp.[31] It also suggested that annual operating cost include both the purchase cost (manufacturer's suggested list price prorated for an assumed annual hours of operation) and annual electricity cost (for average operating hours and electricity cost).[32] ACEEE suggested that use of an annual operating cost metric would allow purchasers to compare products with different lives and costs.

ACEEE further stated that a lumens-per-watt disclosure probably should not be used for residential purchasers. ACEEE maintained that such a disclosure could encourage residential purchasers to buy higher wattage lamps that have higher lumens-per-watt ratings, when a lower wattage lamp with a lower lumens-per-watt rating might provide sufficient light for their needs and cost less to operate at the lower wattage. For commercial purchasers, on the other hand, ACEEE suggested that a lumens-per-watt rating probably would be acceptable because catalog display space is likely to be very limited and commercial purchasers are more sophisticated.

ACEEE supported disclosure of relevant information on lamp packages and other point-of-sale materials that provide information on particular products, such as fact sheets and special displays for residential sales. For commercial sales, it suggested requiring the information in catalogs and other sales materials that provide information on specific products. Finally, ACEEE recommended that the Commission specify label content and size, but that the Commission allow manufacturers to develop their own customized designs, consistent with Commission specifications.

C. Commission's Proposals

1. Disclosure Requirements

Based on the options discussed in the NPR about the kinds of information purchasers need to select lamp products and the proposals suggested by interested parties (as summarized above), the Commission proposed requiring disclosure of two types of information for lamp products covered by the labeling rules. One category included basic performance information (such as light output, which is needed to select lamp products that meet purchasers' requirements), and the other category included various supplemental disclosures designed to further facilitate selection of the most energy efficient lamp. Each category is discussed below.

a. Basic disclosures. The Commission proposed requiring that lamp package labels and catalogs conspicuously disclose the following information: (1) Lumens (whether identified by that term, or another such as "brightness" or "light output"); (2) watts; (3) design volts (if other than 120 volts); (4) average life (in hours); and (5) number of items in the package.[33] For multiple filament ("three-way") general service incandescent lamps, the Commission proposed requiring that lumens, watts, and design volts be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Finally, the Commission proposed that the following statement appear on package labels and in catalogs from which the lamps could be ordered: "More efficient lamps may have a higher purchase price, but may cost you less overall."

b. Supplemental disclosures. The Commission proposed requiring, for all lamps to be covered by the labeling rules, that package labels and catalogs from which the lamps may be ordered also make a supplemental disclosure. The Commission proposed two alternatives for primary consideration: (1) A lumens-per-watt disclosure; or, (2) a disclosure of the estimated energy cost of the lamp based on a specified unit energy cost and use period.

The NPR explained that a lumens-per-watt disclosure (*i.e.*, the "Energy Index" that had been suggested by NEMA) has the advantage of simplicity. But, as ACEEE noted, such a disclosure could lead to lumen over-purchasing because higher wattage bulbs often produce disproportionately more lumens and thus often have a better energy index although they use more energy. The Commission stated that this drawback possibly could be avoided if the Commission required a disclosure such as: "Select the light output you require before comparing the energy index of different bulbs."

Alternatively, the Commission stated that it might require a disclosure of the estimated monetary cost of the energy used by the lamp, based on use for a specified usage period, such as a normal average life in hours of a lamp or a length of time based on average usage patterns. The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy cost of a lamp product. At the same time, the Commission stated that it would consider carefully whether such disclosures effectively communicate the extent to which a higher initial bulb cost can be compensated for by lower operating costs over the bulb's life.[34]

The Commission indicated that, although average or estimated usage patterns (*e.g.*, one year) could be used in a monetary cost of operation disclosure, there are no established usage patterns and estimated use will vary depending upon the location of the lamp. In addition, the Commission noted that it would have to determine what unit cost for electricity to use. The Commission explained that, to prevent possible confusion, it might be appropriate to require disclosure of how the estimated energy cost was determined.[35] The Commission recognized, however, that additional information could unduly complicate the label and not be useful.

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[30] ACEEE, C–40.

[31] For example, ACEEE suggested a 60 watt standard incandescent A-lamp as the reference lamp for a 15 watt compact fluorescent lamp. The relative light output of the compact fluorescent lamp might be 88%, based on average light output.

[32] ACEEE, C–40, 3, illustrated this as follows: Assuming 1,000 hours per year of operation and $.08 per kilowatt-hour unit electricity cost, a 15 watt compact fluorescent lamp (with a $20 list price and 10,000 hour rated life) will have an annual operating cost of $3.20 ([$20/(10.000 hour life/1.000 hours per year) + [15 watts X 1,000 hours per year/1,000 Wh/kWh X $.08 per kilowatt hour]). In comparison, a standard 60 watt general service incandescent A-lamp (with a $1.00 list price and 1,000 hour rated life) will have an annual operating cost of $5.80.

[33] 58 FR at 60154–56.

[34] See notes 106, 108, below.

[35] *Id.*

Because some purchasers may be interested in computing lamp costs comprehensively, including consideration of the initial purchase price and replacement cost, the Commission also proposed requiring that information be provided to purchasers to enable them to determine the "estimated total operating cost" of the lamp for a standard time period. But, recognizing that purchasers desiring such information would need to make calculations for each bulb they were considering, the Commission stated that it would consider carefully the extent to which consumers actually would use the proposed disclosures in making a purchase decision. The Commission noted that, as a practical matter, consumers may disregard, or consider too complex, any disclosure requiring computations of this sort, and that any such required disclosures, therefore, may not be useful to consumers in their efforts to choose an energy efficient bulb.

2. Where Disclosures Should Be Made

In the NPR, the Commission explained that residential purchasers normally buy lamp products through retail outlets, such as hardware, home center, and grocery stores. Residential purchasers, therefore, normally have the opportunity to examine lamp product packaging prior to purchase. The disclosures proposed for packaged product labels would provide residential purchasers with the information they need to select the most energy efficient lamps that meet their requirements.

According to industry representatives, however, some products, such as general service fluorescent lamps, frequently are shipped without individual lamp sleeves or packaging other than the bulk shipping case, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers. For these products, the Commission suggested two options. Option One would require the basic and supplemental disclosures (except for the number of items in each package) on an adhesive, hang tag, or similar type of label, attached to each unpackaged product. Option Two would require the manufacturer to include, with each bulk shipping case, statements disclosing all the required information for the enclosed products (except for the number of items in each package). Option Two also would require the retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product.

Some sellers also sell lamp products to residential purchasers and commercial purchasers through catalogs. These purchasers will not see the disclosures on the product's packaging until the product is delivered, and may rely primarily (or solely) on information in the catalogs from which the lamps are ordered. For these purchasers, the catalog serves the same informational function as a package does for a retail purchaser. The Commission, therefore, proposed that the basic as well as the supplemental disclosures be made both on package labels and in catalogs each time each different lamp product is listed for sale.

3. Format of Disclosures

The Commission explained in the NPR that it could specify that required disclosures be made through use of a flexible standard that requires "clear and conspicuous" disclosures. Under this "performance" standard, complying firms would be free to design disclosures as they wish in response to market considerations, as long as the disclosures were clear and conspicuous. The Commission stated that, alternatively, it could require that the disclosures comply with a design format specified by the Commission.

The Commission indicated that, in choosing a format standard, it would be guided by the need to direct the purchaser's attention to the information that is most important, and the need for the information to be organized so it could be easily understood and acted upon. For example, the Commission stated that it would consider requiring that those items deemed most important to purchasers be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.

4. Substantiation and Sampling Requirements

In the NPR, the Commission proposed requiring that manufacturers follow testing and test specimen sampling procedures to be specified in the final labeling rules to substantiate all disclosures they must make on labels, catalogs and point-of-sale written materials. The Commission stated that when DOE issues testing and sampling procedures for general service fluorescent lamps and general service incandescent reflector lamps, or for any additional lamp products, the Commission would consider whether to adopt the DOE procedures as the required substantiation under the labeling rules.[36] The Commission solicited comments about current industry testing and sampling procedures, such as those issued by IES and the American National Standards Institute ("ANSI"), that would be adequate in the interim to substantiate the disclosures it proposed.

To enable the Commission to determine whether required disclosures are accurate, the NPR also proposed requiring that manufacturers, upon request by the Commission, submit, at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. Any charge levied by the laboratory for testing, however, would be paid for by the Commission.[37]

5. Recordkeeping and Reporting Requirements

The Commission proposed requiring that manufacturers of all covered lamp products maintain records to substantiate each item that the final rules required to be disclosed, and proposed requiring manufacturers to submit those records to the Commission within 30 days of a request. The Commission also proposed requiring that lamp manufacturers submit annual reports on or before March 1 each year. As proposed, the yearly reporting requirement would not become effective until after DOE issues test procedures for specific lamp products covered by the labeling rules. The Commission stated that it would publish a notice after DOE had issued test procedures, announcing when the initial reports would be due.

The Commission proposed requiring that each report contain the same type of information that currently is required for other categories of products covered by the Appliance Labeling Rule. To minimize the burdens imposed by this reporting requirement, the Commission proposed accepting trade association directories and similar submissions in lieu of individual annual reports, as it does for other product categories.

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[36] EPA 92 amended EPCA to establish minimum energy efficiency standards for general service fluorescent lamps and incandescent (reflector) lamps. 42 U.S.C.A. 6295(i) (West Supp. 1993). The amendments require DOE to issue specific testing procedures for these lamp products. 42 U.S.C. 6293(b)(6) (West Supp. 1993). EPCA does not establish energy conservation standards or require DOE to issue test procedures for medium base compact fluorescent lamps or general service incandescent lamps (other than incandescent (reflector) lamps). However, DOE has authority to issue test procedures for categories of products that are not specified in EPCA. 42 U.S.C. 6292(b). 6393(b)(1)(B) (1988). and to set minimum efficiency standards for those products, 42 U.S.C.A. 6295(l) (West Supp. 1993).

[37] Based on EPCA. 42 U.S.C. 6296(b)(3) (1988). the Appliance Labeling Rule, 16 CFR 305.16, applies this requirement to other products.

6. Other Matters

The Commission proposed amending § 305.1 of the Appliance Labeling Rule, 16 CFR 305.1, which summarizes the Rule's coverage, to include a description of the disclosures proposed for labels and catalogs. The Commission also proposed amending § 305.2 of the Rule, 16 CFR 305.2, which contains definitions of words used in EPCA, to include definitions for additional words to be used in the Rule, based on definitions in EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993).

IV. Analysis of Disclosures and Other Requirements Adopted by the Commission

The Commission received information from the public relating to this rulemaking proceeding from three sources: written comments filed in response to the NPR, testimony during the Workshop, and supplemental written comments following the Workshop. The discussion below includes information from all three sources, as well as documents placed on the public record by the Commission's staff during the rulemaking proceeding.

In some cases, participants in the proceeding modified their position on one or more of the issues as the rulemaking progressed. In instances in which the commentor's position on a particular issue changed, the Commission has taken the commentor's most recent comments as its final position on that issue. Similarly, whenever the Commission refers to a commentor's position on a particular issue, if it has changed since its original formulation, the Commission notes that change.

A. Lamp Products Covered by Labeling Rules

EPCA specifically defines the lamp products that are covered by the Commission's lamp labeling rules. Under EPCA, as amended by EPA 92, the Commission's labeling rules apply only to "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps." 42 U.S.C.A. 6294(a)(2)(c)(i) (West Supp. 1993). These lamp products are described in more detail below.

1. General Service Fluorescent Lamps

The term "fluorescent lamp" means a lamp containing a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light. 42 U.S.C.A. 6291(30)(A) (West Supp. 1993). EPCA includes only the following fluorescent lamps:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985.

42 U.S.C.A. 6291(30)(A)(i)–(iv) (West Supp. 1993).

The term "general service fluorescent lamp" means fluorescent lamps that can be used to satisfy the majority of fluorescent applications. 42 U.S.C.A. 6291(30)(B) (West Supp. 1993). The definition specifically excludes fluorescent lamps designed and marketed for specific lighting applications.[38]

2. General Service Incandescent Lamps

The term "incandescent lamp" means a lamp in which light is produced by a filament heated to incandescence by an electric current. 42 U.S.C.A. 6291(30)(C) (West Supp. 1993). The definition includes only the following incandescent lamps:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) A high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

42 U.S.C.A. 6291(30)(C)(i)–(iii) (West Supp. 1993).

The term "general service incandescent lamp" means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications. 42 U.S.C.A. 6291(30)(D) (West Supp. 1993). The definition specifically excludes incandescent lamps designed and marketed for specific lighting applications.[39] Included within the category of "general service incandescent lamps" are incandescent reflector lamps. The term "incandescent reflector lamp" means a lamp described in item (ii), above. 42 U.S.C.A. 6291(30)(F) (West Supp. 1993).

3. Medium Base Compact Fluorescent Lamps

The term "medium base compact fluorescent lamp" means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp. 42 U.S.C.A. 6291(30)(S) (West Supp. 1993). Thus, the definition does not include other types of compact fluorescent lamps that operate with a separate ballast, even if the lamp or the separate ballast has a medium screw base.

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[38] The exclusions are: (i) Fluorescent lamps designed to promote plant growth; (ii) fluorescent lamps specifically designed for cold temperature installations; (iii) colored fluorescent lamps; (iv) impact-resistant fluorescent lamps; (v) reflectorized or aperture fluorescent lamps; (vi) fluorescent lamps designed for use in reprographic equipment; (vii) fluorescent lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (viii) fluorescent lamps with a color rendering index of 82 or greater. 42 U.S.C.A. 6291(30)(B)(i)–(viii) (West Supp. 1993).

[39] EPCA excludes any "general service incandescent lamp" specifically designed for: (i) Traffic signal, or street lighting service; (ii) airway, airport, aircraft, or other aviation service; (iii) marine or marine signal service; (iv) photo, projection, sound reproduction, or film viewer service; (v) stage, studio, or television service; (vi) mill, saw mill, or other industrial process service; (vii) mine service; (viii) headlight, locomotive, street railway, or other transportation service; (ix) heating service; (x) code beacon, marine signal, lighthouse, reprographic, or other communication service; (xi) medical or dental service; (xii) microscope, map, microfilm, or other specialized equipment service; (xiii) swimming pool or other underwater service; (xiv) decorative or showcase service; (xv) producing colored light; (xvi) shatter resistance which has an external protective coating; or (xvii) appliance service. 42 U.S.C.A. 6291(30)(D)(i)–(xvii) (West Supp. 1993).

B. Disclosures for Lamps Generally

Several comments stated that the main purpose of energy labeling for lamps is to encourage purchasers to move towards the purchase of more energy efficient lighting like compact fluorescent lamps.[40] The potential for energy savings through the use of more efficient lighting is high, particularly in commercial settings where lighting is the single largest source of electricity consumption. About 41 percent of electricity, and 28 percent of total energy, consumed in the commercial sector is for lighting.[41] Fluorescent lamps consume about 55 percent of lighting electricity in the commercial sector,[42] with incandescent reflector lamps consuming most of the remainder. In the residential sector, energy use for lighting is small, though not trivial, representing about seven percent of residential energy use.[43] Incandescent lamps provide most lighting in residences.

General service fluorescent lamps provide lighting through a system known as a luminaire. Under EPCA, the term "luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply through a ballast. 42 U.S.C.A. 6291(29)(F) (West Supp. 1993). Compact fluorescent lamps also provide lighting through a system. For compact fluorescent lamps, the system includes the fluorescent lamp and a ballast. Some compact fluorescent lamps are sold for use with separate ballasts. The lamp labeling rules, however, cover only those defined as medium base compact fluorescent lamps, *i.e.*, those that have an integral ballast and medium screw base. Incandescent lamps also have medium screw bases. They provide lighting by heating an internal filament to incandescence by an electric current, and can be used, for example, in table or floor lamp fixtures or in ceiling or wall fixtures. Medium base (integrally ballasted) compact fluorescent lamps are meant for use as replacements for incandescent lamps in these applications.

Increasing the efficiency of a lighting system that currently uses incandescent lamps can be accomplished by selecting a more efficient incandescent lamp, such as a more efficient halogen incandescent lamp, or a more efficient medium base compact fluorescent lamp. To the extent the efficiency of general service fluorescent lighting systems can be increased, it can be accomplished by increasing the efficiency of the lamp, the ballast or the luminaire, or a combination of those separate parts. In designing the disclosure requirements for these different lamp types, therefore, the Commission has considered the effect of the minimum energy efficiency standards specified by EPCA on the lamps that will remain on the market after the standards become effective, and how best to provide purchasers with the information necessary for them to select the most efficient lamps that meet their requirements.

Several comments stated generally that any labeling requirements for lamps should meet one or more of the following standards: Simple, uniform, comprehensible, cost-effective and based on readily available information.[44] In response to a question in the NPR, some comments favored different types of disclosures based on the category of purchaser—residential or commercial. One comment, however, specifically stated that the disclosures should be the same for both categories.[45] Most industry members supported a "bifurcated" approach to labeling (discussed in detail below), with a requirement for detailed disclosures of performance characteristics on packaging for general service incandescent lamps and compact fluorescent lamps and a requirement for disclosure of only an encircled "E" on packaging for general service incandescent reflector lamps and general service fluorescent lamps.[46] Several other comments, however, favored requiring the same detailed disclosures of performance characteristics on the packaging of all the lamp types covered by the labeling rules.[47]

Two of the three categories of lamps covered by the labeling rules have medium size, screw-in bases that fit into standard screw-in lamp receptacles.[48] These are: General service incandescent (reflector and nonreflector) lamps, and medium base compact fluorescent lamps. The method of connection to the power source is the same for these types of lamps, and the Commission is prescribing similar labeling requirements for them. The Commission discusses the comments on the proposals for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps and the labeling rule requirements for them together in Part IV.C, below. The Commission discusses the comments on, and the requirements for, general service incandescent reflector lamps in Part IV.D, below. The comments and final requirements respecting the fourth type of lamp—general service fluorescent lamps—are described in Part IV.E, below.

C. Disclosures for Medium Base General Service Incandescent (Nonreflector) Lamps and Compact Fluorescent Lamps

Virtually all the comments recommended that the Commission require some version of the basic disclosures that the Commission proposed in the NPR for both general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps.[49] The disclosures the Commission is requiring, each of which is discussed separately below, are: design voltage (if other than 120 volts), energy used (in terms of watts), light output (in average initial lumens), average laboratory life (in hours), number of items in the package (if more than one), and a supplemental disclosure, consisting of an advisory statement.[50] Because the comments usually discussed recommendations regarding the disclosures for these two types of medium screwbase lamps together, and because these lamps are generally interchangeable, the Commission discusses the comments and the final disclosure requirements for these types of medium screw base lamps together in this section.

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[40] See, *e.g.*, NEMA, G–3, 35; Gluckstern, GG–3, 1.

[41] U.S. Congress, Office of Technology Assessment, *Building Energy Efficiency* (hereinafter referred to as "OTA Report"), OTA–E–518 (Washington, DC; U.S. Government Printing Office, May 1992), C–6, 50. Commercial buildings used 12.9 quads of energy at a cost of $68 billion in 1989. About two-thirds of this energy was in the form of electricity. In addition to lighting, space heating and space cooling were the other principal end uses. *Id.* at 21.

[42] *Id.* at 54.

[43] *Id.* at 50–51.

[44] GE, G–2, 4–5, (Tr.), 106; NEMA, G–3, 10–11; Osram, G–4, 2; IES (Tr.), 62; MN DPS, GG–9, 1; OR DOE, GG–13, 1.

[45] See 58 FR at 60158. Comments favoring different types of disclosures: ACEEE, GG–1, 1; IES, GG–6, 1–2; OR DOE, GG–13, 2; WA SEO, GG–18, 3. Specifically recommending identical disclosures for both types: MN DPS, GG–9, 1.

[46] See, *e.g.*, NEMA, G–3; Osram, G–4; Philips, G–5; GE, G–2.

[47] See, *e.g.*, Angelo, G–1; ACEEE GG–1; LBL, GG–7; MN DPS, GG–9; WA SEO, GG–18.

[48] The third category, general service fluorescent lamps, are not screwed into lamp receptacles, but have prongs at either end of the lamp tube or receptacles for prongs that are at either end of the lamp fixture.

[49] 58 FR at 60154–55.

[50] See 16 CFR 305.11(e), 305.14(d) in Text of Amendments, below. For descriptions of the items recommended for required disclosures, see, in particular, Angelo, G–1, 2; GE, G–2, 7, (Ans.), 1; NEMA, G–3, 39, (Supp.), G–10, 10–12; Osram, G–4, 2, (Supp.), G–11, 1–2; Philips, G–5, 1–2, (Supp.), G–12, 1; Panasonic, G–7, 2; ACEEE, GG–1, 1; OR DOE, GG–13, 7–8; LRC, GG–15, 2; WA SEO, GG–18, 1–2.

A few comments recommended that required labeling for compact fluorescent lamps include additional information, such as the lamp's incandescent wattage equivalency, color and temperature ratings, noise and interference factors, and whether the lumen output of the lamp is substantially different in a base-up or base-down installation.[51] The Commission discusses these issues in Part IV.C.4, below.

1. Basic Disclosures

a. *Voltage.* Voltage refers to the electromotive force of electricity.[52] In the residential market, the voltage provided by electric utilities in this country for lighting purposes is primarily 120 volts,[53] but may range from approximately 115 to 125 volts.[54] Voltage is not a characteristic of a lamp product, but the operation of a lamp is affected by the voltage at which it operates. For a given lamp, the higher the voltage, the higher the light output in lumens, the higher the wattage, and the shorter the life.[55] In the NPR, the Commission proposed requiring that manufacturers disclose voltage on packaging only if the product's "design voltage," *i.e.*, the voltage at which the lamp was designed to operate, is other than 120 volts.

During the proceeding, commentors explained that lamps produced for use in this country fall into three basic categories, based on their design voltage. The vast majority of lamps have a design voltage of (*i.e.*, are manufactured to operate at) 120 volts.[56] A minority of lamps are produced with a different design voltage because they are intended for use in limited areas of the country, such as the Northwest, in which the line voltage is 125.[57] The last category includes lamps with a design voltage of 130. These lamps typically are produced with a heavier filament and have longer lives when used at 120 volts (though providing less light) than competing lamps with design voltages of 120 volts. They are generally sold as "long-life" products[58] and are marketed throughout the country, regardless of the line voltage in the particular area.[59]

The Commission's Light Bulb Rule currently requires manufacturers to disclose watts, light output in lumens and average laboratory life in hours for incandescent lamps, based on operation at the lamp's stated design voltage.[60] EPCA, as amended by EPA 92, on the other hand, states that: "Labeling information for incandescent lamps shall be based on performance at 120 volts input, regardless of the rated lamp voltage." 42 U.S.C.A. 6294(a)(2((C)(i) (West Supp. 1993).[61] The statutory language and the comments received raise two issues that the labeling rules must address concerning voltage. First, should the rules require that the design voltage always be disclosed, or that the design voltage be disclosed only if it is other than 120 volts? Second, what labeling information (*i.e.*, which disclosures) must be based on tests conducted at 120 volts (regardless of the design voltage)?

Virtually all the comments that discussed voltage agreed that it is an important element that affects operation of lamp products. Several comments agreed with the Commission's proposal to require that voltage be disclosed if the design voltage of the product (the voltage at which the product was designed by the manufacturer to operate) is other than 120.[62] None suggested that disclosure of voltage in labeling is necessary for lamps with a design voltage of 120.[63]

The issue of the voltage at which the required disclosures of watts, light output, life and energy efficiency should be based was the subject of considerable discussion during the Workshop.[64] Several industry representatives supported requiring disclosure of wattage, light output in lumens, and average laboratory life based on operation of the lamp at its design voltage, if the design voltage is other than 120.[65] They suggested that only the energy index (*i.e.*, lumens per watt) should be disclosed at 120 volts regardless of the lamp's design voltage. They argued that only the efficiency measure is covered by the requirement in EPCA that labeling disclosures for incandescent lamps be measured at 120 volts.[66] Other commentors contended.

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[51] See, *e.g.*, NW REAL, GG–12, 1; OR DOE, GG–13, 2–7, 7–8; ORSU, GG–14, 2–3; LRC, GG–15, 1–2; MA AG (Supp.), GG–24, 2; Philips (Supp.), G–12, 1; ACEEE (Supp.), GG–21, 3. See also note 136, below.

[52] The term "volt" (a unit of potential difference and of electromotive force) is defined as the difference of electric potential between two points of a conducting wire carrying a constant current of one ampere, when the power dissipated between those points is equal to one watt. U.S. Department of Commerce, National Institute of Standards and Technology, "The International System of Units (SI)," NIST Special Publication 330 (1991 edition), August 1991 (hereinafter cited as "NIST Publication 330"), at 19.

[53] NEPS (Tr.), 37 (for residential consumers, voltage provided by utilities for lighting is predominately 120 volts); ACEEE (Tr.), 38 (120 volts is normal for vast majority of homes); IES (Tr.), 62 (same). Utility companies in some parts of the country, however, such as the Northwest, provide other voltages such as 125 volts, and manufacturers ship lamps with those design voltages to those areas. Osram (Tr.), 51–52 (ships 125-volt lamps to Northwest, which has slightly higher line voltage); GE (Tr.), 60 (Northwest/TVA is 125 volts); Osram (Tr.), 64 (ships 125-volt lamps to Seattle and TVA). In recognition of the predominant demand for lamps that operate at 120 volts, manufacturers design most incandescent lamps for operation at that voltage. GE (Tr.), 37–38 (90% or more). See also Osram (Tr.), 64–65 (no more than 10% of its incandescent lamps have 125 design voltage).

[54] Even within a given locality, the voltage may vary by plus or minus five percent. NEPS (Tr.), 37.

[55] See, *e.g.*, GE (Tr.), 35.

[56] See note 53, above.

[57] *Id.*

[58] See GE (Tr.), 35–36; Supreme (Tr.), 39.

[59] See, *e.g.*, ACEEE (Tr.), 202.

[60] 16 CFR 409.1 n. 1.

[61] Neither the EPA 92 amendments to EPCA nor the legislative history of the EPA 92 amendments define more specifically the labeling disclosures for incandescent lamps that must be based on operation at 120 volts.

[62] See, *e.g.*, NEMA (Supp), G–10, 10–11; ACEEE (Tr.), 38; Osram (Supp.), G–11, 1; Philips (Supp.), G–12, 1.

[63] See, *e.g.*, ACEEE, GG–1, 1.

[64] See Tr., 35–65. The discussion of this issue throughout the comments and Workshop transcript usually was directed specifically at general service incandescent lamps. In some instances, it was unclear whether the comments were meant to apply also to other lamp types. But, there are no references to this issue specifically pertaining to compact fluorescent lamps.

[65] NEMA (Tr.), 39–40, 54, (Supp.), G–10, 19–21 (the Commission views these statements as NEMA's final position on the issue), Osram (Tr.), 41. (Supp.), G–11, 2. See also Angelo, G–1, 2 (but note that Angelo later recommends disclosures at 120 volts in the Workshop at Tr. 57); GE, G–2, 7, (Ans.), 1; Osram (Tr.), 41, 58–59, (Supp.), G–11, 2; ACEEE, GG–1, 1 (ACEEE, too, later recommends in the Workshop that all disclosures be at 120 volts, (Tr.), 59); OR DOE, GG–13, 7; WA SEO, GG–18, 1.

[66] In its supplemental comment, NEMA stated:

> A question was raised at the Workshop as to whether the last sentence of section (sic) (324(a)(2)(C)(i) of EPCA) should be interpreted to apply only to energy efficiency labeling or to all items required to be disclosed under the Commission's regulations. There is no published legislative history interpreting this provision. However, NEMA representatives were involved in extensive discussions with energy efficiency organizations and congressional staff over the language of the Energy Policy Act. Throughout those discussions, everyone's attention was focused on how best to educate consumers to select the most energy efficient lamp. NEMA representatives sought inclusion of the requirement that all lamps' efficiency ratings be based on a comparable operation at 120 volts. NEMA's objective was to prevent some manufacturers or importers from disguising low efficiency lamps by claiming efficiency ratings at voltages greater than 120 volts. NEMA was concerned that if a consumer faced 120 and 130 volt lamps in the same store, it be clear that the 130 volt lamp would be substantially less efficient when operated at 120 volts (Tr. 40–41). NEMA did not intend to force manufacturers to cease production or alter existing ratings of higher voltage lamps for use in niche markets. Thus, in construing section (sic) (324(a)(2)(C)(i)) of EPCA, NEMA urges that the provision be fairly read in the context of the legislative discussions and that congressional intent is best served by requiring that only lumens per watt measurements be based on 120 volts operation.

NEMA (Supp.), G–10, 20–21. See also GE (Supp.), G–9, Ex. 4; Osram (Tr.), 51–52 (most purchasers do not see mix of products based on different voltages however, that for general service incandescent lamps the labeling rules should require that wattage, light output, life and energy index disclosures be made at 120 volts because most purchasers operate lamps at 120 volts and performance claims should be based on a uniform standard.[67]

The Commission has determined that the final labeling rules should require that all the specified disclosures be based on operation at 120 volts, but that it should not require disclosure of voltage unless the design voltage is other than 120, since all required lamp disclosures will be based on a uniform voltage.[68] For the vast majority of purchasers in the country, lamps will be operated at 120 volts, regardless of the design voltage designated by the lamp manufacturer. For these purchasers, who represent 90% or more of the market for these lamps in the U.S., therefore, disclosures of the lamp's performance in watts, lumens, life and energy efficiency at a different voltage, such as 125 or 130 volts, would misrepresent the performance they receive in actual use.[69] The Commission realizes that, for those purchasers whose line voltage is other than 120 volts, disclosure of these performance characteristics at 120 volts will not represent the lamp performance they will experience. These purchasers, however, represent a small minority in the marketplace. For lamps with a design voltage of 130, but expected to be operated at 120 volts, the disclosures will be accurate.[70]

The final rules, therefore, require that the disclosures of watts, lumens, and hours of life be based on operation of the lamp at 120 volts. Because medium base compact fluorescent lamps compete directly with incandescent lamps, purchasers often will compare these different lamp types when making purchasing decisions. Therefore, the Commission also is requiring that the performance disclosures for medium base compact fluorescent lamps be based on operation at 120 volts.

The labeling rules, however, allow manufacturers who distribute lamps with different design voltages to provide additional information based on the design voltage of the lamps when operated under those other voltages. Because the Commission is allowing manufacturers to provide additional information to purchasers whose line voltage varies from 120 volts, there is no reason to believe that manufacturers will cease production of lamps designed to operate at different voltages, as NEMA speculated.[71] See §§ 305.11(e)(1)(A)(ii) and 305.11(e)(1)(C) in "Text of Amendments," below.

b. *Wattage.* Watt ratings on lamps refer to the unit of electrical power that the lamp will consume.[72] In the NPR, the Commission proposed requiring that watts be disclosed. There was no disagreement during the proceeding regarding the need for or appropriateness of requiring disclosure of wattage on labels for general service incandescent (nonreflector) lamps and compact fluorescent lamps.[73] This information is often used by residential purchasers as the basis for selecting a lamp because they often associate light output with the wattage ratings of the general service incandescent lamps they currently use. But, wattage information also is important to know for safety reasons. Lamp fixtures often are marked with the maximum wattage lamp the fixture is designed to use. For incandescent lamp fixtures in particular, use of a lamp with a higher wattage than that marked on the fixture can result in a safety hazard created by the higher heat output from the higher wattage lamp. Purchasers, therefore, need wattage information in addition to lumen output when selecting the appropriate lamp to meet their requirements.

Accordingly, the Commission is requiring disclosure of watts on packages. In addition, to help purchasers understand the meaning of watts, the Commission is requiring that the phrase "energy used" precede the wattage number and term "watts." The juxtaposition of the "watts" and "energy used" disclosures, in conjunction with the "lumens" and "light output" disclosures, discussed in Part IV.C.1.c.i, below, can help educate purchasers on the relationship between the amount of light a lamp produces and the amount of energy used to produce the light. These disclosures, along with the Advisory Disclosure described in Part IV.C.2.c, below, will enable purchasers to select the most energy efficient products that meet their lighting needs. At the same time, the combined disclosures will provide retail purchasers with the "watt" information they may be most accustomed to using as the basis for their purchasing decisions, and which they may need to avoid purchasing a lamp product that is inappropriate for the lamp fixture in which it will be used. See §§ 305.11(e)(1)(A)(iii) and 305.11(e)(1)(B) in "Text of Amendments," below.

c. *Light output in lumens.* The terms "lumens," "lumen output," or "lumen rating" refer to a lamp product's light output.[74] This information is designed to permit the purchaser to determine whether a given lamp will provide sufficient light to meet the purchaser's requirements and to compare the relative light output of competing lamp products. Some retail purchasers may generally refer to this concept as "brightness," but this term actually means something different from light output, according to accepted industry definitions.[75] In the NPR, the

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on store shelves, but purpose of the statute's requirement was to require efficiency be based on constant voltage for situations when mix of products were on shelves at same time). But see NEMA, G–3, 45 ("Section 324(a)((2))(C)(i) of EPCA requires that labeling information for incandescent lamps be based on performance when operated at 120 volts input, regardless of the rated lamp voltage. The Commission's regulations should expressly require manufacturers of incandescent lamps to disclose all performance characteristics when operated at 120 volts, regardless of the rated voltage.").

[67] See MN DPS, GG–9, 2; NEPS (Tr.), 44; LRC (Tr.), 44, 54–55; Angelo (Tr.), 57; ACEEE (Tr.), 59; IES (Tr.), 62.

[68] See 16 CFR 305.11(e)(1)(C) in Text of Amendments, below. If a lamp's design voltage is other than 120 volts, the lamp's required disclosures of wattage, light output, and life must each be followed by the phrase "at 120 volts." Manufacturers of such lamps may also disclose the lamps' wattage, light output and life at the design voltage. In such cases, the disclosures of wattage, light output, and life must each be followed by a phrase indicating the voltage at which the additional disclosures were measured, *e.g.*, "at 125 volts."

[69] See note 53, above.

[70] See Angelo (Tr.), 63:

(P)eople may choose life or lumen output but if it's tested at 120 then there's no reason to go through the deception of saying it's a 130-volt lamp. It's simply enough to say that this lamp is going to produce less lumens[,] meaning it's going to have a different filament and it has really nothing to do with design wattage, it has to do with life and lumens. So in the circumstance of the people who were buying it for that reason, why go through a deception? Why not just tell them [it's] at 120 and let it be billed as a 120-volt lamp with less lumens and more life?

[71] NEMA (Supp.), G–10, 21.

[72] The term "watt" (a unit of power) is defined as the power which in one second gives rise to energy of one joule. NIST Special Publication 330, at 18. In EPCA, as amended by EPA 92, the term "lamp wattage" means "the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts." 42 U.S.C.A. 6291(30)(O) (West Supp. 1993).

[73] The Light Bulb Rule already requires a wattage disclosure for incandescent lamps. 16 CFR 409.1(a)(1).

[74] Under EPCA, the term "lumen output" means "total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary [of DOE]." 42 U.S.C.A. 6291(30)(Q) (West Supp. 1993). For incandescent lamps, the Light Bulb Rule already requires that light output be disclosed in lumens.

[75] Brightness is measured in candelas and means the intensity of the light, whereas light output,

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Commission proposed requiring that packaging disclose lumens (whether identified by that term, or another such as "light output"). There was agreement among the participants in the proceeding that light output in lumens should be disclosed.

i. Emphasis on light output in disclosures. Although light output is the primary descriptor of whether a specific lamp will provide the necessary lighting to meet a particular need, it appears that residential purchasers, at least, often purchase lamps based on the product's rated wattage.[76] For these purchasers, different wattages are associated with various lighting needs. There are lamp products with substantially different wattage ratings, however, that can provide almost the same light output in lumens. Stated another way, by choosing lamps on the basis of light output, consumers could meet their lighting needs and use less energy by selecting a lamp of a lower wattage.[77]

Four comments agreed that a key element in getting consumers to purchase more energy efficient lamps is to encourage them to shop for light output in lumens, rather than for energy usage in watts, as they currently are more accustomed to do.[78] Several comments favored furthering this objective by making the disclosure of light output (in lumens) as prominent as or more prominent than the wattage disclosure on current packaging.[79] Some comments also suggested that, because residential consumers are often unfamiliar with the term "lumen," the disclosure of lumens should be accompanied by a descriptive phrase that would be more familiar, such as "light output" or "brightness."[80] There was, however, information presented at the Workshop indicating that lumens is not an unfamiliar concept to many consumers, even though wattage may be a more significant factor in making purchase decisions.[81]

The Commission agrees that the labeling rules should assist purchasers in shopping for lamps on the basis of light output in lumens rather than watts. Because competing lamp products may provide the same lumen output at varying wattage ratings, purchasers can reduce their energy costs for lighting by purchasing lamp products that provide the lumens they need at the lowest wattage ratings. Current packaging generally highlights wattage, and purchasers may be accustomed to selecting lamp products based on wattage instead of lumens (*e.g.*, they simply replace a burned out 100 watt lamp with a new 100 watt lamp).

It is in the interest of energy efficiency, therefore, to design labeling information to highlight the importance of light output in lumens. Accordingly, the Commission is requiring that the lumens disclosure be identified primarily as one of "light output," and that this light output disclosure be the first of the three basic performance disclosures appearing on the primary display panel. In addition, to remind consumers that wattage is not a measure of light output, the wattage disclosure will be identified primarily as "energy used."[82] See § 305.11(e)(1)(B) of the rule in "Text of Amendments," below. Coupled with the educational information currently being provided by manufacturers, utility companies and others in the marketplace, this increased emphasis in labeling on light output and clarification of the meaning of wattage should help educate consumers to save energy costs by purchasing the lowest wattage lamp that provides the light output they need.

ii. Average initial lumens vs. average mean or average lumens. In general, the light output in lumens of a given lamp product is greatest at the beginning of its life (*i.e.*, its "initial lumens"). Light output in lumens degrades over the lifetime of the lamp. According to generally accepted industry standards, the light output for a lamp can be measured and expressed in terms of average initial lumens (at or near the beginning of the lamp's life), as average or mean lumens over the duration of the lamp's real or projected lifetime, or as a range of lumens. In determining the most appropriate lumen disclosure for each type of lamp product, the Commission has considered the comments concerning the effect of degradation on the different lamp types and the measure of light output in lumens that will give purchasers the most accurate and uniform information on which they can compare competing products and make purchase decisions.

There was considerable discussion in the written comments and at the Workshop about how and at what point or points in a lamp's operation light output should be measured.[83] Some comments suggested that the required disclosure should be of mean or average lifetime lumens,[84] while others believed that lumens should be expressed as initial lumens.[85]

During the Workshop, representatives of GE and Osram explained in some detail how lumens are measured under current industry methods. One of the issues discussed was the extent to which lumens degrade (or diminish) over the life of a lamp.[86] There was general agreement among most of the Workshop participants that the extent of degradation of competing general service incandescent lamps and of medium base compact fluorescent lamps over the average lifetime of a compact fluorescent lamp (10,000 hours) is substantially the same.[87]

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which is measured in lumens, means amount of flow of light.

[76] See Part IV.C.1.b, above.

[77] For example, a general service incandescent halogen lamp can provide a greater light output in lumens than a standard general service incandescent lamp of the same wattage rating. In addition, a compact fluorescent lamp can provide the same or greater light output in lumens than a general service incandescent halogen lamp at a significantly lower wattage rating.

[78] Angelo, G–1, 2, (Tr.), 182–183; Osram, G–4, 2; Philips, G–5, 2–3; GE, G–2, 7, (Tr.), 181–182. See Part IV.C.1.b, above.

[79] Angelo (Tr.), 182–183 ("make lumens more prominent"); GE, G–2 (Ans.), 1 ("prominent"); Philips, G–5, 1–2 ("at least 50% that of the wattage"); MO DNR, GG–10, 3 ("more prominently"); WA SEO, GG–18, 1–2 ("of equal size and prominence"). But see GE (Tr.) 181–182 (the change in prominence should be gradual).

[80] GE, G–2, (Ans.), 9 ("brightness (lumens)"); Philips, G–5, 2–3 ("light output"); ACEEE, GG–1, 3 ("light output: XX Lumens"); MO DNR, GG–10, 3 ("brightness (lumens)"). But see OR DOE, GG–13, 3 ("lumen disclosure should *be* in lumens, not "brightness" or "light output").

[81] According to research conducted by Conway/Milliken & Associates for GE in July 1992, 55% of all consumers understand the meaning of lumens, even though they may purchase based on wattage. GE (Tr.), 109–10. See GE (Supp.), G–9, 1, Ex. A. But see Angelo (Tr.), 134–35 (disagrees and thinks that most consumers do not know watts are a measurement of energy as opposed to a measurement of light, because, up until now, they have purchased on the basis of watts).

[82] The Commission is not specifying type size for these disclosures because of the huge variety of packaging styles and sizes, and the need to vary type size according to the package.

[83] See, *e.g.*, Tr., 66–86.

[84] Philips (Tr.), 74 (a rating based on a long-term average of tested lumens that would be rounded); NEPS (Tr.), 67, 72; SCS, GG–16, 1–3 (details reasons for disclosing "mean lumen output range," including differing lumen depreciation and lumen output values and differences in lumen output from differences in fixtures, installations, sensitivity to temperature, and/or ballasts).

[85] See, *e.g.*, Osram (Tr.), 68; NEMA (Supp.), G–10, 15–16; Philips (Supp.), G–12, 2; LBL (Supp.), GG–22, 3.

[86] See Tr., 66–86.

[87] Because compact fluorescent lamps have longer lives than incandescent lamps, this comparison requires that several general service incandescent lamps be considered for the comparison. Specifically:

> Over the life span of a compact fluorescent product, generally speaking, after the first hundred hours—and the initial lumens are measured at one hundred hours burning—the product declines in output slowly over a life of perhaps 10,000 hours. If you look at what happens for the equivalent number of incandescent lamps, then obviously every time you replace an incandescent lamp say after 750 hours, your light output goes up to the initial again, and then drops off to some lower figure. If you take the difference in the averages between what you get from that whole bunch of incandescent lamps and what you get from the

Accordingly, most Workshop participants concluded that it would be appropriate for the Commission to require disclosure of average initial lumens.[88] Because it is easier to measure the light output of lamp products as initial lumens, and a requirement to disclose light output in initial lumens is consistent with the requirements of the Light Bulb Rule, the Commission has determined to require disclosure of average initial lumens on the packages of these products.[89] See § 305.11(e)(1)(A)(iv) in "Text of Amendments," below.

d. *Average lamp life.* Lamp life refers to the lamp's average life or lifetime, measured under laboratory conditions (*i.e.*, average laboratory life).[90] In the NPR, the Commission proposed requiring disclosure of average life (in hours). During the proceeding, two issues emerged relating to the proposed requirement to disclose lamp life: (1) How to determine the life of the product; and (2) whether to express life in years (based on an average usage period, such as three hours per day) or hours.

i. *How to measure lamp life.* Laboratory lamp life is determined by measuring the length of time (in hours) the lamp will operate before burning out. The IES standard calls for the lamp to be operated according to an on/off cycling schedule. The life of a lamp is the number of burning hours to failure. Some industry members, however, to save time, will use one or two variations of this standard. In one case, they will use a "steady burn," in which there is no on/off cycle. In the other case, they will burn the lamp at much higher voltages than normal and extrapolate the lamp's laboratory life from the test results.[91]

In the discussion of lamp life determination during the Workshop, the participants agreed that consistency is of considerable significance for this disclosure. Specifically, it is most important that the estimated life of competing lamp products be measured in a manner that yields comparable results. Participants did not, however, agree that any particular test procedure should be required by the labeling rules.

As discussed in Part IV.G, below, the Commission has determined at this time not to require for any of the basic disclosures that any specific test procedure be used. The Commission, however, is requiring that manufacturers have a reasonable basis, consisting of competent and reliable scientific tests, to substantiate these disclosures. To meet this reasonable basis standard for substantiating light output and laboratory life disclosures, manufacturers may rely on tests conducted pursuant to the specific IES test procedure referenced in the Rule. These test procedures, which comments recognized as appropriate test standards used by the industry, require on/off cycling. The Commission concludes that requiring manufacturers to have competent and reliable scientific tests to substantiate laboratory life claims is sufficient to ensure that manufacturers determine average laboratory life in a way that will produce consistent results. See the discussion of substantiation in Part IV.G, below.

ii. *Years vs. hours.* The other issue concerning lamp life pertained to how the lifetime should be expressed. ACEEE originally recommended that life be expressed in years, but later suggested requiring disclosure of both years and hours.[92] NEMA recommended that the required disclosure of life be in hours, because a disclosure in years would involve fractions of less than one year for some lamp products and assumptions about average hours of use in a year.[93] No commentors were aware of any studies demonstrating average usage periods for either commercial or residential users for particular types of lamps or uses. The Light Bulb Rule currently requires that life of incandescent lamps be disclosed in hours, 16 CFR 409.1(a)(3), and many manufacturers express lamp life in hours for other lamps. Accordingly, the Commission has determined to require a simple disclosure of average laboratory life in hours, rather than years (or both hours and years). The labeling rules, therefore, require that the average laboratory life of lamp products be disclosed in hours. See § 305.11(e)(1)(A)(v) in "Text of Amendments," below.

e. *Quantity of lamps in package.* There was no disagreement with the proposal to require the disclosure on packages of the number of bulbs contained in the package if there were more than one. This requirement, therefore, appears in the final labeling rules. See § 305.11(e)(1)(A)(i) in "Text of Amendments," below.

2. Supplemental Disclosure Options

To supplement the disclosures of wattage, light output and laboratory life, the Commission proposed in the NPR requiring disclosure of an efficiency measure of each lamp's performance. The Commission proposed two alternatives for primary consideration: (1) An energy efficiency measure such as lumens per watt; and (2) a disclosure of the estimated energy cost of the lamp based on a specified unit energy cost and usage period. The NPR also described similar suggestions made by ACEEE and NEMA. As is further set forth below, the Commission has concluded that neither a lumens-per-watt disclosure nor an operating cost disclosure is likely to increase consumers' abilities to choose the most efficient lamp for their needs. Instead, the Commission has concluded that the basic information required to be disclosed should be supplemented by the Advisory Disclosure described in Part IV.C.2.c, below.

a. *Energy index.* The Commission explained in the NPR that a lumens-per-watt disclosure (*i.e.*, the "Energy Index" that had been suggested by NEMA), which would rate the efficiency of a lamp product in converting electric energy into light output, has the advantage of simplicity. It pointed out, however, that such a disclosure could suffer from the drawback identified by ACEEE (*i.e.*, because higher wattage bulbs often have disproportionately greater light output, they often will use more energy as well as have a better energy index). Thus, a lumens-per-watt disclosure alone could lead to lumen and watt over-purchasing. The Commission inquired whether this

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single curve with the compact fluorescent, it is not a very big percentage. It is perhaps around five percent. That is far less than you will get by differences in light output from incandescent lamps due to fluctuating voltage.

Osram (Tr.), 80–81.

[88] *See* GE (Tr.), 67 ("Whether I would want product A or product B from a light output or an efficiency standpoint, you'll still make the same decision."); Osram (Tr.), 81 ("Our procedures, both nationally and internationally for rating products at initial value is something that we can live with as an industry, and something that we can measure with some consistency, and can be enforced."); NEMA (Supp.), G–10, 15–15; LBL (Supp.), GG–22, 3 ("There was considerable discussion at the Workshop on whether initial lumens, or mean or maintained lumens, should be reported on lamp labels. LBL concurs with the position that the difference between the lumen depreciation of general service incandescent lamps and compact fluorescent lamps is small enough that initial lumens (per the standard test procedure) are acceptable."); Philips (Supp.), G–12, 3. *But see* MA AG (Supp.), GG–24, 2, fn. 1 ("Manufacturers should disclose if a compact fluorescent lamp or an energy efficient incandescent lamp's lumen degradation is faster or further or both than the degradation of a conventional incandescent lamp.").

[89] This requirement is consistent with the Light Bulb Rule. 16 CFR at 409.1(a)(2).

[90] In EPCA, as amended by EPA 92, the terms "life" and "lifetime" mean "length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume." 42 U.S.C.A. 6291(30)(P) (West Supp. 1993).

[91] See Supreme (Tr.), 89–90.

[92] ACEEE, GG–1, 2, (Supp.), GG–21, 1 ("For example, a label might read: Lamp Life: 1000 hours (0.9 years at 3 hours per day).").

[93] NEMA (Supp.), G–10, 21 note *.

drawback could be avoided by requiring that the Energy Index be accompanied by a disclosure such as: "Select the light output you require before comparing the energy index of different bulbs."

Most of the comments supported requiring a disclosure of the energy efficiency of lamp products in the form of lumens per watt and that it be called an "energy index."[94] One participant compared this to a miles per gallon disclosure for gasoline, which consumers presumably understand.[95] Although consumers could otherwise ascertain the information from the separately required disclosures of lumens and watts, the energy index reduces this information to a single figure.[96] Several comments favoring this disclosure also recommended that it be no less than 50% of the size of the light output disclosure and that it be accompanied by a definition or explanation of its meaning on the same or another panel.[97] Two comments recommended that the Commission require disclosure of a "range" of energy indices for available general service incandescent lamps and compact fluorescent lamps like those the Commission requires for other products under the Appliance Labeling Rule, with the performance of the labeled lamp indicated on the range.[98]

Two comments opposed an energy index as unnecessary or confusing.[99] Other comments were concerned with the potential overbuying problem identified by ACEEE (that the disclosure could unintentionally force consumers to "overbuy" watts and lumens because higher wattage incandescent lamps tend to have higher energy indices.)[100] Three comments, however, agreed with the Commission's suggestion that the potential problem might be avoided by requiring the prominent disclosure of wattage next to the energy index disclosure and/or a definition or explanation that informs purchasers to look for the lumens they want and then select the highest energy index.[101] One comment indicated that the potential overbuying problem was not likely to be a significant one.[102]

The Commission has determined not to require disclosure of a lumens-per-watt index. Although support was expressed in the rulemaking proceeding for this proposal, disclosing such an index could result in consumers purchasing more watts than they need. This overbuying may occur because a lumens-per-watt index will rise with wattage of incandescent lamps. Thus, a consumer who buys the lamp with the highest lumens-per-watt index may select a lamp that has a higher than required light output and wattage. For example, overbuying may occur if a consumer selects a 100-watt incandescent lamp with a 17 lumens-per-watt index as a replacement for a 60-watt incandescent lamp with a 14 lumens-per-watt index or a 75-watt incandescent lamp with a 16 lumens-per-watt index.

An energy index based on lumens per watt also could confuse consumers who understand correctly that higher wattage lamps use more energy. Because a lumens-per-watt index tends to increase with the wattage of incandescent lamps, these consumers might be led to believe that lamps with higher energy index numbers generally cost more to operate. In that event, the much higher energy index numbers that would appear on the labels of compact fluorescent lamps actually could mislead some consumers into believing that these lamps were less energy efficient.

In light of these potential disadvantages, the Commission has determined not to adopt a lumen-per-watt index as a supplemental disclosure. The Commission has concluded that the objectives of EPA 92 will be better achieved by supplementing the basic disclosures with the Advisory Disclosure described in Part IV.C.2.c, below, which informs consumers how to use the basic disclosures to select the most efficient lamp for their needs.

b. Energy operating cost. Another proposal for conveying lamp efficiency information was to require an energy operating cost disclosure. As described in the NPR, ACEEE suggested requiring disclosure of estimated annual operating cost.[103] NEMA suggested requiring disclosure of both an estimated annual operating cost and a lumens-per-watt energy index.[104] Based on these suggestions and other considerations discussed in the NPR, the Commission proposed requiring disclosure of estimated monetary cost of energy information, as an alternative, or in addition to, a lumens-per-watt disclosure of the lamp's energy efficiency.[105]

In the NPR, the Commission stated that it might require a disclosure of the estimated monetary cost of the energy used by a lamp based on its use for a specified period, such as the lamp's life in hours or a length of time based on average usage patterns. The Commission explained that such a disclosure could be based on the representative average unit cost of electricity, as specified in the Appliance Labeling Rule, 16 CFR 305.9, or on an assumed unit cost. The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy costs of competing lamp products. At the same time, the Commission stated that it would consider carefully whether such disclosures, particularly when the costs are prorated over a period of time that is less than the life of a very energy efficient bulb, communicate effectively the extent to which a higher initial lamp cost can be compensated for by lower operating costs over the lamp's life.[106]

The Commission pointed out in the NPR that, if it adopted a monetary cost of operation disclosure, it would have to base the disclosure on an average or estimated usage pattern (*e.g.*, one year). The Commission noted, however, that there are no established usage patterns, and estimated use will vary depending upon the location and use of the lamp. In addition, the Commission would have to determine what unit cost of electricity to use. The representative average unit cost of electricity, as specified in the Appliance Labeling Rule (16 CFR 305.9), changes annually, and thus could result in consumer confusion if lamps manufactured in different years were available for sale at the same time. To avoid possible confusion, the Commission explained that it might require manufacturers to include an explanation of how the estimated energy cost was determined in immediate proximity to the monetary cost estimate disclosure.[107] The Commission recognized, however, that the additional information could unduly complicate the label, and therefore not be helpful to purchasers.

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[94] See, *e.g.*, NEMA, G–3, 34–35, (Supp.), G–10, 12; Osram (Tr.), 124, (Supp.), G–11, 2; Philips, G–5, 2, (Supp.), G–12, 1; Panasonic, G–7, 2; LBL, GG–7, 1; MN DPS, GG–9, 2; OR DOE, GG–13, 2; LRC, GG–15, 2; US EPA, GG–17, 2–3; WA SEO, GG–18, 2; NEPS, GG–11, 3; GE (Tr.), 110, 140, 155, 198, (Supp.), G–9, 1 (GE would prefer that the Commission require only a disclosure of lumens and watts and no energy index, but would prefer an energy index disclosure over an energy cost disclosure).

[95] Osram (Tr.), 124.

[96] See *Id.* at 125.

[97] NEMA (Supp.), G–10, 12; Osram (Supp.), G–11, 2; Philips (Supp.), G–12, 1.

[98] LBL (Supp.), GG–22, 3; NIST (Supp.), GG–23, 2–3.

[99] IES, GG–6, 2; SCS, GG–16, 4.

[100] Angelo, G–1, 2; GE, G–2, (Ans.), 1–2; ACEEE, GG–1, 3, (Supp.), GG–21, 1; MO DNR, GG–10, 2.

[101] LRC, GG–15, 2; WA SEO, GG–18, 2.

[102] OR DOE, GG–13, 2 (may be a problem for some lamps, but not true in general).

[103] 58 FR at 60154.

[104] *Id.* at 60153.

[105] *Id.* at 61055.

[106] For example, if a monetary cost of operation disclosure were adopted, one usage period for which disclosures could be calculated is 750 hours, which is approximately the life of general service incandescent lamps with the shortest lifetimes. A second option would be to set a longer period (e.g., 1000 hours). But, where this period exceeds the average life of the lamp, the cost of replacement of the lamp might come into play. A third option would be to use a shorter period, such as one hour, 10 hours, or 100 hours. A shorter period, however, might be too small to illustrate sufficiently energy cost differences among competing lamps.

Because some purchasers may be interested in computing lamp costs comprehensively, including the initial purchase price, the Commission proposed requiring information to enable them to make the necessary calculations to determine the "estimated total operating cost" of the lamp for a standard time period.[108] But, recognizing that purchasers would need to make calculations for each lamp they considered, the Commission stated that it would consider carefully the extent to which purchasers actually would use the proposed disclosures in making a purchase decision. As a practical matter, the Commission noted that purchasers, particularly retail consumers, may disregard, or consider too complex, any disclosure requiring computations of this sort, and therefore that such required disclosures may not be useful to purchasers in their efforts to choose an energy efficient lamp. The NPR solicited comments on both the annual operating and total operating cost disclosures proposed by the Commission.[109]

The 17 comments that addressed cost disclosures were evenly divided. Seven comments recommended that the Commission require some kind of cost disclosure.[110] Seven comments opposed such a requirement.[111] Two commentors initially supported cost disclosures, but later recommended against them.[112] One comment stated that if cost disclosures were required, the NEMA proposal described in the NPR for estimated annual operating cost along with an energy index would be the best.[113]

Of the comments favoring a cost disclosure, only one recommended including the purchase price of the lamp in the cost disclosure.[114] Most comments that supported cost disclosures, as well as some comments in opposition and some additional comments, opposed requiring disclosure of the "estimated total operating cost."[115] The objection most often offered was that manufacturers have no control over the retail price of the products they manufacture, which would make it impossible to disclose on packages a meaningful operating cost figure that includes purchase price.

The comments supporting disclosure of estimated annual operating cost favored the approach because they believe that consumers understand dollars and that operating cost would provide useful information.[116] Most of these comments recommended using a fixed unit cost for electricity, rather than the national average cost figures published annually by DOE, and a fixed usage period.[117]

Of those comments opposing required disclosure of operating cost, most contended that cost disclosures would be difficult to develop and would make disclosures too complicated, regardless of whether annual or total costs were used.[118] Several comments remarked that cost disclosures in U.S. dollars would result in crowded labels and consumer confusion because of the United States' increased trade with Canada and Mexico under the North American Free Trade Agreement ("NAFTA").[119]

Some comments that opposed mandatory cost disclosures recognized that manufacturers might want to disclose some cost information voluntarily in point-of-sale materials.[120] Several comments recommended that the Commission regulate how cost disclosures on packaging or in point-of-sale materials should be made, if the manufacturer wishes to make them. Of these, some recommended that the Commission require manufacturers to disclose the product usage period and energy cost assumptions upon which their cost claims were based.[121] Other

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[107] This would allow purchasers to compare the energy costs of competing products with different lifetimes based on a time line that is within the lifetime of all the competing products and is large enough to illustrate clearly the differences among energy costs and, therefore, of energy efficiencies. In the alternative, the Commission explained that it could require that monetary cost of operation estimates be based upon a constant unit cost of electricity, such as 10 cents per hour, which although not fully accurate for all purchasers, would facilitate lamp-to-lamp comparisons.

[108] Specifically, the Commission proposed requiring the following statement:

IMPORTANT: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for 750 hours of use is: (*[Figure A]* × the purchase price for one light) + *[Figure B]*). Compare this cost to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens. The manufacturer would determine and preprint Figure A and Figure B in this disclosure. The NPR explained how the manufacturer would calculate these figures and included examples. The Commission proposed a more detailed disclosure for multiple filament general service incandescent lamps.

[109] See Questions 3 ("Disclosure of Monetary Cost of Operation") and 4 ("Disclosure of Estimated Total Operating Cost"), 58 FR at 60158–59.

[110] ACEEE, GG–1, 1–2, (Tr.), 113–114, 149, (Supp.), GG–21, 1; Gluckstern, GG–3, 1; MN DPS, GG–9, 2; MO DNR, GG–10, 2; NEPS, GG–11, 2–3; LRC, GG–15, 2–3; US EPA, GG–17, 3.

[111] GE, G–2, 7, (Tr.), 170; NEMA, G–3, 35–38, (Tr.), 131, 133, 139, (Supp.), 13, 23–26; OR DOE, GG–13, 3–5; Osram (Tr.), 131, (Supp.), 3; Philips (Supp.), G–12, 1; Green Seal (Tr.), 159; SCS, GG–16, 4–5.

[112] Angelo, G–1, 3 (support), (Tr.), 136, 157, 158 (oppose); LBL, GG–7, 1–2 (support), (Supp.), G–22, 4 (oppose).

[113] WA SEO, GG–18, 2.

[114] NEPS, GG–11, 2–3. But see NEPS (Tr.), 199 ("I have put it in my comments as something to be considered, and I am very willing to back off on [life-cycle cost disclosure].").

[115] See Angelo, G–1, 3; Osram, G–4, 2; Philips, G–5, 2; Panasonic, G–7, 2; ACEEE, GG–1, 1–2, 4 (retail prices vary too much to require disclosure of estimated total operating cost); MN DPS, GG–9, 2 (price based cost too complicated unless Commission prescribes a table with several fixed prices for both bulb types); MO DNR, GG–10, 2; LRC, GG–15, 2–3 (cost based on purchase price is practically useless); US EPA, GG–17, 3 (life-cycle cost would be the best, but it's too complicated: thus, estimated annual operating cost over a standard time period is the best compromise).

[116] See, e.g., ACEEE (Tr.), 149 ("We think you really need a dollar cost disclosure. People understand dollars.")

[117] See, e.g., ACEEE (Supp.), GG–21, 1 (But see ACEEE, GG–1, 1–2, in which ACEEE advocated earlier the use of a rounded version of the DOE annual energy cost.); MN DPS, GG–9, 2; MO DNR, GG–10, 2; LRC, GG–15, 2–3; US EPA, GG–17, 3. Even Philips, which opposed cost disclosure requirements, agreed that, if they were required, they should be based on a fixed energy cost. Philips, G–5, 2.

[118] See, e.g., SCS, GG-16, 4–5 ("Given that the most accurate presentation of operating costs is utility district based (due to utility rates (affecting operating cost) and rebates (affecting purchase cost)) rather than national, printing operating costs directly on the product package is problematic.")

[119] IES, GG–6, 2 ("Will labeling requirements necessitate bi- and tri-language packaging to explain the (U.S. cost) information?"); Osram (Tr.), 121; (Supp.), G–11, 3; GE, G–2, (Ans.), 4, (Tr.), 140 ("The result of dollar cost operation on package would force manufacturers to make country-specific packaging. Country-specific packaging means that we are less efficient and we are not as able to meet consumer demands in the three (national) markets."), 141 (noting that there could be special problems with products bound for Canada, which would need bi-lingual labels and, if cost were required, cost disclosures in both US and Canadian dollars).

[120] Osram (Supp.), G–11, 2; LBL (Supp.), GG–22, 4 (contending that the information necessary to make informed purchasing decisions between two lamps of different efficiencies and price takes two forms: Total operating costs, and total life cycle costs. "Since electricity rates vary considerably by region, hours of lamp usage vary by consumer, and retail price depends on factors outside the manufacturers' influence, it is difficult to present this information on a product label. However, guidelines should be established by the Commission for presentation of these quantities in point-of-purchase information to avoid confusing or inaccurate claims in product advertising."); SCS, GG–16, 4–5.

[121] NEMA (Supp.), G–10, 25 note ** ("NEMA believes that the Commission should not mandate specific assumptions that must be used in voluntary cost disclosures. Rather, the Commission should require that manufacturers who choose to make disclosures must disclose their assumptions about the cost of electricity and annual hours of lamp use."); Philips (Supp.), G–12, 1 ("Any such

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comments suggested that the Commission should prescribe standardized assumptions for any voluntarily-made operating cost disclosures.[122]

The Commission has determined not to require disclosure of operating cost information for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps. The Commission agrees that fluctuations in retail purchase prices for lamp products and utility company rebates make it a practical impossibility for manufacturers to disclose a meaningful total operating cost that includes purchase price.[123] The Commission also agrees that varying energy rates and consumer usage patterns would make it necessary to require computation of annual operating cost on the basis of questionable assumptions.[124] This would make it difficult, if not impossible, to provide current, accurate and meaningful annual operating cost information for prospective lamp purchasers.[125] Because purchasing decisions are likely to be made very quickly for lamps, which are relatively low-priced items, complicated disclosures involving operating costs are unlikely to be heeded by purchasers at the point of sale and may possibly be confusing.[126] Therefore, a required energy operating cost disclosure would not be useful in helping buyers make purchasing decisions.[127]

The labeling rules do not prohibit manufacturers from disclosing operating cost information, if they choose to do so. The Commission has determined not to prescribe standardized assumptions for these disclosures. The final labeling rules, however, require that, if manufacturers voluntarily choose to make operating cost disclosures on packaging labels, in catalogs or in point-of-sale printed materials, they disclose the unit energy cost, usage patterns, purchase price, and other assumptions upon which the operating cost claims are based. See §§ 305.11(e)(3), 305.13(a)(2) and 305.14(d)(2) in "Text of Amendments," below.

c. Advisory disclosure. As discussed above, the Commission has determined to require that packaging and catalogs contain an Advisory Disclosure that advises consumers how to select the most efficient lamp for their needs. The Advisory Disclosure is:

> To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

This statement advises consumers how to use the lumen and wattage disclosures that will be on the packages to make energy efficient choices. It has the benefits of the explanatory statement that would have accompanied the Energy Index, without the potential overbuying drawback of the index number itself. Like the proposed Energy Index, it may alert consumers to consider lamps, such as halogen incandescent lamps or compact fluorescent lamps, which have lower wattages but produce comparable amounts of light output as higher-wattage incandescent lamps.

3. Additional Disclosures for Multiple Filament Incandescent Lamps

For multiple filament ("three-way") general service incandescent lamps (*i.e.*, incandescent lamps with two filaments of different wattage that can be burned either separately or together, producing three different light output levels), the Commission proposed requiring that design voltage, wattage, light output and an efficiency measure be disclosed for operation at each level. It proposed that the life rating be based on the life of the first filament that fails. The Commission solicited comments on whether and how proposed operating cost disclosures should apply to multiple filament lamps.[128]

Five comments addressed how to disclose wattage, light output, laboratory life and the energy index for these lamp products.[129] There was general agreement among these comments that the Commission should require disclosure of watts and lumens for all three settings, and that the required disclosure of the laboratory life of the lamp should be determined on the basis of the major filament.[130] One comment recommended requiring use of the average wattage "as used" in calculating an estimated operating cost.[131]

Based on the discussion in Part IV.C.1.a-e, above, the Commission has determined to require, for multiple filament lamps, the same disclosures required for a single filament lamp, i.e., energy used (in terms of wattage), light output (in lumens), laboratory life (in hours) and the Advisory Disclosure. Consistent with the Light Bulb Rule, the Commission has determined to require disclosure of wattage and light output for each light output level of a multiple filament lamp. The Commission has determined to require disclosure of average laboratory life on the basis of the filament that fails first, rather than on the major filament, as suggested by the comments.[132] If the secondary filament routinely fails before the major filament, basing the life estimate on the major filament would not be helpful to purchasers. For the reasons explained in Part IV.C.2.b, above, the Commission has determined not to require energy operating cost information for multiple filament lamps. See § 305.11(e)(1)(G) in "Text of Amendments," below.

(voluntary operating cost) disclosures should be based on substantiated test data and any assumptions (should be) disclosed on the package.").

[122] See Angelo (Tr.), 136, 157 (suggesting that the Commission set a standard to avoid one manufacturer using 10 cents per kWh and another using 15 cent per kWh), 158; GE (Tr.), 170 ("We do agree that if cost of operation is going to be optionally claimed on a package, then it is a good idea to have a standard set of assumptions."), 170–72 (cautioning that, unless the required assumptions are keyed into flexible marketplace standards, there is a risk of their becoming outdated, which would undermine credibility and inhibit the main goal: Consumers switching from general service incandescent lamps to compact fluorescent lamps); Green Seal (Tr.), 159 ("* * * I think it makes sense, therefore, to lay out what the assumptions are and once that is done, there is a standard."); Osram (Supp.), G–11, 2 (supports development of a common set of criteria for operating cost disclosures on lamp packages where the manufacturer chooses to display them, and suggests basing disclosures in meantime on 1100 hours use per year and 10 cents per kilowatt-hour).

[123] To encourage the use of compact fluorescent lamps, some utility companies offer significant rebates to their customers for purchasing them. These offers usually accompany the consumers' utility bills, and include explanations of why compact fluorescent lamps can save energy and money.

[124] Various studies have shown that 1100 operating hours per year is the average figure for a lamp in a residential setting. Osram (Tr.), 122. To use this average where the lamp a consumer actually purchases only has a 750 hour life, however, could be confusing. GE (Tr.), 155. See notes 106, 108, above.

[125] Also, because the dollar cost figure on the package will not relate to what the consumer is paying for the lamp, it is likely to be confusing to consumers. Tr., 132–33, 138–39

[126] See, *e.g.*, NEMA, G–3, 36–37. According to GE, of industry sales of all incandescent lamps to residential purchasers in 1992, 36% were sold through mass merchants, 31% through food and grocery outlets, 22% through hardware and home center stores, 7% through drug stores and 4% through all other outlets. GE (Tr.), 105(4). Seventy eight percent of all these lamps are purchased by residential consumers walking themselves through the purchase decision, without expert assistance. GE (Tr.), 105(5). In addition, the average residential consumer spends 53 minutes total for all purchases per stop in grocery or food stores, GE (Tr.), 108, so the consumer obviously spends little time deciding which lamp to purchase in these stores.

[127] In contrast, information disseminated to consumers in other ways, such as utility company bill inserts, may be more useful.

[128] See 58 FR at 60155, and Questions 3 and 4, at 60158–59.

[129] NEMA, G–3, 45, (Tr.), 206–207, (Supp.), G–10 14; GE (Tr.), 211; Osram (Supp.), G–11, 3; Philips (Supp.), G–12, 1; OR DOE, GG–13, 7.

[130] *Id*

[131] ACEEE, GG–1, 3.

[132] This is consistent with the Light Bulb Rule, 16 CFR 409.1 n. 1

4. Additional Disclosures Recommended for Compact Fluorescent Lamps

Several comments recommended requiring disclosures for compact fluorescent lamps that would be unique to this type of lamp. These suggestions are discussed below.

a. *Equivalence claims.* In its proposal described in the NPR, ACEEE suggested that the relative light output of a compact fluorescent lamp be measured by comparing it to an incandescent reference lamp, with an incandescent reference lamp being defined for each common type and wattage of compact fluorescent lamp.[133] Presumably, this would provide those purchasers who use watts when buying incandescent lamps with light output information they could use in deciding which compact fluorescent lamp would provide the most comparable replacement for that incandescent reference lamp. Responding to this suggestion, some comments recommended against requiring that the lumens of compact fluorescent lamps be expressed as a percentage of the light output of an incandescent reference lamp.[134] Others favored such an approach.[135]

The Commission believes that the disclosure of wattage, light output in lumens, and the other factors required by the final labeling rules, will be sufficient to allow purchasers to compare competing products when making purchasing decisions, without the necessity of tying a compact fluorescent lamp to a specific incandescent reference lamp. Therefore, the Commission has decided not to require disclosure of an equivalent reference lamp for each compact fluorescent lamp. Manufacturers may voluntarily choose to make equivalence claims, however.

b. *Base-up/base-down measurement.* Most comments that specifically addressed the light output performance of compact fluorescent lamps suggested that lumen measurements for these products vary depending on whether the lamp is tested in a base-up or base-down position.[136] For example, there was testimony at the Workshop to the effect that there could be as much as a 20 to 30 percent variation in light output between a base-down and a base-up configuration, depending on the lamp and its installation.[137] The comments also state that no test procedure has yet been developed to measure lumens accurately for compact fluorescent lamps in a base-down position.[138]

There was general agreement among these comments that the fact that lumens will vary between base-up and base-down applications should be addressed in the disclosure requirements. Most comments also agreed that, if there were more than a five percent difference between base-up and base-down lumens, manufacturers should be required to disclose each separately, disclosing base-down lumens to the best of their ability.[139] The Commission agrees that, to the extent the base-up/base-down positioning of compact fluorescent lamps affects the light output of the lamps significantly, those differences in light output should be disclosed. The Commission finds that a difference of more than five percent in lumen output is significant, and has determined that the labeling rules shall require disclosure of light output in lumens for both base-up and base-down positions when the manufacturer has reason to believe that the difference between the two disclosures would be more than five percent. Therefore, if the manufacturer has reason to believe the light output at a base-down position would be more than 5% different, the label also must disclose the light output at the base-down position or, if no test data for the base-down position exist, that the light output for a base-down position might be more than 5% less. See § 305.11(e)(1)(E) in "Text of Amendments," below.

c. *CRI and CCT.* Some comments suggested that the Commission require the disclosure of the color rendering index ("CRI") and the correlated color temperature ("CCT") for compact fluorescent lamps.[140] These two measurements are used by the industry to describe the color of the light that compact fluorescent lamps produce. The record on whether these factors should be disclosed is insufficient for the Commission to prescribe labeling requirements. Although these are useful disclosures for commercial consumers and for some knowledgeable residential consumers, they are not necessary for them or other purchasers to select the most energy efficient lamps to fill their lighting needs. Additionally, it would be difficult to explain the meaning and use of these items in concise and simple terms on the limited space available on lamp packaging. To the extent such information is important, it is likely that manufacturers, utility companies and other interested parties voluntarily will provide that information on packaging or by other means. If they do not and consumers are dissatisfied with the performance of compact fluorescent lamps, they will not make repeat purchases of compact fluorescent lamps. Consequently, the Commission is not requiring the disclosure of CRI or CCT for compact fluorescent lamps.

d. *Operating temperature.* OR DOE recommended that the Commission require disclosure of the effect of operating temperature on compact fluorescent lamps. OR DOE stated that many fluorescent products do not start or operate well at very low temperatures, such as in outdoor lighting in cold temperatures, and do not provide full light output at very low or very high temperatures.[141] The record does not contain sufficient specific information for the Commission to conclude how significant and extensive the effects of temperature are on compact fluorescent lamps in actual practice and to determine what specific disclosures are needed. Moreover, it appears that manufacturers already disclose the temperature factor in some instances on compact fluorescent lamp packages. To keep the required disclosures simple and concise, therefore, while fulfilling the statutory mandate concerning the important information the labeling rules should provide, the Commission has determined not to require disclosures concerning the operation of compact fluorescent lamps under these operating conditions.

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[133] 58 FR at 60154.

[134] LBL (Supp.), GG–21, 2 ("CFL package information should *not* claim equivalent light output based on incandescent wattage").

[135] MN DPS, GG–9, 2 ("It would be confusing to express light output of a lamp as a percent of a reference lamp. Comparison with reference lamps is an excellent approach, but the comparison should be simply stated in watts, lumens per watt and lumens. It would be especially helpful in encouraging the sale of compact fluorescent lamps to have a comparable light output compact fluorescent lamp as the reference lamp for incandescent lamps and vice-versa."); LRC, GG–15, 2; MA AG (Supp.), GG–24, 2.

[136] See, *e.g.*, ACEEE, GG–1, 3, (Tr.), 234, (Supp.), GG–21, 3; OR DOE, GG–13, 10; LRC, GG–15, 2, (Tr.), 235; US EPA, GG–17, 2; Osram (Tr.), 233, 242; GE (Tr.), 236; NEMA (Tr.), 272; Philips (Supp.), G–12, 1; LBL (Supp.), GG–22, 2. Compact fluorescent lamps normally are tested for light output ratings with the base facing upward. On the other hand, compact fluorescent lamps used as replacements for incandescent lamps normally are used with the base facing downward. This difference in position may result in a different light output. In addition, the temperature of the environment surrounding the compact fluorescent lamp also affects light output. When compact fluorescent lamps are used in enclosed luminaires with internal temperatures that are elevated above room temperature, the result may be reduced light output. The same is true when compact fluorescent lamps are operated outdoors at low temperatures. Rensselaer Polytechnic Institute, Lighting Research Center, National Lighting Product Information Program, Specifier Reports: Screwbase Compact Fluorescent Lamp Products ("Rensselaer Report"), Vol. 1, Issue 6, April 1993, C–3, at 6.

[137] See, *e.g.*, US EPA, GG–17, 2; Osram (Tr.), 233; LRC (Tr.), 235.

[138] See ACEEE (Supp.), GG–21, 3; LBL (Supp.), GG–22, 2; OR DOE, GG–13, 10.

[139] LRC (Tr.), 235; ACEEE (Tr.), 239, (Supp.), GG–21, 3 (would prefer that a test procedure for base-down lumens be developed but supports disclosure based on multiplier in interim); NEMA (Tr.), 272; Philips (Supp.), G–12, 1.

[140] WA SEO, GG–18, 3; MA AG, GG–8, 3, (Supp.), GG–24, 1–2; OR DOE, GG–13, 5–7, 7–8; ORSU, GG–14, 2–3. EPCA defines these two terms as follows:

The term "color rendering index" or "CRI" means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature. 42 U.S.C.A. 6291(30)(J) (West Supp. 1993).

The term "correlated color temperature" means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source. 42 U.S.C.A. 6291(30)(K) (West Supp. 1993).

The NPR proposed including these definitions of CRI and CCT in the Rule because they are terms that will often be used in connection with the marketing of fluorescent lamp products and because DOE may include them in its standards or test procedure rules.

e. Noise and interference factors. Several comments suggested requiring disclosure of warning-type information, such as the possibility that compact fluorescent lamps will interfere with some remote control and other electronic devices.[142] One comment recommended requiring the disclosure of power quality and noise factors.[143] Although noise interference warnings appear on packaging for at least some compact fluorescent lamps, there was insufficient information presented on the rulemaking record about how significant these factors are. In light of this, as well as the practical necessity to limit required disclosures to the most important information consumers need, the Commission has determined not to require disclosure of these factors. To the extent manufacturers wish to disclose information about any of these factors in a truthful and non-deceptive way, they will be free to do so.

5. Location and Format of Packaging Disclosures

a. Location. As described in the NPR, NEMA proposed that the disclosures discussed above for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps appear on at least one panel of the outer sleeve of lamp packages. NEMA suggested that the Commission specify both type size and relative size specifications for the disclosures, and that the Commission require that the supplemental disclosures NEMA proposed (the energy index and estimated annual operating cost) be disclosed in a square at least one inch by one inch.[144]

ACEEE's suggestions, as described in the NPR, did not contain specific format recommendations. ACEEE suggested, however, that the Commission specify label content and size, while allowing manufacturers flexibility to design their own customized labels within the specified parameters.[145]

The Commission did not propose specific formats in the NPR for the size or location of the disclosures under consideration. The Commission stated, however, that it would consider requiring that the principal disclosures be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.[146]

Accordingly, the Commission has determined to require that the basic disclosures[147] and the Advisory Disclosure be made on the principal display panel of packages for these two types of lamps. The comments that addressed where these disclosures should be made agreed that key disclosures should be on the front panel, or on "at least one panel."[148] The Commission has determined that it is unnecessary to prescribe exact specifications for all aspects of the required disclosures. But, to ensure prominent display of the light output figure as well as the word, "lumens," the Commission is specifying format requirements for these and the other performance disclosures.[149] See §§ 305.11(e)(1)(A) and 305.11(e)(1)(B) in "Text of Amendments," below.

b. Type size, pominence, and graphic enclosures. Many comments stressed the importance of making the light output disclosure with prominence that is equal or similar to the energy used (wattage) disclosure. These comments agreed that, to encourage consumers to shop for lamps based on efficiency, the disclosure requirements should direct consumers' attention to light output in lumens. To accomplish this, the comments generally recommended that the lumens number be disclosed in a size that is at least 50% as large as the wattage number and that it be disclosed with prominence equal to the disclosure of watts.[150]

The Commission agrees that the requirements should direct consumers to the lumen disclosure, and facilitate consumers' understanding of the meaning of the various terms. In the Commission's experience, this will be facilitated by using simple, understandable language and putting the most important information first. Accordingly, the amended rule specifies that the required disclosures appear in the following order:

(1) The term "light output" followed by the lumens figure, and, in close proximity to either of these, the term "lumens;"

(2) The term "energy used" followed by the wattage figure, and, in close

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[141] OR DOE, GG–13, 5–6. OR DOE's comment directed this concern to all fluorescent lamp products. Because general service fluorescent lamps are purchased overwhelmingly for commercial use, and most commercial purchasers are more knowledgeable about the factors affecting performance of those lamp products, the Commission is addressing this issue primarily as it concerns compact fluorescent lamps purchased by residential consumers.

[142] MA AG, GG–8, 1–3, (Supp.), GG–24, 1–2; NEPS, GG–11, 3; LBL, GG–7, 2.

[143] ORSU, GG–14, 3.

[144] 58 FR at 60153–54

[145] *Id.* at 60154.

[146] *Id* at 60156.

[147] The basic disclosures are: design voltage (if other than 120), energy used (expressed in watts), light output (expressed in lumens), life (expressed in hours), and number of bulbs in package (if more than one).

[148] See, *e.g.*, OR DOE, GG–13, Enclosure (showing proposed disclosures for front and back package panels); Osram (Supp.), G–11, 1 (disclosures should be made on the main panel); Philips (Supp.), G–12, 1 (disclosures should be on at least one panel of the lamp package); NEMA, G–3, 39, (Supp.), G–10, 10 (the main disclosures should be on at least one panel of the package). Although its comment was directed at the disclosure of an energy efficiency range, NIST's remarks on disclosure location are pertinent:

> The side of the package is not in a prominent display situation since the customer must remove the package in order to examine the sidebar information. That is probably too late in the decision process for many purchasers. It would seem to be more advantageous to show such information on the front of the package. Then the buyer could more readily determine that there is another option before removing from the shelf. As GE noted, the crowded display areas can become confusing, if not overwhelming, for a wise choice to be made from the many offerings displayed. Therefore, it seems to be even more important to get the information displayed up front.

NIST (Supp.), GG–23, 2.

[149] See NEMA, G–3, 6 (package design plays an important part in the sale of lamps, package has limited space, specific words and formats matter greatly).

[150] See, *e.g.*, Angelo (Tr.), 156. GE, G–2, 7, (Ans.), 9, (Tr.), 179 (does not believe that lumens should be larger than watts on the package); NEMA, G–3, 39 (wherever wattage is displayed, light output must be disclosed in close proximity, in type that is at least 50 percent the size of the wattage figure); 42 (Commission should consider requiring all disclosures of wattage be accompanied by a reference to light output of equal size and prominence), (Supp.), G–10, 12 (disclosure of light output in lumens should be at least the same size and no less prominent that the disclosure of wattage); Philips, G–5, 2 (the words Light Output should appear in close proximity to the wattage, in print at least 50% that of the wattage); MO DNR, GG–10, 3 (brightness (lumens), yearly energy costs, and lamp life should be more prominent than other required information such as watts, volts, and size); WA SEO, GG–18, 1–2 (to begin steering consumers to lumens, lumens disclosure should be larger in comparison to watts than is presently required, it should perhaps be of equal size and prominence); Osram (Supp.), G–11, 1 (light output disclosure should be no smaller than the wattage disclosure); ACEEE (Supp.), GG–21, 1 (agrees with the proposal forwarded by Angelo that the lamp package have both lumens and watts printed in equal size).

proximity to either of these, the word "watts;" and

(3) The term "life" followed by the life in hours figure and, in close proximity to either of these, the word "hours."

In addition, the disclosures must conform to the following type size requirements:

(1) The three numerical figures must be of equal size;

(2) The terms "light output," "energy used" and "life" must be of equal size; and,

(3) The terms "lumens," "watts," and "hours," must be of equal size but only approximately 50% of the size of the terms "light output," "energy used," and "life," while still clear and conspicuous.

See § 305.11(e)(1)(B) and appendix K in "Text of Amendments," below.

The rules require that lamp packages contain an Advisory Disclosure to educate purchasers how to select the most efficient lamp that meets their needs. The required Advisory Disclosure is:

> To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

This statement must appear on the primary display panel of the lamp package, along with the required disclosures of lumens, watts and life. The Commission is not specifying the type size or style of this reference, but it must be clearly and conspicuously displayed. See § 305.11(e)(1)(F) in "Text of Amendments," below.

6. Disclosures in Catalogs

In the NPR, the Commission proposed that required information be disclosed both on packages and in catalogs from which the lamp products may be purchased.[151] EPCA authorizes the Commission to require that information required on labels be contained in catalogs. 42 U.S.C. 4296(a) (1988). For consumers who purchase lamps through catalogs for either residential or commercial use, the catalog serves the same informational function as a package does for those who purchase the product off a store shelf.

Most of those who commented on this issue generally supported the Commission's proposal. NEMA originally recommended against the Commission's proposal, arguing that the disclosures that NEMA had proposed were uniquely suited to the size and space constraints of packages, and did not necessarily translate well to disclosures in catalogs.[152] In its final comment, however, NEMA recommended requiring disclosure of all required information in catalogs, except lumens per watt and number of bulbs in the package.[153] OR DOE and WA SEO recommended that all required disclosures be required in ordering catalogs.[154] Home Depot recommended that the Commission clearly define "catalog" to differentiate between manufacturers' catalogs and retailers' advertising catalogs or circulars from which lamps can be ordered.[155]

The Commission has concluded that the required disclosures are important to both commercial and residential purchasers of these two types of lamps, whether they are purchasing the lamps in a store or through a catalog. The Commission has determined, therefore, to require that all disclosures that § 305.11(e) requires on packaging be made clearly and conspicuously in catalogs from which the lamps can be ordered, with the exception of the number of lamps in a package. The Commission is not requiring this last disclosure in catalogs because catalogs often offer lamps packaged in different ways. In some cases, lamps are offered in cartons containing smaller packages of several bulbs apiece. In others, lamps are offered in bulk quantities and the lamps are not shipped in retail-store-type packages. In both cases, the catalogs clearly disclose price and quantity with respect to the lamps described on their pages. In contrast, in some instances at point of sale, without actually opening a package, it is not clear how many lamps are inside.

For catalogs not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11(e)(1)(B), but must only be disclosed clearly and conspicuously. The Commission also agrees with OR DOE's recommendation that, in cases in which the same disclosure applies to entire categories of products in the catalog, it is only necessary for the required disclosure to be made once on each page on which such products appear. Accordingly, the labeling rules allow this accommodation. See § 305.14(d)(1) in "Text of Amendments," below. The Rule also requires that, if manufacturers make operating cost claims in catalogs, they disclose, clearly and conspicuously, the assumptions (unit cost of electricity, usage period, purchase price, *etc.*) that were used. See § 305.14(d)(2) in "Text of Amendments," below.

7. Disclosures in Point-of-Sale Printed Materials

In the NPR, ACEEE suggested that the required disclosures for residential purchasers be disclosed on point-of-sale materials as well as on packages.[156] The Commission proposed that, as one option for disclosures for lamps sold in bulk without individual packages, manufacturers be required to include the prescribed information in written materials in shipping cartons and retailers be required to disclose it at point of sale.[157] This proposal was based on EPCA, which authorizes the Commission to require disclosure, in written materials displayed or distributed at point of sale, of any information required on labels. 42 U.S.C. 6294(c)(4) (1988). In the "Questions for Comment" section of the NPR, the Commission solicited comment on the appropriateness of point-of-sale requirements.[158]

The comments were divided on whether the Commission should require disclosures in point-of-sale materials for general service incandescent lamps and compact fluorescent lamps. ACEEE consistently recommended that the Commission require disclosure of annual operating and life-cycle cost information in point-of-sale materials.[159] Although initially neutral on this point, NEMA ultimately opposed mandatory disclosures at point of sale in favor of a requirement that manufacturers be required to disclose only the assumptions upon which any voluntary point-of-sale disclosures are based.[160] GE stated that, if the Commission wished to provide additional information explaining the meaning and use of the lumens-per-watt energy index disclosure, the method most suited for such disclosures is in point-of-sale materials.[161] LBL suggested that the

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[151] 58 FR at 60154–56.

[152] NEMA, G–3, 46–47

[153] NEMA (Supp.), G–10, 14.

[154] OR DOE, GG–13, 9 (labeling disclosures for all products should also be required in catalogs from which these products are sold, whether at retail or wholesale; where a labeling requirement applies to entire categories of products in the catalog, the disclosure could be made once, prominently, at the very least on each page); WA SEO, GG–18, 4.

[155] Home Depot, GG–5, 2.

[156] 58 FR at 60154.

[157] Id. at 60155.

[158] Id. at 60159.

[159] ACEEE, GG–1, 3–4, (Tr.), 169, 188, 201, (Supp.), GG–21, 1. ACEEE recommended charts disclosing several lumens-per-watt efficiencies cross-referenced to various operating costs based on different unit costs for electricity. LBL appeared to support this approach, but recommended disclosing different wattages in place of lumens per watt. LRC (Tr.), 188–189.

[160] Initial neutrality: NEMA, G–3, 40–42, 47 Later opposition: NEMA (Tr.), 190–192, (Supp.), G–10, 14, 26.

[161] GE (Ans.), G–2, 1

Commission either prescribe the assumptions upon which operating cost disclosures are based (such as cost of electricity and hours of use) or, at least, require that manufacturers disclose whatever assumptions they use in point-of-sale materials.[162] Osram supported the disclosure of operating costs only at point of sale and recommended that the Commission prescribe specific cost and use assumptions for those disclosures.[163] Home Depot and SCS recommended that the Commission issue no requirements relating to point-of-sale disclosures, but that it allow such disclosures voluntarily.[164]

The Commission has determined not to mandate particular disclosures at the point of sale (other than the disclosures on packaging). The Commission's requirements for disclosures on packages and in catalogs will provide purchasers of general service incandescent lamps and compact fluorescent lamps with information sufficient to enable them to select the most energy efficient lamps to fill their lighting needs.

Several comments suggested that the Commission also require disclosure of energy cost information, or at least specify the bases (*i.e.*, the unit energy cost and usage patterns) on which any voluntarily made energy cost claims are calculated. The Commission declines to do so, for the same reasons the Commission determined not to require disclosure of energy cost information on packaging or to prescribe the assumptions on which voluntary energy cost information is provided. The Commission has concluded, however, that it is important that consumers be made aware of the assumptions on which any energy cost claims on packaging or in point-of-sale written materials are based. Therefore, the final labeling rules require that the assumptions (unit cost of electricity, purchase price, hours of use, patterns of use, *etc.*) on which any voluntary claims about energy operating cost are made be clearly and conspicuously disclosed in connection with such claims on packaging or in point-of-sale written materials.[165] See § 305.11(a)(2) in "Text of Amendments," below.

D. Disclosures for General Service Incandescent Reflector Lamps

In the NPR, the Commission stated that incandescent reflector lamps would be within the category of general service incandescent lamps under the Commission's proposed labeling rules.[166] As such, the rule amendments would have required manufacturers of these products to disclose design voltage (if other than 120), wattage, light output (expressed in lumens), life (expressed in hours), a supplemental disclosure (either lumens per watt or operating cost), and number of bulbs in the package (if more than one).[167] ACEEE's proposal, as outlined by the Commission in the NPR, would also apply equally to reflector and nonreflector general service incandescent lamps. In contrast, as discussed in the NPR, NEMA recommended that general service incandescent reflector lamps be subject to disclosure requirements that would be substantially different from those required for other general service incandescent lamps. Specifically, NEMA recommended requiring, for incandescent reflector lamps, the same disclosure it proposed for general service fluorescent lamps (*i.e.*, disclosure only of the encircled capital letter "E," as the Rule presently requires for fluorescent lamp ballasts, 16 CFR 305.11(d)). This would designate that the product meets the energy conservation standards established in EPCA.[168] NEMA suggested that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the products themselves.[169]

1. Disclosures on Packaging and in Catalogs

Fourteen of the participants commented on what type of disclosures the Commission should require for general service incandescent reflector lamps. Five comments supported limiting the required disclosures for these lamps to an encircled "E," as NEMA suggested.[170] Six supported a requirement to disclose the basic elements and efficiency index proposed by the Commission.[171] Three favored a requirement to disclose the encircled "E," but with additional limited disclosures.[172]

Those supporting an encircled "E" disclosure for general service incandescent reflector lamps argued that the minimum efficiency standards added to EPCA by EPA 92 for these lamps[173] would eliminate all but the efficient models,[174] leaving purchasers with little choice among the remaining models in terms of energy efficiency.[175] They also contended that, because the products are purchased for the specialized purpose of directing a focused beam of light onto an area or object, purchasers are primarily interested in the pattern (or spread) and the intensity of the beam.[176] NEMA and Philips, moreover, maintained that manufacturers are already disclosing the elements that are relevant to purchasers of these lamps—wattage, voltage, life, beam intensity and beam spread.[177] NEMA added that the Commission can rely on marketing pressures to compel manufacturers to continue making disclosures of pertinent lighting characteristics without a mandate.[178] These comments concluded that the Commission does not have to require most of the elements proposed for other general service incandescent lamps and compact fluorescent lamps for purchasers to be able to select a general service incandescent reflector lamp.

Three comments supporting disclosure of all the basic elements for general service incandescent reflector lamps did not agree that the EPCA standards would eliminate variation among the efficiencies of these products.[179] LBL contended that the variation is actually likely to increase in the future.[180] The supporting comments generally stated that purchasers should be provided with information that will enable them to distinguish between the lamps that meet the standards and those that exceed them.[181] One comment also suggested requiring the disclosure of beam spread for these products.[182]

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[162] LBL (Supp.), GG–22, 1, 4.

[163] Osram (Supp.), G–11, 2.

[164] Home Depot, GG–5, 2 (Tr.), 196.

[165] See Part IV.C.2.b, above.

[166] 58 FR at 60151.

[167] *Id.* at 60154–55.

[168] 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993).

[169] 58 FR at 60152–53.

[170] NEMA, G–3, 29, (Supp.), G–10, 28: IES, GG–6, 2; GE, G–2, 6, (Ans.), 1, 2; Philips, G–5, 2; Supreme (Supp.), G–13, 1.

[171] LBL, GG–7, 1; MN DPS, GG–9, 1–2; MO DNR, GG–10, 1; OR DOE, GG–13, 2–7, 7–8; WA SEO, GG–18, 2; Angelo, G–1, 2. The basic elements are: Voltage (if other than 120), wattage, light output (expressed in lumens), laboratory life (in hours), and number of bulbs in the package (if more than one).

[172] Osram, G–4, 2; (Supp.), G–11, 4; ACEEE, GG–1, 3, (Supp.), GG–21, 2; LRC, GG–15, 3, (Tr.), 312.

[173] 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993).

[174] NEMA (Supp.), G–10, 28; Philips (Supp.), G–12, 2.

[175] Osram (Supp.), G–11, 3.

[176] GE, G–2, 3, 6, (Ans.), 2, 9, (Tr.), 301, 304; NEMA, G–3, 19–21, 30; Osram (Tr.), 295 ("When you purchase a reflector incandescent lamp, you are interested in how it concentrates the light on the particular object or task that you bought the lamp to illuminate. And that typically is characterized * * * in terms of beam spread and beam performance."); IES, GG–6, 2.

[177] NEMA, G–3, 29–30, (Supp.), G–10, 29; Philips, G–5, 2 (Philips limited its remarks to beam characteristics).

[178] NEMA, G–3, 31.

[179] Angelo (Supp.), G–8, 2 ("To presume, as NEMA does, that halogen PAR lamps, which already meet the standards, will simply capture the entire market, belittles the attempts of others to meet the efficiency standards with less expensive technology."); ACEEE (Supp.), GG–21, 2 ("* * * the "circle E" alone does not reflect the substantial variations in efficacy among incandescent reflector products that exceed [EPA 92] efficiency standards.") LBL (Supp.), GG–22, 3 ("While the minimum efficacy required by [EPA 92] for incandescent reflector lamps in effect mandates halogen reflector lamps or better, there are more

Some commentors changed their positions on this issue. Although initially opposing the NEMA recommendation (*i.e.*, for the encircled "E"), ACEEE later stated that publishing an encircled "E" on incandescent reflector lamp packaging would be acceptable as long as wattage, life, and lumens per watt were included in catalogs.[183] LRC originally supported the encircled "E" requirement alone, but, at the Workshop, added that its support was dependent on a requirement to include wattage and life disclosures (presumably on packages), with which NEMA agreed.[184] Osram supported the NEMA recommendation in its initial comment and, in its post-Workshop comment, continued to support an encircled "E" disclosure, along with an additional recommendation that beam performance information (in accordance with ANSI standards) and average life also be disclosed on packages.[185]

The Commission has determined to require disclosure of an encircled "E" on packages and in catalogs[186] for those general service incandescent reflector lamps that meet or exceed the minimum efficiency standards set by EPCA. But, to inform purchasers of the meaning and significance of this information, the Commission is requiring that a brief explanatory statement also appear on the packages for the lamps and in catalogs from which they can be ordered. Specifically, manufacturers must disclose clearly and conspicuously the encircled "E" on the principal display panel of packaging for these lamps. On the principal display panel or on another panel, manufacturers also must disclose clearly and conspicuously the statement, "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." The encircled "E" and the explanatory statement must be linked by asterisks. In catalogs from which general service incandescent reflector lamps can be ordered by purchasers, manufacturers also must disclose clearly and conspicuously the encircled "E" in close proximity to each entry for a covered general service incandescent reflector lamp. On each page in such a catalog upon which the encircled "E" appears, manufacturers also must disclose, clearly and conspicuously at least once, the statement: "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.11(e)(2) in "Text of Amendments," below.

The Commission also has concluded, however, that the encircled "E" disclosure and explanatory statement alone will not provide purchasers of general service incandescent reflector lamps with enough information to select the most energy efficient products to fill their lighting needs. Several comments show that there will continue to be a range of choice among different general service incandescent reflector lamps with varying efficiencies after the DOE standards become effective.[187] Moreover, the record shows that some manufacturers generally already disclose some of several other factors for these lamps—design voltage, wattage, laboratory life, beam spread, and beam intensity.[188] One industry member, Angelo, suggested that it would work no hardship on sellers for the Commission to mandate the same disclosures as those proposed for general service incandescent lamps.[189]

The Commission has determined, therefore, to require that manufacturers of general service incandescent reflector lamps disclose, on packages and in catalogs, the following elements: design voltage (if other than 120), wattage, light output (expressed in average initial lumens),[190] average laboratory life (expressed in hours), the Advisory Disclosure and, on packages only, number of bulbs in package (if more than one).[191] For the reasons explained in Part IV.C.1.a, above, the disclosure of wattage, lumens, and life must be based on operation at 120 volts regardless of the lamp's design voltage. The format requirement for these disclosures will be the same as they are for general service incandescent lamps and compact fluorescent lamps. See §§ 305.11(e)(1)(A)–(D) and 305.14(d)(1) in "Text of Amendments," below.

2. Disclosures in Point-of-Sale Materials

Two comments addressed the issue of disclosures in point-of-sale materials for general service incandescent reflector lamps. ACEEE recommended that average annual operating cost and average lifetime indicators be included on both packaging and point-of-sale displays for sales to residential purchasers.[192] LBL thought that efficacy (*i.e.*, efficiency) information should be included in point-of-sale materials for residential purchasers.[193]

The Commission has already discussed its position generally respecting required disclosures in point-of-sale materials in Part IV.C.7, above. The Commission's position is the same respecting point-of-sale materials for general service incandescent reflector lamps. Accordingly, the Commission is not requiring specific disclosures for these products at point of sale. But, as for the other lamp products, if point-of-sale operating cost disclosures are voluntarily made, the assumptions used (cost of electricity, hours of use, *etc.*) must be disclosed.[194] See § 305.13(a)(2) in "Text of Amendments," below.

3. Vibration Service and Rough Service Reflector Lamps

Angelo raised a concern at the Workshop about a type of incandescent reflectorized lamp that is produced for use under conditions involving rough service or service in which they will be subjected to vibration, such as industrial or construction site use. These lamps are manufactured with more durable filaments to withstand such service, which also results in their having a significantly longer life. Angelo pointed out that these lamps appear to be excluded from the definition of "incandescent reflector lamp" in the

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efficacious options on the market, such as halogen infrared and compact fluorescent reflector lamps. Future technology may bring even more lamps with higher efficiencies.").

[180] LBL (Supp.), GG–22, 3.

[181] Angelo, G–1, 2; ACEEE (Supp.), GG–21, 2; LBL, GG–7, 1; MN DPS, GG–9, 1–2; MO DNR, GG–10, 1; WA SEO, GG–18, 2.

[182] WA SEO, GG–18, 3.

[183] ACEEE, GG–1, 3; (Supp.), GG–21, 4.

[184] LRC, GG–15, 3; (Tr.), 312.

[185] Osram, G–4, 2; (Supp.), G–11, 4.

[186] The record indicates that manufacturers of general service incandescent (reflector) lamps sell many of their products through catalogs, especially to commercial and industrial customers, and many commentors believed that disclosures should appear in catalogs. See, *e.g.*, NEMA, G–3, 29, 31, (Supp.), G–10, 29; Osram, G–4, 2; ACEEE, GG–1, 3–4, (Supp.), GG–21, 2; LBL (Supp.), GG–22, 3; OR DOE, GG–13, 9; WA SEO, GG–18, 4; Hubbell, GG–9, 1.

[187] Angelo (Supp.), G–8, 2; ACEEE (Supp.), GG–21, 2; LBL (Supp.), GG–22, 3.

[188] NEMA, G–3, 29–30, (Supp.), G–10, 29; Philips, G–5, 2; LRC (Tr.), 307.

[189] Angelo, G–1, 2.

[190] Because of the unique nature of the light output of general service incandescent (reflector) lamps, the amendments require that light output (in lumens) for these products be measured for only the beam spread of the lamp, as determined by industry standards.

[191] The reasons for the specific versions of these elements have already been discussed in Part IV.C.1.a–2.c, above. The Commission will not, therefore, repeat the discussion here.

[192] ACEEE, GG–1, 3–4.

[193] LBL (Supp.), GG–22, 3.

[194] See Part IV.C.2.b, above.

EPA 92 amendments to EPCA.[195] As such, they would not be required to meet the minimum efficiency standards or bear the disclosures required for other incandescent reflector lamps by the Rule.

Angelo contended that these products, many of which are imported, are significantly less efficient than incandescent reflector lamps that will have to meet the new minimum standards, but that they may be marketed to compete directly with these more efficient lamps at a reduced retail price.[196] According to Angelo, the price differential will lead residential consumers into purchasing them without realizing that they are receiving a much less efficient product for their money, and "cheap lamps will drive out good lamps at the consumer level."[197] Angelo's recommended solution is to require that manufacturers of rough and vibration service incandescent reflectorized lamps be required to disclose, on their packages, the fact that the lamps are for rough service and do not meet the federal minimum efficiency standards for other similar lamps designed for ordinary household use.[198] Angelo's concerns and proposed solution were shared by three other participants, including a company that produces rough and vibration service incandescent reflector lamps.[199]

EPCA defines "incandescent lamp," in part, as "a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

* * * * *

> (i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.
>
> (ii) Any lamp (commonly referred to as a reflector lamp) which is *not* colored or *designed for rough or vibration service applications* (emphasis supplied), that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—
>
> (I) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or
>
> (II) A high(er) wattage reflector lamp which has a rated wattage above 205 volts."[200]

* * * * *

EPCA defines "incandescent reflector lamp" as "a lamp described in subparagraph (C)(ii)."[201]

Based on the language of the statute, the Commission concludes that it does not have the authority to treat incandescent reflectorized lamps designed for rough or vibration service applications as "incandescent reflector lamps" under the labeling rules. As part of the process of developing test protocols for incandescent reflector lamps, DOE will define what is meant by "rough or vibration service applications" because such lamps will be excluded from the test protocols. Angelo speculated, however, that the definition DOE adopts for such lamps may allow manufacturers to make lamps that meet the DOE exclusionary definition, but then market them, not as rough or vibration service lamps, but simply as spot or flood lamps to compete with the incandescent reflector lamps that are subject to the minimum efficiency standards. The gist of Angelo's concern appears to be twofold. First, manufacturers of incandescent reflector lamps who must meet the DOE standards (and whose products, as a result, will likely cost more to manufacture) will be at a competitive disadvantage because rough or vibration service reflectorized lamps will have a significantly lower retail price. Second, consumers will not be aware that these less expensive lamps are significantly less efficient and will cost more to operate over time. EPCA authorizes DOE to add products to the list of products for which EPCA mandates minimum efficiency standards.[202] Therefore, if the exclusion of these lamps from coverage under the labeling rules as "incandescent reflector lamps" results in unfair competition, consumer confusion, or other problems, DOE can reconsider its definition of general service incandescent reflectorized lamps "for rough or vibration service." In the alternative, DOE can consider whether to add general service incandescent reflectorized lamps "for rough or vibration service" as a specific type of consumer product covered under EPCA to remedy the situation.

E. Disclosures for General Service Fluorescent Lamps

In the NPR, the Commission proposed requiring the disclosure of the same six factors for general service fluorescent lamps as it proposed for the other types of lamps.[203] Similarly, ACEEE's suggestions for disclosures did not distinguish between general service fluorescent lamps and other types of lamps. Instead, ACEEE suggested that the Commission prescribe different requirements based on the type of purchaser—residential or commercial—at which the disclosure was to be targeted.[204]

In contrast, NEMA suggested that, for the two types of lamps for which Congress established minimum efficiency standards in the EPA 92 amendments to EPCA—general service incandescent reflector lamps and general service fluorescent lamps—the Commission require the disclosure of only an encircled "E" on packages, in catalogs and etched on the product itself.[205] The encircled "E" would designate that the product meets the established energy conservation standards. In support of this recommendation, NEMA stated that interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards set by EPA 92 become effective (April 30, 1994, for some lamp products, and October 31, 1995, for other lamp products) will have a range of output of only plus or minus four percent.[206]

1. Disclosures for General Service Fluorescent Lamps Generally

Fifteen comments addressed the issue of what disclosures the Commission should require for general service fluorescent lamps. Seven recommended prescribing disclosure of the same elements for these lamps as were proposed by the Commission in the NPR.[207] Eight comments supported NEMA's recommendation that the

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[195] Angelo (Tr.), 310. See 42 U.S.C.A. 6291(30)(C) (West Supp. 1993).

[196] Angelo (Tr.), 310–11, 314–15, 315–16, (Supp.), G–8, 4.

[197] *Id.*

[198] Angelo (Tr.), 315–16, (Supp.), G–8, 4.

[199] Supreme (Tr.), 313, (Supp.), G–13, 1; Osram (Supp.), G–11, 4 ("This labeling should include that the product is designed for Rough Service (or Vibration Service) applications only, has a low light output and costs more to operate than similar products available in the marketplace."); ACEEE (Supp.), GG–21, 2 ("These products have an efficacy of 12 lumens per watt or less. Requiring disclosure of lumens per watt is the only way to inform consumers of the overwhelming energy penalty associated with purchasing these lamps and in essence to thwart these manufacturers' attempts to get around the [EPA 92] requirements.").

[200] 42 U.S.C.A. 6291(30)(C) (West Supp. 1993).

[201] 42 U.S.C.A. 6291(30)(F) (West Supp. 1993).

[202] 42 U.S.C. 6292(a)(19) (1988).

[203] 58 FR at 60154–55. These were: (1) Lumens; (2) watts; (3) design voltage (if other than 120); (4) average life (expressed in hours); (5) number of items in the package; and, (6) a supplemental disclosure (lumens per watt or operating cost).

[204] 58 FR at 60154.

[205] *Id.* at 60152–54. The minimum efficiency standards for these products are prescribed in section 325(i) of EPCA. 42 U.S.C. 6295(i) (West Supp. 1993).

[206] *Id.* at 60152.

[207] LBL, GG–7, 1; MN DPS, GG–9, 1–2; MO DNR, GG–10, 1; OR DOE, GG–13, 2–7, 7–8; US EPA, GG–17, 2; WA SEO, GG–18, 2–3.

Commission require disclosure only of the encircled "E."[208] ACEEE originally opposed limiting the disclosure of information for any lamps to the encircled "E," favoring instead the "basic disclosures" (without lumens-per-watt) for all types.[209] At the Workshop and in its post-Workshop comment, however, ACEEE appeared to have changed its views, and to accept the idea of limiting disclosures to the encircled "E" on packaging for general service fluorescent lamps as long as the other elements (or some of them) are disclosed in catalogs offering the lamps for sale.[210]

Most of the comments that recommended the same disclosures for all lamp types, including general service fluorescent lamps, did so on the basis that purchasers could thereby have enough information to choose among lamps that will most economically meet their lighting needs.[211] Some specifically opposed limiting the disclosure for these lamps to an encircled "E," most contending that this disclosure alone would not provide purchasers with sufficient information to compare competing lamps.[212] Some recommended additional disclosures, such as the effect of different ballasts on lamp operation or color/temperature disclosures.[213] Several favored the inclusion of operating cost information.[214]

The comments that recommended limiting disclosure requirements for general service fluorescent lamps to an encircled "E" on packages and in catalogs gave several reasons for their position. A principal reason was that the EPA 92 minimum efficiency standards will eliminate all but a few general service fluorescent lamps that are very similar in their energy efficiency characteristics. Those remaining on the market would not necessarily be interchangeable because such lamps are part of a lamp/ballast/fixture *system*. Accordingly, comparative disclosures for products that are not interchangeable are not necessary.

NEMA said that disclosure of lumens per watt for general service fluorescent lamps would not provide a meaningful basis for comparison because lumens-per-watt measurements will not vary significantly among comparable products after the EPA 92 standards take effect. NEMA contended that, after the energy efficiency standards take effect, remaining models of general service fluorescent lamps will differ in light output (for a given nominal wattage) by a very small percentage, if placed in the same lighting system. Only the color of light emitted due to different phosphors would vary, resulting in slight variations in measurements of light output.[215]

In its initial comment, LRC agreed with NEMA's position,[216] adding later in the Workshop that these lamps are a small part of the residential consumer market, and that any additional savings realized after the efficiency standards went into effect would be minor and would not justify labeling requirements.[217] GE stated that, because consumers do not consider replacing A-line bulbs with general service fluorescent lamps or A-line table lamps with overhead general service fluorescent lamp fixtures, labels disclosing the elements proposed in the NPR by the Commission would be useless on general service fluorescent lamps that meet the efficiency standards.[218] Osram concurred with NEMA's position:

> As explained at the Public Workshop, fluorescent lamps are one component of a system whose wattage, light output, and efficiency variations are wide, dependent on the ballast and fixture used, and on the ambient temperature. EPCA removes a number of fluorescent lamps from the marketplace, leaving within interchangeable types a smaller range of efficiency available to the consumer. Of the types that remain, choice is typically by color, either to match the remainder of an installation, or to accord with a consumers preference. Any choice will result in exactly the same energy consumption, since that is controlled by the system.[219]

ACEEE and LBL disagreed with the contention that choice among general service fluorescent lamps of different efficiencies will be eliminated by the EPA 92 minimum efficiency standards. LBL said that there was some interchangeability that could result in a 13% increase in efficacy.[220] It was not clear, however, how often the lamp substitutions described in the comment take place in actual practice.

The Commission finds that general service fluorescent lamps are unique among the products considered in this proceeding because they are a separate part of an integrated lighting system consisting of a lamp, an appropriate ballast, and a fixture, or luminaire, in which the lamp and ballast are installed. On balance, the Commission finds that the preponderance of evidence on the record has established that, because these lamps are part of a system, they are not interchangeable with other types of lamps, and are not readily interchangeable with other general service fluorescent lamps that do not match with the ballast and/or the luminaire in the system of which they are a part. Consequently, after the standards become effective, from an energy efficiency point of view, there will not be a meaningful choice among competing products that will fill the purchaser's lighting needs. The Commission concludes, therefore, that a requirement to disclose the basic elements (and/or a supplemental disclosure) on general service fluorescent lamp package labels will not assist purchasers of these products as contemplated by EPA 92.

The Commission instead has determined to require an encircled "E" on packages and in catalogs for general service fluorescent lamps that meet or exceed the minimum efficiency standards set by EPCA. This disclosure will be useful to purchasers because it will assure them that the lamps so marked meet or exceed the federal minimum efficiency standards. To ensure that purchasers understand that the encircled "E" means that the products meet the minimum efficiency standards established by EPCA, the Commission also has determined to require that a brief explanatory statement appear on the packages for the lamps and in catalogs from which they can be ordered.[221] Specifically, the amendments now adopted require that on each package for general service fluorescent lamps, manufacturers must disclose conspicuously the encircled "E" on the principal display panel. The encircled "E" will be considered "conspicuous," in terms of size, if it appears at least as large as either the manufacturer's name or logo or another logo disclosed on the package, such as the "UL" or "ETL" logos, whichever is larger. On the principal display panel or on another panel, manufacturers also must disclose conspicuously the statement, "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.11(e)(2) in "Text of Amendments," below.

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[208] Angelo, G–1, 1; GE, G–2, 5, (Ans.), 1, 2, (Tr.), 324; NEMA, G–3, 24, (Tr.), 316–317, (Supp.), G–10, 29; Philips, G–5, 3, (Supp.), G–12, 2; Osram (Supp.), G–11, 4; ETL, GG–2, 1–2; IES, GG–6, 2; LRC, GG–15, 3, (Tr.), 318.

[209] ACEEE, GG–1, 1, 3.

[210] ACEEE (Tr.), 328–29, (Supp.), GG–21, 2.

[211] See, *e.g.*, MN DPS, GG–9, 1–2.

[212] See MO DNR, GG–10, 1; US EPA, GG–17, 2; WA SEO, GG–18, 3.

[213] See LBL, GG–7, 1 (the effect of different ballasts); OR DOE, GG–13, 5–7 (operating temperature and color temperature); WA SEO, GG–18, 3 (color rendering index and correlated color temperature).

[214] See, *e.g.*, ACEEE, GG–1, 1; LBL, GG–7, 1; MO DNR, GG–10, 1.

[215] NEMA, G–3, 14–16 ("Once the system is set, replacement lamps are picked to match the old lamps and cannot be purchased to increase lamp or system efficiency."), 25–26, (Tr.), 321, (Supp.), G–10, 29–30.

[216] LRC, GG–15, 3.

[217] LRC (Tr.), 318.

[218] GE, G–2, 2, 3 ("Labels mandated by the Commission should only be required on products that are interchangeable and should only contain information that facilitates comparisons among those products."), 6 (contending that lumens, lumens per watt and other energy cost information of the type suggested by the Commission will not encourage energy efficient choices and that such disclosures could mislead consumers by suggesting that (1) fluorescent lamp performance is not dependent on ballasts and fixtures and (2) that all fluorescent lamp types are interchangeable). See GE's detailed explanation of the system-oriented nature of these lamps and how they will be affected by the EPA 92 minimum efficiency standards at Tr., 321–24 (the chart to which GE refers is found as Exhibit "G" to NEMA's supplemental comment (NEMA (Supp.), G–10, Exhibit "G.")).

[219] Osram (Supp.), G–11, 4.

[220] ACEEE (Supp.), GG–21, 2 ("There are also significant differences between general service fluorescent lamp products meeting the EPAct efficiency standards. For example, 32 watt T8 general service fluorescent lamps have an efficacy of about 91 lumens per watt, approximately 10% better than the 82 lumens per watt of 34 watt T12 cool white lamps."); LBL (Supp.), GG–21, 3 ("While these lamps are already regulated under the Energy Policy Act of 1992, there is a range of efficacy available even within each ballast type. While it is true that efficacy varies within a small range for T–12 lamps, T–10 lamps, which substitute for T–12s, have about 13 percent higher lamp efficacy than 34 W T–12s. It is possible that future technology developments will provide other options that widen the range of efficacy.")

2. Disclosures for Products Without Individual Packaging

In the NPR, the Commission proposed two approaches for disclosures for those products (which are usually general service fluorescent lamps) manufacturers might choose to sell without individual packaging or without packaging other than bulk shipping cases.[222] Option One would have required manufacturers to label the products with disclosures on a hang tag or adhesive label attached to each unpackaged product; Option Two would have required manufacturers to include the required information on statements included in each shipping case, and would have required retailers to post the information at point of sale. In addition to these proposals, the Commission asked generally, in "Questions for Comment," whether it should require that labels be attached to individual unpackaged products.[223]

Four comments addressed this issue as it related to general service fluorescent lamps. NEMA and GE suggested that the Commission require that an encircled "E" be etched on the general service fluorescent lamps themselves.[224] Osram specifically opposed the labeling of individual products with stickers or hang tags.[225] OR DOE recommended against labels on individual lamps in favor of disclosures on the bulk packaging.[226]

EPCA mandates that the Commission's rules shall provide that the labeling shall indicate the information required by the Commission "on the packaging of the lamp." [227] The Commission, therefore, does not have authority under EPCA to require marking directly on lamp products. But, purchasers of general service fluorescent lamps that are not packaged should be informed that the products meet the minimum efficiency standards. The Commission has determined that proposed Option Two would not in many situations result in the required disclosure actually reaching purchasers because the statements enclosed in shipping cases could be lost and a separate requirement in the rules that retailers post them would be difficult to enforce.

The Commission recognizes that manufacturers regularly etch products with voltage, wattage, and other information, which is the disclosure method that NEMA and GE recommended for the encircled "E." [228] The Commission concludes that if the encircled "E" is permanently marked on the lamps, the objectives of EPA 92, as they apply to general service fluorescent lamps, can be achieved at a reduced compliance burden on those manufacturers who choose to sell lamps that bear no labels, whether packaging labels, hang tags or adhesive labels. Manufacturers need not etch on such products the explanatory statement otherwise required to accompany the encircled "E." On the product itself, the statement may be difficult to read and may not be used or needed by most consumers of these products (who primarily are more knowledgeable commercial purchasers). See § 305.11(e)(2)(B) in "Text of Amendments," below.

3. Catalogs

Eight comments recommended that whatever disclosures the Commission requires for general service fluorescent lamps appear in catalogs from which these products can be ordered for purchase.[229] There was no opposition to this recommendation. Therefore, these amendments require that, in addition to disclosing the encircled "E" on packaging, manufacturers must disclose clearly and conspicuously the encircled "E" in close proximity to each entry for a covered general service fluorescent lamp in catalogs from which the lamps can be ordered by purchasers.[230] On each catalog page upon which the encircled "E" appears, manufacturers also must disclose, prominently and conspicuously at least once, the statement: "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.14(d)(1) in "Text of Amendments," below.

4. Point-of-Sale Printed Materials

Four comments addressed the issue of disclosures in point-of-sale materials for general service fluorescent lamps. GE suggested that the Commission may want retailers to make specific disclosures available in point-of-sale written materials, to the extent that such disclosures may be necessary to help consumers choose the most energy efficient products that meet their requirements.[231] ACEEE recommended that average annual operating cost and average lifetime indicators be included on both packaging and point-of-sale displays for sales to residential purchasers.[232] LBL stated that efficacy (efficiency) information should be included in point-of-sale materials for residential purchasers.[233] SCS contended that the best way to disclose both the energy index and operating cost information would be through voluntary point-of-sale materials prepared on a regional basis.[234]

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[221] Catalogs are discussed below in Part IV.E.3., below.

[222] 58 FR 60156. "Some lamp products, however, are not sold in individual packages. According to industry representatives, for example, general service fluorescent lamps frequently are shipped only in bulk containers, without individual lamp sleeves or packaging, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers." *Id.*

[223] *Id.* at 60159.

[224] NEMA, G–3, 24; GE, G–2 (Ans.), 8 ("The Commission should not require that individual lamps contain disclosures on any adhesive label hang tag or other kind of label. Such labels will add cost which does not result in any meaningful disclosure being made. GEL has suggested that general service fluorescent lamps be marked with the symbol "E" enclosed in a circle to indicate to purchasers that such lamps meet the energy efficiency requirements of the EPA–92. It is feasible to require limited amounts of information to be marked (etched) on products. The "E" enclosed with a circle is an example of such disclosure that fits easily on a product.").

[225] Osram (Supp.), G–11, 5.

[226] OR DOE, GG–13, 8.

[227] 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993).

[228] The Commission also notes that the labeling rules do not prohibit manufacturers from marking their products in this manner.

[229] GE, G–2, 5; NEMA, G–3, 24, 26–27, (Supp.), G–10, 30; Osram, G–4, 2, (Supp.), G–11, 4; Philips, G–5, 3; ACEEE, GG–1, 3–4, (Tr.), 328–329, (Supp.), GG–21, 2; OR DOE, GG–13, 9; SCS, GG–16, 4; WA SEO, GG–18, 4.

[230] This requirement also applies to general service incandescent reflector lamps.

[231] GE (Ans.), G–2, 8.

[232] ACEEE, GG–1, 3–4.

[233] LBL (Supp.), GG–22, 3.

The Commission has already discussed its position and its determination not to require disclosures in point-of-sale materials, in Part IV.C.7, above. The Commission's position is the same for point-of-sale materials for general service fluorescent lamps. Accordingly, the Commission is not requiring specific disclosures for these products at point of sale. As with the other lamp products covered by the labeling rules, however, manufacturers and other sellers must disclose the assumptions they use (cost of electricity, hours of use, *etc.*) if they voluntarily make point-of-sale operating cost disclosures.[235] See § 305.13(a)(2) in "Text of Amendments," below.

F. Other Issues

1. Request for Exemption for Products To Be Eliminated by EPCA's Energy Conservation Standards

EPCA's minimum efficiency standards for 4-foot medium bi-pin and 2-foot U-shaped general service fluorescent lamps and all incandescent reflector lamps will not become effective until October 31, 1995,[236] approximately six months after the labeling rules become effective. Because of the burdens new labeling requirements would impose, NEMA, GE and Osram requested an exemption under EPCA, 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993), from the labeling requirements for lamp products that will be eliminated from the market on October 31, 1995.[237] This section states that if the Secretary of DOE determines that compliance with the minimum efficiency standards specified in EPCA for any lamp will result in the discontinuance of its manufacture, the Commission may exempt such lamp from the labeling rules. The exemption would be limited to those lamps that may no longer be manufactured after the minimum efficiency standards become effective. DOE has made this determination.[238] Hence, the Commission has the discretion to exempt these lamp products from the new labeling rules. Given that these products will be manufactured for only six months after the new labeling rules go into effect, it does not appear appropriate to require manufacturers to go to the expense of redesigning their labels. Accordingly, those general service fluorescent lamps and incandescent reflector lamps covered by the minimum efficiency standards that become effective on October 31, 1995, under 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993), that do not meet those minimum efficiency standards are exempted from the labeling rules.[239]

2. "Gray Market" Problem

NEMA and Philips raised concerns about lamps legally produced for export (that do not comply with the EPCA minimum efficiency standards) being illegally imported back into the country (presumably still marked with the manufacturer's identification) for sale in a "gray" market by parties other than the manufacturers.[240] NEMA and Philips recommended that, to provide manufacturers with protection against enforcement actions for this domestic re-sale of these products, the Commission require that products that do not comply with the standards that are manufactured for export be marked indelibly with a symbol connoting that the product was produced exclusively for export.[241]

There is insufficient evidence on the record for the Commission to determine how serious this problem might be, and to prescribe a labeling or marking requirement. Manufacturers who are concerned about the issue, however, can protect themselves by marking their products in such a way that it is clear that they were manufactured for export.

3. Disclosures on Outer Shipping Containers

NEMA, Osram, and Philips recommended that the Commission require disclosure, on the outer shipping cartons of lamp products, of a symbol or statement indicating compliance with the minimum efficiency standards and labeling regulations mandated by EPCA.[242] During the discussion of this proposal at the Workshop, NEMA clarified that its recommendation was for a disclosure on the corrugated carton in which the manufacturer ships the products, and not the larger and sturdier shipping container that would be loaded on a ship and that could contain cartons of lamps on one occasion and cartons of other products on another.[243] While NEMA's and Philip's original proposals appeared to be limited to general service fluorescent lamps and general service incandescent reflector lamps, Osram said that the requirement should apply to "all [lamp] products covered by the Energy Policy Act."[244] Philips and NEMA pointed out that this requirement would facilitate inspection of foreign products by the U.S. Customs Service.[245] The record contains no evidence of opposition to this suggestion.

The Commission agrees that a statement such as the one suggested by NEMA and the other commentors would be helpful to the enforcement efforts of both the U.S. Customs Service and the Commission. Today's amendments, therefore, require that the following disclosure appear conspicuously at least once on the outer surface of all cartons in which lamp products covered by the Rule are shipped domestically or imported: "These lamps comply with Federal energy efficiency labeling requirements." See § 305.11(e)(4) in "Text of Amendments," below.

G. Substantiation of Disclosures

In the NPR, the Commission proposed requiring that manufacturers follow procedures to be specified in the final labeling rules to substantiate all required disclosures. It also proposed requiring that manufacturers comply with specific sampling procedures in selecting the product samples for the required substantiation testing. The substantiation and sampling procedure requirements are connected. The substantiation requirement is directed at ensuring that the disclosures are accurate and based on uniform standards. The sampling procedure requirement is directed at ensuring that the samples tested are representative of the product being produced.

For other products, the Rule requires that substantiation of energy efficiency ratings (and water usage rates) be based on the test procedures specified by

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[234] SCS, GG–16, 4–5.

[235] See Part IV.C.2.b, above.

[236] 42 U.S.C.A. 6295(i)(1)(A)-(B) (West Supp. 1993).

[237] NEMA, G–3, 10, 14–15, 44, (Supp.), G–10, 5 fn. [illegible] Osram, G–4, 2. See GE, G–2, 10.

[238] Letter dated April 18, 1994, to Janet Steiger, Chairman, FTC, from Hazel R. O'Leary, Secretary, DOE.

[239] As of November 1, 1995, any manufacturer who continues to manufacture these lamps could be subject to action by DOE for selling lamps in violation of the minimum efficiency standards.

[240] Philips, G–5, 4; NEMA (Tr.), 326.

[241] Philips suggested an "X" etched on the product. Philips, G–5, 4.

[242] NEMA, G–3, 27, 32, (Tr.), 327–28; NEMA's suggestions in the NPR also recommended this requirement (58 FR at 60154); Philips, G–5, 3; Osram (Tr.), 328. Angelo agreed with this recommendation. Angelo (Tr.), 328. NEMA suggested a symbol, or a statement such as: "These lamps are tested and labeled in compliance with federal energy efficiency requirements." NEMA, G–3, 27, 32.

[243] See Tr., 327–28.

[244] Osram (Tr.), 328.

[245] Philips, G–5, 3; NEMA, G–3, 27, 32, (Tr.), 327.

EPCA or DOE.[246] For those products, § 305.6 of the Rule specifies that the sampling procedures adopted in the DOE test procedures must be used in selecting the product specimens to be tested.[247]

EPCA, as amended by EPA 92, requires DOE to issue test procedures to determine certain performance characteristics relating to the energy efficiency standards specified in EPCA for general service fluorescent lamps and incandescent reflector lamps, taking into consideration the applicable IES or ANSI standards. 42 U.S.C.A. 6293(b)(6) (West Supp. 1993). EPCA authorizes, but does not require, DOE to issue test procedures for nonreflector general service incandescent lamps and medium screw base integrally ballasted compact fluorescent lamps. 42 U.S.C. 6293(b)(1)(B) (West Supp. 1993).

The Commission sought comments in the NPR regarding what test procedures would be acceptable to substantiate the required labeling disclosures, and what sampling procedures should be followed in selecting the lamps to be tested. The Commission stated that, when DOE issues testing and sampling procedures for any of the lamp products covered by the lamp labeling rules, the Commission would consider whether to adopt the DOE testing and sampling procedures as the necessary substantiation for the required labeling disclosures. DOE has not yet issued testing or sampling procedures for any of the lamp products covered by the labeling rules the Commission adopts today.

The labeling rules the Commission has adopted require manufacturers of all lamps covered by the labeling rules to have substantiation for all the required labeling disclosures. The Commission has determined, however, not to prescribe particular test methods or sampling procedures that must be used. Instead, the labeling rules specify that the required substantiation for medium base screw-in lamps is a reasonable basis consisting of competent and reliable scientific tests that substantiate the required disclosures.[248] For general service fluorescent lamps, the required substantiation is a reasonable basis consisting of competent and reliable scientific evidence that substantiates the claim made by the encircled "E," that the lamps meet the minimum energy efficiency standards established under EPCA.

To provide guidance to manufacturers about test procedures the Commission considers adequate to meet the reasonable basis standard, however, the labeling rules include specific examples of test procedures the Commission deems to be adequate (*i.e.*, "safe harbors"). Specifically, for light output and average laboratory life claims, the labeling rules state that the Commission will accept as a reasonable basis competent and reliable scientific tests conducted under particular IES test protocols.[249] The specific IES test protocols referenced in the labeling rules are recognized throughout the lamp industry as authoritative.[250] Further, for incandescent lamps, the current Light Bulb Rule's requirements are consistent with the IES test procedures.[251] If, in the future, DOE issues test procedures different from these IES protocols, or in addition to them, the Commission will consider testing performed according to the DOE procedures as meeting the reasonable basis standard. Further, if it appears necessary or appropriate, the Commission may initiate a proceeding to consider amending the labeling rules to require use of the DOE test procedures to ensure nationwide consistency.

The labeling rules, therefore, state that the Commission will accept as adequate substantiation light output and laboratory life claims based on competent and reliable scientific tests performed according to the following IES test procedures:

For measuring light output (in lumens): 0
  General Service Fluorescent—IES LM 9
  Compact Fluorescent—IES LM 66
  General Service Incandescent (Other than Reflector Lamps)—IES LM 45
  General Service Incandescent (Reflector Lamps)—IES LM 20
For measuring laboratory life (in hours):
  General Service Fluorescent—IES LM 40
  Compact Fluorescent—IES LM 65
  General Service Incandescent (Other than Reflector Lamps)—IES LM 49
  General Service Incandescent (Reflector Lamps)—IES LM 49

Although the lamp industry generally uses these IES test procedures, when measuring the laboratory life of their lamps, industry members sometimes vary the IES methods to save time. For example, manufacturers might use accelerated tests, in which lamps being tested are operated at a much higher voltage than their design voltage.[252] Once the test lamps fail, their laboratory life at their design voltage is calculated mathematically. Industry members also might routinely measure laboratory life by operating test lamps continuously, rather than as specified in the IES methods.[253] Under the lamp labeling rules, such variations on the IES protocols will fall within the safe harbor if manufacturers can demonstrate that they produce results as accurate as those produced following the IES test methods. See § 305.5(b) in "Text of Amendments," below.

The above IES test procedures, however, do not include specifications governing the selection of the lamp specimens for testing. The Commission, therefore, has amended § 305.6 of the Rule to specify that manufacturers must use competent and reliable scientific sampling procedures for testing lamp products. The Rule also provides, as a safe harbor, the sampling procedures contained in Military Standard 105 Sampling Procedures and Tables for Inspection by Attributes. Mil-Std-105E is the sampling standard referenced in the federal specification cited by the Commission's existing Light Bulb Rule.[254] If DOE adopts a sampling standard of its own as part of its test procedures for lamps covered by the labeling rules, the Commission will deem use of that sampling standard as meeting the competent and reliable scientific standard. See § 305.6(b) in "Text of Amendments," below.

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[246] 16 CFR 305.5. The DOE test procedures for products already covered by the Rule are found at 10 CFR part 430, subpart B.

[247] 16 CFR 305.6. The DOE sampling procedures for products already covered by the Rule are found in 10 CFR 430, subpart B.

[248] For medium base screw-in lamps, the required disclosures are of the lamp's design voltage if other than 120 volts, average initial wattage, average initial light output, average laboratory life and the Advisory Disclosure. For general service incandescent reflector lamps, the disclosures must include the encircled "E" and the explanatory statement.

[249] It is not necessary to specify particular test procedures, or safe harbors, for the measurement of design voltage or wattage, because they are elementary measurements.

[250] Philips (Tr.), 91–92; GE (Tr.), 101–02. NEMA has recommended that DOE adopt these IES test procedures when it issues its test methods. NEMA, G–3, 49.

[251] 16 CFR 409.1 n. 1. The Light Bulb Rule states that, for lamps covered by that Rule, the "average initial wattage, average initial lumen and average laboratory life disclosures required by this section shall be in accordance with the requirements of interim Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament) W–L–00101 G and shall be based upon generally accepted and approved test methods and procedures." In 1977, that specification ceased being interim and is now known as Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament) W–L–101H/GEN. This specification refers to pertinent ANSI test protocols, which are consistent with the IES protocols.

[252] Supreme (Tr.), 87–88; Philips, (Tr.), 90–91.

[253] Philips (Tr.), 91.

[254] 16 CFR 409.1 n. 1.

H. Other Requirements for All Lamp Products

1. Recordkeeping and Submission of Data

In the NPR, the Commission proposed requiring that manufacturers maintain records that substantiate each of the items the final rules require be disclosed. It also proposed requiring them to submit those records to the Commission within 30 days of a request. These requirements are imposed directly by EPCA, which requires manufacturers to keep on file, for a period specified in the Rule, the data from which the information included on the label and required by the labeling rules was derived. 42 U.S.C. 6296(b)(2) (1988).

One comment stated simply that the proposed requirements were acceptable.[255] Another recommended that the Commission not mandate recordkeeping requirements, but instead rely on the recordkeeping requirements imposed by DOE as part of its test procedures.[256] Two comments recommended that the manufacturer be given 60 days instead of 30 to produce the records.[257]

The current Rule requires that manufacturers maintain, for a period of two years after production of the specific lamp product has been terminated, records sufficient to show a reasonable basis consisting of competent and reliable scientific evidence that the required disclosures they make on labels and in catalogs are accurate. The recordkeeping requirement is necessary to enable the Commission to determine whether the required disclosures are substantiated and accurate. See 16 CFR 305.15(a).

DOE has not yet specified test procedures or recordkeeping requirements for any lamp products. The Commission, therefore, cannot determine at this time whether the recordkeeping requirements that DOE may specify in the future would be adequate to determine if the manufacturer's rule-required disclosures are substantiated and accurate. The Commission has, however, designed the recordkeeping requirement to minimize the burden it imposes by requiring that manufacturers maintain only those records that are sufficient to demonstrate the accuracy of the required labeling disclosures. After DOE issues test procedures and recordkeeping requirements for lamp products covered by the labeling rules, the Commission will consider whether the DOE recordkeeping requirements are sufficient to satisfy the recordkeeping requirement imposed by the labeling rules.

The final labeling rules also require that manufacturers submit the required records to the Commission within 30 days of a request. This requirement is statutory, imposed directly by EPCA. 42 U.S.C. 6296(b)(2) (1988). The Commission, however, will consider a request for a reasonable extension of this time period, based on a satisfactory showing of the burden imposed by the 30 days requirement on a particular manufacturer. See § 305.15(b) in "Text of Amendments," below.

2. Reporting

In the NPR, the Commission proposed requiring that lamp manufacturers submit annual reports, containing specific information, on or before March 1 each year. The Commission stated that this requirement would not become effective until after DOE has issued test procedures for specific lamp products. The proposed reporting requirements were based on EPCA, 42 U.S.C.A. 6296(b) (West Supp. 1993), which requires manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293 (West Supp. 1993), to supply the Commission annually with relevant information respecting energy consumption.

The Commission proposed requiring that each report contain the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results measured according to the DOE test procedures for the lamps' wattage, light output ratings and Energy Index and, in addition, for all covered fluorescent lamps, the test results for the lamps' color rendering index. This type of information is currently required for other categories of products covered by the Appliance Labeling Rule. To minimize the burdens imposed by this proposed reporting requirement, the Commission proposed accepting trade association directories and similar submissions in lieu of individual annual reports, as it does for other product categories.

One comment basically agreed with the proposed reporting requirements, but urged the Commission to minimize the burden of annual reporting.[258] Four commenters contended that the NPR underestimated both the number of affected models and the time required to prepare required reports for each model.[259] Three of these commenters stated that annual submissions are unnecessary and overly burdensome and recommended that the Commission develop a reporting procedure jointly with DOE.[260] One comment stated that manufacturers are prepared to report test reports for basic models of lamps if basic models are described in terms of performance rather than labels or brand names. This comment urged that reporting requirements be imposed only once with respect to any model with particular performance characteristics. It urged the Commission not to require date-coding, because manufacturers do not routinely label each lamp type with serial numbers or date codes and such a requirement would be very costly and disruptive to manufacturers of certain types of lamps.[261]

The reporting requirement in EPCA is concerned primarily with ensuring that the Commission has sufficient information to determine whether ranges of comparability for major appliances should be changed annually. Because the lamp labeling rules do not require disclosure of ranges of comparability, the Commission has determined that it does not need complete annual reports from lamp manufacturers. To minimize burdens imposed on manufacturers, therefore, the Commission is requiring that reports contain only the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results for the wattage and light output ratings of each lamp model or type and, in addition, for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE test procedure.[262] The reports will be due on March 1 of each year, coinciding with the due date for reports on fluorescent lamp ballasts, beginning March 1, 1996. Although reports must be submitted each year, to further minimize the burdens imposed by the reporting requirements, the Commission will accept subsequent annual reports that identify the reporting entity but provide only data about new, changed, or discontinued products, without repeating information on products that have not changed since the earlier report. In addition, the Commission will accept manufacturers' reports in any format that contains the necessary information. These could be catalogs with cover letters, industry directories, copies of reports to DOE or other federal or state regulatory authorities, or original reports, as long as the required information is included.

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[255] Panasonic, G–7, 2.

[256] NEMA, G–3, 28–29, 33, 43.

[257] NEMA, G–3, 51; Philips, G–5, 3.

[258] Panasonic, G–7, 2.

[259] GE, G–16, 1–2; Osram, G–15, 1–2; Philips, G–14, 1; NEMA, G–3, 28–29, 33, 43. The specific burden estimates contained in these comments are discussed in Part VI, below.

[260] Osram, G–4, 3, G–15, 1–2; Philips, G–5, 1, G–12, 4; NEMA, G–3, 28–29, 33, 43, 50.

[261] NEMA, G–3, 50 (manufacturers may produce many versions of lamps with common performance characteristics, differing only in brand name, distribution channels or packaging).

Because DOE has not yet issued test procedures for any lamp products, however, the Commission is staying the reporting requirements pending DOE's issuance of test procedures. No reports will be due until after DOE issues test procedures for any of the lamps covered by the labeling rules. Once DOE has issued test procedures, the Commission will publish a notice announcing when the initial reports will be due. See §§ 305.8(a)(3) and 305.8(b) in "Text of Amendments," below.

3. Submission of Product Samples to Designated Laboratory

In the NPR, the Commission proposed requiring that manufacturers, upon request by the Commission, submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. The Commission proposed including this requirement in the labeling rules so that manufacturers would be aware of their duties and responsibilities under EPCA, which requires manufacturers to do this. Under EPCA, however, any charge levied by the laboratory for testing will be paid for by the Commission. 42 U.S.C. 6296(b)(3) (1988).

One comment agreed with the proposal, which allows the Commission to determine whether required disclosures are accurate, but urged that care be taken to minimize the expense of spot-check testing.[263] Two commenters stated that the tests should be performed in a NVLAP accredited laboratory.[264] One of these commenters added that the testing should be performed based on the procedures outlined in NIST Handbook 150–01.[265]

The current Rule repeats the standard specified in EPCA, *i.e.*, manufacturers, upon request by the Commission, must submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission.[266] Any charge levied by the laboratory for testing will be paid for by the Commission. The Commission has determined that this requirement is sufficient for lamp products and, therefore, is not amending the Rule in this regard. See 16 CFR 305.16.

V. Regulatory Flexibility Act

The Commission stated in the NPR that the provisions of the Regulatory Flexibility Act requiring a regulatory analysis were not applicable to the proposed amendments because they would not have "a significant economic impact on a substantial number of small entities." The Commission stated that it believed any economic cost imposed on small entities are primarily statutorily imposed and the proposed regulations would impose few, if any, independent additional costs.

None of the commentors specifically addressed the effect of the proposed labeling rules on small entities. Based on the discussion in Parts IV.H.1–2, above and VI, below, the Commission concludes that the information collection burdens imposed by the recordkeeping and reporting requirements of the final labeling rules on all entities within the affected industry will be *de minimis*, and therefore, will not have "a significant economic impact on a substantial number of small entities," for purposes of the Regulatory Flexibility Act.

VI. Paperwork Reduction Act

In the NPR, the Commission stated that the proposed amendments contained provisions that constitute "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB"), 5 CFR 1320.7(c)(1)(1992), under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.* The NPR proposed requiring that manufacturers of lamp products covered by the labeling rules for which DOE has issued test procedures under section 323 of EPCA, 42 U.S.C.A. 6293 (West Supp. 1993), submit annual reports to the Commission. In addition, the NPR proposed that manufacturers of all lamp products covered by the labeling rules, whether or not DOE has issued test procedures for specific lamp products, maintain records that substantiate required disclosures. The Commission estimated in the NPR that approximately 50 manufacturers would be affected by the proposed lamp labeling requirements and that it would take each company fewer than five hours to comply with the proposed recordkeeping and reporting requirements, for a maximum of 250 hours.

The Commission sought comments on the extent of the paperwork burden in the NPR and in a separate request for comments under the PRA.[267] In the separate notice, the Commission stated that the estimated burden was small because manufacturers already maintain some of the required records in the normal course of business.[268] Records that are likely to be retained by industry members during the normal course of business are excluded from the "burden" for PRA purposes.[269]

One manufacturer agreed with the estimate of five hours per manufacturer.[270] Three manufacturers and a trade association, however, commented that the Commission had underestimated the number of hours it would take to process, format, check, and prepare the proposed reports for each model of lamp product.[271] Those three manufacturers stated that it would take from 41 to over 97 hours for them to prepare and file the proposed annual reports.[272] Two of these manufacturers and the trade association recommended that the FTC consider developing a reporting procedure jointly with DOE and that reports be required only once as opposed to once a year.[273]

The comments, however, did not appear to take into account that the Commission's estimate excluded some hours because of the presumption that manufacturers would be maintaining some of the records in the normal course of business. Nevertheless, in response to these comments, the Commission has revised the recordkeeping and reporting requirements in the final labeling rules to minimize their burdens on manufacturers. Specifically, the final labeling rules require only that manufacturers maintain, for a period of two years after production of the specific lamp product has been terminated, records sufficient to demonstrate they have a reasonable basis consisting of competent and reliable scientific evidence that the required disclosures they make on labeling and in catalogs are accurate. The recordkeeping requirement is imposed directly by EPCA, which authorizes the Commission to specify the period for which the records must be kept. 42 U.S.C. 6296(b)(2) (1988). As previously stated, the two-year requirement is identical to the recordkeeping requirement for the other products covered by the Appliance Labeling Rule. In addition, the final rules require that manufacturers submit reports containing only basic information, and submit the information for each different lamp product only once.[274] Further, the Commission will accept manufacturers' reports in any format that contains the necessary information. These could be catalogs with cover letters, industry directories, copies of reports to DOE or other federal or state regulatory authorities, or original reports, as long as the required information is included.

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[262] Lamps differing only in matters not relevant to the specified ratings (*i.e.*, color, brand name) may be grouped as a basic model.

[263] Panasonic, G–7, 2.

[264] Philips, G–5, 3, G–12, 3 (all testing should be performed in NVLAP accredited laboratory); NEMA, G–3, 49 (regulation should require compliance testing only at NVLAP certified laboratories).

[265] Philips, G–12, 3. *See* NIST Handbook 150–01, C–17.

[266] Although the labeling rules do not require the Commission to use NVLAP accredited laboratories, as suggested by some comments, the Commission will select labs for testing services that have appropriate credentials to conduct the required testing and will consider using labs accredited by NVLAP, when appropriate.

[267] 58 FR 60652.

[268] *Id.*

[269] See 5 CFR 1320.7(b)(1).

[270] Panasonic, G–7, 2.

[271] GE, G–16, 1–2; Osram, G–15, 1–2; Philips, G–14, 1; NEMA, G–3, 28–29, 33, 43.

[272] Philips, G–14, 1 (minimum of 41 hours); Osram, G–15, 1–2 (not less than 60 hours); GE, G–16, 1–2 (exceed 97 hours).

[273] Osram, G–4, 3, G–15, 1–2; Philips, G–5, 1, (Supp.), G–12, 4; NEMA, G–3, 28–29, 33, 43, 50.

Because of the changes the Commission has made to the recordkeeping and reporting requirements, and taking into account the fact that many of these records are maintained in the normal course of business, the Commission has determined not to revise its burden estimate. While the initial effort involved in developing a report may, for some companies, take more than the original estimate of five hours per manufacturer, the Commission believes that the time involved in complying with the reporting and recordkeeping requirements, as those requirements have been modified, will nonetheless result in an average of five hours per manufacturer. In light of the revised information collection requirements in the final rules, OMB approved the Commission's request for clearance of the requirements under OMB Control Number 3084–0092.[275]

VII. Regulatory Review

In accordance with the Commission's ongoing regulatory review program, the Commission sought comments about the impact of the proposed requirements for manufacturers and other sellers of lamp products, and their costs and benefits. Based on the comments and discussion in Parts V and VI, above, the Commission concludes that the amended rule will not have a significant economic impact on parties covered by the labeling rules. The Commission has drafted the final labeling rules to minimize burdens imposed on all covered industry members.

VIII. Metric Measurement

In accordance with the Omnibus Trade and Competitiveness Act (OTCA), 15 U.S.C. 205, the Commission must consider metric measurements in addition to inch-pound measurements in measurement sensitive regulations.[276] Although the Commission sought comments from the public on this issue in the NPR, none was received. The Commission has concluded that the units of measurement the Commission is requiring in the labeling rules for lamp products comply with the requirements of the Metric Conversion Act. First, lumens, watts, and volts are metric derived units. Second, the metric terms (lumens, watts, and volts) that the Commission is requiring be disclosed should already be familiar to the consumers because they currently are used on packaging of lamp products.

IX. Discussion of Lamp Labeling Amendments Being Adopted

Each amendment the Commission is adopting today is described below.

A. Section 305.2—Definitions

This section contains definitions of twenty-two terms used in both EPCA and the Rule. The Commission is amending it to add (as twelve new subsections) eleven definitions of terms that EPCA uses for the three categories of lamp products that EPA 92 added to EPCA and a new definition for a term ("consumer product") that the amended Rule uses when requiring disclosure of energy consumption data in lamp labeling. The Commission is also revising two existing definitions ("consumer appliance product" and "covered product") to clarify how the Rule's disclosure requirements apply to lamps. Lastly, the Commission is amending this section to group together all the definitions that are pertinent to lamps and placing them immediately following the two existing definitions relating to fluorescent lamp ballasts. The three definitions relating to plumbing products disclosures that had previously been designated (r) and (u)–(v) are now designated (dd) through (ff).

B. Section 305.3—Description of Covered Products To Which This Part Applies

This section lists the fourteen categories of appliances now covered by EPCA and the Rule. The Commission is amending it to add (as three new subsections) the descriptions taken from section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993), for the three categories of lamps (*i.e.*, fluorescent lamps, medium base compact fluorescent lamps, and incandescent lamps) that EPA 92 added to EPCA.

C. Section 305.4—Prohibited Acts

This section makes it unlawful to distribute in commerce any covered product not marked and/or labeled and advertised as prescribed by the Rule. Failing to maintain and make available certain records and product samples as prescribed by the Rule is also prohibited. The Commission is amending subsection (e), which identifies the various effective dates of the Rule for the different categories of covered products, to establish the effective date of the Rule for covered lamp products. EPA 92 directed the Commission to prescribe, by April 25, 1994, labeling rules for lamp products and provided that such rules shall apply to those covered lamp products manufactured after the 12-month period beginning on the date of publication of the rules in final form. The effective date for these lamp labeling rule amendments is therefore twelve months following publication of this Notice.

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[274] The final rules require manufacturers to submit an initial report containing the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results for the wattage and light output ratings of each lamp model or type and, in addition, for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE test procedure. In subsequent years, manufacturers will be required only to submit reports containing data about new, changed or discontinued lamp products. Further, the Commission will accept manufacturers' reports in any format that contains the necessary information. The reporting requirement will not become effective until after DOE issues test procedures for specific lamp products. The Commission will publish a notice at a later date, after DOE has issued test procedures, announcing when the initial reports and subsequent annual reports will be due.

[275] Notice of Office of Management and Budget Action dated April 1, 1994.

[276] See also Executive Order 12770 ("Metric Usage in Federal Government Programs").

D. Section 305.5—Determinations of Estimated Annual Energy Cost and Energy Efficiency Rating and of Water Use Rate

This section specifies what test procedures are to be used for measuring the water use and energy consumption and efficiency of the various categories of products covered by the Rule. The Commission is adding to this section a new subsection for covered lamps specifying that manufacturers and private labelers of covered lamps must, for any representation of the design voltage, wattage, light output or life of any covered medium base compact fluorescent lamp or general service incandescent lamp, including any incandescent reflector lamp, or for any representation made by the encircled "E" that any covered general service fluorescent or incandescent reflector lamp is in compliance with a minimum energy efficiency standard, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests that substantiate the representation. The new subsection also states that for establishing the light output and life ratings of covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps, the Commission will accept as a reasonable basis the results of competent and reliable scientific tests conducted pursuant to certain IES testing protocols that substantiate those ratings.

E. Section 305.6—Sampling

This section specifies that any representation with respect to or based upon a measure or measures of energy consumption shall be based on certain DOE approved sampling procedures. Inasmuch as DOE has not yet adopted sampling procedures for the covered lamp products, the Commission is adding to this section a new subsection for covered lamps specifying that any representation of design voltage, wattage, light output or life, or any representation made by the encircled "E" that a lamp is in compliance with a minimum energy efficiency standard, shall be based upon testing using competent and reliable scientific sampling procedures. The new subsection also states that the Commission will accept sampling conducted in accordance with "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as competent and reliable scientific sampling procedures.

F. Section 305.8—Submission of Data

This section requires manufacturers of covered products to submit to the Commission, in the form of annual reports, certain information about their products. Section 326(b)(1) of EPCA, 42 U.S.C. 6296(b)(1), requires manufacturers to notify the Commission of all their existing product model numbers within 60 days after a rule covering them takes effect and all their future product model numbers prior to commencement of production. Section 326(b)(4) of EPCA, 42 U.S.C. 6296(b)(4), requires manufacturers to supply annually to the Commission, at times to be specified by the Commission, relevant data respecting their products' energy consumption. The Commission is amending § 305.8 of the Rule to require manufacturers of covered lamp products for which DOE has issued test procedures under EPCA to submit to the Commission by March 1, 1996, and annually thereafter, reports disclosing each company's name and address and the trade names, the model numbers, and the energy consumption data (*i.e.*, for all covered lamps for which DOE has issued test procedures, the test results for the lamps' light output in lumens and energy usage in watts and, in addition, for all covered fluorescent lamps, the test results for the lamps' color rendering index) for each of its covered lamp products. This reporting requirement is, however, being stayed pending DOE's adoption of test procedures for these products. Manufacturers of covered lamp products are not being required to submit any more information than manufacturers of other products covered by the Rule.

G. Section 305.11—Labeling For Covered Products

This section contains five subsections specifying labeling requirements for the Rule's covered products.[277] The Commission is amending this provision by adding a new subsection to address the labeling requirements that EPA 92 has directed the Commission to issue for lamps. This new subsection is designated (e) and placed immediately after the existing subsection (d) that pertains to fluorescent lamp ballasts. The subsection that pertains to plumbing products, which was subsection (e), is being redesignated (f).

The new subsection (e) specifies the information that must be disclosed on the labels of the three categories of lamps that EPA 92 has added to EPCA and consists of three subsections. Subsection (e)(1)(A) states that all covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps (*i.e.*, all covered lamps other than general service fluorescent lamps) must disclose clearly and conspicuously on their labels' principal display panel the following information:

(1) The number of lamps included in the package, if more than one;

(2) The design voltage of each lamp included in the package, if other than 120 volts;

(3) The light output of each lamp included in the package, expressed in average initial lumens;

(4) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage; and

(5) The life of each lamp included in the package, expressed in hours.

Subsection (e)(1)(B) specifies that the light output, energy usage, and life ratings of any covered compact fluorescent and general service incandescent lamp must appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings must be disclosed in terms of "lumens," "watts," and "hours" respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts," and "hours" each appearing in the same type style and size. The words "light output," "energy used," and "life" must precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts," and "hours," except that the letters of the words "lumens," "watts," and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used," and "life."

Subsection (e)(1)(C) specifies that a lamp's light output, energy usage, and life are to be measured at 120 volts, regardless of the lamps' design voltage. If a lamp's design voltage is other than 120 volts, the lamp's required disclosures of light output, energy usage, and life must in each instance be followed by the phrase "at 120 volts." The rule amendment allows, but does not require, labels for lamps with design voltages other than 120 volts also to disclose the lamps' light output, energy usage, and life at the design voltage

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[277] The first subsection applies to all the covered products heretofore included in the Rule except fluorescent lamp ballasts, showerheads, faucets, water closets and urinals; the second concerns only furnaces and central air conditioners; the third only central air conditioners; the fourth only fluorescent lamp ballasts; and the fifth only showerheads, faucets, water closets and urinals.

(*e.g.*, "Light Output 1710 Lumens at 125 volts").

Subsection (e)(1)(D) specifies that for all covered general service incandescent reflector lamps the required disclosures of light output are to be given for the lamps' beam spread and followed clearly and conspicuously by the phrase "at beam spread."

Subsection (e)(1)(E) specifies that, for all covered compact fluorescent lamps, the required disclosures of light output shall be measured at a base-up position, but provides that, if the manufacturer or private labeler has reason to believe any lamp's light output at a base-down position would be more than 5% different, the label must also disclose the lamp's light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the lamp's light output might be more than 5% less.

Subsection (e)(1)(F) requires that for all covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps, there shall be clearly and conspicuously disclosed on the principal display panel the following Advisory Disclosure statement:

> To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Subsection (e)(1)(G) specifies that, for any covered general service incandescent lamp that operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1) (A)–(C) and (F) of this section of the Rule, the lamp's energy usage in watts and light output in lumens at each of the lamp's levels of light output and the lamp's life in hours at the filament that fails first.

Subsection (e)(2) states that all covered general service fluorescent lamps and incandescent reflector lamps shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

> *(The encircled "E") means this bulb meets Federal minimum efficiency standards.

If the statement is not disclosed on the principal display panel, that asterisk shall be followed by a clear and conspicuous disclosure of the following:

> *See (side, top, back) panel for details.

Subsection (e)(2)(A), for purposes of this section of the Rule, states that on labels of general service fluorescent lamps the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

Subsection (e)(2)(B) states that manufacturers and private labelers who would otherwise not put labels on covered general service fluorescent lamps may, instead of labeling such lamps with the encircled "E" and the statement described in paragraph (e)(2)(A), meet the disclosure requirement of that paragraph by permanently marking such lamps clearly and conspicuously with the encircled "E."

Subsection (e)(3) states that, if energy operating cost claims are made in the labeling of any covered lamp, that representation must in connection therewith clearly and conspicuously disclose the assumptions (*e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based.

Subsection (e)(4) states that all cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps, including incandescent reflector lamps, are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

> These lamps comply with Federal energy efficiency labeling requirements.

H. Section 305.13—Promotional Material Displayed or Distributed at Point of Sale

This section has two subsections, the first of which requires all promotional materials for all covered products (other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals) that are displayed at the point of sale to disclose clearly and conspicuously the following statement: "Before purchasing this appliance, read important energy cost and efficiency information available from your retailer," and the second of which requires all promotional materials for all covered showerheads, faucets, water closets and urinals to disclose clearly and conspicuously the product's water flow rate.

The Commission is amending this section to add a third subsection specifying that, if in such promotional materials any energy operating cost claims are made for any covered lamp product, the representation must in connection therewith clearly and conspicuously disclose the assumptions (*e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based. This new subsection is designated (b) and the former subsection (b), which concerns plumbing products, is redesignated (c).

I. Section 305.14—Catalogs

This section has four subsections, the first two of which concern required disclosures in catalogs from which any covered product (other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals) may be purchased, the third of which concerns such required disclosures for fluorescent lamp ballasts, and the fourth of which concerns such required disclosures for showerheads, faucets, water closets and urinals.

The Commission is amending this section to add a fifth subsection requiring all such catalog advertising for covered lamps to bear the same disclosures that § 305.11(e) of the Rule requires in the lamps' labeling, except for the number of items contained in the package, and specifying that, if in such catalog advertising any energy operating cost claims are made for any covered lamp product, the representation must in connection therewith clearly and conspicuously disclose the assumptions (*e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based. This subsection provides that, for catalogs not distributed to consumers for making purchases for personal use or consumption by individuals, the light output, energy usage and life disclosures need not comply with the format provisions of § 305.11(e)(1)(B), but must only be disclosed clearly and conspicuously. This new subsection is designated (d) and the former subsection (d) pertaining to plumbing products is redesignated (e).

J. Section 305.15—Test Data Records

This section requires manufacturers and private labelers, upon notification by the Commission or its designated representative to provide, within 30 days notice, the underlying test data from which the estimated annual energy cost or energy efficiency rating for each basic model was derived. The Commission is amending this section to require that manufacturers and private labelers of lamps provide the Commission upon request with the underlying test data from which the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering index, for each basic model or lamp type, was derived.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

Text of Amendments

For the reasons set out in the preamble, 16 CFR part 305 is amended as follows:

PART 305—RULE CONCERNING DISCLOSURES OF INFORMATION ABOUT ENERGY CONSUMPTION AND WATER USE FOR CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.2 is amended by revising paragraphs (n) through (v) and by adding paragraphs (w) through (hh) to read as follows:

§ 305.2 Definitions.

* * * * *

(n) *Consumer product* means any article (other than an automobile, as "automobile" is defined in section 2001(1) of Title 15 (section 501(1) of the Motor Vehicle Information and Cost Savings Act) of a type—

(1) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(2) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article or such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(o) *Consumer appliance product* means any of the following consumer products, excluding those products designed solely for use in recreational vehicles and other mobile equipment:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(i) Any type designed to be used without doors; and

(ii) Any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Dishwashers.

(3) Water heaters.

(4) Room air conditioners.

(5) Clothes washers.

(6) Clothes dryers.

(7) Central air conditioners and central air conditioning heat pumps.

(8) Furnaces.

(9) Direct heating equipment.

(10) Pool heaters.

(11) Kitchen ranges and ovens.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps.

(15) Medium base compact fluorescent lamps.

(16) General service incandescent lamps, including incandescent reflector lamps.

(17) Showerheads.

(18) Faucets.

(19) Water closets.

(20) Urinals.

(21) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(p) *Covered product* means any consumer product or consumer appliance product described in § 305.3 of the Rule.

(q) *Luminaire* means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(r) *Ballast efficacy factor* means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute standard C82.2–1984, or as may be prescribed by the Secretary of Energy.

(s) *Bulb shape* means the shape of the lamp, especially the glass portion.

(t) *Base* for lamps means the portion of the lamp which screws into the socket.

(u) *Color rendering index* or *CRI* for lamps means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(v) *Correlated color temperature* for lamps means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(w) *Lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(x) *Wattage* for lamps means the total electrical power consumed by a lamp in watts, after an initial seasoning period and including, for fluorescent lamps, arc watts plus cathode watts.

(y) *Light output* for lamps means the total luminous flux (power) of a lamp in lumens.

(z) *Life* and *lifetime* for lamps mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group.

(aa) *Lamp efficacy* means the light output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(bb) *Average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(cc) *IES* means the Illuminating Engineering Society of North America and, as used herein, is the prefix for test procedures adopted by IES.

(dd) *ASME* means the American Society of Mechanical Engineers and, as used herein, is the prefix for national standards and codes adopted by ASME.

(ee) *ANSI* means the American National Standards Institute and, as used herein, is the prefix for national standards and codes adopted by ANSI.

(ff) *Water use* means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 323 of the Act, 42 U.S.C. 6293.

(gg) *Flushometer valve* means a valve attached to a pressured water supply pipe and so designed that, when actuated, it opens the line for direct flow into the fixture at a rate and quantity to operate properly the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size that, when opened, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

(hh) *Flow restricting or controlling spout end device* means an aerator used in a faucet.

3. Section 305.3 is amended by revising paragraphs (k) through (n) and by adding paragraphs (o) through (q) to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(k) *Fluorescent lamp:* (1) Means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more;

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more;

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements; and

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985; but

(2) *Fluorescent lamp* does not mean any lamp excluded by the Department of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service fluorescent lamp* means a fluorescent lamp which can be used to satisfy the majority of fluorescent applications, but does not mean any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth;

(ii) Fluorescent lamps specifically designed for cold temperature installations;

(iii) Colored fluorescent lamps;

(iv) Impact-resistant fluorescent lamps;

(v) Reflectorized or aperture lamps;

(vi) Fluorescent lamps designed for use in reprographic equipment;

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and

(viii) Lamps with a color rendering index of 82 or greater.

(l) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(m) *Incandescent lamp:* (1) means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(A) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(B) A high(er) wattage reflector lamp which has a rated wattage above 205 watts;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service incandescent lamp* means any incandescent lamp (other than a miniature or photographic lamp), including an incandescent reflector lamp, that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamp specifically designed for:

(i) Traffic signal, or street lighting service;

(ii) Airway, airport, aircraft, or other aviation service;

(iii) Marine or marine signal service;

(iv) Photo, projection, sound reproduction, or film viewer service;

(v) Stage, studio, or television service;

(vi) Mill, saw mill, or other industrial process service;

(vii) Mine service;

(viii) Headlight, locomotive, street railway, or other transportation service;

(ix) Heating service;

(x) Code beacon, marine signal, lighthouse, reprographic, or other communication service;

(xi) Medical or dental service;

(xii) Microscope, map, microfilm, or other specialized equipment service;

(xiii) Swimming pool or other underwater service;

(xiv) Decorative or showcase service;

(xv) Producing colored light;

(xvi) Shatter resistance which has an external protective coating; or

(xvii) Appliance service; and

(4) *Incandescent reflector lamp* means a lamp described in paragraph (m)(1)(ii) of this section; and

(5) *Tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(n) *Showerhead* means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(o) *Faucet* means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(p) *Water closet* means a plumbing fixture having a water-containing receptor which receives liquid and solid body waste and, upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

(q) *Urinal* means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

4. Section 305.4 is amended by revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(2) Any covered product, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals, if the manufacture of the product was completed prior to May 19, 1980. Any central air conditioner or any pulse combustion or condensing furnace if its manufacture was completed prior to June 7, 1988 Any fluorescent lamp ballast if its

manufacture was completed prior to January 1, 1990. Any fluorescent lamp, medium base compact fluorescent lamp, or incandescent lamp (including any incandescent reflector lamp), if its manufacture was completed prior to May 15, 1995. Any showerhead, faucet, water closet or urinal if its manufacture was completed prior to October 24, 1994.

(3) Any catalog or point-of-sale printed material pertaining to any covered products, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals, that were distributed prior to May 19, 1980, and any catalog or point-of-sale printed material pertaining to any central air conditioners and pulse combustion and condensing furnaces that were distributed prior to June 7, 1988, and any catalog or point-of-sale printed material pertaining to any fluorescent lamp ballasts that were distributed prior to June 23, 1989, and any catalog or point-of-sale printed material pertaining to fluorescent lamps, medium base compact fluorescent lamps, or incandescent lamps (including incandescent reflector lamps), that were distributed prior to May 15, 1995, and any catalog or point-of-sale printed material pertaining to any showerheads, faucets, water closets and urinals that were distributed prior to October 24, 1994, except that if representations respecting the energy consumption or energy efficiency or water use of any covered product or other consumer appliance product or cost of energy consumed or water used by such product are included, they are subject to the requirements of paragraph (d) of this section.

* * * * *

5. Section 305.5 is revised to read as follows:

§ 305.5 Determinations of estimated annual energy cost and energy efficiency rating and of water use rate.

(a) Procedures for determining the estimated annual energy costs, the energy efficiency ratings, and the power and efficacy factors of covered products are those found in 10 CFR part 430, subpart B, in the following sections:

(1) Refrigerators and refrigerator-freezers—430.22(a).

(2) Freezers—§ 430.22(b).

(3) Dishwashers—§ 430.22(c).

(4) Water heaters—§ 430.22(e).

(5) Room air conditioners—§ 430.22(f).

(6) Clothes washers—§ 430.22(j).

(7) Central air conditioners and heat pumps—§ 430.22(m).

(8) Furnaces—§ 430.22(n).

(9) Fluorescent lamp ballasts—§ 430.22(q).

(b) Manufacturers and private labelers of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), must, for any representation of the design voltage, wattage, light output or life of such lamp or for any representation made by the encircled "E" that such a lamp is in compliance with an applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For representations of the light output and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), the Commission will accept as a reasonable basis competent and reliable scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):	
General Service Fluorescent	IES LM 9
Compact Fluorescent	IES LM 66
General Service Incandescent (Other than Reflector Lamps).	IES LM 45
General Service Incandescent (Reflector Lamps).	IES LM 20
For measuring laboratory life (in hours):	
General Service Fluorescent	IES LM 40
Compact Fluorescent	IES LM 65
General Service Incandescent (Other than Reflector Lamps).	IES LM 49
General Service Incandescent (Reflector Lamps).	IES LM 49

(c) Procedures for determining the water use rates of covered products are those found in the following standards:

(1) Showerheads and faucets—ASME A112.18.1M–1989, Plumbing Fixture Fittings. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.18.1M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC.

(2) Water closets and urinals—ASME A112.19.2M–1990, Vitreous China Plumbing Fixtures. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.19.2M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC.

6. Section 305.6 is revised to read as follows:

§ 305.6 Sampling.

(a) For any covered product (except fluorescent lamps, medium base compact fluorescent lamps, and incandescent lamps, including incandescent reflector lamps), any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.23 of 10 CFR part 430, subpart B.

(b) For any covered product that is a medium base compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), any representation of design voltage, wattage, light output or life and, for any covered product that is a general service fluorescent lamp or incandescent reflector lamp, any representation made by the encircled "E" that such lamp is in compliance with an applicable standard established by section 325 of the Act shall be based upon tests using a competent and reliable scientific sampling procedure. The Commission will accept "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as such a sampling procedure.

7. Section 305.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 305.8 Submission of data.

(a) (1) Each manufacturer of a covered product, except manufacturers of fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets or urinals, shall submit annually to the Commission a report listing the kilowatt-hour use per year (for refrigerators, refrigerator-freezers and freezers), the energy factor (for clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps and furnaces) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: The model number; the total energy consumption, determined in accordance with § 305.5, used to calculate the kilowatt-hour per year, energy factor, or energy efficiency rating; the number of tests performed; and its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption, or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix J of this part illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced in the market.

(2) Each manufacturer of a covered fluorescent lamp ballast shall submit annually to the Commission a report for each basic model of fluorescent lamp ballast in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the fluorescent lamp ballast is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) Nominal input voltage and frequency;

(vi) Ballast efficacy factor; and

(vii) Type (F40T12, F96T12 or F96T12HO) and number of lamp or lamps with which the fluorescent lamp ballast is designed to be used.

(3) Each manufacturer of a covered product that is a fluorescent lamp, medium base compact fluorescent lamp, or incandescent lamp (including an incandescent reflector lamp), shall submit annually to the Commission a report for each lamp type in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the lamp is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each lamp type); and

(v) For all covered lamps, the test results for the lamp's wattage and light output ratings and, in addition, for all covered fluorescent lamps, the test results for the lamp's color rendering index.

(4) Each manufacturer of a covered showerhead, faucet, water closet or urinal shall submit annually to the Commission a report for each basic model of such products in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the product is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) The product's water use, expressed in gallons and liters per flush (gpf/Lpf) or gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) as determined in accordance with § 305.5.

(b) All data required by § 305.8(a) except serial numbers, shall be submitted to the Commission annually, on or before the following dates:

Products	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Clothes washers	Mar. 1.
Fluorescent lamp ballasts	Mar. 1.
Fluorescent lamps	Mar. 1. [Stayed]
Medium Base Compact Fluorescent Lamps.	Mar. 1. [Stayed]
Incandescent Lamps, incl. Reflector Lamps.	Mar. 1. [Stayed]
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.

All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report period. Serial number reports for new covered products are due sixty days after the annual effective mandatory labeling date for each product.

* * * * *

8. Section 305.11 is amended by revising the heading of paragraph (a), by revising paragraph (e), and by adding paragraph (f) to read as follows:

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets and urinals—*. * * *

* * * * *

(e) *Lamps.* (1) (i) Any covered product that is a compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(A) The number of lamps included in the package, if more than one;

(B) The design voltage of each lamp included in the package, if other than 120 volts;

(C) The light output of each lamp included in the package, expressed in average initial lumens;

(D) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage;

(E) The life of each lamp included in the package, expressed in hours.

(ii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings shall be disclosed in terms of "lumens," "watts" and "hours" respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts" and "hours" each appearing in the same type style and size. The words "light output," "energy used" and "life" shall precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts" and "hours," except that the letters of the words "lumens," "watts" and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used" and "life" respectively.

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is other than 120 volts, the disclosures of the wattage, light output and life ratings shall in each instance be followed by the phrase "at 120 volts." Labels for lamps with design voltages other than 120 volts also may disclose the lamps' wattage, light output and life at the designed voltage (*e.g.*, "Light Output 1710 Lumens at 125 volts").

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's beam spread and be followed clearly and conspicuously by the phrase "at beam spread."

(v) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

(vii) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1) (i)–(iii) and (vi) of this section of the Rule, the lamp's wattage and light output at each of the lamp's levels of light output and the lamp's life measured on the basis of the filament that fails first.

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled "E"] means this bulb meets Federal minimum efficiency standards.

If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

*See [Back, Top, Side] panel for details.

(i) For purposes of this section of the Rule, the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled "E" and with the statement described in paragraph (e)(2) of this section of the Rule, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled "E."

(3) Any manufacturer or private labeler who makes any representation on a label of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use.

(4) Any cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

(f) *Plumbing fixtures—(1) Showerheads and faucets.* Showerheads and faucets shall be marked and labeled as follows:

(i) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate disclosure shall also be given in liters per minute (Lpm) or liters per cycle (Lpc). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each showerhead and faucet shall bear a permanent legible marking to identify the manufacturer. This marking shall be the trade name, trademark, or other mark known to identify the manufacturer. Such marking shall be located where it can be seen after installation.

(iii) Each showerhead and faucet shall be marked "A112.18.1M" to demonstrate compliance with the applicable ASME standard. The marking shall be by means of either a permanent mark on the product, a label on the product, or a tag attached to the product.

(iv) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(v) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: "A112.18.1M" and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (Lpm) or liters per cycle (Lpc).

(2) *Water closets and urinals.* Water closets and urinals shall be [illegible] and labeled as follows:

(i) Each such fix [illegible] valve associated [illegible] bear a permanent [illegible] indicating the f [illegible] gallons per flush [illegible] use value shall b [illegible] or the maximum water [illegible] by the standards established [illegible] section (k) of section 325 of the Act, 42 U.S.C. 6295(k). Except where impractical due to the size of the fixture, each flow rate disclosure shall also be given in liters per flush (Lpf). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked with the manufacturer's name or trademark or, in the case of private labeling, the name or registered trademark of the customer for whom the unit was manufactured. This mark shall be legible, readily identified, and applied so as to be permanent. The mark shall be located so as to be visible after the fixture is installed, except for fixtures built into or for a counter or cabinet.

(iii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked at a location determined by the manufacturer with the designation "ASME A112.19.2M" to signify compliance with the applicable standard. This mark need not be permanent, but shall be visible after installation.

(iv) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(v) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words "For Commercial Use Only."

(3) *Annual operating cost claims for covered plumbing products.* Until such time as the Commission has prescribed a format and manner of display for labels conveying estimated annual operating costs of covered showerheads, faucets, water closets, and urinals or ranges of estimated annual operating costs for the types or classes of such plumbing products, the Act prohibits manufacturers from making such representations on the labels of such covered products. 42 U.S.C. 6294(c)(8). If, before the Commission has prescribed such a format and manner of display for labels of such products, a manufacturer elects to provide for any such product a label conveying such a claim, it shall submit the proposed claim to the Commission so that a format and manner of display for a label may be prescribed.

9. Section 305.13 is amended by revising paragraph (a) to read as follows:

§ 305.13 Promotional materials displayed or distributed at point of sale.

(a) (1) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets, and urinals) shall clearly and conspicuously include in such printed material the following required disclosure:

> Before purchasing this appliance, read important energy cost and efficiency information available from your retailer.

(2) Any manufacturer, distributer, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), and who makes any representation in such promotional material regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use.

(3) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered showerhead, faucet, water closet, or urinal shall clearly and conspicuously include in such printed material the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

* * * * *

10. Section 305.14 is amended by revising paragraph (a) introductory text, by revising paragraph (d), and by adding paragraph (e), to read as follows:

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product (except fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall include in such catalog, on each page that lists the covered product, the following information required to be disclosed on the label:

* * * * *

(d) (1) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), shall disclose clearly and conspicuously in such catalog:

(i) On each page listing any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), all the information concerning that lamp, except for the number of units in the package, required by § 305.11(e)(1) of this Rule to be disclosed on the lamp's label; *provided, however,* that, for a catalog not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11 (e)(1)(ii) of this Rule, but must be clear and conspicuous; and (ii) On each page listing a covered product that is a general service fluorescent lamp or an incandescent reflector lamp, all the information required by § 305.11(e)(2) of this Rule to be disclosed on the lamp's label according to the following format:

(A) The encircled "E" shall appear with each lamp entry; and

(B) The accompanying statement shall appear at least once on the page.

(2) Any manufacturer, distributer, retailer, or private labeler who advertises a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), in a catalog who makes any representation in such catalog regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(e) Any manufacturer, distributor, retailer, or private labeler who advertises a covered showerhead, faucet, water closet or urinal in a catalog, from which it may be purchased, shall include in such catalog, on each page that lists the covered product, the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

11. Section 305.15 is amended by revising paragraph (b) to read as follows:

§ 305.15 Test data records.

* * * * *

(b) Upon notification by the Commission or its designated representative, a manufacturer or private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the water use or energy consumption rate, the estimated annual cost of using each basic model, or the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering index for each basic model or lamp type was derived.

* * * * *

12. Further, appendix K to part 305 of 16 CFR is amended by the addition of six Illustrations at the end, as follows:

* * * * *

BILLING CODE 6750–01–P

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel

Light Output	1710 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.
Energy Used	100 Watts	
Life	750 Hours	

Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

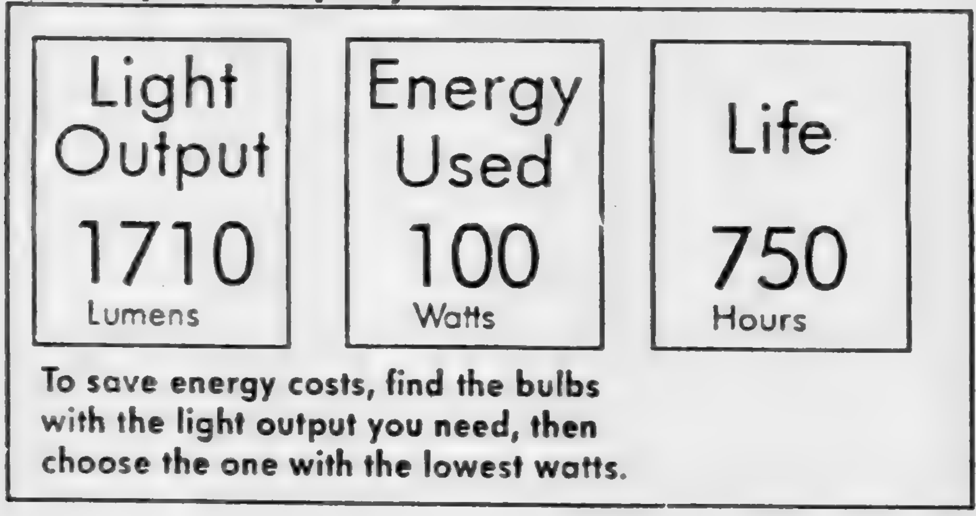
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel



Light Output
1710
Lumens

Energy Used
100
Watts

Life
750
Hours

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

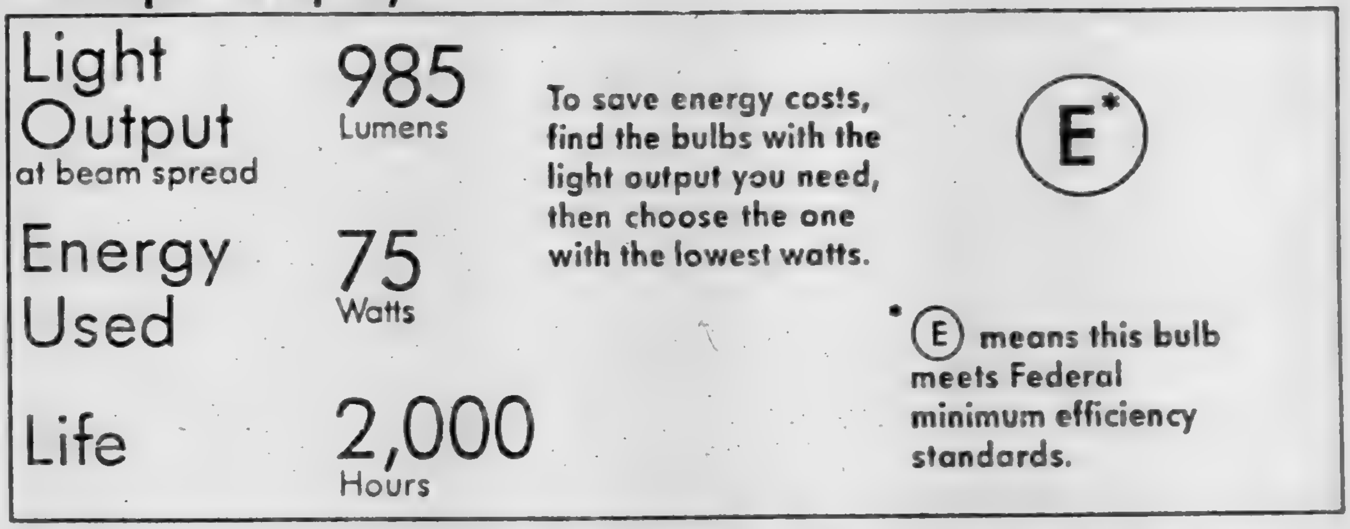
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel



Light Output at beam spread 985 Lumens

Energy Used 75 Watts

Life 2,000 Hours

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Ⓔ*

*Ⓔ means this bulb meets Federal minimum efficiency standards.

The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

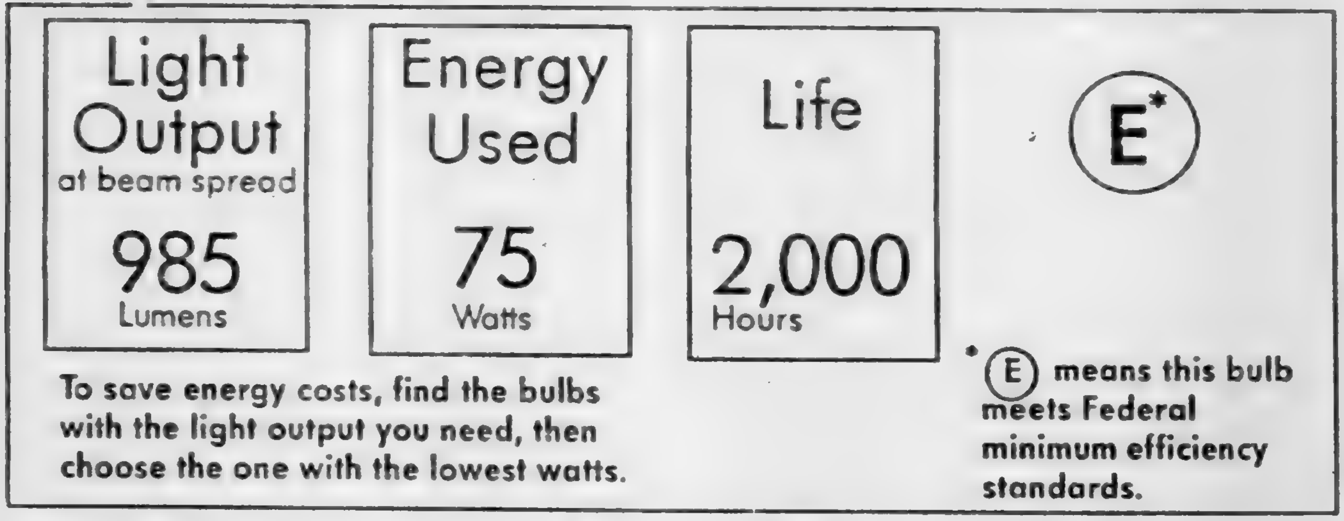
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel



Light Output at beam spread 985 Lumens

Energy Used 75 Watts

Life 2,000 Hours

Ⓔ*

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

*Ⓔ means this bulb meets Federal minimum efficiency standards.

The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

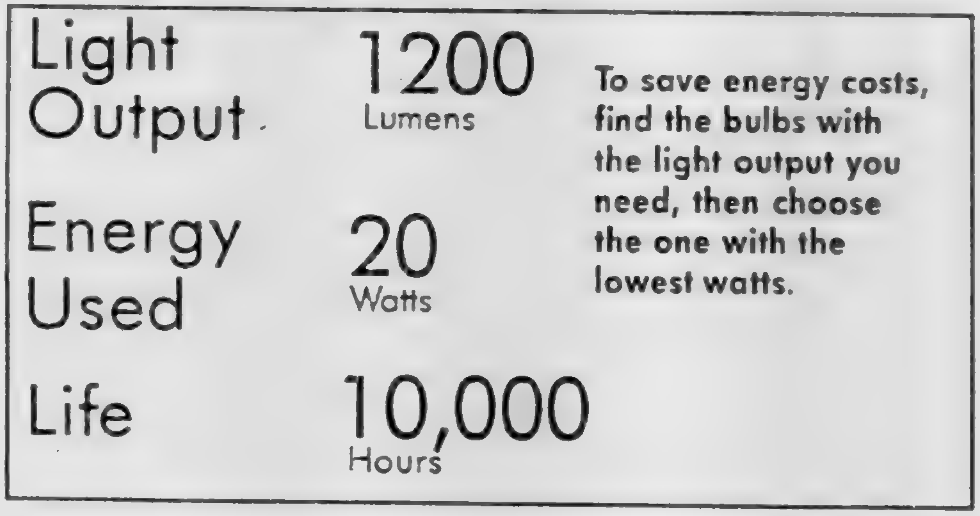
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel



Light Output	1200 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.
Energy Used	20 Watts	
Life	10,000 Hours	

Compact Fluorescent Lamp Illustration

Lamp Packaging Disclosures

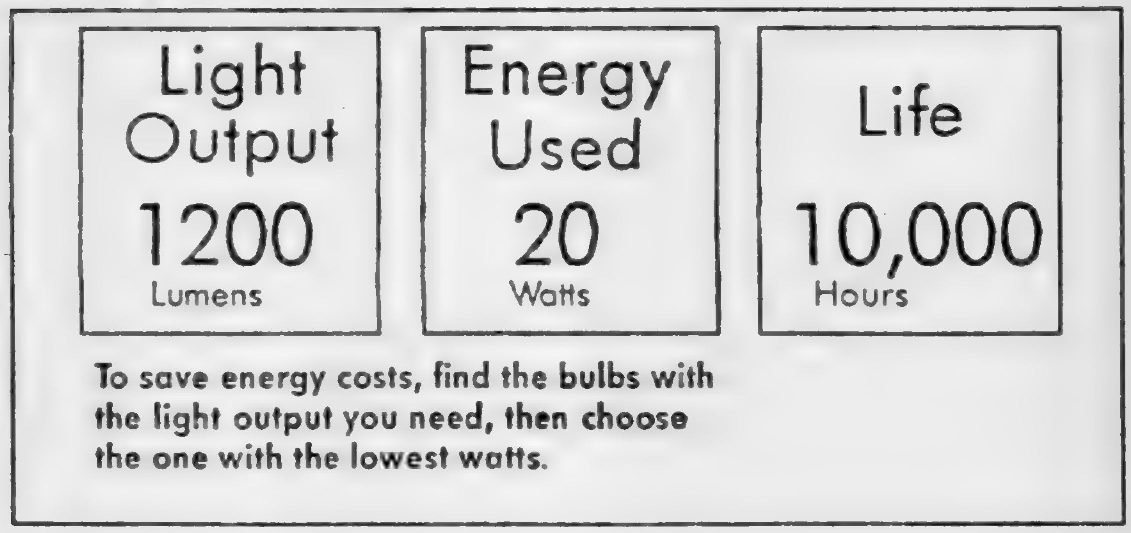
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel



Light Output

1200

Lumens

Energy Used

20

Watts

Life

10,000

Hours

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Compact Fluorescent Lamp Illustration

BILLING CODE 6750–01–C

By direction of the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

Amendments to the Appliance Labeling Rule to Include Lamps, Matter No. R611004

The Energy Policy and Conservation Act of 1975 ("EPCA"), as amended by the Energy Policy Act ("EPA 92"), imposes a number of regulatory requirements on "covered products" and provides a list clearly defining which products are covered products. The only lamp products on this list are "general service fluorescent lamps and incandescent reflector lamps." 42 U.S.C. 6292(a)(14). There is no indication in the legislative history that Congress intended that any other lamp products be considered covered products.

In issuing this rule, the Commission treats medium base compact fluorescent lamps and general service incandescent lamps as covered products. If Congress intended to have these products treated as covered products, it could have included them on the list of covered products. Alternatively, Congress could have given the Commission the authority to add products to the list of covered products under certain conditions, like the authority it has conferred on the Department of Energy. 42 U.S.C. 6292(a)(19). Because Congress neither defined these lamp products as covered products nor gave the Commission the authority to define them as covered products, these lamp products, in my view, cannot be treated as covered products under the rule amendments.

I dissent from the rule to the extent that it treats medium base compact fluorescent lamps and general service incandescent lamps as covered products.

[FR Doc. 94–11234 Filed 5–12–94, 8:45 am]

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federal register

Friday
May 13, 1994

Part IV

Department of Commerce

National Telecommunications and
Information Administration

Grants for Planning and Construction of
Public Telecommunications Facilities;
Acceptance of Applications for Filing;
Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing

I. New Applications and Major Amendments to Deferred Applications

Notice is hereby given that the following described applications for Federal financial assistance are accepted for filing under provisions of title III, part IV, of the Communications Act of 1934, as amended (47 U.S.C. 390–393, 397) and in accordance with 15 CFR part 2301. All of the applications listed in this section were received by March 17, 1994. The effective date of acceptance of these proposals, unless otherwise indicated herein, is "Dated Received". Applications are listed by their State.

The acceptance of applications for filing is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications. Acceptance of an application does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provisions of either the Act or 15 CFR part 2301, or if the applicant fails to file any additional information requested by the Public Telecommunications Facilities Program (PTFP). Acceptance for filing does not ensure that an application will be funded; it merely qualifies that application to compete for funding with other applications which have also been accepted for filing.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments have been delivered to the applicant. Comments must be sent to the address listed in 15 CFR 2301.5(a).

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

Charles M. Rush,

Acting Associate Administrator, Office of Telecommunications and Information Applications.

AK (Alaska)

File No. 94011 CFB Alaska Public Radio Network, 810 East 9th Avenue, Anchorage, AK 99501–3826. Signed By: Ms. Diane S. Kaplan, President and CEO. Funds Requested: $228,044. Total Project Cost: $304.058. To improve the production facilities of the Alaska Public Radio Network by replacing studio production equipment, including an audio console and tape recorders. The project will also provide a control center for the applicant's satellite uplink facility and purchase field production equipment to use with an existing portable satellite uplink. The Alaska Public Radio Network provides programming to 29 member public radio stations throughout Alaska and also produces the daily radio program "National Native News" which is distributed via satellite to over 170 stations in 33 states.

File No. 94089 CTB Capital Community Bdcstg. Inc., 224 Fourth Street, Juneau, AK 99801–1198. Signed By: Mr. Bill Legere, President and General Manager. Funds Requested: $709.484. Total Project Cost: $945,979. To improve the operational capability of public station KTOO, Ch 3, Juneau, AK, by replacing obsolete and unreliable master and production control switching equipment, record and playback facilities, video and audio distribution equipment, test equipment, satellite receive equipment, terminal accessories, and studio lighting as part of moving to a new operating facility.

File No. 94115 CTB Bethel Broadcasting, Inc., 640 Radio Street, Pouch 468, Bethel, AK 99559. Signed By: Mr. Andrew J. Guy, President. Funds Requested: $92,596. Total Project Cost: $123,462. To improve the production capability of public station KYUK–TV, Ch 4, Bethel, AK, by replacing obsolete and unreliable equipment, including an audio mixer, video tape recorders, a studio lighting system, and a studio intercom system.

File No. 94129 PTBN Bethel Broadcasting, Inc., 640 Radio Street, Pouch 468, Bethel, AK 99559. Signed By: Mr. John A. McDonald, Secretary, GM. Funds Requested: $36,723. Total Project Cost: $37,323. To develop a distance learning network plan for the Distance Delivery Consortium of Southwest Alaska, composed of member organizations in K–12 school districts, higher education, health care services, public broadcasting, and advisory members in long distance telephone service and satellite distribution, cable television, medical and technical training, and public utilities. The proposed plan would explore options and prepare a feasibility study for a network distribution system that could include a satellite uplink, satellite downlinks, and various last mile configurations for the video, voice and data delivery of educational materials.

File No. 94138 CRB University of Alaska-Fairbanks, Fairbanks North Star Borough, Fairbanks AK 99775–5620. Signed By: Mr. Ted DeLaca, Dir, Office of Arctic Research. Funds Requested: $183,098. Total Project Cost: $273,098. To extend the coverage of public radio station KUAC–FM, Fairbanks, AK, by changing its frequency from 104.7 MHz to 89.9 MHz, by relocating its transmitter, by increasing its power, and by upgrading translators in Delta, Central Circle, and Nenana. This will provide the first public radio signal to about 20,650 people in the Fairbanks area. The project will also replace an obsolete and unreliable audio console at the main studios of KUAC–FM.

File No. 94205 CRB Dillingham City School District, Box 670 Seward Street, Dillingham, AK 99576. Signed By: Mr. Donald Renfroe, Superintendent. Funds Requested: $98,258. Total Project Cost: $131,011. To improve public radio station KCLD, 670 MHz, Dillingham, AK, by installing an emergency power generator and by replacing worn-out and obsolete studio equipment, including audio consoles, cart machines, audio recorders, CD players, and microphones.

File No. 94222 CRB Pickle Hill Public Bdcstg, Inc., Post Office Box 2111, Kenai, AK 99611. Signed By: Mr. Tom Murphy, Station Manager. Funds Requested: $89,846. Total Project Cost: $119,794. To provide the first locally originated public radio programming to 25,000 people in Kenai, Soldotna, Sterling, and Nikiski, AK, by equipping public station KCZP, 91.9 MHz, with a studio facility. The station now repeats the programming of public radio station KSKA, Anchorage.

File No. 94278 CRB Rainbird Community Bdcstg Corp., 123 Stedman Street, Ketchikan, AK 99901. Signed By: Ms. Marty West-White, General Manager. Funds Requested: $60,026. Total Project Cost: $80,035. To improve the signal of public radio station KRBD, 105.9 MHz, Ketchikan, AK, first by replacing its antenna and changing its frequency to 89.7 MHz, eliminating interference from another FM station, and second by replacing unreliable and obsolete origination equipment, including an audio console, CD players, digital cart machines, recorders, routing switcher and microphones.

AL (Alabama)

File No. 94208 CRB Alabama Educational Television, 2112 11th Avenue S., Birmingham, AL 35205–2884. Signed By: Ms. Judy Stone, Executive Director. Funds Requested: $15,000. Total Project Cost: $30,000. To improve public radio station WLRH–

FM, 89.3 MHz, in Huntsville, AL, by replacing origination equipment, including master control console, stereo source selectors, monitor speakers, stereo compressor/limiter, band graphic equalizer, reel to reel tape decks, digital cart machine, microphones, CD player, DAT record/playback and patch bay and cords, so the station may continue quality service to the 600,000 residents in and around Huntsville.

File No. 94218 CTB Alabama ETV Commission, 2112 11th Avenue South, Suite 40, Birmingham, AL 35205–2884. Signed By: Ms. Judy Stone, Executive Director. Funds Requested: $449,142. Total Project Cost: $898,234. To improve the Alabama TV Network at WIIQ, Ch 41 in Demopolis and WFIQ, Ch 36 in Florence, by replacing the antenna and transmission lines at both locations, replacing the frame synchronizer, color monitor, generator, VCR and still store and by adding Descriptive Video Service items and stereo audio for all 9 network stations. The replacement antenna at Demopolis will provide a first signal to 12,642 unserved residents.

AR (Arkansas)

File No. 94264 CTB Arkansas ETV Commission, 350 South Donaghey, Conway, AR 72032. Signed By: Ms. Susan Howarth, Executive Director. Funds Requested: $437,747. Total Project Cost: $875,495. To improve the production facilities of the Arkansas Educational Television Network in Conway by replacing 3 obsolete camera systems. The project would also purchase 3 cameras, lights, audio and control equipment for Studio B, newly constructed at the applicant's headquarters. The control equipment and two additional field production cameras would be placed in a mobile production van and could also be used in conjunction with the applicant's new mobile satellite uplink.

File No. 94281 CRB University of Arkansas, 120 Ozark Hall, Fayetteville, AR 72701. Signed By: Mr. John Stokes, Director, Research Programs. Funds Requested: $6,917. Total Project Cost: $9,222. To extend the public radio service of KUAF, operating on 91.3 MHz, Fayetteville, AR by constructing a translator in Mena, AR operating on 88.5 MHz, which will provide first service to 17,000 people.

AS (American Samoa)

File No. 94179 CTB American Samoa Government, KVZK, Office of Public Info., Pago Pago, AS 96799. Signed By: Ms. Vaoita Savali, Director. Funds Requested: $152,413. Total Project Cost: $152,413. To improve the production facilities of public television station KVZK–TV, Ch. 2, Pago Pago, AS by replacing audio and video amplifiers, intercom and test equipment. The project would also add a video codec so the station could participate in distance learning programming distributed by the PEACESAT satellite project. KVZK–TV serves 45,000 residents of American Samoa.

AZ (Arizona)

File No. 94009 CTN Yavapai Co. Community College Dist., 1100 E. Sheldon St., Prescott, AZ 86301. Signed By: Mr. W.L. Prather, Interim VP, Admin. & Finance. Funds Requested: $731,716. Total Project Cost: $1,463,433. To expand Yavapai College's Instructional Television Fixed Service (ITFS) to three unserved sites—Chino Valley, Prescott Valley, and Sedona—and to one site (the College's Verde Valley Campus) already served.

File No. 94060 CTN Northern Arizona University, PO Box 5751, Flagstaff, AZ 86011–5751. Signed By: Dr. Jeanette Baker, Associate Vice President. Funds Requested: $2,112,509. Total Project Cost: $2,816,679. To expand Northern Arizona University's existing duplex microwave system (NAUNet) to five community colleges and one Navajo Reservation high school. The schools to be interconnected are Yavapai College (Prescott), Central Arizona College (Signal Peak campus, near Coolidge), Mohave Community College (Lake Havasu City campus), Eastern Arizona College (Thatcher), Estrella Community College (Phoenix), and The Window Rock School District #8 in Ft. Defiance.

File No. 94068 CTB Arizona State University, Tempe, AZ 85287–1903. Signed By: Ms. Janice D. Bennett, Assistant Director, Spon. Proj. Funds Requested: $478,400. Total Project Cost: $956,800. To improve public television station KAET–TV, Ch. 8, in Phoenix, by replacing its worn-out 1978 transmitter and related dissemination equipment. Project would also acquire an audio/video test set and a spectrum analyzer. Station serves approximately 2.8 million people.

CA (California)

File No. 94006 CRB CA State University-Northridge, 18111 Nordhoff Street, Northridge, CA 91330. Signed By: Ms. Louanne Kennedy, Vice President & Provost. Funds Requested: $32,826. Total Project Cost: $65,653. To improve the production and operational facilities of public radio station KCSN, 88.5 MHz, Northridge, CA, by replacing master control room and production studio equipment damaged or destroyed by earthquake on January 17, 1994, including cartridge machines, tape recorders, casette recorders, CD players, and mircophones. The station serves about 1.5 million people and has been broadcasting with borrowed equipment since the earthquake.

File No. 94021 CRB Nevada City Community Bdsct Group, P.O. Box 1327, Nevada City, CA 95959. Signed By: Mr. Steve Ramsey, Program Director. Funds Requested: $44,865. Total Project Cost: $89,730. To improve the signal of public radio station KVMR, 89.5 MHz, Nevada City, CA, by replacing its unreliable and obsolete transmitter, antenna, and tower; and to improve its program service by acquiring a satellite downlink to provide the first nationally distributed public radio programming to about 250,000 persons in the Nevada City area.

File No. 94024 CTB Community TV of S. California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Signed By: Mr. Donald G. Youpa, Executive Vice President. Funds Requested: $639,758. Total Project Cost: $1,279,517. To replace obsolete and unreliable studio lighting and electrical installations at public television station KCET, Ch 28, Los Angeles, CA, which produces both local and national public television programs.

File No. 94036 CRB KCBX, Inc. 4100 Vachell Lane, San Luis Obispo, CA 93401. Signed By: Mr. Frank R. Lanzone, Jr., President. Funds Requested: $99,108. Total Project Cost: $132,144. To improve the operation of public radio station KCBX, 90.1 MHz, San Luis Obispo, CA, by replacing obsolete and worn-out production equipment, including audio consoles, tape recorders, CD players, a telephone interface, routing switcher, and microphones. The project will also replace the remote control system for the station's transmitter. KCBX serves a population of about 550,000.

File No. 94057 CRB Northern CA Public Bdcstg. Inc., 280 North Oak Street, Ukiah, CA 95482. Signed By: Mr. Barry Vogel, President. Funds Requested: $171,966. Total Project Cost: $229,288. To activate a public radio station on 88.1 MHz in Ukiah, CA, to provide the first public radio signal to 28 000 people in Lake and Mendocino Counties.

File No. 94062 CTB Rural CA Broadcasting Corporation, 5850 LaBath Avenue, Rohnert Park, CA 94928. Signed By: Ms. Nancy Dobbs, President and CEO. Funds Requested: $24,399. Total Project Cost: $48,798. To improve the operation of public station KRCB–TV, Ch 22, Rohnert Park, CA, by replacing worn-out components of its transmitter and acquiring test equipment. The station provides the only public television service to about 100,000 homes.

File No. 94067 CTB Redwood Empire Public TV, Inc., Box 13, Eureka, CA 95502–0013. Signed By: Ms. Sile M. Bauriedel, President. Funds Requested: $75,750. Total Project Cost: $151,500. To improve the operation of public station KEET, Ch. 13, Eureka, CA, by replacing obsolete, unreliable studio equipment including cameras, video recorders, a character generator, still-store, monitoring and test equipment and by adding a SAP generator to allow descriptive video or secondary language broadcasts to special audiences. The station serves about 120,000 persons.

File No. 94075 CRB Pataphysical Bdcstg Fndn, Inc, P.O. Box 423, Santa Cruz, CA 95062. Signed By: Mr. Peter Troxell, Manager. Funds Requested: $225,908. Total Project Cost: $301,908. To extend the signal of public radio station KUSP, 88.9 MHz, Santa Cruz, CA, by activating translators to bring the first public radio signal to 888 persons in Big Sur and Palo Canyon, to 15,815 people in Monterey County, and to 32,721 people in San Benito County. The project will also replace the station's unreliable and obsolete transmitter and antenna and items of studio equipment, including a mixing console, tape recorders, and a cartridge machine.

File No. 94097 CTB Bay Area Multicultural T/C Assn, 3533 19th Street, San Francisco, CA 94100. Signed By: Mr. Humberto Cintron Chairman, Board of Director. Funds Requested: $295,041. Total Project Cost: $393,388. To equip studio and field production facilities for providing ethnic and minority oriented programming on a public television station to operate on Channel 32, San Francisco, CA.

File No. 94122 CTB Community TV of S. California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Signed By: Mr. Donald G. Youpa, Executive Vice President. Funds Requested: $1,000,000. Total Project Cost: $2,183,648. To equip a new studio facility being built by public television station KCET, Ch 28, Los Angeles, CA, by replacing obsolete analog equipment with digital routing, signal converters, master sync systems, distribution amplifiers, frame synchronizers/audio delays, still store, machine control, equipment racks, and main monitoring.

File No. 94124 CRB Death Valley Natural History Assn, P.O. Box 188, Death Valley, CA 92328. Signed By: Ms. Feliz N. Fields, Executive Director. Funds Requested: $13,730. Total Project Cost: $18,307. To provide the first public radio signal to Death Valley, CA, by activating a 100 watt FM translator on 88.7 MHz to rebroadcast the programming of public radio station KNPR, Las Vegas, NV.

File No. 94125 CTN Community TV of Santa Cruz Co., Inc., 2828 Casa de Vida, Aptos, CA 95003. Signed By: Mr. Geoffrey Dunn, President. Funds Requested: $455,034. Total Project Cost: $910,069. To establish a production studio, plus a field production capability, to originate programming for dedicated community access channels serving Santa Cruz County, which is located on the coast of central California.

File No. 94133 PRTN North Marin T/C Corporation, 899 Northgate Drive, Suite 302, San Rafael, CA 94903. Signed By: Mr. Maximilian Hopkins, Assistant Chairman. Funds Requested: $75,000. Total Project Cost: $100,000. To conduct a feasibility study to explore the possibility of developing a fully interactive fiber optic information network in Novato, California and surrounding areas. This proposed study would plan for an interconnected telecommunications system throughout the city and its incorporated environs that would include interactive services for television, computers, the reading of utilities, and possibly telephone options as permitted.

File No. 94141 PTN Monterey County Office of Education, 901 Blanco Circle, Salinas, CA 93901. Signed By: Mr. William Barr, Superintendent. Funds Requested: $84,988. Total Project Cost: $132,368. To design a multi-channel, multi-technology video distribution system for educational telecommunications use within a three-county region on California's central coast, and through collaborations among the region's educational institutions, government agencies and private businesses, form the Monterey Bay Educational Telecommunications Roundtable. This Roundtable would include representatives of K–12 school districts, community colleges, universities and local governments working cooperatively to establish the Monterey Bay Educational Telecommunications Network to provide interactive services among educational institutions, government offices and area businesses.

File No. 94145 CRB Hmong-SE Asian Public Bdcstg Corp, 4590 North Woodson Avenue, Fresno, CA 93705. Signed By: Mr. Yeu Cha, President. Funds Requested: $215,960. Total Project Cost: $287,947. To construct a new public radio station on 91.9 MHz in Madera California to serve a large Asian-Pacific population with special programming designed to meet its needs.

File No. 94158 CTB KTEH Foundation, 100 Skyport Drive, MC 54, San Jose, CA 95110–1301. Signed By: Mr. Thomas F. Fanella, President. Funds Requested: $45,727. Total Project Cost: $91,454. To construct a Station-controlled microwave interconnection system to provide KTEH, Channel 54, programming to a CATV head-end serving an unserved market in King City, CA. To construct a second station controlled microwave interconnection system to deliver the KTEH signal to a CATV head-end in Santa Cruz, CA, replacing an unreliable off-air system. To replace an existing coaxial cable feeding microwave systems, with a fiber-optic cable, making it less susceptible to lightning outages.

File No. 94159 CTN San Francisco Public Library, 200 Larkin Street, San Francisco, CA 94102. Signed By: Mr. Kenneth E. Dowlin, City Librarian. Funds Requested: $583,779. Total Project Cost: $778,372. To establish video production facilities to originate programming for a dedicated government access cable television channel serving San Francisco. The mission of the channel would be to provide the community with gavel-to-gavel coverage of Board of Supervisors meetings and other important City meetings, to inform the residents about local legislative processes and issues, and to enable maximum participation in governing decisions.

File No. 94170 CTN University of California, Davis, 410 Mark Hall, Davis, CA 95616–8671. Signed By: Mr. Keith Young, Contract & Grant Analyst. Funds Requested: $165,839. Total Project Cost: $290,944. To expand the distance education offerings of the University of California, Davis by constructing two new classroom production facilities to provide live instructional programming to engineers nationwide via the National Technological University satellite system. The classrooms will also be used to distribute instructional material in environmental engineering to the Mare Island Naval Ship Yard via digital video ½ T1 telephone lines.

File No. 94174 PTN San Diego St. University Found, 5178 College Avenue, San Diego, CA 92182–1900. Signed By: Mr. Frank J. DiSanto, Director, Grants & Contracts. Funds Requested: $38,874. Total Project Cost: $38,874. To plan for a coordinated telecommunications system for the city of San Diego identified as InfoSanDiego, through the International Center for Communications of the San Digeo State University Foundation, that would involve many organizations and institutions in education, health care, library services, local government, utilities, military, cable television, broadcasting, tourism and private industry to provide an interactive educational and informational service that would be made available to San Diego's diverse ethnic population through cable television and other forms of distribution.

File No. 94184 CTB San Diego State University Fndn, 5164 College Avenue, San Diego, CA 92115. Signed By: Mr. Frank J. DiSanto, Director, Grants & Contracts. Funds Requested: $519,922. Total Project Cost: $799,880. To improve the production capability of public station KPBS–TV, Ch 15, San Diego, CA, by replacing obsolete and unreliable studio production equipment, including a master routing switcher, production switcher, and audio console, with digital equivalents and install an on-line videotape editing suit and test equipment.

File No. 94186 CRB Humboldt State University, Arcata, CA 95221–8299. Signed BY: Dr. Alistair W. McCrone, President. Funds Requested: $102,795. Total Project Cost: $137,060. To extend the signal of public radio station KHSU, 90.5 MHz, Arcata, CA, to approximately 22,460 people by activating a repeater at Crescent City and translators at Shelter Cove, Orleans, and Burnt Ranch; and to establish a radio reading service for the visually handicapped by equipping a studio for the purpose at the station in Arcata.

File No. 94198 CRB CA State University-Sacramento, 3416 American River Dr. Suite B, Sacramento, CA 95864. Signed By: Mr. Phil Corrieveau, General Manager. Funds Requested: $61,061. Total Project Cost: $122,125. To construct a Ku-band satellite interconnection system to distribute programming from KXPR and KXJZ, both operated by the applicant in Sacramento, CA, to several repeater stations. These include KXSR, operating in Groveland CA; KXKB, for which the applicant has a construction permit to serve Kings & Tahoe City, CA (and related translator K201AJ to serve South Lake Tahoe, CA and Stateline, NV); and KQNC, Quincy, CA for which the applicant has a transfer of licensing pending at the FCC. The project will also include equipment for the local origination of programming at each of the three repeater stations.

File No. 94224 CTN Educational T/C Consortium of, 1101 East University, Fresno, CA 93741. Signed By: Mr. Robert A. Wyman, Executive Director. Funds Requested: $999,934. Total Project Cost: $2,546,724. To develop a video and data network using ISDN and Frame Relay technologies to offer distance learning services to Fresno, Tulare, King, and Madera counties in central California. The Educational Telecommunications Consortium of central California comprises the State Center Community College District, the Fresno County Office of Education (and all 40 county K–12 districts), West Hills Community College District, Sequoias Community College District, and California State University/Fresno.

File No. 94227 PTN Loyola Marymount University, Loyola Blvd. at W 80th St., Los Angeles, CA 90045–2699. Signed By: Dr. Joseph G. Jabbra, Academic Vice President. Funds Requested: $85,437. Total Project Cost: $111,397. To plan for an inter-campus telecommunications network designated as EduLINK, that would interconnect three institutions of higher education and many schools and agencies in each of their areas of the United States, through fully interactive system providing video, voice and data capabilities for shared distance learning and training services. The three institutions proposing to develop the plan would be working cooperatively toward the sharing of courses, seminars, videoconferences, and computer interactive materials that emphasize the cultural diversity of the institution—Loyola Marymount University, a multicultural university in Los Angeles; Benedict College, a traditionally African-American college in Columbia, SC; and Sinte Gleska University, a Lakota tribal university on the Rosebud Sioux Reservation in South Dakota.

File No. 94237 CRB Radio Bilingue, 1111 Fulton Mall, #700, Fresno, CA 93721. Signed By: Mr. Hugo Morales, Executive Director. Funds Requested: $536,324. Total Project Cost: $715,099. To improve the production facilities operated by the applicant's three California public radio stations KSJV Fresno, KMPO Modesto and KHDC Salinas. Five new studios and control rooms will be added to produce programming for distribution via satellite to public radio station. Radio Bilingue operates the Satellite radio service, which provides Spanish language programming to public radio stations. The project will also provide digital equipment for 7 Hispanic stations to provide programming to Radio Bilingue for national distribution and will replace microwave studio-to-transmitter links at KSJV and KMPO.

File No. 94266 CRB Poor Peoples Radio, Inc, Box 425000 (1329 Divisadero St.), San Francisco, CA 94115. Signed By: Mr. Joe Rudolph, General Manager. Funds Requested: $35,016. Total Project Cost: $46,808. To replace obsolete origination equipment and transmitter at KPOO–FM, 89.5, serving minority populations in San Francisco, California.

File No. 94273 CRB Rose Resnick Lighthouse, 20 10th Street—Suite 220, San Francisco, CA 94103. Signed By: Ms. Anita Baldwin, Executive Director. Funds Requested: $24,860. Total Project Cost: $49,720. To improve the radio reading service provided by the Rose Resnick Lighthouse for the Blind and Visually Impaired, San Francisco, CA, by replacing unreliable equipment, including a console, tape recorders, cartridge machines, distribution amplifiers, and microphones. The service is broadcast over an SCA channel of KPFA–FM, 94.1, San Francisco. The project also includes acquisition of additional special radio receivers for the service.

File No. 94275 CTB Coast Community College District, 15751 Gothard Street, Huntington Beach, CA 92647. Signed By: Mr. William A. Furniss, President. Funds Requested: $443,325. Total Project cost: $591,100. To improve the operation of public television station KOCE, Ch 50, Huntington Beach, CA, by replacing obsolete and unreliable origination equipment, including cameras, switchers, monitors, and video tape recorders. The station serves a population of 8.2-million people.

File No. 94276 CTB KQED, Inc., 2601 Mariposa Street, San Francisco, CA 94110–1400. Signed By: Ms. Mary G. F. Bitterman, President & CEO. Funds Requested: $415,323. Total Project Cost: $830,646. To improve the production capability of public broadcasting station KQED–TV, Ch 9, San Francisco, CA, by replacing worn-out and obsolete video tape recorders for both studio and field use. The project will also include test and monitoring equipment to supplement the station's changeover to digital taping. KQED–TV serves a population of about 7-million.

File No. 94277 CRB San Mateo Cnty Cmty College Dist, 1700 West Hillsdale Boulevard, San Mateo, CA 94402. Signed By: Mr. Craig T. Blake, Acting Chancellor. Funds Requested $211,876. Total Project Cost: $282,501. To improve the signal of public broadcasting station KCSM–FM, 91.1 Mhz, San Mateo, CA, by replacing its obsolete and unreliable transmitter, antenna, and test equipment and by raising the height of its tower. The station serves a population of about 4.6-million people.

File No. 94286 CTN Los Angeles Harbor College, 1111 Figueroa Place, Wilmington, CA 90744. Signed By: Mr. James Heinselman, President. Funds Requested: $394,536. Total Project Cost:

$638,306. To plan, purchase equipment for, and activate a distance learning service that will deliver live interactive instruction, training and specialized workshops and seminars to remote sites surrounding the Los Angeles Port area of San Pedro through the use of T–1 lines. The proposed service would provide distance learning and training courses to students educators, medical personnel, and those considered to be underserved in the general population.

File No. 94298 CTB Valley Public TV, Inc., 1544 Van Ness Avenue, Fresno, CA 93721. Signed By: Mr. Colin Dougherty, Executive Director. Funds Requested: $356,777. Total Project Cost: $713,555. To replace obsolete and unreliable transmission, master control, studio production, field recording, and test equipment at KVPT–TV, Channel 18, in Fresno, California.

File No. 94300 CTB KVIE, Inc., 2595 Capitol Oaks Drive, Sacramento, CA 95833. Signed By: Mr. John D. Hershberger, President and General Manager. Funds Requested: $255,880. Total Project Cost: $551,760. To replace three broadcasting studio cameras and an audio console at public broadcasting station KVIE–TV, Channel 6, Sacramento, California.

File No. 94303 CRB University of the Pacific, 3601 Pacific Avenue, Stockton, CA 95211. Signed By: Mr. Joseph Subbiondo, Executive Vice President. Funds Requested: $45,101. Total Project Cost: $60,135. To establish a reading service for sight impaired persons, local history programs for area schools, and Asian-Pacific programs for Asia-Pacific population, on two SCA channels of KUOP–FM 91.3 MHz. The project will fund production equipment, a digital STL and 70 SCA receivers.

File No. 94312 CTBN Kern Educational T/C Consortium, 5801 Sundale Avenue, Bakersfield, CA 93309–2900. Signed By: Ms. Kelly F. Blanton, Kern Cnty Superin of Schools. Funds Requested: $899,984. Total Project Cost: $1,799,984. To establish a first public telecommunications service in Kern County, located in Southcentral California, by constructing one phase of a county-wide digital microwave system with multi-channel capabilities to program two ITFS facilities and two Low-Power Television (LPTV) facilities, while also providing interactive video, voice and data services to government agencies, hospitals, correctional facilities, libraries and educational institutions at all levels. The proposed telecommunications system would also have four production classrooms in various locations among the educational institutions of the consortium, to originate instructional courses for distribution to an underserved and disadvantaged population in isolated areas.

File No. 94322 CTB Northern CA ETV Association, Inc, 603 North Market Street, Redding, CA 96003. Signed By: Mr. Lyle Mettler, General Manager. Funds Requested: $1,110,000. Total Project Cost: $1,480,000. To replace obsolete and unreliable transmitter, antenna, tower, video recorders, play back machines and test equipment at KIXE–TV, Channel 9, Redding California.

CO (Colorado)

File No. 94035 PRB Leadville Cmnty Brdcst Assoc., Inc., P.O. Box 1256, Leadville, CO 80461. Signed By: Ms. Kathy Bedell, President. Funds Requested: $44,350. Total Project Cost: $59,350. To plan for the establishment of a new public FM radio station on 88.9 MHz in Leadville. Proposed station would provide a first signal to approximately 6,000 people.

File No. 94072 CRB Denver Ed. Broadcasting, PO Box 11111, Denver, CO 80211. Signed By: Ms. Florence Hernandez-Ramos, Chief Executive Officer. Funds Requested: $217,518. Total Project Cost: $290,025. To improve the facilities of public radio station KUVO–FM, 89.3 MHz, in Denver by acquiring a backup studio-to-transmitter link (STL), and a new transmitter. The current 1985 transmitter will be used as a backup. KUVO–FM will replace a variety of master control room equipment including a new console. Project will also replace console and other origination equipment such as reel-to-reel recorders, CD players/recorders, DAT machines and a variety of associated equipment in the station's production/news rooms. KUVO–FM also seeks a selection of test equipment. The replacement and upgrading of KUVO–FM's equipment will allow it to better serve its multi-cultural audience. The Denver area is also served by KCFR–FM and KGNU–FM (Boulder).

File No. 94128 CRB Boulder Community Brdcstg. Assoc., 1900 Folsom, Suite 100, Boulder CO 80302. Signed By: Ms. Marty Durlin, Station Manager. Funds Requested: $28,640. Total Project Cost: $57,280. To improve the facilities of public radio station KGNU–FM, 88.5 MHz, in Boulder by replacing old equipment that has been in use for 16 years. Requested equipment includes 3 audio consoles, a stereo monitor, an SCA monitor and a remote control system for the transmitter. Station serves about 300,000 people.

File No. 94130 CRB Boulder Community Brdcstg. Assoc., 1900 Folsom, Suite 100, Boulder CO 80302. Signed By: Ms. Marty Durlin, Station Manager. Funds Requested: $4,102. Total Project Cost: $8,205. To expand the coverage area of public radio station KGNU–FM, 88.5 MHz, in Boulder, by constructing a new FM translator on 93.7 MHz to serve Ward/Nederland. Translator will provide first service to an estimated 10,000 people in the mountains west of Boulder.

File No. 94183 CTB Prowers County, 301 S. Main Street, Lamar, CO 81052. Signed By: Mr. Robert R. Tempel, Chairman. Funds Requested: $30,431. Total Project Cost: $40,575. To replace two public television translators: K59AH, Ch. 59, Lamar; and K69AS, Ch. 69, in Las Animas. Translators serve about 18,000 people by repeating the signal of KTSC–TV, Ch. 8, in Pueblo. The two EMCEE translators are 22 years old.

File No. 94209 CTB Council for Public Television, 1089 Bannock Street, Denver, CO 80204. Signed By: Mr. James Morgese, President and General Manager. Funds Requested: $137,060. Total Project Cost: $272,120. To improve the facilities of public television station KRMA–TV, Ch. 6, in Denver, by replacing their 12-year old plumbicon equipped cameras with 3 complete current technology CCD camera systems. Station serves approximately 3,000,000 people.

File No. 94226 CRB Carbondale Cmty Access Radio, 417 Main Street, Carbondale, CO 81623. Signed By: Ms. Missy Bowen, Station Mgr., Funds Requested: $33,018. Total Project Cost: $44,025. To improve the facilities of public radio station KDNK–FM, 90.5 MHz, in Carbondale, by replacing worn-out and unrepairable 11-year-old air control room equipment, monitoring equipment, and dissemination equipment. New equipment includes: A stereo modulation monitor, power conditioning equipment, an on-air console, amplifiers, monitors, speakers and a variety of other origination equipment. KDNK–FM's signal covers approximately 23,000 people.

File No. 94246 CTB Front Range Educ. Media Corp., 2246 Federal Blvd., Denver, CO 80211. Signed By: Mr. Ted Krichels, General Manager. Funds Requested: $103,417. Total Project Cost: $206,835. To improve the facilities of public television station KBDI–TV, Ch. 12, in Denver (Broomfield), by replacing worn-out dissemination and origination equipment that has become unreliable and deteriorated. Equipment being requested includes a 7 GHz transmitter/receiver with antennas, a visual transmitter tube, video tape recorders, encoder remote controls, mounting equipment, digital audio cart machines, an ENG camera with battery pack, a video production console, a master control console and other related equipment. KBDI–TV will be relocating to the Five Points Media Center and this equipment will assist in the conversion to the digital format. KBDI–TV serves approximately 2.1 million people.

File No. 94267 CTN National Technological Univ., 700 Centre Avenue, Fort Collins, CO 80526. Signed By: Mr. Lionel V. Baldwin, President. Funds Requested: $564,190. Total Project Cost: $867,900. To establish a Manufacturing Extension Partnership (MEP) satellite network which will provide information to small and medium manufacturing establishments on improving manufacturing competitiveness. The project will utilize NTU's existing digital satellite network and uplinks at 45 engineering schools and will fund 110 downlinks at sites participating in the MEP program, which is sponsored by the National Institute of Standards and Technology (NIST).

File No. 94295 CTB San Juan Basin Area Voc-Tech School, P.O. Box 970, 33057 Highway 160, Cortez, CO 81321. Signed By: Mr. Howard N. Acott, Executive Director. Funds Requested: $184,935. Total Project Cost: $246,580. To activate a low-power noncommercial TV station on Channel 28 that will bring diverse distance learning services to Montezuma and Dolores Counties in southwest Colorado. The course work transmitted will be designed for K–12 schools, San Juan Basin Area Vocational-Technical School, Pueblo Community College, and area law enforcement and firefighting institutions. The proposal includes a satellite Ku-band receive-only earth station, to permit the applicant to retransmit nationally-distributed instructional programming.

CT (Connecticut)

File No. 94105 CTN Board of Trustees of Community, 61 Woodland Street, Hartford, CT 06105. Signed By: Mr. Andrew C. McKirdy, Executive Director. Funds Requested: $319,700. Total Project Cost: $639,400. To establish a compressed video, two-way interactive distance learning network for the Connecticut Community-Technical College System. The network would interconnect the System's fifteen campuses, its central office, and off-campus sites at businesses and State agencies.

DC (District of Columbia)

File No. 94017 CRB Univ. of the District of Columbia, Washington, DC 20008. Signed By: Ms. Martha J. Bridgeforth, V.P. Institutional Advancement. Funds Requested: $77,092. Total Project Cost: $154,185. To improve public radio station WDCU–FM operating on 90.1 MHz in Washington, DC by upgrading the station with the addition to a C-Band fixed satellite downlink to improve its programming and by increasing the power from 6,800 watts to 50,000 watts with the purchase of a new transmitter and antenna which will increase coverage by 900,000 potential listeners.

File No. 94051 CTB Howard University, 2222 4th Street NW., Washington, DC 20059. Signed By: Mr. James A. Fletcher, VP-Business Affairs/Treasurer. Funds Requested: $478,552. Total Project Cost: $957,104. To improve public television station WHMM–TV, operating on Ch. 32 in Washington, DC, by augmenting the present local production and dissemination capability with the purchase of additional portable cameras, digital audio tape recorders, video tape players, digital Betacam players, digital video effects system, computerized video editing system, audio special effects processor and installation supplies, plus additional test equipment and transmitter components to extend the station service structure. This project will provide WHMM–TV the capability to add services to local minority audiences, including 1,400,000 blacks, as well as to the national audiences.

File No. 94134 CTN Amer. Indian Higher Ed. Consort., 509 Capitol Court NE., Ste. 100, Washington, DC 200002. Signed By: Ms. Margarett Perez, President-AIHEC. Funds Requested: $474,802. Total Project Cost: $633,070. To establish the first phase of a satellite-delivered distance learning system that would interconnect the 29 member-schools of the American Indian Higher Education Consortium (AIHEC). The proposal would purchase a C/Ku-Band receive-only earth station for the 29 AIHEC colleges and for the AIHEC headquarters in Washington, DC; it would also provide video classroom equipment for the 29 schools. Three of the AIHEC schools are four-year institutions; the remainder are two-year community colleges. They are found in Michigan (1), Wisconsin (2), North Dakota (5), South Dakota (4), Nebraska (1), Kansas (1), Montana (7), Washington State (1), California (1), New Mexico (3), and Arizona (1). The proposal is the first result of a major telecommunications planning effort conducted over the past two years by AIHEC schools.

File No. 94324 PTN Assn of State & Terr Pub Health Lab, 1211 Conn. Ave. NW., Suite 608, Washington, DC 20036. Signed By: . Funds Requested: $45,500. Total Project Cost: $45,500. To plan for a pilot project that would use digitized video in videoconferencing applications to distribute distance-based learning to rural areas of the U.S. The plan would include identification and evaluation of possible sites, and the production of pilot continuing education and training programs that would focus on medical laboratory methods and procedures in public health.

FL (Florida)

File No. 94027 CTB University of Florida, 1200 Weimer Hall, Gainesville, FL 32611. Signed By: Mr. Dillard C. Marshall, Asst. Director, Sponsored Res. Funds Requested: $188,492. Total Project Cost: $376,984. To improve public television station, WUFT–TV, Ch 5, in Gainesville, FL, by replacing 4 studio cameras, so the station may continue producing local programs to 345,940 residents of North Central Florida.

File No. 94114 CRB Florida State University, 1600 Red Barber Plaza, Tallahassee, FL 32310. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: $49,200. Total Project Cost: $65,600. To activate a repeater noncommercial radio station, WFSU–FM, operating on 89.1 MHz, located 18 miles northwest of Panama City with a power of 100 Kw on an existing tower, providing first signal to 21,349 residents within a radius of 33 miles which covers 195,000 people.

File No. 94139 CTB Florida State University, 16000 Red Barber Plaza, Tallahassee, FL 32310. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: $207,965. Total Project Cost: $415,930. To improve public television station, WFSU–TV, Ch 11 in Tallahassee, FL, by replacing 3 studio camera systems and 1500 ft. of RF transmission line, so the station may continue to produce quality local programs to serve 600,000 residents in 27 counties in North Florida.

File No. 94151 CRB Florida State University, 1600 Red Barbar Plaza, Tallahassee, FL 32310. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: $53,289. Total Project Cost: $71,052. To activate a Radio Reading Service, using the applicant's facilities located at WFSU–FM, 88.9 MHz, in Tallahassee, FL to bring specialized programming to the blind, visually impaired and those with other physical disabilities. The audio will be delivered to approximately 12,560 people by 7 public radio subcarriers and by public TV SAP channels (the 7 include 4 in Tallahassee, 1 in Panama City and 2 in Valdosta, GA).

File No. 94164 CTN Okaloosa-Walton Community College, 100 College Boulevard, Niceville, FL 32578. Signed By: Mr. James R. Richburg, President. Funds Requested: $235,322. Total Project Cost: $313,763. To construct an ITFS system, with a satellite receive-only earth station, that will permit the sharing of instructional programming among the public schools, Okaloosa-Walton Community College, and the private homes of Okaloosa and Walton Counties in northwest Florida. Distribution to the homes will be accomplished through an agreement for a dedicated channel on the cable television system that serves the area.

File No. 94204 CTN University of North Florida, 4567 St. Johns Bluff Rd. So., Jacksonville, FL 32224. Signed By: Dr. Joyce T. Jones, Director, Sponsored Research. Funds Requested: $82,971. Total Project Cost: $110,628. To establish an ITFS system at the University of North Florida to help meet the educational and informational needs of the university and its surrounding communities, by enabling the university to extend its academic programs, workforce education and training, and professional development courses through a two-way interactive distance learning system. The proposed interconnection system would provide services to institutions and organizations at all levels of education, and to libraries, military bases, government offices, retirement communities, and businesses.

File No. 94217 CRB School Board of Dade County, 172 NE 15th Street, Miami, FL 33132. Signed By: Mr. Octavio J. Visiedo, Superintendent of Schools. Funds Requested: $45,182. Total Project Cost: $90,364. To improve public radio station WLRN–FM, 91.3 MHz, in Miami, FL by replacing master control items, including an input console, speakers, cassette recorders, digital cartridges, DAT recorders, CD players, reel to reel recorders, microphones with booms, stereo headphones and a stereo gated compressor/limiter, so the station may continue and increase its local service to the 3,883,700 people in South Florida from the Florida Keys to Palm Beach.

File No. 94223 CRB University of Florida, 219 Grinter Hall, Gainesville, FL 32611. Signed By: Mr. Dillard C. Marshall, Assistant Director, Spon. Res. Funds Requested: $73,369. Total Project Cost: $146,738. To activate a repeater noncommercial Radio station, WWUA–FM, operating on 90.1 MHz, with a power of 4,500 watts, in Inverness, FL, providing first signal to 201,165 residents in the three counties of Citrus, Hernando and Sumter. This project involves the applicant's successful negotiation with Alkalodge for assignment of their Construction Permit for WWUA–FM.

File No. 94251 CTB Florida West Coast Pub. Brdcstg., 1300 North Boulevard, Tampa, FL 33607. Signed By: Mr. Stephen Rogers, President & CEO. Funds Requested: $285,171. Total Project Cost: $570,343. To improve public television station, WEDU–TV, operating on Ch 3 in Tampa, FL, by replacing essential origination and dissemination equipment including tape machines, tape handler, frame synchronizer, routing switcher components and microwave amplifier, so the station can continue service to the 3,396,000 residents in the Florida West Coast area.

GA (Georgia)

File No. 94121 PRB Albany State College, 504 College Drive, Albany, GA 31705. Signed By: Mr. Billy C. Black, President. Funds Requested: $74,590. Total Project Cost: $92,215. To establish a plan to assess public radio audience interests and develop first rate programming. Albany State College is preparing to establish a public radio station to be a part of the Peach State Radio Network, and wants to offer programs which both cultivate the interest of the region and emphasize its uniqueness.

File No. 94126 CTN Macon College, 100 College Station, Macon, GA 31297–4899. Signed By: Dr. S. Aaron Hyatt, President. Funds Requested: $190,730. Total Project Cost: $467,452. To purchase video origination equipment to allow Macon College to implement video distance learning so as to reach off-campus receive sites, including local area high schools and business/industry sites. Although for the most part the College's system will be interconnected by T1 telephone transmission, the system will provide instruction for home-bound non-traditional students and lower-income minority students via educational access channels on local cable television. The College's proposed network will also provide it access to the statewide Georgia State Academic and Medical Systems (GSAMS) network.

File No. 94136 CRB Radio Free Georgia Broadcasting, 1083 Austin Ave., NE, Atlanta, GA 30307. Signed By: Mr. Tom Davis, Executive Director. Funds Requested: $88,368. Total Project Cost: $117,824. To improve public radio station WRFG–FM, 89.3 MHz, in Atlanta, GA by acquiring a new transmitter, antenna and transmission line, which will increase the station's power from 23,400 watts to 100,000 watts directionally. This upgrade will allow WRFG to reach a significant number of counties in north Georgia that currently do not receive the station's signal and will greatly improve the quality and reliability of its broadcast signal.

File No. 94168 CTB GA Public Telecomm. Commission, 1540 Stewart Ave., SW, Atlanta, GA 30310. Signed By: Mr. Frank D. Bugg, Jr., Deputy Director. Funds Requested: $291,958. Total Project Cost: $583,916. To improve public television station WGTV–TV, Ch 8 in Athens, GA by replacing the transmitter, so the station may continue service to the 3,926,884 residents of greater metropolitan Atlanta which is approximately 50% of the population of the State.

File No. 94173 PRTN Southern College of Technology, 1100 So. Marietta Parkway, Marietta, GA 30060. Signed By: S.R. Cheshier, President. Funds Requested: $98,700. Total Project Cost: $180,485. To assess the technology-related educational needs in the state of Georgia for students, educators, lifelong learners and the workforce, to determine the availability and feasibility of instructional technology and telecommunications delivery systems to provide interactive voice, video and data services for distance learning courses and for technical education and training.

File No. 94191 PRTN Georgia State University, 140 Decatur St., Rm. 812, Atlanta, GA 30302–4044. Signed By: Mr. William R. Decatur, Vice Pres., Financial Affairs. Funds Requested: $153,252. Total Project Cost: $174,727. To enable the public institutions of higher education in metropolitan Atlanta, in a cooperative arrangement as the Metropolitan Atlanta Distance Learning Consortium, develop a plan that would combine the telecommunications resources of these institutions along with those of public broadcasting, medical services, associations and other educational organizations, to establish an interactive distance learning network using existing and proposed interconnection systems.

File No. 94203 CTB Atlanta Board of Education, 740 Bismark Road, NE, Atlanta, GA 30324. Signed By: Dr. Lester W. Butts, Superintendent. Funds Requested: $359,079. Total Project Cos $718,158. To improve the production facilities of WPBA–TV, Ch. 30 in Atlanta by replacing a 20-year-old video switcher and audio console. The project will also purchase video tape recorders and upgrade a C-band satellite uplink to Ku-band to permit satellite distribution of instructional programming to schools in the Atlanta area.

File No. 94254 CTN Georgia Center/Continuing Education, University of Georgia, Athens, GA 30602–3603. Signed By: S.E. Younts, Vice President for Services. Funds Requested: $403,516. Total Project Cost: $548,180. To extend the satellite delivered services of the Georgia Center for Continuing Education through the construction of a Ku-band uplink. The Ku-band uplink will serve 1,700 downlinks throughout the state recently funded by the State of Georgia and will supplement a C-band service operated by the Center for the past decade.

HI (Hawaii)

File No. 94270 PRB Kekahu Foundation, 2340 Kamalii Street, Kilauea, HI 96754. Signed By: Ms. Janet Friend, President. Funds Requested: $30,000. Total Project Cost: $35,100. To plan for the establishment of the first public radio station to serve the 51,000 residents of the island of Kauai, Hawaii.

IA (Iowa)

File No. 94052 CTB Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. C. David Bolender, Executive Director. Funds Requested: $302,367. Total Project Cost: $604,735. To improve the operational capability of Iowa Public Television, Johnston, IA, by replacing its routing switcher and to augment the operational capability of IPTV by acquiring an automation system. IPTV serves about 2.7-million people through a statewide system of eight public television stations.

File No. 94211 CTN Indian Hills Community College, 525 Grandview, Ottumwa, IA 52501. Signed By: Dr. Lyle Hellyer, President. Funds Requested: $109,246. Total Project Cost: $273,114. To establish a video production studio to be located in the Indian Hills Community College Advanced Technology Center. The classroom would allow for the origination of instructional programming such as laboratory demonstrations, experiments, and presentations beyond the capability of the usual video classroom. The course work produced in the studio would be transmitted via the Iowa Communications Network to K–12 public schools, post-secondary academic institutions and business/industry.

File No. 94243 CTN SCOLA, RR #1, Box 204 Highway L52, McClelland, IA 51548. Signed By: Mr. Lee Lubbers, S.J., President. Funds Requested: $250,000. Total Project Cost: $500,000. To purchase four digital compressed video encoders to extend the satellite services of SCOLA. SCOLA provides foreign language news programming to 10,000 schools and universities through out the United States. The digital compressed video encoders will permit SCOLA to use Ku-band satellite distribution to increase its programming from one channel to four channels. The three new channels will include documentaries, school courses and children's programs presented in original foreign languages. SCOLA will also offer courses in speaking less-commonly-taught languages, such as Swahili, Lakota and Dutch.

File No. 94325 PRB Suntaman Communications, Inc., 1170 13th Street, Des Moines, IA 50314. Signed By: Mr. Wesley F. Hall, Executive Director. Funds Requested: $40,000. Total Project Cost: $40,000. To plan for a series of public radio stations across the country to be owned and operated by African Americans.

IL (Illinois)

File No. 94043 CRB Northern Illinois University, 801 North First Street, DeKalb, IL 60115. Signed By: Mr. Douglas J. Moore, Controller. Funds Requested: $306,564. Total Project Cost: $408,752. To activate public radio repeater stations in Freeport on 89.1 MHz, in LaSalle on 91.3 MHz, and in Sterling on 91.5 MHz, IL, to bring the first public radio signal to about 181,356 persons. The new stations will repeat the programming of WNIU, DeKalb, and WNIJ, Rockford, IL, and the radio reading service of WNIU will be broadcast on the subcarriers of the new stations.

File No. 94077 CTB University of Illinois, 1110 West Main Street, Champaign, IL 61801. Signed By: Mr. Craig S. Bazzani, Comptroller. Funds Requested: $117,500. Total Project Cost: $235,000. To improve the operation of public station WILL–TV, Ch. 12, Champaign-Urbana, IL, by replacing its worn-out and obsolete routing switcher, eight videotape recorders, and an automation control system. The station serves about 1.3 million persons.

File No. 94092 CTB Chicago Educational TV Assn, 5400 North St. Louis Avenue, Chicago, IL 60625. Signed By: Mr. Martin J. McLaughlin, Vice Pres, Corporate Affairs. Funds Requested: $364,750. Total Project Cost: $729,500. To improve the signal of public television station WTTW, Ch. 11, Chicago, IL, by replacing its worn-out transmitter. The station serves about 10.5-million people.

File No. 94106 PTB City Colleges of Chicago, 226 West Jackson Boulevard, Chicago, IL 60606–6998. Signed By: Ms. Jacqueline E. Woods, Vice Chancellor. Funds Requested: $50,000. Total Project Cost: $50,000. To develop architectural and engineering plans for the move of public television station WYCC, Ch. 20, Chicago, to a larger facility.

File No. 94111 CTB Southern Illinois University, 1048 Comm Bldg, Mailcode 6602, Carbondale, IL 62901. Signed By: Mr. Benjamin A. Shepherd, VP for Academic Affairs. Funds Requested: $191,650. Total Project Cost: $383,300. To improve the production facilities of public station WUSI–TV, Ch. 16, Olney, IL, by replacing obsolete and worn-out videotape recording and editing equipment, a character generator, studio cameras, and a field production unit. WUSI serves a population of about 876,766 persons.

File No. 94113 CRB University of Illinois, 1110 West Main Street, Champaign, IL 61801. Signed By: Mr. Craig S. Bazzani, Comptroller. Funds Requested: $6,031. Total Project Cost: $12,063. To activate a public radio translator operating at 106.5 MHz in Danville, IL, to provide the first nightime public radio service to the 43,000 residents of the area. The translator will repeat the programming of public radio station WILL–FM, Champaign.

File No. 94123 CTN College of DuPage, 22nd Street and Lambert Road, Glen Ellyn, IL 60137. Signed By: Mr. H.D. McAninch, President. Funds Requested: $1,029,615. Total Project Cost: $2,059,231. To assist the College of DuPage in implementing its distance learning system, called 502NET. The proposal would purchase video classroom equipment, including codes, that would allow the 502NET participants to interact fully on the network. Initially, the College will have eight partners: six local area high schools; the Illinois Math and Science Academy; and the Fermi National Accelerator Laboratory. The 502NET service area will be DuPage County and portions of Cook, Kane, Will Counties, all immediately to the west of Chicago. The network would allow participants to: receive two-way interactive video and computer instruction; receive coursework for skills upgrading, re-certifications, and workforce training and re-training; attend videoconferences; and have access to Internet and other data systems. The transmission will be via telephone/fiber optics lines.

File No. 94169 CTN Heartland Community College, 1226 Towanda Avenue, Bloomington, IL 61701. Signed By: Mr Jerry Weber, Vice President/Instruction. Funds Requested: $655,646. Total Project Cost: $849,175. To establish eight additional video classrooms, with associated test equipment, to permit Heartland Community College to expand its distance learning network to sites at underserved rural area high schools and other post-secondary academic institutions in eight counties in Central Illinois. Each interactive classroom will offer access to college preparatory, college credit, graduate-level, and vocational courses.

File No. 94255 CRB Quincy University Corporation, 1800 College Avenue, Quincy, IL 62301–2699. Signed By: Fr. James F. Toal, OFM, President. Funds Requested: $69,665. Total Project Cost: $92,887. To extend the signal of public radio station WQUB, 90.3 MHz, Quincy, IL, by increasing its power to 31 KW from 10 KW. The extension will bring the first public radio signal to about 18,000 persons. The project will also improve service to visually handicapped persons in the WQUB listening area by making it possible for the station to receive a radio reading service from public radio station WIUM, Macomb, IL, and retransmit it.

File No. 94283 CTN Oakton Community College, 1600 East Golf Road, Des Plaines, IL 60016. Signed By: Mr. Thomas HenHoeve, President. Funds Requested: $90,966. Total Project Cost: $181,932. To acquire and activate headend, distribution and playback equipment necessary for a combined distribution system that incorporates an existing ITFS service with a proposed cable television channel, for the delivery of distance learning courses and continuing education programs among educational institutions, the general population and workforce, and specialized skills locations such as acute medical care/nursing facilities. Through the resources of the twenty-one institutions of higher education in a regional consortium, instructional courses and teleconferences would be distributed over this system for academic coursework, professional development and workforce training/retraining.

File No. 94307 CRB Western Illinois University, 900 West Adams Street, Macomb, IL 61455. Signed By: Mr. Donald Spencer, President. Funds Requested: $167,193. Total Project Cost: $222,925. To extend the signal of public radio station WIUM, 91.3 MHz, Macomb, IL, by activating a repeater station in Warsaw, IL, operating at 89.5 MHz, to bring the first public radio signal to approximately 44,628 persons. The project also replaces some items of production equipment and provides a package of test equipment.

IN (Indiana)

File No. 94013 CTB Fort Wayne Public Television, 3632 Butler Road, Fort Wayne, IN 46808. Signed By: Mr. Roger G. Rhodes, President & General Manager. Funds Requested: $174,209. Total Project Cost: $256,190. To improve the transmission and production capabilities of public television station WFWA, Ch. 39, Fort Wayne, IN, by replacing its worn-out and obsolete klystrode tube, video switcher, still store system, audio control board, and field production equipment. WFWA serves a population of about 665,100.

File No. 94014 CRB Ball State University, Building AD–103, Muncie, IN 47306–0550. Signed By: Mr. James L. Pyle, Exec. Dir. of Academic Resch. Funds Requested: $293,370. Total Project Cost: $391,161. To extend the signal of public radio station WBST, 92.1 MHz, Muncie, IN, by activating repeater stations in Marion, 91.1 MHz, Portland, 91.7 MHz, and Hagerstown, 90.5 MHz, IN, to bring the first public radio signal to about 148,714 residents of East Central Indiana.

File No. 94091 CTB Tri-State Public Teleplex, Inc., 405 Carpenter Street, Evansville, IN 47708–1027. Signed By: Mr. David L. Dial, President and General Manager. Funds Requested: $70,696. Total Project Cost: $141,392. To improve the production capability of public station WNIN–TV, Ch. 9, Evansville, IN, by replacing obsolete and malfunctioning items of equipment, including video tape recorders, a field production package, and test equipment. The station serves a population of about 750,000 persons.

File No. 94099 CTB Indiana University, Bloomington, IN 47405–6901. Signed By: Mr. George Walker, Vice President for Research. Funds Requested: $48,680. Total Project Cost: $97,360. To improve the operation of public television station WTIU, Ch. 30, Bloomington, IN, by replacing video tape recorders and associated equipment. The station serves 485,800 potential viewers in the Bloomington area.

File No. 94172 CRB Metro Indianapolis Pub Bdcstg Inc., 1401 North Meridian Street, Indianapolis, IN 46202–2389. Signed By: Mr. Lloyd Wright, President and General Manager. Funds Requested: $36,758. Total Project Cost: $73,517. To improve the operation of public station WFYI–FM, 90.1 MHz, Indianapolis, IN, by replacing various items of worn-out and obsolete equipment, including audio tape recorders, control boards, and microphones. The station serves a population of about 2-million people.

File No. 94196 CRB Purdue University, West Lafayette, IN 47907. Signed By: Mr. Larry E. Pherson, Dir, Ofc of Contracts & Grants. Funds Requested: $41,450. Total Project Cost: $82,900. To augment the operational capabilities of public radio station WBAA, 920 KHz, West Lafayette, IN, by acquiring an automation system. The station serves 2.8-million people.

File No. 94253 CRB Purdue University, West Lafayette, IN 47907. Signed By: Mr. Larry E. Pherson, Dir, Ofc of Contracts & Grants. Funds Requested: $13,250. Total Project Cost: $26,500. To augment the production capabilities of public radio stations WBAA–AM (920 KHz) and WBAA–FM (101.3 MHz), West Lafayette, IN, by acquiring an audio production console. The stations serve a population of 2.8-million people.

KS (Kansas)

File No. 94066 CRB University of Kansas, Broadcasting Hall, Lawrence, KS 66045. Signed By: Dr. Robert C. Bearse, Associate Vice Chancellor. Funds Requested: $54,180. Total Project Cost: $108,360. To improve the facilities of public radio station KANU–FM, 91.5 MHz, in Lawrence, by purchasing replacement equipment for the on-air control and production room as well as audio test equipment. Much of the equipment being replaced was acquired in 1974. New equipment includes: two audio consoles, digital cart machines, DAT machines and related origination equipment. Station serves approximately 1.2 million people.

File No. 94078 CRB Wichita State University, 1845 Fairmont, Wichita, KS 67260. Signed By: Mr. Harry E. Williford, Director, Research Admin. Funds Requested: $21,725. Total Project Cost: $43,450. To improve the facilities of public radio station KMUW–FM, 89.1 MHz, in Wichita, by replacing the transmitter remote control and telemetry system, acquiring audio test equipment and origination equipment including a recorder, a DAT recorder and other related production equipment. Much of the equipment is over a decade old. The remote control equipment is out-of-date, and is no longer manufactured thus replacement parts are unavailable.

File No. 94178 CTB Kansas Public Telecom. Service, 320 West 21st St., N, Wichita, KS 67203. Signed By: Mr. Zoel Parenteau, President/General Manager. Funds Requested: $2,907. Total Project

Cost: $5,815. To improve the facilities of public television station KPTS–TV, Ch. 8, in Wichita, by adding equipment which will permit the broadcast of Descriptive Video Service (DVS). DVS enables the print-handicapped to better understand the televised program. The service will be carried on the Secondary Audio Program (SAP) channel. At this time, KPTS–TV does not intend to originate any DVS programming only pass through the PBS-provided service.

File No. 94215 CRB Kansas State University, Fairchild Hall, Room No. 2, Manhattan, KS 66506. Signed By: Dr. Timothy R. Donoghue, Vice Provost for Research. Funds Requested: $30,319. Total Project Cost: $60,638. To improve the facilities of public radio station KKSU–AM, 580 KHz, in Manhattan by replacing a 25 year-old Gates transmitter. Current transmitter requires frequent and expensive repairs. Station has an extremely large coverage area over parts of four states: KS, IA, MO and OK. Approximately 5.4 million people are served by KKSU–AM. Station shares time with WIBW–AM.

File No. 94239 CTB Kansas Public Telecom. Service, 320 West 21st Street N., Wichita, KS 67203. Signed By: Mr. Zoel Parenteau, President/General Manager. Funds Requested: $37,087. Total Project Cost: $74,175. To improve the facilities of public television station KPTS–TV, Ch. 8, in Wichita, by replacing equipment which is causing repetitive repair problems. Service and parts are unavailable. New equipment consists of a new proc amp, a sync generator, color and black/white monitors and a graphics generator. KTPS–TV serves approximately 388,000 people.

File No. 94271 CRB Kanza Society, Inc., 210 N. 7th Street, Garden City, KS 67846. Signed By: Mr. Dale A. Bolton, Executive Director. Funds Requested: $14,500. Total Project Cost: $29,000. To expand the coverage of public radio station KANZ–FM, 91.1 MHz, in Garden City, by relocating two FM translators, increasing their power and the height of their antennas. The two translators being relocated are in Liberal, 96.3 MHz, and Hays, 96.3 MHz. Approximately 600 people will receive a first public radio signal as a result of this change and another 2,500 will receive an additional service. KANZ–FM will also acquire a spectrum analyzer to assist in the diagnosis and repair of their broadcast equipment.

File No. 94297 CTB Washburn University of Topeka, 301 N. Wanamaker Road, Topeka, KS 66606–9601. Signed By: Mr. Hugh L. Thompson, President. Funds Requested: $261,872. Total Project Cost: $523,745. To improve the facilities of public television station KTWU–TV, Ch. 11, in Topeka by replacing out-of-date production equipment. KTWU–TV is continuing the transition to the Beta format by purchasing four record/playback Beta video tape recorders and related items as well as acquiring three camera systems. Station currently is using old or inappropriate cameras not suitable for studio productions.

File No. 94319 CRB Hutchinson Community College, 815 N. Walnut, Suite 300, Hutchinson, KS 67501. Signed By: Dr. Edward E. Berger, President. Funds Requested: $43,955. Total Project Cost: $87,910. To improve the facilities of public radio station KHCC–FM, 90.1 MHz, in Hutchinson, by replacing the station's 1978 transmitter, stereo generator and related dissemination equipment. Transmitter is becoming more expensive and difficult to repair and the design degrades the stereo and SCA subcarrier signals. Station serves approximately 500,000 people.

KY (Kentucky)

File No. 94085 CRB Appalshop, Inc., 306 Madison Street, Whitesburg, KY 41858. Signed By: Mr. R. Raymond Moore, Administrative Director. Funds Requested: $53,660. Total Project Cost: $71,660. To improve and expand the signal of public radio station WMMT, 88.7 Mhz, Whitesburg, KY, by replacing its transmitter and antenna and increasing its power. The increase will add nearly 51,000 persons to the population of about 147,406 persons now served by the station.

File No. 94219 CTB Kentucky Educational Television, 600 Cooper Drive, Lexington, KY 40502. Signed By: Ms. Virginia G. Fox, Executive Director. Funds Requested: $822,368. Total Project Cost: $1,370,614. To improve the transmission capabilities of Kentucky Educational Television, Lexington, KY, by replacing worn-out elements of various transmitters in its statewide system; and to augment KET by upgrading an analog satellite uplink to provide two channels of digital compression, by upgrading 250 current downlink sites to receive compressed digital signals, by adding a digital telephone bridge, and by adding an interactive video classroom system at Kentucky State University. KET operates a statewide network of 15 transmitters and 6 translators.

LA (Louisiana)

File No. 94076 CRB Friends of WWOZ, Inc., 1201 St. Phillip Street, New Orleans, LA 70116. Signed By: Mr. David Freedman, General Manager. Funds Requested: $35,318. Total Project Cost: $47,091. To provide a satellite downlink and digital audio recorders at WWOZ–FM, 90.7 MHz in New Orleans to permit access to national distributed programming from the Public Radio Satellite System. WWOZ provides a jazz format public radio service to 1,000,000 people in the greater New Orleans area.

File No. 94079 CTN Educational Broadcstng Found. Inc., 2929 So. Carrollton Ave., New Orleans, LA 70118. Signed By: Mr. John Pela, Station Manager. Funds Requested: $1,133,040. Total Project Cost: $1,510,721. To implement the New Orleans Educational Telecommunications Project (NOETP), which will use a two-channel ITFS system to serve approximately 250,000 students in 419 public, parochial, and private schools in the seven parishes that comprise greater New Orleans: Orleans, Jefferson, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany. The project would construct a production studio at public television station WLAE–TV, an origination video classroom at each of seven "hub" schools (one in each parish), a total of nine two-channel studio-to-transmitter microwave links to interconnect the "hub" schools and station WLAE–TV to a common transmission point, and microwave reception equipment to interconnect to the NOETP as many of the 419 schools as is technically feasible.

File No. 94116 CTB Greater New Orleans ETV Found, 916 Navarre Avenue, New Orleans, LA 70124. Signed By: Mr. Randall Feldman, President and General Manager. Funds Requested: $140,417. Total Project Cost: $280,835. To improve public television station WYES–TV, Ch 12 in New Orleans, LA, by replacing the production, master control, and router switchers, 2 monitors, distribution amplifiers, and cable and connectors, so the station may continue to provide quality service to the 800,600 residents in greater New Orleans.

File No. 94137 CRB University of New Orleans, 2000 Lakeshore Drive, New Orleans, LA 70148. Signed By: Ms. Shirley Laska, Vice Chancellor for Research. Funds Requested: $31,837. Total Project Cost: $42,450. To extend the signal public radio station WWNO–FM, 89.9 MHz, in New Orleans, LA by constructing a 200 watt translator system that will bring first signal to the cities of Houma and Thibodaux and surrounding communities in Lafourche and Terrebonne Parish, which, combined, total 59,103 unserved residents.

File No. 94157 CTB Louisiana ETV Authority, 7860 Anselmo Lane, Baton Rouge, LA 70810. Signed By: Ms. Beth Courtney, Executive Director. Funds Requested: $305,250. Total Project Cost: $610,500. To improve public television station WLPB–TV, Ch 27, the originating station in the Louisiana Public Broadcasting TV Network, in Baton Rouge, LA, by replacing three studio cameras and purchasing four, so the station may continue to serve the network which covers, 3,314,792 residents.

File No. 94207 CTN Louisiana State University, 347 Pleasant Hall, Baton Rouge, LA 70803. Signed By: Mr. Allen Copping, President. Funds Requested: $370,856. Total Project Cost: $494,475. To initiate a two-way interactive compressed video system that would connect the five campuses of Louisiana State University using a digital data network that operates over terrestrial T–1 circuits. The network would serve as the major carrier of videoconferences and computing data for the university's delivery of distance learning programs intended to equitably meet the state's targeted educational needs, with the possibility of future development and expansion of the network to other colleges/universities and research centers statewide.

MA (Massachusetts)

File No. 94025 CTN Mass. Corp. for Educational T/C, 38 Sidney Street, Suite 300, Cambridge, MA 02139–4135. Signed By: Ms. Linda DiRocco, Acting Executive Director. Funds Requested: $161,615. Total Project Cost: $323,230. To purchase videobridge, personal work stations, and associated equipment to allow for the establishment of a desktop videoconferencing system with learners in 15 secondary schools in Massachusetts. The system will utilize ISDN interconnection technology. It will enable students and teachers to interact from multiple locations using video, data exchange, and shared whiteboard capabilities. The proposal, which is a coordinated effort with the Massachusetts Executive Office of Education, is designed to be an element of the Mass Ed Online project, which is the state educational technology plan mandated by the State Legislature's Education Reform Act of 1993.

File No. 94026 CRB University of Massachusetts, Box 33630, Amherst, MA 01003–3630. Signed By: Ms. Dorothy Baronas, Dir., Grant & Contract Admin. Funds Requested: $96,097. Total Project Cost: $192,197. To replace an obsolete and worn-out transmitter at public radio station WFCR–FM, 88.5 MHz, Amherst, MA. The replacement will accompany a relocation of the transmitter. The project would also replace WFCR–FM's antenna and erect a new tower that would allow the station to increase its antenna tower height. An important project objective is to overcome multipath and radiation problems.

File No. 94146 PTN Tufts University, 160 Packard Avenue, Medford, MA 02155. Signed By: Mr. William Edington, Associate Director, Grants. Funds Requested: $73,791. Total Project Cost: $117,592. To plan for an educational and instructional video facility and possible methods of providing a telecommunications interconnection system, originating from the Edward R. Murrow Center at Tufts University. The proposed video facility and two-way interactive network would be used for distance learning instruction in joint degree programs with Northwestern University and Dartmouth College, and would incorporate TECnet's (Technologies for Effective Cooperation Network) computer interactive services to manufacturing technology centers.

MD (Maryland)

File No. 94108 CTB Maryland Public Brdcstg. Comm., 11767 Owings Mills Boulevard, Owings Mills, MD 21117. Signed By: Mr. Raymond K. Ho, President & CEO. Funds Requested: $593,050. Total Project Cost: $1,186,100. To improve and extend public television station WWPB–TV, Ch 31, in Hagerstown, MD by replacing the transmitter and antenna, and, at the same time, extending the coverage to 809,078 residents who are unserved by any other TV station. This project will allow the Maryland TV Network to continue and expand its statewide service.

File No. 94112 CRB University of Maryland, E Shore, Backbone Road, JT Williams Admin, Princess Anne, MD 21853. Signed By: Dr. William P. Hytche, President. Funds Requested: $78,771. Total Project Cost: $105,028. To activate a repeater noncommercial Radio station, call letters to be assigned, operating on 88.7MHz with an ERP of 10 kw located at Massey, MD. This extension project will bring first signal to approximately 70,000 residents located in the southern tip of the western shore of Maryland.

File No. 94118 PRTBN Triangle for the Arts, Inc., 9410 Merust Lane, Gaithersburg, MD 20879. Signed By: Mr. Mark D. Pickett, Project Manager. Funds Requested: $41,825. Total Project Cost: $41,825. A proposal that intends to consider the possibility of planning for a facility that could potentially produce and distribute audio and video educational programs, perhaps through an educational radio station, or by satellite, or a computer interactive network. One element of the proposal plan would be to design and arrange floor space configurations for the administrative, operational, engineering and programming areas of this facility.

File No. 94202 CRB Supporters of Public Brdcstg, Inc., 1130 East Coldspring Lane, Baltimore, MD 21239. Signed By: Mr. Lee E. Graham, President. Funds Requested: $317,686. Total Project Cost: $495,581. To construct a radio production facility with 3 on-air control rooms, 3 production studios and two news production facilities for a proposed three channel public radio network to serve 1,000 public radio stations that are not a part of the NPR Satellite Interconnection system as well as the 450 stations that are part of the system.

ME (Maine)

File No. 94080 CTN University of Maine System, 107 Maine Avenue, Bangor, ME 04401. Signed By: Mr. William J. Sullivan, Treasurer, Univ of Maine Sys. Funds Requested: $782,231. Total Project Cost: $1,042,975. To construct a statewide distance learning channel composed of ITFS and D–3 fiber optic interconnection. The channel would be an addition to the University of Maine System's already-operating network. The new channel would offer baccalaureate degrees in liberal arts and business, as well as masters degrees in library science, industrial technology, educational administration and business administration.

MI (Michigan)

File No. 94053 CTB Northern Michigan University, Elizabeth Harden Drive, Marquette, MI 49855. Signed By: Mr. Michael J. Roy, V.P. for Finance & Admin. Funds Requested: $102,550. Total Project Cost: $205,100. To improve the production and operational capabilities of public station WNMU–TV, Ch. 13, Marquette, MI, by replacing its worn-out and obsolete switcher and TV and waveform monitors. The station serves about 275,000 residents of Michigan's Upper Peninsula.

File No. 94096 CTB Detroit Educational TV Foundation, 7441 Second Boulevard, Detroit, MI 48202–2796. Signed By: Dr. Robert F. Larson, President & General Manager. Funds Requested: $572,948. Total Project Cost: $763,931. To improve the production facilities of public television station WTVS, Ch. 56, Detroit, MI, by replacing worn-out ENG packages and Betacam player/recorders, and to upgrade the station's satellite system to transmit as well as receive. WTVS serves approximately 4.5-million people.

File No. 94109 CTN PACE Telecommunications Consort, 6065 Learning Lane, Indian River, MI 49749. Signed By: Mr. Jack A. Keck, Director. Funds Requested: $362,800. Total Project Cost: $477,800. To expand the PACE Telecommunications Consortium four-channel ITFS network to the K–12 schools in seven additional communities. The Consortium's ITFS network already reaches a number of school districts in its service area, using, beside the ITFS interconnection, cable television and CARS microwave. The PACE Telecommunications Consortium is located in a rural six-county area covering 3,302 sq. miles in the northern tip of Michigan's lower peninsula.

File No. 94162 CRB Central Michigan University, 3965 East Broomfield Road, Mt. Pleasant, MI 48858. Signed By: Mr. Leonard E. Plachta, President. Funds Requested: $46,000. Total Project Cost: $92,000. To improve the production capability of public station WCMU–FM, 89.5 Mhz, Mt. Pleasant, MI, by replacing worn-out and obsolete program origination equipment, including audio consoles and recorders, cartridge machines, and CD players.

File No. 94163 CTN Tuscola Intermediate School Dist, 4415 S. Seeger Street, Cass City, MI 48726. Signed By: Mr. Robert E. Townsend, R.E.M.C. #10 Director. Funds Requested: $97,394. Total Project Cost: $196,894. By constructing a two-channel ITFS system, to establish a distance learning network that would interconnect 24 cable headends in the Thumb Area of eastern Michigan. Via dedicated channels, the cable systems would retransmit the educational programming to K–12 schools in 33 communities. The goals would be to make available low-incidence middle and high school classes—such as advanced mathematics, science, and foreign languages—where they are not presently offered, to provide professional development activities and graduate level classes for teachers and administrators, to offer training opportunities to local business and industry, and to put into place a comprehensive community education program.

File No. 94259 CRB Northern Michigan University, Elizabeth Harden Drive, Marquette, MI 49855. Signed By: Mr. Michael J. Roy, VP, Finance & Administration. Funds Requested: $22,755. Total Project Cost: $45,510. To improve the operational capability of public station WNMU–FM, 90.1 MHz, Marquette, MI, by replacing worn-out and obsolete monitoring equipment and substituting a hard-disc digital audio system for its existing reel-to-reel and cartridge audio recorder/playback machines. The station serves 250,000 residents of Michigan's Upper Peninsula.

File No. 94317 CTN Northwestern Michigan College, 1701 East Front Street, Traverse City, MI 49684. Signed By: Mr. Timothy G. Quinn, President. Funds Requested: $1,000,000. Total Project Cost: $3,903,854. To acquire the equipment for, construct and extend a two-way interactive interconnection system designated as Project Interconnect, that would provide video, voice and data services for distance learning and training to students, educators and the workforce in Northwestern Michigan. The proposed fiber optic network would connect colleges, universities, fifteen school districts, libraries, hospitals, and government offices to the present digital compressed video connection from Northwestern Michigan College's main campus in Traverse City to its satellite campus in Cadillac.

MN (Minnesota)

File No. 94046 CRB Minneapolis Public Schools, 807 NE Broadway, Minneapolis, MN 55413. Signed By: Mr. Robert E. Montesano, Station Manager. Funds Requested: $64,114. Total Project Cost: $85,484. To improve the production capability of public radio station KBEM, 88.5 MHz, Minneapolis, MN, by replacing an audio console, audio tape recorders, cassette machines, cart machines, and CD players. The station serves 2,250,000 residents of the Twin Cities area.

File No. 94098 PTBN Asian Media Access, Inc., 3028 Oregon Avenue South, Minneapolis, MN 55426. Signed By: Mr. Stephen J. Lu, President. Funds Requested: $58,000. Total Project Cost: $117,271. To plan for a television production studio in St. Paul, Minnesota that would be managed, operated and have Board control by Asian-Americans, for the purpose of producing and distributing distance learning courses and educational television programs specifically directed to the needs of Asian-Americans in Minnesota, and potentially nationally.

File No. 94100 CTB Native American Television, Inc., P.O. Box 455, St. Paul, MN 56302. Signed By: Ms. Martha Crow, President. Funds Requested: $96,000. Total Project Cost: $128,000. To activate a facility in St. Cloud, MN, for the production of programs by and for Native Americans.

File No. 94104 CRB Fresh Air, Inc., 1808 Riverside Avenue, Minneapolis, MN 55454. Signed By: Ms. Augustine Dominguez, Board President. Funds Requested: $10,000. Total Project Cost: $20,000. To extend the signal of public radio station KFAI, 90.3 MHz, Minneapolis, MN, to the eastern half of the Minneapolis metro area, which is presently blocked by tall buildings from receiving the station's transmission. The project will construct a translator to operate at 106.7 MHz and bring KFAI's signal to approximately 400,000 persons now unable to receive it. The station presently serves approximately 1.2-million persons in the Minneapolis metro area.

File No. 94132 CTN Independent School District #492,202 Fourth Avenue N.E., Austin, MN 55912. Signed By: Dr. J. Douglas Myers, Superintendent of Schools. Funds Requested: $527,301. Total Project Cost: $878,835. To activate a distance learning system using ITFS, microwave, and fiber optics technologies. The system will interconnect the K–12 school districts, cable television systems, and post-secondary educational institutions in six rural communities in southern Minnesota: Austin, Adams, Lyle, Leroy, Grand Meadow, and Glenville. With the cable television connection, the instructional programming provided over the system will be made available to rural homes and libraries.

File No. 94147 CTN Minneapolis Telecommun. Network, 125 SE Main Street, Minneapolis MN 55414. Signed By: Mr. Anthony Riddle, Executive Director. Funds Requested: $884,766. Total Project Cost: $1,769,532. To construct a playback facility for the applicant's 18 channels of public, government, and educational programming distributed by the local cable television system, and to purchase studio production, editing, and remote production equipment.

File No. 94250 CTB Northern Minnesota Public TV, Inc. 1400 Birchmont Drive, Bemidji, MN 56601. Signed By: Ms. Emily K. Lahti, General Manager. Funds Requested: $115,885. Total Project Cost: $154,513. To improve the production capability of public television station KAWE, Ch 9, Bemidji, MN, by replacing worn-out and obsolete items of equipment, including a switcher, field cameras, and video tape recorders. The station serves population of 300,000.

File No. 94279 CTB West Central Minnesota ETV Co, 120 West Schlieman, Appleton, MN 56208. Signed By: Mr. Ansel W. Doll, General Manager. Funds Requested: $1,245,497. Total Project Cost: $2,490,995. To provide the first Minnesota-originated public television signal to 84,284 residents of the Worthington, MN, area by activating a station on Channel 20 to repeat the signal of public station KWCM, Ch. 10, Appleton, MN, which serves a population of approximately 500,000.

File No. 94293 CRB Minnesota Public Radio, Inc., 45 East 7th Street, St. Paul, MN 55101. Signed By: Mr. Dennis Hamilton, Vice President. Funds Requested: $272,851. Total Project Cost: $545,702. To improve the production capability of Minnesota Public Radio by replacing worn-out and obsolete studio equipment, including audio tape recorders, CD players, audio consoles, microphones, and a telephone interface. MPR operates twenty public radio stations across Minnesota, two in Moorehead, ND, one in Decorah, IA, one in Sioux Falls, SD, and one in Sun Valley, ID. In addition, it operates ten translators in Minnesota, and one each in Michigan and Wisconsin. Altogether it serves a population of about 4.9-million persons through parallel networks of classical music and news stations that operate 24 hours a day.

MO (Missouri)

File No. 94061 CRB Southwest Missouri State Univ., 901 South National, Springfield, MO 65804–0089. Signed By: Mr. Frank A. Einhellig, Associate Vice President. Funds Requested: $126,750. Total Project Cost: $169,000. To replace the broadcast tower of public radio station KCOZ, 90.5 MHz, Point Lookout, MO, which serves 71,470 residents of southwest Missouri and northwest Arkansas. The tower has a structural failure that cannot be repaired. KCOZ repeats the programming of public radio station KSMU, 91.1 MHz, Springfield, MO.

File No. 94063 CTN Central Missouri State University, Humphreys 410, Warrensburg, MO 64093. Signed By: Ms. Kathleen D. Easter, Dean, Graduate Studies & Res., Funds Requested: $226,521. Total Project Cost: $348,155. To purchase video classroom and codec equipment to extend the applicant's distance learning system to the Clinton, MO, public school system. The project will also position Central Missouri State University and the Western Missouri Educational Technology Consortium (WeMET), of which the applicant is a part, to interconnect to the University of Missouri/Kansas City and to the Kansas City, MO, Public Schools.

File No. 94213 PTN St. Louis Community College, 300 South Broadway, St. Louis, MO 63102–2820. Signed By: Ms. Gwendolyn W. Stephenson, Chancellor. Funds Requested: $24,845. Total Project Cost: $33,184. To develop a unified educational technology plan that will assist in a comprehensive study of the most effective use of telecommunications technology to facilitate the delivery of distance learning and training throughout the community. This project, when completed, would provide the necessary information to budget and acquire the technology considered consistent with institutional goals toward the integration of telecommunications in distance learning throughout the college's service area.

File No. 94233 Public Television 19, Inc., 125 E. 31st Street, Kansas City, MO 64103. Signed By: Mr. William T. Reed, President. Funds Requested: $271,153. Total Project Cost: $361,537. To construct and activate a new educational service by implementing an interactive compressed video classroom project and interconnection system, to be integrated into a network for student coursework and teacher training and development. The classroom origination facility, the compressed video CODEC, and the interconnecting fiber optic transceivers would comprise a Kansas City compressed video network hub delivering live interactive instruction to schools and educational centers across Kansas and Missouri.

File No. 94256 CTN Missouri School Boards Assoc., 2100 I–70 Dr. S.W., Columbia, MO 65203–0099. Signed By: Mr. Carter Ward, Executive Director. Funds Requested: $905,750. Total Project Cost: $1,207,667. To extend the satellite delivered educational services offered by the Missouri School Board by constructing a C-bank uplink with compressed digital video capability. The uplink will permit the extension of the applicant's service nationwide through participation in the IDEANET project (Interactive Distance Education Alliance) with three other satellite providers, Oklahoma State University, Northern Arizona University, and Educational Service District 101. The project will also fund a production studio so the applicant can increase its educational programming for nationwide distribution.

MP (Marianas Protectorate)

File No. 94323 CRB Northern Marianas College, P.O. Box 1250, Saipan, MP 96950. Signed By: Ms. Agnes McPhetres, President. Funds Requested: $432,415. Total Project Cost: $432,415. To provide the first noncommercial public radio station to the Northern Marianas by establishing a new station operating on 88.1 MHz. in Saipan. A translator will also be constructed operating on 88.9 MHz to serve Chalan Konoa and northern Saipan island. The facilities will serve 43,000 residents of the Northern Marianas Islands.

MS (Mississippi)

File No. 94156 CTN Mississippi Authority for ETV, 3825 Ridgewood Road, Jackson, MS 39211. Signed By: Mr. Larry D. Miller, Executive Director. Funds Requested: $980,548. Total Project Cost: $1,961,096. To purchase audio and video equipment to establish 18 multi-media Interactive Technology Centers across the State of Mississippi. Also purchased will be codec terminal equipment, a 32-port switcher, and related hardware and software to allow the Centers to be connected via T1 lines. Seventeen of the Centers will be housed at public high schools and one will be located in the Jackson headquarters of the Mississippi Authority for Educational Television. Each Center's primary objective will be to allow secondary students in poor, rural schools to have access to otherwise-unavailable instructional materials. The Centers, however, will also be used to provide professional support to teachers and administrators and to offer such functions as adult literacy courses and industrial training.

File No. 94167 CTB Jackson St. University, 1375 Lynch Street, Box 18590, Jackson, MS 39217–0990. Signed By: Mr. James Lyons, Sr., President. Funds Requested: $885,668. Total Project Cost: $1,415,749. To activate a low power public TV station, W23BC, with a power of 100 watts in Jackson, MS to provide a complete broadcast facility for the training of students and to provide programs for the 27,523 people who live in the 10 mile radius of the station. This proposed station received its FCC license in 1992, and has ordered, prior to the deadline, the antenna and transmitter. The $1.4 million TPC is almost all for origination equipment, the transmitter and antenna are in the Pre-operational Expenses.

MT (Montana)

File No. 94095 CTBN SE Montana Telecomm. Educ. Coop., 500 No. Trautman, Broadus, MT 59317. Signed By: Mr. Brian Patrick, Chairman. Funds Requested: $1,270,006. Total Project Cost: $1,693,341. This project would accomplish two major objectives. First, it would establish low-power television stations, with local origination capability, that would bring the first public television signal to approximately 17,000 residents of a five-county area of southeast Montana. The station transmitters would be placed in the communities of Ashland, Broadus, Forsyth, Hysham, and Miles City. The stations would be associated with the Rural Television System, Inc., which has its headquarters in Carson City, Nevada. Second, it would purchase video classroom and interconnection equipment to allow 11 K–12 schools to activate a two-way interactive distance learning system using fiber optics.

File No. 94193 CTB Plains—Paradise TV District, Box 215, 417 Rittenour Street, Plains, MT 59859. Signed By: Mr. Leo S. Rambur, Chairman. Funds Requested: $47,194. Total Project Cost: $62,925. To improve public low power television station K21CA in Plains, MT by improving the local production capability to serve this very rural area with the acquisition of two portable color cameras and associated items, portable light kits, microphones, ¾" editing system, monitors, special effects unit, audio cassette, time base corrector, character generator, and head phones. This project will increase community access to the station's facilities and increase the quality of local programming.

File No. 94230 CTB National Indian Media Foundation, 631 North Center, Hardin, MT 59034. Signed By: Mr. Ronald Holt, Manager. Funds Requested: $436,475. Total Project Cost: $671,500. To activate a non-commercial television station, KOUS–TV, Ch 4, in Hardin, MT, providing first signal to 15,000 to members of the Crow and Northern Cheyenne Indian Tribes in Montana. Applicant recently purchased the existing Channel 4 station in Hardin which went off the air in January 1993, but even though the former owner is including all the TV equipment in the sale, much of it is not usable especially the dissemination equipment. So, The National Indian Media Foundation is requesting only dissemination items and, to start with, will not have local origination capability.

NC (North Carolina)

File No. 94023 CRB Wake Forest University, P.O. Box 7405, Winston-Salem, NC 27109. Signed By: Ms. Julie B. Cole, Dir. Office of Res. & Spon. Funds Requested: $185,145. Total Project Cost: $246,860. To improve public radio station WFDD–FM, 88.5 MHz Winston-Salem, NC, by replacing its transmitter, antenna and original tower, destroyed by a tornado, which is to be installed at a new site, allowing the station to return to its original 100 kw signal from its current Special Temporary Authority of 22 kw, and restore the original coverage of 1,275,175 residents from the current 746,689. WFDD–FM has been on temporary site which has required reauthorization every six months.

File No. 94048 CRB Isothermal Community College, U.S. Highway 74 Bypass, Spindale, NC 28160. Signed By: Dr. Willard L. Lewis, President. Funds Requested: $12,261. Total Project Cost: $24,522. To extend the public radio service provided by WNCW–FM, 88.7 MHz, Spindale, NC through the construction of translators operating on 92.9 MHz Boone, NC and 95.5 MHz, Beach Mtn., NC. The translators will provide first public radio service to 5,981 residents of Watauga County.

File No. 94088 CTN East Wake Education Foundation, 5101 Rolesville Road, Wendell, NC 27591. Signed By: Ms. Linda Johnson, Pres./East Wake Education Fnd. Funds Requested: $55,825. Total Project Cost: $74,434. To establish a television production studio at East Wake High School, to bring distance learning to students at eight public schools—the high school, two middle schools and five elementary schools—in the communities of Zebulon, Wendell, and Knightdale, which are located immediately to the east of Raleigh, NC. The studio would also be used by local law enforcement agencies and possibly by local governments for public service needs.

File No. 94090 CTB University of North Carolina, 10 T.W. Alexander Drive, Research Triangle Park, NC 27709. Signed By: Mr. Tom Howe, Direc & GM UNC Ctr for Pub TV. Funds Requested: $1,344,880. Total Project Cost: $3,362,200. To activate a non-commercial repeater TV network station on CH 31 in Lumberton, NC, providing first signal to 611,326 residents in 11 Southeast-central NC counties and 4 North-central SC counties.

File No. 94188 CTB Elizabeth City State University, 1704 Weeksville Road, Box 800, Elizabeth City, NC 27909. Signed By: Mr. Jimmy R. Jenkins, Chancellor. Funds Requested: $8,474. Total Project Cost: $11,299. To improve non-commercial low power TV station W18BB–TV in Elizabeth City, NC by completing the construction of its TV production studio, which requires adding the production console, editing console system, rack mount slide kits, duplication console, tape cabinets and mobile video carts, so the station may properly complete its local production capability to better serve the 14,292 residents in is coverage area.

File No. 94257 CTN NC Agency for Public T/C, 116 West Jones St., Ste. G–102, Raleigh, NC 27603–8003. Signed By: Ms. Leila Tvedt, Executive Director. Funds Requested: $158,762. Total Project Cost: $317,524. To extend the services provided by the North Carolina Agency for Public Telecommunications by constructing C/Ku-band satellite downlinks at 6 emergency management field offices throughout the state, including sites in Washington, Butner, Burgaw, Asheboro, Conover, Asheville and Raleigh. The project will also equip a classroom as a teleconference production center which will be connected to the North Carolina Information Highway, a fiber optic network connecting public institutions statewide. The project will provide emergency management training and support emergency management communications.

File No. 94304 CRB University of North Carolina, Swain Hall, Chapel Hill, NC 27599–0915. Signed By: Dr. Robert P. Lowman, Director, Office of Res. Serv. Funds Requested: $256,425. Total Project Cost: $512,850. To improve the transmission facilities of WUNC–FM, 91.5 MHz. Chapel Hill by moving the antenna to a higher tower, thereby increasing the station's effective power and providing a first service to 70,000 additional people. The project would fund a new antenna, transmitter and Studio-Transmitter Link. The project would also fund a new satellite uplink and downlink for transmission and receipt of national radio programming. WUNC–FM currently provides service to 1.3 million people in North Carolina.

ND (North Dakota)

File No. 94093 CTN Turtle Mountain Community College, Box 340, Belcourt, ND 58316. Signed By: Mr. Gerald Monette, President. Funds Requested: $271,498. Total Project Cost: $361,997. To establish distance learning facilities at four Native American community colleges in North Dakota: Turtle Mountain Community College; Ft. Berthold Community College; Little Hoop Community College (serving the Ft. Totten Reservation); and United Tribes Technical College, Bismarck. The four schools will be connected by T–1 transmission lines; all schools will have video classroom origination facilities. The system will permit the schools to share instructional programming; to do this, they will interconnect with and use the switching facilities of Standing Rock College, located at Ft. Yates, ND. The project would also allow the schools to participate in the North Dakota University System's Interactive Video Network (IVN).

NE (Nebraska)

File No. 94086 CRB Nebraska Educ. T/C Commission, P.O. Box 83111, 1800 N. 33rd St., Lincoln, NE 68501–3111. Signed By: Mr. Jack G. McBride, Secretary & General Manager. Funds Requested: $37,955. Total Project Cost: $75,911. To extend and improve the facilities of the Nebraska Public Radio Network by activating four FM translators: Max (93.3 MHz), Harrison (89.5 MHz), Falls City (91.7 MHz), and Culbertson (92.7 MHz). Translators would provide first public signal in areas unserved by the network. In addition, project would replace an obsolete 1980 master control console that is inadequate for the nine station network's needs.

File No. 94154 CRB Omaha Community Broadcasting 4914 Ames Avenue, Omaha, NE 68104. Signed By: Mr. William J. Thompson, Chairperson. Funds Requested: $139,000. Total Project Cost: $185,643. To activate a new minority controlled and operated public radio station on 88.9 MHz, in Omaha. Proposed 3 kilowatt station would target programming to minority community. There are three other public radio stations serving the market.

File No. 94263 CTB Nebraska Educ. T/C Commission, 1800 N. 33rd Street, Lincoln, NE 68501–3111. Signed By: Mr. Jack G. McBride, Secretary/General Manager. Funds Requested: $187,475. Total Project Cost: $374,950. To improve the Nebraska Educational TV Network by replacing three worn out television translators at the following locations: Falls City, K24AC, Ch. 24; Neligh, K65AT, Ch. 65; and Decatur, K66AR, Ch. 66. In addition, project would replace worn out/obsolete control and network production equipment by purchasing a new still store, character generator and digital test equipment. This project would continue the network's phased upgrade to digital equipment.

NH (New Hampshire)

File No. 94074 CRB New Hampshire Public Radio, 207 North Main Street, Concord, NH 03301–5048. Signed By: Mark D. Handley, President. Funds Requested: $34,517. Total Project Cost: $86,717. To purchase microwave equipment to improve the interconnection between two public radio repeater stations and the flagship station of New Hampshire Public Radio, Station WEVO–FM, 89.1 Mhz, Concord. One repearter, already on-air, is WEVH–FM (91.3 Mhz) in Hanover; the second, scheduled to go on-air in June 1994, is WEVN–FM (90.7 Mhz), in Keene. The proposed microwave STL systems would provide higher quality signals to the repeaters than are possible from off-air signals. The project would therefore allow approximately 67,000 residents of the Hanover and Keene areas to receive truly reliable public radio signals for the first time. This proposal would also allow for some regionalization of public radio services to the affected areas.

File No. 94155 CTB University of New Hampshire, Rt. 155A, Mast Road, PO Box 1100, Durham, NH 03824. Signed By: Mr. Steven Bernstein, Sr. Grant & Contract Officer. Funds Requsted: $375,000. Total Project Cost: $750,000. To replace a 12-year-old transmitter and antenna for New Hampshire Public Television's station WENH–TV, Ch. 11, Durham. WENH–TV is the flagship station in the applicant's statewide network, which comprises three stations and two translators. WENH's present transmission equipment is unreliable and costly to maintain. The project would also replace an outmoded, low-quality ENG field production unit consisting of a camera, recorder, microphones, and associated accessory equipment.

NJ (New Jersey)

File No. 94187 CRB Electronic Info. & Ed. Service, 59 Scottland Rd., South Orange, NJ 07079. Signed By: Mr. John F. Mulvihill, Jr., General Manager. Funds Requested: $96,990. Total Project Cost: $129,320. To upgrade the applicant's SCA capabilities, using the sub-carrier of WSOU–FM at Seton Hall University in South Orange, NJ, by replacing the audio consoles, reel-to-reel tape recorder, cassette recorder, microphones, digital cart machines, CD players, DAT recorders, booth control system, booth microphones and arm, compressor/limiters, automation mike mixer, studio speaker, reel-to-reel decks, monitor speakers, cabinet racks, custom cabinet for console, headphone, off air receiver and lot of wire. Applicant claims service to 70,000 blind, site impaired and physically disabled.

File No. 94288 PTN Hunterdon Central Regional H.S. Dist, 84 Route 31 North, Flemington, NJ 08822–1239. Signed By: Mr. Raymond Farley, Superintendent. Funds Requested: $150,831. Total Project Cost: $196,957. To conduct a feasibility study to determine possible approaches to the development of an interactive telecommunications network that would connect the schools in twenty-six school districts within five counties of New Jersey and one county in Pennsylvania, using a prototype school facility as a model. The proposed plan would assess the various technologies that might be appropriate with respect to engineering, content development, and distribution systems, to determine the telecommunications methods to employ in establishing an interactive network capable of providing video, voice and data services among the schools, libraries, museums, government agencies, and other organizations.

File No. 94290 CRB Burlington County College, Rte 530, Pemberton-Browns Mills R, Pemberton, NJ 08068. Signed By: Mr. Robert C. Messina, Jr., President. Funds Requested: $49,960. Total Project Cost: $66,614. To construct a C-band satellite downlink at a WBZC–FM 88.9 MHz. Pemberton, a new noncommercial radio station to be operated by Burlington County College. The earth station will provide access to nationally distributed programming for the station, which will provide the first public radio service to 24,916 in Burlington County.

NM (New Mexico)

File No. 94040 PTN Hispanic Educational Telecom System, 1130 University Blvd., N.E., Albuquerque, NM 87102. Signed By: Mr. Jose F. Mendez, President & Chairman, HETS. Funds Requested: $128,940. Total Project Cost: $168,940. To develop the plan for a new Hispanic Educational Telecommunications System (HETS) to interconnect institutions of higher education serving significant Hispanic populations with video and data resources, facilitating the sharing of credit, non-credit and outreach programs to on-campus and off-campus students as well as Hispanics in the work force. The founding HETS institutions are seven universities and community colleges in the states of Arizona, Mississippi, New Mexico, New York, Texas, and in Puerto Rico.

File No. 94045 CRB The Bd of Regents of the Univ of NM, Bernalillo County, Albuquerque, NM 87131. Signed By: Ms. Jane Blume, Interim General Manager. Funds Requested: $37,995. Total Project Cost: $50,660. To extend the signal of KUNM–FM, 89.9 MHz, in Albuquerque by constructing six new translators at the following locations: Cuba, 91.1 MHz; Dzilth-na-o-dith-hle, 91.9 MHz; Socorro, 91.9 MHz; Eagle Nest/Cimarron, 91.1 MHz; Thoreau, 91.1 MHz (will also feed KGLP–FM, in Gallup), and Farmington, 89.7 MHz. The Farmington translator will provide a second signal to 38,576 persons in the area. The other translators will provide a first public radio signal to a total of 16,607 persons.

File No. 94049 CRB The Bd of Regents of the Univ of NM, Bernalillo County, Albuquerque, NM 87131. Signed By: Ms Jane Blume, Interim General Manager. Funds Requested: $30,825. Total Project Cost: $61,650. To improve the facilities of public radio station KUNM–FM, 89.9 MHz, in Albuquerque by replacing and improving the station's obsolete/worn out multi-track console and 8-track recorder and also acquiring two digital workstations and a digital audio tape field production recorder.

File No. 94083 CTB New Mexico State University, Milton Hall, Room 121, Las Cruces, NM 88003. Signed By: Ms. Carol L. Walker, Associate Dean/Director. Funds Requested: $48,401. Total Project Cost: $96,802. To improve the facilities of public television station KRWG–TV, Ch. 22, in Las Cruces by replacing a 1972 intercom system and a 1976 audio console as well as adding dissemination equipment which will allow for the transmission of Descriptive Video Service (DVS) and second audio programming in Spanish for the large Hispanic audience within the station's converge area.

File No. 94165 CTB Regents/Univ of NM & Bd Of Ed Albuq, 1130 University Blvd. N.E., Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Director, Research Admin-UNM. Funds Requested: $38,750. Total Project Cost: $77,500. To improve/extend the signal of public television station KNME–TV, Ch. 8, in Albuquerque by replacing three TV translators: K61BA, Ch. 61, in Ft. Wingate; K60AA, Ch. 60, Cimarron; and K63BD, Ch. 63, in Gallup. The Cimarron translator, a 1990 vintage unit, will be replaced with a more powerful unit. The other two translators are 1978 vintage.

File No. 94258 CRB San Juan College, 4601 College Blvd, Farmington, NM 87402. Signed By: Mr. James C. Henderson, President. Funds Requested: $22,660. Total Project Cost: $45,320. To improve the facilities of public radio station KSJE–FM, 90.9 MHz, in Farmington, by acquiring a receive-only satellite downlink system. KSJE–FM serves approximately 90,000 people.

File No. 94268 CTB Eastern New Mexico University, 15th & Avenue O KENW–TV, Portales, NM 88130. Signed By: Mr. Duane Ryan, Director of Broadcasting. Funds Requested: $170,000. Total Project Cost: $340,000. To improve the facilities of public television station KENW–TV, Ch. 3, in Portales, by replacing old, worn-out/outdated production equipment. Station would acquire a dual channel still store, a ½" editing system (including tape machines, a video switcher, edit controller, audio board and related equipment), and a sync generator. Equipment will further KENW–TV's move toward broadcasting in stereo.

File No. 94287 PTN Northern New Mexico Network, #50 County Road 13, Cuba, NM 87013. Signed By: Mr. Joe A. Lopez, President. Funds Requested: $45,000. Total Project Cost: $47,400. To develop a comprehensive distance learning plan that would consider the feasibility of possible telecommunications systems for a two-way interactive network offering specialized and advanced level courses for K–12 academic students and vocational students, and professional development and in-service training to educators and support staff. The proposed plan would also review long-range options for such an interconnection system to provide continuing education and training to the workforce in various professions and occupations, and information services to the general population in northern New Mexico.

NV (Nevada)

File No. 94140 CTB Clark County School District, 4210 Channel 10 Drive, Las Vegas, NV 89119. Signed By: Dr. Brian Cram, Superintendent. Funds Requested: $348,500. Total Project Cost: $348,500. To improve the facilities of public television station KLVX–TV, Ch. 10, in Las Vegas by replacing old 2 inch video tape recorders, video production switcher, edit-only edit bay, cameras, character generator and associated production and test equipment. KLVX–TV serves approximately 919,388 residents of NV, western AZ and eastern CA.

File No. 94176 PRTN Univ. & Cmnty College Sys. of NV, Computing Center Building, Reno, NV 89557. Signed By: Dr. Donald Zitter, Executive Director. Funds Requested: $55,992. Total Project Cost: $55,992. To conduct a planning project for the purpose of assessing the capabilities and possible activation and extension of sites and facilities using digital technology, for the interactive distance learning system providing video, audio and data services to on-campus and off-campus locations of the University and Community College System of Nevada.

NY (New York)

File No. 94018 CRB Greece Central School District, P.O. Box 300, North Greece, NY 14515. Signed By: Mr. Eric Gruner, Operations Director. Funds Requested: $20,829. Total Project Cost: $27,772. To purchase a satellite receive-only earth station for noncommercial radio station WGMC–FM, licensed to the Greece Central School District, North Greece, NY, which is in the area of Greater Rochester.

File No. 94031 CTB Long Island ETV Council, Inc., Channel 21 Drive, Plainview, NY 11803. Signed By: Mr. Terrel L. Cass, President & General Manager. Funds Requested: $275,000. Total Project Cost: $550,000. To replace aged and obsolete items of studio and test equipment at public television station WLIW–TV, Ch. 21, Plainview, on Long Island, NY. The major items that would be purchased are video tape recorders, video editors, and a digital monitor.

File No. 94064 CTN Hispanic Info. & T/C Network, Inc., 449 Broadway, 3rd Floor, New York, NY 10013. Signed By: Mr. Jose L. Rodriguez, President. Funds Requested: $748,500. Total Project Cost: $998,000. To construct an satellite interconnection system to distribute Hispanic television programming to fifteen communities throughout the United States for dissemination by Instructional Television Fixed Service (IFTS). Ku-band uplinks will be constructed in Brooklyn, NY, San Antonio and in Puerto Rico. Downlinks will be constructed to serve ITFS systems in Colorado Springs, CO, Las Vagas, NV, New Orleans, LA, Orlando, FL, Philadelphia, PA, Riverside, CA, Tucson, AZ, Houston, TX, Kansas City, MO, Oklahoma City, OK, Providence, RI, Portland, OR, Dayton, OH, San Antonio, TX, and New York City, NY.

File No. 94107 CTN Dutchess County BOCES, 578 Salt Point Turnpike, Poughkeepsie, NY 12601–9784. Signed By: Mr. Duane E. Hutton, Chief Executive Officer. Funds Requested: $676,352. Total Project Cost: $1,352,704. To expand the number of school districts and sites served by Dutchess County's INFINET 2000 fiber-optic distance learning network (from eleven sites to eighteen), to serve new elements of the population (e.g., elementary school students), to broaden the reach of the applicant's classroom computer network (from three sites and 150 personal computers to 6 sites and almost 300 personal computers), and to provide access to the Internet.

File No. 94135 CRB Research Fdn. SUNY Buffalo, 520 Lee Entrance, Amherst, NY 14228–2567. Signed By: Mr. Bradley A. Bermudez, Sponsored Programs Associate. Funds Requested: $116,832. Total Project Cost: $166,903. To extend the signal of public radio station WBFO–FM, which operates on 88.7 MHz in Buffalo, NY. The project would increase the station's transmission power from 10kw to 25kw, change its antenna pattern from directional to nondirectional, and purchase the station a new, taller tower. The station estimates that this will allow its signal to reach 24,273 residents of the greater Buffalo area who do not now receive a public radio signal.

File No. 94148 CRTB Public Broadcasting Council of, 506 Old Liverpool Rd., Box 2400, Syracuse, NY 13220–2400. Signed By: Mr. Richard W. Russell, President and CEO. Funds Requested: $188,302. Total Project Cost: $376,604. To replace studio equipment for public television station WCNY, Ch. 24, and for public radio station WCNY–FM, 91.3 MHz. Both stations are licensed to The Public Broadcasting Council of Central New York, Inc., Syracuse, NY. For the television station, the project would purchase three types of switchers: master control; routing; and production. For the radio station, the proposal includes three SCA generators (for the local radio reading service for the print-handicapped) as well as audio distribution amplifiers and digital audio record players (both for studio use and for portable use).

File No. 94166 CTN Columbia University, 530 West 120th Street, New York, NY 10027. Signed By: Mr. John R. Kender, V. Dean, Eng & Applied Science. Funds Requested: $414,712. Total Project Cost: $552,450. To construct a Ku-band satellite uplink at Columbia University which will provide nationwide distribution of educational programming from the School of Engineering and Applied Science. Columbia is a member of the National Technological University (NTU) and the uplink will be compatible with the compressed digital system used by NTU.

File No. 94180 CTB Western NY Public Brdcstg. Assn., P.O. Box 1263, Buffalo, NY 14240. Signed By: Mr. J. Michael Collins, President & CEO. Funds Requested: $723,514. Total Project Cost: $964,686. To improve the studio production facilities of public television station WNED, Ch. 17, Buffalo. The project would replace aged and worn-out cameras by purchasing one portable and four studio cameras, along with separate camera control units for use in a mobile production van. The proposal also calls for the purchase of three digital video tape recorders, a nonlinear edit system, and associated test equipment.

File No. 94234 CTB WSKG Public T/C Council, 601 Gates Road, Vestal, NY 13850. Signed By: Mr. Michael J. Ziegler, President & CEO. Funds Requested: $400,000. Total Project Cost: $800,000. To replace aged and worn-out studio equipment at public television station WSKG, Ch. 46, Binghamton, NY. The project would purchase a master control/routing switcher, six editing video tape recorders, two production video tape recorders, five studio cameras, and an intercom system.

File No. 94238 PRB Indigenous Communications Assoc., Route 37, (P.O. Box 748), Hogansburg, NY 13655. Signed By: Mr. Ray Cook, Executive Director. Funds Requested: $183,735. Total Project Cost: $183,735. To plan for the activation of noncommercial radio stations to serve Native American reservations or communities, most of which receive no public radio signal. The communities or native American institutions to be covered by this planning would be: Pueblo of Acoma, NM; All Indian Pueblo Council, Albuquerque (representing 19 New Mexican Pueblo Tribes); Ft. Peck Reservation, northeast MT; St. Regis Mohawk Tribe, Hogansburg, NY; the Tohono O'odham Nation, in south central AZ; the Confederated Tribes and Bands of the Yakima Indian Nation, Toppenish, WA; the Oneida Tribe of Indians of Wisconsin; and the Red Lake Band of Chippewa Indians, Red Lake, MN.

File No. 94280 CTN Cornell Cooperative Extension of, 246 Griffing Avenue, Riverhead, NY 11901–3086. Signed By: Mr. Kermit W. Graf, Cooperative Extension Agent. Funds Requested: $85,760. Total Project Cost: $123,821. To extend the services provided by the Cornell Cooperative Extension Satellite Network by purchasing a C\Ku-band satellite downlink at Yaphank, NY to provide service to residents of Suffolk County.

File No. 94291 CTN Herkimer, Fulton, Hamilt, Ots BOCES, 400 Gros Blvd., Herkimer, NY 13350. Signed By: Mr. William E. Whitehill, Jr., District Superintendent. Funds Requested: $378,178. Total Project Cost: $504,238. To acquire the necessary equipment to activate a fiber optic interconnection system in Herkimer County and parts of six surrounding counties in central New York State among twelve school districts, a community college, and the Board of Cooperative Educational Services (BOCES) office. The links in this proposed network would include fourteen teaching/learning classrooms that could originate and receive fully interactive video, voice and data materials for instructional distance learning classes, in-service courses, professional development programs, and other community service needs.

File No. 94301 CRB Colleges of the Seneca, Hobart and Will. Smith Colleges, Geneva, NY 14456. Signed By: Mr. Richard Guarasci, Dean, Hobart College. Funds Requested: $65,140. Total Project Cost: $130,280. To extend the signal coverage of public radio station WEOS–FM, 89.7 Mhz, Geneva, NY. By purchasing a more powerful transmitter and a new antenna, the project will increase the station's ERP from 1.5kw to 4kw. Together with moving the transmitter to a more favorable site, the project should allow the station's signal to reach an additional 68,000 persons. The proposal also includes a microwave studio-to-transmitter link and two items of test equipment.

File No. 94313 CTN Orange County Community College, 115 South Street, Middletown, NY 10940. Signed By: Mr. William F. Messner, President. Funds Requested: $13,415. Total Project Cost: $17,887. To construct a C/Ku-band satellite downlink for the Newburgh campus of Orange County Community College to provide nationally distributed instructional programming to 1,000 students at that location.

OH (Ohio)

File No. 94005 CRB Ohio University, 9 South College Street, Athens, OH 45701. Signed By: Mr. T. Lloyd Chesnut, Vice President. Funds Requested: $130,685. Total Project Cost: $261,370. To improve the signal of public radio station WOUB–AM, 1340 KHz, Athens, OH, by replacing its worn-out and obsolete transmitter and antenna and converting the station to AM stereo. WOUB–AM serves a population of 59,549.

File No. 94056 CTB ETV Assn of Metro Cleveland, 4300 Brookpark Road, Cleveland, OH 44134. Signed By: Mr. Jerry Wareham, President and General Manager. Funds Requested: $698,960. Total Project Cost: $1,397,920. To improve the operation of public television station WVIZ, Ch. 25, Cleveland, OH, by replacing three obsolete and worn-out video switchers. The station serves a population of 3.7-million persons.

File No. 94071 PTN Ohio Valley Reg. Dev. Commission, 740 Second Street, Rm. 102, Portsmouth, OH 45662–4088. Signed By: Mr. Jeffrey Spencer, Executive Director. Funds Requested: $27,000. Total Project Cost: $36,000. To plan for an interactive distance learning network that could potentially involve educational institutions at all levels, libraries, health care facilities and other public service agencies in the Ohio Valley Regional Development District of Southern Ohio, in a consortium effort to consider the alternative technologies that might be feasible to develop a telecommunications system for providing educational and training services.

File No. 94082 CRB Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210–1027. Signed By: Mr. Dale K. Ouzts, General Manager, WOSU Stations. Funds Requested: $202,650. Total Project Cost: $270,200. To activate a public radio station, WOSC, 91.1 MHz, in Coshocton County, OH, to bring the first public radio signal to approximately 45,569 people. WOSC will repeat the programming of WOSU, Columbus, OH.

File No. 94084 CTB Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale K. Ouzts, General Manager, WOSU Stations. Funds Requested: $113,532. Total Project Cost: $227,064. To improve the production capability of public station WOSU–TV, Ch. 34, Columbus, OH, by replacing worn-out and obsolete camera pedestals, color and black-and-white monitors, and test equipment. The station serves a population of about 1.8-million people.

File No. 94110 CTB Bowling Green State University, 245 Troup Street, Bowling Green, OH 43403–0060. Signed By: Mr. Louis I. Katzner, Associate V.P. for Research. Funds Requested: $117,200. Total Project Cost: $234,400. To improve the production capability of public station WBGU–TV, Ch. 27, Bowling Green, OH, by replacing worn-out and outdated analog video tape machines and editing with digital technology and also replacing its field production equipment. The station serves a population of about 1.3-million people.

File No. 94131 CRB Public Bdcstg Fndn of NW Ohio, 136 Huron Street, Toledo, OH 43604. Signed By: Ms. Shirley E. Timonere, President & General Manager. Funds Requested: $182,625. Total Project Cost: $243,500. To activate a public radio repeater station at 88.5 Mhz to bring the first public radio signal to 99,010 people in and around Bryan, OH. The new station will repeat the programing of public radio station WGTE–FM, 91.3 MHZ. Toledo.

File No. 94177 CTB Public Bdcstg Fndn of NW Ohio, 136 Huron Street, Toledo, OH 43697. Signed By: Ms. Shirley E. Timonere, President & General Manager. Funds Requested: $109,945. Total Project Cost: $219,890. To improve the production capability of public station WGTE–TV, Ch. 30, Toledo, OH, by replacing worn-out and outdated equipment, including a field production system, a video tape editing system, and a character generator. The station serves a population of about 1.3-million people.

File No. 94221 CRB Kent State University, 1613 East Summit Street, Kent, OH 44242. Signed By: Ms. Anita D. Herington, Acting VP for Inst Advancement. Funds Requested: $621,195. Total Project Cost: $847,585. To activate a public radio repeater station in Thompson, OH, to bring a first public radio signal to 162,716 residents of extreme northeastern Ohio; it will repeat the programing of public radio station WKSU, 89.3 MHz, Kent, OH. To extend the coverage area of WKSU by replacing its transmitter and moving it to Copley, OH. And to improve WKSU's production capability by replacing and upgrading unreliable equipment.

File No. 94245 CTN City of Columbus, Ohio, 90 West Broad Street, Columbus, OH 43215. Signed By: Ms. Maria Caprio, Deputy Director, Admin Svcs. Funds Requested: $233,923. Total Project Cost: $467,845. To purchase the equipment necessary to construct and activate at the Martin Luther King, Jr. Performing/Cultural Arts Complex in Columbus, Ohio, a telecommunications facility, production studio, and fiber optic link to the existing fiber optic interconnection system in the city of Columbus. This project would be a part of a larger Telecomplex Project in which the city would establish a telecommunications and production center in a central Columbus urban area where the population is 90% African-American. The proposed production studio and fiber optic link would enable the residents of this area to produce educational and training materials for video, voice and data applications, through which they could interact with other city residents and service providers on the fiber optic network.

OK (Oklahoma)

File No. 94059 CTB Rogers State College, Will Rogers and College Hill, Claremore, OK 74017–2099. Signed By: Mr. Richard H. Mosier, President. Funds Requested: $418,667. Total Project Cost: $837,334. To improve the facilities of public television station, KRSC–TV, Ch. 35, in Claremore by acquiring equipment to upgrade its origination capabilities to current broadcast standards. In 1987, KRSC–TV went on the air with industrial grade, non-broadcast quality equipment. Much of that equipment is now worn-out, obsolete and experiences significant maintenance problems and downtime. Equipment being replaced includes video tape machines, cameras, master control switcher, edit controller, sequencer and related items. In addition, KRSC–TV will acquire a KU Band satellite downlink terminal to obtain programming from a variety of sources.

OR (Oregon)

File No. 94081 PRTN Treasure Valley Community College, 650 College Blvd., Ontario, OR 97914. Signed By: Dr. Berton L. Glandon, President. Funds Requested: $152,618. Total Project Cost: $152,628. To develop a plan and analyze the feasibility of providing a distance learning service through alternative forms of telecommunications such as fiber optic lines and microwave distribution to learning centers for different levels of education, in a four-county area with a significant Hispanic population in Eastern Oregon.

File No. 94102 CTB Oregon Public Broadcasting, 7140 SW Macadam Avenue, Portland, OR 97219–3013. Signed By: Mr. Maynard E. Orme, President and CEO. Funds Requested: $71,125. Total Project Cost: $142,250. To purchase three one-half inch Beta video recorders to replace three three-quarter inch video recorders located at public television station KOPB–TV, Channel 10, in Portland, Oregon, originating program service to Oregon Public Broadcasting stations in Corvallis, Bend, LaGrand, and Eugene, Oregon.

File No. 94216 CTB Southern Oregon Public TV, Inc., 34 South Fir Street (PO Box 4688, Medford, OR 97501. Signed By: Mr. William R. Campbell, Vice President/General Manager. Funds Requested: $23,250. Total Project cost: $31,000. To construct a translator which will provide first public television service to 2,200 people in Bookings Harbor, Oregon, by extending the signal of public television station KSYS–TV, Channel 8, Medford, Oregon. The project will also provide an additional 11,000 people with their first Oregon based public television service and provide this service to the last significant geographic area of the state without such service.

File No. 94220 CTB Southern Oregon Public TV, Inc., 34 South Fir Street (PO Box 4688, Medford, OR 97501. Signed By: Mr. William R. Campbell, Vice President/General Manager. Funds Requested: $259,298. Total Project Cost $345,730. To replace obsolete, unreliable origination videotape machines with six ½ inch videotape machines and one digital, tapeless playback system for use on KSYS–TV, Channel 8, Medford, Oregon.

File No. 94225 CRB Mt. Hood Community College District, 26000 S.E. Stark Street, Gresham, OR 97030–3300. Signed By: Dr. Bill Becker, Dean of Administration. Funds Requested: $112,415. Total Project cost: $224,831. To improve the transmission, origination, and interconnection facilities at KMHD–FM, 89.1, Gresham, Oregon, by constructing a new STL, replacing unreliable studio production equipment, replacing obsolete control room origination equipment, constructing a satellite receive terminal and replacing test equipment.

File No. 94235 PTBN KWSO, P.O. Box 489, Warm Springs, OR 97761. Signed By: Mr. Warren R. Clements, Director of Public Information. Funds Requested: $65,450. Total Project Cost: $65,450. To plan for the creation of a consolidated

Telecommunications Center that would serve the Confederated Tribes on the Warm Springs Reservation in Oregon. This proposed center would incorporate facilities for the present public radio station with other possible telecommunications operations such as a cable television channel, a satellite earth station, community library, and interactive computer network. The Telecommunications Center would provide educational and training components that would help meet the needs of Native Americans on the reservation.

File No. 94261 CTN Deschutes Cnty Education Ser Dist, 1340 N.W. Wall Street, Bend, OR 97701. Signed By: Mr. Dennis Douglass, Superintendent. Funds Requested: $807,900. Total Project Cost: $1,162,960. To acquire the equipment necessary to construct and activate non-broadcast facilities for an interactive system that would include a production studio to produce instructional programming, and a microwave link and ITFS network through four counties of central Oregon for distance learning, workforce training and economic development services to an underserved population. The proposed project would be a cooperative effort of the Central Oregon Strategic Training and Education Partnership (CO–STEP), which includes school districts, education service agencies, colleges, businesses, government agencies, and telephone and broadcast companies, to accomplish youth education and workforce training initiatives.

PA (Pennsylvania)

File No. 94029 CRB Pennsylvania State University, 202 Wagner Building, University Park, PA 16802–3899. Signed By: Mr. Robert Killoren, Director of Sponsored Programs. Funds Requested: $47,151. Total Project Cost: $62,869. To extend the signal of public radio station WPSU, 91.1 MHz, State College, PA, by activating translators in Clearfield, Lewistown, and DuBois, PA, to bring first public radio service to 33,028 unserved residents of central Pennsylvania.

File No. 94117 CTB Northeastern PA ETV Association, 70 Old Boston Road, Pittston, PA 18640. Signed By: Mr. A. William Kelly, President & CEO. Funds Requested: $193,760. Total Project Cost: $387,520. To improve the broadcast signal of public station WVIA–TV, Ch. 40, Scranton (Pittston), PA, by replacing its worn-out and failing studio-transmitter link, and to improve its production capability by replacing worn-out video tape recorders. The situation serves approximately one million residents of northeast Pennsylvania.

File No. 94228 CTB WHYY, Inc., 150 North Sixth Street, Philadelphia, PA 19106. Signed By: Mr. Frederick Breitenfeld, Jr., President. Funds Requested: $442,387. Total Project Cost: $884,774. To improve the operational capability of public station WHYY–TV, Ch. 12, Philadelphia, PA, by replacing worn-out and obsolete equipment, including its on-air and routing switchers, video tape recorders, monitors, a character generator, and test equipment. The station serves a potential audience of about 7-million people.

File No. 94231 CTB QED Communications, Inc., 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. Donald C. Korb, Chief Executive Officer. Funds Requested: $351,045. Total Project Cost: $702,090. To improve the production capability of public station WQED–TV, Ch. 12, Pittsburgh, PA, by replacing worn-out and obsolete video tape recorders and a character generator. The station serves a population of about 3.25-million.

File No. 94247 CTN Allegheny Intermediate Unit, 4 Station Square, Flr. 2, Pittsburgh, PA 15219. Signed By: Dr. Joseph F. Lagana, Executive Director. Funds requested: $62,538. Total Project Cost: $125,076. To extend the satellite delivered services of the Allegheny Intermediate Unit (AIU) to 14 additional school districts through the purchase of 14 C/Ku-band steerable downlinks. The downlinks will be connected by fiber-optic cable to school buildings in each district to deliver teacher in-service, administrative and instructional programming to an additional 50,000 students and faculty. AIU currently provides satellite delivered services to 16 school districts in the suburban Pittsburgh area.

File No. 94274 CRB Lehigh Valley Cmty Bdcstrs Assn, P.O. Box 1456, Allentown, PA 18102. Signed By: Mr. Brian F. Landers, President. Funds Requested: $23,908. Total Project Cost: $47,817. To expand the signal of public radio station WDIY, 88.1 MHz, Allentown, PA, by activating a translator to operate on 93.9 MHz in Easton, PA, to enhance the signal by activating a translator to operate on 93.5 MHz in Bethlehem, PA, and to equip the station with remote broadcast equipment. The station presently serves a population of approximately 351,167 persons. The translators will add about 69,547 persons to that number.

File No. 94315 CRB Public Broadcasting of NW PA, 8425 Peach Street, Erie, PA 16509. Signed By: Mr. Paul Stankavich, President & General Manager. Funds Requested: $104,238. Total Project Cost: $208,477. To activate a public radio station to operate on 90.5 MHz in Erie, PA, to provide a second public radio service to approximately 229,000 residents of Erie County. The station will be affiliated with WQLN–FM, 91.3 MHz, Erie, which serves approximately 420,000 persons.

File No. 94316 CRB Public Broadcasting of NW PA, 8425 Peach Street, Erie, PA 16509. Signed By: Mr. Paul Stankavich, President & General Manager. Funds Requested: $17,265. Total Project Cost: $34,530. To extend the signal of public station WQLN–FM, 91.3 MHz, Erie, by activating translators at 91.5 MHz in Titusville, PA, and at 91.9 MHz in Franklin/Oil City, PA, and by upgrading its existing translator at 90.1 MHz in Warren, PA. Approximately 45,000 persons will receive their first public radio signal from this project.

PR (Puerto Rico)

File No. 94320 CTN Fundacion Educativa Ana G. Mendez, State Road 176 Km. 0.3, Cupey Rio Piedras, PR 00928. Signed By: Mr. Jose F. Mendez, President. Funds Requested: $778,274. Total Project Cost: $1,037,699. To extend the geographic reach of the Mendez Universities' ITFS signal to portions of Puerto Rico not currently able to receive the signal, by constructing five ITFS repeaters or relay stations in the Southeast, Southcentral and Southwest regions as part of an island-wide ITFS plan. This project would also include construction of a video classroom for the production of instructional courses and programs for distance learning and training through the ITFS system.

RI (Rhode Island)

File No. 94194 CTN Brown University in Providence, 164 Angell Street, Providence, RI 02912–1929. Signed By: Ms. Alice Tangredi-Hannon, Director-Ofc of Research Admin. Funds Requested: $671,967. Total Project Cost: $895,956. To activate a currently non-functioning ITFS system that would enable Brown University to extend its academic, scientific, cultural and medical resources throughout the state of Rhode Island in cooperation with K–12 school districts, colleges/universities, libraries, professional development organizations, government agencies, hospitals/medical facilities, and community centers. In combination with the activated ITFS system, the university also seeks to purchase and install the equipment for a KU-Band satellite uplink/downlink system for distance learning and training, and to interconnect other educational institutions as participants in its international satellite project involving NASA and the Institute for Space Research in Russia.

SC (South Carolina)

File No. 94153 CTN Horry-Georgetown Technical College, 2050 Hwy 501 E., P.O. Box 1966, Conway, SC 29526. Signed By: Mr. D. Kent Sharples, President. Funds Requested: $660,936. Total Project Cost: $881,248. To activate the first phase of a distance learning system featuring two-way, interactive, computer-aided video instruction, the main interconnection being by microwave. In this phase, Horry-Georgetown Technical College will link its main campus, in Conway, to its satellite campus at Georgetown.

File No. 94210 CTN The World Class Partnership, 5588 Airport Road, Anderson, SC 29624. Signed By: Ms. Jane S. Cahaly, Director. Funds Requested: $1,929,572. Total Project Cost: $1,929,572. To acquire equipment and establish a two-way interactive telecommunications network to regional centers and high schools throughout South Carolina using ISDN (Integrated Services Digital Network) technology through telephone or possible fiber optic lines, as an interconnection system providing video, voice and data services statewide, and possibly nationally and internationally. The proposed network would incorporate desktop video and data units at each location, in order for students and educators to participate in a partnership to exchange programs and videoconferences focusing particularly on international understanding.

SD (South Dakota)

File No. 94020 CTB SD Bd of Dir for Educ Telecom, Cherry & Dakota Sts, Box 5000, Vermillion, SD 57069–5000. Signed By: Mr. Don Checots, Executive Director. Funds Requested: $70,925. Total Project Cost: $141,850. To extend the signal coverage of the SD Educational Television Network by activating a new medium power (13 kW ERP) public television station on Ch. 23 in Sioux Falls. Station would improve signal strength of the network and improve reception problems caused by terrain factors.

File No. 94037 CTB SD Bd of Dir for Educat'l Telcomm., Cherry & Dakota Sts, Box 5000, Vermillion, SD 57069–5000. Signed By: Mr. Don Checots, Executive Director. Funds Requested: $237,500. Total Project Cost: $475,000. To improve the facilities of public television station KTSD-TV, Ch. 10, in Pierre, by replacing a 25-year old transmitter, transmission line, diplexer, exciter and related dissemination equipment as well as associated test equipment. Station serves 84,397 residents.

File No. 94073 CRB Dakota Nation Broadcasting Corp., 410 East 2nd Avenue, Sisseton, SD 57262. Signed By: Mr. Michael Simon, Station Manager. Funds Requested: $581,615. Total Project Cost: $775,486. To extend the public radio service of KSWS, 89.3 MHz, Sisseton, SD to serve additional members of the Dakota and Sioux nations. Six FM translators will be constructed from a list that includes eleven communities including Shakopee, Welsch, Granite Fall, and Redwood Falls in MN; Flandreau, Marty, Lower Brule and Ft. Thompson in SD; Niobrara and Ft. Totten in ND; and Ft. Peck in MT. A C-band uplink will be constructed in Sisseton SD and each of the six translator will have C-band downlink capability. A Ku-band uplink to provide news programming to the system and four production studios will also be constructed in Sisseton. The project will be affiliated with the ARIOS service which distributes Native American programming to public radio stations nationwide.

TN (Tennessee)

File No. 94039 CTB Mid-Atlantic Public Comm Fdn., 900 Getwell, Memphis, TN 38111. Signed By: Mr. Michael J. LaBonia, President & CEO/Treasurer. Funds Requested: $33,584. Total Project Cost: $67,168. To improve public television station WKNO–TV, Ch 10, in Memphis, TN by replacing the STL microwave link with hot standby, so the station may continue uninterrupted service to the 2,140,000 residents.

File No. 94047 CTN Univ. of Tennessee at Chattanooga, 615 McCallie Avenue, Chattanooga, TN 37403–2598. Signed By: Mr. Frederick W. Obear, Chancellor. Funds Requested: $49,666. Total Project Cost: $99,332. To establish a second two-way interactive video classroom, using T–1 transmission, on the applicant's campus. The facility will provide continuing education courses to rural health nurses and special education teachers. The project will serve southeast Tennessee, northeast Alabama, and northwest Georgia. The specific project objectives are as follows: to increase the number of rural health nurses trained in advanced childbirth care to better provide services to the women and children in these remote areas; to increase the number of certified special education teachers who work in the remote areas of southeast Tennessee; and to increase the number of master's level speech/language teachers in southeast Tennessee to state mandates for certification by the year 2000.

File No. 94103 CTB Upper Cumberland Broadcast Cncl, PO Box 2040, Cookeville, TN 38502. Signed By: Mr. Richard L. Castle, Jr., President & General Manager. Funds Requested: $230,270. Total Project Cost: $460,540. To improve the operation of public station WCTE-TV, Ch 22, Cookeville, TN, by replacing obsolete master control and production equipment, including video tape recorders and editing, a field camera, graphics system, an audio console, and test equipment.

File No. 94197 CRB University of TN at Chattanooga, 615 McCallie Avenue, Chattanooga, TN 37403–2598. Signed By: Mr. Frederick W. Obear, Chancellor. Funds Requested: $7,775. Total Project Cost: $15,550. To improve the signal of public radio station WUTC, 88.1 MHz, Chattanooga, TN, by replacing its obsolete shared-frequency analog microwave STL with a digital STL to reduce crosstalk from the shared frequency.

File No. 94262 CRB Guiding Hands for the Blind, Inc., 1970–D North Highland Ave., Jackson, TN 38305. Signed By: Mr. Ernest Harper, Jr., General Manager. Funds Requested: $90,000. Total Project Cost: $120,000. To construct a noncommercial public radio station operating on 88.7 MHz, Lexington, TN to provide information to visually and physically impaired residents of West Tennessee. The station would also provide the first public radio service to 33,000 people, and the first locally originated service to 99,000 additional persons. The applicant currently provides service for the visually impaired on a Second Audio Program (SAP) channel of WLJT, Ch. 11, Lexington. The proposed station will serve 133,000 people, which includes an estimated 2,500 visually impaired individuals.

File No. 94284 CTB West Tennessee Public TV Council, University of Tennessee @ Martin, Martin, TN 38237. Signed By: Mr. John C. Hesse, General Manager. Funds Requested: $258,016. Total Project Cost: $516,032. To improve public television station WLJT–TV, Ch. 11, in Lexington, KY by acquiring applicant owned first local production capability which will replace presently loaned production items. Equipment requested includes studio cameras, VTR's, audio console and related, monitors, intercom system, signal distribution/monitoring items and installation supplies. This project will enable this station to radically increase its local program production by not having to use not always available, badly worn, borrowed equipment.

TX Texas

File No. 94004 CTB South Texas Pub. Brdcstg. System, 4255 S. Padre Island Dr. No. 38, Corpus Christi, TX 78411. Signed By: Mr. Peter A. Frid, President and General Manager. Funds Requested: $718,500. Total Project Cost: $958,000. To improve the facilities of public television station KEDT–TV, Ch. 16, in Corpus Christi, by replacing worn out studio equipment including cameras, video tape recorders, character generator, video switcher, cart machines, increasing capacity of their routing switcher as well as other associated origination equipment. KEDT–TV also seeks to update transmitter to stereo and Secondary Audio Programming (SAP) and acquire appropriate test equipment. Station provides only public television signal to about 580,000 residents.

File No. 94010 PRTN Southwest Texas State University, 601 University Drive, San Marcos, TX 78666. Signed By: M. Marion Tangum, Director, Research & Spon Prog. Funds Requested: $134,601. Total Project Cost: $178,228. To conduct a feasibility study and develop a strategic plan for the telecommunications infrastructure within a fifteen county area of Southwest Texas for the purpose of considering possible collaborative efforts in distance learning projects at all levels of education, from elementary school through graduate level courses.

File No. 94016 CTN Alliance for Higher Education, 17103 Preston Road, Dallas, TX 75248–1373. Signed By: Dr. Allan Watson, President. Funds Requested: $465,342. Total Project Cost: $930,684. To purchase equipment for six "candid" video classrooms, one each at the Baylor College of Dentistry (Dallas), Collin County Community College (Plano), Dallas Education Center, East Texas State University (Commerce), Midwestern State University (Wichita Falls), and the University of North Texas Health Science Center (Fort Worth). Using the TAGER Television Network, these entities will produce instructional programming for new and historically underserved members of the population in K–12 education, teacher training, health, dental health, and allied health training.

File No. 94030 CTB University of Houston, 1600 Snith, Suite 3400, Houston, TX 77002. Signed By: Mr. E Dell Felder, Senior Vice Chancellor. Funds Requested: $295,410. Total Project Cost: $590,820. To improve the facilities of public television station KUHT–TV, Ch. 8, in Houston, by replacing (rebuilding) the aged and worn-out inter conductor tower transmission line. KUHT–TV also seeks to upgrade and replace its existing editing equipment by acquiring new digital editing equipment including video cassette recorders, production, switcher, audio console, edit controller, digital video effects, graphics generator and associated origination equipment. KUHT–TV provides the only public television signal to approximately 3.6 million residents.

File No. 94065 CRB University of Texas at Austin, P.O. Box 7726, University Station, Austin, TX 78713–7726. Signed By: Mr. Stephen A. Monti, Vice Provost. Funds Requested: $33,399. Total Project Cost: $66,800. To improve public radio station KUT–FM, 90.5 MHz, in Austin, by replacing worn-out origination equipment including tape recorders, digital cart machines, on-air and production microphones and a telephone hybrid. KUT–FM also seeks equipment that will allow it to meet FCC requirements for unattended operation. Station reaches more than 1 million people in central TX.

File No. 94144 CTN Houston Community College System, 22 Waugh Drive, P.O. Box 7849, Houston, TX 77270–7849. Signed By: Dr. Charles A. Green, Chancellor. Funds Requested: $146,513. Total Project Cost: $293,027. To establish a video production studio, with mobile capability, to originate educational and instructional programming for an educational access channel on the cable television system serving the city of Houston.

File No. 94149 CTN San Isidro Independent School Dist., Highway 1017, P.O. Box 10, San Isidro, TX 78588. Signed By: Mr. Lisandro Ramon, San Isidro Superintendent. Funds Requested: $292,045. Total Project Cost: $584,090. To establish a two-way, interactive distance learning network—the Valley Inter-Active Network, or VIA–MET–1—interconnecting four Independent School Systems in South Texas: San Isidro, Raymondville, Mirando City, and San Perlita. The project will use compressed video technology, with the programming transmitted over the fiber optics lines of the Valley Telephone Cooperative; the Cooperative is an active partner in the proposal.

File No. 94182 PTN Amarillo Junior College District, 2201 South Washington, Amarillo, TX 79109. Signed By: Mr. Neil Mosley, Vice President for Business. Funds Requested: $48,908. Total Project Cost: $55,128. To develop a comprehensive telecommunications plan for a distance learning system that would provide instructional courses and educational programs throughout the twenty six counties of the northern Texas Panhandle. The plan would be developed by the six colleges and universities in the Texas Higher Education Consortium of Texas and Oklahoma, and would cooperatively involve institutions and agencies in K–12 education, continuing education, government services and other non-profit activities to consider the feasibility of options.

File No. 94185 CRB North Texas Public Brdcstg., Inc., 3000 Harry Hines Blvd., Dallas, TX 75201. Signed By: Mr. Richard J. Meyer, President. Funds Requested: $18,876. Total Project Cost: $37,752. To extend the signal of public radio station KERA–FM, 90.1 MHz, in Dallas by constructing a new FM translator on 88.7 MHz, in Wichita Falls. Translator will bring first public radio signal to 68,696 residents. In addition, KERA–FM seeks Integrated Service Digital Network (ISDN) system equipment which will allow it direct access to the uplink in Austin.

File No. 94192 PTB Alamo Public T/C Council, 501 Broadway, San Antonio, TX 78215. Signed By: Ms. Joanne Winik, President and General Manager. Funds Requested: $23,750. Total Project Cost: $23,750. To plan for the extension of public television station KLRN–TV, Ch. 9, in San Antonio, by constructing a lower power television station in Laredo. The initial programming would originate largely from KLRN–TV but there would be a provision for local origination insertion. This would provide first public television service to approximately 38,600 residents. Project would conduct engineering surveys, research microwave tower locations and prepare the appropriate FCC applications for the new station.

File No. 94195 PTN Texas Environmental Center, 1609 Virginia Avenue, Austin, TX 78704. Signed By: Mr. Marshall Frech, Director. Funds Requested: $73,340. Total Project Cost: $155,340. A proposal to plan for the extension of an electronic environmental library project initiated by the Texas Environmental Center and Rice University, using high-speed phone lines and the internet in several schools providing students with the opportunity to monitor water quality of area rivers and to contribute data to a state assessment of area watersheds. The plan would consider the expansion of this network and the testing of teleconference lines so that water monitoring trainers could instruct students from remote sites, to standardize scientific procedures and ensure validity of the data collected.

File No. 94244 CRB University of Texas at Austin, P.O. Box 7726, University Station, Austin, TX 78713–7726. Signed By: Mr. Stephen A. Monti, Vice Provost. Funds Requested: $91,534. Total Project Cost: $122,046. To provide the first public radio service to 99,000 residents of Tom Green County by constructing an FM repeater station in San Angelo operating on 91.1 MHz. The station will rebroadcast the program service of KUT, 90.5 MHz, Austin and will be fed by satellite delivery.

File No. 94252 CTN Texas Tech. University, 17th Street & Indiana Avenue, Lubbock, TX 79409–2161. Signed By: Mr. Donald R. Haragan, Executive Vice President. Funds Requested: $198,941. Total Project Cost: $265,255. To acquire the distribution and origination equipment necessary to activate a fiber optic distribution system from Texas Tech University to school systems, universities, regional education service centers and medical facilities in southwestern Texas, to provide distance learning coursework at many levels from adult basic education to GED to graduate courses in areas such as health sciences. The proposed two-way interactive network would interface with and interconnect the University's Health Science Center TechLink Network, presently using T–1 lines with future expansion to DS–3 services; and the West Texas Educational Network which provides a compressed video service through T–1 lines.

File No. 94289 PTN Austin Independent School District, 1111 West 6th Street, Austin, TX 78703–5399. Signed By: Mr. Terry N. Bishop, Superintendent. Funds Requested: $105,424. Total Project Cost: $146,467. To develop a telecommunications plan as a cooperative project among representatives of a consortium that includes school districts, colleges and other organizations formed as the Central Texas Distance Learning Network, to identify, integrate and utilize non-broadcast technologies throughout ten counties in central Texas for distance learning classes and training programs. The proposed plan would determine the appropriate equipment and potential educational materials for both one-way and two-way interactive systems for video, voice and data services to as many as forty school districts, incorporating a planned fiber optic network in the overall design.

UT (Utah)

File No. 94248 PRTB University of Utah, 101 Wasatch Drive, Salt Lake City, UT 84112. Signed By: Mr. Ted Capener, Vice President. Funds Requested: $17,966. Total Project Cost: $20,417. To plan for the construction of a transmission facility in southwestern UT. Proposed facility would provide service from public radio and television stations KULC–TV, Ch. 9; KUED–TV, Ch. 7; and KUER–FM, 90.1 MHz. Although much of this area is covered by a series of public TV/radio translators, the proposed facility should improve signal penetration and allow for some of the existing translators to be relocated to pockets that are unserved.

File No. 94260 CRTB University of Utah, 101 Wasatch Drive, Salt Lake City, UT 84112. Signed By: Mr. Ted R. Capener, Vice President. Funds Requested: $197,157. Total Project Cost: $274,106. To extend the signal of KULC–TV, Ch. 9, Salt Lake City, by activating nine (9) public television translators to carry the educational/instructional programming of KULC–TV. Project will also extend the (PBS) signal of KUED–TV, Ch. 7, Salt Lake City, by installing a new translator and replacing two worn-out translators. Lastly, to extend the signal of public radio station KUER–FM 90.1 MHz, in Salt Lake City, by activating two new translators in Dutch John-Manila and Mt. Hillers-Ticaboo. This project affects the following counties in UT: Kane, Garfield, Wasatch, Millard, Iron, Tooele, Juab, Daggett, and Duchesne.

VA (Virginia)

File No. 94015 PTN Arlington Cmmnty Access Corp. & TV, 3401 N. Fairfax Drive, # 300, Arlington County, VA 22201. Signed By: Mr. Paul LeValley, Executive Director. Funds Requested: $85,963. Total Project Cost: $85,963. To conduct a comprehensive study of Arlington County, Virginia's non-profit service organizations regarding their telecommunications needs, in order to effectively plan methods to use the resources of Arlington Community Television, which incorporates public access television and other methods of telecommunications in providing community services.

File No. 94033 CRB CAPRA, Inc., Route 2, Box 50, Mechanicsville, VA 23111. Signed By Ms. Catherine Patterson, Project Manager. Funds Requested: $11,820. Total Project Cost: $23,640. To construct a satellite downlink at WCPB–FM, a proposed public radio station for operation on 91.9 MHz in Charlottsville, VA. The satellite downlink will enable WCPB–FM to provide programming distributed nationally by the public radio satellite system.

File No. 94042 CTN Clarendon Foundation, 13422 Elliot An Court, Herndon, VA 22071. Signed By: Mr. Kemp R. Harshman, President. Funds Requested: $4,200. Total Project Cost: $8,400. To expand the services provided by the applicant through the purchase of a satellite downlink and S–VHS recorder to record public domain educational programs for distribution by ITFS systems in Henderson, NV, Syracuse, NY and other potential locations.

File No. 94050 CTB Hampton Roads Educ. T/C Assoc., 5200 Hampton Boulevard, Norfolk, VA 23508. Signed By: Mr. John R. Morison, President and General Manager. Funds Requested: $571,719. Total Project Cost: $1,143,438. To improve the transmission facilities of public television station WHRO–TV, Ch. 15, Norfolk by replacing a 20 year old transmitter and related equipment. The project will also replace three 14 year old 1" videotape recorders. WHRO–TV serves 1.6 million people in the southeast Virginia and Northeast North Carolina.

File No. 94055 CRB James Madison University, Seeger Hall, 821 South Main St., Harrisonburg, VA 22807. Signed By: Mr. Henry J. Schiefer, Asst. V.P. Finance. Funds Requested: $9.602. Total Project Cost: $19,204. To improve the production capabilities of noncommercial radio station WXJM–FM, 88.7 MHz., Harrisonburg, by replacing an obsolete audio console. WXJM–FM is operated by the students of James Madison University and serves 89,300 residents of Rockingham County.

File No. 94236 CTN Old Dominion University, Room 228 Education Building, Norfolk, VA 23539-0228. Signed By: Dr. James C. Phillips, Director, Academic TV Services. Funds Requested: $1,822,352. Total Project Cost: $3,644,705. To extend the satellite delivered instructional services of Old Dominion University and initiate a new higher education service called Teletechnet. This service will provide the final two years of bachelors degree programs via satellite to 13 community colleges within Virginia. The project will fund 5 instructional classrooms at Old Dominion University and Ku-band satellite video downlinks, VSAT downlinks for data, and instructional classrooms at each community college. Community Colleges participating in the project are located in Weyers Cave, Clifton Forge, Dansville, Locust Grove, Middletown, Dublin, Annandale, Martinsville, Richlands, Roanoke, and Wytheville.

File No. 94302 CTN Black College Satellite Network, 2011 Crystal Drive, Suite 1100, Arlington, VA 22202.

Signed by: Dr. Mabel P. Phifer, President. Funds Requested: $1,151,250. Total Project Cost: $1,535,000. To add five additional satellite uplinks to the Black College Satellite Network (BCSN) in order to provide additional minority programming for distribution to 105 historically and predominantly black colleges and universities nationwide. New satellite uplinks will be placed at Tuskegee University in Alabama, Hampton University in Virginia, Cheumney University in Pennsylvania, Clark Atlanta University in Georgia, and at BCSN headquarters in Washington, DC. Microwave equipment will also be constructed to connect Bowie State University in Maryland and Delaware State University in Delaware with existing BCSN member school uplinks.

File No. 94314 CTB Great WA Educ. T/C Association, 3620 South 27th Street, Arlington, VA 22206. Signed by: Mr. Jerry Butler, V.P. Eng and Computer Service. Funds Requested: $595,300. Total Project Cost: $1,190,600. To improve the production capabilities of public television station WETA–TV, Ch. 26, Washington, by replacing 10 videotape recorders over 10 years old with an automated tape cart system. The videotape equipment will permit continuation of production of local and national programming.

File No. 94318 CRB Greater WA Educ. T/C Association, 3700 S. Four Mile Run Drive, Arlington, VA 22206–2304. Signed by: Mr. Tom Livingston, Senior VP/GM WETA–FM. Funds Requested: $324,259. Total Project Cost: $432,345. To establish a repeater FM station operating on 91.7 MHz, Leonardtown, MD to provide the first public radio service to 130,000 people in southern Maryland and the northern neck of Virginia. The proposed station will rebroadcast the program service of WETA–FM, Washington.

VT (Vermont)

File No. 94001 CRB Vermont Public Radio, 107.9 Ethan Allen Avenue, Colchester, VT 05446. Signed by: Mr. Mark Vogelzang, President and CEO. Funds Requested: $194,970. Total Project Cost: $389,940. To replace obsolete studio equipment and improve the program production capabilities of Vermont Public Radio, which operates three stations in that state—in Windsor, Colchester, and Rutland. Vermont Public Radio is moving its headquarters—which will include its main production facility—from Windsor to Colchester. This project is part of that relocation. The project would purchase full master control room, production control room, news production room, and talk studio equipment. It would also purchase subcarrier units to permit Vermont Public Radio to use Vermont ETV's existing microwave system; this would provide a technically superior transmission of Vermont Public Radio's signal from its main studio to its two repeater stations.

File No. 94044 CTBN Vermont ETV, Inc., 88 Ethan Allen Avenue, Colchester, VT 05446–3129. Signed by: Mr. John E. King, VP/Finance & Administration. Funds Requested: $1,042,500. Total Project Cost: $1,390,000. To improve the switching and interconnection facilities of Vermont ETV, Inc. ("VETV"), which operates four stations and offers the sole public TV signal to most of the State's residents. For VETV's control center in Colchester, the project would purchase machine control and signal switching systems as well as a control room automation package. This would increase the center's signal routing capacity and greatly improve the integration of its signal and control systems. The proposed microwave would provide a full duplex, digital system connecting the Colchester studio to VETV's four transmission sites. It would be able to transmit three TV, 12 audio, and many data circuits. This would enable VETV to distribute diverse distant learning services via cable television, wireless cable, and ITFS and to offer data interconnection to varied noncommerical entities.

File No. 94094 PTBN Critical Lang&Area Stud's Cons, Inc., Kipling Road, P.O. Box 676, Brattleboro, VT 05302. Signed by: Mr. Harry G. Barnes, Jr., Executive Director. Funds Requested: $82,701. Total Project Cost: $108,707. To plan a telecommunications service for the forty-three member organizations of the Critical Language and Area Studies Consortium (CLASC) plus other K–12 and higher education schools, distance learning providers, national foreign language centers, research institutes and other organizations involved in foreign language education and training. The plan would assess possible options for a national and potentially international interactive distance learning network, particularly to focus on Arabic, Chinese, Japanese and Russian languages and cultures.

WA (Washington)

File No. 94032 CRB Washington State University, Administration Road, Pullman, WA 99164–2530. Signed by: R.V. Smith, Vice Provost for Research. Funds Requested: $315,996. Total Project Cost: $450,801. To bring first public radio service to 62,428 people in eastern Washington by constructing FM repeaters at Moses Lake and Walla Walla, to carry the signal of the Northwest Public Radio Network in Pullman, WA; to construct new digital audio interconnection facilities to provide service to those stations; and to replace an analog microwave interconnection that can no longer provide service to other receiving stations on the system.

File No. 94034 CTB Washington State University, Administration Road, Pullman, WA 99164–2530. Signed by: Mr. R.V. Smith, Vice Provost and Dean. Funds Requested: $35,407. Total Project Cost: $70,814. To provide local program production capability for public television station KNTW, Ch. 31, Richland, WA, a repeater station of public station KWSU–TV, Pullman, WA, by equipping an editing suite and an electronic field production unit.

File No. 94161 CTB KCTS Television, 401 Mercer Street, Seattle, WA 98109. Signed by: Mr. Burnill F. Clark, President and CEO. Funds Requested: $249,663. Total Project Cost: $499,326. To improve the production capability of public television station KCTS, Ch. 9, Seattle, WA, by replacing unreliable and obsolete analog videotape machines, a switcher and a digital video effects machine. The station serves 3 million persons.

File No. 94171 PRTN City of Richland, 505 Swift Blvd., Richland, WA 99352. Signed by: Mr. Joseph C. King, City Manager. Funds Requested: $150,000. Total Project Cost: $250,000. To develop a master plan for a civic information highway within the city of Richland, Washington, that would be a coordinated effort involving community stakeholders including educational institutions at all levels, libraries, foundations, public utilities and services, and local government agencies. In developing the plan and consensus for the aspects of a voice, video and data network for distance learning/training, public safety, emergency communications and other services, the city would appoint a Citizen's Advisory Council to provide advice and recommendations.

File No. 94175 CRB Centralia College, 600 West Locust, Centralia, WA 98531. Signed by: Dr. Henry P. Kirk, President. Funds Requested: $182,231. Total Project Cost: $242,975. To replace and relocate obsolete transmitter and tower, and to upgrade studio production equipment at KCED–FM, 91.3 MHz, Centralia, WA, which will provide first public radio service to 30,000 persons in the proposed coverage area.

WI (Wisconsin)

File No. 94041 CRTB Educational Communications Board 3319 West

Beltline Highway, Madison, WI 53713–4296. Signed by: Mr. Glenn A. Davison, Executive Director. Funds Requested: $599,917. Total Project Cost: $1,199,835. To improve the signals of two public radio stations, two public television stations, and one television translator in the Wisconsin statewide public broadcasting system by replacing various worn-out and outmoded components of their transmission systems. The stations are WHHI–FM, 91.3 MHz, Highland; WHWC–TV/FM, Ch. 28/88.3 MHz, Menomonie; WHRM–FM, 90.9 MHz, Wausau; and translator W64AU, Adams. The improvements will assist approximately 120,000 persons to receive better signals from these stations.

File No. 94189 CTB University of Wisconsin, 821 University Avenue, Madison, WI 53706. Signed by: Ms. Cheryl E. Gest, Admin. Officer/Res. Adm-Fin. Funds Requested: $150,000. Total Project Cost: $300,000. To improve the production capability of WHA Television/Green Bay, Green Bay, WI, by replacing worn-out and unreliable field and studio production equipment, including cameras and a character generator. The facility provides programming to the six stations of Wisconsin Public Television, which serve the entire state.

File No. 94201 PTN University of Wisconsin Centers, 150 E. Gilman Street, Madison, WI 53703. Signed by: Mr. Robert Erikson, Director, Research Admin. Funds Requested: $50,041. Total Project Cost: $57,589. To design a distance education network to connect the thirteen campuses that comprise the University of Wisconsin Centers, with the central administration in Madison and with local, regional, state and national networks. The proposed distance learning network could potentially involve various technologies in an interconnected system that would enable participating organizations in higher education, professional development, K–12 education, libraries and government offices to be included in interactive video, voice and data services.

File No. 94269 CRB University of Wisconsin, 821 University Avenue, Madison, WI 53706. Signed by: Ms. Cheryl E. Gest, Administrative Officer. Funds Requested: $114,710. Total Project Cost: $229,420. To improve the production capability of public station WHA–TV, Ch. 21, Madison, WI, by developing a digital video exchange network to allow for the timely exchange of works in progress among widely dispersed workstations for collaborative productions.

File No. 94305 CRB White Pine Community Bdcstg, Inc., 303 West Prospect Street, Rhinelander, WI 54501. Signed By: Mr. Robert M. Fiocchi, President. Funds Requested: $30,800. Total Project Cost: $30,800. To expand the signal of public radio station WXPR, 91.7 MHz, Rhinelander, WI, by raising the power of its translator, W265AI, at Ironwood, WI, to 100 watts and providing first public radio service to 3,500 residents in addition to the more than 12,500 persons presently served by the translator; to improve the production capability of WXPR by replacing worn-out and obsolete equipment, including an audio console, a CD player, and switchers. The project will also make some minor adjustments to the operation of the main transmitter. WXPR currently serves 63,000 residents of northern Wisconsin.

WV (West Virginia)

File No. 94008 CTB WV Educational Bdcstng Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Acting Executive Director. Funds Requested: $116,080. Total Project Cost: $232,160. To improve public television station WPBY–TV, Ch 33, in Charleston, WV, by upgrading its local production capability to meet PBS station standards, through securing Beta tape machines, a portable camera and a dockable tape machine, so the station may continue quality State, and PBS, acceptable production of programs to serve the West Virginia Network of 772,451 residents and the national audience.

File No. 94028 CRB WV Educational Bdcstng Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Acting Executive Director. Funds Requested: $523,611. Total Project Cost: $758,130. To improve the West Virginia Public Radio Network, whose originating station is WVPN–FM in Charleston, WV, by constructing two repeater stations, one at Petersburg and one at White Sulphur Springs, each with its own satellite downlink, bringing first signal to 80,575 unserved residents. Additionally, applicant is requesting an upgrade of the Charleston production studio which includes 4 studio consoles and 6 downlinks for its 6 other radio stations resulting in providing quality programs to many unserved rural people and increase the signal reliability over the present microwave system. This network currently serves 1,956,264 people.

File No. 94309 CTB WV Educational Bdcstng Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Acting Executive Director. Funds Requested: $149,500. Total Project Cost: $299,000. To improve public television station WNPB–TV, Ch 24, in Morgantown, WV by replacing basic studio production equipment, including 3 studio cameras, video monitors, switcher, video control console and vectorscope, so the station may continue to serve 718,016 residents in the State TV Network with programs of statewide interest.

WY (Wyoming)

File No. 94069 CRB Northern Arapaho Tribe, 533 Ethete Road, Ethete, WY 82520. Signed By: Mr. John Smith, Chairman, Radio Commun. Commit. Funds Requested: $325,744. Total Project Cost: $434,325. To construct a new noncommercial radio station operating on 89.5 MHz, Ethete, to provide the first public radio service to 35,733 people in the Big Horn Basin and the Wind River Indian Reservation. The station will provide local broadcasts and also rebroadcast programming from KUWR(FM), Wyoming Public Radio in Laramie. A satellite receive terminal will provide Native American programming from the ARIOS program service.

File No. 94306 CTN Campbell Co. Board of Cooperative, 525 West Lakeway, Suite 107, Gillette, WY 82718. Signed By: Mr. Mark A. Higdon, Superintendent. Funds Requested: $431,000. Total Project Cost: $806,000. To establish a distance learning network using varied technologies to serve diverse entities in Campbell Co. and the community of Kaycee in southern Johnson Co., WY. The project would purchase a four-channel ITFS system (with two transmission sites), a fixed VSAT uplink, a mobile VSAT uplink, video classrooms, a C/Ku-band satellite video receive-only earth station, a telephone bridge, codec equipment, a community fiber loop, and other associated equipment.

AK (Alaska)

File No. 94002 CRB, Old File No. 93080, Raven Radio Foundation, Inc., Sitka, AK.

File No. 94022 CRB, Old File No. 93234, Kuskokwim Public Bdcstg Corp, McGrath, AK.

File No. 94142 CTBN, Old File No. 93259, University of Alaska-Fairbanks, Fairbanks, AK.

File No. 94285 CRB, Old File No. 93191, Kashunamiut School District, Chevak, AK.

AL (Alabama)

File No. 94143 CTB, Old File No. 93084, Auburn University, Auburn Univ., AL.

CA (California)

File No. 94212 CRB, Old File No. 93125, Mendocino County Public Bdcstg, Philo, CA.

File No. 94249 CRB, Old File No. 93019, Santa Monica Community College, Santa Monica, CA.

CO (Colorado)

File No. 94214 CTB, Old File No. 93037, University of Southern Colorado, Pueblo, CO.

CT (Connecticut)

File No. 94019 CRB, Old File No. 93226, Connecticut Radio Info. System, Inc., Wethersfield, CT.

File No. 94038 CTB, Old File No. 93293, Connecticut Public Brdcstg., Inc., Hartfort, CT.

FL (Florida)

File No. 94120 CTB, Old File Nos. 93285, 92052, Community Communications, Inc., Orlando, FL.

File No. 94150 CTB, Old File No. 93288, WJCT, Inc., Jacksonville, FL.

File No. 94282 CTB, Old File No. 93235, FL Keys Educat'l Broadcasters, Inc., Key West, FL.

KS (Kansas)

File No. 94119 CTB, Old File No. 93271, Smoky Hills Public Television, Bunker Hill, KS.

MA (Massachusetts)

File No. 94199 CRB, Old File No. 93255, University of Massachusetts, Boston, MA.

MI (Michigan)

File No. 94012 CTB, Old File No. 93090, Grand Valley State University, Grand Rapids, MI.

File No. 94127 CTB, Old File No. 93116, Michigan State University, East Lansing, MI.

File No. 94272 CRB, Old File No. 93179, Central Michigan University, Mt. Pleasant, MI.

MO (Missouri)

File No. 94200 CTB, Old File No. 93005, Ozarks Public T/C, Inc., Springfield, MO.

File No. 94206 CTB, Old File No. 93278, St. Louis Regional Ed & Public TV, St. Louis, MO.

NC (North Carolina)

File No. 94299 CTN, Old File No. 93071, Pembroke State University, Pembroke, NC.

NY (New York)

File No. 94058 CTB, Old File No. 93255, WMHT Educational Telecomm., Inc., Schenectady, NY.

File No. 94240 CTB, Old File No. 93061, Mountain Lake Public T/C Council, Plattsburgh, NY.

OK (Oklahoma)

File No. 94152 CRB, Old File No. 93300, Langston University, Langston, OK.

File No. 94292 CRB, Old File No. 93158, East Central University, Ada, OK.

TN (Tennessee)

File No. 94007 CTB, Old File No. 93137, Metropolitan Board of Pub. Educ., Nashville, TN.

TX (Texas)

File No. 94003 CRB, Old File No. 93266, South Texas Public Broadcasting, Corpus Christi, TX.

File No. 94181 CTB, Old File No. 93189, Capital of TX Public T/C Council, Austin, TX.

VA (Virginia)

File No. 94087 CTB, Old File Nos. 93168, 92100, Shenandoah Valley ETV Corp., Harrisonburg, VA.

WA (Washington)

File No. 94241 CRB, Old File No. 93114, Bellevue Community College, Bellevue, WA.

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federal register

Friday
May 13, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3753; FR–3669–N–01]

NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1994.

SUMMARY: HUD is announcing the availability of $25 million for Fiscal Year 1994 under the Public and Indian Housing Tenant Opportunities Program (TOP). HUD has reinvented resident management and created the TOP which expands the range of the resident managed activities so that resident organizations can set priorities based on the needs in their communities. The program provides assistance to resident grantees, including Resident Councils (RCs), Resident Management Corporations (RMCs), Resident Organizations (ROs), National Resident Organizations (NRO), Statewide Resident Organizations (SRO), and Regional Resident Organizations (RRO), to fund training and other tenant opportunities, such as the formation of such entities, identification of the relevant social support needs, and securing of such support for residents of public and Indian housing. The NOFA discusses eligibility, funding amounts, selection criteria, how to apply for funding, and the selection process.

DATES: Application kits may be requested beginning May 10, 1994. The application deadline will be specified in the application kit, and will be firm as to date and time. Applicants will have at least 60 days from today's publication of the NOFA to prepare and submit their proposals.

ADDRESSES: To obtain a copy of the application kit, please write the Resident Initiatives Clearinghouse, Post Office Box 6424, Rockville, MD 20850, or call the toll free number 1-800–955–2232. Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and should refer to document FR–3669. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins or Barbara J. Armstrong, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street SW., room 4112, Washington, DC 20410. Telephone number (202) 708–3611. All Indian applicants may contact Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street SW., room 4140, Washington, DC 20410. Telephone number (202) 708–1015. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program. (Other than the "800" TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0127.

I. Purpose and Description

A. Authority

Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

B. Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100–42, approved February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20. In part, section 20 states as its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] * * * to promote formation and development of resident management entities" (Sec. 20(a)). Under section 20(f)(1):

> [The Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.]

Under section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public and Indian housing project, and subsection (f)(3) limits the assistance within the context of funds available under section 14 of the 1937 Act (Comprehensive Improvement Assistance Program). Section 20 is implemented in 24 CFR part 964 and, for Native American Programs, in 24 CFR part 905, subpart O. The rules set forth, among other things, the policies, procedures, and requirements of resident participation and management of public and Indian housing.

In FY 1988, $2.5 million was awarded to 27 resident organizations; in FY 1989, $2.5 million was awarded to 35 resident organizations; in FY 1990, $2.4 million was awarded to 37 resident organizations; in FY 1991, $4.9 million was awarded to 96 organizations; in FY 1992 $4.6 million was awarded to 94 organizations; and in FY 1993, $4.7 million was awarded to 94 organizations. In FY 1994, $25 million is available for technical assistance and training for activities under the TOP program.

Today, 383 resident groups throughout the country are in training under this public and Indian housing program. HUD supports the resident management movement, as well as other self-sufficiency and improvement programs designed to benefit public and Indian housing residents. The Office of Resident Initiatives in Public and Indian Housing has been created to deliver a variety of resident initiative programs, with assistance from a network of Resident Initiatives Coordinators (RICs) or Community Relations and Involvement Specialists (CRIs) in HUD's field structure. The RICs/CRIs are available to provide direct assistance to residents and resident groups interested in resident initiatives programs.

C. Key Features of This NOFA

(1) This NOFA announces the new Tenant Opportunity Program (TOP), which was formerly the Public and Indian Housing Resident Management Program. Resident organizations and housing authorities across the country overwhelmingly requested that the Department of Housing and Urban Development (HUD) revamp the Resident Management Program to meet the needs in their communities for business development, education, job training and development, social services, and opportunities for other self-help initiatives. In complying with the request of residents and housing authorities, HUD has reinvented resident management and created the TOP. The new TOP will enable resident organizations to establish priorities based on the needs in their public and Indian housing communities aimed at furthering economic lift and independence.

The authority for the TOP program comes from Section 20 of the 1937 Act; section 20(f) authorizes technical assistance and training. Financial assistance in the form of technical assistance grants is provided by the Secretary to resident grantees to prepare for management activities in their housing development (hereinafter referred to as TOP technical assistance grants). Technical assistance grants are available for "the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects and the securing of such support."

TOP technical assistance grants prepare residents to manage their projects or portions of their projects. The results are significant and multifaceted. For example, resident-managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (i.e., child care and other youth projects). TOP will provide public and Indian housing residents the opportunity to be trained and move toward a responsible role in their community. The training will aim to enhance the functioning of the resident council as well as gain skills to engage in resident managed activities in its community. TOP will strongly encourage resident organizations to develop a partnership with a public or Indian housing authority (hereafter referred to as "HA"). Secretary Cisneros is committed to building a real partnership among HAs, residents, and HUD.

(2) The "Mini Grants" are eliminated this year for the purpose of streamlining program requirements. RCs/RMCs/ROs that have been in existence for several years or that were recently formed may receive up to $100,000 for start-up activities, as well as for community organizing, participation in public and Indian housing and community affairs, and training in other tenant opportunities activities.

(3) All resident grantees that are selected for funding (including additional funding grantees) will access the grant funds through a line of credit control system (LOCCS), as explained in Section I.D, "Funding," of this NOFA.

(4) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and Budget for activities proposed by the applicant. This process facilitates the expeditious execution of a TOP Technical Assistance Grant (TOP TAG) for those applicants that are selected to receive funding.

(5) The information listed below is regarding *all HOPE I grantees:*

All HOPE I applicants' applications will be screened. A cross-check will be made against the HOPE I Planning grants and HOPE I Implementation grants, to assure compliance with section 20(f)(4) of the 1937 Act, which states: "The Secretary may not provide financial assistance under this subsection to any resident management corporation or resident council with respect to which assistance for the development or formation of such entity is provided under title III." HOPE I Planning and Implementation grantees were required to propose plans to establish a RC, RMC, or cooperative association where one did not exist for the proposed homeownership site, including the development or formation of that entity. In addition, HOPE I Full Planning and Implementation grant applicants were expected to include in their applications all eligible activities necessary to make their proposed homeownership program feasible (even if some of the proposed activities were to be carried out with non-HOPE I funds, such as resident management funds). Consequently, in reviewing Tenant Opportunities Program grant applications, the following rules apply:

Rule 1. An applicant for TOP funds that has received a HOPE I Full Planning or Implementation grant (as a lead or joint applicant) may not also receive a TOP grant, unless the applicant proposed in its HOPE I application to use resident management funding to carry out those activities.

Rule 2. An applicant for TOP funds that has received a HOPE I Mini Planning grant (as a lead or joint applicant) may not receive a TOP grant for any activity proposed for funding in the HOPE I grant.

(6) All applicants will have an opportunity to correct technical deficiencies in this application submission as provided for in this NOFA.

D. Funding

As noted, $25 million is being made available on a competitive basis under this NOFA to resident grantees that submit timely applications and are selected for funding. Section 20 provides that not more than an aggregate of $100,000 may be approved with respect to any TOP project.

Of the $25 million total current funds, $1 million will be awarded to National Resident Organizations (NROs), Statewide Resident Organizations (SROs), and Regional Resident Organizations (RROs) to provide technical assistance to public and Indian housing residents desiring either to establish an RC/RMC/RO where one does not exist or organize an inactive RC/RMC/RO. The awards will be competitive, using the Rating Factors in Section I.M of this NOFA, and applicants must meet eligibility requirements.

With the remainder of the available funding, the Department will be providing two kinds of grants: (1) Basic Grants; and (2) Additional Grants.

Basic Grants

All resident grantees that are selected for funding (including additional funding grantees) will access the grant funds through a line of credit control system (LOCCS), based on the line items approved in the work plan/budget. To monitor and ensure the progress of the funded resident grantees this year, each resident grantee will be allowed to draw down up to 10% of the grant funds to begin implementing Tasks 1 and 2 of the workplan. If the resident grantee has reached the 10% limit and all activities set forth in Tasks 1 and 2 are not completed, the resident grantee will not be allowed to draw down any additional funds until all activities are completed. The local field office will monitor this progress through the semiannual progress reports that are required to be submitted by the resident grantees.

Additional Grants

RCs/RMCs/ROs selected for funding in FYs 1988–1993 (including a mini-grant for start-up activities) that received less than a total of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000. A RC/RMC/RO considered for additional funding will be asked to demonstrate progress based on its Work Plan previously approved by HUD. All additional grantees will be evaluated to determine if Tasks 1 and 2 of the workplan have been completed. If the tasks are not completed, the grantee will follow the same procedures as the Basic Grantees and, upon completion of the tasks, proceed to complete all other tasks listed in the workplan.

This year applicants will not be disqualified for funding if all of the activities identified in the work plan are not completed. However, applicants applying for additional grants will receive a higher score if the RC/RMC/RO can demonstrate the accomplishment of all of the following activities:

(1) Developed an active community organization that includes democratically elected officers;

(2) Issued by-laws governing the operation of the organization;

(3) Developed an organizational structure that consists of one or more of the following: floor/block captains or residential community groups and program committees to carry out specific tasks;

(4) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function;

(5) Identified community needs and interests for achieving resident management, and determined the level and degree of skills and community participation available to support program development;

(6) Obtained a Memorandum of Understanding (MOU) between the RC/RMC/RO and the HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, etc.) and the activities to be conducted by the RC/RMC/RO;

(7) Completed the first phase of the Board and Leadership Training provided by the consultant/trainer that is selected by the RC/RMC/RO; and

(8) Has formal recognition from the HA as the duly elected RC/RMC/RO to represent residents in meetings with the HA or other entities.

E. TOP Technical Assistance Grant (TOP TAG)

Grant awards will be made through a TOP Technical Assistance Grant (TOP TAG), which defines the legal framework for the relationship between HUD and a resident grantee for the proposed activities approved for funding. The TAG will contain all applicable requirements, including administrative requirements such as progress reports, a final report, a final audit, and accessing the Line of Credit Control System (LOCCS) to draw down funds. All necessary materials regarding the TAG will be furnished at a later date to applicants that are selected to receive funding.

F. Definitions

The *following definitions apply to applicants:*

National Resident Organization (NRO). An incorporated nonprofit organization or association for public or Indian housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States); and

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations.

Regional Resident Organization (RRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

(1) It is regional (i.e., not limited by HUD Areas, including Tribal Areas); and

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations.

Statewide Resident Organization (SRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

(1) It is statewide; and

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations.

The *following definitions apply to Public Housing:*

Project. Includes any of the following that meets the requirements of 24 CFR part 964:

(1) One or more contiguous buildings;

(2) An area of contiguous row houses;

(3) Scattered site buildings.

Resident Council (RC)/Resident Organization (RO). An incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the tenants it purports to represent;

(2) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);

(4) It must have a democratically elected governing board; and

(5) The voting membership of the governing board must consist of tenants of the project or projects that the tenant organization or resident council represents.

Resident Management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA.

Resident Management Corporation (RMC). The entity that proposes to enter into, or enters into, a management contract with a PHA that meets the requirements of subpart C of 24 CFR part 964. The entity must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State in which it is located;

(2) It may be established by more than one tenant organization or resident council, so long as each organization or council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation;

(3) It must have an elected Board of Directors;

(4) Its by-laws must require the Board of Directors to include representatives of each resident council involved in establishing the corporation;

(5) Its voting members must be tenants of the project or projects it manages;

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project; and

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

The *following definitions apply to Indian Housing:*

Project. Includes any of the following that meet the requirements of 24 CFR part 905.962:

(1) One or more contiguous buildings;

(2) An area of contiguous row houses;

(3) Scattered site buildings;

(4) Scattered site single-family units.

Resident Management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident Management Corporation (RMC). A Resident Management Corporation is an entity that proposes to enter into, or enters into, a management contract with an IHA under this NOFA. The corporation must have each of the following characteristics:

(1) It is a nonprofit organization that is incorporated under the laws of the State or Indian tribe within which it is located;

(2) If it is established by more than one resident organization, each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation;

(3) It has an elected Board of Directors;

(4) Its by-laws require the Board of Directors to include representatives of each resident organization involved in

establishing the corporation. (It may serve as both the resident management corporation and the resident organization, so long as the corporation meets the requirements of this section for a resident organization.);

(5) Its voting members are required to be residents of the project or projects it manages;

(6) Its establishment is approved by the resident organization or, if there is no organization, creation of an organization is approved by a majority of the households of the project for the purpose of determining the feasibility of establishing a RMC to manage the project.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It is representative of the residents it purports to represent.

(2) If it represents residents in more than one project or in all of the projects of an IHA, it fairly represents residents from each project that it represents.

(3) It has adopted written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It has a democratically elected governing board. The voting membership of the board shall consist of the residents of the project or projects that the RO represents.

G. Eligibility

Only organizations that meet the definitions of a RC/RMC/RO or a NRO/RRO/SRO set forth under the subheading "Definitions" (Section I.F) of this NOFA will be eligible for funding under this NOFA, as follows:

(1) A RC/RMC/RO that has been in existence for several years as well as new emerging organizations may apply for a basic grant of up to $100,000.

(2) A RC/RMC/RO selected for funding in FYs 1988–1993 that received less than the statutory maximum of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000. The RC/RMC/RO will receive consideration for the additional amount based on the Ranking Factors contained in Section I.L of this NOFA. No special considerations will be given to previously funded applicants.

(3) Projects that were awarded the maximum total amount of $100,000 in FYs 1988–1993 are not eligible to apply.

(4) A RC/RMC/RO that represents more than one project may apply on behalf of some or all of the projects it represents. In that case, an individual project represented by the organization may not apply for technical assistance funding for the same activities that are included in the application submitted by the larger organization.

(5) A city-wide/tribal-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing projects that are owned and operated by the same HA) may represent more than one RC/RMC/RO within a HA. In that case, an individual project represented by the city-wide/tribal-wide organization that has received technical assistance funding of $100,000 in a previous year may not receive additional funding based on the application submitted by the organization.

(6) A NRO/SRO/RRO that is organized to provide technical assistance to RCs/RMCs/ROs may receive grants up to $100,000.

H. Eligible Activities

Activities that may be funded and carried out by an eligible RC/RMC/RO or NRO/RRO/SRO include any combination of, but are not limited to, the following:

(1) *Resident Capacity Building:*

(a) Training Board members in community organizing, Board development and leadership training, and

(b) Determining the feasibility of the Tenant Opportunity Program initiatives for a specific project or projects.

(2) *Resident Management:*

(a) Start-up activities for a RC/RMC/RO, as well as building and strengthening its capacity as an organization (e.g., conduct democratic elections for officers of the organization, establish operating/planning committees and block building captains to carry out specific organizational tasks, develop by-laws, etc.); developing a cohesive relationship between the residents and the local community; and building a partnership with the HA.

(b) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(c) Training of residents with respect to fair housing and equal opportunity requirements; and

(d) Gaining assistance in negotiating management contracts and designing a long-range planning system.

(3) *Resident Management Business Development*

(a) Economic development training related to resident management and technical assistance for job training and placement in RMC developments;

(b) Technical assistance and training in business development related to resident management through:

- Feasibility and market studies;
- Development of business plans;
- Affirmative outreach activities;
- Innovative financing methods including revolving loan funds; and

(c) Legal advice in establishing resident management required business entities.

(4) *Partnerships:*

(a) Establish and provide training related to the Partnership Paradigm Technical Assistance (PPTA) model to residents in each community. This partnership would bring together residents, the HA, and HUD in an effort to create a community-based process that offers technical assistance and training related to building the partnership between the residents, the HA, and HUD, and to oversee and carry out activities in the TOP program.

(b) Other partnerships developed by the local residents/HA in the community are also allowed under this program.

(5) *Social Support Services* (such as self-sufficiency and youth initiatives):

(a) Feasibility studies to determine training and social services needs;

(b) Coordination of social services;

(c) Resident management training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before- and after-school programs;

(d) Resident management training programs on health, nutrition, and safety;

(e) Resident management workshops for youth services, child abuse and neglect prevention, and tutorial services, in partnership with community-based organizations, such as local Boys and Girls Clubs, YMCA/YWCA, Boys/Girls Scouts, Campfire and Big Brother/Big Sisters, etc.

(f) Resident management training in the development of strategies to successfully implement youth programs. For example, assessing the needs and problems of the youth, improving existing youth programs, and training youth and RMCs/RCs/ROs on youth initiatives.

(6) *General:* (a) Training in resident management-related skills, such as computer skills, clerical (payroll clerk/records management);

(b) Resident management-related employment training and counseling;

(c) Training in accessing other funding sources;

(d) Hiring trainers or other experts (resident grantees must ensure that any training is provided by a qualified housing management specialist, a community development specialist, the HA, or other sources knowledgeable about the program);

(e) Rental of car, van, or bus by resident grantees to attend training related to the TOP initiatives;

(f) Stipends, as provided in this paragraph. Officers and members of a RC/RMC/RO should not receive stipends for participating or receiving training under the TOP. If RCs/RMCs/ROs are interested in achieving resident-managed activities, stipends will be approved, subject to the availability of funds, when the officers and members of the resident organization are within 3–6 months of apprenticeship or dual management contract with the HA. Generally, no more than 10% of the grant funds should be used for this purpose. If approved, Officers and members should use the stipends only for costs incurred for resident management activities (i.e., child care, transportation to training, etc.).

(7) *Capacity building and training to facilitate resident participation in the Comprehensive Grant Program.*

(8) *Funds may be used to assist in the creation of a RC/RMC/RO,* such as:

(a) Consulting and legal assistance to incorporate the RC/RMC/RO;

(b) Preparing by-laws and drafting a corporate charter;

(c) Developing performance standards and assessment procedures to measure the success of the RC/RMC/RO;

(d) Assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance; and

(e) Assessing potential management functions or tasks that the RC/RMC/RO might undertake.

(9) *Implementation of activities by a RC/RMC/RO associated with the operation and maintenance* of the public and Indian housing project(s). Examples of eligible activities, in addition to those cited in paragraphs (1) through (7) of Section I.H, "Eligible Activities," of this NOFA, are:

(a) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;

(b) Assisting in developing and negotiating management contracts, and related contract monitoring and management procedures;

(c) Designing and implementing a long-range planning system;

(d) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; any other recognized functional responsibilities relating to property management, in general, and public/Indian housing management, in particular; and responsibilities relating to any TOP initiative;

(e) Identifying the social support needs of residents, and the securing of that support by hiring a services coordinator to coordinate and assist in implementing the services needed by the residents, such as health clinics, day care, and security; and

(f) Assessing potential homeownership opportunities for residents within public and Indian housing or anywhere in the community.

(10) *Administrative costs* necessary for the implementation of activities outlined in paragraphs (1) through (7) of Section I.H, "Eligible Activities," of this NOFA. Appropriate administrative costs include, but are not limited to, the following items or activities:

(a) Telephone, telegraph, printing, and sundry, nondwelling equipment (such as office supplies, computer software, and furniture). In addition, a reasonable portion of funds may be applied to the acquisition of hardware equipment, such as computer hardware and copying machines, unless purchase of this equipment can be made from a resident grantee's operating budget. A resident grantee must justify the need for this equipment in relationship to its management capability and the level of management responsibilities;

(b) HUD-approved travel directly related to activities for the development/training and implementation of resident management or any tenant opportunity initiatives, including conference fees, related per diem for meals, and miscellaneous travel expenses for individual staff or Board members of the resident grantee; and

(c) Child care expenses for individual resident grantees staff and Board members in cases where residents or Board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than two percent of the total grant amount (.02 times the grant award amount) may be used for expenses to support child care needs.

(11) *For NROs/RROs/SROs only:* Organize and establish democratically elected and effective RCs/RMCs/ROs, in addition to providing to RCs/RMCs/ROs any of the services described in paragraphs (1)–(10) of this Section.

I. Ineligible Activities

Ineligible items or activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals;

(2) Purchase or rental of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the TOP, e.g., lead-based paint testing and abatement and operating capital for economic development activities;

(4) Purchase or rental of any vehicle (car, van, bus etc.) or any other property, other than as described under Section I.H, "Eligible Activities," of this NOFA (see, e.g., paragraphs (6)(e) and (10)(a)), unless approved by HUD;

(5) Architectural and engineering fees;

(6) Payment of salaries for routine project operations, such as security and maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the resident management grant activities;

(7) Payment of fees for lobbying services;

(8) Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD program regulations or directives will be considered ineligible expenditures upon appropriate determination by an audit or HUD Field Office staff, and HUD will reduce the resident grantee's grant for the amount expended; and

(9) Any activity otherwise eligible under this NOFA for which funds from any other source are being provided or are requested by the applicant.

J. Selection Process

Each application for a grant award that is submitted in a timely manner, as specified in the application kit, to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Native American Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 60 points (out of the maximum of 85) for a Basic Grant, or a minimum score of 50 points (out of a maximum of 75) for Additional Grants, to be eligible for funding. NROs/RROs/SROs must receive a minimum score of 60 points (out of a maximum of 85) to be eligible for funding. RCs/RMCs/ROs should submit applications to the local HUD Field Office (Office of Native American Programs, for IHAs; see Appendix to this NOFA). The local Field Office will submit all RC/RMC/RO applications to a grant review site for processing by a

Grants Management Team. NROs/SROs/RROs should submit applications to HUD Headquarters: Department of Housing and Urban Development, PIH/ORI, 451 Seventh Street SW., Room 4112, Washington, DC 20410.

K. Rating Factors—Basic Grant Applicants

An application for funding for a Basic Grant will be reviewed based on the following Rating Factors (maximum of 85 points):

(1) *Describe the Goals and Objectives of the RC/RMC/RO* (30 points):

- A high score (16–30 points) is received where the RC/RMC/RO provides a detailed plan clearly showing proposed methods for accomplishing the overall goals and objectives of the TOP initiatives.
- A medium score (6–15 points) is received where the RC/RMC/RO provides a general explanation of proposed methods for accomplishing TOP initiatives.
- A low score (0–5 points) is received where the RC/RMC/RO provides a plan that is unclear or the RC/RMC/RO does not clearly state the goals and objectives.

(2) *Evidence of Support by Project Residents and RC/RMC/RO Board* (15 points):

- A high score (11–15 points) is received where the RC/RMC/RO provides documentation that shows support by the residents and the support is evidenced by a board resolution, petitions, minutes of meetings, or letters of support.
- A medium score (1–10 points) is received where the RC/RMC/RO provides documentation that is limited to petitions and minutes of meetings.
- No score (0 points) is received where the RC/RMC/RO fails to provide documentation of support by project residents and no support is mentioned.

(3) *Evidence that the RC/RMC/RO has a Partnership with the HA* (20 points):

- A high score (13–20 points) is received where the RC/RMC/RO provides a letter of support from the local HA that states the support of the RC/RMC/RO, as well as a description of what the HA will undertake to assist the RC/RMC/RO.
- A medium score (6–12 points) is received where the RC/RMC/RO provides a letter of support from the HA but does not state the activities for which the HA will provide assistance.
- A low score (0–5 points) is received where the RC/RMC/RO fails to submit a letter of support from the local HA, but support is mentioned in the narrative summary.

(4) *Evidence that the RC/RMC/RO has Support of Other Local/Tribal Agencies* (10 points):

- A high score (8–10 points) is received where the RC/RMC/RO provides letters of support discussing assistance from, at least, one or two local/tribal agencies in target areas, such as Weed and Seed or Distressed housing.
- A medium score (1–7 points) is received where the RC/RMC/RO provides letters of support discussing assistance from one or two local/tribal agencies.
- No score is received where the RC/RMC/RO fails to submit letters of support from local/tribal agencies.

(5) *Capability of Handling Financial Resources*—demonstrated through previous experience, adequate financial control procedures, or similar evidence, or an explanation of how such capability will be obtained (10 points):

- A high score (7–10 points) is received where the RC/RMC/RO provides evidence of having over two years of experience in handling financial resources and has adequate accounting procedures in place.
- A medium score (1–6 points) is received where the RC/RMC/RO provides evidence of having less than two years of experience in handling financial resources or has provided a plan for developing financial controls that is adequate.
- No score (0 points) is received where the RC/RMC/RO has no experience in handling financial matters and no evidence is submitted that shows that an adequate accounting system is in place or under development.

L. Rating Factors—Additional Grant Applicants

An application for funding for an Additional Grant will be reviewed based on the following Rating Factors (maximum of 75 points):

(1) *Describe the Goals and Objectives of the RC/RMC/RO* (25 points):

- A high score (14–25 points) is received where the RC/RMC/RO provides a detailed plan clearly showing proposed methods for accomplishing the overall goals and objectives of the proposed TOP initiatives.
- A medium score (6–15 points) is received where the RC/RMC/RO provides a general explanation of proposed methods for accomplishing its TOP initiatives.
- A low score (0–5 points) is received where the RC/RMC/RO does not provide a plan of the goals and objectives or the plan submitted is unclear.

(2) *Evidence of the Progress of the RC/RMC/RO)* (30 points) (some examples of the documents applicants should include in their applications are listed in parentheses):

- A high score (16–30 points) is received where the RC/RMC/RO show evidence of completing six to eight of the following activities:

(a) Developed an active community organization which includes democratically elected officers (example: fact sheet, minutes of meetings, petitions);

(b) Issued by-laws governing the operation of the organization (example: a copy of the RC/RMC/RO by-laws);

(c) Developed an organizational structure that consists of floor/block captains or residential community groups and program committees to carry out specific tasks (example: a copy of the RC/RMC/RO's organizational structure that lists floor/block captains, community groups and program committees);

(d) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function (example: a certification that the accounting system is developed);

(e) Identified community needs and interests for achieving any TOP initiatives and determined the level and degree of skills and community participation available to support program development (example: a copy of the RC/RMC/RO's needs assessment);

(f) Obtained a Memorandum of Understanding (MOU) between the RC/RMC/RO and HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, etc.) and the activities to be conducted by the RC/RMC/RO (example: a copy of a MOU between the RC/RMC/RO and HA);

(g) Completed the first phase of the Board and Leadership Training provided by the consultant/trainer which is selected by the RC/RMC/RO (example: a copy of the certificate of completion of training); and

(h) Has formal recognition from the HA to represent residents in meetings with the HA or other entities.

- A medium score (6–15 points) is received where the RC/RMC/RO shows evidence of completing four or five of the eight activities listed above.
- A low score (0–5 points) is received where the RC/RMC/RO shows evidence of completing zero to three of the eight activities listed above.

(3) *Evidence That the RC/RMC/RO has a Strong Partnership with the HA* (10 points):

- A high score (8–10 points) is received where the RC/RMC/RO provides a copy of a letter from the HA that indicates there is a cooperative relationship and a commitment from the HA to provide support (i.e., technical assistance, on-the-job training, or in-kind services) to the resident organization;
- A medium score (4–7 points) is received where the RC/RMC/RO provides a copy of a letter from the HA that indicates its support for the resident organization, but does not commit to providing tangible support to the resident organization; and
- A low score (0–3 points) is received where the RC/RMC/RO does not provide a letter from the HA, even if HA support is mentioned.

(4) *Evidence That the RC/RMC/RO has the Support of the State/Local/County/Tribal Government, Community Organizations, or Other Public/Private Sector Groups.* (10 points) (Maximum point value is given where the support letters contain commitments, such as financial assistance, technical assistance, on-the-job training, or other tangible support.)

- A high score (8–10 points) is received where the RC/RMC/RO provides copies of letters discussing assistance from more than three entities (e.g., State/local/county/tribal government, community organizations, or other public/private sector groups;
- A medium score (4–7 points) is received where the RC/RMC/RO provides letters discussing assistance from two or three entities; and
- A low score (0–3 points) is received where the RC/RMC/RO provides a letter from only one entity or was unable to obtain any letters of support.

M. Rating Factors—NROs/RROs/SROs

(1) *Describe the Goals and Objectives of the NRO/RRO/SRO* (30 points):

- A high score (16–30 points) is received where the NRO/RRO/SRO provides a detailed plan clearly showing proposed methods for accomplishing the overall goals and objectives of the TOP initiatives.
- A medium score (6–15 points) is received where the NRO/RRO/SRO provides a general explanation of proposed methods for accomplishing TOP initiatives.
- A low score (0–5 points) is received where the NRO/RRO/SRO provides a plan that is unclear or the NRO/RRO/SRO does not clearly state the goals and objectives.

(2) *Evidence of Support by NRO/RRO/SRO Board* (15 points):

- A high score (11–15 points) is received where the NRO/RRO/SRO provides documentation that shows support, as evidenced by a board resolution, minutes of meetings, and letters of support.
- A medium score (1–10 points) is received where the NRO/RRO/SRO provides documentation of support that is limited to minutes of meetings.
- No score (0 points) is received where the RC/RMC/RO fails to provide documentation of support.

(3) *Evidence of the Capability to Provide Local on-Site Training.* The applicant should demonstrate its capability to identify and provide local on-site training and coordinate activities of the local on-site training, so that RCs/RMCs/ROs may have access to continued training and technical assistance at the end of the grant agreement. (20 points)

- A high score (13–20 points) is received where the applicant provides a detailed plan clearly showing its capability to identify and provide local on-site training.
- A medium score (6–12 points) is received where the applicant provides a general explanation of its capability to identify and provide local on-site training.
- A low score (0–5 points) is received where the applicant provides a plan that is unclear or does not clearly state its capability to identify and provide local on-site training.

(4) *Evidence of Prior Resident Training Experience.* The applicant should provide documented evidence, i.e., letters of support, Board resolution, etc., of prior experience, indicating success and quality of work from RCs/RMCs/ROs. (10 Points)

- A high score (8–10 points) is received where the applicant provides documentation that shows support by the residents, i.e., letters of support, board resolutions, petitions, and minutes of meetings.
- A medium score (1–7 points) is received where the applicant provides documentation that is limited to petitions and minutes of meetings.
- No score is received where the applicant fails to provide documentation of support by project residents, and no support is mentioned.

(5) *Capability of Handling Financial Resources*—demonstrated through previous experience, adequate financial control procedures, or similar evidence, or an explanation of how such capability will be obtained (10 points):

- A high score (7–10 points) is received where the NRO/RRO/SRO provides evidence of having over two years of experience in handling financial resources and has adequate accounting procedures in place.
- A medium score (1–6 points) is received where the NRO/RRO/SRO provides evidence of having less than two years of experience in handling financial resources or has provided a plan for developing financial controls that is adequate.
- No score (0 points) is received where the NRO/RRO/SRO has no experience in handling financial matters and no evidence is submitted that shows that an adequate accounting system is in place or under development.

N. HA Notification

HUD will send a notification to the HAs associated with the applications selected for funding.

II. Application Process

A. Actions Preceding Application Submission

Consistent with this NOFA, HUD may direct a HA to notify its existing RCs/RMCs/ROs, as well as NROs, SROs, and RROs, of this funding opportunity. It is important for residents to be advised that even in the absence of a RC/RMC/RO, the opportunity exists to establish a RC/RMC/RO. If no RC/RMC/RO exists for any of the developments, HUD encourages a HA to post this NOFA in a prominent location within the HA's main office, as well as in each development's office.

B. Application Development and Submission

(1) *Submission.* An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Resident Initiatives Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll-free number 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), and telephone number (including area code), and should refer to document FR3669. Applications may be requested beginning May 13, 1994.

An applicant RC/RMC/RO must submit its application to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Native American Programs, listed in the Appendix to this NOFA. An applicant NRO/SRO/RRO must submit its application to: Department of Housing and Urban Development, PIH/ORI, 451 Seventh Street, SW, Room 4112, Washington, DC 20410.

(2) *Preparation*. The application must contain the following information:

(a)(i) *RCs/RMCs/ROs:* Name and address of the RC/RMC/RO. Name and title of the board members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents, i.e., charter, articles of incorporation (if incorporated), and by-laws. Name and phone number of contact person (in the event further information or clarification is needed during the application review process).

(ii) *NROs/RROs/SROs:* Name and address of the applicant. Name, title, and telephone number of a contact person (in the event further information or clarification is needed during the application review process).

(b)(i) *RCs/RMCs/ROs:* Name, address, and phone number of the Public Housing Agency (PHA)/Indian Housing Authority (IHA) responsible for the development(s) to which inquiries may be addressed concerning the application.

(ii) *NROs/RROs/SROs:* A narrative statement discussing the geographical areas in which the applicant wishes to organize RCs/RMCs/ROs. In addition, the name of the PHA/IHA where the applicant proposes to organize new or inactive RCs/RMCs/ROs, and a proposed schedule of activities.

(c) A narrative statement addressing the following issues:

(i) *For all applicants:*

- The name of the project(s) for which the funds are proposed to be used;
- A summary description which include the proposed amount of funding requested. The schedule for completion of all activities is three to five years;
- The application must be signed by an authorized member of the board of the RC/RMC/RO or NRO/RRO/SRO, and must include a resolution from the RC/RMC/RO or NRO/RRO/SRO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR part 964 (for Public Housing) and 24 CFR part 905, subpart O (for Indian Housing);
- Assurances (e.g., Board Resolution or Certificate) that the RC/RMC/RO or NRO/RRO/SRO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

(ii) *For Basic Grants:*

- A discussion of the needs of the RC/RMC/RO and the overall group objectives for specified TOP initiatives and how the proposed activities will meet the needs of the RC/RMC/RO;
- A description of the extent to which the residents and the board of the RC/RMC/RO support the proposed activities;
- A discussion of the extent to which the local HA supports the activities outlined in the proposal;
- A discussion of the extent to which local agencies, community organizations, and the private sector support the activities outlined in the proposal, including the provision of financial resources, technical assistance, or other support;
- A description of the project financial and accounting procedures that are available, or plans to develop these procedures, to ensure that funds are properly spent; and
- A description of other funding the RC/RMC/RO has received and how the requested funding will complement ongoing activities.

(iii) *For Additional Grants:*

- A discussion of the needs of the RC/RMC/RO and the overall group objectives for specified TOP initiatives and an explanation of how the proposed activities will meet the needs of the RC/RMC/RO;
- An explanation of the RC's/RMC's/RO's progress in carrying out activities in the work plan previously approved by HUD;
- A detailed discussion of the extent to which the local HA supports the activities outlined in the proposal; and
- A description of other funding the RC/RMC/RO has received and how the requested funding will complement ongoing activities.

(iv) *For grants to NROs/RROs/SROs:*

- A description of the extent to which the board of the NRO/RRO/SRO support the proposed activities;
- A description of the training to be provided, including identification of trainers and support letters;
- A description of project financial and accounting procedures, or plans to develop these procedures to ensure that funds are spent properly.

(3) *HA Support*. (a) HUD is in full support of a cooperative relationship between each RC/RMC/RO and its HA. A resident organization is urged to involve its HA in the application planning and submission process. This can be achieved through meetings to discuss resident concerns and objectives and how best to transfer these objectives into activities in the application. The RC/RMC/RO is also encouraged to obtain a letter of support from the HA indicating to what extent the HA supports the proposed activities listed by the RC/RMC/RO and how the HA will assist the RC/RMC/RO.

(b) A RC/RMC/RO is encouraged to include an indication of support and assistance by development residents and Board (e.g., RC/RMC/RO Board resolution, copies of minutes, letters, petition, etc.); the neighboring community; and local public or private organizations.

(4) *Submission*. The original and 2 copies of the Application must be submitted. The Appendix lists addresses of HUD Field/Native American Program Offices that will accept a completed application. The application must be received by the local HUD Field Office no later than 4 p.m. (local time) on the deadline date listed in the application kit.

In the interest of fairness to all competing applicants, any application that is received after the deadline date will be considered ineligible. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will date-stamp incoming applications to evidence (timely or late) receipt, and, upon request, will provide an acknowledgement of receipt. Facsimile and telegraphic applications are not authorized and will not be considered.

HUD also encourages an applicant to submit a copy of the application to the HA for the jurisdiction in which the RC/RMC/RO is located.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. Training Requirements

(1) RC/RMC/RO grantees are required to have training, and NRO/SRO/RRO grantees are requested to provide training, in the areas listed below, but the amount and scope of training will depend on the resident groups' goals. For example, training required to assume property management is more extensive than training needed to establish a landscaping enterprise. The required training areas are:

(a) HUD regulations and policies governing the operation of low-income housing, which includes the part 900 series of 24 CFR and Section 3 (of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u) and other Fair Housing Act requirements, and applicable civil rights laws for Public

Housing or for Indian Housing (24 CFR part 905);

(b) Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A–110 and A–122, which contain Federal administrative requirements for grants, and OMB Circular A–133, relating to audit requirements for nonprofit organizations;

(c) Capacity building to develop the necessary skills to assume management responsibilities at the project; and

(d) Based on the goals of the RC/RMC/RO, property management and/or any TOP activity training that is required.

(2) Each grantee must ensure that this training is provided by a qualified housing management specialist (Consultant/Trainer), community development specialist, the HA, or other local/tribal agencies knowledgeable about the program.

B. OMB Procurement Requirements

(1) The resident grantees must follow Circular A–110, Uniform Administrative Requirements for Grants, and other agreements with recipients of Federal funds. OMB Circular A–110 prescribes standards and policies essential to the proper execution of procurement transactions, including standards of conduct for resident grantees' employees, officers, or agents engaged in procurement actions to avoid any conflict of interest.

(2) A resident grantee may use two methods in obtaining consultant services:

(a) A "full service" approach may be used where the applicant solicits competitive proposals for assisting in the preparation of the application, with inclusion of the consultant work if the applicant is selected to receive a grant. The evaluation criteria in the solicitation must address the qualifications and experience of prospective consultants for all tasks (the contract may stipulate that in the event that the application is not approved, the consultant is not entitled to any payment); and

(b) Separation of Application Preparation from Consultant Work After Grant Award. This approach allows an applicant to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management Specialist for the development of an application for technical assistance funding. If the applicant is selected for funding, the Consultant-Trainer/Housing Management Specialist must compete along with other prospective Consultant-Trainer/Housing Management Specialists through an open and free procurement process for a training and technical assistance contract. This will eliminate any competitive advantage attained by the Consultant-Trainer/Housing Management Specialist who was awarded a contract for the development of the application/Work Plan and Budget.

IV. Corrections to Deficient Applications

HUD will notify an applicant in writing of any technical deficiencies in the application. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the Rating Factors specified in this NOFA. For example, signatures needed on certain forms, certifications, workplan, budget, and other required forms may be considered curable deficiencies. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

After the application due date, applicants will not have an opportunity to submit independently information omitted from the Application Kit that directly relates to the evaluation factors contained in the subheading "Rating Factors" of this NOFA so as to enhance the merits of the application. HUD encourages all applicants to submit all documents with their application before the due date, so that applicants will not be affected by the technical deficiency period.

V. Other Matters

A. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear earmarking or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this rule relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs related to family concerns.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA will fund technical assistance and activities for resident management and other empowerment initiatives of public and Indian housing. It will have no meaningful impact on States or their political subdivisions.

E. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

F. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

G. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 is implemented in 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (these are not toll-free numbers). Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.853.

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: May 9, 1994.

Joseph H. Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix—Names, Addresses, and Telephone Numbers of HUD Field Offices and Offices of Native American Programs Accepting Applications for Tenant Opportunities Program Technical Assistance

Boston, Massachusetts Field Office

Public Housing Division
Room 375
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, Massachusetts 02222–1092
(617) 565–5234

Hartford, Connecticut Office

Public Housing Division
330 Main St. First Floor
Hartford, Connecticut 06106–1860
(203) 240–4522

Manchester, New Hampshire Office

Public Housing Division
Norris Cotton Federal Building
275 Chestnut St.
Manchester, New Hampshire 03101–2487
(603) 666–7681

Providence, Rhode Island Office

Public Housing Division
330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza
Providence, Rhode Island 02903–1785
(401) 528–5351

New York, New York Field Office

Public Housing Division
26 Federal Plaza
New York, New York 10278–0068
(212) 264–6500

Buffalo, New York Office

Public Housing Division
465 Main Street
Lafayette Court, 5th Fl.
Buffalo, New York 14203–1780
(716) 846–5755

Newark, New Jersey Office

Public Housing Division
Military Park Building
60 Park Place
Newark, New Jersey 07102–5504
(201) 877–1662

Washington, D.C. Office

Public Housing Division
820 First St. NE., suite 300
Washington, DC 20002–4502
(202) 275–9200

Philadelphia, Pennsylvania Field Office

Public Housing Division
Liberty Square Building
105 South 7th Street
Philadelphia, Pennsylvania 19106–3392

Baltimore, Maryland Office

Public Housing Division
City Crescent Building
10 South Howard St., 5th Floor
Baltimore, Maryland 21202–2505
(410) 962–2520

Pittsburgh, Pennsylvania Office

Public Housing Division
Old Post Office Courthouse Building
700 Grant St.
Pittsburgh, Pennsylvania 15219–1939
(412) 644–6428

Richmond, Virginia Office

Public Housing Division
The 3600 Centre
3600 West Broad St.
P.O Box 90331
Richmond, Virginia 23230–0331
(804) 278–4507

Charleston, West Virginia Office

Public Housing Division
405 Capitol St., suite 708
Charleston, West Virginia 25301–1795
(304) 347–7000

Atlanta, Georgia Field Office

Public Housing Division
Richard B. Russell Federal Building
75 Spring Street, SW.
Atlanta, Georgia 30303–3388
(404) 331–5136

Birmingham, Alabama Office

Public Housing Division
Beacon Ridge Tower
600 Beacon Parkway West, suite 300
Birmingham, Alabama 35209–3144
(205) 290–7617

Louisville, Kentucky Office

Public Housing Division
P.O. Box 1044
601 W. Broadway
Louisville, Kentucky 40201–1044
(502) 582–5251

Jackson, Mississippi Office

Public Housing Division
Dr. A.H. McCoy Federal Building
100 West Capitol St., room 910
Jackson, Mississippi 39269–1096
(601) 965–5308

Greensboro, North Carolina Office

Public Housing Division
2306 W. Meadowview Rd.
Greensboro, North Carolina 27407
(919) 547–4000

Caribbean Office

Public Housing Division
New San Juan Office Building
159 Carlos E. Chardon Ave.
San Juan, Puerto Rico 00918–1804
(809) 766–6121

Columbia, South Carolina Office

Public Housing Division
Strom Thurmond Federal Building
1835 Assembly St.
Columbia, South Carolina 29201–2480
(803) 765–5592

Knoxville, Tennessee Office

Public Housing Division
John J. Duncan Federal Building
710 Locust St. 3rd Floor
Knoxville, Tennessee 37902–2526
(615) 549–4384

Nashville, Tennessee Office

Public Housing Division
251 Cumberland Bend Drive, suite 200,
Nashville, Tennessee 37228–1803
(615) 736–5213

Jacksonville, Florida Office

Public Housing Division
301 West Bay Street, suite 2200
Jacksonville, Florida 32202–5121
(904) 232–2626

Chicago, Illinois Field Office

Public Housing Division
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604–3507
(312) 353–5680

Detroit, Michigan Office

Public Housing Division
Patrick V. McNamara Federal Building
477 Michigan Ave.
Detroit, Michigan 48226–2592
(313) 226–7900

Indianapolis, Indiana Office

Public Housing Division
151 North Delaware St.
Indianapolis, Indiana 46204–2526
(317) 226–6303

Grand Rapids, Michigan Office

Public Housing Division
2922 Fuller Ave., N.E.
Grand Rapids, Michigan 49505–3499
(616) 456–2100

Minneapolis-St. Paul, Minnesota Office

Public Housing Division
220 2nd St. South
Bridge Place Building
Minneapolis, Minnesota 55401–2195
(612) 370–3000

Cincinnati, Ohio Office

Public Housing Division
Federal Office Building, room 9002
550 Main St.
Cincinnati, Ohio 45202–3253
(513) 684–2884

Cleveland, Ohio Office

Public Housing Division
Renaissance Building
1350 Euclid Ave., 5th Floor
Cleveland, Ohio 44115–1815
(216) 522–4058

Columbus, Ohio Office

Public Housing Division
200 North High Street
Columbus, Ohio 44115–1815
(216) 522–4058 1

Milwaukee, Wisconsin Office

Public Housing Division
Henry S. Reuss Federal Plaza
310 W. Wisconsin Ave., suite 1380
Milwaukee, Wisconsin 53203–2289
(414) 297–3214

Fort Worth, Texas Field Office

Public Housing Division
1600 Throckmorton
P.O. Box 2905
Fort Worth, Texas 76113–2905
(817) 885–5401

Houston, Texas Office

Public Housing Division
Norfolk Tower
2211 Norfolk, suite 200
Houston, Texas 77098–4096
(713) 653–3274

San Antonio, Texas Office

Public Housing Division
Washington Square Building
800 Dolorosa St.
San Antonio, Texas 78207–4563
(210) 229–6800

Little Rock, Arkansas

Public Housing Division
TCBY Tower
425 West Capitol Ave.
Little Rock, Arkansas 72201–3488
(501) 324–5931

New Orleans, Louisiana Office

Public Housing Division
Fisk Federal Building
1661 Canal St., suite 3100
New Orleans, Louisiana 70112–2887
(504) 589–7200

Albuquerque, NM Office

Public Housing Division
625 Truman Street NE.
Albuquerque, NM 87110–6472
(505) 262–6463

Omaha, Nebraska Office

Public Housing Division
10909 Mill Valley Rd.
Omaha, Nebraska 68154–3955
(402) 492–3100

St. Louis, Missouri Office

Public Housing Division
1222 Spruce St., room 3207
St. Louis, Missouri 63103–2836
(314) 539–6583

Kansas City Field Office

Public Housing Division
Room 200
Gateway Tower II
400 State Avenue
Kansas City, Kansas 66101–2406
(913) 551–5462

Des Moines, Iowa Office

Public Housing Division
Federal Building
210 Walnut St., rm. 239
Des Moines, Iowa 50309–2155
(515) 284–4512

Denver, Colorado Field Office

Public Housing Division
633 17th Street
First Interstate Tower North
Denver, Colorado 80202–3607
(303) 672–5448

San Francisco, California Field Office

Public Housing Division
Philip Burton Federal Building & U.S. Courthouse
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, California 94102–3448
(415) 556–4752

Honolulu, Hawaii Office

Public Housing Division
7 Waterfront Plaza
500 Ala Moana Blvd., suite 500
Honolulu, Hawaii 96813–4918
(808) 541–1323

Los Angeles, California Office

Public Housing Division
1615 W. Olympic Blvd.
Los Angeles, California 90015–3801
(213) 251–7122

Sacramento, California Office

Public Housing Division
777 12th St., suite 200
Sacramento, California 95814–1997
(916) 551–1351

Phoenix, Arizona Office

Public Housing Division
Two Arizona Center
400 N. 5th St., suite 1600
Phoenix, Arizona 85004–2361
(602) 379–4434

Portland, Oregon Office

Public Housing Division
Cascade Building
520 Southwest Sixth Ave.
Portland, Oregon 97204–1596
(503) 326–2561

Seattle, Washington Field Office

Public Housing Division
Suite 200
Seattle Federal Office Building
909 First Avenue
Seattle, Washington 98104–1000
(206) 220–5101

Anchorage, Alaska Office

Public Housing Division
University Plaza Building
949 E. 36th Ave., suite 401
Anchorage, Alaska 99508–4399
(907) 271–4170

Native American Program Offices

Serves: All States east of the Mississippi River and Iowa

Mr. Leon Jacobs, Administrator
Chicago Office of Native American Programs, 5P
77 W. Jackson Boulevard, 24th Floor
Chicago, Illinois 60604–3507
(312) 886–4532

Serves: Oklahoma, Kansas, Missouri, Texas, Arkansas and Louisiana

Mr. Hugh Johnson, Administrator
Oklahoma City Office of Native American Programs, 6.7P
Murrah Federal Building
200 N.W. 5th Street
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909 First Avenue
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Anchorage Office of Native American Programs, 10.1PI
University Plaza Building
949 East 36th Avenue, suite 401
Anchorage, Alaska 99508–4399
(907) 271–4633

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Friday
May 13, 1994

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3756; FR-3707-N-01]

NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD is announcing the availability of $5 million in funding for Fiscal Year 1994 for a Youth Development Initiative under the Family Investment Center Program (FIC). The Youth Development Initiative under FIC will provide five grants for innovative violence abatement strategies that have been developed by youth for public housing. The Youth Development Initiative furthers the mission of Operation Safe Home, a major Clinton Administration Initiative that addresses the larger problem of violence in America's low-income communities. The Youth Development Initiative will provide young individuals (ages 13–25), including noncustodial parents with child support agreements for children that are public housing residents and who would be capable of meeting their obligations by being provided such services, with better access to comprehensive education and employment opportunities and supportive services. The grants will be for up to three to five years in duration, depending upon the activities undertaken, and will involve youth as active partners, to provide leadership opportunities and improve the capacity for long-term training and services for young residents. The Department has proposed regulations for this program as part of the Tenant Participation and Tenant Opportunity (TOP) rule, published on April 19, 1994 (59 FR 18666).

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, ranking factors, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available beginning May 13, 1994. The application deadline will be 4:30 p.m., local time, on July 12, 1994.

ADDRESSES: An application kit may be obtained from the local HUD Field Office with delegated responsibilities over an applicant public housing agency (see Appendix for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1-800-955-2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and should refer to document FR-3707-N-01. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Resident Initiatives (ORI), Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, DC 20410; telephone number: (202) 708-3611 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 (not a toll free number) for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0189.

I. Purpose and Substantive Description

A. Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). The Department has proposed regulations for this program as part of the Tenant Participation and Tenant Opportunity (TOP) rule, published on April 19, 1994 (59 FR 18666). This NOFA is being issued in conformity with the statutory requirements of FIC, in order to make funding available as soon as possible.

B. Allocation Amounts

In the NOFA for Public and Indian Housing Family Investment Centers published on February 28, 1994 (59 FR 9592), as amended on April 19, 1994 (59 FR 18570), the Department announced the availability of $69 million for funding Family Investment Center activities by public housing agencies (PHAs) or Indian housing authorities. In today's NOFA, an additional $5 million is being made available to public housing agencies (PHAs) under FIC for the Youth Development Initiative, to further advance the goals of FIC and the Administration's Operation Safe Home (OSH). If the entire $5 million is not needed to carry out the Youth Development Initiative, remaining funds will be made available for funding FIC activities.

The FIC Youth Development Initiative grants will be targeted to assist youth in gaining access to education, employment, and supportive services. HUD expects that this funding will demonstrate the importance of comprehensive supportive services in contributing to the reduction of unemployment among our youth and crime and violence in public housing communities. This Youth Development Initiative requires the design and implementation by the targeted youth in partnership with the PHA.

Each applicant may submit only one application under this NOFA. For this Youth Development Initiative, the maximum grant amount per applicant under this NOFA is $1 million. Although both PHAs and IHAs are eligible applicants in the main FIC NOFA published earlier, only PHAs may apply for the set-aside funds announced in this NOFA.

C. Overview and Policy

The stated purpose of Section 22 for FIC is:

> [T]o provide families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence by: (a) developing facilities in or near public housing for training and support services; (b) mobilizing public and private resources to expand and improve the delivery of such services; (c) providing funding for such essential training and support services that cannot otherwise be funded; and (d) improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services.

Although section 22 is phrased in terms of "families" living in public housing, because of section 527 of the National Affordable Housing Act (104 Stat. 4216; 42 U.S.C. 1437aa note) (NAHA), the definition of "families" may be used interchangeably as individuals. This special Initiative is being made available to individuals (youths, ages 13–25), including noncustodial parents with child support agreements for children living in public housing and who would be made capable of meeting their obligations by being provided these services.

The Department envisions that this Initiative under FIC will complement other youth programs, drug elimination efforts, and Youth Sports activities to increase the rates of school completion, enrollment in advanced education, or training and employment. PHAs that are recipients of or applicants for other programs with youth training opportunities must coordinate this FIC Youth Development Initiative with these programs. As an incentive to becoming self-sufficient, the earnings of public housing "individuals/youths" participating in this Youth Development Initiative shall not be treated as income for the purpose of rent calculation, and services are not treated as income for the purposes of any other program or provision of State or Federal law, including rent assistance, subject to the limitations set out in section I.F(5), "Treatment of Income," of this NOFA. This Initiative is administered by the Department's Office of Resident Initiatives in the Office of Public and Indian Housing, with assistance from a network of Community Relations and Involvement Specialists in HUD Field Offices.

D. Definitions

For purposes of this NOFA, the following definitions apply:

Eligible Residents means public housing residents aged 13–25 of a participating PHA, including noncustodial parents with child support agreements for children living in public housing when those parents would be made capable of meeting their obligations by being provided services.

Secretary means the Secretary of Housing and Urban Development.

Service Coordinator means any person, including youth, who is responsible for:

(1) Determining the eligibility of individuals to be served by this Youth Development Initiative;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a PHA-wide or less-than-PHA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding under this NOFA;

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under this program;

(6) Coordinating the development and implementation of this Youth FIC Initiative with other self-sufficiency programs and other education and employment programs; or

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Supportive Services means new or significantly expanded services essential to providing youth in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. (PHAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided). Program funds may be used for the provision of not more than 15 percent of the cost of any supportive services (which may be provided directly to eligible residents by the public housing agency or by contract or lease through other appropriate agencies or providers). Supportive services may include:

(1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(2) Employment training and counseling (*e.g.*, job training, preparation and counseling, job development and placement, business management training and entrepreneurship development, and follow-up assistance after job placement);

(3) Computer skills training;

(4) Education (*e.g.*, remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);

(5) Transportation as necessary to enable any participating youth to receive available services or to commute to his or her place of employment;

(6) Personal welfare (*e.g.*, substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(7) Supportive Health Care Services (*e.g.*, outreach and referral services); and

(8) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

Vacant Unit means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the PHA is zero.

E. Eligibility

(1) *Eligible Applicants.* Funding for this program is limited to public housing authorities. The factors for award reflect that half of the points possible are for the provision of supportive services, whether provided by the PHA or through partnerships with other social service agencies. Facilities assisted shall be on or near the premises of public housing. For all families using FIC services, other than eligible residents (as defined in Section I.D of this NOFA), any additional costs incurred are to be borne by other resources.

To be eligible under this NOFA, a PHA cannot have serious unaddressed, outstanding Inspector General audit findings; fair housing and equal opportunity monitoring review findings; or Field Office management review findings. In addition, the PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the PHA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57);

(e) There is no pending civil rights suit brought against the PHA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) *Eligible Activities.* To develop such a Youth Development Initiative,

program funds may be used for the following activities to guarantee youth access to comprehensive services:

(a) The renovation, conversion, or combination of vacant dwelling units in a PHA development to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas in a PHA development to accommodate the provision of supportive services;

(c) The renovation, acquisition, or construction of facilities located near the premises of one or more PHA developments to accommodate the provision of supportive services. Under this NOFA, acquisition and new construction will be treated the same as substantial rehabilitation (renovation/conversion) activities, for such purposes as ranking and submission requirements.

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the PHA or by contract or lease through other appropriate agencies or providers), but only if the PHA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents for employment and educational opportunities; and

(ii) The PHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

(3) *Other Eligibility Related Requirements.* (a) Grants used solely for the activities listed in paragraphs (a), (b), or (c) of Section I.E(2), "Eligible Activities," of this NOFA, shall be completed within three years of the effective date of the grant. Other eligible activities may be funded over a maximum five-year period.

(b) Each applicant should submit a description of the Supportive Services Activities and/or the renovation or conversion to be conducted, along with a budget and timetable for those activities. This description should include the PHA's plans to:

(i) Ensure provision of employment, on-the-job training and work experience, education, childcare, transportation, and assistance in resolving personal or family crises;

(ii) Encourage the active involvement of local labor unions, junior and senior high schools, two- and four-year post secondary institutions, and community agencies; and

(iii) Ensure outreach and recruitment efforts and integrate service delivery, intake assessment, and case management.

(c) Each applicant must submit a budget, timetable, and list of milestones for the five-year period (following initial receipt of funding), at least, covered by the applicant's description of supportive services. Milestones shall include the number of youth to be served, types of services, and dollar amounts to be allocated over the five-year period.

(d) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities funded under this NOFA.

(e) When a grant application is approved, the PHA must receive approval from HUD to conduct renovation or conversions. Approval must be provided prior to drawing down funds.

(f) If a renovation is done off-site, the PHA must provide documentation that it has control of the proposed property. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation (see Sections III.B(3) and III.C(14) of this NOFA).

F. Other Program Requirements

(1) *Youth/Resident Involvement.* The Department has a longstanding policy of encouraging PHAs to promote resident involvement, and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, youth/residents must be included in the planning and implementation of this program. The PHA shall develop a process that assures that public housing youth, through their Resident Council if feasible, are active partners in the development of the content of the PHA's application in response to this NOFA. The PHA shall give full consideration to the comments and concerns of the youth representatives. The Department envisions that the youth representatives will work in concert with the duly elected Resident Council. The process shall include:

(a) Informing youth of the selected developments regarding the preparation of the application, and providing for residents to become active partners in the development of the application.

(b) Once a draft application has been prepared, the PHA shall make a copy available for reading in the management office; provide copies of the draft to the duly-elected resident organization representing the residents of the developments involved; and provide adequate opportunity for comment by all residents, including youth, of the development and their representative organizations prior to making the application final. A copy of all comments shall be kept on file for review, at their request, by the duly elected Resident Council and HUD.

(c) After HUD approval of a grant, notify youth and other residents of the development, and any representative organizations, of approval of the grant; notify the youth of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular youth role in all aspects of program implementation.

(2) *Training/Employment of PHA Youth Residents.*

(a) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. For purposes of training and employment, the PHA may offer opportunities to Section 3 residents in the following priority: (i) Youth residents of the housing development for which the assistance is being provided; (ii) residents who reside within a project area as defined in 24 CFR 135.15 and who reside in developments managed by the PHA that is expending the assistance; and (iii) other residents of the Section 3 area. Therefore, at a minimum each PHA, and each of its contractors and subcontractors receiving funds under this program, shall to the greatest extent feasible, employ PHA residents to provide services and renovation or conversion work.

(b) For purposes of the requirements under Section 3, to the greatest extent feasible means that the PHA shall:

(1) Attempt to recruit PHA youth from the appropriate areas through Resident/Youth Councils, local advertising media, signs placed at the proposed FIC project site, and community organizations and public or private institutions operating within the development area. The PHA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program because it includes construction/renovation type of activities, *i.e.*, low-income households headed by women and persons with disabilities; and

(2) Determine the qualifications of PHA residents when they apply, either on their own or on referral from any source, and employ PHA youth if their qualifications are satisfactory and the

contractor has openings. If the PHA is unable to employ youth determined to be qualified, those residents shall be listed for the first available openings.

(3) *Davis-Bacon Requirements.* All laborers and mechanics employed by contractors or the PHA in renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5). All architects, technical engineers, draftsmen, and technicians employed with respect to such work shall be paid not less than the wages prevailing in the locality as determined by HUD. These requirements do not apply to volunteers under the conditions set out in 24 CFR part 70.

(4) *Youth/Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(5) *Treatment of Income.* (a) *1937 Act.* As provided in section 22(i) of the United States Housing Act of 1937 (1937 Act), no service provided to a PHA resident under this program may be treated as income for the purpose of any other program or provision of State, or Federal law. Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any PHA youth resulting from participation in the FIC program shall not be considered as income in computing the tenant's total annual income that is used to determine the tenant rental payment during:

(i) The period that the youth participates in the program; and

(ii) The period that begins with the commencement of employment of the youth in the first job acquired by the youth after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(*A*) The date the youth ceases to continue employment without good cause; or

(*B*) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program.

(6) *Reports.* Each PHA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data, and other information, as needed, regarding the effectiveness of the Youth Development Initiative in providing youth with access to education and job opportunities and supportive services.

G. Ranking Factors

Each application for grant award will be evaluated if it is submitted as required under Section II.B of this NOFA and meets the eligibility requirements in Section I.E of this NOFA. Applications submitted for funds that include renovation (including acquisition and new construction), conversion, or combination of dwelling unit activities will be competitively selected based on the highest scores out of a possible 150 points. Applications submitted for funds solely to implement supportive services will be competitively selected based on the highest scores out of a possible 150 points. Grants will be awarded to the five highest-ranked eligible applicants.

HUD will review and evaluate the application as follows, according to whether the application seeks funds for supportive services only or for other activities:

(1) *Conversion/Renovation/Supportive Services Activities* (Maximum 150 points). If the applicant is proposing to build or rehab a facility to render programmatic services, applications will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible residents [10 points];

(b) The extent to which the envisioned renovation, conversion, and combination activities are appropriate to facilitate the provision of youth FIC services [15 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the PHA has demonstrated that it has partnered with youth in the planning phase for the Youth FIC, and will further include the youth residents in the implementation phase [40 points];

(e) The extent to which the PHA has demonstrated that it will contract with or employ youth to provide services and conduct conversion and renovation activities [15 points];

(f) The ability of the PHA or designated service provider to provide the supportive services [5 points];

(g) The extent to which the PHA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with State and or local service agencies [5 points]. In assigning points for this factor, HUD shall consider the extent of the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the Youth FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (i.e., counseling and training); the use of public housing funds available through existing State and local programs; or other commitments; and

(h) The extent to which the PHA has demonstrated success in modernization activities under the Comprehensive Grant/Comprehensive Improvement Assistance (CIAP) Programs (see 24 CFR part 968); has a good record of maintaining and operating public housing, as determined by the Public Housing Management Assessment Plan (PHMAP) (see 24 CFR part 901); and has utilized innovative and workable strategies to improve management [10 points]; and

(i) The extent to which the PHA has demonstrated that it will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for eligible youth [25 points].

(2) *Supportive Services Only* (Maximum 150 points). If applicant is proposing to use funds solely for the provision of supportive services, applications for funds for these activities will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible youth. [10 points];

(b) Certification that the PHA has control of a site to facilitate the provision of supportive services appropriate for the FIC program [10 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the PHA has demonstrated that it has partnered with youth in the planning phase for the FIC, and will further include the youth in the implementation phase [40 points];

(e) The extent to which the PHA has demonstrated that it will contract with or employ youth to provide services [15 points];

(f) Past experience in obtaining and providing similar services for PHA youth [5 points];

(g) The ability of the PHA or a designated service provider to provide the supportive services [5 points];

(h) The extent to which the PHA has a good record of maintaining and operating public housing, as determined by its Public Housing Management Assessment Plan (PHMAP), and has utilized innovative and workable strategies to improve management [10 points];

(i) The extent to which the PHA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with State and/or local social service agencies [5 points]. In assigning points for this factor, HUD shall consider the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (e.g., counseling and training); the use of public housing funds available through existing State and local programs; or other commitments; and

(j) Extent to which the PHA has demonstrated that it will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for its residents [25 points].

H. Environmental Review

Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under section 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the PHA. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in this NOFA and grant agreements.

II. Application Submissions Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD Field Offices with delegated responsibilities over an applying PHA (See Appendix A for listing), or by calling HUD's Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address or P.O. Box (including zip code), and telephone number (including area code), and should refer to document FR–3707–N–01. Applications may be requested beginning May 13, 1994.

B. Application Submission

The original and two copies of the application must be submitted. The Appendix lists addresses of HUD Field Offices that will accept the completed application.

The application must be physically received by 4:30 p.m., local time, on July 12, 1994. This application deadline is firm to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. *Applications for Supportive Services Only* must contain the following information: (1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of the need for supportive services by eligible youth residents;

(4) A description of the supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this NOFA, and one year following the completion of activities funded under this NOFA and how the supportive services will enhance education and job opportunities for youth residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including profit and nonprofit organizations);

(7) A description of the plan for continuing operation of the Youth FIC, and the provision of services to youth after completion of the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(8) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide youth with better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for the entire five-year period, at least, after the initial receipt of funding under this NOFA.

(9) A description of assistance for which the PHA is applying;

(10) A narrative on the location of the Youth FIC facility. Provide the precise location of the facility to be used for Youth FIC, and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(11) Evidence that the PHA has control of the Youth FIC site. If the facility is off-site, the PHA shall include copies of the negotiated lease and the

terms, an option to lease, indicating that the facility is available to the PHA for use as a Youth FIC for the period ending the later of: (1) Five years following the initial receipt of funding under this NOFA, or (ii) one year following the completion of activities funded under this NOFA;

(12) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program;

(13) A description of the youth involvement and participation in the planning and implementation phases of this program;

(14) A description of the services that PHA residents will be employed to provide;

(15) Letters of commitment. The letters should identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; Job Training Partnership Act (JTPA) and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the Youth FIC;

(16) Certification that efforts were made to use or obtain other resources to fund or provide the services proposed;

(17) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents, if applicable;

(18) A project budget, timetable and narrative;

(19) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(20) Equal Opportunity Requirements. The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(21) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(22) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(24) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(25) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a-5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The PHA will pay such wage rates to its own employees engaged in this work.

B. *Applications for Renovation/Conversion Activities Only* must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) A narrative on the location of the off-site facility, if applicable. Provide the precise location of the Youth FIC facility (street address) and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(3) A narrative description of how the funds will be used;

(4) Evidence that the PHA has control of the proposed premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the PHA for use as a Youth FIC for the period ending the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(5) A description of services that the PHA expects to be provided, to the greatest extent practicable, by youth residents, as described in Section I.F(2) of this NOFA. The Description shall include the position titles and numbers of youth expected to be employed for renovation/conversion activities;

(6) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and

contracting opportunities for eligible residents;

(7) A project budget, timetable and narrative;

(8) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(9) Equal Opportunity Requirements. The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(10) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(11) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(12) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(13) Certification Regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(14) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD;

(c) The PHA will pay such wage rates to its own employees engaged in this work; and

(d) If new construction is undertaken, the PHA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

C. *Applications for Both Supportive Services and Renovation/Conversion Activities* must contain the following information:

(1) Name and address (or P.O. Box) of the PHA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of assistance for which the PHA is applying;

(4) A description of the need for supportive services by eligible residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of the plan for continuing operation of the Youth FIC and the provision of supportive services to families after the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(7) A description of services that the PHA expects to be provided, to the greatest extent practicable by PHA residents as provided under Section I.F(2) of this NOFA;

(8) A description of the positions and numbers of residents expected to be employed for renovation, conversion, and other eligible activities;

(9) A description of the youth involvement in the planning and implementation phases of this program.

(10) Certification of the extent to which the PHA will commit to its Youth FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(11) A project budget, timetable, and narrative;

(12) Letters of commitment. Identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; JTPA and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation,

or other resources for use by participants of the FIC.

(13) A narrative on the location of the facility. Provide the precise location of the Youth FIC facility (street address) and its accessibility to residents including distance from the development(s), and transportation necessary to receive services;

(14) Evidence that the PHA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the PHA for use as a Youth FIC for the period ending the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(15) Certification that Youth FIC funding will not duplicate any other HUD funding, including CGP funding.

(16) *Equal Opportunity Requirements.* The PHA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(17) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(18) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(19) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(20) A certification that:

(a) The PHA will include in any contract for renovation or conversion (including combining of units) on the premises of the PHA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a–5);

(b) The PHA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD.

(c) If new construction is undertaken, the PHA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the ranking factors specified in this NOFA.

V. Other Matters

A. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III, Checklist of Application Submission Requirements, of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR parts 35, 965 and 968.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–

110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

B. Environmental Review

A finding of no significant impact with respect to the environment has been made for the NOFA for Public and Indian Housing Family Investment Centers (FR–3397) in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332) and applies equally to this NOFA. The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds to provide youth living in public housing, or with children living in public housing, with better access to education and job opportunities to achieve self-sufficiency and independence.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist youth living in public housing, or with children living in public housing, with better access to education and job opportunities to achieve self-sufficiency and independence, and, thus, could benefit families. However, because the impact on families is beneficial, no further review is considered necessary.

E. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, and applicant may, through clear earmarking, or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from nondisclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

I. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: May 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX—NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF HUD FIELD OFFICES ACCEPTING APPLICATIONS FOR YOUTH DEVELOPMENT INITIATIVE UNDER FAMILY INVESTMENT CENTERS

Boston, Massachusetts Field Office

Public Housing Division
Room 375,
Thomas P. O'Neill, Jr. Federal Building,
10 Causeway Street,
Boston, Massachusetts 02222-1092,
(617) 565-5234

Hartford, Connecticut Office

Public Housing Division,
330 Main St. First Floor,
Hartford, Connecticut 06106-1860,
(203) 240-4522

Manchester, New Hampshire Office

Public Housing Division,
Norris Cotton Federal Building,
275 Chestnut St.,
Manchester, New Hampshire 03101-2487,
(603) 666-7681

Providence, Rhode Island Office

Public Housing Division,
330 John O. Pastore Federal Building and U.S.
Post Office—Kennedy Plaza,
Providence, Rhode Island 02903-1785,
(401) 528-5351

New York, New York Field Office

Public Housing Division,
26 Federal Plaza,
New York, New York 10278-0068,
(212) 264-6500

Buffalo, New York Office

Public Housing Division,
465 Main Street,
Lafayette Court, 5th Fl.,
Buffalo, New York 14203-1780,
(716) 846-5755

Newark, New Jersey Office

Public Housing Division,
Military Park Building,
60 Park Place,
Newark, New Jersey 07102-5504,
(201) 877-1662

Washington, DC Office

Public Housing Division,
820 First St. NE., Suite 300,
Washington, DC 20002-4502,
(202) 275-9200

Philadelphia, Pennsylvania Field Office

Public Housing Division,
Liberty Square Building,
105 South 7th Street,
Philadelphia, Pennsylvania 19106-3392

Baltimore, Maryland Office

Public Housing Division,
City Crescent Building,
10 South Howard St., 5th Floor,
Baltimore, Maryland 21202-2505,
(410) 962-2520

Pittsburgh, Pennsylvania Office

Public Housing Division,
Old Post Office Courthouse Building,
700 Grant St.,
Pittsburgh, Pennsylvania 15219-1939,
(412) 644-6428

Richmond, Virginia Office

Public Housing Division,
The 3600 Centre,
3600 West Broad St.,
P.O Box 90331,
Richmond, Virginia 23230-0331,
(804) 278-4507

Charleston, West Virginia Office

Public Housing Division,
405 Capitol St., Suite 708,
Charleston, West Virginia 25301-1795,
(304) 347-7000

Atlanta, Georgia Field Office

Public Housing Division,
Richard B. Russell Federal Building,
75 Spring Street, SW.,
Atlanta, Georgia 30303-3388,
(404) 331-5136

Birmingham, Alabama Office

Public Housing Division,
Beacon Ridge Tower,
600 Beacon Parkway West, Suite 300,
Birmingham, Alabama 35209-3144,
(205) 290-7617

Louisville, Kentucky Office

Public Housing Division,
P.O. Box 1044,
601 W. Broadway,
Louisville, Kentucky 40201-1044,
(502) 582-5251

Jackson, Mississippi Office

Public Housing Division,
Dr. A.H. McCoy Federal Building,
100 West Capitol St., Room 910,
Jackson, Mississippi 39269-1096,
(601) 965-5308

Greensboro, North Carolina Office

Public Housing Division,
2306 W. Meadowview Rd.,
Greensboro, North Carolina 27407,
(919) 547-4000

Caribbean Office

Public Housing Division,
New San Juan Office Building,
159 Carlos E. Chardon Ave.,
San Juan, Puerto Rico 00918-1804,
(809) 766-6121

Columbia, South Carolina Office

Public Housing Division,
Strom Thurmond Federal Building,
1835 Assembly St.,
Columbia, South Carolina 29201-2480,
(803) 765-5592

Knoxville, Tennessee Office

Public Housing Division,
John J. Duncan Federal Building,
710 Locust St. 3rd Floor,
Knoxville, Tennessee 37902-2526,
(615) 549-4384

Nashville, Tennessee Office

Public Housing Division,
251 Cumberland Bend Drive, Suite 200,
Nashville, Tennessee 37228-1803,
(615) 736-5213

Jacksonville, Florida Office

Public Housing Division,
301 West Bay Street, Suite 2200,
Jacksonville, Florida 32202-5121,
(904) 232-2626

Chicago, Illinois Field Office

Public Housing Division,
Ralph Metcalfe Federal Building,
77 West Jackson Boulevard,
Chicago, Illinois 60604-3507,
(312) 353-5680

Detroit, Michigan Office

Public Housing Division,
Patrick V. McNamara Federal Building,
477 Michigan Ave.,
Detroit, Michigan 48226-2592,

(313) 226–7900

Indianapolis, Indiana Office

Public Housing Division,
151 North Delaware St.,
Indianapolis, Indiana 46204–2526,
(317) 226–6303

Grand Rapids, Michigan Office

Public Housing Division,
2922 Fuller Ave., NE.,
Grand Rapids, Michigan 49505–3499,
(616) 456–2100

Minneapolis-St. Paul, Minnesota Office

Public Housing Division,
220 2nd St. South,
Bridge Place Building,
Minneapolis, Minnesota 55401–2195,
(612) 370–3000

Cincinnati, Ohio Office

Public Housing Division,
Federal Office Building, Room 9002
550 Main St.,
Cincinnati, Ohio 45202–3253,
(513) 684–2884

Cleveland, Ohio Office

Public Housing Division,
Renaissance Building,
1350 Euclid Ave., 5th Floor,
Cleveland, Ohio 44115–1815,
(216) 522–4058

Columbus, Ohio Office

Public Housing Division,
200 North High Street,
Columbus, Ohio 44115–1815,
(216) 522–4058

Milwaukee, Wisconsin Office

Public Housing Division,
Henry S. Reuss Federal Plaza,
310 W. Wisconsin Ave., Suite 1380,
Milwaukee, Wisconsin 53203–2289,
(414) 297–3214

Forth Worth, Texas Field Office

Public Housing Division,
1600 Throckmorton,
P.O. Box 2905,
Fort Worth, Texas 76113–2905
(817) 885–5401

Houston, Texas Office

Public Housing Division,
Norfolk Tower,
2211 Norfolk, Suite 200,
Houston, Texas 77098–4096,
(713) 653–3274

San Antonio, Texas Office

Public Housing Division
Washington Square Building
800 Dolorosa St.
San Antonio, Texas 78207–4563
(210) 229–6800

Little Rock, Arkansas Office

Public Housing Division,
TCBY Tower,
425 West Capitol Ave.,
Little Rock, Arkansas 72201–3488,
(501) 324–5931

New Orleans, Louisiana Office

Public Housing Division,
Fisk Federal Building,
1661 Canal St., Suite 3100,
New Orleans, Louisiana 70112–2887,
(504) 589–7200

Albuquerque, NM Office

Public Housing Division,
625 Truman Street N.E.,
Albuquerque, NM 87110–6472,
(505) 262–6463

Omaha, Nebraska Office

Public Housing Division,
10909 Mill Valley Rd.,
Omaha, Nebraska 68154–3955,
(402) 492–3100

St. Louis, Missouri Office

Public Housing Division, 1222 Spruce St., Room 3207, St. Louis, Missouri 63103–2836, (314) 539–6583

Kansas City Field Office

Public Housing Division, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462

Des Moines, Iowa Office

Public Housing Division, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512

Denver, Colorado Field Office

Public Housing Division, 633 17th Street, First Interstate Tower North, Denver, Colorado 80202–3607, (303) 672–5448

San Francisco, California Field Office

Public Housing Division, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Honolulu, Hawaii Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Blvd., Suite 500, Honolulu, Hawaii 96813–4918, (808) 541–1323

Los Angeles, California Office

Public Housing Division, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite 200, Sacramento, California 95814–1997, (916) 551–1351

Phoenix, Arizona Office

Public Housing Division, Two Arizona Center, 400 N. 5th St., Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434

Portland, Oregon Office

Public Housing Division, Cascade Building, 520 Southwest Sixth Ave., Portland, Oregon 97204–1596, (503) 326–2561

Seattle, Washington Field Office

Public Housing Division, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101

Anchorage, Alaska Office

Public Housing Division, University Plaza Building, 949 E. 36th Ave., Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170

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Friday
May 13, 1994

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for the John Heinz Neighborhood Development Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-3759; FR-3662-N-01]

NOFA for the John Heinz Neighborhood Development Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for Fiscal Year 1994.

SUMMARY: This NOFA announces the availability of $4,750,000 in funding for the FY 1994 Neighborhood Development Program. Interested persons should apply for FY 1994 program funds according to the procedures and requirements set out in this NOFA.

In the body of this NOFA is information concerning:

(1) This year's round of funding for this program;

(2) The purposes and objectives of the program;

(3) The method of allocation and distribution of funds;

(4) Eligibility requirements for neighborhood development organizations;

(5) Eligible neighborhood development activities;

(6) Selection criteria for the award of funds;

(7) Application requirements for the funds;

(8) Grantee reporting requirements; and

(9) Other applicable administrative requirements associated with the program.

DATES: Applications may be requested beginning May 13, 1994. Completed applications must be submitted no later than 4:30 p.m. (E.S.T.), by the date specified in the application kit. The application deadline will be firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, contact: American Communities, P.O. Box 7189, Gaithersburg, MD 20898-7189. Requests for application kits must be in writing, but requests may be faxed to: (301) 251-5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to the FR-3662. Completed applications may not be submitted by fax.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, room 7218, 451 Seventh Street, SW., Washington, DC 20410; telephone number (202) 708-1189 and (202) 708-2565 (TDD). (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535-0084.

I. Purpose and Substantive Description

A. Authority

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) (section 123) authorized the John Heinz Neighborhood Development Program. For Fiscal Year 1994, a total of $5 million has been appropriated for this program under the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1994 (Pub. L. 103-124, approved October 18, 1993).

Section 123(e)(6)(D) permits the Secretary of Housing and Urban Development (Secretary) to use no more than five percent of the funds appropriated for administrative or other expenses in connection with the program. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and nonprofit or other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. For purposes of this NOFA the term "neighborhood development funding organization" means:

(1) A depository institution, the accounts of which are insured pursuant to the Federal Credit Union Act, and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

The purpose of the program is to support eligible neighborhood development activities using cooperative efforts and monetary contributions from local sources. The Federal funds are incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Not more than 50 percent of the 1994 awards may be to previous grantees in the program; the remaining awards will be made to organizations selected from among new applicants. Applications will be selected for funding on the basis of evaluation criteria that reflect the program purposes and priorities and are contained in this notice.

The objectives of the Neighborhood Development Program are:

—To help neighborhood development organizations increase their capacities to carry out larger or more complex activities, in cooperation with private and public institutions; and

—To assist neighborhood development organizations to achieve long-term financial support for their activities. The activities must benefit low- and moderate-income persons within the neighborhood.

B. Allocation Amounts

The Department will make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), a grantee organization may receive no more than $75,000 in Federal matching funds in a single program year. HUD reserves the right to make grants for less than the maximum amount. The amount of Federal matching funds that an applicant receives during the program year will depend in part upon the amount of monetary contributions raised in the preceding quarter of the program year from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries, and from neighborhood development funding organizations. Contributions attributable to organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. These contributions may, however, be used to carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a one- to three-year period.

A Federal matching ratio will be established for each participating applicant in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the "smallest number of households or greatest degree of economic distress." Subject to the statutory maximum of $75,000, the Federal match for this program year will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered and the matching ratios will be determined in accordance with these two criteria.

Any application selected for the award of Federal funds that proposed a matching funds ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment to an applicant will be governed by the amount of verified, qualifying monetary contributions received from local sources in the preceding quarter, multiplied by the matching funds ratio established for the neighborhood.

C. Eligibility

1. Eligible Applicants—Definition

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following statutory requirements:

(a) The applicant must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(b) The applicant must be responsible through a governing body to the residents of the neighborhood it serves. Not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(c) The applicant must have conducted business for at least one year before the date of its application;

(d) The applicant must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974 (Urban Development Action Grants);

(ii) The area is designated as an empowerment zone or an enterprise community under Federal law;

(iii) The area is designated as an enterprise zone under State law, and is recognized by the Secretary as a State enterprise zone for purposes of this section; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991; and

(e) The applicant must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons, as defined in section 102(a)(2) of the Housing and Community Development Act of 1974. (In general, low- and moderate-income residents means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved.)

2. Eligible Applicants—Other Threshold Requirements

In addition, an applicant must:

(a) Demonstrate measurable achievements in one or more of the activities listed in section I.C(3), Eligible Activities, of this NOFA;

(b) Specify a business plan for accomplishing one or more of the activities listed in section I.C(3), Eligible Activities, of this NOFA;

(c) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization. An applicant that is otherwise eligible will be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible applicant:

(i) Is located in an area described in paragraph (d) of Section I.C(1) of this NOFA (Eligible Applicants—Definition) that does not contain a neighborhood development funding organization; or

(ii) Demonstrates that it has been unable to obtain the cooperation of any neighborhood development funding organization in the area despite having made a good faith effort to obtain such cooperation; and

(d) Specify a strategy for increasing the capacity of the applicant.

3. Eligible Activities

Eligible activities include the following, but are not limited to the examples given:

(a) Developing economic development activities that include:

(i) Creating permanent jobs in the neighborhood; and

(ii) Establishing or expanding businesses within the neighborhood (such as a business incubator);

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood. Examples include fair housing counseling services, child care centers, youth training, and health services; or

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts. Examples include establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, and establishing an on going street and alley cleanup program.

D. Selection Criteria/Ranking Factors

Applications will be evaluated on the basis of the following factors:

(1) The degree of economic distress within the neighborhood. This is based on census data, including poverty level relative to population. Applicants with the highest poverty level relative to their population will get higher points. (15 points)

(2) The record of past performance of the applicant in one or more of the activities specified under paragraph I.C(3), Eligible Activities, of this NOFA, and in promoting fair housing, equal employment opportunity, and minority-owned business and entrepreneurial opportunities. (10 points)

(3) The extent of neighborhood residents' participation in the activities of the applicant and the extent to which the households and businesses in the neighborhood are members of the applicant organization. (10 points)

(4) The extent to which the proposed activities will benefit persons of low- and moderate-income residing in the neighborhood served by the applicant. (15 points)

(5) The extent of monetary contributions that the applicant proposes as a match to the Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. This requirement shall be waived, and an application may

be awarded the full points available under this factor, if the application is submitted by a small eligible organization, involves activities in a very low-income neighborhood, or is especially meritorious. (10 points)

(6) The extent to which the applicant has developed a strategy to increase its capacity to carry out larger or more complex project activities and to address its long-term financial and organizational development needs. (8 points)

(7) The extent of participation in the proposed activities by a neighborhood development funding organization. An eligible applicant shall be credited with the maximum score under this factor if the applicant demonstrates that it has made a good faith effort to obtain such participation, even if the applicant is not successful. (7 points).

(8) The quality of the management plan submitted for accomplishing the activities proposed by the applicant including evidence of sound financial management, the experience and capability of the applicant's director and staff, and the level of coordination efforts, including working relationships with local governments or neighborhood development funding organizations. (25 points)

E. Determination of Ratio for Federal Contribution

The Secretary will determine the ratio by which Federal funds will be used to match monetary contributions made to each eligible applicant that is selected for funding under this NOFA. The ratio will be based on:

(1) The number of households in the neighborhood. Neighborhoods having the smallest number of households will be assigned higher ratios under this factor; and

(2) The degree of economic distress. Neighborhoods indicating the greatest degree of economic distress will be assigned higher ratios under this factor than those with lesser degrees of economic distress.

F. Environmental Reviews

HUD will conduct the appropriate environmental review and comply with all the environmental requirements in 24 CFR part 50 before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

II. Application Submissions Process

A. Obtaining Application

For an application kit, contact: American Communities, P.O. Box 7189, Gaithersburg, MD 20898–7189. Requests for Grant Applications (RFGAs) must be in writing, but the request may be faxed to (301) 251–5747. (This is not a toll-free number). We strongly recommend the use of the fax transmission option to promote accuracy and expedite response time. Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to FR–3662. The RFGA contains the application, forms, and other information regarding the application process and the administration of the program, including relevant provisions from OMB Circulars A–110 and A–122. (This NOFA summarizes major provision of the RFGA).

B. Application Submission

An original and three copies of an application must be submitted to: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. HUD will accept only one application per neighborhood organization.

C. Application Deadline

Applications may be requested beginning May 13, 1994. Applications must be submitted no later than 4:30 p.m. (E.S.T.), by the date specified in the application kit. The application deadline will be firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

A. Preapplication Determination of Eligibility

Before preparing an application, the applicant should carefully check the eligibility requirements described in section I.C. Eligibility, of this NOFA. Applicants that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress (used in determining which cities and urban counties were potentially eligible applicants under the Urban Development Action Grant Program) are advised to consult the following two notices published by the Department in the **Federal Register**: (1) "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987); and (2) "Urban Development Action Grant: Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

Any applicant that needs additional help in determining its eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). If assistance is needed, the city or county community development office serving a neighborhood organization should be able to provide an applicant with the HUD Field Office contact number. If unable to obtain a local contact, the HUD Headquarters contact for this information is Mrs. Stella Hall, telephone number (202) 708–2186; or contact the TDD number: (202) 708–0564. (These are not toll-free numbers.)

B. Application Checklist

Each application must contain the following, as required by the RFGA.

(1) A signed copy of Standard Form SF–424;

(2) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(3) A completed fact sheet that lists neighborhood and organizational characteristics;

(4) Evidence that the applicant meets eligibility criteria and provides the following data:

(a) An original city map, with street names, delineating the applicant's neighborhood boundaries and indicating where project activities will take place;

(b) Census tract, block, or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

(c) Census data on the size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by ethnic, racial, and gender composition;

(d) A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

(e) A list of the names of the neighborhood governing board members and their addresses (with zip codes) to show that at least 51% reside in the neighborhood. Indicate those who reside in the neighborhood separately from those who conduct business in the neighborhood;

(f) Identification of the applicant organization's past and current neighborhood projects, including those projects that are eligible neighborhood development activities as defined in section I.C(3), Eligible Activities, of this NOFA;

(g) A description of the means by which the governing board members account to residents of the neighborhood, including the method and frequency of selection of members of the governing board, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (i.e., a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

(h) Evidence of the applicant's sound financial management system, determined from its financial statements or audits;

(i) A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's comprehensive housing affordability strategy (CHAS), section 104(m) of the Housing and Community Development Act of 1974, or the local government's housing and community development plans;

(j) Evidence of cooperation with a neighborhood development funding organization. In lieu of this participation, evidence may be presented that the applicant:

(i) Has no neighborhood development funding organization within the applicable boundaries; or

(ii) Has been unsuccessful, despite having made a good faith effort, in obtaining this participation.

(k) A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(l) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(m) A project management plan, including a schedule of tasks for both fund raising and project implementation;

(n) A project budget and budget narrative; and

(o) A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F; and

(5) *Equal Opportunity Requirements.* The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of Title VIII of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309).

(f) The requirements of the Americans with Disabilities Act (42 U.S.C. 12181–12189) and implementing regulations at 28 CFR part 36, as applicable.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

Examples of deficiencies that may be cured are:

—Omitted or improper signatures;
—Omitted certifications or assurances; and
—Omitted financial statements or audits.

V. Other Matters

A. Reporting Requirements

In addition to complying with relevant provisions of OMB Circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the program, such as changes in any of the following: the governing board membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the program, and a report on successful projects that will be distributed to other neighborhood organizations.

B. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in section III.B(4) of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction,

reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR part 35.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (households, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the HUD-assisted project.

C. National Environmental Policy Act

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice announces incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

E. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

F. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

G. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Area or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

H. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 has been implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note); 42 U.S.C. 3535(d).

Dated: May 6, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94-11611 Filed 5-12-94; 8:45 am]

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federal register

Friday
May 13, 1994

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan and Yemen; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27744; Special Federal Aviation Regulation (SFAR) No. 67]

RIN 2120–AF38

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Afghanistan.

DATES: *Effective Date*: May 10, 1994. *Expiration date*: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Lane, Airspace and Air Traffic Law Branch, AGC–230, or Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 103(1) of the Federal Aviation Act of 1958 (Act) declares, as a matter of policy, that the regulation of air commerce to promote safety is in the public interest. Section 601(a) of the Act provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce. In the exercise of these statutory responsibilities, the FAA has determined that the current civil war in Afghanistan justifies the imposition of certain measures to ensure the safety of U.S.-registered aircraft and operators that are conducting flight operations in the vicinity of Afghanistan's territory and airspace.

Fighting between the current government and various factions had been localized to an area around Kabul and the northern portion of the country. However, recent fighting has intensified and spread to a larger area of the country. Areas of northern Afghanistan, including major airbases and military garrisons at Mazare Sharif, have come under the control of heavily armed insurgent forces opposed to the Kabul regime.

Government and rebel forces possess a wide range of sophisticated weapons that potentially could be used to attack overflying civil aviation aircraft at cruising altitudes. These weapons include various surface-to-air missiles (SAMs) and antiaircraft artillery. Russian made fighter and attack aircraft, armed with cannons and air-to-air missiles, are also being utilized by government and rebel forces. Opposition forces have attacked Kabul with rockets, artillery, and bombs. Government aircraft have countered with air strikes on rebel airfields and other key facilities. According to press reports, some air-to-air encounters have occurred between aircraft from the Afghan factions and SAMs have been used to target aircraft. Segments of Afghanistan continue to be the scene of factional fighting and consequently pose a threat to transiting civilian aircraft. Fluctuations in the level and intensity of combat create an unsafe environment for any aircraft in Afghan airspace.

As a result of the stepped-up fighting, advisories have been issued by the governments of Russia and the United Kingdom and by the International Civil Aviation Organization (ICAO) urging civil air carriers to avoid Afghan airspace. On January 11, 1994, the Russian Civil Aviation Authority issued a notice specifically advising all aircraft crossing Afghanistan airspace to avoid the Termez-Mazare-Sharif-Kabul air corridor. On January 21, a communiqué was issued by the Coordination Council of the Afghan opposition calling on all international airline organizations to restrict passenger-carrying aircraft from flying in Afghan airspace. On February 22, 1994, the British government issued a notice advising that there may be a risk to civilian aircraft flying along certain air routes in northern and southern Afghanistan, and that British and Hong Kong carriers are now avoiding these routes. ICAO also has issued a directive urging air carriers to discontinue flights over Afghanistan. These notices and the communiqué reflect the violent and uncertain nature of the situation and underscore the danger to flights in Afghan airspace.

While there are no indications that any faction in Afghanistan intends to deliberately target civil aircraft, both sides have the capability to do so and such a possibility cannot be ruled out in the current environment. At the very least, central Afghan government control over installations critical to navigation and communication cannot be assured. Use of combat aircraft and SAMs by all factions in the conflict calls into question the security of Afghan airspace for civilian aircraft. It is uncertain how long these conditions will last.

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

On the basis of the above information and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that immediate action by the FAA is required to prevent the injury to or loss of certain U.S.-registered aircraft and U.S. operators conducting flights in the vicinity of Afghanistan. I find that the current civil war in Afghanistan presents an immediate hazard to the operation of civil aircraft in the territory and airspace of Afghanistan. Accordingly, I am ordering a prohibition of flight operations (excluding those operations approved by the U.S. Government and emergency operations) within the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons on board those aircraft. Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

The rule contains an expiration date of May 10, 1995, but may be terminated sooner or extended through the publication of a corresponding notice if circumstances so warrant.

Regulatory Evaluation Summary

Benefits

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. commercial air carriers and other operators. The potential benefits of this action will accrue only to those air carriers and other operators currently engaging in overflights of Afghanistan's territory. Since this action is proactive rather than reactive, there are no statistics from which a quantitative estimate of benefits can be derived.

Costs

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of Afghanistan's territory and airspace. Based on information available to informed FAA personnel, there are no U.S. air carriers or commercial operators currently conducting revenue flights into Afghanistan. Therefore, these operators will not be impacted by this action. However, there are overflights of Afghanistan's territory by U.S. commercial air carriers. Thus, these operators will be the only entities affected by this action. These operators will incur costs for additional fuel and time as the result of diverting from their normal flight routes over Afghanistan between Europe, Africa, and Asia. Since the FAA does not know at this time to what extent the potential cost of compliance will be, the FAA solicits comments from potentially affected operators. Please provide detailed cost information on the extent the action will impose costs in the form of additional preflight planning and circumnavigation of Afghanistan's territory.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

This final rule could have an impact on the international flights of U.S. air carriers and commercial operators because it will restrict their ability to overfly the territory of Afghanistan and therefore may impose additional costs relating to the circumnavigation of Afghanistan's territorial airspace. This final rule will not restrict the ability of foreign air carriers to overfly Afghanistan's territory. Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

Federalism Determination

The SFAR set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Afghanistan are not currently being conducted by U.S. air carriers or commercial operators, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulation Flexibility Act.

List of Subjects in 14 CFR Part 91

Afghanistan, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*, E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 67 is added to read as follows:

Special Federal Aviation Regulation No. 67—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

1. *Applicability.* This rule applies to all U.S. air carriers and commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided in paragraph 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Afghanistan.

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Afghanistan where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. *Expiration.* This Special Federal Aviation Regulation expires May 10, 1995.

Issued in Washington, DC, on May 10, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–11714 Filed 5–10–94; 2:57 pm]

BILLING CODE 4910–13–P

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14 CFR Part 91

[Docket No. 27745; Special Federal Aviation Regulation (SFAR) No. 68]

RIN 2120–AF39

Prohibition Against Certain Flights Within the Territory and Airspace of Yemen

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Yemen by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Yemen.

DATES: Effective Date: May 10, 1994. Expiration date: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Lane, Airspace and Air Traffic Law Branch, AGC–230, or Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 103(1) of the Federal Aviation Act of 1958 (Act) declares, as a matter of policy, that the regulation of air commerce to promote safety is in the public interest. Section 601(a) of the Act provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce. In the exercise of these statutory responsibilities, the FAA has determined that the current civil war in Yemen justifies the imposition of certain measures to ensure the safety of U.S.-registered aircraft and operators that are conducting flight operations in the vicinity of Yemen's territory and airspace.

Political violence and power struggles have plagued Yemen since North and South Yemen were unified in 1990. Civil hostilities have expanded over the past four months, culminating in the recent outbreak of widespread fighting throughout the country. President Ali Abdallah Salih of Yemen has declared a state of emergency, and a radio station in the capital of Sanaa announced the beginning of an all-out war. Both sides in the conflict possess military aircraft and anti-aircraft weapons.

The current situation in Yemen is volatile and fluid, making it potentially dangerous for civil aircraft to fly into or over Yemen. The ability of either side in the conflict to distinguish between hostile, friendly, and neutral aircraft is questionable. Military aircraft have been shot down, and airports throughout Yemen have reportedly been bombed. Complicating the civil aviation situation is the lack of air traffic control services and facilities in Yemen.

The government of the United Kingdom (U.K.) has issued a flight advisory referencing the civil war in Yemen. On May 5, 1994, the British Civil Aviation Authority, in cooperation with the U.K. Department of Transport's International Aviation Directorate, issued a statement advising airlines to avoid Yemen's airspace because of the serious outbreak of fighting in the country.

Prohibition Against Certain Flights Within the Territory and Airspace of Yemen

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that immediate action by the FAA is required to prevent the injury to or loss of certain U.S.-registered aircraft and U.S. operators conducting flights in the vicinity of Yemen. I find that the current civil war in Yemen presents an immediate hazard to the operation of civil aircraft in the territory and airspace of Yemen. Accordingly, I am ordering a prohibition of most flight operations (excluding operations conducted with the specific approval of the United States Government or emergency operations) within the territory and airspace of Yemen by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons on board those aircraft. Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

The rule contains an expiration date of May 10, 1995, but may be terminated sooner or extended through the publication of a corresponding notice if circumstances so warrant.

Regulatory Evaluation Summary

Benefits

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. commercial air carriers and other operators. The potential benefits of this action will accrue only to those air carriers and other operators currently engaging in overflights of Yemen's territory. Since this action is proactive rather than reactive, there are no statistics from which a quantitative estimate of benefits can be derived.

Costs

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of Yemen's territory and airspace. Based on information available to informed FAA personnel, there are no U.S. air carriers or commercial operators currently conducting revenue flights into Yemen. Therefore, these operators will not be affected by this action. However, there are overflights of Yemen's territory by U.S. commercial air carriers. Thus, these operators will be the only entities affected by this action. These operators will incur costs for additional fuel and time as the result of diverting from their normal flight routes that cross over Yemen. Since the FAA does not know at this time to what extent the potential cost of compliance will be, the FAA solicits comments from potentially impacted operators. Please provide detailed cost information on the extent the action will impose costs in the form of additional preflight planning and circumnavigation of Yemen's territory.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

International Trade Impact Assessment

This final rule could have an impact on the international flights of U.S. air carriers and commercial operators because it will restrict their ability to overfly the territory of Yemen and therefore may impose additional costs related to the circumnavigation of Yemen's territorial airspace. This final rule will not restrict the ability of foreign air carriers to overfly the territory of Yemen. Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States or to the sale of U.S. aviation products and services in foreign countries.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Yemen are not currently being conducted by U.S. air carriers or commercial operators, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulation Flexibility Act.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq., E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 68 is added to read as follows:

Special Federal Aviation Regulation No. 68—Prohibition Against Certain Flights Within the Territory and Airspace of Yemen

1. Applicability. This rule applies to all U.S. air carriers and commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. Flight prohibition. Except as provided in paragraph 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Yemen.

3. Permitted operations. This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Yemen where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA.

4. Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 C.F.R. 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operation of the aircraft involved in the deviation, including a description of the deviation and the reason therefor.

5. Expiration. This Special Federal Aviation Regulation expires May 10, 1995

Issued in Washington, DC, on May 10, 1994

David R. Hinson,

Administrator

[FR Doc. 94–11713 Filed 5–10–94; 2:57 pm]

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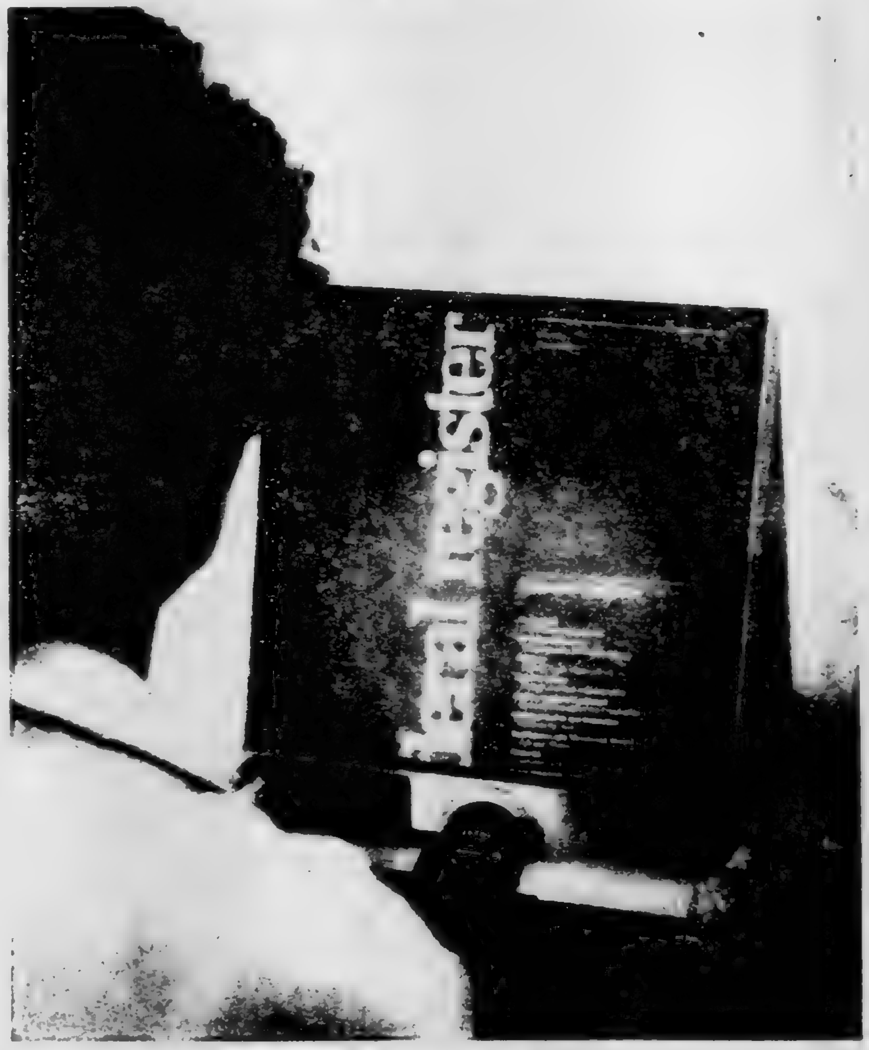

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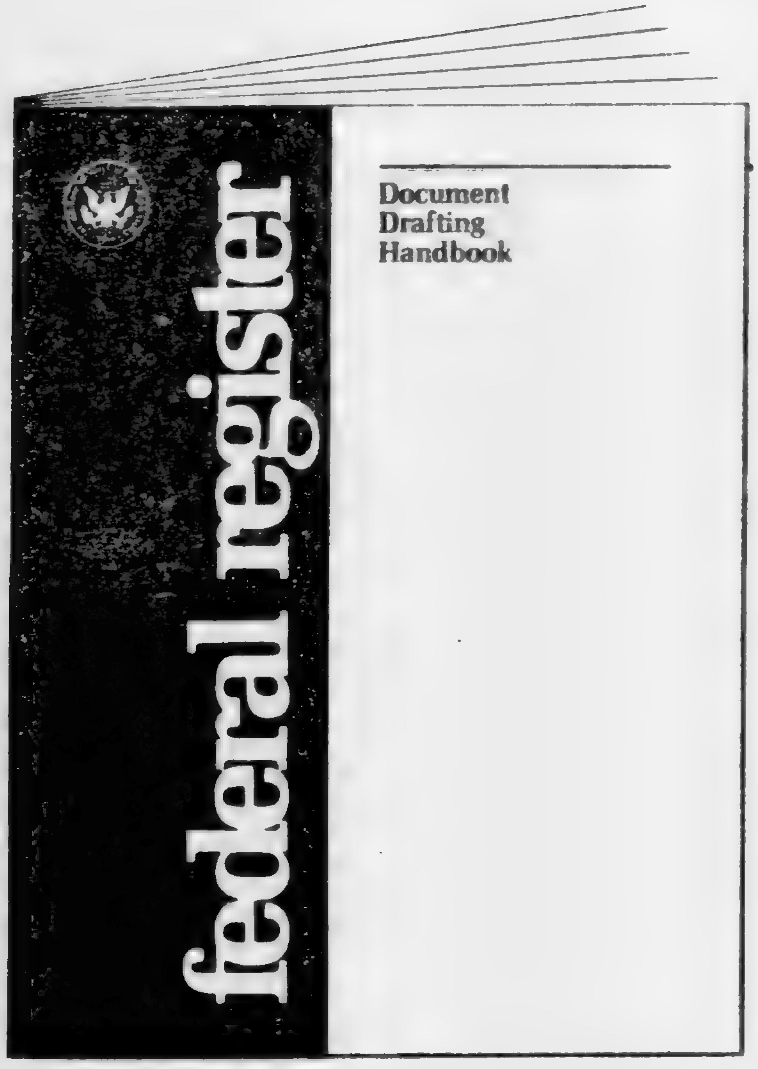

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–153–2]

Citrus Canker Regulations; Quarantined Areas and Survey Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the citrus canker regulations by removing the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas and by removing the area in Hillsborough County, FL, from the list of survey areas. No evidence of citrus canker has been found in these areas for at least 2 years. This action is necessary to relieve regulatory restrictions which are no longer necessary.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr Stephen Poe, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. citri. The disease is known to affect plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. The Asiatic strains of *Xanthomonas campestris* pv. *citri* (A strains) are aggressive strains.

In the United States, Florida is the only State where citrus canker has been present in recent years. Regulations to prevent the interstate spread of citrus canker from Florida are contained in 7 CFR 301.75–1 through 301.75–14, "Subpart—Citrus Canker" (referred to below as "the regulations").

The regulations designate certain areas in Florida as quarantined areas and impose restrictions on the interstate movement of regulated articles from and through quarantined areas. The regulations also designate survey areas, which surround the quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors.

On March 17, 1993, we published in the **Federal Register** (58 FR 12553–12554, Docket No. 93–153–1) a proposal to amend the regulations by removing the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas, and by removing the area in Hillsborough County FL, from the list of survey areas.

We solicited comments concerning our proposal for a 30-day comment period ending April 18, 1994. We received three comments, two from State agriculture departments and one from an organization of farmers.

All the commenters supported our proposal. However, one commenter pointed out that some States also impose restrictions on the movement of citrus plants into their States to prevent the introduction of diseases and pests other than citrus canker.

The commenter is correct. Some citrus-producing states restrict the movement of citrus plants into their States to prevent the introduction of citrus diseases or pests, other than citrus canker, into the State. For this reason, although we are removing the Federally-imposed citrus canker quarantines in Florida, anyone shipping citrus plants interstate should be aware that State-imposed restrictions may apply.

The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register** This rule removes the areas in Highlands and Manatee Counties, FL, from the list of quarantined areas and removes the area in Hillsborough County, FL, from the list of survey areas. This will eliminate the requirement for regular inspection of groves in the former survey areas in which regulated fruit, trees, and plants are produced, thus reducing the burden on the operators of the groves and on APHIS and Florida State agencies, which provide inspectors to perform the inspections. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective upon publication in the **Federal Register**.

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Under this final rule, all areas in Highlands and Manatee Counties are released from their classification as quarantined areas, and the area in Hillsborough County is released from its classification as a survey area. Citrus plants, plant parts, citrus fruit, and other regulated articles from formerly quarantined areas are allowed to be moved interstate to other areas in the United States, including commercial citrus-producing areas, and regulated articles are allowed to be moved interstate through quarantined areas. Requirements which apply to survey areas are also removed.

We have determined that 237 individuals and businesses will be economically affected by the changes. These individuals and businesses include: lawn care companies (82), grove owners (74 persons who own 2,177 acres), retail nursery outlets (21), fruit processors (15), fruit harvesting contractors (12), fruit shippers (12), fresh fruit packing houses (11), nurseries (9), and seed extractors (1). APHIS believes that virtually all of these individuals and businesses are small entities.

It should be noted that the costs of compliance were, in many cases, minimal, and that the individuals and businesses affected by the regulations represent less than one percent of all similar individuals and businesses in Florida.

One of the largest groups of affected individuals and business is grove owners. We estimate that this rule change will save each affected grove owner approximately $25 per acre, per year, by removing requirements for cleaning and disinfecting vehicles, equipment, and personnel leaving their groves. These costs represent a small percentage of the owners' overall production costs.

In addition, this final rule will allow grove owners to expand the areas into which their fruit could be moved interstate, in that they will be allowed to move fruit interstate to commercial citrus-producing areas. We anticipate that any impact from this rule change will be negligible, as approximately 90 percent of all of Florida's citrus production is for the juice market, and only about 10 percent is for the fresh fruit market.

In addition to grove owners in the quarantined areas, truckers, packing and processing plants, and lawn services within the currently quarantined areas will no longer be subject to inspection and will no longer need to carry out activities now required by the regulations. This should result in financial savings to these entities. This also means that groves producing regulated fruit for interstate movement, regulated trees, and regulated plants in the current survey area will no longer be subject to regular inspections for citrus canker. This change will reduce the burden on APHIS and Florida State agencies, which currently provide inspectors to perform inspections.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under this final rule: (1) All State and local laws and regulations that are inconsistent with this rule are preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.75–4, paragraphs (a) and (d)(1) are revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas: Citrus canker is not known to exist in the United States.

* * * * *

(d) * * *

(1) *Survey area.* In the following area, inspections are conducted as required by paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section: Citrus canker is not known to exist in the United States

* * * * *

Done in Washington, DC, this 10th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–11839 Filed 5–13–94; 2:42 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–59–AD; Amendment 39–8912; AD 94–10–05]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires inspections of the forward lower engine mount bolts for migration and damage, inspections of the bolt bushings for damage, torque checks of the nuts installed on these bolts, and correction of any discrepancies. This amendment is prompted by reports of migration of the bolts that attach the forward engine mount universal block to the engine lugs. The actions specified in this AD are intended to prevent migration of the bolts out of the engine lug joint, which could result in loss of the engine from the strut.

DATES: Effective May 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1994.

Comments for inclusion in the Rules Docket must be received on or before July 15, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–59–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Five operators of Boeing Model 747 series airplanes, equipped with Pratt & Whitney JT9D–3 and –7 series engines, have reported cases of migration of the bolts that attach the forward engine mount universal block to the engine lugs. Investigation of the most recent case, which occurred in February 1994, revealed that an engine mount bolt's self-locking nut was missing and the bolt had partially migrated out of the forward engine mount universal block to engine lug joint. The bolt migrated approximately one inch inboard, so that the bolt retainer device sheared and the bolt head came in contact with the thrust reverser air supply duct; this caused the duct to be chafed, dented, and cracked. The reason for the missing self-locking nut has not been determined.

A similar incident was reported in 1982. During troubleshooting of the fan thrust reverser, one operator found an engine mount bolt that had migrated due to the loss of the self-locking nut. Like the most recent case, the reason for the missing self-locking nut was not determined. Prior to this incident, two other operators had reported migration of this same bolt after the loss of the nut and washer.

If the bolt were to completely migrate out of the joint, the engine could separate from the strut. Separation of an engine from the strut could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–71A2269, dated April 14, 1994, that describes procedures for repetitive inspections of the forward lower engine mount bolt for migration and replacement of the nuts if bolt migration exists. It also describes procedures for inspecting the bolts and bolt bushings for damage, replacing damaged bolts and bushings, installing new nuts and modified washers for these bolts, and torque-checking the nut.

The FAA also has reviewed and approved Boeing Service Bulletin 747–71–2192, dated March 2, 1984, that contains procedures for installing steel retention brackets. Installation of these brackets will improve secondary retention of the two bolts that engage the universal block at the lower forward engine mount.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to prevent complete migration of the forward lower engine mount bolt out of the joint, which could result in the separation of the engine from the strut. This AD requires repetitive visual inspections of the bolt for migration and replacement of the nuts if bolt migration exists; inspection of the bolts and bolt bushings for damage, and replacement of damaged bolts and bushings; and a torque check of the nut. These actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 747–71A2269, described previously.

Operators who have previously installed steel retention brackets, in accordance with Boeing Service Bulletin 747–71–2192, as well as nuts having part number NAS1805 and certain modified washers, are permitted to conduct the repetitive inspections for bolt migration at longer intervals than operators without these items installed on the airplane.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA is considering further rulemaking action to revise this rule to require the installation of steel retention brackets, nuts having part number NAS1805, and modified washers on all engine mount bolts. However, the proposed compliance time for these actions is sufficiently long so that notice and time for prior public comment would not be impracticable.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–59–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–05 Boeing: Amendment 39–8912. Docket 94–NM–59–AD.

Applicability: Model 747 series airplanes; equipped with Pratt & Whitney JT9D–3 and –7 series engines (does not apply to –70 series engines); certificated in any category

Compliance: Required as indicated, unless accomplished previously.

To prevent complete migration of the forward lower engine mount bolt out of the joint, which could result in the separation of the engine from the strut, accomplish the following:

(a) For all applicable airplanes: Within 60 days after the effective date of this AD, visually inspect the forward lower engine mount for migration of the forward lower engine mount bolts, both transverse and forward-aft, in accordance with Boeing Alert Service Bulletin 747–71A2269, dated April 14, 1994 (hereafter referred to as "the service bulletin"). The maximum gap for the transverse bolt and the forward-aft bolt in the joint is 0.06 inch; a bolt is considered to have migrated if the gap exceeds this value. Prior to further flight, accomplish the requirements of either paragraph (b) or (c) of this AD, as applicable.

(b) For airplanes not equipped with a steel retention bracket installed in accordance with Boeing Service Bulletin 747–71–2192 or its production equivalent, accomplish the following:

(1) If the inspection required by paragraph (a) of this AD indicates that the bolt has not migrated, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD:

(i) Prior to further flight, perform a torque check of the nut in accordance with the service bulletin. If the torque is outside of the range specified in the service bulletin, prior to further flight, replace the nut with a new nut having part number NAS1805 and associated washer.

(ii) Repeat the inspection for migration of bolts with nuts having part number BACN10JC at intervals not to exceed 2,100 flight hours. Repeat the inspection for migration of bolts with nuts having part number NAS1805 at intervals not to exceed 3,200 flight hours.

(2) If the inspection required by paragraph (a) of this AD indicates that the bolt has migrated, accomplish paragraph (b)(2)(i) of this AD, and either paragraph (b)(2)(ii) or paragraph (b)(2)(iii), as applicable:

(i) Prior to further flight, remove the nut and replace it with a new nut having part number NAS1805 and associated washer, in accordance with the service bulletin Thereafter, repeat the inspection for migration of these bolts at intervals not to exceed 3,200 flight hours

(ii) Except as provided by paragraph (b)(2)(iii) of this AD: Prior to further flight, remove the bolt and visually inspect it for damage, in accordance with Part V of the service bulletin; and visually inspect the bolt bushings for damage, in accordance with Part III of the service bulletin. If the bolt is damaged, prior to further flight, replace the bolt with a new bolt having the same part number. If the bushings are damaged, prior to further flight, replace the bushings

(iii) The inspections of the bolt and bolt bushings required by paragraph (b)(2)(ii) of this AD may be deferred for a maximum of 3,200 flight hours, provided that all of the following apply:

(A) The bolt is visually inspected for thread damage as described in Part IV of the service bulletin and no damage is found; and

(B) The nut threads are still fully engaged with the bolt; and

(C) The migrated bolt has not contacted adjacent structure or systems; and

(D) The bolt is repositioned back to clamp-up position, as described in Part IV of the service bulletin.

(c) For airplanes equipped with a steel retention bracket installed in accordance with Boeing Service Bulletin 747–71–2192 or its production equivalent, accomplish the following:

(1) If the inspection required by paragraph (a) of this AD indicates that the bolt has not migrated, accomplish paragraphs (c)(1)(i) and (c)(1)(ii) of this AD:

(i) Prior to further flight, ensure that the washer on the nut side does not rotate freely If the washer rotates freely, prior to further flight, replace the nut with a new nut having part number NAS1805 and associated washer.

(ii) Repeat the inspection for migration of bolts with nuts having part number BACN10JC at intervals not to exceed 3,200 flight hours. Repeat the inspection for migration of bolts with nuts having part number NAS1805 at intervals not to exceed 6,000 flight hours.

(2) If the inspection required by paragraph (a) of this AD indicates that the bolt has migrated, accomplish paragraph (c)(2)(i) of this AD, and either paragraph (c)(2)(ii) or paragraph (c)(2)(iii), as applicable:

(i) Prior to further flight, remove the nut and replace it with a new nut having part number NAS1805 and associated washer, in accordance with the service bulletin. Thereafter, repeat the inspection for migration of these bolts at intervals not to exceed 6,000 flight hours.

(ii) Except as provided by paragraph (c)(2)(iii) of this AD: Prior to further flight, remove the bolt and visually inspect it for damage, in accordance with Part V of the service bulletin; and visually inspect the bolt bushings for damage, in accordance with Part III of the service bulletin. If the bolt is damaged, prior to further flight, replace the bolt with a new bolt having the same part number. If the bushings are damaged, prior to further flight, replace the bushings

(iii) The inspections of the bolt and bolt bushings required by paragraph (c)(2)(ii) of this AD may be deferred for a maximum of 3,200 flight hours, provided that all of the following apply:

(A) The bolt is visually inspected for thread damage, as described in Part IV of the service bulletin, and no damage is found; and

(B) The nut threads are still fully engaged with the bolt; and

(C) The migrated bolt has not contacted adjacent struture or systems; and

(D) The bolt is repositioned back to clamp-up position, as described in Part IV of the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–71A2269, dated April 14, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 31, 1994.

Issued in Renton, Washington, on May 6, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11522 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–98–AD; Amendment 39–8872; AD 94–08–01]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit flight in certain freezing precipitation conditions. This AD also provides an optional terminating action for the AFM revision. This amendment is prompted by reports of engine power rollback (loss of engine power) that occurred in environmental conditions involving freezing precipitation. The actions specified by this AD are intended to prevent loss of multiple engine power during flight in freezing precipitation.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the

Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model ATP airplanes was published in the **Federal Register** on September 3, 1993 (58 FR 46916). That action proposed to require revising the Airplane Flight Manual (AFM) to prohibit flight in certain freezing precipitation conditions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule, but suggests that the action should have been issued to require immediate compliance to reduce the traveling public's exposure to the potential risk of loss of multiple engine power during flight in freezing precipitation and possible unplanned landings. The commenter also requests that, since the AD was issued as a proposal, the time required for publication of the final rule in the **Federal Register** be kept to a minimum so as not to induce an additional administrative delay that would only delay compliance.

The FAA does not concur with the commenter's suggestion that the final rule be issued to require immediate compliance. At the time of issuance of the proposal, the FAA could not justify that an immediate safety of flight problem existed, especially in light of the fact that the single operator of the entire U.S. fleet of Model ATP airplanes already had added an operating restriction similar to that required by this AD to its FAA-approved operation specifications and had agreed to operate in accordance with that restriction until further corrective action could be identified and incorporated. Moreover, the operating limitation was proposed by the FAA since, at that time, the airplane manufacturer, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, and the FAA were uncertain as to the cause of the engine power rollback problem described in the preamble to the proposal. However, considerable information was available at that time to indicate that the problem was due to ice ingestion into the engines during certain meteorological conditions. That data, however, had not yet been confirmed through testing conducted by the manufacturer and the CAA. Consequently, the FAA determined that a requirement to prohibit flight in certain freezing precipitation conditions would provide an acceptable level of safety until terminating action could be identified and developed.

In developing this AD action, the FAA considered all of these items, and determined that, since the continued operational safety of the U.S. fleet could be assured during the interim, it was not impracticable to provide notice and the opportunity for public comment on the proposed rule.

Two commenters, the CAA and Jetstream, request that the proposed rule be revised to require establishing a life limit on the engine igniter plugs, installing a bypass duct outlet eductor, and incorporating other changes to the airplane flight manual (AFM), in lieu of the proposed AFM revision. The commenters contend that, if such interim measures are taken, an acceptable level of safety would be assured pending longer term corrective action. The commenters explain that service information has been issued that describes procedures for those actions, as follows:

1. Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993, which describes procedures for placing a life limit on the engine igniter plugs and replacing those parts at staggered periods in order to improve ignition reliability.

2. Jetstream Service Bulletin ATP–54–12–35274A, Revision 1, dated December 15, 1993, which describes procedures for installation of an eductor plate over the exhaust port of the engine air intake system. Accomplishment of this installation will increase the air flow rate down the exhaust port.

3. Temporary Revision No. T/33, Issue 1, dated November 1, 1993, which revises AFM Document No. ATP 004. This temporary revision describes revisions to the Limitations and Normal Procedures sections of the FAA-approved AFM to introduce procedures for operation in icing conditions. The changes include a ground inspection of the engine inlet prior to flight, staggered selection of the left- and right-hand engine de-ice systems to ensure that the likelihood of simultaneous engine rundown on final approach is minimized, and a small increase in the final approach speed to ensure safe landing.

Jetstream also suggests two other alternatives that would provide an adequate level of safety, wherein the proposed AFM limitation could be removed:

1. Modification of the engine inlets, in addition to accomplishment of the interim measures discussed previously (a life limit on the engine igniter plugs, installation of a bypass duct outlet eductor, and certain changes to the AFM). Jetstream indicates that these modified engine inlets demonstrate a significant improvement in de-icing effectiveness in the range of temperatures and airplane speeds in which power rollbacks have been experienced.

Jetstream service bulletins that relate to the engine inlet modification are described as follows: Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993, describes procedures for installing engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area. The service bulletin also describes procedures for performing associated electrical system changes. The installation involves installing engine air inlet ducts that incorporate an enlarged heater mat with revised electrical power densities adjacent to the engine intake flange. Jetstream Service Bulletin ATP–54–14, dated October 14, 1993, describes procedures for repetitive visual inspections of the heater mats for damage, and replacement of the engine air intake, if necessary.

2. Accomplishment of special operating procedures, not specifically defined by the commenter. Jetstream considers that requiring such operating procedures is a proven and acceptable means of providing an adequate level of safety, as generally demonstrated by the operation of aircraft throughout their flight spectra, in accordance with AFM's.

Jetstream submits one final suggestion in the event the FAA proceeds with requiring the proposed operating limitation. In this case, the commenter suggests that the actions described in Jetstream Service Bulletins ATP–54–13–35274B and ATP–54–14, in addition to the interim measures discussed previously (a life limit on the engine igniter plugs, installation of a bypass duct outlet eductor, and certain changes to the AFM), be accomplished as an alternative method of compliance for the proposed operating limitation.

The FAA concurs partially. The interim measures proposed by the CAA and Jetstream were based, to a large extent, on the flight crew performing special operating procedures to ensure a safe landing after one or both engines had run down due to ice ingestion. However, the FAA considers that requiring the flight crew to perform such special operating procedures over a long term period may not provide the degree of safety assurance necessary for these airplanes. The FAA has determined that requiring the proposed operating limitation to prohibit flight into certain meteorological conditions known to cause engine rundown will provide an acceptable level of safety until additional hardware modifications can be identified and installed on these airplanes.

However, the FAA concurs with Jetstream's suggestion that the accomplishment of the interim measures and modification of the engine inlets may be accomplished as optional terminating action for the operating limitation. Since the issuance of the proposed rule, Jetstream has issued Temporary Revision No. T/38, Issue 1, dated February 16, 1994, which revises certain pages of Temporary Revision No. T/33 (discussed previously). Temporary Revision No. T/38 amends the Normal Procedures section of the AFM as related to operation of engine continuous ignition during flight in icing conditions. The FAA finds that this new information must be included in the AFM for Model ATP airplanes in order to assure continued reliability and to prevent unnecessary wear on engine ignition systems.

Accordingly, the final rule has been revised to include a new paragraph (b), which includes the following optional terminating action:

1. Revising the Limitations section and the Normal and Abnormal Procedures sections of the FAA-approved AFM, to include the information specified in Temporary Revision No. T/33, Issue 1, dated November 1, 1993, and Temporary Revision No. T/38, Issue 1, dated February 16, 1994, to introduce procedures for operation in icing conditions.

2. Revising the FAA-approved maintenance program to place a life limit on the engine igniter plugs and to replace those parts at specified intervals in accordance with Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993.

3. Installing an eductor plate over the exhaust port of the engine air intake system in accordance with Jetstream Service Bulletin ATP–54–12–35274A, Revision 1, dated December 15, 1993.

4. Installing engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area, and performing associated electrical system changes, in accordance with Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993.

5. Revising the FAA-approved maintenance program to include repetitive visual inspections of the heater mats for damage; and, if any damage is found, replacement of the engine air intake; in accordance with Jetstream Service Bulletin ATP–54–14, dated October 14, 1993.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $55 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $495, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, the number of work hours required to accomplish it is approximately 159 per airplane, at an average labor rate of $55 per work hour. Required modification parts would be supplied by Jetstream at no cost to operators. Based on these figures, the total cost impact of the AD for accomplishment of the optional terminating action is $8,745 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–08–01 British Aerospace (Commercial Aircraft), Limited: Amendment 39–8872. Docket 93–NM–98–AD.

Applicability: All Model ATP airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of multiple engine power during flight in freezing precipitation, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Flight is prohibited into forecast or reported freezing precipitation conditions where the outside air temperature is between +5 °C and −5 °C."

(b) Accomplishment of the actions specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) constitutes terminating action for the AFM revision required by paragraph (a) of this AD.

(1) Revise the Limitations section and the Normal Procedures section of the FAA-approved AFM, to include the information specified in Temporary Revision No. T/33, Issue 1, dated November 1, 1993, and Temporary Revision No. T/38, Issue 1, dated February 16, 1994, which introduce procedures for operation in icing conditions, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 1: This may be accomplished by inserting copies of Temporary Revision No. T/33 and No. T/38 in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision No. T/33 and No. T/38.

(2) Incorporate a revision into the FAA-approved maintenance program that provides for replacement of engine igniter plugs at the intervals specified in Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993. Initial replacement of an engine igniter plug with a new plug shall be accomplished prior to the accumulation of 200 total hours time-in-service on the engine igniter plug, or within 50 hours time-in-service after incorporating the maintenance program revision, whichever occurs later.

(3) Install an eductor plate over the exhaust port of the engine air intake system in accordance with Jetstream Service Bulletin ATP–54–12–35274A, dated September 28, 1993, or Revision 1, dated December 15, 1993. Any eductor plate installed in accordance with the original issue of the service bulletin must be inspected for any aperture profile mismatch, in accordance with paragraph 2., Part B., of the Accomplishment Instructions of Revision 1 of the service bulletin. If any mismatch is found that exceeds the limit specified in that service bulletin, prior to further flight, the discrepancy must be corrected in accordance with paragraph 2., Part C, of Revision 1 of the service bulletin.

(4) Install engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area, and perform associated electrical system changes, in accordance with Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993.

(5) Revise the FAA-approved maintenance program to include repetitive visual inspections of the heater mats for damage at intervals not to exceed 50 hours time-in-service, in accordance with Jetstream Service Bulletin ATP–54–14, dated October 14, 1993; and, if any damage is found, prior to further flight, replace the engine air intake, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with the following documents, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Temporary Revision No. T/33; Issue 1, November 1, 1993	1–5	1	November 1, 1993.
Temporary Revision No. T/38; Issue 1, February 16, 1994	1–2, 7–8	1	February 16, 1994.
	3–4	(These pages are removed).	
	5–6	Original	March 5, 1993.
ATP–80–06; Revision 1, October 22, 1993	1–3	1	October 22, 1993.
ATP–54–13–35274B, October 9, 1993	1–44	Original	October 9, 1993.
ATP–54–14, October 14, 1993	1–5	Original	October 14, 1993.
ATP–54–12–35274A, September 28, 1993	1–3, 5, 7	Original	September 28, 1993.
	4, 6	(These pages are not used)	
ATP–54–12–35274A; Revision 1, December 15, 1993	1–5, 7, 9	1	December 15, 1993.
	6, 8	(These pages are not used)	

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 15, 1994.

Issued in Renton, Washington, on March 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8177 Filed 5–13–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–200–AD; Amendment 39–8911; AD 94–10–04]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires a visual inspection of an area beneath the flooring for foreign objects and debris, removal of any foreign object or debris found, and installation of a protective guard on the rear cabin attendant seat. This amendment also requires a revision to the FAA-approved maintenance program to include repetitive visual inspections of the area above the protective guard for foreign objects and debris, and removal of any foreign object or debris found. This amendment is prompted by reports that foreign objects and debris have been found in the area around the elevator and rudder trim cables below the floor. The actions specified by this AD are intended to prevent foreign objects and debris from lodging in the control circuits and jamming the elevator and rudder trim systems.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box

16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on January 25, 1994 (59 FR 3636). That action proposed to require a visual inspection of an area beneath the flooring for foreign objects and debris, removal of any foreign object or debris found, and installation of a protective guard on the rear cabin attendant seat. That action also proposed to require a revision to the FAA-approved maintenance program to include repetitive visual inspections of the area above the protective guard for foreign objects and debris, and removal of any foreign object or debris found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $770, or $110 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–04 Jetstream Aircraft Limited: Amendment 39–8911. Docket 93–NM–200–AD.

Applicability: Model 4101 airplanes; constructors numbers 41004 through 41023 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the elevator and rudder trim systems, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Alert Service Bulletin J41–A25–034, Revision 1, dated October 30, 1993.

(1) Perform a visual inspection of the underfloor area for foreign objects and debris in accordance with the alert service bulletin. Prior to further flight, remove any foreign object or debris found during the inspection

(2) Install a protective guard on the rear cabin attendant seat in accordance with the alert service bulletin.

(b) Within 30 days after the effective date of this AD, revise the FAA-approved maintenance program to require repetitive visual inspections of the area above the protective guard for foreign objects and debris, and removal of any foreign object or debris found, in accordance with the times and procedures specified in paragraph 2.C.(7) of Jetstream Alert Service Bulletin J41–A25–034, Revision 1, dated October 30, 1993, as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, removal, and installation shall be done in accordance with Jetstream Alert Service Bulletin J41–A25–034, Revision 1, dated October 30, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 7	1	October 30, 1993.
2, 4–6, 8–11.	Original	October 7, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 15, 1994.

Issued in Renton, Washington, on May 5, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–11357 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–53; Amendment 39–8909; AD 94–10–02]

Airworthiness Directives; Pratt & Whitney Canada Model PT6A–67D Turboprop Engines

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that currently requires inspections of the compressor turbine (CT) disk and blades for cracking and other irregularities using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) and installing a placard that alerts the pilot of this requirement. This amendment continues all the requirements of the current priority letter AD and requires the installation of parts having an improved design including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly. This amendment is prompted by the manufacturer developing new design improvements that will reduce the susceptibility of the CT blades to high cycle fatigue (HCF) damage. The actions specified by this AD are intended to prevent engine failure and inflight engine shutdown due to HCF failure of the CT blades.

DATES: Effective June 15, 1994

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding priority letter airworthiness directive (AD) 92–27–19, which is applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, was published in the **Federal Register** on November 26, 1993 (58 FR 62296). That action proposed to retain the inspections and Airplane Flight Manual (AFM) revisions required by the current AD, but would also require installation at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first, of the improved compressor turbine (CT) turbine stator assembly, CT shroud housing, small exit duct assembly, CT blades, and feather seals. Installation of this hardware constitutes terminating action to the inspections required by this AD. PWC has advised the FAA that December 31, 1994, is the earliest compliance end-date possible due to parts availability. The actions are required to be accomplished in accordance with PWC Service Bulletin (SB) No. 14128, Revision 3, dated April 19, 1993; PWC SB No. 14132, Revision 1, dated May 12, 1993; and PWC SB 14142, Revision 1, dated May 12, 1993 Transport Canada, which is the airworthiness authority of Canada, classified these service bulletins as mandatory and issued AD CF–92–25–R1, dated June 1, 1993, in order to assure the airworthiness of these PWC PT6A–67D engines in Canada.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter concurs with the rule as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 100 engines of the affected design in the worldwide fleet. The FAA estimates that 87 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per engine to install the improved hardware, and that the average labor rate is $55 per work hour. PWC advises the FAA that it will reimburse operators for the cost of labor and the cost of required parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be negligible.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–02 Pratt & Whitney Canada: Amendment 39–8909 Docket 93–ANE–53.

Applicability: Pratt & Whitney Canada (PWC) Model PT6A–67D turboprop engines with serial numbers prior to PC-E114100, installed on but not limited to Beech Model 1900D airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure and inflight engine shutdown due to high cycle fatigue (HCF) failure of the compressor turbine (CT) blades, accomplish the following:

(a) Prior to further flight, amend the Beech Model 1900D Aircraft Flight Manual (AFM), Part Number (P/N) 129–590000–3, by inserting the following requirements between pages 2–4 and 2–5:

ENGINE OPERATING LIMITATIONS

Gas Generator RPM (N1)—Continuous operation of the gas generator between 94.0% and 97.1% is prohibited.

Notes

1. This limitation does not prohibit the use of N1's between 94.0% and 97.1% when the pilot in command determines that the power setting is required for the safe operation of the airplane. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

2. This limitation does not prohibit the use of static Take-Off Power and Maximum Continuous Power between 94.0% and 97.1% N1 to meet the required Take-Off performance. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

3. Operation at 94.0% and below, and at 97.1% and above are permitted. Continuous operation at 94.1% through 97.0% is prohibited.

4. "Continuous Operation" means time periods exceeding 5 minutes.

5. High Speed Cruise Power Tables found in the Pilot's Operating Manual may produce N1's in the prohibited range. Flights should be planned using Intermediate or Long Range Power settings.

6. The goal of the operator should be to keep the total time of operation in the prohibited range to the absolute minimum, since the effects of operating between N1's of 94.0% and 97.1% are cumulative.

PLACARDS

Located in front of the pilot on the aft edge of the glareshield between the Master Caution annunciator and the fire extinguisher control switch:

CONTINUOUS OPERATION BETWEEN 94.0% AND 97.1% N1 IS PROHIBITED—SEE AFM"

(b) Compliance with the requirements of paragraph (a) of this AD may also be accomplished by inserting a copy of this AD into the Beech Model 1900D AFM.

(c) Prior to further flight, install the placard as specified in paragraph (a) of this AD.

(d) For engines that have not been inspected prior to the effective date of this AD in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, or debladed and inspected in accordance with PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, accomplish the following:

(1) For engines with Serial Numbers PC-E114001 to PC-E114044, within 25 hours time in service (TIS) after the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(2) For engines with Serial Numbers PC-E114045 to PC-E114099, within 50 hours TIS after the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(e) For engines that have been inspected in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, prior to the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, as follows:

(1) For blade sets with greater than 600 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 50 hours TIS.

(2) For blade sets with greater than or equal to 250 hours TIS, and less than or equal to 600 hours TIS, since new, on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 100 hours TIS.

(3) For blade sets with less than 250 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 250 hours TIS.

(f) For uninstalled CT disk and blade assemblies that have not been inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, in the preceding 250 hours TIS from the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to installation.

(g) For engines with CT disk and blade assemblies that have been debladed and inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to the effective date of this AD, within 250 hours TIS since the last deblading and inspection, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(h) For CT disk and blade assemblies that have been debladed and inspected in accordance with paragraphs (d), (e), (f), and (g) of this AD, deblade the CT disk, reinspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, at intervals not to exceed 250 hours TIS since the last deblading and inspection performed in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(i) Install a CT stator assembly, a CT shroud housing, and a small exit duct assembly in accordance with PWC SB No. 14132, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(j) Install CT blades and feather seals in accordance with PWC SB No. 14142, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(k) For the purpose of this AD, a shop visit is defined as when major engine flanges are separated.

(l) Installation of improved hardware in accordance with paragraphs (i) and (j) of this AD constitutes terminating action for the inspections required by paragraphs (d) through (h) of this AD.

(m) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(n) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(o) The inspections and modifications shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
PWC SB No. 14128; Total pages: 5	1–5	3	April 19, 1993.
PWC SB No. 14132; Total pages: 6	1–6	1	May 12, 1993.
PWC SB No. 14142; Total pages: 7	1–7	1	May 12, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(p) This amendment supersedes priority letter AD 92–27–19, issued December 28, 1992.

(q) This amendment becomes effective on June 15, 1994.

Issued in Burlington, Massachusetts, on April 29, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–10913 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–ACE–03]

Modification of Class D Airspace; Philip Billard Municipal Airport, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Philip Billard Municipal Airport, Topeka, Kansas, Class D airspace published in a final rule on Tuesday, March 8, 1994 (59 FR 10742), Airspace Docket Number 94–ACE–03.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–5267, Airspace Docket 94–ACE–03, published on March 8, 1994, (59 FR 10742), modified the description of Philip Billard Municipal Airport, Topeka, Kansas, Class D airspace. An error was discovered in the geographical coordinates used to describe the airspace. This action corrects that error. This change does not affect the size of the Class D airspace.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Philip Billard Municipal Airport, Topeka, Kansas, Class D airspace, as published in the **Federal Register** on March 8, 1994 (59 FR 10742), **Federal Register** Document 94–5267, page 10743, column 1), is corrected in the amendment to the incorporation by reference in 14 CFR part 71 as follows:

PART 71—[CORRECTED]

Paragraph 5000 General

ACE KS D Topeka, Philip Billard Airport, KS [Corrected]

By changing the geographical coordinates from "(lat. 39°04′08″ N, long. 97°37′21″ W)" to "(lat. 39°04′08″ N, long. 95°37′21″ W)".

Issued in Kansas City, Missouri, on April 28, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–11719 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–04]

Modification of Class D Airspace; Forbes Field, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the airspace designation of Forbes Field, Topeka, Kansas, Class D airspace published in a final rule on Tuesday, March 8, 1994 (59 FR 10741), Airspace Docket Number 94–ACE–04.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–5266, Airspace Docket 94–ACE–04, published on March 8, 1994 (59 FR 10741), modified the description of the Forbes Field, Topeka, Kansas, Class D airspace. An error was discovered in the geographical coordinates used to describe the airspace. This action corrects that error. This change does not affect the size of the Class D airspace.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Forbes Field, Topeka, Kansas, Class D airspace, as published in the **Federal Register** on March 8, 1994 (59 FR 10741), (Federal Register Document 94–5266, page 10742, column 2), is corrected in the amendment to the incorporation by reference in 14 CFR part 71 as follows:

PART 71—[CORRECTED]

Paragraph 5000 General [Corrected]

ACE KS D Topeka, Forbes Field, KS [Corrected]

By changing the geographical coordinates from "(lat. 38°57′01″ N, long. 97°39′51″ W)" to "(lat. 38°57′01″ N, long. 95°39′51″ W)"

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–11724 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AAL–06]

Modification of Class D Airspace and Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Bryant Army Heliport (AHP), AK, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also modifies Class E airspace at Gulkana Airport, AK, by amending the areas' effective hours to coincide with the associated flight service station's hours of operation. The intended effect of this action is to clarify

when two-way radio communication with the Bryant air traffic control tower (ATCT) is required and to clarify when Class E airspace exists for instrument approach procedures at Gulkana Airport.

DATES: *Effective date:* 0901 u.t.c. June 23, 1994.

Comment date: Comments must be received on or before June 23, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 94–AAL–06, Federal Aviation Administration, 222 West 7th Ave. Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone number: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Bryant AHP, AK, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also amends Class E airspace effective hours at Gulkana, AK, to coincide with the associated flight service station's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at Bryant AHP and a control zone (CZ) existed at Gulkana. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation of "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation at Bryant AHP makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with the air traffic control tower Bryant AHP, AK, is required and to provide adequate Class E airspace for instrument approach procedures at Gulkana, AK.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify this Class D and Class E airspace area in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

AAL AK D Anchorage, Bryant AHP, AK [Revised]

Anchorage, Bryant AHP, AK
(lat. 61°15′45″ N, long. 149°39′17″ W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a line beginning at lat. 61°17′13″ N, long. 149°37′35″ W; thence west along lat. 61°17′13″ N to the long. 149°43′08″ W line; thence south along long. 149°43′08″ W line to the Glenn Highway; thence north and east along the Glenn Highway to its intersection with a line one-half mile east of and parallel to Bryant AHP Runway 16/34 extended centerline; thence northeast along a line one-half mile east of and parallel to Bryant AHP Runway 26/34 extended centerline to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AAL AK E2 Gulkana, AK [Revised]

Gulkana, AK
(lat. 62°09′17″ N, long. 145°27′16″ W)
Gulkana VORTAC
(lat. 62°09′08″ N, long. 145°27′01″ W)
Glennallen NDB
(lat. 62°11′43″ N, long. 145°28′05″ W)

Within a 3.9-mile radius of the Gulkana Airport and within 2.8 miles of each side of the Glennallen NDB 351° bearing extending from the 3.9-mile radius of the Gulkana Airport to 9.4 miles north of the Gulkana Airport and within 2.4 miles each side of the Gulkana VORTAC 180° radial extending from the 3.9-mile radius of the Gulkana Airport to

7.1 miles south of the Gulkana Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on May 2, 1994.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 94–11849 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANE–23]

Modification of Class D Airspace and Establishment of Class E Airspace; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Lebanon, NH by amending the effective hours of that area to coincide with the hours of operation of the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Lebanon, NH when the associated ATCT is closed. The intended effect of this action is to clarify when two-way radio communication with the Lebanon, NH ATCT is required and to provide adequate Class E airspace for aircraft conducting instrument approach procedures when that ATCT is closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–23, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours at 8 a.m and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, Management System Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. The rule will become effective on the date specified in the "DATES" section. However, after review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Lebanon, NH by amending the effective hours of that area to coincide with the hours of operation of the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Lebanon, NH when the associated ATCT is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the terms "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was effective on a continuous basis, while the former ATA was contingent upon the hours of operation of the ATCT. The consolidation of the ATA and CZ into a single Class D airspace designation made it necessary to modify the effective hours of the Class D airspace to coincide with the hours of operation of the ATCT. This action also establishes that necessary Class E airspace in the vicinity of Lebanon, NH during the hours the ATCT is closed. The intended effect of this action is to clarify when two-way radio communication with the Lebanon ATCT is required and to provide adequate Class E airspace for aircraft conducting instrument approach procedures to that airport when the ATCT is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify the Lebanon Class D airspace and establish Class E airspace in the vicinity of Lebanon, NH in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and an opportunity for prior public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and

effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

ANE NH D Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(lat. 43°37′35″ N, long. 72°18′15″ W)
BURGR OM
(lat. 43°43′57″ N, long. 72°20′00″ W)
Hanover NDB
(lat. 43°42′08″ N, long. 72°10′39″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.7-mile radius of Lebanon Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ANE NH E2 Lebanon, NH [New]

Lebanon Municipal Airport, NH
(lat. 43°37′35″ N, long. 72°18′15″ W)

Within a 6.7-mile radius of Lebanon Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts on May 9, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–11848 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANE–24]

Modification of Class D Airspace and Establishment of Class E Airspace; Springfield/Chicopee, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Springfield/Chicopee, MA by amending the effective hours of that area to coincide with the hours of operation of the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Springfield/Chicopee, MA when the associated ATCT is closed. The intended effect of this action is to clarify when two-way radio communication with the Springfieldd/Chicopee, MA ATCT is required and to provide adequate Class E airspace for aircraft conducting instrument approach procedures when that ATCT is closed.

DATES: *Effective date:* 0901 U.T.C., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–24, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, Management System Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Springfield/Chicopee, MA by amending the effective hours of that area to coincide with the hours of operation to the associated air traffic control tower (ATCT). This action also establishes Class E airspace at Springfield/Chicopee, MA when the associated ATCT is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the terms "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was effective on a continuous basis, while the former ATA was contingent upon the hours of operation of the ATCT. The consolidation of the ATA and CZ into a single Class D airspace designation made it necessary to modify the effective hours of the Class D airspace to coincide with the hours of operation of the ATCT. Class E airspace in the vicinity of Springfield/Chicopee, MA is necessary for aircraft executing instrument approaches to that airport during times when ATCT is not in operation. The intended effect of this action is to clarify when two-way radio communication with the Springfield/Chicopee ATCT is required and to provide adequate Class E airspace for aircraft executing instrument approach procedures to that airport when the ATCT is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify the Springfield/Chicopee Class D airspace and establish Class E airspace in the vicinity of Springfield/Chicopee, MA in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and an opportunity for prior public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows.

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

ANE MA D Springfield/Chicopee, MA [Revised]

Springfield/Chicopee, Westover AFB, MA
(lat. 42°11′52″ N, long. 72°31′48″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.9-mile radius of Westover AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ANE MA E2 Springfield/Chicopee, MA [New]

Springfield/Chicopee, Westover AFB, MA
(lat. 42°11′52″ N, long. 72°31′48″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.9-mile radius of Westover AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Burlington, Massachusetts on May 9, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–11850 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANE–25]

Establishment of Class E Airspace; New Haven, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes a Class E airspace area at New Haven, CT. At present this area is designated as Class D airspace during the time when the New Haven air traffic control tower (ATCT) is in operation. A need for controlled airspace at New Haven continues, however, after the ATCT closes. The intended effect of this action is to provide adequate Class E airspace for aircraft conducting instrument flight rules (IFR) operations when the ATCT is closed.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, ANE–530, Air Traffic Division, New England Region, Docket No. 94–ANE–25, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, System Management Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530; facsimile, (617) 238–7599.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after review of the comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at New Haven, CT. At present, this area is designated as Class D airspace during the time when the New Haven air traffic control tower (ATCT) is in operation. A need for controlled airspace at New Haven continues, however, after the ATCT closes to provide adequate controlled airspace for aircraft operating under instrument flight rules (IFR) when the ATCT is closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time ATCT should be designated as Class D airspace when the ATCT is in operation, and as Class E airspace at other times. The intended effect of this action is to provide adequate Class E airspace for aircraft conducting IFR operations when the ATCT is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish Class E airspace in the vicinity of New Haven, CT, in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and an opportunity for prior public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ANE CT E2 New Haven, CT [New]

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15′49″ N, long. 72°53′12″ W)

Within a 5-mile radius of the Tweed-New Haven Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts on May 9, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–11851 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASO–7]

Revocation of Class E airspace; Thomaston, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace that extends upward from 700 feet above ground level (AGL) at Thomaston, GA. The Reginald Grant Non Directional Beacon (NDB) was decommissioned on February 11, 1994. The standard instrument approach procedure (SIAP) based on the NDB will be cancelled. Controlled airspace extending upward from 700 feet above the surface will no longer be needed to contain Instrument Flight Rules (IFR) operations at Thomaston, GA. The operating status of the airport will change from IFR operations to VFR operations concurrent with decommissioning of the NDB.

EFFECTIVE DATE: 0901 UTC, May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, ASO–532, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; Telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulation revokes the 700 foot Class E airspace area at Thomaston, GA. The Thomaston City Government advised the Federal Aviation Administration (FAA) of its decision to decommission the Reginald Grant NDB effective February 11, 1994. The FAA will cancel the Standard Instrument Approach based on the Reginald Grant NDB. Controlled airspace extending upward from 700 feet above the surface will no longer be needed to contain IFR operations at Thomaston, GA. In addition, the operating status of the Reginald Grant Airport is changed from IFR operations to VFR operations concurrent with the decommissioning of the Reginald Grant NDB.

Since this action merely involves the revocation of Class E airspace area, as a result of the removal of a navigation aid by the Thomaston City Government, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Additionally, since there will no longer be a SIAP at Thomaston, Georgia, Reginald Grant Airport, the Class E airspace area must be removed to avoid confusion on the part of the pilots flying in the vicinity of the Reginald Grant Airport and to promote safe and efficient handling of air traffic in the area. Therefore, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than thirty days.

Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1, effective September 16, 1993. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 17 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Thomaston, GA [Removed]

* * * * *

Issued in East Point, Georgia, on May 2, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division Southern Region

[FR Doc. 94–11716 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 772, 773, 774, 775, 776, 778, 779, 785, 787, and 799

[Docket No. 940530–4130]

RIN 0694–AA83

Export Administration Regulations: Changes in Categories 3, 4, and 5 of the Commerce Control List; Revisions to Country Groups and Policies; Implementation of Import Certificate/Delivery Verification (IC/DV) Procedures for Bulgaria and Romania; Adjustments to General License GLX

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising certain entries in Categories 3, 4, and 5 of the Commerce Control List (CCL) to conform with changes made to the International Industrial List (IL) before the dissolution of the Coordinating Committee for Multilateral Export Controls (COCOM) on March 31, 1994. The COCOM changes require certain conforming revisions to General License GLX. A policy decision on foreign availability of telecommunications is announced.

This rule also revises the countries that are included in Country Groups V, W, and Y and amends the special country policies provisions in the EAR to reflect the changes in licensing policy for the countries that have been moved from one country group to another.

This rule amends the documentation requirements provisions of the EAR to substitute the Form BXA–629P (Statement by Ultimate Consignee and Purchaser) for the Yugoslav End-Use Certificate requirement. Finally, this rule amends the documentation requirements provisions in the EAR to implement Import Certificate/Delivery Verification (IC/DV) procedures for Bulgaria and Romania.

DATES: *Effective date*: This rule is effective May 9, 1994.

Grace period: A 60-day grace period will apply to the requirement to obtain a Bulgarian or Romanian Import Certificate in support of export or reexport license applications. During the grace period, applications will be accepted when supported by either a Form BXA–629P (Statement by Ultimate Consignee and Purchaser) or a Bulgarian or Romanian Import Certificate.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

Category 1: Jeff Tripp—(202) 482–1309
Category 2: Surendra Dhir—(202) 482–5695
Category 3: Robert Lerner—(202) 482–1641
Category 4: Joseph Young—(202) 482–0706
Category 5: Dale Jensen—(202) 482–0730
Category 6: Joseph Chuchla—(202) 482–1641
Categories 7 and 9: Bruce Webb—(202) 482–3806
Category 8: Steve Clagett—(202) 482–3550

For information on Import Certificate/Delivery Verification (IC/DV) Procedures for Bulgaria and Romania and changes in Country Groups and country policies, contact Rodney Joseph, Office of Technology and Policy Analysis, Telephone: (202) 482–0171.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises new General License GLX (59 FR 15621) to resolve certain ambiguities and to reflect changes in national security controls. For instance, Supplement No. 1 to part 771 is revised to delete 4A03.c and 4A03.b because the paragraph references are now incorrect and new Administrative Exception Notes make listing on the Supplement unnecessary.

This rule amends a number of ECCNs in the Commerce Control List (CCL) to conform with recent changes in the COCOM International Industrial List (IL). ECCN 3A01.a.3 is revised to control "microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits that:

(1) Have an arithmetic logic unit with an access width of 32 bit or more and a "composite theoretical performance" ("CTP") of 80 million theoretical operations per second (Mtops) or more; (2) are manufactured from a compound semiconductor and operate at a clock frequency exceeding 40 MHz; or (3) have more than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s. ECCN 3A01.e.1 is revised to indicate that it does not control batteries with volumes equal to or less than 27 cm³ (e.g., standard C-cells or R-14 batteries).

This rule also revises ECCN 3C03A to control organo-arsenic, organo-antimony, and organo-phosphorus compounds having a purity (inorganic element basis) better than 99.999%. In addition, a Note is added to 3C03A indicating that the entry controls only those compounds whose metallic, partly metallic or non-metallic element is directly linked to carbon in the organic part of the molecule.

This rule removes specific control language in ECCN 4A03A applicable to: (1) Disk drives and solid state storage equipment and input/output control units designed for use with such equipment and (2) color displays and monitors.

ECCN 4A03A retains specific control parameters for "assemblies" and graphics accelerators or graphics coprocessors. ECCN 4A03A controls: (1) "assemblies" that are specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds 260 Mtops and (2) graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 1,600,000.

The following changes are made in the Notes for Category 4: (1) Advisory Notes 1 and 2 are revised to conform with the new paragraph designations in ECCN 4A03A (there are no changes in the administrative exceptions levels); (2) Advisory Note 3 is revised by establishing new administrative exceptions treatment levels for exports to Country Groups Q, W, and Y and the People's Republic of China for "digital computers" (a "CTP" not exceeding 1,000 Mtops), graphics accelerators or graphics coprocessors (a "3–D vector rate" not exceeding 3 million) and equipment specially designed to provide for the external interconnection of "digital computers" or associated equipment (a total data transfer rate not exceeding 400 MByte/second); (3) Advisory Note 4 is removed and reserved because 4A03A no longer contains control parameters that apply specifically to disk drives and input/output control units therefor; (4) Advisory Note 6 is revised by establishing new favorable consideration levels for Country Groups

Q, W, and Y and the People's Republic of China for "digital" computers (a "CTP" not exceeding 1,500 Mtops) and for graphics accelerators or graphics coprocessors and equipment specially designed to provide for the external interconnection of "digital" computers; (5) Advisory Note 7 is revised to conform with the new paragraph designations in ECCN 4A03A (there are no changes in the favorable consideration levels), and (8) a new Advisory Note 8 is added to provide administrative exceptions treatment for equipment controlled by 4A03.g that is exported for use in interconnecting peripheral equipment to "digital computers" *not* controlled by 4A03.b.

In the telecommunications section of Category 5, ECCN 5A02A is revised to control modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 28,800 bit/s. Previously, ECCN 5A02A controlled modems exceeding 19,200 bit/s. On January 13, 1994, BXA published a determination that foreign availability exists within the meaning of the Export Administration Act (EAA) for certain telecommunications equipment controlled under ECCN 5A02.a to Country Groups Q, W, Y, Z, and the People's Republic of China (59 FR 1924). The determination applies to telecommunications transmission equipment employing digital techniques, including digital processing of analog signals, and designed to operate at digital transfer rates up to 623 Mbit/s.

The determination notice specified that the Administration would enter into negotiations to preserve national security interests concerning this equipment. The Administration intends to negotiate to remove foreign availability of this high technology equipment to military end-users in Country Groups Q, W, Y, and the People's Republic of China.

It has been determined that the validated license requirement is retained on telecommunications equipment controlled by ECCN 5A02.a to military end-users and for military end-uses in Country Groups Q, W, Y and the People's Republic of China, consistent with EAA section 5(c)(6), to allow meaningful negotiations to take place. Section 5(c)(6) permits the Secretary of Commerce to maintain controls, notwithstanding foreign availability, for an initial period of six months. For purposes of this control, military end-users and end-uses include conventional military activities and all proliferation activities described in Part 778 of this subchapter.

This action does not affect the control status of this equipment to other end-users or destinations. General License GLX continues to be available for shipments of equipment controlled by ECCN 5A02, except 5A02.h and .i, to civilian end-users and for civilian end-uses in Country Groups QWY and the PRC. In addition, all of ECCN 5A02 remains eligible for General License GFW to Country Groups T & V, except Iran, Syria, and the PRC. Foreign policy controls are retained on all items controlled by ECCN 5A02 to Country Groups S and Z, Iran and Syria, and the South African military and police. Exporters are also reminded that the Department of the Treasury's Office of Foreign Assets Control maintains prohibitions on exports to Iraq, Haiti, and the Federal Republic of Yugoslavia (Serbia and Montenegro).

In the Notes for Telecommunications in Category 5, Advisory Notes 1, 8, 11, 12, 13, 14, 15, 16, 17, and 19 are revised, and new Advisory Notes 23 through 27 are added. Advisory Note 8 is revised to provide administrative exceptions treatment to the People's Republic of China for test, inspection, and production equipment controlled by 5B01A or 5B02A and "software" and technology for such equipment. Advisory Notes 11, 12, and 13 are revised to restrict their application to Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, and Vietnam. Advisory Notes 14 and 17 are revised to clarify which parties are responsible for the supervision of controlled spare parts.

Advisory Note 15 is revised to restrict its application to Bulgaria and Romania. Advisory Note 16 is revised to restrict its application to Albania, Bulgaria, Mongolia, Romania, and Vietnam. Advisory Note 19 is revised by removing references to the Czech Republic and the Slovak Republic. Notes 25 and 27 are added.

This rule revises the country policy provisions in § 785.2 to conform with changes in licensing policies for proscribed countries. This rule also moves Poland, the Czech Republic and the Slovak Republic from Country Group W to Country Group V. As a result of this change, Poland and the Czech and Slovak Republics are now eligible for exports under certain special license procedures (e.g., the Distribution License Procedure) and general licenses (e.g., General License GFW).

This rule also amends the EAR to include new supporting document requirements based on the implementation of Import Certificate/Delivery Verification (IC/DV) procedures for Bulgaria and Romania. Bulgarian and Romanian ICs and DVs are issued by the respective Ministries of Trade in each country. Supplement No. 1 to Part 775 is amended to add the addresses of these issuing agencies.

This rule also amends Supplement No. 1 to Part 775 by revising the name of the agency that issues Indian Import Certificates to small scale industries and entities.

On January 2, 1992 (57 FR 8), the Bureau of Export Administration (BXA) published a final rule clarifying that the geographical area formerly known as the Soviet Union remained a controlled destination as listed in Country Group Y. That rule allowed exporters to use the designation "Union of Soviet Socialist Republics", "Soviet Union", or "USSR" on export control documents involving that geographic area until new political entities were identified. This final rule revises Supplement No. 1 to part 770, Supplement No. 5 to part 778, and § 785.2(a)(1) to include a listing of the states located in the geographic area of the former Soviet Union. These new designations should be used on all export control documents.

The dissolution of the former Socialist Federal Republic of Yugoslavia (Yugoslavia) has raised questions among exporters concerning the export control requirements for that geographic area. The geographic area formerly known as Yugoslavia continues to fall within Country Group V. At this time, the provisions of the EAR that apply to this area remain unchanged, except that this rule revises the documentation requirements to substitute a Form BXA-629P, Statement by Ultimate Consignee and Purchaser, for the Yugoslav End-Use Certificate requirement. In addition, this rule eliminates the Yugoslav End-Use Certificate requirement for exports/reexports under the Distribution License and the Service Supply Procedure.

The Consignee/Purchaser Statement procedure set forth in § 775.2 provides a broader range of exemptions than was previously available under § 775.5 for the Yugoslav End-Use Certificate.

Finally, this rule revises § 776.10(a)(2) to make the special documentation requirements for exports to Country Groups QWY and the People's Republic of China of electronic computers and related equipment conform with the revisions made by this rule in the Advisory Notes for Category 4.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501

et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0007, 0694–0008, 0694–0010, 0694–0013, 0694–0015, 0694–0017, 0694–0021, 0694–0073, and 0694–0078.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 772, 773, 774, 775, 776, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Export, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Exports.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, 772, 773, 774, 775, 776, 778, 779, 785, 787, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 771, 772, 774, 787, and 799 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. The authority citation for 15 CFR parts 773, 775, 778, 779, and 785 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

3. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 770—[AMENDED]

4. Supplement No. 1 to part 770 is amended:

a. By removing and reserving the entry for "Country Group W";

b. By revising the entry for "Country Group Y"; and

c. By adding a NOTE at the end of the Supplement to read as follows:

Supplement No. 1—Country Groups

* * * * *

Country Group W [Reserved]

Country Group Y

Albania
Armenia
Azerbaijan
Belarus
Bulgaria
Cambodia
Estonia
Georgia
Kazakhstan
Kyrgyzstan
Laos
Latvia
Lithuania
Moldova
Mongolia
Russia
Tajikistan
Turkmenistan
Ukraine
Uzbekistan
Vietnam

* * * * *

Note: Contact the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury, (202) 266–2500, before exporting to Libya, Iraq, Haiti, or the Federal Republic of Yugoslavia (Serbia and Montenegro).

PART 771—[AMENDED]

5. Section 771.20 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 771.20 General License GLX: Exports to Country Groups QWY and the People's Republic of China.

* * * * *

(b) * * * Likelihood of approval notes that apply only to the PRC, or to specified destinations in Country Group Y also qualify for this general license to eligible destinations (however, those notes indicating Country Group Q or W *only*, are specifically *not* eligible). * * *

* * * * *

6. Section 771.23 is amended by revising the sixth sentence of paragraph (c) to read as follows:

§ 771.23 General License GFW.

* * * * *

(c) * * * In addition, GFW may be used to export to eligible countries any commodities (but not software) eligible under § 771.20 for General License GLX. * * *

* * * * *

Supplement No. 1 to Part 771 [Amended]

7. Supplement No. 1 to part 771 is amended under category 4 by removing the entry "4A03.c (having a CTP of 1,000 MTOPS or less)", revising the entry "4A03A.h (having a 3–D vector rate less than 3M vectors/sec.)" to read "4A03A.d (having a 3–D vector rate less than 3M vectors/sec.)", and revising the entry "4A03A.k" to read "4A03A.f"

PART 772—[AMENDED]

8. Section 772.11 is amended:

a. By removing the phrase "Yugoslav End-Use Certificate," in paragraph (h)(2)(i); and

b. By revising the introductory text of paragraph (k)(1) to read as follows:

§ 772.11 Amending export licenses.

* * * * *

(k) * * * (1) *Change in party or increase in net quantity not in accordance with current supporting document.* The applicant shall obtain a new or appropriately amended International Import Certificate (§ 775.3 of this subchapter), People's Republic of China End-User Certificate (§ 775.6 of this subchapter), Indian Import Certificate (§ 775.7 of this subchapter), or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate (§ 775.8 of this subchapter) before submitting a request to amend an export license by proposing to change any party to the transaction named on the license or by increasing the net quantity set forth on the license if the proposed change is not in accordance with the current supporting document covering the license. The original copy of the new or amended certificate shall be:

* * * * *

PART 773—[AMENDED]

9. Section 773.3 is amended as follows:

a. By removing and reserving paragraph (h); and

b. By removing paragraph (j)(2)(ii) and redesignating paragraph (j)(2)(iii) as paragraph (j)(2)(ii).

10. Section 773.7 is amended as follows:

a. By revising paragraph (d)(1)(iii);

b. By removing and reserving paragraph (e);

c. By removing the fifth sentence from paragraph (k), introductory text.

§ 773.7 Service Supply Procedure.

* * * * *

(d) * * *

(1) * * *

(iii) *Documents waived.* An application for a Service Supply License (SL) need not be supported by the Import Certificate or Consignee/Purchaser Statement otherwise required under §§ 775.2 or 775.3 of this subchapter.

* * * * *

§ 773.8 [Amended]

11. In § 773.8, paragraph (d)(1) is amended by revising the phrase "an Import Certificate, a consignee/purchaser statement, or a Yugoslav End-Use Certificate to" to read "an Import Certificate or a consignee/purchaser statement to".

Supplement No. 3 to Part 773 [Amended]

12. Supplement No. 3 to part 773 is amended by removing the term "Yugoslavia,".

PART 774—[AMENDED]

13. Section 774.3 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 774.3 How to request reexport authorization.

* * * * *

(c) * * *

(1) * * *

(ii) If the required document is a People's Republic of China End-User Certificate, a Singapore Import Certificate and Delivery Verification, or a Indian Import Certificate, and the same document must be furnished to the export control authorities of the country from which the reexport will be made, the Office of Export Licensing will permit the applicant to submit or to retain on file, as appropriate (see § 774.3(c)(1)(i)), a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, a waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations (15 CFR parts 730–799). (See § 775.7(c) of this subchapter for waiver of an Indian Import Certificate.)

* * * * *

PART 775—[AMENDED]

§ 775.1 [Amended]

14. In § 775.1, in the table in paragraph (b) is amended, as follows:

a. By removing entry 3.;

b. By redesignating entries 4. through 7. as entries number 3. through 6., respectively;

c. By revising the phrase "Czech Republic, Hungary, Poland, or Slovak Republic" in the second column for newly designated entry 5. to read "Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovak Republic"; and

d. By revising the phrase "Czech Republic, Hungary, Poland, or Slovak Republic" in footnote 1 to the table to read "Bulgaria, Czech Republic, Hungary, Poland, Romania, or Slovak Republic".

15. Section 775.2 is amended by revising paragraph (b)(1) to read as follows:

§ 775.2 Form BXA–629P, statement by ultimate consignee and purchaser.

* * * * *

(b) * * *

(1) An International Import Certificate (§ 775.3), a People's Republic of China End-User Certificate (§ 775.6), an Indian Import Certificate (§ 775.7), or a Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate (§ 775.8) is required in support of the application.

* * * * *

16. Section 775.3 is amended by revising paragraph (b) introductory text and footnote 1 to read as follows:

§ 775.3 International import certificate and delivery verification certificate.

* * * * *

(b) *Destinations.* The following country destinations are subject to the International Import Certificate/Delivery Verification Certificate System requirements:[1]

* * * * *

---

[1] See § 775.6 for People's Republic of China End-Use Certificate requirements, § 775.7 for Indian Import Certificate requirements, and § 775.8 for Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate requirements.

§ 775.5 [Removed]

17. Section 775.5 is removed and reserved.

18. Section 775.8 is amended:

a. By revising the section heading;

b. By revising the first sentence of paragraph (a);

c. By revising paragraph (b)(2); and

d. By revising the first sentence of paragraph (e) to read as follows:

§775.8 Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates.

(a) *Requirements.* License applications to export or reexport items identified by the code letter "A" on the Commerce Control List to Bulgaria, the Czech Republic, Hungary, Poland, Romania, or the Slovak Republic must be accompanied by the original Import Certificate issued by the appropriate ministry listed in Supplement No. 1 of this part 775. * * *

(b) * * *

(2) *Temporary export.* An Import Certificate need not be submitted to support a license application to export commodities or software for temporary exhibition, demonstration, or testing purposes in Bulgaria, the Czech Republic, Hungary, Poland, Romania, or the Slovak Republic.

* * * * *

(e) *Delivery Verification.* The Office of Export Licensing will, on a selective basis, require Delivery Verification documents for shipments to Bulgaria, the Czech Republic, Hungary, Poland, Romania, and the Slovak Republic that are subject to the Import Certificate procedure. * * *

19. Section 775.10 is amended:

a. By revising the introductory text;

b. By revising the first sentence of paragraph (a);

c. By revising the first sentence of paragraph (b);

d. By revising the heading and the introductory text of paragraph (c)(2);

e. By revising the paragraph (c)(3);

f. By revising the first sentence of paragraph (d);

g. By revising the introductory text of paragraph (f);

h. By redesignating footnote number 4 as footnote number 3, as referenced in the heading to paragraph (g);

i. By revising the introductory text of paragraph (g)(1);

j. By revising the introductory text of paragraph (g)(2)(i);

k. By revising paragraph (g)(2)(ii); and

l. By revising the introductory text of paragraph (h)(1), to read as follows:

§775.10 Special provisions.

The following special provisions apply as indicated to consignee/purchaser statements, International Import Certificates, Delivery Verification Certificates, People's Republic of China End-User Certificates, Indian Import Certificates, and Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates, and other documents submitted in support of export license applications.

(a) *Coded terms and translation requirements.* All abbreviations, coded terms, or other expressions on consignee/purchaser statements, International Import Certificates, Delivery Verification Certificates, People's Republic of China End-User Certificates, Indian Import Certificates, and Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificates, and other documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. * * *

(b) *Validity period.* When a People's Republic of China End-User Certificate, Indian Import Certificate, Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate, or an International Import Certificate is obtained in support of one or more export license applications, the applicant must submit the first application to be supported by such certificate to the Office of Export Licensing (OEL) within the validity period shown on the Certificate or 6 months from the date of the Certificate was issued, whichever is shorter. * * *

(c) * * *

(2) *International Import Certificate, Indian Import Certificate, and the Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate.* Whenever the requirement for an International Import Certificate, Indian Import Certificate, or a Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate for any commodity is imposed or extended by virtue of one of the following:

* * * * *

(3) *People's Republic of China End-User Certificate.* Whenever the submission requirement for a People's Republic of China End-User Certificate is imposed or extended to any commodity on the Commerce Control List by the addition of Country Group V to the "Validated License Required" paragraph in the applicable entry on the Commerce Control List, a license application to export such commodity need not conform to the submission requirement for 45 days from the date such commodity becomes subject to the requirement.

(d) *Applicant's responsibility for full disclosure.* In obtaining a consignee/purchaser statement, International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, and Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate, the applicant is not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end-use that the applicant has knowledge or belief, even if inconsistent with the representations set forth in the documents listed in this paragraph (d). * * *

* * * * *

(f) *Request for return of certificates.* A U.S. exporter may be requested by a foreign importer to return an unused or partially used International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate. To meet such requests, exporters should adhere to the following procedures:

* * * * *

(g) * * *

(1) *Change in consignee or purchaser* The applicant must obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate before submitting a request for an amendment of an export license that proposes a change in consignee or purchaser in the transaction named in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of the new Statement or Certificate be:

* * * * *

(2) * * * (i) *Increase not supported by existing Statement or Certificate obtained in support of license application.* The applicant shall obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate before submitting a request for an amendment of an export license that proposes any increase in the quantity set forth in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of the new Statement or Certificate shall be:

* * * * *

(ii) *Increase supported by existing Statement or Certificate obtained in support of license application.* (A) If a proposed quantitative amendment is in accordance with the single transaction Statement by Ultimate Consignee or Purchaser or Certificate obtained by the applicant in support of the original export license application, the amendment shall include the following certification, as appropriate:

> I (We) certify that this request for amendment of export license number _________, if granted, will not exceed the total quantity covered by the Statement By Ultimate Consignee and Purchaser against which this export license was issued.
>
> I (We) certify that this request for amendment of export license number _________, if granted, will not exceed the total quantity authorized under the (*name of country*) International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate number _________.

(B) Where the export license is based on a multiple transactions Statement by Ultimate Consignee and Purchaser, an additional Statement is not required from the consignee or purchaser to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be placed on the amendment request:

> I (We) certify that the license listed above is supported by a Statement by Ultimate Consignee and Purchaser.

(h) * * * (1) *Types of request.* A request for exception to a requirement for obtaining an International Import Certificate, People's Republic of China End-User Certificate, Indian Import Certificate, or Bulgarian, Czech, Hungarian, Polish, Romanian, or Slovak Import Certificate[4] may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions.

* * * * *

20. Supplement No. 1 to part 775 is amended:

a. By adding in alphabetical order an entry for "Bulgaria";

b. By revising the phrase "Deputy Chief Controller of Imports and Exports" under the entry "India", in the second column, to read "Deputy Director General of Foreign Trade";

c. By adding in alphabetical order an entry for "Romania"; and

d. By removing the entry for "Yugoslavia", to read as follows:

e. By revising footnote at the end of the table, to read as follows:

SUPPLEMENT NO. 1—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES[1]

[See footnotes at end of table]

Country	IC/DV authorities	System administered[2]
.	. . .	.
Bulgaria	Ministry of Trade, 12 Al. Batenberg, 1000 Sofia, Bulgaria.	IC/DV
.	. . .	.
Romania ..	National Export Control Agency, Ministry of Trade, 17 Apolodor Street, Bucharest, Romania.	IC/DV
.	. . .	.

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing on page (ii) under District Office Addresses) or at the Office of Export Licensing, room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Copies are not available.

[2] 1C—Import Certificate and/or DV—Delivery Verification.

PART 776—[AMENDED]

21. Section 776.10 is amended by revising paragraph (a)(2) to read as follows:

§ 776.10 Electronic computers and related equipment.

* * * * *

(a) * * *

(2) *Special documentation requirements.* Applications to export or reexport computers or related equipment that are described in Advisory Note 6 to Category 4, or that exceed any of the limits in Advisory Notes 3 or 6 to Category 4, must include:

(i) A signed statement by a responsible representative of the end-user or the importing agency describing the end-use and certifying that the "digital" computers or related equipment:

(A) Will be used only for civil applications; *and*

(B) Will *not* be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

(ii) A full description of the equipment *and* its intended application and workload; *and*

(iii) A complete identification of all end-users and their activities.

* * * * *

22. Section 776.11 is amended by revising paragraph (f)(6)(i)(D) and by revising paragraph (f)(6)(ii)(A) to read as follows:

§ 776.11 Supercomputers.

* * * * *

(f) * * *

(6) * * *

(i) * * *

(D) Bulgarian, Czech Republic, Hungarian, Polish, Romanian, or Slovak Republic Import Certificates—see § 775.8 of this subchapter.

(ii) * * *

(A) *Bulgaria, Czech Republic, Hungary, Poland, Romania, and Slovak Republic.* Reproduced copies of the Bulgarian, Czech, Hungarian, Polish, Romanian, and Slovak Import Certificates;

* * * * *

PART 778—[AMENDED]

23. Supplement No. 5 to part 778 is revised to read as follows:

Supplement No. 5—to Part 778—Dual-Use Chemical and Biological Equipment; Reguibs, Countries, and Other Destinations

Armenia
Azerbaijan
Bulgaria
Belarus
China
Cuba
Georgia
Kazakhstan
Kyrgyzstan
Middle East[1]
Moldova
Mongolia
Myanmar (Burma)
North Korea
Russia
Romania
South Africa
Southwest Asia[2]
Taiwan
Tajikistan
Turkmenistan
Ukraine
Uzbekistan
Vietnam

PART 779—[AMENDED]

24. Section 779.4 is amended by revising paragraph (f)(1)(i) and Footnote 10 to read as follows:

§ 779.4 General license GTDR: Technical data under restriction.

* * * * *

(f) * * *

(1) * * *

---

[4] See § 775.2(c) for exceptions to the consignee/purchaser statement requirement where applicant is unable to obtain this statement.

[1] See § 770.2 of this subchapter for definition.

[2] See footnote 1.

(i) Reexport, directly or indirectly, to Country Group Q, S, W,[10] Y, or Z, or the People's Republic of China any technical data relating to commodities controlled to Country Group W as described in the paragraph titled "Validated License Required" of any entry of the Commerce Control List;

* * * * *

§ 779.5 [Amended]

25. Section 779.5 is amended by revising the phrase "the Czech Republic, Hungary, Poland, and the Slovak Republic" in paragraph (a)(3) to read "Bulgaria, the Czech Republic, Hungary, Poland, Romania, and the Slovak Republic".

PART 785—[AMENDED]

26. Section 785.2 is amended:

a. By revising paragraph (a)(1), removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3);

b. By revising paragraph (b);

c. By revising paragraph (c), to read as follows:

§ 785.2 Country Groups Q, W, and Y[2]: Geographic area of the former U.S.S.R., Eastern Europe, Mongolia, Cambodia, Laos, and Vietnam.

(a)(1) The Export Administration Act of 1979, as amended (EAA) states that it is the policy of the United States to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest. The Act also states that it is the policy of the United States to restrict the export of goods and technical data that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, and in compliance with the other sections of the EAA, the Department conducts a continuing review of commodities and technical data to assure that prior approval is required for the export or reexport of U.S.-origin commodities and technical data to Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Russia, Romania, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam only if the commodities or technical data have a potential for being used in a manner that would prove detrimental to the national security of the United States. The general policy of the Department is to approve applications or requests to export or reexport such commodities and technical data to these destinations when the Department determines, on a case-by-case basis, that the commodities or technical data are for civilian use or would otherwise not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States. However, in recognition of efforts made to adopt safeguard measures for exports, Bulgaria, Latvia, Kazakhstan, Lithuania, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

* * * * *

(b) See parts 776 and 778 of this subchapter for foreign policy based controls governing exports to Country Groups Q, W, and Y.

(c) *Country Group Q.* Romania (Country Group Q) has been determined to present a lesser strategic threat, and has adopted safeguard measures to protect against the diversion of national security controlled items. In recognition of these facts, the Commerce Control List includes several Advisory Notes that indicate likelihood of approval or favorable consideration for export to satisfactory end-users in Country Group Q. Items not eligible for favorable consideration will be reviewed on a case-by-case basis.

* * * * *

PART 787—[AMENDED]

27. In § 787.13, paragraphs (e)(2)(ii)(B) and (e)(2)(ii)(C) are revised to read as follows:

§ 787.13 Recordkeeping.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Records required for exports under the Distribution License, as required by § 773.3 of this subchapter;

(C) Records required for exports under the Service Supply Procedure, as required by § 773.7 of this subchapter;

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1—[Amended]

28. In Supplement No. 1 to § 799.1, in Category 2 (Materials Processing), under the heading "Notes for Category 2" following ECCN 2E96G, Advisory Note 4 is removed and reserved.

29. In Category 3, ECCN 3A01A is revised to read as follows:

3A01A Electronic devices and components.

Requirements

Validated License Required: QSTVWYZ.

Unit: Number.

Reason for Control: NS, MT, NP (see Notes).

GLV: $1,500: 3A01.c, $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f, $5,000: 3A01.a, 3A01.b.4 to b.7.

GCT: Yes, except 3A01.a.1 and 3A01.e.5 (see Notes).

GFW: Yes, except 3A01.a.1, 3A01.b.1 and b.3 to b.7, 3A01.c to f.

GNSG: Yes, *except* Bulgaria, Romania, or Russia, for 3A01.e.5 only (see Notes).

Notes: 1. MT controls apply to 3A01.a.1.a
2. NP controls apply to 3A01.e.5

List of Items Controlled

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A01.a.

Note 2: Integrated circuits include the following types: "Monolithic integrated circuits"; "Hybrid integrated circuits"; "Multichip integrated circuits"; "Film type integrated circuits", including silicon-on-sapphire integrated circuits; "Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand either of the following:

a.1.a. A total dose of 5×10^5 Rads (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^8 Rads (Si)/s or higher;

a.2. Integrated circuits described in 3A01.a.3 to a.10 or 3A01.a.12, as follows:

a.2.a. Rated for operation at an ambient temperature above 398 K (+125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (+125 °C);

Note: 3A01.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

---

[10] Effective April 26, 1971, Country Group W no longer included Romania. Assurances executed prior to April 26, 1971, that refer to Country Group W continue to apply to Romania. On May 8, 1992, Hungary was removed from Country Group W. Assurances are no longer applicable to Hungary. On May 9, 1994, Poland, the Czech Republic, and the Slovak Republic were moved from Country Group W to Country Group V. Assurances are no longer applicable to Poland, the Czech Republic and the Slovak Republic.

[2] See Supplement No. 1 to part 770 of this subchapter for listing of Country Groups.

a.3. "Microprocessor microcircuits", "microcomputer microcircuits" and microcontroller microcircuits, having any of the following:

Note: 3A01.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. An arithmetic logic unit with an access width of 32 bit or more and a "composite theoretical performance" ("CTP") of 80 million theoretical operations per second (Mtops) or more;

a.3.b. Manufactured from a compound semiconductor and operating a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Electrically erasable programmable read-only memories (EEPROMs), static random-access memories (SRAMs), and storage integrated circuits manufactured from a compound semiconductor, as follows:

a.4.a. Electrically erasable programmable read-only memories (EEPROMs) with a storage capacity:

a.4.a.1. Exceeding 16 Mbit per package for flash memory types; *or*

a.4.a.2. Exceeding either of the following limits for all other EEPROM types:

a.4.a.2.a. 4 Mbit per package; *or*

a.4.a.2.b. 1 Mbit per package and having a maximum access time of less than 80 ns;

a.4.b. Static random-access memories (SRAMs) with a storage capacity:

a.4.b.1. Exceeding 4 Mbit per package; *or*

a.4.b.2. Exceeding 1 Mbit per package and having a maximum access time of less than 20 ns;

a.4.c. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bits or more, but less than 12 bits, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bits with a total conversion time to maximum resolution of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bits with a total conversion time to maximum resolution of less than 2 microseconds;

a.5.b. Digital-to-analog converters with a resolution of 12 bits or more, and a "settling time" of less than 10 ns;

a.6. Electro-optical or "optical integrated circuits" for "signal processing" having all of the following:

a.6.a. One or more internal "laser" diodes;

a.6.b. One or more internal light detecting elements; *and*

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having either of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns;

a.8. Field programmable logic arrays having either of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.8.b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 144 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.4 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A01.a.3 to a.10 or 3A01.a.12, based upon any compound semiconductor and having either of the following:

a.11.a. An equivalent gate count of more than 300 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following characteristics:

a.12.a. A rated execution time for a 1,024-point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N/10{,}240$ ms, where N is the number of points; *or*

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave devices:

b.1. Electronic vacuum tubes and cathodes, as follows: (For frequency agile magnetron tubes, see ITAR Category 11.)

Note: 3A01.b.1 does not control tubes designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.1.a. Travelling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an "instantaneous bandwidth" of more than 7 percent or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. "Space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes for electronic tubes, with either of the following:

b.1.c.1. A turn on time to rated emission of less than 3 seconds; *or*

b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules containing "monolithic integrated circuits" operating at frequencies exceeding 3 GHz;

Note: 3A01.b.2 does not control circuits or modules for equipment designed or rated to operate in the Standard Civil Telecommunications Bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers:

b.4.a. Operating at frequencies exceeding 10.5 GHz and having an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating at frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 microseconds with either:

b.5.a. A band-pass bandwidth of more than 0.5 percent of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5 percent of center frequency;

b.6. Microwave assemblies capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A02.c, 3A02.e or 3A02.f beyond the control limits stated therein;

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency of 2.5 GHz or less, *and*:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

c.1.b.3. A dispersive delay of more than 10 microseconds; *or*

c.1.c. A carrier frequency exceeding 1 GHz and a bandwidth of 250 MHz or more;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing" devices employing elastic waves) which permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves which permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices or circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 dB; *or*

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries, as follows:

Note: 3A01.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (e.g., standard C-cells or R–14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A01.e.3. does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2;

e.4. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

e.4.a. Resonant operating frequencies exceeding 1 MHz;

e.4.b. A stored energy density of 1 MJ/m^3 or more; *and*

e.4.c. A discharge time of less than 1 ms;

e.5. Flash discharge type X-ray systems, and tubes therefore, having all of the following:

e.5.a. A peak power exceeding 500 MW;

e.5.b. An output voltage exceeding 500 kV; *and*

e.5.c. A pulse width of less than 0.2 microsecond;

f. Rotary input type shaft absolute position encoders having either of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ± 2.5 seconds of arc.

Related ECCNs: * * *

30. In Category 3, ECCN 3A92F is revised to read as follows:

3A92F Electronic devices and components not controlled by 3A01.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Integrated circuits of the type described in 3A01.a.3 to a.10 or a.12, rated for operation at an ambient temperature below 219 K (−54 °C), but not less than 218 K (−55 °C);

b. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a clock frequency exceeding 25 MHz, but not exceeding 40 MHz;

c. Storage integrated circuits not controlled by 3A01, as follows:

c.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

c.1.a. Exceeding 1 Mbit per package; *or*

c.1.b. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

c.2. Static random-access memories (SRAMs) with a storage capacity:

c.2.a. Exceeding 1 Mbit per package; *or*

c.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

d. Field programmable logic arrays not controlled by 3A01 having either of the following:

d.1. An equivalent gate count of more than 5,000 (2 input gates); *or*

d.2. A toggle frequency exceeding 100 MHz;

e. Travelling wave tubes, pulsed or continuous wave, not controlled by 3A01, as follows:

e.1. Coupled cavity tubes, or derivatives thereof;

e.2. Helix tubes, or derivatives thereof, with any of the following:

e.2.a.1. An "instantaneous bandwidth" of half an octave or more; *and*

e.2.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

e.2.b.1. An "instantaneous bandwidth" of less than half an octave; *and*

e.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

f. Flexible waveguides not controlled by 3A01 designed for use at frequencies exceeding 40 GHz;

g. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), not controlled by 3A01, having either of the following:

g.1. A carrier frequency exceeding 1 GHz; or

g.2. A carrier frequency of 1 GHz or less, *and*

g.2.a. A frequency side-lobe rejection exceeding 55 dB;

g.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

g.2.c. A dispersive delay of more than 10 microseconds;

h. Batteries not controlled by 3A01, as follows:

Note: 3A92.h does not control batteries with volumes equal to or less than 26 cm^3 (e.g., standard C-cells or UM–2 batteries).

h.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

h.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

h.3. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527 °C);

i. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, not controlled by 3A01, having all of the following:

Note: 3A92.i does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

i.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

i.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

i.3. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2.

31. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 3, a new ECCN 3A94F is added immediately following ECCN 3A93F to read as follows:

3A94F General purpose electronic equipment not controlled by 3A02.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: Number

Reason for Control: FP

GLV: $0

GCT: No

GFW: No

List of Items Controlled

a. Digital instrumentation magnetic tape data recorders not controlled by 3A02 having any of the following characteristics:

a.1. A maximum digital interface transfer rate exceeding 60 Mbit/s and employing helical scan techniques;

a.2. A maximum digital interface transfer rate exceeding 120 Mbit/s and employing fixed head techniques; *or*

a.3. "Space qualified";

b. Equipment, not controlled by 3A02, with a maximum digital interface transfer rate exceeding 60 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

c. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rated for a peak current of 500A or more.

32. In Category 3, ECCNs 3C03A and 3C04A are revised to read as follows:

3C03A Organo-inorganic compounds as described in this entry.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GLV: $3,000

GCT: Yes

GFW: No

List of Items Controlled

Organo-inorganic compounds, as follows:

a. Organo-metallic compounds of aluminum, gallium or indium having a purity (metal basis) better than 99.999 percent;

b. Organo-arsenic, organo-antimony and organo-phosphorus compounds having a purity (inorganic element basis) better than 99.999 percent.

Note: 3C03A controls only compounds whose metallic, partly metallic or non-metallic element is directly linked to carbon in the organic part of the molecule.

3C04A Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999 percent, even diluted in inert gases or hydrogen.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GLV: $3,000

GCT: Yes

GFW: No

Note: 3C04A does *not* control hydrides containing 20 percent molar or more of inert gases or hydrogen.

33. In Category 3, ECCN 3D94F is amended by revising the heading of the entry to read as follows:

3D94F "Software" specially designed for the "development", "production", or "use" of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

* * * * *

34. In Category 3, ECCN 3E94F is amended by revising the heading of the entry to read as follows:

3E94F Technology for the "development", "production", or "use" of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

* * * * *

35. In Category 3, under the heading "Notes for Category 3" following ECCN 3E96G, Advisory Note 4 is removed and reserved.

36. In Category 4 (Computers), ECCN 4A03A is revised to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as described in this entry, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: NS, MT, NP, FP (see Notes)

GLV: $5,000

GCT: Yes, except MT and FP, and except supercomputers as defined in § 776.11(a) (no supercomputer restriction for Japan); see Notes

GFW: Yes, except MT and FP (see Notes), for computers with a CTP not exceeding 1,000 Mtops (500 Mtops for eligible countries listed in Supp. 4 to Part 778 of this subchapter) and specially designed components therefor, exported separately or as part of a system, and related equipment therefor when exported with these computers as part of a system.

N.B. 1: General License GFW is *not* available for the export of commodities that the exporter knows will be used to:

a. Enhance the performance capability (i.e., CTP) of a computer to the "supercomputer" level; or

b. Enhance the performance capability of a "supercomputer" (see § 776.11 for definition of "supercomputer").

N.B. 2: To determine whether General License GFW may be used to export related equipment controlled under another entry in the CCL, consult the GFW paragraph under the Requirements heading of the appropriate entry.

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.

2. NP controls apply to computers with a CTP exceeding 500 Mtops to countries listed in Supplement No. 4 to Part 778 of this subchapter.

3. FP controls apply to computers for computerized fingerprint equipment to all destinations except Australia, Japan, New Zealand and members of NATO.

4. FP controls apply to all destinations, except Japan, for supercomputers (see § 776.11 of this subchapter).

5. FP controls apply to Iran and Syria for computers controlled by 4A03A or 4A94F (i.e., computers with a CTP of 6 Mtops or greater). See § 785.4(d)(1) of this subchapter.

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, digital signal processors, logic processors, and equipment for "image enhancement" or "signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.

c. The technology for the "digital computers" and related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:

a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.a, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 260 million theoretical operations per second (Mtops);

c. "Assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A03.b;

Note 1: 4A03.c applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.b, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.d to 4A03.f.

Note 2: 4A03.c does not control "assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.b.

d. Graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 1,600,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A01.a.5;

f. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.f, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

g. Equipment, specially designed to provide for the external interconnection of "digital computers" or associated equipment, that allows communications at data rates exceeding 80 Mbytes/s.

Note: 4A03.g does not control internal interconnection equipment (e.g., backplanes, buses) or passive interconnection equipment.

37. In Category 4 (Computers), ECCN 4A94F is revised to read as follows:

4A94F Computers, "assemblies" and related equipment not controlled by 4A01, 4A02, or 4A03, and specially designed components therefor.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: Computers and peripherals in number; parts and accessories in $ value

Reason for Control: FP

GLV: $0

GCT: No

GFW: No

List of Items Controlled

a. Electronic computers and related equipment, and "assemblies" and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70°C), but not above 358 K (85°C);

b. "Digital computers" not controlled by 4A03 having a "composite theoretical performance" ("CTP") equal to or greater than 6 million theoretical operations per second (Mtops);

c. "Assemblies" not controlled by 4A03 that are specially designed or modified to enhance performance by aggregation of "computing elements" ("CEs"), as follows:

c.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements" ("CEs"); *or*

c.2. Having a sum of maximum data rates on all channels available for connection to associated processors exceeding 40 million Bytes/s;

Note 1: 4A94.c applies only to "assemblies" and programmable interconnections with a "composite theoretical performance" ("CTP") not exceeding 12.5 million theoretical operations per second (Mtops), when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03 or 4A94.

Note 2: 4A94.c does not control any "assembly" specially designed for a product or family of products with a maximum configuration that does not exceed a "CTP" of 12.5 Mtops.

d. Disk drives and solid state storage equipment:

d.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" exceeding 25 million bit/s;

d.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with a "maximum bit transfer rate" exceeding 36 million bit/s;

e. Input/output control units designed for use with equipment controlled by 4A94.d;

f. Equipment for "signal processing" or "image enhancement", not controlled by 4A03, having a "composite theoretical performance" ("CTP") exceeding 8.5 million theoretical operations per second (Mtops);

g. Graphics accelerators or graphics coprocessors, not controlled by 4A03, that exceed a "3–D vector rate" of 400,000 or, if supported by 2–D vectors only, a "2–D vector rate" of 600,000;

Note 1: The provisions of 4A94.g do not apply to work stations designed for and limited to:

a. Graphic arts (e.g., printing, publishing); *and*

b. The display of two-dimensional vectors.

h. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

Note 1: 4A94.h does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

i. Equipment containing "terminal interface equipment" exceeding the limits in 5A91F.

Note: For the purposes of 4A94.h, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

38. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers) is amended:

a. By removing the sub-heading "Equipment for the development and production of magnetic and optical storage equipment as follows." immediately following the heading "B. Test, Inspection and Production Equipment", which follows ECCN 4A96G; and

b. By removing ECCNs 4B01A, 4B02A, and 4B03A;

c. By adding a new ECCN 4B94F immediately following the heading "B. Test, Inspection and Production Equipment"; and

d. By revising the heading of ECCN 4B96G to read as follows:

4B94F Equipment for the "development" and "production" of magnetic and optical storage equipment, as described in this entry.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GLV: $0

GCT: No

GFW: No

List of Items Controlled

a. Equipment specially designed for the application of magnetic coating to controlled non-flexible (rigid) magnetic or magneto-optical media;

Note: 4B94F does not control general-purpose "sputtering" equipment.

b. "Stored program controlled" equipment specially designed for monitoring, grading, exercising or testing controlled rigid magnetic media;

c. Equipment specially designed for the "production" or alignment of heads or head/disk assemblies for controlled rigid magnetic and magneto-optical storage, and electro-mechanical or optical components therefor.

4B96G Computer test, production and inspection equipment, n.e.s.

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39. In Category 4 (Computers), ECCN 4C01A is removed, a new ECCN 4C94F is added immediately following the heading "C. Materials", and ECCN 4C96G is amended by revising the heading of the entry to read as follows:

4C94F Materials specially formulated for and "required" for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GLV: $0

GCT: No

GFW: No

4C96G Materials, n.e.s., specially formulated for and "required" for the fabrication of computer equipment, "assemblies" and components.

* * * * *

40. In Category 4 (Computers), ECCN 4D01A is amended by revising the heading of the entry to read as follows:

4D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or "software" controlled by 4D01, 4D02, or 4D03.

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41. In Category 4 (Computers), ECCN 4D03A is revised to read as follows:

4D03A Specific "software", as described in this entry.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GTDR: Yes, except 4D03.c

GTDU: No

List of Items Controlled

a. Operating system "software", "software" development tools and compilers specially designed for "multi-data-stream processing" equipment, in "source code";

b. "Expert systems" or "software" for "expert system" inference engines providing both:

b.1. Time dependent rules; *and*

b.2. Primitives to handle the time characteristics of the rules and the facts;

c. "Software" having characteristics or performing functions exceeding the limits in the "information security" entries in Category 5;

d. Operating systems specially designed for "real time processing" equipment that guarantees a "global interrupt latency time" of less than 20 microseconds.

42. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 4 (Computers), new ECCNs 4D92F and 4D93F are added immediately following ECCN 4D80C to read as follows:

4D92F "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 4B94 and materials controlled by 4C94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, *except* destinations listed under *Validated License Required*

4D93F "Program" proof and validation "software", "software" allowing the automatic generation of "source codes", and operating systems not controlled by 4D03 that are specially designed for "real time processing" equipment.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, *except* destinations listed under *Validated License Required*

List of Items Controlled

a. "Program" proof and validation "software" using mathematical and analytical techniques and designed or modified for "programs" having more than 500,000 "source code" instructions;

b. "Software" allowing the automatic generation of "source codes" from data acquired on line from external sensors described in the Commerce Control List;

c. Operating systems not controlled by 4D03A that are specially designed for "real time processing" equipment that guarantees a "global interrupt latency time" of less than 30 microseconds.

43. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4D94F is amended by revising the heading of the entry to read as follows:

4D94F "Software" specially designed for the "development", "production", or "use" of "digital computers", "assemblies" and related equipment therefor controlled by 4A94.

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44. In Category 4 (Computers), ECCN 4E01A is amended by revising the heading of the entry and ECCN 4E02A is amended by revising the List of Items Controlled to read as follows:

4E01A Technology, according the General Technology Note, for the "development", "production" or "use" of equipment controlled by 4A01, 4A02, 4A03, or 4A04, or "software" controlled by 4D01, 4D02, or 4D03.

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4E02A Other technology.

* * * * *

List of Items Controlled

a. Technology for the "development" or "production" of equipment designed for "multi-data-stream processing" where the "CTP" exceeds 120 Mtops;

b. Technology "required" for the "development" or "production" of magnetic hard disk drives with an "MBTR" exceeding 47 Mbit/s.

45. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), new ECCNs 4E92F and 4E93F are added immediately following ECCN 4E80C to read as follows:

4E92F Technology for the "development", "production", or "use" of equipment controlled by 4B94, materials controlled by 4C94, or "software" controlled by 4D92, 4D93, or 4D94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, *except* destinations listed under *Validated License Required*

4E93F Technology for the "development" or "production" of graphics accelerators or equipment designed for "multi-data-stream processing" and technology "required" for the "development" or "production" of magnetic hard disk drives.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, *except* destinations listed under *Validated License Required*

List of Items Controlled

a. Technology for the "development" or "production" of graphics accelerators not controlled by 4A03.d or 4A94.g;

b. Technology, not controlled by 4E02.a, for the "development" or "production" of equipment designed for "multi-data-stream processing";

c. Technology, not controlled by 4E02.b, "required" for the "development" or "production" of magnetic hard disk drives with a "maximum bit transfer rate" ("MBTR") exceeding 11 Mbit/s.

46. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), ECCN 4E94F is amended by revising the heading of the entry to read as follows:

4E94F Technology for the "development", "production", or "use" of "digital computers", "assemblies" and related equipment therefor controlled by 4A94F.

* * * * *

47. In Category 4 (Computers), following ECCN 4E96G, under the heading "Notes for Category 4":

a. Advisory Notes 1, 2, and 3 are revised;

b. Advisory Note 4 and 5 are removed and reserved;

c. Advisory Notes 6 and 7 are revised; and

d. A new Advisory Note 8 is added to read as follows:

Notes for Category 4

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Romania of the items controlled by Category 4 for national security reasons, *except*:

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.b, having a "composite theoretical performance" (CTP) exceeding 100 million theoretical operations per second (Mtops);

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a, .b, or .c that are controlled by 4D or 4E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions for export to satisfactory end-users in the People's Republic of China of "digital computers", specially designed components and related equipment therefor, controlled by 4A03.b, .d, .e, or .f, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They are exported as complete systems or enhancements to previously exported systems up to the limits in this Advisory Note 2.d;

c. They have been primarily designed and used for non-strategic applications;

d. The "CTP" of the "digital computers" does not exceed 20 Mtops;

e. Equipment containing "terminal interface equipment" does not exceed:

1. The limits of Advisory Note 4 to Category 5, Section I (Telecommunications);

2. The limits of 5A02.c.2; *or*

3. A "digital transfer rate" of 100 Mbit/s on the common media for "network access controllers" and related equipment controlled by 5A02.c.3; *and*

f. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers", "assemblies" or related equipment controlled by 4A03, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. The "CTP" of the "digital computers" does not exceed 1,000 Mtops;

2. The "3–D vector rate" does not exceed 3 million;

3. The total data transfer rate of equipment controlled by 4A03.g does not exceed 400 MByte/second;

d. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

e. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved;

2. The equipment will not be used for the design, development, or production of items controlled for national security reasons; *and*

3. The exporter shall report promptly any evidence of the removal or diversion of the equipment from authorized purposes related to the specific export license;

f. For systems where the "CTP" exceeds 520 Mtops, the following conditions apply:

1. The licensee or the designated representative of the licensee, who must be from a non-proscribed country, must have the right of access to all the equipment and may carry out inspections;

2. The licensee, upon the request of the Office of Export Licensing, must carry out inspections to establish that all the equipment and systems exported under the provisions of this Advisory Note:

a. Are being used for the intended civil purposes; *and*

b. Are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 4: [Reserved]

Advisory Note 5: [Reserved]

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "digital computers", "assemblies" or related equipment therefor controlled by 4A03, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. The "CTP" of the "digital computers" does not exceed 1,500 Mtops;

2. The "3–D vector rate" does not exceed 3 million;

3. The total data transfer rate of equipment controlled by 4A03.g does not exceed 400 MByte/second;

d. The "assemblies" controlled by 4A03.c are not specially designed or modified for a family of computers the maximum configuration of which exceeds 1,500 Mtops;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 6.c;

f. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment;

g. Exports of items covered by this Advisory Note 6 shall be subject to the following conditions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency describing the end-use and certifying that the "digital computers" or related equipment:

a. Will be used only for civil applications; *and*

b. Will *not* be reexported or otherwise disposed of without prior written authorization from the Office of Export Licensing;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

a. A full description of the equipment *and* its intended application and workload; *and*

b. A complete identification of all end-users and their activities;

3. The licensee or the designated representative of the licensee, who must be from a non-proscribed country, must have the right of access to all the equipment or systems and may carry out inspections;

4. The licensee, upon the request of the Office of Export Licensing, must carry out inspections to establish that all the equipment or systems exported under the provisions of this Advisory Note:

a. Are being used for the intended civil purposes; *and*

b. Are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

5. The licensee, or the designated representative of the licensee, must be notified of any significant change of application or of other facts on which the license was based;

h. In reviewing applications for items described in this Advisory Note, consideration will be given to:

1. The appropriateness of the equipment to the stated end-use;

2. Any evidence that would indicate that the proposed end-users are:

a. Directly involved in significant strategic, including intelligence, activities; *or*

b. Affiliated with organizations that foster diversion to strategic purposes;

3. The extent to which the equipment will support the strategic activities of the end-users; *and*

4. The extent to which diversion would disrupt the activities of the proposed end-users.

Advisory Note 7: Licenses will receive favorable consideration for exports to satisfactory end-users in Bulgaria, Kazakhstan, Latvia, Mongolia, Russia and Ukraine of all items controlled by Category 4 for national security reasons, *except:*

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03.b having a "CTP" exceeding 41 Mtops, and specially designed components therefor;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 7.a, .b, or .c. controlled by 4D or 4E for national security reasons.

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 4A03.g, provided that it is exported for use in interconnecting peripheral equipment to "digital computers" *not* controlled by 4A03.b.

48. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A01A is amended by revising the List of Items Controlled to read as follows:

5A01A Any type of telecommunications equipment having any of the characteristics, functions or features described in this entry.

* * * * *

List of Items Controlled

Any type of telecommunications equipment having any of the following characteristics, functions or features:

a. Specially designed to withstand transitory electronic effects or electromagnetic pulse arising from a nuclear explosion;

b. Specially hardened to withstand gamma, neutron or ion radiation;

c. Specially designed to operate outside the temperature range from 218 K (–55 °C) to 397 K (124 °C).

Note: 5A01.c applies only to electronic equipment.

Note: 5A01.b and c do not apply to equipment on board satellites.

49. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCN 5A02A is amended by revising the List of Items Controlled to read as follows:

5A02A "Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the characteristics, functions or features.

* * * * *

List of Items Controlled

Note: "Telecommunication transmission equipment."

a. Categorized as follows, or combinations thereof:

1. Radio equipment (e.g., transmitters, receivers and transceivers);

2. Line terminating equipment;

3. Intermediate amplifier equipment;

4. Repeater equipment;

5. Regenerator equipment;

6. Translation encoders (transcoders);

7. Multiplex equipment (statistical multiplex included);

8. Modulators/demodulators (modems);

9. Transmultiplex equipment (see CCITT Rec. G.701);

10. "Stored program controlled" digital crossconnection equipment;

11. "Gateways" and bridges;

12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via:

1. Wire (line);

2. Coaxial cable;

3. Optical fiber cable;

4. Electromagnetic radiation;

5. Underwater acoustic wave propagation.

"Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s, or a "total digital transfer rate" exceeding 90 MBit/s;

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 28,800 bit/s;

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 2.1 Mbit/s per channel; *or*

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 156 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification";

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 GHz and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/sec/Hz;

Note 1: 5A02.f does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

Note 2: 5A02.f does not control radio relay equipment for operation in an ITU allocated band:

a.1. Not exceeding 960 MHz; *or*

2. With a "total digital transfer rate" not exceeding 8.5 Mbit/s; *and*

b. Having a "spectral efficiency" not exceeding 4 bit/sec/Hz.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1. a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 MHz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; *and*

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates of less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.b;

k. Being underwater communications systems having any of the following characteristics:

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; *or*

k.3. Using electronic beam steering techniques.

50. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", ECCNs 5D01A, 5D02A, 5E01A, and 5E02A are revised and ECCN 5D03A is amended by revising the Requirements to read as follows:

5D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by the telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason For Control: NS, MT (see *Note*)

GTDR: Yes, *except* MT (see *Note*)

GTDU: No

Note: MT controls apply to "software designed or modified for the "development", "production" or "use" of items controlled by 5A01.

5D02A "Software" specially designed or modified to support "technology" controlled by telecommunications entries 5E01 or 5E02.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason For Control: NS, MT (see *Note*)

GTDR: Yes, *except* MT (see *Note*)

GTDU: No

Note: MT controls apply to "software" designed or modified to support "technology" for the "development", "production" or "use" of items controlled by 5A01.

5D03A Specific "software" as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT (see *Note*)
GTDR: Yes, *except* MT (see *Note*)
GTDU: No

Note: MT controls apply to "software" listed below as applicable to the "development", "production" or "use" of equipment controlled by 5A01.

List of Items Controlled

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5E01A Technology according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, systems, materials or "software" controlled by the telecommunications entries in 5A, 5B, 5C, or 5D.

Requirements

Validated License Required: QSTVWYZ
Reason For Control: NS, MT (see *Note*)
GTDR: Yes, *except* MT, Iran and Syria
GTDU: No

Note: MT controls apply to technology for the "development", "production" or "use" of equipment controlled by 5A01 or related "software" controlled by 5D01, 5D02 or 5D03.

5E02A Specific technologies as described in this entry.

Requirements

Validated License Required: QSTVWYZ
Reason For Control: NS
GTDR: Yes, *except* Iran and Syria
GTDU: No

List of Items Controlled

a. "Required" technology for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b. Technology for the "development" or "use" of laser communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

c. Technology for processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

d. Technology for "development" or "production" of equipment employing "Synchronous Digital Hierarchy" (SDH) or "Synchronous Optical Network" (SONET) techniques;

e. Technology for the "development" or "production" of "switch fabric" exceeding 64,000 bits per second per information channel other than for digital cross connect integrated in the switch;

f. Technology for the "development" or "production" of centralized network control;

g. Technology for the "development" or "production" of digital cellular radio systems;

h. Technology for the "development" or "production" of "Integrated Services Digital Network" (ISDN);

i. Technology for the "development" of QAM techniques, for radio equipment, above level 4.

51. In Category 5 (Telecommunications and "Information Security"), Subcategory I "Telecommunications", under the heading "Notes for Telecommunications", Advisory Note 1 is removed and reserved, and Advisory Notes 8, 11, 12, 13, 14, 15, 16, 17, and 19 are revised, and new Advisory Notes 23 through 27 are added to read as follows:

Notes for Telecommunications

Advisory Note 1: [Reserved]

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Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of test and inspection equipment and specially designed components and accessories therefor controlled by 5B01A or 5B02A and "software" and technology for such equipment, components and accessories, for the repair of telecommunications equipment, provided that:

a. Such equipment, components, accessories, "software" and technology:

1. Are specially designed for repair;

2. Are to be used to repair controlled equipment authorized for export or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities;

5. Do not provide for testing of individual electronic components; *and*

6. Do not include "software" in "source code" controlled by 5D03.a;

b. The repair does not upgrade the equipment or "software";

c. All the records of repair activity are kept by a representative of the Western supplier; *and*

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; *and*

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 8 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

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Advisory Note 11: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, or Vietnam of telecommunications equipment for optical fibers controlled by 5A02.d.1, provided that the transmission wavelength does not exceed 1,370 nm.

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, or Vietnam of cables or fibers controlled by 5A05, provided that:

a. Quantities are normal for the envisaged end-use; *and*

b. They are for a specified civil end-use.

Advisory Note 13: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Albania, Bulgaria, the People's Republic of China, Mongolia, Romania, or Vietnam of optical fiber test equipment controlled by 5B01.c using a transmission wavelength not exceeding 1,370 nm.

Advisory Note 14: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of digital radio equipment or systems controlled by 5A02.a or f, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil telecommunication system, one end of which is in a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the licensee;

c. No means are to be provided for the transmission of traffic between points in a single proscribed country other than a country in Country Group Q or W;

d. The "digital transfer rate" at the highest multiplex level does not exceed 156 Mbit/s;

e. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above level 64; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6 bit/s/Hz;

f. The equipment is not controlled by 5A02.e or .h or by the "information security" entries in Category 5;

g. Spare parts shall remain under the control of the licensee or the licensee's designated representative;

Note: The supervision of the spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The licensee or the licensee's designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

i. There will be no transfer of technology controlled for national security reasons;

j. Supervision of systems installation, operation and maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries;

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not mean that only nationals from the exporting country should install the system.

k. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 15: Licenses will receive favorable consideration for exports to satisfactory end-users in Bulgaria or Romania of technology controlled by the telecommunications entries in Category 5, and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories on the Commerce Control List, for the modification or "production" of telecommunications equipment or systems eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5), provided that:

N.B.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the telecommunications equipment or systems are limited to those eligible for administrative exceptions treatment under Advisory Note 1 in the Notes for Telecommunications (Category 5);

b. Modification of the telecommunications equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 15.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" shall be exported in machine executable form only;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the telecommunications equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only and not for reexport to proscribed destinations other than Bulgaria or Romania;

h. System integration testing will be performed by the supplier or licensor; if it requires test tools that would provide the licensee with the capability to recover source code or upgrade the system beyond the performance thresholds or features of Advisory Note 1 in the Notes for Telecommunications (Category 5);

i. End-use reporting of the installed telecommunication equipment or systems will be provided in accordance with the provisions of Advisory Note 1 in the Notes for Telecommunications (Category 5).

N.B. 1: No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under entries in other Categories on the Commerce Control List.

N.B. 2: For each license application for export pursuant to this Advisory Note, the exporter must submit the following assurances to be obtained from the importer:

a. An Import Certificate issued by the importer's national authorities;

b. An assurance that the importer will make available information as requested by the Department of Commerce; *and*

c. An assurance that the importer will allow on-site inspection if requested by the Department of Commerce.

Advisory Note 16: Licenses will receive favorable consideration for the export to satisfactory end-users in Albania, Bulgaria, Mongolia, Romania, or Vietnam of radio relay communications equipment, specially designed components and accessories, specially designed test equipment, "software" and technology for the "use" of equipment or materials therefor, controlled by the telecommunications entries in this Category, provided that:

a. It is for fixed installation and civil application;

b. It is designed for operation at a total "digital transfer rate" not exceeding 156 Mbit/s;

c. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above 64 QAM; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6.3 bit/s/Hz;

d. It operates at fixed frequencies not exceeding 9 GHz;

e. A license application for export under the provisions of this Advisory Note provides the following information:

1. The equipment or system to be provided;

2. The intended application; *and*

3. The location of the equipment.

Advisory Note 17: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber cables and optical fiber transmission equipment or systems controlled by 5A02 or 5A05, provided that:

a. The equipment or systems are intended for general commercial international traffic in an international civil submarine optical fiber telecommunication system linking the importing country with a non-proscribed country;

b. It is to be installed in a permanent circuit under the supervision of the licensee;

c. No means are to be provided for the transmission of traffic between points in one or more proscribed countries other than Bulgaria or Romania;

d. The total length of optical fiber cable to be installed within the proscribed country, excluding cable in territorial waters, does not exceed 10 km or the shortest distance that is practical for installation;

e. The "digital transfer rate" at the highest multiplex level does not exceed 565 Mbit/s;

f. The "laser" transmission wavelength does not exceed 1,550 nm;

g. The equipment is not controlled by 5A02.d.2 to d.5 or by the "information security" entries in Category 5;

h. Controlled spare parts shall remain under the supervision of the licensee or the licensee's designated representative, who shall be from a non-proscribed country;

Note: The supervision of spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The licensee or the licensee's designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

j. There will be no transfer of controlled technology;

k. Supervision of systems installation and of maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries; *and*

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not require that only nationals from the exporting country should install the system.

l. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose;

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection

to the Office of Export Licensing within one month after completing the inspection.

* * * * *

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunications transmission systems or equipment controlled by 5A02.a and 5A02.d.1, fiber optic cables controlled by 5A05, or coaxial cable telecommunications transmission systems controlled by 5A02.a, and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use" thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. *From the following countries:* Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, or the United Kingdom;

b. *To the following cities as listed by country:* Albania (Tirana), Armenia (Yerevan), Azerbaijan (Baku), Bulgaria (Sophia, Varna), Belarus (Minsk), Georgia (Tbilissi), Kazakhstan (Alma-Ata), Kyrgyzstan (Bishkek), Moldova (Chisinau), Romania (Bucharest, Constanza), Russia (Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Ukraine (Kiev, Odessa, Sebastopol), Uzbekistan (Tashkent) *or*

2.a. *From the following countries:* Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States,

b. *To the following cities as listed by country:* People's Republic of China (Shanghai, Guangzhou), Russia (Khabarovsk, Nakhodka, Vladivostok, Yuzhno-Sadhalinsk), Vietnam (Hanoi, Ho Chi Minh City);

N.B.: No traffic shall be carried between points in proscribed countries, except in Estonia, Latvia, and Lithuania

b. [Reserved];

c. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

d. The "laser" transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries.

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the licensee or the licensee's designated representative, who shall be from a non-proscribed country;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee

h. The licensee or the licensee's designated representative, who shall be from a non-proscribed country, must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1 The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated end purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

j. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to the licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route

* * * * *

Advisory Note 23: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "software" controlled by 5D03.a, and related technology, "software" tools and test equipment necessary for the "development", "production" or "use" thereof, provided that:

a The "software", technology, "software" tools and test equipment will be limited to those necessary for problem analysis and reporting or for local adaptation of the switching equipment such as for subscriber terminal interface, network interface, billing, administration or similar adaptations for local civilian telecommunications requirements, by a civil end-user.

b. No "software" or technology "required" for the "development", "production" or "use" of functions, features or equipment controlled by the telecommunications entries in 5A, 5B or 5E of Subcategory I to Category 5 shall be included;

Note: This Advisory Note does not release from control the "software" in "source code" comprising that "software" that controls the management and execution of programs, commonly referred to as the operating system

c. Such "software", technology, "software" tools or test equipment do not provide the capability to decompile, disassemble or perform similar activities to "software" in "object code" or similar format and thereby reverse-engineer controlled characteristics, functions or features;

d. The licensee or the licensee's designated representative, who shall be from a nonproscribed country, shall have the right of access to the site of, and computing equipment being used to perform, such adaptations so as to have access to:

1. The "software", technology, "software" tools and test equipment referred to in this Advisory Note; *and*

2. All "software" developed or derived from the "software" technology, "software" tools and test equipment licensed under this Advisory Note;

e. Upon request of the Office of Export Licensing, the licensee must carry out an inspection to establish that:

1. The "software", technology, "software" tools and test equipment referred to in this Advisory Note are being used for the intended civil purpose; *and*

2. All the "software", technology, "software" tools and test equipment exported under the provisions of this Advisory Note are being used for the stated end purpose and are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 24: Licenses will receive favorable consideration for exports to satisfactory end-users in the People's Republic of China of technology controlled by the telecommunications entries in Subcategory I of Category 5 and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by national security entries on the Commerce Control List, for the modification or production of the telecommunication transmission equipment or systems described in 5A02.a, 5A02 d.1, 5A02 f.1, or 5A02.f.2, provided that:

N.B. 1: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains controlled by Category 4.

N.B. 2: No technology is to be included for the "production" of:

a. Equipment employing "SDH" or "SONET" techniques; *or*

b. "Lasers" with transmission wavelengths exceeding 1,000 nm.

a. The characteristics of the telecommunication transmission equipment or systems are limited to those that release them from control or make them eligible under the relevant Advisory Notes that provide administrative exceptions treatment, provided that the following limits are not exceeded:

1. QAM techniques of level 16,

2. A "digital transfer rate" of 140 Mbits/s and a "total digital transfer rate" of 168 Mbits/s;

N.B.: An additional 2 Mbit/s may be added to the "total digital transfer rate" of 168 Mbit/s for operation, maintenance and service communications.

3. A "laser" transmission wavelength of 1,370 nm;

b. Modification of the telecommunications transmission equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment;

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 24.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories in the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" must be supplied in machine executable form only except for the specific customer data and site parameters;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or production equipment is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and production equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the equipment produced must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems covered by this Advisory Note;

5. The "production" technology, production equipment and equipment or systems produced do not exceed the characteristics of the relevant Advisory Notes that provide administrative exceptions treatment and will be for civil end-use only;

h. System integration testing will be performed by the supplier or licensor if it requires test tools that provide the licensee with the capability to recover "source code" or upgrade the system beyond the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment;

i. The relevant Advisory Note that provides administrative exceptions treatment should be indicated on the license application.

N.B.: No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under other Categories in the Commerce Control List.

Advisory Note 25: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of components, parts and materials, controlled for national security reasons by entries on the Commerce Control List, necessary for the production of telecommunication equipment or systems, provided that:

a. The production equipment and technology for the equipment concerned has been previously legally exported;

b. The quantity of components, parts and materials exported is normal for the stated end-use;

c. Authorization under this Advisory Note will cover a program of supplies up to two calendar years for the production by the same licensee of equipment authorized under Advisory Note 25.a;

d. No technology or "software" "required" for "development", "production" or "use" shall be included;

e. The components, parts and materials exported will not be permitted to exceed the performance threshold or features of the equipment previously authorized;

f. The contract includes explicit conditions to ensure that:

1. The equipment manufactured with the exported components, parts and materials is not exported or reexported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and production equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the equipment produced must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems;

5. The equipment or systems produced will be for civil end-use only.

Advisory Note 26: [Reserved]

Advisory Note 27: Licenses are likely to be approved, as administrative exceptions, for exports to Albania, Armenia, Azerbaijan, Bulgaria, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, the People's Republic of China, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam of telecommunications equipment or systems controlled by 5A02.a through 5A02.g, 5A03, 5A04 or 5A05, measuring, test or repair equipment controlled by 5B01.c or 5B02, and specially designed components and accessories, "software" and technology necessary for the "use" thereof, provided that:

a. Optical fiber telecommunication transmission equipment or systems:

1. Are designed to operate at a "digital transfer rate" of 623 Mbit/s or less at the highest multiplex level; *and*

2. Are designed to operate on a "laser" transmission wavelength not exceeding 1,590 nm.

b. Digital radio equipment or systems:

1. Are designed to operate at a "digital transfer rate" of 623 Mbit/s or less at the highest multiplex level;

2. Do not employ QAM techniques exceeding level 512 or other digital modulation techniques having a "spectral efficiency" exceeding 9 bit/s/Hz;

c. "CCS":

1. Is limited to the associated mode of operation;

2. Signalling and related speech/data channels are limited to two signalling points and must not be routed via different transmission media or different routes;

N.B.: A single route consists of one or more consecutive serial connection links that may use different transmission media.

3. Message Transfer Part (MTP) level 3 signalling routes are limited to two signalling points;

N.B.: MTP Level 3 is found in Q.704 and related recommendations of the ITU-T Q series for "CCS".

4. For point-to-point inter-city "CCS" connectivity between two signalling points, where permitted by Advisory Note 27.c.1, c.2, or c.3, the Originating Point Codes (OPC) and Destination Point Codes (DPC) for all signalling messages over such signalling links cannot be reinstalled or changed following the vendor's initial software installation without prior authorization, being available in object code only; all compilation mechanisms and administrative tools that allow for modification of the Point Codes are removed following installation;

d. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to a civilian network;

e. The equipment or systems, if employing synchronous transmission techniques, conform to one of the ANSI or ITU–T approved standards or recommendations for "SONET" or "SDH";

f. Measuring, test or repair equipment controlled by 5B01.c or 5B02 and controlled spare parts remain under the supervision of the licensee or the licensee's designated representative;

g. The licensee or the licensee's designated representative have the right of access to all the equipment or systems and may carry out inspections;

h. Upon the request of the Office of Export Licensing, the licensee must carry out inspections to establish that:

1. All the equipment or systems exported under the provisions of this Advisory Note are being used for the intended civil purpose; *and*

2. Are still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection;

i. Supervision of systems installation and maintenance of controlled transmission equipment is performed by the licensee or the licensee's designated representative. Any portion of the installation of controlled transmission equipment that would require the transfer of controlled technology is performed by the licensee or the licensee's designated representative;

N.B. 1: Supervision of maintenance includes prevention maintenance at periodic intervals and intervention for major malfunctions.

j. License applications to export systems or equipment for "common channel signalling" identify the intended system routes and locations of signalling points.

52. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software"

and Technology), a new ECCN 5A90F is added immediately following ECCN 5A80D to read as follows:

5A90A Any type of telecommunications equipment, not controlled by 5A01, specially designed to operate outside the temperature range from 219 K (−54 °C) to 397 K (124 °C).

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

53. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software", and Technology), ECCN 5A91F is revised to read as follows:

5A91F Transmission equipment, not controlled by 5A02, containing:

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bits per second;

b. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; *or*

c. "Network access controller" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s.

54. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software", and Technology), a new ECCN 5D90F is added immediately following ECCN 5D20B to read as follows:

5D90F "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 5A90 or 5A91.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control. FP
GLV: $0
GCT: No
GFW: No

55. In Category 5 (Telecommunications and "Information Security"), Subcategory III (Other Equipment, Materials, "Software", and Technology), a new ECCN 5E90F is added immediately following ECCN 5E20B to read as follows:

5E90F Technology for the "development", "production", or "use" of equipment controlled by 5A90 or 5A91 or "software" controlled by 5D90.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT No
GFW. No

56. In Category 6 (Sensors), under the heading "Notes for Category 6", Advisory Notes 2.4 and 4.4 are removed and reserved.

57. In Category 7 (Navigation and Avionics), under the heading "Notes for Category 7", Advisory Note 2 is removed and reserved.

58. In Category 8 (Marine Technology), under the heading "Notes for Category 8", Advisory Note 3 is removed and reserved.

59. In Category 9 (Propulsion Systems and Transportation Equipment), under the heading "Notes for Category 9", Advisory Note 3 is removed and reserved.

Dated: May 6, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–11467 Filed 5–9–94; 4:55 pm]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket N 0295]

Listing of Color Additives Subject to Certification; FD&C Blue No. 1; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 19, 1994, of the final rule that appeared in the **Federal Register** of February 16, 1994 (59 FR 7636) (effective date corrected in the **Federal Register** of February 22, 1994 (59 FR 8507)), and amended the color additive regulations to provide for the safe use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

DATES: Effective date confirmed: March 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–254–9519.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 16, 1994 (59 FR 7636) (effective date corrected in the **Federal Register** of February 22, 1994 (59 FR 8507)), FDA amended 21 CFR 74.1101 and 74.2101 to provide for the safe use of FD&C Blue No. 1 and FD&C Blue No. 1 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

FDA gave interested persons until March 18, 1994, to file written objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of February 16, 1994, should be confirmed as corrected on February 22, 1994.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the February 16, 1994, final rule. Accordingly, the amendments promulgated thereby became effective March 19, 1994.

Dated: May 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 94–11594 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 178

[Docket No. 92F–0162]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in polypropylene articles intended for contact with all types of food to include frozen or refrigerated storage of ready-prepared foods intended to be reheated in the container at the time of use. This action is in response to a petition filed by Asahi Denka Kogyo K. K.

DATES: Effective May 16, 1994; written objections and requests for a hearing by June 15, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 4, 1992 (57 FR 19133), FDA announced that a food additive petition (FAP 2B4300) had been filed by Asahi Denka Kogyo K. K., c/o Japan Technical Information Center, Inc., 1002 Pennsylvania Ave. SE., Washington, DC 20003, proposing that the food additive regulations be amended in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to expand the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–1–2) as a clarifying agent in polypropylene articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3295 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 15, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3295 is amended in the table by revising the entry for "Sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate" to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* * * *	* * *
Sodium 2,2'- methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–91–2).	For use only as a clarifying agent at a level not exceeding 0.30 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2 (where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene). The finished polymers contact foods only of types I, II, IV-B, VI–B, VII–B, and VIII as identified in Table 1 of § 176.170(c) of this chapter and limited to conditions of use B through H described in Table 2 of § 176.170(c) of this chapter or foods of all types, limited to conditions of use C through H described in Table 2 of § 176.170(c) of this chapter.

Dated: May 6, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–11785 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 2006]

Schedule of Fees for Consular Services, Department of State and Foreign Service of the United States

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule.

SUMMARY: This interim rule amends § 22.1 of title 22, Code of Federal Regulations by creating a surcharge for the processing of machine readable visas (MRV's). That surcharge, pursuant to OMB Circular No. A–25, is set at a cost-recovery based level of $20.00 per visa application.

DATES: *Effective Date:* The effective date for the new fee is May 16, 1994.

Date for submission of comments: June 15, 1994.

ADDRESSES: Interested persons are invited to submit comments in duplicate to the Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818.

FOR FURTHER INFORMATION CONTACT: Holcombe Thomas, Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818, (202) 647–1148.

SUPPLEMENTARY INFORMATION

Background

Public Law 103–236, enacted April 30, 1994, authorizes the Secretary of State to collect a surcharge for the processing of machine readable visa (MRV) applications, and to retain the resulting revenues, up to a ceiling of $107.5 million for fiscal years 1994 and 1995. This authority has been delegated to the Under Secretary for Management. It supplements and in part overrides section 281 of the Immigration and Nationality Act (INA) which generally provides for nonimmigrant visa fees to be set on the basis of reciprocity.

The Secretary of State has also been authorized under E.O. 10718 of June 27, 1957, to exercise the President's authority under 22 U.S.C. 4219 to prescribe rates of fees to be charged for official services performed by the Department of State. Under this authority, the Department has determined a number of fees for consular services performed overseas, as well as in the United States, within the guidelines set by OMB Circular No. A–25. The policy set out in Circular A–25 states that services which directly benefit individuals, organizations, or groups should be paid for by the users rather than the taxpayers. Services performed for the primary benefit of the general public or the U.S. Government are to be supported by tax revenues. The principles of Circular A–25 have guided various fee studies conducted by the Department. As a result, although the authority to charge for processing a machine readable visa is new, the Department has for a number of years had on hand Circular A–25-based cost estimates for visa processing.

In the Department's latest consular fee study, issued in January 1991, the cost of processing a nonimmigrant visa was determined to be $18.47. Equipment used to process machine readable nonimmigrant visas (MRV's) is considerably more expensive than the equipment used to issue the outdated stamped visas which the MRV is replacing. Given these additional equipment costs and the costs of collecting the fee, the new fee has been set at a cost-recovery level of $20.00 per visa application. This fee may in fact be below cost, but the Department believes that it is an approximate level at which to set the charge initially, given the base estimate of $18.47 and the need for a fee that can be collected with minimal transaction costs. A $20.00 fee is a whole dollar amount. Moreover, in discussing the new fee with members of Congress, $20.00 was discussed in light of the 1991 cost study as the initial amount at which the new fee would be set.

The implementation of this rule as an interim rule, with provision for post-promulgation comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3). The authorization for the collection of a processing fee for machine readable nonimmigrant visas and machine readable combination border crossing card mandated by Public Law 103–236 took effect on April 30, 1994. This rule must take effect upon publication to ensure that the Department maximizes surcharge revenue for the balance of fiscal year 1994. The Department will be relying on such revenues to fund accelerated installation of improved visa processing and issuing technology at consular posts. The installation of such technology has become a high priority for the United States in light of the World Trade Center bombing and increasing concerns about visa fraud and alien terrorist activity in the United States.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 22

Passports and visas, Schedule of Consular Fees.

Accordingly, 22 CFR part 22 is amended as follows:

1. The authority citation for part 22 continues to read as follows:

PART 22—[AMENDED]

Authority: Sections 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; EO 101718, 22 FR 4632; EO 11295, 31 FR 10603; 3 CFR 1954–1958 Comp. p. 507.

2. Section 22.1 is amended by adding item 26 under "Visa Services for Aliens" to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
* * * *	*
26. Surcharge for processing machine readable nonimmigrant visa application	$20.00
(Item Nos. 27 through 29 vacant)	
* * * *	*

Dated: May 6, 1994.

Richard Moose,

Under Secretary for Management, Department of State.

[FR Doc. 94–11861 Filed 5–11–94; 3:24 pm]

BILLING CODE 4710–06–M

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2005]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act

Visa Fees

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule.

SUMMARY: This rule adds a surcharge provision to part 41 title 22, Code of Federal Regulations. The amendment to the regulations authorizes the Secretary of State, pursuant to the provisions of section 140 of Public Law 103–236, to collect a surcharge for processing applications for machine readable nonimmigrant visas and machine readable combined border crossing cards. This surcharge is herein referred to as the "MRV surcharge". The authority vested in the Secretary of State mandates appropriate amendments to the nonimmigrant regulations.

DATES: *Effective date:* May 16, 1994. Interested persons are invited to submit written comments on or before June 15, 1994.

ADDRESSES: Comments should be submitted to Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC, (202) 663–1204.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the President signed into law Public Law 103–236, State Department Authorization Bill for Fiscal Years 1994 and 1995. The provisions of section 140 of this law grant the Secretary of State the authority to collect a surcharge for the processing of applications of machine readable nonimmigrant visas and machine readable combined border crossing cards. Such authority is new and requires appropriate amendment of the visa regulations at 22 CFR 41.107.

Current Authority

Section 281 of the Immigration and Nationality Act (INA) provides that the Secretary of State shall establish fees for the issuance of nonimmigrant visas based upon reciprocity. Pursuant to this section of law, the Secretary of State where practicable prescribes a fee to be imposed upon nationals of a foreign country that corresponds with all the visa related costs charged U.S. citizens by that foreign country. The Department's implementing regulation, at 22 CFR 41.107(a), restates the statutory principle authorizing the Secretary of State to collect nonimmigrant visa issuance fees based on reciprocity. As a reciprocal charge, the fee prescribed by the Secretary reflects the total costs imposed by a foreign state on U.S. nationals. If no costs are incurred, no fee is prescribed. The fees collected pursuant to section 281 are remitted to the general funds of the U.S. Treasury.

MRV Surcharge

Section 140 of the State Department Authorization Bill authorizes a surcharge to be imposed for machine readable visas and border crossing cards notwithstanding INA 281 and the regulations at § 41.107. This new fee may, therefore, be charged for processing applications for machine readable visas, independent of fees prescribed pursuant to reciprocity under the provisions of section 281 of the Act. Moreover, surcharges collected pursuant to section 140 may be retained by the Department up to $107 million for FY 94 and FY 95 combined.

The regulation at section 41.107 is being amended to authorize the collection of this surcharge separate from and in addition to any other fee. The amount of the surcharge and justification for that amount are subjects of a separate regulation being promulgated by the Under Secretary of State for Management.

Interim Rule

In order to implement the provisions of section 140, Public Law 103–236, the regulation at § 41.107 is being amended to authorize the Secretary of State to collect the surcharge, separate from or independent from and in addition to any other fee, for processing applications for machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

The implementation of this rule as an interim rule, with provision for post-promulgation comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3). The authorization for the collection of a processing fee for machine readable nonimmigrant visas and machine readable combination border crossing cards mandated by Public Law 103–236 takes effect on April 30, 1994. This rule must take effect upon publication to ensure that the Department maximizes surcharge revenues for the balance of FY–94. The Department will be relying on such revenues to fund accelerated installation of an imposed visa processing and issuing technology at consular posts. The installation of such technology has become a high priority for the United States in light of the World Trade Center bombing and increasing concern about visa fraud and alien terrorist activity in the United States. This rule is not considered to be a major rule for purposes of E.O. 12291; nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas, Fees, Surcharge.

Accordingly, 22 CFR part 41, is amended as follows:

1. The authority citation for part 41 would continue to read as follows:

PART 41—[AMENDED]

Authority: 8 U.S.C. 1104.

2. Sec. 41.107 is amended by adding paragraph (e) to read as follows:

§ 41.107 Visa fees.

* * * * *

(e) *Visa processing surcharge.* In addition to the collection of the fee prescribed in paragraph (a) of this section, a consular officer shall collect or ensure the collection of a surcharge for the processing of applications for machine readable nonimmigrant visas and for machine readable combined border crossing cards in the amount specified by the Secretary of State from such applicants as the Secretary of State shall designate. Such surcharge is refundable only if, as a result of action taken by the U.S. Goverment for which the alien was not responsible and over which the alien had no control, the alien's application is not processed.

Dated: May 4, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–11860 Filed 5–11–94; 3:24 pm]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 710, 712, 713, and 720

[FHWA Docket No. 93–7]

RIN 2125–AD09

Removal of Obsolete and Redundant Right-of-Way Requirements

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule eliminates a number of FHWA prior approvals previously required in the acquisition of real property for Federal-aid highway projects. Consistent with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), this approach reduces the regulatory burden for States and encourages greater flexibility by reducing the degree to which the FHWA will be involved in the development of Federal-aid highway projects.

DATES: This regulation is effective June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: This final rule modifies several provisions in the FHWA's right-of-way regulations that require the FHWA to grant prior approvals or authorizations for particular actions by a State. These case-by-case approvals will no longer be required and will be replaced by a one-time FHWA approval of State procedures. Oversight by the FHWA will continue through the use of process reviews. In the future, prior approvals may be reinstituted if they are found to be necessary to protect the Federal investment.

As a result of a review of the FHWA's right-of-way regulations, the Office of Right-of-Way identified a number of requirements that imposed burdens on States without commensurate program benefit. The review disclosed a number of case-by-case approval actions that, based on experience, were no longer necessary to protect the investment of Federal-aid highway funds. These approval actions are divided into the two categories set forth below.

The first category includes six FHWA approvals or authorizations. The State may now take the approval or authorization actions required by the following sections if they are in accordance with procedures that have been approved by the FHWA.

Approval action	23 CFR section
Use of fee negotiators	710.203(e)(3)
Interest on right of entry payments.	710.304(j)(5)
Use of fee attorneys	712.408(a)
Land service facilities	712.805(c)(1)
Temporary use of right-of-way.	713.103(h)(1)
Appraisal fees	720.202(d)(2)

The second category includes four FHWA approvals that are eliminated on all FHWA-funded projects except those on the National Highway System (NHS). These concern the long-term use or disposal of rights-of-way and are no longer considered necessary or useful on a case-by-case basis for non-NHS projects. The FHWA will continue case-by-case approvals or authorizations relating to the use or disposal of NHS rights-of-way, consistent with the provisions of 23 U.S.C. 106(b)(2) which require that a higher level of FHWA oversight be maintained on the NHS.

Accordingly, the authorization actions required by the following sections may be taken by the State if they are in accordance with procedures that have been approved by the FHWA, except with regard to facilities or projects that are on the National Highway System (NHS), described in 23 U.S.C. 103. The FHWA approvals or authorizations that are prescribed by the following sections continue to be required with regard to facilities or projects on the NHS because of FHWA's special interest in the integrity and safety of NHS facilities and right-of-way.

Approval action	23 CFR section
Non-highway use and occupancy of right-of-way.	712.203(b)(1)
Airspace agreements	713.204
Disposal of right-of-way no longer needed.	713.305
Disposal of access-control and relinquishment of right-of-way.	620.203(d) through (l)

On July 21, 1993, the FHWA published in the **Federal Register** a notice of proposed rulemaking (NPRM) concerning the above provisions of FHWA's right-of-way regulations (58 FR 38987). The FHWA received three comments on the NPRM, all from State Departments of Transportation. All three commenters supported in varying degrees the proposed changes. Two commenters indicated that the proposed changes would increase their flexibility or simplify their right-of-way programs. The third anticipated a slight decrease in paperwork and a subsequent saving of time.

We received no negative comments. Furthermore, none of the three commenters suggested any changes in the language of the NPRM. Accordingly, the language of the final rule is unchanged from that proposed in the NPRM.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. The rulemaking would not affect the level of funding available in Federal or federally-assisted programs covered by the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4610 *et seq.*), or otherwise have a significant economic impact; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities since it will make relatively small changes in existing regulatory provisions by eliminating certain FHWA prior approvals.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action, in effect, both clarifies and simplifies current regulatory requirements.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.205 Highway Planning and Construction. The regulations implementing Executive

Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 710

Civil rights, Grant programs-transportation, Highway and roads, Real property acquisition, Rights-of-way.

23 CFR Part 712

Grant programs-transportation Highway and roads, Real property acquisition, Rights-of-way.

23 CFR Part 713

Grant programs-transportation, Highways and roads, Property management, Real property acquisition, Rights-of-way.

23 CFR Part 720

Appraisal, Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

Issued on May 9, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In accordance with the foregoing, parts 710, 712, 713, and 720 of title 23, Code of Federal Regulations, are amended as set forth below.

PART 710—[AMENDED]

1. The authority citation for part 710 is revised to read as follows:

Authority: 23 U.S.C. 101(a) and 315; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48 (b) and (cc) and parts 21 and 24; 23 CFR 1.32.

§ 710.203 [Amended]

2. In § 710.203, paragraph (e)(3) is revised to read as follows:

§ 710.203 General responsibilities.

* * * * *

(e) * * *

(3) Firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

3. Section 710.204 is added to read as follows:

§ 710.204 State approvals.

Notwithstanding any other provision of this title, the FHWA authorizations or approvals prescribed by §§ 712.203(b)(1), 713.204, 713.305, and 620.203 (d) through (i) of this chapter may, except in the case of facilities or projects on the National Highway System (described in 23 U.S.C. 103), be made by the SHD in accordance with procedures that have been approved by the FHWA.

4. In § 710.304, the first sentence of paragraph (j)(5) is revised to read as follows:

§ 710.304 Reimbursement policy.

* * * * *

(j) * * *

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner directly or by deposit with the court, except in cases of unusual circumstances in accordance with SHD procedures that have been approved by the FHWA. * * *

PART 712—[AMENDED]

5. The authority citation for part 712 is revised to read as follows:

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d–1, 4633, 4651–4655; 49 CFR 1.48–(b) and (cc) and part 24; 23 CFR 1.32.

6. In § 712.408, paragraph (a) is revised to read as follows:

§ 712.408 Special counsel.

(a) If part-time assistants or legal counsel are employed for Federal-aid right-of-way procurements, reimbursement may be claimed for the eligible cost of the services of such attorney, provided that such assistants or counsel are employed in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

7. In § 712.805, paragraph (c)(1) is revised to read as follows:

§ 712.805 Policies.

* * * * *

(c) *Private use and benefit.* (1) Land service facilities designed for restoration of access to and within a privately owned property shall be justified primarily on the basis of economics. In exceptional cases where the land service facility is not justified economically, but it is believed that access is nevertheless in the public interest, such access may be approved by the SHD, in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

PART 713—[AMENDED]

8. The authority citation for part 713 is revised to read as follows:

Authority: 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651–4566; 23 CFR 1.32; 49 CFR 1.48(b) and (cc), 18.31 and parts 21 and 24.

9. In § 713.103, paragraph (h)(1) is revised to read as follows:

§ 713.103 Policies and procedures.

* * * * *

(h) * * *

(1) The SHD has approved temporary right-of-way limits within the overall right-of-way in accordance with SHD procedures approved by the FHWA;

* * * * *

PART 720—[AMENDED]

10. The authority citation for part 720 is revised to read as follows:

Authority: 23 U.S.C. 101(a) and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48(b) and (cc) and part 24.

11. In § 720.22, paragraph (d)(2) is revised to read as follows:

§ 720.202 Appraisal fees, contracts, and agreements.

* * * * *

(d) * * *

(2) In instances in which special use or other unusual properties are involved, the SHD may approve the use of a per diem rate contracting method with a stated overall limit which should not be exceeded except by supplemental agreement, provided that such SHD approval is made in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

[FR Doc. 94–11846 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–22–P

Coast Guard

33 CFR Part 165

[COTP Miami 94–045]

RIN 2115–AA97

Safety Zone Regulations; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone at Port Everglades, Fort Lauderdale, Florida. This safety zone is needed to protect the Whitbread Round the World Race participant vessels from safety hazards associated with the spectator vessels operating in the area of the Whitbread/Heineken Trophy Village at Port Everglades in Fort Lauderdale, Florida. Entry into this zone is prohibited unless authorized by the Captain of the Port, Miami, Florida, or his designated representative.

FOR OTHER INFORMATION CONTACT: LT Robert G. Garrott, Port Operations Department, USCG Marine Safety Office, 51 SW. First Avenue, Miami, Florida 33130 (305) 536–5693.

EFFECTIVE DATES: This regulation becomes effective at 11:30 a.m. Eastern Daylight Time (EDT), April 23, 1994 or upon arrival of the first Whitbread Round the World Race participant vessel. It terminates at 11:30 a.m. (EDT), May 21, 1994 or upon departure of the final Whitbread Round the World Race participant vessel.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication.

Drafting Information

The drafters of this regulation are Lieutenant Robert G. Garrott, Project Officer for the Captain of the Port, Miami, Florida, and Lieutenant Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The event requiring this regulation to be established is the presence of the Whitbread Round the World Race participant vessels at the Whitbread/Heineken Trophy Village. The Trophy Village is located within Port Everglades on the west side of the Atlantic Intercoastal Waterway with its easternmost limits marked by NO WAKE signs. There are significant risks associated with spectator vessels operating in close proximity to the participant vessels. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule making does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.c of Commandant Instruction M16475.1B and the establishment of safety zones has been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone will only be in effect for such a small area that it is not expected to have a significant impact on any commercial navigation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 33 CFR 160.5.

2. A new § 165.TO7–045 is added to read as follows:

§ 165.TO70–45 Safety Zone: Whitbread Round the World Race participant vessels at the Whitbread/Heineken Trophy Village at Port Everglades in Fort Lauderdale, Florida.

(a) *Location.* The following area is a safety zone:

All waters within fifty yards in all directions from the easternmost limit of the Whitbread/Heineken Trophy Village, as marked by NO WAKE signs.

(b) *Effective date.* This section becomes effective at 11:30 a.m. (EDT), April 23, 1994 or upon arrival of the first Whitbread Round the World Race participant vessel. It terminates at 11:30 a.m. (EDT), May 21, 1994 or upon departure of the final Whitbread Round the World Race participant vessel.

(c) *Regulations.* In accordance with general regulations in Section 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him. Section 165.33 also contains other general requirements.

Dated: April 14, 1994.

L. A. Doyle,

Captain, U.S. Coast Guard, Captain of the Port, Miami.

[FR Doc. 94–11709 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG46

Disease Subject To Presumptive Service Connection (Cancer of the Urinary Tract)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases resulting from exposure to ionizing radiation during military service. Congress has added cancer of the urinary tract to the list of radiogenic conditions for which presumptive service connection is authorized, but did not indicate which entities it considers part of the urinary tract. This amendment is intended to define the term "urinary tract" for VA purposes.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published in the **Federal Register** of October 5, 1993 (58 FR 51798–99) a proposed amendment to 38 CFR 3.309(d) to define the term "urinary tract" for purposes of implementing the presumption of service connection for urinary tract cancers based on exposure to ionizing radiation established in the Radiation Exposure Amendments of 1992, Public Law 102–578. Interested parties were invited to submit written comments on or before November 4, 1993. Since no comments were received on the proposed rule, the final rule is adopted as proposed, effective October 1, 1992, the date provided by Public Law 102–578.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 31, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.309, paragraph (d)(2)(xv), add a note at the end to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(d) * * *

(2) * * *

(xv) Cancer of the urinary tract.

Note: For the purposes of this section, the term "urinary tract" means the kidneys, renal pelves, ureters, urinary bladder, and urethra.

* * * * *

[FR Doc. 94–11759 Filed 5–13–94; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 3

RIN 2900–AG51

Returned and Canceled Checks

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning returned and canceled checks. The amendment will assure that the regulations clearly reflect the requirements of the governing statutes as interpreted in a precedent opinion of VA's General Counsel. The intended effect of the amendment is to ensure that the amount represented by a benefit check received but unnegotiated prior to a beneficiary's death is properly distributed.

EFFECTIVE DATE: This amendment is effective June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.1003 in the **Federal Register** of September 3, 1993 (58 FR 46920–21). Interested persons were invited to submit written comments on or before October 4, 1993. No comments were received, and the amendments are adopted as proposed with the exception of the following technical amendment. Section 3.1003(a), as here amended, will provide that the amount represented by a returned and canceled check will be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1)–(4), which deals with accrued benefits. Section 3.1000(a)(4) provides, in effect, that, where there is no living person in the classes identified in § 3.1000(a)(1)–(3), the amount of accrued benefits payable is limited to the amount necessary to reimburse the person who bore the expense of last sickness or burial. We are adding to § 3.1003(a), as originally proposed, a similar statement to ensure that there is no confusion on the amount of a returned and canceled check that may be paid in such a situation.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 31, 1994.

Jesse Brown,

Secretary of Veteran's Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1003 is revised to read as follows:

§ 3.1003 Returned and canceled checks.

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.

(a) The amount represented by the returned check, or any amount recovered following improper negotiation of the check, shall be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1) through (4), except that the total amount payable shall not include any payment for the month in which the payee died (see § 3.500(g)), and payments to persons described in § 3.1000(a)(4) shall be limited to the amount necessary to reimburse such persons for the expenses of last sickness and/or burial.

(1) There is no limit on the retroactive period for which payment of the amount represented by the check may be made, and no time limit for filing a claim to obtain the proceeds of the check or for furnishing evidence to perfect a claim.

(2) Nothing in this section will preclude payment to an otherwise

entitled claimant having a lower order of precedence under § 3.1000(a)(1) through (4), if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(b) Subject to the limitations in § 3.500(g) of this part, any amount not paid in the manner provided in paragraph (a) of this section shall be paid upon settlement by the General Accounting Office to the estate of the deceased payee, provided that the estate, including the amount paid under this paragraph, will not escheat.

(c) The provisions of this section do not apply to checks for lump sums representing amounts withheld under § 3.551(b) or § 3.557. These amounts are subject to the provisions of § 3.1001 and § 3.1007, as applicable.

(Authority: 38 U.S.C. 501(a), 5122)

[FR Doc. 94–11761 Filed 5–13–94; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 20

RIN 2900–AG42

Rules of Practice; Attorneys' and Agents' Fees

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs has amended its regulation to cover an exception to the requirements for charging a fee in connection with a proceeding before the Department with respect to benefits administered by the Secretary. These fee agreements will be treated similarly to other fee agreements for administrative efficiency.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Counsel to the Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–2978).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1993, at pages 47100 through 47101, VA published a proposed rule to implement an exception regarding the requirements for charging a fee in connection with a proceeding before the Department in cases arising out of certain loans. The amendment regarding the exception was created by section 303 of Public Law 102–405. Interested persons were invited to submit written comments, suggestions or objections on or before October 7, 1993. Since no comments were received, the final rule is adopted as proposed.

There are no Catalogs of Federal Domestic Assistance numbers associated with these final regulatory amendments.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal Services, Veterans.

Approved: January 25, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 20.609 paragraph (d) is redesignated as paragraph (d)(2), and a new paragraph (d)(1) is added reading as set forth below; and in paragraph (e) introductory text, the first sentence, the words "under paragraph (c)" are removed.

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Exceptions*—(1) *Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

* * * * *

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0085)

[FR Doc. 94–11760 Filed 5–13–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD16–1–5967; A–1–FRL–4884–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland Small Business Stationary Source Technical Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP revision was submitted by the State to satisfy the Federal mandate of the Clean Air Act ("CAA" or "the Act") which lists specific program criteria to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with CAA. The rationale for EPA's approval is set forth in this document; additional information is available at the address indicated below. This action is being taken in accordance with CAA.

DATES: This final rule will become effective July 15, 1994 unless notice is received on or before June 15, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Air Docket, 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, Air and Radiation Management Association, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Makeba Morris at (215) 597–2923. U.S. Environmental Protection Agency, Region III (3AT11), 841 Chestnut Building, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, section 507 of CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, section 507 of CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions, and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On November 13, 1992, the State of Maryland submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a state Small Business Ombudsman to represent the interests of small business stationary sources in connection with the implementation of CAA; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP and the state Small Business Ombudsman.

II. Analysis

1. Small Business Assistance Program

Sections 1–402, 1–404 and 2–201 of the Code of Maryland authorizes the Secretary of the Maryland Department of the Environment (MDE) to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which meets the requirements of section 507 of CAA. In developing Maryland's PROGRAM submittal, the Secretary of MDE has delegated the majority of its functions to the Department of the Environment, Air Management Administration (AMA) which will establish a small business assistance office.

Section 507(a) of CAA sets forth seven requirements that states must meet to have an approvable SBAP. Six requirements will be discussed in this section of this document, while the seventh requirement, establishment of a state Small Business Ombudsman, will be discussed in the next section.

The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

The State has met these first two requirements by charging the AMA SBAP with the responsibility of serving as a clearinghouse for information related to compliance methods and control technologies, pollution prevention and accidental release prevention and detection. Information on pollution prevention/accidental release will focus on the requirements under the accidental release provisions of title III of CAA, the Emergency Planning and Community Right-to-Know Act of 1986, the Occupational Safety and Health Administration (OSHA) process safety standards, using the Pollution Prevention Information Clearinghouse (PPIC) and the Chemical Emergency Preparedness and Prevention Office (CEPPO) as resources. Relevant clearinghouse material will be translated into layman's terms and organized into information packets. The AMA will also use as resources EPA's Control Technology Center (CTC), Emissions Measurement Technical Information Center (EMTIC), as well as other state organizations, such as the University of Maryland's Technology Extension Service. The AMA will work closely with other state agencies, particularly the Maryland Department of Economic and Employment Development (DEED) to optimize information exchange and program effectiveness. Information dissemination shall take two forms. The proactive portion of the program (Information Outreach Network) will utilize industry groups, trade associations, Maryland's Small Business Development Center (SBDC) and additional avenues as needed to disseminate information to eligible small business stationary sources. The AMA will also disseminate information in a reactive manner by establishing an Information Clearinghouse, via a toll-free telephone hotline, which will be responsible for answering questions directly or referring such questions to appropriate agency experts.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under CAA in a timely and efficient manner. The AMA has met this requirement by planning to develop pamphlets and information packets, as well as sponsoring seminars detailing general permit requirements, new and existing regulatory requirements and methods of pollution prevention and accidental release prevention and detection. These informational packages will be disseminated in a timely manner by the Information Outreach Network described in the preceding paragraph. Specific questions about permitting responsibilities and procedures will be directed to appropriate experts in the AMA.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with CAA. The AMA has met these requirements by planning to maintain a database of all small business stationary sources and small business membership groups subject to Federal and/or state requirements and notify these sources, in a timely manner by the proactive mechanisms described above, of rights and obligations under CAA. In support of said PROGRAM, the AMA will also conduct periodic surveys, to solicit feedback from the small business community. In addition, the AMA will provide material, through the Information Outreach Network and the Information Clearinghouse, on environmental auditors to assist small businesses in meeting the requirements of CAA. AMA staff will also be available to provide limited on-site assistance.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods. The AMA will meet this requirement by establishing a mechanism in accordance with section 507(a)(7) of CAA to receive, review and process requests for work practice, compliance method or milestone modifications.

2. Ombudsman

Section 507(a)(3) of CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. Maryland's Secretary of the Department of the Environment has designated the Office of Community Assistance to serve as Ombudsman for small business concerns as they relate to the SBAP. The Office of Community Assistance presently coordinates the Department outreach activities, and serves a problem mediation function for private citizens, industry, and local organizations, etc. The Ombudsman will be readily accessible to small businesses and, on their behalf, be authorized to provide reports to and communicate with state air pollution control authorities and the Secretary of the Department of the Environment. It is anticipated that the Ombudsman's office will be adequately staffed and funded to fulfill its function with existing personnel.

3. Compliance Advisory Panel

Section 507(e) of CAA requires the state to establish a Compliance Advisory Panel (the CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The Compliance Advisory Panel will be established by the Governor of the State of Maryland, through an executive order to be issued no later than September 1, 1994. The Panel will include seven members who will be chosen consistent with the requirements of section 507(e) of the CAA.

In addition to establishing the minimum membership of the CAP, CAA delineates four responsibilities of the Panel: (A) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (B) to review and assure that information for small business stationary sources is easily understandable; (C) to develop and disseminate the reports and advisory opinions made through the SBAP; and (D) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the state PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal Statutes.)

Upon review of the November 13, 1992 formal SIP revision submittal EPA has determined that Maryland specifically satisfies these requirements. Section 4.0 of the SIP revision states that: (1) The CAP will render advisory opinions concerning measures to enhance the effectiveness of the program; (2) prepare periodic reports to the EPA on compliance status of the program with the Federal Paperwork Reduction Act, the Regulatory Flexibility Act and the Equal Access to Justice Act; and (3) review information directed to small businesses stationary sources to assure such information is understandable to the layperson. The SBAP will serve as the Secretariat for the development and dissemination of Panel reports and advisory opinions.

The Compliance Advisory Panel will be established by the Governor of the State of Maryland, through an executive order to be issued no later than September 1, 1994. If the executive order for the establishment of the Compliance Advisory Panel is not issued by September 1, 1994, the EPA will issue a SIP call, pursuant to 110(k)(5), to ensure its timely issuance.

4. Eligibility

Section 507(c)(1) of CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Except for source categories which the EPA Administrator or the State of Maryland determines (in accordance with sections 507(c)(3)(A) and (B)), to have sufficient financial and technical capabilities to meet the requirements of the Act without PROGRAM assistance, all small business stationary sources located in Maryland will be eligible to receive assistance under the PROGRAM. Maryland's PROGRAM criteria for defining a "small business stationary source" is equivalent to the criteria listed in section 507(c)(1) of CAA. The State of Maryland has not provided for the extension of eligibility for assistance under the PROGRAM beyond the requirements of sections 507(c)(1)(C)-(E). However, the State may provide "unofficial" program assistance to any source that requests help if resources are available.

III. Summary of SIP Revision

The State of Maryland has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of CAA. The Small Business Assistance Program (SBAP) will be administered by the Maryland Department of the Environment (MDE), Air and Radiation Management Administration. Program implementation will begin no later than November 15, 1994. The Compliance Advisory Panel will be established by the Governor of the State of Maryland through an executive order to be issued no later than September 1, 1994. The Panel will be appointed by no later than November 15, 1994. By this action, EPA is hereby approving the SIP revision submitted by the State of Maryland. Accordingly, § 52.1110 is added to 40 CFR part 52, subpart V in order to reflect EPA's approval action and the fact that it is considered part of the Maryland SIP.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 15, 1994 unless, by June 15, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent documents. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on July 15, 1994.

IV. Final Action

The Agency has reviewed Maryland's request for revision of its federally-approved SIP and found it to be in conformance with CAA, including sections 507 and 110(a)(2)(E) thereof. EPA is approving Maryland's plan for the establishment of a Small Business Stationary Source Technical and

Environmental Compliance Assistance Program. Accordingly, § 52.1110 is added to 40 CFR part 52, subpart V-Maryland to reflect EPA's approval action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have a economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of CAA, petitions for judicial review of this action to approve the Maryland Small Business Stationary Source Technical and Environmental Compliance Assistance Program must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: December 30, 1993.

Elaine B. Wright,

Acting Regional Administrator, Region III

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart V—Maryland

2. Section 52.1110 is added to subpart V to read as follows:

§ 52.1110 Small business stationary source technical and environmental compliance assistance program.

On November 13, 1992 the Acting Director of the Air and Radiation Management Administration, Maryland Department of the Environment submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a state implementation plan (SIP) revision, as required by title V of the Clean Air Act Amendments. EPA approved the Small Business Stationary Source Technical and Environmental Compliance Assistance Program on [Insert date of publication] and made it part of the Maryland SIP. As with all components of the SIP, Maryland must implement the program as submitted and approved by EPA.

[FR Doc. 94–11752 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[OR39–1–6366; FRL–4882–1]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the revisions to the State of Oregon Implementation Plan (SIP) which were submitted on February 4, 1994 by the Oregon Department of Environmental Quality (ODEQ). These revisions to OAR Chapter 340 Division 34 (Residential Woodheating and the Woodstove Certification Program) eliminate the State's independent Woodstove Certification program. The State instead will rely on the Federal woodstove certification program which is fully equivalent to Oregon's woodstove certification requirements. The revisions also eliminate Oregon's requirement for separate efficiency testing and labeling. The elimination of the State Certification Program will eliminate the duplication of program efforts between the Federal program and the State program.

DATES: This final rule will be effective on July 15, 1994 unless notice is received by June 15, 1994 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, Docket # OR39–1–6366, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Kelly McFadden, Air & Radiation Branch (AT–082), EPA, Seattle, Washington, (206) 553–1498.

SUPPLEMENTARY INFORMATION:

I. Background

EPA first established a Federal New Source Performance Standard (NSPS) for New Residential Wood Heaters February 26, 1988. (53 FR 5873) codified at 40 CFR part 60, subpart AAA. Oregon's Woodstove Certification Rules were first approved by EPA on August 2, 1985 (50 FR 31368) prior to promulgation of the NSPS. On

November 15, 1991 revisions to the Woodstove Certification Rules were submitted by ODEQ that included renumbering, a new requirement for temporary labeling for overall efficiency, and provisions prohibiting the sale of used non- certified woodstoves. By these revisions, ODEQ also retained its laboratory efficiency accreditation requirement as well as its overall retail enforcement authority. These revisions were approved by EPA on June 9, 1992 (57 FR 24373).

The current SIP approved Woodstove Certification rules (OAR 340–34–005 through 115) require the ODEQ to maintain a woodstove certification program separate from the Federal Woodstove Certification Program. Moreover, Oregon's program requires the testing and labeling of a woodstove's heating efficiency. EPA's NSPS does not have this requirement. By approving the revision to the State of Oregon's Air Quality Control Plan Volume 2, Oregon would eliminate the requirement for separate efficiency testing and labeling and accept the Federal Woodstove Certification Program.

This revision was adopted by the Oregon Environmental Quality Commission on December 10, 1993 and submitted to EPA by the Oregon Department of Environmental Quality on February 4, 1994. The woodstove provisions are intended to reduce particulate emissions statewide. However, by eliminating the state testing and labeling of heating efficiency, no reduction in the amount of environmental protection will be lost since there is not an efficiency standard that must be met. The Federal woodstove emission standard is as stringent as the Oregon standard for catalytic woodstoves, and is more stringent than the Oregon emission standard for noncatalytic woodstoves. Therefore, by the state deferring to the Federal certification program, the amount of environmental protection would in no way be reduced.

II. EPA Action

EPA is approving the revisions to Division 34 Residential Woodheating and Woodstove Certification Program (OAR 340–34–005 through 115). The revision includes the adoption of the rule OAR 340–34–45 into the SIP. The revision also includes the repeal of OAR 340–34–55, OAR 340–34–65 as well as OAR 340–34–075 through 340–34–115.

III. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The public should be advised that this action will be effective on July 15, 1994. However, if notice is received by June 15, 1994 that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607 (b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: April 26, 1994.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (106) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(106) On February 4, 1994 the Oregon Department of Environmental Quality (ODEQ) submitted the formal SIP revision to Oregon's Administrative Rules (OAR) 340–34–005 through 340–34–115 (Residential Woodheating and Woodstove Certification Program). This revision includes the repeal of OAR 340–34–55, OAR 340–34–65 as well as OAR 340–34–075 through 340–34–115

(i) Incorporation by reference.

(A) February 4, 1994 letter from the Director of ODEQ to EPA Region 10 submitting a revision to the Woodstove Certification and Efficiency Testing Program.

(B) OAR 340–34–005 through 115, Residential Woodheating and Woodstove Certification Program, adopted on December 10, 1993 and effective on January 3, 1994.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current state implementation plan.

STATE OF OREGON

AIR QUALITY CONTROL PROGRAM

Volume 2–The Federal Clean Air Act Implementation Plan(and Other State Regulations)

Section

1. Introduction (1–86)

2. General Administration (1–86)

2.1 Agency Organization (1–86)
2.2 Legal Authority (1–86)
2.3 Resources (1–86)
2.4 Intergovernmental Cooperation and Consultation (1–86)
2.5 Miscellaneous Provisions (1–86)

3. Statewide Regulatory Provisions

3.1 Oregon Administrative Rules–Chapter 340 (1–86)

Division 12–Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation (12–3–85)
Sec. 045 Mitigating and Aggravating Factors (11–8–84)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (9–25–74)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14–Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exceptions (6–10–88)
Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72), except(1), (4)(b), (5) (6–10–88)
Sec. 025 Issuance of a Permit (4–15–72), except(2), (3), (4), (5), (6) (6–10–88)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20–General

Sec. 001 Highest and Best Practicable Treatment and ControlRequired (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (5–12–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)
Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)
Sec. 136 Owners of Gasoline at Terminals, Distributors and Retail Outlets Required to Have Indirect Source Operating Permits (11–1–92)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Renumbered to OAR 340–28–110
Sec. 150 Notice Policy (6–10–88)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Renumbered to OAR 340–28–110
Sec. 230 Procedural Requirements (10–16–84), except (3)(d) (6–10–88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Emissions (9–8–81)
Sec. 275 Repealed
Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

Sec. 300 Policy (9–8–81)
Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
Sec. 305 Renumbered to OAR 340–28–110
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
Sec. 315 Alternative Emission Controls (9–8–81)
Sec. 320 Temporary PSD Increment Allocation (9–8–81)

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[FR Doc. 94–11751 Filed 5–13–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7049

[ID–943–4060–02; IDI–04790–01]

Partial Revocation of Public Land Order No. 1703; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 60 acres of National Forest System land withdrawn by the Department of the Army, Corps of Engineers, for the Albeni Falls Dam Project in the Kaniksu National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and mining, and will permit the Forest Service to dispose of the land by exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1703, which withdrew National Forest System land for the Department of the Army, Corps of Engineers' Albeni Falls Dam Project, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 56 N., R. 4 W.,
Sec. 34, lots 3 and 4.

The area described contains 60 acres in Bonner County.

2. At 9 a.m. on June 15, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are

governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 4, 1994

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 94–11811 Filed 5–13–94; 8:45 am]

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43 CFR Public Land Order 7050

[AK–932–4210–06; A–026010]

Partial Revocation of Public Land Order No. 1094; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 50 acres of National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, for the Ingram Creek Recreation Area. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1094, which withdrew National Forest System land for recreational purposes, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Chugach National Forest

T. 9 N., R. 2 E., unsurveyed, within Secs. 22, 23, 26, and 27, more particularly described as:

A tract extending 10 chains on each side of the centerline of the Seward-Anchorage Highway, beginning at Station 452+79 Section E and extending along and parallel to the highway centerline to Station 515+00 Section E, approximate latitude 60°51′ N., longitude 149°4′ W., excluding the following parcel:

All that part of the above described land lying south and east of the left bank of the Ingram Creek. This parcel contains approximately 8.5 acres.

The area described, less the exclusion, contains approximately 50 acres.

2. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of the Chugach National Forest reservation, and any other withdrawal of record.

Dated: May 4, 1994.

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 94–11812 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[ET Docket No. 93–7; FCC 94–80]

Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted rules for assuring compatibility between consumer electronics equipment and cable systems, as required by the Section 17 of the Cable Television Consumer Protection and Competition Act of 1992. These new rules are intended to ensure compatibility between consumer equipment and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their television receivers and video cassette recorders (VCRs).

EFFECTIVE DATE: These regulations are effective June 15, 1994. The incorporation by reference of a publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–632–7060) or Robert Bromery (301–653–7315), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in ET Docket No. 93–7, FCC 93–495, adopted April 4, 1994 and released May 4, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcriptions Service, 2100 M Street NW., Washington, DC 20036, (202) 857–3800

Summary of the Notice of Proposed Rule Making

1. Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) requires that the Commission issue regulations to ensure compatibility between consumer equipment and cable systems. The goal of Section 17 is to ensure that cable subscribers will be able to enjoy the full benefits and functions of their television receivers and VCRs when receiving cable service.

2. Problems between cable systems and consumer TV equipment generally tend to arise from conflicts between new features in consumer television equipment and the techniques used by cable systems to address security and other technical operating considerations. Examples of TV receiver features affected by cable operating methods and devices include functions that permit the subscriber:

—To watch a program on one channel while simultaneously recording a program on another channel;
—To record two programs that appear on different channels; or,
—To use advanced features such as picture in picture.

3. The rules adopted by the Commission are based on the findings and recommendations in its "Report to Congress on Means for Assuring Compatibility Between Cable Systems and Consumer Electronics Equipment" and information provided in comments submitted in response to the Notice of Proposed Rule Making (Notice) in this proceeding, 58 FR 65153, December 3, 1993. These rules include measures that will assure improved compatibility between existing cable system and consumer TV equipment. They also

include provisions for achieving more effective compatibility through new cable and consumer equipment. The specific provisions of these regulations are essentially the same as those proposed in the *Notice*, with a number of modifications that address issues raised in the record. The new rules for improving compatibility between existing cable system and consumer equipment require that cable operators:

(1) Refrain from scrambling program signals carried on the basic tier of service;

(2) Offer subscribers supplemental equipment to enable them to use the special features and functions of their TV equipment with cable service; this includes providing subscribers the option of having simultaneous access to all signals that do not need to be processed by a set-top device;

(3) Provide a consumer education program to inform subscribers of potential compatibility problems and methods for resolving such problems; this includes notice that remote controls and supplemental equipment compatible with the set-top devices used by the cable system are available from third-party vendors; and

(4) Allow set-top devices that incorporate remote control capability to be operated with subscriber-owned remote controls or otherwise take no action that would prevent the use of such remote controls, including changing the infrared codes used to operate the remote control capabilities of the set-top devices they employ so as to adversely affect the operation of consumer-purchased remote controls.

The compatibility rules for new equipment provide technical standards for "cable ready" consumer TV equipment and require that both "cable ready" consumer TV equipment and cable systems use a standard cable channel plan.

4. The Commission also concluded that more effective compatibility between consumer TV equipment and cable systems that use scrambling can be achieved through use of a standard interface connector, or "Decoder Interface," in "cable ready" consumer TV equipment and associated component descrambler/decoder devices to be provided by cable systems. Used together, the Decoder Interface and component descrambler/decoder devices can eliminate the need for use of a set-top cable box. However, based on indications that the cable and consumer electronics industries are close to agreement on a new Decoder Interface standard that will serve both existing analog cable operations and also incorporate flexibility to support new technologies and services, including digital cable service, the Commission found that it would be appropriate to allow an additional period of time for the industries to complete their work on the new standard. The Commission therefore did not act on the Decoder Interface standard and related issues now, but rather will allow industry parties an additional 90 days to complete the new standard.[1] The Commission stated that would develop rules establishing a standard for a Decoder Interface connector and requirements for its use after that period.

5. As a policy matter, the Commission also found that standards for cable digital transmissions are desirable. These standards will be needed to ensure that compatibility is maintained as new digital cable technologies and services are introduced. The Commission stated that it was not, however, adopting technical standards or other rules in this area at this time, as developmental work on cable digital technologies and services has not reached a stage where it would be reasonable to attempt to specify such regulations. It stated that it will continue to monitor progress by the industries in this area and will initiate a separate action on these issues as is necessary to assure continuing compatibility in the future.

6. The Commission indicated that the actions in this First Report and Order will allow consumers to utilize equipment offered by a variety of suppliers, including the cable system operator, in a competitive market. Thus, a number of manufacturers and retailers will be able to increase their participation in markets to which they previously had limited access. Opening these markets to competitive equipment providers will give product developers and manufacturers, as well as cable system operators, the ability and incentives to introduce new products and to respond to consumer demand. In return, consumers will have greater access to technology with new features and functions. Most importantly, consumers will be assured that the equipment they buy will work with their cable system.

7. The Commission further indicated that open entry for equipment provision ensures that the equipment market remains competitive. In addition to open markets and incentives for innovation, another key component of competition is information. The new regulations ensure not only that the marketplace will be open and equipment options available to consumers, but that consumers will be informed about their choices. Competition could be stifled unless consumers are informed about their equipment options. By structuring the regulations to promote innovation and competition, the Commission expects increased investment in new technology development and increased economic activity as consumers purchase the new, competitively priced equipment.

8. Accordingly, it is ordered that parts 15 and 76 of the Commission's rules are amended as set forth below, effective 30 days after the publication of this final rule in the **Federal Register**. This action is taken pursuant to authority provided in sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), 303(r) and 324A of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 157(a), 302, 303(c), 303(f), 303(g), 303(r) and 324A.

List of Subjects

47 CFR Part 15

Communications equipment, Incorporation by reference, Television receivers, TV interface devices.

47 CFR Part 76

Cable television, Incorporation by reference.

Amendments to the Rules

Parts 15 and 76 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 is revised to read as follows:

Authority: Secs. 4, 302, 303, 304, 307 and 624A of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. Section 15.3 is amended by adding a new paragraph (aa) to read as follows:

§ 15.3 Definitions.

* * * * *

(aa) *Cable ready consumer electronics equipment.* Consumer electronics TV receiving devices, including TV receivers, videocassette recorders and similar devices, that incorporate a tuner capable of receiving television signals and an input terminal intended for receiving cable television service, and are marketed as "cable ready" or "cable compatible." Such equipment shall comply with the technical standards specified in § 15.118.

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[1] If the industry parties do not complete their work in the 90-day period, we will establish a standard using our own resources.

3. Section 15.19 is amended by adding a new paragraph (d) to read as follows:

§ 15.19 Labeling requirements.

* * * * *

(d) Consumer electronics TV receiving devices, including TV receivers, videocassette recorders and similar devices, that incorporate features intended to be used with cable television service, but do not fully comply with the technical standards for cable ready equipment set forth in § 15.118 are subject to the following labeling requirements:

(1) Such equipment shall be labeled with an advisory indicating that the device does not fully comply with the Federal Communications Commissions standards for cable ready consumer electronics equipment. The advisory must appear on the device and on its packaging. This requirement applies to consumer TV receivers, videocassette recorders and similar devices manufactured or imported for sale in this country on or after June 30, 1997.

(2) Such equipment shall not be marketed with terminology that describes the device as "cable ready" or "cable compatible," or that otherwise conveys the impression that the device is *fully* compatible with cable service. This requirement applies to consumer TV receivers, videocassette recorders and similar devices manufactured or imported for sale in this country on or after October 31, 1994.

4. Section 15.115 is amended by revising paragraph (c)(1)(*i*) and adding new paragraphs (h) and (i) to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(c) * * *

(1) * * *

(*i*) For a cable system terminal device or a TV interface device equipped for use with a cable system or a master antenna, as defined in paragraph (b)(3) of this section, the isolation between the antenna and cable input terminals shall be at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of a transfer switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. The provisions of this paragraph regarding frequencies in the range 550 MHz to 806 MHz are applicable as of June 30, 1997.

* * * * *

(h) Stand-alone switches used to alternate between cable service and an antenna shall provide isolation between the antenna and cable input terminals that is at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz.The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of stand-alone switches requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. The provisions of this paragraph are applicable as of June 30, 1997.

(i) Switches and other devices intended to be used to by-pass the processing circuitry of a cable system terminal device, whether internal to such a terminal device or a stand-alone unit, shall not attenuate the input signal more than 6 dB from 54 MHz to 550 MHz, or more than 8 dB from 550 MHz to 806 MHz. The provisions of this paragraph are applicable as of June 30, 1997.

5. Section 15.117 is amended by revising paragraph (h) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(h) For a TV broadcast receiver equipped with a cable input selector switch, the selector switch shall provide, in any of its set positions, isolation between the antenna and cable input terminals of at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of a selector switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. An actual switch that can alternate between reception of cable television service and an antenna is not required for a TV broadcast receiver, provided compliance with the isolation requirement specified in this paragraph can be demonstrated and the circuitry following the antenna input terminal(s) has sufficient bandwidth to allow the reception of all TV broadcast channels authorized under this chapter. The provisions of this paragraph regarding frequencies in the range 550 MHz to 806 MHz are applicable as of June 30, 1997.

6. New § 15.118 is added to read as follows:

§ 15.118 Cable ready consumer electronics equipment.

(a) All consumer electronics TV receiving equipment marketed in the United States as cable ready or cable compatible shall comply with the provisions of this section. Consumer electronics TV receiving equipment that includes features intended for use with cable service but does not fully comply with the provisions of this section are subject to the labelling requirements of § 15.19(d).

(b) Cable ready consumer electronics equipment shall be capable of receiving all NTSC or similar video channels in the frequency range 54 MHz to 804 MHz in accordance with the channel allocation plan set forth in the Electronic Industries Association's "Cable Television Channel Identification Plan, EIA IS–132, May 1994" (EIA IS–132). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of EIA IS–132 may be obtained from: Global Engineering Documents, 2805 McGraw Ave., Irvine CA 92714. copies of EIA IS–132 may be inspected during normal business hours at the following locations: Federal Communications Commission, 1919 M Street, NW., Dockets Branch (Room 239), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) Cable ready consumer electronics equipment must meet the following technical performance requirements. Compliance with these requirements shall be determined by performing measurements at the unfiltered IF output port. Where appropriate, the Commission will consider allowing alternative measurement methods.

(1) *Adjacent channel interference.* In the presence of a lower adjacent channel CW signal that is 1.5 MHz below the desired visual carrier in frequency and 10 dB below the desired visual carrier in amplitude, spurious signals within the IF passband shall be attenuated at least 55 dB below the visual carrier of the desired signal. The desired input signal shall be an NTSC visual carrier modulated with a 10 IRE flat field and the aural carrier should be unmodulated. Measurements are to be performed for input signal levels of 0 dBmV and +15 dBmV, with the receiver tuned to ten evenly spaced channels specified in the EIA IS–132 channel plan.

(2) *Image channel interference.* Image channel interference within the IF passband shall be attenuated below the visual carrier of the desired channel by at least 60 dB from 54 MHz to 806 MHz.

In testing for compliance with this standard, the desired input signal is to be an NTSC visual carrier modulated with a 10 IRE flat field and the aural carrier should be unmodulated. The undesired test signal shall be a CW signal equal in amplitude to the desired visual carrier and located 90 MHz above the visual carrier frequency of the desired channel. Measurements shall be performed for input signals of 0 dBmV and +15 dBmV, with the receiver tuned to ten evenly spaced channels specified in the EIA IS–132 channel plan.

(3) *Direct pickup interference.* The direct pickup (DPU) of a co-channel interfering ambient field by a cable ready device shall not exceed the following criteria. The ratio of the desired to undesired signal levels at the IF passband on each channel shall be at least 45 dB. The average ratio over the six channels shall be at least 50 dB. The desired input signal shall be an NTSC signal having a visual carrier level of 0 dBmV. The equipment under test (EUT) shall be placed on a rotatable table that is one meter in height. Any excess length of the power cord and other connecting leads shall be coiled on the floor under the table. The EUT shall be immersed in a horizontally polarized uniform CW field of 100 mV/m at a frequency 2.55 MHz above the visual carrier of the EUT tuned channel. Measurements shall be made with the EUT tuned to six EIA IS–132 channels, two each in the low VHF, high VHF and UHF broadcast bands. On each channel, the levels at the IF passband due to the desired and interfering signals are to be measured.

(4) *Tuner overload.* Spurious signals within the IF passband shall be attenuated at least 55 dB from 54 to 806 MHz below the visual carrier of the desired channel using a comb spectrum input with each signal individually set at +15 dBmV. Measurements shall be made with the receiver tuned to ten evenly spaced EIA IS–132 channels.

(5) *Cable input conducted emissions.* Conducted spurious emissions that appear at the cable input to the device must meet the following criteria. The input shall be an NTSC video carrier modulated with a 10 IRE flat field at a level of 0 dBmV and with a visual to aural ratio of 10 dB. The aural carrier shall be unmodulated. The peak level of the spurious signals will be measured using a spectrum analyzer connected by a directional coupler to the cable input of the equipment under test. Spurious signal levels must not exceed the limits in the following table:

From 54 MHz up to and including 300 MHz–26 dBmV
From 300 MHz up to and including 450 MHz–20 dBmV
From 450 MHz up to and including 806 MHz–15 dBmV

The average of the measurements on multiple channels from 450 MHz up to and including 806 MHz shall be no greater than −20 dBmV. Measurements shall be made with the receiver tuned to at least four EIA IS–132 channels in each of the above bands. The test channels are to be evenly distributed across each of the bands. Measurements for conducted emissions caused by sources internal to the device are to be made in a shielded room. Measurements for conducted emissions caused by external signal sources shall be made in an ambient RF field whose field strength is 100 mV/m, following the same test conditions as described in paragraph (c)(3) of this section.

(d) The field strength of radiated emissions from cable ready consumer electronics equipment shall not exceed the limits in § 15.109(a) when measured in accordance with the applicable procedures specified in § 15.31 and § 15.35 for unintentional radiators, with the following modifications. During testing the NTSC input signal level is to be +15 dBmV, with a visual to aural ratio of 10 dB. The visual carrier is to be modulated by a 10 IRE flat field; the aural carrier is to be unmodulated. Measurements are to be taken on six EIA IS–132 channels evenly spaced across the required RF input range of the equipment under test.

Note: The provisions of paragraphs (a) through (d) of this section are applicable as of June 30, 1997.

PART 76—CABLE TELEVISION SERVICE

7. The authority citation for part 76 is revised to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 324A 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 544A, 552 as amended, 106 Stat. 1460.

8. Section 76.605 is amended by redesignating paragraphs (a)(2) through (a)(12) as paragraphs (a)(2) through (a)(12) as paragraphs (a)(3) through (a)(13), and adding a new paragraph (a)(2) to read as follows:

§ 76.605 Technical standards.

(a) * * *

(2) Cable systems shall transmit channels to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronic Industries Association's Cable Television Channel Identification Plan, EIA IS–132, May 1994" (EIA IS–132). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Cable systems are required to sue this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA IS–132 may be obtained from: Global Engineering Documents, 2805 McGraw Ave., Irvine CA 92714. Copies of EIA IS–132 may be inspected during normal business hours at the following locations: Federal Communications Commission, 1919 M Street NW., Dockets Branch (Room 239), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. This requirement is applicable as of June 30, 1995, for new and re-built cable systems, and on June 30, 1997, for all cable systems.

* * * * *

9. New § 76.630 is added to read as follows:

§ 76.630 Compatibility with consumer electronics equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR § 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Cable Services Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business).

Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

(b) Cable system operators that provide their subscribers with cable system terminal devices and other customer premises equipment that incorporates remote control capability shall permit the remote operation of such devices with commercially available remote control units or otherwise take no action that would prevent the devices from being operated by a commercially available remote control unit. Cable system operators are advised that this requirement obliges them to actively enable the remote control functions of customer premises equipment where those functions do not operate without a special activation procedure. Cable system operators may, however, disable the remote control functions of a subscriber's customer premises equipment where requested by the subscriber.

(c) Cable operators may not alter the infrared codes used to operate the remote control capabilities of the customer premises equipment they employ in providing service to subscribers. Cable operators may, however, use new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of customer premises equipment.

(d) Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.1(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. This equipment could include, for example, set-top cable system terminal devices with multiple descramblers/decoders and/or timers, and signal bypass switches.

(1) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(2) Such special equipment shall, at a minimum, have the capability:

(i) To allow simultaneous reception of any two or more scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and,

(ii) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(3) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(4) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

(e) Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(1) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(2) The consumer information program shall include the following information:

(i) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(ii) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(iii) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

Note: The provisions of paragraphs (a) and (b) of this section are applicable as of July 31 1994, and June 30, 1994, respectively. The provisions of paragraphs (c) through (e) of this section are applicable as of October 31, 1994, except for the requirement under section (d)(1)(i) of this section for cable system operators to supply cable system terminal devices with multiple tuners, which is applicable as of October 31, 1995. The initial offer of special equipment to all subscribers, as required under paragraph (d) of this section shall be made by October 31, 1994.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–11068 Filed 5–13–94; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 93–291; DA 94–425]

Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends its rules, the listing of major television markets, to change the designation of the Boston-Cambridge-Worcester, Massachusetts, television market to include the community of Lawrence, Massachusetts. This action, taken at the request of MFP, Inc. licensee of television station WMFP, Channel 63 (Independent), Lawrence, Massachusetts, and after evaluation of the comments filed in this proceeding, amends the rules to designate the subject market as the Boston-Cambridge-Worcester-Lawrence, Massachusetts, television market. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–291, adopted April 29, 1994, and released May 5, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 154,303.

2. Section 76.51 is amended by revising paragraph (a)(6) to read as follows:

§ 76.51 Major television markets.

* * * * *

(a) * * *

(6) Boston-Cambridge-Worcester-Lawrence, Mass.

* * * * *

Federal Communications Commission.
William H. Johnson
Deputy chief, Cable Services Bureau.
[FR Doc. 94–11749 Filed 5–13–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940425–4125; I.D. 040694D]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this interim emergency rule at the request of the Gulf of Mexico Fishery Management Council (Gulf Council) to prohibit the taking of live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) from the Pasco/Hernando County line in Florida to the Alabama/Mississippi boundary; and, in the Gulf EEZ off Florida south of the Pasco/Hernando County line, to prohibit the use of power-assisted tools to break up or dislodge pieces of live rock and to establish a daily vessel harvest and possession limit for live rock of 25 5-gallon (19-liter) buckets. The intended effect of this rule is to protect live rock resources and fishery habitat in the Gulf.

EFFECTIVE DATES: May 16, 1994 through August 14, 1994.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Georgia Cranmore, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf are managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Live rock consists of living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding mollusk shells), and therefore is a "fish" within the meaning of the Magnuson Act. Live rock is collected by SCUBA divers and sold to the marine aquarium industry, which markets it as the basis for mini-reef aquaria. In 1992, reported live rock landings in Florida from the EEZ totaled 783,145 lbs (355,228 kg) with an ex-vessel value of $864,521. (Florida had previously banned the harvest of live rock in its waters.) In 1992, Florida implemented regulations to phase out landings of live rock from the EEZ off Florida over a 3-year period ending in 1995.

In 1993 a Federal court overturned these regulations (Southeastern Fisheries Ass'n, Inc. v. Chiles, 979 F.2d 1504 (11th Cir. 1992).

At the request of Gulf Council members from Florida and Alabama, the Gulf and South Atlantic Councils initiated development of Amendment 2 to the FMP to address management of live rock in the EEZ. Similar to coral reefs, the current focus of the FMP, live rock resources are essentially nonrenewable and serve as habitat for a variety of other organisms.

In the recent public review process during the development of Amendment 2, the Gulf and South Atlantic Councils received testimony that rock outcroppings, that are important reef fish habitats, are being removed and sold as live rock for marine aquariums. Testimony from about 60 divers and fishermen indicated that removal of live rock by harvesters in the northern Gulf is causing severe damage to the limited outcroppings or rock ledges and reefs that occur in state and Federal waters. Divers and fishermen testified that some small banks have disappeared and many ledges off the Florida Panhandle have been seriously damaged. Such outcroppings are not nearly as abundant in this area as they are off southern Florida. These nonrenewable resources serve as essential habitat for reef fish and invertebrates. Accordingly, the Gulf Council requested an emergency rule to prohibit the taking of live rock in the EEZ of the Gulf from the Pasco/Hernando County line in Florida to the Alabama/Mississippi boundary.

The Gulf and South Atlantic Councils also heard testimony that pneumatic drills and hammers are being used to break large rock ledges into harvestable pieces. This results in large-scale destruction of reef fish habitat. Testimony indicated that large vessels with numerous divers and equipped with power-assisted gear can devastate a rock ledge very quickly. To prevent further acceleration of harvest of live rock before the management measures proposed for inclusion in Amendment 2 can be implemented, the Gulf Council also requested a prohibition on the use of power-assisted tools and a daily vessel harvest and possession limit, both of which would apply to the harvest of live rock in the EEZ of the Gulf south of the Pasco/Hernando County line.

Live rock or live bottom habitats are at such a premium in the northern Gulf that local government and private organizations have been active in constructing artificial reefs to supplement natural habitats off the coasts of Alabama and Florida. Loss of these natural, nonrenewable, habitat areas because of live rock collections presents a serious threat to marine habitat resources.

According to the Florida Department of Environmental Protection, the closure of the Gulf EEZ from Florida's Pasco/Hernando County line to the Alabama/Mississippi boundary to live rock collecting will affect approximately 16 fishermen and live rock dealers who reported landings of live rock in Florida and Alabama in 1993.

The daily vessel harvest and possession limit and the prohibition on the use of power tools were widely supported by industry representatives during the last three public hearings conducted in conjunction with Gulf Council meetings. These restrictions are expected to affect only a few individuals who allegedly are taking up to 10,000 lbs (4,536 kg) of live rock per trip using power tools.

Amendment 2 is scheduled to be submitted for Secretarial review by the Councils in July 1994. It is expected that Amendment 2 will implement the measures in this emergency interim rule on a more permanent basis and include a phase-out schedule for live rock harvests in other areas.

Compliance With NMFS Guidelines for Emergency Rules

The Gulf Council and NMFS have concluded that the present situation constitutes biological and conservation emergencies, which are properly addressed by this emergency interim rule, and that the situation meets NMFS's policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) realizes immediate benefits from the emergency interim rule that outweigh the value of advance notice, public comment, and deliberative consideration expected under the normal rulemaking process. The basis for the conclusions regarding emergency guidelines (1) and (2) was summarized above.

Regarding the realization of immediate benefits, the Gulf Council has determined that an emergency rule under section 305(c) of the Magnuson Act is the only means for immediately addressing the biological emergency involving the Gulf live rock resources.

Going through the formal FMP amendment process would delay implementation of the required measures and would result in substantial damage to live rock resources and fishery habitats in the Gulf. This emergency interim rule will prevent live rock collection in the northern Gulf and slow the harvesting rate in the rest of the Gulf EEZ until annual quotas and a phase-out can be implemented under Amendment 2 through the normal FMP amendment and rulemaking process.

NMFS concurs with the Gulf Council's findings about the biological emergency regarding Gulf live rock resources and the need for immediate regulatory action. Accordingly, NMFS publishes this emergency interim rule, effective initially for 90 days, as authorized by section 305(c) of the Magnuson Act. By agreement of NMFS and the Gulf Council, this emergency interim rule may be extended for an additional period of 90 days.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule has been determined to be "not significant" for purposes of E.O. 12866.

The Assistant Administrator finds for good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that the need to prevent further environmental damage and loss of fishery habitat makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Similarly, to implement measures to address the conservation and biological emergencies in a timely manner, the Assistant Administrator finds for good cause under section 553(d)(3) of the APA that the effective date of this rule should not be delayed.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 638.5, effective May 16, 1994, through August 14, 1994, paragraphs (o), (p), and (q) are added to read as follows:

§ 638.5 Prohibitions.

* * * * *

(o) Harvest or possess live rock in or from the EEZ of the Gulf of Mexico from 28°26′N. lat. north and west to 88°23′12″W. long., as specified in § 638.27(b).

(p) Use a power-assisted tool to break up or dislodge pieces of live rock in the EEZ of the Gulf of Mexico south of 28°26′N. lat., or possess live rock taken with such a power-assisted tool in or from that area; as specified in § 638.27(c).

(q) Exceed the daily vessel harvest and possession limit of 25 5-gallon (19-liter) buckets, or volume equivalent, applicable to the harvest or possession of live rock in or from the EEZ of the Gulf of Mexico south of 28°26′N. lat., as specified in § 638.27(d).

3. In subpart B, effective May 16, 1994, through August 14, 1994, § 638.27 is added to read as follows:

§ 638.27 Live rock.

(a) *Definition.* Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding mollusk shells).

(b) *Closed area.* No person may harvest or possess live rock in or from the EEZ of the Gulf of Mexico from 28°26′ N. lat. (extension of the Pasco/Hernando County, Florida, boundary) north and west to 88°23′12″ W. long. (a line due south from the seaward terminus of the Alabama/Mississippi state line).

(c) *Gear limitations.* No person may use a power-assisted tool to break up or dislodge pieces of live rock in the EEZ of the Gulf of Mexico south of 28°26′ N. lat., and no person may possess live rock taken with such a power-assisted tool in or from that area.

(d) *Harvest and possession limit.* A daily vessel limit of 25 5-gallon (19-liter) buckets, or volume equivalent, applies to the harvest or possession of live rock in or from the EEZ of the Gulf of Mexico south of 28°26′ N. lat.

[FR Doc. 94–11764 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 931059–4126; I.D. 092293E]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing a regulatory amendment to require increased observer coverage and improved equipment for estimating groundfish total catches by vessels and processors participating in the Western Alaska Community Development Quota (CDQ) pollock fisheries. This action is intended to improve estimates of total groundfish catches in the CDQ fisheries.

EFFECTIVE DATES: June 15, 1994, except for § 675.27(h)(2), which is effective August 15, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, Fisheries Management Division, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by operators of U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) management area is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

This regulatory amendment will require increased observer coverage and improved equipment for estimating total catch for vessels and processors participating in the Western Alaska CDQ pollock fisheries. Two NMFS-certified observers will be required on processor vessels, one or more observers in shoreside processing operations, and one observer on catcher vessels delivering to processors. In addition, processor vessels will be required to have either measured, marked, and certified fish-receiving bins to improve volumetric estimates of total catch, or scales to weigh total catch. A description of, and reasons for, these actions were discussed in the proposed rule published in the **Federal Register** on December 27, 1993 (58 FR 68386). Public comment on the proposed rule was invited through January 26, 1994. Four letters of comment were received within the comment period.

Management of the CDQs requires an estimate of the total catch weight of pollock for each vessel participating in the CDQ fisheries. The purpose of this rule is to standardize the equipment available to observers to make volumetric estimates of the weight of all groundfish caught, including pollock, or to require that the fish be weighed.

The volume of fish in the bin is determined by the area of the base of the bin and the height of fish throughout the bin. Fish poured into bins do not always form a flat, smooth surface, or settle at the same height throughout the bin. The surface of the fish often slopes from front to back or from one side to another in the bin. Fish may stack up higher in one corner than in others or pile up in the middle of the bin.

The process of making volumetric estimates of the catch using certified bins generally occurs in five steps. *First*, a certified engineer, or other authorized person, measures the inside of all bins that will be used to make volumetric estimates of catch weight, witnesses the placement of marked increments every 10 cm on the internal sides of the bin, and prepares a height-to-volume conversion table that indicates the volume of the bin, in cubic meters, below the level of each 10-cm increment. *Second*, the observer estimates the average height of fish in a bin by visual inspection. In order to determine the average height of fish in a bin, an observer must be able to see the level of fish throughout the bin. *Third*, the observer uses a height-to-volume conversion table to determine the volume associated with the average height of fish in the bin. *Fourth*, the observer applies a density factor indicating weight per unit volume (metric tons (mt) per cubic meter (m) or mt/m^3) to estimate the total weight of all fish in the bin. *Fifth*, the observer samples a portion of the fish in the bin to determine species composition (the proportion of each species or species group) and applies this distribution to the estimate of total groundfish weight to estimate the total weight of pollock. This last step provides the observer's estimate of pollock catch that is attributed to the vessel and applied against the CDQ. The volumetric methods are used to estimate the total catch weight of all groundfish, and species composition samples are used to estimate how much of that groundfish is pollock.

Changes From the Proposed Rule

There are three changes from the proposed rule in the final rule. The first change is to delete the phrase "NMFS or U.S. Coast Guard enforcement" from sentences referring to authorized officers in § 675.27 (h)(2)(i)(A) and (ii)(B)(*1*). Removing the phrase makes the references consistent with the definition of authorized officers in 50 CFR 620.2. The second change is to clarify the intent of the first sentence of § 675.27(h)(2)(ii) by replacing the phrase "estimate its total weight" with "estimate the total weight of its groundfish catch". The third change is to clarify the intent of § 675.27(h)(2)(ii)(A)(*2*). The requirement that marked increments be readable from the outside of the bin at all times has been changed to read "Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times." The phrase "on each side of the bin" is deleted from the last sentence of the paragraph. Although NMFS requires that all internal sides of the bin be marked, the markings on the side of the bin containing the viewing port or window need not be visible from the outside of all bins. This issue is also addressed in the response to Comment 9.

Four letters of comment were received during the comment period. One letter was in support of the rule. Three letters included comments or suggestions on technical or operational aspects of the rule. Fourteen individual comments were contained in these four letters. No comments were in opposition to the rule.

Comment 1: Increased observer coverage and improved equipment for estimating total catch in the CDQ fisheries will be beneficial to fishery managers and to CDQ fishing partners.

Response: NMFS concurs.

Comment 2: NMFS should identify standards for catch measurement and leave it to the industry to decide what equipment and methods would meet those standards.

Response: This rule offers two options for processor vessels to provide improved estimates of catch in the CDQ fisheries. One is based on volumetric estimates and the other is based on a scale weight. While a performance standard for the accuracy of a scale system can be established by NMFS and tested by an observer, the same standard of accuracy cannot be established for volumetric estimates. The accuracy of a scale system depends on the performance of a piece of equipment, while the accuracy of volumetric estimates depends on the accurate measuring of the bin volume, on the ability of an observer to determine the volume visually, and on variation in the density of the fish. The only way to test the accuracy of volumetric estimates of total groundfish catch weight is to compare the volumetric estimates of fish weight with the scale weight of the same fish. A scale large enough to assess the accuracy of volumetric estimates of catch aboard a processor vessel would be more effectively used to weigh the catch directly. Rather than specifying an accuracy standard for volumetric estimates, NMFS has established guidelines for the equipment that must be provided for the observer to make volumetric estimates.

Comment 3: NMFS should fairly apply regulations for improved total catch weight to all sectors.

Response: This rule addresses only processors and vessels participating in the CDQ fisheries. All catcher vessels must meet the same requirements, regardless of their size. Shoreside processors are required to report scale weights, because scales are currently available in all the plants. All processor vessels are offered the same options to provide improved estimates of catch.

Comment 4: The appropriate method for estimating total catch weight should distinguish between the pelagic pollock fisheries and other mixed-species fisheries.

Response: The CDQ fisheries are predominantly pelagic pollock fisheries in that most trawl hauls contain 95 percent or more pollock by weight. The primary difference between pelagic pollock fisheries and mixed-species fisheries, with respect to volumetric estimates of total groundfish catch weight, is the appropriate density factor to use in the volume-to-weight conversion. NMFS distinguishes between the pelagic pollock fishery and other mixed-species fisheries by applying a standard density factor of 0.93 mt/m^3 for all trawl hauls in the pelagic pollock fishery and by using the observer's estimate of the appropriate density factor for hauls with less than 95 percent pollock.

Comment 5: The appropriate location of certified marks inside bins depends on the configuration of the individual bin and should be determined on a case-by-case basis.

Response: NMFS agrees that many bins have different configurations and that specifying the location and number of certified markings that would provide the most accurate volumetric estimates from each bin on each vessel may be more desirable. However, NMFS does not have the resources to review and approve the bin configurations for individual vessels. For this reason, the final rule contains specifications that must be met for each bin used to make volumetric estimates of catch weight.

Comment 6: Vessel owners should be required to submit a description of the system they plan on using, with endorsement by prospective certifiers, well in advance of the effective date, to assure that they have selected a workable system and that they have adequate time to get it in place and certified.

Response: The processor or vessel owners are responsible for completing these modifications by the effective date (i.e., August 15, 1994, see § 675.27(h)(2)). Therefore, NMFS is providing approximately 3 months for modifications to the vessel that may be necessary under this rule.

Comment 7: Visual access to the bins and to all walls in the bins is difficult to achieve, costly, and sometimes impossible.

Response: Information about the average height of fish in a bin is a critical element in volumetric estimates of groundfish catch weight. NMFS believes that processor vessel operators must provide the appropriate viewing ports or windows, bin lighting, and readable markings in order to provide the observer with the opportunity to make an estimate of the average height of fish in the bin that is as accurate as possible.

Comment 8: Marking all internal walls of a bin may result in less accurate estimates of the height of fish in the bin than could be obtained by marking fewer walls. For example, if all markings in a bin with more than four walls were used to calculate a simple average of the height of fish in the bin, the procedure would skew the height estimate toward the part of the bin with the most marked walls.

Response: The accuracy of the estimates of height of fish in a bin is based on the procedure used by the observer to determine average height and not necessarily on the number of marked walls. Identifying the sides of the bin that would always provide the best information to observers is difficult, because the surface of the fish in the bin is often not level or smooth due to the trim of the vessel or other reasons. NMFS believes that the requirement to mark all internal sides of the bins provides the maximum amount of reference points for an observer. Observers will use as much information as is available to determine the average height of fish in a bin, but they will not be instructed to calculate a simple average of the height of fish at each marked wall for reasons suggested in the letter of comment.

The rule requires that vessel operators submit certification documents prepared by an authorized, independent agent who measured the bins, witnessed the location of the marks, and calculated the volume of the bin associated with each set of marks. Instructions or recommendations from the certifying agent to estimate properly the average height of fish in the bin, or to use height-to-volume conversion tables, would improve the reliability of the volumetric estimates.

Comment 9: It is not necessary to mark the inside of the bin wall that contains the viewing port or window, because the observer cannot see these marks from outside the bin.

Response: NMFS agrees that, for some bins, an observer would not be able to see the marks on the bin wall that contains the viewing port. However, in other cases, the observer can look inside the bin from the viewing port and see the level of fish against the wall that contains the viewing port, thereby increasing the accuracy of the estimated average height of fish in the bin. NMFS prefers one standard for all bins used for volumetric estimates. NMFS will continue to require markings on all internal walls of the bin, but will not require that the markings on the side of the bin that contains the viewing port or window be readable from the outside of the bin.

Comment 10: Ultrasonic bin level sensors (bin sensors) should be considered as an alternative to determine the average height of fish in bins that are not visually accessible.

Response: Bin sensors employ transducers installed in the overhead of the bin to measure the distance from the top of the bin to the surface of the fish in the bin. The transducers determine distance by "sounding" or measuring the amount of time it takes for an ultrasonic sound wave to travel from the transducer to the surface of the fish. The average height of fish could be estimated by locating transducers in several places throughout a bin.

NMFS has two concerns about the use of bin sensors. First, the appropriate number of transducers, location of the transducers, and direction in which they are pointed are important determinants of the accuracy of the information provided from the bin sensors. The appropriate system design depends on the configuration of the individual bin, the way fish are loaded into the bin, and the distribution of fish once inside the bin. Developing regulations that would specify a general system design applicable to all bins would be difficult. Also, NMFS does not have the resources to review and evaluate system designs for individual bins or to work with the industry to develop the appropriate configuration for individual bins.

The second, and more serious, concern relates to NMFS' ability to monitor both the initial calibration of the bin sensors and their use aboard the processor vessel to determine the level of fish in a bin. One mothership in the Alaska groundfish fisheries currently uses bin sensors to make volumetric estimates of the groundfish catch delivered by catcher vessels. However, these bin sensors are installed in fish receiving bins that have markings on the internal sides of the bins that can be seen from outside the bin. In this case, there is little difficulty in verifying the readings of the bin sensors.

Once properly calibrated, the transducers should continue to perform accurately unless the equipment malfunctions or breaks down. However, the bin sensors can be recalibrated at any time to provide either more or less accurate readings. NMFS does not intend to monitor the use of bin sensors by requiring that only observers have access to the control panel.

Representatives of a bin-sensor manufacturer suggested that each bin should contain five transducers, each of which would take an individual reading of the height of fish in the bin directly below the transducer. Transducers can be calibrated individually. Therefore, in order to verify that all transducers are reading accurately, hatches would have to be placed in the overhead of the bin next to each transducer so that the observer could drop a tape measure and check the distance against that recorded by the bin sensor. NMFS believes that this procedure would be burdensome to the processor vessel operator because of the necessity to place up to five hatches in each bin to verify transducer readings, and that it would be time-consuming and difficult for the observer.

The manufacturer's representative also suggested that the information from the initial calibration of the system, such as the distance from each transducer to the bottom of the bin, could be used to determine whether the system had been recalibrated. NMFS is concerned that the bin sensors could be recalibrated, and then changed back to the original calibration without the knowledge of the observer. Although NMFS believes that bin sensors could accurately estimate the height of fish in a bin, NMFS is not satisfied that observers have the capability or the time to monitor the system to assure accurate information about the volume of fish in enclosed and inaccessible bins.

Comment 11: An opening in the top or overhead of a bin through which a tape measure could be lowered into the bin should be considered as an alternative method for determining the average height of fish in bins that are not visually accessible.

Response: NMFS believes that reliable estimates of the volume of fish in a fish bin must be determined from averaging the height of fish in a bin from several locations in the bin. A single reading at the center of the bin may not provide accurate information if the fish are unevenly distributed throughout the bin.

Comment 12: A narrow vertical window extending the full height of one wall of the bin with marks on the outside of the bin should be considered as an alternative method for determining the average height of fish in bins that are not visually accessible.

Response: This suggestion would provide the observer with a height reading at only one location in the bin which, for reasons discussed above, is not sufficient to determine the average height of fish in the bin.

Comment 13: The use of scales to weigh groundfish harvests is a costly alternative.

Response: NMFS recognizes that a marine scale capable of accurately weighing groundfish harvests will cost between $30,000 and $50,000 per scale. This does not include the cost of installation and maintenance. This rule allows processors to choose either modification of their bins to accommodate volumetric estimates or scales to weigh groundfish harvests in the CDQ fisheries.

Comment 14: It is not feasible for processor vessel operators to weigh each species or species group of fish separately.

Response: This rule does not require weight by species or species group for management of the CDQ pollock fisheries.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be "not significant" for purposes of E.O. 12866.

The AA has determined that this rule could have a significant economic impact on a substantial number of small entities. A copy of the FRFA is available (see **ADDRESSES**).

This rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget under control number 0648–0269. The public's reporting burden for each requirement is indicated in the following description and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new reporting requirements are: (1) CDQ-managing organizations must arrange for processors to transmit copies of daily observer catch messages to them in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocations have been exceeded (5 minutes per message); (2) scale printouts of each CDQ delivery must be maintained in the processing operation for the duration of the fishing year, or for as long after a fishing year that the products from fish harvested during that year are retained in the processing operation (8 minutes per delivery day); (3) the volumes of bins aboard processing vessels must be certified in writing by an independent registered engineer (8 hours); and shoreside processors must notify the observers of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading (2 minutes). Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**) and to the Office of Management and Budget, Attn: Desk Officer, NOAA (Paperwork Reduction

Project 0648–0269), Washington, DC 20503.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.27, paragraph (e)(4) is revised and a new paragraph (h) is added to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

* * * * *

(e) * * *

(4) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

* * * * *

(h) *Estimation of total harvest in the CDQ fisheries*—

(1) *Observer coverage.* Vessel operators and processors participating in CDQ fisheries must comply with the following requirements for observer coverage:

(i) Each shoreside processing operation participating in the CDQ fisheries must have one NMFS-certified observer present at all times while groundfish harvested under a CDQ are being received or processed. The Regional Director is authorized to require more than one observer for a shoreside processing operation if:

(A) The CDQ delivery schedule requires an observer to be on duty more than 12 hours in a 24-hour period;

(B) Simultaneous deliveries of CDQ harvests by more than one vessel cannot be monitored by a single observer; or

(C) One observer is not capable of adequately monitoring CDQ deliveries;

(ii) Each processor vessel participating in the CDQ fisheries must have two NMFS-certified observers aboard the vessel at all times while groundfish harvested under a CDQ are being harvested, processed, or received from another vessel;

(iii) Each catcher vessel delivering groundfish harvested under a CDQ, other than a catcher vessel delivering only unsorted codends to a processor or another vessel, must have a NMFS-certified observer on the vessel at all times while the vessel is participating in the CDQ fisheries, regardless of the vessel length. Observer coverage requirements for catcher vessels participating in the CDQ fisheries are in addition to any observer coverage requirements in § 675.25.

(2) *Equipment and operational requirements.* (i) Each shoreside processing operation participating in the CDQ fisheries must comply with the following requirements:

(A) Groundfish harvested in the CDQ fisheries must be recorded and weighed on a scale certified by the State of Alaska. Such a scale must measure catch weights at all times to at least 95-percent accuracy, as determined by a NMFS-certified observer or authorized officer. The scale and scale display must be visible simultaneously by the observer;

(B) Observers must be provided access to the scale used to weigh groundfish landings;

(C) Printouts of scale measurements of each CDQ delivery must be made available to observers and be maintained in the shoreside processing operation for the duration of the fishing year, or for as long after a fishing year as product from fish harvested during that year are retained in the shoreside processing operation; and

(D) The manager of each shoreside processing operation must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) Each processor vessel participating in the CDQ fisheries must either estimate the total weight of its groundfish catch by the volumetric procedures specified in paragraph (h)(2)(ii)(A) of this section or must weigh its catch in accordance with the procedures under (h)(2)(ii)(B) of this section.

(A) *Volumetric measurements of total catch.* (*1*) Each processor vessel estimating its catch by volumetric measurement must have one or more receiving bins in which all fish catches are placed to determine total catch weight prior to sorting operations.

(*2*) The volume of each bin must be accurately measured, and the bin must be permanently marked and numbered in 10-cm increments on all internal sides of the bin. Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by a NMFS-certified observer or authorized officer.

(*3*) The location of bin markings, as certified, must be described in writing. Tables certified under paragraph (h)(2)(ii)(A)(*2*) of this section indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins, must be submitted to the NMFS Observer Program prior to harvesting or receiving groundfish and must be maintained aboard the vessel and made available to NMFS-certified observers at all times. All bin certification documents must be dated and signed by the certifier. The bin volume and marked and numbered increments must be certified by a registered engineer with no financial interest in fishing, fish processing, or fish tender vessels, or by a qualified organization that has been designated by the U.S. Coast Guard Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76. Bin volumes and marked and numbered increments must be recertified each time a bin is structurally or physically changed.

(*4*) Vessel operators must notify observers prior to any removal or addition of fish from each bin used for volumetric measurements of catch in such a manner that allows an observer to take bin volume measurements prior to fish being removed from or added to the bin. Once a volumetric measurement has been taken, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric measurements of catch until an observer indicates that bin volume measurements have been completed and any samples of catch required by the observer have been taken.

(*5*) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(B) *Scale weight measurements of total catch.* (*1*) Any scale used on a processor vessel to weigh groundfish harvested in the CDQ fisheries must measure catch weights to at least 95-percent accuracy at all times as determined by a NMFS-certified observer or authorized officer. The scale must be equipped with a functional motion compensation device to account for vessel acceleration, roll, pitch and vibration movement. The scale and scale display must be visible by the observer simultaneously.

(*2*) Printouts of scale measurements of each haul weight must be made available to the observer and be maintained on board the vessel for the duration of the fishing year or for as long after a fishing year as products from fish harvested during that year are retained aboard a vessel.

(*3*) The catch from each haul must be kept separate, such that the scale weight can be obtained separately for each haul.

[FR Doc. 94–11763 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 678

[Docket No. 920409–3047; I.D. 050694H]

Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period January 1 through June 30, 1994.

EFFECTIVE DATE: The closure is effective from 0001 hours local time May 17, 1994, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by the Secretary of Commerce under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota is available for harvest from January 1 through June 30, 1994.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests reach, or are projected to reach, a quota established under § 678.23(b)(1), the AA is further required under § 678.24 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1994, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by May 17, 1994. During this closure, for vessels issued a permit under § 678.4, possession of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. However, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4(a)(4), is prohibited, except for those that were harvested, off-loaded, and sold, traded, or bartered prior to May 17, 1994, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from Office of Management and Budget review under E.O. 12866.

Dated: May 10, 1994

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 94–11748 Filed 5–10–94; 3:54 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 93
Monday, May 16, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 4, 30, 150

Proposed Amendments to Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing substantial revisions to the disclosure framework applicable to commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"). The proposed amendments reflect the Commission's experience in applying the disclosure requirements set forth in part 4 of the Commission's rules and significant evolution in the purposes, structure and activities of the managed funds marketplace. These proposed modifications of the CPO and CTA disclosure framework are designed to achieve greater simplicity, focus and clarity in performance history presentations; streamlining of other required disclosures; and a more concise and readable format for disclosure documents.

DATES: Comments on the proposed rules must be received on or before July 15, 1994.

ADDRESSES: Comments must be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or France M.T. Maca, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Commission Rule 4.21[1] requires that each CPO registered or required to be registered under the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. 1 et seq. (1988 & Supp. 1992), provide prospective participants with a disclosure document containing the information specified in the rule on or before the date it solicits, accepts or receives funds, securities or other property from prospective participants for a pool it operates or intends to operate. Each CTA who is registered or required to be registered is also required, by Rule 4.31, to deliver a disclosure document prior to or at the time of soliciting or entering into an agreement to direct or guide the commodity interest account of a prospective client. These requirements were first promulgated on January 8, 1979, when the Commission published part 4 of its regulations relating to the operations and activities of CPOs and CTAs.[2]

I. Summary of Proposed Rule Changes

Based upon more than fifteen years of experience with administering the part 4 disclosure framework for CPOs and CTAs, the Commission has undertaken a comprehensive review of the disclosure requirements for CPOs and CTAs to identify areas in which the regulatory structure can be streamlined or simplified, while continuing to provide appropriate customer protection. Rules 4.7 and 4.8 were adopted in August 1992 as a result of the first phase of this review.[3] This proposal represents the second phase of the Commission's review of part 4, which will also include consideration of the appropriateness of a two-part format for pool disclosure documents.[4] The Commission is seeking public comment on proposed revisions of Rules 4.21 and 4.31. The amendments have three major purposes: (1) Simplification of past performance disclosures; (2) reduction of required disclosures as to matters of secondary relevance; and (3) clarification and modernization of various requirements. In addition, Rules 4.21 and 4.31 would be redrafted, reorganized and renumbered with a view towards greater clarity, simplicity and congruence with contemporary managed funds practices.

Proposed revisions to the disclosure requirements for CPO disclosure documents include the following.

A. Performance Disclosures

Under the proposal, past performance disclosures would be simplified and streamlined as follows.

1. All past performance presentations for pools would be reduced to a summary format containing specified core information.

2. For pools which have been in operation for at least three years, the only past performance record required generally would be that of the pool offered.

3. For pools with less than a three-year history, only the performance records of the pool offered, other pools operated by the CPO, CTAs allocated at least twenty-five percent of the aggregate initial futures margins and commodity option premiums for the pool offered and investee pools allocated at least twenty-five percent of the assets of the pool offered generally would be required. If the CPO has less than a three-year history, the past performance records of the CPO's principals would be required to be disclosed.

4. Certain performance data of secondary relevance to the pool offering would be replaced by a statement indicating whether that performance was "adverse," *i.e.*, the performance was one hundred basis points lower than the relevant Treasury Bill rate or the pool had to be terminated due to poor performance pursuant to a loss termination provision.

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (1993).

[2] 44 FR 1918 (January 8, 1979)

[3] 57 FR 34853 (August 7, 1992). Subject to certain conditions, Rule 4.7(a) provides relief from the specific requirements of Rules 4.21 and 4.23 and from certain of the requirements of Rule 4.22 to registered CPOs with respect to pools sold only to "qualified eligible participants" and satisfying the other conditions set forth in the rule. Rule 4.7(b) provides relief from the specific requirements of Rules 4.31 and 4.32 to registered CTAs with respect to the accounts of "qualified eligible clients" as defined in the rule. Rule 4.8 permits the CPOs of certain privately offered pools to solicit participants for those pools upon filing with the Commission and delivering to prospective participants the disclosure document required by Rule 4.21, eliminating the twenty-one day pre-filing requirement of Rule 4.21(g) for such pools.

[4] If determined to be appropriate, such a document could consist of: A summary disclosure document, provided to all prospective pool participants, containing core information relevant to a determination to participate in the pool; and a supplemental document, which would be made available upon request, containing additional and more detailed information of interest to some investors.

B. Non-Performance Disclosures

Non-performance disclosures would be revised as follows.

1. Required disclosures concerning the litigation history of futures commission merchants ("FCMs") would be significantly reduced.
2. Disclosure of the business backgrounds of principals would be limited to principals who participate in making trading or operational decisions for the pool or CTA.
3. Requirements for disclosure of conflicts of interest would no longer make specific reference to FCMs and introducing brokers ("IBs"). However, a general requirement to disclose conflicts of interest on the part of any persons providing services to the pool, which would encompass FCMs and IBs as well as persons who may not be Commission registrants, would be included.
4. The required description of each fee and expense of the pool would be supplemented by a tabular presentation of fees and expenses setting forth how the "break-even point" for the pool is calculated. The break-even point is the per-unit profit that the pool must realize during its first year for a participant to recoup his initial investment in the pool.

C. Format Improvements to Enhance Readability

A number of revisions to the rules are being proposed to enhance the accessibility and prominence of relevant disclosures. Disclosure documents would be required to contain a table of contents. General information concerning the pool, including the break-even point, would be required to be set forth in the forepart of the document. The number and content of various previously required bold-face "boilerplate" cautionary statements would be reduced and all information voluntarily provided would be required to follow the relevant required disclosures.

D. Other Revisions

Changes are also proposed to generally facilitate pool offerings, particularly with respect to areas of overlap or potential inconsistency with Securities and Exchange Commission ("SEC") rules. Thus, under the revisions, CPOs may update pool disclosure documents every nine months, consistent with SEC requirements, rather than every six months, as under current CFTC rules. In addition, CPOs may provide accredited investors with a notice of intended offering and term sheet, prior to delivery of a disclosure document.

Similar changes are proposed to be made to the requirements applicable to CTA disclosure documents.

The proposed changes are more specifically discussed in the section-by-section analysis.

II. Background

In announcing the adoption of part 4 in 1979, the Commission stated that Rule 4.21, the basic disclosure document requirement for CPOs, was intended "to protect pool participants—particularly those who are unsophisticated in financial matters—by ensuring that they are informed about the material facts regarding the pool before they commit their funds."[5] Similarly, Rule 4.31 was premised, in part, upon the view that "a prospective [CTA] client or subscriber should be aware of the advisor's commodity and general business experience if he is to make an informed decision as to whether or not to avail himself of the advisor's services."[6]

Section 4.21 requires the disclosure document for commodity pools to contain various types of information concerning the pool; the pool's CPO and CTA, and their principals; the FCM through which the pool's trades will be executed and cleared; and the pool's IB, if applicable. This information includes, among other things, the pool's and CPO's form of organization (Rule 4.21(a)(1)(i)); the pool's investment objectives (Rule 4.21(a)(1)(viii)); the business backgrounds of the CPO and CTA and their principals (Rule 4.21(a)(2)); material administrative, civil or criminal actions within the five years preceding the date of the disclosure document against the CPO, CTA, FCM and IB and their principals (Rule 4.21(a)(13)(i)); conflicts of interest on the part of the CPO, CTA, FCM, IB and their principals with respect to the pool (Rule 4.21(a)(3)(i)); the performance records of the pool and its CTA (Rules 4.21 (a)(4) and (a)(5), respectively) and, if the pool has traded commodity interests for less than twelve months, the performance of each other pool operated by the CPO and by each of its principals (Rule 4.21(a)(4)(i)(B)); a complete description of each kind of expense that the pool has incurred in its preceding fiscal year or is expected to incur in its current fiscal year (Rule 4.21(a)(7)) and of commissions or other fees that are paid or may be paid by the pool, its CPO, CTA or their principals in connection with solicitations for the pool (Rule 4.21(a)(14)); and risk disclosure and cautionary statements (Rules 4.21(a)(17) and 4.21(a)(18), respectively).

The disclosure document for CTAs must contain, among other matters, the name and business background of the CTA and each principal thereof (Rules 4.21(a)(1) and 4.21(a)(2), respectively); a description of the trading program (Rule 4.31(a)(1)(iii)); the types of commodity interests the CTA intends to trade (Rule 4.31(a)(v)); the performance record of the CTA and its principals (Rule 4.31(a)(3)); a description of any conflict of interest regarding the trading program on the part of the CTA, FCM, IB and their principals (Rule 4.31(a)(5)); material actions against the foregoing persons (Rule 4.31(a)(7)); and risk disclosure and cautionary statements (Rules 4.31(a)(8) and 4.31(a)(9), respectively).

Since the adoption of Rules 4.21 and 4.31 in 1979, the number of registered CPOs has more than doubled and the number of CTAs has increased nearly threefold.[7] Assets under the management of CPOs have also grown dramatically[8] and the range of available futures and option contracts has increased substantially.[9] In addition, during the past decade, pool operations and investments have reflected increased diversity and complexity. When Rule 4.21 came into effect, most CPOs operated one or two pools, and pools usually had one CPO which generally directed the commodity interest trading for the pool or engaged the services of a CTA who invested pool assets directly in commodity interest contracts. Increasingly, however, CPOs operate multiple pools, and commodity pools' and CTAs' investments are more diverse and complex.[10] A single commodity pool may engage multiple CTAs to provide advisory services for the pool and also invest in other commodity pools ("investee pools") or securities funds in order to access the services of particular traders or advisors, to employ multiple trading strategies or programs, or to diversify its portfolio.[11] "Investee pools" may also hold investments in other funds, resulting in multi-tiered structures of commodity pools and other investment vehicles. Because of the proliferation of trading strategies and growing specialization of CTAs, an increasing number of pools also retain "trading managers" to recommend or select CTAs for the pool or to select funds for investment of the pool's assets. Many CPOs and trading managers follow dynamic asset allocation strategies whereby the performance of the pool's CTAs is continuously reviewed and the selection of CTAs and allocation of assets among them are subject to frequent modification. Other commodity pools are formed as vehicles for collective access to particular CTAs whose services would not be readily available on a managed account basis and who are expected to provide advisory services to the pool throughout its existence.

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[5] 44 FR 1918, 1920.

[6] 42 FR 9278, 9279 (February 15, 1977).

[7] In April 1979, 619 persons were registered as CPOs and 976 persons as CTAs. As of February 28, 1994 there were 1,265 registered CPOs and 2,511 registered CTAs.

[8] Figures compiled by the National Futures Association indicate that the assets of commodity pools (both public and private) have more than doubled from 1988 to 1991, from approximately $8.6 billion to approximately $19 billion. *Managed Accounts Reports* ("MAR") estimates public pool assets at $15 million in 1975, $250 million in 1980 and $435 million in 1983. These data reflect, in part, the increased use of managed futures by collective investment vehicles seeking to diversity their portfolios or manage the risks of securities, fixed income instruments or other assets. Concomitantly, institutional users such as state pension plans have increased their participation in managed futures. See Peltz, *The road to managed futures—the institutional perspective*, MAR Issue No. 181 (March 1994). In addition, many primarily securities vehicles invest a small portion of their assets in commodity interests pursuant to Rule 4.12(b), which went into effect on November 2, 1987. See note 13 *infra*.

[9] Commodity futures and option contracts designated by the CFTC numbered 90 in 1978 and 419 as of April 18, 1994.

[10] For example, in addition to investing directly and indirectly in commodity interest contracts

In implementing its statutory mandate to regulate the activities of CPOs and CTAs, the Commission has endeavored to refine its rules as appropriate to respond to changing market conditions and to simplify and streamline the disclosure process in a manner consistent with customer protection. For example, in 1985, the Commission adopted Rule 4.5, which, as last amended,[12] provides an exclusion from the definition of the term "commodity pool operator" for the operators of specified types of collective investment vehicles operating pursuant to other regulatory frameworks, *i.e.*, certain pension plans, registered investment companies, bank or trust company collective funds and insurance company separate accounts, whose use of futures and commodity option transactions is limited to hedging and to non-hedging transactions for which initial margin deposits and option premiums do not exceed five percent of the liquidation value of the entity's portfolio.[13]

In 1987, the Commission adopted Rule 4.12(b), which provides relief from certain requirements of Rules 4.21, 4.22 and 4.23 with respect to pools that commit no more than ten percent of the fair market value of their assets to establish commodity interest positions and trade such commodity interests in a manner solely incidental to their securities trading. Also in 1987, the Commission adopted Rule 4.14(a)(8), which provides registration relief to investment advisers registered as such with the SEC, who provide commodity interest trading advice to trading vehicles that are excluded from the definition of the term "pool" under Rule 4.5 or are qualifying entities for which a notice of eligibility has been filed under Rule 4.5, provided that the investment adviser's commodity interest trading advice is solely incidental to the adviser's business of providing securities advice and consistent with Rule 4.5, and that the investment adviser does not otherwise hold itself out as a CTA.

In August 1992, the Commission adopted Rule 4.7, which provides relief from certain part 4 requirements to CPOs offering pool participations and to CTAs offering managed accounts to certain highly accredited investors.[14] Rule 4.7 also facilitates multi-jurisdictional offerings by making relief available for private offerings exempt from registration pursuant to section 4(2) of the Securities Act of 1933 ("Securities Act") and pursuant to the SEC's Regulation S[15] and by including certain foreign persons as eligible participants in pools qualifying for Rule 4.7 exemption.[16]

In addition, the Division of Trading and Markets ("Division") has issued relief on a case-by-case basis to facilitate application of the disclosure requirements in the context of new market conditions not contemplated by the existing regulatory framework, such as multiple CTA and fund-of-funds structures, with the objective of fostering clear and succinct disclosure of material information, especially concerning fees and the manner in which proceeds of the offering will be used. In many cases, strict application of existing disclosure requirements to pools whose CPOs have voluminous performance histories or which retain multiple CTAs or invest in multiple investee funds may result in such extensive track record disclosure that past performance records generally may be given undue emphasis and the most germane data given insufficient prominence. These effects have been mitigated in appropriate circumstances through grants of exemptive or no-action relief. For example, in Interpretative Letter No. 92–12,[17] the Division granted relief from required disclosures (including disclosure of past performance records) concerning CTAs and investee pools allocated less than ten percent of the assets of the investor pool. The CPO had an operating history of more than three years and changed the pools' CTAs frequently based on its continuous analysis of over 500 CTAs. This relief has since been made available to other CPOs in similar circumstances.

In Interpretative Letter 94–10, the Division granted relief permitting a CPO to use a summary format containing specified core information to present, in the disclosure document of a single-advisor pool, its past performance with respect to other pools operated by the CPO, none of which was advised by the same CTA as the single-advisor pool. The CTA advising the single-advisor pool had a ten-year track record that would be fully disclosed in the disclosure document of the single-advisor pool and the full performance record of the CPO's other pools would be available upon request.[18]

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traded on U.S. contract markets, pools and managed accounts may engage in a variety of other transactions, such as swaps, Separate Trading of Registered Interest and Principal of Securities (also known as STRIPS), and repurchase and reverse repurchase agreements.

[11] For its *Survey of Commodity Pool Operators*, (the "Pool Survey") dated January 1991, the Commission's Division of Economic Analysis surveyed sixty-five large CPOs (defined as those with over $10 million in net assets under management) representing about 94 percent of the total $7.8 billion in net assets reported by the approximately 1,200 CPOs registered as of September 30, 1988. The Pool Survey indicated that, on average, each large CPO operated about four pools and employed about two CTAs per pool. At the upper end of the range, the Pool Survey showed two CPOs accounting for 20 or more pools each and three pools employing the services of as many as 14 CTAs each. The National Futures Association reported that, as of October 1993, for 300 pools the CPO also served as CTA, 376 pools had one CTA and 216 pools had more than one CTA.

[12] 58 FR 43791 (August 18, 1993), effective September 17, 1993.

[13] Rule 4.12(b) allows the use of a simplified disclosure document that does not contain, among other things, the past performance records, risk disclosure and cautionary statements otherwise required by Rule 4.21. Thus, a pool's securities offering memorandum should require little supplementation to meet the requirements for a pool disclosure document under Rule 4.12(b).

[14] See note 3 *supra*.

[15] Regulation S generally provides that the registration requirements of the Securities Act do not apply to offers and sales of securities that occur outside the United States and provides two safe harbors from those requirements for specified offerings where no "directed selling efforts" are made in the United States. "Directed selling efforts" are activities undertaken for the purpose of, or that could reasonably be expected to result in, conditioning of the market in the United States for the securities being offered. See 55 FR 18306, at 18307 (May 2, 1990).

[16] As of April 5, 1994, relief has been claimed under Rule 4.7(a) for 360 pools, and 150 CTAs have claimed relief under Rule 4.7(b).

[17] [1990–1992 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25.343 (July 28, 1992).

[18] [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25.991 (December 16, 1993). The Division

(Continued)

In Interpretative Letter No. 92–9,[19] the Division permitted a CPO to use a two-part disclosure document for a commodity pool provided, among other things, that both parts of the disclosure document were delivered at the same time and that the first part of the document contained all of the disclosures required by Rule 4.21 except for the disclosures required by Rule 4.21(a)(5) with respect to the performance records of the pool's CTAs, which were required to be included in the second part. By Advisory 27–92 (June 3, 1992), the Division gave notice that it had no objection to the use of a two-part disclosure document of the nature described above by other CPOs, subject to the conditions set forth in the foregoing letter.

In reviewing CPO disclosure documents, Division staff has addressed fund-of-funds structures by requiring that certain disclosures be made with respect to investee pools but limiting these disclosures with respect to investee pools allocated less than twenty-five percent of the assets of the pool offered.[20] The Division has also issued interpretative statements and advisories giving guidance with respect to the presentation of past performance in disclosure documents.[21]

In developing this proposal, the Commission has taken into account its experience in administering the current regulatory framework, reviewing disclosure documents and responding to requests for relief from registrants. The Commission has also taken into consideration the evolution of the industry, the views of the public and of market participants and the disclosure implications of recently developed trading structures.

The Commission also has had the benefit of the work of a Special Committee for the Review of CPO/CTA Disclosure Issues established by the National Futures Association ("NFA")[22] to review and make recommendations concerning CPO and CTA disclosure documents. The Special Committee's recommendations were presented to NFA's Board of Directors in February 1994. On March 15, 1994, the NFA submitted to the Commission proposed amendments to, and interpretations of, its Compliance Rules which were based upon the Special Committee's recommendations. NFA's rule submission consists of several parts. Proposed revisions of NFA Compliance Rule 2–13(a) would require CPOs to comply, not only with specified Commission rules applicable to CPOs' and CTAs' activities and disclosures, but also with interpretations of those rules issued by NFA's Board of Directors and approved by the Commission. Separately, new paragraph (b) would be added to Compliance Rule 2–13 to require CPO disclosure documents to include a "break-even" analysis, *i.e.*, a computation of the trading profit that a pool must realize in its first year for a participant to recoup its initial investment, presented in the manner prescribed by the NFA's Board of Directors, including a tabular presentation of fees and expenses. NFA is also proposing interpretations of proposed Compliance Rule 2–13 relating to disclosure of past performance information, the computation and presentation of the break-even analysis, the use of pro forma and extracted results in past performance presentations and other topics addressed by this proposal, including the disclosure of business backgrounds of CPO and CTA principals, material litigation against FCMs and other past performance issues. In addition, NFA is proposing to replace paragraph (b)(4) of NFA Rule 2–29 with a new, more detailed, paragraph (c) concerning the use of hypothetical trading results. References to the NFA proposal are made in appropriate sections of this release.[23] Certain portions of that proposal are being published for comment contemporaneously with this release. The NFA submission is available from the Commission's Office of the Secretariat.

The Commission is exploring possible mechanisms for addressing CPO and CTA disclosure issues with the benefit of industry and other external input on an ongoing basis.

III. Section-by-Section Analysis

Current Rule 4.21 would be reorganized with a view towards simplification of presentation. Rule 4.21 would continue to require CPOs to deliver a disclosure document. New Rule 4.24 sets forth general disclosure requirements, *i.e.*, requirements applicable to disclosure of all matters other than past performance. Past performance disclosure requirements would be codified in new Rule 4.25. New Rule 4.26 would contain requirements with respect to the use, amendment and filing of the disclosure document.[24]

A. Section 4.25—Performance Disclosures

Simplification of past performance disclosure requirements has been a primary objective of this rulemaking. The proposed revisions of the past performance disclosure requirements

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also allowed the use of a capsule performance disclosure format in Interpretative Letter 94–12 under similar circumstances. [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25,993 (December 27, 1993). In Interpretative Letter No. 93–107 the Division granted relief permitting a CPO to omit disclosure of the past performance of certain single-advisor pools in the CPO's disclosure documents for two multi-advisor pools, provided that the CPO gave a brief description of the single-advisor pools and made their performance records available upon request. This relief was based upon representations that the CPO, which played an active role as an administrator and asset allocator for the multi-advisor pools, performed no asset allocation functions for the single-advisor pools and that the single-advisor pools served as vehicles to provide access to commodity pools advised by certain experienced CTAs whose minimum investment levels for managed accounts would otherwise have been prohibitive for individual investors. The CPO's track record as an asset allocator would be more significant in the context of multi-advisor funds than its track record in the context of single advisor funds, where the skill of the individual CTA would be of greater interest to prospective participants. [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 25,899 (October 26, 1993).

[19] (1990–1992 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 25,300 (June 1, 1992).

[20] Staff comment letters have stated that pool disclosure documents should provide all information required by Rule 4.21 for each investee pool, "generally at the same level of detail as though the investee pool were providing its own separate disclosure document," but that reduced disclosures were appropriate where less than twenty-five percent of the assets of the pool offered is invested in the investee pool. Moreover, the staff indicated that it is always willing to address specific requests for relief and has done so in appropriate circumstances.

[21] See, e.g., CFTC Advisory 87–2, (1986–1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,624 (June 2, 1987), defining the term "beginning net asset value" for purposes of computing rate of return; CFTC Advisory dated February 27, 1991 (1990–1992 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,005, permitting CPOs and CTAs to use alternative rate of return computation methods to more accurately reflect the return on funds available for trading during the period; and CFTC Advisory 93–13, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,554 (February 12, 1993), permitting the use of an alternative method for computing CTAs' rates of return. The use of this method may result in fewer and simplified performance tables.

[22] NFA is presently the only futures association registered with the Commission pursuant to section 17 of the Act. It has responsibilities with respect to, among others things, oversight of sales practices, including the use of promotional material.

[23] The NFA submission also includes proposed new Compliance Rule 2–34 which would govern the use of non-fully funded accounts. This part of NFA's submission has been remitted by the Commission to NFA for further explanation and supporting material.

[24] The disclosure requirements for CTAs would be correspondingly reorganized and set forth in Rules 4.31, 4.33, 4.34 and 4.35. Many of the proposed changes for pool disclosure documents are also proposed for CTA documents. Rather than repeating the discussion of these changes, the text or footnotes thereto indicate where amendments similar to those discussed for pool disclosure documents are also proposed for CTA disclosure documents.

are predicated upon the view that past performance is not predictive of future performance results and that inclusion of multiple performance records in disclosure documents may tend to give undue importance to past performance data. Nonetheless, the Commission believes that past performance disclosure may serve to reveal negative performance results and the volatility of pool returns. Consequently, the Commission is proposing to substantially simplify past performance requirements with the objective of eliminating required disclosure of past performance that is of secondary relevance to the pool offered.

The proposed rules are designed to foster clarity and simplicity. This objective would be achieved in part by substituting a summary of core performance data for the multicolumnar presentations called for under current rules. This new "capsule" format, which has recently been used by some CPOs pursuant to exemptive relief issued by the Division of Trading and Markets on a case-by-case basis,[25] provides a simple, readable and succinct overview of pool performance and substantially reduces the overall quantity of performance data required to be presented without sacrificing the elements important to customers.

The past performance disclosure requirements have also been comprehensively reviewed and revised with a view towards eliminating or reducing past performance disclosures of secondary importance. As a result, the primary focus of past performance disclosure would be the performance of the pool offered and for most pools with less than a three year operating history, upon pools of a similar nature. Only the past performance records of CTAs with responsibility for managing substantial amounts of a pool's futures or commodity option trading would be required. The performance of CTAs managing lesser amounts of the pool's futures trading and other performance data of secondary relevance to the offering would generally not be required except to the extent that such performance was below a specified benchmark rate of return or resulted in significant losses. The performance of pools dissimilar to the pool offered would be permitted to be shown in composites, subject to limitations on the types of pools that may be included in a composite.

The proposed rules also take into account structures in which a trading manager, rather than the pool's CPO, allocates pool assets, and fund-of-funds structures. In addition, because, under the proposal, the volume of required performance disclosures would be considerably reduced, the time period for these disclosures would be increased from three to five years to provide pool participants with a better chronological perspective of the track records presented in the disclosure document.[26]

Thus, the proposed past performance requirements require presentation of the past performance of the pool itself. For most pools with at least a three-year track record this would be the only past performance required to be disclosed. Proposed Rule 4.25(c) would require the following additional disclosures with respect to pools with less than a three-year history. If the pool has not commenced trading, a short statement to that effect would be required to be prominently disclosed. The performance of the CPO (or of the pool's trading manager, if applicable) would be required to be disclosed and if the CPO (trading manager) had less than a three-year trading history, the performance of its trading principals also would be required.[27] If applicable, a legend would be required to disclose the fact that neither the CPO (or trading manager), nor its principals has any commodity interest trading experience.

With respect to CTAs and investee pools, proposed Rule 4.25(c)(3) would provide for disclosure of the performance of "major" CTAs and investee pools, *i.e.*, CTAs allocated at least twenty-five percent of the pool's aggregate initial futures margins and commodity option premiums and investee pools allocated at least twenty-five percent of the pool's assets, to be set forth in the specified capsule format. The CPO would only be required to indicate any "adverse performance" as defined in proposed Rule 4.25(a)(8) on the part of CTAs allocated less than twenty-five but at least ten percent of the pool's futures margins and commodity option premiums and investee pools allocated less than twenty-five percent but at least ten percent of the assets of the pool offered. No performance disclosure would be required for CTAs allocated less than ten percent of the pool's futures margins and commodity option premiums or investee pools allocated less than ten percent of the pool's assets. If a major CTA or investee pool had no experience in trading commodity interests, a prominent legend would be required to so indicate. The legend would also indicate the percentage of futures margins and option premiums allocated to the particular CTA or pool assets allocated to the investee pool.

Past performance disclosure requirements would be codified in Rule 4.25, which would contain three sections. Paragraph (a) would set forth general principles applicable to pool performance disclosure; paragraph (b) would set forth the requirements applicable to pools with three or more years history; and paragraph (c) would address other pools.[28] The proposed changes are more fully described below.

1. Capsule Performance Presentation

Rule 4.21(a)(4) currently requires performance to be disclosed in tables showing at least quarterly the beginning and ending net asset values for the period, all additions, withdrawals and redemptions, whether voluntary or involuntary, the net performance for the period, net of additions, withdrawals and redemptions, and the rate of return for the period. These requirements have been applied in practice such that multiple pages of small-type numerical tables, frequently including performance data not required by Commission rules, are presented, often mixing without differentiation the performance of trading vehicles similar to the pool offered and of vehicles different in material respects. Such performance presentations are voluminous and may give equal weight to relevant data and to data of secondary or marginal pertinence.

The Commission is proposing a new summary format for presentation of all required past performance history.[29] This format is intended to capture the most significant information concerning a pool's history in a reader-friendly, largely nontabular form, which would generally permit multiple performance track records to be provided on a single page. The proposed new format, which is set forth in Rule 4.25(a)(1)(i) for pools and Rule 4.25(a)(1)(ii) for accounts, calls for core information intended to convey relevant data in a condensed format.

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[25] The proposed summary format differs in minor respects from that used by those CPOs.

[26] This recommendation is consistent with a similar recommendation by the NFA Special Committee.

[27] This performance would be presented in a capsule format and the performance of pools of a different class than the pool offered could be presented in a composite format. See discussion of proposed Rule 4.25(a)(3)(ii) relating to composites, *infra*.

[28] Rule 4.34, which sets forth performance disclosure requirements for CTA disclosure documents, would include paragraph (a), setting forth general principles applicable to CTA performance disclosures, and paragraph (b) setting forth specific requirements.

[29] The only exception to the summary format presentation is that a CTA disclosure document would be required to present the performance of the program offered in the full format currently required by current Rule 4.31.

The capsule format for pools would set forth the date when the pool commenced trading, the aggregate gross capital subscriptions for the pool, and the pool's current net asset value. The "largest monthly draw-down" and "worst continuous peak-to-valley draw-down" are intended to show that material changes in rates of return may occur. Rates of return would also be included, on a monthly basis for the pool offered, and on an annual basis for other pools.

The "largest monthly drawn-down" and the "worst continuous peak-to-valley draw-down" would demonstrate the significant one-month and sustained declines to which commodity pool returns may be subject. Both draw-down figures would be expressed as a percentage of the pool's net asset value. The largest monthly draw-down would indicate the largest net asset loss experienced by the pool in any calendar month and the month and year in which it occurred. The peak-to-valley draw-down would indicate the largest calendar month-to-calendar month continuous net asset loss experienced by the pool during any period and the months and year in which it occurred. Dating the monthly and peak-to-valley draw-downs would permit participants to assess whether the losses were connected to market conditions by comparing the draw-downs of several pools. As explained in the rule, a peak-to-valley draw-down of 4 to 8–91/25% would indicate that the peak-to-valley lasted from April to August of 1991 and resulted in a twenty-five percent draw-down of the pool's net asset value.

The rate of return would be presented for each month for the pool offered and for each year for other pools. It would be computed on a monthly compounded basis in order that the rate of return for a given month will take into account the prior months' trading profits. Annual rates of return computed on a monthly compounded basis assume reinvestment of accrued profits and therefore the investment base on which rates of return are calculated is effectively adjusted by these amounts, presenting a more accurate picture of actual returns realized on an investment. Information currently required by Rule 4.21(a)(4) concerning additions, withdrawals and redemptions, the beginning and ending net asset values and the number of units outstanding at the end of each period at least for each quarter, would not be required.

The proposed capsule format for CTA accounts would contain similar core information, *i.e.*, the name of the CTA or other person trading the account and the name of the trading program; the date when the CTA began trading client funds and the date of inception of the program being disclosed; the number of accounts in the program; the total assets under the management of the CTA and in the trading program; the largest monthly and worst continuous peak-to-valley draw-downs for the program; and the annual and year-to-date rates of return. Registrants who compute rates of return for CTA programs on the basis permitted by Advisory 93–13 would continue to be required to state the actual and nominal account sizes, as required therein.[10]

The summary format is designed for presentation purposes only. CPOs and CTAs must continue to compute pool performance on the basis set forth in current Rule 4.21(a)(4)(ii) (proposed to be renumbered as Rule 4.25(a)(6)), as interpreted by the Commission and to maintain records substantiating such computations in accordance with Rule 1.31.[11]

An example of capsule past performance presentation follows. This table sets forth on a single page capsule past performance for eight pools.

SAMPLE.—CAPSULE PERFORMANCE OF ALL POOLS OPERATED BY X

[As of March 2, 1994]

Name of pool	Type of pool[2]	Start date	Aggregate subscription ($ × 1,000)	Current total NAV ($ × 1,000)	Worst monthly percent draw-down	Worst continuous peak-to-valley draw-down	Rate of return					
							1989	1990	1991	1992	1993	Year-to-date (percent)
A, B	2, 3, 6	8/93, 10/89	3,101	20,701	[1](1.09%) 12/93	[1](1.09%) 10–12/93	6.8	8.9	9.6	11.2	12.6	0.51
C	2, 4, 6	4/86	2,104	3,313	(11.70%) 4/90	(20.47%) 1–4/90	4.2	9.8	6.5	9.3	5.7	(9.08)
D	2, 3, 5	8/87	3,364	5,144	(10.13%) 11/91	(16.11%) 10–11/91	9.6	9.5	2.5	5.8	8.6	(0.28)
E	1, 3, 6	6/87	534	292	(9.86%) 9/93	(21.14%) 9–11/93	3.4	7.8	8.2	7.6	(5.2)	(2.98)
F	1, 4, 6	8/86	517	730	(11.73%) 7/93	(19.61%) 4–8/91	11.17	6.2	3.4	10.6	6.8	6.82
G	1, 4, 5	1/90	331	379	(16.01%) 6/92	(40.81%) 5–8/92	(2.3)	4.3	6.2	(8.2)	13.9	(17.26)
H	1, 3, 6	9/91	278	N/A	(12.20%) 6/93	(28.41%) 1–6/89	(1.8)	6.3	2.3	(0.7)	8.1	N/A

[1] Worst draw-down for any of the pools included in the composite.

[2] Key to type of pool: 1—Private; 2—Public; 3—Multi-advisor; 4—Non-multi-advisor; 5—Limited risk; 6—Non-limited risk.

2. Pools With Three or More Years Operating History

Current Rule 4.21(a)(4) requires disclosure of the performance of the pool offered and of its CTAs and their principals for all pools. If the pool offered has less than a twelve-month track record, the performance of the CPO and of each of its principals must also be disclosed. Under the proposed rules, past performance disclosure requirements would differ based on whether the pool had a three-year, rather than twelve-month, track record. Generally, where a pool has at least a three-year track record, the only performance required to be disclosed would be that of the pool offered.

The Commission believes that, generally, where a pool has an extensive operational history, presentation of the pool's own past performance record should fulfill the objectives of past performance disclosure. If, however, the pool's historical track record occurred under materially different conditions, the track record of the pool alone may not be sufficient. For example, if the pool was essentially a proprietary trading vehicle investing a relatively small amount of funds contributed by third party sources, the track record generated may have little or no relevance to a publicly offered pool. To assure that a pool's three-year history was not acquired under circumstances in which the pool was essentially a proprietary trading vehicle, proposed Rule 4.25(b) would provide for past performance disclosure to be limited to that of the pool offered for pools that have traded commodity futures and option contracts for at least three years with no fewer than fifteen participants who are unaffiliated with the pool's CPO and in which no more than ten percent of the assets were contributed by the CPO. The pool's performance would be required to be disclosed for five full calendar years and year-to-date

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[10] But see note 23.

[11] Among other things, Rule 1.31 requires all books and records to be kept for a period of five years and available for inspection by any representative of the Commission or the U.S. Department of Justice.

(or, if the pool had less than a five-year history, for the pool's entire operating history), in the specified capsule format with monthly rates of return. The CPO would be free to include additional performance records in compliance with the provision relating to voluntary information.

The Commission requests comment as to whether the performance record of a pool with a three-year operating history is generally sufficient without supplementary performance data concerning the pool's CTAs or other pools operated by the CPO. The Commission also requests comment as to whether the offered pool's operating history should be considered for purposes of the three-year minimum if such history was acquired when the pool differed in some material respect from the pool as offered, for example, in cases in which the pool's CTA, types of interests traded or the trading program have been significantly modified or the pool was initially privately offered but is now offered to the public.

3. Pools With Less Than Three Years History

As noted above, current Rule 4.21(a)(4) requires a pool disclosure document to disclose the performance of the pool offered, of each of the pool's CTAs and of each principal of the CTAs, and, if the pool offered has traded commodity interests for less than twelve months, the performance of the CPO and each of its principals.

As discussed in the preceding section, the Commission is proposing to limit required performance disclosures to the performance of the pool offered if the pool has at least a three-year performance history. With respect to pools that have less than a three-year history, proposed Rule 4.25(c) would require presentation of the performance records of the pool offered, the CPO (or trading manager), the CPO's (or trading manager's) trading principals if the CPO (or trading manager) has less than a three-year history, and the performance of each "major" CTA and investee pool, i.e., CTAs allocated at least twenty-five percent of the pool's futures margins and commodity option premiums and investee pools allocated at least twenty-five percent of the assets of the pool offered.[32] For CTAs allocated less than twenty-five percent of the pool's futures margins and commodity option premiums and investee pools allocated less than twenty-five percent of the pool's assets, the sole requirement would be to indicate any "adverse" performance as defined in the rule. No disclosure would be required for CTAs allocated less than ten percent of the pool's futures margins and option premiums or investee pools allocated less than ten percent of the pool's assets.

The proposed rules would require that the performance history for the pool offered be presented before any other performance history in the disclosure document. The performance of pools similar to the pool offered would be presented after that of the pool offered, on a pool-by-pool basis.

The performance disclosure requirement of current Rule 4.21(a)(4) focuses on the past performance of the pool offered, its CTAs, principals of the CTAs and, if the pool has less than a year history, the CPO and each of its principals. As noted above, these requirements would be largely eliminated for pools with at least a three-year operating history. For pools with a shorter history, additional past performance records would be required to be disclosed. These requirements were devised to focus upon the performance of pools similar to the pool offered and of persons responsible for management of a significant portion of the offered pool's assets. Further, to the extent that performance of principals is required, unlike the current rule which requires disclosure of the performance of all principals, the proposed rule would require disclosure of the past performance of "trading principals" only. A "trading principal" would be defined in proposed Rule 4.10(m) to mean a principal of a CPO or CTA who participates in making commodity interest trading decisions for a pool or client or who supervises, or has authority to allocate pool assets to, persons so engaged.

The proposed rules also would take into account arrangements in which pools use trading managers to direct their trading.[33] The term "trading manager" is defined in proposed Rule 4.10(j) as any person, other than the pool's CPO, with authority to allocate pool assets to CTAs or investee pools.

As noted above, the practice of retaining trading managers to select and monitor the performance of CTAs and investee pools to which pool assets will be committed has become commonplace. CPOs seek to maximize pool returns by allocating pool assets based on analysis of the returns achieved by CTAs retained for the pool and investee pools in which the pool has invested as compared to those of other CTAs and investee pools, and in response to changing market conditions. CPOs frequently rely on trading managers to continuously review the performance of CTAs and investee pools and allocate and reallocate pool funds. Because the trading manager, rather than the CPO, conducts the asset allocation activities for the pool, the Commission believes that the principal focus of the performance disclosure for a pool in which a trading manager is responsible for allocating the assets should be on the trading manager, rather than the CPO. Thus, when a pool has a trading manager, the trading manager's performance would replace that of the CPO.

With respect to CTAs, the proposed rules would require disclosure of the past performance of CTAs only where they manage twenty-five percent or more of the pool's futures and commodity option trading and thus would constitute "major CTAs," as defined in proposed Rule 4.10(k). The proposed rules also would require disclosure of past performance of investee pools constituting "major investee pools, that is investee pools allocated twenty-five percent or more of the pool's assets. The term "major CTA" would be defined in Rule 4.10(k) to mean a CTA allocated or intended to be allocated twenty-five percent or more of the pool's initial margins for futures contracts and premiums for commodity options. Proposed Rule 4.10(l) would define "major investee pool" as an investee pool allocated or intended to be allocated at least twenty-five percent of the assets of a pool. These definitions are intended to include CTAs or investee pools to whom the CPO of a pool that has not commenced trading intends to make allocations at or above the specified thresholds. Similarly, CTAs and investee pools to whom the CPO of an operating pool intends to reallocate assets such that the allocations will total twenty-five percent or more under the margin or total asset standards also would be included.

To further reduce the volume of performance data contained in the disclosure document, the proposed rules would eliminate the requirement to present performance data with respect to CTAs allocated less than twenty-five percent of the pool's initial margins and commodity option premiums and investee pools allocated less than twenty-five percent of the pool's assets and require only that "adverse" performance be disclosed as to CTAs allocated ten percent or more of the pool's initial futures margins and commodity option premiums and investee pools allocated ten percent or more of the pool's assets. "Adverse performance" would be defined in proposed Rule 4.25(a)(8) as an annual rate of return of one hundred basis points less than the ninety-day Treasury Bill rate on December 31 of the calendar year in which the performance occurred or the termination of any pool pursuant to a loss termination provision. To disclose adverse performance, the CPO would indicate the year in which the performance occurred, the rate of return for that year, and the name of the CPO, CTA or investee pool responsible for the performance. An indication of adverse performance would be required to be given for the pool's CPO (where the pool had a trading manager whose performance was disclosed in-lieu of that of the CPO), any trading principal of the CPO or trading manager whose performance was not otherwise disclosed, any CTA, other than a major CTA, allocated at least ten percent of the pool's initial futures margins and commodity option premiums and any investee pool, other than a major investee pool, allocated at least ten percent of the assets of the pool offered and the trading principals of major CTAs and the CPOs of major investee pools that have no prior operating history. Proposed Rule 4.25(c)(3)(iii) would permit CPOs to provide capsule performance in lieu of giving an indication of adverse performance.

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[32] The lack of prior trading history of the specified persons would be indicated by legends set forth in the rule.

[33] Trading managers are CTAs and are required to be registered as such.

Comment is requested concerning the proposed treatment of CTA and investee pool performance, including the definitions of major CTA and major investee pools. In particular, commenters may wish to address whether use of a twenty-five percent of futures margin or commodity premium benchmark as compared to twenty-five percent of total assets adequately reflects the relative risks of direct futures trading as compared to trading through vehicles which limit the risk of loss to the initial investment. Comment also is requested as to the definition of adverse performance, in particular, as to whether any additional benchmarks for identifying whether past performance is sufficiently "adverse" to warrant disclosure would be appropriate. For example, should the adverse performance definition be revised to include a one-month draw-down exceeding a specified percentage, e.g., twenty-five percent, of account equity traded pursuant to the trading program under which the CTA will trade for the offered pool.

4. Past Performance Disclosure in CTA Disclosure Documents

CTA disclosure documents would be required to include the past performance of the CTA and its trading principals. The past performance of the program offered would be required to be disclosed in the full format currently required. For other programs, the CTA would be required to use the capsule format used by CPOs to present CTA past performance in pool disclosure documents.

5. Updating Past Performance Records

Concurrently, Rule 4.22(a) is proposed to be revised by adding paragraph (a)(4) to require periodic account statements to include the names of all of the pool's CTAs and investee pools regardless of the amount of pool assets allocated to them. In addition, to provide a ready means of presenting the performance of newly added major CTAs and investee pools, account statements would be required to include the past performance of all CTAs and investee pools that are major CTAs and major investee pools as of the date of the statements and whose performance was not previously disclosed. Use of account statements to update major CTAs' and investee pools' performance records would provide a convenient means for CPOs to amend pool performance disclosures. In the event that the pool acquired a new major CTA or investee pool whose past performance had not previously been disclosed, the CPO would be required to notify pool participants of such event and provide the relevant performance records as required by proposed Rule 4.26(c) (current Rule 4.21(b)),[34] within twenty-one calendar days after the CPO knows or should know of this occurrence, whether by way of the account statement (if this would provide timely notice under the twenty-one day requirement) or by other similar means.

6. Time Period for Which Past Performance Disclosure Would be Required

Current Rule 4.21 generally requires past performance to be presented for a three-year period. However, the Commission is aware that some registrants nonetheless include longer performance periods in their disclosure documents for marketing purposes. The Commission believes that requiring performance to be disclosed for a period longer than three years will have the benefit of making performance disclosures more uniform and will provide a better picture of the evolution of performance over time, including positive and negative fluctuations in returns. In addition, under the proposed summary format for performance disclosure, lengthy tables to present performance data would not be required. Consequently, adoption of a five-year disclosure period would not result in any significant increase in the volume of performance disclosures. Accordingly, the Commission is proposing to increase the minimum time period for which performance would be disclosed from three to five years. CPOs may continue to provide additional performance disclosures provided the performance is calculated in compliance with proposed Rule 4.25 and is included in the document following the required performance disclosures as required by proposed Rule 4.24(v) for information voluntarily provided.

A summary table of the proposed past performance disclosure requirements follows.

SUMMARY OF PROPOSED AMENDMENTS TO PERFORMANCE DISCLOSURE

Pools with three or more years history	Performance of pool offered for up to five calendar years and year-to-date ("YTD"), with monthly rates of return ("RORs").
Pools with less than three years history	Performance of pool offered for life of pool (monthly RORs); statement if pool has no history. Performance of CPO's or trading manager's other pools and accounts (annual RORs). If CPO or trading manager has less than three years history in trading same type of pool, performance of its principals (annual RORs). Statement if no prior trading history of CPO or trading manager and its principals.

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[34] Rule 4.21(b) (proposed to be renumbered as 4.26(c)) sets forth the requirements for amending pool disclosure documents to reflect a material change in the document.

SUMMARY OF PROPOSED AMENDMENTS TO PERFORMANCE DISCLOSURE—Continued

	Performance of major investee pools ("IPs") (allocated at least 25% of pool assets) and major CTAs (allocated at least 25% of futures margins and option premiums). Statement if no prior history. Unless performance otherwise disclosed, indication of adverse performance of CPO, CPO's or trading manager's trading principals and IPs allocated 10% or more of the pool's assets and CTAs allocated 10% or more of the pool's futures margins and option premiums.

7. Composite Performance Presentations

Rule 4.21(a)(4)(iv) currently permits the performance of pools operated by each person for whom performance is required to be disclosed to be presented on a composite basis provided that the performance of the pool offered is separately disclosed, the CPO describes how each composite was developed, and the composite is not misleading. Rule 4.31 also permits composite presentation of the performance of accounts directed by the CTA and each of its principals provided that material differences among the accounts and the manner in which the composite was developed are described.

Composite presentations have the obvious advantage of reducing the volume of past performance data presented. However, composite presentations raise a number of regulatory concerns precisely because they supplant individualized presentations of potentially quite different types of pools and trading programs and may smooth or camouflage actual rates of return. Composite results not only fail to reflect differences among the pools and accounts whose results are presented but also merge potentially disparate trading results into average trading results and thus fail to reflect the actual dispersion of returns as well as the volatility of individual pools and accounts. For these reasons, the Commission considered prohibiting the use of composite performance data for pools as well as accounts.

The Commission has carefully considered the benefits and disadvantages that may accrue from the use of composites and is proposing an approach designed to realize the benefits of reducing the volume of performance data created by the use of composites while reducing the potential for misleading result presentations. Under the proposal, past performance data for the pool offered and pools similar to the pool offered would be required to be separately disclosed. Pools of a different type from the pool offered would be permitted to be presented in composites with other pools of the same type, provided that such presentations would not be misleading. Pools would be considered to be of a different type or category if they differed in material respects. The proposed rule delineates several types of material distinctions among pools for this purpose, including the following: Pools privately offered pursuant to Regulation D of the Securities Act and public pools; pools traded with materially different leverages; limited risk pools and non-limited risk pools; pools using different commodity or trading methodologies; and multi-advisor pools[35] and non-multi-advisor pools.

A pool could be included in a composite with another pool only if both pools were of the same type with respect to each of these categories. For example, a publicly offered non-multi-advisor pool could not be included in the same composite as a privately offered non-multi-advisor pool and two limited risk pools that used different trading programs or materially different degrees of leverage could not be included in the same composite. Moreover, there may be instances in which even composites of pools of the same type may be misleading, such as where differences between the trading results of the pools are so great that a composite would materially distort their results. For example, two publicly offered multi-advisor pools with the same CTAs could show widely disparate results unless each CTA were allocated substantially the same portion of each pool's assets. Also, two single-advisor pools with different CTAs may achieve very different results. The proviso in proposed Rule 4.25(a)(3)(ii) that results may be presented in composite form "unless such presentation would be misleading" is intended to assure that composites are carefully reviewed to protect against any material distortion that may result from these types of situations.

Proposed Rules 4.25(a)(6) and 4.34(a)(2) would require that records substantiating the performance data set forth in CPO and CTA documents, respectively, and documenting the underlying calculations be maintained in accordance with Rule 1.31. Naturally, this requirement also applies with respect to composite presentations. Pursuant to proposed Rule 4.25(a)(3)(ii), a CPO must be prepared to justify the inclusion in a composite of the pool results contained therein.

To present capsule performance of pools in a composite, the CPO would name all pools included in the composite, set forth the categories of these pools (which, as discussed above, would be the same for each pool in the composite), including at a minimum the categories specified in proposed Rule 4.25(a)(3)(iii), and specify the dates on which each pool commenced trading. The aggregate gross capital subscriptions would be the total subscriptions for all pools in the composite. The draw-down figures would be the worst experienced by any one of the pools included in the composite and the rate of return would be the average rate of return for all pools included. The sample capsule past performance presentation table set forth above following the discussion on capsule performance includes an example of performance presentation for pools (pools A and B, in the example) whose performance is disclosed in composite form.

The Commission requests comment as to whether the pool categories delineated in proposed Rule 4.25(a)(3)(iii) relating to composite presentations are appropriate for purposes of limiting composite presentations and as to whether any additional categories of pools should be identified for this purpose. Comment is also requested as to the costs and benefits of a general requirement of separate rather than composite presentation of pool performance in lieu of a qualified approach of the nature proposed.

Proposed Rule 4.34(a)(5) would permit CTAs to include in a composite all accounts traded pursuant to the same trading program, provided that such a presentation would not be misleading and provided that the CTA describes how the composite was calculated. The term "trading program" would be defined in the rule as "a trading strategy differentiated from others by commodity trading methodology, degree of risk or degree of leverage." Comment is requested as to the necessity and feasibility of providing a more detailed definition of the term "trading program" or additional guidance as to how trading programs can be differentiated.

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[35] Proposed Rule 4.10(h) would define the term "multi-advisor pool" as a pool in which no CTA is allocated twenty-five percent or more of the pool's aggregate initial margin and premiums for futures and commodity option contracts and no investee pool is allocated twenty-five percent or more of the pool's assets.

8. Proprietary Trading Results

Use of proprietary trading results in soliciting customer accounts is a practice which has long been of concern to the Commission. CPOs and CTAs may trade proprietary funds for a variety of purposes, including to test a new trading strategy before implementing it for customer funds or to establish a track record prior to trading customer funds. However, proprietary accounts may be traded in a different manner, for example, more aggressively, using higher leverage and assuming greater risk, than customer accounts. Also, proprietary accounts are usually not subject to the same fee schedule as customer accounts. Naturally, no management or incentive fee would apply where a CTA traded its own account, and clearing fees may be waived or reduced if the account is cleared by an affiliate. In addition, where proprietary and customer assets are combined for purposes of performance presentations, the total amount of assets under management is inflated and conceals the actual amount of customer funds being traded. For these reasons, proprietary trading results may, in many cases, be of little relevance to a prospective pool participant or CTA client and actually misleading in others.

Currently, the Commission's rules do not specifically address the use of proprietary trading results in disclosure documents. However, in reviewing disclosure documents, because the rules require performance of "directed accounts" and because of the prohibition against misleading disclosures, Division staff have advised that any proprietary trading results provided must be clearly labeled as such and presented in a separate table to reduce the potential for misleading investors. The staff also has required that if fees, expenses, commissions, margin-to-equity ratios, or any other item pertaining to the proprietary trading is materially different from that relevant to the trading program offered to clients, the registrant must "pro forma" such items to correspond to those in the program offered.

In reviewing the Part 4 rules, the Commission considered prohibiting the use of proprietary results in CPO and CTA disclosure documents given the potentially misleading nature of such presentations and their at best marginal relevance in the non-proprietary trading context. However, the Commission is aware that proprietary trading results may be the only performance results available to some new traders to present to customers as evidence of trading experience. Accordingly, rather than prohibiting disclosure of proprietary trading results, the Commission is proposing to permit such disclosure under appropriate restrictions. Under proposed Rule 4.25(a)(9), pools and accounts in which the pool operator, trading manager, CTA or other person providing services to the pool owned or controlled fifty percent or more of the beneficial interest could not be included in disclosure documents unless prominently labeled as such and set forth following all required performance and non-performance disclosures. The requirement that proprietary results follow all required disclosures, rather than just the required performance disclosures, would reflect the peripheral and potentially misleading nature of proprietary trading results and reduce the potential for confusion of proprietary and customer trading results.[36]

9. Pro Forma, Hypothetical and Extracted Results

The Commission also recognizes the potential for inappropriate use of certain other types of performance data. These include hypothetical, pro forma and extracted results. Hypothetical results are results calculated based upon the application of a given program to historical market prices and purport to present results that could have been obtained in trading a particular program during the specified historical period. Thus, hypothetical results are based on hindsight and can be readily manipulated. Rule 4.41 requires that any presentation of simulated or hypothetical trading results be accompanied by a specified cautionary statement describing the limited value of such results. In its rule submission, the NFA notes that a number of NFA disciplinary cases have involved NFA members who advertise hypothetical results to solicit unsophisticated customers. When the trading program is unsuccessful and causes substantial customer losses, the program is abandoned in favor of a new program for which hypothetical results, based on hindsight, are presented. The actual performance of customers whose accounts were traded under the prior program may never be disclosed.

Pro forma results present trading results with adjustments to reflect certain factors, such as a particular fee schedule or degree of leverage, to permit easier comparison with other types of results. In its rule submission, the NFA notes that in some instances the use of pro forma results may have some of the same limitations as hypothetical results. For example, some CPOs may use pro forma data to present results that a multi-advisor pool could have achieved had assets been allocated differently among CTAs than occurred in actuality As the NFA Special Committee concluded, "[t]his use of pro forma results reflects the same sort of hindsight that hypothetical results do and invites the same sort of abuse."

Extracted performance results isolate a single component of a trading strategy for presentation to customers, and although based on actual results, are subject to manipulation as they may disproportionately emphasize a small portion of the overall strategy.

Although the Commission believes that the use of pro forma, hypothetical and extracted results must be closely scrutinized, it has determined not to prohibit them at the present time. Instead, like other disclosures voluntarily provided, the disclosure of these types of results would be subject to such restrictions as may be imposed under the rules of a registered futures association and to the Commission's general antifraud prohibitions. NFA's proposed Compliance Rule 2–29(c) would strictly limit the use of hypothetical results in promotional material, except in promotional material directed exclusively to qualified eligible participants, as defined in CFTC Rule 4.7(a)(1)(ii). NFA's proposed interpretation of Compliance Rule 2–13 would permit pro forma performance histories solely for the purpose of adjusting performance presentations to the same fee structure as that of the pool or program offered. No pro forma results which reflect a hindsight analysis, such as to show results a multi-advisor pool could have achieved using a different allocation of assets among CTAs, would be permitted. Extracted results would only be permitted to be presented based on the percentage of net asset value actually committed to the particular component extracted.

10. Voluntary Performance Disclosures

Pursuant to proposed Rule 4.24(v), disclosures, including performance disclosures, other than those required by CFTC rules must follow all relevant required disclosures in the disclosure document[37] and may not be misleading in their content or presentation or inconsistent with required disclosures.[38] Performance disclosures voluntarily provided could have misleading effects if favorable performance data are given undue prominence. For example, if the performance of two pools other than the offered pool operated by the CPO were voluntarily provided, it may be misleading to show the favorable performance of Pool 1 but not the negative performance of Pool 2 or to show the performance of Pool 1 in capsule format and that of Pool 2 in full format. It may also be misleading to show the performance of a pool in capsule format for year one and in full format for year two or to show the pool's performance for 1991 and not 1992. Generally, inclusion of voluntarily provided performance data should be made on a result-neutral basis that results in inclusion of all similar data. For example, the past performance of two CTAs allocated an equal portion of a pool's assets should either be included or omitted, as should the performance of the CPO's other pools.

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[36] The NFA Special Committee also reached the conclusion that proprietary results should be displayed separately and labeled as such and that adjustments for fee differentials and other differences should be made.

The Commission also notes that the practice of advertising the performance of a particular CTA with an excellent track record to attract prospective participants and shortly thereafter reallocating pool assets to another CTA, a practice commonly referred to as "bait-and-switch," is misleading and that performance voluntarily provided for this purpose is prohibited under general antifraud standards.

11. Cautionary Legends

The proposed rules would continue to require the inclusion of certain legends alerting pool participants and prospective participants to the lack of experience of the CPO (or trading manager), the pool's CTAs and their principals. However, these legends have been revised and substantially streamlined. Under current Rule 4.21, these legends are required to recite the relevant performance disclosure requirement. For example, Rule 4.21(4)(i)(B) requires a statement that the CFTC requires disclosure of the performance of the pool offered and of other pools operated by the CPO and its principals and that neither the CPO nor its principals have any prior performance history.[39] The proposed rules would eliminate the prescribed statements concerning CFTC rules, with the effect of deleting the bulk of the bold-faced disclosures and of focusing attention upon the primary point to be conveyed, *i.e.*, the fact that the CPO and its principals have not previously operated any commodity pools. Thus, the legend relating to the lack of trading history of a pool would read: "THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY",[40] and the legend relating to the lack of experience of the CPO and its trading principals would read: "NEITHER THIS POOL OPERATOR NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS."[41] Similar legends would be required, where applicable, with respect to trading managers and major investee pools. To further reduce the bulk of these disclosures, where several legends may be required, the proposed rules provide an alternate legend consolidating the several statements that would otherwise be required. For example, the proposed rules would require a CTA disclosure document to disclose, if true, the lack of experience of the CTA and its principals. If the CTA had no prior experience, the following legend should be included: "THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS." The following legend would be used for trading principals: "NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS." If neither the CTA nor any of its principals had prior trading experience, rather than displaying these two separate legends, the following single sentence would be included: "NEITHER THIS TRADING ADVISOR NOR ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS." These proposals are designed to reduce disclosures that complicate and lengthen disclosure documents while preserving disclosures that may be important to prospective investors.

A legend indicating that "PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE" would be required to precede any performance presentation, whether required or given voluntarily.[42]

12. Order of Disclosures

For pools with an operating history shorter than three years, the performance of the pool offered would be required to be the first performance record presented in the disclosure document. Performance data for pools of the same category as the pool offered would be required to appear after the performance history of the pool offered and to be presented on a pool-by-pool, that is non-composite, basis. Pools of a different category from the pool offered would be required to follow the performance of pools of the same category as the pool offered. As discussed above, for purposes of applying the requirement that composite presentations be used only for pools of the same category, the rule would identify a number of categories of pools.

The Commission believes that the streamlined past performance disclosure requirements should substantially increase the clarity and readability of past performance disclosures.

The Commission requests comment on all aspects of Rule 4.25 and, in particular, on the adequacy of the summary performance format to provide a basis upon which a prospective pool participant may make an informed judgment with respect to past performance results; whether a three-year history is a sufficient basis for eliminating any requirement for disclosure of past performance other than that of the pool offered; and whether the ten percent allocation thresholds for major CTAs and investee pools, below which no performance disclosures would be required, is appropriate. The Commission also requests comment as to whether past performance presentations would provide more meaningful information if they were required to include rates of return on a risk-adjusted basis, that is, reduced by the relevant Treasury Bill rate or comparable interest figure, or to break out trading results from passive interest income.

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[37] As noted above, proprietary trading [illegible] would be required to follow all required disclosures.

[38] See general discussion on voluntary [illegible], *infra*.

[39] The entire legend reads as follows: "THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THE OPERATOR OF A POOL THAT HAS TRADED COMMODITY INTERESTS FOR LESS THAN 12 MONTHS TO DISCLOSE THE ACTUAL PERFORMANCE RECORD OF THE POOL FOR ITS ENTIRE OPERATING HISTORY AND THE ACTUAL PERFORMANCE RECORD OF EACH OTHER POOL OPERATED BY THE POOL OPERATOR AND ITS PRINCIPALS. YOU SHOULD NOTE THAT THIS POOL OPERATOR AND ITS PRINCIPALS PREVIOUSLY HAVE NOT OPERATED ANY OTHER COMMODITY POOL."

[40] Proposed Rule 4.25(c)(1)(ii).

[41] Proposed Rule 4.25(c)(2)(iii). Similarly, the legend concerning major CTAs who have never directed accounts would read: "(name of CTA), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY AUTHORITY OVER (percentage of the pool's aggregate initial futures margin and commodity option premiums allocated to that CTA) OF THE POOL'S DIRECT FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS."

[42] Numerous studies have shown the general lack of predictive value of past performance. See, e.g., Irwin, *The Predictability of Managed Futures Returns: Evidence from Multiple CTA Public Commodity Pools*, Working Paper Version, Ohio State University, Department of Agricultural Economics and Rural Sociology (April 1992) (unpublished). See also *Futures Pools' Returns Are a Far Cry From Their Brochures and Prospectuses*, Wall St. J., Oct. 2, 1992.

B. Section 4.24—Required General Disclosures

Under the proposal, non-performance disclosure requirements would be set forth in Rule 4.24.

1. Table of Contents and Order of Required Information

As noted above, a primary objective of this proposal is to foster clarity and comprehensibility in the disclosure of relevant information to prospective pool participants. To this end, in addition to eliminating certain required disclosures, the Commission is proposing that certain information be presented in a required sequence which would be specified in proposed Rules 4.24(a) through (d). Like current Rule 4.21, proposed Rule 4.24 would require that a cautionary statement, *i.e.*, a statement that the CFTC has not passed upon the merits of the pool investment or the adequacy of the disclosure document, and any other information required under any other applicable federal or state laws and regulations, appear on the cover page of the disclosure document. The risk disclosure statement specified in Rule 4.24(b) would be required to be set forth immediately after these disclosures. The next item in the disclosure document would be a table of contents.[43] Prior to any detailed disclosures with respect to the pool and persons involved in operating and trading the assets of the pool, in what would constitute the "forepart" of the disclosure document, a prospective participant would find very basic information concerning the pool.[44] This information would include the name and address of the pool and CPO; the type of pool being offered, *i.e.*, whether the pool is privately offered pursuant to section 4(2) of the Securities Act of 1933, a multi-advisor pool[45], or a limited risk pool[46]; a statement whether the pool is continuously offered or the closing date of the offering; the date of the disclosure document; and the "break-even point" for the pool, that is, the trading profit that the pool must realize in its first year for a participant to recoup its initial investment. The break-even point would provide a simple illustration of the costs of investing in the pool and facilitate comparisons among pools.[47]

The Commission considered whether a particular order for all required information should be mandated in order to "standardize" the entire format of disclosure documents but determined to propose only the limited sequence requirements discussed above at this time. However, the Commission requests comment on the appropriateness and desirability of mandating that all required information be presented in a specified order to foster clarity in and comparability of disclosure documents, ease of regulatory review, and development of compliance guidance or instructions.

2. Voluntary Disclosures

To address concerns that in many cases the disclosure process fails to achieve its intended purpose due to the high volume of information included in the disclosure document, the Commission is proposing a format for disclosure documents under which "voluntary" disclosures, *i.e.*, those not required by Commission rules[48] or those of other regulators, would be required to be placed in the disclosure document after all relevant required disclosures. Proposed Rule 4.24(v) would require all information, other than that required by the Commission, the antifraud provisions of the Act, and any federal or state securities laws and regulations, to appear following the related required disclosures. Such "voluntary information" could not be misleading in content or presentation or inconsistent with required disclosures. In addition, voluntary information would be subject to the antifraud provisions of the Act and the regulations thereunder and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act. This format is designed to accommodate the apparent desire of some CPOs and CTAs to include in disclosure documents information that is not required under the Commission's rules or those of other regulators, while assuring that core disclosures are given due prominence. Naturally, CPOs and CTAs would continue to be subject to the antifraud prohibitions of sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o*.[49] with respect to all disclosures, including disclosures voluntarily provided.

3. Investee Pools

The proposed disclosure framework specifically addresses disclosures concerning investee pools. As discussed in the performance section, for purposes of past performance disclosures, investee pools would be treated comparably to CTAs, *i.e.*, the scope of performance disclosure required would be based on the amount of assets of the offered pool committed to the investee pool. However, a different benchmark for applying the twenty-five percent (as used in the major investee pool definition) and ten percent (for adverse performance disclosure to be required) thresholds is used for investee pools in light of the fact that investments in other pools generally expose the pool only to loss of the initial investment and that the full amount of the investment is required to be paid at the inception of the investment. The relative importance of investee pools to prospective pool participants is thus more appropriately determined by reference to the proportion of the pool's total assets invested in the investee pool. The proposal would streamline other investee pool disclosures to obviate the need for CPOs to substantially incorporate in the document the contents of each investee pool's disclosure document.[50] Nonperformance disclosure requirements relating to investee pools also would be tailored to take into account the relative importance of the investee pool to the offered pool, as measured by the amount of assets of the pool offered allocated to it. Thus, no disclosures would be required for investee pools allocated less than ten percent of the assets of the pool offered and disclosures with respect to other investee pools would be limited based on the proportion of the pool's assets allocated to them. Specifically, with respect to each investee pool allocated at least ten percent of the assets of the pool offered, the CPO also would be required to disclose its name and that of its CPO and its principals and any conflicts of interest on the part of the investee pool's CPO in respect of the offered pool.

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[43] Rule 4.21 currently does not require a table of contents. However, most disclosure documents reviewed by the Division contain such a table. Further, Form S–1, the form most frequently used to register pool offerings with the SEC, requires "a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each section or subdivision begins." See Item 502(g) of Regulation S–K, 17 CFR 229.502(g), incorporated by reference into Item 2 of Form S–1, 17 CFR 239.11. The Commission believes that a table of contents should contribute to making the disclosure document "user-friendly".

[44] The cover page and forepart of CTA disclosure documents would be organized in a similar fashion and a table of contents would also be required.

[45] Proposed Rule 4.10(h) would define a "multi-advisor pool" as a pool in which no CTA is allocated twenty-five percent or more of the pool's aggregate initial futures margins and commodity option premiums and no investee pool is allocated twenty-five percent or more of the pool's total assets.

[46] Proposed § 4.10(i) would define the term "limited risk pool" as a pool designed to limit the loss of the initial investment of its participants.

[47] The break-even point is discussed in greater detail in the fees and expense section, *infra*. The break-even point would be required to account for hidden costs such as costs associated with investments in investee pools. In multi-advisor pools the potential consequences of incentive fees being calculated advisor-by-advisor should also be a disclosed risk.

[48] CFTC-required disclosures include information required by Rules 4.21(h) (proposed to be renumbered as Rule 4.24(w)) for CPOs and 4.31(g) (proposed to be renumbered as Rule 4.33(*o*) for CTAs. These rules require CPOs and CTAs to disclose all material information to existing and prospective pool participants and clients even if the information is not specifically required by Commission rules.

[49] Generally, section 4b of the Act prohibits fraud in connection with the making of any contract of sale of any commodity for future delivery. Section 4*o* of the Act prohibits CPOs, CTAs and their associated persons from employing any device, scheme, or artifice to defraud a pool participant, prospective pool participant or client and from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon such participant or client. In addition, CPOs, CTAs and their associated persons are precluded from representing or implying that they have been sponsored, recommended or approved by the United States or by any agency or officer thereof.

With respect to major investee pools, *i.e.*, those allocated twenty-five percent or more of the assets of the offered pool, the CPO would be required to disclose the business background of, material litigation against, and any ownership in the pool offered on the part of its CPO and its principals. In addition, the use of proceeds, risk factors, fees and expense, and redemption sections of the document would call for specific information relative to investments in investee pools. Risk disclosure relative to investee pools would be required because investments in investee pools may create both the risks inherent in the investee pool's own investments and liquidity risks due to restrictions upon redemption of the investment in the investee pool. Fees and expenses may accrue at each level of a multi-tier structure and should be disclosed. Investments in investee pools with redemption periods different from those of the pool offered or with minimum "lock-in" provisions[51] may affect the ability of that pool to promptly honor redemption requests from its participants.

The Commission requests comment concerning the proposed treatment of investee pools. In particular, commenters are invited to address any special public policy or disclosure considerations presented by tiered investment structures by means of which a commodity pool can, in effect, appropriate the value of a second fund's management by investing all or a portion of its funds in the second fund. The Commission also requests comment concerning whether any additional protections, other than disclosure of applicable fees, are appropriate in light of the "layering" of fees that typically occurs at each level of a fund of funds structure.

4. Risk Disclosure Statement

Rule 4.21 currently requires that disclosure documents include a prescribed bold-face statement alerting prospective pool participants to the risks involved in participating in a pool. This statement does not specifically address the risks of trading foreign futures or foreign option contracts. The risks attributable to foreign futures and foreign options were originally required to be addressed by a special disclosure statement, set forth in part 30 of the Commission's regulations, which generally governs transactions in foreign futures and foreign options.[52] Thus, a CPO offering a pool expected to trade foreign and domestic futures or options was required to include in the disclosure document the Rule 4.21 risk disclosure statement, which does not refer to foreign futures or options, and the Rule 30.6 foreign futures and options risk disclosure statement. However, Rule 1.55, the basic risk disclosure requirement applicable to FCMs and IBs opening accounts for domestic futures and option contracts, was recently amended to consolidate the required disclosures concerning foreign futures and options into the domestic risk disclosure statement, and the separate Rule 30.6(a) disclosure statement was eliminated.[53] Consequently, under the revised Rules 1.55 and 30.6, CPOs and CTAs offering pools and accounts, respectively, which may engage in foreign futures and option transactions would be required to include the new consolidated Rule 1.55 risk disclosure statement as well as the part 4 risk disclosure statement in the disclosure document.

The Commission is proposing to address the potential for duplicative disclosure created by the recent rule revisions and to eliminate the necessity for providing two prescribed risk disclosure statements by revising the part 4 risk disclosure statements for CPOs and CTAs to address the risks of foreign as well as domestic transactions. Rule 30.6(b) would be revised to cross-reference the part 4 statement. In addition, the terms "domestic" and "foreign" previously used to refer to contract markets or exchanges in foreign jurisdictions are proposed to be replaced with the terms "United States" and "non-United States" to avoid confusion in the context of offerings in non-United States jurisdictions to non-United States participants for whom the term "foreign" does not mean "non-United States".[54] Rule 1.55 would also be amended to provide that pools need not be treated as customers for the purposes of delivery of the risk disclosure statement.

5. Business Background

Rule 4.21(a)(2) currently requires disclosure of the business backgrounds of the pool's CPO and CTA, and their principals. This disclosure requirement would be streamlined by: (1) Eliminating the requirement to disclose business backgrounds of CTAs except those of major CTAs, *i.e.*, CTAs allocated at least twenty-five percent of the fund's futures margins and commodity option premiums; and (2) limiting the requirement to disclose business backgrounds of principals[55] of CPOs and CTAs to those principals "who participate in making trading or operational decisions for the pool or who supervise those so engaged."[56] Comment is requested as to whether the business backgrounds of all principals, even those who hold a passive ownership interest in the CPO, should continue to be required to be disclosed. The business backgrounds of trading managers, who represent a subset of CTAs, and their principals who participate in making trading or operational decisions or supervise persons so engaged would also be required to be disclosed.

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[50] See note 20 *supra* and accompanying text.

[51] Certain pools lock in initial investments for a specified period before allowing any redemptions. There are no rules requiring availability of redemption of pool interests in very short timeframes as for investment companies, hence the added importance of volatility disclosure.

[52] The Rule 30.6(a) statement was required to be provided by FCMs and IBs to clients opening foreign futures or foreign option accounts and, pursuant to Rule 30.6(b), by CPOs and CTAs trading foreign contracts for their pool or clients.

[53] 58 FR 17495 (April 5, 1993).

[54] This discussion also applies generally to CTA disclosure documents.

[55] Pursuant to current Rule 4.10(e), the term "principal" includes, with respect to an entity, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, to exercise a controlling influence over the activities of the entity. Holders and beneficial owners of at least ten percent of the CPO or CTA and persons who contributed at least ten percent of the CPO's or CTA's capital are also included.

[56] All principals would continue to be required to be named in the disclosure document.

6. Principal Risk Factors

As noted above, current Rule 4.21(a)(17)(ii) requires the inclusion, at the front of the disclosure document, of a "boiler-plate" risk disclosure statement that describes generically the risks of pool investments. Proposed Rule 4.24(g) would require, in addition to this required disclosure, a discussion designed to address risk factors specific to the pool offered. This discussion would address the volatility of the pool investment as compared to investments in other types of trading vehicles and other risks relating to the particular trading program to be followed, such as risks resulting from concentration of investments in particular commodities or contracts or from trading foreign contracts that are subject to currency rate fluctuations. Risks relative to transactions in off-exchange instruments, e.g., counterparty creditworthiness risks,[57] or to the lack of relevant experience of the CPO or CTAs should also be addressed. The Commission believes that a succinct "plain English" discussion of the risks of the investment being offered would be highly material to the prospective participant's evaluation of the proposed investment and that this type of disclosure warrants particular attention when complex over-the-counter transactions are contemplated. Establishment of an express requirement for disclosure of principal risk factors essentially codifies disclosures that would likely be required under the specific requirements of existing rules or as material information.[58]

The Commission welcomes comment as to whether additional guidance should be given in the rule as to the types of risk factors that should be discussed and as to any specific factors that should be identified in this context

7. Use of Proceeds

Under current Rule 4.21(a)(1)(viii), the pool operator must describe the types of commodity interests that the pool is expected to trade and any restrictions or limitations on such trading established by the CPO. Current Rule 4.21(a)(9) requires a description of the manner in which the pool will fulfill its margin requirements and of the form in which non-margin funds will be held The nature of non-cash items must be described and the person to whom any income generated by such items will be paid must be identified. Taken together, Rules 4.21(a)(1)(viii) and (a)(9) call for information concerning all types of trading and investments in which the pool is expected to engage. As a result, under current rules, CPOs generally provide a description of the overall trading activities of the pool, such that the full range of transactions, whether in securities, commodity interests or other types of interests, is disclosed.

Under the proposal, current Rules 4.21(a)(1)(viii) and 4.21(a)(9) would be consolidated into Rule 4.24(h) under the caption "Use of Proceeds"[59] and revised to better reflect changes in the nature of funds management. Proposed Rule 4.24(h) would require the description of the pool's trading[60] to include not only transactions in commodity interests but also any other types of interests in which the pool is expected to trade. With respect to pool funds that are not deposited as margin or held in cash or cash equivalents, the proposed rule would require disclosure of the nature of such property, for example, whether it consists of securities listed on a national securities exchange, bonds, commercial paper or interests in commodity pools, whether such property is subject to state or federal regulation or to regulation by a foreign government, and any investment rating applicable to such property. The proposed rule also would require the CPO to indicate the type of custodian, e.g., bank, broker-dealer or other entity, which will hold property not deposited as margin or option premiums and the jurisdiction where held, if other than the United States. The Commission believes that the proposed use of proceeds provision should provide a more coherent statement of the matters called for by current requirements in a manner that is consistent with current practice.

8. Fees and Expenses

Rule 4.21(a)(7) currently requires a description of the expenses that the CPO knows or should know have been incurred in the past year or will be incurred in the current year. Expenses required to be disclosed include, without limitation, fees for management, trading advice, brokerage commissions, legal advice, accounting and organizational services. Rule 4.21(a)(14) requires disclosure of fees and commissions paid in connection with solicitations for the pool. Proposed new Rule 4.24(i) would combine the requirements of Rule 4.21 (a)(7) and (a)(14) to provide in a single section of the disclosure document a complete discussion of costs incurred by the pool for all purposes.

The proposed provision relating to fees and expenses (Rule 4.24(i)) requires a detailed description of fees and expenses, including certain fees and expenses that are not specifically enumerated in current Rule 4.21 but that constitute material disclosures and are thus required to be disclosed.[61] Thus, clearance fees and fees paid to national exchanges and self-regulatory organizations, incentive fees, including any disproportionate share of profits allocated to the CPO, *i.e.*, a right of the CPO to receive a greater than pro-rata share of the pool's profits, and fees and expenses incurred as a result of investments in investee pools and other investment vehicles or to fund the guarantee of a limited risk pool, would be required to be set forth specifically in the table. In addition, the proposed rule would clarify that disclosure of fees paid in connection with solicitations for the pool must include trailing commissions as well as any type of benefit that may accrue to persons engaged in such solicitations.

Expenses, fees and commissions are assessed based on various factors. For example, brokerage fees are assessed based on a round-turn commission, management fees may be based on the net asset value of the pool's assets, incentive fees on trading profits, and sales commissions may be charged as a percentage of the proceeds of the offering. A description of each separate fee and expense may not, however, convey a clear understanding of the actual portion of each pool participation absorbed by fees and expenses. As the risk disclosure statement required by current Rule 4.21(a)(17) indicates, "in some cases, commodity pools are subject to substantial charges for management, advisory and brokerage fees," and "it may be necessary for those pools that are subject to these charges to make substantial trading profits to avoid depletion or exhaustion of their assets."

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[57] These risks may differ materially from those entailed in exchange-traded futures and option transactions, which are backed by clearing organization guarantees, daily marking-to-market and settlement, and segregation and minimum capital requirements applicable to intermediaries Transactions entered directly between two counterparties generally do not benefit from such protections and expose the parties to the risk of counterparty default.

[58] This requirement is consistent with SEC requirements for public offerings and investment company offerings. See, e.g., Item 3 of Form S–1, which requires a discussion of the principal factors that make the offering speculative or one of high risk and Item 4(c) of Form N–1A which requires a brief discussion of the "principal risk factors associated with investment in Registrant, including factors peculiar to the Registrant as well as those generally attendant to investment in an investment company with investment policies and objectives similar to Registrant's."

[59] Captions are proposed to be added to increase ease of reference to the rules.

[60] The proposed rule would also call specifically for a description of the trading program that will be followed.

[61] See note 48.

To foster a better understanding of the nature of those costs and their impact upon the investment, the proposal would require, in addition to a narrative description, a tabular presentation of fees and expenses from all sources setting forth how the break-even point for the pool is calculated ("break-even analysis"). As noted *supra*, the "break-even point" for the pool, *i.e.*, the trading profit that a pool or trading program must realize in its first year to equal all fees and expenses such that a participant or client will recoup its initial investment,[62] would be required to be set forth as a single figure in the forepart of the pool disclosure document, expressed as a percentage of a unit of initial investment. The break-even analysis would provide an explanation, in tabular form, of how the break-even point is calculated, taking into account all fees, expenses and commissions applicable to the pool. The proposal would require the break-even analysis to be prepared in accordance with rules promulgated by a registered futures association pursuant to section 17(j) of the Act. As noted above, NFA has filed with the Commission a proposed interpretation of Compliance Rule 2-13 which would set forth how a break-even point must be calculated and the format in which such calculation must be disclosed.[63] The Commission believes that these proposed requirements with respect to fees and expenses will serve to better codify disclosures required under existing rules and assist readers of disclosure documents in understanding the nature and effect upon investment returns of costs incidental to the offering and operation of the pool. The Commission requests comment as to whether a description of fees and expenses should continue to be required or whether the break-even analysis is sufficient to accurately describe the costs of participation in a pool.

9. Conflicts of Interest and Related Party Transactions

Pursuant to current Rule 4.21(a)(3), a description of any actual or potential conflict of interest regarding the pool on the part of the CPO, CTA, FCM, IB and their principals must be included in the disclosure document. This discussion must include a description of any arrangement whereby the CPO, CTA or their principals may benefit from the maintenance of the pool account with the FCM or from its introduction to an FCM by an IB. Like current Rule 4.21(a)(3), proposed Rule 4.24(j) would require disclosure of any conflict of interest on the part of the pool's CPO and its principals. Subject to the requirement that all material information be disclosed, the proposal would eliminate such disclosure with respect to CTAs allocated less than ten percent of the pool's futures margins and commodity option premiums and investee pools allocated less than ten percent of the pool's assets.[64] The proposed rule also would require disclosure of conflicts of interest with respect to any persons providing services to the pool or soliciting participants for the pool. This provision would encompass certain categories of Commission registrants specified in the existing rule, *i.e.*, FCMs and IBs, as well as any other person providing services to the pool.[65] The Commission believes that the purposes of conflict of interest disclosure are not limited to situations where such conflicts relate to a Commission registrant and that there may be unregulated parties, *e.g.*, a CPO affiliate acting as counterparty to over-the-counter transactions with the pool, as to whom such disclosure may be equally material. Consequently, the Commission proposes to delete the specific reference in the current rule to the pool's FCM and IB and their principals and to substitute more general terminology intended to include but not to be limited to FCMs and IBs. Although the express requirement of disclosure of conflicts of interest on the part of FCM and IB principals would be eliminated, disclosure of such conflicts may be required as material information in specific situations, *e.g.*, where an FCM's majority owner or other controlling person has such a conflict in regard to the pool.

In addition, the current provision requiring the description of carrying broker or introducing arrangements benefitting the CPO or CTA and their principals has been revised to make clear that payments for order flow and soft dollar arrangements must be included. Payment for order flow is a practice whereby FCMs and IBs compensate CPOs and CTAs for directing customers to them. Soft dollar arrangements consist of arrangements whereby customer or pool funds are used to pay for research or other services that benefit the CPO or CTA. Both practices have been of concern to regulators because, among other things, they are often inadequately disclosed.[66]

Separately, under proposed Rule 4.24(k) ("Related Party Transactions"), any material transactions or arrangements for which there is no publicly disseminated price between the pool and any person affiliated with a person providing services to the pool, would be required to be disclosed, including the costs of such transactions to the pool.[67] The Commission believes that this type of disclosure may be viewed as already required in many cases under the general requirement that material information be disclosed. However, given the increasing use of over-the-counter transactions in which pools contract with the pool operator or an affiliate of the pool operator, an express requirement for such disclosure appears warranted.

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[62] This definition would be set forth in Rule 4.10(n).

[63] As set forth in NFA's proposed interpretation of Compliance Rule 2-13, to calculate the break-even point, the CPO would determine, per unit of participation, the amount of fees and expenses expected to be incurred by the pool during its first year of operation and subtract from that amount the amount of interest income expected to be earned by the pool in its first year, to obtain the pool's gross trading profit necessary for the pool to retain its initial net asset value per unit. The CPO would then determine the amount of additional trading profits necessary to offset the incentive fees which the CPO would charge for managing the pool. Finally, the CPO would calculate the total amount of trading income that the pool must earn to equal the initial selling price per unit after one year. This calculation would be required to be presented in tabular form.

[64] Under the general materiality standard, disclosure of conflicts of interest on the part of CTAs and CPOs of investee pools below the ten percent thresholds would be required if, in light of all relevant circumstances, including, for example, the nature and severity of the conflict, such disclosure would be material to prospective pool participants.

[65] However, current Rule 4.21(h) would require disclosure of all material conflicts of interest.

[66] See, e.g., SEC Release No. 34-33026, 58 FR 52934 (October 6, 1993) and *Market 2000, An Examination of Current Equity Market Developments Study V, Best Execution* (Division of Market Regulation, SEC, January 1994).

[67] The purpose of this requirement is illustrated by the events preceding the demise of Stotler Funds, Inc., a wholly-owned subsidiary of Stotler Group, Inc. ("Stotler Group"), a registered FCM. See Complaint, *CFTC v. Stotler Funds, Inc*., Civil Action No. 90 C 4387 (N.D. Ill., July 31, 1990). The defendant, Stotler Funds, Inc., was the general partner and CPO of, among other pools, Compass Futures Fund ("Compass") and Advanced Portfolio Management, Limited Partnership ("Advanced"). The Commission's complaint included allegations that in December 1989, Compass used pool funds in the amount of approximately $4,550,000 (about 80% of its assets) to purchase commercial paper issued by Stotler Group and that Advanced used pool funds in the amount of approximately $1 million (about 10% of its assets) to make a loan to Stotler Group. The disclosure documents of Compass and Advanced did not disclose such uses of pool funds. The limited partnership agreement for Compass specifically precluded the use of pool funds to make loans

10. Litigation

Current Rule 4.21(a)(13) requires disclosure of any material administrative, civil or criminal action within the five years preceding the date of the disclosure document against the CPO, CTA(s), FCM, IB and their principals. Like the current rule, proposed Rule 4.24(1) would require the disclosure of administrative, civil or criminal actions against certain persons involved in operating or trading the pool during the five years preceding the date of the disclosure document. However, this requirement would be substantially simplified. Concluded actions that resulted in an adjudication on the merits in favor of such persons would not be required to be disclosed. In addition, disclosure of the litigation background of FCMs and IBs would be limited as follows. First, with respect to litigation brought by private parties, the proposed rule would provide for the materiality of the action to be determined by reference to the potential financial impact upon the FCM or IB. Specifically, an action would be considered material if it would be required to be disclosed in the notes to the registrant's financial statements prepared pursuant to generally accepted accounting principles ("GAAP"). Generally, under GAAP, certain information regarding litigation must be disclosed if the potential of a financial loss from the litigation is either probable (*i.e.*, likely to occur) or reasonably possible (more than remote but less than likely).[68] Except for events occurring subsequent to the issuance of the latest certified financial statements, under this paragraph, litigation required to be disclosed would already have been disclosed in the FCM's or IB's latest certified financial statements.

Second, the requirement to disclose actions brought by the Commission and other regulatory agencies against FCMs and IBs would be streamlined. Actions brought by the Commission would be treated differently from those brought by other regulatory agencies due to the presumptively greater significance of such actions to an investment decision. All actions brought by the Commission would be considered material other than concluded actions which did not result in fines exceeding $50,000 and did not involve allegations of fraud or other willful misconduct. Actions brought by any other federal or state agency or by a self-regulatory organization, whether domestic or foreign, would be considered material if they involved allegations of fraud or other willful misconduct.[69]

In addition, the proposed rule would eliminate the requirement to disclose litigation against CTAs allocated less than twenty-five percent of the pool's initial futures margins and commodity option premiums and the principals of FCMs and IBs. Of course, as noted above with respect to conflicts of interest on the part of FCM and IB principals, the requirement to disclose all material information may require such disclosure in particular cases. Proposed Rule 4.24(*l*) also requires disclosure of litigation against a pool's trading manager, if any, and its principals, a requirement which is encompassed within the existing requirement for disclosure of litigation against CTAs.

11. Limited Risk Pools

So-called "guaranteed pools," which generally are designed to assure participants the return of their initial investment, have been extensively offered in recent years. Such pools generally commit a significant portion of their assets to interest-bearing instruments, letters of credit or other investments to fund the "guarantee" and correspondingly reduce the level of their futures or other investments. Many "guarantee" structures require that the participant maintain his investment in the fund for a specified period of years in order to realize on the guarantee. Because such structures impose significant costs which limit the potential for futures and other investment-related returns, are often subject to significant conditions, *e.g.*, that redemption rights not be exercised for a specified period of years from the date of the initial investment, and are subject to varying degrees of risk of nonfulfillment due to unforeseen trading losses or other reasons, the use of "guarantee" terminology in pool disclosure documents raises certain regulatory concerns. These concerns relate to such matters as the representations expressly or impliedly made as to the nature and security of the pool investment and the impact of the guarantee structure upon the overall investment. In Advisory 86–1[70], the Division of Trading and Markets set forth certain disclosures that should be made in this context to assure that prospective investors are apprised of material information concerning guarantee structures. These include, for example, statements that a specified percentage of each unit of participation in the pool has been set aside to purchase the guarantee, that redemptions are not available for a specified period and that additional expenses and management fees are charged in connection with the guarantee, as applicable.

Proposed Rule 4.24(*o*) would codify minimum disclosures relevant to limited risk pools. Under the proposal, the term "limited risk pool" would be defined in Rule 4.10(i) to mean "a pool * * * that is designed to limit the loss of the initial investment of its participants." Rule 4.24(*o*) would generally codify Advisory 86–1 by requiring the CPO of a limited risk pool to describe the nature of the limitation on risk intended to be provided, the manner in which the limitation is achieved, including the cost of providing it, the conditions that must be satisfied for participants to receive the benefits of the risk limitation and the circumstances in which the risk limitation becomes operative.[71] CPOs are also reminded of the admonition in Advisory 86–1 that "(a)ny statements that suggest that the risks of futures trading are decreased by reason of this structure have a high potential to mislead or deceive and could result in serious violations of the Commission's regulations and anti-fraud provisions."

12. Other Proposed Changes

Current Rule 4.21 requires certain negative statements to be made in a pool disclosure document where there is no pertinent information to report. A CPO must state, if true, that there are no actual or potential conflicts of interest regarding any aspect of the pool on the part of certain persons, that certain persons do not own any beneficial interest in the pool, that no material litigation occurred within the past five years against the CPO, CTA, FCM, IB and their principals, and that the CPO, CTA, and their principals will not trade for their own accounts. These negative statements would no longer be required.

Proposed Rule 4.21 would permit CPOs to provide prospective participants who are accredited investors as defined in Rule 501 of Regulation D of the Securities Act[72] with a notice of intended offering and term sheet prior to delivery of the disclosure document. This provision should facilitate the offering of pools that qualify for relief from registration under the Securities Act as private offerings.

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[68] See FASB–5 (Accounting for Contingencies) relating to disclosure of contingencies, including litigation.

[69] Litigation disclosures in CTA disclosure documents with respect to FCMs and IBs would be simplified in similar fashion.

[70] [1984–1986 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 23,045 (April 25, 1986).

[71] Proposed Rule 4.24(p), which deals with transferability and redemption, would require a description of restrictions on redemption associated with the pool's investments. The Commission intends that this discussion include a description of any restrictions on transferability and redemption due to use of pool funds to support a guarantee and of any restrictions upon vesting of a guarantee.

[72] 17 CFR Rule 230.501 (1993).

The Commission is requesting comment as to whether there are specific situations in which the streamlined disclosure document proposed herein may not offer adequate protection to prospective and existing pool participants or managed account clients. Further, the Commission requests comment as to whether additional changes to further streamline the requirements of Rule 4.21 and 4.31 and improve the clarity of such disclosures could be made without reducing customer protection and on whether any additional disclosures should be required.

The Commission also requests comment on whether the requirement in current Rule 4.21(d) (proposed to be numbered as Rule 4.21(b)) that a CPO must receive from a prospective pool participant an acknowledgment that the participant has received a disclosure document for the pool continues to be necessary.

C. Section 4.26—Use, Amendment and Filing of Disclosure Documents

Except as follows, the requirements for updating pool disclosure documents would remain substantially unchanged and are proposed to be set forth in Rule 4.26. The Commission is proposing to extend from six to nine months the maximum period between the date on a disclosure document and the date of its use. This would conform the updating requirements of pool disclosure documents to those of Section 10(a)(3) of the Securities Act for public securities offerings.[73] As under current Rule 4.21(b), two copies of each amendment to the disclosure document must be filed within twenty-one calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment. There has been some uncertainty as to whether amendments are subject to the twenty-one day prefiling requirements of current Rule 4.21(g)(1) (renumbered as Rule 4.26(d)(1)). The Commission is confirming that such amendments may be used simultaneously with their filing with the Commission, *i.e.*, not more than twenty-one days after the date on which the pool operator first knows or has reason to know that the disclosure document is materially inaccurate or incomplete.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[74] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[75] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[76]

The amendments proposed herein would reduce rather than increase the requirements of Rule 4.21 for CPOs and the requirements of Rule 4.31 for CTAs. Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that these proposed amendments would not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered CPO or CTA who believes that these rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, ("PRA") 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rule amendments and the associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden Hours per Response: 124.65.
Number of Respondents: 3,924
Frequency of Response: On Occasion.

The burden associated with these specific proposed rules, is as follows:

Average Burden Hours per Response: 8.05.
Number of Respondents: 1,162.
Frequency of Response: On Occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 1

Customer protection, risk disclosure statements.

17 CFR Part 4

Commodity pool operators and commodity trading advisors.

17 CFR Part 30

Foreign futures and foreign options transactions.

17 CFR Part 150

Limits on positions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, and 8a, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6*l*, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24

2. Section 1.55 is proposed to be amended by adding paragraph (a)(1)(iii) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a)(1) * * *

(iii) Solely for purposes of this section, a pool operated by a commodity pool operator registered under the Commodity Exchange Act or exempt from such registration need not be treated as a customer.

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[73] Section 10(a)(3) of the Securities Act requires that when a securities prospectus is used more than nine months after the effective date of the registration statement, information contained therein may not be as of a date more than sixteen months prior to such use if the information is known and can be furnished without unreasonable effort or expense.

[74] 47 FR 18618–18621 (April 30, 1982).

[75] 47 FR 18619–18620.

[76] 47 FR 18618, 18620.

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PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

3. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

Subpart A—General Provisions, Definitions and Exemptions

4. Section 4.10 is proposed to be amended by adding new paragraphs (h), (i), (j), (k), (*l*), (m), and (n) to read as follows:

§ 4.10 Definitions.

* * * * *

(h) *Multi-advisor pool* means a pool in which no commodity trading advisor is allocated or intended to be allocated twenty-five percent or more of the pool's aggregate initial margin and premiums for futures and commodity option contracts and no investee pool is allocated or intended to be allocated twenty-five percent or more of the pool's total assets.

(i) *Limited risk pool* means a pool (commonly referred to as a "guaranteed pool") that is designed to limit the loss of the initial investment of its participants.

(j) *Trading manager* means, with respect to a pool, any person, other than the commodity pool operator of the pool, with authority to allocate pool assets to commodity trading advisors or investee pools.

(k) *Major commodity trading advisor* means any commodity trading advisor that is allocated or is intended to be allocated at least twenty-five percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts.

(l) *Major investee pool* means any investee pool that is allocated or intended to be allocated at least twenty-five percent of the assets of the pool.

(m) *Trading principal* means:

(1) A principal of a commodity pool operator who participates in making commodity interest trading decisions for a pool, or who supervises, or has authority to allocate pool assets to, persons so engaged; and

(2) A principal of a commodity trading advisor who participates in making commodity interest trading decisions for a client account or who supervises or selects persons so engaged.

(n) *Break-even point* means the trading profit that a pool or trading program must realize in its first year to equal all fees and expenses such that a participant or client will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act. The break-even point must be expressed as a percentage of the minimum unit of initial investment and assume redemption of the initial investment at the end of the first year of investment.

5. Section 4.12 is proposed to be amended by revising paragraphs (b)(2)(i) and (b)(5)(i) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(2) * * *

(i) In the case of § 4.24, that the Commission accept in lieu and in satisfaction of the disclosure document specified by that section an offering memorandum for the pool which does not contain the information required by §§ 4.24(a), 4.24(b), and 4.24(n), *provided*, that the offering memorandum:

(A) Is prepared pursuant to the requirements of the Securities Act of 1933 or the exemption from said Act pursuant to which the pool is being offered and sold;

(B) Contains the information required by §§ 4.24(c) through (m) and (o) through (u);

(C) Complies with the requirements of §§ 4.24(v) and (w).

* * * * *

(5)(i) If a claim of exemption has been made under § 4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the Commission pursuant to § 4.26.

* * * * *

6. Section 4.21 is proposed to be revised to read as follows:

§ 4.21 Required Delivery of Pool Disclosure Document.

(a) No commodity pool operator registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the commodity pool operator delivers or causes to be delivered to the prospective participant a disclosure document for the pool containing the information set forth in § 4.24, *Provided, however*, That where the prospective investor is an accredited investor, as defined in 17 CFR 230.501, a notice of intended offering and term sheet may be provided subject to rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the participant received a disclosure document for the pool.

7. Section 4.22 is proposed to be amended by adding new paragraph (a)(4) to read as follows:

§ 4.22 Reporting to pool participants.

(a) * * *

(4) The Account Statement must provide the names of all commodity trading advisors directing trading for the pool and of all investee pools as of the date of the Account Statement, together with the percentage of pool assets each is allocated. In addition, if the performance of major commodity trading advisors and investee pools is required to be disclosed in a pool disclosure document, the Account Statements must include the past performance of each commodity trading advisor previously allocated less than ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts and investee pool previously allocated less than ten percent of the pool assets that is a major commodity trading advisor or investee pool as of the date of the Account Statement.

* * * * *

8. Section 4.23 is proposed to be amended by revising paragraph (a)(3) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(3) The acknowledgement specified by § 4.21(b) for each participant in the pool.

* * * * *

9. Sections 4.24, 4.25 and 4.26 are proposed to be added as follows:

§ 4.24 General disclosures required.

Except as otherwise provided herein, a disclosure document must include the following information.

(a) *Cautionary statement*. The following Cautionary Statement must be prominently displayed on the cover page of the disclosure document.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON

THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the disclosure document as provided by the Commission or any applicable federal or state securities laws and regulations.

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTIONS TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL AT PAGE (insert page number) AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number)

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE YOUR PARTICIPATION IN THIS COMMODITY POOL. THEREFORE, BEFORE YOU DECIDE TO PARTICIPATE IN THIS COMMODITY POOL, YOU SHOULD CAREFULLY STUDY THIS DISCLOSURE DOCUMENT, INCLUDING A DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number)

(2) If the pool may trade foreign futures or options contracts, the Risk Disclosure Statement must further state.

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY TRADE FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET, MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION TO THE POOL AND ITS PARTICIPANTS. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE TRANSACTIONS FOR THE POOL MAY BE EFFECTED.

(c) *Table of Contents.* A table of contents showing, by subject matter, the location of the disclosures made in the disclosure document must appear immediately following the Risk Disclosure Statement.

(d) *Information Required In the Forepart of the Document:* (1) The name, address of the main business office, main business telephone number and form of organization of the pool. If the mailing address of the main business office is a post office box number or is not within the United States, the pool operator must state where the pool's books and records will be kept and made available for inspection;

(2) The name, address of the main business office, main business telephone number and form of organization of the commodity pool operator. If the mailing address of the main business office is a post office box number or is not within the United States, the pool operator must state where its books and records will be kept and made available for inspection;

(3) A statement whether the pool is:

(i) privately offered pursuant to 15 U.S.C. 4(2) of the Securities Act of 1933;

(ii) A multi-advisor pool as defined in § 4.10(h);

(iii) A limited risk pool as defined in § 4.10(i); and

(iv) Continuously offered and if not, the closing date of the offering.

(4) The date when the disclosure document will first be used; and

(5) The break-even point per unit of initial investment, as specified in § 4.10(n)

(e) *The name of:* (1) Each principal of the pool operator;

(2) The pool's trading manager, if any, and each principal thereof; and

(3) Each investee pool allocated or intended to be allocated at least ten percent of the assets of the pool offered, each commodity trading advisor that is allocated or intended to be allocated at least ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts, the operator of each such investee pool and each principal of such commodity trading advisor and of the commodity pool operator of such investee pool;

(4) Which of the foregoing persons will make trading decisions for the pool; and

(5) If known, the futures commission merchant through which the pool will execute its trades.

(f) *Business background.* (1) The business background, for the five years preceding the date of the disclosure document, of:

(i) The commodity pool operator, the pool's trading manager, if any, each major commodity trading advisor and the operator of each major investee pool; and

(ii) Each principal of the foregoing persons who participates in making trading or operational decisions for the pool or supervises persons so engaged.

(2) The pool operator must include in the description of the business background of each such person the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for the employers or in connection with the associations or ventures.

(g) *Principal risk factors.* As applicable, a discussion of the principal risk factors of this investment. This discussion must include, without limitation, risks relating to volatility, leverage, and counterparty creditworthiness.

(h) *Use of proceeds.* The pool operator must disclose:

(1) The types of commodity interests or other interests the commodity pool operator intends that the pool will hold or trade, with a description of the trading program that will be followed and any restrictions or limitations on such interests or trading required by the pool's organizational documents or otherwise.

(2)(i) The manner in which the pool will fulfill its margin requirements and the approximate percentage of the pool's property that will be segregated pursuant to the Act and the Commission's regulations thereunder

(ii) If property deposited as margin generates income, to whom that income will be paid

(iii) If the pool will fulfill its margin requirements with other than cash deposits, the nature of such deposits.

(3) With respect to pool property not deposited as margin, paid as premiums or held in cash or cash equivalents:

(i) The nature of such property (*e.g.*, securities listed on a national securities exchange, interests in commodity pools or other funds, bonds, commercial paper) including whether such property is subject to state or federal regulation or to regulation by a foreign government, and any investment rating thereof; and

(ii) The custodian or other entity, *e.g.*, bank or brokerdealer, which will hold pool property not deposited as margin or paid as premiums, and, if such property will be held or invested outside of the United States, its territories or possessions, the jurisdiction in which it will be held;

(i) *Fees and expenses.* (1) A complete description of each fee, expense and commission which the commodity pool operator knows or should know has been incurred by the pool for its preceding fiscal year and is expected to be incurred by the pool in its current fiscal year, including fees and expenses occurring within investee pools.

(2) This description shall include, but not be limited to:

(i) Management fees;

(ii) Brokerage fees and commissions, including interest income paid to futures commission merchants;

(iii) Fees and commissions paid in connection with trading advice provided to the pool;

(iv) Fees and expenses incurred within investments in investee pools and other collective investment vehicles, disclosed separately for each investment tier;

(v) Incentive fees and any disproportionate share of profits allocated to the commodity pool operator, *i.e.*, any right of the commodity pool operator to receive a greater than pro rata share of the pool's profits, based on the percentage of capital contributions made by the commodity pool operator.

(vi) Commissions or other benefits, including trailing commissions paid or that may be paid or accrue, directly or indirectly, to any person in connection with the solicitation of participations in the pool; and

(vii) Professional and general administrative fees and expenses, including legal and accounting fees and office supplies expenses;

(viii) Organizational and offering expenses;

(ix) Clearance fees and fees paid to national exchanges and self-regulatory organizations;

(x) For limited risk pools, any costs of providing the limitation on risk as referred to in paragraph (o)(3) of this section; and

(xi) Any other fee or expense.

(3) Where any expense, fee or commission is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits," or "net gains," the pool operator must specifically explain how such base amount will be calculated.

(4) Where any expense, fee or commission is based on an increase in the value of the pool, the pool operator must specify how the increase is calculated, the period of time during which the increase is calculated, the expense, fee or commission to be charged at the end of that period and the value of the pool at which payment of the expense, fee or commission commences.

(5) Where any expense, fee or commission of the pool has been paid or is to be paid by a person other than the pool, the pool operator must disclose the nature and amount thereof and the person who paid or who is expected to pay it.

(6) The pool operator must provide, in a tabular format, an analysis setting forth how the break-even point for the pool was calculated. The analysis must include all fees, expenses and commissions of the pool, as set forth in § 4.24(i)(2).

(j) *Conflicts of Interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the pool on the part of:

(i) The commodity pool operator, the pool's trading manager, if any, any commodity trading advisor allocated or intended to be allocated at least ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts and the commodity pool operator of any investee pool allocated or intended to be allocated at least ten percent of the assets of the pool;

(ii) Any principal of the foregoing; and

(iii) Any person providing services to the pool or soliciting participants for the pool.

(2) Included in the description of such conflicts shall be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant or from the introduction of the pool's account to a futures commission merchant by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or other investments.

(k) *Related party transactions.* A full description, including a discussion of the costs thereof to the pool, of any material transactions or arrangements between the pool and any person affiliated with a person providing services to the pool for which there is no publicly disseminated price.

(*l*) *Litigation.* (1) Subject to the provisions of paragraph (*l*)(2) of this section, any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the document, against any of the following persons, except a concluded action that resulted in an adjudication on the merits in favor of such person:

(i) The commodity pool operator, the pool's trading manager, if any, the pool's major commodity trading advisors and the operators of the pool's major investee pools;

(ii) Any principal of the foregoing;

(iii) The pool's futures commission merchants and introducing brokers, if any.

(2) With respect to futures commission merchants and introducing brokers, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission, *Provided, however*, That a concluded action that did not result in fines exceeding $50,000 need not be disclosed unless it involved allegations of fraud or other willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, or by a self-regulatory organization, domestic or foreign, and involved allegations of fraud or other willful misconduct.

(m) *Trading for Own Account.* If the commodity pool operator, the pool's trading manager, any of the pool's commodity trading advisors or any principal thereof trades or intends to trade commodity interests for its own account, the pool operator must disclose whether participants will be permitted to inspect the records of such person's trades and any written policies related to such trading.

(n) *Performance disclosures* as set forth in § 4.25.

(o) *Limited risk pools.* If the pool is a limited risk pool, as defined in § 4.10(i) the commodity pool operator must:

(1) Describe the nature of the limitation on risk intended to be provided, the manner by which such risk limitation will be achieved, including sources of funding, and what conditions must be satisfied for participants to receive the benefits of the risk limitation;

(2) Specify when the limitation on risk becomes operative; and

(3) Disclose, in the break-even analysis required by § 4.24(i)(6), the costs of purchasing and carrying the assets to fund the limitation on risk, expressed as a percentage of the price of a unit of participation.

(p) *Transferability and redemption.* (1) A complete description of any restrictions upon the transferability of a participant's interest in the pool; and

(2) A complete description of the manner in which a participant may redeem its interest in the pool. That description must specify:

(i) How the redemption value of a participant's interest will be calculated;

(ii) The conditions under which a participant may redeem its interest, including the cost associated therewith, the terms of any notification required and the time between the request for redemption and payment;

(iii) Any restrictions on the redemption of a participant's interest, including any restrictions associated with the pool's investments; and

(iv) Any liquidity risks relative to the pool's redemption capabilities.

(q) *Liability of pool participants.* The extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant for the purchase of an interest in the pool.

(r) *Distribution of profits and taxation.* (1) The pool's policies with respect to the payment of distributions from profits or capital and the frequency of such payments; and

The Federal income tax effects of such payments for a participant, including a discussion of the Federal income tax laws applicable to the form of organization of the pool and to such payments therefrom. If a pool is specifically structured to accomplish certain Federal income tax objectives, the commodity pool operator must explain those objectives, the manner in which they will be achieved and any risks relative thereto.

(s) *Inception of trading and other information.* (1) The minimum aggregate subscriptions that will be necessary for the pool to commence trading commodity interests;

(2) The minimum and maximum aggregate subscriptions that may be contributed to the pool;

(3) The maximum period of time for which the pool will hold funds prior to the commencement of trading commodity interests;

(4) The disposition of funds received if the pool does not receive the necessary amount to commence trading, including the period of time within which the disposition will be made; and

(5) Where the pool operator will deposit funds received prior to the commencement of trading by the pool, and a statement as to whom any income from such deposits will be paid.

(t) *Ownership in pool.* The extent of any ownership or beneficial interest in the pool held by:

(1) The commodity pool operator;

(2) The pool's trading manager;

(3) The pool's major commodity trading advisors and the operators of the pool's major investee pools; and

(4) Any principal of the foregoing.

(u) *Reporting to pool participants.* A statement that the commodity pool operator must provide all participants with monthly or quarterly (whichever applies) statements of account and with an annual report containing financial statements certified by an independent public accountant.

(v) *Voluntary information.* If any information, other than that required by the Commission, the antifraud provisions of the Act, or any federal or state securities laws and regulations, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with required disclosures;

(2) Shall be subject to the antifraud provisions of the Act and the regulations thereunder and to rules regarding the use of promotional material promulgated by a registered futures association, pursuant to section 17(j) of the Act; and

(3) May only appear following the related required disclosures, unless otherwise specified in this rule.

(w) *Material information.* This section does not relieve a commodity pool operator from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective pool participants even if the information is not specifically required by this section.

§ 4.25 Performance disclosures.

(a) *General principles and definitions.* (1)(i) Capsule Performance: Unless otherwise specified, the disclosure of the performance of a pool must be net of any fees, expenses or allocations to the commodity pool operator and include the following information.

(A) The name of the pool;

(B) A statement as to whether the pool is:

(*1*) Privately offered pursuant to 15 U.S.C. 4(2) of the Securities Act of 1933;

(*2*) A multi-advisor pool as defined in § 4.10(h); and

(*3*) A limited risk pool as defined in 4.10(i);

(C) The date of inception of trading;

(D) The aggregate gross capital subscriptions to the pool;

(E) The pool's current net asset value;

(F) The largest monthly draw-down, during the most recent five calendar years and year-to-date, expressed as a percentage of pool net asset value; the month and year of the draw-down must be specified.

(G) The worst continuous peak-to-valley draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of pool net asset value, indicating the months and year of the draw-down (for example, a peak-to-valley draw-down of "4 to 8–91/25%" means that the peak-to-valley draw-down lasted from April to August of 1991 and resulted in a twenty-five percent cumulative draw-down;) and

(H) The annual and year-to-date rate of return for the pool, computed on a compounded monthly basis, except that performance of the pool offered must include monthly rates of return.

(ii) Unless otherwise specified, the performance of accounts must include:

(A) The name of the commodity trading advisor or other person trading the account and the name of the trading program;

(B) The date on which the commodity trading advisor began trading client accounts and the date when client funds began being traded pursuant to the trading program;

(C) The number of accounts directed by the commodity trading advisor pursuant to the trading program specified as of the date of the disclosure document;

(D) The total assets under the management of the commodity trading advisor and in the trading program specified, as of the date of the disclosure document;

(E) The largest monthly draw-down for the trading program specified during the most recent five calendar year and year-to-date expressed as a percentage of client funds. The month and year of the draw-down must be specified;

(F) The worst ever continuous peak-to-valley draw-down in for the trading program specified during the most recent five calendar year and year-to-date, indicating the months and year of the draw-down, expressed as a percentage of net asset value (for example, a peak-to-valley draw-down of "4 to 8–91/25%" means that the peak-to-valley draw-down lasted from April to August of 1991 and resulted in a twenty-five percent cumulative draw-down;) and

(G) The annual and year-to-date rate-of-return for the program specified, computed on a compounded monthly basis.

(2) The performance of the pool offered must be identified as such and separately presented first and its rate of

return must be stated in monthly increments.

(3) With respect to pools other than the pool offered for which performance is required to be presented under this section:

(i) Pools of the same class as the pool offered must be presented following the performance of the pool offered, on a pool by pool basis.

(ii) Pools of a different class must be presented less prominently and, unless such presentation would be misleading, may be presented in composite form: *Provided,* That the disclosure document must disclose how the composite was developed and that pools of different classes may not be presented in a composite. The commodity pool operator must be prepared to justify the inclusion in a composite of the pools contained therein.

(iii) For the purpose of § 4.25(3)(ii), without limitation, the following shall be considered pools of different classes: Pools privately offered pursuant to Regulation D of the Securities Act and public offerings; pools of materially different leverages; limited and non-limited risk pools; pools using different trading programs; and multi-advisor pools as defined in § 4.10(h) and non-multi-advisor pools.

(iv) Material differences among the pools for which past performance is disclosed must be described.

(4) The past performance of accounts required to be presented under this section must be presented on a program by program basis using the format set forth in § 4.25(a)(1)(ii).

(5) The disclosure document must indicate whether the pool offered will use any of the trading programs for which past performance is presented.

(6) All past performance presented in a disclosure document, including voluntarily presented performance, must be calculated in accordance with generally accepted accounting principles as specified below or by a method otherwise approved by the Commission. All performance data presented in a disclosure document must be current as of a date not more than three months preceding the date of the document. The commodity pool operator or commodity trading advisor must maintain all supporting documents necessary to substantiate such calculations, in accordance with § 1.31.

(i) The beginning net asset value for the period, which shall be the same as the previous period's ending net asset value;

(ii) All additions, whether voluntary or involuntary, during the period;

(iii) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(iv) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, and redemptions;

(v) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals, redemptions and net performance;

(vi) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

(vii) The number of units outstanding at the end of the period, if applicable.

(7) All required performance information must be presented for the most recent five calendar years and year-to-date or for its entire duration, if less than five years.

(8) Adverse performance: Where presentation of adverse performance is required hereunder, adverse performance means any annual return of one hundred basis points less than the ninety day Treasury Bill rate on December 31 of the calendar year in which the performance occurred or any termination of a pool pursuant to a loss termination provision. To disclose adverse performance, the pool operator must indicate the year in which it occurred, the annual rate of return for that year, the commodity trading advisor or commodity pool operator responsible for the performance and the capacity of such person in respect of the pool being offered.

(9) The performance of any pool or account in which the pool operator, trading manager, commodity trading advisor or any principal thereof, or any person providing services to the pool owns or controls fifty percent or more of the beneficial interest shall not be included in a disclosure document unless such performance is prominently labeled as proprietary and is set forth separately after all required disclosures.

(10) Any past performance presentation, whether required or voluntarily provided, must be preceded by the following statement, prominently displayed:

PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE.

(b) *Pools which have traded commodity interests for three years or more with no fewer than fifteen participants unaffiliated with the commodity pool operator and in which no more than ten percent of the assets were contributed by the commodity pool operator.* The pool operator must disclose the performance of the pool offered, as set forth in § 4.25(a)(1)(i) (C) through (H).

(c) *Other pools.* (1)(i) The pool operator must disclose the performance of the pool offered, as set forth in § 4.25(a)(1)(i) (C) through (H).

(ii) If applicable, the pool operator must prominently display the following statement:

THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY.

(2) (i) The pool operator must disclose the performance of each other pool operated and each other account traded by the pool operator or, if the pool has a trading manager, by the trading manager.

(ii) If the pool operator, or if applicable, the trading manager, has less than a three-year history in trading pools with no fewer than fifteen participants unaffiliated with the pool operator and in which no more than ten percent of the assets were contributed by the commodity pool operator, the pool operator must also disclose the performance of each other pool operated and each other account traded, by each trading principal of the pool operator or the trading manager, if applicable.

(iii) If neither the pool operator or trading manager, if applicable, nor any of its trading principals has operated any other pools or traded any other accounts during the prescribed period, the pool operator must prominently display the following statement:

NEITHER THIS POOL OPERATOR (TRADING MANAGER, if applicable) NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS:

(3)(i) The pool operator must disclose the performance of any accounts (including pools) directed by any major commodity trading advisor and of any major investee pool.

(ii) If a major commodity trading advisor or major investee pool has no prior performance history, the pool operator must prominently display the following statement(s), as applicable:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY AUTHORITY OVER (percentage of the pool's aggregate initial margin and premiums for futures and commodity option contracts allocated to that trading advisor) PERCENT OF THE POOL'S DIRECT FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS, and

(name of the major investee pool), AN INVESTEE POOL THAT IS ALLOCATED (percentage of the pool assets allocated to that investee pool) PERCENT OF THE POOL'S ASSETS HAS NOT COMMENCED TRADING.

(iii) Unless this performance is otherwise required to be disclosed, the pool operator must indicate, as set forth in § 4.25(a)(8), any adverse performance for any account (including pools) directed or operated by the pool operator, any trading principal of the pool operator or trading manager, any commodity trading advisor allocated at least ten percent of the pool's aggregate initial margin and premiums for futures and commodity option contracts and for any investee pool allocated at least ten percent of the pool's assets. In addition, if a major commodity trading advisor or major investee pool has no prior operating history, the pool operator must indicate any adverse performance for any account (including pools) directed or operated by any trading principal of that advisor or of the commodity pool operator of the investee pool. In lieu of giving an indication of adverse performance, the commodity pool operator may provide capsule performance disclosure as set forth in § 4.25(a)(1).

§ 4.26 Use, amendment and filing of disclosure document.

(a)(1) Subject to paragraph (c) of this section, all information contained in the disclosure document must be current as of the date of the document; *provided, however,* That performance information may be current as of a date not more than three months prior to the date of the document.

(2) No commodity pool operator may use a disclosure document dated more than nine months prior to the date of its use.

(b) The commodity pool operator must attach to the disclosure document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22.

(c)(1) If the commodity pool operator knows or should know that the disclosure document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant. The pool operator may furnish the correction by way of an amended document, a sticker on the document, or other similar means.

(2) The pool operator may not use the document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission two copies of the disclosure document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the document to a prospective participant in the pool; and

(2) The commodity pool operator must file with the Commission two copies of all subsequent amendments to the disclosure document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

10. Section 4.31 is proposed to be revised to read as follows:

§ 4.31 Required delivery of disclosure document to prospective clients.

(a) No commodity trading advisor registered or required to be registered under the Act may solicit a prospective client, or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), delivers or causes to be delivered to the prospective client a disclosure document for the trading program pursuant to which the trading advisor seeks to direct the client's account or to guide the client's trading, containing the information set forth in §§ 4.33 and 4.34.

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a disclosure document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading.

11. Section 4.32 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 4.32 Recordkeeping.

* * * * *

(a) * * *

(2) The acknowledgement specified in § 4.31(b).

* * * * *

12. Sections 4.33, 4.34 and 4.35 are proposed to be added as follows:

§ 4.33 General disclosures required.

Except as otherwise provided herein, a disclosure document must include the following information.

(a) *Cautionary statement.* The following Cautionary Statement, must be prominently displayed on the cover page of the disclosure document:

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk disclosure statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the disclosure document as provided by the Commission or any applicable federal or state securities laws and regulations:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURE OR SELL A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT

NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLE "LONG" OR "SHORT" POSITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number).

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2) If the commodity trading advisor may trade foreign futures or options contracts, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.

(3) If the commodity trading advisor is not also a registered futures commission merchant, the trading advisor must make the additional following statement in the Risk Disclosure Statement, prominently disclosed as the last paragraph thereof:

THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT.

(c) *Table of contents.* A table of contents showing, by subject matter, the location of the disclosures made in the disclosure document must appear immediately following the Risk Disclosure Statement.

(d) *Information required in the forepart of the document.* (1) The name, address of the main business office, main business telephone number and form of organization of the commodity trading advisor. If the mailing address of the main business office is a post office box number or is not within the United States, the trading advisor must state where its books and records will be kept and made available for inspection; and

(2) The date when the disclosure document will first be used.

(e) *The name of.* (1) Each principal of the trading advisor;

(2) The futures commission merchant with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant with which it will maintain its account, the commodity trading advisor must make a statement to that effect; and

(3) The introducing broker through which the commodity trading advisor will require the client to introduce its account or, if the client is free to choose the introducing broker through which it will introduce its account, the commodity trading advisor must make a statement to that effect.

(f) *Business background.* (1) The business background, for the five years preceding the date of the document, of:

(i) The commodity trading advisor; and

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

(2) The trading advisor must include in the description of the business background of each such person the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for th employers or in connection with the associations or ventures.

(g) *Principol risk factors.* As applicable, a discussion of the principa risk factors of this trading program. Thi discussion must include, without limitation, risks due to volatility, leverage, and counterparty risks.

(h) *Trading program.* A description o the trading program. This description shall include the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the commodity trading advisor.

(i) *Fees.* A complete description of each fee which the commodity trading advisor will charge the client.

(1) Wherever possible, the trading advisor must specify the dollar amount of each such fee.

(2) Where any fee is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits" or "net gains," th trading advisor must specifically explain how such base amount will be calculated.

(3) Where any fee is based on an increase in the value of the client's commodity interest account, the trading advisor must specify how that increase is calculated, the period of time during which the increase is calculated, the fe to be charged at the end of that period and the value of the account at which payment of the fee commences.

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspe of the trading program on the part of:

(i) The commodity trading advisor;

(ii) Any futures commission merchan with which the client will be required to maintain its commodity interest account;

(iii) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant.

(2) Any principal of the foregoing.

(k) *Litigation.* (1) Subject to the provisions of paragraph (k)(2) of this section, any material administrative, civil or criminal action, whether pending or concluded, within five year preceding the date of the document, against any of the following persons, except a concluded action that resulted in an adjudication on the merits in favo of such person:

(i) The commodity trading advisor and any principal thereof:

(ii) The futures commission merchant with which the client will be required to maintain its commodity interest account; and

(ii) The introducing broker through which the client will be required to introduce its account to the futures commission merchant.

(2) With respect to the futures commission merchant and the introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission. *Provided, however,* That a concluded action that did not result in fines exceeding $50,000 need not be disclosed unless it involved allegations of fraud or willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, or by a self-regulatory organization, domestic or foreign, and involves allegations of fraud or other willful misconduct.

(l) *Trading for own account.* If the commodity trading advisor or any principal thereof trades or intends to trade commodity interests for its own account, the commodity trading advisor must disclose whether clients will be permitted to inspect the records of such person's trading and any written policies related to such trading.

(m) *Performance disclosures* as set forth in § 4.34

(n) *Voluntary Information.* If any information, other than that required by the Commission, the antifraud provisions of the Act, or any federal or state securities laws and regulations, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with the required disclosures:

(2) Shall be subject to the antifraud provisions of the Act and the regulations thereunder, and to rules regarding the use of promotional material promulgated by a registered futures association, pursuant to section 17(j) of the Act; and

(3) May only appear following the related required disclosures, unless otherwise specified.

(o) *Material information.* This section does not relieve a commodity trading advisor from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective clients even if the information is not specifically required by this section.

§ 4.34 Performance disclosures.

(a) *General principles.* (1) The performance of the program offered must be displayed first, calculated in accordance with generally accepted accounting principles as specified below or by a method otherwise approved by the Commission, in a table showing at least quarterly the following information.

(i) The beginning net asset value for the period, which shall represent the previous period's ending net asset value;

(ii) All additions, whether voluntary or involuntary, during the period;

(iii) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(iv) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses;

(v) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals and redemptions, and net performance;

(vi) The rate of return for the period, computed on a compounded monthly basis, which shall be calculated by dividing the net performance by the beginning net asset value;

(2) The performance of all other programs must be presented as set forth in § 4.25(a)(1)(ii)(C) through (G) and must be based on the information set forth in § 4.34(a)(1), and calculated on a current basis. The commodity trading advisor must maintain all supporting documents necessary to substantiate such calculation in accordance with § 1.31.

(3) All performance information presented in the disclosure document must be current as of a date not more than three months preceding the date of the document.

(4) All required performance information must be presented for the most recent five calendar years and year-to-date or for its entire duration, if less than five years.

(5) Unless such presentation would be misleading, the performance of accounts traded pursuant to the same trading program may be presented in a single composite table provided that the trading advisor describes how each composite was calculated. The term *trading program* means a trading strategy differentiated from others by commodity trading methodology, degree of risk or degree of leverage.

(6) The performance of any account in which the commodity trading advisor, any of its principals or any person providing services to the pool owns or controls fifty percent or more of the beneficial interests shall not be included in a disclosure document unless such performance is prominently labeled as proprietary and set forth separately after all required disclosures.

(7) Any past performance presentation, whether required or voluntarily provided, must be preceded with the following statement, prominently displayed:

PAST PERFORMANCE IS NOT PREDICTIVE OF FUTURE PERFORMANCE

(b) *Performance to be disclosed.* The commodity trading advisor must disclose the actual performance of all accounts directed by the commodity trading advisor and by each of its trading principals; *Provided, however,* That if the trading advisor or its trading principals previously have not directed any accounts, the trading advisor must prominently disclose this fact with one of the following statements, as applicable:

(1) THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS; or

(2) NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS; or

(3) NEITHER THIS TRADING ADVISOR NOR ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS.

§ 4.35 Use, amendment and filling of disclosure document.

(a) Subject to paragraph (c) of this section, all information contained in the disclosure document must be current as of the date of the document; *Provided, however,* That performance information must be current as of a date not more than three months preceding the date of the document.

(b) No commodity trading advisor may use a disclosure document dated more than nine months prior to the date of its use.

(c)(1) If the commodity trading advisor knows or should know that the disclosure document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing clients in the trading program within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective client for the trading program prior to entering into an agreement to direct or to guide such prospective client's commodity interest account pursuant to the program. The trading advisor may furnish the correction by way of an amended document, a sticker on the document, or other similar means.

(2) The trading advisor may not use the document until such correction is made.

(d)(1) The commodity trading advisor must file with the Commission two copies of the disclosure document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the document to a prospective client in the trading program.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the disclosure document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

13. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c, and 12a

14. Section 30.6 is proposed to be amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first provides each prospective participant or client with the Risk Disclosure Statement set forth in § 4.24(b) in the case of a commodity pool operator or § 4.33(b) in the case of a commodity trading advisor.

(2) The disclosure statement required to be provided in paragraph (b)(1) of this section may be given as a separate document or, if part of the disclosure document required to be furnished customers or potential customers pursuant to § 4.21 or § 4.31 of this chapter, must be prominently disclosed immediately following any disclosures required to appear on the cover page of the disclosure document as provided by the Commission or any applicable federal or state securities laws and regulations.

* * * * *

PART 150—LIMITS ON POSITIONS

15. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5) (1988).

16. Section 150.3 is proposed to be amended by revising paragraph (a)(4)(i)(D) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(4) * * *

(i) * * *

(D) Solicit funds for such trading by separate disclosure documents that meet the standards of § 4.24 or § 4.33 of this chapter, as applicable, where such disclosure documents are required under part 4 of this chapter.

* * * * *

Issued in Washington, DC, on May 5, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-11380 Filed 5-13-94; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

RIN 1515-AB46

Filing of Export Certificates

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to allow a vessel carrying a shipment of meat or meat-food products to be cleared before the filing of a copy of an export certificate by providing a statement regarding the shipment and the export certificate. The copy of the export certificate must then be presented within 4 days of the vessel's clearance. The regulations are being amended so that they will conform to revised regulations of the Food Safety and Inspection Service of the U.S. Department of Agriculture.

DATES: Comments must be received before July 15, 1994.

ADDRESSES: Comments (preferably in triplicate) should be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Whiting, Carrier Rulings Branch, (202) 482-6940.

SUPPLEMENTARY INFORMATION:

Background

In this document, Customs proposes to amend its regulations so that there will be consistency between regulations of the U.S. Department of Agriculture (USDA) and those of Customs regarding the timeframe within which an exporter must file a certificate certifying the wholesomeness of meat products being exported.

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), meat and meat products intended and offered for export and sale in a foreign country must be inspected. In addition, FMIA prohibits the clearance for departure of any vessel carrying meat and meat products for export to and sale in a foreign country until the owner or shipper has obtained from an inspector a certificate indicating that the products are sound and wholesome (unless the Secretary has waived certificate requirements for the country).

In 1986, the Food Safety and Inspection Service (FSIS) of the Department of Agriculture, which administers the FMIA, amended its regulations. Previously, the FSIS regulations required that exporters deliver a duplicate of the export certificate to the shipper for filing with Customs at the time the master's manifest or supplemental manifest is filed by the chief officer with Customs; that is, on the day of departure. Otherwise, the vessel carrying the meat or meat products would not be granted clearance. Because § 4.75 of the Customs regulations allows shippers a delay of four business days in the filing of a Complete Cargo Declaration (manifest), the FSIS regulations were amended to allow a vessel carrying a shipment of meat or meat products to clear in those instances where the duplicate export certificate is not available at departure time. In lieu of the duplicate export certificate, the shipper, shipper's agent or the vessel's agent must provide Customs with a statement under the shipper's or agent's letterhead signed by the shipper which briefly describes the shipment of the product, the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment. Exporters must file the duplicate export certificate within 4 days of the clearance of a vessel carrying a shipment of meat products.

In order to maintain consistency with Customs and USDA regulations, Customs is now proposing to amend that section of its regulations governing the clearance of vessels carrying meat products. Section 4.72(a) of the Customs Regulations (19 CFR 4.72(a)) currently states that no clearance shall be granted to a vessel carrying meat or meat-food product until copies of the export certificates issued by the USDA have been filed with the district director. Customs is proposing to amend this section so that clearance can be granted to vessels when documents complying with the requirements of 9 CFR part 322 of the USDA regulations are submitted. Shippers will still have to comply with the four-day time limit of § 4.75 for submitting the actual USDA export certificate.

Comments

Before adopting the proposed amendment, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

Executive Order 12866 and Regulatory Flexibility Act

This amendment is not a "significant regulatory action" within the meaning of E.O. 12866. Based on the supplementary information set forth above and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Meat and meat products, Meat inspection, Vessels.

Proposed Amendment

It is proposed to amend part 4, Customs Regulations (19 CFR part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

2. Paragraph (a) of § 4.72 is revised by adding, at the end thereof, two new sentences to read as follows:

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) * * * If such certificate has been obtained but is unavailable at the scheduled time of the vessel's departure, the vessel may be cleared on the basis of the receipt of a statement, under the shipper's or shipper's agent's letterhead, certifying the number of boxes, the number of pounds, the product name and the USDA export certificate number that covers the shipment of the product. If such statement has been used as the basis for obtaining vessel clearance, the duplicate of the certificate must be filed with Customs within the time prescribed by § 4.75 of this part.

* * * * *

Samuel H. Banks,

Acting Commissioner of Customs

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

Approved: April 28, 1994.

[FR Doc. 94–11857 Filed 5–13–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB52

Safety Requirements Governing Production Platforms and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise various safety-related regulations regarding the design and operating procedures of production platforms and pipelines in the Outer Continental Shelf (OCS). The purpose of the revisions is to reduce or prevent the unintentional release of hydrocarbons from pipelines on or near offshore platforms during emergency situations and thereby reduce the potential for explosions or fires.

DATES: Comments must be received or postmarked no later than July 15, 1994.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Paul Schneider, Technology Assessment and Research Branch, telephone (703) 787–1559, or Bill Hauser, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The MMS is proposing to revise regulations governing design, operation, and maintenance of oil and gas facilities in the OCS. These revisions were recommended by an internal task group that reviewed information on tow tragic offshore incidents in 1988 and 1989.

Safety Review Task Group

A safety review task group of MMS personnel was established to review available information in the 1988 Piper Alpha platform fire in the North Sea and the circumstances related to an interactive pipeline and platform fire in 1989 at ARCO Oil and Gas Company's (ARCO) South Pass 60 Platform "B" facility in the Gulf of Mexico. The group was asked to make specific recommendations regarding regulations and operating practices that would reduce the risk of such incidents occurring in U.S. waters. Following is a capsule summary of each incident.

Explosion and Fire on Piper Alpha Platform, North Sea, 1988

Piper Alpha was an oil and gas production platform in the United Kingdom (U.K.) sector of the North Sea that was destroyed by fire in 1988. On July 6, 1988, a series of events and operational mistakes caused an explosion and fires that ultimately destroyed the platform and killed 167 people. Maintenance personnel mistakenly activated an out-of-service injection pump causing a repair flange in the pipework to rupture. Liquid condensate leaked into the production module for several minutes. The gas ignited and exploded, damaging the electrical power generator and the fire pumps. Eventually the fire ruptured the shut-in gas pipelines releasing high pressure gas on the platform. The fire burned for several hours until the pressure was relieved. The platform was completely destroyed.

The Public Inquiry into the Piper Alpha Disaster was published by Her Majesty's Stationery Office, London, in November 1990. The report confirmed the conclusions reached in the initial investigation report published in September 1988. The report concluded that in all likelihood the scenario of the leaking blind flange in the condensate injector pump was the initial cause of the incident. The report lists 106 recommendations for improving safety in the U.K. North Sea. The recommendations propose changes to the regulations, regulatory agency realignment, and a call for renewed commitment to safety by industry.

Summary of South Pass 60 Platform "B" Fire

On March 19, 1989, an offshore contracting crew was "cold-cutting" an 18-inch gas line riser at the platform's 10-foot level in preparation for the installation of a pig trap. "Cold cutting" is a method of cutting through a section of pipe with a mechanical cutting tool as opposed to using a blow torch. Upon penetration into the pipeline riser, pressurized condensate began to spray from the cut area. The condensate was ignited either by sparks generated on the compressor skid on an attendant workboat or by hot exhaust pipes on the above production deck. The fire raged upward from the riser, and the emergency shutdown (ESD) system shut down both Platform "B" and Platform "E" and all incoming and departing pipelines. Six of the 10 incoming and departing pipelines, including a high pressure gas line, ruptured from the heat of the fire. The resulting explosions killed seven people and destroyed the platform.

Federal Register Notice on Subsea Pipeline Valves

In support of the work of the task group, MMS published a **Federal Register** Notice dated July 23, 1990 (55 FR 29860), seeking information on subsea shutdown valve (SDV) technology and feasibility and offshore emergency pipeline pressure reduction techniques. Thirty companies and organizations representing oil- and gas-related industries responded to the questionnaire. Their responses are discussed later in the preamble.

Task Group Findings

The MMS task group identified the following areas in the regulations that should be revised:

1. Identification and notification procedures for out-of-service safety devices and systems.
2. Location and protection of pipeline risers.
3. Diesel and helicopter fuel storage areas and tanks.
4. Approval of pipeline repairs.
5. Location of ESD valves on pipelines.

Identification and Notification Procedures for Out-of-Service Safety Devices

A contributing factor to both accidents was the lack of communication and notification to personnel of the platform production systems status. In the Piper Alpha incident, the production crew attempted to start a condensate injection pump that was partially dismantled for repairs during the previous shift. Leaking condensate from the associated pipework of the pump caused the first of a series of explosions and fires. The location of the pump control panel did not allow the operator of the control panel to view the pump or detect the leak. In the South Pass 60 incident, the platform operator and the pipeline company did not provide for adequate planning and coordination of the riser cutting operation. Platform personnel were apparently unaware of the status of the riser cutting operation or the difficulty the contractor was experiencing with the unexpected flow.

Current regulations for identifying out-of-service devices are found at:

30 CFR 250.123(c), General platform operations. (1) Surface or subsurface safety devices shall not be bypassd or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device which is temporarily out of service shall be flagged.

Requirements for out-of-service devices on pipelines are found at 30 CFR 250.154(c). If the required safety equipment is rendered ineffective or removed from service on pipelines which are continued in operation, an equivalent degree of safety shall be provided. The safety equipment shall be identified by the placement of a sign on the equipment stating that the equipment is rendered ineffective or removed from service.

The task group determined that the existing regulations do not provide for adequate communication or warning of out-of-service equipment and may not have prevented an accident similar to Piper Alpha if the same set of circumstances existed in the OCS. The current rule does not ensure that accidental flow of hydrocarbons will not be initiated in process components that are taken out of service, particularly if flow is initiated out of view of a flagged device or control. Flagging requirements for out-of-service equipment and valves need to be revised to ensure that control panels and certain equipment upstream of process equipment or valves are also flagged and that the procedure is documented. The task group recommended that the regulations should include requirements identifying which individuals have the authority to remove flags and to authorize equipment startup. It also recommended that subpart A be revised to include a briefing requirement to ensure that all workers on a production platform are notified of all out-of-service equipment and safety concerns at the beginning of each work shift or upon addition or replacement of personnel.

Location and Protection of Pipeline Risers

From the evidence gathered on Piper Alpha, at least one of the highly pressured risers ruptured when struck by debris falling from the burning platform. The effect of gas escaping from the high pressure pipeline was catastrophic. The escaping gas boiled to the surface, exploded, and burned under the platform for several hours.

Subpart J of the regulations currently requires risers to be protected only from contact with floating vessels. Protection is usually accomplished by locating risers between the jacket legs or by reinforcing the risers with external protection. The task group recommended that subpart J be revised to add a requirement to provide for riser protection from falling objects as well and that MMS require submission of piping drawings at an early stage in the platform design approval process.

Diesel and Helicopter Fuel Storage Areas and Tanks

During the early stages of the Piper Alpha incident, fuel drums and containers of lubricants and cleaners stored throughout the platform exploded and burned when they were exposed to flames. These materials are stored in a similar manner on U.S. facilities.

There are no current MMS regulations for fuel storage. The task group recommended that MMS revise the regulations to require operators to store diesel and other flammable liquids on platforms in accordance with the requirements contained in American Petroleum Institute (API) Recommended Practice (RP) 500, Recommended Practice for Classification of Locations for Electrical Installation at Petroleum Facilities. The task group also recommended that the revised regulations require operators to design fuel storage tanks in accordance with API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms.

Approval of Pipeline Repairs

Upon examination of the events leading to the fire on the ARCO "B" platform, the task group found that there was a lack of communication and coordination between the platform operator and the pipeline repair company. The task group recommended that the regulations be strengthened by requiring MMS approval for pipeline repairs. The Regional Supervisor, upon being notified that the lessee or right-of-way holder is anticipating a pipeline repair, will consider the complexity of the repair procedure in deciding whether or not to require a written repair plan. Exceptions would be made for pipeline repairs necessitated by imminent harm to the environment or to human safety.

Location of ESD Valves on Pipelines

The Piper Alpha fire and the Arco "B" fire were greatly intensified by released gas from pipelines associated with the platforms. In the United States, incoming pipelines are required to have emergency SDV's as a protective measure, but they are often located onboard the platform to allow access for maintenance and testing.

Locating SDV's away from the process equipment, such as on the seafloor or on the riser close to the waterline, may provide a greater level of protection for the platform but would at the same time reduce accessibility for repair and maintenance. This issue has major safety and reliability implications; therefore, MMS published the advance notice of proposed rulemaking in the **Federal Register** requesting more information on this subject.

Thirty responses to the questionnaire were received from the oil and gas industry, including major oil and gas production companies, pipeline operators, and equipment manufacturers. The first 13 questions dealt with locating a pipeline SDV on the seafloor or just above the splash zone. Approximately half of the respondents cited limited access to a valve, particularly those located on the seafloor, for inspection and maintenance purposes as a major area of concern. Nearly half of the commenters suggested that the reliability of subsea valves is unknown or nonexistent. Again, supporting data was very limited. The remaining four questions dealt with pipeline pressure reduction during emergency situations. The results of the questionnaire are discussed after this section.

For applications in the United States, the task group considered three distinct riser locations for the placement of SDV's: On the platform, on the seafloor, on the vertical portion of the riser below the lowest production deck but above the waterline. The advantages and disadvantages of each location are discussed below:

The first location considered was "on the platform." Subpart J—Pipelines and Pipeline Rights-of-Way, § 250.154(b)(2) requires that,

> Incoming pipelines boarding to a production platform shall be equipped with an automatic shutdown valve (SDV) immediately upon boarding the platform * * *

This regulation allows placement of the SDV on the deck where the riser enters the platform. "Immediately upon boarding" means near the edge of the platform. Accessibility for testing and maintenance is the greatest advantage to this location since the valve is located within the platform structure. Also, since the valve is located in close proximity of the production processing equipment, there is little or no hydrocarbon inventory between the valve and the process equipment that needs to be vented in the event of an emergency. However, this location also presents the greatest potential safety hazard. Since the valve is located near the process equipment, it is vulnerable to damage from explosions, extreme heat from fires, and falling debris during emergency situations. The task group determined that the valve in this location does not fulfill the intended purpose of an SDV in all situations since failure of the SDV or pressured portion of the riser would likely result in the release of a significant portion of the pipeline inventory at the point of failure. This vulnerability was demonstrated in the Piper Alpha disaster and the South Pass 60 fire.

Next, the task group considered locating SDV's on the seafloor a short distance from the platform. The safety advantage of this location is obvious. The valve is isolated from the platform and is not vulnerable to explosions or fire that may occur during an emergency situation. However, a major drawback of this location is inaccessibility for maintenance and testing, especially in deep water. At this location, the valve would isolate the majority of the pipeline inventory from the platform. However, there may be a significant hydrocarbon inventory in the riser between the valve on the seafloor and the process equipment. This inventory must be safely vented when the pipeline is depressurized during an emergency after the valve is closed.

Lastly, the task group considered locating SDV's on the vertical portion of risers below the lowest production deck of the platform but above the waterline. This location offers several advantages. The valve is removed from and placed below the hydrocarbon process areas within the platform, thereby isolating it from potential explosion and fire damage during emergency situations. Also, it effectively isolates the entire inventory of the pipeline from the platform since there is a minimal length of riser between the valve and the process equipment that must be vented during emergency situations, and the valve is above the waterline and is accessible for maintenance and testing.

Considering the information gathered from the **Federal Register** Notice and additional information regarding subsea valve installations in the U.K. North Sea, the task group concluded that locating such valves on risers or on the seafloor was technically feasible. Other aspects of the current regulation were also reviewed. The task group considered the current regulation which requires SDV's to be installed on incoming pipelines only. Based on the events that occurred on Piper Alpha, the task group determined that there is a significant potential hazard from blackflow of pressured hydrocarbons from departing pipelines. Therefore, the task group recommended requiring SDV's on all new pipelines entering and departing production platforms. This requirement should also apply to sulphur operations since sulphur is also flammable and poses a significant threat to safety. This requirement would cover bidirectional pipelines, crossing pipelines, fuel lines, and pipelines carrying flammable or hazardous fluids. Crossing pipelines that enter onto platforms but do not take on production from those platforms pose an environmental risk, if not a risk to human safety. Therefore, crossing pipelines should also be required to have SDV's installed on the incoming and departing risers.

Responses to the Questions in the July 23, 1990, Federal Register Notice

The following represents a summary of the responses received and does not necessarily reflect the opinion of MMS

Question—If the SDV was located on the seafloor or just above the splash zone, how would the following parameters be affected?

(a) *Maintenance.*

Response—Subsea maintenance poses a major problem, especially for deep water which would be difficult during rough seas and winter months. This jeopardizes the operation of the pipeline during those periods. Preventative subsea maintenance would be impractical while maintenance by divers would pose an additional safety risk. Minor and major repairs of a valve would most likely require removal from the pipe which is dangerous in itself and would require shutting down the pipeline system for extended periods

The splash zone is the most corrosive offshore environment. The cyclical wetting and drying of surface materials accelerate the corrosion process and degrades protective coatings. At the splash zone, increased maintenance would be required and most platforms have limited access in this area. Splash zone maintenance could not be performed during rough seas or winter months, thus jeopardizing the operation of the pipeline during those periods. Control lines would also be exposed to the corrosive wet/dry environment. Requiring SDV's to be located subsea or at the splash zone increases the safety risk to personnel and reduces the pipeline system's reliability.

The diving cost alone to repair a subsea SDV in 180 feet of water would run between $15,000 and $18,000 per day

(b) *Inspection*

Response—Subsea SDV inspection by a diver would be of minimal value. Control systems for subsea valves are more complex than for surface valves The ability of divers to inspect and perform repairs underwater is questionable and cannot be verified. Inspection and repair operations would be limited by weather conditions.

Inspection of an SDV above the splash zone is reliable since it can be performed by an engineer or company representative. All inspection information is first hand.

A typical subsea SDV inspection in 300 feet of water could cost between $20,000 and $30,000 per day.

(c) *Testing.*

Response—Testing subsea valves from a remote station is not reliable and may indicate problems that may or may not exist.

Dealing with a malfunction during testing could have serious implications due to limited accessibility.

The higher the SDV is located above the water, the greater its accessibility, maintenance, and performance

Frequency of subsea SDV testing should be kept to a minimum in order to maintain valve reliability.

Testing would be complex. Remote monitoring or divers would be necessary to confirm test results.

(d) *Reliability*

Response—Reliability is dependent on the individual reliability of all the components that make up the SDV and control system. Subsea valve reliability statistics are not presently available and need to be established

It is assumed that the reliability of an SDV functioning on the seafloor would be less than at any other location. Access to the SDV and control lines would be limited and equipment and personnel would be exposed to adverse conditions

The reliability of an SDV functioning in the splash zone would be slightly higher. Accessibility would be improved but the valve itself and control lines would be exposed to more adverse conditions

(e) *Pressure venting*

Response—Subsurface SDV's would be limited by the static back pressure of the seawater, or vent lines to the surface would be required. This may cause a delay in response time

A splash zone SDV would not have back pressure, but gas exhaust would need to be routed to the platform vent system

Underwater venting of pipelines is not recommended due to environmental considerations.

The volume of hydrocarbons vented through the platform flare system would be greater for a subsea SDV than a platform SDV. This is a serious safety consideration.

The capability to vent pressure from a pipeline should never take the form of bypassing the SDV but should be from the respective ends of the pipelines.

(f) *Bidirectional operations.*

Response—Not affected.

(g) *Pigging operations.*

Response—Subsea valves should be fitted with remote position indicators to ensure the valve is fully open during pigging operations.

Question—What measures could be taken to enhance performance and reliability—in particular, how could problems identified in response to question one be alleviated?

Response—Locating the SDV above the maximum wave height would alleviate most problems described in question one. Control lines are relatively short and the valve is readily accessible for maintenance and repairs.

There are designs where safety can be achieved by other methods. There are also "economical" platforms where the producer accepts more risk to reduce facility costs. The location of the SDV should be commensurate with the level of protection afforded to other high-risk facilities on the platform.

The SDV's should be manufactured from materials which will avoid valve replacement and offer reliable performance. The valve should have manual actuators and quick connect ends to facilitate operation or removal

Platform operating decks should be made of plate, not grating. Plate acts as a fire wall. If the deck is made of plate, the SDV can be safely located on the deck.

The SDV's should be self-operating and fail-safe closed.

Valves should be routinely inspected and tested as well as continuously monitored.

The SDV and control system should be protected from mechanical damage

Placement of SDV's on the platform would improve reliability but would also minimize their effectiveness.

Redundant control and instrumentation systems may be desirable. Standards should be established for value specifications and certification. Quality control in manufacturing could also enhance their reliability.

Valve technology has advanced to the point that reliable subsea operation is available. Advancement in the areas of a valve failure data base and check valve technology could yield further reliability and performance.

Require a surface SDV as well as a subsea valve

Question—What types of SDV's are available that could be located on the seafloor?

Response—Any valve designed for subsea service such as a quarter turn ball valve, check valve, or a gate valve could perform as an SDV.

The use of hydraulically operated valves could present a pollution problem

It is the actuator that needs to be scrutinized

No existing SDV would likely serve the purpose when located on the seafloor.

Hydraulic or pneumatic systems would be most practical. Some manufacturers have devised an SDV for subsea service.

Question—What specific limitations would be encountered with regard to placing the SDV at the seafloor location with respect to the following variables?

(a) *Size of valve.*

Response—For the most part, the size of the valve is not a major factor. However, valves over 12 inches in diameter are cumbersome, heavy and difficult to maneuver, and maintain. Valves greater than 36 inches in diameter are difficult to obtain.

The valve and actuator may be quite large and may require mechanical protection.

(b) *Pressure.*

Response—For the most part, pressure is not a major consideration except in deep water. Very large actuators may be needed to overcome extreme differential pressures in deep water.

(c) *Flow rate.*

Response—For low flow rates, the reduced flow may not justify the placement of a seafloor SDV.

(d) *Water depth.*

Response—Water depth has a large effect on diver costs for installation, maintenance, repairs, testing, etc. Deepwater locations also require novel installation methods, additional complexity, and further development of components and testing methods to achieve valve reliability. Some SDV's may be designed for installation and maintenance using a drilling rig. Beyond, 1,000 feet, diverless maintenance and retrieval become major considerations. Common valve operators are limited to water depths of less than 3,000 feet.

In shallow water, subsea valves would be subjected to potential damage from shipping vessels.

(e) *Types of fluids transported.*

Response—Gas lines that are pressurized contribute a higher risk to platform safety than nonpressurized oil lines.

(f) *Other variables identified by commenters.*

Response—Repairing and replacing subsea SDV's would increase pollution potential.

Reliable valve operation is the biggest concern. Factors affecting operation include water pressure and severe water forces on the valve and operating lines, hydrate formation, wax build up, etc. Chemical injection may be necessary to prevent hydrate or wax build up.

The use of seafloor SDV's would preclude the use of J-tube methods of riser installation since the valve could not be passed through the J-tube.

Sea-bottom conditions may dictate the location of SDV's.

Protective coverage would be necessary to prevent trawl damage.

Heavy valves, should they become suspended, will cause additional stress on the pipeline.

The SDV's located near the waterline would be vulnerable to collisions and wave damage.

Question—What actuation and control system options are available for placement of the SDV on the seafloor (e.g., pneumatic, hydraulic, electrical)? Would actuation backup capability be necessary or desirable?

Response—Actuators can be powered by line pressure, stored gas pressure, or hydraulics. Fail-safe operation would be desirable. Pneumatic and hydraulic systems are the most reliable for subsea service. Manual operation is also necessary. Electrical systems could be used, but a backup system would be desirable. It is also necessary to provide manual diver valve actuation for emergency situations.

Question—What emergency support systems (e.g., fire loop system, ESD system, subsurface safety system) would activate the subsea SDV? Should the conditions of actuation be different than for an SDV located on the platform?

Response—All ESD and fire loop systems could operate the SDV. There would need to be a control line between the valve actuator and the platform. This could pose a maintenance problem. Pressure sensors could also be installed for the case of a ruptured or blocked line. This would require a relief valve, which brings up the following question. Where would the relief valve relieve to, the seafloor? The foregoing provides yet another reason to have the SDV above water.

Question—For seafloor placement of the SDV, what would be the optimum location in distance from the platform?

Response—Distance is not very important. The closer to the platform, the better. This would keep the control lines the shortest. Placing the valve 40 feet below the water surface on the riser would make it accessible to divers while providing its structural protection.

The location of an SDV relative to the platform should ideally be decided by a quantified risk analysis. The optimum distance for placement of an SDV should be determined on a case-by-case basis, considering water depth, anchorage areas, fishing areas, and minimizing the inventory between the platform and the SDV.

Question—What effect would burial (either intentional or unintentional) of the valve and actuator have on maintenance and operational reliability?

Response—Burial would not hurt the SDV, but it would make it harder for divers to find it. Burial would increase the diving costs associated with maintenance. Burial would preclude using a remotely operated vehicle for inspection and maintenance and should be avoided.

Question—What measures would be necessary to protect a subsea valve and control system from the following effects?

(a) *Temperature.*

Response—The SDV and control system need to be designed to operate in internal and external environments by selection of suitable materials.

(b) *Hydrates.*

Response—Hydrate formation could prevent subsea SDV operation. Glycol injection lines would be required in addition to control lines supplemented with glycol tanks, pumps, and attendant equipment.

(c) Permafrost.

Response—Not feasible.

(d) Hydrogen sulfide.

Response—The effects of hydrogen sulfide could be controlled with special alloys or inhibitors.

(e) Carbon dioxide.

Response—The effects of carbon dioxide could be controlled with special alloys or inhibitors.

(f) Stress cracking.

Response.—The effects of stress cracking could be controlled with special alloys.

(g) Other effects identified by commenters.

Response.—Control lines and connections could be damaged by boat or fishing activity. Protection will be necessary to protect small lines from being hooked by trawl boats and anchors.

Sand production could jeopardize the operation of a subsea valve.

Corrosion protection will be necessary for valve operators and control lines.

Question—Should SDV's be manufactured, maintained, and repaired in accordance with a certification process similar to the process used with surface and subsurface safety valves?

Response—API Spec 6D, Specification for Pipeline Valves, is a sufficient standard for valves, so certification is not necessary. Pipeline SDV's are not critical to permanent containment of hydrocarbons. However, proper maintenance of subsea valves may be a bigger issue.

Question—Would the use of flexible piping impose difficulties to subsea valve?

Response—Not so long as the pipeline is properly anchored at the valve location. High seas could pose a difficult problem (keeping the pipe still). Also, special support may be necessary for the SDV.

Question—If an SDV is placed at an alternate seafloor location, should an ADV also be placed on the platform?

Response—An SDV installed on a platform has a different function than a subsea SDV. The platform SDV mitigates consequences of a hydrocarbon release from the process equipment by isolating the pipeline from those facilities. Subsea SDV's mitigate the consequences of a hydrocarbon release from the pipeline which may occur as a primary or secondary event.

In general, redundancy is always safer. However, redundancy costs more for equipment and increases the chance for malfunction and platform downtime. Placement of a surface SDV should not be required but considered an option. In general, SDV's should not be placed on the seafloor except in unusual circumstances.

If an SDV is installed above the splash zone, there is no need for another one on the seafloor.

Question—Current regulations require SDV's on certain incoming pipelines. What, if any, SDV's should be required on outgoing and crossing pipelines?

Response—There is no need to place SDV's on all outgoing or crossing pipelines. Adding more valves is not necessary; however, present valves may need to be relocated to safer locations.

The SDV's should be placed on new outgoing and crossing pipelines. A risk assessment should be performed on existing lines before making such modifications.

Flow safety valves are adequate and less likely to fail, due to their simplistic design.

Unmanned platforms that contain no production facilities, no compression, and no power source should not require SDV's.

Question—What options are available to allow rapid reduction of pipeline pressure in an emergency, and what are the benefits and drawbacks of the techniques?

Response—Rapid reduction of pipeline pressure is a formidable problem. Flaring at the platform can be a very slow method of reducing pipeline pressure. Strategically located SDV's along the pipeline may offer an alternative to depressurization. An outlying subsea vent is probably safest since it distances the gas from the platform. However, in most cases, rapid pressure reduction is expensive and of limited use.

There is the damage of the formation of hydrate plugs and liquid plug flow as well as the need to prevent expanding vapor explosions.

Blowdown on the seafloor or a platform could cause considerable pollution due to entrained liquids and could feed a fire in some instances.

Blowing down a pipeline at a platform would require a scrubber system to separate liquids. These liquids would need to be disposed of safely which may be difficult during a platform emergency.

Question—What are the benefits and shortcomings of subsea pipeline diversion?

Response—System dependability might be enhanced by subsea diversion but not enough to offset additional cost over platform diversion

Subsea diversion could place evacuating and rescuing personnel in peril and could pose a significant pollution problem.

Question—What are the advantages and disadvantages of having the capability to blow down a pipeline from both ends?

Response—It may be good engineering practice to locate blowdowns at each end of a pipeline. One end may be inaccessible due to fire or failure. If both ends are accessible, a more rapid blowdown can be accomplished. However, the majority of damage and injuries on a platform occurs during the first few minutes and before pressure could be reduced. Actual damage is not likely to be significantly reduced.

It would be necessary to bypass the check valve of the outgoing line. The bypass would need to be maintained and tested. Facilities for large scrubbing, liquid handling, and flaring would also be required.

Question—Should pipelines be required to have the capability of rapid reduction of pipeline pressure from either end and, if so, what length of time should be specified as the maximum time for pipeline pressure reduction in an emergency situation?

Response—Rapid pressure reduction is impractical during emergencies. Larger lines and volumes must be depressurized more slowly.

The pest solution is accident prevention and efficient platform evacuation. Gas pipeline pressure cannot be reduced fast enough to prevent early damage during a platform emergency.

In an emergency, evacuation is the primary concern. Flaring large volumes of gas could create a dangerous situation for aircraft and boats.

Summary of Proposed Changes

Based on the report of the task group and the analysis of the responses received following the July 23, 1990, **Federal Register** Notice, MMS proposes to:

1. Revise § 250.1, Documents incorporated by reference, to incorporate API's Recommended Practice for Classification of Locations for Electrical Installation at Petroleum Facilities, First Edition, June 1, 1991 (API RP 500), into the regulations. This document replaces API RP 500B, Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Second Edition, with Supplement. API RP 500 combined API RP 500A, 500B, and 500C into a single document to provide guidelines for classifying locations at petroleum facilities for the selection and installation of electrical equipment. API RP 500 contains essentially the same information contained in API RP 500B. API RP 500 is referenced in § 250.51(i) to classify fuel and other flammable liquid storage locations. Also, references to API RP 500 replace API RP 500B in §§ 250.53(b), 250.122(e)(4)(i), 250.123(b)(9)(i), 250.291(b)(3) and (d)(4)(i), and 250.292(b)(4)(i).

2. Add a new § 250.27, Safety of operations communication, that requires operators of offshore production platforms to notify incoming or new personnel arriving on the platform of the status of repairs of process equipment, safety systems, or other systems that are out of service. The new regulation also requires operators to maintain records of all communications.

3. Revise § 250.51, General requirements, to include requirements for fuel storage on offshore facilities

4. Revise § 250.123, Additional production system requirements, to be more specific on identifying and deactivating process equipment and controls when safety systems are out of service and maintaining records.

5. Add a new paragraph, § 250.153(a)(5), that requires operators to protect horizontal sections of pipeline risers from damage by falling objects.

6. Revise § 250.154 to require pipeline shutdown valves to be located below the lowest production deck on all new pipelines entering and departing OCS platforms. This rule also applies to all pipelines under the jurisdiction of MMS, including production flow lines, gathering lines, sulphur pipelines, fuel lines, bidirectional lines, and crossing pipelines. For existing platforms and pipelines, the rule requires installation or relocation of valves when significant riser repairs or maintenance is performed.

7. Revise § 250.158 to give the Regional Supervisor authority to require operators to submit written pipeline repair procedures for approval. The preparation and approval of written

plans ensure that an operator adequately considers the repair activity.

Author

The principal authors of this proposed rule are Elmer P. Danenberger, Chief, Engineering and Technology Division, and Paul Schneider, Technology Assessment and Research Branch.

Regulatory Flexibility Act

The DOI has also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and level of financial resources necessary to safely conduct such activities.

Paperwork Reduction Act

This proposed rule adds new information collection requirements to subparts A and J. The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The collection of this information will not be required until it has been approved by OMB. Public reporting burdens for the new information collection requirements contained in subparts A and J are estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053, 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget; Paperwork Reduction Project (1010–0030) for subpart A and (1010–0050) for subpart J; Washington, DC 20503, telephone (202) 395–7340.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protection Property Rights.

E.O. 12778

The DOI has certified to OMB that this proposed regulation meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

E.O. 12866

This rule was reviewed under E.O. 12866. The rule was determined to not be a significant rule under the criteria of E.O. 12866 and, therefore, was not reviewed by OMB.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 4, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR part 250 is proposed to be amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.1, paragraphs (d)(9) and (d)(15) are revised as follows:

§ 250.1 Documents incorporated by reference.

* * * * *

(d) * * *

(9) API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811–07180, incorporated by reference at §§ 250.51(i); 250.122 (b) and (e)(2); 250.123(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), and (c)(2); 250.124 (a) and (a)(5); 250.152(d); 250.154(b)(12); 250.291 (c) and (d)(2); 250.292 (b)(2) and (b)(4)(v); and 250.293(a).

* * * * *

(15) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. 811-06005, incorporated by reference at §§ 250.51(i), 250.53(b), 250.122(e)(4)(i), 250.123(b)(9)(i), 250.291(b)(3) and (d)(4)(i) and 250.292(b)(4)(i).

* * * * *

3. A new § 250.27 is added to subpart A to read as follows:

§ 250.27 Safety of operations communication.

At the beginning of each crew shift and upon addition or replacement of personnel, incoming workers shall receive safety information relative to activities and repairs underway on the facility and any process or safety equipment that is out of service. This information may be provided through a safety meeting, a notice provided to each employee, or a posted notice that must be read by each employee. A record of this communication shall be kept and maintained at the facility.

4. In § 250.51, a new paragraph (i) is added to read as follows:

§ 250.51 General requirements.

* * * * *

(i) Diesel and other fuel storage tanks, drums containing lubricants, cleaners, and other flammable liquids shall be clearly labeled and located as far as practicable from ignition sources. Storage locations shall be classified in accordance with the American Petroleum Institute (API) Recommended Practice (RP) for Classification of Locations for Electrical Installations at Petroleum Facilities (API RP 500). Tanks shall be adequately vented or equipped in accordance with API RP for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms (API RP 14C). Fire detection devices, such as fusible plugs, shall be installed in fuel and flammable liquid storage areas.

5. In § 250.53, paragraph (b) is revised to read as follows:

§ 250.53 Electrical equipment.

* * * * *

(b) All areas shall be classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities.

* * * * *

6. In § 250.122, the introductory text of paragraph (e)(4)(i) is revised to read as follows:

§ 250.122 Design, installation, and operation of surface production-safety systems.

* * * * *

(e) * * *

(4) * * *

(i) A plan of each platform deck outlining all hazardous areas classified in accordance with API RP 500, Recommended Practice for Classification of Location for Electrical Installations at Petroleum Facilities, and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information.

* * * * *

7. In § 250.123, paragraphs (b)(9)(i) and (c)(1) are revised to read as follows:

§ 250.123 Additional production system requirements.

* * * * *

(b) * * *

(9) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the lower explosive limit (LEL). One approved method of providing adequate ventilation is a change of air volume every 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500.

* * * * *

(c) *General platform operations.* (1) Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device that is temporarily placed out of service shall be flagged. When conducting repairs or maintenance that expose the production safety system to the atmosphere or to conditions that constitute a potential danger to safety of personnel or protection of the environment, the system shall be purged of hydrocarbons and flow shall be blocked from the area under repair or maintenance. Valves, pumps, or other equipment that could initiate flow through the designated area shall also be flagged and removed from service. The activation of such equipment from the control panel shall be temporarily precluded. Only the person in charge of the repair or maintenance may authorize the resumption of service. This authorization may not be given until the repair or maintenance action is completed.

* * * * *

8. In § 250.153, a new paragraph (a)(5) is added to read as follows:

§ 250.153 Installation, testing, and repair requirements for DOI pipelines.

(a) * * *

(5) Risers shall be designed to prevent damage from falling debris. Horizontal sections of risers shall be of minimal length and protected to prevent damage from falling objects.

* * * * *

9. In § 250.154, paragraphs (b) and (c) are revised to read as follows:

§ 250.154 Safety equipment requirements for DOI pipelines.

* * * * *

(b) All new oil, gas, or sulphur pipelines approved or modified after the effective date of these regulations shall comply with this section, where applicable.

(1)(i) Incoming pipelines to a platform shall be equipped with a flow safety valve (FSV).

(ii) For sulphur operations, incoming pipelines delivering gas to the power plant platform may be equipped with high- and low-pressure sensors (PSHL), which activate audible and visual alarms in lieu of requirements in paragraph (b)(1)(i) of this section. The PSHL shall be set at 15 percent or 5 psi, whichever is greater, above and below the normal operating pressure range.

(2) Incoming pipelines boarding to a production platform or delivering gas to a power plant platform shall be equipped with an automatic shutdown valve (SDV) below the lowest production deck of the platform. The SDV shall be connected to the automatic- and remote-emergency shut-in systems.

(3) Departing pipelines receiving production from production platforms shall be protected by PSHL to directly or indirectly shut in all production facilities. The PSHL shall be set not to exceed 15 percent above and below the normal operating pressure range. However, high pilots shall not be set above the pipeline's maximum allowable operating pressure.

(4) Departing pipelines from a production platform shall be equipped with an SDV below the lowest production deck of the platform. The SDV shall be connected to the automatic- and remote-emergency shut-in systems in a manner that allows the safe shut in of the platform prior to SDV closure.

(5)(i) Crossing pipelines on production or manned nonproduction platforms shall be equipped with an SDV on both the incoming and departing lines below the lowest production deck. These SDVs shall be connected to the automatic- and remote-emergency shut-in systems.

(ii) Crossing pipelines on unmanned nonproduction platforms shall be equipped with an FSV.

(6) Bidirectional pipelines servicing production or manned nonproduction platforms shall be equipped with a PSHL and an SDV on all risers.

(7) All SDV's shall be operable locally and connected to the automatic- and remote-emergency shut-in systems. The SDV shall be protected from fire, explosion, and impacts from falling objects and marine vessels. The SDV shall be accessible for inspections, maintenance, repairs, and testing. The SDV shall be inspected and tested at least once each calendar month, but the interval shall not exceed 6 weeks.

(8) For facilities and pipelines installed prior to the effective date of these regulations, an SDV shall be installed when riser maintenance or repair is performed.

(9) The Regional Supervisor may require that oil pipelines be equipped with a metering system to provide a continuous volumetric comparison between the input to the line at the structure(s) and the deliveries onshore. The system shall include an alarm system and shall be of adequate sensitivity to detect variations between input and discharge volumes. In lieu of the foregoing, a system capable of detecting leaks in the pipeline may be substituted with the approval of the Regional Supervisor.

(10) Pipelines incoming to a subsea tie-in shall be equipped with a block valve and a FSV. Bidirectional pipelines connected to a subsea tie-in shall be equipped with only a block valve.

(11) Gas-lift or water-injection pipelines on unmanned platforms need only be equipped with an FSV installed immediately upstream of each casing annulus or the first inlet valve on the wellhead.

(12) Pipeline pumps shall comply with Section A7 of API RP 14C. The setting levels for the PSHL devices are specified in paragraph (b)(5) of this section.

(c)(1) If the SDV or other required safety equipment is rendered ineffective or removed from service on pipelines that are continued in operation, an equivalent degree of safety shall be provided. The affected safety equipment shall be identified by the placement of a sign on the equipment stating that the equipment is rendered ineffective or removed from service.

(2) When conducting repairs or maintenance to the pipeline system components that expose the pipeline to the atmosphere or to conditions that constitute a potential danger to safety of personnel or protection to the environment, the system shall be purged of hydrocarbons and flow shall be blocked from the area under repair or maintenance. Valves, pumps, or other equipment that could allow or initiate flow through the designated area shall also be flagged and removed from service. Activation of this equipment from the control panel shall be temporarily precluded. Only the person in charge of the repair or maintenance may authorize the resumption of service. This authorization may not be given until the repair or maintenance action is completed.

10. In § 250.158, paragraph (e) is revised to read as follows:

§ 250.158 Reports.

* * * * *

(e)(1) Except for emergency repairs necessary to prevent or minimize pollution or the loss of human life, the lessee or right-of-way holder shall notify the Regional Supervisor prior to the repair of any pipeline or pipeline component. Based on the nature of the repair, the Regional Supervisor may require the lessee or right-of-way holder to submit detailed pipeline repair procedures for approval before conducting repairs. The repair procedures shall include the types of equipment and specifications of components used in the repair.

(2) A detailed report of the pipeline repair shall be submitted to the Regional Supervisor within 30 days after completion of the repair. The report shall include the following:

(i) Type of damage sustained and cause:

(ii) Type and volume of hydrocarbons lost due to damage;

(iii) Specifications of components utilized in the repair and a detailed repair procedure;

(iv) Results of pressure and other verification tests; and

(v) Date pipeline or component returned to service.

* * * * *

11. In § 250.291, paragraphs (b)(3) and (d)(4)(i) are revised to read as follows:

§ 250.291 Design, installation, and operation of production systems.

* * * * *

(b) * * *

(3) Electrical system information, including a plan of each platform deck that shows:

(i) All hazardous areas classified in accordance with API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities; and

(ii) All areas in which potential ignition sources are to be installed:

* * * * *

(d) * * *

(4) * * *

(i) A plan of each platform deck, outlining all hazardous areas classified in accordance with API RP 500 and outlining areas in which potential ignition sources are to be installed:

* * * * *

12. In § 250.292, paragraph (b)(4)(i) is revised to read as follows:

§ 250.292 Additional production and fuel gas system requirements.

* * * * *

(b) * * *

(4) *Fire- and gas-detection system.* (i) Fire (flame, heat, or smoke) sensors shall be installed in all enclosed classified areas. Gas sensors shall be installed in all inadequately ventilated, enclosed classified areas. Adequate ventilation is defined as ventilation that is sufficient to prevent accumulation of significant quantities of vapor-air mixture in concentrations over 25 percent of the LEL. One approved method of providing adequate ventilation is a change of air volume every 5 minutes or 1 cubic foot of air-volume flow per minute per square foot of solid floor area, whichever is greater. Enclosed areas (e.g., buildings, living quarters, or doghouses) are defined as those areas confined on more than four of their six possible sides by walls, floors, or ceilings more restrictive to air flow than grating or fixed open louvers and of sufficient size to allow entry of personnel. A classified area is any area classified Class I, Group D, Division 1 or 2, following the guidelines of API RP 500.

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[FR Doc. 94–11601 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

RIN 0596–AA35, 0596–AB42

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1780 and 4100

[WO–220–4320–02 24 1A]

RIN 1004–AB89

Administration of Grazing on Public Lands and National Forest System Lands

AGENCIES: Forest Service, USDA and Bureau of Land Management, Interior

ACTION: Proposed rule; notice of hearings and informational meetings.

SUMMARY: This document provides notice of public hearings in which the public is invited to comment on regulations proposed by the Bureau of Land Management (BLM) and the Forest Service, relating to the administration of grazing on the public lands administered by the BLM and on National Forest System lands. These hearings will also provide the public an opportunity to comment on a draft environmental impact statement (EIS) for Rangeland Reform '94. Immediately preceding the hearings, BLM and the Forest Service will sponsor informational meetings on the proposed regulations.

DATES: All hearings will be held on June 8, 1994.

ADDRESSES: Hearings will be held at the facilities listed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Lee Otteni (BLM), 202–208–7701 or Jerry McCormick (Forest Service), 202–205 1746.

SUPPLEMENTARY INFORMATION:

Background

The United States Department of the Interior is proposing to amend the regulations which govern how the BLM administers livestock grazing on the public lands. A proposed rule was published in the **Federal Register** on Friday, March 25, 1994 (59 FR 14314) The proposed rule provides for a public comment period that runs until July 28, 1994.

On April 28, 1994, the United States Department of Agriculture published similar proposed rules in the **Federal Register** (59 FR 22074, 22094) which govern how the Forest Service administers livestock grazing on National Forest System lands. These proposed rules also provide for public comments to be received by July 28, 1994.

In addition to the proposed rules, the Bureau of Land Management and the Forest Service, as cooperating agencies, have prepared a draft EIS. The draft EIS is currently being printed and prepared for distribution. Notice of availability of the draft EIS will be made through a separate publication in the **Federal Register**.

During the preparation of the BLM proposed rule, Interior Secretary Bruce Babbitt met on a number of occasions throughout the West with governors, State and local officials, ranchers, environmentalists and other public land users. These meetings resulted in many useful suggestions that are reflected in the proposed rule. In order to continue this important communication with user groups and members of the public, and to further elicit valuable comments on the proposed rules of both Departments and the draft EIS, the BLM and Forest Service have jointly scheduled 49 public hearings to be held throughout the United States on June 8, 1994.

Hearing Procedures

The purpose of the hearings is to provide the public an alternate method by which to comment on the proposed rules and the EIS. The hearings do not replace the public comment period described in the proposed rules. All members of the public may submit comments in accordance with the procedures set forth in the proposed rules and are encouraged to do so.

The hearings will be preceded by informal general information sessions which will begin at 8 a.m. in each location. The purpose of these sessions is to allow the public an opportunity to learn more about the proposed rules and EIS. BLM and Forest Service personnel will be present to describe the key elements of the proposals, and to answer questions so that those who wish to testify at the hearings will fully understand the proposals. These sessions are not part of the hearing and will not appear as part of the hearing record.

The hearings themselves will begin at 10:30 a.m. and continue until 5 p.m., with a lunch recess to be determined by the Hearing Officer. The hearings will resume at 7 p.m. and will continue until 10 p.m. or thereafter until all speakers have been heard.

In order to have productive and meaningful hearings and to ensure that those who wish to speak at the hearings are able to do so in a fair and orderly manner, the following procedures will be observed:

—Persons wishing to testify must register at the hearing site between 8 a.m. and 9 p.m. Speakers will be heard in the order in which they register, with the exception of elected Federal, state or local officials, who will speak first at the beginning of each session or as otherwise arranged with the Hearing Officer.

—Each person may present testimony only once. However, if time permits, the Hearing Officer may allow each speaker additional time after all other witnesses have had the opportunity to speak. When provided, such additional time will be granted to speakers in the same order in which they originally testified.

—Because a large number of speakers is anticipated, it will be necessary to limit the amount of time of each speaker. Since the number of speakers may vary greatly from location to location, the time allocated to each speaker may also vary among the hearings. However, within any one hearing, all speakers will be allocated an equal amount of time. The amount of time allocated to each speaker will be left to the discretion of the Hearing Officer. Time limitations will be strictly followed.

—The purpose of the hearings is to elicit comments from the public. A technical representative from the BLM and Forest Service will be present to ask clarifying questions of witnesses. Time spent asking and answering these questions will not count against the time allocated to the speaker. Because of the time constraints and the desire to maximize public input, the technical representatives will not respond to questions from or otherwise engage in discussions with the speaker. Speakers who wish to ask questions should do so during the informal information session.

—A transcript of the hearing will be made and become part of the rulemaking record. Speakers are encouraged to submit a written copy of their statements to be included in the hearing record. The record of the hearing will remain open through June 13, 1994 for submission of supplemental written statements or other exhibits. The name and address of the designated official to receive these statements or exhibits will be announced at the hearing.

Location

The hearings are to be held at the following locations:

ARIZONA

Fountain Suites Hotel, 2577 W. Greenway, Phoenix, AZ, on the Southeast Corner of the Black Canyon Freeway.
Eastern Arizona College, Student Activity Center, Highway 70, Thatcher, AZ

CALIFORNIA

Red Lion Inn, 1830 Hilltop Drive, Redding, CA 96002
Red Lion Inn, 3100 Camino del Rio Court, Bakersfield, CA 93308
Barstow Community Center, 841 Barstow Road, Barstow, CA 92311
Lassen Community College, Room H221–222 (Humanities Building), Highway 139, Susanville, CA 96130

COLORADO

Holiday Inn Denver West, 14707 West Colfax Avenue, Golden, CO
Holy Cross Abbey, Community Center, 2951 East Highway 50, Canon City, CO
Moffat County Fairgrounds Pavilion, Craig, CO
Two Rivers Convention Center, 159 Main Street, Grand Junction, CO
The Montrose Pavilion, 1800 Pavilion Road, Montrose, CO

IDAHO

Weston Plaza, 1350 Blue Lakes Blvd., N., Twin Falls, ID 83301
Senior Citizens Center, Rt. 2 Truck Route, Grangeville, ID 83530
Quality Inn of Pocatello, 1555 Pocatello Creek Road, Pocatello, ID 83201
Boise Center On-the-Grove, 850 Front, Boise, ID 83702
Salmon Valley Center, 200 Main Street, Salmon, ID 83467

MONTANA

Copper King Inn, 4655 Harrison Ave. S., Butte, MT 59701
Exhibition Hall, Custer Co. Fairgrounds, Garryowen Rd., W. of Miles City, Miles City, MT 59301
Fergus High School, 201 Casino Creek Dr., Lewistown, MT 59457

NEVADA

Elko Junior High School, 770 Country Club Drive, Elko, NV 89801
Humboldt County Fairgrounds, Exhibition Hall, Fairgrounds Road, Winnemucca, NV 89445
Peppermill Hotel and Casino, 2707 S. Virginia Street, Reno, NV 89502
Bristlecone Convention Center, 150 6th Street, Ely, NV 89301
Cashman Field, 850 N. Las Vegas Blvd., Room 103–104, Las Vegas, NV 89101
Austin High School, Highway 305 North, Austin, NV 89310

NEW MEXICO

UNM Continuing Education Conference Center, 1634 University Blvd., NE, Main Auditorium, Albuquerque, NM 87131–4006
The Best Western Mesilla Valley Inn, Aspen Room, 901 Avenida de Mesilla, Las Cruces, NM 88005
Pearson Auditorium, New Mexico Military Institute Campus, Roswell, NM 88201

Farmington Civic Center, 200 West Arrington, Farmington, NM 87401

NORTH DAKOTA

Hospitality Inn, Remington-Winchester Rooms, Highway 22 and I–94, Dickinson, ND

OREGON

BLM Salem District, Lobby Level Conference Room, 1717 Fabry Road SE, Salem, OR 97306

Vale Catholic Church, Parish Hall, 690 A Street West, Vale, OR 97918

Harney County Fairgrounds, Memorial Building, South Egan Road, Burns, OR 97720

BLM Medford District, The Oregon Room, 3040 Biddle Road, Medford, OR 97504

Central Oregon Community College, Hitchcock Auditorium, 2600 NW College Way, Bend, OR 97701

Lake County Courthouse, Lakeview, OR 97630

LaGrande Senior High School, High School Auditorium, 708 K Avenue, LaGrande, OR 97850

UTAH

Holiday Inn, 1575 W. 200 N., Cedar City UT

Sevier County Courthouse, 250 North Main Street, Richfield, UT

Uintah County High School, Little Theater, 1880 W. 500 N., Vernal, UT

Star Hall, Center Street, Moab, UT

Salt Lake City Public Library, Third Floor Lecture Hall, 209 E. 500 S., Salt Lake City, UT

Dixie High School, 350 East 700 South, St. George, UT

WASHINGTON

Wenatchee Convention Center, South Ball Room, 201 Wenatchee Avenue, Wenatchee, WA 98801

WASHINGTON DC

Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153

WYOMING

Elks Lodge BPOE II 1908, 601 Coburn Avenue, Worland, WY 82401

White Mountain Junior High School Auditorium, 2550 Foothills Blvd, Rock Springs, WY 82901

Jeffrey Center, 3rd and Spruce St., Rawlins, WY 82301

Natrona County Agricultural Building, 2011 Fairground Road, Casper, WY 82604

Dated: May 5, 1994.

Mike Dombeck,

Acting Director, Bureau of Land Management.

Mark A. Reimers,

Acting Chief, Forest Service.

[FR Doc. 94–11653 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–84–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4881–6]

RIN 2060–AD97

National Emission Standards for Hazardous Air Pollutants Epoxy Resins Production and Non-nylon Polyamides Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standard would limit emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture polymers and resins produced from epichlorohydrin feedstock, specifically, basic liquid epoxy resins (BLR) and non-nylon polyamide resins, also known as wet strength resins (WSR). The proposed standards implement section 112(d) of the Clean Air Act (Act) amendments of 1990, which require the Administrator to regulate emissions of hazardous air pollutants listed in section 112(b) of the Act. The intent of these standards is to protect the public by requiring new and existing major sources to control emissions to the level achievable by the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality related health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before July 15, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 6, 1994, a public hearing will be held on June 15, 1994, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Lina Hanzely at (919) 541–5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 6, 1994, by contacting Ms. Lina Hanzely, Chemicals and Petroleum Branch, (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–37, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Background Information Document

The background information document (BID) for the proposed standard may be obtained from the docket or from the U. S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Emissions from Epoxy Resins Production and Non-Nylon Polyamides Production—Background Information for Proposed Standards" EPA 453/R–94–033a.

Docket. Docket No. A–92–37, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. Randy McDonald at (919) 541–5402, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. List of Source Categories
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III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
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I. List of Source Categories

Section 112 of the amended Act requires that EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Included on that list were major sources emitting HAP from epoxy resins and non-nylon polyamides production.

The categories of major sources that would be affected by this regulation are defined as the manufacture of basic liquid epoxy resins (BLR) and resins made of epichlorohydrin (EPI) cross-linked non-nylon polyamides, also known as wet strength resins (WSR). The BLR source category does not include the manufacture of specialty epoxy resins (epoxy resins that are not BLR) or the modification of epoxy resins (BLR that are blended with solvents, reactive diluents, or other resins). The WSR source category are those that are made with dibasic esters, dicarboxylic acids, amines, and EPI. In developing the background information to support the proposed standard, no reasons for subcategorizing either of the source categories were identified.

Production methods used in the two source categories include both batch and continuous operations. The sizes of the facilities range from those that make several thousand pounds of resin per year (lb/yr) to those that produce over 100 million lb/yr. Air emissions of HAP compounds originate from breathing and working losses from storage tanks, venting of process vessels, leaks from piping equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams. Pollutants (HAP) emitted from the production processes include EPI, methanol, and hydrochloric acid (HCl) Detailed information describing manufacturing processes and emissions can be found in "Emissions from Epoxy Resins Production and Non- Nylon Polyamides Production—Background Information for Proposed Standards" (EPA 453/R–94–033a), Chapter 3.

As of 1990, only three U.S. companies were producing BLR. All three of these facilities are considered to be major sources according to the Act criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP. There are at least 17 facilities in the U.S. that manufacture WSR, of these, 9 are considered major sources because they are co-located within larger chemical manufacturing operations, based on the criteria mentioned above. The proposed standard would apply to all major sources that produce BLR and/or WSR. Area sources would not be subject to this standard

II. Background

In 1989, EPA conducted a study that examined the use of epichlorohydrin in industry. This study identified the BLR and WSR industries as the major users of epichlorohydrin in the U.S.

Under section 112(c) of the Act, the Administrator is required to publish and from time to time revise a list of source categories and subcategories that emit one or more of the hazardous air pollutants listed in section 112, as amended. Information from the study of epichlorohydrin use in industry was used during the development of the source category list. On July 16, 1992 (57 FR 31576), the EPA published the initial list of source categories, which includes epoxy resins production and non-nylon polyamides production.

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Clean Air Act gives the Environmental Protection Agency the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of "major sources" (defined below) that emit one or more of the listed HAP. A major source is defined in section 112 (a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the "maximum achievable control technology" (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards should be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3))

In a March 9, 1994 **Federal Register** notice reopening the public comment period for determination of "MACT floor" for NESHAP source categories (59 FR 11018), the Agency considered more than one interpretation of the statutory language concerning the MACT floor for existing sources and solicited comment on them. The MACT floor decision that the EPA will make on the basis of this March 9, 1994 notice will have broad precedential effects, and will presumptively be followed by the Agency in any rulemakings subsequently promulgated under Title III of the Act. The MACT floor determinations proposed in today's rulemaking may therefore be affected by the Agency's final interpretation of "MACT floor."

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

The proposed standards would regulate HAP emissions from epoxy resins production (facilities that produce BLR), and from non-nylon polyamides production (facilities that produce WSR), that are determined to be major sources. The standards would apply to existing sources as well as new sources.

B. Pollutants To Be Regulated

Hazardous air pollutants emitted from existing BLR and wet strength resin production processes include epichlorohydrin, methanol, and hydrochloric acid. The proposed standards would regulate emissions of these compounds, as well as any other HAP that may be emitted.

In addition, note that epichlorohydrin is listed under section 112(r) of the Act. The intent of section 112(r), Prevention of Accidental Releases, is to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release, and to minimize consequences should a release occur. Epichlorohydrin, along with the other substances listed under section 112(r)(3), is listed because it is known to cause, or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment (see 59 FR 4478, January 31, 1994). Sources that handle epichlorohydrin in greater quantities than the established threshold quantity under section 112(r)(5) will be subject to the risk management program requirements under Section 112(r)(7) (see 58 FR 54190, October 20, 1993).

C. Affected Emission Points

Emission points identified for BLR and wet strength resin production include process vents, equipment leaks, storage tanks, and wastewater.

D. Format of the Standards

The standards for process vents, storage tanks, and wastewater for existing facilities are presented in an emission limit format in the units of pounds of HAP per 1 million pounds of product (lb HAP/MM lb product). Facilities will have the option of using any control technology or pollution prevention strategy, as long as the HAP production-based emission limits are achieved. An emission limit format cannot be used for the standard for new facilities because it would identify a specific facility's production level, which is claimed as confidential business information. Therefore, standards for new facilities are in the equipment standard format. Facilities would have to implement the controls specified in the standard, or demonstrate equivalency, to achieve compliance.

The EPA solicits comments on the equipment standard format of the standards for process vents, storage tanks, and wastewater at new facilities. In particular, the EPA solicits comments on whether performance standards for vents, tanks, and wastewater at new facilities can be used without compromising confidential business information and whether operators can comply with performance standards for vents, tanks, and wastewater at new facilities without compromising confidential business information.

Standards for equipment leaks are specified for new and existing BLR facilities, and are presented as an alternative standard for new and existing wet strength resin facilities. Equipment leak standards are in the form of equipment/work practice standards. Facilities would be required to implement the program specified in the proposed regulation to achieve compliance with the standard.

E. Proposed Standards

Table 1 summarizes the standards for existing BLR and WSR sources. In each case, for purposes of determining compliance with the emission requirements, the source was divided into two portions: (1) The combination of process vents, storage tanks, and wastewater, and (2) equipment leaks. The proposed standards for BLR production would require existing facilities to limit emissions from all process vents, storage tanks, and wastewater combined to a level at or below 130 lb HAP/MM lb production. Existing BLR facilities would also be required to implement the leak detection and repair (LDAR) program specified in the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart H). The LDAR program specified under subpart H requires specific equipment modifications and work practices that reduce emissions from equipment leaks.

TABLE 1.—PROPOSED STANDARDS FOR EXISTING AND NEW SOURCES

Emission source	Basic liquid epoxy resins	Wet strength resins	
			Equivalent standard
		Existing sources	
(1) Process vents, storage tanks, and wastewater.	Emission limit of 130 lb/MM lb product.	Emission limit of 10 lb/MM lb product.	No requirement.
(2) Equipment leaks	Requirements of 40 CFR 63, subpart H.	No requirement	Requirements of 40 CFR 63, subpart H.
		New sources	
(1) Process vents, storage tanks and wastewater.	(a) Route process vents and storage tank vents to a common water scrubber w/efficiency of 99 percent. (b) Recirculate scrubber liquor back to process. (c) Control wastewater to 99%	(a) Control process vent emissions w/water-cooled condenser @ 25 °C. (b) Eliminate the production of methanol by-product in the manufacturing process (c) Eliminate the use of hydrochloric acid in the manufacturing process	No requirement.
(2) Equipment leaks	Requirements of 40 CFR 63, subpart H.	No requirement	Requirements of 40 CFR 63, subpart H.

For new BLR facilities, the standards would be based on the technology used by the best performing facility in the category for process vents, storage tanks, and wastewater, which is the use of a 99 percent efficient water scrubber on all process vents coupled with recirculation of the scrubber effluent to the process, and 99 percent control of emissions from wastewater. As for existing facilities, new facilities would be required to implement the LDAR program of subpart H to control equipment leak emissions.

For existing wet strength resin facilities, the proposed standards would require an emission limit of 10 lb HAP/MM lb product from process vents, wastewater, and storage tanks combined. No emission limits or equipment standards are required for equipment leaks; however, facilities may elect to implement the subpart H LDAR program in lieu of complying with the emission limit for process vents, storage tanks, and wastewater, as this alternative would achieve a greater emission reduction. Similar to BLR production, for new wet strength resin facilities, the standards would be based on the technology used by the best performing source in the category. This technology is the use of a water-cooled condenser, from which the outlet gas temperature shall be no higher than 25 °C, on the batch reactor and no methanol by-product formation or hydrochloric acid usage, or the implementation of the subpart H LDAR program to control equipment leak emissions.

F. Certification of Compliance

1. Existing sources

a. *Process vents, storage tanks, and wastewater emission points.* To determine compliance with the emission limit for process vents, storage tanks, and wastewater combined, the owner or operator of an existing BLR or WSR manufacturing facility would calculate the total emissions per product produced by summing the production-based emission values for process vents, storage tanks, and wastewater according to the following equation:

$$E=\Sigma PV=\Sigma ST=\Sigma WW \qquad (1)$$

where:

E=Emissions, lb HAP/10^6 lb product

PV=Process vent emissions, lb HAP/10^6 lb product

ST=Storage tank emissions, lb HAP/10^6 lb product

WW=Wastewater emissions, lb HAP/10^6 lb product

The required calculation methods for each type of emission point are described below for the BLR and WSR source categories.

i. *BLR source category.* For basic liquid resin production, tests would be required to determine the flow rate and HAP concentration of emissions from process vents and, where applicable, storage tank vents that are combined with process vents. Data from three 1-hour tests would be used to calculate an average HAP emission rate in pounds per hour. Initial performance tests for uncontrolled streams or streams controlled by devices other than flares and certain boilers and process heaters would consist of measuring HAP concentration using the EPA Method 18 or Method 25A of 40 CFR part 60, appendix A. Method 25A may be used only if a single HAP compound greater than 50 percent of the total organic HAP in the vent stream and that HAP compound is used for calibration. Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A is specified for measuring vent stream flowrate.

To determine the production-based emission rate for process vents, the owner or operator would calculate an hourly rate of production based on production data for the previous year and the actual operating hours during the same annual period. For each vent, the hourly emission rate, determined from the average of three 1-hour tests, would be divided by the hourly production rate (calculated as described above) to determine the production-based emission rate for the vent. The sum of production-based emission rates from all process vents (and storage tank vents if manifolded with process vents) constitutes the first term in the equation used to determine compliance. Because emissions are divided by the annual production of the previous year, testing must take place under operating conditions that represent the production rate for the previous year.

Emissions from storage tanks not manifolded with process vents would be calculated according to the methodology described in 40 CFR 63.150(f)(3). The annual emissions would be divided by the annual production from the previous year to determine the production-based emission rate from storage tanks.

Emissions from wastewater would be calculated according to the methodology described in 40 CFR 63.150(f)(5). Monthly emissions calculated using this methodology would be divided by a monthly production rate, which would be calculated by dividing the annual production rate for the previous year by 12. Testing is required by 40 CFR 163.150(f)(5) to determine wastewater stream parameters such as the flow rate and HAP concentration. Because emissions would be divided by a production rate calculated using production data for the previous year, test conditions must reflect typical production for the previous year.

ii. *WSR source category.* If a process uses a condenser to recover HAP, emissions would be calculated for the purpose of determining compliance using equations developed for batch operations, in lieu of compliance tests. Testing would be required to determine the emission rate from uncontrolled vents and vents controlled by devices other than condensers. Testing requirements are the same as for the BLR source category, except that testing would take place over the batch cycle, rather than hourly. Likewise, the production-based emission rates used in the equation to determine compliance would be calculated based on emissions and production data obtained on a per-batch basis, not per-hour as is the case for the BLR source category.

As with the BLR source category, storage tank emission calculations would follow the methodology described in 40 CFR 63.150(f)(3). The methodology of 40 CFR 63.150(f)(5) would be used to determine emissions from wastewater.

b. *Equipment leaks emission point.* To determine compliance with the standard for equipment leaks, BLR and WSR facilities would have to demonstrate that an LDAR program meeting the requirements of 40 CFR part 63, subpart H (40 CFR 63.160–63.183) is in place. This includes performance of the test methods and procedures used to verify the adequacy of monitoring equipment outlined in 40 CFR 63.180.

2. New Sources

a. *BLR source category.* Although the proposed standards for new BLR sources are essentially equipment standards, control efficiencies are required for the equipment specified in the standards. Therefore, in addition to installing the equipment required by the standards, new BLR facilities would be required to perform the appropriate EPA test methods to demonstrate that the common water scrubber required to control emissions from process vents, storage tanks, and wastewater is achieving 99 percent control. The testing methodology described in 40 CFR 163.150(f)(5) would be required to demonstrate that wastewater treatment systems are achieving 99 percent control.

b. *WSR source category.* The equipment standards for new WSR facilities do not specify any control efficiencies that must be achieved. Therefore, facilities would only be required to demonstrate operation of a water-cooled condenser at an outlet temperature of 25 °C, that no methanol is being produced during the manufacturing process, and that no hydrochloric acid is being used to produce WSR.

G. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a BLR or wet strength resin process is in compliance. This monitoring is done either by: (1) Continuously measuring outlet mass flowrate and concentration, or by (2) continuously measuring a site-specific operating parameter, the value of which is established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. A summary of the monitoring requirements of the proposed standards is provided in Table 2.

TABLE 2.—MONITORING REQUIREMENTS

Emission source	Parameter monitored	Noncompliance
BLR process and storage*:		
Carbon adsorber controlled.	Continuous measurement of outlet HAP concentration using Method 25A if possible or Method 18 if speciation necessary.	One-hour average outlet concentration is greater than the maximum concentration established during the compliance test.
Uncontrolled	Continuous measurement of outlet HAP concentration using Method 25A if possible or Method 18 if speciation necessary.	One-hour average outlet concentration is greater than the maximum concentration established during the compliance test.
Condenser controlled	Continuous measurement of outlet gas temperature	One-hour average exhaust gas temperature is greater than the maximum temperature established during the compliance test.
Scrubber controlled	Continuous measurement of scrubber liquid flowrate	One-hour average scrubber flowrate is below the minimum flowrate established during the compliance test.
Flare controlled	Continuous verification of pilot flame presence with heat sensing device such as a UV sensor or thermocouple.	Loss of pilot flame.
Wastewater	Flow rate, pH, and HAP concentration measured daily; TSS and BOD measured biweekly.	Monitored values are outside the range established during initial compliance.
All air pollution control devices.	Flow diversion: if bypass lines that could divert flow from the control device to the atmosphere exist flow must be monitored continuously or the line must be secured with a car-seal or lock-and-key type configuration that is inspected daily.	Presence of flow detected in the line, rupture of the car-seal, or removed of the lock-and-key must be reported in the quarterly reporting requirement of §63.10. Occurrence does not establish noncompliance.
Wet strength resin batch reactor:		
Condenser controlled	Continuous measurement of outlet gas temperature during each step in batch process.	Average outlet gas temperature over the step is greater than the maximum temperature established from compliance calculations.
Carbon adsorber controlled Uncontrolled.	Continuous measurement of outlet HAP concentration using Method 25A if possible or Method 18 if speciation necessary.	Average outlet HAP concentration over the step is greater than the maximum value established during the compliance test.
Scrubber controlled	Measurement of average outlet gas flowrate during each step in batch process.	Average scrubber flowrate over the step is below the acceptable minimum flowrate established during the compliance test.
Wastewater	pH, flow rate and HAP concentration measured daily; TSS and BOD measured bi-weekly.	Monitored values are outside the range established during compliance

* Monitoring of emissions from storage tanks is required only if emissions are combined with other tank or process emissions prior to discharge to the atmosphere.

H. Reporting and Recordkeeping Requirements

The owner or operator of any BLR or wet strength resin source subject to these standards would be required to fulfill all reporting requirements outlined in the General Provisions to 40 CFR part 63.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Facilities Affected by These NESHAP

These NESHAP would affect BLR and WSR facilities that are major sources in themselves, or constitute a portion of a major source. There are three existing manufacturers of BLR, all of which were assumed to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process). Of the 17 existing facilities that manufacture WSR, 9 were assumed to be considered major sources. The expected growth rate for the BLR industry and the wet strength resin industry is expected to be between 2 and 3 percent through 1995. Impacts associated with the control options are presented in Table 3 and Table 4; the options selected as proposed standards are footnoted.

TABLE 3.—IMPACTS OF MEETING MACT FLOORS AND REGULATORY ALTERNATIVES FOR BLR SOURCE CATEGORY

Regulatory option	Baseline emissions, Mg/yr	Emission reduction, Mg/yr	Energy burden, 10^6Btu/yr	Wastewater generated, gal/yr	Capital costs, $/1,000	Annual costs, $	Cost effectiveness, $/Mg	Incremental cost effectiveness, $/Mg
MACT floor	122	52	1.5	3,200,000	335	127,500	2,500	
Regulatory Alternative 1 [a]	122	95	1.5	3,200,000	410	140,000	1,500	300
Regulatory Alternative 2	122	97	1.5	3,200,000	419	152,000	1,600	6,000

[a] This option was chosen as the standard.

TABLE 4.—IMPACTS OF MEETING MACT FLOORS AND REGULATORY ALTERNATIVES FOR WET STRENGTH RESIN SOURCE CATEGORY

Regulatory option	Baseline emissions, Mg/yr	Emission reduction, Mg/yr	Energy burden, 10^6 Btu/yr	Wastewater generated, tons/yr	Capital costs, $/1,000	Annual costs, $	Cost effectiveness, $/Mg	Incremental cost effectiveness, $/Mg
MACT floor [a]	27	2	4	0	510	520,000	210,000	
Regulatory Alternative I	27	16	4	0	648	572,000	35,750	3,700
Regulatory Alternative II	27	17	4	0	808	792,000	46,590	220,000
Equivalent standard	27	14	0	0	138	52,000	3,700	

[a] This option was chosen as the standard.

B. *Air Impacts*

The proposed standards would reduce HAP emissions from existing BLR sources by 95 megagrams per year (Mg/yr) (105 tons per year (tons/yr)) from the baseline level, a reduction of 78 percent from baseline. Emissions of HAP from existing wet strength resin sources would decrease by 2 Mg/yr (2 tons/yr) if facilities elect to comply with the MACT floor, a reduction of 7 percent from baseline. If facilities elect to implement the alternative standard for the process vents, storage tanks, and wastewater source, HAP emissions would decrease by 14 Mg/yr (15 tons/yr), a reduction of 52 percent from baseline

C. *Water and Solid Waste Impacts*

The proposed standards will result in the generation of 3,200,000 gallons of wastewater per year from the BLR source category, assuming gas absorbers (water scrubbers) are installed to control process vents and storage tank emissions. This amount of wastewater represents approximately 10 percent of the wastewater currently generated at the BLR production facility and a small portion of the total wastewater from the plant. EPA believes the additional wastewater can be treated on-site in the plant's existing wastewater treatment system. Wastewater impacts may be less if an alternative control measure is used to comply with the standard.

There is no wastewater generated from the WSR production process, because emissions are controlled with condensers. There is also no solid waste generated from the BLR or WSR production processes.

D. *Energy Impacts*

The proposed standards for the BLR source category would require an additional energy usage of 1.5×10^6 Btu per year (Btu/yr). Additional energy usage for the WSR source category is 4×10^6 Btu/yr if the MACT floor is implemented; however, if facilities elect to comply with the alternative standard, the additional energy usage is negligible.

E. *Cost Impacts*

The emission reductions that would be required by this regulation could be met using one or more of several different techniques. To determine costs, certain control scenarios were assumed. The scenarios used in costing were judged to be the most feasible scenarios possible for meeting the requirements of the proposed standards from a technical and cost standpoint. The total control cost includes the capital cost to install the control device, the costs involved in operating the control device, and costs associated with monitoring the device to ensure compliance. Monitoring costs include the cost to purchase and operate monitoring devices, as well as reporting and recordkeeping costs required to demonstrate compliance.

The cost impacts of the proposed standards are summarized in Table 3 and Table 4. Nationwide, the total annual cost of this standard to the BLR industry is $140,000.

The total cost of this regulation to the wet strength resin industry is $520,000, assuming all facilities do not decide to achieve compliance with the alternative standard (controlling equipment leaks). If all facilities *do* decide to comply with the alternative standard, the total annual cost is $52,000

F. *Economic Impacts*

The economic impact analysis of this standard shows that the estimated price increase from compliance with the recommended alternative for process vents, storage tanks, and wastewater is 0.05 percent for BLR. Estimated reduction in market output for BLR is 0.08 percent

For WSR, control of equipment leaks is not required, but is allowed as an alternative standard because it achieves an emission reduction which is equivalent to or better than the MACT floor level of control for vents, tanks, and wastewater. Assuming compliance with the alternative standard for WSR, the estimated price increase is 0.22 percent and the estimated reduction in market output is 0.20 percent.

No plant closures are expected from compliance with this set of alternatives For more information, consult the background information document for these standards (see the *Background Information Documents* section near the beginning of this preamble).

VI. Rationale

A. Selection of Emission Points To Be Covered by the Standards

Emissions from BLR and WSR production occur from the following emission points: Storage tanks, process vents, equipment leaks, and wastewater. The proposed standards consider all of these emission points. Wastewater emissions from wet strength resin facilities are negligible, although they are included as an emission point

B. Designation of Sources

For these proposed standards, a source is defined as all HAP emission points within a facility that are related to the production of BLR or WSR, including process vents, storage tanks, wastewater, and equipment leaks. For the purpose of developing the standards, the emission points included in the definition of the source are divided into two portions:

1. All process vents, storage tanks, and wastewater emission points; and

2. Equipment leaks

The Administrator considered proposing a single emission limit that would apply to process vents, storage tanks, wastewater and equipment leaks. However, equipment leaks cannot be included with process vents, storage tanks, and wastewater because: (1) The negotiated standard for equipment leaks has no fixed performance level; and (2) no method currently exists for determining the magnitude of allowable emissions to assign for leaks. Without a method to determine the magnitude of allowable emissions to assign for equipment leaks, an averaging policy that included equipment leaks would be difficult to enforce. Therefore, the MACT floor and each regulatory alternative has two components—one for the combination of process vents, storage tanks, and wastewater, and another for equipment leaks. When methods are developed to assign allowable emission levels for particular leak points, the EPA will consider revising these standards to allow inclusion of equipment leaks in the emission limit

The Administrator also considered proposing separate emission limits for each type of emission point, but determined that this approach was not feasible because tanks, and wastewater emission points are intertwined by existing control strategies. For example, in existing BLR facilities, process vents and storage tank emissions are manifolded together and controlled using a common device. The device commonly used to control these emissions is a water scrubber, which functions in transferring potential HAP emissions from gaseous point sources to a wastewater emission source. Therefore, a single emission limit is proposed for process vents, storage tanks, and wastewater combined to give facilities flexibility in complying with the standard. Specifying a single emission limit for this combination of emission points gives facilities the latitude to determine the best way for them to achieve emission reductions. Separate regulatory options were identified for equipment leaks for the reasons described at the beginning of this section.

C. Selection of Basis and Level of Proposed Standards for Existing Sources

1. BLR Source Category

Because there are three existing facilities in the U.S. that produce BLR (all three are believed to be major sources), EPA used the average of the total production-based emission factors achieved by the three facilities to determine the MACT floors. Using this method, the production-based emission limit of 130 lb HAP/MM lb product was established as the MACT floor for the process vents, storage tanks, and wastewater portion of the source based on information from BLR facilities.

Existing BLR facilities control equipment leak emissions using various leak detection and repair (LDAR) programs. The impacts associated with the MACT floor and regulatory alternatives for sources at existing BLR facilities are presented in Table 3.

Regulatory Alternative II represents the highest level of control identified for existing BLR sources. Because the MACT floor for the process vents, storage tanks, and wastewater portion of the source reflects a high level of control (the use of water scrubbers, carbon adsorbers, refrigerated condensers, and flares on process and storage tank vents, and biodegradation to reduce emissions from wastewater), only one area was identified as a possible additional controlled emission point: the generation of HAP-containing scrubber effluent, which is normally routed to the facility's wastewater treatment system. This wastewater could be controlled by recirculating scrubber effluent to the process. This measure would result in an emission limit of 125 lb HAP/MM production. Therefore, this emission limit was chosen for Regulatory Alternative II for the process vents, storage tanks, and wastewater portion of the source. The control method proposed for the equipment leaks portion of the source was to implement the LDAR program specified in 40 CFR 63, subpart H, which represents a higher level of control than is currently practiced by any existing BLR facility.

In evaluating Regulatory Alternative II, the Administrator considered the impacts (air, cost, water, and energy). Regulatory Alternative II was rejected because the incremental emission reduction over Regulatory Alternative I (2 Mg/yr [2 tons/yr]) is not significant considering the associated cost. Water and energy impacts were examined; however, because the magnitude of these impacts were small, they were not a major factor in the decision to reject Regulatory Alternative II.

The first regulatory alternative above the MACT floor (Regulatory Alternative I) considered for existing BLR sources was to implement the LDAR program specified in 40 CFR 63, subpart H to control the equipment leaks portion of the source, and to require the MACT floor emission limit of 130 lb HAP/MM lb product for the process vents, storage tanks, and wastewater portion. The LDAR program of subpart H would achieve a higher level of control than the MACT floor; also, the cost of this control option was judged to be reasonable (see Table 3). Therefore, the Administrator selected Regulatory Alternative I as the standard for existing BLR sources.

2. WSR Source Category

The MACT floor for process vents, storage tanks, and wastewater for existing wet strength resin facilities was calculated based on data supplied by the nine major sources making up this source category. The MACT floor represents the average value of the lowest five production-based emission totals from major sources in the industry. For the process vents, wastewater, and storage tanks portion of the source, the emission limit is 10 lb/MMlb production. Because no existing facility in the WSR source category controls equipment leak emissions, the MACT floor for the equipment leaks portion of the source represents an uncontrolled situation. Impacts associated with the MACT floor and regulatory alternatives for sources at existing wet strength resin facilities are presented in Table 4.

Regulatory Alternative II, the most stringent alternative identified for existing WSR sources, would require an emission limit of 5 lb HAP/MM lb product for the process vents, storage tanks, and wastewater portion of the source, as well as requiring the subpart H LDAR program for the equipment leaks portion of the source. In evaluating Regulatory Alternative II, the Administrator considered the impacts (air, cost, water, and energy). Regulatory Alternative II was rejected because the incremental emission reduction over Regulatory Alternative I, (1 Mg/yr) is not significant considering the associated cost. No additional water or energy impacts were associated with Regulatory Alternative II; therefore, water and energy impacts were not a factor in the decision to reject Regulatory Alternative II.

Regulatory Alternative I, the first regulatory alternative above the MACT floor for existing WSR sources, would require the MACT floor emission limit of 10 lb HAP/MM lb production for the process vents, storage tanks, and wastewater portion of the source, and the LDAR program described in 40 CFR part 63, subpart H for the equipment leaks portion of the source. In evaluating Regulatory Alternative I, the Administrator considered the impacts (air, cost, water, and energy). Considering the emission reduction and cost of Regulatory Alternative I, the Administrator judged this option to be unreasonable. No additional water or energy impacts were associated with Regulatory Alternative I; therefore, water and energy impacts were not a factor in the decision to reject Regulatory Alternative I.

Because both Regulatory Alternatives were judged to be unreasonable, the control levels proposed for both the combined process vents, storage tanks, and wastewater emission points, as well as the equipment leaks portions of existing WSR sources are the MACT floor levels. However, the Administrator proposes the implementation of the subpart H LDAR program for equipment leaks as an equivalent standard for existing WSR sources. The subpart H LDAR program represents an effective control option with reasonable associated costs for the equipment leaks portion of the source, with significant emission reductions, no negative water impacts, and negligible energy impacts. The subpart H LDAR program was chosen as an alternative standard because it achieves an emission reduction which is equivalent to or better than that achieved by the technology basis for the floor level of control for vents, tanks, and wastewater and because costs of implementation of this LDAR program are in many cases much more reasonable than those incurred from requiring compliance with the emission limit (see Table 4).

D. Selection of Basis and Level of Proposed Standards for New Sources

1. BLR Source Category

For new sources, the MACT floor shall be no less stringent than the level representing the best controlled similar source. For new BLR sources, the MACT floor for the portion of the source consisting of the combination of process vents, storage tanks and wastewater is achieved by: (1) Routing process vents and storage tank vents to a common water scrubber with an efficiency of 99 percent; (2) recirculating scrubber effluent back to the process, and (3) Controlling HAP emissions from wastewater by 99 percent. This strategy represents a 99 percent emission reduction for this portion of the source. No regulatory alternatives more stringent than the new source MACT floor could be identified for this portion of new BLR sources.

The MACT floor for the equipment leaks portion of new BLR sources is the LDAR program of 40 CFR part 60, subpart VV.

Regulatory Alternative I for new BLR sources would require sources to implement the subpart H LDAR program to control equipment leaks, in addition to the MACT floor requirement for process vents, storage tanks, and wastewater. The subpart H LDAR program represents a cost-effective control option for equipment leaks with significant emission reductions, no negative water impacts, and negligible energy impacts. For these reasons, the Administrator chose Regulatory Alternative I as the proposed standard for new BLR sources.

2. WSR Source Category

The MACT floor for process vents, storage tanks, and wastewater for new wet strength resin facilities is achieved by equipping the batch reactor with a cooling water condenser, and by operating the process without the use of hydrochloric acid and prohibiting the formation of methanol. This represents the highest level of control that is technically feasible. Therefore, no regulatory alternatives above the MACT floor could be identified.

Because no existing facility in the WSR source category is controlling equipment leak emissions, the MACT floor represents an uncontrolled situation. Regulatory Alternative I for new WSR sources is the LDAR program described in 40 CFR part 63, subpart H for the equipment leaks portion of the source (the same as for existing facilities), and the MACT floor equipment standard described in the previous paragraph for the process vents, storage tanks, and wastewater portion of the source. In evaluating Regulatory Alternative I, the Administrator considered the impacts (air, costs, water, and energy). Considering the emission reduction and cost of Regulatory Alternative I, the Administrator judged this option to be unreasonable. No additional water or energy impacts were associated with Regulatory Alternative I; therefore, water and energy impacts were not a factor in the decision to reject Regulatory Alternative I.

Because the only Regulatory Alternative above the MACT floor was judged to be unreasonable, the control levels proposed for both the combined process vents, storage tanks, and wastewater emission points, as well as the equipment leaks portions of new WSR sources are the MACT floor levels. However, the Administrator proposes the implementation of the subpart H LDAR program for equipment leaks as an equivalent standard for new WSR sources. The subpart H LDAR program represents an effective control option with reasonable associated costs for the equipment leaks portion of the source, with significant emission reductions, no negative water impacts, and negligible energy impacts. The subpart H LDAR program was chosen as an alternative standard because it achieves an emission reduction which is equivalent to or better from that achieved by the technology basis for the floor level of control for vents, tanks, and water and because costs of implementation of this LDAR program are expected to be much more reasonable than those incurred from requiring compliance with the emission limit.

E. Selection of the Format of the Proposed Standards

The formats of the proposed standards were selected in order to give facilities the most flexibility possible in achieving the level of control required by the selected regulatory alternative. Because the MACT floor for the process vents, storage tanks, and wastewater portion of the source reflects control by various methods, the format needs to allow sufficient flexibility for facilities to meet the level of the standard using the various control methods already in place to the extent possible.

Of the formats considered (mass emission limits, percent concentration, percent reduction, equipment standards, work practice standards), the mass emission limit format was chosen because various combinations of controls can be employed among several emission points to achieve the same mass emission rate. Also, mass emission limits encourage facilities to reduce emissions through process changes, work practice changes, and other methods to avoid costly add-on controls. In this way, mass emission limits serve to encourage pollution prevention. An equipment standard format is not needed for this source because an emission limit can be established. Formats such as specifying a concentration or a percent reduction, offer no advantages over the emission limit format, and would be more cumbersome from an enforcement standpoint due to the different characteristics of the emission points that make up the source of process vents, storage tanks, and wastewater.

For process vent, storage tank, and wastewater emission points within new sources, however, equipment standards have been proposed. An emission limit format cannot be used for these emission points within new sources because it would identify specific facilities' production levels, which are claimed as confidential business information. However, facilities would have the opportunity to employ other technologies to meet the standard by demonstrating equivalence.

The EPA solicits comments on the equipment standard format of the standards for process vents, storage tanks, and wastewater at new facilities. In particular, the EPA solicits comments on whether performance standards for vents, tanks, and wastewater at new facilities can be used without compromising confidential business information and whether operators can comply with performance standards for vents, tanks, and wastewater at new facilities without compromising confidential business information.

The LDAR program of 40 CFR part 63, subpart H is a combination of an equipment standard/work practice format. Under section 112 of the Act, national emission standards must, whenever possible, take the format of a numerical emission standard. Typically, an emission standard is written in terms of an allowable emission rate, performance level, or allowable concentration. These types of standards require the direct measurement of emissions to determine compliance. For some emission points, emission standards cannot be prescribed because it is not feasible to measure emissions. Section 112(h)(2) recognizes this situation by defining two conditions under which it is not feasible to establish an emission standard. These conditions are: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement methodology is not practicable due to technological and economic limitation. If an emission standard cannot be established, the EPA may instead establish a design, equipment, work practice, or operational standard or combination thereof.

For equipment leak emission points, such as pumps and valves, EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration, the only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit. Moreover, this procedure would not be useful for routine monitoring and identification of leaking equipment for repair. Therefore, LDAR program of 40 CFR, subpart H, an equipment/work practice standard, was chosen for the equipment leaks emission point.

F. Selection of Compliance and Performance Testing Provisions and Monitoring Requirements

The proposed regulation contains compliance provisions that require owners or operators to conduct an initial performance test to demonstrate compliance with the proposed standards. As a means of demonstrating compliance with the standards following the initial performance test, the owner or operator must also establish source-specific parameters based on the characteristics of the emission stream, process, or type of control device used. The Administrator determined that these provisions were necessary to meet the monitoring requirements of the General Provisions (40 CFR part 63, subpart A).

1. Testing and Monitoring

Compliance is comprised of initial performance testing and continuous compliance verification, or monitoring. The proposed requirements for initial compliance testing and any periodic or continuous measurement to verify ongoing compliance are based on the emission stream characteristics that would be encountered either at the outlet of the control device or at the point of release to the atmosphere for uncontrolled emission streams. Often, an important factor to consider in evaluating emission stream characteristics is the type of control device that is preceding the emission stream. Also, the operating parameters of the device can be used as an indicator of the level of control of the device and therefore, the outlet emissions. The selection of appropriate test methods for initial and ongoing compliance, therefore, is related to both the characteristics of the stream and to the type of device used to control it. The discussion of both factors is presented below.

2. Emission Stream Characteristics

An important characteristic to consider when evaluating measurement methods are whether the streams are from continuous sources or whether they are from batch sources. Streams that are from continuous sources would have minimal variation in characteristics; the test measurement method therefore can be intermittent in nature. For example, flowrate and concentration can be sampled on an intermittent basis to obtain an average emission value that presumably will not vary significantly. Batch emission streams, however, are expected to have wide variation in flowrate, composition, and conditions throughout the course of a batch (i.e., with time). Often, proportional sampling of flowrate and composition over the course of a batch to arrive at a total emission number over the entire batch is necessary. Alternatively, simultaneous measurement of flowrate and composition must be made to arrive at an instantaneous emission rate. Because these methods are difficult, an initial compliance test requiring concentration measurement is not recommended for most batch operations. Specifically for these NESHAP, equations are provided in the regulation to determine HAP emissions from the batch reactor used in WSR production.

A second important characteristic of the emission stream to consider during selection of a test method is the composition. If organic material other than HAP are contained in the stream, it may be necessary to speciate the stream or at least identify the HAP constituents in the stream. This identification limits how continuously the stream can be sampled. The most common technology that will be used in identification is gas chromatography, specified in EPA Reference Method 18 of 40 CFR part 60, appendix A. Gas chromatography, coupled with the quantification of material typically done with a flame-ionization device (FID), EPA Reference Method 25A, can be done at sub-minute intervals, but not continuously. However, if identification of organic species is not necessary, an FID alone can be used. This technology will provide a continuous reading of concentration.

3. Control Devices

The devices used to abate HAP emissions will affect the outlet stream composition and conditions and therefore affect the degree of confidence of the initial and continuous compliance methods. Devices that are commonly used in the basic liquid resins and WSR industry to control process vents and storage tank emissions are condensers, gas absorbers (water scrubbers), carbon adsorbers, and flares. These devices differ from one another in the type of streams that they control and the outlet conditions of the streams.

i. *Condensers.* In the case of condensers, which are usually applied to saturated emission streams and by design yield saturated streams, it can be assumed that the components will be present at levels corresponding to their saturated values (equilibrium) at the outlet conditions. This measure provides a worst-case estimate of emissions. Therefore, the direct measurement of concentration often may be foregone in lieu of the measurement of stream temperature and flow rate and subsequent calculation to yield mass emissions. For wet strength resin batch reactors, this is the required measurement to determine HAP concentration in both initial and continuous performance tests. Because the emission streams controlled by condensers in basic liquid resin manufacturing will be more likely to have multiple sources with numerous components that will affect the ability to predict HAP concentrations by measurement of secondary parameters, the direct measurement of concentration is required at least in the initial performance test. Thereafter, concentration measurements to establish continuous compliance may be reasonably approximated with a measurement of outlet gas temperature.

ii. *Gas Absorbers.* Gas absorbers (water scrubbers), however, differ in that there is no parameter that can be measured and used to establish a limit of HAP concentration. Often, the streams routed to scrubbers are more dilute, and the control device functions in not only changing the conditions of the gas temperature like a condenser would do, but in employing concentration gradients to remove materials from gas streams. In order to predict the performance of a gas absorber, information must be known about the appropriate mass transfer coefficients for the specific system. Most often, the mass transfer coefficients are experimentally derived for specific applications and are usually functions of the mass velocities and contacting path variables. While it is possible to calculate the scrubber outlet compositions without mass transfer information by assuming that the amount of material transferred to the liquid is limited by the equilibrium-defined composition, this information is not indicative of the physical scrubber because it does not provide for the evaluation of the contacting path. Therefore, a direct measurement of composition is required during the initial performance test.

Evaluation of continuous compliance need not be done by continuous direct measurement of HAP concentration from the scrubber effluent, however. Another parameter, the liquid to gas molar ratio through the scrubber, could be monitored to ensure required removal. The L/G ratio, which often reduces to the measurement of L, the liquid molar flow rate, because G, the gas molar flow rate is often constant, could be measured during the initial performance test to evaluate the sensitivity of the ratio with removal efficiency. Thereafter, the L/G ratio could be used to verify appropriate removal if the ratio remained within the limits established during the initial compliance test.

iii. *Carbon Adsorbers.* Streams controlled by carbon adsorption will usually be diluted, compared to those controlled by condensers and scrubbers. No surrogate parameters have been identified as measures of HAP concentration or removal efficiencies. Therefore, a direct measurement of concentration will be required during the initial performance test as well as in continuous compliance monitoring.

iv. *Flares.* Compliance testing for flares can be complicated by the formation of undesired products of combustion (including HAP) and the inability to further capture and control these byproducts. Nevertheless, if a facility chooses to use a flare as a control device, EPA has established flare combustion efficiency criteria that specify that 98 percent or greater combustion efficiency can be achieved provided that certain operating conditions are met. If a HAP is formed from combustion, the quantity formed must be considered when calculating control efficiency. These conditions prescribe that the flare must be operated with no visible emissions and with a flame present and that the heating value and exit velocity of the gas routed to the flare must be within certain ranges, depending upon whether the flares are steam-assisted.

Additionally, the NESHAP general provisions provide for an initial performance test to determine whether the net heating value will fall within the applicable ranges for control at 98 percent. The performance test involves measuring the incoming gas flowrate and the concentration of combustible compounds (40 CFR 63.11) to determine net heating value. However, it appears that as the number of compounds in the stream increases, the determination of the net heating value becomes increasingly difficult. Also, in light of the fact that flares are often used to control discontinuous or upset conditions, the net heating value at any one time is subject to change. Continuously measuring the concentration of combustible compounds to determine heating value on a continuous basis is probably not feasible. Therefore, the enhanced monitoring method chosen for these standards is to require that the presence of a pilot flame be monitored continuously. Also, an initial measurement and characterization of the inlet mass emissions to the flare is required for two reasons:

1. To determine the fraction of hazardous air pollutant emissions that are being controlled by the flare; and
2. To determine the net heating value of the vent stream.

v. *Wastewater.* Because air emissions from wastewater treatment systems cannot be collected and measured, certain parameters must be identified that indicate the emission rate from wastewater for monitoring purposes. The proposed methods for estimating wastewater emissions for initial compliance with the proposed standards for the emission source of process vents, storage tanks, and wastewater, as well as for identifying enhanced monitoring parameter values for wastewater, are those specified in 40 CFR 63.150(f)(5). The requirements of 40 CFR 63.150(f)(5) consist of monitoring specific wastewater treatment parameters and emission calculation methods. Monitoring of the following wastewater parameters is required: inlet flow rate, HAP concentration, pH, and biological oxygen demand. These parameters were chosen for monitoring because they can be used to determine wastewater treatment system performance.

vi. *Storage Tanks.* Storage tank emissions vary greatly over time, which prohibits testing over reasonable periods of time. Therefore, no initial compliance test is proposed for this emission point, unless emissions are manifolded with process vents, in which case the compliance tests specified for process vents apply. Instead, the methods specified in 40 CFR 63.150(f)(3) are proposed to calculate emissions. Emissions would be calculated based on the facility's solvent usage records for the most recent 1-year period and divided by the amount of product produced during the same period. A 1-year period is necessary to reduce the effect of variation in solvent usage on the emission calculation. Because emissions are calculated from factors, and because storage tank emissions are not dependent on parameters that can be controlled, no continuous monitoring requirements are proposed for this emission point, except that facilities that control storage tank emissions must certify that such controls are in proper working order.

vii. *Equipment Leaks.* Like wastewater emissions, equipment leak emissions occur in open areas and in most cases cannot feasibly be captured. Therefore, no performance test is required for the equipment leaks source. Instead, facilities must demonstrate that they have an LDAR program in place that meets the requirements of 40 CFR part 63, subpart H. No monitoring requirements are proposed for equipment leaks, as the proposed standard for equipment leaks is a work practice/equipment standard.

5. Averaging Times

i. *Initial compliance.* The standards for the process vents, storage tanks, and wastewater source at existing BLR and WSR production facilities are in the form of mass emission limits. Initial compliance is determined by adding the emissions per unit mass of product calculated for each process vent, storage tank, and wastewater emission point within the facility. For BLR production, a continuous process, a 1-hour averaging time is specified for process vent compliance tests; the emission rate would be the average of the results of three 1-hour tests. For WSR production, typically a batch operation, the emission rates used to determine compliance would be the average of 3 tests taken over for 3 different batch runs. Longer averaging times are required for batch operations to minimize the effect of emissions that vary significantly with time.

Storage tank emissions would be averaged over a period of 1 year, based on HAP usage records from the previous year, to minimize the effect of variation in solvent usage on the calculated emission rate. A monthly averaging time is required for wastewater, as specified in 40 CFR 63.150(f)(5). Different averaging times are possible for different emission types because emissions are divided by the production rate for an equal time period. The resulting production-based emissions are then added together according to Equation 1 and compared with the mass emission limit to determine compliance.

ii. *Monitoring.* In accordance with § 63.8(c)(4) of the General Provisions, all continuous monitoring systems measuring either emissions or an operating parameter shall complete a minimum of one measurement cycle (sampling, analyzing, and data recording) for each successive 15-minute period.

BLR source category. For BLR manufacturers, the determination of compliance varies for each type of control or capture system. Owners and operators complying with the standard by using carbon adsorbers, condensers, incinerators, and total enclosures on continuous processes may be determined to be out of compliance with the standard if, for any 1-hour period, the average operating parameter value exceeds or is less than the value established during the initial performance test, as applicable. A 1-hour averaging time is chosen to determine compliance because it parallels the length of time for each of the three test runs conducted for the initial performance test.

WSR source category. Wet strength resins are produced in batch processes, during which emissions may vary significantly. Therefore, longer averaging times are necessary for WSR processes than for BLR processes. The averaging time proposed for WSR processes is the time required to complete one batch operation (typically about 8 hours). Because producers of WSR do not vary the production process from batch to batch, emissions data averaged over the course of one batch operation would be representative of the actual emissions from future batch runs.

G. Selection of Reporting and Recordkeeping Requirements

The owner or operator of any BLR or wet strength resin facility subject to these standards would be required to fulfill all reporting requirements outlined in the General Provisions 40 CFR part 63. No special considerations have been identified for these industries that would warrant additional reporting and recordkeeping requirements.

H. Operating Permit Program

Under Title V of the Act, all HAP-emitting facilities will be required to obtain an operating permit. Oftentimes, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the proposed rule for the operating permit program published on May 10, 1991 (58 FR 21712), this new permit program would include in a single document all of the requirements that pertain to a single source. Once a State's permit program has been approved, each facility containing that source within that State must apply for and obtain an operating permit. If the State wherein the source is located does not have an approved permitting program, the owner or operator of a source must submit the application under the proposed General Provisions of 40 CFR part 63.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for epoxy resins production and non-nylon polyamides production should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–92–37.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and
2. To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action for OMB review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1681.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW., (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 600 hours per source, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Regulatory Flexibility Act guidelines for regulations like this one whose start action notifications (SAN's) were filed before April 1992 indicate that an economic impact should be considered significant if it meets one of the following criteria:

1. Compliance increases annual production costs by more than 5 percent, assuming costs are passed onto consumers;

2. Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

3. Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

4. Regulatory requirements are likely to result in closure of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. All of the affected BLR and WSR producers are large enough not to satisfy the criteria for a small business. Consequently, no significant small business impacts will result from compliance with these standards.

F. *Miscellaneous*

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-10973 Filed 5-13-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 90

[FRL-4881-5]

RIN 2060 AE29

Control of Air Pollution; Emission Standards for New Nonroad Spark-ignition Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes emission standards for new nonroad spark-ignition engines at or below 19 kilowatts (25 horsepower). This action is authorized by section 213(a)(3) of the Clean Air Act as amended. The proposed standards are expected to result in a 32 percent reduction in hydrocarbon emissions and a 14 percent reduction in carbon monoxide emissions from these engines by the year 2020 when complete fleet turnover is projected.

DATES: Comments must be received on or before July 15, 1994. A public hearing will be held on June 21, at 10 a.m.; requests to present oral testimony must be received on or before June 15, 1994.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) for EPA consideration by addressing them as follows: EPA Air and Radiation Docket, Attention: Docket Number A-93-25, 401 M Street SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed at this location from 8 a.m. until 4 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held at Dominos Farm, Ulrich room, lobby E, 24 Frank Lloyd, Ann Arbor, MI 48104.

FOR FURTHER INFORMATION CONTACT: Lucie Audette, Office of Mobile Sources, Certification Division, (313) 741-7878.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Regulatory Language

EPA has not included in this document the proposed regulatory language or the draft Regulatory Support Document (RSD). Electronic copies (on 3.5" diskettes) of both the proposed regulatory language and the draft RSD may be obtained free of charge by visiting, calling, or writing the Environmental Protection Agency, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 741-7878. Refer to Docket A-93-25. A copy is available for inspection in the docket (see **ADDRESSES**).

The proposed regulatory language and the draft RSD are also available electronically on the Technology Transfer Network (TTN). TTN is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Users are able to access and download TTN files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919-541-5742 (1,200-14,400 bps, no parity, eight data bits, one stop bit) Voice help: 919-541-5384 Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 - 12:00 Noon ET

1. Technology Transfer Network Top Menu:<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards) Command: T
2. TTN TECHNICAL INFORMATION AREAS <M> OMS - Mobile Sources Information Command: M
3. OMS BBS ==== MAIN MENU FILE TRANSFERS <K> Rulemaking & Reporting Command: K
4. RULEMAKING PACKAGES <6> Non-Road Command: 6
5. Non-Road Rulemaking Area: File area #2 * * * Non-Road Engines Command: 2<CR>
6. Non-Road Engines

At this stage, the system will list all available nonroad engine files. To download a file, select a transfer protocol which will match the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'ed) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

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III. Statutory Authority and Background

A. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

CAA section 213(a) directs EPA to: (1) Conduct a study of emissions from nonroad engines and vehicles; (2) determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from nonroad engines and vehicles are significant contributors to ozone or CO concentrations in more than one area that has failed to attain the National Ambient Air Quality Standards (NAAQS) for ozone and CO; and (3) regulate those categories or classes of new nonroad engines and vehicles that, in EPA's judgment cause or contribute to such air pollution. Under CAA section 213(a)(4), EPA may also regulate emissions other than CO, NO_X, and VOCs from new nonroad engines and vehicles if EPA determines that such other emissions significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The Nonroad Engine and Vehicle Emission Study (hereafter, "Nonroad Study") required by section 213(a)(1) was completed in November 1991. The Nonroad Study is available in docket A–91–24. The determination of the significance of emissions from nonroad engines and vehicles in more than one NAAQS nonattainment area, required by section 213(a)(2), was proposed on May 17, 1993 (58 FR 28809) and is incorporated by reference into this proposal. At the same time, the first set of regulations for a class or category of nonroad engines that contribute to air pollution, required by section 213(a)(3), was proposed (58 FR 28809) for new nonroad compression-ignition (CI) engines at or above 37 kilowatts (kW). Today's action continues to implement section 213(a)(3); it proposes emission standards for nonroad spark-ignition (SI) engines at ornd below 19 kW (25 horsepower) (hereafter, "small SI engines"), another class or category of nonroad engines that contributes to air pollution.

Background

On the basis of the Nonroad Study, EPA has proposed its determination that emissions of CO, NO_X, and VOCs from nonroad engines and vehicles contribute significantly to ozone or CO in more than one NAAQS nonattainment area (see 58 FR 28809, May 17, 1993). According to the Nonroad Study, nonroad engines and vehicles contribute an average of ten percent of summer VOCs in the 19 ozone nonattainment areas included in the study. Small SI engines are the source of half of those nonroad summer VOC emissions. In the 16 CO nonattainment areas included in the study, nonroad engines and vehicles account on average for nine percent of winter CO emissions. Small SI engines are the source of 56 percent of the nonroad winter CO contribution, according to the study.

Since March 1992, EPA has held several public workshops and meetings to solicit information on technical characteristics, emissions, potential regulatory strategies, and general regulatory issues related to small SI engines. Public notice of such meetings may be found in the docket for this rulemaking.

At the March 1992 public workshop, the Engine Manufacturers Association and the Outdoor Power Equipment Institute encouraged federal regulation of nonhandheld small SI engines and expressed interest in working in a cooperative program with EPA to develop regulations by November 1993. Likewise, the Portable Power Equipment Manufacturers Association encouraged federal regulation of portable 2-stroke power equipment and expressed interest in working cooperatively with EPA.

Industry's interest in federal regulation of small SI engines may be traced to California's efforts to develop a statewide regulatory program. CAA section 209(e)(2) authorizes California to enforce emission standards for certain nonroad engines if: (1) California determines that such standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, and such standards are not arbitrary and capricious, (2) California needs such standards to meet compelling and extraordinary conditions, and (3) California standards and accompanying enforcement procedures are consistent with section 209(e)(2). (See 58 FR 45866, September 6, 1991, for EPA's Notice of Proposed Rulemaking for implementing section 209(e). This rulemaking is ongoing and the exact criteria for EPA granting an authorization to California will be prescribed in the final section 209(e) rule. Definitions of farm and construction equipment are also provided in this section 209(e) rule.) CAA section 209(e)(2) also authorizes other states to opt into California standards. The California Air Resources Board (CARB) has adopted standards for nonroad lawn and garden and utility SI and CI engines from 0–25 horsepower (0–19 kilowatts). EPA is currently reviewing CARB's section 209(e) authorization request for its lawn and garden and utility rule. A decision will be issued once EPA's section 209(e) procedural rule is finalized. There is potential for other states to adopt the California standards, which are scheduled to become effective in 1995, if EPA decides to approve California's waiver request.

Following the March 1992 workshop, EPA determined that setting emission standards for the small SI engine category might be suitable for a consultative approach to rulemaking, such as negotiated rulemaking. The Negotiated Rulemaking Act (5 U.S.C. 581–590) establishes a framework for conducting negotiated rulemaking. Under that Act, in deciding whether to conduct a negotiated rulemaking, the head of an agency must consider several factors, including whether, at the preproposal stage of development, the number of identifiable parties who would come to the negotiating table is relatively limited, the number of specific issues for which sufficient information and technology is in hand for resolution is limited, and a time-forcing factor exists that lends an air of urgency to issuance of the rule in question. Negotiations are conducted through a committee chartered under the Federal Advisory Committee Act (5 U.S.C. App. II section 9(c)). The goal of a regulatory negotiation committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal.

EPA initiated a convening process to determine the best way to work with industry and other interested parties in developing regulations for small SI engines. The conveners interviewed individuals in leadership roles in key organizations identified by EPA to determine what parties were interested in these regulations, what issues were important to interested parties, and whether a consultative rulemaking process would be feasible and appropriate. A copy of the convening report, dated August 24, 1992, is available in the docket for this rulemaking.

The convening report recommended an exploratory meeting of interested parties to discuss, but not initiate, a consultative process. EPA determined that the number of parties who would come to the negotiating table would be relatively limited, the number of specific issues for resolution would be limited, sufficient information and technology would be in hand or could be timely developed for resolution of issues, and time-forcing factors existed. (See 58 FR 34389, June 25, 1993, for a complete discussion of the application of the factors in this case.) Time-forcing factors lending an air of urgency to issuance of the rule include the potential threat to industry of patchwork regulation if a number of states opt into California's program in order to attain national air quality goals. More recently, an air of urgency has been created by the settlement of *Sierra Club v. Browner*, Civ. No. 93–0197 NHJ (D.D.C. 1993), which requires EPA to propose emission standards for small SI engines by April 1994 and to promulgate such standards by May 1995.

The exploratory meeting recommended in the convening report was held in Ann Arbor, Michigan on November 16–17, 1992. Participants decided that state and public interest representatives needed more technical information to fully understand some of the regulatory issues participants might face. It was also decided that another meeting was necessary to discuss the potential design of a consultative process for a small SI engine rulemaking. The technical briefing for state and public interest representatives was conducted in Ann Arbor on December 16, 1992. On January 28–29, 1993, a meeting to discuss consultative process design was held in Ann Arbor.

At the January meeting, it was suggested that EPA consider a two-phased approach to regulation of small SI engines. In the suggested first phase, EPA would propose regulations for new small SI engines through the normal regulatory process rather than a consultative process. It was suggested that Phase 1 regulations could be similar to California's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines, modified as necessary to meet CAA requirements. (For example, EPA's proposal could modify CARB's program by including engines preempted from regulation in California.) The Phase 1 proposal would be completed as soon as possible, but no later than the spring of 1994. The final rule would be promulgated no later than spring of 1995. The suggested second phase of regulation could be developed through the consultative process of regulatory negotiation. It could include issues such as useful life, in-use emissions, evaporative emissions, refueling emissions, test procedure, and market-based incentive programs. Negotiations could begin in Fall 1993 and continue for approximately 18 months.

EPA has decided to proceed with the phased approach. Today's action proposes the first phase of regulation for new small SI engines. The data that supports the proposed emission standards and the technology, cost, and benefits assessments for this proposal are outlined herein and in the draft Regulatory Support Document (RSD), a copy of which is located in the public docket for this rulemaking. EPA does not currently have sufficient data to establish useful life standards or an in-use liability program. However, rather than lose the potential early emission benefits while EPA develops the data necessary to establish useful life and in-use liability, EPA is choosing to claim those early benefits in this first phase of new small SI engine regulation and to continue developing the data necessary for the second phase of small SI engine regulation. EPA believes that the potential for early benefits to public health and the environment provided by the first phase of emission standards is of sufficient magnitude to postpone determinations of useful life and in-use liability until the second phase of rulemaking. The phased approach to regulation of small SI engines is incorporated in the *Sierra Club v. Browner* settlement, a copy of which is available in the public docket for this rulemaking.

IV. Requirements of the Proposed Rule

The general provisions of this rule, as well as the rationale for the key parts of this proposal, are briefly described in the following section

A. Overview

EPA proposes to regulate emissions of hydrocarbons (HC), NO_X, and CO from certain new nonroad spark-ignition engines that have a gross power output at and below 19 kW.[1] A spark-ignition engine is an internal combustion engine in which the air/fuel mixture is ignited in the combustion chamber by an electric spark.

The scope of this rule would encompass a broad range of small SI engine applications, including farm and construction equipment, which individual states are preempted from regulating under section 209(e)(1) of the CAA. Exclusions from the rule are detailed below.

Under this proposal, exhaust emissions from new small SI engines could not exceed levels for a given engine class as listed in Table 1. Engine classes would be specified both by engine displacement, as measured in cubic centimeters (cc), and by the type of equipment the engine powered—either handheld or nonhandheld. Five engine classes are being proposed today. Each has a unique set of emission standards. Nonhandheld engine classes would be: Class I—engines less than 225 cc in displacement; and Class II—engines greater than or equal to 225 cc in displacement. Engines powering equipment defined as handheld would be classified as Class III, IV, or V: Class

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[1] To convert kilowatts to horsepower multiply kW by 1.34 and round to the same number of significant digits. For example 3.5 kW×1.34=4.7 hp

III—engines less than 20 cc in displacement; Class IV—engines equal to or greater than 20 cc and less than 50 cc in displacement; and Class V—engines equal to or greater than 50 cc in displacement. Emission standards being proposed today are considered Phase 1 new small SI engine standards.

TABLE 1—EXHAUST EMISSION STANDARDS

[Grams per kilowatt hour]

Engine class	Hydrocarbon plus oxides of nitrogen	Hydrocarbon	Carbon monoxide	Oxides of nitrogen
I	16.1	....	402	....
II	113.4	....	402	....
III	....	295	805	5.36
IV	....	241	805	5.36
V	....	161	402	5.36

The rule would explicitly exclude from regulation the following small SI engines:

(1) Engines used to propel marine vessels as defined in the General Provisions of the United States Code, 1 U.S.C. 3 (1992). A "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C. 3 (1992).

(2) Engines used in underground mining or engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MHSA). See 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75.

(3) Engines used in motorcycles and regulated in 40 CFR part 86, subpart E.

(4) Engines used in aircraft as that term is defined in 40 CFR 87.1(a).

(5) Engines used in recreational vehicles, which are defined as engines which have no installed speed governor and which have a rated speed of greater than or equal to 5,000 revolutions per minute (RPM). Engines used in recreational vehicles are not used to propel marine vessels and do not meet the criteria to be categorized as a Class III, IV, or V engine under this rule.

This rule proposes the following regulatory scheme:

- Designation of product lines into groups of engines with similar emission characteristics (such groups are called engine families),
- Manufacturer emission testing of selected engines with a specified test procedure to demonstrate compliance with new engine emission standards,
- Labeling of engines, and alternatively, equipment labeling if the engine label becomes obscured when placed in the equipment,
- Submission of an application for certification for each engine family,
- Inclusion of various certification requirements such as the prohibition of defeat devices,
- Issuance of an emission certificate of conformity for each engine family,
- Prohibition against offering for sale in the United States engines not certified by EPA,
- Requirement that equipment manufacturers use the appropriate handheld or nonhandheld certified engine in their equipment,
- Recordkeeping and reporting requirements,
- EPA Administrator testing provisions,
- Design warranty provisions and prohibition on tampering,
- Inclusion of all farm and construction engines, state regulation of which is preempted under the CAA,
- Development of an engine manufacturer's program to evaluate in-use emission deterioration,
- Requirement that if catalysts are used in an engine family, catalyst durability must be confirmed by means of the evaluation procedure that is specified in this notice,
- Defect reporting and voluntary recall,
- Importation provisions,
- General prohibitions and enforcement provisions, and
- Production line Selective Enforcement Auditing (SEA). Certain elements of EPA's on-highway program are not being proposed for this Phase I rule including:
- No certification requirement for engine durability demonstration,
- No performance warranty,
- No averaging, banking, and trading program, and
- No useful life determination and no in-use enforcement.

B. General Enforcement Provisions

EPA, as authorized in the CAA, would enforce nonroad standards in a manner similar to on-highway standards. Section 213(d) of the Act provides that the standards promulgated under 213 "shall be subject to sections (206, 207, 208, and 209), with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section (202)." Section 206 specifies requirements for motor vehicles and motor vehicle engine compliance testing and certification; section 207 requires manufacturers to warrant compliance by motor vehicles and motor vehicle engines in actual use; section 208 requires recordkeeping by manufacturers of new motor vehicles or new motor vehicle engines and authorizes EPA to collect information and require reports; and section 209 preempts states and political subdivisions from adopting or enforcing standards relating to emission control, certification, or inspection of new motor vehicles or new motor vehicle engines, unless specifically authorized to do so by EPA.

Pursuant to this authority, EPA is proposing in today's action regulations that require manufacturers of new small SI engines to obtain certification and that subject them to Selective Enforcement Auditing. Any manufacturer of a new small SI engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States.

The Agency is also proposing certain prohibited acts and general enforcement provisions similar to those for on-highway vehicles under sections 203, 204, 205, and 208 of the CAA.

Section 203 specifies prohibited acts; section 204 provides for federal court injunctions of violations of section 203(a); section 205 provides for assessment of civil penalties for violations of section 203; and section 208 provides the Agency with information collection authority. The general enforcement language of section 213(d) provides the Agency's authority for applying section 203, 204, 205, and 208 of the CAA to new small SI engines and equipment.

As applied to nonroad engines, vehicles and equipment under section 213(d), Phase 1 prohibited acts would include, but would not be limited to:

- An engine manufacturer's introduction into commerce of new small SI engines that are not covered by a certificate of conformity issued by EPA,
- The introduction into commerce of new small SI equipment and vehicles which do not incorporate the appropriate nonhandheld or handheld certified nonroad engine,
- Tampering with emission control devices or elements of design installed on or in a small SI engine, and
- Failure to provide information to the Agency if requested.

EPA is also proposing regulations, under the authority of section 205 of the Act, which set forth the maximum statutory penalties for violating the prohibitions.

EPA is proposing general information collection provisions similar to current on-highway provisions under section 208 of the Act which would include, but would not be limited to, the manufacturer's responsibility to provide information to EPA, perform testing if requested by EPA, and maintain records. In addition, EPA is proposing emission system defect reporting regulations which require manufacturers to report to EPA emission system-related defects that affect a given class or category of engines. EPA enforcement personnel would be authorized to gain entry and access to various facilities under section 208 and today's action proposes these entry and access provisions.

This rule's information requirements are similar to those proposed in the nonroad large compression-ignition (CI) rule,[2] but reduced from the on-highway program requirements. EPA requests comment on whether patterning the small SI engine information requirements after the nonroad large CI rule is appropriate for the manufacturers of small nonroad engines. In particular, EPA request comments on whether there are more efficient or more effective ways than those proposed for manufacturers to create, maintain, and report this information; whether electronic data interchange (EDI) is a common practice within this industrial sector; and whether EPA should consider using EDI or any other technology in its information collection to reduce the burden and costs of compliance.

EPA is authorized under section 217 of the CAA to establish fees to recover compliance program costs associated with section 206 and 207. EPA will propose to establish fees for today's nonroad compliance program at some future time, after this rule has been promulgated and associated costs are determined.

C. Program Description and Rationale

This section describes several features of EPA's proposed Phase 1 small SI engine, vehicle and equipment compliance program and EPA's rationale for including these features in the program. Specific issues related to the proposed program which require in-depth discussion are presented in "V. Discussion of Issues."

1. Applicability

This rule would apply to new nonroad spark-ignition engines that have a gross power output at or below 19 kW and are manufactured after August 1, 1996 for use in the United States. New engines that would be covered by this rule are used in a large and varied assortment of vehicles and equipment including lawnmowers, string trimmers, edgers, chain saws, commercial turf equipment, small construction equipment, and lawn and garden tractors.

EPA estimates that in the first year of regulation approximately 16,525,000 new engines, or approximately 19.4 percent of the in-use fleet, would be subject to this regulation. See Chapter 4 of the draft Regulatory Support Document (hereafter, draft RSD) for this rulemaking.[3]

EPA is proposing to require certification of new small SI engines, not the vehicle or equipment which houses such engines. First, small SI engines are used in a variety of applications. EPA believes it is inappropriate to mandate that a specific SI engine be manufactured for any given application. Second, the number of manufacturers and the diversity of vehicles and equipment in which small SI engines are used would present clear administrative problems. Regulating primarily by vehicle or equipment type would dramatically increase administrative cost associated with this rule with no comparable reduction in emissions. EPA is, however, proposing to require that vehicle and equipment manufacturers and importers use the appropriate certified nonroad engines in their vehicles and equipment. This requirement is discussed in "V.H. Requirements Applicable to Vehicle and Equipment Manufacturers."

EPA also considered, but rejected, the idea of including SI engines above 19 kW in this Phase 1 rule. Engines above the proposed 19 kW cutoff tend to exhibit different operating cycle characteristics than small SI engines. This difference necessitates the development of additional test procedures. EPA does not have sufficient data to undertake such a development within the timeframe of this Phase 1 rule. As part of the *Sierra Club* v. *Browner* settlement, EPA will determine by November 1996 whether to undertake a rulemaking which targets emissions from SI engines over 19 kW.

Certain small SI engines which otherwise would be subject to this rule would be explicitly excluded from regulation:

(1) Engines used to propel marine "vessels" as such term is defined in 1 U.S.C. 3 (1992). EPA is not including these engines because they are currently subject to safety regulations by the U.S. Coast Guard (See 46 U.S.C. 331 and 46 U.S.C. 4302.), and EPA is developing a separate rulemaking which will propose appropriate methods of regulating emissions from these engines.

(2) Engines regulated by the Mining Safety and Health Administration (MSHA) for underground use. EPA is not including in this proposal engines that are used in underground mining or engines used in underground mining equipment as regulated by MSHA under the authority of 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75. MSHA is responsible for protecting miners from unhealthy levels of air pollution in underground mines and has issued air quality standards for mines and standards for NO_X and CO emissions from some types of mining equipment. Although EPA considered applying EPA regulations to these engines, EPA chose not to include them at this time in order to avoid dual regulation of these engines.

(3) Engines used in motorcycles and regulated in 40 CFR part 86, subpart E. EPA has regulated emissions from motorcycles since 1978. A motorcycle means any motor vehicle with a headlight, taillight, and stoplight and having two wheels or three wheels and a curb mass less than or equal to 680 kilograms.

(4) Engines used in aircraft as that term is defined in 40 CFR 87.1(a).

(5) Engines used in recreational vehicles which are defined as follows: (1) The engine has no installed speed governor; (2) the engine's rated speed is greater than or equal to 5,000 RPM; (3) the engine is not used for the propulsion of a marine vessel; and (4) the engine does not meet the criteria to be categorized as a Class III, IV, or V engine under this regulation. Recreational vehicles include: All-terrain vehicles, off-road motorcycles, snowmobiles, and go-karts. These engines are being excluded for several reasons: First, the duty cycle is completely different from most small SI engine applications. These engines experience highly transient operation and likely will require completely different test procedures for purposes of emission control testing. Second, they are designed to emphasize power output; thus, they are typically designed to run at much higher RPMs than other small SI engines. EPA invites comments on other criteria which may be utilized in defining the class of nonroad engines which propel recreational vehicles.

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[2] See Control of Air Pollution; Emissions of Oxides of Nitrogen and Smoke From New Nonroad Compression-Ignition Engines at or above 50 Horsepower, 58 FR 28809 and 51595 (May 17, 1993).

[3] A copy of the draft RSD may be found in the docket for this rulemaking.

2. Exclusions and Exemptions to Today's Proposal

Pursuant to section 203(b)(1) of the CAA, the Agency is proposing additional categories of exemptions from new small SI engine regulation similar to the exclusions and exemptions that exist for on-highway engines and that have been proposed in the nonroad large CI engine rule. These include exemptions for purposes of research, investigations, studies, demonstrations, training, or for reasons of national security. Exemptions would be obtained either categorically, that is without application to the Administrator, or by submitting a written application to the Administrator. Export exemptions and manufacturer-owned engine exemptions would be granted without application. Testing exemptions, display exemptions, and national security exemptions would be obtained by application.

Exclusions from this regulation include nonroad engines that are used solely for competition or for combat.

Exemptions and exclusions are justified in these cases because the sources are limited in number or scope, so minimal environmental harm results; the particular use of the source is determined to further air quality research; and/or the exemption is vital to the security of the nation. (See 39 FR 10601, March 21, 1974.)

3. Effective Date for Certification

EPA is proposing that certification of new small SI engines begin in 1996. Manufacturers of engines produced on or after August 1, 1996, would be required to obtain from the Administrator a certificate of conformity covering the engine family. The certificate would be obtained prior to selling, offering for sale, introducing into commerce, or importing into the United States the new engine.

While the small SI engines affected by this proposal include a broad range of engine types, EPA believes that the effective date for the proposed standards is reasonable and technologically feasible and that engine manufacturers will be able to implement these regulations within the short lead time provided under this rule. This issue is discussed, in detail, in "V.I. Effective Date." Further, an August 1, 1996 effective date is consistent with the Congressional mandate found in section 213(c) of the Clean Air Act which requires that, "Standards * * * shall take effect at the earliest possible date considering lead time necessary to permit the development and application of the requisite technology * * *"

4. Emission Standards

Section 213(a)(3) of the CAA states that nonroad emissions standards:

> * * * shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time * * *.

The emission standards being proposed for this Phase 1 small engine regulation are listed in Table 1 in the Overview Section. The proposed emission standards result in significant emission reductions in the near term while work is going on to develop more stringent Phase 2 standards and while manufacturers work to design engines and equipment capable of meeting lower standards at a later date.

EPA believes these proposed emission standards represent the greatest emission reductions achievable given the short lead time prior to this rule's effective date and the technology available during this period. Requiring more stringent Phase 1 emission standards than those proposed today would necessarily delay implementation of new small SI engine standards by at least two years. This additional lead time would be needed to allow manufacturers time to redesign engines and equipment to accommodate requirements of more sophisticated technologies. Air quality benefits which will accrue under the proposed emission standards are large and meet the statutory criteria for nonroad standards required by the CAA. These benefits are discussed in Section VI of this preamble.

In determining the appropriate level of emission standards to propose, EPA initially considered, as required in the CAA, comparable motor vehicle standards. Due to technological constraints present in small engines, EPA believes that promulgating emission standards comparable with motor vehicle standards in a Phase 1 rule is not technologically achievable. See chapter 1 of the draft RSD for further discussion of small SI engine technological constraints.

In proposing these emission standards, EPA has also considered potential safety and noise issues. Of concern is 36 CFR 261.52 which directs the Forest Service to prohibit the operation or use of any handheld internal or external combustion engine without a spark-arresting device properly installed, maintained, and in effective working order. The Forest Service also requires that multipositional small engines used on federal park lands have exposed exhaust system surface temperatures not exceeding 550 °C. Exhaust gas temperatures may not exceed 475 °C.

The type of engine changes EPA expects as a result of the proposed emission standards will not present a safety concern. Only catalytic converters designed to produce high conversion efficiencies can generate sufficient exotherms to raise exhaust system skin temperatures to a level that might present a safety problem. Manufacturers have indicated that they will not use catalytic converters to meet the proposed emission standards for most product lines. EPA estimates that up to 30 percent of engines in Class I may need low efficiency catalysts to meet the standards. However, one manufacturer stated that the exotherm generated by these low efficiency catalysts will not affect exhaust system skin temperatures sufficiently to warrant more advanced heat dissipation and heat shield technologies.

Noise levels of small SI engines will not be allowed to increase as a result of the proposed emission standards. The type of engine changes EPA expects to see among current engine designs to meet the proposed emission standards are not expected to impact noise levels. The primary source of noise from nonroad small engines originates from combustion and the moving parts in the engine, such as the piston, valve train, and so forth. Noise from combustion is controlled primarily through the engine muffler. EPA believes the principal method to be used by all engine manufacturers to meet the proposed emission regulation will be leaner air/fuel ratios. Noise levels in future engines which meet the proposed regulations must, therefore, not exceed that of current production engines.

EPA requests comment on the possible impact of this proposed regulation on both engine noise and safety.

In EPA's judgment, section 213(a)(3)'s requirement that EPA regulate emissions from those classes or categories of new nonroad engines which cause, or contribute to concentrations of ozone in nonattainment areas allows EPA to set emission standards for HC, rather than VOCs in general, as EPA believes that HC emissions from small gasoline engines are those that cause or contribute to ozone nonattainment concentrations. In addition, regulating HC rather that VOCs would be consistent with on-highway practice. EPA requests comment on this proposed approach.

In the Nonroad Study, EPA described VOCs as any compounds containing carbon and hydrogen or containing carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions.

HCs contain both hydrogen atoms and carbon atoms but no other atoms and are a subset of VOCs. For small SI engines, based on engines tested by Southwest Research Institute under contract with EPA, HCs make up more than 99 percent of the VOCs emitted from these engines. Less than one percent of the measured VOC emissions are from constituents other than HC emissions (aldehydes and ketones were the measured non-hydrocarbon constituents in this case).

In general, the types of emission controls employed to reduce HC emissions also reduce emissions of non-hydrocarbon VOCs. Therefore, in the case of small SI engines, setting emission limits for HC emission accomplishes essentially the same overall reduction in VOC emission as would setting emission limits for VOCs. Of course reductions in the individual non- hydrocarbon VOC species varies, as does the individual hydrocarbon species.

5. Engine Classes

The category of small SI engines is very complex and comprises a wide range of engines used in a broad spectrum of equipment. EPA proposes to adopt a "class" structure for this Phase 1 regulation. In determining which class of emission standards a particular engine must meet, an engine's end use or application must be determined. This rule proposes two broad use categories—nonhandheld and handheld. Nonhandheld engines would be required to meet either Class I or Class II standards while handheld engines would have to meet either Class III, IV, or V emission standards. Once the applicable use category is determined, the engine class would be selected on the basis of engine displacement as measured in cubic centimeters (cc).

Each engine class would have unique emission standards. EPA is proposing five engine classes: Class I—small nonhandheld engines less than 225 cc in displacement; Class II—small nonhandheld engines greater than or equal to 225 cc in displacement; Class III—small handheld engines less than 20 cc in displacement; Class IV—small handheld engines equal to or greater than 20 cc to less than 50 cc in displacement; Class V— small handheld engines equal to or greater than 50 cc in displacement.

Class I engines are overwhelmingly found in lawnmowers. Class II engines primarily include engines used in generator sets, garden tractors, and commercial lawn and garden equipment.

Only engines used in equipment defined as handheld would be allowed to meet Class III, IV, or V emission standards. Class III includes engines used in consumer handheld products, such as small string trimmers, edgers, and brush cutters. Class IV encompasses engines used in both residential and commercial settings and includes large trimmers, edgers, blowers, and chain saws. Class V includes a majority of engines utilized in commercial chain saws.

EPA is proposing five separate engine classes based on a number of factors. First, some types of equipment are currently powered exclusively by 2-stroke engines. EPA estimates that as much as 90 percent of 2-stroke engines are utilized in handheld equipment. These current handheld 2-stroke engines incorporate a technology which is inherently more polluting than current 4-stroke engine technology and which results in 2-stroke engines experiencing a higher concentration of hydrocarbons in their exhaust. EPA's view is that it is not technologically feasible to apply the nonhandheld Class I and II engine standards to handheld engines in this Phase 1 rule; therefore the need arises for Class III, IV, and V handheld engine standards. Differences in stringency between classes III, IV, and V are due to the fact that energy-specific emissions generally increase as engine size decreases. This principle is also true in the case of engines used in nonhandheld applications and meeting emission standards of either classes I or II. See discussion in the draft RSD. Finally, the engine classification approach for Phase 1 harmonizes federal small engine regulations with California's lawn and garden regulations.

In summary, it is EPA's view that the emission standards proposed today for handheld and nonhandheld engines and reflected in the five engine class categories represent the greatest emission reduction achievable for this Phase 1 rule.

6. Handheld Engine Qualifications

To qualify as a handheld engine under this proposal, the small SI engine would be required to meet at least one of the following three requirements:

(1) The engine must be used in a piece of equipment that is carried by the operator throughout the performance of its intended function(s). This is meant to encompass such equipment as lightweight leafblowers, trimmers (both string and hedge), and cutters.

(2) The engine must be used in a piece of equipment that must operate multipositionally, such as upside down and sideways, to complete its intended function(s). EPA intends this category to include all types of chain saws as well as items already listed in the first requirement.

(3) The engine must be used in a piece of equipment for which the combined engine and equipment dry weight is under 14 kilograms, no more than two wheels are present, and at least one of the following attributes is also present:

(a) The operator must alternately provide support or carry the equipment throughout the performance of its intended function(s). This allows lightweight snowblowers that are carried up stairs, or edgers which are picked up and supported during operation to qualify for handheld status.

(b) The operator must provide support or attitudinal control for the equipment throughout the performance of its intended function(s). This attribute will allow equipment such as lightweight tillers, augers, cutoff/concrete saws, and edgers to qualify for handheld status.

(c) The engine is used exclusively in a hand-portable generator or pump.

For purposes of this section "support" would mean that the operator holds the equipment in position so as to prevent it from falling, slipping, or sinking. It would not be necessary for the entire weight of the equipment to be borne by the operator. "Attitudinal control" would mean that the operator regulates either the horizontal or vertical position of the equipment, or both. "Carry" would mean that the operator completely bears the weight of the equipment, including the engine.

Section "V.G. Definition of Handheld Engines" provides additional discussion on this issue. EPA believes that this proposed handheld definition adequately covers those categories of engines which should be allowed to meet the less stringent handheld engine standards.

EPA requests information regarding specific engine applications which are not clearly identifiable as handheld or nonhandheld under the proposed definition. EPA also requests alternative language which could be incorporated in this definition to clarify the distinction between handheld and nonhandheld. EPA is particularly concerned that manufacturers of 2-stroke lawnmowers may attempt to qualify for handheld status utilizing the second requirement—multiposition operation. It is not EPA's intent that pushing a lawnmower up and down hills would qualify as multiposition operation.

7. Standards for Classes I and II

EPA is proposing to adopt one of two options under consideration for setting standards applicable to Class I and II engines. EPA requests comments on each of these options.

Option 1: Phase 1 would adopt a combined HC + NO_x standard for engine classes I and II. While engines in classes I and II have high HC emission rates, most currently produce extremely low levels of NO_x. Due to technological constraints of all small SI engines, HC reductions would generally come at the expense of increased NO_x. See "VII. Technology Assessment" for a discussion of this phenomenon. However, the resultant overall increase in NO_x emission inventories would be slight relative to the NO_x produced by sources such as nonroad large CI engines. The sensitivity of NO_x emissions to HC control varies greatly between engine designs. EPA believes that a Phase 1 approach which allows incremental tradeoffs between HC and NO_x controls through a combined standard would be consistent with EPA's statutory mandate that nonroad engine emission standards reflect the greatest emission reductions achievable. See "VII. Technology Assessment" for further discussion.

To meet the combined standard, a manufacturer would add its HC emission test result to the NO_x test result. This combined number would then be submitted to EPA. Individual levels of these pollutants would not be established. The manufacturer would also be required to meet this combined level during Administrator testing and the SEA enforcement program. EPA believes that this approach would be workable for a Phase 1 rule. Setting separate standards for HC and NO_x would be addressed in EPA's Phase 2 regulatory negotiations. For further discussion of this issue, see "V. M. HC + NO_x Standard for Class I, II Engines."

EPA is reluctant to set such a combined standard because it is extremely concerned that no precedent be set for promulgating combined emission standards in future rulemakings. EPA's past practice has been to set separate pollutant standards. EPA is considering the combined standard approach only for this Phase 1 small SI engine rule because of limited data availability, the aggressive timeframe of this rule, and to harmonize with the California lawn and garden regulation.

Option 2: Under this option EPA would set separate Class I and II emission levels for HC and NOx. Based on information currently available to EPA, the NOx standard would be approximately 136 percent higher than current new engine levels, while the HC standard would be approximately equal to the difference between those levels and the HC + NO_x standards proposed in option 1. EPA requests comment on this specific option, including industry data which addresses the appropriate level of both HC and NOx if separate standards were to be promulgated.

8. Engine Family Categorization

For the purpose of demonstrating emission compliance, EPA is proposing that manufacturers of small SI engines divide their product line into groups of engines, called engine families, which are composed of engines having similar emission characteristics. Small SI engine families would be determined by using the same criteria (type of fuel, method of air aspiration, number of cylinders, and so forth) currently used to define on-highway motorcycle engine families.

To be placed in the same engine family, engines would be required to be identical in all the following applicable respects:

(1) Combustion cycle,

(2) Cooling mechanism,

(3) The cylinder configuration (inline, vee, opposed bore spacings, and so forth),

(4) The number of cylinders,

(5) The engine class,

(6) The number of catalytic converters (location, volume, and composition), and

(7) The thermal reactor characteristics.

At the manufacturer's option, engines identical in all the above respects could be further divided into different engine families if the Administrator determined that such engines were expected to have different emission characteristics. This determination would be based on a number of features, such as the intake and exhaust valve or port size, the fuel system, exhaust system, and method of air aspiration.

EPA requests comment on the appropriateness of adding governed engine RPM range as a criterion for the determination of an engine family. EPA is concerned that a wide-governed RPM spread in the same engine family, that is one engine configuration has a no-load governed speed at 3,200 RPM and another engine configuration has a rated no-load governed speed of 2,200 RPM, may be a sufficient reason to break up one engine family into more than one engine family.

9. Compliance With Emission Standards

The test engine(s) representing an engine family would be required to demonstrate that emissions are less than or equal to each separate emission standard. If a test engine exceeded any one emission standard in the applicable class, the engine family would be deemed not in compliance with emission standards of that class.

EPA is proposing that if catalysts are used in an engine family to meet the emission standards of this regulation, the engine manufacturer must affirm that the durability of the catalysts has been confirmed on the basis of the evaluation procedure that is specified in this notice.

10. Useful Life Period, In-use Enforcement, and Development of an In-use Testing Program

EPA is not proposing a small SI engine useful life period or an in-use enforcement program in today's proposal. However, EPA believes that a critical element in the success of its nonroad program is assuring that manufacturers build engines that continue to meet emission standards throughout the engine's useful life. While section 213(d) of the CAA authorizes EPA to enforce emission standards in-use, EPA is proposing to postpone setting a useful life period and an in-use enforcement program for small SI engines until the Phase 2 regulations become effective and, instead, to require in this Phase 1 regulation that manufacturers test in-use engines. The Phase 2 rulemaking for small SI engines is under a court-ordered deadline and must be promulgated by April 30, 1997.

EPA is not proposing a Phase 1 useful life period for several reasons. Only limited testing data is currently available on in-use performance of small SI engines. Additional data would be provided by the in-use testing program described below. Second, EPA does not believe that emission controls proposed for Phase 1 will experience significant deterioration beyond normal engine deterioration, although this area needs more research. For further discussion of these issues see "V.P. Applicability of In-Use Standards" and "V.Q. In-Use Testing Requirements."

The proposed in-use testing requirement is intended to parallel in-use testing previously or currently conducted by industry. While manufacturers and their associations have proposed that EPA adopt a cooperative testing program, EPA believes cooperative programs would not adequately or as effectively achieve the goals of this in-use program. See "V.Q. In-Use Testing Requirements."

EPA is proposing that engine manufacturers test a sample of in-use engines. In the absence of in-use emission standards, EPA believes this testing requirement would be invaluable for manufacturers and EPA to learn about in-use emissions and emission deterioration. Although EPA would not enforce in-use emission standards for Phase 1 engines, EPA expects that manufacturers would take appropriate actions to prevent recurrence of in-use noncompliance and to also remedy in-use noncompliance when it was discovered.

At the time of certification the engine manufacturer would propose which engine families are to be included in the in-use test program. The certificate of conformity issued by EPA for engine families included in the in-use testing program would be conditional based on completion of the test program for that family. EPA would approve a manufacturer's test program if the selected engine families represented an adequate consideration of the elements discussed below.

Number of engines to be tested: The number of small SI engines to be tested by a manufacturer would be determined by the following method:

For an engine manufacturer with total projected annual production of more than 75,000 small SI engines, the minimum number of engines to be tested will be the lowest of the numbers determined in (1), (2), or (3) below:

(1) Divide the manufacturer's total projected annual production of small SI engines by 50,000, and round to the nearest whole number,

(2) Test five engines each from 25 percent of all small SI engine families certified in that model year,

(3) Test three engines each from 50 percent of all small SI engine families certified in that model year.

An engine manufacturer with total projected annual production of 75,000 small SI engines or less must test a minimum of two engines.

Criteria for selecting test engines: An engine manufacturer would be required to select test engines from engine families utilizing the following criteria and in the order specified:

(1) Engine families using emission technology which may be used on phase 2 engines,

(2) Engine families using aftertreatment,

(3) Engine families certified to different emission standards,

(4) Different engine designs (such as side valve versus overhead valve engines),

(5) Engine families using emission control technology specifically installed to achieve compliance with Phase 1 standards,

(6) The engine family with the highest projected annual sales, and

(7) Engine families which meet the above criteria, but have not been included in prior model year in-use testing programs as required by these provisions.

Collection and testing of in-use engines: An engine manufacturer would be required to procure in-use engines which have been operated for between half and three-quarters of the engine's advertised (or projected) useful life. All testing would be completed within three years after the certificate is issued or is effective, whichever is later, for an engine family which requires in-use testing.

A test engine would be procured from sources not associated with the engine manufacturer or equipment manufacturer, except that, with prior approval of the Administrator, an engine manufacturer with annual sales of less than 50,000 engines might obtain in-use engines associated with itself or its equipment manufacturer

A test engine would be required to have a maintenance history representative of actual in-use conditions. To comply with this requirement a manufacturer would question the end user regarding the accumulated usage, maintenance, operating conditions, and storage of the test engine.

The manufacturer would perform minimal set-to-spec maintenance on a test engine. Maintenance would include only what is listed in the owner's instructions for engines with the amount of service and age of the acquired test engine. One valid emission test would be required for each in-use engine. Finally, if a selected in-use engine failed to comply with any applicable certification emission standards, the manufacturer would be responsible for determining the reason for noncompliance.

In-use test program reporting requirements: The manufacturer would be required to submit to the Administrator by January 30 of each calendar year all emission testing results generated from the in-use testing program. At the Administrator's request, a manufacturer would be required to provide documents used in the procurement process, including criteria used in the procurement screening process and information from the end user(s) related to use, maintenance, and storage of the selected engines.

EPA is aware that engine manufacturers may have near-term concerns regarding testing capacity and the burden this type of program may impose on a newly regulated industry. EPA requests comments on the lack of in-use standards, the lack of in-use enforcement, all elements of this proposed testing requirement, and on possible alternative designs of in-use testing programs (such as a joint program between manufacturers and EPA) or enforcement that may be more effective, giving consideration to the limited lead time and duration of the Phase 1 program.

11. Certificate of Conformity, Requirements of Certification

Any manufacturer of a small SI engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States, before such an engine is sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States.

Section 203 of the CAA does not prohibit the production of vehicles or engines before a certificate of conformity is issued. Vehicles or engines produced prior to the effective date of a certificate of conformity might also be covered by the certificate if the following conditions were met:

- The engine conformed in all respects to the engines described in the application for the certificate of conformity.
- The vehicles or engines were not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity.
- The Agency was notified prior to the beginning of production when such production would start, and the Agency was provided full opportunity to inspect and/or test the engines during and after their production. For example, the Agency would have the opportunity to conduct SEA production line testing as

if the engines had been produced after the effective date of the certificate.

EPA is proposing that a number of requirements be met by the engine manufacturer prior to granting a certificate of conformity. As is the case for on-highway vehicles and engines, the proposed regulations would make it illegal for any person to use a device on a nonroad engine which senses operation outside normal emission test conditions and reduces the ability of the emission control system to control the engine's emissions. To guard against use of these devices, EPA would reserve the right to require testing of a certification test engine over a modified test procedure if EPA suspected a defeat device was being used by an engine manufacturer on a particular engine. In addition, use of defeat devices would be considered a prohibited act subject to civil penalties.

Engines equipped with adjustable operating parameters would have to comply with all the regulations with the parameters adjusted to any setting in the full range of adjustment. For example, this could include adjustment of the high-speed needle for alteration of the air/fuel ratio or adjustment of the speed set screw. This would ensure that changes to the adjustable operating parameters that might readily occur in use would not cause the engine to fail to comply with these regulations.

EPA is proposing to require that manufacturers label each engine and that the label meet the same requirements with respect to durability and visibility as required in the current on-highway program. The engine manufacturer would be responsible for proper labeling of engines from each engine family. In addition, EPA is proposing labeling requirements for vehicle and equipment manufacturers if the engine label is obscured.

EPA is also proposing that each engine must have a unique engine identification number which may be part of the engine label or engraved on the engine. Such identification is necessary for tracking individual engines. Use of engine identification numbers would facilitate setting up a tracking system and allow manufacturers to sample in-use engines for their programs. This identification would be essential for development of a long-term in-use durability program. EPA requests comment on the labeling proposal as well as on current engine identification practices within the industry.

Finally, EPA also proposes to require that all engine crankcases must be closed to preclude the emissions that occur when a crankcase is vented to the atmosphere. Since most currently produced engines do have closed crankcases, EPA believes this requirement would impact relatively few manufacturers. Finally, small SI engine noise levels would not be allowed to increase as a result of this rule.

EPA requests comment on these proposed certification requirements. While EPA is today proposing vehicle and equipment manufacturer labeling responsibilities, EPA is considering whether to instead make engine manufacturers responsible for ensuring that the emission control label is visible once the certified engine is incorporated into a given piece of nonroad equipment. EPA requests comment on this specific issue as well.

12. Vehicle/Equipment Manufacturer Requirements

Commencing on this rule's effective date, manufacturers of small SI vehicles and equipment and importers would be prohibited from introducing into U.S. commerce any vehicle or equipment powered by a small SI engine which does not incorporate the appropriate certified handheld or nonhandheld engine. Failure to do so would make the equipment manufacturer liable for the assessment of civil penalties. EPA is proposing this requirement because it is concerned that engines certified to meet handheld engine standards may in fact be used in nonhandheld equipment. This would significantly and negatively impact air quality benefits which are to accrue as a result of this rule. Due to the potential for engines in different categories to be substituted for one another, this prohibition would ensure that the regulated engines are used in appropriate applications.

As noted above, EPA is proposing to require that the original emission control engine label is visible once the certified engine is placed in the vehicle or equipment. If the engine label is obscured as a result of the vehicle or equipment manufacturer's placement of the engine in the nonroad vehicle or equipment, the vehicle or equipment manufacturer would be required to attach an identical but supplemental label, in a readily visible location on a part necessary for normal vehicle or equipment operation before it is introduced into United States commerce.

Section 213 gives EPA the authority to require nonroad equipment manufacturers to use certified nonroad engines. For further discussion, see "V.F. Nonroad Engine and Vehicle Definitions."

13. Certification Procedures—Application Process

The engine manufacturer would be required to submit an application to EPA requesting a certificate of conformity for each engine family for every model or calendar year. Certificates would be issued to cover production for a single model year. See "V. W. Duration of Certificates of Conformity, Definition of Model Year, Annual Production Period" for further discussion of these issues. An application for a certificate would be submitted every model year even when the engine family does not change from the previous certificate, although representative test data could be reused in the succeeding model year's application. If the emissions from the test engine were below the applicable standards and EPA believed that all other requirements of the regulation were met, EPA would issue a certificate of conformity for that engine family.

The application would need to provide EPA with sufficient information to determine the appropriate test results and emission characteristics of the engine family. It would also allow EPA to determine test engine compliance with the applicable emission standards in a timely manner. It would be important that the engine manufacturer succinctly, fully, and accurately submit all pertinent information to EPA and maintain internal records which could be easily accessed if such access is determined to be necessary by EPA.

If changes to an engine family configuration occur after the application is submitted which cause the changed version to be the engine family's worst case emitter, then emission testing of the changed version is required. Additionally, the Administrator may require a manufacturer to conduct testing to demonstrate compliance.

The application would be submitted to the United States Environmental Protection Agency, Certification Division, Office of Mobile Sources, 2565 Plymouth Road, Ann Arbor, MI 48105. A second copy of the application would be forwarded to Manufacturers Operation Division, Office of Mobile Sources, 401 M St., SW (Mail Code 6405J), Washington, DC 20460. The application would include the following information:

- A description of the basic engine design including engine family specifications,
- A complete description and explanation of how the emission control system operates, including a detailed description of all emission control

components, and a listing of the engine and emission control calibrations,

- Part numbers for all emission control components which might reasonably be expected to affect emissions,
- Proposed test engine selection and the rationale for such a selection,
- A description of the test engine starting instructions, fuel, and lubricants to be used,
- A description of the operating cycle and the service accumulation period necessary to break in the test engine,
- A description of all adjustable operating parameters,
- Information relating why the physical limits or stops used to establish the physically adjustable range of each parameter were effective,
- A description of the rated speed(s) and power(s) within the engine family,
- Fuel flow rates for each configuration within the engine family,
- The proposed maintenance instructions, the emission warranty, and emission control label,
- All test data obtained by the manufacturer on the test engine,
- A description of the test facilities, test equipment, and test procedures,
- A section which incorporated any revisions or amendments to the application, including any production changes,
- A list of official manufacturer contacts, organizational chart, and individual designated to receive the certificate of conformity,
- The projected annual sales for the engine family,
- A statement indicating which information in the application was confidential, and
- An unconditional statement certifying that all engines in the engine family complied with all the requirements of the Clean Air Act and this regulation.

14. Certification Procedures—Testing Overview and Preliminaries

EPA is proposing that the emission level used to certify an engine family be equal to the highest emission test level reported for any engine configuration in that family. The engine manufacturer would be responsible for selecting and testing one engine from each engine family which is most likely to be that engine family's worst case emitter. The criterion for selecting the worst case engine would be that engine configuration which has the highest weighted brake-specific fuel consumption over the appropriate engine test cycle. EPA could verify the test results by requiring Administrator testing of this engine. EPA would also have the option to test any available test engine representing other configurations in the engine family.

Before emission testing was carried out, the manufacturer would perform service accumulation on each test engine over the dynamometer hour accumulation cycle of its choice based on good engineering practices (for example, a cycle representative of typical "break-in" operation of a new production engine in actual use). For each engine family, the manufacturer would determine the number of hours required to stabilize the emissions of the test engine. However, the number of hours which the manufacturer chose could not exceed 12 hours. EPA does not believe a break-in time greater that 12 hours is necessary to stabilize new engine emissions. In addition, this cutoff is necessary to ensure that EPA gets an equitable view of stabilized emissions over all engine families which may vary with respect to HC and CO emission degradation and NO_X emission improvement with time. The manufacturer would maintain, and provide in its application to the Administrator, a record of the rationale used both in making the dynamometer cycle selection and in making the service accumulation hours determination.

The manufacturer would be required to conduct emission tests of selected engine(s) using the proposed test procedure discussed herein. Finally, the proposed rule does provide for Administrator approval of special test procedures if the small SI engine is not capable of being satisfactorily tested under the proposed test procedures.

15. Certification Procedures—Emission Test Procedure for HC, CO, and NO_X

EPA is proposing a single test procedure with three different test cycles for measuring HC, CO, and NO_x. One cycle would be for all Class III, IV, and V engines (Cycle C), while two cycles would be possible for Class I and II engines (Cycles A and B).

Cycle B would only be used for those Class I and II engine families in which 100 percent of the engines were sold with a governor which maintained engine speed within ± two percent of rated speed (rated speed means the speed at which the manufacturer specifies the maximum rated power of an engine) under all operating conditions. Cycle B would be a 6-mode steady state cycle consisting of five power modes at rated speed and one no-load mode at idle speed. For all other Class I and II engines, the test cycle to be used would be Cycle A. Cycle A would be identical to Cycle B, except the five power modes would be run at intermediate engine speed (intermediate speed is defined as 85 percent of rated speed).

For Class III, IV, and V engines, the engine manufacturer would be required to use Cycle C. Cycle C is a 2-mode steady state cycle consisting of one power mode (at rated speed) and one no-load mode at idle speed. The test modes for each cycle would be run in a prescribed order.

The three test cycles (modes and power settings) documented in the proposed regulations are based on work performed by the Society of Automotive Engineer's (SAE) Small Engine Committee. The SAE Small Engine Committee has published a recommended practice for measuring gaseous exhaust emissions from small utility engines typically less than 20 kW. This recommended procedure is known as SAE J1088. Test Cycles A, B, and C are all taken from J1088. The mode weighting factors are taken from work performed by CARB.

In addition, the International Standards Organization (ISO) has published recommended test cycles for measuring exhaust emissions from reciprocating internal combustion engines. Recommended exhaust gas measurement procedures and test cycles for reciprocating internal combustion engines are contained in ISO 8178, Part 4. ISO has three test cycles for spark-ignition engines less than 20 kW termed G1, G2, and G3 which are identical to SAE Cycles A, B, and C, respectively.

EPA believes the proposed test procedures are adequate for the proposed emission standards. The purpose of a certification test procedure is to adequately represent the emission levels produced by the test engine when it is used in actual operation. The test procedure in this proposed rule does this. The 6-mode test cycles (Cycle A and Cycle B) used for Class I and II engines and the 2-mode cycle (Cycle C) used for Class III, IV, and V engines were developed by the Society of Automotive Engineer's Small Engine Committee to cover the broad range of engine operating conditions seen by small engines. The weighting factors were developed by CARB using data supplied by the small engine industry. The weighting factors are intended to be representative of the modes (speed and power conditions) used by the broad range of small gasoline engines. The Agency believes these weighting factors are sufficient for this proposed rule.

The methods used to measure the gaseous emissions of HC, CO, and NO_x for all small engines would be independent of the type of engine and test cycle. EPA proposes to allow manufacturers to sample emissions using either the Raw Gas Method (raw) or the Constant Volume Sampling Method (CVS). Using either method, each test engine would be stabilized at each mode before emission measurement began. After stabilizing the power output during each mode, the concentration of each pollutant, exhaust volume, and fuel flow would be determined. The measured values would be weighted and then used to calculate the grams of exhaust pollutant emitted per kilowatt-hour.

SAE J1088 contains a recommended procedure for the measurement of gaseous emissions using the Raw Gas Method. A recommended testing procedure, such as SAE J1088 or ISO 8178, by definition allows sufficient flexibility for individual manufacturers to develop unique features in their test procedures while still being within the allowable guidance. This flexibility is not a desirable feature in a regulatory program where both manufacturers and EPA want to ensure uniformity between test labs, since conformity and compliance testing decisions are binding on the parties involved. For this reason, the test procedures proposed by EPA are not identical to SAE J1088 or ISO 8178, but are compatible with those procedures.

EPA understands the importance of compatibility between the EPA proposed test procedures and those used to demonstrate emission compliance for other regulatory agencies within the U.S. and throughout the world. Compatibility allows a manufacturer to exercise the cost efficiencies of using one engine configuration to demonstrate emission compliance in more than one market. EPA has tried to establish a test procedure that is compatible with both CARB's utility engine test procedure and with ISO 8178. As a result, EPA expects that a manufacturer using the resultant EPA procedure would also meet the CARB and ISO requirements. However, since the SAE and ISO procedures are recommended practices and do not have stringent test parameter tolerances, a manufacturer using the SAE or ISO procedure may or may not meet EPA requirements.

16. Administrator Testing

EPA is proposing Administrator testing provisions that allow EPA flexibility in determining when and where engine testing may occur. This is necessary given EPA's limited testing facilities.

Specifically, this provision would allow EPA to require test engine testing at any given location, including at a manufacturer's facility. The Administrator would be empowered to require the manufacturer to make available such instrumentation and equipment that was specified by the Administrator. Any testing conducted at a manufacturer's facility would be scheduled by the manufacturer as promptly as possible. Authorized EPA personnel would be given access to the facilities to observe such testing.

17. Catalyst Durability

EPA expects the emission controls used to meet the exhaust emission standards specified in this rulemaking to be durable so that emission reduction benefits are realized not only when the engines are new, but also during operation in-use, over time. Although EPA is not proposing full emission control system durability demonstration requirements in this notice, manufacturers are fully expected to design such systems to be effective under normal in-use operating conditions over time. Full emission control system durability demonstration requirements are expected to be included in the Phase 2 regulations for small SI engines. However, EPA has concerns that certain emission control components, namely catalysts, warrant separate consideration. Therefore, EPA is proposing durability demonstration requirements for catalysts in this notice as discussed in greater detail in "V. U. Catalyst Durability."

18. Information Requirements, Application for Certificate of Conformity, Amendments

This rule's information retention requirements are similar to those proposed in the nonroad large CI rule. EPA believes that the proposed information requirements are sufficient to adequately determine compliance with this regulation and the appropriateness of awarding a certificate of conformity.

A manufacturer would be responsible for retaining certain information applicable to each test engine along with copies of the submitted applications for individual certificates of conformity. A manufacturer would also be required to submit an amendment(s) to the application or certificate of conformity whenever additional small SI engines were added to an engine family or changes were made to a product line covered by a certificate of conformity. Notification normally would occur prior to either producing such engines or making such changes to a product line.

19. Selective Enforcement Auditing Program

EPA is proposing to conduct a Selective Enforcement Auditing (SEA) program of small SI engines as authorized by section 213 of the CAA. The small engine SEA program would be an emission compliance program for new production small SI engines in which manufacturers would be required to test engines as they leave the assembly line, with EPA oversight. Through SEA testing, EPA could determine with reasonable statistical certainty whether or not tested engine families were in compliance with the Act.

EPA believes that an SEA program is necessary to verify that production engines comply with applicable regulations. Since certification would be based on preproduction prototype engines which often contain specially built and installed components, production engines could still fail to meet emission standards if quality control was inadequate. SEAs would provide a means to test actual production engines as they came off the assembly line. Since no in-use enforcement program is being proposed for small SI engines, SEA provides the only opportunity for EPA to determine the compliance of production engines.

EPA would assign a limit to the number of SEAs each manufacturer could receive during a model year. As in the on-highway SEA program, this annual limit would be used to provide assurance to manufacturers that EPA would not significantly overburden a manufacturer with an unreasonable number of audits during the model year

Each SEA would be an audit of one engine family, and each passing audit would count toward the manufacturer's annual limit. EPA is proposing an annual limit of two for each manufacturer with projected annual production of less than 100,000 engines. For manufacturers with annual production of 100,000 or more engines the annual limit would be the greater of either two or the number determined by dividing the number of engine families certified in that model year by five, and rounding to the nearest whole number. For example, a manufacturer with a projected annual United States production of 600,000 engines with 13 certified engine families would have an annual limit of three, and a manufacturer with a projected annual production of 300,000 small SI engines and 22 engine families would have an annual limit of four.

EPA believes this method of determining annual limits is most appropriate for the small SI engine industry. EPA is proposing the minimum annual limit of two because manufacturers may change production during the model year. If a manufacturer passed an SEA early in a model year, the manufacturer might subsequently implement changes in its production process which could increase engine emissions. With an annual limit of two, EPA would have the flexibility to audit a manufacturer early in the model year, and then return later in the model year if that manufacturer implemented a change in production which could increase engine emissions.

As described above, EPA is also proposing that manufacturers with projected annual production of 100,000 small SI engines or more may have an annual limit of more than two. EPA believes it might be necessary to conduct more than two SEAs on larger engine manufacturers when they have a large variety of engine families. When manufacturers have a variety of engine families, an SEA might only check a small portion of the manufacturers' production. Therefore, by dividing the number of engine families certified by larger manufacturers by five, EPA could establish a higher annual limit for those manufacturers with a variety of engine families with different emission characteristics. Manufacturers with lower production should be assured that EPA would not overburden its limited test facilities with SEAs.

Annual limits would act as a cap and would not necessarily be the actual number of audits a manufacturer received. EPA would not exceed a manufacturer's annual limit unless the Agency had reason to believe noncompliance was occurring. EPA requests comment on the proposed method for determining annual limits.

The SEA program strives to encourage manufacturers to perform self-auditing and promptly remedy the emission noncompliance it discovers. Therefore, EPA would consider reducing the number of audits conducted by the Agency, minimizing audits of engine families which are unusually burdensome to audit, or both options, if the manufacturer provided substantial data to demonstrate conformity of actual production engines with the applicable emission standards. EPA suggests that manufacturers unfamiliar with self-auditing review existing on-highway programs, such as CARB's Quality Audit Program or the manufacturers' Assembly Line Test Data, for guidance in implementing an in-house auditing program. Examples of audit programs are available in the docket for this rulemaking.

EPA would review self-audit data and procedures used in acquiring the data to assess the validity and representativeness of each manufacturer's self-audit program. The primary criteria EPA would use in evaluating the in-house programs are sample size, randomness within the family of the audited engine(s), frequency of testing, and the applicable required test procedures. EPA would discount the value of any self-audit data if the Agency received indications of noncompliance or concluded that the data were invalid, incomplete, unrepresentative, or insufficient. In addition, manufacturers with a comprehensive self-audit program would be subject to spot checks with EPA oversight to provide EPA assurance of compliance. EPA requests comment on this issue.

Manufacturers would be notified of an SEA by means of a test order. This test order would specify the engine family to be audited. EPA might also specify an engine configuration or range of configurations from a family to be audited. However, EPA would reserve the option to select all configurations within an engine family for an SEA. To minimize the burden on manufacturers, EPA would consider requests by manufacturers to exclude particular engines or engine configurations from a test sample. Justification for such requests could be to avoid a delay in shipment of urgent customer-ordered engines or to minimize test cell set-up time by selecting engines of similar physical configurations.

Test orders would include information relevant to the SEA. The test order would indicate any specific procedures, such as the time to begin selecting engines, during the course of the audit. Additionally, the test order would authorize EPA enforcement officers, upon presentation of enforcement credentials, to inspect engine production, test facilities, storage facilities, and records necessary to establish compliance with nonroad regulations.

Due to differences between the small SI industry and the on-highway industry, EPA is proposing that some aspects of the on-highway SEA program be modified for small SI engines. Historically, on-highway engine SEAs have been conducted on engine configurations: a specific engine family, an engine code, a rated speed and an emission control system. EPA believes that making an entire small engine family subject to an audit would lead manufacturers to use extra care when grouping engines in a family. Consequently, EPA is proposing that nonroad SEAs be conducted by sampling engines from within an engine family. EPA requests comments on this aspect of the program.

SEA engines would typically be selected from a point of final engine assembly or from a storage or shipping facility. Most often, this selection point would be at the end of the engine assembly line, where no further quality control procedures happen or parts would be installed on the engines. Selection of imported engines could occur at a port of entry. SEA engines could not receive any additional inspections or quality control other than that of normal production engines and pre-test safety checks. Engines would be tested in the same order as they were selected. EPA requests comment on the feasibility of selecting equipment, then removing the engine for audit testing.

EPA proposes to include ports of entry or storage locations in the United States as locations for EPA selection of foreign- produced small SI engines for SEA emission testing at laboratories in the United States. The location of these selections could be designated by the manufacturer to minimize disruption and shipping costs. The manufacturer would be responsible for ensuring that a test facility in the United States was available for SEA testing.

"Port selection" would assist the Agency in reducing its travel costs. Recently, in the on-highway program, EPA has had requests from light-duty vehicle manufacturers to conduct port selection during SEAs. These audits were performed and ran smoothly. EPA might permit reasonable maintenance and inspections of port-selected engines to address problems that could result from long-term storage, ocean shipping, or repeated handling. EPA requests comments on the port selection aspect of the SEA program.

Prior to testing SEA engines, manufacturers could operate engines to break in engine components. This break-in or service accumulation of an SEA engine family would follow the same procedures and could be up to 12 hours or the same number of break-in hours accumulated for that family's emission data engine during certification. Service accumulation would be performed expeditiously and in a manner using good engineering judgment.

Audit engines would be tested using the same test cycle, either Test Cycle A, B, or C, as was used in certification, however, deviations allowed in certification from the full test procedures as described in proposal 40 CFR part 90 would not be permitted in SEAs.

EPA is proposing that small SI engines will be selected for SEA testing at a rate of at least four engines per day, unless production is less than four engines per day. To minimize delays in shipment of engines to customers, manufacturers could test the first engines selected for an audit while additional engines were produced.

The total number of engines tested in an SEA would be dictated by the number of engines required to reach the statistically acceptable pass/fail decision within the sampling plan applied. EPA is proposing a sequential sampling plan for small SI engine SEAs. These sampling plans have been designed to meet a 40 percent Acceptable Quality Level (AQL) and to ensure low statistical risks of incorrect pass/fail determinations. The maximum theoretical percentage of failing engines for passing an SEA is 40 percent. EPA is proposing a 40 percent AQL for the small SI engine SEA program. EPA has used this AQL since the 1970s for the on-highway program, and EPA currently has no reason to propose a different AQL for a nonroad program. EPA is proposing that the small SI engine SEA program use the same sampling plans used for the on-highway heavy-duty engine SEA program.

EPA proposes that engine manufacturers with projected United States annual sales of 7,500 or greater must complete a minimum of two engine tests per day during an SEA. Engine manufacturers with projected United States annual sales of less than 7,500 would be required to complete a minimum of one engine test per day during an SEA. A valid emission test or a voided test would each count as one test toward meeting the requirement. EPA requests comments on this aspect of the proposal.

A test engine's pass or fail determination would be made by comparing final test results to the applicable federal emission standard. Within five working days of the conclusion of an audit, manufacturers would be required to submit a report to EPA summarizing engine test results, test procedures, and audit events such as the date, time, and location of each test, repairs to engines, and the reason for the repair.

Failure of an SEA could result in suspension or revocation of the certificate of conformity for that family. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer would be required to demonstrate, by showing passing data, that improvements, modifications, or replacement had brought the family into compliance. The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the sampling plans or the manner in which tests were conducted.

20. Importation of Nonconforming Small SI Engines

EPA is proposing certain restrictions on the importation of nonconforming small SI engines. Such restrictions are based in part on the existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines.

While EPA provides for an Independent Commercial Importer (ICI) program for motor vehicles and motor vehicle engines, EPA is not certain that an ICI program is necessary or practical for small SI engines. For the on-highway program, ICIs are responsible for all aspects of compliance required of manufacturers (e.g., certification, testing, labeling, warranty, recall; maintaining records). EPA solicits comment on the need for an ICI program for small SI engines. Due to the uncertainty about the need for an ICI program, EPA is proposing in the alternative both to have an ICI program that parallels that of the on-highway program, and to have no ICI program in the final rule. EPA currently favors no ICI program for small SI engines; if the Agency determines not to promulgate an ICI program, the proposed regulatory language will be deleted from the final rule.

This proposal includes a special provision for individuals to import a limited number of nonconforming small SI engines for personal use. EPA expects that individuals may not know of the regulations applicable to small SI engines and, without this once in a lifetime exemption, individuals may be stopped at a port of entry with small SI engines and equipment included with their personal possessions. Additionally, this exemption would relieve a significant burden on EPA and the U.S. Customs Service. EPA is proposing that, at least for Phase 1 of these regulations, individuals be permitted to import up to three nonconforming small SI engines and not have these engines brought into compliance with the proposed standards. This is a one-time exemption (for one importation) in which individuals are permitted to import these engines for personal use and not for purposes of resale. This exemption would not require prior EPA written approval. Additional small SI engines, after an individual's limit of three, would not be permitted to be imported under the proposal unless otherwise provided under another exemption or exclusion. All small SI engines imported for purposes of resale would be required to be imported and modified by an ICI. If EPA does not finalize an ICI program, such engines may not be imported for resale. EPA requests comment on this proposed exemption.

Today's proposal also provides certain exemptions to the restrictions on importing nonconforming small SI engines. These include exemptions for repairs and alterations, testing, precertification, display, national security, hardship, small SI engines greater than 20 original production years old, and certain small SI engines proven to be identical, in all material respects, to their corresponding United States certified versions. These exemptions would also include the exclusion of nonconforming engines used solely in competition.

EPA is not proposing to include provisions for a catalyst control program for small SI engines. The catalyst control program for motor vehicles consists of a special provision for catalyst-equipped vehicles to be operated in countries where the catalyst may be poisoned by the use of leaded fuel. In the on-highway catalyst control program, owners may either have the catalyst removed while the vehicle is operated outside of the United States or, if the vehicle is driven only in countries that have a wide availability of unleaded gasoline, demonstrate by using a plumbtesmo test that the vehicle was not operated on leaded fuel. EPA is not proposing a catalyst control program for small SI engines because EPA does not expect that U.S. certified small SI engines equipped with catalysts will be used in countries that do not have a wide availability of unleaded fuel and then imported into the United States. Additionally, EPA has no knowledge of the extent to which catalysts will be used on Phase 1 small SI engines. EPA requests comments on the absence of a catalyst control program and the need for such a program for Phase 1 engines.

Finally, EPA is not proposing to include a provision for small SI engine Designated Canadian Importer (DCI). EPA's motor vehicle import program has a special provision in which DCIs may import and sell Canadian vehicles that were manufactured to be identical in all material respects to U.S. certified counterparts. Because EPA has no indication that Canada will adopt EPA's Phase 1 small SI engine standards, engines imported from Canada into the United States will likely be nonconforming engines and thus would not be eligible to be imported by a small SI engine DCI. Consequently, EPA expects that provisions for small SI engine DCI are unnecessary. EPA requests comment on the absence of a DCI program and the need for such a program for Phase 1 engines.

Importation regulations are joint regulations between EPA and the United States Department of the Treasury (Customs Service). The citation for United States Customs Service, Department of Treasury regulations governing import requirements is reserved. The citation will be inserted upon promulgation by the United States Customs Service of the applicable regulations.

21. Defect Reporting and Voluntary Recall

EPA is proposing that a manufacturer of small SI engines file a defect information report whenever a manufacturer identifies the existence of a specific emission-related defect in 25 or more engines in a single engine family manufactured in the same model year. However, no report would need to be filed if the defect was corrected prior to the sale of the affected engines to the ultimate purchaser. These proposed reporting requirements are similar to the requirements found in the on-highway program. EPA is currently revising the on-highway reporting program and new regulations will shortly be proposed. The new regulations may encompass both on-highway and the nonroad sector.

EPA is also proposing that individual manufacturers establish, when appropriate, voluntary recall programs. EPA is proposing limited guidelines which engine manufacturers would follow when undertaking such a program. EPA invites comments on how such a voluntary program might be effectively structured.

22. Emission Defect Warranty Requirements

EPA is proposing that engine manufacturers provide an emission warranty for the first two years of engine use. The two-year warranty period was adopted from California's lawn and garden regulations to reduce the burden on manufacturers of administering two different warranty programs.

EPA is also considering "hours of engine use" as an alternative measure for the warranty period. Under this option, an engine manufacturer would need to install some form of metering device to track the hours of use for an engine. EPA solicits comments on this metering option, the feasibility of outfitting small engines with such devices, and the feasibility of employing the useful life hours generated in the Nonroad Study as a measure for an hours-based warranty period.

EPA believes that a warranty program is necessary to ensure the quality of emission control components and systems that are used on or in nonroad engines and also to protect consumers from costly repairs that result from manufacturing defects. Furthermore, a warranty program gives the engine owner/operator the incentive to get emission-related system failures repaired, since failures to the emission control system do not always affect the ability of an engine to work.

The warranty requirements proposed today are consistent with emission defect warranty policies developed for on-highway vehicles, located in section 207(a) of the Act. Manufacturers of new nonroad engines would warrant to the ultimate purchaser and each subsequent purchaser that such engine was (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and (2) free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period. The related parts and components covered by section 207(a) are detailed in an advisory parts list issued by EPA on July 15, 1991, and encompass parts and systems which are or may be used on small SI engines. A copy of the parts list is in the public docket for this rulemaking. EPA invites comments on this parts list and its applicability to small SI engines.

EPA is currently developing more detailed regulations that will further clarify manufacturers' responsibilities under section 207(a) for both on-highway and nonroad engines. EPA will rely on the existing 207(a) practices until those regulations are finalized.

23. Tampering Enforcement

Today's action would make it illegal for any person to tamper with any emission-related component or system installed on or in a small SI engine. EPA believes that an engine would more likely continue to meet the applicable emissions standards in-use if the engine maintained its certified configuration. Therefore, EPA believes it is necessary to impose antitampering provisions for such engines and is proposing that the existing policies developed for on-highway tampering also apply to engines included in this rule. See Office of Enforcement and General Counsel; Mobile Source Enforcement Memorandum No. 1A, June 25, 1974. A copy of this memorandum is in the public docket for this rulemaking.

V. Discussion of Issues

This section contains further discussion of a number of issues raised during the development of this proposal.

A. Use of Metric Units

Metric units are used throughout the proposed rule without English equivalents. This is done in compliance with the Metric Conversion Act of 1975, as amended, and Executive Order 12770, July 25, 1981, which directs all federal agencies to use metric as the primary unit in regulations by September 30, 1992 and to only provide English equivalents when the affected party(s) uses English as the primary unit.

EPA acknowledges slight differences between the two systems and the use of mixed units by CARB. Comments are solicited on the impact of using only metric units or the need for including the English equivalent.

B. Use of Power Rating as Cutoff for Applicability

EPA is proposing to limit the applicability of this action to engines at or below 19 kW (25 horsepower) rated power as compared to CARB's 25 horsepower limit. EPA considered limiting the regulation's applicability based instead on a total displacement, but has chosen to propose a power-based cutoff for consistency with CARB.

EPA is aware that the measurement of rated power is subject to engine configuration and test conditions, and that a cutoff based on power might create an incentive for manufacturers with engines just below the cutoff to change engine and/or test procedure parameters to result in a higher measured power.

In examining data from Power Systems Research (PSR),[4] EPA has identified a relationship between total displacement and rated power which suggests that a one-liter total displacement cutoff would affect nearly an identical group of engines as a 19 kW cutoff. However, using such a cutoff would cause a limited number of engines to be included that would not be included using a 19 kW cutoff (that is, engines above 19 kW but less than one liter displacement). Examples include larger two-stroke engines. A limited number of engines would also go unregulated under this scenario (that is, engines under 19 kW but greater than one liter). Examples include larger industrial four-stroke engines.

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[4] Power Systems Research (PSR), *Engindata North America and Parts Link Aftermarket*, 1992, St. Paul-Minneapolis, Minnesota.

Because of the differences in applicability between a power- and displacement-based cutoff, EPA has chosen to propose the former despite the potential advantages of the latter. EPA requests comment on the appropriateness of instead limiting this regulation to engines under one-liter total displacement (or a different displacement limit), or limiting the applicability to engines that are below displacement or power cutoffs. Comments should address the relative market and environmental impact of the alternative approaches, as well as the relative enforceability.

C. Exclusion of Compression-ignition Engines

EPA is not proposing to regulate small CI engines in this action. As part of the *Sierra Club* v. *Browner* settlement, EPA will determine by November 1996 whether to undertake a rulemaking which targets emissions from small CI engines. CI engines have different emission characteristics from the engines addressed by this proposal, emitting much lower levels of HC and considerably higher levels of NO_x than small SI engines.

In contrast to the current proposal, which is focused on achieving reductions in emissions of HC, a regulation addressing CI engines would likely focus on NOx. EPA lacks sufficient data regarding baseline emissions and control technologies for nonroad CI engines in this power range to determine appropriate standards at this time. Therefore EPA has chosen to exclude these engines from the current proposal, which is aimed at achieving significant reductions in small engine HC emissions on an expedited basis.

EPA is raising this as an issue because of the potential that unregulated CI engines could be substituted for post-control SI engines. In EPA's view, while this may occur in some cases (for example, small agricultural tractors), the most price-sensitive products such as string trimmers and lawnmowers are unlikely to shift significantly toward CI engines due to technological limitations, consumer preference, or both.

The Agency solicits comment on the exclusion of compression-ignition engines, and on the appropriate test procedure and standards that should be applied to CI engines if they were to instead be covered by this regulation.

D. Exclusion of Recreational Propulsion Engines

EPA is proposing to exclude engines used in recreational vehicles, examples of which include snowmobiles, off-road motorcycles, and all-terrain vehicles. Golf carts do not qualify as recreational vehicles under this proposal, and they would be subject to the emission standards of this rule. Engines used in such recreational vehicles are defined by the following characteristics: Use of a continuously variable throttle (as opposed to a governor), rated engine speeds in excess of 5,000 RPM, and wide variations in both engine load and speed.

EPA's primary reason for this exclusion is the extremely transient operation of the products in which these engines are used, which limits the ability of the proposed steady state test procedure to adequately represent exhaust emissions. This exclusion is not based on a determination that these engines do not contribute to air pollution and therefore need not be controlled. EPA has chosen to exclude engines used in recreational vehicles in order that it may proceed quickly with a program for other small SI engines. As part of the *Sierra Club* v. *Browner* settlement, EPA will determine by November 1996 whether to undertake a rulemaking which targets emissions from engines used in recreational vehicles.

EPA solicits comment on the exclusion of engines used in recreational vehicles, on the criteria used to identify such engines, and on the appropriate test procedure and emission standards if EPA were to include such engines in this proposal.

E. Exclusion of Marine Propulsion Engines

EPA proposes to exclude marine propulsion engines, examples of which, in this power range, include outboard marine engines. EPA is developing emission standards for marine propulsion engines in a separate action. However, small SI engines used on marine vessels for purposes other than propulsion, such as generators and pumps, are not excluded in this proposal.

F. Nonroad Engine and Vehicle Definitions

EPA is proposing to incorporate in this rule the nonroad engine definition proposed in the large CI rule. EPA will include in this rule any changes to that definition included in the final large CI rule. EPA is also proposing to amend the definition of nonroad vehicle proposed there by adding the following sentence: "Nonroad vehicle also includes equipment that is powered by nonroad engines."

The statutory definition of nonroad vehicle adopted by Congress in the 1990 CAA Amendments provides little guidance as to what is a nonroad vehicle. Rather, statutory language describes only what is not a nonroad vehicle, namely, motor vehicles and vehicles used solely for competition. A review of the Conference Report, the Statement of Senate Managers, and the Statement of House Managers does not provide any additional guidance. It is necessary to examine both the House and Senate Committee Reports of the original legislation before this issue is discussed.

The United States House of Representatives, Committee on Energy and Commerce, Report on H.R. 3030, offers some insight into the meaning of both nonroad engine and vehicle. In part the report states, "(T)he term 'nonroad engine' is defined for purposes of this section to include certain internal combustion engines not used in a motor vehicle or a competition vehicle, while a nonroad vehicle is a vehicle powered by (a) nonroad engine that is not a motor vehicle and not used solely for competition. Stationary internal combustion engines are to be regulated under Title I of the Clean Air Act amendments of 1990, and are not subject to the requirements of this section."[5]

Equally enlightening is the report of S. 1630 from the United States Senate, Committee of Environment and Public Works, which discusses at some length the Committee's understanding of what the terms nonroad engine and nonroad vehicle mean. A pertinent part of the report states,

> * * * "non-road engines" include a wide range of engine uses and vehicles. The term includes, for example, diesel locomotives, farm and construction equipment, utility engines such as lawn and garden equipment, marine vessels, forklifts and airport vehicles. The definition in the bill for non-road vehicles is an inclusive one that covers all engines that are not used in motor vehicles, or in a vehicle used solely for competition in vehicle racing, that are not regulated by standards promulgated under section 111 of the Act, and that are not subject to regulation under part B of title I of the Act, related to aircraft.[6]

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[5] H. Rep., Legislative History of the 1990 Amendments to the Clean Air Act of 1990. Committee on Energy and Commerce to accompany H.R. 3030, May 17, 1990, at 310.

[6] S. Rep. Legislative History of the 1990 Amendments to the Clean Air Act, Committee on Environment and Public Works to accompany S. 1630, December 20, 1989, at 104–105.

EPA believes that Congress used the terms "non-road engine," "equipment," and "vehicle" interchangeably. It is EPA's belief that Congress intended nonroad vehicles and nonroad engines to be inclusive terms covering all manner of equipment not defined as motor vehicles, vehicles for competition, and stationary sources. Furthermore, there is a practical interrelationship between an engine and the equipment that houses it or is powered by it. Equipment or vehicle characteristics may have a significant impact on the emissions associated with the operation of the engine. The nonroad engine definition proposed in the large CI rule and incorporated in this rulemaking relies to a great extent on this interrelationship between an engine and a piece of equipment to determine whether an engine is a nonroad engine. In future development of a small SI engine program, it may become necessary and appropriate to regulate aspects of equipment to control fuel spillage, evaporative emissions, or refueling emissions. EPA believes that CAA section 213 provides authority for such regulation.

G. *Definition of Handheld Equipment*

EPA is proposing that engines intended for use in equipment defined as handheld be certified to standards much less stringent than those applicable to engines used in nonhandheld equipment. However, on a percentage basis, the reductions obtained from handheld and nonhandheld engines will be of similar magnitude. Because of the unique characteristics of handheld 2-stroke engines, it is not feasible, given the timing of this proposal and the unique performance requirements of handheld equipment, to require that all engines covered in this proposal meet emission levels that can be achieved by 4-stroke engines used in nonhandheld equipment.

This distinction is based, in part, on the substantial difference between emissions from current 4-stroke and 2-stroke engines, which is an inherent result of the design differences of these engines. Because of scavenging losses, current 2-stroke engines generally emit approximately ten times more unburned HC (on an energy-specific basis) than their 4-stroke counterparts.

However, current 2-stroke engines are generally lighter than current 4-stroke engines of the same rated power and can be operated in any orientation. As a result, applications requiring that the operator pick up and/or carry the device while using it (for example, chain saws), are nearly exclusively powered by 2-stroke engines. On the other hand, nonhandheld applications such as lawnmowers, which are currently sold in both 2-stroke and 4-stroke versions, can clearly be powered by 4-stroke engines. Approximately 90 percent of the lawnmowers sold in the United States are powered by 4-stroke engines. Section VII discusses the present market mix of small engines.

EPA is proposing to distinguish between "handheld" and "nonhandheld" equipment in a manner that is similar to that adopted by CARB. However, EPA proposes to clarify and expand on California's handheld definition.

First, in cases where the operator carries all of the equipment's weight during engine operation, the equipment would be classified as handheld. Second, where the equipment is clearly required to operate in any position the equipment would also be classified as handheld. California's handheld definition requires that the equipment must both be carried and used multipositionally in order to qualify for handheld status. EPA requests comment on whether this approach may preclude equipment which is in practice "handheld" from qualifying for handheld status. The proposed federal definition does not require that both stated criteria be present for a given piece of equipment to qualify as handheld. One criterion is sufficient. It is EPA's intent that the preceding two criteria allow leafblowers, trimmers (both string and hedge), cutters, or chain saws to qualify for handheld status.

In addition, EPA is proposing that engines be allowed to meet Class III, IV, or V standards if the dry weight of the equipment they are used in, including engine weight, is under 14 kg, there are no more than two wheels present on the equipment; *and* at least one of the following three attributes is also present: (1) The operator alternately provides support or carries the equipment throughout its performance; (2) the operator provides support and attitudinal control for the equipment throughout its performance; (3) the engine is used exclusively in a generator or pump.

EPA believes that a weight-based criterion is an appropriate initial determinant of whether a 2-stroke engine can be handheld. Industry data show clear weight distinctions between those engines which are "lightweight" and made for handheld operations and those which are not. For example, review of industry brochures revealed that 2-stroke engines were almost always found in equipment under 14 kg. In addition, the presence of not more than two wheels in a given piece of equipment is another important indicator of the need for an operator to either support, carry, or provide attitudinal control for the equipment.

The first attribute seeks to classify as "handheld" equipment which is either carried or supported by the operator throughout the entire engine operation. An operator carries equipment when the full weight of the equipment is borne by the operator. Support means that the operator holds the equipment in position so as to prevent it from falling, slipping, or sinking. The entire weight of the equipment is not necessarily borne by the operator. Legitimate sources of support might include the ground, ice, wood, or concrete. EPA intends that lightweight snowblowers, edgers, and augers qualify for handheld status under this first attribute.

The second attribute classifies as "handheld" equipment which requires either operator support or attitudinal control during the entire operation. Attitudinal control means the operator regulates either the horizontal or vertical position of the equipment. This definition is meant to allow certain lightweight tillers, augers, or edgers to qualify for handheld status. Both ice and earth augers must be carried to each drill site by the operator, and must be supported by the operator during operation. In addition, the operator must control the vertical attitude of the equipment during operation including pulling upward after each hole is drilled. Tillers without wheels or with no more than two wheels are designed to be supported or picked up frequently during operation while maneuvering between rows in a garden. Likewise, the vertical and horizontal position of the tiller is controlled by the operator.

Finally, the third attribute acknowledges that engines used in lightweight pumps and generators should be allowed to meet the handheld emission standards. Like augers, lightweight generators and pumps are carried to the work site by the operator and may operate at significant distances from electrical-power outlets.

All other equipment would be classified as nonhandheld equipment. Examples of nonhandheld equipment include lawnmowers, compressors, lawn tractors, garden tractors, tillers with wheels, chippers/grinders, and log splitters.

EPA believes that the proposed handheld definition identifies sufficient criteria by which all handheld equipment types may be classified. However, it may still be possible that certain equipment types which are in practice handheld applications would not meet this definition. EPA is considering whether to institute a "case-by-case review process" so that, where appropriate in the Administrator's judgment, engines used in specific types of nonhandheld equipment would either be reclassified as handheld or would be allowed to meet the handheld emission standards as if that type of equipment was classified as handheld. In such cases, the Administrator might consider factors including, but not necessarily limited to the following: Equipment function and design (for example, handle placement); equipment capability; equipment weight; engine weight; rated power; multipositional operating requirements; presence and number of wheels; presence of other weight supports; availability of similar 4-stroke, electric, and/or nonpowered models by the same manufacturer or competitors; typical operating profiles (including season of use), and nationwide annual industry-wide sales. The manufacturer requesting such a review might be required to demonstrate, based on these and any other pertinent factors, that a 2-stroke engine clearly was a necessary design feature of the equipment concerned.

EPA is currently aware of at least one type of equipment that, in EPA's view, might need to be evaluated through such a process. Unlike CARB, EPA is not allowing all currently produced 2-stroke snowthrowers to meet standards applicable to engines used in handheld equipment. In approving its regulations, California accepted arguments that nonhandheld 2-stroke snowthrowers should be allowed an exemption from the nonhandheld standards to meet emission standards for handheld engines. In EPA's view, at least two factors could have formed a basis for this decision: First, snowthrowers are operated in the winter, which means that they do not significantly impact ozone nonattainment and thus need not be subject to stringent control aimed at improving ambient air quality; and second, at least some of the lightweight 2-stroke snowthrowers that were exempted from nonhandheld standards appear to be designed to be picked up while in operation (for example, to clear porch steps), implying that the use of a 4-stroke engine would significantly limit critical performance features.

While the first of these factors raises questions regarding the need to control emissions at all from products that are clearly only used in the winter, regardless of their classification as handheld or nonhandheld, those questions must also be weighed against the need to address CO emissions, and the need to protect the health of equipment operators. The second factor reveals potential problems with CARB's definition of "handheld." Specifically, CARB's action with regard to snowthrowers raises questions regarding other "fringe" products.

EPA believes that it would be appropriate to classify as handheld equipment lightweight snowthrowers under 14 kg which have no more than two wheels and which would either be carried or supported during operation. All other snowthrowers would be classified as nonhandheld and required to meet the standards that were generally applicable to engines used in nonhandheld equipment. EPA solicits comment on this proposal.

Under EPA's proposed definitions, lawnmowers will be classified as nonhandheld equipment and thus engines used in lawnmowers must meet the more stringent nonhandheld emission standards. Manufacturers of 2-stroke lawnmower engines have raised concerns over their economic survival if required to meet nonhandheld standards, based on their doubt that cost-effective technology now exists to bring their 2-stroke engines into timely compliance. EPA requests comment on the ability of 2-stroke lawnmower engine manufacturers to meet the nonhandheld standards, the impact such a requirement would have on such manufacturers, the need for relief for such manufacturers, and the impact such relief might have on the environmental benefits of this proposal.

EPA further requests comment on the following options for providing relief to 2-stroke lawnmower engine manufacturers: (1) Provide an extended effective date, such as 1998, for 2-stroke lawnmower engines to meet the nonhandheld standards; (2) allow 2-stroke lawnmower engines to meet the handheld engine standards until the effective date of the second phase of small SI engine regulations; (3) cap the number of 2-stroke lawnmowers allowed to certify to the handheld standards to the number sold in the year this proposal is published or promulgated until the effective date of the second phase of small SI engine regulations; or (4) allow a declining percentage of 2-stroke lawnmower engines to meet the handheld standards, such as 100 percent in 1996, 75 percent in 1997, 50 percent in 1998, and 25 percent in 1999, so that by the year 2000, all 2-stroke lawnmower engines sold would meet the nonhandheld emission standards.

EPA solicits comment on the proposed definition of handheld equipment and on the potential process for handling those types of equipment that may pose difficulties to classification. EPA also requests comment on the specific cases discussed. Finally, EPA solicits comment on alternative definitions that may be appropriate. Alternative definitions of "handheld equipment" might include, but need not be limited to, the following elements:

- Lack of wheels or other means of support (other than operator),
- Overall weight below some limit such as 10 kg or 20 kg, and
- Portion of overall weight attributable to current engine above some minimum, such as 75 percent.

Conversely, alternative definitions of "nonhandheld equipment" could include elements such as:

- Presence of wheels or other means of support other than operator,
- Overall weight above some minimum such as 10 kg or 20 kg, and
- Portion of overall weight attributable to current engine below some limit such as 75 percent.

It should be recognized that recent engineering developments may eventually obviate the need to provide different standards for handheld and nonhandheld equipment engines. Future technical solutions may provide engines used in all applications with comparable emission performance capability. For example, one firm has recently announced plans to begin marketing portable string trimmers, traditionally powered by either electricity or 2-stroke gasoline engines, that are instead powered by lightweight, high-speed 4-stroke engines. This company claims to achieve emission rates much lower than either current 2-stroke engines or engines that would meet the handheld standards proposed in this rulemaking. Numerous efforts are also under way to develop direct injection systems applicable to larger 2-stroke engine-systems that may be able to bring emissions from engines such as those used for outboard marine engines down to levels equivalent to a well-calibrated 4-stroke engine in the same power range. However, the applicability of direct injection systems to small engines used in handheld applications has not yet been investigated. In developing Phase 2 standards, EPA intends to revisit this issue in its entirety and may combine all engines under one set of standards, modify the definitions of nonhandheld and handheld equipment, as well as the applicable standards, or may promulgate an entirely different regulatory structure.

H. Requirements Applicable to Vehicle and Equipment Manufacturers

EPA is proposing to require that vehicle and equipment manufacturers and importers use the appropriate handheld or nonhandheld certified engine in their vehicles and equipment. Section 213 gives EPA the authority to require nonroad vehicle and equipment manufacturers and importers to use certified nonroad engines. EPA has determined that the most effective way to ensure that certified engines are used in nonroad vehicles and equipment is to require that manufacturers and importers use such engines. Without such a requirement, there would be no penalty for vehicle and equipment manufacturers that knowingly purchase noncomplying engines, thus undercutting the entire program.

EPA is proposing that vehicle and equipment manufacturers and importers be subject to the prohibition, injunction, and penalty provisions of CAA sections 203, 204, and 205, except that only the nonroad engine in the vehicle or equipment, rather than the vehicle or equipment itself, would need to be certified for compliance. Although engine manufacturers will bear the burden of certification under this proposal, the focus of enforcement will fall to some extent on vehicle and equipment manufacturers because they determine whether a handheld or nonhandheld engine is appropriate for use in their vehicle or equipment and will ensure that those engines are certified.

No federal paperwork or reporting burden would be imposed on vehicle and equipment manufacturers by the requirement that certified nonroad engines be used. This is consistent with the nonroad large CI engine proposal (58 FR 28809 at 28815 (May 17, 1993) and 58 FR 51595 at 51597 (October 4, 1993)).

Only new engines manufactured on or after the effective date of this rule would be subject to the provisions of this rule. For example, rebuilt engines originally manufactured prior to the effective date of this rule would not be subject to this rule. Rebuilt engines originally manufactured after the effective date of this rule would be subject only to the tampering provisions. New replacement engines manufactured after the effective date would be subject to this rule. EPA requests comment on whether there is any need for manufacturers to produce replacement engines for use in pre-1996 equipment, and the extent of such a need, if any.

Labeling requirements proposed in this notice may also impact nonroad vehicle and equipment manufacturers and importers.

I. Effective Date

EPA is proposing an effective date of August 1, 1996 for this rulemaking. This midyear effective date coincides with model changeover in the small SI engine industry. Engines manufactured on or after August 1, 1996 for use within the United States would have to meet the standards and requirements included in this rulemaking.

Vehicle and equipment manufacturers that use regulated engines would be required to use appropriate certified nonroad engines in their vehicles and equipment after August 1, 1996. EPA requests comment on whether a separate effective date for nonroad vehicle and equipment manufacturers should be established and, if so, whether that date should be three months after the August 1, 1996 effective date for nonroad engine manufacturers (that is, November 1, 1996). It appears, based on best available data, that the start of large volume equipment production is approximately November 1 of every year. EPA is considering this separate effective date because it is concerned that equipment manufacturers have small inventories of noncertified engines that could not be incorporated into equipment by the August 1 effective date. EPA would consider extending this flexibility to six months, that is, February 1, 1997, if manufacturers could quantitatively demonstrate that the increased risk of stockpiling noncertified engines by the equipment manufacturers would be minimal and the inventory buildup would be normal. EPA also requests comment on whether a separate effective date for equipment manufacturers should be based on introduction of equipment into commerce, rather than the date of equipment manufacture.

The August 1996 effective date allows engine manufacturers over two years of lead time from the date of this proposal, and more than one year beyond the 1995 implementation date imposed by CARB. EPA is not proposing the same effective date as CARB in order to allow manufacturers some lead time between the CARB and federal effective dates to bring preempted engines into compliance; however, EPA requests comment on the feasibility of a 1995 effective date for federal standards, particularly for those engines that are not preempted from state regulation.

While EPA acknowledges the need for sufficient lead time to perform research, develop testing capacity, apply emission control technology, and manufacture clean engines, EPA's view is that engine manufacturers have been aware for a considerable period of time that emission regulations were likely to impact their products in the near future. In 1990, CARB was required under the California Clean Air Act (CCAA) to develop emission standards for lawn and garden and utility equipment engines by December of 1990. In November of 1990, Congress amended the federal Clean Air Act, requiring that EPA study emissions of nonroad engines and vehicles by November of 1991 and promulgate applicable regulations by November of 1992 if these sources were found to contribute significantly to air pollution. At a public workshop held in March of 1992, EPA discussed the importance of emissions from small SI engines, announcing its intent to develop applicable regulations Consequently, manufacturers have known since March 1992, at the latest, that EPA was planning to develop standards applicable to their products, and have already had more than two years to assess emission control technologies and develop testing capacity.

Several state and environmental interest groups have expressed concerns that a 1996 effective date delays the realization of reductions of in-use air pollutant emissions unnecessarily and limits the ability of many states to adhere to the schedules mandated in the CAA for reasonable further progress toward volatile organic compound reductions from 1990 levels and for attainment of the ozone National Ambient Air Quality Standard. Manufacturers have argued that a 1996 effective date offers too little lead time given that this proposed rule covers various categories of equipment that California is preempted from regulating

Both the Outdoor Power Equipment Institute and the Engine Manufacturers Association have requested that EPA extend the effective date to 1997 for all engines. The Portable Power Equipment Manufacturers Association has requested that EPA extend it to 1997 for engines regulated and sold in California and to 1999 for preempted engines and engines discontinued in California. These industry association requests are available in the docket for this rulemaking. In all cases, these associations have argued that more lead time is needed to apply these standards to nationwide sales.

EPA requests comment on the impact of its proposed effective date on both engine and equipment manufacturers. EPA also requests comment on alternative effective dates, including phased effective dates, such as 1996 for nonpreempted engines and 1997 for preempted engines, or a phase-in by engine size where Class I, II, III, IV, and V engines would meet the applicable standards at different times based on environmental impact and lead time constraints.

J. Selection of Worst Case Emitter

EPA is proposing to use the criteria of highest weighted brake-specific fuel consumption (BSFC) over the appropriate engine test cycle to determine that engine configuration within an engine family which will be selected as the certification test engine. EPA believes that BSFC is an appropriate criterion for selecting a worst case emitter. In particular, EPA believes that an engine configuration with high BSFC will generally emit higher levels of hydrocarbons and carbon monoxide than a second configuration in the same engine family which has a lower BSFC. EPA solicits comments on the appropriateness of weighted BSFC as the criterion to be used for selecting the worst case emitter.

EPA considered one alternative method of selecting the worst case emitter. EPA considered leaving the selection of the worst case emitter up to the engine manufacturer with the guideline that the engine manufacturer must test that engine configuration within an engine family which is most likely to exceed any emission standard. EPA solicits comment on the appropriateness of this approach for selecting the worst case emitter.

K. Adequacy of Test Cycle

The test procedure proposed in this notice is capable of predicting emission reductions at the level of proposed emission standards. The proposed test cycles are based on the Society of Automotive Engineers (SAE) recommended practice #J1088. This is a procedure that measures emissions over a number of steady state operating modes or conditions (speed/load points) and determines average emissions over the entire test cycle by weighting the modes relative to their likely occurrence in actual use. Much of the emission assessment work to date has occurred using the J1088 test procedures.

EPA has determined that the types of technology that will be forced by setting standards using the proposed test cycle will result in real emission reductions in actual use. The current feasible technologies are analogue in nature. Thus, when a technology is demonstrated to reduce emissions on six discrete points on the engine speed/load performance curve, EPA expects these technologies will perform in a continuum between those test points. No large emission spikes will occur under operating conditions that were not specifically tested.

No time is available to develop a more accurate test cycle. While improvements can be made and must be studied before proposing more stringent emission standards that require more sophisticated technologies, EPA has determined this test cycle is adequate to produce the desired emission reductions expected by the proposed emission standards.

As part of the Phase 2 emission regulation process, EPA has identified three test modes of the test cycle that it intends to study. First, EPA wants to evaluate whether the test procedure should be run using the engine's governor to control throttle. Second, EPA wants to evaluate the method by which the load points used in the test cycle are determined. Third, EPA wants to study the sensitivity of emissions to the operating conditions not used in the test cycle to ensure emission benefits are not being overlooked.

Operating the engine directly on the governor as opposed to on the throttle is allowed in the current test procedure as proposed. However, it is optional and most manufacturers choose to run the test by directly controlling the throttle. Manufacturers do this to reduce the factors that can add variability to the test. EPA believes that, since engines in use are controlled by the governor, a test cycle that simulates actual operation as closely as possible has the potential to predict real in-use emissions more accurately. Before such a change is adopted, EPA intends to analyze the validity of this hypothesis.

The average power generated during the test cycle has a large impact on the emission result. The emission standards are based on the mass emission generated for the amount of work accomplished (g/kWh). Since power is a factor in how much work can be accomplished, it weighs heavily in the final mass emission result. EPA wants to ensure that the test cycle does not reflect how much power (and thus work) the engine is capable of achieving, but is reflective of how much power the equipment actually commands from the engine as it does its work. EPA is concerned that the actual power drawn by equipment in actual use is lower than the average power drawn from the engine during the proposed test procedures. EPA does not have time to adequately verify this hypothesis within the timeline of this rule, but intends to do this during the Phase 2 rulemaking process.

Finally, EPA has not verified that the operating modes in the proposed test procedures are the optimal representation of what happens in actual use. Any test cycle is at best an approximation of the operating conditions experienced by engines in actual use. Indeed, any one engine will be installed in a range of equipment types and will experience a different operating environment in each application. To determine if the test procedures are doing the best possible job at estimating real world operation, EPA intends to collect data on a full range of operating conditions that are not represented in the current test cycle. Manufacturers have presented histograms of a range of equipment operations such that, for purposes of this notice, the test cycle is directionally acceptable. Further investigation may result in a determination that the current cycle adequately covers the range of operation. However, time is not available to make that determination in this proposal.

Any of the above mentioned changes to the current proposed test cycle or procedures would require extensive testing and development. All emission data to date is based on the proposed test procedures. Before introducing any change in the test procedures EPA would have to develop emission standards based on the revised procedures and would have to assess emission impact on the procedures. The current timeline constraints provide neither adequate time to properly assess whether any of these changes would benefit the program, nor adequate time to develop appropriate emission standards using the revised procedures. Faced with these constraints, EPA believes that the proposed test procedures are the best available to ensure early emission reduction from the engines covered in this notice.

L. Alternative, Oxygenated, and Reformulated Fuels

EPA is not proposing the requirement of any specific type of fuel to be used in engines produced to meet the proposed emission standards. EPA's proposal would require that all SI engines under 19 kW meet the proposed standards. This includes SI engines which run on "alternative" fuels, such as liquid petroleum gas (LPG) and natural gas. A few research papers have been published which indicate well calibrated spark-ignition engines running on LPG fuel may be able to meet the proposed emission standards with less difficulty than an equivalent engine running on gasoline. EPA proposes to let the engine manufacturer decide what type of fuel a given engine application will use and not require any specific engine to use a "cleaner" fuel.

EPA's proposal would not allow engines which are designed to run on gasoline to perform certification emission testing using an alternative fuel. EPA understands that oxygenated and reformulated gasoline fuel is currently available in different areas around the United States. However, availability of oxygenated and reformulated fuels varies widely across the country. EPA does not have information that would provide adequate assurance that the alternative fuel, and not gasoline, would be used in these engines in actual use. Faced with the difficulty of tracking small SI engine owners, EPA does not have adequate resources, nor an adequate tracking mechanism to enforce a requirement that small SI engine owners use only the specified alternative fuel. At the same time, preliminary tests performed on small engines using reformulated and oxygenated fuels show approximately a three to five percent improvement in exhaust emission levels of CO and total HC. See the draft RSD in the docket for further discussion of this issue. Reformulated fuel was designed to lower HC levels from on-highway vehicles, primarily engines with fuel injection and catalytic convertors. EPA is not convinced it can reasonably expect the same type of benefit from carbureted single and two-cylinder engines. EPA solicits comment on the feasibility of requiring small SI engines to run only on oxygenated or reformulated fuels.

M. HC + NO_X Standard for Class I and II Engines

EPA is considering two options for setting Class I and II HC and NOx standards. Option 1 would consist of setting a combined standard for emissions of HC and NO_X for Class I and II engines. Under option 2, EPA would set separate HC and NO_X emission levels for Class I and II engines.

Regardless of which option EPA chooses, it anticipates that NO_X emission rates from engines meeting this proposed rule's standards will be generally higher than those extremely low NO_X levels emitted by current engines. The Agency views this as an inevitable consequence of the level of HC reduction being achieved in this rule. Furthermore, EPA estimates that the resulting increase in NO_X emission inventories would be slight enough in this particular case to be warranted given the much greater decrease in HC emission inventories. See "VI Environmental Benefit Assessment" in this preamble.

Nonroad small SI engines currently operate on an extremely rich fuel and air mixture—in other words, one that contains a very high proportion of fuel relative to that used by, for example, automotive engines. Because this results both in less complete combustion and much lower peak combustion temperatures, exhaust concentrations of unburned HC are extremely high, while concentrations of NO_X are extremely low. As a result, small SI engines contribute appreciably to HC emission inventories, but very little to NO_X emission inventories.

In the 19 ozone nonattainment areas studied by EPA in the 1991 Nonroad Study, emissions from all nonroad sources, on average, represented ten percent of total HC emissions and 17 percent of total NO_X emissions. Of those contributions, small SI engines contributed an average of 50 percent of total HC from nonroad sources, but only one percent of total NO_X. In contrast, nonroad large CI engines, for which EPA has proposed NO_X standards, contributed an average of ten percent of total HC from nonroad sources and 75 percent of total NO_X. Consequently, EPA's primary focus in developing emission standards for small SI engines is achieving sizeable reductions in HC emission rates.

Given the extremely rich operation of small SI engines, EPA does not believe that small engine technology is available to prevent NO_X levels from increasing while HC levels decrease substantially within the short lead time period set forth in this proposal. While it may be possible in some isolated cases to employ automotive-type emission control systems relying on closed-loop operation and three-way catalytic converters, the state of development of such technology is not ready for small engine application in the short lead time proposed. Furthermore, the sensitivity of such systems to in-use deterioration and malmaintenance would greatly lessen their in-use effectiveness given the state of the service industry available to these engines.

EPA has estimated that by the year 2020, when current equipment turnover is projected, the proposed emission standards would result in approximately a 32 percent reduction in HC emission from current levels, or 356,710 tons per year. Under the same timeframe, in-use NO_X emission rates would be expected to increase 1.36-fold, or 34,000 tons per year. Given the magnitude of the relative contribution of these small SI engines to HC and NO_X emission inventories in ozone nonattainment areas, EPA believes this projected decrease in HC and increase in NO_X levels would be consistent with EPA's statutory mandate that emissions standards reflect the greatest emission reductions achievable. This is especially the case in light of the fact that this rule would increase the national NO_X inventory by about one quarter of one percent, while EPA's nonroad large CI engine regulations would reduce the national NO_X inventory by about four percent.

EPA anticipates that, given the magnitude of the HC reduction proposed, emission rates would be marginally sensitive enough that near term compliance with separate emission standards at the proposed level of stringency could be difficult in some cases, whereas compliance with a combined standard is expected to be achievable.

However, EPA is concerned that establishing a combined standard might be viewed as setting a precedent for future rulemakings. EPA does not intend to establish any such precedent, and is considering a combined standard for Phase 1 only due to the present lack of available data for setting a separate NO_X standard, the current lack of technology for achieving NO_X reductions simultaneously with HC reductions for the subject engines and vehicles, the need to achieve HC reductions as soon as possible under the Phase 1 rule, and the desire to harmonize with California's standards

EPA requests comment on a combined standard (option 1). EPA also requests comments and data supporting separate numerical standards for HC and NO_X (option 2). Based on information currently available to EPA, if it were necessary to develop separate standards the NO_X standard would be approximately 136 percent higher than current new engine levels, while the HC standards would be approximately equal to the difference between those levels and the proposed HC+NO_X standards.

N. CO Standard for Handheld Engines Over 50 cc

EPA is concerned that the CO levels for handheld engines be kept as low as possible. The operators of equipment using these engines are in close proximity to the exhaust pipe. The Class V engines are a large concern. The majority of these engines are used on large commercial chain saws used in logging operations. The high power and high load factors associated with this equipment mean the operator is potentially exposed to a high CO rate from the engine and could experience high CO intake during operation.

EPA is proposing to limit CO emissions from large (Class V) handheld engines to 402 g/kWh. In comparison, smaller (Class III, IV) handheld engines would be required to meet the higher standard of 804 g/kWh. The larger Class V engines have technical advantages over smaller engines, with respect to fuel metering and combustion chamber boundary layer conditions, that would allow them to achieve these lower levels of CO emission. This technical rationale is discussed at length in the draft RSD in the docket. In addition to the technical rationale that the Class V engines are capable of lower CO emission levels, a number of engines were tested by the Portable Power Equipment Manufacturers Association (PPEMA) and an individual manufacturer, modified for a six percent enleanment over current production calibration. Approximately 20 to 30 percent of these engines met the 402 g/kWh CO standard, achieving average CO levels of eight percent below the standard. The remaining engines tested did not meet either the HC or the CO emission standards. (See data in the draft RSD.) EPA observed that, in general, port design may affect the ease with which engines can meet emission standards. EPA requests comment and data on whether there is a supportable technical rationale why it would not be feasible to further optimize these engines to bring both the HC and CO emissions into line with the engines capable of achieving the proposed standards.

PPEMA has argued that the 402 g/kWh level is too stringent, but did not focus on Class V engines at the time California rules were being considered since its members anticipated limited regulation of the Class V engines in California due to preemption of many of the products in which these engines are used. In a letter to EPA, a copy of which is included in the docket for this rulemaking, PPEMA suggests that a standard of 603 g/kWh would be more appropriate. EPA would need further data and information that establishes 603 g/kWh as the appropriate technical limit and addresses the need for this higher CO standard as noted above.

Based on the data currently available, EPA does not see the need for the higher standard and believes that the proposed standard is achievable. However, EPA is requesting additional information and data that would verify the need for the higher standard and justify why all engines cannot be designed to meet the CO levels achieved by the 20 to 30 percent of engines tested by PPEMA that met all proposed standards.

O. Cap on Noise

EPA is proposing to require that engine noise levels not increase as a result of this rulemaking. The type of engine changes which EPA believes will be used to meet the proposed exhaust gaseous emission standards should not increase engine noise above current levels. EPA is aware that several European nations currently have sound level standards for different classes of nonroad equipment, some of which are powered by SI engines less than 19 kW. EPA lacks the necessary information to determine if regulating engine noise without regard to the type of equipment in which the engine will eventually be used is a sensible technical approach. EPA requests data and comments on this issue.

P. Applicability of In-Use Standards

The proposed rule does not require that small engines meet in-use standards over a useful life period for several reasons. First, limited emission testing of in-use engines has been performed. Additional data will be provided by the in-use testing program described in "IV.C. Program Description and Rationale." Second, EPA does not believe that emission controls proposed for Phase 1 will experience significant deterioration beyond normal engine deterioration, although this area needs more research. EPA does acknowledge its responsibility to achieve enforceable reductions of in-use emissions and plans to develop such measures in its long-term Phase 2 program.

Until such measures are developed, EPA proposes to maintain regulatory language in the Phase 1 rule that commits EPA to setting in-use standards and useful life periods by April 1997. In developing Phase 2 regulations, EPA intends to amend this language, replacing it with regulatory language specifying programs that are developed to meet this commitment.

EPA solicits comment on the lack of in-use standards and on the appropriate level of in-use standards, useful life period, and enforcement measures if EPA were to make these a requirement of Phase 1. EPA also invites comment on the regulatory language in the Phase 1 rule that commits EPA to developing these requirements by April 1997. This language states, "A useful life period for engines subject to the provisions of subpart A of this part will be set by the Agency and will be promulgated no later than the year 1997."

Q. In-Use Testing Requirement

This proposal requires that manufacturers procure and test a sample of in-use engines and report the results to EPA. In developing this program, EPA considered manufacturer suggestions that any in-use testing program be conducted jointly between EPA, manufacturers, and manufacturers' organizations. EPA is concerned that a joint program would not as efficiently address the goals of the proposed in-use testing program.

EPA is proposing the in-use testing requirement with two main goals in mind. Primarily, EPA believes that a critical element in the success of its nonroad program is assuring that manufacturers build engines that continue to meet emission standards beyond the certification and production stages. By requiring manufacturers to test and report results, EPA expects that manufacturers would act responsibly to avoid or correct in-use emission problems.

EPA's authority to recall engines which do not comply with emission standards in use provides an important incentive to on-highway manufacturers to design and build durable engines and vehicles. However, at this time, EPA has limited data by which to propose in-use standards for small SI engines under section 213(d) of the CAA, subjecting nonroad engine manufacturers to the requirements of section 207(c) of the CAA. Because EPA is not proposing to establish in-use emission standards in this rulemaking, it is necessary to require that manufacturers test in-use engines to gain important knowledge about the emission deterioration of their engines and report the results to EPA. EPA expects that this knowledge will be critical to developing more durable emission control systems and achieving better in-use compliance with Phase 2 engines.

An auxiliary outcome of this Phase 1 testing program would be that manufacturers, by working closely with EPA to evaluate in-use emissions and identify solutions to problems, would be preparing for the Phase 2 in-use compliance program. This Phase 1 testing program would permit issues associated with a variety of maintenance and use conditions to be identified and resolved prior to Phase 2.

As stated previously, EPA is concerned that these goals may not be as fully achieved with joint testing programs involving several manufacturers and their respective organizations. By requiring direct communication with EPA, manufacturers would have to individually provide test data showing in-use performance. EPA's experience has been that aggregate data (sorted by organizations and stripped of engine identification) is not effective in identifying specific in-use problems. The generated Phase 1 in-use data would improve estimates of in-use emissions, thereby enhancing the basis for emission inventories used to support the State Implementation Plan (SIP) development process.

Given the critical feedback the in-use testing program would provide, EPA believes it is compelled to ensure the fulfillment of the obligation to perform in-use testing. For engine families where in-use testing would be required, certification is proposed to be conditioned upon the completion of a number of in-use tests as agreed upon by EPA and the manufacturer at the time of certification. Completion of the number of valid in-use tests as agreed, regardless of the test results, would satisfy this condition.

Under this proposal, a manufacturer's failure to fully execute the in-use tests would be considered a failure to satisfy the conditions under which the certificate was issued. An engine would be considered to be covered by the certificate only if the manufacturer fulfilled the conditions upon which the certificate was issued. Thus, failure to satisfy the conditions of the certificate could subject a manufacturer to the imposition of civil penalties. However, EPA recognizes that a manufacturer, notwithstanding its best efforts, might fail to perform the required testing due to circumstances beyond its control. Thus EPA would consider all relevant factors when determining whether to view an engine as not being covered by a certificate based on failure of a manufacturer to fully execute the test program condition of the certificate.

EPA requests comment on the proposed in-use testing program.

R. Absence of Averaging, Banking, and Trading Programs

EPA is not proposing an averaging, banking, and trading program (ABT) for small SI engines at this time. ABT programs, which EPA uses in its on-highway heavy-duty engine program and proposed for the nonroad large CI engine program, provide manufacturers flexibility in meeting the emission standards. EPA is increasingly using market-based incentive programs such as ABT because such programs can reduce the cost of controlling emissions. An ABT trading program can also reduce the burden of regulation on small manufacturers by providing them flexibility in meeting requirements.

At this time, EPA has not been able to construct an ABT program, given the uncertainties surrounding projected in-use emission levels. These uncertainties will be resolved as part of the Phase 2 regulatory negotiations. However, as part of the requirements of approving an ABT program, EPA must know the in-use emission characteristics of engine families in order to implement an ABT standard, unless all engine families deteriorate at the same rate.

The lifetime emissions of engine families must be averaged together in order to compute the average emission level of a manufacturer's product line. Use of lifetime emissions is necessary because it may be the case that the emissions of one type of engine deteriorate at a higher rate than another type, or a smaller engine may deteriorate at a higher rate than a larger engine of the same type. EPA is not in a position to determine what the in-use emission level is presently or would be under this Phase 1 regulation. EPA's initial assessment is that the emissions of these engines deteriorate somewhat over time and likely deteriorate at different rates between engine families, but more research is necessary. However, even if engine families deteriorate at different rates, if such deterioration is not systematically biased, it may not undermine the validity of an ABT program. EPA requests comment on this point.

Phase 2 will directly assess in-use emission characteristics of engine families and incorporate enforcement of in-use emission levels. Once in-use emission levels are known with more confidence, EPA expects that market-based programs such as ABT will be viewed favorably by the regulatory negotiation committee during policy development.

EPA requests comment on the absence of an ABT program.

S. Engine Manufacturer Requirement—Disclosure of Maximum Exhaust Pressure and Minimum Inlet Pressure

The design of the exhaust system can influence emissions. Most small engines are supplied with both an air inlet system and an exhaust system which are tested as part of the engine package, and the entire package is used by the equipment manufacturer. However, some engines are designed to be installed in a chassis with more complex packaging requirements where the equipment manufacturer may supply and/or install the exhaust system, or part of it, and even the air inlet system. In these latter cases, EPA is considering a requirement that the engine manufacturer would need to specify to the equipment manufacturer the maximum exhaust pressure and the minimum inlet pressure, and the equipment manufacturer would be required to adhere to those specifications. EPA requests both engine and equipment manufacturer comments regarding this issue.

T. Direct Health Effects of Air Toxics and CO

In addition to the concern of the role of HC and CO in ozone and CO nonattainment, EPA is concerned about direct health effects of air toxics and CO exposure. The concentrations and direct health effects of toxic pollutants in exhaust are especially important because the operator of a small SI engine application is typically near the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. See "VI. Environmental Benefit Assessment" for further discussion of this issue. The Agency requests additional information on the effects of air toxics and CO exposure associated with the use of small SI engines.

U. Catalyst Durability

Relative to all other types of emission-related engine components, catalysts are unique in that:

- Relatively small changes in chemical and/or physical characteristics of a catalyst can result in very large deleterious changes in operational characteristics.
- The engine manufacturer is not likely to be involved in the design or fabrication of the catalysts nor be able to verify the acceptability of vendor-supplied catalysts by means of the simple checks and tests that are adequate for other engine components
- The satisfactory operational durability of catalysts are much more dependent on the catalyst manufacturer's proprietary techniques and processes than is the case with other emission control system components.
- Since it is the last component in the emission control system, a catalyst can compensate for sub-standard performances by other emission control components, but it is not itself supported by any other back-up component that is able to compensate for a reduction in catalyst performance capability.
- Substantial reductions in performance can result from:
  —Abrasion or fracturing as a result of relative motion between the catalyst and its protective outer metal jacket,

—Poisoning as a result of fuel contaminants (such as lead),

—Glazing as a result of excessive quantities of lubricating oil in the exhaust, and

—Thermal degradation as a result of exposure to excessively high temperatures for prolonged periods.

Catalytic converters designed for small SI engines in the short term will be low efficiency catalysts to address safety concerns. The catalysts designed for potential Phase 1 use would have conversion efficiencies on the order of approximately 30 percent for HC and CO emission. The design constraint that dictates these low efficiencies is the need to limit the increase in exhaust temperatures, since the exhaust is in close proximity to the operator in handheld equipment. Efficiencies much higher than 30 percent begin to generate exotherms that can substantially increase exhaust temperatures. Since the industry has not yet developed the necessary solutions, such as creative small-scale insulation approaches, to control the added temperature, only low efficiency catalysts would be available for Phase 1 use.

While adequate durability of catalysts is a concern relative to catalytic converters used in on-highway engine applications, EPA is less concerned with the emission impact of failures of the catalytic converters expected to be used for engines regulated by this rule. This is because the conversion efficiency of catalysts used in small SI engines would not exceed approximately 30 percent for reasons discussed in the previous paragraph. Faced with this constraint, an engine manufacturer would need to modify its base engine to realize substantial emission reduction of engine-out emissions even before the exhaust was converted further by the catalytic converter. Should such a low efficiency catalyst fail in use, the increase in emissions would not be as large as occurs when a high efficiency on-highway vehicle catalyst fails.

The preceding discussion underscores the need for some means to validate the adequacy of catalysts that would be added to engines to provide compliance with the emission standards during in-use operation. Various approaches could be used for ensuring that the "long term" conversion capabilities of catalysts would be adequate. For example, certification engines could be tested with catalysts which had been subjected to some type of "aging" process to substantiate that the catalysts were adequately designed and fabricated. Alternatively, certification engines could be tested with new catalysts that had been proven to be satisfactory by meeting the requirements of a catalyst certification procedure that would be separate from the engine emission certification test.

The main advantage of a validation approach involving the use of "aged" catalysts on certification engines would be its simplicity. The aging process would be carried out by either the engine manufacturers or the catalyst vendors. In either case, there would be no requirements for special catalyst performance testing and, hence, no need for the establishment of performance standards that would be needed for evaluating the test results.

The main disadvantage of this approach is the possible negative impact on catalyst usage that might result from a Phase 1 certification process which imposed durability testing requirements on catalysts but not on certification engines or any other engine components involved in their construction. On one hand, the dependence of successful certification of engine families on the performance capabilities of aged catalysts might result in engine manufacturers being reluctant to use catalysts to meet the applicable emission standards. Also, given that there is limited field data on small engine catalysts, it would be extremely difficult to design a fair aging procedure that could be evaluated by the certification engine test and accompanying emission standards.

Such possibly adverse results would be avoided by the engine manufacturer's use of a new catalyst that was "certified" by the supplier or the engine manufacturer as having design and fabrication details that resulted in specific long-term conversion performance capabilities. This approach would have the disadvantage of being more complicated in that it additionally involves the establishment of limits on the amount of efficiency loss that would be acceptable and would require a test procedure for determining compliance with such limits.

As a consequence of concerns regarding possible negative impacts on catalyst development for small engines that might result from a provision requiring the certification of engines with aged catalysts, EPA is not proposing such a requirement in this notice. Instead, EPA is proposing that for systems utilizing catalysts, the certification engine configuration to be tested must be equipped with a new catalyst of a design that has been "certified." A "certified" catalyst design would be one which had successfully met the requirements of a separate catalyst durability demonstration procedure which is described in more detail in the following paragraphs. This approach ensures that durable catalysts are used on small engines while avoiding excessive requirements that could discourage the development of very promising catalyst technology.

Comments regarding this proposal are requested. Also requested are comments regarding the advantages and disadvantages of this requirement, as well as the alternative requirement for the use of preconditioned or aged catalysts during engine emission certification testing.

The use of an oven exposure procedure for evaluating catalyst resistance to thermal degradation is proposed in this notice. This procedure would involve the heating of the test catalyst in air to a temperature of 1,000 °C for six hours. Prior to heating the catalyst to 1,000 °C, an optional pre-heating procedure is proposed to be allowed to remove the "green" effect of the catalyst. This optional procedure would consist of heating the catalyst to no more than 500 °C for no more than two hours.

The oven exposure procedure described above is proposed in lieu of procedures which involve exposure to synthetic or actual exhaust gas mixtures because EPA believes that the oven aging procedure aggressively and directly stresses the catalyst and is the best method for assessing the most major catalyst durability concern: thermal stability. Another advantage of this method is that it is much less complex than the other exposure procedures.

For example, in the case of the procedure which involves exposure to synthetic exhaust gas mixtures, information is lacking regarding the most appropriate test parameters, such as the temperature of the mixtures and the duration of the exposure. Similarly, with respect to the procedure which involves exposure to actual exhaust gas mixtures, information is needed regarding a number of test variables that are related to the engine that is used to generate the exhaust gas mixture, such as its combustion cycle and power output, the manner in which it is operated and the operating times that are involved in each phase of the operating cycle.

General comments regarding the applicability and suitability of the proposed oven exposure procedure are requested. Specific comments are also requested regarding variation in the procedure, such as: The use of an oven atmosphere other than air; if flow through the catalyst is recommended;

and the composition and flow rate of the gas or gaseous mixture that is used.

Regardless of which method is used to age the catalyst, some means must be used to determine the effects of the aging process. With respect to the intended purpose of this process, the most straightforward evaluation would involve the determination of the extent to which the performance characteristics of the test catalyst had been adversely affected. Of particular significance would be the adverse effect on the catalyst's conversion capabilities with respect to the oxidation of HC and CO and/or the reduction of NO_X.

The use of a procedure which uses a synthetic exhaust gas mixture for evaluating the effects of thermal stressing is being proposed for several reasons. One of the main reasons is the relative simplicity of such a procedure. For example, it would not involve the questions regarding the in-use representativeness of test parameters, such as the temperature of the mixture and the duration of the test, that arise when a synthetic exhaust gas mixture is used for actually thermally stressing a catalyst. For evaluation purposes, any fixed temperature which allowed the conversion reactions of interest to occur could be specified. The specification of a particular exposure time would not be required since the conversion efficiency existing as a result of the previous thermal stressing would be involved rather than a time-related change in efficiency. Furthermore, a procedure which used synthetic exhaust gas would be simpler than a procedure that used actual exhaust gas. Using synthetic exhaust gas mixtures alleviates the need for detailed information not readily available at this time. Another reason for proposing the use of synthetic exhaust gas mixtures is the standardization that results; all catalysts would be aged under the specific conditions that are proposed in subpart E of the proposed regulations. The composition of the synthetic exhaust gas mixture that is specified in this subpart is comparable to compositions of synthetic exhaust gas mixtures currently used by catalyst manufacturers for testing related to the kinds of engines covered by the proposal.

Comments are solicited concerning these specifications, particularly with regard to the chemical composition and temperature of the synthetic exhaust mixture and its flow rate as it enters the test catalyst.

A fixed catalyst efficiency loss limit of 20 percent for HC, CO, and NO_X is proposed in this notice on the basis of on-highway experience and the absence of information at this time regarding the conversion efficiencies that will be used with small engines. To illustrate this loss limit, a catalyst with initial HC conversion efficiency of 50 percent would be required to maintain at least a conversion efficiency of 40 percent after thermal aging.

Comments are requested regarding the use of a different fixed deterioration limit. Comments are also requested regarding the relative advantages and disadvantages of one fixed limit versus several limits that are proportional to initial conversion efficiency.

V. Test Procedure Requirements

EPA received a technical review of an early draft of the test procedure from the Small Engine Committee of the Society of Automotive Engineers (SAE) in September 1993. EPA requests comment on several points mentioned in SAE's comments.

EPA is proposing that during each mode of the emission test cycle, engine manufacturers collect and analyze exhaust constituents and measure engine parameters during a period of time referred to as the "sampling period." EPA is proposing that the sampling period be a minimum of four minutes long. The SAE recommended test procedure J1088 recommends the sampling period be "* * * at least two minutes. Longer averaging times may be required to ascertain the true time averaged emissions if data variability over time is significant." Based on EPA's experience with several small (two to four kW) engines, a two-minute averaging time for idle modes is not sufficient to make accurate fuel flow measurements. EPA requests comment on the appropriateness of a four minute averaging time, including any available test data to substantiate an averaging time less than four minutes.

EPA is proposing that for the final calculation of the brake-specific emission rate (gr/kWh), any power measured during the idle mode not be included in the calculation for the reported brake-specific emission rate. EPA believes the idle mode is, by definition, that engine operating mode during which no useful work is performed. Any power measured during this mode is a result of the frictional losses resulting from the dynamometer. EPA is concerned that an engine manufacturer using an inappropriately large dynamometer with a large frictional loss would not provide an accurate measurement of the engine idle mode. EPA believes it is inappropriate to include power generated by the engine to overcome the windage losses of the dynamometer in the calculation of emissions during the idle mode. EPA requests comment on the appropriateness of including power measured by the dynamometer in the calculation of the final brake-specific emission rate.

VI. Duration of Certificates of Conformity, Definition of Model Year, Annual Production Period

EPA is considering adopting one of the following three options for defining model year, annual production period, and duration of the certificate of conformity. Regardless of the option selected, EPA is also proposing in this notice that it would be a prohibited act to introduce an uncertified small SI engine into commerce after August 1, 1996. Furthermore, it would be a prohibited act to introduce a specific model year engine into commerce prior to or after the model year for which the certificate of conformity was issued and in effect. EPA requests comment on each of these three alternatives.

Option 1: EPA would incorporate the on-highway definition of model year, annual production period, and duration of a certificate of conformity.

The model year would include January 1 of the calendar year for which it is designated and would not include a January 1 of any other calendar year. Thus, the maximum duration of a model year would be one calendar year plus 364 days.

The "annual production period" for any specific model within an engine family would begin either: (1) When such an engine was first produced, or (2) on January 2 of the calendar year preceding the year for which the model year was designated, whichever date was later. The annual production period would end either: (1) When the last engine was produced, or (2) on December 31 of the calendar year for which the model year was named, whichever date was sooner.

A certificate of conformity would be issued to cover engines introduced into commerce for a single model year. Under option 1, the 1997 model year certificate could cover production between January 2, 1996 and December 31, 1997, although engines regulated under this proposal would be manufactured after August 1, 1996.

Interested parties may wish to consult OMS Advisory Circular A/C No. 6B, issued December 31, 1987, which summarizes the on-highway treatment of model year, annual production period, and duration of the certificate of conformity. A copy of the circular has been placed in the docket for this rulemaking.

Option 2: This option represents a variation of Option 1. EPA believes that the dates selected for the commencement of model year and the annual production period more closely parallel the experience of the small engine industry.

Under option 2, the model year would include August 1 of the preceding calendar year for which it was designated and would not include an August 1 of any other calendar year. The maximum duration of a model year would remain one calendar year plus 364 days.

The "annual production period" for a specific model within an engine family would begin either: (1) When such an engine was first produced, or (2) on August 2 of two calendar years preceding the year for which the model year was designated, whichever date was later. The annual production period would end either: (1) When the last engine was produced, or (2) on July 31 of the calendar year for which the model year was named, whichever date was sooner.

The certificate of conformity would be issued to cover production for a single model year. For example, the 1997 model year could cover production between August 2, 1995 through July 31, 1997.

The proposed extended coverage period described in options 1 and 2 for a certificate of conformity (that is, up to one year plus 364 days) is primarily intended to allow flexibility in the production of new models. Under no circumstances should it be interpreted that existing models could "skip" yearly certification by pulling ahead the production of every other model year. While this situation, to our knowledge, has not occurred in the on-highway program in the past, a practice of producing small SI engines for a two year period would violate Congress' intent of annual certification based upon an *annual* production period. EPA is not currently proposing rules for how to determine when abuse has occurred since this has not been a problem to date. However, manufacturers should note EPA's concern in this area and should use normal yearly production periods for existing models.

Option 3: Under this option, the certificate of conformity would be issued to cover production from August 1 of a given calendar year through July 31 of the subsequent calendar year for which it was issued. EPA would retain the model year concept found in on-highway programs but would define it as follows: "*Model year* means the manufacturer's annual production period which includes August 1 of a given calendar year through July 31 of the subsequent calendar year." Thus the maximum duration of a model year would be 365 days.

VI. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials, and visibility. Concentrations of ozone (O_3) are impacted by HC emissions and, to a lesser extent, emissions of CO. Ambient concentrations of CO are, of course, impacted by CO emissions. EPA has determined that the standards set in this rule would reduce emissions of HC and CO and, despite also increasing emissions of NO_X, help most areas come into compliance with the NAAQS for ozone and, to a lesser extent, CO. The following provides a summary of the emission reductions expected and the health effects of HC components, CO, and ozone. A discussion of the roles of HC and NO_X in ozone formation is also presented. The underlying analysis is described in greater detail in the draft RSD, a copy of which is in the public docket for this rulemaking.

A. Estimated Emissions Impact of Proposed Regulation

The emission standards proposed in today's action should reduce average per-engine HC and CO emission from small SI engines by 32 percent and 14 percent, respectively, by the year 2020, when complete fleet turnover is projected. This would result in annual nationwide reductions of roughly 350,000 tons of HC and 2,000,000 tons of CO by the year 2020. In-use NO_X emission rates are expected to increase, roughly, from 7,000 to 34,000 tons per year. This increase represents one quarter of one percent of the national NO_X inventory, and is small compared to the substantial NO_X reductions achieved in the nonroad large CI proposal (58 FR 28809).

In addition to control of HC, the proposed standards should be effective in reducing emissions of air toxics, including benzene and 1,3-butadiene. However, the magnitude of reduction would depend on whether the control technology reduces the individual toxics in the same proportion to total hydrocarbons.

These emission reduction estimates for HC and CO are based on population projections using estimates of annual engine consumption (that is, sales), engine attrition (that is, scrappage), activity indicator, and current and proposed in-use emission factors. Data on activity indicators and the baseline emission factors were obtained from the Nonroad Study. Estimates of annual engine consumption for years from 1973 to 1992 were based on engine consumption data available from the PSR databases and industry data from OPEI,[7] PPEMA,[8] and Booz Allen & Hamilton.[9] Future consumption estimates are for the most part based on estimates of population growth for the United States. Attrition rates (that is, likelihood, as a function of engine age, that an engine remains in service) for all engines included in this analysis were developed on the assumption that equipment attrition is described by a two-parameter form of the Weibull cumulative distribution function.

For the analysis summarized in Tables 2 and 3, the emission inventories were developed for the five regulated engine classes as well as for all pieces of equipment using engines covered by this proposed rule. Using estimated engine consumption and attrition, EPA projected the total in-service engine population for each year from 1973 through 2020. EPA projected the total annual nationwide HC, CO, and NO_X emissions from small SI engines included in the current proposal under the baseline (that is, no controls applied) and controlled scenarios.

For the controlled scenario, EPA assumed that new engines sold beginning in 1996 would meet the proposed standards. For both scenarios, in-use emission rates were determined so as to account for deterioration by adjusting the difference between new engine and in-use engine emission rates by a factor which is a function of age of the specific engine and its B–50 or median life expressed in years.

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[7] Outdoor Power Equipment Institute's historic national shipment data.

[8] Portable Power Equipment Manufacturers Association's shipment data for selected equipment.

[9] Booz Allen & Hamilton, 1990 Report to California Air Resource Board.

TABLE 2.—PROJECTED ANNUAL NATIONWIDE HC EMISSIONS
[tons/year]

Year	Baseline	With proposed controls	Reduction from baseline	Percent of baseline
1990	729,458	729,458		
1996	813,575	733,597	79,978	9.8
2000	871,723	618,876	252,847	29.0
2005	938,275	636,769	301,506	32.1
2010	1,002,164	676,759	325,405	32.5
2015	1,058,864	716,899	341,965	32.3
2020	1,112,630	755,920	356,710	32.0

TABLE 3.—PROJECTED ANNUAL NATIONWIDE CO EMISSIONS
[tons/year]

Year	Baseline	With proposed controls	Reduction from baseline	Percent of baseline
1990	8,109,097	8,109,097		
1996	9,499,739	9,112,559	387,180	4.1
2000	10,384,195	9,107,279	1,276,916	12.3
2005	11,379,821	9,807,781	1,572,040	13.8
2010	12,320,136	10,591,294	1,728,842	14.0
2015	13,153,741	11,303,418	1,850,323	14.1
2020	13,939,000	11,977,377	1,961,623	14.1

B. Health and Welfare Effects of HC Emissions

The focus of today's action is reduction of HC emission as a part of the solution to the ozone nonattainment problem. However, direct health effects are also a reason for concern due to direct human exposure to emissions from small SI engines during operation of equipment using such engines. Of specific concern is the emission of air toxics. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's regulations should be effective in reducing air toxics such as benzene and 1,3-butadiene.

Based on data from the Nonroad Study, the exhaust and crankcase emissions from a 2.9 kW lawnmower with a 4-stroke engine contain 3.5 grams of benzene per hour. Exhaust emission of a 2.9 kW, 2-stroke lawnmower contains 17 grams of benzene per hour. A small, 2.2 kW chainsaw emits 28.2 grams of benzene per hour, compared to a large, 4.5 kW chainsaw that emits 40.8 grams per hour.

Also, according to data from the Nonroad Study, 1,3- butadiene content in exhaust and crankcase emissions from a 2.9 kW, 4-stroke lawnmower is approximately 1.5 grams per hour. For a 2.9 kW, 2-stroke lawnmower, 1,3-butadiene content in exhaust is 7.0 grams per hour. Butadiene emitted from a small, 2.2 kW chainsaw is approximately 12.2 grams per hour, and is 17.7 grams per hour from a large 4.5 kW chainsaw.

Benzene is a clear, colorless aromatic hydrocarbon which is both volatile and flammable. Benzene is present in both exhaust and evaporative emissions. Health effects caused by benzene emissions differ based on concentration and duration of exposure.

1,3-butadiene is a colorless, flammable gas at room temperature. This suspected human carcinogen is insoluble in water and its two conjugated double bonds make it highly reactive. 1,3–Butadiene is formed in internal combustion engine exhaust by the incomplete combustion of the fuel and is assumed not present in evaporative and refueling emissions.

Since air toxic levels generally decrease in proportion to overall emissions once emission control technology is applied, the amount of benzene and 1,3-butadiene produced by new small SI engines should diminish after this rule becomes effective. Consequently, exposure to air toxics from new small SI engines will be reduced, as will associated health effects.

There is little data on direct health effects of small SI engine emissions. No study has been conducted involving the health effects of air toxic emissions specifically from small SI engines. The Agency requests additional information on this topic.

C. Health and Welfare Effects of CO Emissions

Carbon monoxide (CO) is a colorless, odorless gas which can be emitted into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines.

The concentration and direct health effect of CO exposure are especially important in small SI engines because the operator of a small SI engine application is typically near the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. According to numbers published in the Nonroad Study, a 4-stroke, 2.9 kW lawnmower engine emits 1051.1 g/hr CO, while a 2-stroke, 2.9 kW engine emits 1188.4 g/hr CO.

Although no studies measuring the human health effects of CO emanating from small SI engine exhaust have been conducted, ample research results are available concerning general health effects of exposure to CO. The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes have been topics of substantial research efforts. However, most of these involved higher, more constant exposure concentration levels of CO than are likely to be produced under normal operations of these small SI engines. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

D. Roles of HC and NO_x in Ozone Formation

Both HC and NO_x contribute to the formation of tropospheric ozone through a complex series of reactions. In general, the ratio between the ambient concentrations of HC and NO_x in a localized area is an indicator of the likely effectiveness of HC and/or NO_x reductions as ozone control measures. If the level of HC is high relative to the level of NO_x (that is, in a ratio of 20 to one), ozone formation is limited by the amount of NO_x present, making reduction of NO_x emission an effective strategy for reducing ozone levels. Alternatively, if the level of HC is low relative to the level of NO_x (that is, in a ratio of eight to one), efforts to control HC would be expected to be a more effective means of reducing ozone concentration. In a recent report, researchers emphasize that both HC and NO_x controls are needed in most areas of the United States.[10]

E. Health and Welfare Effects of Tropospheric Ozone

EPA's primary reason for controlling emissions from small SI engines is the role of HC in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and other compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_x and HC can result in urban and rural areas exceeding the national ambient ozone standard by a factor of three. The ozone NAAQS represents the maximum level considered protective of public health by the EPA.

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma.[11] Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The current NAAQS for ozone of 0.12 part per million (ppm) is set at a level that, with an adequate margin of safety, is protective of public health. However, ozone has also been shown to damage forests and crops, watershed areas, and marine life.[12] The NAAQS for ozone is frequently violated across large areas in the United States, and after 20 years of efforts aimed at reducing ozone-forming pollutants, although EPA has reported a trend toward lower average ozone concentrations from 1982 to 1989,[13] the ozone standard has proven to be exceptionally difficult to achieve. High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere. Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[14] Repeated exposure to ozone levels above 0.04 ppm can cause reductions in the yields of some crops above ten percent.[15] While strains of some crops are relatively resistant to ozone, many crops experience a loss in yield of 30 percent at ozone concentrations below the NAAQS.[16] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the United States.[17] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, there is evidence that some forest types are negatively affected by ambient levels of ozone.[18] Specifically, in the San Bernadino Mountains of southern California, ozone is believed to be the agent responsible for the slow decline and death of ponderosa pine trees in these forests since 1962.[19]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect,[20] although tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface, the increase of which is expected to result from depletion of stratospheric ozone.[21]

VII. Technology Assessment

In the draft RSD, EPA presents a comprehensive technology assessment supporting the emission standards proposed for each class of engines in this notice. This assessment demonstrates that small SI engine manufacturers will be technically capable of achieving the proposed emission standards and will not be capable of achieving lower emission standards in this Phase 1 rule. This assessment also considers factors of noise, energy, and safety as outlined in section 213(a)(3) of the CAA. The public docket for this rulemaking contains a lengthier version of this Technology Assessment section.

The levels of the proposed emission standards under this rule are in large part driven by the aggressive timeline of Phase 1. EPA agreed to promulgate Phase 1 small SI engine standards to realize early emission reduction benefits while a more comprehensive long-term program will be developed for Phase 2.

A. Achievability of Proposed Emission Standards

EPA believes that the proposed Phase 1 emission standards are the lowest standards for Class I–V engines achievable by the 1996 model year.

The engines covered by this proposed regulation are divided into five classes with unique emission standards proposed for each class. The lowest level of emission standards achievable was determined for each class of engines. The unique standards for each class are driven by differences in emission reduction capability of engines with different combustion cycles and different displacements.

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[10] National Research Council, Rethinking the Ozone Problem in Urban and Regional Air Pollution, National Academy Press, 1991.

[11] United States Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989, pp. VI–11 to 13.

[12] U.S. EPA, Review of NAAQS for Ozone.

[13] NRC, Rethinking the Ozone Problem, p. 61.

[14] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[15] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[16] U.S. EPA, Review of NAAQS for Ozone, p. X–10

[17] U.S. EPA, Review of NAAQS for Ozone, p. X–22.

[18] U.S. EPA, Review of NAAQS for Ozone, p. X–27.

[19] U.S. EPA, Review of NAAQS for Ozone, p. X–29.

[20] NRC, Rethinking the Ozone Problem, p. 22

[21] The New York Times, September 15, 1992, p C4

Class I and II engines represent nonhandheld engines that, in large part, use 4-stroke combustion cycle engines, as opposed to Class III–V engines which represent handheld engines that, in large part, use 2-stroke combustion cycle engines. Within the time constraints for compliance with this rule, Class I and II engines will be capable of achieving a lower HC + NO_X composite emission standard and lower CO emission standard than the Class III–V engines are capable of achieving. Furthermore, within each combustion cycle type, the larger displacement classes will be capable of achieving lower HC + NO_X, HC, and CO emission standards. A full discussion of the technical rationale for these limitations is set forth in the draft RSD.

EPA's belief that the proposed emission standards for Classes I–V are the lowest achievable standards is based on emission data provided on nonoptimized prototype configurations of engines that meet the proposed standards, technical discussions with manufacturers, and EPA analysis of information on technologies collected from a range of sources. The following is a summary of these analyses. A complete analysis is provided in the draft RSD.

EPA has compiled emission data on selected Class I–V engines and prototypes that were tested at either an independent or industry laboratory and met the proposed emission standards. These prototypes represent the greatest degree of emission control technology achievable given the aggressive timeline for earliest possible introduction of these engines into commerce at reasonable cost (one of the parameters for achievability listed in CAA section 213(a)(3)). Data was compiled and reported on three Class I engines, two Class II engines, one Class III engine, two Class IV engines plus one data point representing the aggregate of 27 Class IV engines, and one Class V engine plus one data point representing the aggregate of 18 Class V engines. These data and the specific technologies used on each are presented in Chapter 1 of the draft RSD.

Additional support for the proposed emission standards being the lowest achievable standards is provided by EPA's analytical summary of confidential discussions with manufacturers and information on technologies collected from a range of sources. EPA used this summary information to compile and predict the expected percentage usage of each emission control technology discussed.

For Class I and II engines, EPA predicts that manufacturers will use different combinations of the following technologies: Carburetor enleanment and/or modifications; fuel system modifications; ignition timing modifications; valve system and valve timing modifications; combustion chamber modifications; cooling system modifications; some conversion from side valve to overhead valve engines; and some conversion from 2-stroke to 4-stroke engines.

For Class III, IV, and V engines, EPA predicts that manufacturers will use combinations of the following technologies: Carburetor enleanment and/or modifications; carburetor limiter cap installation; fuel system modifications; combustion chamber modifications; port timing and scavenging modifications; cooling system modifications; and some conversion from 2-stroke to 4-stroke engines. The estimated percent usage of each technology by engine class is presented and discussed in the draft RSD.

In addition to the technologies listed, the use of catalytic converters, exhaust gas recirculation (EGR), and air injection technology may occur on a limited basis or not at all in the 1996 model year. EPA estimates that manufacturers will meet proposed Phase 1 emission standards without the use of catalysts. However, some manufacturers are developing low efficiency catalysts in case some marginally acceptable engine family should need this technology to meet the standards. If catalysts were to be used, EPA estimates that their use would occur on no more than 30 percent of Class I engines and one percent of all Class II–V engines. EPA requests information on the likelihood that catalyst, EGR, or air injection systems will be used and, if so, any additional information on percent usage.

B. Proposed Emission Standards Are Lowest Feasible

EPA believes that three specific emission control technologies, while allowing engines to meet lower standards than those proposed today, cannot be developed within the timeline of this rule or at reasonable cost. Technologies such as high efficiency catalytic converters, low cost fuel injection systems, and low cost electronic control systems are currently either available on only a limited basis or are in the early design phase. These technologies cannot be used on the vast majority of engines by the proposed implementation date. These technologies have the potential to develop much greater emission reductions than those technologies determined to be achievable for this rule. As discussed in Chapter 1 of the draft RSD, a number of technical barriers and safety issues must still be overcome before standards can be set that would reflect general or blanket use of these technologies.

C. Impact on Equipment

EPA estimates that the proposed emission standards can be met with the identified engine emission control technologies with minimal impact on equipment design. However, EPA also believes that to propose more stringent emission standards in today's rule than those already proposed would necessitate equipment redesign to accommodate more sophisticated technologies, such as high efficiency catalysts.

It has been EPA's past experience that, given the latitude to change either the engine or equipment, most manufacturers will choose to modify the engine. EPA estimates that most engine models will require only internal modifications (such as tighter tolerances and fuel mixture enleanment strategies) to meet the proposed standards. These modifications will have little, if any, effect on equipment design.

EPA estimates that few engine models will be discontinued as a result of the proposed standards. Models that may be discontinued represent older engine designs and low volume sales. Since this market generally has a large number of engine models, substitutions should be readily available for these few incidents of model discontinuation.

Catalytic converter use is not predicted for the Phase 1 rule. However, if catalysts should be used on a small percentage of equipment, EPA has estimated the equipment impact of catalyst use in terms of additional shielding as a result of higher exhaust skin temperatures.

The draft RSD summarizes EPA's estimates of equipment impacts as a result of this rulemaking. EPA requests comment or additional information with respect to the estimations concerning impact of the proposed standards on equipment

D. Energy, Noise, and Safety

Section 213(a)(3) of the Act requires that EPA also give appropriate consideration to energy, noise, and safety factors associated with the application of technologies. Energy factors include engine fuel consumption and power. Noise factors are self explanatory, and safety factors include safety for the user as well as compliance with other existing regulations in this country and abroad.

In Chapter 1 of the draft RSD, EPA has analyzed the likely average fuel consumption change considering all factors that would impact the final figure in actual use. EPA estimates that a reduction in fuel consumption is likely to be seen in actual use and will average approximately 13 percent for handheld engines and 26 percent for nonhandheld engines. Since this is a desirable impact, little additional design effort will be expended to optimize fuel consumption effects.

Manufacturers will also optimize final designs such that the expected power loss on resulting production engines will be minimized. Based on analyses in Chapter 1 of the draft RSD, EPA estimates that the resulting average power change in actual use will be a gain of approximately five percent for Class I and II engines and a three percent reduction for Class III–V engines. The major contributors to this gain for Class I and II are changes in technology for Class I side valve engines which make up a large majority of engines in this rulemaking.

Although overall power may increase, some engines may experience a decrease in power availability. However, real time data collected on equipment in actual use demonstrate that many engines do not need their full power capability in actual use. This is especially true in the case of nonhandheld engines. The operators of these engines will likely experience no performance impact as a result of this rule.

Engine noise level is expected to stay at current levels. Further discussion of this issue can be found in "V.O. Cap on Noise."

Many safety regulations and recommendations have been established for small engines and their related use in equipment. These regulations will affect the feasibility of using some technologies on handheld engines. One example is a regulation requiring spark arresters on equipment used on certain federal lands. See 36 CFR part 261. The regulation results in a temperature limit on exhaust and exhaust surfaces which, to date, has resulted in a limitation on the feasibility of the use of catalysts for handheld engines due to the high heat levels emitted during conversion of pollutants as seen when applied to these engines.

Safety recommendations and regulations also have an impact on the end use of the engines. Some small SI equipment have operating restrictions of certain speeds and loads. One example is ANSI standard B71.1 which contains information for measuring mower blade tip speed and a description of the use of safety brake systems. A summary of safety regulations and recommendations is presented in the draft RSD. EPA requests further information on additional safety regulations or requirements which may impact engines covered by this rulemaking.

E. Per Engine Cost Estimates Due to Proposed Standards

The technical solutions required to meet the emission standards proposed in this notice will be cost-effective. Further discussion is presented in "IX. Cost-Effectiveness." While this summary presents only aggregate costs for nonhandheld and handheld engines, the draft RSD gives cost estimates by technology and by engine displacement class.

The retail price of equipment which uses nonhandheld engines ranges from $90 to $9,000. On average, the cost to the engine manufacturer to install the necessary emission control technology on these engines will be approximately $0.80 to $1.13 per engine. The retail price of equipment which uses handheld engines ranges from $60 to $1,000. On average, the cost to install the necessary control technology on all handheld equipment engines, hardware variable costs, and production costs will be approximately $2.05 to $2.20 per engine to the engine manufacturer. Tables in the draft RSD list the Agency's estimated variable hardware and production cost broken out by engine technology for each engine class.

EPA's cost estimate assumes that catalytic converters will not be needed to comply with proposed standards. However, as discussed previously, engine manufacturers may voluntarily decide to use catalysts on a percentage of engines at risk of only marginally complying. Should catalysts actually be used, EPA estimates that the additional variable hardware costs for nonhandheld engines will be $1.09 per engine and for handheld engine will be $0.10 per engine, with an additional $0.24 per engine for equipment modifications and $0.20 per potential heat shielding. The Agency requests additional comment on these cost estimates for application of catalyst technology and equipment impacts.

VIII. Economic Effects

The total national average annual cost of this rule is estimated to be $55 million. If catalysts become necessary, the average annual cost estimate becomes $73 million.

EPA's economic analysis of the proposed rule's likely impact on consumers and industry indicates that reducing pollution from these engines will result in offsetting costs to consumers. Consumers will find small increases in retail prices for most equipment powered by these engines. The initial purchase price to the consumer will, however, be partially offset by savings in fuel and maintenance costs. Thus, over time, environmentally friendly, alternatively powered equipment such as electric powered trimmers, chain saws, and lawnmowers will become less costly to consumers. Industry will bear pollution control costs that are moderate (roughly six percent for handheld and two percent for nonhandheld equipment) relative to current production costs. (The level of pollution control costs is largely due to the high levels of pollution emitted by these engines, especially 2-stroke engines, and the relatively outdated state of the technology compared to on-highway engines.) However, the costs are small in absolute terms, and it is anticipated that these costs will be passed through to consumers in higher product prices. The complete economic analysis can be found in Chapter 3 of the draft RSD.

A. Consumer Cost

EPA estimated the increase in consumer cost of the equipment powered by these engines. In assessing consumer cost, three areas were analyzed: change to the retail cost of the engine, cost of fuel, and cost of maintenance.

1. Retail Cost

The increase in retail price of the equipment to the consumer is estimated using a percentage increase over the average amortized and discounted per engine manufacturers' cost, weighted by the sales mix. As such, the estimated sales-weighted average increase in retail cost to the consumer due to the proposed rule in 1996 is $4.04 for handheld equipment and $2.35 for nonhandheld equipment. If catalysts are necessary, the estimated sales-weighted average increase in retail cost to the consumer due to the proposed rule in 1996 is $4.30 for handheld equipment and $3.68 for nonhandheld equipment.

The retail price effects for specific engines may be more or less than the costs shown here, depending on the specific technology of the engine. However, the price increases shown here reflect the relative price increases considering all types of engines in the market. Therefore, these estimates are not indicative of the price increase specific to any particular manufacturer's engine or equipment.

2. Fuel Cost

This rule is expected to decrease fuel consumption significantly. The average sales-weighted handheld engine is expected to experience a 13 percent decrease in fuel consumption and the average sales-weighted nonhandheld engine is expected to experience a 26 percent decrease in fuel consumption. However, these decreases are translated into small discounted lifetime sales-weighted fuel savings of approximately $0.22 for a handheld engine and $2.79 for a nonhandheld engine.

3. Maintenance Cost

EPA estimates that the engines produced to meet the proposed emission standards will be higher quality: the parts and raw materials will be more durable and less likely to malfunction. See Chapter 2 of the draft RSD for further discussion of this phenomenon. This will result in equipment which is operational a higher percentage of the time and which lasts longer. EPA is unable to estimate the increase in useful life or the decrease in maintenance costs at this time. EPA requests comment on the potential decrease in maintenance costs and potential increase in useful life.

4. Lifetime Consumer Cost Impact

The lifetime consumer cost impact was assessed by considering the decrease in maintenance cost and the fuel savings along with the increase in retail price of the average, sales-weighted engine. The increase in price of an engine will be mitigated somewhat by these other impacts. Applying the lifetime savings in fuel costs, the average sales-weighted handheld engine's lifetime increase in cost will be adjusted to $3.82 and the average sales-weighted nonhandheld engine's lifetime cost impact will be a savings of $0.44. If catalysts are necessary this will be $4.08 for a handheld engine and $.89 for a nonhandheld engine. EPA requests comments on lifetime consumer costs. Submission of quantified estimates would be beneficial.

B. Incremental Economic Impacts

EPA considered the potential incremental economic impacts due to today's proposal. EPA estimates the net present value of pollution control capital costs to be approximately $27 million. EPA estimates that there will be no long run negative impacts on employment as a result of this rule. Costs can be recovered through increased prices. Any potential decreases in employment that might occur due to obsolescence of product line should be offset by increased production of engines meeting emission standards. Total demand for these products has traditionally been relatively inelastic, and thus industry sales volume is not expected to decrease. Energy impacts will be positive, freeing up approximately $9 million for other uses in the economy.

IX. Cost-Effectiveness

Based upon the costs and benefits in the previous discussion, EPA has prepared a cost-effectiveness analysis and has performed a Regulatory Impact Analysis (RIA) for this proposal. See "X.A. Administrative Requirements" for an explanation of the mandate for an RIA. Because the benefits of this proposal are not easily monetized, a cost-effectiveness analysis has been prepared. The complete RIA is contained in the draft RSD. Presented here is a summary of the cost-effectiveness of the proposed small SI engine Phase 1 program.

If all program costs are allocated to HC reductions, today's proposal has a cost-effectiveness of $197 per ton of HC reduced. Alternatively, if all program costs are allocated to CO reductions, the cost-effectiveness would be $37 per ton.

If the costs of the program were equally split between HC and CO, the cost-effectiveness of HC reduction would be $99 per ton and the cost-effectiveness of CO would be $19 per ton.

These cost-effectiveness numbers are significantly lower than costs per ton of other available control strategies. The cost-effectiveness estimates, underlying quantitative methodology, and comparisons to other available control strategies discussed above are explained further in the draft RSD/RIA.

In summary, the cost-effectiveness of the standard included in the current proposal is favorable relative to the cost-effectiveness of several other control measures required under the Clean Air Act. To the extent that cost-effective nationwide controls are applied to small SI engines, the need may be reduced to apply in the future more expensive additional controls to mobile and stationary sources that also contribute to ozone nonattainment, nutrient loading, and visibility.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, (58 **Federal Register** 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because this rulemaking adversely affects in a material way a sector of the economy, namely manufacturers of small SI engines, particularly the manufacturers who specialize in the production of small handheld engines. Further, EPA believes that an RIA is important for this rule because small SI engines have not previously been regulated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Copies of the ICR document may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

Table 4 provides a listing of this proposed rulemaking's information collection requirements along with the appropriate information collection request (ICR) numbers. The cost of this burden has been incorporated into the cost estimate for this rule.

EPA has estimated that the public reporting burden for the collection of information required under this proposed rule would average approximately 6,100 hours annually for a typical engine manufacturer. The hours spent by a manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emission defects, etc.

TABLE 4. PUBLIC REPORTING BURDEN

EPA ICR No.	Type of information	OMB control No.
N/A	Certification	2060–0104
0282	Emission defect information	2060–0048
N/A	Importation of nonconforming engines	N/A
N/A	Selective enforcement auditing	N/A
0012	Engine exclusion determination	2060–0124
0095.03	Precertification and testing exemption	2060–0007
N/A	In-use testing	N/A

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW (PM–223Y), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will contain response to OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The RFA explores options for minimizing those impacts.

EPA has recently adopted a new approach to regulatory flexibility[22] for purposes of EPA's implementation of the Act, any impact is a significant impact, and any number of small entities is a substantial number. Thus, EPA will consider regulatory options for every regulation subject to the Act that can reasonably be expected to have an impact on small entities.

Therefore, in light of this new approach, EPA has determined that this rule will have a significant effect on a substantial number of small entities. As a result, EPA has tailored this rule to minimize the cost burdens imposed on smaller engine manufacturers.

The proposed regulations contain certification requirements for new engines, in-use testing requirements for controlled engines, Selective Enforcement Auditing provisions for the testing of production engines, and prohibitions on incorrect engine use for equipment manufacturers.

The certification program has been structured in this proposal such that all manufacturers may take advantage of a more simplified certification process than that currently mandated in the on-highway program. Testing requirements for test engines are reduced. The application and certification process is more straightforward.

The in-use testing program is structured such that manufacturers with lower annual production volumes have a lower minimum number of engines which must be tested. This places the burden of the in-use testing mostly on manufacturers with high production volumes. Provisions are also allowed for manufacturers whose number of product lines are limited. Also, manufacturers with very low production volumes are allowed maximum flexibility in procuring engines to be tested. Refer to "IV.C.10. In-use Testing Program" for a more detailed discussion.

The SEA program is structured such that the annual limit on the number of SEA's that EPA may perform is lower for manufacturers with lower projected annual production. Additionally, manufacturers with high projected annual production but fewer engine families will have a lower annual limit. Furthermore, manufacturers with low projected annual production may perform fewer audit tests per day to minimize the SEA burden on its test facilities. Refer to "IV.C.19. Selective Enforcement Auditing Program" for a more detailed discussion.

EPA is proposing that equipment manufacturers must correctly use engines that are certified upon implementation of these regulations. However, EPA has decided to make the use of non- certified engines for United States-marketed equipment a prohibited act rather than requiring equipment manufacturers to report to EPA that they are using certified engines in their equipment being consumed in the United States. Further, it is a prohibited act for equipment manufacturers to incorrectly use an engine certified as handheld in nonhandheld equipment marketed in the United States. EPA decided to make these provisions prohibited acts in order to reduce any potential reporting or recordkeeping burden for engine and equipment manufacturers. Manufacturers who attempt to sell equipment to the United States market which uses noncertified engines or uses handheld engines in nonhandheld equipment will be voluntarily reported to EPA by their competitors. EPA has proposed stiff fines on prohibited acts. Competition should effectively police these prohibited acts as competitors have a competitive incentive to make sure that no equipment manufacturer is dumping equipment with lower cost, unlawful, noncertified, or incorrectly used engines (that is, the use of a handheld engine in nonhandheld equipment) into the U.S. market.

EPA considered, but rejected, the notion of exempting small manufacturers from enforcement programs or from the regulation entirely. A more proportionate sharing of cost burden was deemed appropriate. The pollution emitted by each of these engines not only contributes to ambient air quality problems but also has health impacts on the user of the equipment who is in close proximity to the exhaust emissions. See "VI. Environmental Benefit Assessment" for a discussion of the health impacts of the related exhaust pollutants.

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[22] Habicht, F. Henry II, Deputy Administrator, Internal EPA Memorandum, "Revised Guidelines for Implementing the Regulatory Flexibility Act," April 9, 1992.

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: April 29, 1994

Carol M. Browner,

Administrator

[FR Doc. 94-10975 Filed 5-13-94; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 180

[OPP-300343; FRL-4866-7]

RIN No. 2070-AC18

Pesticide Tolerances for 1-[(6-Chloro-3-Pyridinyl)Methyl]-N-Nitro-2-Imidazolidinimine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish time-limited tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites (proposed common name "imidacloprid") in or on dried hops at 3.0 parts per million (ppm), milk at 0.05 ppm, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm, with an expiration date of 1 year after the beginning of the effective date of a final rule based on this proposal. EPA is issuing this proposal on its own initiative.

DATES: Comments, identified by the document control number, [OPP-300343], must be recieved on or before June 15, 1994.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20604. In person, bring comments to: Rm. 1128, CM #2, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA is proposing a time-limited tolerance for the residues of imidacloprid on dried hops at 3.0 parts per million (ppm). EPA recently reclassified dried hops as raw agricultural commodity (59 FR 9167; Feb. 25, 1994 and 59 FR 17487; April 13, 1994). EPA is proposing the tolerance because EPA has granted a petition for an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p, for the use of imidacloprid on hops in the States of Washington, Oregon, and Idaho; imidacloprid is used in other countries that export hops to the United States; and the database for imidacloprid is relatively complete. The most significant data gap for establishing a permanent tolerance for imidacloprid on dried hops is a third field-residue trial. Given the relatively low risks presented by imidacloprid, EPA does not believe that the missing data will significantly change EPA's risk assessment. Nevertheless, EPA is establishing a 1-year time limitation on this tolerance for a full residue data base to be available in making a decision on a permanent tolerance.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm..

3. A 1-year dog feeding study with a NOEL of 1,250 ppm (41/mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified as a "Group E" (no evidence of carcinogenicity for humans) carcinogen by the OPP Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainity factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is 0.000984 mg/kg/bwt/day and utilizes 2 percent percent of the ADI.

The nature of the residue in plants and livestock is adequately understood. Results of a bovine feeding study show that finite imidacloprid residues will actually occur in milk, meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep from feeding of imidacloprid-treated raw agricultural commodities or their processed commodities when the formulations are used as directed; therefore, tolerances are required. Spent hops are not considered a poultry feed item; therefore, secondary imidacloprid tolerances for poultry and eggs are not required. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in plants using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. The magnitude of the residue crop field trial data for imidacloprid on hops indicate that residues of total imidacloprid will not exceed the proposed tolerance when the formulations are used as directed.

The tolerance would be established for 1 year, with an expiration date of 1 year after the beginning of the effective date of a final rule based on this proposal.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the above information considered by the Agency, the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested person are invited to submit written comments on the proposed regulation. Comments must bear notation indicating the document control number, [OPP-300343]. All written comments filed in response to this document will be be available in the Public Docket and Freedom of Information Section, at the addressed given above from 8 a.m. to 4 p.m, Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 9181 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 9, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding new 180.472, to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-2-imidazolidinimine; tolerances for residues.

Time-limited tolerances, to expire (1 year after beginning of effective date of final rule), are established permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat byproducts	0.2
Hops, dried	3.0
Goats, fat	0.2
Goats, meat	0.2
Goats, meat byproducts	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, meat byproducts	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, meat byproducts	0.2
Milk	0.05
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat byproducts	0.2

[FR Doc. 94–11827 Filed 5–11–94; 12:37 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[GN Docket No. 94–33, FCC 94–101]

Further Forbearance From Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This notice of proposed rule making (Notice) solicits comment on whether, within particular services classified as Commercial Mobile Radio Service (CMRS), there may be types of providers that merit forbearance from certain requirements found in Title II of the Communications Act. Specifically, the Commission asks whether we should forbear from enforcing those provisions of Title II that we determined did not merit general forbearance in our Second Report and Order in Gen. Docket No. 93–252. If the further forbearance is warranted, the Commission asks how we should determine which types of CMRS providers should be excused from remaining Title II requirements and how we should implement and enforce such forbearance provisions.

DATES: Comments are due by June 27, 1994 and reply comments are due by July 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Gina Harrison or Susan McNeil, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–7792 and 634–2443, respectively, or Peter Batacan, Common Carrier Bureau, Tariff Division (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice in GN Docket No. 94–33, adopted April 20, 1994 and released May 4, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037

Synopsis of the Notice of Proposed Rule Making

1. In the Second Report and Order in General Docket No. 93–252, 59 FR 18493 (Apr. 19, 1994) the Commission elected, pursuant to the Omnibus Budget Reconciliation Act of 1993 (Budget Act), to forbear from applying Sections 203, 204, 205, 211, 212, and 214 of Title II of the Communications Act to any service classified as CMRS. The Commission determined that the remaining sections of Title II should be enforced with respect to CMRS providers in order to promote competition or to protect consumers, and that this decision would not place any undue burden on any CMRS provider or class of providers. Nevertheless, the Commission also announced that it would consider additional relief in a future rule making that would gather a more extensive record on the potential effect of the remaining sections of Title II on particular types of CMRS providers within each class of service. The purpose of this Notice is to initiate that rule making.

2. The Budget Act authorizes the Commission to take forbearance actions if it determines that: (i) Enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) specifying such provision is consistent with the public interest. The legislative history of this provision indicates that the Commission may distinguish among types of CMRS providers in making this determination. Assuming that further

forbearance in a particular case would not adversely affect rates or practices or harm consumers under the first two prongs of the test, the Commission tentatively identified two factors under the public interest test of the last prong that could serve to guide its determinations: (1) Whether there are differential costs of compliance with the remaining Title II sections that could make further forbearance appropriate for particular types of providers; and (2) whether the public interest benefits from application of particular Title II provisions are less for certain types of CMRS providers. Thus, in applying the last prong of the statutory test, the Commission asks commenters to identify (1) the benefits of applying the remaining Title II sections, (2) the costs of compliance with any the remaining Title II sections, and (3) whether the costs of compliance with any of the remaining sections of Title II outweigh the benefits. In addition, the Commission asks, pursuant to 47 CFR 332(c)(1)(C), whether further forbearance will enhance future CMRS competition from a diversity of entities.

3. The Commission also asks commenters to demonstrate actual or projected costs of compliance with each provision of Title II that was not forborne, and the extent to which such costs vary across different types of providers. For example, if the costs of regulation are fixed, it could indicate that small CMRS providers are more likely than other types of CMRS providers to be burdened by the costs of regulation. The Commission asks whether there are instances where these additional costs outweigh the public interest benefits of applying the statutory provision in issue. The Commission seeks evidence on the magnitude of any such fixed costs.

I. Application of Further Forbearance

4. Commenters should address (1) how the statutory forbearance test applies to each remaining Title II provision, (2) how further forbearance from applying each provision of Title II would enhance future CMRS competition, (3) how Congressional intent underlying each Title II provision would be affected, (4) how forbearance for particular types of CMRS providers would comport with regulatory symmetry and (5) whether there are other factors or alternatives we should consider in classifying CMRS for further forbearance.

5. The Commission seeks comment on its tentative view that there would be no purpose in forbearing from applying 47 U.S.C. 210, which allows common carriers to issue franks and passes to their employees, and to provide the Government with free service in connection with preparation for national defense.

6. The Commission characterized 47 U.S.C. 213, 215, 218, 219, and 220 as primarily reservations of authority and reaffirmed its finding in the Second Report and Order that it was unnecessary to forbear from applying these provisions to CMRS. Section 213 authorizes the Commission to make valuations of carrier property. Section 215 gives the Commission the authority to examine carrier activities and transactions. Section 218 authorizes the Commission to inquire into the management of a carrier and its owner. Section 219, *inter alia*, authorizes the Commission to require annual reports from carriers. Section 220 gives the Commission discretion to prescribe the forms of accounts, records, and memoranda to be kept by carriers, as well as depreciation rates. Even though these provisions impose no affirmative obligations on CMRS providers, and may have no immediate impact on CMRS, the Commission seeks comment on whether the potential for increased regulation (and any concomitant costs) might have an adverse economic impact on specific types of provides that is not in the public interest.

7. 47 CFR 223 governs obscene, harassing and indecent communications. In relevant part, the statute forbids a common carrier (if the carrier collects payments for an adult information provider using the carrier's services) to the extent technically feasible, to permit access to an obscene or indecent communication from the telephone of any subscriber who has not previously requested such access. This requirement, known as "reverse blocking," applies only if a carrier bills and collects fees for the adult information provider. As a technical matter, then, a CMRS provider subject to this obligation would have to program its switch (should it employ one) to accomplish this blocking.

8. The Commission tentatively reaffirms its general conclusion in the Second Report and Order that section 223 should continue to apply to CMRS. Commenters are asked to address the impact of section 223 on existing and projected CMRS offerings, and in particular, whether CMRS providers are likely to be involved in services that implicate Section 223.

9. 47 U.S.C. 225, Title IV of the Americans with Disabilities Act, requires all common carriers providing interstate or intrastate telephone voice transmission service to provide telecommunications services that enable persons with hearing and speech disabilities to communicate with hearing individuals. Common carriers may select one of several methods of offering TRS, but most have elected to designate a TRS provider or to provide TRS in concert with other carriers.

10. For purposes of further forbearance, the Commission asks whether there are any CMRS providers whose market is so specialized, or their customer base or size of operation so small that applying TRS obligations to them would not appreciably advance the universal service objectives of Section 225. Would forbearance in such cases meet the test in section 332? Parties are also asked to address whether the need for forbearance is reduced by providers' ability to designate a third party to provide TRS. The Commission also seeks comment on whether there are technical or operational limitations that would make compliance with our TRS technical standards difficult for a particular type of CMRS provider. The Commission asks whether interfacing with a third-party TRS provider would also pose technical difficulties, particularly for those private providers who will be reclassified as CMRS after new technical/operational rules become effective.

11. The Commission has adopted a shared-funding mechanism for interstate TRS cost recovery. Under the Commission's shared-funding plan, providers of interstate telecommunications services are required to contribute to a TRS fund and comply with reporting and filing obligations, including conforming their accounts to a specified format. The amount of the yearly contribution is a percentage (.00030) of the carrier's gross interstate revenues. Each carrier must contribute at least $100, even if its share under the actual computation would be less.

12. In light of the small percentage used to calculate the contribution and the low minimum required, the Commission asks whether the burden from the funding and concomitant filing obligations are likely to be significant for any type of CMRS. The Commission also reiterates that providers that do not themselves use TRS facilities are nevertheless required to contribute to the Fund. The Commission seeks comment on its tentative view that the public interest would not be furthered by exempting CMRS entirely because they do not use TRS facilities.

13. The Telephone Operator Consumer Services Improvement Act (TOCSIA), codified at 47 U.S.C. 226, protects consumers making interstate

operator service calls from phones available to the public or to transient users against unreasonably high rates and anti-competitive practices. It regulates two groups. The first consists of operator service providers (OSPs). These are providers of interstate telecommunications service from phones available to the public or to transient users that give automatic or live assistance for billing or completion to a caller. The second group are aggregators, generally persons that, in the ordinary course of their operations, make telephones available to the public or to transient users of the premises and who use a provider of operator services. Pursuant to TOCSIA and Commission rules, OSPs are subject to various identification, disclosure and billing requirements, including the requirement that they "brand" calls, *i.e.*, audibly identify themselves at the beginning of the call and before the consumer incurs any charges for the call. They may not engage in "call splashing" (transfer of a call to another carrier at a location different from the originating consumer where the second carrier cannot tell the originating location, with the result that the charge to the consumer is incorrect and not based on originating location). OSPs must file informational tariffs. Aggregators are required to identify and disclose certain information regarding the presubscribed OSP and to disclose that rate information is available and that the consumer has the right to use an OSP of his or her choice. The aggregator must also ensure (1) that its telephones presubscribed to an OSP allow consumers to use 800 or 900 numbers to obtain access to the OSP of choice, and (2) according to an established implementation schedule, that any of its presubscribed equipment allows the consumer to use equal access (10XXX) codes to access the customer's choice of OSP.

14. The Notice requests comment on whether forbearance from section 226 for particular classes of CMRS would be justified. Parties advocating forbearance for specific types of providers from the aggregator or OSP rules should explain how such action would meet the three-part test for forbearance under Section 332. In particular, parties should address how the first and second prongs of the test, that rates be just and reasonable and that consumers be adequately protected, would be met. In connection with the third prong, parties should address whether the statute imposes any costs that would be exceptionally difficult for certain types of CMRS provider to bear, and whether forbearance in such case would significantly diminish statutory protections for the public. In particular, the Commission seeks comment on whether such costs are likely to prove unduly burdensome for specific types of small CMRS providers.

15. The telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. 227, restricts the use of automatic telephone dialing systems, artificial or prerecorded voice messages, and telephone facsimile machines to send unsolicited advertisements. TCPA prohibits autodialed and prerecorded voice message calls to emergency lines, health care facilities or similar establishments, and with certain exceptions, number (such as cellular numbers) for which the called party is charged for the call.

16. Current TCPA obligations primarily apply to the originator of the unwanted message, *e.g.*, telemarketers. Unless a CMRS provider also engages in telemarketing or sends unsolicited facsimiles or other unwanted communications, the statute generally does not apply to it. In so far as small CMRS providers act as originators of unsolicited voice or facsimile transmissions, the Commission tentatively concludes that forbearance for such providers would not adequately protect consumers' privacy interests under the second prong of the Section 332 test. Moreover, the decision to undertake telemarketing services would be a voluntary business judgment on the part of a CMRS provider. Such telemarketing is not a necessary part of what is generally regarded as CMRS. The Commission also sees no public interest benefit under the third prong of the test in permitting CMRS providers, even small ones, to undertake such activities without complying with TCPA. The Notice seeks comment on these tentative views.

17. 47 U.S.C. 228 incorporates the Telephone Disclosure and Dispute Resolution Act (TDDRA), which governs pay-per-call services (also known as "audiotext" or "900" services), and imposes obligations in interexchange carriers, local exchange carriers and common carriers in general. Pursuant to the Act and our implementing regulations, local exchange carriers must offer subscribers, where technically feasible, an option to block access to 900 services. They must also tariff the terms and conditions for such blocking.

18. TDDRA also imposes additional obligations on all common carriers. (a) 800 Service. With certain exceptions, information service charges cannot be assessed against callers to 800 and other toll-free numbers. Common carriers must enforce this obligation by contract or tariff. (b) Collect Calls. Common carriers may not transmit collect information services that are either at a per-call or per-time-interval charge that is greater than, or in addition to, the charge for the transmission of the call, or have not been affirmatively accepted by the called party. (c) Payment. Common carriers are prohibited from disconnecting or interrupting service for failure to remit pay-per-call or similar service charges. Common carriers may not recover the cost of complying with TDDRA requirements from ratepayers.

19. The Commission seeks comment on the extent to which the local exchange carrier obligation to permit subscribers to block access where technically feasible should apply to CMRS, and whether there are particular types of CMRS providers for which such an obligation would be particularly difficult. Would local exchange carriers provide blocking for customers of CMRS providers that interconnect with the public switched network? Additional TDDRA obligations, including restrictions on disconnection or on transmission of collect pay-per-call charges, are imposed on carriers who bill and collect for 900 services, which is not a common carrier service. The Commission asks for comment on whether this type of voluntary business activity is not essential to provision of CMRS and hence, would not justify forbearance for any type of CMRS.

20. In analyzing application of any of the above TDDRA obligations, commenters are asked to address the three parts of the section 332 forbearance test. In connection with the third prong, the Commission asks whether Section 228 obligations would impose exceptional costs on certain types of CMRS and whether forbearance in such cases would significantly diminish statutory protections to the public. Parties should also address the effect forbearance would have on the TDDRA objectives of promoting the legitimate development of pay-per-call services and protecting consumers from fraudulent and deceptive practices.

II. CMRS Providers Meriting Further Forbearance

21. Turning to the question of which types of CMRS providers merit further forbearance, the Commission asks as a threshold matter whether any further forbearance is merited, noting that application of Title II is not expected to create any undue burden on any CMRS provider, or on CMRS competition generally. To the extent that regulatory obligations impose fixed costs, however they would place relatively greater

burdens on small providers who have less of a revenue base and other resources to support them. The Commission seeks comment on whether there are technical or operational limitations inherent in the services these small businesses provide that may make application of certain of the statutory provisions in question not in the public interest. The Commission also recognizes the public interest in maintaining opportunities for small businesses and the role that further forbearance might play in reducing the cost of doing business for them. The Notice thus seeks comment on whether the size of the provider may be a basis for defining CMRS eligibility for further forbearance. Finally, the Notice seeks comment on whether to consider an analysis of a CMRS provider's customer base as another possible factor in determining the appropriateness of further forbearance. Certain types of providers, particularly small providers, may serve predominantly business customers who require more advanced communications services and may have relatively greater bargaining power than CMRS customers that make personal use of the service. As a result the differing needs of business and individual customers could affect the analysis of whether forbearance would reduce benefits to customers. In addition, the Commission asks whether it should distinguish between medium to large business customers, and small businesses.

22. The Commission seeks comment on how to determine which type of provider should be considered "small" for purposes of further forbearance. The Commission asks interested parties to comment on whether any one or any combination of the options advanced below should be applied. Parties are invited to identify alternatives and to comment on how the Commission could draw on its experience in identifying small carriers in other contexts, *e.g.*, the exemption to the cable-telco cross-ownership rule. Finally, the Notice asks interested parties to provide their views on how the Commission might best implement and enforce any classification scheme. The Notice seeks comment on the advantages and disadvantages of the various options with respect to implementation by both the Commission and licensees.

A. Measurement Factors

23. One possible standard for size of business operation is the Small Business Administration (SBA) definition of small entity: an entity with a net worth not in excess of $6 million with average net income after Federal income taxes for the two preceding years not in excess of $2 million. The Commission relied on this standard to define small businesses entitled to preferences under the spectrum auction rules. The Commission believes that these criteria are appropriate for identifying entities entitled to preferred entry into new business ventures, as in the spectrum auction context. The Commission tentatively finds, however, that this standard is too generous for purposes of determining which CMRS providers are entitled to relief from remaining title II obligations, many of which, as discussed above, are designed to protect consumers. The Notice thus asks whether the Commission should employ a more modest income and net worth standard. Those commenters that nevertheless advocate use of this approach should discuss how it would affect the different services comprising CMRS, providing as much data as possible on the number of providers in a particular service that would be eligible for further forbearance under this definition, and how it would affect consumer protection. The Commission might also measure size and scope by a number of objective factors, such as average revenues per subscriber or percentage of interconnected traffic, average number of customers or for part 90 licensees, number of mobile units, or average subscriber rate. Interested parties should provide data to demonstrate whether providers within their suggested definition would find the costs of complying with the title II regulatory obligations burdensome and how their recommended definition comports with the statutory factors set forth in section 332(c) governing forbearance.

24. The Commission also seeks comment on how, if standards applicable to individual providers are established, it should treat affiliated corporations or operators of systems in more than one geographic area or providers who own multiple small systems. In addition, the Notice seeks comment on whether the Commission should attribute ownership of systems that are operated pursuant to an exclusive management contract, and thus not forbear when management contracts are in force. Further, it seeks comment on the impact, if any, of industry mergers on application of a size standard. Should a small system's affiliation with a corporation that would yield greater vertical integration disqualify that system from further forbearance? Would a small mobile system necessarily enjoy benefits of scale and scope from an affiliation with, for example, a long distance provider? If so, would such a provider be ineligible for further forbearance?

25. Number of channels would provide an administratively straightforward means of identifying small CMRS entities. The Commission thus asks for comment on whether number of channels is a workable and rational approach to measuring size of CMRS licensees. Commenters should specify specific types of CMRS providers licensed under parts 22 and 90 of the Commission's Rules, and suggest numbers of channels that would identify small providers in each mobile radio service. In responding to these questions, commenters should consider the likelihood that channels can be aggregated to form systems that would no longer be operated by a small provider, and how transition to a different level of forbearance would be effectuated. Commenters should also address how licensees conforming to this approach would be affected by the remaining title II obligations discussed above, and whether their users or competitors would be adversely affected by further forbearance.

26. The character of a provider's customer base,—*i.e.*, whether its customers subscribe to the service to meet their business communications requirements, or whether customers are primarily consumers with a personal need for mobile communications service—may be another possible factor to consider in determining whether to undertake further forbearance. To the extent that certain types of CMRS providers predominantly serve business customers.—such as traditional SMR and business radio service,—rather than individual customers, such business customers may have relatively greater bargaining power and information concerning their telecommunications options. In addition, the Commission asks whether it should also distinguish between large and medium-sized and small business customers, on the assumption that small businesses may be more like individual consumers in their bargaining power over telecommunications services. The Commission accordingly seeks comment on (1) whether to apply an analysis of a CMRS provider's customer base and (2) what factors might contribute to this analysis.

B. Case-by-Case Determination

27. The Commission might also extend further forbearance to particular CMRS providers on a case-by-case basis. Under this approach, providers desiring further forbearance from the remaining provisions of title II that continue to

apply could petition the Commission to forbear in individual circumstances. To qualify for further forbearance, petitioners would have to demonstrate that they meet the statutory test for forbearance, as implemented by the rules and policies established in this proceeding. The Notice seeks comment on this approach, which is consistent with the Commission's previous conclusion that the degree of forbearance adopted in the Second Report and Order should not be unduly burdensome for the vast majority of CMRS providers.

C. Implementation

28. If the Commission exercises further forbearance with respect to individual providers, how should the Commission enforce its standards efficiently, in terms of both identifying eligible entities and deterring evasive behavior? One option would be to amend application forms to require certification of compliance with specific standards as part of our revised application form for the mobile services. The Commission could use random staff audits of licensees to determine whether they in fact quality for further forbearance. A second alternative would be to impose affirmative reporting requirements on small providers. A third option would be to rely on complaints alleging violations of our further forbearance standards. Commenters should discuss these and any alternative enforcement methods. The Notice also seeks comment on whether existing licensees should have to file a separate certification to be eligible for further forbearance.

Procedural Matters

Ex Parte Consideration

29. This is a non-restricted proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See* generally 47 CFR 1.1202, 1.203 and 1.206(a).

Comment Information

30. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before June 27, 1994 and reply comments on or before July 12, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Statement

I. *Reason for Action.* In an effort to avoid the imposition of unwarranted costs or other burdens upon carriers, the *Second Report and Order* determined that the Commission would initiate a rule making (the instant proceeding) to determine whether further forbearance from application of Title II provisions to CMRS was necessary.

II. *Objectives of the Action.* We seek here to determine whether to forbear further from the imposition of Title II regulation on certain types of CMRS providers, particularly small providers, and how to define small CMRS providers.

III. *Legal Basis.* Communications Act, section 332, 47 U.S.C. 332.

IV. *Description, potential impact, and number of small entities affected.* We do not have the data at this time to estimate the number of CMRS providers affected by this rule making, but we are herein proposing to reduce regulatory burdens for these providers.

V. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Notice include the possibility of new reporting and record keeping requirements for small CMRS providers; however, one of the objectives in this proceeding is to minimize such burdens.

VI. *Federal rules which overlap, duplicate or conflict with these rules.* If adopted, the proposals here in would modify existing rules codified at 47 CFR part 20 and 47 CFR 1.728–1.734.

VII. *Any significant alternatives minimizing the impact on small entities and consistent with stated objectives.* This Notice proposes to reduce the administrative burdens and costs of compliance with Title II regulation on small CMRS providers. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IFRA These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164. 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act Statement

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. This proposed requirement would, however, reduce information collection requirements otherwise applicable to small CMRS providers. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, the Commission adopts this Notice pursuant to the authority contained in Section 332 of the Communications Act of 1934, as amended, 47 U.S.C. § 332.

List of Subjects in 47 CFR Part 20

Commercial mobile radio services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11750 Filed 5–13–94; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 59, No. 93
Monday, May 16, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notice for public comment and notice of decisions subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish the legal notice for public comment or decision. This allows the public to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeal process.

DATES: Publication of legal notices in the listed newspapers will begin with proposals for public comment or decisions subject to appeal that are made on or after April 30, 1994. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Pacific Northwest Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 and 217 in the following newspapers which are listed by Forest Service administrative units. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper, which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. The timeframe for appeal shall be based on the date of publication of a notice of decision in the principal newspaper.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery Managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions;
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Burns Times Herald, Burns, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt. Hood National Forest

Mt. Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional

notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspaper providing additional notice of Powers decision:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport, Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Unpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District, Ranger decision:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Baker City Herald, Baker City, Oregon
Baker District Ranger decisions:
Baker City Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Hells Canyon National Recreational Area Ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho—
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decision:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Baker City Herald, Baker City, Oregon
Unity District Ranger decisions:
Baker City Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
SalemStatement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of McKinzie decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Oakridge District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Ridgon decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decision:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Homes decisions:
Salem Statement-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Kalamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Kalamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Kalamath Falls, Oregon
Klamath District Ranger decisions:

Herald and News, Kalamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Statesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pinchot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mount St. Helens National Volcanic Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
Packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelliquencer, Seattle Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald, Enumclaw, Washington

Okanagon National Forest

Koanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions:
Methow Valley News, Twisp, Washington

Olympic National Forest

Olympic Forest supervisor decisions:
The Olympian, Olympia, Washington
Newspaper providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilcene District Ranger decisions:
Pennisula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions:
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberdeen, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington

Dated: May 9, 1994.

Nancy Graybeal,
Deputy Regional Forester.

[FR Doc. 94-11781 Filed 5-13-94; 8:45 am]

BILLING CODE 3410-11-M

Savant Sage Resource Area; Idaho Panhandle National Forests, Kootenai County, Idaho.

ACTION: Notice of availability of the final environmental impact statement for activities in the Savant Sage Resource Area.

DATES: The appeal period on this Final Environmental Impact Statement ends June 29, 1994.

APPEAL RIGHTS: Send appeals to Appeal Reviewing Officer, Regional Forester David F. Jolly, USDA Forest Service, Northern Region, Federal Building, 200 East Broadway, P.O. Box 7669, Missoula, MT 59807. Appeals must meet the requirements of 36 CFR 215.4.

FOR FURTHER INFORMATION CONTACT: Questions about the decision and environmental impact statement should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 664-2318.

SUMMARY: The notice is hereby given that the Forest Service has prepared a Final Environmental Impact Statement (EIS) documenting activities in the Savant Sage Resource Area. The area is located approximately 5 miles east of Athol, Idaho, and is approximately 7,500 acres in size.

SUPPLEMENTARY INFORMATION: The proposed action was based on a landscape-level approach to ecosystem management, and included timber harvest and reforestation in the Savant Sage Resource Area, through implementation of a single timber sale. The scope of the proposed action is limited to timber harvesting, reforestation, and related road construction and reconstruction activities. During development of the proposed action and alternatives to the proposed action, emphasis was placed on addressing the water resource needs and visual concerns of local residents.

Five alternatives were developed, including a No-Action Alternative. Alternative 4 is the alternative selected by the Responsible Official. Alternative 4 provides resource management practices that move toward the desired future conditions for the area, described in the Forest Plan, and includes several features favored by the public: no new roads, large streamside management zones where no cutting will occur, no helicopter yarding, and protection of unfragmented habitat. Alternative 4 demonstrates a balance between protecting visual, recreation, fragmentation, biodiversity, watershed, and wildlife resources, and initiating treatment of disease conditions. It will allow for the effective re-establishment of native tree species (white pine, ponderosa pine, and western larch), and will reduce the risk of severe fires on the acres that are treated. Alternative 4 will provide timber volume to the timber industry and funds to the local counties for schools and roads.

Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Dated: May 1, 1994.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 94–11321 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Eastside Forest Restoration Project, Tahoe National Forest, Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for proposed timber harvest, plantation thinning, fire hazard reduction, watershed restoration, and wildlife habitat improvement projects for areas in the Feather River Watershed and Truckee River Watershed. The project area is located within portions of T.19N., R.14, 15, 16, & 17E., T.20N., R.14, 15, 16, & 17E., and T.21N., R.15, 16, and 17E., MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by June 30, 1994.

ADDRESSES: Written comments concerning the project should be directed to Steve Bishop, District Ranger, Sierraville Ranger District, P.O. Box 95, Sierraville, CA 96126.

FOR FURTHER INFORMATION CONTACT: Steve Bishop, District Ranger, or Barbara Bonefeld, Public Services Director, Sierraville Ranger District, Sierraville, CA 96126, telephone (916) 994–3401.

SUPPLEMENTARY INFORMATION: The Eastside Analysis Area is about 85,000 acres in size. Most of the area is in the Feather River Watershed, with a small portion in the Truckee River Watershed. It is located two miles south of Sierraville, southwest to Webber Lake, east to the crest of the Bald Mountain Range, and north to approximately 4 miles south of Loyalton. The area is dominated by eastside pine stands with catastrophic insect-induced mortality resulting from several years of severe drought.

The extensive mortality and overstocked timber stands have resulted in poor forest health and an extreme fire hazard. There are opportunities to treat these stands in order to improve forest health and reduce the fire hazard, while concurrently accomplishing watershed restoration and wildlife habitat improvement goals.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for this area. One of the alternatives will be no treatment. Other alternatives will consider differing levels of implementation of California spotted owl standards and guidelines, salvage and sanitation treatments, group selection harvests, plantation thinning, thinnings from below, fuelbreak construction, plantation protection from fire, watershed restoration, road obliteration, wildlife habitat improvement, and new road construction and reconstruction. An ecological approach will be used to achieve multiple-use management of the Eastside area. It also means that the needs of people and environmental values will be blended in such a way that this area would represent a diverse, healthy, productive, and sustainable ecosystems.

Public participation will be important during the analysis, especially during the review of the Draft Environmental Impact Statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The following list of issues has been identified through initial scoping:

(1) To what extent will future options for the management of California spotted owls be maintained?

(2) To what extent can the potential for large catastrophic wildfires be reduced within the project area?

(3) To what extent can the forest health be improved within the project area? In addition, what level of timber commodities could result from forest health improvement projects?

(4) To what extent will the view from Highway 49 and Highway 89 be affected? What will the visual character be resulting from the proposed activities and to what extent will these activities affect views from private land within the study area?

(5) To what extent will water quality in the Feather River and the Truckee River watersheds be affected by the proposed activities?

(6) To what extent will air quality in the Sierra Valley and Truckee areas be affected by proposed activities?

(7) To what extent will long term soil productivity be affected by proposed activities?

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to potentially interested or affected mining claim owners, private land owners, and special use permittees on the Sierraville

Ranger District; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. Public meetings used as a method of public involvement during preparation and review of the draft environmental impact statement will be announced in newspapers of general circulation in the geographic area of such meetings well in advance of scheduled dates.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by the end of January, 1995. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by May, 1995. The responsible official is John H. Skinner, Forest Supervisor, Tahoe National Forest.

Dated: May 4, 1994.

John H. Skinner,

Forest Supervisor.

[FR Doc. 94–11820 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Hawaii Tropical Forest Recovery Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will conduct business meetings and meetings with the public on June 13 and 14, 1994. A Task Force business meeting will be held in Honolulu to review and discuss written public comments on the draft forest recovery action plan issued by the Task Force in May 1994. The Task Force will also conduct evening public comment meetings in Hilo, Hawaii and in Honolulu, Hawaii to give the public the opportunity to share their comments on the draft action plan with members of the Task Force. A Task Force business meeting will then be conducted in Kahului on the island of Maui to finalize the action plan. A period of time will be available at that meeting for the public to share their comments on the draft action plan with members of the Task Force. All sessions are open to the public. A detailed meeting agenda is available from the Task Force Coordinator.

The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii, and 11 others appointed by the Governor of Hawaii and the Secretaries of Agriculture and the Interior.

DATES: On June 12, 1994, the Task Force business meeting in Honolulu on the island of Oahu will be held from 10 a.m. to 1 p.m. From 6 p.m. to 8 p.m., concurrent public comment meetings will be held in Honolulu, and in Hilo on the island of Hawaii. On June 14, 1994, the business meeting in Wailuku on the island of Maui will be held from 11 a.m. to 4 p.m..

ADDRESSES: The June 13 Task Force business meeting in Honolulu and the evening public comment meeting will be in the Department of Land and Natural Resources Board Room, located on the ground floor, oceanside, in the Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii. The June 13 Hilo public comment meeting will be held in the Ola Ballroom at the Hilo Hawaiian Hotel, 71 Banyan Drive, Hilo, Hawaii. The concluding June 14 Task Force business meeting will be held in the Nahele Room, Sandalwood Golf Course, 2500 Honoapiilani Highway, Wailuku, on the island of Maui.

FOR FURTHER INFORMATION CONTACT: Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, 1151 Punchbowl Street, room 323, Honolulu, HI 96813, Telephone: (808) 522–8233, FAX: (808) 522–8236.

Dated: May 10, 1994.

Michael T. Rains,

Associate Deputy Chief, State and Private Forestry

[FR Doc. 94–11755 Filed 5–13–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
MO–131; Callaway Livestock Center, Inc. Fulton, Missouri.	May 11, 1959.
TX–142 Clifton Livestock Commission Company, Inc. Clifton, Texas.	March 19, 1957.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 10th day of May, 1994.

Tommy Morris,

Acting Director, Livestock Marketing Division.

[FR Doc. 94–11768 Filed 5–13–94; 8:45 am]

BILLING CODE 3210–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on June 14, 1994, at the Albuquerque Hilton, 1901 University Boulevard, NE., Albuquerque, New Mexico 87102. The purpose of the meeting is to plan future activities in northwestern New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emma Armendariz or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–11803 Filed 5–13–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Precanvass Operation.

Form Number(s): DG–102A thru DG–102D, DG–328.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,605 hours.

Number of Respondents: 92,100.

Avg Hours Per Response: 3 minutes.

Needs and Uses: In preparation for the Year 2000 Decennial Census, the Census Bureau will conduct a test census in 1995 of five test sites around the United States. We will conduct a precanvass operation at three of the test sites classified as urban areas. The precanvass operation will identify and collect a complete mailing address for every housing unit not already appearing in the Census Bureau's Master Address File (MAF). The MAF consists of 1990 census addresses updated with recently acquired United States Post Service (USPS) address records. During precanvass, enumerators will conduct interviews with homeowners and owners or managers of multiunit buildings. Unit addresses will be corrected, deleted, or added to a listing given to the enumerators. This operation will test the completeness of USPS address records and the quality of forms and procedures to be implemented for the Year 2000 Decennial Census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–11872 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Economic and Agriculture Censuses—1994 Farm and Ranch Irrigation Survey.

Form Number(s): 94–A62.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 14,400 hours.

Number of Respondents: 20,000.

Avg Hours Per Response: 43 minutes.

Needs and Uses: The 1994 Farm and Ranch Irrigation Survey will update data on irrigation inputs and investment in the agricultural production sector. Inadequate surface water, overuse of ground water, concerns about water quality, and increasing competition for available water are currently recognized as problems of national concern. Agricultural irrigation is the largest single use of available U.S. water supplies. Farm and ranch irrigation surveys have provided the only source of detailed, nationally consistent data on water–management practices and water uses in American agriculture. The 1994 Farm and Ranch Irrigation Survey will obtain data to describe the irrigation activities of U.S. farm operations. The survey will collect critically needed data on issues of national concern, such as water conservation practices and the chemical application practices of irrigators. Federal and state agencies, the irrigation industry, agricultural producers, and universities will use the results of the survey in preparing a wide variety of water–related programs, economic models, legislative initiatives, market analyses, and feasibility studies.

Affected Public: Farms.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 11, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–11871 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Action Affecting Export Privileges; Solomon Schwartz

Order Denying Permission to Apply for or Use Export Licenses

In the matter of: Solomon Schwartz, Number 2 Hillside Terrace, Suffern, New York 10901.

On January 29, 1992, Solomon Schwartz (hereinafter referred to as "Schwartz") was convicted in the U.S. District Court for the Eastern District of New York of, among other crimes, four counts of violating the Arms Export Control Act (22 U.S.C.A. § 2778 (1990. Supp. 1993)) (the "AECA"), for exporting night vision devices to Argentina and the Soviet Union, and for exporting firearms and ammunition to Iraq and Poland, without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–10, March 27, 1993)) (the "EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Schwartz's conviction for violating the AECA, the following consultations with the Director, Office of Export Enforcement, I have decided to deny Schwartz permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on January 29, 2002. I have also decided to revoke all export licenses issued pursuant to the EAA in which Schwartz had an interest at the time of his conviction.

Accordingly, it is *hereby Ordered*

I. All outstanding individual validated licenses in which Schwartz appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Schwartz's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until January 29, 2002, Solomon Schwartz, Number 2, Hillside Terrace, Suffern, New York 10901, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Schwartz by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until January 29, 2002.

VI. A copy of this Order shall be delivered to Solomon Schwartz. This Order shall be published in the **Federal Register**.

Date: May 4, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing

[FR Doc. 94–11823 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Grimm DePanicis; Order Denying Permission to Apply for or Use Export Licenses

In the matter of Grimm DePanicis, 529 East 7th Avenue, Mount Dora, Florida 32757

On June 24, 1991, Grimm DePanicis (hereinafter referred to as "DePanicis") was convicted in the U.S. District Court for the Eastern District of New York of, among other crimes, one count of violating the Arms Export Control Act (22 U.S.C.A. 2778 (1990, Supp. 1993)) (the "AECA"), for exporting firearms and ammunition to Iraq without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991), Supp. 1993, and Public Law No. 103–10, March 27, 1993)) (the "EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the AECA or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations

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[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

[1] Pursuant to appropriate delegations o
that are reflected in the Regulations, the D
Office of Export Licensing, in consultation
Director, Office of Export Enforcement, ex
the authority granted to the Secretary by se
11(h) of the EAA.

(currently codified at 15 CFR parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of DePanicis' conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny DePanicis permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on June 24, 2001. I have also decided to revoke all export licenses issued pursuant to the EAA in which DePanicis had an interest at the time of his conviction.

Accordingly, it is *hereby Ordered*

I. All outstanding individual validated licenses in which DePanicis appears or participated, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of DePanicis' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until June 24, 2001, Grimm DePanicis, 529 East 7th Avenue, Mount Dora, Florida 32757, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving in any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to DePanicis by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until June 24, 2001.

VI. A copy of this Order shall be delivered to Grimm DePanicis. This Order shall be published in the **Federal Register**.

Dated: May 4, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–11821 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Leon Albert Lisbona; Order Denying Permission to Apply for or Use Export Licenses

In the matter of: Leon Albert Lisbona, 110–46 68th Drive, Forest Hills, New York 11375 currently incarcerated at: U.S. Bureau of Prisons, Federal Correctional Institute, Allenwood, Post Office Box 1000, Montgomery, Pennsylvania 17752.

On January 29, 1992, Leon Albert Lisbona (hereinafter referred to as "Lisbona") was convicted in the U.S. District Court for the Eastern District of New York of, among other crimes, four counts of violating the Arms Export Control Act (22 U.S.C.A. 2778 (1990, Supp. 1993)) (the "AECA"), for exporting night vision devices to Argentina and the Soviet Union and for exporting firearms and ammunition to Iraq and Poland, without obtaining the required licenses or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991, Supp. 1993, and No. 103–10, March 27, 1993)) (the "EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the "Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the

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[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Lisbona's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Lisbona permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the data of his conviction. The 10-year period ends on January 29, 2002. I have also decided to revoke all export licenses issued pursuant to the EAA in which Lisbona had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. All outstanding individual validated licenses in which Lisbona appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Lisbona's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until January 29, 2002, Leon Albert Lisbona, 110–46 68th Drive, Forest Hills, New York 11375, currently incarcerated at U.S. Bureau of Prisons, Federal Correctional Institute—Allenwood, Post Office Box 1000, Montgomery, Pennsylvania 17752, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participating, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Lisbona by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until January 29, 2002.

VI. A copy of this Order shall be delivered to Leon Albert Lisbona. This Order shall be published in the **Federal Register**.

Dated: May 4, 1994.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 94–11822 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 17–94]

Foreign-Trade Zone 84—Houston, TX; Application for Subzone Status Microwave Networks, Inc. (Microwave Radios)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the microwave radio manufacturing plant of Microwave Networks, Inc. (MNI), located in Houston, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 29, 1994.

The MNI plant is located at 10795 Rockley Road, in Harris County, Houston, Texas. The facility (3.5 acres, 240 employees) is used to manufacture microwave radios for use in cellular and other wireless communication networks (duty rates: 2.4% to 6%). Foreign-origin materials used in the manufacturing process (some 70% of total) include: Electronic transformers, multiplexors, antennnas, transmitters/receivers, capacitors, resistors, printed circuits, diodes, transistors, integrated circuits, insulated wire, coaxial cable, flexible RF waveguide and waveguide parts (duty rates: duty-free to 10%). The application indicates that privileged foreign status (19 CFR 146.41) would be elected on all foreign merchandise admitted to the subzone.

Zone procedures would exempt MNI from Customs duty payments on the foreign materials used in export production (90% of output). On domestic sales, MNI would be able to defer Customs duty payments until the finished products leave the plant. Foreign materials and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that the savings from zone procedures would help improve MNI's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period August 1, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office #1 Allen Center, 500 Dallas, Suite 1160 Houston, TX 77002.

Office of the Executive Secretary Foreign-Trade Zones Board U.S. Department of Commerce, Room 3716,14th Street & Constitution Avenue NW., Washington, DC 20230.

Dated: May 9, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–11868 Filed 5–13–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–427–812]

Amendment of Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4929, respectively.

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of calcium aluminate (CA) flux from France to reflect the correction of a ministerial error made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

Scope of Investigation

The merchandise subject to this investigation is CA flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2523.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation remains dispositive.

Case History and Amendment of Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on March 25, 1994, the Department of Commerce (the Department) published its final determinations that CA cement, cement clinker and flux from France were being sold at less than fair value (59 FR 14136). Subsequent to the final determinations, we received ministerial error allegations by both petitioner and respondent in these investigations.

On April 8, 1994, Lafarge Fondu International and its U.S. subsidiary Lafarge Calcium Aluminates, Inc. (collectively Lafarge), the sole respondent in these investigations, alleged that the Department made a ministerial error in the final margin calculation for CA cement and clinker. Respondent alleged that the Department "inadvertently" used the wrong fixed costs for the period of investigation (POI) to calculate the constructed value (CV) of CA clinker and the foreign manufacturing cost of CA clinker used to allocate profit on U.S. sales of further manufactured CA clinker (*i.e.*, U.S. sales of CA cement). Specifically, respondent claimed that the Department "inadvertently" used the POI fixed costs that Lafarge reported in its initial response to Section D of the Department's questionnaire submitted on August 19, 1994, for its clinker CV and further manufacturing profit calculation. Respondent argued that the Department should have used the revised POI costs that were submitted in a subsequent supplemental questionnaire response dated September 28, 1993, and ultimately verified by the Department after some minor corrections were made based on the information contained in a relevant cost verification exhibit.

On April 20, 1994, we rejected respondent's allegation on the grounds that the alleged error did not constitute a "ministerial error" as defined in the Department's regulations. (See April 20, 1994, Memorandum to Barbara R. Stafford from The Team Re. Ministerial Error Allegations.) We stated in the **Federal Register** notice announcing our final determinations that we were "us[ing] only the *reported* fixed costs for the POI as [best information available] BIA." (emphasis added) (See 59 FR 14136, March 25, 1994.) That is, we explicitly chose the cost data that we used. Moreover, respondent alleged a "ministerial" error based on our *choice* of fixed costs used in the final determination. These are not "ministerial" actions. 19 CFR 353.28(d) defines "ministerial error" as "an error in addition, subtraction or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." Contrary to respondent's allegation, the alleged error was neither "clerical" nor "unintentional" in nature. As our choice of BIA is a methodological issue, this is not an issue of ministerial error properly raised under 19 CFR 353.28.

On April 12, 1994, we received an allegation from the petitioner, Lehigh Portland Cement Company (Lehigh), that the Department made a ministerial error in the final margin calculation for CA flux. Lehigh alleged that the Department erred by double counting the cost of raw materials used to calculate the foreign manufacturing cost of CA flux for purposes of allocating profit on U.S. sales of further manufactured flux. Specifically, Lehigh alleged that the Department's computer program for calculating the weighted-average dumping margin for CA flux contained an instruction which overstated the cost of foreign manufacture used to calculate profit associated with U.S. further manufacturing because it double counted the cost of raw materials. Petitioner requested that the Department correct this clerical error by deleting the extraneous field from the computer program.

We agree that this alleged error is a ministerial one. Upon re-examination of the final computer program relevant to CA flux, we noted that raw material costs had indeed been inadvertently double counted in the manner described above. Therefore, we have corrected the data in question, and have recalculated the margin in our final determination for CA flux to reflect this correction in accordance with 19 CFR 353.28(c). The corrected margin is 37.93 percent.

Based on the foregoing, the cash deposit or bonding rate for Lafarge is now 37.93 percent. The cash deposit or bonding rate for the "All Others" category is also now 37.93 percent.

Suspension of Liquidation

We are directing the Customs Service to suspend liquidation of all entries of CA flux from France that are entered, or withdrawn from warehouse, for consumption on or after March 25, 1994, at the revised cash deposit or bonding rates specified above.

Notification of International Trade Commission (ITC)

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), we have notified the ITC of our amended final determination.

This amended determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.28(c).

Dated: May 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-11870 Filed 5-13-94; 8:45 am]

BILLING CODE 3510-DS-P

Postponement of the Preliminary Determinations of Antidumping Duty Investigations: Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-6320, or (202) 482-3965, respectively.

POSTPONEMENT: On April 26, 1994, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Crucible Specialty Metals Division, Electralloy Corporation, Republic Engineered Steels, Slater Steels Corporation, Talley Metals Technology, Inc. and the United Steelworkers of America, AFL-CIO/CLC, petitioners in the above-referenced investigations, requested that the Department of Commerce (the Department) postpone its preliminary determinations until July 28, 1994. Petitioners made this request in order to permit further analysis of the respondents' questionnaire responses in the investigations of stainless steel bar from India, Italy and Spain. Furthermore, petitioners stated that postponements are necessary to permit them to determine whether the record contains evidence to support allegations that home market sales were made at prices below the cost of production in India and Italy. Finally, petitioners request that the investigations of stainless steel bar from Brazil and Japan be postponed in order to keep all five investigations on the same time table.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)) and 19 CFR 353.15(c), we find no compelling reason to deny the request and are, accordingly, postponing the date of all five preliminary determinations until July 28, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: May 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-11869 Filed 5-13-94; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 042194A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 748 (P77#50).

SUMMARY: Notice is hereby given that on May 3, 1994, Permit No. 748, issued to the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/712-2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980-4016).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 748, which authorizes photo-identification studies and aerial surveys for a number of cetacean species, was modified to extend the effective date through July 31, 1996.

Dated: May 3, 1994.

William W. Fox, Jr.

Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 94-11782 Filed 5-13-94; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form, and OMB Control Number: Application for DoD Military Serial Support or Community Relations Events; DD Form 2535; OMB Control Number 0704-0290

Type of Request: Revision

Number of Respondents: 2,000

Responses Per Respondent: 1

Annual Responses: 2,000

Average Burden Per Response: 30 minutes

Annual Burden Hours: 1,000

Needs and Users: The information collected hereby, provides the DoD approving authority with the data necessary to evaluate a rule on requests from the public for military aerial support at community relations events

Affected Public: Individuals or households; States or local governments; Federal agencies or employees; and Non-profit institutions

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 11, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-11874 Filed 5-13-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Space Mission Panel of the USAF Scientific Advisory Board will meet on 7-8 June 1994 at AF Space Command from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to space debris and the resulting hazards to spacecraft.

The meeting will be closed to the public in accordance with Section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-11815 Filed 5-13-94; 8:45 am]

BILLING CODE 3910-01-P

USAF Scientific Advisory Board Meeting

The Training Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 28-30 June 1994 at Charleston AFB, SC and Fort Rucker, AL from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-11816 Filed 5-13-94; 8:45 am]

BILLING CODE 3910-01-P

USAF Scientific Advisory Board Meeting

The Training Panel of the USAF Scientific Advisory Board's 1994 Summer Study On "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 14-16 June 1994 at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA and The Institute for Defense Analysis, Washington, DC from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-11817 Filed 5-13-94; 8:45 am]

BILLING CODE 3910-01-P

Department of the Army

Availability of Patents for Exclusive, Partially Exclusive or Nonexclusive Licenses

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or nonexclusive licenses under the following patent. Any licenses granted shall comply with 35 U.S. Code 209 and 37 CFR part 404.

Issued patent	Title	Issue date
5,303,883	Gliding decelerator including an assembly for improving the lift to drag ratio associated therewith.	04/19/94

ADDRESSES: U.S. Army Natick Research, Development and Engineering Center, Office of Chief Counsel, Attn: Patents, Natick, MA 01760-5035.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Stone, Chief Counsel or Ms. Jessica M. Niro, Paralegal Specialist, (508) 651-4322.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-11802 Filed 5-13-94; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Grant Renewal)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance renewal award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) Criteria (A), the DOE, Morgantown Energy Technology Center (METC) gives notice of its plans to award a grant renewal to Syracuse University, Department of Chemical Engineering & Materials Science Department, c/o Office of Sponsored Programs, 113 Bowne Hall, Syracuse, NY 13244-1200, in the amount of approximately $150,000 and covers a twelve (12) month budget period.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880. Telephone: (304) 291-4089. Procurement Request No. 21-94MC28072.501.

SUPPLEMENTARY INFORMATION: The pending award is based on a renewal application for continuing work of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The grant is to provide financial assistance to Syracuse University for conducting research focused on the utilization of low-quality natural gas by economically upgrading the gas to pipeline quality via membrane separation processes. The objective of this follow-on effort is to evaluate the potential usefulness of membrane separation processes for the removal of acid gases, water vapor, and nitrogen from low-quality natural gas. The effort will comprise gas permeability and separation measurements, process design studies, and economic evaluations using novel membrane configurations which were developed under the current grant. By providing financial support, DOE expects to stimulate utilization of U.S. natural gas resources, reduce oil imports, and help stabilize our energy supply.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94-11865 Filed 5-13-94; 8:45 am]

BILLING CODE 6450-01-P

Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies.

DATE AND TIME: June 7, 1994, 9 a.m.–5 p.m.; June 8, 1994, 9 a.m.–12 p.m.

PLACE: The Madison Hotel, 15th & M Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elaine Guthrie, Office of Technical Assistance (EE–542), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–1719.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for commercialization ventures, and on otherwise carrying out her responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101–218, 42 U.S.C. 12005), as amended by the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13201).

Tentative Agenda: Briefings and discussion of:

Orientation of Members;
Background of 1994 Solicitation Process;
Alternative Financial Mechanisms;
FY 1995 Congressional Appropriations;
Committee Work Plan;
Other Matters Requiring Committee Consideration;
Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provisions will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 10, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–11866 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG88–14–003]

Black Marlin Pipeline Co.; Filing

May 10, 1994.

Take notice that on April 22, 1994, Black Marlin Pipeline Company (Black Marlin) filed revised procedures under Order Nos. 497 *et seq.*[1] Black Marlin's filing is in response to Order No. 497–F which, among other things, required Black Marlin to show cause why it should not be required to remove the operating employee restrictions from its Standards E and F, 18 CFR 161.3 (e) and (f).[2] Black Marlin filed, under protest, revised standards of conduct procedures that remove the reference to "operating" from its Standards E and F. Black Marlin's filing also reflects that its electronic bulletin board is now internally managed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11772 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶30.920 (1988); Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30.868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶30.908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30.934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61.139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶61.307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶30.987 (December 23, 1993). Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶61.347 (March 24, 1994).

[2] Standard E provides that a pipeline may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

Standard F provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

[Docket No. RP93–187–007]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

May 10, 1994.

Take notice that on May 4, 1994, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheets:

Sub 3rd Sub Second Revised Sheet No. 5
Sub 3rd Sub First Revised Sheet No. 7

The proposed tariff sheets contain an effective date of March 1, 1994.

On April 20, 1994, the Commission issued an Order on Rehearing and Motion Filing in the instant proceeding. The Commission required Equitrans to file revised tariff sheets that specify the amount of the demand surcharge resulting from Equitrans' proposed stranded cost treatment of certain company-owned production costs and well plugging costs. Equitrans states that the revised rate sheets are filed in compliance with the Commission's order, and contain separate columns showing the base tariff rates and the stranded cost surcharge for each service to which the surcharge applies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-11774 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-306-000]

Keystone Energy Service Co. L.P.; Issuance of Order

May 10, 1994.

On December 20, 1993, as supplemented on February 23, 1994, Keystone Energy Service Company, L.P. (Keystone) filed a power sale agreement with Atlantic City Electric Company. Keystone also requested waiver of various Commission Regulations. In particular, Keystone requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Keystone.

On April 28, 1994, the Commission granted the request for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Keystone should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Keystone is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Keystone's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 31, 1994. Copies of the full text of the Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capital Street N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11770 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG91-1-004]

National Fuel Gas Supply Corp.; Filing

May 10, 1994.

Take notice that on April 20, 1994, National Fuel Gas Supply Corporation (National Fuel) filed revised procedures under Order Nos. 497 *et seq.*[1] National Fuel's revisions reflect changes to Standard F, 18 CFR 161.3(f) (1993), instituted in Order Nos. 497-D and 497-E.[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-11773 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-9-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 10, 1994.

Take notice that on May 5, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 53, to become effective May 1, 1994.

Northern states that Ninth Revised Sheet No. 53 is being filed to establish the April 1994, Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-11778 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

Southern Natural Gas Co.; Resubmitted Tariff Sheet

[Docket No. RP94-67-010]

May 10, 1994.

Take notice that on May 4, 1994, Southern Natural Gas Company (Southern) filed to resubmit language that was inadvertently omitted from Southern's tariff. In accordance with the Commission's orders dated March 16, 1994 and March 31, 1994 in the above referenced docket Southern submitted for filing on April 15, 1994, revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1. As a result of inadvertently omitting certain language, Southern resubmitted the following tariff sheet with the proposed effective date of April 1, 1994:

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988); Order No. 497-A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497-C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs ¶ 30,987 (December 23, 1993); Order No. 497-F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard F currently provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

First Substitute Second Revised Sheet No. 202

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood S. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-11775 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-230-000]

Tenaska Washington Partners II, L.P.; Issuance of Order

May 10, 1994

On December 10, 1993, Tenaska Washington Partners II, L.P. (Tenaska) filed a power sale agreement with Bonneville Power Administration. Tenaska also requested waiver of various Commission regulations. In particular, Tenaska requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Tenaska.

On April 28, 1994, the Commission granted the request for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Tenaska should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Tenaska is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Tenaska's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 31, 1994. Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE. Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11769 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-97-002]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 10, 1994

Take notice that on May 5, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective June 6, 1994:

2nd Revised Sheet No. 148

Transwestern states that the tariff sheet revises Transportation Service Agreement—Form N, Operator Balancing Agreement, Sheet No. 148 in order to revise the Index Price contained therein. These revisions will allow an operator to elect (for a period of at least one year) to utilize the published prices for gas from one basin or two basins (rather than the standard Operator Balancing Agreement's (OBA) three basins) if such basin or basins is/are the source of all of the gas covered by the operator's OBA. In addition, the existing price references are corrected and the OBA is revised to provide for the inclusion of additional generally accepted available industry publications in calculating the Index Price.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-11776 Filed 5-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-234-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 10, 1994

Take notice that on May 5, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective June 6, 1994

Effective June 6, 1994

6th Revised Sheet No. 5A.04
2nd Revised Sheet No. 49
3rd Revised Sheet No. 51
5th Revised Sheet No. 64
3rd Revised Sheet No. 72
1st Revised Sheet No. 72A
11th Revised Sheet No. 80
4th Revised Sheet No. 80A
4th Revised Sheet No. 80B
Original Sheet No. 81D
Original Sheet No. 81E
3rd Revised Sheet No. 92F
Original Sheet No. 95B
1st Revised Sheet No. 95
1st Revised Sheet No. 95A
2nd Revised Sheet No. 95B
Original Sheet No. 95B.1
2nd Revised Sheet No. 95C
1st Revised Sheet No. 95D
1st Revised Sheet No. 95E
1st Revised Sheet No. 95F
2nd Revised Sheet No. 95G
2nd Revised Sheet No. 95H
1st Revised Sheet No. 95H.1
1st Revised Sheet No. 95I
1st Revised Sheet No. 95J
1st Revised Sheet No. 95K
1st Revised Sheet No. 95L
1st Revised Sheet No. 95N
1st Revised Sheet No. 95O
1st Revised Sheet No. 95P
11th Revised Sheet Nos. 96-104
2nd Revised Sheet No. 115
2nd Revised Sheet No. 116
8th Revised Sheet No. 147
2nd Revised Sheet No. 149
1st Revised Sheet No. 152

Transwestern states that the tariff sheets contain revisions relating to the one-year review of Transwestern's Order No. 636 restructuring proceeding. Specifically, Transwestern is modify its tariff: (i) To improve and streamline the capacity release program, (ii) to a provisions pertaining to the EBB interactivity function, (iii) to allow Transwestern to maintain better control of its system, and (iv) to revise certain miscellaneous provisions, as set forth in its tariff filing.

In light of actual experience under Transwestern's capacity release program, Transwestern states that it proposes to: (i) Shorten the timeline for releases for one to three months, (ii) provide for partial day capacity releases, (iii) revise the minimum notice revisions so that such do not apply to pre-arranged deals at maximum rates, (iv) collapse the Notice of Available Capacity and Notice of Original Transaction into one notice called an Offer to Release Capacity, (v) delete Form C, (vi) revise the term section of Form D—Capacity Release Agreement, and (vii) revise certain miscellaneous capacity release provisions as explained in its tariff filing. Such modifications will simplify Transwestern's capacity release program and make it more user-friendly.

With respect to Transwestern's EBB, Transwestern states that it proposes to: (i) Add provisions relating to the EBB interactivity function (i.e. direct posting of Offers to Release Capacity and bids), (ii) delete provisions regarding the posting of buy-sell arrangements, and (iii) delete provisions relating to a shipper's posting of a request to purchase supplies.

With respect to operational provisions, Transwestern submits that the following tariff modifications will enable it to maintain better control of its system. In light of actual experience under Order No. 636, Transwestern proposes to: (i) Decrease the tolerance level in its Operator Balancing Agreement ("OBA"), (ii) provide additional incentives for the timely resolution of imbalances, (iii) accommodate parties who wish to be aggregators for OBA purposes, (iv) provide for an Alert Day in the event of operational distress, (v) provide for real-time nominations by shippers, and (vi) change the operator confirmation deadline form 5:00 p.m. to 2:00 p.m. Central time.

Finally, Transwestern is making certain miscellaneous tariff revisions relating to: (i) The now-obsolete FTS-2 cost-based sales-rate, (ii) the definitions of "day" and "month", (iii) errors in billing and prior period adjustments, (iv) nominations of receipts and deliveries, and (v) pre-OBA shipper imbalance provisions, as explained in more detail therein.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11777 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–41–000]

Williston Basin Interstate Pipeline Co., Compliance Filing

May 10, 1994.

Take notice that on May 5, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to become effective May 5, 1994:

Second Revised Sheet Nos. 779 through 795
Second Revised Sheet Nos. 825 through 828
Third Revised Sheet Nos. 829 through 830
Second Revised Sheet Nos. 831 through 832
Third Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–11771 Filed 5–13–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–17; Medical Applications Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, announces its interest in receiving applications to support one specific research area, Receptor-Targeted Cancer Imaging and Therapy with Genetically Modified Radiolabeled Probes, within the Medical Applications Program. The research applications should address the use of antibody-based molecular strategies to develop new radiolabeled molecules which will significantly advance the current state of tumor imaging and therapy for potential human use. Appropriate consideration should be given to receptor mediated localization and stability of the administered molecular form *in vivo*, its rate of clearance, selective delivery to the target in high yield with target-binding affinity, and specificity and selectivity for effective imaging and killing of cancer micrometastases. A well integrated multi-disciplinary team effort combining the areas of radiopharmaceutical chemistry, molecular immunology, and oncologic nuclear medicine to achieve the projected goals will be important.

DATES: Formal applications submitted in response to this Notice must be received 4:30 p.m., EDT, September 15, 1994, to be accepted for a merit review in November 1994, and to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–17 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, Attn: Program Notice 94–17. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research. Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown. Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Prem C. Srivastava, Office of Health and Environmental Research, ER–73. U.S. Department of Energy, GTN, Washington, D C. 20585, telephone: (301) 903–4071.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10 (d)(2), which consists of two or three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research objectives of the Medical Applications Program. Preapplications referencing Program Notice 94–17 should be received by June 15, 1994, and sent to Dr. Prem C. Srivastava, Office of Health and Environmental Research, ER–73, Department of Energy, GTN, Washington, DC 20585, FAX: (301) 903–0567. Telephone and FAX numbers are required to be part of the preapplication. A response to the preapplications discussing the program relevance of a formal application will be communicated by July 15, 1994.

It is anticipated that approximately $3 million will be available for grant awards during FY 1995 contingent upon availability of appropriated funds. Previous awards have ranged from $100,000 per year up to $400,000 per year with terms lasting up to 3 years. Similar award sizes are anticipated for new grants. Funding of multiple year new grant awards is expected, and is also contingent upon availability of funds.

Information about development and submission of applications, eligibility limitations, evaluation and selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the Office of Health and Environmental Research, ER–73, U.S. Department of Energy, (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903–5349.

The Catalog of Federal Domestic Assistance Number of this program is 81.049.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research

[FR Doc. 94–11867 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 94–6—Certification Notice—134]

Michigan Power Limited Partnership Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On May 6, 1994, Michigan Power Limited Partnership submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of May 6, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

OWNER: Michigan Power Limited Partnership Houston, Texas.

OPERATOR: Destec Operating Company Houston, Texas.

LOCATION: Township of Pere Marquette, in Mason County adjacent to Ludington, Michigan.

PLANT CONFIGURATION: Combined cycle cogeneration.

CAPACITY: 123 megawatts.

FUEL: Natural gas.

PURCHASING UTILITIES: Consumers Power.

IN-SERVICE DATES: Late 1995.

Issued in Washington, DC, May 11, 1994

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11864 Filed 5–13–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4882–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 15, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notification of Stored Pesticides with Canceled or Suspended Registration Under section 6(g) of the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA). (EPA # 1519.03; OMB # 2070–0109). This is a request for an extension of the expiration date of a currently approved collection with no changes.

Abstract: Section 6(g) of the FIFRA requires anyone who holds a pesticide product with a canceled or suspended registration, to provide the EPA and State Lead Agencies with the following information:

(1) The identity and address of the company submitting FIFRA 6(g) information;

(2) Name and telephone number of a contact person in the company;

(3) Any active ingredient of the pesticide subject to the FIFRA section 6(g) requirement;

(4) The relationship of the company to the pesticide subject to section 6(g) (i.e exporter, producer, pesticide product registrant, applicant for registration, applicant for or holder of an Experimental Use Permit (EUP),

commercial applicator, distributor, retailer, etc.);

(5) The street address of each location owned/leased or operated in the United States by the submitter where the canceled or suspended pesticide is held;

(6) For each location listed, the quantity of canceled or suspended pesticide listed by the number of units of each size container and by EPA registration number; and

(7) For each location listed, the total quantity of canceled or suspended pesticide product.

The EPA and the State Lead Agencies, use the information to monitor compliance with the FIFRA, and to ensure safe storage and distribution of pesticide products with canceled or suspended registration.

Burden Statement: The public reporting burden for this collection of information is estimated to average 60 minutes per response annually. This estimate includes the time to review instructions, search for existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Holders of canceled or suspended registration of pesticide products.

Estimated Number of Respondents: 156,000.

Estimated Number of Responses per Respondents: 1.

Estimated Total Burden on Respondents: 156,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 6, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–11830 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4885–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 15, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticide and Toxic Substances

Title: Section 8(a) Chemical-Specific Rules (*EPA ICR No.:* 1198.04; *OMB No.:* 2070–0067). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Section 8(a) rules of the Toxic Substances Control Act (TSCA), require persons to report to the EPA if they manufacture, import, or process or propose to manufacture, import, or process chemical substances or mixtures identified in the TSCA section 8(a) rules. Information that EPA may require includes, but is not limited to, chemical names, production volumes, use categories, byproducts of chemical production, data on deaths and environmental effects, exposure data and disposal information.

The Agency uses these data to monitor the production, importation, and uses of the identified chemical substance or mixture and to regulate as appropriate.

Burden Statement: The burden for this collection of information is estimated to average about 65.8 hours per response for reporting, and 3 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Manufacturers, importers, or processors of chemical substances.

Estimated No. of Respondents: 4.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 275 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 6, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–11831 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4884–9]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Techlaw, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, TechLaw, Inc. (hereinafter "TechLaw") of Lakewood, Colorado, cost recovery support documentation for the Superfund sites: (See Attachment). This disclosure includes Confidential Business Information ("CBI") which has been submitted to EPA Region 8, Hazardous Waste Management Division, Superfund Remedial Branch. TechLaw's office is located at 12600 West Colfax Avenue, suite C310, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Sam Marquez, Superfund Management Branch, Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202. (303) 294–7151.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity To Comment

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into Enforcement Support Services (ESS) contract No. 68–W4–0025 with TechLaw for management of these records. EPA Region 8 has determined that disclosure of CBI to TechLaw employees is necessary in order that they may carry out the work requested under this contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region 8 will require that each TechLaw employee working on cost recovery work sign a written agreement that he or she:

(1) Will use the information only for the purpose of carrying out the work required by the contract.

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and

(3) Shall return to EPA all copies of the information and any abstracts or extracts therefrom, (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by TechLaw for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region 8 Project Officer for TechLaw. TechLaw employees will be provided technical direction from EPA contract management staff.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to Environmental Protection Agency, Region 8, Carol Macy, 8HWM–SR, 999 18th St. Denver, Colorado 80202.

Dated: May 9, 1994.

Jack McGraw,

Acting Regional Administrator

COLORADO

AIR FORCE PLANT PJKS
ASARCO INC (GLOBE PLANT)
BRODERICK WOOD PRODUCTS
CALIFORNIA GULCH
CENTRAL CITY-CLEAR CREEK
CHEMICAL SALES CO
DENVER RADIUM SITE
EAGLE MINE
LINCOLN PARK
LOWRY LANDFILL
MARSHALL LANDFILL
ROCKY FLATS PLANT (USDOE)
ROCKY MOUNTAIN ARSENAL
SAND CREEK INDUSTRIAL
SMELTERTOWN/KOPPERS
SMUGGLER MOUNTAIN
SUMMITVILLE MINE
URAVAN URANIUM PROJECT (UNION CARBIDE)

MONTANA

ANACONDA CO. SMELTER
BN LIVINGSTON SHOP COMPLEX
CLARK FORK RIVER
EAST HELENA SITE
IDAHO POLE CO
KALISPELL POLE & TIMBER CO INC
LIBBY GROUNDWATER CONTAMINATION
MILLTOWN RESERVOIR SEDIMENTS
MONTANA POLE AND TREATING
MOUAT INDUSTRIES
SILVER BOW CREEK/BUTTE AREA

NORTH DAKOTA

ARSENIC TRIOXIDE SITE
MINOT LANDFILL

SOUTH DAKOTA

ANNIE CREEK MINE TAILINGS
ELLSWORTH AIR FORCE BASE
WHITEWOOD CREEK
WILLIAMS PIPE LINE CO. DISPOSAL PIT

UTAH

HILL AIR FORCE BASE
KENNECOTT—BINGHAM/SOUTH ZONE
KENNECOTT TAILINGS/NORTH ZONE
MIDVALE SLAG
MONTICELLO MILL TAILINGS (DOE)
MONTICELLO RADIOACTIVELY CONTAMIN PROPS
MURRAY SMELTER
OGDEN DEFENSE DEPOT
PETROCHEM RECYCLING CORP/ EKOTEK
PORTLAND CEMENT (KILN DUST #2 & #3)
RICHARDSON FLAT TAILINGS
ROSE PARK SLUDGE PIT
SANDY SMELTER SITE
SHARON STEEL (MIDVALE TAILINGS)
TOOELE ARMY DEPOT (NORTH AREA)
UTAH POWER & LIGHT/AMERICAN BARREL
WASATCH CHEMICAL CO. (LOT 6)

WYOMING

BAXTER/UNION PACIFIC TIE TREATING
F.E. WARREN AIR FORCE BASE
MYSTERY BRIDGE AT HWY 20

[FR Doc. 94–11832 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4884–8]

Waste Analysis Plans (WAP) Guidance Manual: the Resource Conservation and Recovery Act (RCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Waste Analysis Plan Guidance Manual.

SUMMARY: The Environmental Protection Agency announces a revision of the October 1984 Waste Analysis Plan Guidance Manual. This guidance document was developed by the Office of Waste Programs Enforcement for facilities that generate, treat, store, and dispose of hazardous wastes. RCRA was the first federal law to address hazardous waste, and was designed to ensure that the generation, transportation, treatment, storage and disposal of hazardous wastes are conducted in a manner that "protects human health and the environment". The cornerstone of the program, is the ability of facility personnel to properly identify their waste. The guidance manual is designed to assist the regulated community, permit writers and enforcement officials by establishing criteria to properly evaluate and prepare RCRA waste analysis plans.

ADDRESSES: Copies of the Waste Analysis Plan Guidance Manual F94–TTAA–FFFF may be obtained by visiting the RCRA Docket. The RCRA docket is located in room M2616 at EPA Headquarters, 401 M Street SW., Washington, DC 20460. It is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost 0.15 per page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487–4600. Waste Analysis Plan Guidance Manual (NTIS #PB94–963–603).

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 920–9810 locally. For information on specific aspects of the guidance manual, contact Jim Thompson at (202) 260–2265, RCRA Enforcement Division (5503), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: April 5, 1994

Samuel Coleman,

Acting Deputy Director, Office of Waste Programs Enforcement

[FR Doc. 94–11829 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50783; FRL–4778–6]

Receipt of a Notification To Conduct Small-Scale Field Testing; Genetically-Altered Microbial Pesticide

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has received from AgriVirion Inc., of New York, a notification of intent to conduct a small-

scale field test involving the genetically-altered (polyhedrin-minus) *Autographa californica* nuclear polyhedrosis virus (ACNPV). AgriVirion intends to test the pesticide on cabbage in New York. The target pest for these field trials is the cabbage looper.

DATES: Written comments must be received on or before June 15, 1994.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50783 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from AgriVirion Inc. of New York. The purpose of the proposed testing is to evaluate the efficacy of the genetically-altered AcNPV under field conditions on cabbage in New York. The target pest for these field trials is the cabbage looper. A 2 acre test site will be treated twice this growing season: all treated crops will be destroyed

Following the review of AgriVirion's application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

List of Subjects

Environmental protection.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–11833 Filed 5–13–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on May 15, 1994, and will end on August 1, 1994. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from July 1, 1994 through August 1, 1994. The open season and the election period are being extended through August 1, 1994 because July 31, 1994 falls on a Sunday.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

Dated: May 11, 1994

Roger W. Mehle,

Executive Director.

[FR Doc. 94–11862 Filed 5–13–94; 8.45 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Inter-City Telecommunications Services

ACTION: Notice for Request for Post–FTS2000 Ideas/Comments—Inter-city Telecommunications Services—Public Review of the "Post–FTS2000 Acquisition Alternatives White Paper" released on April 29, 1994, and other Post–FTS2000 documents.

SUMMARY: The Federal government currently satisfies its inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in 1998. As a part of the continuing, open discussion related to the post–FTS2000 provision of telecommunications services to Federal government users, the government hereby advises interested parties of the following opportunities to participate in this discussion. The government released a report entitled, "Post–FTS2000 Acquisition Alternatives White Paper" on April 29, 1994. The report addresses the solicited submissions from industry and other parties regarding the various approaches available for provisioning telecommunications services for the post–FTS2000 environment. This report was prepared, as a framework for further study, by the Acquisition Working Group, a subcommittee of the Interagency Management Council. At present, the government plans that the report will be available for public viewing in the General Services Administration Bid Room and electronically via the Internet (see below for access information). The government also plans to make available at these sites other post–FTS2000 documents, including the report entitled, "Networking for a Reinvented Government: Federal Telecommunications Requirements and Industry Technology Assessment." The government will accept clarification questions on the alternatives enumerated in the above report through May 31, 1994. Clarification questions may be submitted to General Services Administration, Attention: Concept Development Record, 7980 Boeing Court, Vienna, Va 22182–3988. It is preferred that clarification questions be submitted electronically to the Internet address, cdr@post.fts2k.gsa.gov. The government will provide responses to the clarification questions on or about July 1, 1994. At present, the government plans that the responses will be available for public viewing in the General Services Administration Bid Room and electronically via the Internet (see below). The government also plans to make available to interested parties an analysis report of the various acquisition alternatives on or about August 12, 1994. The government will accept written comments on the alternatives report and the analysis report through September 23, 1994. Written comments may be submitted to General Services Administration, Attention: Concept Development Record, 7980 Boeing Court, Vienna, VA 22182–3988. It is preferred that comments be submitted electronically to

an Internet address of cdr@post.fts2k.gsa.gov. The government also intends to invite verbal summaries, based on the written comments received prior to August 30, 1994, to be presented before a Government Panel consisting of members of the Interagency Management Council on September 13, 14, and 15, 1994.

The times and locations of these sessions will be announced on or about July 29, 1994. As a related matter, the government is also interested in receiving written comments on the impact of the National Information Infrastructure's telecommunications deregulation initiatives on industry for the post–FTS2000 environment. Written comments may be submitted to General Services Administration, Attention: Concept Development Record, 7980 Boeing Court, Vienna, VA 22182–3988. It is preferred that comments be submitted electronically to the Internet address, cdr@post.fts2k.gsa.gov, through June 10, 1994. At present, the government plans that the comments will be available for public viewing in the General Services Administration Bid Room and electronically via the Internet (see below) on or about July 15, 1994. Information on the above programs may be accessed electronically via the Internet in one of two methods. Files may be downloaded electronically via anonymous FTP from post.fts2k.gsa.gov under the/pub directory. Files may also be perused (and downloaded) and full-text searches may be made via a World Wide Web client (such as Mosaic) by accessing our home page, whose URL is http://post.fts2k.gsa.gov/. Electronic responses sent to cdr@post.fts2k.gsa.gov may be in any of the following four formats: ordinary ASCII; PostScript; uuencoded representations of Microsoft Word (versions 6.0 and earlier) documents; and uuencoded representation of Word Perfect (version 6.0 and earlier) documents. If you have any questions regarding this notice, please contact Richard Kosko at Area Code (703) 827–5107.

DATES: May 31, 1994: The cut-off date for clarification questions on the alternatives enumerated in the "Post–FTS2000 Acquisition Alternatives White Paper"; June 10, 1994: Cut off date for receipt of written comments on the impact of the National Information Infrastructure's telecommunications deregulation initiatives on industry for the post–FTS2000 environment; July 1, 1994: The Government will provide responses to the 5/31/94 clarification questions; July 15, 1994: Target date the government plans to display for public viewing (GSA's Bid Room and via Internet) the comments received on the impact of the National Information Infrastructure's telecommunications deregulation initiatives on industry for the post–FTS2000 environment; July 29, 1994: Will announce the times and locations where the Government Panel sessions scheduled for September 13, 14, and 15, 1994, will be held; August 12, 1994: On/or about 8/12/94 the government plans to make available an analysis report of the various acquisition alternatives; August 30, 1994: The government intends to invite verbal summaries, based on the written comments received prior to August 30, 1994; September 13–15, 1994: The written comments received prior to 8/30/94 will be presented before a Government Panel consisting of members of the Interagency Management Council, and September 23, 1994: The cut-off date for written comments on the alternatives report and the analysis report.

ADDRESSES: Please mail all responses (written comments) to the General Services Administration, Attn: Concept Development Record, 7980 Boeing Court, Vienna, VA 22182–3988. Preferred method to be submitted electronically to Internet address of: cdr@post.fts2k.gsa.gov. The GSA's Bid room is located at 7th & D Streets SW., room 1701, Washington, DC 20407.

FOR FURTHER INFORMATION CONTACT: Richard J. Kosko at (703) 827–5107.

Dated: May 4, 1994.

Phillip R. Patton,

Branch Chief, Kena.

[FR Doc. 94–11804 Filed 5–13–94; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Examination of Methods for Assessing Comprehensive Community Change Initiatives

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Request for applications to conduct research to examine methods for assessing comprehensive community change initiatives.

SUMMARY: The Department seeks applications from not-for-profit or for-profit organizations or entities to conduct research to examine methods for assessing comprehensive community change initiatives and to develop possible solutions to assessment problems for these initiatives. The Primary goal of the proposed research is to further the understanding of the problems confronted in assessing the impact of comprehensive community change initiatives. It is anticipated that one "Cooperative Agreement" of $50,000 for 12–17 months will be awarded.

DATES: *Closing date:* The closing date for submitting an application is July 15, 1994.

ADDRESSES: Send applications to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Grants Officer at above address, phone (202) 401–3951.

SUPPLEMENTARY INFORMATION:

PURPOSE OF THE SOLICITATION

Pursuant to section 1110 of the Social Security Act, the Assistant Secretary for Planning and Evaluation (ASPE) is seeking applications from not-for-profit or for-profit organizations or entities to conduct research to examine methods for assessing comprehensive community change initiatives and to develop possible solutions to assessment problems for these initiatives. It is anticipated that a "Cooperative Agreement" will be awarded as a result of this announcement.

The primary goal of the proposed research is to further the understanding of the problems confronted in assessing the impact of comprehensive community change initiatives. These initiatives have several features that do not correspond to traditional assessment methods: (1) They rely on a complex interaction of components, (2) they are intended to produce impacts in several different spheres, (3) they are purposefully flexible and variable rather than standardized, (4) they saturate a community, affecting all members of the community, and (5) they involve contexts and systems that are in a continuous process of change. Given these difficulties, an examination is needed of how assessment of these initiatives can be improved.

A. Type of Application Requested

1. Background

ASPE has a long history of interest in comprehensive human services efforts and the methods of assessing the impact of such efforts. This includes an interest in service integration projects, as well as an interest in community-based human services reform. The office has funded assessments of individual projects and clearinghouses for information on comprehensive strategies.

Several private foundations have recently created initiatives that attempt to change human service and other systems in communities. These initiatives attempt to work across systems, involving the social services, the health care system, the schools, and economic and physical redevelopment. They are generally focused on one or more urban communities. Examples of foundation initiatives include several foundation-sponsored efforts such as the Annie E. Casey foundation's New Futures Initiative, the Pew Charitable Trust's Children's Initiative, and the Ford Foundation's Neighborhood and Family Initiative. Recent federal initiatives, such as the Empowerment Zone and Enterprise Community Initiative, include similar features.

2. Research Approach

As a background for further work, the organization should investigate and document how comprehensive community change initiatives have been assessed in the past, how they are now being assessed, and the problems and successes encountered in assessing these initiatives. Many problems in assessing comprehensive initiatives are not new and are not confined to any one set of social reform efforts. Such an investigation would identify similarities and differences in the types of assessments underway, the processes being described, and the outcomes being measured, cataloging topics requiring attention for the next generation of initiatives and for assessment of the current generation and creating a research agenda for the field.

Possible topics and research activities of interest may include the following:

- Articulating the assumptions and hypotheses underlying existing comprehensive community change initiatives. This work would clarify the causal connections that assessments of initiatives should explore. Such work might include collaborating with a specific initiative to map the assumptions and expected causal relationships. The creation of an outline of assumptions, hypotheses, and causal connections should involve many different perspectives, including the funders, developers, technical assistance providers, and community participants of initiatives.
- Generating, based on the improved articulation of assumptions and hypotheses, a set of interim progress indicators with clear links to the ultimate goals of the initiative.
- Identifying gaps in measurement that hold back assessment and working to improve measurement tools. This work could involve participating with an initiative to test methods. Results would then be summarized for the field.
- Developing suggestions for improved assessment practice. For example, developing methods appropriate for initiatives that saturate a community, making it impossible to randomly select individuals in treatment and control groups.
- Other topics as defined by the work group

3. Awardee and Government Responsibilities

A. Awardee Responsibilities

1. Establish a work group of experts and knowledgeable practitioners to assist the project. The work group should include people with the following backgrounds:
   - direct experience in developing and conceptualizing comprehensive community change initiatives
   - direct experience in assessing comprehensive community change initiatives
   - direct experience in managing or overseeing comprehensive community change initiatives
   - direct experience in assessment and measurement of social programs.
2. Plan and conduct a series of meetings in which the work group develops key issues to be addressed.
3. Submit a final work plan that updates the work plan submitted in the original application. This work plan should include a plan for dissemination of research findings.
4. Conduct one or more small studies to explore the key issues identified by the work group.
5. Prepare a final report describing the procedures, findings, and other relevant information in a form that will maximize the dissemination and use of the findings, and a set of papers addressing the research topics. A draft of this report will be delivered to the Federal project officer within 15 months of the date the award is made. The Department will return comments within one month. A final report will be delivered to the Federal project officer within 17 months of the date the award.
6. Participate in a wrap-up meeting involving Federal officials and other key audiences.

B. Federal Government Responsibilities

1. Assist in the selection of members of the work group.
2. Participate in all work group meetings.
3. Provide input into the final work plan, including the dissemination plan.
4. Assist in developing the wrap-up meeting.

3. Application

This announcement seeks applications from organizations or entities that will enter into a cooperative agreement with ASPE to create a process to examine issues in the assessment of community change initiatives. One cooperative agreement will be awarded

A. Applicant Qualifications

Applicants must demonstrate experience with the issues confronted in comprehensive community change initiatives, as well as experience with issues related to the measurement and assessment issues of such initiatives.

Applicants must demonstrate an ability to manage a complex multi-activity research project involving an oversight work group.

Applicants must demonstrate connections to key audiences for dissemination. Audiences include federal, state, and local policy makers foundation officials, local and community leaders, and the research community.

Applicants must demonstrate access to matching funds at a 2 to 1 ratio of private or local funding to federal funding.

B. Content and Organization of the Application

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than one page). Failure to include the abstract may result in delays in processing the application. The application must contain the required Federal forms, title page, table of contents, and the sections listed below All pages of the narrative should be numbered.

The application must include the following elements:

Goals and Objectives

Present the goals of the effort and related objectives.

Workplan

Describe the planned activities (e.g., meetings of the work group or research activities). Outline the rationale for undertaking those activities, and note the timing of the activities over the period of the cooperative agreement.

Corporate Capacity

Describe the organizational character of the applicant and how the applicant meets the qualifications outlined in Section 3A above.

Staffing

List primary staff and the activities they will perform on this project. Curriculum Vitae or job descriptions for key staff must be appended.

Work Group

List proposed members of the work group. Descriptions of their affiliations, their relevant experiences, and evidence of arrangements that have been made to assure their participation in the work group.

Budget

Submit a request for federal funds using Standard Form 424A. In addition, include a detailed breakdown of all Federal line items along with a brief narrative description or justification for these line items. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources, with those other sources identified. Documentation must be included which substantiates the existence of a commitment to provide the required non-Federal share. (See Section IV, paragraph C below for specific requirements regarding this non-Federal local contribution.) All costs fees for services of the work group and travel by the work group should be included in the budget.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 62)

2. "Administration of Grants" (45 CFR part 74)

C. Effective Date and Duration

The cooperative agreement awarded pursuant to this announcement is expected to be made on or about September 9, 1994.

In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing date for applications is specified in Section G.

The cooperative agreement will be awarded for a 12–17 month period.

D. Statement of Funds Available and Matching Funds Requirement

HHS intends to award one cooperative agreement resulting from this announcement. $50,000 has been set aside for one cooperative agreement to be awarded in FY 1994. Funds will be obligated fully at the time of award.

This cooperative agreement will require a 2 to 1 match of private or local funding to federal funding. For example, to receive $50,000 of federal funds, an organization must have $100,000 of private or local funding.

Nothing in this application should be construed as committing the Assistant Secretary to make an award.

E. Application Processing

1. Applications will be initially screened for relevance to the interests and needs defined in Section A. If judged relevant, the application will be reviewed by a government review panel. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged according to the criteria set forth in item 5 below.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as possible. Applicants are encouraged to respond within 15 double-spaced types pages, exclusive of forms, abstract, curriculum vitae, and proposed budget. They should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation*. Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

A. *Goals, Objectives, and Need for Assistance*. (10 points).

i. *Rationale*.

Is there a clear rationale for the project, including a documented need?

ii. *Goals and Objectives*.

Are the goals and objectives presented in observable, measurable terms, and how well do they reflect the specific program requirements delineated in the announcement?

B. Project Design and Approach. (40 points).

i. *Strategic Plan*.

Do the planned activities match clearly with the needs of the field? Is there a clear mechanism for linking together the activities in the project? Is there a clear dissemination strategy?

C. *Organization and Staffing*. (40 points).

I. *Staff*.

Are the number and type of staff positions sufficient to achieve project objectives? Do the staff have experience with comprehensive community change initiatives and with assessment issues? Does the work group represent the necessary perspectives? Does the work contain people with extensive expertise in this area?

ii. *Organizational Capacity*.

Does the organization demonstrate experience with the issues confronted in comprehensive community change initiatives? experience with issues related to the measurement and assessment issues?

Does the organization demonstrate an ability to manage a complex multi-activity research project?

Does the organization demonstrate connections to key audiences for dissemination?

D. *Budget*. (10 points).

Is the proposed budget reasonable and sufficient to ensure implementation?

Are the required matching funds being provided and is this commitment reliable?

Is evidence provided that the matching costs represent an additional effort and not a reallocation of existing resources?

F. Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is 60 days after publication in the **Federal Register.** Applications must be postmarked or hand delivered to the application receipt point no later than 5:30 p.m. on the day 60 days after publication in the **Federal Register.** Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays during the working hours of 9:00 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue SW., in Washington, DC. When hand-delivering an application, call (202) 401–3951 from the lobby for pick up. A staff person will be available to receive applications. Faxed applications will not be accepted.

An application will be considered as meeting the deadline if it is either: (1) received at, or hand-delivered to, the mailing address on or before 60 days after publication in the **Federal Register,** or (2) postmarked before midnight of the deadline date 60 days after publication in the **Federal Register** and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to natural disasters, such as floods, hurricanes or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

G. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

H. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue SW., room 405F, Hubert H. Humphrey Building, Washington, DC 20101, Phone (202) 401-3951. Questions concerning the preceding information should be submitted to the Grants officer at the same address. Neither questions nor requests for applications should be submitted after 60 days after publication in the Federal Register. Applications will not be faxed.

I. Federal Domestic Assistance Catalog

This program is not listed in the Catalog of Federal Domestic Assistance.

J. State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of EO. 12372.

K. Components of a Complete Application

A compete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. budget Information—Non-Construction programs (Standard Form 424A);
3. Assurances—Non-Construction Programs (Standard Form 424B);
4. Table of contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement;
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personal;
14. Application for Federal Assistance Checklist.

Dated: May 5, 1994.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94-11842 Filed 5-13-94; 8:45 am]

BILLING CODE 4151-04-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Revision; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill; *Form No.:* HCFA-1450; *Use:* The 1450 is a claim form completed by institutional providers for inpatient and outpatient services. All intermediary processed Medicare claims are billed on the HCFA-1450; *Frequency:* On occasion; *Respondents:* State or local governments; *Estimated Number of Responses:* 100,168,729; *Average Hours Per Response:* 5-9 minutes; *Total Estimated Burden Hours:* 3,590,518.

2. *Type of Request:* New; *Title of Information Collection:* Hospice Survey and Deficiencies Report; *Form No.:* HCFA-643; *Use:* In order to participate in the Medicare program, a hospice must meet certain Federal health and safety conditions of participation. This form will be used by State surveyors to record data about a hospice's compliance with these conditions of participation in order to initiate the certification or recertification process. This request includes the recently revised Hospice Interpretive Guidelines used as the basis for the instructions for the form; *Frequency:* Annually; *Respondents:* State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 1,200; *Average Hours Per Response:* 2.5; *Total Estimated Burden Hours:* 3,000.

3. *Type of Request:* Extension; *Title of Information Collection:* Requirement to Disclose Health Maintenance Organization (HMOs) Financial Information to Members; *Form No.:* HCFA-R-97; *Use:* HMOs are required to disclose specific information to members, potential members, employees, and contractors. This rule specifies what information can be disclosed; *Frequency:* Annually; *Respondents:* Businesses or other for profit, nonprofit organizations; *Estimated Number of Responses:* 380; *Average Hours Per Response:* .5; *Total Estimated Burden Hours:* 190.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA-1514; *Use:* Section 1861 of the Social Security Act requires hospitals to be certified to participate in the Medicare/Medicaid program. These providers must complete the Hospital Request for Certification on the Medicare/Medicaid program form which concerns information collection requirements and their uses; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 2,548; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 637.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966-5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: May 4, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–11819 Filed 5–13–94; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Availability of Funds for New Community Health Centers, and Expanded Community Health Center Activities

[PIN 2227]

RIN–0905–ZA34

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of discretionary grant funds of approximately $12.5 million in fiscal year (FY) 1994 under section 330 of the Public Health Service (PHS) Act to establish new community health centers (CHCs) and new CHC service delivery sites for existing CHCs. For more than twenty-five years, the CHC program has been working toward ensuring the availability and accessibility of essential primary health services to those individuals who have the most limited access to services. The goal of the CHC New Start and Expansion strategy is to extend primary health services to populations currently without such services and to improve the health status of medically underserved individuals by supporting the development and maintenance of systems of care in areas where such systems are lacking or inadequate.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity. The health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3228).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in the appendix to this document are responsible for distributing application kits and guidance (Form PHS 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control number 0937–0189), and completed applications must be submitted to them. The RGMO can also provide assistance on business management issues.

DATES: Applications are due June 1, 1994. An advance notice of application deadline dates for this program was published in the **Federal Register** at 59 FR 8649 on February 23, 1994. Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

If a proposed area or population to be served is not currently federally designated, in whole or in part, as a medically underserved area (MUA) or medically underserved population (MUP), the applicant must have requested a designation from the Bureau of Primary Health Care by March 15, 1994. Applicants were also encouraged to submit a letter of interest to the appropriate RGMO by March 15, 1994. The above deadlines for this program were published in the **Federal Register** at 59 FR 8649 on February 23, 1994.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Richard C. Bohrer, Director, Division of Community and Migrant Health, 4350 East-West Highway, 7th Floor, Rockville, MD 20857 (301) 594–4300.

SUPPLEMENTARY INFORMATION:

Grant Amounts

Approximately $12.5 million in discretionary grants to establish CHCs in new geographic areas and/or to establish new CHC service delivery sites for existing CHCs in new or existing geographic areas will be made available under section 330 of the PHS Act (42 U.S.C. 254c). Of the approximately $12.5 million available, approximately $8.5 million will be directed to new CHCs and approximately $4 million will be directed to new CHC service delivery sites that expand the service capacity (i.e., increase the number of new patients served) of existing CHCs.

Number of Awards

Approximately 35 to 40 section 330 awards will be made. The awards will range up to $600,000, including a limit of $150,000 for capital requests. Awards will be made for a one year budget period. Project periods for new CHCs will be for up to two years, while expansion grants will have project periods consistent with the ongoing grant.

Eligible Applicants

Eligible applicants for new CHCs are public or private nonprofit entities. Section 329 grantees not currently receiving section 330 funds may request section 330 funds to support primary health services for other than migrant and seasonal farmworkers and their families. The proposed service area must be a defined geographic area or population which is federally designated, in whole or in part, as a MUA or MUP. Applicants must be prepared to provide the comprehensive primary health services required under section 330, and supplemental services necessary to assure that required primary health services are provided effectively.

Eligible applicants for CHC expansions must be current recipients of section 330 funds. The applicant's proposed delivery system, in conjunction with its current delivery capacity, must provide the comprehensive primary health services required under section 330, and supplemental services necessary to assure that required primary health care services are provided effectively. The proposed service area must be a defined geographic area or population which is federally designated, in whole or in part, as a MUA or MUP.

Criteria for Evaluation

When determining whether Federal support will be made available for CHC new start or expansion grants, the Department will review the applications for compliance with standard criteria stipulated in the program regulations (42 CFR 51c.305 for operating CHCs). These include:

(a) The relative need of the population to be served for the services to be provided based on the following indicators:

For urban applicants: (1) Percentage of the population with incomes below 200 percent of the official poverty level; (2) percentage of minority populations; (3) percentage of the population that is uninsured; (4) a shortage of necessary primary care health professionals to meet the needs of the target population; and (5) other documented community health issues such as a high unemployment rate, high growth rate of minority/special populations, high percentage of immigrant population, high infant mortality rate/high percentage of low birthweight, late entry into prenatal care, high teenage pregnancy rate, high morbidity rates due to specific diseases, high percentage geriatric population, cultural/language barriers, or excessive travel time/distance to next nearest source of primary care for the target population.

For rural applicants: (1) Percentage of the population with incomes below 200 percent of the official poverty level; (2) geographic barriers based on average travel time/distance to next nearest source of primary care that is accessible to the target population; (3) percentage of the population that is uninsured; (4) shortage of necessary primary care health professionals to meet the needs of the target population; and (5) other documented community health issues such as a high unemployment rate, high growth rate of minority/special populations, high percentage of immigrant population, high infant mortality rate/high percentage of low birthweight, late entry into prenatal care, high teenage pregnancy rate, high morbidity rates due to specific diseases, high percentage geriatric population, cultural/language barriers, or a high percentage of minority populations; and

(b) The extent to which the applicant's project plan for CHC new start or expansion grants meets the program requirements:

For CHC New Start and Expansions in New Service Areas: (1) The extent to which the applicant demonstrates an understanding of its State and local health care environment (e.g., identifying key State health care initiatives/proposals and describing local community resources/providers), and addresses how it will position itself strategically in both of these environments;

(2) The applicant's capability in the following health services/clinical management areas: (i) A service delivery plan that addresses the priority health problems of the target population; (ii) provision of patient case management, the assurance of continuity of care and a quality assurance program; and (iii) an appropriate number and mix of primary care physicians, non-physician primary care providers and clinical support staff to support the clinical component of the service delivery plan;

(3) The degree to which the applicant ensures that its governing board is appropriately structured and has by-laws reflecting all its functions and responsibilities. A public entity must be able to meet all governance requirements or have an acceptable co-applicant board (governing boards of public centers by statute are not required to set general policies for the center);

(4) The administrative and management capability of the applicant, particularly the extent to which center operations will emphasize efficiency of operations and sound financial management;

(5) The extent to which the proposed facility is adequate and available to meet the projected demand of the target population; and

(6) Whether the proposed new start will result in new patients being served or, for expansion applicants, whether the proposed expansion will result in new patients being served through a new service delivery site.

For CHC Expansions in an Existing Service Area: Applicants will be evaluated according to the following criteria:

(1) The extent to which the grantee justifies a patient demand in excess of what is reasonable for the current organization to serve;

(2) The extent to which the service delivery plan addresses the priority health problems of the new patients to be served;

(3) The extent to which the proposed expansion plan is a reasonable and cost-effective solution to meet the projected demand;

(4) The extent to which the budget is reasonable and appropriate and corresponds to the objective of the request for funds;

(5) The extent to which the proposed facility is adequate and available to meet the projected demand of the target population; and

(6) Whether the proposed expansion will result in new patients being served through a new service delivery site.

The HRSA hopes to achieve a wide geographic dispersion of awards. Contingent upon the outcome of the review process, grant awards will be made in such a manner as to achieve a distribution of resources throughout the country. Special consideration will be given to applicants that received Section 330(c) planning grant funds in FY 1993 to assist in their development of a new CHC.

Other Award Information: All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a State Single Point of Contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The Bureau of Primary Health Care does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

Public Health System Reporting Requirement: These programs are subject to the Public Health System Reporting Requirement, PHS Circular 92.01. Reporting requirements have been approved by the OMB—0937-0195. Under this requirement, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) a copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies. In the OMB Catalog of Federal Domestic Assistance, the number for the Community Health Center program is listed as 93.224

Dated: March 28, 1994.

John H. Kelso

Acting Administrator

Appendix—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II: Frank DiGiovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III: Martin Bree, Grants Management Officer, PHS Regional Office III, 3535 Market Street, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII: Susan Jaworowski, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Al Tevis, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

[FR Doc. 94–11783 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–15–P

RIN: 0905–ZA55

Program Announcement and Proposed Criteria for Meeting the General Statutory Funding Preference for Grants for Nurse Anesthetist Faculty Fellowships for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Grants for Nurse Anesthetist Faculty Fellowships under the authority of section 831(b), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed criteria for meeting the general statutory funding preference.

Approximately $100,000 will be available in FY 1994 for this program. It is anticipated that $100,000 will be available to support 10 competing awards averaging $10,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 22 applications for Grants for Nurse Anesthetist Faculty Fellowships. Of those applications, 100 percent were approved. Fifteen projects, or 68% of applications received, were funded. In FY 1992, HRSA reviewed 9 applications for Grants for Nurse Anesthetist Faculty Fellowships. Of those applications, 100 percent were approved and funded.

Purpose

Section 831(b) of the Public Health Service Act authorizes the Secretary to make grants to provide financial assistance to certified registered nurse anesthetists (CRNA) who are faculty members in accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions. Applicants must compete for Federal support annually.

Eligibility

Public and private nonprofit institutions which employ CRNA faculty to teach registered nurses in a full-time accredited nurse anesthetist training program may apply for a Grant for Nurse Anesthetist Faculty Fellowships.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Criteria for Fellows

The following criteria for fellows were established in FY 1993 after public comment (58 FR 40658, 7/29/93), and will be extended in fiscal year 1994.

To be eligible for fellowship support an individual must be:

1. A United States citizen, noncitizen national, or foreign national who possesses a visa permitting permanent residence in the United States;
2. A certified registered nurse anesthetist with current licensure to practice, and with teaching responsibilities in an accredited nurse anesthetist education program;
3. Enrolled or accepted for enrollment in a formal program of study which leads to a master's or doctoral degree;
4. Proposed for a fellowship in the applicant institution's grant proposal; and
5. A faculty member employed by, or affiliated with, the applicant institution during the period of approved fellowship support.

Policy on Payment of Stipends

The following policy on payment of stipends was established in fiscal year 1990 after public comment (55 FR 36325, dated September 5, 1990) and is being extended in fiscal year 1994.

A faculty member may be paid a stipend for living costs if attending an educational institution as a full-time student; no stipend would be available for a faculty member who is enrolled in part-time study or who is employed on a full-time basis. This policy is designed to target stipend assistance to the individuals who are most in need of such aid.

Review Criteria

Applications will be reviewed and award amounts will be calculated by staff in the Division of Nursing and in the Grants Management Branch of the Bureau of Health Professions. The review of applications will take into consideration the following criteria:

1. The eligibility of applicants;
2. The eligibility of faculty; and
3. The extent to which an applicant meets the funding preferences.

These review criteria were established in 1990 (55 FR 36325, 9/5/90). Different criteria were established for use in FY 1993 to meet the statutory requirement for peer review. The requirement for peer review was deleted by Public Law 103–43.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preference

Section 860(e) of the PHS Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, enacted on October 13, 1992, provides for the following statutory preference for this program of Grants for Nurse Anesthetist Faculty Fellowships, as well as for certain other programs under titles VII and VIII of the PHS Act.

Statutory preference will be given to qualified applicants that: (1) Have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) have achieved, during the 2-year period preceding the fiscal year for which such an award is sought, a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of applications that have been recommended for approval.

Proposed Criteria for Meeting the General Statutory Funding Preference

It is proposed that, for Grants for Nurse Anesthetist Faculty Fellowships, qualified applicants will meet the general statutory funding preference if a minimum of 50% of the nurse anesthetist faculty are teaching in medically underserved communities.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated 7/29/93.

Established Funding Preference

The following funding preference was established in fiscal year 1990 after public comment (55 FR 36325, dated September 5, 1990). A revised version is being extended in fiscal year 1994. The Department determined that this is a more appropriate means to achieve program goals.

A funding preference will be given first to faculty who will be completing degree requirements before or by the end of the funded budget year, second to faculty who are full-time students, and third to faculty who are part-time students.

Information Requirements Provision

Under section 860(e)(2) of the Act, the Secretary may make an award under the Nurse Anesthetist Faculty Fellowships only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated 8/17/93 and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed review criteria and the proposed criteria for meeting the general statutory funding preference. The comment period is 30 days. All comments received on or before June 15, 1994 will be considered before the final review criteria and the final criteria for meeting the general statutory funding preference are established. Written comments should be addressed to: Marla Salmon, ScD, RN, FAAN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Jacquelyn Whitaker (A–22), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857 FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Donna English, Acting Chief, Nursing Practice Resources Section, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36,5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 FAX: (301) 443–8586.

The deadline date for receipt of applications is June 24, 1994. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Nurse Anesthetist Faculty Fellowships, is listed at 93.907 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: March 29, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–11784 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

RIN: 0905–2A56

Office of Minority Health; Cooperative Agreement for Family and Community Violence; Prevention Demonstration Program; Notice of Availability of Funds and Request for Application

Introduction

The Office of Minority Health (OMH) announces the availability of Fiscal Year 1994 funds to support a cooperative agreement with a consortium of Historically Black Colleges and Universities (HBCUs). Specifically, the intent of this project is to design, develop, implement, and test a series of models that may be effective in preventing minority male related violence in such communities.

Models developed under this project should address behavioral patterns and environmental influences that may precipitate violence within the family or the community. Such factors may contribute to dysfunctional patterns of individual behavior or dysfunctional relationships within families. They include breakdowns in family structure, alcoholism and drug abuse, lack of economic and job opportunities, educational deficiencies, poverty, and crime. With respect to domestic violence, these issues may include spousal and child abuse and rape; transmission of violent behavior to subsequent generations; societal and family relationships.

Multi-purpose family support systems are planned through both linkages and consortiums of campus based centers and participating official and private community based organizations providing a range of prevention and service interventions. Interventions will be directed toward several different target populations including primary school (k–5), junior high school (6–8), and high school as well as young adults, adults, parents, and the elderly. They will involve, but not be limited to certain common strategies such as target group focused education; individual counseling, treatment and individually relevant assistance; and referral to public and private agencies, which includes the college and university based family support center or the participating professionals, institutions and organizations within the community. The provider system encompasses colleges and university students and faculty, parents, school officials and teachers, a large array of professionals and official community agencies. The system is designed to utilize and expand the expertise of these educational institutions and other community resources in the areas to be addressed. The consortium consists of 16 Historically and Predominantly Black Colleges and Universities (HBCUs) and a number of key public and private entities functioning together to improve the lives of individuals residing throughout the communities in which they live.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Violence and Abusive Behavior, which includes the following sub-areas: homicide, suicide, weapon-related deaths, child abuse and neglect, spousal abuse, assault injuries, suicide attempts by adolescents, physical fighting among youth, weapon-carrying youth and comprehensive violence programs.

Authority

This project is authorized under section 1707(d)(1), Public Health Service Act.

Eligible Applicant

Approximately $4,250,000 is available to support a family and community violence prevention effort. Assistance will be provided to Central State University of Wilberforce, Ohio, which will serve as the lead entity for the consortium of 16 Historical and Predominately Black Colleges and Universities, specifically the Consortium for Practicum and Research on Minority Males/Minority Males Consortium (MIN–MALES. The Acting Deputy Assistant Secretary for Minority Health has determined that this consortium is uniquely qualified to receive this award because it is a pre-existing proven consortium which can respond rapidly to the OMH requirement to complete the award process this fiscal year. Each institution participating in this existing consortium is already actively involved in on-campus or in neighborhoods/community based projects that are designed to remedy minority male and family educational and health problems. Furthermore, all participating institutions are working in an official and coordinated capacity to focus specifically on violence-related problems faced by minority communities. In addition, the consortium members are geographically distributed in such a manner that allows them to access and service a large and diverse number of racial and ethnic minorities.

They have established functional working relationships with community-based organizations, churches, schools, prisons, etc. * * * which demonstrates the existence of a viable network with cultural competence and existing outreach mechanisms targeting multiple racial and ethnic family populations. This consortium is uniquely prepared by virtue of its expertise, geographic distribution and existing network to implement a model family domestic violence program expeditiously. No other applications will be solicited.

Availability of Funds

Approximately $4,250,000 (indirect and direct costs) will be available in Fiscal Year 1994 to fund this cooperative agreement. The project is expected to begin on September 30, 1994, for a 12 month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. The funding estimate above may vary and is subject to change.

Background

Violent and abusive behavior exacts a large toll on the physical and mental health of Americans. Child abuse, spouse abuse, and other forms of intrafamilial violence continue to threaten the health of thousands of American families, particularly minorities.

In 1986, an estimated 1.6 million children nationwide experienced some form of abuse or neglect. Physical abuse accounted for the greatest portion of abuse incidents. Studies suggest that between 2 million and 4 million women are physically battered each year by their partners. On an annual basis, more than 1 million women seek medical assistance for injuries caused by battering. Also, the vast majority of domestic homicides are preceded by episodes of violence. Domestic violence is a major context for suicide attempts, substance abuse, and mental illness among women and 45 percent of mothers of abused children are themselves battered women.

The characteristics of homicides indicate a clear and consistent pattern of friend and family violence. Half of the yearly 23,000 homicide victims in the United States die at the hands of an acquaintance. For example, family members are responsible for 20 percent of the deaths whereas casual acquaintances are responsible for 30 percent.

During 1985, the Surgeon General and the U.S. Public Health Service provided a national focus on violence as a leading public health problem in the United States. Since that time, public health perspectives in preventing death and disability due to violent and abusive behavior have emerged across the country.

Violence in America is a public health problem that takes its greatest toll on young minority males. Minority males have the highest rates of contact with the criminal justice system of any group in the nation. In 1987, more than half of all prison inmates in the nation were Black or Hispanic males. Problems confronting minority males are those particularly associated with poverty, violence, single parent households, school drop-out rates, delinquency, unemployment, access to higher education and health status. The American Council on Education recently reported that African American Male enrollment in colleges and universities declined by five percent, while the enrollment among Hispanic males remained constant, between 1990–1992.

Purpose

The purpose of this cooperative agreement is to design, implement, and assess the use of a consortium to conduct model centers for the development and demonstration of interventions related to minority male, family and community violence.

Program Requirements

The consortium will design, implement, and assess Minority Male, Family and Community Violence Prevention Models which maximize the leadership of minority institutions of higher education in: (1) Organizing a total "town and gown" initiative with respect to both their own functions and responsibilities and those of entities to be involved throughout the community, e.g., primary/secondary schools, churches, public agencies; (2) The life centers should at a minimum conduct the following:

- Assess local community resources dedicated to address problems of family and community violence.
- Coordinate with local violence efforts currently in place to minimize duplication of efforts and to maximize use of local resources.
- Specifically, though not exclusively, address the problem of interpersonal family violence by designing and implementing an educational/prevention intervention.
- Design and implement a student assessment project to identify students from dysfunctional families and to delineate positive and negative coping strategies.

(3) developing educational experiences, preventive measures and therapeutic interventions designed to address the issues of dysfunctional males and families; and (4) formulating methods and strategies for execution of the initiatives through a variety of avenues within the minority institutions of higher education and throughout the community. This initiative seeks to address the escalating national problems experienced by dysfunctional families and individuals in the minority community. These national problems are precipitated by such conditions as breakdowns in family structures, alcoholism and drug abuse, educational deficiencies, poverty, crime, and violence.

The consortium will establish a maximum of sixteen (16) Family Life Centers on the campuses of minority institutions of higher education. A complete organizational structure will be developed for initiatives to be executed through this program with respect to both the minority institutions of higher education and community components involved including methodologies and strategies for their operation. The consortium will develop and test the interventions and other programmatic content for all facets of the program that are internal and external to the minority institutions of higher education. These include, methods of their delivery and the competencies necessary for all students and professionals involved (mentor, counselors, faculty, etc.) in carrying out the interventions.

Use of Cooperative Agreement: A cooperative agreement will be awarded because of the anticipated substantial programmatic involvement by OMH staff. OMH will take the lead programmatic responsibility for this activity and will work in collaboration with other PHS and DHHS co-sponsoring entities. Substantial programmatic involvement is as follows

(1) OMH shall arrange an initial orientation meeting to discuss and finalize a project management plan, to clarify roles and responsibilities of the consortium and OMH staff, to establish clear lines of communication, to introduce the consortium participants to other PHS and DHHS co-sponsors, and to discuss and review a workplan.

(2) OMH staff shall provide technical assistance and oversight as necessary for the overall design, implementation and assessment of the project activity.

(3) OMH staff shall provide technical assistance to the consortium in the design, development, and implementation of the evaluation plans and strategies.

(4) OMH staff shall review and approve all consortium evaluation plans and strategies prior to implementation.

(5) OMH staff shall provide non-financial assistance to the consortium to arrange an annual meting and to provide briefings regarding programmatic outcomes, evaluation plans, strategies, agreement, and to provide expertise regarding the identification of evolving areas of concern affecting the minority populations.

Technical Assistance

OMH will collaborate with representatives of the Consortium in the identification of specific areas of intervention activities and the development of research areas. The following document has been provided by OMH to the Consortium: Healthy People 2000

Application Content

In a narrative form, the applicant shall submit sufficient supporting evidence to satisfy all items in the "Evaluation Criteria". This information should be presented using the PHS Application form PHS 5161 (Approved by OMB under control no 0937–0189). The application submitted under this cooperative agreement will contain multiple subparts addressing the individual contributions of consortium members. It is anticipated that the application received will contain technical proposal(s) that may cover up to a three-year period.

Evaluation Criteria

A. The application will be evaluated according to the following criteria:

1. The extent to which the proposed family community violence intervention model(s) will address the needs of the targeted minority populations as expressed by clear and measurable goals and objectives; the reasonableness of the effort required to incorporate the model into the long-term institutional goals as expressed by letters of long-term institutional commitment. (40%)
2. The appropriateness of the proposed model design, purpose, methodology, scope, assessment, and timetable. (40%)
3. Evidence for collaborative effort within the consortium and with other significant participants such as community based organizations. (5%)
4. Adequacy of resources; including background and training of key personnel and percentage effort allocation to achieve stated objectives and goals. (10%)
5. Potential for the proposed interventions and reports to lead to publishable results. (5%)
6. Budget and Cost-effectiveness; the extent to which the total budget is reasonable and will be adequate to achieve stated project goals. The budget cost of the project to the Government must be reasonable. (Not Scored)

Contacts: For program information, contact Mr. Michael A. Douglas, Project Officer, Division of Policy Coordination, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland, 20852, telephone number (301) 443–9923. For grants management information, contact Ms. Carolyn A. Williams, Grants Management Officer, Division of Grants Management, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland, 20852, telephone number (301) 594–0758.

Application Deadline: The application deadline is June 15, 1994.

Guide for Grants and Contracts: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

State Reviews: Executive Order 12372 sets up a system for State and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Points of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. A current list of SPOCs is included in the application kit. SPOCs will have 60 days to provide comments. SPOC comments must be received by July 15, 1994. The Office of Minority Health does not guarantee to accommodate or explain State process recommendations after that date. SPOC comments are to be sent to: Office of Minority Health, Grants Management Officer, Rockwall II Building, suite 1000, 5515 Security Lane, Rockville, MD 20852.

Public Health System Reporting Requirement: This program is subject to Public Health Systems Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS) (Approved by OMB under control no. 0937–0195). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (a) a copy of the face page of the applications (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate State or local agencies.

(The Catalog of Federal Domestic Assistance number is 93.105).

Dated: March 29, 1994.

Audrey F. Manley,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 94–11753 Filed 5–13–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–94–3769; FR–3725–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of open meetings.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge. Three committees were established by the Task Force members: (1) Finance Committee; (2) Liability Committee; and (3) Implementation Committee. The members of these committees are members of the Task Force.

DATES: The committees will be meeting on June 20, 1994—Finance Committee (9 to 5), June 21, 1994—Implementation Committee (9 to 5), and June 22, 1994—Liability Committee (9 to 5), (EST), at the Marriott Waterfront Hotel, 80 Compromise Street, Annapolis, Maryland 21401, telephone number (410) 268–7555, or (301) 261–2240.

ADDRESSES: Members of the public are invited to provide written material to: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410; telephone (202) 755–1805. The TTD numbers are (202) 708–9300 or 1–800–877–8339. (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The last Task Force Committee meetings were held on April 4, 5 & 6, 1994 in Washington, DC. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection Agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: May 10, 1994.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–11835 Filed 5–13–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3739; FR–3640–C–02]

Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP); Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1994.

SUMMARY: On April 19, 1994 (59 FR 18642), the Department published in the **Federal Register**, a notice of funding availability for Fiscal Year (FY) 1994 for the Comprehensive Improvement Assistance Program (CIAP). Because of an error in an editorial instruction, the date "June 18, 1994" calculates to be a nonworking business day and is not correct. The purpose of this document is to correct the application due date listed in the DATES section of the preamble.

DATES: Application is due on or before 3 p.m. local time on June 20, 1994, at the HUD Field Office with jurisdiction over the Public Housing Agency or Indian Housing Authority (herein referred to as HA), Attention: Director, Public or Indian Housing Division.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410. Telephone (202) 708–1800. (This is not a toll-free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1015. (This is not a toll-free number).

Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–0850. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 94–9321, a Notice of Funding Availability for Comprehensive Improvement Assistance Program (CIAP), published in the **Federal Register**, on April 19, 1994 at 59 FR 18642 is corrected to read as follows:

On page 18642, in the first column, in the DATES section, the date "June 18, 1994" is corrected to read "June 20, 1994".

Dated: May 10, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 94–11766 Filed 5–13–94; 8:45 am]

BILLING CODE 4210–33–P

Office of Administration

[Docket No. N–94–3767]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 23, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) working days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Josephe F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone no. (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, and information collection package with respect to the Public Housing Residents Anti-crime Survey. HUD is requesting a 7-day OMB review of this information collection.

HUD is currently implementing Operation Safe Home, a joint anti-crime effort with the U.S. Departments of Justice, Treasury, and the Office of National Drug Control, to eliminate criminal activity in public housing. A key component of Safe Home is coordinated strikes by Federal agencies against drug-related crime in public housing. Predatory violent crime in public housing also has been targeted for action. In an effort to make Operation Safe Home as effective as possible and to guide HUD's policy and legislative agenda, the Secretary wants to survey public housing residents on their opinions regarding crime and associated problems.

These survey data will be used directly by the Office of Public and Indian Housing to strengthen HUD's crime prevention activities in public housing and by the Office of Policy Development and Research to enhance HUD's policy and legislative initiatives for crime prevention in a broad range of other settings as well.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 3, 1994.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

Submission of Proposed Information Collection to OMB

Proposal: Public Housing Residents Anti-Crime Survey.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: The survey is needed so that HUD can poll public housing residents on their opinion regarding crime prevention activities in public housing. The information will be used to strengthen HUD's crime prevention activities in public housing and to ensure client feedback is incorporated into their design.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: One Time.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	2,500		1		.08		200
Interviews	1,500		1		.42		633

Total Estimated Burden Hours: 833.

Status: New.

Contact: Donald S. Bradley, HUD, (202) 708–4504, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: May 3, 1994.

Information for Inclusion, OMB Clearance Package, Public Housing Residents Anti-Crime Survey Sponsored by U.S. Department of Housing and Urban Development, Conducted by Research Triangle Institute

Section A: Justification

A.1 Circumstances That Make Information Collection Necessary

The U.S. Department of Housing and Urban Development (HUD) is currently implementing Operation Safe Home, a joint anti-crime effort with the U.S. Department of Justice, U.S. Department of Treasury, and the Office of National Drug Control, to eliminate criminal activity in public housing. A key component of Safe Home is coordinated strikes by federal agencies against drug-related crime in public housing. Predatory violent crime in public housing also has been targeted for action. In an effort to make Operation Safe Home as effective as possible, the Secretary wants to survey public housing residents on their opinions regarding crime and associated problems.

A.2 Use and Users of Information—Overview of Data Requirements

These survey data will be used directly by the Office of Public and Indian Housing (PIH) to strengthen HUD's crime prevention activities in public housing and by the Office of Policy Development and Research (PD&R) to enhance HUD's policy and legislative initiatives for crime prevention in a broad range of other settings as well.

A.3 Consideration of the Use of Improved Information Technology

The survey is utilizing several technological approaches to create an innovative way to efficiently gather information from a population in which data collection has traditionally been difficult. We are creating the sampling frame for the telephone interviews by obtaining recent telephone numbers for the sample or addresses, using a commercial file matching service. The phone numbers obtained will be loaded into an electronic scheduler which will assign cases to interviews at times which maximize the probability of successful contact. The scheduling algorithm considers time zones, time and result of previous efforts, and the most appropriate time to make calls to residences, as well as handling specific call-back appointments.

Once contact has been made with an eligible residence, and an eligible respondent selected, the Computer Assisted Telephone Interview (CATI) program will guide the interviewer through the questionnaire. Respondent burden is reduced since CATI selects the correct question sequence based on the respondent's previous answers allowing the interviewer to concentrate on reading the question and entering the response, not searching for the correct next question. CATI requires the entry of consistent data which falls into appropriate ranges thus eliminating editing time while the respondent is on the phone or callbacks to resolve problems. The CATI program can also offer the opportunity of providing the questions and response categories in an alternate language, if needed to allow special population to participate fully.

A.4 Efforts to Identify Duplication

The Department has examined existing administrative data sources to determine if similar data are collected. The information that this survey seeks to gather is not available from existing administrative or other survey instruments. This is the first telephone survey of its kind to focus on public housing residents.

A.5 Why Similar, Already Available Data Cannot Be Used

There does not exist a source of data on the attitudes of public housing residents toward crime/crime prevention issues equivalent to what is being collected in this effort. The Department regularly collects information (such as income and number of dependents) on residents of low-income public housing developments for use in administering low-income housing programs but does not collect information on resident's perceptions of crime and safety, and their opinions of programs that could effectively address these issues.

A.6 Reducing the Burden

The only burden associated with this survey is the 25 minute interview which respondents agree to complete. As discussed in Item A.3, the use of CATI minimizes the burden associated with the mode of administration.

A.7 Consequences of Less Frequent Data Collection

Since this is a one-time data collection effort, this section is not applicable.

A.8 Special Circumstances Requiring Inconsistency With 5CFR1320.6

All data collection procedures and data collection instruments have been designed in a manner which is in compliance with all sections of 5 CFR 1320.6. No exceptions are requested.

A.9 Consultations With Persons Outside the Agency

The survey design and the data collection instrument have been designed by project staff at the Research Triangle Institute (RTI) working under contract from HUD to design and completer the survey. RTI staff and their consultant, Dr. William Rohe from the University of North Carolina, have worked closely with the HUD project staff to develop the questionnaire and the sampling approach which will be used with standard telephone data collection procedures to complete the survey. During the questionnaire design, RTI methodologists consulted with the staff from the Census Bureau on issues of question wording and ordering.

A.10 Confidentiality

During an introduction to the interview which address the components of informed consent, all respondents will be assured that the information that they provide will remain confidential, and that they can refuse to answer any individual question during the interview. No names are requested and the address and telephone numbers will not be included in the data file prepared and delivered to HUD. Any location information used in the analyses will be presented in composite form which will not allow the identification of individual respondents.

All project staff and each telephone interviewer will comply with all aspects of relevant federal regulations concerning privacy of respondent's data, and the data will be maintained in limited access secured computer files.

A.11 Justification for Questions of a Sensitive Nature

During their cognitive and telephone pretest interviews, we attempted to identify questions which the respondents might consider sensitive. None of the respondents indicated any problems with the questions in the questionnaire. We did replace a household income question with a proxy measure, monthly rent, which we felt would be less intrusive.

A.12 Estimates of Cost

The cost of the survey design, data collection, and analysis and reporting contract to RTI is $142,401.

A.13 Estimates of Respondents

The sample will consist of 2,500 telephone numbers which will be screened to determine eligibility, defined as a working residential number at the address determined for the sample. These screening calls will require an average of 5 minutes. The interview will be completed for 1,500 respondents and will take, on average, 25 minutes. The total burden is estimated to be 833 hours.

A.14 Reasons for Change in Respondent Burden

Since this is a one-time effort, there is no change in the respondent burden.

A.15 Plans for Publication and Statistical Tabulation

RTI will prepare a databook presenting outcome variables cross-tabulated by independent variables. A final results report will provide summary tables and/or graphics that present main findings and text that interprets and gives highlights of the main findings.

Section B: Statistical Methods of Data Collection

B.1 Sampling Method and Respondent Universe

B.1.1 Target Population and Respondent Universe

The target population, the desired inference population, comprises all public housing residents in the 48 coterminous States. The respondent universe or study population, defined as the portion of the target population actually being sampled from, is essentially the public housing residents in the 48 States that have listed telephone numbers. Because of undercoverage of this list source compared to the target population, that is, residents with no listed telephone and some that are not covered by the HUD address file (the 951 data base), special attention is being given to the sample allocation and to the construction of analysis weights to improve interferences relating to the target population.

The basic source of sample residents will be the HUD 951 data base, which is basically an address file. The approximately 300,000 addresses on this file represent 68 percent of the 1.3 million public housing units in the United States. Those not represented are the result of nonreporting, data errors, and indefinite addresses (rural addresses, etc.) provided to HUD in response to the periodic mailout to all of the Public Housing Authorities. The circa 300,000 records identify on the average about three housing units each because of a single address and file record representing a multi-family unit in many cases. The respondent universe will be developed by matching these addresses to telephone listings.

B.1.2 Sampling Method

The sample public housing resident will be selected in several phases beginning with a proportional stratified sample of approximately 25,000 addresses obtained from the 300,000 records on the 951 data base (proportional to the target population counts in 32 strata). The strata to be used at each phase are the cross of 4 Census Regions, 4 sizes of Housing Authority, and by housing for elderly versus other. The telephone numbers obtained from the addresses selected for matching will be subsampled, again using random stratified sampling with proportional allocation. The result will be a nearly self-weighting sample with respect to the target population.

Approximately 2500 telephone numbers will be selected for fielding, possibly in two waves to facilitate early testing of analysis and weighting software and with expectation of obtaining 1500 interviews required for the study. Finally, any eligible individual (a resident of the household who is 18 years of age or older) will become the sample respondent.

The sample of 1500 is expected to yield sampling errors ranging from about 2 to 4 percentage points for the required domain estimates when the estimates are near 50 percent (the domains will be approximately 15 percent or more of the total).

B.2 Procedures To Deal With Nonresponse

Two categories of nonresponse are important in this survey: first, the undercoverage of the sampling frame and, second, the potential nonparticipation of those residents contacted. With regard to the potential for nonparticipation, we are making allowance for nonworking numbers, other types of loss, and approximately a 20 to 25 percent nonresponse by fielding 2500 numbers to obtain the required 1500 interviews.

To deal with potential for nonresponse and undercoverage biases, we are also developing analysis weights that align the final sample with known control totals (with regard to the design strata defined above). Finally, other control totals will be compared to weighted frequencies (based on the initial analysis weights). Additional weight adjustments using iterative proportional fitting will be used as needed to agree with other important control totals (for example, age, race, metro/nonmetro).

B.3 Pretesting

RTI staff conducted pretesting of the questionnaire during the second week of the contract. The testing included four cognitive interviews and eight telephone interviews with residents of public housing facilities in Durham, North Carolina. The four in-depth cognitive interviews lasted approximately 45 minutes each, including introductory and concluding comments. Respondents were paid $20 for participating in the interview. During each interview, the respondents listened to the survey questions and responded to each as appropriate. We used concurrent probing during the interview to obtain insight into how respondents were interpreting question wording and choosing the best response option. In addition, we asked respondents to comment on what we felt were the most sensitive items (for example, the gun ownership and income questions) in order to determine the likelihood that respondents would provide valid responses.

We also conducted 8 telephone interviews to determine if there were any additional changes to the questionnaire that were needed due to the mode of administration. All respondents were paid $10 for completing the interview. These calls averaged about 25 minutes each. Three of these interviews were conducted by project survey specialists and methodologists. The remaining interviews were conducted by RTI Telephone Survey Unit (TSU) supervisors, and were monitored by one of the project survey specialists. After each of these interviews, the interviewer completed a debriefing form with the respondent and then answered a similar set of items gauging his or her perception of how well the questionnaire worked.

Based on these pretest interviews, we prepared a series of recommendations which were faxed to HUD and used as the basis of a series of discussions of potential revisions. The revisions which were agreed upon were included in the final version of the questionnaire, which is included in Section B5.

B.4 Persons Responsible for Statistical Aspects of the Design

Staff at RTI responsible for the statistical aspects of the design include:

Project Statistician—Steve Williams, (919) 541–6246
Task Manager—Harvey Zelon, (919) 541–5888
Policy Analyst—Sam Leaman, (919) 541–6682

Staff at HUD involved in the design include:

Project GTR—Don Bradley, (202) 708–4504
Sampling Staff—Lynn Rodgers, (202) 708–2031

B.5 Copy of the Survey Instrument

A copy to the current version of the survey instrument is attached as Appendix A. The following table indicates the questions associated with the analysis domains.

Screening questions used to verify the household and identify an eligible sample member	S1–S4
Background/demographic questions used to characterize the respondent and his/her living situation	1, 2, 40–47
Level of fear of crime and perception of safety	3, 4
Attitudes toward police role in the public housing neighborhood	5, 6
Existence of and attitudes toward citizen involvement in crime prevention activities	7–11, 25–27
Perception of perpetrators of crime	12, 14, 17
6-month history of victimization	13, 15, 16
Perception of developmental characteristics	18, 24, 31, 37–39
Perceived efficacy of crime-reduction measures	19–23, 28–36

BILLING CODE 4210–01–M

Appendix A—Survey Instrument

HUD RESIDENT CRIME SURVEY

Hello, this is ______________________________, from the Research Triangle Institute in North Carolina. We are doing a study for the United States Department of Housing and Urban Development.

S1. Is this (____)____-____?

1 YES
2 NO ——▸ Thank you. I'll redial the number. If your phone should ring, please answer it as I do have to verify the number. HANG UP AND DIAL THE NUMBER AGAIN.

S2. The address that I have on record for this household is:

ADDRESS OF PROJECT/UNIT

Is this correct?

1 YES
2 NO ——▸ TERMINATE.

S3. CHECK ITEM: ARE YOU SPEAKING WITH AN ADULT?

1 YES
2 NO ——▸ May I please speak to someone 18 or older?

- 1 YES ——▸ WHEN AN ADULT IS ON THE PHONE: This is ________ from the Research Triangle Institute in North Carolina. We are doing a study for the United States Department of Housing and Urban Development. CONTINUE WITH S4.
- 2 NOT AVAILABLE——▸SET CALLBACK.
- 3 NO ONE 18 OR OLDER LIVES HERE——▸ Thank you. That is all the information that I need. TERMINATE.

S4. I need to speak to someone who lives at this address who is 18 years of age or older? Do you live there and are you 18 or older?

1 YES
2 NO ——▸ May I please speak to someone 18 or older who lives there?

  1 YES ——▸ WHEN AN ADULT IS ON THE PHONE: This is ________ from the Research Triangle Institute in North Carolina. We are doing a study for the United States Department of Housing and Urban Development.
  2 NOT AVAILABLE ——▸ SET CALLBACK.
  3 NO ONE 18 OR OLDER LIVES HERE ——▸ Thank you. That is all the information that I need. TERMINATE.

This study is being conducted to better understand the kinds of crimes that take place in public housing developments, or projects, and to identify ways to help prevent crime. The federal government is considering a number of ways to make public housing safer for residents and would like your thoughts on what should be done. Your household was chosen at random to participate in this study. All the information that you provide will be kept confidential and will only be used for the purposes stated for this study. Your participation is voluntary and you can refuse to answer any question. The questions should only take about 25 minutes.

[INTERVIEWER: IF RESPONDENT OBJECTS TO THE TERM "PROJECT", SUBSTITUTE WITH THE TERM "DEVELOPMENT" IN THE QUESTIONNAIRE TEXT.]

First, I need to know what type of place you live in.

1. Many public housing units are in a project with other public housing units, but some are single units that are not with other public housing units. Is the unit that you live in...

   1 a project with other public housing units
   2 a single unit that is not part of a public housing project

2. How long have you lived in your current house or apartment? Would you say...

   1 6 months or less
   2 between 6 months and 1 year
   3 1 to 5 years
   4 6 to 10 years
   5 more than 10 years

3. (During the past 6 months, that is, since DATE 6 MONTHS AGO,/since you moved into your current home), how safe a place has your (housing project/neighborhood) been to live in? Would you say that it has been...

   1 very safe
   2 somewhat safe
   3 somewhat unsafe
   4 very unsafe

4. (During the past 6 months/Since you moved into your current home), how fearful have you been that you would be held up, mugged, or assaulted in your (housing project/neighborhood)? Would you say you have been...

   1 very fearful
   2 somewhat fearful
   3 a little fearful
   4 not at all fearful

5 Are there any efforts taking place in your (housing project/neighborhood) to help prevent or reduce crime?

   1 YES
   2 NO ——► SKIP TO 8.
   3 DON'T KNOW ——► SKIP TO 8.

6. What efforts or programs are you aware of?

1 COMMUNITY/NEIGHBORHOOD/BLOCK WATCH PROGRAM
2 PATROLS BY RESIDENTS
3 POLICE MINI-STATION IN THE PROJECT/BUILDING
4 INCREASED POLICE PATROLS
5 AFTER-SCHOOL/WEEKEND YOUTH PROGRAMS
6 JOB-TRAINING PROGRAMS FOR ADULTS
7 OTHER (SPECIFY________________________)

7. At any time (in the past 6 months/since you moved in to your current home), have you actively participated in any of these programs?

1 YES
2 NO

8. How would you rate the quality of service provided by the local police or sheriff's department to your neighborhood? Would you say it is...

1 good
2 fair
3 poor

I am going to list some actions that the government might ask your public housing authority to do. As I read each action, please tell me how much you think the action would help to reduce crime.

9. Do you think that having…

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. more police officers patrol your neighborhood on a regular basis would help reduce crime a lot, somewhat, a little, or not at all?	1	2	3	4
b. police officers patrol the neighborhood on foot?	1	2	3	4
c. police officers patrol the neighborhood on bicycles?	1	2	3	4
d. more police cars patrol your neighborhood?	1	2	3	4
e. police officers live in your (project/neighborhood)?	1	2	3	4

We are interested in your views on resident patrols as a way to control or reduce crime. By "resident patrols", I mean people from your (project/neighborhood) who volunteer to walk or ride around and report anything suspicious to the police.

10. Do you think that a resident patrol in your (project/neighborhood) would help reduce crime…

1 a lot
2 somewhat
3 a little
4 not at all

11. Are you willing to participate in a resident patrol?

1 YES
2 NO
3 ALREADY PARTICIPATES

12. Would you say that most of the crime in your (project/neighborhood) is committed by people who live in the (project/neighborhood) or by people coming from outside the (project/neighborhood)?

1 INSIDE
2 AN EQUAL AMOUNT FROM INSIDE AND OUTSIDE
3 OUTSIDE
4 DON'T KNOW

13. Since (DATE 6 MONTHS AGO, that is, in the past 6 months/you moved into your current home), has your home been broken into or have you had anything stolen from your home or yard?

1 YES
2 NO ——▸ SKIP TO 15.

14. The last time something was stolen from your home or yard, was the thief someone who lived in your (project/neighborhood) or outside of it?

1 LIVED IN PROJECT/NEIGHBORHOOD
2 LIVED OUTSIDE PROJECT/NEIGHBORHOOD
3 DON'T KNOW

15 (In the past 6 months/since you moved into your current home), has anyone, including anyone you lived with, assaulted, mugged, or robbed you (or any member of your household)?

1 YES
2 NO ——▸ SKIP TO 18.

16. The last time (you were/either you or someone in your household was) assaulted, mugged, or robbed, did it happen inside your home, within two blocks of your home, or someplace more than two blocks from your home?

1 IN THE HOME
2 IN THE TWO BLOCK AREA
3 MORE THAN TWO BLOCKS AWAY

17. The last time (you were/either you or someone in your household was) assaulted, mugged, or robbed, was the attacker someone who lived in your own household, someone who lived in your (project/neighborhood), or someone who lived outside your (project/neighborhood)?

1 LIVED IN HOUSEHOLD
2 LIVED IN PROJECT/NEIGHBORHOOD
3 LIVED OUTSIDE PROJECT/NEIGHBORHOOD
4 DON'T KNOW

I'm going to read a list of things that are sometimes problems in (housing projects/neighborhoods). As I read each one, please tell me if it has been a big problem, somewhat of a problem, or not a problem at all in your (housing project/neighborhood).

18. (During the past 6 months/Since you moved into your current home), do you think that...

	BIG	SOMEWHAT	NOT AT ALL	NA
a. people in your (project/neighborhood) shooting guns?	1	2	3	9
b. people having their homes broken into?	1	2	3	9
c. people being robbed or having their purses or wallets taken from them?	1	2	3	9
d. people being attacked or assaulted?	1	2	3	9
e. people breaking hallway, stairway, or street lights?	1	2	3	9
f. not having enough streetlights or the streetlights not working?	1	2	3	9
g. people damaging elevators?	1	2	3	9
h. doors being broken or removed?	1	2	3	9
i. broken glass or trash in the yards?	1	2	3	9
j. graffiti on walls or doors of buildings?	1	2	3	9

The next questions are about ways to limit or control access into your neighborhood. I will read several actions that could be taken to control who can come into your neighborhood. As I read each action, please tell me how much you think it would help to reduce crime.

19. Do you think that…

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL	DON'T KNOW
a. closing off one end of your street, so that cars could not drive through the neighborhood on your street would help a lot, somewhat, a little, or not at all?	1	2	3	4	8
b. hiring private security guards to patrol the neighborhood around the clock?	1	2	3	4	8
CHECKPOINT: IF Q1=1, CONTINUE. IF Q1=2, SKIP TO 20.					
c. building a fence around the project?	1	2	3	4	8
d. having an intercom system that would make visitors identify themselves before they are allowed into the building?	1	2	3	4	8
e. having video cameras that would record what was going on in the public areas in and around your building?	1	2	3	4	8
f. requiring that residents of the project show identification cards before they are allowed into the building?	1	2	3	4	8
g. having a police mini-station at or near your housing project?	1	2	3	4	8
h. having the project manager live in the project?	1	2	3	4	8

20. Now, please think about the housing authority rules for your (project/home), for example, rules about noise, drinking in public, or about who can stay in the unit. Do you think that enforcing the current rules more strictly would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

The next few questions ask about criminal background checks, that is, checking with the police to see if a person has ever been arrested or convicted for a crime.

21. Do you think that allowing your public housing authority to conduct criminal background checks on people who apply to live there would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

22. Do you think that prohibiting people with criminal backgrounds from living in your (project/neighborhood) would help reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all

23. Do you think that evicting residents who are arrested for drug sales and other crimes, even if they have not been convicted, would help to reduce crime...

1 a lot
2 somewhat
3 a little
4 not at all ——► SKIP TO 25.

24. Are you for or against residents being evicted when they are arrested for drug sales and other crimes, even if they have not been convicted?

1 FOR
2 AGAINST

The presence of drug dealers is a problem in some (housing projects/neighborhoods). In other (housing projects/neighborhoods), this is not a problem.

25. (In the past 6 months/Since you moved to your current home), how much of a problem has the presence of drug dealers been in your (project/neighborhood)? Would you say that it has been...

    1 a big problem
    2 somewhat
    3 not a problem at all ——▸ SKIP TO 28.

26. If the housing authority would help people in your (project/neighborhood) move to another (project/neighborhood) and would give them Section 8 or other housing assistance, do you think that they would be willing to testify in court against drug dealers?

    1 YES
    2 NO
    3 DON'T KNOW/MAYBE

27. If the housing authority would help you move to another (project/neighborhood) and would give you Section 8 or other housing assistance, would you be willing to testify in court against drug dealers?

    1 YES
    2 NO
    3 DON'T KNOW/MAYBE

The next few questions are about guns. When I ask about guns, please include pistols, shotguns, rifles, and other types of firearms. Do not include guns that cannot fire, starter pistols, or BB guns.

28. How many residents in your (project/neighborhood) would turn in guns in exchange for $50 in cash or for clothing or food that would sell for about $50? Would you say. .

    1 most or all
    2 some
    3 a few
    4 none ——▸ SKIP TO 30.

29. Are you for or against a program that would let residents exchange guns for $50 in cash or for clothing or food that would sell for about $50?

1 FOR
2 AGAINST

30. Do you think that rules prohibiting residents from possessing guns (for example, pistols, shotguns, or other types of firearms) help reduce crime....

1 a lot
2 somewhat
3 a little
4 not at all

Some public housing authorities ask local police to conduct unannounced searches of houses or units in a development to look for illegal guns or drugs.

31. Do you think that these "sweeps" or searches would make your (project/neighborhood)...

1 a lot safer
2 somewhat safer
3 a little safer
4 not at all safer ——▸ SKIP TO 33.

32. Are you for or against allowing the local police to conduct these "sweeps?"

1 FOR
2 AGAINST

33. How concerned are you that these "sweeps" would be done in the homes of residents who do not have illegal guns or drugs? Would you say you are...

1 very concerned
2 somewhat concerned
3 a little concerned
4 not at all concerned

Some problems in public housing are associated with gangs of young people.

34 (In the past 6 months/since you moved into your current home) have gangs in your (project/neighborhood) been a big problem, somewhat of a problem, or no problem at all?

1 big problem
2 somewhat of a problem
3 not a problem at all

Next, I am going to read a list of different things that might be done to help prevent young people from joining gangs. As I read each one, please tell me whether you think that it would help a lot, somewhat, a little, or not at all.

35. Do you think that...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. a minimum-wage job would help prevent young people from joining gangs a lot, somewhat, a little, or not at all?	1	2	3	4
b. organized and supervised activities that run after 10:00 at night?	1	2	3	4
c. organized and supervised activities that run from 6:00 until 10:00 in the evening?	1	2	3	4
d. after-school programs that run until 6:00 in the evening?	1	2	3	4

Next, I am going to read a list of different types of assistance that might be used to help unemployed residents in public housing get a job. As I read each one, please tell me how much you think it would help residents get a job.

36. Do you think that assistance with...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. transportation would help a lot, somewhat, a little, or not at all?	1	2	3	4
b. child care?	1	2	3	4
c. medical needs, including health insurance?	1	2	3	4
d. school or training?	1	2	3	4
e. the cost of food?	1	2	3	4

Next, I am going to read a list of training programs that might be used to help unemployed residents in public housing get a job. As I read each type of program, please tell me how much you think the program would help residents in public housing get a job.

37. Do you think that...

	A LOT	SOMEWHAT	A LITTLE	NOT AT ALL
a. high school equivalency programs, like GED, would help people in your (project/neighborhood) get a job a lot, somewhat, a little, or not at all?	1	2	3	4
b. college or adult education courses?	1	2	3	4
c. skills or technical training programs that train people for a job like a machine operator, secretary, or truck driver?	1	2	3	4
d. programs that train people on how to find a new job?	1	2	3	4

Some people think that these kinds of programs would help to reduce crime because more people in the (project/neighborhood) would have jobs. Other people do not think that these kinds of programs would help to reduce crime.

38. How much do you think these kinds of programs would help reduce crime in your (project/neighborhood)? Would you say that they would help...

1 a lot
2 somewhat
3 a little
4 not at all

39 What other things would you recommend to help reduce crime in your (housing project/neighborhood)?

____

____

____

CHECKPOINT: IF Q1=1, CONTINUE. OTHERWISE, SKIP TO 44.

Now, I have just a few more general questions about the kind of place that you live in.

40. Which of the following best describes the project that you live in? Is it...

1 one or more high-rise buildings with an elevator
2 one or more low-rise buildings (without an elevator)
3 attached townhouses or rowhouses
4 single-family houses

41 Thinking about all the buildings in your project, how many units, that is houses or apartments, are there? Would you say...

1 between 2 and 50
2 between 51 and 100
3 between 101 and 500
5 more than 500
6 DON'T KNOW

42. Thinking now just about your building, how many separate units or apartments are there in your building?

1 2 TO 10
2 11 TO 20
3 21 TO 50
4 MORE THAN 50

43 How many of the residents in your building are handicapped or at least 62 years old? Would you say that...?

1 almost all or all of them
2 some of them
3 a few of them
4 none of them

Finally, I have just a few general questions about your background.

44. What is the year of your birth?

______ YEAR OF BIRTH

45. What is the highest grade or year of school you have attended?

______ HIGHEST GRADE/YEAR ATTENDED

46. Did you complete that year?

1 YES
2 NO

47. Do you currently have a job? By "job", I mean either full- or part-time work that you do for pay.

1 YES
2 NO

48. How much rent do you (or others in your household) pay each month for your apartment or house?

__________ PER MONTH

49. Are you of Spanish or Hispanic origin or decent, for example, Mexican, Puerto Rican, or Cuban?

1 YES
2 NO

50. Which of the following best describes your race?

1 American Indian or Alaskan Native
2 Asian or Pacific Islander
3 Black
4 White
5 OTHER (SPECIFY________________________)

51. CHECK ITEM: RECORD SAMPLE MEMBER'S GENDER.

1 MALE
2 FEMALE

Those are all of the questions that I have. Thank you for your time and assistance.

[FR Doc. 94-11836 Filed 5-13-94; 8:45 am]

BILLING CODE 4210-01-C

[Docket No. N-94-3768]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act for expedited review. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 26, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within ten (10) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, a form to be used to report annual accomplishments regarding employment, training, and contracting opportunities under Section 3, and a (complaint) form for filing with the Department allegations of non-compliance with section 3. HUD is requesting a 10-day OMB review of the documents.

The Department has submitted the proposal for the collection of information as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) The title of the information collection proposal:

(2) The Office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How often information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours for preparing the response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The name and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 2, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Information Collection for Part 135—Employment Opportunities for Low and Very Low-Income Persons

Office: Office of Economic Opportunity, EPE Assistant Secretary for Fair Housing and Equal Opportunity

Description of the Need for the Information and its Proposed Use: This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses that provide economic opportunities to them.

Form Number: Form HUD 958 and Form HUD 60002

Respondents: HUD recipients and their contractors and subcontractors

Frequency of Submission: Annually

Reporting Burden: Form Hud-60002

Number of respondents	Number of reports	Hours per report	Total hours
58,403 (recipients)	1	2	116,806
75,000 (contractors and subcontractors)	1	2	150,000

Form HUD-958

Number of respondents	Number of responses	Hours per response	Total hours
100 complainants .	100	1	100
100 respondents	90	4	360

Total Estimated Burden Hours: 534,072

Status: Revision of a currently approved collection

Contact: Maxine B. Cunningham, HUD (202) 708-2251, Joseph F. Lackey, Jr., OMB (202) 395-6880

Date: May 2, 1994

Supporting Statement

1. Need for Information and Legal Requirements

Section 3 Reporting Form

Section 3 of the Housing and Urban Development Act of 1968 (Section 3) mandates that the Department ensure that employment and other economic opportunities generated by its housing and community development assistance programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

The Housing and Community Development Act (HCDA) of 1992 requires the Secretary of Housing and Urban Development (HUD) to submit to the Congress, not later than one year after the date of enactment, a report describing (1) the Secretary's efforts to enforce Section 3; (2) barriers to full implementation of Section 3; (3) the anticipated costs and benefits of full implementation of Section 3; and (4) recommendations for legislative changes to enhance the effectiveness of Section 3.

Congressional actions support the need for a data collection instrument to assess Section 3's impact. Responding to a directive in the Conference Report on the Housing and Community Development Act of 1987, the Department in FY 1991 issued a report to Congress. This report assessed the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses located in the area of assisted projects. Further, the Fair Housing Act, as amended in 1988, at Section 808(e)(6) requires the Secretary of HUD to report annually to Congress, and make available to the public, data on beneficiaries of HUD-assisted programs pursuant to Section 3. In addition, Section 562 paragraph (a) of the Housing and Community Development Act of 1987 requires HUD to collect data and report annually to Congress on the racial and ethnic characteristics of persons eligible for, assisted by or otherwise benefiting from each community development and housing assistance program administered by HUD. Since the provisions of Section 3 apply to community development and housing assistance programs, Section 562 authorizes the Secretary to collect information determined to be necessary and appropriate in order to complete this report. In spite of these numerous reporting requirements, no data is collected on Section 3 which allows the Department to determine the potential or to evaluate the impact of the statute in meeting its objectives.

Congress, as well as the Department's Office of Inspector General, have admonished the Department in failing to systematically implement Section 3. The primary impediment is the absence of a regulation which conforms to the statute and applies to all Section 3 covered assistance.

The regulations governing Section 3 at 24 CFR Part 135 have been revised to incorporate the statutory amendments in the Housing and Community Development Act of 1992; reflect certain changes in the Department's programs that are subject to the Section 3 regulations; clarify the obligations of individuals and entities subject to the requirements of Section 3; and simplify the Department's administration of Section 3 requirements. The revised regulations include recordkeeping and reporting requirements.

The section 3 proposed rule was published on October 8, 1993 for public comment. As a result of comments received, the Department made a number of changes to the rule. Accordingly, the previously approved section 3 reporting form, OMB No. 2529–0043, was revised to reflect the changes made in the rule.

Changes in the rule affecting the recordkeeping and reporting requirements are the establishment of numerical goals to be reported in staff hours for training and employment and numerical goals to be reported in percentages for contracting opportunities. The section 3 reporting form, OMB No. 2529–0043, requested that data be reported on the number of section 3 residents hired in available positions and the total dollar amount of contracts awarded to section 3 business concerns. Based on revisions to the rule, the data collection will reflect staff hours for new hires and section 3 positions, and a percentage of the total dollar amount of contracts awarded to section 3 business concerns. These are elements needed for an effective program performance measurement system as required under the Government Performance and Results Act of 1993.

In addition, we are adding a Complaint Register which will be used to file section 3 complaints for your approval. Although the regulations implementing section 3, since 1973 have provided for HUD processing of allegations of non-compliance, this is the first request for OMB approval of a formal complaint form for this requirement.

The Department is seeking a three year approval of the revised section 3 reporting form, OMB No. 2529–0043; and the section 3 complaint form.

Complaint Register

The Complaint Register for section 3 of the Housing and Urban Development Act of 1968 (Section 3 Compliant Form) is necessary for the collection of information relative to the investigation of allegations of noncompliance pursuant to Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3). Section 3 requires that the Department, to the greatest extent feasible, provide: (1) job and training opportunities for lower income persons within that unit of local government or the metropolitan area (or nonmetropolitan county) where the project is located; and (2) business opportunities for firms located or owned in substantial part by persons in the same metropolitan area (or nonmetropolitan county) as the project. The regulation at 24 CFR part 135 provides that Section 3 residents and business concerns may file a complaint alleging noncompliance with Section 3 by a recipient, contractor or subcontractor. The complaint must be filed within 180 days of the alleged violation.

It is anticipated that the Section 3 Complaint Form will help to expedite the acceptance of complaints because the form guides the complainants to include all necessary components of the complaint, thereby saving costs associated with staff time that would otherwise be spent securing additional information that would be necessary to complete a complaint.

Statutory Authority

The authorization for the information collection on the Section 3 Reporting Form is Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The implementing regulations are found at 24 CFR Part 135 Subpart F—Recordkeeping and Reporting.

The authorization for Section 3 Complaint Form is Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The implementing regulations are found at 24 CFR Part 135 Subpart D—Complaint and Compliance Review. The Section 3 Complaint Form was developed to provide for uniformity in the information that, by regulation, must be included in a complaint and for the convenience of the public. The Section 3 regulation (24 CFR Part 135) states what each complaint should contain. For purposes of meeting the time requirement for filing complaints (180 days), initially these complaints do not have to be submitted on the form that HUD provides.

2. Use of Information

The Section 3 Reporting Form will be used by the Department to monitor program recipients' compliance with Section 3. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the statutory objectives of Section 3. Also, the data collected will be used by recipients as a self-monitoring tool. If the information is not collected, HUD will be unable to prepare the mandatory reports to Congress or to assess the effectiveness of Section 3.

The Section 3 Complaint Form will be used by a complainant to provide the necessary information to file a complaint. A complaint may be filed by mail, in person or by telephone with the Office of Fair Housing And Equal Opportunity (FHEO), Department of Housing and Urban Development. FHEO staff will use the information provided by this form as the basis for the Department's determination of jurisdiction over a complainants' allegations.

3. Improved Technology To Reduce Burden

This issue is not applicable to the Section 3 Reporting Form.

The collection of data on the Section 3 Complaint Form is consistent with the use of improved technology as the Department prepares to convert their form to a direct electronic input source. This electronic input source will reduce the burden of completing the form manually before the information is stored on to an electronic media for use in the Department's automated tracking system.

4. Duplication

The Section 3 Reporting Form does not duplicate any other reporting requirement in the Department.

The Section 3 Complaint Form does not duplicate any other information collection process. HUD is the only Federal agency with responsibility for administration of Section 3. This form is unique to the processing of a allegation of noncompliance with the Section 3 statute or implementing regulations.

5. No Similar Information

No similar information is available to HUD with respect to the Section 3 Reporting Form.

6. Small Business Burden

The collection of information by the Section 3 Reporting Form involves recipients, contractors, and subcontractors receiving Federal financial assistance for housing and community development programs covered by Section 3. To minimize the burden, the Department has attempted to provide clear guidance on the required information collection. This guidance will prevent the recipient from collecting and submitting unnecessary or duplicative information. The Section 3 regulations apply to any Public and Indian Housing programs that receive: (1) Development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937. The regulations also apply to other housing and community development assistance expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; (3) other public construction projects; and (4) housing and community development assistance for which the HUD share of the project cost (as defined in § 135.5) for such activity exceeds $100,000, or the amount of any subcontract awarded in connection with the covered activity exceeds $50,000.

Recipients and contractors subject to Section 3 requirements must maintain appropriate documentation to establish that, at a minimum, a good faith effort was made to provide economic opportunities resulting from financial assistance for housing and community development programs to low- and very low-income residents. Each recipient who receives Section 3 covered assistance from HUD shall submit to the Assistant Secretary for Fair Housing and Equal Opportunity an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the results of Section 3 activities.

These results are used to assess the impact of the law, to target monitoring and compliance reviews, and to prepare reports to Congress.

A Section 3 complaint may be filed by an individual representing the interests of a small business. The information required on the Section 3 Complaint Form, is the same type of information voluntarily provided by a person representing an individual. Complainants are individuals or businesses who chose to submit this form to HUD, and by electing to do so, are required to only submit it once. No reporting of any kind is required, nor are respondents remunerated by HUD for this effort.

7. Reporting Cycle

Section 3 Reporting Form information will be collected annually. The report may be submitted on the same cycle as the performance report required by the program under which Section 3 covered assistance is provided. Where a performance report is not required, the Section 3 report is due to the local HUD (Category A) Office within ten (10) days after the end of the reporting period indicated in Block 8 of form HUD–60002 or at the completion of the project if sooner. Also, an annual reporting cycle will assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act, Section 561 of the HCDA of 1987 and Section 916 of the HCDA of 1992. This report also will assist the Department in evaluating and managing program performance.

The Section 3 Complaint Form mandates no specific requirements with respect to the frequency of collection of information. The Section 3 Compliant Form is made available to the public for use by individuals or businesses who wish to file a Section 3 compliant with HUD. Complaints are individuals who chose to submit this form to HUD, and by electing to do so, are required to only submit it once. No remunerated by HUD for this effort.

8. Consistency With 5 CFR 1320.6

Use of the Section 3 Reporting Form is consistent with 24 CFR part 1320.6.

Use of the Section 3 Complaint Form is consistent with 24 CFR part 1320.6.

9. Outside Consultation

Pursuant to statutory requirements, staff from the Departments of Labor and Commerce, and the Small Business Administration have been contacted regarding the Section 3 Reporting Form. The attached Section 3 Reporting Form—Economic Opportunities for Low- and Very Low-Income Persons, Housing and Urban Development Act of 1968, has been developed by the Section 3 Compliance Division for collecting Section 3 data. Form HUD–2516 is modified to collect Section 3 contracting data from public and Indian housing programs and all community development programs except those administered by States. Form HUD–60002 is designed to collect Section 3 contracting data from all other Section 3 covered programs and to collect training and employment data on all Section 3 covered programs. These data collection forms are the only instruments that collect Section 3 employment, training and contracting information.

No one was consulted outside the Department with respect to the Section 3 Complaint Form. The instructions are specific, and the information provided by the complainant is unique on each form.

10. Confidentiality

An assurance of confidentiality is not applicable to the Section 3 Reporting Form. The form will be filed with HUD's Office of Fair Housing and Equal Opportunity. The Privacy Act of 1974 and OMB Circular A–108 are not applicable.

All information collected by the Section 3 Complaint Form complies with the Privacy Act of 1974 and OMB Circular A–108, "Responsibilities for Maintenance of Records About Individuals by Federal Agencies". Each respondent is apprised of the filing of a Section 3 Complaint against them. However, information obtained during the investigation is held in confidence and may not be divulged while the investigation is in progress.

11. Sensitive Questions

The Section 3 Reporting Form reporting requirements do not contain sensitive questions. The information requested deals with the results of the recipient's good faith efforts to provide opportunities for lower income residents to receive job training and employment and for local businesses to receive contracts in connection with HUD assisted programs. Data is cumulative and personal identifying information is not included.

The Section 3 Complaint Form does not request information of a sensitive nature such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private. Section 3 is racially neutral and as such the complaint form does not request information regarding the complainants' race, color, sex, or national origin because these areas are not protected classes or issues which determine beneficiaries of Section 3. The information provided on this complaint form is given voluntarily and provides the basis for HUD's investigation of the complaint to determine if the allegations of noncompliance are valid.

12. Estimate of Costs

For HUD Section 3 Reporting Form—Preparing the Report	
FHEO:	
GS–13 to compile and analyze the information at $25.18 per hour for approximately 8 hours.	$201.44
GS–15 to review and approve at $35 per hour for approximately 3 hours.	105.00
GS–7 to type, copy, and prepare report for mailing at $11.94 per hour for approximately 8 hours.	95.52
Mailing costs for first class for 58,403 packages per recipient @ $1 per report. (33,000 PHI recipients, 403 Housing recipients, & 25,000 CPD recipients)	58,403.00
Total	58,804.96
For Respondents—Recordkeeping and Reporting Recipients	
One professional staff at $25 per hour for approximately 3 hours.	75.00
One secretary to type, copy, and prepare report for mailing at $11 per hour for approximately 12 hours.	132.00
Mailing costs for first class for 1 package @ $1 per report.	1.00
Total	208.00
Contractors	
One professional staff at $25 per hour for approximately 1½ hours.	37.50
One secretary to type, copy, and prepare report for mailing at $11 per hour for approximately 4 hours.	44.00
Mailing costs for first class for one package @ $1 per report.	1.00
Total	82.50
For HUD—Reviewing the Section 3 Complaint Form	
FHEO:	
GS–12 to review each Section 3 Complaint Form at $19 per hour for ⅓hour. HUD anticipates a receipt of 100 complaints annually. 100 complaints x .33 minutes = 33 hrs.	
33 hrs x $19 per hour	627.00
10 % overhead	62.70
Total	689.70
For Complainants—Completion of Section 3 Complaint Form	
This form is voluntarily filled out by a Section 3 Complainant in one hour. There is no financial investment required or expected	
For Respondents—Completion of Section 3 Complaint Form	
A Respondent does not complete the Section 3 Complaint Form. However, the respondent is required to respond and/or resolve the allegations identified on the Section 3 Complaint Form. The estimated time for response is four (4) hours. The estimated cost for this response time is as follows:	
One professional staff (attorney) at $75 per hour for approximately 3 hours.	225.00
One secretary to type, copy, and prepare response for mailing at $11 per hour for approximately 1 hour.	11.00
Mailing costs for first class for one package @ $1 per response.	1.00
Total	237.00

13. Estimate of Collection Burden

For the Section 3 Reporting Form the total universe of potential respondents, including recipients, prime contractors and subcontractors, is approximately 133,403. We anticipate that about 58,403 respondents (HUD recipients) will submit summary reports to HUD. Prime contractors and subcontractors will submit reports, *as requested*, to the recipients. The required summary report from the recipients is submitted to HUD annually, 10 days after the end of the designated reporting period. The information is generated by the recipient through maintaining documentation that summarizes efforts made, and the results of those efforts, to provide opportunities for training and employment arising from HUD assistance to low- and very low-income residents. The data will be recorded on the Section 3 reporting form (form HUD–60002, Economic Opportunities for Low- and Very Low-Income Persons). It is estimated that two hours per reporting period will be required of the recipients, contractors and subcontractors to prepare the Section 3 report. We estimate that the burden will not vary significantly among the respondents.

Form HUD–60002

Number of respondents	Number of reports	Hours per report	Total hours
58,403 (recipients) ..	1	2	116,806
75,000 (contractors and subcontractors)	1	2	150,000

For the Section 3 Complaint Form, the Department estimates that during the course of a year approximately 100 Section 3 complaints will be filed. It is anticipated that it will take the complainant approximately one (1) hour to complete the complaint form. It is anticipated that it will take the respondent approximately four hours to respond to the allegations of the complaint. Of the 100 complaints anticipated for receipt, HUD does not expect to require or receive a response from each respondent. About 10% of the complaints received will be administratively closed for lack of jurisdiction prior to the notification of the respondent. Therefore, the number of responses by the respondent has been lessened by 10% (to 90 responses) resulting in 360 total response hours for a respondent.

The total number of burden hours for the Section 3 Complaint Form is 460 hours calculated as follows:

Section 3 Complaint Form

Number of respondents	Number of responses	Hours per response	Total hours
100 complainants	100	1	100
100 respondents	90	4	360
Record-keeping: 133,403 recipients, contractors & subcontractors	1	4	266,806

14. Change in Burden

The Section 3 Reporting Form is revised to reflect public comments to the proposed rule.

This is the first time that the Section 3 Complaint Form information has been requested.

15. Publication of Data

There are no existing plans for the tabulation and publication of Section 3 Reporting Form data.

There are no existing plans for the tabulation and publication of Section 3 Complaint Form data.

BILLING CODE 4210–01–M

Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects

U.S. Department of Housing and Urban Development
Office of Fair Housing
and Equal Opportunity

HUD Act of 1968, Section 3

OMB Approval No 2529-0043 (Exp 4/30/97)

Public Reporting Burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2529-0043), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

1. Recipient Name and Address (Street, City, State, Zip)	2. Federal Identification (Contract/Award No.)	3. Dollar Amount of Award
	4. Contact Person	5. Phone (Include Area code)
	6. Reporting Period	7. Date Report Submitted

8. Program Code ☐ (Use a separate sheet for each Program code)

Part I: Employment and Training (* Include New Hires in columns C and D.)

A Job Category	B % of Aggregate New Hires that are Section 3 Residents	C % of total staff hours for Section 3 Employees and Trainees *	D Number of Section 3 Employees and Trainees *	E Racial Ethnic Code(s) For Columns D and E, show Numbers 1	2	3	4	5
Professionals								
Technicians								
Office/Clerical								
Construction by Trade (List) Trade:								
Trade:								
Trade								
Trade								
Trade.								
Other (List)								

Contract Codes:
C = Contractor
S = Subcontractor

Racial Ethnic Codes:
1 = White American
2 = Black American
3 = Native American
4 = Hispanic American
5 = Asian/Pacific American
6 = Hasidic Jews (For Part I only)

Program Codes:
1 = Flexible Subsidy
2 = Section 202/811
3 = Public/Indian Housing Development, Operation and Modernization
4 = Homeless Assistance
5 = HOME
6 = HOME-State Administered
7 = CDBG Entitlement
8 = CDBG-State Administered
9 = Other CD Programs
10 = Other Housing Programs

form **HUD-60002** (05/06/94)
ref Handbook 8023.1

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project $ ____________

B. Total dollar amount of contracts awarded to Section 3 businesses $ ____________

C. Percentage of the total dollar amount that was awarded to Section 3 businesses ____________ %

D. Total number of Section 3 businesses receiving contracts ____________

E. Enter the number of Section 3 businesses receiving contracts by Racial/Ethinic code(s)(see page 1 for codes)

1		2		3		4		5		6	

2. Non-Construction Contracts:

A. Total dollar amount of all non-construction contracts awarded on the project/activity $ ____________

B. Total dollar amount of non-construction contracts awarded to Section 3 businesses $ ____________

C. Percentage of the total dollar amount that was awarded to Section 3 businesses ____________ %

D. Total number of Section 3 businesses receiving non-construction contracts ____________

E. Enter the number of Section 3 businesses receiving non-construction contracts by Racial/Ethinic code(s)(see page 1 for codes)

1		2		3		4		5		6	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

____ Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.

____ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

____ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

____ Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.

____ Other; describe below.

Instructions for completing form HUD-60002, Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects.

This form is to be used to report annual accomplishments regarding employment, training and contracting opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968 (Section 3). The Section 3 regulations apply to any **public and Indian Housing** programs that receive: (1) development assistance pursuant to section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to section 14 of the U.S. Housing Act of 1937 and to **housing and community development** assistance expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; **and** to contracts and subcontracts on such programs where the amount of any contract or subcontract awarded in connection with the covered activity exceeds $100,000

Form HUD-60002 has three parts which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit two copies of this report to the local HUD Field Office. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted with the program performance report. Where an annual performance report is **not required**, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

1. Recipient: Enter the name of the recipient submitting this report

4. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.

5. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.

6. Contact Person: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.

8. Reporting Period: Indicate the time period (months and year) this report covers

Part I: Employment and Training Opportunities

Block A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers

Block B: Enter the percentage of all the new hires (Section 3 residents) in connection with this award. New Hires include full-time positions (permanent, temporary and seasonal).

Block C: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions

Block D: Enter the number of Section 3 residents that were hired and trained in connection with this award.

Block E: Enter under each racial/ethnic code (1-5) the number of employees and trainees recorded in columns D and E

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards. Indicate the appropriate racial/ethnic code(s).

Item E: Enter under each racial/ethnic code (1-6) the number of employees and trainees recorded in Item D.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards. Indicate the appropriate racial/ethnic code(s).

Item E: Enter under each racial/ethnic code (1-6) the number of employees and trainees recorded in Item D.

Part III: Summary of Efforts - Self-Explanatory

Submit two (2) copies of this report to your local HUD Field Office within ten (10) days after the end of the reporting period you specified in Item 8. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

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*The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes

form **HUD-60002** (05/06/94)
ref Handbook 8023.1

COMPLAINT REGISTER

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

1. Name of aggrieved person or organization (last name, first name, middle initial) (Mr., Mrs., Miss, Ms.)

Home Phone: ( ) Business Phone: ( )

Street Address (include City, County, State and zip code)

Check the applicable box or boxes which describe(s) the status of the complainant named above.

A. Low/very low income resident(s)

B. Public Housing resident(s)

B. Representative of low/very low income residents or public housing residents

C. Section 3 business concern(s)

D. Representative of Section 3 business concerns

2. Against whom or what organization is this complaint being filed? Name (last name, first name, middle initial; Mr., Mrs., Miss, Ms.)

Phone Number:

Street Address (include City, County, State and zip code)

Check the applicable box or boxes which describe(s) the party/organization named above.

A. APPLICANT
B. RECIPIENT
C. SUB-RECIPIENT
D. CONTRACTOR
E. SUBCONTRACTOR
F. OTHER

If you named an individual who appeared to be acting for a company in this case, check this box and write the name and address of the company in this space:

PROOF

NAME ADDRESS

Name and identify others (if any) you believe violated the law in this case:

3. On what basis are you alleging noncompliance with Section 3?

A. TRAINING OPPORTUNITIES FOR SECTION 3 RESIDENTS
B. EMPLOYMENT OPPORTUNITIES FOR SECTION 3 RESIDENTS
C. CONTRACTING OPPORTUNITIES FOR SECTION 3 BUSINESSES

4. What did the person/organization you are complaining against do? Check all that apply and give the most recent date of the act(s) occurred in block No. 6a below.

A. FAILED TO UNDERTAKE REQUIRED TRAINING EFFORTS

B. FAILED TO UNDERTAKE REQUIRED EMPLOYMENT EFFORTS

C. FAILED TO UNDERTAKE REQUIRED CONTRACTING EFFORTS

5. Identify the HUD program(s) through which assistance is being provided. Check all that apply:
PIH/DEV _____ PIH/MOD _____ PIH/OPER _____ OTHER PIH____
202/811 _____ OTHER HOUSING _____ CDBG _____ HOME _____
HOMELESS _____OTHER CPD _____ LEAD-BASED PAINT ______

6. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Additional details may be submitted on an attachment. Note: HUD will furnish a copy of the complaint to the person or organization against whom the complaint is made.

6a. When did the act(s) checked in Item 3 occur? (Include the most recent date if several dates are involved.)

7. I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Signature and Date:

PROOF

COMPLAINT REGISTER

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

__Instructions.__ This form is to be used to report allegations of noncompliance with Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3) and implementing regulations at 24 CFR Part 135.

What Does Section 3 of the Housing and Urban Development Act of 1968 provide?

The law describes the HUD programs directly affected by Section 3, receiving Federal financial assistance from the Department, and dictates how these programs are to provide employment and other economic opportunities for low and very low income persons.

What does the Law Cover?

Section 3 applies to any __public and Indian Housing__ programs that receive: (1) developmental assistance pursuant to section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to section 14 of the U.S. Housing Act of 1937 and to __housing and community development__ assistance extended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; __and__ for which the contract or subcontract amount exceeds $100,000.

What Can You Do About Violations of the Law?

Remember, Section 3 applies to the awarding of jobs and contracts, generated from projects receiving HUD financial assistance. If you believe that, as a low income person or a Section 3 business concern, the responsibilities to provide economic opportunities under Section 3 have been violated, you have a right to file a complaint within 180 days of the last alleged occurrence of noncompliance.

Complain to the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, by filing this form by mail or in person. The information received will be used by HUD to determine jurisdiction under Section 3.

HUD will send the complaint to the appropriate HUD recipient for resolution. If resolution by the recipient fails, HUD will investigate. If HUD finds that the complaint has merit, it will try to end the violation by informal resolution. If conciliation fails, HUD may initiate other steps to enforce the law, including but not limited to suspension and debarment of the recipient or contractors as applicable.

You can obtain assistance in learning about Section 3 or in filing a complaint at the HUD Offices listed below:

Assistant Secretary
HUD - Fair Housing and Equal Opportunity
451 7th Street SW
Washington, DC 20410

New England (Connecticut, Maine, Massachusetts, New Hampshire Rhode Island, Vermont)
HUD - Fair Housing and Equal Opportunity (FHEO)
Boston Federal Office Building, 10 Causeway Street
Boston, Massachusetts 02222-1092

New york, New Jersey
HUD - Fair Housing and Equal Opportunity (FHEO)
26 Federal Plaza
New York, New York 10278-0068

Mid-Atlantic (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
HUD - Fair Housing and Equal Opportunity (FHEO)
Liberty Square Building, 105 7th Street
Philadelphia, Pennsylvania 19106-3392

Southeast (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, Virgin Islands)
HUD - Fair Housing and Equal Opportunity (FHEO)
Richard B. Russell Building, 75 Spring Street, SW
Atlanta, Georgia 30303-3388

Midwest (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
HUD - Fair Housing and Equal Opportunity (FHEO)
Ralph H. Metcalfe Federal Building, 77 West Jackson Blvd.
Chicago, Illinois 60604-3507

Great Plains (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
HUD - Fair Housing and Equal Opportunity (FHEO)
1600 Throckmorton, P.O. Box 2905
Fort Worth, Texas 76113-2905

Rocky Mountain (Iowa, Kansas, Missouri, Nebraska)
HUD - Fair Housing and Equal Opportunity (FHEO)
Gateway Tower II, 400 State Avenue
Kansas City, Kansas 66101-2406

Southwest (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
HUD - Fair Housing and Equal Opportunity (FHEO)
Executive Tower Building, 1405 Curtis Street
Denver, Colorado 80202-2349

Northwest/Alaska (Alaska, Idaho, Oregon, Washington)
HUD - Fair Housing and Equal Opportunity (FHEO)
Suite 200 Seattle Federal Building, 909 1st Avenue
Seattle, Washington 98104-1000

Pacific/Hawaii (Arizona, California, Hawaii, Nevada, Guam, American Samoa)
HUD - Fair Housing and Equal Opportunity (FHEO)
450 Golden Gate Avenue
San Francisco, California 94102-3448

Privacy Act of 1974 (P.L.93-579)

Authority: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, U.S.C. 1701u and implementing regulations at 24 CFR Part 135.

Purpose: The information requested on this form is to be used to investigate and process Section 3 complaints.

Penalty: Failure to provide some or all of the requested information will result in delay or denial of HUD assistance.

Disclosure of this information is voluntary.

H:S3CPTFOR

[FR Doc. 94-11837 Filed 5-13-94; 8:45 am]

BILLING CODE 4210-01-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-920-94-4120-01]

Utah and Colorado: Uinta Southwestern Utah Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: In accordance with the responsibilities outlined in the Federal Coal Management Regulations (43 CFR part 3400), the Regional Coal Team (RCT) for the decertified Uinta Southwestern Utah Federal Coal Production Region will hold a meeting to discuss and make recommendations concerning coal leasing and development in the region. The RCT will review pending coal lease applications under the "Leasing by Application" (LBA) program and discuss any additional coal-related activities appropriate at this time.

Members of the public, coal companies and interested agencies are invited to make comments at the meeting.

SUPPLEMENTARY INFORMATION: A total of seven coal lease applications are pending in the region, including six in Utah and one in Western Colorado. The RCT will be reviewing the applications and where appropriate making recommendations to the BLM concerning processing the applications. Pending applications in the region include:

State	Applicant	Coal field	Estimated acreage
Utah	Mining & Energy Res. Inc	Wasatch Plateau	[1] 3,431
	Coastal States Energy	Wasatch Plateau	2,020
	Sage Point Coal Co	Book Cliffs	1,104
	Sage Point Coal Co	Book Cliffs	2,098
	PacifiCorp Electric Oper	Wasatch Plateau	7,865
	Genwal Coal Co	Wasatch Plateau	4,052
Colorado	Mountain Coal	Paonia/Summerset	2,276

[1] Portions of this application were leased in early 1994.

DATES: The Regional Coal Team meeting will be June 16, 1994, at 1 p.m.

ADDRESSES: The meeting will be held at Bureau of Land Management, Utah State Office, BLM Conference Room, No. 302, 324 South State, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Coal Project Manager, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, Telephone 801-539-4038.

Dated: May 10, 1994.

James M. Parker,

State Director, Utah.

[FR Doc. 94-11859 Filed 5-13-94; 8:45 am]

BILLING CODE 4310-DQ-M

[AK-050-04-4331-04]

Modifications of Alaska Off-Road Vehicle Designations; Tangle Lakes National Register Archaeological District, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice on off-road vehicle decision.

SUMMARY: This notice is provided in reference to the use of off-road vehicles on public lands within the Glennallen District, Alaska, in accordance with authority and requirements of Executive Order's (E.O.) 11644 and 11989 and the regulations contained in 43 CFR part 8340. The following described lands under the administration of the Bureau of Land Management are designated open, limited use, or closed to off-road motorized vehicle (ORV) use. This modifies earlier notices, published July 6, 1984 and May 4, 1992. This order will be effective upon publication and remain in effect until rescinded and/or modified by the District Manager, Glennallen District.

A 226,600-acre area is affected by the designations, known as the Tangle Lakes National Register Archaeological District. This area is located in South Central Alaska, within the Clearwater Geographic Reference Unit. The reduced and revised boundaries for this National Register District were accepted by the Keeper of the National Register of Historic Places as of August 12, 1993. The reduction and revision has resulted in changes to certain previously designated ORV trails. Trails previously designated limited use, the Maclaren River Road and Sevenmile Lake Trail, are now outside the National Register Archaeological District Boundary. Use is open for motorized vehicles.

A. Limited Designations

1. Limited Season of Use—226,600 Acres

The Tangle Lakes National Register Archaeological District is located west of Paxson, Alaska along the Denali Highway from mileposts (MP) 17 to 38. The area is open to motorized vehicle use from October 16 to May 15. Motorized vehicle use is limited to designated trails from May 16 to October 15, to protect historic properties.

2. Use Limited to Designated Roads and Trails

Motorized vehicle use in this area is permitted on designated roads and trails which are identified on maps which are available at the Glennallen District Office and by signs posted at major access points.

The following roads and trails are designated and open for motorized vehicle use, in accordance with item 1 above. All trails originate at the Denali Highway, with the exceptions of trails 7 and 8.

1. Maclaren Summit Trail, at the Maclaren Summit, 4,086 ft. elevation (MP 37). Of this short 3-mile long trail only the first mile remains limited use.
2. Osar Lake Trail, south to vicinity of Osar Lake (MP 37).
3. Glacier Lake Trail, north to Glacier Lake (MP 30).
4. Landmark Gap Trail South, south with a southwest branch extending to an area north of Osar Lake; the southeast fork extends toward the Tangle Lakes (MP 24.7).
5. Landmark Gap Trail North, north to Landmark Gap Lake (MP 24.6).
6. Swede Lake Trail, south to the Swede Lakes, portions of the Swede Lake trail are outside the National Register Archaeological District boundary. Additional signage will alert users when they are outside the

National Register District. Trails 9 and 10 depart from this trail (MP 16).

7. Middle Fork Gulkana Branch Trail, parallels the Middle Fork Gulkana River, west to Dickey Lake remains within the National Register Archaeological District; the portion east to Meier Lake is located outside the National Register Archaeological District.

8. Alphabet Hills Trail, south extension of Swede Lake after crossing the Middle Fork Gulkana River.

Additional trails may be opened as required federal legislation, pertinent to historic properties and environmental concerns, are met. The above designations become effective upon publication in the FR and will remain in effect until rescinded and/or modified by the Authorized Officer.

Operators of ORVs in violation of these designations are subject to penalties prescribed in 43 CFR 8340.0–7 and Public Law 96–95.

ADDRESSES: Direct questions and/or comments to: Glennallen District Manager, Bureau of Land Management, P.O. Box 147, Glennallen, Alaska 99588. (907) 822–3217.

FOR FURTHER INFORMATION CONTACT: Patricia McCoy 907/822–3217.

Dated: May 2, 1994.

Michael Zaidlicz,

Acting District Manager.

[FR Doc. 94–11614 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–JA–M

[WY–920–04–4140–03, WYW132641]

Sodium Exploration License; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for sodium exploration license (WYW132641).

SUMMARY: Pursuant to section 302(b), and to the regulations at CFR 43, subpart 3524, members of the public are hereby invited to participate with Tg Soda Ash, Inc. on a pro rata cost sharing basis in its program for the exploration of sodium deposits owned by the United States of America in the following-described lands in Sweetwater County, WY:

T. 20 N., R. 110 W., 6th P.M., Wyoming,
  Sec. 4: Lots 1 thru 4, S2N2, S2;
  Sec. 10: All.

Containing approximately 1181.85 acres.

All of the sodium in the above-described lands consists of unleased Federal sodium within the Green River Basin Known Sodium Leasing Area. The purpose of the exploration program is to conduct off-lease exploration by drilling to evaluate thickness, quality, and other characteristics of the sodium mineral deposits located on lands adjacent to Tg Soda Ash's existing mining operation.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132641): BLM, WY State Office, 2515 Warren Avenue, Cheyenne, WY; and, BLM, Rock Springs District Office, Highway 191 North, Rock Springs, WY.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program must send written notice to both the BLM and Tg Soda Ash, Inc. by the close of business June 15, 1994. The written notice should be sent to the following addresses: Tg Soda Ash, Inc., Attn: Terry Leigh, P.O. Box 100, Granger, WY 82934; and, BLM, WY State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

Vernon G. Rulli,

Acting Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 94–11873 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–22–M

[ID–942–04–321A–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 4, 1994.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of section 3, Township 23 North, Range 22 East, Boise Meridian, Idaho, Group No. 829, was accepted May 2, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 4, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–11814 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee meeting will continue development of the draft risk assessment process.

DATES: The Risk Assessment and Management Committee will meet from 8 a.m. to 5 p.m. on Wednesday, June 1, 1994, and 8 a.m. to 2 p.m. on Thursday, June 2, 1994.

ADDRESSES: The Risk Assessment and Management Committee meeting will be held at the Southeastern Biological Science Center, National Biological Survey, 7920 NW. 71st Street, Gainesville, Florida 32606.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD (301) 436–8939.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Assessment and Management Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD 20782 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 9, 1994.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 94–11754 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0038); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart N, Remedies and Penalties.

OMB Approval Number: 1010–0038.

Abstract: Respondents submit this information to MMS seeking administrative review of charges that they have failed to comply with provisions of the Outer Continental Shelf Lands Act (OCSLA) or provisions of a lease, license, or permit issued under the OCSLA, or any regulation or order issued under the OCSLA. The alleged violator is permitted to submit information for review and analysis by MMS's Reviewing Officer in the determination of the facts and issues involved and the amount of the civil penalty which might be assessed.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal Outer Continental, Shelf oil and gas lessee.

Estimated Completion Time: 80 hours.

Annual Responses: 15.5.

Annual Burden Hours: 1,240.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: February 14, 1994.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 94–11818 Filed 5–13–94; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–700–701 (Preliminary)]

Disposable Lighters From the People's Republic of China and Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–700–701 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Thailand of disposable pocket lighters, gas fueled, non-refillable, provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 23, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access 2 to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 9, 1994, by BIC Corporation, Milford, CT.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 1, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than May 27, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 10, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11765 Filed 5–13–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 303–TA–25 (Preliminary)]

Disposable Lighters From Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303–TA–25 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of disposable pocket lighters, gas fueled, non-refillable, provided for in subheading 9613.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Thailand. The Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by June 23, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 9, 1994, by BIC Corporation, Milford, CT.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 1, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than May 27, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11912 Filed 5–13–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 22–55]

Peanut Butter and Peanut Paste: Rescheduling of Public Hearing

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

SUMMARY: The Commission has rescheduled to June 30, 1994, from May

19, 1994, its public hearing in this investigation pursuant to a request for a change in the hearing date from the National Peanut Growers Group.

The schedule for filing briefs has been revised as follows: the deadline for filing prehearing briefs is June 23, 1994; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 30, 1994; and the deadline for filing posthearing briefs is July 7, 1994.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The subject investigation was instituted by the Commission on January 18, 1994. Notice of the investigation and the schedule for its conduct was published in the **Federal Register** of January 26, 1994 (59 FR 3734). Notice of the rescheduling of the public hearing to May 19 was published in the **Federal Register** of April 1, 1994 (59 FR 15456).

For further information concerning the conduct of this investigation and rules of general application see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 204, (19 CFR part 204).

This notice is published pursuant to section 204 of the Commission's rules (19 CFR 204.4).

Issued: May 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11911 Filed 5–13–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32492]

Chicago and North Western Transportation Company—Trackage Rights Exemption—Soo Line Railroad Company, d/b/a CP Rail Systems

Soo Line Railroad Company, d/b/a CP Rail Systems (Soo) has agreed to grant trackage rights to Chicago and North Western Transportation Company (C&NW) over a segment of Soo's track, commonly known as the Saunders Connection, in the City of Superior, WI, which lies between and connects to trackage owned and operated by the Duluth Messabe and Iron Range Railroad, and to trackage owned and operated by the Burlington Northern Railroad. The trackage rights will permit C&NW to operate over the connecting line segment, and thereby facilitate more economical and efficient operation in and through the City of Superior, WI. The trackage rights were to become effective on or after May 5, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. Flanagan, 165 North Canal Street, Chicago, IL 60606–1551.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: May 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11838 Filed 5–13–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Appleton, Papers Inc.,* Civil No. 92 C–0962, was lodged on May 3, 1994 with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree provides penalties and injunctive relief for defendant's violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR part 403, and provisions of a local pretreatment program established by the City of Appleton. The Consent Decree requires defendant to implement a comprehensive compliance program, and pay to the United States a civil penalty of $670,000, plus interest from the date of lodging of the decree, for its past violations of the Clean Water Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Appleton Papers, Inc.* (E.D. Wisc.) and DOJ Ref. No. 90–5–1–1–3879.

The proposed Consent Decree may be examined at any of the following offices:

(1) The Office of the United States Attorney, Eastern District of Wisconsin, Federal Building, room 330, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin (53202);

(2) The Region V office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois (60604–3590); and

(3) The Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 94–11808 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Bridgestone/Firestone, Inc., et al.,* Civil Action No. *94-56-2-ALB-AMER(DS),* was lodged on April 25, 1994 with the United States District Court for the Middle District of Georgia. The proposed Consent Decree concerns the Firestone Tire and Rubber Co. Superfund Site (the "Site") near Albany, Georgia. The Site involves soils and groundwater contaminated by PCBs and other hazardous substances. The Albany-Dougherty Payroll Authority has owned the Site since 1967. From 1968 until 1986, Firestone Tire and Rubber Co. manufactured tires at this location, during which operations it contaminated the Site with heavy metals, PCBs and other hazardous substances. Bridgestone/Firestone ("B/F") is the corporate successor to Firestone Tire and Rubber Co. Pursuant to sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99–499, 42 U.S.C. 9696 and 9607(a), the Complaint in this action seeks performance of the remedy selected by EPA, as well as recovery of all past response costs incurred by the United States at the Site and of all future and oversight costs to be incurred by the United States in connection with the Site.

B/F has agreed in the proposed Consent Decree to (1) perform the remedy selected by EPA at a total estimated cost of $2 million, and (2) reimburse the United States for all of its past response costs incurred at the Site ($348,333.04), and all of its future response and oversight costs. The selected remedy requires excavation and off-site disposal of the contaminated soils and the extraction and treatment of contaminated groundwater. In the proposed Consent Decree, The Albany-Dougherty Payroll Development Authority has agreed to provide access to the Site, record deed restrictions, and impose institutional controls on the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bridgestone/Firestone, Inc., et al.*, DOJ Ref. #90–11–3–1130.

The proposed consent decree may be examined at the office of the United States Attorney for the Middle District of Georgia, 433 Cherry Street, 4th Floor, Macon, Georgia; the Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $54.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–11807 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* versus *Fiji Sugar Corporation, Ltd., et al.*, Civil Action No. 94–00305–DAE, was lodged on April 25, 1994, with the United States District Court for the District of Hawaii. The settling defendants are Fiji Sugar Corporation, Ltd., Industrial Iron Works Corporation, and Russell C. McGarry, d.b.a. R & D Hawaii. The Complaint in this action, brought under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleged that the defendants committed violations of the asbestos NESHAP notification and work practice requirements of 40 CFR part 61, Subpart M, during the removal of a boiler at Hamakua Sugar Company's Ookala Sugar Mill in Ookala, Hawaii.

The proposed consent decree requires the settling defendants to pay a civil penalty of $120,000; to inspect and sample facilities to identify asbestos before commencing a renovation or demolition operation; and, when hiring workers for asbestos-related projects, to employ only persons who have successfully completed an EPA-approved training course.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Fiji Sugar Corporation, Ltd., et al.*, DOJ Ref. #90–5–2–1–1524.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Hawaii, room C–242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–11809 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 92–16

Notice is hereby given that, on March 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project 92–16 have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arco Exploration and Production Technology Company, Plano, TX, has become a member of PERF Project 92–16.

No other changes have been made in either the membership or planned activity of PERF Project 92–16. Membership in this group research project remains open, and PERF Project 92–16 intends to file additional written notification disclosing all changes in membership.

On August 13, 1993, the participants in PERF Project 92–16 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 30, 1993, (58 FR 51104).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–11805 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 92–08: "Biodegradation of VOC's in Vapor Bioprocesses"

Notice is hereby given that, on March 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* ("the Act"), the Chevron Research & Technology Company, acting on behalf of the Petroleum Environmental Research Forum ("PERF") Project 92–08: "Biodegration of VOC's in Vapor Bioprocesses" has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Southern California Edison Company, Rosemead, CA, and Bohn Biofilter Corporation, Tucson, AZ have become members of PERF Project 92–08.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On February 9, 1993, PERF Project 92–08 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 1993, 51 FR 8903.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–11806 Filed 5–13–94; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–2A CARP DD]

1992 and 1993 Digital Audio Recording Royalty Funds; Motions and Objections

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of time period to file motions and objections.

SUMMARY: The Copyright Office is giving notice to the claimants to the 1992 and 1993 Digital Audio Recording Royalty Funds of the commencement of a 30-day period to file any precontroversy motions or objections. This includes any objections for cause to the arbitrators nominated by various professional arbitration associations.

DATES: Any motions or objections are due June 15, 1994.

ADDRESSES: If sent by mail, an original and five copies should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, Copyright Office, room LM–407, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION: On May 9, 1994, the Copyright Office of the Library of Congress published in the **Federal Register** the interim regulations that govern the distribution and ratemaking proceedings conducted by the Copyright Arbitration Royalty Panels (CARP), as specified by the Copyright Royalty Tribunal Reform Act of 1993. 59 FR 23964 (May 9, 1994).

Section 251.45 of these interim regulations provides that, before the initiation of any CARP royalty distribution proceeding, the Librarian of Congress will "designate a 30-day period in which any party to the proceeding may file with the Librarian of Congress objections to, or motions to dismiss, any party's royalty claim, or motions for declaratory rulings, or for procedural or evidentiary rulings, on any proper ground."

At the same time, § 251.4 of the CARP rules provides that, during this same 30-day period, "any party to the proceeding may * * * file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable."

We are currently anticipating that a CARP proceeding may be required for the distribution of 1992 and 1993 digital audio recording royalties (DART). On March 1, 1994, we published in the **Federal Register** a notice asking the claimants to those two funds whether any controversies exist, and requested their filing of a notice of intention to participate. We stated that, if controversies do exist, we would initiate the proceeding on June 30, 1994. 59 FR 9773 (Mar. 1, 1994).

Precontroversy motion and objection period for 1992 and 1993 DART. Therefore, by this Notice, we are establishing the 30-day precontroversy period called for by §§ 251.4 and 251.45 for the filing of precontroversy motions and objections, and for the filing of objections to the list of arbitrators nominated by professional arbitration association. The precontroversy motion and objection period begins today and ends June 15, 1994.

The list of nominated arbitrators was published in the **Federal Register** on May 12, 1994, and is available, with accompanying supporting materials, by contacting the Office of the General Counsel, Copyright Office. 59 FR 23964 (May, 9, 1994).

Other matters. In our March 1, 1994, notice, we asked whether the claimants wanted to file a motion for consolidation of the 1992 and 1993 DART distribution proceedings. We requested comments by June 10, 1994. Although a motion for consolidation is typical of the types of motions for which the 30-day precontroversy period (ending on June 15, 1994) is designed, we have already set the deadline for the motion for consolidation as June 10, 1994, and we are not changing that slightly earlier deadline by our action today.

Handling of precontroversy motions and objections. For any precontroversy motion or objection, the Librarian of Congress has discretion either to rule on it or to refer it to the CARP panel. See, § 251.45(b). As explained in our preamble to the interim CARP regulations issued on May 9, 1994, we have decided that, unlike the situation with respect to precontroversy motions and objections, there is no practical way to allow for precontroversy discovery under the statute. Thus, any motion that is in the nature of precontroversy discovery will be referred by the Librarian to the CARP panel to be handled during the controversy. See, 59 FR 23964, 23977 (May 9, 1994).

For any objection to one or more listed arbitrators, the Librarian will take into account the objection as part of the entire consideration of each nominee at the time he is required to select two arbitrators for the proceeding. The mere filing of an objection will not, in and of itself disqualify an arbitrator or, without supporting reasons, diminish the person's chances of being selected. As we have said earlier, peremptory challenges will not be allowed, and all objections must be fully substantiated. See, 59 FR 2550, 2552 (Jan. 18, 1994); 59 FR 23964, 23969 (May 9, 1994).

Dated: May 9, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-11858 Filed 5-13-94; 8:45 am]

BILLING CODE 1410-09-P

NUCLEAR REGULATORY COMMISSION

All Power Reactor Licensees; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated April 13, 1994, Paul M. Blanch (Petitioner) has requested that the NRC take immediate action with regard to all power reactor licensees, concerning the potential meltdown of the fuel in the spent fuel pools for all reactors in the United States. Specifically, the Petitioner requests that: (1) The NRC immediately issue an information notice or other appropriate notification forwarding all information in its possession to all power reactor licensees regarding the potential meltdown of fuel in spent fuel pools, and reminding licensees of their responsibilities to perform timely operability determinations in accordance with their technical specifications and NRC Generic Letter 91-18; (2) each licensee immediately perform an evaluation of compliance of this potential deficiency with respect to its current licensing basis; (3) the NRC deny all requests for license amendments for the expansion of spent fuel pool capacity until these safety concerns are fully resolved; and (4) after evaluation by each licensee, if the NRC determines there is little or no risk to the public health and safety, the NRC may issue a Notice of Enforcement Discretion.

As bases for his request, the Petitioner asserts that the NRC was informed approximately one and one-half years ago of a potential substantial nuclear safety hazard at the Susquehanna Steam Electric Station and the NRC has intentionally withheld this information from other utilities. According to the Petitioner, this hazard involves a major design flaw such that during a design basis loss of coolant accident, the electrical power to the fuel pool cooling system would be turned off, resulting in loss of cooling for the spent fuel pool. The Petitioner alleges that radiation levels in the reactor building would prohibit operators from entering the reactor building to restart the system. According to the Petitioner, if cooling is not restored, the water in the spent fuel pool will boil, water will evaporate and, since the valves which must be opened to provide replacement water are within the inaccessible reactor building, replacement water cannot be provided, resulting in high onsite and offsite radiation levels and a meltdown of the spent fuel in the pool resulting in release of massive amounts of airborne radioactivity outside of primary and secondary containment. The Petitioner alleges further that the residual heat removal system could not cool the fuel pool under accident conditions, and that if replacement water could be provided, the temperature and humidity conditions would be generated in the reactor building which would cause the emergency systems to fail, resulting in additional meltdown and failure of the primary and secondary containment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. By letter dated May 5, 1994, the Petitioner's request for immediate action has been denied.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW. (lower level), Washington, DC 20555.

Dated at Rockville, Maryland this 6th day of May 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94-11788 Filed 5-13-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8681]

UMETCO Minerals Corporation Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated January 13, 1994, Thomas W. Clawson, on behalf of Envirocare of Utah, Inc. (Petitioner), requested that the Nuclear Regulatory Commission (Commission) hold an informal hearing concerning the August 2, 1993, approval of an amendment to Umetco Minerals Corporation's (Umetco) materials license pursuant to 10 CFR 2.1205 and institute pursuant to 10 CFR 2.206 a proceeding to modify, suspend or revoke Umetco's materials license, pending the preparation of either an environmental assessment pursuant to the National Environmental Policy Act of 1969 (NEPA) or an environmental report under 10 CFR 51.60, and while a determination is made whether the amended license complies with controlling Commission rules and with the standards promulgated by the Environmental Protection Agency, as required under 42 U.S.C.A. 2114(a)(2).

As basis for the request, the Petitioner asserts that the Commission has allowed Umetco to convert the White Mesa Mill facility into a major commercial byproduct materials disposal facility without a current environmental analysis in violation of NEPA and the Commission's environmental regulations and which does not have to comply with current environmental protection standards.

By Memorandum and Order of the Commission's Atomic Safety and Licensing Board dated March 4, 1994, the Petitioner's request for an informal hearing pursuant to 10 CFR 2.1205 was denied. Accordingly, the Petitioner's request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Materials Safety and Safeguards. As provided by § 2.206, appropriate action will be taken on this request within a reasonable period of time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 3rd day of May 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-11787 Filed 5-13-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co., Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would modify the pressure temperature limit curves of Technical Specification 3/4.4.9, "Pressure/Temperature Limits, Reactor Coolant System," Figures 3.4-3, 4, and 5 and the associated Bases section.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations

By June 15, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave in intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 7, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 9th day of May 1994.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11789 Filed 5–13–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34034; File No. 265–19]

Consumer Affairs Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Consumer Affairs Advisory Committee ("Committee").

SUMMARY: This is to give notice that the Securities and Exchange Commission Consumer Affairs Advisory Committee will meet on May 25, 1994, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: [illegible] comments should be submitted in triplicate and should refer to File No. 265–19. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washin[illegible]

FOR FURTHER INFORMATION CONTACT: Paul A[illegible]kins, Office of the Chairman (202) 942–010[illegible], Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 10a, the Securities and Exchange Commission [illegible] Affairs Advisory Committee hereby gives notice that it will meet on May 25, 1994, in room [illegible] at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public.

The Committee's responsibilities include assisting the Commission in identifying investor problems and being more responsive to their needs. The Committee will explore fundamental issues of concern to investors, including matters currently under consideration by the SEC and topics of emerging concern to investors and the financial services industry.

The purpose of this meeting will be general organizational issues, as well as consideration of proposed Commission rules on mutual funds advertisements; litigation reform and broker-dealer sales practices.

Dated: May 10, 1994.

Jonathan G. Katz,

Advisory Committee Management Officer

[FR Doc. 94-11767 Filed 5-13-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34025; File No. SR–CBOE–93–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Permanent Approval of the Pilot Program Involving Debit Put Spreads in Broad-Based Indexes With European-Style Exercise

May 9, 1994.

On December 27, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(10 of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule change seeking permanent approval of Exchange Rule 24.11A, "Debit Put Spread Cash Account Transactions," which establishes a pilot program allowing approved public customers with qualified portfolios ("spread exemption customers") to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[3]

The proposed rule change was published in Securities Exchange Act Release No. 33407 (December 30, 1993), 59 FR 1041. No comments were received on the proposed rule change.

Currently, § 220.8 of Regulation T under the Act precludes customers from effecting spread transactions in cash accounts. Specifically, § 220.8(a)(3)([illegible]) of Regulation T includes in permissible cash account transactions a creditor's issue, endorsement or guarantee of a put option for a customer if the creditor obtains cash in an amount equal to the exercise price of the option or holds in the account any of the following instruments with a current market value at least equal to the exercise price of the option and with one year or less to maturity: U.S. government securities, negotiable bank certificates of deposit, or bankers acceptance issued by a U.S bank and payable in the United States. Because offsetting option positions fail to satisfy these criteria, spreads are not included in permissible cash account transactions and therefore must be effected in margin accounts.

On November 26, 1991, the Commission approved proposals submitted by the CBOE and the Amex which established one year pilot programs allowing approved public customers[4] with qualified portfolios of stock to effect and maintain in ca[illegible] accounts debit put spread transa[illegible] in broad-based index options wi[illegible] European-style exercises.[5] The Commission approved proposal[illegible] extending the CBOE's pilot prog[illegible] through December 31, 1993, and [illegible] recently, through December 31, [illegible]

The pilot program defines a "[illegible] put spread" as "a long put posi[illegible] coupled with a short put posit[illegible] overlying the same broad-based i[illegible] and having an equivalent underl[illegible] aggregate index value, where the [illegible] put(s) expires with the long pu[illegible] and the strike price of the long put(exceeds the strike price of the [illegible] put(s)." Under the terms of the [illegible] only public customers approved [illegible] CBOE are permitted to particip[illegible] pilot program. To obtain the CB[illegible] approval, customers are required, among other things, to hold a qu[illegible] stock portfolio or its equivalent [illegible] composed of net long positions [illegible] common stocks in at least four ind[illegible] groups and that contains at least twenty stocks, none of which accounts for more than fifteen percent of the value [illegible] portfolio. A portfolio must meet [illegible] standards at all times, regardless [illegible] trading activity in the stocks. In addition, the debit put spread positions must be carried in an account with an Exchange member organization and the qualified portfolio must be maintained with either an Exchange member organization, another broker-dealer, a bank, or a securities depository.

In conjunction with the creation of the pilot program, the Commission staff also issued no-action letters to the Amex and the CBOE stating the staff would not recommend enforcement action against the Amex and the CBOE due to the operation of the pilot program, namely the maintenance of spread positions in a cash account.[7] The staff of the Board of Governors of the Federal Reserve System ("Board") also informed the Commission staff that Board staff would not object to the Commission staff's issuance of these no-action positions in connection with the pilot programs.[8] Most recently, Board staff indicated that it would not raise objections to permanent approval of the pilot program.[9]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Initially, the Commission approved the pilot program on a one-year basis through November 25 1992. See Securities Exchange Act Release No. 29992 (November 26, 1991), 56 FR 63526 (order approving File Nos. SR–Amex–91–14 and SR–CBOE–91–17) ("Debit Put Spread Approval Order"). Subsequently, both the CBOE and the American Stock Exchange, Inc. ("Amex") amended the definition of "debit put spread" to provide that the strike price of the long leg of the spread must exceed, not equal, the strike price of the short leg. See Securities Exchange Act Release Nos. 30267 (January 21, 1992), 57 FR 3234 (order approving File No. SR–CBOE–91–50) and 30419 (February 26 1992), 57 FR 7825 (order approving File No. SR–Amex–92–07). On June 30, 1993, the Commission approved an extension of the pilot program through December 31, 1993. See Securities Exchange Act Release No. 32556 (June 30, 1993), 58 FR 32556 (order approving File No. SR–CBOE–93–13) ("Pilot Extension Order"). Most recently, the Commission approved a proposal extending the pilot program through December 31, 1994. See Securities Exchange Act Release No. 33407 (December 30, 1993), 59 FR 1041 (notice of filing and order granting partial accelerated approval of File No SR–CBOE–93–60) ("1994 Extension Order").

[4] For purposes of its pilot program, a public customer is a customer whose orders are eligible to be placed on a CBOE limit order book under Exchange Rule 7.4(a).

[5] See Debit Put Spread Approval Order, [illegible] note 3.

[6] See Pilot Extension Order and 1994 Exte[illegible] Order, *supra* note 3.

[7] See Letter from Howard L. Kramer, Assistant Director, Division, Commission, to Mary L. [illegible], First Vice President, Division of Regulatory Services, CBOE, dated November 25, 1991, and Letter from Howard L. Kramer, Assistant Director, Division, Commission, to James M. McNeil, Assistant Vice President, Chief Examiner, Amex, dated November 25, 1991.

As required by the Debit Put Spread Approval Order, the CBOE submitted a report assessing the effectiveness of the pilot program.[10] In addition, as required under the Pilot Extension Order, the CBOE has submitted a report dated as of November 10, 1993, assessing the effectiveness of the pilot program from January 1993 through September 1993.[11] In its 1993 Pilot Report, the CBOE states that no participant has operated in violation of the pilot since its inception. As it concluded in its initial Pilot Report, the CBOE states that the pilot program has provided an efficient means for investors who are limited to cash account transactions to effectively hedge their portfolios against market declines. The CBOE states that it has neither experienced or detected any problems related to the pilot program and, in addition, that no activity of any participant appeared to violate the requirements of the pilot program or other Exchange Rules. The Exchange has found no evidence of market manipulation or other negative impact on market operations arising from the pilot program.

The Commission finds that the proposal to grant permanent approval to the debit pub spread pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[12] Specifically, the Commission believes, as it has concluded previously,[13] that the pilot program is designed to benefit qualified public customers who are prohibited or restricted in their use of margin accounts by facilitating their purchase of index option debit put spreads. Because the purchaser of a debit put spread uses the call premium to reduce the cost of purchasing the put, index option pub spreads provide investors with an affordable means to hedge their portfolios against adverse market moves. In addition, to the extent that the pilot program has increased index options transactions, the program has benefitted all options investors by contributing to the depth and liquidity of the CBOE's options markets.

The Commission continues to believe that the economic characteristics of index option debit put spreads permit an exception to the application of Regulation T. In a debit put spread, the long put entitles the spread exemption customer to receive payment when the index reaches the pub option's strike price; because the strike price of the long put must exceed the strike price of the short put, the spread exemption customer's right to receive payment under the long put will offset any obligations he incurs from the sale of the short put. Because the short position must expire with the long position, the offset provided by the long put will last for the duration of the spread exemption customer's obligation as a short put writer. In addition, there is no risk that the short put will be exercised prior to the long put because the exemption applies solely to European-style options, which may be exercised only during a specified period prior to expiration.

In its 1993 Pilot Report, the CBOE states that no participant has operated in violation of the pilot since its inception, nor have the CBOE's surveillance procedures revealed evidence of manipulation or abuse of knowledge of impending expiration-related program trades for each expiration Friday during the review period. The 1993 Pilot Report indicates that the pilot program's 39 participants included corporations, pension/retirement plans, non-profit organizations, mutual funds, and individual or family trusts, the majority of which were prohibited by contractual agreements from using margin accounts. The debit put spreads of all of the participants were comprised of Standard & Poor's ("S&P") 500 Index ("SPX") options with one to four months remaining until expiration. During the review period the total number of spreads effected on a monthly basis under the pilot program each month ranged from 3,696 to 12,544.

On the basis of the 1993 Pilot Report, the Commission believes that the debit put spread pilot program has facilitated that needs of qualified public customers who are limited to cash account transactions by providing them with an effective means to hedge their portfolios against adverse market moves. At the same time, the 1993 Pilot Report indicates that no pilot participant has violated the pilot's parameters, nor has the Exchange discovered any market manipulation or abuse in connection with the pilot program.[14] In addition, the Commission has received no comments regarding the operation of the pilot program, and Board staff has raised no objection to permanent approval of the pilot program.[15] For these reasons, the Commission believes that the debit put spread pilot program has provided qualified public customers with additional means to implement their hedging strategies and, by facilitating index options transactions, has benefitted all options investors by contributing to the depth and liquidity of the CBOE's options markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–93–60) granting permanent approval to the CBOE's debit put spread program is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11798 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34031; File No. SR–NASD–92–46]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Conflicts of Interest in the Distribution of Securities

May 10, 1994.

On November 12, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The NASD has amended the filing four times, most recently on April 8, 1994.[3] As amended, the proposal extends the provisions of Schedule E to the NASD By-Laws[4] to potential conflicts of interest that arise when a member participating in an offering owns debt, preferred equity, or non-voting equity of the issuer.

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[8] See Letter from Laura Homer, Securities Credit Officer, Board, to Howard L. Kramer, Assistant Director, Division, Commission, dated July 12, 1991

[9] See Letter from Scott Holz, Senior Attorney, Board, to Sharon M. Lawson, Assistant Director, Division, Commission, dated January 28, 1994 ("Board Letter").

[10] See Letter from Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated October 1, 1992 ("Pilot Report"). In the Pilot Report, the CBOE stated that the pilot program has been an efficient means for investors that are limited to cash account transactions to effectively hedge their portfolios against declines in the market. The CBOE represented that it had neither experienced nor detected any problems related to the pilot. Moreover, the Exchange stated that no activity of any pilot participant appeared violative of the program's requirements or other Exchange rules, nor did Exchange studies find evidence of market manipulation or other negative impact on market operations.

[11] See Letter from Mary L. Bender, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated November 10, 1993 ("1993 Pilot Report").

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] See Debit Pub Spread Approval Order, *supra* note 3

[14] The Commission expects the CBOE to notify the Commission promptly of any problems arising in connection with the program.

[15] See Board Letter, *supra* note 9

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1993)

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on September 27, 1995.[5] The Commission received one letter commenting on the proposal. This order approves the rule change.

I. Text of the Proposed Rule Change

Following is the text of the proposed rule change. Additions are italicized, deletions are in brackets.

Schedule E to the NASD By-Laws

Distribution of Securities of Members and Affiliates

Conflicts of Interest

Section 1—General

(a) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Schedule.

(b) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent or affiliates have a conflict of interest with the company, as defined herein, except in accordance with this Schedule

Section 2—Definitions

* * * * *

(e) Common Equity—the total number of shares of common stock outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

* * * * *

(g) Conflict of Interest—shall be presumed to exist when:

(1) a member and/or its associated persons, parent or affiliates in the aggregate beneficially own 10% or more of the outstanding subordinate debt of a company;

(2) a member and/or its associated persons, parent or affiliates in the aggregate beneficially own 10% or more of the common equity of a company which is a corporation, or beneficially own a general limited or special partnership interest in 10% or more of the distributable profits or losses of a company; or

(3) a member and/or its associated persons, parent or affiliates in the aggregate beneficially own 10% or more of the preferred equity of a company.

(4) The provisions of paragraphs (1), (2), and (3) hereof notwithstanding, the conflict of interest provisions of this Schedule E shall not apply to:

(a) an offering of securities exempt from registration with the Securities and Exchange Commission under section 3(a)(4) of the Securities Act of 1993;

(b) an investment company registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, as amended;

(c) a "separate account" as defined in section 2(a)(37) of the Investment Company Act of 1940, as amended;

(d) a "real estate investment trust" as defined in section 856 of the Internal Revenue Code;

(e) a "direct participation program" as defined in Article III, section 34 of the Rules of Fair Practice;

(f) an offering of financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories;

(g) an offering of a class of equity securities for which a bona fide independent market as defined in section 2(c) exists as of the date of the filing of the registration statement and as of the effective date thereof; and

(h) an offering of a class of securities rated in one of the four highest generic rating categories by a nationally recognized statistical rating organization.

* * * * *

(1) Preferred Equity—the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company.

* * * * *

[l]*(o)* Qualified independent underwriter[*]—a member which:

* * * * *

(6) is not an affiliate of the entity issuing securities pursuant to section 3 of this Schedule and does not beneficially own five percent or more of the outstanding voting securities, *common equity, preferred equity or subordinated debt* of such entity which is a corporation or beneficially own a partnership interest in five percent or more of the distributable profits or losses or such entity which is a partnership; and

* * * * *

(r) Subordinated Debt—includes (1) debt of an issuer which is expressly subordinate in right of payment to, or with a claim on assets subordinate to, any existing or future debt of such issuer; or (2) all debt that is specified as subordinated at the time of issuance. Subordinated debt shall include short-term debt with maturity at issuance of less that one year and secured debt and bank debt not specified as subordinated debt at the time of issuance.

* * * * *

Section 3—Participation in Distribution of Securities [of Member or Affiliate]

(a) No member shall underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of an issue of debt or equity securities issued or to be issued by the member of an affiliate of the member, *or of a company with which the member or its associated persons, parent or affiliates have a conflict of interest*, unless the member is in compliance with subsection 3(b) and subsection 3(c) below.

(b) In the case of a member which is a corporation, the majority of the board of directors, or in the case of a member which is a partnership, a majority of the general partners or, in the case of a member which is a sole proprietorship, the proprietor as of the date of the filing of the registration statement and as of the effective date of the offering shall have been actively engaged in the investment banking or securities business for the five year period immediately preceding the filing of the registration statement.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The first three amendments were submitted prior to and incorporated in the notice if filing published by the Commission. Amendment No. 4, filed on April 8, 1994, was a technical amendment to reflect that the proposed standard for "conflict of interest" is a rebuttable presumption. Amendment No. 4 also responded to a comment letter on the filing received by the Commission.

[4] NASD Manual, (CCH) ¶ 1881.

[5] Securities Exchange Act Release No. 32930 (September 21, 1993), 58 FR 50373.

[*] In the opinion of the National Association of Securities Dealers, Inc., and the Securities and Exchange Commission the full responsibilities and liabilities of an underwriter under the Securities Act of 1933 attach to a "qualified independent underwriter" performing the functions called for by the provisions of section 3 hereof

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own, or an affiliate's securities, *or of securities of a company with which it or its associated persons, parent or affiliates have a conflict of interest*, [subject to this section without limitation as to the amount of securities to be distributed by the member,] one or more of the following three criteria shall be met:

(1) the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that:

(i) an offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; [or] *and*

(ii) the provision of this paragraph which requires that the price or yield of the securities be established based on the recommendation of a qualified independent underwriter shall not apply to an offering of equity or debt securities if:

a. the securities (except for the securities of a broker/dealer or its parent) are issued in an exchange offer or other transaction relating to a recapitalization or restructuring of a company; and

b. the member that is affiliated with the issuer or with which the member or its associated persons, parent or affiliates have a conflict of interest is not obligated to and does not provide a recommendation with respect to the price, yield, or exchange value of the transaction; or

* * * * *

Section 4—Disclosure

(a) Any member offering its securities pursuant to this schedule shall disclose in the registration statement, offering circular, or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in subsection 5(a).

(b) All offerings included within the scope of this Schedule shall disclose in the underwriting section of the registration statement, offering circular or similar document that the offering is being made pursuant to the provisions of this Schedule, that the offering is *either* being made by a member of its own securities or those of an affiliate, *or those of a company in which the member or its associated persons, parent or affiliates own the common stock, preferred stock or subordinated debt of the company*, the name of the member acting as qualified independent underwriter, if any, and that such member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.

* * * * *

Section 11—Suitability

Every member underwriting an issue of its securities, or securities of an affiliate, *or the securities of a company with which it has a conflict of interest*, pursuant to the provisions of section 3 hereof, who recommends to a customer the purchase of a security of such an issue shall have reasonable grounds to believe that the recommendation is suitable for such customer on the basis of information furnished by such customer concerning the customer's investment objectives, financial situation, and needs, and any other information known by such member. In connection with all such determinations, the member must maintain in its files the basis for its determination.

Section 12—Discretionary Accounts

Notwithstanding the provisions of Article III, section 15 of the Corporation's Rules of Fair Practice, or any other provisions of law, a transaction in securities issued by a member or an affiliate of a member, *or by a company with which a member has a conflict of interest* shall not be executed by any member in a discretionary account without the prior specific written approval of the customer.

II. Background

Schedule E addresses potential conflicts of interest that arise when a member participates in the public distribution of its own securities or the securities of an affiliate. The standards for determining affiliation under Schedule E are voting control through ownership of equity securities, or common control of management through interlocking officerships or directorships. Where such conflicts exist, and absent an investment grade rating for debt securities or a bona fide independent market for equity securities, Schedule E requires a qualified independent underwriter to render an opinion on the offering price of the securities, conduct due diligence, and participate in the preparation of the registration statement. The qualified independent underwriter also assumes underwriter's liability for the offering. The NASD relies on the objectivity and independence of the qualified independent underwriter to resolve the conflicts of interest present when a member distributes its own securities or those of an affiliate.

After discussions with several member firms and a review of numerous leveraged buy-out offerings, the NASD determined that a potential conflict of interest arises when a member engaged in an offering of the issuer's securities owns subordinated debt, voting or non-voting equity of the issuer. The NASD is concerned about these offerings because members and their affiliates often become holders of subordinated debt or non-voting equity as a result of their participation in leveraged buy-out transactions, which could influence the independence of members' pricing and due diligence functions in any subsequent related public offering. The proposed rule change addresses these potential conflicts by extending Schedule E to situations in which a member participating in a public offering of debt or equity securities owns debt, preferred equity, or non-voting common equity of the issuer.

III. The Proposal

The rule change prohibits members and their associated persons from participating in the distribution of a public offering of securities if the member and/or its associated persons, parent, or affiliates have a conflict of interest with the issuer. For purposes of the rule change, a "conflict of interest" would be presumed to exist if the member and/or its associated persons, parent, or affiliates in the aggregate beneficially own 10% or more of the outstanding subordinated debt.[6]

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[6] The NASD has determined that subordinated debt issued in a leveraged buy-out or restructuring transaction raises the greatest potential for a conflict of interest. In these situations, the subordinated debt takes on many equity characteristics and the likelihood of repayment may be substantially based on the success of the new offering. The NASD has not observed similar levels of conflict arising with

common equity,[7] or preferred equity[8] of the issuer. In addition, a "conflict of interest" would exist if the member and/or its associated persons, parent, or affiliates beneficially owns a general, limited, or special partnership interest in 10% or more of the distributable profits or losses of the issuer.

The calculation of the 10% threshold would be based on all securities of the issuer beneficially owned by the member at the time of the filing of the offering documents, including proprietary trading accounts and other fluctuating positions, regardless of whether any of the securities are sold prior to effectiveness of the offering. With respect to the ownership of subordinated debt, the calculation of the threshold would be based on the issuer's entire subordinated debt outstanding—not just the issue owned by the member.

The rule change exempts (1) offerings by not-for-profit and charitable organizations; (2) investment companies registered under the Investment Company Act of 1940; (3) "separate accounts" as defined in the Investment Company Act of 1940; (4) real estate investment trusts; (5) direct participation programs; (6) financing-instrument-backed securities which are rated investment grade; (7) equity securities for which a bona fide independent market exists; and (8) debt securities rated investment grade.[9]

The rule change would also require disclosure of the conflict of interest in the offering document. The provision currently requires that the offering document disclose (i) that the offering is being made pursuant to the provisions of Schedule E; and (ii) the name of the qualified independent underwriter, and that such member is acting as a qualified independent underwriter. In the case of an offering subject to the conflict of interest provisions, Schedule E would require disclosure that the member or its associated persons, parent, or affiliates own the common stock, preferred stock, or subordinated debt of the company.

Finally, the rule change provides an exception from the QIU pricing requirements of Schedule E in recapitalizations or restructurings for a member who is acting solely as financial advisor but is otherwise subject to Schedule E because of a conflict of interest or because the member is participating in offerings of securities of an affiliate. The NASD believes that the more limited functions of the member acting as a financial advisor would not require the qualified independent underwriter to provide a pricing opinion where the financial advisor does not participate in the pricing opinion. The exception would not be available in the context of an offering by a member of its own securities or those of its parent.

IV. Comments

The Commission receive one letter opposing the rule change from the Securities Industry Association ("SIA").[10] The NASD responded to these comments in Amendment No. 4. The SIA's comments and the NASD's responses are discussed below.

The SIA argues that ownership of an issuer's debt or non-voting equity securities does not demonstrate a conflict of interest requiring regulation under Schedule E. The SIA recognizes the NASD's concern that an underwriter could obtain practical control of an issuer through holding a substantial amount of debt securities with "equity-type control powers." Nevertheless, the SIA argues, the concept of control in Schedule E is sufficiently broad to cover the situation where an underwriter obtains practical control through holding a substantial amount of debt securities with "equity-type control powers."

The NASD responds that it has identified situations in which a member's ownership of the issuer's debt or non-voting equity results in the absence of an arm's-length bargaining relationship, potentially compromising due diligence, disclosure, and pricing. Furthermore, the NASD disagrees that the concept of control in Schedule E is sufficiently broad to cover a situation where an underwriter might obtain practical control through holding a substantial amount of debt securities with "equity-type control powers." The NASD is not aware of any situations in which the NASD staff has based a determination of "control" on debt ownership, nor does it believe it can distinguish debt securities with "equity-type control powers."

The SIA argues further that disclosure in the offering document of a significant relationship between the issuer and the underwriter should be sufficient to address such potential conflicts of interest. The NASD responds that it relies on a number of standards of fair practice, including disclosure, to ensure the independence of members participating in offerings. The NASD does not believe that disclosure of a conflict, by itself, is sufficient to address the effects to the conflict.

The SIA also notes that concerns about conflicts arising from an underwriter's ownership of issuers' debt and non-voting equity arose as a result of the prevalence of leveraged buy-outs and bridge loans in the late 1980s and early 1990s. The SIA points out that these transactions are no longer prevalent, and argues that the rule change should be postponed until these transactions again become prevalent. The NASD, however, believes that a member's debt or non-voting equity interest in an issuer can present a conflict regardless of the structure of the transaction. The NASD notes that recently, companies once subject to leveraged buy-outs are now de-leveraging by issuing equity. In these situations, the member, who served as financial advisor and acquired subordinated debt in the buy-out, may now serve as lead manager of the equity offering. The NASD believes that these situations raise potential conflicts that warrant the protections of Schedule E.

Finally, the SIA argues that the 10% member ownership threshold for determining whether there is a potential conflict should not apply to the member's holdings in an individual class of securities but rather, to the member's combined securities holdings in the issuer.[11] For example, under the SIA's approach, a member with a 10% interest in the issuer's subordinated

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respect to holders of short-term or senior debt. As a result, the rule change does not apply either to senior debt, whether secured or unsecured, or to short-term debt with a maturity at issuance of less than one year. The calculation of the 10% threshold is applicable to an issuer's entire subordinated debt outstanding. The calculation of the ownership level will not be applied to the specific issue of subordinated debt owned by the member but to the issuer's entire subordinated debt outstanding.

[7] "Common equity" includes the total number of shares of common stock outstanding without regard to class, voting rights or other distinguishing characteristics as reflected on the consolidated financial statements of the company.

[8] The term "preferred equity" would include the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, voting rights, or other distinguishing characteristics as reflected on the consolidated financial statements of the company.

[9] Offerings in which the securities are being issued by a member or an affiliate of a member are subject to the filing requirements of Schedule E regardless of whether the offering is of equity securities for which a bona fide independent market exists or of debt securities which are rated investment grade.

[10] Letter from David E. Rosedahl, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, SEC (December 30, 1993).

[11] The SIA also argues that the aggregation standard for measuring ownership for a conflict of interest is more strict than that for measuring control under the definition of affiliation. The NASD responds that the standards are in fact the same: the NASD will aggregate the firm's trading and proprietary accounts, the proprietary accounts of any associated persons or employees, and any accounts over which members or associated persons or employees exercise beneficial ownership as defined in Rule 13(d)(3) under the Act

debt would not have a conflict of interest if its interest in all other classes of the issuer's securities including voting and non-voting equity, does not rise to the 10% threshold. The NASD responds that it considered this approach but determined that the potential conflict of interest occurs in connection with significant ownership of securities within an individual class.

V. Discussion

The Commission has considered the above comments and has determined to approve the NASD's proposed rule change. The Commission recognizes the NASD's obligation to ensure the objectivity and independence of members participating in a securities offering. Furthermore, the Commission recognizes that a member's holdings of subordinated debt or non-voting equity could influence the independence of the member's pricing and due diligence functions in a subsequent offering of the issuer's securities. The Commission believes that the absence of an arms-length bargaining relationship in these transactions potentially compromises due diligence, disclosure, and pricing.

Accordingly, the Commission believes that it is appropriate to extend the requirements of Schedule E to situations in which a member participating in a public offering owns debt or non-voting equity of the issuer.[12] The Commission does not believe that disclosure of the member's interest in the issuer, by itself, is sufficient to address the potential conflict of interest that arises when a member holds a substantial interest in the debt or non-voting equity of an issuer. Rather, the Commission believes that the additional protections provided under Schedule E—including a pricing opinion and due diligence by a qualified independent underwriter—are necessary to address these potential conflicts.

Finally, the Commission believes that it is appropriate to provide an exception from the QIU pricing requirements of Schedule E in recapitalizations or restructurings for members who are otherwise subject to Schedule E but are acting solely as financial advisors. The Commission understands that in these transactions, the member acting as financial advisor would not be participating in the pricing opinion. Consequently, it appears that in recapitalizations or retructurings in which the conflicted financial advisor does not participate in the pricing of the offering, an exception from the Schedule E qualified independent underwriter pricing opinion would not reduce investor protections.

For these reasons, and for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[13] Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will prevent manipulative acts and practices, promote just and equitable principles of trade, and otherwise protect the public interest in connection with offerings in which a member and/or its associated persons, parent, or affiliates may have a conflict of interest with the issuer.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–92–46 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11801 Filed 5–13–94; 8:45 am]

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[12] The Commission also recognizes that the potential conflict of interest that arises occurs in connection with the member's interest in an individual class of securities. The Commission thus believes that it is appropriate to apply the 10% member ownership threshold for determining whether there is a potential conflict to the member's holdings in an individual class of securities, rather than to the member's combined securities holdings in the issuer

[13] 15 U.S.C. 78o–3(b)(6).

[14] 17 CFR 200.30–3(a)(12).

[Release No. 34–34033; File No. SR–NYSE–94–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Interpretation to Rule 345 Establishing a New Category of Limited Registration for Floor Clerks of Members and the Content Outline for the Examination Module for Floor Clerks of Members Engaged in Public Business With Professional Customers (Series 7B)

May 10, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on March 28, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the propose rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposed interpretation to Rule 345 establishing a new category of limited registration for floor clerks of members engaged in public business with professional customers and the Content Outline for the Examination Module for Floor Clerks of Members Engaged in Public Business with Professional Customers (Series B). The Exchange also seeks approval of the Series 7B examination module.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993)

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Recently, the Exchange established a new category of registration and developed a qualification examination module (Qualification Examination for Floor Members Engaged in Public Business with Professional Customers—Series 7A) for floor members who conduct a public business limited to accepting orders from professional customers for execution on the trading floor.[3] This Series 7A examination module, developed as a subset of the General Securities Registered Representative Examination ("Series 7"), was created because the level of knowledge required to perform the activities engaged in by members who conduct a professional public business limited to transactions in listed securities on the Exchange floor is narrower in content and scope than that needed to conduct an overall general securities business with retail customers.

Currently, floor clerks associated with members and who take orders from public customers must become registered representatives and pass the Series 7 examination. Floor members who conduct a public business limited to dealing with professional customers (who may satisfy the Series 7A exam requirements in lieu of the Series 7) have requested that their floor clerks who take orders solely from professional customers also be allowed to take a qualifying examination more appropriate to the level of knowledge required to serve professional customers.

The Exchange will continue to require the successful completion of the Series 7 examination for any floor clerk seeking to become a registered representative dealing with other than professional customers. In addition, any person who has successfully completed the Series 7 examination will not be required to complete the Series 7B examination.

Since the Series 7A exam was developed for members, it assumes the member's level of qualification (*i.e.*, completion of new member orientation program and/or having passed the floor member qualification examination—Series 15). Consequently, the Series 7B examination module has been developed to test the knowledge of floor clerks who accept orders only from professional customers on behalf of members qualified to conduct business with these professional customers by complementing the Series 7A examination module with questions on basic information required to perform floor functions.

A committee of floor member representatives in conjunction with the Exchange staff developed the content outline, which details the coverage of the examination module, as well as the actual examination. The committee and staff identified the knowledge areas associated with the job tasks, determined the relative emphasis to be given across the knowledge areas, reviewed examination questions and forms, and determined the passing score.

The proposed interpretation to rule 345.15 establishes a new category of registration, limited registration for floor clerks, and requires that those who conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor, successfully complete the Series 7B examination.

(b) Statutory Basis

The statutory basis for the Series 7B Exam lies in section 6(c)(3)(B) of the Act. Under that section, the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that Exchange floor members and persons associated with such members performing specific functions have attained specific levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No: SR–NYSE–94–13 and should be submitted by June 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11797 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

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[3] The Exchange stated that the term "professional customer" is derived from the term "designated account" as used in NYSE Rule 431. As used in this proposal, the Exchange defines "professional customer" to include a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or political subdivision thereof, or any person who has, or has under management, net tangible assets of at least sixteen million dollars. For purposes of the definition of "professional customer," the term "person" shall mean the same as that term is defined in NYSE Rule 2, except that it shall not include natural persons. NYSE Rule 2 defines "person" as a natural person, corporation, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

[Release No. 34–34032; International Series Release No. 665; File No. SR–PHLX–90–35]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Warrants Based on the Financial Times-Stock Exchange 100 Index

May 10, 1994.

On December 10, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list warrants based on the Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index"). Notice of the proposal appeared in the **Federal Register** on January 7, 1991.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Exchange proposes to list index warrants based on the FT–SE 100, a broad-based, internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized and actively traded stocks traded on the London Stock Exchange ("LSE").

The Commission has previously approved the listing of FT–SE 100 warrants by other self-regulatory organizations ("SROs").[4] The PHLX will list FT–SE 100 warrants consistent with the standards set forth in the FT–SE 100 Warrant Approval Orders. Specifically, trading in FT–SE 100 warrants will be subject to Exchange Rule 1026 (Suitability), which applies the options suitability standard to index warrant recommendations made by members and member organizations, and to Exchange Rule 1027 (Discretionary Accounts), which requires that a Senior Registered Options Principal or Registered Options Principal approve and initial any discretionary index warrant transaction on the day it is executed. In addition, Exchange Rule 747 (Approval of Accounts), which requires that member organizations obtain certain approvals prior to making brokerage transactions for customer accounts, shall apply to trading FT–SE 100 warrants. Finally, the Exchange will also distribute a circular regarding suitability requirements to its membership.

Further, consistent with the proposals set forth and approved in the FT–SE 100 Warrant Approval Orders, FT–SE 100 warrants may be American-style[5] or European-style,[6] and may have a term of one to five years. Additionally, (1) issuers must exceed the Exchange's financial listing criteria and have assets in excess of $100 million, (2) the warrants must have a minimum public distribution of one million warrants with a minimum of 400 public warrant holders, and (3) the warrants must have an aggregate market value of at least $4 million.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] Specifically, for the reasons stated in the FT–SE 100 Warrant Approval Orders, the Commission believes FT–SE 100 warrants may provide a valuable hedging vehicle for investors, allowing them to hedge against stock market fluctuations in the United Kingdom.[8] Additionally, the Commission notes the PHLX is a member of the Intermarket Surveillance Group ("ISG")[9] and that the LSE is an affiliate member of the ISG. As an affiliate member, the LSE has agreed to provide certain information to other ISG members, including the PHLX, upon request.[10] Accordingly, the Commission believes the LSE's affiliate membership in the ISG helps to ensure the effectiveness of an information sharing arrangement that will assist the PHLX in its surveillance of trading in FT–SE 100 warrants. Finally, the Commission notes that other U.S. SROs have listed FT–SE 100 warrants pursuant to the FT–SE 100 Warrant Approval Orders for several years and the Commission is not currently aware of any prior or existing problems regarding the listing and trading of these warrants. Based on the above, the Commission finds that the Exchange's proposal to list FT–SE 100 warrants as described herein is consistent with just and equitable principles of trade and the protection of investors.

It is Therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–90–35) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11799 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 28723 (December 28, 1990), 56 FR 543 (January 7, 1991).

[4] See, *e.g.*, Securities Exchange Act Release Nos. 28627 (November 19, 1990), 55 FR 49357 (November 27, 1990) (approval for Chicago Board Options Exchange, Inc. ("CBOE")); 28106 (June 12, 1990), 55 FR 24955 (June 19, 1990) (approval for Pacific Stock Exchange, Inc. ("PSE")) ("FT–SE Warrant Approval Orders").

[5] American-style warrants may be exercised at any time prior to expiration.

[6] European-style warrants may only be exercised during a specified period prior to expiration.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] See *supra* note 4.

[9] The ISG was formed on July 14, 1983 to, among other things coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The current members of the ISG are the American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the National Association of Securities Dealers, Inc.; the PSE; and the PHLX.

[10] The LSE has agreed to provide certain trading information to members of the ISG, including information relating to: (1) component securities of the Index; and (2) the identity, trading activity, and positions of LSE members or customers of LSE members. *Id*

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34024; File No. SR–PHLX–93–51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Excessive Trading

May 9, 1994.

On December 30, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PHLX Rule 1015, "Excessive Dealing in Options," to delete the phrase "in view of his financial resources" from the rule and to renumber the rule as PHLX Rule 1021.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 33804 (March 22, 1994), 59 FR 14699 (March 29, 1994). No comments were received on the proposal.[3]

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[1] 15 U.S.C. 78s(b0(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Originally, the PHLX also proposed to amend Exchange Rule 771, "Excessive Trading of Members," to delete the phrase "or in view of the market for such security" from the rule. Subsequently, the PHLX submitted a letter returning that phrase to Exchange Rule 771. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of

Currently, PHLX Rule 1015, "Excessive Dealing in Options," prohibits a member from effecting purchases or sales in options which are excessive in view of his financial resources or in view of the market for such security. The PHLX proposes to amend PHLX Rule 1015 by deleting the phrase "in view of his financial resources" and by renumbering the rule as PHLX Rule 1021. The PHLX proposes to delete the reference to the financial resources of a member from current PHLX Rule 1015 because this phrase is already appropriately included in Exchange Rule 771, "Excessive Trading of Members."[4] The PHLX indicates that the financial responsibility reference included in the trade practice rule (PHLX Rule 1015) was recently the source of confusion which will be corrected by the PHLX's proposal. Specifically, under the proposed rule change, PHLX Rule 771 will govern the financial aspect of excessive options trading and PHLX Rule 1021 will govern the trade practice aspect of excessive options trading.[5]

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular with section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that it is designed to protect investors and the public interest.[6] Specifically, the proposal will help to clarify the PHLX's rules by deleting the phrase "in view of his financial resources" from PHLX Rule 1015, so that PHLX Rule 1015 will apply solely to the trade practice aspect of excessive options trading and PHLX Rule 771 will apply to the financial aspect of excessive options trading. In its proposal, the PHLX states that the financial responsibility reference in PHLX Rule 1015 has been a source of confusion. Because PHLX Rule 771, which applies to both equities and options, contains the same financial responsibility provision as that provided currently in PHLX Rule 1015 the Commission believes that it is reasonable for the PHLX to delete the redundant financial responsibility reference in PHLX Rule 1015 in order to eliminate confusion. Because PHLX Rule 771 applies to both equities and options, the proposal to delete the financial responsibility reference from PHLX Rule 1015 will clarify PHLX Rule 1015 without affecting the substance of the PHLX's prohibition of excessive options trading. In addition, the Commission believes that the increased clarity of PHLX Rule 1015 will help to facilitate compliance with the rule.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–9[illegible]–51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11860 Filed 5–13–94; [illegible]]

BILLING CODE 8010-01-M

Issuer Delisting, Notice of Application To Withdraw From Listing and Registration; (Unimed, Inc., Common Stock, $0.25 Par Value) File No. 1–11003

May 10, 1994.

Unimed, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on May 2, 1994, to withdraw the Company's Common Stock from listing on the CHX. The Company is currently listed on the National Association of Securities Dealers Automated Quotations National Market System ("NASDAQ/NMS") and does not wish to be dually listed. During 1993, the trading volume on the CHX was zero.

Any interested person may, on or before June 1, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application [illegible] the date mentioned above, unless the Commission determines [illegible] on the matter.

[illegible] by the D[illegible] [illegible]ket Reg[illegible]

Jonathan G. Katz,

Secretary.

[illegible] 5–13–[illegible]

[illegible]

Issuer Delisting: Notice of Application To Withdraw From Listing and Registration; (Sunstates Corporation Common Stock, $0.33⅓ Par Value; $3.75 Cumulative Preferred Stock, $25 Par Value) File No. 1–5300

May 10, 1994.

Sunstates Corpor[illegible] has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved a resolution on January 20, 1994, to withdraw the Company's Common Stock and Preferred Stock from listing on the Amex and, instead, list such Common Stock and Preferred Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS").

The Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for its Common Stock and $3.75 Cumulative Preferred Stock than is presently the case with the single specialist on the Amex.

The Company believes that the NASDAQ/NMS system will offer the Company's shareholders a broader

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Market Regulation ("Division"), Commission, dated April 13, 1994. This change is non-substantive.

[4] PHLX Rule 771 states that "No member, member organization, partner or stockholder therein shall effect on the Exchange purchases or sales for any account in which he or it is directly or indirectly interested, which purchases or sales are excessive in view of his or its financial resources or in view of the market for such security."

[5] Telephone conversation between Edith Hallahan, Attorney, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on April 26, 1994.

[6] 15 U.S.C. 78f(b)(5) (1988)

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1988)

market, greater liquidity and less volatility in quoted prices per share than is presently available on the Amex.

The Company believes that the firms making a market in the Company's Common Stock and $3.75 Cumulative Preferred Stock on the NASDAQ/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing research and advisory reports.

Any interested person may, on or before June 1, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue and order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11796 Filed 5–13–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2720]

Florida; Declaration of Disaster Loan Area

Volusia County and the contiguous counties of Brevard, Flagler, Lake, Orange, Putnam and Seminole in the State of Florida constitute a disaster area as a result of damages caused by thunderstorms and tornadoes which occurred May 3, 1994. Applications for loans for physical damage may be filed until the close of business on *July 7, 1994* and for economic injury until the close of business on *February 9, 1995* at the address listed below:

U.S. Small Business Administration,
Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 272012 and for economic injury the number is 826200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–11791 Filed 5–13–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2713]

Missouri; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 21 1994, and amendments on May 3, I find that the Counties of Cole, Franklin, Jefferson, Lincoln, Pemiscot, St. Charles, and St. Louis and the City of St. Louis constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding April 9, 1994 through May 5. Applications for loans for physical damage may be filed until the close of business on June 21, 1994, and for loans for economic injury until the close of business on January 23, 1995 at the address listed below:

U.S. Small Business Administration,
Disaster Area 3 Office, 4440 Amon Carter Boulevard, Suite 102, Fort Worth, Texas 76155

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Calloway, Crawford, Dunklin, Gasconade, Miller, Moniteau, Montgomery, New Madrid, Osage, Pike, St. Francois, St. Genevieve, Warren and Washington Counties in the State of Missouri; Mississippi County in the State of Arkansas; Calhoun, Jersey, Madison, Monroe and St. Clair Counties in the State of Illinois; and Dyer and Lake Counties in the State of Tennessee.

The interest rates are

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.125
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.125
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 271306 and for economic injury the numbers are 824800 for Missouri, 824900 for Illinois, 826000 for Arkansas, and 826100 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 5, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11791 Filed 5–13–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/07–5083]

Polestar Capital, Inc.; Issuance of a Small Business Investment Company License

On March 23, 1994, a notice was published in the **Federal Register** (59 FR 13755) stating that an application has been filed by Polestar Capital, Inc., 200 Randolph Drive, Chicago, Illinois 60601, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a Transfer of Ownership and Control and Capital Reorganization of Amoco Venture Capital Company.

Interested parties were given until close of business April 22, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA has approved the Transfer of Ownership and Control and Capital Reorganization of Polestar Capital, Inc., under the following terms and conditions, effective April 29, 1994.

(1) At this time, subject to number two (2) below and current regulations,

your application does not address the 3 percent Preferred Stock Buy Back Program or the Preferential Payment Distribution to Amoco Corporation ("AMOCO").

(2) No distributions, including the Preferential Payment Distribution, could be made to any shareholder or Amoco without full repayment of the accrued dividends outstanding owed to the Small Business Administration ("SBA") for your outstanding 3 percent Preferred Stock. Provided that Polestar Capital, Inc. ("PCI") is in compliance with SBA regulations, after the payment of the accrued but unpaid dividends owed to SBA, then PCI could make distributions to other shareholders and to Amoco as long as PCI had the ability to make additional distributions in compliance with all SBA regulations.

(3) Once the final regulations were completed for the Preferred Stock Buy Back, PCI would be eligible to apply under the then current existing regulations. PCI could not request terms or conditions that were utilized in the pilot program, if such conditions have been changed for the final program. Amoco Corporation has indicated that they do not desire and would not apply for the 3 percent Preferred Stock Buy Back Program prior to the actual change of ownership and control. For the purposes of the 3 percent Preferred Stock Buy Back, PCI would agree that it could not claim distressed status under the Buy Back regulations.

(4) Any future sale or conversion of a controlling interest (50 percent or more of the common stock) of the common stock of PCI would continue to be subordinated to the accrued but unpaid interest and principal of the Small Business Administration's ("SBA") outstanding 3 percent Preferred Stock, and would require under existing regulation SBA's prior approval.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 9, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-11792 Filed 5-13-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 2004]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

SUMMARY: Public Law 103-94, effective February 3, 1994, authorized the garnishment of salary of Federal employees for unpaid debts. Under Executive Order 12897, the Office of Personnel Management was delegated authority to promulgate regulations to implement the commercial garnishment provisions in section 9 of that law. OPM has issued interim regulations which, among other things, specify the "minimally required" information to accompany legal process (5 CFR 582.203). The law also requires that priority be given and special treatment be provided for garnishments for child support and alimony under 42 U.S.C. 659, 661, and 662. The information proposed to be collected on the Department of State form DS-1932 includes the minimally required information and facilitates differentiation between commercial garnishments and those for child support or alimony. The following summarizes the information collection proposal submitted to OMB:

Type of request—New collection

Originating office—Bureau of Legal Affairs

Title of information collection—U.S. Department of State Garnishment Application

Form No.—DS-1932

Frequency—On occasion

Respondents—Parties seeking garnishment of employees' salary

Estimated number of respondents—500

Average hours per response—15 minutes

Total estimated burden hours—125

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Jefferson Hill, (202) 395-3176.

Dated: April 26, 1994.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94-11810 Filed 5-13-94; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 6, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49539

Date filed: May 4, 1994

Parties: Members of the International Air Transport Association

Subject: TC12 Reso/P 1581 dated May 3, 1994, South Atlantic Resolution 003m, Summary Attached.

Proposed Effective Date: June 1, 1994

Docket Number: 49546

Date filed: May 6, 1994

Parties: Members of the International Air Transport Association

Subject: TC3 Telex Mail Vote 684, China-Japan fares, Amendment to Mail Vote

Proposed Effective Date: June 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-11841 Filed 5-13-94; 8:45 am]

BILLING CODE 4910-62-P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 6, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49538

Date filed : May 4, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 1994

Description: Application of American Airlines, Inc., pursuant to section 401 of the Act, and subpart Q of the Act, applies for renewal and amendment of its certificate for Route 572 to authorize scheduled foreign air transportation of persons, property, and mail between the coterminal points Honolulu/San Francisco/Los Angeles and the terminal point Sydney, Australia.

Docket Number: 49541

Date filed: May 4, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 1994

Description: Application of Skyjet, S.A., pursuant to section 402 of the Act and subpart Q of the [illegible] carrier permit authorizing Skyjet to perform passenger charter service [illegible] States.

Phyllis T. Kaylor,

[illegible]

[FR Doc. 94–11840 Filed [illegible]]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program Gulfport-Biloxi Regional Airport Gulfport, MS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Gulfport-Biloxi Regional Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On May 21, 1993, the FAA determined that the noise exposure maps submitted by Gulfport-Biloxi Regional Airport Authority under part 150 were in compliance with applicable requirements. On April 1, 1994, the Administrator approved the Gulfport-Biloxi Regional Airport noise compatibility program. Most of the recommendations of the program were approved. No program element relating to new or revised flight procedures for noise abatement were proposed by the airport operator. The Gulfport-Biloxi Regional Airport Authority has also requested under part 150, § 150.35(f), that FAA determine that revised noise exposure maps, submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program, are in compliance with applicable requirements of FAR part 150. The FAA announces its determination that the revised noise exposure maps for the Gulfport-Biloxi Regional Airport for years 1992 and 1997, submitted with the noise compatibility program, are in compliance with applicable requirements of FAR Part 150 effective April 1, 1994.

EFFECTIVE DATE: The effective date of the FAA's approval of the Gulfport-Biloxi Regional Airport noise compatibility program is April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Principal Engineer, Planning and Safety, Jackson Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Gulfport-Biloxi Regional Airport, effective April 1, 1994, and that revised noise exposure maps for this same airport are determined to be in compliance with applicable requirements of FAR Part 150.

A. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Jackson, Mississippi.

Gulfport-Biloxi Regional Airport Authority submitted to the FAA on October 16, 1991, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 16, 1991, through October 5, 1993. The Gulfport-Biloxi Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 21, 1993. Notice of this determination was published in the **Federal Register** on June 7, 1993.

The Gulfport-Biloxi Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 5, 1993, and was required by a provision of the Act of approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective April 1, 1994.

Outright approval was granted for 2 noise abatement actions, 3 remedial land use strategies, 6 preventive land use strategies, and 5 implementation measures of the specific program elements.

Noise Abatement Actions

1. *Construct 1500′ runway extension* at the north end of Runway 13/31 with a displacement of the Runway 13 landing threshold to maintain current threshold position.

2. *Establish Preferential North Flow* runway use which maximizes operations on Runway 31, consistent with wind, weather, traffic and other operating conditions as an informal runway use program.

Land Use Strategies

Remedial. It is recommended that, at the discretion of the Airport Authority, the implementation program for alleviating incompatibilities within the 70–75 DNL contour be continued by the Airport Authority rather than the land owner (as is the case for the 65–70 DNL contour)

1. *Acquisition in Fee Simple.* 39 mobile homes in the 65–70 DNL contour. In the 70–75 DNL contour, there are 13 mobile homes recommended for voluntary acquisition. In the DNL 75+ contour, fee simple, voluntary acquisition of two residential structures is recommended.

2. *Acquisition of Avigation Easements.* In exchange for sound attenuation (item 3, below) the conveyance of an avigation easement to the airport authority would be required. For those homes now participating in the sound attenuation program (and for some mobile homes (see item 1, above)), it is recommended that avigation easements be acquired. In addition, the Airport Authority should request that an avigation easement be provided if any change in zoning or land use is proposed (from compatible to noncompatible).

3. *Sound Attenuation.* In the 65–70 DNL contour, for three churches and one school, for 557 single-family and 93 multi-family homes. In the 70–75 DNL contour, for 2 churches, 2 schools, 158 single-family homes and 276 multi-family homes.

Preventive. These strategies apply to the DNL 65 and above noise contour.

1. Enactment of new zoning, including the establishment of a joint zoning board.

a. *Zoning.* The local jurisdictions (City of Gulfport, Harrison County, and the Regional Airport Authority) should work together to develop a plan for proper airport zoning ordinance to comply with Part 150 noise land use compatibility criteria.

b. *Establish a Joint Airport Zoning Board.* Recommend that Chapters of the Mississippi Code be amended to permit the Joint Airport Zoning Board to enact airport zoning regulations for areas impacted by airport noise. In addition, the GBRAA, County of Harrison, and City of Gulfport should establish a Joint Airport Zoning Board which would enact appropriate zoning in the areas surrounding the airport.

2. *Easement acquisition of undeveloped land.* These easements would be structured so that they would prohibit the establishment of any incompatible land use within the noise exposure area in the future. Because the FAA does not participate in acquisition of undeveloped land, in fee or easement, regardless of the noise level affecting the area, it is recommended that the land uses be classified in accordance with the noise levels.

3. *Real estate disclosure.* Enactment of a voluntary real estate disclosure policy notifying area residents of the potential for aircraft noise impacts within the noise exposure area. It is recommended that local developers and lending institutions inform potential buyers.

4. *Revised building codes.* Each jurisdiction should revise the building codes to require noise insulating materials be used in the construction of structures within the noise exposure area. These standards include new construction and would be imposed on existing homes being sound attenuated within the DNL 65 contour and above.

5. *Comprehensive planning.* Incorporation of the study findings into the local jurisdiction comprehensive plans.

6. *Enactment of an environmental review process.* Establish an environmental review process to ensure that proposed development within the airport noise exposure area is compatible or that appropriate measures are undertaken to achieve compatibility.

Implementation Measures

1. *Letter to Airmen.* A Letter to Airmen would be an appropriate mechanism for the FAA to use in communicating ATC-related noise abatement measures to pilots.

2. *Noise Abatement Bulletin.* A Noise Abatement Bulletin would be an appropriate mechanism to communicate the noise abatement program to pilots.

3. *Distribution of Materials.* The airport should provide copies of the Letter to Airmen and the Noise Abatement Bulletin to the military and airlines for distribution to pilots and to FBO's.

4. *Provision for Revision of Noise Exposure Maps and Noise Compatibility Program.* The NCP calls for revision to the NCP and to the NEM's.

5. *Continuation of the NCP Advisory Committee as a Noise Abatement Committee.* It is recommended that the airport continue the advisory committees as a noise abatement committee.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on April 1, 1994.

B. The FAA also has completed its review of the revised noise exposure maps and related descriptions submitted by Gulfport-Biloxi Regional Airport Authority. The specific maps under consideration are Figure 5–1, "Short-Term (1992) Noise Abatement Contours with Existing Off-Airport Land Use," and Figure 5–2, "Long-Term, (1997) Noise Abatement Contours (1500′ Runway Extension and North Flow Preferential Runway Use), with Existing Off-Airport Land Use" in the submission. The FAA has determined that these maps for Gulfport-Biloxi Regional Airport are in compliance with applicable requirements. This determination was effective on April 1, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps, and of the FAA's evaluation of the maps, and copies of the Record of Approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration, Jackson Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208–2306

Mr. Bruce Frallic, Executive Director, Gulfport-Biloxi Regional Airport Authority, 14035–L Airport Road, Gulfport, Mississippi 39501.

Questions on either of these FAA determinations may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Southern Region, Atlanta, Georgia, May 4, 1994.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 94–11852 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on a request to amend an approved PFC application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to Impose and Use the Revenue from a PFC at Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Edward Levell, Jr., Director of New Orleans International Airport at the following address: Mr. Edward Levell, Jr., Director of Aviation, New Orleans International Airport, Box 20007, New Orleans, LA 70141.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to New Orleans International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Forth Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from the PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 28, 1994, the FAA received the request to amend the application to impose and use the revenue from a PFC submitted by New Orleans International Airport within the requirements of § 158.37(b) of Part 158. The FAA will approve or disapprove the amendment no later than August 26, 1994.

The following is a brief overview of the request. Amend original project financing plans to account for the issuance of tax exempt bonds secured by and payable from PFC revenues:

Proposed increase in the total estimated PFC revenue: From $77,800,382.00 to $193,889,875.00; and

Proposed charge expiration date: From April 1, 2000 to December 31, 2024 (for 30 year bond coverage). However, the actual charge expiration date is expected to be April 15, 2008.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Forth Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at New Orleans International Airport.

Issued in Forth Worth, Texas on April 28, 1994.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 94–11853 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Benton/Hickory/Dallas Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Benton, Hickory, and Dallas Counties in Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to build a four lane relocation of U.S. Route 65 in Benton, Hickory, and Dallas Counties in Missouri. The improved highway would have a positive economic and social impact on the Lake of the Ozarks region by providing traffic relief, increased mobility, and enhanced social economic opportunities.

1. The proposed highway project begins in Benton County near the Route MM Junction at Warsaw, and proceeds southward through Hickory and Dallas Counties. It ends 1.0 miles north of Route EE near Buffalo, Missouri. The total project distance is 47.9 miles. The proposal will provide partial relocation of U.S. Route 65 through the Lake of the Ozarks and Pomme de Terre Lake region. The proposed project will involve grading, paving, and bridges for a four-lane relocation with freeway right of way for the entire length of the project. Interchanges will be provided at or near major arterial crossroads.

2. Alternatives currently under consideration include "build" alternatives, the "no build" alternative, mass transportation alternatives, and upgrading of existing facilities.

3. To date, preliminary information has been furnished to local officials, legislators, and other interested parties. Presentation of the concept has been made at the local level and input received. The scoping process has been initiated with Federal, State, and local agencies. Further public hearings also will be held. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on April 18, 1994.

Donald Neumann,

Program Engineer, Jefferson City.

[FR Doc. 94–11813 Filed 5–13–94; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 6, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0805.

Form Number: IRS Form 5472.

Type of Review: Extension.

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

Description: Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned and a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 75,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 17 hr., 13 min.

Learning about the law or the form: 1 hr., 41 min.

Preparing and sending the form to the IRS: 2 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,571,250 hours.

OMB Number: 1545–0996.

Regulation ID Number: EE–113–82 NPRM.

Type of Review: Extension.

Title: Required Distribution From Qualified Plans and Individual Retirement Plans.

Description: The proposed regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Respondents: State or local governments, Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 8,400.

Estimated Burden Hours Per Respondent/Recordkeeper: 36 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 8,400 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 94–11756 Filed 5–13–94; 8:45 am]

BILLING CODE 4830–01–P

Internal Revenue Service

Information Reporting Program Advisory Committee; Open Membership Application Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC). The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 18 representatives from various segments of the private sector payer community. Four of these appointments to IRPAC will expire at the end of 1994. Additional members will be selected for two-year terms beginning in January 1995.

DATES: Completed questionnaires should be received by IRS no later than June 30, 1994. Applications received after this date will not be considered. An acknowledgment letter will be sent upon receipt of each application.

ADDRESSES: Internal Revenue Service, CP:EX:I:P, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Kate LaBuda at 202–622–3404 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRPAC reports to the Executive Director, Information Reporting Program (IRP), who is the executive responsible for information reporting and is charged with its system-wide planning and improvement. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance and reduction of burden. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend a two-day meeting twice each year

The IRS is interested in representation from different areas of the payer community (e.g., real estate, property & casualty insurance, small business, corporate compliance, software development, employee plans, and state & local government, etc.). Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following questionnaire and forward it to Ms. Kate LaBuda of the IRP Planning Staff, at the address below.

Dated: April 29, 1994.

Approved:

John Devlin,

Executive Director, Information Reporting Program.

Information Reporting Program Advisory Committee

Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications must be received in that office by June 30, 1994. Those received after this date will not be considered. All applications received will be acknowledged. Questions should be directed to Kate LaBuda at 202–622–3404, and your reply should be returned to: Ms. Kate LaBuda, CP:EX:I:P, Information Reporting Program Planning Staff, Internal Revenue Service, Room 2013, 1111 Constitution Avenue, NW., Washington, DC 20224.

1. Name: ____
2. Title: ____
3. Company or Organization Name: ____
4. Business Address: ____
5. Business Phone: ____
6. Fax Number: ____
7. Home Address: ____
8. Home Phone: ____
9. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf. This letter should contain the name of a contact and this contact's phone number.
10. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)
11. Check the *one* segment of the Information Reporting Program (IRP) payer community to which the organization that you represent, and your experience, most closely relate:

____ Large Financial Institution
____ Small Financial Institution
____ Real Estate
____ Transmitter/Forms Developer
____ Software Developer
____ Insurance: Property & Casualty
____ Insurance: Life
____ Securities
____ Mutual Funds
____ Payroll
____ State & Local Government
____ Corporate Compliance
____ Small Business Compliance
____ Public Accounting
____ Employee Plans
____ Trust Company
____ Corporate Transfer Agent/Utilities
____ Other (Please specify. ______)

12. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Account for all years of IRP experience claimed.)
13. Identify organizations to which you belong and any relevant leadership positions you have held.
14. List any previous IRS employment (please state position/s, title/s, and length of time in each position):
15. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (two sentences) of each topic.

The Following Three Items Are Required for an FBI Name Check.

16. Date of Birth: ____
17. Place of Birth: ____
18. Other names ever used: ____

The Following Items Are Required for an IRS Tax Check. (Please Note That a Tax Check Is Not a Tax Audit.)

I hereby authorize the Internal Revenue Service to perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and to provide this information to the Assistant Secretary (Administration) of the Treasury Department.

I understand that the purpose of such tax check and income tax filing record check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. I have been advised that my Social Security Number is required to identify my tax records accurately. I also understand that this tax check must be completed prior to my appointment to this Federal Advisory Committee and I hereby voluntarily provide the following information:

19. Social Security Number: ____
20. Spouse's name and SSN (if married and filing jointly): ____
21. Name(s) and address(es) under which tax returns were filed for the past three years. —

The Following Item Is Required Because of the Foreign Agents Registration Act (FARA), as Amended.

22. I presently ______ am / ______ am not required to register as an agent of a foreign principal under FARA, as amended.

NOTE: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

Certification

23. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

____

Signature

____

Date

[FR Doc. 94–11757 Filed 5–13–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The American Indian Parfleche: A Tradition of Abstract Painting" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Des Moines Art Center, Des Moines, Iowa from on or about May 28, 1994 to on or about August 7, 1994, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 11, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–11854 Filed 5–13–94; 8:45 am]

BILLING CODE 8230–01–M

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[1] A copy of this list may be obtained by contracting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6829, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Dali: The Early Years" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York from on or about June 28, 1994 to on or about September 18, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: May 11, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–11855 Filed 5–13–94; 8:45 am]

BILLING CODE 8230–01–M

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[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 93
Monday, May 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on May 4, 1994 (59 FR 23094) of the special meeting of the Farm Credit Administration Board (Board) scheduled for May 5, 1994. This notice is to amend the agenda by adding an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The open session of the agenda for May 5, 1994, is amended as follows:

OPEN SESSION[*]

C. New Business

2. Other

a. Proposed Joint MIS Venture Between AgAmerica, FCB and CoBank.

Dated: May 11, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–11908 Filed 5–12–94; 10:16 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:06 a.m. on Wednesday, May 11, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Application of Jefferson Federal Savings and Loan Association of Morristown, Morristown, Tennessee, a proposed new federally chartered stock savings association for Federal deposit insurance.

Recommendation with respect to initiating certain administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

Reports of the Office of Inspector General.

Personnel matters.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (C)(4), (c)(6), (c)(8), (c)(9) (A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9) (A)(ii), (c)(9)(B), and (c)(10).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: May 11, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

FR Doc. 94-11906 Filed 5-12-94;10:13 am]

BILLING CODE 6714–01–M

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[*] Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (c)(9), and (c)(10).

federal register

Monday
May 16, 1994

Part II

Department of Education

Notice of Proposed Funding Priority for FY 1994–1995 for the Knowledge Dissemination and Utilization Program

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of a proposed funding priority for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before June 15, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice proposes a project to support the international exchange of information and experts.

Authority for the D&U program is contained in sections 202(b)(2) and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations. Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish a priority by reserving funds to support particular activities.

This proposed priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing an additional priority, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with [illegible] the notice of [illegible]

Priority

Under 34 CFR 7[illegible] Secretary proposes to give an a[illegible] preference to applications that [illegible] following priority. The Secretary proposes to fund under this pr[illegible] only applications that meet th[illegible] priority:

Proposed Priority: International Exchange of Information and Experts

Background

Since 1973, NIDRR has had statutory authority to conduct international research and development and to exchange rehabilitation and special education experts with other nations. International research and development activities significantly can change the perspectives of service providers and researchers, provide data for the evaluation of domestic programs, and offer new insights and new practices that can solve some of the old rehabilitation problems. Learning about the technical and cultural aspects of other countries' rehabilitation practices may assist U.S. rehabilitation practioners to improve the effectiveness of the the services they provide, especially for minority and immigrant populations.

In the past, NIDRR approached international activities in two ways. NIDRR funded two projects to facilitate fellowships of non-governmental experts to other countries to gather data on practices, legislation, and policy. NIDRR also engaged in international activities on a government-to-government basis, participating in international policy and data generation through international organizations such as the U.N., Federal agencies such as the Department of State and the Peace Corps, direct grants to foreign research agencies, participation in foreign research consortia and conferences, and facilitation of site visits and study tours for foreign visitors.

In order to enhance the impact of international activities on the rehabilitation field, NIDRR now seeks to fund a single project that will facilitate the exchange of both domestic and foreign experts in rehabilitation research and technical assistance; facilitate international conferences; disseminate [illegible] information to rehabilitation personnel and researchers, independent living centers, and families; assist in relevant site visitations by foreign government officials; and develop training modules that increase participation in international activities by rehabilitation practitioners, [illegible] and individ[illegible]

[illegible] the international [illegible] nation and [illegible]

- Gather information on international [illegible] tion issues, legislation, and [illegible], and maintain a library of such information for use by NIDRR and other researchers;
- Facilitate small annual conferences to explore international issues or to share rehabilitation information and data with other governments;
- Assist both foreign and domestic professionals or consumers to plan trips of particular policy and programmatic value through the development and listing of potential sites;
- Establish an international exchange of research and technical assistance experts between foreign nations and the U.S.;
- Share information with other Federal government agencies in order to assist them in the development of their research priorities in the area of disability;
- Publish and disseminate data and information to relevant target audiences on relevant policy issues and legislation, which are identified in conjunction with NIDRR;
- Develop training activities and materials to sensitize rehabilitation personnel, including special education personnel, to cultural differences that can affect rehabilitation needs and approaches; and
- Develop training activities and materials on comparative research techniques, bilateral consultation and technical assistance, utilizing the different international perspectives.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in room 3423, Switzer Building, 330 C Street

SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: May 10, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–11758 Filed 5–13–94; 8:45 am]

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federal register

Monday
May 16, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Fair Housing Initiatives Program; FY 1994 Competitive Solicitation; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3755; FR-3622-N-01]

NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $14,881,000 of 1994 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application kit for funding under this Notice will be available following publication of the Notice. The actual application due date will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until July 15, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1-800-343-3442. Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529-0033.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organizations Initiative.

More significantly, section 905 has established FHIP as a permanent program. As originally promulgated by section 561, FHIP was a demonstration program authorized to expire on September 30, 1992. Since this demonstration period has passed, and FHIP is now a permanent program, the Department has determined that the requirements specifically tied to the demonstration period, namely, the testing guidelines at § 125.405, are no longer applicable to FHIP. Accordingly, the use of these testing guidelines is not required under this NOFA. The Department has executed a waiver of § 125.405 for the purposes of this NOFA, pending the elimination of this provision in the revision of 24 CFR part 125. Because section 905 does not eliminate any FHIP provisions other than those related to its status as a demonstration program, the Initiatives and activities currently eligible under 24 CFR part 125 remain eligible under this NOFA.

This NOFA further incorporates the HCDA 1992 section 905 FHIP additions to the extent of including the new eligible applicants and activities, and the new Fair Housing Organizations Initiative. For the purpose of future funding rounds, the Department is soliciting in a separate proposed rule comments on the amendment of 24 CFR part 125 by section 905. The proposed rule will be published shortly in the **Federal Register**. However, applications for FY 1994 funds will be subject to the requirements and deadlines in this NOFA. Eligible applicants should not wait for the rule's publication to prepare and submit their FY 1994 applications in response to this NOFA.

Two of the new eligible applicants, fair housing enforcement organizations and qualified fair housing enforcement organizations, are given specific definitions, which apply to this NOFA, in section 905:

Fair housing enforcement organization means any organization that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

Qualified fair housing enforcement organization means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative; and 14.413, Fair Housing Organizations Initiative.

(b) Allocation Amounts

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $20,481,000 for the FHIP program. Of this amount, $2,000,000 of Private Enforcement Initiative funds will be used to fund the second year of two-year projects approved under the FY 1993 FHIP NOFA; $2,000,000 of Private Enforcement Initiative funds will be made available for special projects to be announced in a separate NOFA; and $1,600,000 of Fair Housing Organizations Initiative funds will be used to fund the second year of two-year projects to establish new organizations approved under the FY 1993 FHIP NOFA. The remaining $14,881,000 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information. The Department retains the right to shift funds between FHIP Initiatives, listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total amount available under this NOFA will be divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative.* The amount of $1.5 million in FY 1994 funds is available under this NOFA for the Administrative Enforcement Initiative.

(2) *Education and Outreach Initiative.* The amount of $3 million in FY 1994 funds is available under this NOFA for the Education and Outreach Initiative. Of this amount, $1.5 million is available for national programs, of which $200,000 is designated for Fair Housing Month activities. Of the remaining $1.5 million, $1 million is available for regional and local programs, and $500,000 is for community-based programs.

(3) *Private Enforcement Initiative.* The amount of $4,981,000 in FY 1994 funds is available under this NOFA for the Private Enforcement Initiative. Of this amount, $2,981,000 will be available for two-year projects, with the commitment of second year funding, in an amount not to exceed the first year's funding, subject to annual appropriations and annual performance reviews. The remaining $2 million is for one-year projects.

(4) *Fair Housing Organizations Initiative.* This NOFA makes $5.4 million in FY 1994 funds available for activities under the Fair Housing Organizations Initiative. Of this amount, $2.5 million in FY 1994 funds is available for the purpose of the continued development of existing organizations under the Fair Housing Organizations Initiative. The remaining $2.9 million will be available for two-year projects for the purpose of establishing new organizations, with the commitment of second year funding subject to annual appropriations and annual performance reviews.

(c) Eligibility

Eligible activities, eligible applicants, and additional requirements under each Initiative are listed below. All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities. The Department is particularly interested in projects that address fair housing issues confronting persons with disabilities.

(1) Administrative Enforcement Initiative

(i) *Eligible applicants.* The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws certified by the Secretary as providing rights and remedies that are substantially equivalent to those provided in the Fair Housing Act. A State or local fair housing agency, to be eligible to participate in the Administrative Enforcement Initiative, must be certified by the Assistant Secretary as substantially equivalent under 24 CFR part 115, or have entered into an agreement with the Department for interim referrals, as provided in 24 CFR 115.11.

(ii) *Eligible activities.* Funding will be available to support enforcement and compliance activities conducted by eligible State and local agencies. Eligible activities may include (but are not limited to) the following:

(A) Projects that focus on the areas of mortgage lending, insurance redlining, and appraisal practices;

(B) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(C) Implementing fair housing testing and other related enforcement activity programs;

(D) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice; and

(E) Developing new procedures to increase the efficiency of operations, such as the use of computers for case processing, tracking, and Home Mortgage Disclosure Act (HMDA) analysis.

(iii) *Additional requirements.* (A) Testers in testing activities funded with Administrative Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) *Term of contract.* Administrative Enforcement Initiative funding is only available for one-year projects, which may be for up to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) No recipient of assistance under the Administrative Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) *Case tracking log requirement.* Recipients of funds under the Administrative Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(2) Education and Outreach Initiative

(i) *Eligible applicants.* The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(A) State or local governments;

(B) Qualified fair housing enforcement organizations (QFHO–Es);

(C) Fair housing enforcement organizations (FHO–Es);

(D) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(E) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and

(F) Community Housing Resource Boards (CHRBs).

(ii) *Eligible activities.* (A) *In general.* Each application for Education and Outreach Initiative funding must identify if it proposes a national, Fair Housing Month, regional or local, or community-based program. The kinds of activities that may be funded through this Initiative may include (but are not limited to) the following:

(*1*) Projects that focus on informing persons with disabilities and/or their support organizations and service providers, housing providers, and the general public on the rights of disabled persons under the Fair Housing Act and on the location or availability of accessible housing or the modification of non-accessible housing are particularly encouraged;

(*2*) Projects that provide guidance to housing providers on meeting their Fair Housing Act obligation to make reasonable accommodations for persons with disabilities are also encouraged;

(*3*) Projects that will provide housing, mortgage lending, appraisal, and insurance counseling services;

(*4*) Developing informative material on fair housing rights and responsibilities;

(*5*) Developing fair housing and affirmative marketing instructional material for educational programs for national, regional and local housing industry groups;

(*6*) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups;

(*7*) Developing educational material targeted at persons in need of specific or additional information on their fair housing rights;

(*8*) Developing national, regional or local media campaigns regarding fair housing;

(*9*) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(*10*) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(*11*) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices;

(*12*) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm;

(*13*) Developing and implementing school curriculums for fair housing courses;

(*14*) Developing and implementing a response to community opposition to the location of residential facilities for persons with disabilities, as defined under the Fair Housing Act, where supportive health or human services are provided in connection with the housing; and

(*15*) Developing materials and providing technical assistance to support compliance with housing adaptability and accessibility guidelines contained in the 1988 Fair Housing Amendments Act.

(B) *National programs.* (*1*) Activities eligible to be funded as national programs shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair housing media products that may appropriately be used on a nationwide basis, including:

(*i*) Public service announcements, both audio and video;

(*ii*) Television, radio and print advertisements;

(*iii*) Posters; and

(*iv*) Pamphlets and brochures.

(*2*) *National Fair Housing Month.* Applicants must separately indicate if they are applying for funding of activities related to the annual National Fair Housing Month. Fair Housing Month activities must be directed toward all protected class members.

(*3*) National program applications, including those for Fair Housing Month funding, will receive a preference of up to ten additional points if they:

(*i*) Demonstrate cooperation with real estate industry organizations (up to five points); and/or

(*ii*) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988 (up to five points).

(C) *Regional, local, and community-based programs.*

(*1*) Activities eligible to be funded as regional, local, or community-based programs include any of the activities, to be implemented on a regional, local or community-based level, listed in paragraphs I.(c)(2)(ii)(A) and I.(c)(2)(ii)(B)(*1*), above, of this NOFA. Community-based programs include school, church and community presentations, conferences or other educational activities.

(*2*) For the purposes of this NOFA, activities that are "local" in scope are activities that are limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are "regional" in scope are activities that cover adjoining States or two or more units of general local government within a state. Activities that are "community-based" in scope are those which are primarily focused on a particular geographic area within a unit of general local government.

(*3*) Every regional, local, or community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(*4*) Projects for community-based activities proposed by community-based organizations will receive a preference of five additional points. For the purposes of this NOFA, a community-based organization is an organization whose members primarily come from a particular geographic area within a unit of general local government.

(iii) *Additional requirements.* The following requirements are applicable to all applications under the Education and Outreach Initiative:

(A) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

(B) Projects may range in length from six to eighteen months in duration.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(3) Private Enforcement Initiative

(i) *Eligible applicants.* Organizations that are eligible to receive FY 1994 funding assistance under the Private Enforcement Initiative are:

(A) Qualified fair housing enforcement organizations.

(B) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(ii) *Eligible activities.* Applications are solicited for one- and two-year project proposals as described in 24 CFR 125.403 and in this NOFA. Applications may designate up to 10% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints based upon mental and/or physical disabilities;

(C) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales and rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(D) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(E) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(F) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(G) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(H) Testing and other investigative activities, including building the capacity for housing investigative activities in unserved or underserved areas;

(I) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(J) Providing funds for the costs and expenses of litigation, including expert witness fees.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with Private Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) One-year projects may be for up to eighteen months in duration. Two-year projects must be twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) In accordance with 24 CFR 125.404, no recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(4) Fair Housing Organizations (FHO) Initiative.

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* Eligible applicants for funding under this purpose of the FHO Initiative are:

(*1*) Qualified fair housing enforcement organizations;

(*2*) Other private nonprofit fair housing enforcement organizations; and

(*3*) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHO Initiative are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(3)(ii) of this NOFA and carried out as one-year projects.

(C) *Additional requirements.* The following requirements apply to activities funded under the Continued Development of Existing Organizations purpose of the FHO Initiative:

(*1*) *Operating budget limitation.* Funding under this purpose of the FHO Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year. For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(*2*) *Term of contract.* One-year projects may be for up to eighteen months in duration.

(ii) *Purpose: Establishing New Organizations.*

(A) *Eligible applicants.* Any applicants eligible under any of the other FHIP Initiatives in this NOFA are eligible applicants for funding under this purpose of the FHO Initiative.

(B) *Eligible activities.* Eligible for funding under this purpose of the FHO Initiative are two-year projects that help establish, organize, and build the capacity of fair housing enforcement organizations in the targeted unserved and underserved areas identified in sections I.(c)(4)(ii)(C), or other underserved areas identified by the applicant in accordance with section I.(c)(4)(ii)(D), below, of this NOFA. The Department has considered a number a factors to identify the targeted areas eligible for funding under this NOFA, including, for example, the amount of funds available; the lack of substantially equivalent state or local agencies, or private enforcement groups; and the presence of large concentrations of protected classes. In future NOFAs, the Department will consider additional targeted areas for funding.

(C) *Targeted areas.*

(*1*) A preference of ten additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following unserved areas:

(*i*) New Hampshire;
(*ii*) New Mexico;
(*iii*) Puerto Rico; and
(*iv*) Wyoming.

(*2*) A preference of five additional points will be given for applications that propose to establish new fair housing enforcement organizations in localities within any of the following underserved areas:

(*i*) Alabama;
(*ii*) Louisiana;
(*iii*) Mississippi;
(*iv*) Nebraska;
(*v*) Oregon; and
(*vi*) Utah.

(*3*) An applicant may seek funding to establish a new organization in a locality not included in the list of target areas, above, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations and as containing large concentrations of protected classes. An applicant may provide additional evidence of the need to establish a fair housing organization in a locality by citing data and studies that indicate the presence of housing discrimination and/or segregation in the locality. An example of evidence that may be used for this purpose is provided in (but is not limited to) the study, American Apartheid: Segregation and the Making of the Underclass, by Nancy A. Denton and Douglas S. Massey (Harvard University Press, 1993).

(D) *Additional requirements.* The following requirements apply to activities funded under the Establishing New Organizations purpose of the FHO Initiative:

(*1*) *Term of contract.* Two-year projects must be twenty-four months in duration, and funding for the second year of a project is subject to a performance review of the first year's activities and available annual appropriations.

(iii) *Additional Requirements.* The following requirements apply to all activities funded under the Fair Housing Organizations Initiative:

(A) Testers in testing activities funded with FHO Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(B) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(C) No recipient of assistance under the FHO Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(D) Recipients of funds under the FHO Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received: the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(d) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

In addition to the preference points indicated in section I.(c) for particular activities, all projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) *The anticipated impact of the project proposed on the concerns identified in the application.* (25 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraph III. (a)(1) of this NOFA under the heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (25 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(6) and III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for monitoring the progress of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) will be taken into account as part of the assessment. This may be evidenced by the applicant's financial management of previous FHIP or other civil rights project management, a certification from cognizant auditor, and other documentation. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), and III.(a)(5) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (20 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors/consultants. For organizations submitting an application under the Education and Outreach Initiative, HUD will consider both fair housing experience and experience in implementing education, outreach or public information programs. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points). Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources are available. The resources that will be considered must be targeted specifically for the proposed project, and must be over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the Selection Criteria for Ranking Applications for Assistance identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. The rank ordering will be done separately for: Each Initiative; each program component (national, National Fair Housing Month, regional/local, and community-based) of the Education and Outreach Initiative; each purpose (continued development of existing organizations, and establishing new organizations) under the Fair Housing Organizations Initiative, or funding cycle (one-year and two-year projects) under the Private Enforcement Initiative. Awards for each Initiative will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(3) Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. At that point, the project's cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(e) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) the application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, reduction or limitation of further funding for administrative enforcement activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll free number 1–800–343–3442. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, SW., Washington, DC 20410.

The application due date will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until July 15, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

The application deadline is firm as to date. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity, but a separate application must be submitted for each of the following categories of funding:

(1) Administrative Enforcement Initiative activities;

(2) National programs under the Education and Outreach Initiative;

(3) National Fair Housing Month activities under the Education and Outreach Initiative;

(4) Regional or local activities under the Education and Outreach Initiative;

(5) Community-based activities under the Education and Outreach Initiative;

(6) One-year projects under the Private Enforcement Initiative;

(7) Two-year projects under the Private Enforcement Initiative;

(8) Continued Development of Existing Organizations activities under the Fair Housing Organizations Initiative; and

(9) Establishing New Organizations activities under the Fair Housing Organizations Initiative.

Although a separate application is required for each funding category, an application may propose more than one type of eligible activity under each category. For example, both production and distribution of a public service message may be proposed in a single application for a national program under the Education and Outreach Initiative.

Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) *General requirements.* The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A budget—which must include $3,000 for one-year projects, and $6,000 for two-year projects—to be used for travel costs for training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants;

(4) A statement indicating the need for FHIP funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities and the applicant's planned or implemented financial control procedures that will demonstrate the applicant's capability in managing financial resources;

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured, and;

(7) A description of the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed;

(8) HUD Form 2880, Applicant Disclosures;

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF–LLL).

(11) Prior to award execution, successful applicants must submit a certification that they will comply with

(i) Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135.

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(iii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(b) *Additional Education and Outreach Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals under the Education and Outreach Initiative must include the following:

(1) A description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose

(2) Coordination of activities. Each non-governmental applicant for funding under the Education and Outreach Initiative that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a

substantially equivalent fair housing law must provide, with its application, documentation that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other. Failure to submit the documentation required by this section will be treated as a technical deficiency in accordance with section IV., below, of this NOFA.

(3) Every regional/local/community-based program application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies, private attorneys, or HUD and the Department of Justice for further enforcement processing.

(c) *Additional Private Enforcement Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals for testing under the Private Enforcement Initiative must include:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

(d) *Additional Fair Housing Organizations Initiative requirements.* In addition to meeting the application requirements contained in section III.(a), above, the following application submission requirements apply to proposals under the Fair Housing Organizations Initiative:

(1) Each applicant under the continued development of existing organizations purpose of the Fair Housing Organizations Initiative must submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This operating budget will be used for the purposes of determining the extent of the 50% funding limitation on operating expenses.

(2) All proposals for testing under the Fair Housing Organizations Initiative must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

IV. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619). Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: May 6, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

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Monday
May 16, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

Fiscal Year 1994 Indian Child Welfare Act Grant Program (ICWA), Availability of Title II ICWA Funds for Off-Reservation Indian Organizations; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year (FY) 1994 Indian Child Welfare Act (ICWA) Grant Program, Availability of Title II ICWA Funds for Off-Reservation Indian Organizations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability of Grant Funds.

SUMMARY: The Indian Child Welfare Act makes grant funds available to off-reservation Indian organizations from the Bureau of Indian Affairs (BIA), Department of the Interior, for the purpose of establishing and operating off-reservation Indian child and family service programs.

DATES: The closing date for the receipt of applications for all applicants is June 30, 1994.

ADDRESSES: Applications must be mailed or hand-delivered to the appropriate Area Office of the Bureau of Indian Affairs listed in Part IV of this announcement.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or Albanita Atencio, BIA Division of Social Services, Mail Stop 310–SIB, 1849 C Street, NW., Washington, DC 20240. Telephone (202) 208–2721.

SUPPLEMENTARY INFORMATION: Title II of the Indian Child Welfare Act, Public Law 95–608, authorizes the utilization of funds for grants to Off-reservation Indian organizations. The BIA published in the January 13, 1994, **Federal Register**, Vol. 59, No. 9, regulations revising 25 CFR Part 23, the rules that govern the Title II, ICWA grant program. Pursuant to 25 CFR Part 23, the Assistant Secretary—Indian Affairs hereby announces procedures necessary for eligible off-reservation Indian organizations to apply for the FY 1994 Title II ICWA grant funds which shall be awarded competitively under the revised 25 CFR Part 23. The revised rules became effective on February 14, 1994. Copies of the revised 25 CFR Part 23 ICWA grant regulations may be obtained from the Area Social Workers listed in Part IV of this notice.

A two-year developmental plan for an ICWA grant program will be accepted under this notice. Applications received under this notice must comply with all applicable requirements and criteria specified in the revised 25 CFR Part 23. It is important that applicants carefully review all requirements detailed in this notice relative to application contents, deadlines, and other special instructions. If an application is not received by the close of business on June 30, 1994, it will not be considered.

It is incumbent upon the respective Area Director to provide the necessary technical assistance requested in accordance with 25 CFR Part 23.42. The timeframe for receipt of requests from the off-reservation applicants for technical assistance is 10 days prior to the close of the application deadline.

A national total of $1,735,000 in FY 1994 ICWA funds will be awarded competitively to off-reservation Indian organizations nationwide for grants under Title II of the Indian Child Welfare Act.

Part I. General Information

A. Background

It is the policy of the BIA to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, and local programs which strengthen and preserve Indian families and Indian tribes. Thus, applicants are encouraged to design their ICWA programs/activities that integrate with or complement existing child and family service programs or those administered by the applicant.

Section 202 of the Indian Child Welfare Act of 1978 (Public Law 95–608, 25 U.S.C. 1932) authorizes the Secretary to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing and preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be an action of last resort. These programs are intended to promote the Indian Child Welfare Act of 1978 (25 U.S.C. 1902; 25 U.S.C. 1932).

This notice provides information on the FY 1994 ICWA grant application process for eligible off-reservation Indian organizations to compete for FY 1994 ICWA grant funds.

B. Eligible Applicants

The Board of directors of any nonprofit off-reservation Indian organization may apply for a grant under this announcement. A new application for projects of two years duration may be submitted in response to this announcement. An applicant may not submit more than one application nor be a beneficiary of more than one grant under this or other prior notices.

C. Purpose of Off-Reservation Grants

The purpose of every Indian child and family services program shall be to prevent the breakup of Indian families, and ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be a last resort. Off-reservation Child and family service programs may include, but are not limited to:

(a) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support maintenance and medical needs;

(b) The operation and maintenance of facilities and services for the counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(c) Family assistance (including homemaker services and home counselors), protective day care and after school care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(d) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

Part II

A. Available Funds

In FY 1994, off-reservation Indian organizations will compete for a national allocation of $1,735,000. Grants will be awarded competitively to approved off-reservation Indian organizations on the basis of service area population within the following categories:

(a) A maximum of up to $27,500 for eligible applicants with a total service area population of 500 or less;

(b) A maximum of up to $35,000 for eligible applicants with a total service area population greater than 500 but less than 1,500;

(c) A maximum of up to $45,000 for eligible applicants with a total service area population greater than 1,500 but less than 3,000;

(d) A maximum of up to $55,000 for eligible applicants with a total service area population greater than 3,000 but less than 5,000;

(e) A maximum of up to $65,000 for eligible applicants with a total service area population greater than 5,000 but less than 8,000;

(f) A maximum of up to $80,000 for eligible applicants with a total service area population greater than 8,000 but less than 20,000;

(g) A maximum of up to $110,000 for eligible applicants with a total service area population greater than 20,000 but less than 40,000;

(h) A maximum of up to $140,000 for eligible applicants with a total service area population greater than 40,000 but less than 60,000;

(i) A maximum of up to $175,000 for eligible applicants with a total service area population greater than 60,000 but less than 90,000;

(j) A maximum of up to $250,000 for eligible applicants with a total service area population greater than 90,000 but less than 140,000;

(k) A maximum of up to $350,000 for eligible applicants with a total service area population greater than 140,000 but less than 180,000; and

(l) A maximum of up to $500,000 for eligible applicants with a total service area population over 180,000.

Under no circumstances may any off-reservation Indian organization receive Indian Child Welfare Act grant funds greater than the maximum grant amount of $500,000 either through a direct grant or through subgranting procedures with approved applicants.

No ICWA grant funds will be withheld at the Central Office for appeals related to off-reservation funding levels; therefore, approved applications will be funded strictly on the basis of funds available to each area office and in accordance with the funding amounts published in this grant notice. The respective Area Director has final funding authority.

B. Service Eligibility

The service area population is the total number of Indians eligible for services under 25 CFR 23.50(b) in the geographical area to which an off-reservation Indian organization can realistically provide the services proposed in the application. The service area population is used only to determine the maximum grant amount for which an applicant may be eligible.

For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in 25 CFR Section 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for ICWA services.

These service area population figures must be based upon substantiated, identifiable statistical sources. Applicants must submit copies of recent statistical data from sources which support their service area figures, such as off-reservation population information, U.S. Census data, or off-reservation service area population data maintained by the Indian Health Service for urban Indian populations.

Part III. Application Selection Criteria

A. Statutory Authority

The BIA's Indian Child Welfare Act grants program is authorized by Title II of Public Law 95–608, the Indian Child Welfare Act (25 U.S.C. 1901 et seq., 25 CFR part 23). All grant applications submitted under this notice shall be scored individually and recommended for grant awards in accordance with the mandatory application requirements and the application selection criteria specified in 25 CFR part 23.33.

B. Closing Date for Receipt of Applications for All Applications

The closing date for receipt of applications under this grant notice is the close of business on June 30, 1994, for all applicants. All applications for off-reservation Indian Child Welfare Act grants must be received by the appropriate BIA Area Director, as specified in 25 CFR 23.31(c) on or before 5:00 p.m. or the official close of business for that office on the closing date of the application period. Hand-delivered applications will be accepted during normal work hours Monday through Friday. Postmarks will not be considered as meeting the deadline. Applicants which do not meet the deadline criteria will be considered late applications, and will not be considered in the competition. The names and addresses of all BIA area offices are listed in Part IV of this notice.

C. Mandatory Application Requirements for All Applicants

Pursuant to 25 CFR 23.33(a), an application for a two-year competitive grant under this subpart shall be submitted to the appropriate Area Director as specified in 25 CFR 23.33(c). Mandatory application requirements for Indian organization applicants shall include:

(1) An official request for an ICWA grant program from the organization's board of directors covering the duration of the proposed program;

(2) A completed Application for Federal Assistance form, SF 424;

(3) Written assurances that the organization meets the definition of Indian organization at 25 CFR Section 23.2;

(4) A copy of the organization's current Articles of Incorporation for the applicable grants years;

(5) Proof of the organization's nonprofit status;

(6) A copy of the organization's IRS tax exemption certificate and IRS employer identification number;

(7) Proof of liability insurance for FY 1994–1995;

(8) Current written assurances that the requirements of Circular A–128 for fiscal management, accounting, and recordkeeping are met; and

(9) Pursuant to the Drug-Free Workplace Act of 1988, all grantees under this subpart shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

An application missing any of the above mandatory requirements will not be reviewed.

In addition to the foregoing requirements, existing ICWA grantees must submit a copy of a satisfactory program evaluation for the current year of operation from the appropriate area office in order to be considered for funding in FY 1994 (25 CFR 23.33(e)).

In accordance with 25 CFR 41, grantees must adhere to and comply with all the general and uniform grant administration provisions and requirements specified at CFR part 276 and those identified in Subpart E of 25 CFR 23. Failure to meet and comply with these regulatory requirements may result in suspension, cancellation and/or termination of program funds.

The grant application shall be no longer than 40 pages, double spaced, excluding the appendix. The table of contents and appendices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages. If an application is longer than the established page limitation, only the first 40 pages will be reviewed. All applicants must submit one original application and three copies of the complete application.

Information included in the appendix should relate specifically to the application. The appendix may include, but is not limited to the following: Resolutions, support letters, position descriptions, current/recent fiscal management/accounting certification, operational internal monitoring systems, and non-profit status documentation.

D. Competitive Application Selection Criteria

The Area Director or his/her designated representative shall select those proposals which will in his/her judgement best promote the proposes of the Indian Child Welfare Act of 1978. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the following selection criteria:

(1) The degree to which the application reflects an understanding of the social services problems or issues affecting the resident Indian population which the applicant proposes to serve;

(2) Whether the applicant presents a narrative needs assessment, quantitative data and demographics of the client Indian population to be served;

(3) Estimates of the number of Indian people to receive benefits or services from the program based on available data;

(4) Program goals and objectives to be achieved through the grant;

(5) A comprehensive developmental two-year (FY 1994 and FY 1995) narrative plan describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include a narrative description of the program; the program goals and objectives, stated in measurable terms, to be achieved through the grant; and the methodology, including culturally defined approaches, and procedures by which the grantee will accomplish the identified goals and objectives;

(6) An internal monitoring system the grantee will use to measure progress and accomplishments, and to ensure that the quality and quantity of actual performance conforms to the requirements of the grant;

(7) Documentation of the relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing the prevention of Indian family breakups, such as mandatory state services. Factors to be considered in determining accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Technical barriers created by existing public or private programs;

(v) Availability of transportation to existing programs;

(vi) Distance between the Indian community to be served under the proposal and the nearest existing programs;

(vii) Quality of services provided to Indian clientele; and

(viii) Relevance of services provided to the specific needs of the Indian clientele.

(8) If the proposed program duplicates existing Federal, state, or local child and family service programs emphasizing the prevention of Indian family breakups, proper and current documented evidence that repeated attempts to obtain services have been unsuccessful;

(9) Evidence of substantial support from the Indian community or communities to be served, including but not limited to:

(i) Tribal support evidenced by a tribal resolution or cooperative service agreements between the administrative bodies of the affected tribe(s) and the applicant for the duration of the grant period, or

(ii) Letters of support from social services organizations familiar with the applicant's past work experience;

(10) A staffing plan that is consistent with implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services. The plan must include proposed key personnel, their qualifications, training or experience relevant to the services to be provided, responsibilities, Indian preference criteria for employment and position descriptions. In accordance with 25 U.S.C. 3201 et seq. (Pub. L. 101–630), Title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statue prior to their actual employment.

(11) The reasonableness and relevance of the estimated overall costs of the proposed program or services and their overall relation to the organization's funding base, activities, and mission;

(12) The degree to which the detailed annual budget and justification for the requested funds are consistent with, and clearly supported by, the proposed plan and by appropriate program services and activities for the applicable grant year;

(13) The applicant's identification of any consultants and/or subgrantees it proposes to employ; description of the services to be rendered; the qualifications and experience of said personnel, reflecting the requirements for performing the identified services; and the basis for the cost and the amount to be paid for such services;

(14) Certification by a licensed accountant that the bookkeeping and accounting procedures that the applicant uses or intends to use meet existing Federal standards for grant administration and management specified at 25 CFR 23.46;

(15) The compliance of property management and recordkeeping systems with subpart D of 43 CFR Part 2 (the Privacy Act, 5 U.S.C. 552a), and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant;

(16) A description of the proposed facilities, equipment, and buildings necessary to carry out the grant activities; and

(17) Proof of liability insurance coverage for FY 1994 and FY 1995

E. Scoring and Grant Application Selection Criteria

Upon receipt of an application for an off-reservation grant under 25 CFR 23.33 which requires the approval of the Area Director, the Area Director shall:

(1) Establish and convene an area review committee, chaired by a person qualified by knowledge, training and experience in the delivery of Indian child and family services.

(2) Review the area office certification form required in 25 CFR 23.33(a).

(3) Review the application in accordance with the competitive review procedures prescribed in 25 CFR section 23.33. An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(i) Contains all the information required in 25 CFR section 23.33 which must be received by the close of the application period. Modifications of the grant application received after the close of the application period shall not be considered in the competitive review process; and

(ii) Receives at least the established minimum score of 80 points in an area competitive review, using the application selection criteria and scoring process set out in section 23.33.

(4) Approve or disapprove the application and promptly notify the applicant in writing of the approval or disapproval of the application. If the application is disapproved, the Area Director shall include in the written notice the specific reasons therefore The actual funding amounts for the initial grant year shall be subject to appropriations available nationwide and the continued funding of an approved off-reservation grant application under subpart D of this part shall be subject to available funds received by the respective area office for the applicable grant year. Initial funding decisions and subsequent decisions with respect to

funding level amounts for all approved grant applications under 25 CFR subpart D shall be made by the Area Director.

(5) Based on the competitive scoring process, priority funding consideration will be given as follows:

(i) Bonus points for past successful program performance, will be awarded one point per year up to five years (from FY 89–FY93), upon certification by the Area Director.

(ii) An application receiving the highest rated score will receive priority funding consideration at a higher funding level than the remaining approved applicants. In case of a tied score, the applicant with the largest service area population will receive priority funding consideration.

(iii) At least one approved applicant per area will be funded at a higher level than the rest. The remaining approved applicants will share proportionately the balance of available ICWA grant funds.

F. Grant Review and Award Process

The Area Director shall review each application through a competitive process and take the appropriate course of action on all off-reservation ICWA grant applications received in response to this notice in accordance with the established requirements and timeframes in 25 CFR Parts 23.33(a) and 23.34 respectively. Grants shall be awarded and executed in accordance with 25 CFR Part 23.43 as expeditiously as possible.

G. Appeals

A grantee or applicant may appeal any decision made or action taken by the Area Director under subpart D that is alleged to be in violation of the U.S. Constitution, Federal statues, or regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4(e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. An applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

A notice of appeal must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice must be filed in the office of the official whose decision is being appealed. The date of filing is the date the notice of appeal is postmarked or the date it is personally delivered to the official's immediate office (25 CFR 2.9(a); 25 CFR 2.13(a)). The burden of proof of timely filing is on the appellant. No extension of time will be granted for filing a notice of appeal (25 CFR 2.9(a) and 2.16).

Within 30 days of the filing of the notice of appeal, a statement of reasons must be filed in the office of the official whose decision is being appealed. The statement of reasons may, however, be in or filed with the notice of appeal (25 CFR 2.10). Appeals will be handled in accordance with provisions set forth at 25 CFR 2.20.

No ICWA funds will be withheld at the Central Office for purposes of appeals related to funding appeals.

Part IV. BIA Area Offices—Area Social Workers

All application materials must be submitted in person or mailed to the appropriate Bureau of Indian Affairs Area Director. The following is a listing of the 12 BIA Area Social Workers designated by the Area Directors to receive ICWA grant applications from off-reservation Indian organizations.

Aberdeen Area Office: Peggy Davis; 115 4th Avenue, S.E.; Aberdeen, SD 57401; 605/226–7351.

Albuquerque Area Office: Joseph Naranjo; 615 1st Street; P.O. Box 26567; Albuquerque, NM 87125–6567; 505/766–3321.

Anadarko Area Office: Retha Murdock; 1½ mile North Highway 281; WCD Office Complex; P.O. Box 368; Anadarko, OK 73005; 405/ 247–6673 ext. 257.

Billings Area Office: Louise Zokan-Delos Reyes; 316 North 26th Street; Billings, MT 59101; 406/657–6651.

Eastern Area Office: Evelyn S. Roanhorse; 3701 N. Fairfax Drive; Suite 260; Arlington, VA 22201; 703/235–2353.

Juneau Area Office: Jimmie Clemmons; 9109 Menden Hall Mall Road; P. O. Box 25520; Juneau, AK 99802–5520; 907/586–7628.

Minneapolis Area Office: Rosalie Clark; 331 South Second Avenue; Minneapolis, MN 55401; 612/373–1182.

Muskogee Area Office: Alice A. Allen; Federal Courthouse Building; 101 North 5th Street; Muskogee, OK 74401–6206; 918/687–2507.

Navajo Area Office: Vivian Hailstorm; 300 West Hill Avenue; P.O. Box 1060; MC–440, Gallup, NM 87301; 602/871–5151.

Phoenix Area Office: Stephen J. Lacy; 1 North First Street; P.O. Box 10; Phoenix, AZ 85001; 602/379–6785.

Portland Area Office: Robert C. Carr; 911 N.E. 11th Avenue; Portland, OR 97232–4169; 503/231–6783.

Sacramento Area Office: Kevin Sanders; Federal Office Building; 2800 Cottage Way; Sacramento, CA 95825; 916/978–4705.

Dated May 6, 1994.

John W. Tippeconnic,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–11674 Filed 5–12–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
May 16, 1994

Part V

Department of the Interior

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting; Notice

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

ACTION: Notice of meeting.

SUMMARY: The Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: May 24–26, 1994, 9 a.m. to 5:30 p.m.; the Sheraton Century Center Hotel, 1 North Broadway, Oklahoma City, Oklahoma, 73102, (405) 235–2780. Work Groups of the Task Force will meet from May 21 through May 23, 1994, just prior to the general session. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Designated Federal Officer, Office of the Assistant Secretary — Indian Affairs; MS 320 SIB; 1849 C Street NW.; Washington, DC 20240; Telephone number (202) 208–2631.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss organizational impacts of budget decisions including the National Budget Hearings for FY 1996 held in Washington, D.C. Information will be provided on policy directions resulting from the meeting between tribal leaders and President Clinton and from the listening conference jointly sponsored by the Departments of Justice and Interior. The Task Force will also discuss the direction future restructuring of the BIA should take and will begin preparing the final report of the Task Force to the Congress and the Secretary of the Interior. Each of the Work Groups of the Task Force will present reports of activities and a draft of their portion of the final report. Public attendance and participation in this meeting are encouraged, and time for public comments has been scheduled.

Dated: May 11, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–11930 Filed 5–13–94; 8:45 am]

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federal register

Monday
May 16, 1994

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

Oyster Disease Research; Financial Assistance; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 94–0528–4128, I.D. 031894A]

RIN: 0648-ZA02

Financial Assistance for Oyster Disease Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: A total of $1.3 million in Fiscal Year (FY) 1994 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist interested state fishery agencies, academic institutions, and other nonprofit organizations relating to cooperative research units, in carrying out research projects to provide information on oyster diseases through cooperative agreements. NMFS issues this notice describing the conditions under which eligible applications will be accepted and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program will be accepted between May 16, 1994 and 6 p.m. eastern standard time on June 30, 1994. Applications received after that time will not be considered for funding. No applications will be accepted by facsimile machine submission.

Successful applicants generally will be selected approximately 90 days from the date of publication of this notice and the earliest date for awards will be about 180 days after the date of publication of this notice.

ADDRESSES: Send applications to: M. Elizabeth Gillelan, Division Chief, NOAA Chesapeake Bay Office, NMFS, 410 Severn Avenue, suite 107A, Annapolis, MD 21403.

Questions of an administrative nature should be referred to: Grants Management Division, Attn: Jean West, Chief, Grants Operations Branch, NOAA, SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910, at 301/713–0926.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Gillelan, 410/267–5660.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753 (a), authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1994 makes funds available to the Secretary.

The research to be funded is in support of the Oyster Disease Research Program, which provides information on American oyster disease-related research and management concerns in the northeastern United States. The program investigates selected aspects of the life cycle of oyster pathogens, physiological and genetic factors that influence disease resistance in the American oyster, *Crassostrea virginica*, and management strategies that would enhance survival of the public fishery and prospects for resource rehabilitation.

Oyster disease research is essential, given the recent devastating effect of oyster diseases on the Maryland and Virginia oyster fisheries. Oyster harvests from the Chesapeake Bay reached record lows in 1992–1993. Fishery management approaches that manage around the diseases have not been able to guard against widespread disease outbreaks. New research into the diseases should provide new knowledge and new tools for managing and restoring these oyster populations.

II. Areas of Special Emphasis

A. Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Eligible women and minority scientists, associated with eligible applicants, are encouraged to submit applications. While the areas for special emphasis are listed below, proposals in other areas will be considered on a funds-available basis. Primary consideration for funding will be given to applications addressing the specific priorities listed in this section. These priorities are not listed in any implied order. NMFS will accept proposals that address other significant areas of research on *C. virginica;* however, consideration cannot be guaranteed.

Consideration will be given to applications that address the following American oyster disease research and management priorities for the northeastern United States:

1. Technical Priorities

a. Investigate the basic mechanisms (physiological, genetic, immunological, biochemical, etc.) that may make *C. virginica* resistant/susceptible to the diseases currently affecting the Northeast Region's oyster populations. This includes the genetic basis for disease resistance and the possible development of gene transfer techniques that could lead to improved native oysters.

b. Investigate selected aspects of the life cycle and natural history of *C. virginicus* pathogens, with emphasis on transmission dynamics; identification of intermediate hosts; and determination of the time/age when young oysters first become susceptible to *Haplosporidium nelsoni*, commonly known as MSX, or *Perkinsus marinus*, known as Dermo.

c. Utilize *P. marinus* cultures and isolated cells to investigate the biochemistry and physiology of this pathogen, with emphasis on osmotic tolerance of cells *in vitro* and the role of virulence factors in pathogenicity.

d. Investigate juvenile oyster mortalities occurring in the Northeast Region, including the identification of the definitive disease agent, its range, and impact on the oyster industry.

2. Management-Related Priorities

a. Develop and test new management strategies that would enhance survival of a fishery in the continuous presence of disease, such as the establishment of brood stock sanctuaries, genetic selection programs, aquaculture techniques, and oyster reef research and development.

b. Develop resource survey techniques that can be adopted to manage disease-affected oyster populations effectively and provide background data to support development of management options for resource rehabilitation.

c. Evaluate the potential of a Geographic Information System approach for characterizing the transmission dynamics of oyster diseases throughout the Chesapeake Bay.

B. Applications addressing the priorities should build upon, or take into account, any related past or current work. During FY 92 and FY 93, funds under this program were awarded for the following projects, at a total cost of $1.3 million, for each year.

1. FY 93:

a. Role of Oyster Lysosomal Enzymes in Disease Resistance.

b. Field and Laboratory Study of the Process and Dynamics of *Perkinsus marinus* Infection of the Eastern Oyster, *Crassostrea virginica*.

c. Extracellular Protein from *Perkinsus marinus*: Analysis of Pathogenic Mechanisms and Development of Enhanced Diagnoses.

d. Population Genetic Structure of *Perkinsus marinus*.

e. Intertidal Oyster Reefs as a Tool for Estuarine Environmental Rehabilitation and Rejuvenation of the Virginia Oyster Fishery.

f. Replenishment Strategies in the Continuous Presence of Disease.

g. Infectivity of Cultured *Perkinsus marinus*: Effects of Parasite Life Stage and Delivery Method.

h. Development of *Haplosporidium nelsoni* (MSX)-Specific DNA Probes for Diagnostic Applications and Life Cycle Studies.

i. Hybridization of Eastern and Pacific Oysters Using Bridging Taxa.

j. Development of Culture Strategies to Reduce Losses Due to Juvenile Oyster Mortalities in the Northeast.

k. Physiological Responses of the Oyster *Crassostrea virginica* to Infections of *Perkinsus marinus*: Effects of Environmental Variables on Acid-base Status.

l. ELISA Assay for Detection of *Perkinsus marinus* in Oyster Tissue.

m. American Oyster Stock Assessment in Maryland.

n. Technical Support for Maryland's Oyster Recovery Action Plan.

o. Flow Cytometric Enumeration of *P. marinus* Cells in Chesapeake Bay Waters.

p. Development and Evaluation of Nucleic Acid Probes for Diagnosis and Detection of Genetic Polymorphisms of *Perkinsus marinus*.

q. Utilization of Genetically Selected Lines to Reduce the Impact of Juvenile Oyster Mortality.

2. FY 92:

a. Use of Immuno-Stimulants to Augment the Resistance of the Eastern Oyster *Crassostrea virginica* to Infection by *Perkinsus marinus*.

b. A Stock-Recruitment Model of the James River Oyster Fishery.

c. Studies of Genetic Variation Between and Within Strains of the American Oyster Selected for Disease Resistance II. Analysis of Anonymous Nuclear Loci.

d. Development of a Microcomputer-Based Geographic Information System (GIS) for the Visualization, Interpretation, and Analysis of Maryland Chesapeake Bay Oyster Disease and Population Information.

e. American Oyster Stock Assessment in Maryland.

f. *In vitro* Propagation of *Perkinsus marinus*.

g. Resistance of *Crassostrea virginica* Races to *Perkinsus marinus* Isolates: A Foundation for Breeding and Management.

h. Life Cycle Studies of *Haplosporidium nelsoni* (MSX) Spores and Non-Oyster Hosts.

i. Relative Effects of Harvest Pressure and Disease Mortality on the Population Dynamics of the Eastern Oyster in Delaware Bay.

j. Development of a DNA Probe to Investigate the Life Cycle of *Haplosporidium nelsoni* (MSX).

k. Life Cycle Studies of *Perkinsus marinus*-Host Specificity.

l. Flow Cytometric Quantification and Analysis of *Perkinsus marinus* Cells Present in Estuarine Waters.

m. Integrated Physiological Investigation of the Effects of Protozoan Parasitism in the Oyster, *Crassostrea virginica*.

III. How To Apply

A. Eligible Applicants

The cooperative agreement has been determined as the appropriate funding instrument because of the substantial involvement of NMFS in (1) developing program research priorities, (2) performing cooperative research jointly with eligible applicants through the NMFS unit at the Cooperative Oxford Laboratory, (3) evaluating the performance of the program for effectiveness in meeting national and regional goals for Chesapeake Bay oyster conservation and restoration, (4) monitoring the progress of each funded project, (5) holding periodic workshops with investigators to encourage inter-disciplinary dialogue and forge synthesis of results, and (6) working with recipients in preparation of annual reports summarizing current accomplishments of the Oyster Disease Research Program.

Applications for cooperative agreements under the oyster disease research program may be submitted, in accordance with the procedures set forth in this notice, by any state game and fish department, college or university, or other nonprofit organizations relating to cooperative research units. Eligible applicants outside the northeastern United States (Maine to Virginia) may submit proposals, as long as their objectives support the technical and management priorities of the Northeast Region, as defined in sections II.A.1. and II.A.2. above. All solicited proposals received by the closing date will be considered by NMFS. Applicants will be expected to identify the principal investigators who will be conducting the research. Curricula vitae should also be provided for all essential personnel.

Investigators submitting proposals in response to this announcement are strongly encouraged to develop interinstitutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision. These efforts may be among external eligible applicants, as well as with NMFS scientists at the Cooperative Oxford Laboratory. NMFS personnel may participate in joint efforts with non-NMFS persons or groups in these projects, as long as these non-NMFS persons or groups have applied and successfully competed for oyster disease research funds through the process outlined in this announcement and as long as these applications refer to, or include, an internal NMFS proposal that details how NMFS personnel plan to cooperate. Any activities to be undertaken by NMFS personnel under such cooperative agreements will be funded by direct transfer of oyster disease research funds or regular appropriated funds within NMFS. No such NMFS activity is to be funded by non-NMFS persons or groups using oyster disease research funds other than those who have successfully competed for funds under this announcement.

B. Amount and Duration of Funds

Under this solicitation, NMFS will fund American oyster disease research projects under this program for 1-year cooperative agreements. Project dates should be scheduled to begin on December 1, 1994. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost sharing is not required under the oyster disease research program. However, cost sharing is encouraged to enhance the value of a project, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to share cost, and if that application is selected for funding, the applicants will be bound by the percentage of cost sharing reflected in the grant award.

The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The total cost of a project begins on the effective date of a cooperative agreement between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

D. Format

1. Applications for project funding must be complete. Applicants must identify the specific research priority or priorities to which they are responding. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application.

2. Applications must be submitted in the following format:

a. *Cover Sheet:* An applicant must use OMB Standard Form 424 (revised 4/92) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division or the NOAA Chesapeake Bay Office (see **ADDRESSES**).

b. *Project Summary:* Each proposal must contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

c. *Project Description:* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of Problem(s):* Describe the specific problem to be addressed and the area of emphasis to which the project responds (see section II above).

(2) *Project Objectives:* This is one of the most important parts of the Project Proposal. Use the following guidelines for stating the objective of the project.

(a) Keep it simple and easily understandable.

(b) Be as specific and quantitative as possible.

(c) Specify the "what and when;" avoid the "how and why."

(d) Keep it attainable within the time, money, and manpower available.

(e) Use action verbs that are accomplishment oriented.

(3) *Need for Government Financial Assistance:* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the Project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(4) *Benefits or Results Expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Project Statement of Work:* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s). If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant. Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.(c)(5)(d)) that are to be attained in each month covered by the Statement of Work.

(6) *Participation by Persons or Groups Other Than the Applicant:* Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the initial proposal.

(7) *Federal, State and Local Government Activities:* List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management programs, NOAA Chesapeake Bay Stock Assessment Committee, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project Management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project, their qualifications, and their level of involvement in the project.

(9) *Monitoring of Project Performance:* Identify who will participate in monitoring the project.

(10) *Project Impacts:* Describe the impact of the project in terms of anticipated increased production, sales, product quality and safety, improved management, or any other values that will be produced by this project. Describe how these products or services will be made available to the fisheries and management communities.

(11) *Evaluation of Project:* The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) *Total Project Costs:* Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. Cost-sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (SF–424A) is available from the offices listed (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. To support the budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed; as well as the name of the audit firm, the contact person, and phone number and address; must be also provided.

d. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. Initial Evaluation of Applications

Applications will be reviewed to assure that they meet all requirements of this announcement, including eligibility and relevance to the Oyster Disease Research Program.

B. Consultation With Experts in the Field of Oyster Disease Research

For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to comment on the following evaluation criteria:

1. Problem description and project conceptual approach toward resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (30 points).
2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (35 points).
3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (15 points).
4. Justification and allocation of the budget in terms of the work to be performed (20 points).

C. Review Panel

NMFS will convene a review panel of nationally or regionally recognized experts in the scientific and management aspects of oyster disease research who will review each proposal as follows:

1. Review field review responses.
2. Provide their own reviews based on the same criteria as the field reviews.
3. Discuss all review comments as a panel.
4. Provide individual panelist scores and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

D. Funding Decision

1. Applications will be ranked by NMFS into two groups: (a) Recommended, and (b) not recommended. As previously stated (section III.A.1., above), collaborative proposals are strongly encouraged, and therefore will be given added weight in the selection process. Numeric ranking will be the major consideration for deciding which of the "recommended" proposals will be selected for funding. Because NMFS will seek to balance technical and management priorities of the program, the highest-ranked "recommended" proposals may not necessarily receive funding.

2. After projects have been ranked for funding, the Chief of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator for Fisheries, NOAA, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be recommended for funding, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in pre-award negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. A project must not be initiated by a recipient until a signed award is received from the Grants Officer.

V. Other Requirements

A. Deliverables

In addition to quarterly status and budget reports, and at the time of submission of the final report of results of funded projects, recipients must submit a four-to-five page summary of project work and results that will be compiled in a report of oyster disease research program results. Projects that produce non-experimental data must have copies of these data transferred to the NOAA/NMFS Chesapeake Bay Office in both compiled, hard copy format, and as a verified, electronic data file. Full, clearly stated documentation of the contents of such data files must be submitted with these data.

B. Periodic Workshops

Investigators will be expected to attend periodic workshops with other Oyster Disease Research Program researchers to encourage inter-disciplinary dialogue and forge synthesis of results.

C. Administrative

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications—All primary applicants must submit a completed FORM CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace*—Grantees (as defined at 15 CFR part 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying*—Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosure*—Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Potential recipients may be required to submit an "Identification-Application for Funding Assistance" (Form CD–346), which is used to ascertain background information on key individuals associated with the potential recipient. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Applicants will also be subject to credit check reviews.

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

If an application is selected for funding, DOC has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, sections 606(a) and (b).

Classification

This action has been determined to be "not significant" for purposes of E.O. 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This notice contains collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043 and 0605–0001.

Dated: May 12, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration

[FR Doc. 94–11949 Filed 5–12–94; 1:03 pm]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

S. 1930/P.L. 103-248

Farmers Home Administration Improvement Act of 1994 (May 11, 1994; 108 Stat. 619; 1 page)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
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1–699	(869–019–00004–6)	21.00	Jan. 1 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
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0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
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46–51	(869–022–00009–8)	20.00	[7] Jan. 1, 1993
*52	(869–022–00010–1)	30.00	Jan. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

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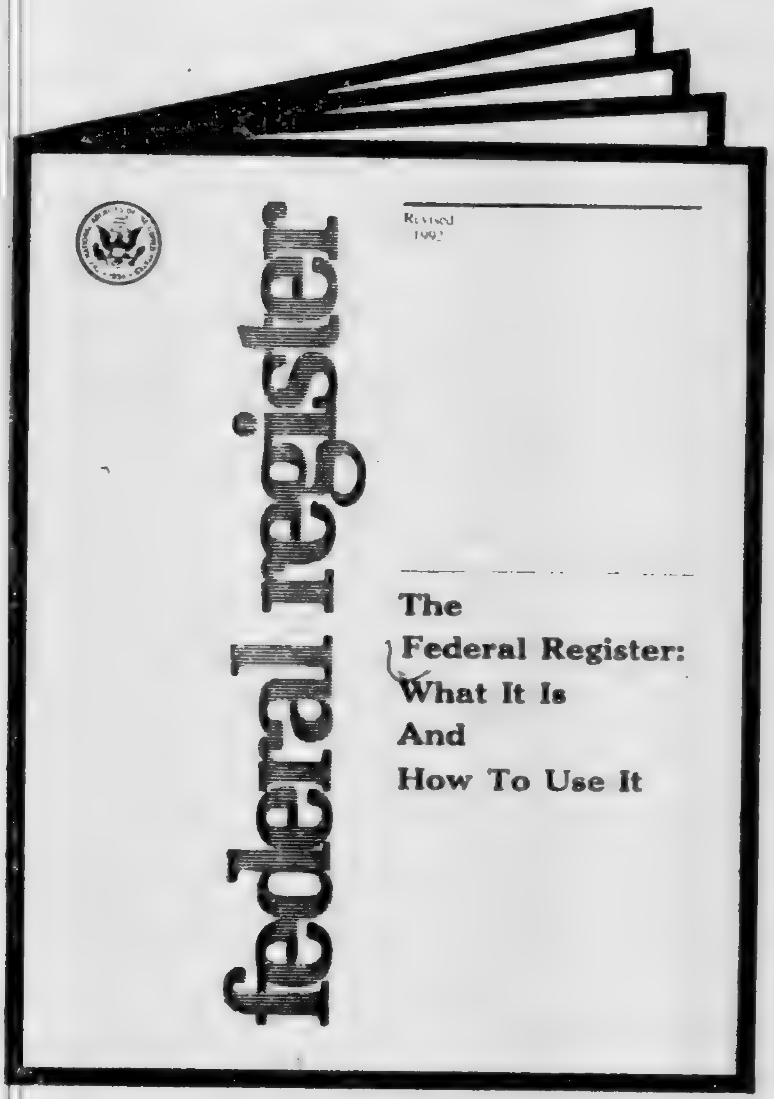
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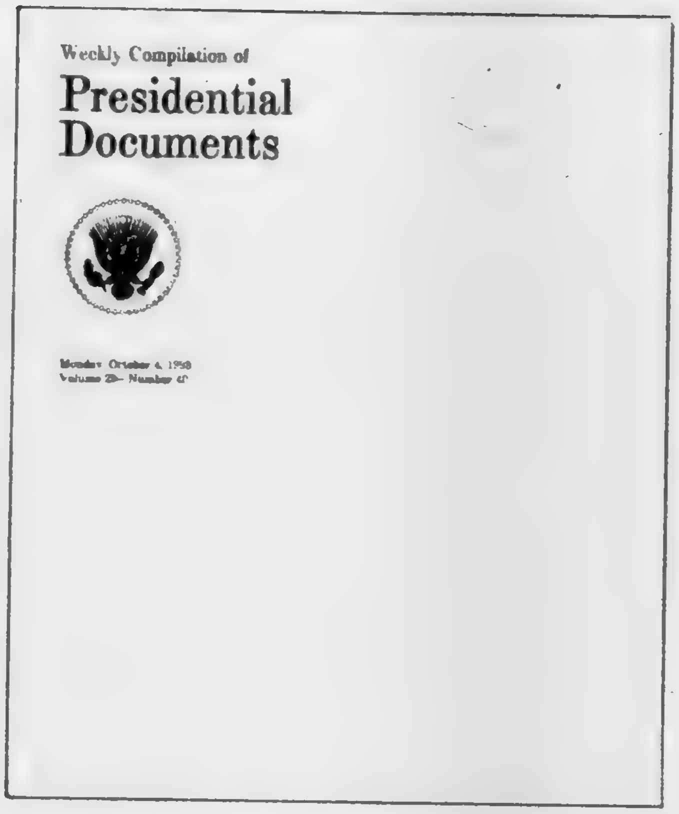

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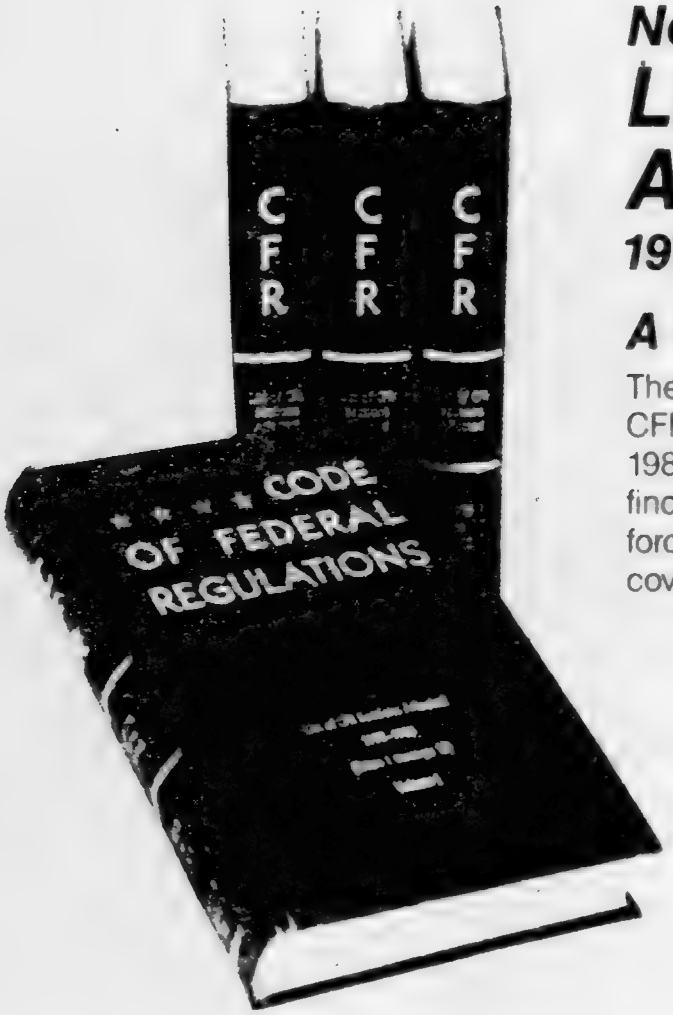

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